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

(a) R.C.M. 305(j)(2)(A)(iii) is amended to read as follows:

"(iii) *Standard of proof.* The requirements for confinement under R.C.M. 305~~(h)~~(i)(2)(B) must be proved by a preponderance of the evidence."

(b) The Discussion following R.C.M. 308 is amended to read as follows:

"When notice is given, a certificate to that effect on the charge sheets should be completed. *See* DD Form 458.

However, in cases where charges are immediately referred after preferral, service of referred charges under R.C.M. 602 fulfills the notice requirement of this rule. In those cases, the notice certificate on the charge sheet need not be completed and should be lined out.

Following notification of preferred charges, the Government shall comply with the requirements of R.C.M. 403~~(c)~~(a)."

(c) The Discussion following R.C.M. 601(e)(1)(B) is amended to read as follows:

"Under the UCMJ as amended through ~~the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263 136 Stat. 2395 (2022)~~the National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, 137 Stat. 136 (2023), a special trial counsel may ~~not~~ refer a charge to a special court-martial consisting of a military judge alone. *See* Article 16(c)(2)(A), 10 U.S.C. § 816(c)(2)(A) ~~(2019) ("if the case is so referred by the convening authority . . . .") (emphasis added).~~" (2023) (Pub. L. No. 118-31 § 531(b)(1) struck "by the convening authority" after "is so referred")."

(d) R.C.M. 703(d)(2)(B) is amended to read as follows:

"(B) If the military judge grants a motion for the appointment or employment of a defense expert witness or consultant, the expert witness or consultant, or an adequate substitute,

shall be provided in accordance with regulations prescribed by the Secretary concerned. In the absence of advance approval by an official authorized to grant such approval under the regulations prescribed by the Secretary concerned, expert witnesses and consultants may not be paid fees other than those to which they are entitled under R.C.M. ~~207(g)(3)(E)~~703(g)(3)(G)."

(e) R.C.M. 705(c)(1)(B) is amended to read as follows:

"(B) *Deprivation of certain rights*. A term or condition in a plea agreement shall not be enforced if it deprives the accused of: the right to counsel; the right to due process; the right to challenge the jurisdiction of the court-martial; the right to a speedy trial; the right to complete presentencing proceedings; or the complete and effective exercise of post-trial and appellate rights."

(f) R.C.M. 804(a)(1)(B) is amended to read as follows:

"(B) *Custody*. Responsibility for maintaining custody or control of an accused before and during trial may be assigned, subject to R.C.M. 304 and 305, and R.C.M. 804~~(c)(3)~~(a)(4)(C), under such regulations as the Secretary concerned may prescribe."

(g) R.C.M. 909(f) is amended to read as follows:

"(f) *Hospitalization of the accused*. An accused who is found incompetent to stand trial under this rule shall be hospitalized by the Attorney General as provided in section 4241(d) of title 18, United States Code. If notified that the accused has recovered to such an extent that he or she is able to understand the nature of the proceedings and to conduct or cooperate intelligently in the defense of the case, then the general court-martial convening authority shall promptly take custody of the accused. If, at the end of the period of hospitalization, the accused's mental condition has not so improved, action shall be taken in accordance with sections 4246 and 4248 of title 18, United States Code."

(h) R.C.M. 911(a) is amended to read as follows:

"(a) Except in a trial conducted by a military judge alone, ~~P~~prior to assembly of the court-martial, the military judge, or a designee thereof, shall randomly assign numbers to the members detailed by the convening authority."

(i) R.C.M. 1114 is amended to read as follows:

"(a) *Transcription of complete record*. A certified verbatim transcript of the record of trial shall be prepared~~ in all general and special courts-martial in which the judgment includes a finding of guilty.~~

(1) When the judgment entered into the record includes a sentence of death; or

(2) As otherwise required by court rule, court order, or under regulations prescribed by the Secretary concerned.

(b) *Transcription of portions of the record*. A certified verbatim transcript of relevant portions of the record of trial shall be prepared—

(1) Upon application of a party, and upon a showing of good cause, as approved by the military judge, any court, or the Judge Advocate General; or

(2) As otherwise required under regulations prescribed by the Secretary concerned."

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

(a) A new discussion is inserted immediately after Mil. R. Evid. 305(e)(3)(A)(ii) to read as follows:

"Discussion

See Maryland v. Shatzer, 559 U.S. 98 (2010)."

