

Presidential Documents

Executive Order 13740 of September 16, 2016

2016 Amendments to the Manual for Courts-Martial, United States

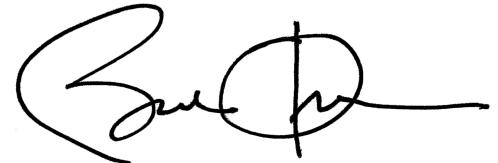
By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801–946), and in order to prescribe amendments to the Manual for Courts-Martial, United States,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

Section 1. Part I, Part II, and Part IV of the Manual for Courts-Martial, United States, are amended as described in the Annex attached 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 effective 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 proceedings, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to the effective 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.

A handwritten signature in black ink, appearing to read "Barack Obama". The signature is fluid and cursive, with a distinct circular flourish at the end.

THE WHITE HOUSE,
September 16, 2016.

ANNEX

Section 1. Part I of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 4 is amended to read as follows:

"The Manual for Courts-Martial shall consist of this Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, the Punitive Articles, and Nonjudicial Punishment Procedures (Part I-V). This Manual shall be applied consistent with the purpose of military law.

The Department of Defense, in conjunction with the Department of Homeland Security, publishes supplementary materials to accompany the Manual for Courts-Martial. These materials consist of a Preface, a Table of Contents, Discussions, Appendices, and an Index. These supplementary materials do not have the force of law.

The Manual shall be identified by the year in which it was printed; for example, "Manual for Courts-Martial, United States (20xx edition)." Any amendments to the Manual made by Executive Order shall be identified as "20xx" Amendments to the Manual for Courts-Martial, United States, "20xx" being the year the Executive Order was signed.

The Department of Defense Joint Service Committee (JSC) on Military Justice reviews the Manual for Courts-Martial and

proposes amendments to the Department of Defense (DoD) for consideration by the President on an annual basis. In conducting its annual review, the JSC is guided by DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice." DoD Directive 5500.17 includes provisions allowing public participation in the annual review process."

Sec. 2. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 201(c) is amended to read as follows:

"(c) *Contempt.* A judge detailed to a court-martial may punish for contempt any person who uses any menacing word, sign, or gesture in the presence of the judge during the proceedings of the court-martial; disturbs the proceedings of the court-martial by any riot or disorder; or willfully disobeys the lawful writ, process, order, rule, decree, or command of the court-martial. The punishment may not exceed confinement for 30 days or a fine of \$1,000, or both."

(b) R.C.M. 307(c)(3) is amended to read as follows:

"(3) *Specification.* A specification is a plain, concise, and definite statement of the essential facts constituting the offense charged. A specification is sufficient if it alleges every element of the charged offense expressly or by necessary implication; however, specifications under Article 134 must

expressly allege the terminal element. Except for aggravating factors under R.C.M 1003(d) and R.C.M. 1004, facts that increase the maximum authorized punishment must be alleged in order to permit the possible increased punishment. No particular format is required."

(c) R.C.M. 307(c)(4) is amended to read as follows:

"(4) *Multiple offenses.* Charges and specifications alleging all known offenses by an accused may be preferred at the same time. Each specification shall state only one offense. What is substantially one transaction should not be made the basis for an unreasonable multiplication of charges against one person. Unreasonable multiplication of charges is addressed in R.C.M. 906(b)(12); multiplicity is addressed in R.C.M. 907(b)(3)(B); and punishment limitations are addressed in R.C.M. 1003(c)(1)(C)."

(d) R.C.M. 701(e) is amended to read as follows:

"(e) *Access to witnesses and evidence.* Each party shall have adequate opportunity to prepare its case and equal opportunity to interview witnesses and inspect evidence, subject to the limitations in subsection (e)(1) of this rule. No party may unreasonably impede the access of another party to a witness or evidence.

(1) *Counsel for the Accused Interview of Victim of Alleged Sex-Related Offense.*

(A) Upon notice by counsel for the Government to counsel for the accused of the name of an alleged victim of a sex-related offense whom counsel for the Government intends to call to testify at a court-martial, counsel for the accused, or that lawyer's representative, as defined in Mil. R. Evid. 502(b)(3), shall make any request to interview that victim through the Special Victims' Counsel or other counsel for the victim, if applicable.

(B) If requested by an alleged victim of a sex-related offense who is subject to a request for interview under subsection (e)(1)(A) of this rule, any interview of the victim by counsel for the accused, or that lawyer's representative, as defined in Mil. R. Evid. 502(b)(3), shall take place only in the presence of counsel for the Government, counsel for the victim, or a sexual assault victim advocate.

(C) In this subsection, the term "sex-related offense" means—

(i) a violation of Article 120, 120a, 120b, 120c, or 125; or

(ii) an attempt to commit an offense specified in subsection (e)(1)(C)(i) of this rule under Article 80."

(e) R.C.M. 703(a) is amended to read as follows:

"(a) *In general.* The prosecution and defense and the court-martial shall have equal opportunity to obtain witnesses and

evidence, subject to the limitations set forth in R.C.M.

701(e)(1), including the benefit of compulsory process."

(f) R.C.M. 906(b)(12) is amended to read as follows:

"(12) *Unreasonable multiplication of charges.* The military judge may provide a remedy, as provided below, if he or she finds there has been an unreasonable multiplication of charges as applied to findings or sentence.

(i) *As applied to findings.* Charges that arise from substantially the same transaction, while not legally multiplicitous, may still be unreasonably multiplied as applied to findings. When the military judge finds, in his or her discretion, that the offenses have been unreasonably multiplied, the appropriate remedy shall be dismissal of the lesser offenses or merger of the offenses into one specification.

(ii) *As applied to sentence.* Where the military judge finds that the nature of the harm requires a remedy that focuses more appropriately on punishment than on findings, he or she may find that there is an unreasonable multiplication of charges as applied to sentence. If the military judge makes such a finding, the maximum punishment for those offenses determined to be unreasonably multiplied shall be the maximum authorized punishment of the offense carrying the greatest maximum punishment."

(g) R.C.M. 907(b)(3) is amended to read as follows:

"(3) *Permissible grounds.* A specification may be dismissed upon timely motion by the accused if one of the following is applicable:

(A) *Defective.* When the specification is so defective that it substantially misled the accused, and the military judge finds that, in the interest of justice, trial should proceed on any remaining charges and specifications without undue delay; or

(B) *Multiplicity.* When the specification is multiplicitous with another specification, is unnecessary to enable the prosecution to meet the exigencies of proof through trial, review, and appellate action, and should be dismissed in the interest of justice. A charge is multiplicitous if the proof of such charge also proves every element of another charge."

(h) R.C.M. 916(b)(1) is amended to read as follows:

"(1) *General rule.* Except as listed below in paragraphs (2) and (3), the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist."

(i) R.C.M. 916(b)(3) is amended to read as follows:

"(3) *Mistake of fact as to age.* In the defense of mistake of fact as to age as described in Article 120b(d)(2) in a prosecution of a child sexual offense, the accused has the burden of proving mistake of fact as to age by a preponderance of the evidence."

(j) R.C.M. 916(b)(4) is deleted.

(k) R.C.M. 916(j)(2) is amended to read as follows:

"(2) *Child Sexual Offenses.* It is a defense to a prosecution for Article 120b(b), sexual assault of a child, and Article 120b(c), sexual abuse of a child, that, at the time of the offense, the accused reasonably believed that the child had attained the age of 16 years, if the child had in fact attained at least the age of 12 years. The accused must prove this defense by a preponderance of the evidence."

(l) R.C.M. 916(j)(3) is deleted.

