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MEMORANDUM FOR DISTRIBUTION C  
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FROM: HQ USAF/JA  
1420 Air Force Pentagon  
Washington, DC 20330-1420

SUBJECT: Department of the Air Force Guidance Memorandum (DAFGM) to Department of the Air Force Instruction (DAFI) 51-207, *Victim and Witness Rights and Procedures*

By Order of the Secretary of the Air Force, this DAFGM immediately implements changes to DAFI 51-207, *Victim and Witness Rights and Procedures*. Compliance with this Memorandum is mandatory. To the extent its directions are inconsistent with other Department of the Air Force publications, the information herein prevails, in accordance with DAFI 90-160, *Publications and Forms Management*.

This DAFGM renews the Independent Review Commission on Sexual Assault in the Military (IRC) Recommendation 1.7e, consistent with Section 549D of the National Defense Authorization Act for Fiscal Year 2022, establishing DAF policy for the provision of independent civilian expert witnesses and consultant access for the defense. The purpose of this policy change is to establish procedures for compliance with both the aforementioned authorities, and the Secretary of the Air Force's pre-approved plan for policy implementation. This DAFGM also implements new Domestic Violence notification requirements and clarifies requirements for the Victim Appellate Notification Program (VANP).

This Memorandum becomes void after one year has elapsed from the date of this Memorandum, or upon incorporation by interim change to, or rewrite of DAFI 51-207, whichever is earlier.

CHARLES L. PLUMMER  
Lieutenant General, USAF  
The Judge Advocate General

Attachment:  
Guidance Changes

## Guidance Changes

**Current guidance in DAFI 51-207, *Victim and Witness Rights and Procedures*, remains in effect with the following changes:**

2.9.1.1. **(Added)** The LRO for cases in which the subject is assigned or attached to a traditional (standalone) Air Reserve Base (ARB) where the installation commander is not a SPCMCA shall be the LRO of the nearest Regular Air Force (RegAF) or Space Force installation. Accordingly, VWAP responsibilities for traditional (standalone) ARBs without SPCMCA are the responsibility of the nearest RegAF or Space Force VWAP. This is to ensure continuity and regular support to victims and witnesses of cases arising from traditional ARBs not staffed with full-time VWAP personnel.

2.9.1.2. **(Added)** If a case arising from a traditional ARB is being prosecuted by a RegAF or Space Force installation legal office other than the nearest RegAF or Space Force installation, the LRO and VWAP for the servicing installation shall be the LRO and VWAP for the case.

6.1.2.2. **(Changed) Victims of Certain Sexual and Domestic Violence Offenses—Additional Notification Requirements (see Section 6A).** In addition to the notification requirements applicable to all victims as detailed in this chapter, victims who make allegations of certain qualifying sex-related offenses are entitled to notification of specific significant events in the investigation and prosecution of offenses, as well as specific notifications regarding decisions not to refer allegations to court-martial and any further final disposition of those allegations. **(T-0)** Release of information regarding sex-related offenses pursuant to these requirements may occur in spite of any otherwise applicable provisions of the Privacy Act. FY20 NDAA § 549, FY22 NDAA § 545. Victims who make allegations of qualifying domestic violence offenses are entitled to specific notifications regarding decisions not to refer allegations to court-martial and any further final disposition of those allegations. **(T-1)** See **Section 6A** below for further guidance on required notifications to victims of qualifying offenses.

***Section 6A (Changed)—Notifications Specific to Victims of Qualifying Sex-Related and Domestic-Violence Offenses***

**6.2. (Changed) Notifications in Cases of Qualifying Sex-Related and Domestic-Violence Offenses.** In addition to the notifications applicable to all victims, victims who make allegations of qualifying sex-related offenses are entitled to additional specific notifications concerning significant events in the investigation, prosecution, and post-sentencing phases of cases, as well as specific notifications concerning decisions not to refer qualifying offenses to court-martial, to include notification of the further disposition of those allegations. Victims who make allegations of qualifying domestic violence offenses are entitled to notifications concerning decisions not to refer qualifying offenses to court-martial, to include notification of the further disposition of those allegations.

6.2.1. **(Changed) Qualifying Offenses.** For purposes of this section, qualifying domestic-violence offenses are defined as violations of Article 128b, UCMJ. Qualifying sex-related offenses are defined as violations of the following UCMJ articles:

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6.2.4. **(Changed) Notification of Further Disposition in Cases of Qualifying Sex-Related and Domestic-Violence Offenses.** Victims who have alleged qualifying sex-related offenses **(T-0)** or qualifying domestic violence offenses **(T-1)** must be provided notice when the determination is made to not refer a qualifying offense, and informed no less than monthly of the status of further disposition. The victims of qualifying sex-related offenses **(T-0)** and qualifying domestic violence offenses **(T-1)** must also be notified of the final decision on any further disposition, to include the type of action taken, the outcome of the action (including any punishment or characterization of service as applicable), and other such information as the commander deems relevant.

6.2.4.1. **(Changed)** If the disposition decision cannot practicably be made within 60 days of the non-referral decision, the victims of qualifying sex-related offenses **(T-0)** and qualifying domestic violence offenses **(T-1)** must be notified in writing and provided an explanation of the delay. This notification must continue to be made in writing every successive 30-day period for victims of qualifying sex-related offenses **(T-0)** and qualifying domestic violence offenses **(T-1)** until the disposition decision is made and the victim is so notified.

6.2.4.4. **(Changed) Application to Each Offense Alleged.** These requirements apply to each qualifying offense alleged. For example: in a case with one victim that alleges three separate sexual assaults were committed by the accused, these requirements apply to each specification. Thus, if the convening authority decides not to refer any one of the specifications, the aforementioned notifications are required. Notification under this section is not required for non-qualifying offenses.

6.23.5. **(Added)** Pursuant to DoD Instruction 1030.02, paragraph 3.2.e., legal offices are responsible for sending required post-trial documents to the VANP Coordinator at AF/JAJI for qualifying victims. Qualifying victims are individuals named in a specification that resulted in a finding of guilty at a court-martial. However, victims who do not meet this criteria but who would like to opt into the VANP may do so to follow the appellate process for the case. Within five duty days, legal offices must send one copy of the DD Form 2704-1, one copy of the DD Form 2704 (as applicable), and the email template found on the VMJD to the VANP Coordinator at [AF.Appellate.NotificationWorkflow@us.af.mil](mailto:AF.Appellate.NotificationWorkflow@us.af.mil). Legal offices must send one email per victim to the VANP Coordinator, which may result in multiple emails per case.

## 7.14. **(Changed) Civilian Expert Witnesses (not employees of the United States).**

7.14.1. **(Added)** When the prosecution determines government employment of a civilian expert is necessary, the government shall submit a written request to the court-martial convening authority, with notice to the defense, requesting authorization and approval of the employment and fix the expert's compensation.

7.14.2. **(Added)** When the defense determines employment of a civilian expert is necessary for an adequate defense, they may submit a written request to the convening authority. Alternatively, the defense may submit a written request to a Defense Expert Authorizing

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Official (DEAO). The Chief, Trial Defense Division (AF/JAJD) will appoint DEAOs from within the division. The Chief, AF/JAJD shall ensure each DEAO is properly trained prior to being appointed. DEAOs must be an active duty Air Force Judge Advocate in the grade of O-4 or above, or a Department of the Air Force (DAF) civilian attorney in the grade of GS-13 or above.

7.14.2.1. **(Added)** DEAOs may authorize or deny authorization of a defense request for expert assistance and fix compensation for authorized experts.

7.14.2.2. **(Added)** When a DEAO authorizes a defense request for expert assistance, the GCMCA exercising jurisdiction over the accused is obligated to fund, travel, and reimburse the expert in accordance with the DEAO's authorization. This remains true regardless of whether charges have been, or are anticipated to be, referred to a special or general court-martial.

7.14.2.3. **(Added)** At a minimum, DEAO training will include instruction on the standards to be applied when considering a request for expert assistance (See paragraph 7.14.3.1. *et seq.*), on the responsibility of the DEAO to verify that the requestor has demonstrated reasonable efforts to ensure that a similarly qualified expert to the one requested cannot be found at lower cost, and on record keeping requirements associated with requests.

7.14.3. **(Added)** The defense may submit a request for expert assistance at any time. If the request is submitted to a DEAO, the DEAO must be outside of the rating chain of all defense counsel detailed to the case. If such a request is submitted to a DEAO prior to preferral of charges, the defense must demonstrate to the DEAO that it is more likely than not that charges will be preferred.

7.14.3.1. **(Added)** For requests submitted to a DEAO, the DEAO must determine that the expert assistance requested is necessary for an adequate defense. *See R.C.M. 703(d)*. To do so, the request must establish that a reasonable probability exists that an expert would be of assistance to the defense, by showing:

7.14.3.1.1. **(Added)** Why the expert is needed;

7.14.3.1.2. **(Added)** What the expert will accomplish for the defense;

7.14.3.1.3. **(Added)** Why the defense is unable to accomplish the stated objective(s) without the assistance of the requested expert; and

7.14.3.1.4. **(Added)** If expert travel is requested, why in-person assistance is required, and why removed assistance would be inadequate.

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7.14.3.2. **(Added)** The defense request to the DEAO for expert assistance is attorney work product and is not discoverable. It is privileged information unless voluntarily disclosed by the defense. *Ex parte* communications between defense counsel and the DEAO are likewise not discoverable.

7.14.3.2.1. **(Added)** Each GCMCA will designate a resource advisor (RA) who is not a member of the GCMCA's legal office to process authorized defense expert requests. The request, authorization, approval, and appointment of the defense expert are *ex parte* and will not be discoverable to the prosecution absent an order issued by the detailed military judge. The GCMCA is responsible for implementing procedures to fund the defense expert without providing or permitting notification of the defense request or expert's employment to the prosecution.

7.14.3.2.2. **(Added)** For purposes of this instruction, "the prosecution" includes any attorney or paralegal who has contributed or will contribute to the processing or prosecution of the case. During the RA approval process, any member of the prosecution who learns about information related to a defense request for expert assistance made to a DEAO or who becomes aware of the release of any such information to another member of the prosecution has a duty, as soon as practicable, to inform the defense of the nature and scope of the release. This duty applies whether the release of information was intentional or inadvertent. Release of such information may result in remedies as deemed appropriate by the detailed military judge.

7.14.3.3. **(Added)** Authorization by the DEAO is final and must be in writing. When the DEAO authorizes a request for expert assistance, the GCMCA must timely ensure funds are available to allow for the defense counsel or defense paralegal to enter into a Memorandum of Agreement (MOA) with the expert.

7.14.3.4. **(Added)** The DEAO's denial of a request for expert assistance does not preclude a subsequent request to that same DEAO or to an appropriate convening authority for the appointment of an expert. If a DEAO who has previously acted on a request for expert assistance is determined to be unavailable by the Chief, AF/JAJD or by the Deputy Chief, AF/JAJD when the Chief, AF/JAJD is unavailable, a subsequent request may be made to another DEAO.

7.14.3.5. **(Added)** The defense may also seek authorization for the employment of a defense expert witness or consultant through the military judge as permitted by R.C.M. 703. Should the military judge grant a defense motion for employment of a witness or consultant raised *ex parte*, the defense counsel should supply the military judge's authorization to the GCMCA's designee. Subsequent approval by the GCMCA's designee will follow the same process outlined in paragraph 7.14.3.6 below.

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7.14.3.6. **(Added)** When a request for expert assistance is authorized, the DEAO will notify the GCMCA's designee. The authorization memo must confirm that the client on whose behalf the expert was authorized is within the GCMCA's command chain, however the memo need not identify the client/accused. The authorization memo will include the name and contact information for the expert authorized and the defense counsel who requested the expert, the scope of services authorized, and whether travel is authorized.

7.14.3.6.1. **(Added)** Upon receipt of the authorization memo, the GCMCA's designee will verify funds are available and notify the requesting defense counsel.

7.14.3.6.2. **(Added)** A detailed military defense counsel or a defense paralegal, if there is no detailed military defense counsel, will sign a MOA with the expert on behalf of the government in accordance with the services authorized by the DEAO.

7.14.3.6.3. **(Added)** To ensure the GCMCA can timely compensate the expert upon completion of services, or when otherwise required, defense counsel will submit the expert's invoice(s) to the GCMCA's designee within 30 days of the conclusion of services, though failure to submit the invoice within 30 days will not be grounds for non-payment. The invoice submitted shall include:

7.14.3.6.3.1. **(Added)** The expert's full name, duty status, rank/grade, social security number or tax ID, and date of birth;

7.14.3.6.3.2. **(Added)** The expert's Employer Identification Number (EIN), Unique Entity Identifier (UEI), and Commercial and Government Entity (CAGE) Code;

7.14.3.6.3.3. **(Added)** The expert's mailing address and business and cellular phone numbers;

7.14.3.6.3.4. **(Added)** The client's name, rank, unit, and base of assignment;

7.14.3.6.3.5. **(Added)** The defense counsel and/or defense paralegal's name and contact information;

7.14.3.6.3.6. **(Added)** The expert's fee schedule;

7.14.3.6.3.7. **(Added)** The MOA signed by the expert and the defense counsel or the defense paralegal;

7.14.3.6.3.8. **(Added)** An Electronic Funds Transfer (EFT) Form (if necessary); and,

### Guidance Changes

7.14.3.6.3.9. **(Added)** Written verification from defense counsel or defense paralegal that the expert is entitled to requested compensation based on services rendered under the MOA.

7.14.3.7. **(Added)** When an expert has fully utilized, or is anticipated to fully utilize, the number of hours, days, or dollar amount authorized by the DEAO, the defense may submit a supplementary request to the same DEAO for additional authorization. If the DEAO who previously acted on the initial request for expert assistance is determined to be unavailable by the Chief, AF/JAJD or by the Deputy Chief, AF/JAJD (when the Chief, AF/JAJD is unavailable), a subsequent supplemental request may be made to another DEAO. Like the original expert request, a supplemental request is privileged attorney work product and not discoverable. The request should include a copy of the original request and a statement explaining why the expert was unable to accomplish the objective(s) within the time allotted and how much more time or travel is required. If authorized, the DEAO will notify the GCMCA's designee. Upon confirmation from the GCMCA's designee that funds are available, defense counsel will enter into a new or amended MOA with the defense expert.

7.14.3.8. **(Added)** If, after referral, the defense determines an approved expert consultant will be present at any session of a court-martial for purposes of observing or potentially testifying, the defense must provide notice to trial counsel. Such notice must be made as soon as practicable, or in accordance with the military judge's scheduling order, if applicable. Notice should identify the approved expert and their field of expertise.

7.14.3.9. **(Added)** Nothing in these rules shall affect defense counsel obligations under the Rules for Courts-Martial, the Uniform Rules of Practice before Department of the Air Force Courts-Martial, and applicable orders issued by the detailed military judge. This includes defense counsel's obligations to make appropriate notifications when a decision is made that an appointed defense expert consultant is expected to testify as an expert witness during any preliminary hearing or court-martial session, and to submit a written summary of the expected testimony from the expert witness in accordance with the military judge's scheduling order and R.C.M. 703, or in the absence of a scheduling order, as soon as practicable after referral of charge(s).

7.14.4. **(Added)** The terms of employment for approved requests shall be memorialized in a MOA for Expert Witnesses. A sample memorandum is located on the VMJD. In the absence of advance approval, experts may not be paid fees other than those to which they are entitled under R.C.M. 703(g)(3)(E). Use Invitational Travel Orders for approved travel of civilian experts and to notify them of billeting and travel arrangements. The finance office associated with AF/JAJM will not process a manual DD Form 1610, *Request and Authorization for TDY Travel of DoD Personnel*, or DD Form 1351-2, *Travel Voucher or Subvoucher*. The legal office is responsible for obtaining DTS access for all witnesses who travel for any court-martial related purpose. For defense expert consultants, the GCMCA's designee may obtain DTS access for the approved expert so as to avoid premature disclosure to the government that a defense expert has been retained.

**BY ORDER OF THE  
SECRETARY OF THE AIR FORCE**

**DEPARTMENT OF THE AIR FORCE  
INSTRUCTION 51-207**



**14 APRIL 2022**

**Law**

**VICTIM AND WITNESS RIGHTS AND  
PROCEDURES**

**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

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This publication implements Department of the Air Force Policy Directive (DAFPD) 51-2, *Military Justice and Other Criminal Proceedings* and is consistent with Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice*. It provides guidance and procedures on victims' rights, implementation of the Victim and Witness Assistance Program (VWAP), and the Victims' Counsel (VC) Program. It establishes responsibility for VWAP at the Headquarters, Department of the Air Force (DAF) and subordinate levels in the DAF. It provides guidance for the treatment of victims and witnesses of offenses in violation of the Uniform Code of Military Justice (UCMJ) or the law of local, state, other federal, or foreign authorities during those stages of the criminal or administrative processes conducted primarily by the Department of the Air Force (collectively, the Air Force and Space Force, which are herein referred to as "Department of the Air Force" or "DAF"). This publication applies to the United States Space Force, Regular Air Force, the Air Force Reserve, and the Air National Guard, except where otherwise noted. It also applies to the United States Air Force Academy (USAFA) and civilians pursuant to the eligibility criteria in **paragraph 3.2**. Refer recommended changes and questions about this publication to the office of primary responsibility (OPR) using the AF Form 847, *Recommendation for Change of Publication*; route AF Forms 847 from the field through the appropriate chain of command. The authorities to waive wing/unit level requirements in this publication are identified with a tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See Department of the Air Force Instruction (DAFI) 33-360, *Publications and Forms Management*, Table 1.1, for a description of the authorities associated with the tier numbers. Submit requests for waivers through the chain of command to the appropriate tier waiver approval authority. All waivers of non-tiered compliance statements must be submitted to AF/JAJM, the



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## Chapter 1

### OVERVIEW, TEMPLATES, ROLES & RESPONSIBILITIES

#### *Section 1A—Overview*

**1.1. Overview.** Victim and witness policy provides guidance for the protection and assistance of victims and witnesses, enhances their roles in the disciplinary process, and promotes recovery of victims, throughout the judicial, nonjudicial, and disciplinary processes in the DAF. This policy is intended to uphold these tenets while preserving the Constitutional rights of the accused.

**1.2. Waiver Authority.** All requirements that are not tiered may only be waived by the Military Justice Law and Policy Division (AF/JAJM) or superior functional authority with coordination with AF/JAJM. Submit waiver requests via AF Form 847 through the appropriate chain of command.

**1.3. Templates.** Use of all template documents implementing the UCMJ and Manual for Courts-Martial (MCM) that are referenced in this instruction is mandatory. Legal offices must use AF/JAJM-produced formats that are included on the Virtual Military Justice Deskbook (VMJD), available at <https://kmjas.jag.af.mil/moodle/course/view.php?id=251>. Deviation on substantive provisions is not authorized without prior approval of AF/JAJM; however, templates may be modified to address the facts and circumstances of each individual case (e.g., names, addresses, offense types).

**1.4. VWAP Checklists.** The VWAP checklist for victim and witness notifications and consultations can be found on the VMJD. This checklist must be used for all victims within the purview of the VWAP, as defined in the terms of this instruction, when they meet the two following criteria: (1) the victim has been identified by the legal office; and (2) the victim is involved in a case opened in Automated Military Justice Analysis and Management System (AMJAMS), to include uncharged victims of any offense related to an AMJAMS case (e.g., witnesses with relevant information as to Military Rule of Evidence (M.R.E.) 413 offenses who are not victims of the specific offense that triggered the original AMJAMS entry in the case). The VWAP checklist may be accomplished digitally or via hard copy. The VWAP checklist will also be used for victims within the purview of VWAP, even if there is no AMJAMS case opened. The VWAP obligations contained in the checklist apply to all victims within the purview of VWAP, even when use of the checklist (as noted above) is not required.

#### *Section 1B—Roles and Responsibilities*

**1.5. Secretary of the Air Force.** Exercises DAF secretarial authorities set out in the UCMJ, MCM, and Department of the Air Force Policy Directive (DAFPD) 51-2, *Military Justice and Other Criminal Proceedings*; issues DAFPD 51-2 and other regulations to implement the UCMJ, MCM, and DoD policy; authorizes The Judge Advocate General (TJAG) to issue publications and establish procedures related to the administration of military justice and VWAP in the DAF.

**1.6. The Judge Advocate General.** Exercises TJAG authorities set out in 10 U.S.C. § 9037, *Judge Advocate General*, the UCMJ, MCM, and DAFPD 51-2 for the DAF. Certifies or delegates the certification of DAF 51-series publications establishing procedures to administer military justice in the DAF. Serves as the Component Responsible Official for the DAF VWAP.



**1.7. Military Justice and Discipline Domain (AF/JAJ).** Exercises supervisory responsibility for subordinate divisions, including: Appellate Defense Division (AF/JAJA), Trial Defense Division (AF/JAJD), Government Trial and Appellate Counsel Division (AF/JAJG), Investigations, Inquiries, and Relief Division (AF/JAJI), the Military Justice Law and Policy Division (AF/JAJM), Office of Disability Counsel (AF/JAJO), and Victims' Counsel Division (AF/JAJS).

**1.8. Military Justice Law and Policy Division (AF/JAJM).** Provides counsel, guidance, and support to Headquarters AF, court-martial convening authorities, and staff judge advocates (SJAs) on the administration of military justice, discipline, and VWAP; functions as a component of the Office of The Judge Advocate General (AF/JA) for matters pursuant to the UCMJ; serves as the office of primary responsibility for this instruction and other publications establishing procedures to administer military justice in the DAF.

**1.9. Victims' Counsel Division (AF/JAJS).** Serves to educate eligible clients on the investigative and military justice processes, protect victims' rights in the military justice process, and facilitate their full participation in the investigative and military justice processes consistent with 10 U.S.C. § 1044e, *Special Victims' Counsel for victims of sex-related offenses* federal law, DoD policy, and DAF policy; provides policy guidance on legal representation of victims in accordance with 10 U.S.C. § 1044e, FY20 (National Defense Authorization Act) NDAA § 548, and DAFPD 51-2.

**1.10. Trial Judiciary (AF/JAT).** Provides support to military courts-martial throughout the DAF; details trial judges to courts-martial; docket courts-martial; provides oversight of military judges and court reporters throughout the DAF; prescribes the *Uniform Rules of Practice Before Department of the Air Force Courts-Martial*; and prescribes guidance for military judges regarding procedural and substantive aspects of trials by courts-martial, including appointment of Article 6b representatives.

