

**JUDICIAL PROCEEDINGS PANEL  
REQUEST FOR INFORMATION SET # 3**

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83	For fiscal years 2012-2014, please provide the total number of sexual assault victims who filed an unrestricted report and were subsequently involuntarily discharged (medically, administratively or punitively discharged) from the service in FY12, FY13, and FY14. Please further break down that total number in 83b to indicate the number who received each type of discharge and the number who received each characterization of service each year for rows 83c-k in the table provided.	60-62
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**RESPONSES REQUESTED FROM THE SERVICES BY MAY 6, 2015**

**Explanatory Information About Retaliation in the Services**

**67. What organization is responsible for training leaders and service members about retaliation against victims of sexual assault? Please describe that training and explain whether this is separate or in conjunction with mandatory EO training that addresses a hostile work environment?**

<b>USA</b>	<p>Currently the Sexual Harassment/Assault Response and Prevention (SHARP) Directorate, SHARP Academy, Training and Doctrine Command (TRADOC), Inspector General (IG), and The Judge Advocate General’s Legal Center and School (TJAGLCS) share responsibility for training leaders and service members about retaliation.</p> <p>The SHARP Baseline Certification (7 week) and 80-Hour Certification Courses, which are used to train Sexual Assault Response Coordinators (SARC) and Victim Advocates (VA), uses the Department of Defense form 2910 (line 1.d.6.) which provides the choices and different options if a victim experiences or feels that they have been retaliated against. The SARC/VA training addresses if a victim experiences some form of the following: coercion, retaliation, reprisal, or ostracism from their supervisors or peers, they can report to the SARC/VA, Special Victims Counsel, Victim Witness Assistance Program, the Inspector General, and unit commander. In the future, retaliation will be discussed in the life cycle of training, which includes Professional Military Education, the Civilian Education System, and during mandatory annual SHARP operational training. Retaliation will also be discussed monthly during the Sexual Assault Review Boards (SARB) as per Army Directive 2015-16 (Command Engagement to Prevent Retaliation), dated 4 Mar 2015. The SARB chair will ask SARB members if the victim, witnesses, bystanders (who intervene), SARC, VA, first responders or other parties to the incident have experienced any retaliation or reprisal.</p> <p>The SHARP Training, like EO, addresses a hostile work environment. SHARP training is taught in conjunction with EO training, but SHARP focuses on both Sexual Harassment and Sexual Assault. The SHARP Training, like EO, addresses a hostile work environment. SHARP training is in conjunction with EO training, but SHARP focuses on both Sexual Harassment and Sexual Assault.</p> <p>Judge Advocates train leaders at TJAGLCS on the topic of retaliation to incoming Brigade Commanders at Senior Officer Legal Orientation, incoming Command Sergeants Major at Command Sergeant Major Legal Orientation, and incoming general officers at General Officer Legal Orientation. Judge Advocates train incoming Battalion Commanders at the Pre-Command Course at Fort Leavenworth. At local installations, Judge Advocates train incoming Company Commanders and First Sergeants at Pre-Command Courses. Finally, The Judge Advocate General provided a block of instruction on retaliation at the Army Chief of Staff SHARP Summit to all</p>
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	<p>4/3/and select 2-star command teams.</p> <p>The Center for Army Professional Ethics has developed training on the topic of retaliation for use Army-wide in small group discussions. The Center for Army Professional Ethics has produced videos from three sexual assault victims that discuss retaliation and its devastating effects. Those videos have been provided to the JPP staff.</p>
<p><b>USAF</b></p>	<p>The AF Sexual Assault Prevention and Response Office (AF SAPRO) is the lead organization training leaders and service members about retaliation against victims of sexual assault. SAPRO training is different and separate from the Equal Opportunity training, though the message is consistent across the two programs. This training is amplified at the highest levels of senior leadership including SecAF, CSAF, and the commanders of the Major Commands, all of whom convey the message that addressing the issue of retaliation is critical to the success of fighting sexual assault.</p> <p>Retaliation against a victim or other military member who reports a criminal offense is prohibited in AFGM to AFI 36-2909, para. 11, and members who violate the specific prohibition may be subject to adverse action under the UCMJ. Commanders and supervisors at all levels have the authority and responsibility to ensure subordinates do not retaliate against victims or other military members who report a criminal offense. Commanders and supervisors have a duty to prevent retaliation and may be held accountable for failing to act in appropriate cases. AFGM to AFI 36-2909, para. 13.</p> <p>Retaliation as defined in Air Force policy is an umbrella term that includes reprisal under 10 U.S.C. § 1034 (Protected Communications; Prohibition of Retaliatory Personnel Actions) as well as ostracism and maltreatment as those terms are defined in AFGM to AFI 36-2909, paras. 11.2 and 11.3. Reprisal is covered under AFI 90-301, <i>Inspector General Complaints Resolution</i>, Chapter 6.</p> <p>Additionally, AFI 1-1, <i>Air Force Standards</i>, provides guidance to Airmen on the use of social media and para. 2.15.3 requires Airmen to “avoid offensive and/or inappropriate behavior on social networking platforms and through other forms of communication that could bring discredit upon the Air Force...or that would otherwise be harmful to good order and discipline, respect for authority, unit cohesion, morale, mission accomplishment, or the trust and confidence that the public has in the United States Air Force.” Paragraph 2.2.8 goes on to say, “Airmen do not tolerate bullying, hazing, or any instance where an Airman inflicts any form of physical or psychological abuse that degrades, insults, dehumanizes, or injures another Airman (unless it is part of an approved formal training program). It is the obligation of each Airman in the chain of command to prevent such conduct.” This regulation is punitive and failure to adhere to these standards can form the basis for adverse action under the UCMJ.</p> <p>AF SAPRO has incorporated information about retaliation in its 2015 Annual SAPR Training that is provided to all Airmen, military and civilian. This interactive training includes definitions and a video from the DoD Inspector General titled, <i>Whistleblower Reprisal: Rape and Sexual Assault</i>. The objective of this part of the training is to give general information about what reprisal is and what steps can be taken if an Airman</p>

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who is a victim of sexual assault believes they are a victim of reprisal. Another section of the annual SAPR training focuses on empathy and the spectrum of available potential response if a disclosure of sexual assault is made, helping Airmen understand how to interact with victims of sexual assault and to help Airmen develop better communication skills and build empathy for victims. During this portion of the training, the audience watches and listens to a video that presents helpful responses to give to a victim who reports being sexually assaulted. After the video, the audience pairs up with another Airman next to them and practices what they would say to a victim of sexual assault if the victim confided in them. As empathetic and supportive behaviors are taught and increase in frequency, the Air Force believes that incidents of actual and perceived victim retaliation will decrease.

In addition to the annual SAPR training, all Airmen will participate in SAPR small group discussions throughout the year. One of the mandatory sessions specifically focuses on empathy and what to say to a victim of sexual assault. All AF personnel will complete this training by 1 October 2015.

Additionally, AF SAPRO has updated initial training for Wing, Group, and Squadron commanders to include information on retaliation against victims of sexual assault. Data from the 2014 RAND Military Workplace Survey, focus groups, and Defense Equal Opportunity Climate Survey questions are used to highlight the need for leaders to address retaliation proactively. The training also educates leaders on the neurobiology of trauma which increases knowledge about victim response and behaviors. Educating leaders and increasing empathy for victims encourages personal commitment to protect those who report sexual assault from incidents of actual and perceived retaliation.

AF SAPRO is including education and training on retaliation in the first line supervisor training which was released in the spring of 2015 and in seminars for senior enlisted leaders. Other training currently in development will include information about retaliation and the AF policy against all forms of retaliation against victims of sexual assault. AF SAPRO understands that retaliation in any form affects the experiences of victims and influences the willingness of future victims in coming forward to report sexual assault crimes. Therefore, AF SAPRO will continue to address, educate, and train its force for the health of the program and, more importantly, for the health of survivors.

Training on retaliation is also included in the Senior Officer Legal Orientation (SOLO) course, hosted by the AF Judge Advocate General's School. To date, two offerings of SOLO have occurred and attendees have included incoming Wing Commanders, Vice Wing Commanders, and Group Commanders.

The Wing Commander's Course, taught at Air University, also includes instruction on retaliation so that incoming commanders are aware of their role and requirements pertaining to creating an environment free of retaliation and properly referring or investigating retaliation reports.

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	<p><u>References:</u></p> <ul style="list-style-type: none"> <li>- AFGM 2014-01 to AFI 36-2909, <i>Professional and Unprofessional Relationships</i>, 19 June 2014, <a href="http://static.e-publishing.af.mil/production/1/af_ja/publication/afi36-2909/afi36-2909.pdf">http://static.e-publishing.af.mil/production/1/af_ja/publication/afi36-2909/afi36-2909.pdf</a></li> <li>- AFI 90-301, <i>Inspector General Complaints Resolution</i>, 6 June 2012, <a href="http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf">http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf</a></li> <li>- AFI 1-1, <i>Air Force Standards</i>, 7 August 2012, <a href="http://static.e-publishing.af.mil/production/1/af_cc/publication/afi1-1/afi1-1.pdf">http://static.e-publishing.af.mil/production/1/af_cc/publication/afi1-1/afi1-1.pdf</a></li> </ul>
<p><b>USN</b></p>	<p>The Twenty-First Century Sailor Office (OPNAV N17) is responsible for ensuring appropriate training is provided to leaders and service members about retaliation against victims of sexual assault, and is included in the annual SAPR Training. It is the responsibility of commands to deliver the training to their personnel using training specialists. OPNAV N17 also provides content, including information on how to recognize and prevent retaliation, for the SAPR modules of the Major Command, Prospective Commanding Officer, Executive Officer, Senior Enlisted Academy, and leadership development courses across the enlisted and officer training continuums. The SAPR Pre-Commissioning training is in use at Officer Candidate School (OCS), Reserve Officers Training Corps (ROTC), and the United States Naval Academy (USNA).</p> <p>The Department of the Navy Sexual Assault Prevention and Response Video Library is a training resource containing short videos on various SAPR topics with accompanying discussion guides. Within the video library, various leaders speak to the need to prevent gossip and rumors and ensure victims are receiving appropriate support and care. These videos also include testimonials from victims of social or peer retaliation and ostracism.</p> <p>New SAPR training courses are currently being developed for Navy recruits attending Recruit Training Command (RTC) and for Navy senior enlisted leaders attending the Senior Enlisted Academy (SEA). Both courses will include sections that explain retaliation, reprisal, coercion, ostracism, and maltreatment; explain what is the appropriate professional response by peers to a victim and an alleged offender when a sexual assault is reported; and explain Navy regulations that protect victims of sexual assault from coercion, retaliation, ostracism, maltreatment, and reprisal.</p> <p>The Naval Justice School (NJS) in Newport, RI, provides basic level training to attendees of the Senior Officer Course (leaders) about the grievance process and prohibitions against victim retaliation.</p> <p>USNA's Sexual Assault Prevention &amp; Response (SAPR) Office trains on retaliation from a victim-impact perspective and plans to continue the discussion, emphasizing</p>

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	<p>the most recent President of the United States (POTUS) and Military Service Academies (MSA) report findings. Specifically, through 31 Dec 15, both reports and their emphasis on retaliation will be addressed in Midshipmen Pre-Cruise SAPR training (May 2015), Plebe Summer Detailer SAPR training (Jun &amp; Jul 2015), Reform SAPR training (Aug 2015), and within the SHAPE (Sexual Harassment Assault Prevention Education) curriculum (Aug-Dec 2015). Additionally, retaliation will be addressed with military faculty &amp; staff in annual training. SAPR training will continue to address retaliation from a victim-impact perspective, specifically how it is a barrier to sexual assault victims coming forward to utilize response services and formally report.</p> <p>The above-mentioned trainings regarding retaliation against victims of sexual assault are separate from and in addition to mandatory equal opportunity training that address hostile work environments. Mandatory equal opportunity training addresses retaliation against victims of unlawful discrimination and sexual harassment. A hostile work environment is addressed in the context of sexual harassment in the work place.</p>
<b>USMC</b>	<p>While the Inspector General of the Marine Corps (IGMC) is the Office of Primary Responsibility for reprisal training, HQMC SAPR incorporates additional training regarding retaliation into their programs.</p> <p>All Department of the Navy (DON) military and civilian personnel are required to complete web based, biennial training on the Notification and Federal Employees Antidiscrimination and Retaliation Act (No FEAR Act) of 2002. This training provides information about the rights and remedies available under applicable Antidiscrimination and Whistleblower Protection Laws. Specifically, the training provides an overview of the No FEAR Act, the Equal Employment Opportunity (EEO) Discrimination Complaint Process (including who to contact to file a complaint), the Whistleblower Protection Act, and freedom from reprisal, which covers the elements of a reprisal claim, elements of proof for whistleblower reprisal, opposition to discriminatory practice, participation in the EEO process, and disciplinary actions.</p> <p>All Marines must complete annual EO training, conducted by an EO Representative, which covers retaliation and the complaint process for retaliation. During annual sexual harassment training, Marines are advised that their participation in the Military EO process constitutes protected communication making them eligible to file retaliation complaints with the IG (both recipient and witness).</p> <p>Retaliation-specific training for Sexual Assault Response Coordinators (SARCs) will be conducted by HQMC SAPR, and all-hands training for Victim Advocates (VAs)/Uniformed Victim Advocates (UVAs) will be conducted by SARCs. Further details of this training can be found in the response to Question 85 below. HQMC SAPR conducts leadership training designed to ensure that Marine Corps leaders understand the risks and circumstances associated with sexual assault incidents, including retaliation, and the proactive measures to prevent these and other destructive behaviors. Training is currently being enhanced to include more</p>

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	<p>information pertaining to retaliation prevention and detection, as well as policies and procedures for filing a complaint of retaliation.</p> <p>Judge Advocate Division, HQMC, provides training to counsel on retaliation against victims of sexual assault during legal community training and trial counsel assistance program training. Training on retaliation is also discussed with leaders at the commanders' course.</p>
<b>USCG</b>	<p>The Civil Rights Directorate is responsible for Equal Opportunity training, which includes training and preventing retaliation in any employment context, including following a report of sexual assault. The Sexual Assault Prevention and Response (SAPR) Program is responsible for mandatory annual training as well as other special event training materials, such as Sexual Assault Awareness Month, and includes some discussion of retaliation in the training they provide. Sexual Assault Response Coordinators (SARC) receive training on retaliation during their initial Coast Guard SARC training, as well as during their ongoing advanced trainings.</p>

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**68. How does the Service advertise or publicize the DoDIG Whistleblower hotline to Service members? Is there a separate hotline for members to report retaliation to the Service IG?**

<p><b>USA</b></p>	<p>The DAIG webpage contains a link directly to DoD IG webpage which contains a direct link to the DoDIG fraud, waste, abuse, or reprisal hotline. Additionally, IGs meeting with Service members provide information on other complaint channels, including DoD IG.</p> <p>DAIG provides three avenues for members to report retaliation to the Service IG. DAIG maintains a Complaint Line which is manned by an Army IG 24 hours a day, 7 days a week. The phone number is posted on the DAIG webpage. This Complaint Line can be used at any time to report retaliation to an actual IG. Additionally, the DAIG website allows members to submit retaliation complaints on-line at any time. Finally, anyone can contact their unit IG or any other IG to make a retaliation report. Complaints can be made by calling-in, walking-in, writing-in (USPS, Fax, email, etc.), and on-line.</p>
<p><b>USAF</b></p>	<p>The contact information for DoD Inspector General (DoD IG) and AF Inspector General (AF IG) are published in numerous places throughout installations, distributed through periodic e-mail and publications, and posted and advertised on both public and internal web pages so that Airmen are aware of how to report reprisal under 10 U.S.C. § 1034 (Protected Communications; Prohibition of Retaliatory Personnel Actions).</p> <p>The AF IG does maintain dedicated phone and e-mail hotlines which members can use to contact the AF IG directly. Additionally, the AF IG maintains a web-based complaint system that allows a member to file a complaint over the internet. The AF IG webpage also contains links to DoD IG and the other Service IGs.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- Air Force Inspector General Complaints <a href="http://www.af.mil/InspectorGeneralComplaints.aspx">http://www.af.mil/InspectorGeneralComplaints.aspx</a></li> <li>- Department of Defense Inspector General Complaints <a href="http://www.dodig.mil/hotline/">http://www.dodig.mil/hotline/</a></li> <li>- Air Force Inspector General Hotline – 1-800-538-8429</li> </ul>
<p><b>USN</b></p>	<p>SECNAVINST 5370.5B, Navy Hotline Program, requires hotline information to be posted at Navy commands. Required information includes the local IG Hotline and Naval Inspector General (NAVINSGEN) Hotline numbers. During the NAVINSGEN Hotline Program Quality Assurance Review (QAR) process, NAVINSGEN inspects Echelon II compliance with this requirement. In addition, Hotline contact information is advertised via the NAVINSGEN website: <a href="http://www.secnav.navy.mil/ig/Pages/Home.aspx">http://www.secnav.navy.mil/ig/Pages/Home.aspx</a>. NAVINSGEN and the Navy IG Community can receive complaints in person, via telephone, or through the NAVINSGEN website.</p> <p>OPNAV N17 encourages Sailors to use the DoD Safe Helpline which provides live,</p>

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	<p>one-on-one crisis intervention information to the worldwide DoD community and an avenue for victims to report retaliation. Key fobs, pamphlets, flyers, table tents and posters which publicize the DoD Safe Helpline are provided to the Fleet.</p>
<p><b>USMC</b></p>	<p>The Deputy Naval Inspector General for Marine Corps Matters/Inspector General of the Marine Corps (IGMC) has a separate hotline phone number and email address to send a hotline complaint to their office located on the IGMC's website. Within 10 days of receiving a reprisal complaint, HQMC IG will notify the Department of Defense (DoD) IG of the complaint. The IGMC website discusses the DoDIG's hotline and provides a link to the DoDIG's website.</p> <p>DoD Directive (DoDD) 7050.06, Military Whistleblower Protection, dated April 17, 2015, issues the broad mandate to "publicize the content of this directive to ensure that members of the Military Services and other DoD personnel fully understand its scope and application." DoD IG typically refers the retaliation complaints it receives via its whistleblower hotline to the service. As such, the inspector general offices at each command publicize their hotline and the Deputy Naval Inspector General for Marine Corps Matters/Inspector General of the Marine Corps (IGMC) hotline in addition to referencing the DoD IG whistleblower hotline. Secretary of the Navy Instruction (SECNAVINST) 5370.7D, Military Whistleblower Protection, dated December 4, 2014, publicizes to all service members and DON personnel that they are protected from reprisal and retaliation when reporting to the proper authority those acts/omissions that they reasonably believe to be violations of law/regulation, fraud, waste, or mismanagement. The Naval Inspector General (NAVINSGEN) and IGMC are the only entities within DON designated/authorized to investigate matters relating to professional retaliation (reprisal) against uniformed personnel and the SECNAVINST details reporting and investigative procedures. The IGMC reaches a vast audience within and outside the Marine Corps where IG core functional responsibilities are incorporated into a variety of recurring training venues (retaliation is an essential topic covered in each curriculum, as are discussions about all avenues of reporting, which include the IGMC hotline, the Command IG (CIG) hotlines, and the DoD IG Whistleblower hotline).</p> <p>Specifically:</p> <ul style="list-style-type: none"> <li>a. Commandant's Commander's Course (X 2 annually)</li> <li>b. World-wide IGMC Symposium (Annual)</li> <li>c. Senior Leaders Legal Course (Annual, upon request)</li> <li>d. Installations Commander's Course (Annual)</li> <li>e. Inspector General Mobile Training Teams (X 4, West Coast, East Coast, New Orleans -Reserve force, Okinawa)</li> <li>f. The Basic School (All Classes)</li> <li>g. Joint Inspector General Course - handling Marine Corps matters (x4 DoDIG sponsored annually)</li> <li>h. Sergeant Major Symposium (Annual)</li> <li>i. Brigadier General Select Orientation Course (BGSOC), (Annual)</li> <li>j. IGMC Inspection Program (including Special Interest (SPINS) Brief): All major subordinate commands (Marine Expeditionary Forces, Marine Forces) and individual</li> </ul>

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	<p>commands (HMX, MBks 8th&amp;I, MCIA, Pax River, etc.)</p> <p>k. IGMC Newsletters serve as interim policy guidance</p> <p>DoDIG information is further disseminated and publicized during IGMC biennial inspection of the CIGs throughout the Marine Corps. The IGMC and all CIG offices currently have the capacity and procedures in place to in-take all allegations of retaliation via their general hotlines (there is no dedicated retaliation hotline in the USMC).</p>
<b>USCG</b>	<p>The SAPR Program distributes the DoD Safe Helpline number. The Coast Guard does not fall under the DoD IG and therefore, although a Coast Guard member may call the DoD number for help, that individual will normally be directed to the DHS IG hotline. The DHS IG hotline is made available to Coast Guard members via the service's website. Pursuant to a Memorandum of Understanding, the DHS IG refers most Coast Guard related matters to the Coast Guard Investigative Service (CGIS) for issues that would typically be evaluated by the DoD IG. The Coast Guard does not have its own Service IG.</p>

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**69. What are the various channels within the Service that a victim of sexual assault or witness to retaliation can use to report social or professional retaliation?**

<b>USA</b>	<p>Victims and/or witnesses may report allegations of professional or social retaliation to the chain of command, law enforcement, Victim Advocates, Sexual Assault Response Coordinators, Special Victim Counsel, the IG, and hotlines run by the DoD, the Army, or the installation</p>
<b>USAF</b>	<p>The terms “professional retaliation” and “social retaliation” have been used in surveys and discussions about how to address retaliation and other negative ancillary effects of reporting a crime experienced by victims. In reporting, we do not focus on this terminology, but instead focus on the division between conduct that the Inspector General (IG) investigates (i.e. reprisal) and ostracism and maltreatment.</p> <p>As discussed in RFI #68, an Airman can file a complaint of reprisal through the DoD Inspector General (DoD IG) or AF Inspector General (AF IG) complaint resolution systems. They may report any reprisal under 10 U.S.C. § 1034 (Protected Communications; Prohibition of Retaliatory Personnel Actions) to the IG at the installation, Numbered Air Force (NAF), Major Command (MAJCOM), or AF level. They can file their complaint in person, over the phone, via e-mail or through the web-based AF IG complaints page.</p> <p>An Airman, military or civilian, can make a complaint of ostracism or maltreatment, in violation of AFGM to AFI 36-2909, directly to their chain of command or to law enforcement, meaning AFOSI or AF Security Forces. AFGM to AFI 36-2909, para. 14, states that “[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.” If the report made to a commander or law enforcement involves an allegation of reprisal, the matter will be referred to the IG. AFGM to AFI 36-2909, para. 16.</p> <p>Airmen also have available the assistance of their sexual assault response coordinator (SARC), victim advocate (VA), or Special Victim’s Counsel (SVC) to provide them advice on how to report reprisal, ostracism, and maltreatment, and to assist with reporting if the victim chooses. A victim may refuse to disclose and prevent any other person from disclosing a privileged communication made between the victim and a SARC, VA, or SVC unless required by law. Military Rules of Evidence 502 and 514.</p> <p>During the initial intake that SAPR personnel have with a victim, the SARC or VA is responsible for discussing with victims the definition of retaliation, to include reprisal, ostracism, and maltreatment. They are also required to talk to the victim about whether the victim has experienced any form of retaliation, different reporting</p>

