

# **Article 120 Slides**

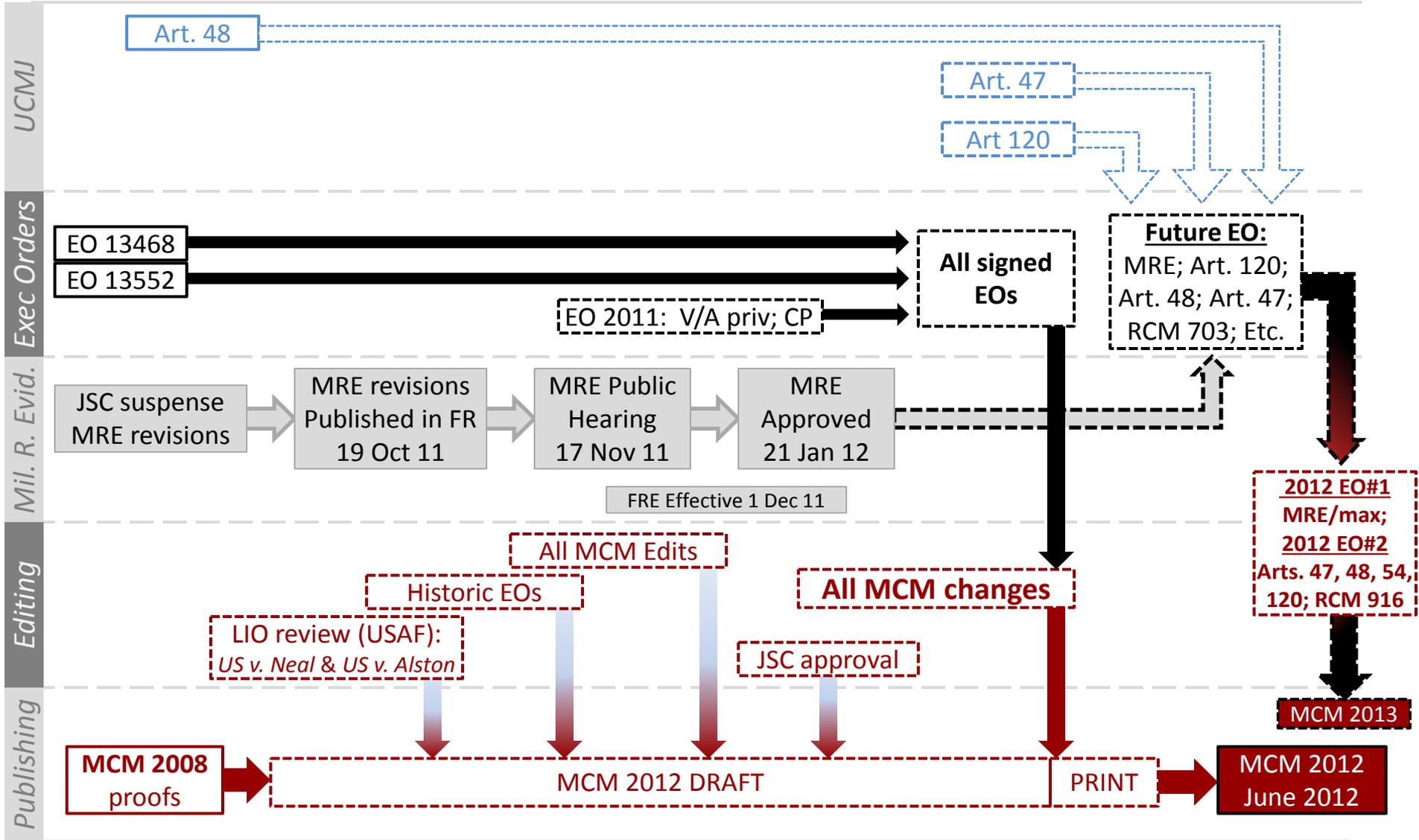
## **OTJAG, Criminal Law Policy**

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# Manual for Courts-Martial (2012)

