

House Bill 2136

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Oregon Military Department)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Revises provisions relating to Oregon militia.

Creates crime of wearing official uniform of organized militia or Armed Forces of United States without authorization. Punishes by maximum of six months' imprisonment or \$2,500 fine, or both.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to Oregon Military Department; creating new provisions; amending ORS 181.539, 183.315,
3 396.105, 396.125, 396.145, 396.160, 396.305, 396.360, 398.002, 398.008, 398.012, 398.058, 398.060,
4 398.062, 398.083, 398.104, 398.106, 398.108, 398.110, 398.112, 398.116, 398.126, 398.132, 398.135,
5 398.136, 398.209, 398.224, 398.226, 398.256, 398.258, 398.282, 398.302, 398.416, 399.095, 399.155 and
6 399.515; and declaring an emergency.

7 **Be It Enacted by the People of the State of Oregon:**

8 **SECTION 1.** ORS 396.125 is amended to read:

9 396.125. (1) The Governor of the state, by virtue of office, is the Commander in Chief of the
10 militia of the state, and may issue military regulations for the [*government*] **governance** of the
11 militia. Military regulations issued by the Governor shall have the same force and effect as the
12 provisions of this chapter and ORS chapters 398 and 399. In issuing such regulations, the Governor
13 may give consideration to the laws and regulations of the United States relating to the organization,
14 discipline and training of the militia, to the provisions of this chapter and ORS chapters 398 and 399
15 and to the laws and regulations governing **the** United States Army and United States Air Force.
16 The military [*rules and*] regulations in force on [*May 22, 1961,*] **the effective date of this 2005 Act**
17 shall remain in force until new [*rules and*] regulations are approved and promulgated.

18 **(2) The Governor may delegate to the Adjutant General authority to issue the regulations**
19 **described in subsection (1) of this section for the governance of the militia.**

20 **SECTION 2.** ORS 396.160 is amended to read:

21 396.160. (1) The Adjutant General shall be the Director of the Oregon Military Department, and
22 Chief of Staff to the Governor. The Adjutant General shall be the Commander of the Oregon Na-
23 tional Guard.

24 (2) The Adjutant General shall be charged, under the direction of the Governor, with the
25 supervision of all matters pertaining to the administration, discipline, mobilization, organization and
26 training of the Oregon National Guard and the Oregon State Defense Force.

27 (3) The Adjutant General shall perform all duties required by the laws of the United States and
28 of the State of Oregon, and the regulations issued thereunder, now or hereafter promulgated.

29 (4) The Adjutant General may employ such deputies, assistants and other personnel as the Ad-
30 jutant General shall deem necessary to assist the Adjutant General in the performance of those

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 duties required of the Adjutant General as Director of the Oregon Military Department. The Adju-
2 tant General shall fix the compensation of such deputies, assistants and other personnel in accord-
3 ance with then existing state laws, budgetary restrictions and employment policies.

4 (5) The Adjutant General shall supervise the preparation and submission of all returns and re-
5 ports pertaining to the militia of the state as may be required by the United States.

6 (6) The Adjutant General shall be the channel of official military correspondence with the
7 Governor, and shall, on or before November 1 of each year, make a report to the Governor of the
8 transactions, expenditures and condition of the Oregon National Guard. The report shall include the
9 report of the United States Property and Fiscal Officer.

10 (7) The Adjutant General shall be the custodian of records of officers and enlisted personnel and
11 all other records and papers required by law or regulations to be filed in the office of the Adjutant
12 General. The Adjutant General may deposit with the State Archivist for safekeeping in the official
13 custody, records of the office of the Adjutant General that are used for historical purposes rather
14 than the administrative purposes assigned to the office of the Adjutant General by law.

15 (8) The Adjutant General shall attest and record all military commissions issued by the Gover-
16 nor and keep a roll of all commissioned officers, with dates of commission and all changes occurring
17 in the commissioned forces.

18 (9) The Adjutant General shall record, authenticate and communicate to troops and individuals
19 of the militia all orders, instructions and regulations.

20 (10) The Adjutant General shall cause to be procured, printed and circulated to those concerned
21 all books, blank forms, laws, regulations or other publications governing the militia needful to the
22 proper administration, operation and training thereof or to carry into effect the provisions of this
23 chapter and ORS chapters 398 and 399.

24 (11) The Adjutant General shall have an appropriate seal of office and affix its impression to
25 all certificates of record issued from the office of the Adjutant General.

26 (12) The Adjutant General shall render such professional aid and assistance and perform such
27 military duties, not otherwise assigned, as may be ordered by the Governor.

28 (13) The Adjutant General shall, in time of peace, perform the duties of quartermaster general
29 and chief of ordnance.

30 **(14) The Adjutant General may issue regulations as described in ORS 396.125 (1) if au-**
31 **thority is delegated to the Adjutant General by the Governor.**

32 **SECTION 3.** ORS 396.105 is amended to read:

33 396.105. (1) The militia of the state shall be divided into the organized militia and the unorgan-
34 ized militia.

35 (2) The organized militia shall be composed of the Oregon Army National Guard and the Oregon
36 Air National Guard, which forces together with an inactive National Guard shall comprise the
37 Oregon National Guard; the Oregon State Defense Force whenever such a state force shall be duly
38 organized; and such additional forces as may be created by the Governor.

39 (3) The unorganized militia shall consist of all able-bodied [*male*] residents of the state between
40 the ages of 18 and 45 who are not serving in any force of the organized militia or who are not on
41 the state retired list and who are or who have declared their intention to become citizens of the
42 United States; subject, however, to such exemptions from military duty as are created by the laws
43 of the United States.

44 **SECTION 4.** ORS 396.145 is amended to read:

45 396.145. (1) The military staff of the Governor shall consist of the Chief of Staff to the Governor,

1 the Military Council and such personal aides-de-camp as the Governor shall deem necessary.

2 (2) The Adjutant General shall be Chief of Staff to the Governor.

3 (3) The Military Council hereby is established as an advisory board to the Governor for the
 4 purpose of advising the Governor in all matters of military interest to the state. It shall consist of
 5 the Adjutant General, **a judge advocate** and not [*less*] **fewer** than 6 nor more than 10 officers of
 6 the Oregon National Guard selected for their knowledge of the service. The Oregon Army National
 7 Guard and the Oregon Air National Guard shall be represented on the Military Council in propor-
 8 tion to their total strength.

9 (4) Personal aides-de-camp to the Governor may be selected from the commissioned officers of
 10 the Oregon National Guard or from reserve officers of the Armed Forces of the United States who
 11 are residents of Oregon and who are not serving on extended active duty. Officers detailed under
 12 this section shall not be relieved from their ordinary duties except when actually on duty with the
 13 Governor.

14 (5) The military staff of the Governor shall, in addition to its other duties, perform such cere-
 15 monial functions and duties as the Governor may prescribe.

16 **SECTION 5.** ORS 398.002 is amended to read:

17 398.002. As used in this chapter and ORS 396.120, **396.145**, 399.205 and 399.515, unless the con-
 18 text requires otherwise:

19 (1) “Accuser” means a person who signs and swears to charges, any person who directs that
 20 charges nominally be signed and sworn to by another, or any other person who has an interest other
 21 than an official interest in the prosecution of the accused.

22 (2) “Active state duty” means full-time duty in the active military service of the state under an
 23 order of the Governor issued under authority vested in the Governor by law, and includes travel to
 24 and from such duty. The term “active state duty” also includes all Oregon National Guard personnel
 25 serving on active duty under Title 32 U.S.C. 502 (f).

26 (3) “Commanding officer” includes only commissioned officers **in positions of command**.

27 (4) “Commissioned officer” includes a commissioned warrant officer.

28 (5) “Component” includes the Army National Guard, the Air National Guard and the Oregon
 29 State Defense Force.