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	<p>options, and to assist the victim with reporting the retaliation if the victim chooses. The SARC or VA will continue to discuss this issue with victims at least monthly prior to Case Management Group (CMG) meetings. If a victim discusses a retaliation incident with the SARC or VA, but chooses not to make a retaliation report, the communications remain privileged and will not be discussed at the installation CMG to ensure the victim's identity is protected. If the victim chooses to report the retaliation, the SARC will assist in determining whether the complaint is best referred to command, the IG, or Air Force Office of Special Investigations (AFOSI) and assist the victim in contacting the agency if necessary. The SARC or VA will also encourage the victim to consult with their SVC.</p> <p>For victims that elect Special Victims' Counsel (SVC) representation, the SVC will discuss with the victim the definitions of retaliation, to include reprisal, ostracism, and maltreatment. The SVC will also discuss different reporting options if the victim makes the SVC aware of a retaliation incident and assist the victim with making a report if the victim chooses. These conversations take place both in advance and after CMG meetings to see if there is an incident the victim would like to report so that it can be discussed at the CMG or at the meeting victims have with their commander within 72 hours after the CMG where they receive a status update on the investigation. If the victim makes the SVC aware of an incident that the victim has experienced that does not meet the definitions of reprisal, ostracism, or maltreatment, the SVC (if the victim consents) will raise the issue with the Commander or installation Staff Judge Advocate. An example of such a scenario could be an inappropriate posting on the Facebook page of one of the victim's friends that the victim views. Such conduct could be a violation of AFI 1-1, <i>Air Force Standards</i>, para.2.15.3.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- AFGM 2014-01 to AFI 36-2909, <i>Professional and Unprofessional Relationships</i>, 19 June 2014, <a href="http://static.e-publishing.af.mil/production/1/af_ja/publication/afi36-2909/afi36-2909.pdf">http://static.e-publishing.af.mil/production/1/af_ja/publication/afi36-2909/afi36-2909.pdf</a></li> <li>- AFI 90-301, <i>Inspector General Complaints Resolution</i>, 6 June 2012, <a href="http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf">http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf</a></li> <li>- AFI 1-1, <i>Air Force Standards</i>, 7 August 2012, <a href="http://static.e-publishing.af.mil/production/1/af_cc/publication/afi1-1/afi1-1.pdf">http://static.e-publishing.af.mil/production/1/af_cc/publication/afi1-1/afi1-1.pdf</a></li> </ul> <p><b>ATTACHMENT:</b> Attachment 70, Change 1 to 27 February 15 Memorandum - Updated Procedures Regarding Reporting and Tracking Victim Retaliation in Sexual Assault Cases, 17 March 15.</p>
<b>USN</b>	A service member who is a victim of sexual assault or witness to retaliation can report via several channels including their chain of command, an Inspector General, Naval Criminal Investigative Service (NCIS), Victims' Legal Counsel (VLC), Victim Advocate (VA), other Commanding Officers (COs), or DoD Safe Helpline.
<b>USMC</b>	Victims of or witnesses to social or professional retaliation may report such retaliation in a number of ways. Ways of reporting include:

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	<p>(a) Request that any SARC or SAPR VA/UVA (not just those to whom they are normally designated) assist them in reporting. This can be facilitated locally or by the DoD SAPR SAFE Helpline;</p> <p>(b) Report to their immediate commander, a commander outside of their chain of command, or to any superior commissioned officer;</p> <p>(c) Report through an IG; or</p> <p>(d) Request legal services from Victim’s Legal Counsel (VLC), trial counsel, the Victim Witness Assistance Program (VWAP), or a legal assistance attorney to facilitate reporting.</p> <p>SARCs and SAPR VA/UVAs are required to inform sexual assault victims of the resources available to report instances of retaliation as part of the protocol for reviewing the DD Form 2910.</p> <p>VLC are available to discuss options and to assist victims to file complaints to address perceived reprisal or retaliation. However, few crime victims seeking VLC assistance have raised such issues or requested assistance filing retaliation complaints. The options VLC may use to address perceived retaliation include:</p> <ul style="list-style-type: none"> <li>- Article 138, UCMJ, Complaints of Wrong</li> <li>- Navy General Regulation 1150, Redress of Wrong Committed by a Superior</li> <li>- Request Mast</li> <li>- Equal Opportunity complaint</li> <li>- BCNR assistance</li> <li>- IG complaint</li> <li>- Congressional inquiry assistance</li> </ul>
<b>USCG</b>	<p>A victim that experiences retaliation or a witness to retaliation can report such incidents to a Coast Guard SARC, victim advocate (VA), or special victims’ counsel (SVC) using existing channels for victim support. Reports can also be made to CGIS. If a victim or bystander is involved in an ongoing criminal case for which trial counsel have been assigned, a report can also be made to trial counsel. Reports can always be made through the victim’s chain of command or to a superior in the chain of command. The Coast Guard has also instituted a SAPR Crisis Intervention Team consisting of the victim and alleged offender’s commands, SARC, CGIS, legal, and medical representatives for every unrestricted report of sexual assault. This team is capable of coordinating response to an allegation of retaliation.</p>

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**70. What organization is responsible for training those who assist service members with filing retaliation complaints? How do victims learn about the availability of this assistance?**

<b>USA</b>	<p>Agencies responsible for training those who assist service members with filing a retaliation complaint are the SHARP Directorate, SHARP Academy, Judge Advocate General Corps (JAG), IG, and the Criminal Investigation Command (CID).</p> <p>Victims learn about the availability of assistance from the SARC, VA, Victim Representatives (VR), SHARP Trainers, SHARP Program Managers, Special Victims Counsel, Victim Witness Assistance Program (VWAP), Inspector General Personnel, Criminal Investigation Agents, and Commanders/Senior Leaders.</p>
<b>USAF</b>	<p>AF Sexual Assault Prevention and Response Office and the AF Judge Advocate General's Corps are responsible for training their respective personnel on how to assist Airmen with filing reports of retaliation, to include reprisal, ostracism, and maltreatment. Sexual assault victims learn about this assistance when they meet with a Sexual Assault Response Coordinator, Victim Advocate, or Special Victims' Counsel as described above in RFI #69.</p>
<b>USN</b>	<p>An active duty victim of sexual assault is eligible to receive free legal representation from a VLC, who may assist the victim in filing retaliation complaints. Should the victim prefer, a VA, Sexual Assault Response Coordinator (SARC), or member of the victim's command may also assist the victim in filing retaliation complaints.</p> <p>NJS trains VLCs, and all judge advocates, on different options available in filing retaliation complaints during the ten-week Basic Lawyer Course all Navy, Marine Corps, and Coast Guard judge advocates attend before being certified to practice law in the military, and again during advanced military law courses offered by the NJS. NJS also provides basic level training to attendees of the Senior Officer Course (leaders) about the grievance process, including on the filing of allegations of retaliation.</p> <p>SARCs, VAs, military criminal investigators (including NCIS), victim/witness liaisons, and trial counsel are required to notify the victim about the availability of VLC services. Victims also learn about the availability of VLC services from base and area newspaper articles, base and DoD television broadcasts, VLC awareness and outreach briefs, naval messages, VLC pamphlets, and VLC posters. As of April 10, 2015, VLC have briefed over 40,000 Fleet personnel on VLC availability and services provided.</p>
<b>USMC</b>	<p>Pursuant to SECNAVINST 5370.7D, the IGMC has overall responsibility to ensure that IG personnel (and the lawyers who advise them) who receive complaints of professional retaliation (reprisal) are trained to offer assistance in preparing complaints to IGMC that meet the content requirements of DoDD 7050.06, dtd April 17, 2015. The IGMC is available to train-the-trainers and/or present retaliation education at any brief or schoolhouse not currently covered in the above-referenced schedule (question 68). The IGMC Inspection Team conducts all-hands Special Interest (SPINs) Briefs to all units on the annual inspection schedule. SPINs briefs provide the latest and essential "troop information" prescribed by Marine Corps</p>

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	<p>leadership. Topics include safety, adverse trends, professional conduct, training/education opportunities, and available resources. All IGMC training modules given across the USMC have been updated to incorporate new legal retaliation requirements and details how the IGMC is processing retaliation complaints via the IG hotline.</p> <p>HQMC SAPR is responsible for SARC and SAPR VA/UVA training curriculums. SARCs and SAPR VA/UVAs are required to inform sexual assault victims of the resources available to report instances of retaliation as part of the protocol for reviewing the DD Form 2910. The availability of assistance, briefly outlined in response to question 69, is included in the Department of Defense Instruction (DoDI) 6495.02 SAPR Program Procedures Change 2 that is in routing for publication in May 2015.</p>
<b>USCG</b>	<p>The SARCs are primarily responsible for training about retaliation and assisting those who report they have been retaliated against. The most common route through which victims learn of the availability for assistance is through their SVC or the servicing SARC.</p>

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**71. What role do the following personnel have regarding retaliation complaints from a sexual assault victim: SVC, SARC, VA, VWL, MCIO, TC, EOA, IG, Case Management Group (CMG), SARB?**

<b>USA</b>	<p><b>SVC:</b> SVC will assist victims in identifying and reporting allegations of retaliation. SVC will also advocate on behalf of victims who have experienced retaliation with the chain of command to ensure an appropriate response.</p> <p><b>SARC/VA:</b> If a SARC or a VA becomes aware that a sexual assault victim has a complaint of retaliation, the SARC or VA should notify the Lieutenant Colonel (O-5) level or higher commander of the victim. The Lieutenant Colonel will develop a plan to immediately address the issue and forward the plan to the SARB chair.</p> <p><b>VWL:</b> VWL notify Trial Counsel or Special Victim Prosecutors if a victim makes an allegation of retaliation to ensure an appropriate investigation and response.</p> <p><b>MCIO:</b> When CID initiates a sexual assault investigation, it will also initiate and conduct subsequent investigations relating to suspected threats against the sexual assault victim, including minor physical assaults and damage to property. Complainants and/or their commander should immediately notify Criminal Investigation Command whenever the victim of an unrestricted sexual assault is threatened, assaulted or suffers property damage subsequent to her/his complaint of a sexual assault.</p> <p><b>TC:</b> TC will assist victims in identifying allegations of retaliation and refer allegations to law enforcement, IG, or the chain of command for investigation. Once investigations are complete, TC are also trained to evaluate evidence to determine if the retaliatory conduct meets the elements of a charge under the Uniform Code of Military Justice, regulatory violation, or other inappropriate non-criminal conduct. Trial Counsel will then advise commanders on appropriate disposition.</p> <p><b>EOA:</b> Equal Opportunity Advisors do not assist victims of sexual assault.</p> <p><b>IG:</b> Army IGs will normally refer a retaliation complaint to the command for investigation. If the complainant meets the requirements for statutory reprisal, the IG will forward the complaint through IG channels to DAIG for a formal review. DAIG will review the complaint and if they concur, forward the complaint to DoDIG WRI. If the complaint is missing some critical information necessary to determine if it is reprisal, DAIG will contact the IG who received the complaint or the complainant directly to obtain the missing information prior to forwarding to DoDIG.</p> <p><b>SARB (CMG):</b> Per Army Directive 2015-16, during every Sexual Assault Review Board (SARB) meeting the SARB chair will ask SARB members if the victim, witnesses, bystanders (who intervened), Sexual Assault Response Coordinators, Victim Advocates, first responders or other parties to the incident have experienced any retaliation or reprisal. If any incidents are reported, the Lieutenant Colonel (O-5) level or higher commander of the victim of retaliation or reprisal will develop a plan</p>
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	<p>to immediately address the issue and forward the plan to the SARB chair. For the Army, the SARB is the equivalent of the Case Management Group.</p>
<p><b>USAF</b></p>	<p><u>SARC, VA, CMG</u>: Change 1 to 27 February 15 Memorandum - Updated Procedures Regarding Reporting and Tracking Victim Retaliation in Sexual Assault Cases, 17 March 15, provides Commanders and Sexual Assault Response Coordinators (SARC) with a formal framework to use in reporting and tracking sexual assault victim retaliation. SARCs have the primary responsibility for discussing retaliation with sexual assault victims, discussing retaliation reporting, and ensuring victims are provided with assistance in making retaliation reports. Retaliation allegations that a victim reports will be briefed at the monthly Case Management Group (CMG) meeting. The victim's commander will brief a plan to address the retaliation report. The report will remain on the CMG agenda until the victim's sexual assault case has reached final disposition or the report has been appropriately addressed according to the CMG Chair. At the installation level, the SARC, Victim Advocate (VA), or CMG may seek advice from their servicing Staff Judge Advocate (SJA). Questions of policy may be referred to AF SAPRO.</p> <p><u>SVC</u>: If a Special Victims' Counsel (SVC) becomes aware a client may have suffered retaliation, the SVC will discuss reporting options with the client. The SVC will assist the client in making a retaliation report and advise the client as to how the retaliation complaint may affect the client's sexual assault allegation that led to the original representation. SVCs also advocate directly to commanders, first sergeants, legal offices or other relevant entities as necessary in order to ensure their client's rights have been safeguarded and instances of retaliation are addressed. SVCs work with other helping agencies, to include the SARC, Family Advocacy Program, and Victim and Witness Assistance Program, to assist the client in resolving retaliation allegations. SVCs are actively involved in advising their clients both before and after CMG meetings to advise them on their reporting options for retaliation.</p> <p><u>IG</u>: The AF Inspector General (IG) analyzes all complaints received to determine the appropriate resolution strategy. Any complaints meeting the definition of reprisal will remain with the IG for further analysis. Those allegations of retaliation that do not meet the reprisal definition will be referred to the appropriate level of command for further analysis and action as required. Allegations of reprisal will be assessed to see if there is <i>prima facie</i> evidence of reprisal. If there is not, the allegations will be dismissed. If there is <i>prima facie</i> evidence of reprisal, then the allegations will be analyzed to see if a full investigation is warranted or not. If a full investigation is warranted, then one will be conducted and subsequently, a determination will be made whether or not to substantiate each claim. At the installation level, the servicing SJA provides advice to the AF IG on investigations. This structure of the IG receiving legal advice from the servicing SJA is mirrored at the Numbered Air Force (NAF), Major Command (MAJCOM), and Air Staff level.</p> <p><u>AFOSI</u>: As a Military Criminal Investigative Organization, the Air Force Office of Special Investigations (AFOSI) assesses all complaints it receives to determine if the complaint involves a felony violation of the UCMJ or other federal, local or foreign penal codes. Currently, there is no specific UCMJ punitive article for "retaliation."</p>

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Instead, retaliation may be the motive for committing a variety of UCMJ offenses, such as damage to property, assault, or unlawful communication of a threat. If an allegation involves a criminal matter falling outside of AFOSI's own mission area or jurisdiction, AFOSI refers the matter to the appropriate law enforcement agency (e.g., AF Security Forces; federal, state or local law enforcement agency; foreign law enforcement agency). In cases where AFOSI and another law enforcement agency both have an interest in the matter, the status of the subject (not the victim) and the location of the offense generally determines which agency will lead the investigation. For non-criminal matters, AFOSI refers the matter to command officials (e.g., installation IG, unit commander) for further action. AFI 51-201, Section 13P, provides details on the relationship between each installation legal office and AFOSI detachment.

TC/VWAP: The installation Victim and Witness Assistance Program (VWAP) is responsible for informing victims that they should immediately report any intimidation, harassment, or similar conduct to military or civilian authorities. AFI 51-201, *Administration of Military Justice*, para. 7.12.8. The VWAP and trial counsel are also responsible for ensuring the victim is reasonably protected from the accused under Article 6b, UCMJ and will inform victims of the availability of military protective orders and civilian restraining orders. AFI 51-201, para. 7.12.8.1. The VWAP and trial counsel will also ensure that victims and witnesses are able to wait to testify in an area that is separate from the accused or defense witnesses. AFI 51-201, para. 7.15.1.4. If a victim indicated to the VWAP or trial counsel that he or she had experienced a retaliation incident, the legal office personnel would be responsible for ensuring the retaliation allegation was referred to the appropriate entity (e.g. AFOSI, AF IG, commander) for investigation.

SARB: The AF does not use SARBs.

EO: The Equal Opportunity (EO) office addresses allegations of unlawful discrimination on the basis of race, color, national origin, sex, religion, or sexual harassment for military members and allegations of unlawful discrimination on the basis of race, color, religion, sex, national origin, age (40 and older), disability, genetic information, sexual harassment, or retaliation for opposing discrimination or for participating in the complaint process for DoD civilians. AFI 36-2706, paras. 3.14, 4.2. If the victim's allegation includes reprisal, the EO office will refer the victim to the installation IG. AFI 36-2706, para. 3.40. If the victim's allegation does not fall within the scope of the EO program, the EO office will refer the victim to another helping agency (e.g. SARC, SVC) to assist the victim in making a retaliation report. The installation EO office may seek advice from their servicing SJA.

References:

- AFI 90-301, *Inspector General Complaints Resolution*, 6 June 2012, [http://static.e-publishing.af.mil/production/1/saf\\_ig/publication/afi90-301/afi90-301.pdf](http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf)
- AFI 51-201, *Administration of Military Justice*, 6 June 2013, <http://static.e->

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	<p><a href="http://publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf">publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf</a></p> <p>- AFI 36-2706, <i>Equal Opportunity Program Military and Civilian</i>, 5 October 2010, <a href="http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2706/afi36-2706_ic-1.pdf">http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2706/afi36-2706_ic-1.pdf</a></p> <p><b>ATTACHMENT:</b> Attachment 70, Change 1 to 27 February 15 Memorandum - Updated Procedures Regarding Reporting and Tracking Victim Retaliation in Sexual Assault Cases, 17 March 15.</p>
<p><b>USN</b></p>	<ul style="list-style-type: none"> <li>• Depending on the nature of the complaint, NAVINSGEN will investigate or refer Hotline complaints regarding retaliation from sexual assault victims. Retaliation that falls within the protection of 10 U.S.C. 1034 (Military Whistleblower Protection), will be investigated by NAVINSGEN Military Whistleblower Reprisal (MWBR) Branch and Echelon II IG offices under the supervision of the NAVINSGEN MWBR Branch. Cases investigated as potential 10 U.S.C. 1034 violations are specifically related to <u>professional retaliation</u> – allegations of a responsible management official taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making or preparing to make a protected communication.</li> <li>• In accordance with SECNAVINST 5370.7D, Military Whistleblower Protection, allegations of <u>ostracism and maltreatment</u> shall be referred to the appropriate command for action except in those circumstances where IGs, in their discretion, determine the allegations should be handled by an IG.</li> <li>• The Sexual Assault Case Management Group (SACMG) is required to regularly assess, and refer for appropriate corrective action, all reports from a victim, witness or first responder of retaliation, ostracism, maltreatment, or reprisal in conjunction with a report of sexual assault. Upon notification of retaliation, COs are required to follow procedures for reporting and investigation in accordance with SECNAVINST 5370.7D. Available at <a href="http://doni.daps.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-300%20Manpower%20Personnel%20Support/5370.7D.pdf">http://doni.daps.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-300%20Manpower%20Personnel%20Support/5370.7D.pdf</a>.</li> <li>• If an allegation of reprisal, or any other allegations of criminal activity against the victim (threats, minor physical assaults, damage to property, etc.) is <u>identified during a NCIS sexual assault investigation</u>, NCIS shall initiate a separate investigation. For all other instances, NCIS will open a formal investigation or refer the matter to either NAVINSGEN or the victim’s command.</li> <li>• Navy VLC play a direct role in advising and assisting victims in understanding and exercising retaliation complaint options when a victim has retained a VLC and a complaint is desired. To date, Navy VLC have assisted victims in utilizing Article 1150, U.S. Navy Regulations and Article 138, UCMJ to make complaints. However, Navy VLC report that the vast majority of “retaliation” issues observed in the course of their support for victims have</li> </ul>

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	<p>consisted of lower-level, “peer-to-peer”, social ostracism which have generally been successfully resolved via VLC engagement with the victim’s chain of command.</p> <ul style="list-style-type: none"> <li>• Trial counsel provide all victims and witnesses of sexual assaults with Victim Witness Assistance Program (VWAP) notifications, which includes information on retaliation. All VWAP resources and instructions for the DoD and Navy are located at this website: <a href="http://www.public.navy.mil/bupers-npc/support/vwap/Pages/default.aspx">http://www.public.navy.mil/bupers-npc/support/vwap/Pages/default.aspx</a></li> <li>• VAs and SARCs advise victims on available legal assistance through the VLC, and can advise regarding the various reporting options available to victims.</li> </ul>
<b>USMC</b>	<p><b>VLC.</b> VLC provide legal advice and counseling to victims, including discussing options to file complaints of retaliation, and assisting to prepare such complaints. In cases of either social or professional retaliation, VLC are able to assist victims with allegations of retaliation by communicating with the command to seek resolution. When this effort fails, VLC can assist the victim by filing an appropriate complaint as listed above in response to Question #69.</p> <p><b>SARC/VA.</b> SARCs and SAPR VA/UVAs refer service members with a retaliation complaint to their command and/or the IG.</p> <p><b>VWL.</b> None</p> <p><b>MCIO.</b> See the USN response for information regarding NCIS.</p> <p><b>IGMC.</b> The role of the IGMC regarding any retaliation complaint applies to all service members, not only to victims of sexual assault. The IGMC established specific procedures necessary for conducting professional retaliation (reprisal) investigations, as published in SECNAVINST 5370.7D. Upon determining sufficient evidence, the IGMC will promptly investigate allegations of retaliation. Additionally, the IGMC is available to take retaliation complaints through the hotline, task them to commands via CIG (if the command is the more appropriate investigative avenue, such for social retaliation complaints), and track completion information.</p> <p><b>TC.</b> Trial counsel must ensure notification of victims of their rights under Article 6b. Also, TCs must notify eligible victims of their right to VLC. Finally, TCs will review allegations of retaliation when received by commands through requests for legal services, and make appropriate recommendations regarding form and disposition of charges, if any.</p> <p><b>EOA.</b> MEO will refer any Marine who wishes to file a reprisal complaint to their servicing IG office. EOAs do not provide advice and guidance regarding reprisal.</p> <p><b>CMG.</b> Per Secretary of Defense Memorandum dated 3 December 2014, Installation commanders who serve as CMG Chairs will regularly assess, and refer for appropriate corrective action, all reports from a victim, witness, or first responder of</p>

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	<p>retaliation, ostracism, maltreatment, or reprisal in conjunction with a report of sexual assault.</p> <p>A new section was added to Change 2 of DoDI 6495.02 (pending publication): “At every CMG meeting, the CMG Chair will ask the CMG members if the victim, witnesses, bystanders (who intervened), SARCs and SAPR VA/UVAs, responders, or other parties to the incident have experienced any incidents of coercion, retaliation, ostracism, maltreatment, or reprisals. If any incidents are reported, the commander concerned will develop a plan to immediately address the issue and will forward the plan to the CMG Chair. The coercion, retaliation, ostracism, maltreatment, or reprisal incident will remain on the CMG agenda for status updates, until the victim's case is closed or until the coercion, retaliation, ostracism, maltreatment, or reprisal incident has been appropriately addressed.”</p> <p><b>IGMC.</b> IGMC is typically not a first responder for sexual assault victims, but the IGMC and CIG accept and process all requests for assistance and/or investigations in accordance with SECNAVINST 5370.7D and will assist anyone who comes to the IG to file a retaliation complaint. The IGMC is responsible for conducting all inquiries in an independent, unbiased, and professional manner and will ensure all complaints to the IG are addressed.</p>
<b>USCG</b>	<p>A victim that experiences retaliation or a witness to retaliation can report such incidents to a Coast Guard SARC, VA, or SVC using existing channels for victim support. The SVC, VA, or SVC may then communicate with CGIS or the trial counsel, if assigned, to ask that the matter be investigated. If a report is received by DHS IG and that organization believes CGIS is in the best position to investigate the complaint, DHS IG will refer the matter to CGIS directly.</p>

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**72. Who is primarily responsible for advising a victim of his/her options to file a complainant of professional or social retaliation?**

<b>USA</b>	The SARC or VA advises the victim, as part of completing the DD Form 2910 (Victim Reporting Preference Statement) that: (6) “I understand that if I experience coercion, retaliation, reprisal, or ostracism from my supervisors or peers, I can report it to the SARC, Special Victims Counsel, my commander, Victim Witness Assistance Program personnel or my Service Inspector General.”
<b>USAF</b>	See RFI #68 for discussion of the terms “professional retaliation” and “social retaliation.”  As of 17 March 2015, Sexual Assault Response Coordinators and Victim Advocates have the primary responsibility for discussing retaliation and retaliation reporting with sexual assault victims under the AF SAPR program, as well as ensuring retaliation cases are properly referred. The response to RFIs #69 and #71 provide further details on the roles of each helping agency in advising victims of their reporting options and assisting victims with making retaliation reports.
<b>USN</b>	Responsibility for advising any victim of their options to file a complaint of professional or social retaliation will depend on to whom the victim makes the initial report. Navy has embarked on comprehensive education and advertising programs that announce the NAVINSGEN as the central reporting agency for filing complaints of professional or social retaliation; however, chains of command, VLC, NCIS, and VAs are also capable of assisting victims with complaints of professional or social retaliation. If a victim has formed an attorney-client relationship with a VLC, the VLC is primarily responsible for advising and assisting the victim in retaliation complaint options.
<b>USMC</b>	SARCs and SAPR VA/UVAs are required to discuss retaliation from supervisors or peers and options to file a complaint as part of the protocol for review of the DD Form 2910; however, they will refer them to their command or IG to actually file a complaint.  Also, IGMC is typically not a first responder for sexual assault victims, but the IGMC and CIG accept and process all requests for assistance and/or investigations in accordance with SECNAVINST 5370.7D and will assist anyone who comes to the IG to file a retaliation complaint. The IGMC is responsible for conducting all inquiries in an independent, unbiased, and professional manner and will ensure all complaints to the IG are addressed.
<b>USCG</b>	The SARC or SVC have the primary responsibility of advising a victim of the option to file a complaint for professional or social retaliation.

