

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

54. Services: What current options are available to provide compensation and/or restitution available to victims of offenses committed by Service members? For each option, provide the following:

USA	The Department of Justice, Office of Justice Program, Office for Victims of Crime http://www.ovc.gov/ provides all states and the VWL Program Federal funds to help support victim assistance and compensation programs. Victim Witness Liaisons provide victims with information concerning State compensation. In addition, victims of offenses committed by Service members can receive compensation and/or restitution by filing claims against the perpetrator under Article 139, UCMJ or as a term and condition in a pretrial agreement. Although not restitution as such, victims may be entitled to Transitional Compensation in accordance with 10 U.S.C. § 1059, and AR 608-1, Army Community Service, paragraph 4-12 and Appendix H.
USCG	Victims may receive restitution through the court-martial process if the accused enters into a pre-trial agreement. The Department of Justice Office for Victims of Crimes administers the Criminal Victims Fund to provide compensation to victims for crime-related expenses. More information on that program is available at http://www.ovc.gov/about/victimsfund.html . Dependents of military members separated for dependent abuse are also eligible for transitional benefits under 10 U.S.C. §1059.

a. Is the option Service-specific or applicable across DoD?

USA	<p>Article 139 is part of the UCMJ and is applicable to all Services. However, implementation for Article 139 claims varies among the Services. Chapter 9 of AR 27-20 and DA PAM 27-162 make cognizable a greater range of offenses than Air Force or Navy Regulations.</p> <p>Transitional compensation is authorized by 10 U.S.C. §1059. The Federal Statute authorizes the Secretary of Defense and the Secretary of Homeland Security to each establish a program to pay monthly transitional compensation to dependents or former dependents of a member of the armed forces in certain circumstances. The intent of the Transitional Compensation program is to help ease the unexpected transition from military to civilian life for eligible Family members who have experienced a dependent-abuse offense. The program was established by Congress as an entitlement for abused dependents of military personnel in the Fiscal Year 1994 National Defense Authorization Act (P.L. 103-160). The Act authorizes temporary payments for Families in which the Active Duty Soldier has been court-martialed with a qualifying sentence or is being administratively separated from the military as a result of a dependent-abuse offense. Crimes that may qualify as "dependent-abuse offenses" are sexual assault, rape, sodomy, assault, battery, murder, and manslaughter."</p> <p>Army Regulation 27-10, paragraph 17-16c states, "Court-martial convening authorities will consider the appropriateness of requiring restitution as a term and condition in pretrial agreements, and will consider whether the offender has made restitution to the victim when taking action under R.C.M. 1107." This consideration is</p>
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	<p>available to all victims of crime regardless of the type of crime or whether the victim is or is not affiliated with the DoD.</p>
<p>USAF</p>	<p><u>Restitution</u> may be available from, or offered by, an accused as a condition in the terms of a pretrial agreement under RCM 705(c)(2)(C), during the sentencing process, as a part of post-trial mitigation under RCM 1105, or as a term or condition of parole or clemency. AFI 51-201, para. 7.12.4.1. This option is available across DoD. Restitution is not limited to victims of a specific offense or specific status.</p> <p><u>Transitional compensation</u> may be available to victims of intra-familial abuse offenses, to include sexual assault. This option is available across DoD. The governing regulations are DoDI 1342.24, <i>Transitional Compensation for Abused Dependents</i>, and AFI 36-3024, <i>Transitional Compensation for Abused Dependents</i>. Compensation eligibility is limited to dependents whose spouse was separated or convicted based on dependent abuse as part of the military record. Each military department Secretary has authority under 10 U.S.C. §1059(m) to provide benefits based on "exceptional eligibility" when the abuse was outside the member's record for discharge (e.g., member was convicted of abuse in civilian court).</p> <p><u>Waiver of mandatory forfeitures</u> by the convening authority during the clemency process may be available to victims of intra-familial abuse offenses, to include sexual assault. AFI 51-201, para. 9.12, discusses waiver of mandatory forfeiture of pay and allowances under Article 58b(b), UCMJ, for the benefit of the accused's dependents. This option is available across DoD. Pursuant to Article 58b(b), UCMJ, waiver of mandatory forfeitures is only available to benefit the dependents of the accused.</p> <p><u>Retirement benefits</u> may be available to a former spouse or legally separated spouse as designated by a court if the member had 20 or more years of active service, even if the member was not eligible to receive retirement pay pursuant to the Uniform Services Former Spouse Protection Act. This option is available across DoD. A victim cannot receive both the percentage of retirement pay and transitional compensation at the same time. If a spouse or former spouse is receiving transitional compensation payments and later is determined to be eligible for and receives payments under the Uniform Services Former Spouse Protection Act, any amounts of transitional compensation received must be recouped. AFI 36-3024, para. 1.2.</p> <p><u>State crime victim funds</u> are available across DoD. State crime victim funds receive federal funds for victim compensation under 42 U.S.C. §§ 10601-10602. In order to be eligible for these funds, states cannot discriminate between otherwise compensable crimes on the basis of state or federal jurisdiction. Most states receiving federal funds pay medical and funeral expenses as well as loss of wages.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> - DoDI 1342.24, <i>Transitional Compensation for Abused Dependents</i> http://www.dtic.mil/whs/directives/corres/pdf/134224p.pdf - AFI 36-3024, <i>Transitional Compensation for Abused Dependents</i> http://static.e-