30 (6) **“Confining authority” means the Governor, a military court or a convening authority**
 31 **or commanding officer who has authority to order confinement of a person subject to this**
 32 **chapter.**

33 [(6)] (7) “Convening authority” [*includes, in addition to the person who convened the court, a*
 34 *commissioned officer commanding for the time being, or a successor in command*] **means a person**
 35 **authorized under this chapter to convene a court-martial.**

36 [(7)] (8) “Duty status other than active state duty” means [*and includes*] any [*periods of*] drill
 37 **periods** and such other training or service, other than active state duty, as may be required under
 38 state or federal laws, regulations or orders, and [*includes*] travel to and from such duty.

39 [(8)] (9) “Enlisted member” means a person in an enlisted grade.

40 [(9)] (10) “Grade” means a step or degree, in a graduated scale of office or military rank, that
 41 is established and designated as a grade by law or regulation.

42 [(10)] (11) “Judge advocate” means the State Judge Advocate or an Assistant State Judge Ad-
 43 vocate.

44 [(11) “*May*” is used in a permissive sense. However, the words “no person may...” mean that no
 45 person is required, authorized or permitted to do the act prescribed.]

1 (12) "Military" refers to any or all of the armed forces.

2 (13) "Military court" means a court-martial, a court of inquiry or a provost court.

3 (14) "Military judge" means an official of a general or special court-martial detailed in accord-
4 ance with ORS 398.135.

5 (15) "Officer" means commissioned or warrant officer.

6 (16) "Organized militia" means the [*National Guard of the state, as defined in section 101(3) of*
7 *title 32, United States Code, and the Oregon State Defense Force*] **organized militia described in**
8 **ORS 396.105.**

9 (17) "Rank" means the order of precedence among members of the armed forces.

10 (18) "Record," when used in connection with the proceedings of a court-martial, means:

11 (a) An official written transcript, written summary or other writing relating to the proceedings;

12 or

13 (b) An official audiotape, videotape or similar material from which sound or sound and visual
14 images depicting the proceedings may be reproduced.

15 [(19) "*Shall*" is used in an imperative sense.]

16 [(20)] (19) "State Judge Advocate" means the commissioned officer responsible for supervising
17 the administration of [*the*] military justice **and general military legal matters** in the organized
18 militia.

19 [(21)] (20) "Superior commissioned officer" means a commissioned officer superior in rank or
20 command.

21 (21) "**Uniform Code of Military Justice**" means **chapter 47 (commencing with section 801)**
22 **of Title 10 of the United States Code and regulations adopted thereunder, together with the**
23 **Manual for Courts-Martial, United States, 1984 (Executive Order 12473 of July 13, 1984, as**
24 **amended).**

25 **SECTION 6.** ORS 398.008 is amended to read:

26 398.008. (1) If any commissioned officer dismissed by order of the Governor makes a written
27 application for trial by court-martial, setting forth under oath that the officer has been wrongfully
28 dismissed, the Governor **or the Adjutant General**, as soon as practicable shall convene a general
29 court-martial to try that officer on the charges on which the officer was dismissed. A court-martial
30 so convened has jurisdiction to try the dismissed officer on those charges, and the officer shall be
31 considered to have waived the right to plead any statute of limitations applicable to any offense with
32 which the officer is charged. The court-martial may, as part of its sentence, adjudge the affirmance
33 of the dismissal; but if the court-martial acquits the accused or if the sentence adjudged, as finally
34 approved or affirmed, does not include dismissal, the Adjutant General shall substitute for the dis-
35 missal ordered by the Governor a form of discharge authorized for administrative issue.

36 (2) If the Governor **or the Adjutant General** fails to convene a general court-martial within six
37 months from the presentation of an application for trial under this chapter, the Adjutant General
38 shall substitute for the dismissal ordered by the Governor a form of discharge authorized for ad-
39 ministrative issue.

40 (3) If a discharge is substituted for a dismissal under this chapter, the Governor alone may re-
41 appoint the officer to such commissioned grade and with such rank as, in the opinion of the Gov-
42 ernor, that former officer would have attained had the officer not been dismissed. The reappointment
43 of such a former officer may be made only if a vacancy is available under applicable tables of or-
44 ganization. All time between the dismissal and the reappointment shall be considered as actual ser-
45 vice for all purposes.

1 (4) If an officer is discharged from the organized militia by administrative action or by board
 2 proceedings under law, or is dropped from the rolls by order of the Governor, the officer has no
 3 right to trial under this section.

4 **SECTION 7.** ORS 398.012 is amended to read:

5 398.012. (1) The Governor, on the recommendation of the Adjutant General, shall appoint an of-
 6 ficer of the organized militia as State Judge Advocate. To be eligible for appointment, an officer
 7 must:

8 (a) Be a member **in good standing** of the **Oregon State Bar** [*of the highest court of the state*
 9 *and*];

10 (b) [*must*] Have been a member of the **Oregon State Bar** [*of the state*] for at least five years;
 11 **and**

12 (c) **Meet the qualifications for a judge advocate under the Uniform Code of Military Jus-**
 13 **tice.**

14 (2) The Adjutant General may appoint as many Assistant State Judge Advocates as the Adjutant
 15 General deems necessary[, *which*]. **The** Assistant State Judge Advocates shall be officers of the
 16 organized militia and members of the **Oregon State Bar** [*of the state*]. However, the Adjutant Gen-
 17 eral may appoint temporary Assistant State Judge Advocates for a period not to exceed 12 months.
 18 An individual appointed as a temporary Assistant State Judge Advocate shall be an officer of the
 19 Oregon State Defense Force and shall be legally trained but is not required to be admitted to the
 20 practice of law by the Supreme Court of this state. The legal services performed by temporary As-
 21 sistant State Judge Advocates shall be limited to those legal services that may be performed by legal
 22 assistants consistent with ORS 9.160.

23 (3) The State Judge Advocate or assistants shall make frequent inspections in the field for
 24 supervision of the administration of military justice **and general military legal matters.**

25 (4) Convening authorities shall at all times communicate directly with their staff judge advocate
 26 or legal officers in matters relating to the administration of military justice **and general military**
 27 **legal matters**; and the staff judge advocate or legal officer of any command is entitled to commu-
 28 nicate directly with the staff judge advocate or legal officer of a superior or subordinate command,
 29 or with the State Judge Advocate.

30 (5) [*No*] **A** person who has acted as member, military judge, trial counsel, assistant trial counsel,
 31 defense counsel, assistant defense counsel or investigating officer, or who has been a witness for
 32 either the prosecution or defense in any case, may **not** later act as staff judge advocate or legal
 33 officer to any reviewing authority upon the same case.

34 (6) A judicial officer, as defined by ORS 1.210, is not prohibited, by reason of holding that office,
 35 from performing all acts necessary or incumbent to the authorized exercise of duties as a [*State*]
 36 judge advocate or [*legal officer*] **as a member of the Military Council.**

37 **SECTION 8.** ORS 398.058 is amended to read:

38 398.058. (1)(a) **Except as provided in paragraph (b) of this subsection,** any person subject to
 39 this chapter charged with an offense under this chapter may be ordered, **as a priority prisoner,**
 40 into arrest or confinement, as circumstances may require[; *but when*].

41 (b) **A person subject to this chapter** charged only with [*an*] **a minor** offense normally tried
 42 by a summary court-martial **or subject to punishment under ORS 398.083**[, *such person shall*] **may**
 43 not ordinarily be placed in confinement.

