

(3) The term “immediate family”, in the case of a specific person, means a spouse, parent, child, or sibling of the person, or any other family member, relative, or intimate partner of the person who regularly resides in the household of the person or who within the six months preceding the commencement of the course of conduct regularly resided in the household of the person.

(Added Pub. L. 109–163, div. A, title V, §551(a)(1), Jan. 6, 2006, 119 Stat. 3256.)

TRANSFER AND ENACTMENT OF SECTION

Pub. L. 114–328, div. E, title LX, §§5401(11), 5431, title LXIII, §5542, Dec. 23, 2016, 130 Stat. 2939, 2951, 2967, provided that, effective on the date designated by the President, not later than the first day of the first calendar month beginning two years after Dec. 23, 2016, with implementing regulations prescribed by the President not later than one year after Dec. 23, 2016, and with provisions relating to applicability to various situations, this section is redesignated and transferred to become section 930 of this title (article 130), and a new section 920a (article 120a) is enacted. For text of new section 920a after the effective date, see Amendment of Analysis and Subchapter note preceding section 877 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Transfer of current section and enactment of new section 920a by Pub. L. 114–328 effective on the date designated by the President, not later than the first day of the first calendar month beginning two years after Dec. 23, 2016, with implementing regulations prescribed by the President not later than one year after Dec. 23, 2016, and with provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328, set out as a note under section 801 of this title.

EFFECTIVE DATE

Pub. L. 109–163, div. A, title V, §551(b), Jan. 6, 2006, 119 Stat. 3256, provided that: “Section 920a of title 10, United States Code (article 120a of the Uniform Code of Military Justice), as added by subsection (a), applies to offenses committed after the date that is 180 days after the date of the enactment of this Act [Jan. 6, 2006].”

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

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

- (1) commits a sexual act upon a child who has not attained the age of 12 years; or
- (2) commits a sexual act upon a child who has attained the age of 12 years by—
 - (A) using force against any person;
 - (B) threatening or placing that child in fear;
 - (C) rendering that child unconscious; or
 - (D) administering to that child a drug, intoxicant, or other similar substance;

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

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

(c) SEXUAL ABUSE OF A CHILD.—Any person subject to this chapter who commits a lewd act

upon a child is guilty of sexual abuse of a child and shall be punished as a court-martial may direct.

(d) AGE OF CHILD.—

(1) UNDER 12 YEARS.—In a prosecution under this section, it need not be proven that the accused knew the age of the other person engaging in the sexual act or lewd act. It is not a defense that the accused reasonably believed that the child had attained the age of 12 years.

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

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

(f) MARRIAGE.—In a prosecution under subsection (b) (sexual assault of a child) or subsection (c) (sexual abuse of a child), it is a defense, which the accused must prove by a preponderance of the evidence, that the persons engaging in the sexual act or lewd act were at that time married to each other, except where the accused commits a sexual act upon the person when the accused knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring or when the other person is incapable of consenting to the sexual act due to impairment by any drug, intoxicant, or other similar substance, and that condition was known or reasonably should have been known by the accused.

(g) CONSENT.—Lack of consent is not an element and need not be proven in any prosecution under this section. A child not legally married to the person committing the sexual act, lewd act, or use of force cannot consent to any sexual act, lewd act, or use of force.

(h) DEFINITIONS.—In this section:

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

(2) FORCE.—The term “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 child; or
- (C) inflicting physical harm.

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

(3) THREATENING OR PLACING THAT CHILD IN FEAR.—The term “threatening or placing that child in fear” means a communication or action that is of sufficient consequence to cause the child to fear that non-compliance will re-

sult in the child or another person being subjected to the action contemplated by the communication or action.

(4) CHILD.—The term “child” means any person who has not attained the age of 16 years.

(5) LEWD ACT.—The term “lewd act” means—

(A) any sexual contact with a child;

(B) intentionally exposing one’s genitalia, anus, buttocks, or female areola or nipple to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person;

(C) intentionally communicating indecent language to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person; or

(D) any indecent conduct, intentionally done with or in the presence of a child, including via any communication technology, that amounts to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations.

(Added Pub. L. 112–81, div. A, title V, § 541(b), Dec. 31, 2011, 125 Stat. 1407; amended Pub. L. 112–239, div. A, title X, § 1076(a)(3), Jan. 2, 2013, 126 Stat. 1948; Pub. L. 114–328, div. E, title LX, § 5430(c), Dec. 23, 2016, 130 Stat. 2950.)

AMENDMENT OF SUBSECTION (h)(1)

Pub. L. 114–328, div. E, title LX, § 5430(c), title LXIII, § 5542, Dec. 23, 2016, 130 Stat. 2950, 2967, provided that, effective on the date designated by the President, not later than the first day of the first calendar month beginning two years after Dec. 23, 2016, with implementing regulations prescribed by the President not later than one year after Dec. 23, 2016, and with provisions relating to applicability to various situations, subsection (h)(1) of this section is amended by inserting before the period at the end “, except that the term ‘sexual act’ also includes the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person”. See 2016 Amendment note below. For text of this section after amendment on the effective date, see Amendment of Analysis and Subchapter note preceding section 877 of this title.

AMENDMENTS

2016—Subsec. (h)(1). Pub. L. 114–328 inserted before period at end “, except that the term ‘sexual act’ also includes the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person”.

2013—Pub. L. 112–239 made technical amendment to directory language of Pub. L. 112–81, which enacted this section.

EFFECTIVE DATE OF 2016 AMENDMENT

Amendment by Pub. L. 114–328 effective on the date designated by the President, not later than the first

day of the first calendar month beginning two years after Dec. 23, 2016, with implementing regulations prescribed by the President not later than one year after Dec. 23, 2016, and with provisions relating to applicability to various situations, see section 5542 of Pub. L. 114–328, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–239, div. A, title X, § 1076(a), Jan. 2, 2013, 126 Stat. 1947, provided that the amendment made by section 1076(a)(3) is effective Dec. 31, 2011, and as if included in Pub. L. 112–81 as enacted.

EFFECTIVE DATE

Amendment by Pub. L. 112–81 effective 180 days after Dec. 31, 2011, and applicable with respect to offenses committed on or after such effective date, see section 541(f) of Pub. L. 112–81, set out as an Effective Date of 2011 Amendment note under section 843 of this title.

§ 920c. Art. 120c. Other sexual misconduct

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

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

(2) knowingly photographs, videotapes, films, or records by any means the private area of another person, without that other person’s consent and under circumstances in which that other person has a reasonable expectation of privacy; or

(3) knowingly broadcasts or distributes any such recording that the person knew or reasonably should have known was made under the circumstances proscribed in paragraphs (1) and (2);

is guilty of an offense under this section and shall be punished as a court-martial may direct.

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

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

(d) DEFINITIONS.—In this section:

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

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

(3) REASONABLE EXPECTATION OF PRIVACY.—The term “under circumstances in which that other person has a reasonable expectation of privacy” means—

(A) circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the person was being captured; or