



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-1799/P1
MLJ&JAM:amn

DOA:.....Stinebrink, BB0491 - Wisconsin National Guard duties related to sexual assault and sexual harassment

FOR 2023-2025 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

MILITARY AFFAIRS

Wisconsin National Guard duties related to sexual assault and sexual harassment

This bill makes a number of changes to the Wisconsin Code of Military Justice (WCMJ), including: 1) the codification of offenses that have been included as offenses in the federal Uniform Code of Military Justice (UCMJ) related to retaliation, sexual harassment, and engagement in prohibited sexual activity with a recruit or trainee; 2) articulation of the limits of punishment under the WCMJ; 3) clarifications as to which courts-martial have primary jurisdiction over certain offenses; 4) removal of certain gender-specific language from the WCMJ; 5) requiring that the adjutant general prescribe rules of procedure for courts-martial arising under the WCMJ; and 6) requiring that the adjutant general prescribe and implement a policy that ensures that a victim of an offense under the WCMJ is treated with dignity, respect, courtesy, sensitivity, and fairness.

This bill also requires the adjutant general to submit to the governor and appropriate standing committees of the legislature an annual report containing information related to sexual assaults and sexual harassment reported by members of the Wisconsin National Guard, and a summary of National Guard training and

policies related to preventing and responding to incidents of sexual assault and sexual harassment.

This bill also requires DMA to establish and maintain a case management system that allows the National Guard to track and manage casework related to misconduct within the National Guard. This bill also requires DMA to submit to the governor and appropriate standing committees of the legislature an annual report describing any substantive changes to the UCMJ during the prior federal fiscal year, a comparison of those changes to the WCMJ, and recommendations regarding whether those changes should be incorporated into the WCMJ.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 321.03 (1) (f) of the statutes is created to read:

321.03 (1) (f) 1. In this paragraph, “substantive change” means any change that modifies the elements of a punitive article of the Uniform Code of Military Justice, creates a punitive article in the Uniform Code of Military Justice, or repeals a punitive article from the Uniform Code of Military Justice.

2. By July 1 of each year, submit to the appropriate standing committees of the legislature in the manner provided under s. 13.172 (3) a report that summarizes any substantive changes that have been made to the Uniform Code of Military Justice during the prior federal fiscal year, compares those substantive changes to the Wisconsin Code of Military Justice, and provides recommendations to the legislature regarding whether those substantive changes to the Uniform Code of Military Justice should be incorporated into the Wisconsin Code of Military Justice. The report shall be the subject of a public hearing, conducted no less often than annually, by the appropriate standing committees of the legislature.

SECTION 2. 321.03 (1) (g) of the statutes is created to read:

321.03 (1) (g) Establish and maintain a case management system that allows the national guard to manage and track all case-related information for cases of misconduct within the national guard.

SECTION 3. 321.04 (1) (s) of the statutes is created to read:

321.04 (1) (s) 1. By February 1 of each year, submit to the governor and to the appropriate standing committees of the legislature in the manner provided under s. 13.172 (3), and publish on the department's website, an annual report on sexual assault and sexual harassment within the Wisconsin national guard. The report shall be the subject of a public hearing, conducted no less often than annually, by the appropriate standing committees of the legislature. The report shall include, at a minimum, all of the following information for the prior federal fiscal year:

a. Data regarding all reported incidents of sexual assault and sexual harassment made by members of the Wisconsin national guard during that period, including the numbers of restricted and unrestricted reports of sexual assault and reports of sexual harassment, and historical trends relating to that data for the 5 fiscal years preceding the fiscal year covered in the report. For unrestricted reports of sexual assault and for reports of sexual harassment, the report shall also include all of the following information: the type of conduct that was reported to have occurred; the duty status of the members involved at the time of the incident; information on the status of the report, including whether the case was referred for additional investigation; and a summary of any resolution or discipline taken, including whether criminal charges were referred or filed.

b. A summary of any training relating to preventing and responding to incidents of sexual assault and sexual harassment that was provided to members of the Wisconsin national guard in the preceding year.

c. A summary of any current federal national guard bureau policies relating to preventing and responding to incidents of sexual assault and sexual harassment that were enacted during that period and a description of how those policies are being implemented in the Wisconsin national guard.

d. A summary of the current policies and procedures related to preventing and responding to incidents of sexual assault and sexual harassment in the Wisconsin national guard and any changes made since the prior report.

2. The report under subd. 1. shall protect the privacy of victims of sexual assault and sexual harassment and may not provide any personal identifying information that would allow a victim to be identified.

