Presidential Documents

Executive Order 13447 of September 28, 2007

Further 2007 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, as amended, it is hereby ordered as follows:

Section 1. The second subparagraph of paragraph 4, of Part I, of the Manual for Courts-Martial, United States, as amended by section 2 of Executive Order 13262 of April 11, 2002, is amended by striking the third sentence.

Sec. 2. Parts II, III, and 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. 3. These amendments shall take effect on October 1, 2007.

(a) Nothing in these amendments shall be construed to make punishable any act done or omitted prior to October 1, 2007, 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 October 1, 2007, and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

THE WHITE HOUSE,
September 28, 2007.

Billing code 3195–01–P

ANNEX

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

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

"(b) Burden of proof.

(1) *General rule.* Except as listed below in paragraphs (2), (3), and (4), the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist.

(2) *Lack of mental responsibility.* The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(3) *Mistake of fact as to age.* In the defense of mistake of fact as to age as described in Part IV, para. 45a(o)(2) in a prosecution of a sexual offense with a child under Article 120, the accused has the burden of proving mistake of fact as to age by a preponderance of the evidence. After the accused meets his or her burden, the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist.

(4) *Mistake of fact as to consent.* In the defense of mistake of fact as to consent in Article 120(a), rape, Article 120(c), aggravated sexual assault, Article 120(e), aggravated sexual contact, and Article 120(h), abusive sexual contact, the accused has the burden of proving mistake of fact as to consent by a preponderance of the evidence. After the defense meets its burden, the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist."

(b) 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 120(d), aggravated sexual assault of a child, Article 120(f), aggravated sexual abuse of a child, Article 120(i), abusive sexual contact with a child, or Article 120(j), indecent liberty with a child that, at the

time of the offense, the child was at least 12 years of age, and the accused reasonably believed the person was at least 16 years of age. The accused must prove this defense by a preponderance of the evidence."

(c) R.C.M. 916(j) is amended by inserting new paragraph R.C.M. 916(j)(3) after the Discussion section to R.C.M. 916(j)(2) as follows:

"(j)(3) *Sexual offenses.* It is an affirmative defense to a prosecution for Article 120(a), rape, Article 120(c), aggravated sexual assault, Article 120(e), aggravated sexual contact, and Article 120(h), abusive sexual contact that the accused held, as a result of ignorance or mistake, an incorrect belief that the other person engaging in the sexual conduct consented. The ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances. To be reasonable the ignorance or mistake must have been based on information, or lack of it, which would indicate to a reasonable person that the other person consented. Additionally, the ignorance or mistake cannot be based on the negligent failure to discover the true facts. Negligence is the absence of due care. Due care is what a reasonably careful person would do under the same or similar circumstances. The accused's state of intoxication, if any, at the time of the offense is not relevant to mistake of fact. A mistaken belief that the other person consented must be that which a reasonably careful, ordinary, prudent, sober adult would have had under the circumstances at the time of the offense."

(d) 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) or (j)(3) is raised, add: The accused has the burden of proving the defense of mistake of fact as to consent or age by a preponderance of the evidence.]"

(e) 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, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, aggravated arson, 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."

(f) 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, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery, or aggravated arson was major and who manifested a reckless indifference for human life."

(g) R.C.M. 1102(b)(2) is amended to read as follows:

"(2) *Article 39(a) sessions.* An Article 39(a) session under this rule may be called, upon motion of either party or

sua sponte by the military judge, for the purpose of inquiring into, and, when appropriate, resolving any matter that arises after trial and that substantially affects the legal sufficiency of any findings of guilty or the sentence. The military judge may also call an Article 39(a) session, upon motion of either party or *sua sponte*, to reconsider any trial ruling that substantially affects the legal sufficiency of any findings of guilty or the sentence. The military judge may, *sua sponte*, at any time prior to authentication of the record of trial, enter a finding of not guilty of one or more offenses charged, or may enter a finding of not guilty of a part of a specification as long as a lesser offense charged is alleged in the remaining portion of the specification. Prior to entering such a finding or findings, the military judge shall give each party an opportunity to be heard on the matter in a post-trial Article 39(a) session."

(h) R.C.M. 1102(d) is amended by deleting the last phrase of the second sentence, which reads:

", except that no proceeding in revision may be held when any part of the sentence has been ordered executed".

(i) R.C.M. 1102(e)(2) is amended by inserting the following sentence after the last sentence in R.C.M. 1102(e)(2):

"Prior to the military judge *sua sponte* entering a finding of not guilty of one or more offenses charged or entering a finding of not guilty of a part of a specification as long as a lesser offense charged is alleged in the remaining portion of the specification, the military judge shall give each party an opportunity to be heard on the matter."

(j) R.C.M. 1204(c)(2) is amended to read as follows:

"(2) *Sentence requiring approval of the President.* (A) If the Court of Appeals for the Armed Forces has affirmed a sentence

that must be approved by the President before it may be executed, the Judge Advocate General shall transmit the record of trial, the decision of the Court of Criminal Appeals, the decision of the Court of Appeals for the Armed Forces, and the recommendation of the Judge Advocate General to the Secretary concerned.

(B) If the Secretary concerned is the Secretary of a military department, the Secretary concerned shall forward the material received under paragraph (A) to the Secretary of Defense, together with the recommendation of the Secretary concerned. The Secretary of Defense shall forward the material, with the recommendation of the Secretary concerned and the recommendation of the Secretary of Defense, to the President for the action of the President.

(C) If the Secretary concerned is the Secretary of Homeland Security, the Secretary concerned shall forward the material received under paragraph (A) to the President, together with the recommendation of the Secretary concerned, for the action of the President."

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

(a) Mil. R. Evid. 412 is amended to read as follows:

"*Rule 412. Sex offense cases; relevance of alleged victim's sexual behavior or sexual predisposition*

(a) *Evidence generally inadmissible.* The following evidence is not admissible in any proceeding involving an alleged sexual offense except as provided in subdivisions (b) and (c):

(1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.

(2) Evidence offered to prove any alleged victim's sexual predisposition.

(b) *Exceptions.*

(1) In a proceeding, the following evidence is admissible, if otherwise admissible under these rules:

(A) evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;

(B) evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and

(C) evidence the exclusion of which would violate the constitutional rights of the accused.

(c) *Procedure to determine admissibility.*

(1) A party intending to offer evidence under subsection (b) must --

(A) file a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is offered unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

(B) serve the motion on the opposing party and the military judge and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.

(2) Before admitting evidence under this rule, the military judge must conduct a hearing, which shall be closed. At this hearing, the parties may call witnesses, including the alleged victim, and offer relevant evidence. The alleged victim must be afforded a reasonable opportunity to attend and be heard. In a case before a court-martial composed of a military judge and

members, the military judge shall conduct the hearing outside the presence of the members pursuant to Article 39(a). The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

(3) If the military judge determines on the basis of the hearing described in paragraph (2) of this subsection that the evidence that the accused seeks to offer is relevant for a purpose under subsection (b) and that the probative value of such evidence outweighs the danger of unfair prejudice to the alleged victim's privacy, such evidence shall be admissible under this rule to the extent an order made by the military judge specifies evidence that may be offered and areas with respect to which the alleged victim may be examined or cross-examined. Such evidence is still subject to challenge under Mil. R. Evid. 403.

