

upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298; phone (978)281-9200; fax (978)281-9371; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702-2432; phone (727)570-5301; fax (727)570-5320.

**FOR FURTHER INFORMATION CONTACT:** Dr. Tammy Adams or Ruth Johnson, (301)713-2289.

**SUPPLEMENTARY INFORMATION:** The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226).

On June 23, 1999, notice was published in the **Federal Register** (64 FR 33470) that a request for a permit to conduct research on a variety of cetaceans had been submitted by the above-named individual. The permit, which authorizes harassment of marine mammals in the North Atlantic during close approaches for photo-identification and behavioral observations, was issued on March 10, 2000 (65 FR 14947; March 20, 2000). This minor amendment extends the expiration date for the permit from March 31, 2005 to March 1, 2006. This minor amendment does not authorize harassment of any additional marine mammals. Rather, it allows the permit holder an additional 11 months to complete any research remaining from the previous permit year.

Issuance of this permit amendment, as required by the ESA, was based on a finding that such permit amendment: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 6, 2004.

**Patrick O'pay,**

*Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*  
[FR Doc. 05-526 Filed 1-10-05; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Manual for Courts-Martial; Proposed Amendments

**AGENCY:** Joint Service Committee on Military Justice (JSC).

**ACTION:** Notice of summary of public comment received regarding proposed amendments to the Manual for Courts-Martial, United States (2002 ed.).

**SUMMARY:** The JSC is forwarding final proposed amendments to the Manual for Courts-Martial, United States (2002 ed.) (MCM) to the Department of Defense. The proposed changes, resulting from the JSC's 2004 annual review of the MCM, concern the rules of procedure applicable in trials by courts-martial. The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 3, 2003. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

In accordance with paragraph III.B.4 of the Internal Organization and Operating Procedures of the JSC, the committee also invites members of the public to suggest changes to the Manual for Courts-Martial in accordance with the described format.

**ADDRESSES:** Comments and materials received from the public are available for inspection or copying at the Office of the Judge Advocate General (Code 20), 716 Sicard St., SE., Suite 1000, Washington, DC 20374-5047, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander James Carsten, Executive Secretary, Joint Service Committee on Military Justice, Office of the Judge Advocate General, 716 Sicard St., SE., Suite 1000, Washington, DC 20374-5047, (202) 685-7298, (202) 685-7687 fax.

**SUPPLEMENTARY INFORMATION:**

### Background

On 15 September 2004, the JSC published a Notice of Proposed Amendments to the Manual for Courts-Martial and a Notice of Public Meeting to receive comment on its 2004 draft annual review of the Manual for Courts-Martial. On 15 October 2004, the public meeting was held. Five individuals attended the public meeting and provided oral comment. The JSC received sixteen letters commenting on the proposed amendments.

### Purpose

The proposed changes concern the rules of procedure applicable in trials by courts-martial. More specifically, the proposed changes: Amend Rules of Court-Martial and other provisions of the Manual to allow for remote testimony for certain Article 39(a), UCMJ sessions and presentencing witnesses; add the Manual for Courts-Martial provisions for newly enacted Article 119a, Death or Injury to an Unborn Child, enacted on 1 April 2004 in the Unborn Victims of Violence Act of 2004; and the addition of a new Article 134 offense of Patronizing a Prostitute.

### Discussion of Comments and Changes

In response to the request for public comment the JSC received oral and written comments. The JSC considered the public comments and, after making some minor amendments, is satisfied that the proposed amendments are appropriate to implement without additional modification. The JSC will forward the public comments and the proposed amendments to the Department of Defense.

Summaries of the oral and written comments regarding the proposed substantive changes follow:

a. In two submissions, one commentator objected to the remote testimony amendments to the Rules of Courts-Martial. The commentator objected, in part, because the commentator perceived that no rationale was provided for the proposed amendments. The commentator also considered the proposed amendments to be deleterious to the military justice system.

b. Three comments were received regarding the JSC proposed Manual provisions for the new Article 119a, Death or Injury to an Unborn Child. Most of the comments highlighted the fact that the statutory language may create some practical difficulties when an actual prosecution takes place under this provision. Other comments suggested creating a definition of

