

VWAP Overview

GOALS of the Training

1. Refresher/Basic Training for VWLO and VWAP representatives
2. Understand impact of crime and the justice system upon victims, especially victims of violent crime
3. Improve Marine Corps Installation programs to provide best support to our victims and witnesses
4. Focus on best practices to accomplish #3

VWAP 101

VWAP: PURPOSE & GOALS

- Ensure that all victims and witnesses are treated with dignity and respect.
- Ensure all victims are aware of their rights and are provided services they need
- Protect victims from further harm or hardship
- Employ a multi-disciplinary approach to assisting victims and witnesses by combining the services of law enforcement, family advocacy, medical, legal corrections, and command personnel.

VICTIM AND WITNESS ASSISTANCE PROGRAM (VWAP) - REFERENCES

- Victim Witness Protection Act of 1982 – establishes VWAP
- Victims of Crime Act of 1984 – DOJ funded/Victims have fund
- Crime Control Act of 1990 – Victims right to information about offenders
- NDAA 1994 – mandates notification of inmate status changes
- 18 U.S.C. § 3771(a) “Justice for All Act of 2004” – most recent
- DoDD 1030.1 of April 13, 2004 “Victim and Witness Assistance”
- DoDI 1030.2 of June 4, 2004 “Victim and Witness Assistance Procedures”
- SECNAVINST 5800.11B of 5 Jan 2006 “Victim and Witness Assistance Program”
- MCO 5814 VWAP

Victims Eligible for VWAP Services

- Person who suffers physical, emotional, or pecuniary harm as a result of a crime if any portion of the investigation is conducted primarily by DoD component:
 - Includes, *but is not limited to*:
 - Military members and dependents.
 - Outside the Continental U.S. - DoD civilian employees, contractors, and family members.
 - If victim is under 18, incompetent, incapacitated, or deceased, the term includes either: spouse, guardian, parent, child, sibling, family member, or another person designated by court.
 - Authorized representative of Institutional Entity – but not entitled to individual services – such as, transitional compensation, etc.
- Civilians if the offense is punishable under the UCMJ and any portion of the investigation is conducted primarily by a DoD Component.

VWAP: VICTIMS' RIGHTS

- The right
 - to be reasonably protected from the accused.
 - to reasonable, accurate, and timely notice of any public court proceeding, any parole proceeding, movement or release of the accused.
 - not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.

VWAP: VICTIMS' RIGHTS

- The right
 - to be reasonably heard at any public proceeding involving release, plea, sentencing, or any parole proceeding.
 - to full and timely restitution as provided in law.
 - to proceedings free from unreasonable delay.
 - to be treated with fairness and with respect for the victim's dignity and privacy.
 - The reasonable right to confer with the attorney for the Government in the case.

VWAP: VICTIMS' RIGHTS

- *Victim's rights do not provide authority for a legal "cause of action" against the Government.*

VWAP: Witnesses eligible for services

- A person who has information or evidence about a crime, and provides that knowledge to a DOD Component about an offense in the investigative jurisdiction of a DOD component.
 - When the witness is a minor, a witness includes a family member or legal guardian.
- The term witness does not include a defense witness or an individual involved in the crime as a perpetrator or accomplice.

VWAP: WITNESS' RIGHTS

- To be treated with fairness and respect for the witness's dignity and privacy.
- To be reasonably protected from the accused.
- To be notified of any scheduling changes which will affect their appearance at court-martial.
- To be notified of the apprehension of an accused, the initial appearance of an accused before a military judge, the release of the accused pending court-martial, and trial proceedings (including entry of guilty pleas and sentencing).
- To receive information about the conviction, sentence, confinement, and release of the accused.

VWAP: WITNESS' RIGHTS

- *Witness' rights do not provide authority for a legal "cause of action" against the Government.*

VWAP: DOD POLICY

- Role of victims/witnesses should be enhanced/protected
- Do all that is possible to assist victims/witnesses without infringing on the rights of the accused
- ***Particular attention should be paid to victims of serious, violent crime, including sexual assault, child abuse, and domestic violence.***

VWAP: HOW IT WORKS

- Base and Installation commanders are responsible for implementing VWAP and shall be the central points of contact for VWAP issues aboard the installation.
- Base and Installation Commander manage through Victim Witness Liaison Officer (VWLO), VWAP Council and Victim Witness Assistance Coordinators for commands.

