

**ADULT SEXUAL CRIMES INVOLVING
PENETRATION OR SEXUAL TOUCHING**

**COMPARISON OF ARTICLE 120, UCMJ
AND SECTION 213 OF THE PROPOSED MODEL PENAL CODE**

| | Offenses under 10 U.S.C. §920 (Art. 120, UCMJ) | Offenses under the Proposed Model Penal Code (MPC) |
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| <p>RAPE</p> <p style="text-align: center;">&</p> <p>RAPE (FIRST DEGREE FELONY)</p> | <p>Article 120(a) – Rape</p> <p>Any person subject to this chapter who commits a sexual act upon another person by—</p> <p>(1) using unlawful force against that other person;</p> <p>(2) using force causing or likely to cause death or grievous bodily harm to any person;</p> <p>(3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping;</p> <p>(4) first rendering that other person unconscious; or</p> <p>(5) administering to that other person by force or threat of force, or without the knowledge or consent of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct;</p> <p>is guilty of rape and shall be punished as a court-martial may direct.</p> | <p>Section 213.1. RAPE AND RELATED OFFENSES</p> <p>(2) An actor is guilty of aggravated rape, a felony of the first degree, if he or she violates subsection (1) of this Section and:</p> <p>(a) uses a deadly weapon to cause the other person to engage in such act of sexual intercourse; or</p> <p>(b) acts with the active participation or assistance of one or more other persons who are present at the time of the act of sexual intercourse; or</p> <p>(c) knowingly or recklessly causes serious bodily injury to the other person or to anyone else for the purpose of causing such other person to engage in the act of sexual intercourse; or</p> <p>(d) the act of sexual intercourse in violation of subsection (2) of this Section is a commercial sex act.</p> |
| <p>SEXUAL ASSAULT</p> <p style="text-align: center;">&</p> <p>RAPE (SECOND DEGREE)</p> | <p>Article 120(b) – Sexual Assault</p> <p>(b) Sexual Assault.— Any person subject to this chapter who—</p> <p>(1) commits a sexual act upon another person by—</p> <p>(A) threatening or placing that other person in fear;</p> <p>(B) causing bodily harm to that other person;</p> <p>(C) making a fraudulent representation that the sexual act serves a professional purpose; or</p> | <p>Section 213.1. RAPE AND RELATED OFFENSES</p> <p>(1) An actor is guilty of rape, a felony of the second degree, if he or she knowingly or recklessly:</p> <p>(a) uses physical force, physical restraint, or an implied or express threat of physical force, bodily injury, or physical restraint to cause another person to engage in an act of sexual intercourse with anyone; or</p> |

**ADULT SEXUAL ASSAULT CRIMES INVOLVING PENETRATION OR SEXUAL TOUCHING
COMPARISON OF ARTICLE 120, UCMJ AND THE SECTION 213 OF THE PROPOSED MODEL PENAL CODE**

