

## Regulations Prohibiting Retaliation

SERVICE	Prohibition against Retaliation	Summary
DoD	<p><a href="#">DoDI 5505.18</a> (5/1/2013)</p> <p><a href="#">DoDD 7050.06</a> (7/23/2007)</p>	<p><b>Investigation of Adult Sexual Assault in the Department of Defense</b> MCIO will investigate threats, assault, and property damage against victims</p> <p><b>Military Whistleblower Protection:</b> Protects against unfavorable action, or withholding favorable action, in reprisal of reporting a crime (being updated to add sexual misconduct specifically)</p>
Army	<p><a href="#">AD 2014-20</a> (6/19/2014)</p> <p><a href="#">AD 2015-16</a> (3/4/2015)</p> <p><a href="#">AR 600-20</a> (11/6/2014)</p>	<p><b>Prohibition of Retaliation Against Soldiers for Reporting a Criminal Offense</b> Prohibits retaliation, defines retaliation as unfavorable action and social exclusions</p> <p><b>Command Engagement to Prevent Retaliation</b> Requires discussion of retaliation on unrestricted cases at case management review</p> <p><b>Army Command Policy</b> Requires commanders to have policy and conduct training regarding the prohibition against reprisal 5-12 cites the Military Whistleblower Protection Act</p>
Navy	<p><a href="#">ALNAV 030/14</a> (4/14/2014)</p> <p><a href="#">SECNAVINST 5370.7D</a> (12/4/2014)</p>	<p><b>Retaliation Against Members of the Armed Forces Reporting a Criminal Offense.</b> Makes it an art 92 violation to retaliate against a SM who reports a criminal offense</p> <p><b>Military Whistleblower Protection</b> Emphasizes prohibition against taking unfavorable or withholding favorable action as retaliation for someone reporting a crime</p>
Air Force	<p><a href="#">AFI 90-301</a> (6/6/2012)</p> <p><a href="#">AFI 36-2909 AFGM2014-01</a> (6/19/2014)</p>	<p><b>Inspector General Complaints Resolution</b> Provides guidance on conducting reprisal, restriction and improper mental health evaluation complaint analysis/investigation/oversight</p> <p><b>Professional and Unprofessional Relationships Prohibition on Retaliation.</b> Military members shall not retaliate against an alleged victim or other military member who reports a criminal offense.</p>
Marines	<p><a href="#">MCO 1752.5B</a> (03/01/2013)</p>	<p><b>Sexual Assault Prevention and Response Program</b> Requires cdrs protect victims from retaliation and reprisal</p>
Coast Guard	<p><a href="#">33 CFR Part 53</a> (7/1/2014)</p>	<p><b>Coast Guard Whistleblower Protections</b> Prohibits taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, against a member of the Coast Guard for making or preparing to make a protected communication.</p>



SECRETARY OF THE ARMY  
WASHINGTON

19 JUN 2014

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Directive 2014-20 (Prohibition of Retaliation Against Soldiers for Reporting a Criminal Offense)

1. References:

- a. National Defense Authorization Act for Fiscal Year 2014, Public Law 113-66, section 1709.
- b. Title 10, United States Code, Chapter 47.
- c. Department of Defense Directive 7050.06 (Military Whistleblower Protection), July 23, 2007.
- d. Department of Defense Instruction 6490.04 (Mental Health Evaluations of Members of the Military Services), March 4, 2013.
- e. Manual for Courts-Martial, United States, Part IV Punitive Articles, 2012 Edition.
- f. Army Regulation 20-1 (Inspector General Activities and Procedures), 29 November 2010, Including Rapid Action Revision Issued 3 July 2012.
- g. Army Regulation 600-20 (Army Command Policy), 18 March 2008, Including Rapid Action Revision No. 5 Issued 20 September 2012.

2. No Soldier may retaliate against a victim, an alleged victim or another member of the Armed Forces based on that individual's report of a criminal offense.