“woman” for this specific article and adding certain language to the draft elements to make them more consistent with current practices. The JSC agreed and made amendments consistent with the comment on a definition of the term “woman” and to add Manual-consistent language to the draft specifications. One comment indicated that the JSC has proposed MCM provisions for this new criminal statute which are not completely consistent with the legislative language and intent.

c. The majority of comments received addressed the “Patronizing a Prostitute” offense which the JSC is recommending be added to paragraph 97 of Article 134, UCMJ. Those opposed to the JSC recommendation questioned the need for such an offense, for a variety of reasons including the impact on morale, the negative effects on the health of the service members, and the potential for this offense to be exploited by adversaries of the United States. In addition, some expressed concern regarding the manner in which the offense might ultimately be enforced. Those supporting the JSC recommendation believed it was both appropriate and long overdue. Neither those opposed to the JSC recommendation, nor those in support, provided specific technical amendments to the recommendation. One comment did indicate that no rationale was provided for the proposed amendments and thus it was difficult to ascertain why the amendments were being proposed.

#### Proposed Amendments After Consideration of Public Comment Received

The proposed amendments to the Manual for Courts-Martial are as follows:

Amend RCM 703(b)(1) by inserting the following three sentences after the last sentence in RCM 703(b)(1):

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. 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, and 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.

Add a new paragraph to the end of the Discussion which follows R.C.M. (b)(1) that reads:

The procedures for receiving testimony via remote means and the definition thereof are contained in R.C.M. 914B.

Amend the Analysis accompanying R.C.M. 703(b) by inserting the following paragraph:

“200\_\_ Amendment: Subsection (b)(1) was amended to allow, under certain circumstances, the utilization of various types of remote testimony in lieu of the personal appearance of the witness.”

Amend the discussion to R.C.M. 802 by amending the last sentence of the discussion to read:

A conference may be conducted by remote means or similar technology consistent with the definition in R.C.M. 914B.

Amend R.C.M. 804(c)(2) to read:

(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 which 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, 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.

Amend the Analysis accompanying R.C.M. 804(c) by inserting the following paragraph:

“200\_\_ Amendment: The specific terminology of the manner in which remote live testimony may be transmitted was deleted to allow for technological advances in the methods used to transmit audio and visual information.”

Amend RCM 914A by deleting the third sentence of paragraph (a), which read, “However, such testimony should normally be taken via a two-way closed circuit television system” leaving the remaining paragraph which reads:

(a) *General procedures.* A child shall be allowed to testify out of the presence of the accused after the military judge has determined that the requirements of Mil. R. Evid. 611(d)(3) have been satisfied. The procedure used to take

such testimony will be determined by the military judge based upon the exigencies of the situation. At a minimum, the following procedures shall be observed:

Amend RCM 914A by re-lettering current paragraph “(b)” to paragraph “(c)” and inserting new paragraph (b) which will read:

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

Add a discussion section that reads:

For purposes of this rule, unlike R.C.M. 914B, remote means or similar technology does not include receiving testimony by telephone where the parties cannot see and hear each other.

Amend the Analysis accompanying R.C.M. 914A by inserting the following paragraph:

“200\_\_ Amendment: The rule was amended to allow for technological advances in the methods used to transmit audio and visual information.”

Add new Rule R.C.M. 914B, which will read:

#### Rule 914B. Use of Remote Testimony

(a) *General procedure.* 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 video-teleconference, closed circuit television, telephone, or similar technology.

#### Discussion

This rule applies for all witness testimony other than child witness testimony specifically covered by M.R.E. 611(d) and R.C.M. 914A. When utilizing testimony via remote means, military justice practitioners are encouraged to consult the procedure used in *In re San Juan Dupont Plaza Hotel Fire Litigation*, 129 F.R.D. 424 (D.P.R. 1989) and to read *United States v. Shabazz*, 52 M.J. 585 (N.M.Ct. Crim. App. 1999); and *United States v. Gigante*, 166 F.3d 75 (2d Cir. 1999), *cert denied*, 528 U.S. 1114 (2000).

Add a new analysis section for R.C.M. 914B by inserting the following title and paragraph:

#### “Rule 914B. Use of Remote Testimony

“200\_\_ Amendment: This rule describes the basic procedures that will

be used when testimony of any witnesses, other than child witnesses pursuant to R.C.M. 914A, is received via remote means.”