SEP      OCT      NOV      DEC      JAN-2012      FEB      MAR      APR      MAY



# 2012 MCM CHANGES

## EO 13468, 28 Jul 08:

- Art. 32 closures
- Manslaughter

## EO 13552, 31 Aug 10:

- PTRs under RCM 1106
- Fines
- Military property
- JX over civilians

## EO 13593, 13 Dec 11:

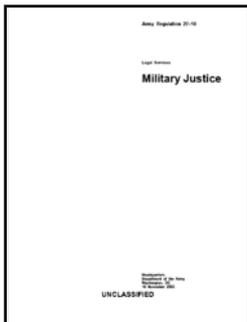
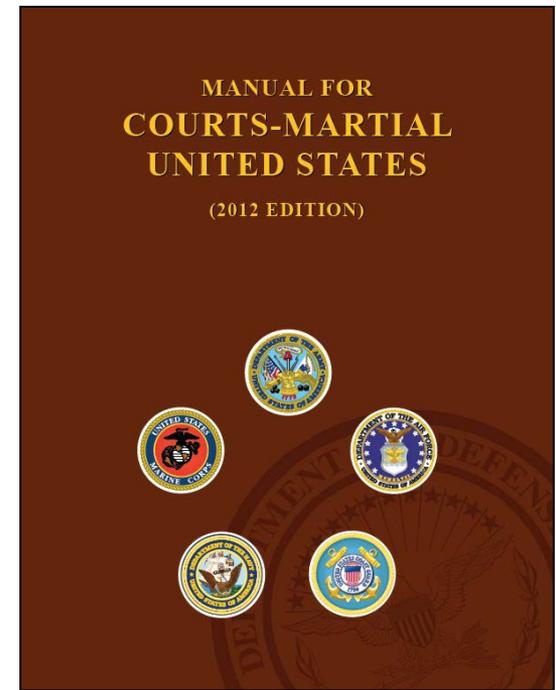
- VA privilege
- Child porn (Art 134)

## FY09-12 NDAA changes:

- Contempt powers (Art 47)
- Pre-Referral subpoena (Art 48)
- ROT to victims (Art 54)
- Sex Offenses (Arts 120, 120b, 120c)

## ON THE HORIZON:

- Revised MREs (Summer 12)
- Art 120 Implementation (Winter 12)
- Amended RCMs and other edits
- **NEW MCM in 2013!!!!**



## NEW AR 27-10:

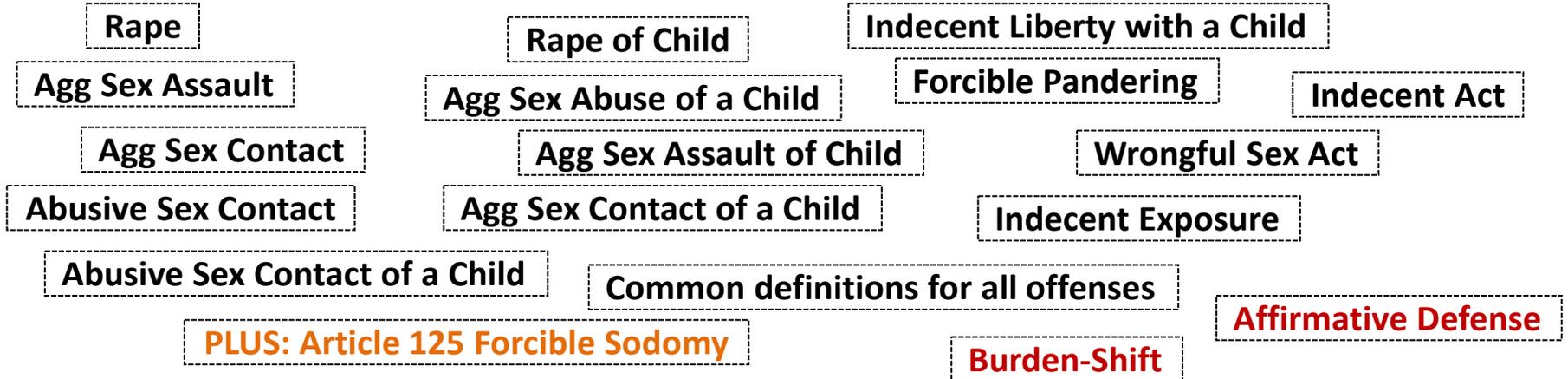
- Effective 3 Oct 11
- VTC authorizations
- Guidance on jx over civilians in the field

## RAPID ACTION REVISION:

- Cap Lit Study changes
- IMC procedures
- Appx E to be BRAC-amended
- Other minor edits