44 (c) **The offense described under ORS 398.322 is not a minor offense for the purposes of**
 45 **this subsection.**

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

4 (3) **When a person subject to this chapter is placed in confinement prior to summary**
 5 **court-martial or disposition under ORS 398.083, the person shall be conditionally released**
 6 **pending disposition of the charges.**

7 (4) **A person described in subsection (3) of this section may be reconfined if the person**
 8 **violates the conditional release. The person violates the conditional release if the person fails**
 9 **to attend drill periods, periods of active duty training, annual training, other periods deter-**
 10 **mined by the confining authority or hearings related to the pending charges or other condi-**
 11 **tions imposed by the confining authority.**

12 (5) As used in this section, “priority prisoner” means a person subject to this chapter
 13 who:

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

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

17 (c) **May be released only upon order of the confining authority.**

18 **SECTION 9.** ORS 398.060 is amended to read:

19 398.060. (1) Confinement other than in [*a guard house*] **an authorized military confinement**
 20 **facility**, whether before, during or after trial by a military court, shall be executed in [*civil jails*]
 21 **county jails**, penitentiaries or prisons designated by the Governor or by such persons as the Gov-
 22 ernor may authorize to act.

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

25 (3) **Confinement under this section shall be without requirement of payment of any fee**
 26 **or charge for confining the person.**

27 **SECTION 10.** ORS 398.083 is amended to read:

28 398.083. (1) Under such [*rules*] **regulations** as may be prescribed by the Governor **or the Ad-**
 29 **jutant General**, limitations may be placed on the powers granted by this section with respect to the
 30 kind and amount of punishment authorized, the categories of commanding officers and warrant offi-
 31 cers exercising command authorized to exercise those powers, the applicability of this section to an
 32 accused who demands trial by court-martial, and the kinds of courts-martial to which the case may
 33 be referred upon such a demand. However, punishment may not be imposed upon any member of the
 34 organized militia under this section if the member has, before the imposition of such punishment
 35 demanded trial by court-martial in lieu of such punishment. [*Rules*] **Regulations** may be prescribed
 36 by the Governor **or the Adjutant General** with respect to the suspension of punishments authorized
 37 under this section. If authorized by regulations prescribed by the Governor **or the Adjutant Gen-**
 38 **eral**, the Governor, the Adjutant General[,] or an officer of a general rank in command may delegate
 39 powers under this section to a principal assistant who is a member of the organized militia.

40 (2) Subject to subsection (1) of this section, any commanding officer may, in addition to or in lieu
 41 of admonition or reprimand, impose one or more of the following disciplinary punishments for minor
 42 offenses without the intervention of a court-martial:

43 (a) Upon officers of the command:

44 (A) Restriction to certain specified limits, with or without suspension from duty, for not more
 45 than [*15*] **30** consecutive duty or drill days, the punishment to be completed within 90 days of the

1 date punishment was imposed.

2 (B) If imposed by the Governor, the Adjutant General[,] or an officer of a general rank in com-
3 mand:

4 (i) Arrest in quarters for not more than [15] **30** consecutive duty or drill days, the punishment
5 to be completed within 90 days of the date punishment was imposed.

6 (ii) Forfeiture of [pay of] not more than [two-thirds] **one-half** of one month's **active duty base**
7 pay for [three] **two** months.

8 **(iii) Restriction to certain specified limits, with or without suspension from duty, for not**
9 **more than 60 consecutive duty or drill days, the punishment to be completed within 90 days**
10 **of the date punishment was imposed.**

11 **(iv) Detention of not more than one-half of one month's active duty base pay for three**
12 **months.**

13 (b) Upon other military personnel of the command:

14 (A) Forfeiture of [pay of] not more than [two-thirds of one month's pay for one month] **seven**
15 **days' active duty base pay;**

16 (B) Reduction to the next inferior pay grade, if the grade from which demoted is within the
17 promotion authority of the officer imposing the reduction or any officer subordinate to the one who
18 imposes the reduction;

19 (C) Extra duties, including fatigue or other duties, not to exceed two hours per day, including
20 holidays, for not more than [15] **14** consecutive duty or drill days, the punishment to be completed
21 within 90 days of the date punishment was imposed;

22 (D) Restriction to certain specified limits, with or without suspension from duty, for not more
23 than [15] **14** consecutive duty or drill days, the punishment to be completed within 90 days of the
24 date punishment was imposed; [or]

25 **(E) Correctional custody for not more than seven consecutive duty or drill days, the**
26 **punishment to be completed within 90 days of the date punishment was imposed;**

27 **(F) Detention of not more than 14 days' active duty base pay; or**

28 [(E)] (G) If imposed by an officer of the grade of major or above:

29 (i) Forfeiture of [pay of] not more than [two-thirds] **one-half** of one month's **active duty base**
30 pay for two months;

31 (ii) Reduction to the lowest or any intermediate pay grade, if the grade from which demoted is
32 within the promotion authority of the officer imposing the reduction or any officer subordinate to
33 the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be
34 reduced more than two pay grades;

35 (iii) [*The punishment authorized under subparagraph (C) of this paragraph*] **Extra duties, in-**
36 **cluding fatigue or other duties, not to exceed two hours per day, including holidays, for not**
37 **more than 45 consecutive duty or drill days, the punishment to be completed within 90 days**
38 **of the date punishment was imposed; [or]**

39 (iv) [*The punishment authorized under subparagraph (D) of this paragraph.*] **Restriction to cer-**
40 **tain specified limits, with or without suspension from duty, for not more than 60 consecutive**
41 **duty or drill days, the punishment to be completed within 90 days of the date punishment**
42 **was imposed;**

43 **(v) Correctional custody for not more than seven consecutive duty or drill days, the**
44 **punishment to be completed within 90 days of the date punishment was imposed; or**

45 **(vi) Detention of not more than one-half of one month's active duty base pay for three**

1 **months.**

2 (3) No two or more of the punishments of arrest in quarters, extra duties, and restriction may
 3 be combined to run consecutively in the maximum amount that may be imposed for each. When any
 4 of those punishments are combined to run consecutively, there must be an apportionment.

5 (4) An officer in charge may impose upon enlisted members assigned to the unit of which the
 6 officer is in charge such of the punishments authorized under subsection (2)(b)(A), (B), (C), [and]
 7 (D), **(E) and (F)** of this section as the Governor may specifically prescribe by regulation.

8 (5) The officer who imposes the punishments authorized under subsection (2) of this section, or
 9 a successor in command, may, at any time, suspend probationally a reduction in grade or a forfeiture
 10 imposed under subsection (2) of this section, whether or not executed. In addition, such officer may,
 11 at any time, remit or mitigate any part or amount of the unexecuted punishment and may set aside
 12 in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privi-
 13 leges and property affected. The officer may also mitigate reduction in grade to forfeiture of **active**
 14 **duty base** pay. When mitigating an arrest in quarters to restriction or extra duties to restriction,
 15 the mitigated punishment shall not be for a greater period than the punishment mitigated. When
 16 mitigating reduction in grade to forfeiture of **active duty base** pay, the amount of the forfeiture
 17 shall not be greater than the amount that could have been imposed initially under this section by
 18 the officer who imposed the punishment mitigated.

