

**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 \_\_\_\_ . AUTHORITY OF MILITARY JUDGES AND MILI-**  
2 **TARY MAGISTRATES TO ISSUE MILITARY**  
3 **COURT PROTECTIVE ORDERS.**

4 (a) JUDGE-ISSUED MILITARY COURT PROTECTIVE  
5 ORDERS.—Chapter 80 of title 10, United States Code, is  
6 amended by adding at the end the following new section  
7 **“§ 1567b. Authority of military judges and military**  
8 **magistrates to issue military court pro-**  
9 **TECTIVE ORDERS**

10 “(a) AUTHORITY TO ISSUE MILITARY COURT PRO-  
11 TECTIVE ORDERS.—The President shall prescribe regula-  
12 tions authorizing military judges and military magistrates  
13 to issue protective orders in accordance with this section.  
14 A protective order issued in accordance with this section  
15 shall be known as a ‘military court protective order’.  
16 Under the regulations prescribed by the President, mili-  
17 tary judges and military magistrates shall have exclusive  
18 jurisdiction over the issuance, appeal, renewal, and termi-  
19 nation of military court protective orders and such orders

1 may not be issued, appealed, renewed, or terminated by  
2 State, local, territorial, or tribal courts.

3 “(b) ENFORCEMENT BY CIVILIAN AUTHORITIES.—

4 “(1) IN GENERAL.—In prescribing regulations  
5 for military court protective orders, the President  
6 shall seek to ensure that the protective orders are  
7 issued in a form and manner that is enforceable by  
8 State, local, territorial, and tribal civilian law en-  
9 forcement authorities.

10 “(2) FULL FAITH AND CREDIT.—Any military  
11 court protective order, should be accorded full faith  
12 and credit by the court of a State, local, territorial,  
13 or tribal jurisdiction (the enforcing jurisdiction) and  
14 enforced by the court and law enforcement personnel  
15 of that jurisdiction as if it were the order of the en-  
16 forcing jurisdiction.

17 “(3) RECIPROCITY AGREEMENTS.—Consistent  
18 with paragraphs (1) and (2), the Secretary of De-  
19 fense shall seek to enter into reciprocity agreements  
20 with State, local, territorial, and tribal civilian law  
21 enforcement authorities under which—

22 “(A) such authorities agree to enforce mili-  
23 tary court protective orders; and

1           “(B) the Secretary agrees to enforce pro-  
2            ective orders issued by such authorities that  
3            are consistent with section 2265(b) of title 18.

4           “(c) PURPOSE AND FORM OF ISSUANCE.—A military  
5            court protective order may be issued for the purpose of  
6            protecting a victim of an alleged sex or domestic violence  
7            offense, or a family member or associate of the victim,  
8            from a person subject to chapter 47 of this title (the Uni-  
9            form Code of Military Justice) who is alleged to have com-  
10           mitted such an offense.

11          “(d) TIMING AND MANNER OF ISSUANCE.—A mili-  
12            tary court protective order may be issued—

13            “(1) by a military magistrate, before referral of  
14            charges and specifications to court-martial for trial,  
15            at the request of—

16            “(A) a victim of an alleged sex or domestic  
17            violence offense; or

18            “(B) a Special Victims’ Counsel or other  
19            qualified counsel acting on behalf of the victim;  
20            or

21            “(2) by a military judge, after referral of  
22            charges and specifications to court-martial for trial,  
23            at the request of qualified counsel, which may in-  
24            clude a Special Victims’ Counsel acting on behalf of

1 the victim or trial counsel acting on behalf of the  
2 prosecution.

3 “(e) DURATION AND RENEWAL OF PROTECTIVE  
4 ORDER.—

5 “(1) DURATION.—A military court protective  
6 order shall be issued for an initial period of thirty  
7 days and may be reissued for one or more additional  
8 periods of thirty days in accordance with paragraph  
9 (2).

10 “(2) EXPIRATION AND RENEWAL.—Before the  
11 expiration of any 30 day period during which a mili-  
12 tary court protective order is in effect, a military  
13 judge or military magistrate shall review the order  
14 to determine whether the order will terminate at the  
15 expiration of such period or be reissued for an addi-  
16 tional period of 30 days.

17 “(3) NOTICE TO PROTECTED PERSONS.—If a  
18 military judge or military magistrate determines  
19 under paragraph (2) that a military court protective  
20 order will terminate, the judge or magistrate con-  
21 cerned shall provide to each person protected by the  
22 order reasonable, timely, and accurate notification of  
23 the termination.