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	<p>publishing.af.mil/production/1/af_a1/publication/afi36-3024/afi36-3024.pdf</p> <ul style="list-style-type: none"> - AFGM to AFI 51-201, <i>Administration of Military Justice</i> http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf - 10 U.S.C. §1059(m) http://www.law.cornell.edu/uscode/text/10/1059 - 42 U.S.C. §§ 10601-10602 http://www.law.cornell.edu/uscode/text/42/10601 - Article 58b(b), UCMJ http://www.law.cornell.edu/uscode/text/10/858b - 10 U.S.C. § 1408, Uniform Services Former Spouse Protection Act http://www.law.cornell.edu/uscode/text/10/1408 - DoD 7000.14-R, Volume 7B, Chapter 60, Victims of Abuse – Nonretirement Eligible Members (Transitional Compensation) http://www.law.cornell.edu/uscode/text/42/10601
USN	Transitional Compensation for Abused Dependents (TCAD) may be applicable to some victims in domestic violence sexual assaults. TCAD applies across DoD.
USMC	The Marine Corps has no service-specific options to provide victims with compensation and/or restitution, but complies with the DoD and statutory requirements.
USCG	See Above.

b. What rules, regulations, and/or policies govern each option?

USA	<p>Article 139 claims are governed by: Article 139, UCMJ. See http://www.apd.army.mil/pdffiles/mcm.pdf. Army Regulation 27-20, Claims. See http://www.apd.army.mil/pdffiles/r27_20.pdf. Department of the Army Pamphlet 27-162, Claims Procedures. See http://www.apd.army.mil/pdffiles/p27_162.pdf.</p> <p>Transitional Compensation is governed by: 10 U.S. Code §1059. See http://www.law.cornell.edu/uscode/text/10/1059. Army Regulation 608-1, Army Community Service. See http://www.apd.army.mil/pdffiles/r608_1.pdf.</p> <p>Pretrial agreements are discussed in: Army Regulation 27-10, Military Justice. See http://www.apd.army.mil/pdffiles/r27_10.pdf. Rule for Courts-Martial 1107. See http://www.apd.army.mil/pdffiles/mcm.pdf.</p>
USAF	<p><u>Restitution</u> may be available from, or offered by, an accused as a condition in the terms of a pretrial agreement under RCM 705(c)(2)(C), during the sentencing process, as a part of post-trial mitigation under RCM 1105, or as a term or condition of parole or clemency. AFI 51-201, para. 7.12.4.1. This option is available across DoD. Restitution is not limited to victims of a specific offense or specific status.</p> <p><u>Transitional compensation</u> may be available to victims of intra-familial abuse offenses, to include sexual assault. This option is available across DoD. The governing regulations are DoDI 1342.24, <i>Transitional Compensation for Abused Dependents</i>, and AFI 36-3024, <i>Transitional Compensation for Abused Dependents</i>. Compensation eligibility is limited to dependents whose spouse was separated or</p>

