

## Staff summary of reading materials for JPP members in preparation for Aug 7 public meeting

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1. ***Rape and Sexual Assault in the Legal System, June 5, 2015, Carol E. Tracy, Terry L. Fromson, Women's Law Project, Jennifer Gentile Long, Charlene, Whitman, AEquitas (34 pages).***
  - Presents an overview of the history and trends in rape law which helps put it in context and build a baseline knowledge of the topic. The abstract addresses the fact that jurisdictions differ in “terminology, gradation, and their interpretation of the proscribed conduct.” P. 12
  - Provides an analysis of common elements in state and federal rape and sexual assault laws (including the 2012 version of Art 120 of the UCMJ) for comparative purposes. AEquitas developed a compilation of rape and sexual assault laws is available to accompany the Abstract.
  - *Two of the authors will be present at the August 7 JPP meeting: Ms. Carol E. Tracey, Women's Law Project, and Ms. Charlene Whitman, AEquitas.*
  
2. ***Proposed Revision to Model Penal Code, section 213, tentative draft by American Law Institute, April 30, 2014.***
  - Excerpt provided is 35 pages - full document will be posted to the JPP website
  - Explains the history of sexual assault statutes and why a change to the MPC is necessary. Also includes the table of contents, which indicates other issues and topics detailed in the rest of the document, and list of personnel who drafted or consulted on the report.
  - Other parts of the report may be helpful for deeper analysis of Art. 120 and comparison to civilian statutes.
  - *The Reporter for the proposal, Professor Stephen J. Schulhofer, NYU School of Law, will appear telephonically at the August 7 JPP meeting.*
  
3. ***Prospectus to revise the Model Penal Code, section 213, prepared by Prof Schulhofer, May 14, 2012 (22 pages).***
  - Provides questions and analysis that may be useful in analyzing Article 120 of the UCMJ.
  
4. **Text of current version of Article 120, UCMJ (2012). (3 pages)**
  
5. **Timeline of amendments to Article 120, UCMJ. (1 page)**
  
6. ***Analysis of Crimes and Defenses 2012 UCMJ Article 120, effective 28 June 2012, Professor Jim Clark (9 pages).***
  - Briefly describes the changes in Article 120 in 2007 and 2011 and explains the law as it exists today.
  
7. ***2004 Sex Crimes and the UCMJ: A report for the Joint Service Committee on Military Justice.***
  - Excerpt provided is 49 pages – full document will be posted to the JPP website.
  - In 2004, a subcommittee to the Joint Service Committee prepared an extensive report (806 pages) analyzing various options to change Article 120 of the UCMJ. The excerpt provides a

good background of military sexual assault offenses and framework to appreciate the complexity of revising the statute.

- A subcommittee member, Colonel Gary Jackson, U.S. Air Force, will be present at the August 7 JPP meeting.

**8. *Annual Review of Developments in Instructions, ARMY LAWYER 2013, COL R. Peter Masterton, COL David Robertson, COL Wendy Daknis (21 pages).***

- Provides an overview of the military history of Article 120, the evolution, and discussion of the current version of Article 120.
- None of the authors will appear at the August 7 JPP meeting, but three presenters are former military judges who have presided over cases based on different versions of Article 120.

**9. *Neither a Model of Clarity nor a Model Statute: An Analysis of the History, Challenges, and Suggested Changes to the 'New' Article 120, AIR FORCE LAW REVIEW, 2011, Brig Gen (Ret) Jack Nevin and Lt Joshua Lorenz (Excerpt – 19 pages).***

- Provides a good historical background and explains why the change to Article 120 occurred in 2006-2007. *NOTE: This article was written prior to the 2012 amendment to Article 120.*

**10. *Sex Offenses Under Military Law: Will the Recent Changes in the Uniform Code of Military Justice (UCMJ) Re-traumatize Sexual Assault Survivors in the Courtroom?, OHIO STATE JOURNAL OF CRIMINAL LAW, 2014, COL (Ret) Lisa M. Schenck (48 pages)***

- Reviews the reasons for and recent amendments to Article 120. Discusses problems with most recent 2012 statutory revision to Article 120 and provides recommendations for further statutory amendments.

**11. *Department of the Army Pamphlet 27-9, Legal Services, Military Judges Benchbook (Excerpt-Article 120 Instructions) (54 pages)***

- Excerpt provided is fifty-four pages and only includes instructions regarding the 2012 Article 120, UCMJ.
- The instructions provided to the panel members prior to deliberation on a rape or sexual assault offense. The instructions address issues such as elements of particular offenses, consent, lesser included offenses, and the affirmative defense of mistake of fact.

**12. *Comparison of Article 213 of the Model Penal Code and Article 120, UCMJ***

- A chart reflecting the similarities and differences between the proposed revisions to the Model Penal Code's Article 213 and the current Article 120, UCMJ.

**13. *Presentation by Mr. Dwight Sullivan on Military Justice and Legislation***

- Power point presentation provided to the Panel Members by Mr. Dwight Sullivan from the Department of Defense, Office of the General Counsel.
- Provides an overview of the entire military justice system.
- Provides an update on recently passed and pending legislation impacting the military justice system.

**14. *Presentation by Mr. Dwight Sullivan on the Evolution of Article 120, UCMJ***

- Power point presentation provided to the Panel Members by Mr. Dwight Sullivan from the Department of Defense, Office of the General Counsel.
- Provides a historical overview of the previous rape and sexual assault laws and the legislative history of the current version of Article 120, UCMJ.
- Discusses the current statutory framework of the Article 120, UCMJ.

**15. *Section 541, FY12 NDAA***