19 (6) A person punished under this section who considers the punishment unjust or dispropor-
 20 tionate to the offense may, through the proper channel, appeal to the next superior authority. The
 21 appeal shall be promptly forwarded and decided, but the person punished may in the meantime be
 22 required to undergo the punishment adjudged. The superior authority may exercise the same powers
 23 with respect to the punishment imposed as may be exercised under subsection (5) of this section by
 24 the officer who imposed the punishment. Before acting on an appeal from [*a punishment of*] **any of**
 25 **the following punishments, the authority who is to act on the appeal shall refer the case to**
 26 **a staff judge advocate or legal officer for consideration and advice:**

27 (a) Arrest in quarters for more than seven days;

28 **(b) Correctional custody for more than seven consecutive duty or drill days;**

29 [*(b)*] (c) Forfeiture of [*pay of*] more than [*two-thirds of one month's pay for one month*] **seven**
 30 **days' active duty base pay; [or]**

31 [*(c)*] **(d) Reduction of one or more pay grades from the fourth or a higher pay grade[.]**

32
 33 [*the authority who is to act on the appeal shall refer the case to a staff judge advocate or legal officer*
 34 *for consideration and advice, and may so refer the case upon appeal from any punishment imposed*
 35 *under subsection (2) of this section.];*

36 **(e) Extra duties for more than 14 consecutive drill or duty days;**

37 **(f) Restriction for more than 14 consecutive drill or duty days; or**

38 **(g) Detention of more than 14 days' active duty base pay.**

39 **(7) Except as provided in subsection (6) of this section, before acting on an appeal from**
 40 **any punishment imposed under subsection (2) of this section, the authority who is to act on**
 41 **the appeal may refer the case to a staff judge advocate or legal officer for consideration and**
 42 **advice.**

43 [(7)] **(8) The imposition and enforcement of disciplinary punishment under this section for any**
 44 **act or omission is not a bar to trial by court-martial or other legal proceeding for a serious crime**
 45 **or offense growing out of the same act or omission, and not properly punishable under this section;**

1 but the fact that a disciplinary punishment has been enforced may be shown by the accused upon
 2 trial, and when so shown shall be considered in determining the measure of punishment to be
 3 adjudged in the event of a finding of guilty.

4 [(8)] (9) Whenever a punishment of forfeiture of **active duty base** pay is imposed under this
 5 section, the forfeiture may apply to **active duty base** pay accruing on or after the date that pun-
 6 ishment is imposed and to any **active duty base** pay accrued before that date.

7 [(9)] (10) The Governor **or the Adjutant General** may, by [rule] **regulation**, prescribe the form
 8 of records to be kept of proceedings under this section and may also prescribe that certain catego-
 9 ries of those proceedings shall be in writing.

10 **SECTION 11.** ORS 398.104 is amended to read:

11 398.104. Each component of the organized militia has court-martial jurisdiction over all persons
 12 subject to this chapter. The exercise of jurisdiction by one component over personnel of another
 13 component shall be in accordance with military department regulations prescribed by the Governor
 14 **under ORS 396.125 or by the Adjutant General under ORS 396.160.**

15 **SECTION 12.** ORS 398.106 is amended to read:

16 398.106. Subject to ORS 398.104, general courts-martial have jurisdiction to try persons subject
 17 to this chapter for any offense made punishable by this chapter and may, under such limitations as
 18 the Governor **or the Adjutant General** may prescribe, impose any of the following punishments:

- 19 (1) A fine of not more than [200] **\$500 for each offense or forfeiture of up to two-thirds of**
 20 **one month's active duty base pay and allowances for up to three months, whichever is**
 21 **greater;**
- 22 (2) Forfeiture of **active duty base** pay and allowances **during any period of confinement;**
- 23 (3) Dishonorable discharge, bad-conduct discharge or dismissal;
- 24 (4) Reprimand;
- 25 (5) Reduction of an enlisted member to the lowest or any intermediate enlisted grade;
- 26 (6) Confinement for not more than [200] **365 days for each offense;** or
- 27 (7) Any combination of these punishments.

28 **SECTION 13.** ORS 398.108 is amended to read:

29 398.108. (1) Subject to ORS 398.104, special courts-martial have jurisdiction to try persons other
 30 than officers for any offense made punishable by this chapter.

31 (2) A special court-martial may, under such limitations as the Governor **or the Adjutant Gen-**
 32 **eral** may prescribe, impose any of the following punishments:

- 33 (a) A fine of not more than [200] **\$250 for each offense or forfeiture of up to one-half of**
 34 **one month's active duty base pay and allowances for up to three months, whichever is**
 35 **greater;**
- 36 (b) Forfeiture of **active duty base** pay and allowances **during any period of confinement;**
- 37 (c) Bad-conduct discharge;
- 38 (d) Reprimand;
- 39 (e) Reduction of an enlisted member to the lowest or any intermediate enlisted grade;
- 40 (f) Confinement for not more than [100 days] **365 days for each offense;** or
- 41 (g) Any combination of these punishments.

42 **SECTION 14.** ORS 398.110 is amended to read:

43 398.110. (1) Subject to ORS 398.104, summary courts-martial have jurisdiction to try persons
 44 other than officers for any offense made punishable by this chapter.

45 (2) [No] A person with respect to whom summary courts-martial have jurisdiction may **not** be

1 brought to trial before a summary court-martial if the person objects [*thereto, unless the person has*
 2 *been permitted to refuse punishment under ORS 398.083 and has elected to refuse such punishment*].
 3 If objection to trial by summary court-martial is made by an accused [*who has not been permitted to*
 4 *refuse punishment under ORS 398.083*], trial [*shall*] **may** be ordered by special or general court-
 5 martial, as may be appropriate.

6 [*(3) A summary court-martial may sentence to a fine of not more than \$25 for a single offense, to*
 7 *forfeiture of pay and allowances, to reduction of an enlisted member to the lowest enlisted grade or to*
 8 *confinement for not longer than 30 days.*]

9 **(3) A summary court-martial may impose the following punishments:**

10 **(a) For an enlisted member in a pay grade of E-4 or lower, reduction to the lowest or any**
 11 **intermediate pay grade and rank;**

12 **(b) For a noncommissioned officer, reduction to the next lower pay grade and rank;**

13 **(c) Forfeiture of active duty base pay and allowances during any period of confinement;**

14 **(d) Forfeiture of up to two-thirds of one month's active duty base pay;**

15 **(e) A fine not exceeding \$25 for each offense;**

16 **(f) Confinement not exceeding 30 days; or**

17 **(g) Any combination of these punishments.**

18 **SECTION 15.** ORS 398.112 is amended to read:

19 398.112. In the organized militia not in federal service:

20 (1) A sentence of dismissal or dishonorable discharge may not be executed until the sentence is
 21 approved by the Governor; and

22 (2) A sentence of bad-conduct discharge may not be executed until the sentence is approved by
 23 the [*Governor or by the*] Adjutant General.

24 **SECTION 16.** Sections 17 and 18 of this 2005 Act are added to and made a part of ORS
 25 **chapter 398.**

26 **SECTION 17.** Upon the conditions and with the restrictions and limitations as the Gov-
 27 **ernor thinks proper, the Governor may grant commutations and pardons for all punishments**
 28 **imposed under this chapter by a general court-martial or a special court-martial and may**
 29 **remit all forfeitures and fines imposed under ORS 398.106 or 398.108.**

30 **SECTION 18.** (1) When a person subject to this chapter makes an application for com-
 31 **mutation or pardon to the Governor, a copy of the application, signed by the applicant and**
 32 **stating fully the grounds of the application, shall be served by the applicant upon:**

33 **(a) The convening authority; and**

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

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

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

41 **(4) Following receipt by the Governor of an application for commutation or pardon, the**
 42 **Governor may not grant the application for at least 30 days. Upon the expiration of 180 days**
 43 **following receipt of an application, if the Governor has not granted the commutation or**
 44 **pardon applied for, the application shall lapse. Any further proceedings for commutation or**
 45 **pardon in the case shall be pursuant only to further application and service.**

1 **SECTION 19.** ORS 398.126 is amended to read:

2 398.126. In the organized militia not in federal service, general courts-martial may be convened
3 [by the President or] by the Governor **or by the Adjutant General.**

4 **SECTION 20.** ORS 398.132 is amended to read:

5 398.132. (1) Any commissioned officer of the organized militia is eligible to serve on all courts-
6 martial for the trial of any person who may lawfully be brought before such courts for trial.

7 (2) Any warrant officer of the organized militia is eligible to serve on general and special
8 courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be
9 brought before such courts for trial.

