APPROVED Change 16-21 (Article 134 -- Prostitution after EO 13740)

**Amend Instruction 3-97-1 as reflected below:**

***3–97–1. PROSTITUTION (ARTICLE 134)***

a. MAXIMUM PUNISHMENT: DD, TF, 1 year, E-1.

b. MODEL SPECIFICATION:

In that \_\_\_\_\_\_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location), on or about \_\_\_\_\_\_\_\_\_\_, wrongfully engage in (a sexual act) (sexual acts) with \_\_\_\_\_\_\_\_\_\_, a person not his/her spouse, for the purpose of receiving (money) (\_\_\_\_\_\_\_\_\_\_), such conduct being (to the prejudice of good order and discipline in the armed forces) (and) (of a nature to bring discredit upon the armed forces).

c. ELEMENTS:

(1) That (state the time and place alleged), ##the accused## engaged in (a sexual act) (sexual acts) with \_\_\_\_\_\_\_\_\_\_, a person not his/her spouse;

(2) That ##the accused## did so for the purpose of receiving (money) (\_\_\_\_\_\_\_\_\_\_);

(3) That the sexual act(s) (was) (were) wrongful; and

(4) That, under the circumstances, the conduct of ##the accused## was (to the prejudice of good order and discipline in the armed forces) (or) (of a nature to bring discredit upon the armed forces).

d. DEFINITIONS AND OTHER INSTRUCTIONS:

"Sexual act" means penetration, however slight, of the vulva or anus or mouth of another (by the penis) (by any body part or by any object, with the intent to abuse, humiliate, harass or degrade any person or to arouse or gratify the sexual desire of any person).

(The “vulva” is the external genital organ of the female, including the entrance of the vagina and the labia majora and labia minora. “Labia” is the Latin and medically correct term for “lips.”)

Prostitution may be committed by males or females.

“Wrongful” means without legal justification or excuse.

(“Conduct prejudicial to good order and discipline” is conduct which causes a reasonably direct and obvious injury to good order and discipline.)

(“Service discrediting conduct” is conduct which tends to harm the reputation of the service or lower it in public esteem.)

**~~NOTE: Requirement for compensation. In a broad opinion discussing the sufficiency of a guilty plea for the offense of pandering, the CAAF observed that the offense of prostitution in some jurisdictions does not require receiving compensation. United States v. Gallegos, 41 MJ 446 (CAAF 1995). Under the UCMJ, however, receipt of money or other compensation is an element. See MCM, Part IV, Paragraph 97b(1)(b).~~**

**Amend Instruction 3-97-2 as reflected below:**

***3–97–2. PROSTITUTION—–PATRONIZING (ARTICLE 134)***

a. MAXIMUM PUNISHMENT: DD, TF, 1 year, E-1.

b. MODEL SPECIFICATION:

In that \_\_\_\_\_\_\_\_\_\_ (personal jurisdiction data) did, (at/on board—location) on or about \_\_\_\_\_\_\_\_\_\_,wrongfully (compel) (induce) (entice) (procure) \_\_\_\_\_\_\_\_\_\_, a person not his/her spouse, to engage in (a sexual act) (sexual acts) with the accused in exchange for (money) (\_\_\_\_\_\_\_\_\_\_), such conduct being (to the prejudice of good order and discipline in the armed forces) (and) (of a nature to bring discredit upon the armed forces).

c. ELEMENTS:

(1) That (state the time and place alleged), ##the accused## engaged in (a sexual act) (sexual acts) with \_\_\_\_\_\_\_\_\_\_\_\_, a person not his/her spouse;

(2) That ##the accused## (compelled) (induced) (enticed) (procured) such person to engage in the (sexual act) (sexual acts) in exchange for (money) (compensation, to wit: \_\_\_\_\_\_\_\_\_\_);

(3) That the sexual act(s) (was) (were) wrongful; and

(4) That, under the circumstances, the conduct of ##the accused## was (to the prejudice of good order and discipline in the armed forces) (or) (of a nature to bring discredit upon the armed forces).

d. DEFINITIONS AND OTHER INSTRUCTIONS:

"Sexual act" means penetration, however slight, of the vulva or anus or mouth of another (by the penis) (by any body part or by any object, with the intent to abuse, humiliate, harass or degrade any person or to arouse or gratify the sexual desire of any person).

(The “vulva” is the external genital organ of the female, including the entrance of the vagina and the labia majora and labia minora. “Labia” is the Latin and medically correct term for “lips.”)

Prostitution may be committed by males or females.

("Compel" means to force.) (“Induce” means to lead on, to influence, to prevail upon, to persuade, to bring about or to cause.) (“Entice” means to solicit, to persuade, to procure, to allure, to attract, to coax, or to seduce.) (“Procure” means to cause, to obtain, or to bring about.)

“Wrongful” means without legal justification or excuse.

(“Conduct prejudicial to good order and discipline” is conduct which causes a reasonably direct and obvious injury to good order and discipline.)

(“Service discrediting conduct” is conduct which tends to harm the reputation of the service or lower it in public esteem.)

