



# 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 14 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.



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-2341/1

RPN:wj:jf

**2007 BILL**

- 1 **AN ACT to create** 302.31 (1m) and chapter 322 of the statutes; **relating to:** the  
2 Wisconsin code of military justice and providing penalties.

---

***Analysis by the Legislative Reference Bureau***

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This bill was prepared for the drafting subcommittee of the Joint Legislative Council's Special Committee on Recodification of ch. 21, Military Affairs. When the subcommittee was convened to undertake the ch. 21 recodification, the Department of Military Affairs (DMA) requested that the subcommittee also review proposed legislation to revise the current Wisconsin Code of Military Justice (WCMJ) which was being drafted by a working group led by the staff judge advocate general (JAG) at DMA. This bill is based on that proposed legislation, with modifications suggested by the drafting subcommittee to comport with legislative drafting conventions and clarify the relationship of the WCMJ to other provisions of state law. The bill places the WCMJ in newly created ch. 322, stats. To

**BILL**

the greatest extent possible, the bill retains the structure and language of the Uniform Code of Military Justice on which the revised WCMJ is based, including use of parallel article numbers, for easy transition from one code to the other.

The current WCMJ was enacted in ch. 20, Laws of 1969, as s. 21.37, stats., which provides that the WCMJ shall govern the conduct of all members of the national guard and any other military force organized under state law, but that the revisor of statutes shall not print the code in the statutes. Over time, there was concern that JAGs and others who utilized the code did not have ready access to a written version of the code. According to DMA, many key provisions of the current WCMJ are outdated and limit a commander's ability to adequately discipline those under his or her command. Also, DMA expects that the increased activity of the Wisconsin National Guard over the past few years, both within and outside the U.S., will result in a corresponding increase in disciplinary and other military justice matters.

Under this bill, if an act or omission that is a nonmilitary offense violates both the WCMJ and the criminal law, a civilian court has primary jurisdiction. In that case, a court-martial may be initiated only if civilian authorities decline to prosecute or dismiss charges, if jeopardy has not attached. Courts-martial have primary jurisdiction over military offenses, as defined in the WCMJ.

The bill reorganizes and modernizes the current WCMJ and makes a number of substantive changes. As examples of the substantive changes, the bill:

1. Updates definitions of terms such as "state military forces," "judge advocate," and "commanding officer" and creates definitions of a number of terms including "record," "military offenses," "enemy," and "unit training assembly."
2. Specifies a number of state criminal code chapters that do not apply to proceedings under the WCMJ.
3. Clarifies that the WCMJ applies to members of the state military forces if they are in a duty status or a nexus exists to the military.
4. Prohibits confinement of state military personnel with enemy prisoners or other foreign nationals who are not members of the armed forces.
5. Eliminates current amounts for forfeiture of pay in nonjudicial punishment cases and instead bases forfeitures on the accused's pay grade at the time of the offense.

**BILL**

6. Suspends the running of any statute of limitations until two years after termination of hostilities under certain circumstances in court-martial cases when the U.S. is in a declared war that is part of the global war on terror.

7. Establishes an affirmative defense of mental disease or defect in a court-martial trial, parallel to the defense available under state law, and specifies procedures, including those required of the state Department of Health and Family Services, for committing a person for examination and treatment who is found incompetent to stand trial due to lack of mental capacity.

8. Reduces the number of votes necessary to convict a person in a court-martial from unanimous to two-thirds in most cases.

9. Provides that appeals of court-martial decisions are to the Wisconsin Court of Appeals, District IV, and if necessary, to the Wisconsin Supreme Court, following procedures under ch. 809. stats.

10. Expands the current offense of drunken or reckless driving of a vehicle to also include operation of an all-terrain vehicle, snowmobile, aircraft, or vessel.

11. Specifies several offenses subject to court-martial that the current WCMJ leaves to civilian courts, including such offenses as "rape and carnal knowledge," "forgery," "violations regarding controlled substances," and "housebreaking." The term "controlled substance" is defined by reference to a definition in current criminal statutes.

Chapter 322, Wisconsin Code of Military Justice, will be organized as follows:

**Subchapter I****General Provisions**

322.0001 Criminal code interaction

322.001 Article 1—Definitions

322.002 Article 2—Persons subject to this code; jurisdiction

322.003 Article 3—Jurisdiction to try certain personnel

322.005 Article 5—Territorial applicability of the code

322.006 Article 6—Judge advocates

**Subchapter II****Apprehension and Restraint**

**BILL**

322.007 Article 7—Apprehension

322.009 Article 9—Imposition of restraint

322.010 Article 10—Restraint of persons charged with offenses

322.011 Article 11—Place of confinement; reports and receiving of prisoners

322.012 Article 12— Confinement with enemy prisoners prohibited

322.013 Article 13—Punishment prohibited before trial

322.014 Article 14—Delivery of offenders to civil authorities

**Subchapter III****Nonjudicial Punishment**

322.015 Article 15—Commanding officer's nonjudicial punishment

**Subchapter IV****Court-Martial Jurisdiction**

322.016 Article 16—Courts-martial classified

322.017 Article 17—Jurisdiction of courts-martial in general

322.018 Article 18— Jurisdiction of general courts-martial

322.019 Article 19—Jurisdiction of special courts-martial

322.020 Article 20—Jurisdiction of summary courts-martial

**Subchapter V****Appointment and Composition of Courts-Martial**

322.022 Article 22—Who may convene general courts-martial

322.023 Article 23—Who may convene special courts-martial

322.024 Article 24—Who may convene summary courts-martial

322.025 Article 25—Who may serve as a member on courts-martial

322.026 Article 26—Military judge of a general or special court-martial

322.027 Article 27—Detail of trial counsel and defense counsel

322.028 Article 28—Detail or employment of reporters and interpreters

322.029 Article 29—Absent and additional members

**BILL****Subchapter VI  
Pretrial Procedure**

- 322.030 Article 30—Charges and specifications
- 322.031 Article 31—Compulsory self-incrimination prohibited
- 322.032 Article 32—Investigation
- 322.033 Article 33—Forwarding of charges
- 322.034 Article 34—Advice of judge advocate and reference for trial
- 322.035 Article 35—Service of charges

**Subchapter VII  
Trial Procedure**

- 322.036 Article 36—Governor may prescribe regulations
- 322.037 Article 37—Unlawfully influencing action of court
- 322.038 Article 38—Duties of trial counsel and defense counsel
- 322.039 Article 39—Sessions
- 322.040 Article 40—Continuances
- 322.041 Article 41—Challenges
- 322.042 Article 42—Oaths or affirmations
- 322.043 Article 43—Statute of limitations
- 322.044 Article 44—Former jeopardy
- 322.045 Article 45—Pleas of the accused
- 322.046 Article 46—Opportunity to obtain witnesses and other evidence
- 322.047 Article 47—Refusal to appear or testify
- 322.048 Article 48—Contempt
- 322.049 Article 49—Depositions
- 322.050 Article 50—Admissibility of records of courts of inquiry
- 322.0505 Article 50a—Defense of mental disease or defect
- 322.051 Article 51—Voting and rulings
- 322.052 Article 52—Number of votes required
- 322.053 Article 53—Court to announce action

**BILL**

322.054 Article 54—Record of trial

**Subchapter VIII****Sentences**

322.055 Article 55—Cruel and unusual punishments prohibited

322.056 Article 56—Maximum limits

322.057 Article 57—Effective date of sentences

322.0575 Article 57a—Deferment of sentences

322.058 Article 58—Conditions of confinement

322.0585 Article 58a—Sentences: reduction in enlisted grade upon approval

322.0587 Article 58b—Sentences: forfeiture of pay and allowances during confinement

**Subchapter IX****Post-Trial Procedure and Review of Courts-Martial**

322.059 Article 59—Error of law; lesser included offense

322.060 Article 60—Action by the convening authority

322.061 Article 61—Withdrawal of appeal

322.062 Article 62—Appeal by the state

322.063 Article 63—Rehearings

322.064 Article 64—Review by the senior force judge advocate

322.065 Article 65—Disposition of records after review by the convening authority

322.0675 Article 67a—Review by state appellate authority

322.070 Article 70—Appellate counsel

322.071 Article 71—Execution of sentence; suspension of sentence

322.072 Article 72—Vacation of suspension

322.073 Article 73—Petition for a new trial

322.074 Article 74—Remission and suspension

322.075 Article 75—Restoration

322.076 Article 76—Finality of proceedings, findings, and sentences

322.0763 Article 76a—Leave required to be taken pending review of certain court-martial convictions

**BILL**

322.0767 Article 76b—Competency; commitment for examination and treatment

**Subchapter X****Punitive Articles**

322.077 Article 77—Principals

322.078 Article 78—Accessory after the fact

322.079 Article 79—Conviction of lesser included offense

322.080 Article 80—Attempts

322.081 Article 81—Conspiracy

322.082 Article 82—Solicitation

322.083 Article 83—Fraudulent enlistment, appointment, or separation

322.084 Article 84—Unlawful enlistment, appointment, or separation

322.085 Article 85—Desertion

322.086 Article 86—Absence without leave

322.087 Article 87—Missing movement

322.088 Article 88—Contempt toward officials

322.089 Article 89—Disrespect toward superior commissioned officer

322.090 Article 90—Assaulting or willfully disobeying superior commissioned officer

322.091 Article 91—Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer

322.092 Article 92—Failure to obey order or regulation

322.093 Article 93—Cruelty and maltreatment

322.094 Article 94—Mutiny or sedition

322.095 Article 95—Resistance, flight, breach of arrest, and escape

322.096 Article 96—Releasing prisoner without proper authority

322.097 Article 97—Unlawful detention

322.098 Article 98—Noncompliance with procedural rules

322.099 Article 99—Misbehavior before the enemy

**BILL**

- 322.100 Article 100—Subordinate compelling surrender
- 322.101 Article 101—Improper use of countersign
- 322.102 Article 102—Forcing a safeguard
- 322.103 Article 103—Captured or abandoned property
- 322.104 Article 104—Aiding the enemy
- 322.105 Article 105—Misconduct as prisoner
- 322.107 Article 107—False official statements
- 322.108 Article 108—Military property—Loss, damage, destruction, or wrongful disposition
- 322.109 Article 109—Property other than military property—Waste, spoilage, or destruction
- 322.110 Article 110—Improper hazarding of vessel
- 322.111 Article 111—Drunken or reckless operation of an all-terrain vehicle, vehicle, snowmobile, aircraft, or vessel
- 322.112 Article 112—Drunk on duty
- 322.1125 Article 112a—Violations regarding controlled substances
- 322.113 Article 113—Misbehavior of sentinel
- 322.114 Article 114—Dueling
- 322.115 Article 115—Malingering
- 322.116 Article 116—Riot or breach of peace
- 322.117 Article 117—Provoking speeches or gestures
- 322.120 Article 120—Rape and carnal knowledge
- 322.121 Article 121—Larceny and wrongful appropriation
- 322.122 Article 122—Robbery
- 322.123 Article 123—Forgery
- 322.1235 Article 123a—Making, drawing, or uttering check, draft, or order without sufficient funds
- 322.124 Article 124—Maiming
- 322.126 Article 126—Arson
- 322.127 Article 127—Extortion
- 322.128 Article 128—Assault
- 322.129 Article 129—Burglary



