

DRAFT OUTLINE OF COMPENSATION & RESTITUTION IN THE MILITARY
APRIL 10, 2015

- I. Adequacy of Current Mechanisms for Restitution
 - A. Definitions
 - B. Pretrial Agreements
 - C. Clemency and Parole
 - D. Article 139

- II. Adequacy of Current Mechanisms for Compensation
 - A. Transitional Compensation for Abuse of Dependents (TCAD)
 - B. State and Local Crime Victim Compensation (CVC) Programs
 - C. Personnel Claims Act (PCA)
 - D. Other Compensation Mechanisms

- III. Options for Change (*see* “Witness Perspectives” document for pros and cons of these proposals)
 - A. Establishing Restitution as an Authorized Punishment at Courts-Martial
 - B. Directing Court-Martial Forfeitures to Victims
 - C. Amending Article 139 to Include Bodily Harm
 - D. Establishing a DoD Compensation Program

DRAFT OUTLINE OF COMPENSATION & RESTITUTION IN THE MILITARY

APRIL 10, 2015

I. Adequacy of Current Mechanisms for Restitution

A. Definitions: The essential distinction between restitution and compensation is that restitution is a court-ordered punishment paid by a convicted perpetrator of the crime, whereas compensation is paid by the government, irrespective of a conviction.¹

B. Pretrial Agreements (PTAs)

1. Background

- a. Under R.C.M. 705(c)(2)(C), trial counsel may seek, as a term of a PTA, the accused's "promise to provide restitution," normally prior to trial.² This is currently the best way for a victim to get restitution under the present system, particularly when restitution is required to be paid before trial. Military courts have consistently enforced restitution provisions in PTAs.³
- b. The Services do not currently track the use of restitution in PTAs. Restitution is most often included in PTAs in cases involving larceny, wrongful appropriation, and/or fraud. The Navy, Marine Corps, and Coast Guard reported that they were not aware of any recent Article 120 case in which restitution was included as a term of the PTA.⁴
- c. DD Form 2701, Initial Information for Victims and Witnesses of Crime, contains a provision notifying victims that restitution "can be used as a condition of a pre-trial agreement to plead guilty to an offense."⁵
- d. The convening authority is required to consider the views of the victim prior to entering into a PTA. When the victim is not represented by counsel, including where the victim is a civilian, the trial counsel is responsible for soliciting the victim's views and conveying them to the convening authority.⁶

2. Limitations as a Restitution Mechanism for Sexual Assault Victims

- a. PTAs are entered into much less often in Article 120 cases than in other cases.⁷
- b. Whether a PTA will include a restitution provision ultimately remains within the discretion of the convening authority.⁸ Where the victim is represented by an SVC/VLC, the convening

¹ See, e.g., *Transcript of JPP Public Meeting* 106 (testimony of Prof. Njeri Mathis Rutledge, South Texas College of Law); *id.* at 202 (testimony of Maj Mark D. Sameit, U.S. Marine Corps, Officer In Charge, Trial Counsel Assistance Program); Coast Guard's Response to RFI 53 (quoting Black's Law Dictionary to define restitution as "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).

² *Transcript of JPP Public Meeting* 19-21 (testimony of Col John G. Baker, U.S. Marine Corps, Chair, Joint Service Committee).

³ Lieutenant Colonel David M. Jones, *Making the Accused Pay for His Crime: A Proposal to Add Restitution as an Authorized Punishment under Rule for Courts-Martial 1003(B)*, 56 NAVAL L. REV. 1, 5 (2005) [hereinafter Jones Article].

⁴ Services' Responses to RFI 54(f)(ii).

⁵ See DoD's Response to RFI 60(a).

⁶ *Transcript of JPP Public Meeting* 38-42 (testimony of Col John G. Baker, U.S. Marine Corps, Chair, Joint Service Committee).

⁷ *Transcript of JPP Public Meeting* 234-35 (testimony of Capt Joseph B. Ahlers, U.S. Air Force, Special Victims' Counsel).

