GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2016 REGULAR SESSION

SENATE BILL NO. 217

THURSDAY, MARCH 3, 2016

The following bill was reported to the House from the Senate and ordered to be printed.

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY K. Adler

1 AN ACT relating to military justice.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 35.010 is amended to read as follows:

4 As used in this chapter, unless the context otherwise requires:

5 (1) "State" means one (1) of the several states, the District of Columbia, the
6 Commonwealth of Puerto Rico, Guam, and the United States Virgin Islands;

7 (2) "Cadet," "candidate," or "midshipman" means a person who is enrolled in or
8 attending a state military academy, a regional training institute, or any other formal
9 education program for the purpose of becoming a commissioned officer in the state
10 military forces;

11 (3) "Officer" means a commissioned or warrant officer;

12 (4) "Superior commissioned officer" means a commissioned officer superior in rank or
13 command;

14 (5) "Enlisted member" means a person in an enlisted grade;

15 (6) "State active duty" means full-time military duty in the state military forces under
16 an order of the Governor or otherwise issued by authority of law, and paid by state
17 funds, and includes travel to and from the duty;

18 (7) "Military court" means a court-martial or a court of inquiry;

19 (8) "Military judge" means an official of a general and special court-martial detailed in
20 accordance with KRS 35.125;

21 (9) "Classified information" means:

22 (a) Any information or material that has been determined by an official of the
23 United States or any state pursuant to law, an executive order, or regulation to
24 require protection against unauthorized disclosure for reasons of national or
25 state security; and

26 (b) Any restricted data, as defined in the Atomic Energy Act of 1954, 42 U.S.C.
27 sec. 2014(y);

1 (10) "Code" means this chapter;
2 (11) "National security" means the national defense and foreign relations of the United
3 States;
4 (12) "Commanding officer" includes only commissioned officers of the state military
5 forces and shall include officers in charge only when administering nonjudicial
6 punishment under KRS 35.070. The term "commander" has the same meaning
7 unless the context otherwise requires;
8 (13) "Day" means:
9 ***(a) For the purpose of pay, one (1) day equals one (1) unit training assembly;***
10 ***and***
11 ***(b) For all other purposes, one (1) day equals one (1)*** calendar day~~[and is not~~
12 ~~synonymous with the term "unit training assembly." Any punishment~~
13 ~~authorized by this chapter which is measured in terms of days shall, when~~
14 ~~served in a status other than annual field training, be construed to mean~~
15 ~~succeeding duty days]~~;
16 (14) "Record," when used in connection with the proceedings of a court-martial, means:
17 (a) An official written transcript, written summary, or other writing relating to the
18 proceedings; or
19 (b) An official audiotape, videotape, digital image or file, or similar material from
20 which sound, or sound and visual images, depicting the proceedings may be
21 reproduced;
22 (15) "Duty status other than state active duty" means any other type of duty not in federal
23 service and not full-time in the active service of the state, under an order issued by
24 authority of law and includes travel to and from the duty;
25 (16) "Judge advocate" means a commissioned officer of the organized state military
26 forces who is a member in good standing of the bar of the highest court of a state,
27 and is:

1 (a) Certified or designated as a judge advocate in the Judge Advocate General's
2 Corps of the Army, Air Force, Navy, Marine Corps, or Coast Guard, or a
3 reserve component of one (1) of these; or
4 (b) Certified as a non-federally recognized judge advocate, under regulations
5 promulgated pursuant to this provision, by the senior judge advocate of the
6 commander of the force in the state military forces of which the accused is a
7 member, as competent to perform those military justice duties required by this
8 code. If there is no judge advocate available, then the certification may be
9 made by a senior judge advocate of the commander of another force in the
10 state military forces, as the convening authority directs;
11 (17) "Accuser" means a person who signs and swears to charges, any person who directs
12 that charges nominally be signed and sworn to by another, and any other person
13 who has an interest other than an official interest in the prosecution of the accused;
14 (18) "Military" refers to any or all of the Armed Forces;
15 (19) "Convening authority" includes, in addition to the person who convened the court, a
16 commissioned officer commanding for the time being or a successor in command to
17 the convening authority;
18 (20) "Officer in charge" means a member of the naval militia, the Navy, the Marine
19 Corps, or the Coast Guard designated as such by appropriate authority;
20 (21) "Senior force commander" means the commander of the same force of the state
21 military forces as the accused;
22 (22) "Senior force judge advocate" means the senior judge advocate of the commander
23 of the same force of the state military forces as the accused and who is that
24 commander's chief legal advisor;
25 (23) "State military forces" means the Kentucky National Guard as defined in Title 32 of
26 the United States Code and as organized under the Constitution and laws of the
27 Commonwealth of Kentucky. The unorganized militia, state defense force, state