10 (3)(a) Any enlisted member of the organized militia who is not a member of the same unit as the
11 accused is eligible to serve on general and special courts-martial for the trial of any enlisted member
12 who may lawfully be brought before such courts for trial, but shall serve as a member of a court
13 only if, before the conclusion of a session called by the military judge under ORS 398.209, prior to
14 trial or, in the absence of such a session, **at least 30 days** before the court is assembled for the trial
15 of the accused, the accused personally **or through counsel** has requested in writing that enlisted
16 members serve on it. After such a request, the accused may not be tried by a general or special
17 court-martial the membership of which does not include enlisted members in a number comprising
18 at least one-third of the total membership of the court, unless eligible enlisted members cannot be
19 obtained on account of physical conditions or military exigencies. If such members cannot be ob-
20 tained, the court may be convened and the trial held without them, but the convening authority shall
21 make a detailed written statement, to be appended to the record, stating why they could not be
22 obtained.

23 (b) As used in this subsection, "unit" means any regularly organized body of the organized
24 militia not larger than a company, a squadron or a corresponding body.

25 (4)(a) When it can be avoided, no person subject to this chapter shall be tried by a court-martial
26 any member of which is junior to the person in rank or grade.

27 (b) When convening a court-martial, the convening authority shall detail as members thereof
28 such members of the organized militia as, in the opinion of the convening authority, are best quali-
29 fied for the duty by reason of age, education, training, experience, length of service, and judicial
30 temperament. No member of the organized militia is eligible to serve as a member of a general or
31 special court-martial when the member is the accuser or a witness for the prosecution or has acted
32 as investigating officer or as counsel in the same case.

33 (5) Before a court-martial is assembled for the trial of a case, the convening authority may ex-
34 cuse a member of the court from participating in the case. The convening authority may delegate
35 any authority under this subsection to the State Judge Advocate or designee.

36 **SECTION 21.** ORS 398.135 is amended to read:

37 398.135. (1) The authority convening a general court-martial or the State Judge Advocate shall
38 detail a military judge to the general court-martial. Subject to [rules of] **regulations issued by** the
39 Governor **or the Adjutant General**, the authority convening a special court-martial or the State
40 Judge Advocate may detail a military judge to the special court-martial. A military judge shall
41 preside over each open session of the court-martial to which the judge has been detailed.

42 (2) A military judge shall be a commissioned officer of the organized militia or of any of the
43 Armed Forces of the United States, be a member of the bar of the highest court of a state or a
44 member of the bar of a federal court and be certified to be qualified for such duty by the State Judge
45 Advocate.

1 (3) The military judge of a general or special court-martial shall be designated by the State
 2 Judge Advocate, or designee, for detail by the convening authority, and, unless the court-martial
 3 was convened by the Governor **or the Adjutant General**, neither the convening authority nor any
 4 member of the staff of the convening authority shall prepare or review any report concerning the
 5 effectiveness, fitness, or efficiency of the military judge so detailed, which relates to performance
 6 of duty as a military judge.

7 (4) [No] A person is **not** eligible to act as a military judge in a case if the person is the accuser
 8 or a witness for the prosecution or has acted as investigating officer or as a counsel in the same
 9 case.

10 (5) The military judge of a court-martial may not consult with the members of the court except
 11 in the presence of the accused, trial counsel, and defense counsel, nor may the military judge vote
 12 with members of the court.

13 **SECTION 22.** ORS 398.136 is amended to read:

14 398.136. (1) For each general and special court-martial the staff judge advocate for the unit,
 15 command or organization shall detail trial counsel and such assistants as the staff judge advocate
 16 considers appropriate. The State Judge Advocate shall detail defense counsel. [No] A person who
 17 has acted as investigating officer, military judge or court member in any case may **not** act later as
 18 trial counsel, assistant trial counsel or, unless expressly requested by the accused, as defense
 19 counsel or assistant defense counsel in the same case. [No] A person who has acted for the prose-
 20 cution may **not** act later in the same case for the defense, nor may any person who has acted for
 21 the defense act later in the same case for the prosecution.

22 (2) Trial counsel or defense counsel detailed for a general court-martial must be:

23 **(a) A judge advocate qualified under the Uniform Code of Military Justice; or**

24 [(a)] **(b) A person who is:**

25 **(A) A member of the Oregon State Bar [of the highest court of this state], or a member of the**
 26 **bar of a federal court or an attorney allowed under ORS 9.241 to practice before a court of this**
 27 **state; and**

28 [(b)] **(B) Certified as competent to perform such duties by the State Judge Advocate.**

29 (3) In the case of a special court-martial:

30 (a) If the trial counsel is qualified to act as counsel before a general court-martial, the defense
 31 counsel detailed by the State Judge Advocate must be a person similarly qualified; and

32 (b) If the trial counsel is a member of the **Oregon State Bar [of the highest court of this state]**,
 33 the defense counsel detailed by the State Judge Advocate must have the same qualifications.

34 **SECTION 23.** ORS 398.224 is amended to read:

35 398.224. (1) Any person not subject to this chapter is guilty of an offense against the state when
 36 the person:

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

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

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

44 (2) Any person who commits an offense described in subsection (1) of this section shall be tried
 45 before the circuit court or judge thereof of the county where the offense occurred, and exclusive

1 jurisdiction is conferred upon those courts for such purpose. Upon conviction, such a person shall
 2 be punished by a fine of not more than [~~\$500~~] **\$2,500**, or imprisonment for not more than six months,
 3 or both.

4 (3) The district attorney of the county in which the offense occurred, upon certification of the
 5 facts by the military court, court of inquiry or board, shall prosecute any person who commits the
 6 offense described in subsection (1) of this section. The fine shall be deposited in the General Fund
 7 of the State Treasury, to be available for general governmental expenses.

8 **SECTION 24.** ORS 398.226 is amended to read:

9 398.226. (1) A military court may punish for contempt any person who uses any menacing word,
 10 sign or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The pun-
 11 ishment may not exceed confinement for 30 days or a fine of \$100, or both.

12 (2) **A military court shall have the contempt power possessed by a civilian court as pro-**
 13 **vided under ORS 33.015 to 33.155.**

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

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

18 (5) **The county jail may not charge the Oregon Military Department or the state for the**
 19 **costs of a person's confinement under this section.**

20 **SECTION 25.** ORS 398.258 is amended to read:

21 398.258. (1) A sentence of confinement adjudged by a military court, whether or not the sentence
 22 includes discharge or dismissal, and whether or not the discharge or dismissal has been executed,
 23 may be carried into execution by confinement in any place of confinement under the control of any
 24 of the forces of the organized militia or in any jail, penitentiary or prison designated for that pur-
 25 pose. Persons so confined in a jail, penitentiary or prison are subject to the same discipline and
 26 treatment as persons confined or committed to the jail, penitentiary or prison by the courts of the
 27 state or of any political subdivision thereof.

28 (2) The keepers, officers and wardens of [*city or*] county jails [*and of other jails*], penitentiaries
 29 or prisons designated by the Governor, or by such person as the Governor may authorize to act
 30 under ORS 398.060, shall receive persons ordered into confinement before trial and persons com-
 31 mitted to confinement by a military court and shall confine them according to law.