(d) For purposes of this rule, the term "sexual offense" includes any sexual misconduct punishable under the Uniform Code of Military Justice, federal law, or state law. "Sexual behavior" includes any sexual behavior not encompassed by the alleged offense. The term "sexual predisposition" refers to an alleged victim's mode of dress, speech, or lifestyle that does not directly refer to sexual activities or thoughts but that may have a sexual connotation for the factfinder."

(b) Mil. R. Evid. 503(b) is amended by renumbering the existing subsection (2) as subsection (3) and inserting the following new subsection (2) after current Mil. R. Evid. 503(b)(1) to read as follows:

"(2) A "clergyman's assistant" is a person employed by or assigned to assist a clergyman in his capacity as a spiritual advisor."

(c) Mil. R. Evid. 504 is amended by inserting new subsection (d) after Mil. R. Evid. 504(c) to read as follows:

"(d) *Definitions.* As used in this rule:

(1) The term "a child of either" includes not only a biological child, adopted child, or ward of one of the spouses but also includes a child who is under the permanent or temporary physical custody of one of the spouses, regardless of the existence of a legal parent-child relationship. For purposes of this rule only, a child is: (i) an individual under the age of 18; or (ii) an individual with a mental handicap who functions under the age of 18.

(2) The term "temporary physical custody" includes instances where a parent entrusts his or her child with another. There is no minimum amount of time necessary to establish temporary physical custody nor must there be a written agreement. Rather, the focus is on the parent's agreement with another for assuming parental responsibility for the child. For example, temporary physical custody may include instances where a parent entrusts another with the care of their child for recurring care or during absences due to temporary duty or deployments."

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

(a) Paragraph 43, Article 118, Murder, paragraph a.(4) is amended to read as follows:

"(4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery or aggravated arson; is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court-martial may direct."

(b) Paragraph 43, Article 118, Murder, paragraph b.(4)(d) is amended to read as follows:

"(d) That, at the time of the killing, the accused was engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery, or aggravated arson."

(c) Paragraph 44, Article 119, Manslaughter, paragraph b.(2)(d) is amended to read as follows:

"(d) That this act or omission of the accused constituted culpable negligence, or occurred while the accused was perpetrating or attempting to perpetrate an offense directly affecting the person other than burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery, or aggravated arson."

(d) Paragraph 45, Rape and Carnal Knowledge is amended to read as follows:

"45. Article 120 -- Rape, sexual assault, and other sexual misconduct

a. *Text.*

"(a) *Rape.* Any person subject to this chapter who causes another person of any age to engage in a sexual act by --

(1) using force against that other person;

(2) causing grievous bodily harm to any person;

(3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping;

(4) rendering another person unconscious; or

(5) administering to another 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 impairs the ability of that other person to appraise or control conduct;

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

(b) *Rape of a child.* Any person subject to this chapter who --

(1) engages in a sexual act with a child who has not attained the age of 12 years; or

(2) engages in a sexual act under the circumstances described in subsection (a) with a child who has attained the age of 12 years;

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

(c) *Aggravated sexual assault.* Any person subject to this chapter who -- (1) causes another person of any age to engage in a sexual act by --

(A) threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping); or

(B) causing bodily harm; or

(2) engages in a sexual act with another person of any age if that other person is substantially incapacitated or substantially incapable of --

(A) appraising the nature of the sexual act;

(B) declining participation in the sexual act; or

(C) communicating unwillingness to engage in the sexual act; is guilty of aggravated sexual assault and shall be punished as a court-martial may direct.

(d) *Aggravated sexual assault of a child.* Any person subject to this chapter who engages in a sexual act with a child who has attained the age of 12 years is guilty of aggravated sexual assault of a child and shall be punished as a court-martial may direct.

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

(f) *Aggravated sexual abuse of a child.* Any person subject to this chapter who engages in a lewd act with a child is guilty of aggravated sexual abuse of a child and shall be punished as a court-martial may direct.

(g) *Aggravated sexual contact with a child.* Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (b) (rape of a child) had the sexual contact been a sexual act, is guilty of aggravated sexual contact with a child and shall be punished as a court-martial may direct.

(h) *Abusive sexual contact.* Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (c) (aggravated sexual assault) had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall be punished as a court-martial may direct.

(i) *Abusive sexual contact with a child.* Any person subject to this chapter who engages in or causes sexual contact with

or by another person, if to do so would violate subsection (d) (aggravated sexual assault of a child) had the sexual contact been a sexual act, is guilty of abusive sexual contact with a child and shall be punished as a court-martial may direct.

(j) *Indecent liberty with a child.* Any person subject to this chapter who engages in indecent liberty in the physical presence of a child --

(1) with the intent to arouse, appeal to, or gratify the sexual desire of any person; or

(2) with the intent to abuse, humiliate, or degrade any person;

is guilty of indecent liberty with a child and shall be punished as a court-martial may direct.

(k) *Indecent act.* Any person subject to this chapter who engages in indecent conduct is guilty of an indecent act and shall be punished as a court-martial may direct.

(l) *Forcible pandering.* Any person subject to this chapter who compels another person to engage in an act of prostitution with another person to be directed to said person is guilty of forcible pandering and shall be punished as a court-martial may direct.

(m) *Wrongful sexual contact.* Any person subject to this chapter who, without legal justification or lawful authorization, engages in sexual contact with another person without that other person's permission is guilty of wrongful sexual contact and shall be punished as a court-martial may direct.

(n) *Indecent exposure.* Any person subject to this chapter who intentionally exposes, in an indecent manner, in any place where the conduct involved may reasonably be expected to be viewed by people other than members of the actor's family or household,

the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure and shall be punished as a court-martial may direct.

(o) *Age of child.* (1) *Twelve years.* In a prosecution under subsection (b) (rape of a child), subsection (g) (aggravated sexual contact with a child), or subsection (j) (indecent liberty with a child), it need not be proven that the accused knew that the other person engaging in the sexual act, contact, or liberty had not attained the age of 12 years. It is not an affirmative defense that the accused reasonably believed that the child had attained the age of 12 years.

(2) *Sixteen years.* In a prosecution under subsection (d) (aggravated sexual assault of a child), subsection (f) (aggravated sexual abuse of a child), subsection (i) (abusive sexual contact with a child), or subsection (j) (indecent liberty with a child), it need not be proven that the accused knew that the other person engaging in the sexual act, contact, or liberty had not attained the age of 16 years. Unlike in paragraph (1), however, it is an affirmative defense that the accused reasonably believed that the child had attained the age of 16 years.

(p) *Proof of threat.* In a prosecution under this section, in proving that the accused made a threat, it need not be proven that the accused actually intended to carry out the threat.

(q) *Marriage.*

(1) *In general.* In a prosecution under paragraph (2) of subsection (c) (aggravated sexual assault), or under subsection (d) (aggravated sexual assault of a child), subsection (f) (aggravated sexual abuse of a child), subsection (i) (abusive sexual contact with a child), subsection (j) (indecent liberty with a child), subsection (m) (wrongful sexual contact), or subsection (n) (indecent exposure),

it is an affirmative defense that the accused and the other person when they engaged in the sexual act, sexual contact, or sexual conduct were married to each other.