# The Practitioner's View

## Article 120 Offenses (2007-2012 version):



## Article 120 Offenses (effective 28 June 2012):

### Article 120 (Adults):

- Rape
- Sexual Assault
- Agg Sexual Contact
- Abusive Sex Contact
- Definitions

### Article 120b (Child):

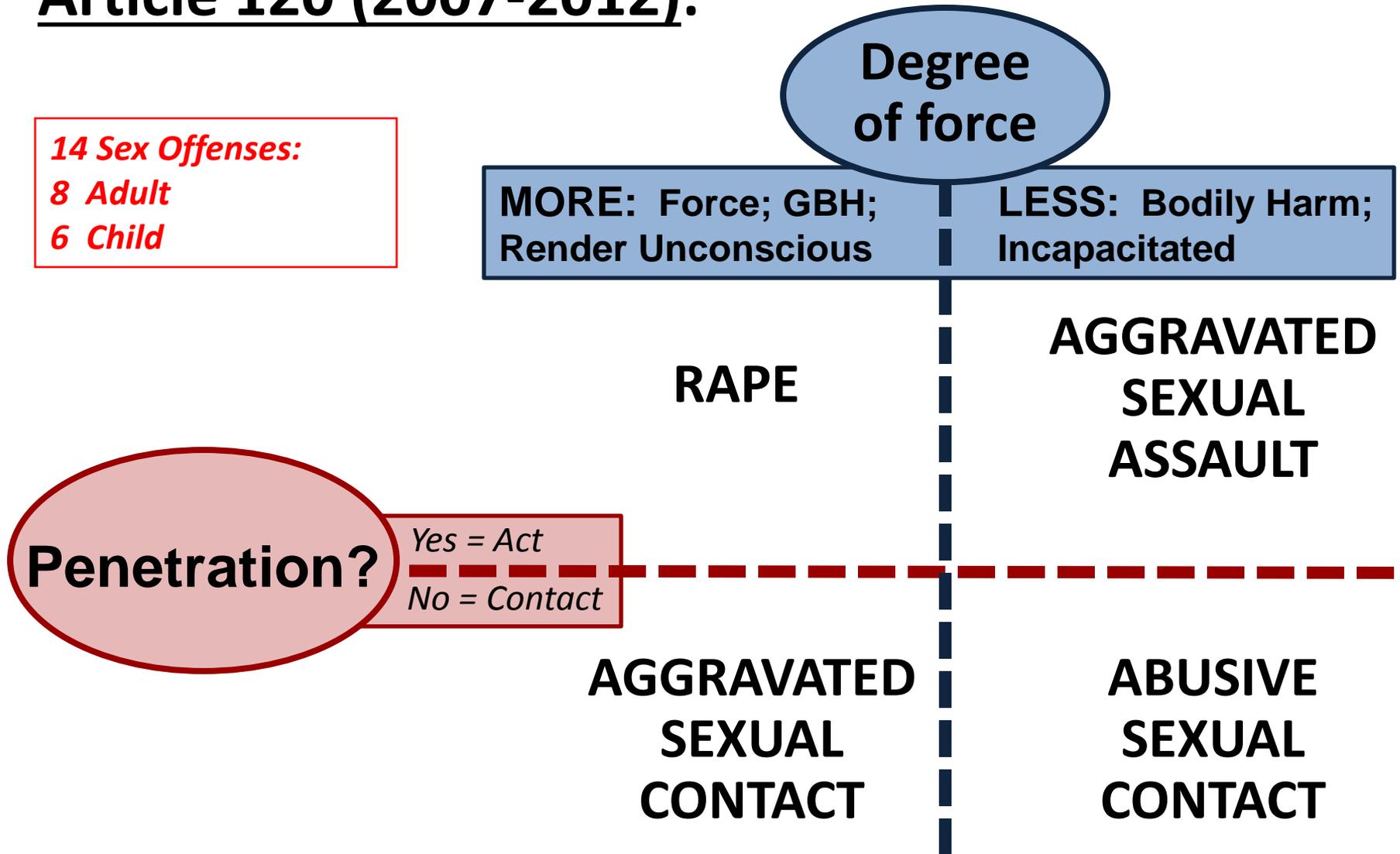
- Rape
- Sexual Assault
- Sexual Abuse
- Definitions

### Article 120c (Other):

- Indecent View/Record/Broadcast
- Forcible Pandering
- Indecent Exposure
- Definitions