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	<p>convicted based on dependent abuse as part of the military record. Each military department Secretary has authority under 10 U.S.C. §1059(m) to provide benefits based on "exceptional eligibility" when the abuse was outside the member's record for discharge (e.g., member was convicted of abuse in civilian court).</p> <p><u>Waiver of mandatory forfeitures</u> by the convening authority during the clemency process may be available to victims of intra-familial abuse offenses, to include sexual assault. AFI 51-201, para. 9.12, discusses waiver of mandatory forfeiture of pay and allowances under Article 58b(b), UCMJ, for the benefit of the accused's dependents. This option is available across DoD. Pursuant to Article 58b(b), UCMJ, waiver of mandatory forfeitures is only available to benefit the dependents of the accused.</p> <p><u>Retirement benefits</u> may be available to a former spouse or legally separated spouse as designated by a court if the member had 20 or more years of active service, even if the member was not eligible to receive retirement pay pursuant to the Uniform Services Former Spouse Protection Act. This option is available across DoD. A victim cannot receive both the percentage of retirement pay and transitional compensation at the same time. If a spouse or former spouse is receiving transitional compensation payments and later is determined to be eligible for and receives payments under the Uniform Services Former Spouse Protection Act, any amounts of transitional compensation received must be recouped. AFI 36-3024, para. 1.2.</p> <p><u>State crime victim funds</u> are available across DoD. State crime victim funds receive federal funds for victim compensation under 42 U.S.C. §§ 10601-10602. In order to be eligible for these funds, states cannot discriminate between otherwise compensable crimes on the basis of state or federal jurisdiction. Most states receiving federal funds pay medical and funeral expenses as well as loss of wages.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> - DoDI 1342.24, <i>Transitional Compensation for Abused Dependents</i> http://www.dtic.mil/whs/directives/corres/pdf/134224p.pdf - AFI 36-3024, <i>Transitional Compensation for Abused Dependents</i> http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-3024/afi36-3024.pdf - AFGM to AFI 51-201, <i>Administration of Military Justice</i> http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf - 10 U.S.C. §1059(m) http://www.law.cornell.edu/uscode/text/10/1059 - 42 U.S.C. §§ 10601-10602 http://www.law.cornell.edu/uscode/text/42/10601 - Article 58b(b), UCMJ http://www.law.cornell.edu/uscode/text/10/858b - 10 U.S.C. § 1408, Uniform Services Former Spouse Protection Act http://www.law.cornell.edu/uscode/text/10/1408 - DoD 7000.14-R, Volume 7B, Chapter 60, Victims of Abuse – Nonretirement Eligible Members (Transitional Compensation) http://www.law.cornell.edu/uscode/text/42/10601
USN	10 U.S.C. 1059, http://www.law.cornell.edu/uscode/text/10/1059 ; DoDI 1342.24, http://www.cnic.navy.mil/content/dam/cnic/hq/pdfs/n91

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	<p>fleet and family support program/about us/AboutUsDoDINST1342.24Transitional CompensationFor%20AbusedDependents.pdf; and OPNAVINST 1750.3 http://doni.daps.dla.mil/Directives/01000%20Military%20Personnel%20Support/01-700%20Morale,%20Community%20and%20Religious%20Services/1750.3.pdf govern TCAD in DoD.</p>
USMC	<p>Article 139 claims are governed by the UCMJ and Chapter IV of JAGINST 5800.7F (http://doni.daps.dla.mil/SECNAV%20Manuals1/5800.7F.pdf); pretrial agreements are governed by RCM 705; the Transitional Compensation program is guided by 10 USC § 1059, DODI 1342.24, and DoD FMR Volume 7B, Chapter 60. Additionally, every state has a crime victim compensation fund which is governed by state statute.</p>
USCG	<p>See above.</p>

c. When did the option become available for victims?

USA	<p>Article 139 was part of the UCMJ when it was first enacted in 1950 and took effect on May 31, 1951. Transitional Compensation was enacted in the FY94 NDAA, Public Law No: 103-160 on November 30, 1993. Army Regulation 27-10, paragraph 17-17c has been in place since 2005.</p>
USAF	<p><u>Restitution</u> may be available from, or offered by, an accused as a condition in the terms of a pretrial agreement under RCM 705(c)(2)(C), during the sentencing process, as a part of post-trial mitigation under RCM 1105, or as a term or condition of parole or clemency. AFI 51-201, para. 7.12.4.1. This option is available across DoD. Restitution is not limited to victims of a specific offense or specific status.</p> <p><u>Transitional compensation</u> may be available to victims of intra-familial abuse offenses, to include sexual assault. This option is available across DoD. The governing regulations are DoDI 1342.24, <i>Transitional Compensation for Abused Dependents</i>, and AFI 36-3024, <i>Transitional Compensation for Abused Dependents</i>. Compensation eligibility is limited to dependents whose spouse was separated or convicted based on dependent abuse as part of the military record. Each military department Secretary has authority under 10 U.S.C. §1059(m) to provide benefits based on "exceptional eligibility" when the abuse was outside the member's record for discharge (e.g., member was convicted of abuse in civilian court).</p> <p><u>Waiver of mandatory forfeitures</u> by the convening authority during the clemency process may be available to victims of intra-familial abuse offenses, to include sexual assault. AFI 51-201, para. 9.12, discusses waiver of mandatory forfeiture of pay and allowances under Article 58b(b), UCMJ, for the benefit of the accused's dependents. This option is available across DoD. Pursuant to Article 58b(b), UCMJ, waiver of mandatory forfeitures is only available to benefit the dependents of the accused.</p> <p><u>Retirement benefits</u> may be available to a former spouse or legally separated spouse as designated by a court if the member had 20 or more years of active service, even if the member was not eligible to receive retirement pay pursuant to the Uniform Services</p>

