



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2007 Wisconsin Act 200
[2007 Assembly Bill 400]

**Military Affairs/Wisconsin Code of
Military Justice**

Act 200 resulted from 2007 Assembly Bill 400, which was prepared for the Joint Legislative Council's Special Committee on Recodification of Ch. 21, Military Affairs. The Special Committee was directed to conduct a recodification of ch. 21, relating to military affairs, to include reorganizing the chapter in a logical manner, renumbering and retitling sections, consolidating related provisions, modernizing language, resolving ambiguities in language, making other necessary organizational changes, and making minor substantive changes.

Military Affairs

Act 200 does the following regarding military affairs provisions:

1. Moves the military affairs provisions of the statutes that are currently in ch. 21, Stats., to a newly created ch. 321, Stats.
2. Reorganizes the entire chapter by subdividing it into the five subchapters shown in the table of contents set forth below. Prior ch. 21, Stats., consisted of 54 sections that were not organized into subchapters.
3. Makes nonsubstantive editorial changes to modernize language to make the language consistent with current drafting style.
4. Repeals several provisions considered no longer necessary. For example, one section in prior ch. 21, Stats., relates to the Badger Challenge program, a program that no longer exists. As another example, a section is being repealed that allows the Governor to prescribe rules for issuing of property to bands.
5. Makes minor substantive changes. These include the following:

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

- a. Modifying the provision on legal defense of National Guard and State Defense Force members for actions taken in the line of duty. Currently, legal counsel is appointed for state residents who are members of the state defense force or who are members of the national guard of any state. Act 200 also includes members of the Wisconsin National Guard or Wisconsin State Defense Force who are not residents of Wisconsin.
- b. Raising the dollar amount of rent of premises from which specified family members of a person may not be evicted while the person is in active state service, unless there is a court order. Under prior law, the spouse, children, or others dependents of a service member who is in active state service may not be evicted from premises for which the rent does not exceed \$1,200 per month, unless there is a court order. Act 200 increases this amount to \$2,400 per month.
- c. Increasing the amount of time for which a local governmental unit may grant a leave of absence to an employee for federal active duty from four years to five years.
- d. Adding to the military staff of the governor a joint chief of staff with a specified rank.

Chapter 321, Department of Military Affairs, will be organized as follows under Act 200:

**Subchapter I
General Provisions**

- 321.01 Definitions.
- 321.02 Powers and duties of the governor.
- 321.03 Powers and duties of the department.
- 321.04 Powers and duties of the adjutant general.
- 321.05 Permission to forces of other states.

**Subchapter II
Military Officers**

- 321.10 Military staff of the governor.
- 321.11 United States property and fiscal officer.
- 321.12 Chief surgeons.
- 321.13 Discharge of officers.
- 321.14 Authority to administer oaths.
- 321.15 Resignation of officer.

**Subchapter III
Military Property**

- 321.20 Distribution of military property.
- 321.21 Military property accountability.
- 321.22 Camp Williams.
- 321.23 Facilities and lands.
- 321.24 Encroachment on military areas and interference with military personnel.

**Subchapter IV
National Guard and State Defense Force**

- 321.30 Composition of national guard.
- 321.31 Uniform of national guard.
- 321.32 Term of enlistment and discharge.
- 321.33 Commission and rank.
- 321.34 Examinations for promotion or appointments.
- 321.35 Pay.
- 321.36 Rules of discipline.
- 321.37 No discrimination.
- 321.38 Decorations and awards.
- 321.39 Call to state active duty.
- 321.40 Educational benefits.
- 321.41 Training; special schools; pay and allowances.
- 321.42 Defense of members of guard; payment of judgments.
- 321.43 Exemption from civil authority.
- 321.44 Exemptions from certain county duties.
- 321.51 State defense force authorized.

**Subchapter V
Rights of Service Members**

- 321.60 Extension of licenses for service members.
- 321.61 Service members civil relief for property taxes and mobile telephone contracts; federal active duty.
- 321.62 Service members civil relief; state active duty.
- 321.63 Local government employees or officers in federal active duty.
- 321.64 Reemployment after completion of federal active duty.
- 321.65 Reemployment rights after national guard, state defense force, or public health emergency service.

