

THE MILITARY JUSTICE SYSTEM & THE VICTIM WITNESS ASSISTANCE PROGRAM (VWAP)



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LEARNING OBJECTIVES



- Understand the basics of the Military Justice System
- Understand the key personnel in the Military Justice System
- Understand the Victim Witness Assistance Program (VWAP)
- Identify VWAP Responsible officials

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MILITARY JUSTICE - *Back in the day*



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MODERN MILITARY JUSTICE



- Uniform Code of Military Justice - enacted 1950, became effective 1951
- Military Justice Act of 1968 and 1969 Manual for Courts-Martial (MCM)
- Military judge (judge advocate); detailed defense counsel

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MODERN MILITARY JUSTICE



- Tracks civilian law crimes and unique military offenses (unauthorized absence, disrespect, and dueling)
- Commander driven system
- Jurisdiction
 - Service members are subject to the UCMJ worldwide, on and off duty, on and off base
 - Civilian jurisdiction is based on where the crime happens, not who commits it
 - Concurrent jurisdiction may exist

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Jurisdiction



- DoD Bases and Installations 3 types jurisdiction
- Exclusive Federal
- Concurrent Federal and State/local
- Proprietary - local only



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WHO INVESTIGATES

NCIS/CID/OSI	USMC CID/Navy Security/MP Investigator	MPs	Command investigator
Felony – serious cases	Misdemeanor	Initial call/traffic/ minor offenses	Preliminary inquiry for minor cases
Special Agents – family and sexual violence	Investigators – no specialization in sex offenses	Military police – no specialization	Company grade officer or SNCO – no special investigative or law enforcement ability
All sex offenses	Minor – sexual harassment – not aggravated	Never	Sexual harassment/EEO – never sexual assault, rape, forcible sodomy

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- ## Commanders' Options
- Court-martial charges?
 - Civilian prosecution?
 - Alternate disposition?
 - No action?
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- ## Courts-martial Personnel
- Trial counsel (prosecutor)
 - Defense counsel (entitled to military, may also have civilian)
 - Convening authority
 - Military criminal investigators (MCIO)
 - Military judge
 - Panel (jury)
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Three Types of Courts-Martial

- Summary court-martial - not a federal conviction
- Special court-martial - similar to federal misdemeanor
- General court-martial - similar to federal felony
- *Procedures differ based on level of seriousness*

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INVESTIGATION TO PROSECUTION: ROADMAP

Investigation

- NCIS/OSI/CID
- Military Police
- Civilian law enf
- Command

Command Decisions

Article 33 Investigation

Special Court-Martial

Summary Court-Martial

Administrative Actions

Internal Action

Waiver

Trial

General or Special Court-martial

- Witness interviews
- Developing evidence and theory
- Motion/obscure (motions to protect victim)
- Jury Selection (Members)
- Opening statements
- Government case - witnesses and exhibits (including victim testimony)
- Defense case - witnesses and evidence (including accused - if he/she takes stand)
- Government rebuttal case
- Closing arguments
- Deliberations by members and announcement of findings (verdict)
- Sentencing case, deliberation on sentence, announcement of sentence

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VWAP - PROGRAM OVERVIEW

VWAP: PURPOSE & GOALS



- Ensure that victims and witnesses receive appropriate response and assistance
- Protect victims from further harm or hardship
- Ensure all victims are aware of their rights and are provided services they need
- Employ a multi-disciplinary approach to assisting victims and witnesses by combining the services of law enforcement, family advocacy, medical, legal corrections, and command personnel.

VICTIM AND WITNESS ASSISTANCE PROGRAM (VWAP) - REFERENCES



- Victim Witness Protection Act of 1982 – establishes VWAP
- Victims of Crime Act of 1984 – DOJ funded/Victims have fund
- Crime Control Act of 1990 – Victims right to information about offenders
- 18 U.S.C. § 3771(a) "Justice for All Act of 2004" – most recent
- DoDD 1030.1 of April 13, 2004 "Victim and Witness Assistance"
- DoDI 1030.2 of June 4, 2004 "Victim and Witness Assistance Procedures"
- SECNAVINST 5800.11B of 5 Jan 2006 (DON Regulation)
- MCO P5800.16A (LEGADMINMAN) Chapter 6 (USMC Regulation)
- AR 27-10, Chapter 18 (Army JAG Corps Regulation)
- AFI 51-201, Chapter 7 (Air Force JAG Corps Regulation)

Victims Eligible for VWAP Services



- Includes, *but is not limited to*:
- Military members and dependents.
- Outside the Continental U.S. - DoD civilian employees, contractors, and family members.
- If victim is under 18, incompetent, incapacitated, or deceased, the term includes either: spouse, guardian, parent, child, sibling, family member, or another person designated by court.
- Authorized representative of Institutional Entity – but not entitled to individual services – such as, transitional compensation, etc.