(m) R.C.M. 920(e)(5)(D) is amended to read as follows:

"(D) The burden of proof to establish the guilt of the accused is upon the Government. [When the issue of lack of mental responsibility is raised, add: The burden of proving the defense of lack of mental responsibility by clear and convincing evidence is upon the accused. When the issue of mistake of fact under R.C.M. 916(j)(2) is raised, add: The accused has the burden of proving the defense of mistake of fact as to age by a preponderance of the evidence.]"

(n) R.C.M. 1003(c)(1)(C) is amended to read as follows:

"(C) *Multiple Offenses.* When the accused is found guilty of two or more offenses, the maximum authorized punishment may be imposed for each separate offense, unless the military judge finds that the offenses are either multiplicious or unreasonably multiplied.

(i) *Multiplicity.* A charge is multiplicitous and must be dismissed if the proof of such charge also proves every element of another charged offense.

(ii) *Unreasonable Multiplication.* If the military judge finds that there is an unreasonable multiplication of charges as applied to sentence, the maximum punishment for those offenses shall be the maximum authorized punishment for the offense carrying the greatest maximum punishment. The military judge may either merge the offenses for sentencing, or dismiss one or more of the charges."

(o) R.C.M. 1004(c)(7)(B) is amended to read as follows:

"(B) The murder was committed: while the accused was engaged in the commission or attempted commission of any robbery, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, aggravated arson, forcible sodomy, burglary, kidnapping, mutiny, sedition, or piracy of an aircraft or vessel; or while the accused was engaged in the commission or attempted commission of any offense involving the wrongful distribution, manufacture, or introduction or possession, with intent to distribute, of a controlled substance; or, while the accused was engaged in flight or attempted flight after the commission or attempted commission of any such offense."

(p) R.C.M. 1004(c)(8) is amended to read as follows:

"(8) That only in the case of a violation of Article 118(4), the accused was the actual perpetrator of the killing or was a principal whose participation in the burglary, forcible sodomy, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, robbery, or aggravated arson was major and who manifested a reckless indifference for human life."

(q) R.C.M. 1004(c)(9) is amended to read as follows:

"(9) That, in addition to the offense for which the accused is eligible for the death penalty, the accused has also been convicted of a sexual offense in which:

(A) Under Article 120b, the victim was under the age of 12; or

(B) Under Articles 120 or 120b, the accused maimed or attempted to kill the victim;"

Sec. 3. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) In paragraphs 2, 4 through 59, 61-62, 64-86, 89, 91-100, and 102-113, the text of subparagraph d is uniformly amended by deleting the existing language and inserting the following words in its place:

"*Lesser included offenses.* See paragraph 3 of this part and Appendix 12A."

(b) Paragraph 3.b, Article 79, Conviction of lesser included

offenses, is amended to read as follows:

"b. Explanation.

(1) *In general.* A lesser offense is "necessarily included" in a charged offense when the elements of the lesser offense are a subset of the elements of the charged offense, thereby putting the accused on notice to defend against the lesser offense in addition to the offense specifically charged. A lesser offense may be "necessarily included" when:

(a) All of the elements of the lesser offense are included in the greater offense, and the common elements are identical (for example, larceny as a lesser included offense of robbery);

(b) All of the elements of the lesser offense are included in the greater offense, but at least one element is a subset by being legally less serious (for example, housebreaking as a lesser included offense of burglary); or

(c) All of the elements of the lesser offense are "included and necessary" parts of the greater offense, but the mental element is a subset by being legally less serious (for example, wrongful appropriation as a lesser included offense of larceny).

(2) *Sua sponte duty.* A military judge must instruct panel members on lesser included offenses reasonably raised by the evidence.

(3) *Multiple lesser included offenses.* When the offense charged is a compound offense comprising two or more lesser

included offenses, an accused may be found guilty of any or all of the offenses included in the offense charged. For example, robbery includes both larceny and assault. Therefore, in a proper case, a court-martial may find an accused not guilty of robbery, but guilty of wrongful appropriation and assault.

(4) *Findings of guilty to a lesser included offense.* A court-martial may find an accused not guilty of the offense charged, but guilty of a lesser included offense by the process of exception and substitution. The court-martial may except (that is, delete) the words in the specification that pertain to the offense charged and, if necessary, substitute language appropriate to the lesser included offense. For example, the accused is charged with murder in violation of Article 118, but found guilty of voluntary manslaughter in violation of Article 119. Such a finding may be worded as follows:

Of the Specification: Guilty, except the word "murder" substituting therefor the words "willfully and unlawfully kill," of the excepted word, not guilty, of the substituted words, guilty.

Of the Charge: Not guilty, but guilty of a violation of Article 119.

If a court-martial finds an accused guilty of a lesser included offense, the finding as to the charge shall state a

violation of the specific punitive article violated and not a violation of Article 79.

(5) *Specific lesser included offenses.* Specific lesser included offenses, if any, are listed for each offense in Appendix 12A, but the list is merely guidance to practitioners, is not all-inclusive, and is not binding on military courts."

(c) Paragraph 43.c.(5)(b), Article 118 - Murder is amended to insert "forcible" immediately before "sodomy".

(d) Paragraph 44.b.(2)(d), Article 119 - Manslaughter is amended to insert "forcible" immediately before "sodomy".

(e) Paragraph 45, Article 120 - Rape and sexual assault generally, is amended by deleting the following note:

"[Note: The subparagraphs that would normally address elements, explanation, lesser included offenses, maximum punishments, and sample specifications are generated under the President's authority to prescribe rules pursuant to Article 36. At the time of publishing this MCM, the President had not prescribed such rules for this version of Article 120. Practitioners should refer to the appropriate statutory language and, to the extent practicable, use Appendix 28 as a guide.]"

(f) Paragraph 45, Article 120 - Rape and sexual assault generally, is amended by inserting new subparagraph b immediately after subparagraph a to read as follows:

"b. *Elements.*

(1) *Rape involving contact between penis and vulva or anus or mouth.*

(a) *By unlawful force*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so with unlawful force.

(b) *By force causing or likely to cause death or grievous bodily harm*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by using force causing or likely to cause death or grievous bodily harm to any person.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.

(d) *By first rendering that other person unconscious*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by first rendering that other person unconscious.

(e) *By administering a drug, intoxicant, or other similar substance*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by administering to that other 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.

(2) *Rape involving penetration of the vulva or anus or mouth by any part of the body or any object.*

(a) *By force*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth of another person by any part of the body or by any object;

(ii) That the accused did so with unlawful force; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(b) *By force causing or likely to cause death or grievous bodily harm*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth of another person by any part of the body or by any object;

(ii) That the accused did so by using force causing or likely to cause death or grievous bodily harm to any person; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth of another person by any part of the body or by any object;

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(d) *By first rendering that other person unconscious*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth of another person by any part of the body or by any object;

(ii) That the accused did so by first rendering that other person unconscious; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(e) *By administering a drug, intoxicant, or other similar substance*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth of another person by any part of the body or by any object;

(ii) That the accused did so by administering to that other 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; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(3) *Sexual assault involving contact between penis and vulva or anus or mouth.*

(a) *By threatening or placing that other person in fear*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by threatening or placing that other person in fear.

(b) *By causing bodily harm*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by causing bodily harm to that other person.

(c) *By fraudulent representation*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by making a fraudulent representation that the sexual act served a professional purpose.

(d) *By false pretense*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis; and

(ii) That the accused did so by inducing a belief by any artifice, pretense, or concealment that the accused is another person.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis;

(ii) That the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring; and

(iii) That the accused knew or reasonably should have known that the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring.