Wisconsin Code of Military Justice

When the Joint Legislative Council's Special Committee on Recodification of ch. 21, Military Affairs was convened to undertake the ch. 21 recodification, the Department of Military Affairs (DMA) requested that the committee also review proposed legislation to revise the current Wisconsin Code of Military Justice (WCMJ), which was being drafted by a working group led by the staff judge advocate general (JAG) at DMA. This part of Act 200 is based on that proposed legislation, with modifications to comport with legislative drafting conventions and clarify the relationship of the WCMJ to other provisions of state law. The Act places the WCMJ in newly created ch. 322, Stats. To the greatest extent possible, the Act retains the structure and language of the Uniform Code of Military Justice on which the

revised WCMJ is based, including use of parallel article numbers, for easy transition from one code to the other.

The prior WCMJ was enacted in ch. 20, Laws of 1969. That legislation also created s. 21.37, Stats., which provided that the WCMJ shall govern the conduct of all members of the National Guard and any other military force organized under state law, but that the Revisor of Statutes shall not print the code in the statutes. Over time, there was concern that JAGs and others who utilized the code did not have ready access to a written version of the code. According to DMA, many key provisions of the prior WCMJ were outdated and limited a commander's ability to adequately discipline those under his or her command. Also, DMA expects that the increased activity of the Wisconsin National Guard over the past few years, both within and outside the U.S., will result in a corresponding increase in disciplinary and other military justice matters.

Under Act 200, if an act or omission that is a nonmilitary offense violates both the WCMJ and the criminal law, a civilian court has primary jurisdiction. In that case, a court-martial may be initiated only if civilian authorities decline to prosecute or dismiss charges, if jeopardy has not attached. Courts-martial have primary jurisdiction over military offenses, as defined in the WCMJ.

The Act reorganizes and modernizes the prior WCMJ and makes a number of substantive changes. As examples of the substantive changes, the Act:

1. Updates definitions of terms such as "state military forces," "judge advocate," and "commanding officer" and creates definitions of a number of terms including "record," "military offenses," "enemy," and "unit training assembly."
2. Specifies a number of state criminal code chapters that do not apply to proceedings under the WCMJ.
3. Clarifies that the WCMJ applies to members of the state military forces if they are in a duty status or a nexus exists to the military.
4. Prohibits confinement of state military personnel with enemy prisoners or other foreign nationals who are not members of the armed forces.
5. Eliminates current amounts for forfeiture of pay in nonjudicial punishment cases and instead bases forfeitures on the accused's pay grade at the time of the offense.
6. Suspends the running of any statute of limitations until two years after termination of hostilities under certain circumstances in court-martial cases when the U.S. is in a declared war that is part of the global war on terror.
7. Establishes an affirmative defense of mental disease or defect in a court-martial trial, parallel to the defense available under state law, and specifies procedures, including those required of the state Department of Health and Family Services, for committing a person for examination and treatment who is found incompetent to stand trial due to lack of mental capacity.
8. Reduces the number of votes necessary to convict a person in a court-martial from unanimous to two-thirds in most cases.

9. Provides that appeals of court-martial decisions are to the Wisconsin Court of Appeals, District IV, and if necessary, to the Wisconsin Supreme Court, following procedures under ch. 809, Stats.
10. Expands the current offense of drunken or reckless driving of a vehicle to also include operation of an all-terrain vehicle, snowmobile, aircraft, or vessel.
11. Specifies several offenses subject to court-martial that the prior WCMJ left to civilian courts, including such offenses as “rape and carnal knowledge,” “forgery,” “violations regarding controlled substances,” and “housebreaking.” The term “controlled substance” is defined by reference to a definition in current criminal statutes.

