

# State of Wisconsin



2023 Senate Bill 167

Date of enactment: **December 6, 2023**

Date of publication\*: **December 7, 2023**

## 2023 WISCONSIN ACT 48

AN ACT *to create* 321.03 (1) (f) and 321.04 (1) (s) of the statutes; **relating to:** annual reporting to the legislature of sexual harassment and assault that occurs in the Wisconsin National Guard and of changes to the Uniform Code of Military Justice.

*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. The bill requires the Adjutant General to submit a report, annually, to the Governor and the appropriate standing committees of the Legislature on various topics related to sexual assault and sexual harassment reported by members of the Wisconsin National Guard. The bill also requires the Department of Military Affairs (DMA) to submit a report to the appropriate standing committees of the Legislature describing any substantive changes to the federal Uniform Code of Military Justice (UCMJ) during the prior federal fiscal year.

### Sexual Assault and Sexual Harassment Report

This bill requires the adjutant general to submit a report to the Governor and appropriate standing committees of the Legislature annually on several topics related to sexual assault and sexual harassment reported by members of the Wisconsin National Guard. The report must also be made publicly available on DMA's website, and must contain the following information.

First, the report must include data regarding all reported incidents of sexual assault and sexual harassment made by members of the Wisconsin National Guard during the prior federal fiscal year, 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 five previous federal fiscal years. For unrestricted reports of sexual assault and for reports of sexual harassment, the report must include 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, includ-

ing whether the case was referred for additional discipline; and a summary of any resolution or discipline taken, including whether criminal charges were referred or filed. The report must 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.

Second, the report must include a summary of any training provided to members of the Wisconsin National Guard in the preceding year related to preventing and responding to incidents of sexual assault and sexual harassment.

Third, the report must include a summary of any current National Guard Bureau policies related to preventing and responding to incidents of sexual assault and sexual harassment during the previous federal fiscal year, and a description of how those policies are being implemented in the Wisconsin National Guard.

Fourth, the report must include 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.

The report is due by February 1 of each year. The bill further requires that the appropriate standing committees of the Legislature hold a public hearing on the report at least annually.

### Report Regarding Changes to UCMJ

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. If on federal status, National Guard members are subject instead to the UCMJ. Although many of the WCMJ's punitive articles parallel those in the UCMJ, the

\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

codes differ in certain respects and any modifications Congress makes to the UCMJ do not affect the WCMJ unless subsequently adopted by the Wisconsin Legislature.

This bill requires DMA to submit a report to the appropriate standing committees of the Legislature annually that summarizes any substantive changes that have been made to the UCMJ during the prior fiscal year, compares the changes to the WCMJ's punitive articles, and makes recommendations regarding whether those substantive changes should be incorporated into the WCMJ. A substantive change is any change that modifies the elements of, creates, or repeals a punitive article of the UCMJ.

The report is due by July 1 of each year. The bill further requires that the appropriate standing committees of the Legislature hold a public hearing on the report at least annually.

**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.** 321.04 (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 3. Initial applicability.**

(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.