(f) *When the other person is incapable of consenting*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by the penis;

(ii) That the other person was incapable of consenting to the sexual act due to:

(A) Impairment by any drug, intoxicant or other similar substance; or

(B) A mental disease or defect, or physical disability; and

(iii) That the accused knew or reasonably should have known of the impairment, mental disease or defect, or physical disability of the other person.

(4) *Sexual assault involving penetration of the vulva or anus or mouth by any part of the body or any object.*

(a) *By threatening or placing that other person in fear*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by any part of the body or by any object;

(ii) That the accused did so by threatening or placing that other person in fear; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(b) *By causing bodily harm*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by any part of the body or by any object;

(ii) That the accused did so by causing bodily harm to that other person; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(c) *By fraudulent representation*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by any part of the body or by any object;

(ii) That the accused did so by making a fraudulent representation that the sexual act served a professional purpose when it served no professional purpose; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(d) *By false pretense*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by any part of the body or by any object;

(ii) That the accused did so by inducing a belief by any artifice, pretense, or concealment that the accused is another person; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by any part of the body or by any object;

(ii) That the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring;

(iii) That the accused knew or reasonably should have known that the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring.

(iv) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(f) *When the other person is incapable of consenting*

(i) That the accused committed a sexual act upon another person by causing penetration, however slight, of the vulva or anus or mouth by any part of the body or by any object;

(ii) That the other person was incapable of consenting to the sexual act due to:

(A) Impairment by any drug, intoxicant or other similar substance; or

(B) A mental disease or defect, or physical disability;

(iii) That the accused knew or reasonably should have known of the impairment, mental disease or defect, or physical disability of the other person; and

(iv) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(5) *Aggravated sexual contact involving the touching of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.*

(a) *By force*

(i) That the accused committed sexual contact upon another person by 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;

(ii) That the accused did so with unlawful force; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(b) *By force causing or likely to cause death or grievous bodily harm*

(i) That the accused committed sexual contact upon another person by 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;

(ii) That the accused did so by using force causing or likely to cause death or grievous bodily harm to any person; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping*

(i) That the accused committed sexual contact upon another person by 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;

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(d) *By first rendering that other person unconscious*

(i) That the accused committed sexual contact upon another person by 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;

(ii) That the accused did so by first rendering that other person unconscious; and

(iii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(e) *By administering a drug, intoxicant, or other similar substance*

(i) That the accused committed sexual contact upon another person by 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;

(ii) That the accused did so by administering to that other 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; and

(iii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(6) *Aggravated sexual contact involving the touching of any body part of any person.*

(a) *By force*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so with unlawful force; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(b) *By force causing or likely to cause death or grievous bodily harm*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by using force causing or likely to cause death or grievous bodily harm to any person; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(d) *By first rendering that other person unconscious*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by first rendering that other person unconscious; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(e) *By administering a drug, intoxicant, or other similar substance*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by administering to that other 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; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(7) *Abusive sexual contact involving the touching of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.*

(a) *By threatening or placing that other person in fear*

(i) That the accused committed sexual contact upon another person by 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;

(ii) That the accused did so by threatening or placing that other person in fear; and

(iii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(b) *By causing bodily harm*

(i) That the accused committed sexual contact upon another person by 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;

(ii) That the accused did so by causing bodily harm to that other person; and

(iii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(c) *By fraudulent representation*

(i) That the accused committed sexual contact upon another person by 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;

(ii) That the accused did so by making a fraudulent representation that the sexual act served a professional purpose; and

(iii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(d) *By false pretense*

(i) That the accused committed sexual contact upon another person by 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;

(ii) That the accused did so by inducing a belief by any artifice, pretense, or concealment that the accused is another person; and

(iii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring*

(i) That the accused committed sexual contact upon another person by 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;

(ii) That the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring;

(iii) That the accused knew or reasonably should have known that the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring; and

(iv) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(f) When the other person is incapable of consenting

(i) That the accused committed sexual contact upon another person by 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;

(ii) That the other person was incapable of consenting to the sexual act due to:

(A) Impairment by any drug, intoxicant or other similar substance; or

(B) A mental disease or defect, or physical disability;

(iii) That the accused knew or reasonably should have known of the impairment, mental disease or defect, or physical disability of the other person; and

(iv) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(8) Abusive sexual contact involving the touching of any body part of any person.

(a) By threatening or placing that other person in fear

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by threatening or placing that other person in fear; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(b) *By causing bodily harm*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by causing bodily harm to that other person; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(c) *By fraudulent representation*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by making a fraudulent representation that the sexual act served a professional purpose when it served no professional purpose; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(d) *By false pretense*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the accused did so by inducing a belief by any artifice, pretense, or concealment that the accused is another person; and

(iii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring;

(iii) That the accused knew or reasonably should have known that the other person was asleep, unconscious, or otherwise unaware that the sexual act was occurring; and

(iv) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(f) *When the other person is incapable of consenting*

(i) That the accused committed sexual contact upon another person by touching, or causing another person to touch, any body part of any person;

(ii) That the other person was incapable of consenting to the sexual act due to:

(A) Impairment by any drug, intoxicant, or other similar substance; or

(B) A mental disease or defect, or physical disability;

(iii) That the accused knew or reasonably should have known of the impairment, mental disease or defect, or physical disability of the other person; and

(iv) That the accused did so with intent to arouse or gratify the sexual desire of any person."

(g) Paragraph 45, Article 120 – Rape and sexual assault generally, is amended by inserting new subparagraph c immediately after subparagraph b to read as follows:

"c. *Explanation.*

(1) *In general.* Sexual offenses have been separated into three statutes: adults (120), children (120b), and other offenses (120c).

(2) *Definitions.* The terms are defined in Paragraph 45.a.(g).

(3) *Victim character and privilege.* See Mil. R. Evid. 412 concerning rules of evidence relating to the character of the victim of an alleged sexual offense. See Mil. R. Evid. 514 concerning rules of evidence relating to privileged communications between the victim and victim advocate.

(4) *Consent as an element.* Lack of consent is not an element of any offense under this paragraph unless expressly stated. Consent may be relevant for other purposes."

(h) Paragraph 45, Article 120 - Rape and sexual assault generally, is amended by inserting new subparagraph d immediately after subparagraph c to read as follows:

"d. *Lesser included offenses.* See paragraph 3 of this part and Appendix 12A."

(i) Paragraph 45, Article 120 - Rape and sexual assault generally, subparagraph e is amended to read as follows:

"e. *Maximum punishments.*

(1) *Rape.* Forfeiture of all pay and allowances and confinement for life without eligibility for parole. Mandatory minimum - Dismissal or dishonorable discharge.

(2) *Sexual assault.* Forfeiture of all pay and allowances, and confinement for 30 years. Mandatory minimum - Dismissal or dishonorable discharge.

(3) *Aggravated sexual contact.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(4) *Abusive sexual contact.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 7 years."

(j) Paragraph 45, Article 120 - Rape and sexual assault generally, is amended by inserting new subparagraph f immediately after subparagraph e to read as follows:

"f. *Sample specifications.*

(1) *Rape involving contact between penis and vulva or anus or mouth.*

(a) *By force.* In that (personal jurisdiction data), did (at/on board location), on or about _____, commit a sexual act upon _____ by causing penetration of _____'s (vulva) (anus) (mouth) with _____'s penis, by using unlawful force.

(b) *By force causing or likely to cause death or grievous bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____ by causing penetration of _____'s (vulva) (anus) (mouth) with _____'s penis, by using force likely to cause death or grievous bodily harm to _____, to wit: _____.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____ by causing penetration of _____'s (vulva) (anus) (mouth) with _____'s penis, by (threatening _____) (placing _____ in fear) that _____ would be subjected to (death) (grievous bodily harm) (kidnapping).

