



## What to Know About Victims' Rights

### Background

The FY14 and FY15 National Defense Authorization Acts (NDAA) added and amended rights for victims of offenses punishable under the Uniform Code of Military Justice (UCMJ). A significant change is the addition of Article 6b, UCMJ, modeled after the Crime Victims' Rights Act (18 U.S.C. §3771). This Practice Advisory reviews numerous victims' rights and describes the implementation of Article 6b as approved by the Staff Judge Advocate to the Commandant of the Marine Corps. Because many of the rights listed below span multiple stages of the military justice process, it is important to read this Practice Advisory in its entirety.

### Who is a "victim of an offense" for purposes of these rights?

The term "victim of an offense" is defined by Article 6b, UCMJ, as "an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under [the UCMJ]." An individual need not be named in the specification to qualify as a victim. For example, the spouse of a homicide victim would qualify as a victim if the surviving spouse suffered direct emotional or pecuniary harm as a result of the offense.

If the victim is incompetent, incapacitated, deceased, or under 18 years old and not a member of the Armed Forces, another individual may be designated to assume the rights of the victim. See the coming practice advisory to discuss appointment of the victim's representative.

In the Marine Corps, eligible victims of any crime under the UCMJ may seek assistance from a victims' legal counsel (VLC). As a general rule, any victim eligible for legal assistance is eligible for victim counsel services. (MCO P5800.16A, Manual for Legal Administration (LEGADMINMAN) Ch. 6; see also 10 U.S.C. 1044e; 10 U.S.C. 1565b, and NDAA FY15, Section 533 for reserve member eligibility).

### *Victim Rights Afforded by Article 6b, UCMJ*

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any of the following:
  - (A) A public hearing concerning the continuation of confinement prior to trial of the accused;
  - (B) A preliminary hearing under section 832 of this title relating to the offense;
  - (C) A court-martial relating to the offense;
  - (D) A public proceeding of the service clemency and parole board relating to the offense; and
  - (E) The release or escape of the accused unless such notice may endanger the safety of any person.
- (3) The right not to be excluded from any public hearing or proceeding described in paragraph (2) unless the military judge or [preliminary hearing officer], after receiving clear and convincing evidence, determines that testimony by the victim of an offense under this chapter would be materially altered if the victim heard other testimony at that hearing or proceeding.
- (4) The right to be reasonably heard at any of the following:
  - (A) A public hearing concerning the continuation of confinement prior to trial of the accused
  - (B) A sentencing hearing relating to the offense
  - (C) A public proceeding of the service Clemency and Parole Board relating to the offense
- (5) The reasonable right to confer with the counsel representing the Government at any proceeding described in paragraph (2).
- (6) The right to receive restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the dignity and privacy of the victim.

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## Victims' Right to be Protected from the Accused

**Military Protective Orders (MPOs).** Victims may request and commanders may issue, MPOs whenever it is necessary to safeguard victims, quell disturbances, and maintain good order and discipline. Commands should provide the local Provost Marshal Office (PMO) with a copy of the MPO. (Marine Corps Order (MCO) 1754.11 (Marine Corps Family Advocacy and General Counseling Program); MCO 1752.5B (Sexual Assault Prevention and Response (SAPR) Program), and MCO 5800.14 (Victim Witness Assistance Program (VWAP) Order)). If an MPO is issued and any individual involved in the order does not reside on a military installation at any time during the duration of the MPO, the commander of the military installation, via PMO, shall notify the appropriate civilian authorities of (1) the issuance of the MPO, and (2) the individuals involved in the order. (10 U.S.C. 1567A; 26 June 2014 Under Secretary of Defense Memorandum, "Placing Military Protective Orders in the National Crime Information Center Protective Order File." Additional guidance from HQMC pending.)

**Reassignment of the Accused.** Commanders may temporarily reassign or remove a member of their unit accused of a sexual assault offense for the purpose of maintaining good order and discipline. Per MARADMIN 031/14, this is normally accomplished via intra-unit or unit transfers as opposed PCS orders.

**Expedited Transfer of Victim.** For sexual assaults falling under the Sexual Assault Prevention and Response Program (SAPR), commanding officers shall ensure that victims are provided reasonable protection from the alleged offender, to include processing an eligible victim's request for an expedited transfer to another location. COs shall approve or disapprove the request for transfer within 72 hours of receiving the signed and dated transfer request by considering factors found in MCO 1752.5B and DoDI 6495.02 (SAPR Program Procedures).

