

72 FR 20213, *

FEDERAL REGISTER

Vol. 72, No. 077

Presidential Documents

PRESIDENT OF THE UNITED STATES

Executive Order 13430 of April 18, 2007

Title 3--

The President

2007 Amendments to the Manual for Courts-Martial, United States

Part III

72 FR 20213

DATE: Monday, April 23, 2007

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801-946), and in order to prescribe amendments to the Manual for Courts-Martial, United States, prescribed by Executive Order 12473 of April 13, 1984, as amended, it is hereby ordered as follows:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) R.C.M. 703(b)(1) is amended by adding at the end the following new sentences:

"With the consent of both the accused and Government, the military judge may authorize any witness to testify via remote means. Over a party's objection, the military judge may authorize any witness to testify on interlocutory questions via remote means or similar technology if the practical difficulties of producing the witness outweigh the significance of the witness' personal appearance (although such testimony will not be admissible over the accused's objection as evidence on the ultimate issue of guilt). Factors to be considered include, but are not limited to, the costs of producing the witness; the timing of the request for production of the witness; the potential delay in the interlocutory proceeding that may be caused by the production of the witness; the willingness of the witness to testify in person; the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training; and, for child witnesses, the traumatic effect of providing in-court testimony."

(b) R.C.M. 804 is amended by redesignating paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively, and inserting the following new paragraph (b):

"(b) *Presence by remote means.* If authorized by the regulations of the Secretary concerned, the military judge may order the use of audiovisual technology, such as videoteleconferencing technology, between the parties and the military judge for purposes of Article 39(a) sessions. Use of such audiovisual technology will satisfy the "presence" requirement of the accused only when the accused has a defense counsel physically present at his location. Such technology may

include two or more remote sites as long as all parties can see and hear each other."

(c) R.C.M. 804(c)(2) is redesignated as R.C.M. 804(d)(2) and amended to read as follows:

"(2) *Procedure*. The accused's absence will be conditional upon his being able to view the witness' testimony from a remote location. Normally, transmission of the testimony will include a system that will transmit the accused's image and voice into the courtroom from a remote location as well as transmission of the child's testimony from the courtroom to the accused's location. A one-way transmission may be used if deemed necessary by the military judge. The accused will also be provided private, [*20214] contemporaneous communication with his counsel. The procedures described herein shall be employed unless the accused has made a knowing and affirmative waiver of these procedures."

(d) R.C.M. 805(a) is amended by adding at the end the following new sentence:

"If authorized by regulations of the Secretary concerned, for purposes of Article 39(a) sessions solely, the presence of the military judge at Article 39(a) sessions may be satisfied by the use of audiovisual technology, such as videoteleconferencing technology."

(e) R.C.M. 805(c) is amended by adding at the end the following new sentences:

"If authorized by regulations of the Secretary concerned, for purposes of Article 39(a) sessions solely, the presence of counsel at Article 39(a) sessions may be satisfied by the use of audiovisual technology, such as videoteleconferencing technology. At least one qualified defense counsel shall be physically present with the accused."

(f) R.C.M. 914A is amended by deleting the third sentence of paragraph (a).

(g) R.C.M. 914A is further amended by redesignating paragraph (b) as paragraph (c) and inserting the following new paragraph (b):

"(b) *Definition*. As used in this rule, "remote live testimony" includes, but is not limited to, testimony by videoteleconference, closed circuit television, or similar technology."

(h) New Rule R.C.M. 914B is inserted after R.C.M. 914A:

"Rule 914B. Use of remote testimony.

(a) *General procedures*. The military judge shall determine the procedures used to take testimony via remote means. At a minimum, all parties shall be able to hear each other, those in attendance at the remote site shall be identified, and the accused shall be permitted private, contemporaneous communication with his counsel.

(b) *Definition*. As used in this rule, testimony via "remote means" includes, but is not limited to, testimony by videoteleconference, closed circuit television, telephone, or similar technology."

(i) R.C.M. 1001(e)(2)(D) is amended by deleting the "or" before "former testimony" and inserting ", or testimony by remote means" after "former testimony."

Sec. 2. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 4.c.(6) is amended by redesignating paragraph (f) as paragraph (g) and inserting the following new paragraph (f):

"(f) *Article 119a-attempting to kill an unborn child*"

(b) Paragraph 12a is amended by replacing the word "Transportation" with the words "Homeland Security".

(c) Paragraph 35a is amended to read as follows:

"(a) Any person subject to this chapter who --

(1) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in section 912a(b) of this title (Article 112a (b)); or

(2) operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is equal to or exceeds the applicable limit under subsection (b), shall be punished as a court-martial may direct.

