

**JUDICIAL PROCEEDINGS PANEL
REQUEST FOR INFORMATION SET # 1**

24. Services: What is the status of expanding SVC representation to child victims of sexual offenses? How will §1701 of the FY14 NDAA, which requires designation of a representative for certain victims (such as a child or incapacitated victim), impact the role or effectiveness of SVCs? Please provide any guidance that addresses this issue.

USA	<p>The Army SVC Program currently represents child victims of sexual offenses. On September 9-15, 2014 the Army SVC trained 33 Active Component and 7 Reserve Component Judge Advocates to represent minors who are victims of sexual assault. Special Victim Counsel presently represent between 20 and 30 child victims. Each case is closely monitored by the Chief of Legal Assistance and SVC Program Manager. The next training course will be conducted in March of 2015. There has been no adverse impact on the role or effectiveness of SVC services reported to the SVC Program Manager in terms of representing children, however; this field is very specialized and more training and resources need to be dedicated in ensuring our Judge Advocates are subject matter experts. The SVC Program is fully operational in representing children who are victims of sexual assault.</p>
USAF	<p>On 24 June 2014, the AF SVC Program began representing child victims of sexual assault. The SVC Program implemented new Rules of Practice and Procedure and provided specialized training to assist the hand-selected SVCs in representing children. As of 10 October 2014, SVCs were representing 18 child clients. SVCs have represented child clients in interviews, protected their privacy interest in disclosure of mental health records, and assisted in an expedited transfer request through the Family Advocacy Program.</p> <p>In expanding SVC representation of sexual assault victims to include child victims, the Program provides representation to the child crime victim when that child is competent to direct and maintain the attorney-client relationship. When the child is not competent to make choices in the actions they want the SVC to take or to direct the SVC, the SVC works with the non-offending, custodial parent or other guardian, while maintaining ethical duties of confidentiality with the child. This method of representation has worked well for representation of children prior to judicial interaction. SVCs representing children in court report inconsistent responses from military judges regarding whether the SVC can be heard to assert the child crime victim's rights under Article 6b of the UCMJ.</p> <p>The SVC community also reported challenges with the legal guardian provisions of Article 6b which took effect on 26 December 2013. Article 6b(c) of the UCMJ states that "In the case of a victim of an offense under this chapter who is under 18 years of age, incompetent, incapacitated, or deceased, the military judge <i>shall</i> [emphasis added] designate a legal guardian from among the representatives of the estate of the victim, a family member, or other suitable person to assume the victims' rights under this section." This requirement for military judges to appoint a legal guardian to assume a child victim's rights in all cases has already proven difficult in practice. In at least one case, a military judge received a motion to exclude a child victim from the courtroom during other witness testimony under Military Rule of Evidence 615. The appointed legal guardian took the position that exclusion was appropriate. The child</p>

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	<p>victim had a different view and wanted to be present in court. The SVC requested to be heard on the issue but the military judge deferred to the decision of the appointed legal guardian as that person assumed the child victim’s Article 6b rights according to the statutory language of Article 6b.</p> <p>Inclusion of the mandate that military judges “shall” appoint a legal guardian for a child crime victim provides no discretion to military judges to permit the child victims to exercise their own rights, advocating on their own or through counsel, SVC or civilian. To address this issue, we recommend a legislative change to Article 6b(c) to read: “In the case of a victim of an offense under this chapter who is under 18 years of age, incompetent, incapacitated, or deceased the military judge shall may designate a legal guardian from among the representatives of the estate of the victim, a family member, or other suitable person to assume the victims’ rights under this section.” This legislative change would bring Article 6b(c) in line with the Crime Victims’ Rights Act, 18 U.S.C. § 3771. Section 3771(e) provides discretion to the presiding judge to appoint a guardian who may or may not assume the child crime victim’s rights.</p> <p><u>Reference:</u></p> <ul style="list-style-type: none"> - 18 U.S.C. § 3771, <i>Crime Victims’ Rights Act</i> http://www.law.cornell.edu/uscode/text/18/3771
USN	<p>The Navy VLCP extended legal support to child victims on June 24, 2014 pursuant to the mandate of NDAA FY14. Copies of the VLCP Child Victim Business Rules, Scope of Representation Letters, and Child Competency Worksheet are attached in enclosure (21). A Navy VLC also developed a handbook to assist child victims in testifying in courts-martial which is provided in enclosure (22). Operation of Section 1701 of the FY14 NDAA may make relations with victims more complicated and challenging where the victim is competent to direct his or her own legal affairs, yet a legal “representative” has been unilaterally appointed.</p> <p>ENCLOSURES 21 AND 22:</p> <p>Enclosure 21:</p> <ul style="list-style-type: none"> - Business Rules for the Provision of VLC Services to Minors and Clients with Diminished Capacity (24 Jan 2014) - Diminished Capacity Client – Considered Judgment/Capacity Assessment Worksheet - VLC – Scope of Representation Letter - Child Client (Sample) - VLC – Scope of Representation Letter - Parent/Guardian (Sample) <p>Enclosure 22: When Kids Testify at Courts-Martial (Illustrated Guide)</p>
USMC	<p>Marine VLC have been representing victims under the age of 18 since establishment of this organization.</p>
USCG	<p>The Coast Guard currently provides SVC representation to child victims. Providing</p>

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	<p>services to child victims creates significant challenges ensuring counsel who are trained sufficiently to provide competent services. Given the fact that SVC services are provided by active duty Coast Guard judge advocates who typically have little to no experience working with child victims and who will rotate every few years, ensuring that a sufficient number of counsel attend required training in order to provide competent representation of child victims will be a significant challenge.</p>
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