

knowledge that steps are being taken or have been taken toward arranging or fighting a duel and who fails to take reasonable preventive action thereby connives at the fighting of a duel.

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

e. *Maximum punishment.* For all Article 114 offenses: dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

f. *Sample specifications.*

(1) *Dueling.*

In that _____ (personal jurisdiction data) (and _____), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, fight a duel (with _____), using as weapons therefor (pistols) (swords) (_____).

(2) *Promoting a duel.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, promote a duel between _____ and _____ by (telling said _____ he/she would be a coward if he/she failed to challenge said _____ to a duel) (knowingly carrying from said _____ to said _____ a challenge to fight a duel).

(3) *Conniving at fighting a duel.*

In that _____ (personal jurisdiction data), having knowledge that _____ and _____ were about to engage in a duel, did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __, connive at the fighting of said duel by (failing to take reasonable preventive action) (_____).

(4) *Failure to report a duel.*

In that _____ (personal jurisdiction data), having knowledge that a challenge to fight a duel (had been sent) (was about to be sent) by _____ to _____, did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 __ fail to report that fact promptly to the proper authority.

40. Article 115—Malingering

a. *Text of statute.*

Any person subject to this chapter who for the purpose of avoiding work, duty, or service—

(1) **feigns illness, physical disablement, mental lapse or derangement; or**

(2) **intentionally inflicts self-injury; shall be punished as a court-martial may direct.**

b. *Elements.*

(1) That the accused was assigned to, or was aware of prospective assignment to, or availability for, the performance of work, duty, or service;

(2) That the accused feigned illness, physical disablement, mental lapse or derangement, or intentionally inflicted injury upon himself or herself; and

(3) That the accused’s purpose or intent in doing so was to avoid the work, duty, or service.

[Note: If the offense was committed in time of war or in a hostile fire pay zone, add the following element]

(4) That the offense was committed (in time of war) (in a hostile fire pay zone).

c. *Explanation.*

(1) *Nature of offense.* The essence of this offense is the design to avoid performance of any work, duty, or service which may properly or normally be expected of one in the military service. Whether to avoid all duty, or only a particular job, it is the purpose to shirk which characterizes the offense. Hence, the nature or permanency of a self-inflicted injury is not material on the question of guilt, nor is the seriousness of a physical or mental disability which is a sham. Evidence of the extent of the self-inflicted injury or feigned disability may, however, be relevant as a factor indicating the presence or absence of the purpose.

Discussion

Bona fide suicide attempts should not be charged as criminal offenses. When making a determination whether the injury by the service member was a bona fide suicide attempt, the convening authority should consider factors including, but not limited to, health conditions, personal stressors, and DoD policy related to suicide prevention.

(2) *How injury inflicted.* The injury may be inflicted by nonviolent as well as by violent means and may be accomplished by any act or omission which produces, prolongs, or aggravates any sickness or disability. Thus, voluntary starvation which results in debility is a self-inflicted injury and when done for the purpose of avoiding work, duty, or service constitutes a violation of this article.

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

e. *Maximum punishment.*

(1) *Feigning illness, physical disablement, mental lapse, or derangement.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Feigning illness, physical disablement, mental lapse, or derangement in a hostile fire pay zone or in time of war.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

(3) *Intentional self-inflicted injury.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(4) *Intentional self-inflicted injury in a hostile fire pay zone or in time of war.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.

f. *Sample specification.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (in a hostile fire pay zone) (subject-matter jurisdiction data, if required) (on or about ____ 20 __) (from about ____ 20 __ to about ____ 20 __), (a time of war) for the purpose of avoiding (his/her duty as officer of the day) (his/her duty as aircraft mechanic) (work in the mess hall) (service as an enlisted person) (_____) (feign (a headache) (a sore back) (illness) (mental lapse) (mental derangement) (_____)) (intentionally injure himself/herself by _____).

41. Article 116—Riot or breach of peace

a. *Text of statute.*

Any person subject to this chapter who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

b. *Elements.*

(1) *Riot.*

(a) That the accused was a member of an assembly of three or more persons;

(b) That the accused and at least two other members of this group mutually intended to assist one another against anyone who might oppose them in doing an act for some private purpose;

(c) That the group or some of its members, in furtherance of such purpose, unlawfully committed a

tumultuous disturbance of the peace in a violent or turbulent manner; and

(d) That these acts terrorized the public in general in that they caused or were intended to cause public alarm or terror.

(2) *Breach of the peace.*

(a) That the accused caused or participated in a certain act of a violent or turbulent nature; and

(b) That the peace was thereby unlawfully disturbed.

c. *Explanation.*

(1) *Riot.* “Riot” is a tumultuous disturbance of the peace by three or more persons assembled together in furtherance of a common purpose to execute some enterprise of a private nature by concerted action against anyone who might oppose them, committed in such a violent and turbulent manner as to cause or be calculated to cause public terror. The gravamen of the offense of riot is terrorization of the public. It is immaterial whether the act intended was lawful. Furthermore, it is not necessary that the common purpose be determined before the assembly. It is sufficient if the assembly begins to execute in a tumultuous manner a common purpose formed after it assembled.

(2) *Breach of the peace.* A “breach of the peace” is an unlawful disturbance of the peace by an outward demonstration of a violent or turbulent nature. The acts or conduct contemplated by this article are those which disturb the public tranquility or impinge upon the peace and good order to which the community is entitled. Engaging in an affray and unlawful discharge of firearms in a public street are examples of conduct which may constitute a breach of the peace. Loud speech and unruly conduct may also constitute a breach of the peace by the speaker. A speaker may also be guilty of causing a breach of the peace if the speaker uses language which can reasonably be expected to produce a violent or turbulent response and a breach of the peace results. The fact that the words are true or used under provocation is not a defense, nor is tumultuous conduct excusable because incited by others.

(3) *Community and public.* “Community” and “public” include a military organization, post, camp, ship, aircraft, or station.

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

e. *Maximum punishment.*