Chapter 322, Wisconsin Code of Military Justice, will be organized as follows under Act 200:

Subchapter I

General Provisions

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| 322.0001 | Criminal code interaction |
| 322.001 Article 1 | Definitions |
| 322.002 Article 2 | Persons subject to this code; jurisdiction |
| 322.003 Article 3 | Jurisdiction to try certain personnel |
| 322.005 Article 5 | Territorial applicability of the code |
| 322.006 Article 6 | Judge advocates |

Subchapter II

Apprehension and Restraint

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| 322.007 Article 7 | Apprehension |
| 322.009 Article 9 | Imposition of restraint |
| 322.010 Article 10 | Restraint of persons charged with offenses |
| 322.011 Article 11 | Place of confinement; reports and receiving of prisoners |
| 322.012 Article 12 | Confinement with enemy prisoners prohibited |
| 322.013 Article 13 | Punishment prohibited before trial |
| 322.014 Article 14 | Delivery of offenders to civil authorities |

Subchapter III

Nonjudicial Punishment

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| 322.015 Article 15 | Commanding officer’s nonjudicial punishment |
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Subchapter IV

Court-Martial Jurisdiction

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| 322.016 Article 16 | Courts-martial classified |
| 322.017 Article 17 | Jurisdiction of courts-martial in general |
| 322.018 Article 18 | Jurisdiction of general courts-martial |
| 322.019 Article 19 | Jurisdiction of special courts-martial |
| 322.020 Article 20 | Jurisdiction of summary courts-martial |

Subchapter V
Appointment and Composition of Courts-Martial

322.022 Article 22	Who may convene general courts-martial
322.023 Article 23	Who may convene special courts-martial
322.024 Article 24	Who may convene summary courts-martial
322.025 Article 25	Who may serve as a member on courts-martial
322.026 Article 26	Military judge of a general or special court-martial
322.027 Article 27	Detail of trial counsel and defense counsel
322.028 Article 28	Detail or employment of reporters and interpreters
322.029 Article 29	Absent and additional members

Subchapter VI
Pretrial Procedure

322.030 Article 30	Charges and specifications
322.031 Article 31	Compulsory self-incrimination prohibited
322.032 Article 32	Investigation
322.033 Article 33	Forwarding of charges
322.034 Article 34	Advice of judge advocate and reference for trial
322.035 Article 35	Service of charges

Subchapter VII
Trial Procedure

322.036 Article 36	Governor may prescribe regulations
322.037 Article 37	Unlawfully influencing action of court
322.038 Article 38	Duties of trial counsel and defense counsel
322.039 Article 39	Sessions
322.040 Article 40	Continuances
322.041 Article 41	Challenges
322.042 Article 42	Oaths or affirmations
322.043 Article 43	Statute of limitations
322.044 Article 44	Former jeopardy
322.045 Article 45	Pleas of the accused
322.046 Article 46	Opportunity to obtain witnesses and other evidence
322.047 Article 47	Refusal to appear or testify
322.048 Article 48	Contempt
322.049 Article 49	Depositions
322.050 Article 50	Admissibility of records of courts of inquiry
322.0505 Article 50a	Defense of mental disease or defect
322.051 Article 51	Voting and rulings
322.052 Article 52	Number of votes required

322.053 Article 53	Court to announce action
322.054 Article 54	Record of trial
	Subchapter VIII
	Sentences
322.055 Article 55	Cruel and unusual punishments prohibited
322.056 Article 56	Maximum limits
322.057 Article 57	Effective date of sentences
322.0575 Article 57a	Deferment of sentences
322.058 Article 58	Conditions of confinement
322.0585 Article 58a	Sentences: reduction in enlisted grade upon approval
322.0587 Article 58b	Sentences: forfeiture of pay and allowances during confinement
	Subchapter IX
	Post-Trial Procedure and Review of Courts-Martial
322.059 Article 59	Error of law; lesser included offense
322.060 Article 60	Action by the convening authority
322.061 Article 61	Withdrawal of appeal
322.062 Article 62	Appeal by the state
322.063 Article 63	Rehearings
322.064 Article 64	Review by the senior force judge advocate
322.065 Article 65	Disposition of records after review by the convening authority
322.0675 Article 67a	Review by state appellate authority
322.070 Article 70	Appellate counsel
322.071 Article 71	Execution of sentence; suspension of sentence
322.072 Article 72	Vacation of suspension
322.073 Article 73	Petition for a new trial
322.074 Article 74	Remission and suspension
322.075 Article 75	Restoration
322.076 Article 76	Finality of proceedings, findings, and sentences
322.0763 Article 76a	Leave required to be taken pending review of certain court-martial convictions
322.0767 Article 76b	Competency; commitment for examination and treatment
	Subchapter X
	Punitive Articles
322.077 Article 77	Principals
322.078 Article 78	Accessory after the fact
322.079 Article 79	Conviction of lesser included offense
322.080 Article 80	Attempts
322.081 Article 81	Conspiracy