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| <p>FELONY)</p> | <p>(D) inducing a belief by any artifice, pretense, or concealment that the person is another person; (2) commits a sexual act upon another person when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring; or (3) commits a sexual act upon another person when the other person is incapable of consenting to the sexual act due to— (A) impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the person; or (B) a mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the person;</p> <p>is guilty of sexual assault and shall be punished as a court-martial may direct.</p> | <p>(b) causes another person to engage in an act of sexual intercourse by threatening to inflict bodily injury on someone other than such person or by threatening to commit any other crime of violence; or (c) has, or enables another person to have, sexual intercourse with a person who, at the time of such act of sexual intercourse: (i) is less than 12 years old¹; or (ii) is sleeping, unconscious, or physically unable to express nonconsent to engage in such act of sexual intercourse; or (iii) lacks the capacity to express nonconsent to engage in such act of sexual intercourse, because of mental disorder or disability, whether temporary or permanent; or (iv) lacks substantial capacity to appraise or control his or her conduct because of drugs, alcohol, or other intoxicating or consciousness altering substances that the actor administered or caused to be administered, without the knowledge of such other person, for the purpose of impairing such other person’s capacity to express nonconsent to such act of sexual intercourse.</p> |
| <p>SEXUAL ASSAULT</p> <p style="text-align: center;">&</p> <p>EXPLOITATION</p> | <p>Article 120(b) – Sexual Assault</p> <p>(b) Sexual Assault.— Any person subject to this chapter who—</p> <p>(1) commits a sexual act upon another person by— (A) threatening or placing that other person in fear; (B) causing bodily harm to that other person; (C) making a fraudulent representation that the sexual act serves a professional purpose; or (D) inducing a belief by any artifice, pretense, or concealment that the person is another person; (2) commits a sexual act upon another person when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is</p> | <p>MPC SECTION 213.3. SEXUAL INTERCOURSE BY EXPLOITATION</p> <p>An actor is guilty of sexual intercourse by exploitation, a felony of the fourth degree, if he or she has sexual intercourse with another person and:</p> <p>(1) is engaged in providing professional treatment, assessment, or 1 counseling for a mental or emotional illness, symptom, or condition of such person over a period concurrent with or substantially contemporaneous with the time when the act of sexual intercourse occurs, regardless of the location where such act of sexual intercourse occurs and regardless of whether the actor is formally licensed to provide such</p> |

¹ Sexual crimes against children under age 16 are addressed under 10 U.S.C. §920b (Article 120b, UCMJ), Rape and sexual assault of a child.

**ADULT SEXUAL ASSAULT CRIMES INVOLVING PENETRATION OR SEXUAL TOUCHING
COMPARISON OF ARTICLE 120, UCMJ AND THE SECTION 213 OF THE PROPOSED MODEL PENAL CODE**

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| | <p>occurring; or (3) commits a sexual act upon another person when the other person is incapable of consenting to the sexual act due to— (A) impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the person; or (B) a mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the person;</p> <p>is guilty of sexual assault and shall be punished as a court-martial may direct.</p> | <p>treatment; or (2) represents that the act of sexual intercourse is for purposes of medical treatment or that such person is in danger of physical injury or illness which the act of sexual intercourse may serve to mitigate or prevent; or (3) knowingly leads such person to believe falsely that he or she is someone with whom such person has been sexually intimate.</p> |
| <p align="center">PRINCIPAL LIABILITY</p> <p align="center">&</p> <p align="center">SEXUAL INTERCOURSE BY COERCION AND IMPOSITION</p> | <p><i>JPP Note: Actors who would be charged with sexual intercourse coercion or imposition under the proposed MPC are charged as principals under applicable subsections of Article 120, UCMJ, based on the offense. Acts of coercion are normally captured as “threatening or placing in fear” or “unlawful force.”</i></p> <p><i>Art. 77 states:</i></p> <p>Article 77, UCMJ – Principals</p> <p>Any person punishable under this chapter who— (1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or (2) causes an act to be done which if directly performed by him would be punishable by this chapter; is a principal.</p> | <p>MPC Section 213.2. SEXUAL INTERCOURSE BY COERCION OR IMPOSITION</p> <p>(1) An actor is guilty of sexual intercourse by coercion, a felony of the third degree, if he or she:</p> <p>(a) knowingly or recklessly has, or enables another person to have, sexual intercourse with a person who at the time of the act of sexual intercourse:</p> <ul style="list-style-type: none"> (i) has by words or conduct expressly indicated nonconsent to such act of sexual intercourse; or (ii) is undressed or is in the process of undressing for the purpose of receiving nonsexual professional services from the actor, and has not given consent to sexual activity; or (b) obtains the other person’s consent by threatening to: <ul style="list-style-type: none"> (i) accuse anyone of a criminal offense or of a failure to comply with immigration regulations; or (ii) expose any information tending to impair the credit or business repute of any person; or (iii) take or withhold action in an official capacity, whether public or private, or cause another person to take or withhold action in an official capacity, whether public or private; or (iv) inflict any substantial economic or financial harm that would not benefit the actor; or |

