

TITLE 10 - ARMED FORCES

Subtitle A - General Military Law

PART II - PERSONNEL

CHAPTER 47 - UNIFORM CODE OF MILITARY JUSTICE

SUBCHAPTER X - PUNITIVE ARTICLES

§ 920. Art. 120. Rape and sexual assault generally

- (a) **Rape.**— Any person subject to this chapter who commits a sexual act upon another person by—
- (1) using unlawful force against that other person;
 - (2) using force causing or likely to cause death or grievous bodily harm to any person;
 - (3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping;
 - (4) first rendering that other person unconscious; or
 - (5) administering to that other person by force or threat of force, or without the knowledge or consent 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;

is guilty of rape and shall be punished as a court-martial may direct.

- (b) **Sexual Assault.**— Any person subject to this chapter who—
- (1) commits a sexual act upon another person by—
 - (A) threatening or placing that other person in fear;
 - (B) causing bodily harm to that other person;
 - (C) making a fraudulent representation that the sexual act serves a professional purpose; or
 - (D) inducing a belief by any artifice, pretense, or concealment that the person is another person;
 - (2) commits a sexual act upon another person when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring; or
 - (3) commits a sexual act upon another person when the other person is incapable of consenting to the sexual act due to—
 - (A) impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the person; or
 - (B) a mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the person;

is guilty of sexual assault and shall be punished as a court-martial may direct.

- (c) **Aggravated Sexual Contact.**— Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (a) (rape) had the sexual contact been a sexual act, is guilty of aggravated sexual contact and shall be punished as a court-martial may direct.

- (d) **Abusive Sexual Contact.**— Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (b) (sexual assault) had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall be punished as a court-martial may direct.

- (e) **Proof of Threat.**— In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

- (f) **Defenses.**— An accused may raise any applicable defenses available under this chapter or the Rules for Court-Martial. Marriage is not a defense for any conduct in issue in any prosecution under this section.

(g) Definitions.— In this section:**(1) Sexual act.**— The term “sexual act” means—

(A) contact between the penis and the vulva or anus or mouth, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; or

(B) the penetration, however slight, of the vulva or anus or mouth, of another by any part of the body or by any object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(2) Sexual contact.— The term “sexual contact” means—

(A) touching, or 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, or degrade any person; or

(B) any touching, or causing another person to touch, either directly or through the clothing, any body part of any person, if done with an intent to arouse or gratify the sexual desire of any person.

Touching may be accomplished by any part of the body.

(3) Bodily harm.— The term “bodily harm” means any offensive touching of another, however slight, including any nonconsensual sexual act or nonconsensual sexual contact.

(4) Grievous bodily harm.— The term “grievous bodily harm” means serious bodily injury. It includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose.

(5) Force.— The term “force” means—

(A) the use of a weapon;

(B) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or

(C) inflicting physical harm sufficient to coerce or compel submission by the victim.

(6) Unlawful force.— The term “unlawful force” means an act of force done without legal justification or excuse.

(7) Threatening or placing that other person in fear.— The term “threatening or placing that other person in fear” means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another person being subjected to the wrongful action contemplated by the communication or action.¹

(8) Consent.—

(A) The term “consent” means a freely given agreement to the conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue shall not constitute consent.

(B) A sleeping, unconscious, or incompetent person cannot consent. A person cannot consent to force causing or likely to cause death or grievous bodily harm or to being rendered unconscious. A person cannot consent while under threat or in fear or under the circumstances described in subparagraph (C) or (D) of subsection (b)(1).

(C) Lack of consent may be inferred based on the circumstances of the offense. All the surrounding circumstances are to be considered in determining whether a person gave consent, or whether a person did not resist or ceased to resist only because of another person’s actions.

Footnotes

¹ So in original.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

(Aug. 10, 1956, ch. 1041, 70A Stat. 73; Pub. L. 102–484, div. A, title X, § 1066(c), Oct. 23, 1992, 106 Stat. 2506; Pub. L. 104–106, div. A, title XI, § 1113, Feb. 10, 1996, 110 Stat. 462; Pub. L. 109–163, div. A, title V, § 552(a)(1), Jan. 6, 2006, 119 Stat. 3256; Pub. L. 112–81, div. A, title V, § 541(a), Dec. 31, 2011, 125 Stat. 1404.)

Historical and Revision Notes

Revised section	Source (U.S. Code)	Source (Statutes at Large)
920(a)		
920(b)		
920(c)	50:714(a).	
50:714(b).		
50:714(c).	May 5, 1950, ch. 169, § 1 (Art. 120), 64 Stat. 140.	

In subsection (c), the words “either of” are inserted for clarity.