3. This directive implements reference 1a effective immediately. The provisions of this directive are punitive, and violations may be punished under Article 92, Uniform Code of Military Justice (UCMJ) (reference 1b).

4. Definitions

a. Subject to more specific guidance from the Department of Defense, for the purposes of this directive, "retaliation" is defined as:

- (1) taking or threatening to take an adverse or unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, with respect to a victim or other member of the Armed Forces because the individual reported a criminal offense or was believed to have reported a criminal offense; or

SUBJECT: Army Directive 2014-20 (Prohibition of Retaliation Against Soldiers for Reporting a Criminal Offense)

(2) ostracism, which is defined as excluding from social acceptance, privilege or friendship a victim or other member of the Armed Forces because: (a) the individual reported a criminal offense; (b) the individual was believed to have reported a criminal offense; or (c) the ostracism was motivated by the intent to discourage reporting of a criminal offense or otherwise to discourage the due administration of justice; or

(3) acts of cruelty, oppression or maltreatment (as these terms are described in paragraph 17c(2) of reference 1e), committed against a victim, an alleged victim or another member of the Armed Forces by peers or other persons, because the individual reported a criminal offense or was believed to have reported a criminal offense.

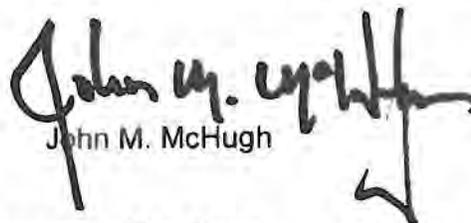
b. Personnel action is defined in reference 1c as any action taken against a member of the Armed Forces that affects, or has the potential to affect, that member's current position or career. Such actions include a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards or training; referral for mental health evaluations under reference 1d; and any other significant change in duties or responsibilities inconsistent with the member's grade.

5. Allegations of retaliation described in paragraph 4a(1) will be referred to, and investigated by, the appropriate Inspector General in accordance with references 1c and 1f.

6. Allegations of retaliation described in paragraphs 4a(2) and 4a(3) will be referred to, and investigated by, the victim's chain of command or supervision, or by any other appropriate investigative agency, organization or entity.

7. Commanders should consult with their servicing legal advisor and/or Inspector General for guidance on implementation of this directive at the command level.

8. The Deputy Chief of Staff, G-1 is the proponent for this policy and will incorporate the provisions of this directive into the next revision of Army Regulation 600-20 as soon as practicable. This directive is rescinded upon publication of the revised regulation.

  
John M. McHugh

DISTRIBUTION:  
Principal Officials of Headquarters, Department of the Army  
(CONT)

SUBJECT: Army Directive 2014-20 (Prohibition of Retaliation Against Soldiers for Reporting a Criminal Offense)

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ALNAV 030/14

MSGID/GENADMIN/SECNAV WASHINGTON DC/-/APR//

SUBJ/RETALIATION AGAINST MEMBERS OF THE ARMED FORCES REPORTING A CRIMINAL OFFENSE//

REF/A/DOC/SECTION 1709 OF FISCAL YEAR 2014 NATIONAL DEFENSE AUTHORIZATION ACT//  
AMPN/REF A ESTABLISHES POLICY AND PROCEDURES FOR SUBJECT PROHIBITION.//

RMKS/1. Retaliation against alleged victims or other members of the Armed Forces who report a criminal offense is prohibited. This prohibition constitutes a lawful general order, is punitive, and is applicable to all Department of the Navy (DON) personnel without further implementation. A violation by a person subject to the Uniform Code of Military Justice (UCMJ) (Chapter 47 of Title 10, United States Code) is punishable as a violation of Article 92 of the UCMJ. A violation by civilian personnel may be punishable under regulations governing disciplinary actions.

2. Per Ref (a), at a minimum, retaliation includes taking or threatening to take an adverse personnel action or withholding or threatening to withhold a favorable personnel action, with respect to a member of the Armed Forces because the member reported a criminal offense. Additionally, retaliation includes ostracism and such acts of maltreatment committed by peers of a member of the Armed Forces or by other persons because the member reported a criminal offense.

