

Ask the Lawyer: What Exactly Qualifies as Wrongful Sexual Contact Under the UCMJ?

By Mathew B. Tully

While the most serious sexual assault offenses, such as rape and aggravated sexual assault, have captured the most media attention, wrongful sexual contact is actually becoming a bigger problem in the military. In the 2010 fiscal year, reports of wrongful sexual contact accounted for 26 percent of all unrestricted reports of sexual assault throughout the military, up from 20 percent in the 2008 fiscal year, according to the latest Department of Defense Annual Report of Sexual Assault in the Military.

Wrongful sexual contact is a violation of Article 120 of the Uniform Code of Military Justice. Before delving into right and wrong, it's important to know what qualifies as sexual contact. Sexual contact involves the touching of certain body parts such as the breast, groin, or buttocks of another person or the causing of another person to touch any of those parts of any person. Both touching above or under clothing counts. The intent of this touching must be to humiliate, abuse, degrade, arouse, or gratify, according to the Manual for Courts-Martial.

Compared to aggravated sexual contact, which is associated with rape, wrongful sexual contact is less complex. As the Air Force Court of Criminal Appeals recently noted in *U.S. v. Pitman* (2011), wrongful sexual contact lacks the essential element of force. Sexual contact, the court added, is wrongful when a service member lacks permission to touch the other person and the touching is not legally justifiable or lawfully authorized.

Service members should also keep in mind that Congress late last year revised the military's rape and sexual assault laws under Article 120 when it passed the National Defense Authorization Act for Fiscal Year 2012. Among other things, the new Article 120, which takes effect in late June, modifies the definitions for aggravated and abusive sexual contact. Navy personnel charged with wrongful sexual contact should immediately consult with a military law attorney.

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. The information in this column is not intended as legal advice.