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	<p>Former Spouse Protection Act. This option is available across DoD. A victim cannot receive both the percentage of retirement pay and transitional compensation at the same time. If a spouse or former spouse is receiving transitional compensation payments and later is determined to be eligible for and receives payments under the Uniform Services Former Spouse Protection Act, any amounts of transitional compensation received must be recouped. AFI 36-3024, para. 1.2.</p> <p><u>State crime victim funds</u> are available across DoD. State crime victim funds receive federal funds for victim compensation under 42 U.S.C. §§ 10601-10602. In order to be eligible for these funds, states cannot discriminate between otherwise compensable crimes on the basis of state or federal jurisdiction. Most states receiving federal funds pay medical and funeral expenses as well as loss of wages.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> - DoDI 1342.24, <i>Transitional Compensation for Abused Dependents</i> http://www.dtic.mil/whs/directives/corres/pdf/134224p.pdf - AFI 36-3024, <i>Transitional Compensation for Abused Dependents</i> http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-3024/afi36-3024.pdf - AFGM to AFI 51-201, <i>Administration of Military Justice</i> http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf - 10 U.S.C. §1059(m) http://www.law.cornell.edu/uscode/text/10/1059 - 42 U.S.C. §§ 10601-10602 http://www.law.cornell.edu/uscode/text/42/10601 - Article 58b(b), UCMJ http://www.law.cornell.edu/uscode/text/10/858b - 10 U.S.C. § 1408, Uniform Services Former Spouse Protection Act http://www.law.cornell.edu/uscode/text/10/1408 - DoD 7000.14-R, Volume 7B, Chapter 60, Victims of Abuse – Nonretirement Eligible Members (Transitional Compensation) http://www.law.cornell.edu/uscode/text/42/10601
USN	Payments may be made for dependent abuse occurring no earlier than November 30, 1993. The statute was signed in 1994, and the DoDI was first signed May 23, 1995.
USMC	Article 139 claims have been available since the adoption of the UCMJ in 1951. Restitution by pretrial agreement has been available since the promulgation of RCM 705 in 1984. The availability of state crime victim compensation funds varies among the states. Transitional Compensation was enacted in the FY94 NDAA, Public Law No: 103-160 on November 30, 1993. Dependents may apply for transitional compensation using DD form 2698 found at http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2698.pdf
USCG	There is no formal service compensation/restitution program for the victims, so there is no date to provide. At best, I can say that the compensation for civilian victims became available on the date that the DOJ victim fund came online, and that transitional benefits started the date that the statute became effective. .

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d. Is the option limited to victims of a specific offense or limited in other ways (age, status, etc.)?

USA	<p>Article 139 is limited to claims for expenses resulting from property wrongfully taken or willfully damaged. Property loss or damage assessments are limited to direct damages. No redress is provided for indirect, remote, or consequential damages.</p> <p>Transitional Compensation provides support to victims of dependent abuse during their transition from military to civilian life when the sponsor receives specified sentence(s) at a court-martial or separated from active duty as a result of a dependent-abuse offense. Payments are provided for 36 months based on existing Dependent Indemnity Compensation rates.</p>
USAF	<p><u>Restitution</u> may be available from, or offered by, an accused as a condition in the terms of a pretrial agreement under RCM 705(c)(2)(C), during the sentencing process, as a part of post-trial mitigation under RCM 1105, or as a term or condition of parole or clemency. AFI 51-201, para. 7.12.4.1. This option is available across DoD. Restitution is not limited to victims of a specific offense or specific status.</p> <p><u>Transitional compensation</u> may be available to victims of intra-familial abuse offenses, to include sexual assault. This option is available across DoD. The governing regulations are DoDI 1342.24, <i>Transitional Compensation for Abused Dependents</i>, and AFI 36-3024, <i>Transitional Compensation for Abused Dependents</i>. Compensation eligibility is limited to dependents whose spouse was separated or convicted based on dependent abuse as part of the military record. Each military department Secretary has authority under 10 U.S.C. §1059(m) to provide benefits based on "exceptional eligibility" when the abuse was outside the member's record for discharge (e.g., member was convicted of abuse in civilian court).</p> <p><u>Waiver of mandatory forfeitures</u> by the convening authority during the clemency process may be available to victims of intra-familial abuse offenses, to include sexual assault. AFI 51-201, para. 9.12, discusses waiver of mandatory forfeiture of pay and allowances under Article 58b(b), UCMJ, for the benefit of the accused's dependents. This option is available across DoD. Pursuant to Article 58b(b), UCMJ, waiver of mandatory forfeitures is only available to benefit the dependents of the accused.</p> <p><u>Retirement benefits</u> may be available to a former spouse or legally separated spouse as designated by a court if the member had 20 or more years of active service, even if the member was not eligible to receive retirement pay pursuant to the Uniform Services Former Spouse Protection Act. This option is available across DoD. A victim cannot receive both the percentage of retirement pay and transitional compensation at the same time. If a spouse or former spouse is receiving transitional compensation payments and later is determined to be eligible for and receives payments under the Uniform Services Former Spouse Protection Act, any amounts of transitional compensation received must be recouped. AFI 36-3024, para. 1.2.</p> <p><u>State crime victim funds</u> are available across DoD. State crime victim funds receive</p>

