

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

59. Services: Regarding claims made under Article 139 of the UCMJ:

a. What rules, regulations, and/or policies govern procedures, proper claims and claimants, limitations, etc. for Article 139 claims?

USA	<p>Article 139 claims are governed by: Article 130, 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>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>
USAF	<ol style="list-style-type: none"> 1. Article 139, UCMJ 2. AFI 51-502, <i>Personnel and Government Recovery Claims</i>, Chapter 6 (will be moved to AFI 51-501, Chapter 8 when draft currently under formal review is published) 3. Tort Law and Claims Action Officer Handbook (Atch 59.1) <p>References:</p> <ul style="list-style-type: none"> - Article 139, UCMJ http://www.law.cornell.edu/uscode/text/10/939 - AFI 51-502, <i>Personnel and Government Recovery Claims</i>, Chapter 6 (will be moved to AFI 51-501, Chapter 8 when draft currently under formal review is published) http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-502/afi51-502.pdf <p>ATTACHMENT: Atch 59.1 – Tort Law and Claims Action Officer Handbook</p>
USN	<p>Chapter IV of the JAGMAN provides a process for assessments against the pay of member of the naval service in satisfaction of claims for damage or wrongful taking of privately-owned property. Under this Article, pay may be assessed if the damage, destruction or loss is caused by willful, wrongful, reckless, riotous, or disorderly conduct by the servicemember. Chapter IV identifies proper claimants, claims that are cognizable and time limits for filing claims, as well as setting forth detailed procedures for the filing, investigating and adjudicating Article 139 claims.</p>
USMC	<p>Chapter IV of JAGINST 5800.7F.</p>
USCG	<p>In addition to Article 139 itself, 33 C.F.R. §§ 25.701-709 and Chapter 7 of the Commandant Instruction Manual 5890.9, Claims and Litigation, govern these claims.</p>

b. What claims under Article 139 were submitted to the Services in FY12, FY13, and FY14? Please provide the status of claimant (military or civilian, business, etc.), details of the claim (including description of property taken or damaged, etc.), alleged offenses under the UCMJ, final outcome, and any assessment of damages.

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

USA	See Enclosure 17.				
ENCLOSURE 17: Article 139 Claims Spreadsheet (FY 2012-FY 2014)					
USAF	The Air Force has had 7 Article 139 claims submitted since the beginning of FY12.				
	Status of Claimant	Details of claim	alleged UCMJ offenses	final outcome	assessment of damages
	civilian	damage to hood and side of vehicle while intoxicated	willful damage to property	still pending	still pending
	business	damage to veterinarian clinic after intoxicated military member broke in during the night and ransacked the clinic	Unlawful entry; destruction of property;	member found liable	\$13,069.64
	civilian	member had argument with civilian, then got on civilian's car and walked on top, denting hood	destruction of property	Transferred to the Army; claim withdrawn after claim paid under alternate statute (Foreign Claims Act)	none
	active duty	claimant came home after TDY to find house in shambles; spouse intentionally damaged most of his property and the apartment	destruction of property	spouse found liable	\$1,621.25
	civilian	cell phone destroyed after victim was intentionally pushed to the ground	assault	still pending	still pending
	military	trailer was stolen by another military member and damaged	theft	member found liable	\$1215.36
	military	member entrusted care of apartment and vehicle to friend while deployed. Returned to find	damage to property	member found liable for car damage, not liable for	\$584.66

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

	vehicle damaged and personal items missing from apartment		missing items	
<p><u>Reference:</u></p> <p>- Article 139, UCMJ http://www.law.cornell.edu/uscode/text/10/939</p>				
USN	A survey of Region Legal Service Offices and Staff Judge Advocate Offices for Operational, Installation and Administrative Commands indicates no Article 139 claims were filed during the FY12-FY14 timeframe.			
USMC	The Marine Corps is aware of one Article 139 claim made in FY14 and the claim was unsubstantiated. This information is not tracked service wide.			
USCG	The Coast Guard had one Article 139 claim in FYs 12-14. In FY 2013, a military member claimant filed an Article 139 claim against a military member. The claimant had left his vehicle in the care of the military member when the claimant transferred to another location. The parties had made an agreement for the member to use, care for and ship the vehicle; however, the member misused the vehicle resulting in over \$11,000 in damages. An Article 139 investigation was conducted and the member was found liable for damages up to the maximum permitted by Coast Guard policy of 1/2 of one month's pay for one month. The claimant received \$1,532.10. The member also received non-judicial punishment from his Commanding Officer for the offenses of wrongful appropriation, larceny, and false official statement.			

c. What impacts may result from expanding Article 139 to include claims for bodily harm?

