

(1) The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and a possession of the United States.

(2) The term “person eligible for legal assistance” means a person who is eligible for legal assistance under section 1044 of this title.

(3) The term “legal assistance” means legal services authorized under section 1044 of this title.

(Added Pub. L. 104-106, div. A, title VII, §749(a)(1), Feb. 10, 1996, 110 Stat. 388.)

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-106, div. A, title VII, §749(b), Feb. 10, 1996, 110 Stat. 389, provided that: “Section 1044c of title 10, United States Code, shall take effect on the date of the enactment of this Act [Feb. 10, 1996] and shall apply to advance medical directives referred to in that section that are executed before, on, or after that date.”

§ 1044d. Military testamentary instruments: requirement for recognition by States

(a) TESTAMENTARY INSTRUMENTS TO BE GIVEN LEGAL EFFECT.—A military testamentary instrument—

(1) is exempt from any requirement of form, formality, or recording before probate that is provided for testamentary instruments under the laws of a State; and

(2) has the same legal effect as a testamentary instrument prepared and executed in accordance with the laws of the State in which it is presented for probate.

(b) MILITARY TESTAMENTARY INSTRUMENTS.—For purposes of this section, a military testamentary instrument is an instrument that is prepared with testamentary intent in accordance with regulations prescribed under this section and that—

(1) is executed in accordance with subsection (c) by (or on behalf of) a person, as a testator, who is eligible for military legal assistance;

(2) makes a disposition of property of the testator; and

(3) takes effect upon the death of the testator.

(c) REQUIREMENTS FOR EXECUTION OF MILITARY TESTAMENTARY INSTRUMENTS.—An instrument is valid as a military testamentary instrument only if—

(1) the instrument is executed by the testator (or, if the testator is unable to execute the instrument personally, the instrument is executed in the presence of, by the direction of, and on behalf of the testator);

(2) the instrument is executed in the presence of a military legal assistance counsel acting as presiding attorney;

(3) the instrument is executed in the presence of at least two disinterested witnesses (in addition to the presiding attorney), each of whom attests to witnessing the testator’s execution of the instrument by signing it; and

(4) the instrument is executed in accordance with such additional requirements as may be provided in regulations prescribed under this section.

(d) SELF-PROVING MILITARY TESTAMENTARY INSTRUMENTS.—(1) If the document setting forth a military testamentary instrument meets the re-

quirements of paragraph (2), then the signature of a person on the document as the testator, an attesting witness, a notary, or the presiding attorney, together with a written representation of the person’s status as such and the person’s military grade (if any) or other title, is prima facie evidence of the following:

(A) That the signature is genuine.

(B) That the signatory had the represented status and title at the time of the execution of the will.

(C) That the signature was executed in compliance with the procedures required under the regulations prescribed under subsection (f).

(2) A document setting forth a military testamentary instrument meets the requirements of this paragraph if it includes (or has attached to it), in a form and content required under the regulations prescribed under subsection (f), each of the following:

(A) A certificate, executed by the testator, that includes the testator’s acknowledgment of the testamentary instrument.

(B) An affidavit, executed by each witness signing the testamentary instrument, that attests to the circumstances under which the testamentary instrument was executed.

(C) A notarization, including a certificate of any administration of an oath required under the regulations, that is signed by the notary or other official administering the oath.

(e) STATEMENT TO BE INCLUDED.—(1) Under regulations prescribed under this section, each military testamentary instrument shall contain a statement that sets forth the provisions of subsection (a).

(2) Paragraph (1) shall not be construed to make inapplicable the provisions of subsection (a) to a testamentary instrument that does not include a statement described in that paragraph.

(f) REGULATIONS.—Regulations for the purposes of this section shall be prescribed jointly by the Secretary of Defense and by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy.

(g) DEFINITIONS.—In this section:

(1) The term “person eligible for military legal assistance” means a person who is eligible for legal assistance under section 1044 of this title.

(2) The term “military legal assistance counsel” means—

(A) a judge advocate (as defined in section 801(13) of this title); or

(B) a civilian attorney serving as a legal assistance officer under the provisions of section 1044 of this title.

(3) The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and each possession of the United States.

(Added Pub. L. 106-398, §1 [[div. A], title V, §551(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-123; amended Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314.)

AMENDMENTS

2002—Subsec. (f). Pub. L. 107-296 substituted “of Homeland Security” for “of Transportation”.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107-296, set out as a note under section 101 of this title.