SECTION 4. 321.04 (1) (t) of the statutes is created to read:

321.04 (1) (t) Prescribe in writing, make publicly available on the department's website, and implement a policy that ensures that any victim of an offense under the Wisconsin code of military justice is treated with dignity, respect, courtesy, sensitivity, and fairness.

SECTION 5. 321.04 (1) (u) of the statutes is created to read:

321.04 (1) (u) Prescribe in writing and make publicly available on the department's website the procedures required under s. 322.036.

SECTION 6. 322.001 (15) of the statutes is amended to read:

322.001 (15) "Military offenses" means those offenses prescribed under articles 77, principals; 78, accessory after the fact; 80, attempts; 81, conspiracy; 82, solicitation; 83, fraudulent enlistment, appointment, or separation; 84, unlawful enlistment, appointment, or separation; 85, desertion; 86, absence without leave; 87, missing movement; 88, contempt toward officials; 89, disrespect towards superior commissioned officer; 90, assaulting or willfully disobeying superior commissioned

officer; 91, insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer; 92, failure to obey order or regulation; 93, cruelty and maltreatment; 93a, prohibited activities with military recruit or trainee by a person in a position of special trust; 94, mutiny or sedition; 95, resistance, flight, breach of arrest, and escape; 96, releasing prisoner without proper authority; 97, unlawful detention; 98, noncompliance with procedural rules; 99, misbehavior before the enemy; 100, subordinate compelling surrender; 101, improper use of countersign; 102, forcing a safeguard; 103, captured or abandoned property; 104, aiding the enemy; 105, misconduct as prisoner; 107, false official statements; 108, military property — loss, damage, destruction, or wrongful disposition; 109, property other than military property — waste, spoilage, or destruction; 110, improper hazarding of vessel; 111, drunken or reckless operation of a vehicle, aircraft, or vessel; 112, drunk on duty; 112a, wrongful use, or possession of controlled substances; 113, misbehavior of sentinel; 114, dueling; 115, malingering; 116, riot or breach of peace; 117, provoking speeches or gestures; ~~120, rape and sexual assault generally; 120a, stalking; 120b, rape and sexual assault of a child; 120c, sexual misconduct;~~ 121, larceny and wrongful appropriation; 122, robbery; 123, forgery; 124, maiming; 126, arson; 127, extortion; 128, assault; 129, burglary; 130, housebreaking; 131, perjury; 132, frauds against the government; 132a, retaliation; 133, conduct unbecoming an officer and a gentleman; and; 134, general; and 134h, sexual harassment; of this code.

SECTION 7. 322.001 (16) of the statutes is repealed.

SECTION 8. 322.036 of the statutes is amended to read:

322.036 Article 36 — ~~Governor may prescribe regulations~~ Pretrial, trial, and post-trial procedures. Pretrial, trial, and post-trial procedures not specified in this code, including modes of proof, for courts-martial cases arising

under this code, and for courts of inquiry, ~~may~~ shall be prescribed by the governor by 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 adjutant general in writing and made publicly available on the department of military affairs' website.

SECTION 9. 322.056 (2) of the statutes is amended to read:

322.056 (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.

SECTION 10. 322.056 (5) of the statutes is amended to read:

322.056 (5) The limits of punishment for violations of the punitive sections under Subch. X shall be those under the Uniform Code of Military Justice, unless otherwise 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.

SECTION 11. 322.0935 of the statutes is created to read:

322.0935 Article 93a — Prohibited activities with military recruit or trainee by a person in a position of special trust. (1) In this section:

(a) “Applicant for military service” means a person who, under regulations prescribed by the secretary of the relevant military branch, is an applicant for original enlistment or appointment in the state military forces.

(b) “Military recruiter” means a person who, under regulations prescribed by the secretary of the relevant military branch, has the primary duty to recruit persons for military service.

(c) “Prohibited sexual activity” means any sexual act, as defined in s. 322.120 (1) (e), or any sexual contact, as defined in s. 322.120 (1) (f), or any attempt or solicitation to commit a sexual act or sexual contact.

(d) “Specially protected junior member of the state military forces” means any of the following:

1. A member of the state military forces who is assigned to, or is awaiting assignment to, basic training or other initial active duty for training, including a member who is enlisted under a delayed entry program.

2. A member of the state military forces who is a cadet, candidate, or midshipman, or a student in any other officer qualification program.

3. A member of the state military forces in any program that, by regulation prescribed by the secretary of the relevant military branch, is identified as a training program for initial career qualification.