VWAP OFFICIALS

- USMC - SJA to CMC
 - CMC provides DoD VWAP Council Rep – That's me!
- CMC (PSL) Corrections
- MCI Regional Commanding Generals RVWLO
- Installation commanders – VWLO
- Unit commanders – Bn/Sq and above – VWAC
- Law enforcement - VWAP Representative
- Legal representatives - VWAP Representative
- Corrections Personnel - VWAP Representative
- Service providers (advocates, chaplain, medical) - VWAP Representatives

VWAP Definitions

- **RVWLO** – MCI Region/MCICOM/MFR CG's primary representative on all VWAP matters.
- **VWLO** - The installation commander's representative responsible for the coordination of victim and witness assistance efforts aboard the installation.
- **VWAC** - The command's primary point of contact for victim and witness assistance matters.
- **Victim** – suffered a direct physical, mental or pecuniary harm from the commission of a crime (UCMJ or local)
- **Witness** – someone who has information about a crime

INSTALLATION LEVEL: WHO DOES WHAT

- **RVWLO** – Manages VWAP throughout the Commander's area of responsibility
- **VWLO** - manage base programs for Commanders
- **NCIS/CID/PMO** – normally first responsibility to inform crime victims and witnesses of rights under program; perform threat assessment; assist in contacting other services; safeguard property; contact command VWACs
- **Prosecutors and legal personnel** - have continuing responsibility to ensure rights and services afforded victims and witnesses
- **Victim Witness Legal Officer** – provides limited representation of eligible victims
- **Corrections personnel** - manage post-trial confinement forms, reports & notifications

INSTALLATION LEVEL: WHO DOES WHAT

- Sexual Assault Prevention and Response Program/ SARCs, UVAs – SA Only
- Victim Legal Counsel – represents eligible victims
- Family Advocacy Program – Victim Advocates
- Transitional Compensation – HQMC via commanders
- Unit Commanders – Security, military protective orders, notifications
- Chaplain – counseling, comfort
- Medical - services
- Civilian advocacy services, social services, medical

VWAP: COORDINATION IS KEY

- “All offices responsible for a part of the military justice process (including, but not limited to, law enforcement and criminal investigative agencies, convening authorities, legal, corrections) are responsible for ensuring a smooth transition of victim and witness assistance at each stage of the criminal justice process. *This means that close coordination is required among the VWAP personnel assigned to each of these offices during the transition from one phase of the criminal justice process to the next.*”
- Ensure right contact information is given on each DD Form to each Victim or Witness
- Ensure continuing coverage for Victims/Witnesses of services and rights.

RVWLO *REQUIREMENTS*

- Ensures training is available to all VWLOs and VWACs
- Maintains list of all VWLOs in region
- Chair semi-annual Regional VWLO Meeting
- Ensure data (2701-2704) collection for the region
- Available to inspect VWLOs and VWACs as part of CGIP

VWLO

REQUIREMENTS

- Ensures coordination among all offices
- Maintains list of all VWACs
- Ensures VWACs have relevant information, including VWAC roster and directory of local services/programs
- Chairs VWAP Council
- Ensures victims are notified of all support, services and rights available and VWAC information.
- Assists Base CO in reporting requirements

VWLO

REQUIREMENTS

- “Maintain a directory of military and civilian programs and services . . . within geographic area of the installation.”
- If necessary, assist in contacting the people responsible for providing victim and witness services and relief
- VWLO – Maintains Base VWAP website

VWAP vs SAPR

- VWAP is an overarching assistance program for victims and witnesses of any crime, regardless of type and criminal proceeding. SAPR is a specialized victim assistance program for sexual assault cases.
- The main requirements of VWAP are for the necessary personnel to inform victims of their rights, fill out the appropriate forms, and track the status of a confined individual if requested. Under SAPR, the obligations are much more labor intensive and require constant coordination of all parties.

VWAP vs SAPR

Purpose

- VWAP

To uniformly notify victims/witnesses of their rights throughout the criminal justice process.

