



State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-6548/P4  
MJW:cjs

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT to amend** 322.001 (15); and **to create** 322.1325 of the statutes; **relating**  
2             **to:** creating a punitive article in the Wisconsin Code of Military Justice  
3             prohibiting certain retaliatory activities.

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***Analysis by the Legislative Reference Bureau***

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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***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.

This bill prohibits wrongfully taking or threatening to take an adverse personnel action against any person or wrongfully withholding or threatening to withhold a favorable personnel action with respect to any person, if done with intent to do any of the following: (1) retaliate against any person for reporting or planning to report a criminal or military offense; (2) retaliate against any person for making or planning to make a protected communication; or (3) discourage any person from reporting a criminal or military offense or making a protected communication.

The bill defines a protected communication as either of the following: (1) a lawful communication to a member of Congress, member of the Wisconsin state legislature,

governor, or an inspector general; or (2) a communication to a member of the U.S. Department of Defense, a member of the National Guard Bureau, a law enforcement officer, a representative of a state agency, a person in the chain of command, or a court-martial proceeding, if in the communication a member of the state military forces complains of, or discloses evidence that the person reasonably believes constitutes evidence of, a violation of a law or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

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  
17      property — waste, spoilage, or destruction; 110, improper hazarding of vessel; 111,  
18      drunken or reckless operation of a vehicle, aircraft, or vessel; 112, drunk on duty;  
19      112a, wrongful use, or possession of controlled substances; 113, misbehavior of  
20      sentinel; 114, dueling; 115, malingering; 116, riot or breach of peace; 117, provoking  
21      speeches or gestures; 120, rape and sexual assault generally; 120a, stalking; 120b,

1 rape and sexual assault of a child; 120c, sexual misconduct; 121, larceny and  
2 wrongful appropriation; 122, robbery; 123, forgery; 124, maiming; 126, arson; 127,  
3 extortion; 128, assault; 129, burglary; 130, housebreaking; 131, perjury; 132, frauds  
4 against the government; 132a, retaliation; 133, conduct unbecoming an officer and  
5 a gentleman; and 134, general; of this code.

6 **SECTION 2.** 322.1325 of the statutes is created to read:

7 **322.1325 Article 132a - Retaliation. (1)** In this section:

8 (a) "Protected communication" means any of the following:

9 1. A lawful communication to a member of Congress, a member of the  
10 Wisconsin legislature, the governor, or an inspector general.

11 2. A communication to a member of the U.S. department of defense or the U.S.  
12 national guard bureau, a law enforcement officer, a representative of a state agency,  
13 a person in the chain of command, or a court-martial proceeding in which a member  
14 of the state military forces complains of, or discloses information that the member  
15 reasonably believes constitutes evidence of, a violation of a law or regulation,  
16 including a law or regulation prohibiting sexual harassment or unlawful  
17 discrimination, or gross mismanagement, a gross waste of funds, an abuse of  
18 authority, or a substantial and specific danger to public health or safety.

\*\*\*\*NOTE: Do you want to include reports to state agencies in this provision? What  
about legislative agencies such as the Legislative Audit Bureau?

19 (b) "Unlawful discrimination" means discrimination on the basis of race, color,  
20 religion, sex, or national origin.

21 **(2)** Any person who, with intent to retaliate against any person for reporting  
22 or planning to report a criminal or military offense or for making or planning to make  
23 a protected communication, or with intent to discourage any person from reporting

1 a criminal or military offense or making a protected communication, does any of the  
2 following shall be punished as a court-martial may direct:

3 (a) Wrongfully takes or threatens to take an adverse personnel action against  
4 any person.

5 (b) Wrongfully withholds or threatens to withhold a favorable personnel action  
6 with respect to any person.

7 (END)