

VICTIM AND WITNESS ASSISTANCE PROGRAM



JUSTICE FOR ALL

***OFFICE THE STAFF JUDGE ADVOCATE
ROBINS AIR FORCE BASE, GEORGIA***

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DISCLAIMER

FAILURE TO PROVIDE THE INFORMATION OR SERVICES LISTED IN THIS PACKET DOES NOT CREATE A CAUSE OF ACTION OR DEFENSE IN FAVOR OF ANY PERSON. NO LIMITS ARE HEREBY PLACED ON THE LAWFUL PREROGATIVES OF THE AIR FORCE OR ITS OFFICIALS.

PREAMBLE

The Victim and Witness Protection Act of 1982 was passed into law for the protection and assistance of crime victims and witnesses. Without the cooperation of victims and witnesses, the military justice system would cease to function effectively. People who work in and support the system at Robins Air Force Base will ensure that the victims and witnesses receive due consideration, are extended authorized assistance, are treated with dignity and courtesy, and are subjected to minimum interference with personal privacy and property rights. Subject to available resources, operational commitments and military exigencies, Air Force personnel in the military justice process will work to ease the physical, psychological and financial hardships suffered by victims of crimes investigated by the Air Force.

This handbook is intended to provide information concerning the protection and assistance of victims and witnesses, to inform them about the availability of emergency medical care and to inform them of the steps in the military justice process and their roles therein, without infringing on the constitutional and statutory rights of the accused or limiting command prerogatives. Commanders, law enforcement personnel, OSI agents and supervisors who believe a military member, dependent, or Air Force employee is a victim of or witness to a crime should refer the individual to the Base Legal Office, WR-ALC/JA, Building 215, extension 926-3961 or 926-5995 for an interview and briefing with an attorney.

INTRODUCTION

As the victim or witness of a serious crime, the Federal Government has taken special care to pass laws that protect you from any further harm, notify you of organizations and places where you can receive help or care, and explain the rights you have as a victim or witness.

The criminal justice system should assist the victims of crime -- not add to the injury. This packet is designed to inform you of your rights, explain the workings of the criminal justice system that will be prosecuting the accused, and supply the names and numbers of organizations that can help in the healing process and protect you from further harm.

Some quick definitions may be helpful to start:

VICTIM: A person that has suffered direct, or threatened, physical, emotional, or financial harm as a result of the commission of a crime.

WITNESS: A person who has information or evidence concerning a crime, and provides testimony regarding his/her knowledge to a law enforcement agency.

SERIOUS: A criminal offense that involves personal violence, attempted or threatened personal violence or significant property loss.

PROSECUTOR/TRIAL COUNSEL: The Judge Advocate in charge of the case, usually an Air Force Captain, who will be acting as the trial attorney during any judicial proceeding.

VICTIM'S REPRESENTATIVE: A lawyer who works for the Judge Advocate's office, usually a civilian, who is appointed to assist victims and/or witnesses exercise their rights and obligations.

DEFENSE COUNSEL: The Air Force lawyer who represents the accused during the court proceeding.

Many of the rights and protections that are afforded to the victims and witnesses of crimes are contained in the Victim and Witness Protection Act of 1982 and in the Victims' Rights and Restitution Act of 1990.

RIGHTS OF CRIME VICTIMS

1. The right to be treated with fairness and with respect for the victim's dignity and privacy.
2. The right to be reasonably protected from the accused offender.
3. The right to be notified of court proceedings.
4. The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.
5. The right to confer with an attorney for the Government in the case.
6. The right to restitution.
7. The right to information about the conviction, sentencing, imprisonment, and release of the offender.

CHILD VICTIMS

The Victims of Child Abuse Act of 1990 was enacted to address the special problems caused by the investigation of a child abuse case. A “child victim or witness” is a person under age 18 alleged to be a victim of a crime of physical/sexual abuse or exploitation, or a witness to a crime committed by another person. The act codifies specific “rights” for children including the following:

1. The right of a child to have an adult attendant accompany the child during court testimony and assist the child in other necessary activities in the process.
2. The allowance of the use of closed-circuit television and videotaped depositions of the children, as alternatives to live in-court testimony.
3. Stringent procedures which protect a child witness’ privacy as well as sanctions for violating such procedures.
4. A requirement disallowing routine competency examination except upon written motion that compelling reasons exist and ruling out age as a compelling reason.
5. An allowance that when a child victim or witness testifies all persons who do not have a direct interest in the case may (subject to restrictions) be excluded from the courtroom.

These measures are intended to reduce the trauma to the child victim caused by the criminal justice system while at the same time increasing the successful prosecution of child abuse offenders.

GENERAL INFORMATION

1. The Legal Office at Robins Air Force Base prosecutes Air Force members who have committed a crime punishable under the Uniform Code of Military Justice if the Air Force has jurisdiction. You are either a victim of such a crime and/or are being asked to serve as a witness for the United States in a court-martial. This handbook is designed to help you understand our system and your role in the process. The people of the United States, and the Air Force, in particular, are depending on you and others who know something about a crime. Only with your help can the Air Force have a fair and effective system to bring the criminal to justice.

2. It is a federal offense to threaten, intimidate, harass, or mislead a witness in a criminal proceeding or investigation. When appropriate, steps will be taken to protect you from intimidation or similar threats. If anyone threatens you, or you feel that you're being harassed because of your contribution to the case, immediately notify the judge advocate in charge of the case in the Base Legal Office or the Air Force agency investigating the offense.