- SAPR

To eliminate sexual assaults within the Marine Corps and to assist those Marines affected by sexual assault; to provide standardized requirements, guidelines, protocols, and instructional materials on awareness and prevention of sexual assault; to provide an immediate, trained response capability for each report of sexual assault in all locations; and to ensure support of effective command programs and criminal justice procedures for persons to be held accountable

VWAP vs SAPR

Applicability

VWAP

- Applies to all victims of crimes committed in violation of the UCMJ, or in violation of the law of another jurisdiction

SAPR

- Applies to all eligible victims of sexual assault

VWAP vs SAPR Implementation

VWAP

- All Marine Corps personnel, and Navy personnel attached to Marine units, engaged in detecting, investigation, or prosecuting crime, and all personnel assisting crime victims and witnesses are responsible for the implementation of the VWAP requirements

SAPR

- Report to command by 3rd Party
- Victims may report sexual assaults in one of two manners:
 - Unrestricted Reporting –
 - Restricted Reporting –
- VAs & UVAs are responsible for upholding the rights of the victim

VWAP vs SAPR

Personnel Involved

SAPR

- Uniform Victims Advocates

VWAP

- Victim Witness Assistance Coordinators

- Can they be the same person?
- Look at the job title – different roles and responsibilities evident

VWAP FORMS

- An end to themselves?
- No –
 - Ensures that the support, services and rights are provided and ensured.
- ***DD Forms 2701-2704 do not replace genuine service and support.***

VWAP: Pretrial & DD Form 2701

- NCIS/CID/PMO provide V/Ws with DD Form 2701
- If no investigation – Prosecution team provides DD Form 2701
- 2701 provides initial rights advisement, discusses impact of various crimes, explains basic services and notifies V/W where to get further assistance

VWAP: Military Trial Process & DD Form 2702

- Upon first contact with victim or witness, prosecution provides DD Form 2702
- DD Form 2702 explains military trial process, gives tips and restates rights.
- 2702 includes rights regarding participating in trial process.
- 2702 provides VWAP responsible official contact information and prosecutor contact information

VWAP: Post Trial & DD Form 2703

- Prosecution provides victim or witness with DD Form 2703 at finish of trial.
- Includes "Right to receive information about the conviction, sentencing, imprisonment, parole eligibility and release of the accused"
- Provides Contact info for Service Central Repository (*CMC PSL (Corrections)*), Confinement Facility, Service Clemency and Parole Board and any other necessary agency/office
- *"From now on, your POC will be the confinement facility or the Service Central Repository listed on the back of this page."*

VWAP: Post Trial & DD Form 2704

- TC provides brig with DD Form 2704 at finish of trial.
- Requires election by each V/W whether to receive information on confinement status
- Provided to victims and witnesses upon request (redacted)
- **The 2700s are never included in the ROT – these have personal info of victims and witnesses and should not be shared**

VWAP: Post Trial Notifications & DD Form 2705

- Corrections personnel ensure notifications made to V or Ws listed on DD Form 2704
- Clemency Eligibility
- Parole Eligibility
- Change in status – Parole/Clemency
Approved, Released, Deceased, Escaped,
Transferred, Work release

MCO 5800.14 VWAP

- Creates RVWLO
- TCs shall not serve at VWLO/RVWLO
- Quarterly reporting of 2701-2704 for VWLOs
- Addition of Legal Assistance Attorney Role
 - Now superseded by Victim Legal Counsel
- Additional requirements for Confinement facilities
- VWACs should not serve as UVAs (SAPR Order may be more restrictive)
- LSST OICs have requirement for VWAP Data in CMS

Functional Area Checklist

- USMC IG
 - 092 Functional Area Checklist for VWAP
 - New in 2012
 - The Marine Corps Standard for VWAP
 - Soon to be core inspection area
- <http://www.hqmc.marines.mil/igmc/Resources/FunctionalAreaChecklists.aspx>

VWAP: RESOURCES AND FORMS

- CMC – Maj _____ ; _____ Capt

- CMC (PSL Corrections) _____
- Installation Victim Witness Liaison Officers (VWLO)
- <http://www.defenselink.mil/vwac/dodprograms.html> (DOD VWAP COUNCIL WEBSITE) – contains link to training presentations and forms
- <http://www.ncvc.org/ncvc/Main.aspx> (National Center for Victims of Crime)
- <http://www.ojp.usdoj.gov/programs/victims.htm> (DOJ Office for Victims of Crime)
- <http://vwac.defense.gov/> (DoD Victim Witness Assistance Council)