**BILL****SECTION 2**

1           (2) A crime under this code is a crime under s. 939.12. A felony under this code  
2 is a felony under s. 939.22 (12). A misdemeanor under this code is a misdemeanor  
3 under s. 939.22 (20).

4           **322.001 Article 1—Definitions.** In this chapter, unless the context otherwise  
5 requires:

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

10           (2) “Cadet,” “candidate,” or “midshipman” means a person who is enrolled in  
11 or attending a state military academy, a regional training institute, or any other  
12 formal education program for the purpose of becoming a commissioned officer in a  
13 state military force.

14           (3) “Classified information” means any of the following:

15           (a) Any information or material that has been determined by an official of the  
16 United States or any state subject to law, an executive order, or regulation to require  
17 protection against unauthorized disclosure for reasons of state security or national  
18 defense or foreign relations of the United States.

19           (b) Any restricted data, as defined in 42 USC 2014 (y).

20           (4) “Code” means this chapter.

21           (5) “Commanding officer” includes only commissioned officers of the state  
22 military forces and shall include officers in charge only when administering  
23 nonjudicial punishment under s 322.015. The term ‘commander’ has the same  
24 meaning as ‘commanding officer’ unless the context otherwise requires.

**BILL**

1           (6) "Convening authority" includes, in addition to the person who convened the  
2 court, a commissioned officer commanding for the time being or a successor in  
3 command to the convening authority.

4           (7) "Day" means calendar day and is not synonymous with the term "unit  
5 training assembly." Any punishment authorized by this code which is measured in  
6 terms of days shall, when served in a status other than annual field training, be  
7 construed to mean succeeding duty days.

8           (8) "Duty status other than state active duty" means any other type of duty  
9 including Unit Training Assemblies or drills but excludes duty not in federal service  
10 and not full-time duty in the active service of the state; under an order issued by  
11 authority of law and includes travel to and from duty.

12           (9) "Enemy" includes organized forces of the enemy in time of war, any hostile  
13 body that U.S. or state forces may be opposing, such as a rebellious mob or band of  
14 renegades, and includes civilians as well as members of military organizations.  
15 Enemy is not restricted to the enemy government or its armed forces.

16           (10) "Enlisted member" means a person in an enlisted grade.

17           (11) "Forfeiture" means a permanent loss of entitlement to pay or allowances  
18 and any forfeiture under this code is not a forfeiture for purposes of Article X, Section  
19 2, of the Wisconsin constitution.

20           (12) "Judge advocate" means a commissioned officer of the organized state  
21 military forces who is an attorney licensed to practice in this state or a member in  
22 good standing of the bar of the highest court of another state, and is any of the  
23 following:

**BILL****SECTION 2**

1 (a) Certified or designated as a judge advocate in the Judge Advocate General's  
2 Corps of the army, air force, navy, or the marine corps or designated as a law  
3 specialist as an officer of the coast guard, or a reserve component of one of these.

4 (b) Certified as an non-federally recognized judge advocate, under regulations  
5 promulgated subject to this provision, by the senior judge advocate of the commander  
6 of the force in the state military force of which the accused is a member, as competent  
7 to perform military justice duties required by this code. If there is no judge advocate  
8 available, then certification may be made by the senior judge advocate of the  
9 commander of another force in the state military forces, as the convening authority  
10 directs.

11 (13) "Military court" means a court of inquiry under s. 322.135 or a  
12 court-martial.

13 (14) "Military judge" means an official of a general or special court-martial  
14 detailed under s. 322.026.

15 (15) "Military offenses" means those offenses prescribed under articles 77,  
16 principals; 78, accessory after the fact; 80, attempts; 81, conspiracy; 82, solicitation;  
17 83, fraudulent enlistment, appointment, or separation; 84, unlawful enlistment,  
18 appointment, or separation; 85, desertion; 86, absence without leave; 87, missing  
19 movement; 88, contempt toward officials; 89, disrespect towards superior  
20 commissioned officer; 90, assaulting or willfully disobeying superior commissioned  
21 officer; 91, insubordinate conduct toward warrant officer, noncommissioned officer,  
22 or petty officer; 92, failure to obey order or regulation; 93, cruelty and maltreatment;  
23 94, mutiny or sedition; 95, resistance, flight, breach of arrest, and escape; 96,  
24 releasing prisoner without proper authority; 97, unlawful detention; 98,  
25 noncompliance with procedural rules; 99, misbehavior before the enemy; 100,