DRAFT OUTLINE OF COMPENSATION & RESTITUTION IN THE MILITARY

APRIL 10, 2015

- authority does not always, and is not currently required to, receive oral/contemporaneous input from the SVC/VLC regarding the PTA.⁹ Sometimes the victim is not even advised of the PTA until after it has been signed.¹⁰
- c. In cases without an SVC/VLC, the trial counsel sometimes conveys the victim's views regarding the PTA through the staff judge advocate rather than directly to the convening authority.¹¹
 - d. The RSP recommended MCM modifications and appropriate regulations providing victims the right to be heard before the convening authority proposes or responds to a PTA offer. The RSP recommendation would leave it to the convening authority to determine the best means to comply with this right (e.g., prior written submission vs. orally/contemporaneously in person). In December 2014, DoD Office of General Counsel referred the RSP recommendation to the Joint Service Committee.¹² The JSC is currently reviewing the RSP recommendation; at this time, implementation would most likely involve a possible change to R.C.M. 705 (Pretrial agreements) and new Service regulations.¹³
 - e. If the PTA does not require restitution to be paid until after trial, under the typical restitution provision, additional confinement is triggered if the accused fails to pay. But to enforce such a position, the convening authority must hold a vacation hearing, assuming that enforcement is still possible (i.e., that the accused is still in confinement and that the suspension period has not passed). The convening authority may be reluctant to hold such a time-consuming hearing, especially when the accused has paid most but not all of the restitution amount.¹⁴
 - f. One JPP presenter testified that VLCs lack sufficient guidance as to the appropriate amount of restitution.¹⁵
 - g. Under R.C.M. 201 (Jurisdiction in general), military judges arguably lack authority to order restitution pursuant to a PTA, to the extent that restitution could be considered a civil remedy.¹⁶

⁸ *Transcript of JPP Public Meeting 305* (testimony of Maj Richard M. Cloninger, U.S. Marine Corps, Regional Victims' Legal Counsel).

⁹ *Transcript of JPP Public Meeting 43* (testimony of Col John G. Baker, U.S. Marine Corps, Chair, Joint Service Committee).

¹⁰ *Transcript of JPP Public Meeting 306* (testimony of Maj Richard M. Cloninger, U.S. Marine Corps, Regional Victims' Legal Counsel).

¹¹ *Transcript of JPP Public Meeting 44* (testimony of Col John G. Baker, U.S. Marine Corps, Chair, Joint Service Committee).

¹² U.S. Dep't of Def., Memorandum from the Secretary of Defense on Implementation of the Recommendations of the Response Systems to Adult Sexual Assault Crimes Panel at 15 (Dec. 15, 2014) (responding to RSP Recommendation 54A-C), available at http://jpp.whs.mil/Public/docs/03_Topic-Areas/01-General-Information/05_DoDResponse_RSPRecommendations_20141215.pdf.

¹³ *Written Statement of Col John G. Baker, U.S. Marine Corps, Chair, Joint Service Committee* para. 2 (Mar. 20, 2015).

¹⁴ Jones Article at 6.

¹⁵ *Transcript of JPP Public Meeting 306-07* (testimony of Maj Richard M. Cloninger, U.S. Marine Corps, Regional Victims' Legal Counsel).

¹⁶ *Transcript of JPP Public Meeting 307* (testimony of Maj Richard M. Cloninger, U.S. Marine Corps, Regional Victims' Legal Counsel).