# Article 120 (2007-2012):

**14 Sex Offenses:**  
**8 Adult**  
**6 Child**

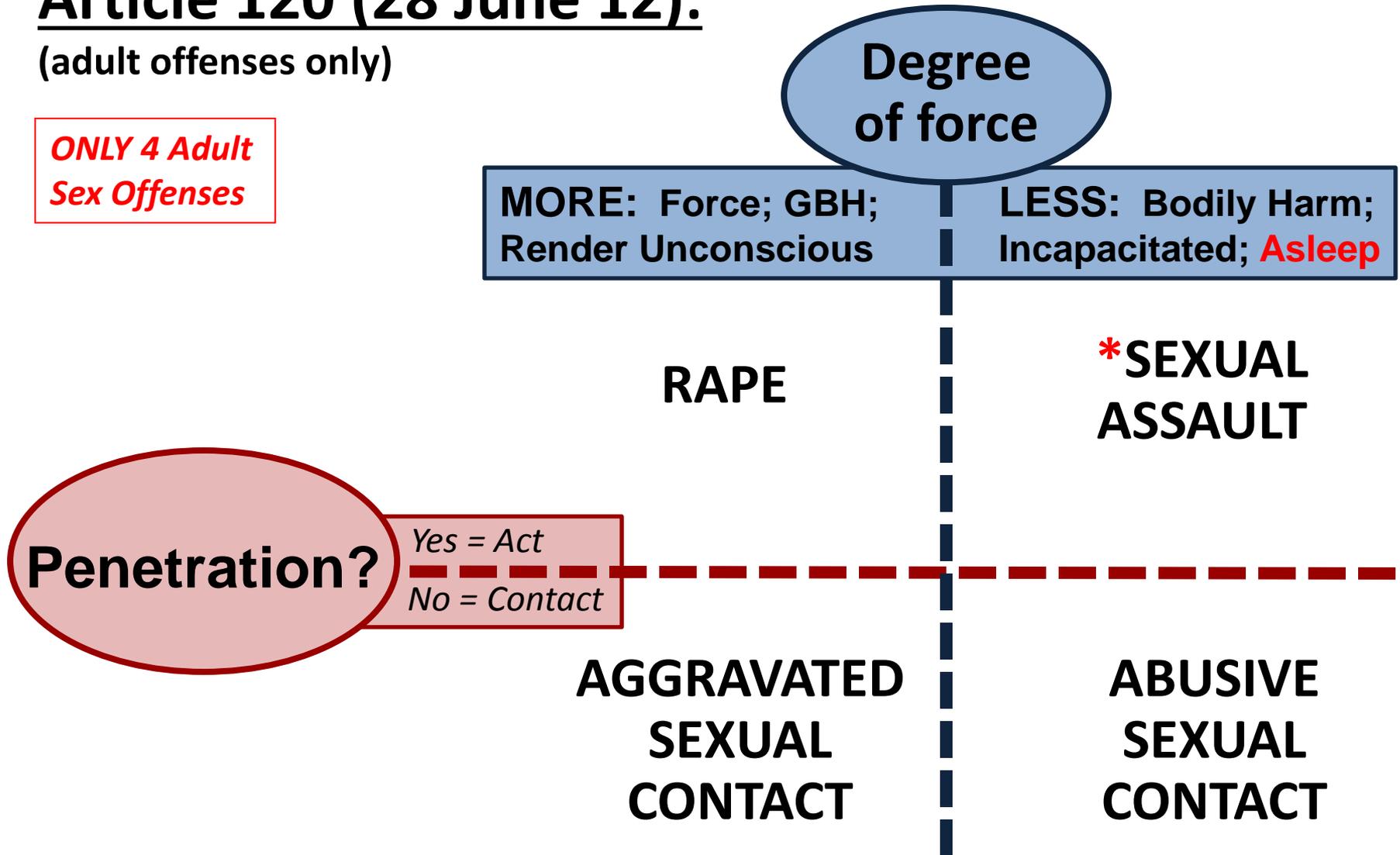


**4 Crimes above PLUS Child sex crimes PLUS forcible pandering; wrongful sex act; indecent act; indecent exposure.**  
**ALSO Forcible Sodomy is under Article 125.**

# Article 120 (28 June 12):

(adult offenses only)

**ONLY 4 Adult  
Sex Offenses**



*\* The word "aggravated" was removed.*

# Article 120b (28 June 12):

(child offenses only)

**ONLY 3 Child  
Sex Offenses**

1. Any child under 12; or
2. A child under 16 and:
  - (a) use force; or
  - (b) use threat/fear; or
  - (c) child unconscious; or
  - (d) child drugged.

