

Article 6b, UCMJ, Enforcement Rights

Draft Recommendation 1: Congress amend Article 6b(e)(1) and (2), UCMJ, as follows:

(1) The victim of an offense under this chapter may assert the rights of the victim afforded by a section (article) or rule specified in paragraph (5) at the court-martial in which the accused is being tried or may assert these rights with a military judge pursuant to section 830a (article 30a) if charges have not yet been referred to a court-martial. The court-martial, or military judge if pre-referral, shall take up and decide any motion asserting a victim's right forthwith. If the relief sought is denied, the victim may petition the Court of Criminal Appeals for a writ of mandamus.

(2) If the victim of an offense under this chapter is subject to an order to submit to a deposition, notwithstanding the availability of the victim to testify at the court-martial trying the accused for the offense, the victim may file a motion with the court-martial, or with a military judge if pre-referral, to quash such order. If the court-martial or military judge denies the relief sought, the victim may petition the Court of Criminal Appeals for a writ of mandamus to quash such order.

Draft Recommendation 2: The Joint Service Committee on Military Justice draft an amendment to Rule for Courts-Martial 309(b) to provide that a victim may file a motion pre-referral with a military judge to assert their rights under Article 6b(a), UCMJ.

Draft Recommendation 3: Congress amend Article 6b(e) to add a new subparagraph (3), as follows:

The Court of Appeals for the Armed Forces shall review the record in any matter decided by a Court of Criminal Appeals under this section in which, upon petition of the victim and on good cause shown, the Court of Appeals for the Armed Forces grants a review. For any petition of review granted, the Court of Appeals for the Armed Forces may act on any issues specified in their grant of review.

Draft Recommendation 4a: Congress amend Article 6b(e)(3)(A)–(C), UCMJ, by renumbering the subsections as Article 6b(e)(4)(A)–(C).

Recommendation 4b: The new subparagraph (4)(B) should be amended as follows:

A petition for a writ of mandamus described in this subsection shall have priority over all proceedings before the Court of Criminal Appeals. The Court of Criminal Appeals shall review and decide on a victim's petition for a writ of mandamus *[within 30 days]* *[within 60 days]* *[another time period]* after the petition has been filed with that court, unless the litigants, with the approval of the court, have stipulated to a different time period. To the extent practicable, court-martial proceedings shall not be stayed or subject to a continuance of more than five days for purposes of enforcing this section.

Recommendation 4c: The new subparagraph (4)(C) should be amended as follows:

Review of any decision of the Court of Criminal Appeals on a petition for a writ of mandamus described in this subsection shall have priority in the Court of Appeals for the Armed Forces, as determined under the rules of the Court of Appeals for the Armed Forces. The Court of Appeals for the Armed Forces shall review and decide on a victim's writ-appeal [*within 30 days*] [*within 60 days*] [*another time period*] after the writ-appeal has been filed with that court, unless the litigants, with the approval of the court, have stipulated to a different time period.

Or should this paragraph remain unchanged? Current language:

Review of any decision of the Court of Criminal Appeals on a petition for a writ of mandamus described in this subsection shall have priority in the Court of Appeals for the Armed Forces, as determined under the rules of the Court of Appeals for the Armed Forces.

Draft Recommendation 5: Congress amend Article 6b(e), UCMJ, to add a new subparagraph 4(D):

The Courts of Criminal Appeals and the Court of Appeals for the Armed Forces shall apply the ordinary standard of appellate review, legal error or abuse of discretion, in reviewing a victim's petition for a writ of mandamus asserting their [*enumerated rights under Article 6b(a)*]. However, the higher standard of review, clear and indisputable error, shall continue to apply to review of alleged violations of Military Rules of Evidence 412, 513, 514, and 615.]

Or

[*enumerated rights under Article 6b, including for alleged violations of Military Rules of Evidence 412, 513, 514, and 615*].

Draft Recommendation 6: Congress amend Article 6b(e), UCMJ, to add the following conforming changes:

- a. Strike the words "by Court of Criminal Appeals" in the title of Article 6b(e).
- b. Renumber what is currently Article 6b(e)(4) to be Article 6b(e)(5).
- c. In renumbered paragraph (e)(5), strike the words "Paragraph (1)" and substitute the words "This subsection."