

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-

sistance shall be the relationship between an attorney and client.

(d) **QUALIFICATIONS.**—(1) An individual may not be designated as a Special Victims' Counsel under this section unless the individual—

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

(B) 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, and within the Marine Corps, by the Staff Judge Advocate to the Commandant of the Marine Corps.

(2) The Secretary of Defense shall—

(A) develop a policy to standardize the time period within which a Special Victims' Counsel receives training; and

(B) establish the baseline training requirements for a Special Victims' Counsel.

(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 concerned, 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.

(3) The Secretary of Defense, in collaboration with the Secretaries of the military departments and the Secretary of the Department in which the Coast Guard is operating, shall establish—

(A) guiding principles for the Special Victims' Counsel program, to include ensuring that—

(i) Special Victims' Counsel are assigned to locations that maximize the opportunity for face-to-face communication between counsel and clients; and

(ii) effective means of communication are available to permit counsel and client interactions when face-to-face communication is not feasible;

(B) performance measures and standards to measure the effectiveness of the Special Victims' Counsel program and client satisfaction with the program; and

(C) processes by which the Secretaries of the military departments and the Secretary of the Department in which the Coast Guard is operating will evaluate and monitor the Special Victims' Counsel program using such guiding principles and performance measures and standards.

(f) **AVAILABILITY OF SPECIAL VICTIMS' COUNSEL.**—(1) An individual described in subsection (a)(2) 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 healthcare provider, or any other personnel designated by the Secretary concerned for purposes of this subsection.

(2) Subject to such exceptions for exigent circumstances as the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating may prescribe, notice of the availability of a Special Victims' Counsel shall be provided to an individual described in subsection (a)(2) before any military criminal investigator or trial counsel interviews, or requests any statement from, the individual regarding the alleged sex-related offense.

(3) The assistance of a Special Victims' Counsel under this subsection shall be available to an individual described in subsection (a)(2) regardless of whether the individual elects unrestricted or restricted reporting of the alleged sex-related offense. The individual shall also be informed that the assistance of a Special Victims' Counsel may be declined, in whole or in part, but that declining such assistance does not preclude the individual from subsequently requesting the assistance of a Special Victims' Counsel.

(g) **ALLEGED SEX-RELATED OFFENSE DEFINED.**—In this section, the term “alleged sex-related offense” means any allegation of—

(1) a violation of section 920, 920b, 920c, or 930 of this title (article 120, 120b, 120c, or 130 of the Uniform Code of Military Justice); or

(2) an attempt to commit an offense specified in a paragraph (1) as punishable under section 880 of this title (article 80 of the Uniform Code of Military Justice).

(h) **REGULATIONS.**—The Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall prescribe regulations to carry out this section.

(Added Pub. L. 113-66, div. A, title XVII, §1716(a)(1), Dec. 26, 2013, 127 Stat. 966; amended Pub. L. 113-291, div. A, title V, §§531(c), 533, 534(a), Dec. 19, 2014, 128 Stat. 3364, 3366, 3367; Pub. L. 114-92, div. A, title V, §§532-534(a), 535(a), (b), Nov. 25, 2015, 129 Stat. 815, 816; Pub. L. 115-91, div. A, title X, §1081(c)(2)(D), Dec. 12, 2017, 131 Stat. 1599.)

#### AMENDMENTS

2017—Subsec. (g)(1). Pub. L. 115-91 substituted “920b, 920c, or 930” for “920a, 920b, 920c, or 925” and “120b, 120c, or 130” for “120a, 120b, 120c, or 125”.

2015—Subsec. (a)(2)(C). Pub. L. 114-92, §532, added subpar. (C).

Subsec. (b)(9), (10). Pub. L. 114-92, §533, added par. (9) and redesignated former par. (9) as (10).

Subsec. (d). Pub. L. 114-92, §535(a), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

Subsec. (e)(3). Pub. L. 114-92, §535(b), added par. (3).

Subsec. (f)(2), (3). Pub. L. 114-92, §534(a), added par. (2) and redesignated former par. (2) as (3).

2014—Subsec. (a). Pub. L. 113-291, §533(a), amended subsec. (a) generally. Prior to amendment, text read as follows: “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.”

Subsec. (b)(4). Pub. L. 113–291, § 531(c)(1), substituted “the United States” for “the Department of Defense”.

Subsec. (b)(6). Pub. L. 113–291, § 534(a), substituted “Representing the victim” for “Accompanying the victim”.

Subsec. (d)(2). Pub. L. 113–291, § 531(c)(2), inserted “, and within the Marine Corps, by the Staff Judge Advocate to the Commandant of the Marine Corps” before period at end.

Subsec. (e)(1). Pub. L. 113–291, § 531(c)(3), inserted “concerned” after “jurisdiction of the Secretary”.

Subsec. (f). Pub. L. 113–291, § 533(b), substituted “described in subsection (a)(2)” for “eligible for military legal assistance under section 1044 of this title” in pars. (1) and (2).

#### EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§ 5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

#### SPECIAL VICTIMS’ COUNSEL TRAINING REGARDING THE UNIQUE CHALLENGES OFTEN FACED BY MALE VICTIMS OF SEXUAL ASSAULT

Pub. L. 115–91, div. A, title V, § 536, Dec. 12, 2017, 131 Stat. 1392, provided that: “The baseline Special Victims’ Counsel training established under section 1044e(d)(2) of title 10, United States Code, shall include training for Special Victims’ Counsel to recognize and deal with the unique challenges often faced by male victims of sexual assault.”

#### ENHANCEMENT OF VICTIMS’ RIGHTS IN CONNECTION WITH PROSECUTION OF CERTAIN SEX-RELATED OFFENSES

Pub. L. 113–291, div. A, title V, § 534(b)–(e), Dec. 19, 2014, 128 Stat. 3367, 3368, provided that:

“(b) CONSULTATION REGARDING VICTIM’S PREFERENCE IN PROSECUTION VENUE.—

“(1) CONSULTATION PROCESS REQUIRED.—The Secretary of Defense shall establish a process to ensure consultation with the victim of an alleged sex-related offense that occurs in the United States to solicit the victim’s preference regarding whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.

“(2) CONVENING AUTHORITY CONSIDERATION OF PREFERENCE.—The preference expressed by the victim of an alleged sex-related offense under paragraph (1) regarding the prosecution of the offense, while not binding, should be considered by the convening authority in making the determination regarding whether to refer the charge or specification for the offense to a court-martial for trial.

“(3) NOTICE TO APPROPRIATE JURISDICTION OF VICTIM’S PREFERENCE FOR CIVILIAN PROSECUTION.—If the victim of an alleged sex-related offense expresses a preference under paragraph (1) for prosecution of the offense in a civilian court, the convening authority described in paragraph (2) shall ensure that the civilian authority with jurisdiction over the offense is notified of the victim’s preference for civilian prosecution.

“(4) NOTICE TO VICTIM OF STATUS OF CIVILIAN PROSECUTION WHEN VICTIM EXPRESSES PREFERENCE FOR CIVILIAN PROSECUTION.—Following notification of the civilian authority with jurisdiction over an alleged sex-related offense of the preference of the victim of the offense for prosecution of the offense in a civilian court, the convening authority shall be responsible for notifying the victim if the convening authority

learns of any decision by the civilian authority to prosecute or not prosecute the offense in a civilian court.

“(c) MODIFICATION OF MANUAL FOR COURTS-MARTIAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 19, 2014], Part III of the Manual for Courts-Martial shall be modified to provide that when a victim of an alleged sex-related offense has a right to be heard in connection with the prosecution of the alleged sex-related such offense, the victim may exercise that right through counsel, including through a Special Victims’ Counsel under section 1044e of title 10, United States Code (as amended by subsection (a)).

“(d) NOTICE TO COUNSEL ON SCHEDULING OF PROCEEDINGS.—The Secretary concerned shall establish policies and procedures designed to ensure that any counsel of the victim of an alleged sex-related offense, including a Special Victims’ Counsel under section 1044e of title 10, United States Code (as amended by subsection (a)), is provided prompt and adequate notice of the scheduling of any hearing, trial, or other proceeding in connection with the prosecution of such offense in order to permit such counsel the opportunity to prepare for such proceeding.

“(e) DEFINITIONS.—In this section:

“(1) The term ‘alleged sex-related offense’ has the meaning given that term in section 1044e(g) of title 10, United States Code.

“(2) The term ‘Secretary concerned’ has the meaning given that term in section 101(a)(9) of such title.”

#### IMPLEMENTATION

Pub. L. 113–66, div. A, title XVII, § 1716(a)(4), Dec. 26, 2013, 127 Stat. 969, provided that: “Section 1044e of title 10, United States Code, as added by paragraph (1), shall be implemented within 180 days after the date of the enactment of this Act [Dec. 26, 2013].”

#### ENHANCED TRAINING REQUIREMENT

Pub. L. 113–66, div. A, title XVII, § 1716(b), Dec. 26, 2013, 127 Stat. 969, provided that: “The Secretary of each military department, and 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, shall implement, consistent with the guidelines provided under section 1044e of title 10, United States Code, as added by subsection (a), in-depth and advanced training for all military and civilian attorneys providing legal assistance under section 1044 or 1044e of such title to support victims of alleged sex-related offenses.”

#### § 1045. Voluntary withholding of State income tax from retired or retainer pay

(a) The Secretary concerned shall enter into an agreement under this section with any State within 120 days of a request for agreement from the proper State official. The agreement shall provide that the Secretary concerned shall withhold State income tax from the monthly retired or retainer pay of any member or former member entitled to such pay who voluntarily requests such withholding in writing. The amounts withheld during any calendar month shall be retained by the Secretary concerned and disbursed to the States during the following calendar month.

(b) A member or former member may request that the State designated for withholding be changed and that the withholdings be remitted in accordance with such change. A member or former member also may revoke any request of such member or former member for withholding. Any request for a change in the State designated and any revocation is effective on the first day of the month after the month in which the request or revocation is processed by the Sec-