1 national guard, home guard, or any other name of any state force that does not meet
2 this definition shall not be part of the "state military forces" under this code; and
3 (24) "Military offenses" means those offenses prescribed under KRS 35.440, 35.442,
4 35.450, 35.451, 35.470, 35.471, 35.472, 35.473, 35.474, 35.4751, 35.476, 35.478,
5 35.481, 35.486, 35.491, 35.575, 35.577, 35.580, 35.585, 35.590, 35.595, 35.600,
6 35.605, 35.609, 35.614, 35.620, 35.625, 35.630, 35.635, 35.637, 35.640, 35.642,
7 35.645, 35.650, 35.652, 35.654, 35.657, 35.660, 35.665, 35.671, ***Sections 6, 7, 8, 9,***
8 ***and 10 of this Act,*** 35.725, 35.727, and 35.730.
9 ➔Section 2. KRS 35.070 is amended to read as follows:
10 (1) Under such regulations as prescribed, any commanding officer, and for purposes of
11 this section, officers-in-charge, may impose disciplinary punishments for minor
12 offenses without the intervention of a court-martial pursuant to this section. The
13 Governor, the adjutant general, or an officer of a general or flag rank in command
14 may delegate the powers under this section to a principal assistant who is a member
15 of the state military forces.
16 (2) Any commanding officer may impose upon enlisted members of the officer's
17 command:
18 (a) An admonition;
19 (b) A reprimand;
20 (c) The withholding of privileges for not more than six (6) months;
21 (d) The forfeiture of pay of not more than seven (7) days' pay;
22 (e) A fine of not more than seven (7) days' pay;
23 (f) A reduction to the next inferior pay grade if the grade from which demoted is
24 within the promotion authority of the officer imposing the reduction or any
25 officer subordinate to the one who imposes the reduction;
26 (g) Extra duties, including fatigue or other duties, for not more than fourteen (14)
27 days, which need not be consecutive; and

1 (h) Restriction to certain specified limits, with or without suspension from duty,
2 for not more than fourteen (14) days, which need not be consecutive.
3 (3) Any commanding officer of the grade of major or lieutenant commander or above
4 may impose upon enlisted members of the officer's command:
5 (a) Any punishment authorized in subsection (2)(a), (b), and (c) of this section;
6 (b) The forfeiture of not more than ***fourteen (14) days' pay;***
7 ***(c) A fine of not more than fourteen (14) days' pay***[~~one half (1/2) of one (1)~~
8 ~~month's pay per month for two (2) months;~~
9 ~~(c) A fine of not more than one (1) month's pay~~];
10 (d) A reduction to the lowest or any intermediate pay grade, if the grade from
11 which demoted is within the promotion authority of the officer imposing the
12 reduction or any officer subordinate to the one who imposes the reduction, but
13 an enlisted member in a pay grade above E-4 may not be reduced more than
14 two (2) pay grades;
15 (e) Extra duties, including fatigue or other duties, for not more than forty-five
16 (45) days which need not be consecutive; and
17 (f) Restriction to certain specified limits, with or without suspension from duty,
18 for not more than sixty (60) days which need not be consecutive.
19 (4) The Governor, the adjutant general, an officer exercising general court-martial
20 convening authority, or an officer of a general or flag rank in command may
21 impose:
22 (a) Upon officers in the officer's command:
23 1. Any punishment authorized in paragraph (a), (b), (c), or (f) of subsection
24 (3) of this section; and
25 2. Arrest in quarters for not more than thirty (30) days which need not be
26 consecutive;
27 (b) Upon enlisted members of the officer's command, any punishment authorized

1 in subsection (3) of this section.

2 (5) Whenever any of those punishments are combined to run consecutively, the total
3 length of the combined punishment cannot exceed the authorized duration of the
4 longest punishment in the combination, and there must be an apportionment of
5 punishments so that no single punishment in the combination exceeds its authorized
6 length under this section.

