2013 DRAFTING REQUEST

Bill

Received:	**3/18/2013**	Received By:	**rnelson**
Wanted:	**As time permits**	Same as LRB:	**-0979**
For:	**Military Affairs**	By/Representing:	**Julio B**
May Contact:		Drafter:	**rnelson**
Subject:	**Military Affairs - misc**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Ryan.Murray@wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Changes to Wisconsin code of military justice

Instructions:

Jacket for Senate for Governor's office; notify Patrick Hughes in gov's office.

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/1	rnelson 3/18/2013	scalvin 3/18/2013	phenry 3/19/2013	_____ _____	mbarman 3/19/2013	srose 3/19/2013	Crime

FE Sent For:

→ Not Needed

<END>

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/1	rnelson	/1 sac 03/18/2013	3/19 ph				Crime

FE Sent For:

<END>

Nelson, Robert

From: Barron, Julio R COL USAF NG WIARNG (US) [julio.r.barron2.mil@mail.mil]
Sent: Friday, March 15, 2013 3:15 PM
To: Nelson, Robert
Cc: Hughes, Patrick - GOV
Subject: FW: Draft review: LRB -0979/1 Topic: Changes to Wisconsin code of military justice (UNCLASSIFIED)

Attachments: 13-0979/1.pdf

13-0979_1.pdf (92 KB)

Classification: UNCLASSIFIED
Caveats: FOUO

Good afternoon Bob. Please jacket this bill for both the Assembly and the Senate. I ask that you please forward the final work products to Patrick Hughes in the Governor's Office for sponsor assignment in both Houses. Thank you for your hard work on this critical piece of legislation!

Julio

Julio R. Barron
Legislative Liaison
Department of Military Affairs
2400 Wright Street
Madison, Wisconsin 53704
office: (608) 242-3026
mobile: (608) 235-0182
julio.r.barron2.mil@mail.mil

-----Original Message-----
From: LRB.Legal [mailto:LRB-LegalServices@legis.wisconsin.gov]
Sent: Friday, March 15, 2013 11:59 AM
To: julio.barron2@us.army.mil
Subject: Draft review: LRB -0979/1 Topic: Changes to Wisconsin code of military justice

State of Wisconsin - Legislative Reference Bureau One East Main Street - Suite 200 - Madison

The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent. If you have any questions concerning the draft or would like to have it redrafted, please contact Robert P. Nelson, Legislative Attorney, at (608) 266-9739, at robert.nelson@legis.wisconsin.gov <blockedmailto:robert.nelson@legis.wisconsin.gov?subject=Submitted:%20LRB%20-0979/1%20Topic:%20Changes%20to%20Wisconsin%20code%20of%20military%20justice?body=> , or at One East Main Street, Suite 200.

If you would like to jacket the draft for introduction, please click on the appropriate button below. Please select only one button. If you wish to introduce this draft in both houses please contact the drafting attorney to have a companion bill drafted.

Jacket for the ASSEMBLY <blockedmailto:lrb.legal@legis.wisconsin.gov?subject=Draft%20Review:%20LRB%20-0979/1%20Topic:%20Changes%20to%20Wisconsin%20code%20of%20military%20justice&body=%0APlease%20Jacket%20LRB%20-0979/1%20for%20the%20ASSEMBLY.%0A>

soon (3/18)

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB-~~0079/1~~ 1920/1
RPN:sac:rs

2013 BILL

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AN ACT ***to amend*** 322.001 (15), 322.001 (23), 322.016 (2) (a), 322.026 (2) (a) and 322.139 (1); ***to repeal and recreate*** 322.120; and ***to create*** 322.1201, 322.1202 and 322.1203 of the statutes; **relating to:** stalking and sexual offenses under the code of military justice.

Analysis by the Legislative Reference Bureau

Currently, the statutes include the Wisconsin Code of Military Justice, which provides the procedures, responsibilities, and penalties concerning actions involving members of the state military forces, generally the members of the Wisconsin Air and Army National Guard, that may result in a court–martial. This code parallels the federal code of military justice, which applies to active members of the U.S. armed forces. These codes establish the members of and methods used in a court–martial, as well as the types of behavior that may result in being the subject of a court–martial.

This bill replaces one section of the code currently dealing with rape and carnal knowledge with four new sections concerning sexual assault of adults and children, other sexual misconduct, and stalking, to make the Wisconsin code consistent with changes made in the federal code in 2011. The bill defines what constitutes sexual assault against an adult and against a child, other sexual misconduct, and stalking, specifies what defenses are available to a defendant, and provides for punishment as determined by the members of the court martial.

