

### **3–45. PREFACE TO ARTICLE 120 INSTRUCTIONS**

#### **Changes effective 28 June 2012**

The National Defense Authorization Act for Fiscal Year 2012 (112 Pub. L. No. 112-81, § 541, 125 Stat. 1298 (2011)) added new articles to the Uniform Code of Military Justice regarding sexual misconduct occurring on and after 28 June 2012. Article 120 now contains only adult sexual assaults (in four different types), while Articles 120b and 120c contain sexual assaults against children and other miscellaneous sexual misconduct, respectively. This preface seeks to conceptualize these changes to make them easier to understand.

Article 120 uses several key terms, which are not defined the same as they were in the October 2007 version of Article 120, nor in the pre-2007 version of Article 120. Understanding these definitions is crucial to understanding how the 28 June 2012 Article 120 is constructed.

**“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.

**“Sexual contact”** means:

(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

(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.

**“Bodily harm”** means any offensive touching of another, however slight, including any nonconsensual sexual act or nonconsensual sexual contact.

**“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.

**“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.

The version of Article 120 effective 28 June 2012 does not further define the term “weapon.”

**“Unlawful force”** means an act of force done without legal justification or excuse.

**“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.

**“Sexual contact”** means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, or intentionally 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 to arouse or gratify the sexual desire of any person.

**“Grievous bodily harm”** means serious bodily injury. It does not include minor injuries such as a black eye or a bloody nose, but it does include fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It is the same level of injury as in Article 128, UCMJ, and a lesser degree of bodily injury than that involving a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

**“Force”** means action to compel submission of another or to overcome or prevent another's resistance by:

(A) the use or display of a dangerous weapon or object;

(B) the suggestion of possession of a dangerous weapon or object that is used in a manner to cause another to believe it is a dangerous weapon or object; or

(C) physical violence, strength, power, or restraint applied to another person, sufficient that the other person could not avoid or escape the sexual conduct.

**“Dangerous weapon or object”** means:

(A) any firearm, loaded or not, and whether operable or not;

(B) any other weapon, device, instrument, material, or substance, whether animate or inanimate, that in the manner it is used, or is intended to be used, is known to be capable of producing death or grievous bodily harm; or

(C) any object fashioned or utilized in such a manner as to lead the victim under the circumstances to reasonably believe it to be capable of producing death or grievous bodily harm.

**“Threatening or placing that other person in fear”** (for rape and aggravated sexual contact) 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 death, grievous bodily harm, or kidnapping.

**“Threatening or placing that other person in fear”** (for aggravated sexual assault and abusive sexual contact) 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 a lesser degree of harm than death, grievous bodily harm, or kidnapping. Such lesser degree of harm includes:

(A) physical injury to another person or to another person's property; or

(B) a threat:

(i) to accuse any person of a crime;

(ii) to expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

(iii) through the use or abuse of military position, rank, or authority, to affect or threaten to affect, either positively or negatively, the military career of some person.