

Art 120 (and 120a, 120b, 120c) (2012)

ADULT CRIMES (Art 120)

- RAPE
- SEXUAL ASSAULT
- AGGRAVATED SEXUAL CONTACT
- ABUSIVE SEXUAL CONTACT

STALKING (Art 120a)

CHILD CRIMES (Art 120b)

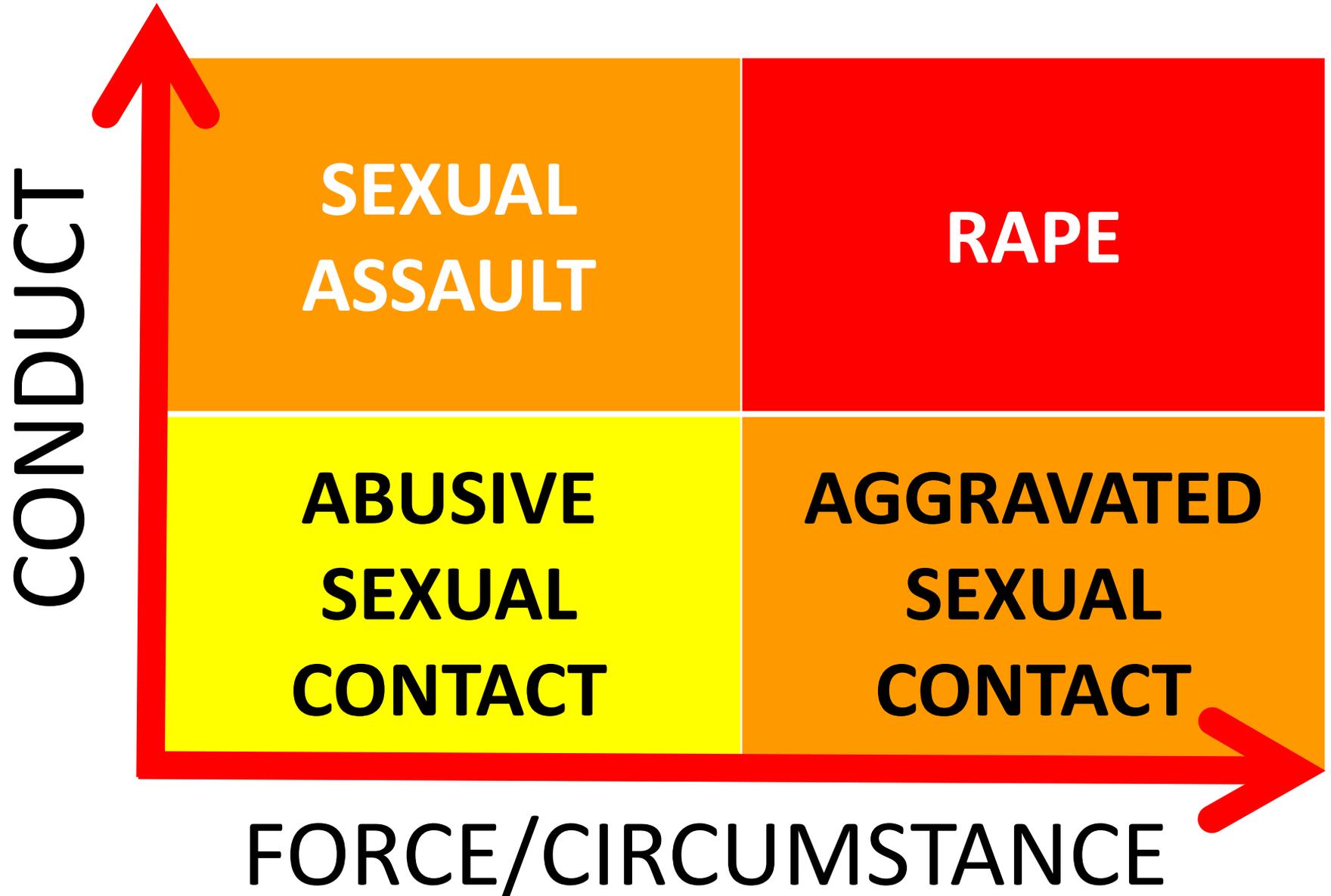
- RAPE OF A CHILD
- SEXUAL ASSAULT OF A CHILD
- SEXUAL ABUSE OF A CHILD

OTHER SEXUAL MISCONDUCT (Art 120c)