(2) *Definition.* For purposes of this subsection, a marriage is a relationship, recognized by the laws of a competent State or foreign jurisdiction, between the accused and the other person as spouses. A marriage exists until it is dissolved in accordance with the laws of a competent State or foreign jurisdiction.

(3) *Exception.* Paragraph (1) shall not apply if the accused's intent at the time of the sexual conduct is to abuse, humiliate, or degrade any person.

(r) *Consent and mistake of fact as to consent.* Lack of permission is an element of the offense in subsection (m) (wrongful sexual contact). Consent and mistake of fact as to consent are not an issue, or an affirmative defense, in a prosecution under any other subsection, except they are an affirmative defense for the sexual conduct in issue in a prosecution under subsection (a) (rape), subsection (c) (aggravated sexual assault), subsection (e) (aggravated sexual contact), and subsection (h) (abusive sexual contact).

(s) *Other affirmative defenses not precluded.* The enumeration in this section of some affirmative defenses shall not be construed as excluding the existence of others.

(t) *Definitions.* In this section:

(1) *Sexual act.* The term "sexual act" means --

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

(B) the penetration, however slight, of the genital opening of another by a hand or finger or by any object, with an intent to

abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(2) *Sexual contact.* The term "sexual contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, or intentionally causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, or degrade any person or to arouse or gratify the sexual desire of any person.

(3) *Grievous bodily harm.* The term "grievous bodily harm" means serious bodily injury. It includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose. It is the same level of injury as in section 928 (article 128) of this chapter, and a lesser degree of injury than in section 2246(4) of title 18.

(4) *Dangerous weapon or object.* The term "dangerous weapon or object" means --

(A) any firearm, loaded or not, and whether operable or not;

(B) any other weapon, device, instrument, material, or substance, whether animate or inanimate, that in the manner it is used, or is intended to be used, is known to be capable of producing death or grievous bodily harm; or

(C) any object fashioned or utilized in such a manner as to lead the victim under the circumstances to reasonably believe it to be capable of producing death or grievous bodily harm.

(5) *Force.* The term "force" means action to compel submission of another or to overcome or prevent another's resistance by --

(A) the use or display of a dangerous weapon or object;

(B) the suggestion of possession of a dangerous weapon or object that is used in a manner to cause another to believe it is a dangerous weapon or object; or

(C) physical violence, strength, power, or restraint applied to another person, sufficient that the other person could not avoid or escape the sexual conduct.

(6) *Threatening or placing that other person in fear.* The term "threatening or placing that other person in fear" under paragraph (3) of subsection (a) (rape), or under subsection (e) (aggravated sexual contact), means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another person being subjected to death, grievous bodily harm, or kidnapping.

(7) *Threatening or placing that other person in fear.*

(A) *In general.* The term "threatening or placing that other person in fear" under paragraph (1)(A) of subsection (c) (aggravated sexual assault), or under subsection (h) (abusive sexual contact), means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another being subjected to a lesser degree of harm than death, grievous bodily harm, or kidnapping.

(B) *Inclusions.* Such lesser degree of harm includes --

(i) physical injury to another person or to another person's property; or

(ii) a threat --

(I) to accuse any person of a crime;

(II) to expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt, or ridicule; or

(III) through the use or abuse of military position, rank, or authority, to affect or threaten to affect, either positively or negatively, the military career of some person.

(8) *Bodily harm.* The term "bodily harm" means any offensive touching of another, however slight.

(9) *Child.* The term "child" means any person who has not attained the age of 16 years.

(10) *Lewd act.* The term "lewd act" means --

(A) the intentional touching, not through the clothing, of the genitalia of another person, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person; or

(B) intentionally causing another person to touch, not through the clothing, the genitalia of any person with an intent to abuse, humiliate or degrade any person, or to arouse or gratify the sexual desire of any person.

(11) *Indecent liberty.* The term "indecent liberty" means indecent conduct, but physical contact is not required. It includes one who with the requisite intent exposes one's genitalia, anus, buttocks, or female areola or nipple to a child. An indecent liberty may consist of communication of indecent language as long as the communication is made in the physical presence of the child. If words designed to excite sexual desire are spoken to a child, or a child is exposed to or involved in sexual conduct, it is an indecent liberty; the child's consent is not relevant.

(12) *Indecent conduct.* The term "indecent conduct" means that form of immorality relating to sexual impurity that is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations. Indecent conduct includes observing, or making

a videotape, photograph, motion picture, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material, without another person's consent, and contrary to that other person's reasonable expectation of privacy, of --

(A) that other person's genitalia, anus, or buttocks, or (if that other person is female) that person's areola or nipple; or

(B) that other person while that other person is engaged in a sexual act, sodomy (under section 925 (article 125) of this chapter), or sexual contact.

(13) *Act of prostitution.* The term "act of prostitution" means a sexual act, sexual contact, or lewd act for the purpose of receiving money or other compensation.

(14) *Consent.* The term "consent" means words or overt acts indicating a freely given agreement to the sexual conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the accused's use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating relationship by itself or the manner of dress of the person involved with the accused in the sexual conduct at issue shall not constitute consent. A person cannot consent to sexual activity if --

(A) under 16 years of age; or

(B) substantially incapable of --

(i) appraising the nature of the sexual conduct at issue due to --

(I) mental impairment or unconsciousness resulting from consumption of alcohol, drugs, a similar substance, or otherwise; or

(II) mental disease or defect that renders the person unable to understand the nature of the sexual conduct at issue;

(ii) physically declining participation in the sexual conduct at issue; or

(iii) physically communicating unwillingness to engage in the sexual conduct at issue.

(15) *Mistake of fact as to consent.* The term "mistake of fact as to consent" means the accused held, as a result of ignorance or mistake, an incorrect belief that the other person engaging in the sexual conduct consented. The ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances. To be reasonable, the ignorance or mistake must have been based on information, or lack of it, that would indicate to a reasonable person that the other person consented. Additionally, the ignorance or mistake cannot be based on the negligent failure to discover the true facts. Negligence is the absence of due care. Due care is what a reasonably careful person would do under the same or similar circumstances. The accused's state of intoxication, if any, at the time of the offense is not relevant to mistake of fact. A mistaken belief that the other person consented must be that which a reasonably careful, ordinary, prudent, sober adult would have had under the circumstances at the time of the offense.

(16) *Affirmative defense.* The term "affirmative defense" means any special defense that, although not denying that the accused committed the objective acts constituting the offense charged, denies, wholly, or partially, criminal responsibility for those acts. The accused has the burden of proving the affirmative defense by a preponderance of evidence. After the defense meets this burden, the prosecution shall have the burden of proving

beyond a reasonable doubt that the affirmative defense did not exist."

b. *Elements.*

(1) Rape.

(a) Rape by using force.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by using force against that other person.

(b) Rape by causing grievous bodily harm.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by causing grievous bodily harm to any person.

(c) Rape by using threats or placing in fear.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(d) Rape by rendering another unconscious.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by rendering that other person unconscious.

