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

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

SEC. 5. PILOT PROGRAM ON PROSECUTION OF SPECIAL VICTIM OFFENSES COMMITTED BY ATTENDEES OF MILITARY SERVICE ACADEMIES.

(a) PILOT PROGRAM.—Beginning not later than January 1, 2021, the Secretary of Defense shall carry out a pilot program (referred to in this Act as the “Pilot Program”) under which the Secretary shall establish, in accordance with this section, an independent authority to—

(1) review each covered special victim offense;

and

(2) determine whether such offense shall be referred to trial by an appropriate court-martial convening authority.

(b) OFFICE OF THE CHIEF PROSECUTOR.—

(1) ESTABLISHMENT.—As part of the Pilot Program, the Secretary shall establish, within the Office of the Secretary of Defense, an Office of the Chief Prosecutor.
(2) HEAD OF OFFICE.—The head of the Office shall be known as the Chief Prosecutor. The Secretary shall appoint as the Chief Prosecutor a commissioned officer in the grade of O–7 or above who—

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

(B) is outside the chain of command of any cadet or midshipman described in subsection (f)(2).

(3) RESPONSIBILITIES.—The Chief Prosecutor shall exercise the authorities described in subsection (c) but only with respect to covered special victim offenses.

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

(5) TERMINATION.—The Office of the Chief Prosecutor shall terminate on the date on which the Pilot Program terminates under subsection (e).
(1) INVESTIGATION PHASE.—

   (A) NOTICE AND INFORMATION.—A military criminal investigative organization that receives an allegation of a covered special victim offense shall provide to the Chief Prosecutor and the commander of the military service academy concerned—

   (i) timely notice of such allegation;

   and

   (ii) any information and evidence obtained as the result of a subsequent investigation into the allegation.

   (B) TRIAL COUNSEL.—A trial counsel assigned to a case involving a covered special victim offense shall, during the investigative phase of such case, provide the Chief Prosecutor with the information necessary to enable the Chief Prosecutor to make the determination required under paragraph (3).

(2) REFERRAL TO CHIEF PROSECUTOR.—In the case of a charge relating to a covered special victim offense, in addition to referring the charge to the staff judge advocate under subsection (a) or (b) of section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice), the
convening authority of the Armed Force of which
the accused is a member shall refer, as soon as rea-
sonably practicable, the charge to the Chief Pros-
ecutor to make the determination required by para-
graph (3).

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

(4) EFFECT OF DETERMINATION AND APPEALS
PROCESS.—
(A) Determination to Proceed to Trial.—Subject to subparagraph (C), a determination to try a charge relating to a covered special victim offense by court-martial under paragraph (3), and the determination as to the type of court-martial, shall be binding on any convening authority under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice) for a trial by court-martial on the charge.

(B) Determination Not to Proceed to Trial.—Subject to subparagraph (C), a determination under paragraph (3) not to proceed to trial on a charge relating to a covered special victim offense by general or special court-martial shall be binding on any convening authority under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice) except that such determination shall not operate to terminate or otherwise alter the authority of the convening authority—

(i) to proceed to trial by court-martial on charges of collateral misconducted related to the special victim offense; or
(ii) to impose non-judicial punishment in connection with the conduct covered by the charge as authorized by section 815 of such title (article 15 of the Uniform Code of Military Justice).

(C) APPEAL.—In a case in which a convening authority and the staff judge advocate advising such authority disagree with the determination of the Chief Prosecutor under paragraph (3), the convening authority and staff judge advocate may jointly appeal the determination to the General Counsel of the Department of Defense. The determination of the General Counsel with respect to such appeal shall be binding on the Chief Prosecutor and the convening authority concerned.

(5) TRIAL BY RANDOMIZED JURY.—After the Chief Prosecutor makes a determination under paragraph (3) to proceed to trial on a charge relating to a covered special victim offense, the matter shall be tried by a court-martial convened within the Armed Force of which the accused is a member in accordance with the applicable provisions of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice) except that, when convening a
court-martial that is a general or special court-martial involving a covered special victim offense in which the accused elects a jury trial, the convening authority shall detail members of the Armed Forces as members thereof at random unless the obtainability of members of the Armed Forces for such court-martial prevents the convening authority from detailing such members at random.

(6) **UNLAWFUL INFLUENCE OR COERCION.**—

The actions 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.

(d) **EFFECT ON OTHER LAW.**—This section shall supersede any provision of chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), that is inconsistent with this section, but only to the extent of the inconsistency.

(e) **TERMINATION AND TRANSITION.**—

(1) **TERMINATION.**—The authority of the Secretary to carry out the Pilot Program shall terminate four years after the date on which the Pilot Program is initiated.

(2) **TRANSITION.**—The Secretary shall take such actions as are necessary to ensure that, on the
date on which the Pilot Program terminates under paragraph (1), any matter referred to the Chief Prosecutor under subsection (c)(2), but with respect to which the Chief Prosecutor has not made a determination under subsection (c)(3), shall be transferred to the appropriate convening authority for consideration.

(f) DEFINITIONS.—In this Act:

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

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

(A) alleged to have been committed on or after the date of the enactment of this Act by a cadet of the United States Military Academy or the United States Air Force Academy, without regard to the location at which the offense was committed; or

(B) alleged to have been committed on or after the date of the enactment of this Act by a midshipman of the United States Naval Academy, without regard to the location at which the offense was committed.
(3) The term “Secretary” means the Secretary of Defense.

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

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

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

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

   (D) An attempt to commit an offense specified in subparagraph (A) as punishable under section 880 of such title (article 80 of the Uniform Code of Military Justice).