7 (6) Prior to the offer of non-judicial punishment, the commanding officer shall
8 determine whether arrest in quarters***, restriction, forfeiture, or fine***[~~ or restriction~~]
9 shall be considered as punishments. Should the commanding officer determine that
10 the punishment options may include arrest in quarters***, restriction, forfeiture, or***
11 ***fine***[~~ or restriction~~], the accused shall be notified of the right to demand a trial by
12 court-martial. Should the commanding officer determine that the punishment
13 options will not include arrest in quarters***, restriction, forfeiture, or fine***[~~ or~~
14 ~~restriction~~], the accused shall be notified that there is no right to trial by courts-
15 martial in lieu of non-judicial punishment.

16 (7) The officer who imposes punishment, or the successor in command, may, at any
17 time, suspend, set aside, mitigate, or remit any part or amount of the punishment
18 and restore all rights, privileges, and property affected. The officer also may
19 mitigate:

20 (a) Reduction in grade to forfeiture of pay;

21 (b) Arrest in quarters to restriction; or

22 (c) Extra duties to restriction.

23 The mitigated punishment shall not be for a greater period than the punishment
24 mitigated. When mitigating reduction in grade to forfeiture of pay, the amount of
25 the forfeiture shall not be greater than the amount that could have been imposed
26 initially under this section by the officer who imposed the punishment mitigated.

27 (8) A person punished under this section who considers the punishment unjust or

1 disproportionate to the offense may, through the proper channel, appeal to the next
2 superior authority within fifteen (15) days after the punishment is either announced
3 or sent to the accused, as the commander may determine. The appeal shall be
4 promptly forwarded and decided, but the person punished may in the meantime be
5 required to undergo the punishment adjudged. The superior authority may exercise
6 the same powers with respect to the punishment imposed as may be exercised under
7 subsection (7) of this section by the officer who imposed the punishment. Before
8 acting on an appeal from a punishment, the authority that is to act on the appeal may
9 refer the case to a judge advocate for consideration and advice.
10 (9) The imposition and enforcement of disciplinary punishment under this section for
11 any act or omission is not a bar to trial by court-martial or a civilian court of
12 competent jurisdiction for a serious crime or offense growing out of the same act or
13 omission, and not properly punishable under this section; but the fact that a
14 disciplinary punishment has been enforced may be shown by the accused upon trial,
15 and when so shown shall be considered in determining the amount of punishment to
16 be adjudged in the event of a finding of guilty.
17 (10) Whenever a punishment of forfeiture of pay is imposed as provided in this section,
18 the forfeiture may apply to pay accruing before, on, or after the date that punishment
19 is imposed.
20 (11) Regulations may prescribe the form of forfeiture of records to be kept of
21 proceedings under this section and may prescribe that certain categories of those
22 proceedings shall be in writing.
23 ~~[(12) "Day," as used in this section, means:~~
24 ~~(a) For the purpose of pay, one (1) day shall equal one (1) active duty military pay~~
25 ~~day; and~~
26 ~~(b) For all other purposes, one (1) day shall equal one (1) calendar day.]~~
27 ➔Section 3. KRS 35.125 is amended to read as follows:

1 (1) A military judge shall be detailed to each general and special court-martial. The
2 military judge shall preside over each open session of the court-martial to which the
3 military judge has been detailed.
4 (2) A military judge shall be ***all of the following***:
5 (a) An active or retired commissioned officer of ***the Judge Advocate General's***
6 ***Corps***[~~ an organized state military force~~];
7 (b) A member in good standing of the bar of the highest court of a state or a
8 member of the bar of a federal court for at least five (5) years; and
9 (c) ***A judge certified by the service component Judge Advocate General's Corps,***
10 ***the senior force judge advocate of the state, or a judge of a court of***
11 ***competent jurisdiction who is approved by the adjutant general, subject to***
12 ***the order of succession in subsection (5) of this section. For purposes of this***
13 ***section, "certified" means the judge advocate certification and assignment***
14 ***as a military judge upon completion of the Judge Advocate General's Legal***
15 ***Center and School's military judge training, as referenced in Army***
16 ***Regulation 27-10 or Structure Manning Decision Review 27-10, paragraphs***
17 ***1 through 4(b)***[~~Either:~~
18 ~~1. A certified military judge; or~~
19 ~~2. Certified as qualified for duty as a military judge by the senior force~~
20 ~~judge advocate which is the same force as the accused~~].
21 (3) In the instance when a military judge is not a member of the bar of the highest court
22 of the state, the military judge shall be deemed admitted pro hac vice, subject to
23 filing a certificate with the senior force judge advocate which is the same force as
24 the accused setting forth the qualifications provided in subsection (2) of this section
25 ***, and with notice and approval of the state bar and the Chief Justice of the***
26 ***Kentucky Supreme Court***.
27 (4) The military judge of a general or special court-martial shall be designated by the

