

**JUDICIAL PROCEEDINGS PANEL  
REQUEST FOR INFORMATION SET # 1**

**V. Compensation / Restitution**

**Adequacy of Compensation and Restitution for Crime Victims Under UCMJ:** An assessment of the adequacy of the provision of compensation and restitution for victims of offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), and develop recommendations on expanding such compensation and restitution, including consideration of the options as follows:

- Providing the forfeited wages of incarcerated members of the Armed Forces to victims of offenses as compensation.
- Including bodily harm among the injuries meriting compensation for redress under section 939 of title 10, United States Code (Article 139 of the Uniform Code of Military Justice).
- Requiring restitution by members of the Armed Forces to victims of their offenses upon the direction of a court-martial. (*FY 14 NDAA*)

**53. Services: Provide the Services’ definitions of, and distinction between, “compensation” and “restitution” as those terms relate to victims of criminal offenses. Please provide a copy of (or hyperlink to) source regulations, instructions, directives, etc. for these definitions.**

<b>USA</b>	<p>The Army is unaware of any regulation, instruction, or directive that defines “compensation” and “restitution” as those terms relate to victims of criminal offenses. However, those terms are referenced in Article 139, UCMJ, AR 27-20, DA PAM 27-162, AR 27-10, 10 U.S. Code §1059, AR 608-1, and RCM 1107. Links for these documents are provided in the response to RFI 54. The Army follows the Department of Justice definition of compensation <a href="http://www.ovc.gov/">http://www.ovc.gov/</a> and routinely refers to the Department of Justice and State Compensation programs <a href="http://www.nacvcb.org">www.nacvcb.org</a> for resources. Victim Witness Liaisons are instructed on State victim compensation statutes and required to familiarize themselves with programs in their areas.</p>
<b>USAF</b>	<p>Victims have the right to receive restitution as provided in law pursuant to Article 6b, UCMJ. AFI 51-201, para. 7.11.6. DD Form 2701, <i>Initial Information for Victims and Witnesses of Crime</i>, also notifies victims of the right to available restitution.</p> <p>Restitution may be available from, or offered by, an accused as a condition in the terms of a pretrial agreement, during the sentencing process, as a part of post-trial mitigation under RCM 1105, or as a term or condition of parole or clemency. AFI 51-201, para. 7.12.4.1.</p> <p>Transitional compensation, waiver of mandatory forfeitures, and possible entitlement to a portion of the active duty member’s retirement benefits may be available to victims of intra-familial abuse offenses, to include sexual assault. AFI 51-201, para. 7.12.5.</p> <p>Additionally, the Victim and Witness Assistance Program provides information to</p>

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	<p>victims on possible compensation from local, state or federal crime victim funds, to include the procedures for applying for such funds.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- AFGM to AFI 51-201, <i>Administration of Military Justice</i> <a href="http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf">http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf</a></li> <li>- DD Form 2701, <i>Initial Information for Victims and Witnesses of Crime</i> <a href="http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2701.pdf">http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2701.pdf</a></li> </ul>
<b>USN</b>	<p>Compensation typically refers to reimbursement for expenses incurred by a crime victim, this may be paid from the Crime Victims Compensation fund or similar source; whereas, restitution would be paid by an accused. Although a victim has a right to receive restitution, as provided by law, under Article 6(b), the military does not have either compensation or restitution built into policy or law.</p>
<b>USMC</b>	<p>Neither term is explicitly defined by the Marine Corps. However these terms are discussed in: Article 139, UCMJ; Rules for Courts-Martial 705(c)(2)(C), concerning a “promise to provide restitution” in a pre-trial agreement; in the Marine Corps’ Victim Witness Assistance Program Order, that a victim has the right “to receive available restitution,” see MCO 5800.14; and in the Federal Transition Compensation for Abused Family Members (TCAFAM) program, found in 10 U.S.C. § 1059, and implemented in the Marine Corps in the Family Advocacy and Counseling Program, <a href="http://www.marines.mil/Portals/59/Publications/MCO%201754_11">http://www.marines.mil/Portals/59/Publications/MCO%201754_11</a>.</p>
<b>USCG</b>	<p>Those terms are not defined in service regulations or instructions. The service defines those terms based on their meaning in law. Compensation is defined in <i>Black’s Law</i> to mean “remuneration and other benefits received in return for services rendered, especially salary or wages.” Restitution is defined in <i>Black’s Law</i> to mean “compensation for loss; especially, full or partial compensation paid by a criminal to a victim, not awarded in a civil trial for tort, but ordered as part of a criminal sentence or as a condition of probation.” The distinction between restitution and compensation is that restitution is paid to the victim by the convicted servicemember so that the victim may recover economic losses suffered at the hands of the guilty party. Compensation is paid by the government.</p>

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**54. Services: What current options are available to provide compensation and/or restitution available to victims of offenses committed by Service members? For each option, provide the following:**

<b>USA</b>	The Department of Justice, Office of Justice Program, Office for Victims of Crime <a href="http://www.ovc.gov/">http://www.ovc.gov/</a> provides all states and the VWL Program Federal funds to help support victim assistance and compensation programs. Victim Witness Liaisons provide victims with information concerning State compensation. In addition, victims of offenses committed by Service members can receive compensation and/or restitution by filing claims against the perpetrator under Article 139, UCMJ or as a term and condition in a pretrial agreement. Although not restitution as such, victims may be entitled to Transitional Compensation in accordance with 10 U.S.C. § 1059, and AR 608-1, Army Community Service, paragraph 4-12 and Appendix H.
<b>USCG</b>	Victims may receive restitution through the court-martial process if the accused enters into a pre-trial agreement. The Department of Justice Office for Victims of Crimes administers the Criminal Victims Fund to provide compensation to victims for crime-related expenses. More information on that program is available at <a href="http://www.ovc.gov/about/victimsfund.html">http://www.ovc.gov/about/victimsfund.html</a> . Dependents of military members separated for dependent abuse are also eligible for transitional benefits under 10 U.S.C. §1059.

**a. Is the option Service-specific or applicable across DoD?**

<b>USA</b>	<p>Article 139 is part of the UCMJ and is applicable to all Services. However, implementation for Article 139 claims varies among the Services. Chapter 9 of AR 27-20 and DA PAM 27-162 make cognizable a greater range of offenses than Air Force or Navy Regulations.</p> <p>Transitional compensation is authorized by 10 U.S.C. §1059. The Federal Statute authorizes the Secretary of Defense and the Secretary of Homeland Security to each establish a program to pay monthly transitional compensation to dependents or former dependents of a member of the armed forces in certain circumstances. The intent of the Transitional Compensation program is to help ease the unexpected transition from military to civilian life for eligible Family members who have experienced a dependent-abuse offense. The program was established by Congress as an entitlement for abused dependents of military personnel in the Fiscal Year 1994 National Defense Authorization Act (P.L. 103-160). The Act authorizes temporary payments for Families in which the Active Duty Soldier has been court-martialed with a qualifying sentence or is being administratively separated from the military as a result of a dependent-abuse offense. Crimes that may qualify as "dependent-abuse offenses" are sexual assault, rape, sodomy, assault, battery, murder, and manslaughter."</p> <p>Army Regulation 27-10, paragraph 17-16c states, "Court-martial convening authorities will consider the appropriateness of requiring restitution as a term and condition in pretrial agreements, and will consider whether the offender has made restitution to the victim when taking action under R.C.M. 1107." This consideration is</p>
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	<p>available to all victims of crime regardless of the type of crime or whether the victim is or is not affiliated with the DoD.</p>
<p><b>USAF</b></p>	<p><u>Restitution</u> may be available from, or offered by, an accused as a condition in the terms of a pretrial agreement under RCM 705(c)(2)(C), during the sentencing process, as a part of post-trial mitigation under RCM 1105, or as a term or condition of parole or clemency. AFI 51-201, para. 7.12.4.1. This option is available across DoD. Restitution is not limited to victims of a specific offense or specific status.</p> <p><u>Transitional compensation</u> may be available to victims of intra-familial abuse offenses, to include sexual assault. This option is available across DoD. The governing regulations are DoDI 1342.24, <i>Transitional Compensation for Abused Dependents</i>, and AFI 36-3024, <i>Transitional Compensation for Abused Dependents</i>. Compensation eligibility is limited to dependents whose spouse was separated or convicted based on dependent abuse as part of the military record. Each military department Secretary has authority under 10 U.S.C. §1059(m) to provide benefits based on "exceptional eligibility" when the abuse was outside the member's record for discharge (e.g., member was convicted of abuse in civilian court).</p> <p><u>Waiver of mandatory forfeitures</u> by the convening authority during the clemency process may be available to victims of intra-familial abuse offenses, to include sexual assault. AFI 51-201, para. 9.12, discusses waiver of mandatory forfeiture of pay and allowances under Article 58b(b), UCMJ, for the benefit of the accused's dependents. This option is available across DoD. Pursuant to Article 58b(b), UCMJ, waiver of mandatory forfeitures is only available to benefit the dependents of the accused.</p> <p><u>Retirement benefits</u> may be available to a former spouse or legally separated spouse as designated by a court if the member had 20 or more years of active service, even if the member was not eligible to receive retirement pay pursuant to the Uniform Services Former Spouse Protection Act. This option is available across DoD. A victim cannot receive both the percentage of retirement pay and transitional compensation at the same time. If a spouse or former spouse is receiving transitional compensation payments and later is determined to be eligible for and receives payments under the Uniform Services Former Spouse Protection Act, any amounts of transitional compensation received must be recouped. AFI 36-3024, para. 1.2.</p> <p><u>State crime victim funds</u> are available across DoD. State crime victim funds receive federal funds for victim compensation under 42 U.S.C. §§ 10601-10602. In order to be eligible for these funds, states cannot discriminate between otherwise compensable crimes on the basis of state or federal jurisdiction. Most states receiving federal funds pay medical and funeral expenses as well as loss of wages.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- DoDI 1342.24, <i>Transitional Compensation for Abused Dependents</i> <a href="http://www.dtic.mil/whs/directives/corres/pdf/134224p.pdf">http://www.dtic.mil/whs/directives/corres/pdf/134224p.pdf</a></li> <li>- AFI 36-3024, <i>Transitional Compensation for Abused Dependents</i> <a href="http://static.e-">http://static.e-</a></li> </ul>

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	<p><a href="http://publishing.af.mil/production/1/af_a1/publication/afi36-3024/afi36-3024.pdf">publishing.af.mil/production/1/af_a1/publication/afi36-3024/afi36-3024.pdf</a></p> <ul style="list-style-type: none"> <li>- AFGM to AFI 51-201, <i>Administration of Military Justice</i> <a href="http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf">http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf</a></li> <li>- 10 U.S.C. §1059(m) <a href="http://www.law.cornell.edu/uscode/text/10/1059">http://www.law.cornell.edu/uscode/text/10/1059</a></li> <li>- 42 U.S.C. §§ 10601-10602 <a href="http://www.law.cornell.edu/uscode/text/42/10601">http://www.law.cornell.edu/uscode/text/42/10601</a></li> <li>- Article 58b(b), UCMJ <a href="http://www.law.cornell.edu/uscode/text/10/858b">http://www.law.cornell.edu/uscode/text/10/858b</a></li> <li>- 10 U.S.C. § 1408, Uniform Services Former Spouse Protection Act <a href="http://www.law.cornell.edu/uscode/text/10/1408">http://www.law.cornell.edu/uscode/text/10/1408</a></li> <li>- DoD 7000.14-R, Volume 7B, Chapter 60, Victims of Abuse – Nonretirement Eligible Members (Transitional Compensation) <a href="http://www.law.cornell.edu/uscode/text/42/10601">http://www.law.cornell.edu/uscode/text/42/10601</a></li> </ul>
<b>USN</b>	Transitional Compensation for Abused Dependents (TCAD) may be applicable to some victims in domestic violence sexual assaults. TCAD applies across DoD.
<b>USMC</b>	The Marine Corps has no service-specific options to provide victims with compensation and/or restitution, but complies with the DoD and statutory requirements.
<b>USCG</b>	See Above.