The bill also allows a commissioned officer of the U.S. armed forces to preside over a court–martial involving a member of the state military forces. Currently, only

a commissioned officer of a Wisconsin military force may preside over a court–martial involving a member of the state military forces.

The bill removes the requirement that the commanding officer convene a board of three commissioned officers to investigate and recommend action regarding a complaint that a member of a state military force damaged or took another person's property. Instead, the bill allows the commanding officer to investigate the complaint and determine the amount, if any, that has to be paid to an injured party.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

SECTION 1. 322.001 (15) of the statutes is amended to read:

322.001 **(15)** "Military offenses" means those offenses prescribed under articles 77, principals; 78, accessory after the fact; 80, attempts; 81, conspiracy; 82, solicitation; 83, fraudulent enlistment, appointment, or separation; 84, unlawful enlistment, appointment, or separation; 85, desertion; 86, absence without leave; 87, missing movement; 88, contempt toward officials; 89, disrespect towards superior commissioned officer; 90, assaulting or willfully disobeying superior commissioned officer; 91, insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer; 92, failure to obey order or regulation; 93, cruelty and maltreatment; 94, mutiny or sedition; 95, resistance, flight, breach of arrest, and escape; 96, releasing prisoner without proper authority; 97, unlawful detention; 98, noncompliance with procedural rules; 99, misbehavior before the enemy; 100, subordinate compelling surrender; 101, improper use of countersign; 102, forcing a safeguard; 103, captured or abandoned property; 104, aiding the enemy; 105, misconduct as prisoner; 107, false official statements; 108, military property — loss, damage, destruction, or wrongful disposition; 109, property other than military

property — waste, spoilage, or destruction; 110, improper hazarding of vessel; 111, drunken or reckless operation of a vehicle, aircraft, or vessel; 112, drunk on duty; 112a, wrongful use, or possession of controlled substances; 113, misbehavior of sentinel; 114, dueling; 115, malingering; 116, riot or breach of peace; 117, provoking speeches or gestures; 120, rape ~~or carnal knowledge;~~ and sexual assault generally; 120a, stalking; 120b, rape and sexual assault of a child; 120c, sexual misconduct; 121, larceny and wrongful appropriation; 122, robbery; 123, forgery; 124, maiming; 126, arson; 127, extortion; 128, assault; 129, burglary; 130, housebreaking; 131, perjury; 132, frauds against the government; 133, conduct unbecoming an officer and a gentleman; and 134, general; of this code.

SECTION 2. 322.001 (23) of the statutes is amended to read:

322.001 **(23)** "State military forces" means the Wisconsin army and air national guard, the national guard, as defined in 32 USC ~~502, 503, or 904~~ 101, the state defense force, the organized naval militia of the state, and any other military force organized under the Constitution and laws of the state, ~~and~~ but does not include the unorganized militia~~, state guard, or home guard, when not in~~. "State military forces" does not include the national guard when under a status subjecting them to ~~exclusive~~ jurisdiction under 10 USC ch. 47.

SECTION 3. 322.016 (2) (a) of the statutes is amended to read:

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

SECTION 4. 322.026 (2) (a) of the statutes is amended to read:

322.026 **(2)** (a) Be a commissioned officer of the armed forces of the United States or of a component thereof or a commissioned officer of an organized state military force.

SECTION 5. 322.120 of the statutes is repealed and recreated to read:

322.120 Article 120 – Rape and sexual assault generally.

(1) In this section:

(a) "Bodily harm" means any offensive touching of another, however slight, including any nonconsensual sexual act or nonconsensual sexual contact.

(b) 1. "Consent" means a freely given agreement to the conduct at issue by a competent person.

2. An expression of lack of consent through words or conduct means there is no consent. Submission or lack of oral or physical resistance, resulting from the use of force, threat of force, or placing another person in fear, does not constitute consent. A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue shall not constitute consent. A sleeping, unconscious, or incompetent person cannot consent. A person cannot consent to force causing or likely to cause death or grievous bodily harm or to being rendered unconscious. A person cannot consent while under threat or in fear.