DRAFT OUTLINE OF COMPENSATION & RESTITUTION IN THE MILITARY

APRIL 10, 2015

C. Clemency and Parole

1. Background

- a. The military judge may recommend that the convening authority disapprove or suspend some portion of punishment awarded if the accused makes restitution to the victim within a certain period. If the accused submits a request consistent with the military judge's recommendation – usually for reduced confinement time if restitution is paid, the convening authority has discretion to grant the accused's request.¹⁷
- b. DD Form 2701, Initial Information for Victims and Witnesses of Crime, contains a provision notifying victims that restitution "can be used . . . as a condition of clemency or parole."¹⁸
- c. It is DoD policy that clemency and parole boards "shall consider making restitution to the victim a condition of granting" clemency and parole. In addition, parole may be revoked if the parolee has violated such a condition by failing to pay restitution.¹⁹
- d. The Services do not currently track clemency or parole as a restitution mechanism. The Marine Corps reported that it is unaware of any Article 120 case in which restitution was included as a condition of parole.²⁰

2. Limitations as a Restitution Mechanism

- a. Whether restitution can be sought during the clemency process ultimately remains within the discretion of the convening authority.²¹
- b. Whether the victim receives restitution is contingent on the military judge's recommendation and post-trial requests by the accused.²²

D. Article 139

1. Background

- a. Article 139 permits victims – whether military or civilian – to seek restitution for property crimes.²³
- b. Claimants must file a report with the offender's commander within 90 days of the incident. An investigating officer/board is appointed within four working days of receipt of the claim. If the offender's commander finds in favor of the victim, the commander orders the finance

¹⁷ Jones Article at 7.

¹⁸ See DoD's Response to RFI 60(a).

¹⁹ Jones Article at 17 & n.87 (quoting U.S. DEP'T OF DEF. DIR. 1030.1, VICTIM AND WITNESS ASSISTANCE pt. 4.5 (Apr. 23, 2004)).

²⁰ Services' Responses to RFI 54(f)(ii)(a).

²¹ Jones Article at 7; *Transcript of JPP Public Meeting 305* (testimony of Maj Richard M. Cloninger, U.S. Marine Corps, Regional Victims' Legal Counsel).

²² Jones Article at 8.

²³ *Transcript of JPP Public Meeting 12* (testimony of Col John G. Baker, U.S. Marine Corps, Chair, Joint Service Committee); Jones Article at 10-11.

DRAFT OUTLINE OF COMPENSATION & RESTITUTION IN THE MILITARY

APRIL 10, 2015

- office to garnish the offender's wages and directly pay the victim. Up to \$10,000 can be awarded.²⁴
- c. Funds are generally available to pay the victim because the offender usually is still being paid throughout the Article 139 process.²⁵
 - d. For FY12-FY14, the Army adjudicated 68 Article 139 claims per year, the Air Force reported 2, and the Navy, Marine Corps and Coast Guard had zero.
 - e. None of the Article 139 claims that the Services reported for FY12-FY14 arose from an Article 120 case.²⁶
 - f. The underutilization in most Services of the Article 139 process may be due to a lack of training of commanders and insufficient guidance to victims about the process.²⁷ The Services have begun attempting to improve Article 139 education and training.²⁸

2. Limitations/Concerns as a Restitution Mechanism for Sexual Assault Victims

- a. Article 139 is limited to willful property damage and theft of tangible property; it expressly excludes bodily injury and therefore is not a remedy for violent crime.²⁹
- b. The Article 139 process sometimes does not conclude until after the accused is released from active duty, in which case his wages can no longer be garnished. Likewise, the victim will not receive any money if the offender is in a "no-pay" status (e.g., due to being on excess leave, appellate leave, or unauthorized absence).³⁰
- c. Some commanders may decline to appoint an investigating officer in order to avoid the administrative responsibility or to avoid disputes between Service members.³¹ Converting physical and mental injuries into a dollar value would be a heavy responsibility ill-suited to commanders.³²

²⁴ *Transcript of JPP Public Meeting 12* (testimony of Col John G. Baker, U.S. Marine Corps, Chair, Joint Service Committee); Jones Article at 10-11.

²⁵ Jones Article at 10-11.

²⁶ Services' Responses to Request for Information [hereinafter RFI] 59(b).

²⁷ *Transcript of JPP Public Meeting 13-14, 18* (testimony of Col John G. Baker, U.S. Marine Corps, Chair, Joint Service Committee).