3. The DON is revising all appropriate instructions to incorporate these changes. In the interim, consult and coordinate with Command Inspectors General on matters involving allegations of suspected retaliation. Additionally, recommend you consult with your Staff Judge Advocate, Office of General Counsel Attorney, Region Legal Service Office, or Legal Services Support Section, as appropriate, with any questions regarding this message.

4. Point of contact at Naval Inspector General is Mr. Richard Gambino, Branch Head, Whistleblower Reprisal, at (202) 433-2097, or via e-mail at richard.gambino@navy.mil.

5. Released by Ray Mabus, Secretary of the Navy.//

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DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
1000 NAVY PENTAGON  
WASHINGTON DC 20350-1000

SECNAVINST 5370.7D  
NAVINGEN  
4 DEC 2014

SECNAV INSTRUCTION 5370.7D

From: Secretary of the Navy

Subj: MILITARY WHISTLEBLOWER PROTECTION

- Ref: (a) 10 U.S.C. §1034, The Military Whistleblower Protection Act, as amended through the National Defense Authorization Act of Fiscal Year 2014 (FY2014 NDAA)
- (b) National Defense Authorization Act for Fiscal Year 2014, Section 1709, Prohibition of Retaliation Against Members of the Armed Forces for Reporting a Criminal Offense
- (c) SECNAVINST 5430.92B, Assignment of Responsibilities to Counteract Fraud, Waste, and Related Improprieties Within the DON
- (d) SECNAVINST 5370.5B, DON Hotline Program
- (e) US Navy Regulations, 1990
- (f) 5 U.S.C. Appx., Inspector General Act of 1978
- (g) DoD Directive 7050.06, Military Whistleblower Protection of 23 July 2007
- (h) DoD Instruction 6490.04, Mental Health Evaluations of Members of the Military Services of 4 March 2013
- (i) 5 U.S.C. §552, the Freedom of Information Act (FOIA), as implemented by SECNAVINST 5720.42F, DON FOIA Program
- (j) Guide to Investigating Military Whistleblower Reprisal and Restriction Complaints of 7 November 2014 (no number, formerly IGDG 7050.6DI of 6 February 1996)
- (k) SECNAVINST 5800.12B, Investigation of Allegations Against Senior Officials of the DON

- Encl: (1) Definitions  
(2) Background  
(3) Responsibilities and Procedures

1. Purpose. To implement amendments to reference (a) and to implement reference (b). This instruction is a significant revision and should be read in its entirety.

2. Cancellation. SECNAVINST 5370.7C.

3. Definitions. Terms used in this instruction are defined in enclosure (1).

4. Applicability

a. This instruction applies to the Office of the Secretary of the Navy (SECNAV), the Chief of Naval Operations, the Commandant of the Marine Corps, and all U.S. Navy and U.S. Marine Corps installations, commands, activities and field offices, all other organizational entities within the Department of the Navy (DON), all personnel assigned to these entities, and DON service members, as defined in enclosure (1) who are serving outside of the DON.

b. The protections in references (a), (b), and this instruction apply to all service members. Enclosure (2) provides background information.

c. The restrictions in references (a), (b), and this instruction apply to all service members and to all DON civilian personnel.

d. The boldface language in paragraphs 5d through 5f of this instruction constitutes regulatory orders that are applicable to all service members and DON personnel without further implementation. A violation of these provisions by a person subject to the Uniform Code of Military Justice (UCMJ) (Chapter 47 of Title 10, United States Code) is punishable as a violation of Article 92 of the UCMJ. A violation by DON civilian personnel is punishable under regulations governing disciplinary or adverse action.

5. Policy

a. Service members shall be free to make a protected communication to a member of Congress; an inspector general (IG); a member of a Department of Defense (DoD) audit, inspection, investigation, or law enforcement organization; any person or organization in the chain of command; a court-martial proceeding; or any other person or organization designated pursuant to command regulations or other established administrative procedures for such communications. Service members shall also be free to provide testimony or otherwise participate in or assist with an investigation or proceeding

involving a protected communication. Navy regulations and instructions contain provisions that permit or require DON personnel to report suspected impropriety, including criminal offenses.

