



FORT SAM HOUSTON CRIMINAL LAW DIVISION **STALKING (ARTICLE 120a, UCMJ)**

1. *Purpose.* To inform military justice practitioners of the new stalking statute, Article 120a, UCMJ.

2. *Article 120a, UCMJ (Stalking).*

a. *Effective Date.* The effective date of the Article 120a is 6 July 06. While the statute will be effective, the draft Executive Order (EO), which includes the MCM implementing provisions will likely not be signed before 6 Jul 06.

b. *Elements of the Offense of Stalking.* The offense of stalking consists of three elements. Military justice practitioners should note that certain operative terms are statutorily defined, while other terms are not defined but have a well-accepted meaning in punitive statutes.

(1) The first element requires proof of a "course of conduct" by the actor. This term is further defined in the statute. See enclosure 1. For charging purposes, it is important to note that the "course of conduct" must be set forth in the specification.

(2) The second element contains the language "who has knowledge, or should have knowledge, that the specific person will be placed in reasonable fear of death or bodily harm." The second element requires the actor to have the requisite knowledge of the wrongness/illegality of his act or conduct. As with all such provisions, this knowledge must be proven before a conviction can be obtained.

(3) The term "immediate family" has a fairly expansive statutory definition and should be kept in mind when considering charges against a suspected stalker.

c. *Maximum punishment.* The proposed maximum punishment for the offense of stalking is a dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years. Because the EO will likely not be finalized, the recommended maximum punishment under Article 120a, UCMJ (Stalking) will not be in effect on 6 Jul 06. Accordingly, upon a conviction under Article 120a, trial counsel should argue that stalking is closely related to the UCMJ offenses of Communicating a Threat (Art. 134), three years confinement; and Offering a Type of Assault with Unloaded Firearm (Art. 128), three years confinement. In the alternative, trial counsel could argue that stalking is closely related to the analogous federal crime of stalking, which has a maximum period of confinement of five (5) years.

SEC. 551. OFFENSE OF STALKING UNDER THE UNIFORM CODE OF MILITARY JUSTICE.

(a) Establishment of Offense-

(1) NEW PUNITIVE ARTICLE- Subchapter X of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended by inserting after section 920 (article 120) the following new section:

Sec. 920a. Art. 120a. Stalking

(a) Any person subject to this section--

(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 toward 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.

(2) CLERICAL AMENDMENT- The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 920 the following new item:

(a) 920a. 120a. Stalking.

(b) Applicability- Section 920a of title 10, United States Code (article 120a of the Uniform Code of Military Justice), as added by subsection (a), applies to offenses committed after the date that is 180 days after the date of the enactment of this Act.