**BILL**

1 subordinate compelling surrender; 101, improper use of countersign; 102, forcing a  
2 safeguard; 103, captured or abandoned property; 104, aiding the enemy; 105,  
3 misconduct as prisoner; 107, false official statements; 108, military property — loss,  
4 damage, destruction, or wrongful disposition; 109, property other than military  
5 property — waste, spoilage, or destruction; 110, improper hazarding of vessel; 111,  
6 drunken or reckless operation of a vehicle, aircraft, or vessel; 112, drunk on duty;  
7 112a, wrongful use, or possession of controlled substances; 113, misbehavior of  
8 sentinel; 114, dueling; 115, malingering; 116, riot or breach of peace; 117, provoking  
9 speeches or gestures; 120, rape or carnal knowledge; 121, larceny and wrongful  
10 appropriation; 122, robbery; 123, forgery; 124, maiming; 126, arson; 127, extortion;  
11 128, assault; 129, burglary; 130, housebreaking; 131, perjury; 132, frauds against  
12 the government; 133, conduct unbecoming an officer and a gentleman; and 134,  
13 general; of this code.

14 (16) "Nonmilitary offenses" mean offenses which are in the state's civilian  
15 penal statute and are not offenses in this code.

16 (17) "Officer" means a commissioned or warrant officer.

17 (18) "Officer in charge" means a member of the naval militia, the navy, the  
18 marine corps, or the coast guard as designated by appropriate authority.

19 (19) "Record," when used in connection with the proceedings of a  
20 court-martial, means any of the following:

21 (a) An official written transcript, written summary, or other writing relating  
22 to the proceedings.

23 (b) An official audiotape, videotape, digital image or file, or similar material  
24 from which sound, or sound and visual images, depicting the proceedings may be  
25 reproduced.

**BILL****SECTION 2**

1           (20) "Senior force commander" means the commander of the same force of the  
2 state military forces as the accused.

3           (21) "Senior force judge advocate" means the senior judge advocate of the  
4 commander of the same force of the state military forces as the accused and who is  
5 that commander's chief legal advisor.

6           (22) "State active duty" means full-time duty in the state military forces under  
7 an order of the governor or otherwise issued by authority of law, and paid by state  
8 funds, and includes travel to and from duty.

9           (23) "State military forces" means the Wisconsin army and air national guard,  
10 the national guard, as defined in 32 USC 502, 503, or 904, the state defense force, the  
11 organized naval militia of the state, and any other military force organized under the  
12 Constitution and laws of the state, and does not include the unorganized militia,  
13 state guard, or home guard, when not in a status subjecting them to exclusive  
14 jurisdiction under 10 USC ch. 47.

15           (24) "Superior commissioned officer" means a commissioned officer superior in  
16 rank or command.

17           (25) "Unit Training Assembly" means an assembly for drill and instruction  
18 which may consist of a single ordered formation of a company, battery, squadron, or  
19 detachment, or, when authorized by the commander, a series of ordered formations  
20 of those organizations.

21           **322.002 Article 2—Persons subject to this code; jurisdiction.** (1) Except  
22 as provided in s. 322.003, this code applies only to members of the state military  
23 forces at all times.

24           (2) Subject matter jurisdiction is established if a nexus exists between an  
25 offense under this code and the state military force. Courts-martial have primary

**BILL**

1 jurisdiction of military offenses as defined in s. 322.001. A proper civilian court has  
2 primary jurisdiction of a nonmilitary offense when an act or omission violates both  
3 this code and local criminal law, foreign or domestic. In this case, a court-martial  
4 may be initiated only after the civilian authority has declined to prosecute or  
5 dismissed the charge, provided jeopardy has not attached. Jurisdiction over  
6 attempted crimes, conspiracy crimes, solicitation, and accessory crimes must be  
7 determined by the underlying offense.

8 **322.003 Article 3—Jurisdiction to try certain personnel.** (1) Each  
9 person discharged from a state military force who is later charged with having  
10 fraudulently obtained a discharge is, subject to s. 322.043, subject to trial by  
11 court-martial on that charge and is, after apprehension, subject to this code while  
12 in custody under the direction of the state military forces for that trial. Upon  
13 conviction of that charge that person is subject to trial by court-martial for all  
14 offenses under this code committed before the fraudulent discharge.

15 (2) No person who has deserted from a state military force may be relieved from  
16 amenability to the jurisdiction of this code by virtue of a separation from any later  
17 period of service.

18 **322.005 Article 5—Territorial applicability of the code.** (1) This code has  
19 applicability in all places, provided that either the person subject to the code is in a  
20 duty status or, if not in a duty status, that there is a nexus between the act or omission  
21 constituting the offense and the efficient functioning of the state military forces;  
22 however, this grant of military jurisdiction shall neither preclude nor limit civilian  
23 jurisdiction over an offense.

24 (2) Military courts may be convened and held in units of a state military force  
25 while those units are serving outside the state with the same jurisdiction and powers

**BILL**

1 as to persons subject to this code as if the proceedings were held inside the state, and  
2 offenses committed outside the state may be tried and punished either inside or  
3 outside the state.

4 **322.006 Article 6—Judge advocates.** (1) The senior force judge advocates  
5 in each of the state's military forces or that judge advocate's delegates shall make  
6 frequent inspections in the field in supervision of the administration of military  
7 justice in that force.

8 (2) Convening authorities shall at all times communicate directly with their  
9 judge advocates in matters relating to the administration of military justice. The  
10 judge advocate of any command is entitled to communicate directly with the judge  
11 advocate of a superior or subordinate command, or with the state judge advocate.