1 senior force judge advocate which is the same force as the accused, or a designee,
2 for detail by the convening authority. Neither the convening authority nor any staff
3 member of the convening authority shall prepare or review any report concerning
4 the effectiveness, fitness, or efficiency of the military judge so detailed, which
5 relates to performance ***of duty*** as a military judge.
6 (5) ***The senior force judge advocate shall designate the military judge who is***
7 ***currently assigned to the state military forces and certified as a military judge by***
8 ***his or her service component of the Judge Advocate General's Corps. If that***
9 ***military judge is unavailable, then the senior force judge advocate shall designate***
10 ***upon consideration of this order of succession:***
11 ***(a) A current member of the state military forces who has been certified as a***
12 ***military judge by his or her service component of the Judge Advocate***
13 ***General's Corps;***
14 ***(b) A current member of the state military forces who is both a judge advocate***
15 ***and an actively serving judge of a court of competent jurisdiction;***
16 ***(c) A retired judge advocate of the state military forces who is an actively***
17 ***serving judge of a court of competent jurisdiction;***
18 ***(d) Any other military judge certified by his or her service component of the***
19 ***Judge Advocate General's Corps; or***
20 ***(e) Any other military judge certified by the senior force judge advocate as set***
21 ***out in Structure Manning Decision Review 27-10.***
22 ***(6)*** No person is eligible to act as military judge in a case if that person is the accuser, a
23 witness, or has acted as investigating officer or a counsel in the same case.
24 ***(7)***[~~(6)~~] The military judge of a court-martial may not consult with the members of the
25 court except in the presence of the accused, trial counsel, and defense counsel, nor
26 vote with the members of the court.
27 ***(8) The designation of a military judge shall not be by political appointment. The***

1 ***designation of a military judge by the senior force judge advocate under***
2 ***subsection (5) of this section shall ensure uniformity and impartiality, and***
3 ***prevent any appearance of impropriety. The senior force judge advocate shall***
4 ***assign a military judge from a predetermined list of military judges.***
5 ***(9) A military judge does not have to be in the same service as the accused. However,***
6 ***the court-martial shall be conducted using the implementing regulations and***
7 ***procedures of the military service of the accused to the extent that they apply and***
8 ***are not inconsistent with this code. When a service member is tried by a court-***
9 ***martial convened by a joint commander, the applicable implementing regulations***
10 ***and procedures of the service of which the accused is a member shall be used to***
11 ***the extent they apply and are not inconsistent with this code, the state manual for***
12 ***courts-martial, and their implementing regulations.***
13 ➔Section 4. KRS 35.215 is amended to read as follows:
14 (1) Except as otherwise provided in this section, a person charged with any offense is
15 not liable to be tried by court-martial or punished under KRS 35.070 if the offense
16 was committed more than three (3) years before the receipt of sworn charges and
17 specifications by an officer exercising court-martial jurisdiction over the command
18 or before the imposition of punishment under KRS 35.070. ***There shall be no***
19 ***statute of limitations for the crimes set forth in Sections 5 to 10 of this Act.***
20 (2) Periods in which the accused is absent without authority or fleeing from justice
21 shall be excluded in computing the period of limitation prescribed in this article.
22 (3) Periods in which the accused was absent from territory in which the state has the
23 authority to apprehend him, or in the custody of civil authorities, or in the hands of
24 the enemy, shall be excluded in computing the period of limitation prescribed in this
25 section.
26 (4) When the United States is at war, the running of any statute of limitations
27 applicable to any offense under this code:

1 (a) Involving fraud or attempted fraud against the United States, any state, or any
2 agency of either in any manner, whether by conspiracy or not;
3 (b) Committed in connection with the acquisition, care, handling, custody,
4 control, or disposition of any real or personal property of the United States or
5 any state; or
6 (c) Committed in connection with the negotiation, procurement, award,
7 performance, payment, interim financing, cancellation, or other termination or
8 settlement, of any contract, subcontract, or purchase order which is connected
9 with or related to the prosecution of the war, or with any disposition of
10 termination inventory by any war contractor or government agency;
11 is suspended until two (2) years after the termination of hostilities as proclaimed by
12 the President or by a joint resolution of Congress.
13 (5) "War," as used in subsection (4) of this section, means a period of war declared by
14 Congress or the factual determination by the President that the existence of
15 hostilities warrants a finding that a time of war exists.
16 (6) (a) If charges or specifications are dismissed as defective or insufficient for any
17 cause and the period prescribed by the applicable statute of limitations:
18 1. Has expired; or
19 2. Will expire within one hundred eighty (180) days after the date of
20 dismissal of the charges and specifications;
21 trial and punishment under new charges and specifications are not barred by
22 the statute of limitations if the conditions specified in paragraph (b) of this
23 subsection are met.
24 (b) The conditions referred to in paragraph (a) of this subsection are that the new
25 charges and specifications must:
26 1. Be received by a commander within one hundred eighty (180) days after
27 the dismissal of the charges or specifications; and

1 2. Allege the acts or omissions that were alleged in the dismissed charges
2 or specifications.
3 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 35 TO BE NUMBERED
4 AS KRS 35.678 IS CREATED TO READ AS FOLLOWS:
5 ***As used in Sections 5 to 10 of this Act:***
6 ***(1) "Act of prostitution" means a sexual act or sexual contact as defined in***
7 ***subsection (12) or (13) of this section, respectively, on account of which anything***
8 ***of value is given to, or received by, any person;***
9 ***(2) "Bodily harm" means any offensive touching of another, however slight,***
10 ***including any nonconsensual sexual act or nonconsensual sexual contact;***
11 ***(3) "Broadcast" means delivering to the actual or constructive possession of***
12 ***another, including transmission by electronic means;***
13 ***(4) (a) "Consent" means a freely given agreement to the conduct at issue by a***
14 ***competent person. An expression of lack of consent through words or***
15 ***conduct means there is no consent. Lack of verbal or physical resistance or***
16 ***submission resulting from the use of force, threat of force, or placing***
17 ***another person in fear does not constitute consent. A current or previous***
18 ***dating or social or sexual relationship by itself or the manner of dress of the***
19 ***person involved with the accused in the conduct at issue shall not constitute***
20 ***consent.***
21 ***(b) A sleeping, unconscious, or incompetent person cannot consent. A person***
22 ***cannot consent to force causing or likely causing death or grievous bodily***
23 ***harm or to being rendered unconscious. A person cannot consent while***
24 ***under threat or fear or under the circumstances described in subsection***
25 ***(2)(a)3. and 4. of Section 7 of this Act.***
26 ***(c) Lack of consent may be inferred based on the circumstances of the offense.***
27 ***All the surrounding circumstances are to be considered in determining***

1 *whether a person gave consent, or whether a person did not resist or ceased*
2 *to resist only because of another person's actions;*
3 *(5) "Course of conduct" means:*
4 *(a) A repeated maintenance of visual or physical proximity to a specific person;*
5 *or*
6 *(b) A repeated conveyance of verbal threat, written threats, or threats implied*
7 *by conduct, or a combination of these threats, directed at or towards a*
8 *specific person;*
9 *(6) "Force" means:*
10 *(a) The use of a weapon;*
11 *(b) The use of such physical strength or violence as is sufficient to overcome,*
12 *restrain, or injure a person; or*
13 *(c) Inflicting physical harm sufficient to coerce or compel submission by the*
14 *victim;*
15 *(7) "Grievous bodily harm" means serious bodily injury. It includes fractures or*
16 *dislocated bones, deep cuts, torn members of the body, serious damage to internal*
17 *organs, and other severe bodily injuries. It does not include minor injuries such*
18 *as a black eye or a bloody nose;*
19 *(8) "Immediate family," in the case of a specific person, means a spouse, parent,*
20 *child, or sibling of the person, or any other family member, relative, or intimate*
21 *partner of the person who regularly resides in the household of the person or who*
22 *within the six (6) months preceding the commencement of the course of conduct*
23 *regularly resided in the household of the person;*
24 *(9) "Indecent manner" means conduct that amounts to a form of immorality*
25 *relating to sexual impurity which is grossly vulgar, obscene, and repugnant to*
26 *common propriety, and tends to excite sexual desire or deprave morals with*
27 *respect to sexual relations;*

