



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## **RESEARCH APPENDIX -** **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 04/16/2008 (Per: RPN/RLR)



 Appendix A ... Part 10 of 16

 The 2007 drafting file for LRB-2341/1

has been transferred to the drafting file for

**2007 LRB-0517**

**(AB 400 ... Wisconsin Act 200)**

 The attached 2007 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the attached drafting file were added, as an appendix, to the new 2007 drafting file. This section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

5

1 (1) No person may be convicted of an offense except as provided in s. 322.45 (2)  
2 or s. 322.51 (4) or by the concurrence of two-thirds of the members present at the time  
3 the vote is taken.

4 (2) All other questions to be decided by the members of a general or special  
5 court-martial shall be determined by a majority vote, but a determination to  
6 reconsider a sentence, with a view toward decreasing it, may be made by any lesser  
7 vote which indicates that the reconsideration is not opposed by the number of votes  
8 required for that finding or sentence. A tie vote on a challenge disqualifies the  
9 member challenged. A tie vote on a motion relating to the question of the accused's  
10 mental disease or defect is a determination against the accused. A tie vote on any  
11 other question is a determination in favor of the accused.

12 **322.53** <sup>em</sup> Article 53, **Court to announce action.** A court-martial shall  
13 announce its findings and sentence to the parties as soon as determined.

14 **322.54** <sup>em</sup> Article 54, **Record of trial.** <sup>Woff</sup>

15 (1) Each general and special court-martial shall keep a separate record of the  
16 proceedings in each case brought before it, and the record shall be authenticated by  
17 the signature of the military judge. If the record cannot be authenticated by the  
18 military judge by reason of his or her death, disability, or absence, it shall be  
19 authenticated by the signature of the trial counsel or by that of a member, if the trial  
20 counsel is unable to authenticate it by reason of his or her death, disability, or  
21 absence. In a court-martial consisting of only a military judge, the record shall be  
22 authenticated by the court reporter under the same conditions which would impose  
23 a duty on a member under this subsection.

24 (2) A complete verbatim record of the proceedings and testimony shall be  
25 prepared in each general and special court-martial case resulting in a conviction,

1 and in all other court-martial cases, the record shall contain matters as may be  
2 prescribed by regulations.

3 (3) Each summary court-martial shall keep a separate record of the  
4 proceedings in each case, and the record shall be authenticated in the manner as may  
5 be prescribed by regulations.

6 (4) A copy of the record of the proceedings of each general and special  
7 court-martial shall be given to the accused as soon as it is authenticated.

8 SUBCHAPTER VIII

9 SENTENCES

10 (3) 322.55 Article 55<sup>em</sup> **Cruel and unusual punishments prohibited.**

11 Punishment by flogging, or by branding, marking, or tattooing on the body, or any  
12 other cruel or unusual punishment may not be adjudged by a court-martial or  
13 inflicted upon any person subject to this code. The use of irons, single or double,  
14 except for the purpose of safe custody, is prohibited.

15 (3) 322.56 Article 56<sup>em</sup> **Maximum limits.** (No ff)

16 (1) The punishment which a court-martial may direct for an offense may not  
17 exceed <sup>10</sup>ten years confinement.

18 (2) A conviction by a general court-martial of any military offense for which  
19 an accused may receive a sentence of confinement for more than 1 year is a felony  
20 offense.

21 (3) Except for convictions by a summary court-martial, all other offenses are  
22 misdemeanors.

23 (4) A conviction by a summary court-martial is not a criminal conviction.

1 (5) The limits of punishment for violations of the punitive sections under  
2 Subch. X shall be prescribed by the governor according to ss. 322.18, to 322.20, but  
3 under no instance shall any punishment exceed that authorized by this code.

4 **322.57** <sup>①</sup> Article 57<sup>=em</sup> **Effective date of sentences.** <sup>②</sup> **No ff**

5 (1) Whenever a sentence of a court-martial as lawfully adjudged and approved  
6 includes a forfeiture of pay or allowances in addition to confinement not suspended,  
7 the forfeiture may apply to pay or allowances becoming due on or after the date the  
8 sentence is approved by the convening authority. No forfeiture may extend to any  
9 pay or allowances accrued before that date.

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

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

16 **322.575** <sup>③</sup> Article 57a<sup>=em</sup> **Deferment of sentences.** <sup>④</sup> **No ff**

17 (1) On application by an accused who is under sentence to confinement that  
18 has not been ordered executed, the convening authority or, if the accused is no longer  
19 under that person's jurisdiction, the person exercising general court-martial  
20 jurisdiction over the command to which the accused is currently assigned, may in  
21 that person's sole discretion defer service of the sentence to confinement. The  
22 deferment shall terminate when the sentence is ordered executed. The deferment  
23 may be rescinded at any time by the person who granted it or, if the accused is no  
24 longer under that person's jurisdiction, by the person exercising general

1 court-martial jurisdiction over the command to which the accused is currently  
2 assigned.

3 (2) (a) In any case in which a court-martial sentences an accused referred to  
4 in par. (b) to confinement, the convening authority may defer the service of the  
5 sentence to confinement, without the consent of the accused, until after the accused  
6 has been permanently released to the state military forces by a state, the United  
7 States, or a foreign country referred to in that paragraph.

8 (b) Paragraph (a) applies to a person subject to this code who meets all of the  
9 following:

10 1. While in the custody of a state, the United States, or a foreign country is  
11 temporarily returned by that state, the United States, or a foreign country to the  
12 state military forces for trial by court-martial.

13 2. After the court-martial, is returned to that state, the United States, or a  
14 foreign country under the authority of a mutual agreement or treaty, as the case may  
15 be.

16 (3) In any case in which a court-martial sentences an accused to confinement  
17 and the sentence to confinement has been ordered executed, but in which review of  
18 the case under s. 322.675 is pending, the adjutant general may defer further service  
19 of the sentence to confinement while that review is pending.

20 (4) A sentence of confinement shall address work release privileges.

21 **322.58** Article 58<sup>cm</sup> **Conditions of confinement.** (No ff)

22 (1) A sentence of confinement adjudged by a court-martial, whether or not the  
23 sentence includes discharge or dismissal, and whether or not the discharge or  
24 dismissal has been executed, may be carried into execution by confinement in any  
25 place authorized by this code. Persons so confined are subject to the same discipline

1 and treatment as persons regularly confined or committed to that place of  
2 confinement.

3 (2) The omission of hard labor as a sentence authorized under this code does  
4 not deprive the state confinement facility from employing it, if it otherwise is within  
5 the authority of that facility to do so.

6 (3) No place of confinement may require payment of any fee or charge for  
7 receiving or confining a person except as otherwise provided by law.

8 **322.585** Article 58a<sup>sem</sup> **Sentences: reduction in enlisted grade upon**  
9 **approval.** (No ff)

10 (1) A court-martial sentence of an enlisted member in a pay grade above E-1,  
11 as approved by the convening authority, that includes a dishonorable or bad-conduct  
12 discharge, or confinement, reduces that member to pay grade E-1, effective on the  
13 date of that approval.

14 (2) If the sentence of a member who is reduced in pay grade under sub. (1) is  
15 set aside or disapproved, or, as finally approved, does not include any punishment  
16 named in sub. (1), the rights and privileges of which the person was deprived because  
17 of that reduction shall be restored, including pay and allowances.

18 **322.587** Article 58b<sup>sem</sup> **Sentences: forfeiture of pay and allowances during**  
19 **confinement.** (No ff)

20 (1) A court-martial sentence described in sub. (2) shall result in the forfeiture  
21 of pay, or of pay and allowances, due that member during any period of confinement  
22 or parole. The forfeiture subject to this section shall take effect on the date  
23 determined under s. 322.57 (1) and may be deferred as provided by that subsection.  
24 The pay and allowances forfeited, in the case of a general court-martial, shall be all

1 pay and allowances due that member during the period and, in the case of a special  
2 court-martial, shall be two-thirds of all pay due that member during the period.

3 (2) A sentence covered by this section is any sentence that includes any of the  
4 following:

5 (a) Confinement for more than <sup>6</sup>~~six~~ months.

6 (b) Confinement for <sup>6</sup>~~six~~ months or less and a dishonorable or bad-conduct  
7 discharge or dismissal.

8 (3) In a case involving an accused who has dependents, the convening  
9 authority or other person acting under s. 322.60 may waive any or all of the  
10 forfeitures of pay and allowances required by sub. (1) for a period not to exceed <sup>6</sup>~~six~~  
11 months. Any amount of pay or allowances that, except for a waiver under this  
12 subsection, would be forfeited shall be paid, as the convening authority or other  
13 person taking action directs, to the dependents of the accused.