12 (3) No person who has acted as member, military judge, trial counsel, defense  
13 counsel, or investigating officer, or who has been a witness, in any case may later act  
14 as a judge advocate to any reviewing authority upon the same case.

**SUBCHAPTER II****APPREHENSION AND RESTRAINT**

15  
16  
17 **322.007 Article 7—Apprehension.** (1) In this section, "apprehension"  
18 means the taking of a person into custody.

19 (2) Any person authorized by this code or by the Uniform Code of Military  
20 Justice, or by regulations issued under either, to apprehend persons subject to this  
21 code, any marshal of a court-martial appointed subject to the provisions of this code,  
22 and any peace officer or civil officer having authority to apprehend offenders under  
23 the laws of the United States or of a state, may do so upon probable cause that an  
24 offense has been committed and that the person apprehended committed it.

**BILL**

1           (3) Commissioned officers, warrant officers, petty officers, and  
2 noncommissioned officers have authority to quell quarrels, frays, and disorders  
3 among persons subject to this code and to apprehend persons subject to this code.

4           (4) If an offender is apprehended outside the state, the offender's return to the  
5 state must be in accordance with normal extradition procedures or by reciprocal  
6 agreement.

7           (5) No person authorized by this section to apprehend persons subject to this  
8 code or the place where an offender is confined, restrained, held, or otherwise housed  
9 may require payment of any fee or charge for so receiving, apprehending, confining,  
10 restraining, holding, or otherwise housing a person except as otherwise provided by  
11 law.

12           **322.009 Article 9—Imposition of restraint.** (1) In this section:

13           (a) "Arrest" means the restraint of a person by an order, not imposed as a  
14 punishment for an offense, directing him or her to remain within certain specified  
15 limits.

16           (b) "Confinement" means the physical restraint of a person.

17           (2) An enlisted member may be ordered into arrest or confinement by any  
18 commissioned officer by an order, oral or written, delivered in person or through  
19 other persons subject to this code. A commanding officer may authorize warrant  
20 officers, petty officers, or noncommissioned officers to order enlisted members of the  
21 commanding officer's command or subject to the commanding officer's authority into  
22 arrest or confinement.

23           (3) A commissioned officer, a warrant officer, or a civilian subject to this code  
24 or to trial there under may be ordered into arrest or confinement only by a  
25 commanding officer to whose authority the person is subject, by an order, oral or

**BILL**

1 written, delivered in person or by another commissioned officer. The authority to  
2 order persons into arrest or confinement may not be delegated.

3 (4) No person may be ordered into arrest or confinement except for probable  
4 cause.

5 (5) This section does not limit the authority of persons authorized to apprehend  
6 offenders to secure the custody of an alleged offender until proper authority may be  
7 notified.

8 **322.010 Article 10—Restraint of persons charged with offenses.** Any  
9 person subject to this code charged with an offense under this code may be ordered  
10 into arrest or confinement, as circumstances may require. When any person subject  
11 to this code is placed in arrest or confinement prior to trial, immediate steps shall be  
12 taken to inform the person of the specific wrong of which the person is accused and  
13 diligent steps shall be taken to try the person or to dismiss the charges and release  
14 the person.

15 **322.011 Article 11—Place of confinement; reports and receiving of**  
16 **prisoners.** (1) If a person subject to this code is confined before, during, or after  
17 trial, he or she shall be in a civilian or military confinement.

18 (2) No sheriff or other person authorized to receive prisoners subject to sub. (1)  
19 may refuse to receive or keep any prisoner committed to the person's charge by a  
20 commissioned officer of the state military forces, when the committing officer  
21 furnishes a statement, signed by the officer, of the offense charged against the  
22 prisoner, unless otherwise authorized by law.

23 (3) Every person authorized to receive prisoners subject to sub. (1) to whose  
24 charge a prisoner is committed shall, within 24 hours after that commitment or as  
25 soon as the person is released from guard, report to the commanding officer of the

**BILL**

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

3 **322.012 Article 12—Confinement with enemy prisoners prohibited.** No  
4 member of a state military force may be placed in confinement in immediate physical  
5 association with enemy prisoners or other foreign nationals not members of the  
6 armed forces.

7 **322.013 Article 13—Punishment prohibited before trial.** No person,  
8 while being held for trial or awaiting a verdict, may be subjected to punishment or  
9 penalty other than arrest or confinement upon the charges pending against the  
10 person, nor shall the arrest or confinement imposed upon the person be any more  
11 rigorous than the circumstances required to insure the person's presence, but the  
12 person may be subjected to minor punishment during that period for infractions of  
13 discipline.

14 **322.014 Article 14—Delivery of offenders to civil authorities.** (1) A  
15 person subject to this code accused of an offense under this code or under the state's  
16 civilian penal statute may be delivered to the civil authority for trial or confinement.

17 (2) When delivery under this section is made to any civil authority of a person  
18 undergoing sentence of a court-martial, the delivery, if followed by conviction in a  
19 civil tribunal, interrupts the execution of the sentence of the court-martial, and the  
20 offender after having answered to the civil authorities for the offense shall, upon the  
21 request of competent military authority, be returned to the place of original custody  
22 for the completion of the person's sentence.

## SUBCHAPTER III

## NONJUDICIAL PUNISHMENT

**BILL****322.015 Article 15—Commanding officer’s nonjudicial punishment. (1)**

Under regulations as prescribed, any commanding officer, and for purposes of this section, officers-in-charge, may impose disciplinary punishments for minor offenses without the intervention of a court-martial. The governor, the adjutant general, or an officer of a general or flag rank in command may delegate the powers under this section to a principal assistant who is a member of a state military force.