(e) Rape by administration of drug, intoxicant, or other similar substance.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by administering to that other person a drug, intoxicant, or other similar substance;

(ii) That the accused administered the drug, intoxicant or other similar substance by force or threat of force or without the knowledge or permission of that other person; and

(iii) That, as a result, that other person's ability to appraise or control conduct was substantially impaired.

(2) *Rape of a child.*

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

(i) That the accused engaged in a sexual act with a child; and

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

(b) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using force.*

(i) That the accused engaged in a sexual act with a child;

(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.

(c) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.*

(i) That the accused engaged in a sexual act with a child;

(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 causing grievous bodily harm to any person.

(d) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.*

(i) That the accused engaged in a sexual act with a child;

(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 or placing that child in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(e) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by rendering that child unconscious.*

(i) That the accused engaged in a sexual act with a child;

(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.

(f) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.*

(i) That the accused engaged in a sexual act with a child;

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

(b) That the accused administered the drug, intoxicant, or other similar substance by force or threat of force or without the knowledge or permission of that child; and

(c) That, as a result, that child's ability to appraise or control conduct was substantially impaired.

(3) *Aggravated sexual assault.*

(a) *Aggravated sexual assault by using threats or placing in fear.*

(i) That the accused caused another person, who is of any age, to engage in a sexual act; and

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

(b) *Aggravated sexual assault by causing bodily harm.*

(i) That the accused caused another person, who is of any age, to engage in a sexual act; and

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

(c) *Aggravated sexual assault upon a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or communicating unwillingness.*

(i) That the accused engaged in a sexual act with another person, who is of any age; and

(Note: add one of the following elements)

(ii) That the other person was substantially incapacitated;

(iii) That the other person was substantially incapable of appraising the nature of the sexual act;

(iv) That the other person was substantially incapable of declining participation in the sexual act; or

(v) That the other person was substantially incapable of communicating unwillingness to engage in the sexual act.

(4) *Aggravated sexual assault of a child who has attained the age of 12 years but has not attained the age of 16 years.*

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

(b) 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.

(5) *Aggravated sexual contact.*

(a) *Aggravated sexual contact by using force.*

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by using force against that other person.

(b) *Aggravated sexual contact by causing grievous bodily harm.*

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(ii) That the accused did so by causing grievous bodily harm to any person.

(c) *Aggravated sexual contact by using threats or placing in fear.*

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

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

(d) *Aggravated sexual contact by rendering another unconscious.*

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

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

(e) *Aggravated sexual contact by administration of drug, intoxicant, or other similar substance.*

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

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

(b) That the accused administered the drug, intoxicant, or other similar substance by force or threat of force or without the knowledge or permission of that other person; and

(c) That, as a result, that other person's ability to appraise or control conduct was substantially impaired.

(6) *Aggravated sexual abuse of a child.*

(a) That the accused engaged in a lewd act; and

(b) That the act was committed with a child who has not attained the age of 16 years.

(7) *Aggravated Sexual Contact with a Child.*

(a) *Aggravated sexual contact with a child who has not attained the age of 12 years.*

(i)(a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

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

(b) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using force.*

(i)(a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact 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.

(c) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.*

(i)(a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact 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 causing grievous bodily harm to any person.

(d) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.*

(i)(a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact 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 or placing that child or that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(e) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by rendering another or that child unconscious.*

(i)(a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(ii) That at the time of the sexual contact 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 or that other person unconscious.

(f) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.*

(i)(a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

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

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

(b) That the accused administered the drug, intoxicant, or other similar substance by force or threat of force or without the knowledge or permission of that child or that other person; and

(c) That, as a result, that child's or that other person's ability to appraise or control conduct was substantially impaired.

(8) *Abusive sexual contact.*

(a) Abusive sexual contact by using threats or placing in fear.

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

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

(b) *Abusive sexual contact by causing bodily harm.*

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

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

(c) *Abusive sexual contact upon a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or communicating unwillingness.*

(i)(a) That the accused engaged in sexual contact with another person; or

(b) That the accused caused sexual contact with or by another person; and

(Note: add one of the following elements)

(ii) That the other person was substantially incapacitated;

(iii) That the other person was substantially incapable of appraising the nature of the sexual contact;

(iv) That the other person was substantially incapable of declining participation in the sexual contact; or

(v) That the other person was substantially incapable of communicating unwillingness to engage in the sexual contact.

(9) *Abusive sexual contact with a child.*

(i)(a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

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

(10) *Indecent liberty with a child.*

(a) That the accused committed a certain act or communication;

(b) That the act or communication was indecent;

(c) That the accused committed the act or communication in the physical presence of a certain child;

(d) That the child was under 16 years of age; and

(e) That the accused committed the act or communication with the intent to:

(i) arouse, appeal to, or gratify the sexual desires of any person; or

(ii) abuse, humiliate, or degrade any person.

(11) *Indecent act.*

(a) That the accused engaged in certain conduct; and

(b) That the conduct was indecent conduct.

(12) *Forcible pandering.*

(a) That the accused compelled a certain person to engage in an act of prostitution; and

(b) That the accused directed another person to said person, who then engaged in an act of prostitution.

(13) *Wrongful sexual contact.*

(a) That the accused had sexual contact with another person;

(b) That the accused did so without that other person's permission; and

(c) That the accused had no legal justification or lawful authorization for that sexual contact.

(14) *Indecent exposure.*

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

(b) That the accused's exposure was in an indecent manner;

(c) That the exposure occurred in a place where the conduct involved could reasonably be expected to be viewed by people other than the accused's family or household; and

(d) That the exposure was intentional.

c. *Explanation.*

(1) *Definitions.* The terms are defined in Paragraph 45a.(t), *supra.*

(2) *Character of victim.* See Mil. R. Evid. 412 concerning rules of evidence relating to the character of the victim of an alleged sexual offense.

(3) *Indecent.* In conduct cases, "indecent" generally signifies that form of immorality relating to sexual impurity that is not only grossly vulgar, obscene, and repugnant to common propriety, but also tends to excite lust and deprave the morals with respect to sexual relations. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards.

d. *Lesser included offenses.* The following lesser included offenses are based on internal cross-references provided in the statutory text of Article 120. See subsection (e) for a further listing of possible lesser included offenses.

(1) *Rape.*

(a) Article 120 -- Aggravated sexual contact

(b) Article 134 -- Assault with intent to commit rape

(c) Article 128 -- Aggravated assault, Assault, Assault consummated by a battery

(d) Article 80 -- Attempts

(2) *Rape of a child.*

(a) Article 120 -- Aggravated sexual contact with a child; Indecent act

(b) Article 134 -- Assault with intent to commit rape

(c) Article 128 -- Aggravated assault; Assault; Assault consummated by a battery; Assault consummated by a battery upon a child under 16

(d) Article 80 -- Attempts

(3) *Aggravated sexual assault.*

(a) Article 120 -- Abusive sexual contact

(b) Article 128 -- Aggravated assault, Assault, Assault consummated by a battery

(c) Article 80 -- Attempts

(4) *Aggravated sexual assault of a child.*

(a) Article 120 -- Abusive sexual contact with a child; Indecent act

(b) Article 128 -- Aggravated assault; assault; Assault consummated by a battery; Assault consummated by a battery upon a child under 16

