

Issue Checklist: Victims' Appellate Rights

Issue	Concerns and Considerations
Definition of Victim in Proposed Legislation	<p><i>Which victims should have appellate standing? Possible options include:</i></p> <ul style="list-style-type: none"> • Section 547 proposal: any individual who has suffered direct physical, emotional, or pecuniary harm as a result of an offense under the UCMJ • Victims of sexual assault (sexual assault victims are the only class of victims afforded representation by SVCs/VLCs; however, per the U.S. Marine Corps Victims' Legal Counsel Manual, VLCs in the Marine Corps may provide "confidential and privileged legal advice and counseling" to victims of all crimes, but can only provide "representation and advocacy" to victims of sexual assault, domestic violence, and child abuse) • Other categories of victims, such as victims of domestic violence, victims of child pornography, or victims of hate crimes • Not just victims, but any witness with a privacy interest or privilege
Victim Privacy Interests During Appellate Counsel Review of Record of Trial	<p><i>What are the due process and/or practical implications of limiting appellate counsel's access to sealed materials?</i></p> <ul style="list-style-type: none"> • Possibility that exculpatory evidence erroneously not disclosed at trial will not be discovered—and corrected—on appeal • Military judges, unlike their federal civilian counterparts, are not tenured and are unable to benefit from experience beyond 2-3 years in most cases <p><i>Should the process governing appellate counsel access to sealed materials in the record of trial be modified? Possible options include:</i></p> <ul style="list-style-type: none"> • No change, but better inform victims of the responsibilities of appellate counsel and the current procedures that prevent unfettered access to sealed materials on appeal • Standardize Service Criminal Courts of Appeals Rules of Practice and Procedure for appellate counsel access and review of sealed materials • Allow victims to file pleadings prior to appellate counsel review of sealed materials • Amend Rule for Courts-Martial 1103A to require in camera review by the Service appellate court prior to appellate counsel review of sealed materials

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<p>Victim Standing on Appeal</p>	<p><i>What are the due process and/or practical implications of granting victims standing to file pleadings on direct appeal?</i></p> <ul style="list-style-type: none"> • Delay in appellate process, and potential for a case to be overturned due to speedy trial issues • Appearance that appellate process is stacked against appellant • Appearance that oral argument is unfair unless appellant is afforded additional time <p><i>What are the mechanisms for allowing victims to participate on appeal? Possible options include:</i></p> <ul style="list-style-type: none"> • Section 547 proposal: real party in interest • Explicit statutory grant of standing • Intervening party • Amicus Curiae <p><i>In which instances should victims have standing? Possible options include:</i></p> <ul style="list-style-type: none"> • Section 547 proposal: when a victim’s rights under Military Rules of Evidence 412, 513, and 514 are implicated • When any of the victim’s rights under Article 6b, UCMJ are implicated
<p>Victim Standing at the Court of Appeals of the Armed Forces (CAAF)</p>	<p><i>Should victims be allowed to appeal a writ-denial to the CAAF?</i></p> <ul style="list-style-type: none"> • CAAF found that it does not have jurisdiction to hear a writ-appeal by a victim in the 2016 case <i>EV v. United States & Martinez</i>, 75 M.J. 331 (C.A.A.F 2016) • Section 547 does not clearly give victims the right to appeal writ-denials to CAAF <p><i>What requirements could be put in place to limit the delay in interlocutory appeals? Possible options include:</i></p> <ul style="list-style-type: none"> • Page limit for appellate pleadings • Clearly defined timelines for appellate pleadings and appellate court review

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<p>Victim Notice of Appellate Pleadings</p>	<p><i>In which instances should victims receive notice? Possible options include:</i></p> <ul style="list-style-type: none"> • Section 547 proposal: a victim should receive notice of any appellate matter • A victim should receive notice of pleadings that reasonably implicate the victim’s interest <p><i>How should victims receive notice of appellate matters, particularly when they are not represented by counsel on appeal? Possible options include:</i></p> <ul style="list-style-type: none"> • Opt-in provision post-conviction • Responsibility of Government counsel to locate victim • Appellate victim liaison within the Clerk of Courts Office (currently used by Army) • System similar to PACER that allows public access to pleadings (provision to create such system is included in current version of the FY17 NDAA) • Creation of SVC appellate office that could automatically receive notice
<p>Resources</p>	<p><i>How should resources be allocated to facilitate victim participation on appeal? Possible options include:</i></p> <ul style="list-style-type: none"> • Creation of a joint SVC appellate office • Creation of Service specific SVC appellate office
<p>Proposed Legislation and Other Pending Changes in Military Appellate Practice</p>	<p><i>What are other pending changes to the military justice system that may impact appellate practice?</i></p> <ul style="list-style-type: none"> • Section 547 is pending in the Senate version of the FY17 NDAA • Military Justice Act of 2016, currently part of both the Senate and House versions of the FY17 NDAA, would potentially change appellate practice in numerous ways, including: <ul style="list-style-type: none"> ○ creation of PACER-like requirements to improve accessibility of records ○ change from automatic appeal system to an appeal as of right system (which is no longer automatic, but requires the accused to file notice of appeal within 90 days of notice of appellate rights) (Senate version) ○ change to limit factual sufficiency review by appellate courts (Senate version) ○ changes in sentencing that may affect Service Courts of Appeals sentence reassessment powers • Joint Services Committee is considering changes to Rule for Court Martial 1103A; Federal Register notice on proposed changes expected mid-late October 2016.

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