**1.11. Staff Judge Advocate.** Performs the duties of the SJA set forth in the UCMJ and MCM; executes installation-level Local Responsible Official (LRO) responsibilities and authorities delegated by the LRO, if applicable; serves as the senior legal representative to the LRO; serves as, or designates in writing, a VWAP Coordinator, and coordinates with the LRO to appropriately resource the VWAP; collaborates with VWAP Coordinator on VWAP training syllabus and ensures legal office personnel accomplish required VWAP, Sexual Assault Prevention and Response (SAPR) program, and Family Advocacy Program (FAP) training; facilitates legal training for victim advocates (VAs); ensures victims and witnesses are notified of applicable rights and services; coordinates, as needed, on expedited transfer requests, humanitarian assignments, and other personnel or command requests pertaining to movement of victims and subjects in ongoing investigations and prosecutions; coordinates on requests for return of personal property to victims of crime, in accordance with Department of Defense Instruction (DoDI) 5505.18, *Investigation of Adult Sexual Assault in the Department of Defense*; DoDI 6495.02, Volume 2, *Sexual Assault Prevention and Response (SAPR) Education and Training*, and federal law; ensures military justice and discipline-related victim consultations and notifications are accomplished in accordance with the MCM, DoD policy, DAF policy, and this instruction; ensures attorneys are assigned to support the High Risk for Violence Team, High Risk Response Team, FAP Case Review Board, and SAPR Case Management Group; ensures the local requirements of the Special Victims' Investigation and Prosecution capability (SVIP) are satisfied, in accordance with DAFI 51-201.

### 1.12. Trial Counsel.

1.12.1. Prior to conducting a sexual assault victim interview, ensures unrepresented, but eligible victims have been informed of the right to VC representation. 10 U.S.C. § 1565b(a)(3), *Victims of sexual assault: access to legal assistance and services of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates*.

1.12.2. Provides any motions impacting a victim's rights or privileges to the victim's counsel (if the victim is represented) and notifies any victim or witness of a motion or ruling affecting the victim's or witness's rights or privileges, to include providing access to motions or documents in accordance with the Rules for Courts-Martial (R.C.M.), the UCMJ, or other law or regulation, including where necessary to comply with Article 6b, UCMJ. **Note:** Where victims are unrepresented, victims must be notified directly or through their Article 6b representative.

1.12.3. Ensures the Government's responsibilities to victims and witnesses under the UCMJ and MCM are fulfilled.

1.12.4. Ensures the local requirements of SVIP capability are satisfied. See DAFI 51-201.

1.12.5. Notifies the military judge and defense counsel of any unrepresented victim's or witness's assertion of a right or privilege related to the court-martial.

**1.13. Victims' Counsel (VC).** Provides services to eligible victims in accordance with the provisions of this instruction; coordinates with servicing legal offices, VWAP Coordinators, and VWAP personnel to ensure provision of services, notifications, and assistance to represented victims throughout the investigative and military justice processes.

### 1.14. Air Force Office of Special Investigations (AFOSI) Personnel.

1.14.1. Exercises law enforcement responsibilities relating to investigations of crimes within the law enforcement matrix, including receipt and storage of evidence. See AFI 71-101, Volume 1, *Criminal Investigations Program*, Table 2..

1.14.2. Collaborates with the VWAP Coordinator and SJA to develop local VWAP training; accomplishes required local VWAP training for AFOSI personnel.

1.14.3. When necessary, protects victims and witnesses from offenders. This includes participation in the Threatened Person Assignment Program. See DAFI 36-2110, *Total Force Assignments*. Is knowledgeable of safety considerations, and when appropriate, takes necessary steps to ensure the safety of victims and witnesses.

1.14.4. Provides victims or witnesses, at the earliest opportunity, the DD Form 2701, *Initial Information for Victims and Witnesses of Crime*. **(T-0)** Annotates on incident reports the date of distribution of the DD Form 2701. Tracks the provision of DD Forms 2701 to victims and witnesses and provide an annual accounting of the separate numbers of forms provided to victims and witnesses to the servicing legal office in order to facilitate completion of the annual VWAP Report.

1.14.5. Additional Responsibilities Afforded to Victims. During the investigation of a crime, law enforcement and investigative personnel will, as appropriate, and in accordance with DoDI 1030.02, *Victim and Witness Assistance Procedures*:

1.14.5.1. Identify crime victims; **(T-0)**

1.14.5.2. Inform the victim of available military and civilian emergency medical and/or social services; **(T-0)**

1.14.5.3. Inform the victim of the investigation status, to the extent it will not interfere with the investigation and is appropriate; **(T-0)**

1.14.5.4. Inform the victim of any decision not to pursue further investigation; **(T-0)** and

1.14.5.5. Refer victims of domestic violence who wish to seek legal services to the local VWAP. **(T-0)**

1.14.6. Additional Responsibilities to Sexual Assault Victims.

1.14.6.1. If the victim alleges a sex-related offense, law enforcement must inform the victim of the ability to request assistance from the Sexual Assault Response Coordinator (SARC), VA, and VC in accordance with 10 U.S.C. § 1565b, unless emergency circumstances prevent doing so. **(T-0)**

1.14.6.2. Process requests for return of personal property in accordance with DoDI 5505.18, *Investigation of Adult Sexual Assault in the Department Of Defense*.

**1.15. Security Forces Personnel.**

1.15.1. Exercise law enforcement responsibilities relating to investigations of crimes within the law enforcement matrix, including receipt and storage of evidence. See AFI 71-101, Volume 1, Table 2.

1.15.2. Collaborate with VWAP Coordinator and SJA to develop local VWAP training. Accomplish required local VWAP training for Security Forces personnel.

1.15.3. Provide victims or witnesses, at the earliest opportunity, the DD Form 2701. **(T-0)** Annotate on incident reports the date of distribution of the DD Form 2701. Track the provision of DD Forms 2701 to victims and witnesses and provide an annual accounting of the separate numbers of forms provided to victims and witnesses to the servicing legal office in order to facilitate completion of the annual VWAP Report.

1.15.4. When necessary, protect victims and witnesses from offenders. This includes participation in the Threatened Person Assignment Program. See DAFI 36-2110. Be knowledgeable of safety considerations, and when appropriate, take necessary steps to ensure the safety of victims and witnesses.

1.15.5. **Additional Responsibilities Related to Victims.** During the investigation of a crime, law enforcement and investigative personnel will, as appropriate, and in accordance with DoDI 1030.02: **(T-0)**

1.15.5.1. Identify crime victims; **(T-0)**

1.15.5.2. Inform the victim of available military and civilian emergency medical and/or social services; **(T-0)**

1.15.5.3. Inform the victim of the investigation status, to the extent it will not interfere with the investigation and is appropriate; **(T-0)**

1.15.5.4. Inform the victim of any decision not to pursue further investigation; **(T-0)** and

1.15.5.5. Refer victims of domestic violence who wish to seek legal services to the local VWAP. (T-0)

**1.16. Local Responsible Official (LRO).** Identifies victims and witnesses of crimes, coordinates the delivery of services required by the VWAP, resources the VWAP, and establishes and chairs the VWAP council. Ensures the provisions of this chapter are publicized to all military and civilian agencies providing victim and witness services within their communities. **Note:** See [paragraph 2.9](#) for discussion of the identity of the LRO and delegation of authority and responsibilities.

**1.17. The Commander.**

1.17.1. Shall be knowledgeable of safety considerations, and when appropriate, take necessary steps to ensure the safety of victims and witnesses.

1.17.2. Takes reasonable and necessary steps to ensure victims and witnesses are adequately protected during the period of investigation and prosecution, to include protection from retaliation and ostracism.

1.17.3. Issues protective orders when the circumstances require. See DoDI 6400.06, *DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel*; DoDI 6495.02, Volume 2; AFI 90-6001, *Sexual Assault Prevention and Response (SAPR) Program*. See DAFI 51-201 for further discussion on the types, processing and rescission of protective orders.

1.17.4. Refers victims of crime who wish to seek legal services to the local VWAP.

1.17.5. Refers victims of sexual assault to the local SARC, VA, FAP or VC, as applicable.

1.17.6. Ensures victims within the command receive appropriate notifications.

1.17.7. Exercises initial disposition authority, in accordance with R.C.M. 306 and DAFI 51-201.

**1.18. Victim Witness and Assistance Program (VWAP) Coordinator.** If delegated the authority by the LRO and SJA, implements and manages the VWAP on behalf of the LRO and SJA. Ensures accomplishment of required training by all local agencies; coordinates with servicing law enforcement (e.g., AFOSI, Security Forces, local law enforcement) to facilitate law enforcement-specific training; ensures VWAP responsibilities to victims and witnesses are accomplished and documented; serves as or appoints Victim/Witness Liaison (VWL) in a particular case. Designates an appropriately trained VWL to a particular victim or witness in order to facilitate notifications and provision of services. Where necessary, designates an appropriately trained VWL from another legal office to a particular victim or witness, with the concurrence of the applicable SJA. **Note:** This instruction does not discuss the responsibilities of the Confinement VWAP Coordinator. See Air Force Manual (AFMAN) 31-115 Volume 1, *Department of the Air Force Correction Systems*.

**1.19. Victim/Witness Liaison (VWL).** Ensures completion and documentation of victim notifications, services, and coordination. Works with VWAP Coordinator, if applicable, to complete VWAP Checklist. Serves as a member of the applicable Criminal Investigation and Prosecution (CIP) capability team or SVIP capability team, IAW DAFI 51-201. **Note:** This may be the VWAP Coordinator or any person designated by the VWAP Coordinator and SJA.

**1.20. Court-Martial Convening Authority.** Considers victim input, if provided, in determining appropriate initial disposition of an offense; provides funding for sexual assault victim escort or attendant, expert witnesses and consultants, and other witness travel, where applicable; serves as LRO, where applicable. See [paragraph 2.9](#).

**1.21. Family Advocacy Program (FAP).**

1.21.1. Develops, implements, and evaluates programs and policies to prevent and treat domestic abuse and child maltreatment.

1.21.2. Employs DAVAs.

1.21.3. Refers domestic violence victims who make restricted reports of domestic violence to the supporting VC office if they wish to seek legal services.

1.21.4. Refers domestic violence victims who make unrestricted reports of domestic violence to the local VWAP if they wish to seek legal services and are ineligible for a VC.

1.21.5. Refers domestic violence victims who make unrestricted reports of domestic violence to the local Victims' Paralegal (VP) if they wish to seek legal services and they are eligible for a VC or it is unclear whether they are eligible for a VC.

1.21.6. Enters into memoranda of understanding (MOUs) or agreement (MOAs) related to victim services with local community partners.

**1.22. Sexual Assault Prevention and Response (SAPR) Program.** Provides support to victims of sexual assault in cases that do not involve intimate partners or family members. Trains and oversees VAs.

**1.23. Victim Advocates (VAs).** Provide essential support, liaison services, and care to the victim on behalf of the program with which they are associated (either FAP or SAPR); provide crisis intervention, referral and ongoing non-clinical support, and information on available options and resources to assist the victim in making informed decisions related to investigative, administrative, or court-martial processes and proceedings; provide services until the victim states support is no longer needed. Do not provide counseling or other professional services to a victim, but refer the victim to the appropriate agency for clinical, legal, and other professional services. May accompany the victim, at the victim's request, to investigative interviews, medical examinations, and to civilian and military court proceedings. **Note:** VAs' communications with victims are privileged under M.R.E. 514, subject to the limitations of privilege as described in the rule.

## Chapter 2

### VICTIM WITNESS ASSISTANCE PROGRAM

#### *Section 2A—Administration of the VWAP Program*

**2.1. General Provision.** These provisions create no cause of action or defense in favor of any person arising out of a failure to comply with the program. VWAP places no limitations on the lawful prerogatives of DAF personnel. Funding for VWAP is an operations and maintenance-type expense. This chapter implements DoDI 1030.02.

**2.2. Access to the Victim and Witness Assistance Program.** VWAP obligations exist in all cases where any portion of the investigation, prosecution, or administrative action is conducted primarily by DoD components. **Note:** However, certain VWAP services may not apply to civilian complainants covered under equal employment opportunity policy. See DoDI 6400.07, *Standards for Victim Assistance Services in the Military Community*, paragraph 2.b. Contact AF/JAJM for further guidance.

**2.3. Identification of Victims and Witnesses.** After the detection of a crime, any potential victim of an offense shall be identified at the earliest opportunity without interfering with an investigation. This includes all victims of crime where the offense is being investigated or disposed of by DAF authorities, regardless of the offender's status (i.e. military or civilian). For guidance on defining "victim" and "witness," see the "Terms" section of [Attachment 1](#). VWAP personnel will work with the servicing law enforcement agency to deconflict initial contact. VWAP personnel will pay special attention to victims of serious, violent crime, but ensure all victims and witnesses of crime receive the assistance and protection to which they are entitled. While various DAF agencies have particular responsibility for the program, the provision of victim and witness assistance is to be a coordinated effort among all agencies providing services to individuals.

**2.4. VWAP Designation in JAGC "ROSTER."** The SJA will ensure that the VWAP coordinator for each servicing base legal office is identified on the Air Force Judge Advocate General's intranet site "ROSTER," found at <https://roster.jag.af.mil/pls/rosterdad/roster.rosterMain>.

**2.5. Victim Witness Information Network (VWIN).** The VWIN is a Knowledge Management-based collaboration tool for VWAP personnel at the Headquarters and local level. The VWAP Coordinator shall be a member of the VWIN. Other VWAP personnel may also participate in VWIN, at the discretion of AF/JAJM.

#### **2.6. VWAP Objectives.**

2.6.1. Mitigate the physical, emotional, and financial hardships suffered by victims and witnesses of offenses investigated by DAF authorities.

2.6.2. Foster cooperation of victims and witnesses with the military criminal justice system.

2.6.3. Ensure best efforts are made to provide victims certain enumerated rights, including those described in Article 6b, UCMJ. **Note:** Such best efforts include informing victims of their rights, including the right to legal assistance (if eligible).

## 2.7. VWAP Council.

2.7.1. The senior DAF LRO at an installation is responsible for establishing a VWAP council. **(T-0)** The following agencies or functions will designate program representatives: SARC, FAP, Security Forces, AFOSI, Surgeon General (SG) (or Medical Treatment Facility, Group, Clinic, etc., if no SG is present), Airman and Family Readiness Center (AFRC), Chaplain, and SJA. If any of these agencies is not physically present (e.g., certain joint bases, expeditionary bases), the LRO will execute MOUs with the agencies servicing the installation in those roles to appoint personnel to the VWAP council.

2.7.2. The LRO appoints at least one squadron commander and at least one first sergeant to the council.

2.7.3. The LRO may appoint other representatives as appropriate.

2.7.4. The LRO chairs the council, which must meet at least annually.

2.7.5. VWAP council members are responsible for ensuring and documenting that members of their respective agencies are trained annually on VWAP procedures. See [paragraph 2.13](#).

2.7.6. Where appropriate, one or more LROs may collaborate to appoint a single VWAP council, so long as program representatives from all servicing agencies noted in [paragraph 2.7.1](#) are designated.

**2.8. Victim Information Packet (Military Justice at a Glance).** The VWAP Coordinator shall prepare a victim information packet through the coordinated efforts of the SJA, Security Forces, AFOSI, SARC, FAP, SG (or Medical Treatment Facility, Group, Clinic, etc., if no SG is present) AFRC, Installation Chaplain, commanders and first sergeants. The packet includes, at a minimum, an overview of the military justice process and the victim's role in it, the victim's rights and privileges, and a listing of local services (e.g., medical, chaplain, legal, mental health, advocacy services) available and contact information for those agencies. AF/JAJM publishes a model packet on the VMJD, which should be modified for local circumstances.

**2.9. Identifying the Applicable LRO.** The applicable LRO is identified as follows:

2.9.1. In a case involving an offense alleged to have been committed by an individual subject to the UCMJ, the first DAF commander with special court-martial convening authority (SPCMCA) in the subject's chain of command is the LRO. Typically this will be the installation commander. **Note:** General courts-martial convening authorities (GCMCAs) do not ordinarily serve as LROs. In cases where the subject is an SPCMCA or works directly for the GCMCA and is not in the chain of command of a commander with only SPCMCA authority, contact AF/JAJM for guidance.

2.9.2. In a case involving an offense alleged to have been committed by a civilian employee or contractor, the first commander possessing SPCMCA over the unit to which the civilian employee or contractor is assigned is the LRO.

2.9.3. In a case involving an offense alleged against an individual not described above but involving DAF equities, the senior DAF SPCMCA at the installation where the investigation occurs is the LRO.

2.9.4. In cases where the victims or witnesses are not located at or near the LRO's installation, and in cases where there are multiple possible LROs, the LROs will coordinate the delivery of

services, consultations, and notifications. The LRO's servicing SJA must facilitate coordination to ensure appropriate delivery of services to eligible victims and witnesses.

**2.10. Delegation of LRO Duties.** Unless otherwise restricted, the LRO identified above may delegate his or her authorities as LRO to the servicing SJA, who may in turn delegate LRO authorities to a VWAP coordinator. The delegation must be in writing and addressed to the LRO's SJA by duty title rather than name. Any further delegation to a VWAP coordinator must also be in writing.

**2.11. Responsibility for LRO Duties.** Even if an LRO delegated his or her authorities to the servicing SJA or VWAP Coordinator, the LRO is ultimately responsible for ensuring the requirements of the VWAP and LRO are accomplished in accordance with federal law, DoD policy, and this instruction.

**2.12. Victim and Witness Assistance Program Inspection by LRO.**

2.12.1. LROs will assess the effectiveness of their VWAP by periodically inspecting the program. Inspected procedures will include: creation and maintenance of a record of each case involving victims, witnesses, or others entitled to notice, documentation of completion dates of notifications, and issuance of DD Forms 2701-2704. LROs will use the VWAP self-inspection checklist available on the VMJD.

2.12.2. Staff assistance visits and other inspections shall examine the effectiveness of the VWAP and compliance with VWAP requirements.

**2.13. Victim and Witness Assistance Program Local Training.** The senior DAF LRO at an installation is responsible for ensuring required VWAP training is conducted.

2.13.1. **Applicability of Training Requirement.** All personnel involved in the military investigative or criminal justice process and those responsible for providing required services to victims and witnesses must be familiar with the requirements of the VWAP. This includes legal office personnel responsible for military justice matters or the provision of legal assistance. The LRO is responsible for developing and implementing a program at each installation. The LRO coordinates all training required by this chapter. The LRO is responsible for ensuring the completion of annual training by local agencies. **(T-0)** Local agencies that service more than one LRO or participate in more than one VWAP council are not required to accomplish redundant annual VWAP training, provided the training received covers applicable procedures for all units served.

2.13.2. **Development of Local VWAP Training.** Together, the installation SJA, Security Forces commander, AFOSI detachment commander, SARC, FAP, SG (or Medical Treatment Facility, Group, Clinic, etc., if no SG is present), AFRC, Chaplain, commanders, and first sergeants develop local training to ensure compliance with the VWAP. A list of references for use in developing a training program is located on the VMJD.

2.13.3. **Accomplishment of Annual Training.** Each agency/function assigned to the VWAP council, unless otherwise or additionally listed in this chapter, must train its own agency's personnel on their responsibilities under this chapter annually and report training completion to the VWAP coordinator. The SJA trains commanders and first sergeants. The SJA or LRO will consider conducting the VWAP training at the Community Action Board. See DAFI 90-5001, *Integrated Resilience*.



## 2.14. Victim and Witness Assistance Program Symposium.

2.14.1. **Attendance Requirement.** The VWAP coordinator shall attend the DAF VWAP symposium or an equivalent training prior to or as soon as practicable after appointment as VWAP coordinator. Expeditionary units are exempt from this requirement. Course attendance will be reflected in ROSTER.

2.14.2. **Minimum Training Requirement.** The following are minimum required training topics, which are covered at the VWAP symposium:

2.14.2.1. Proper intake procedures. This includes intake procedures specific to victims of sexual offenses and domestic violence.

2.14.2.2. Eligibility requirements for VC representation and legal assistance services. See paragraphs [2.16.6.2](#) and [3.2](#).

2.14.2.3. Confidentiality and privilege and how those concepts apply or do not apply to communications between a domestic violence or sexual assault victim and various personnel (VWAP, trial counsel, legal assistance, VP/VC).

2.14.2.4. VP/VC referral process.

2.14.2.5. Legal assistance referral process.

2.14.2.6. Protocol for providing continued services to sexual assault or domestic violence victims represented by a VC, to include instruction on the roles and responsibilities of the VWAP and VC.

2.14.2.7. Overview of other military and non-military agencies who may provide services to victims, including services provided to victims of sexual offenses and domestic violence.

2.14.2.8. Other topic areas as defined by DoD policy or applicable federal law, including topics specific to victims of sexual offenses and domestic violence.

2.14.3. **Special Victims Investigation and Prosecution Capability (SVIP).** VWAP Coordinators must receive training on implementation of the SVIP capability and their role in the program. See DAFI 51-201. Such training may be accomplished locally or through the VWAP Symposium.

2.14.4. **Victim Rights, Notifications, and Responsibilities.** VWAP Coordinators must receive training on rights, notifications, and responsibilities to victims, as prescribed by federal law, DoD and DAF policy. See [Chapter 5](#). Such training may be accomplished locally or through the VWAP symposium.

## 2.15. Annual VWAP Reporting Requirements.

2.15.1. **Overview.** TJAG submits an annual report using the DD Form 2706, *Annual Report on Victim and Witness Assistance*, to the Under Secretary of Defense for Personnel and Readiness. The report is submitted by 15 March for the preceding calendar year quantifying the assistance provided victims and witnesses of crime as measured by distribution of the DD Forms 2701 through 2705. **(T-0)** The report is submitted to: Under Secretary of Defense for Personnel and Readiness, Attention Legal Policy Office, 4000 Defense Pentagon, Washington, DC 20301-4000.

2.15.2. **Data Collection.** After the conclusion of each calendar year:

2.15.2.1. The law enforcement and investigative personnel will record and report to the installation SJA or equivalent the number of DD Forms 2701 distributed for the preceding calendar year. **(T-0)**

2.15.2.2. The installation SJA or equivalent will consolidate the reports compiled by DAF law enforcement and investigative personnel and VWAP personnel at that installation and report via the DD Form 2706 the information listed below through functional channels to the Major Commands (MAJCOMs), Field Commands (FLDCOMs), or equivalent. The report includes the number of victims and witnesses who:

2.15.2.2.1. Received a DD Form 2701 from law enforcement or criminal investigative personnel;

2.15.2.2.2. Received a DD Form 2702 from the government trial counsel or designee;

2.15.2.2.3. Received a DD Form 2703 from the government trial counsel or designee; and

2.15.2.2.4. Elected via the DD Form 2704 to be notified of changes in confinee status.

2.15.2.3. MAJCOMs, FLDCOMs, field operating agencies, and direct reporting units (DRUs) consolidate the reports and each command forwards one consolidated DD Form 2706 to AF/JAJM to arrive no later than 15 February of each year.