14 (4) If the sentence of a member who forfeits pay and allowances under sub. (1)  
15 is set aside or disapproved or, as finally approved, does not provide for a punishment  
16 referred to in sub. (1) (b), the member shall be paid the pay and allowances that the  
17 member would have been paid, except for the forfeiture, for the period during which  
18 the forfeiture was in effect.

19 SUBCHAPTER IX

20 POST-TRIAL PROCEDURE AND

21 REVIEW OF COURTS-MARTIAL

22 **322.59** Article 59<sup>(B)</sup> <sup>= error</sup> **Error of law; lesser included offense.** (No ff)

23 (1) A finding or sentence of a court-martial may not be held incorrect on the  
24 ground of an error of law unless the error materially prejudices the substantial rights  
25 of the accused.

1           (2) Any reviewing authority with the power to approve or affirm a finding of  
2 guilty may approve or affirm, instead, so much of the finding as includes a lesser  
3 included offense.

4

<sup>6</sup> **322.60** Article 60<sup>en</sup> **Action by the convening authority.** <sup>Woff</sup>

5           (1) The findings and sentence of a court-martial shall be reported promptly to  
6 the convening authority after the announcement of the sentence.

7           (2) The accused may submit to the convening authority matters for  
8 consideration by the convening authority with respect to the findings and the  
9 sentence. Any submission shall be in writing. Except in a summary court-martial  
10 case, a submission shall be made within 10 days after the accused has been given an  
11 authenticated record of trial and, if applicable, the recommendation of a judge  
12 advocate under sub. (9). In a summary court-martial case, a submission shall be  
13 made within ~~seven~~<sup>7</sup> days after the sentence is announced.

14           (3) If the accused shows that additional time is required for the accused to  
15 submit matters, the convening authority or other person taking action under this  
16 section, for good cause, may extend the applicable period for not more than an  
17 additional 20 days.

18           (4) In a summary court-martial case, the accused shall be promptly provided  
19 a copy of the record of trial for use in preparing a submission.

20           (5) The accused may waive the right to make a submission to the convening  
21 authority under sub. (2). A waiver must be made in writing and may not be revoked.  
22 The time within which the accused may make a submission under this subsection  
23 shall be deemed to have expired upon the submission of a waiver to the convening  
24 authority.

1           (6) The authority under this section to modify the findings and sentence of a  
2 court-martial is a matter of command prerogative involving the sole discretion of the  
3 convening authority. If it is impractical for the convening authority to act, the  
4 convening authority shall forward the case to a person exercising general  
5 court-martial jurisdiction who may take action under this section.

6           (7) Action on the sentence of a court-martial shall be taken by the convening  
7 authority or by another person authorized to act under this section. Action may be  
8 taken only after consideration of any matters submitted by the accused under sub.  
9 (2) or after the time for submitting matters expires, whichever is earlier. The  
10 convening authority or other person taking action, in that person's sole discretion  
11 may approve, disapprove, commute, or suspend the sentence in whole or in part.

12           (8) Action on the findings of a court-martial by the convening authority or  
13 other person acting on the sentence is not required. However, the person, in the  
14 person's sole discretion may do any of the following:

15           (a) Dismiss any charge or specification by setting aside a finding of guilty.

16           (b) Change a finding of guilty to a charge or specification to a finding of guilty  
17 to an offense that is a lesser included offense of the offense stated in the charge or  
18 specification.

19           (9) Before acting under this section on any general or special court-martial  
20 case in which there is a finding of guilt, the convening authority or other person  
21 taking action under this section shall obtain and consider the written  
22 recommendation of a judge advocate. The convening authority or other person  
23 taking action under this section shall refer the record of trial to the judge advocate,  
24 and the judge advocate shall use the record in the preparation of the  
25 recommendation. The recommendation of the judge advocate shall include matters

1 as may be prescribed by regulation and shall be served on the accused, who may  
2 submit any matter in response. Failure to object in the response to the  
3 recommendation or to any matter attached to the recommendation waives the right  
4 to object.

5 (10) The convening authority or other person taking action under this section,  
6 in the person's sole discretion, may order a proceeding in revision or a rehearing.

7 (11) A proceeding in revision may be ordered if there is an apparent error or  
8 omission in the record or if the record shows improper or inconsistent action by a  
9 court-martial with respect to the findings or sentence that can be rectified without  
10 material prejudice to the substantial rights of the accused. In no case, however, may  
11 a proceeding in revision perform any of the following:

12 (a) Reconsider a finding of not guilty of any specification or a ruling which  
13 amounts to a finding of not guilty.

14 (b) Reconsider a finding of not guilty of any charge, unless there has been a  
15 finding of guilty under a specification laid under that charge, which sufficiently  
16 alleges a violation of some section of this code.

17 (c) Increase the severity of the sentence unless the sentence prescribed for the  
18 offense is mandatory.

19 (12) A rehearing may be ordered by the convening authority or other person  
20 taking action under this section if that person disapproves the findings and sentence  
21 and states the reasons for disapproval of the findings. If a person disapproves the  
22 findings and sentence and does not order a rehearing, that person shall dismiss the  
23 charges. A rehearing as to the findings may not be ordered where there is a lack of  
24 sufficient evidence in the record to support the findings. A rehearing as to the

1 sentence may be ordered if the convening authority or other person taking action  
2 under this subsection disapproves the sentence.

3 **322.61** <sup>(b)</sup> Article 61 <sup>=en</sup> **Withdrawal of appeal.** (No ff)

4 (1) In each case subject to appellate review under this code, the accused may  
5 file with the convening authority a statement expressly withdrawing the right of the  
6 accused to appeal. A withdrawal shall be signed by both the accused and his or her  
7 defense counsel and must be filed in accordance with appellate procedures under ch.  
8 809.

9 (2) The accused may withdraw an appeal at any time in accordance with  
10 appellate procedures under ch. 809.

11 **322.62** <sup>(b)</sup> Article 62 <sup>=en</sup> **Appeal by the state.** (No ff)

12 (1) In a trial by court-martial in which a punitive discharge may be adjudged,  
13 the state may appeal any of the following, other than a finding of not guilty with  
14 respect to the charge or specification by the members of the court-martial, or by a  
15 judge in a bench trial, so long as it is not made in reconsideration:

16 (a) An order or ruling of the military judge which terminates the proceedings  
17 with respect to a charge or specification.

18 (b) An order or ruling which excludes evidence that is substantial proof of a fact  
19 material in the proceeding.

20 (c) An order or ruling which directs the disclosure of classified information.

21 (d) An order or ruling which imposes sanctions for nondisclosure of classified  
22 information.

23 (e) A refusal of the military judge to issue a protective order sought by the State  
24 to prevent the disclosure of classified information.

1 (f) A refusal by the military judge to enforce an order described in par. (e) that  
2 has previously been issued by appropriate authority.

3 (2) An appeal of an order or ruling may not be taken unless the trial counsel  
4 provides the military judge with written notice of appeal from the order or ruling  
5 within 72 hours of the order or ruling. Notice shall include a certification by the trial  
6 counsel that the appeal is not taken for the purpose of delay and, if the order or ruling  
7 appealed is one which excludes evidence, that the evidence excluded is substantial  
8 proof of a fact material in the proceeding.

9 (3) An appeal under this section shall be diligently prosecuted as provided by  
10 law.

11 (4) An appeal under this section shall be forwarded to the court prescribed in  
12 s. 322.675. In ruling on an appeal under this section, that court may act only with  
13 respect to matters of law.

14 (5) Any period of delay resulting from an appeal under this section shall be  
15 excluded in deciding any issue regarding denial of a speedy trial unless an  
16 appropriate authority determines that the appeal was filed solely for the purpose of  
17 delay with the knowledge that it was totally frivolous and without merit.

18 **322.63** Article 63<sup>em</sup> **Rehearings.** Each rehearing under this code shall take  
19 place before a court-martial composed of members not members of the court-martial  
20 which first heard the case. Upon a rehearing the accused may not be tried for any  
21 offense of which he or she was found not guilty by the first court-martial, and no  
22 sentence in excess of or more severe than the original sentence may be approved,  
23 unless the sentence is based upon a finding of guilty of an offense not considered upon  
24 the merits in the original proceedings, or unless the sentence prescribed for the  
25 offense is mandatory. If the sentence approved after the first court-martial was in

1 accordance with a pretrial agreement and the accused at the rehearing changes a  
 2 plea with respect to the charges or specifications upon which the pretrial agreement  
 3 was based, or otherwise does not comply with the pretrial agreement, the approved  
 4 sentence as to those charges or specifications may include any punishment not in  
 5 excess of that lawfully adjudged at the first court-martial.