(b) A new discussion is inserted immediately after Mil R. Evid. 513 to read as follows:

"Discussion

For purposes of this rule, the term 'record of a communication' is defined as a record that memorializes, summarizes, paraphrases, quotes, or otherwise reflects a confidential communication described in paragraph (a) or the psychotherapist's communicated response to that communication.

A record is not a confidential record of a communication merely because it appears in a mental health or medical record. When dealing with the production of a record that includes both privileged and non-privileged content, the records custodian should segregate or redact privileged portions from records, in accordance with the request for release or Military Judge's order.

This privilege does not include the fact or name of a formal diagnosis; medication-related information, including a medication's name, dosage, prescription, monitoring, adherence, or history; appointment date, time, or duration; provider identity or professional status; billing, coding, routing, or authentication information; or other fact that does not memorialize or reveal a confidential communication."

Section 3. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 33.a. is amended to read as follows:

"a. *Text of statute*.

Any person who—

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, provides military education, military training, or tactical advice to, or communicates or

corresponds with or holds any intercourse with the enemy, either directly or indirectly; shall suffer death or such other punishment as a court-martial or military commission may direct. This section does not apply to a military commission established under chapter 47A of this title.

b. *Elements*.

(1) Aiding the enemy.

(a) That the accused aided the enemy; and

(b) That the accused did so with certain arms, ammunition, supplies, money, or other things.

(2) Attempting to aid the enemy.

(a) That the accused did a certain overt act;

(b) That the act was done with the intent to aid the enemy with certain arms, ammunition, supplies, money, or other things;

(c) That the act amounted to more than mere preparation; and

(d) That the act apparently tended to bring about the offense of aiding the enemy with certain arms, ammunition, supplies, money, or other things.

(3) Harboring or protecting the enemy.

(a) That the accused, without proper authority, harbored or protected a person;

(b) That the person so harbored or protected was the enemy; and

(c) That the accused knew that the person so harbored or protected was an enemy.

(4) Providing military education, military training, or tactical advice to the enemy.

(a) That the accused, without proper authority, knowingly provided military education, military training, or tactical advice;

(b) That the military education, military training, or tactical advice was provided to the enemy; and

(c) That the accused knew the recipient of the military education, military training, or tactical advice was the enemy.

(45) Giving intelligence to the enemy.

(a) That the accused, without proper authority, knowingly gave intelligence information to the enemy; and

(b) That the intelligence information was true, or implied the truth, at least in part.

(~~5~~6) Communicating with the enemy.

(a) That the accused, without proper authority, communicated, corresponded, or held intercourse with the enemy; and

(b) That the accused knew that the accused was communicating, corresponding, or holding intercourse with the enemy.

e. *Sample specifications*.

(1) *Aiding or attempting to aid the enemy.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about _____ 20__, (attempt to) aid the enemy with (arms) (ammunition) (supplies) (money) (____), by (furnishing and delivering to _____, members of the enemy's armed forces ___) (____).

(2) *Harboring or protecting the enemy*.

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about _____ 20 __, without proper authority, knowingly (harbor) (protect) _____, an enemy, by (concealing the said _____ in (his) (her) house) (_____).

(3) *Providing military education, military training, or tactical advice to the enemy*.

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about _____ 20 __, without proper authority, knowingly provide (military education) (military training) (tactical advice) _____, to the enemy, by (_____).

(~~3~~4) *Giving intelligence to the enemy.*

In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about _____ 20__, without proper authority, knowingly give intelligence to the enemy, by (informing a patrol of the enemy's forces of the whereabouts of a military patrol of the United States forces) (____).

(45) *Communicating with the enemy.* In that _____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction, if required), on or about _____ 20 __, without proper authority, knowingly (communicate with) (correspond with) (hold intercourse with) the enemy (by writing and transmitting secretly through the lines to one _____, whom (he) (she), the said _____, knew to be (an officer of the enemy's armed forces) (_____) a communication in words and figures substantially as follows, to wit: _____) (indirectly by publishing in _____, a newspaper published at _____, a communication in words and figures as follows, to wit: _____, which communication was intended to reach the enemy) (_____)."

(b) Paragraph 52.e.4 is amended as follows:

"(4) *Carrying a concealed weapon*.

In that _____ (personal jurisdiction data), did, (at/on board location) (subject-matter jurisdiction data, if required), on or about _____, 20___, unlawfully carry on or about (his)(her) person a concealed dangerous weapon, to wit: a _____."