2.15.2.4. Each confinement facility reports the information listed below to the Central Repository, Headquarters Air Force Security Forces Confinement and Corrections Directorate (AFSFC/FC). AFSFC/FC forwards a consolidated report to AF/JAJM to arrive no later than 15 February of each year. The report includes the following:

2.15.2.4.1. The number of victims and witnesses who were notified by confinement facility VWAP Coordinators, via the DD Form 2705, of changes in confinee status.

2.15.2.4.2. The cumulative number of confinees for whom victim or witness notifications must be made by each confinement facility. This number is obtained by totaling the number of confinees with victim or witness notification requirements as of 1 July 1995, adding the number of new confinees with the requirement, and subtracting the number of those confinees who were released, died, or were transferred to another facility (federal, state, or Sister Service) during the reporting year.

2.15.2.5. Victim Demographic Data Reporting. VWAP personnel are required to request all victims of offenses for any case opened in AMJAMS to provide demographic data in accordance with the victim demographic data questionnaire located on the VMJD. The SJA is responsible for ensuring the victims' self-reported data is promptly entered into AMJAMS. The DAF relies on self-reported data; do not obtain this data via observation or other means.

**2.15.3. Preparation of the DD Form 2706.** AF/JAJM consolidates the data from the MAJCOMs, FLDCOMs, FOAs, DRUs, and AFSFC/FC, then records and forwards them on the DD Form 2706 to TJAG.

## *Section 2B—VWAP Services*

### **2.16. General VWAP Services.**

**2.16.1. Primary Point of Contact.** VWAP personnel serve as the primary points of contact for eligible victims and witnesses to ensure they are informed of and referred to all available legal resources. This begins as soon as a victim or witness makes contact with the legal system, either directly or via referral from an outside agency. VWAP personnel are responsible for ensuring victims are notified at the earliest possible opportunity of any rights afforded under Article 6b, UCMJ, DoDI 1030.02, and other rules as outlined in the R.C.M.

**2.16.2. Victim/Witness Intake and Eligibility Assessment.** Intake is typically conducted by the VWAP coordinator or VWL once a victim or witness makes contact with the legal office. The VWAP coordinator or VWL assesses the victim's or witness's eligibility for services, including the additional VWAP services afforded to victims of certain sexual offenses and certain domestic violence offenses, as discussed in paragraphs [3.2.2.1](#) and [3.2.2.2](#). The VWAP coordinator or VWL will assess eligibility for services from other DAF, DoD and non-military agencies. This includes notification the victim is eligible for legal assistance or VC services as soon as eligibility is assessed. After intake, if provision of VWAP services is appropriate for the victim or witness, the VWAP coordinator assigns a VWL to the victim or witness. The VWAP coordinator may designate an appropriately trained VWL from another legal office to a particular victim or witness, with the concurrence of the applicable SJA. If a victim is represented by counsel prior to contact with VWAP personnel, the VWAP coordinator must contact the victim's counsel to arrange an initial meeting and discuss provision of information and services to the victim. See [paragraph 2.21.2.2](#).

**2.16.3. Scope of Relationship.** VWAP personnel must notify the victim prior to intake and eligibility assessment that the VWAP coordinator/VWL may not enter into an attorney-client relationship with the victim, and that their communications are not privileged or confidential. VWAP personnel must explain their disclosure obligations and provide the victim contact information, if requested, for appropriate personnel with whom the victim can have privileged conversations.

### **2.16.4. Regular and Continuous Contact with Victims.**

**2.16.4.1. General Rule.** VWAP personnel will maintain regular and continuous contact with victims until all requested services or referrals are complete, all active criminal or administrative investigations or adjudications into the alleged offense are concluded with final disposition, or the victim specifically declines VWAP services. See [paragraph 2.21.2](#) for guidance on contact with represented victims. Additional guidance and templates for victim contacts is available on the VMJD.

**2.16.4.2. Monthly Notice Required.** Victims must be notified, no less than monthly, of the status of the investigation, prosecution, or alternate disposition of the allegation reported to law enforcement or the command, whichever is applicable. This applies even if victims are represented by counsel. See [paragraph 2.21.2](#) for guidance on contact with represented victims.

**2.16.4.3. Written Requirement.** VWAP personnel are not required to provide the notification in writing, though it is encouraged. If VWAP personnel notify the victim in

writing, then such notification must be retained with the legal office's case file. If VWAP personnel do not notify the victim in writing, VWAP personnel must memorialize the notification in writing after the fact and such memorialization must be retained with the case file.

2.16.4.4. Victim Declination. If a victim declines contact with VWAP personnel or provision of VWAP services, the declination shall be obtained in writing. If the victim refuses or fails to provide the declination in writing, the VWAP coordinator must document the declination in the case file and retain it in accordance with the record disposition schedule.

2.16.5. Protective Orders. VWAP personnel will inform victims and witnesses of the availability of applicable no-contact orders, military protective orders (MPO), and civilian protective orders (CPO). See DAFI 51-201 for discussion regarding applicability of and procedures for obtaining no contact orders, MPOs, and CPOs.

2.16.5.1. Assistance for Eligible Victims and Witnesses. If the individual requests assistance obtaining a no-contact order or protective order, VWAP personnel must determine eligibility for DAF legal assistance services and take the steps identified in [paragraph 2.16.6](#).

2.16.5.2. Assistance for Ineligible Victims and Witnesses. If the individual is ineligible for either VC representation or legal assistance and requests assistance for a protective order, VWAP personnel shall take the following steps:

2.16.5.2.1. No-Contact Order or military protective order Requests. VWAP personnel shall provide the individual with the contact information for the responsible DAF law enforcement agency; ask the victim or witness, if willing, to provide contact information that can be relayed to the accused's commander to facilitate the request for a no-contact order or MPO; and/or forward the request for a no-contact order or MPO and the requestor's contact information to the applicable commander.

2.16.5.2.2. A civilian protective order. The VWAP may provide resources within the local community which may enable the victim or witness to pursue a civilian protective order. VWAP will inform the commander, victim(s), or witnesses that a violation of a C is punishable under the UCMJ as required by DoD policy.

#### 2.16.6. Referrals for Department of the Air Force Legal Services.

2.16.6.1. VC Representation. If an eligible victim requests VC representation, VWAP personnel will complete a referral form and forward it to the VP in accordance with [paragraph 3.10.3](#). This includes requests submitted via the extraordinary circumstances request (ECR) process discussed in [paragraph 3.2.4](#). If the VP determines the victim is ineligible for VC services, the victim will be referred back to VWAP personnel. **Note:** In cases where it is unclear which legal services a qualifying victim should be referred to, the VWAP must then ensure the victim makes contact with the VP instead of conducting the intake themselves.

2.16.6.2. Legal Assistance Services. If the victim is eligible for legal assistance services and wishes to engage with a legal assistance attorney, the VWAP will promptly work to make the victim an appointment with a legal assistance attorney. The VWAP must ensure

the legal assistance attorney is not conflicted out of representation, note whether the individual has questions regarding civilian or military protection orders, and request the individual receive scheduling priority. If applicable, the VWAP will provide the victim with the time and location of the appointment and standardized information on preparing for the appointment.

2.16.6.3. If a victim is eligible for both VC and legal assistance services and wishes to engage with both a VC and legal assistance attorney, the VWAP will accomplish both referrals required by paragraphs **3.10.3** and **2.16.6.2**.

2.16.6.4. The VWAP will provide active duty victims who are not eligible for a VC general information on the availability of an Area Defense Counsel (ADC) to advise on collateral misconduct or other similar matters. If a victim who is not eligible for a VC qualifies for ADC services and expresses concerns that could be addressed by an ADC, the VWAP will refer the victim to an ADC in coordination with the applicable Chief Circuit Defense Counsel. For victims who are eligible for VC services, the VC/VP will make any necessary ADC referral.

**2.16.7. Referral for Non-Department of the Air Force Legal Services.** For victims who are ineligible for a legal assistance attorney, VC, or an ADC; who decline such assistance; or who require assistance outside the scope of those programs, the VWAP will:

2.16.7.1. If the victim is eligible, assign a legal assistance attorney to perform an American Bar Association (ABA) Military Pro Bono referral; or

2.16.7.2. If the victim is ineligible for an ABA Military Pro Bono referral or the referral request is denied, if appropriate, provide comprehensive information on local low-cost or pro bono legal services entities. These services may not be available in all localities. The VWAP coordinator should familiarize himself or herself with local resources of this type.

2.16.7.3. Provide the victim with a standardized booklet on self-representation in military investigations and criminal or administrative processes. A sample booklet can be found on the VMJD.

**2.16.8. Referral for Non-Legal Services.** VWAP personnel shall refer victims and witnesses to other available, non-legal resources available to meet their needs, such as the AFRC; FAP; the Chaplain; the Women, Infants, and Children program; and/or civilian resources. The VWAP should be familiar with these local services and have established relationships with local points of contact.

## **2.17. Additional VWAP Services for and Requirements Related to Victims of Domestic Violence.**

2.17.1. Provide local area-specific information regarding services that may be needed by victims of domestic violence. This may include information about domestic violence shelters, low-cost housing, and other state or non-governmental entity social services.

2.17.2. At installations with no DAF FAP or for other cases not within the purview of FAP or SARC, VWAP personnel will assist eligible victims of domestic violence with expedited transfer and/or humanitarian requests in accordance with **Section 2D**. VWAP personnel will inform domestic violence victims not eligible for expedited transfers of any other potential

humanitarian permanent change of station (PCS) or transfer options, and assist the victims with preparing the request.

2.17.3. VWAP personnel will process referrals for eligible victims of domestic violence to the VC in accordance with [paragraph 3.10.3](#). VWAP personnel will work closely with VPs and VCs to ensure potential safety concerns are promptly addressed, and victim assistance needs outside the scope of VC services are addressed to the extent possible.

## **2.18. Additional VWAP Services for Victims of Qualifying Sexual Offenses.**

2.18.1. VWAP personnel will assist eligible victims of Articles 120, 120c, and 130, UCMJ, offenses that are not within the purview of the SARC with expedited transfer requests in accordance with [Section 2D](#). VWAP personnel will inform sexual assault victims (or, if victims are minors, their parents, guardians, or Article 6b representative, as applicable) not eligible for expedited transfers of any other potential humanitarian PCS or transfer options, and assist in obtaining information and applying for any such transfers.

### *Section 2C—Relationship Between VWAP and Other Department of the Air Force Programs*

**2.19. General Provision.** The VWAP, SAPR program, and FAP are distinct but complementary programs providing support and services to victims as required by their governing directives. The LRO, or other officials appointed in this chapter, and the SARC and VA, must work in concert to discharge their individual responsibilities and provide victims appropriate information on available options and resources, notice of relevant events in the investigative and judicial processes, and support. The LRO, or any other official appointed in this chapter, remains responsible for the delivery of VWAP services.

**2.20. VWAP Coordination with Local Civilian Agencies.** LROs are encouraged to consider agreements with local civilian agencies to ensure cooperative relationships in identifying, reporting, investigating, and providing services and treatment to victims and witnesses.

## **2.21. VWAP Coordination with Unrepresented and Represented Victims.**

### **2.21.1. Unrepresented Victims.**

2.21.1.1. During intake, there may be circumstances when it is unclear whether a victim is eligible for VC services. In such cases, the VWAP must ensure the victim makes contact with the VP instead of conducting the intake themselves. These cases will largely be cases where:

2.21.1.1.1. It is unclear which entity (VC or legal assistance) can best address the victim's legal needs.

2.21.1.1.2. An ineligible victim wishes to make an ECR for a VC and confidential communications are desirable to facilitate this request.

2.21.1.2. This hand-off ensures the victim may confidentially describe their legal needs for the purpose of requesting an attorney's services.

### **2.21.2. Represented Victims.**

2.21.2.1. The VWAP plays a critical role in supporting the victim even after a VC is detailed or a civilian victim counsel is retained. For instance, the assigned VC may not



always be assigned to the local base, and may rely on the VWAP for assistance in providing the victim information regarding local resources. Moreover, it is the VWAP's responsibility to ensure the victim is receiving the appropriate and required information and notifications regarding his or her case.

2.21.2.2. Once notified the attorney-client relationship has formed between victim's counsel and a victim, VWAP personnel will not directly contact a victim without written permission from the victim's counsel, subject to [paragraph 2.21.2.3](#).

2.21.2.3. For clients within the purview of VWAP, VCs will provide a notice of representation to the applicable VWAP, and include in the notice the permissible scope of direct contact with the client, in accordance with [paragraph 3.19.2](#). **Note:** VWAP personnel may request a similar document outlining responsibilities and contact preferences from any civilian victim's counsel retained by a victim. The permissible scope of contact shall specify whether the VWL or VWAP personnel are permitted to directly contact the represented victim to update the victim on case status and available services. If such contact is permitted, the VC and VP shall be copied on any correspondence.

2.21.2.4. If a victim is represented by counsel, required notifications or coordination with the victim shall be made through the victim's counsel subject to the permissible scope of contact outlined in [paragraph 2.21.2.3](#). The VWAP always remains responsible for required notifications, services, and consultations, either directly to the victim or to the victim's counsel. VWAP personnel remain responsible for maintaining VWAP records related to notification to victims and VC.

## **2.22. VWAP Notifications to FAP, SARC, and Law Enforcement.**

2.22.1. If the VWAP becomes aware of an allegation of domestic violence that has not yet been referred to the FAP or law enforcement, the VWAP will notify both entities after consultation with the SJA. The VWAP personnel will inform all potential victims who contact them directly of the VWAP personnel's obligation to perform this notification. When possible, in these situations VWAP personnel will ensure the victim makes contact with FAP personnel.

2.22.2. If the VWAP becomes aware of an allegation of a qualifying sexual offense, as defined in [paragraph 3.2.2.1](#), that has not yet been referred to the SARC or FAP, whichever is applicable, or law enforcement, the VWAP will notify the appropriate entity after consultation with SJA. The VWAP will inform all potential victims who contact VWAP personnel directly of the VWAP's obligation to perform this notification. When possible, in these situations VWAP personnel will ensure the victim receives correct contact information for FAP or SARC personnel and that direct contact is offered and provided.

2.22.3. If the VWAP becomes aware of other criminal allegations not contemplated in paragraphs [2.22.1-2.22.2](#) above, the VWAP will consult with the SJA to accomplish appropriate notifications to law enforcement or other agencies.

## ***Section 2D—Expedited Transfers and Other Transfer Requests***

**2.23. VWAP Responsibilities.** In cases where an expedited transfer or humanitarian request related to an allegation of sexual assault or domestic violence does not fall within the scope of the SAPR program or FAP, VWAP Coordinators process the expedited transfer request. Such requests may include, but are not limited to, the following scenarios:

2.23.1. Service members who are victims of Article 120c or Article 130 offenses, such as stalking; indecent viewing; visual recording or broadcasting; forcible pandering; and/or indecent exposure;

2.23.2. Service members who are victims of domestic violence but do not fall within the purview of the FAP; or

2.23.3. A service member whose dependent was sexually assaulted by another Service member to whom the victim is not related.

**2.24. Other Transfer Requests.** Where applicable, VWAP personnel will inform victims (or their parents or guardians, in the case of minor victims) not eligible for expedited transfers of any other potential humanitarian PCS (e.g., humanitarian assignment, early return of dependents, dependent PCS in conjunction with a qualifying court-martial conviction, or administrative discharges) or transfer options, and assist them in requesting such a transfer. See DAFI 36-2110; AFI 36-3012, *Military Entitlements*.



## Chapter 3

### THE VICTIMS' COUNSEL PROGRAM

#### *Section 3A—Administration of the Victims' Counsel Program*

**3.1. General Provision.** The VC program is a distinct program designed to provide representation to eligible members of the DAF during the investigative, military justice, and disciplinary process, or as otherwise authorized by law or regulation. **Note:** Scope of representation is further explained in [paragraph 3.6](#).

#### **3.2. Access to the VC Program.**

3.2.1. Eligible crime victims may request specialized legal assistance and representation as provided by the VC program. Eligibility turns on three factors—type of offense, victim status, and subject status, in accordance with paragraphs [3.2.2-3.2.3](#).

3.2.2. VCs are authorized to provide services to victims of qualifying sex-related offenses, domestic violence offenses, and other offenses that contain elements of interpersonal violence, including but not limited to, workplace violence, under the UCMJ.

3.2.2.1. Qualifying sex-related offenses include violations of the following offenses:

3.2.2.1.1. Article 120;

3.2.2.1.2. Article 120b;

3.2.2.1.3. Article 120c;

3.2.2.1.4. Article 130;

3.2.2.1.5. Attempts, under Article 80, of those articles listed in paragraphs [3.2.2.1.1-3.2.2.1.4](#); and

3.2.2.1.6. Article 117a, provided the following criteria are met:

3.2.2.1.6.1. The victim is eligible for VC services under 10 U.S.C. § 1044e (a)(2)(A) or (a)(2)(B);

3.2.2.1.6.2. The victim has reported the offense to a Military Criminal Investigative Organization (MCIO);

3.2.2.1.6.3. The offender was subject to the UCMJ at the time the offense was committed;

3.2.2.1.6.4. The offender was subject to the UCMJ at the time the offense was reported; and

3.2.2.1.6.5. The DAF has jurisdiction over the offense.

3.2.2.2. Qualifying crimes of domestic violence include violations of the following offenses, provided the victim of the offense is a spouse, intimate partner, or immediate family member:

3.2.2.2.1. Article 117a;

3.2.2.2.2. Article 118 (attempted);

- 3.2.2.2.3. Article 119 (attempted);
  - 3.2.2.2.4. Article 128(b);
  - 3.2.2.2.5. Article 128a;
  - 3.2.2.2.6. Article 128b, but only offenses that constitute violations of Article 128b(1); 128b(4); or 128b(5);
  - 3.2.2.2.7. Article 130;
  - 3.2.2.2.8. Attempts of the offenses listed in paragraphs [3.2.2.2.1](#) and [3.2.2.2.4-3.2.2.2.7](#); or
  - 3.2.2.2.9. Any offenses that constitute violations of Articles 119a, 122, and 126, along with any other offense that has as an element that includes the use, attempted use, or threatened use of physical force against the person or property of a spouse, intimate partner or immediate family member, to include animals, will be considered on a case-by-case basis. A violation of any other provision of the UCMJ when committed against a spouse, intimate partner, or immediate family member may be considered by AF/JAJS on a case-by-case basis as an ECR.
- 3.2.2.3. Eligible victims include:
- 3.2.2.3.1. RegAF or Space Force members, if the qualifying offense occurred while the victim was on active duty or eligible for legal assistance services IAW 10 U.S.C. § 1044, *Legal assistance* (i.e., the offense was not pre-service).
    - 3.2.2.3.1.1. Limited scope consultations are authorized for RegAF or Space Force members in order to decline participation in an MCIO investigation for a qualifying offense that occurred pre-service.
  - 3.2.2.3.2. Air Reserve Component (ARC) personnel if the circumstances of the qualifying offense have a nexus to the victim's military service. Air National Guard (ANG) personnel are normally referred to the National Guard VC Program.
  - 3.2.2.3.3. Others who are eligible for military legal assistance services IAW 10 U.S.C. § 1044 if the alleged perpetrator of a qualifying offense was subject to the UCMJ at the time of the offense, and is currently subject to the UCMJ.
  - 3.2.2.3.4. DAF and DoD Civilian Employees not eligible for military legal assistance services IAW 10 U.S.C. § 1044, provided: the civilian employee reports he or she is a victim of a qualifying sex-related offense committed by a military member subject to the UCMJ; the DAF has jurisdiction to prosecute the offense; and there is a nexus to the victim's employment with the DAF or other Military Service.
  - 3.2.2.3.5. USAFA Cadets, Entry-level RegAF or Space Force, ARC, and ANG members provided that:
    - 3.2.2.3.5.1. The individual is a victim of a qualifying offense, or the victim is alleged to have been involved in an unprofessional relationship, as defined by Air Education and Training Command (AETC) Supplement 36-2909, *Air Force Professional Relationships and Conduct*, that involves sexual conduct with basic military training or technical training faculty or staff; or

3.2.2.4. Eligible members and dependents from other Military Services. Anyone eligible for a VC or Victims' Legal Counsel (VLC) from another Service (members, their dependents, those entitled to retired or retainer pay, or civilians deployed OCONUS) will be referred to their respective Service branch's VC or VLC Program for representation. An Air Force VC may be detailed if the other Service is unable to provide representation. The Chief, AF/JAJS, or designee, after notification of the request for representation, will coordinate the detailing of a VC/VLC with the program managers of the other Service.

3.2.3. VC services are subject to availability of staff resources and capabilities where not contrary to statute or regulation.

**3.2.4. Extraordinary Circumstances Requests (ECR).**

3.2.4.1. General Provision. Pursuant to the authority granted by 10 U.S.C. § 1044e, and DAFPD 51-2, TJAG, through AF/JAJS, promulgates the ECR process to grant VC representation to individuals who are not statutorily eligible for representation under 10 U.S.C. §§ 1044, 1044e, 1565b or FY20 NDAA § 548. No substantive or procedural rights are created by the procedures established herein, discretion exercised on allocating Division personnel or resources, or AF/JAJS internal procedures or guidelines.

3.2.4.2. Eligibility for ECR. The ECR process authorizes exceptions to eligibility requirements when: (1) the alleged perpetrator was subject to the UCMJ at the time of the offense; and (2) the alleged perpetrator was subject to the UCMJ at the time of the ECR; and (3) the ECR is warranted for good cause and furtherance of the DAF mission. This authority includes, but is not limited to, detailing VCs, on a case-by-case basis, to represent:

3.2.4.2.1. Victims of sex-related crimes, domestic violence crimes, or crimes involving interpersonal violence, regardless of eligibility for legal assistance services under 10 U.S.C. § 1044; and

3.2.4.2.2. Victims of other violent crimes under the UCMJ, regardless of eligibility for legal assistance services under 10 U.S.C. § 1044.

