

## **Claims Stemming From Cell Phones Seized During Sexual Assault Investigations**

**Overview:** The Claims Division of the Staff Judge Advocate is often presented with claims requesting reimbursement of the cost of replacing a cell phone that was seized by Criminal Investigations Division (CID) in the course of a sexual assault investigation.

Under the Personnel Claims Act (PCA)(DA PAM 27-162, paragraph 11-5k) payment of claims are allowed for the temporary loss of tangible property that causes a grave hardship on the victim. A phone confiscated from a victim by CID during the course of a sexual assault investigation is no longer required to be held for five years after the passage of the FY2015 National Defense Authorization Act (Public Law No. 113-291). Key factors for consideration of the claim include: the nature of the property seized, the length of time the property is seized, and the eligibility of the claimant.

**Nature of the Property:** Cell phones are items deemed essential by many individuals who rely upon them for daily living. A claimant suffers loss of use when a phone is seized. Victims will often purchase a replacement phone immediately, regardless of whether or not the seized phone will eventually be returned. The value of the seized phone may depreciate significantly while it is in CID custody. Also, under the PCA, a service contract associated with the seized phone would not be considered as part of the cost of the phone itself and would be excluded from any claim reimbursement amount.

**Length of seizure:** The FY2015 National Defense Authorization Act allows for the return of seized property upon the conclusion of a sexual assault investigation and subsequent trial. Previously, such property was held for five years. Nevertheless, claims personnel may consider payment of claims for essential items, such as replacement cell phones, as soon as 60 days after the original phone's confiscation. A memo is required from CID as to the legitimacy of the claim and for verification that the original phone is in their custody.

**Eligibility of the Claimant:** In order to be eligible for payment, the party making the claim must be a "Proper Claimant" under the PCA in that they are either a service member making a claim on their own behalf, or a service member making a claim on behalf of his/her dependent. Unlike the victim, the suspect of the assault investigation is ineligible for reimbursement unless all evidence, including that withheld at trial, completely exonerates him or her of any wrongdoing. Similarly, if the family member's sponsor is also the suspect of the assault, the family member is excluded from reimbursement unless the sponsor/suspect is cleared and then subsequently makes a claim on the family member's behalf.

**Conclusion:** Persons wishing to file a claim for expenses incurred to replace a cell phone seized during a CID investigation should stop by the Staff Judge Advocate Claims Office on the first floor of Building 113 for a checklist of required documents. The amount of reimbursement will be based upon the purchase price of the phone, with applicable depreciation deducted if the original phone is over a year old. Once a claim is paid, the claimant forfeits the right to retrieve the seized phone as this is construed as collecting double for the same item.