

**JUDICIAL PROCEEDINGS PANEL
REQUEST FOR INFORMATION SET # 1**

2. DoD and Services: Provide all views, formal positions, recommendations, and correspondence that DoD, the Joint Service Committee, or the Services submitted to Congress or Congressional representatives regarding the 2012 amendments to Article 120, prior to or after its enactment (from 2007 to the present). Please include submissions on specific statutory recommendations, anticipated effects of amendments, impact assessments, suggestions for further recommendations, problems or concerns, etc.

DoD	<p>On April 15, 2011, the Department of Defense transmitted to the President of the Senate and the Speaker of the House of Representatives a 30-page legislative proposal to amend Article 120 of the Uniform Code of Military Justice, enact Articles 120b and 120c, and repeal Article 125. TAB A. That document included a section-by-section analysis and a “Changes to Existing Law” (CEL) section displaying the textual amendments in line-in/line-out format. On May 23, 2011, the Acting Director of the Department of Defense Office of General Counsel’s Office of Legislative Counsel forwarded to congressional professional staff members a new version correcting errors in the CEL that was included in the April 15 proposal. That corrected proposal is attached at TAB B. No other views, formal positions, recommendations, or official correspondence submitted to Congress by either DoD or the Joint Service Committee concerning the National Defense Authorization Act for Fiscal Year 2012’s amendments to Article 120 have been identified.</p> <p>TABS A and B:</p> <p>Tab A:</p> <ol style="list-style-type: none"> 1. Assistance SECDEF Transmittal Letter to Pres. of the Senate - Additional Legislative Proposal (15 Apr 2011) 2. Assistance SECDEF Transmittal Letter to Speaker of the House - Additional Legislative Proposal (15 Apr 2011) 3. Legislative proposal to amend Article 120 of the UCMJ, to enact Articles 120b and 120c, and repeal Article 125 <p>Tab B: Legislative Proposal to Amend Article 120 & 125, UCMJ (Corrected)</p>
USA	<p>Pursuant to Department of Defense Directive 5500.01, single coordinated positions are transmitted to Congress by the DOD, not individual Services. See http://www.dtic.mil/whs/directives/corres/pdf/550001p.pdf. Additional information was provided to Congress as follows:</p> <ul style="list-style-type: none"> • Requests for Information and Testimony previously provided to the Response Systems Panel. See http://responsesystemspanel.whs.mil/. • Testimony provided to the United States Senate Committee on Armed Services on June 4, 2013 concerning Pending Legislation Regarding Sexual Assaults in the Military. See http://www.armed-services.senate.gov/hearings/oversight-pending-legislation-regarding-sexual-assaults-in-the-military. • Letter from The Judge Advocate General (TJAG) to the Honorable Lindsey

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	<p>Graham, dated July 23, 2013. <i>See</i> Enclosure 1.</p> <ul style="list-style-type: none"> • Letter from United States Army Criminal Investigation Command (USACIDC) to Honorable Jackie Speier, dated August 14, 2013. <i>See</i> Enclosure 1. <p>ENCLOSURE 1, Correspondence to Congress:</p> <ul style="list-style-type: none"> a. Letter from The Judge Advocate General (TJAG) to the Honorable Lindsey Graham (23Jul 2013) b. Letter from United States Army Criminal Investigation Command (USACIDC) to Honorable Jackie Speier (1 Aug 2013)
<p>USAF</p>	<p>In July 2011, an AF judge advocate who had recently served as a military judge (along with representatives from the other services) provided a brief to members of the House Armed Services Committee and their staff on Article 120. In addition to the brief from the military judges, two members of the Joint Service Committee (JSC) also presented information on Article 120. Attached is the Joint Service Committee on Military Justice brief that was provided during this meeting. (Atch 2.1) Also attached is a slide that was presented on the legal impossibility of the double burden shift that existed in the 2007 amendments to Article 120. (Atch 2.2)</p> <p>In September 2011, an AF judge advocate met with Congresswoman Tsongas. Congresswoman Tsongas asked questions about the concept of an affirmative “yes” and a consent based statute. The AF judge advocate offered the personal view that the proposed version of Article 120 was a combination of a force-based and consent-based statute; and further, that including some element of force in the language of the statute is necessary to provide for enhanced punishment in situations involving force or violence. Additionally, the AF judge advocate indicated that a strictly consent-based statute eliminates the offender focus that prompted the initial change to Article 120. Attached are slides that were presented during this briefing. (Atch 2.3)</p> <p>The AF Legislative Liaison and Office of The Judge Advocate General have conducted reviews of formal positions, recommendations, and correspondence provided to Congress regarding the 2012 amendments to Article 120 and found no submissions responsive to the request.</p> <p>ATTACHMENTS:</p> <ul style="list-style-type: none"> - Atch 2.1 – House Armed Services Committee Brief (12 Jul 2011) - Atch 2.2 – Legal Impossibility of Double Burden Shift - Atch 2.3 – Force-Based vs. Consent-Based
<p>USN</p>	<p>Navy did not submitted formal position papers to Congress or Congressional representatives regarding the 2012 amendments to Article 120. Navy provided input to DoD for consolidated submission pursuant to Department of Defense Directive 5500.01, which requires a single coordinated position be transmitted to Congress by the Department of Defense.</p> <p>http://www.dtic.mil/whs/directives/corres/pdf/550001p.pdf</p>
<p>USMC</p>	<p>Pursuant to Department of Defense Directive 5500.01, single coordinated positions are</p>

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	<p>transmitted to Congress by the DOD, not individual Services. <i>See</i> http://www.dtic.mil/whs/directives/corres/pdf/550001p.pdf . Additional information was provided to Congress as follows:</p> <p>Requests for Information and Testimony previously provided to the Response Systems Panel. <i>See</i> http://responsesystemspanel.whs.mil/.</p> <p>Testimony provided to the United States Senate Committee on Armed Services on June 4, 2013 concerning Pending Legislation Regarding Sexual Assaults in the Military. <i>See</i> http://www.armed-services.senate.gov/hearings/oversight-pending-legislation-regarding-sexual-assaults-in-the-military .</p>
USCG	<p>The Coast Guard's positions were those adopted by the Joint Service Committee on Military Justice (JSC). There was not a separate communication of Coast Guard views on the 2012 Amendments to Article 120. The Coast Guard, through its participation in the JSC, aided in the development of the proposals for the 2012 Amendments.</p>