

SENATE BILL NO. 28—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE OFFICE OF THE MILITARY)

PREFILED NOVEMBER 18, 2020

Referred to Committee on Government Affairs

SUMMARY—Revises provisions of the Nevada Code of Military Justice. (BDR 36-261)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to the military; establishing the offense of sexual harassment within the Nevada Code of Military Justice; revising provisions relating to the offense of sexual assault within the Code; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law contains the Nevada Code of Military Justice, which provides a system of adjudicating guilt and punishing offenders within the Nevada National Guard. (NRS 412.196-412.584) **Section 1** of this bill establishes the offense of sexual harassment within the Code, using language that is consistent with language used in the Manual for Courts-Martial relating to sexual harassment. (*Manual for Courts-Martial, United States* (2019 ed.) [MCM], pt. IV, ¶ 19.c) Under **section 1**, any person who is subject to the Code is guilty of sexual harassment if the person: (1) engages in or attempts to engage in influencing, offering to influence or threatening the career, pay or job of another person in exchange for sexual favors; or (2) makes deliberate or repeated offensive comments or gestures of a sexual nature to or in the presence of another person. **Section 1** also provides that a person who is guilty of sexual harassment shall be punished by way of nonjudicial punishment or as a court-martial may direct.

Existing law provides that any person who is subject to the Nevada Code of Military Justice is guilty of sexual assault or sexual misconduct if the person engages in or causes nonconsensual sexual contact with or by another person without legal justification or lawful authorization. (NRS 412.5485) **Section 3** of this bill makes the existing Code regarding sexual assault consistent with the provisions of the Uniform Code of Military Justice of the Armed Forces of the United States and a directive from the United States Department of Defense relating to sexual assault. (10 U.S.C. § 920; DOD Dir. 6495.01, January 23, 2012) **Section 3** removes the reference to sexual misconduct and provides that a person is



23 guilty of sexual assault if he or she engages in or attempts to engage in intentional
24 sexual contact with another person and such sexual contact: (1) is characterized by
25 the use of force, threats, intimidation or abuse of authority; or (2) occurs when the
26 victim does not or cannot consent. **Section 3** also defines the term “consent” and
27 specifies the circumstances that do not constitute consent and the circumstances in
28 which a person cannot provide consent. **Section 3** additionally revises the definition
29 of the term “sexual contact.”

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 412 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *Any person subject to this Code who engages in or attempts to*
4 *engage in influencing, offering to influence or threatening the*
5 *career, pay or job of another person in exchange for sexual favors*
6 *or who makes deliberate or repeated offensive comments or*
7 *gestures of a sexual nature to or in the presence of another person*
8 *is guilty of sexual harassment and shall be punished by way of*
9 *nonjudicial punishment or as a court-martial may direct.*

10 **Sec. 2.** NRS 412.452 is hereby amended to read as follows:

11 412.452 No person may be tried or punished for any offense
12 provided for in NRS 412.454 to 412.562, inclusive, *and section 1 of*
13 *this act* unless it was committed while the person was subject to
14 jurisdiction under this Code in accordance with NRS 412.254,
15 412.2545 and 412.256, as applicable.

16 **Sec. 3.** NRS 412.5485 is hereby amended to read as follows:

17 412.5485 1. Any person subject to this Code who engages in
18 or ~~[causes noneconsensual]~~ *attempts to engage in intentional* sexual
19 contact with ~~[or by]~~ another person ~~[, without legal justification or~~
20 ~~lawful authorization,]~~ *and such sexual contact is characterized by*
21 *the use of force, threats, intimidation or abuse of authority or*
22 *occurs when the victim does not or cannot consent* is guilty of
23 sexual assault ~~[or sexual misconduct]~~ and shall be punished by way
24 of nonjudicial punishment or as a court-martial may direct.

25 2. Neither consent nor mistake of fact as to consent is an
26 affirmative defense in a prosecution for sexual assault . ~~[or sexual~~
27 ~~misconduct.]~~

28 3. In a prosecution under this section, in proving that the
29 accused made a threat, it need not be proven that the accused
30 actually intended to carry out the threat.

31 4. As used in this section:

32 (a) ~~[“Noneconsensual?”]~~ **“Consent”** means ~~[:~~

33 ~~—(1) Using force against the other person before consent or to~~
34 ~~gain consent;~~



1 ~~— (2) Causing grievous bodily harm to a person;~~
2 ~~— (3) Threatening or placing a person in fear to gain consent;~~
3 ~~— (4) Rendering a person unconscious;~~
4 ~~— (5) Administering to a person by force or threat of force, or~~
5 ~~without the knowledge or permission of that person, a drug,~~
6 ~~intoxicant or other similar substance and thereby substantially~~
7 ~~impairing the ability of that other person to appraise or control~~
8 ~~conduct;~~

9 ~~— (6) Receiving verbal nonconsent before the act; or~~
10 ~~— (7) Lack of permission given.] an agreement to sexual~~
11 ~~contact that is freely given by a competent person. For the~~
12 ~~purposes of this section:~~

13 (1) *There is no consent if a person expresses a lack of*
14 *consent through words or conduct.*

15 (2) *The following circumstances do not constitute consent:*

16 (I) *A lack of verbal or physical resistance by a person;*

17 (II) *The submission of a person to sexual contact as a*
18 *result of the use of force or threat of the use of force or the*
19 *placing of the person in fear;*

20 (III) *The fact alone that a person is currently or was*
21 *previously in a dating, social or sexual relationship with the*
22 *person engaging or attempting to engage in sexual contact in*
23 *violation of subsection 1; or*

24 (IV) *The manner of dress of a person.*

25 (3) *A person cannot provide consent:*

26 (I) *If the person is sleeping, unconscious or*
27 *incompetent;*

28 (II) *To being subjected to force causing or likely to*
29 *cause death or grievous bodily harm or to being rendered*
30 *unconscious; or*

31 (III) *While under threat or in fear.*

32 (4) *All of the surrounding circumstances must be*
33 *considered in determining whether a person provided consent.*

34 (b) "Sexual contact" means ~~[the intentional]~~ touching ~~[,]~~ *or*
35 *causing another person to touch, with any part of the body or with*
36 *an object and either directly or through the clothing, [of] the*
37 ~~[genitalia,] vulva, penis, scrotum,~~ anus, groin, breast, inner thigh or
38 buttocks of another person ~~[or intentionally causing another person~~
39 ~~to touch, either directly or through the clothing, the genitalia, anus,~~
40 ~~groin, breast, inner thigh or buttocks of any person,]~~ with an intent
41 to abuse, humiliate, *harass* or degrade any person or to arouse or
42 gratify the sexual desire of any person.

43 **Sec. 4.** The amendatory provisions of this act apply to conduct
44 that occurs on or after the effective date of this act.



1 **Sec. 5.** This act becomes effective upon passage and approval.

⑩