32 (3) **A person confined under this section shall have the status of a priority prisoner as**
 33 **defined in ORS 398.058 and may be released only upon order of a military court.**

34 (4) [*No such*] **A keeper, officer or warden [*may*] described in subsection (2) of this section**
 35 **may not** require payment of any fee or charge for [*so*] receiving or confining a person **under this**
 36 **section.**

37 **SECTION 26.** ORS 398.302 is amended to read:

38 398.302. A person may not be tried or punished for any offense provided for in ORS 398.304 to
 39 398.388, unless:

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

42 (2) The offense charged has a connection with the military duties of the person. For purposes
 43 of this subsection, the required connection with military duties is conclusively established for of-
 44 fenses for which there is no equivalent offense in the general criminal laws of this state and for
 45 offenses involving [*personal*] **wrongful use, possession, manufacture, distribution or introduc-**

1 **tion of [illegal or controlled substances] a substance described in ORS 398.391 (2) in violation of**
 2 **ORS 398.391.**

3 **SECTION 27.** ORS 399.155 is amended to read:

4 399.155. (1) *[No member of the organized militia shall wear, when on or off duty, any uniform or*
 5 *any device, strap, knot or insignia of any design or character used as a designation of grade, rank or*
 6 *office, such as are by law or regulation, duly promulgated, prescribed for the use of the organized*
 7 *militia, without the permission of the commanding officer.]* **A person who is not authorized by law**
 8 **or regulation may not wear any official uniform of the organized militia as described in ORS**
 9 **396.105 or the Armed Forces of the United States unless the person is:**

10 (a) **A current member of the organized militia or the Armed Forces of the United States;**

11 (b) **A former member who has been honorably discharged from the organized militia or**
 12 **the Armed Forces of the United States; or**

13 (c) **Retired from the organized militia or the Armed Forces of the United States.**

14 (2) **A person who violates this section commits a Class B misdemeanor.**

15 **SECTION 28.** ORS 181.539 is amended to read:

16 181.539. (1) Upon the request of the Teacher Standards and Practices Commission, the Depart-
 17 ment of Education or the Oregon Military Department, the Department of State Police shall furnish
 18 to the authorized staff of the Teacher Standards and Practices Commission, the Department of Ed-
 19 ucation or the Oregon Military Department, whichever is appropriate, such information on a subject
 20 individual as the Department of State Police may have in its possession from its central bureau of
 21 criminal identification, including but not limited to manual or computerized criminal offender infor-
 22 mation.

23 (2)(a) Subsequent to furnishing the information required under subsection (1) of this section, the
 24 Department of State Police shall conduct nationwide criminal records checks of the subject indi-
 25 vidual through the Federal Bureau of Investigation by use of the subject individual's fingerprints
 26 and shall report the results to the staff of the requesting agency, who must be specifically authorized
 27 to receive the information.

28 (b) The Federal Bureau of Investigation shall either return or destroy the fingerprint cards used
 29 to conduct the criminal records check and shall not keep any record of the fingerprints. However,
 30 if the federal bureau policy authorizing return or destruction of the fingerprint cards is changed, the
 31 department shall cease to send the cards to the federal bureau but shall continue to process the
 32 information through other available resources.

33 (c) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of
 34 State Police, the department shall return the fingerprint cards to the requesting agency. Upon re-
 35 ceiving fingerprint cards under this paragraph, the requesting agency shall destroy the fingerprint
 36 cards and shall retain no facsimiles or other material from which a fingerprint can be reproduced.

37 (3) For purposes of requesting and receiving the information and data described in subsections
 38 (1) and (2) of this section, the Teacher Standards and Practices Commission, the Department of Ed-
 39 ucation and the Oregon Military Department are designated agencies for purposes of ORS 181.010
 40 to 181.560 and 181.715 to 181.730.

41 (4) Nothing in this section shall be considered to require a subject individual as described in
 42 subsection (5)(d)(D), (E) or (I) of this section to submit to fingerprinting until the individual has been
 43 offered employment or a contract by a school district or private school. Contractor employees shall
 44 not be required to submit to fingerprinting until the contractor has been offered a contract.

45 (5) As used in this section:

1 (a) "Private school" means a school that provides educational services as defined in ORS 345.505
 2 and is registered as a private school under ORS 345.505 to 345.575.

3 (b) "Requesting agency" means whichever agency requested the criminal offender information
 4 under subsection (1) of this section.

5 (c) "School district" means:

6 (A) A school district as defined in ORS 330.003.

7 (B) The Oregon State School for the Blind.

8 (C) The Oregon State School for the Deaf.

9 (D) An educational program under the Youth Corrections Education Program.

10 (E) A public charter school as defined in ORS 338.005.

11 (F) An education service district.

12 (d) "Subject individual," for purposes of requests made by the Teacher Standards and Practices
 13 Commission or the Department of Education, means:

14 (A) An individual who is applying for initial issuance of a license under ORS 342.120 to 342.430
 15 as a teacher, administrator or personnel specialist if the individual has not submitted to a criminal
 16 records check within the previous year with the Teacher Standards and Practices Commission.

17 (B) An individual who is applying for reinstatement of a license as a teacher, administrator or
 18 personnel specialist whose license has lapsed for at least three years.

19 (C) An individual who is applying for initial issuance of a certificate under ORS 342.475 as a
 20 school nurse.

21 (D) A school district or private school contractor, whether part-time or full-time, or an employee
 22 thereof, whether part-time or full-time, who has direct, unsupervised contact with students as de-
 23 termined by the district or private school.

24 (E) An individual newly hired, whether part-time or full-time, by a school district or private
 25 school in a capacity not described in subparagraphs (A) to (C) of this paragraph who has direct,
 26 unsupervised contact with children as determined by the district or private school.

27 (F) An individual employee, whether part-time or full-time, of a school district or private school
 28 in a capacity not described in subparagraphs (A) to (C) of this paragraph who has direct, unsuper-
 29 vised contact with children as determined by the district or private school.

30 (G) An individual who is registering with the Teacher Standards and Practices Commission for
 31 student teaching, practicum or internship as a teacher, administrator or personnel specialist, if the
 32 individual has not submitted to a criminal records check within the previous year with the Teacher
 33 Standards and Practices Commission for student teaching, practicum or internship as a teacher,
 34 administrator or personnel specialist.

35 (H) An individual who is a community college faculty member providing instruction at a
 36 kindergarten through grade 12 school site during the regular school day.

37 (I) An individual who is an employee of a public charter school.

38 (J) An individual who is applying for initial issuance of a registration as a public charter school
 39 teacher under ORS 342.125.

40 (e) "Subject individual" does not include an individual described in paragraph (d)(D), (E), (F), (H)
 41 or (I) of this subsection if the individual or the individual's employer was checked in one school
 42 district or private school and is currently seeking to work in another district or private school un-
 43 less the individual lived outside this state during the interval between the two periods of time of
 44 working in the district or private school.

45 (f) "Subject individual," for purposes of requests made by the Oregon Military Department,

1 means:

2 (A) An individual who is applying for or is employed in a position in a job category for which
3 a statewide and nationwide criminal records check is a job qualifier and in which personnel:

4 [(A)] (i) Are assigned to the at-risk youth alternative education program;

5 [(B)] (ii) Are issued firearms and munitions;

6 [(C)] (iii) Have fiscal and purchasing responsibilities as their primary responsibilities; or

7 [(D)] (iv) Have regular access to restricted areas within a military installation.

8 (B) An individual who is applying to join the organized militia of this state, as described
9 in ORS 396.105, or is a member of the organized militia of this state.

10 **SECTION 29.** Section 30 of this 2005 Act is added to and made a part of ORS chapter 398.

11 **SECTION 30.** (1) There is established within the Oregon Military Department the Armed
12 Forces Court of Appeals for Oregon.

13 (2) The court shall have jurisdiction over appeals properly brought under regulations
14 adopted by the Adjutant General.

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

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

20 (5)(a) Appointments shall be for a term of six years, except that the initial appointments
21 of the judges shall be for the following terms:

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

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

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

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

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

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

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

33 (b) Is a former commissioned officer of the Armed Forces of the United States (regular,
34 reserve or National Guard), or a former or current member of the Oregon State Defense
35 Force; and

36 (c) Has at least:

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

38 (B) 15 years' experience in the Judge Advocate Branch of the Oregon State Defense
39 Force.