(c) Paragraph 56.a. is amended to read as follows:

"a. *Text of statute*.

Any person subject to this chapter who, without justification or excuse, unlawfully kills a human being, when ~~he~~such person—

(1) has a premeditated design to kill;

(2) intends to kill or inflict great bodily harm;

(3) is engaged in an act which is inherently dangerous to another and evinces a wanton disregard of human life; or

(4) is engaged in the perpetration or attempted perpetration of burglary, rape, rape of a child, sexual assault, sexual assault of a child, aggravated sexual contact, sexual abuse of a child, robbery or aggravated arson;

is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under clause (1) or (4), ~~he~~such person shall suffer death or imprisonment for life as a court-martial may direct, unless such person is otherwise sentenced in accordance with a plea agreement entered into between the parties under section 853a of this title (article 53a)."

(d) Paragraph 62.a. is amended to read as follows:

"a. *Text of statute*.

(a) RAPE OF A CHILD.—Any person subject to this chapter who—

(1) commits a sexual act upon a child who has not attained the age of 12 years; or

(2) commits a sexual act upon a child who has attained the age of 12 years by—

(A) using force against any person;

(B) threatening or placing that child in fear;

(C) rendering that child unconscious; or

(D) administering to that child a drug, intoxicant, or other similar substance;

is guilty of rape of a child and shall be punished as a court-martial may direct.

(b) SEXUAL ASSAULT OF A CHILD.—Any person subject to this chapter who commits a sexual act upon a child who has attained the age of 12 years is guilty of sexual assault of a child and shall be punished as a court-martial may direct.

(c) SEXUAL ABUSE OF A CHILD.—Any person subject to this chapter who commits a lewd act upon a child is guilty of sexual abuse of a child and shall be punished as a court-martial may direct.

(d) AGE OF CHILD.—

(1) UNDER 12 YEARS.—In a prosecution under this section, it need not be proven that the accused knew the age of the other person engaging in the sexual act or lewd act. It is not a defense that the accused reasonably believed that the child had attained the age of 12 years.

(2) UNDER 16 YEARS.—In a prosecution under this section, it need not be proven that the accused knew that the other person engaging in the sexual act or lewd act had not attained the age of 16 years, but it is a defense in a prosecution under subsection (b) (sexual assault of a child) or subsection (c) (sexual abuse of a child), which the accused must prove by a preponderance of the evidence, that the accused reasonably believed that the child had attained the age of 16 years, if the child had in fact attained at least the age of 12 years.

(e) PROOF OF THREAT.—In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

~~**(f) MARRIAGE.—In a prosecution under subsection (b) (sexual assault of a child) or subsection (c) (sexual abuse of a child), it is a defense, which the accused must prove by a preponderance of the evidence, that the persons engaging in the sexual act or lewd act were at that time married to each other, except where the accused commits a sexual act upon the person when the accused knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring or when the other person is incapable of consenting to the sexual act due to impairment by any drug, intoxicant, or other similar substance, and that condition was known or reasonably should have been known by the accused.**~~

(~~g~~f) CONSENT.—Lack of consent is not an element and need not be proven in any prosecution under this section. A child ~~not legally married to the person committing the sexual act, lewd act, or use of force~~ cannot consent to any sexual act, lewd act, or use of force.

(~~h~~g) DEFINITIONS.—In this section:

(1) SEXUAL ACT AND SEXUAL CONTACT.—The terms "sexual act" and "sexual contact" have the meanings given those terms in section 920(g) of this title (article 120(g)), except that the term "sexual act" also includes the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(2) FORCE.—The term "force" means—

(A) the use of a weapon;

(B) the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a child; or

(C) inflicting physical harm.

In the case of a parent-child or similar relationship, the use or abuse of parental or similar authority is sufficient to constitute the use of force.

(3) THREATENING OR PLACING THAT CHILD IN FEAR.—The term "threatening or placing that child in fear" means a communication or action that is of sufficient consequence to cause the child to fear that non-compliance will result in the child or another person being subjected to the action contemplated by the communication or action.

(4) CHILD.—The term "child" means any person who has not attained the age of 16 years.

(5) LEWD ACT.—The term "lewd act" means—

(A) any sexual contact with a child;

(B) intentionally exposing one's genitalia, anus, buttocks, or female areola or nipple to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person;

(C) intentionally communicating indecent language to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person; or

(D) any indecent conduct, intentionally done with or in the presence of a child, including via any communication technology, that amounts to a form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations."