**b. What rules, regulations, and/or policies govern each option?**

<b>USA</b>	<p>Article 139 claims are governed by: Article 139, UCMJ. See <a href="http://www.apd.army.mil/pdffiles/mcm.pdf">http://www.apd.army.mil/pdffiles/mcm.pdf</a>. Army Regulation 27-20, Claims. See <a href="http://www.apd.army.mil/pdffiles/r27_20.pdf">http://www.apd.army.mil/pdffiles/r27_20.pdf</a>. Department of the Army Pamphlet 27-162, Claims Procedures. See <a href="http://www.apd.army.mil/pdffiles/p27_162.pdf">http://www.apd.army.mil/pdffiles/p27_162.pdf</a>.</p> <p>Transitional Compensation is governed by: 10 U.S. Code §1059. See <a href="http://www.law.cornell.edu/uscode/text/10/1059">http://www.law.cornell.edu/uscode/text/10/1059</a>. Army Regulation 608-1, Army Community Service. See <a href="http://www.apd.army.mil/pdffiles/r608_1.pdf">http://www.apd.army.mil/pdffiles/r608_1.pdf</a>.</p> <p>Pretrial agreements are discussed in: Army Regulation 27-10, Military Justice. See <a href="http://www.apd.army.mil/pdffiles/r27_10.pdf">http://www.apd.army.mil/pdffiles/r27_10.pdf</a>. Rule for Courts-Martial 1107. See <a href="http://www.apd.army.mil/pdffiles/mcm.pdf">http://www.apd.army.mil/pdffiles/mcm.pdf</a>.</p>
<b>USAF</b>	<p><u>Restitution</u> may be available from, or offered by, an accused as a condition in the terms of a pretrial agreement under RCM 705(c)(2)(C), during the sentencing process, as a part of post-trial mitigation under RCM 1105, or as a term or condition of parole or clemency. AFI 51-201, para. 7.12.4.1. This option is available across DoD. Restitution is not limited to victims of a specific offense or specific status.</p> <p><u>Transitional compensation</u> may be available to victims of intra-familial abuse offenses, to include sexual assault. This option is available across DoD. The governing regulations are DoDI 1342.24, <i>Transitional Compensation for Abused Dependents</i>, and AFI 36-3024, <i>Transitional Compensation for Abused Dependents</i>. Compensation eligibility is limited to dependents whose spouse was separated or</p>

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	<p>convicted based on dependent abuse as part of the military record. Each military department Secretary has authority under 10 U.S.C. §1059(m) to provide benefits based on "exceptional eligibility" when the abuse was outside the member's record for discharge (e.g., member was convicted of abuse in civilian court).</p> <p><u>Waiver of mandatory forfeitures</u> by the convening authority during the clemency process may be available to victims of intra-familial abuse offenses, to include sexual assault. AFI 51-201, para. 9.12, discusses waiver of mandatory forfeiture of pay and allowances under Article 58b(b), UCMJ, for the benefit of the accused's dependents. This option is available across DoD. Pursuant to Article 58b(b), UCMJ, waiver of mandatory forfeitures is only available to benefit the dependents of the accused.</p> <p><u>Retirement benefits</u> may be available to a former spouse or legally separated spouse as designated by a court if the member had 20 or more years of active service, even if the member was not eligible to receive retirement pay pursuant to the Uniform Services Former Spouse Protection Act. This option is available across DoD. A victim cannot receive both the percentage of retirement pay and transitional compensation at the same time. If a spouse or former spouse is receiving transitional compensation payments and later is determined to be eligible for and receives payments under the Uniform Services Former Spouse Protection Act, any amounts of transitional compensation received must be recouped. AFI 36-3024, para. 1.2.</p> <p><u>State crime victim funds</u> are available across DoD. State crime victim funds receive federal funds for victim compensation under 42 U.S.C. §§ 10601-10602. In order to be eligible for these funds, states cannot discriminate between otherwise compensable crimes on the basis of state or federal jurisdiction. Most states receiving federal funds pay medical and funeral expenses as well as loss of wages.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- DoDI 1342.24, <i>Transitional Compensation for Abused Dependents</i> <a href="http://www.dtic.mil/whs/directives/corres/pdf/134224p.pdf">http://www.dtic.mil/whs/directives/corres/pdf/134224p.pdf</a></li> <li>- AFI 36-3024, <i>Transitional Compensation for Abused Dependents</i> <a href="http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-3024/afi36-3024.pdf">http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-3024/afi36-3024.pdf</a></li> <li>- AFGM to AFI 51-201, <i>Administration of Military Justice</i> <a href="http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf">http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf</a></li> <li>- 10 U.S.C. §1059(m) <a href="http://www.law.cornell.edu/uscode/text/10/1059">http://www.law.cornell.edu/uscode/text/10/1059</a></li> <li>- 42 U.S.C. §§ 10601-10602 <a href="http://www.law.cornell.edu/uscode/text/42/10601">http://www.law.cornell.edu/uscode/text/42/10601</a></li> <li>- Article 58b(b), UCMJ <a href="http://www.law.cornell.edu/uscode/text/10/858b">http://www.law.cornell.edu/uscode/text/10/858b</a></li> <li>- 10 U.S.C. § 1408, Uniform Services Former Spouse Protection Act <a href="http://www.law.cornell.edu/uscode/text/10/1408">http://www.law.cornell.edu/uscode/text/10/1408</a></li> <li>- DoD 7000.14-R, Volume 7B, Chapter 60, Victims of Abuse – Nonretirement Eligible Members (Transitional Compensation) <a href="http://www.law.cornell.edu/uscode/text/42/10601">http://www.law.cornell.edu/uscode/text/42/10601</a></li> </ul>
<b>USN</b>	<p>10 U.S.C. 1059, <a href="http://www.law.cornell.edu/uscode/text/10/1059">http://www.law.cornell.edu/uscode/text/10/1059</a>; DoDI 1342.24, <a href="http://www.cniv.navy.mil/content/dam/cniv/hq/pdfs/n91">http://www.cniv.navy.mil/content/dam/cniv/hq/pdfs/n91</a></p>

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	<p><a href="#">fleet and family support program/about us/AboutUsDoDINST1342.24Transitional CompensationFor%20AbusedDependents.pdf</a>; and OPNAVINST 1750.3 <a href="http://doni.daps.dla.mil/Directives/01000%20Military%20Personnel%20Support/01-700%20Morale,%20Community%20and%20Religious%20Services/1750.3.pdf">http://doni.daps.dla.mil/Directives/01000%20Military%20Personnel%20Support/01-700%20Morale,%20Community%20and%20Religious%20Services/1750.3.pdf</a> govern TCAD in DoD.</p>
<b>USMC</b>	<p>Article 139 claims are governed by the UCMJ and Chapter IV of JAGINST 5800.7F ( <a href="http://doni.daps.dla.mil/SECNAV%20Manuals1/5800.7F.pdf">http://doni.daps.dla.mil/SECNAV%20Manuals1/5800.7F.pdf</a> ); pretrial agreements are governed by RCM 705; the Transitional Compensation program is guided by 10 USC § 1059, DODI 1342.24, and DoD FMR Volume 7B, Chapter 60. Additionally, every state has a crime victim compensation fund which is governed by state statute.</p>
<b>USCG</b>	<p>See above.</p>

**c. When did the option become available for victims?**

<b>USA</b>	<p>Article 139 was part of the UCMJ when it was first enacted in 1950 and took effect on May 31, 1951. Transitional Compensation was enacted in the FY94 NDAA, Public Law No: 103-160 on November 30, 1993. Army Regulation 27-10, paragraph 17-17c has been in place since 2005.</p>
<b>USAF</b>	<p><u>Restitution</u> may be available from, or offered by, an accused as a condition in the terms of a pretrial agreement under RCM 705(c)(2)(C), during the sentencing process, as a part of post-trial mitigation under RCM 1105, or as a term or condition of parole or clemency. AFI 51-201, para. 7.12.4.1. This option is available across DoD. Restitution is not limited to victims of a specific offense or specific status.</p> <p><u>Transitional compensation</u> may be available to victims of intra-familial abuse offenses, to include sexual assault. This option is available across DoD. The governing regulations are DoDI 1342.24, <i>Transitional Compensation for Abused Dependents</i>, and AFI 36-3024, <i>Transitional Compensation for Abused Dependents</i>. Compensation eligibility is limited to dependents whose spouse was separated or convicted based on dependent abuse as part of the military record. Each military department Secretary has authority under 10 U.S.C. §1059(m) to provide benefits based on "exceptional eligibility" when the abuse was outside the member's record for discharge (e.g., member was convicted of abuse in civilian court).</p> <p><u>Waiver of mandatory forfeitures</u> by the convening authority during the clemency process may be available to victims of intra-familial abuse offenses, to include sexual assault. AFI 51-201, para. 9.12, discusses waiver of mandatory forfeiture of pay and allowances under Article 58b(b), UCMJ, for the benefit of the accused's dependents. This option is available across DoD. Pursuant to Article 58b(b), UCMJ, waiver of mandatory forfeitures is only available to benefit the dependents of the accused.</p> <p><u>Retirement benefits</u> may be available to a former spouse or legally separated spouse as designated by a court if the member had 20 or more years of active service, even if the member was not eligible to receive retirement pay pursuant to the Uniform Services</p>

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	<p>Former Spouse Protection Act. This option is available across DoD. A victim cannot receive both the percentage of retirement pay and transitional compensation at the same time. If a spouse or former spouse is receiving transitional compensation payments and later is determined to be eligible for and receives payments under the Uniform Services Former Spouse Protection Act, any amounts of transitional compensation received must be recouped. AFI 36-3024, para. 1.2.</p> <p><u>State crime victim funds</u> are available across DoD. State crime victim funds receive federal funds for victim compensation under 42 U.S.C. §§ 10601-10602. In order to be eligible for these funds, states cannot discriminate between otherwise compensable crimes on the basis of state or federal jurisdiction. Most states receiving federal funds pay medical and funeral expenses as well as loss of wages.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- DoDI 1342.24, <i>Transitional Compensation for Abused Dependents</i> <a href="http://www.dtic.mil/whs/directives/corres/pdf/134224p.pdf">http://www.dtic.mil/whs/directives/corres/pdf/134224p.pdf</a></li> <li>- AFI 36-3024, <i>Transitional Compensation for Abused Dependents</i> <a href="http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-3024/afi36-3024.pdf">http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-3024/afi36-3024.pdf</a></li> <li>- AFGM to AFI 51-201, <i>Administration of Military Justice</i> <a href="http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf">http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf</a></li> <li>- 10 U.S.C. §1059(m) <a href="http://www.law.cornell.edu/uscode/text/10/1059">http://www.law.cornell.edu/uscode/text/10/1059</a></li> <li>- 42 U.S.C. §§ 10601-10602 <a href="http://www.law.cornell.edu/uscode/text/42/10601">http://www.law.cornell.edu/uscode/text/42/10601</a></li> <li>- Article 58b(b), UCMJ <a href="http://www.law.cornell.edu/uscode/text/10/858b">http://www.law.cornell.edu/uscode/text/10/858b</a></li> <li>- 10 U.S.C. § 1408, Uniform Services Former Spouse Protection Act <a href="http://www.law.cornell.edu/uscode/text/10/1408">http://www.law.cornell.edu/uscode/text/10/1408</a></li> <li>- DoD 7000.14-R, Volume 7B, Chapter 60, Victims of Abuse – Nonretirement Eligible Members (Transitional Compensation) <a href="http://www.law.cornell.edu/uscode/text/42/10601">http://www.law.cornell.edu/uscode/text/42/10601</a></li> </ul>
<b>USN</b>	Payments may be made for dependent abuse occurring no earlier than November 30, 1993. The statute was signed in 1994, and the DoDI was first signed May 23, 1995.
<b>USMC</b>	Article 139 claims have been available since the adoption of the UCMJ in 1951. Restitution by pretrial agreement has been available since the promulgation of RCM 705 in 1984. The availability of state crime victim compensation funds varies among the states. Transitional Compensation was enacted in the FY94 NDAA, Public Law No: 103-160 on November 30, 1993. Dependents may apply for transitional compensation using DD form 2698 found at <a href="http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2698.pdf">http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2698.pdf</a>
<b>USCG</b>	There is no formal service compensation/restitution program for the victims, so there is no date to provide. At best, I can say that the compensation for civilian victims became available on the date that the DOJ victim fund came online, and that transitional benefits started the date that the statute became effective. .