VWAP: VICTIMS' RIGHTS



- The right to be reasonably protected from the accused.
- The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
- The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
- The right to be reasonably heard at any public proceeding involving release, plea, sentencing, or any parole proceeding.
- The reasonable right to confer with the attorney for the Government in the case.
- The right to full and timely restitution as provided in law.
- The right to be treated with fairness and with respect for the victim's dignity and privacy.

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VWAP: Witnesses eligible for services



- A person who has information or evidence about a crime, and provides that knowledge to a DOD Component about an offense in the investigative jurisdiction of a DOD component.
- When the witness is a minor, a witness includes a family member or legal guardian.
- The term witness does not include a defense witness or an individual involved in the crime as a perpetrator or accomplice.

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VWAP: WITNESS' RIGHTS



- To be treated with fairness and respect for the witness's dignity and privacy.
- To be reasonably protected from the accused.
- To be notified of any scheduling changes which will affect their appearance at court-martial.
- To be notified of the apprehension of an accused, the initial appearance of an accused before a military judge, the release of the accused pending court-martial, and trial proceedings (including entry of guilty pleas and sentencing).
- To receive information about the conviction, sentence, confinement, and release of the accused.

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VWAP: DOD POLICY



- Role of victims/witnesses should be enhanced/protected
- Do all that is possible to assist victims/witnesses without infringing on the rights of the accused
- **Particular attention to victims of serious, violent crime, including sexual assault, child abuse, and domestic violence.**

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VWAP: HOW IT WORKS



- **Main Effort – Victim Witness Liaison Officer!**
- Base and Installation commanders or SJAs are responsible for implementing VWAP and the central points of contact for VWAP issues aboard installations.
- Manage through Victim Witness Liaison Officers (VWLO), VWAP Council and VWAP Coordinators for commands.

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VWAP OFFICIALS



- TJAGs and Staff Judge Advocate to the Commandant of the Marine Corps – manage VWAPs
- DoD VWAP Council
- Installation commanders – VWL/VWLO
- Law enforcement - VWAP Representative
- Legal representatives - VWAP Representative
- Corrections Personnel - VWAP Representative
- Service providers (advocates, chaplain, medical) - VWAP Representatives

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**INSTALLATION LEVEL:
WHO DOES WHAT**



- VWLO - manage base programs for Commanders
- NCIS/CID/OSI/MPs - normally have first responsibility to inform crime victims and witnesses of rights under program; perform threat assessment; assist in contacting other services; safeguard property; provide updates (including apprehension); contact command VWACs
- Prosecutors and legal personnel - have continuing responsibility to ensure rights and services afforded.
- Corrections personnel - manage post-trial confinement forms, reports and notifications and coordinate with other offices

**INSTALLATION LEVEL:
WHO DOES WHAT**



- Sexual Assault Prevention and Response Program/ SARCs, UVA/VAs – victims of sexual assault
- Family Advocacy Program – Victim Advocates
- Transitional Compensation – via commanders
- Unit Commanders – Security, military protective orders, notifications
- Chaplains – counseling, comfort
- Medical - services
- Civilian advocacy services, social services, medical

VWAP: COORDINATION IS KEY



- All offices responsible for a part of the criminal justice process (including, but not limited to, law enforcement and criminal investigative agencies, convening authorities, legal, corrections) are responsible for ensuring a smooth transition of victim and witness assistance at each stage of the criminal justice process. This means that close coordination is required among the VWAP personnel assigned to each of these offices during the transition from one phase of the criminal justice process to the next.
- Ensure right contact information is given on each DD Form to each Victim or Witness
- Ensure continuing coverage for Victims/Witnesses of services and rights.