24 “(f) REVIEW OF MAGISTRATE-ISSUED ORDERS.—

1           “(1) REVIEW.—A military judge, at the request  
2 of the person subject to a military court protective  
3 order that was issued by a military magistrate, may  
4 review the order to determine if the order was prop-  
5 erly issued by the magistrate.

6           “(2) STANDARDS OF REVIEW.—A military  
7 judge who reviews an order under paragraph (1)  
8 shall terminate the order if the judge determines  
9 that—

10           “(A) the military magistrate’s decision to  
11 issue the order was an abuse of discretion, and  
12 there is not sufficient information presented to  
13 the military judge to justify the order; or

14           “(B) information not presented to the mili-  
15 tary magistrate establishes that the military  
16 court protective order should be terminated.

17           “(g) DUE PROCESS.—

18           “(1) PROTECTION OF DUE PROCESS.—Except  
19 as provided in paragraph (2), a protective order au-  
20 thorized under subsection (a) may be issued only  
21 after reasonable notice and opportunity to be heard,  
22 directly or through counsel, is given to the person  
23 against whom the order is sought sufficient to pro-  
24 tect that person’s right to due process.

1           “(2) EMERGENCY ORDERS.—A protective order  
2           on an emergency basis may be issued on an ex parte  
3           basis under such rules and limitations as the Presi-  
4           dent shall prescribe. In the case of ex parte orders,  
5           notice and opportunity to be heard must be provided  
6           within a reasonable time after the order is issued,  
7           sufficient to protect the respondent’s due process  
8           rights.

9           “(h) RIGHTS OF VICTIM.—The victim of an alleged  
10          sex or domestic violence offense who seeks a military court  
11          protective order has, in addition to any rights provided  
12          under section 806b (article 6b), the following rights with  
13          respect to any proceeding involving the protective order:

14                 “(1) The right to reasonable, accurate, and  
15                 timely notice of the proceeding and of any change in  
16                 the status of the protective order resulting from the  
17                 proceeding.

18                 “(2) The right to be reasonably heard at the  
19                 proceeding.

20                 “(3) The right to appear in person, with or  
21                 without counsel, at the proceeding.

22                 “(4) The right be represented by qualified  
23                 counsel in connection with the proceeding, which  
24                 may include a Special Victims’ Counsel.

1           “(5) The reasonable right to confer with a rep-  
2           resentative of the command of the accused and  
3           counsel representing the government at the pro-  
4           ceeding, as applicable.

5           “(6) The right to submit a written statement,  
6           directly or through counsel, for consideration by the  
7           military judge or military magistrate presiding over  
8           the proceeding.

9           “(i) RESTRICTIONS ON ACCESS TO FIREARMS.—

10           “(1) IN GENERAL.—Notwithstanding any other  
11           provision of law—

12           “(A) a military court protective order  
13           issued on an ex parte basis shall restrain a per-  
14           son from possessing, receiving, or otherwise ac-  
15           cessing a firearm; and

16           “(B) a military court protective order  
17           issued after the person to be subject to the  
18           order has received notice and opportunity to be  
19           heard on the order, shall restrain such person  
20           from possessing, receiving, or otherwise access-  
21           ing a firearm in accordance with section 922 of  
22           title 18.

23           “(2) NOTICE TO ATTORNEY GENERAL.—Not  
24           later than 72 hours after the issuance of an order  
25           described in paragraph (1), the Secretary of Defense

1 shall submit to the Attorney General a record of the  
2 order.

3 “(j) TREATMENT AS LAWFUL ORDER.—A military  
4 court protective order shall be treated as a lawful order  
5 for purposes of the application of section 892 (article 92)  
6 and a violation of such an order shall be punishable under  
7 such section (article).

8 “(k) COMMAND MATTERS.—

9 “(1) INCLUSION IN PERSONNEL FILE.—Any  
10 military court protective order against a member  
11 shall be placed and retained in the military per-  
12 sonnel file of the member.

13 “(2) NOTICE TO CIVILIAN LAW ENFORCEMENT  
14 OF ISSUANCE.—Any military court protective order  
15 against a member shall be treated as a military pro-  
16 tective order for purposes of section 1567a including  
17 for purposes of mandatory notification of issuance to  
18 civilian law enforcement as required by that section.

