



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-6549/P4
MJW:emw&wlj

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to amend** 322.001 (15); and **to create** 322.1345 of the statutes; **relating**
2 **to:** a punitive article in the Wisconsin Code of Military Justice regarding sexual
3 harassment.

Analysis by the Legislative Reference Bureau

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

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 sexual harassment under the WCMJ—specifically, any person who either knowingly makes an unwelcome sexual advance, demand, or request for a sexual favor or knowingly engages in other unwelcome conduct of a sexual nature, if the conduct meets two conditions.

First, the sexual advance, demand, request, or conduct of a sexual nature must do either of the following: a) Under the circumstances, cause a reasonable person to believe, and actually cause at least one person to believe, that submission to or rejection of such an advance, demand, request, or conduct would be made, either explicitly or implicitly, a term or condition of that person's job, pay, career, benefits, or entitlements or would be used as a basis for decisions affecting that person's job, pay, career, benefits, or entitlements. b) Be so severe, repetitive, or pervasive that a reasonable person would perceive, and at least one person actually perceived, an intimidating, hostile, or offensive working environment.

Second, the sexual advance, demand, request, or conduct of a sexual nature must be to the prejudice of good order and discipline in the state military forces or of a nature to bring discredit upon the state military forces, or both.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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; 133, conduct unbecoming an officer and a gentleman; and
5 134, general; and 134h, sexual harassment; of this code.

6 **SECTION 2.** 322.1345 of the statutes is created to read:

7 **322.1345 Article 134h - Sexual harassment.** Any person who knowingly
8 makes an unwelcome sexual advance, demand, or request for a sexual favor or
9 knowingly engages in other unwelcome conduct of a sexual nature shall be punished
10 as a court-martial may direct if all of the following apply:

11 (1) The sexual advance, demand, request, or conduct of a sexual nature
12 satisfies any of the following conditions:

13 (a) It would, under the circumstances, cause a reasonable person to believe, and
14 at least one person did believe, that submission to or rejection of such an advance,
15 demand, request, or conduct would be made, either explicitly or implicitly, a term or
16 condition of that person's job, pay, career, benefits, or entitlements or would be used
17 as a basis for decisions affecting that person's job, pay, career, benefits, or
18 entitlements.

19 (b) It was so severe, repetitive, or pervasive that a reasonable person would
20 perceive, and at least one person did perceive, an intimidating, hostile, or offensive
21 working environment.

22 (2) The sexual advance, demand, request, or conduct of a sexual nature was to
23 the prejudice of good order and discipline in the state military forces or of a nature
24 to bring discredit upon the state military forces, or both.

25

(END)