VWLO
REQUIREMENTS



- *Responsible for everything the VWAP does or fails to do at the base.*

VWLO
REQUIREMENTS



- *“Maintain a directory of military and civilian programs and services . . . within geographic area of the installation.”*

VWLO
REQUIREMENTS



- *“Maintain a directory of military and civilian programs and services . . . within geographic area of the installation.”*
- *Assist victims in exercising their rights (if necessary, assist in contacting the people responsible for providing victim services)*

**VWLO
REQUIREMENTS**



- “Maintain a directory of military and civilian programs and services . . . within geographic area of the installation.”
- If necessary, assist in contacting the people responsible for providing victim and witness services and relief
- **Ensure all victims and witnesses are receiving information on rights and services – DD Forms 2701-2704**

VWAP: Pretrial & DD Form 2701



- NCIS/CID/PMO provide V/Ws with DD Form 2701
- If no investigation – Prosecution team provides DD Form 2701
- 2701 provides initial rights advisement, discusses impact of various crimes, explains basic services and notifies V/W where to get further assistance

VWAP: Military Trial Process & DD Form 2702



- Upon first contact with victim or witness, prosecution provides DD Form 2702
- DD Form 2702 explains military trial process, gives tips and restates rights.
- 2702 includes rights regarding participating in trial process.
- 2702 provides VWAP responsible official contact information and prosecutor contact information

VWAP: Post Trial & DD Form 2703



- Prosecution provides victim or witness with DD Form 2703 at finish of trial.
- Includes "Right to receive information about the conviction, sentencing, imprisonment, parole eligibility and release of the accused"
- Provides Contact info for Service Central Repository (CMC PSL (Corrections)), Confinement Facility, Service Clemency and Parole Board and any other necessary agency/office
- "From now on, your POC will be the confinement facility or the Service Central Repository listed on the back of this page."

VWAP: Post Trial & DD Form 2704



- TC provides brig with DD Form 2704 at finish of trial.
- Requires election by each V/W whether to receive information on confinement status

VWAP: Post Trial Notifications & DD Form 2705



- Corrections personnel ensure notifications made to V or Ws listed on DD Form 2704
- Clemency Eligibility
- Parole Eligibility
- Change in status – Parole/Clemency Approved, Released, Deceased, Escaped, Transferred, Work release

Transitional Compensation

- Provides monthly payments and other benefits to family members of service members convicted by court-martial or separated from the military for domestic violence/child abuse.
- *12-36 months benefits*

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Transitional Compensation: Eligibility

- Must be family members/dependents of military personnel residing in home who have been on active duty for more than 30 days and who have been:
 - Separated from active duty under a court-martial sentence resulting from a dependent related abuse offense (BCD or DD); or
 - Sentenced to forfeiture of all pay and allowances at court-martial; or
 - Administratively separated from active duty for reasons that include dependent abuse offense.

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SUMMARY

- Victims/Witnesses of Crime deserve protection and assistance
 - Assists recovery
 - Improves Criminal Justice System at Large
- Interdisciplinary Program
- Coordination is Key
- Base Commanders own Local Base Programs
- All agencies have a role

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TRAINING AND INITIATIVES



- DoD VWAP Council and Service VWAPs partner with DOJ (Office for Victims of Crime)
- National Conference Victims of Crime – New Orleans, Sep 2010
- 2010 USMC VWAP Conference – first annual June 2010
- 2011 USMC VWAP Conference – second annual, March 2011 aboard Marine Corps Base Quantico
- USMC VWAP added to the Commanding General's Inspection Program checklists

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VWAP: RESOURCES AND FORMS



- CMC (JAM) – Major B. C. Parsons (703) 614-4250; breven.parsons@usmc.mil
- <http://www.defenselink.mil/vwac/dodprograms.html> (DOD VWAP COUNCIL WEBSITE) – contains link to training presentations and forms
- <http://www.ncvc.org/ncvc/Main.aspx> (National Center for Victims of Crime)
- <http://www.ojp.usdoj.gov/programs/victims.htm> (DOJ Office for Victims of Crime)
- Marine Corps VWAP Website: <http://www.marines.mil/unit/judqeadvocate/Pages/vwap.aspx>

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