

### **35.681 Rape and sexual assault generally.**

- (1) Any person subject to this code is guilty of rape and shall be punished as a court-martial may direct who commits a sexual act upon another person by:
  - (a) Using unlawful force against another person;
  - (b) Using force causing or likely to cause death or grievous bodily harm to any person;
  - (c) Threatening or placing that other person in fear that any person will be subject to death, grievous bodily harm, or kidnapping;
  - (d) First rendering that other person unconscious; or
  - (e) Administering to that other person by force or threat of force, or without the knowledge or consent of that person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct.
- (2) Any person subject to this code is guilty of sexual assault and shall be punished as a court-martial may direct who:
  - (a) Commits a sexual act upon another person by:
    1. Threatening or placing that other person in fear;
    2. Causing bodily harm to that other person;
    3. Making a fraudulent representation that the sexual act serves a professional purpose; or
    4. Inducing a belief by an artifice, pretense, or concealment that the person is another person;
  - (b) Commits a sexual act upon another person when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring; or
  - (c) Commits a sexual act upon another person when the other person is incapable of consenting to the sexual act due to:
    1. Impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the person; or
    2. A mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the person.
- (3) Any person subject to this code who commits or causes sexual contact upon or by another person, if to do so would violate subsection (1) of this section had the sexual contact been a sexual act, is guilty of aggravated sexual contact and shall be punished as a court-martial may direct.
- (4) Any person subject to this chapter who commits or causes sexual contact upon or by another person, if to do so would violate subsection (2) of this section had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall be punished as a court-martial may direct.
- (5) 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.

- (6) An accused may raise any applicable defenses available under this code. Marriage is not a defense for the conduct in issue in any prosecution under this section.

**Effective:** July 15, 2016

**History:** Amended 2016 Ky. Acts ch. 75, sec. 7, effective July 15, 2016. -- Created 2013 Ky. Acts ch. 32, sec. 122, effective June 25, 2013.