

# Presidential Documents

Title 3—

Executive Order 14062 of January 26, 2022

The President

## 2022 Amendments to the Manual for Courts-Martial, United States

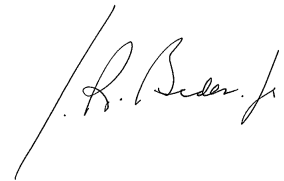
By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801–946a), and in order to prescribe amendments to the Manual for Courts-Martial, United States, prescribed by Executive Order 12473 of April 13, 1984, as amended, it is hereby ordered as follows:

**Section 1.** Parts II and IV of the Manual for Courts-Martial, United States, are amended as described in the Annex attached to and made a part of this order.

**Sec. 2.** These amendments shall take effect as of the date of this order, subject to the following:

(a) Nothing in these amendments shall be construed to make punishable any act done or omitted prior to the date of this order that was not punishable when done or omitted.

(b) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to the date of this order, and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.



THE WHITE HOUSE,  
*January 26, 2022.*

## ANNEX

**Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:****(a) R.C.M. 916(e)(3) is amended to read as follows:**

“(3) *Other assaults.* It is a defense to any assault punishable under Article 89, 91, 128, or 128b and not listed in paragraphs (e)(1) or (2) of this rule that the accused:

(A) Apprehended, upon reasonable grounds, that bodily harm was about to be inflicted wrongfully on the accused; and

(B) Believed that the force that the accused used was necessary for protection against bodily harm, provided that the force used by the accused was less than force reasonably likely to produce death or grievous bodily harm.”

**(b) R.C.M. 916(e)(5) is amended to read as follows:**

“(5) *Defense of another.* The principles of self-defense under paragraphs (e)(1) through (4) of this rule apply to defense of another. It is a defense to homicide, attempted homicide, assault with intent to kill, or any assault under Article 89, 91, 128, or 128b that the accused acted in defense of another, provided that the accused may not use more force than the person defended was lawfully entitled to use under the circumstances.”

**Section 2. Part IV of the Manual for Courts-Martial, United States, is amended as follows:****(a) A new paragraph 55a is inserted immediately after paragraph 55 to read as follows:**

**“55a. Article 117a (10 U.S.C. 917a)—Wrongful broadcast or distribution of intimate visual images**

*a. Text of statute.*

**(a) PROHIBITION.—Any person subject to this chapter—**

**(1) who knowingly and wrongfully broadcasts or distributes an intimate visual**

image of another person or a visual image of sexually explicit conduct involving a person who—

(A) is at least 18 years of age at the time the intimate visual image or visual image of sexually explicit conduct was created;

(B) is identifiable from the intimate visual image or visual image of sexually explicit conduct itself, or from information displayed in connection with the intimate visual image or visual image of sexually explicit conduct; and

(C) does not explicitly consent to the broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct;

(2) who knows or reasonably should have known that the intimate visual image or visual image of sexually explicit conduct was made under circumstances in which the person depicted in the intimate visual image or visual image of sexually explicit conduct retained a reasonable expectation of privacy regarding any broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct;

(3) who knows or reasonably should have known that the broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct is likely—

(A) to cause harm, harassment, intimidation, emotional distress, or financial loss for the person depicted in the intimate visual image or visual image of sexually explicit conduct; or

(B) to harm substantially the depicted person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships; and

(4) whose conduct, under the circumstances, had a reasonably direct and palpable

connection to a military mission or military environment,  
is guilty of wrongful distribution of intimate visual images or visual images of sexually  
explicit conduct and shall be punished as a court-martial may direct.

**(b) DEFINITIONS.—In this section:**

**(1) BROADCAST.—**The term “broadcast” means to electronically transmit a visual  
image with the intent that it be viewed by a person or persons.

**(2) DISTRIBUTE.—**The term “distribute” means to deliver to the actual or  
constructive possession of another person, including transmission by mail or electronic  
means.

**(3) INTIMATE VISUAL IMAGE.—**The term “intimate visual image” means a visual  
image that depicts a private area of a person.

**(4) PRIVATE AREA.—**The term “private area” means the naked or underwear-clad  
genitalia, anus, buttocks, or female areola or nipple.

