



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU



## ☞ Appendix A ... segment III

### LRB BILL HISTORY RESEARCH APPENDIX

☞ The drafting file for 2013 LRB-0979/1 (For: Military Affairs)

has been copied/added to the drafting file for

**2013 LRB-3430** (For: Military Affairs)

☞ Are These “Companion Bills” ?? ... No



**RESEARCH APPENDIX -**  
**PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 10/14/2013 (Per: MPG)

☞ The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



wanted  
3/18



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

2013 Bill  
(see p<sup>3</sup>, <sup>13</sup>(3))

gen act

1 AN ACT *to amend* 322.001 (15), 322.001 (23), 322.016 (2) (a), 322.026 (2) (a) and  
2 322.139 (1); *to repeal and recreate* 322.120; and *to create* 322.1201,  
3 322.1202 and 322.1203 of the statutes; **relating to:** stalking and sexual  
4 offenses under the code of military justice.

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

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

FAS  
Anl →

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

5 SECTION 1. 322.001 (15) of the statutes is amended to read:  
6 322.001 (15) "Military offenses" means those offenses prescribed under articles  
7 77, principals; 78, accessory after the fact; 80, attempts; 81, conspiracy; 82,  
8 solicitation; 83, fraudulent enlistment, appointment, or separation; 84, unlawful  
9 enlistment, appointment, or separation; 85, desertion; 86, absence without leave; 87,

1 missing movement; 88, contempt toward officials; 89, disrespect towards superior  
2 commissioned officer; 90, assaulting or willfully disobeying superior commissioned  
3 officer; 91, insubordinate conduct toward warrant officer, noncommissioned officer,  
4 or petty officer; 92, failure to obey order or regulation; 93, cruelty and maltreatment;  
5 94, mutiny or sedition; 95, resistance, flight, breach of arrest, and escape; 96,  
6 releasing prisoner without proper authority; 97, unlawful detention; 98,  
7 noncompliance with procedural rules; 99, misbehavior before the enemy; 100,  
8 subordinate compelling surrender; 101, improper use of countersign; 102, forcing a  
9 safeguard; 103, captured or abandoned property; 104, aiding the enemy; 105,  
10 misconduct as prisoner; 107, false official statements; 108, military property — loss,  
11 damage, destruction, or wrongful disposition; 109, property other than military  
12 property — waste, spoilage, or destruction; 110, improper hazarding of vessel; 111,  
13 drunken or reckless operation of a vehicle, aircraft, or vessel; 112, drunk on duty;  
14 112a, wrongful use, or possession of controlled substances; 113, misbehavior of  
15 sentinel; 114, dueling; 115, malingering; 116, riot or breach of peace; 117, provoking  
16 speeches or gestures; 120, rape or carnal knowledge; and sexual assault generally;  
17 120a, stalking; 120b, rape and sexual assault of a child; 120c, sexual misconduct;  
18 121, larceny and wrongful appropriation; 122, robbery; 123, forgery; 124, maiming;  
19 126, arson; 127, extortion; 128, assault; 129, burglary; 130, housebreaking; 131,  
20 perjury; 132, frauds against the government; 133, conduct unbecoming an officer and  
21 a gentleman; and 134, general; of this code.

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

23 322.001 (23) “State military forces” means the Wisconsin army and air national  
24 guard, the national guard, as defined in 32 USC 502, 503, or 904 101, the state  
25 defense force, the organized naval militia of the state, and any other military force

1 organized under the Constitution and laws of the state, ~~and but~~ does not include the  
2 unorganized militia, ~~state guard, or home guard, when not in.~~ "State military forces"  
3 does not include the national guard when under a status subjecting them to ~~exclusive~~ ←  
4 jurisdiction under 10 USC ch. 47.

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

6 322.016 (2) (a) A military judge and not less than 3 members. ~~An accused may~~  
7 ~~waive having 12 members and proceed to a special court-martial with not less than~~  
8 ~~6 members.~~

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

10 322.026 (2) (a) Be a commissioned officer of the armed forces of the United  
11 States or of a component thereof or a commissioned officer of an organized state  
12 military force.