<u>AGENCY</u>	<u>TELEPHONE</u>
Base Legal Office	926-3961 or 926-5995
Security Police	922-5271
Office of Special Investigations (OSI)	926-2141

3. If you are not a federal government employee, you will receive a witness fee for each day that you are required to attend a court-martial, including time spent waiting to testify. Out-of-town witnesses receive reimbursement for certain travel expenses in addition to their daily witness fee. At the conclusion of your testimony, you will complete a witness voucher, Standard Form 1175, to make a claim for your fees. The NCOIC, Military Justice, and Base Legal Office, will help you file your witness voucher. A check for all fees will be mailed to you when the case is over or you can be paid in cash by the Base Finance Office. If you are a federal government employee, you receive your regular salary, notwithstanding your absence from your job while testifying and you will not collect a witness fee in addition to your salary.

4. If you are a victim or immediate family member of a victim of a serious offense, the judge advocate in charge of the case will wish to obtain your views about legal decisions made before, during and after the case. Any adverse impact on you and your family will also be explored in detail. In this way, your situation and opinions can and will be given due consideration throughout the case.

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5. Sometimes law enforcement officers take and store property belonging to victim/witnesses as evidence in a court-martial. Examples are stolen property and property at a crime scene. If your property is being held as evidence and you feel that you would like to regain your property before the court-martial case is over, contact the judge advocate in charge of the case in the Base Legal Office. Sometimes arrangements can be made for the early release of your property. This will require a determination as to the value of the production of your property as evidence in the court-martial. In any case, your property held for evidence will be safeguarded and returned as expeditiously as possible. The prompt return of your property will always be sought. If a delay in the return of your property is required, the judge advocate in charge of the case will explain the reasons for retaining your property and estimate when it can be returned to you.

6. As a victim or witness, you may have questions about transportation, the location of the Base Legal Office and courtroom, food service, lodging, parking, child care, availability of interpreters/translators, what to expect in court and what time to appear. The judge advocate assigned to your case, Base Legal Office, 926-3961 or 926-5995, has assembled information for you on these subjects or will provide assistance in obtaining services. You should feel free to ask him/her for assistance.

7. Even though you are being asked for our cooperation in this case by the prosecution, witnesses do not belong to either side of a criminal case. It is proper for the defense lawyer to contact you about your testimony in this case. In an interview with a representative of the government or defense, you should always do your very best to tell “the truth, the whole truth, and nothing but the truth.”

a. If you give a statement to an investigator or lawyer for the government or the defense you do not have to sign the statement. Any statement that you make during an interview, even if not signed, may be used to try to challenge or discredit your testimony in court if your court testimony differs from your first--whether written or oral. If you decide to sign the statement, make sure you read it over very carefully first and correct any mistakes. You should request a copy of your statement if you wish.

b. The judge advocate in charge of the case may discuss various aspects of the case with you, both for your information and to prepare for testimony if necessary. Any time you have an interview with an attorney or investigator for the defense, please let the judge advocate in charge of the case from the Base Legal Office know about the interview.

c. You may discuss the case with anyone you wish. However, it is not always a good idea. For example, an accused may be under orders not talk to you about the case as a condition on liberty prior to trial and might be placed in pretrial confinement if he/she does so. Remember, if an accused approaches you and you find this upsetting, contact the judge advocate in charge of the case immediately. Since you are a potential witness, you are encouraged not to discuss the

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case with members of the press because the rights of the government and the accused to a fair trial could be jeopardized by pretrial publicity. Also, after you have testified in court, you should not tell other witnesses about your testimony until after the case is over and do not ask other witnesses about their testimony.

8. There is sometimes more than one kind of court hearing in a case in which you might be asked to testify. It is difficult to schedule hearings at a time convenient for everyone involved. A hearing may require the presence of witnesses, law enforcement officers, the attorneys for the government and the defense, the judge or investigating officer or magistrate, as well as the accused. Therefore, when a time and place is set for a hearing, please be there promptly. If you know in advance that you might have difficulty in making an appearance, let the judge advocate in charge of the case know so that an attempt may be made to adjust the schedule. If you have been sent a subpoena, you should know there are serious penalties if you don't obey that formal order to appear. Despite the efforts of everyone concerned, once in a while a hearing doesn't take place on schedule. Sometimes a hearing or court-martial must be postponed. The Base Legal Office will notify you promptly of any scheduling changes which affect your attendance.

9. If a victim or witness of a serious offense requests, the Victims Representative will notify them in advance, if possible, of the apprehension of the accused, the pretrial release of the accused, and the accused's trial or entry of a guilty plea and sentencing proceeding. Please provide the Victims Representative assigned to the case with a current address or telephone number and which of these events you would like notice of on the form provided at the back of this pamphlet.

10. At courts-martial and other proceedings, victims and witnesses will be afforded, to the extent practicable, the opportunity to wait in an area of the Base Legal Office separate from the accused or other witnesses. Separate waiting areas are normally provided. Separate waiting areas are appropriate when necessary to avoid embarrassment, coercion, or similar emotional distress. If the case includes numerous witnesses and you would like a separate waiting area, please ask your Victims Representative.

11. Upon request of a victim or witness, reasonable steps will be taken by the judge advocate in charge of the case to inform an employer of the reasons a victim or witness must be absent from work. In appropriate cases a victim or witness who is subjected to serious financial strain as a direct result of crime or cooperation in the investigation or prosecution of a crime will be assisted by the Base Legal Office in explaining this situation to creditors. If you need assistance in these areas, notify your Victims Representative.

12. Any requests for release of investigative reports or other documents may be processed in accordance with the Freedom of Information Act, AFI 37-131. Please contact your Victims Representative, if you have such a request.

6.

