



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-6551/P3
MJW:amn&wlj

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to renumber and amend* 322.120 (3) (b); and *to create* 322.120 (3) (b)
2 1. of the statutes; **relating to:** a punitive article under the Wisconsin Code of
3 Military Justice relating to sexual assault.

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 PREFATORY NOTE: This bill was prepared for the Joint Legislative Council Study Committee on Wisconsin National Guard Sexual Misconduct Procedures. Under current law, members of the Wisconsin National Guard on state status are subject to the Wisconsin Code of Military Justice (WCMJ), which codifies offenses that may be punished under the code and establishes procedures for enforcing the code.

Under current law, a person is guilty of sexual assault under the WCMJ if he or she commits a sexual act, as defined by statute, upon another person under a variety of different types of circumstances. One way the elements of sexual assault are satisfied under the WCMJ is if a person commits a sexual assault upon another person without the other person's consent by doing any of the following: (a) threatening or placing that other person in fear; (b) causing bodily harm to that other person; (c) making a fraudulent representation that the sexual act serves a professional purpose; or (d) inducing a belief by any artifice, pretense, or concealment that the person is another person.

Another way the elements of sexual assault are satisfied under the WCMJ is if a person commits a sexual act upon another person when the person knows or reasonably

should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring. A third way the elements of sexual assault are satisfied under the WCMJ is if a person commits a sexual act upon another person when the other person is incapable of consenting for various specified reasons.

The bill adds a fourth way the elements of sexual assault are satisfied under the WCMJ. The bill provides that a person is guilty of sexual assault if he or she commits a sexual act upon another person without the consent of the other person.

Also under current law, a person who commits or causes sexual contact, as defined by statute, on another person, under circumstances that would violate the offense of sexual assault had the contact instead been a sexual act, is guilty of abusive sexual contact under the WCMJ. By virtue of the bill's creation of a fourth way the elements of sexual assault are satisfied under the WCMJ, a person is also guilty of abusive sexual contact if he or she commits or causes sexual contact on another person without that person's consent.

****NOTE: This bill modifies Article 120 of the Wisconsin Code of Military Justice (WCMJ) to provide that a person commits sexual assault if he or she commits a sexual act upon another person without the consent of the other person. This change creates a provision that parallels one way in which sexual assault is described under the Uniform Code of Military Justice (UCMJ). [See, 10 U.S.C. 920 (2) (A).] Does the committee also want to modify s. 322.120 (3) (a), Stats., which describes another way in which sexual assault may be committed, to align that statute with the UCMJ's parallel provision?

Section 322.120 (3) (a), Stats., provides that a person commits sexual assault if he or she commits a sexual act upon another person without consent by doing any of the following: (a) threatening or placing that other person in fear; (b) causing bodily harm to that other person; (c) making a fraudulent representation that the sexual act serves a professional purpose; or (d) inducing a belief by any artifice, pretense, or concealment that the person is another person. A person who is guilty of the conduct described in s. 322.120 (3) (a) will also always necessarily be guilty of the offense this bill creates because both offenses prohibit committing a nonconsensual sexual act, but s. 322.120 (3) (a) additionally requires the presence of other elements that are not required to prove the offense this bill creates.

The UCMJ provision that parallels s. 322.120 (3) (a) does not include lack of consent as an element of that offense [10 U.S.C. 920 (b) (1)]. Under the UCMJ, a person who commits a sexual act upon another person is guilty of sexual assault if he or she commits the assault by (a) threat or use of force; (b) making a fraudulent representation that the sexual act serves a professional purpose; or (c) inducing a belief by any artifice, pretense, or concealment that the person is another person. Consent is not an issue in this offense. Does the committee wish to parallel the UCMJ by removing "without consent" from s. 322.120 (3) (a)? If it does, does the committee also want to repeal s. 322.120 (3) (a) 2., Stats., which is no longer reflected in the UCMJ? As noted above, s. 322.120 (3) (a) prohibits committing a nonconsensual sexual act by doing certain acts; one is "by causing bodily harm to that other person" [s. 322.120 (3) (a) 2., Stats.]. The UCMJ's parallel provision does not include lack of consent as an element of the offense, and the provision pertaining to causing bodily harm has been removed from that provision.

1 **SECTION 1.** 322.120 (3) (b) of the statutes is renumbered 322.120 (3) (b) (intro.)
2 and amended to read:
3 322.120 (3) (b) (intro.) Commits a sexual act upon another person when under
4 one of the following circumstances:

