



WISCONSIN LEGISLATIVE COUNCIL  
REPORT TO THE LEGISLATURE

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SPECIAL COMMITTEE ON  
RECODIFICATION OF  
CHAPTER 21, MILITARY  
AFFAIRS

[2007 ASSEMBLY BILL 400]

June 18, 2007

RL 2007-18



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# Special Committee on Recodification of Chapter 21, Military Affairs

Prepared by:  
Pam Shannon and Richard Sweet, Senior Staff Attorneys  
June 18, 2007

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# **PART I**

## **KEY PROVISIONS OF COMMITTEE RECOMMENDATION**

The Joint Legislative Council recommends the following for introduction in the 2007-08 Session of the Legislature.

### **2007 Assembly Bill 400, Relating to Powers and Duties of the Department of Military Affairs, the Adjutant General, Military Officers, Military Property and Assets, the National Guard, the State Defense Force, Rights of Service Personnel, the Wisconsin Code of Military Justice, Making an Appropriation, and Providing a Penalty**

2007 Assembly Bill 400 does the following:

- Creates a new military affairs chapter – ch. 321, Stats. – and moves provisions from current ch. 21, Stats., into ch. 321.
- Reorganizes the entire military affairs chapter by sub-dividing it into five subchapters and makes nonsubstantive editorial changes to modernize language to make it consistent with current drafting style.
- Makes several minor substantive changes to current law.
- Creates a new chapter – ch. 322, Stats. – for the Wisconsin Code of Military Justice (WCMJ) which is currently provided for in ch. 21 but whose actual text is not set forth in the statutes.
- Sets forth the entire revised WCMJ, in ch. 322, which has been reorganized and updated and to which certain substantive changes have been made.



## PART II

### COMMITTEE ACTIVITY

#### Assignment

The Joint Legislative Council established the Special Committee on Recodification of Chapter 21, Military Affairs and appointed the chairperson by an June 9, 2006 mail ballot. The committee was directed to conduct a recodification of ch. 21, Stats., 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.

Membership of the Special Committee, appointed by an August 1, 2006 mail ballot, consisted of one Senator, two Representatives, and six public members. A list of committee members is included as *Appendix 3* to this report.

#### Summary of Meetings

The Special Committee met two times in Madison on the following dates:

September 7, 2006

June 4, 2007

At the September 7, 2006 meeting, the Special Committee reviewed a proposed table of contents for a revised ch. 21, Stats., discussed some of the issues involved in recodifying the chapter, and discussed incorporating a modernized Wisconsin Code of Military Justice (WCMJ) into the statutes.

At the June 4, 2007 meeting, the Special Committee reviewed the recommendations of the drafting subcommittee (described below) and gave final approval to the legislation described in this report. Prior to this meeting, Representative Terry Musser was named as chair, to replace Senator Ron Brown who was not re-elected.

At the September 7, 2006 meeting, the Special Committee established a drafting subcommittee which met in Madison nine times on the following dates:

September 21, 2006

January 8, 2007

October 12, 2006

January 25, 2007

November 1, 2006

February 20, 2007

November 14, 2006

March 15, 2007

December 12, 2006

At its meetings, the drafting subcommittee reviewed each of the provisions of current ch. 21, Stats. In addition to recommending the repeal of several obsolete provisions, the subcommittee modernized and clarified the language of the remaining provisions. The subcommittee also moved the remaining provisions to a new ch. 321, Stats., and placed them in a more logical order.

In addition, the subcommittee reviewed a draft of the WCMJ, which was prepared by the Department of Military Affairs. The subcommittee made changes in that draft to make it closer in format to other chapters of the statutes, and recommended that it become ch. 322, Stats. The two drafts that were prepared by the subcommittee were combined into one draft that became 2007 Assembly Bill 400.

Both the Special Committee and the drafting subcommittee were aided significantly by the help provided by Robert P. Nelson and Robin Ryan, attorneys with the Legislative Reference Bureau.



# **PART III**

## **RECOMMENDATION INTRODUCED BY THE JOINT LEGISLATIVE COUNCIL**

This part of the report provides background information on, and a description of, the bill as recommended by the Special Committee on Recodification of Chapter 21, Military Affairs and introduced by the Joint Legislative Council.

### **Military Affairs Chapter**

As noted above, 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.

The bill does the following:

1. Moves the military affairs provisions of the statutes that are currently in ch. 21 to a newly created ch. 321.

2. Reorganizes the entire chapter by subdividing it into the following five subchapters. The current ch. 21 consists of 54 sections that are not organized into subchapters. The subchapters created in the bill are as follows:

Subchapter I - General Provisions

Subchapter II - Military Officers

Subchapter III - Military Property

Subchapter IV - National Guard and State Defense Force

Subchapter V - Rights of Service Members

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 current ch. 21 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:

a. Modifying the current 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. This bill also includes members of the Wisconsin National Guard or Wisconsin state defense force who are not residents of Wisconsin.

b. Increasing the penalties for unlawfully keeping military property. Currently, a person may be fined not less than \$50 nor more than \$200. Under the bill, the fine would be increased to not less than \$100 nor more than \$1,000.

c. Eliminating the reference to \$50 minimum base pay for national guard members, so that under the bill, the member will receive the base pay and allowances of a person of equal rank in the corresponding branch of the U.S. armed forces.

d. 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 current 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. The bill increases this amount to \$2,400 per month.

e. 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.

f. Adding to the military staff of the governor a joint chief of staff with a specified rank.

g. Requiring that a person be an actively drilling national guard member on the date of completing a course for which the person receives a tuition grant.

## Wisconsin Code of Military Justice

When the subcommittee was convened to undertake the ch. 21 recodification, the Department of Military Affairs (DMA) requested that the subcommittee 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 bill is based on that proposed legislation, with modifications suggested by the drafting subcommittee to comport with legislative drafting conventions and clarify the relationship of the WCMJ to other provisions of state law. The bill places the WCMJ in newly created ch. 322, stats. To the greatest extent possible, the bill 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 current WCMJ was enacted in ch. 20, Laws of 1969, as s. 21.37, Stats., which provides 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 current WCMJ are outdated and limit 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 this bill, 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 bill reorganizes and modernizes the current WCMJ and makes a number of substantive changes. As examples of the substantive changes, the bill:

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 current WCMJ leaves 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.

Under the bill, the new WCMJ will be placed in ch. 322, Stats., which will have the following subchapter titles:

Subchapter I - General Provisions

Subchapter II - Apprehension and Restraint

Subchapter III - Nonjudicial Punishment

Subchapter IV – Court Martial Jurisdiction

Subchapter V - Appointment and Composition of Courts-Martial

Subchapter VI - Pretrial Procedure

Subchapter VII - Trial Procedure

Subchapter VIII - Sentences

Subchapter IX - Post-Trial Procedure and Review of Courts-Martial

**Subchapter X - Punitive Articles**

**Subchapter XI - Miscellaneous Provisions**

## Appendix 1

### Committee and Joint Legislative Council Votes

LRB-0517/1 was recommended by the Special Committee on Recodification of Chapter 21, Military Affairs to the Joint Legislative Council for introduction in the 2007-08 Session of the Legislature.

#### Special Committee Vote

The Special Committee voted to recommend LRB-0517/1 to the Joint Legislative Council for introduction in the 2007-08 Session of the Legislature. The vote on the bill was as follows:

- LRB-0517/1, relating to powers and duties of the department of military affairs, the adjutant general, military officers, military property and assets, the national guard, the state defense force, rights of service personnel, the Wisconsin code of military justice, making an appropriation, and providing a penalty: Ayes, 8 (Reps. Musser and Schneider; Sen. Fitzgerald; and Public Members Dziobkowski, Hardie, McArdle, Milsap, and Olson); Noes, 0; and Absent, 1 (Public Member Nischke).