(b)(1) For purposes of subsection (a), the applicable limit on the alcohol concentration in a person's blood or breath is as follows: **[*20215]**

(A) In the case of the operation or control of a vehicle, aircraft, or vessel in the United States, such limit is the lesser of --

(i) the blood alcohol content limit under the law of the State in which the conduct occurred, except as may be provided under paragraph (2) for conduct on a military installation that is in more than one State; or

(ii) the blood alcohol content limit specified in paragraph (3).

(B) In the case of the operation or control of a vehicle, aircraft, or vessel outside the United States, the applicable blood alcohol content limit is the blood alcohol content limit specified in paragraph (3) or such lower limit as the Secretary of Defense may by regulation prescribe.

(2) In the case of a military installation that is in more than one State, if those States have different blood alcohol content limits under their respective State laws, the Secretary may select one such blood alcohol content limit to apply uniformly on that installation.

(3) For purposes of paragraph (1), the blood alcohol content limit with respect to alcohol concentration in a person's blood is 0.10 grams of alcohol per 100 milliliters of blood and with respect to alcohol concentration in a person's breath is 0.10 grams of alcohol per 210 liters of breath, as shown by chemical analysis.

(4) In this subsection:

(A) The term "blood alcohol content limit" means the amount of alcohol concentration in a person's blood or breath at which operation or control of a vehicle, aircraft, or vessel is prohibited.

(B) The term "United States" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and the term "State" includes each of those jurisdictions.

(d) Paragraph 35b(2)(c) is amended to read as follows:

"(c) the alcohol concentration in the accused's blood or breath equaled to or exceeded the applicable limit under subparagraph (b) of paragraph 35a. [NOTE: If injury resulted add the following element]"

(e) Para 35f is amended to read as follows:

"In that ----- (personal jurisdiction data), did (at/onboard location)(subject matter jurisdiction data, if required), on or about ----- 20--, (in the motor pool area)(near the

Officer's Club)(at the intersection of ----- and -----)(while in the Gulf of Mexico)(while in flight over North America) physically control [a vehicle, to wit: (a truck)(a passenger car)(-----)] [an aircraft, to wit: (an AH 64 helicopter)(an F 14 A fighter)(a KC 135 tanker)(-----)] [a vessel, to wit: (the aircraft carrier USS)(the Coast Cutter)(-----)], [while drunk][while impaired by -----][while the alcohol concentration in his (blood or breath equaled or exceeded the applicable limit under subparagraph (b) of paragraph 35a) as shown by chemical analysis][in a (reckless) (wanton) manner by (attempting to pass another vehicle on a sharp curve)(by ordering that the aircraft be flown below the authorized altitude)][and did thereby cause said (vehicle)(aircraft) (vessel) to (strike and)(injure -----)]."

(f) By inserting the new paragraph 44a:

"44a. Article 119a--Death or injury of an unborn child

a. *Text.*

(a)(1) Any person subject to this chapter who engages in conduct that violates any of the provisions of law listed in subsection (b) and thereby causes the death of, or bodily injury (as defined in section 1365 of title 18 to, a child who is in utero at the time the conduct takes place, is guilty of a separate offense under this section and shall, upon conviction, be punished by such punishment, other than death, as a court-martial [*20216] may direct, which shall be consistent with the punishments prescribed by the President for that conduct had that injury or death occurred to the unborn child's mother.

(2) An offense under this section does not require proof that --

(i) the person engaging in the conduct had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

(ii) the accused intended to cause the death of, or bodily injury to, the unborn child.

(3) If the person engaging in the conduct thereby intentionally kills or attempts to kill the unborn child, that person shall, instead of being punished under paragraph (1), be punished as provided under sections 880, 918, and 919(a) of this title (articles 80, 118, and 119(a)) for intentionally killing or attempting to kill a human being.

(4) Notwithstanding any other provision of law, the death penalty shall not be imposed for an offense under this section.

(b) The provisions referred to in subsection (a) are sections 918, 919(a), 919(b)(2), 920(a), 922, 924, 926, and 928 of this title (articles 118, 119(a), 119(b)(2), 120(a), 122, 124, 126, and 128).

(c) Nothing in this section shall be construed to permit the prosecution

(1) of any person authorized by state or federal law to perform abortions for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(2) of any person for any medical treatment of the pregnant woman or her unborn child; or

(3) of any woman with respect to her unborn child.

