

1 fore the period the following: “and the availability to the
2 member and dependents of suicide prevention resources
3 following separation from the armed forces”.

4 **Subtitle D—Military Justice and**
5 **Legal Matters**

6 **SEC. 541. REFORM OF OFFENSES RELATING TO RAPE, SEX-**
7 **UAL ASSAULT, AND OTHER SEXUAL MIS-**
8 **CONDUCT UNDER THE UNIFORM CODE OF**
9 **MILITARY JUSTICE.**

10 (a) RAPE AND SEXUAL ASSAULT GENERALLY.—Sec-
11 tion 920 of title 10, United States Code (article 120 of
12 the Uniform Code of Military Justice), is amended as fol-
13 lows:

14 (1) REVISED OFFENSE OF RAPE.—Subsection
15 (a) is amended to read as follows:

16 “(a) RAPE.—Any person subject to this chapter who
17 commits a sexual act upon another person by—

18 “(1) using unlawful force against that other
19 person;

20 “(2) using force causing or likely to cause death
21 or grievous bodily harm to any person;

22 “(3) threatening or placing that other person in
23 fear that any person will be subjected to death,
24 grievous bodily harm, or kidnapping;

1 “(4) first rendering that other person uncon-
2 scious; or

3 “(5) administering to that other person by force
4 or threat of force, or without the knowledge or con-
5 sent of that person, a drug, intoxicant, or other
6 similar substance and thereby substantially impair-
7 ing the ability of that other person to appraise or
8 control conduct;

9 is guilty of rape and shall be punished as a court-martial
10 may direct.”.

11 (2) REPEAL OF PROVISIONS RELATING TO OF-
12 FENSES REPLACED BY NEW ARTICLE 120b.—Sub-
13 sections (b), (d), (f), (g), (i), (j), and (o) are re-
14 pealed.

15 (3) REVISED OFFENSE OF SEXUAL ASSAULT.—
16 Subsection (c) is redesignated as subsection (b) and
17 is amended to read as follows:

18 “(b) SEXUAL ASSAULT.—Any person subject to this
19 chapter who—

20 “(1) commits a sexual act upon another person
21 by—

22 “(A) threatening or placing that other per-
23 son in fear;

24 “(B) causing bodily harm to that other
25 person;

1 “(C) making a fraudulent representation
2 that the sexual act serves a professional pur-
3 pose; or

4 “(D) inducing a belief by any artifice, pre-
5 tense, or concealment that the person is another
6 person;

7 “(2) commits a sexual act upon another person
8 when the person knows or reasonably should know
9 that the other person is asleep, unconscious, or oth-
10 erwise unaware that the sexual act is occurring; or

11 “(3) commits a sexual act upon another person
12 when the other person is incapable of consenting to
13 the sexual act due to—

14 “(A) impairment by any drug, intoxicant,
15 or other similar substance, and that condition is
16 known or reasonably should be known by the
17 person; or

18 “(B) a mental disease or defect, or phys-
19 ical disability, and that condition is known or
20 reasonably should be known by the person;

21 is guilty of sexual assault and shall be punished as a court-
22 martial may direct.”.

23 (4) AGGRAVATED SEXUAL CONTACT.—Sub-
24 section (e) is redesignated as subsection (c) and is
25 amended—

1 (A) by striking “engages in” and inserting
2 “commits”; and

3 (B) by striking “with” and inserting
4 “upon”.

5 (5) ABUSIVE SEXUAL CONTACT.—Subsection
6 (h) is redesignated as subsection (d) and is amend-
7 ed—

8 (A) by striking “engages in” and inserting
9 “commits”;

10 (B) by striking “with” and inserting
11 “upon”; and

12 (C) by striking “subsection (c) (aggravated
13 sexual assault)” and inserting “subsection (b)
14 (sexual assault)”.

15 (6) REPEAL OF PROVISIONS RELATING TO OF-
16 FENSES REPLACED BY NEW ARTICLE 120c.—Sub-
17 sections (k), (l), (m), and (n) are repealed.