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**d. Is the option limited to victims of a specific offense or limited in other ways (age, status, etc.)?**

<b>USA</b>	<p>Article 139 is limited to claims for expenses resulting from property wrongfully taken or willfully damaged. Property loss or damage assessments are limited to direct damages. No redress is provided for indirect, remote, or consequential damages.</p> <p>Transitional Compensation provides support to victims of dependent abuse during their transition from military to civilian life when the sponsor receives specified sentence(s) at a court-martial or separated from active duty as a result of a dependent-abuse offense. Payments are provided for 36 months based on existing Dependent Indemnity Compensation rates.</p>
<b>USAF</b>	<p><u>Restitution</u> may be available from, or offered by, an accused as a condition in the terms of a pretrial agreement under RCM 705(c)(2)(C), during the sentencing process, as a part of post-trial mitigation under RCM 1105, or as a term or condition of parole or clemency. AFI 51-201, para. 7.12.4.1. This option is available across DoD. Restitution is not limited to victims of a specific offense or specific status.</p> <p><u>Transitional compensation</u> may be available to victims of intra-familial abuse offenses, to include sexual assault. This option is available across DoD. The governing regulations are DoDI 1342.24, <i>Transitional Compensation for Abused Dependents</i>, and AFI 36-3024, <i>Transitional Compensation for Abused Dependents</i>. Compensation eligibility is limited to dependents whose spouse was separated or convicted based on dependent abuse as part of the military record. Each military department Secretary has authority under 10 U.S.C. §1059(m) to provide benefits based on "exceptional eligibility" when the abuse was outside the member's record for discharge (e.g., member was convicted of abuse in civilian court).</p> <p><u>Waiver of mandatory forfeitures</u> by the convening authority during the clemency process may be available to victims of intra-familial abuse offenses, to include sexual assault. AFI 51-201, para. 9.12, discusses waiver of mandatory forfeiture of pay and allowances under Article 58b(b), UCMJ, for the benefit of the accused's dependents. This option is available across DoD. Pursuant to Article 58b(b), UCMJ, waiver of mandatory forfeitures is only available to benefit the dependents of the accused.</p> <p><u>Retirement benefits</u> may be available to a former spouse or legally separated spouse as designated by a court if the member had 20 or more years of active service, even if the member was not eligible to receive retirement pay pursuant to the Uniform Services Former Spouse Protection Act. This option is available across DoD. A victim cannot receive both the percentage of retirement pay and transitional compensation at the same time. If a spouse or former spouse is receiving transitional compensation payments and later is determined to be eligible for and receives payments under the Uniform Services Former Spouse Protection Act, any amounts of transitional compensation received must be recouped. AFI 36-3024, para. 1.2.</p> <p><u>State crime victim funds</u> are available across DoD. State crime victim funds receive</p>

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	<p>federal funds for victim compensation under 42 U.S.C. §§ 10601-10602. In order to be eligible for these funds, states cannot discriminate between otherwise compensable crimes on the basis of state or federal jurisdiction. Most states receiving federal funds pay medical and funeral expenses as well as loss of wages.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- DoDI 1342.24, <i>Transitional Compensation for Abused Dependents</i> <a href="http://www.dtic.mil/whs/directives/corres/pdf/134224p.pdf">http://www.dtic.mil/whs/directives/corres/pdf/134224p.pdf</a></li> <li>- AFI 36-3024, <i>Transitional Compensation for Abused Dependents</i> <a href="http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-3024/afi36-3024.pdf">http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-3024/afi36-3024.pdf</a></li> <li>- AFGM to AFI 51-201, <i>Administration of Military Justice</i> <a href="http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf">http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf</a></li> <li>- 10 U.S.C. §1059(m) <a href="http://www.law.cornell.edu/uscode/text/10/1059">http://www.law.cornell.edu/uscode/text/10/1059</a></li> <li>- 42 U.S.C. §§ 10601-10602 <a href="http://www.law.cornell.edu/uscode/text/42/10601">http://www.law.cornell.edu/uscode/text/42/10601</a></li> <li>- Article 58b(b), UCMJ <a href="http://www.law.cornell.edu/uscode/text/10/858b">http://www.law.cornell.edu/uscode/text/10/858b</a></li> <li>- 10 U.S.C. § 1408, Uniform Services Former Spouse Protection Act <a href="http://www.law.cornell.edu/uscode/text/10/1408">http://www.law.cornell.edu/uscode/text/10/1408</a></li> <li>- DoD 7000.14-R, Volume 7B, Chapter 60, Victims of Abuse – Nonretirement Eligible Members (Transitional Compensation) <a href="http://www.law.cornell.edu/uscode/text/42/10601">http://www.law.cornell.edu/uscode/text/42/10601</a></li> </ul>
<b>USN</b>	<p>Yes, TCAD is limited to spouses and dependents of service members who have been convicted at court-martial or notified of administrative separation for a dependent abuse offense. Current and former spouses must not live with the service member. Dependents must have been the victims of dependent abuse or resided in the home with the offending service member when the dependent abuse took place.</p>
<b>USMC</b>	<p>While Article 139 claims are limited to victims who suffered property damage, pretrial agreements are not limited. The state crime victim funds are generally limited to innocent victims who are citizens of the United States and have suffered personal injuries as a result of a crime. TCAFM is limited to victims of dependent-abuse offenses.</p>
<b>USCG</b>	<p>See Above.</p>

**e. Is victim compensation or restitution tracked? If so, how is it tracked and reported?**

<b>USA</b>	<p>The United States Army Claims Service does not track Article 139 claims. Article 139 claims are maintained at the installation where the Article 139 claim is processed. Army Regulation 27-20 requires installation claims judge advocates maintain a log of Article 139 claims.</p> <p>The Installation Management Command (IMCOM), HQ, G9 Family and MWR Programs, Transitional Compensation Program Manager tracks the number of transitional compensation cases processed each year and the amount of compensation provided. The Army does not track pretrial agreements requiring restitution as a term or condition.</p>
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<b>USAF</b>	Victim compensation and restitution is not tracked.
<b>USN</b>	While records of compensation are not specifically tracked, the TCAD program is managed by Navy's Twenty-First Century Sailor Office, OPNAV N17, an organization within Naval Personnel Command reporting to the Chief of Naval Operations. This office is responsible for creating Navy policies and programs to provide Sailors and their families with tools (readiness, safety, physical fitness, inclusion, continuum of service) to successfully meet the physical and mental challenges of a career in the 21st century. The Director, a Rear Admiral, is Navy's Sexual Assault and Prevention and Response Officer.
<b>USMC</b>	Victim compensation or restitution is not tracked or reported.
<b>USCG</b>	Victim compensation and restitution is not tracked.

**f. For restitution, please address the following questions based on guidance contained in DoD Directive 1030.01 and applicable Service regulations:**

- i. How does each Service ensure restitution to the victim of a criminal offense is considered by court-martial convening authorities as a condition of pretrial agreements and clemency, and by the clemency and parole boards for sentence reduction, clemency, and parole decisions?**

<b>USA</b>	<p>Army Regulation 27-10, paragraph 17-16c states, “Court-martial convening authorities will consider the appropriateness of requiring restitution as a term and condition in pretrial agreements, and will consider whether the offender has made restitution to the victim when taking action under R.C.M. 1107.” This consideration is available to all victims of crime regardless of the type of crime or whether the victim is or is not affiliated with the DoD.</p> <p>When considering a case for clemency or parole, the Army Clemency &amp; Parole Board will consider the prisoner’s parole plan in accordance with paragraph 3-2a(5)(d), AR 15-130, Army Clemency and Parole Board. Included in that plan may be the payment of restitution or the payment of a fine ordered executed as part of the prisoner’s court-martial sentence. In addition, in accordance with paragraph 4-5(e)(6), parole may be revoked if the parolee has violated a condition of parole by a failure to pay a fine or restitution. See <a href="http://armypubs.army.mil/epubs/pdf/r15_130.pdf">http://armypubs.army.mil/epubs/pdf/r15_130.pdf</a>.</p>
<b>USAF</b>	<p>Pursuant to RCM 705(d)(1) pretrial agreement negotiations may be initiated by the accused, defense counsel, trial counsel, the staff judge advocate, or the convening authority. AFI 51-201, Section 8C, provides guidance on the consideration of pretrial agreements. The staff judge advocate provides advice to the convening authority regarding the permissible terms or conditions that may be included in a pretrial agreement pursuant to RCM 705(c)(2), to include a promise to provide restitution.</p> <p>AFI 51-201, Section 9F, provides guidance on Staff Judge Advocate Recommendations (SJAR) to convening authorities as part of the clemency process pursuant to RCM 1106. Recommendations on restitution may be included in the SJAR.</p>

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	<p>The disposition board that formulates a recommendation for clemency or parole for an inmate considers restitution to victims. <i>See</i> AFGM to AFI 31-205, <i>Air Force Corrections System</i>, para 11.6.3.3. Along with the recommendations of the disposition board, Air Force Security Forces Center detachment commanders, and the convening authority, the Air Force Clemency and parole Board considers the inmate’s efforts to make restitution to the victim.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- AFGM to AFI 51-201, <i>Administration of Military Justice</i> <a href="http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf">http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf</a></li> <li>- AFGM to AFI 31-205, <i>Air Force Corrections System</i> <a href="http://static.e-publishing.af.mil/production/1/af_a4_7/publication/afi31-205/afi31-205.pdf">http://static.e-publishing.af.mil/production/1/af_a4_7/publication/afi31-205/afi31-205.pdf</a></li> </ul>
<b>USN</b>	Restitution is a factor to be considered under RCM 306. Convening authorities are advised by their Staff Judge Advocates and by trial counsel to weigh the provision of restitution as part of any decision on disposition. Navy VLC discuss the option of restitution (if relevant) with clients and include the victim’s preferences for any restitution as part of the larger “victim input” provided to convening authorities in considering pretrial agreements.
<b>USMC</b>	RCM 306 requires the convening authority to consider the views of the victim before making an initial disposition decision in every case, including the victim’s views as to restitution. Additionally, if a pretrial agreement is being considered, the victim’s views are required to be considered by the convening authority before making a decision. These rights are enforced by trial counsel, SJAs, and the Victims’ Legal Counsel Organization.
	The Marine Corps does not handle clemency and parole boards as a service, those are handled by the Department of the Navy.
<b>USCG</b>	The service relies on its staff judge advocates to advise the convening authority on whether restitution is appropriate or available in a given case. The Coast Guard utilizes the U.S. Navy clemency and parole board for its incarcerated members, and defers to the Navy on the clemency and parole board process.

