

**AMENDMENT TO H.R. 6395**  
**OFFERED BY MS. SPEIER OF CALIFORNIA**

At the appropriate place in title V, insert the following new section:

1 **SEC. 5 \_\_\_\_ . PILOT PROGRAM ON PROSECUTION OF SPECIAL**  
2 **VICTIM OFFENSES COMMITTED BY**  
3 **ATTENDEES OF MILITARY SERVICE ACAD-**  
4 **EMIES.**

5 (a) PILOT PROGRAM.—Beginning not later than Jan-  
6 uary 1, 2021, the Secretary of Defense shall carry out a  
7 pilot program (referred to in this Act as the “Pilot Pro-  
8 gram”) under which the Secretary shall establish, in ac-  
9 cordance with this section, an independent authority to—

10 (1) review each covered special victim offense;

11 and

12 (2) determine whether such offense shall be re-  
13 ferred to trial by an appropriate court-martial con-  
14 vening authority.

15 (b) OFFICE OF THE CHIEF PROSECUTOR.—

16 (1) ESTABLISHMENT.—As part of the Pilot  
17 Program, the Secretary shall establish, within the  
18 Office of the Secretary of Defense, an Office of the  
19 Chief Prosecutor.

1           (2) HEAD OF OFFICE.—The head of the Office  
2 shall be known as the Chief Prosecutor. The Sec-  
3 retary shall appoint as the Chief Prosecutor a com-  
4 missioned officer in the grade of O-7 or above  
5 who—

6           (A) has significant experience prosecuting  
7 sexual assault trials by court-martial; and

8           (B) is outside the chain of command of  
9 any cadet or midshipman described in sub-  
10 section (f)(2).

11          (3) RESPONSIBILITIES.—The Chief Prosecutor  
12 shall exercise the authorities described in subsection  
13 (c) but only with respect to covered special victim of-  
14 fenses.

15          (4) SPECIAL RULE.—Notwithstanding any other  
16 provision of law, the military service from which the  
17 Chief Prosecutor is appointed is authorized an addi-  
18 tional billet for a general officer or a flag officer for  
19 each year in the two year period beginning with the  
20 year in which the appointment is made.

21          (5) TERMINATION.—The Office of the Chief  
22 Prosecutor shall terminate on the date on which the  
23 Pilot Program terminates under subsection (e).

24          (c) REFERRAL TO OFFICE OF THE CHIEF PROS-  
25 ECUTOR.—

1 (1) INVESTIGATION PHASE.—

2 (A) NOTICE AND INFORMATION.—A mili-  
3 tary criminal investigative organization that re-  
4 ceives an allegation of a covered special victim  
5 offense shall provide to the Chief Prosecutor  
6 and the commander of the military service  
7 academy concerned—

8 (i) timely notice of such allegation;  
9 and

10 (ii) any information and evidence ob-  
11 tained as the result a subsequent investiga-  
12 tion into the allegation.

13 (B) TRIAL COUNSEL.—A trial counsel as-  
14 signed to a case involving a covered special vic-  
15 tim offense shall, during the investigative phase  
16 of such case, provide the Chief Prosecutor with  
17 the information necessary to enable the Chief  
18 Prosecutor to make the determination required  
19 under paragraph (3).

20 (2) REFERRAL TO CHIEF PROSECUTOR.—In the  
21 case of a charge relating to a covered special victim  
22 offense, in addition to referring the charge to the  
23 staff judge advocate under subsection (a) or (b) of  
24 section 834 of title 10, United States Code (article  
25 34 of the Uniform Code of Military Justice), the

1 convening authority of the Armed Force of which  
2 the accused is a member shall refer, as soon as rea-  
3 sonably practicable, the charge to the Chief Pros-  
4 ecutor to make the determination required by para-  
5 graph (3).

6 (3) PROSECUTORIAL DETERMINATION.—The  
7 Chief Prosecutor shall make a determination regard-  
8 ing whether a charge relating to a covered special  
9 victim offense shall be referred to trial. If the Chief  
10 Prosecutor makes a determination that the charge  
11 shall be tried by court-martial, the Chief Prosecutor  
12 also shall determine whether the charge shall be  
13 tried by a general court-martial convened under sec-  
14 tion 822 of title 10, United States Code (article 22  
15 of the Uniform Code of Military Justice) or a special  
16 court-martial convened under section 823 of such  
17 title (article 23 of the Uniform Code of Military Jus-  
18 tice). The determination of whether to try a charge  
19 relating to a covered special victim offense by court-  
20 martial shall include a determination of whether to  
21 try any known offenses, including any lesser in-  
22 cluded offenses.

23 (4) EFFECT OF DETERMINATION AND APPEALS  
24 PROCESS.—

1 (A) DETERMINATION TO PROCEED TO  
2 TRIAL.—Subject to subparagraph (C), a deter-  
3 mination to try a charge relating to a covered  
4 special victim offense by court-martial under  
5 paragraph (3), and the determination as to the  
6 type of court-martial, shall be binding on any  
7 convening authority under chapter 47 of title  
8 10, United States Code (the Uniform Code of  
9 Military Justice) for a trial by court-martial on  
10 the charge.