3.2.4.3. Factors. There is no one particular factor or set of factors that determines whether an ECR is granted or denied. Each case must be evaluated on a case-by-case basis, given the unique facts presented, and a determination must be made that a VC is required because no other victims' service is able to meet the legal needs of the particular victim. The following threshold factors must be considered when submitting a victim's request for VC representation when the victim is not otherwise eligible for services. It is important to note that these threshold considerations are informative, but not dispositive in the determination to approve or deny an ECR.

3.2.4.3.1. The individual is a victim of a qualifying sexually-related offense (in accordance with 10 U.S.C. § 1044e) or, beginning 1 December 2020, domestic violence offense (in accordance with FY20 NDAA, § 548(g) and this instruction), or a crime involving interpersonal violence; and

3.2.4.3.2. The alleged perpetrator was subject to the UCMJ at the time of the offense and is currently subject to the UCMJ; and

3.2.4.3.3. The victim will have an ongoing participation in a DAF investigation or the military justice process; and

- 3.2.4.3.4. The type of service requested is directly related to the MCIO's investigation or UCMJ action resulting from the victim's crime report, and the requested service may only be provided by a VC; and
- 3.2.4.3.5. Granting the request is consistent with AF/JAJS guidance.
- 3.2.4.4. Victims of other offenses may be considered for VC services on a case-by-case basis consistent with the threshold factors above.
- 3.2.4.5. The Chief, AF/JAJS, Deputy Chief, AF/JAJS, or Chief Circuit Victims Counsel (CCVC), after notification of the request for representation, will determine whether an ECR will be granted and, if so, detail a VC.

### **3.3. Minimum Qualifications for Victims' Counsel and Paralegals.**

3.3.1. **Victims' Counsel.** VCs must satisfy the requirements of 10 U.S.C. § 1044e(d) to be designated as a VC by TJAG. **(T-0)**

3.3.1.1. **Recommendation.** Judge advocates must be recommended for the VC position by their current SJA or equivalent through the Professional Development Directorate (AF/JAX) nomination process. SJAs should consider the unique characteristics necessary to provide victim services, which include, but are not limited to, military justice and discipline (particularly court-martial) and legal assistance experience, independence, competence, creativity, personality, and leadership qualities.

3.3.1.2. **Designation and Certification.** TJAG may designate and certify JAGs and DAF civilian attorneys as competent to perform the duties of a CCVC or VC if the following conditions are met:

3.3.1.2.1. The CCVC or VC has been certified by TJAG under Article 27(b), UCMJ; and

3.3.1.2.2. The CCVC or VC has successfully completed a DoD VC certification course. The VC certification course must comply with all guidance promulgated by the DoD regarding VC training requirements. **(T-0)**

3.3.1.3. **Removal of Designation and Certification or Reassignment Due to Improper Qualifications.** If the Chief, AF/JAJS, determines a VC does not have the proper qualifications or disposition required to be a VC, the Chief shall take appropriate action, in coordination with AF/JAX, to remove the individual from the VC course, recommend decertification as a VC, and/or take appropriate steps to reassign the individual, whichever is/are applicable.

3.3.1.4. **Local Jurisdiction Training.** Upon the assignment of a VC to a military installation in the United States, the VC shall complete training on the law and policies of the state or states in which the VC is assigned with respect to state criminal justice matters. **(T-0)**

3.3.1.4.1. The state-specific training must generally cover the following matters:

3.3.1.4.1.1. Victim's rights laws; **(T-0)**

3.3.1.4.1.2. Prosecution of criminal offenses; **(T-0)**

3.3.1.4.1.3. Sentencing for conviction of criminal offenses; and **(T-0)**

3.3.1.4.1.4. Civilian protective orders. **(T-0)**

3.3.1.4.2. This training must be complete prior to or within 30 days of in-processing at the military installation.

3.3.1.4.3. VCs use this training to advise clients as to applicable jurisdictions in which offenses are prosecutable and assist them in making applicable decisions on jurisdiction preference. See DAFI 51-201.

3.3.1.5. Supervisory Review of Local Jurisdiction Training. CCVCs must confirm each VC within their circuit has completed the required state(s) specific training, and report completion dates to AF/JAJS within 90 calendar days of new personnel in-processing to the division. Additionally, CCVCs must report annual completion of training requirements by all VCs, and periodic review of any additional training materials by all VCs as established by the Chief, or the Deputy Chief.

3.3.1.6. Domestic Violence Training. VCs must receive specialized training in legal issues commonly associated with alleged domestic violence offenses. **(T-0)** The training must be conducted in accordance with DoD policy and approved by AF/JAJS.

**3.3.2. Victims' Paralegals (VPs).**

3.3.2.1. Recommendation. VPs must be recommended for the VP position by their current SJA or equivalent through the special duty category nomination process. SJAs and/or legal office superintendents must consider the unique characteristics necessary to provide victim services, which include, but are not limited to, military justice and discipline and legal assistance experience, independence, competence, creativity, and leadership qualities.

3.3.2.2. Qualifications. VPs are special duty category positions. Volunteers and non-volunteers must meet certain criteria. At a minimum, VPs must:

3.3.2.2.1. Possess a 5-skill level;

3.3.2.2.2. Have a favorable recommendation from their current SJA;

3.3.2.2.3. Have 12 months of military justice experience; and

3.3.2.2.4. Successfully complete an approved VC certification course. The VC certification course must comply with the guidance promulgated by the DoD regarding VC and VP training requirements. **(T-0)**

3.3.2.3. Disqualification and/or Removal from Position. If the Chief, AF/JAJS, determines a VP does not have the proper qualifications or disposition required to be a VP, the Chief shall take appropriate action, in coordination with the Paralegal Functional Assignments Manager, to remove the individual from the VC course, recommend decertification as a VP, and/or take appropriate steps to reassign the individual.

**3.3.3. Professional Responsibilities and Rules.** VCs must comply with the Air Force Rules of Professional Conduct (AFRPC) in accordance with AFI 51-110, *Professional Responsibility Program*, Attachment 2, and their state bar rules of professional conduct. **(T-0)** Due to the sensitive nature of their practice, VCs must exercise caution regarding extrajudicial statements (even though they are not a party to the proceeding). **(T-0)** Accordingly, VCs/VPs must adhere to the rules on publicity and social media as outlined in Rule 3.6 of the AFRPC. **(T-0)**

**3.4. Case Management and Tracking.** The VC Case Administration Tool (CAT) collects data pertaining to client services provided by VCs. CCVCs and VC Circuit Paralegal Managers shall ensure all subordinate attorneys and paralegals properly utilize the tool to track cases in accordance with established business rules. VCs are responsible for ensuring paralegals are adequately trained to input data and maintain case information in a timely manner. The contents of the CAT are privileged and exempt from release under the Freedom of Information Act (FOIA).

### *Section 3B—VC Representation and Services*

**3.5. Scope of Representation.** The VC has an ethical obligation to advocate for the expressed interests of the client, even if in conflict with what the VC or a third party believes is in the best interests of the client. Provided a client's request is legal and ethical, a VC cannot substitute his or her own judgement for the expressed interests of any client.

**3.5.1. Attorney-Client Relationship.** VCs are legally authorized to enter into attorney-client relationships with eligible clients. **(T-0)** The VC's primary responsibility is to his or her client and the VC is bound by professional ethical responsibilities to the client.

**3.5.2. Covered Services.** VC legal representation and assistance related to the client's role in any military legal proceeding related to the qualifying offense(s) may include, but is not limited to:

3.5.2.1. Legal consultation and representation regarding military investigations, the military justice system, administrative hearings, and other proceedings where a victim can participate as a witness or other party;

3.5.2.2. Legal consultation regarding a victim's potential criminal liability stemming from or in relation to the circumstances surrounding an alleged offense and the victim's right to seek military defense counsel services, if authorized;

3.5.2.3. Legal consultation and assistance regarding the responsibilities, legal authorities, and support provided to the victim by the VWAP, FAP, or DAVA;

3.5.2.4. Legal consultation and assistance regarding the availability and procurement of protections offered by civilian and military protective or restraining orders;

3.5.2.5. Legal consultation and assistance regarding the eligibility, requirements, and procurement of any available victims' compensation programs;

3.5.2.6. Legal consultation and assistance on other related matters that may arise outside of the military justice or administrative disciplinary process, such as expedited transfer requests, personal property claims, requests for the return of personal property, or as specified or permitted by 10 U.S.C. § 1044e, Directive-Type Memorandum (DTM) 14-003, *DoD Implementation of Special Victim Capability (SVC) Prosecution and Legal Support*, NDAA FY20 § 548, and other applicable law or regulation; and

3.5.2.7. Such other legal assistance as the Secretary of Defense or the SecAF may authorize.

**3.5.3. Advocacy to Civilian Agencies and Representative Limitations.** Within the limitations of the AFRPC and rules of applicable state(s), VCs may advocate a victim's interests to civilian prosecutors, law enforcement agencies, and other civilian and government

agencies where there is a nexus to the client's status as a victim. VCs must exercise caution when advocating to civilian agencies to avoid any professional responsibility issues to include allegations of the unauthorized practice of law. VCs do not have the authority to represent a victim at any civilian proceedings. **(T-0)** Representation of clients at civilian law enforcement interviews that are not joint investigations with a MCIO, must comply with AFRPC and applicable state(s) professional responsibility rules, and the local jurisdiction's rules regarding non-licensed attorneys. Any requests to represent a client at a civilian proceeding must be vetted by the CCVC and approved by the Chief, AF/JAJS.

### **3.6. Initiation of Attorney-Client Relationship and Scope of Representation (SOR) Letter.**

3.6.1. An individual who is eligible for VC services becomes a client once he or she enters into an attorney-client relationship. **Note:** This may occur before or after the formal detailing of the VC and execution of the Scope of Representation (SOR) letter.

3.6.2. VCs will execute SORs with their clients, explaining the areas in which they can provide legal representation and advice. The written SOR shall be executed immediately upon entering into an attorney-client relationship, or as soon as practicable thereafter. The SOR shall be tailored to each client and will comply with 10 U.S.C. § 1044e, NDAA FY20 § 548 and this instruction.

3.6.3. The VC shall review the SOR letter with the victim after establishing competency and shall execute the agreement. For victims the VC determines incompetent or of diminished capacity, the VC shall review the SOR letter with a non-offending parent or guardian, who shall execute the agreement on the victim's behalf. **(T-0)** See [paragraph 3.7](#).

3.6.4. When assistance is requested beyond the SOR, a VC shall consult with his or her CCVC, and refer clients to appropriate resources. The SOR must detail the circumstances in which the attorney-client relationship will terminate, to include notice to the client of circumstances that could trigger unilateral termination, and that, absent direction otherwise by the client, the VC will notify the legal office or other relevant entities of termination or transfer of representation.

### **3.7. Representation of Minors and Clients with Diminished Capacity.**

3.7.1. **General Provision.** Pursuant to the AFRPC, when a client's capacity is diminished due to age or other reasons, VCs must, as far as possible, maintain a normal attorney-client relationship with the client. Therefore, the VC has a continuing duty to evaluate the decision-making capacity of his or her client so representation may be adjusted accordingly. If the VC determines the client lacks capacity to direct representation, the VC may request an Article 6b or other suitable representative be appointed to direct representation. VCs must comply with professional responsibility rules regarding confidentiality when representing clients with diminished capacity.

3.7.1.1. Children 16 Years of Age and Older. Victims 16 years of age and older are presumed to have the capacity to independently direct their own representation. **(T-0)**

3.7.1.2. Children Under 16 Years of Age. Prior to initiating the attorney-client relationship and reviewing the SOR letter with any child victim under the age of 16, the VC will act in conformity with the AFRPC to determine whether the victim has sufficiently diminished capacity that prevents the victim entirely from being competent to enter into an attorney-client relationship. **(T-0)**

3.7.1.2.1. There is no presumption a child under 16 years of age has diminished capacity.

3.7.1.2.2. Capacity may fluctuate depending on the child's circumstances. A child may be able to determine some positions or direct representation on some aspects but not others. The VC will assess the child's competency throughout the term of the attorney-client relationship, and will advise and advocate for the child client accordingly.

3.7.2. **Representatives Under Article 6b, UCMJ.** A VC may explore or request the appointment of a representative under Article 6b, as required, or a convening authority-appointed representative. Consideration of any such action shall be coordinated with the VC's CCVC.

3.7.3. **Guardian Ad Litem.** Only insofar as provided by applicable state or federal law, a VC may consider exploring the appointment of a guardian ad litem to protect the child's best interests in extraordinary circumstances. Consideration of any such action shall be coordinated with the Chief, AF/JAJS.

**3.8. Limited Services for Victims Without Qualifying Reports.** VC services for clients who have not yet made a report of sexual assault, domestic violence, or other qualifying offense are limited to explaining the available reporting options, methods, and services available under each reporting option.

**3.9. Matters Outside the Scope of Representation.** VCs shall not represent victims in civilian criminal or civil courts; civilian courts of delinquency; civilian family court; custody, neglect, or divorce matters; or in civilian school system or board matters.

### **3.10. Obtaining VC Services.**

3.10.1. **Requirement to Advise Victims of Available VC Services.** Eligible victims must be informed of the availability of VC services upon reporting a sexual assault, before being interviewed as a victim regarding a sexual assault allegation, or when seeking assistance as a victim related to an allegation of sexual assault from the DAF agencies/personnel listed immediately below in paragraphs **3.10.1.1-3.10.1.10**. Notification of eligibility must be made during the initial meeting. **Note:** Trial counsel must ensure qualifying victims have received an initial notification of VC availability from a qualifying party before trial counsel conducts an interview with the qualifying victim. See 10 U.S.C. § 1565b(a)(3). For guidance on ECR requests and general eligibility, see **paragraph 3.2.4**. The following agencies or individuals must inform eligible victims reporting a sexual assault of the availability of VC services:

3.10.1.1. SARC;

3.10.1.2. VA (SAPR or FAP, to include DAVAs);

3.10.1.3. FAP personnel;

3.10.1.4. AFOSI/SFS investigator or agent, upon victim report and/or victim interview;

3.10.1.5. VWAP personnel;

3.10.1.6. Trial counsel;

3.10.1.7. Defense counsel;



3.10.1.8. Chaplain or chaplain's assistant;

3.10.1.9. Mental health provider; or

3.10.1.10. Medical provider.

**3.10.2. Request for Services and Referrals.** Victims may directly request VC services from the local VC office, or may submit a request for VC services through their chain of command or any of the agencies identified in paragraphs **3.10.1.1-3.10.1.10**.

**3.10.3. Referral Process.**

3.10.3.1. The individual making the referral completes the VC referral form, which is located on the VMJD. **Note:** Different forms exist for different referring agencies (e.g., SARC, VWAP personnel); however the process for submission remains the same for each referral form.

3.10.3.2. Completed referral forms are submitted to the VP at the servicing VC office for processing. The Chief or Deputy Chief, AF/JAJS, or CCVC details VCs to represent eligible victims.

3.10.3.3. Victim Determined Eligible for VC Services. If eligible, a victim will normally be assigned a VC within 72 hours of the referral. Once a VC is detailed, the VP will notify the VWAP Coordinator or other referring agency, and the VP will contact the victim directly.

3.10.3.4. Victim Determined Ineligible for VC Services. If a victim is determined ineligible for VC representation, the VP will notify the VWAP Coordinator, or other referring agency, who will notify the victim. If the victim wishes to pursue an ECR, the VWAP or other referring agency will assist the victim with drafting and submitting the request in accordance with **paragraph 3.2.4**.

**3.10.4. Effect of VC Services on Crime Reporting.** Victims may be detailed VC representation regardless of whether they made a restricted report, unrestricted report, or no official report of being the victim of qualifying offense.

**3.10.5. VC Availability and Accessibility.**

3.10.5.1. Upon request for VC services by an eligible victim, a VC will be made available to consult with the victim within 72 hours.

3.10.5.2. If a member of the armed forces who is eligible for VC services under 10 U.S.C. § 1044e requests access to a VC at a military installation, and a VC is not available at that installation, a VC shall be made available in-person or by electronic means to the member by not later than 72 hours after such request. **(T-0)** In situations where a VC cannot be made available in-person, the VC shall advise the individual about communication by electronic means and the limitations of in-person representation. The VC shall document the member's consent or lack thereof to electronic communication.

3.10.5.3. If the Chief, AF/JAJS, or superior authority (e.g., the Director, AF/JAJ, The Deputy Judge Advocate General, or TJAG), determines a VC cannot be made available to a member of the armed forces within 72 hours of the request for access, due to exigent circumstances related to military activities, the Chief, AF/JAJS, or higher authority, shall

ensure a VC is made available to such member as soon as is practical under such circumstances. **(T-0)**

### **3.11. Termination or Declination of Services.**

3.11.1. Attorney-client relationships within the VC Program are status-based, and may extend for as long as a client is eligible and those services are reasonably needed by the client. Individuals who enter into an attorney-client relationship with a VC remain eligible for VC assistance, limited to matters directly related to the investigation, prosecution and/or disposition of the alleged qualifying offense, even if they otherwise lose their eligibility for legal assistance. Such assistance terminates as specified in the SOR signed by the individual and the VC at the time representation commenced, consistent with the AFRPC and their state bar rules of professional conduct. VCs will provide written notice to the client of termination of the attorney-client relationship. **(T-0)** If a client has become unreachable or unavailable through normal means of contact, the VC shall make best efforts to notify the client of the termination of the relationship. **(T-0)**

#### **3.11.2. Termination by Client.**

3.11.2.1. VC services are optional and may be declined at any time by a victim and/or a client.

3.11.2.2. In cases where the client no longer desires VC representation, the client may release the VC from further representation. The VC shall request a written release, signed by the client. VCs may prepare a release for the client's signature. If the client refuses to sign a release after expressing the desire to release the VC, the VC will send the client a termination letter informing the client that the representation has been terminated according to the client's desire to withdraw. At a minimum, the VC shall retain a copy of the letter in the case file and document any other circumstances of the release.

#### **3.11.3. Termination by the VC.**

3.11.3.1. General Rule. Once the attorney-client relationship is established, the VC may only sever it at the request of the client or in accordance with the agreed upon SOR, the AFRPC, and this instruction, or IAW statute, regulation, or case law. The VC will execute a termination memorandum with the client after all matters reasonably relating to qualifying offenses are complete.

3.11.3.2. Termination Following a Restricted Report. Representation of a client with a restricted report will normally focus on advice and referral to support services, advice on reporting options to include the option to convert the report to an unrestricted report, and participation in the "Catch a Serial Offender" (CATCH) program. A VC may continue to represent a client until the client has utilized all available advocacy services related to the restricted report of a qualifying offense. **Note:** For guidance on the CATCH program, see DoDI 5505.18.

3.11.3.3. Termination Following No Action Decision or Article 32 Preliminary Hearing. A VC shall continue to represent a client following a disposition decision of no action until no legal matters related to the offense remain.

3.11.3.4. Termination Following Conclusion of Court-Martial. A VC shall continue to represent a client in the court-martial process until the entry of judgment is complete.

Requests for post-trial appellate representation may be made in accordance with [paragraph 3.15](#).

3.11.3.5. Termination Following Nonjudicial Punishment or Other Administrative Action. In cases where an offense against the client is resolved by a commander's imposition of nonjudicial punishment, administrative separation proceedings, board of inquiry, or any other administrative means, a VC shall continue to represent the victim's interests and assert any applicable victim's rights at such proceedings until the relevant process is complete.

#### 3.11.4. Transfer of Services.

3.11.4.1. Transfer of counsel due to a client's deployment, expedited transfer, permanent change of station or other circumstances may be approved through the appropriate CCVC or the Chief, AF/JAJS, when requested by the victim. **(T-0)**

3.11.4.2. If the VC desires to withdraw from representing a client due to a transfer to another assignment the VC shall: (1) obtain approval from his or her own detailing CCVC and the CCVC who details the successor VC and (2) obtain the client's consent in writing to terminate the attorney-client relationship or provide written notice of unilateral termination if the VC's new position is incompatible with continued representation.

3.11.4.3. Whether an assignment is incompatible with continued VC representation is determined by AF/JAX.

3.11.4.4. If the VC is separating or retiring from the active duty force, the VC shall:

3.11.4.4.1. Inform his or her CCVC of his or her last duty day and request a new VC be detailed if the client desires continued representation; and

3.11.4.4.2. Notify the client the VC's representation will terminate upon the VC's separation or retirement in accordance with the SOR in writing. The withdrawing VC shall provide appropriate written notice of the withdrawal to any interested persons. If the VC is entering the Air Force Reserve and wishes to continue representation, a request must be sent to Chief, AF/JAJS, for consideration.

3.11.4.5. Transfer of VC services are subject to availability of staff resources and capabilities.

**3.12. Grounds for Continued Representation.** A VC may continue to represent a client after the final disposition action related to the client's allegations if necessary to resolve legal issues related to the qualifying offense as authorized under 10 U.S.C. § 1044e or FY20 NDAA § 548, such as personal legal assistance matters related to the allegation, personnel issues (i.e., petitions to the command or Board of Correction of Military Records to remove records of the client's collateral misconduct), a request for an expedited transfer or other administrative matters (e.g., communications with Congress or an Inspector General, complaints of retaliation, submission of FOIA requests for AFOSI Reports of Investigation (ROIs), and for transitional assistance applications). A VC will normally terminate representation within 30 calendar days of the client filing any administrative matters, and/or communications with Congress or an Inspector General.

**3.13. Client Requests for Continued Representation.** A client or former client may request continued representation after termination of services by submitting a new request for VC representation. Such requests will be evaluated on a case-by-case basis.

**3.14. Grounds for New Representation.** If, after termination, the VC is made aware of a new legal issue or matter that relates back to the prior representation, the VC may contact the client in order to inform the client of the new matter. If the VC is no longer assigned to AF/JAJS or has separated from active duty status in the Air Force, the Chief, AF/JAJS or appropriate CCVC, may detail a new counsel to contact the former client. The VC and former client shall then execute a new SOR to address the new matter.

**3.15. Appellate VC (AVC) Program.** AVC representation is distinct from VC representation.

**3.15.1. Notification of AVC Representation.** Following an accused's conviction related to the client's allegations that qualifies for processing through the military appellate court system, VCs will inform the client of the availability of appellate VC representation.

**3.15.2. Scope of AVC Representation.**

3.15.2.1. Eligible Victims. See paragraph [3.2.2.1-3.2.2.3](#) for eligibility criteria.

3.15.2.2. Qualifying Matters. At a VC client's or former VC client's request, AVCs may be assigned in cases where there are post-trial matters before a Service court of criminal appeals, the Court of Appeals for the Armed Forces, the Supreme Court of the United States, or the Air Force Clemency and Parole Board where the client, or former client, has a legal right related to the accused's conviction for an eligible offense as outlined in [paragraph 3.15.2.2.1](#).