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**73. Is there standardization of the advice within different organizations that is given to victims of sexual assault who wish to make a complaint of professional or social retaliation? If so, what advice is given?**

<b>USA</b>	<p>There is standardization of the advice that is given to victims across the Services. The SARC or VA advises the victim, as part of completing the DD Form 2910 (Victim Reporting Preference Statement) that: (6) “I understand that if I experience coercion, retaliation, reprisal, or ostracism from my supervisors or peers, I can report it to the SARC, Special Victims Counsel, my commander, Victim Witness Assistance Program personnel or my Service Inspector General.”</p>
<b>USAF</b>	<p>See RFI #68 for discussion of the terms “professional retaliation” and “social retaliation.”</p> <p>There are standard definitions for the terms reprisal, ostracism, and maltreatment. Ostracism and maltreatment are defined in AFI 36-2909, paras. 11.2 and 11.3. Reprisal is defined in 10 U.S.C. § 1034 (Protected Communications; Prohibition of Retaliatory Personnel Actions) and reprisal complaints are investigated in the AF under AFI 90-301, <i>Inspector General Complaints Resolution</i>, Chapter 6.</p> <p>The personnel/organizations discussed in RFI #71 advise victims to report allegations of reprisal to the IG and allegations of ostracism and maltreatment to the Air Force Office of Special Investigations (AFOSI) or the victim’s commander. AFOSI will investigate the allegation if the retaliation report (to include ostracism and maltreatment as defined in AFI 36-2909) involves a violation of the UCMJ and AFOSI agrees to investigate. DoDI 5505.18, <i>Investigation of Sexual Assault in the Department of Defense</i>, paragraph 3.d.(1), provides that “when an MCIO initiates an adult sexual assault investigation, it will also initiate and conduct subsequent investigations relating to suspected threats against the sexual assault victim, to include minor physical assaults and damage to property.” If the alleged retaliation is not a criminal violation that AFOSI investigates, AFOSI will refer the matter to the AF Security Forces, AF IG, or unit commander for resolution.</p> <p>The definitions of reprisal and retaliation and interplay between reporting options and helping agencies are further explained in the Case Management Group Memo provided as an attachment to RFI #70.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- AFI 90-301, <i>Inspector General Complaints Resolution</i>, 6 June 2012, <a href="http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf">http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf</a></li> <li>- AFGM 2014-01 to AFI 36-2909, <i>Professional and Unprofessional Relationships</i>, 19 June 2014, <a href="http://static.e-publishing.af.mil/production/1/af_ja/publication/afi36-2909/afi36-2909.pdf">http://static.e-publishing.af.mil/production/1/af_ja/publication/afi36-2909/afi36-2909.pdf</a></li> </ul> <p><b>ATTACHMENT:</b> Attachment 70, Change 1 to 27 February 15 Memorandum - Updated Procedures Regarding Reporting and Tracking Victim Retaliation in Sexual</p>

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	Assault Cases, 17 March 15.
<b>USN</b>	<p>Victims of sexual assault who wish to make a complaint of professional or social retaliation are advised to report allegations to the NAVINSGEN or their command. (See SECNAVINST 5370.7D.) Victims are advised that allegations of reprisal or retaliation in the form of unfavorable personnel action are investigated by the NAVINSGEN, while allegations of retaliation in the form of maltreatment or ostracism are typically investigated by the victim's command. If an allegation of reprisal, or any other allegations of criminal activity against the victim (threats, minor physical assaults, damage to property, etc.) is identified during a NCIS sexual assault investigation, NCIS shall initiate a separate investigation. For all other instances, NCIS will open a formal investigation or refer the matter to either NAVINSGEN or the victim's command. Regardless of which option the victim chooses, the victim's report will be forwarded to the appropriate investigator.</p>
<b>USMC</b>	<p>Relevant organizations give substantively similar advice governed by applicable regulations within the specific duties each organization has. At this time, there is no standardized advice among these organizations.</p> <p>Currently, Marine Corps SARCs and SAPR VA/UVAs inform sexual assault victims on how to report allegations of professional and social retaliation when reviewing the DD Form 2910. To enhance standardization and ensure pertinent information is being communicated to each victim, HQMC SAPR has developed a retaliation module, which will be disseminated to SAPR personnel via All-Hands training in May 2015. See response to question 85 for additional details.</p> <p>If an issue of retaliation is identified by a VLC during the course of interviewing a victim, all options will be discussed and considered, as provided in the response to Question #69.</p> <p>IGMC is typically not a first responder for sexual assault victims, but the IGMC and CIG accept and process all requests for assistance and/or investigations in accordance with SECNAVINST 5370.7D and will assist anyone who comes to the IG to file a retaliation complaint. The IGMC is responsible for conducting all inquiries in an independent, unbiased, and professional manner and will ensure all complaints to the IG are addressed.</p>
<b>USCG</b>	<p>If a victim wishes to make a complaint of retaliation, generally they are advised to work with their SARC or SVC and bring the issue to the attention of CGIS or their chain of command. There is no standardization of the advice given by the SARC or SVC.</p>

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**74. What is the process for victims to submit a formal report of professional reprisal (i.e., personnel action) or social retaliation (i.e., ostracism, maltreatment, etc.)?**

<p><b>USA</b></p>	<p>Victims may report allegations of professional or social retaliation to the chain of command, law enforcement, Victim Advocates, Sexual Assault Response Coordinators, Special Victim Counsel, the IG, and hotlines run by the DoD, the Army, or the installation. Once reported, Secretary of the Army Directive 2015-16 requires all allegations of professional or social retaliation will be formally reported to the senior installation commander through the SARB. The commander will ensure that all allegations will be investigated by either law enforcement or the chain of command.</p> <p>Each reporting agency has a separate process for taking complaints of retaliation, investigating the complaint, and producing the results of the investigation. If a victim makes a report of retaliation to the chain of command, the chain of command may initiate an investigation in accordance with AR 15-6.</p>
<p><b>USAF</b></p>	<p>See RFI #68 for discussion of the terms “professional retaliation” and “social retaliation.”</p> <p>The process for victims to make a report of reprisal is outlined in AFI 90-301, Chapter 6. Victims may file a report using the mechanisms described in RFI #68 and channels described in RFI #69. Attachment 17 of AFI 90-301 is provided to Airmen so that they understand their rights under 10 U.S.C. § 1034 (Protected Communications; Prohibition of Retaliatory Personnel Actions) and the processing of their report of reprisal.</p> <p>The process for victims to make a report of ostracism or maltreatment is described in RFI #69. If an Airman chooses to make a report of retaliation through their chain of command, the victim’s commander will develop a plan to address the retaliation report. For example, the commander may initially refer the allegation to the Air Force Office of Special Investigations (AFOSI) or the commander could initiate a commander-directed investigation to look into the allegations. If the allegation is against the victim’s immediate commander, a higher level commander would initiate the investigation. The commander’s plan will be briefed at the monthly Case Management Group (CMG) meeting. The report will remain on the CMG agenda until the victim’s sexual assault case has reached final disposition or the report has been appropriately adjudicated according to the CMG Chair.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- AFI 90-301, <i>Inspector General Complaints Resolution</i>, 6 June 2012, <a href="http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf">http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf</a></li> <li>- <i>Commander-Directed Investigation (CDI) Guide</i>, 26 April 2010, <a href="http://www.af.mil/Portals/1/documents/ig/cdi-guide.pdf">http://www.af.mil/Portals/1/documents/ig/cdi-guide.pdf</a></li> </ul> <p><b>ATTACHMENT:</b> Attachment 70, Change 1 to 27 February 15 Memorandum - Updated Procedures Regarding Reporting and Tracking Victim Retaliation in Sexual</p>

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	Assault Cases, 17 March 15.
<b>USN</b>	<p>To formally report professional reprisal or social retaliation a victim can either contact the NAVINSGEN through their Hotline number or can contact their chain of command. (Where a victim has engaged a VLC, that VLC is primarily responsible for advising and assisting the victim in submitting a formal report of professional reprisal or social retaliation.) Upon receipt of a formal complaint, the NAVINSGEN will evaluate the complaint and either forward the complaint (i.e. in the case of social retaliation) to the appropriate commander for investigation or investigate the complaint (i.e. in the case of professional retaliation). A command, upon receipt of a formal complaint of reprisal or retaliation in the form of unfavorable personnel action will advise the victim in writing of their rights, document the provision of such advice, and offer to forward the complaint of reprisal or retaliation in the form of unfavorable personnel action to the NAVINSGEN. A command, upon receipt of a formal complaint of retaliation in the form of maltreatment or ostracism will investigate the allegations, or forward to the next level in the chain of command for investigation when necessary to avoid the appearance of a lack of impartiality or objectivity. (SECNAVINST 5370.7D, Enclosure (3), paragraph 6.) If an allegation of reprisal, or any other allegations of criminal activity against the victim (threats, minor physical assaults, damage to property, etc.), is identified during a NCIS sexual assault investigation, NCIS shall initiate a separate investigation. For all other instances, NCIS will open a formal investigation or refer the matter to either NAVINSGEN or the victim's command.</p>
<b>USMC</b>	<p>Any retaliation complaint can be filed with DoDIG, IGMC, or any CIG Hotline. All professional retaliation (reprisal) complaints in the USMC, regardless of where the complaint is filed, are then vetted by IGMC for investigative merit and action as appropriate. Any social retaliation complaint filed with the IG will be vetted to determine the appropriate investigative avenue (IGMC or command). Additionally, the Naval Criminal Investigative Service (NCIS) will refer victims to IG or command if the retaliation consisting of Unfavorable Personnel Action (UPA) or ostracism/maltreatment becomes known during an on-going investigation (NCIS will investigate or maintain the investigation if the retaliation consists of a crime other than UPA or social retaliation, for example assault or obstruction of justice (either misdemeanor or felony level)). Other organizations who might receive retaliation complaints (like Military Equal Opportunity) will also refer the victim to the IG. Victims may file an Article 138 complaint if they believe their commanders have engaged in professional retaliation or failed to hold others accountable for retaliation. Chapter 3 of JAGINST 5800.7F (JAGMAN) contains templates for formally filing an Article 138 complaint. The procedures include requesting redress by the commander, and the submission of the complaint to the GCMCA. Article 138 complaints are ultimately reviewed by the ASN. VLC are also available to assist with filing the complaint.</p> <p>Victims may also report social retaliation to their chain-of-command. In such cases, the commander may decide to use a command investigation to determine the fact and character of the social retaliation and to obtain recommendations for appropriate remedies. The commander, assisted by the Staff Judge Advocate (SJA) defines the scope of the investigation, and makes legal counsel available to the investigating</p>

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	<p>officer. Pursuant to Chapter 2 of the JAGMAN, investigating officers may interview witnesses and seek other evidence. In certain cases, the IG will investigate complaints of social retaliation, see response to question 75.</p> <p>Victims of retaliation may also report social retaliation by senior service members through Article 1150 complaints, which are handled according to the procedures for Article 138 complaints.</p>
<b>USCG</b>	<p>Victims can bring a complaint of retaliation to CGIS or their chain of command. An initial report can be made in any form.</p>

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**75. When/how is a sexual assault victim’s retaliation complaint referred to:**

- a. A Commander’s Inquiry or Investigation (informal or formal such as Army Regulation 15-6 investigation and JAGMAN investigations in the Navy and Marine Corps);**

<b>USA</b>	Upon notification to the command that a victim has made a complaint of retaliation, the command will appoint an AR 15-6 Investigating Officer.
<b>USAF</b>	<p>Any commander who receives a retaliation report that does not constitute reprisal can initiate a commander-directed investigation (CDI). This is not limited to the Airman’s immediate commander – a higher level commander, such as a wing commander, may initiate a CDI. The formal complaint can come directly from the member or their chain of command or it could be referred to the commander from another agency such as the Air Force Office of Special Investigations (AFOSI) or AF Inspector General (AF IG).</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- <i>Commander-Directed Investigation (CDI) Guide</i>, 26 April 2010, <a href="http://www.af.mil/Portals/1/documents/ig/cdi-guide.pdf">http://www.af.mil/Portals/1/documents/ig/cdi-guide.pdf</a></li> <li>- AFI 90-301, <i>Inspector General Complaints Resolution</i>, 6 June 2012, <a href="http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf">http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf</a></li> <li>- AFI 51-904, <i>Complaints of Wrongs under Article 138, Uniform Code of Military Justice</i>, 30 June 1994, <a href="http://static.e-publishing.af.mil/production/1/af_a3_5/publication/afi51-904/afi51-904.pdf">http://static.e-publishing.af.mil/production/1/af_a3_5/publication/afi51-904/afi51-904.pdf</a></li> </ul>
<b>USN</b>	A sexual assault victim’s retaliation complaint is referred to a commander’s JAGMAN investigation or inquiry in cases of social retaliation in the form of ostracism or maltreatment, as defined by SECNAVINST 5370.7D, or when an IG requests the command investigate other forms of reprisal or retaliation.
<b>USMC</b>	<p>See consolidated answer below.</p> <p>Any IG is authorized to receive complaints of professional retaliation (reprisal) from naval personnel. All professional retaliation (reprisal) complaints are vetted by the IGMC for investigative merit. Upon the receipt of allegations of social retaliation (in the form of ostracism or maltreatment), IGMC will typically refer them to the appropriate command for action except in those circumstances where the IGMC, in its discretion, determines that the allegations should be handled by an IG. Such circumstances would exist, for example, when either ostracism, maltreatment, or both, is alleged to have occurred in addition to a retaliatory personnel action (professional retaliation) and the IGMC determines it would be unreasonable to conduct two separate investigations; or when a flag/general officer (GO) or member of the senior executive service (SES) is alleged to have engaged in the ostracism or maltreatment (as IGMC is the only entity in the USMC authorized to conduct senior official investigations). DoD IG retains the investigative authority for 3-star general officers and above and SES equivalents.</p>

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	If an issue of retaliation is identified during the provision of VLC services, the VLC will assist that victim prepare and file their complaint to each of these, whether it is a letter to the Commander or filling out a form to request an IG investigation. Often times VLC will inquire into allegations of retaliation by phone to get further details and seek resolution, followed by written inquiry to preserve the record to file a formal complaint later if necessary.
<b>USCG</b>	Generally, if a victim brings a report of retaliation to the attention of their chain of command, or someone within their unit, it can be referred for a command level investigation. However, the command also has the option of requesting that CGIS conduct the investigation instead. The victim can also approach CGIS, directly or through the SVC or SARC, to request an investigation.

**b. MCIO for investigation;**

<b>USA</b>	Upon notification to the command/VA/SARC/SVC that a victim has made a complaint of retaliation that involves an assault, a threat, or damage to personal property, that complaint will be forwarded to CID immediately.
<b>USAF</b>	Other agencies refer retaliation reports to AFOSI when the actions associated with the retaliation are criminal in nature and of a level of seriousness to warrant AFOSI involvement. Less serious criminal activities and those outside of AFOSI's authority are referred to the appropriate authorities (e.g., AF Security Forces; federal, state, or local law enforcement; foreign law enforcement).  <u>References:</u>  <ul style="list-style-type: none"> <li>- <i>Commander-Directed Investigation (CDI) Guide</i>, 26 April 2010, <a href="http://www.af.mil/Portals/1/documents/ig/cdi-guide.pdf">http://www.af.mil/Portals/1/documents/ig/cdi-guide.pdf</a></li> <li>- AFI 90-301, <i>Inspector General Complaints Resolution</i>, 6 June 2012, <a href="http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf">http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf</a></li> <li>- AFI 51-904, <i>Complaints of Wrongs under Article 138, Uniform Code of Military Justice</i>, 30 June 1994, <a href="http://static.e-publishing.af.mil/production/1/af_a3_5/publication/afi51-904/afi51-904.pdf">http://static.e-publishing.af.mil/production/1/af_a3_5/publication/afi51-904/afi51-904.pdf</a></li> </ul>
<b>USN</b>	Reports of reprisal and retaliation are typically investigated by the NAVINSGEN or the victim's command. However, if an allegation of reprisal, or any other allegations of criminal activity against the victim (threats, minor physical assaults, damage to property, etc.), is identified during a NCIS sexual assault investigation, NCIS shall initiate a separate investigation. For all other instances, NCIS will open a formal investigation or refer the matter to either NAVINSGEN or the victim's command.
<b>USMC</b>	N/A. NCIS is a DON agency; NCIS procedures will be addressed in the USN response.
<b>USCG</b>	Victims, SARCs, SVCs, or any other person can bring information about retaliation to the attention of CGIS for investigation. CGIS may then open an investigation or refer the matter to the chain of command for investigation and action.

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**c. The Service IG for investigation;**

<b>USA</b>	A Soldier makes a complaint of statutory whistleblower reprisal directly to the IG.
<b>USAF</b>	<p>A member can make a reprisal report at the AF IG or DoD IG level. The AF IG will review the complaint and determine if it meets the criteria for reprisal. If it does not amount to reprisal, the IG will refer the report it back to the commander or another appropriate agency for review.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- <i>Commander-Directed Investigation (CDI) Guide</i>, 26 April 2010, <a href="http://www.af.mil/Portals/1/documents/ig/cdi-guide.pdf">http://www.af.mil/Portals/1/documents/ig/cdi-guide.pdf</a></li> <li>- AFI 90-301, <i>Inspector General Complaints Resolution</i>, 6 June 2012, <a href="http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf">http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf</a></li> <li>- AFI 51-904, <i>Complaints of Wrongs under Article 138, Uniform Code of Military Justice</i>, 30 June 1994, <a href="http://static.e-publishing.af.mil/production/1/af_a3_5/publication/afi51-904/afi51-904.pdf">http://static.e-publishing.af.mil/production/1/af_a3_5/publication/afi51-904/afi51-904.pdf</a></li> </ul>
<b>USN</b>	<p>NAVINSGEN receives complaints of retaliation through the NAVINSGEN Hotline. In addition, NAVINSGEN receives referrals of complaints via the DoDIG Hotline or other Service IG Hotline. Complaints are also received via Navy Echelon II Hotlines and certain Echelon III commands which maintain Hotline Programs. The Hotline system accepts complaints directly from the complainant, via a third party, or anonymously.</p> <p>NAVINSGEN investigates allegations of reprisal or retaliation in the form of unfavorable personnel action. NAVINSGEN typically forwards complaints of social retaliation (i.e. ostracism or maltreatment) to the appropriate commander for investigation except in those circumstances where NAVINSGEN, in its discretion, determines whether the allegation should be handled by the NAVINSGEN. (SECNAVINST 5370.7D, enclosure (3), paragraph 1(m).)</p>
<b>USMC</b>	<p>See consolidated answer below.</p> <p>Any IG is authorized to receive complaints of professional retaliation (reprisal) from naval personnel. All professional retaliation (reprisal) complaints are vetted by the IGMC for investigative merit. Upon the receipt of allegations of social retaliation (in the form of ostracism or maltreatment), IGMC will typically refer them to the appropriate command for action except in those circumstances where the IGMC, in its discretion, determines that the allegations should be handled by an IG. Such circumstances would exist, for example, when either ostracism, maltreatment, or both, is alleged to have occurred in addition to a retaliatory personnel action (professional retaliation) and the IGMC determines it would be unreasonable to conduct two separate investigations; or when a flag/general officer (GO) or member of the senior executive service (SES) is alleged to have engaged in the ostracism or maltreatment (as IGMC is the only entity in the USMC authorized to conduct senior official investigations). DoD IG retains the investigative authority for 3-star general</p>

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	<p>officers and above and SES equivalents.</p> <p>If an issue of retaliation is identified during the provision of VLC services, the VLC will assist that victim prepare and file their complaint to each of these, whether it is a letter to the Commander or filling out a form to request an IG investigation. Often times VLC will inquire into allegations of retaliation by phone to get further details and seek resolution, followed by written inquiry to preserve the record to file a formal complaint later if necessary.</p>
<b>USCG</b>	<p>The victim can report the allegation of retaliation to the DHS IG through its hotline. However, DHS IG generally refers matters regarding the Coast Guard to CGIS for investigation.</p>

**d. DOD IG for investigation;**

<b>USA</b>	<p>DOD IG will provide this response separately.</p>
<b>USAF</b>	<p>AF IG notifies DoD IG within 10 days of receiving a complaint including allegations of reprisal. AFI 90-301, para. 6.5. DoD IG may decide to retain the allegation to conduct a complaint analysis at their level and conduct an investigation or return the complaint to AF IG to proceed. DoD IG maintains oversight throughout the conduct of any investigation into an allegation of reprisal.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- <i>Commander-Directed Investigation (CDI) Guide</i>, 26 April 2010, <a href="http://www.af.mil/Portals/1/documents/ig/cdi-guide.pdf">http://www.af.mil/Portals/1/documents/ig/cdi-guide.pdf</a></li> <li>- AFI 90-301, <i>Inspector General Complaints Resolution</i>, 6 June 2012, <a href="http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf">http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf</a></li> <li>- AFI 51-904, <i>Complaints of Wrongs under Article 138, Uniform Code of Military Justice</i>, 30 June 1994, <a href="http://static.e-publishing.af.mil/production/1/af_a3_5/publication/afi51-904/afi51-904.pdf">http://static.e-publishing.af.mil/production/1/af_a3_5/publication/afi51-904/afi51-904.pdf</a></li> </ul>
<b>USN</b>	<p>DoD IG investigates or oversees NAVINSGEN investigations of allegations of restriction or professional retaliation.</p>
<b>USMC</b>	<p>N/A.</p>
<b>USCG</b>	<p>The Coast Guard does not fall within the Department of Defense and thus does not utilize the DoD IG for investigation. If a member does call the DoD IG hotline or contact the DoD IG in another way, DoD IG would normally refer the matter to the DHS IG, who would normally refer it to CGIS for investigation.</p>

**e. Any other investigative body (e.g., Art. 138 complaints)?**

<b>USA</b>	<p>A victim has multiple avenues to report retaliation. A victim of retaliation can make a report with the SARC, Special Victims Counsel, the commander, law enforcement, Victim Witness Assistance Program personnel or the Service Inspector General. The SARC/VA/SVC will assist the victim by ensuring that the victim's complaint is referred to the appropriate agency. Once the complaint is made, each of the investigating agencies follows its own procedures.</p>
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<p><b>USAF</b></p>	<p>It is the victim's choice to make an Article 138 complaint. There is no process to refer an allegation to an Article 138 complaint. If the victim is an Airman who believes that he or she was wronged by his/her commander and is refused redress by that commander, the Airman may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction will examine the complaint and take proper measures for redressing the wrong.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- <i>Commander-Directed Investigation (CDI) Guide</i>, 26 April 2010, <a href="http://www.af.mil/Portals/1/documents/ig/cdi-guide.pdf">http://www.af.mil/Portals/1/documents/ig/cdi-guide.pdf</a></li> <li>- AFI 90-301, <i>Inspector General Complaints Resolution</i>, 6 June 2012, <a href="http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf">http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf</a></li> <li>- AFI 51-904, <i>Complaints of Wrongs under Article 138, Uniform Code of Military Justice</i>, 30 June 1994, <a href="http://static.e-publishing.af.mil/production/1/af_a3_5/publication/afi51-904/afi51-904.pdf">http://static.e-publishing.af.mil/production/1/af_a3_5/publication/afi51-904/afi51-904.pdf</a></li> </ul>
<p><b>USN</b></p>	<p>If a victim of sexual assault file an Article 138, UCMJ complaint alleging reprisal or retaliation, the allegation will be forwarded to the next level in the commander's chain of command and the next level in the chain of command will either ensure that an investigation is completed or will offer to forward the complaint of reprisal or retaliation to the NAVINSGEN.</p>
<p><b>USMC</b></p>	<p>See consolidated answer below.</p> <p><b>BCNR.</b> BCNR is a DON agency; BCNR procedures will be addressed in the USN response.</p> <p>Any IG is authorized to receive complaints of professional retaliation (reprisal) from naval personnel. All professional retaliation (reprisal) complaints are vetted by the IGMC for investigative merit. Upon the receipt of allegations of social retaliation (in the form of ostracism or maltreatment), IGMC will typically refer them to the appropriate command for action except in those circumstances where the IGMC, in its discretion, determines that the allegations should be handled by an IG. Such circumstances would exist, for example, when either ostracism, maltreatment, or both, is alleged to have occurred in addition to a retaliatory personnel action (professional retaliation) and the IGMC determines it would be unreasonable to conduct two separate investigations; or when a flag/general officer (GO) or member of the senior executive service (SES) is alleged to have engaged in the ostracism or maltreatment (as IGMC is the only entity in the USMC authorized to conduct senior official investigations). DoD IG retains the investigative authority for 3-star general officers and above and SES equivalents.</p> <p>If an issue of retaliation is identified during the provision of VLC services, the VLC will assist that victim prepare and file their complaint to each of these, whether it is a letter to the Commander or filling out a form to request an IG investigation. Often times VLC will inquire into allegations of retaliation by phone to get further details</p>

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	and seek resolution, followed by written inquiry to preserve the record to file a formal complaint later if necessary.
<b>USCG</b>	A Victim could bring an Article 138 complaint under the appropriate circumstances for retaliation to the first flag officer in his/her chain of command. The SAPR Crisis Intervention Team also provides an avenue to raise awareness not only to the command level, but to the appropriate legal office and CGIS field office.