§ 1044e. Special Victims' Counsel for victims of sex-related offenses

(a) DESIGNATION; PURPOSES.—The Secretary concerned shall designate legal counsel (to be known as “Special Victims’ Counsel”) for the purpose of providing legal assistance to an individual eligible for military legal assistance under section 1044 of this title who is the victim of an alleged sex-related offense, regardless of whether the report of that offense is restricted or unrestricted.

(b) TYPES OF LEGAL ASSISTANCE AUTHORIZED.—The types of legal assistance authorized by subsection (a) include the following:

(1) Legal consultation regarding potential criminal liability of the victim stemming from or in relation to the circumstances surrounding the alleged sex-related offense and the victim’s right to seek military defense services.

(2) Legal consultation regarding the Victim Witness Assistance Program, including—

(A) the rights and benefits afforded the victim;

(B) the role of the Victim Witness Assistance Program liaison and what privileges do or do not exist between the victim and the liaison; and

(C) the nature of communication made to the liaison in comparison to communication made to a Special Victims’ Counsel or a legal assistance attorney under section 1044 of this title.

(3) Legal consultation regarding the responsibilities and support provided to the victim by the Sexual Assault Response Coordinator, a unit or installation Sexual Assault Victim Advocate, or domestic abuse advocate, to include any privileges that may exist regarding communications between those persons and the victim.

(4) Legal consultation regarding the potential for civil litigation against other parties (other than the Department of Defense).

(5) Legal consultation regarding the military justice system, including (but not limited to)—

(A) the roles and responsibilities of the trial counsel, the defense counsel, and investigators;

(B) any proceedings of the military justice process in which the victim may observe;

(C) the Government’s authority to compel cooperation and testimony; and

(D) the victim’s responsibility to testify, and other duties to the court.

(6) Accompanying the victim at any proceedings in connection with the reporting, military investigation, and military prosecution of the alleged sex-related offense.

(7) Legal consultation regarding eligibility and requirements for services available from appropriate agencies or offices for emotional and mental health counseling and other medical services;

(8) Legal consultation and assistance—

(A) in personal civil legal matters in accordance with section 1044 of this title;

(B) in any proceedings of the military justice process in which a victim can participate as a witness or other party;

(C) in understanding the availability of, and obtaining any protections offered by, civilian and military protecting or restraining orders; and

(D) in understanding the eligibility and requirements for, and obtaining, any available military and veteran benefits, such as transitional compensation benefits found in section 1059 of this title and other State and Federal victims’ compensation programs.

(9) Such other legal assistance as the Secretary of Defense (or, in the case of the Coast Guard, the Secretary of the Department in which the Coast Guard is operating) may authorize in the regulations prescribed under subsection (h).

(c) NATURE OF RELATIONSHIP.—The relationship between a Special Victims’ Counsel and a victim in the provision of legal advice and assistance shall be the relationship between an attorney and client.

(d) QUALIFICATIONS.—An individual may not be designated as a Special Victims’ Counsel under this section unless the individual—

(1) meets the qualifications specified in section 1044(d)(2) of this title; and

(2) is certified as competent to be designated as a Special Victims’ Counsel by the Judge Advocate General of the armed force in which the judge advocate is a member or by which the civilian attorney is employed.

(e) ADMINISTRATIVE RESPONSIBILITY.—(1) Consistent with the regulations prescribed under subsection (h), the Judge Advocate General (as defined in section 801(1) of this title) under the jurisdiction of the Secretary, and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, is responsible for the establishment and supervision of individuals designated as Special Victims’ Counsel.

(2) The Secretary of Defense (and, in the case of the Coast Guard, the Secretary of the Department in which the Coast Guard is operating) shall conduct a periodic evaluation of the Special Victims’ Counsel programs operated under this section.

(f) AVAILABILITY OF SPECIAL VICTIMS’ COUNSEL.—(1) An individual eligible for military legal assistance under section 1044 of this title who is the victim of an alleged sex-related offense shall be offered the option of receiving assistance from a Special Victims’ Counsel upon report of an alleged sex-related offense or at the time the victim seeks assistance from a Sexual Assault Response Coordinator, a Sexual Assault Victim Advocate, a military criminal investigator, a victim/witness liaison, a trial counsel, a health-care provider, or any other personnel designated by the Secretary concerned for purposes of this subsection.

(2) The assistance of a Special Victims’ Counsel under this subsection shall be available to an individual eligible for military legal assistance under section 1044 of this title regardless of