18 (7) PROOF OF THREAT.—Subsection (p) is re-
19 designating as subsection (e) and is amended—

20 (A) by striking “the accused made” and
21 inserting “a person made”;

22 (B) by striking “the accused actually” and
23 inserting “the person actually”; and

1 (C) by inserting before the period at the
2 end the following: “or had the ability to carry
3 out the threat”.

4 (8) DEFENSES.—Subsection (q) is redesignated
5 as subsection (f) and is amended to read as follows:

6 “(f) DEFENSES.—An accused may raise any applica-
7 ble defenses available under this chapter or the Rules for
8 Court-Martial. Marriage is not a defense for any conduct
9 in issue in any prosecution under this section.”.

10 (9) PROVISIONS RELATING TO AFFIRMATIVE
11 DEFENSES.—Subsections (r) and (s) are repealed.

12 (10) DEFINITIONS.—Subsection (t) is redesignig-
13 nated as subsection (g) and is amended—

14 (A) in paragraph (1)—

15 (i) in subparagraph (A), by inserting
16 “or anus or mouth” after “vulva”; and

17 (ii) in subparagraph (B)—

18 (I) by striking “genital opening”
19 and inserting “vulva or anus or
20 mouth,”; and

21 (II) by striking “a hand or fin-
22 ger” and inserting “any part of the
23 body”;

24 (B) by striking paragraph (2) and insert-
25 ing the following:

1 “(2) SEXUAL CONTACT.—The term ‘sexual con-
2 tact’ means—

3 “(A) touching, or causing another person
4 to touch, either directly or through the clothing,
5 the genitalia, anus, groin, breast, inner thigh,
6 or buttocks of any person, with an intent to
7 abuse, humiliate, or degrade any person; or

8 “(B) any touching, or causing another per-
9 son to touch, either directly or through the
10 clothing, any body part of any person, if done
11 with an intent to arouse or gratify the sexual
12 desire of any person.

13 Touching may be accomplished by any part of the
14 body.”.

15 (C) by striking paragraph (4) and redesign-
16 ating paragraph (3) as paragraph (4);

17 (D) by redesignating paragraph (8) as
18 paragraph (3), transferring that paragraph so
19 as to appear after paragraph (2), and amending
20 that paragraph by inserting before the period at
21 the end the following: “, including any non-
22 consensual sexual act or nonconsensual sexual
23 contact”;

24 (E) in paragraph (4), as redesignated by
25 subparagraph (C), by striking the last sentence;

1 (F) by striking paragraphs (5) and (7);

2 (G) by redesignating paragraph (6) as
3 paragraph (7);

4 (H) by inserting after paragraph (4), as
5 redesignated by subparagraph (C), the following
6 new paragraphs (5) and (6):

7 “(5) FORCE.—The term ‘force’ means—

8 “(A) the use of a weapon;

9 “(B) the use of such physical strength or
10 violence as is sufficient to overcome, restrain, or
11 injure a person; or

12 “(C) inflicting physical harm sufficient to
13 coerce or compel submission by the victim.

14 “(6) UNLAWFUL FORCE.—The term ‘unlawful
15 force’ means an act of force done without legal jus-
16 tification or excuse.”;

17 (I) in paragraph (7), as redesignated by
18 subparagraph (G)—

19 (i) by striking “under paragraph (3)”
20 and all that follows through “contact,”;
21 and

22 (ii) by striking “death, grievous bodily
23 harm, or kidnapping” and inserting “the
24 wrongful action contemplated by the com-
25 munication or action.”;

1 (J) by striking paragraphs (9) through
2 (13);

3 (K) by redesignating paragraph (14) as
4 paragraph (8) and in that paragraph—

5 (i) by inserting “(A)” before “The
6 term”;

7 (ii) by striking “words or overt acts
8 indicating” and “sexual” in the first sen-
9 tence;

10 (iii) by striking “accused’s” in the
11 third sentence;

12 (iv) by inserting “or social or sexual”
13 before “relationship” in the fourth sen-
14 tence;

15 (v) by striking “sexual” before “con-
16 duct” in the fourth sentence;

17 (vi) by striking “A person cannot con-
18 sent” and all that follows through the pe-
19 riod; and

20 (vii) by adding at the end the fol-
21 lowing new subparagraphs:

22 “(B) A sleeping, unconscious, or incom-
23 petent person cannot consent. A person cannot
24 consent to force causing or likely to cause death
25 or grievous bodily harm or to being rendered

1 unconscious. A person cannot consent while
2 under threat or in fear or under the cir-
3 cumstances described in subparagraph (C) or
4 (D) of subsection (b)(1).