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COMPARISON OF ARTICLE 120, UCMJ AND THE SECTION 213 OF THE PROPOSED MODEL PENAL CODE**

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| | | <p>(c) knows or recklessly disregards the risk that the other person:</p> <ul style="list-style-type: none">(i) is less than 18 years old and the actor is a parent, foster parent, guardian, teacher, educational or religious counselor, school administrator, extracurricular instructor, or coach of such person; or(ii) is on probation or parole and that the actor holds any position of authority or supervision with respect to such person's probation or parole; or(iii) is detained in a hospital, prison, or other custodial institution, and that the actor holds any position of authority at such facility. <p>(2) An actor is guilty of aggravated sexual intercourse by coercion, a felony of the second degree, if he or she violates subsection (1)(b) or (1)(c) of this Section and in doing so causes a person to engage in a commercial sex act involving sexual intercourse.</p> <p>(3) An actor is guilty of sexual intercourse by imposition, a felony of the third degree, if he or she knowingly or recklessly has, or enables another person to have, sexual intercourse with a person who, at the time of the act of sexual intercourse:</p> <ul style="list-style-type: none">(a) lacks the capacity to express nonconsent to such act of sexual intercourse, because of intoxication, whether voluntary or involuntary, and regardless of the identity of the person who administered such intoxicants; or(b) is less than 16 years old and the actor is more than four years older than such person; or(c) is mentally disabled, developmentally disabled, or mentally incapacitated, whether temporarily or permanently, to the extent that such person is incapable of understanding the physiological nature of sexual intercourse, its potential for causing pregnancy, or its potential for transmitting disease; or(d) is mentally or developmentally disabled to the extent that such person's social or intellectual capacities are no greater |
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**ADULT SEXUAL ASSAULT CRIMES INVOLVING PENETRATION OR SEXUAL TOUCHING
COMPARISON OF ARTICLE 120, UCMJ AND THE SECTION 213 OF THE PROPOSED MODEL PENAL CODE**

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| | | <p>than that of a person who is less than 12 years old.</p> <p>(4) An actor is guilty of aggravated sexual intercourse by imposition, a felony of the second degree, if he or she violates subsection (3) of this Section and in doing so causes a person to engage in a commercial sex act involving sexual intercourse.</p> |
| SEXUAL CONTACT OFFENSES | <p>Article 120(c) Aggravated Sexual Contact</p> <p>(c) Aggravated Sexual Contact.— Any person subject to this chapter who commits or causes sexual contact upon 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.</p> <p>Article 120(d) Abusive Sexual Contact</p> <p>(d) Abusive Sexual Contact.— Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (b) (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.</p> | <p>SECTION 213.5. CRIMINAL SEXUAL CONTACT <i>[Reserved]</i></p> |
| SEXUAL INTERCOURSE WITHOUT CONSENT | <i>No UCMJ equivalent</i> | <p>SECTION 213.4. SEXUAL INTERCOURSE WITHOUT CONSENT.</p> <p>An actor is guilty of sexual intercourse without consent, a misdemeanor, if the actor knowingly or recklessly has, or enables another person to have, sexual intercourse with a person who at the time of the act of sexual intercourse has not given consent to that act.</p> |
| INTIMATE PARTNER OFFENSES | <i>Intimate partner crimes are not distinguished under the UCMJ</i> | <p>SECTION 213.6. SEXUAL OFFENSES INVOLVING SPOUSES AND OTHER INTIMATE PARTNERS <i>[Reserved]</i></p> |

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COMPARISON OF ARTICLE 120, UCMJ AND THE SECTION 213 OF THE PROPOSED MODEL PENAL CODE