(1) References (c) and (d) discuss the DON program to combat fraud, waste and related improprieties, and place emphasis on reporting suspected violations to the proper authority to include the immediate superior of the person submitting the report, his or her commander or commanding officer, and the immediate superior of his or her commander or commanding officer if either is apparently implicated.

(2) Reference (e) includes guidance indicating the chain of command is the preferred method of reporting and resolving the matters they address, e.g., articles 0820, 1024, 1114, 1115, 1137, 1143, 1150, 1151, and 1152.

b. Per § 1137 of reference (e), DON service members are required to report known violations of the UCMJ which come under their observation. Per references (c), (d) and Section 7 of reference (f), all DON personnel should report suspected violations of law or regulation, fraud, waste, or mismanagement, to proper authority.

c. All service members and DON personnel who report to proper authority those acts or omissions they reasonably believe to be violations of law or regulation, fraud, waste, or mismanagement, shall be free from reprisal and retaliation.

d. No person shall restrict or attempt to restrict service members from making lawful communications to a member of Congress or an IG.

e. Service members and DON personnel shall not take or threaten to take an unfavorable personnel action, or withhold or threaten to withhold a favorable personnel action, in reprisal against any service member for making or preparing to make, or who is perceived as making or preparing to make, a protected communication.

f. Service members and DON personnel shall not retaliate against a service member because the member reported a criminal offense.



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS UNITED STATES AIR FORCE  
WASHINGTON, DC

AFI 36-2909\_AFGM2014-01  
19 JUNE 2014

MEMORANDUM FOR DISTRIBUTION C  
MAJCOMs/FOAs/DRUs

FROM HQ USAF JAG  
1040 Air Force Pentagon  
Washington DC 20330-1040

SUBJECT: Air Force Guidance Memorandum to AFI 36-2909, *Professional and Unprofessional Relationships*

By Order of the Secretary of the Air Force, this Air Force Guidance Memorandum immediately changes AFI 36-2909, *Professional and Unprofessional Relationships*. Compliance with this Memorandum is mandatory. To the extent its directions are inconsistent with other Air Force publications, the information herein prevails in accordance with AFI 33-360, *Publications and Forms Management*.

This Air Force Guidance Memorandum establishes command, supervisory and personal responsibilities in prohibiting retaliation against an alleged victim or other member of the Armed Forces (hereafter, military members) for reporting a criminal offense. Retaliation against individuals who report criminal offenses is unlawful and erodes good order, discipline, respect for authority, unit cohesion and ultimately mission accomplishment. It is the responsibility of commanders and supervisors at all levels to ensure compliance with this instruction. The policy set out in this instruction applies to all active duty members and to members of the United States Air Force Reserve (USAFR) and Air National Guard (ANG), except as provided in paragraph 3.8. Military members, including Reserve members on active duty or inactive duty for training and ANG members in Federal service, who violate the specific prohibitions contained in paragraph 11 of this instruction can be prosecuted under either Article 92 or Article 134 of the Uniform code of Military Justice (UCMJ), or both, as well as any other applicable Article of the UCMJ, as appropriate.

**(ADD New) Preamble.** Military members, including Reserve members on active duty or inactive duty for training and ANG members in Federal service, who violate the specific prohibitions contained in paragraph 11 of this instruction can be prosecuted under either Article 92 or Article 134 of the Uniform code of Military Justice (UCMJ), or both, as well as any other applicable Article of the UCMJ, as appropriate.

**(ADD New) 11. Prohibition on Retaliation.** Military members shall not retaliate against an alleged victim or other military member who reports a criminal offense.

**(ADD New) 11.1. Retaliation.** Retaliation is taking or threatening to take an adverse personnel action, or withholding or threatening to withhold a favorable personnel action, with respect to a military member because the member reported a criminal offense.

