

AMENDMENT TO RULES COMMITTEE PRINT 116-

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OFFERED BY MS. SPEIER OF CALIFORNIA

At the end of subtitle D of title V, add the following new section:

1 **SEC. 5__ . PUNITIVE ARTICLE ON SEXUAL HARASSMENT**
2 **AND RELATED INVESTIGATION MATTERS.**

3 (a) PUNITIVE ARTICLE ON SEXUAL HARASSMENT.—

4 (1) IN GENERAL.—Subchapter X of chapter 47,
5 United States Code (the Uniform Code of Military
6 Justice), is amended by inserting after section 920c
7 (article 120c) the following new section (article):

8 **“§ 920d. Art. 120d. Sexual harassment**

9 “(a) IN GENERAL.—Any person subject to this chap-
10 ter who commits sexual harassment against another per-
11 son shall be punished as a court-martial may direct.

12 “(b) SEXUAL HARASSMENT DEFINED.—

13 “(1) In this section term ‘sexual harassment’
14 means conduct that takes place in a circumstance
15 described in paragraph (2) that takes the form of—

16 “(A) a sexual advance;

17 “(B) a request for sexual favors; or

18 “(C) any other conduct of a sexual nature.

1 “(2) A circumstance described in this para-
2 graph is a situation in which—

3 “(A) submission to the conduct involved is
4 made either explicitly or implicitly a term or
5 condition of employment;

6 “(B) submission to or rejection of such
7 conduct is used as the basis for an employment
8 decision affecting an individual’s employment;
9 or

10 “(C) such conduct unreasonably alters an
11 individual’s terms, conditions, or privileges of
12 employment, including by creating an intimi-
13 dating hostile, or offensive work environment,
14 as determined in accordance with paragraph
15 (3).

16 “(3) In determining, for purposes of paragraph
17 (2)(C), whether conduct constitutes sexual harass-
18 ment because the conduct unreasonably alters an in-
19 dividual’s terms, conditions, or privileges of employ-
20 ment, including by creating an intimidating, hostile,
21 or offensive work environment, the following rules
22 shall apply:

23 “(A) The determination shall be made on
24 the basis of the record as a whole, according to

1 the totality of the circumstances. A single inci-
2 dent may constitute sexual harassment.

3 “(B) Incidents that may be sexual harass-
4 ment shall be considered in the aggregate,
5 with—

6 “(i) conduct of varying types (such as
7 expressions of sex-based hostility, requests
8 for sexual favors, and denial of employ-
9 ment opportunities due to sexual orienta-
10 tion) viewed in totality, rather than in iso-
11 lation; and

12 “(ii) conduct based on multiple pro-
13 tected characteristics (such as sex and
14 race) viewed in totality, rather than in iso-
15 lation.

16 “(C) The factors specified in this subpara-
17 graph are among the factors to be considered in
18 determining whether conduct constitutes sexual
19 harassment and are not meant to be exhaustive.
20 No one of those factors shall be considered to
21 be determinative in establishing whether con-
22 duct constitutes sexual harassment. Such fac-
23 tors are each of the following:

24 “(i) The frequency of the conduct.

25 “(ii) The duration of the conduct.

1 “(iii) The location where the conduct
2 occurred.

3 “(iv) The number of individuals en-
4 gaged in the conduct.

5 “(v) The nature of the conduct, which
6 may include physical, verbal, pictorial, or
7 visual conduct, and conduct that occurs in
8 person or is transmitted, such as electroni-
9 cally.

10 “(vi) Whether the conduct is threat-
11 ening.

12 “(vii) Any power differential between
13 the alleged harasser and the person alleg-
14 edly harassed.

15 “(viii) Any use of epithets, slurs, or
16 other conduct that is humiliating or de-
17 grading.

18 “(ix) Whether the conduct reflects
19 stereotypes about individuals in the pro-
20 tected class involved.”.