(d) *By first rendering that other person unconscious.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____ by causing penetration of _____'s (vulva) (anus) (mouth) with _____'s penis, by first rendering _____ unconscious by _____.

(e) *By administering a drug, intoxicant, or other similar substance.* In that (personal jurisdiction data), did

(at/on board location), on or about ____ 20_____, commit a sexual act upon _____ by causing penetration of _____'s (vulva) (anus) (mouth) with _____'s penis, by administering to _____ (by force) (by threat of force) (without the knowledge or permission of _____) a (drug) (intoxicant) (list other similar substance), to wit: _____, thereby substantially impairing the ability of _____ to appraise or control his/her conduct.

(2) *Rape involving penetration of genital opening by any part of the body or any object.*

(a) *By force.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20_____, commit a sexual act upon _____, by penetrating the (vulva) (anus) (mouth) of _____ with (list body part or object) by using unlawful force, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse/gratify the sexual desire of) _____.

(b) *By force causing or likely to cause death or grievous bodily injury.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20_____, commit a sexual act upon _____, by penetrating the (vulva) (anus) (mouth) of _____ with (list body part or object) by using force likely to cause death or grievous bodily harm to _____, to wit: _____, with an intent to (abuse) (humiliate)

(harass) (degrade) (arouse/gratify the sexual desire of) _____.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____, by penetrating the (vulva) (anus) (mouth) of _____ with (list body part or object) by (threatening _____) (placing _____ in fear) that _____ would be subjected to (death) (grievous bodily harm) (kidnapping), with an intent to (abuse) (humiliate) (harass) (degrade) (arouse/gratify the sexual desire of) _____.

(d) *By first rendering that other person unconscious.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____, by penetrating the (vulva) (anus) (mouth) of _____ with (list body part or object) by first rendering _____ unconscious, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse/gratify the sexual desire of) _____.

(e) *By administering a drug, intoxicant, or other similar substance.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____, by penetrating the (vulva) (anus) (mouth) of _____ with (list body part or object) by administering to

_____ (by force) (by threat of force) (without the knowledge or permission of _____) a (drug) (intoxicant) (list other similar substance), to wit: _____, thereby substantially impairing the ability of _____ to appraise or control his/her conduct, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse/gratify the sexual desire of) _____.

(3) *Sexual assault involving contact between penis and vulva or anus or mouth.*

(a) *By threatening or placing that other person in fear.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____, by causing penetration of _____'s (vulva) (anus) (mouth) with _____'s penis, by (threatening _____) (placing _____ in fear).

(b) *By causing bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____, by causing penetration of _____'s (vulva) (anus) (mouth) with _____'s penis by causing bodily harm to _____, to wit: _____.

(c) *By fraudulent representation.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____, by

causing penetration of _____'s (vulva) (anus) (mouth) with _____'s penis by making a fraudulent representation that the sexual act served a professional purpose, to wit: _____.

(d) *By false pretense.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____, by causing penetration of _____'s (vulva) (anus) (mouth) with _____'s penis by inducing a belief by (artifice) (pretense) (concealment) that the said accused was another person.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____, by causing penetration of _____'s (vulva) (anus) (mouth) with _____'s penis when he/she knew or reasonably should have known that _____ was (asleep) (unconscious) (unaware the sexual act was occurring due to _____).

(f) *When the other person is incapable of consenting.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____, by causing penetration of _____'s (vulva) (anus) (mouth) with _____'s penis, when _____ was incapable of consenting to the sexual act because he/she [was impaired by (a drug, to wit: _____) (an intoxicant, to wit:

_____) ()] [had a (mental disease, to wit: _____)
(mental defect, to wit: _____) (physical disability, to wit:
_____)], a condition that was known or reasonably should
have been known by the said accused.

(4) *Sexual assault involving penetration of vulva or
anus or mouth by any part of the body or any object.*

(a) *By threatening or placing that other person
in fear.* In that (personal jurisdiction data), did (at/on board
location), on or about ____ 20____, commit a sexual act upon
_____, by penetrating the (vulva) (anus) (mouth) of
_____ with (list body part or object), by (threatening
_____) (placing _____ in fear), with an intent to
(abuse) (humiliate) (harass) (degrade) (arouse) (gratify the
sexual desire of) _____.

(b) *By causing bodily harm.* In that (personal
jurisdiction data), did (at/on board location), on or about ____
20____, commit a sexual act upon _____, by penetrating the
(vulva) (anus) (mouth) of _____ with (list body part or
object), by causing bodily harm to _____, to wit: _____
with an intent to (abuse) (humiliate) (harass) (degrade)
(arouse) (gratify the sexual desire of) _____.

(c) *By fraudulent representation.* In that
(personal jurisdiction data), did (at/on board location), on or

about ____ 20____, commit a sexual act upon _____, by penetrating the (vulva) (anus) (mouth) of _____ with (list body part or object), by making a fraudulent representation that the sexual act served a professional purpose, to wit: _____, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) _____.

(d) *By false pretense.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____, by penetrating the (vulva) (anus) (mouth) of _____ with (list body part or object), by inducing a belief by (artifice) (pretense) (concealment) that the said accused was another person, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) _____.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____, by penetrating the (vulva) (anus) (mouth) of _____ with (list body part or object), when he/she knew or reasonably should have known that _____ was (asleep) (unconscious) (unaware the sexual act was occurring due to _____), with an intent to (abuse)

(humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) _____.

(f) *When the other person is incapable of consenting.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____, by penetrating the (vulva) (anus) (mouth) of _____ with (list body part or object), when _____ was incapable of consenting to the sexual act because he/she [was impaired by (a drug, to wit: _____) (an intoxicant, to wit: _____) ()] [had a (mental disease, to wit: _____) (mental defect, to wit: _____) (physical disability, to wit: _____)], a condition that was known or reasonably should have been known by the said accused, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) _____.

(5) *Aggravated sexual contact involving the touching of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.*

(a) *By force.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause _____ to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _____, by using unlawful force, with an intent

to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) _____.

(b) *By force causing or likely to cause death or grievous bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause _____ to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _____, by using force likely to cause death or grievous bodily harm to _____, to wit: _____, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) _____.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause _____ to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _____, by (threatening _____) (placing _____ in fear) that _____ would be subjected to (death) (grievous bodily harm) (kidnapping), with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) _____.

(d) *By first rendering that other person unconscious.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause

_____ to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _____, by rendering _____ unconscious by _____, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) _____.

(e) *By administering a drug, intoxicant, or other similar substance.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause _____ to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _____, by administering to _____ (by force) (by threat of force) (without the knowledge or permission of ____) a (drug) (intoxicant) (____) thereby substantially impairing the ability of _____ to appraise or control his/her conduct, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) _____.

(6) *Aggravated sexual contact involving the touching of any body part of any person.*

(a) *By force.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause _____ to touch)] [(directly) (through the clothing)] (name of body part) of _____, by using unlawful force, with an intent to (arouse) (gratify the sexual desire of) _____.

(b) *By force causing or likely to cause death or grievous bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause _____ to touch)] [(directly) (through the clothing)] (name of body part) of _____, by using force likely to cause death or grievous bodily harm to _____, to wit: _____, with an intent to (arouse) (gratify the sexual desire of) _____.

(c) *By threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause _____ to touch)] [(directly) (through the clothing)] (name of body part) of _____, by (threatening _____) (placing _____ in fear) that _____ would be subjected to (death) (grievous bodily harm) (kidnapping), with an intent to (arouse) (gratify the sexual desire of) _____.

(d) *By first rendering that other person unconscious.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause _____ to touch)] [(directly) (through the clothing)] (name of body part) of _____, by rendering _____ unconscious by _____, with an intent to (arouse) (gratify the sexual desire of) _____.

