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2007 BILL

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AN ACT to create 302.31 (1m) and chapter 322 of the statutes; **relating to:** the 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 PREPATORY 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

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That legislation also created

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 According to DMA, many key provisions of the current WCMJ are outdated and limit a commander's ability to adequately discipline those under his or her command.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.

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- 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.

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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

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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

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**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

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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

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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

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- 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

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- 322.130 Article 130—Housebreaking
- 322.131 Article 131—Perjury
- 322.132 Article 132—Frauds against the government
- 322.133 Article 133—Conduct unbecoming an officer and a gentleman
- 322.134 Article 134—General section

Subchapter XI

Miscellaneous Provisions

- 322.135 Article 135—Courts of inquiry
- 322.136 Article 136—Authority to administer oaths and to act as notary
- 322.137 Article 137—Articles to be available
- 322.138 Article 138—Complaints of wrongs
- 322.139 Article 139—Redress of injuries to property
- 322.140 Article 140—Delegation by the governor
- 322.141 Article 141—Payment of fees, costs, and expenses
- 322.142 Article 142—Payment of fines and disposition
- 322.143 Article 143—Uniformity of interpretation
- 322.144 Article 144—Immunity for action of military courts

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SECTION 1. 302.31 (1m) of the statutes is created to read:

302.31 (1m) The detention of persons subject to confinement under s. 322.011.

SECTION 2. Chapter 322 of the statutes is created to read:

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CHAPTER 322

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CODE OF MILITARY JUSTICE

SUBCHAPTER I

GENERAL PROVISIONS

322.0001 Criminal code interaction. (1) Chapters 939, 967 to 973, and 975

to 979 do not apply to proceedings under this chapter.

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

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

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

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

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

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

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

(4) “Code” means this chapter.

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

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

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

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

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

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

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

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

BILL**SECTION 2**

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

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

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

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

(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,

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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; 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.

(16) “Nonmilitary offenses” mean offenses which are in the state’s civilian penal statute and are not offenses in this code.

(17) “Officer” means a commissioned or warrant officer.

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

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

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

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

BILL**SECTION 2**

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

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

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

(23) "State military forces" means the Wisconsin army and air national guard, the national guard, as defined in 32 USC 502, 503, or 904, 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 does not include the unorganized militia, state guard, or home guard, when not in a status subjecting them to exclusive jurisdiction under 10 USC ch. 47.

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

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

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

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

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

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

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

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

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

BILL**SECTION 2**

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

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

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

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

SUBCHAPTER II**APPREHENSION AND RESTRAINT**

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

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

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

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

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

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

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

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

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

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

BILL**SECTION 2**

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

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

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

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

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

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

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

BILL

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

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

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

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

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

SUBCHAPTER III

NONJUDICIAL PUNISHMENT

BILL**SECTION 2****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).

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

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

(d) Reduction to the lowest or any intermediate 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, but an enlisted member in a pay grade above E-4 may not be reduced more than 2 pay grades.

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

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

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

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

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

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

BILL**SECTION 2**

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

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

- (a) Mitigate reduction in grade to forfeiture of pay.
- (b) Mitigate arrest in quarters to restriction.
- (c) Mitigate extra duties to restriction.

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

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

BILL

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

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

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

SUBCHAPTER IV**COURT-MARTIAL JURISDICTION**

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

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

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

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

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

BILL**SECTION 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.

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

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

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

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

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

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

BILL

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

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

SUBCHAPTER V**APPOINTMENT AND COMPOSITION****OF COURTS-MARTIAL****322.022 Article 22—Who may convene general courts-martial. (1)**

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

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

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

BILL**SECTION 2****322.023 Article 23—Who may convene special courts-martial. (1)**

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

- (a) Any person who may convene a general court-martial.
- (b) The commanding officer of a garrison, fort, post, camp, station, air national guard base, or naval base or station.
- (c) The commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the army national guard.
- (d) The commanding officer of a wing, group, separate squadron, or corresponding unit of the air national guard.
- (e) The commanding officer or officer in charge of any other command when empowered by the adjutant general.

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

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

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

- (a) Any person who may convene a general or special court-martial.
- (b) The commanding officer of a detached company or other detachment, or corresponding unit of the army national guard.
- (c) The commanding officer of a detached squadron or other detachment, or corresponding unit of the air national guard.
- (d) The commanding officer or officer in charge of any other command when empowered by the adjutant general.