**ii. For courts-martial cases:**

- a) How many courts-martial cases in FY12, FY13, and FY14 included restitution to the victim as a condition of pretrial agreements, sentence reduction, clemency, or parole?**

<b>USA</b>	This data is not tracked by the Army.
<b>USAF</b>	<p>There is currently no policy or other guidance requiring installation legal offices to input restitution-related information into the Automated Military Justice Analysis and Management System.</p> <p>Air Force Global Strike Command identified a summary court-martial, U.S. v. Corral,</p>

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	<p>where the convening authority agreed to refer charges to a summary court-martial in a larceny case if the accused paid full restitution to the victims.</p> <p>Air Force Space Command identified a court-martial where victim restitution was made prior to the court-martial, but was not part of a pretrial agreement. The case involved a recruiter who unlawfully solicited donations from Recruiter Assistance Program (RAP) participants in order for them to obtain days off from RAP duty in violation of Air Force regulations. According to the accused, donations were supposed to be sent to charity but were not sent to the charities in a timely manner. After the Article 32 hearing in the case, the accused made restitution to the RAP participants by sending them a money order in the amount of the donations. He also sent money orders to the charities that the donations from the RAP participants were supposed to be sent. Restitution in that case totaled \$5,000.</p>
<b>USN</b>	Navy does not track, or maintain statistical analysis on, cases involving restitution as a provision in the pretrial agreement. Typically these cases involve the United States as the victim and usually involve military allowance fraud, larceny, and or destruction of property. Navy is not aware of any cases involving violations of Article 120 or 125 with disposition dates in FY12/13/14 that involved pretrial agreements with restitution provisions.
<b>USMC</b>	This data is not tracked by the Marine Corps; however, the Marine Corps is not aware of any sexual assault cases where restitution to the victim was included as a condition of pretrial agreements, sentence reductions, clemency, or parole.
<b>USCG</b>	The Coast Guard does not currently track that data. However, the service is aware of at least five cases in FY13 and FY14 in which restitution to the economic victim of the crime (in all cases the United States Treasury) was included as a term in the pretrial agreement.

**b) What are the most common court-martial charges that have resulted in restitution being paid to a victim?**

<b>USA</b>	Article 121 – Larceny and wrongful appropriation.
<b>USAF</b>	Presently there is no reliable method for determining the quantifiable portions of the questions posed in RFI #54 using the Automated Military Justice Analysis and Management System (AMJAMS) or any other AFLOA/JAS supported software application.
<b>USN</b>	Navy does not maintain information with which to answer this question accurately; however, typically, in cases where a pretrial agreement is reached, fraud, larceny and destruction of property offenses may result in restitution to the victim.
<b>USMC</b>	While this data is not tracked by the Marine Corps, these cases would typically involve charges of larceny, wrongful appropriation, or fraud.
<b>USCG</b>	The most common charges are violations of Articles 121 and 132, UCMJ. The service is aware of no case in which restitution was made to the economic victim of a crime in an adult sex offense case.

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- c) **Please provide a sampling of court-martial documents, to include pretrial agreements, final actions, etc., that indicate restitution terms and corresponding sentence reduction, clemency, or parole.**

<b>USA</b>	<p>See Enclosure 16.</p> <p><b>ENCLOSURE 16: Sampling of Court-Martial documents that indicate restitution terms and corresponding sentence reduction, clemency, or parole:</b></p> <ul style="list-style-type: none"> <li>a. Pretrial Offers and Agreements</li> <li>b. DD Form 2707-1, Results of Trial</li> <li>c. General Court-Martial Final Orders</li> </ul>
<b>USAF</b>	<p>Attached are pretrial agreement documents from U.S. v. Corral. (Atch 54.1)</p> <p><b>ATTACHMENT_Q54_USAF_A:</b></p> <p>Atch 54.1 – <i>U.S. v. Corral</i> Pretrial Agreement (19 Sep 2012)</p>
<b>USN</b>	<p>The standard pretrial agreement restitution provision is: "I agree to make restitution by cashier's check in the amount of at \$X'XXX.XX, made payable to the economic victim of my misconduct, (VICTIM'S NAME), prior to the date of my sentencing hearing. I expressly represent that I will have the economic means to make restitution prior to the date of sentencing. The cashier's check will be delivered to the trial counsel as soon as possible and no later than (DATE). I fully understand that failure on my part to meet this obligation may serve as the basis for the convening authority to withdraw from this agreement, rendering it null and void."</p>
<b>USMC</b>	<p>While the Marine Corps does not track this data, the Marine Corps uses standard language in its pretrial agreements relating to restitution: "I agree to make restitution by [cashier's check/money order] in the amount of \$XXX.XX, made payable to the economic victim of my misconduct, (Name(s) of Victim(s)). The [cashier's check/money order] will be delivered to the trial counsel at least seven calendar days prior to the date of trial. I fully understand that failure on my part to meet this obligation may serve as the basis for the Convening Authority to seek to withdraw from this Agreement, making the Agreement ineffective.</p> <p>This language may be modified if the Accused will have the means to provide restitution after trial: "...I fully understand that failure on my part to meet this obligation may serve as the basis for the Convening Authority to seek to withdraw from this Agreement, making the Agreement ineffective, or may serve as the basis for the Convening Authority to vacate any or all previously suspended portions of my sentence, causing me to have to serve that previously suspended sentence."</p> <p>There is also model language if the Accused must make payments in installments: "...I will provide the trial counsel or staff judge advocate with a [cashier's check/money order] made payable to (Name(s) of Victim(s)), no later than the second working day following the 1st and 15th of each month (dates as required), in the amount of \$XXX.XX. These partial payments will begin on DD Month YYYY and</p>

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	will be completed by DD Month YYYY. I fully understand...”
<b>USCG</b>	See Attachments (18)-(19).  <b>ATTACHMENTS 18 and 19:</b>  - Attachment (18): <i>United States v. Martin</i> - Excerpt from Pretrial Agreement - Attachment (19): <i>United States v. Suba</i> - Excerpt from Pretrial Agreement

**iii. For cases not resolved at courts-martial, how may commanders utilize restitution to victims as a factor when deciding case disposition? Provide a sampling of cases summaries (to include alleged offenses and documentation, where available) where this has occurred.**

<b>USA</b>	This data is not tracked by the Army. However, AR 27-10, paragraph 17-16c states, “Court-martial convening authorities will consider the appropriateness of requiring restitution as a term and condition in pretrial agreements, and will consider whether the offender has made restitution to the victim when taking action under R.C.M. 1107.”
<b>USAF</b>	The following are examples of NJP actions where part of the punishment was suspension of forfeitures on condition that the Airman make restitution to the victim:  1. An E-5 stole fuel from AAFES and forged another Airman’s signature on the credit card purchases. His punishment follows: “Reduction to the grade of Senior Airman, with new date of rank of 28 March 2014. Forfeiture of \$1,213.00 pay per month for 2 months, suspended through 27 September 2014, after which time it will be remitted without further action, unless sooner vacated. In accordance with MCM, Part V, paragraph 6a (4), this suspension is subject to the additional condition of your making restitution to the Army and Air Force Exchange Service's Exchange Credit Program in the amount of \$1,255.31 no later than 27 April 2014. 45 days extra duty, suspended through 27 September 2014, after which time it will be remitted without further action, unless sooner vacated. In accordance with MCM, Part V, paragraph 6a (4), this suspension is subject to the additional condition of your making restitution to the Army and Air Force Exchange Service's Exchange Credit Program in the amount of \$1,255.31 no later than 27 April 2014. Reprimand.” (Atch 54.2)  2. An E-6 stole fuel from AAFES by using a government fuel card to fuel his POV. His punishment follows: “Reduction to the grade of Staff Sergeant, suspended through 8 March 2014, after which time it will be remitted without further action, unless sooner vacated. In accordance with MCM, Part V, paragraph 6a(4), this suspension is subject to the additional condition of your making restitution to the appropriate government card account in the amount of \$225.18 no later than 8 October 2013. 45 days extra duty. Reprimand.”  3. An E-5 who got into an off-base accident and did not have liability insurance on his vehicle. As a conditional punishment, he was required to provide restitution to the

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	<p>drivers of the other vehicles damaged in the accident or receive a reduction in rank.</p> <p>4. An E-3 was intoxicated and damaged the fence of a local national. As part of his conditional punishment, he was required to provide restitution to the owners of the fence or receive a reduction in rank and forfeiture of pay. (Atch 54.3)</p> <p>5. An E-4 was arrested for battery after an altercation with the staff at a bar. The county released jurisdiction to the AF. The member accepted NJP and was punished with a reduction to E-3 and suspended forfeiture of \$1017.00 pay per month for two months. The suspended forfeiture was conditional on the member paying the assault victim \$569.00 in restitution for the glasses that were broken during the altercation.</p> <p><b>ATTACHMENT_Q54_USAF_B:</b></p> <ul style="list-style-type: none"> <li>- Atch 54.2 – AF 3070A - Record of Non-judicial Punishment Proceedings</li> <li>- Atch 54.3 – AF 3070A - Record of Non-judicial Punishment Proceedings</li> </ul>
<b>USN</b>	<p>Restitution to victims is a factor to consider under RCM 306 as a matter in mitigation. A copy of a sample pretrial agreement restitution provision is attached in enclosure (28).</p> <p><b>ENCLOSURE 28: <i>U.S. v. BMC</i> - Pretrial Agreement (Restitution Provision)</b></p>
<b>USMC</b>	<p>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. In cases where restitution is the primary concern, an option for commanders is the Art. 139, UCMJ, Redress of Injuries to Property, process. A commander may use this process in cases where a victim reports that willful damage has been done to his or her property, or that his or her property has been wrongfully taken by a member of the armed forces. During this process, the commander convenes a board to investigate the property damage or taking and, if necessary, assess damages. The commander may then order the offender to pay restitution to the victim. The Marine Corps does not track cases where commanders have utilized restitution to victims as a disposition factor for cases not resolved at court-martial.</p>
<b>USCG</b>	<p>That information is not available. While it is possible that commanders demand restitution to economic victims prior to imposing NJP, that is not information that is captured anywhere in the NJP tracking system. We are aware of no case where a commander ordered or encouraged restitution to a victim of a sexual offense.</p>

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**55. Services: Other than those options explained in the previous question, have victims requested or sought other forms of compensation, restitution, services, benefits, etc.?**

<b>USA</b>	Victims request information concerning Transitional Compensation, State Compensation programs, women’s shelters, divorce assistance, food vouchers, immigration assistance, support groups (HIV, Death, Sexual Assault, etc.), return of property taken by the government during an investigation (cell phones, computers, etc.), child cares services, child custody issues, transportation relocation/funds, waiver and deferment of forfeitures, Military One Source services, storage facilities, Army Community Services Loan Closet, employment information, college funding, outpatient medical counseling services, emergency financial services, protective orders, referral to Chaplain, referral to Legal Assistance and Special Victim’s Counsel, Article 32 hearings, and various other related issues.
<b>USAF</b>	<p>Other than options explained in previous RFIs, other forms of compensation, restitution, services, and benefits that have been requested by victims include: Veteran Affairs disability benefits; medical retirement benefits; continuous medical orders while a line of duty is processed; restitution through personal insurance companies; and movement of household goods.</p> <p>Additionally, many victims request an expedited transfer to a new duty assignment or station. Expedited transfer requests are processed pursuant to AFI 36-2110, <i>Assignments</i>.</p> <p>Special Victims’ Counsel, legal assistance attorneys, and Victim and Witness Assistance Program personnel are available to assist victims with these requests or refer them to the appropriate resource to provide assistance.</p> <p><u>References</u></p> <p>- AFI 36-2110, <i>Assignments</i> <a href="http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2110/afi36-2110.pdf">http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2110/afi36-2110.pdf</a></p>
<b>USN</b>	Navy does not track this information.
<b>USMC</b>	Yes, civilian victims that miss work or lose their jobs as a result of a crime under the UCMJ have successfully received funds from state compensation funds. Additionally, Early Return of Dependents and Authorization of Movement of Household Goods processes are available.
<b>USCG</b>	The DHS Board for Correction of Military Records (BCMR), pursuant to 10 U.S.C. 1552, may correct any military record to “correct an error or remove an injustice.” The BCMR has the authority to, among other things, correct officer and enlisted evaluations, to bring former members back on active duty, and to require the Coast Guard to provide back pay and benefits, if an error or injustice is found. Although the BCMR is not involved directly with criminal justice cases, there are circumstances where the remedies available to an applicant to the BCMR could be considered indirect compensation. If, for example, someone is the victim of a sexual assault while on active duty and then has difficulty continuing on active duty, they may opt to be released from active duty, or they may receive evaluations that reflect a decline in