3.15.2.2.1. Matters under review by a Service court of criminal appeals, the Court of Appeals for the Armed Forces, the Supreme Court of the United States, or the Air Force Clemency and Parole Board must be directly related to an eligible offense under Articles 117a, 120, 120a, 120b, 120c, 128, 128b, or other qualifying domestic violence offense.

3.15.2.2.2. To qualify for an AVC, the accused's conviction for a qualifying offense must have resulted in a sentence of death, dismissal of a commissioned officer or cadet, dishonorable discharge or bad-conduct discharge, or confinement for more than two years, and the VC client or former VC client must have a legal right impacted by such conviction.

3.15.2.2.3. In cases where the accused appeals, but does not have a sentence qualifying for automatic review, the issue appealed must directly impact a right of the victim to qualify for AVC services.

3.15.2.2.4. In cases where the client or former client seeks representation before the Air Force Clemency and Parole Board, the case must have resulted in confinement of more than two years.

3.15.2.2.5. Petitions for Relief. A VC may file with an appellate court petitions for relief from adverse rulings or other events, as authorized by law or other authority. If practicable, the VC should consult with his or her CCVC and the appellate function within AF/JAJS prior to filing any such petition with an appellate court. The VC must follow the applicable rules of court in filing any such petition.

3.15.2.2.6. Requests for exceptions to AVC qualification matters will be considered on a case- by-case basis. All requests must articulate the client or former client's

right(s) impacted in the post-trial phase and the scope of services requested and must be processed in accordance with the ECR process in [paragraph 3.2.4](#).

3.15.2.3. Absent exceptional circumstances as determined by the Chief, AF/JAJS or Deputy Chief, AF/JAJS, the trial VC shall terminate his or her representation once the client is transferred to the AVC. The Chief or Deputy Chief, AF/JAJS, may detail AVCs.

### ***Section 3C—Access to Department of the Air Force Information***

**3.16. Official Use Requests.** In order to perform their official duties advising and representing clients pursuant to 10 U.S.C. § 1565b, 10 U.S.C. § 1044e, and FY20 NDAA § 548, VCs and VPs will often need to review records within the control of the government to assist in the performance of their official duties. See DAFI 51-201 for processing guidance. **Note:** This is separate from the ability of a civilian attorney serving as VC to request and receive documents. See DAFI 51-201, and DoD 5400.11-R, *Department of Defense Privacy Program*, paragraph C4.2.1..

**3.17. VC Duty to Protect Responsive Records.** VCs receiving DAF records as “official use” requests have a duty to protect said records from unauthorized access or release. **(T-0)** A VC may discuss relevant information contained in released documents with his or her client to help the client understand the outcome of the trial or other proceeding, make case related decisions, or otherwise assist the VC in performing their duties as they relate to the client. A VC shall not release any documents to his or her client, individuals outside of the DoD, or share the documents with other DoD personnel except for official duty purposes, without the express, written approval of the releasing office.

**3.18. Court Pleadings, Filings, and Other Court Documents.** VCs may represent clients’ legal interests in any UCMJ or administrative proceeding and shall receive copies of pleadings, motions, and other documents relating to those matters within a timely manner as Controlled Unclassified Information (CUI). **(T-0)** Where a victim is represented by a civilian victims’ counsel or is not represented by counsel, the government trial counsel must notify any victims or witnesses of a motion or ruling affecting the victim or witness’s rights or privileges, to include providing access to motions or documents where required by the R.C.M., the UCMJ, or other law or regulation, including where necessary to comply with Article 6b, UCMJ.

### ***Section 3D—Relationship Between VC Program and Other Department of the Air Force Programs.***

#### **3.19. VC Coordination with VWAP for Represented Victims.**

3.19.1. VCs and VPs foster cooperation with the VWAP Coordinator to further the goals of victim support throughout the military justice process. VCs may provide information regarding VWAP to clients. The VC program is not a substitute for VWAP.

3.19.2. In cases with an ongoing military investigation or adjudication, once a VC forms an attorney-client relationship with a victim and the SOR is signed, the victim’s VC must provide a notice of representation to the applicable VWAP personnel describing the general nature of the VC’s representation, and describing any circumstances where the VWAP or other personnel may contact the victim directly about the matter in which he or she is represented. Unless doing so would prejudice the interests of the client, the VC must notify the VWAP when representation ceases, or when transfer of representation occurs. The VC will consult

with the client on which communications the client wishes to receive directly from the VWAP or other legal office personnel and initial scope of representation agreements with clients must ensure the client understands and consents to the VC and client's communication arrangement with the VWAP.

3.19.3. VWAP and legal office personnel will not contact represented victims directly, unless provided written permission to do so by the VC. For the duration of the VC representation, even when permitted to contact a client directly, the VWAP must courtesy copy the victim's VC on all communications, and must notify the VC of telephone or in-person communications the VWAP had with the client outside the presence of the VC. Once informed that representation has ceased, the VWAP may resume contacting the victim directly.

**3.20. Local Legal Office.** SJAs are responsible for providing support to the local VC and VP in accordance with DAFI 51-201.

## Chapter 4

### SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM FIRST RESPONDER TRAINING FOR LEGAL PERSONNEL

**4.1. Development of SAPR Program Training.** The Air Force Judge Advocate General's School (AFJAGS) develops and provides training to satisfy the annual requirement for SAPR program first responder training for specified legal personnel. See DoDI 6495.02, Volume 1, Enclosure 10, paragraph 7. **Note:** Training on local procedures is mandated in addition to the training developed by AFJAGS.

**4.2. Mandatory SAPR Training Requirement.** SAPR Program First Responder training is mandatory for the following:

4.2.1. RegAF and ARC judge advocates who practice in military justice (including Article 32 Preliminary Hearing Officers (PHOs)), VWAP, or legal assistance (this may include VCs and defense counsel); who serve as trial counsel or advise commanders on military justice, or who advise criminal investigators on criminal investigative matters;

4.2.2. RegAF and ARC paralegals who provide military justice or legal assistance support or directly contribute to a VWAP;

4.2.3. Any civilian attorney whose core document or position description references, or who through assigned duties, directly contributes to, military justice, legal assistance, or a VWAP; and

4.2.4. Any other civilian personnel (including volunteers) assigned to a legal office whose core document or position description references, or who through assigned duties, contributes to, criminal investigations, military justice, legal assistance, or a VWAP. **(T-0)**

**4.3. SAPR Training Timeline.** Training must be completed within 30 days of assuming a position or duties requiring the training as described above and annually thereafter. **(T-0)** There is no further requirement to repeat training prior to deployment if the individual will otherwise be compliant for annual requirements.

**4.4. SAPR Training Compliance Tracking.** AF/JAX is responsible for tracking compliance with the annual training requirement for legal personnel.

## Chapter 5

### RIGHTS, OBLIGATIONS, AND DUTIES TO VICTIMS AND WITNESSES

#### *Section 5A—General Rights, Privileges and Services Afforded to Victims and Witnesses*

**5.1. Obligation to Know Rights and Privileges.** Trial counsel, VWAP personnel, law enforcement, investigative personnel, and commanders must be knowledgeable of their obligations and the rights and privileges of victims and witnesses in this instruction, 32 C.F.R. § 114, *Victim and Witness Assistance*, the MCM, the UCMJ, and DoD and DAF policy.

**5.2. Initial Legal Office Interaction with Victim.** At the first meeting with legal office personnel, VWAP personnel must provide the VWAP packet discussed in [paragraph 2.8](#) to the victim or witness. **Note:** Trial counsel must coordinate with the VWAP coordinator or VWL to ensure availability of VWAP personnel at the initial victim or witness meeting.

#### **5.3. Rights and Privileges for Victims and Witnesses.**

5.3.1. The UCMJ, R.C.M.s, M.R.E.s, DoD and DAF policy, and other applicable statutes and regulations afford certain rights and privileges to all individuals involved in the military justice process. A list of these rights and privileges with references can be found on the VMJD. The applicable privileges found in the M.R.E. apply at all stages of the investigative and military justice process for victims, witnesses, and subjects or accused.

5.3.2. Intimidation and Harassment Safety Considerations for Victims and Witnesses. All participants in the military justice process, including VWAP personnel, MCIOs, military law enforcement agencies, legal office personnel, and VCs are responsible for providing information to victims of the services available in the event of intimidation or harassment. These responsibilities include:

5.3.2.1. Informing victims and witnesses of the right to receive reasonable protection from intimidation and harassment or similar threats by the accused or other individuals resulting from participation in the military justice process;

5.3.2.2. Instructing victims and witnesses to immediately report any intimidation, harassment, or similar conduct to military or civilian authorities.

5.3.2.3. Promptly taking measures to provide protection in instances where a victim's life, well-being or safety is jeopardized or threatened. See 18 U.S.C. § 1512, *Tampering with a witness, victim, or informant* and 18 U.S.C. § 1513, *Retaliating against a witness, victim, or informant*. **(T-0)**

5.3.2.3.1. Commanders and legal office personnel shall immediately notify appropriate law enforcement agencies of safety concerns.

5.3.2.3.2. Law enforcement and investigative personnel shall take prompt and appropriate measures to provide protection for victims and witnesses, as allowed by jurisdictional restrictions.

5.3.2.3.3. VWAP personnel, MCIOs, military law enforcement agencies, legal office personnel, and VCs should inform victims and witnesses of the availability of military



protective orders and civilian protective orders. In appropriate circumstances these personnel should assist victims and witnesses in obtaining these protections.

### ***Section 5B—General Services for Victims***

**5.4. Legal Assistance.** The SJA or designee will inform victims eligible for legal assistance under AFI 51-304, *Legal Assistance, Notary, Preventative Law, and Tax Programs*, of legal assistance services in accordance with 10 U.S.C. § 1565b. If a victim requests a legal assistance appointment, ensure the attorney they are referred to and all attorney-client communications are protected from disclosure to any personnel involved in military justice proceedings relating to the offense. See AFI 51-304. All victims may also elect to seek the advice of a private attorney at their own expense.

**5.5. Victims' Rights List.** Victims of crime may have additional rights not discussed in this instruction that are contingent on the type of offense, the stage in the process, the status of the victim with respect to the military, and other factors. A list of victims' rights with references is available on the VMJD.

**5.6. Timeliness.** The SJA or designee will ensure timely notice to victims and their counsel of any hearing (e.g., pretrial confinement, Article 39a, post-trial sentencing vacation), proceeding, or court-martial and the right to reasonably confer with trial counsel at those proceedings.

**5.7. Others Entitled to Notice on Behalf of Victim/Witness.** Article 6b representatives of minor victims and witnesses should receive prompt notification of information concerning cases as well as non-offending individuals specifically requested by victim. Non-offending and close relatives of homicide victims should also receive prompt notification of information concerning cases. This paragraph should not be read to interfere with the rights of a minor victim to consult with and receive notifications from or through VC as discussed in [paragraph 3.7](#). If requested, VWAP personnel shall notify the individuals of the events outlined in [Chapter 6](#) and of the court-martial proceedings, including any pleas by the accused, findings, and the sentence imposed, including the date on which the accused becomes eligible for release from confinement or parole, if applicable.

### **5.8. Medical and Social Services.**

5.8.1. The LRO or designee will inform, as appropriate, victims of available medical and social services, victim advocacy services for victims of domestic violence and sexual assault and, when necessary, assist in securing those services. **(T-0)**

5.8.2. The LRO or designee will provide, as appropriate, victims with the contact information (name, address and telephone) of the AFRC director (or, when applicable, the SARC and/or FAP).

5.8.3. In cases where referring a victim to the AFRC for information may potentially cause undue embarrassment for the victim, local responsible officials are encouraged to provide victim and witness assistance program information directly to the victim.

5.8.4. The LRO or designee will inform victims of available public and private counseling, treatment and support programs and, when necessary, assist in obtaining those services.

## 5.9. Restitution.

5.9.1. The LRO or designee will inform victims of any restitution or other relief to which they may be entitled. Assist victims as appropriate in obtaining the relief or contacting those responsible for providing relief. **(T-0)**

5.9.1.1. The LRO or designee inform victims that restitution may be available from, or offered by, an accused as a condition in the terms of a plea agreement, during the sentencing process, as a part of post-trial mitigation (R.C.M. 1109), or as a term or condition of parole or clemency.

5.9.1.2. Convening authorities must consider making restitution to victims a condition of any plea agreement, sentence reduction, or clemency. See DoDI 1030.02. **(T-0)**

5.9.1.3. Nonjudicial punishment authorities may make restitution a term of suspended punishment.

5.9.2. The LRO or designee will inform victims of possible restitution and/or other forms of compensation from local, state, or federal crime victims' compensation funds, including procedures for applying for such funds. **(T-0)** When requesting jurisdiction input from victims of certain sex-related offenses (see DAFI 51-201), provide the victim information regarding restitution potentially available should the accused be convicted in a civilian criminal court.

5.9.3. The LRO or designee will inform victims that Article 139, UCMJ, may provide relief if the property loss or damage resulted from wrongful taking or willful damage by a member of the Armed Forces due to riotous, violent, or disorderly conduct. Inform victims and witnesses whose property was taken as evidence of the potential to file a claim for their loss. See AFI 51-306, *Administrative Claims for and Against the Air Force*, Chapter 6. Ensure an Article 139 investigation does not interfere with any criminal investigation or court-martial proceedings.

**5.10. Transitional Compensation.** The LRO or designee will inform eligible victims of intra-familial abuse offenses of the potential availability of limited transitional compensation benefits, the potential for waiver of automatic forfeitures, potential for continued on-base privileges for a limited period of time, and possible entitlement to a portion of the member's retirement benefits. **(T-0)** See 10 U.S.C. §§ 1058, *Responsibilities of military law enforcement at scenes of domestic violence*, 1059, *Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits*, and 1408, *Gratuity payment to persons discharged for fraudulent enlistment*; DoDI 1342.24, *Transitional Compensation for Abused Dependents*, and AFI 36-3012, *Military Entitlements*, Chapter 8.

**5.11. Access to Information.** In accordance with 5 U.S.C. § 552a (the Privacy Act), records and information related to military justice, magistrate court, Article 138, UCMJ complaints, and administrative disposition, including nonjudicial punishment and administrative discharge proceedings, may potentially be disclosed as a routine use to victims and witnesses where consistent with the requirements of the VWAP; Article 6b, UCMJ; or 34 U.S.C. § 20141, *Services to victims*. See SORN DoD 0006; 5 U.S.C. § 552a(b)(3).

5.11.1. When analyzing Privacy Act exceptions, consider the DAF's interest in fostering cooperation of victims and witnesses in the instant case, whether the accused has made any

disclosures about the action or disposition that would diminish his/her expectation of privacy, and other relevant factors.

5.11.2. Because each case presents unique facts and circumstances, decisions to release information are reviewed on an individualized basis, in light of the Privacy Act and the exceptions allowing disclosure, as provided therein.

5.11.3. See [Section 3C](#) and DAFI 51-201 for release of information to VCs pursuant to an official use request.

5.11.4. Requests for information or documents beyond what SORN DoD 0006 or other applicable authority provide shall be processed in accordance with DoDM 5400.07-R\_AFMAN 33-302, *Freedom of Information Act Program*, as FOIA/Privacy Act requests. **(T-0)** The SJA shall ensure prompt response to and processing of these requests, or, to the extent the SJA is not the release authority, promptly direct the requestor to the appropriate release authority.

### *Section 5C—Additional Rights Available to Victims of Sexual Assault*

#### **5.12. Law Enforcement, Attorney, and VWAP Contact with VC Represented Victim.**

5.12.1. MCIOs, law enforcement agencies, investigators, and their support staffs must obtain consent from the VC prior to communicating with a represented victim. **(T-0)** See DoDI 5505.18.

5.12.2. Military defense counsel, defense investigative support, defense expert consultants and witnesses, defense paralegals, and their support staffs must obtain consent from the VC prior to communicating with a represented victim. **(T-0)** See Air Force Rules of Professional Conduct.

5.12.3. Unless specifically authorized in the letter of representation or other written authorization, the VWAP coordinator, VWL, trial counsel, paralegals, government expert consultants and witnesses, and their support staffs must obtain consent from the VC prior to communicating with a represented victim. **(T-0)** See Air Force Rules of Professional Conduct. **Note:** This restriction extends to administrative matters such as scheduling.

**5.13. Victims of Certain Sexual Offenses—Notification of Significant Events.** All victims who make an unrestricted report of qualifying sexual offenses are entitled to notification of significant events in any investigation, prosecution, and confinement resulting from their allegation. See [paragraph 6.2.2](#) for further guidance.

**5.14. Jurisdictional Preference.** Victims of qualifying sexual offenses are entitled to express their desire as to prosecutorial jurisdiction. The SJA is responsible for soliciting this input in writing. See DAFI 51-201.

**5.15. Return of Personal Property in Certain Sexual Offense Cases.** Sexual assault victims may request return of personal property in accordance with DoDI 5505.18 and DoDI 6495.02, Volume 1, Enclosure 8. **Note:** SJAs must timely coordinate with appropriate law enforcement to process the request in accordance with DoDI 5505.18.

**5.16. Victim's Declination to Participate.** If a sexual assault victim declines to participate in an investigation or prosecution, ordinarily that decision should be respected by commanders,

investigators, and prosecutors. Commanders should refer to AFI 90-6001, *Sexual Assault Prevention and Response Program*, paragraph 3.7, and DoDI 6495.02, Volume 1, Enclosure 4, prior to ordering a victim to participate in a prosecution or investigation.

***Section 5D—Legal Privilege and Confidentiality Matters and Conflict Prevention***

**5.17. General Provision.** Certain communications with victims and witnesses may be privileged. Legal practitioners, VWAP personnel, and MCIOs should be aware of these privileges.

5.17.1. **FAP.** FAP treatment providers' communications with victims, the accused, and witnesses, as well as related documentation, are generally privileged under M.R.E. 513. DAVA communications with victims may be privileged under M.R.E. 514.

5.17.1.1. **Conflict Prevention.** The SJA should defer any review or legal advice to FAP on release of FAP records involving a victim, accused, or other individual involved in an ongoing investigation to the servicing medical law consultant or an attorney unaffiliated with providing legal advice regarding the military justice matters at issue (i.e., a taint team or taint attorney).

5.17.2. **SAPR.** SAPR personnel communications with victims, even in cases of unrestricted reports, are generally privileged under M.R.E. 514.

## Chapter 6

### NOTIFICATIONS AND RESPONSIBILITIES TO VICTIMS AND WITNESSES

#### 6.1. Notifications and Responsibilities from Investigation Through Disposition.

6.1.1. **General Provision.** Notifications, consultations, and responsibilities discussed in this chapter are listed at the earliest possible stage in the military justice and discipline process in which they may arise. Many of these are continuing obligations that apply to multiple stages and/or throughout the process. Practitioners must be mindful of the continuing nature of these obligations and ensure they are accomplishing them as required. The LRO is responsible for ensuring victims and witnesses receive the notifications listed within this chapter; however, in practice, this notification will generally be executed on the LRO's behalf by the SJA, VWAP personnel, trial counsel, or the case paralegal, unless otherwise noted herein. **Note:** If victims are represented by counsel, the personnel accomplishing notification must coordinate with counsel to determine how such notifications will be made (e.g., through the victim's counsel or directly to the victim).

#### 6.1.2. Required Monthly Contact with All Victims.

6.1.2.1. Monthly Notice Required. All victims within the purview of the VWAP must be notified, no less than monthly, of the status of the investigation, prosecution, or alternate disposition of the allegation reported to law enforcement or the command, whichever is applicable, until final disposition is complete. **(T-0)**

6.1.2.2. **Victims of Certain Sexual Offenses—Additional Notification Requirements (see Section 6A).** In addition to the notification requirements applicable to all victims as detailed in this chapter, victims who make allegations of certain qualifying sex-related offenses are entitled to notification of specific significant events in the investigation and prosecution of offenses, as well as specific notifications regarding decisions not to refer allegations to court-martial and any further final disposition of those allegations. **(T-0)** See **Section 6A** below for further guidance on required notifications to victims of qualifying sex-related offenses.

6.1.2.3. Responsibility for Notification. VWAP personnel execute these notification requirements on behalf of the commander, unless otherwise executed by the victim's commander and memorialized in writing.

6.1.2.4. Written Requirement. VWAP personnel are not required to provide these notifications in writing, though it is highly encouraged. If VWAP personnel notify the victim in writing, then such notification must be retained with the legal office's case file. If VWAP personnel do not notify the victim in writing, VWAP personnel must memorialize the notification in writing after the fact and such memorialization must be retained with the case file.

#### 6.1.2.5. Exception to Notification Requirements.

6.1.2.5.1. These notifications may be limited to avoid endangering the safety of the individual making the report or another witness, jeopardizing an ongoing investigation, disclosing classified or privileged information, or unduly delaying the disposition of an offense. **(T-0)**

6.1.2.5.2. Non-Participating Victims. In any case where a victim declines to participate, these notifications are not required, provided the victim has affirmatively opted out of further updates. Such opt-out must be provided by the victim or victim's counsel in writing, or if verbally communicated, must be memorialized by the receiving VWAP personnel in writing. In either case, the written election must be retained in the case file.

6.1.2.6. Notification through Counsel. These notification requirements are satisfied by notifying the VC. In such cases, it is the responsibility of the VC to inform the victim.

6.1.2.7. Notification Through Appointed Representative. These notifications are satisfied by notifying the victim's representative, if one is appointed on behalf of the victim by the court or convening authority.

### *Section 6A—Notifications Specific to Victims of Qualifying Sex-Related Offenses*

**6.2. Notifications in Cases of Qualifying Sex-Related Offenses.** In addition to the notifications applicable to all victims, victims who make allegations of qualifying sex-related offenses are entitled to additional specific notifications concerning significant events in the investigation, prosecution, and post-sentencing phases of cases, as well as specific notifications concerning decisions not to refer qualifying offenses to court-martial, to include notification of the further disposition of those allegations. These additional requirements largely derive from FY20 NDAA §§ 540C and 549, and FY22 NDAA § 545.