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

BILL

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

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

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

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

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

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

BILL**SECTION 2**

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

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

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

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

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

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

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

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

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

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

BILL

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

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

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

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

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

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

BILL**SECTION 2**

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

- (a) A judge advocate as defined in this code.
- (b) In the case of trial counsel, an attorney licensed to practice in this state.

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

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

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

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

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

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

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

BILL

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

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

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

SUBCHAPTER VI

PRETRIAL PROCEDURE

BILL**SECTION 2**

322.030 Article 30—Charges and specifications. (1) Charges and specifications shall be signed by a person subject to this code under oath before a commissioned officer authorized by s. 322.136 (1) to administer oaths and shall state all of the following:

(a) The signer has personal knowledge of, or has investigated, the matters set forth in the charges and specifications.

(b) The facts are true to the best of the signer's knowledge and belief.

(2) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made in the interest of justice and discipline, and the person accused shall be informed of the charges as soon as practicable.

322.031 Article 31—Compulsory self-incrimination prohibited. (1) No person subject to this code may compel any person to incriminate himself or herself or to answer any question the answer to which may tend to incriminate him or her.

(2) No person subject to this code may interrogate or request any statement from an accused or a person suspected of an offense without first informing that person of the nature of the accusation and advising that person that the person does not have to make any statement regarding the offense of which the person is accused or suspected and that any statement made by the person may be used as evidence against the person in a trial by court-martial.

(3) No person subject to this code may compel any person to make a statement or produce evidence before any military court if the statement or evidence is not material to the issue and may tend to degrade the person.

BILL

(4) No statement obtained from any person in violation of this section or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against the person in a trial by court-martial.

322.032 Article 32—Investigation. (1) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(2) The accused shall be advised of the charges against the accused and of the right to be represented at that investigation by counsel. The accused has the right to be represented at that investigation as provided in s. 322.038 and in regulations prescribed under that section. At that investigation, full opportunity shall be given to the accused to cross-examine witnesses against the accused, if they are available, and to present anything the accused may desire in the accused's own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy shall be given to the accused.

(3) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in sub. (2), no further investigation of that charge is necessary under this section unless it is demanded by the accused after the accused is informed of the charge. A demand for further investigation entitles the accused

BILL**SECTION 2**

to recall witnesses for further cross-examination and to offer any new evidence in the accused's own behalf.

(4) If evidence adduced in an investigation under this section indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that offense without the accused having first been charged with the offense if the accused is afforded all of the following:

- (a) Present at the investigation;
- (b) Informed of the nature of each uncharged offense investigated; and
- (c) Afforded the opportunities for representation, cross-examination, and presentation prescribed in sub. (2).

(5) The requirements of this section are binding on all persons administering this code but failure to follow them does not constitute jurisdictional error.

322.033 Article 33—Forwarding of charges. When a person is held for trial by general court-martial, the commanding officer shall within 8 days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the person exercising general court-martial jurisdiction. If that is not practicable, the commanding officer shall report in writing to that person the reasons for delay.

322.034 Article 34—Advice of judge advocate and reference for trial.

(1) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to a judge advocate for consideration and advice. The convening authority may not refer a specification under a charge to a general court-martial for trial unless the convening authority has been advised in writing by a judge advocate that all the following conditions are met:

- (a) The specification alleges an offense under this code.

BILL

(b) The specification is warranted by the evidence indicated in the report of investigation under s. 322.032, if there is a report.

(c) A court-martial would have jurisdiction over the accused and the offense.

(2) The advice of the judge advocate under sub. (1) with respect to a specification under a charge shall include a written and signed statement by the judge advocate that does all of the following:

(a) Expressing conclusions with respect to each matter set forth in sub. (1).

(b) Recommending action that the convening authority take regarding the specification.

(3) If the specification is referred for trial, the recommendation of the judge advocate shall accompany the specification.

(4) If the charges or specifications are not correct formally or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and changes in the charges and specifications as are needed to make them conform to the evidence, may be made.

322.035 Article 35—Service of charges. The trial counsel shall serve or caused to be served upon the accused a copy of the charges. No person may, against the person's objection, be brought to trial before a general court-martial case within a period of 5 days after the service of charges upon the accused, or in a special court-martial, within a period of 3 days after the service of charges upon the accused.