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

(c) "Force" means any of the following:

1. The use of a weapon.

2. The use of physical strength or violence that is likely to overcome, restrain, or injure a person.

3. Inflicting physical harm that is likely to coerce or compel submission by the victim.

(d) "Grievous bodily harm" means serious bodily injury, including fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, or other severe bodily injuries. "Grievous bodily harm" does not include minor injuries such as a black eye or a bloody nose.

(e) "Sexual act" means any of the following:

1. Contact between the penis and the vulva or anus or mouth, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight.

2. The penetration, however slight, of the vulva or anus or mouth, of another by any part of the body or by any object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(f) "Sexual contact" means any of the following:

1. Touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, or degrade any person.

2. Any touching, or causing another person to touch, either directly or through the clothing, any body part of any person, if done with an intent to arouse or gratify the sexual desire of any person. Touching may be accomplished by any part of the body.

(g) "Threatening or placing that other person in fear" means a communication or action that is of sufficient consequence to cause a reasonable fear that

noncompliance will result in the victim or another person being subjected to the wrongful action contemplated by the communication or action.

(h) "Unlawful force" means an act of force done without legal justification or excuse.

(2) Any person subject to this chapter who commits a sexual act upon another person without consent by doing any of the following is guilty of rape and shall be punished as a court–martial may direct:

(a) Using unlawful force against that other person;

(b) Using force causing or likely to cause death or grievous bodily harm to any person.

(c) Threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(d) Rendering that other person unconscious.

(e) Administering to that other person by force or threat of force, or without the knowledge or consent of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control his or her conduct.

(3) Any person subject to this chapter who does any of the following is guilty of sexual assault and shall be punished as a court–martial may direct:

(a) Commits a sexual act upon another person without consent by doing any of the following:

1. Threatening or placing that other person in fear.

2. Causing bodily harm to that other person.

3. Making a fraudulent representation that the sexual act serves a professional purpose.

4. Inducing a belief by any artifice, pretense, or concealment that the person is another person.

(b) Commits a sexual act upon another person when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring.

(c) Commits a sexual act upon another person when the other person is incapable of consenting to the sexual act due to any of the following:

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

2. A mental disease or defect or a physical disability, and that condition is known or reasonably should be known by the person.

(4) Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate sub. (2) had the sexual contact been a sexual act, is guilty of aggravated sexual contact and shall be punished as a court–martial may direct.

(5) Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (3) had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall be punished as a court–martial may direct.

(6) In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

(7) An accused may raise any applicable defenses available under this chapter or the rules for court–martial. Marriage is not a defense for any conduct in issue in any prosecution under this section.

SECTION 6. 322.1201 of the statutes is created to read:

322.1201 Article 120a – Stalking.

(1) In this section:

(a) "Course of conduct" means any of the following:

1. A repeated maintenance of visual or physical proximity to a specific person.

2. A repeated conveyance of oral threat, written threats, or threats implied by conduct, or a combination of such threats, directed at or toward a specific person.

(b) "Immediate family" means a spouse, parent, son, daughter, or sibling of the person, or a relative or intimate partner of the person who regularly resides in the household of the person or who within the six months preceding the commencement of a course of conduct regularly resided in the household of the person.

(c) "Repeated," with respect to a course of conduct, means two or more occasions of such conduct.

(2) Any person subject to this chapter who does all of the following is guilty of stalking and shall be punished as a court–martial may direct:

(a) Wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family.

(b) Has knowledge or should have knowledge that the specific person will be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family.

(c) Commits acts that induce reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family.

SECTION 7. 322.1202 of the statutes is created to read:

322.1202 Article 120b – Rape and sexual assault of a child.

(1) In this section:

(a) "Child" means any person who has not attained the age of 16 years.

(b) "Force" means any of the following:

1. The use of a weapon.

2. The use of physical strength or violence that is likely to overcome, restrain, or injure a child.

3. Inflicting physical harm.

4. In the case of a parent–child or similar relationship, the abuse of parental or similar authority.

(c) "Lewd act" means any of the following:

1. Any sexual contact with a child.

2. Intentionally exposing one's genitalia, anus, buttocks, or female areola or nipple to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person.

3. Intentionally communicating indecent language to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person.

4. Any conduct intentionally done with or in the presence of a child, including via any communication technology, that amounts to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

(d) "Sexual act" and "sexual contact" have the meanings given in s. 322.120 (1) (e) and (f).

(e) "Threatening or placing that child in fear" means a communication or action that is of sufficient consequence to cause the child to fear that noncompliance will result in the child or another person being subjected to the wrongful action contemplated by the communication or action.