(e) *By administering a drug, intoxicant, or other similar substance.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause _____ to touch)] [(directly) (through the clothing)] (name of body part) of _____, by administering to _____ (by force) (by threat of force) (without the knowledge or permission of _____) a (drug) (intoxicant) (_____) and thereby substantially impairing the ability of _____ to appraise or control his/her conduct, with an intent to (arouse) (gratify the sexual desire of) _____.

(7) *Abusive sexual contact involving the touching of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.*

(a) *By threatening or placing that other person in fear.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _____ by (threatening _____) (placing _____ in fear), with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) _____.

(b) *By causing bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause another person to touch)]

[(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _____ by causing bodily harm to _____, to wit: _____, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) _____.

(c) *By fraudulent representation.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _____ by making a fraudulent representation that the sexual contact served a professional purpose, to wit: _____, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) _____.

(d) *By false pretense.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _____ by inducing a belief by (artifice) (pretense) (concealment) that the said accused was another person, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) _____.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _____ when he/she knew or reasonably should have known that _____ was (asleep) (unconscious) (unaware the sexual contact was occurring due to _____), with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) _____.

(f) *When that person is incapable of consenting.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _____ when _____ was incapable of consenting to the sexual contact because he/she [was impaired by (a drug, to wit: _____) (an intoxicant, to wit: _____) ()] [had a (mental disease, to wit: _____) (mental defect, to wit: _____) (physical disability, to wit: _____)] and this condition was known or reasonably should have been known by _____, with an intent to (abuse) (humiliate) (degrade) (arouse) (gratify the sexual desire of) _____.

(8) *Abusive sexual contact involving the touching of any body part of any person.*

(a) *By threatening or placing that other person in fear.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (name of body part) of _____ by (threatening _____) (placing _____ in fear), with an intent to (arouse) (gratify the sexual desire of) _____.

(b) *By causing bodily harm.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (name of body part) of _____ by causing bodily harm to _____, to wit: _____, with an intent to (arouse) (gratify the sexual desire of) _____.

(c) *By fraudulent representation.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (name of body part) of _____ by making a fraudulent representation that the sexual contact served a professional purpose, to wit: _____, with an intent to (arouse) (gratify the sexual desire of) _____.

(d) *By false pretense.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (name of body part) of _____ by inducing a belief by (artifice) (pretense) (concealment) that the said accused was another person, with an intent to (arouse) (gratify the sexual desire of) _____.

(e) *Of a person who is asleep, unconscious, or otherwise unaware the act is occurring.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (name of body part) of _____ when he/she knew or reasonably should have known that _____ was (asleep) (unconscious) (unaware the sexual contact was occurring due to _____), with an intent to (arouse) (gratify the sexual desire of) _____.

(f) *When that person is incapable of consenting.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20____, [(touch) (cause another person to touch)] [(directly) (through the clothing)] the (name of body part) of _____ when _____ was incapable of consenting to the sexual contact because he/she [was impaired by (a drug, to wit: _____) (an intoxicant, to wit: _____) ()] [had a (mental disease, to wit: _____) (mental defect, to

wit: _____) (physical disability, to wit: _____)], a condition that was known or reasonably should have been known by _____, with an intent to (arouse) (gratify the sexual desire of) _____."

(k) Paragraph 45b, Article 120b - Rape and sexual assault of a child, is amended by deleting the following note, which appears immediately after subparagraph a:

"[Note: The subparagraphs that would normally address elements, explanation, lesser included offenses, maximum punishments, and sample specifications are generated under the President's authority to prescribe rules pursuant to Article 36. At the time of publishing this MCM, the President had not prescribed such rules for this new statute, Article 120b. Practitioners should refer to the appropriate statutory language and, to the extent practicable, use Appendix 28 as a guide.]"

(l) Paragraph 45b, Article 120b - Rape and Sexual assault of a child, is amended by inserting new subparagraph b immediately after subparagraph a to read as follows:

"b. Elements.

(1) Rape of a child involving contact between penis and vulva or anus or mouth.

(a) Rape of a child who has not attained the age of 12.

(i) That the accused committed a sexual act upon a child causing penetration, however slight, by the penis of the vulva or anus or mouth; and

(ii) That at the time of the sexual act the child had not attained the age of 12 years.

(b) *Rape by force of a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child causing penetration, however slight, by the penis of the vulva or anus or mouth; and

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years, and

(iii) That the accused did so by using force against that child or any other person.

(c) *Rape by threatening or placing in fear a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child causing penetration, however slight, by the penis of the vulva or anus or mouth;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by threatening the child or another person or placing that child in fear.

(d) *Rape by rendering unconscious a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child causing penetration, however slight, by the penis of the vulva or anus or mouth;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by rendering that child unconscious.

(e) *Rape by administering a drug, intoxicant, or other similar substance to a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child causing penetration, however slight, by the penis of the vulva or anus or mouth;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by administering to that child a drug, intoxicant, or other similar substance.

(2) *Rape of a child involving penetration of vulva or anus or mouth by any part of the body or any object.*

(a) *Rape of a child who has not attained the age of 12.*

(i) That the accused committed a sexual act upon a child by causing penetration, however slight, of the vulva or anus or mouth of the child by any part of the body or by any object;

(ii) That at the time of the sexual act the child had not attained the age of 12 years; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(b) *Rape by force of a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child by causing penetration, however slight, of the vulva or anus or mouth of the child by any part of the body or by any object;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years;

(iii) That the accused did so by using force against that child or any other person; and

(iv) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(c) *Rape by threatening or placing in fear a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child by causing penetration, however slight, of the vulva or anus or mouth of the child by any part of the body or by any object;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years;

(iii) That the accused did so by threatening the child or another person or placing that child in fear; and

(iv) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(d) *Rape by rendering unconscious a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child by causing penetration, however slight, of the vulva or anus or mouth of the child by any part of the body or by any object;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years;

(iii) That the accused did so by rendering that child unconscious; and

(iv) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(e) *Rape by administering a drug, intoxicant, or other similar substance to a child who has attained the age of 12.*

(i) That the accused committed a sexual act upon a child by causing penetration, however slight, of the vulva or anus or mouth of the child by any part of the body or by any object;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years;

(iii) That the accused did so by administering to that child a drug, intoxicant, or other similar substance; and

(iv) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(3) *Sexual assault of a child.*

(a) *Sexual assault of a child who has attained the age of 12 involving contact between penis and vulva or anus or mouth.*

(i) That the accused committed a sexual act upon a child causing contact between penis and vulva or anus or mouth; and

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years.

(b) *Sexual assault of a child who has attained the age of 12 involving penetration of vulva or anus or mouth by any part of the body or any object.*

(i) That the accused committed a sexual act upon a child by causing penetration, however slight, of the vulva or anus or mouth of the child by any part of the body or by any object;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(4) *Sexual abuse of a child.*

(a) *Sexual abuse of a child by sexual contact involving the touching of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.*

(i) That the accused committed sexual contact upon a child by 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; and

(ii) That the accused did so with intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(b) *Sexual abuse of a child by sexual contact involving the touching of any body part.*

(i) That the accused committed sexual contact upon a child by touching, or causing another person to touch, either directly or through the clothing, any body part of any person; and

(ii) That the accused did so with intent to arouse or gratify the sexual desire of any person.

(c) *Sexual abuse of a child by indecent exposure.*

(i) That the accused intentionally exposed his or her genitalia, anus, buttocks, or female areola or nipple to a child by any means; and

(ii) That the accused did so with an intent to abuse, humiliate or degrade any person, or to arouse or gratify the sexual desire of any person.