#### Joint Legislative Council Vote

At its June 12, 2007 meeting, the Joint Legislative Council voted to introduce Assembly Bill 400. The vote by the Joint Legislative Council was as follows:

- Sen. Risser moved, seconded by Rep. Schneider, that LRB-0517/1, relating to powers and duties of the Department of Military Affairs, the adjutant general, military officers, military property and assets, the national guard, the state defense force, rights of service personnel, the Wisconsin Code of Military Justice, making an appropriation, and providing a penalty, be approved by the Joint Legislative Council. The motion passed on a roll call vote as follows: Ayes, 22 (Reps. Wieckert, Ballweg, Berceau, Fitzgerald, Gottlieb, Huebsch, Kaufert, Kreuser, Pocan, Rhoades, and Schneider; and Sens. Risser, Breske, Carpenter, Coggs, Darling, Decker, Fitzgerald, Harsdorf, Lasee, Miller, and Robson); and Noes, 0.



## Appendix 2

### Joint Legislative Council

*[Joint Legislative Council Members Who Selected and Appointed Committee and Its Membership]*

**Co-Chair**

**ALAN LASEE**  
*Senate President*  
2259 Lasee Road  
De Pere, WI 54115

**Co-Chair**

**STEVE WIECKERT**  
*Representative*  
1 Weatherstone Drive  
Appleton, WI 54914

**SENATORS**

**RONALD W. BROWN**  
1112 Violet Avenue  
Eau Claire, WI 54701

**DAN KAPANKE**  
1610 Lakeshore Drive  
La Crosse, WI 54603

**DALE SCHULTZ**  
*Majority Leader*  
515 N. Central Avenue  
Richland Center, WI 53581

**RUSSELL DECKER**  
6803 Lora Lee Lane  
Schofield, WI 54476

**MARK MILLER**  
4903 Roigan Terrace  
Monona, WI 53716

**DAVID ZIEN**  
*President Pro Tempore*  
1716 63<sup>rd</sup> Street  
Eau Claire, WI 54703

**SCOTT FITZGERALD**  
N4692 Maple Road  
Juneau, WI 53039

**FRED A. RISSER**  
5008 Risser Road  
Madison, WI 53705

**GLENN GROTHMAN**  
111 South 6<sup>th</sup> Avenue  
West Bend, WI 53095

**JUDY ROBSON**  
*Minority Leader*  
2411 E. Ridge Road  
Beloit, WI 53511

**REPRESENTATIVES**

**JOHN AINSWORTH**  
W6382 Waukechon Road  
Shawano, WI 54166

**MICHAEL HUEBSCH**  
*Majority Leader*  
419 West Franklin  
West Salem, WI 54669

**MARLIN D. SCHNEIDER**  
3820 Southbrook Lane  
Wisconsin Rapids, WI 54494

**PEDRO COLON**  
338 West Walker Street  
Milwaukee, WI 53204

**DEAN KAUFERT**  
**1360 Alpine Lane**  
**Neenah, WI 54956**

**DAVID TRAVIS**  
5440 Willow Road  
Waunakee, WI 53597

**STEPHEN J. FREESE**  
*Speaker Pro Tempore*  
310 East North Street  
Dodgeville, WI 53533

**JIM KREUSER**  
*Minority Leader*  
3505 14th Place  
Kenosha, WI 53144

**JOHN GARD**  
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481 Aubin Street, P.O. Box 119  
Peshtigo, WI 54157

**ANN NISCHKE**  
202 W. College Avenue  
Waukesha, WI 53186

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

# Joint Legislative Council

*[Current Joint Legislative Council Members Receiving Committee Report]*

## Co-Chair

**FRED RISSER**  
*Senate President*  
5008 Risser Road  
Madison, WI 53705

## Co-Chair

**STEVE WIECKERT**  
*Representative*  
1 Weatherstone Drive  
Appleton, WI 54914

## SENATORS

### **ROGER BRESKE**

8800 Hwy. 29  
Eland, WI 54427

### **TIM CARPENTER**

*President Pro Tempore*  
2957 South 38<sup>th</sup> Street  
Milwaukee, WI 53215