6 **322.64** Article 64<sup>er</sup> **Review by the senior force judge advocate.** No ff

7 (1) Each general and special court-martial case in which there has been a  
 8 finding of guilty shall be reviewed by the senior force judge advocate, or a designee.  
 9 The senior force judge advocate, or designee, may not review a case under this  
 10 subsection if that person has acted in the same case as an accuser, investigating  
 11 officer, member of the court, military judge, or counsel or has otherwise acted on  
 12 behalf of the prosecution or defense. The senior force judge advocate's review shall  
 13 be in writing and shall contain all of the following:

14 (a) Conclusions regarding all of the following:

- 15 1. The court had jurisdiction over the accused and the offense.
- 16 2. The charge and specification stated an offense.
- 17 3. The sentence was within the limits prescribed as a matter of law.

18 (b) A response to each allegation of error made in writing by the accused.

19 (c) If the case is sent for action under sub. (2), a recommendation as to the  
 20 appropriate action to be taken and an opinion as to whether corrective action is  
 21 required as a matter of law.

22 (2) The record of trial and related documents in each case reviewed under sub.  
 23 (1) shall be sent for action to the adjutant general, under any of the following  
 24 circumstances:

- 25 (a) The judge advocate who reviewed the case recommends corrective action.

1 (b) The sentence approved under s. 322.60 extends to dismissal, a bad-conduct  
2 or dishonorable discharge, or confinement for more than ~~six~~<sup>62</sup> months.

3 (c) Action is otherwise required by regulations of the adjutant general.

4 **(3)** The adjutant general may do any of the following:

5 (a) Disapprove or approve the findings or sentence, in whole or in part.

6 (b) Remit, commute, or suspend the sentence in whole or in part.

7 (c) Except where the evidence was insufficient at the trial to support the  
8 findings, order a rehearing on the findings, on the sentence, or on both.

9 (d) Dismiss the charges.

10 **(4)** If a rehearing is ordered but the convening authority finds a rehearing  
11 impracticable, the convening authority shall dismiss the charges.

12 **(5)** If the opinion of the senior force judge advocate, or designee, in the senior  
13 force judge advocate's review under sub. (1) is that corrective action is required as  
14 a matter of law and if the adjutant general does not take action that is at least as  
15 favorable to the accused as that recommended by the judge advocate, the record of  
16 trial and action thereon shall be sent to the governor for review and action as deemed  
17 appropriate.

18 **(6)** The senior force judge advocate, or a designee, may review any case in  
19 which there has been a finding of not guilty of all charges and specifications. The  
20 senior force judge advocate, or designee, may not review a case under this subsection  
21 if that person has acted in the same case as an accuser, investigating officer, member  
22 of the court, military judge, or counsel or has otherwise acted on behalf of the  
23 prosecution or defense. The senior force judge advocate's review shall be limited to  
24 questions of subject matter jurisdiction.

1 (7) The record of trial and related documents in each case reviewed under sub.

2 (4) shall be sent for action to the adjutant general.

3 (8) The adjutant general may do any of the following:

4 (a) When subject matter jurisdiction is found to be lacking, void the  
5 court-martial from inception, with or without prejudice to the government, as the  
6 adjutant general deems appropriate.

7 (b) Return the record of trial and related documents to the senior force judge  
8 advocate for appeal by the government as provided by law.

9 <sup>em</sup> **322.65** Article 65 <sup>em</sup> **Disposition of records after review by the convening  
10 authority.** Except as otherwise required by this code, all records of trial and related  
11 documents shall be transmitted and disposed of as prescribed by regulation and  
12 provided by law.

13 <sup>em</sup> **322.675** Article 67 <sup>em</sup> **Review by state appellate authority.** Decisions of a  
14 court-martial are from a court with jurisdiction to issue felony convictions and  
15 appeals are to the Wisconsin court of appeals, District IV and, if necessary, to the  
16 Wisconsin Supreme Court. The appellate procedures to be followed shall be those  
17 provided under ch. 809.

18 <sup>em</sup> **322.70** Article 70 <sup>em</sup> **Appellate counsel.** <sup>No ff</sup>

19 (1) The senior force judge advocate shall detail a judge advocate as appellate  
20 Government counsel to represent the state in the review or appeal of cases specified  
21 in s. 322.675 and before any federal court when requested to do so by the state  
22 attorney general. Appellate government counsel shall be an attorney licensed to  
23 practice in this state or a member in good standing of the bar of the highest court of  
24 the state to which the appeal is taken.

1           (2) Upon an appeal by the state, an accused has the right to be represented by  
2 detailed military counsel before any reviewing authority and before any appellate  
3 court.

4           (3) Upon the appeal by an accused, the accused has the right to be represented  
5 by military counsel before any reviewing authority.

6           (4) Upon the request of an accused entitled to be so represented, the state  
7 senior force judge advocate shall appoint a judge advocate to represent the accused  
8 in the review or appeal of cases specified in subs. (2) and (3).

9           (5) An accused may be represented by civilian appellate counsel at no expense  
10 to the State.

11           **322.71** <sup>elen</sup> Article 71 **Execution of sentence; suspension of sentence.** Noff

12           (1) If the sentence of the court-martial extends to dismissal or a dishonorable  
13 or bad-conduct discharge and if the right of the accused to appellate review is not  
14 waived, and an appeal is not withdrawn under s. 322.61, that part of the sentence  
15 extending to dismissal or a dishonorable or bad-conduct discharge may not be  
16 executed until there is a final judgment as to the legality of the proceedings. A  
17 judgment as to the legality of the proceedings is final in cases when review is  
18 completed by an appellate court prescribed in s. 322.675, and is deemed final by the  
19 law of state where the judgment was had.

20           (2) If the sentence of the court-martial extends to dismissal or a dishonorable  
21 or bad conduct discharge and if the right of the accused to appellate review is waived,  
22 or an appeal is withdrawn under s. 322.61, that part of the sentence extending to  
23 dismissal or a dishonorable or bad-conduct discharge may not be executed until  
24 review of the case by the senior force judge advocate and any action on that review  
25 under s. 322.64 is completed. Any other part of a court-martial sentence may be

1 ordered executed by the convening authority or other person acting on the case under  
2 s. 322.60 when so approved under that section.

3 **322.72** Article 72<sup>=em</sup> **Vacation of suspension.** (No ff)

4 (1) Before the vacation of the suspension of a special court-martial sentence,  
5 which as approved includes a bad-conduct discharge, or of any general  
6 court-martial sentence, the officer having special court-martial jurisdiction over the  
7 probationer shall hold a hearing on an alleged violation of probation. The  
8 probationer shall be represented at the hearing by military counsel if the probationer  
9 so desires.

10 (2) The record of the hearing and the recommendation of the officer having  
11 special court-martial jurisdiction shall be sent for action to the officer exercising  
12 general court-martial jurisdiction over the probationer. If the officer vacates the  
13 suspension, any unexecuted part of the sentence, except a dismissal, shall be  
14 executed, subject to applicable restrictions in this code.

15 (3) The suspension of any other sentence may be vacated by any authority  
16 competent to convene, for the command in which the accused is serving or assigned,  
17 a court of the kind that imposed the sentence.

18 **322.73** Article 73<sup>=em</sup> **Petition for a new trial.** At any time within <sup>2</sup>two years  
19 after approval by the convening authority of a court-martial sentence the accused  
20 may petition the adjutant general for a new trial on the grounds of newly discovered  
21 evidence or fraud on the court-martial.

22 **322.74** Article 74<sup>=em</sup> **Remission and suspension.** (No ff)

23 (1) Any authority competent to convene, for the command in which the accused  
24 is serving or assigned, a court of the kind that imposed the sentence may remit or

1 suspend any part or amount of the unexecuted part of any sentence, including all  
2 uncollected forfeitures other than a sentence approved by the governor.

3 (2) The governor may, for good cause, substitute an administrative form of  
4 discharge for a discharge or dismissal executed in accordance with the sentence of  
5 a court-martial.