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

14 **322.120 Article 120 - Rape and sexual assault generally.**

15 (1) In this section:

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

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

20 2. An expression of lack of consent through words or conduct means there is no  
21 consent. Submission or lack of oral or physical resistance, resulting from the use of  
22 force, threat of force, or placing another person in fear, does not constitute consent.  
23 A current or previous dating or social or sexual relationship by itself or the manner  
24 of dress of the person involved with the accused in the conduct at issue shall not  
25 constitute consent. A sleeping, unconscious, or incompetent person cannot consent.

1 A person cannot consent to force causing or likely to cause death or grievous bodily  
2 harm or to being rendered unconscious. A person cannot consent while under threat  
3 or in fear.

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

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

9 1. The use of a weapon.

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

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

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

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

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

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

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

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

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

8           (g) “Threatening or placing that other person in fear” means a communication  
9 or action that is of sufficient consequence to cause a reasonable fear that  
10 noncompliance will result in the victim or another person being subjected to the  
11 wrongful action contemplated by the communication or action.

12           (h) “Unlawful force” means an act of force done without legal justification or  
13 excuse.

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

17           (a) Using unlawful force against that other person;

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

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

22           (d) Rendering that other person unconscious.

23           (e) Administering to that other person by force or threat of force, or without the  
24 knowledge or consent of that person, a drug, intoxicant, or other similar substance

1 and thereby substantially impairing the ability of that other person to appraise or  
2 control his or her conduct.

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

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

7 1. Threatening or placing that other person in fear.

8 2. Causing bodily harm to that other person.

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

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

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

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

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

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

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

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

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

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

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

12           **322.1201 Article 120a – Stalking.**

13           (1) In this section:

14           (a) “Course of conduct” means any of the following:

- 15           1. A repeated maintenance of visual or physical proximity to a specific person.  
16           2. A repeated conveyance of oral threat, written threats, or threats implied by  
17 conduct, or a combination of such threats, directed at or toward a specific person.

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

22           (c) “Repeated,” with respect to a course of conduct, means two or more occasions  
23 of such conduct.

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



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

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

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

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

11 **322.1202 Article 120b – Rape and sexual assault of a child.**

12 (1) In this section:

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

14 (b) “Force” means any of the following:

15 1. The use of a weapon.

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

18 3. Inflicting physical harm.

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

21 (c) “Lewd act” means any of the following:

22 1. Any sexual contact with a child.

23 2. Intentionally exposing one’s genitalia, anus, buttocks, or female areola or  
24 nipple to a child by any means, including via any communication technology, with

1 an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the  
2 sexual desire of any person.

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

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

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

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

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

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

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

22 1. Using force against any person.

23 2. Threatening or placing that child in fear.

24 3. Rendering that child unconscious.

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

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

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

6           (5) In a prosecution under this section, it need not be proven that the accused  
7 knew the age of the other person engaging in the sexual act or lewd act. It is not a  
8 defense that the accused reasonably believed that the child had attained the age of  
9 12 years.

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

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

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

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

23           **322.1203 Article 120c - Other sexual misconduct.**

24           (1) In this section:

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

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

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

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

11          (e) “Private area” means the naked or underwear-clad genitalia, anus,  
12          buttocks, or female areola or nipple.

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

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

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

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

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

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

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

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

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

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

14 322.139 (1) Whenever complaint is made to any commanding officer that  
15 willful damage has been done to the property of any person or that the person's  
16 property has been wrongfully taken by ~~members~~ a member of the ~~a~~ state military  
17 ~~forces, that person~~ force, the commanding officer may, under the regulations  
18 prescribed, ~~convene a board to~~ investigate the complaint. ~~The board shall consist of~~  
19 ~~from one to 3 commissioned officers and, for the purpose of that investigation, it has~~  
20 ~~power to~~ commanding officer may summon witnesses and examine them upon oath,  
21 ~~to~~ receive depositions or other documentary evidence, and ~~to~~ assess the damages  
22 sustained against the responsible ~~parties~~ party. The assessment of damages made  
23 by the ~~board~~ investigator is subject to the approval of the commanding officer, ~~and~~  
24 ~~in the.~~ The amount approved assessed by ~~that~~ the commanding officer shall be  
25 charged against the pay of the ~~offenders~~ offender. The order of the commanding

1 officer directing charges ~~herein authorized~~ is conclusive on any disbursing officer for  
2 payment to the injured ~~parties~~ party of the damages so assessed and approved.

