AMENDMENT TO THE RULES COMMITTEE PRINT
FOR H.R. 4435
OFFERED BY MS. SPEIER OF CALIFORNIA

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

SEC. 540. MODIFICATION OF AUTHORITY TO DETERMINE TO PROCEED TO TRIAL BY COURT-MARTIAL ON CHARGES INVOLVING SEX-RELATED OFFENSES.

(a) Role of Office of the Chief Prosecutor in Determination to Proceed to Trial on Charge Involving Sex-related Offense.—

   (1) Referral and determinations by Office of the Chief Prosecutor.—Section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice) is amended—

       (A) by redesignating subsection (c) as subsection (d); and

       (B) by inserting after the subsection (b) the following new subsection (c):

“(c)(1) In the case of a charge relating to sex-related offense, in addition to referring the charge to the staff judge advocate under subsection (a), the convening au-
thority shall refer, as soon as reasonably practicable, the
charge to the Office of the Chief Prosecutor of the armed
force of which the accused is a member to make the deter-
mination required by paragraph (3). The actions of the
Office of the Chief Prosecutor under this subsection
whether or not to try charges by court-martial shall be
free of unlawful or unauthorized influence or coercion.

“(2) For purposes of this subsection, the term ‘sex-
related offense’ means any of the following:

“(A) An offense covered by section 920, 920a,
920b, or 920c of this title (article 120, 120a, 120b,
or 120c).

“(B) A conspiracy to commit an offense speci-
fied in subparagraph (A) as punishable under sec-
tion 881 of this title (article 81).

“(C) A solicitation to commit an offense speci-
fied in subparagraph (A) as punishable under sec-
tion 882 of this title (article 82).

“(D) An attempt to commit an offense specified
in subparagraphs (A) through (C) as punishable
under section 880 of this title (article 80).

“(3) The Office of the Chief Prosecutor shall make
a determination regarding whether a charge relating to a
sex-related offense should be referred to trial. If the Office
of the Chief Prosecutor makes a determination to try the
charge by court-martial, the Office of the Chief Prosecutor also shall determine whether to try the charge by a general court-martial convened under section 822 of this title (article 22) or a special court-martial convened under section 823 of this title (article 23).

“(4) A determination under paragraph (3) to try a charge relating to a sex-related offense by court-martial shall include a determination to try all known offenses, including lesser included offenses.

“(5) The determination to try a charge relating to a sex-related offense by court-martial under paragraph (3), and by type of court-martial, shall be binding on any applicable convening authority for a trial by court-martial on the charge.

“(6) A determination under paragraph (3) not to proceed to trial on a charge relating to a sex-related offense by general or special court-martial shall not operate to terminate or otherwise alter the authority of commanding officers to refer such charge for trial by summary court-martial convened under section 824 of this title (article 24), or to impose non-judicial punishment in connection with the conduct covered by the charge as authorized by section 815 of this title (article 15).

“(7) Nothing in this subsection shall be construed to alter or affect the disposition of charges under this chapter
(the Uniform Code of Military Justice) that allege an offense triable by court-martial under this chapter for which the maximum punishment authorized under this chapter includes confinement for one year or less.

“(8) This subsection does not apply to the Coast Guard when it is not operating as a service in the Department of the Navy.”.

(2) APPOINTMENT OF CHIEF PROSECUTOR.—

For any Armed Force (other than the Coast Guard) for which the position of Chief Prosecutor does not exist as of the date of the enactment of this Act, the Judge Advocate General of that Armed Force shall establish the position of Chief Prosecutor and appoint as the Chief Prosecutor a commissioned officer in the grade of O–6 or above who has significant experience prosecuting sexual assault trials by court-martial.