SUMMARY

- Victims/Witnesses of Crime deserve protection and assistance
- Interdisciplinary Program
- Coordination is Key
- Base Commanders own Local Base Programs
- All agencies have a role



Trial Counsel Orientation

Victim-Witness Assistance Program

Major _____

Modified – 4/28/14



Introduction

- What is the Victim-Witness Assistance Program (VWAP)?
 - Victim Rights
 - Witness Rights
 - Your responsibilities
 - Other VWAP personnel



What is VWAP?

- Multi-disciplinary approach to assist victims and witnesses by combining the services of law enforcement, family advocacy, medical, legal corrections, and command personnel.
- Goals
 - Ensure victims and witnesses are treated with dignity and respect
 - Ensure victims and witnesses are aware of their rights and provided services they need
 - Protect victims from further harm or hardship
- Different from SAPR and covers ALL victims under UCMJ, not just sexual assault victims.



Victim Rights Source Documents

- MCO 5800.14 – USMC VWAP Order
- Article 6b, UCMJ – military crime victims rights act
- Articles 32, 46(b), 54(e), 60(d)
 - Provide individual victim rights
- DODI 6495.02 & MCO 1752.5B – DOD and USMC SAPR Orders



Victim Rights

- Article 6b, UCMJ & MCO 5800.14
 - *Victim* – a person who has suffered direct physical, emotional or pecuniary harm as a result of the commission of an offense under the UCMJ
 - The right to be reasonably protected from the accused
 - MPO – TC, command, and investigator responsibility
 - The right to reasonable, accurate and timely notice of any of the following:
 - IRO hearing – TC & command
 - Article 32 hearing - TC
 - Court-martial - TC
 - Clemency & Parole hearing - brig
 - Release or Escape - brig



Victim Rights

- Article 6b, UCMJ & MCO 5800.14
 - The right not to be excluded from any of the following unless the MJ or IO finds by **clear and convincing** evidence that testimony of victim would be materially altered
 - IRO hearing – TC & command
 - Article 32 hearing - TC
 - Court-martial - TC
 - Clemency and parole board – brig
 - The right to be heard at any of the following:
 - IRO hearing – TC & command
 - Sentencing hearing – US v. Terlep, 57 M.J. 344 - TC
 - Clemency and Parole - brig



Victim Rights

- Article 6b, UCMJ & MCO 5800.14
 - The right to confer with the TC regarding all hearings and pre-trial offers - TC
 - The right to restitution as provided in law – TC & command
 - Article 139 & installation VWAP website
 - The right to proceedings free from unreasonable delay
 - The right to be treated with fairness and with respect for the dignity and privacy of the victim of an offense - TC
 - Don't ask 412 questions, use victim's initials in all pleadings, redact all irrelevant information (financial, phone, and other records), don't put PII on the record!
 - JAGMAN 0141a – requires removal of PII before placed in record
 - If introduced, request all SANE photos be sealed



Victim Rights

- Article 32 – effective 26 Dec 2014
 - 32(d)(3) – victim has a right not to testify at an Article 32 – deemed unavailable
 - 32(e) – victim may request a copy of the 32 recording and shall have access as prescribed by MCM
- Article 46(b) – effective now
 - Upon notice that TC intends to call a victim at an Article 32 or at a court-martial
 - DC must go through TC to request interview of victim
 - Must be in presence of TC, VLC, or VA if requested



Victim Rights

- Article 54(e)
 - Right to a redacted copy of the record of trial
 - Qualification - Testifying victim in an Article 120, 120b, 120c, 125, or 80 (attempt to commit previously listed offense)
 - TC – must notify the victim before authentication of ROT
 - Within 7 days of sentence



Victim Rights

- Article 60(d) – effective 24 June 2014
 - Right to submit matters on clemency
 - **Qualifying victim** – person who has suffered a direct physical, emotional, or pecuniary loss as a result of a commission of an offense under this chapter & on which the CA is taking action under this section
 - No right if acquittal or no evidence presented
 - TC must inform victim of right
 - **Timing** - Victim has 10 days from receipt of later of ROT/SJAR and can request up to 20 additional days.