**(5) REASONABLE EXPECTATION OF PRIVACY.—**The term “reasonable expectation of  
privacy” means circumstances in which a reasonable person would believe that a private  
area of the person, or sexually explicit conduct involving the person, would not be visible to  
the public.

**(6) SEXUALLY EXPLICIT CONDUCT.—**The term “sexually explicit conduct” means  
actual or simulated genital-genital contact, oral-genital contact, anal-genital contact, or  
oral-anal contact, whether between persons of the same or opposite sex, bestiality,  
masturbation, or sadistic or masochistic abuse.

**(7) VISUAL IMAGE.—**The term “visual image” means the following:

**(A)** Any developed or undeveloped photograph, picture, film, or video.

**(B) Any digital or computer image, picture, film, or video made by any means, including those transmitted by any means, including streaming media, even if not stored in a permanent format.**

**(C) Any digital or electronic data capable of conversion into a visual image.**

*b. Elements.*

- (1) That the accused knowingly and wrongfully broadcasted or distributed a visual image;
- (2) That the visual image is an intimate visual image of another person or a visual image of sexually explicit conduct involving another person;
- (3) That the person depicted in the intimate visual image or visual image of sexually explicit conduct—
  - (a) is at least 18 years of age at the time the intimate visual image or visual image of sexually explicit conduct was created;
  - (b) is identifiable from the intimate visual image or visual image of sexually explicit conduct itself or from information displayed in connection with the intimate visual image or visual image of sexually explicit conduct; and
  - (c) does not explicitly consent to the broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct;
- (4) That the accused knew or reasonably should have known that the intimate visual image or visual image of sexually explicit conduct was made under circumstances in which the person depicted retained a reasonable expectation of privacy regarding any broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct;
- (5) That the accused knew or reasonably should have known that the broadcast or distribution of the intimate visual image or visual image of sexually explicit conduct was likely

to—

(a) cause harm, harassment, intimidation, emotional distress, or financial loss for the person depicted in the intimate visual image or visual image of sexually explicit conduct; or

(b) harm substantially the depicted person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships; and

(6) That the conduct of the accused, under the circumstances, had a reasonably direct and palpable connection to a military mission or military environment.

c. *Explanation.* See Paragraph 55a.a.(b) for definitions.

(1) *Wrongful.* Wrongful means without legal justification or excuse. This paragraph shall not apply in the case of a visual image the disclosure of which is in the bona fide public interest. For example, this paragraph does not prohibit any lawful law enforcement, correctional, or intelligence activity; shall not apply to the reporting of unlawful activity; and shall not apply to a subpoena or court order for use in a legal proceeding.

(2) *Reasonable Expectation of Privacy.* A reasonable expectation of privacy is determined based on the totality of the circumstances.

(3) *A reasonably direct and palpable connection to a military mission or military environment.* The connection between the conduct and a military mission or military environment is contextually oriented and cannot be evidenced by conduct that is connected only in a remote or indirect sense. To constitute an offense under the UCMJ, the conduct must have a measurably divisive effect on unit or organization discipline, morale, or cohesion, or must be clearly detrimental to the authority or stature of or respect toward a Servicemember.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

*e. Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did (at/on board—location), on or about \_\_\_\_\_ 20 \_\_, knowingly and wrongfully [(distribute) (broadcast)] [(an intimate visual image of \_\_\_\_\_) (a visual image of sexually explicit conduct involving \_\_\_\_\_)], a person who was at least 18 years of age when the image was created, is identifiable from (the image itself) (information conveyed in connection with the image), and did not explicitly consent to the (broadcast) (distribution) of the image, when the accused (knew) (reasonably should have known) the image was made under circumstances in which \_\_\_\_\_ retained a reasonable expectation of privacy regarding any (broadcast) (distribution) of the image, and where the accused (knew) (reasonably should have known) that the (broadcast) (distribution) of the image was likely to [cause (harm) (harassment) (intimidation) (emotional distress) (financial loss), to wit: \_\_\_\_\_ ] [harm substantially the (health) (safety) (business) (calling) (career) (financial condition) (reputation) (personal relationships), to wit: \_\_\_\_\_ ] and that, under the circumstances, such conduct had a reasonably direct and palpable connection to a (military mission) (military environment).”