6 **322.75** Article 75<sup>em</sup> **Restoration.** (No F)

7 (1) Under regulations as may be prescribed, all rights, privileges, and property  
8 affected by an executed part of a court-martial sentence which has been set aside or  
9 disapproved, except an executed dismissal or discharge, shall be restored unless a  
10 new trial or rehearing is ordered and the executed part is included in a sentence  
11 imposed upon the new trial or rehearing.

12 (2) If a previously executed sentence of dishonorable or bad-conduct discharge  
13 is not imposed on a new trial, the governor may substitute therefore a form of  
14 discharge authorized for administrative issuance unless the accused is to serve out  
15 the remainder of the accused's enlistment.

16 (3) If a previously executed sentence of dismissal is not imposed on a new trial,  
17 the governor may substitute a form of discharge authorized for administrative issue,  
18 and the commissioned officer dismissed by that sentence may be reappointed by the  
19 governor alone to a commissioned grade and rank as in the opinion of the governor  
20 that former officer would have attained had he or she not been dismissed. The  
21 reappointment of a former officer shall be without regard to the existence of a  
22 vacancy and shall affect the promotion status of other officers only insofar as the  
23 governor may direct. All time between the dismissal and the reappointment shall  
24 be considered as actual service for all purposes, including the right to pay and  
25 allowances.

1           <sup>ⓐ</sup> **322.76** Article 76<sup>= en</sup> **Finality of proceedings, findings, and sentences.** The  
 2 appellate review of records of trial provided by this code, the proceedings, findings,  
 3 and sentences of courts-martial as approved, reviewed, or affirmed as required by  
 4 this code, and all dismissals and discharges carried into execution under sentences  
 5 by courts-martial following approval, review, or affirmation as required by this code,  
 6 are final and conclusive. Orders publishing the proceedings of courts-martial and  
 7 all action taken subject to those proceedings are binding upon all departments,  
 8 courts, agencies, and officers of the United States and the several states, subject only  
 9 to action upon a petition for a new trial as provided in s. 322.73 and to action under  
 10 s. 322.74.

11           <sup>ⓑ</sup> **322.763** Article 76a<sup>= en</sup> **Leave required to be taken pending review of**  
 12 **certain court-martial convictions.** Under regulations prescribed, an accused  
 13 who has been sentenced by a court-martial may be required to take leave pending  
 14 completion of action under this section if the sentence, as approved under s. 322.60,  
 15 includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct  
 16 discharge. The accused may be required to begin leave on the date on which the  
 17 sentence is approved under s. 322.60 or at any time after that date, and any leave  
 18 may be continued until the date on which action under this section is completed or  
 19 may be terminated at any earlier time.

20           <sup>ⓑ</sup> **322.767** Article 76b<sup>= en</sup> **Competency; commitment for examination and**  
 21 **treatment.** <sup>(No ff)</sup>

- 22           <sup>ⓑ</sup> (1) The following applies to persons who are incompetent to stand trial:
- 23           (a) If a person subject to a general court-martial is found to lack substantial  
 24 mental capacity to understand the proceedings or assist in his or own defense and  
 25 the military judge determined that the person is likely to become competent within

1 the period specified under s. 971.14(5) (a), the court-martial convening authority for  
2 the person shall commit the person to the custody of the department of health and  
3 family services under s. 971.14 (5). If the military judge determines that the  
4 defendant is not likely to become competent in the time period specified under s.  
5 971.14(5), the military judge shall suspend or terminate the general court-martial.

6 (b) The department of health and family services shall submit all reports that  
7 are required under s. 971.14 (5) (b) and that pertain to a person subject to a  
8 commitment order under par. (a) to the court-martial.

9 (c) Upon receiving a report under s. 971.17 (5) (b), the court-martial shall make  
10 a determination as to whether the person has become competent. If the  
11 court-martial determines that the defendant has become competent, the  
12 court-martial shall terminate the commitment to the department of health and  
13 family services and resume the general court-martial. If the court-martial  
14 determines that the person is making sufficient progress toward becoming  
15 competent, the commitment shall continue. If the court-martial determines that the  
16 person is not likely to become competent to proceed in the time period specified under  
17 s. 971.14 (5) (a), the court-martial shall suspend or terminate the commitment order  
18 under this subsection.

19 (d) If a person who has been restored to competency again becomes  
20 incompetent, the maximum commitment period under s. 971.14 (5) (a) shall be as  
21 provided under s. 971.14 (5) (d).

22 (e) If the court-martial determines under par. (a) or (d) that the person is not  
23 likely to become competent to proceed, the court-martial may order that the person  
24 be delivered to a facility under s. 51.15 (2), an approved public treatment facility  
25 under s. 51.45 (2), or an appropriate medical or protective placement facility.

1 (f) If the person is discharged from the military forces while subject to a  
2 commitment order under par. (a), the court-martial shall suspend or terminate the  
3 commitment order and may order that the person be delivered to a facility under s.  
4 51.15 (2), an approved public treatment facility under s. 51.45 (2), or an appropriate  
5 medical or protective placement facility.

6 (2) The following applies to persons who are found not guilty by reason of  
7 mental disease or defect:

8 (a) If a court-martial finds a person not guilty by reason of mental disease or  
9 defect, the court-martial shall commit the person to the custody of the department  
10 of health and family services for a period not to exceed that described under s. 971.17  
11 (1).

12 (b) Using the standard under s. 971.17 (3) (a), the court-martial shall  
13 determine whether the commitment order under par. (a) shall specify institutional  
14 care or conditional release.

15 (c) The court-martial has the same authority as a circuit court has under s.  
16 971.17 (2) to order the department of health and family services to conduct a  
17 predisposition investigation using the procedure in s. 972.15 or a mental  
18 examination as provided under s. 971.17 (2) (b), (c), and (e) to assist the  
19 court-martial in determining whether to place the person in institutional care or to  
20 conditionally release the person.

21 (d) If the court-martial specifies institutional care, the department of health  
22 and family services shall place the person in an institution as provided under s.  
23 971.17 (3) (c). If the court-martial specifies conditional release, the department of  
24 health and family services, in conjunction with the person's county of residence, shall  
25 develop a plan for conditional release as provided under s. 971.17 (3) (d).

1 (e) After the court-martial enters an order under this subsection and transfers  
2 custody of a person to the department of health and family services, the person shall  
3 be subject to s. 971.17 and the circuit court for the county in which the person is  
4 institutionalized or where the person is placed on conditional release shall have  
5 jurisdiction in proceedings under s. 971.17.

6 

7 SUBCHAPTER X

8 PUNITIVE ARTICLES

9 <sup>(B)</sup> **322.77** Article 77<sup>=en</sup> **Principals.** Any person who either commits an offense  
10 punishable by this code, or aids, abets, counsels, commands, or procures its  
11 commission, or causes an act to be done which if directly performed by him or her  
12 would be punishable is a principal.

13 <sup>(B)</sup> **322.78** Article 78<sup>=en</sup> **Accessory after the fact.** Any person who, knowing that  
14 an offense punishable by this code has been committed, receives, comforts, or assists  
15 the offender in order to hinder or prevent his or her apprehension, trial, or  
16 punishment shall be punished as a court-martial may direct.

17 <sup>(B)</sup> **322.79** Article 79<sup>=en</sup> **Conviction of lesser included offense.** An accused may  
18 be found guilty of an offense necessarily included in the offense charged or of an  
19 attempt to commit either the offense charged or an offense necessarily included.

20 <sup>(B)</sup> **322.80** Article 80<sup>=en</sup> **Attempts.** (No ff)

21 (1) An act, done with specific intent to commit an offense under this code,  
22 amounting to more than mere preparation and tending, even though failing, to effect  
23 its commission, is an attempt to commit that offense.

1 (2) Any person who attempts to commit any offense punishable by this code  
2 shall be punished as a court-martial may direct, unless otherwise specifically  
3 prescribed.

4 (3) Any person may be convicted of an attempt to commit an offense although  
5 it appears on the trial that the offense was consummated.

6 (6) **322.81** <sup>em</sup> Article 81, **Conspiracy.** Any person who conspires with any other  
7 person to commit an offense under this code shall, if one or more of the conspirators  
8 does an act to effect the object of the conspiracy, be punished as a court-martial may  
9 direct

10 (10) **322.82** <sup>em</sup> Article 82, **Solicitation.** <sup>No ff</sup>

11 (1) Any person who solicits or advises another or others to desert in violation  
12 of s. 322.85 or mutiny in violation of s. 322.94 shall, if the offense solicited or advised  
13 is attempted or committed, be punished with the punishment provided for the  
14 commission of the offense, but, if the offense solicited or advised is not committed or  
15 attempted, the person shall be punished as a court-martial may direct.