13. Often crime may mean a real financial loss for the victim. Perhaps you have had cash or valuable property stolen and not recovered, property damaged, medical expenses not covered by the Air Force, or a loss of income because you could not work. If any of these things have happened to you, please see if you have insurance which will cover the loss. If you have no insurance or only partial coverage, contact your victim representative to assist in determining whether you are eligible for any of the following:

- a. Transition Compensation
- b. Claims Compensation
- c. State Crime Compensation
- d. Court Ordered Restitution
- e. Civil Litigation

a. TRANSITION COMPENSATION

(i) Transition Compensation For Abused Dependents of Active Duty Members of the Armed Forces

Congress passed section 1059 of title 10 to provide monthly payments for dependents abused by an active duty member of the armed forces. Certain eligibility requirements must be met to qualify for and receive payments. The abused dependent should be aware of these procedures so that they can take advantage of the compensation.

I. ELIGIBILITY

The Department of Defense policy on Transition Compensation covers the dependents of members who are on active duty for more than 30 days and (1) the member has been convicted of a dependent-abuse offense resulting in separation pursuant to a court martial or (2) the member is administratively separated and the basis for separation includes a dependent-abuse.

A dependent-abuse offense is defined as an act which involves the abuse of the spouse or dependent child of the member and is a criminal offense as defined by the Uniform Code of Military Justice (UCMJ) or other applicable criminal codes. Such acts can include **but are not limited to**: sexual assault, rape, sodomy, assault, battery, murder, and manslaughter.

Eligibility Conditions (“spouse” and “member” includes “former spouse” and “former member”):

- If the member was married at the time of the offense, payment is made to the spouse at the time of the offense.
- If the spouse is ineligible to receive payment because of remarriage, cohabitation, or active participation in the abuse, payments will be made to the dependent child of the member who does not reside in the household of the member or spouse.
- If there is no eligible spouse (i.e. the spouse has died), compensation will be paid to the dependent children who do not reside in the household of the member.
- A dependent child status is determined by the date on which the member is convicted of the offense or date of administrative separation.
- If the recipient is not capable of handling his or her own affairs, then payments may be made only to a court-appointed guardian. If the dependent is under 18 years of age, payments can only be made to a court-appointed guardian or natural parent (other than the member) if that parent has legal custody.

A dependent child is defined as an unmarried child, including adopted and stepchildren, who resided with the member at the time of the dependent-abuse offense and:

- is under 18 years of age; or
- is 18 years of age or older and incapable of self-support because of mental or physical incapacity that existed before the age of 18 and is dependent on the member for over one-half of their support; or
- is 18 years of age or older but less than 23 years of age and enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense and is or was dependent upon the member for over one-half of their support.

Eligibility Responsibilities

- The spouse will certify annually that he or she is not remarried or cohabiting with the offender on the Certificate of Eligibility (COE) which is submitted to the Defense Finance and Accounting Service (DFAS). Dependent children will also submit a COE with the DFAS that they are not cohabiting with either the offender or ineligible spouse. The spouse must notify the DFAS within 30 days of remarriage or residing in the same household as the spouse or dependent child.
- If the spouse is eligible for compensation under 10 USC § 1059 or 10 USC § 1408(h) (compensation for abused dependents of members who lose their retirement pay), the spouse must choose under which law the payments will be made.

II. FORFEITURE OF ELIGIBILITY

Eligibility for Transition Compensation can be lost upon:

- Remarriage of the spouse. These payments do not begin again upon termination of the remarriage. Any payments going to a dependent child will continue as long as the child does not live in the same household as the spouse or member.
- Cohabitation with the member convicted of the abuse. Once payments are terminated for this reason, they will not begin again. Any payments made before the former member resided in the household shall not be recouped by the government.
- Active participation of the spouse in the abuse of the dependent child. Competent authority designated by the Secretary of Defense must conclude that the spouse was involved in the criminal conduct or actively aided or abetted in abusing the child. If a dependent child lives with the spouse, then the child will also lose their eligibility to receive compensation.

III. PAYMENTS AND BENEFITS

Payments will begin as of the date of approval of the court martial sentence if it includes dismissal, dishonorable discharge, or bad conduct discharge. If the member is administratively separated, payment shall begin the date on which the separation action is initiated by the member's commander.

Payments are made for a period of 36 months except if as of the date of commencement of payment the unserved portion of the member's obligated active duty service is less than 36 months, then the duration of payment will be the greater of the unserved portion or 12 months.

Currently amount of payment is \$790 for the spouse and \$200 per child. The amount will increase for each child. The rate is set by 38 USC § 1311(a) and 38 USC § 1311 (b). If there is no eligible spouse, compensation paid to a dependent child or multiple dependent children will be paid in equal shares as governed by 38 USC § 1313. Payments will be prorated for months when payments start in the middle of the month. If there is an odd amount because of multiple children, then the odd cent will go to the youngest child.

Payments that have been commenced shall cease to be effective the first day of the first month in which the Secretary notifies a recipient of transitional compensation in writing that payment will cease because:

- The member's sentence by a court-martial to receive punishment that included a dismissal, dishonorable discharge, or bad conduct as a result of a conviction for dependent-abuse offense, is remitted, set aside, or mitigated to a lesser punishment that does not include any such punishment.

- The administrative separation of a member from active duty for dependent-abuse offense is disapproved by competent authority under applicable regulations.

In either case, the recipient of payments shall not be required to repay any amount received before the effective date of cessation unless any amount was erroneous when paid.

Benefits available to the recipients of Transition Compensation include use of the commissary and exchange stores. These privileges will be the same as a dependent of a member of the armed forces on active duty for a period of more than 30 days. If the recipient is eligible to use the commissary or exchange under another provision of law, then the other provision will determine eligibility and entitlements.

Limited medical care is available to a dependent receiving Transition Compensation. The dependent must request the care and it must relate to an injury or illness caused by abuse. Contact the Victim/Witness Assistance Coordinator for more details on eligibility.

This is a brief overview of the Transition Compensation program of the Department of Defense. If you have further questions or need to obtain the proper forms to begin Transition Compensation payments, you can contact the Victim/Witness Assistance Coordinator at Robins AFB. The telephone number for the office is (912) 926-5995.