(e) Paragraph 77.c. is amended to read as follows:

"c. *Explanation*.

(1) *Definitions of bodily harm*.

(a) "Bodily harm" means an offensive touching of another, however slight.

(b) "Substantial bodily harm" means a bodily injury that involves:

(i) a temporary but substantial disfigurement, or

(ii) a temporary but substantial loss or impairment of function of any bodily member, organ, or mental faculty.

(c) "Grievous bodily harm" means a bodily injury that involves:

(i) a substantial risk of death;

(ii) extreme physical pain;

(iii) protracted and obvious disfigurement; or

(iv) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(2) *Simple assault*.

(a) *Definition of assault*. An assault is an unlawful attempt or offer, made with force or violence, to do bodily harm to another, whether or not the attempt or offer is

consummated. It must be done without legal justification or excuse and without the lawful consent of the person affected.

(b) *Difference between attempt and offer type assaults.*

(i) *Attempt-type assault*. An attempt-type assault requires a specific intent to inflict bodily harm, and an overt act—that is, an act that amounts to more than mere preparation and apparently tends to effect the intended bodily harm. An attempt-type assault may be committed even though the victim had no knowledge of the incident at the time.

(ii) *Offer-type assault*. An offer-type assault is an unlawful demonstration of violence, either by an intentional or by a culpably negligent act or omission, which creates in the mind of another a reasonable apprehension of receiving immediate bodily harm. Specific intent to inflict bodily harm is not required. The act or omission must be done without legal justification or excuse and without the lawful consent of the person affected. Culpable negligence is a degree of carelessness greater than simple negligence. It is a negligent act or omission accompanied by a culpable disregard for the foreseeable consequences to others of that act or omission. Thus, the basis of a charge of an offer-type assault may be a negligent act or omission which, when viewed in the light of human experience,might foreseeably result in the creation in the mind of another a reasonable apprehension of receiving immediate bodily harm, even though bodily harm would not necessarily be a natural and probable consequence of the act or omission. For example, a person who points a pistol in jest at another may commit an offer-type assault if the pointing of the pistol was culpably negligent and created a reasonable apprehension of receiving immediate bodily harm in the mind of the person at whom the pistol was pointed.

(iii) *Examples*.

(A) If Doe swings a fist at Roe's head intending to hit Roe but misses, Doe has committed an attempt-type assault, whether or not Roe is aware of the attempt.

(B) If Doe swings a fist in the direction of Roe's head either intentionally or as a result of culpable negligence, and Roe sees the blow coming and is thereby put in apprehension of being struck, Doe has committed an offer-type assault whether or not Doe intended to hit Roe.

(C) If Doe swings at Roe's head, intending to hit it, and Roe sees the blow coming and is thereby put in apprehension of being struck, Doe has committed both on offer- and an attempt-type assault.

(D) If Doe swings at Roe's head simply to frighten Roe, not intending to hit Roe, and Roe does not see the blow and is not placed in fear, and Doe does not hit Roe, then no assault of any type has been committed.

(c) *Situations not amounting to assault*.

(i) *Mere preparation*. Preparation not amounting to an overt act, such as picking up a stone without any attempt or offer to throw it, does not constitute an assault.

(ii) *Threatening words*. The use of threatening words alone does not constitute an assault. However, if the threatening words are accompanied by a menacing act or gesture, there may be an assault, since the combination constitutes a demonstration of violence.

(iii) *Circumstances negating intent to harm*. If the circumstances known to the person menaced clearly negate an intent to do bodily harm, there is no assault. Thus, if a person accompanies an apparent attempt to strike another by an unequivocal announcement in some form of an intention not to strike, there is no assault. For example, if Doe raises a stick and shakes it at Roe within striking distance saying, "If you weren't an old man, I would knock you

down," Doe has committed no assault. However, an offer to inflict bodily injury upon another instantly if that person does not comply with a demand that the assailant has no lawful right to make is an assault. Thus, if Doe points a pistol at Roe and says, "If you don't hand over your watch, I will shoot you," Doe has committed an assault upon Roe. See also paragraph 67 (Robbery) of this Part.

(d) *Situations not constituting defenses to assault*.

