

3rd Infantry Division SHARP Team Newsletter



“The Sharpest Team in the Division”

H.R. 3435:

Sexual Assault Training Oversight and Prevention Act Summary

Congresswoman Jackie Speier (D-San Francisco, San Mateo) introduced the Sexual Assault Training Oversight and Prevention Act – the STOP ACT on November 16, 2011. This legislation would take the reporting, oversight, investigation, and victim care of sexual assaults out of the hands of the normal chain of command and places jurisdiction in the hands of an independent Sexual Assault Oversight and Response Office. This Office will be comprised of civilian and military experts. The legislation also creates a sexual assault database within DoD that will be required to share information with DoJ civilian sexual offender database.

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**UCMJ:
Article 120
Amendments
Effective 28 Jun 12**



As of 28 June 2012, Article 120 of the UCMJ will be amended to reflect four distinct offenses: Rape, Sexual Assault, Aggravated Sexual Contact and Abusive Sexual Contact.

- * Article 120, Rape and sexual assault generally, (adults),
- * Article 120b, Rape and sexual assault of a child; and
- * Article 120c, other sexual misconduct

The amendments to Article 120 removed Constitutional infirmities and clarified the statute by separating penetration offenses from non-penetration offenses.

- * Specifically, the unlawful burden-shift to an accused that occurred when an accused asserted certain defenses under the former statute was removed.
- * The definition of sex act was made gender neutral to include oral and anal penetration.
- * The definition of consent was further defined and the statute states that a “sleeping” person cannot consent.
- * The definition of bodily harm now includes nonconsensual sex act or contact.
- * And the offense of indecent acts was removed from Article 120 and will be moved back to Article 134 with the next Executive order.

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Establishment of a Sexual Assault Oversight and Response Office within the Department of Defense

All duties and staff focused on response to sexual assault that are now covered by the Sexual Assault Prevention and Response Office will be moved to the new Office.

The Office will: Work with various Military investigative organizations to investigate cases of sexual assault; Ensure that victims are given safety, security, and a place to communicate their experiences; Have the authority to reassign a victim to separate them from their assailant Create a new method of reporting sexual assault that takes it out of the hands of the normal chain of command; The Military Criminal Investigative Organizations will report directly to the Sexual Response Office; and Work with the different branches of the military to provide contact information for the Sexual Assault Grievance Board for offense reporting and written guidelines regarding who to contact including a direct telephone number.

Establishment of a Sexual Assault Oversight and Response Council in the Department of Defense

The Council will: Appoint personnel to the Sexual Assault Response Office, and advise the Office. The Secretary of Defense will appoint two members who must have served as military judges. The President will appoint one member from the Department of Justice, one member who has experience advocating for the rights of those sexually assaulted in the military, and one member who has expertise working on civilian cases of sexual assault. They will also report annually to Congress.

Establishment of a Director of Military Prosecutions:

The Director will have final and independent authority to oversee the prosecution of all sexual-related offenses. They will also have the authority to request that a case be sent to an appellate court within the DoD or referred to the Department of Justice.

Removal of cases of sexual assault from the chain of command in the military:

This provision explicitly takes control of sexual assault cases out of the hands of base commanders and places jurisdiction within the Sexual Assault Oversight and Response Office. This provision also takes away the possibility of non-judicial punishment or the consideration of service when looking at the perpetrator.

Sexual offender database:

This provision directs the Department of Defense to collect and maintain information regarding sexual assaults in the U.S. Armed Forces. Upon a conviction of sexual assault this information will be sent to the Department of Justice to become a part of the National Sex Offender Registry.

BE AN ACTIVE BYSTANDER

What is a Bystander?

Bystanders are the largest group of people involved in violence – they greatly outnumber both the perpetrators and the victims. Bystanders have a range of involvement in assaults. Some know that a specific assault is happening or will happen, some see an assault or potential assault in progress, and some know that assaults do happen. Regardless of how close to the assault they are, bystanders have the power to stop assaults from occurring and to get help for people who have been victimized.

We have all been bystanders in our lives, and we will all be in situations where we are bystanders in the future. The choice, then, becomes whether we are going to be active bystanders who speak up and say something, or whether we will be passive bystanders who stand by and say nothing.