**6.2.1. Qualifying Sex-Related Offenses.** For purposes of this section, qualifying sex-related offenses are defined as violations of the following UCMJ articles:

6.2.1.1. Article 120;

6.2.1.2. Article 120b;

6.2.1.3. Article 120c;

6.2.1.4. Article 125 (if the offense was alleged to have been committed prior to 1 January 2019);

6.2.1.5. Article 130 (or Article 120a, if the offense was alleged to have been committed prior to 1 January 2019); and

6.2.1.6. Article 80, attempts of any of the above offenses in paragraphs [6.2.1.1-6.2.1.5](#).

**6.2.2. Significant Events.** The following constitute significant events for which notification is required to victims of qualifying offenses under paragraph [6.2.1.1-6.2.1.6](#).

6.2.2.1. Conclusion of the investigation;

6.2.2.2. Pre-trial confinement proceedings;

6.2.2.3. Preferral of charges;

6.2.2.4. Initial disposition decision;

6.2.2.5. Article 32 preliminary hearing;

6.2.2.6. Referral of charges or determination to not refer charges;

- 6.2.2.7. All court proceedings (including arraignment, motions hearing, and trial);
- 6.2.2.8. Withdrawal of charges;
- 6.2.2.9. Dismissal of charges;
- 6.2.2.10. Post-trial hearings;
- 6.2.2.11. Vacation hearings;
- 6.2.2.12. Clemency submissions;
- 6.2.2.13. Appellate filings;
- 6.2.2.14. Appellate hearings; and
- 6.2.2.15. Appellate decisions.

**6.2.3. Timely Non-Referral Decision and Notification to the Victim.** In accordance with FY20 NDAA, Section 540C, in any case where a qualifying offense has been preferred but the convening authority that possesses authority to dispose of the offense declines to refer that specification to a general or special court-martial, the disposition decision must be made in a timely manner. **(T-0)** If the convening authority determines there is insufficient evidence to support the prosecution of a qualifying sex-related offense and decides not to refer such specification to a general or special court-martial, any further disposition recommendation or decision must be made within 60 days of the convening authority's non-referral decision. **(T-0)**

**6.2.4. Notification of Further Disposition.** In accordance with FY20 NDAA, Section 549, and FY22 NDAA, Section 545, the victim must be provided notice when the determination is made to not refer a qualifying offense, and informed no less than monthly of the status of further disposition. The victim must also be notified of the final decision on any further disposition, to include the type of action taken, the outcome of the action (including any punishment or characterization of service as applicable), and other such information as the commander deems relevant. **(T-0)** Release of information pursuant to these requirements may occur in spite of any otherwise applicable provisions of the Privacy Act. See FY22 NDAA § 545.

6.2.4.1. If the disposition decision cannot practicably be made within 60 days of the non-referral decision, the victim must be notified in writing and provided an explanation of the delay. **(T-0)** This notification must continue to be made in writing every successive 30 day period until the disposition decision is made and the victim is so notified. **(T-0) Note:** Notification under this section, if made within the first 30 days, satisfies the requirements under FY20 NDAA, Section 549.

6.2.4.2. **Applicable "Further Disposition."** For purposes of this requirement, "further disposition" includes no action, administrative action (verbal counseling, RIC, LOC, LOA, or LOR), administrative separation, non-judicial punishment, referral of a lesser included or related offense that does not constitute one of the qualifying offenses, or subsequent referral of the qualifying offense.

6.2.4.3. **Form of the Notification.** The convening authority's disposition notification and delay notifications are provided by the servicing wing-level legal office on behalf of the convening authority. The servicing legal office should utilize the templates on the VMJD

to provide such notifications. **Note:** This mandate does not require the release of the disposition documentation and is intended to serve only as notice of the convening authority's disposition decision.

**6.2.4.4. Application to Each Offense Alleged.** These requirements apply to each qualifying offense alleged. For example: in a case with one victim that alleges three separate sexual assaults were committed by the accused, these requirements apply to each specification. Thus, if the convening authority decides not to refer any one of the specifications, the aforementioned notifications are required.

**6.2.4.5. Further Disposition by Lower Level Commander.** If a case is returned to a subordinate commander, the disposing commander must notify the convening authority of the further disposition. The convening authority is then responsible for notifying the victim of the ultimate disposition of the allegation.

### ***Section 6B—Pre-Preferral Notifications and Responsibilities to Victims and Witnesses***

#### **6.3. Pretrial Confinement Notifications to Victims.**

6.3.1. Notify victims of:

6.3.1.1. The arrest of the accused.

6.3.1.2. The accused's being placed in pretrial confinement.

6.3.1.3. A seven-day review concerning the continuation of confinement prior to trial of the accused or any other public DAF hearing concerning continuation of confinement prior to trial of the accused. **(T-0)**

6.3.1.3.1. The victim's right not be excluded and to be heard at a pretrial confinement hearing.

6.3.1.3.2. The victim's right to be heard and/or submit matters for consideration by the Pretrial Confinement Review Hearing Officer.

6.3.1.4. The accused being released or escaping from pretrial confinement, or any changes in pretrial restrictions unless such notice may endanger the safety of any person. **(T-0)**

#### **6.4. Pre-Preferral Notifications to Victims and Witnesses.**

6.4.1. Ensure victims and witnesses are provided with copies of DD Form 2702, *Court-Martial Information for Victims and Witnesses of Crime*, explaining victims' and witnesses' rights and services.

6.4.2. Inform victims and witnesses about the military justice process, their role in the process, and how they may obtain information concerning the process or case. **(T-0)**

6.4.3. Notify any victim of a qualifying sexual offense of the conclusion of the investigation, as discussed in [paragraph 5.13](#).

6.4.4. Notify victims of any pre-trial confinement hearings.

**6.5. Disposition Consultation with Victims.** SJAs must ensure victims are given meaningful opportunities to consult with disposition authorities, which may include unit commanders and convening authorities, either in writing, telephonically, or in person prior to any decision



concerning whether or not to prosecute, pursue a disposition by plea, or dismiss a charge involving a victim. Under ordinary circumstances, SJAs should encourage commanders to engage with victims or their counsel.

6.5.1. When the victim requests a verbal (e.g., telephonic, video teleconference, or in-person) consultation with the disposition authority, ensure the disposition authority is notified of this request prior to the disposition decision, and the victim is notified of the disposition authority's decision on whether to grant a verbal consultation.

6.5.2. Solicit the victim's preference regarding the disposition of specifications involving the victim. The victim's views must be solicited by written memorandum. A template memorandum can be found on the VMJD. If victims are represented by a VC or other counsel, that counsel may provide the victim's views on behalf of the client.

6.5.2.1. These views include:

6.5.2.1.1. Decisions to prefer or not to prefer charges or disposition of the offense by means other than court-martial;

6.5.2.1.2. Decisions to refer or dismiss charges;

6.5.2.1.3. Pretrial restraint or confinement, particularly an accused's possible release from any pretrial restraint or confinement;

6.5.2.1.4. Plea agreement negotiations, including relevant plea agreement terms;

6.5.2.1.5. Request for discharge or resignation in lieu of trial by court-martial.

6.5.2.2. The victim's preference on disposition and willingness to participate in proceedings must be among the factors considered by disposition authorities in making a disposition decision.

6.5.2.3. If the victim elects not to provide written matters concerning his or her views on disposition, this should be annotated in the second indorsement on the template memorandum. **Note:** If the victim or counsel fail to timely respond, the legal office must consult their superior legal office for guidance. In any case, such failure to provide disposition preference should be annotated in the second indorsement on the template memorandum.

6.5.2.4. The SJA provides the GCMCA any statements solicited from the victim with regard to disposition in cases where initial disposition decisions are required to be forwarded to the GCMCA under DAFI 51-201. Additionally, if the victim makes any verbal statements to the disposition authority, the SJA ensures the statements are summarized in writing and forwarded to the GCMCA.

**6.6. Jurisdiction Consultation Requirement for Victims of Certain Sex-Related Offenses.** Victims of an offense listed in paragraph [6.2.1.1-6.2.1.6](#) must be notified of the right to express a preference as to whether the offense will be prosecuted by court-martial or in a civilian court with jurisdiction over the offense in cases where the offense occurred in the United States, or any political subdivision, possession, or territory thereof. (T-0) See DAFI 51-201.

***Section 6C—Notification of Preferral, Alternate Disposition or the Decision Not to Prosecute***

**6.7. All Cases.** Victims and witnesses should be informed of the preferral of charges resulting from their allegations. When allegations against a subject are disposed of other than by trial, a victim or witness shall be informed of the alternate disposition. Victims and witnesses shall be provided as much relevant information as possible, consistent with the privacy rights of the accused.

**6.7.1. Victim Declination to Receive Further Notifications.** If at any point in the process, a victim declines to receive future contact with the convening authority regarding the disposition of the case, this declination must be provided in writing from the victim or victim's counsel. **(T-1)** If the victim and/or counsel refuse to provide such documentation, VWAP personnel must document the refusal and retain such documentation in the case file. **(T-1)**

**6.8. Secretary of the Air Force or Next Superior GCMCA Review of Decision not to Refer.** Notify victims of rape or sexual assault in violation of Article 120, forcible sodomy in violation of Article 125 and attempts to commit the above offenses, of SecAF or the next superior GCMCA review of a decision to not refer charges. **(T-0)**

***Section 6D—Notification of Pre-Referral Proceedings***

**6.9. Notification of Judicial or Administrative Proceedings Involving the Victim.** Provide the victim (and counsel, if represented) with reasonable, timely, and accurate notice of the scheduling of judicial or administrative proceedings involving the victim. **(T-0)** A template for this notification is on the VMJD. Practitioners must ensure this continuing obligation is accomplished throughout the judicial administrative process.

***Section 6E—Victim Consultation Prior to Court Proceedings*****6.10. General Considerations.**

6.10.1. Inform victims in detail of the applicable rights and privileges in military processes related to the offense, and of available methods to assert their rights or privileges or to report or appeal violations. In SVIP cases, this notification must occur in the initial meeting.

6.10.2. VWAP personnel, or VC, if applicable, must notify victims of the right to petition for an Article 30a, UCMJ, hearing to request relief from or quashing of an investigative subpoena.

6.10.3. If requested by the victim, take reasonable steps to inform the victim's employer of the reasons for the victim's absence from work.

**6.10.4. Victim's Rights in Interviews.**

6.10.4.1. Victims generally cannot be compelled to interview with trial or defense counsel. However, VWAP personnel, or VC, if applicable, may encourage them to do so, and take any possible steps to mitigate concerns associated with interviewing (for example, arrange for the interview to be in a place convenient for the victim or witness).

6.10.4.2. A victim who is subject to a request for interview by defense counsel has the right to have any interview take place in the presence of trial counsel, VC, civilian counsel for the victim, or a victim advocate. **(T-0)**

6.10.4.2.1. The, VWAP coordinator, VWL or trial counsel shall notify unrepresented victims of this right.

6.10.4.2.2. If the victim requests trial counsel's presence, the trial counsel informs the victim that the trial counsel's presence does not establish an attorney-client relationship.

6.10.4.2.3. At all defense counsel interviews of the victim attended by trial counsel, an additional person other than the trial counsel should be present (e.g., paralegal or VWL).

6.10.5. In appropriate cases, and if requested by the victim, the SJA or designee will assist victims subjected to serious financial strain directly resulting from a crime, or cooperation in the investigation or prosecution of an offense, in explaining reasons for financial strains to creditors. However, this does not entitle non-eligible victims to formal legal assistance. See AFI 51-304.

### **6.11. Victim Consultation Limitations.**

6.11.1. Consultation with the victim may be limited if it could endanger the safety of the victim or a witness, jeopardize an ongoing investigation, disclose classified or privileged information, or unduly delay disposition of an offense.

6.11.2. If the victim is represented by a VC, any consultation must be coordinated with the VC.

6.11.3. Although the victim's views may be considered, the VWAP does not limit the responsibility and authority of officials involved in the military justice process from taking any action deemed necessary in the interest of good order and discipline and the prevention of service-discrediting conduct.

**6.12. Incompetent, Incapacitated, Deceased, Underage, or Institutional Entity Victims.** In the case of a UCMJ offense, when a victim is incompetent, incapacitated, deceased, or under 18 years of age, a detailed military judge may designate a representative who may assume the victim's rights under the UCMJ. **(T-0)** See Article 6b; Article 30a(1)(D); R.C.M. 801(a)(6). The military judge-appointed representative may exercise any rights of the victim under this instruction, and VWAP personnel, and VC, if applicable, will fulfill their obligations to victims through the representative (or, if applicable, counsel for the victim/victim's representative). **Note:** There is no prohibition on an individual having both an Article 6b representative and VC.

6.12.1. The military judge shall not designate an alleged offender as the representative of the victim. **(T-0)** See R.C.M. 801(a)(6)(B)(iv).

6.12.2. The convening authority may also appoint one or more representatives for the victim in accordance with 32 C.F.R. Part 114, *Victim and Witness Assistance*.

6.12.3. In the case of a victim that is an institutional entity, an authorized representative of the institutional entity may represent the institutional entity.

### ***Section 6F—Preliminary Hearing Notifications and Responsibilities to Victims and Witnesses***

**6.13. Preliminary Hearing Logistics.** The SJA or designee will provide to witnesses testifying at the hearing and all victims:

6.13.1. Reasonable, timely, and accurate notice of the preliminary hearing location, date, and time.

6.13.2. Appropriate assistance in obtaining available services, such as transportation, parking, child care, lodging, and courtroom translators or interpreters. Even when victims are represented by counsel, the legal office remains responsible for providing and arranging lodging, transportation, and any other services for the victim.

6.13.3. Assistance in obtaining prompt payment of witness fees and related costs for those individuals who are (1) requested or ordered to appear at preliminary hearings; and (2) entitled to reimbursement for their expenses under Articles 46 and 47, UCMJ, and R.C.M. 405(h). The SJA shall establish local procedures for paying vouchers after normal duty hours when necessary to avoid undue hardship.

#### **6.14. Additional Notifications and Responsibilities to Victims.**

6.14.1. The SJA or designee will provide victims a waiting area removed from and out of the sight and hearing of the accused and defense witnesses.

6.14.2. The SJA or designee will inform victims of:

6.14.2.1. The right not to be excluded from public portions of the preliminary hearing, unless the preliminary hearing officer (PHO) determines testimony by the victim of an offense under the UCMJ would be materially altered if the victim heard other testimony at that hearing or proceeding.

6.14.2.2. The right to receive, upon written request, a copy of, or access to, the recording of a preliminary hearing, as soon as practicable following the conclusion of the hearing. See DAFI 51-201 for procedures to release the recording.

6.14.2.3. The right to have their VC (if applicable) present at all open sessions, and all closed sessions involving their client. **(T-0)**

6.14.2.4. If named in a specification presented at the preliminary hearing, the right to submit supplemental materials to the PHO and convening authority within 24 hours after the close of the hearing.

6.14.3. The SJA ensures trial counsel:

6.14.3.1. Notifies the victim of the intent to introduce any evidence implicating M.R.E. 412, 513, or 514, and serve a copy of any M.R.E. 412 motions and responses on the victim or their counsel if applicable.

6.14.3.2. Advises victims of the right to seek the advice of an attorney and of the potential eligibility for VC representation prior to questioning victims about a sexual offense. **(T-0)** See FY16 NDAA § 534.

6.14.3.3. Informs unrepresented victims of the right to petition the Air Force Court of Criminal Appeals for a writ of mandamus contesting a ruling in an Article 32 hearing or court-martial if the victim believes the ruling violates the victim's rights as enumerated in Article 6b, UCMJ, or afforded by M.R.E. 412, 513, 514, or M.R.E. 615. However, the victim must exhaust other judicial remedies first (e.g., if contesting an Article 32 ruling, the victim must first petition a military judge for a hearing under Article 30a, UCMJ).

*Section 6G—Referral and Pretrial Responsibilities to Victims and Witnesses*

**6.15. Victim and Witness Notifications.** The SJA or designee will inform victims and witnesses of the time and place of each trial proceeding the victim or witness is either required or entitled to attend and promptly notify the victim or witness of any scheduling changes.

**6.16. Additional Responsibilities with Respect to Victims.**

6.16.1. The SJA or designee will also notify victims of:

6.16.1.1. Referral of charges or the decision not to prosecute. **(T-0)**

6.16.1.2. The military justice process, the role of the victim in the process, and how the victim can obtain additional information concerning the process or case. **(T-0)**

6.16.1.3. For victims who suffered direct physical, emotional, or pecuniary harm due to an offense the accused is convicted of, the opportunity to present to the court at sentencing, in compliance with applicable law and regulations, a sworn or unsworn oral or written statement on the impact of the crime on the victim or mitigation. **(T-0)** This right can only be exercised by the victim or the victim's Article 6b representative appointed by the military judge.

6.16.2. The SJA or designee will notify victims of the following events:

6.16.2.1. Referral of charges;

6.16.2.2. Withdrawal of charges; and

6.16.2.3. Dismissal of charges.

**6.17. Notification of Disposition.** SJAs will ensure trial counsel confers with the victim regarding the disposition of the case, to include the acceptance of a guilty plea, the rendering of a verdict, or the withdrawal or dismissal of charges.

*Section 6H—Trial Notifications and Responsibilities to Victims and Witnesses*

**6.18. Court-Martial Logistics.** The logistical assistance requirements outlined in [paragraph 6.14](#) apply at all courts-martial proceedings.

**6.19. Additional Notifications and Responsibilities to Victims.** The SJA or designee will notify victims of the right to not be excluded from public portions of the court-martial unless the military judge determines testimony by the victim of an offense under the UCMJ would be materially altered if the victim heard other testimony at that proceeding.

6.19.1. The SJA or designee will notify any victim of the following events:

6.19.1.1. All court proceedings, including arraignment, motions hearings, and trial dates;

6.19.1.2. Withdrawal of charges; and

6.19.1.3. Dismissal of charges.

*Section 6I—Post-Sentencing Notifications and Responsibilities to Victims and Witnesses*

**6.20. Victim Notifications.** The SJA or designee will notify victims of:

6.20.1. The sentence imposed, including general information regarding minimum release date, parole, clemency, and mandatory supervised release, if applicable.

6.20.2. Any post-trial vacation hearings.

6.20.3. If the accused was found guilty at a court-martial of an offense pertaining to the victim, immediately notify the victim of the opportunity to submit, within ten days after the sentence is announced in a General or Special Court-Martial or within seven days after the sentence is announced in a Summary Court-Martial, a written statement to the convening authority. See R.C.M. 1106A.

6.20.3.1. The SJA should consult with trial counsel to see if this right applies. The right applies only to offenses in which the convening authority may take action under R.C.M. 1109 or 1110.

6.20.4. The opportunity to receive a copy of or access to the recording of all open sessions of the court-martial, subject to the limitations in DAFI 51-201, upon written request and for the purpose of facilitating the submission of matters. The SJA or designee provides the victim with a copy of the recording.

6.20.5. The ability to make a personal appearance (or submit an audio, video, or written statement) before the clemency and parole board when the hearing date occurs.

## **6.21. Access to Court-Martial Documents and Recordings.**

6.21.1. The SJA or designee will promptly provide victims who have suffered direct physical, emotional, or pecuniary harm of any referred offense a copy of the Statement of Trial Results and a copy of any action taken by the convening authority.

6.21.2. The SJA or designee will notify victims who have suffered direct physical, emotional, or pecuniary harm of any referred offense of the right to receive, upon written request, a copy of the Entry of Judgment. Provide the copy of the Entry of Judgment promptly upon receipt of written request.

6.21.3. The SJA or designee will notify victims who testified or who were named in a specification referred to a special or general court-martial of the right to receive a copy of the certified Record of Trial (ROT). See R.C.M. 1112(e)(1). Victims who testified shall be provided a copy upon certification; named victims who did not testify shall be provided a copy upon written request.

6.21.3.1. Redactions may be required to protect the privacy interests of third parties or for other reasons required by law or policy.

6.21.3.2. The victim's copy of the ROT must not contain any sealed material unless so ordered by the military judge in the sealing order.

6.21.3.3. The ROT must be served on the victim unless:

6.21.3.3.1. Service on the victim is impracticable due to the victim's unauthorized absence or a military exigency.

6.21.3.3.2. The victim requests otherwise on the record or in writing, or declines a copy of the certified ROT on the record or in writing.

6.21.3.4. If service on the victim is impracticable due to unauthorized absence or military exigency, or if requested by the victim, serve the victim's copy on the victim's counsel, if represented. **(T-0)**

6.21.3.5. If service on the victim is impracticable because the victim refuses the ROT or cannot be found after due diligence is exhausted, serve the victim's copy on the victim's counsel, if represented.

6.21.3.6. The SJA or designee will ensure any declination of or failure to serve the ROT on the victim, for any reason, is documented in writing and attached to the original record. **(T-0)**

6.21.4. The SJA or designee will notify any victim of the following events:

6.21.4.1. Post-trial hearings;

6.21.4.2. Vacation hearings; and

6.21.4.3. Clemency submissions.

**6.22. Duty to Maintain and Return Personal Property.** The SJA or designee shall work with the law enforcement evidence custodian to ensure any property of the victim held for evidentiary purposes be maintained in good condition and returned to the victim as soon as it is no longer needed or required to be retained by law. See [paragraph 5.15](#) for guidance when victims request earlier return of personal property.

**6.23. Confinement Documentation and Notification.**

6.23.1. Trial counsel or the VWL will provide victims and witnesses with a DD Form 2703, *Post-Trial Information for Victims and Witnesses of Crime*, explaining the victim's post-trial rights. **(T-0)** List individuals' email addresses in the same boxes as their mailing addresses on the form.

6.23.2. For all cases resulting in a sentence to confinement, the trial counsel or VWL completes a DD Form 2704, *Victim/Witness Certification and Election Concerning Prisoner Status*. **(T-0)**

6.23.2.1. One copy of the DD Form 2704 is sent to the Central Repository, AFSFC/FC, 1517 Billy Mitchell Boulevard, Joint Base San Antonio-Lackland, Texas, 78236-0119; one copy to the confinement facility where the accused is in post-trial confinement; and a redacted copy to each of the appropriate victims and witnesses. A victim's or witness's copy must not contain the accused's personal information or any information concerning other victims or witnesses.

6.23.2.2. The SJA or designee ensures the DD Form 2704 is not included in any portion of any record to which the convicted member has access, including the ROT. The DD Form 2704 is exempt from FOIA release.

6.23.3. The SJA or designee will promptly notify the victim of any deferment or suspension of adjudged confinement.

6.23.4. Upon an offender's entry into confinement:

6.23.4.1. The VWAP coordinator at the military confinement facility obtains the DD Form 2704 to determine victim or witness notification requirements. If the form is unavailable,

the VWAP Coordinator at the military confinement facility must consult the SJA. The VWAP coordinator ensures the accused's confinement records are clearly marked to indicate the case involves a victim who wants to be informed of the inmate's status.