21 (2) CLERICAL AMENDMENT.—The table of sec-
22 tions at the beginning of such subchapter is amend-
23 ed by inserting after the item relating to section
24 920c (article 120c) the following new item:

 “920d. 120d. Sexual harassment.”.

25 (b) INVESTIGATIONS OF SEXUAL HARASSMENT.—

1 (1) IN GENERAL.—Section 1561 of title 10,
2 United States Code, is amended to read as follows:

3 **“§ 1561. Complaints of sexual harassment: investiga-**
4 **tion by commanding officers and law en-**
5 **forcement organizations**

6 “(a) ACTION ON COMPLAINTS ALLEGING SEXUAL
7 HARASSMENT.—A commanding officer or officer in charge
8 of a unit, vessel, facility, or area of the Army, Navy, Air
9 Force, Marine Corps, or Space Force who receives from
10 a member of the command or a member under the super-
11 vision of the officer—

12 “(1) a formal complaint alleging sexual harass-
13 ment by a member of the armed forces shall, as soon
14 as practicable after receiving the complaint, forward
15 the complaint to an appropriate military criminal in-
16 vestigative organization outside the chain of com-
17 mand of the individual who submitted the complaint;
18 or

19 “(2) in the case of any other complaint of sex-
20 ual harassment by a member of the armed forces,
21 shall carry out an investigation of the matter in ac-
22 cordance with this section.

23 “(b) COMMENCEMENT OF INVESTIGATION.—To the
24 extent practicable—

1 “(1) a military criminal investigative organiza-
2 tion shall commence an investigation of a complaint
3 of sexual harassment within 72 hours of—

4 “(A) receiving a formal complaint of sexual
5 harassment forwarded by a commanding officer
6 or officer in charge under subsection (a)(1); or

7 “(B) receiving a formal complaint of sex-
8 ual harassment directly from a member of the
9 armed forces; and

10 “(2) a commanding officer or officer in charge
11 who receives a complaint described in subsection
12 (a)(2) shall, within 72 hours after receipt of the
13 complaint—

14 “(A) forward the complaint or a detailed
15 description of the allegation to the next superior
16 officer in the chain of command who is author-
17 ized to convene a general court-martial;

18 “(B) commence, or cause the commence-
19 ment of, an investigation of the complaint; and

20 “(C) advise the complainant of the com-
21 mencement of the investigation.

22 “(c) DURATION OF INVESTIGATION.—To the extent
23 practicable, an investigation under subsection (b) shall be
24 completed not later than 14 days after the date on which
25 the investigation commences.

1 “(d) REPORT ON COMMAND INVESTIGATION.—To the
2 extent practicable, a commanding officer or officer in
3 charge who commences an investigation under subsection
4 (b)(2) shall—

5 “(1) submit a final report on the results of the
6 investigation, including any action taken as a result
7 of the investigation, to the next superior officer re-
8 ferred to in such subsection within 20 days after the
9 date on which the investigation is commenced; or

10 “(2) submit a report on the progress made in
11 completing the investigation to the next superior of-
12 ficer referred to in such subsection within 20 days
13 after the date on which the investigation is com-
14 menced and every 14 days thereafter until the inves-
15 tigation is completed and, upon completion of the in-
16 vestigation, then submit a final report on the results
17 of the investigation, including any action taken as a
18 result of the investigation, to that next superior offi-
19 cer.

20 “(e) DEFINITIONS.—In this section:

21 “(1) The term ‘formal complaint’ means a com-
22 plaint that an individual files in writing and attests
23 to the accuracy of the information contained in the
24 complaint.

1 “(2) The term ‘sexual harassment’ has the
2 meaning given that term in section 920d(b) of this
3 title (article 120d of the Uniform Code of Military
4 Justice).”.

5 (2) CLERICAL AMENDMENT.—The table of sec-
6 tions at the beginning of chapter 80 of title 10,
7 United States Code, is amended by striking the item
8 relating to section 1561 and inserting the following
9 new item:

“1561. Complaints of sexual harassment: investigation by commanding officers
and law enforcement organizations.”.

