AMENDMENT TO RULES COMMITTEE PRINT 116–57

OFFERED BY MS. SPEIER OF CALIFORNIA

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

SEC. 5. PUNITIVE ARTICLE ON SEXUAL HARASSMENT AND RELATED INVESTIGATION MATTERS.

(a) PUNITIVE ARTICLE ON SEXUAL HARASSMENT.—

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

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

   “(a) IN GENERAL.—Any person subject to this chapter who commits sexual harassment against another person shall be punished as a court-martial may direct.

   “(b) SEXUAL HARASSMENT DEFINED.—

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

   “(A) a sexual advance;

   “(B) a request for sexual favors; or

   “(C) any other conduct of a sexual nature.
“(2) A circumstance described in this paragraph is a situation in which—

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

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

“(C) such conduct unreasonably alters an individual’s terms, conditions, or privileges of employment, including by creating an intimidating, hostile, or offensive work environment, as determined in accordance with paragraph (3).

“(3) In determining, for purposes of paragraph (2)(C), whether conduct constitutes sexual harassment because the conduct unreasonably alters an individual’s terms, conditions, or privileges of employment, including by creating an intimidating, hostile, or offensive work environment, the following rules shall apply:

“(A) The determination shall be made on the basis of the record as a whole, according to
the totality of the circumstances. A single incident may constitute sexual harassment.

“(B) Incidents that may be sexual harassment shall be considered in the aggregate, with—

“(i) conduct of varying types (such as expressions of sex-based hostility, requests for sexual favors, and denial of employment opportunities due to sexual orientation) viewed in totality, rather than in isolation; and

“(ii) conduct based on multiple protected characteristics (such as sex and race) viewed in totality, rather than in isolation.

“(C) The factors specified in this subparagraph are among the factors to be considered in determining whether conduct constitutes sexual harassment and are not meant to be exhaustive. No one of those factors shall be considered to be determinative in establishing whether conduct constitutes sexual harassment. Such factors are each of the following:

“(i) The frequency of the conduct.

“(ii) The duration of the conduct.
“(iii) The location where the conduct occurred.

“(iv) The number of individuals engaged in the conduct.

“(v) The nature of the conduct, which may include physical, verbal, pictorial, or visual conduct, and conduct that occurs in person or is transmitted, such as electronically.

“(vi) Whether the conduct is threatening.

“(vii) Any power differential between the alleged harasser and the person allegedly harassed.

“(viii) Any use of epithets, slurs, or other conduct that is humiliating or degrading.

“(ix) Whether the conduct reflects stereotypes about individuals in the protected class involved.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by inserting after the item relating to section 920c (article 120c) the following new item:

“920d. 120d. Sexual harassment.”.

(b) INVESTIGATIONS OF SEXUAL HARASSMENT.—
(1) IN GENERAL.—Section 1561 of title 10, United States Code, is amended to read as follows:

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

“(a) Action on complaints alleging sexual harassment.—A commanding officer or officer in charge of a unit, vessel, facility, or area of the Army, Navy, Air Force, Marine Corps, or Space Force who receives from a member of the command or a member under the supervision of the officer—

“(1) a formal complaint alleging sexual harassment by a member of the armed forces shall, as soon as practicable after receiving the complaint, forward the complaint to an appropriate military criminal investigative organization outside the chain of command of the individual who submitted the complaint; or

“(2) in the case of any other complaint of sexual harassment by a member of the armed forces, shall carry out an investigation of the matter in accordance with this section.

“(b) Commencement of investigation.—To the extent practicable—
“(1) a military criminal investigative organization shall commence an investigation of a complaint of sexual harassment within 72 hours of—

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

“(B) receiving a formal complaint of sexual harassment directly from a member of the armed forces; and

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

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

“(B) commence, or cause the commencement of, an investigation of the complaint; and

“(C) advise the complainant of the commencement of the investigation.

“(c) DURATION OF INVESTIGATION.—To the extent practicable, an investigation under subsection (b) shall be completed not later than 14 days after the date on which the investigation commences.
“(d) REPORT ON COMMAND INVESTIGATION.—To the extent practicable, a commanding officer or officer in charge who commences an investigation under subsection (b)(2) shall—

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

“(2) submit a report on the progress made in completing the investigation to the next superior officer referred to in such subsection within 20 days after the date on which the investigation is commenced and every 14 days thereafter until the investigation is completed and, upon completion of the investigation, then submit a final report on the results of the investigation, including any action taken as a result of the investigation, to that next superior officer.

“(e) DEFINITIONS.—In this section:

“(1) The term ‘formal complaint’ means a complaint that an individual files in writing and attests to the accuracy of the information contained in the complaint.
“(2) The term ‘sexual harassment’ has the meaning given that term in section 920d(b) of this title (article 120d of the Uniform Code of Military Justice).”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 80 of title 10, United States Code, is amended by striking the item relating to section 1561 and inserting the following new item:

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