

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

58. Services: Regarding forfeitures of wages imposed pursuant to Article 58b of the UCMJ:

- a. What options are currently available to convening authorities for waiving forfeitures? In what instances can forfeitures be waived and to whom can forfeited wages be directed?**

USA	<p>Pursuant to Article 57, UCMJ, any forfeiture of pay and allowances included in a court-martial sentence takes effect 14 days after the date adjudged, or on the date in which the sentence is approved by the convening authority (whichever occurs first). In cases where forfeiture has been adjudged as part of a sentence, Articles 57 and 58b, UCMJ, authorize a convening authority to defer this portion of a sentence until the date the sentence is ordered executed. If approved, deferment of adjudged forfeitures is paid to the accused.</p> <p>Article 58b, UCMJ, directs automatic forfeitures in cases where the sentence includes confinement for more than 6 months or a punitive discharge. This provision triggers forfeiture of all pay and allowances for a General Court-Martial and 2/3rds pay and allowances for a Special Court-Martial. Further, Article 58b, UCMJ, authorizes a convening authority to waive all automatic forfeiture of pay and allowances for a period not to exceed six months. This is authorized only in cases where an accused has dependents and the forfeitures must be paid to the dependents.</p>
USAF	<p>If an accused has dependents, an application may also be submitted to the convening authority through the servicing SJA, to waive any mandatory forfeiture of pay and allowances under Article 58b(b), for the benefit of the accused's dependents. Applications for deferral and/or waiver may be submitted through the servicing SJA any time after the sentence is announced and before action by the convening authority. AFI 51-201, para. 9.12.</p> <p>Articles 57(a) and 58b, UCMJ, enable a convening authority to permit payments to the accused's dependents that would otherwise have been forfeited. AFI 51-201, para. 9.28. Mandatory forfeitures can only be waived in cases where an accused has dependents and the waived forfeitures must be paid to the dependents. AFI 51-201, para. 9.28.2. Mandatory forfeitures can only be waived by the convening authority for a period not exceeding six months, or the period of confinement if less than six months.</p> <p><u>Reference:</u></p> <p>- 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</p>
USN	<p>Article 57, UCMJ, provides that any forfeiture of pay and allowances included in a court-martial sentence takes effect 14 days after the date adjudged, or on the date in which the sentence is approved by the convening authority (whichever occurs first). Articles 57 and 58b, UCMJ, authorize a convening authority to defer the forfeiture of pay and allowances until the date the sentence is ordered executed. Deferred adjudged</p>

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

	forfeitures may be paid to the accused, but in many cases such a deferment is part of a pretrial agreement by which the accused agrees to establish an allotment for the benefit of a third party (usually a family member) as part of the agreement and is directly linked to the forfeiture provisions of Article 58b, UCMJ, which directs automatic forfeitures in cases where the sentence includes confinement for more than 6 months or a punitive discharge. Article 58b mandates “forfeiture of pay, or all pay and allowances, due that member during any period of confinement.” Forfeitures that are the result of a General Court-Martial amount to “all pay and allowances” while those that result from a Special Court-Martial are “two-thirds of all pay due that member.” Where an accused has dependents, Article 58b, UCMJ, authorizes a convening authority to waive all automatic forfeiture of pay and allowances for a period not to exceed six months.
USMC	Convening authorities may waive forfeitures and direct the wages to dependents as part of a Pretrial Agreements or by exercising Article 60 authority.
USCG	Article 58b(b), UCMJ, permits the convening authority to waive automatic forfeitures for no longer than six months, if paid to the dependents of the accused. Pursuant to R.C.M. 1101(c), the convening authority may defer the automatic forfeitures until convening authority action, at which time they may be suspended for six months. In practice, this allows the dependents of the accused to receive the accused’s pay for approximately ten months after conviction (assuming that the convening authority takes action 120 days after the sentence is adjudged and that the forfeitures are waved for six months). In accordance with Article 58(b) and R.C.M. 1101(d), the forfeitures may only be waived for the purpose of providing support to the accused dependents and may only be paid to those dependents and no one else.

b. How would allowing forfeited wages of incarcerated Service members to be used as restitution or compensation to victims of criminal offenses impact current wage forfeiture options?