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**76. What are the criteria for substantiating a retaliation case investigated by the command, the SARB, the Service IG, and MCIO? If the standard is different, please explain.**

<b>USA</b>	<p><b>COMMAND:</b> For 15-6 investigations (from AR 15-6, paragraph 3-10): <i>Standard of proof.</i> Unless another directive or an instruction of the appointing authority establishes a different standard, the findings of investigations and boards governed by this regulation must be supported by a greater weight of evidence than supports a contrary conclusion, that is, evidence which, after considering all evidence presented, points to a particular conclusion as being more credible and probable than any other conclusion. The weight of the evidence is not determined by the number of witnesses or volume of exhibits, but by considering all the evidence and evaluating such factors as the witness’s demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and other indications of veracity.</p> <p><b>SARB:</b> The SARB will not substantiate complaints of sexual assault or conduct separate investigations. The SARB will direct that allegations be investigated, monitor investigations until complete, and track and report data on allegations of retaliation.</p> <p><b>DAIG:</b> DAIG applies a “preponderance of the evidence” standard.</p> <p><b>MCIO:</b> CID would investigate any retaliation case that was a non-military related criminal offense. Specifically, CID would investigate an Assault, or a Wrongfully Damaging of Private Property, or Communicating a Threat. The criteria for substantiating any criminal offense investigated by CID is a probable cause standard as opined upon by the supporting trial counsel. Generally, the probable cause standard is the set of facts and circumstances which would induce a reasonably intelligent and prudent person to believe that a crime had been committed and that a particular person had committed it.</p>
<b>USAF</b>	<p><b>Commander-Directed Investigations:</b> If a commander directs a commander-directed investigation (CDI), the standard of proof is a preponderance of the evidence. A preponderance of the evidence for a CDI is defined as “the greater weight and quality of the credible evidence,” meaning the evidence indicates that one position is more probable than the opposing position. After weighing all the evidence, the Investigating Officer (IO) may substantiate a finding when the greater weight or quality of the evidence points to a particular conclusion as more credible and probable than the reverse. Additionally, while the amount of evidence is something to consider, non-credible evidence will not trump a smaller amount of good evidence. Some additional things an IO should consider when weighing the evidence are witness demeanor, opportunity for knowledge, bias, motive, intent, and the ability to recall and relate events. At all times, IOs may use their own common sense, life experiences and knowledge of the ways of the world to assess the credibility of witnesses they interview. A legal advisor assists the commander in framing allegations, provides training to the IO and assists in formulating the proof analysis and interview questions, and advises the IO during the investigation. CDI Guide, para. 3.4.1. Commanders receive a legal review on CDIs from their servicing Staff</p>

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	<p>Judge Advocate (SJA) before reviewing the Report of Investigation and taking action. CDI Guide, para. 3.4.2.</p> <p><u>IG</u>: The standard of proof for IG investigations is a preponderance of the evidence. AFI 90-301, para. 3.48.1. The standard “means that it is more likely than not the wrongdoing has occurred.” The standard is further explained in para. 3.48.2: “IOs must be careful not to apply this standard too mechanically. Quality counts as much as quantity and an IO may choose to believe one witness rather than five others if the one is sufficiently credible and the five are not. In addition, there is no way to measure the weight of a document against the testimony of a witness other than by evaluating credibility as discussed in paragraph 3.49.2.” IGs at all levels receive a legal sufficiency review from their servicing SJA prior to approving the report and its findings. AFI 90-301, para. 3.59.1. The attorney who provides the legal sufficiency review is a different attorney than the individual assigned to advise the IO. AFI 90-301, para. 3.59.2.</p> <p><u>MCI</u>O: The Air Force Office of Special Investigations (AFOSI) does not substantiate or unsubstantiate allegations that it investigates. Rather, AFOSI investigates each allegation and writes a Report of Investigation (ROI) that includes all evidence collected during the investigation. AFOSI provides the ROI to the commander of the subject of the investigation. The commander receives advice from the servicing SJA taking into account the evidentiary standard of the disciplinary forum under consideration.</p> <p><u>SARB</u>: The AF does not use SARBs.</p> <p><u>References</u>:</p> <ul style="list-style-type: none"> <li>- <i>Commander-Directed Investigation (CDI) Guide</i>, 26 April 2010, <a href="http://www.af.mil/Portals/1/documents/ig/cdi-guide.pdf">http://www.af.mil/Portals/1/documents/ig/cdi-guide.pdf</a></li> <li>- AFI 90-301, <i>Inspector General Complaints Resolution</i>, 6 June 2012, <a href="http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf">http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf</a></li> <li>- AFI 51-904, <i>Complaints of Wrongs under Article 138, Uniform Code of Military Justice</i>, 30 June 1994, <a href="http://static.e-publishing.af.mil/production/1/af_a3_5/publication/afi51-904/afi51-904.pdf">http://static.e-publishing.af.mil/production/1/af_a3_5/publication/afi51-904/afi51-904.pdf</a></li> </ul>
USN	<p>NAVINSGEN typically investigates cases of reprisal or retaliation resulting in unfavorable personnel actions. The standard of review for is “preponderance of evidence.”</p> <p>Pursuant to SECNAVINST 5370.7D, the command typically investigates cases of retaliation in the form of ostracism or maltreatment. A command investigation, pursuant to JAGMAN 0203, uses the same “preponderance of evidence” standard for facts alleged in the allegation. However, a commander may consider the appropriate disposition of the matter and evaluate with advice of a judge advocate whether the facts alleged meet a higher standard of proof in determining how to dispose of the case, i.e. at nonjudicial punishment where a preponderance of the evidence burden</p>

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	<p>must be met, or at a court-martial, where the facts must be proven beyond a reasonable doubt.</p> <p>NCIS, when investigating reprisal or retaliation claims gathers the facts and then forwards the results of the investigation to the command to determine whether the claim is actionable.</p>
<p><b>USMC</b></p>	<p>The Service IG or MCIO both have roles in substantiation of retaliation incidents. Because NCIS, a DON agency, is addressed in the USN responses, only the CI and IG process is described below. HQMC SAPR, SARCs, SAPR VA/UVAs, nor CMGs initiate, conduct, or substantiate any investigations, retaliation or otherwise. The Marine Corps SAPR Program has no role in substantiating cases of retaliation.</p> <p><b>CI.</b> As discussed in Question 74 above, Chapter 2 of the JAGMAN dictates the procedures and standards for CIs. All findings of fact in CIs must be found by a preponderance of the evidence.</p> <p><b>IG.</b> For professional retaliation (reprisal) the criteria are:</p> <ul style="list-style-type: none"> <li>a. The complainant made (or was preparing to make) a protected communication (PC);</li> <li>b. The complainant was given (or threatened with) an unfavorable personnel action (UPA)/adverse personnel action (PA) or a favorable personnel action was withheld (or threatened to be withheld);</li> <li>c. The Responsible Management Officials (RMO) knew, or suspected, the complainant made or was preparing to make a PC; and</li> <li>d. The personnel actions would not have been taken or withheld absent the PC.</li> </ul> <p>The investigation must document: the RMO’s reasons for taking the PA; consistency as compared with similarly situated service members; the motive for taking or withholding the PA; as well as the RMO reaction to the PC. The burden of proof to substantiate professional retaliation (reprisal) is a preponderance of the evidence. Evaluative criteria for social retaliation have not been established beyond the definitions (as required by Section 1709 of NDAA 14) in SECNAVINST 5370.7D. DoDD 7050.06 does not address social retaliation.</p>
<p><b>USCG</b></p>	<p>Neither CGIS nor the command “substantiates” a case that it investigates. The command will take action on the case under the same standard that it does for other allegations of misconduct.</p>

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**77. What procedures are criminal investigators required to follow when a victim states that he/she has experienced social or professional retaliation after making a report of sexual assault? Describe and provide any policies or regulations that address the role MCIOs have in investigating complaints of retaliation after a witness or victim reports a crime. Please include any special measures taken for victims who report a sexual assault.**

<p><b>USA</b></p>	<p>Department of Defense Instruction 5505.18, (Investigation of Adult Sexual Assault in the Department of Defense), dated 25 January 2013, paragraph 3d(1) provides that all adult sexual assault investigations assumed by an MCIO will be investigated thoroughly and in compliance with DoD Instructions 5505.03, 5505.07, 5505.11, and 5505.14. When an MCIO initiates an adult sexual assault investigation, it will also initiate and conduct subsequent investigations relating to suspected threats against the sexual assault victim, to include minor physical assaults and damage to property.</p> <p>Army Directive 2015-16, (Command Engagement to Prevent Retaliation), dated 4 March 2015, paragraph 6 provides that when U.S. Army Criminal Investigation Command initiates a sexual assault investigation, it will also initiate and conduct subsequent investigations relating to suspected threats against the sexual assault victim, including minor physical assaults and damage to property. Complainants and/or their commander should immediately notify Criminal Investigation Command whenever the victim of an unrestricted sexual assault is threatened, assaulted or suffers property damage subsequent to her/his complaint of a sexual assault.</p> <p>CID Regulations provide that in accordance with DOD Instruction 5505.18, CID will also initiate and conduct investigations relating to suspected threats against a sexual assault victim, to include minor physical assaults, stalking and damage to property. Depending on the situation, a separate law enforcement report (LER) may be initiated (e.g., friends or other Soldiers or associates of the subject may be ones threatening the victim, in which situation a separate LER from the sexual assault LER may be called for).</p>
<p><b>USAF</b></p>	<p>See RFI #68 for discussion of the terms “professional retaliation” and “social retaliation.”</p> <p>If the alleged retaliation is a criminal violation of the UCMJ or another penal code that the Air Force Office of Special Investigations (AFOSI) investigates, investigators will either open a criminal investigation or refer the matter to the appropriate law enforcement agency with jurisdiction (e.g., AF Security Forces; federal, state or local law enforcement agency; foreign law enforcement agency). DoDI 5505.18, <i>Investigation of Sexual Assault in the Department of Defense</i>, paragraph 3.d.(1), provides that “when an MCIO initiates an adult sexual assault investigation, it will also initiate and conduct subsequent investigations relating to suspected threats against the sexual assault victim, to include minor physical assaults and damage to property.” If the alleged retaliation is not a criminal violation that AFOSI investigates, AFOSI will refer the matter to the IG or commander for resolution.</p>

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	<p><u>References:</u></p> <ul style="list-style-type: none"> <li>- DoDI 5505.18, <i>Investigation of Sexual Assault in the Department of Defense</i>, Incorporating Change 1, 1 May 2013, <a href="http://dtic.mil/whs/directives/corres/pdf/550518p.pdf">http://dtic.mil/whs/directives/corres/pdf/550518p.pdf</a></li> </ul>
USN	<p>Criminal investigator procedures:</p> <ul style="list-style-type: none"> <li>• If an allegation of reprisal, or any other allegations of criminal activity against the victim (threats, minor physical assaults, damage to property, etc.), is identified during a NCIS sexual assault investigation, NCIS shall initiate a separate investigation. For all other instances, NCIS will open a formal investigation or refer the matter to either NAVINSGEN or the victim’s command.</li> <li>• If NCIS initiates an investigation, the criminal investigator will inform the victim when an investigation into the victim’s retaliation complaint is initiated and will provide status updates periodically thereafter.</li> <li>• Criminal investigators will conduct a thorough interview of the victim to obtain details of the retaliation and will collect any physical evidence relevant to the complaint.</li> <li>• Criminal investigators will present their preliminary investigative findings to a judge advocate to determine whether the retaliation complaint constitutes the elements of a crime punishable under the UCMJ or United States Code.</li> <li>• Regardless of the path pursued, the criminal investigator will immediately inform the victim’s command, SARC, and VLC of the retaliation complaint, as well as the results of all ensuing investigative efforts.</li> </ul> <p>Policies and regulations:</p> <ul style="list-style-type: none"> <li>• The NCIS-3 Criminal Investigations Manual (Chapter 34.2, Sex Offenses) directs that NCIS “shall initiate separate investigations if additional allegations of criminal activity against the victim (threats, minor physical assaults, damage to property, etc.) are identified during the investigation.”</li> <li>• The NCIS-3 Criminal Investigations Manual (Chapter 33.3, Crimes Against Persons) provides guidance for pursuing cases regarding the communication of a threat. The elements of communicating a threat include: that the accused communicated certain language expressing a present determination or intent to wrongfully injure the person, property, or reputation of another person, presently or in the future; that the communication was made known to that person or to a third person; the communication was wrongful. To establish the threat, it is not necessary that the accused actually intended to do the injury he/she threatened.</li> </ul>

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	<ul style="list-style-type: none"> <li>Special measures taken for victims and/or witnesses that have been retaliated against for reporting a sexual assault include providing the victim with VWAP information and ensuring they are afforded the services of a VA and VLC.</li> </ul>
<b>USMC</b>	The Naval Criminal Investigative Service handles sexual assaults for the Marine Corps; the USN response to this question therefore applies to the Marine Corps.
<b>USCG</b>	CGIS is required to investigate all unrestricted reports of sexual assault. During the course of their investigations, CGIS documents all information brought to their attention and pursues all investigatory leads relevant to that investigation, to include reports of retaliation. Outside of sexual assault, CGIS investigates all reports of misconduct that may involve felony level criminal activity, and, similarly to sexual assault investigations, if a report of victim or witness retaliation occurs during the course of an investigation, CGIS pursues investigatory leads related to that. CGIS has been particularly interested in reports of activity, whether retaliation or in some other form, that may be an attempt to obstruct any ongoing investigation. CGIS has discretion to determine whether to investigate, or to leave for command action, an independent report of retaliation, unrelated to a case they investigated.

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**78. How does a victim learn of the results of a retaliation investigation? Does victim notification vary for different types of retaliation claims? How is a victim informed of the action that will be taken against the retaliator in a substantiated case?**

<b>USA</b>	Victim notification of the results of a retaliation investigation will vary based on the type of claim and the procedures governing the investigating agency. In any case, the SARC/VA will ultimately be responsible for ensuring that victims receive all notifications required.
<b>USAF</b>	<p>If a victim makes a reprisal report to the AF Inspector General (AF IG), the victim will receive periodic updates throughout the course of the investigation. Upon conclusion of the case, the victim will be notified of the determination of the allegations (dismissal, substantiated, not substantiated) and the complainant's options for appeal and/or further consideration through the Board of Military Corrections and/or the AF Ombudsman.</p> <p>AFI 90-301, para. 6.10.2.1. The victim is also entitled to a redacted copy of the final Report of Investigation in accordance with the Freedom of Information Act. AFI 90-301, Atch 17. If the victim makes a retaliation report to the AF IG that the AF IG determines does not involve reprisal, the AF IG informs the victim of the decision to refer a retaliation report to the commander or other appropriate agency and provides the victim the option of not releasing his or her name in the referral. When the AF IG refers a retaliation report to a commander, the referral memorandum requests that the commander receiving the referral notify the IG of the analysis and action within 30 days. Also, the commander is required to notify the victim of the resolution of the retaliation report. The commander may release disposition information to the victim consistent with Privacy Act restrictions and receive legal advice from their servicing Staff Judge Advocate on what information is releasable to the victim.</p> <p>For retaliation reports that are reviewed during monthly installation Case Management Group (CMG) meetings, the victim will receive a monthly update from the victim's commander within 72 hours of the CMG.</p> <p>The Privacy Act and System of Records Notice for the particular action control the release of disciplinary action to the victim. The results of all courts-martial and Article 15, UCMJ, non-judicial punishment actions are releasable to the victim.</p> <p><u>References:</u>  - AFI 90-301, <i>Inspector General Complaints Resolution</i>, 6 June 2012,  <a href="http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf">http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf</a></p> <p><b>ATTACHMENT:</b> Attachment 70, Change 1 to 27 February 15 Memorandum - Updated Procedures Regarding Reporting and Tracking Victim Retaliation in Sexual Assault Cases, 17 March 15.</p>
<b>USN</b>	In a case involving a NAVINSGEN investigation, a victim will learn of the results of a retaliation investigation and receive a redacted copy of the investigation within thirty days of when the investigation is complete per 10 U.S.C. 1034. The copy of

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	<p>the investigation will include any recommendation for disposition. The victim will receive an update if the investigation goes beyond 180 days from when the allegation was made. Should the claim be substantiated, the investigation will be forwarded to the appropriate commander who will notify the victim of the action that will be taken against the retaliator.</p> <p>In a case involving a command investigation, unit commanders, commanding officers and officers in charge are responsible for ensuring that victims and witnesses (whether military or civilian) of crimes under military jurisdiction are afforded their rights and kept informed on the status of the case until administrative (nonjudicial punishment, administrative separation, or other) or judicial disposition. (OPNAVINST 5800.7A, paragraph 7(c), available at <a href="http://doni.daps.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-800%20Laws%20and%20Legal%20Services/5800.7A.pdf">http://doni.daps.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-800%20Laws%20and%20Legal%20Services/5800.7A.pdf</a>)</p> <p>In a case involving an NCIS investigation, the criminal investigator will inform the victim when an investigation into the victim’s retaliation complaint is initiated and will provide status updates periodically thereafter. At the conclusion of the investigation, NCIS will hand the case over to trial counsel. NCIS, trial counsel, and the victim’s command will provide the victim frequent case updates all the way through case disposition.</p> <p>When a victim has engaged a VLC, the VLC will be tracking the case progress on behalf of the victim and ensure the victim is provided with status and disposition updates.</p>
<b>USMC</b>	<p>For IG complaints, victims should be notified directly by the agency where the complaint was filed due to the fact that such complaints are signed and submitted by the victim. Results of Command or MCIO investigations may be provided directly to the victim, or through detailed VLC. In CIs, victims must request the report of the investigation from the GCMCA, who is the release authority.</p> <p>In cases of professional retaliation (reprisal), the IGMC notifies complainants in writing that their complaint has either been declined (and why) or is under investigation. After an investigation is completed, reviewed for legal sufficiency, and endorsed by the IGMC, it is forwarded to DoD IG for oversight (concurrence). Not later than 30 days after the DOD IG completes or approves a report of investigation, a copy of the report of investigation and, when applicable, the DoD IG approval memorandum will be provided to the service member. The report provided to the service member may be redacted. Upon request, summaries of interviews conducted and documents collected during the investigation will also be afforded to the service member. After the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&amp;RA)) concurs with the findings, complainants are provided a letter explaining the result of investigation and information on how to petition the Board for Correction of Naval Records (BCNR) to change/correct military records. If ASN (M&amp;RA) determines that no corrective, administrative or disciplinary action is appropriate, he will notify the service member of the reasons for</p>

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	not taking action. Procedural criteria for social retaliation cases have not been determined to date. DoDD 7050.06 does not address social retaliation. DON met the requirements of Section 1709 of NDAA 14 by defining ostracism/maltreatment in its SECNAVINST, but has not had DoD guidance on further processes.
<b>USCG</b>	How a victim is informed of the results of a report of retaliation varies depending on the type of report, the organization that investigates the report, and the type of action taken.

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**79. Who informs the Service member of their options to challenge the investigation findings? To whom can a Service member make a complaint about the handling of their case or appeal the findings of the:**

<b>USA</b>	The individual responsible for informing a Service member of the options to challenge an investigation finding depends on the regulations governing the agency that conducted the investigation. In all cases, if there is any adverse action as a consequence of the investigation, the Service member will be advised of all due process protections under the provisions of law, DoD, or Army policy governing the particular adverse information (for example, AR 600-37 with respect to official reprimands). Service members will also be advised of their right to criminal defense advice and representation from U.S. Army Trial Defense Service members and/or the local Legal Assistance Office.
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**a. Command investigation?**

<b>USA</b>	Command investigations require an independent legal review when complete to identify any errors in the process or conclusions. This legal review ensures thorough and independent investigations and conclusions supported by the evidence. The Service member can challenge the investigation and its findings to the Commander that appointed the investigation, the Inspector General's Office or they may avail themselves of the Art. 138, UCMJ, complaint process.
<b>USAF</b>	<p>The Commander-Directed Investigation (CDI) Guide, para. 7.3, provides that there is no formal appeal process. If the victim wishes to appeal the result of the CDI, the victim should provide additional information to justify further review and any “appeal” is within the discretion of the initiating commander and superior commanders. In practice victims have demonstrated their awareness of their right to request further review. Victims may also appeal any adverse administrative action or non-judicial punishment to the Air Force Board for Correction of Military Records (AFBCMR) for substantive relief. Active duty members may also file an Article 138 complaint to request redress.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- <i>Commander-Directed Investigation (CDI) Guide</i>, 26 April 2010, <a href="http://www.af.mil/Portals/1/documents/ig/cdi-guide.pdf">http://www.af.mil/Portals/1/documents/ig/cdi-guide.pdf</a></li> </ul>
<b>USN</b>	<p>Service members with a complaint about the handling of their case may contact supervisory personnel at the local NCIS office, or alternatively, their command, VA, VLC, higher NCIS headquarters, the offices of the DON and DoD Inspector General, or members of Congress.</p> <p>When a victim has engaged a VLC, the VLC will inform a victim of their option to challenge the investigation findings. SARCs and VAs may also provide this information, and refer victims to the VLC (or legal assistance attorney for non-sexual assault victim questions) for any legal questions. Further, all of the above offices may inform the service member of their options to challenge the investigation findings.</p>
<b>USMC</b>	VLC are equipped to advise clients about the handling of their case, including any

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	appeal processes. Article 138 provides recourse for victims to seek redress for improper actions by their commanders.
<b>USCG</b>	A Service member can request a command investigation be reviewed higher up the chain of command or can request that CGIS look into the matter.

