

Senate Bill No. 28—Committee on Government Affairs

CHAPTER.....

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

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

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

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

Any person subject to this Code who 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 who makes deliberate or repeated offensive comments or gestures of a sexual nature to or in the presence of another person is guilty of sexual harassment and shall be punished by way of nonjudicial punishment or as a court-martial may direct.

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

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

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

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

2. Neither consent nor mistake of fact as to consent is an affirmative defense in a prosecution for sexual assault . ~~for sexual misconduct.~~

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

4. As used in this section:

(a) ~~“Nonconsensual”~~ *“Consent”* means ~~:~~

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

~~— (2) Causing grievous bodily harm to a person;~~

~~— (3) Threatening or placing a person in fear to gain consent;~~

~~— (4) Rendering a person unconscious;~~

~~— (5) Administering to a person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct;~~

~~— (6) Receiving verbal nonconsent before the act; or~~

~~— (7) Lack of permission given.~~ *an agreement to sexual contact that is freely given by a competent person. For the purposes of this section:*



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

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

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

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

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

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

(3) *A person cannot provide consent:*

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

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

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

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

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

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

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

