

## LEGAL REPRESENTATION

If you are the victim of sexual assault, certain related offenses, or domestic violence, you may be eligible for assistance from a SVC/VC/VLC, in addition to services provided by a Sexual Assault Response Coordinator (SARC) and your Victim Advocate.

## VICTIM RIGHTS in the COURT-MARTIAL PROCESS\*

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

- Notified in a reasonable, accurate, and timely manner of public preliminary hearings, pretrial confinement hearings, court proceedings related to the offense;
- 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 heard other testimony;
- Notified regarding pre-trial confinement of accused and release of the 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 plea agreement;
- Notified of the acceptance of a guilty plea and to present evidence to the court during sentencing.
- Notified of the opportunity to provide a written statement to the Convening Authority before any action on findings and sentence;
- Informed about the conviction, sentencing, and imprisonment of the accused; and,
- Consulted about testifying as a witness.

**\* You have significant other rights as a victim throughout the military criminal justice process. For additional information, contact your Victim/Witness Liaison or Special Victims' Counsel/ Victims' Legal Counsel.**

## CONTACT INFORMATION

If you need additional assistance, below are several key points of contact:

- General case information/support/rights violations:  
Victim/Witness Liaison -  
\_\_\_\_\_
- Status of the criminal investigation:  
Investigator -  
\_\_\_\_\_
- Status of the prosecution:  
Legal Office -  
\_\_\_\_\_
- Legal Assistance office (if eligible):  
\_\_\_\_\_
- Special Victims' Counsel/Victims' Counsel/Victims' Legal Counsel (if eligible):  
\_\_\_\_\_
- Assistance with compensation for medical expenses or other expenses:  
State office for Crime Victim Compensation -  
\_\_\_\_\_
- Assistance with reprisal, retaliation, or ostracism:  
Inspector General's office -  
\_\_\_\_\_
- Family Advocacy Office:  
\_\_\_\_\_
- Miscellaneous contact information:  
\_\_\_\_\_  
\_\_\_\_\_



# COURT-MARTIAL INFORMATION FOR VICTIMS & WITNESSES OF CRIME



DoD  
Victim and Witness Assistance Program

## INFORMATION ABOUT COURTS-MARTIAL

### **Introduction**

The Department of Defense is concerned about the problems often experienced by victims and witnesses of crime. 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, telephone number, and email.

### **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 may 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**

An Article 32 preliminary hearing is conducted for cases that may be convened at a General Court-Martial. An Art. 32 preliminary hearing officer (PHO) reviews the charges to determine if probable cause exists to believe the accused committed the crime(s) charged. In the Art. 32 hearing, evidence is given to a PHO, rather than a judge or jury. You may be asked to testify under oath regarding what you know about the charges, but. After the Art. 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 Art. 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 materially altered 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**

A court-martial is the criminal trial of a Service member who is referred to as the "accused." A court-martial 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 or a panel of "members" (jury) will decide whether the accused is guilty of any offenses. If you are the victim of an alleged crime, you have the right to attend the court-martial unless the military judge finds that your testimony may be materially altered by watching the testimony of a particular witness.

### **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 (the attorney representing the accused). The military judge and/or members may also ask you questions as well. If you have concerns about questions that could be asked, tell your SVC/VC/VLC and/or Trial Counsel before trial.

### **Pointers When Testifying**

- Dress appropriately: Be neat. Dress professionally;
- Tell the truth;
- Speak clearly and loudly: Everyone in the courtroom must be able to hear what you have to say;
  - 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 and professional: 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 court-martial ends, and if accused is in pretrial confinement, the accused is released. If there is a finding of "guilty," the trial proceeds to the sentencing phase.

### **Sentencing**

In this phase, the judge or members decide the appropriate types and amount of punishment. The Trial Counsel may call witnesses, who may be cross-examined by the Defense Counsel, to establish aggravating factors concerning the offenses.

The defense may call witnesses to explain the circumstances, lessen the potential punishment, or establish grounds for clemency. You may be asked to testify about how the crime has affected you, including any emotional, physical and financial suffering you experienced. A crime victim may also elect to present and submit a verbal or written unsworn statement which is not subject to cross-examination.

### **Punishment**

The court-martial ends when the judge reads 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. Other parts of the sentence take effect only after the military judge enters the judgment, which generally occurs within two to four months after trial. 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, Trial Counsel, or a designated representative.

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