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	<p>federal funds for victim compensation under 42 U.S.C. §§ 10601-10602. In order to be eligible for these funds, states cannot discriminate between otherwise compensable crimes on the basis of state or federal jurisdiction. Most states receiving federal funds pay medical and funeral expenses as well as loss of wages.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> - DoDI 1342.24, <i>Transitional Compensation for Abused Dependents</i> http://www.dtic.mil/whs/directives/corres/pdf/134224p.pdf - AFI 36-3024, <i>Transitional Compensation for Abused Dependents</i> http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-3024/afi36-3024.pdf - AFGM to AFI 51-201, <i>Administration of Military Justice</i> http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf - 10 U.S.C. §1059(m) http://www.law.cornell.edu/uscode/text/10/1059 - 42 U.S.C. §§ 10601-10602 http://www.law.cornell.edu/uscode/text/42/10601 - Article 58b(b), UCMJ http://www.law.cornell.edu/uscode/text/10/858b - 10 U.S.C. § 1408, Uniform Services Former Spouse Protection Act http://www.law.cornell.edu/uscode/text/10/1408 - DoD 7000.14-R, Volume 7B, Chapter 60, Victims of Abuse – Nonretirement Eligible Members (Transitional Compensation) http://www.law.cornell.edu/uscode/text/42/10601
USN	Yes, TCAD is limited to spouses and dependents of service members who have been convicted at court-martial or notified of administrative separation for a dependent abuse offense. Current and former spouses must not live with the service member. Dependents must have been the victims of dependent abuse or resided in the home with the offending service member when the dependent abuse took place.
USMC	While Article 139 claims are limited to victims who suffered property damage, pretrial agreements are not limited. The state crime victim funds are generally limited to innocent victims who are citizens of the United States and have suffered personal injuries as a result of a crime. TCAFM is limited to victims of dependent-abuse offenses.
USCG	See Above.

e. Is victim compensation or restitution tracked? If so, how is it tracked and reported?

USA	<p>The United States Army Claims Service does not track Article 139 claims. Article 139 claims are maintained at the installation where the Article 139 claim is processed. Army Regulation 27-20 requires installation claims judge advocates maintain a log of Article 139 claims.</p> <p>The Installation Management Command (IMCOM), HQ, G9 Family and MWR Programs, Transitional Compensation Program Manager tracks the number of transitional compensation cases processed each year and the amount of compensation provided. The Army does not track pretrial agreements requiring restitution as a term or condition.</p>
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USAF	Victim compensation and restitution is not tracked.
USN	While records of compensation are not specifically tracked, the TCAD program is managed by Navy's Twenty-First Century Sailor Office, OPNAV N17, an organization within Naval Personnel Command reporting to the Chief of Naval Operations. This office is responsible for creating Navy policies and programs to provide Sailors and their families with tools (readiness, safety, physical fitness, inclusion, continuum of service) to successfully meet the physical and mental challenges of a career in the 21st century. The Director, a Rear Admiral, is Navy's Sexual Assault and Prevention and Response Officer.
USMC	Victim compensation or restitution is not tracked or reported.
USCG	Victim compensation and restitution is not tracked.

f. For restitution, please address the following questions based on guidance contained in DoD Directive 1030.01 and applicable Service regulations:

- i. How does each Service ensure restitution to the victim of a criminal offense is considered by court-martial convening authorities as a condition of pretrial agreements and clemency, and by the clemency and parole boards for sentence reduction, clemency, and parole decisions?**

USA	<p>Army Regulation 27-10, paragraph 17-16c states, “Court-martial convening authorities will consider the appropriateness of requiring restitution as a term and condition in pretrial agreements, and will consider whether the offender has made restitution to the victim when taking action under R.C.M. 1107.” This consideration is available to all victims of crime regardless of the type of crime or whether the victim is or is not affiliated with the DoD.</p> <p>When considering a case for clemency or parole, the Army Clemency & Parole Board will consider the prisoner’s parole plan in accordance with paragraph 3-2a(5)(d), AR 15-130, Army Clemency and Parole Board. Included in that plan may be the payment of restitution or the payment of a fine ordered executed as part of the prisoner’s court-martial sentence. In addition, in accordance with paragraph 4-5(e)(6), parole may be revoked if the parolee has violated a condition of parole by a failure to pay a fine or restitution. See http://armypubs.army.mil/epubs/pdf/r15_130.pdf.</p>
USAF	<p>Pursuant to RCM 705(d)(1) pretrial agreement negotiations may be initiated by the accused, defense counsel, trial counsel, the staff judge advocate, or the convening authority. AFI 51-201, Section 8C, provides guidance on the consideration of pretrial agreements. The staff judge advocate provides advice to the convening authority regarding the permissible terms or conditions that may be included in a pretrial agreement pursuant to RCM 705(c)(2), to include a promise to provide restitution.</p> <p>AFI 51-201, Section 9F, provides guidance on Staff Judge Advocate Recommendations (SJAR) to convening authorities as part of the clemency process pursuant to RCM 1106. Recommendations on restitution may be included in the SJAR.</p>

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	<p>The disposition board that formulates a recommendation for clemency or parole for an inmate considers restitution to victims. <i>See</i> AFGM to AFI 31-205, <i>Air Force Corrections System</i>, para 11.6.3.3. Along with the recommendations of the disposition board, Air Force Security Forces Center detachment commanders, and the convening authority, the Air Force Clemency and parole Board considers the inmate’s efforts to make restitution to the victim.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> - AFGM to AFI 51-201, <i>Administration of Military Justice</i> http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf - AFGM to AFI 31-205, <i>Air Force Corrections System</i> http://static.e-publishing.af.mil/production/1/af_a4_7/publication/afi31-205/afi31-205.pdf
USN	Restitution is a factor to be considered under RCM 306. Convening authorities are advised by their Staff Judge Advocates and by trial counsel to weigh the provision of restitution as part of any decision on disposition. Navy VLC discuss the option of restitution (if relevant) with clients and include the victim’s preferences for any restitution as part of the larger “victim input” provided to convening authorities in considering pretrial agreements.
USMC	RCM 306 requires the convening authority to consider the views of the victim before making an initial disposition decision in every case, including the victim’s views as to restitution. Additionally, if a pretrial agreement is being considered, the victim’s views are required to be considered by the convening authority before making a decision. These rights are enforced by trial counsel, SJAs, and the Victims’ Legal Counsel Organization.
	The Marine Corps does not handle clemency and parole boards as a service, those are handled by the Department of the Navy.
USCG	The service relies on its staff judge advocates to advise the convening authority on whether restitution is appropriate or available in a given case. The Coast Guard utilizes the U.S. Navy clemency and parole board for its incarcerated members, and defers to the Navy on the clemency and parole board process.

ii. For courts-martial cases:

- a) How many courts-martial cases in FY12, FY13, and FY14 included restitution to the victim as a condition of pretrial agreements, sentence reduction, clemency, or parole?**

USA	This data is not tracked by the Army.
USAF	<p>There is currently no policy or other guidance requiring installation legal offices to input restitution-related information into the Automated Military Justice Analysis and Management System.</p> <p>Air Force Global Strike Command identified a summary court-martial, U.S. v. Corral,</p>

