

AMENDMENT TO RULES COMMITTEE PRINT 114-

51

OFFERED BY MS. SPEIER OF CALIFORNIA

Page 139, after line 22, insert the following:

1 **SEC. 547. MODIFICATION OF AUTHORITY TO DETERMINE**
2 **TO PROCEED TO TRIAL BY COURT-MARTIAL**
3 **ON CHARGES INVOLVING SEX-RELATED OF-**
4 **FENSES.**

5 (a) ROLE OF OFFICE OF THE CHIEF PROSECUTOR
6 IN DETERMINATION TO PROCEED TO TRIAL ON CHARGE
7 INVOLVING SEX-RELATED OFFENSE.—

8 (1) REFERRAL AND DETERMINATIONS BY OF-
9 FICE OF THE CHIEF PROSECUTOR.—Section 834 of
10 title 10, United States Code (article 34 of the Uni-
11 form Code of Military Justice) is amended—

12 (A) by redesignating subsection (c) as sub-
13 section (d); and

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

16 “(c)(1) In the case of a charge relating to a sex-re-
17 lated offense, in addition to referring the charge to the
18 staff judge advocate under subsection (a), the convening
19 authority shall refer, as soon as reasonably practicable, the

1 charge to the Office of the Chief Prosecutor of the armed
2 force of which the accused is a member to make the deter-
3 mination required by paragraph (3). The actions of the
4 Office of the Chief Prosecutor under this subsection
5 whether or not to try charges by court-martial shall be
6 free of unlawful or unauthorized influence or coercion.

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

9 “(A) An offense covered by section 920, 920a,
10 920b, or 920c of this title (article 120, 120a, 120b,
11 or 120c).

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

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

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

21 “(3) The Office of the Chief Prosecutor shall make
22 a determination regarding whether a charge relating to a
23 sex-related offense should be referred to trial. If the Office
24 of the Chief Prosecutor makes a determination to try the
25 charge by court-martial, the Office of the Chief Prosecutor

1 also shall determine whether to try the charge by a general
2 court-martial convened under section 822 of this title (ar-
3 ticle 22) or a special court-martial convened under section
4 823 of this title (article 23).

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

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

14 “(6) A determination under paragraph (3) not to pro-
15 ceed to trial on a charge relating to a sex-related offense
16 by general or special court-martial shall not operate to ter-
17 minate or otherwise alter the authority of commanding of-
18 ficers to refer such charge for trial by summary court-
19 martial convened under section 824 of this title (article
20 24), or to impose non-judicial punishment in connection
21 with the conduct covered by the charge as authorized by
22 section 815 of this title (article 15).

23 “(7) Nothing in this subsection shall be construed to
24 alter or affect the disposition of charges under this chapter
25 (the Uniform Code of Military Justice) that allege an of-

1 fense triable by court-martial under this chapter for which
2 the maximum punishment authorized under this chapter
3 includes confinement for one year or less.

4 “(8) This subsection does not apply to the Coast
5 Guard when it is not operating as a service in the Depart-
6 ment of the Navy.”.

7 (2) APPOINTMENT OF CHIEF PROSECUTOR.—

8 For any Armed Force (other than the Coast Guard)
9 for which the position of Chief Prosecutor does not
10 exist as of the date of the enactment of this Act, the
11 Judge Advocate General of that Armed Force shall
12 establish the position of Chief Prosecutor and ap-
13 point as the Chief Prosecutor a commissioned officer
14 in the grade of O–6 or above who has significant ex-
15 perience prosecuting sexual assault trials by court-
16 martial.

17 (b) CHIEF PROSECUTOR AUTHORITY TO CONVENE

18 ARTICLE 32 PRELIMINARY HEARINGS.—Section 832(a) of
19 title 10, United States Code (article 32(a) of the Uniform
20 Code of Military Justice), is amended by adding at the
21 end the following new paragraph:

22 “(3) The Office of the Chief Prosecutor of an armed
23 force may order a preliminary hearing under this section
24 in the event of an allegation of a sex-related offense (as
25 defined in section 834(c)(2) of this title (article 34(c)(2)))

1 involving a member of that armed force. This paragraph
2 does not apply to the Coast Guard when it is not operating
3 as a service in the Department of the Navy.”.

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

6 (1) IN GENERAL.—Subsection (a) of section
7 822 of title 10, United States Code (article 22 of the
8 Uniform Code of Military Justice), is amended—

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

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

14 “(8) the officers in the offices established pur-
15 suant to section 546(c)(3) of the National Defense
16 Authorization Act for Fiscal Year 2016 or officers in
17 the grade of O–6 or higher who are assigned such
18 responsibility by the Chief of Staff of the Army, the
19 Chief of Naval Operations, the Chief of Staff of the
20 Air Force, or the Commandant of the Marine Corps,
21 but only with respect to a sex-related offense (as de-
22 fined in section 834(c)(2) of this title (article
23 34(c)(2)));”.

24 (2) NO EXERCISE BY OFFICERS IN CHAIN OF
25 COMMAND OF ACCUSED OR VICTIM.—Such section

1 (article) is further amended by adding at the end the
2 following new subsection:

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

6 (3) OFFICES OF CHIEFS OF STAFF ON COURTS-
7 MARTIAL.—

8 (A) OFFICES REQUIRED.—The Chief of
9 Staff of the Army, the Chief of Naval Oper-
10 ations, the Chief of Staff of the Air Force, or
11 the Commandant of the Marine Corps shall es-
12 tablish an office to do the following:

13 (i) To convene general and special
14 courts-martial under sections 822 and 823
15 of title 10, United States Code (articles 22
16 and 23 of the Uniform Code of Military
17 Justice), pursuant to paragraph (8) of sec-
18 tion 822(a) of title 10, United States Code
19 (article 22(a) of the Uniform Code of Mili-
20 tary Justice), as amended by paragraph
21 (1), with respect to a sex-related offense
22 (as defined in section 834(c)(2) of title 10,
23 United States Code (article 34(c)(2) of the
24 Uniform Code of Military Justice)).

1 (ii) To detail under section 825 of
2 title 10, United States Code (article 25 of
3 the Uniform Code of Military Justice),
4 members of courts-martial convened as de-
5 scribed in clause (i).

6 (B) PERSONNEL.—The personnel of each
7 office established under subparagraph (A) shall
8 consist of such members of the Armed Forces
9 and civilian personnel of the Department of De-
10 fense as may be detailed or assigned to the of-
11 fice by the Chief of Staff or Commandant con-
12 cerned. The members and personnel so detailed
13 or assigned, as the case may be, shall be de-
14 tailed or assigned from personnel billets in ex-
15 istence on the date of the enactment of this
16 Act.

17 (d) IMPLEMENTATION AND EFFECTIVE DATE.—

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

24 (2) POLICIES AND PROCEDURES.—

1 (A) IN GENERAL.—The Secretaries of the
2 military departments shall revise policies and
3 procedures as necessary to comply with this sec-
4 tion.

5 (B) UNIFORMITY.—The General Counsel
6 of the Department of Defense shall review the
7 policies and procedures revised under this para-
8 graph in order to ensure that any lack of uni-
9 formity in policies and procedures, as so re-
10 vised, among the military departments does not
11 render unconstitutional any policy or procedure,
12 as so revised.

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

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