**b. MCIO investigation?**

<b>USA</b>	A service member may consult with a legal assistance attorney or a civilian attorney at their own expense. Department of Defense Instruction 5505.07, (Titling and Indexing Subjects of Criminal Investigations in the Department of Defense), provides that an individual or entity is listed as the subject of a criminal investigation in the Defense Central Index of Investigations (DCII) to ensure that this information may be retrieved for law enforcement or security purposes in the future. Reports of a criminal investigation are titled to identify the subject for the accuracy and efficiency of the investigative effort. An individual (or representative of a business entity) who believes he or she (or the business entity represented) was titled or indexed incorrectly may appeal to the head of the investigation organization to obtain a review of the decision. When reviewing the appropriateness of a titling and indexing decision, the reviewing official shall consider the investigative information available at the time the initial titling and indexing decision was made to determine whether credible information exists that the subject committed a criminal offense.
<b>USAF</b>	AFI 71-101, <i>Criminal Investigations Program</i> , does not establish any direct formal procedures for challenging investigative findings. Victims may file a complaint regarding an Air Force Office of Special Investigations (AFOSI) investigation through the AF Inspector General (AF IG) or directly with the Headquarters AFOSI/Inspector General.  <u>References:</u> AFI 71-101, <i>Criminal Investigations</i> , 4 February 2015, <a href="http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi71-101v1/afi71-101v1.pdf">http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi71-101v1/afi71-101v1.pdf</a>
<b>USN</b>	Service members with a complaint about the handling of their case may contact supervisory personnel at the local NCIS office, or alternatively, their command, VA, VLC, higher NCIS headquarters, the offices of the DON and DoD Inspector General, or members of Congress.  When a victim has engaged a VLC, the VLC will inform a victim of their option to challenge the investigation findings. SARCs and VAs may also provide this information, and refer victims to the VLC (or legal assistance attorney for non-sexual assault victim questions) for any legal questions. Further, all of the above offices may inform the service member of their options to challenge the investigation findings.
<b>USMC</b>	N/A. NCIS is a DON agency; NCIS procedures will be addressed in the USN response.
<b>USCG</b>	CGIS does not make specific findings in their reports. They report only information collected. CGIS does not “substantiate” a report. A service member, either directly or through the SVC, can bring additional information or leads to the attention of CGIS and can approach a convening authority or legal office with concerns that a CGIS investigation does not adequately cover the claim the member brought forward.

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**c. Service IG investigation?**

<b>USA</b>	<p>Upon DoD approval of DAIG findings, DAIG notifies service members who submitted allegations of retaliation under 10 U.S.C 1034 of their option to challenge the investigation finding as it pertains to an error or injustice they believe exists in their records. DAIG notifies Service members they can appeal the finding to the Army Board for Correction of Military Records. The Secretary of the Army is directed by DoDD 7050.06, "Military Whistleblower Protection," dated April 17, 2015 to notify a Service member that he or she may request review of the matter by the USD(P&amp;R) on behalf of the Secretary of Defense. 10 USC 1034(h) establishes a right to appeal findings to the Secretary of Defense upon completion of all administrative review.</p> <p>A Service member can make a complaint about the handling of their case to the next higher IG office, DAIG, or DoD IG.</p>
<b>USAF</b>	<p>AFI 90-301, para. 2.4, grants complainants the right to request the next higher-level IG review their complaint within 90 days of receiving the IG response. The closure letter that complaints receive includes a statement that the complainant can request the next higher level IG review the investigation if they have additional information to justify the review. The letter also provides their option to address the issues with the Air Force Ombudsman and/or the AFBCMR. In the case of reprisal, a redacted copy of the Report of Investigation is included with the closure letter.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- AFI 90-301, <i>Inspector General Complaints Resolution</i>, 6 June 2012, <a href="http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf">http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf</a></li> </ul>
<b>USN</b>	<p>Service members with a complaint about the handling of their case may contact supervisory personnel at the local NCIS office, or alternatively, their command, VA, VLC, higher NCIS headquarters, the offices of the DON and DoD Inspector General, or members of Congress.</p> <p>When a victim has engaged a VLC, the VLC will inform a victim of their option to challenge the investigation findings. SARCs and VAs may also provide this information, and refer victims to the VLC (or legal assistance attorney for non-sexual assault victim questions) for any legal questions. Further, all of the above offices may inform the service member of their options to challenge the investigation findings.</p>
<b>USMC</b>	<p>Since professional retaliation (reprisal) investigations are conducted by IGMC and over-sighted by DoD IG, challenge or appeal would quickly be exhausted within DoD. The only appeal a service member can make is to the Secretary of Defense, after he/she receives notification of the ASN (M&amp;RA) determination. If the complainant has new or additional information that was not considered by the IGMC, or has a complaint of investigatory misconduct, a new IGMC/DoD IG complaint can be filed.</p>
<b>USCG</b>	<p>As noted previously, generally CGIS handles IG complaints that involve the Coast Guard. The Coast Guard does not have a Service IG.</p>

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**d. DOD investigation?**

<b>USA</b>	DOD IG will provide this response separately.
<b>USAF</b>	Defer to DoD Inspector General.
<b>USN</b>	<p>Service members with a complaint about the handling of their case may contact supervisory personnel at the local NCIS office, or alternatively, their command, VA, VLC, higher NCIS headquarters, the offices of the DON and DoD Inspector General, or members of Congress.</p> <p>When a victim has engaged a VLC, the VLC will inform a victim of their option to challenge the investigation findings. SARCs and VAs may also provide this information, and refer victims to the VLC (or legal assistance attorney for non-sexual assault victim questions) for any legal questions. Further, all of the above offices may inform the service member of their options to challenge the investigation findings.</p>
<b>USMC</b>	N/A.
<b>USCG</b>	The Coast Guard is not a part of the Department of Defense.

**e. Art. 138 investigation?**

<b>USA</b>	<p>Art. 138, UCMJ, allows a Service member to lodge a complaint against his/her commander if said Service member believes he/she has been wronged. The UCMJ and AR 27-10 establish a complaint, not investigation, system wherein a Service member's allegations against his/her commander may be adjudicated. After the Service member informs the allegedly offending commander of the grievance, if said commander does not rectify the situation to the Service member's satisfaction (or the matter is not appropriate for resolution IAW Art. 138), the Service member may "appeal" to the GCMCA for adjudication. Subsequent to GCMCA adjudication, as a matter of due course, all such Art. 138 complaints are forwarded to the Army Judge Advocate General (acting on behalf of the Secretary of the Army) for review of the GCMCA's action; or in other words, an "automatic appeal."</p>
<b>USAF</b>	<p>If the superior commander receiving the Article 138 complaint deems it necessary, the commander may order a CDI into matters raised in the complaint. In that case, the challenge mechanisms within the CDI process would be available as described above.</p> <p>Inherent in the Article 138 process is the service member's right to have his/her complaint reviewed by a superior commander if the member's immediate commander does not grant the redress petitioned for. Under paragraph 4.2, the immediate commander must promptly notify the member in writing as to the redress granted, or in the case of denial of the petitioned redress, must specify the reasons for such denial. AFI 51-904, para. 4.2.</p> <p>Further, in the event that the complainant believes the initial redress is unsatisfactory, para. 4.5 requires that the officer exercising General Court-Martial Convening Authority (GCMCA) over the member's immediate commander, conduct or direct further investigation into the complaint and then "inform the member in writing of</p>

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	<p>both the action taken on the complaint and the reasons for that action.” Finally, the GCMCA must forward the file to the Air Staff for review and disposition.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- AFI 51-904, <i>Complaints of Wrongs under Article 138, Uniform Code of Military Justice</i>, 30 June 1994, <a href="http://static.e-publishing.af.mil/production/1/af_a3_5/publication/afi51-904/afi51-904.pdf">http://static.e-publishing.af.mil/production/1/af_a3_5/publication/afi51-904/afi51-904.pdf</a></li> </ul>
<b>USN</b>	<p>Service members with a complaint about the handling of their case may contact supervisory personnel at the local NCIS office, or alternatively, their command, VA, VLC, higher NCIS headquarters, the offices of the DON and DoD Inspector General, or members of Congress.</p> <p>When a victim has engaged a VLC, the VLC will inform a victim of their option to challenge the investigation findings. SARCs and VAs may also provide this information, and refer victims to the VLC (or legal assistance attorney for non-sexual assault victim questions) for any legal questions. Further, all of the above offices may inform the service member of their options to challenge the investigation findings.</p>
<b>USMC</b>	<p>VLC are equipped to advise clients about Article 138 complaints, including the inherent appeals process. Article 138 includes review by a GCMCA, JAG, and the SecNav (delegable to the ASN) as part of the process, and the SECNAV provides the complainant with the final determination.</p>
<b>USCG</b>	<p>A General Court-Martial Convening Authority reviews, with advice of their SJA, all investigations into Article 138 complaints, and takes the final action with regard to them. That action is then reviewed in the Office of the Judge Advocate General.</p>

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**80. Board of Correction of Military Records (BCMRs) –**

**a. How have BCMRs typically handled applications that specifically contain requests for relief from retaliation for making a protected communication?**

<b>USA</b>	<p>The Army Board for Correction of Military Records (ABCMR) considers applications for correction of military records at the request of a member or former member who alleges that unfavorable personnel actions were taken or were threatened to be taken or favorable personnel actions were withheld or were threatened to be withheld in reprisal for making or preparing a protected communication, pursuant to 10 U.S.C. § 1034.</p> <p>In resolving such an application, the ABCMR reviews the Inspector General (IG) report, if any, and any other documents submitted by the applicant and associated documents retained in their Official Military Personnel File (OMPF) or Army Military Human Resources Record (AMHRR). If the applicant references an IG report or criminal investigation, ARBA will request a copy of the report. The ABCMR issues a final decision on an application received under Department of Defense Directive 7050.06 within 180 days after receipt of the application.</p>
<b>USAF</b>	<p>The Air Force Board for Correction of Military Records (AFBCMR) takes great care in the expeditious processing of requests from applicants claiming to be the victim of reprisal in violation of 10 U.S.C. § 1034 (Protected Communications; Prohibition of Retaliatory Personnel Actions). Such cases are flagged upon receipt as reprisal cases as applicants claiming reprisal are afforded expedited processing (180 days) in accordance with DoDI 1332.41, <i>Boards for Correction of Military Records</i>, and AFI 36-2603, <i>Air Force Board for Corrections of Military Records</i>. When such a case is received, the AFBCMR staff secures pertinent military personnel records, service medical records (if applicable), reports of investigation from the IG’s office, and advisory opinions from the appropriate office(s) of primary responsibility, which are essential to the AFBCMR making a reasoned determination as to whether or not the applicant is the victim of an error or injustice under 10 U.S.C. § 1552 (Correction of Military Records; Claims Incident Thereto), and/or the victim of reprisal in violation of 10 U.S.C. § 1034. The AFBCMR has unique responsibilities when it comes to reprisal cases. In cases where the IG substantiates that an applicant was the victim of reprisal, the AFBCMR has the authority to make the necessary corrections to make the victim whole. While the AFBCMR is not ordinarily an investigative body, in adjudicating reprisal cases, it may receive oral argument, examine and cross-examine witnesses, take depositions, and, if appropriate, conduct an evidentiary hearing. Additionally, the AFBCMR may request the IG gather further evidence for their consideration and has done so three times in the last four years. In those cases where the AFBCMR determines that the actions taken against the alleged perpetrator were insufficient, it may recommend to the Secretary of the Air Force that additional disciplinary action be taken.</p> <p><u>References:</u></p> <p>- DoDI 1332.41, <i>Boards for Correction of Military Records</i>, 23 April 2007,</p>

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	<p><a href="http://www.dtic.mil/whs/directives/corres/pdf/133241p.pdf">http://www.dtic.mil/whs/directives/corres/pdf/133241p.pdf</a></p> <p>- AFI 36-2603, <i>Air Force Board for Corrections of Military Records</i>, 5 March 2012, <a href="http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2603/afi36-2603.pdf">http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2603/afi36-2603.pdf</a></p>
<b>USN</b>	SECNAVINST 5420.193, Board for Correction of Naval Records, addresses the requirements for handling Whistleblower Protection Act cases. It mirrors the processing timelines and appellate review requirements contained in DoDD 7050.06, Military Whistleblower Protection. Cases are required to be processed within 180 days and the applicant informed of their right to SECDEF review.
<b>USMC</b>	The BCNR handles all cases within the Department of the Navy, including Marine Corps cases. The U.S. Navy response therefore applies to the Marine Corps.
<b>USCG</b>	The Chair of the BCMR has met with personnel in the Office of the Inspector General to ensure they are aware of the BCMR as an avenue of redress, but the BCMR has not received a whistleblower case in several years. The BCMR has specific regulations for handling such whistleblower cases at 33 CFR part 53.

**b. Are there any additional considerations given if an applicant states or provides evidence that he/she has been a victim of sexual assault in the military?**

<b>USA</b>	All information provided by an applicant is thoroughly analyzed and considered. If the applicant indicates there was a Criminal Investigation or IG Investigation, ARBA will request those documents. The Army Review Boards Agency (ARBA) staff engages the ARBA Medical Advisor if a medical review could provide the board members with additional relevant insight or clarification on the reported trauma and the effect on the individual. In turn, the ARBA Medical Advisor will coordinate with the Army Office of The Surgeon General (OTSG), as appropriate. Whenever an external advisory opinion is obtained, it is provided to the applicant under “ex parte prohibited” rules for the applicant’s awareness and to provide response or rebuttal, as appropriate in accordance with 10 U.S.C. § 1556. All advisory opinions are included in the case documents for board review and deliberation.
<b>USAF</b>	<p>Yes, in accordance with Section 547 of the Fiscal Year 2015 National Defense Authorization Act (NDAA), the AFBCMR is required to give due consideration to the psychological and physical aspects of an individual’s experience in connection with the sex-related offense and determining what bearing such experience may have had on the circumstances surrounding the individual’s discharge or separation. While these requirements prescribe that a confidential process be utilized in adjudicating such cases, the AFBCMR already complies with these provisions as it provides a confidential process for all applicants where the protection of their privacy is paramount. While the Freedom of Information Act (FOIA) requires the AFBCMR to publish records of proceeding to a public reading room, any personally identifying information is redacted prior to this information being posted.</p> <p><u>References:</u></p> <p>- DoDI 1332.41, <i>Boards for Correction of Military Records</i>, 23 April 2007, <a href="http://www.dtic.mil/whs/directives/corres/pdf/133241p.pdf">http://www.dtic.mil/whs/directives/corres/pdf/133241p.pdf</a></p>

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	- AFI 36-2603, <i>Air Force Board for Corrections of Military Records</i> , 5 March 2012, <a href="http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2603/afi36-2603.pdf">http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2603/afi36-2603.pdf</a>
<b>USN</b>	If the Board for Correction of Naval Records (BCNR) determines the information provided by an applicant alleging sexual assault is credible, the BCNR will consider that evidence in accordance with FY15 NDAA, Section 547. The BCNR is instructed  (1) to give due consideration to the psychological and physical aspects of the individual's experience in connection with the sex related offense; and  (2) to determine what bearing such experience may have had on the circumstances surrounding the individual's discharge or separation from the Armed Forces.
<b>USMC</b>	The BCNR handles all cases within the Department of the Navy, including Marine Corps cases. The U.S. Navy response therefore applies to the Marine Corps.
<b>USCG</b>	If the Board received such an application, it would consider the recent Medical Guidance about PTSD issued by DoD for the correction boards on September 3, 2014.

- c. What considerations are given when applicants note they filed a sexual assault report, admittedly engaged in collateral or subsequent misconduct, and the command's adverse action was unfair or an injustice (i.e., a request to change an involuntary administrative discharge to a medical discharge)? If those cases are not treated as retaliatory claims, please explain how BCMRs distinguish those record corrections requests which may imply a causal connection to the sexual assault from those that specifically state the action was in reprisal to filing a report.**

<b>USA</b>	See 80 b above. Additionally, ABCMR staff engages the ARBA Legal Advisor(s) to provide additional guidance, clarification, or context, as it pertains to the governing and applicable laws, policies, and other regulatory guidance. All advisory opinions are included in the case documents for board review and deliberation.
<b>USAF</b>	The AFBCMR has yet to receive a specific request from an applicant claiming that their personnel action was a reprisal for reporting a sexual assault. Rather, they are claiming to be a victim of a sexual assault who was discharged because of their inability to cope with the rigors of the military as a result of the trauma suffered from the assault. In those cases, they are asking the board to consider a medical discharge or medical retirement in lieu of the administrative discharge. They are not stating they were wrongfully discharged. Such cases are reviewed by the AFBCMR Medical Consultant, who, after a complete review of the evidence provided by the applicant, military personnel records, and service medical records, provides a comprehensive advisory opinion for the Board's consideration. The advisory opinion is rendered upon the applicant for review and comment prior to the case being sent to the Board for its consideration. As with any case where an applicant is requesting retirement or discharge for physical disability, the AFBCMR must determine if the evidence provided by the applicant is sufficient to conclude that they should have been found unfit for continued military service at the date of their separation, and, thus, entitled to disability benefits.

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	<p>References:</p> <ul style="list-style-type: none"> <li>- DoDI 1332.41, <i>Boards for Correction of Military Records</i>, 23 April 2007, <a href="http://www.dtic.mil/whs/directives/corres/pdf/133241p.pdf">http://www.dtic.mil/whs/directives/corres/pdf/133241p.pdf</a></li> <li>- AFI 36-2603, <i>Air Force Board for Corrections of Military Records</i>, 5 March 2012, <a href="http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2603/afi36-2603.pdf">http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2603/afi36-2603.pdf</a></li> </ul>
<b>USN</b>	<p>BCNR will use the guidelines contained in FY15 NDAA, Section 547 when considering the case of an applicant who states they are a victim of sexual assault.</p> <p>If an individual does not claim Whistleblower status, the specific facts of the case are the determining factor in whether a case is considered a retaliatory claim. However, BCNR applications that mention Whistleblower status are identified and treated accordingly to the regulatory requirements. Cases that do not mention Whistleblower status but contain facts that support a Whistleblower case are later identified and processed as Whistleblower cases. So if an applicant reports that they were discharged in reprisal for reporting a sexual assault, BCNR will treat it as a Whistleblower case.</p>
<b>USMC</b>	<p>The BCNR handles all cases within the Department of the Navy, including Marine Corps cases. The U.S. Navy response therefore applies to the Marine Corps.</p>
<b>USCG</b>	<p>The BCMR does not receive enough sexual assault cases to generalize (fewer than one per year on average), but the Board normally treats an implication of reprisal the same as an outright allegation of reprisal.</p>

**d. What procedures have been developed with DOD IG and/or the Service IGs to help expedited the procedures for victims whose retaliation claims have been substantiated? How does the BCMR coordinate cases with the DOD and Service IGs?**

<b>USA</b>	<p>ARBA coordinates with the DoD or Service IGs. Additionally, Whistleblower Cases are given top priority 1 processing. If the BCMR has not received a copy of the IG Whistleblower Investigation Report, one is obtained before processing the case.</p> <p>Normally, the Army Inspector General provides a copy of the report to ARBA as soon as the IG investigation is concluded. ARBA creates a case party and flags it to identify the potential incoming application as Whistleblower Reprisal related. A case party is an electronic identification of an individual in the ARBA Case Tracking System (ACTS). When the actual application is received, the flagged case is immediately brought to the attention of the leadership for further review and processing instructions.</p>
<b>USAF</b>	<p>DoD IG notifies the AFBCMR when an AF member has been found to be the victim of substantiated reprisal allegation. Such notification puts the AFBCMR on notice of the finding so it can be poised to act quickly should the member choose to seek relief from the AFBCMR. Many of these members do not seek relief from the AFBCMR as numerous corrections to military records can be resolved through administrative means. In the last year, DoD IG has notified the AFBCMR of six substantiated cases of reprisal (none involving a sexual assault victim); however, a review of information</p>

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	<p>in our Case Management and Tracking System indicates that only one of these members has sought relief of the AFBCMR. The AFBCMR coordinates with DoD IG as appropriate, but predominantly coordinates with the AF IG. The purpose of this coordination is to secure any pertinent investigative reports that may exist pertaining to an applicant’s claim of reprisal or retaliation and, in the case of substantiated reprisal, includes information on the type of disciplinary action rendered upon the perpetrator(s) of the reprisal.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- DoDI 1332.41, <i>Boards for Correction of Military Records</i>, 23 April 2007, <a href="http://www.dtic.mil/whs/directives/corres/pdf/133241p.pdf">http://www.dtic.mil/whs/directives/corres/pdf/133241p.pdf</a></li> <li>- AFI 36-2603, <i>Air Force Board for Corrections of Military Records</i>, 5 March 2012, <a href="http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2603/afi36-2603.pdf">http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2603/afi36-2603.pdf</a></li> </ul>
<b>USN</b>	Navy IG forwards copies of closure letters to BCNR so we can cross check against applications we receive that allege an IG complaint. If BCNR requires a copy of an IG investigation, the Navy IG will provide a copy for inclusion in the record.
<b>USMC</b>	The BCNR handles all cases within the Department of the Navy, including Marine Corps cases. The U.S. Navy response therefore applies to the Marine Corps.
<b>USCG</b>	The Chair of the BCMR has met with personnel in the Office of the Inspector General to ensure they are aware of the BCMR as an avenue of redress, but the BCMR has not received such a whistleblower case in several years.

**e. Have the Services’ BCMRs established a separate procedure for sexual assault victims challenging their discharge as required by FY14 NDAA section 547? If so, please describe that confidential process.**

<b>USA</b>	<p>A “Sexual Assault” special project category was established in ACTS to signify those cases dealing with sexual assault. This category has the highest processing priority (code 1).</p> <p>Unless consent is granted by the applicant, once a case is decided, it will not be posted on the Department of Defense Boards’ Electronic Reading Room and may not be released in response to a request under the Freedom of Information Act (FOIA). However, these decisions are filed in the individual’s AMHRR as the official Army record.</p>
<b>USAF</b>	See the answer to question 80(b) above.
<b>USN</b>	Yes. BCNR processes ensure all cases are processed confidentially. Applications and case files are tightly controlled internally, shared only by individuals responsible for presenting the case to the Board, and only released on a need to know basis to outside organizations when BCNR seeks an advisory opinion. The only privacy exception to this procedure is the public posting of redacted decision letters to the DoD reading room. However, unlike all other BCNR cases, sexual assault case decision letters are not posted to the DoD reading room to maximize the confidential nature of their cases.

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	<p><u>References:</u></p> <ul style="list-style-type: none"> <li>- DoDI 1332.41, <i>Boards for Correction of Military Records</i>, 23 April 2007, <a href="http://www.dtic.mil/whs/directives/corres/pdf/133241p.pdf">http://www.dtic.mil/whs/directives/corres/pdf/133241p.pdf</a></li> <li>- AFI 36-2603, <i>Air Force Board for Corrections of Military Records</i>, 5 March 2012, <a href="http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2603/afi36-2603.pdf">http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2603/afi36-2603.pdf</a></li> </ul>
<b>USMC</b>	The BCNR handles all cases within the Department of the Navy, including Marine Corps cases. The U.S. Navy response therefore applies to the Marine Corps.
<b>USCG</b>	The BCMR has a staff of three, and all BCMR cases are handled confidentially and on a need-to-know basis. In light of section 547, BCMR decisions in sexual assault cases will no longer be posted online.

**f. What steps are BCMRs taking to give due consideration to the psychological and physical aspects of an individual’s experience in connection with the sex-related offense and determining what bearing such experience may have had on the circumstances surrounding the individual’s discharge or separation from the Armed Forces as required by FY15 NDAA 547?**

<b>USA</b>	<p>ABMCR drafted and is staffing an Army wide directive regarding the Section 547 provision. This information is being incorporated in the ABCMR’s analysis process and board member training. ABCMR is requesting Medical advisory opinions through its internal Medical Advisory office and externally from the Army OTSG.</p> <p>Additionally, the ABCMR consults with the ARBA Legal Advisor as appropriate on the legal aspects of implementing and applying changes to the law contained in the 2015 NDAA, to include Section 547. Advisory opinions become part of the case and are included for the board’s consideration. Whenever an external advisory opinion is obtained, it is provided under “ex parte prohibited” rules for the applicant’s awareness and to provide a response or rebuttal, as appropriate IAW 10 USC §1556. All advisory opinions are included in the case documents for board review and deliberation.</p>
<b>USAF</b>	<p>In the case of an applicant who was the victim of sexual assault requesting an upgrade of their administrative discharge, the AFBCMR is advised of its responsibilities to give due consideration to the psychological and physical aspects of an individual’s experience in connection with the sex-related offense to determine what bearing such an experience may have had on the circumstances of the applicant’s separation. The burden of proof of an error or injustice rests with an applicant and the AFBCMR will appropriately consider evidence provided by an applicant in determining if the applicant was the victim of a sexual assault and whether or not the effects of the assault had a bearing on the misconduct that precipitated the discharge.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- DoDI 1332.41, <i>Boards for Correction of Military Records</i>, 23 April 2007, <a href="http://www.dtic.mil/whs/directives/corres/pdf/133241p.pdf">http://www.dtic.mil/whs/directives/corres/pdf/133241p.pdf</a></li> </ul>

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	- AFI 36-2603, <i>Air Force Board for Corrections of Military Records</i> , 5 March 2012, <a href="http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2603/afi36-2603.pdf">http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2603/afi36-2603.pdf</a>
<b>USN</b>	Examiners are instructed to remind BCNR members prior to considering sexual assault cases that they must apply the factors required for consideration by FY15 NDAA, Section 547. If the facts of a case raise an issue that requires an expert level of analysis regarding the psychological and/or physical aspect of an individual's experience in connection with a sexual assault and its relationship to that individual's behavior, the Board will request an advisory opinion from a medical expert within the Secretary of the Navy or the Navy Bureau of Medicine and Surgery
<b>USMC</b>	The BCNR handles all cases within the Department of the Navy, including Marine Corps cases. The U.S. Navy response therefore applies to the Marine Corps.
<b>USCG</b>	When the BCMR receives an application from a victim of sexual assault, it will take into consideration DoD's new Medical Guidance about PTSD, and if the applicant received mental health treatment while in the Service, the Coast Guard's advisory opinion for the case will contain the opinion of a psychologist or psychiatrist, in accordance with section 521 of the FY15 NDAA.