²⁸ *Transcript of JPP Public Meeting 13-14, 18* (testimony of Col John G. Baker, U.S. Marine Corps, Chair, Joint Service Committee).

²⁹ Jones Article at 11; Julie Dickerson, *A Compensation System for Military Victims of Sexual Assault and Harassment*, 222 MIL. L. REV. 211, 225 (Winter 2014) [Hereinafter Dickerson Article].

³⁰ *Transcript of JPP Public Meeting 310-11* (testimony of Maj Richard M. Cloninger, U.S. Marine Corps, Regional Victims' Legal Counsel).

³¹ Jones Article at 12.

³² Dickerson Article at 225.

DRAFT OUTLINE OF COMPENSATION & RESTITUTION IN THE MILITARY

APRIL 10, 2015

- d. Practitioners report concern that Article 139 investigating officers may gather facts that conflict with those gathered during – or otherwise get in the way of – the criminal investigation.³³

II. Adequacy of Current Mechanisms for Compensation

A. Transitional Compensation for Abuse of Dependents (TCAD)

1. Background

- a. Victims of dependent abuse may seek compensation for up to 36 months if the sponsor-offender is separated from the military – either administratively or punitively – due to the abuse.³⁴ TCAD is intended to help ease abused dependents' unexpected transition from military to civilian life.³⁵ The payments are currently \$1,254 to the spouse and \$311 per child per month.³⁶
- b. In practice, the availability of TCAD helps trial counsel convince reluctant spouses to testify against their abusers.³⁷

2. Limitations as a Compensation Mechanism for Sexual Assault Victims

- a. TCAD does not require a showing of financial harm – and, in fact, targets dependents, not victims – and is not paid by the accused.³⁸
- b. TCAD is not triggered unless and until the offender is convicted at court-martial or administratively separated for a qualifying domestic abuse offense. Article 15 punishment does not trigger TCAD.³⁹
- c. TCAD is subject to various requirements, including:
 - that dependent may not reside with accused; and
 - that dependent did not participate in abuse.⁴⁰
- d. The duration of compensation depends upon the amount of time left on the accused's service contract.⁴¹ Typically, this is 12-24 months.⁴²

³³ *Transcript of JPP Public Meeting 12-15* (testimony of Col John G. Baker, U.S. Marine Corps, Chair, Joint Service Committee); *id.* at 311 (testimony of Maj Richard M. Cloninger, U.S. Marine Corps, Regional Victims' Legal Counsel).

³⁴ Jones Article at 13 (citing 10 U.S.C. § 1059).

³⁵ Army's Response to RFI 54(a).

³⁶ U.S. Dep't of Def., Financial Management Reg. 7000.14-R vol. 7B, ch. 60, at 8-9 (Feb. 2015) (emailed to Panel with this Outline).

³⁷ Jones Article at 13.

³⁸ *Transcript of JPP Public Meeting 223* (testimony of Capt Joseph B. Ahlers, U.S. Air Force, Special Victims' Counsel); *id.* at 253 (testimony of LCDR Patrick K. Korody, U.S. Navy, Supervising Attorney, Victims' Legal Counsel Program); *id.* at 307-08 (testimony of Maj Richard M. Cloninger, U.S. Marine Corps, Regional Victims' Legal Counsel); Jones Article at 13.

³⁹ *Transcript of JPP Public Meeting 308* (testimony of Maj Richard M. Cloninger, U.S. Marine Corps, Regional Victims' Legal Counsel); *Written Statement of Mr. Gene McCleskey, Director, Texas Crime Victims' Compensation Program 1* (unnumbered).

⁴⁰ *Transcript of JPP Public Meeting 30-31* (testimony of Col John G. Baker, U.S. Marine Corps, Chair, Joint Service Committee).