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<p>performance due to PTSD or other issues associated with a trauma. A member, or former member, may file an application with the BCMR to have such evaluations upgraded, or to be returned to active duty. If the BCMR found an injustice in the discharge or evaluation, the Board has the authority to have the applicant returned to active duty and could direct the Coast Guard to provide back pay and benefits. The BCMR could also upgrade previous evaluations and order a promotion based on the amended evaluations, as well as order commensurate back pay and benefits. Therefore, certain BCMR remedies could be considered indirect forms of compensation for victims. The BCMR has received cases from members requesting these types of remedies as a result of an allegation of sexual assault.</p> <p>Victims have also sought relief for medical issues through the Physical Disability Evaluation System. The purpose of the Physical Disability Evaluation System is to ensure a fit military force while ensuring members receive certain benefits and protections if their military career ends prematurely due to injury or illness. Procedurally, when a member (active duty or reservist on active duty) suffers an injury or develops a medical condition that could affect their fitness to serve in the Coast Guard, the PDES program evaluates their ability to perform the duties associated with their office, grade, rank or rating. The PDES program then makes a determination on the member's fitness to continue on active duty, or be separated/retired due to physical disability. A qualifying medical condition could include physical injuries related to sexual assault or post traumatic stress disorder. Victims of sexual assault have sought such relief in the past.</p>
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**56. Services: What impacts may result from allowing a court-martial, either by court members or military judge, to direct restitution to the victims of offenses? What mechanisms exist or would be required to enforce restitution sentences?**

<b>USA</b>	<p>The only current mechanisms to enforce restitution are provisions in a pretrial agreement. Suspension of a sentence or part of a sentence raises the practical and legal difficulties of enforcing such a provision when the offender is indigent. Creating a system of probation whether before or after the verdict that may mirror civilian practices is theoretically possible, but may result in retaining a truly undesirable service member – a service member who might otherwise receive a punitive discharge or an administrative discharge following conviction and allow a commander to obtain a competent replacement.</p>
<b>USAF</b>	<p>The AF does not have a position at this time on the impact that may result from allowing a court- martial to direct restitution to the victims of offenses. The AF is open to considering proposals that balance the interests of crime victims and the accused as well as the impact of restitution on the ability of the convening authority to waive forfeitures for the benefit of the accused’s dependents.</p> <p>The AF already has a mechanism in place that could enforce restitution sentences. Wage garnishment for court-directed sentences can take place. For example, a member’s wages may be garnished for an alimony payment pursuant to a divorce decree. Specific procedures are outlined in DoD 7000.14-R, Vol 7A, Chapter 41.</p> <p><u>Reference:</u></p> <ul style="list-style-type: none"> <li>- DoD 7000.14-R, Volume 7A, Chapter 41, “Garnishments and Other Voluntary Allotments” <a href="http://comptroller.defense.gov/Portals/45/documents/fmr/archive/07aarch/07a_41_Dec10.pdf">http://comptroller.defense.gov/Portals/45/documents/fmr/archive/07aarch/07a_41_Dec10.pdf</a></li> </ul>
<b>USN</b>	<p>Under the Mandatory Victims Restitution Act of 1996 (18 U.S.C. § 3663A), victims of federal crimes may recover for pecuniary losses with the most major categories being lost income, expenses for medical and psychological care, and expenses for physical therapy. Those types of expenses are not present for military victims who continue to be paid, continue to receive medical and psychological care and similar support. While a dependent arguably could experience some income loss, they would not experience treatment and therapy expenses and the active duty sponsor would maintain their income. Furthermore, convicted military members lose most or all of their income while in confinement.</p>
<b>USMC</b>	<p>In addition to methods of compensation or restitution discussed in question 54, military victims continue to receive pay, housing benefits, medical benefits, psychological care and access to Veterans’ benefits upon discharge; therefore, the losses covered by the federal Mandatory Victims Restitution Act of 1996 (18 USC 3663A) are not present for military victims. Civilian victims and military victims may receive compensation from state compensation funds and receive support from local volunteer organizations. Further, convicted military members lose most or all of their income while in confinement making the collection of restitution difficult</p>

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	<p>during confinement or after discharge.</p>
<p><b>USCG</b></p>	<p>There would very likely be no positive impact if a court-martial could direct restitution to the victims of an offense as part of an adjudged court-martial sentence. The Coast Guard has no evidence, anecdotal or otherwise, to suggest that victims will be more willing to make an unrestricted report of their assault or pursue a conviction through the court-martial process if restitution was an authorized punishment. In the vast majority of cases, the victim pursues the case because he or she wants to see justice served or to protect others from having to go through the same experience that they endured. Money is not a motivating factor.</p> <p>In fact, the impact of allowing for restitution as an authorized punishment may be negative. If court-martial panel members and the Coast Guard at large are notified that a victim could receive restitution as a form of punishment from the accused, they may associate a victim of an offense with someone out to make money off the accused. It would be ammunition for any defense counsel to argue that the victim only made the claim because of the financial payout at the end. This is especially true in cases where there was no economic loss suffered by the victim, such as in cases of sexual assault of a servicemember, as the victim's medical and mental health costs are covered by the Coast Guard. The Coast Guard has worked hard to dispel common misperceptions about sexual assault victims and to create a culture of respect for, rather than blame of, the victim. Restitution would undo much of that hard work.</p> <p>Although restitution is not an authorized punishment to be adjudged by a court-martial, it is an available term of a pre-trial agreement and can be used to compensate the economic victim of an offense. For those cases where the victim has suffered an economic loss, such as a theft, restitution in the pre-trial agreement should remain a viable option. For those active duty victims who suffer physically or emotionally as a result of an offense, medical and mental health care costs are covered by the military's benefits system. If it was available in any court-martial as an authorized punishment, it would be used by the defense bar as motivation to fabricate and will most likely not increase the number of victims who report or who see the case through the court-martial process. The purpose of the military justice system is not to make the victims of crimes whole or to put them in the same position they would have been in had the crime not occurred. It is to ensure that justice is served on the guilty.</p> <p>Currently, in cases where restitution is made part of the pre-trial agreement, the accused is forced to comply with the restitution or risk the government withdrawing from the agreement. This is the primary means for the government to enforce the restitution agreement. If the member does not complete restitution, the convening authority may seek to nullify the deal.</p> <p>If restitution were an authorized punishment, there would have to be caveats in the rules to allow for members who cannot afford to pay restitution. For example, the rules could create a conversion chart where the failure to pay restitution resulted in a set period of confinement, equivalent to the amount of restitution adjudged. Of course, in those cases where the accused could not pay the restitution and thus was</p>

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	sentenced to additional confinement, the victim would not be financially compensated for the hardship.
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**57. DoD and Services: How can military victims continue to receive treatment, counseling, etc., for injuries related to the crime committed against them after separation or retirement from the Armed Forces? How are victims informed of these options?**

<b>DoD</b>	Response Pending
<b>USA</b>	<p>For the purpose of this response we assume the Judicial Proceedings Panel is referring to Active Duty Service Members (ADSMs) only. Family members who are victims of abuse or domestic violence have a separate program for continuing medical treatment under TRICARE.</p> <p>If an Active Duty Service Member (ADSM) sexual assault victim is retired from active service, they are eligible to receive medical treatment through the Military Health System (MHS). To our knowledge, there is no independent eligibility for medical care in the MHS based solely on a sexual assault that occurred while on active duty. The Transitional Assistance Management Program (TAMP) provides 180 days of transitional health care benefits to help certain members of the uniformed services and their families' transition to civilian life, but that is irrespective of a sexual assault.</p> <p>The Department of Veterans Affairs (VA) provides free health care for conditions resulting from sexual assault or repeated, threatening sexual harassment that occurred while on active duty. Both physical and mental health treatment (including medications) related to these experiences are provided free of charge. Veterans may receive these services even if not eligible for other VA care. Veterans may also apply for service-connected disability for conditions resulting from Military Sexual Trauma (MST), but the provision of free care is not dependent upon the MST becoming service-connected.</p> <p>A victim would most likely be informed of these options by a Victim Advocate or in the case of TAMP, a TRICARE Beneficiary Counseling and Assistance Coordinator (BCAC).</p>
<b>USAF</b>	<p>SARCs and SVCs will provide information about services available through the Veterans Administration to victims who are separating or retiring. The Transition Assistance Program and mental health and medical providers provide this information as well. Additionally, all members are required to go through a medical examination prior to separating where post-separation healthcare is discussed.</p> <p>Former service members who are retirement eligible and their dependents would continue to receive TRICARE benefits under the TRICARE Prime, Standard, USFHP, TRICARE for Life, or TRICARE Standard Overseas programs. <a href="http://www.tricare.mil/Plans/Eligibility/RSMandFamilies.aspx">http://www.tricare.mil/Plans/Eligibility/RSMandFamilies.aspx</a></p> <p>Benefits for retired Reserve members depend on the sponsor's age. If under age 60, they may qualify to purchase TRICARE Standard Reserve. At age 60 (and when receiving retired pay), they are eligible for the same benefits as all other retired service members. <a href="http://www.tricare.mil/Plans/Eligibility/NGRRandFamilies.aspx">http://www.tricare.mil/Plans/Eligibility/NGRRandFamilies.aspx</a></p>

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	<p>Former Service Members and dependents who are not retirement eligible may be eligible for the Transitional Assistance Management Program (TAMP). TAMP provides 180 days of premium- free transitional health care after regular TRICARE benefits end.</p> <p>Sponsors and eligible family members may be covered by TAMP if the sponsor is:</p> <ul style="list-style-type: none"> <li>• Involuntarily separating from active duty under honorable conditions.</li> <li>• A National Guard or Reserve member separating from a period of more than 30 consecutive days of active duty served in support of a contingency operation.</li> <li>• Separating from active duty following involuntary retention (stop-loss) in support of a contingency operation.</li> <li>• Separating from active duty following a voluntary agreement to stay on active duty for less than one year in support of a contingency operation.</li> <li>• Receiving a sole survivorship discharge.</li> <li>• Separating from regular active duty service and agree to become a member of the Selected Reserve of a Reserve Component. The Service member must become a Selected Reservist the day immediately following release from regular active duty service to qualify.</li> </ul> <p><a href="http://www.tricare.mil/Plans/SpecialPrograms/TAMP.aspx">http://www.tricare.mil/Plans/SpecialPrograms/TAMP.aspx</a></p> <p>Once TAMP coverage ends or if the victim is not eligible for TAMP, the Secretary of Defense (or his/her designee) and/or the Secretary of the Army, Navy, and Air Force may designate these individuals who are not otherwise entitled for DoD healthcare (medical and dental) in military MTFs. The victim may be granted this Secretarial Designee status, upon his/her request. Individuals may request renewal of Designee status and reapply for Designation; however, continued approval is not guaranteed. Care under Secretarial Designee status is available only on a space available basis at MTFs.</p> <p><a href="http://static.e-publishing.af.mil/production/1/af_sg/publication/afi41-210/afi41-210.pdf">http://static.e-publishing.af.mil/production/1/af_sg/publication/afi41-210/afi41-210.pdf</a></p> <p>The VA will provide disability compensation for sexual assault regardless of the individual's service-connected disability rating or availability of other documentation.</p> <p><a href="http://www.benefits.va.gov/BENEFITS/factsheets/serviceconnected/MST.pdf">http://www.benefits.va.gov/BENEFITS/factsheets/serviceconnected/MST.pdf</a></p> <p>Individuals are informed of these options through various methods. General healthcare options are briefed during the separation or retirement briefings that every service member attends. Beneficiary Counseling and Assistance Coordinators are available at the MTFs to assist and inform individuals of their options. The SARC is also a source for that information.</p>
<b>USN</b>	<p>Victims would receive treatment through the Department of Veterans Affairs (VA). Anyone who has served in the military is entitled to free treatment for military related injuries including sexual trauma. In order to be entitled to additional benefits, victims must follow the VA disability procedures. Victims are informed of this by their active</p>

