

**Summary of Reading Materials for JPP Subcommittee Members  
in Preparation for May 7 Meeting**

**1. Article 120 Comments and Proposed Amendments, Colonel Timothy Grammel, U.S. Army (Ret.)(8 pages).**

*Colonel Grammel spoke at the April subcommittee meeting.*

- Provides comments on Issues 1-11 and a mark-up of the Article for his suggested amendments.

**2. Emerging Issues: Consent and Mistake of Fact as to Consent Defenses to Adult Sexual Assault Offenses Under the Uniform Code of Military Justice, Zachary Spilman, Lexis, November 26, 2014 (13 pages)**

*Mr. Spilman, a Reserve Marine Corps judge advocate and civilian defense counsel, will appear during the afternoon session with other civilian counsel.*

- Explains the difference between a defense and an affirmative defense.
- Regarding application of consent under the current version of Article 120, argues that consent remains a defense under the current law.
- Asserts that mistake of fact as to consent may be either a defense or an affirmative defense depending on the specific offense charged.

**3. Rape and Sexual Assault in the Legal System, Carol E. Tracy, Terry L. Fromson, Women's Law Project, Jennifer Gentile Long, Charlene Whitman, AEquitas (34 pages).**

*Mr. John Wilkinson, Attorney Advisor with AEquitas, will appear during the afternoon session with other civilian counsel.*

- 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. 8
- 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.

**4. Federal Adult Sex Crimes Statutes: 18 U.S.C. §§ 2241 (Aggravated Sexual Abuse), 2242 (Sexual Abuse), 2244 (Abusive Sexual Contact), 2246 (Definitions)(7 pages)**

- The federal criminal code (Title 18) divides federal sex crime offenses into:
  - 2241-Aggravated Sexual Abuse (penetration by force; threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; by rendering the victim unconscious; or by administering to the victim a substance under a variety of circumstances);

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- 2242-Sexual Abuse (penetration by threats placing the victim in fear; with a victim who is incapable of appraising the nature of the conduct; or with a victim who is physically incapable of declining participation in, or communicating unwillingness to engage in the act); and
- 2244-Abusive Sexual Contact (contact under a variety of circumstances).

**5. California Sex Crimes Code (14 pages)**

- California's sex crimes code, divides adult offenses into rape (sexual intercourse under a variety of circumstances), sexual battery (contact with an intimate part of the victim's body under a variety of circumstances), unlawful sexual intercourse, penetration, oral copulation, or sodomy (any of these acts where consent is obtained by false pretenses or with the intent to create fear), and lewd or obscene conduct and indecent exposure.

**6. Colorado Sex Crimes Code (6 pages)**

- Colorado's sex crimes code, including definitions, divides adult offenses into sexual assault (intrusion or penetration under a variety of circumstances), unlawful sexual contact (contact under a variety of circumstances), public indecency, and indecent exposure.

**7. New Jersey Sex Crimes Code (3 pages)**

- New Jersey's sex crimes code, including definitions, divides adult offenses into sexual assault (penetration under a variety of circumstances), criminal sexual contact (contact under a variety of circumstances), and lewdness (exposure of "intimate parts" of the body).

**8. New York Sex Crimes Code (11 pages)**

- New York's sex crimes statutes, including definitions, notes that lack of consent is an element of every offense, and lists certain defenses including the affirmative defense of lack of knowledge on the part of the defendant regarding the victim's incapacity to consent.