SUBCHAPTER VII**TRIAL PROCEDURE**

322.036 Article 36—Governor may prescribe regulations. Pretrial, trial, and post-trial procedures, including modes of proof, for courts-martial cases arising under this code, and for courts of inquiry, may be prescribed by the governor by

BILL**SECTION 2**

regulations, or as otherwise provided by law, which shall apply the principles of law and the rules of evidence generally recognized in military criminal cases in the courts of the armed forces but which may not be contrary to or inconsistent with this code.

322.037 Article 37—Unlawfully influencing action of court. (1) No authority convening a general, special, or summary court-martial, nor any other commanding officer, or officer serving on the commanding officer's staff, may censure, reprimand, or admonish the court or any member, the military judge, or counsel, with respect to the findings or sentence adjudged by the court or with respect to any other exercise of its or their functions in the conduct of the proceedings. No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or court of inquiry or any member, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to their judicial acts. The foregoing provisions of the subsection shall not apply with respect to the any of the following:

(a) General instructional or informational courses in military justice if the courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial.

(b) Statements and instructions given in open court by the military judge, summary court-martial officer, or counsel.

(2) In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the state military forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the state military forces, or in determining whether a member of the state military forces should be retained

BILL

on active status, no person subject to this code may, in preparing any report, do any of the following:

(a) Consider or evaluate the performance of duty of any member as a member of a court-martial or witness.

(b) Give a less favorable rating or evaluation of any counsel of the accused because of zealous representation before a court-martial.

322.038 Article 38—Duties of trial counsel and defense counsel. (1) The trial counsel of a general or special court-martial shall be an attorney licensed to practice in this state and shall prosecute in the name of the state, and shall, under the direction of the court, prepare the record of the proceedings.

(2) (a) The accused has the right to be represented in defense before a general or special court-martial or at an investigation under s. 322.032.

(b) The accused may be represented by civilian counsel at the provision and expense of the accused.

(c) The accused may be represented by any of the following:

1. Military counsel detailed under s. 322.027.
2. Military counsel of the accused's own selection if that counsel is reasonably available as determined under par. (g).

(d) If the accused is represented by civilian counsel, military counsel detailed or selected under par. (c) shall act as associate counsel unless excused by military judge at the request of the accused.

(e) Except as provided under par. (f), if the accused is represented by military counsel of his or her own selection under par. (c) 2., any military counsel detailed under par. (c) 1. shall be excused.

BILL**SECTION 2**

(f) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under s. 322.027 to detail counsel, in that person's sole discretion may do any of the following:

1. Detail additional military counsel as assistant defense counsel.
2. If the accused is represented by military counsel of the accused's own selection under par. (c) 2., may approve a request from the accused that military counsel detailed under par. (c) 1. act as associate defense counsel.

(g) The senior force judge advocate of the same force of which the accused is a member, shall determine whether the military counsel selected by an accused is reasonably available.

(3) In any court-martial proceeding resulting in a conviction, the defense counsel may do any of the following:

(a) Forward for attachment to the record of proceedings a brief of matters as counsel determines should be considered in behalf of the accused on review, including any objection to the contents of the record which counsel considers appropriate.

(b) Assist the accused in the submission of any matter under s. 322.060.

(c) Take other action authorized by this code.

322.039 Article 39—Sessions. (1) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to s. 322.035, call the court into session without the presence of the members for the purpose of any of the following:

(a) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty.

BILL

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

(c) Holding the arraignment and receiving the pleas of the accused.

(d) Performing any other procedural function which does not require the presence of the members of the court under this code.

(2) These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record. These proceedings may be conducted notwithstanding the number of court members and without regard to s. 322.029.

(3) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and the military judge.

322.040 Article 40—Continuances. The military judge of a court-martial or a summary court-martial may, for reasonable cause, grant a continuance to any party for time, and as often, as may appear to be just.

322.041 Article 41—Challenges. (1) (a) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge or the court shall determine the relevancy and validity of challenges for cause and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

BILL**SECTION 2**

(b) If exercise of a challenge for cause reduces the court below the minimum number of members required by s. 322.016, all parties shall, notwithstanding s. 322.029, either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.

(2) (a) Each accused and the trial counsel are entitled initially to one peremptory challenge of members of the court. The military judge may not be challenged except for cause.

(b) If exercise of a peremptory challenge reduces the court below the minimum number of members required by s. 322.016, the parties shall, notwithstanding s. 322.029, either exercise or waive any remaining peremptory challenge, not previously waived, against the remaining members of the court before additional members are detailed to the court.