**Degree  
of force**

- Only if:
1. Child is under 16; and
  2. NO force/fear/drug

**RAPE  
of a child**

**\*SEXUAL  
ASSAULT  
of a child**

**Penetration?**

Yes = Act

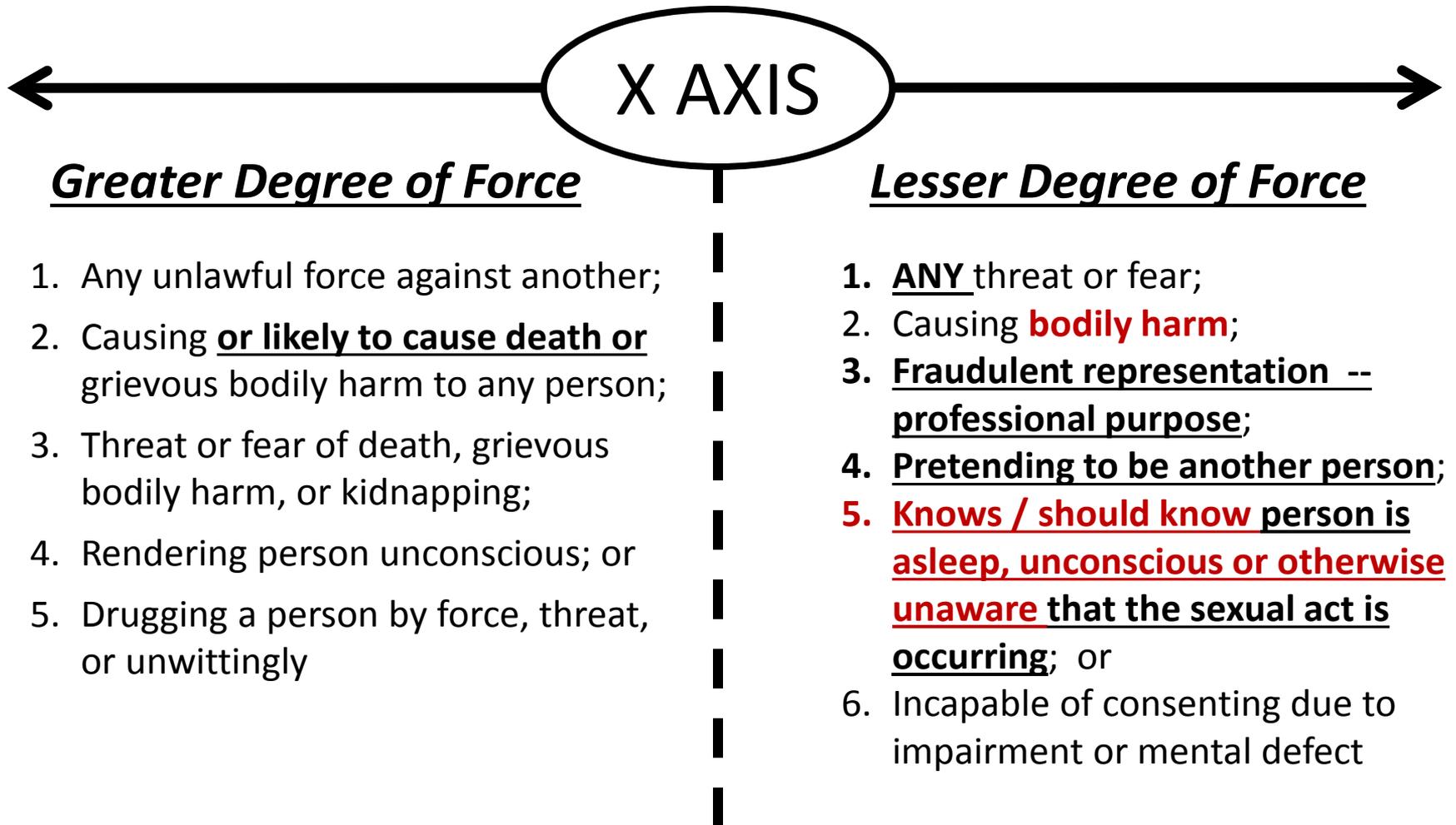
No = Contact

**SEXUAL ABUSE  
of a child**

*\* The word "aggravated" was removed.*

*Sexual abuse of a child replaces and provides higher max punishment for the offenses of aggravated sexual abuse; aggravated sexual contact; abusive sexual contact; and indecent liberties.*