1 *(10) "Private area" means the naked or underwear-clad genitalia, anus, buttocks, or*
2 *female areola or nipple;*
3 *(11) "Repeated," with respect to conduct, means two (2) or more occasions of that*
4 *conduct;*
5 *(12) "Sexual act" means:*
6 *(a) Contact between the penis and the vulva or anus or mouth, and, for*
7 *purposes of this paragraph, contact involving the penis occurs upon*
8 *penetration, however slight; or*
9 *(b) The penetration, however slight, of the vulva or anus or mouth of another*
10 *by any part of the body or by any object, with an intent to abuse, humiliate,*
11 *harass, or degrade any person or to arouse or gratify the sexual desire of*
12 *any person;*
13 *(13) "Sexual contact" means:*
14 *(a) Touching, or causing another person to touch, either directly or through*
15 *the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of*
16 *any person, with an intent to abuse, humiliate, or degrade any person; or*
17 *(b) Any touching, or causing another person to touch, either directly or*
18 *through the clothing, any body parts of another person, if done with an*
19 *intent to arouse or gratify the sexual desire of any person. Touching may be*
20 *accomplished by any part of the body;*
21 *(14) "Threatening or placing that other person in fear" means a communication or*
22 *action that is of sufficient consequences to cause a reasonable fear that*
23 *noncompliance will result in the victim or another person being subjected to the*
24 *wrongful action contemplated by the communication or action;*
25 *(15) "Under circumstances in which that other person has a reasonable expectation*
26 *of privacy" means:*
27 *(a) Circumstances in which a reasonable person would believe that he or she*

1 ***could disrobe in privacy, without being concerned that an image of a private***
2 ***area of that person was being captured; or***
3 ***(b) Circumstances in which a reasonable person would believe that a private***
4 ***area of that person would not be visible to the public; and***
5 ***(16) "Unlawful force" means an act of force done without legal justification or***
6 ***excuse.***
7 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 35 TO BE NUMBERED
8 AS KRS 35.680 IS CREATED TO READ AS FOLLOWS:
9 ***Any person subject to this code is guilty of sexual harassment and shall be punished as***
10 ***a court-martial may direct who:***
11 ***(1) Influences, offers to influence, or threatens the career, reputation, pay, or job of***
12 ***another person in exchange for sexual favors;***
13 ***(2) Makes deliberate or repeated unwanted offensive comments or gestures of a***
14 ***sexually explicit nature toward, or in the presence of, another person; or***
15 ***(3) Displays or transmits to another person, without legal justification or lawful***
16 ***authorization, imagery of a sexually explicit nature.***
17 ➔Section 7. KRS 35.681 is amended to read as follows:
18 (1) Any person subject to this code is guilty of rape and shall be punished as a court-
19 martial may direct who commits a sexual act upon another person by:
20 (a) Using unlawful force against another person;
21 (b) Using force causing or likely to cause death or grievous bodily harm to any
22 person;
23 (c) Threatening or placing that other person in fear that any person will be subject
24 to death, grievous bodily harm, or kidnapping;
25 (d) First rendering that other person unconscious; or
26 (e) Administering to that other person by force or threat ***of force***, or without the
27 knowledge or consent of that person, a drug, intoxicant, or other similar

1 substance and thereby substantially impairing the ability of that other person
2 to appraise or control conduct.
3 (2) Any person subject to this code is guilty of sexual assault and shall be punished as a
4 court-martial may direct who:
5 (a) Commits a sexual act upon another person by:
6 1. Threatening or placing that other person in fear;
7 2. Causing bodily harm to that other person;
8 3. Making a fraudulent representation that the sexual act serves a
9 professional purpose; or
10 4. Inducing a belief by an artifice, pretense, or concealment that the person
11 is another person;
12 (b) Commits a sexual act upon another person when the person knows or
13 reasonably should know that the other person is asleep, unconscious, or
14 otherwise unaware that the sexual act is occurring; or
15 (c) Commits a sexual act upon another person when the other person is incapable
16 of consenting to the sexual act due to:
17 1. Impairment by any drug, intoxicant, or other similar substance, and that
18 condition is known or reasonably should be known by the person; or
19 2. A mental disease or defect, or physical disability, and that condition is
20 known or reasonably should be known by the person.
21 (3) Any person subject to this code who commits or causes sexual contact upon or by
22 another person, if to do so would violate subsection (1) of this section had the
23 sexual contact been a sexual act, is guilty of aggravated sexual contact and shall be
24 punished as a court-martial may direct.
25 (4) Any person subject to this chapter who commits or causes sexual contact upon or by
26 another person, if to do so would violate subsection (2) of this section had the
27 sexual contact been a sexual act, is guilty of abusive sexual contact and shall be

1 punished as a court-martial may direct.