### **G. SPENCER COGGS**

3732 North 40<sup>th</sup> Street  
Milwaukee, WI 53216

### **ALBERTA DARLING**

1325 West Dean Road  
River Hills, WI 53217

### **RUSSELL DECKER**

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### **SCOTT FITZGERALD**

*Minority Leader*  
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River Falls, WI 54022

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2259 Lasee Road  
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### **MARK MILLER**

4903 Roigan Terrace  
Monona, WI 53716

### **JUDY ROBSON**

*Majority Leader*  
2411 E. Ridge Road  
Beloit, WI 53511

## REPRESENTATIVES

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### **TERESE BERCEAU**

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### **JEFF FITZGERALD**

*Majority Leader*  
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### **MARK GOTTLIEB**

*Speaker Pro Tempore*  
1205 Noridge Trail  
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### **MICHAEL HUEBSCH**

*Speaker*  
419 West Franklin  
West Salem, WI 54669

### **DEAN KAUFERT**

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### **JIM KREUSER**

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### **KITTY RHOADES**

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### **MARLIN SCHNEIDER**

3820 Southbrook Lane  
Wisconsin Rapids, WI 54494

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the co-chairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

**Recodification of Chapter 21, Military Affairs**

**Representative Terry M. Musser, Chair**  
W13550 Murray Road  
Black River Falls, WI 54615

**Senator Scott Fitzgerald**  
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**Representative Marlin D. Schneider**  
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**David Dziobkowski**  
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**Anthony Hardie**  
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**Terence McArdle**  
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**Randi Milsap**  
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**Ann Nischke**  
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**Larry Olson**  
Department of Military Affairs  
2400 Wright Street  
Madison, WI 53708

**STUDY ASSIGNMENT:** The committee is directed to conduct a recodification of ch. 21, Stats., 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.

**9 MEMBERS:** 1 Senator, 2 Representatives, and 6 Public Members.

**LEGISLATIVE COUNCIL STAFF:** Richard Sweet and Pam Shannon, Senior Staff Attorneys; and Tracey Uselman, Support Staff.



**Committee Materials List**  
(Copies of documents are available at [www.legis.state.wi.us/lc](http://www.legis.state.wi.us/lc))

