

Article 6b, UCMJ With Proposed Language From Section 547 of the Senate Version of the FY 2017 NDAA (S.2943)

Art. 6b. Rights of the victim of an offense under this chapter

(a) Rights of a Victim of an Offense Under This Chapter.-A victim of an offense under this chapter has the following rights:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any of the following:
 - (A) A public hearing concerning the continuation of confinement prior to trial of the accused.
 - (B) A preliminary hearing under section 832 of this title (article 32) relating to the offense.
 - ~~(C) A court-martial relating to the offense.~~ (C) A court-martial and any appellate matters, including post-trial review, relating to the offense.
 - (D) A public proceeding of the service clemency and parole board relating to the offense.
 - (E) The release or escape of the accused, unless such notice may endanger the safety of any person.
- (3) The right not to be excluded from any public hearing or proceeding described in paragraph (2) unless the military judge or investigating officer, as applicable, after receiving clear and convincing evidence, determines that testimony by the victim of an offense under this chapter would be materially altered if the victim heard other testimony at that hearing or proceeding.
- (4) The right to be reasonably heard at any of the following:
 - (A) A public hearing concerning the continuation of confinement prior to trial of the accused.
 - (B) A sentencing hearing relating to the offense.
 - (C) A public proceeding of the service clemency and parole board relating to the offense.
- (5) The reasonable right to confer with the counsel representing the Government at any proceeding described in paragraph (2).
- (6) The right to receive restitution as provided in law.
- (7) The right to proceedings free from unreasonable delay.
- (8) The right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense under this chapter.

(b) Victim of an Offense Under This Chapter Defined.-In this section, the term "victim of an offense under this chapter" means an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under this chapter (the Uniform Code of Military Justice).

(c) Appointment of Individuals to Assume Rights for Certain Victims.-In the case of a victim of an offense under this chapter who is under 18 years of age (but who is not a member of the armed forces), incompetent, incapacitated, or deceased, the military judge shall designate a representative of the estate of the victim, a family member, or another suitable individual to assume the victim's rights under this section. However, in no event may the individual so designated be the accused.

(d) Rule of Construction.-Nothing in this section (article) shall be construed-

(1) to authorize a cause of action for damages; or

(2) to create, to enlarge, or to imply any duty or obligation to any victim of an offense under this chapter or other person for the breach of which the United States or any of its officers or employees could be held liable in damages.

(e) Enforcement by Court of Criminal Appeals.-

(1) If the victim of an offense under this chapter believes that a preliminary hearing ruling under section 832 of this title (article 32) or a court-martial ruling violates the rights of the victim afforded by a section (article) or rule specified in paragraph (4), the victim may petition the Court of Criminal Appeals for a writ of mandamus to require the preliminary hearing officer or the court-martial to comply with the section (article) or rule.

(2) If the victim of an offense under this chapter is subject to an order to submit to a deposition, notwithstanding the availability of the victim to testify at the court-martial trying the accused for the offense, the victim may petition the Court of Criminal Appeals for a writ of mandamus to quash such order.

(3) A petition for a writ of mandamus described in this subsection shall be forwarded directly to the Court of Criminal Appeals, by such means as may be prescribed by the President, and, to the extent practicable, shall have priority over all other proceedings before the court.

(4) Paragraph (1) applies with respect to the protections afforded by the following:

(A) This section (article).

(B) Section 832 (article 32) of this title.

(C) Military Rule of Evidence 412, relating to the admission of evidence regarding a victim's sexual background.

(D) Military Rule of Evidence 513, relating to the psychotherapist-patient privilege.

(E) Military Rule of Evidence 514, relating to the victim advocate-victim privilege.

(F) Military Rule of Evidence 615, relating to the exclusion of witnesses.

(f) VICTIM AS REAL PARTY IN INTEREST DURING APPELLATE REVIEW.—

(1) If counsel for the accused or the Government files appellate pleadings under section 866 or 867 of this title (article 66 or 67), the victim of an offense under this chapter may file pleadings as a real party in interest when the victim's rights under the rules specified in

paragraph (2) are implicated. The victim's right to file pleadings as a real party in interest includes the right to do so through counsel, including through a Special Victims' Counsel under section 1044e of this title.

(2) Paragraph (1) applies with respect to the protections afforded by the following:

(A) Military Rule of Evidence 412, relating to the admission of evidence regarding a victim's sexual background.

(B) Military Rule of Evidence 513, relating to the psychotherapist-patient privilege.

(C) Military Rule of Evidence 514, relating to the victim advocate-victim privilege.

(3) In this subsection, the term 'victim of an offense under this chapter' means an individual who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under this chapter (the Uniform Code of Military Justice) and for which there was a guilty finding that is the subject of appeal under section 866 or 867 of this title (article 66 or 67).

(Added Pub. L. 113-66, div. A, title XVII, §1701(a)(1), Dec. 26, 2013, 127 Stat. 952 ; amended Pub. L. 113-291, div. A, title V, §§531(f), 535, Dec. 19, 2014, 128 Stat. 3364 , 3368; Pub. L. 114-92, div. A, title V, §531, Nov. 25, 2015, 129 Stat. 814 .)