6.23.4.2. If an accused is confined at or near the installation where tried, the installation Security Forces commander notifies the victim of an accused's escape, any form of release from custody, or death.

#### **6.24. Confinement Facility Responsibilities.**

6.24.1. The military confinement facility VWAP coordinator is responsible for notifying the victims or witnesses who elected notification on the DD Form 2704 of confinee status changes. The military confinement facility VWAP Coordinator will use the DD Form 2705, *Notification to Victim/Witness of Prisoner Status*, to notify the victim or witness of changes and will record the date notifications are made on the DD Form 2705. **(T-0)**

6.24.2. Notifications shall be made for any of the following events:

6.24.2.1. The confinee's clemency or parole hearing date before the Air Force Clemency and Parole Board.

6.24.2.2. The transfer of the inmate from one facility to another (in addition to required victim and witness notifications, forward the DD Form 2704 to the gaining facility, with an informational copy to the Central Repository, AFSFC/FC).

6.24.2.3. The escape (and subsequent return to custody), work release, furlough, or any other form of release of the inmate from custody, including release into parole supervision.

6.24.2.4. Changes in confinee status for any emergency or special temporary home release granted the inmate.

6.24.2.5. The death of the confinee if the accused dies while in custody.

6.24.3. Remind victims and witnesses of responsibility to keep HQ AFSFC/FC informed of changes in current addresses.

#### **6.25. Appellate VWAP Requirements.** In all appeals or writs, AF/JAJI:

6.25.1. Will maintain a record of victims who requested to be notified of post-trial actions involving the accused.

6.25.2. Will notify victims of:

6.25.2.1. Filings at an appellate court.

6.25.2.2. Scheduling, including changes and delays of each public court proceeding or hearing the victim is entitled to attend.

6.25.2.3. Decisions made by the appellate courts.

6.25.2.4. When the offender's case is reviewed by the Office of the Judge Advocate General under Article 69, UCMJ.

6.25.2.5. The date of the clemency and parole board hearing and the ability to make a personal appearance (or submit an audio, video, or written statement) to the board.

6.25.3. For cases remanded to the trial court level, the appellate VWAP will notify the local VWAP coordinator to ensure the local VWAP makes prompt notification to the victim.



## Chapter 7

### WITNESS PRODUCTION

#### *Section 7A—General Witness Production Matters for Preliminary Hearings*

**7.1. Production of Witnesses.** Follow the rules and procedures in R.C.M. 405(h) for the production of witnesses. Additionally, all legal office personnel responsible for witness production should familiarize themselves with the guidance and requirements of the *Joint Travel Regulations (JTR)*, section 0305.

**7.2. Notice.** The parties must provide notice of the name and contact information for each witness they intend to call at the preliminary hearing to the PHO and the opposing party in accordance with timelines established by the PHO. **(T-0)**

**7.3. Defense Witness Requests.** All defense requests for witnesses must be in writing. This includes requests the defense provides to the PHO in the event the Government objects to producing the requested witness(es).

**7.4. Victim Testimony.** A victim who is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification under consideration and is named in one of the specifications under consideration shall not be required to testify at a preliminary hearing. **(T-0)**

**7.5. Civilian Witnesses.** A template letter to invite civilian witnesses to testify at a preliminary hearing is available on the VMJD.

#### *Section 7B—General Witness Production Matters for Courts-Martial*

**7.6. Military Witnesses (R.C.M. 703(g)(1)).** The SJA or trial counsel provides notice to the witness and the witness's commander of the time, place, and date the witness's presence is required and requests the commander issue any necessary orders to the witness.

**7.7. Civilian Witnesses (Article 46, UCMJ, and R.C.M. 703).** A civilian may be compelled to appear as a witness before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission, or board if they were duly issued a subpoena. Except as provided in paragraphs **7.7.1** and **7.9**, DD Form 453, *Subpoena*, is used to obtain the presence of a civilian witness. Civilian witness travel expenses are computed and reimbursed via the Defense Travel System (DTS) website.

**7.7.1. Informal Service for Willing Witnesses (R.C.M. 703(g)(3)(E) and Discussion).** When a civilian witness will appear voluntarily and a subpoena is issued, informal service of process by mail, including arrangements for travel and advance travel pay, is authorized. Sample letters to accomplish informal service are located on the VMJD.

**7.7.2. Formal Service for Unwilling Witnesses (R.C.M. 703(g)(3)(E) and Discussion).** If a witness is unwilling to attend the court-martial voluntarily, the trial counsel or designee ordinarily serves the subpoena personally on the witness and tenders travel orders. A witness who violates a subpoena faces potential prosecution by federal authorities under Article 47, UCMJ. See [paragraph 7.8](#) and DAFI 51-201.

7.7.2.1. Where it is impracticable for the trial counsel or designee to personally serve a subpoena (e.g., if the witness is not in the local area), the trial counsel shall contact the servicing SJA of the military installation nearest to the witness for assistance. Personal service may also be requested through the local law enforcement office or AFOSI detachment nearest the witness.

7.7.2.2. To meet the threshold requirement for requesting a warrant of attachment and subjecting the witness to federal prosecution under Article 47, UCMJ, the person serving the subpoena must provide the witness a means of reimbursement of fees and mileage or, in cases of hardship, ensure such reimbursement is provided in advance to the witness.

7.7.2.2.1. Except in cases involving a hardship requiring an advance payment, providing a witness instructions on the mechanism for filing a voucher for reimbursement shall ordinarily be sufficient to satisfy this requirement.

7.7.2.2.2. Trial counsel shall consult with the base finance office to determine the proper method of obtaining any necessary funds for an advance payment. The SJA or trial counsel may be designated by the finance office as an accounting and finance certifying payment official in order to receive the witness travel funds for personal service on the witness. In the alternative, the finance office may draft a check to the witness that accompanies the subpoena for service or attempted service upon the witness. Refer to the *JTR*, section 010204 for advance payment processing.

**7.8. Failure to Appear (R.C.M. 703(g)(3)(H) and Discussion).** If the witness fails or refuses to appear, exhaust every reasonable means to secure live testimony. If necessary, use a DD Form 454, *Warrant of Attachment*, to compel the witness to appear or produce evidence. See R.C.M. 703(h)(2)(H), Discussion; *United States v. Ortiz*, 35 M.J. 391 (C.M.A. 1992). The witness may be prosecuted for failure to comply. See DAFI 51-201 for the process for obtaining a warrant of attachment.

7.8.1. **Escorting and Detaining a Civilian Witness.** Once a warrant of attachment is executed, the civilian witness must be under escort or otherwise accounted for at all times. Escort and housing of a civilian witness ceases once a determination is made by the authority issuing the warrant that the witness is no longer needed for the proceeding.

7.8.2. If the United States Marshals Service or other civilian law enforcement agency did not execute the warrant of attachment, a civilian witness must be accompanied by a minimum of two escorts at all times. Armed escorts may be used as a last resort and only if absolutely necessary.

7.8.3. If it is necessary to house a civilian witness prior to the proceeding and the United States Marshals Service or other civilian law enforcement agency did not execute the warrant of attachment, coordinate with the United States Marshals Service to arrange for housing of the witness in the nearest available civilian detention facility. Every effort shall be made to minimize the amount of time a civilian witness is housed in a civilian detention facility. Never house a civilian witness in a military confinement facility.

7.8.4. **Funding.** The funding authority responsible for funding the travel of the witness is also responsible for funding the travel of personnel necessary to effect the execution of the warrant of attachment and escort the witness to the location specified in the subpoena. If detention of the witness is required, either at the location the warrant of attachment is executed or at the

location specified in the subpoena, the funding authority responsible for funding the travel of the witness is also responsible for fees charged by the facility detaining the witness. If the entity executing the warrant of attachment is another Federal agency, such as the United States Marshals Service, funding will be accomplished through a Military Interdepartmental Purchase Request.

**7.9. Subpoena Limitations.** A civilian witness may not be subpoenaed to testify at a court-martial outside the United States or at an Article 30a or 32, UCMJ, preliminary hearing. However, a subpoena *duces tecum* (for documents) may be duly issued in accordance with Article 46, UCMJ, and R.C.M. 703, for a preliminary hearing, pursuant to Article 32(b), UCMJ. A search warrant or order may be issued pursuant to Article 46, UCMJ and R.C.M. 703A for electronic or stored communications prior to or after referral of any charges and specifications. Invitational Travel Orders (located on the VMJD) shall be issued to a civilian witness who voluntarily agrees to appear at such proceedings. *Joint Travel Regulations*, Appendix E1.

**7.10. Foreign Area Clearance and Passport Applications.** Allow appropriate time for the processing of foreign area clearances when witnesses must travel to courts-martial convened outside the United States. DoD Directive 4500.54E, *DoD Foreign Clearance Program*. Ensure the prospective witness has a passport or applies for one. The responsible SJA may request the base nearest the requested witness process the passport application or the witness may personally process the passport application. The Department of State will normally process a passport application without the normal fee if the orders expressly provide for it. Contact the nearest passport office for further guidance.

### *Section 7C—Specific Witness Matters*

**7.11. Office of Special Investigations.** Submit witness requests for special agents to the AFOSI detachment to which the agent is assigned. To submit a request for a deployed or TDY AFOSI agent, see [paragraph 7.12](#).

7.11.1. Submit witness requests for threatened DAF personnel and confidential sources to the local AFOSI detachment. Threatened DAF personnel are uniformed service members in the DAF against whom “threats of bodily harm or death” are made. The threats must be “of such severity that military and civilian authorities are unable to provide the family’s continued safety.” See DAFI 36-2110.

7.11.2. Only AFOSI may contact another installation to request threatened DAF personnel and confidential sources as witnesses.

**7.12. Requests for Deployed, TDY and Remote Tour Witnesses.** Requests to return a witness who is deployed, on a remote tour, or TDY to a deployed location must be routed through the Combatant Command’s service component’s legal office prior to contacting the witness’s deployed unit or making arrangements to return the witness for purposes of testifying. For example, for DAF witnesses, AFCENT/JA will coordinate requests with CENTCOM prior to any base legal office attempt to make arrangements with the member’s deployed/TDY/remote command to return the witness. **Note:** Contact AF/JAJM in cases requiring the use of central witness funding.

**7.13. Escort or Attendant for an Active Duty Sexual Assault Victim.** A sexual assault victim is authorized an escort or attendant when required to travel in order to testify or participate in

proceedings (e.g., an preliminary hearing; pretrial motion hearing; or court-martial) in connection with the sexual assault. See Joint Travel Regulations, paragraph 030704. Funding for such travel is provided by the convening authority.

**7.14. Civilian Expert Witnesses (not employees of the United States).** When a party determines government employment of a civilian expert witness is necessary, the party shall submit a written request to the convening authority, with notice to the opposing party, to authorize the employment and fix the expert's compensation. **(T-0)** R.C.M. 703(d). The terms of employment in approved requests shall be memorialized in a Memorandum of Agreement for Expert Witnesses. A sample memorandum is located on the VMJD. Use Invitational Travel Orders to authorize travel of civilian experts and to notify them of billeting and travel arrangements. The finance office associated with AF/JAJM will not process a manual DD Form 1610, *Request and Authorization for TDY Travel of DoD Personnel*, or DD Form 1351-2, *Travel Voucher or Subvoucher*. The requesting legal office is responsible for obtaining DTS access for the witness.

**7.15. Civilians Employed by the United States.** Civilian employees of the United States can be required to testify incident to their employment with appropriate travel orders issued for this purpose. A subpoena is not required for DoD civilian employees requested as witnesses; the appropriate travel order is the DD Form 1610. This is completed via DTS. For non-DoD federal civilian employees providing testimony incident to their employment, the employee's agency will prepare the appropriate travel order. Do not use Invitational Travel Orders for federal civilian employees, contractors or non-appropriated fund employees.

**7.16. Subpoenas to the Media for Testimony or Matters.** If considering issuing a subpoena to a member of the media, consult DAFI 51-201 for guidance.

## Chapter 8

### IMMUNITY

#### *Section 8A—General Immunity Matters*

**8.1. General Provision.** A GCMCA possesses the authority to grant immunity to witnesses. When another GCMCA retains administrative control over the witness to be immunized, prior coordination with the retaining GCMCA or delegee, if applicable, is required.

**8.2. Delegation of Authority to Grant Immunity.** The GCMCA may delegate the authority to grant immunity to subordinate SPCMCAs. Any such delegation must be in writing, and the authorization may not be further delegated. **(T-0)**

**8.3. SPCMCA/SJA Consultation.** If the GCMCA delegates authority to grant immunity to the SPCMCA, the SPCMCA's servicing SJA must consult with the GCMCA's servicing SJA before requesting a grant of immunity from the SPCMCA.

**8.4. Format of Immunity.** All grants of immunity must be in writing. Grants of immunity must include language stating the immunity grant takes effect on the date the witness receives a copy of it. A template is located on the Virtual Military Justice Deskbook.

**8.5. Inclusion in the Record of Trial.** All grants of immunity must be signed and included in the ROT. See AFMAN 51-203, *Records of Trial*.

**8.6. Preliminary Discussions of Immunity.** Judge advocates and investigators must be exceedingly careful in discussing the possibility of immunity with anyone involved in an investigation or potential prosecution. Avoid creating a perceived expectation of immunity that may be unfounded. The best practice is to first coordinate potential grants of immunity with the appropriate convening authority, and when appropriate, the Department of Justice.

#### *Section 8B—National Security Cases*

**8.7. Processing.** Process immunity requests for witnesses suspected of criminal activity involving national security according to [Section 8C](#). Government Trial and Appellate Division (AF/JAJG) is responsible for coordinating such cases with the Department of Justice and other interested U.S. agencies.

**8.8. Additional Reporting Requirements.** Complete the additional reporting and processing requirements specified in DAFI 51-201 for national security cases independent of immunity authorization requests.

#### *Section 8C—Department of Justice Cases*

##### **8.9. In Personam Jurisdiction and Requests for Department of Justice Authorization.**

8.9.1. **Persons Subject to the UCMJ.** If the Department of Justice has an interest in investigating and prosecuting a witness suspected of criminal activity, prepare the immunity request according to [paragraph 8.9.4.6](#).

8.9.2. **Persons Not Subject to the UCMJ.** The GCMCA or delegee, if applicable, must indicate the intent to approve a request for immunity for persons not subject to the UCMJ prior

to submission of the immunity request to the Department of Justice. **(T-0)** A written memorandum from the GCMCA or delegee is then forwarded to AF/JAJG, who will staff the package to the Department of Justice. The Department of Justice (or other authority designated under 18 U.S.C. § 6004, *Certain administrative proceedings*) will then either authorize the GCMCA to offer immunity to the person not subject to the UCMJ or will disapprove the request. If authorized, the GCMCA may then offer the person not subject to the UCMJ immunity. Prepare requests for Department of Justice authorization in accordance with [paragraph 8.9.4.6](#).

8.9.3. In cases requiring Department of Justice authorization for immunity, the SJA whose office is prosecuting the court-martial initiates the request for Department of Justice authorization. When the GCMCA, or delegee, indicates in a memorandum the intent to grant immunity, the GCMCA's servicing SJA or SPCMCA's servicing SJA, if the authority to grant immunity has been delegated to the SPCMCA, forwards the request with written endorsement, by e-mail, directly to JAJG, with information copies to the MAJCOM's or FLDCOM's servicing SJA. The SJA must consult with JAJG prior to forwarding the request as the Department of Justice requires requests be forwarded in a specific format. Requests are forwarded no less than 30 days in advance of the date the witness is expected to testify. SJAs may consider requesting a delay pursuant to R.C.M. 707(c)(1) while authorization is pending.

8.9.4. The written request must include the following information:

- 8.9.4.1. Case name and nature of the proceeding for which requesting immunity;
- 8.9.4.2. Nature of the charges against the accused and anticipated date of the proceeding;
- 8.9.4.3. Name, social security number, date and place of birth, and address of the witness;
- 8.9.4.4. The witness's military status and organization, if any;
- 8.9.4.5. Whether the defense or prosecution requested the immunity;
- 8.9.4.6. Name, grade, organization, and mailing address of the GCMCA or delegee who will grant the immunity after receiving Department of Justice authorization, and a statement that the GCMCA or delegee supports the immunity request. **Note:** Immunity is not actually granted until approved by the GCMCA or delegee after receiving Department of Justice authorization;
- 8.9.4.7. An explanation of why immunity is necessary, including whether any state or Federal charges are pending against the witness and a description of those charges, if any;
- 8.9.4.8. Whether the witness is currently incarcerated and, if so, the location, cause, and length of incarceration;
- 8.9.4.9. A summary of the witness's expected testimony;
- 8.9.4.10. Factual basis for believing the witness will assert the privilege against self-incrimination, including the nature of the offenses in which the witness may be incriminated;
- 8.9.4.11. The likelihood of the witness testifying, should immunity be granted; and
- 8.9.4.12. Name, title, address and telephone number of the representative from the local State's Attorney's Office and United States Attorney's Office with whom trial counsel coordinated the request. Include information on whether the representative supports or opposes the request.

## Chapter 9

### WITNESS FUNDING

#### *Section 9A—Overview of Witness Travel Funding*

**9.1. Funding Authorities.** DAFMAN 65-605, Volume 1, *Budget Guidance and Technical Procedures*, Table 11.2, prescribes the travel funding authorities for persons required for preliminary hearings and courts-martial. A copy of the travel funding table and additional procedural guidelines are located on the VMJD.

**9.2. Air Force Legal Central Funding.** AF/JAJM centrally funds and manages travel for certain persons identified in DAFMAN 65-605, Volume 1, Table 11.2, for travel required for Article 30a, UCMJ, pre-referral proceedings, Article 32, UCMJ, preliminary hearings and courts-martial. For example, if a witness is being traveled within the same MAJCOM or FLDCOM for a relevant proceeding, then the convening authority responsible for the proceeding funds witness travel (e.g., if an active duty DAF witness is being traveled to testify at an Article 30a, UCMJ, pre-referral proceeding or Article 32, UCMJ, preliminary hearing, the SPCMCA is responsible for funding that witness's travel). AF/JAJM does not fund travel for other matters related to disciplinary or administrative proceedings, such as travel to and from depositions and administrative discharge boards. AF/JAJM does not fund costs associated with preparation days for judicial proceedings. If a court-martial, Article 30a, UCMJ, pre-referral judicial proceeding, or Article 32, UCMJ, preliminary hearing is conducted within Regular DAF channels for a Category A or B Reservist, the applicable Regular DAF convening authority prescribed in AFMAN 65-605 Volume 1 is responsible for witness travel costs.

#### *Section 9B—Requesting Funding*

**9.3. Requesting Air Force Legal Central Travel Funds.** R.C.M. 703(c) governs the initial determination of whether a witness will be produced for a court-martial. Once the determination is made to require the presence of a person whose travel may be funded by AF/JAJM, including a witness whose production is required by the military judge, the SJA requests travel funds electronically through the Witness Funding Management System (WFMS) on FLITE.

9.3.1. The WFMS tracks all requests submitted by legal offices and is currently the sole method for requesting central witness funding. This system provides an up-to-date status on each request. In addition, the system has bulletin and e-mail capability that allows AF/JAJM's Central Witness Funding branch to provide essential information to field legal offices.

9.3.2. All requests must be sent through the WFMS to AF/JAJM at least ten, and no more than 30, calendar days before the witness is required to travel. Requests not received in a timely manner may require the convening authority to provide the initial funding. A link to the WFMS is accessible on the VMJD.

#### **9.4. Roles and Responsibilities within the WFMS.**

9.4.1. **Requesters.** All personnel assigned to the requesting legal office can create a request for central witness funding in the WFMS. The requester will need a Common Access Card and personal identification number to log into the database. Creating a request includes

supplying the initial information in the WFMS and forwarding the request to a local WFMS manager for approval.

**9.4.2. Local WFMS Managers.** The SJA, the Chief of Military Justice and the NCOIC of Military Justice are appointed as local WFMS managers. Only managers can approve, cancel and forward the initial request to AF/JAJM. AF/JAJM will not know a request is generated until the local manager approves and forwards the request to AF/JAJM. The WFMS will not allow a manager to both create and approve or forward an initial funding request. Managers are responsible for managing the status of witnesses until the witness voucher is paid, expert fees are paid, if applicable, and all orders and vouchers are provided to AF/JAJM. WFMS managers ensure all fields on the central witness funding request and constructive travel worksheet are completed prior to forwarding the request to AF/JAJM. After approval by the local manager, the request is forwarded to Central Witness Funding for review.

**9.4.3. Central Witness Funding Branch.** The Central Witness Funding branch approves or disapproves all requests. The requesting office is notified of the decision through the WFMS.

**9.4.4.** All requests received through the WFMS are assumed to be approved by the appropriate authority for witness production. AF/JAJM does not determine whether a witness will or will not be produced for a proceeding. Witness production and witness funding are two separate processes; AF/JAJM only determines whether or not the witness's travel will be centrally funded.

## **9.5. Responsibilities for Travel of Centrally Funded Witnesses.**

### **9.5.1. JAJM Responsibilities.**

**9.5.1.1.** AF/JAJM is responsible for funding the witness to travel from their current location (Permanent Duty Station, leave, or Area of Responsibility) to the base where the proceeding is being conducted.

**9.5.1.1.1.** Per diem rates are determined based on the *Joint Travel Regulations*. If lodging is not available and either a non-availability number or a non-availability letter is provided, or there is a letter from the requesting legal office stating a dining facility is not operable, then full rate per diem is authorized.

**9.5.1.1.2.** AF/JAJM considers funding rental vehicles in accordance with the *Joint Travel Regulations*, paragraph 020209, Rental Vehicle, and paragraph 020212B1, Travel in and around the Temporary Duty Location. An order-issuing official may authorize/approve a rental vehicle when advantageous to the government. A traveler's personal preference or minor inconvenience shall not be the basis for authorizing/approving rental vehicle use. If disapproved by AF/JAJM, the convening authority may choose to fund a rental vehicle from a separate fund cite.

**9.5.1.2.** AF/JAJM furnishes procedural instructions through e-mail for centrally funded travel. AF/JAJM does not fund costs associated with trial preparation. Central witness funding pays for a witness to travel one day prior to the start of the proceeding for stateside travel or two days prior to the start of the proceeding for travel to or from an overseas location. The convening authority may choose to fund trial preparation days from a separate fund cite.