USA	<p>Article 139 provides redress for property willfully damaged or destroyed, or wrongfully taken, by members of the Armed Forces of the United States. Article 139 claims for property damage are for tangible losses which would not be compensated through the imposition of fines or forfeiture at trial or through imposition of non-judicial punishment by commanders. Expanding Article 139 to include claims for bodily harm would significantly increase the number and complexity of these claims. The increased complexity of trying to determine what bodily injury may or may not be worth in a given case would also require greater resources to properly investigate and adjudicate than is currently required for relatively simple property damage claims. Article 139 claims for willful damage also require that the commander convene a board consisting of one to three commissioned officers (all non-lawyers) to review the evidence and assess damages against the accused. As the accused currently has very limited due process rights under Article 139, exposing him to damages for bodily injury on top of the fairly easy to ascertain property damage will likely raise constitutional due process concerns.</p> <p>While the doctrine established in <i>U.S. v. Feres</i> precludes potential litigants from suing the federal government for acts committed by one of its employees or contractors that are deemed outside the scope of their employment, both civilian and military victims</p>
------------	---

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

	<p>may sue the accused in their individual capacity in federal district court. These courts are equipped to make evidentiary determinations and damage assessments that are fair to the victim and to the accused.</p>
<p>USAF</p>	<p>Expanding Article 139 explicitly to include claims for bodily harm would likely result in an increased workload for legal and command resources, in light of the broad variety of cases under Article 120 and Article 128 that involve bodily harm. Article 139 claim awards for bodily harm would be extremely difficult to quantify and wildly disparate as military officers and commanders would be ill-equipped to determine such damages. While a process for providing restitution in cases such as sexual assault or battery cases seems appealing on its face, the result would be to make the Air Force a small claims court whereby individuals sue each other. Criminal conduct is more appropriately handled in the military justice process; civil misconduct is more appropriately handled in the civilian system already established to handle such matters. If the desire is to make victims of crimes whole, it would seem more practical to make restitution a sentencing option. It would also require the development of standards to determine the amount of compensation that an individual would receive under these claims.</p> <p>In the case where an Article 139 board compensates the victim with a substantial amount of money, deduction from the offender's paychecks is likely the only source of revenue to satisfy the debt. This creates a tension between the need to maintain good order and discipline by promptly discharging sexual assault offenders, and the laudable desire to provide compensation to sexual assault victims by keeping their attackers on the payroll.</p> <p>Further, creating a cause of action for financial relief creates an opportunity for financial gain and therefore a possible motivation to make false allegations. The defense would be expected to allege such motivations to impeach the victim's credibility.</p> <p><u>References:</u></p> <p>- Article 139, UCMJ http://www.law.cornell.edu/uscode/text/10/939</p>
<p>USN</p>	<p>As enacted, Article 139 of the UCMJ allows commanders to investigate claims filed by victims of a wrongful taking or willful destruction of property committed by service members and, if substantiated by an investigative panel applying a preponderance of evidence standard, to direct finance officials to pay the victim directly from the offending member's pay. Nothing in the text of Article 139, its implementing regulations, or its legislative history provides for its use as a means to compensate victims of personal injury or for compensation of intangible losses or for indirect or consequential (special) damages. Because existing Article 139 relief is under-utilized, it is difficult to predict the impact of a revision to include recourse for personal injury. Adding an administrative remedy to a military justice proceeding risks complicating matters with no clear benefit.</p>
<p>USMC</p>	<p>Administrative action under Article 139 is separate and distinct from court-martial proceedings. Finding liability for an Article 139 claims requires an investigation</p>

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

	<p>and findings by a General Court-Martial Convening Authority per service regulations. Expanding Article 139 claims to include bodily harm would increase the number of claims made and may require changes to regulations implementing Article 139 in the JAGMAN to address the increased complexity of determining compensation for bodily harm and increased protections for accused service members.</p>
USCG	<p>Expanding Article 139 to include claims for bodily harm will require significant resources while providing little benefit for victims of sexual assault. Each Article 139 claim requires investigation by a fact-finding board of at least one, but not more than three, commissioned officers, to investigate the complaint, and, if appropriate, to assess the damages and report to the command to which the alleged offender is assigned for final action. Sexual assault investigations are not simple, and a separate Article 139 investigation could complicate the prosecution of a sexual assault. For instance, Article 139 provides the board with power to take testimony under oath and could require the sexual assault victim to provide such testimony. Furthermore, the convening authority for a court-martial and the commanding officer for the Article 139 claim may be the same person. In such a circumstance, the commander likely could not act on the Article 139 claim until any court-martial case was final. Ultimately, service regulations limit the recovery under Article 139 to one-half of one month's basic pay of the offender.</p>