

H.R.1815

National Defense Authorization Act for Fiscal Year 2006 (Enrolled as Agreed to or Passed by Both House and Senate)

Latest Major Action: Became Public Law No: 109-163

Subtitle E--Military Justice and Legal Assistance Matters

SEC. 551. OFFENSE OF STALKING UNDER THE UNIFORM CODE OF MILITARY JUSTICE.

(a) Establishment of Offense--

(1) NEW PUNITIVE ARTICLE- Subchapter X of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by inserting after section 920 (article 120) the following new section:

Sec. 920a. Art. 120a. Stalking

(a) Any person subject to this section--

(1) who wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family;

(2) who has knowledge, or should have knowledge, that the specific person will be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family; and

(3) whose acts induce reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself or to a member of his or her immediate family;

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

(b) In this section:

(1) The term 'course of conduct' means--

(A) a repeated maintenance of visual or physical proximity to a specific person; or

(B) a repeated conveyance of verbal threat, written threats, or threats implied by conduct, or a combination of such threats, directed at or toward a specific person.

(2) The term 'repeated', with respect to conduct, means two or more occasions of such conduct.

(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.'.

(2) CLERICAL AMENDMENT- The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 920 the following new item:

` 920a. 120a. Stalking.'

(b) Applicability- 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** .

SEC. 552. RAPE, SEXUAL ASSAULT, AND OTHER SEXUAL MISCONDUCT UNDER UNIFORM CODE OF MILITARY JUSTICE.

(a) Revision to UCMJ-

(1) IN GENERAL- Section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice), is amended to read as follows:

` Sec. 920. Art. 120. Rape, sexual assault, and other sexual misconduct

` (a) Rape- Any person subject to this chapter who causes another person of any age to engage in a sexual **act** by--

` (1) using force against that other person;

` (2) causing grievous bodily harm to any person;

` (3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnaping;

` (4) rendering another person unconscious; or

` (5) administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby substantially impairs the ability of that other person to appraise or control conduct;

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

` (b) Rape of a Child- Any person subject to this chapter who--

` (1) engages in a sexual **act** with a child who has not attained the age of 12 years; or

` (2) engages in a sexual **act** under the circumstances described in subsection (a) with a child who has attained the age of 12 years;

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

` (c) Aggravated Sexual Assault- Any person subject to this chapter who--

` (1) causes another person of any age to engage in a sexual act by--

` (A) threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping); or

` (B) causing bodily harm; or

` (2) engages in a sexual act with another person of any age if that other person is substantially incapacitated or substantially incapable of--

` (A) appraising the nature of the sexual act ;

` (B) declining participation in the sexual act ; or

` (C) communicating unwillingness to engage in the sexual act ;

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

` (d) Aggravated Sexual Assault of a Child- Any person subject to this chapter who engages in a sexual act with a child who has attained the age of 12 years is guilty of aggravated sexual assault of a child and shall be punished as a court-martial may direct.

` (e) Aggravated Sexual Contact- Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (a) (rape) had the sexual contact been a sexual act , is guilty of aggravated sexual contact and shall be punished as a court-martial may direct.

` (f) Aggravated Sexual Abuse of a Child- Any person subject to this chapter who engages in a lewd act with a child is guilty of aggravated sexual abuse of a child and shall be punished as a court-martial may direct.

` (g) Aggravated Sexual Contact With a Child- Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (b) (rape of a child) had the sexual contact been a sexual act , is guilty of aggravated sexual contact with a child and shall be punished as a court-martial may direct.

` (h) Abusive Sexual Contact- Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (c) (aggravated sexual assault) had the sexual contact been a sexual act , is guilty of abusive sexual contact and shall be punished as a court-martial may direct.

` (i) Abusive Sexual Contact With a Child- Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (d) (aggravated sexual assault of a child) had the sexual contact been a sexual act , is guilty

of abusive sexual contact with a child and shall be punished as a court-martial may direct.

