



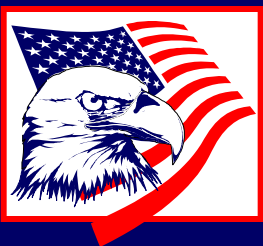
OTJAG Criminal Law Division Policy Branch

LTC Pete Yob
(703) 588-6744



Change to Art. 120

- ◆ Part of NDAA for FY 2006
- ◆ Purpose: Bring MCM in line with Fed/State Codes
- ◆ Effective 1 OCT 07

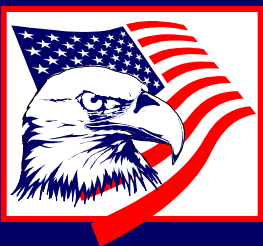


Change to Art. 120

OLD

New Art. 120

- ♦ Art. 120 Rape → • Rape or Aggravated Sexual Assault
- ♦ Art. 120 Carnal Knowledge → • Aggravated Sexual Assault of a Child
- ♦ Art. 134 Indecent Assault → • Wrongful Sexual Contact
- ♦ Art. 134 Indecent Acts/Liberties w/Child → • Indecent Liberty w/Child or Aggravated Sexual Abuse of/child
- ♦ Art. 134 Indecent Exposure → • Indecent Exposure
- ♦ Art. 134 Indecent Acts w/Another → • Indecent Act



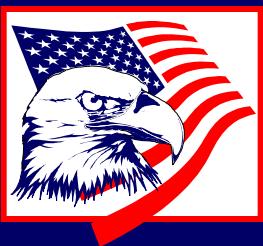
Change to Art. 120 (Offenses)

- ◆ Offenses under Article 120:
 - Rape
 - Rape of a Child
 - Aggravated Sexual Assault
 - Aggravated Sexual Assault of a Child
 - Aggravated Sexual Contact
 - Aggravated Sexual Abuse of a Child
 - Aggravated Sexual Contact with a Child
 - Abusive Sexual Contact
 - Abusive Sexual Contact with a Child
 - Indecent Liberty with a Child
 - Indecent Act
 - Forcible Pandering
 - Wrongful Sexual Contact
 - Indecent Exposure



Change to Art. 120 (Defs.)

- ◆ Definitions:
 - “Sexual Act”
 - “Sexual Contact”



Change to Art. 120 (Elements)

1. SEX ACT



2. By:

- a. Force**
- b. Causing GBH**
- c. Threat of death, GBH
or kidnapping**
- d. Rendering unconscious**
- e. Drugging to impair**



Rape



Change to Art. 120 (Elements, cont.)

1. SEX ACT

2. By:

- a. Force
- b. Causing GBH
- c. Threat of death, GBH or kidnapping
- d. Rendering unconscious
- e. Drugging to impair

Rape

2. By:

- a. Bodily harm
- b. Threat < death, GBH or kidnapping
- c. Taking Advantage of Incapacitation

Aggravated Sexual Assault



Change to Art. 120 (Elements, cont.)

1. SEX ACT

1. **SEXUAL CONTACT**

2. **By:**

- a. **Force**
- b. **Causing GBH**
- c. **Threat of death, GBH or kidnapping**
- d. **Rendering unconscious**
- e. **Drugging to impair**

2. By:

- a. Bodily harm
- b. Threat < death, GBH or kidnapping
- c. Taking Advantage of Incapacitation

Aggravated Sexual Contact

Rape

Aggravated Sexual Assault



Change to Art. 120 (Elements, cont.)

1. SEX ACT

1. SEXUAL CONTACT

2. By:

- a. Force
- b. Causing GBH
- c. Threat of death, GBH or kidnapping
- d. Rendering unconscious
- e. Drugging to impair

2. By:

- a. Bodily harm**
- b. Threat < death, GBH or kidnapping**
- c. Taking Advantage of Incapacitation**

Aggravated Sexual Contact

Rape

Abusive Sexual Contact

Aggravated Sexual Assault



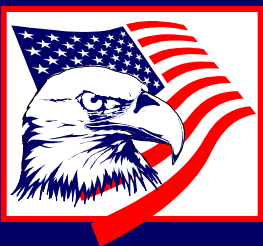
Change to Art. 120 (Child Sex Offenses)

- ◆ Child Sex Offenses
 - Rape of a Child
 - Aggravated Sexual Assault of a Child
 - Aggravated Sexual Abuse of a Child
 - Aggravated Sexual Contact with a Child
 - Abusive Sexual Contact with a Child
 - Indecent Liberty with a Child



Change to Art. 120 (Other Offenses)

- ◆ Other Sex Offenses
 - Indecent Act
 - Forcible Pandering
 - Wrongful Sexual Contact
 - Indecent Exposure



Change to Art. 120 (Max. Punishment)

- ◆ Rape – Death
- ◆ Agg. sexual assault – 30 yrs. + DD
- ◆ Agg. sexual assault of a child 12>16, agg. sexual abuse of child, agg. sexual contact, agg. sexual contact w/child – 20 yrs. + DD
- ◆ Abusive sexual contact w/child, indecent liberty w/child – 15 yrs. + DD
- ◆ Abusive sexual contact – 7 yrs. + DD
- ◆ Indecent act, forcible pandering – 5 yrs. + DD
- ◆ Wrongful sexual contact, indecent exposure – 1 yr. + DD



Change to Art. 120 (Charging LIOs)

- ◆ Lesser Included Offenses for Rape
 - Aggravated sexual contact
 - Assault w/intent to commit rape
 - Aggravated assault, assault, assault consummated by a battery
 - Attempts



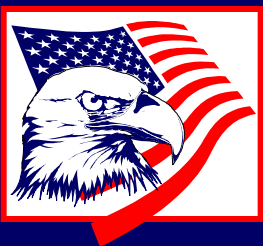
Change to Art. 120 (Charging LIOs cont.)

- ◆ Lesser Included Offenses for Rape (cont.)
 - (by force)
 - Wrongful sexual contact
 - (by causing GBH)
 - Aggravated sexual assault by causing bodily harm
 - Abusive sexual contact by causing bodily harm
 - Indecent act
 - Wrongful sexual contact
 - (by threat)
 - Aggravated sexual assault by threat
 - Abusive sexual contact by threat
 - Indecent act
 - Wrongful sexual contact
 - (by rendering unconscious)
 - Aggravated sexual assault upon an incapacitated person
 - Abusive sexual contact upon an incapacitated person
 - Indecent act
 - Wrongful sexual contact
 - (by drugging to impair)
 - Aggravated sexual assault upon an incapacitated person
 - Abusive sexual contact upon an incapacitated person
 - Indecent act
 - Wrongful sexual contact



Change to Art. 120 (Other Issues)

- ◆ Affirmative Defenses
 - Reasonable belief that a child has obtained the age of 16 years
 - Accused is married to victim for certain offenses (but not if intent is to abuse, humiliate or degrade)
 - Mistake of fact as to consent for certain offenses
- ◆ Dual Manual provisions for charging
- ◆ Application of existing case law



Child Endangerment

- ◆ Article 134 Offense
- ◆ Elements
 - 1. Duty of care
 - 2. Child under 16
 - 3. Accused endangered child's mental or physical health, safety or welfare through design or culpable negligence
- ◆ Culpable negligence viewed in context
- ◆ Actual harm not required by may enhance sentence



QUESTIONS?

Stick Around!

Drive Safe!