

“(1) SUBSECTIONS (a) AND (b).—For an offense under subsection (a) (rape) or subsection (b) (rape of a child), death or such other punishment as a court-martial may direct.

“(2) SUBSECTION (c).—For an offense under subsection (c) (aggravated sexual assault), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 30 years.

“(3) SUBSECTIONS (d) AND (e).—For an offense under subsection (d) (aggravated sexual assault of a child) or subsection (e) (aggravated sexual contact), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

“(4) SUBSECTIONS (f) AND (g).—For an offense under subsection (f) (aggravated sexual abuse of a child) or subsection (g) (aggravated sexual contact with a child), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

“(5) SUBSECTIONS (h) THROUGH (j).—For an offense under subsection (h) (abusive sexual contact), subsection (i) (abusive sexual contact with a child), or subsection (j) (indecent liberty with a child), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 7 years.

“(6) SUBSECTIONS (k) AND (l).—For an offense under subsection (k) (indecent act) or subsection (l) (forcible pandering), dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

“(7) SUBSECTIONS (m) AND (n).—For an offense under subsection (m) (wrongful sexual contact) or subsection (n) (indecent exposure), dishonorable discharge, forfeiture of all pay and allowances, and confinement for one year.”

[See 2011 Amendment notes above for extensive amendment of section 920 of title 10 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.]

#### § 920a. Art. 120a. Mails: deposit of obscene matter

Any person subject to this chapter who, wrongfully and knowingly, deposits obscene matter for mailing and delivery shall be punished as a court-martial may direct.

(Added Pub. L. 114-328, div. E, title LX, §5431, Dec. 23, 2016, 130 Stat. 2951.)

##### PRIOR PROVISIONS

A prior section 920a was renumbered section 930 of this title.

##### EFFECTIVE DATE

Section effective on Jan. 1, 2019, as designated by the President, with implementing regulations and provisions relating to applicability to various situations, see section 5542 of Pub. L. 114-328 and Ex. Ord. No. 13825, set out as notes under section 801 of this title.

#### § 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)), 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.

(2) FORCE.—The term “force” means—

- (A) the use of a weapon;