

**(b) Paragraph 77.d.(1)(b) is amended to read as follows:**

“(b) *When committed with a firearm or other dangerous weapon.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 2 years.”

**Section 5. Part V of the Manual for Courts-Martial, United States, is amended as follows:**

**(a) Paragraph 1.h. is amended to read as follows:**

“h. *Burden of proof.* The burden of proof to be utilized by commanders throughout the nonjudicial punishment process shall be a preponderance of the evidence. This means the commanding officer must determine it is “more likely than not” the member committed the offense defined by the UCMJ. Each element of each offense, as defined in the Manual for Courts-Martial, must be supported by a preponderance of the evidence (*i.e.*, “more likely than not”). This standard is more rigorous than a “probable cause” standard of proof used by law enforcement to obtain a warrant but a lower standard of proof than the “beyond a reasonable doubt” standard used at a court-martial.”

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

**“PRESIDENTIALLY-PRESCRIBED LESSER INCLUDED OFFENSES PURSUANT TO ARTICLE 79(b)(2), UNIFORM CODE OF MILITARY JUSTICE”**

This authoritative list provides actual notice of factually similar lesser included offenses designated by the President, pursuant to Article 79(b)(2), that are “reasonably included” in the greater offense. The military justice system has unique, but closely related, military offenses, which are not “necessarily included” lesser offenses under the “elements test.” *See United States v. Teters*, 37 M.J. 370 (C.A.A.F. 1993); *see also United States v. Jones*, 68 M.J. 465 (C.A.A.F. 2009). This list is exhaustive as to those lesser included offenses (called “reasonably included

offenses” in the chart below) that the President has designated pursuant to Article 79(b)(2).

However, this list is not intended to address, and does not address, those offenses that are necessarily included in a charged offense and are therefore lesser included offenses pursuant to Article 79(b)(1).

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)
87b - Offenses against correctional custody and restriction	Para. 13.b.(1)	86 - Absent without leave	Para. 10.b.(3)
93a - Prohibited activities with military recruit or trainee by person in position of special trust	Para. 20.b.(1); 20.b.(2)	93 - Cruelty and maltreatment	Para. 19.b.
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)