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**Data Call**

**81. For fiscal years 2012-2014, please provide the number of: sexual assault (SA) victims who filed an unrestricted report, followed by a retaliation claim, indicate the number of investigations each organization, the final disposition of the investigation.**

SA/Retaliation Claims Investigated	FY12	FY13	FY14
a. SA Victims who filed an unrestricted report			
b. SA Victims who filed an unrestricted report and subsequently complained of retaliation			
c. Investigated by Command			
d. Investigated by MCIO			
e. Investigated by Service IG			
f. Investigated by DOD IG			
g. Other type of Investigations			
h. Investigations incomplete			
i. Investigations unsubstantiated			
j. Investigations substantiated			

<b>USA</b>	<p>The Army has not historically tracked allegations of retaliation or disposition information on those offenses and does not have reliable data available.</p> <p>In March 2015, pursuant to SECARMY Directive 2015-16, the Army established a formal mechanism to track all allegations of retaliation through the monthly Sexual Assault Review Board (SARB). The senior installation commander will ensure all allegations of retaliation made by victims, bystanders, witnesses, and first responders are investigated by either law enforcement or through Army Regulation 15-6 Investigations. The results of those investigations and any subsequent accountability actions will be monitored by the SARB until complete.</p> <p>Additionally, the Chief of Staff of the Army directed that Army SHARP Resource Centers, located at select installations across the force, collect data on retaliation allegations beginning in May 2015.</p> <p>The Army believes that the SARB and Resource Center reports will serve as reliable sources of data for future analysis.</p> <p>In March 2015, at the direction of the Undersecretary of Defense for Personnel and Readiness, the Army conducted a data call of multiple sources for reports, investigations and dispositions of retaliation allegations. The Army does not have confidence in the specifics of the data collection results because there was not sufficient time to properly collect and analyze the results. The Army believes that our results may be incomplete, inconsistent, and potentially duplicative, which would lead to potentially improper conclusions and corrective action. Therefore, the data collected through the SARB and SHARP Resource Centers is the proper source to determine policy and actions for the future.</p>
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	Although the detailed results of the data call are not appropriate for release, the data collection did confirm that: (1) as of March 2015, the SARBs are collecting data as required by SECARMY Directive 2015-16; (2) the Inspector General (IG) complaint process is being properly executed for allegations of retaliation and reprisal in accordance with the Military Whistle Blower Protection Act; and (3) victims are reporting allegations of retaliation through multiple channels including the chain of command, law enforcement, Victim Advocates, Sexual Assault Response Coordinators, Special Victim Counsel, the IG, and Congressional representatives.
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<b>USAF</b>	<p>The AF did not publish its service instruction on retaliation, incorporated in AFI 36-2909, until 19 June 2014. Starting in March 2015, the AF Sexual Assault Prevention and Response Office began tracking retaliation reports made by victims who fall under the SAPR program IAW the guidance in the CMG Memo. Allegations of retaliation that comprise reprisal are tracked by the AF IG. Information about reprisal reports are included below in RFI #84.</p> <p><u>References:</u></p> <ul style="list-style-type: none"> <li>- DoD Annual SAPRO Report, 1 May 2015, Enclosure 3, Department of the Air Force, Chart 1.1, Reports of Sexual Assault Over Time</li> </ul> <p><b>ATTACHMENT:</b> Attachment 70, Change 1 to 27 February 15 Memorandum - Updated Procedures Regarding Reporting and Tracking Victim Retaliation in Sexual Assault Cases, 17 March 15.</p>
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<b>USAF</b>			
<b>SA/Retaliation Claims Investigated</b>	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>
a. SA Victims who filed an unrestricted report	483	737	944
b. SA Victims who filed an unrestricted report and subsequently complained of retaliation			
c. Investigated by Command			
d. Investigated by MCIO			
e. Investigated by Service IG	0	0	2
f. Investigated by DOD IG			
g. Other type of Investigations			
h. Investigations incomplete			
i. Investigations unsubstantiated			
j. Investigations substantiated			

<b>USN</b>	<p>Navy is unable to provide Service-wide numbers for many of the requested data points due to lack of information.</p> <p>NAVINGEN received a total of four allegations of reprisal or retaliation from sexual assault victims from FY12 through FY14. The three allegations received in FY12 and FY13 involved professional reprisal. All three were unsubstantiated following an investigation. The single allegation received in FY14 from a victim of sexual assault involved retaliation in the form of ostracism and unfavorable personnel action. This</p>
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claim of reprisal/retaliation was unsubstantiated following an investigation. However, in the course of the investigation it was discovered that the Victim Advocate violated the Victim Advocate Code of Professional Ethics. The Victim Advocate received a written letter of counseling and the Victim Advocate's credentials were suspended.

Although Navy is unable to provide an accurate Service-wide response to the requested data call, the Twenty First Century Sailor office received information from some Navy commands, as well as NCIS. The following alleged retaliation case synopsis capture information involving retaliation against a sexual assault victim who made an Unrestricted Report during the period of October 1, 2013 through February 2015, and what action was taken, if any. This data was gathered quickly without quality assessment and has not been validated. Further, the number of reported allegations from Naval commands and NCIS, and NAVINSGEN may include some of the same cases reducing the total number of reported allegations below 26.

Naval commands:

- Navy commands that were able to respond to the request for data reported a total of 21 allegations of reprisal or retaliation (8 were reported as professional, 12 social, and 1 both).
- Males and females, acting alone or in multiples, were the retaliators.
- In all but 2 of the cases, the victim who experienced the retaliation was female.
- In 4 of the cases, the retaliator was the perpetrator of the underlying sexual assault report.
- Actions taken in the cases included:
  - 1 resulted in nonjudicial punishment (NJP).
  - 3 resulted in an expedited transfer of the victim.
  - 5 resulted in briefings or trainings for the retaliator. (One of these was concurrent with an expedited transfer.)
  - 2 resulted in briefings or trainings for the command.
  - 1 resulted in a military protective order (MPO) for the victim.
  - 5 resulted in some other form of action being taken, and was elaborated on in the data response.
  - 4 resulted in no action being taken.

NCIS:

- NCIS reported 5 allegations.
- NCIS investigates retaliation and does not classify cases as social or professional.
- 1 of the cases was considered actionable and was dealt with via NJP.
- 3 of the cases resulted in no action being taken, one of which is an ongoing investigation.
- All 5 of the victims of allegation were female.
- 3 of the cases identified the retaliator as being a single male (one was listed as the perpetrator of the underlying sexual assault report).
- 2 of the cases listed the retaliator as female. 1 case was a single female, and the other was multiple females.

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<b>USN</b>			
<b>SA/Retaliation Claims Investigated</b>	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>
a. SA Victims who filed an unrestricted report	556	902	1001
b. SA Victims who filed an unrestricted report and subsequently complained of retaliation			
c. Investigated by Command			
d. Investigated by MCIO			
e. Investigated by Service IG	2	1	1
f. Investigated by DOD IG			
g. Other type of Investigations			
h. Investigations incomplete			
i. Investigations unsubstantiated			
j. Investigations substantiated			

<b>USMC</b>	The Marine Corps does not track this information
<b>USCG</b>	The Coast Guard has not historically tracked allegations of retaliation or disposition information on those offenses and does not have reliable data available.

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**82. For fiscal years 2012-2014, based on the number of substantiated retaliation cases (answer to RFI # 81j ), please provide the number of service members who received an adverse action relating to their retaliatory misconduct (i.e., Article 92, Article 93 (Maltreatment), or Article 134 (Obstruction of Justice)) and further identify the type of action taken and in the table below.**

<b>Actions Taken Against Retaliators / Offenders</b>	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>
a. Total number of substantiated cases with adverse action taken against offender			
b. Offender received adverse administrative action, but retained in the Service			
c. Offender received adverse administrative action and administratively separated from the Service			
d. Offender received nonjudicial punishment, but retained in the Service			
e. Offender received nonjudicial punishment and administratively separated from the Service			
f. Offender court-martialed, but retained in the Service			
g. Offender court-martialed and received a punitive discharge (BCD, DD, Dismissal)			
h. Offender court-martialed (no kick) and subsequently administratively separated			

<b>USA</b>	<p>The Army has not historically tracked allegations of retaliation or disposition information on those offenses and does not have reliable data available.</p> <p>In March 2015, pursuant to SECARMY Directive 2015-16, the Army established a formal mechanism to track all allegations of retaliation through the monthly Sexual Assault Review Board (SARB). The senior installation commander will ensure all allegations of retaliation made by victims, bystanders, witnesses, and first responders are investigated by either law enforcement or through Army Regulation 15-6 Investigations. The results of those investigations and any subsequent accountability actions will be monitored by the SARB until complete.</p> <p>Additionally, the Chief of Staff of the Army directed that Army SHARP Resource Centers, located at select installations across the force, collect data on retaliation allegations beginning in May 2015.</p> <p>The Army believes that the SARB and Resource Center reports will serve as reliable sources of data for future analysis.</p> <p>In March 2015, at the direction of the Undersecretary of Defense for Personnel and Readiness, the Army conducted a data call of multiple sources for reports, investigations and dispositions of retaliation allegations. The Army does not have confidence in the specifics of the data collection results because there was not sufficient time to properly collect and analyze the results. The Army believes that our</p>
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	<p>results may be incomplete, inconsistent, and potentially duplicative, which would lead to potentially improper conclusions and corrective action. Therefore, the data collected through the SARB and SHARP Resource Centers is the proper source to determine policy and actions for the future.</p> <p>Although the detailed results of the data call are not appropriate for release, the data collection did confirm that: (1) as of March 2015, the SARBs are collecting data as required by SECARMY Directive 2015-16; (2) the Inspector General (IG) complaint process is being properly executed for allegations of retaliation and reprisal in accordance with the Military Whistle Blower Protection Act; and (3) victims are reporting allegations of retaliation through multiple channels including the chain of command, law enforcement, Victim Advocates, Sexual Assault Response Coordinators, Special Victim Counsel, the IG, and Congressional representatives.</p>
<b>USAF</b>	<p>Due to current technological limitations, the Air Force does not currently track adverse actions outside of courts-martial and Article 15s. We are in the process of developing a system that will track all adverse actions and will have special identifiers for retaliation. Prior to issuing the guidance referred to in Question 81, AF/CVS sent a data call to the field requesting all available information on retaliation complaints for FY 14 through March 2015.</p>
<b>USN</b>	<p>Navy is unable to provide an accurate response to the requested data call. Please refer to the narrative response in question 81 for the information Navy was able to obtain.</p>
<b>USMC</b>	<p>The Marine Corps does not track the data requested in items (a) through (e). Further, the Marine Corps had no responsive cases for items (f)-(h).</p>
<b>USCG</b>	<p>The Coast Guard has not historically tracked allegations of retaliation or disposition information on those offenses and does not have reliable data available.</p>

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**83. For fiscal years 2012-2014, please provide the total number of sexual assault victims who filed an unrestricted report and were subsequently involuntarily discharged (medically, administratively or punitively discharged) from the service in FY12, FY13, and FY14. Please further break down that total number in 83b to indicate the number who received each type of discharge and the number who received each characterization of service each year for rows 83c-k in the table below.**

<b>USA</b>	<p>The Army is still in the process of collecting this data, which requires manual synchronization of data from multiple data sources. The Army will provide the data as soon as available.</p> <p>The Army had regulatory protections for victims who have made an unrestricted report of sexual assault in both the voluntary and involuntary administrative separation process. Pursuant to Army Regulation 600-20, paragraph 8-5(o)(26)-(27), a unit commander initiating a voluntary or involuntary separation on any Soldier must include documentation in the packet that positively identifies the Soldier as having been, or not having been, a victim of sexual assault. If the Soldier was a victim the documentation, signed by the Soldier, must state whether or not the Soldier believes that the separation is a direct or indirect result of the sexual assault or the filing of the unrestricted report. There is an elevated level of review and approval, at the Special Court-Martial Convening Authority or General Court-Martial Convening Authority, for the administrative separation packets for Soldiers who have made an unrestricted report.</p> <p>All Soldiers facing involuntary administrative separation proceedings are entitled to the advice and services of Trial Defense Counsel, including representation at administrative separation boards. Victims of sexual assault can also request the services of Special Victim Counsel.</p>		
<b>USA (PENDING)</b>			
<b>SA Victims (Involuntarily) Separated</b>	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>
a. SA Victims who filed an unrestricted report			
b. Total number of SA Victims who reported & subsequently involuntarily separated			
c. Medical separation			
d. Administrative separation			
e. Honorable discharge			
f. General, under honorable conditions discharge			
g. Other than honorable discharge			
h. Punitive discharge (court-martial)			
i. Bad conduct discharge			
j. Dishonorable discharge			
k. Dismissal			

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<b>USAF</b>	The AF is unable to determine answers to items 83(b)-(k) for FY12-FY14.			
	<b>SA Victims (Involuntarily) Separated</b>	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>
a.	SA Victims who filed an unrestricted report	483	737	944
b.	Total number of SA Victims who reported & subsequently involuntarily separated			
c.	Medical separation			
d.	Administrative separation			
e.	Honorable discharge			
f.	General, under honorable conditions discharge			
g.	Other than honorable discharge			
h.	Punitive discharge (court-martial)			
i.	Bad conduct discharge			
j.	Dishonorable discharge			
k.	Dismissal			

<b>USN</b>	Navy Personnel Command began tracking the involuntary separation of <u>enlisted</u> sexual assault victims in FY13, and involuntary separation of <u>officer</u> sexual assault victims in FY14.			
	<b>SA Victims (Involuntarily) Separated</b>	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>
a.	SA Victims who filed an unrestricted report	556	902	1001
b.	Total number of SA Victims who reported & subsequently involuntarily separated	Not Tracked (NT)	Enlisted: 9 Officer: NT	Enlisted: 11 Officer: 0
c.	Medical separation	NT	Enlisted: 4 Officer: NT	Enlisted: 4 Officer: NT
d.	Administrative separation	NT	Enlisted: 5 Officer: NT	Enlisted: 7 Officer: 0
e.	Honorable discharge	NT	Enlisted: 3 Officer: NT	Enlisted: 2 Officer: 0
f.	General, under honorable conditions discharge	NT	Enlisted: 0 Officer: NT	Enlisted: 1 Officer: 0
g.	Other than honorable discharge	NT	Enlisted: 0 Officer: NT	Enlisted: 4 Officer: 0
h.	Punitive discharge (court-martial)	NT	NT	NT
i.	Bad conduct discharge	NT	NT	NT
j.	Dishonorable discharge	NT	NT	NT
k.	Dismissal	NT	NT	NT

<b>USMC</b>	The Marine Corps does not track this information
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<b>USCG</b>	<p>The Coast Guard does not track the subsequent status or discharge of sexual assault victims in the manner requested in the question. The Coast Guard is aware, however, of the potential for a sexual assault to negatively impact a victim's Coast Guard career in a wide variety of ways. Toward that end, the Sexual Assault Prevention Council, a Flag and SES-level coordinating committee for the Coast Guard's Sexual Assault Prevention efforts, sponsored a number of "career preservation" initiatives aimed at limiting the possible negative impacts on sexual assault victims by amending a number of personnel policies. Among the approved and implemented career preservation initiatives are allowing sexual assault victims to request that the Commander, Personnel Services Center, the flag-level discharge authority for all administrative separations, personally review their proposed discharge and receive an independent legal review prior to making a decision; permitting District Commanders and commanding officers to authorize up to 30 days convalescent leave for victims of sexual assault; authorizing sexual assault victims to request a no-fault disenrollment from "A" school (initial occupational training) after a sexual assault; and allowing a sexual assault victim whose assault occurred during the current service wide examination cycle (test for advancement for enlisted members) to request a no-fault absence from the next service wide examination. Several other initiatives are still under development.</p>
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**84. (Service IGs) Please provide the following numbers for each FY12, FY13, FY14:**

<b>FY 12</b>	<b>Sexual Assault</b>	<b>Sexual Harassment</b>	<b>Fraud, Waste &amp; Abuse</b>	<b>Other Crimes</b>
<b>Total Number of</b>				
Reprisal Complaints Received by Service IG				
Investigations Opened				
Investigations Closed				
Substantiated Cases				
<b>FY 13</b>	<b>Sexual Assault</b>	<b>Sexual Harassment</b>	<b>Fraud, Waste &amp; Abuse</b>	<b>Other Crimes</b>
<b>Total Number of</b>				
Reprisal Complaints Received by Service IG				
Investigations Opened				
Investigations Closed				
Substantiated Cases				
<b>FY 14</b>	<b>Sexual Assault</b>	<b>Sexual Harassment</b>	<b>Fraud, Waste &amp; Abuse</b>	<b>Other Crimes</b>
<b>Total Number of</b>				
Reprisal Complaints Received by Service IG				
Investigations Opened				
Investigations Closed				
Substantiated Cases				

<b>USA</b>	<p>The DAIG does not track data in the format requested below. The chart below provides information on total whistleblower reprisal complaints of 10 USC §1034, Protected communications; prohibition of retaliatory personnel actions.</p> <p><b>NOTE: * Indicates number of complaints, not number of cases (which can have multiple complaints in each)</b></p>
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<b>Total Number of</b>	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15 (to date)</b>	<b>FY12 - FY15 Total</b>
Reprisal Complaints Received by Service IG*	887	704	832	299	2722
Investigations Opened*	653	535	654	229	2071
Investigations Closed*	599	399	206	9	1213
Substantiated Cases*	25 (1%)	14 (1%)	3 (0%)	0 (0%)	42 (1%)

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<b>USAF</b>				
<b>FY 12</b>	<b>Sexual Assault</b>	<b>Sexual Harassment</b>	<b>Fraud, Waste &amp; Abuse</b>	<b>Other Crimes</b>
<b>Total Number of</b>				
Reprisal Complaints Received by Service IG	0	0	4	
Investigations Opened	0	0	3	
Investigations Closed	0	0	1	
Substantiated Cases	0	0	0	
<b>FY 13</b>	<b>Sexual Assault</b>	<b>Sexual Harassment</b>	<b>Fraud, Waste &amp; Abuse</b>	<b>Other Crimes</b>
<b>Total Number of</b>				
Reprisal Complaints Received by Service IG	2	3	2	
Investigations Opened	0	2	0	
Investigations Closed	0	2	0	
Substantiated Cases	0	0	0	
<b>FY 14</b>	<b>Sexual Assault</b>	<b>Sexual Harassment</b>	<b>Fraud, Waste &amp; Abuse</b>	<b>Other Crimes</b>
<b>Total Number of</b>				
Reprisal Complaints Received by Service IG	4	4	3	
Investigations Opened	2	1	1	
Investigations Closed	2	0	0	
Substantiated Cases	0	0	0	

<b>USN</b>				
<b>FY 12</b>	<b>Sexual Assault</b>	<b>Sexual Harassment</b>	<b>Fraud, Waste &amp; Abuse</b>	<b>Other Crimes</b>
<b>Total Number of</b>				
Reprisal Complaints Received by Service IG	2	2	5	59
Investigations Opened	2	0	0	16
Investigations Closed	0	2	5	43
Substantiated Cases	0	0	0	6
<b>FY 13</b>	<b>Sexual Assault</b>	<b>Sexual Harassment</b>	<b>Fraud, Waste &amp; Abuse</b>	<b>Other Crimes</b>
<b>Total Number of</b>				
Reprisal Complaints Received by Service IG	1	1	5	32
Investigations Opened	0	0	1	12
Investigations Closed	1	1	4	19
Substantiated Cases	0	0	0	1
<b>FY 14</b>	<b>Sexual Assault</b>	<b>Sexual Harassment</b>	<b>Fraud, Waste &amp; Abuse</b>	<b>Other Crimes</b>
<b>Total Number of</b>				
Reprisal Complaints Received by Service IG	2	1	0	30
Investigations Opened	1	0	0	17
Investigations Closed	0	2	5	13
Substantiated Cases	0	0	0	1

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<b>USMC</b>				
<b>FY 12</b>	<b>Sexual Assault</b>	<b>Sexual Harassment</b>	<b>Fraud, Waste &amp; Abuse</b>	<b>Other Crimes</b>
<b>Total Number of</b>				
Reprisal Complaints Received by Service IG	0	1	4	0
Investigations Opened	0	1	2	0
Investigations Closed	0	0	0	0
Substantiated Cases	0	0	0	0
<b>FY 13</b>	<b>Sexual Assault</b>	<b>Sexual Harassment</b>	<b>Fraud, Waste &amp; Abuse</b>	<b>Other Crimes</b>
<b>Total Number of</b>				
Reprisal Complaints Received by Service IG	0	0	7	0
Investigations Opened	0	0	4	0
Investigations Closed	0	1	2	0
Substantiated Cases	0	0	0	0
<b>FY 14</b>	<b>Sexual Assault</b>	<b>Sexual Harassment</b>	<b>Fraud, Waste &amp; Abuse</b>	<b>Other Crimes</b>
<b>Total Number of</b>				
Reprisal Complaints Received by Service IG	0	1	14	1
Investigations Opened	0	1	9	1
Investigations Closed	0	0	4	0
Substantiated Cases	0	0	1	0

<b>USCG</b>	The Coast Guard does not have a Service IG. CGIS has not historically tracked this data in a searchable format and is unable to respond to this question within the time frame prescribed by the JPP.
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**85. Provide dates for any upcoming conferences, summits, or training events (such as SAPR, MCIO, SVC, or SARC training) that focus on retaliation. Please notify the JPP Director if a staff member would be permitted to observe any of those events.**

<b>USA</b>	<p><b>TJAGLCS Courses:</b> The following courses would provide the most convenient periods for JPP guests to observe the instruction. However, please note that TJAGLCS covers retaliation during our Judge Advocate Officer Basic Course, Judge Advocate Officer Graduate Course, General Officer Legal Orientation, Command Sergeant Major Legal Orientation, and Intermediate Trial Advocacy Course.</p> <p>Special Victims Counsel Course, 11 - 15 May 2015 (Specific Date - 12 May 2015)          Senior Officer Legal Orientation, 11 - 15 May 2015 (Specific Date - 11 May 2015)          Special Victims counsel Course, 27 - 31 July 2015 (Specific Date - 28 July 2015)          Senior Officer Legal Orientation, 31 August - 4 September 2015 (Specific Date - 31 August 2015)</p> <p><b>SARC/VA:</b></p> <p>Primary teams of SARC/VA staffing SHARP Resource Centers, 6 May 2015          SHARP Improvement Process Summit, 3-4 August 2015</p> <p><b>MCIO:</b></p> <p>NCR/MDW Sexual Assault Conference, 7-8 May 2015, Fort Belvoir Officer's Club, Fort Belvoir, Virginia. On 7 May 2015 from 0800 – 1200 training is designed for Command Teams (Battalion and above), their SARCs, and VAs. The topics covered will be: male on male sexual assault with guest speaker Dr. Howard Fradkin; alcohol and sexual assault with guest speaker Dr. Tharp; and a retaliation panel consisting of all branches of service. Only 350 seats are available.</p> <ul style="list-style-type: none"> <li>- Registration for SARCs and VAs <a href="https://www.surveymonkey.com/s/FHGFSC9">https://www.surveymonkey.com/s/FHGFSC9</a></li> <li>- Registration for Command Teams <a href="https://www.surveymonkey.com/s/39XTJXN">https://www.surveymonkey.com/s/39XTJXN</a></li> </ul> <p>National Organization for Victim Assistance Conference (NOVA), 16-19 August 2015, Dallas Texas. <a href="http://www.trynova.org/">http://www.trynova.org/</a>.</p> <p>The NOVA Conference offers over 100 workshops and plenary sessions for new, intermediate, and advanced victim advocates. Educational topics include: counseling and advocacy; restorative justice; program management; identity theft and cyber crimes; spiritual and mental health services; homicide issues; domestic violence and sexual assault; special concerns for children, elderly, and victims with disabilities; public policy; law enforcement and prosecution models; Native American Justice; self-care and burnout; interdisciplinary services and collaboration.</p>
<b>USAF</b>	<p>The annual SAPR training is being conducted at various times throughout the Air Force. As mentioned before, the SAPR Annual training includes a segment on retaliation. These events are scheduled and conducted at the installation level. If desired, the AF Sexual Assault Prevention and Response Office (AF SAPRO) can coordinate for members of the panel to view annual training being conducted at an</p>