16 (2) Any person who solicits or advises another or others to commit an act of  
17 misbehavior before the enemy in violation of s. 322.99 or sedition in violation of s.  
18 322.94 shall, if the offense solicited or advised is committed, be punished with the  
19 punishment provided for the commission of the offense, but, if the offense solicited  
20 or advised is not committed, the person shall be punished as a court-martial may  
21 direct.

22 (14) **322.83** <sup>em</sup> Article 83, **Fraudulent enlistment, appointment, or separation.**

23 Any person who does any of the following shall be punished as a court-martial may  
24 direct:

1 (1) Procures his or her own enlistment or appointment in the state military  
2 forces by knowingly false representation or deliberate concealment as to his or her  
3 qualifications for that enlistment or appointment and receives pay or allowances  
4 there under.

5 (2) Procures his or her own separation from the state military forces by  
6 knowingly false representation or deliberate concealment as to his or her eligibility  
7 for that separation.

8 **322.84** <sup>(b)</sup> Article 84, <sup>en</sup> **Unlawful enlistment, appointment, or separation.**

9 Any person who effects an enlistment or appointment in or a separation from the  
10 state military forces of any person who is known to him or her to be ineligible for that  
11 enlistment, appointment, or separation because it is prohibited by law, regulation,  
12 or order shall be punished as a court-martial may direct.

13 **322.85** <sup>(b)</sup> Article 85, <sup>en</sup> **Desertion.** <sup>(No ff)</sup>

14 (1) Any member of the state military forces is guilty of desertion if he or she  
15 does any of the following:

16 (a) Without authority goes or remains absent from his or her unit, organization,  
17 or place of duty with intent to remain away there from permanently.

18 (b) Quits his or her unit, organization, or place of duty with intent to avoid  
19 hazardous duty or to shirk important service.

20 (c) Without being regularly separated from one of the state military forces  
21 enlists or accepts an appointment in the same or another one of the state military  
22 forces, or in one of the armed forces of the United States, without fully disclosing the  
23 fact that he or she has not been regularly separated, or enters any foreign armed  
24 service except when authorized by the United States.

1           (2) Any commissioned officer of the state military forces who, after tender of  
2 his or her resignation and before notice of its acceptance, quits his or her post or  
3 proper duties without leave and with intent to remain away there from permanently  
4 is guilty of desertion.

5           (3) Any person found guilty of desertion or attempt to desert shall be punished,  
6 if the offense is committed in time of war, by confinement of not more than 10 years  
7 or other punishment as a court-martial may direct, but if the desertion or attempt  
8 to desert occurs at any other time, by punishment as a court-martial may direct.

9           **322.86** <sup>(B)</sup> Article 86<sup>=cm</sup> **Absence without leave.** Any person who, without  
10 authority, does any of the following shall be punished as a court-martial may direct:

11           (1) Fails to go to his or her appointed place of duty at the time prescribed.

12           (2) Goes from that place.

13           (3) Absents himself or herself or remains absent from his or her unit,  
14 organization, or place of duty at which he or she is required to be at the time  
15 prescribed.

16           **322.87** <sup>(B)</sup> Article 87<sup>=cm</sup> **Missing movement.** Any person who through neglect or  
17 design misses the movement of a ship, aircraft, or unit with which he or she is  
18 required in the course of duty to move shall be punished as a court-martial may  
19 direct.

20           **322.88** <sup>(B)</sup> Article 88<sup>=cm</sup> **Contempt toward officials.** Any commissioned officer  
21 who uses contemptuous words against the president, the vice-president, members  
22 of congress, the secretary of defense, the secretary of a military department, the  
23 secretary of homeland security, or the governor or legislature of the state of  
24 Wisconsin shall be punished as a court-martial may direct.

1           **322.89** <sup>(B)</sup> Article 89<sup>=en</sup> **Disrespect toward superior commissioned officer.**

2           Any person who behaves with disrespect toward his or her superior commissioned  
3           officer shall be punished as a court-martial may direct.

4           **322.90** <sup>(B)</sup> Article 90<sup>=en</sup> **Assaulting or willfully disobeying superior**  
5           **commissioned officer.** A court-martial may direct punishment on any person who  
6           does any of the following:

7           (1) Strikes his or her superior commissioned officer or draws or lifts up any  
8           weapon or offers any violence against him or her while he or she is in the execution  
9           of his or her office.

10          (2) Willfully disobeys a lawful command of his or her superior commissioned  
11          officer.

12          **322.91** <sup>(B)</sup> Article 91<sup>=en</sup> **Insubordinate conduct toward warrant officer,**  
13          **noncommissioned officer, or petty officer.** Any warrant officer or enlisted  
14          member who does any of the following shall be punished as a court-martial may  
15          direct:

16          (1) Strikes or assaults a warrant officer, noncommissioned officer, or petty  
17          officer, while that officer is in the execution of his or her office.

18          (2) Willfully disobeys the lawful order of a warrant officer, noncommissioned  
19          officer, or petty officer.

20          (3) Treats with contempt or is disrespectful in language or deportment toward  
21          a warrant officer, noncommissioned officer, or petty officer, while that officer is in the  
22          execution of his or her office.

23          **322.92** <sup>(B)</sup> Article 92<sup>=en</sup> **Failure to obey order or regulation.** Any person who  
24          does any of the following shall be punished as a court-martial may direct:

25          (1) Violates or fails to obey any lawful general order or regulation.

1 (2) Having knowledge of any other lawful order issued by a member of the state  
2 military forces, which it is his or her duty to obey, fails to obey the order.

3 (3) Is derelict in the performance of his or her duties.

4 (4) <sup>(b)</sup> ~~322.93~~ Article 93<sup>=en</sup> **Cruelty and maltreatment.** Any person who is guilty of  
5 cruelty toward, or oppression or maltreatment of, any person subject to his or her  
6 orders shall be punished as a court-martial may direct.

7 (7) <sup>(b)</sup> ~~322.94~~ Article 94<sup>=en</sup> **Mutiny or sedition.** (No IT)

8 (1) Any person who does any of the following shall be punished as a  
9 court-martial may direct:

10 (a) With intent to usurp or override lawful military authority, refuses, in  
11 concert with any other person, to obey orders or otherwise do his or her duty or  
12 creates any violence or disturbance is guilty of mutiny.

13 (b) With intent to cause the overthrow or destruction of lawful civil authority,  
14 creates, in concert with any other person, revolt, violence, or other disturbance  
15 against that authority is guilty of sedition.

16 (c) Fails to do his or her utmost to prevent and suppress a mutiny or sedition  
17 being committed in his or her presence, or fails to take all reasonable means to inform  
18 his or her superior commissioned officer or commanding officer of a mutiny or  
19 sedition which he or she knows or has reason to believe is taking place, is guilty of  
20 a failure to suppress or report a mutiny or sedition.

21 (2) A person who is found guilty of attempted mutiny, mutiny, sedition, or  
22 failure to suppress or report a mutiny or sedition shall be punished as a  
23 court-martial may direct.

24 (24) <sup>(b)</sup> ~~322.95~~ Article 95<sup>=en</sup> **Resistance, flight, breach of arrest, and escape.** Any  
25 person who does any of the following shall be punished as a court-martial may direct:

1 (1) Resists apprehension.

2 (2) Flees from apprehension.

3 (3) Breaks arrest.

4 (4) Escapes from custody or confinement.

5 <sup>(B)</sup> <sup>= en</sup> **322.96** Article 96 **Releasing prisoner without proper authority.** Any  
6 person who, without proper authority, releases any prisoner committed to his or her  
7 charge, or who through neglect or design causes any prisoner to escape, shall be  
8 punished as a court-martial may direct, whether or not the prisoner was committed  
9 in strict compliance with law.

10 <sup>(B)</sup> <sup>= en</sup> **322.97** Article 97 **Unlawful detention.** Any person who, except as provided  
11 by law or regulation, apprehends, arrests, or confines any person shall be punished  
12 as a court-martial may direct.

13 <sup>(B)</sup> <sup>= en</sup> **322.98** Article 98 **Noncompliance with procedural rules.** Any person who  
14 does any of the following shall be punished as a court-martial may direct:

15 (1) Is responsible for unnecessary delay in the disposition of any case of a  
16 person accused of an offense under this code.