5 “(C) Lack of consent may be inferred
6 based on the circumstances of the offense. All
7 the surrounding circumstances are to be consid-
8 ered in determining whether a person gave con-
9 sent, or whether a person did not resist or
10 ceased to resist only because of another per-
11 son’s actions.”; and

12 (L) by striking paragraphs (15) and (16).

13 (11) SECTION HEADING.—The heading of such
14 section (article) is amended to read as follows:

15 **“§ 920. Art. 120. Rape and sexual assault generally”.**

16 (b) RAPE AND SEXUAL ASSAULT OF A CHILD.—
17 Chapter 47 of such title (the Uniform Code of Military
18 Justice) is amended by inserting after section 920a (arti-
19 cle 120a), as amended by subsection (a), the following new
20 section (article):

21 **“§ 920b. Art. 120b. Rape and sexual assault of a child**

22 “(a) RAPE OF A CHILD.—Any person subject to this
23 chapter who—

24 “(1) commits a sexual act upon a child who has
25 not attained the age of 12 years; or

1 “(2) commits a sexual act upon a child who has
2 attained the age of 12 years by—

3 “(A) using force against any person;

4 “(B) threatening or placing that child in
5 fear;

6 “(C) rendering that child unconscious; or

7 “(D) administering to that child a drug,
8 intoxicant, or other similar substance;

9 is guilty of rape of a child and shall be punished as a
10 court-martial may direct.

11 “(b) SEXUAL ASSAULT OF A CHILD.—Any person
12 subject to this chapter who commits a sexual act upon a
13 child who has attained the age of 12 years is guilty of
14 sexual assault of a child and shall be punished as a court-
15 martial may direct.

16 “(c) SEXUAL ABUSE OF A CHILD.—Any person sub-
17 ject to this chapter who commits a lewd act upon a child
18 is guilty of sexual abuse of a child and shall be punished
19 as a court-martial may direct.

20 “(d) AGE OF CHILD.—

21 “(1) UNDER 12 YEARS.—In a prosecution under
22 this section, it need not be proven that the accused
23 knew the age of the other person engaging in the
24 sexual act or lewd act. It is not a defense that the

1 accused reasonably believed that the child had at-
2 tained the age of 12 years.

3 “(2) UNDER 16 YEARS.—In a prosecution under
4 this section, it need not be proven that the accused
5 knew that the other person engaging in the sexual
6 act or lewd act had not attained the age of 16 years,
7 but it is a defense in a prosecution under subsection
8 (b) (sexual assault of a child) or subsection (c) (sex-
9 ual abuse of a child), which the accused must prove
10 by a preponderance of the evidence, that the accused
11 reasonably believed that the child had attained the
12 age of 16 years, if the child had in fact attained at
13 least the age of 12 years.

14 “(e) PROOF OF THREAT.—In a prosecution under
15 this section, in proving that a person made a threat, it
16 need not be proven that the person actually intended to
17 carry out the threat or had the ability to carry out the
18 threat.

19 “(f) MARRIAGE.—In a prosecution under subsection
20 (b) (sexual assault of a child) or subsection (c) (sexual
21 abuse of a child), it is a defense, which the accused must
22 prove by a preponderance of the evidence, that the persons
23 engaging in the sexual act or lewd act were at that time
24 married to each other, except where the accused commits
25 a sexual act upon the person when the accused knows or

1 reasonably should know that the other person is asleep,
2 unconscious, or otherwise unaware that the sexual act is
3 occurring or when the other person is incapable of con-
4 senting to the sexual act due to impairment by any drug,
5 intoxicant, or other similar substance, and that condition
6 was known or reasonably should have been known by the
7 accused.