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

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

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

3 **(10) The Adjutant General shall adopt regulations to govern appellate procedure before**
 4 **the court. The regulations shall be substantially similar to the provisions for post-trial pro-**
 5 **cedure and review of courts-martial under the Uniform Code of Military Justice.**

6 **SECTION 31.** ORS 183.315 is amended to read:

7 183.315. (1) The provisions of ORS 183.410, 183.415, 183.425, 183.440, 183.450, 183.452, 183.458,
 8 183.460, 183.470 and 183.480 do not apply to local government boundary commissions created pur-
 9 suant to ORS 199.425 or 199.430, the Department of Revenue, State Accident Insurance Fund Cor-
 10 poration, Department of Consumer and Business Services with respect to its functions under ORS
 11 chapters 654 and 656, Psychiatric Security Review Board or State Board of Parole and Post-Prison
 12 Supervision.

13 (2) This chapter does not apply with respect to actions of the Governor authorized under ORS
 14 chapter 240 **and ORS 396.125 or actions of the Adjutant General authorized under ORS 396.160**
 15 **(14).**

16 (3) The provisions of ORS 183.410, 183.415, 183.425, 183.440, 183.450, 183.452, 183.458 and 183.460
 17 do not apply to the Employment Appeals Board or the Employment Department.

18 (4) The Employment Department shall be exempt from the provisions of this chapter to the ex-
 19 tent that a formal finding of the United States Secretary of Labor is made that such provision con-
 20 flicts with the terms of the federal law, acceptance of which by the state is a condition precedent
 21 to continued certification by the United States Secretary of Labor of the state's law.

22 (5) The provisions of ORS 183.415 to 183.430, 183.440 to 183.460, 183.470 to 183.485 and 183.490
 23 to 183.500 do not apply to orders issued to persons who:

24 (a) Have been committed pursuant to ORS 137.124 to the custody of the Department of Cor-
 25 rections or are otherwise confined in a Department of Corrections facility; or

26 (b) Seek to visit an inmate confined in a Department of Corrections facility.

27 (6) ORS 183.410, 183.415, 183.425, 183.440, 183.450, 183.460, 183.470 and 183.480 do not apply to
 28 the Public Utility Commission.

29 (7) The provisions of this chapter do not apply to the suspension, cancellation or termination
 30 of an apprenticeship or training agreement under ORS 660.060.

31 (8) The provisions of ORS 183.413 to 183.497 do not apply to administrative proceedings con-
 32 ducted under rules adopted by the Secretary of State under ORS 246.190.

33 **SECTION 32.** ORS 399.515 is amended to read:

34 399.515. This section and ORS 398.006, 398.008, 398.052, 398.083, 398.132, 398.136, 398.204,
 35 398.252, 398.302 to 398.388, 398.404 and 399.205 shall be carefully explained to every enlisted member
 36 at the time of enlistment or transfer or induction into, or at the time of an order to duty in or with
 37 any of the forces of the organized militia or within 30 days thereafter. They shall also be explained
 38 annually to each unit of the organized militia. A complete text of ORS chapter 398 and ORS 399.205,
 39 [and] of the military department regulations prescribed by the Governor thereunder **and of the**
 40 **regulations issued by the Adjutant General under ORS 396.160 and section 30 of this 2005**
 41 **Act**, shall be made available to any member of the organized militia, upon request, for personal ex-
 42 amination.

43 **SECTION 33.** Section 34 of this 2005 Act is added to and made a part of ORS chapter 398.

44 **SECTION 34.** (1) **A charge against a person subject to this chapter for an offense that is**
 45 **classified as a Class A felony under the Oregon Criminal Code shall first be presented by the**

1 **convening authority to a prosecuting civilian authority with jurisdiction over the offense for**
 2 **possible prosecution.**

3 **(2) If the prosecuting civilian authority declines to prosecute or fails to respond within**
 4 **90 days from presentation of the charge, the charge may then be prosecuted as provided in**
 5 **this chapter.**

6 **SECTION 35.** ORS 396.305 is amended to read:

7 396.305. (1) The Oregon Military Department is established. The department, under the direc-
 8 tion of the Governor, shall be responsible as provided in this chapter and ORS chapters 398 and 399
 9 for the supervision of the military affairs of the state.

10 (2) The military department shall prepare and promulgate necessary [*rules and*] regulations for
 11 the organization, [*government*] **governance**, armament, equipment, training and compensation of the
 12 militia of the state in conformity with the provisions of this chapter, ORS chapters 398 and 399 and
 13 the laws of the United States. [*Rules and*] Regulations so made shall be subject to the approval of
 14 the Governor.

15 (3) The military department shall make such changes in the military organization of the Oregon
 16 National Guard as are necessary from time to time to conform to the requirements of the laws of
 17 the United States and the directives of the National Guard Bureau.

18 (4) The military department shall fix the location of the units and headquarters of the Oregon
 19 National Guard, and shall, subject to the approval of the National Guard Bureau, transfer, attach,
 20 consolidate or inactivate any organization or unit when in its judgment the efficiency of the present
 21 organization will be increased thereby.

22 (5) The military department shall have the power to establish awards and decorations and to
 23 approve the design therefor.

24 **SECTION 36.** ORS 396.360 is amended to read:

25 396.360. (1) The Oregon Military Department may adopt reasonable policies or procedures for
 26 any program operated by the military department for at-risk youth where attendance by at-risk
 27 youth is voluntary. The policies or procedures adopted by the military department may include but
 28 are not limited to drug testing policies designed to ensure that a person enrolled in the program is
 29 not engaging in unlawful drug use.

30 (2) The military department may adopt policies or procedures pursuant to subsection (1) of this
 31 section by [*rule*] **regulation** or may provide notice of policies or procedures to at-risk youth prior
 32 to enrollment in the program.

33 (3) The results of any drug test performed pursuant to this section shall be used solely for the
 34 purpose of determining eligibility for enrollment or continuing attendance in the program and shall
 35 not be used against the person in any criminal prosecution.

36 **SECTION 37.** ORS 398.062 is amended to read:

37 398.062. (1) [*No provost marshal, commander of a guard, master at arms,*] **A** warden, keeper or
 38 officer of a [*city or*] county jail [*or any other jail*], penitentiary or prison designated under ORS
 39 398.060, may **not** refuse to receive or keep any prisoner committed to the charge of the person, when
 40 the committing person furnishes a statement, signed by the committing person, of the offense
 41 charged against the prisoner.

42 (2) Every [*commander of a guard, master-at-arms,*] warden, keeper or officer of a [*city or*] county
 43 jail [*or of any other jail*], penitentiary or prison designated under ORS 398.060, to whose charge a
 44 prisoner is committed shall, within 24 hours after that commitment [*or as soon as the person is re-*
 45 *lieved from guard*], report to the commanding officer of the prisoner the name of the prisoner, the

1 offense charged against the prisoner, and the name of the person who ordered or authorized the
2 commitment.

3 **SECTION 38.** ORS 398.116 is amended to read:

4 398.116. A general or special court-martial convened for the trial of a person charged with
5 committing an offense after the declaration of a war or national emergency and before the time
6 when the person is brought under the jurisdiction of the [*United States*] Uniform Code of Military
7 Justice, [*chapter 47, title 10, United States Code*], may, upon conviction, adjudge such punishment
8 as may be appropriate, except that it may not exceed that authorized for a similar offense by the
9 [*United States*] Uniform Code of Military Justice.

10 **SECTION 39.** ORS 398.209 is amended to read:

11 398.209. (1) At any time after the service of charges which have been referred for trial to a
12 court-martial composed of a military judge and members, the military judge may, subject to ORS
13 398.172, call the court into session without the presence of the members for the purpose of:

14 (a) Hearing and determining motions, raising defenses or objections which are capable of de-
15 termination without trial of the issues raised by a plea of not guilty;

16 (b) Hearing and ruling upon any matter which may be ruled upon by the military judge under
17 this chapter, whether or not the matter is appropriate for later consideration or decision by the
18 members of the court;

19 (c) If permitted by [*rules of*] **regulations issued by the Governor or the Adjutant General**,
20 holding the arraignment and receiving the pleas of the accused; and

21 (d) Performing any other procedural function which may be performed by the military judge
22 under this chapter or under [*rules*] **regulations** prescribed pursuant to ORS 398.202 and which does
23 not require the presence of the members of the court.