(c) Article 80 -- Attempts

(5) *Aggravated sexual contact.*

(a) Article 128 -- Aggravated assault; Assault; Assault consummated by a battery

(b) Article 80 -- Attempts

(6) *Aggravated sexual abuse of a child.*

(a) Article 120 -- Indecent act

(b) Article 128 -- Assault; Assault consummated by a battery; Assault consummated by a battery upon a child under 16

(c) Article 80 -- Attempts

(7) *Aggravated sexual contact with a child.*

(a) Article 120 -- Indecent act

(b) Article 128 -- Assault; Assault consummated by a battery; Assault consummated by a battery upon a child under 16

(c) Article 80 -- Attempts

(8) *Abusive sexual contact.*

(a) Article 128 -- Assault; Assault consummated by a battery

(b) Article 80 -- Attempts

(9) *Abusive sexual contact with a child.*

(a) Article 120 -- Indecent act

(b) Article 128 -- Assault; Assault consummated by a battery; Assault consummated by a battery upon a child under 16

(c) Article 80 -- Attempts

(10) *Indecent liberty with a child.*

(a) Article 120 -- Indecent act

(b) Article 80 -- Attempts

(11) *Indecent act.* Article 80 -- Attempts

(12) *Forcible pandering.* Article 80 -- Attempts

(13) *Wrongful sexual contact.* Article 80 -- Attempts

(14) *Indecent exposure.* Article 80 -- Attempts

e. *Additional lesser included offenses.* Depending on the factual circumstances in each case, to include the type of act

and level of force involved, the following offenses may be considered lesser included in addition to those offenses listed in subsection d. (See subsection (d) for a listing of the offenses that are specifically cross-referenced within the statutory text of Article 120.) The elements of the proposed lesser included offense should be compared with the elements of the greater offense to determine if the elements of the lesser offense are derivative of the greater offense and vice versa. See Appendix 23 for further explanation of lesser included offenses.

(1)(a) *Rape by using force.* Article 120 -- Indecent act; Wrongful sexual contact

(1)(b) *Rape by causing grievous bodily harm.* Article 120 -- Aggravated sexual assault by causing bodily harm; Abusive sexual contact by causing bodily harm; Indecent act; Wrongful sexual contact

(1)(c) *Rape by using threats or placing in fear.* Article 120 -- Aggravated sexual assault by using threats or placing in fear; Abusive sexual contact by using threats or placing in fear; Indecent act; Wrongful sexual contact

(1)(d) *Rape by rendering another unconscious.* Article 120 -- Aggravated sexual assault upon a person substantially incapacitated; Abusive sexual contact upon a person substantially incapacitated; Indecent act; Wrongful sexual contact

(1)(e) *Rape by administration of drug, intoxicant, or other similar substance.* Article 120 -- Aggravated sexual assault upon a person substantially incapacitated; Abusive sexual contact upon a person substantially incapacitated; Indecent act; Wrongful sexual contact

(2)(a) -- (f) *Rape of a child who has not attained 12 years; rape of a child who has attained the age of 12 years but has not attained the age of 16 years.* Article 120 -- Aggravated sexual

assault of a child; Aggravated sexual abuse of a child; Abusive sexual contact with a child; Indecent liberty with a child; Wrongful sexual contact

(3) *Aggravated sexual assault.* Article 120 -- Wrongful sexual contact; Indecent act

(4) *Aggravated sexual assault of a child.* Article 120 -- Aggravated sexual abuse of a child; Indecent liberty with a child; Wrongful sexual contact

(5)(a) *Aggravated sexual contact by force.* Article 120 -- Indecent act; Wrongful sexual contact

(5)(b) *Aggravated sexual contact by causing grievous bodily harm.* Article 120 -- Abusive sexual contact by causing bodily harm; Indecent act; Wrongful sexual contact

(5)(c) *Aggravated sexual contact by using threats or placing in fear.* Article 120 -- Abusive sexual contact by using threats or placing in fear; Indecent act; Wrongful sexual contact

(5)(d) *Aggravated sexual contact by rendering another unconscious.* Article 120 -- Abusive sexual contact upon a person substantially incapacitated; Indecent act; Wrongful sexual contact

(5)(e) *Aggravated sexual contact by administration of drug, intoxicant, or other similar substance.* Article 120 -- Abusive sexual contact upon a person substantially incapacitated; Indecent act; Wrongful sexual contact

(6) *Aggravated sexual abuse of a child.* Article 120 -- Aggravated sexual contact with a child; Aggravated sexual abuse of a child; Indecent liberty with a child; Wrongful sexual contact

(7) *Aggravated sexual contact with a child.* Article 120 -- Abusive sexual contact with a child; Indecent liberty with a child; Wrongful sexual contact

(8) *Abusive sexual contact.* Article 120 -- Wrongful sexual contact; Indecent act

(9) *Abusive sexual contact with a child.* Article 120 -- Indecent liberty with a child; Wrongful sexual contact

(10) *Indecent liberty with a child.* Article 120 -- Wrongful sexual contact

f. *Maximum punishment.*

(1) *Rape and rape of a child.* Death or such other punishment as a court martial may direct.

(2) *Aggravated sexual assault.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 30 years.

(3) *Aggravated sexual assault of a child who has attained the age of 12 years but has not attained the age of 16 years, aggravated sexual abuse of a child, aggravated sexual contact, and aggravated sexual contact with a child.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(4) *Abusive sexual contact with a child and indecent liberty with a child.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

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

(6) *Indecent act or forcible pandering.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(7) *Wrongful sexual contact or indecent exposure.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

g. *Sample specifications.*

(1) *Rape.*

(a) *Rape by using force.*

(i) *Rape by use or display of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____ , by (using a dangerous weapon or object, to wit: _____ against (him)(her)) (displaying a dangerous weapon or object, to wit: _____ to (him)(her)).

(ii) *Rape by suggestion of possession of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____ , by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him)(her) to believe it was a dangerous weapon or object.

(iii) *Rape by using physical violence, strength, power, or restraint to any person.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by using (physical violence) (strength) (power) (restraint applied to _____), sufficient that (he)(she) could not avoid or escape the sexual conduct.

(b) *Rape by causing grievous bodily harm.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by causing grievous bodily harm upon (him)(her) (_____), to wit: a (broken leg)(deep cut)(fractured skull)(_____).

(c) *Rape by using threats or placing in fear.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by [threatening] [placing (him)(her) in fear] that (he)(she) (_____) will be subjected to (death)(grievous bodily harm) (kidnapping) by _____.

(d) *Rape by rendering another unconscious.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by rendering (him)(her) unconscious.

(e) *Rape by administration of drug, intoxicant, or other similar substance.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____ , by administering to (him)(her) a drug, intoxicant, or other similar substance, (by force) (by threat of force) (without (his)(her) knowledge or permission), and thereby substantially impaired (his)(her) ability to [(appraise) (control)][(his) (her)] conduct.

(2) *Rape of a child.*

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

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____ with _____, a child who had not attained the age of 12 years.

(b) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using force.*

(i) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by use or display of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____ , with _____ , a child who had attained the age of 12 years, but had not attained the age of 16 years, by (using a dangerous weapon or object, to wit: _____ against (him)(her)) (displaying a dangerous weapon or object, to wit: _____ to (him)(her)).