19 “(l) RELATIONSHIP TO OTHER AUTHORITIES.—  
20 Nothing in this section may be construed as prohibiting—

21 “(1) a commanding officer from issuing or en-  
22 forcing any otherwise lawful order in the nature of  
23 a protective order to or against members of the offi-  
24 cer’s command;

1           “(2) pretrial restraint in accordance with Rule  
2           for Courts-Martial 304 (as set forth in the Manual  
3           for Courts-Martial, 2019 edition, or any successor  
4           rule); or

5           “(3) pretrial confinement in accordance with  
6           Rule for Courts-Martial 305 (as set forth in the  
7           Manual for Courts-Martial, 2019 edition, or any suc-  
8           cessor rule)

9           “(m) DELIVERY TO CERTAIN PERSONS.—A physical  
10          and electronic copy of any military court protective order  
11          shall be provided, as soon as practicable after issuance,  
12          to the following:

13           “(1) The person or persons protected by the  
14          protective order or to the guardian of such a person  
15          if such person is under the age of 18 years.

16           “(2) The person subject to the protective order.

17           “(3) To such commanding officer in the chain  
18          of command of the person subject to the protective  
19          order as the President shall prescribe for purposes  
20          of this section.

21          “(n) DEFINITIONS.—In this section:

22           “(1) CONTACT.—The term ‘contact’ includes  
23          contact in person or through a third party, or  
24          through gifts,

1           “(2) COMMUNICATION.—The term ‘communica-  
2           tion’ includes communication in person or through a  
3           third party, and by telephone or in writing by letter,  
4           data fax, or other electronic means.

5           “(3) COVERED SEX OR DOMESTIC VIOLENCE  
6           OFFENSE.—The term ‘covered sex or domestic vio-  
7           lence offense’ means—

8                   “(A) an alleged sex-related offense (as de-  
9                   fined in section 1044e(h)); or

10                   “(B) an alleged offense of domestic vio-  
11                   lence under section 928b of this title (article  
12                   128b of the Uniform Code of Military Justice)  
13                   or an attempt to commit such an offense that  
14                   is punishable under section 880 of this title (ar-  
15                   ticle 80 of the Uniform Code of Military Jus-  
16                   tice).

17           “(4) MILITARY JUDGE AND MILITARY MAG-  
18           ISTRATE.—The terms ‘military judge’ and ‘military  
19           magistrate’ mean a commissioned officer of the  
20           armed forces who is a member of the bar of a Fed-  
21           eral court or a member of the bar of the highest  
22           court of a State and who is certified to be qualified,  
23           by reason of education, training, experience, and ju-  
24           dicial temperament, for duty as a military judge or

1 magistrate by the Judge Advocate General of the  
2 armed force of which the officer is a member.

3 “(5) PROTECTIVE ORDER.—The term ‘protec-  
4 tive order’ means an order that—

5 “(A) restrains a person from harassing,  
6 stalking, threatening, or otherwise contacting or  
7 communicating with a victim of an alleged sex  
8 or domestic violence offense, or a family mem-  
9 ber or associate of the victim, or engaging in  
10 other conduct that would place such other per-  
11 son in reasonable fear of bodily injury to any  
12 such other person;

13 “(B) by its terms, explicitly prohibits—

14 “(i) the use, attempted use, or threat-  
15 ened use of physical force by the person  
16 against a victim of an alleged sex or do-  
17 mestic violence offense, or a family mem-  
18 ber or associate of the victim, that would  
19 reasonably be expected to cause bodily in-  
20 jury;

21 “(ii) the initiation by the person re-  
22 strained of any contact or communication  
23 with such other person; or

24 “(iii) actions described by both clauses  
25 (i) and (ii).

1           “(6) SPECIAL VICTIMS’ COUNSEL.—The term  
2           ‘Special Victims Counsel’ means a Special Victims’  
3           Counsel described in section 1044e and includes a  
4           Victims’ Legal Counsel of the Navy.”.

5           (b) CLERICAL AMENDMENT.—The table of sections  
6           at the beginning of such chapter is amended by adding  
7           at the end the following new item:

          “1567b. Authority of military judges and military magistrates to issue military  
          court protective orders.”.

8           (c) IMPLEMENTATION.—The President shall pre-  
9           scribe regulations implementing section 1567b of title 10,  
10          United States Code, not later than one year after the date  
11          of the enactment of this Act.