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	<p>where the convening authority agreed to refer charges to a summary court-martial in a larceny case if the accused paid full restitution to the victims.</p> <p>Air Force Space Command identified a court-martial where victim restitution was made prior to the court-martial, but was not part of a pretrial agreement. The case involved a recruiter who unlawfully solicited donations from Recruiter Assistance Program (RAP) participants in order for them to obtain days off from RAP duty in violation of Air Force regulations. According to the accused, donations were supposed to be sent to charity but were not sent to the charities in a timely manner. After the Article 32 hearing in the case, the accused made restitution to the RAP participants by sending them a money order in the amount of the donations. He also sent money orders to the charities that the donations from the RAP participants were supposed to be sent. Restitution in that case totaled \$5,000.</p>
USN	Navy does not track, or maintain statistical analysis on, cases involving restitution as a provision in the pretrial agreement. Typically these cases involve the United States as the victim and usually involve military allowance fraud, larceny, and or destruction of property. Navy is not aware of any cases involving violations of Article 120 or 125 with disposition dates in FY12/13/14 that involved pretrial agreements with restitution provisions.
USMC	This data is not tracked by the Marine Corps; however, the Marine Corps is not aware of any sexual assault cases where restitution to the victim was included as a condition of pretrial agreements, sentence reductions, clemency, or parole.
USCG	The Coast Guard does not currently track that data. However, the service is aware of at least five cases in FY13 and FY14 in which restitution to the economic victim of the crime (in all cases the United States Treasury) was included as a term in the pretrial agreement.

b) What are the most common court-martial charges that have resulted in restitution being paid to a victim?

USA	Article 121 – Larceny and wrongful appropriation.
USAF	Presently there is no reliable method for determining the quantifiable portions of the questions posed in RFI #54 using the Automated Military Justice Analysis and Management System (AMJAMS) or any other AFLOA/JAS supported software application.
USN	Navy does not maintain information with which to answer this question accurately; however, typically, in cases where a pretrial agreement is reached, fraud, larceny and destruction of property offenses may result in restitution to the victim.
USMC	While this data is not tracked by the Marine Corps, these cases would typically involve charges of larceny, wrongful appropriation, or fraud.
USCG	The most common charges are violations of Articles 121 and 132, UCMJ. The service is aware of no case in which restitution was made to the economic victim of a crime in an adult sex offense case.

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- c) **Please provide a sampling of court-martial documents, to include pretrial agreements, final actions, etc., that indicate restitution terms and corresponding sentence reduction, clemency, or parole.**

USA	<p>See Enclosure 16.</p> <p>ENCLOSURE 16: Sampling of Court-Martial documents that indicate restitution terms and corresponding sentence reduction, clemency, or parole:</p> <ul style="list-style-type: none"> a. Pretrial Offers and Agreements b. DD Form 2707-1, Results of Trial c. General Court-Martial Final Orders
USAF	<p>Attached are pretrial agreement documents from U.S. v. Corral. (Atch 54.1)</p> <p>ATTACHMENT_Q54_USAF_A:</p> <p>Atch 54.1 – <i>U.S. v. Corral</i> Pretrial Agreement (19 Sep 2012)</p>
USN	<p>The standard pretrial agreement restitution provision is: "I agree to make restitution by cashier's check in the amount of at \$X'XXX.XX, made payable to the economic victim of my misconduct, (VICTIM'S NAME), prior to the date of my sentencing hearing. I expressly represent that I will have the economic means to make restitution prior to the date of sentencing. The cashier's check will be delivered to the trial counsel as soon as possible and no later than (DATE). I fully understand that failure on my part to meet this obligation may serve as the basis for the convening authority to withdraw from this agreement, rendering it null and void."</p>
USMC	<p>While the Marine Corps does not track this data, the Marine Corps uses standard language in its pretrial agreements relating to restitution: "I agree to make restitution by [cashier's check/money order] in the amount of \$XXX.XX, made payable to the economic victim of my misconduct, (Name(s) of Victim(s)). The [cashier's check/money order] will be delivered to the trial counsel at least seven calendar days prior to the date of trial. I fully understand that failure on my part to meet this obligation may serve as the basis for the Convening Authority to seek to withdraw from this Agreement, making the Agreement ineffective.</p> <p>This language may be modified if the Accused will have the means to provide restitution after trial: "...I fully understand that failure on my part to meet this obligation may serve as the basis for the Convening Authority to seek to withdraw from this Agreement, making the Agreement ineffective, or may serve as the basis for the Convening Authority to vacate any or all previously suspended portions of my sentence, causing me to have to serve that previously suspended sentence."</p> <p>There is also model language if the Accused must make payments in installments: "...I will provide the trial counsel or staff judge advocate with a [cashier's check/money order] made payable to (Name(s) of Victim(s)), no later than the second working day following the 1st and 15th of each month (dates as required), in the amount of \$XXX.XX. These partial payments will begin on DD Month YYYY and</p>

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	will be completed by DD Month YYYY. I fully understand...”
USCG	See Attachments (18)-(19). ATTACHMENTS 18 and 19: - Attachment (18): <i>United States v. Martin</i> - Excerpt from Pretrial Agreement - Attachment (19): <i>United States v. Suba</i> - Excerpt from Pretrial Agreement