**(b) Paragraph 77, subparagraph a. is amended to read as follows:**

“a. *Text of statute.*

**(a) ASSAULT.—Any person subject to this chapter who, unlawfully and with force or violence—**

**(1) attempts to do bodily harm to another person;**

**(2) offers to do bodily harm to another person; or**

**(3) does bodily harm to another person;**

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

**(b) AGGRAVATED ASSAULT.—Any person subject to this chapter—**

**(1) who, with the intent to do bodily harm, offers to do bodily harm with a dangerous weapon;**

**(2) who, in committing an assault, inflicts substantial bodily harm or grievous bodily harm on another person; or**

**(3) who commits an assault by strangulation or suffocation;**

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

**(c) ASSAULT WITH INTENT TO COMMIT SPECIFIED OFFENSES.—**

**(1) IN GENERAL.—Any person subject to this chapter who commits assault with intent to commit an offense specified in paragraph (2) shall be punished as a court-martial may direct.**

**(2) OFFENSES SPECIFIED.—The offenses referred to in paragraph (1) are murder, voluntary manslaughter, rape, sexual assault, rape of a child, sexual assault of a child, robbery, arson, burglary, and kidnapping.”**

**(c) Paragraph 77, subparagraph b.(3)(c) is amended to read as follows:**

*“(c) Assault consummated by a battery upon a child under 16 years.*

*(i) That the accused did bodily harm to a certain person;*

*(ii) That the bodily harm was done unlawfully;*

*(iii) That the bodily harm was done with force or violence; and*

*(iv) That the person was then a child under the age of 16 years.”*

**(d) Paragraph 77, subparagraph b.(4)(a) is amended to read as follows:**

*“(a) Assault with a dangerous weapon.*

*(i) That the accused offered to do bodily harm to a certain person;*



- (ii) The offer was made with the intent to do bodily harm; and
  - (iii) That the accused did so with a dangerous weapon.
- [Note: Add any of the following elements as applicable:]
- (iv) That the dangerous weapon was a loaded firearm.
  - (v) That the person was a child under the age of 16 years.”

**(e) Paragraph 77, subparagraph b.(4)(b) is amended to read as follows:**

“(b) *Assault in which substantial bodily harm is inflicted.*

- (i) That the accused assaulted a certain person; and
  - (ii) That substantial bodily harm was thereby inflicted upon such person.
- [Note: Add any of the following elements as applicable:]
- (iii) That the injury was inflicted with a loaded firearm.
  - (iv) That the person was a child under the age of 16 years.”

**(f) Paragraph 77, subparagraph b.(4)(c) is amended to read as follows:**

“(c) *Assault in which grievous bodily harm is inflicted.*

- (i) That the accused assaulted a certain person; and
  - (ii) That grievous bodily harm was thereby inflicted upon such person.
- [Note: Add any of the following elements as applicable:]
- (iii) That the injury was inflicted with a loaded firearm.
  - (iv) That the person was a child under the age of 16 years.”

**(g) Paragraph 77, subparagraph b.(4) is amended by inserting a new subparagraph (d) immediately after subparagraph (c) to read as follows:**

“(d) *Aggravated Assault by strangulation or suffocation.*

- (i) That the accused assaulted a certain person;

(ii) That the accused did so by strangulation or suffocation;

(iii) That the strangulation or suffocation was done with unlawful force or violence;

[Note: Add the following as applicable]

(iv) That the person was a child under the age of 16 years.”

**(h) Paragraph 77, subparagraph c.(4)(d) is deleted.**

**(i) Paragraph 77, subparagraph c.(5)(a)(vi) is deleted.**

**(j) Paragraph 77, subparagraph c.(5)(b)(iii) is deleted.**

**(k) Paragraph 77, subparagraph c.(5) is amended by inserting a new subparagraph (c) immediately after subparagraph (b) to read as follows:**

*“(c) Aggravated Assault by strangulation or suffocation.*

(i) In general. Assault by strangulation or suffocation is an assault committed intentionally, knowingly, or recklessly, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.

(ii) *Assault.* See paragraph 77.c.(2)(a).

(iii) *Strangulation.* Intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.