(i) *Assault attempt fails*. It is not a defense to a charge of assault that for some reason unknown to the assailant, an assault attempt was bound to fail. Thus, if a person loads a rifle with what is believed to be a good cartridge and, pointing it at another, pulls the trigger, that person may be guilty of assault although the cartridge was defective and did not fire. Likewise, if a person in a house shoots through the roof at a place where a policeman is believed to be, that person may be guilty of assault even though the policeman is at another place on the roof.

(ii) *Retreating victim*. An assault is complete if there is a demonstration of violence and an apparent ability to inflict bodily injury causing the person at whom it was directed to reasonably apprehend that unless the person retreats bodily harm will be inflicted. This is true even though the victim retreated and was never within actual striking distance of the assailant. There must, however, be an apparent present ability to inflict the injury. Thus, to aim a pistol at a person at such a distance that it clearly could not injure would not be an assault.

(3) *Battery*.

(a) *In general*. A battery is an assault in which ~~the attempt or offer to do~~ bodily harm is inflicted~~consummated by the infliction of that harm~~ either by an intentional or by a culpably negligent act or omission. Specific intent to inflict bodily harm is not required. The act

or omission must be done without legal justification or excuse and without the lawful consent of the person affected. Unlike an offer-type assault, the act or omission in a battery-type assault need not have created any apprehension in the mind of another of receiving immediate bodily harm. Culpable negligence is a degree of carelessness greater than simple negligence. It is a negligent act or omission accompanied by a culpable disregard for the foreseeable consequences to others of that act or omission. Thus, the basis of a charge of battery may be a negligent act or omission which, when viewed in the light of human experience, might foreseeably result in the bodily harm of another, even though bodily harm would not necessarily be a natural and probable consequence of the act or omission. Acts which may amount to culpable negligence include throwing an object over a wall without ascertaining whether someone is on the other side of the wall, swinging a club near another person, and using a slingshot to hit an object near another person.

(b) *Application of force*. The force applied in a battery may have been directly or indirectly applied. Thus, a battery can be committed by inflicting bodily injury on a person through striking the horse on which the person is mounted causing the horse to throw the person, as well as by striking the person directly.

(c) *Examples of battery*. It may be a battery to spit on another, push a third person against another, set a dog at another that bites the person, cut another's clothes while the person is wearing them though without touching or intending to touch the person, shoot a person, cause a person to take poison, or drive an automobile into a person. A person who, although excused in using force, uses more force than is required, commits a battery. Throwing an object into a crowd may be a battery on anyone whom the object hits. Unintentionally striking a person after

the culpably negligent act of swinging one's fist in the person's immediate vicinity may be a battery.

(d) *Situations not constituting battery*. If bodily harm is inflicted unintentionally and without culpable negligence, there is no battery. It is also not a battery to touch another to attract the other's attention or to prevent injury.

(4) *Assaults permitting increased punishment based on status of victims*.

(a) *Assault upon a commissioned, warrant, noncommissioned, or petty officer*. The maximum punishment is increased when assault is committed upon a commissioned officer of the armed forces of the United States, or of a friendly foreign power, or upon a warrant, noncommissioned, or petty officer of the armed forces of the United States. Knowledge of the status of the victim is an essential element of the offense and may be proved by circumstantial evidence. It is not necessary that the victim be superior in rank or command to the accused, that the victim be in the same armed force, or that the victim be in the execution of office at the time of the assault.

(b) *Assault upon a sentinel or lookout in the execution of duty, or upon a person in the execution of law enforcement duties*. The maximum punishment is increased when assault is committed upon a sentinel or lookout in the execution of duty or upon a person who was then performing security police, military police, shore patrol, master at arms, or other military or civilian law enforcement duties. Knowledge of the status of the victim is an essential element of this offense and may be proved by circumstantial evidence. *See* subparagraph 22.c.(1)(d) for the definition of sentinel or lookout.

(c) *Assault consummated by a battery upon a child under 16 years of age*. The maximum punishment is increased when assault consummated by a battery is committed upon a

child under 16 years of age. Knowledge that the person assaulted was under 16 years of age is not an element of this offense.

(5) *Aggravated assault*.

(a) *Assault with a dangerous weapon*.

(i) *In general*. It must be proved that the accused specifically intended to do bodily harm. Culpable negligence will not suffice.

(ii) *Proving intent*. Specific intent may be proved by circumstantial evidence. When bodily harm has been inflicted by means of intentionally using force in a manner capable of achieving that result, it may be inferred that bodily harm was intended.