(2) Any commanding officer may impose any of the following upon enlisted members of the officer’s command:

(a) Admonition.

(b) Reprimand.

(c) Withholding of privileges for not more than 6 months, which need not be consecutive.

(d) Forfeiture of not more than 7 days’ pay.

(e) Fine of not more than 7 days’ pay.

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

(g) Extra duties, including fatigue or other duties, for not more than 14 days, which need not be consecutive.

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

(3) Any commanding officer of the grade of major or lieutenant commander, or above may impose any of the following upon enlisted members of the officer’s command:

(a) Any punishment authorized in sub. (2) (a), (b), and (c).

**BILL**

1 (b) Forfeiture of not more than one-half of one month's pay per month for 2  
2 months.

3 (c) Fine of not more than one month's pay.

4 (d) Reduction to the lowest or any intermediate pay grade, if the grade from  
5 which demoted is within the promotion authority of the officer imposing the  
6 reduction or any officer subordinate to the one who imposes the reduction, but an  
7 enlisted member in a pay grade above E-4 may not be reduced more than 2 pay  
8 grades.

9 (e) Extra duties, including fatigue or other duties, for not more than 45 days,  
10 which need not be consecutive.

11 (f) Restriction to certain specified limits, with or without suspension from duty,  
12 for not more than 60 days, which need not be consecutive.

13 (4) The governor, the adjutant general, an officer exercising general  
14 court-martial convening authority, or an officer of a general or flag rank in command  
15 may impose any of the following penalties:

16 (a) Upon officers of the officer's command, any punishment authorized in sub.  
17 (3) (a), (b), (c), and (f) and arrest in quarters for not more than 30 days, which need  
18 not be consecutive.

19 (b) Upon enlisted members of the officer's command, any punishment  
20 authorized in sub. (3).

21 (5) Whenever any of the punishments under this section are combined to run  
22 consecutively, the total length of the combined punishment cannot exceed the  
23 authorized duration of the longest punishment in the combination, and there must  
24 be an apportionment of punishments so that no single punishment in the  
25 combination exceeds its authorized length under this section.

**BILL**

1           (6) The service member shall have the right to demand trial by court-martial  
2 in lieu of nonjudicial punishment, and shall have the right to consult with a judge  
3 advocate.

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

8           (a) Mitigate reduction in grade to forfeiture of pay.

9           (b) Mitigate arrest in quarters to restriction.

10          (c) Mitigate extra duties to restriction.

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

16          (9) A person punished under this section who considers the punishment unjust  
17 or disproportionate to the offense may, through the proper channel, appeal to the  
18 next superior authority within 15 days after the punishment is either announced or  
19 sent to the accused, as the commander may determine. The appeal shall be promptly  
20 forwarded and decided, but the person punished may in the meantime be required  
21 to undergo the punishment adjudged. The superior authority may exercise the same  
22 powers with respect to the punishment imposed as may be exercised under sub. (7)  
23 by the officer who imposed the punishment. Before acting on an appeal from a  
24 punishment, the authority that is to act on the appeal may refer the case to a judge  
25 advocate for consideration and advice.

**BILL**

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

8           (11) Whenever a punishment of forfeiture of pay is imposed under this section,  
9 the forfeiture may apply to pay accruing before, on, or after the date that punishment  
10 is imposed.

11           (12) Regulations may prescribe the form of records to be kept of proceedings  
12 under this section and may prescribe that certain categories of those proceedings  
13 shall be in writing.

**SUBCHAPTER IV****COURT-MARTIAL JURISDICTION**

14  
15  
16           **322.016 Article 16—Courts-martial classified.** The 3 kinds of  
17 courts-martial in the state military forces are as follows:

18           (1) General courts-martial, consisting of any of the following:

19           (a) A military judge and not less than 5 members.

20           (b) Only a military judge, if before the court is assembled the accused, knowing  
21 the identity of the military judge and after consultation with defense counsel,  
22 requests orally on the record or in writing a court composed only of a military judge  
23 and the military judge approves.

24           (2) Special courts-martial, consisting of any of the following:

**BILL**

1 (a) A military judge and not less than 3 members. An accused may waive  
2 having 12 members and proceed to a special court-martial with not less than 6  
3 members.

4 (b) Only a military judge, if one has been detailed to the court, and the accused  
5 under the same conditions as those prescribed in sub. (1) (b) so requests.

6 (3) Summary courts-martial, consisting of one commissioned officer.

7 **322.017 Article 17—Jurisdiction of courts-martial in general.** Each  
8 component of the state military forces has court-martial jurisdiction over all  
9 members of the particular component who are subject to this code. Additionally, the  
10 state military forces have court-martial jurisdiction over all members subject to this  
11 code.

12 **322.018 Article 18—Jurisdiction of general courts-martial.** Subject to  
13 s. 322.017, general courts-martial have jurisdiction to try persons subject to this  
14 code for any offense made punishable by this code, and may, under limitations as the  
15 governor may prescribe, adjudge any punishment not forbidden by this code.

16 **322.019 Article 19—Jurisdiction of special courts-martial.** Subject to s.  
17 322.017, special courts-martial have jurisdiction to try persons subject to this code  
18 for any offense made punishable by this code, and may, under limitations as the  
19 governor may prescribe, adjudge any punishment not forbidden by this code except  
20 dishonorable discharge, dismissal, confinement for more than one year, forfeiture of  
21 pay exceeding two-thirds pay per month, or forfeiture of pay for more than one year.