Amendments

2011—Pub. L. 112–81, § 541(a)(11), substituted “Art. 120. Rape and sexual assault generally” for “Art. 120. Rape, sexual assault, and other sexual misconduct” in section catchline.

Subsec. (a). Pub. L. 112–81, § 541(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to rape.

Subsec. (b). Pub. L. 112–81, § 541(a)(3), redesignated subsec. (c) as (b) and amended it generally. Pub. L. 112–81, § 541(a)(2), struck out subsec. (b) which related to rape of a child.

Subsec. (c). Pub. L. 112–81, § 541(a)(4), redesignated subsec. (e) as (c) and substituted “commits” for “engages in” and “upon” for “with”. Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 112–81, § 541(a)(5), redesignated subsec. (h) as (d) and substituted “commits” for “engages in”, “upon” for “with”, and “subsection (b) (sexual assault)” for “subsection (c) (aggravated sexual assault)”.

Pub. L. 112–81, § 541(a)(2), struck out subsec. (d) which related to aggravated sexual assault of a child.

Subsec. (e). Pub. L. 112–81, § 541(a)(7), redesignated subsec. (p) as (e) and substituted “a person made” for “the accused made” and “the person actually” for “the accused actually” and inserted “or had the ability to carry out the threat” before period at end. Former subsec. (e) redesignated (c).

Subsec. (f). Pub. L. 112–81, § 541(a)(8), redesignated subsec. (q) as (f) and amended it generally.

Pub. L. 112–81, § 541(a)(2), struck out subsec. (f) which related to aggravated sexual abuse of a child.

Subsec. (g). Pub. L. 112–81, § 541(a)(2), (10), redesignated subsec. (t) as (g) and struck out former subsec. (g) which related to aggravated sexual contact with a child.

Subsec. (g)(1)(A). Pub. L. 112–81, § 541(a)(10)(A)(i), inserted “or anus or mouth” after “vulva”.

Subsec. (g)(1)(B). Pub. L. 112–81, § 541(a)(10)(A)(ii), substituted “vulva or anus or mouth,” for “genital opening” and “any part of the body” for “a hand or finger”.

Subsec. (g)(2). Pub. L. 112–81, § 541(a)(10)(B), amended par. (2) generally. Prior to amendment, par. (2) defined “sexual contact”.

Subsec. (g)(3). Pub. L. 112–81, § 541(a)(10)(D), redesignated par. (8) as (3) and inserted “, including any nonconsensual sexual act or nonconsensual sexual contact” before period at end. Former par. (3) redesignated (4).

Subsec. (g)(4). Pub. L. 112–81, § 541(a)(10)(E), struck out at end “It does not include minor injuries such as a black eye or a bloody nose. It is the same level of injury as in section 928 (article 128) of this chapter, and a lesser degree of injury than in section 2246 (4) of title 18.”

Pub. L. 112–81, § 541(a)(10)(C), redesignated par. (3) as (4) and struck out former par. (4) which defined “dangerous weapon or object”.

Subsec. (g)(5). Pub. L. 112–81, § 541(a)(10)(F), (H), added par. (5) and struck out former par. (5) which defined “force”.

Subsec. (g)(6). Pub. L. 112–81, § 541(a)(10)(H), added par. (6). Former par. (6) redesignated (7).

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

Subsec. (g)(7). Pub. L. 112–81, § 541(a)(10)(G), (I), redesignated par. (6) as (7), struck out “under paragraph (3) of subsection (a) (rape), or under subsection (e) (aggravated sexual contact),” after “person in fear” , and substituted “the wrongful action contemplated by the communication or action.” for “death, grievous bodily harm, or kidnapping”.

Pub. L. 112–81, § 541(a)(10)(F), struck out par. (7) which defined “threatening or placing that other person in fear”.

Subsec. (g)(8). Pub. L. 112–81, § 541(a)(10)(K), redesignated par. (14) as (8), designated introductory provisions as subpar. (A), in first sentence, struck out “words or overt acts indicating” before “a freely given” and “sexual” before “conduct”, in third sentence, struck out “accused’s” before “use of force”, in fourth sentence, inserted “or social or sexual” before “relationship” and struck out “sexual” before “conduct” and last sentence, including subpars. (A) and (B), which related to a person who cannot consent to sexual activity, and added subpars. (B) and (C). Former par. (8) redesignated (3).

Subsec. (g)(9) to (13). Pub. L. 112–81, § 541(a)(10)(J), struck out pars. (9) to (13) which defined “child”, “lewd act”, “indecent liberty”, “indecent conduct”, and “act of prostitution”, respectively.

Subsec. (g)(14). Pub. L. 112–81, § 541(a)(10)(K), redesignated par. (14) as (8).