2 (5) In a prosecution under this section, in proving that a person made a threat, it need
3 not be proven that the person actually intended to carry out the threat or had the
4 ability to carry out the threat.

5 (6) An accused may raise any applicable defenses available under this code[~~ or the~~
6 ~~Rules for Court-Martial~~]. Marriage is not a defense for the conduct in issue in any
7 prosecution under this section.

8 [~~(7) In this section:~~

9 ~~(a) "Sexual act" means:~~

10 ~~1. Contact between the penis and the vulva or anus or mouth, and, for~~
11 ~~purposes of this subparagraph, contact involving the penis occurs upon~~
12 ~~penetration, however slight; or~~

13 ~~2. The penetration, however slight, of the vulva or anus or mouth of~~
14 ~~another by any part of the body or by any object, with an intent to abuse,~~
15 ~~humiliate, harass, or degrade any person or to arouse or gratify the~~
16 ~~sexual desire of any person;~~

17 ~~(b) "Sexual contact" means:~~

18 ~~1. Touching, or causing another person to touch, either directly or through~~
19 ~~the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of~~
20 ~~any person, with an intent to abuse, humiliate, or degrade any person; or~~

21 ~~2. Any touching, or causing another person to touch, either directly or~~
22 ~~through the clothing, any body parts of another person, if done with an~~
23 ~~intent to arouse or gratify the sexual desire of any person. Touching may~~
24 ~~be accomplished by any part of the body;~~

25 ~~(c) "Bodily harm" means any offensive touching of another, however slight,~~
26 ~~including any nonconsensual sexual act or nonconsensual sexual contact;~~

27 ~~(d) "Grievous bodily harm" means serious bodily injury. It includes fractures or~~

1 ~~dislocated bones, deep cuts, torn members of the body, serious damage to~~
2 ~~internal organs, and other severe bodily injuries. It does not include minor~~
3 ~~injuries such as a black eye or a bloody nose;~~
4 ~~(e) "Force" means:~~
5 ~~1. The use of a weapon;~~
6 ~~2. The use of such physical strength or violence as is sufficient to~~
7 ~~overcome, restrain, or injure a person; or~~
8 ~~3. Inflicting physical harm sufficient to coerce or compel submission by the~~
9 ~~victim;~~
10 ~~(f) "Unlawful force" means an act of force done without legal justification or~~
11 ~~excuse;~~
12 ~~(g) "Threatening or placing that other person in fear" means a communication or~~
13 ~~action that is of sufficient consequences to cause a reasonable fear that~~
14 ~~noncompliance will result in the victim or another person being subjected to~~
15 ~~the wrongful action contemplated by the communication or action; and~~
16 ~~(h) "Consent":~~
17 ~~1. The term "consent" means a freely given agreement to the conduct at~~
18 ~~issue by a competent person. An expression of lack of consent through~~
19 ~~words or conduct means there is no consent. Lack of verbal or physical~~
20 ~~resistance or submission resulting from the use of force, threat of force,~~
21 ~~or placing another person in fear does not constitute consent. A current~~
22 ~~or previous dating or social or sexual relationship by itself or the manner~~
23 ~~of dress of the person involved with the accused in the conduct at issue~~
24 ~~shall not constitute consent.~~
25 ~~2. A sleeping, unconscious, or incompetent person cannot consent. A~~
26 ~~person cannot consent to force causing or likely causing death or~~
27 ~~grievous bodily harm or to being rendered unconscious. A person cannot~~

1 ~~consent while under threat or fear or under the circumstances described~~
2 ~~in subsection (2)(a)3. and 4. of this section.~~
3 ~~3. Lack of consent may be inferred based on the circumstances of the~~
4 ~~offense. All the surrounding circumstances are to be considered in~~
5 ~~determining whether a person gave consent, or whether a person did not~~
6 ~~resist or ceased to resist only because of another person's actions.~~]
7 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 35 TO BE NUMBERED
8 AS KRS 35.683 IS CREATED TO READ AS FOLLOWS:
9 ***Any person subject to this code is guilty of rape of a child and shall be punished as a***
10 ***court-martial may direct who:***
11 ***(1) Commits a sexual act upon a child who has not attained the age of twelve (12)***
12 ***years; or***
13 ***(2) Commits a sexual act upon a child who has attained the age of twelve (12) years***
14 ***by:***
15 ***(a) Using force against any person;***
16 ***(b) Threatening or placing that child in fear;***
17 ***(c) Rendering that child unconscious; or***
18 ***(d) Administering to that child a drug, intoxicant, or other similar substance.***
19 Section 9. KRS 35.685 is amended to read as follows:
20 [~~(1)~~] Any person subject to this code is guilty of stalking and shall be punished as a
21 court-martial may direct who:
22 *(1)*[~~(a)~~] Wrongfully engages in a course of conduct directed at a specific person that
23 would cause a reasonable person to fear death or bodily harm, including sexual
24 assault, to himself or herself or a member of his or her immediate family;
25 *(2)*[~~(b)~~] Has knowledge, or should have knowledge, that the specific person will be
26 placed in reasonable fear of death or bodily harm, including sexual assault, to
27 himself or herself or a member of his or her immediate family; and

