AMENDMENT TO RULES COMMITTEE PRINT 115–70

OFFERED BY MR. GOHMERT OF TEXAS

At the end of subtitle D of title V, insert the following:

SEC. 5. AFFIRMATIVE DEFENSE TO CRIMES OF VIOLENCE COMMITTED IN COMBAT THEATERS OF OPERATIONS.

(a) IN GENERAL.—At the end of subtitle X of chapter 47 of title 10, United States Code, (the Uniform Code of Military Justice), insert the following new section:

“§ 935. Art. 135.; Affirmative defense to crimes of violence in combat theaters of operations

“(a) IN GENERAL.—It is an affirmative defense in a trial by court-martial of a crime of violence, including murder, manslaughter, and assault, if at the time of the commission of the acts constituting the offense, the accused was deployed to a combat theater of operations and reasonably believed that such acts would protect the accused or a fellow member of the armed forces from subversive enemy activity.
“(b) Burden of Proof.—The accused has the burden of proving the defense of self-defense or defense of a third party by a preponderance of the evidence.

“(c) Instructions.—Whenever the affirmative defense referred to in subsection (a) is raised with respect to an offense referred to under such subsection and is properly at issue, the military judge, or the president of a court-martial without a military judge, shall instruct the members of the court as to the defense of self-defense or defense of a third party.”

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 935 (art. 135) the following new item:

“935. Art. 135. Affirmative defense to crimes of violence in combat theaters of operations.”