22 **322.020 Article 20—Jurisdiction of summary courts-martial. (1)**  
23 Subject to s. 322.017, summary courts-martial have jurisdiction to try persons  
24 subject to this code, except officers, cadets, candidates, and midshipmen, for any

**BILL**

1 offense made punishable by this code under limitations as the governor may  
2 prescribe.

3 (2) No person with respect to whom summary courts-martial have jurisdiction  
4 may be brought to trial before a summary court-martial if that person objects. If  
5 objection to trial by summary court-martial is made by an accused, trial by special  
6 or general court-martial may be ordered, as may be appropriate. Summary  
7 courts-martial may, under limitations as the governor may prescribe, adjudge any  
8 punishment not forbidden by this code except dismissal, dishonorable or  
9 bad-conduct discharge, confinement for more than one month, restriction to  
10 specified limits for more than 2 months, or forfeiture of more than two-thirds of one  
11 month's pay.

## SUBCHAPTER V

## APPOINTMENT AND COMPOSITION

## OF COURTS-MARTIAL

**322.022 Article 22—Who may convene general courts-martial. (1)**

16 General courts-martial may be convened by any of the following:

- 17 (a) The governor.  
18 (b) The adjutant general.  
19 (c) The commanding general officer of any force of the state military forces.  
20 (d) The commanding officer of a division or a separate brigade.  
21 (e) The commanding officer of a separate wing.

22 (2) If any commanding officer is an accuser, the court shall be convened by  
23 superior competent authority and may in any case be convened by a superior  
24 authority if considered desirable by the authority.

**BILL****1           322.023 Article 23—Who may convene special courts-martial. (1)**

2 Special courts-martial may be convened by any of the following:

3           (a) Any person who may convene a general court-martial.

4           (b) The commanding officer of a garrison, fort, post, camp, station, air national  
5 guard base, or naval base or station.

6           (c) The commanding officer of a brigade, regiment, detached battalion, or  
7 corresponding unit of the army national guard.

8           (d) The commanding officer of a wing, group, separate squadron, or  
9 corresponding unit of the air national guard.

10          (e) The commanding officer or officer in charge of any other command when  
11 empowered by the adjutant general.

12          **(2)** If the officer is an accuser, the court shall be convened by superior  
13 competent authority and may in any case be convened by a superior authority if  
14 considered desirable by the superior competent authority.

**15           322.024 Article 24—Who may convene summary courts-martial. (1)**

16 Summary courts-martial may be convened by any of the following:

17           (a) Any person who may convene a general or special court-martial.

18           (b) The commanding officer of a detached company or other detachment, or  
19 corresponding unit of the army national guard.

20           (c) The commanding officer of a detached squadron or other detachment, or  
21 corresponding unit of the air national guard.

22           (d) The commanding officer or officer in charge of any other command when  
23 empowered by the adjutant general.

24          **(2)** When only one commissioned officer is present with a command or  
25 detachment that officer shall be the summary court-martial of that command or

**BILL**

1 detachment and shall hear and determine all summary court-martial cases.  
2 Summary courts-martial may, however, be convened in any case by superior  
3 competent authority if considered desirable by that authority.

**322.025 Article 25—Who may serve as a member on courts-martial. (1)**

4 Any commissioned officer of the state military forces is eligible to serve on all  
5 courts-martial for the trial of any person subject to this code.  
6

7 (2) Any warrant officer of the state military forces is eligible to serve on general  
8 and special courts-martial for the trial of any person subject to this code, other than  
9 a commissioned officer.

10 (3) Any enlisted member of the state military forces who is not a member of the  
11 same unit as the accused is eligible to serve on general and special courts-martial  
12 for the trial of any enlisted member subject to this code, but that member shall serve  
13 as a member of a court only if, before the conclusion of a session called by the military  
14 judge under s. 322.039 (1) prior to trial or, in the absence of a session, before the court  
15 is assembled for the trial of the accused, the accused personally has requested orally  
16 on the record or in writing that enlisted members serve on it. After a request, the  
17 accused may not be tried by a general or special court-martial the membership of  
18 which does not include enlisted members in a number comprising at least one-third  
19 of the total membership of the court, unless eligible enlisted members cannot be  
20 obtained on account of physical conditions or military exigencies. If the members  
21 cannot be obtained, the court may be assembled and the trial held without them, but  
22 the convening authority shall make a detailed written statement, to be appended to  
23 the record, stating why they could not be obtained.

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

**BILL**

1           (5) When convening a court-martial, the convening authority shall detail  
2 members of the state military forces as, in the convening authority's opinion, are best  
3 qualified for the duty by reason of age, education, training, experience, length of  
4 service, and judicial temperament. No member of the state military forces is eligible  
5 to serve as a member of a general or special court-martial when that member is the  
6 accuser, a witness, or has acted as investigating officer or as counsel in the same case.

7           (6) Before a court-martial is assembled for the trial of a case, the convening  
8 authority may excuse a member of the court from participating in the case.

9           (7) The convening authority may delegate the authority under this section to  
10 a judge advocate or to any other principal assistant.

11           (8) In this section, "unit" means any regularly organized body of the state  
12 military forces not larger than a company, a squadron, a division of the naval militia,  
13 or a body corresponding to one of them.