(iv) *Suffocation.* Intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.

(v) *When committed upon a child under 16 years of age.* The maximum punishment is increased when aggravated assault by strangulation or suffocation is inflicted upon a child under 16 years of age. Knowledge that the person assaulted was under the age of 16 years is not an element of the offense.”

**(l) Paragraph 77.d. is amended to read as follows:**

“d. *Maximum punishment.*

(1) *Simple assault.*

(a) *Generally.* Confinement for 3 months and forfeiture of two-thirds pay per month for 3 months.

(b) *When committed with an unloaded firearm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(2) *Battery.*

(a) *Assault consummated by a battery.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(b) *Assault consummated by a battery upon a child under 16 years.* See paragraph 77.d.(3)(e).

(3) *Assaults permitting increased punishments based upon status of victim.*

(a) *Assault upon a commissioned officer of the armed forces of the United States or of a friendly foreign power, not in the execution of office.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(b) *Assault upon a warrant officer, not in the execution of office.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 18 months.

(c) *Assault upon a noncommissioned or petty officer, not in the execution of office.* Bad-

conduct discharge, forfeiture of all pay and allowances, and confinement for 6 months.

(d) *Assault upon a sentinel or lookout in the execution of duty, or upon any person who, in the execution of office, is performing security police, military police, shore patrol, master at arms, or other military or civilian law enforcement duties.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(e) *Assault consummated by a battery upon a child under 16 years.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(4) *Aggravated assault.*

(a) *Aggravated assault with a dangerous weapon.*

(i) *When committed with a loaded firearm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 8 years.

(ii) *When committed upon a child under the age of 16 years.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(iii) *Other cases.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(b) *Aggravated assault in which substantial bodily harm is inflicted.*

(i) *When the injury is inflicted with a loaded firearm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 8 years.

(ii) *When the injury is inflicted upon a child under the age of 16 years.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 6 years.

(iii) *Other cases.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(c) *Aggravated assault in which grievous bodily harm is inflicted.*

(i) *When the injury is inflicted with a loaded firearm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

(ii) *When the injury is inflicted upon a child under the age of 16 years.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 8 years.

(iii) *Other cases.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(d) *Aggravated Assault by strangulation or suffocation.*

(i) *Aggravated assault by strangulation or suffocation when committed upon a child under the age of 16 years.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 8 years.

(ii) *Other cases.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(5) *Assault with intent to commit specified offenses.*

(a) *Assault with intent to commit murder, rape, or rape of a child.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(b) *Assault with intent to commit voluntary manslaughter, robbery, arson, burglary, and kidnapping.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.”

**(m) Paragraph 77, subparagraphs e.(7)-(11) are amended to read as follows:**

“(7) *Assault consummated by a battery upon a child under 16 years.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, unlawfully (strike) (\_\_\_\_\_) \_\_\_\_\_ (a child under the age of 16 years) (in) (on) the \_\_\_\_ with \_\_\_\_\_.

(8) *Assault, aggravated—with a dangerous weapon.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, with the intent to inflict bodily harm, commit an assault upon \_\_\_\_\_ (a child under the age of 16 years) by (shooting) (pointing) (striking) (cutting) (\_\_\_\_) (at (him) (her)) with a dangerous weapon, to wit: a (loaded firearm) (pickax) (bayonet) (club) (\_\_\_\_).

(9) *Assault, aggravated—inflicting substantial bodily harm.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, commit an assault upon \_\_\_\_\_ (a child under the age of 16 years) by (shooting) (striking) (cutting) (\_\_\_\_) (him) (her) (on) the \_\_\_\_\_ with a (loaded firearm) (club) (rock) (brick) (\_\_\_\_) and did thereby inflict substantial bodily harm upon (him) (her), to wit: (severe bruising of the face) (head concussion) (temporary blindness) (\_\_\_\_).

(10) *Assault, aggravated—inflicting grievous bodily harm.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, commit an assault upon \_\_\_\_\_ (a child under the age of 16 years) by (shooting) (striking) (cutting) (\_\_\_\_) (him) (her) (on) the \_\_\_\_\_ with a (loaded firearm) (club) (rock) (brick) (\_\_\_\_) and did thereby inflict grievous bodily harm upon (him) (her), to wit: a (broken leg) (deep cut) (fractured skull) (\_\_\_\_).