STATUTORY DEFINITIONS

| | Definitions under 10 U.S.C. §920 (Art. 120, UCMJ) | Definitions under the Proposed Model Penal Code (MPC) |
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| CONSENT | <p><i>Consent.</i></p> <p>(A) The term ‘consent’ means a freely given agreement to the 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 use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue shall not constitute consent.</p> <p>(B) A sleeping, unconscious, or incompetent person cannot consent. A person cannot consent to force causing or likely to cause death or grievous bodily harm or to being rendered unconscious. A person cannot consent while under threat or fear or under the circumstances described in subparagraph (C) or (D) of subsection (b)(1).</p> <p>(C) Lack of consent may be inferred based on the circumstances of the offense. All the surrounding circumstances are to be considered in determining whether a person gave consent, or whether a person did not resist or ceased to resist only because of another person’s actions.</p> | <p>“Consent” means a person’s positive agreement, communicated by either words or actions, to engage in sexual intercourse or sexual contact.</p> <p>“Nonconsent” means a person’s refusal to consent to sexual intercourse or sexual contact, communicated by either words or actions; a verbally expressed refusal establishes nonconsent in the absence of subsequent words or actions indicating positive agreement.</p> |

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| <p style="text-align: center;">SEXUAL ACT & SEXUAL INTERCOURSE</p> | <p><i>Sexual act.</i> The term ‘sexual act’ means—</p> <p>(A) contact between the penis and the vulva or anus or mouth, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; or</p> <p>(B) the penetration, however slight, of the vulva or anus or mouth of another by any part of the body 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.</p> | <p>“Sexual intercourse” means:</p> <p>(a) any act involving penetration, however slight, of the anus or vagina by any object or body part, unless done for bona fide medical, hygienic, or law enforcement purposes; or</p> <p>(b) direct contact between the mouth or tongue of one person and the anus, penis, or vagina of another person.</p> |
| <p style="text-align: center;">SEXUAL CONTACT</p> | <p><i>Sexual contact.</i> The term ‘sexual contact’ means—</p> <p>(A) touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, or degrade any person; or</p> <p>(B) any touching, or causing another person to touch, either directly or through the clothing, any body part of any person, if done with an intent to arouse or gratify the sexual desire of any person. Touching may be accomplished by any part of the body.</p> | <p>“Sexual contact” means [<i>reserved</i>].</p> |
| <p style="text-align: center;">PROSTITUTION & PANDERING COMMERCIAL SEX ACT</p> | <p><i>(Pandering and prostitution are criminalized under Art. 134, UCMJ)</i></p> <p><i>Act of prostitution.</i> The term ‘act of prostitution’ means a sexual act or sexual contact (as defined in section 120(g) of this title (article 120(g))) on account of which anything of value is given to, or received by, any person.</p> | <p>“Commercial sex act” means any act of sexual intercourse or sexual contact in exchange for which any money, property, or services are given to or received by any person.</p> |

**ADULT SEXUAL ASSAULT CRIMES INVOLVING PENETRATION OR SEXUAL TOUCHING
COMPARISON OF ARTICLE 120, UCMJ AND THE SECTION 213 OF THE PROPOSED MODEL PENAL CODE**

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| BODILY HARM | <i>Bodily harm.</i> The term ‘bodily harm’ means any offensive touching of another, however slight, including any nonconsensual sexual act or nonconsensual sexual contact. | <i>Not defined in Section 213</i> |
| GREIVOUS BODILY HARM | <i>Grievous bodily harm.</i> 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. | <i>Not defined in Section 213</i> |
| FORCE | <i>Force.</i> The term ‘force’ means— (A) the use of a weapon; (B) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or (C) inflicting physical harm sufficient to coerce or compel submission by the victim. | <i>Not defined in Section 213</i> |
| UNLAWFUL FORCE | <i>Unlawful force.</i> The term ‘unlawful force’ means an act of force done without legal justification or excuse. | <i>Not defined in Section 213</i> |
| THREATS & FEAR | <i>Threatening or placing that other person in fear.</i> The term ‘threatening or placing that other person in fear’ 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 the wrongful action contemplated by the communication or action. | <i>Not defined in Section 213</i> |
| RECKLESSLY | <i>Not defined in Article 120, UCMJ</i> | “Recklessly” shall carry only the meaning designated in Model Penal Code § 2.02(2)(c); the provisions of Model Penal Code § 2.08(2) shall not apply to this Article. |