322.082 Article 82	Solicitation
322.083 Article 83	Fraudulent enlistment, appointment, or separation
322.084 Article 84	Unlawful enlistment, appointment, or separation
322.085 Article 85	Desertion
322.086 Article 86	Absence without leave
322.087 Article 87	Missing movement
322.088 Article 88	Contempt toward officials
322.089 Article 89	Disrespect toward superior commissioned officer
322.090 Article 90	Assaulting or willfully disobeying superior commissioned officer
322.091 Article 91	Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer
322.092 Article 92	Failure to obey order or regulation
322.093 Article 93	Cruelty and maltreatment
322.094 Article 94	Mutiny or sedition
322.095 Article 95	Resistance, flight, breach of arrest, and escape
322.096 Article 96	Releasing prisoner without proper authority
322.097 Article 97	Unlawful detention
322.098 Article 98	Noncompliance with procedural rules
322.099 Article 99	Misbehavior before the enemy
322.100 Article 100	Subordinate compelling surrender
322.101 Article 101	Improper use of countersign
322.102 Article 102	Forcing a safeguard
322.103 Article 103	Captured or abandoned property
322.104 Article 104	Aiding the enemy
322.105 Article 105	Misconduct as prisoner
322.107 Article 107	False official statements
322.108 Article 108	Military property—Loss, damage, destruction, or wrongful disposition
322.109 Article 109	Property other than military property—Waste, spoilage, or destruction
322.110 Article 110	Improper hazarding of vessel
322.111 Article 111	Drunken or reckless operation of an all-terrain vehicle, vehicle, snowmobile, aircraft, or vessel
322.112 Article 112	Drunk on duty
322.1125 Article 112a	Violations regarding controlled substances
322.113 Article 113	Misbehavior of sentinel
322.114 Article 114	Dueling
322.115 Article 115	Malingering
322.116 Article 116	Riot or breach of peace

322.117 Article 117	Provoking speeches or gestures
322.120 Article 120	Rape and carnal knowledge
322.121 Article 121	Larceny and wrongful appropriation
322.122 Article 120	Robbery
322.123 Article 123	Forgery
322.1235 Article 123a	Making, drawing, or uttering check, draft, or order without sufficient funds
322.124 Article 124	Maiming
322.126 Article 126	Arson
322.127 Article 127	Extortion
322.128 Article 128	Assault
322.129 Article 129	Burglary
322.130 Article 130	Housebreaking
322.131 Article 131	Perjury
322.132 Article 132	Frauds against the government
322.133 Article 133	Conduct unbecoming an officer and a gentleman
322.134 Article 134	General section
	Subchapter XI
	Miscellaneous Provisions
322.135 Article 135	Courts of inquiry
322.136 Article 136	Authority to administer oaths and to act as notary
322.137 Article 137	Articles to be available
322.138 Article 138	Complaints of wrongs
322.139 Article 139	Redress of injuries to property
322.140 Article 140	Delegation by the governor
322.141 Article 141	Payment of fees, costs, and expenses
322.142 Article 142	Payment of fines and disposition
322.143 Article 143	Uniformity of interpretation
322.144 Article 144	Immunity for action of military courts

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