(ii) Transition Compensation for Abused Dependents of Retirement Eligible Members of the Armed Forces

Congress passed 10 USC § 1408(h) to provide for the payment of retirement benefits to the dependent spouse or former spouse of a military member convicted of dependent-abuse.

I. ELIGIBILITY

For a spouse or former spouse to receive a portion of disposable retirement pay under § 1408(h), the member must be convicted of a dependent-abuse offense after becoming eligible for retirement and lose eligibility to receive retired pay as a result of the misconduct. To be eligible, the spouse or former spouse:

- was the victim of the abuse and was married to the member or former member at the time of that abuse; or
- is a natural or adopted parent of a dependent child of the member or former member who was a victim of abuse.

A court order is necessary to request a portion of disposable retired pay. The order should be submitted to the Secretary of the appropriate service. The member's loss of eligibility to retirement pay becomes effective when the sentence of the member is approved under the Uniform Code of Military Justice.

A dependent child is an unmarried child, including adopted and stepchildren, who resided with the member at the time of the dependent-abuse offense and:

- is under 18 years of age; or
- is 18 years of age or older and incapable of self-support because of mental or physical incapacity that existed before the age of 18 and is dependent on the member for over one-half of their support; or
- is 18 years of age or older but less than 23 years of age and enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense and is or was dependent upon the member for over one-half of their support.

II. LOSS OF ELIGIBILITY

A former spouse receiving payments under § 1408(h) will lose eligibility upon a subsequent remarriage. The payments may begin again after the termination of that marriage by annulment, divorce or death of the spouse.

III. PAYMENTS AND BENEFITS

After a court order is sent to the appropriate service secretary, the service secretary will certify the amount of retirement that the member or former member would have received at retirement. The service secretary will determine the amount based on the date of certification as

- if the member or former member's eligibility had not been terminated as a result of a dependent-abuse case; and
- if the member or former member had not received retired pay immediately before the termination of eligibility, then as if the member or former member had retired on the date of certification.

A court order can provide that when retired pay is increased under section 1401a of this title (or other provision of law), the amount payable shall increase at the same time and by the same percentage as if the member or former member was eligible to receive the retired pay.

If the punishment that results in the termination of the retirement benefits is remitted, set aside, or mitigated to a punishment that does not include the termination of eligibility for retirement, the payments will stop on the first day of the first month following the month in which the service secretary notifies the recipient the payments will cease. The recipient will not be required to repay any money except any amount which was erroneous when first paid.

A spouse and dependent child can use the commissary and exchange stores, receive medical and dental care, and any other benefits provided to dependents of retired members as if the member or former member was eligible for retired pay. If the spouse or child is eligible or entitled to receive a benefit under another provision of the law, the eligibility shall be determined by the other law.

This is a brief overview of the Retired Pay Compensation program of the Department of Defense. If you have further questions you can contact the Victim/Witness Assistance Coordinator at Robins AFB. The telephone number for the office is (912) 926-3961 or (912) 926-5995.

b. CLAIMS COMPENSATION

6.1 **Scope.** This chapter explains the Air Force procedures for processing Article 139, Uniform Code of Military Justice (10 U.S.C., 939)

6.2 **Claims Payable.** Appointing commanders may direct collection and pay a claim for property that Air Force military personnel willfully damage or wrongfully take, if the claim results from riotous, violent, or disorderly conduct.

6.3 **Claims Not Payable.** Appointing commanders do not pay.

- Claims resulting from simple negligence.
- Claims for personal injury or death.
- Claims resulting from acts or omissions of Air Force military personnel performing legally authorized duties.
- Claims of subrogees.
- Claims arising from private indebtedness.
- Claims for reimbursement for bad checks.

6.4 **Limiting Provisions.** A person who wishes to file an Article 139 claim against an Air Force member submits a complaint within 90 days of the date of the incident.

EXCEPTION: The claimant may file after 90 days, if the appointing commander finds good cause for the delay. A command determination of good cause or absence of good cause is final.

6.4.2 Appointing commanders may not pay indirect, remote, or consequential damages.

6.5 **Filing a Claim.** In order to file a claim in accordance with Article 139, the claimant must complain (orally or in writing) to the commander of the military organization or unit of the alleged offending member or members. If claimants are unsure what organization the offender belongs to, they may file a complaint with the commander of the nearest military installation.

While claimants do not need to request a specific amount when they first complain, the claimant or authorized agent must present a claim for specific amount in writing before appointing commanders make a settlement.

c. STATE CRIME VICTIM COMPENSATION PROGRAM

The Criminal Justice Coordinating Council (CJCC) is a statutorily created executive branch governmental agency.

The Council's goal is to improve the level of communication between law enforcement, courts, corrections, and the juvenile justice system. Also, through enactment of federal drug and violent crime control and victim assistance legislation, as well as various amendments to State law, most of the Council's resources are dedicated to the administration of several criminal justice programs, such as the Crime Victim Compensation Program.

Generally, the Program can assist with compensating innocent violent crime victims with out-of-pocket medical/counseling bills, funeral costs, and lost wages directly related to their victimization. In order to be eligible to participate an applicant must be:

- A victim of violent crime.
- A dependent spouse or child of such a victim.
- A reasonably acting "good Samaritan".
- Family violence victim.
- DUI crash victim.
- Parent or guardian of eligible minor claimant.
- Guardian or estate administrator of eligible mentally incompetent claimant.
- Any person who is not a direct service provider and who assumes the cost of an eligible expense of a victim regardless of such person's relationship to the victim or whether such person is a dependent of the victim.