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	<p>installation.</p> <p>Furthermore, AF SAPRO provided all Wing and Squadron leadership with materials to conduct a SAPR group discussion called “Empathy Matters”. The intent of that training is to create a dialogue among peers and promote communication with leadership on issues surrounding sexual assault, climate and prevention. In the take away for the commanders, they are provided the definitions of retaliation, to include ostracism, maltreatment, and reprisal so they can properly guide discussions.</p> <p>The next Special Victims’ Counsel (SVC) Course is scheduled for 22 June – 1 July at Maxwell AFB, AL. The course will include a block on retaliation, reporting options, and tactics SVCs can utilize to assist their clients. The JPP is welcome to observe the SVC Course.</p> <p>Finally, our Senior Officer Leaders Orientation Course (SOLO) is held 5 times a year from February through July and each class has between 60-80 students. All incoming Wing Commanders, Vice Wing Commanders and Group Commanders attend the course and receive training and instruction on retaliation. The next courses are 7-8 May, 28-29 May, and 16-17 July.</p>
<p><b>USN</b></p>	<p>The annual Navy SAPR Officer Training, 3-5 Aug 15, sponsored by OPNAV N17 will provide a session addressing retaliation. A member of the JPP is welcome to observe the session.</p> <p>NCIS does not have any upcoming conferences or training events that focus on retaliation; however, each iteration of the NCIS Advanced Adult Sexual Assault Training program includes instruction on NCIS policy, which mandates NCIS “shall initiate separate investigations if additional allegations of criminal activity against the victim (threats, minor physical assaults, damage to property, etc.) are identified during the investigation.” This NCIS policy is also covered during the NCIS Family and Sexual Violence Program Brief. A member of the JPP staff is welcome to observe the instruction at either the advanced sexual assault training or Family and Sexual Violence program brief.</p> <p>Navy VLC currently attend courses administered by the Army and Air Force for official victims’ legal counsel training and certification. Per the Army and Air Force Special Victims' Counsel Program Managers, the Army course contains retaliation-related training addressing both retaliation/intimidation concerns for victims' counsel, and peer/command retaliation issues potentially impacting victims. Navy judge advocates approved for VLC assignments are attending the Army SVC Course 11-15 May 15 and the Air Force SVC Course set for 22 Jun - 1 Jul 15. Attendance at or observation of these courses by JPP staff should be arranged through the Army and Air Force SVC Program Managers. Navy VLC Program training officers are creating a specialized training session addressing retaliation matters to be delivered to all VLC via the Defense Connect Online (DCO)/ Defense Collaboration Services (DCS) system by mid-Jun 15. This webinar will provide instruction on multiple avenues available for complainants followed by a question-and-answer session to promote discussion of best practices and lessons learned. This DCO/DCS training may be observed by a member of the JPP staff. Additionally, the standing internal</p>

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	<p>VLC SharePoint website provides a continuing forum for collective discussion of all VLC representation matters among Navy VLC, including issues of victim retaliation and avenues for dealing with complaints. This site is restricted to serving Navy VLC for confidentiality purposes.</p> <p>CNIC will provide in-person training on retaliation at the 2015 Navy SARC Training, 15-18 Sep 15 in Washington, DC. A JPP staff member would be permitted to observe.</p> <p>In addition to future training events listed in response to #67, upcoming mandatory P-CO SAPR training for all incoming Company Officers will address retaliation in the above-mentioned context and may be observed. This training is scheduled for Thursday, 7 May from 0900-1200 (location: USNA, building &amp; room TBD).</p> <p>NAVINSGEN IG Conference 4-8 May 15 will have one session dedicated to Military Whistleblower Reprisal Investigations. Although the focus of this conference is not retaliation, issues related to sexual assault and retaliation may be introduced during question and answer sessions, and during the Whistleblower Reprisal session.</p>
<b>USMC</b>	<p>HQMC SAPR is hosting a symposium on retaliation on 28 April 2015. The guest speaker is Dr. Patricia Harned, the Chief Executive Officer of the Ethics and Compliance Officer Association. Dr. Harned is a leading expert on the topic of retaliation. The event is mandatory for all HQMC SAPR personnel. Other invitees include representatives from Marine Corps Inspector General, Victim's Legal Counsel Organization, Equal Opportunity, and Department of Defense Sexual Assault Prevention and Response Office. Staff members are invited to observe any session, but registration is required. HQMC SAPR point of contact is Major N. Packard, <a href="mailto:Nathan.packard1@usmc.mil">Nathan.packard1@usmc.mil</a>.</p> <p>HQMC SAPR will be conducting all-hands training for SARCs via the Defense Connect Online (DCO) Webinar classroom in May. The webinar will cover definitions of retaliation, reprisal, maltreatment, ostracism; reporting avenues for victims; procedures for SARCs and VAs when retaliation is reported to them by a victim; and discussing retaliation at CMGs. After receiving training, all SARCs will be required to provide the training to their respective SAPR VAs/UVAs. SARCs will be authorized to train their UVAs in person, via teleconference, or via webinar. Staff members are invited to observe any session, but registration is required. Dates and registration details are provided at enclosure (2).</p> <p>USMC SAPR Annual Training for all USMC SARCs and civilian SAPR VAs will be conducted aboard MCB Quantico 18-20 August 2015. The agenda is pending; however, retaliation will be one of the key topics covered. Staff members are invited to observe. HQMC SAPR can provide an agenda once it is finalized and approved.</p> <p><b>ENCLOSURE 2: Dates for SARC All Hands Retaliation Training</b></p>
<b>USCG</b>	<p>The Coast Guard has none scheduled at this time.</p>

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**Request for production of documents:**

**86. Please provide the information you gathered in response to the data call issued by the Under Secretary of Defense on March 12, 2015, to include the spreadsheets reflecting the Alleged Retaliation Case Synopses for FY14-15, and the Case Management Group (CMG) Retaliation Allegations Snapshot from March 2015.**

<b>USA</b>	<p>As discussed above, in March 2015, at the direction of the Undersecretary of Defense for Personnel and Readiness, the Army conducted a data call of multiple sources for reports, investigations and dispositions of retaliation allegations. The Army does not have confidence in the specifics of the data collection results because there was not sufficient time to properly collect and analyze the results. The Army believes that our results may be incomplete, inconsistent, and potentially duplicative, which would lead to potentially improper conclusions and corrective action. Therefore, the data collected through the SARB and SHARP Resource Centers is the proper source to determine policy and actions for the future.</p> <p>Although the detailed results of the data call are not appropriate for release, the data collection did confirm that: (1) as of March 2015, the SARBs are collecting data as required by SECARMY Directive 2015-16; (2) the Inspector General (IG) complaint process is being properly executed for allegations of retaliation and reprisal in accordance with the Military Whistle Blower Protection Act; and (3) victims are reporting allegations of retaliation through multiple channels including the chain of command, law enforcement, Victim Advocates, Sexual Assault Response Coordinators, Special Victim Counsel, the IG, and Congressional representatives.</p>
<b>USAF</b>	The AF defers to DoD SAPRO who is compiling all the service data.
<b>USN</b>	<p>Navy is unable to provide the requested spreadsheets at this time.</p> <p>During March 2015, Sexual Assault Case Management Groups (SACMGs) across Navy documented findings of the required monthly assessment of instances of retaliation against victims, witnesses/bystanders, and first responders as follows:</p> <p>March 2015:</p> <ul style="list-style-type: none"> <li>• SACMGs reported 6 cases of reprisal/retaliation (2 were reported as professional, 4 as social).</li> <li>• In 5 of the 6 cases, the gender of the victim of retaliation was female.</li> <li>• In 5 of the cases, there were multiple alleged retaliators of both genders. The sixth alleged retaliator was a single female.</li> <li>• In 1 case of alleged social retaliation, at least 1 of the alleged retaliators was the perpetrator of the underlying sexual assault report.</li> <li>• Actions taken included referral to command for investigation, referral to NCIS for investigation, victim safety plan updated, and consideration of expedited for victim, or transfer of alleged retaliator.</li> </ul>
<b>USMC</b>	The Marine Corps is not the release authority for the requested information.
<b>USCG</b>	The Coast Guard was not asked to respond to the data call from the Under Secretary of Defense.

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**87. Please provide all materials that were provided to Human Rights Watch in 2014-2015 as part of their investigation into retaliation and military sexual assault.**

<b>USA</b>	The Army provided all publically available materials found at <a href="http://www.sapr.mil">www.sapr.mil</a> and <a href="http://responsesystemspanel.whs.mil">http://responsesystemspanel.whs.mil</a>
<b>USAF</b>	On 25 September 2014, Human Rights Watch (HRW) filed a Freedom of Information Act (FOIA) request seeking, among other requests, documents related to types of corrective actions or disciplinary actions used in connection with reprisals or retaliation against servicemembers for reporting a sexual assault or sexual harassment. The Air Force FOIA office assigned the following number to the FOIA: FOIA #2014-06593-F. HRW determined that they did not want to pay the fees associated with responding to the FOIA request. As a result the AF FOIA office closed the FOIA on 12 Dec 14 and no documents were released to HRW.
<b>USN</b>	Navy has no responsive material at this time.
<b>USMC</b>	The HQMC FOIA office released enclosure (3) to Human Rights Watch.  <b>ENCLOSURE 3: FOIA Human Rights Watch</b>
<b>USCG</b>	The Coast Guard was not asked to provide any materials to Human Rights Watch.

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**88. Please review the [tables](#) on the following pages and provide a copy of or link to any other Service regulation(s) or policies that:**

- a. prohibits retaliation against any victim or other Service member who reports a criminal offense with a punitive provision under Art. 92, UCMJ (FY14 NDAA section 1709);**
- b. sets out the complaint, investigation, and appeals process for incidents of retaliation;**
- c. describes the remedies available to Service members;**
- d. describes disciplinary action for substantiated cases;**
- e. addresses particular considerations in personnel actions for sexual assault victims to ensure they are not retaliated against (e.g., medical regulations pertaining to disability reviews for personality disorder diagnosis, promotion considerations, separations, etc.).**

<b>USA</b>	Table is complete for Army regulations and policies.
<b>USAF</b>	Table is complete for Air Force regulations and policies.
<b>USN</b>	<p><u>SECNAVINST 5370.7D (Military Whistleblower Protection)</u>  <a href="http://doni.daps.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-300%20Manpower%20Personnel%20Support/5370.7D.pdf">http://doni.daps.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-300%20Manpower%20Personnel%20Support/5370.7D.pdf</a></p> <p><u>OPNAVINST 1752.1B (Sexual Assault Victim Intervention (SAVI) Program)</u>  <a href="http://doni.documentservices.dla.mil/Directives/01000%20Military%20Personnel%20Support/01-700%20Morale,%20Community%20and%20Religious%20Services/1752.1B.PDF">http://doni.documentservices.dla.mil/Directives/01000%20Military%20Personnel%20Support/01-700%20Morale,%20Community%20and%20Religious%20Services/1752.1B.PDF</a></p> <p><u>OPNAVINST 5354.1F CH-1 (Navy Equal Opportunity Policy)</u>  <a href="http://doni.documentservices.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-300%20Manpower%20Personnel%20Support/5354.1F%20CH-1.pdf">http://doni.documentservices.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-300%20Manpower%20Personnel%20Support/5354.1F%20CH-1.pdf</a></p> <p>When training Senior Officer and Basic Lawyer Course students about available grievance processes and retaliation, NJS references the following policies and authorities:</p> <ol style="list-style-type: none"> <li>1. 10 USC 1034 – Protected Communications; prohibition of retaliatory personnel actions:  <a href="http://uscode.house.gov/view.xhtml?req=(title:10%20section:1034%20edition:prelim)%20OR%20(granuleid:USC-prelim-title10-section1034)&amp;f=treesort&amp;edition=prelim&amp;num=0&amp;jumpTo=true">http://uscode.house.gov/view.xhtml?req=(title:10%20section:1034%20edition:prelim)%20OR%20(granuleid:USC-prelim-title10-section1034)&amp;f=treesort&amp;edition=prelim&amp;num=0&amp;jumpTo=true</a> ;</li> <li>2. DoD Directive 7050.06 – Military Whistleblower Protection:  <a href="http://www.dtic.mil/whs/directives/corres/pdf/705006p.pdf">http://www.dtic.mil/whs/directives/corres/pdf/705006p.pdf</a>;</li> <li>3. SECNAVINST 5370.7D – Military Whistleblower Protection:</li> </ol>

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	<p><a href="http://doni.daps.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-300%20Manpower%20Personnel%20Support/5370.7D.pdf">http://doni.daps.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-300%20Manpower%20Personnel%20Support/5370.7D.pdf</a>;</p> <p>4. FY14 NDAA: <a href="http://www.gpo.gov/fdsys/pkg/BILLS-113hr1960rh/pdf/BILLS-113hr1960rh.pdf">http://www.gpo.gov/fdsys/pkg/BILLS-113hr1960rh/pdf/BILLS-113hr1960rh.pdf</a>:</p> <p style="padding-left: 40px;">a. §1709 (PROHIBITION OF RETALIATION AGAINST MEMBERS OF THE ARMED FORCES FOR REPORTING A CRIMINAL OFFENSE);</p> <p style="padding-left: 40px;">b. §1714 (EXPANSION AND ENHANCEMENT OF AUTHORITIES RELATING TO PROTECTED COMMUNICATIONS OF MEMBERS OF THE ARMED FORCES AND PROHIBITED RETALIATORY ACTIONS); and</p> <p style="padding-left: 40px;">c. §1715 (INSPECTOR GENERAL INVESTIGATION OF ALLEGATIONS OF RETALIATORY PERSONNEL ACTIONS TAKEN IN RESPONSE TO MAKING PROTECTED COMMUNICATIONS REGARDING SEXUAL ASSAULT)</p> <p>5. SECNAVINST 12771.2 – Department of the Navy Administrative Grievance System: <a href="http://doni.daps.dla.mil/Directives/12000%20Civilian%20Personnel%20Services/12-700%20Civilian%20Employee%20Relations%20and%20Services/12771.2.pdf">http://doni.daps.dla.mil/Directives/12000%20Civilian%20Personnel%20Services/12-700%20Civilian%20Employee%20Relations%20and%20Services/12771.2.pdf</a>;</p> <p>6. JAGMAN, Chapter III – As the JAGMAN applies U.S. Navy Regulations, Articles 1150, 1151, 1154-1156 (Rights and Restrictions related to Grievances): <a href="http://www.jag.navy.mil/library/instructions/jagman2012.pdf">http://www.jag.navy.mil/library/instructions/jagman2012.pdf</a>;</p> <p>7. Article 138, UCMJ: <a href="http://uscode.house.gov/view.xhtml?req=(title:10%20%20section:938%20edition:prelim)%20OR%20(granuleid:USC-prelim-title10%20-section938)&amp;f=treesort&amp;edition=prelim&amp;num=0&amp;jumpTo=true">http://uscode.house.gov/view.xhtml?req=(title:10%20%20section:938%20edition:prelim)%20OR%20(granuleid:USC-prelim-title10%20-section938)&amp;f=treesort&amp;edition=prelim&amp;num=0&amp;jumpTo=true</a>;</p> <p>8. MCO 1700.23F – Request Mast: <a href="http://www.hqmc.marines.mil/Portals/146/Docs/Inspections%20Div/MCO%201700.23F.pdf">http://www.hqmc.marines.mil/Portals/146/Docs/Inspections%20Div/MCO%201700.23F.pdf</a>;</p>
<b>USMC</b>	<p><a href="#">Marine Corps Order (MCO) 1752.5B SAPR Program</a>: Chapter 3, paragraph 5d states that all Commanders shall “protect victims of sexual assault from coercion, retaliation, and reprisal.” and Chapter 3, paragraph 5h(4) states that each Commander is expected to minimize re-victimization by “fostering a command environment that encourages reporting sexual assaults without the fear of reprisal.”</p>

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	<p><a href="#">MARADMIN 365/10</a> encourages Marines to responsibly engage in unofficial communication on the behalf of the Marine Corps using social media and to avoid any social media interactions that can bring “discredit upon themselves, their unit, and the Marine Corps.” Violations of Federal Law and DOD Regulations or Policies may result in disciplinary action under the UCMJ.</p> <p>Additional guidance on retaliation: <a href="#">MCO P5354.1D w/Ch 1</a> (Marine Corps Equal Opportunity Manual) (28 Aug 2006) and <a href="#">MCO 1000.9</a> (Sexual Harassment) (30 May 2006).</p> <p>The Inspector General of the Marine Corps (IGMC) <a href="#">SAPR checklist</a>, item number 963 01 027, ascertains that each command has a Standard Operating Procedure (SOP) “that establishes formal SAPR procedures and protocols, specific to the command location and structure, for the execution of the SAPR program. At a minimum, the SOP shall localize procedures; identify local resources; ensure protection of the UVA/VA/SARC from coercion, discrimination, reprisal; ensure victim protection from reprisal; and implement commander's protocols (specific to the command’s location).”</p> <p>GMCAs may not delegate separation authority for any administrative separation action involving a Marine who was a victim of a sexual assault, if the separation action occurs within one year of final disposition of the Marine’s sexual assault case, per paragraph 6307.3c of <a href="#">MCO 1900.16</a> (26 Nov 2013).</p>
<b>USCG</b>	<p>33 CFR 53.</p> <p>Civil Rights Manual (see Ch.2-C) which lays out the CFR requirements in more detail. Available at <a href="http://www.uscg.mil/civilrights/Documents/CIM_5350_4c.pdf">http://www.uscg.mil/civilrights/Documents/CIM_5350_4c.pdf</a></p> <p>Retaliation lawful general order (attached), based on the requirements of FY14 NDAA 1709.</p> <p><b>ATTACHED:</b> ALCOST 208/14 Military Whistleblower Protection</p>

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	Army	Air Force	Navy/MC	DOD
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### Retaliation Regulations

<b>Punitive Regulations Prohibiting Retaliation</b>	<p><a href="#"><u>AD 2014-20</u></a> <b>“Prohibition of Retaliation Against Soldiers for Reporting a Criminal Offense” (19 Jun 2014)</b></p> <p>(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.</p> <p>(3) This directive implements FY14 NDAA section 1709 effective immediately. The provisions of this directive are punitive, and violations may be punished under <b>Article 92</b>, UCMJ.</p>	<p><a href="#"><u>AFI 36-2909 AFGM2014-01</u></a> <b>“Air Force Guidance Memorandum to AFI 36-2909, “Professional and Unprofessional Relationships” (19 Jun 2014)</b></p> <p>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 <b>Article 92 or Article 134</b> of the Uniform code of Military Justice (UCMJ), or both, as well as any other applicable Article of the UCMJ, as appropriate.</p> <p>11. Prohibition on Retaliation. Military members shall not retaliate against an alleged victim or other military member who reports a criminal offense.</p>	<p><a href="#"><u>ALNAV 030/14</u></a> <b>Retaliation Against Members of the Armed Forces Reporting a Criminal Offense (Apr 2014)</b></p> <p>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 <b>Article 92</b> of the UCMJ.</p> <p>A violation by civilian personnel may be punishable under regulations governing disciplinary actions.</p> <p><a href="#"><u>SECNAVINST 5370.7D</u></a> <b>Military Whistleblower Protection (4 Dec 2014) 4.d</b></p>	<p><a href="#"><u>FY14 NDAA 1709</u></a> – <b>Prohibition of Retaliation Against Members of the Armed Forces for Reporting A Criminal Offense. (Dec 26, 2013)</b></p> <p>(a)(1) REGULATIONS REQUIRED.— The SecDef shall prescribe regulations, or require the Secretaries of the military departments to prescribe regulations, that prohibit retaliation against an alleged victim or other member of the Armed Forces who reports a criminal offense. The regulations shall prescribe that a violation of the regulations is an offense punishable under <b>article 92</b> of the Uniform Code of Military Justice).</p> <p>(2) DEADLINE.—The regulations required by this subsection shall be prescribed not later than 120 days after the date of the enactment of this Act.</p> <p><a href="#"><u>10 U.S.C. 1034</u></a> – <b>Protected communications; prohibition of retaliatory personnel actions</b></p>
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Implementation Guidance	<p>(<a href="#">AD 2014-20</a> (7))</p> <p>Commanders should consult with their servicing legal advisor and/or IG for guidance on implementation of this directive at the command level.</p>	<p>(<a href="#">AFI 36-2909 AFGM2014-01</a> )</p> <p><b>14. Actions in Response to Retaliation.</b> 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.</p> <p><b>17. Questions Regarding Retaliation.</b> 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.</p>	<p>(<a href="#">ALNAV 030/14</a> (3))</p> <p>The DON is revising all appropriate instructions to incorporate these changes. In the interim, consult and coordinate with Command IGs 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.</p>	<p><a href="#">SecDef Memorandum for Secretaries of the Military Departments re: Sexual Assault Prevention and Response (Dec 3, 2014)</a></p> <p><b>Engage Command to Prevent Retaliation:</b> the Chiefs of the Military Services and the NGB will develop new procedures for installation commanders who serve as the SAPR Case Management Group Chair. <b>These procedures will require installation commanders to regularly assess, and refer for appropriate corrective action, all reports from a victim, witness, or first responder of retaliation, ostracism, maltreatment, or reprisal in conjunction with a report of sexual assault.</b> These procedures will be provided to the USD(P&amp;R) by January 30, 2015.</p>

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	Army	Air Force	Navy/MC	DOD
<b>Whistleblower Protection/IG Complaint Regulations</b>	<p><a href="#"><u>AR 600-20 Ch 5-12 (11/6/2014)</u></a> <a href="#"><u>Military Whistleblower Protection Act</u></a></p> <p>Dept of the Army personnel are prohibited from taking acts of reprisal against any Soldier for filing a complaint of unlawful discrimination or sexual harassment (see DoDD 7050.06)(5-12)</p> <p>The Chain of command will ensure complainants are protected from reprisal or retaliation for filing EO complaints. Should Soldiers be threatened with such an act, or should an act of reprisal occur, they must report these circumstances to the DoD IG. (5-12e)</p> <p><a href="#"><u>AR 20-1, Inspector General Activities and Procedures (3 Jul 2012)</u></a></p> <p><a href="#"><u>AR 15-6, Procedure for Investigating Officers and Boards of Officers (30 Sep 1996)</u></a></p>	<p><a href="#"><u>AFI90-301 Inspector General Complaints Resolution (23 Aug 2011, Inc Ch 1, 6 Jun 2012)</u></a></p> <p>6.3.1. Members of the armed forces shall be free from reprisal for making or preparing to make a protected communication (PC).</p> <p>6.3.1.1. No person may take (or threaten to take) an unfavorable personnel action; or withhold (or threaten to withhold) a favorable personnel action as reprisal against a member of the armed forces for making or preparing to make a protected communication.</p> <p>6.3.1.2. Military members who violate this prohibition are subject to prosecution and/or disciplinary and administrative action under Article 92 of the UCMJ.</p> <p><a href="#"><u>JAG Guide to IG Investigations (14 Apr 2010)</u></a></p> <p><a href="#"><u>IG Guide for Investigating Officers (Feb 2012)</u></a></p> <p><a href="#"><u>Commander-Directed Investigation (CDI) Guide (26 Apr 2010)</u></a></p> <p><a href="#"><u>IG Reference Guide for Commanders/Agency Chiefs</u></a></p>	<p><a href="#"><u>SECNAVINST 5370.7D Military Whistleblower Protection (4 Dec 2014)</u></a></p> <p>5d. No person shall restrict or attempt to restrict service members from making lawful communications to a member of Congress or an IG.</p> <p>5e. 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.</p> <p>5f. Service members and DON personnel shall not retaliate against a service member because the member reported a criminal offense.</p> <p><a href="#"><u>Marine Corps Inspector General Program Investigations Guide Part 2 (Special Topic IG Inquiries/Investigations) (August 2009)</u></a></p> <p><a href="#"><u>Marine Corps Inspector General Program Assistance Guide (August 2009)</u></a></p> <p><a href="#"><u>MCO 5430.1 Marine Corps Inspector General Program (13 Nov 2006)</u></a></p>	<p><a href="#"><u>DoDD 7050.06 - Military Whistleblower Protection (Jul 23, 2007)</u></a></p> <p>4.1. Members of the Armed Forces shall be free to make a protected communication.</p> <p>4.2. No person shall restrict a member of the Armed Forces from making lawful communications to a Member of Congress or an IG.</p> <p>4.3. Members of the Armed Forces shall be free from reprisal for making or preparing to make a protected communication.</p> <p>4.4. No person may take or threaten to take an unfavorable personnel action, or withhold or threaten to withhold a favorable personnel action, in reprisal against any member of the Armed Forces for making or preparing to make a protected communication.</p> <p>4.5. The Secretaries of the Military Departments shall issue general regulations making punishable under Article 92, Uniform Code of Military Justice (UCMJ), "Failure to Obey Order or Regulation," any violation of the prohibitions of paragraphs 4.2. and 4.4. by persons subject to the UCMJ.</p>