(d) *Sexual abuse of a child by indecent communication.*

(i) That the accused intentionally communicated indecent language to a child by any means; and

(ii) That the accused did so with an intent to abuse, humiliate or degrade any person, or to arouse or gratify the sexual desire of any person.

(e) *Sexual abuse of a child by indecent conduct.*

(i) That the accused engaged in indecent conduct, intentionally done with or in the presence of a child;

and

(ii) That the indecent conduct amounted to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations."

(m) Paragraph 45b, Article 120b – Rape and sexual assault of a child, is amended by inserting new subparagraph c immediately after subparagraph b to read as follows:

"c. *Explanation.*

(1) *In general.* Sexual offenses have been separated into three statutes: adults (120), children (120b), and other offenses (120c).

(2) *Definitions.* Terms not defined in this paragraph are defined in paragraph 45b.a.(h), *supra.*"

(n) Paragraph 45b, Article 120b – Rape and sexual assault of a child, is amended by inserting new subparagraph d immediately after subparagraph c to read as follows:

"d. *Lesser included offenses.* See paragraph 3 of this part and Appendix 12A."

(o) Paragraph 45b, Article 120b – Rape and sexual assault of a child, subparagraph e is amended to read as follows:

"e. *Maximum punishment.*

(1) *Rape of a child.* Forfeiture of all pay and allowances, and confinement for life without eligibility for parole. Mandatory minimum - Dismissal or dishonorable discharge.

(2) *Sexual assault of a child.* Forfeiture of all pay and allowances, and confinement for 30 years. Mandatory minimum - Dismissal or dishonorable discharge.

(3) *Sexual abuse of a child.*

(a) *Cases involving sexual contact.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(b) *Other cases.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years."

(p) Paragraph 45b, Article 120b - Rape and sexual assault of a child, is amended by inserting new subparagraph f immediately after subparagraph e to read as follows:

"f. *Sample specifications.*

(1) *Rape of a child involving contact between penis and vulva or anus or mouth.*

(a) *Rape of a child who has not attained the age of 12.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20__, commit a sexual act upon

_____, a child who had not attained the age of 12 years, by causing penetration of _____'s (vulva) (anus) (mouth) with _____'s penis.

(b) *Rape by force of a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____, a child who had attained the age of 12 years but had not attained the age of 16 years, by causing penetration of _____'s (vulva) (anus) (mouth) with _____'s penis, by using force against _____, to wit:

_____.

(c) *Rape by threatening or placing in fear a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____, a child who had attained the age of 12 years but had not attained the age of 16 years, by causing penetration of _____'s (vulva) (anus) (mouth) with _____'s penis by (threatening ____) (placing _____ in fear).

(d) *Rape by rendering unconscious of a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____, a child who had attained the age of 12 years but had not attained the age of 16

years, by causing penetration of _____'s (vulva) (anus) (mouth) with _____'s penis by rendering _____ unconscious by _____.

(e) *Rape by administering a drug, intoxicant, or other similar substance to a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20_____, commit a sexual act upon _____, a child who had attained the age of 12 years but had not attained the age of 16 years, by causing penetration of _____'s (vulva) (anus) (mouth) with _____'s penis by administering to _____ a (drug) (intoxicant) (_____), to wit: _____.

(2) *Rape of a child involving penetration of the vulva or anus or mouth by any part of the body or any object.*

(a) *Rape of a child who has not attained the age of 12.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20_____, commit a sexual act upon _____, a child who had not attained the age of 12 years, by penetrating the (vulva) (anus) (mouth) of _____ with (list body part or object), with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) _____.

(b) *Rape by force of a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20_____, commit a sexual act upon _____, a child who had attained the age of 12 years but had not attained the age of 16 years, by penetrating the (vulva) (anus) (mouth) of _____ with (list body part or object), by using force against _____, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) _____.

(c) *Rape by threatening or placing in fear a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20_____, commit a sexual act upon _____, a child who had attained the age of 12 years but had not attained the age of 16 years, by penetrating the (vulva) (anus) (mouth) of _____ with (list body part or object), by (threatening _____) (placing _____ in fear), with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) _____.

(d) *Rape by rendering unconscious of a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20_____, commit a sexual act upon _____, a child who had attained the age of 12 years but had not attained the age of 16

years, by penetrating the (vulva) (anus) (mouth) of _____ with (list body part or object), by rendering _____ unconscious, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) _____.

(e) *Rape by administering a drug, intoxicant, or other similar substance to a child who has attained the age of 12 years.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____, a child who had attained the age of 12 years but had not attained the age of 16 years, by penetrating the (vulva) (anus) (mouth) of _____ with (list body part or object), by administering to _____ a (drug) (intoxicant) (_____), to wit: _____, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) _____.

(3) *Sexual assault of a child.*

(a) *Sexual assault of a child who has attained the age of 12 years involving contact between penis and vulva or anus or mouth.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20____, commit a sexual act upon _____, a child who had attained the age of 12 years but had not attained the age of 16 years, by causing penetration of _____'s (vulva) (anus) (mouth) with _____'s penis.

(b) *Sexual assault of a child who has attained the age of 12 years involving penetration of vulva or anus or mouth by any part of the body or any object.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20_____, commit a sexual act upon _____, a child who had attained the age of 12 years but had not attained the age of 16 years, by penetrating the (vulva) (anus) (mouth) of _____ with (list body part or object), with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) _____.

(4) *Sexual abuse of a child.*

(a) *Sexual abuse of a child involving sexual contact involving the touching of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20_____, commit a lewd act upon _____, a child who had not attained the age of 16 years, by intentionally [(touching) (causing _____ to touch)] [(directly) (through the clothing)] the (genitalia) (anus) (groin) (breast) (inner thigh) (buttocks) of _____, with an intent to (abuse) (humiliate) (degrade) _____.

(b) *Sexual abuse of a child involving sexual contact involving the touching of any body part of any person.* In that (personal jurisdiction data), did (at/on board

location), on or about ____ 20_____, commit a lewd act upon _____, a child who had not attained the age of 16 years, by intentionally exposing [his (genitalia) (anus) (buttocks)] [her (genitalia) (anus) (buttocks) (areola) (nipple)] to _____, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) _____.

(c) *Sexual abuse of a child involving indecent exposure.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20_____, commit a lewd act upon _____, a child who had not attained the age of 16 years, by intentionally [(touching) (causing _____ to touch)] [(directly) (through the clothing)] (name of body part) of _____, with an intent to (arouse) (gratify the sexual desire of) _____.

(d) *Sexual abuse of a child involving indecent communication.* In that (personal jurisdiction data), did (at/on board location), on or about ____ 20_____, commit a lewd act upon _____, a child who had not attained the age of 16 years, by intentionally communicating to _____ indecent language to wit: _____, with an intent to (abuse) (humiliate) (harass) (degrade) (arouse) (gratify the sexual desire of) _____.

(e) *Sexual abuse of a child involving indecent conduct.* In that (personal jurisdiction data), did (at/on board

location), on or about _____ 20_____, commit a lewd act upon _____, a child who had not attained the age of 16 years, by engaging in indecent conduct, to wit: _____, intentionally done (with) (in the presence of) _____, which conduct amounted to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations."

(q) Paragraph 45c.a.(c), Article 120c - Other sexual misconduct, is amended by deleting the phrase "(c) Definitions." and inserting the phrase "(d) Definitions." in its place.

(r) Paragraph 45c, Article 120c - Other sexual misconduct, is amended by deleting the following note, which appears immediately after subparagraph a:

"[Note: The subparagraphs that would normally address elements, explanation, lesser included offenses, maximum punishments, and sample specifications are generated under the President's authority to prescribe rules pursuant to Article 36. At the time of publishing this MCM, the President had not prescribed such rules for this new statute, Article 120c. Practitioners should refer to the appropriate statutory language and, to the extent practicable, use Appendix 28 as a guide.]"