Amend R.C.M. 1001(e)(2)(D) by deleting the “or” before “former testimony” and inserting “, or testimony by remote means” after “former testimony” so the paragraph reads as follows:

(D) Other forms of evidence, such as oral depositions, written interrogatories, former testimony, or testimony by remote means would not be sufficient to meet the needs of the court-martial in the determination of an appropriate sentence; and

Add new Discussion paragraph immediately following R.C.M. 1001(e)(2)(E) which will read:

The procedures for receiving testimony via remote means and the definition thereof are contained in R.C.M. 914B.

Amend the Analysis accompanying R.C.M. 1001(e) by inserting the following paragraph:

“200\_\_ Amendment: Subsection (e)(2)(D) was amended to allow the availability of various types of remote testimony to be a factor to consider in whether a presentencing witness must be physically produced.”

Amend Part IV, Punitive Articles, paragraph 4(c)(6) by inserting the following new subparagraph (f) and redesignating the existing subparagraph (f) as (g):

“(f) Article 119a—attempting to kill an unborn child”

Amend Appendix 23, Analysis of Punitive Articles

“200\_\_ Amendment: In 4(c)(6), subparagraph (f) was redesignated as subparagraph (g) and a new subparagraph (f) was added to reflect the offense of attempting to kill an unborn child as established by the Unborn Victims of Violence Act of 2004, Pub. L. No. 108–212, § 3, \_\_ Stat. \_\_, \_\_ (2004) (art. 119a).

Amend Part IV, Punitive Articles, by inserting the new paragraph 44a to read:

#### 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 court-martial 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 engage 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 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; and

(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.*

(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; and

(b) That the woman was then pregnant; and

(c) That the accused thereby 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(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; and

(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 "women" means a female of any age. This article does not permit the prosecution of any—

(i) 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;

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

(iii) woman with respect to her unborn child.

The offenses of "injuring an unborn child" and "killing an unborn child" do not require proof that—

(i) 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

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

(2) *Bodily injury.* For the purpose of this offense, the term "bodily injury" is that which is provided by 18 U.S.C. § 1365, 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.

(3) *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.

d. *Lesser included offenses.*

(1) *Killing an unborn child.*

(a) 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 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 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 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.

(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.

Amend Appendix 12, maximum Punishment Chart by inserting the following before Article 120, rape:

#### 119a Death or Injury of an Unborn Child

Injuring or killing an unborn child Article 119a \* \* \* Such punishment, other than death, as a court-martial may direct but such punishment shall be consistent with the punishment had the bodily injury or death occurred to the unborn child's mother.

Attempting to kill an unborn child Article 119a \* \* \* Such punishment, other than death, as a court-martial may direct but such punishment shall be consistent with the punishment had the attempt been made to kill the unborn child's mother.

Intentional killing an unborn child Article 119a \* \* \* Such punishment, other than death, as a court-martial may direct but such punishment shall be consistent with the punishment had the killing occurred to the unborn child's mother.

Amend Appendix 23, Analysis of Punitive Articles by adding the following new analysis:

#### 44a. Article 119a—(Death or Injury of an Unborn Child)

(c) *Explanation.* This paragraph is new and is based on Public Law 108–212, 18 U.S.C. 1841 and 10 U.S.C. 919a (Unborn Victims of Violence Act of 2004) enacted on 1 April 2004.

Amend paragraph 97, Article 134—(Pandering and prostitution) to add the new offense of patronizing a prostitute. The Article as amended will read:

a. *Text.* See paragraph 60.

b. *Elements.*

(1) *Prostitution.*

(a) That the accused had sexual intercourse with another person not the accused's spouse;

(b) That the accused did so for the purpose of receiving money or other compensation;

(c) That this act was wrongful; and

(d) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(2) *Patronizing a prostitute.*

(a) That the accused had sexual intercourse with another person not the accused's spouse;

(b) That the accused compelled, induced, enticed, or procured such person to engage in an act of sexual intercourse in exchange for money or other compensation; and

(c) That this act was wrongful; and  
 (d) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(3) *Pandering by compelling, inducing, enticing, or procuring act of prostitution.*

(a) That the accused compelled, induced, enticed, or procured a certain person to engage in an act of sexual intercourse for hire and reward with a person to be directed to said person by the accused;

