

**RCM 801, Art 6(b), GAL,  
NDAA FY15**

VLC – DCO  
19 Feb 2015

# Field Feedback

- Art 6(b)
  - Had success using as a basis for standing to discuss jury instruction Defense was requesting to state victim was “accomplice” to adultery.
  - Had success in standing on MRE 610 & to address court on general court procedure/counsel conduct issues, & argue on defense expert psychologist request.
  - Effective in fighting continuances, “proceedings free from unreasonable delay.”
  - Effective in awakening Commands to victim rights (training commands may need wake up.)

# Field Feedback

- Art 6(b) Continued...
- Challenges
  - Some clients won't report problems, bury head in the sand, won't assert rights.
  - Clients value privacy over assertion of rights, may be hesitant to speak out.
  - Accused concurrent arguably superior rights in Court, often outplays victim right.
  - Others?
- RCM 801 – No field comments

# Field Feedback

- GAL (i.e. Child Rep model, Art 6(b) rep, etc.)
  - Assessing Competency, some counsel don't feel particular comfortable
    - Business Rules
    - Competency Checklist
    - Training Resources
  - Utilize Art 6(b) Rep Order, file w/ NOA
  - Parent involvement necessary, often complicates, can be messy
    - Parent concerns may not track kids concerns & may interfere
    - Effect of Parent on child and impact on representation

# NDAA FY15 Highlights

- CO evals will reflect command climate on:
  - Are SA allegations properly managed, fairly evaluated
  - Can criminal activity be reported w/out fear of retaliation, ostracism, group pressure. Sec 508
  - ...tie into Art 6(b) rights can be good leverage
- Clarifies SVC/VLC coverage for Reservist w/ military duty nexus to assault. Sec 533
- Clarifies Article 6(b) rep is a not a “legal guardian” but an “individual to assume rights”. Sec 531

# NDAA FY15 Highlights

- Depositions – Any party may request, must show due to exceptional circumstances it is in the interest of justice that testimony be taken and preserved. Sec. 532
- Victim Rights expansion – Sec. 534
  - CA must ask victim about military v. civilian prosecution preference
  - Victim input must be considered by CA
  - If victim wants civilian prosecution CA must reach out to appropriate civilian official and provide victim desire (If CA later learns of civilian officials intended action or lack thereof they must notify victim of the same.)

# NDAA FY15 Highlights

- MCM changes to clarify that where victim has right to be heard, that mean through counsel – Sec 534 continued.
  - Also provision expressly clarifying victim’s counsel shall get notice of hearings, proceedings, etc.
- Right of Victim to seek Writ of Mandamus from Appellate Court for issues related to MRE 412, 513 – Sec. 535
- Removal of Good Military Character Defense from many offenses (to include Art 120-123, 125-127, 129-132) – Sec. 536

# NDAA FY15 Highlights

- MRE 513 Mods – Sec. 537
  - 180 days until start (June 17?)
  - No more constitutional/catch all exception
  - Codifies the Klemick factors and require moving party to prove information sought meets claimed exception to privilege by preponderance of the evidence
  - In camera review only permitted if:
    - Codified Klemick factors shown by preponderance standard
    - Examination of information is necessary to rule on production or admissibility of protected records/comms

# NDAA FY15 Highlights

- Review of Decision to not Refer Charges – Sec 541
  - Still have review of ISIC if no referral after positive recommendation to refer in Art 34 advice
  - New Review Possibility
    - In any non-referral , the Secretary of the Service will review the decision if the “Chief Prosecutor” of the affected Services requests such review
      - In Navy I believe the JAG will appoint someone as the “Chief Prosectuor” to request such reviews since we don’t have a standing Chief Prosecutor.

# NDAA FY15 Highlights

- NCIS/CID/OSI to come up w/ plan and report via SECDEF to Armed Forces Committee in House and Senate – Sec. 543
  - How a restricted reporter could provide certain info to NCIS about perpetrator w/out waiving confidentiality in cases of perp accused of assaulting multiple persons.
  - Plan must provide detail on:
    - How Agency would maintain confidentiality of victim and restricted report info
    - Timeline to implement plan

# NDAA FY15 Highlights

- Victims who have been discharged can seek confidential review of discharge from BCMR/BCNR – Sec. 547
  - Boards should consider Individual Victims experience in connection w/ offense
    - Give due consideration to psychological and physical aspects of victim experience in relation to offense
    - Determine what bearing such experience may have had on circumstances surrounding victim discharge/separation [and classification.]

# Questions or Comments

- Any additional thoughts/input/questions?
- Comments by COS or DCOS?