\*\*\*NOTE: I think we should add language allowing the commanding officer to delegate the investigation, otherwise it is unclear where "the investigator" in the "assessment of damages made by the investigator" comes from in the provision above.

3 **SECTION 10. Initial applicability.**

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

6 (END)

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0979/1ins  
RPN:sac:jf

Insert An1:

\*  
\*  
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.

## 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=%20APlease%20Jacket%20LRB%20-0979/1%20for%20the%20ASSEMBLY.%0A>



---

**Barman, Mike**

---

**From:** Barman, Mike  
**Sent:** Monday, March 18, 2013 12:57 PM  
**To:** Hughes, Patrick - GOV  
**Cc:** Gallagher, Michael  
**Subject:** LRB-0979/1

**LRB-0979/1 (Military Affairs draft) was jacketed for the Assembly ... ready for pick-up at the LRB.**

**Mike Barman (Lead Program Assistant)**

State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office

1 East Main Street, Suite 200, Madison, WI 53703

(608) 266-3561 / [mike.barman@legis.wisconsin.gov](mailto:mike.barman@legis.wisconsin.gov)



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-0979/1  
RPN:sac:rs

## 2013 BILL

1 AN ACT *to amend* 322.001 (15), 322.001 (23), 322.016 (2) (a), 322.026 (2) (a) and  
2 322.139 (1); *to repeal and recreate* 322.120; and *to create* 322.1201,  
3 322.1202 and 322.1203 of the statutes; **relating to:** stalking and sexual  
4 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

**BILL**

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:*

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

2           322.001 (15) "Military offenses" means those offenses prescribed under articles  
3           77, principals; 78, accessory after the fact; 80, attempts; 81, conspiracy; 82,  
4           solicitation; 83, fraudulent enlistment, appointment, or separation; 84, unlawful  
5           enlistment, appointment, or separation; 85, desertion; 86, absence without leave; 87,  
6           missing movement; 88, contempt toward officials; 89, disrespect towards superior  
7           commissioned officer; 90, assaulting or willfully disobeying superior commissioned  
8           officer; 91, insubordinate conduct toward warrant officer, noncommissioned officer,  
9           or petty officer; 92, failure to obey order or regulation; 93, cruelty and maltreatment;  
10          94, mutiny or sedition; 95, resistance, flight, breach of arrest, and escape; 96,  
11          releasing prisoner without proper authority; 97, unlawful detention; 98,  
12          noncompliance with procedural rules; 99, misbehavior before the enemy; 100,  
13          subordinate compelling surrender; 101, improper use of countersign; 102, forcing a  
14          safeguard; 103, captured or abandoned property; 104, aiding the enemy; 105,  
15          misconduct as prisoner; 107, false official statements; 108, military property — loss,  
16          damage, destruction, or wrongful disposition; 109, property other than military

**BILL**

1 property — waste, spoilage, or destruction; 110, improper hazarding of vessel; 111,  
2 drunken or reckless operation of a vehicle, aircraft, or vessel; 112, drunk on duty;  
3 112a, wrongful use, or possession of controlled substances; 113, misbehavior of  
4 sentinel; 114, dueling; 115, malingering; 116, riot or breach of peace; 117, provoking  
5 speeches or gestures; 120, rape ~~or carnal knowledge~~; and sexual assault generally;  
6 120a, stalking; 120b, rape and sexual assault of a child; 120c, sexual misconduct;  
7 121, larceny and wrongful appropriation; 122, robbery; 123, forgery; 124, maiming;  
8 126, arson; 127, extortion; 128, assault; 129, burglary; 130, housebreaking; 131,  
9 perjury; 132, frauds against the government; 133, conduct unbecoming an officer and  
10 a gentleman; and 134, general; of this code.

