

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

3. Services: What impact would separating penetrative and contact offenses into separate punitive articles under the UCMJ have on the prosecution or defense of sexual assault cases? Would such a change have other impacts or consequences on the military justice system?

USA	Separating penetrative and contact offenses would have little positive effect on the prosecution or defense of sex assault cases. To separate these offenses, contact offenses would fall under a proposed new Article 120d. Penetrative offenses would remain under subsections (a) and (b) of Article 120. Practitioners would now have four different statutory schemes to be aware of when charging these types of offenses. This becomes particularly challenging when prosecutors have to guess which scheme would apply when a victim cannot remember exact dates and times of the offenses and the offenses span a number of years. This would cause unnecessary confusion in charging decisions. If the prosecutor chose the wrong offense, the charges could end up being permanently dismissed. Prosecutors have no problems at the current time properly charging penetrative and contact offenses even though both are currently mingled together in Article 120. The risks involved in creating a fourth statutory scheme for Article 120 offenses outweigh any potential benefits.
USAF	We believe that separating such offenses would not have a substantial effect on the prosecution or defense of most offenses, nor do we believe there would be any beneficial impact on the military justice system. As a result, we see little value in bifurcating the contact and penetrative offenses and therefore do not endorse this change.
USN	Separating penetrative and contact offenses into separate punitive article under the UCMJ risks adding confusion without any significant benefit. Under the current version of Article 120, practitioners can identify common elements of different offenses and compare charges within the same sphere of conduct.
USMC	Changing Article 120 yet again would add significant confusion to the entire military community. The 2014 Military Judge’s Benchbook instructions on Article 120 and its many different permutations over the years is already 136 pages (see pages 474-610). Teaching Article 120, its past permutations, its statute of limitations, and how to charge cases from prior statutes is already a difficult task and Congress should not make changes lightly to the statute.
USCG	The 2012 Amendments make tracking penetrative offenses, against adults or children, relatively straightforward. Under Article 120, subsections (a) and (b) are the penetrative offenses, and subsections (c) and (d) are the contact offenses. Similarly, under Article 120b, subsections (a) and (b) are the penetrative offenses, whereas subsection (c) covers sexual activity, contained within the definition of “lewd act,” which does not require contact with a child. As to adult offenses, it is simple to track the offenses by the appropriate subsection, which allows easy tracking of penetrative versus contact offenses. For crimes committed against children, the penetrative offenses are again simple to track. It is more difficult to differentiate between contact and non-contact lewd acts solely by reference to Section 120b(c). Rearranging the penetrative offenses and contact offenses would have little substantive difference, and as long as the arrangement of the offenses was coherent, would have little impact on prosecution or defense of either class of cases. However, such changes would

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	complicate data collection and comparison between the number of cases occurring under the current scheme and the future scheme.
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