(iii) *Dangerous weapon*. A weapon is dangerous when used in a manner capable of inflicting death or grievous bodily harm. What constitutes a dangerous weapon depends not on the nature of the object itself but on its capacity, given the manner of its use, to kill or inflict grievous bodily harm. Thus, a bottle, beer glass, a rock, a bunk adaptor, a piece of pipe, a piece of wood, boiling water, drugs, or a rifle butt may be used in a manner capable of inflicting death or grievous bodily harm. Furthermore, under the appropriate circumstances, fists, teeth, feet, elbows, etc. may be considered a dangerous weapon when employed in a manner capable of inflicting death or grievous bodily harm.

(iv) *Injury not required*. It is not necessary that bodily harm be actually inflicted to prove assault with a dangerous weapon.

(v) *When committed upon a child under 16 years of age*. The maximum punishment is increased when assault with a dangerous weapon is committed upon a child under 16 years of age. Knowledge that the person assaulted was under the age of 16 years is not an element of the offense.

(b) *Assault in which substantial or grievous bodily harm is inflicted*.

(i) *In general*. Assault in which substantial or grievous bodily harm is inflicted is a general intent crime which requires that the accused assaulted another person and that the assault resulted in substantial or grievous bodily harm. The offense does not require specific intent to cause substantial or grievous bodily harm and may be committed by a culpably negligent act or omission. Culpable negligence is a degree of carelessness greater than simple negligence. It is a negligent act or omission accompanied by a culpable disregard for the foreseeable consequences to others of that act or omission. Thus, the basis of a charge of aggravated assault in which substantial or grievous bodily harm is inflicted may be a negligent act or omission which, when viewed in the light of human experience, might foreseeably result in the substantial or grievous bodily harm of another, even though substantial or grievous bodily harm would not necessarily be a natural and probable consequence of the act or omission. Acts which may amount to culpable negligence include negligently conducting target practice so that the bullets go in the direction of an inhabited house within range; pointing a pistol in jest at another and pulling the trigger, believing, but without taking reasonable precautions to ascertain, that it would not be dangerous; and carelessly leaving poisons or dangerous drugs where they may cause substantial or grievous bodily harm. The focus of the offense is the degree of bodily harm resulting from an assault. This contrasts with the offense of assault with a dangerous weapon, where the focus of the offense is the accused's intent to do bodily harm and the use of a dangerous weapon, regardless of whether any bodily harm results.

(ii) *When committed on a child under 16 years of age*. The maximum punishment is increased when assault involving infliction of substantial or grievous bodily harm

is inflicted upon a child under 16 years of age. Knowledge that the person assaulted was under the age of 16 years is not an element of the offense.

(c) *Aggravated Assault by strangulation or suffocation*.

(i) *In general*. Assault by strangulation or suffocation is an assault committed intentionally, knowingly, or recklessly, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.

(ii) *Assault*. See paragraph 77.c.(2)(a).

(iii) *Strangulation*. Intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.

(iv) *Suffocation*. Intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.

(v) *When committed upon a child under 16 years of age*. The maximum punishment is increased when aggravated assault by strangulation or suffocation is inflicted upon a child under 16 years of age. Knowledge that the person assaulted was under the age of 16 years is not an element of the offense.

(6) *Assault with intent to commit specified offenses*.

(a) *In general*. An assault with intent to commit any of the offenses referenced below is not necessarily the equivalent of an attempt to commit the intended offense, for an

assault can be committed with intent to commit an offense without achieving that proximity to consummation of an intended offense that is essential to an attempt. See paragraph 4 of this Part.

(b) *Assault with intent to murder*. Assault with intent to commit murder is assault with the specific intent to kill. Actual infliction of injury is not necessary. To constitute an assault with intent to murder with a firearm, it is not necessary that the weapon be discharged. When the intent to kill exists, the fact that for some unknown reason the actual consummation of the murder by the means employed is impossible is not a defense if the means are apparently adapted to the end in view. The intent to kill need not be directed against the person assaulted if the assault is committed with intent to kill some person. For example, if a person, intending to kill Jones, shoots Smith, mistaking Smith for Jones, that person is guilty of assaulting Smith with intent to murder. If a person fires into a group with intent to kill anyone in the group, that person is guilty of an assault with intent to murder each member of the group.