DRAFT OUTLINE OF COMPENSATION & RESTITUTION IN THE MILITARY APRIL 10, 2015

- e. In practice, dependents must diligently pursue TCAD, and it takes several months for them to receive the first payment.⁴³ This is significant since compensation at the early stages is what's most important to victims, particularly in domestic cases.⁴⁴
- f. A military offender is often his family's primary provider. Following the offender's confinement, dependent victims usually face difficulty enforcing judgments for spousal or child support in civilian courts. Therefore, according to some practitioners, TCAD is generally insufficient to provide the financial support needed for dependent victims and families to essentially begin a new life.⁴⁵

B. State and Local Crime Victim Compensation (CVC) Programs

1. Background

- a. Financial assistance is provided to victims, including military victims, who are residents of the state at the time of victimization. Covering certain expenses that are not covered by insurance or another program, the CVC funds are payors of last resort.⁴⁶ As limited public resources, CVC programs generally are designed to be safety nets to help victims get through the initial trauma of a crime, not to provide long-term service.⁴⁷
- b. Except for the Coast Guard, the Services regularly provide training to the personnel responsible for advising victims on state or local CVC programs such as VWLs.⁴⁸ Training is conducted by the National Association of CVC Boards as well as individual CVC programs.⁴⁹
- c. The Services do not currently track compensation received by sexual assault victims from state and local CVC programs.⁵⁰
- d. Most state CVC programs are operated by individuals trained in victim services who work closely with their counterparts.⁵¹

⁴¹ *Transcript of JPP Public Meeting 30-31* (testimony of Col John G. Baker, U.S. Marine Corps, Chair, Joint Service Committee).

⁴² *Transcript of JPP Public Meeting 308-09* (testimony of Maj Richard M. Cloninger, U.S. Marine Corps, Regional Victims' Legal Counsel).

⁴³ *Transcript of JPP Public Meeting 208-09* (testimony of LCDR Patrick K. Korody, U.S. Navy, Supervising Attorney, Victims' Legal Counsel Program); *id.* at 309 (testimony of Maj Richard M. Cloninger, U.S. Marine Corps, Regional Victims' Legal Counsel).

⁴⁴ *Transcript of JPP Public Meeting 309-10* (testimony of Maj Richard M. Cloninger, U.S. Marine Corps, Regional Victims' Legal Counsel).

⁴⁵ *E.g., Transcript of JPP Public Meeting 212* (testimony of LCDR Patrick K. Korody, U.S. Navy, Supervising Attorney, Victims' Legal Counsel Program); *see also id.* at 309 (testimony of Maj Richard M. Cloninger, U.S. Marine Corps, Regional Victims' Legal Counsel).

⁴⁶ *JPP March 13 Meeting and Reference Materials* Tab 14 at 1 (unnumbered) (National Association of Crime Victim Compensation Boards (NACVCB) brochure); NACVCB, "Crime Victim Compensation: Resources for Recovery," *available at* Tab 14; *see also Written Statement of Mr. Gene McCleskey, Director, Texas Crime Victims' Compensation Program 1.*

⁴⁷ *Transcript of JPP Public Meeting 182-83* (testimony of Mr. Dan Eddy, Executive Director, NACVCB).

⁴⁸ Services' Responses to RFI 60.

⁴⁹ *Written Statement of Mr. Gene McCleskey, Director, Texas Crime Victims' Compensation Program 1.*

⁵⁰ Services' Responses to RFIs 54(e), 60(d).

DRAFT OUTLINE OF COMPENSATION & RESTITUTION IN THE MILITARY APRIL 10, 2015

- e. Approximately one-third to one-half of state CVC programs cover some relocation expenses.⁵² Property loss/damage usually is not covered, except for medically necessary devices like eyeglasses.⁵³ Currently, no state CVC program covers pain and suffering.⁵⁴

