

Victims' Rights in Trial Process.

You may choose to participate in the trial at several stages. Your rights include being:

- Notified in a reasonable, accurate, and timely manner of public preliminary hearings, pretrial confinement hearings, court proceedings, and clemency and parole hearings related to the offense;
- Being present at all public proceedings related to the offense unless the hearing officer or military judge determines that your testimony would be materially altered if you as the victim heard other testimony;
- Consulted on pre-trial confinement of accused and release of accused from pre-trial confinement;
- Consulted about the proposed dismissal of any and all charges;
- Consulted on decision not to prosecute;
- Consulted on proposed terms of any pre-trial agreement;
- Notified of the acceptance of a guilty plea; to present to the court evidence on sentencing. Crime victims have the opportunity to present a written statement to the Convening Authority before any action on findings and sentence.
- Informed about the conviction, sentencing, and imprisonment of the accused;
- Consulted about testifying as a witness.

If You Believe You Were the Victim of Reprisal, Retaliation, or Ostracism.

Federal law prohibits military members, civilian employees, and contractors from reprisal, retaliating, or ostracizing individuals who report a crime or provide information relating to a criminal investigation. Prohibited actions may include taking, or threatening to take an unfavorable personnel action; withholding, or threatening to withhold a favorable personnel action; or socially ostracizing you for making a protected communication. If you believe someone has reprisal, retaliated, or ostracized you for reporting a crime or participating in a criminal investigation, contact the corresponding official listed on the back of this form.

If You Are Threatened or Harassed.

If anyone threatens you or you feel that you are being harassed because of your cooperation with this investigation, contact Law Enforcement, the Trial Counsel, and your VWL right away. It is a crime to threaten or harass a victim or witness. If you fear for your immediate safety, call 911 or law enforcement immediately. You may also seek a military protective order and/or civilian restraining order.

Legal Assistance and Special Victims' Counsel/ Victims' Legal Counsel (SVC/VLC).

If you are a member of the Armed Forces or a dependent, you have the right to speak with a legal assistance attorney, at no cost. You may contact the legal assistance office listed below. If you are the victim of sexual assault and certain related offenses, you may also be entitled to the assistance of a SVC/VLC, in addition to services provided by a Sexual Assault Response Coordinator and your Victim Advocate.

Points of Contact:

Victim/Witness Liaison (VWL)

(Name)

(Telephone Number)

Trial Counsel

(Name)

(Telephone Number)

Legal Assistance and SVC/VLC.

You may be eligible for legal assistance and/or a Special Victims' Counsel (SVC) or Victims' Legal Counsel (VLC), depending on the specific offense. To determine eligibility or obtain assistance, contact these offices at:

(Legal Assistance Office)

(Telephone Number)

(SVC/VLC Office)

(Telephone Number)

In regard to any **reprisal, retaliation, or ostracism** you experienced as a result of reporting a crime, contact:

(Telephone Number)

For further information on crime issues, see the DoD Victim and Witness Assistance Council web page at: <http://vwac.defense.gov/>

DEPARTMENT OF DEFENSE



**COURT-MARTIAL
INFORMATION FOR
VICTIMS AND WITNESSES
OF CRIME**

Court-Martial Information **For Victims and Witnesses of Crime**

Introduction.

The Department of Defense is concerned about the problems often experienced by victims and witnesses of crime. We know that as a victim or witness, you may feel anger, confusion, frustration, or fear and then feel added frustration in the course of the trial. The information in this brochure will explain the criminal justice procedures, and your role as a witness.

In the military, a prosecutor is called the Trial Counsel. The Trial Counsel's office will make every effort to keep you informed of the times and places you may be needed. However, it is not unusual for court dates to change several times before the trial. It is very important to keep the Trial Counsel informed of your current address and telephone number.

Preferral of Charges.

Like a civilian criminal "complaint," the referral of charges begins the criminal trial process. Upon referral, you may participate in the case at several points as outlined below.

Pretrial Conference.