17 (2) Knowingly and intentionally fails to enforce or comply with any provision  
18 of this code regulating the proceedings before, during, or after trial of an accused.

19 <sup>(B)</sup> <sup>= en</sup> **322.99** Article 99 **Misbehavior before the enemy.** Any person who before  
20 or in the presence of the enemy does any of the following shall be punished as a  
21 court-martial may direct:

22 (1) Runs away.

23 (2) Shamefully abandons, surrenders, or delivers up any command, unit,  
24 place, or military property which it is his or her duty to defend.

1 (3) Through disobedience, neglect, or intentional misconduct endangers the  
2 safety of any command, unit, place, or military property.

3 (4) Casts away his or her arms or ammunition.

4 (5) Is guilty of cowardly conduct.

5 (6) Quits his or her place of duty to plunder or pillage.

6 (7) Causes false alarms in any command, unit, or place under control of the  
7 armed forces of the United States or the state military forces.

8 (8) Willfully fails to do his or her utmost to encounter, engage, capture, or  
9 destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which  
10 it is his or her duty so to encounter, engage, capture, or destroy.

11 (9) Does not afford all practicable relief and assistance to any troops,  
12 combatants, vessels, or aircraft of the armed forces belonging to the United States  
13 or their allies, to the state, or to any other state, when engaged in battle.

14 <sup>(B)</sup> **322.100** Article 100<sup>=en</sup> **Subordinate compelling surrender.** Any person who  
15 compels or attempts to compel the commander of any of the state military forces of  
16 the State, or of any other state, place, vessel, aircraft, or other military property, or  
17 of any body of members of the armed forces, to give it up to an enemy or to abandon  
18 it, or who strikes the colors or flag to an enemy without proper authority, shall be  
19 punished as a court-martial may direct.

20 <sup>(B)</sup> **322.101** Article 101<sup>=en</sup> **Improper use of countersign.** Any person who in time  
21 of war discloses the parole or countersign to any person not entitled to receive it or  
22 who gives to another, who is entitled to receive and use the parole or countersign, a  
23 different parole or countersign from that which, to his or her knowledge, he or she  
24 was authorized and required to give, shall be punished as a court-martial may  
25 direct.

1

2 **322.102** <sup>(b)</sup> Article 102<sup>=cor</sup> **Forcing a safeguard.** Any person who forces a  
3 safeguard shall be punished as a court-martial may direct. "Forcing a safeguard"  
4 means performing any act in violation of the protection of a detachment, guard, or  
5 detail posted by a commander for protection.

6 **322.103** <sup>(b)</sup> Article 103<sup>=cor</sup> **Captured or abandoned property.** <sup>(Not)</sup>

7 (1) All persons subject to this code shall secure all public property taken for the  
8 service of the United States or the state, or of any other state, and shall give notice  
9 and turn over to the proper authority without delay all captured or abandoned  
10 property in their possession, custody, or control.

11 (2) Any person subject to this code who does any of the following shall be  
12 punished as a court-martial may direct:

13 (a) Fails to carry out the duties prescribed in sub. (1).

14 (b) Buys, sells, trades, or in any way deals in or disposes of taken, captured, or  
15 abandoned property, whereby he or she receives or expects any profit, benefit, or  
16 advantage to himself or herself or another directly or indirectly connected with  
17 himself or herself.

18 (c) Engages in looting or pillaging.

19 **322.104** <sup>(b)</sup> Article 104<sup>=cor</sup> **Aiding the enemy.** Any person who does any of the  
20 following shall be punished as a court-martial may direct:

21 (1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies,  
22 money, or other things.

23 (2) Without proper authority, knowingly harbors or protects or gives  
24 intelligence to, or communicates or corresponds with or holds any intercourse with  
25 the enemy, either directly or indirectly.

1           **322.105** <sup>(B)</sup> Article 105 <sup>=02</sup> **Misconduct as prisoner.** Any person who, while in the  
 2 hands of the enemy in time of war does any of the following shall be punished as a  
 3 court-martial may direct:

4           (1) For the purpose of securing favorable treatment by his or her captors acts  
 5 without proper authority in a manner contrary to law, custom, or regulation, to the  
 6 detriment of others of whatever nationality held by the enemy as civilian or military  
 7 prisoners.

8           (2) While in a position of authority over such persons maltreats them without  
 9 justifiable cause.

10           **322.107** <sup>(B)</sup> Article 107 <sup>=02</sup> **False official statements.** Any person who, with intent  
 11 to deceive, signs any false record, return, regulation, order, or other official document  
 12 made in the line of duty, knowing it to be false, or makes any other false official  
 13 statement made in the line of duty, knowing it to be false, shall be punished as a  
 14 court-martial may direct.

15           **322.108** <sup>(B)</sup> Article 108 <sup>=02</sup> **Military property — Loss, damage, destruction, or  
 16 wrongful disposition.** Any person who, without proper authority, does any of the  
 17 following shall be punished as a court-martial may direct:

18           (1) Sells or otherwise disposes of any military property of the United States,  
 19 the State, or of any state.

20           (2) Willfully or through neglect damages, destroys, or loses any military  
 21 property of the United States, the state, or of any state.

22           (3) Willfully or through neglect suffers to be lost, damaged, destroyed, sold, or  
 23 wrongfully disposed of any military property of the United States, the state, or of any  
 24 state.

1           **322.109** <sup>(b)</sup> Article 109<sup>=en</sup> **Property other than military property — Waste,**  
 2 **spoilage, or destruction.** Any person who willfully or recklessly wastes, spoils, or  
 3 otherwise willfully and wrongfully destroys or damages any property other than  
 4 military property of the United States, the State, or of any state, shall be punished  
 5 as a court-martial may direct.

6           **322.110** <sup>(b)</sup> Article 110<sup>=en</sup> **Improper hazarding of vessel.** <sup>(b) No ff</sup>  
 7           (1) Any person who willfully and wrongfully hazards or suffers to be hazarded  
 8 any vessel of the armed forces of the United States, this state, or any other state  
 9 military forces shall suffer punishment as a court-martial may direct.

10           (2) Any person who negligently hazards or suffers to be hazarded any vessel  
 11 of the armed forces of the United States, the state, or any other state, state military  
 12 forces shall be punished as a court-martial may direct.

13           **322.111** <sup>(b)</sup> Article 111<sup>=en</sup> **Drunken or reckless operation of a** <sup>(b) n</sup> **all-terrain**  
 14 **vehicle, vehicle, snowmobile, aircraft, or vessel.** Any person who violates s.  
 15 23.33 (3) (a) or (4c), 30.68, 30.681, 114.09, 346.62, 346.63 (1) or (2), 350.10 (1) (b),  
 16 350.101, 940.25, or 940.09 where the offense involved the operation or physical  
 17 control of an aircraft, all-terrain vehicle, snowmobile, vehicle or vessel on or off a  
 18 highway shall be punished as the court-martial may direct.

19           **322.112** <sup>(b)</sup> Article 112<sup>=en</sup> **Drunk on duty.** Any person other than a sentinel or  
 20 lookout, who is found drunk on duty, shall be punished as a court-martial may direct.

21           **322.1125** <sup>(b)</sup> Article 112a<sup>=en</sup> **Violations regarding controlled substances.** <sup>(b) No ff</sup>  
 22           (1) Any person who wrongfully uses, possesses, manufactures, distributes,  
 23 imports into the customs territory of the United States, exports from the United  
 24 States, or introduces into an installation, vessel, vehicle, or aircraft used by or under  
 25 the control of the armed forces of the United States, the state, or of any other state,

1 state military forces a controlled substance, as defined in s. 961.01 (4) shall be  
2 punished as a court-martial may direct.

3 <sup>(B)</sup> **322.113** Article 113, <sup>=en</sup> **Misbehavior of sentinel.** Any sentinel or look-out who  
4 is found drunk or sleeping upon his or her post or leaves it before being regularly  
5 relieved, shall be punished, if the offense is committed in time of war, by confinement  
6 of not more than 10 years or other punishment as a court-martial may direct, but  
7 if the offense is committed at any other time, by punishment as a court-martial may  
8 direct.

9 <sup>(B)</sup> **322.114** Article 114, <sup>=en</sup> **Dueling.** Any person who fights or promotes, or is  
10 concerned in or connives at fighting a duel, or who, having knowledge of a challenge  
11 sent or about to be sent, fails to report the fact promptly to the proper authority.