2. Limitations as a Compensation Mechanism for Sexual Assault Victims

- a. The victim must be made aware of and referred to a state or local CVC program, must follow its procedures, and must follow up with necessary documentation. Victims must rely on cooperation from commands and/or MCIOs to assist them in providing documentation.⁵⁵
- b. Victims of offenses committed by Service members are not uniformly compensated. Their compensation depends upon the requirements and funds available in the state in which they apply.⁵⁶
- c. State CVC funds are subject to various requirements and limitations, including:
 - victims must have reported the crime promptly to law enforcement – in some jurisdictions, within as little as 48-72 hours;⁵⁷
 - victims generally must file claim within one year of incident;⁵⁸
 - victims generally must agree to cooperate with law enforcement (e.g., report crime to police, provide information to prosecutors, testify against accused)⁵⁹
 - while California recently amended its statute to eliminate its reporting requirement for victims of military sexual assault,⁶⁰ it remains to be seen whether other states will follow its lead;⁶¹
 - victims must not have engaged in contributory misconduct – i.e., unlawful conduct that caused the sexual assault (sometimes called “innocent victim” requirement);⁶²

⁵¹ *Transcript of JPP Public Meeting 164* (testimony of Mr. Dan Eddy, Executive Director, NACVCB).

⁵² *Transcript of JPP Public Meeting 174-75* (testimony of Mr. Dan Eddy, Executive Director, NACVCB).

⁵³ *JPP March 13 Meeting and Reference Materials* Tab 14 at 3 (NACVCB brochure); NACVCB, “Crime Victim Compensation: Resources for Recovery,” available at Tab 14.

⁵⁴ *Transcript of JPP Public Meeting 180* (testimony of Mr. Dan Eddy, Executive Director, NACVCB).

⁵⁵ *Transcript of JPP Public Meeting 313-14* (testimony of Maj Richard M. Cloninger, U.S. Marine Corps, Regional Victims’ Legal Counsel).

⁵⁶ *E.g.*, Dickerson Article at 240.

⁵⁷ *JPP March 13 Meeting and Reference Materials* Tab 14 at 2 (NACVCB brochure); NACVCB, “Basic Program Information,” available at Tab 14; *Transcript of JPP Public Meeting 172-74* (testimony of Mr. Dan Eddy, Executive Director, NACVCB); *id.* at 63 (testimony of Prof. Njeri Mathis Rutledge, South Texas College of Law).

⁵⁸ *JPP March 13 Meeting and Reference Materials* Tab 14 at 2 (NACVCB brochure); NACVCB, “Basic Program Information,” available at Tab 14.

⁵⁹ *Transcript of JPP Public Meeting 63* (testimony of Prof. Njeri Mathis Rutledge, South Texas College of Law).

⁶⁰ Cal. Assembly Bill No. 2545 (Sept. 20, 2014), available at *JPP March 13 Meeting and Reference Materials* Tab 18.

⁶¹ *JPP March 13 Meeting and Reference Materials* Tab 14 at 2 (NACVCB brochure); *Written Statement of Prof. Njeri Mathis Rutledge, South Texas College of Law 3* (undated).

DRAFT OUTLINE OF COMPENSATION & RESTITUTION IN THE MILITARY APRIL 10, 2015

- benefit caps (\$25,000 average) and sub caps (e.g., in about half the jurisdictions, mental health counseling, for which the maximum benefit is as low as \$1,000);⁶³
 - exclusions of certain procedures (e.g., abortion, tattoo removal) and more progressive therapies (e.g., massage, acupuncture, meditation).⁶⁴
- d. The above requirements vary from state to state; VWAPs and SVC/VLCs cannot be expert on them all.⁶⁵ Although victims can sometimes seek compensation from foreign CVC programs, some U.S. state CVC programs may not compensate residents for crimes committed abroad.⁶⁶
- e. State and local CVC programs are operated by small staffs and depend heavily on police, prosecutors, and victim service agencies to inform victims of availability and how to apply.⁶⁷ Due to insufficient staffing and administrative support, state and local CVC programs are generally under-publicized and often have extensive backlogs.⁶⁸
- f. Approximately one-fourth of the state programs are operated by boards whose members are generally appointed by the governor and who often lack sufficient training.⁶⁹