(11) *Assault, aggravated—by strangulation or suffocation.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, commit an assault upon \_\_\_\_\_ (a child under the age of 16 years) by unlawfully (strangling) (suffocating) (him) (her) (with/by

\_\_\_\_\_).

**(n) Paragraph 77 is amended by inserting a new subparagraph e.(12) immediately after subparagraph e.(11) to read as follows:**

*“(12) Assault with intent to commit specified offenses.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, with intent to commit (murder) (voluntary manslaughter) (rape) (rape of a child) (sexual assault) (sexual assault of a child) (robbery) (arson) (burglary) (kidnapping), assault \_\_\_\_\_ by (striking at (him) (her) with a \_\_\_\_\_) (\_\_\_\_\_).”

**(o) A new paragraph 78a is inserted immediately after paragraph 78 to read as follows:**

**“78a. Article 128b (10 U.S.C. 928b) – Domestic Violence**

*a. Text of statute.*

**Any person who—**

**(1) commits a violent offense against a spouse, an intimate partner, or an immediate family member of that person;**

**(2) with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person—**

**(A) commits an offense under this chapter against any person; or**

**(B) commits an offense under this chapter against any property, including an animal;**

**(3) with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person, violates a protection order;**

**(4) with intent to commit a violent offense against a spouse, an intimate partner, or**

**an immediate family member of that person, violates a protection order; or**

**(5) assaults a spouse, an intimate partner, or an immediate family member of that person by strangling or suffocating;**

**shall be punished as a court-martial may direct.**

*b. Elements.*

*(1) Commission of a violent offense against a spouse, intimate partner, or immediate family member of that person.*

(a) That the accused committed a violent offense; and

(b) That the violent offense was committed against a spouse, intimate partner, or immediate family member of the accused.

[Note: Add the following as applicable]

(c) That the immediate family member was a child under the age of 16 years.

*(2) Commission of a violation of the UCMJ against any person with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person.*

(a) That the accused committed an act in violation of the UCMJ;

(b) That the accused committed the act against any person; and

(c) That the accused committed the act with the intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of the accused.

*(3) Commission of a violation of the UCMJ against any property, including an animal, with the intent to threaten or intimidate a spouse, intimate partner, or an immediate family member of that person.*

(a) That the accused committed an act in violation of the UCMJ;

(b) That the accused committed the act against any property, including an animal; and



(c) That the accused committed the act with the intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of the accused.

(4) *Violation of a protection order with the intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person.*

(a) That a lawful protection order was in place;

(b) That the accused committed an act in violation of that lawful protection order; and

(c) That the accused committed the act with the intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of the accused.

(5) *Violation of a protection order with the intent to commit a violent offense against a spouse, an intimate partner, or an immediate family member of that person.*

(a) That a lawful protection order was in place;

(b) That the accused committed an act in violation of that lawful protection order; and

(c) That the accused committed the act with the intent to commit a violent offense against a spouse, an intimate partner, or an immediate family member of the accused.

(6) *Assaulting a spouse, an intimate partner, or an immediate family member of that person by strangulation or suffocation.*

(a) That the accused assaulted a spouse, an intimate partner, or an immediate family member of the accused;

(b) That the accused did so by strangulation or suffocation; and

(c) That the strangulation or suffocation was done with unlawful force or violence;

[Note: Add the following as applicable]

(d) That the person was a child under the age of 16 years.”

c. *Explanation.*

(1) *Violent Offense*. The term “violent offense” means a violation of the following:

- (a) 10 U.S.C. § 918 (article 118)
- (b) 10 U.S.C. § 919(a) (article 119(a))
- (c) 10 U.S.C. § 919a (article 119a)
- (d) 10 U.S.C. § 920 (article 120)
- (e) 10 U.S.C. § 920b (article 120b)
- (f) 10 U.S.C. § 922 (article 122)
- (g) 10 U.S.C. § 925 (article 125)
- (h) 10 U.S.C. § 926 (article 126)
- (i) 10 U.S.C. § 928 (article 128)
- (j) 10 U.S.C. § 928a (article 128a)
- (k) 10 U.S.C. § 930 (article 130)

(l) Any other offense that has an element that includes the use, attempted use, or threatened use of physical force against the person or property of another.