8 “(g) CONSENT.—Lack of consent is not an element
9 and need not be proven in any prosecution under this sec-
10 tion. A child not legally married to the person committing
11 the sexual act, lewd act, or use of force cannot consent
12 to any sexual act, lewd act, or use of force.

13 “(h) DEFINITIONS.—In this section:

14 “(1) SEXUAL ACT AND SEXUAL CONTACT.—The
15 terms ‘sexual act’ and ‘sexual contact’ have the
16 meanings given those terms in section 920(g) of this
17 title (article 120(g)).

18 “(2) FORCE.—The term ‘force’ means—

19 “(A) the use of a weapon;

20 “(B) the use of such physical strength or
21 violence as is sufficient to overcome, restrain, or
22 injure a child; or

23 “(C) inflicting physical harm.

1 In the case of a parent-child or similar relationship,
2 the use or abuse of parental or similar authority is
3 sufficient to constitute the use of force.

4 “(3) THREATENING OR PLACING THAT CHILD
5 IN FEAR.—The term ‘threatening or placing that
6 child in fear’ means a communication or action that
7 is of sufficient consequence to cause the child to fear
8 that non-compliance will result in the child or an-
9 other person being subjected to the action con-
10 templated by the communication or action.

11 “(4) CHILD.—The term ‘child’ means any per-
12 son who has not attained the age of 16 years.

13 “(5) LEWD ACT.—The term ‘lewd act’ means—

14 “(A) any sexual contact with a child;

15 “(B) intentionally exposing one’s genitalia,
16 anus, buttocks, or female areola or nipple to a
17 child by any means, including via any commu-
18 nication technology, with an intent to abuse,
19 humiliate, or degrade any person, or to arouse
20 or gratify the sexual desire of any person;

21 “(C) intentionally communicating indecent
22 language to a child by any means, including via
23 any communication technology, with an intent
24 to abuse, humiliate, or degrade any person, or

1 to arouse or gratify the sexual desire of any
2 person; or

3 “(D) any indecent conduct, intentionally
4 done with or in the presence of a child, includ-
5 ing via any communication technology, that
6 amounts to a form of immorality relating to
7 sexual impurity which is grossly vulgar, ob-
8 scene, and repugnant to common propriety, and
9 tends to excite sexual desire or deprave morals
10 with respect to sexual relations.”.

11 (c) OTHER SEXUAL MISCONDUCT.—Such chapter
12 (the Uniform Code of Military Justice) is further amended
13 by inserting after section 920b (article 120b), as added
14 by subsection (b), the following new section:

15 **“§ 920c. Art. 120c. Other sexual misconduct**

16 “(a) INDECENT VIEWING, VISUAL RECORDING, OR
17 BROADCASTING.—Any person subject to this chapter who,
18 without legal justification or lawful authorization—

19 “(1) knowingly and wrongfully views the private
20 area of another person, without that other person’s
21 consent and under circumstances in which that other
22 person has a reasonable expectation of privacy;

23 “(2) knowingly photographs, videotapes, films,
24 or records by any means the private area of another
25 person, without that other person’s consent and

1 under circumstances in which that other person has
2 a reasonable expectation of privacy; or

3 “(3) knowingly broadcasts or distributes any
4 such recording that the person knew or reasonably
5 should have known was made under the cir-
6 cumstances proscribed in paragraphs (1) and (2);

7 is guilty of an offense under this section and shall be pun-
8 ished as a court-martial may direct.

9 “(b) FORCIBLE PANDERING.—Any person subject to
10 this chapter who compels another person to engage in an
11 act of prostitution with any person is guilty of forcible
12 pandering and shall be punished as a court-martial may
13 direct.

14 “(c) INDECENT EXPOSURE.—Any person subject to
15 this chapter who intentionally exposes, in an indecent
16 manner, the genitalia, anus, buttocks, or female areola or
17 nipple is guilty of indecent exposure and shall by punished
18 as a court-martial may direct.

