

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

56. Services: What impacts may result from allowing a court-martial, either by court members or military judge, to direct restitution to the victims of offenses? What mechanisms exist or would be required to enforce restitution sentences?

USA	<p>The only current mechanisms to enforce restitution are provisions in a pretrial agreement. Suspension of a sentence or part of a sentence raises the practical and legal difficulties of enforcing such a provision when the offender is indigent. Creating a system of probation whether before or after the verdict that may mirror civilian practices is theoretically possible, but may result in retaining a truly undesirable service member – a service member who might otherwise receive a punitive discharge or an administrative discharge following conviction and allow a commander to obtain a competent replacement.</p>
USAF	<p>The AF does not have a position at this time on the impact that may result from allowing a court- martial to direct restitution to the victims of offenses. The AF is open to considering proposals that balance the interests of crime victims and the accused as well as the impact of restitution on the ability of the convening authority to waive forfeitures for the benefit of the accused’s dependents.</p> <p>The AF already has a mechanism in place that could enforce restitution sentences. Wage garnishment for court-directed sentences can take place. For example, a member’s wages may be garnished for an alimony payment pursuant to a divorce decree. Specific procedures are outlined in DoD 7000.14-R, Vol 7A, Chapter 41.</p> <p><u>Reference:</u></p> <ul style="list-style-type: none"> - DoD 7000.14-R, Volume 7A, Chapter 41, “Garnishments and Other Voluntary Allotments” http://comptroller.defense.gov/Portals/45/documents/fmr/archive/07aarch/07a_41_Dec10.pdf
USN	<p>Under the Mandatory Victims Restitution Act of 1996 (18 U.S.C. § 3663A), victims of federal crimes may recover for pecuniary losses with the most major categories being lost income, expenses for medical and psychological care, and expenses for physical therapy. Those types of expenses are not present for military victims who continue to be paid, continue to receive medical and psychological care and similar support. While a dependent arguably could experience some income loss, they would not experience treatment and therapy expenses and the active duty sponsor would maintain their income. Furthermore, convicted military members lose most or all of their income while in confinement.</p>
USMC	<p>In addition to methods of compensation or restitution discussed in question 54, military victims continue to receive pay, housing benefits, medical benefits, psychological care and access to Veterans’ benefits upon discharge; therefore, the losses covered by the federal Mandatory Victims Restitution Act of 1996 (18 USC 3663A) are not present for military victims. Civilian victims and military victims may receive compensation from state compensation funds and receive support from local volunteer organizations. Further, convicted military members lose most or all of their income while in confinement making the collection of restitution difficult</p>

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	<p>during confinement or after discharge.</p>
<p>USCG</p>	<p>There would very likely be no positive impact if a court-martial could direct restitution to the victims of an offense as part of an adjudged court-martial sentence. The Coast Guard has no evidence, anecdotal or otherwise, to suggest that victims will be more willing to make an unrestricted report of their assault or pursue a conviction through the court-martial process if restitution was an authorized punishment. In the vast majority of cases, the victim pursues the case because he or she wants to see justice served or to protect others from having to go through the same experience that they endured. Money is not a motivating factor.</p> <p>In fact, the impact of allowing for restitution as an authorized punishment may be negative. If court-martial panel members and the Coast Guard at large are notified that a victim could receive restitution as a form of punishment from the accused, they may associate a victim of an offense with someone out to make money off the accused. It would be ammunition for any defense counsel to argue that the victim only made the claim because of the financial payout at the end. This is especially true in cases where there was no economic loss suffered by the victim, such as in cases of sexual assault of a servicemember, as the victim's medical and mental health costs are covered by the Coast Guard. The Coast Guard has worked hard to dispel common misperceptions about sexual assault victims and to create a culture of respect for, rather than blame of, the victim. Restitution would undo much of that hard work.</p> <p>Although restitution is not an authorized punishment to be adjudged by a court-martial, it is an available term of a pre-trial agreement and can be used to compensate the economic victim of an offense. For those cases where the victim has suffered an economic loss, such as a theft, restitution in the pre-trial agreement should remain a viable option. For those active duty victims who suffer physically or emotionally as a result of an offense, medical and mental health care costs are covered by the military's benefits system. If it was available in any court-martial as an authorized punishment, it would be used by the defense bar as motivation to fabricate and will most likely not increase the number of victims who report or who see the case through the court-martial process. The purpose of the military justice system is not to make the victims of crimes whole or to put them in the same position they would have been in had the crime not occurred. It is to ensure that justice is served on the guilty.</p> <p>Currently, in cases where restitution is made part of the pre-trial agreement, the accused is forced to comply with the restitution or risk the government withdrawing from the agreement. This is the primary means for the government to enforce the restitution agreement. If the member does not complete restitution, the convening authority may seek to nullify the deal.</p> <p>If restitution were an authorized punishment, there would have to be caveats in the rules to allow for members who cannot afford to pay restitution. For example, the rules could create a conversion chart where the failure to pay restitution resulted in a set period of confinement, equivalent to the amount of restitution adjudged. Of course, in those cases where the accused could not pay the restitution and thus was</p>

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	sentenced to additional confinement, the victim would not be financially compensated for the hardship.
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