(c) Whenever additional members are detailed to the court, and after any challenges for cause against additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

322.042 Article 42—Oaths or affirmations. (1) Before performing their respective duties, military judges, general and special courts-martial members, trial counsel, defense counsel, reporters, and interpreters shall take an oath or affirmation in the presence of the accused to perform their duties faithfully. The form of the oath or affirmation, the time and place of the taking, the manner of recording the same, and whether the oath or affirmation shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulation or as provided by law. These regulations may provide that an oath or

BILL

affirmation to perform faithfully the duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified or designated to be qualified or competent for the duty, and if an oath or affirmation is taken, it need not again be taken at the time the judge advocate or other person is detailed to that duty.

(2) Each witness before a court-martial shall be examined under oath or affirmation.

322.043 Article 43—Statute of limitations. (1) Except as otherwise provided in this section, a person charged with any offense is not liable to be tried by court-martial or punished under s. 322.015 if the offense was committed more than 3 years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction over the command or before the imposition of punishment under s. 322.015.

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

(3) Periods in which the accused was absent from territory in which the state has the authority to apprehend him or her, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this section.

(4) When the United States is at war based on a congressional declaration or by presidential declaration under the Global War on Terror, the running of any statute of limitations is suspended until 2 years after the termination of hostilities, as proclaimed by the president or by a joint resolution of congress, and is applicable to any offense under this code under any of the following circumstances:

BILL**SECTION 2**

(a) Involving fraud or attempted fraud against the United States, any state, or any agency of either in any manner, whether by conspiracy or not.

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

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

(5) (a) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations has expired, or will expire within 180 days after the date of dismissal of the charges and specifications, trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in par. (b) are met.

(b) The conditions referred to in par. (a) are that the new charges and specifications satisfy all of the following:

1. Be received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications.

2. Allege the same acts or omissions that were alleged in the dismissed charges or specifications, or allege acts or omissions that were included in the dismissed charges or specifications.

322.044 Article 44—Former jeopardy. (1) No person may, without his or her consent, be tried a 2nd time for the same offense.

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(2) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial under this section until the finding of guilty has become final after review of the case has been fully completed.

(3) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial under this section.

322.045 Article 45—Pleas of the accused. (1) If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty.

(2) With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event, the proceedings shall continue as though the accused had pleaded not guilty.

322.046 Article 46—Opportunity to obtain witnesses and other evidence. The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence as prescribed by regulations and provided by law. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall

BILL**SECTION 2**

apply the principles of law and the rules of courts-martial generally recognized in military criminal cases in the courts of the armed forces of the United States, but which may not be contrary to or inconsistent with this code. Process shall run to any part of the United States, or the territories, commonwealths, and possessions, and may be executed by civil officers as prescribed by the laws of the place where the witness or evidence is located or of the United States.

322.047 Article 47—Refusal to appear or testify. (1) Any person not subject to this code may be punished by the military court in the same manner as a court of the state, if all of the following apply to that person:

(a) Has been duly subpoenaed to appear as a witness or to produce books and records before a court-martial or court of inquiry, or before any military or civil officer designated to take a deposition to be read in evidence before a court.

(b) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending a court of the state.

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

(2) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

322.048 Article 48—Contempt. A military judge may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder. A person subject to this code may be punished for contempt by confinement not to exceed 30 days or a fine of \$100, or both. A person not subject to this code may be punished for contempt by a military court in the same manner as a court of the state.

BILL

322.049 Article 49—Depositions. (1) At any time after charges have been signed as provided in s. 322.030, any party may take oral or written depositions unless the military judge or summary court-martial officer hearing the case or, if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause.

(2) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(3) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, digital image or file, or similar material, may be played in evidence before any military court, if any of the following apply:

(a) The witness resides or is beyond the State in which the court is ordered to sit, or beyond one hundred miles from the place of trial or hearing;

(b) The witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, non amenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing.

(c) The present whereabouts of the witness is unknown.

322.050 Article 50—Admissibility of records of courts of inquiry. (1) In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a

BILL**SECTION 2**

court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of evidence.

(2) Testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(3) Testimony may also be read in evidence before a court of inquiry.

322.0505 Article 50a—Defense of mental disease or defect. (1) The accused has an affirmative defense of mental disease or defect in a trial by court-martial if, at the time of the commission of the acts constituting the offense, the accused, as a result of a mental disease or defect, lacked substantial capacity either to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law. Mental disease or defect does not otherwise constitute a defense.