19 “(d) DEFINITIONS.—In this section:

20 “(1) ACT OF PROSTITUTION.—The term ‘act of
21 prostitution’ means a sexual act or sexual contact
22 (as defined in section 920(g) of this title (article
23 120(g))) on account of which anything of value is
24 given to, or received by, any person.

1 “(2) PRIVATE AREA.—The term ‘private area’
2 means the naked or underwear-clad genitalia, anus,
3 buttocks, or female areola or nipple.

4 “(3) REASONABLE EXPECTATION OF PRI-
5 VACY.—The term ‘under circumstances in which
6 that other person has a reasonable expectation of
7 privacy’ means—

8 “(A) circumstances in which a reasonable
9 person would believe that he or she could dis-
10 robe in privacy, without being concerned that
11 an image of a private area of the person was
12 being captured; or

13 “(B) circumstances in which a reasonable
14 person would believe that a private area of the
15 person would not be visible to the public.

16 “(4) BROADCAST.—The term ‘broadcast’ means
17 to electronically transmit a visual image with the in-
18 tent that it be viewed by a person or persons.

19 “(5) DISTRIBUTE.—The term ‘distribute’
20 means delivering to the actual or constructive pos-
21 session of another, including transmission by elec-
22 tronic means.

23 “(6) INDECENT MANNER.—The term ‘indecent
24 manner’ means conduct that amounts to a form of
25 immorality relating to sexual impurity which is

1 grossly vulgar, obscene, and repugnant to common
2 propriety, and tends to excite sexual desire or de-
3 prave morals with respect to sexual relations.”.

4 (d) CONFORMING AMENDMENTS.—Chapter 47 of
5 such title (the Uniform Code of Military Justice) is further
6 amended as follows:

7 (1) STATUTE OF LIMITATIONS.—Subparagraph
8 (B) of section 843(b)(2) (article 43(b)(2)) is amend-
9 ed—

10 (A) in clause (i), by striking “section 920
11 of this title (article 120)” and inserting “sec-
12 tion 920, 920a, 920b, or 920c of this title (arti-
13 cle 120, 120a, 120b, or 120c)”;

14 (B) in clause (v)—

15 (i) by striking “indecent assault”; and

16 (ii) by striking “or liberties with a
17 child”.

18 (2) MURDER.—Paragraph (4) of section 918
19 (article 118) is amended by striking “aggravated
20 sexual assault,” and all that follows through “with
21 a child,” and inserting “sexual assault, sexual as-
22 sault of a child, aggravated sexual contact, sexual
23 abuse of a child,”.

24 (e) CLERICAL AMENDMENTS.—The table of sections
25 at the beginning of subchapter X of such chapter (the Uni-

1 form Code of Military Justice) is amended by striking the
2 items relating to sections 920 and 920a (articles 120 and
3 120a) and inserting the following new items:

“920. 120. Rape and sexual assault generally.

“920a. 120a. Stalking.

“920b. 120b. Rape and sexual assault of a child.

“920c. 120c. Other sexual misconduct.”.

4 (f) **EFFECTIVE DATE.**—The amendments made by
5 this section shall take effect 180 days after the date of
6 the enactment of this Act and shall apply with respect to
7 offenses committed on or after such effective date.

8 **SEC. 542. AUTHORITY TO COMPEL PRODUCTION OF DOCU-**
9 **MENTARY EVIDENCE.**

10 (a) **EFFECT OF REFUSAL TO APPEAR OR TESTIFY.**—
11 Section 847 of title 10, United States Code (article 47
12 of the Uniform Code of Military Justice), is amended—

13 (1) in subsection (a)—

14 (A) in paragraph (1), by striking “board;”
15 and inserting “board, or has been duly issued
16 a subpoena duces tecum for an investigation
17 pursuant to section 832(b) of this title (article
18 32(b));”; and

19 (B) in paragraph (2)—

20 (i) by striking “duly paid or tendered
21 the fees and mileage of a witness” and in-
22 serting “provided a means for reimburse-