

Regular Session, 2013

HOUSE BILL NO. 127

BY REPRESENTATIVE LORUSSO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To enact R.S. 29:220, 220a, and 220b, relative to the Louisiana Code of Military Justice; to
3 provide for the creation of certain crimes related to sexual offenses within the
4 Louisiana Code of Military Justice; to provide for definitions and punishments as it
5 relates to each offense; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 29:220, 220a, and 220b are hereby enacted to read as follows:

8 §220. Article 120. Sexual assault

9 A. Any person subject to this code who commits any of the following acts
10 is guilty of sexual assault and shall be punished as a court-martial may direct:

11 (1) A sexual act upon another person by any of the following:

12 (a) Threatening or placing another person in fear.

13 (b) Causing bodily harm to another person.

14 (c) Making a fraudulent representation that the sexual act serves a
15 professional purpose.

16 (d) Inducing a belief by any artifice, pretense, or concealment that the person
17 is another person.

18 (2) A sexual act upon another person when the person knows or reasonably
19 should know that the other person is asleep, unconscious, or otherwise unaware that
20 the sexual act is occurring.

21 (3) A sexual act upon another person when the other person is incapable of
22 consenting to the sexual act due to any of the following:

23 (a) Impairment by any drug, intoxicant, or other similar substance, and that
24 condition is known or reasonably should be known by the person.

1 (b) A mental disease or defect or physical disability, and that condition is
2 known or reasonably should be known by the person.

3 B. Any person subject to this code who commits or causes sexual contact
4 upon or by another person, if to do so would violate Subsection A of this Section,
5 had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall
6 be punished as a court-martial may direct.

7 C. In a prosecution under this Section, in proving that a person made a threat,
8 it need not be proven that the person actually intended to carry out the threat or had
9 the ability to carry out the threat.

10 D. An accused may raise any applicable defenses available under this
11 Chapter or the Rules for Court-Martial. Marriage is not a defense for any conduct
12 in issue in any prosecution under this Section.

13 E. In this code, for purposes of this Section unless the context otherwise
14 requires, the following terms shall have the following meanings ascribed herein:

15 (1) "Bodily harm" means any offensive touching of another, however slight,
16 including any nonconsensual sexual act or nonconsensual sexual contact.

17 (2) "Consent" means:

18 (a) A freely given agreement to the conduct at issue by a competent person.

19 An expression of lack of consent through words or conduct means there is no
20 consent. Lack of verbal or physical resistance or submission resulting from the use
21 of force, threat of force, or placing another person in fear shall not constitute consent.

22 A current or previous dating, social, or sexual relationship by itself or the manner of
23 dress of the person involved with the accused in the conduct at issue shall not
24 constitute consent.

25 (b) A sleeping, unconscious, or incompetent person cannot consent. A
26 person cannot consent to force causing or likely to cause death or grievous bodily
27 harm or to being rendered unconscious. A person cannot consent while under threat
28 or fear or under the circumstances described in Subparagraph (A)(1)(c) or (d).

29 (c) Lack of consent may be inferred based on the circumstances of the
30 offense. All the surrounding circumstances shall be considered in determining

1 whether a person gave consent, or whether a person did not resist or ceased to resist
2 only because of another person's actions.

3 (3) "Force" means:

4 (a) The use of a weapon.

5 (b) The use of such physical strength or violence as is sufficient to
6 overcome, restrain, or injure a person.

7 (c) Inflicting physical harm sufficient to coerce or compel submission by the
8 victim.

9 (4) "Grievous bodily harm" means serious bodily injury and includes
10 fractured or dislocated bones, deep cuts, torn members of the body, serious damage
11 to internal organs, and other severe bodily injuries. Grievous bodily harm does not
12 include minor injuries such as a black eye or a bloody nose.

13 (5) "Sexual act" means either of the following:

14 (a) Contact between the penis and the vulva or anus or mouth, and for
15 purposes of this Subparagraph, contact involving the penis occurs upon penetration,
16 however slight.

17 (b) The penetration, however slight, of the vulva or anus or mouth of another
18 by any part of the body or by any object, with an intent to abuse, humiliate, harass,
19 or degrade any person or to arouse or gratify the sexual desire of any person.

20 (6) "Sexual contact" means either of the following:

21 (a) Touching, or causing another person to touch, either directly or through
22 the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person,
23 with an intent to abuse, humiliate, or degrade any person.