On the other hand, an applicant is ineligible to receive an award if:

- A victim was incarcerated or was currently serving an existing sentence for a felony involving criminally injurious conduct.
- A victim did not cooperate with law enforcement, prosecution, or the Council.
- A victim contributed to their victimization.
- A victim whose sole loss was property.
- Other requirements include:
 - **The crime must be reported to law enforcement within seventy-two (72) hours, unless good cause is shown.**
 - **A completed application must be filed within 180 days of the victimization unless cause is shown.**

After an initial checklist is made and the application is deemed eligible, an investigation begins. This process includes conversation and correspondence with medical providers, counselors, funeral providers, employers, law enforcement officials, and prosecutors. All of the stated sources provide information concerning the victimization and serve to verify the contents of an application.

Once all documentation is gathered and analyzed a decision regarding compensation is made at the Council's staff level. An award can either be denied or granted up to the maximum amount. Supplemental victimization claims on a crime will be considered if related expenses are incurred after the initial award.

Denials may be appealed by a claimant to the Council's Crime Victim Compensation Committee within thirty (30) days of receipt of the denial letter. This Committee meets when necessary to review these matters and may either affirm, modify, or overturn an initial decision of the Council's staff.

Applications, copies of the victim compensation law, and other information pertaining to the Program may be obtained either by writing or contacting:

The Criminal Justice Coordinating Council
c/o Crime Victim Compensation Committee
503 Oak Place, Suite 540
Atlanta, GA 30349
(404) 559-4949
(404) 559-4960 (FAX)
(404) 559-4177 (TDD) or
Governor's Victim Assistance Helpline
1-800-338-6745

Note: Applications and pertinent information are also generally available from prosecutors, law enforcement agencies, medical providers offices, and victim service providers. Many prosecutors now have in-house victim-witness assistance programs, which are staffed with personnel knowledgeable about the Victim Compensation Program. These persons are available to help explain the Program requirements and assist claimants with completing applications. Of course, the staff of the Council is always available to answer any question and provide aid in completing applications.

Applicants and other information pertaining to other state programs may be obtained by calling that state's program.

Contact List: National Association of Crime Victim Compensation Boards

Alabama - (205) 242-4007	Ohio - (614) 466-7190
Alaska - (907) 465-3040, (800) 764-3040	Oklahoma - (405) 557-6704
Arizona - (602) 542-1928	Oregon - (503) 557-6704
Arkansas - (501) 682-1323	Pennsylvania - (717) 783-5153
California - (916) -323-6251	Rhode Island - (401) 277-2500
Colorado - (303) 239-4442	South Carolina - (803) 737-8140
Connecticut - (203) 529-3089	South Dakota - (506) 773-3478
Delaware - (302) 995-8383	Tennessee - (605) 741-2734
District of Columbia - (202) 576-7090	Texas - (512) 462-6400
Florida - (904) 488-0848	Utah - (801) 533-4000
Georgia - (404) 559-4949	Vermont - (802) 828-3374
Hawaii - (808) 5587-1143	Virgin Islands - (809)774-0903, ext 4104
Idaho - (208) 334-6000	Virginia - (804) 367-956-5340
Illinois - (312) 814-2581	Washington - (206) 956-5340
Indiana - (317) 232-7103	West Virginia - (304) 347-4850
Iowa - (515) 281-5044	Wisconsin - (608) 266-6470
Kansas - (913) 296-2359	Wyoming - (307) 635-4050
Kentucky - (502) 564-2290	
Louisiana - (504) 925-4437	
Maine - (207) 624-7882	
Maryland - (410) 764-4214	
Massachusetts - (617) 727-2200, ext 3410	
Michigan - (517) 373-7373	
Minnesota - (612) 282-6256/(800) 247-0390	
Mississippi - (601) 359-6766	
Missouri - (314) 526-6006	
Montana - (406) 444-3653	
Nebraska - (402) 471-2828	
Nevada - (702) 486-2740	
New Hampshire - (603) 271-1284	
New Jersey - (201) 648-2107	
New Mexico - (505) 841-9432	
New York - (212) 417-5133	
North Carolina - (919) 733-7974	
North Dakota - (701) 328-6195	

REQUEST FOR CRIME VICTIM COMPENSATION APPLICATION

Victim's Name: _____

Claimant's Name (if different from Victim): _____

Applicant's Address: _____

Home Phone Number: () _____ Work Phone Number () _____

d. RESTITUTION: When an offender returns stolen property or otherwise makes good the losses caused to a victim, he/she has given restitution to the victim. The Manual for Courts-Martial does not authorize restitution as a part of an accused's sentence. However, in the hope of receiving a lighter sentence, an accused may agree to or will sometimes make restitution voluntarily. You should cooperate fully with the judge advocate in charge of the case by giving information regarding the impact the crime had on you as the victim. If the accused offers restitution, the judge advocate will then have an accurate picture of what restitution is involved in your case.

e. CIVIL LITIGATION: A victim may try to recover losses by a civil lawsuit against the accused. Such a private lawsuit is completely separate from the court-martial or other proceeding. A judge advocate cannot represent you in a civil lawsuit. Local attorneys are listed in the Warner Robins telephone directory. If you qualify, you may be able to get help free of charge from local legal aid services. If your total losses are small, you will not need a lawyer to file in Small Claims Court and the base legal office can provide you information on the procedures. The difficulty in trying to obtain civil damages from the accused is that whatever money the accused once had may now be gone.

WHAT HAPPENS IN A COURT-MARTIAL?

