

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.

MILITARY AFFAIRS: Provides with respect to the La. Code of Military Justice

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; or

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.

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

3           (a) Impairment by any drug, intoxicant, or other similar substance, and that  
4           condition is known or reasonably should be known by the person; or

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

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

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

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

17          E. 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) "Bodily harm" means any offensive touching of another, however slight,  
20          including any nonconsensual sexual act or nonconsensual sexual contact.

21          (2) "Consent" means:

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

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

26          A current or previous dating or social or sexual relationship by itself or the manner  
27          of dress of the person involved with the accused in the conduct at issue shall not  
28          constitute consent.

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

5           (c) Lack of consent may be inferred based on the circumstances of the  
6           offense. All the surrounding circumstances shall be considered in determining  
7           whether a person gave consent, or whether a person did not resist or ceased to resist  
8           only because of another person's actions.

9           (3) "Force" means:

10          (a) The use of a weapon;

11          (b) The use of such physical strength or violence as is sufficient to  
12          overcome, restrain, or injure a person; or

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

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

19          (5) "Sexual act" means:

20          (a) Contact between the penis and the vulva or anus or mouth, and for  
21          purposes of this Subparagraph, contact involving the penis occurs upon penetration,  
22          however slight; or

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

26          (6) "Sexual contact" means:

27          (a) Touching, or causing another person to touch, either directly or through  
28          the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person,  
29          with an intent to abuse, humiliate, or degrade any person; or

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

5           (7) "Threatening or placing another person in fear" means a communication  
6           or action that is of sufficient consequence to cause a reasonable fear that  
7           noncompliance will result in the victim or another person being subjected to the  
8           wrongful action contemplated by the communication or action.

9           (8) "Unlawful Force" means an act of force committed without legal  
10          justification or excuse.

11          §220a. Article 120a. Stalking

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

14                 (1) Who wrongfully engages in a course of conduct directed at a specific  
15                 person that would cause a reasonable person to fear death or bodily harm, including  
16                 sexual assault, to himself or herself or a member of his or her immediate family;

17                 (2) Who has knowledge, or should have knowledge, that the specific person  
18                 will be placed in reasonable fear of death or bodily harm, including sexual assault,  
19                 to himself or herself or a member of his or her immediate family; and

20                 (3) Whose acts induce reasonable fear in the specific person of death or  
21                 bodily harm, including sexual assault, to himself or herself or to a member of his or  
22                 her immediate family.

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

25                 (1) "Course of conduct" means:

26                         (a) A repeated maintenance of visual or physical proximity to a specific  
27                         person; or

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

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

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

8           §220b. Article 120b. Other sexual misconduct; indecent viewing, visual recording,  
9           or broadcasting

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

13           (1) Knowingly and wrongfully views the private area of another person,  
14           without that other person's consent and under circumstances in which that other  
15           person has a reasonable expectation of privacy;

16           (2) Knowingly and wrongfully photographs, videotapes, films, or records by  
17           any means the private area of another person, without that other person's consent and  
18           under circumstances in which that other person has a reasonable expectation of  
19           privacy; or

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

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

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

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

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

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

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

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

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

16          (6) "Reasonable expectation of privacy" means:

17          (a) Circumstances in which a reasonable person would believe that he or she  
18          could disrobe in privacy, without being concerned that an image of a private area of  
19          the person was being captured; or

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

#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Lorusso

HB No. 127

**Abstract:** Provides for crimes related to sexual assault and other sexual offenses in the La. Code of Military Justice for which a soldier may be charged.

Present law (R.S. 29:101 et seq.) establishes the La. Code of Military Justice and provides that the code applies to all members of the state military forces when such persons are not subject to the Uniform Code of Military Justice.

Proposed law creates the offense of sexual assault in the La. Code of Military Justice and provides for definitions, defenses, and punishment for the offense.

Proposed law provides that any person who commits the crime of sexual assault shall also be found guilty of abusive sexual contact and punished as directed by a court-martial.

Proposed law creates the offense of stalking in the La. Code of Military Justice and further provides for definitions and punishment for violation of the offense.

Proposed law provides for the creation of additional offenses related to sexual misconduct, indecent viewing, visual recording, or broadcasting and further provides for the definitions and punishments for violation of any of the offenses.

Proposed law creates the offense of forcible pandering in the La. Code of Military Justice and provides punishments for the violation of the offense.

Proposed law creates the offense of indecent exposure in the La. Code of Military Justice and provides for definitions and punishment for violation of the offense.

(Adds R.S. 29:220, 220a, and 220b)

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Judiciary to the original bill.

1. Added a provision specifying that any person who commits the offenses related to sexual misconduct, indecent viewing, visual recording, or broadcasting, does so knowingly and wrongfully.