(2) Any person subject to this chapter who does any of the following is guilty of rape and shall be punished as a court–martial may direct:

(a) Commits a sexual act upon a child who has not attained the age of 12 years.

(b) Commits a sexual act upon a child who has attained the age of 12 years by doing any of the following:

1. Using force against any person.

2. Threatening or placing that child in fear.

3. Rendering that child unconscious.

4. Administering to that child a drug, intoxicant, or other similar substance.

(3) Any person subject to this chapter who commits a sexual act upon a child who has attained the age of 12 years is guilty of sexual assault of a child and shall be punished as a court–martial may direct.

(4) Any person subject to this chapter who commits a lewd act upon a child is guilty of sexual abuse of a child and shall be punished as a court–martial may direct.

(5) In a prosecution under this section, it need not be proven that the accused knew the age of the other person engaging in the sexual act or lewd act. It is not a defense that the accused reasonably believed that the child had attained the age of 12 years.

(6) In a prosecution under this section, it need not be proven that the accused knew that the other person engaging in the sexual act or lewd act had not attained the age of 16 years, but it is a defense in a prosecution under subs. (3) or (4), which the accused must prove by a preponderance of the evidence, that the accused reasonably believed that the child had attained the age of 16 years, if the child had in fact attained at least the age of 12 years.

(7) In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

(8) Lack of consent is not an element and need not be proven in any prosecution under this section. A child not legally married to the person committing the sexual act, lewd act, or use of force cannot consent to any sexual act, lewd act, or use of force.

SECTION 8. 322.1203 of the statutes is created to read:

322.1203 Article 120c – Other sexual misconduct.

(1) In this section:

(a) "Act of prostitution" means a sexual act or sexual contact on account of which anything of value is given to, or received by, any person.

(b) "Broadcast" means to electronically transmit a visual image with the intent that it be viewed by a person.

(c) "Distribute" means delivering to the actual or constructive possession of another, including transmission by electronic means.

(d) "Indecent manner" means conduct that amounts to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

(e) "Private area" means the naked or underwear–clad genitalia, anus, buttocks, or female areola or nipple.

(f) "Under circumstances in which that other person has a reasonable expectation of privacy" means any of the following:

1. Circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the person was being captured.

2. Circumstances in which a reasonable person would believe that a private area of the person would not be visible to the public.

(2) Any person subject to this chapter who, without legal justification or lawful authorization who does any of the following is guilty of sexual misconduct and shall be punished as a court–martial may direct:

(a) Knowingly and wrongfully views the private area of another person, without that other person's consent and under circumstances in which that other person has a reasonable expectation of privacy.

(b) Knowingly photographs, videotapes, films, or records by any means the private area of another person, without that other person's consent and under circumstances in which that other person has a reasonable expectation of privacy.

(c) Knowingly broadcasts or distributes any such recording that the person knew or reasonably should have known was made under the circumstances proscribed in pars. (a) and (b).

(3) Any person subject to this chapter who compels another person to engage in an act of prostitution with any person is guilty of forcible pandering and shall be punished as a court–martial may direct.

(4) Any person subject to this chapter who intentionally exposes, in an indecent manner, the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure and shall be punished as a court–martial may direct.

SECTION 9. 322.139 (1) of the statutes is amended to read:

322.139 **(1)** Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that the person's property has been wrongfully taken by ~~members~~ a member of ~~the~~ a state military ~~forces, that person~~ force, the commanding officer may, under the regulations prescribed, ~~convene a board to~~ investigate the complaint. The ~~board shall consist of from one to 3 commissioned officers and, for the purpose of that investigation, it has power to~~ commanding officer may summon witnesses and examine them upon oath, ~~to~~ receive depositions or other documentary evidence, and ~~to~~ assess the damages sustained against the responsible ~~parties~~ party. The assessment of damages made by the ~~board~~ investigator is subject to the approval of the commanding officer~~, and in the~~. The amount ~~approved~~ assessed by ~~that~~ the commanding officer shall be charged against the pay of the ~~offenders~~ offender. The order of the commanding officer directing charges ~~herein authorized~~ is conclusive on any disbursing officer for payment to the injured ~~parties~~ party of the damages so assessed and approved.

SECTION 10. Initial applicability.

(1) MILITARY AFFAIRS. This act first applies to offenses committed on the effective date of this subsection.

(END)