

Wisconsin Legislative Council



Anne Sappenfield
Director

Joint Legislative Council Study Committee on Wisconsin National Guard Sexual Misconduct Procedures

David Moore, Senior Staff Attorney, and Tom Koss, Staff Attorney

October 13, 2022

Reporting Considerations

- ▶ Recipient of report.
- ▶ Conduct that must be reported.
- ▶ Disclosure of identities.
- ▶ Frequency of report.
- ▶ Inclusion of case summaries, statistics, trends.
- ▶ Disclosure of status of report and status of discipline taken.
- ▶ Training and policy updates.
- ▶ Duty status of parties involved.

Updates to WCMJ: Victims' Rights

- ▶ Wisconsin Constitution and statutes provide a variety of rights to a crime victim, defined as “a person against whom a crime is committed.”
- ▶ Enforcement through Crime Victims' Rights Board.
 - ▶ Private and public reprimands of public officials.
 - ▶ Refer violations to judicial commission
 - ▶ Seek equitable relief on behalf of victim.
 - ▶ Bring civil actions to assess a forfeiture.

Updates to WCMJ: Military Rules of Evidence

- ▶ Section 322.036, Stats., allows the Governor to prescribe procedures for court-martial cases arising under the WCMJ, “which shall apply the principles of law and the rules of evidence generally recognized in military criminal cases in the courts of the armed forces”
- ▶ This generally parallels Article 36 of the ABA’s model state code of military justice.

Updates to WCMJ: Nonconsensual Sexual Act or Contact

- ▶ Nonconsensual sexual act:
 - ▶ Treated as a criminal act under state criminal law (3rd-degree sexual assault) and the UCMJ (sexual assault), but not the WCMJ, unless other circumstances apply.
- ▶ Nonconsensual sexual contact:
 - ▶ Treated as a criminal act under state criminal law (4th-degree sexual assault) and the UCMJ (abusive sexual contact), but not the WCMJ, unless other circumstances apply.

Updates to WCMJ: Sexual Harassment

▶ Prohibited under the UCMJ:

1. Knowingly made sexual advances, demands, or requests for sexual favors or knowingly engaged in other conduct of a sexual nature.
2. The conduct was unwelcome.
3. Under the circumstances, the conduct met certain standards regarding the person's job or work environment.
4. Under the circumstances, the accused's conduct was prejudicial to the good order and discipline of the military or brought discredit upon the military, or both.

Updates to WCMJ: Retaliation

▶ Prohibited under the UCMJ:

1. Wrongfully taking or threatening to take an adverse personnel action against any person or withholding or threatening to withhold a favorable personnel action against any person.
2. If done with the intent to: (A) retaliate against any person for reporting or planning to report a criminal offense; (B) retaliate against any person for making or planning to make a protected communication, or (C) discourage any person from reporting a criminal offense or making a protected communication.

Updates to WCMJ: Prohibited Activities with Recruit or Trainee

- ▶ Prohibited under the UCMJ:
 1. An officer, noncommissioned officer, or petty officer who is in a training leadership position with respect to specially protected junior member of the armed forces and engages in prohibited sexual activity with such specially protected junior member.
 2. A military recruiter who engages in prohibited sexual activity either with an applicant for military service or with a specially protected junior member of the armed forces who is enlisted under a delayed entry program.

Case Management and Tracking System

- ▶ During September 14, 2022, meeting, DMA expressed interest in improving technology it uses to track and manage casework related to misconduct.
- ▶ Committee members discussed exploring whether existing state resources could be utilized.
- ▶ According to the department of administration, DOA can work with agencies to develop programs that fit specific needs.