C. Personnel Claims Act (PCA)

1. Background

- a. The official name of the PCA is the Military Personnel and Civilian Employees Claims Act.⁷⁰ The PCA allows victims who are Service members or DoD employees to file claims

⁶² *JPP March 13 Meeting and Reference Materials* Tab 14 at 2 (NACVCB brochure); *Transcript of JPP Public Meeting* 151-52 (testimony of Ms. Nikki Charles, Network for Victim Recovery of DC (NVRDC), former Administrator of Victim Services, Maryland Criminal Injuries Compensation Board); *id.* at 162-63 (testimony of Mr. Dan Eddy, Executive Director, NACVCB).

⁶³ *JPP March 13 Meeting and Reference Materials* Tab 14 at 3 (NACVCB brochure); NACVCB, "Basic Program Information," available at Tab 14; NACVCB, "Crime Victim Compensation: Resources for Recovery," available at Tab 14; *Transcript of JPP Public Meeting* 182 (testimony of Mr. Dan Eddy, Executive Director, NACVCB); *id.* at 152-53 (testimony of Ms. Nikki S. Charles, Network for Victim Recovery of DC (NVRDC), former Administrator of Victim Services, Maryland Criminal Injuries Compensation Board).

⁶⁴ *Transcript of JPP Public Meeting* 152-53 (testimony of Ms. Nikki S. Charles, Network for Victim Recovery of DC (NVRDC), former Administrator of Victim Services, Maryland Criminal Injuries Compensation Board).

⁶⁵ *Transcript of JPP Public Meeting* 220-21 (testimony of Capt Joseph B. Ahlers, U.S. Air Force, Special Victims' Counsel).

⁶⁶ *Transcript of JPP Public Meeting* 298 (testimony of Ms. Teresa P. Scalzo, Deputy Director, U.S. Navy Trial Counsel Assistance Program); Dickerson Article at 240.

⁶⁷ *JPP March 13 Meeting and Reference Materials* Tab 14 at 3 (NACVCB brochure); NACVCB, "Crime Victim Compensation: Resources for Recovery," available at Tab 14.

⁶⁸ *Transcript of JPP Public Meeting* 113-14 (testimony of Prof. Julie Goldscheid, CUNY Law School).

⁶⁹ *Transcript of JPP Public Meeting* 185-86 (testimony of Ms. Nikki S. Charles, Network for Victim Recovery of DC (NVRDC), former Administrator of Victim Services, Maryland Criminal Injuries Compensation Board, and Mr. Dan Eddy, Executive Director, NACVCB).

⁷⁰ 31 U.S.C. § 3721.

DRAFT OUTLINE OF COMPENSATION & RESTITUTION IN THE MILITARY

APRIL 10, 2015

against the government for damage to or loss of personal property incident to service, including seizure of evidence.⁷¹

- b.** Victims can be reimbursed for lost items such as cell phones, computers, clothing, and doorknobs,⁷² and, in some cases, compensated for the temporary deprivation of such items.⁷³
- c.** The PCA is primarily used to pay Service members and civilian employees for losses to personal property incurred during government-sponsored shipments.⁷⁴ As a mechanism to compensate for seized evidence, the PCA is currently used more often in the Army and Air Force than in the Marine Corps, which is only starting to train trial counsel on this application of the PCA.⁷⁵

2. Limitations as a Compensation Mechanism for Sexual Assault Victims

- a.** Sexual assault victims may not seek compensation under the PCA for any harm other than loss/damage to, or temporary deprivation of, personal property (seized as evidence).⁷⁶
- b.** The PCA does not permit payments to civilian victims who are not DoD employees.⁷⁷
- c.** Victims cannot file claims under the PCA for damage or harm (of any kind) caused by an accused.⁷⁸

D. Other Compensation Mechanisms

1. Federal Tort Claims Act (FTCA)

- a.** The FTCA, 28 U.S.C. §§ 2671-2680, permits payment of claims to civilians for death, injury, or property loss caused by negligent or wrongful acts of military personnel acting within the scope of employment.⁷⁹

⁷¹ *E.g.*, U.S. DEP'T OF ARMY REG. 27-20, CLAIMS para. 11-5(k) (Feb. 8, 2008) (emailed to Panel with this Outline).