11 (B) DETERMINATION NOT TO PROCEED TO  
12 TRIAL.—Subject to subparagraph (C), a deter-  
13 mination under paragraph (3) not to proceed to  
14 trial on a charge relating to a covered special  
15 victim offense by general or special court-mar-  
16 tial shall be binding on any convening authority  
17 under chapter 47 of title 10, United States  
18 Code (the Uniform Code of Military Justice) ex-  
19 cept that such determination shall not operate  
20 to terminate or otherwise alter the authority of  
21 the convening authority—

22 (i) to proceed to trial by court-martial  
23 on charges of collateral misconducted re-  
24 lated to the special victim offense; or

1 (ii) to impose non-judicial punishment  
2 in connection with the conduct covered by  
3 the charge as authorized by section 815 of  
4 such title (article 15 of the Uniform Code  
5 of Military Justice).

6 (C) APPEAL.—In a case in which a con-  
7 vening authority and the staff judge advocate  
8 advising such authority disagree with the deter-  
9 mination of the Chief Prosecutor under para-  
10 graph (3), the convening authority and staff  
11 judge advocate may jointly appeal the deter-  
12 mination to the General Counsel of the Depart-  
13 ment of Defense. The determination of the Gen-  
14 eral Counsel with respect to such appeal shall  
15 be binding on the Chief Prosecutor and the con-  
16 vening authority concerned.

17 (5) TRIAL BY RANDOMIZED JURY.—After the  
18 Chief Prosecutor makes a determination under para-  
19 graph (3) to proceed to trial on a charge relating to  
20 a covered special victim offense, the matter shall be  
21 tried by a court-martial convened within the Armed  
22 Force of which the accused is a member in accord-  
23 ance with the applicable provisions of chapter 47 of  
24 title 10, United States Code (the Uniform Code of  
25 Military Justice) except that, when convening a

1 court-martial that is a general or special court-mar-  
2 tial involving a covered special victim offense in  
3 which the accused elects a jury trial, the convening  
4 authority shall detail members of the Armed Forces  
5 as members thereof at random unless the  
6 obtainability of members of the Armed Forces for  
7 such court-martial prevents the convening authority  
8 from detailing such members at random.

9 (6) UNLAWFUL INFLUENCE OR COERCION.—

10 The actions of the Chief Prosecutor under this sub-  
11 section whether or not to try charges by court-mar-  
12 tial shall be free of unlawful or unauthorized influ-  
13 ence or coercion.

14 (d) EFFECT ON OTHER LAW.—This section shall su-  
15 perse any provision of chapter 47 of title 10, United  
16 States Code (the Uniform Code of Military Justice), that  
17 is inconsistent with this section, but only to the extent of  
18 the inconsistency.

19 (e) TERMINATION AND TRANSITION.—

20 (1) TERMINATION.—The authority of the Sec-  
21 retary to carry out the Pilot Program shall termi-  
22 nate four years after the date on which the Pilot  
23 Program is initiated.

24 (2) TRANSITION.—The Secretary shall take  
25 such actions as are necessary to ensure that, on the

1 date on which the Pilot Program terminates under  
2 paragraph (1), any matter referred to the Chief  
3 Prosecutor under subsection (c)(2), but with respect  
4 to which the Chief Prosecutor has not made a deter-  
5 mination under subsection (c)(3), shall be trans-  
6 ferred to the appropriate convening authority for  
7 consideration.

8 (f) DEFINITIONS.—In this Act:

9 (1) The term “Armed Force” means an Armed  
10 Force under the jurisdiction of the Secretary of a  
11 military department.

12 (2) The term “covered special victim offense”  
13 means a special victim offense—

14 (A) alleged to have been committed on or  
15 after the date of the enactment of this Act by  
16 a cadet of the United States Military Academy  
17 or the United States Air Force Academy, with-  
18 out regard to the location at which the offense  
19 was committed; or

20 (B) alleged to have been committed on or  
21 after the date of the enactment of this Act by  
22 a midshipman of the United States Naval Acad-  
23 emy, without regard to the location at which  
24 the offense was committed.



1           (3) The term “Secretary” means the Secretary  
2 of Defense.

3           (4) The term “special victim offense” means  
4 any of the following:

5           (A) An offense under section 917a, 920,  
6 920b, 920c, or 930 of title 10, United States  
7 Code (article 117a, 120, 120b, 120c, or 130 of  
8 the Uniform Code of Military Justice).

9           (B) A conspiracy to commit an offense  
10 specified in subparagraph (A) as punishable  
11 under section 881 of such title (article 81 of the  
12 Uniform Code of Military Justice).

13           (C) A solicitation to commit an offense  
14 specified in subparagraph (A) as punishable  
15 under section 882 of such title (article 82 of the  
16 Uniform Code of Military Justice).

17           (D) An attempt to commit an offense spec-  
18 ified in subparagraph (A) as punishable under  
19 section 880 of such title (article 80 of the Uni-  
20 form Code of Military Justice).