**Military Dependent Personal Safety Moves.** Dependents of service members who are victims of abuse by the service member may apply for a Personal Safety Move. (JTR, Para. U5106, formerly JFTR, Para. U5205). Contact your local Family Advocacy Program Office for specific guidance.

**Victim/Witness Protection.** Victims, victim support personnel, and government witnesses must be provided separate waiting rooms during courts-martial and administrative hearings. Such waiting rooms shall be out of the sight and hearing of the accused or respondent and also from defense or respondent witnesses. (MCO 5800.14)

For cases that involve significant victim or witness security issues, trial counsel shall coordinate with investigative agencies and the Department of Justice to provide victim/witness protection. Trial Services Administration Officers will also serve as the courtroom security officer for the legal service support area. (Pending Legal Support and Administrative Manual, (LSAM) Vol 1, Ch. 3).

**Release or Escape of Accused from Pretrial Confinement.** If the pretrial confinement reviewing officer orders release of the prisoner, the trial counsel shall notify the victim, via VLC if applicable. Additionally, trial counsel shall notify the victim, via VLC if applicable, if a prisoner placed in pretrial confinement escapes. (Article 6b, UCMJ; MCO 5800.14).

## Victims' Rights during the Military Justice Process

**Avoid Unreasonable Delay.** Victims have the right to proceedings free from unreasonable delay. (Article 6b and MCO 5800.14).

**Initial Disposition Decisions.** Victims of a possible sex-related offense under the UCMJ have the right to state, either at the time of making an unrestricted report of the allegation or during the criminal investigation of the allegation, whether the victim believes that the offense alleged is a sex-related offense. (NDAA FY14, Section 1744, ALNAV 052/14).

Victims of offenses under the UCMJ have the right to express their views to the convening authority as to disposition of their case. In cases involving sex-related offenses, Sexual Assault Initial Disposition Authorities (SA-IDA) are specifically required to consider the views of the victim when making a decision to go forward with court-

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martial charges, impose non-judicial punishment, administrative action or take no further action. (NDAA FY14, Section 1744, ALNAV 052/14, Pending LSAM, Vol 1, Ch. 3, DODI 1030.2 Victim Witness Assistance Procedures).

Before the SA-IDA makes the initial disposition decision he or she must consider the victim's preference concerning whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense. If the victim expresses a preference that the offense be prosecuted in a civilian court with jurisdiction over the offense, the SJA shall ensure that the appropriate civilian authority is notified of this preference. While persuasive, the victim's preference is not binding on the SA-IDA and, in appropriate cases, the SA-IDA may take initial disposition regardless of the victim's preference. (NDAA FY15, Section 534, Pending LSAM, Vol 1, Ch. 3).

**Timely Notice of All Legal Proceedings.** The victim shall be provided with reasonable, accurate, and timely notice of all required legal proceedings by the trial counsel, via the VLC when applicable, as required by Article 6b, UCMJ. (See also Practice Advisory 4-14, Disclosure of Information to Crime Victims.)

Section 534 of FY15 NDAA further requires that counsel for a victim must be provided notice of the scheduling of any proceeding in connection with the prosecution in order to permit the counsel the opportunity to prepare for the proceeding.

**Right Not to be Excluded.** Victims have the right under Article 6b, UCMJ, not to be excluded from: (1) any public hearing concerning continuation of confinement prior to trial, (2) the Article 32 preliminary hearing, (3) any court-martial relating to the offense against the victim, and (4) any public proceeding of the Clemency and Parole Board relating to the offense. The presiding officer, preliminary hearing officer, or military judge, as applicable, may only exclude the victim after receiving clear and convincing evidence that testimony by the victim would be materially altered if the victim heard other testimony at that hearing or proceeding.

Furthermore, the Marine Corps VWAP order provides victims the right to be present at all public courts-martial, NJPs, and administrative hearings, unless the court or legal advisor, after receiving clear and convincing evidence that the testimony by the victim would be materially altered if the victim heard other testimony at that proceeding. (MCO 5800.14).