14           **322.026 Article 26—Military judge of a general or special**  
15 **court-martial.** (1) A military judge shall be detailed to each general and special  
16 court-martial. The military judge shall preside over each open session of the  
17 court-martial to which the military judge has been detailed.

18           (2) A military judge shall meet all of the following qualifications:

19           (a) Be a commissioned officer of an organized state military force.

20           (b) Be an attorney licensed to practice in this state or be a member of the bar  
21 of a federal court for at least 5 years.

22           (c) Certified as qualified for duty as a military judge by the senior force judge  
23 advocate which is the same force as the accused.

24           (3) In the instance when a military judge is not an attorney licensed to practice  
25 in this state, the military judge shall be deemed admitted on motion, subject to filing

**BILL**

1 with the senior force judge advocate of the same force as the accused setting forth the  
2 qualifications provided in sub. (2).

3 (4) The military judge of a general or special court-martial shall be designated  
4 by the state senior force judge advocate of the same force as the accused if possible,  
5 or otherwise by the senior of the senior force judge advocates, or a designee, for detail  
6 by the convening authority. Neither the convening authority nor any staff member  
7 of the convening authority shall prepare or review any report concerning the  
8 effectiveness, fitness, or efficiency of the military judge so detailed, which relates to  
9 performance of duty as a military judge.

10 (5) No person is eligible to act as military judge in a case if that person is the  
11 accuser or a witness, or has acted as investigating officer, trial counsel, or defense  
12 counsel in the same case.

13 (6) The military judge of a court-martial may not consult with the members  
14 of the court except in the presence of the accused, trial counsel, and defense counsel  
15 nor vote with the members of the court.

16 **322.027 Article 27—Detail of trial counsel and defense counsel.** (1) For  
17 each general and special court-martial the authority convening the court shall detail  
18 trial counsel, defense counsel, and assistants as are appropriate.

19 (2) No person who has acted as investigating officer, military judge, witness or  
20 court member in any case may act later as trial counsel, assistant trial counsel, or,  
21 unless expressly requested by the accused, as defense counsel or assistant or  
22 associate defense counsel in the same case. No person who has acted for the  
23 prosecution may act later in the same case for the defense nor may any person who  
24 has acted for the defense act later in the same case for the prosecution.

**BILL****SECTION 2**

1           (3) Except as provided in sub. (4), trial counsel or defense counsel detailed for  
2 a general or special court-martial must meet all of the following:

3           (a) A judge advocate as defined in this code.

4           (b) In the case of trial counsel, an attorney licensed to practice in this state.

5           (4) In the instance when a defense counsel is not an attorney licensed to  
6 practice in this state, the defense counsel shall be deemed admitted on motion,  
7 subject to filing with the military judge setting forth the qualifications that counsel  
8 is all of the following:

9           (a) Commissioned officer of the armed forces of the United States or a  
10 component thereof.

11           (b) Member in good standing of the bar of the highest court of another state.

12           (c) Certified as a judge advocate in the Judge Advocate General's Corps of the  
13 army, air force, navy, or the marine corps, or a judge advocate as defined in this code.

14           (5) Trial counsel detailed to a court-martial shall be considered a prosecutor  
15 under state statutes.

16           **322.028 Article 28—Detail or employment of reporters and**  
17 **interpreters.** Under regulations as may be prescribed, the convening authority of  
18 a general or special court-martial or court of inquiry shall detail or employ qualified  
19 court reporters, who shall record the proceedings of and testimony taken before that  
20 court and may detail or employ interpreters who shall interpret for the court.

21           **322.029 Article 29—Absent and additional members.** (1) No member of  
22 a general or special court-martial may be absent or excused after the court has been  
23 assembled for the trial of the accused unless excused as a result of a challenge,  
24 excused by the military judge for physical disability or other good cause, or excused  
25 by order of the convening authority for good cause.

**BILL**

1           (2) Whenever a general court-martial, other than a general court-martial  
2 composed of a military judge only, is reduced below 5 members, the trial may not  
3 proceed unless the convening authority details new members sufficient in number  
4 to provide not less than the applicable minimum number of 5 members. The trial  
5 may proceed with the new members present after the recorded evidence previously  
6 introduced before the members of the court has been read to the court in the presence  
7 of the military judge, the accused, and counsel for both sides.

8           (3) Whenever a special court-martial, other than a special court-martial  
9 composed of a military judge only, is reduced below 3 members, the trial may not  
10 proceed unless the convening authority details new members sufficient in number  
11 to provide not less than 3 members, unless the accused waives the number of  
12 members. The trial shall proceed with the new members present as if no evidence  
13 had been introduced previously at the trial, unless a verbatim record of the evidence  
14 previously introduced before the members of the court or a stipulation is read to the  
15 court in the presence of the military judge, the accused, and counsel for both sides.

16           (4) If the military judge of a court-martial composed of a military judge only  
17 is unable to proceed with the trial because of physical disability, as a result of a  
18 challenge, or for other good cause, the trial shall proceed, subject to any applicable  
19 conditions of s. 322.016 (1) (b) or (2) (b), after the detail of a new military judge as if  
20 no evidence had previously been introduced, unless a verbatim record of the evidence  
21 previously introduced or a stipulation is read in court in the presence of the new  
22 military judge, the accused, and counsel for both sides.

## SUBCHAPTER VI

## PRETRIAL PROCEDURE