We are not advocating that people risk their own safety in order to be an active bystander. Remember, there is a range of actions that are appropriate, depending on the situation. If you or someone else is in immediate danger, calling 911 is the best action a bystander can take.

As opposed to being the bystander who stands by and does nothing, we want to create a culture of bystanders who are actively engaged in the prevention of violence.

Power of Bystanders

Has anyone stopped a friend from going home with someone when the friend was drunk? Has anyone tried to stop a Soldier, friend, peer, or supervisor, from taking advantage of someone or doing something else inappropriate? Both of these actions are examples of bystanders using their power to stop violence.

What else can bystanders do to make a difference?

Believe someone who discloses a sexual assault, abusive relationship, or experience with stalking or cyber-stalking.

Be respectful of yourself and others. Make sure any sexual act is OK with your partner if you initiate by getting consent first.

Watch out for your friends and fellow Soldiers – if you see someone who looks like they are in trouble, ask if they are okay. If you see a friend or Soldier doing something inappropriate, say something.

Speak up – if someone says something offensive, derogatory, or abusive, let him or her know that behavior is wrong and you don't want to be around it. Don't laugh at racist, sexist, homophobic jokes. Challenge your peers to be respectful.

BYSTANDER TECHNIQUES

“I” statements

- ▣ Three parts: 1. State your feelings, 2. Name the behavior, 3. State how you want the person to respond. This focuses on your feelings rather than criticizing the other person.

- Example: “I feel _____ when you _____. Please don’t do that anymore.”

Silent Stare

- ▣ Remember, you don’t have to speak to communicate.

Sometimes a disapproving look can be far more powerful than words.

Humor

- ▣ Reduces the tension of an intervention and makes it easier for the person to hear you.

Do not undermine what you say with too much humor. Funny doesn’t mean unimportant.

Group Intervention

- ▣ There is safety and power in numbers.

Best used with someone who has a clear pattern of inappropriate behavior where many examples can be presented as evidence of his problem.

Bring it Home

- ▣ Prevents someone from distancing himself from the impact of his actions.

- Example: “I hope no one ever talks about you like that.”

- ▣ Prevents someone from dehumanizing his targets.

- Example: What if someone said your girlfriend/boyfriend deserved to be raped or called your mother out of her name?”

We’re friends, right....?

- ▣ Reframes the intervention as caring and non-critical.

- Example: “As your friend I’ve gotta tell you that getting a girl/guy drunk to have sex with her/him isn’t cool, and could get you in a lot of trouble. Don’t do it.”

Distraction

- ▣ Snaps someone out of his or her “sexist comfort zone.”

- Example: Ask a man harassing a woman on the street for directions or the time.

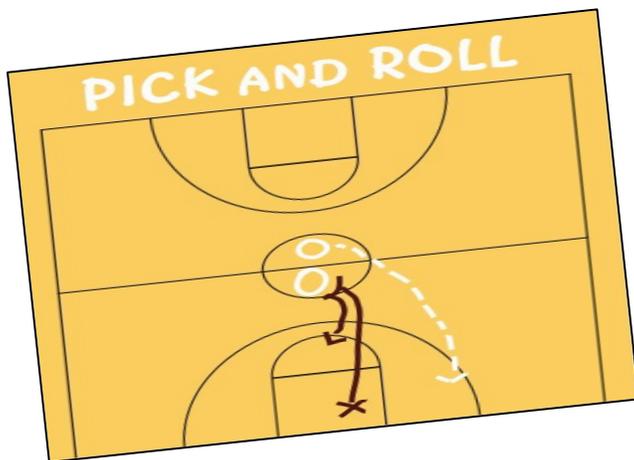
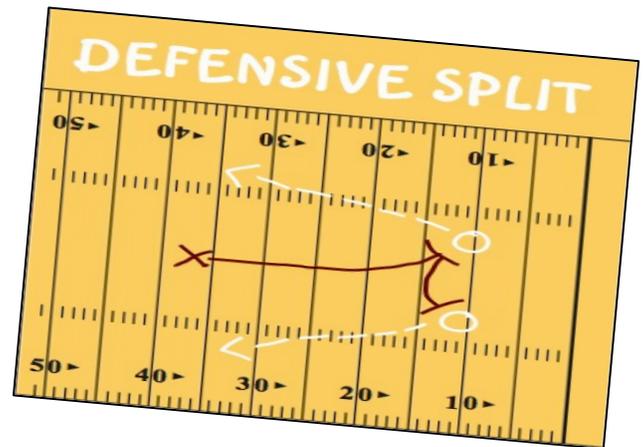
- ▣ Allows a potential target to move away and/or to have other friends intervene.