1. You are entitled to understand what is happening in the case in which you are involved. There are many steps to a court-martial and you may be contacted by the prosecutor or the accused's lawyer regarding various stages of the military justice process. The judge advocate in charge of prosecuting the case is called a trial counsel. The accused's lawyer is called a defense counsel.
2. When there has been a violation of a particular article of the Uniform Code of Military Justice (UCMJ), the accused's commander discusses the offense and surrounding circumstances with a judge advocate in the Base Legal Office. Minor offenses are often not considered serious enough to warrant court-martial. However, a minor offense may warrant non-judicial punishment under Article 15, UCMJ. Depending on all the circumstances, an Article 15 proceeding between the accused and his or her commander does not always involve imposition of punishment. If an accused does not wish to resolve the matter by Article 15 proceedings, he/she can demand trial by court-martial.
3. When the offense is too serious for disposition by an Article 15 proceeding, or if the accused demands a trial by court-martial, the accused's commander signs a charge sheet accusing him/her of breaking the law by violating a particular article of the UCMJ. In cases where the accused probably will flee from prosecution or engage in serious criminal misconduct and lesser forms of restraint are inadequate, the accused's commander will place him/her in pretrial confinement (jail) to await trial. This decision is reviewed by a neutral and detached magistrate who may need your testimony. The accused's commander then forwards the charge sheet and other papers to the special court-martial convening authority. After discussing the offense and surrounding circumstances with the Staff Judge Advocate, Base Legal Office, the convening authority may choose to send the charges back to the accused's commander with instructions to either drop the charges or initiate an Article 15 proceeding. Otherwise, the convening authority will decide to hold a special court-martial or have an investigation pursuant to Article 32, UCMJ.
4. An Article 32 investigation is like a grand jury proceeding in the civilian justice system. Article 32 of the UCMJ says no charges can be sent to a general court-martial without an impartial investigation. A general court-martial is the most serious kind of court-martial and is the equivalent of a felony prosecution in a federal or state court. The Article 32 investigator will examine the charge sheet and case file and call witnesses for sworn testimony. The accused and his/her lawyer have a right to be present when evidence is reviewed or witnesses testify, a right to cross-examine government witnesses and to call witnesses for the defense. The accused has a right to testify but doesn't have to say anything. Most defense lawyers think it's best to just sit back and watch at this stage in the military justice process. At the end of the Article 32 investigation, the investigator recommends to the convening authority what's to be done with the case.

5. The convening authority, 78 Air Base Wing Commander, for a special court martial, or the installation commander, for a general court-martial, decides if a case will go to court. If the charges are referred to a court-martial, the convening authority's decision is written on the charge sheet. The convening authority decides who the court members (jury) will be based on what he/she knows about them as fair and mature officers. The trial counsel (prosecutor) is a judge advocate from the Base Legal Office. The accused is provided a judge advocate, usually the Area Defense Counsel, free of charge. The accused can also have a civilian lawyer at his/her own expense. The military judge is assigned from the Eastern Circuit Office at Bolling AFB. The accused decides whether to be tried by a judge alone or by a court with members. The accused, if enlisted, has a right to request enlisted members on the court.

6. Once the charges have been referred to a court-martial, they are formally served on the accused. Once the charges are served, the trial can begin any time within three to five days. If the case is complicated, the trial may be delayed in order to give adequate time to prepare and arrange for witnesses. The military trial has two parts. The first part is to decide whether the accused is guilty or not guilty. The second part, if the accused is found guilty, is to decide what the punishment will be.

7. At trial, the accused will either plead not guilty, guilty, or guilty of some lesser included offense. A guilty plea, if providently made, is the strongest form of proof known to the law. The accused may plead not guilty to all the charges and rely on his/her right to have the government prove guilt beyond a reasonable doubt if it can. After the pleas, if any issue of guilt remains, the jury, if any, is questioned to insure their impartiality, sworn, and instructed on their function and duties. The trial and defense counsel may make opening statements about what they believe the evidence will show. Then, the trial counsel (prosecutor), calls witnesses and brings in evidence to try and prove guilt. The defense counsel is given a chance to cross-examine these witnesses. The trial counsel can never call the accused as a witness. Defense then gets a chance to call their own witnesses and put in their evidence. They don't have to do anything and the accused doesn't have to testify. If the accused chooses not to testify, his/her silence cannot be used against him/her. If the accused does testify, anything he/she says can be used against him/her and the trial counsel can cross-examine him/her just like any other witness called for the defense. After the defense finishes putting in evidence and calling witnesses, the trial counsel can put on rebuttal witnesses or evidence. Rebuttal is trying to show the opposite of what was just said or put into evidence.

8. After both sides have put on all the evidence, the lawyers for each side get to make a closing argument. The trial counsel tries to convince the court that he/she put on enough evidence to prove guilt beyond a reasonable doubt. Then the defense counsel tries to show where the prosecutor is wrong. The lawyers also summarize the evidence before the court and tell how they feel the law applies to the facts as they see them. The trial counsel makes two arguments, before and after the defense counsel, because the government has the heavy burden

of proof. If there is a jury, the judge then instructs the court members of their responsibilities and advises them of what the law is. The court members deliberate in private and decide by secret written ballot whether the accused is guilty or not guilty of the charges.

9. Deliberation on findings by the judge or court members may take several minutes or it may take hours. If the accused is found guilty of anything whether by guilty plea or findings, the sentencing part of the trial begins immediately. In the civilian criminal justice system, the sentencing proceeding is held days later. In the military justice system, the prosecution proceeds by putting on any evidence that makes things look worse, called matters in aggravation. Besides evidence and testimony about the adverse impact the accused's crime had on the victim (see page 18) and the Air Force, the trial counsel will also put in evidence of the accused's previous court convictions, Articles 15 or Letters of Reprimand in the accused's unfavorable information file, Personal Information Folder, or official Air Force records. Enlisted Performance Reports or Officer Performance Reports may also be admitted into evidence.