(c) *Assault with intent to commit voluntary manslaughter*. Assault with intent to commit voluntary manslaughter is an assault committed with a specific intent to kill under such circumstances that, if death resulted therefrom, the offense of voluntary manslaughter would have been committed. There can be no assault with intent to commit involuntary manslaughter, for it is not a crime capable of being intentionally committed.

(d) *Assault with intent to commit rape, rape of a child, sexual assault, and sexual assault of a child*. In assault with intent to commit any rape or sexual assault, the accused must have intended to complete the offense. Any lesser intent will not suffice. No actual touching is necessary. Once an assault with intent to commit rape is made, it is no defense that the accused voluntarily desisted.

(e) *Assault with intent to rob*. For assault with intent to rob, the fact that the accused intended to take money and that the person the accused intended to rob had none is not a defense."

Section 4. Appendix 3 of the Manual for Courts-Martial, United States, is amended as follows:

"Department of Defense Instruction 5525.07, "Implementation of the Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes," is available on the Washington Headquarters Service Directives Division website at https://www.esd.whs.mil/DD/."

Section 5. Appendix 4 of the Manual for Courts-Martial, United States, is amended as follows:

"The "Memorandum of Understanding Between the Departments of Justice and Transportation (Coast Guard) Relating to the Investigations and Prosecution of Crimes Over Which the Two Departments have Concurrent Jurisdiction" is available on the U.S. Coast Guard Office of Military Justice website at: https://www.uscg.mil/Resources/Legal/Military-Justice/."

Section 6. Appendix 12A of the Manual for Courts-Martial, United States, is amended as follows:

The chart is removed and replaced as follows:

Article	Offense (Part IV Citation)	Reasonably Included Offense (RIO) Article	RIO (Part IV Citation)
85 – Desertion	Para. 9.b.(1) – (3)	85 – Desertion	Para. 9.b.(4)
87a – Resistance, flight, breach of arrest, and escape	Par. 12.b.(5)	86- Absent without leave	Para. 10.b.(3)
93a – Prohibited activities with military recruit or	Para. 20.b.(1); 20.b.(2)	93 Cruelty and maltreatment	Para. 19.b.

trainee by person in position of special trust			
94 – Mutiny or sedition	Para. 21.b.(1)	94 – Mutiny or sedition	Para. 21.b.(6)
100 – Subordinate compelling surrender	Para. 28.b.(1)	100 – Subordinate compelling surrender	Para. 28.b.(2)
103a – Espionage	Para. 32.b.(1)	103a – Espionage	Para 32.b.(2)
103b – Aiding the enemy	Para. 33.b.(1)	103b – Aiding the Enemy	Para 33.b.(2)
104b – Unlawful enlistment, appointment, or separation	Para. 36.b.	107 False official statements; false swearing	Para. 41.b.(1)
118 – Murder	Para. 56.b.(1); 56.b.(2); 56.b.(3); 56.b.(4)	114 – Endangerment offenses	Para. 52.b.(1)
119 – Manslaughter	Para. 57.b.(1)	114 – Endangerment offenses	Para. 52.b.(1)
119a – Death or injury of an unborn child	Para. 58.b.(2); 58.b.(4)	119a – Death or injury of an unborn child	Para. 58.b.(3)
120 – Rape and Sexual Assault	Para. 60.b.(1)	128 – Assault with intent to commit specified offenses (rape)	Para 77.b.~~(3)~~(5)
120 – Rape and Sexual Assault	Para. 60.b.(2)	128 – Assault with intent to commit specified offenses (sexual assault)	Para 77.b.~~(3)~~(5)
120b – Rape of a child	Para. 62.b.(1)	128 – Assault with intent to commit specified offenses (rape of a child)	Para 77.b.~~(3)~~(5)
120b – Rape of a child	Para. 62.b.(2)	128 – Assault with intent to commit specified offenses (sexual assault of a child)	Para 77.b.~~(3)~~(5)
128 – Assault	Para. 77.b.(2); 77.b(3); 77.b.(4); 77.b.(5)	128 – Assault	Para. 77.b.(1)
134 – Check, worthless making and uttering by	Para. 94.b.	134 – Debt, dishonorably failing to pay	Para. 96.b.

dishonorably failing to maintain funds			
134 – Child pornography	Para. 95.b.(1); 95.b.(2); 95.b.(3); 95.b.(4)	134 – Indecent conduct	Para. 104.b.
134 – Disloyal statements	Para. 97.b.	88 – Contempt toward officials	Para. 14.b.