- iii. For cases not resolved at courts-martial, how may commanders utilize restitution to victims as a factor when deciding case disposition? Provide a sampling of cases summaries (to include alleged offenses and documentation, where available) where this has occurred.**

USA	This data is not tracked by the Army. However, AR 27-10, paragraph 17-16c states, “Court-martial convening authorities will consider the appropriateness of requiring restitution as a term and condition in pretrial agreements, and will consider whether the offender has made restitution to the victim when taking action under R.C.M. 1107.”
USAF	The following are examples of NJP actions where part of the punishment was suspension of forfeitures on condition that the Airman make restitution to the victim: 1. An E-5 stole fuel from AAFES and forged another Airman’s signature on the credit card purchases. His punishment follows: “Reduction to the grade of Senior Airman, with new date of rank of 28 March 2014. Forfeiture of \$1,213.00 pay per month for 2 months, suspended through 27 September 2014, after which time it will be remitted without further action, unless sooner vacated. In accordance with MCM, Part V, paragraph 6a (4), this suspension is subject to the additional condition of your making restitution to the Army and Air Force Exchange Service's Exchange Credit Program in the amount of \$1,255.31 no later than 27 April 2014. 45 days extra duty, suspended through 27 September 2014, after which time it will be remitted without further action, unless sooner vacated. In accordance with MCM, Part V, paragraph 6a (4), this suspension is subject to the additional condition of your making restitution to the Army and Air Force Exchange Service's Exchange Credit Program in the amount of \$1,255.31 no later than 27 April 2014. Reprimand.” (Atch 54.2) 2. An E-6 stole fuel from AAFES by using a government fuel card to fuel his POV. His punishment follows: “Reduction to the grade of Staff Sergeant, suspended through 8 March 2014, after which time it will be remitted without further action, unless sooner vacated. In accordance with MCM, Part V, paragraph 6a(4), this suspension is subject to the additional condition of your making restitution to the appropriate government card account in the amount of \$225.18 no later than 8 October 2013. 45 days extra duty. Reprimand.” 3. An E-5 who got into an off-base accident and did not have liability insurance on his vehicle. As a conditional punishment, he was required to provide restitution to the

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	<p>drivers of the other vehicles damaged in the accident or receive a reduction in rank.</p> <p>4. An E-3 was intoxicated and damaged the fence of a local national. As part of his conditional punishment, he was required to provide restitution to the owners of the fence or receive a reduction in rank and forfeiture of pay. (Atch 54.3)</p> <p>5. An E-4 was arrested for battery after an altercation with the staff at a bar. The county released jurisdiction to the AF. The member accepted NJP and was punished with a reduction to E-3 and suspended forfeiture of \$1017.00 pay per month for two months. The suspended forfeiture was conditional on the member paying the assault victim \$569.00 in restitution for the glasses that were broken during the altercation.</p> <p>ATTACHMENT_Q54_USAF_B:</p> <ul style="list-style-type: none"> - Atch 54.2 – AF 3070A - Record of Non-judicial Punishment Proceedings - Atch 54.3 – AF 3070A - Record of Non-judicial Punishment Proceedings
USN	<p>Restitution to victims is a factor to consider under RCM 306 as a matter in mitigation. A copy of a sample pretrial agreement restitution provision is attached in enclosure (28).</p> <p>ENCLOSURE 28: <i>U.S. v. BMC</i> - Pretrial Agreement (Restitution Provision)</p>
USMC	<p>Commanders may consider restitution when making an initial disposition decision under R.C.M. 306, particularly when the accused agrees to or has already provided restitution to the victim. Commanders may also include restitution to the victim as a condition of a pretrial agreement, to include in cases not ultimately resolved at a court-martial. In cases where restitution is the primary concern, an option for commanders is the Art. 139, UCMJ, Redress of Injuries to Property, process. A commander may use this process in cases where a victim reports that willful damage has been done to his or her property, or that his or her property has been wrongfully taken by a member of the armed forces. During this process, the commander convenes a board to investigate the property damage or taking and, if necessary, assess damages. The commander may then order the offender to pay restitution to the victim. The Marine Corps does not track cases where commanders have utilized restitution to victims as a disposition factor for cases not resolved at court-martial.</p>
USCG	<p>That information is not available. While it is possible that commanders demand restitution to economic victims prior to imposing NJP, that is not information that is captured anywhere in the NJP tracking system. We are aware of no case where a commander ordered or encouraged restitution to a victim of a sexual offense.</p>