Victim Rights

- DODI 6495.02 – SAPR Program Procedures
 - Enclosure (4), paragraph 1.c – The victim’s decision to decline to participate in an investigation or prosecution should be honored by all personnel charged with the investigation or prosecution . . . including commanders.
- MCO 1752.5B – SAPR
 - Paragraph 4(a)(2)(g) - Victim may decline to participate in an investigation at any time
- Not binding on convening authority’s, but persuasive
- You should try to ensure victim is declining for right reason



Witness Rights

- MCO 5800.14
 - Witness – a person who has information or evidence “about” a crime under the UCMJ and provides that knowledge to a DOD Component representative.
 - Does not include defense witnesses, character witnesses, or uncooperative witnesses
 - Right to be treated with fairness and respect for the witness’s dignity and privacy
 - JAGMAN 0141a – redact witness PII as well!
 - If witnesses have compromising photos, recommend seal



Witness Rights

- MCO 5800.14
 - Right to be reasonably protected from accused – MPO – TC, NCIS, & command
 - Right to be notified of any decision to dispose of an alleged offense at court-martial, NJP, or adsep - TC
 - Right to be provided information about the resolution or sentence in a case - TC
 - Right to be notified of the apprehension, arraignment, release, time and location of proceeding - TC



TC VWAP Responsibilities

- Before preferral
 - Identify and speak to all victims and witnesses
 - If victim has VLC, must go through VLC before speak to victim
 - Ensure all victims and witnesses have been provided a DD 2701
 - Ensure victim is aware of IRO hearing and right to be heard
- After preferral
 - Explain the trial process to all victims and witnesses with the DD 2702
 - Ensure victim and witnesses are aware of the Article 32 hearing, motions hearings, and the court-martial dates
 - Consult victim on all pretrial negotiations or decisions not to go forward
 - Notify the victim of date charges referred and nature of charges



TC VWAP Responsibilities

- At trial
 - Notify victim and witnesses of dates and times
 - Provide subpoenas to notify employers of official duties
 - Ensure transportation, lodging, and necessary services are provided
 - Notify victim of right to be present unless excluded by clear & convincing evidence



TC VWAP Responsibilities

- Post trial
 - Provide DD 2703 to all victims and witnesses to ensure they understand the post trial process
 - If confinement awarded – gather victim and witness preference on DD 2704 for notification of change of status
 - Notify victims and witnesses of findings and sentence awarded and effect of any PTA
 - Notify victim of rights under Article 54(e) (if qualify) and Article 60(d) (if qualify)
- Ensure all victim and witness information is entered in CMS and DD forms provided!



VWAP forms

- Not an end to themselves, but how we report compliance
 - DD 2701 – initial contact
 - DD 2702 – upon referral
 - DD 2703 – after trial
 - DD 2704 – upon confinement
- Practice Notes
 - Keep copies of 2701-2703 on hand in office
 - Walk the victims/witnesses through forms as you explain them, it's a checklist!



Other VWAP Personnel

- Regional VWLO – appointed by MCI CG to oversee the VWAP program in the region
 - Chair semi-annual VWAP meeting with all VWLOs
- Installation VWLO – appointed by installation commander and oversees VWAP program on that installation – trains VWACs
 - Chair quarterly VWAP meeting w/ all VWACs
- VWAC– appointed at every battalion/ squadron level unit – ensures compliance with VWAP within the unit
 - Your primary POC to get witnesses from unit
 - Victim’s unit VWAC should assist to ensure victim is receiving necessary services
 - Make accused and victim VWACs come to trial to assist!!



Other VWAP Personnel

- LSST VWAC – ensure compliance with VWAP within the LSST
- Law Enforcement VWAC – ensure law enforcement compliance & providing DD 2701s
- Service providers (medical, chaplain, victim advocates) – provide VWAP rep for quarterly meeting
- Corrections personnel – provide VWAP rep and ensure victim notice of all changes of status of convicted offender



Take Away

- VWAP – goal - instill confidence in victims and witnesses in the military justice process
 - Update early and often
 - Ensure understanding of process
 - Ensure assistance provided