You will be asked to speak with the Trial Counsel handling the case at least once before you testify. The Trial Counsel will answer any questions you may have at this time, and will tell you what will be expected of you as a witness.

Article 32 Hearing.

Crimes dealt with in a General Court-Martial require an Article 32 hearing. An Article 32 preliminary hearing officer (PHO) reviews the charges to determine if probable cause exists to believe the accused committed the crimes charged. In the Article 32 hearing, testimony is given to a PHO, rather than a judge or jury. You may have to appear at the hearing and testify under oath regarding what you know about the charges. After the Article 32 hearing, the PHO recommends whether to "refer" (send) the case to trial. The preliminary hearing is not required in cases referred directly to a Special Court-Martial.

If you are the victim of a crime, it is your decision whether or not you want to testify at the Article 32 hearing. You also have the right to attend the hearing and may only be excluded if the hearing officer finds that your testimony may be influenced by watching the proceedings. If you are a witness, you may be required to testify under oath regarding what you know about the charges.

Court-Martial.

This is the trial of the accused. It generally has two parts: findings (guilty or not guilty) and sentencing (punishment). In the findings phase the accused has the right to choose whether a military judge sitting alone or a panel of "members" (jury) will decide whether the accused is guilty of any offenses. If you are the victim of a crime, you have the right to attend the court-martial unless the military judge finds that your testimony may be influenced by watching the testimony of the other witnesses.

Testimony.

If you testify, you will be placed under oath and asked questions by the Trial Counsel, and, in most cases, cross-examined by the Defense Counsel. If you have concerns about embarrassing questions that could be asked, tell the Trial Counsel before trial.

Pointers When Testifying.

- Dress Appropriately: Be neat. Dress conservatively.
- Tell the Truth.
- Speak Clearly and Loudly: Everyone in the courtroom must be able to hear what you have to say. No gum chewing.
- Don't Guess or Speculate: If you don't know, say you don't know. Give positive, definite answers when you remember positively.
- Be Courteous: Answer politely and address the judge as "Your honor."
- Don't Lose Your Temper: Stay calm.

Closing Argument.

After all evidence is received by the court, each side makes a closing argument. After argument, the judge or members will adjourn to deliberate on the issue of guilt or innocence. If there is a finding of "not guilty," the accused is released and the court-martial process ends. If there is a finding of "guilty," the trial goes to the sentencing phase.

Sentencing.

In this phase, the judge or members (jury) decide the appropriate types and amount of punishment. The Trial Counsel may call witnesses to show aggravating factors concerning the offenses, who may be cross-examined by the Defense Counsel. The defense may call witnesses to explain the circumstances, lessen the potential punishment, or establish grounds for clemency. You may be asked to return to the witness stand and testify as to how the crime has affected you. This may include any emotional, physical and financial suffering you experienced. A crime victim may also elect to submit an unsworn statement, oral or written, which is not subject to cross-examination.

Punishment.

The court-martial ends when the judge or members read the sentence to the accused. Normally, any confinement ordered begins at the time the sentence is announced. Forfeitures of pay and reductions in rank usually begin 14 days after the sentence is announced, unless deferred by the Convening Authority, who is typically a senior officer. Other parts of the sentence take effect only after the "Convening Authority," takes "action" on the case, which generally occurs within two to four months after trial. Depending on the offense, the Convening Authority may, in his or her action, give clemency to the offender in the form of dismissing charges or reducing the sentence. If you are a victim, you have the right to submit a written statement to the Convening Authority, which may include your feelings about whether the accused should receive clemency and how you have been impacted by the crime. The VWL will inform you of the process for how to do this.

If the accused is sentenced to prison, you have additional rights to notification of any changes in the inmate's status. These will be explained to you by the VWL or Family Advocacy Program (FAP) official, or a designated representative.

If the offender is convicted or discharged for abusing you or your children, you may be eligible for "transitional compensation" benefits. Contact the Trial Counsel or VWL for an application (DD Form 2698) and for further information.