` (j) Indecent Liberty With a Child- Any person subject to this chapter who engages in indecent liberty in the physical presence of a child--

` (1) with the intent to arouse, appeal to, or gratify the sexual desire of any person; or

` (2) with the intent to abuse, humiliate, or degrade any person;

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

` (k) Indecent **Act** - Any person subject to this chapter who engages in indecent conduct is guilty of an indecent **act** and shall be punished as a court-martial may direct.

` (l) Forcible Pandering- Any person subject to this chapter who compels another person to engage in an **act** of prostitution with another person to be directed to said person is guilty of forcible pandering and shall be punished as a court-martial may direct.

` (m) Wrongful Sexual Contact- Any person subject to this chapter who, without legal justification or lawful **authorization**, engages in sexual contact with another person without that other person's permission is guilty of wrongful sexual contact and shall be punished as a court-martial may direct.

` (n) Indecent Exposure- Any person subject to this chapter who intentionally exposes, in an indecent manner, in any place where the conduct involved may reasonably be expected to be viewed by people other than members of the actor's family or household, the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure and shall be punished as a court-martial may direct.

` (o) Age of Child-

` (1) TWELVE YEARS- In a prosecution under subsection (b) (rape of a child), subsection (g) (aggravated sexual contact with a child), or subsection (j) (indecent liberty with a child), it need not be proven that the accused knew that the other person engaging in the sexual **act**, contact, or liberty had not attained the age of 12 years. It is not an affirmative **defense** that the accused reasonably believed that the child had attained the age of 12 years.

` (2) SIXTEEN YEARS- In a prosecution under subsection (d) (aggravated sexual assault of a child), subsection (f) (aggravated sexual abuse of a child), subsection (i) (abusive sexual contact with a child), or subsection (j) (indecent liberty with a child), it need not be proven that the accused knew that the other person engaging in the sexual **act**, contact, or liberty had not attained the age of 16 years. Unlike in paragraph (1), however, it is an affirmative **defense** that the

accused reasonably believed that the child had attained the age of 16 years.

ˆ (p) Proof of Threat- In a prosecution under this section, in proving that the accused made a threat, it need not be proven that the accused actually intended to carry out the threat.

ˆ (q) Marriage-

ˆ (1) IN GENERAL- In a prosecution under paragraph (2) of subsection (c) (aggravated sexual assault), or under subsection (d) (aggravated sexual assault of a child), subsection (f) (aggravated sexual abuse of a child), subsection (i) (abusive sexual contact with a child), subsection (j) (indecent liberty with a child), subsection (m) (wrongful sexual contact), or subsection (n) (indecent exposure), it is an affirmative **defense** that the accused and the other person when they engaged in the sexual **act**, sexual contact, or sexual conduct are married to each other.

ˆ (2) DEFINITION- For purposes of this subsection, a marriage is a relationship, recognized by the laws of a competent State or foreign jurisdiction, between the accused and the other person as spouses. A marriage exists until it is dissolved in accordance with the laws of a competent State or foreign jurisdiction.

ˆ (3) EXCEPTION- Paragraph (1) shall not apply if the accused's intent at the time of the sexual conduct is to abuse, humiliate, or degrade any person.

ˆ (r) Consent and Mistake of Fact as to Consent- Lack of permission is an element of the offense in subsection (m) (wrongful sexual contact). Consent and mistake of fact as to consent are not an issue, or an affirmative **defense**, in a prosecution under any other subsection, except they are an affirmative **defense** for the sexual conduct in issue in a prosecution under subsection (a) (rape), subsection (c) (aggravated sexual assault), subsection (e) (aggravated sexual contact), and subsection (h) (abusive sexual contact).

ˆ (s) Other Affirmative Defenses not Precluded- The enumeration in this section of some affirmative defenses shall not be construed as excluding the existence of others.

ˆ (t) Definitions- In this section:

ˆ (1) SEXUAL **ACT** - The term "sexual **act**" means--

ˆ (A) contact between the penis and the vulva, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; or

ˆ (B) the penetration, however slight, of the genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

` (2) SEXUAL CONTACT- The term `sexual contact' means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, or intentionally causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, or degrade any person or to arouse or gratify the sexual desire of any person.