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	duty medical providers if or when transition to the VA is required.
<b>USMC</b>	<p>The Veterans Administration provides benefits and services to former service members, including crime victims. Every Marine separated honorably is given a copy of the Federal Benefits for Veterans and Dependents (VA Benefits Manual). Per (page 7) of the VA Benefits Manual: “Military sexual trauma (MST) is the term that the Department of Veterans Affairs uses to refer to sexual assault or repeated, threatening sexual harassment that occurred while a Veteran was serving on active duty (or active duty for training if the service was in the National Guard or Reserves). VA health care professionals provide counseling and treatment to help Veterans overcome health issues related to MST. Veterans who are not otherwise eligible for VA health care may still receive these services. Appropriate services are provided for any injury, illness or psychological condition related to such trauma. For additional information visit: <a href="http://www.mentalhealth.va.gov/msthome.asp">http://www.mentalhealth.va.gov/msthome.asp</a></p>
<b>USCG</b>	<p>Victims can continue to receive treatment and counseling through the Veterans Administration. Counseling regarding this option is included in training that the members receive prior to separation from the service.</p>

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**58. Services: Regarding forfeitures of wages imposed pursuant to Article 58b of the UCMJ:**

- a. What options are currently available to convening authorities for waiving forfeitures? In what instances can forfeitures be waived and to whom can forfeited wages be directed?**

<b>USA</b>	<p>Pursuant to Article 57, UCMJ, any forfeiture of pay and allowances included in a court-martial sentence takes effect 14 days after the date adjudged, or on the date in which the sentence is approved by the convening authority (whichever occurs first). In cases where forfeiture has been adjudged as part of a sentence, Articles 57 and 58b, UCMJ, authorize a convening authority to defer this portion of a sentence until the date the sentence is ordered executed. If approved, deferment of adjudged forfeitures is paid to the accused.</p> <p>Article 58b, UCMJ, directs automatic forfeitures in cases where the sentence includes confinement for more than 6 months or a punitive discharge. This provision triggers forfeiture of all pay and allowances for a General Court-Martial and 2/3rds pay and allowances for a Special Court-Martial. Further, Article 58b, UCMJ, authorizes a convening authority to waive all automatic forfeiture of pay and allowances for a period not to exceed six months. This is authorized only in cases where an accused has dependents and the forfeitures must be paid to the dependents.</p>
<b>USAF</b>	<p>If an accused has dependents, an application may also be submitted to the convening authority through the servicing SJA, to waive any mandatory forfeiture of pay and allowances under Article 58b(b), for the benefit of the accused's dependents. Applications for deferral and/or waiver may be submitted through the servicing SJA any time after the sentence is announced and before action by the convening authority. AFI 51-201, para. 9.12.</p> <p>Articles 57(a) and 58b, UCMJ, enable a convening authority to permit payments to the accused's dependents that would otherwise have been forfeited. AFI 51-201, para. 9.28. Mandatory forfeitures can only be waived in cases where an accused has dependents and the waived forfeitures must be paid to the dependents. AFI 51-201, para. 9.28.2. Mandatory forfeitures can only be waived by the convening authority for a period not exceeding six months, or the period of confinement if less than six months.</p> <p><u>Reference:</u></p> <p>- AFGM to AFI 51-201, <i>Administration of Military Justice</i> <a href="http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf">http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf</a></p>
<b>USN</b>	<p>Article 57, UCMJ, provides that any forfeiture of pay and allowances included in a court-martial sentence takes effect 14 days after the date adjudged, or on the date in which the sentence is approved by the convening authority (whichever occurs first). Articles 57 and 58b, UCMJ, authorize a convening authority to defer the forfeiture of pay and allowances until the date the sentence is ordered executed. Deferred adjudged</p>

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	forfeitures may be paid to the accused, but in many cases such a deferment is part of a pretrial agreement by which the accused agrees to establish an allotment for the benefit of a third party (usually a family member) as part of the agreement and is directly linked to the forfeiture provisions of Article 58b, UCMJ, which directs automatic forfeitures in cases where the sentence includes confinement for more than 6 months or a punitive discharge. Article 58b mandates “forfeiture of pay, or all pay and allowances, due that member during any period of confinement.” Forfeitures that are the result of a General Court-Martial amount to “all pay and allowances” while those that result from a Special Court-Martial are “two-thirds of all pay due that member.” Where an accused has dependents, Article 58b, UCMJ, authorizes a convening authority to waive all automatic forfeiture of pay and allowances for a period not to exceed six months.
<b>USMC</b>	Convening authorities may waive forfeitures and direct the wages to dependents as part of a Pretrial Agreements or by exercising Article 60 authority.
<b>USCG</b>	Article 58b(b), UCMJ, permits the convening authority to waive automatic forfeitures for no longer than six months, if paid to the dependents of the accused. Pursuant to R.C.M. 1101(c), the convening authority may defer the automatic forfeitures until convening authority action, at which time they may be suspended for six months. In practice, this allows the dependents of the accused to receive the accused’s pay for approximately ten months after conviction (assuming that the convening authority takes action 120 days after the sentence is adjudged and that the forfeitures are waved for six months). In accordance with Article 58(b) and R.C.M. 1101(d), the forfeitures may only be waived for the purpose of providing support to the accused dependents and may only be paid to those dependents and no one else.

**b. How would allowing forfeited wages of incarcerated Service members to be used as restitution or compensation to victims of criminal offenses impact current wage forfeiture options?**

<b>USA</b>	Currently, wage forfeiture options stemming from a court-martial are limited to those described in the response to RFI 58a above. While deferment of adjudged forfeitures is payable to an accused, waiver of automatic forfeitures is only payable to an accused’s dependents. Authorizing forfeited wages to be used as victim compensation would require amendments to the current forfeiture and waiver provisions and may impact compensation to dependents (i.e. spouses, children, etc).
<b>USAF</b>	The impact would depend on the proposal. If the convening authority was required to waive forfeitures and direct restitution to the victim, waiver of forfeitures for the benefit of the accused’s dependents would no longer be an option. If this was not a requirement, but only an option available to the convening authority, it would require the convening authority to potentially choose between providing support to the victim or the accused’s dependents through waiver of forfeitures.
<b>USN</b>	Because Article 58b, UCMJ, authorizes a convening authority to waive forfeiture of pay and allowances for accused members who have dependents, this proposition would have a significant negative impact on those dependents. In many cases the support from an accused for dependent family members is all the support they receive. Dividing this limited pool of resources between dependent family members and other

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	victims would limit support to the family.
<b>USMC</b>	Article 58b, UCMJ, allows a convening authority to waive automatic forfeitures for service members with dependents with those forfeitures to be paid as the convening authority directs. If the incarcerated service member has dependents using forfeited wages as compensation for victims may impact the amount of forfeitures going to dependents.
<b>USCG</b>	<p>In some cases, it would mean that there would be no funds available for the families of an incarcerated member. The waiver of automatic forfeitures is very common when the member has dependents. Waiver of forfeitures is included in almost every pre-trial agreement when dependents are involved, and it is the most frequent form of clemency granted by the convening authority. The convening authority may only waive forfeitures after determining that the money will be used to provide for the accused's dependents and only after considering factors such as the number and age of the dependents, debts owed by the accused, the ability of the accused's family member to find employment, and the availability of transitional compensation for the family. The decision to waive forfeitures is not taken lightly by the convening authority. Often times the accused will be required to produce a court-ordered child support agreement as evidence that he or she has been financially supporting the dependents and is seeking to continue that support.</p> <p>For members who have dependents, the requirement that restitution be given to the victims rather than dependents could have a negative effect on the willingness of an accused to enter into a pre-trial agreement. The accused often enters into the agreement because it provides him or her an opportunity to continue to provide for the family. If he or she goes to trial and is convicted, the convening authority is not required to waive forfeitures for the dependents, as he or she is required to do if there is an agreement in place. This is especially true in the Coast Guard because, although permitted under Article 58a, UCMJ, as a matter of policy the Coast Guard does not affect automatic reduction in rank to E-1 for qualifying sentences. Therefore, a Coast Guard member who is not reduced in rank as a result of the adjudged sentence is still permitted to receive the base pay he or she received prior to the trial, and will be able to provide that money to the family for ten months. For incarcerated members who have no dependents, the impact on the willingness to take a plea will obviously be negligible.</p> <p>As discussed in the question above, the possibility that a victim could receive money from the accused will also likely have a negative effect on the Coast Guard's efforts to create a culture where the victim is treated with respect, rather than with blame. If the victim is given the opportunity for financial compensation through forfeitures, many members, including panel members, will assume that the victim has a motive to fabricate the incident. This is especially true if the victim has financial debts of his or her own at the time of the assault, as some of the junior members do. And statistically it is the junior members who are most likely to be victimized.</p> <p>Allowing the victim to receive the accused's forfeited funds would require a statutory change to Article 58b. The compensation of the victim by using forfeited funds of the</p>

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	<p>accused is contrary to the purpose behind Article 58b, which is to provide for families, especially children, who are innocent victims of their parents' crimes and have no way of providing for themselves. It is money that, in most cases, is used to help the family bounce back from the loss of the primary or sole breadwinner. It does not make the family whole again because that is not possible under the UCMJ. It only provides a short period of time for the remaining parent to find a job or other means of support. To provide the forfeited wages to a non-dependent victim, one who may not have suffered financially as a result of the crimes or who is still drawing full pay from a military or civilian job would not align with the purpose behind Article 58b.</p>
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**59. Services: Regarding claims made under Article 139 of the UCMJ:**

**a. What rules, regulations, and/or policies govern procedures, proper claims and claimants, limitations, etc. for Article 139 claims?**

<b>USA</b>	<p>Article 139 claims are governed by:          Article 130, UCMJ. See <a href="http://www.apd.army.mil/pdffiles/mcm.pdf">http://www.apd.army.mil/pdffiles/mcm.pdf</a>.          Army Regulation 27-20, Claims. See <a href="http://www.apd.army.mil/pdffiles/r27_20.pdf">http://www.apd.army.mil/pdffiles/r27_20.pdf</a>.          Department of the Army Pamphlet 27-162, Claims Procedures.          See <a href="http://www.apd.army.mil/pdffiles/p27_162.pdf">http://www.apd.army.mil/pdffiles/p27_162.pdf</a>.</p> <p>Article 139 is limited to claims for expenses resulting from property wrongfully taken or willfully damaged. Property loss or damage assessments are limited to direct damages. No redress is provided for indirect, remote, or consequential damages.</p>
<b>USAF</b>	<ol style="list-style-type: none"> <li>1. Article 139, UCMJ</li> <li>2. AFI 51-502, <i>Personnel and Government Recovery Claims</i>, Chapter 6 (will be moved to AFI 51-501, Chapter 8 when draft currently under formal review is published)</li> <li>3. Tort Law and Claims Action Officer Handbook (Atch 59.1)</li> </ol> <p>References:</p> <ul style="list-style-type: none"> <li>- Article 139, UCMJ <a href="http://www.law.cornell.edu/uscode/text/10/939">http://www.law.cornell.edu/uscode/text/10/939</a></li> <li>- AFI 51-502, <i>Personnel and Government Recovery Claims</i>, Chapter 6 (will be moved to AFI 51-501, Chapter 8 when draft currently under formal review is published) <a href="http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-502/afi51-502.pdf">http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-502/afi51-502.pdf</a></li> </ul> <p><b>ATTACHMENT: Atch 59.1 – Tort Law and Claims Action Officer Handbook</b></p>
<b>USN</b>	<p>Chapter IV of the JAGMAN provides a process for assessments against the pay of member of the naval service in satisfaction of claims for damage or wrongful taking of privately-owned property. Under this Article, pay may be assessed if the damage, destruction or loss is caused by willful, wrongful, reckless, riotous, or disorderly conduct by the servicemember. Chapter IV identifies proper claimants, claims that are cognizable and time limits for filing claims, as well as setting forth detailed procedures for the filing, investigating and adjudicating Article 139 claims.</p>
<b>USMC</b>	<p>Chapter IV of JAGINST 5800.7F.</p>
<b>USCG</b>	<p>In addition to Article 139 itself, 33 C.F.R. §§ 25.701-709 and Chapter 7 of the Commandant Instruction Manual 5890.9, Claims and Litigation, govern these claims.</p>