24 (2) These proceedings shall be conducted in the presence of the accused, the defense counsel,
25 and the trial counsel and shall be made a part of the record.

26 (3) When the members of a court-martial deliberate or vote, only the members may be present.
27 All other proceedings, including any other consultation of the members of the court with counsel
28 or the military judge, shall be made a part of the record and shall be in the presence of the accused,
29 the defense counsel, the trial counsel, and in cases in which a military judge has been detailed to
30 the court, the military judge.

31 **SECTION 40.** ORS 398.256 is amended to read:

32 398.256. (1) Whenever a sentence of a court-martial as lawfully adjudged and approved includes
33 a forfeiture of **active duty base** pay or allowances, the forfeiture may apply to **active duty base**
34 pay or allowances becoming due on or after the date the sentence is approved by the convening
35 authority. No forfeiture may extend to any **active duty base** pay or allowances accrued before that
36 date.

37 (2) Any period of confinement included in a sentence of a court-martial begins to run from the
38 date the sentence is ordered to be executed by the convening authority but periods during which
39 the sentence to confinement is suspended or deferred shall be excluded in computing the service of
40 the term of confinement. Regulations prescribed by the Governor may provide that sentences of
41 confinement may not be executed until approved by designated officers.

42 (3) All other sentences of courts-martial are effective on the date ordered executed.

43 **SECTION 41.** ORS 398.282 is amended to read:

44 398.282. (1) If the convening authority is the Governor, action by the Governor on the review
45 of any record of trial is final.

1 (2) In all other cases not covered by subsection (1) of this section, if the sentence of a special
 2 court-martial as approved by the convening authority includes a dishonorable discharge, whether
 3 or not suspended, the entire record shall be sent to the appropriate judge advocate of the state force
 4 concerned to be reviewed in the same manner as a record of trial by general court-martial. The re-
 5 cord and the opinion of the judge advocate shall then be sent to the State Judge Advocate for re-
 6 view.

7 (3) All other special and summary court-martial records shall be sent to the judge advocate of
 8 the appropriate force of the organized militia and shall be acted upon, transmitted, and disposed of
 9 as may be prescribed by the Governor.

10 (4) The State Judge Advocate shall review the record of trial in each case sent to the State
 11 Judge Advocate for review as provided under subsection (2) of this section. If the final action of the
 12 court-martial has resulted in an acquittal of all charges and specifications, the opinion of the State
 13 Judge Advocate shall be limited to questions of jurisdiction.

14 (5) The State Judge Advocate shall take final action in any case reviewable by the State Judge
 15 Advocate.

16 (6) In a case reviewable by the State Judge Advocate under this section, the State Judge Ad-
 17 vocate may act only with respect to the findings and sentence as approved by the convening au-
 18 thority. The State Judge Advocate may affirm only such findings of guilty, and the sentence or such
 19 part or amount of the sentence, as the State Judge Advocate finds correct in law and fact and de-
 20 termines, on the basis of the entire record, should be approved. In considering the record the State
 21 Judge Advocate may weigh the evidence, judge the credibility of witnesses and determine
 22 controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the
 23 State Judge Advocate sets aside the findings and sentence, the State Judge Advocate may, except
 24 where the setting aside is based on lack of sufficient evidence in the record to support the findings,
 25 order a rehearing. If the State Judge Advocate sets aside the findings and sentence and does not
 26 order a rehearing, the State Judge Advocate shall order that the charges be dismissed.

27 (7) In a case reviewable by the State Judge Advocate under this section, the State Judge Ad-
 28 vocate shall instruct the convening authority to act in accordance with the State Judge Advocate's
 29 decision on the review. If the State Judge Advocate has ordered a rehearing but the convening au-
 30 thority finds a rehearing impracticable, the State Judge Advocate may dismiss the charges.

31 (8) The State Judge Advocate may order one or more boards of review each composed of not
 32 [less] **fewer** than three commissioned officers of the organized militia, each of whom must be a
 33 member of the **Oregon State Bar** [of the highest court of the state]. Each board of review shall re-
 34 view the record of any trial by special court-martial referred to it by the State Judge Advocate.
 35 Boards of review have the same authority on review as the State Judge Advocate has under this
 36 section.

37 **SECTION 42.** ORS 398.416 is amended to read:

38 398.416. The Governor may delegate any authority vested in the Governor under this chapter,
 39 and may provide for the subdelegation of any such authority, except with respect to the power given
 40 the Governor by ORS 398.112 and 398.126 **and section 17 of this 2005 Act.**

41 **SECTION 43.** ORS 399.095 is amended to read:

42 399.095. (1) There shall be paid to each unit of the organized militia such amount within funds
 43 available as the Adjutant General may determine, not in excess of \$2,000 a year, for care of state
 44 and federal property or other necessary military expenses not otherwise provided for, including rent
 45 of armories as follows:

1 (a) Upon certificate of the Adjutant General or the person designated by the Adjutant General
 2 that a unit of the organized militia is fully organized and has complied with the military laws and
 3 regulations during the preceding three months, the Oregon Department of Administrative Services
 4 shall draw a warrant quarterly on the State Treasurer to the commander of the unit in the amount
 5 designated in the certificate.

6 (b) Whenever any unit is divided into two separate parts and stationed at different localities,
 7 an additional sum of \$300 per year may be paid to such unit, and the total sum shall be divided and
 8 apportioned between the two parts by the Adjutant General, and the Oregon Department of Ad-
 9 ministrative Services shall draw warrants accordingly.

10 (2) A custodian of a Unit Headquarters Fund may maintain a checking account in any financial
 11 institution authorized to do business in Oregon if the financial institution is also authorized to pro-
 12 vide checking account services and has its accounts insured by the Federal Deposit Insurance Cor-
 13 poration or other similar federal agency which insures financial institutions. All moneys for a Unit
 14 Headquarters Fund shall be deposited, spent and accounted for according to [*rules and*] regulations
 15 adopted and published by the Oregon Military Department.

16 **SECTION 44. ORS 398.302, 398.391, 398.393, 398.394, 398.395, 398.397, 398.399 and 398.400 are**
 17 **added to and made a part of ORS 398.304 to 398.388.**

18 **SECTION 45. The amendments to ORS 398.012 by section 7 of this 2005 Act apply to ap-**
 19 **pointments made on or after the effective date of this 2005 Act.**

20 **SECTION 46. The amendments to ORS 398.058, 398.083, 398.106, 398.108, 398.110 and 399.155**
 21 **by sections 8, 10, 12, 13, 14 and 27 of this 2005 Act apply to conduct that occurs on or after**
 22 **the effective date of this 2005 Act.**

23 **SECTION 47. The amendments to ORS 398.136 by section 22 of this 2005 Act apply to trial**
 24 **counsel or defense counsel detailed on or after the effective date of this 2005 Act.**

25 **SECTION 48. Sections 17 and 18 of this 2005 Act apply to punishments imposed before,**
 26 **on or after the effective date of this 2005 Act.**

27 **SECTION 49. If the Adjutant General adopts regulations for the organization, discipline**
 28 **and governance of the organized militia, the Adjutant General shall specify in the regulations**
 29 **a date on which the regulations become operative for the purposes of all conduct occurring**
 30 **on or after the specified date. The provisions of ORS chapters 396, 398 and 399 do not apply**
 31 **to any conduct occurring on or after the specified date.**

32 **SECTION 50. This 2005 Act being necessary for the immediate preservation of the public**
 33 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
 34 **on its passage.**