(d) As used in this section, the term "unborn child" means a child in utero, and the term "child in utero" or "child who is in utero" means a member of the species homo sapiens, at any stage of development, who is carried in the womb.

b. *Elements.*

(1) *Injuring an unborn child.*

(a) That the accused was engaged in the [(murder (article 118)), (voluntary manslaughter (article 119(a))), (involuntary manslaughter (article 119(b)(2))), (rape (article 120)), (robbery (article 122)), (maiming (article 124)), (assault (article 128)), of] or [burning or setting afire, as arson (article 126), of (a dwelling inhabited by) (a structure or property (known to be occupied by) (belonging to))]] a woman;

(b) That the woman was then pregnant; and

(c) That the accused thereby caused bodily injury to the unborn child of that woman.

(2) *Killing an unborn child.*

(a) That the accused was engaged in the [(murder (article 118)), (voluntary manslaughter (article 119(a))), (involuntary manslaughter (article 119(b)(2))), (rape (article 120)), (robbery (article 122)), (maiming (article 124)), (assault (article 128)), of] or [burning or setting afire, as arson (article 126), of (a dwelling inhabited by) (a structure or property known to (be occupied by) (belong to))]] a woman;

(b) That the woman was then pregnant; and

(c) That the accused thereby caused the death of the unborn child of that woman.

(3) *Attempting to kill an unborn child.* **[*20217]**

(a) That the accused was engaged in the [(murder (article 118)), (voluntary manslaughter (article 119(a))), (involuntary manslaughter (article 119(b)(2))), (rape (article 120)), (robbery (article 122)), (maiming (article 124)), (assault (article 128)), of] or [burning or setting afire, as arson (article 126), of (a dwelling inhabited by) (a structure or property (known to be occupied by) (belonging to))]] a woman;

(b) That the woman was then pregnant; and

(c) That the accused thereby intended and attempted to kill the unborn child of that woman.

(4) *Intentionally killing an unborn child.*

(a) That the accused was engaged in the [(murder (article 118)), (voluntary manslaughter (article 119(a))), (involuntary manslaughter (article 119(b)(2))), (rape (article 120)), (robbery (article 122)), (maiming (article 124)), (assault (article 128)), of] or [burning or setting afire, as arson (article 126), of (a dwelling inhabited by) (a structure or property (known to be occupied by) (belonging to))]] a woman;

(b) That the woman was then pregnant; and

(c) That the accused thereby intentionally killed the unborn child of that woman.

c. *Explanation.*

(1) *Nature of offense.* This article makes it a separate, punishable crime to cause the death of or bodily injury to an unborn child while engaged in arson (article 126, UCMJ); murder (article 118, UCMJ); voluntary manslaughter (article 119(a), UCMJ); involuntary manslaughter (article 119(b)(2), UCMJ); rape (article 120(a), UCMJ); robbery (article 122, UCMJ); maiming (article 124, UCMJ); or assault (article 128, UCMJ) against a pregnant woman. For all underlying offenses, except arson, this article requires that the victim of the underlying offense be the pregnant mother. For purposes of arson, the pregnant mother must have some nexus to the arson such

that she sustained some "bodily injury" due to the arson. For the purposes of this article the term "woman" means a female of any age. This article does not permit the prosecution of any --

(a) person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

(b) person for any medical treatment of the pregnant woman or her unborn child; or

(c) woman with respect to her unborn child.

(2) The offenses of "injuring an unborn child" and "killing an unborn child" do not require proof that --

(a) the person engaging in the conduct (the accused) had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

(b) the accused intended to cause the death of, or bodily injury to, the unborn child.

(3) The offense of "attempting to kill an unborn child" requires that the accused intended by his conduct to cause the death of the unborn child (See paragraph b(3)(c) above).

(4) *Bodily injury*. For the purpose of this offense, the term "bodily injury" is that which is provided by section 1365 of title 18, to wit: a cut, abrasion, bruise, burn, or disfigurement; physical pain; illness; impairment of the function of a bodily member, organ, or mental faculty; or any other injury to the body, no matter how temporary.

(5) *Unborn child*. "Unborn child" means a child in utero or a member of the species homo sapiens who is carried in the womb, at any stage of development, from conception to birth.

[*20218]

d. *Lesser included offenses.*

(1) *Killing an unborn child*. Article 119a--injuring an unborn child

(2) *Intentionally killing an unborn child*.

(a) Article 119a--killing an unborn child

(b) Article 119a--injuring an unborn child

(c) Article 119a--attempts (attempting to kill an unborn child)

e. *Maximum punishment.*

The maximum punishment for (1) *Injuring an unborn child*; (2) *Killing an unborn child*; (3) *Attempting to kill an unborn child*; or (4) *Intentionally killing an unborn child* is such punishment, other than death, as a court-martial may direct, but shall be consistent with the punishment had the bodily injury, death, attempt to kill, or intentional killing occurred to the unborn child's mother.

f. *Sample specifications.*

(1) *Injuring an unborn child*.