10. After matters in aggravation are submitted to the court by the trial counsel, the defense counsel will submit mitigation and extenuation evidence. This is evidence which tends to show the accused is basically a good person who doesn't need the maximum punishment authorized, or the offense committed by the accused really wasn't so bad under the circumstances. The strict military rules of evidence don't apply to this part of the trial. Usually the defense can present to the court whatever information they think is needed for the court members or judge to decide on a fair punishment. The accused may testify under oath, make an unsworn statement, say nothing at all or the defense counsel can make a statement on the accused's behalf. If the accused testifies under oath, the trial counsel can cross-examine him/her.

11. After the defense puts on evidence in extenuation and mitigation, the trial counsel can put in rebuttal evidence. Next, the lawyers make their closing arguments about what the sentence should be. If there is a jury, the judge instructs them on their responsibilities and the law. The court then closes to deliberate or decide the proper punishment. In a special court-martial, the maximum punishment possible is a bad conduct discharge (BCD), six months confinement (jail), forfeiture of two-thirds pay per month for six months, and reduction in rank to the lowest enlisted grade, airman basic (for enlisted members). A general court-martial can give any sentence authorized by law. In any court-martial, no punishment is a possible option. Lastly, the accused is advised of his post-trial and appellate rights by the military judge.

12. Except for death, dismissal or a punitive discharge (BCD or Dishonorable Discharge), the convening authority may order all parts of a sentence executed in his/her initial action on the case. If the sentence includes jail time, usually the accused is taken directly to jail. The accused can ask to have the confinement postponed or deferred to a later date, but this is rarely approved and then only for the most compelling reasons. The convening authority may make restitution to a victim a condition of suspension of a sentence. The convening authority cannot increase the sentence.

13. If the sentence, as approved, includes death, dismissal, BCD, Dishonorable Discharge or confinement for one year or longer, and the accused has not waived or withdrawn his/her right to appellate review, the case will automatically be appealed to the United States Air Force Court of Criminal Appeals (AFCCA). After, that, a petition for review can be filed with the United States Court of Appeals for the Armed Forces (USCAAF). If the case is reviewed by USCAAF, the accused can file a petition for review with the United States Supreme Court. If there is no automatic appeal, the accused can file an appeal or review request with the Judge Advocate General under Article 69, UCMJ.

14. As indicated in paragraphs 2 and 3 above, a case does not always go to trial by court-martial. Additionally, the accused can ask to be administratively discharged or allowed to resign instead of going to trial. Such requests are occasionally approved. When they are approved, they are almost always for Other Than Honorable Conditions Discharge. This is the worst type of administrative discharge and is about the same as a BCD.

15. Any questions you may have about what happens before, during or after a court-martial in your case should be addressed to the trial counsel in the Base Legal Office.

PREPARING TO TESTIFY

1. You, as a witness, have a very important job, not only for the side you appear for but to yourself and to our American system of justice. In order for a court or board to make a correct decision, they must have all the evidence put before them truthfully and accurately.
2. All the people involved in the case know your time is valuable and that you have other things you would rather be doing than testifying in court. Every attempt will be made to use your time as efficiently as possible. There may be unavoidable delays in getting you on and off the witness stand. Be patient -- you have not been forgotten.
3. Frequently, witnesses who have already given written statements before the trial or hearing are called to testify. You may wonder why you should be inconvenienced by going to court when they could use your statement instead. The judge would normally not allow the statement into evidence because the law requires the witness to appear in court, tell his/her story under oath, and be subject to questioning by all parties. Therefore, you are still needed in court, even if you have already given a statement.
4. Frequently, people called as witnesses believe they don't know any relevant facts about the case and therefore shouldn't be called. The fact of the matter is you may know something very important even though it may seem insignificant to you. Remember, the lawyers investigate the case thoroughly and know what testimony is necessary and relevant. If your testimony is not essential, you will not be called.
5. If you are a civilian witness and subpoenaed to a court-martial, don't ignore the subpoena. It is an order of the court and must be obeyed. Failure to appear in court as the subpoena tells you could place you in contempt of court. If you have any questions or problems about appearing, contact the attorney or trial counsel who sent you the subpoena.
6. If you are contacted by the attorney for either side for an interview prior to the trial, cooperate with him or her on any reasonable requests. Failure to cooperate prior to trial could cause you embarrassment and delay at trial.
7. These rules will be helpful to you in court:
 - a. Be neat in your personal appearance. You are being judged not only by what you say, but how you look. You will first be sworn in. When you take the oath, say "I do" clearly. On the witness stand, get comfortable, sit straight and look around to familiarize yourself with the surroundings.

- b. In testifying, the first rule is to tell the truth. Don't answer questions with half-truths. Don't try to judge whether an answer is going to help or hurt one side or the other. Don't let your personal feelings of who should win or lose color your testimony. Avoid giving your opinion about the guilt or innocence of the people involved. That is the job of the court. As a witness, your only duty is to tell it like you saw it, nothing more, nothing less.
- c. Answer the questions clearly and loudly enough so everyone can hear you. Don't talk too fast or too slowly. Don't mumble or slur your words. Look at the court panel and address your remarks to them so they will be able to hear and understand what you have to say.
- d. Be polite and use military courtesy if you are military. Use "ma'am," "sir," and "your honor." Be serious at all times. The courtroom is not the place to be cute or humorous.
- e. Don't memorize your testimony. It will sound rehearsed and lack the ring of truth. Speak in your own words. Do not nod your head for "yes" or "no" answers.
- f. Listen to the questions carefully. If you don't hear a question, ask that it be repeated. If you don't understand a question, ask that it be rephrased a different way.
- g. Don't try to guess at an answer to a question that you didn't understand or didn't hear or simply don't know the answer, simply say that you don't know. A trial is not like a television quiz show where you must come up with some kind of answer.
- h. Answer directly and simply only the question asked of you. Don't volunteer information. Do not exaggerate or make overbroad statements that you may have to correct. Give positive, definite answers when at all possible.
- i. If you make a mistake in answering a question, correct it immediately. If your answer was not clear, clarify it immediately.
- j. If a question can't be truthfully answered with a "yes" or "no," you have a right to explain the answer. Don't give your conclusions or opinions, just the facts, unless you are specifically asked.
- k. If an objection is made by one of the lawyers, or if the judge speaks, stop immediately. Don't try to complete your answer until told to continue.
- l. Don't argue with the attorney asking questions. Keep your temper and always be courteous.