(2) *Spouse*. The term “spouse” means one’s husband or wife by lawful marriage.

(3) *Intimate partner*. The term “intimate partner” means—

(a) one’s former spouse, a person with whom one shares a child in common, or a person with whom one cohabits or with whom one has cohabited as a spouse; or

(b) a person with whom one has been in a social relationship of a romantic or intimate nature, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(4) *Immediate family*. The term “immediate family” means—

(a) one’s spouse, parent, brother or sister, child, or other person to whom he or she stands

in loco parentis; or

(b) any other person living in one's household to whom he or she is related by blood or marriage.

(5) *Strangulation*. The term "strangulation" has the same meaning ascribed to that term in subparagraph 77.c.(5)(c)(iii).

(6) *Suffocation*. The term "suffocation" has the same meaning ascribed to that term in subparagraph 77.c.(5)(c)(iv).

(7) *Protection order*. The term "protection order" means—

(a) a military protective order enforceable under 10 U.S.C. § 892 (article 92); or

(b) a protection order, as defined in 18 U.S.C. § 2266 and, if issued by a State, tribal, or territorial court, is in accordance with the standards specified in 18 U.S.C. § 2265.

(8) *Mandatory Minimum Punishments*. In accordance with 10 U.S.C. § 856 (article 56), for a conviction of an offense under this paragraph, mandatory minimum punishment provisions shall not apply.

d. *Maximum punishment*. Dishonorable discharge, forfeiture of all pay and allowances, and confinement as follows:

(1) *Commission of a violent offense against a spouse, an intimate partner, or an immediate family member of that person*. Any person subject to the UCMJ who is found guilty of violating Article 128b by committing a violent offense against a spouse, an intimate partner, or an immediate family member of that person shall be subject to the same maximum period of confinement authorized for the commission of the underlying offense plus an additional 3 years of confinement except for those violent offenses for which the maximum punishment includes death, confinement for life without eligibility for parole, or confinement for life.

(2) *Commission of a violation of the UCMJ against any person with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person.* Any person subject to the UCMJ who is found guilty of violating Article 128b by committing an offense punishable under the UCMJ with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person shall be subject to the same maximum period of confinement authorized for the commission of the underlying offense plus an additional 3 years, with the exception of those offenses for which the maximum punishment includes death, confinement for life without eligibility for parole, or confinement for life.

(3) *Commission of a violation of the UCMJ against any property, including an animal, with the intent to threaten or intimidate a spouse, intimate partner, or an immediate family member of that person.* Any person subject to the UCMJ who is found guilty of violating Article 128b by committing an offense punishable under the UCMJ against any property, including an animal, with the intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person shall be subject to the same maximum period of confinement authorized for the commission of the underlying offense plus an additional 3 years, with the exception of those offenses for which the maximum punishment includes death, confinement for life without eligibility for parole, or confinement for life.

(4) *Violation of a protection order with the intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person.* Confinement for 3 years.

(5) *Violation of a protection order with the intent to commit a violent offense against a spouse, an intimate partner, or an immediate family member of that person.* Confinement for 5 years.

(6) *Assaulting a spouse, an intimate partner, or an immediate family member of that*

*person by strangulation or suffocation.*

(a) *Aggravated assault by strangulation or suffocation when committed upon a child under the age of 16 years.* Confinement for 11 years.

(b) *Other cases.* Confinement for 8 years.

*e. Sample Specifications.*

(1) In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, commit a violent offense against \_\_\_\_\_, the (spouse) (intimate partner) (immediate family member) (immediate family member under the age of 16 years) of the accused, to wit: (describe offense with sufficient detail to include expressly or by necessary implication every element and any applicable sentence enhancer from the underlying offense).

(2) In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, with the intent to (threaten) (intimidate) the (spouse) (intimate partner) (immediate family member) of the accused, commit an offense in violation of the UCMJ against (any person) (a child under the age of 16 years), to wit: (describe offense with sufficient detail to include expressly or by necessary implication every element and any applicable sentence enhancer from the underlying offense).

