

SUGGESTED CHANGES TO THE U.C.M.J. REGARDING VICTIM APPELLATE RIGHTS

§Article 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 and all pleadings filed by all parties in 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 and any appellate matters, to include 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, to include sentence reassessment in accordance with review under Article 66, UCMJ, relating to the offense.
 - (C) A public proceeding of the service clemency and parole board relating to the offense.
 - (D) Any and all appellate matters and hearings arising out of the offense.
 - (E) Any and all administrative boards and other adverse administrative proceedings, arising out of 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.

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(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 ~~(54)~~,

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) If counsel for the accused or the Government file appellate pleadings in a matter arising out of the offense, the victim shall be served notice of the pleadings in accordance with paragraph (a)(2) and may file pleadings as a real party in interest when a victim's statutory, regulatory or Constitutional right is implicated.

(45) Paragraph (1) and (4) 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.

§ Article 870, UCMJ Appellate Counsel

(a) The Judge Advocate General shall detail in his office one or more commissioned officers as appellate Government counsel, ~~and~~ one or more commissioned officers as appellate defense counsel, and one or more commissioned officers as appellate victims' counsel, who are qualified under section 827(b)(1) of this title (article 27(b)(1)).

(b) Appellate Government counsel shall represent the United States before the Court of Military Review or the Court of Military Appeals when directed to do so by the judge Advocate General. Appellate Government counsel may represent the United States before the Supreme Court in cases arising under this chapter when requested to do so by the Attorney General.

(c) Appellate defense counsel shall represent the accused before the Court of Military Review, the Court of Military Appeals, or the Supreme Court—

(1) when requested by the accused;

(2) when the United States is represented by counsel; or

(3) when the Judge Advocate General has sent the case to the Court of Military Appeals.

(d) The accused has the right to be represented before the Court of Military Review, the Court of Military Appeals, or the Supreme court by civilian counsel if provided by him.

(e) Appellate victims' counsel shall represent the victim before the Court of Military Review, the Court of Military Appeals, or the Supreme Court –

(1) when requested by the victim;

(2) when the Judge Advocate General has sent the case to the Court of Military Appeals; or

(3) when any Article 6b right is implicated during trial or in any appellate pleading or matter.

(~~e~~f) Military appellate counsel shall also perform such other functions in connection with the review of court-martial cases as the Judge Advocate General directs.