` (3) GRIEVOUS BODILY HARM- The term `grievous bodily harm' means serious bodily injury. It includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose. It is the same level of injury as in section 928 (article 128) of this chapter, and a lesser degree of injury than in section 2246(4) of title 18.

` (4) DANGEROUS WEAPON OR OBJECT- The term `dangerous weapon or object' means--

` (A) any firearm, loaded or not, and whether operable or not;

` (B) any other weapon, device, instrument, material, or substance, whether animate or inanimate, that in the manner it is used, or is intended to be used, is known to be capable of producing death or grievous bodily harm; or

` (C) any object fashioned or utilized in such a manner as to lead the victim under the circumstances to reasonably believe it to be capable of producing death or grievous bodily harm.

` (5) FORCE- The term `force' means action to compel submission of another or to overcome or prevent another's resistance by--

` (A) the use or display of a dangerous weapon or object;

` (B) the suggestion of possession of a dangerous weapon or object that is used in a manner to cause another to believe it is a dangerous weapon or object; or

` (C) physical violence, strength, power, or restraint applied to another person, sufficient that the other person could not avoid or escape the sexual conduct.

` (6) THREATENING OR PLACING THAT OTHER PERSON IN FEAR- The term `threatening or placing that other person in fear' under paragraph (3) of subsection (a) (rape), or under subsection (e) (aggravated sexual contact), means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the

victim or another person being subjected to death, grievous bodily harm, or kidnapping.

` (7) THREATENING OR PLACING THAT OTHER PERSON IN FEAR-

` (A) IN GENERAL- The term `threatening or placing that other person in fear' under paragraph (1)(A) of subsection (c) (aggravated sexual assault), or under subsection (h) (abusive sexual contact), means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another being subjected to a lesser degree of harm than death, grievous bodily harm, or kidnapping.

` (B) INCLUSIONS- Such lesser degree of harm includes--

` (i) physical injury to another person or to another person's property; or

` (ii) a threat--

` (I) to accuse any person of a crime;

` (II) to expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

` (III) through the use or abuse of military position, rank, or authority, to affect or threaten to affect, either positively or negatively, the military career of some person.

` (8) BODILY HARM- The term `bodily harm' means any offensive touching of another, however slight.

` (9) CHILD- The term `child' means any person who has not attained the age of 16 years.

` (10) LEWD **ACT** - The term `lewd **act**' means--

` (A) the intentional touching, not through the clothing, of the genitalia of another person, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person; or

` (B) intentionally causing another person to touch, not through the clothing, the genitalia of any person with an intent to abuse, humiliate or degrade any person, or to arouse or gratify the sexual desire of any person.

` (11) INDECENT LIBERTY- The term `indecent liberty' means indecent conduct, but physical contact is not required. It includes one who with the requisite intent exposes one's genitalia, anus, buttocks, or female areola or nipple to a child. An indecent liberty may consist of communication of indecent language as long as the communication is made in the physical presence of the child. If words designed to excite

sexual desire are spoken to a child, or a child is exposed to or involved in sexual conduct, it is an indecent liberty; the child's consent is not relevant.

` (12) INDECENT CONDUCT- The term `indecent conduct' means that 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. Indecent conduct includes observing, or making a videotape, photograph, motion picture, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material, without another person's consent, and contrary to that other person's reasonable expectation of privacy, of--

` (A) that other person's genitalia, anus, or buttocks, or (if that other person is female) that person's areola or nipple; or

` (B) that other person while that other person is engaged in a sexual **act**, sodomy (under section 925 (article 125)), or sexual contact.

` (13) **ACT** OF PROSTITUTION- The term `**act** of prostitution' means a sexual **act**, sexual contact, or lewd **act** for the purpose of receiving money or other compensation.

` (14) CONSENT- The term `consent' means words or overt acts indicating a freely given agreement to the sexual conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the accused's use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating relationship by itself or the manner of dress of the person involved with the accused in the sexual conduct at issue shall not constitute consent. A person cannot consent to sexual activity if--

` (A) under 16 years of age; or

` (B) substantially incapable of--

` (i) appraising the nature of the sexual conduct at issue due to--

` (I) mental impairment or unconsciousness resulting from consumption of alcohol, drugs, a similar substance, or otherwise; or

` (II) mental disease or defect which renders the person unable to understand the nature of the sexual conduct at issue;

` (ii) physically declining participation in the sexual conduct at issue; or

` (iii) physically communicating unwillingness to engage in the sexual conduct at issue.

` (15) MISTAKE OF FACT AS TO CONSENT- The term `mistake of fact as to consent' means the accused held, as a result of ignorance or mistake, an incorrect belief that the other person engaging in the sexual conduct consented. The ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances. To be reasonable the ignorance or mistake must have been based on information, or lack of it, which would indicate to a reasonable person that the other person consented. Additionally, the ignorance or mistake cannot be based on the negligent failure to discover the true facts. Negligence is the absence of due care. Due care is what a reasonably careful person would do under the same or similar circumstances. The accused's state of intoxication, if any, at the time of the offense is not relevant to mistake of fact. A mistaken belief that the other person consented must be that which a reasonably careful, ordinary, prudent, sober adult would have had under the circumstances at the time of the offense.

` (16) AFFIRMATIVE DEFENSE - The term `affirmative defense' means any special defense which, although not denying that the accused committed the objective acts constituting the offense charged, denies, wholly, or partially, criminal responsibility for those acts. The accused has the burden of proving the affirmative defense by a preponderance of evidence. After the defense meets this burden, the prosecution shall have the burden of proving beyond a reasonable doubt that the affirmative defense did not exist.'

(2) CLERICAL AMENDMENT- The item relating to section 920 (article 120) in the table of sections at the beginning of subchapter X of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended to read as follows:

` 920. 120. Rape, sexual assault, and other sexual misconduct.'

(b) Interim Maximum Punishments- Until the President otherwise provides pursuant to section 856 of title 10, United States Code (article 56 of the Uniform Code of Military Justice), the punishment which a court-martial may direct for an offense under section 920 of such title (article 120 of the Uniform Code of Military Justice), as amended by subsection (a), may not exceed the following limits:

(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.

(c) Applicability- Section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice), as amended by subsection (a), shall apply with respect to offenses committed on or after the effective date specified in subsection (f).

(d) Aggravating Factors for Offense of Murder- Section 918 of title 10, United States Code (article 118 of the Uniform Code of Military Justice), is amended in paragraph (4) by striking `rape,' and inserting `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,'.

(e) Statute of Limitations- Section 843(a) of title 10, United States Code (article 843(a) of the Uniform Code of Military Justice), as amended by section 553(a), is amended by striking `or rape,' and inserting `, rape, or rape of a child,'.

(f) Effective Date- The amendments made by this section shall take effect on October 1, 2007.

SEC. 553. EXTENSION OF STATUTE OF LIMITATIONS FOR MURDER, RAPE, AND CHILD ABUSE OFFENSES UNDER THE UNIFORM CODE OF MILITARY JUSTICE.

(a) No Limitation for Murder or Rape- Subsection (a) of section 843 of title 10, United States Code (article 43 of the Uniform Code of Military Justice), is amended by striking `or with any offense punishable by death' and inserting `with murder or rape, or with any other offense punishable by death'.

(b) Special Rules for Child Abuse Offenses- Subsection (b)(2) of such section (article) is amended--

(1) in subparagraph (A), by striking `before the child attains the age of 25 years' and inserting `during the life of the child or within five years after the date on which the offense was committed, whichever provides a longer period,';

(2) in subparagraph (B)--

(A) in the matter preceding clause (i), by striking `sexual or physical';

(B) in clause (i), by striking `Rape or carnal knowledge' and inserting `Any offense'; and

(C) in clause (v), by striking `Indecent assault,' and inserting `Kidnaping; indecent assault;'; and

(3) by adding at the end the following new subparagraph:

`(C) In subparagraph (A), the term `child abuse offense' includes an **act** that involves abuse of a person who has not attained the age of 18 years and would constitute an offense under chapter 110 or 117, or under section 1591, of title 18.'