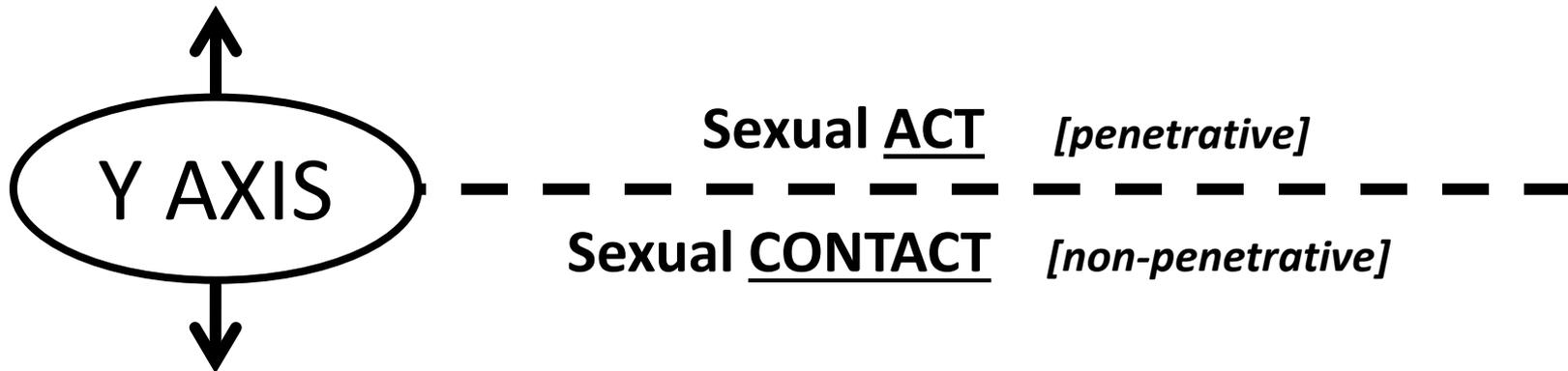
# New Article 120 (28 June 2012):



**New text underlined**

# New Article 120 (28 June 2012):

- Contact between the penis and the vulva or anus or mouth; or
- 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.



- Touching or causing another person to touch . . . the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate or degrade any person (including through clothing);
- Touching or causing another person to touch any body part of any person if done with an intent to arouse or gratify the sexual desire of any person (including through the clothing)

New text underlined

# Definition of Consent

## Current 120

### Art. 120(t)(14) Consent:

- Freely given agreement...by a competent person
- Expressing lack of consent through words or conduct means there is NO consent
- Lack of verbal or physical resistance or submission resulting from the accused's use of force, threat of force, or placing another person in fear does not constitute consent
- Current/previous dating relationship; manner of dress...shall not constitute consent
- The following CANNOT consent:
  - under 16 years of age; or
  - ~~substantially incapable of appraising~~ the nature of the sexual conduct at issue due to: mental impairment or unconsciousness resulting from consumption of alcohol, drugs, a similar substance, or otherwise; or mental disease or defect;
  - physically declining participation in the sexual conduct at issue; or
  - physically communicating unwillingness to engage in the sexual conduct at issue.

## New 120 (28 June 2012)

### Art. 120(g)(8) Consent:

- Freely given agreement...by competent person
- Expressing lack of consent with words or conduct means there is NO consent
- The following DO NOT mean consent:
  - Lack of verbal or physical resistance
  - Submission resulting from force, threat or fear
  - Current or previous dating, social, or sexual relationship
  - Manner of dress
- The following CANNOT consent:
  - **Sleeping, unconscious or incompetent person**
  - Response to force likely causing death/GBH
  - Being rendered unconscious
  - While under threat or in fear
  - Fraud or believing a person is another
- Lack of consent may be inferred based on the circumstances of the offense
- All the surrounding circumstances are to be considered