(e) “Training leadership position” means, with respect to a specially protected junior member of the state military forces, any drill instructor position or other leadership position in a basic training program, an officer candidate school, a reserve officers’ training corps unit, a training program for entry into the state military forces, or any program that, by regulation prescribed by the secretary of the relevant military branch, is identified as a training program for initial career qualification.

(2) Any officer, noncommissioned officer, or petty officer who is in a training leadership position and engages in prohibited sexual activity with a specially protected junior member of the state military forces shall be punished as a court-martial may direct.

(3) Any person who is a military recruiter and engages in prohibited sexual activity with an applicant for military service or a specially protected junior member

of the state military forces who is enlisted under a delayed entry program shall be punished as a court-martial may direct.

(4) Consent is not a defense for any conduct at issue in a prosecution under this section.

SECTION 12. 322.120 (1) (a) of the statutes is repealed.

SECTION 13. 322.120 (3) (a) (intro.) of the statutes is amended to read:

322.120 (3) (a) (intro.) Commits a sexual act upon another person ~~without consent~~ by doing any of the following:

SECTION 14. 322.120 (3) (b) of the statutes is renumbered 322.120 (3) (b) (intro.) and amended to read:

322.120 (3) (b) (intro.) Commits a sexual act upon another person ~~when~~ under one of the following circumstances:

2. When the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring.

SECTION 15. 322.120 (3) (b) 1. of the statutes is created to read:

322.120 (3) (b) 1. Without the consent of the other person.

SECTION 16. 322.1325 of the statutes is created to read:

322.1325 Article 132a — Retaliation. (1) In this section:

(a) “Protected communication” means any of the following:

1. A lawful communication to a member of Congress, a member of the Wisconsin legislature, the governor, or an inspector general.

2. A communication to a member of the U.S. department of defense or the U.S. national guard bureau, a law enforcement officer, a state agency, a legislative service agency, a person in the chain of command, or a court-martial proceeding in which a member of the state military forces complains of, or discloses information that the

member reasonably believes constitutes evidence of, a violation of a law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(b) “Unlawful discrimination” means discrimination on the basis of race, color, religion, sex, or national origin.

(2) Any person who, with intent to retaliate against any person for reporting or planning to report a criminal or military offense or for making or planning to make a protected communication, or with intent to discourage any person from reporting a criminal or military offense or making a protected communication, does any of the following shall be punished as a court-martial may direct:

(a) Wrongfully takes or threatens to take an adverse personnel action against any person.

(b) Wrongfully withholds or threatens to withhold a favorable personnel action with respect to any person.

SECTION 17. 322.133 of the statutes is amended to read:

322.133 Article 133 — Conduct unbecoming an officer and a gentleman.

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

SECTION 18. 322.1345 of the statutes is created to read:

322.1345 Article 134h — Sexual harassment. Any person who knowingly makes an unwelcome sexual advance, demand, or request for a sexual favor or knowingly engages in other unwelcome conduct of a sexual nature shall be punished as a court-martial may direct if all of the following apply:

(1) The sexual advance, demand, request, or conduct of a sexual nature satisfies any of the following conditions:

(a) It would, under the circumstances, cause a reasonable person to believe, and at least one person did believe, that submission to or rejection of such an advance, demand, request, or conduct would be made, either explicitly or implicitly, a term or condition of that person's job, pay, career, benefits, or entitlements or would be used as a basis for decisions affecting that person's job, pay, career, benefits, or entitlements.

(b) It was so severe, repetitive, or pervasive that a reasonable person would perceive, and at least one person did perceive, an intimidating, hostile, or offensive working environment.

(2) The sexual advance, demand, request, or conduct of a sexual nature was to the prejudice of good order and discipline in the state military forces or of a nature to bring discredit upon the state military forces, or both.

SECTION 9331. Initial applicability; Military Affairs.

(1) REPORT ON SUBSTANTIVE CHANGES TO THE UNIFORM CODE OF MILITARY JUSTICE. The reporting requirement under s. 321.03 (1) (f) 2. first applies to a substantive change to the Uniform Code of Military Justice that is made on or after October 1, 2023.

(2) REPORTING OF SEXUAL ASSAULT AND SEXUAL HARASSMENT WITHIN THE WISCONSIN NATIONAL GUARD. The reporting requirement under s. 321.04 (1) (s) first applies to a reported incident of sexual assault or sexual harassment that is made on or after October 1, 2023.

(END)