

**§ 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 execution of the instrument is notarized by—

(A) a military legal assistance counsel;

(B) a person who is authorized to act as a notary under section 1044a of this title who—

(i) is not an attorney; and

(ii) is supervised by a military legal assistance counsel; or

(C) a State-licensed notary employed by a military department or the Coast Guard who is supervised by a military legal assistance counsel;

(3) the instrument is executed in the presence of at least two disinterested witnesses (in addition to the person notarizing the instrument in accordance with paragraph (2)), 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 requirements 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; Pub. L. 114-328, div. A, title V, § 523(a), Dec. 23, 2016, 130 Stat. 2116.)

**AMENDMENTS**

2016—Subsec. (c)(2). Pub. L. 114-328, § 523(a)(1), added par. (2) and struck out former par. (2) which read as follows: “the instrument is executed in the presence of a military legal assistance counsel acting as presiding attorney;”.

Subsec. (c)(3). Pub. L. 114-328, § 523(a)(2), substituted “person notarizing the instrument in accordance with paragraph (2)” for “presiding attorney”.

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.—(1) The Secretary concerned shall designate legal counsel (to be known as “Special Victims’ Counsel”) for the purpose of providing legal assistance to an individual described in paragraph (2) who is the victim of an alleged sex-related offense, regardless of whether the report of that offense is restricted or unrestricted.

(2) An individual described in this paragraph is any of the following:

(A) An individual eligible for military legal assistance under section 1044 of this title.

(B) An individual who is—

- (i) not covered under subparagraph (A);
- (ii) a member of a reserve component of the armed forces; and
- (iii) a victim of an alleged sex-related offense as described in paragraph (1)—

(I) during a period in which the individual served on active duty, full-time National Guard duty, or inactive-duty training; or

(II) during any period, regardless of the duty status of the individual, if the circumstances of the alleged sex-related offense have a nexus to the military service of the victim, as determined under regulations prescribed by the Secretary of Defense.

(C) A civilian employee of the Department of Defense who is not eligible for military legal assistance under section 1044(a)(7) of this title, but who is the victim of an alleged sex-related offense, and the Secretary of Defense or the Secretary of the military department concerned waives the condition in such section for the purposes of offering Special Victims’ Counsel services to the employee.

(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 United States).

(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) Representing 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) Legal consultation and assistance in connection with—

(A) any complaint against the Government, including an allegation under review by an inspector general and a complaint regarding equal employment opportunities;

(B) any request to the Government for information, including a request under section 552a of title 5 (commonly referred to as a “Freedom of Information Act request”); and

(C) any correspondence or other communications with Congress.

(10) 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 as-