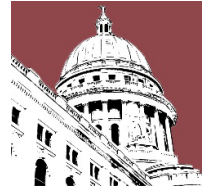

Wisconsin Legislative Council

MINUTES



STUDY COMMITTEE ON WISCONSIN NATIONAL GUARD SEXUAL MISCONDUCT PROCEDURES

300 Northeast, State Capitol
Madison, WI
October 13, 2022
10:00 a.m. – 2:00 p.m.

CALL TO ORDER AND ROLL CALL

Chair Kurtz called the meeting to order and a quorum was determined 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, Adam Gerol, Gabriela Guzman, and Melissa Inlow.

COMMITTEE MEMBERS EXCUSED: Public Members Amy Arenz and Jade La Sage.

COUNCIL STAFF PRESENT: David Moore, Senior Staff Attorney, and Tom Koss, Staff Attorney.

APPEARANCES: Colonel Douglas H. Moore, Judge Advocate, Wisconsin National Guard, Department of Military Affairs (DMA); Captain Leigh Neville-Neil, Deputy Brigade Staff Judge Advocate, 32nd IBCT, Wisconsin Army National Guard.

APPROVAL OF THE MINUTES OF THE SEPTEMBER 14, 2022, MEETING

The committee approved the minutes of the September 14, 2022, meeting by unanimous consent.

DESCRIPTION OF DISTRIBUTED MATERIAL BY LEGISLATIVE COUNCIL STAFF

Memo No. 2, Information in Response to Committee Discussion at September 14, 2022, Meeting (October 6, 2022)

David Moore, Senior Staff Attorney, and Tom Koss, Staff Attorney, provided an overview of Memo No. 2, *Information Provided in Response to Committee Discussion at September 14, 2022, Meeting*. Mr. Koss discussed requirements that other states' National Guard submit a report to the Legislature regarding reports of sexual assault and sexual harassment. Mr. Moore discussed the applicability of Wisconsin's constitutional and statutory provisions regarding victims' rights to proceedings brought under the Wisconsin Code of Military Justice (WCMJ), the rules of evidence applicable to a court-

martial under the WCMJ, and the treatment of nonconsensual sexual contact or a nonconsensual sexual act under the WCMJ and Uniform Code of Military Justice (UCMJ). Mr. Koss then discussed three punitive articles that have recently been adopted under the UCMJ, but are not replicated in the WCMJ: sexual harassment; retaliation; and prohibited activities with a recruit or trainee. Mr. Moore concluded by sharing information from the Department of Administration (DOA) related to supporting state agencies' information technology development needs.

DISCUSSION WITH DEPARTMENT OF MILITARY AFFAIRS STAFF

COL Douglas H. Moore, Judge Advocate, and CPT Leigh M. Neville-Neil, Deputy Brigade Staff Judge Advocate, Wisconsin National Guard

Colonel Moore and Captain Neville-Neil answered questions from committee members. In response to questions from Chair Kurtz, Colonel Moore told the committee that the National Guard currently uses an Excel spreadsheet to track misconduct by Guard members, but it would be helpful to have a more comprehensive case management and tracking system. Colonel Moore, Ms. Guzman, and Mr. Curtis explained that paralegals currently work with commanders to collect information on discipline and investigations, and then compile this information into a spreadsheet. This information then serves as the basis for status of discipline (SOD) briefings. They explained that this system works well, but Captain Neville-Neil explained that a tracking and case management system would improve efficiency, help remove human error, and assist the department with compiling data.

Colonel Moore and Captain Neville-Neil told the committee they agree the WCMJ should be updated to reflect certain recent amendments to the UCMJ, but that any changes should be carefully considered first. They specifically cautioned that adding "triggering language" to the WCMJ to automatically add offenses that have been added to the UCMJ could create problems, as federal laws and regulations do not always translate to Wisconsin, and would limit the Legislature's ability to review and adopt changes to the WCMJ. Captain Neville-Neil advised that the UCMJ could serve as a model for language adopted in Wisconsin and also explained that the definition of "military offense" could be clarified.

COMMITTEE DISCUSSION

Committee members expressed concern over certain differences between the UCMJ and WCMJ. There was consensus among members that the WCMJ should be updated to more closely reflect the UCMJ for the following offenses: abusive sexual contact, sexual assault, sexual harassment, retaliation, and prohibited activities with a recruit or trainee. Chair Kurtz directed Legislative Council staff to prepare bill drafts generally aligning the WCMJ with the UCMJ on these topics for the committee's consideration at its next meeting.

Mr. Curtis and Ms. Inlow also recommended that the committee consider creating a process for the Legislature to regularly review substantive updates to the UCMJ to determine whether the WCMJ should be similarly updated. Mr. Curtis noted that substantive changes are well-known before they are implemented and are discussed in many legal updates. Chair Kurtz directed Legislative Council staff to prepare a bill draft that requires National Guard leadership to submit an annual report to the appropriate legislative committees that details substantive changes made to the UCMJ in the preceding year and compares any changes to the WCMJ.

There was consensus among the committee members that it would be beneficial for DMA to submit an annual report to the Legislature regarding reports of sexual assault and sexual harassment within the National Guard. Ms. Guzman and Mr. Curtis noted that much of the report would likely be derived from

status of discipline (SOD) reports, which are not currently made public, but could serve as a basis for the more general information that might be included in a report to the Legislature. Ms. Carroll suggested that any report also include information on the rank of the members involved. Chair Kurtz directed Legislative Council staff to prepare a bill draft requiring DMA to annually report various information to the Legislature. There was consensus among committee members that the bill draft's reporting requirements be based on the summary of what other states generally require, as described in Memo No. 2.

Committee members expressed interest in exploring options for developing a case management and tracking system. Mr. Gerol noted that it appears that DMA needs a database that can be queried and might not need a system as comprehensive as the Prosecutor Technology for Case Tracking (PROTECT) case management system.

Committee members expressed interest in specifying that victims' rights provided under Wisconsin law apply to victims of crimes under the WCMJ. Committee members discussed issues related to who may be considered a victim, for the purposes ch. 322, Stats., and how current victims' rights apply to victims within the context of a military justice proceeding.

Ms. Guzman observed that while the WCMJ does not specifically address victims' rights, National Guard Bureau and Department of Defense Directives protect certain rights of victims of sexual assault and sexual harassment. Ms. Inlow and Mr. Gerol noted difficulties in directly applying victims' rights to the WCMJ because of procedural and substantive differences between the military justice system and the civilian criminal justice system. Mr. Gerol observed that the crime victims' rights expressed in Wisconsin statutes do not seem to fit well within the context of the WCMJ, and that one option might be to specify that the general rights that the Wisconsin Constitution currently affords to crime victims apply to victims of offenses under the WCMJ. Chair Kurtz asked Mr. Gerol to work with Legislative Council staff to explore possible changes the committee could consider.

There was consensus among committee members that s. 322.036, Stats., which authorizes the Governor to prescribe pretrial, trial, and post-trial procedures for court-martial cases arising under the WCMJ could be revised for clarity. Chair Kurtz directed Legislative Council staff to prepare bill draft that modifies this provision to more directly specify that the principles of law and the rules of evidence generally recognized in military criminal cases in the courts of the armed forces apply to courts-martial under the WCMJ.

PLANS FOR FUTURE MEETINGS

The next meeting of the study committee is scheduled for November 10, 2022; however, Chair Kurtz advised the committee that the meeting may be rescheduled and that the committee may also meet again in December or January.

ADJOURNMENT

The meeting adjourned at 2:00 p.m.

DM:TK:ksm