(ii) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by suggestion of possession of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____ , with _____ , a child who had attained the age of 12 years, but had not attained the age of 16 years, by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him)(her) to believe it was a dangerous weapon or object.

(iii) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using physical violence, strength, power, or restraint to any person.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____ with _____ , a child who had attained the age of 12 years, but had not attained the age of 16 years, by using (physical violence) (strength) (power) (restraint applied to _____) sufficient that (he)(she) could not avoid or escape the sexual conduct.

(c) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____ , with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by causing grievous bodily harm upon (him)(her)(_____), to wit: a (broken leg)(deep cut)(fractured skull)(_____).

(d) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____, with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by [threatening] [placing (him)(her) in fear] that (he)(she) (_____) would be subjected to (death)(grievous bodily harm) (kidnapping) by _____.

(e) *Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by rendering that child unconscious.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____, with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by rendering (him)(her) unconscious.

(f) *Rape of a child who has attained the age of 12 years*

but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____, with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by administering to (him)(her) a drug, intoxicant, or other similar substance (by force) (by threat of force) (without (his)(her) knowledge or permission), and thereby substantially impaired (his)(her) ability to [(appraise)(control)] (his)(her)] conduct.

(3) *Aggravated sexual assault.*

(a) *Aggravated sexual assault by using threats or placing in fear.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by [threatening] [placing(him)(her) in fear of] [(physical injury to ____) (injury to ____'s property)(accusation of crime)(exposition of secret)(abuse of military position) (_____)].

(b) *Aggravated sexual assault by causing bodily harm.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, cause _____ to engage in a sexual act, to wit: _____, by causing bodily harm upon (him)(her)(_____), to wit: _____.

(c) *Aggravated sexual assault upon a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or communicating unwillingness.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20____, engage in a sexual act, to wit: _____ with _____, who was (substantially incapacitated) [substantially incapable of (appraising the nature of the sexual act)(declining participation in the sexual act) (communicating unwillingness to engage in the sexual act)].

(4) *Aggravated sexual assault of a child who has attained the age of 12 years but has not attained the age of 16 years.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a sexual act, to wit: _____ with _____, who had attained the age of 12 years, but had not attained the age of 16 years.

(5) *Aggravated sexual contact.*

(a) *Aggravated sexual contact by using force.*

(i) *Aggravated sexual contact by use or display of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____) (cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: _____)] by (using a dangerous weapon or object, to wit: _____ against (him)(her)) (displaying a dangerous weapon or object, to wit: _____ to (him)(her)).

(ii) *Aggravated sexual contact by suggestion of possession of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit:

_____with _____)(cause _____ to engage in sexual contact, to wit: _____ , with _____) (cause sexual contact with or by _____, to wit: _____)] by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him)(her)(_____) to believe it was a dangerous weapon or object.

(iii) *Aggravated sexual contact by using physical violence, strength, power, or restraint to any person.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____,[(engage in sexual contact, to wit: _____ with _____)(cause _____ to engage in sexual contact, to wit: _____ , with _____) (cause sexual contact with or by _____, to wit: _____)] by using (physical violence) (strength) (power) (restraint applied to _____), sufficient that (he)(she)(_____) could not avoid or escape the sexual conduct.

(b) *Aggravated sexual contact by causing grievous bodily harm.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____)(cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: _____)] by causing grievous bodily harm upon (him)(her)(_____), to wit: a (broken leg)(deep cut)(fractured skull)(_____).

(c) *Aggravated sexual contact by using threats or placing in fear.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____)(cause _____ to engage in sexual contact, to wit: _____,

with _____) (cause sexual contact with or by _____, to wit: _____)] by [(threatening (him)(her)(_____)] [(placing(him)(her) (_____) in fear] that (he)(she)(_____) will be subjected to (death)(grievous bodily harm)(kidnapping) by _____.

(d) *Aggravated sexual contact by rendering another unconscious.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____)(cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: _____)] by rendering (him)(her)(_____) unconscious.

(e) *Aggravated sexual contact by administration of drug, intoxicant, or other similar substance.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____)(cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: (_____)] by administering to (him)(her)(_____) a drug, intoxicant, or other similar substance, (by force) (by threat of force) (without (his)(her)(_____) knowledge or permission), and thereby substantially impaired (his)(her)(_____) ability to [(appraise) (control)] [(his) (her)] conduct.

(6) *Aggravated sexual abuse of a child.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in a lewd act, to wit: _____ with_____, a child who had not attained the age of 16 years.

(7) *Aggravated sexual contact with a child.*

(a) *Aggravated sexual contact with a child who has not attained the -- age of 12 years.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had not attained the age of 12 years)(cause _____ to engage in sexual contact, to wit: _____, with _____, a child who had not attained the age of 12 years) (cause sexual contact with or by _____, a child who had not attained the age of 12 years, to wit: _____)].

(b) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using force.*

(i) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by use or display of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board-location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause _____ to engage in sexual contact, to wit: _____ , with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, to wit: _____)] by (using a dangerous weapon or object, to wit: _____ against (him)(her)(_____)) (displaying a dangerous weapon or object, to wit: _____ to (him)(her)(_____)).

(ii) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by suggestion of possession of dangerous weapon or object.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause _____ to engage in sexual contact, to wit: _____ , with _____, a child who had attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had attained the age of 12 years, but had not attained the age of 16 years, to wit: _____)] by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him)(her)(_____) to believe it was a dangerous weapon or object.

(iii) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using physical violence, strength, power, or restraint to any person.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years)(cause _____ to engage in sexual contact, to wit: _____ , with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years, to wit: _____)] by using (physical violence) (strength) (power) (restraint applied to _____) sufficient that (he)(she) (_____) could not avoid or escape the sexual conduct.

(c) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years)(cause _____ to engage in sexual contact, to wit: _____ , with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years, to wit: _____)] by causing grievous bodily harm upon (him)(her)(_____), to wit: a (broken leg)(deep cut)(fractured skull)(_____).

(d) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years)(cause _____ to engage in sexual contact, to wit: _____ , with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years, to wit: _____)] by [threatening] [placing (him)(her)(_____) in fear] that (he)(she)(_____) will be subjected to (death) (grievous bodily harm)(kidnapping) by _____.

(e) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by rendering that child or another unconscious.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years)(cause _____ to engage in sexual contact, to wit: _____ , with _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had not attained the age of 12 years, but had not attained the age of 16 years, to wit: _____)] by rendering (him)(her)(_____) unconscious.

(f) *Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had not attained the age of 12 years but had not attained the age of 16 years)(cause ___ to engage in sexual contact, to wit: _____, with _____, a child who had not attained the age of 12 years but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had not attained the age of 12 years but had not attained the age of 16 years, to wit: _____)] by administering to (him)(her)(_____) a drug, intoxicant, or other similar substance (by force) (by threat of force) (without (his)(her)(_____) knowledge or permission), and thereby substantially impaired (his)(her) (_____) ability to [(appraise) (control)][(his) (her)] conduct.

(8) *Abusive sexual contact.*

(a) *Abusive sexual contact by using threats or placing in fear.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with ____) (cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: _____)] by [(threatening) (placing (him)(her)(_____) in fear of)] [(physical injury to _____)(injury to _____'s property)(accusation of crime)(exposition of secret)(abuse of military position)(_____)].