1 ***(3)***[~~(c)~~] ***By his or her acts,*** induces reasonable fear in the specific person or bodily
2 harm, including sexual assault, to himself or herself or to a member of his or her
3 immediate family, through the person's actions.
4 [~~(2) In this section:~~
5 ~~(a) "Course of conduct" means:~~
6 ~~1. A repeated maintenance of visual or physical proximity to a specific~~
7 ~~person; or~~
8 ~~2. A repeated conveyance of verbal threat, written threats, or threats~~
9 ~~implied by conduct, or a combination of these threats, directed at or~~
10 ~~towards a specific person;~~
11 ~~(b) "Repeated," with respect to conduct, means two (2) or more occasions of that~~
12 ~~conduct; and~~
13 ~~(c) "Immediate family," in the case of a specific person, means a spouse, parent,~~
14 ~~child, or sibling of the person, or any other family member, relative, or~~
15 ~~intimate partner of the person who regularly resides in the household of the~~
16 ~~person or who within the six (6) months preceding the commencement of the~~
17 ~~course of conduct regularly resided in the household of the person.~~]
18 ➔Section 10. KRS 35.690 is amended to read as follows:
19 (1) Any person subject to this code is guilty ***of***[~~on~~] an offense under this section and
20 shall be punished as a court-martial may direct who, without legal justification or
21 lawful authorization:
22 (a) Knowingly or wrongfully views the private area of another person, without
23 that other person's consent and under circumstances in which that other person
24 has a reasonable expectation of privacy;
25 (b) Knowingly photographs, videotapes, films, or records by any means the
26 private area of another person, without that other person's consent or under
27 circumstances in which that other person has a reasonable expectation of

1 privacy; or
2 (c) Knowingly broadcasts or distributes any recording that the person knew or
3 reasonably should have known was made under the circumstances proscribed
4 in paragraphs (a) and (b) of this subsection.
5 (2) Any person subject to this code who compels another person to engage in the act of
6 prostitution with any person is guilty of forcible pandering and shall be punished as
7 a court-martial may direct.
8 (3) Any person subject to this code who intentionally exposes, in an indecent manner,
9 the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent
10 exposure and shall be punished as a court-martial may direct.
11 ~~[(4) In this section:~~
12 ~~(a) "Act of prostitution" means a sexual act or sexual contact as defined in KRS~~
13 ~~35.681(7) on account of which anything of value is given to, or received by,~~
14 ~~any person;~~
15 ~~(b) "Private area" means the naked or underwear-clad genitalia, anus, buttocks, or~~
16 ~~female areola or nipple;~~
17 ~~(c) "Under circumstances in which that other person has a reasonable expectation~~
18 ~~of privacy" means:~~
19 ~~1. Circumstances in which a reasonable person would believe that he or~~
20 ~~she could disrobe in privacy, without being concerned that an image of a~~
21 ~~private area of that person was being captured; or~~
22 ~~2. Circumstances in which a reasonable person would believe that a private~~
23 ~~area of that person would not be visible to the public;~~
24 ~~(d) "Broadcast" means delivering to the actual or constructive possession of~~
25 ~~another, including transmission by electronic means; and~~
26 ~~(e) "Indecent manner" means conduct that amounts to a form of immorality~~
27 ~~relating to sexual impurity which is grossly vulgar, obscene, and repugnant to~~

1 ~~common propriety, and tends to excite sexual desire or deprave morals with~~

2 ~~respect to sexual relations.]~~

President of Senate

Speaker-House of Representatives

Attest: Chief Clerk of Senate

Approved Governor

Date 9 APRIL 2016