



The UCMJ and Kink

The times have changed. The DSM-5 revisions, the repeal of “Don’t Ask Don’t Tell” (DADT) and the need to attract young Americans to volunteer in one of the most diverse fighting forces in the world has forced the military courts to adapt. UCMJ Case Law has expanded to include a complex and nuanced understanding of consent and privacy in the last several years.

Military code is now remarkably similar to the revised Model Penal Code on Sexual Assault’s Section 213:10: Explicit Prior Permission. Under current UCMJ Case Law, it is possible to consent to kink, BDSM, Consensual Non-monogamy, and other activities so long as there is no serious injury, and all parties obtain prior, informed consent and respect the veil of privacy.

Requirements for Informed Consent (Currently)

- Prior Consent is NOT current consent. (US v. Christopher)
- You cannot consent to aggravated assault. (US v. Mader)
- You cannot consent to grievous bodily harm. (US v. Holmes)
- Withholding STD status may jeopardize consent. (US v. Gutierrez)
- Safewords and written contracts are evidence of consent. (US v. Christopher)
- Consent must be continually reaffirmed, before, during, and after (including in court)
- Some acts are considered legally and medically riskier than others
- All persons involved must be legally able to observe informed consent

Veil of Privacy (Lawrence v. Texas)

A servicemember’s otherwise consensual activities will be protected as long as the servicemember observes limitations on this protection. Military courts also apply additional restrictions to Lawrence (US v. Marcum):

- If you photograph or film it and others see, it is public (US v. Goings)
- If a photo or video is sent across state lines by computer it is “publicly traded”
- Protection is lost with rule violation, i.e. fraternization (US v. Goings)
- Protection is lost if the act occurs in public (US v. Holmes)

It is already possible to observe Explicit Prior Permission (EPP) for consent to kink under UCMJ Case Law. But care must be taken or protections are lost:

- Make sure everyone has current and ongoing consent
- If you are going to take photos, be mindful when sharing them, or keep them private
- If you have kink/BDSM or CNM social media profiles, keep the account settings private, and keep pictures of yourself in uniform off that profile
- Don’t do puppy roleplay on the base
- If you show up with impact play marks visible while in PT attire, somebody may ask questions