- INDECENT VIEWING, VISUAL RECORDING, OR BROADCASTING
- FORCIBLE PANDERING
- INDECENT EXPOSURE

Effective 28 June 2012

ADULT CRIMES



ADULT CRIMES

Sexual Act

**SEXUAL
ASSAULT**
30

RAPE
LWOP

Sexual Contact

**ABUSIVE
SEXUAL
CONTACT**
7

**AGGRAVATED
SEXUAL
CONTACT**
20

Lower degree of force



Higher degree of force

**SEXUAL
ACT**

1. Contact*
between penis and
vulva or anus or
mouth
(*penetration
however slight)

or

1. Penetration* of vulva, anus,
or mouth
2. By any body part or object
3. With the intent to:
 - a. Abuse, humiliate, harass, or
degrade any person or
 - b. Arouse or gratify the sexual
desire of any person.

**SEXUAL
CONTACT**

1. Touching (or causing
another to touch)
2. Directly or through
clothing
3. Of genitalia, anus,
groin, breast, inner
thigh, or buttocks
4. With intent to abuse,
humiliate, harass, or
degrade any person

or

1. Touching (or causing
another to touch)
2. Directly or through
clothing
3. Any body part by any
body part
4. With intent to gratify the
sexual desire of any
person.

FORCE/CIRCUMSTANCE

Sexual Assault or Abusive Sexual Contact

- threatening or placing that other person in fear;
- causing bodily harm to that other person;
- making a fraudulent representation that the sexual act serves a professional purpose;
- inducing a belief . . . that the person is another person;
- knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware . . . or is incapable of consenting . . .

Rape or Aggravated Sexual Contact

1. using unlawful force against that other person;
2. using force causing or likely to cause death or grievous bodily harm to any person;
3. threatening . . . death, grievous bodily harm, or kidnapping;
4. first rendering that other person unconscious; or
5. administering . . . by force or threat of force, or without the knowledge or consent . . . intoxicant, . . . substantially impairing the ability of that other person to appraise or control conduct;

Language use

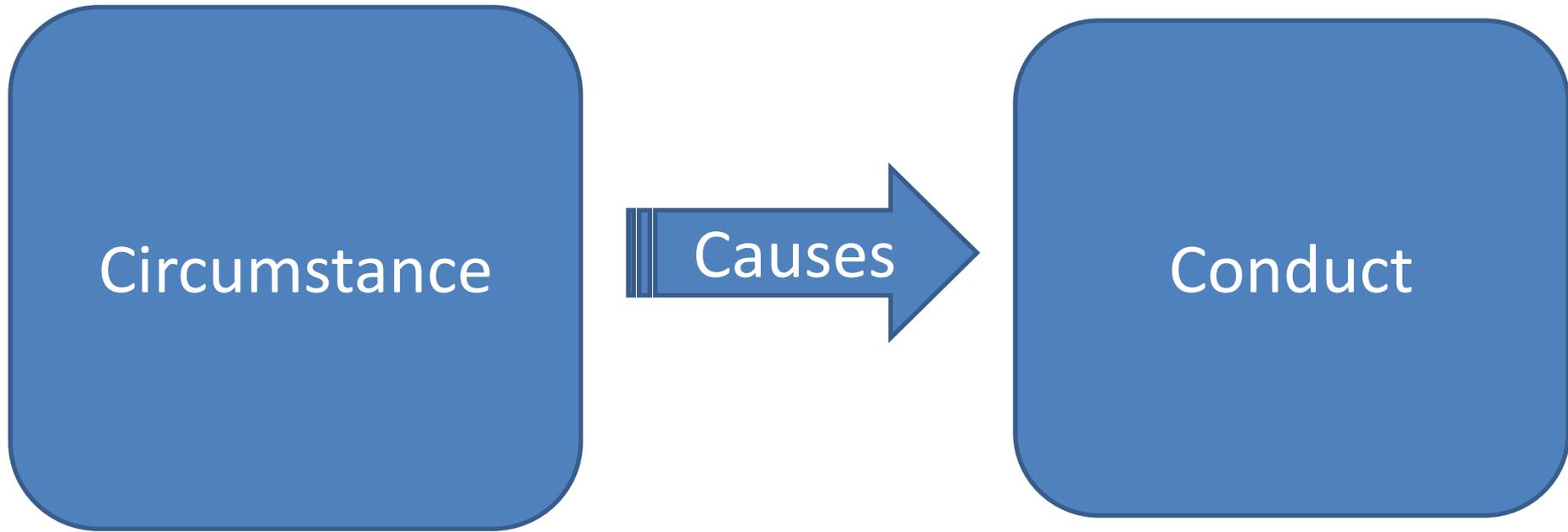
Sexual Assault when incapable of consent:

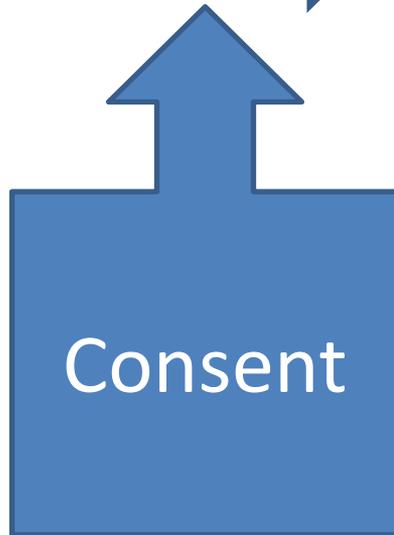
Commits a sexual act upon another person when the other person is **incapable of consenting** to the sexual act due to— **impairment** by any drug, intoxicant, or other similar substance, and that condition **is known or reasonably should be known** by the Accused.

Rape by administration:

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.

Statutory Construction





Sexual Act

When

Condition/
Capacity

Bodily Harm

“to wit” or not “to wit”

(3) *Bodily harm.* The term ‘bodily harm’ means any offensive touching of another, however slight, including any nonconsensual sexual act or nonconsensual sexual contact.

It’s in the pleading:

1. In that A did sexually assault V by committing a sexual act with V, to wit: penetration of V’s vulva with his penis by causing bodily harm, to wit: pushing V to the bed and holding her down with his hands.

Consent ≠ element

2. In that A did sexually assault V by committing a sexual act with V, to wit: penetration of V’s vulva with his penis by causing bodily harm.

Consent = element: the penetration serves as both the sexual act AND the bodily harm IF the Government proves the sexual act was nonconsensual.

The Article 125 Redundancy

"Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex by unlawful force or without the consent of the other person is guilty of forcible sodomy and shall be punished as a court-martial may direct."

2015

§ 920. Art. 120. Rape and sexual assault generally

(1) Sexual act. The term 'sexual act' means—

(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

(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.

As of
June 28,
2012

The Article 125 Loophole

"Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex by unlawful force or without the consent of the other person is guilty of forcible sodomy and shall be punished as a court-martial may direct."

45b. Article 120b—Rape and sexual assault
of a child

(d) *Age of Child.*

(2) *Under 16 years.* In a prosecution under this section, it need not be proven that the accused knew that the other person engaging in the sexual act or lewd act had not attained the age of 16 years, but it is a defense in a prosecution under subsection (b) (sexual assault of a child) or subsection (c) (sexual abuse of a child), which the accused must prove by a preponderance of the evidence, that the accused reasonably believed that the child had attained the age of 16 years, if the child had in fact attained at least the age of 12 years.

U.S. v. Hernandez,
28 Aug 2014, ACCA

United States v. Wilson,
66 M.J. 39
(C.A.A.F. 2008)

As of
June 28,
2012