

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) [now 1044e(h)] 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.”

§ 1044f. Policies with respect to special trial counsel

(a) POLICIES REQUIRED.—The Secretary of Defense shall establish policies with respect to the

appropriate mechanisms and procedures that the Secretaries of the military departments shall establish relating to the activities of special trial counsel, including expected milestones for such Secretaries to fully implement such mechanisms and procedures. Subject to subsection (c), the policies shall—

(1) provide for the establishment of a dedicated office within each military service from which office the activities of the special trial counsel of the military service concerned shall be supervised and overseen;

(2) provide for the appointment of one lead special trial counsel, who shall—

(A) be a judge advocate of that service in a grade no lower than O–7, with significant experience in military justice;

(B) be responsible for the overall supervision and oversight of the activities of the special trial counsel of that service; and

(C) report directly to the Secretary concerned, without intervening authority;

(3) ensure that within each office created pursuant to paragraph (1), the special trial counsel and other personnel assigned or detailed to the office—

(A) are independent of the military chains of command of both the victims and those accused of covered offenses and any other offenses over which a special trial counsel at any time exercises authority in accordance with section 824a of this title (article 24a); and

(B) conduct assigned activities free from unlawful or unauthorized influence or coercion;

(4) provide that special trial counsel shall be well-trained, experienced, highly skilled, and competent in handling cases involving covered offenses; and

(5) provide that commanders of the victim and the accused in a case involving a covered offense shall have the opportunity to provide input to the special trial counsel regarding case disposition, but that the input is not binding on the special trial counsel.

(b) UNIFORMITY.—The Secretary of Defense shall ensure that any lack of uniformity in the implementation of policies, mechanisms, and procedures established under subsection (a) does not render unconstitutional any such policy, mechanism, or procedure.

(c) SPECIAL TRIAL COUNSEL OF DEPARTMENT OF THE AIR FORCE.—In establishing policies under subsection (a), the Secretary of Defense shall—

(1) in lieu of providing for separate offices for the Air Force and Space Force under subsection (a)(1), provide for the establishment of a single dedicated office from which office the activities of the special trial counsel of the Department of the Air Force shall be supervised and overseen; and

(2) in lieu of providing for separate lead special trial counsels for the Air Force and Space Force under subsection (a)(2), provide for the appointment of one lead special trial counsel who shall be responsible for the overall supervision and oversight of the activities of the special trial counsel of the Department of the Air Force.

(d) **MILITARY SERVICE DEFINED.**—In this section, the term “military service” means the Army, Navy, Air Force, Marine Corps, and Space Force.

(Added Pub. L. 117–81, div. A, title V, § 532(a), Dec. 27, 2021, 135 Stat. 1694; amended Pub. L. 117–263, div. A, title V, § 545(a), Dec. 23, 2022, 136 Stat. 2584.)

Editorial Notes

AMENDMENTS

2022—Subsec. (a). Pub. L. 117–263, § 545(a)(1), substituted “Subject to subsection (c), the policies shall” for “The policies shall” in introductory provisions.

Subsecs. (c), (d). Pub. L. 117–263, § 545(a)(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117–263, div. A, title V, § 545(b), Dec. 23, 2022, 136 Stat. 2584, provided that: “The amendments made subsection (a) [amending this section] shall take effect immediately after the coming into effect of the amendments made by section 532 of the National Defense Authorization Act for Fiscal Year 2022 (Public Law 117–81; 135 Stat. 1694) [enacting this section] as provided in section 539C of that Act (10 U.S.C. 801 note).”

EFFECTIVE DATE

Section effective on the date that is two years after Dec. 27, 2021, and applicable with respect to offenses that occur after that date, with provisions for delayed effect and applicability if regulations are not prescribed by the President before the date that is two years after Dec. 27, 2021, see section 539C of Pub. L. 117–81, set out as an Effective Date of 2021 Amendment note under section 801 of this title.

§ 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 Secretary concerned, but in no event later than on the first day of the second month beginning after the day on which the request or revocation is received by the Secretary concerned.

(c) A member or former member may have in effect at any time only one request for withholding under this section and may not have more than two such requests in effect during any one calendar year.

(d)(1) This section does not give the consent of the United States to the application of a statute that imposes more burdensome requirements on the United States than on employers generally or that subjects the United States or any member or former member entitled to retired or retainer pay to a penalty or liability because of this section.

(2) The Secretary concerned may not accept pay from a State for services performed in withholding State income taxes from retired or retainer pay.

(3) Any amount erroneously withheld from retired or retainer pay and paid to a State by the Secretary concerned shall be repaid by the State in accordance with regulations prescribed by the Secretary concerned.

(e) In this section:

(1) The term “State” means any State, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(2) The term “Secretary concerned” includes the Secretary of Health and Human Services with respect to the commissioned corps of the Public Health Service and the Secretary of Commerce with respect to the commissioned corps of the National Oceanic and Atmospheric Administration.

(Added Pub. L. 98–525, title VI, § 654(a), Oct. 19, 1984, 98 Stat. 2551; amended Pub. L. 100–26, § 7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 109–163, div. A, title VI, § 661, Jan. 6, 2006, 119 Stat. 3314.)

Editorial Notes

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–163, in third sentence, substituted “any calendar month” for “any calendar quarter” and “during the following calendar month” for “during the month following that calendar quarter”.

1987—Subsec. (e)(1), (2). Pub. L. 100–26 inserted “The term” after each par. designation.

§ 1046. Overseas temporary foster care program

(a) **PROGRAM AUTHORIZED.**—The Secretary concerned may establish a program to provide temporary foster care services outside the United States for children accompanying members of the armed forces on duty at stations outside the United States. The foster care services provided under such a program shall be similar to those services provided by State and local governments in the United States.

(b) **EXPENSES.**—Under regulations prescribed by the Secretary concerned, the expenses related to providing foster care services under subsection (a) may be paid from appropriated funds available to the Secretary.

(Added Pub. L. 102–484, div. A, title VI, § 651(a), Oct. 23, 1992, 106 Stat. 2425.)

Editorial Notes

PRIOR PROVISIONS

A prior section 1046, added Pub. L. 98–525, title VII, § 708(a)(1), Oct. 19, 1984, 98 Stat. 2572, related to pre-separation counseling, prior to repeal by Pub. L. 101–510, div. A, title V, § 502(b)(1), Nov. 5, 1990, 104 Stat. 1557.