- Example: Spill your drink on the person or interrupt and start a conversation with the person.

BYSTANDER TECHNIQUES CONTINUED

Defensive Split

Step in and separate the two people. Let them know your concerns and reasons for intervening. As a Soldier, peer, friend, or supervisor, let them know you are acting in their best interest. Make sure each person makes it home safely.



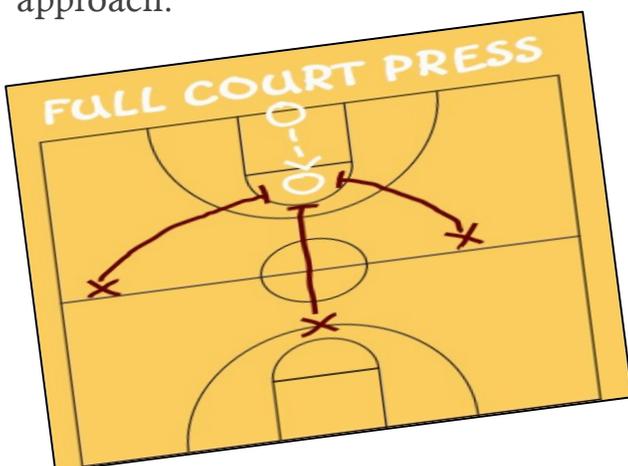
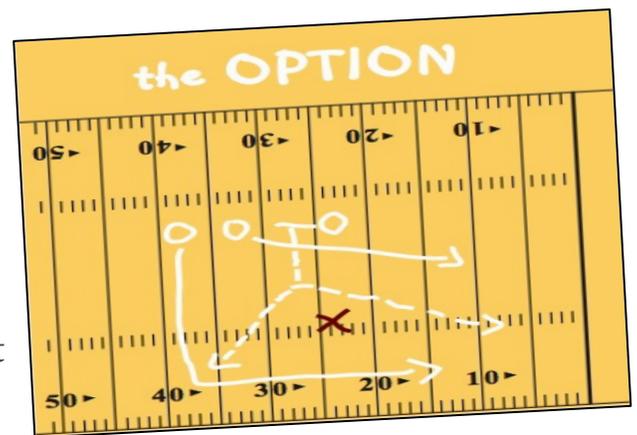
Pick and Roll

Use a distraction to redirect the focus somewhere else:

“Hey, I need to talk to you.” or “Hey, this party is lame. Let’s go somewhere else.”

The Option

Evaluate the situation and people involved to determine your best move. You could directly intervene yourself, or alert other Soldiers, peers, friends, or supervisors, of each person to come in and help. If the person reacts badly, try a different approach.



Full Court Press

Recruit the help of other Soldiers, peers, friends, or supervisors, to step in as a group.

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Key Changes to Article 120

Effective date: 180 days after the date of enactment of the NDAA (December 31, 2011). That date is June 28, 2012.

Note: All crimes committed prior to this date must be prosecuted under the law in effect at the time of the criminal act. The 2007 version of Article 120 is contained in the 2008 edition of the Manual of Courts Martial. The previous version of Article 120 is contained in the 2005 edition of the Manual for Courts Martial.



Key highlights of the changes for 2012: [quoted material is the language of the statute. An “*” indicates language derived or copied from the Section-by-Section Analysis of the Joint Services Committee in the DoD submission to Congressional committees.]

Simplification: Article 120 contains only adult sexual crimes. New Article 120b contains sexual crimes against children. New Article 120c contains non-contact “Other Sexual Misconduct”.

