

**JUDICIAL PROCEEDINGS PANEL
REQUEST FOR INFORMATION SET # 6**

140. (Update to JPP RFI 24) Services: Since the implementation of the FY14 NDAA §1701, which requires designation of a representative for certain victims (such as a child or incapacitated victim):

a. What impact has this requirement had on the role or effectiveness of SVCs to be able to provide assistance to their all of their clients?

USA	Several military judges have appointed SVC as designated representatives. This raises professional responsibility concerns due to competing functions of an advocate and representative.
USAF	<p>The requirement for the judge to designate an Art 6b representative for certain victims has impacted the effectiveness of the SVC in some Air Force cases. In most cases, SVCs have successfully interacted with the designated representative, usually the victim's parent if the parent is not the accused or subject. A few SVCs have met with resistance when the non-offending parent did not agree with or understand the child-client model. In some circumstances, the non-offending parent did not allow the SVC access to the child. As necessary and appropriate, the SVC worked through these issues in order to communicate with the child and facilitate representation. Because the current statutory language makes the designation of a representative mandatory in all cases, AFLOA/CLSV has proposed a legislative change that would make the designation of a representative discretionary for the judge.</p> <p>Representing children has not hindered Air Force SVCs from providing competent representation to their adult clients, although SSVCs often consider the SVC's overall caseload when detailing child clients because of the complexity and additional workload of a case involving a child client.</p>
USN	Navy VLC report that designation of representatives for minors or incapacitated victims has had minimal adverse impact on representation of victims. Court appointed representatives have predominately been the non-offending parent. Good communication and a good relationship with the non-offending parent are integral to successfully representing minors, within the confines of the attorney-client relationship. With very young minors, the non-offending parent is often the <i>de facto</i> client out of necessity, which VLC report has not inhibited the process. In one case, where a child did not want to testify at sentencing, the mother, in her role as the representative, read the victim impact statement on the client's behalf so that the court-martial was able to adequately consider the impact to the child victim.
USMC	The requirement has not had an adverse impact. The court generally appoints a non-offending parent who has worked well with the VLC.
USCG	There has been no impact.

b. Provide any guidance that addresses the representation of those victims now covered by FY14 NDAA §1701.

USA	SVC Program Manager in conjunction with OTJAG Professional Responsibility provided guidance that while there is no actual conflict of interest, it is recommended that another competent individual perform these duties, such as personnel from Family Advocacy Program.
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REQUEST FOR INFORMATION SET # 6**

USAF	See Attachment 125.3, DRAFT AFI 51-504, Chapter 3, which will replace Air Force SVC Rules of Practice and Procedure provided as Attachment 19.7 for JPP RFI 19.
USN	Copies of the VLCP Child Victim Business Rules, Scope of Representation Letters, and Child Competency Worksheet are attached in enclosures (18) and (19) from Question 125. LCDR Ann Lundwall, a practicing Navy VLC stationed at Naval District Washington, developed and illustrated a handbook to assist child victims testifying at courts-martial which was previously provided as enclosure (20) from Question 125. ENCLOSURES: 1. Scope of Representation 2. Business Rules for the Provision of VLC Services to Minor and Clients with Diminished Capacity 3. VLC Handbook: "When Kids Testify at Courts-Martial," adopted and illustrated by LCDR Ann Lundwall
USMC	The VLCO has not published any additional guidance.
USCG	See response to 125a. The draft SVC Instruction will speak to the representation and incapacitation of victims.

c. How many clients have SVCs represented who were not adult sexual assault victims? Please provide the numbers based on the type of client (child, incapacitated victim, or other categories which SVCs are now representing).

USA	Since the Program's inception, Army SVC have represented 87 child victims.
USAF	Through FY15, Air Force SVCs had represented 65 children. Air Force SVCs have not represented any incapacitated adults since the expansion of eligibility.
USN	Since the Navy VLCP began representing child victims in June 2014, Navy VLC have represented 62 minor victims (dependents of active duty Service members) and no incapacitated adult victims.
USMC	Marine Corps VLC have represented 10 child victims of sexual assault.
USCG	The Coast Guard SVC Program has served four minor victims (and a fifth case is currently pending). In all four of those instances, the offender was not a member of the Coast Guard and the SVC played a limited role advising the client in general terms about the criminal justice process while providing information about accessing the state's victims' rights organizations. Additionally, in December 2015, the Coast Guard TJAG promulgated a memorandum formalizing the eligibility of Coast Guard/DHS employees for SVC services. So far, the SVC Program has not represented or assisted any of these individuals. The TJAG memorandum also reinforced the policy already in place that allowed non-SVC eligible victims to request SVC representation. Those requests are routed through the SVC Program Manager and signed off on by the Chief, Office of Member Advocacy and Legal Assistance and reported each month to the Deputy Judge Advocate General. The Coast Guard SVC Program has approved the SVC representation of seven clients who would otherwise not be eligible for a SVC.

d. What are the greatest challenges SVCs experience in representing child victims?

USA	The greatest challenges for SVC representing child victims is navigating the relationship with the non-offending parent and determining when a guardian ad litem needs to be
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	appointed.
USAF	As explained in the previously provided response to JPP RFI 24, Air Force SVCs employ a child-client model of representation. The most challenging aspect of this representation is the SVC's obligation to determine the child's competency. This responsibility is ongoing and the SVC must continually re-assess throughout the representation. To meet this requirement, SVCs receive training provided by the Air Force and non-DoD agencies. SVCs have encountered additional challenges in some cases involving child victims, such as interactions with a non-supportive parent of the child-client. This challenge can be overcome through advocacy and judgment. Other challenges include time pressure. Children often need quick resolution of their cases in order to avoid significant disruption to their living or custodial situation. To address this need, SVCs seek out information and training regarding state-specific civilian courts that make dependency and placement decision. While SVCs are not authorized to advocate in these state courts, they frequently work with the state-appointed guardian ad litem in order to achieve the best possible result for their child-client.
USN	Communication is challenging, especially in understanding a child's wants and needs. Another challenge is maintaining a clear boundary of who the actual client is. With very young victims, most communication is with a non-offending parent or guardian out of practical necessity. As minors grow older and develop mentally and socially, more advanced concepts of justice and legal consequences are difficult for some to grasp. Helping children understand the ramifications of their decisions can be difficult; and being able to discern whether they have grasped age-appropriate explanations is not easy. The greatest challenge is the subject matter. One VLC reported that being a parent helped develop skills which facilitate building rapport and talking with kids. However, that same VLC reported that because he is a parent, the subject matter was that much more disturbing to address.
USMC	A challenge faced by VLC in representing child victims is having access to their client. Usually, the guardian/designee of the child has full custody of the minor victim and that guardian can deny the VLC access to the victim if the guardian does not want the accused to be prosecuted.
USCG	So far, the children the Coast Guard has represented have not required extensive services due to the fact that the offender has not been a member of the Coast Guard.