(3) In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, with the intent to (threaten) (intimidate) the (spouse) (intimate partner) (immediate family member) of the accused, commit an offense in violation of the UCMJ against any property, to wit: (describe offense with sufficient detail to include expressly or by necessary implication every element and any applicable sentence enhancer from the underlying offense).

(4) In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, with the intent to (threaten) (intimidate) the (spouse) (intimate partner) (immediate family member) of the accused, wrongfully violate a protection order by \_\_\_\_\_.

(5) In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, violate a protection order, to wit: \_\_\_\_\_, with the intent to commit a violent offense, to wit: (describe offense with sufficient detail to include expressly or by necessary implication every element), against the (spouse) (intimate partner) (immediate family member) of the accused.

(6) In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board-location) (subject matter jurisdiction data, if required), on or about \_\_\_\_ 20 \_\_, commit an assault upon \_\_\_\_\_, the (spouse) (intimate partner) (immediate family member) (immediate family member under the age of 16 years) of the accused, by unlawfully (strangling) (suffocating) him/her (with/by \_\_\_\_\_).”

**(p) A new paragraph 107a is inserted immediately after paragraph 107 to read as follows:**

**“107a. Article 134—(Sexual Harassment)**

a. *Text of statute.* See paragraph 91.

b. *Elements.*

(1) That the accused knowingly made sexual advances, demands or requests for sexual favors, or knowingly engaged in other conduct of a sexual nature;

(2) That such conduct was unwelcome;

(3) That, under the circumstances, such conduct:

(a) Would cause a reasonable person to believe, and a certain person did believe, that

submission to such conduct would be made, either explicitly or implicitly, a term or condition of a person's job, pay, career, benefits, or entitlements;

(b) Would cause a reasonable person to believe, and a certain person did believe, that submission to, or rejection of, such conduct would be used as a basis for decisions affecting that person's job, pay, career, benefits, or entitlements; or

(c) Was so severe, repetitive, or pervasive that a reasonable person would perceive, and a certain person did perceive, an intimidating, hostile, or offensive working environment; and

(4) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

*c. Explanation.*

(1) Whether "other conduct" is "of a sexual nature" is dependent upon the circumstances of the act or acts alleged and may include conduct that, without context, would not appear to be sexual in nature.

(2) *Nature of victim.* "A certain person" extends to any person, regardless of gender or seniority, and regardless of whether subject to the UCMJ, who by some duty or military-related reason may work or associate with the accused.

(3) *Timing and location of act.* The act constituting sexual harassment can occur at any location, regardless of whether the victim or accused is on or off duty at the time of the alleged act or acts. Physical proximity is not required, and the acts may be committed through online or other electronic means.

(4) *Mens Rea.* The accused must have actual knowledge that he or she is making a sexual

advance or a demand or request for sexual favors, or engaging in other conduct of a sexual nature. Actual knowledge is not required for the other elements of the offense.

(5) *A certain person's belief or perception.* For purposes of the portions of the elements dealing with a certain person's belief or perception, that belief or perception may be satisfied by such a belief or perception being formed at any time; the belief or perception need not be formed contemporaneously with the actions that gave rise to that belief or perception.

d. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.

e. *Sample specification.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board-location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_ 20\_\_, knowingly (make sexual advances) (demand or request sexual favors) (engage in conduct of a sexual nature), to wit (by saying to (him) (her), "\_\_\_\_\_,," or words to that effect) (by \_\_\_\_\_); that such conduct was unwelcome; and under the circumstances (would cause a reasonable person to believe, and \_\_\_\_\_ did believe, that submission to such conduct would be made, either explicitly or implicitly, a term or condition of a person's job, pay, career, benefits or entitlements) (would cause a reasonable person to believe, and \_\_\_\_\_ did believe, that submission to, or rejection of, such conduct would be used as a basis for career or employment decisions affecting \_\_\_\_\_) (was so severe, repetitive, or pervasive that a reasonable person would perceive, and \_\_\_\_\_ did perceive, an intimidating, hostile, or offensive working environment); and that such conduct was (to the prejudice of good order and discipline in the armed forces) (of a nature to bring discredit upon the armed forces) (to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces)."