12 <sup>(B)</sup> **322.115** Article 115, <sup>=en</sup> **Malingering.** Any person who for the purpose of avoiding  
13 work, duty, or service does any of the following shall be punished as a court-martial  
14 may direct:

15 (1) Feigns illness, physical disablement, mental lapse, or derangement.

16 (2) Intentionally inflicts self-injury.

17 <sup>(B)</sup> **322.116** Article 116, <sup>=en</sup> **Riot or breach of peace.** Any person who causes or  
18 participates in any riot or breach of the peace shall be punished as a court-martial  
19 may direct.

20 <sup>(B)</sup> **322.117** Article 117, <sup>=en</sup> **Provoking speeches or gestures.** Any person who uses  
21 provoking or reproachful words or gestures towards any other person subject to this  
22 code shall be punished as a court-martial may direct.

23 <sup>(B)</sup> **322.120** Article 120, <sup>=en</sup> **Rape and carnal knowledge.**

24 (1) Any person who commits an act of sexual intercourse, by force and without  
25 consent, is guilty of rape and shall be punished as a court-martial may direct.

1           (2) Any person subject to this chapter who, under circumstances not  
2 amounting to rape, commits an act of sexual intercourse with a person who is not that  
3 person's spouse, and who has not attained the age of <sup>16</sup> ~~sixteen~~ years; is guilty of carnal  
4 knowledge and shall be punished as a court-martial may direct.

5           (3) Penetration, however slight, is sufficient to complete either of these  
6 offenses.

7           (4) In a prosecution under sub. (2), it is an affirmative defense if all of the  
8 following conditions are established:

9           (a) The person with whom the accused committed the act of sexual intercourse  
10 had at the time of the alleged offense attained the age of 12 years.

11           (b) The accused reasonably believed that that person had at the time of the  
12 alleged offense attained the age of 16 years.

13           (5) The accused has the burden of proving a defense under sub. (4) by a  
14 preponderance of the evidence.

15           **322.121** <sup>en</sup> Article 121 ~~x~~ **Larceny and wrongful appropriation.** Any person  
16 who wrongfully takes, obtains, or withholds, by any means, from the possession of  
17 the owner or of any other person any money, personal property, or section of value  
18 of any kind if any of the following apply shall be punished as a court-martial may  
19 direct:

20           (1) With intent permanently to deprive or defraud another person of the use  
21 and benefit of property or to appropriate it to his or her own use or the use of any  
22 person other than the owner, steals that property and is guilty of larceny.

23           (2) With intent temporarily to deprive or defraud another person of the use and  
24 benefit of property or to appropriate it to his or her own use or the use of any person  
25 other than the owner, is guilty of wrongful appropriation.

1           322.122<sup>(B)</sup> Article 122<sup>=en</sup> **Robbery.** Any person who with intent to steal takes  
2 anything of value from a person or in the presence of another person, against his or  
3 her will, by means of force or violence or fear of immediate or future injury to his or  
4 her person or property or to the person or property of a relative or member of his or  
5 her family or of anyone in his or her company at the time of the robbery, is guilty of  
6 robbery and shall be punished as a court-martial may direct.

7           322.123<sup>(B)</sup> Article 123<sup>=en</sup> **Forgery.** Any person who, with intent to defraud who  
8 does any of the following shall be punished as a court-martial may direct:

9           (1) Falsely makes or alters any signature, to, or any part of, any writing which  
10 would, if genuine, apparently impose a legal liability on another or change his or her  
11 legal right or liability to his or her prejudice.

12           (2) Utters, offers, issues, or transfers a writing, known by him or her to be so  
13 made or altered; is guilty of forgery.

14           322.1235<sup>(B)</sup> Article 123a<sup>=en</sup> **Making, drawing, or uttering check, draft, or**  
15 **order without sufficient funds.** Any person who does any of the following shall  
16 be punished as a court-martial may direct:

17           (1) Procures any section or thing of value, with intent to defraud.

18           (2) Pays any past due obligation, or for any other purpose, with intent to  
19 deceive; makes, draws, utters, or delivers any check, draft, or order for the payment  
20 of money upon any bank or other depository, knowing at the time that the maker or  
21 drawer has not or will not have sufficient funds in, or credit with, the bank or other  
22 depository for the payment of that check, draft, or order in full upon its presentment.  
23 The making, drawing, uttering, or delivering by a maker or drawer of a check, draft,  
24 or order, payment of which is refused by the drawee because of insufficient funds of  
25 the maker or drawer in the drawee's possession or control, is prima facie evidence of

1 his or her intent to defraud or deceive and of his or her knowledge of insufficient  
2 funds in, or credit with, that bank or other depository, unless the maker or drawer  
3 pays the holder the amount due within <sup>5</sup> days after receiving notice, orally or in  
4 writing, that the check, draft, or order was not paid on presentment.

5 (3) In this section, the word "credit" means an arrangement or understanding,  
6 express or implied, with the bank or other depository for the payment of that check,  
7 draft, or order.

8 **322.124** <sup>(b)</sup> Article 124 <sup>= em</sup> **Maiming.** Any person who, with intent to injure,  
9 disfigure, or disable, inflicts on the person of another an injury which does any of the  
10 following shall be punished as a court-martial may direct:

11 (1) Seriously disfigures his or her person by a mutilation.

12 (2) Destroys or disables any member or organ of his or her body.

13 (3) Seriously diminishes his or her physical vigor by the injury of any member  
14 or organ.

15 **322.126** <sup>(b)</sup> Article 126 <sup>= em</sup> **Arson.** Any person who does any of the following shall  
16 be punished as a court-martial may direct:

17 (1) Willfully and maliciously burns or sets on fire an inhabited dwelling, or any  
18 other structure, movable or immovable, in which the offender knows there is at the  
19 time a human being, is guilty of aggravated arson.

20 (2) Willfully and maliciously burns or sets fire to the property of another, except  
21 as provided in sub. (1), is guilty of simple arson.

22 **322.127** <sup>(b)</sup> Article 127 <sup>= em</sup> **Extortion.** Any person who communicates threats to  
23 another person with the intention of obtaining anything of value or any acquittance,  
24 advantage, or immunity is guilty of extortion and shall be punished as a  
25 court-martial may direct.

1 **322.128**<sup>(B)</sup> Article 128<sup>-en</sup> **Assault.** Any person who does any of the following shall  
2 be punished as a court-martial may direct:

3 (1) Attempts or offers with unlawful force or violence to do bodily harm to  
4 another person, whether or not the attempt or offer is consummated, is guilty of  
5 assault.

6 (2) Commits an assault with a dangerous weapon or other means or force likely  
7 to produce death or grievous bodily harm is guilty of aggravated assault.

8 (3) Commits an assault and intentionally inflicts grievous bodily harm with or  
9 without a weapon is guilty of aggravated assault.

10 **322.129**<sup>(B)</sup> Article 129<sup>-en</sup> **Burglary.** Any person who, with intent to commit an  
11 offense punishable under ss. 322.120 to 322.128, breaks and enters, in the nighttime,  
12 the dwelling house of another, is guilty of burglary and shall be punished as a  
13 court-martial may direct.

14 **322.130**<sup>(B)</sup> Article 130<sup>-en</sup> **Housebreaking.** Any person who unlawfully enters the  
15 building or structure of another with intent to commit a criminal offense is guilty of  
16 housebreaking and shall be punished as a court-martial may direct.

17 **322.131**<sup>(B)</sup> Article 131<sup>-en</sup> **Perjury.** Any person who in a judicial proceeding or in  
18 a course of justice willfully and corruptly does any of the following shall be punished  
19 as a court-martial may direct:

20 (1) Upon a lawful oath or in any form allowed by law to be substituted for an  
21 oath, gives any false testimony material to the issue or matter of inquiry.

22 (2) In any declaration, certificate, verification, or statement under penalty or  
23 perjury as permitted under 28 USC 1746, subscribes any false statement material  
24 to the issue or matter of inquiry.

1           **322.132** <sup>(D)</sup> Article 132 <sup>=en</sup> **Frauds against the government.** Any person who does  
2 any of the following knowing it to be false or fraudulent shall be punished as a  
3 court-martial may direct:

4           **(1)** For the purpose of obtaining the approval, allowance, or payment of any  
5 claim against the United States, the state, or of any state, or any officer:

6           (a) Makes or presents a claim.

7           (b) Makes or uses any writing or other paper.

8           (c) Makes any oath, affirmation or certification to any fact or to any writing or  
9 other paper.

