



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-6559/P3
MJW:amn

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 322.001 (16); and *to amend* 322.001 (15), 322.056 (2), 322.056
2 (5) and 322.133 of the statutes; **relating to:** military offenses under the
3 Wisconsin Code of Military Justice, punishments for violations of the Wisconsin
4 Code of Military Justice, and the removal of gender-specific language from the
5 Wisconsin Code of Military Justice.

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 the WCMJ, courts-martial have primary jurisdiction of military offenses, while civilian criminal courts have primary jurisdiction of nonmilitary offenses when an act or omission violates both the WCMJ and civilian criminal law. A nonmilitary offense is defined as offenses that are in the state's civilian penal statute and are not offenses

under the WCMJ. The definition of military offense, however, includes several offenses that are offenses under both the WCMJ and civilian criminal law, which appears to give courts-martial primary jurisdiction over those offenses instead of the state civilian criminal justice system.

This bill repeals the definition of “nonmilitary offense” and removes the following offenses from the definition of military offense: rape and sexual assault generally; stalking; rape and sexual assault of a child; sexual misconduct; larceny and wrongful appropriation; robbery; forgery; maiming; arson; extortion; assault; burglary; housebreaking; and perjury.

This bill also specifies the limits of punishment under the WCMJ. Under the WCMJ, the limits of punishment for violating an offense “shall be prescribed by the governor,” but may not exceed ten years of confinement or constitute cruel or unusual punishment. This bill establishes that the limits of punishment shall be those under the federal Uniform Code of Military Justice, unless otherwise prescribed by the governor, but still may not exceed ten years of confinement or constitute cruel or unusual punishment.

Finally, this bill removes gender-specific language from Article 133 of the WCMJ, which prohibits any commissioned officer, cadet, candidate, or midshipman from engaging in conduct unbecoming of an officer and a gentleman.

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

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 and sexual assault generally; 120a, stalking; 120b,~~
6 ~~rape and sexual assault of a child; 120e, sexual misconduct; 121, larceny and~~
7 ~~wrongful appropriation; 122, robbery; 123, forgery; 124, maiming; 126, arson; 127,~~
8 ~~extortion; 128, assault; 129, burglary; 130, housebreaking; 131, perjury; 132, frauds~~
9 ~~against the government; 133, conduct unbecoming an officer and a gentleman; and~~
10 134, general; of this code.

11 **SECTION 2.** 322.001 (16) of the statutes is repealed.

12 **SECTION 3.** 322.056 (2) of the statutes is amended to read:

13 322.056 (2) A conviction by a general court-martial of any ~~military~~ offense for
14 which an accused may receive a sentence of confinement for more than 1 year is a
15 felony offense.

16 **SECTION 4.** 322.056 (5) of the statutes is amended to read:

17 322.056 (5) The limits of punishment for violations of the punitive sections
18 under Subch. X shall be those under the Uniform Code of Military Justice, unless
19 otherwise prescribed by the governor according to ss. 322.018 to 322.020, but under
20 no instance shall any punishment exceed that authorized by this code.

21 **SECTION 5.** 322.133 of the statutes is amended to read:

22 **322.133 Article 133 — Conduct unbecoming an officer and a gentleman.**

23 Any commissioned officer, cadet, candidate, or midshipman who is convicted of

