

Man may be charged with raping another man under UCMJ

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Q. Can sex crimes in the military that involve two males rise to the level of rape?

A.

When Congress passed the 2012 National Defense Authorization Act and overhauled Article 120 of the Uniform Code of Military Justice, lawmakers gave the military a larger net to catch sexual offenders.

The new Article 120, which took effect in June 2012, placed sexual acts outside of what would qualify as traditional sexual intercourse within the meaning of rape and sexual assault. So now, for example, forcible sex acts involving two men can be prosecuted under the same statute that traditionally applied only to rape involving a male and a female.

The revised Article 120 did this by creating a broader definition for what constitutes a "sexual act," allowing the government to prosecute certain types of sexual misconduct as rape or sexual assault.

Both rape and sexual assault involve one person committing a "sexual act" against another person, regardless of gender. The 2012 law criminalizes this type of act no matter how it is accomplished (e.g. "by any part of the body or by any object"), as long as it is coupled with the intent to "abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person," according to the Manual for Courts-Martial.

The U.S. Court of Appeals for the Armed Forces highlighted the old Article 120's limitation in *U.S. v. Akeem A. Wilkins* (2012), when it said, "This Court is confined to the definitions formulated by Congress."

Such definitions did not include the type of sex that typically occurs between two males or similar sexual acts. If the new Article 120 had been in effect at that time, the court may have reached a different conclusion in that case because a sexual act is no longer limited to the definition of heterosexual sex.

Traditionally, the military had prosecuted forcible sodomy under Article 125, which addresses sodomy. The 2012 revisions to Article 120 served in part to ensure all sex crimes are prosecuted under that article, including Article 125's forcible sodomy offense.

As such, Article 125 likely will be revised out of the UCMJ in its current form.

Service members charged with rape or sexual assault should immediately contact a military law attorney.

Depending on the circumstances, an attorney can show the sexual act was consensual or that the accused's conduct amounted only to sexual contact, not a sexual act.