(b) *Abusive sexual contact by causing bodily harm.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____) (cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: ____)] by causing bodily harm upon (him)(her)(_____), to wit: (_____).

(c) *Abusive sexual contact by engaging in a sexual act with a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or substantially incapable of communicating unwillingness.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____) (cause _____ to engage in sexual contact, to wit: _____, with _____) (cause sexual contact with or by _____, to wit: _____)] while (he)(she)(_____) was [substantially incapacitated] [substantially incapable of (appraising the nature of the sexual contact) (declining participation in the sexual contact) (communicating unwillingness to engage in the sexual contact)].

(9) *Abusive sexual contact with a child.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, [(engage in sexual contact, to wit: _____ with _____, a child who had attained the age of 12 years but had not attained the age of 16 years) (cause _____ to engage in sexual contact, to wit: _____, with _____, a child who had attained the age of 12 years but had not attained the age of 16 years) (cause sexual contact with or by _____, a child who had attained the age of 12 years but had not attained the age of 16 years, to wit: _____)].

(10) *Indecent liberties with a child.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, (take indecent liberties) (engage in indecent conduct) in the physical presence of _____, a (female) (male) under 16 years of age, by (communicating the words: to wit:_____) (exposing one's private parts, to wit: _____) (_____), with the intent to [(arouse) (appeal to) (gratify) the (sexual desire) of the _____ (or _____)] [(abuse)(humiliate)(degrade) _____].

(11) *Indecent act.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, wrongfully commit indecent conduct, to wit _____.

(12) *Forcible pandering.*

In that _____ (personal jurisdiction data), did (at/on board—location), (subject-matter jurisdiction data, if required), on or about _____20_____, compel _____ to engage in [(a sexual

act)(sexual contact) (lewd act), to wit: _____] for the purpose of receiving money or other compensation with _____ (a) person(s) to be directed to (him)(her) by the said _____.

(13) *Wrongful sexual contact.*

In that_____ (personal jurisdiction data), did (at/on board—location), (subject-matter jurisdiction data, if required), on or about _____ 20_____, engage in sexual contact with _____, to wit: _____, and such sexual contact was without legal justification or lawful authorization and without the permission of _____.

(14) *Indecent exposure.*

In that_____ (personal jurisdiction data), did (at/on board—location), (subject-matter jurisdiction data, if required), on or about _____ 20____, intentionally (expose in an indecent manner (his) (her) (_____) (_____) while (at the barracks window) (in a public place) (_____).

(e) Paragraph 50, Article 124 -- Maiming, paragraph e. is amended to read as follows:

"e. *Maximum Punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years."

(f) Paragraph 51, Article 125 -- Sodomy, paragraph d. is amended by deleting the following lesser included offenses under paragraphs d.(1)(b); d.(2)(c); and d.(3)(a), and replacing them, respectively, with the following:

"(b) Article 134 -- indecent liberty with a child"

"(c) Article 134 -- indecent assault"

"(a) Article 134 -- indecent acts with another"

(g) Paragraph 51, Article 125 -- Sodomy, paragraph d. is amended by adding at the end of paragraph d. the following note:

"(Note: Consider lesser included offenses under Art. 120 depending on the factual circumstances in each case.)"

(h) Paragraph 54, Article 128 -- Assault, paragraph b.(4)(a) is amended to read as follows:

"(a) Assault with a dangerous weapon or other means of force likely to produce death or grievous bodily harm.

(i) That the accused attempted to do, offered to do, or did bodily harm to a certain person;

(ii) That the accused did so with a certain weapon, means, or force;

(iii) That the attempt, offer, or bodily harm was done with unlawful force or violence; and

(iv) That the weapon, means, or force was used in a manner likely to produce death or grievous bodily harm.

(Note: Add any of the following as applicable)

(v) That the weapon was a loaded firearm.

(vi) That the person was a child under the age of 16 years."

(i) Paragraph 54, Article 128 -- Assault, paragraph b.(4)(b) is amended to read as follows:

"(b) *Assault in which grievous bodily harm is intentionally inflicted.*

(i) That the accused assaulted a certain person;

(ii) That grievous bodily harm was thereby inflicted upon such person;

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

(iv) That the accused, at the time, had the specific intent to inflict grievous bodily harm.

(Note: Add any of the following as applicable)

(v) That the injury was inflicted with a loaded firearm.

(vi) That the person was a child under the age of 16 years."

(j) Paragraph 54, Article 128 -- Assault, paragraph c.(4)(a) is amended by adding new paragraph c.(4)(a)(v) after c.(4)(a)(iv),

to read as follows:

"(v) *When committed upon a child under 16 years of age.* The maximum punishment is increased when aggravated assault with a dangerous weapon or means likely to produce death or grievous bodily harm is inflicted upon a child under 16 years of age. Knowledge that the person assaulted was under the age of 16 years is not an element of the offense."

(k) Paragraph 54, Article 128 -- Assault, paragraph c.(4)(b) is amended by adding new paragraph c.(4)(b)(iv), to read as follows:

"(iv) *When committed upon a child under 16 years of age.* The maximum punishment is increased when aggravated assault with intentional infliction of grievous bodily harm is inflicted upon a child under 16 years of age. Knowledge that the person assaulted was under the age of 16 years is not an element of the offense."

(l) Paragraph 54, Article 128 -- Assault, paragraph (d)(6) is amended to read as follows:

"(6) *Assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm.* Article 128 -- simple assault; assault consummated by a battery; (when committed upon a child under the age of 16 years; assault consummated by a battery upon a child under the age of 16 years)."

(m) Paragraph 54, Article 128 -- Assault, paragraph d.(7) is amended to read as follows:

"(7) *Assault in which grievous bodily harm is intentionally inflicted.* Article 128 -- simple assault; assault consummated by a battery; assault with a dangerous weapon; (when committed upon a child under the age of 16 years -- assault consummated by a battery upon a child under the age of 16 years)."

(n) Paragraph 54, Article 128 -- Assault, paragraph e.(8) is amended to read as follows:

"(8) *Aggravated assault with a dangerous weapon or other means of force to produce death or grievous bodily harm.*"

After current paragraph (a), insert paragraph (b) as follows below, and redesignate (b) as paragraph (c):

"(b) *Aggravated assault with a dangerous weapon or other means of force to produce death or grievous bodily harm when committed upon a child under the age of 16 years.* Dishonorable discharge, total forfeitures, and confinement for 5 years."

(o) Paragraph 54, Article 128 -- Assault, paragraph (e)(9) is amended to read as follows:

"(9) *Aggravated assault in which grievous bodily harm is intentionally inflicted.*"

After current paragraph (a), insert paragraph (b) as follows below, and redesignate paragraph (b) as paragraph (c):

"(b) *Aggravated assault in which grievous bodily harm is intentionally inflicted when committed upon a child under the age of 16 years.* Dishonorable discharge, total forfeitures, and confinement for 8 years."

(p) Paragraph 54, Article 128 -- Assault, paragraph (f)(8) is amended to read as follows:

"(8) *Assault, aggravated*—with a dangerous weapon, means or force.

