
Wisconsin Legislative Council

MINUTES



STUDY COMMITTEE ON WISCONSIN NATIONAL GUARD SEXUAL MISCONDUCT PROCEDURES

300 Northeast, State Capitol
Madison, WI
August 9, 2022
10:00 a.m. – 2:05 p.m.

CALL TO ORDER AND ROLL CALL

Chair Kurtz called the meeting to order and determined a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Tony Kurtz, Chair; Sen. Eric Wimberger, Vice Chair; Rep. Daniel Riemer; Sen. Melissa Agard; and Public Members Autumn Carroll, Jacob Curtis, and Gabriela Guzman.

COMMITTEE MEMBERS EXCUSED: Public Members Amy Arenz, Adam Gerol, Melissa Inlow, and Jade La Sage.

COUNCIL STAFF PRESENT: Anne Sappenfield, Director; David Moore, Senior Staff Attorney; Tom Koss, Staff Attorney; and Alex Witz, Intern.

APPEARANCES: Major General Charles Walker, Director, Office of Complex Investigations (OCI), National Guard Bureau; and COL Douglas H. Moore, Staff Judge Advocate, and CPT Leigh M. Neville-Neil, Deputy Brigade Staff Judge Advocate, 32d IBCT, Wisconsin Army National Guard, and Meg Vergeront, General Counsel, Wisconsin Department of Military Affairs.

OPENING REMARKS FROM ANNE SAPPENFIELD, DIRECTOR, LEGISLATIVE COUNCIL STAFF

Anne Sappenfield, Director of the Legislative Council staff, welcomed committee members and thanked them for their service. She introduced the Legislative Council staff assigned to the committee. She then presented a video featuring remarks from Wisconsin legislators, including the current co-chairs of the Joint Legislative Council, regarding the work of interim study committees. In closing, Ms. Sappenfield briefly described the procedures followed throughout the study committee process.

INTRODUCTION OF COMMITTEE MEMBERS AND STUDY COMMITTEE OVERVIEW

Chair Kurtz introduced himself and welcomed the committee members. At his invitation, committee members introduced themselves and briefly explained their backgrounds and interest in the committee's topic.

PRESENTATION OF STAFF BRIEF BY LEGISLATIVE COUNCIL STAFF

David Moore, Senior Staff Attorney, and Tom Koss, Staff Attorney, provided an overview of information provided in Legislative Council Staff Brief 2022-05, [Study Committee on Wisconsin National Guard Sexual Misconduct Procedures](#) (July 29, 2022). Mr. Moore provided an overview of the organization and administration of the Wisconsin National Guard and the rules and policies applicable to Guard members. Mr. Koss discussed the different statuses under which National Guard members may be called to serve and how those statuses affect the applicability and enforcement of rules and policies, including through the use of the Uniform Code of Military Justice (UCMJ) and Wisconsin Code of Military Justice (WCMJ). Mr. Moore and Mr. Koss concluded by discussing the assessment of the Wisconsin National Guard by the National Guard Bureau's OCI.

PRESENTATION BY MAJOR GENERAL CHARLES WALKER, DIRECTOR, OCI, NATIONAL GUARD BUREAU

Major General Walker provided an overview of the OCI and the unique role that the organization serves to the National Guard. He explained that OCI investigates allegations of sexual assault in an administrative capacity at the request of state Adjutants General. Its standard of proof for substantiating an allegation is a preponderance of the evidence, rather than beyond a reasonable doubt. Based on this standard, about 52% of cases are substantiated and about 48% are unsubstantiated. Substantiated allegations require the state National Guard to take action against the perpetrator.

He also discussed the complexities that arise in investigating sexual assault in the National Guard. Examples of these complexities include the statuses under which National Guard members serve, work, and live; the fact that most victims and perpetrators know each other; and the difficulty of corroborating allegations. He pointed out several statistics related to sexual assault in the National Guard, including that the majority of victims are female and between the ages of 18 and 26, and that many cases involve alcohol consumption.

He closed his presentation by discussing three best practices that states have taken for addressing sexual assault in the National Guard: (1) utilizing a single, centralized agency to conduct criminal investigations of sexual assault; (2) utilizing the Office of Provost Marshal; and (3) exercising oversight of the state militia, providing as an example a Vermont law that requires the National Guard to report annually on sexual assault and harassment and diversity, equity, and inclusion.

Major General Walker then responded to questions from committee members on several topics, including: (1) the prevalence of substantiated and unsubstantiated incidents of sexual assault; (2) charging options and decisions under the UCMJ; (3) the use of a single, centralized investigatory agency; and (4) the use of Sexual Assault Response Coordinator (SARC) interviews in courts-martial.

PRESENTATION BY COL DOULAS H. MOORE, STAFF JUDGE ADVOCATE, AND CPT LEIGH M. NEVILLE-NEIL, DEPUTY BRIGADE STAFF JUDGE ADVOCATE, WISCONSIN ARMY NATIONAL GUARD, AND MEG VERGERONT, GENERAL COUNSEL, WISCONSIN DEPARTMENT OF MILITARY AFFAIRS

Colonel Moore provided an update on changes to the Wisconsin National Guard's policies since the OCI assessment concluded. He discussed how the Guard has improved tracking and transparency of complaints of sexual assault and disciplinary matters, updated sexual assault policies to comply with

federal law and policies, and improved staffing and resources, training, and communication and messaging. He explained that the National Guard Bureau validated the Wisconsin National Guard's progress in December 2021. He also described the resources available for victims who report an instance of sexual assault, the procedural differences in handling restricted and unrestricted reports of sexual assault, and that the National Guard works with local law enforcement through the provost marshal.

Colonel Moore and Captain Neville-Neil responded to questions from committee members on several topics, including: (1) the tracking and transparency of discipline and complaints; (2) updates to and use of the Codes of Military Justice; (3) the use of a single, centralized investigatory agency; (4) barriers to reporting instances of sexual misconduct; and (5) the audit or review of Wisconsin National Guard policies and procedures.

COMMITTEE DISCUSSION OF ASSIGNMENT

Following presentations from invited speakers, the committee discussed the information received and the committee's scope. Among other topics, committee members reflected on issues related to accountability, identifying barriers to reporting, ensuring adequate victim supports, and the importance of tracking allegations of sexual misconduct. Committee members also discussed the use of, and potential update to, the WCMJ, efforts to prevent sexual misconduct, and efforts to encourage reporting of sexual misconduct. One committee member also discussed the opportunity to learn about what other states have been doing to address sexual misconduct in the National Guard.

At Chair Kurtz's invitation, committee members requested a presentation from a SARC at the next committee meeting and discussed the opportunity to hear from the Adjutant General.

PLANS FOR FUTURE MEETINGS

Chair Kurtz reminded committee members that the next meeting of the committee has been scheduled for Wednesday, September 14, 2022.

ADJOURNMENT

The meeting adjourned at 2:05 p.m.

DM:TK:ksm