**Article 32, Preliminary Hearing.** Victims may not be compelled to testify during an Article 32 preliminary hearing. For purposes of Article 32, UCMJ, a victim is defined as "a person who . . . is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification being considered and . . . is named in one of the specifications." Upon request victims may receive access to or a copy of the recording of the hearing not later than a reasonable time following dismissal of the charges, unless charges are dismissed for the purpose of re-referral, or court-martial adjournment. (10 U.S.C. 832 as amended by the NDAA FY14, ALNAV 086/14).

**Right to be Heard.** Victims have the right to be heard at (1) any public hearing concerning the continuation of confinement prior to trial, (2) during any court-martial pursuant to Military Rules of Evidence (M.R.E.) 412, 513, and 514, (3) any sentencing hearing relating to the offense, and (4) any public proceeding of the Clemency and Parole Board. When the victim of a sex-related offense has a right to be heard under an M.R.E., the victim may exercise this right through counsel. (Article 6b, UCMJ, NDAA FY15, Section 534).

Should the victim exercise the right to be reasonably heard at any stage of the court-martial, the Marine Corps VWAP order requires that trial counsel inform victims about the availability of services such as transportation, parking, childcare, lodging, and courtroom translators or interpreters, and shall assist in securing needed services. Additionally, upon request by the victim, the trial counsel shall take reasonable steps to inform that person's employer of the reasons for that person's absence from work. (MCO 5800.14).

**Right to File Writ of Mandamus.** Victims have the right, in appropriate cases to petition the appropriate Court of Criminal Appeals for a writ of mandamus when the victim believes that a court-martial ruling violates the victim's rights as afforded by M.R.E. 412 or 513. (FY15 NDAA, Section 535).

**Right to Confer with Trial Counsel.** Victims have the reasonable right to confer with the counsel representing the government at all stages of the military justice process. (Article 6b, UCMJ; MCO 5800.14).

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**Information and Document Sharing.** For victims represented by victims' legal counsel (VLC), PA 4-14 outlines the information and documents that trial counsel must disclose to victims through their VLC at different stages in the military justice process.

**Interview of the Victim or Victim Representative.** Communication with represented victims related to the subject of the representation requires notice to the detailed VLC, or other assigned counsel, including civilian counsel unless otherwise authorized by law or court order. This requirement includes requests to interview the victim by trial counsel, defense counsel, and criminal investigators acting on behalf of the trial counsel. Victims have the right to have their VLC or victim advocate present during a defense interview. This right is triggered upon the earlier of (1) notice of representation by VLC, or (2) when the trial counsel informs the defense counsel that the victim will be called as a witness at an Article 32 preliminary hearing or at a court-martial. (LEGADMINMAN, Ch. 6, Pending LSAM, Vol 1, Ch. 5, Article 46(b), UCMJ (as amended by NDAA FY15) and Rule 4.2 of JAGINST 5803.1D).

**Restitution.** (a) For crimes involving willful damage to property or the wrongful taking of property by members of the Armed Forces, victims may request relief via the Article 139, UCMJ, Redress of Injuries to Property, process. During this process, the commander convenes a board to investigate the property damage or taking, and, if necessary, to assess damages. The amount approved by the commander is then charged against the pay of the offender. (JAGMAN, Chapter 4). Command Legal Officers are responsible for ensuring that victims are notified of their right to file a claim under Article 139, UCMJ. (Pending LSAM, Vol 2, Ch 1).

(b) Commanders may consider restitution when making an initial disposition decision under R.C.M. 306, particularly when the accused agrees to or has already provided restitution to the victim. Commanders may also include restitution to the victim as a condition of a pretrial agreement, to include in cases not ultimately resolved at a court-martial.

**Reprisal and Retaliation.** All service members and DoN personnel who report to proper authority those acts or omissions they reasonably believe to be violations of law or regulation, fraud, waste, or mismanagement, shall be free from reprisal and retaliation. At a minimum, retaliation includes taking or threatening to take an adverse personnel action or withholding or threatening to withhold a favorable personnel action, with respect to a member of the Armed Forces because the member reported a criminal offense. Additionally, retaliation includes ostracism and such acts of maltreatment committed by peers of a member of the Armed Forces or by other persons because the member reported a criminal offense. The Navy and Marine Corps Inspector General Offices investigate claims of reprisal or retaliation and except in certain cases will refer investigations of ostracism and maltreatment to the appropriate command. (SECNAVINST 5370.7D).