10          **(2)** For the purpose of defrauding the United States, the state, or of any state,  
11 or any officer:

12          (a) Forges or counterfeits any signature upon any writing or other paper, or  
13 uses any signature knowing it to be forged or counterfeited.

14          (b) Delivers to any person having authority to receive it, any amount less than  
15 that for which he or she receives a certificate or receipt.

16          (c) Makes or delivers to any person, a writing without having full knowledge  
17 of the truth of the statements contained in the writing.

18          **322.133** <sup>(D)</sup> Article 133 <sup>=en</sup> **Conduct unbecoming an officer and a gentleman.**

19 Any commissioned officer, cadet, candidate, or midshipman who is convicted of  
20 conduct unbecoming an officer and a gentleman shall be punished as a court-martial  
21 may direct.

22          **322.134** <sup>(B)</sup> Article 134 <sup>=en</sup> **General section.** Though not specifically mentioned in  
23 this code, all disorders and neglects to the prejudice of good order and discipline in  
24 the state military forces and all conduct of a nature to bring discredit upon the state  
25 military forces shall be taken cognizance of by a court-martial and punished at the

1 discretion of a military court. However, where a crime constitutes an offense that  
2 violates both this code and the criminal laws of the state where the offense occurs or  
3 criminal laws of the United States, jurisdiction of the military court shall be  
4 determined under s. 322.02 (2).

#### 5 SUBCHAPTER XI

#### 6 MISCELLANEOUS PROVISIONS

#### 7 **322.135** Article 135<sup>135</sup> **Courts of inquiry.** (No ff)

8 (1) Courts of inquiry to investigate any matter of concern to the state military  
9 forces may be convened by any person authorized to convene a general  
10 court-martial, whether or not the persons involved has requested an inquiry.

11 (2) A court of inquiry consists of <sup>3</sup>three or more commissioned officers. For each  
12 court of inquiry, the convening authority shall also appoint counsel for the court.

13 (3) Any person whose conduct is subject to inquiry shall be designated as a  
14 party. Any person subject to this code who has a direct interest in the subject of  
15 inquiry has the right to be designated as a party upon request to the court. Any  
16 person designated as a party shall be given due notice and has the right to be present,  
17 to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

18 (4) Members of a court of inquiry may be challenged by a party, but only for  
19 cause stated to the court.

20 (5) The members, counsel, the reporter, and interpreters of courts of inquiry  
21 shall take an oath to faithfully perform their duties.

22 (6) Witnesses may be summoned to appear and testify and be examined before  
23 courts of inquiry, as provided for courts-martial.

24 (7) Courts of inquiry shall make findings of fact but may not express opinions  
25 or make recommendations unless required to do so by the convening authority.

1 (8) Each court of inquiry shall keep a record of its proceedings, which shall be  
2 authenticated by the signatures of the president and counsel for the court and  
3 forwarded to the convening authority. If the record cannot be authenticated by the  
4 president, it shall be signed by a member in lieu of the president. If the record cannot  
5 be authenticated by the counsel for the court, it shall be signed by a member in lieu  
6 of the counsel.

7 **322.136** <sup>(b)</sup> Article 136 <sup>=ew</sup> **Authority to administer oaths and to act as notary.** <sup>(No ff)</sup>

8 (1) The following persons may administer oaths for the purposes of military  
9 administration, including military justice:

10 (a) All judge advocates.

11 (b) All summary courts-martial.

12 (c) All adjutants, assistant adjutants, acting adjutants, and personnel  
13 adjutants.

14 (d) All commanding officers of the naval militia.

15 (e) All other persons designated by regulations of the armed forces of the  
16 United States or by statute.

17 (2) The following persons may administer oaths necessary in the performance  
18 of their duties:

19 (a) The president, military judge, and trial counsel for all general and special  
20 courts-martial.

21 (b) The president and the counsel for the court of any court of inquiry.

22 (c) All officers designated to take a deposition.

23 (d) All persons detailed to conduct an investigation.

24 (e) All recruiting officers.

1 (f) All other persons designated by regulations of the armed forces of the  
2 United States or by statute.

3 (3) The signature without seal of any of the above persons, together with the  
4 title of his or her office, is prima facie evidence of the person's authority.

5 <sup>(B)</sup> **322.137** Article 137<sup>=en</sup> **Articles to be available.** The code and the manual for  
6 courts-martial shall be made available to a member of the state military forces, upon  
7 request by the member, for the member's personal examination.

8 <sup>(B)</sup> **322.138** Article 138<sup>=en</sup> **Complaints of wrongs.** Any member of the state  
9 military forces who believes himself or herself wronged by a commanding officer, and  
10 who, upon due application to that commanding officer, is refused redress, may  
11 complain to any superior commissioned officer, who shall forward the complaint to  
12 the officer exercising general court-martial jurisdiction over the officer against  
13 whom it is made. The officer exercising general court-martial jurisdiction shall  
14 examine into the complaint and take proper measures for redressing the wrong  
15 complained of; and shall, as soon as possible, send to the adjutant general a true  
16 statement of that complaint, with the proceedings.

17 <sup>(B)</sup> **322.139** Article 139<sup>=en</sup> **Redress of injuries to property.** <sup>(No ff)</sup>

18 (1) Whenever complaint is made to any commanding officer that willful  
19 damage has been done to the property of any person or that the person's property has  
20 been wrongfully taken by members of the state military forces, that person may,  
21 under the regulations prescribed, convene a board to investigate the complaint. The  
22 board shall consist of from one to <sup>3</sup> ~~three~~ commissioned officers and, for the purpose  
23 of that investigation, it has power to summon witnesses and examine them upon  
24 oath, to receive depositions or other documentary evidence, and to assess the  
25 damages sustained against the responsible parties. The assessment of damages

1 made by the board is subject to the approval of the commanding officer, and in the  
2 amount approved by that officer shall be charged against the pay of the offenders.  
3 The order of the commanding officer directing charges herein authorized is  
4 conclusive on any disbursing officer for payment to the injured parties of the  
5 damages so assessed and approved.

6 (2) If the offenders cannot be ascertained, but the organization or detachment  
7 to which they belong is known, charges totaling the amount of damages assessed and  
8 approved may be made in proportion as may be considered just upon the individual  
9 members who are shown to have been present at the scene at the time the damages  
10 complained of were inflicted, as determined by the approved findings of the board.

11 **322.140** <sup>①</sup> Article 140, <sup>=en</sup> **Delegation by the governor.** The governor may  
12 delegate any authority vested in the governor under this code, and provide for the  
13 sub-delegation of any authority, except the power given the governor by s. 322.22.

14 **322.141** <sup>①</sup> Article 141, <sup>=en</sup> **Payment of fees, costs, and expenses.** The fees and  
15 authorized travel expenses of all witnesses, experts, victims, court reporters, and  
16 interpreters, fees for the service of process, the costs of collection, apprehension,  
17 detention and confinement, and all other necessary expenses of prosecution and the  
18 administration of military justice, not otherwise payable by any other source, shall  
19 be paid by the Wisconsin national guard.

20 **322.142** <sup>①</sup> Article 142, <sup>=en</sup> **Payment of fines and disposition.** <sup>Wolf</sup>

21 (1) Fines imposed by a military court or through imposition of non-judicial  
22 punishment may be paid to the state and delivered to the court or imposing officer,  
23 or to a person executing their process. Fines may be collected in the following  
24 manner:

25 (a) By cash, cashier's check, or money order.

1 (b) By retention of any pay or allowances due or to become due the person fined  
2 from any state or the United States.

3 (c) By garnishment or levy, together with costs, on the wages, goods, and  
4 chattels of a person delinquent in paying a fine, as provided by law.

5 (2) Any sum so received or retained shall be deposited with the Wisconsin  
6 national guard or to where the court so directs.

7 (3) Nothing in this code shall be construed to prohibit restitution.

8 **322.143** Article 143, <sup>=ev</sup> **Uniformity of interpretation.** This code shall be so  
9 construed as to effectuate its general purpose to make it uniform, so far as practical,  
10 with the 10 USC ch. 47.

11 **322.144** Article 144, <sup>=ev</sup> **Immunity for action of military courts.** All persons  
12 acting under the provisions of this code, whether as a member of the military or as  
13 a civilian, shall be immune from any personal liability for any of the acts or omissions  
14 that they did or failed to do as part of their duties under this code.

15 **SECTION 3. Initial applicability.**

16 (1) This act first applies to acts or omissions that occur on the effective date of  
17 this subsection.

18 (END)