SEC. 554. REPORTS BY OFFICERS AND SENIOR ENLISTED MEMBERS OF CONVICTION OF CRIMINAL LAW.

(a) Requirement for Reports-

(1) IN GENERAL- The Secretary of **Defense** shall prescribe in regulations a requirement that each covered member of the Armed Forces shall submit to an authority in the military department concerned designated pursuant to such regulations a timely report of any conviction of such member by any law enforcement authority of the United States for a violation of a criminal law of the United States, whether or not the member is on active duty at the time of the conduct that provides the basis for the conviction. The regulations shall apply uniformly throughout the military departments.

(2) COVERED MEMBERS- In this section, the term `covered member of the Armed Forces' means a member of the Army, Navy, Air Force, or Marine Corps who is on the active-duty list or the reserve active-status list and who is--

(A) an officer; or

(B) an enlisted member in a pay grade above pay grade E-6.

(b) Law Enforcement Authority of the United States- For purposes of this section, a law enforcement authority of the United States includes--

- (1) a military or other Federal law enforcement authority;
- (2) a State or local law enforcement authority; and
- (3) such other law enforcement authorities within the United States as the Secretary shall specify in the regulations prescribed pursuant to subsection (a).

(c) Criminal Law of the United States-

(1) IN GENERAL- Except as provided in paragraph (2), for purposes of this section, a criminal law of the United States includes--

- (A) any military or other Federal criminal law;
- (B) any State, county, municipal, or local criminal law or ordinance; and
- (C) such other criminal laws and ordinances of jurisdictions within the United States as the Secretary shall specify in the regulations prescribed pursuant to subsection (a).

(2) EXCEPTION- For purposes of this section, a criminal law of the United States shall not include a law or ordinance specifying a minor traffic offense (as determined by the Secretary for purposes of such regulations).

(d) Timeliness of Reports- The regulations prescribed pursuant to subsection (a) shall establish requirements for the timeliness of reports under this section.

(e) Forwarding of Information- The regulations prescribed pursuant to subsection (a) shall provide that, in the event a military department receives information that a covered member of the Armed Forces under the jurisdiction of another military department has become subject to a conviction for which a report is required by this section, the Secretary of the military department receiving such information shall, in accordance with such procedures as the Secretary of **Defense** shall establish in such regulations, forward such information to the authority in the military department having jurisdiction over such member designated pursuant to such regulations.

(f) Convictions- In this section, the term 'conviction' includes any plea of guilty or nolo contendere.

(g) Deadline for Regulations- The regulations required by subsection (a), including the requirement in subsection (e), shall go into effect not later than the end of the 180-day period beginning on the date of the enactment of this **Act** .

(h) Applicability of Requirement- The requirement under the regulations required by subsection (a) that a covered member of the Armed Forces submit notice of a conviction shall apply only to a conviction that becomes final after the date of the enactment of this **Act** .

SEC. 556. USE OF TELECONFERENCING IN ADMINISTRATIVE SESSIONS OF COURTS-MARTIAL.

Section 839 of title 10, United States Code (article 39 of the Uniform Code of Military Justice), is amended--

- (1) by redesignating subsection (b) as subsection (c);
- (2) by designating the matter following paragraph (4) of subsection (a) as subsection (b); and
- (3) in subsection (b), as so redesignated--
 - (A) by striking `These proceedings shall be conducted' and inserting `Proceedings under subsection (a) shall be conducted'; and
 - (B) by adding at the end the following new sentence:
`If authorized by regulations of the Secretary concerned, and if at least one **defense** counsel is physically in the presence of the accused, the presence required by this subsection may otherwise be established by audiovisual technology (such as videoteleconferencing technology).'