In that _____ (personal jurisdiction data), did, (at/on board—location)(subject matter jurisdiction data, if required), on or about _____ 20_____, commit an assault upon _____ (a child under the age of 16 years) by (shooting)(pointing)(striking)(cutting) (_____) (at him/her)(him/her) (in)(on)(the _____) with (a dangerous weapon)(a (means)(force) likely to produce death or grievous bodily harm), to wit: a (loaded firearm)(pickax)(bayonet)(club)(_____)."

(q) Paragraph 54, Article 128 -- Assault, paragraph (f)(9) is amended to read as follows:

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

(r) Paragraph 64, Article 134 -- (Assault -- with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking), paragraph c.(4), first sentence, is amended to read as follows:

"In assault with intent to commit rape, the accused must have intended to complete the offense."

(s) Paragraph 64, Article 134 -- (Assault -- with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking), is amended by deleting the following lesser included offense under paragraph d.(3)(b):

"(b) Article 134 -- indecent assault"

(t) New paragraph 68a, Article 134 -- (Child endangerment) is inserted:

"68a. Article 134 -- (Child endangerment)

a. *Text.* *See* paragraph 60.

b. *Elements.*

(1) That the accused had a duty for the care of a certain child;

(2) That the child was under the age of 16 years;

(3) That the accused endangered the child's mental or physical health, safety, or welfare through design or culpable negligence; and

(4) 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 is intended to prohibit and therefore deter child endangerment through design or culpable negligence.

(2) *Design.* Design means on purpose, intentionally, or according to plan and requires specific intent to endanger the child.

(3) *Culpable negligence.* Culpable negligence is a degree of carelessness greater than simple negligence. It is a negligent act or omission accompanied by a culpable disregard for the foreseeable consequences to others of that act or omission. In the context of this offense, culpable negligence may include acts that, when viewed in the light of human experience, might foreseeably result in harm to a child, even though such harm would not necessarily be the natural and probable consequences of such acts. In this regard, the age and maturity of the child, the conditions surrounding the neglectful conduct, the proximity of assistance available, the nature of the environment in which the child may have been left, the provisions made for care of the child, and the location of the parent or adult responsible for the child relative to the location of the child, among others, may be considered in determining whether the conduct constituted culpable negligence.

(4) *Harm.* Actual physical or mental harm to the child is not required. The offense requires that the accused's actions reasonably could have caused physical or mental harm or

suffering. However, if the accused's conduct does cause actual physical or mental harm, the potential maximum punishment increases. *See* Paragraph 54(c)(4)(a)(iii) for an explanation of "grievous bodily harm".

(5) *Endanger.* "Endanger" means to subject one to a reasonable probability of harm.

(6) *Age of victim as a factor.* While this offense may be committed against any child under 16, the age of the victim is a factor in the culpable negligence determination. Leaving a teenager alone for an evening may not be culpable (or even simple) negligence; leaving an infant or toddler for the same period might constitute culpable negligence. On the other hand, leaving a teenager without supervision for an extended period while the accused was on temporary duty outside commuting distance might constitute culpable negligence.

(7) *Duty required.* The duty of care is determined by the totality of the circumstances and may be established by statute, regulation, legal parent-child relationship, mutual agreement, or assumption of control or custody by affirmative act. When there is no duty of care of a child, there is no offense under this paragraph. Thus, there is no offense when a stranger makes no effort to feed a starving child or an individual/neighbor not charged with the care of a child does not prevent the child from running and playing in the street.

d. *Lesser included offenses.*

(1) *Child Endangerment by Design.* Article 134 -- Child endangerment by culpable negligence

(2) Article 80 -- Attempts

e. *Maximum punishment.*

(1) *Endangerment by design resulting in grievous bodily*

harm. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 8 years.

(2) *Endangerment by design resulting in harm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(3) *Other cases by design.* Dishonorable discharge, forfeiture of all pay and allowances and confinement for 4 years.

(4) *Endangerment by culpable negligence resulting in grievous bodily harm.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(5) *Endangerment by culpable negligence resulting in harm.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 2 years.

(6) *Other cases by culpable negligence.* Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

f. *Sample specification.*

(1) *Resulting in grievous bodily harm.*

In that _____ (personal jurisdiction data), (at/on board—location) (subject matter jurisdiction data, if required) on or about _____, 20_____, had a duty for the care of _____, a child under the age of 16 years and did endanger the (mental health) (physical health) (safety) (welfare) of said _____, by (leaving the said _____ unattended in his quarters for over _____ hours/days with no adult present in the home) (by failing to obtain medical care for the said _____'s diabetic condition) (_____), and that such conduct (was by design) (constituted culpable negligence) (which resulted in grievous bodily harm, to wit:) (broken leg) (deep cut) (fractured skull) (_____).

(2) *Resulting in harm.*

In that _____ (personal jurisdiction data), (at/on board—location) (subject matter jurisdiction data, if required) on or about _____, 20_____, had a duty for the care of _____, a child under the age of 16 years, and did endanger the (mental health) (physical health) (safety) (welfare) of said _____, by (leaving the said _____ unattended in his quarters for over _____ hours/days with no adult present in the home) (by failing to obtain medical care for the said _____'s diabetic condition) (_____), and that such conduct (was by design) (constituted culpable negligence) (which resulted in (harm, to wit:) (a black eye) (bloody nose) (minor cut) (_____).

(3) *Other cases.*

In that _____ (personal jurisdiction data), (at/on board—location) (subject matter jurisdiction data, if required) on or about _____, 20_____, was responsible for the care of _____, a child under the age of 16 years, and did endanger the (mental health) (physical health) (safety) (welfare) of said _____, by (leaving the said _____ unattended in his quarters for over _____ hours/days with no adult present in the home) (by failing to obtain medical care for the said _____'s diabetic condition) (_____), and that such conduct (was by design) (constituted culpable negligence)."

(u) Paragraph 63, Article 134 -- (Assault-indecent) is deleted.

(v) Paragraph 87, Article 134 -- (Indecent acts or liberties with a child) is deleted.

(w) Paragraph 88, Article 134 -- (Indecent exposure) is deleted.

(x) Paragraph 90, Article 134 -- (Indecent acts with another) is deleted.

(y) Paragraph 89, Article 134 -- (Indecent language), paragraph c. is amended to read as follows:

"c. *Explanation.* "Indecent" language is that which is grossly offensive to modesty, decency, or propriety, or shocks the moral sense, because of its vulgar, filthy, or disgusting nature, or its tendency to incite lustful thought. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards. *See* paragraph 45 if the communication was made in the physical presence of a child."

(z) Paragraph 97, Article 134 -- (Pandering and prostitution) is amended to read as follows:

"(3) *Pandering by inducing, enticing, or procuring act of prostitution.*

(a) That the accused induced, enticed, or procured a certain person to engage in an act of sexual intercourse for hire and reward with a person to be directed to said person by the accused;

(b) That this inducing, enticing, or procuring was wrongful;

(c) 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."

(aa) Paragraph 97, Article 134 -- (Pandering and prostitution), subsection (f)(3) is amended to read as follows:

"(3) *Inducing, enticing, or procuring act of prostitution.*

In that _____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ 20_____, wrongfully (induce)(entice)(procure)

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_____ to engage in (an act)(acts) of (sexual intercourse for hire and reward) with persons to be directed to him/her by the said _____."

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