**(ADD New) 11.2. Ostracism.** Ostracism, which is a form of retaliation under this instruction, is the exclusion, from social acceptance, privilege or friendship with the intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice.

**(ADD New) 11.3. Maltreatment.** Maltreatment, which is a form of retaliation under this instruction, is treatment by peers or by other persons, that, when viewed objectively under all the circumstances, is abusive or otherwise unnecessary for any lawful purpose, that is done with the intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice, and that results in physical or mental harm or suffering, or reasonably could have caused, physical or mental harm or suffering. Maltreatment under this instruction is prohibited by the National Defense Authorization Act of Fiscal Year 2014, Section 1709(b), and does not require a senior-subordinate relationship as is required for maltreatment under Article 93, UCMJ.

**(ADD New) 11.4. Personnel Action.** Any action taken on a military member that affects or has the potential to affect that military member's current position or career. Such actions include a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards or training; and any other significant change in duties or responsibilities inconsistent with the military member's grade.

**(ADD New) 11.5. Member of the Armed Forces (Military Member).** Included in this definition are active-duty military personnel, and ARC personnel when performing active duty, full-time National Guard duty, or inactive duty training.

**(ADD New) 11.6. Criminal Offense.** An act or omission punishable under the UCMJ, or other federal, state or local criminal law.

**(ADD New) 12. Individual Responsibility to Refrain from Engaging in Retaliation.** All military members share the responsibility to refrain from retaliating against an alleged victim or other military member who reports a criminal offense.

**(ADD New) 13. Commander and Supervisory Responsibilities to Prevent Retaliation.** Commanders and supervisors at all levels have the authority and responsibility to ensure subordinates do not retaliate against an alleged victim or other military member who reports a criminal offense. Commanders and supervisors have a duty to prevent retaliation and may be held accountable for failing to act in appropriate cases.

**(ADD New) 14. Actions in Response to Retaliation.** A commander or supervisor must take appropriate action if it is reasonable to believe retaliation has occurred. At a minimum, the member or members suspected of engaging in retaliation will be ordered to cease from engaging in any further retaliation. As soon as practicable, the alleged victim, or other military member who is believed to have been retaliated against will be informed that command is aware of the suspected act or acts of retaliation, and that the alleged offenders have been ordered to cease from engaging in any further retaliation. The individual retaliated against will be advised to report any further acts of retaliation.

**(ADD New) 15. Relationship of Retaliation to Other Provisions of the UCMJ.** All military members are subject to lawful orders. When a military member has been lawfully ordered to cease from engaging in retaliation, the military member is subject to prosecution under the UCMJ for violation of that order.

**(ADD New) 16. Relationship of Retaliation to Inspector General Complaints Resolution Program.** Cases involving retaliation or allegations of retaliation, should be evaluated to determine if they involve 1) reprisal for making protected communications, 2) restriction from making lawful communications, or 3) improper referral for a mental health evaluation, in violation of AFI 90-301, *Inspector General Complaints Resolution*, para. 1.13.6. If so, refer the matter to the Inspector General Complaints Resolution Program.

**(ADD New) 17. Questions Regarding Retaliation.** Military members who have questions as to the application or interpretation of the policy should consult their commander. Commanders are highly encouraged to consult their staff judge advocates or servicing legal offices for assistance in interpretation.

**(ADD New) References.**

National Defense Authorization Act of Fiscal Year 2014, Section 1709.

AFI 90-301, *Inspector General Complaints Resolution*, 23 August 2011, *Incorporating Change 1*, 6 June 2012.

DODD 7050.06, *Military Whistleblower Protection*, 23 June 2007.

This memorandum becomes void after 1 year has elapsed from the date of this memorandum, or upon incorporation by interim change to or a rewrite of AFI 36-2909, whichever is earlier.

ROBERT G. KENNY  
Major General, USAFR  
Performing the Duties of The Judge  
Advocate General