m. While testifying on cross-examination, don't look at the attorney who called you for help in answering the question. You're on your own. If the question is improper, the attorney will object and the judge will rule on it. It's important, however, that you listen to the objection so that you understand why it's being made.

n. If you are asked whether or not you have talked to anyone about your testimony before coming to court, be sure and answer "yes" if you have. There is nothing wrong with discussing the facts with the attorneys, parties, security police, or investigators before the trial.

o. If the question is about distances, time or speed and your answer is only an estimate, be sure you say it is only an estimate. Beware of suggestions by attorneys as to estimates and do not agree with their estimates unless you independently arrive at the same estimate.

p. Be natural; be yourself. Don't try to be someone you are not. If you relax and tell the truth and remember you are talking to other people, you'll get along fine.

q. After you have testified, do not tell other witnesses what was said during testimony until after the case is over. Do not ask other witnesses about their testimony.

r. Do not discuss the case or your testimony within the hearing of the court members (the jury). The only time the court members should hear from you is while you are testifying in the courtroom.

8. If you have any questions about testifying or problems related to the case, please contact the trial counsel assigned to the case in the Base Legal Office.

EMERGENCY SERVICES

One major aim of Victim and Witness Assistance programs is to supply the victim/witness with sources of emergency medical, social, or protective services.

Emergency Medical Services may be obtained by contacting the base hospital at 926-3845 during duty hours. Contact the base Emergency Room after duty hours.

Social Services/Counseling/Support Programs: Family Advocacy 926-5228 during duty hours. If the problem is domestic violence the Salvation Army Safe House for Abused Women may be contacted 24 hours per day at 923-6294 or 923-2348.

Reasonable protection from a suspected offender is requested by contacting: Security Police at 911 on base; the local Police at 929-1170, if within the Warner Robins city limits; and the Sheriff's Department at 542-2080, if in the county. If the problem is an emergency all three organizations may be contacted by dialing 911.

VICTIM IMPACT AND FINANCIAL STATEMENTS

What is a VICTIM IMPACT STATEMENT?

VICTIM IMPACT STATEMENT:

It is a written description of a person's physical, psychological, emotional, and financial injuries. If the accused is found guilty by a jury, the statement is read by the sentencing judge, the prosecutor, and the defense counsel. Your statements will be used to help the judge in sentencing the defendant.

Who can file a Victim Impact Statement?

You have the right to file a Victim Impact Statement (VIS) if you are a victim of any crime of violence. If the victim has died, a representative of the victim's immediate family may file the statement with the court.

When you are filling out the Victim/Witness Impact statement tell: How did this crime make you feel! How did this crime affect you medically, physically, emotionally, and financially? How did this crime make your children feel? These are the kind of questions you should answer in the Victim Impact Statement.

What is a VICTIM FINANCIAL STATEMENT?

VICTIM FINANCIAL STATEMENT:

It is a written description of specific financial losses from the injuries and/or damages you suffered because of the crime, and to indicate what money you expect to receive from insurance or other sources.

When you are filling out the Victim/Witness Financial Statement tell: How this crime caused you and your family money problems. Tell how the lack of money caused hurt to you and your family. These are the kind of questions you should answer on the Victim/Witness Financial Statement.

VICTIM FINANCIAL STATEMENT FORM

A. Damages

1. List property lost, destroyed or damaged and its value. (Whenever possible, attach receipts, repair bills, etc.)

_____	\$ _____
_____	\$ _____
_____	\$ _____

2. List Medical expenses (attach receipts)

_____	\$ _____
_____	\$ _____
_____	\$ _____

If physically injured, have you applied for crimes compensation? ____ Will you be experiencing long-term medical treatment? _____

3. List lost income or wages \$ _____

4. List miscellaneous expenses (Type and Amount). Include such items as child care during court appearances, transportation costs during the investigation etc.

_____	\$ _____
_____	\$ _____
_____	\$ _____

5. List expenses for counseling or therapy. \$ _____
Are you currently in therapy? _____

TOTAL LOSS \$ _____

B. Reimbursement received (please attach receipts)

1. Property insurance \$ _____
2. Medical insurance \$ _____
3. Crimes Compensation \$ _____
4. Other (list source and amount)

_____	\$ _____
_____	\$ _____

TOTAL REIMBURSEMENT \$ _____

I declare under penalty of law that the above information is true and correct.

Date _____ Signature: _____

NOTIFICATION CHECKLIST

Please complete the attached form for your Victim's Assistance Representative at the Base Legal Office. He/she will notify you of this form. Ask your Victim's Assistance Representative to explain any items or questions you don't understand or would like to discuss.

NOTIFICATION CHECKLIST

CASE NAME: _____

USAF ATTORNEY HANDLING THE CASE: _____

VICTIM/WITNESS REPRESENTATIVE: _____

YOUR NAME: _____

YOUR ADDRESS: _____

YOUR PHONE NUMBER(s): _____

PLEASE PLACE A CHECK BY THOSE ITEMS WHICH YOU WOULD LIKE TO BE NOTIFIED:

- _____ 1. The arrest of the accused
- _____ 2. Initial appearance of the accused
- _____ 3. Release of the accused pending judicial proceeding
- _____ 4. Trial Date
- _____ 5. Entry of a guilty plea or trial verdict
- _____ 6. Date set for sentencing
- _____ 7. Other: _____