### 9.5.2. Legal Office Responsibilities.

9.5.2.1. The requesting legal office is responsible for ensuring all temporary duty arrangements are completed in a timely manner (e.g., flight reservations, billeting, transportation). It is the base legal office's responsibility to ensure witnesses are transported to and from court, meals, and the lodging facility or hotel.

9.5.2.2. The requesting legal office's WFMS manager notifies AF/JAJ immediately when the presence of a centrally funded witness is no longer required.

9.5.2.3. The requesting legal office is responsible for obtaining Defense Travel System access for the witness and will be responsible for processing the invitational travel orders. Once approved, the legal office will provide the invitational travel orders and the ticketed itinerary to the witness. The requesting legal office is responsible for filing the witness travel voucher. The finance office associated with AF/JAJ will not process a manual DD Form 1610 or DD Form 1351-2.

9.5.2.4. The legal office shall provide justification for witnesses requiring more than six temporary duty days for stateside travel and eight temporary duty days for overseas travel. The legal office must obtain prior approval from AF/JAJM for any deviations to the authorized travel itinerary or the organization approving such deviation may be responsible for the additional costs. Witnesses subject to recall by the court-martial shall remain in the local area until released to avoid travel itinerary deviations.

9.5.3. Expert Witnesses. AF/JAJM only funds expert witnesses involved in urinalysis cases (e.g., forensic experts such as chemists, toxicologists, qualified physicians) and only when the expert has been approved by a convening authority to testify at courts-martial relating to urinalysis testing. AF/JAJM does not fund consultants for either the Government or defense, including in urinalysis cases.

9.5.3.1. Requesting Funding for an Expert. The witness fee per day, travel costs, and per diem must be included in the request. The request must include a statement of the convening authority's approval of the expert and the amount of compensation. In cases involving an expert urinalysis witness, the SJA for the requesting legal office must certify the attendance and testimony of the expert witness in writing before payment of expert or inconvenience fees can be made.

9.5.3.2. Non-Government Civilian Expert Witnesses. Before requesting funding for a non-government civilian expert witness, trial counsel must first confirm the unavailability of the forensic urinalysis experts at the Air Force Drug Testing Laboratory, Joint Base San Antonio-Lackland, Texas, or any other expert under contract with the DoD. SJAs shall obtain written agreements with non-government civilian expert witnesses fixing their rate of compensation and reimbursement for expenses. A sample agreement is located on the VMJD

9.5.3.3. Fee Limits. AF/JAJM funding for urinalysis expert witness fees is limited to \$1,000 per day, with a maximum of \$4,000 per witness, per case, for in-court testimony only. Expert witness fees paid by AF/JAJM will not include payment for days devoted to travel, trial preparation, or consultation. Any agreement to pay amounts exceeding AF/JAJM's limits will result in the convening authority accepting responsibility for the

excess costs. The SJA must certify the attendance and testimony of expert witnesses before payment of expert fees can be made.

9.5.3.4. Inconvenience Fees. AF/JAJM may fund up to \$500 per expert witness, per case, for inconvenience or cancellation fees for prior approved urinalysis expert witnesses. Inconvenience fees not approved in advance by AF/JAJM will not be paid from central witness funds. Payment will be denied unless the written agreement at the time the services of the witness was contracted provided for inconvenience or cancellation fees. In every case, there must be a showing of actual inconvenience and financial loss to the witness, and cancellation within five calendar days of the authorized travel date. In order to demonstrate actual inconvenience and financial loss, more than a mere cancellation is required. Expert witnesses are expected to mitigate any financial loss caused by a cancellation.

9.5.4. Consultants. Central witness funds are used for expert witnesses, not consultants. The convening authority is responsible for payment of expert consultant services and fees. A central witness funding request constitutes a good faith representation the witness is expected to testify at the trial. However, should AF/JAJM approve and fund an expert witness who does not ultimately testify at trial, the funding authorization will not be revoked.

## **9.6. Rates for Civilian Witnesses.**

9.6.1. Civilians Employed by the United States. When summoned as a witness, a civilian employed by the U.S. Government is paid as authorized by the *Joint Travel Regulations* or by the Federal Travel Regulation, 41 C.F.R. Subtitle F (for non-DoD civilian employees).

9.6.2. Civilians Not Employed by the United States. When summoned as a witness, a civilian not employed by the United States Government is paid fees and allowances authorized under Title 28 U.S.C. § 1821, *Per diem and mileage generally; subsistence*.

## ***Section 9C—Processing Vouchers***

**9.7. Processing Travel Vouchers.** The requesting legal office ensures travelers promptly prepare and submit travel vouchers to AF/JAJM as applicable. All paid vouchers must be e-mailed to Central Witness Funding within five days of completion. All DTS users will accomplish their vouchers through DTS. The installation legal office must ensure AF/JAJM promptly receives a copy of the paid DTS voucher. If a witness does not file a voucher within 30 days of the initial travel date, the orders will be automatically revoked.

9.7.1. If a military witness files a voucher 30 or more days after the initial travel date, the travel voucher may be returned as “no order on file” and a letter from the witness’s commander may be required to explain why the voucher was not filed in a timely manner.

9.7.2. If a civilian witness files a voucher 30 or more days after the initial travel date, the travel voucher may be returned as “no order on file” and a letter may be required to explain why the voucher was not filed in a timely manner.

9.7.3. If an accused is adjudged confinement, ensure the travel voucher is filed prior to entering confinement. Failure to file the travel voucher prior to entering confinement will require the member’s unit to make arrangements for the confined member to file the voucher.

**9.8. Processing Expert Fee Vouchers.** Use the Standard Form 1034, *Public Voucher for Purchases and Services Other than Personal*, or Optional Form 1164, *Claim for Reimbursement for Expenditures on Official Business*. The SJA with administrative responsibility for the proceeding in which the expert witness testified ensures the expert witness prepares and submits the appropriate forms and supporting documents (e.g., receipts, fee schedule, etc.) to the servicing finance office. Centrally Funded Witness forms are sent to AF/JAJM for processing. Before AF/JAJM will pay a civilian expert witness, the SJA must certify the dates of attendance and any scheduled witness fees (e.g., expert testimony, inconvenience). See the template included on the VMJD.

JEFFREY A. ROCKWELL  
Lieutenant General, USAF  
The Judge Advocate General

## Attachment 1

## GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

*References*

- 10 U.S.C. § 801, et seq, *Uniform Code of Military Justice (UCMJ) Manual for Courts-Martial (MCM) 2019 Edition*
- Privacy Act (5 U.S.C. § 552a)
- 10 U.S.C. § 1044, *Legal assistance*
- 10 U.S.C. § 1044e, *Special Victims' Counsel for victims of sex-related offenses*
- 10 U.S.C. § 1058, *Responsibilities of military law enforcement officials at scenes of domestic violence*
- 10 U.S.C. § 1059, *Dependents of members separated for dependent abuse: transitional compensation; commissary and exchange benefits*
- 10 U.S.C. § 1408, *Payment of retired or retainer pay in compliance with court orders*
- 10 U.S.C. § 1565b, *Victims of sexual assault: access to legal assistance and services of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates*
- 10 U.S.C. § 9037, *Judge Advocate General*
- 18 U.S.C. § 1512, *Tampering with a witness, victim, or an informant*
- 18 U.S.C. § 1513, *Retaliating against a witness, victim, or an informant*
- 18 U.S.C. § 6004, *Certain administrative proceedings*
- 28 U.S.C. § 1821, *Per diem and mileage generally; subsistence*
- 34 U.S.C. § 20141, *Services to victims*
- Pub. L. 116-92, 133 Stat. 1366, *National Defense Authorization Act for Fiscal Year 2020, sections 540C, 549*, 14 December 2019
- Pub. L. 117-81, 135 Stat. 1711, *National Defense Authorization Act for Fiscal Year 2022, section 545*, 27 December 2021
- 32 C.F.R. Part 114, *Victim and Witness Assistance*
- 41 C.F.R. Subtitle F, *Federal Travel Regulation System*
- M.R.E. 412
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- DoD 5400.11-R, *Department of Defense Privacy Program*, 14 May 2007
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DAFI 51-201, *Administration of Military Justice*, 18 January 2019

AFI 51-304, *Legal Assistance, Notary, Preventative Law, and Tax Programs*, 22 August 2018

AFI 51-306, *Administrative Claims for and Against the Air Force*, 5 May 2021

AFI 71-101, Volume 1, *Criminal Investigations Program*, 1 July 2019

AFI 90-5001, *Integrated Resilience*, 25 January 2019

AFI 90-6001, *Sexual Assault Prevention and Response (SAPR) Program*, 15 July 2020

*Joint Travel Regulations*, current version (updates monthly)

AFMAN 31-115, Volume 1, *Department of the Air Force Corrections System*, 22 December 2020

AFMAN 51-203, *Records of Trial*, 4 September 2018

DAFMAN 65-605 Volume 1, *Budget Guidance & Technical Procedures*, 31 March 2021

AFI 36-2909\_AETCSUP, *Air Force Professional Relationships and Conduct*, 27 October 2020

Uniform Rules of Practice Before Department of the Air Force Courts-Martial, 1 March 2022

DTM 14-003, *DoD Implementation of Special Victim Capability (SVC) Prosecution and Legal Support*, 12 February 2014

***Adopted Forms***

AF Form 847, *Recommendation for Change of Publication*

DD Form 453, *Subpoena*

DD Form 1610, *Request and Authorization for TDY Travel of DoD Personnel*

DD Form 1351-2, *Travel Voucher or Subvoucher*

DD Form 2701, *Initial Information for Victims and Witnesses of Crime*

DD Form 2702, *Court-Martial Information for Victims and Witnesses of Crime*

DD Form 2703, *Post-Trial Information for Victims and Witnesses of Crime*

DD Form 2704, *Victim/Witness Certification and Election Concerning Prisoner Status*

DD Form 2705, *Notification to Victim/Witness of Prisoner Status*

DD Form 2706, *Annual Report on Victim and Witness Assistance*

DD Form 2873, *Military Protection Order*

Standard Form 1034, *Public Voucher for Purchases and Services Other than Personal*

Optional Form 1164, *Claim for Reimbursement for Expenditures on Official Business*

***Abbreviations and Acronyms***

**ABA**—American Bar Association

**ADC**—Area Defense Counsel

**AFI**—Air Force instruction

**AF/JAJ**—Military Justice and Discipline Domain

**AF/JAJA**—Appellate Defense Division

**AF/JAJD**—Trial Defense Division

**AF/JAJG**—Government Trial and Appellate Counsel Division

**AF/JAJI**—Investigations, Inquiries and Relief Division

**AF/JAJM**—Military Justice Law and Policy Division

**AF/JAJO**—Office of Disability Counsel Division

**AF/JAJS**—Victims' Counsel Division

**AF/JAT**—Air Force Trial Judiciary

**AF/JAX**—Professional Development Directorate

**AFJAGC**—The Air Force Judge Advocate General's Corp

**AFJAGS**—Air Force Judge Advocate General's School

**AFMAN**—Air Force Manual

**AFOSI**—Air Force Office of Special Investigations

**AFPD**—Air Force Policy Directive  
**AFRC**—Airman and Family Readiness Center  
**AFRPC**—Air Force Rules of Professional Conduct  
**AFSFC/FC**—Air Force Security Forces Center, Confinement and Corrections Directorate  
**AMJAMS**—Automated Military Justice Analysis and Management System  
**ANG**—Air National Guard  
**ARC**—Air Reserve Component  
**AVC**—Appellate Special Victims Counsel  
**CAT**—Case Administration Tool  
**CATCH**—Catch a Serial Offender Program  
**CCVC**—Chief Circuit Victims’ Counsel  
**C.F.R.**—Code of Federal Regulations  
**CIP**—Criminal Investigation and Prosecution Capability  
**CPO**—Civilian Protective Order  
**DAF**—Department of the Air Force  
**DAFI**—Department of the Air Force Instruction  
**DAFPD**—Department of the Air Force Policy Directive  
**DAVA**—Domestic Abuse Victim Advocate  
**DoD**—Department of Defense  
**DoDD**—Department of Defense Directive  
**DoDI**—Department of Defense instruction  
**DoDM**—Department of Defense Manual  
**DRU**—Direct Reporting Unit  
**DTM**—Directive-Type Memorandum  
**DTS**—Defense Travel System  
**ECR**—Extraordinary Circumstances Request  
**FAP**—Family Advocacy Program  
**FLDCOM**—Field Command  
**FLITE**—Federal Legal Information Through Electronics  
**FOA**—Field Operating Agency  
**FOIA**—Freedom of Information Act  
**GCM**—General Court-Martial

**GCMCA**—General Court-Martial Convening Authority  
**IG**—Inspector General  
**LOC**—Letter of Counseling  
**LOR**—Letter of Reprimand  
**LRO**—Local Responsible Official  
**MAJCOM**—Major Command  
**MCIO**—Military Criminal Investigative Organization  
**MCM**—Manual for Courts-Martial  
**MEO**—Military Equal Opportunity  
**MOU**—Memorandum of Understanding  
**MPO**—Military Protective Order  
**M.R.E.**—Military Rule of Evidence  
**NDAA**—National Defense Authorization Act  
**OPR**—Office of Primary Responsibility  
**PHO**—Preliminary Hearing Officer  
**R.C.M.**—Rule for Courts-Martial  
**RegAF**—Regular Air Force Component  
**ROI**—Report of Investigation  
**ROT**—Record of Trial  
**SAPR**—Sexual Assault Prevention and Response  
**SARC**—Sexual Assault Response Coordinator  
**SG**—Surgeon General  
**SJA**—Staff Judge Advocate  
**SOR**—Scope of Representation  
**SORN**—System of Records Notice  
**SPCM**—Special Court-Martial  
**SPCMCA**—Special Court-Martial Convening Authority  
**SVIP**—Special Victims Investigation and Prosecution Capability  
**TJAG**—The Judge Advocate General  
**UCMJ**—Uniform Code of Military Justice  
**USAFA**—United States Air Force Academy  
**U.S.C.**—United States Code



**USSF**—United States Space Force

**VA**—Victim Advocate

**VC**—Victims' Counsel

**VMJD**—Virtual Military Justice Deskbook

**VP**—Victims' Paralegal

**VWAP**—Victim and Witness Assistance Program

**VWIN**—Victim Witness Information Network

**VWL**—Victim Witness Liaison

**WFMS**—Witness Funding Management System

### *Terms*

**Adjudged Forfeitures**—Forfeitures of pay and/or allowances announced as part of a sentence in a court-martial. See Article 57, UCMJ.

**Central Repository**—A central organization for confinee information, charged with establishing procedures to ensure victims are notified of changes in confinee status, if they so elect. The United States Air Force central repository is the Air Force Security Forces Center (AFSFC/FC), Confinement and Corrections Directorate/Victim and Witness Assistance Program Central Repository. It is located at 1517 Billy Mitchell Boulevard, Joint Base San Antonio-Lackland, Texas 78236-0119. COMM: (210) 925-5607, Toll Free (877) 273-3098.

**Component Responsible Official**—The DAF official responsible for coordinating, implementing and managing the DAF VWAP. TJAG is the DAF component responsible official.

**Court-Martial Convening Authority**—A commander or equivalent person that exercises court-martial convening authority powers as set out in the UCMJ and MCM. In this regulation, the term Court-Martial Convening Authority may be used to refer to an individual authorized to convene courts-martial or to the authority to convene courts-martial.

**Crime of Domestic Violence**—An offense that has as its factual basis one of the following: (1) the use or attempted use of physical force or (2) the threatened use of a deadly weapon. The alleged offender must be (1) a current or former spouse; (2) parent or guardian of the victim; (3) a person with whom the victim shares a child in common; (4) a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian; or, (5) a person similarly situated to a spouse, parent or guardian of the victim. See DoDI 6400.06; 18 U.S.C. § 922.

**Child Victim**—The definition of child victim varies based on the offense and context. Practitioners must consult the MCM to determine which definition of child victim applies.

**Civilian Protective Order (CPO)**—Formal protective orders issued by civilian court. See DAFI 51-201 for additional guidance and discussion.

**Contingent Confinement**—Confinement authorized by a court-martial in the form of a fine-enforcement provision.

**Deferment of Forfeitures**—Delaying the effective date of the beginning of forfeitures of pay and/or allowances. See Article 57, UCMJ.

**Dependent**—Generally, the spouse, unmarried child, parent of the member, or person in the member's legal custody, if those persons meet certain criteria. For further information, see 37 U.S.C. § 401.

**Domestic Abuse Victim Advocate**—A FAP staff member who provides domestic abuse victim advocacy services to victims of domestic abuse. See DAFI 40-301.

**Entry of Judgment**—Document which reflects the results of the court-martial after all post-trial actions, rulings or orders. See R.C.M. 1111 and Article 60c, UCMJ.

**Family Advocacy Program (FAP)**—The FAP is governed by DAFI 40-301. The FAP personnel develop, implement, and evaluate programs and policies to prevent and treat domestic abuse and child maltreatment. The FAP program includes Domestic Abuse Victim Advocates (DAVAs).

**Family Advocacy Program (FAP) Victim Advocate (VA)**—Personnel appointed by the FAP to provide essential support, liaison services, and care to the victim.

**General Court-Martial Convening Authority**—Convening authority authorized to convene general courts-martial. See Article 22, UCMJ.

**Local Responsible Official**—Commander responsible for identifying victims and witnesses of crimes, coordinating the delivery of services required by the VWAP, resourcing the VWAP, and establishing and chairing the VWAP council. Refer to [paragraph 2.9](#).

**Military Protective Order (MPO)**—Formal protective orders issued by commanders on DD Form 2873. See DAFI 51-201 for DAF guidance on MPOs.

**No-Contact Order**—Order given by a senior or supervisory military member for another military member to have no-contact with another person for a period of time. See DAFI 51-201 for DAF guidance on no-contact orders.

**Offense**—Crime punishable under the UCMJ or the law of applicable local, state, other federal (including, where applicable, tribal), or foreign jurisdiction. For purposes of this instruction, the term offense only applies to crimes where one of the following criteria are met: (1) the inquiry or investigation is primarily conducted by the DAF, irrespective of the identity of the offender or victim or the type of the investigation (e.g., criminal, administrative, or command); or (2) the DAF is adjudicating the offense (such adjudication may include administrative, nonjudicial, and judicial action against a military member and/or action taken against a civilian employee). See DoDI 1030.02; DoDI 6400.07.

**Representative**—A person designated by the military judge or convening authority to exercise the legal rights of the victim under this instruction or as they pertain to a victim of any offense before the court.

**Sexual Assault Prevention and Response (SAPR) Program**—The SAPR program is governed by AFI 90-6001, *Sexual Assault Prevention and Response Program*. It applies to support of victims of sexual assault in cases that do not involve intimate partners or family members. The SAPR program includes Victim Advocates.

**Sexual Assault Prevention and Response (SAPR) Victim Advocate (VA)**—Personnel appointed by the SAPR Program to provide essential support, liaison services, and care to the victim.

**Special Court-Martial Convening Authority**—Convening authority authorized to convene special courts-martial. See Article 23, UCMJ.

**Special Victim Investigation and Prosecution Capability**—Team of specially trained prosecutors, paralegals, and victim witness assistance personnel who work with specially trained investigators, often from investigative agencies such as AFOSI, to provide advice, guidance, and support during the investigative and military justice process.

**Special Victims' Counsel**—An attorney employed by the DAF JAG Corps who is designated and certified by TJAG to serve in the position of VC. This term includes both civilian attorneys employed by DAF and uniformed attorneys employed by DAF, provided they meet the qualifications of 10 U.S.C. § 1044e(d) and are so designated.

**Staff Judge Advocate**—The SJA is the senior legal representative servicing the LRO. LROs may delegate their official duties and responsibilities to the SJA. The delegation must be in writing and addressed to the LRO's SJA by duty title rather than name. The SJA may further delegate those duties and responsibilities in writing to a VWAP Coordinator while maintaining oversight and overall responsibility for the program.

**Statement of Trial Results**—Document which is prepared after the announcement of sentence or acquittal and is inserted into the Record of Trial. See R.C.M. 1101 for further information.

**Victim**—A person who suffered direct physical, emotional, or financial harm as the result of an offense. Victims shall be identified at the earliest opportunity after the detection of an offense. **Note:** This definition determines those who are entitled to victim services in cases where VWAP has responsibilities. The definition of victim for other obligations or rights varies throughout this instruction based on statutory requirements. Where the definition of victim changes, it is noted. Victim designation for VWAP purposes includes persons alleged, by themselves or another, to have suffered harm from an offense, regardless of the adjudication status of the offense. In the event a victim is identified as such in an investigation or prosecution but has not alleged harm by the offense, VWAP services shall still be provided.

**Victim and Witness Assistance Program Coordinator**—The individual designated in writing by the SJA to implement and manage the VWAP for an LRO. The coordinator must be a member of the legal office under the supervision (direct or indirect) of the SJA. The coordinator must possess sufficient skill, experience, and authority to carry out sensitive program management and training responsibilities on behalf of the LRO and under the supervision of the SJA.

**Victim and Witness Assistance Program Personnel**—Term which includes LROs, SJAs, VWAP Coordinators, and VWLs. **Note:** Such personnel who delegate their VWAP responsibilities remain responsible to ensure victims and witnesses are notified of and provided services and notices where applicable.

**Victim's Counsel**—Any attorney hired by or appointed to represent the specific and expressed interests of a victim client. This term encompasses both counsel employed by the Service or DoD as well as any civilian attorney hired by or appointed on behalf of the victim.

**Victim/Witness Liaison**—An individual appointed by the LRO or delegate to assist a victim or witness during the military justice (including the investigation phase) or applicable administrative process. The designation need not be in writing. The liaison may be a judge advocate, paralegal, or other legal office personnel appropriate under the circumstances of a particular case. A liaison

is responsible for making contact between victims and service agencies and arranging for those services, when appropriate.

**Virtual Military Justice Deskbook**—Knowledge management website with military justice resources available to Air Force judge advocates.

**Waiver of Forfeitures**—Act of a convening authority to direct forfeitures not be collected but that they be directed to the accused's dependents, for use of the accused's dependents, for no more than six months. See Article 58b, UCMJ.

**Witness**—A person who has information or evidence of a crime and provides that information or evidence to an Air Force official. When the witness is a minor, the term includes an appropriate family member. For purposes of obligations under VWAP and this instruction , the term “witness” does not include a purely defense witness, law enforcement acting in their official capacity, government expert witnesses or consultants, or an individual allegedly involved in a crime as a conspirator, accomplice, or principal.