I. Sexual Offenses against Adults: Article 120

A. Definitions of “Sexual Act” and “Sexual Contact” are expanded:

“Sexual act” includes penetration of the vulva by the penis, and penetration of the vulva, anus, or mouth, by any other part of the body or by a foreign object.* “Sexual contact” is expanded to include touching any part of the body with sexual intent. Touching may be accomplished by any part of the body, including the hands or the mouth.*

B. “Substantially incapacitated” re-written: The new version of “substantially incapacitated” highlights the statutory focus on the offender by imposing a “knows or reasonably should know” standard on incapacity. The new section states:

Art. 120(b) SEXUAL ASSAULT – Any person subject to this chapter who - ...

(2) commits a sexual act upon another person when the person *knows or reasonably should know* that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring; or

(3) commits a sexual act upon another person when the other person is incapable of consenting to the sexual act due to –

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

(B) a mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the person;

C. Defenses to adult sexual crimes are largely eliminated: Legally problematic defenses have been removed from Article 120. The law now states:

“An accused may raise any applicable defenses available under this chapter or the Rules for Court-Martial. Marriage is not a defense for any conduct in issue in any prosecution under this section.”



D. Definition of consent is expanded: The definition of consent has been retained, but expanded. The most striking new wording is that “A person cannot consent while under threat or in fear....” This is new. Neither prior caselaw nor instructions in the Military Judges’ Benchbook state that if the government proved fear or threat, consent was not possible.

“Lack of consent may be inferred based on the circumstances of the offense. All the surrounding circumstances are to be considered in determining whether a person gave consent, or whether a person did not resist or ceased to resist only because of another person’s actions.” Although any fact can be inferred from circumstantial evidence, this section assures that consent is considered to be such a fact. It is likely that this section will generate a specific instruction in the Benchbook.

The statute also emphasizes that “A sleeping, unconscious or incompetent person cannot consent.”

II. Maximum punishments:

Article 120:

- (1) Rape. Dishonorable discharge, forfeiture of all pay and allowance, and confinement for life without eligibility for parole.
- (2) Sexual assault. Dishonorable discharge, forfeiture of all pay and allowance, and confinement for 30 years.
- (3) Aggravated sexual contact. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.
- (4) Abusive sexual contact. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 7 years.

Transfer or Reassignment Procedures for Victims of Sexual Assault

Soldiers who file an unrestricted report of sexual assault will be given the option to request a temporary or permanent transfer from their assigned command or base, or to a different location within their assigned command or base.

Requests for transfer or reassignment must be accomplished utilizing a DA Form 4187 signed by the Soldier and endorsed by an LTC (O-5) or higher.



Upcoming SHARP 80-Hour Training:

There will be two separate classes given simultaneously on both dates for the month of July and August. Each class will be comprised of 50 Students.

Dates:
16 – 27 Jul 12

Location:
4IBCT Classroom
Rooms: 1161 & 1162

Times:
0800 - 1700

13 – 24 Aug 12

BLDG 626A
Rooms: 101A & 102A

0800 - 1700

3ID SHARP REPs

SHARP PM
LTC Thomas, Dana

SHARP NCOIC
MSG Johnson, Marilyn

SHARP SARC NCO
SFC Grandon, Sean

1HBCT SHARP SARC
SFC May, Travis

2HBCT SHARP SARC
SFC Ferguson, Janet

3HBCT SHARP SARC
SFC Cochrane, Yolanda

4IBCT SHARP SARC
SFC Taylor, Roger

3SB SHARP SARC
SFC Alloway, Denise

3CAB SHARP SARC
SFC Byers, Shawanda

SHARP SARC (Tenant Units)
SFC Boyd, Jerome

Resources

3ID SHARP Portal Link: Provides current information on all items relating to SHARP.

<https://marneportal.stewart.army.mil>

Click "Sharp" on the left hand side
Scroll down to "Documents"

Live 1-on-1 Help Confidential Worldwide 24/7

Help is just a Click, Call or Text away!

Safe Helpline
Sexual Assault Support for the DoD Community

Click www.SafeHelpline.org

Call 877-995-5247

Text* 55-247 (INSIDE THE U.S.)
202-470-5546 (OUTSIDE THE U.S.)

*Text your location for the nearest support resources