(b) That this compelling, inducing, enticing, or procuring was wrongful; and

(c) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(4) *Pandering by arranging or receiving consideration for arranging for sexual intercourse or sodomy.*

(a) That the accused arranged for, or received valuable consideration for arranging for, a certain person to engage in sexual intercourse or sodomy with another person;

(b) That the arranging (and receipt of consideration) was wrongful; and

(c) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.* Prostitution may be committed by males or females. Sodomy for money or compensation is not included in subparagraph b(1). Sodomy may be charged under paragraph 51. Evidence that sodomy was for money or compensation may be a matter in aggravation. See R.C.M. 1001(b)(4).

d. *Lesser included offense.* Article 80—attempts

e. *Maximum punishment.*

(1) *Prostitution and patronizing a prostitute.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

(2) *Pandering.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

f. *Sample specifications.*

(1) *Prostitution.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, wrongfully engage in (an act) (acts) of sexual intercourse with \_\_\_\_\_, a person not his/

her spouse, for the purpose of receiving (money) (\_\_\_\_\_).

(2) *Patronizing a prostitute.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, wrongfully (compel) (induce) (entice) (procure) \_\_\_\_\_, a person not his/her spouse, to engage in (an act) (acts) of sexual intercourse with the accused in exchange for (money) (\_\_\_\_\_).

(3) *Compelling, inducing, enticing, or procuring act of prostitution.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_, wrongfully (compel) (induce) (entice) (procure) \_\_\_\_\_ to engage in (an act) (acts) of (sexual intercourse for hire and reward with persons to be directed to him/her by the said \_\_\_\_\_).

(4) *Arranging, or receiving consideration for arranging for sexual intercourse or sodomy.*

In that \_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about \_\_\_\_\_ 20 \_\_ wrongfully (arrange for) (receive valuable consideration, to wit: \_\_\_\_\_ on account of arranging for—) \_\_\_\_\_ to engage in (an act) (acts) of (sexual intercourse) (sodomy) with \_\_\_\_\_.

Amend Appendix 12, Maximum Punishment Chart by substituting “Prostitution and patronizing a prostitute” for “Prostitution.”

Amend Appendix 23, Analysis of Punitive Articles by amending the Analysis accompanying paragraph 97 by adding the following:

“200 Amendment: b. Elements. Subparagraph (2) defines the elements of the offense of patronizing a prostitute. Old subparagraphs (2) and (3) are now (3) and (4) respectively.”

Dated: January 5, 2005.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## DEPARTMENT OF EDUCATION

[CFDA 84.060A]

### Indian Education Formula Grants to Local Education Agencies—Notice Inviting Applications for Fiscal Year (FY) 2005

**AGENCY:** Office of Indian Education.

*Purpose:* The Indian Education Formula Grant program provides grants to support local educational agencies (LEAs) and other eligible entities (described elsewhere in this notice) in their efforts to reform and improve elementary and secondary school programs that serve Indian students. The programs funded are to be based on challenging State academic content and student academic achievement standards used for all students, and be designed to assist Indian students to meet those standards. Section 7116 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), also authorizes, upon the Secretary's receipt of an acceptable plan for the integration of education and related services, the consolidation of funds for any Federal program exclusively serving Indian children, or the funds reserved under any Federal program to exclusively serve Indian children, that are awarded under a statutory or administrative formula, for the purposes of providing education and related services that would be used to serve Indian students. Instructions for submitting an integration of services plan are included in the application package.

*Eligible Applicants:* LEAs, certain schools funded by the Bureau of Indian Affairs and Indian tribes under certain conditions, as prescribed by section 7112(c) of the ESEA.

*Applications Available:* January 12, 2005.

*Deadline for Transmittal of Applications:* February 28, 2005.

Applications not meeting the deadline will not be considered for funding in the initial allocation of awards. However, if funds become available after the initial allocation of funds, applications not meeting the deadline may be considered for funding if the Secretary determines, under section 7118(d) of the ESEA, that reallocation of those funds to applicants filing after the deadline would best assist in advancing the purposes of the program. However, the amount and date of an individual award, if any, may be less than the applicant would have received had the application been submitted on time.

*Deadline for Intergovernmental Review:* May 11, 2005.

*Available Funds:* \$95,165,536.