⁷² *Transcript of JPP Public Meeting 218, 248* (testimony of Capt Joseph B. Ahlers, U.S. Air Force, Special Victims' Counsel); *id.* at 257 (testimony of LCDR Patrick K. Korody, U.S. Navy, Supervising Attorney, Victims' Legal Counsel Program).

⁷³ *E.g.*, U.S. DEP'T OF ARMY REG. 27-20, CLAIMS para. 11-5(k) (Feb. 8, 2008) ("Deprivation of property held as evidence may be considered a payable loss when, after taking all circumstances into consideration, the approval authority determines that the temporary loss of the property will work a grave hardship on a claimant who is a victim of a crime.") (emailed to Panel with this Outline).

⁷⁴ Col R. Peter Masterton, U.S. Army, *Claims Office Management*, 2011-SEP Army Law. 48, 50 (Sept. 2011) [hereinafter Masterton Article].

⁷⁵ *Transcript of JPP Public Meeting 246-47* (testimony of Maj Mark D. Sameit, U.S. Marine Corps, Officer In Charge, Trial Counsel Assistance Program).

⁷⁶ *See* U.S. DEP'T OF ARMY REG. 27-20, CLAIMS para. 11-5 (Claims payable) (Feb. 8, 2008) (emailed to Panel with this Outline).

⁷⁷ 31 U.S.C. § 3721; *Written Statement of Col John G. Baker, U.S. Marine Corps, Chair, Joint Service Committee* para. 4 (Mar. 20, 2015) (clarifying prior testimony at public meeting regarding Military Claims Act).

⁷⁸ 31 U.S.C. § 3721; *Transcript of JPP Public Meeting 248-49* (testimony of Capt Joseph B. Ahlers, U.S. Air Force, Special Victims' Counsel).

⁷⁹ Masterton Article at 52.

DRAFT OUTLINE OF COMPENSATION & RESTITUTION IN THE MILITARY
APRIL 10, 2015

- b. The *Feres* Doctrine, however, prohibits claims by Service members, barring any “complaint of injury that occurs while the complaining party is in active-duty status, on a military base, or engaged in a military mission.”⁸⁰
- c. The FTCA effectively bars sexual assault claims because sexual assault “cannot be considered performing the employer’s work.”⁸¹

2. Military Claims Act

- a. The Military Claims Act (MCA) permits payment of claims arising outside the United States from death, injury, or property loss caused by negligence or wrongful acts of military personnel or civilian employees acting within the scope of employment.⁸²
- b. The claim must arise from “noncombat activities” of the armed forces. For purposes of the MCA, “noncombat activities” are defined as “authorized activities essentially military in nature, having little parallel in civilian pursuits,” such as firing of weapons, field exercises, and maneuvers that include the operation of military aircraft and vehicles.⁸³
- c. The MCA does not allow recovery for claims otherwise excluded under the FTCA.⁸⁴

⁸⁰ Dickerson Article at 218 (internal quotation marks omitted).

⁸¹ Dickerson Article at 226 (internal quotation marks omitted).

⁸² 10 U.S.C. § 2733; *see also* *Written Statement of Col John G. Baker, U.S. Marine Corps, Chair, Joint Service Committee* para. 4 (Mar. 20, 2015) (clarifying prior testimony at public meeting regarding Military Claims Act); *see also generally* Masterton Article at 50-53.

⁸³ Masterton Article at 53; U.S. DEP’T OF ARMY REG. 27-20, CLAIMS 108 (Feb. 8, 2008) (emailed to Panel with this Outline).

⁸⁴ Dickerson Article at 227.