**b. What claims under Article 139 were submitted to the Services in FY12, FY13, and FY14? Please provide the status of claimant (military or civilian, business, etc.), details of the claim (including description of property taken or damaged, etc.), alleged offenses under the UCMJ, final outcome, and any assessment of damages.**

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<b>USA</b>	See Enclosure 17.				
<b>ENCLOSURE 17: Article 139 Claims Spreadsheet (FY 2012-FY 2014)</b>					
<b>USAF</b>	The Air Force has had 7 Article 139 claims submitted since the beginning of FY12.				
	Status of Claimant	Details of claim	alleged UCMJ offenses	final outcome	assessment of damages
	civilian	damage to hood and side of vehicle while intoxicated	willful damage to property	still pending	still pending
	business	damage to veterinarian clinic after intoxicated military member broke in during the night and ransacked the clinic	Unlawful entry; destruction of property;	member found liable	\$13,069.64
	civilian	member had argument with civilian, then got on civilian's car and walked on top, denting hood	destruction of property	Transferred to the Army; claim withdrawn after claim paid under alternate statute (Foreign Claims Act)	none
	active duty	claimant came home after TDY to find house in shambles; spouse intentionally damaged most of his property and the apartment	destruction of property	spouse found liable	\$1,621.25
	civilian	cell phone destroyed after victim was intentionally pushed to the ground	assault	still pending	still pending
	military	trailer was stolen by another military member and damaged	theft	member found liable	\$1215.36
	military	member entrusted care of apartment and vehicle to friend while deployed. Returned to find	damage to property	member found liable for car damage, not liable for	\$584.66

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	vehicle damaged and personal items missing from apartment		missing items	
<p><u>Reference:</u></p> <p>- Article 139, UCMJ <a href="http://www.law.cornell.edu/uscode/text/10/939">http://www.law.cornell.edu/uscode/text/10/939</a></p>				
<b>USN</b>	A survey of Region Legal Service Offices and Staff Judge Advocate Offices for Operational, Installation and Administrative Commands indicates no Article 139 claims were filed during the FY12-FY14 timeframe.			
<b>USMC</b>	The Marine Corps is aware of one Article 139 claim made in FY14 and the claim was unsubstantiated. This information is not tracked service wide.			
<b>USCG</b>	The Coast Guard had one Article 139 claim in FYs 12-14. In FY 2013, a military member claimant filed an Article 139 claim against a military member. The claimant had left his vehicle in the care of the military member when the claimant transferred to another location. The parties had made an agreement for the member to use, care for and ship the vehicle; however, the member misused the vehicle resulting in over \$11,000 in damages. An Article 139 investigation was conducted and the member was found liable for damages up to the maximum permitted by Coast Guard policy of 1/2 of one month's pay for one month. The claimant received \$1,532.10. The member also received non-judicial punishment from his Commanding Officer for the offenses of wrongful appropriation, larceny, and false official statement.			

**c. What impacts may result from expanding Article 139 to include claims for bodily harm?**

<b>USA</b>	<p>Article 139 provides redress for property willfully damaged or destroyed, or wrongfully taken, by members of the Armed Forces of the United States. Article 139 claims for property damage are for tangible losses which would not be compensated through the imposition of fines or forfeiture at trial or through imposition of non-judicial punishment by commanders. Expanding Article 139 to include claims for bodily harm would significantly increase the number and complexity of these claims. The increased complexity of trying to determine what bodily injury may or may not be worth in a given case would also require greater resources to properly investigate and adjudicate than is currently required for relatively simple property damage claims. Article 139 claims for willful damage also require that the commander convene a board consisting of one to three commissioned officers (all non-lawyers) to review the evidence and assess damages against the accused. As the accused currently has very limited due process rights under Article 139, exposing him to damages for bodily injury on top of the fairly easy to ascertain property damage will likely raise constitutional due process concerns.</p> <p>While the doctrine established in <i>U.S. v. Feres</i> precludes potential litigants from suing the federal government for acts committed by one of its employees or contractors that are deemed outside the scope of their employment, both civilian and military victims</p>
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	<p>may sue the accused in their individual capacity in federal district court. These courts are equipped to make evidentiary determinations and damage assessments that are fair to the victim and to the accused.</p>
<p><b>USAF</b></p>	<p>Expanding Article 139 explicitly to include claims for bodily harm would likely result in an increased workload for legal and command resources, in light of the broad variety of cases under Article 120 and Article 128 that involve bodily harm. Article 139 claim awards for bodily harm would be extremely difficult to quantify and wildly disparate as military officers and commanders would be ill-equipped to determine such damages. While a process for providing restitution in cases such as sexual assault or battery cases seems appealing on its face, the result would be to make the Air Force a small claims court whereby individuals sue each other. Criminal conduct is more appropriately handled in the military justice process; civil misconduct is more appropriately handled in the civilian system already established to handle such matters. If the desire is to make victims of crimes whole, it would seem more practical to make restitution a sentencing option. It would also require the development of standards to determine the amount of compensation that an individual would receive under these claims.</p> <p>In the case where an Article 139 board compensates the victim with a substantial amount of money, deduction from the offender's paychecks is likely the only source of revenue to satisfy the debt. This creates a tension between the need to maintain good order and discipline by promptly discharging sexual assault offenders, and the laudable desire to provide compensation to sexual assault victims by keeping their attackers on the payroll.</p> <p>Further, creating a cause of action for financial relief creates an opportunity for financial gain and therefore a possible motivation to make false allegations. The defense would be expected to allege such motivations to impeach the victim's credibility.</p> <p><u>References:</u></p> <p>- Article 139, UCMJ <a href="http://www.law.cornell.edu/uscode/text/10/939">http://www.law.cornell.edu/uscode/text/10/939</a></p>
<p><b>USN</b></p>	<p>As enacted, Article 139 of the UCMJ allows commanders to investigate claims filed by victims of a wrongful taking or willful destruction of property committed by service members and, if substantiated by an investigative panel applying a preponderance of evidence standard, to direct finance officials to pay the victim directly from the offending member's pay. Nothing in the text of Article 139, its implementing regulations, or its legislative history provides for its use as a means to compensate victims of personal injury or for compensation of intangible losses or for indirect or consequential (special) damages. Because existing Article 139 relief is under-utilized, it is difficult to predict the impact of a revision to include recourse for personal injury. Adding an administrative remedy to a military justice proceeding risks complicating matters with no clear benefit.</p>
<p><b>USMC</b></p>	<p>Administrative action under Article 139 is separate and distinct from court-martial proceedings. Finding liability for an Article 139 claims requires an investigation</p>

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	<p>and findings by a General Court-Martial Convening Authority per service regulations. Expanding Article 139 claims to include bodily harm would increase the number of claims made and may require changes to regulations implementing Article 139 in the JAGMAN to address the increased complexity of determining compensation for bodily harm and increased protections for accused service members.</p>
<p><b>USCG</b></p>	<p>Expanding Article 139 to include claims for bodily harm will require significant resources while providing little benefit for victims of sexual assault. Each Article 139 claim requires investigation by a fact-finding board of at least one, but not more than three, commissioned officers, to investigate the complaint, and, if appropriate, to assess the damages and report to the command to which the alleged offender is assigned for final action. Sexual assault investigations are not simple, and a separate Article 139 investigation could complicate the prosecution of a sexual assault. For instance, Article 139 provides the board with power to take testimony under oath and could require the sexual assault victim to provide such testimony. Furthermore, the convening authority for a court-martial and the commanding officer for the Article 139 claim may be the same person. In such a circumstance, the commander likely could not act on the Article 139 claim until any court-martial case was final. Ultimately, service regulations limit the recovery under Article 139 to one-half of one month's basic pay of the offender.</p>

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**60. DoD and Services: Regarding State Victim Compensation Funds:**

- a. Do the Services notify victims of their options for seeking compensation through a State Victim Compensation Fund? Is the notification required by DoD and/or Service policy? If yes, please provide copies of all policies.**

<b>DoD</b>	<p>Yes. Immediately after identification of a crime victim/witness, the local Military Service Responsible Official, law enforcement officer, or criminal investigation officer will explain and provide appropriate information about public and private programs available to provide counseling, treatment, and other support, including available compensation through federal, State, and local agencies and crime victim funds. <i>See</i> Department of Defense Instruction (DoDI) 1030.2, (June 4, 2004), “Victim and Witness Assistance Procedures,” paragraph 6.1.3. In accordance with current and anticipated DoD Victim Witness Assistance policy, specifically, DD Form 2701, “Initial Information for Victims and Witnesses of Crime,” is used by Military Department Victim Witness Assistance Program (VWAP) Responsible Officials. All VWAP Forms are available at <a href="http://www.dtic.mil/whs/directives/infomgt/forms/efoms/dd2701.pdf">http://www.dtic.mil/whs/directives/infomgt/forms/efoms/dd2701.pdf</a>),</p> <p>Please note that the Department of Defense is currently in the process of revising this policy which will be published as a single issuance, DoDI 1030.02, “Victim and Witness Assistance.” The Department contemplates that the revised Instruction will include a section addressing Special Victims’ Counsel/Victims’ Legal Counsel (SVC/VLC), as well as legal assistance to crime victims, based on established policy. The Department anticipates the imminent publication of a draft of DoDI 1030.02 in the Federal Register for public comment. The Department will provide the JPP with that Federal Register notice once published.</p> <p>Furthermore, in addition to the information provided by local VWAP personnel, the Military Services provide legal counsel, known as SVC/VLC to assist victims of alleged sex-related offenses including Articles 120, 120a, 120b, and 120c, forcible sodomy under Article 125 of the UCMJ, attempts to commit such offenses under Article 80 of the UCMJ, or other crimes under the UCMJ as authorized by the Service, who are eligible for legal assistance pursuant to section 1044e of Reference (c) and as further prescribed by the Military Departments and National Guard Bureau policies. Among other vital legal services, SVC/VLC programs can help victims understand their eligibility and the requirements for, and obtaining, any available military and veteran benefits, such as transitional compensation benefits, and other State and federal victims’ compensation programs. The revision of DoDI 1030.02 will incorporate the DoD’s implementation of section 1716 of Public Law 113-66, “National Defense Authorization Act for Fiscal Year 2014,” (December 26, 2013).</p> <p>Additionally, under current DoD policy, active and retired Service members and their dependents are entitled to receive legal assistance pursuant to sections 1044 and 1565 of title 10, United States Code. Legal assistance services for crime victims will include confidential advice and assistance to address matters including, but not limited</p>
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	<p>to, rights and benefits afforded to the victim under law and DoD policy. <i>See</i> Under Secretary of Defense for Personnel and Readiness Memorandum, “Legal Assistance for Victims of Crimes,” October 17, 2011, which we expect will be incorporated in DoDI 1030.02.</p> <p><b>ATTACHMENTS 1.1 through 1.5:</b></p> <ul style="list-style-type: none"> <li>-Attachment 1.1 – DoD Instruction 1030.2, “Victim and Witness Assistance Procedures,” [to be replaced with DoDI 1030.02, Victim and Witness Assistance,” once published] (4 Jun 2004)</li> <li>-Attachment 1.2 – DD Form 2701, “Initial Information for Victims and Witnesses of Crime” (Aug 2013)</li> <li>-Attachment 1.3 – Under Secretary of Defense for Personnel and Readiness Memorandum - Legal Assistance for Victims of Crimes (17 Oct 2011)</li> <li>-Attachment 1.4 – DoDI 6400.07 - Standards for Victim Assistance Services in the Military Community (25 Nov 2013)</li> <li>-Attachment 1.5 – DoDI 6495.02 - Sexual Assault Prevention and Response (SAPR) Program Procedures,” (28 Mar 2013, <i>Incorporating Change 1, Effective 12 Feb 2014</i>)</li> </ul>
<p><b>USA</b></p>	<p>Army Victim/Witness Liaisons refer victims to state victim compensation funds in accordance with AR 27-10, paragraph 17-12b.</p>
<p><b>USAF</b></p>	<p>Yes. Victims are notified of their options for seeking compensation from state victim compensation funds through the Victim and Witness Assistance Program. AFI 51-201, para 7.12.4. AFI 51-201, Figure 7.2, contains a list of resources for victims which includes state crime victims funds. Some legal offices and SARCs also refer victims to local civilian non-profit victim advocacy centers or the District Attorney’s Office to facilitate victims access to state compensation programs. Notification to victims is provided utilizing DD Form 2701, <i>Initial Information for Victims and Witnesses of Crime</i>.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- AFGM2 to AFI 51-201, <i>Administration of Military Justice</i> <a href="http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf">http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf</a></li> <li>- DD Form 2701, <i>Initial Information for Victims and Witnesses of Crime</i> <a href="http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2701.pdf">http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2701.pdf</a></li> </ul> <p>Victims have the right to receive restitution as provided in law pursuant to Article 6b, UCMJ. AFI 51-201, para. 7.11.6. DD Form 2701, <i>Initial Information for Victims and Witnesses of Crime</i>, also notifies victims of the right to available restitution.</p> <p>Restitution may be available from, or offered by, an accused as a condition in the terms of a pretrial agreement, during the sentencing process, as a part of post-trial mitigation under RCM 1105, or as a term or condition of parole or clemency. AFI 51-201, para. 7.12.4.1.</p>