Subsec. (g)(15), (16). Pub. L. 112–81, § 541(a)(10)(L), struck out pars. (15) and (16) which defined “mistake of fact as to consent” and “affirmative defense”, respectively.

Subsec. (h). Pub. L. 112–81, § 541(a)(5), redesignated subsec. (h) as (d).

Subsecs. (i), (j). Pub. L. 112–81, § 541(a)(2), struck out subsecs. (i) and (j) which related to abusive sexual contact with a child and indecent liberty with a child, respectively.

Subsecs. (k) to (n). Pub. L. 112–81, § 541(a)(6), struck out subsecs. (k) to (n) which related to indecent act, forcible pandering, wrongful sexual contact, and indecent exposure, respectively.

Subsec. (o). Pub. L. 112–81, § 541(a)(2), struck out subsec. (o) which related to age of child.

Subsec. (p). Pub. L. 112–81, § 541(a)(7), redesignated subsec. (p) as (e).

Subsec. (q). Pub. L. 112–81, § 541(a)(8), redesignated subsec. (q) as (f).

Subsecs. (r), (s). Pub. L. 112–81, § 541(a)(9), struck out subsecs. (r) and (s) which related to consent and mistake of fact as to consent and other affirmative defenses not precluded, respectively.

Subsec. (t). Pub. L. 112–81, § 541(a)(10), redesignated subsec. (t) as (g).

2006—Pub. L. 109–163 amended section generally, substituting subsecs. (a) to (t) relating to rape, sexual assault, and other sexual misconduct for subsecs. (a) to (d) relating to rape and carnal knowledge.

1996—Subsec. (b). Pub. L. 104–106, § 1113(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a female not his wife who has not attained the age of sixteen years, is guilty of carnal knowledge and shall be punished as a court-martial may direct.”

Subsec. (d). Pub. L. 104–106, § 1113(b), added subsec. (d).

1992—Subsec. (a). Pub. L. 102–484 struck out “with a female not his wife” after “intercourse” and “her” after “without”.

Effective Date of 2011 Amendment

Amendment by Pub. L. 112–81 effective 180 days after Dec. 31, 2011, and applicable with respect to offenses committed on or after such effective date, see section 541(f) of Pub. L. 112–81, set out as a note under section 843 of this title.

Effective Date of 2006 Amendment

Pub. L. 109–163, div. A, title V, § 552(c), Jan. 6, 2006, 119 Stat. 3263, provided that: “Section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice), as amended by subsection (a), shall apply with respect to offenses committed on or after the effective date specified in subsection (f) [see note below].”

Amendment by Pub. L. 109–163 effective on Oct. 1, 2007, see section 552(f) of Pub. L. 109–163, set out as a note under section 843 of this title.

Effective Date of 1992 Amendment

Amendment by Pub. L. 102–484 effective Oct. 23, 1992, and applicable with respect to offenses committed on or after that date, see section 1067 of Pub. L. 102–484, set out as a note under section 803 of this title.

Interim Maximum Punishments

Pub. L. 109–163, div. A, title V, § 552(b), Jan. 6, 2006, 119 Stat. 3263, provided that: “Until the President otherwise provides pursuant to section 856 of title 10, United States Code (article 56 of the Uniform Code of Military Justice), the punishment which a court-martial may direct for an offense under section 920 of such title (article 120 of the Uniform Code of Military Justice), as amended by subsection (a), may not exceed the following limits:

“(1) Subsections (a) and (b).—For an offense under subsection (a) (rape) or subsection (b) (rape of a child), death or such other punishment as a court-martial may direct.

“(2) Subsection (c).—For an offense under subsection (c) (aggravated sexual assault), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 30 years.

“(3) Subsections (d) and (e).—For an offense under subsection (d) (aggravated sexual assault of a child) or subsection (e) (aggravated sexual contact), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

“(4) Subsections (f) and (g).—For an offense under subsection (f) (aggravated sexual abuse of a child) or subsection (g) (aggravated sexual contact with a child), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

“(5) Subsections (h) through (j).—For an offense under subsection (h) (abusive sexual contact), subsection (i) (abusive sexual contact with a child), or subsection (j) (indecent liberty with a child), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 7 years.

“(6) Subsections (k) and (l).—For an offense under subsection (k) (indecent act) or subsection (l) (forcible pandering), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

“(7) Subsections (m) and (n).—For an offense under subsection (m) (wrongful sexual contact) or subsection (n) (indecent exposure), dishonorable discharge, forfeiture of all pay and allowances, and confinement for one year.”

[See 2011 Amendment notes above for extensive amendment of section 920 of title 10 by Pub. L. 112–81, effective 180 days after Dec. 31, 2011, and applicable with respect to offenses committed on or after such effective date.]