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

12 322.001 (23) "State military forces" means the Wisconsin army and air national  
13 guard, the national guard, as defined in 32 USC 502, 503, ~~or 904 101~~, the state  
14 defense force, the organized naval militia of the state, and any other military force  
15 organized under the Constitution and laws of the state, ~~and but~~ does not include the  
16 unorganized militia, ~~state guard, or home guard, when not in.~~ "State military forces"  
17 does not include the national guard when under a status subjecting them to exclusive  
18 jurisdiction under 10 USC ch. 47.

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

20 322.016 (2) (a) A military judge and not less than 3 members. ~~An accused may~~  
21 ~~waive having 12 members and proceed to a special court-martial with not less than~~  
22 ~~6 members.~~

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

**BILL****SECTION 4**

1           322.026 (2) (a) Be a commissioned officer of the armed forces of the United  
2 States or of a component thereof or a commissioned officer of an organized state  
3 military force.

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

5           **322.120 Article 120 - Rape and sexual assault generally.**

6           (1) In this section:

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

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

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

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

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

25           1. The use of a weapon.

**BILL**

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

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

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

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

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

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

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

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

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

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

**BILL**

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

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

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

8 (a) Using unlawful force against that other person;

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

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

13 (d) Rendering that other person unconscious.

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

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

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

22 1. Threatening or placing that other person in fear.

23 2. Causing bodily harm to that other person.

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

**BILL**

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

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

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

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

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

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

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

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

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



**BILL**

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

2           **322.1201 Article 120a - Stalking.**

3           (1) In this section:

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

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

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

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

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

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

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

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

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

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

**BILL**

1           **322.1202 Article 120b - Rape and sexual assault of a child.**

2           (1) In this section:

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

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

5           1. The use of a weapon.

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

8           3. Inflicting physical harm.

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

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

12          1. Any sexual contact with a child.

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

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

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

**BILL**

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

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

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

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

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

12 1. Using force against any person.

13 2. Threatening or placing that child in fear.

14 3. Rendering that child unconscious.

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

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

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

21 (5) In a prosecution under this section, it need not be proven that the accused  
22 knew the age of the other person engaging in the sexual act or lewd act. It is not a  
23 defense that the accused reasonably believed that the child had attained the age of  
24 12 years.

**BILL**

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

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

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

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

14           **322.1203 Article 120c – Other sexual misconduct.**

15           (1) In this section:

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

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

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

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

**BILL**

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

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

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

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

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

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

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

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

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

**BILL**

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

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

5 322.139 (1) Whenever complaint is made to any commanding officer that  
6 willful damage has been done to the property of any person or that the person's  
7 property has been wrongfully taken by ~~members~~ a member of ~~the~~ a state military  
8 ~~forces, that person~~ force, the commanding officer may, under the regulations  
9 prescribed, ~~convene a board to~~ investigate the complaint. ~~The board shall consist of~~  
10 ~~from one to 3 commissioned officers and, for the purpose of that investigation, it has~~  
11 ~~power to~~ commanding officer may summon witnesses and examine them upon oath,  
12 ~~to~~ receive depositions or other documentary evidence, and ~~to~~ assess the damages  
13 sustained against the responsible ~~parties~~ party. The assessment of damages made  
14 by the ~~board~~ investigator is subject to the approval of the commanding officer, ~~and~~  
15 ~~in the.~~ The amount approved ~~assessed~~ by that the commanding officer shall be  
16 charged against the pay of the ~~offenders~~ offender. The order of the commanding  
17 officer directing charges ~~herein authorized~~ is conclusive on any disbursing officer for  
18 payment to the injured ~~parties~~ party of the damages so assessed and approved.

19 **SECTION 10. Initial applicability.**

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

22 (END)