**Amend Instruction 3-97-3 as reflected below:**

***3–97–3. PANDERING BY INDUCING, ENTICING, OR PROCURING ACT OF PROSTITUTION (ARTICLE 134)***

a. MAXIMUM PUNISHMENT: DD, TF, 5 years, E-1.

b. MODEL SPECIFICATION:

In that \_\_\_\_\_\_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location), on or about \_\_\_\_\_\_\_\_\_\_, wrongfully (induce) (entice) (procure) \_\_\_\_\_\_\_\_\_\_ to engage in (a sexual act) (sexual acts) for hire and reward with persons to be directed to him/her by the accused, such conduct being (to the prejudice of good order and discipline in the armed forces) (and) (of a nature to bring discredit upon the armed forces).

c. ELEMENTS:

(1) That (state the time and place alleged), ##the accused## (induced) (enticed) (procured) (state the name(s) of the person(s) alleged) to engage in (a sexual act) (sexual acts) for hire and reward with (a person) (persons) to be directed to him/her by ##the accused##;

(2) That this (inducing) (enticing) (procuring) by ##the accused## was wrongful; and

(3) That, under the circumstances, the conduct of ##the accused## was (to the prejudice of good order and discipline in the armed forces) (or) (of a nature to bring discredit upon the armed forces).

d. DEFINITIONS AND OTHER INSTRUCTIONS:

"Sexual act" means penetration, however slight, of the vulva or anus or mouth of another (by the penis) (by any body part or by any object, with the intent to abuse, humiliate, harass or degrade any person or to arouse or gratify the sexual desire of any person).

(The “vulva” is the external genital organ of the female, including the entrance of the vagina and the labia majora and labia minora. “Labia” is the Latin and medically correct term for “lips.”)

(“Induce” means to lead on, to influence, to prevail upon, to persuade, to bring about or to cause.) (“Entice” means to solicit, to persuade, to procure, to allure, to attract, to coax, or to seduce.) (“Procure” means to cause, to obtain, or to bring about.) (“For hire and reward” means for the purpose of receiving money or other compensation.)

“Wrongful” means without legal justification or excuse.

(“Conduct prejudicial to good order and discipline” is conduct which causes a reasonably direct and obvious injury to good order and discipline.)

(“Service discrediting conduct” is conduct which tends to harm the reputation of the service or lower it in public esteem.)

**NOTE ~~1~~: Pandering as requiring three persons. Pandering requires three persons. If only two are involved, the evidence may raise the offense of solicitation to commit prostitution. United States v. Miller, 47 MJ 352 (CAAF 1997).**

**~~NOTE 2: Definition of prostitution. Prior editions of the Military Judge’s Benchbook provided a definition of prostitution as follows: “The word prostitution describes the practice of a male/female offering his/her body to indiscriminate sexual intercourse with men or women for hire and reward.” That definition is unnecessary and may be confusing. While the name of the offense uses the word “prostitution,” the elements do not. Furthermore, the nature of compensation is included in the elements and definitions. The MCM does not define prostitution except through the elements.~~**

**Amend Instruction 3-97-4 as reflected below:**

***3–97–4. PANDERING BY ARRANGING OR RECEIVING CONSIDERATION FOR ARRANGING FOR A SEXUAL ACT (ARTICLE 134)***

a. MAXIMUM PUNISHMENT: DD, TF, 5 years, E-1.

b. MODEL SPECIFICATION:

In that \_\_\_\_\_\_\_\_\_\_ (personal jurisdiction data), did, (at/on board—location), on or about \_\_\_\_\_\_\_\_\_\_, wrongfully [arrange for] [receive valuable consideration, to wit: \_\_\_\_\_\_\_\_\_\_ on account of arranging for] \_\_\_\_\_\_\_\_\_\_ to engage in (a sexual act) (sexual acts) with \_\_\_\_\_\_\_\_\_\_, such conduct being (to the prejudice of good order and discipline in the armed forces) (and) (of a nature to bring discredit upon the armed forces).

c. ELEMENTS:

(1) That (state the time and place alleged), ##the accused## [arranged for] [received valuable consideration, to wit: (state the consideration received) on account of arranging for] \_\_\_\_\_\_\_\_\_\_\_\_\_\_ to engage in (a sexual act) (sexual acts) with \_\_\_\_\_\_\_\_\_\_\_\_\_;

(2) That the arranging (and receipt of consideration) was wrongful; and

(3) That, under the circumstances, the conduct of ##the accused## was (to the prejudice of good order and discipline in the armed forces) (or) (of a nature to bring discredit upon the armed forces).

d. DEFINITIONS AND OTHER INSTRUCTIONS:

"Sexual act" means penetration, however slight, of the vulva or anus or mouth of another (by the penis) (by any body part or by any object, with the intent to abuse, humiliate, harass or degrade any person or to arouse or gratify the sexual desire of any person).

(The “vulva” is the external genital organ of the female, including the entrance of the vagina and the labia majora and labia minora. “Labia” is the Latin and medically correct term for “lips.”)

“Wrongful” means without legal justification or excuse.

(“Conduct prejudicial to good order and discipline” is conduct which causes a reasonably direct and obvious injury to good order and discipline.)

(“Service discrediting conduct” is conduct which tends to harm the reputation of the service or lower it in public esteem.)

**NOTE 1: Pandering as requiring three persons. Pandering requires three persons. If only two are involved, the evidence may raise the offense of solicitation to commit prostitution. United States v. Miller, 47 MJ 352 (CAAF 1997).**

**NOTE 2: Compensation not required. Pandering charged under MCM, Part IV, Paragraph 97(b)(3) does not require that the act be done for compensation. United States v. Gallegos, 41 MJ 446 (CAAF 1995).**