In that -----(personal jurisdiction data), did (at/on board--location), (subject-matter jurisdiction data, if required), on or about ----- 20---, cause bodily injury to the unborn child of, a pregnant woman, by engaging in the [(murder) (voluntary manslaughter)

(involuntary manslaughter) (rape) (robbery) (maiming) (assault) of] [(burning) (setting afire) of (a dwelling inhabited by) (a structure or property known to (be occupied by) (belong to))] that woman.

(2) *Killing an unborn child.*

In that -----(personal jurisdiction data), did (at/on board--location), (subject-matter jurisdiction data, if required), on or about ----- 20---, cause the death of the unborn child of, a pregnant woman, by engaging in the [(murder) (voluntary manslaughter) (involuntary manslaughter) (rape) (robbery) (maiming) (assault) of] [(burning) (setting afire) of (a dwelling inhabited by) (a structure or property known to (be occupied by) (belong to))] that woman.

(3) *Attempting to kill an unborn child.*

In that -----(personal jurisdiction data), did (at/on board--location), (subject-matter jurisdiction data, if required), on or about ----- 20---, attempt to kill the unborn child of, a pregnant woman, by engaging in the [(murder) (voluntary manslaughter) (involuntary manslaughter) (rape) (robbery) (maiming) (assault) of] [(burning) (setting afire) of (a dwelling inhabited by) (a structure or property known to (be occupied by) (belong to))] that woman.

(4) *Intentionally killing an unborn child.*

In that -----(personal jurisdiction data), did (at/on board--location), (subject-matter jurisdiction data, if required), on or about ----- 20---, intentionally kill the unborn child of, a pregnant woman, by engaging in the [(murder) (voluntary manslaughter) (involuntary manslaughter) (rape) (robbery) (maiming) (assault) of] [(burning) (setting afire) of (a dwelling inhabited by) (a structure or property known to (be occupied by) (belong to))] that woman."

(g) By inserting the new paragraph 45a to read:

"45a. Article 120a Stalking

a. *Text*

(a) Any person subject to this section: **[*20219]**

(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 towards 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.

b. *Elements.*

(1) That the accused wrongfully engaged in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm to himself or herself or a member of his or her immediate family;

(2) That the accused had knowledge, or should have had knowledge, that the specific person would be placed in reasonable fear of death or bodily harm to himself or herself or a member of his or her immediate family; and

(3) That the accused's acts induced reasonable fear in the specific person of death or bodily harm to himself or herself or to a member of his or her immediate family.

c. *Explanation.* See Paragraph 54.c(1)(a) for an explanation of "bodily harm".

d. *Lesser included offenses.* Article 80--attempts.

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

f. *Sample Specification.*

In that -----(personal jurisdiction data), who (knew)(should have known) that ----
-- would be placed in reasonable fear of (death)(bodily harm) to (himself) (herself) (-----, a
member of his or her immediate family) did (at/on board--location), (subject-matter jurisdiction
data, if required), (on or about ----- 20---)(from about -----to about ----- 20--), wrongfully
engage in a course of conduct directed at -----, to wit: ----- thereby inducing in
-----, a reasonable fear of (death)(bodily harm) to (himself)(herself) (----, a member of his
or her immediate family)."

Sec. 3. Part V of the Manual for Courts-Martial, United States, is amended as follows:
[*20220]

(a) Paragraph 5.c.(8) is amended by replacing the word "foreign" with the word "hardship."

(b) Paragraph 7(e) is amended by replacing the word "Transportation" with the words
"Homeland Security".

Sec. 4. Part IV of the Manual for Courts-Martial, United States, is amended by replacing the
word "Transportation" with the words "Homeland Security."

Sec. 5. These amendments shall take effect 30 days from the date of this order.

(a) Nothing in these amendments shall be construed to make punishable any act done or
omitted prior to the effective date of this order that was not punishable when done or omitted.

(b) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment
proceedings, restraint, investigation, referral of charges, trial in which arraignment occurred, or

other action begun prior to the effective date of this order, and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

George W. Bush

THE WHITE HOUSE,

April 18, 2007.

[FR Doc. 07-2027 Filed 4-20-07; 8:45 am]

Billing code 3195-01-P

Service: **Get by LEXSEE®**

Citation: **72 FR 20213**

View: Full

Date/Time: Friday, December 23, 2011 - 9:50 AM EST

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