24 (b) Any touching, or causing another person to touch, either directly or
25 through the clothing, any body part of any person, if done with an intent to arouse
26 or gratify the sexual desire of any person. Touching may be accomplished by any
27 part of the body.

28 (7) "Threatening or placing another person in fear" means a communication
29 or action that is of sufficient consequence to cause a reasonable fear that

1 noncompliance will result in the victim or another person being subjected to the
2 wrongful action contemplated by the communication or action.

3 (8) "Unlawful force" means an act of force committed without legal
4 justification or excuse.

5 §220a. Article 120a. Stalking

6 A. Any person subject to this code who commits all of the following acts is
7 guilty of stalking and shall be punished as a court-martial may direct:

8 (1) Who wrongfully engages in a course of conduct directed at a specific
9 person that would cause a reasonable person to fear death or bodily harm, including
10 sexual assault, to the person or a member of the person's immediate family.

11 (2) Who has knowledge, or should have knowledge, that the specific person
12 will be placed in reasonable fear of death or bodily harm, including sexual assault,
13 to the person or a member of the person's immediate family.

14 (3) Whose acts induce reasonable fear in the specific person of death or
15 bodily harm, including sexual assault, to the person or to a member of the person's
16 immediate family.

17 B. In this code, for purposes of this Section unless the context otherwise
18 requires, the following terms shall have the following meanings ascribed herein:

19 (1) "Course of conduct" means either of the following:

20 (a) A repeated maintenance of visual or physical proximity to a specific
21 person.

22 (b) A repeated conveyance of verbal threat, written threats, or threats implied
23 by conduct, or a combination of such threats, directed at or towards a specific person.

24 (2) "Immediate family", in the case of a specific person, means a spouse,
25 parent, child, or sibling of the person, or any other family member, relative, or
26 intimate partner of the person who regularly resides in the household of the person
27 or who within the six months preceding the commencement of the course of conduct
28 regularly resided in the household of the person.

29 (3) "Repeated", with respect to conduct, means two or more occasions of
30 such conduct.

1 §220b. Article 120b. Other sexual misconduct; indecent viewing, visual recording,
2 or broadcasting

3 A. Any person subject to this code who knowingly commits any of the
4 following acts without legal justification or lawful authorization is guilty of an
5 offense under this Section and shall be punished as a court-martial may direct:

6 (1) Knowingly and wrongfully views the private area of another person,
7 without that other person's consent and under circumstances in which that other
8 person has a reasonable expectation of privacy.

9 (2) Knowingly and wrongfully photographs, videotapes, films, or records by
10 any means the private area of another person, without that other person's consent and
11 under circumstances in which that other person has a reasonable expectation of
12 privacy.

13 (3) Knowingly and wrongfully broadcasts or distributes any such recording
14 that the person knew or reasonably should have known was made under the
15 circumstances described in Paragraphs (1) and (2) of this Subsection.

16 B. Any person subject to this code who compels another person to engage
17 in an act of prostitution with any person is guilty of forcible pandering and shall be
18 punished as a court-martial may direct.

19 C. Any person subject to this code who intentionally exposes, in an indecent
20 manner, the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent
21 exposure and shall be punished as a court-martial may direct.

22 D. In this code, for purposes of this Section, unless the context otherwise
23 requires, the following terms shall have the following meanings ascribed herein:

24 (1) "Act of prostitution" means a sexual act or sexual contact as defined in
25 Article 120(E) of this code on account of which anything of value is given to, or
26 received by, any person.

27 (2) "Broadcast" means to electronically transmit a visual image with the
28 intent that it be viewed by a person or persons.

29 (3) "Distribute" means delivering to the actual or constructive possession of
30 another, including transmission by electronic means.

1 (4) "Indecent manner" means conduct that amounts to a form of immorality
2 relating to sexual impurity which is grossly vulgar, obscene, and repugnant to
3 common propriety, and tends to excite sexual desire or deprave morals with respect
4 to sexual relations.

5 (5) "Private area" means the naked or underwear-clad genitalia, anus,
6 buttocks, or female areola or nipple.

7 (6) "Reasonable expectation of privacy" means either of the following:

8 (a) Circumstances in which a reasonable person would believe that he or she
9 could disrobe in privacy, without being concerned that an image of a private area of
10 the person was being captured.

11 (b) Circumstances in which a reasonable person would believe that a private
12 area of the person would not be visible to the public.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____