(2) The accused has the burden of proving the defense of mental disease or defect to a reasonable certainty by the greater weight of the credible evidence.

(3) Whenever lack of mental disease or defect of the accused with respect to an offense is properly at issue, the military judge shall instruct the members of the military court as to the defense of mental disease or defect under this section and charge them to find the accused any one of the following:

(a) Guilty.

(b) Not guilty.

(c) Not guilty by reason of mental disease or defect.

(4) Sub. (3) does not apply to a court-martial composed of a military judge only.

In the case of a court-martial composed of a military judge only or a summary court-martial officer, whenever mental disease or defect of the accused with respect

BILL

to an offense is properly at issue, the military judge or summary court-martial officer shall find the accused of any of the following:

- (a) Guilty.
- (b) Not guilty.
- (c) Not guilty by reason of mental disease or defect.

(5) Notwithstanding the provisions of s. 322.052, the accused shall be found not guilty by reason of mental disease or defect if any of the following apply:

(a) A majority of the members of the court-martial present at the time the vote is taken determines that the defense of mental disease or defect has been established.

(b) In the case of a court-martial composed of a military judge only or a summary court-martial officer, the military judge or summary court-martial officer determines that the defense of mental disease or defect has been established.

322.051 Article 51—Voting and rulings. (1) Voting by members of a general or special court-martial on the findings and on the sentence shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall as soon as possible announce the result of the ballot to the members of the court.

(2) The military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental disease or defect of the accused is final and constitutes the ruling of the court. However, the military judge may change the ruling at any time during the trial. Unless the ruling is final, if any member objects, the court shall be cleared and

BILL**SECTION 2**

closed and the question decided by a voice vote as provided in s. 322.052, beginning with the junior in rank.

(3) Before a vote is taken on the findings, the military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them with all of the following:

(a) The accused shall be presumed to be innocent until his or her guilt is established by legal and competent evidence beyond reasonable doubt.

(b) The case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted.

(c) If there is a reasonable doubt as to the degree of guilt, the finding shall be in a lower degree as to which there is no reasonable doubt.

(d) The burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the state.

(4) Subsections (1), (2), and (3) do not apply to a court-martial composed of a military judge only. The military judge of a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of a court-martial shall make a general finding and shall in addition, on request, find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear.

322.052 Article 52—Number of votes required. (1) No person may be convicted of an offense except as provided in s. 322.045 (2) or s. 322.051 (4) or by the concurrence of two-thirds of the members present at the time the vote is taken.

BILL

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

322.053 Article 53—Court to announce action. A court-martial shall announce its findings and sentence to the parties as soon as determined.

322.054 Article 54—Record of trial. (1) Each general and special court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his or her death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member, if the trial counsel is unable to authenticate it by reason of his or her death, disability, or absence. In a court-martial consisting of only a military judge, the record shall be authenticated by the court reporter under the same conditions which would impose a duty on a member under this subsection.

(2) A complete verbatim record of the proceedings and testimony shall be prepared in each general and special court-martial case resulting in a conviction, and in all other court-martial cases, the record shall contain matters as may be prescribed by regulations.

BILL**SECTION 2**

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

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

SUBCHAPTER VIII**SENTENCES**

322.055 Article 55—Cruel and unusual punishments prohibited. Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment may not be adjudged by a court-martial or inflicted upon any person subject to this code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

322.056 Article 56—Maximum limits. (1) The punishment which a court-martial may direct for an offense may not exceed 10 years confinement.

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

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

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

(5) The limits of punishment for violations of the punitive sections under Subch. X shall be prescribed by the governor according to ss. 322.018, to 322.020, but under no instance shall any punishment exceed that authorized by this code.

322.057 Article 57—Effective date of sentences. (1) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture

BILL

of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

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

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

322.0575 Article 57a—Deferment of sentences. (1) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under that person's jurisdiction, the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may in that person's sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the person who granted it or, if the accused is no longer under that person's jurisdiction, by the person exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

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

BILL**SECTION 2**

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

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

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

(3) In any case in which a court-martial sentences an accused to confinement and the sentence to confinement has been ordered executed, but in which review of the case under s. 322.0675 is pending, the adjutant general may defer further service of the sentence to confinement while that review is pending.

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

322.058 Article 58—Conditions of confinement. (1) A sentence of confinement adjudged by a court-martial, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place authorized by this code. Persons so confined are subject to the same discipline and treatment as persons regularly confined or committed to that place of confinement.

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

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