

108TH CONGRESS
2D SESSION

H. R. 4709

To amend the Uniform Code of Military Justice to bring sexual assault crimes under military law into parallel with sexual assault crimes under Federal law, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2004

Ms. LORETTA SANCHEZ of California introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend the Uniform Code of Military Justice to bring sexual assault crimes under military law into parallel with sexual assault crimes under Federal law, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Military Sexual Assault
5 Crimes Revision Act of 2004”.

1 **SEC. 2. MILITARY SEXUAL ABUSE.**

2 (a) SEXUAL ABUSE.—Section 920 of title 10, United
3 States Code (article 120 of the Uniform Code of Military
4 Justice), is amended to read as follows:

5 **“§ 920. Art. 120. Sexual abuse**

6 “(a) Any person subject to this chapter who know-
7 ingly—

8 “(1) causes another person to engage in a sex-
9 ual act by using force against that other person;

10 “(2) causes another person to engage in a sex-
11 ual act by threatening or placing that other person
12 in fear that any person will be subjected to death,
13 grievous bodily harm, or kidnapping;

14 “(3) renders another person unconscious and
15 thereby engages in a sexual act with that other per-
16 son; or

17 “(4) administers to another person by force or
18 threat of force, or without the knowledge or permis-
19 sion of that other person, a drug, intoxicant, or
20 other similar substance and thereby—

21 “(A) substantially impairs the ability of
22 that other person to appraise or control con-
23 duct; and

24 “(B) engages in a sexual act with that
25 other person;

1 is guilty of aggravated sexual abuse and shall be punished
2 as a court-martial may direct.

3 “(b) Any person subject to this chapter who know-
4 ingly engages in a sexual act with another person who has
5 not attained the age of twelve years is guilty of aggravated
6 sexual abuse of a child and shall be punished as a court-
7 martial may direct. In a prosecution under this subsection,
8 it need not be proven that the accused knew that the other
9 person engaging in the sexual act had not attained the
10 age of twelve years.

11 “(c) Any person subject to this chapter who know-
12 ingly—

13 “(1) causes another person to engage in a sex-
14 ual act by threatening or placing that other person
15 in fear (other than by threatening or placing that
16 other person in fear that any person will be sub-
17 jected to death, grievous bodily harm, or kidnap-
18 ping); or

19 “(2) engages in a sexual act with another per-
20 son if that other person is—

21 “(A) incapable of appraising the nature of
22 the conduct; or

23 “(B) physically incapable of declining par-
24 ticipation in, or communicating unwillingness to
25 engage in, that sexual act;

1 is guilty of sexual abuse and shall be punished as a court-
2 martial may direct.

3 “(d)(1) Any person subject to this chapter who know-
4 ingly engages in a sexual act with another person who—

5 “(A) has attained the age of twelve years but
6 has not attained the age of sixteen years; and

7 “(B) is not that person’s spouse;

8 is guilty of sexual abuse of a minor and shall be punished
9 as a court-martial may direct.

10 “(2) In a prosecution under this subsection, it need
11 not be proven that the accused knew the age of the other
12 person engaging in the sexual act.

13 “(3) In a prosecution under this subsection, it is an
14 affirmative defense that the accused reasonably believed
15 that the other person had attained the age of sixteen
16 years. The accused has the burden of proving a defense
17 under this paragraph by a preponderance of the evidence.

18 “(e) Any person subject to this chapter who know-
19 ingly engages in a sexual act with another person who is—

20 “(1) in official detention or confinement;

21 “(2) under the custodial, supervisory, or dis-
22 ciplinary authority of the person so engaging; and

23 “(3) is not that person’s spouse;

24 is guilty of sexual abuse of a prisoner and shall be pun-
25 ished as a court-martial may direct.

1 “(f) In this section, the term ‘sexual act’ means—

2 “(1) contact between the penis and the vulva or
3 the penis and the anus, and for purposes of this sub-
4 paragraph contact involving the penis occurs upon
5 penetration, however slight;

6 “(2) contact between the mouth and the penis,
7 the mouth and the vulva, or the mouth and the
8 anus;

9 “(3) the penetration, however slight, of the anal
10 or genital opening of another by a hand or finger or
11 by any object, with an intent to abuse, humiliate,
12 harass, degrade, or arouse or gratify the sexual de-
13 sire of any person; or

14 “(4) the intentional touching, not through the
15 clothing, of the genitalia of another person who has
16 not attained the age of sixteen years with an intent
17 to abuse, humiliate, harass, degrade, or arouse or
18 gratify the sexual desire of any person.”.

19 (b) CONFORMING AMENDMENTS.—(1) Paragraph (4)
20 of section 918 of title 10, United States Code (article 118
21 of the Uniform Code of Military Justice), is amended by
22 striking “rape,” and inserting “aggravated sexual abuse,
23 aggravated sexual abuse of a child,”.

24 (2) Subsection (b)(2)(B)(i) of section 843 of title 10,
25 United States Code (article 43 of the Uniform Code of

1 Military Justice), is amended by striking “Rape or carnal
2 knowledge” and inserting “Aggravated sexual abuse of a
3 child or sexual abuse of a minor”.

4 (c) CLERICAL AMENDMENT.—The table of sections
5 at the beginning of chapter 47 of title 10, United States
6 Code, is amended by striking the item relating to section
7 920 and inserting the following new item:

“920. Art. 120. Sexual abuse.”.

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect 6 months after the date of
10 the enactment of this Act and apply with respect to of-
11 fenses committed after such effective date.

12 (e) INTERIM MAXIMUM PUNISHMENTS.—Until the
13 President otherwise provides pursuant to section 856 of
14 title 10, United States Code (article 56 of the Uniform
15 Code of Military Justice), the punishment which a court-
16 martial may direct for an offense under section 920 of
17 such title (article 120 of the Uniform Code of Military
18 Justice), as amended by this section, may not exceed the
19 following limits:

20 (1) For aggravated sexual abuse or aggravated
21 sexual abuse of a child, such punishment may not
22 exceed dishonorable discharge, forfeiture of all pay
23 and allowances, and confinement for life without eli-
24 gibility for parole.

1 (2) For sexual abuse or sexual abuse of a
2 minor, such punishment may not exceed dishonor-
3 able discharge, forfeiture of all pay and allowances,
4 and confinement for twenty years.

5 (3) For sexual abuse of a prisoner, such pun-
6 ishment may not exceed bad-conduct discharge, for-
7 feiture of all pay and allowances, and confinement
8 for one year.

9 (f) NO PREEMPTION.—The prosecution or punish-
10 ment of an accused for an offense under section 920 of
11 title 10, United States Code (article 120 of the Uniform
12 Code of Military Justice), as amended by this section, does
13 not preclude the prosecution or punishment of that ac-
14 cused for any other offense.

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