(b) CHIEF PROSECUTOR AUTHORITY TO CONVENE ARTICLE 32 PRELIMINARY HEARINGS.—Section 832(a) of title 10, United States Code (article 32(a) of the Uniform Code of Military Justice), is amended by adding at the end the following new paragraph:

“(3) The Office of the Chief Prosecutor of an armed force may order a preliminary hearing under this section in the event of an allegation of a sex-related offense (as
defined in section 834(c)(2) of this title (article 34(c)(2)) involving a member of that armed force. This paragraph does not apply to the Coast Guard when it is not operating as a service in the Department of the Navy.”.

(e) MODIFICATION OF OFFICERS AUTHORIZED TO CONVENE GENERAL AND SPECIAL COURTS-MARTIAL.—

(1) IN GENERAL.—Subsection (a) of section 822 of title 10, United States Code (article 22 of the Uniform Code of Military Justice), is amended—

(A) by redesignating paragraphs (8) and (9) as paragraphs (9) and (10), respectively; and

(B) by inserting after paragraph (7) the following new paragraph (8):

“(8) the officers in the offices established pursuant to section 537(c)(3) of the National Defense Authorization Act for Fiscal Year 2015 or officers in the grade of O–6 or higher who are assigned such responsibility by the Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, or the Commandant of the Marine Corps, but only with respect to a sex-related offense (as defined in section 834(c)(2) of this title (article 34(c)(2)));”.
(2) No exercise by officers in chain of command of accused or victim.—Such section (article) is further amended by adding at the end the following new subsection:

“(c) An officer specified in subsection (a)(8) may not convene a court-martial under this section if the officer is in the chain of command of the accused or the victim.”.

(3) Offices of chiefs of staff on courts-martial.—

(A) Offices required.—The Chief of Staff of the Army, the Chief of Naval Operations, the Chief of Staff of the Air Force, or the Commandant of the Marine Corps shall establish an office to do the following:

(i) To convene general and special courts-martial under sections 822 and 823 of title 10, United States Code (articles 22 and 23 of the Uniform Code of Military Justice), pursuant to paragraph (8) of section 822(a) of title 10, United States Code (article 22(a) of the Uniform Code of Military Justice), as amended by paragraph (1), with respect to a sex-related offense (as defined in section 834(c)(2) of title 10,
United States Code (article 34(e)(2) of the Uniform Code of Military Justice)).

(ii) To detail under section 825 of title 10, United States Code (article 25 of the Uniform Code of Military Justice), members of courts-martial convened as described in clause (i).

(B) PERSONNEL.—The personnel of each office established under subparagraph (A) shall consist of such members of the Armed Forces and civilian personnel of the Department of Defense as may be detailed or assigned to the office by the Chief of Staff or Commandant concerned. The members and personnel so detailed or assigned, as the case may be, shall be detailed or assigned from personnel billets in existence on the date of the enactment of this Act.

(d) IMPLEMENTATION AND EFFECTIVE DATE.—

(1) FUNDING SOURCE.—The Secretaries of the military departments shall carry out subsections (a), (b), and (c) (and the amendments made by such subsections) using funds appropriated after the date of enactment of this Act and otherwise available to the Secretary of the military department concerned.
(2) POLICIES AND PROCEDURES.—

(A) IN GENERAL.—The Secretaries of the military departments shall revise policies and procedures as necessary to comply with this section.

(B) UNIFORMITY.—The General Counsel of the Department of Defense shall review the policies and procedures revised under this paragraph in order to ensure that any lack of uniformity in policies and procedures, as so revised, among the military departments does not render unconstitutional any policy or procedure, as so revised.

(3) MANUAL FOR COURTS-MARTIAL.—The Secretary of Defense shall recommend such changes to the Manual for Courts-Martial as are necessary to ensure compliance with this section.

(4) EFFECTIVE DATE AND APPLICABILITY.—Subsections (a), (b), and (c) (and the amendments made by such subsections) shall take effect on the date that is 180 days after the date of the enactment of this Act, and shall apply with respect to charges preferred under section 830 of title 10,
United States Code (article 30 of the Uniform Code of Military Justice), on or after such effective date.