Report to the Legislature				
<ul style="list-style-type: none"> <li>• <a href="#">Proposed</a> Report to the Legislature, 2007-18, <i>Special Committee on Recodification of Ch. 21, Military Affairs</i> (June 5, 2007)</li> <li>• <a href="#">LRB-0517/1</a>, relating to powers and duties of the department of military affairs, the adjutant general, military officers, military property and assets, the national guard, the state defense force, rights of service personnel, the Wisconsin code of military justice, making an appropriation, and providing a penalty</li> </ul>				
June 4, 2007 Meeting	<a href="#">Notice</a>	Agenda	Audio	Minutes
<ul style="list-style-type: none"> <li>• <a href="#">LRB-0517/P4</a>, relating to powers and duties of the department of military affairs, the adjutant general, military officers, military property and assets, the national guard, state defense force, rights of service personnel, the Wisconsin code of military justice, making an appropriation, and providing a penalty</li> <li>• <a href="#">LRB-0588/P7</a> (this draft shows how ch. 321 will read and does not require committee action).</li> </ul>				
April 10, 2007 Subcommittee Meeting				<a href="#">Notice</a>
<ul style="list-style-type: none"> <li>• <a href="#">Proposed Wisconsin Code of Military Justice</a></li> <li>• <a href="#">LRB-0517/P2</a>, relating to powers and duties of the department of military affairs, the adjutant general, military officers, military property and assets, the national guard, state defense force, rights of service personnel, the Wisconsin code of military justice, and making an appropriation</li> <li>• <a href="#">LRB-2341/P1</a>, relating to the Wisconsin code of military justice</li> </ul>				
March 15, 2007 Subcommittee Meeting				<a href="#">Notice</a>
<ul style="list-style-type: none"> <li>• <a href="#">Proposed Wisconsin Code of Military Justice</a></li> </ul>				
February 20, 2007 Subcommittee Meeting				<a href="#">Notice</a>
<ul style="list-style-type: none"> <li>• <a href="#">LRB-0588/P5</a>, relating to powers and duties of the department of military affairs, adjutant general, military officers, military property and assets, the national guard, state defense force, rights of service personnel, and the Wisconsin code of military justice</li> <li>• <a href="#">Proposed Wisconsin Code of Military Justice</a></li> </ul>				
January 25, 2007 Subcommittee Meeting				<a href="#">Notice</a>
<ul style="list-style-type: none"> <li>• <a href="#">LRB-0588/P4</a>, relating to powers and duties of the department of military affairs, adjutant general, military officers, military property and assets, the national guard, state defense force, rights of service personnel, and the Wisconsin code of military justice</li> <li>• <a href="#">Proposed Wisconsin Code of Military Justice</a></li> </ul>				
January 8, 2007 Subcommittee Meeting				<a href="#">Notice</a>
<ul style="list-style-type: none"> <li>• <a href="#">LRB-0588/P3</a>, relating to powers and duties of the department of military affairs, adjutant general, military officers, military property and assets, the national guard, state defense force, rights of service personnel, and the Wisconsin code of military justice</li> </ul>				
December 12, 2006 Subcommittee Meeting				<a href="#">Notice</a>
<ul style="list-style-type: none"> <li>• <a href="#">LRB-0588/P2</a>, relating to powers and duties of the department of military affairs, adjutant general, military officers, military property and assets, the national guard, state defense force, rights of service personnel, and the Wisconsin code of military justice</li> </ul>				

November 14, 2006 Subcommittee Meeting				<a href="#">Notice</a>
<ul style="list-style-type: none"> <li>• <a href="#">LRB-0588/P1</a>, relating to powers and duties of the department of military affairs, adjutant general, military offices, military property and assets, the national guard, state defense force, rights of service personnel, and the Wisconsin code of military justice</li> </ul>				
November 1, 2006 Subcommittee Meeting				<a href="#">Notice</a>
<ul style="list-style-type: none"> <li>• <a href="#">LRB-0588</a>, relating to powers and duties of the department of military affairs, military officers, military property and assets, the national guard and state defense force, rights of service personnel, and the Wisconsin code of military justice.</li> <li>• <a href="#">WLC: 0012/P1</a>, relating to powers and duties of the department of military affairs, military officers, military property and assets, the national guard and state defense force, rights of service personnel, and the Wisconsin code of military justice.</li> </ul>				
October 12, 2006 Subcommittee Meeting				<a href="#">Notice</a>
<ul style="list-style-type: none"> <li>• <a href="#">WLC: 0010/P1</a>, relating to powers and duties of the department of military affairs, military officers, military property and assets, the national guard and state defense force, rights of service personnel, and the Wisconsin code of military justice.</li> </ul>				
September 21, 2006 Subcommittee Meeting				<a href="#">Notice</a>
September 7, 2006 Meeting	<a href="#">Notice</a>	<a href="#">Agenda</a>	<a href="#">Audio</a>	<a href="#">Minutes</a>
<ul style="list-style-type: none"> <li>• <a href="#">Chapter 21, Stats.</a></li> <li>• <a href="#">Proposed table of contents for a revised ch. 21, Stats.</a></li> </ul>				