**Declination to Participate.** Victims of sexual assault may decline to participate in the investigation or prosecution of the assault. However, the victim should be informed by the VLC if applicable, SARC, or SAPR VA that the investigation or prosecution may continue regardless of whether the victim participates. (DoDI 6495.02)

## **Post-Trial**

**Record of Trial, Submit Matters.** Victims of certain sexual offenses have the right to receive prepared court-martial documents in accordance with R.C.M. 1103 as amended by Executive Order 13669 and crime victims of an offense under the UCMJ for which the accused was found guilty may submit matters in the post-trial phase of a court-martial. If the VLC or a victim submits matters for the convening authority's consideration, SJAs and, if applicable, Regional Review Officers, must comply with the requirements of R.C.M. 1106(f)(7) to the extent that the submission raises "new matter." (Article 54(e) Article 60(d), UCMJ, R.C.M. 1103/1105A/1107).

**Notification of Change in Prisoner Status.** Victims have the right to receive information concerning a change in a convicted prisoner's status. The victim's election to receive this information is documented on in DD Form 2704. Trial counsel must properly complete and submit the DD Form 2704 to the brig to ensure that victims receive the proper notifications from brig personnel.



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**Notification of Appellate Proceedings.** Victims will be notified when an offender's case is docketed for review by the Navy-Marine Corps Court of Criminal Appeals, granted review by the Court of Appeals for the Armed Forces or by the Supreme Court. The U.S. Government appellate counsel or appropriate designee will ensure that all victims who have indicated a desire to be notified receive: notification of the scheduling, including changes and delays, of each public court proceeding that the victim is entitled to attend, and notification of the decision of the court. When an offender's case is reviewed by the Office of the Judge Advocate General pursuant to Article 69 of the UCMJ, the Judge Advocate General or designee will ensure that all victims who have indicated a desire to be notified on DD form 2704 receive notification of the outcome of the review. DD form 2704 shall not be included with the record of trial, but must be forwarded separately to Code 46 pursuant to MCO 5800.14. (Pending changes to DODI 1030.02; MCO 5800.14 and DD form 2704)

**Clemency and Parole Hearings.** Article 6b and the Marine Corps VWAP order provide victims the right to notice of clemency or parole hearings involving the accused. The Marine Corps VWAP order also tasks the confinement facility Victim Witness Assistance Coordinator (VWAC) with notifying the victims at least 45 days in advance (or as soon as the date is established) of the clemency or parole hearings held by the cognizant military Clemency and Parole Board. Victims also have the right to be reasonably heard at clemency or parole hearings involving the accused. The Marine Corps VWAP order tasks the confinement facility VWAC with notifying the victims of their right to request a personal appearance at the parole hearing and to submit statements to the appropriate Clemency and Parole Board describing the impact on their lives. Victims have the right not to be excluded from these proceedings unless a presiding officer, after receiving clear and convincing evidence, determines that testimony by the victim of an offense under this chapter would be materially altered if the victim heard other testimony at that hearing or proceeding. Victims also have the reasonable right to confer with counsel for the government at public proceeding of the service clemency and parole board. (Article 6b, UCMJ; MCO 5800.14).

## **Points of Contact**

Questions about these rights may be directed to the Head, JMJ, LtCol Angela Wissman, USMCR, at [angela.wissman@usmc.mil](mailto:angela.wissman@usmc.mil) or (703)693-9005; Deputy Head (Policy and Legislation), JMJ, Maj Ben Robles, USMC, at [benjamin.robles@usmc.mil](mailto:benjamin.robles@usmc.mil) or (703)614-1513; or Maj Mark D. Sameit, USMC OIC, Trial Counsel Assistance Program, [mark.sameit@usmc.mil](mailto:mark.sameit@usmc.mil) or (703)693-8955;

Questions concerning the Victims' Legal Counsel Organization (VLCO) may be directed to the OIC, VLCO, Col Carol Joyce, USMC, at [carol.k.joyce@usmc.mil](mailto:carol.k.joyce@usmc.mil) or (703)693-9524 or Deputy OIC, VLCO, Maj Jahn Olson, USMC, at [jahn.olson@usmc.mil](mailto:jahn.olson@usmc.mil) or (703)693-9526.

Victims represented by counsel should contact their VLC regarding these rights.