USA	Currently, wage forfeiture options stemming from a court-martial are limited to those described in the response to RFI 58a above. While deferment of adjudged forfeitures is payable to an accused, waiver of automatic forfeitures is only payable to an accused’s dependents. Authorizing forfeited wages to be used as victim compensation would require amendments to the current forfeiture and waiver provisions and may impact compensation to dependents (i.e. spouses, children, etc).
USAF	The impact would depend on the proposal. If the convening authority was required to waive forfeitures and direct restitution to the victim, waiver of forfeitures for the benefit of the accused’s dependents would no longer be an option. If this was not a requirement, but only an option available to the convening authority, it would require the convening authority to potentially choose between providing support to the victim or the accused’s dependents through waiver of forfeitures.
USN	Because Article 58b, UCMJ, authorizes a convening authority to waive forfeiture of pay and allowances for accused members who have dependents, this proposition would have a significant negative impact on those dependents. In many cases the support from an accused for dependent family members is all the support they receive. Dividing this limited pool of resources between dependent family members and other

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

	victims would limit support to the family.
USMC	Article 58b, UCMJ, allows a convening authority to waive automatic forfeitures for service members with dependents with those forfeitures to be paid as the convening authority directs. If the incarcerated service member has dependents using forfeited wages as compensation for victims may impact the amount of forfeitures going to dependents.
USCG	<p>In some cases, it would mean that there would be no funds available for the families of an incarcerated member. The waiver of automatic forfeitures is very common when the member has dependents. Waiver of forfeitures is included in almost every pre-trial agreement when dependents are involved, and it is the most frequent form of clemency granted by the convening authority. The convening authority may only waive forfeitures after determining that the money will be used to provide for the accused's dependents and only after considering factors such as the number and age of the dependents, debts owed by the accused, the ability of the accused's family member to find employment, and the availability of transitional compensation for the family. The decision to waive forfeitures is not taken lightly by the convening authority. Often times the accused will be required to produce a court-ordered child support agreement as evidence that he or she has been financially supporting the dependents and is seeking to continue that support.</p> <p>For members who have dependents, the requirement that restitution be given to the victims rather than dependents could have a negative effect on the willingness of an accused to enter into a pre-trial agreement. The accused often enters into the agreement because it provides him or her an opportunity to continue to provide for the family. If he or she goes to trial and is convicted, the convening authority is not required to waive forfeitures for the dependents, as he or she is required to do if there is an agreement in place. This is especially true in the Coast Guard because, although permitted under Article 58a, UCMJ, as a matter of policy the Coast Guard does not affect automatic reduction in rank to E-1 for qualifying sentences. Therefore, a Coast Guard member who is not reduced in rank as a result of the adjudged sentence is still permitted to receive the base pay he or she received prior to the trial, and will be able to provide that money to the family for ten months. For incarcerated members who have no dependents, the impact on the willingness to take a plea will obviously be negligible.</p> <p>As discussed in the question above, the possibility that a victim could receive money from the accused will also likely have a negative effect on the Coast Guard's efforts to create a culture where the victim is treated with respect, rather than with blame. If the victim is given the opportunity for financial compensation through forfeitures, many members, including panel members, will assume that the victim has a motive to fabricate the incident. This is especially true if the victim has financial debts of his or her own at the time of the assault, as some of the junior members do. And statistically it is the junior members who are most likely to be victimized.</p> <p>Allowing the victim to receive the accused's forfeited funds would require a statutory change to Article 58b. The compensation of the victim by using forfeited funds of the</p>

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

	<p>accused is contrary to the purpose behind Article 58b, which is to provide for families, especially children, who are innocent victims of their parents' crimes and have no way of providing for themselves. It is money that, in most cases, is used to help the family bounce back from the loss of the primary or sole breadwinner. It does not make the family whole again because that is not possible under the UCMJ. It only provides a short period of time for the remaining parent to find a job or other means of support. To provide the forfeited wages to a non-dependent victim, one who may not have suffered financially as a result of the crimes or who is still drawing full pay from a military or civilian job would not align with the purpose behind Article 58b.</p>
--	--