(s) Paragraph 45c, Article 120c – Other sexual misconduct, is amended by inserting new subparagraph b immediately after subparagraph a to read as follows:

"b. Elements.

(1) Indecent viewing.

(a) That the accused knowingly and wrongfully viewed the private area of another person;

(b) That said viewing was without the other person's consent; and

(c) That said viewing took place under circumstances in which the other person had a reasonable expectation of privacy.

(2) Indecent recording.

(a) That the accused knowingly recorded (photographed, videotaped, filmed, or recorded by any means) the private area of another person;

(b) That said recording was without the other person's consent; and

(c) That said recording was made under circumstances in which the other person had a reasonable expectation of privacy.

(3) Broadcasting of an indecent recording.

- (a) That the accused knowingly broadcast a certain recording of another person's private area;
- (b) That said recording was made or broadcast without the other person's consent;
- (c) That the accused knew or reasonably should have known that the recording was made or broadcast without the other person's consent;
- (d) That said recording was made under circumstances in which the other person had a reasonable expectation of privacy; and
- (e) That the accused knew or reasonably should have known that said recording was made under circumstances in which the other person had a reasonable expectation of privacy.

(4) Distribution of an indecent visual recording.

- (a) That the accused knowingly distributed a certain recording of another person's private area;
- (b) That said recording was made or distributed without the other person's consent;
- (c) That the accused knew or reasonably should have known that said recording was made or distributed without the other person's consent;

(d) That said recording was made under circumstances in which the other person had a reasonable expectation of privacy; and

(e) That the accused knew or reasonably should have known that said recording was made under circumstances in which the other person had a reasonable expectation of privacy.

(5) *Forcible pandering.*

That the accused compelled another person to engage in an act of prostitution with any person.

(6) *Indecent exposure.*

(a) That the accused exposed his or her genitalia, anus, buttocks, or female areola or nipple;

(b) That the exposure was in an indecent manner; and

(c) That the exposure was intentional."

(t) Paragraph 45c, Article 120c – Other sexual misconduct, is amended by inserting new subparagraph c immediately after subparagraph b to read as follows:

"c. *Explanation.*

(1) *In general.* Sexual offenses have been separated into three statutes: adults (120), children (120b), and other offenses (120c),

(2) *Definitions.*

(a) *Recording.* A "recording" is a still or moving visual image captured or recorded by any means.

(b) Other terms are defined in paragraph 45c.a. (d), *supra.*"

(u) Paragraph 45c, Article 120c – Other sexual misconduct, is amended by inserting new subparagraph d immediately after subparagraph c to read as follows:

"d. *Lesser included offenses.* See paragraph 3 of this part and Appendix 12A."

(v) Paragraph 45c, Article 120c – Other sexual misconduct, is amended by inserting new subparagraph f immediately after subparagraph e to read as follows:

"f. *Sample specifications.*

(1) *Indecent viewing, visual recording, or broadcasting.*

(a) *Indecent viewing.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20_____, knowingly and wrongfully view the private area of _____, without (his) (her) consent and under circumstances in which (he) (she) had a reasonable expectation of privacy.

(b) *Indecent visual recording.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20_____, knowingly (photograph) (videotape) (film) (make a

recording of) the private area of _____, without (his) (her) consent and under circumstances in which (he) (she) had a reasonable expectation of privacy.

(c) *Broadcasting or distributing an indecent visual recording.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20_____, knowingly (broadcast) (distribute) a recording of the private area of _____, when the said accused knew or reasonably should have known that the said recording was (made) (and/or) (distributed/broadcast) without the consent of _____ and under circumstances in which (he) (she) had a reasonable expectation of privacy.

(2) *Forcible pandering.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20_____, wrongfully compel _____ to engage in (a sexual act) (sexual contact) with _____, to wit: _____, for the purpose of receiving (money) (other compensation) (_____).

(3) *Indecent exposure.* In that (personal jurisdiction data), did (at/on board location), on or about _____ 20_____, intentionally expose [his (genitalia) (anus) (buttocks)] [her (genitalia) (anus) (buttocks) (areola) (nipple)] in an indecent manner, to wit: _____."

(wx) Paragraph 51, Article 125 - Sodomy is amended to read as follows:

"51. Article 125—Forcible sodomy; bestiality

a. *Text of statute.*

(a) **Forcible Sodomy.**—Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex by unlawful force or without the consent of the other person is guilty of forcible sodomy and shall be punished as a court-martial may direct.

(b) **Bestiality.**—Any person subject to this chapter who engages in unnatural carnal copulation with an animal is guilty of bestiality and shall be punished as a court-martial may direct.

(c) **Scope of Offenses.**—Penetration, however slight, is sufficient to complete an offense under subsection (a) or (b).

b. *Elements.*

(1) *Forcible sodomy.*

(a) That the accused engaged in unnatural carnal copulation with a certain other person.

(b) That the act was done by unlawful force or without the consent of the other person.

(2) *Bestiality.*

(a) That the accused engaged in unnatural carnal copulation with an animal.

c. *Explanation.*

(1) It is unnatural carnal copulation for a person to take into that person's mouth or anus the sexual organ of another person or of an animal; or to place that person's sexual organ in the mouth or anus of another person or of an animal; or to have carnal copulation in any opening of the body, except the sexual parts, with another person; or to have carnal copulation with an animal.

(2) For purposes of this Article, the term "unlawful force" means an act of force done without legal justification or excuse.

d. *Lesser included offenses.*

See paragraph 3 of this part and Appendix 12A.

e. *Maximum punishment.*

(1) *Forcible sodomy.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life without eligibility for parole. Mandatory minimum - Dismissal or dishonorable discharge.

(2) *Bestiality.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

(1) *Forcible sodomy.* In that (personal jurisdiction data), did, (at/on board-location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in unnatural

carnal copulation with _____, by unlawful force or without the consent of the said _____.

(2) *Bestiality.* In that (personal jurisdiction data), did, (at/on board-location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in unnatural carnal copulation with (type of animal)."

(x) In paragraphs 62, 64-86, 89, 91-100a, and 102-113, the sample specifications in subparagraph f are uniformly amended by inserting the words below between the last word and the period in each sample specification:

" , and that said 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 was of a nature to bring discredit upon the armed forces)."

(y) Paragraph 60.b, Article 134(b)-General Article, is amended to read as follows:

"b. *Elements.* The proof required for conviction of an offense under Article 134 depends upon the nature of the misconduct charged. If the conduct is punished as a crime or offense not capital, the proof must establish every element of the crime or offense as required by the applicable law. All offenses under Article 134 require proof of a single terminal element; however, the terminal element may be proven using any

of three theories of liability corresponding to clause 1, 2, or 3 offenses.

(1) For clause 1 or 2 offenses under Article 134, the following proof is required:

(a) That the accused did or failed to do certain acts; and

(b) That, under the circumstances, the accused's conduct was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) For clause 3 offenses under Article 134, the following proof is required:

(a) That the accused did or failed to do certain acts that satisfy each element of the federal statute (including, in the case of a prosecution under 18 U.S.C. § 13, each element of the assimilated State, Territory, Possession, or District law); and

(b) That the offense charged was an offense not capital."