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	<p>Transitional compensation, waiver of mandatory forfeitures, and possible entitlement to a portion of the active duty member’s retirement benefits may be available to victims of intra-familial abuse offenses, to include sexual assault. AFI 51-201, para. 7.12.5.</p> <p>Additionally, the Victim and Witness Assistance Program provides information to victims on possible compensation from local, state or federal crime victim funds, to include the procedures for applying for such funds.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- AFGM to AFI 51-201, <i>Administration of Military Justice</i> <a href="http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf">http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf</a></li> <li>- DD Form 2701, <i>Initial Information for Victims and Witnesses of Crime</i> <a href="http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2701.pdf">http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2701.pdf</a></li> </ul>
<b>USN</b>	<p>Yes. Legal assistance attorneys are required to be generally familiar with State Victim Compensation programs per JAGINST 5800.4A located at: <a href="http://www.jag.navy.mil/library/instructions/5800_4A.pdf">http://www.jag.navy.mil/library/instructions/5800_4A.pdf</a>.</p> <p>Legal assistance attorneys are required to be able to provide advice on the processes for federal, state and local crime compensation programs. While this instruction does not specifically cover VLC, VLC are trained on matters regarding civilian compensation programs as are trial counsel and VWAP personnel. Navy VLC specifically advise victims of available local State Victims Compensation Funds.</p>
<b>USMC</b>	<p>Yes. MCO 5800.14 requires notification to all victims and requires that either (1) victims be provided a DD 2701 upon initial interview by NCIS, or (2) that the TC and the Victim-Witness Assistance Coordinator must confirm that victims received the initial DD 2701 and that they understand their rights. Additionally, each Marine Corps Installation includes this information on its public website.</p> <p>Below are a few sample websites:</p> <p><a href="http://www.hqmc.marines.mil/sja/Branches/VictimWitnessAssistanceProgram/CampPendletonVWAP.aspx">http://www.hqmc.marines.mil/sja/Branches/VictimWitnessAssistanceProgram/CampPendletonVWAP.aspx</a></p> <p><a href="http://www.hqmc.marines.mil/sja/Branches/VictimWitnessAssistanceProgram/MCAS YumaVWAP.aspx">http://www.hqmc.marines.mil/sja/Branches/VictimWitnessAssistanceProgram/MCAS YumaVWAP.aspx</a></p> <p><a href="http://www.hqmc.marines.mil/sja/Branches/VictimWitnessAssistanceProgram/29PalmsVWAP.aspx">http://www.hqmc.marines.mil/sja/Branches/VictimWitnessAssistanceProgram/29PalmsVWAP.aspx</a></p> <p><a href="http://www.hqmc.marines.mil/sja/Branches/VictimWitnessAssistanceProgram/MC BCampLejeuneVWAP.aspx">http://www.hqmc.marines.mil/sja/Branches/VictimWitnessAssistanceProgram/MC BCampLejeuneVWAP.aspx</a></p>
<b>USCG</b>	<p>Sexual Assault Response Coordinators verbally provide information to victims regarding the methods of seeking compensation from sources outside the military. This practice is not required by policy.</p>

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**b. Are personnel within each Service trained regarding State Victim Compensation Funds? If so, which personnel?**

<b>DoD</b>	<p>DoDI 6400.07, “Standards for Victim Assistance Services in the Military Community,” sets forth standards for competency, ethical conduct, and program foundational standards for victim assistance services within the military community. These standards are consistent with the <i>Standards for Victim Assistance Programs and Providers</i> established by the National Victim Assistance Standards Consortium, and incorporate the unique needs of the military community. Victim assistance personnel are defined as those who are available to provide support and assistance to victims of crime and harassment consistent with their assigned responsibilities and in accordance with DoDI 6400.07. They include part-time, full-time, collateral duty, and other authorized individuals, and may be domestic violence or sexual assault prevention and response coordinators (to include unit and uniformed victim advocates), Sexual Assault Response Coordinators, VWAP personnel, or military equal opportunity advisors. Furthermore, DoDI 6495.02, “Sexual Assault Prevention and Response (SAPR) Program Procedures,” Enclosure 10, requires legal assistance attorneys to receive training on State and federal victims’ compensation programs. Specific training is provided by the Military Department Judge Advocates General and the SJA to the Commandant of the Marine Corps.</p>
<b>USA</b>	<p>Army Victim/Witness Liaisons are trained to be familiar with state victim compensation boards and provided information to assist them in that duty.</p>
<b>USAF</b>	<p>DoDI 6495.02, Enclosure 10, requires legal assistance attorneys to receive training on state and federal victims’ compensation programs. The AF JAG Corps has implemented annual SAPR first responder training for legal personnel in AFI 51-201, Section 7J. This training is mandatory for all active duty and Reserve judge advocates who provide military justice advice, legal assistance, or who serve as trial counsel; active duty and Reserve paralegals who provide legal assistance or directly contribute to a VWAP program; any civilian attorney whose core document or position description references, or who through assigned duties, directly contributes to military justice, legal assistance, or a VWAP program; and any other civilian personnel (including volunteers) assigned to a legal office whose core document or position description references, or who through assigned duties, contributes to a VWAP program.</p> <p>Judge advocates receive VWAP training at the Judge Advocate Staff Officer Course, which includes information regarding state victim compensation funds.</p> <p>Finally, the Air Force Judge Advocate General’s School began fielding a VWAP distance education course in September 2013.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- DoDI 6495.02, <i>Sexual Assault Prevention and Response Program Procedures</i> <a href="http://www.dtic.mil/whs/directives/corres/pdf/649502p.pdf">http://www.dtic.mil/whs/directives/corres/pdf/649502p.pdf</a></li> <li>- AFGM2 to AFI 51-201, <i>Administration of Military Justice</i> <a href="http://static.e-">http://static.e-</a></li> </ul>

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	<a href="http://publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf">publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf</a>
<b>USN</b>	Yes. VLC, VWAP personnel, trial counsel, legal assistance attorneys, SARCs and victim advocates are all trained on the general nature of local State Victim Compensation Funds. See enclosure (29)  <b>ENCLOSURE 29: Domestic Abuse Victim Advocate Program Resource Guide</b>
<b>USMC</b>	Yes. All VWAP personnel, judge advocates, VAs, VLCs, and chaplains are notified of the availability of state victim compensation funds, and know that the number is available on the installation VWAP website.
<b>USCG</b>	There are no Service personnel so trained.

**c. For personnel trained on State Victim Compensation Funds, please describe any training received, including courses attended and training material received through courses and other resources.**

<b>DoD</b>	Training is provided by the Military Departments and often conducted at the local level through the legal office, Family Advocacy Program, or SARC program. Judge advocates or VWAP personnel may have the opportunity to attend more extensive training hosted by local victim advocacy organizations, U.S. Attorney's Victim Services training program, and other national victim advocacy conferences.
<b>USA</b>	As part of the VWL basics file that is sent to all new VWLs and as part of the continued training for all VWLs, the Office of The Judge Advocate General Criminal Law Division requires that all VWLs be familiar with their state's victim compensation program and directs them to <a href="http://www.nacvcb.org">www.nacvcb.org</a> as a starting point. It is also discussed at the annual VWL training.
<b>USAF</b>	Training varies base by base but is completed IAW the requirements described under subpart b. Training is often conducted at the local level through the legal office, Family Advocacy Program, or SARC. Some judge advocates or VWAP personnel have the opportunity to attend more extensive training hosted by local victim advocacy organizations, U.S. Attorney's Victim Services training program, and other national victim advocacy conferences.
<b>USN</b>	Navy does not collect information or statistics about compensation received by victims, nor are there any training requirements for personnel who execute the program. Commander Navy Installations Command provides guidance to field personnel.
<b>USMC</b>	The Marine Corps runs annual training for all VWAP personnel and teaches about state victim compensation funds as an element of VWAP. This is also taught to all new TC through the TCO course. See enclosure (16).  <b>ENCLOSURE (16) Training Re: Victim Compensation Funds:</b>  a) VWAP Overview Training Slides b) Trial Counsel Orientation – VWAP Training Slides (28 Apr 2014)
<b>USCG</b>	There are no Service personnel trained on State Victim Compensation Funds.

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**d. Do DoD or the Services collect information or statistics about compensation received by victims of sexual assault in the military from State Victim Compensation Funds? If so, please provide copies of recent reports and information.**

<b>DoD</b>	No information or statistics are collected by the DoD regarding compensation victims receive from state victim compensation funds.
<b>USA</b>	This data is not tracked by the Army.
<b>USAF</b>	No information or statistics are collected by the AF regarding compensation victims receive from state victim compensation funds.
<b>USN</b>	At the installation level, Domestic Abuse Victim Advocates (DAVAs) assist victims with processing and completing the paperwork necessary to apply for the Transitional Compensation for Abused Dependents program. The DAVA Program Resource Guide, attached as enclosure (29), is used as a training tool and as a resource to provide core competency skills needed by DAVAs to ensure they are able to provide victim-advocacy services competently. Transitional Compensation content is included in applicable chapters throughout this Resource Guide.  <b>ENCLOSURE 29: Domestic Abuse Victim Advocate Program Resource Guide</b>
<b>USMC</b>	This information is not collected.
<b>USCG</b>	The Service does not collect that information.