(z) Paragraph 60, Article 134 - General Article, subparagraph c.(6)(a) is amended to read as follows:

"(a) *Specifications under clause 1 or 2.* When alleging a clause 1 or 2 violation, the specification must expressly allege that the conduct was "to the prejudice of good order and

discipline" or that it was "of a nature to bring discredit upon the armed forces." The same conduct may be prejudicial to good order and discipline in the armed forces and at the same time be of a nature to bring discredit upon the armed forces. Both clauses may be alleged; however, only one must be proven to satisfy the terminal element. If conduct by an accused does not fall under any of the enumerated Article 134 offenses (paragraphs 61 through 113 of this Part), a specification not listed in this Manual may be used to allege the offense."

(aa) Paragraph 60, Article 134 - General Article, subparagraph c.(6)(b) is amended to read as follows:

"(b) *Specifications under clause 3.* When alleging a clause 3 violation, the specification must expressly allege that the conduct was "an offense not capital," and each element of the federal statute (including, in the case of a prosecution under 18 U.S.C. § 13, each element of the assimilated State, Territory, Possession, or District law) must be alleged expressly or by necessary implication. In addition, the federal statute should be identified."

(bb) Paragraph 60, Article 134 - General Article, subparagraph c.(6)(c) is deleted.

(cc) Paragraph 61, Article 134 - Abusing public animal, is amended to read as follows:

"61. Article 134-(Animal Abuse)

a. *Text of statute.* See paragraph 60.

b. *Elements.*

(1) *Abuse, neglect, or abandonment of an animal.*

(a) That the accused wrongfully abused, neglected, or abandoned a certain (public*) animal (and the accused caused the serious injury or death of the animal*); and

(b) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(*Note: Add these elements as applicable.)

(2) *Sexual act with an animal.*

(a) That the accused engaged in a sexual act with a certain animal; and

(b) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *In general.* This offense prohibits knowing, reckless, or negligent abuse, neglect, or abandonment of an animal. This offense does not include legal hunting, trapping, or fishing; reasonable and recognized acts of training, handling, or disciplining of an animal; normal and accepted farm or

veterinary practices; research or testing conducted in accordance with approved military protocols; protection of person or property from an unconfined animal; or authorized military operations or military training.

(2) *Definitions.* As used in this paragraph:

(A) "Abuse" means intentionally and unjustifiably: overdriving, overloading, overworking, tormenting, beating, depriving of necessary sustenance, allowing to be housed in a manner that results in chronic or repeated serious physical harm, carrying or confining in or upon any vehicles in a cruel or reckless manner, or otherwise mistreating an animal. Abuse may include any sexual touching of an animal if not included in the definition of "sexual act with an animal" below.

(B) "Neglect" means allowing another to abuse an animal, or, having the charge or custody of any animal, intentionally, knowingly, recklessly, or negligently failing to provide it with proper food, drink, or protection from the weather consistent with the species, breed, and type of animal involved.

(C) "Abandon" means the intentional, knowing, reckless or negligent leaving of an animal at a location without providing minimum care while having the charge or custody of that animal.

(D) "Animal" means pets and animals of the type that are raised by individuals for resale to others, including but not limited to: cattle, horses, sheep, pigs, goats, chickens, dogs, cats, and similar animals owned or under the control of any person. Animal does not include reptiles, insects, arthropods, or any animal defined or declared to be a pest by the administrator of the United States Environmental Protection Agency.

(E) "Public animal" means any animal owned or used by the United States or any animal owned or used by a local or State government in the United States, its territories or possessions. This would include, for example, drug detector dogs used by the government.

(F) "Sexual act with an animal" means contact between the sex organ, anus, or mouth of a person and an animal or between the sex organ, mouth, or anus of an animal and a person or object manipulated by a person if done with an intent to arouse or gratify the sexual desire of any person.

(G) "Serious injury of an animal" means physical harm that involves a temporary but substantial disfigurement; causes a temporary but substantial loss or impairment of the function of any bodily part or organ; causes a fracture of any bodily part; causes permanent maiming; causes acute pain of a duration that results in suffering; or carries a substantial risk of

death. Serious injury includes, but is not limited to, burning, torturing, poisoning, or maiming.

d. *Lesser included offenses.* See paragraph 3 of this part and Appendix 12A.

e. *Maximum punishment.*

(1) *Abuse, neglect, or abandonment of an animal.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Abuse, neglect, or abandonment of a public animal.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(3) *Sexual act with an animal or cases where the accused caused the serious injury or death of the animal.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that _____, (personal jurisdiction data), did, (at/on board-location) (subject-matter jurisdiction data, if required), on or about (date), (wrongfully [abuse] [neglect] [abandon]) (*engage in a sexual act, to wit: _____, with) a certain (*public) animal (*and caused [serious injury to] [the death of] the animal), and that said 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 was of a nature to bring discredit upon the armed forces).

(dde) Paragraph 64, Article 134 - Assault—with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking is amended by inserting "forcible" immediately preceding every occurrence of the word "sodomy".

(ee) Paragraph 90, Article 134 - Deleted—See Appendix 27, is amended to read as follows:

"90. Article 134 -(Indecent conduct)

a. *Text of Statute.* See paragraph 60.

b. *Elements.*

(1) That the accused engaged in certain conduct;

(2) That the conduct was indecent; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) "Indecent" means that form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

(2) Indecent conduct includes offenses previously proscribed by "Indecent acts with another" except that the

presence of another person is no longer required. For purposes of this offense, the words "conduct" and "act" are synonymous. For child offenses, some indecent conduct may be included in the definition of lewd act and preempted by Article 120b(c). See paragraph 60c(5)(a).

d. *Lesser included offense.* See paragraph 3 of this part and Appendix 12A.

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did (at/on board - location) (subject-matter jurisdiction data, if required), on or about (date), (wrongfully commit indecent conduct, to wit: _____), and that said 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 was of a nature to bring discredit upon the armed forces).

(ff) Paragraph 97, Article 134 - Pandering and prostitution, subparagraph b.(1)(a) is amended by replacing "had sexual intercourse" with "engaged in a sexual act".

(gg) Paragraph 97, Article 134 - Pandering and prostitution, subparagraph b.(2)(a) is amended by replacing "had sexual intercourse" with "engaged in a sexual act".

- (hh) Paragraph 97, Article 134 – Pandering and prostitution, subparagraph b.(2)(b) is amended by replacing “engage in an act of sexual intercourse” with “engage in a sexual act”.
- (ii) Paragraph 97, Article 134 – Pandering and prostitution, subparagraph b.(3)(a) is amended by replacing “engage in an act of sexual intercourse” with “engage in a sexual act”.
- (jj) Paragraph 97, Article 134 – Pandering and prostitution, subparagraph b.(4) is amended by replacing “*Pandering by arranging or receiving consideration for arranging for sexual intercourse or sodomy.*” with “(4) *Pandering by arranging or receiving consideration for arranging for a sexual act.*”
- (kk) Paragraph 97, Article 134 – Pandering and prostitution, subparagraph b.(4)(a) is amended by replacing “engage in an act of sexual intercourse or sodomy” with “engage in a sexual act”.
- (ll) Paragraph 97, Article 134 – Pandering and prostitution, subparagraph c is amended to read as follows:
- “c. *Explanation.*
- (1) Prostitution may be committed by males or females.
- (2) *Sexual act.* See paragraph 45.a.(g)(1).”
- (mm) Paragraph 97, Article 134 – Pandering and prostitution, subparagraph f.(1) is amended by replacing “(an act) (acts) of sexual intercourse” with “(a sexual act) (sexual acts)”.

(nn) Paragraph 97, Article 134 – Pandering and prostitution, subparagraph f.(2) is amended by replacing “(an act) (acts) of sexual intercourse” with “(a sexual act) (sexual acts)”.

(oo) Paragraph 97, Article 134 – Pandering and prostitution, subparagraph f.(3) is amended by replacing “(an act) (acts) of sexual intercourse” with “(a sexual act) (sexual acts)”.