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	Army	Air Force	Navy/MC	DOD
Oversight	<p>(<a href="#">AD 2014-20</a> (8))</p> <p><b>The Deputy Chief of Staff, G-1</b> 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.</p>	<p>(<a href="#">AFI 36-2909 AFGM2014-01</a> (13))</p> <p><b>Commanders and supervisors</b> 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.</p>	<p><a href="#">SECNAVINST 5370.7D</a> Enclosure 3</p> <p>1. The <b>Naval IG and the IGMC</b> have overall responsibility for assisting <b>SECNAV</b> in ensuring full implementation of 10 U.S.C. 1034 and the part of FY14 NDAA 1709 that prohibits retaliation in the form of an unfavorable personnel action for reporting, or preparing to report, a criminal offense.</p> <p>(ALNAV 030/14(4))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 <a href="mailto:richard.gambino@navy.mil">richard.gambino@navy.mil</a>.</p>	<p><a href="#">SecDef Memorandum for Secretaries of the Military Departments re: Sexual Assault Prevention and Response (Dec 3, 2014)</a></p> <p>Engage Command to Prevent Retaliation: the <b>Chiefs of the Military Services and the NGB</b> will develop new procedures for <b>installation commanders who serve as the SAPR Case Management Group Chair</b>. These procedures will require installation commanders to regularly assess, and refer for appropriate corrective action, all reports from a victim, witness, or first responder of retaliation, ostracism, maltreatment, or reprisal in conjunction with a report of sexual assault. These procedures will be provided to the USD(P&amp;R) by January 30, 2015.</p>

## REGULATORY PROVISIONS PERTAINING TO RETALIATION IN THE MILITARY

	Army	Air Force	Navy/MC	DOD
Retaliation Defined	<p><a href="#">(AD 2014-20 (4)(a)(1))</a>(19 Jun 2014)</p> <p>Taking or threatening to take an <b>adverse or unfavorable personnel action</b>, 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</p> <p>(AD 2014-20(4)(a)(2)) <b>ostracism</b>, 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</p> <p>(AD 2014-20(4)(a)(3)) acts of <b>cruelty, oppression or maltreatment</b> (as these terms are described in paragraph 17c(2) of MCM Part IV), committed against a victim, an alleged victim or another member of the Armed Forces <b>by peers or other persons</b>, because the individual reported a criminal offense or was believed to have reported a criminal offense.</p> <p>(see AR 600-20, 5-12d – narrower definition of retaliation)</p>	<p><a href="#">(AFI 36-2909 AFGM2014-01)</a>(19 Jun 2014)</p> <p>11.1. <b>Retaliation</b> is taking or threatening to take an <b>adverse personnel action</b>, or withholding or threatening to withhold a favorable personnel action, with respect to a military member because the member reported a criminal offense.</p> <p>11.2. <b>Ostracism</b>, 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.</p> <p>11.3. <b>Maltreatment</b>, which is a form of retaliation under this instruction, is treatment <b>by peers or by other persons</b>, 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 FY14 NDAA, Section 1709(b), and does not require a senior-subordinate relationship as is required for maltreatment under <a href="#">Article 93, UCMJ</a>.</p> <p>(See narrower def.: <b>2.1.1. Reprisal</b>. IG Guide for Investigating Officers)</p>	<p><a href="#">SECNAVINST 5370.7D</a> (4 Dec 2014) Encl 1</p> <p>15. a. Per reference FY14 NDAA 1709, retaliation against a service member is one of the following actions when taken because that member reported, either formally or informally, a criminal offense:</p> <p>(1) Taking or threatening to take an <b>unfavorable or adverse personnel action</b>, or withholding or threatening to withhold a favorable personnel action;</p> <p>(2) <b>Ostracism</b>, which is the exclusion from social acceptance, privilege, or friendship with intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice; or</p> <p>(3) <b>Maltreatment</b>, which is treatment <b>by peers or by other persons</b>, that, when viewed objectively under all the circumstances, is abusive or otherwise unwarranted, unjustified, and unnecessary for any lawful purpose, that is done with 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 does not require a senior-subordinate relationship as is required for maltreatment under <a href="#">Article 93, UCMJ</a>.</p> <p>See also <a href="#">ALNAV 030/14</a></p>	<p><a href="#">FY14 NDAA 1709(b)</a></p> <p>(1) RETALIATION —For purposes of the regulations required by the FY14 NDAA 1709(b)</p> <p>(a), the Secretary of Defense shall define retaliation to include, at a minimum—</p> <p>(A) taking or threatening to take an <b>adverse personnel action</b>, 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; and</p> <p>(B) <b>ostracism</b> and such of acts of <b>maltreatment</b>, as designated by the Secretary of Defense, committed by peers of a member of the Armed Forces or by other persons because the member reported a criminal offense.</p>

## REGULATORY PROVISIONS PERTAINING TO RETALIATION IN THE MILITARY

	Army	Air Force	Navy/MC	DOD
<b>Personnel Action Defined</b>	<p><a href="#">(AD 2014-20 (4)(b))</a></p> <p>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; and any other significant change in duties or responsibilities inconsistent with the member's grade.</p>	<p><a href="#">(AFI 36-2909 AFGM2014-01)</a></p> <p><b>11.4. Personnel Action.</b> 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.</p>	<p><a href="#">(SECNAVINST 5370.7D)</a></p> <p>11. Personnel Action: Per DoDD 7050.06, any action taken with respect to a service member 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 DoDD 7050.06; and any other significant change in duties or responsibilities inconsistent with the service member's grade.</p>	<p><a href="#">FY14 NDAA 1709(b)</a></p> <p>(2) PERSONNEL ACTIONS.—For purposes of retaliation by adverse personnel action, the Secretary of Defense shall define the personnel actions to be covered by the regulations.</p>

## REGULATORY PROVISIONS PERTAINING TO RETALIATION IN THE MILITARY

	Army	Air Force	Navy/MC	DOD
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### Investigations of Retaliation Complaints

Investigation Process for Ostracism and/or Maltreatment (Social Retaliation)	<p>(<a href="#">AD 2014-20</a>) (6))</p> <p>Allegations of retaliation described in paragraphs 4a(2) (ostracism) and 4a(3) (cruelty, maltreatment) will be referred to, and <b>investigated by</b>, the victim 's <b>chain of command</b> or supervision, or by any <b>other appropriate investigative agency</b>, organization or entity.</p>	<p>(<a href="#">AFI 36-2909 AFGM2014-01</a>)(14))</p> <p>A <b>commander or supervisor</b> must take appropriate action <b>if it is reasonable to believe</b> 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.</p>	<p>(<a href="#">SECNAVINST 5370.7D</a>, Encl 3</p> <p>(m) <b>Navy IG and IGMC</b> will refer allegations of ostracism or maltreatment to the appropriate <b>command</b> for action except in those circumstances where <b>IG</b> wishes to handle, such as those cases where a personnel action as well as ostracism and maltreatment are alleged or where subject is flag officer or SES.</p>	Not Addressed by DoD
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## REGULATORY PROVISIONS PERTAINING TO RETALIATION IN THE MILITARY

	Army	Air Force	Navy/MC	DOD
Investigation Process for Professional Retaliation	<p>(<a href="#">AD 2014-20</a> (5))</p> <p>Allegations of retaliation described in paragraph 4a(1) (personnel actions) will be referred to, and investigated by, the appropriate IG in accordance with DoDD 7050.06 and AR 20-1.</p>	<p>(<a href="#">AFI 36-2909</a> <a href="#">AFGM2014-01</a>)</p> <p><b>16. Relationship of Retaliation to Inspector General Complaints Resolution Program.</b> Cases involving retaliation or allegations of retaliation, should be evaluated to determine if they involve 1) <b>reprisal</b> for making protected communications, 2) <b>restriction</b> from making lawful communications, or 3) <b>improper referral for a mental health evaluation</b>, in violation of AFI 90-301, <i>Inspector General Complaints Resolution</i>, para. 1.13.6. If so, refer the matter to the <b>Inspector General Complaints Resolution Program</b>.</p>	<p><a href="#">SECNAVINST 5370.7D</a>, Encl 3</p> <p><b>Naval IG and IGMC</b> must: (b) Notify DoD IG within 10 days of receiving a complaint of reprisal. Conduct preliminary inquiry to determine if sufficient evidence to conduct full investigation. Report decision to DoD IG within 30 days of receiving complaint. May task to Echelon II or Command IG. (c) If sufficient evidence, open full investigation, or if requested by DoD IG. Ensure only investigators with specialized training or experience conduct reprisal investigations. (d) Ensure complainant advised of their rights and offer to assist in preparing complaints or forwarding to DoD IG. (c) Complaint must be made within 1 yr. of complainant awareness of personnel action, but can be waived for compelling case. (f) Ensure investigator is outside immediate chain of command or at least one organization higher in the chain that either party. (g) Ensure preliminary report reviewed by attorney. (h) Ensure report contains recommendations for appropriate remedy for the complainant. Provide DoD IG report of investigation w/in 150 days of receipt of complaint. (m) refer allegations of ostracism or maltreatment to the appropriate command for action except in those circumstances where IG wishes to handle.</p>	<p><a href="#">DoDD 7050.06</a> –</p> <p><b>DoD IG</b></p> <p>5.1.1. Determine whether sufficient evidence to warrant an investigation of complaint.                      5.1.2. Receive notification from Service Igs of all reprisal complaints and notify Service IG if DoD IG to retain case.                      5.1.3 Review and approve Service IG determinations that no investigation warranted.                      5.1.4. initiate or request Service IG to initiate investigations. Ensure that Service IG conducting investigation is outside chain of command of either party.                      5.1.5. Review and approve results of investigations conducted by Service Igs. Initiate a follow-up investigat. To correct any inadequacies.                      5.1.6. Issue a report of investigation w/in 180 days of receipt of complaint by DoD IG. Report MAY include recommendation(s) as to disposition of the complaint. Notify DUSD(PI)</p> <p>4.7. No investigation is required if complaint filed more than 60 days from date member learned of personnel action, but IG may still investigate if compelling case.</p>

## REGULATORY PROVISIONS PERTAINING TO RETALIATION IN THE MILITARY

	Army	Air Force	Navy/MC	DOD
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### Retaliation – Corrective Actions and Appeals

Subject Disciplinary , Criminal Actions or Remedies (Prof/Social)	<p><u><a href="#">AD 2014-20</a></u></p> <p>The provisions of this directive are punitive, and violations may be punished under <b>Article 92</b>, UCMJ.</p>	<p><u><a href="#">AFI 36-2909 AFGM2014-01</a></u></p> <p>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 <b>either Article 92 or Article 134</b> of the UCMJ, or both, as well as <b>any other applicable Article</b> of the UCMJ, as appropriate.</p> <p>(AFI 36-2909_AFGM2014-01(14))</p> <p>At a minimum, the member or members suspected of engaging in retaliation will be ordered to cease from engaging in any further retaliation.</p>	<p><u><a href="#">ALNAV 030/14</a></u></p> <p>A violation by a person subject to the UCMJ (Chapter 47 of Title 10, United States Code) is punishable as a violation of <b>Article 92</b> of the UCMJ.</p> <p>A violation by civilian personnel may be punishable under regulations governing disciplinary actions.</p>	<p><u><a href="#">FY14 NDAA 1709</a></u></p> <p>(a)The regulations shall prescribe that a violation of the regulations is an offense punishable under <b>article 92</b> of the UCMJ.</p> <p>(c) REPORT ON SEPARATE PUNITIVE ARTICLE.—Not later than 180 days after the date of the enactment of this Act, the SecDef shall submit to the SASC and HASC a report setting forth the recommendations of the SecDef regarding whether the UCMJ should be amended to add a new punitive article to subchapter X of such chapter to prohibit retaliation against an alleged victim or other member of the Armed Forces who reports a criminal offense.</p>
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DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS, UNITED STATES AIR FORCE  
WASHINGTON, DC

MAR 17 2015

MEMORANDUM FOR MAJCOM VICE COMMANDERS  
DRU COMMANDERS

FROM: HQ USAF/CVS  
1410 Air Force Pentagon  
Washington DC 20330-1410

SUBJECT: Change 1 to 27 February 15 Memorandum - Updated Procedures Regarding  
Reporting and Tracking Victim Retaliation in Sexual Assault Cases

1. This memorandum substantially changes the previous memorandum on this topic by no longer requiring commanders to discuss retaliation with sexual assault victims prior to each Case Management Group (CMG). Sexual Assault Response Coordinators (SARCs), Sexual Assault Prevention and Response Victim Advocates (SAPR VAs), or volunteer victim advocates (VVAs) will now discuss retaliation each month with victims and collect data regarding retaliation. Commanders are still encouraged to speak with victims regarding retaliation and other issues, but should be aware that any communications with the victim and documentation they create may be discoverable if the case goes forward to court-martial.

2. Commanders, Special Victim's Counsel (SVCs), SARCs, SAPR VAs, VVAs and all Airmen that work with sexual assault victims are responsible for supporting an environment free from retaliation. Retaliation prevents a victim from safely recovering from sexual assault. This memorandum is intended to provide a formal framework for reporting and tracking sexual assault victim retaliation. SARCs, SAPR VAs and VVAs (SAPR personnel) will now have the primary responsibility for discussing retaliation with sexual assault victims, discussing retaliation reporting, and ensuring retaliation cases are properly referred. The Case Management Group (CMG) will track retaliation reports. Cases involving possible reprisal will be tracked by the Inspector General (IG). This memorandum establishes additional reporting requirements for SARCs regarding any retaliation victims are experiencing. This policy is effective immediately. If victims have already been asked about retaliation under the 27 February 15 guidance, SAPR personnel should collect the data from the prior interview and forward to AF/CVS via SharePoint. Victims will not be reinterviewed.

3. PROCEDURE FOR THE IDENTIFICATION OF RETALIATION: The SAPR personnel will implement the following procedures for all unrestricted reports of sexual assault discussed during the CMG.

3.1. During the initial intake and at least monthly, SAPR personnel are responsible for discussing the following with all victims who make an unrestricted report of sexual assault.

3.1.1. The definition of retaliation and reprisal. See Air Force definitions at Attachment 1. Discussion of these definitions is only required once, but explanation of the terms may be required more often based on each victim's experience.

3.1.1.2 Victims of reprisal are afforded rights and protections under Title 10 USC 1034 and further clarified in DoDD 7050.06 Military Whistleblower Protection, and AFI 90-301, Inspector General Complaints Resolution. Allegations of reprisal are required by statute to be investigated by the Inspector General (IG). It is important to note that an active IG investigation does not alleviate commanders from their responsibilities to include maintaining a climate and environment free from retaliation and reprisal.

3.1.2. Whether a victim has experienced any forms of retaliation.

3.1.2.1. If a victim initially reports they have not experienced retaliation, SAPR personnel, as part of their ongoing relationship with the victim, are responsible for continuing to ask questions that may reveal retaliation.

3.1.3. A victim has a choice to decide whether or not to make a retaliation report. Victim communications to SAPR personnel are privileged under Military Rule of Evidence 514 if such communication were made for the purpose of facilitating advice or supportive assistance. Victim communications to SAPR personnel about retaliation are made for the purpose of facilitating advice or supportive assistance to the victim. A victim may refuse to disclose and prevent any other person from disclosing a privileged communication made between the victim and SAPR personnel unless required by law.

3.1.3.1. If the victim would like to make a retaliation report, SAPR personnel must understand what office is responsible for investigating different types of retaliation and the definitions of the types of retaliation to ensure allegations are properly referred to the IG, commander or OSI. The IG is responsible for adjudicating allegations of reprisal. OSI will only have a role if the retaliation report involves a violation of the UCMJ and OSI agrees to investigate. Commanders should address all other instances of retaliation. SAPR personnel should contact their servicing Staff Judge Advocate if they are unsure whom to refer the victim to. However, an improper referral can be changed and will not impact the merits of the investigation.

3.2. AFI 36-2909, *Professional and Unprofessional Relationships*, requires commanders and supervisors at all levels to report retaliation.

3.2.1. SAPR personnel should ensure that victims who choose not to make a retaliation report understand that if a commander or supervisor believes retaliation has occurred through other information the commander or supervisor receives, an investigation will still occur.

3.2.2. SARC must be aware that supervisors in a victim's chain of command are mandatory reporters of retaliation.

3.3. Whenever a victim makes a retaliation report, whether they chose to report it to command, OSI or the IG, SARC personnel should encourage the victim to consult with their SVC if represented.

4. RETALIATION REPORTING: When SAPR personnel receive information about retaliation or reprisal from a victim, they will discuss different reporting options with the victim. Victims may choose to keep the retaliation confidential and not make a retaliation or reprisal report. Victims may choose to make a retaliation or reprisal report to command, OSI, or the IG as appropriate.

4.1 Allegations of reprisal will be referred, tracked, adjudicated and reported within the Inspector General and in accordance with AFI 90-301, Inspector General Complaints Resolution. Reprisal cases will not be discussed in the CMG. Reprisal is defined in attachment 1 and includes both the definition of reprisal and paragraph 1 under the definition of retaliation.

4.2. A victim may discuss retaliation with SAPR personnel but choose not to forward the retaliation report for investigation. If a victim discusses retaliation with SAPR personnel, but chooses not to make a retaliation report, the communications between SAPR personnel and the victim remain privileged and will not be discussed at installation CMGs to ensure victim identity is protected.

4.2.1. If the allegation of retaliation is raised through other sources and an investigation is initiated, SAPR personnel retain their privileged communications with the victim and shall not disclose information without the victim's consent unless required by law.

4.2.2. Even if the allegation of retaliation is not referred for investigation by making a retaliation report, the SARC will gather information regarding the incident for purposes of assisting the victim and better understanding the prevalence of retaliation. Attachment 2 contains further guidance on data collection. The information will not include any personally identifying information.

4.3. A victim may choose to report retaliation outside SAPR channels for an investigation. The SARC will assist in determining whether the complaint is best referred to command, the IG or OSI. SAPR personnel will then assist the victim in contacting the agency if necessary. SARC will gather information regarding these reports and input data as discussed in attachment 2.

4.4. Prior to the monthly CMG, the SARC will determine if any victims with unrestricted reports of sexual assault have made a report of retaliation.

4.4.1. Retaliation reports of ostracism and maltreatment, as defined in attachment 1, will be briefed at the CMG. Reprisal as defined in attachment 1 and includes both the definition of reprisal and paragraph 1 under the definition of retaliation will not be briefed at the CMG.

4.4.2. The issue will be discussed within the limits of legal or regulatory guidance ensuring the victim's case review at the monthly CMG.

4.4.2.1. During the CMG, the CMG chair and members will discuss any retaliation reports made by the victim.

4.4.2.2. The victim's commander will brief the plan to address the retaliation report. If the victim's commander is the subject of the retaliation report the CMG Chair will address the issue. This may include that the retaliation report is being investigated as part of a Command Directed Investigation (CDI) or may be that the case has been referred to OSI. OSI may provide updates as a member of the CMG.

4.4.2.3. The retaliation report will remain on the CMG agenda until the victim's sexual assault case has reached final disposition or the retaliation report has been appropriately addressed according to the CMG chair.

4.5. SARC's are responsible for tracking retaliation reports throughout the investigative process. Further guidance can be found at attachment 2. Continuous updates to AF/CVS will be made; at a minimum the updates will occur when the retaliation report is made, when a plan to address the retaliation report is made and at resolution as determined by the CMG chair.

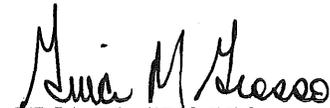
4.5.1. SAPR personnel know victims and are in the best position to discuss retaliation with victims. Direct questions about retaliation are often unnecessary as general questions about work environment, interactions with friends/coworkers and general welfare questions may be sufficient to make an initial assessment as to any potential retaliation toward the victim. SAPR personnel should use attachment 2 to collect all retaliation data as required by DoD.

4.5.2 For cases referred to the IG, SAPR personnel will document the initial retaliation report, that the case was referred to the IG and when possible the resolution.

4.6. SARC's will notify AF/CVS if they receive a discovery request through the court-martial process and coordinate a response with their servicing Staff Judge Advocate prior to release.

5. Thank you for ensuring sexual assault incidents involving forms of retaliation are properly reported in accordance with the above prescribed requirements. These requirements will be included in future SAPR policy. This memorandum supersedes my memorandum dated 27 February 2015. Please feel free to contact me if you have questions or require additional

information. If your staff has any questions they may call the Air Force SAPR Operations Branch Chief, Ms. Debbie Allen, at (703) 697-5795.



GINA M. GROSSO  
Major General, USAF  
Director, Air Force Sexual Assault  
Prevention and Response

Attachments:

1. Forms of Retaliation Standard Definitions
2. Victim Experience Interview

## Attachment 1

### FORMS OF RETALIATION STANDARD DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this memorandum and will be incorporated into AFI 90-6001.

**Case Management Group (CMG)**—A multi-disciplinary group that meets monthly to review individual sexual assault cases. The group is chaired by the installation or host wing commander who may delegate to the vice wing commander but no further. This group facilitates monthly victim updates and directs system coordination, accountability, and victim access to quality services. For unrestricted report case reviews the CMG shall consist of the following: Chair, SARC, SAPR VA, chaplain, military criminal investigator, DoD law enforcement, DPH, command legal representative or SJA, VWAP and victim's commander, VVA and SVC. For restricted report case review the CMG membership is limited to all SARCs assigned to the installation, victim's SAPR VA or VVA, DPH. At the request of the victim, the victim's SVC and chaplain may attend. Any deviations to this CMG for restricted cases must be approved by AF/CVS.

**Reprisal**—Taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making, preparing to make, or being perceived as making or preparing to make a protected communication. (See 10 U.S.C. § 1034 for full definition)

#### **Retaliation -**

1. The 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. or;
2. Ostracizing a military member, to include excluding from social acceptance, privilege or friendship with the intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice. or;
3. Maltreating a military member, to include 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.

## Attachment 2

### VICTIM EXPERIENCE INTERVIEW

**Purpose:** This form is intended to collect information on the possible consequences experienced by victims of sexual assault both at work and away from work due to reporting the sexual assault.

**Directions:**

This is a voluntary interview for victims with an open case with the CMG. The victim can decline to participate in this interview.

Sexual Assault Response Coordinators (SARCs) –If the victim is willing to participate, please ask (or have your SAPR VAs ask) the victim questions that appear on this form. Please record the answers to each question in the space provided on the form. After the victim questions, please enter your determination of whether referral has occurred for this victim and other follow-on data at the end of the form.

The SARC will enter data from this form into a Microsoft Access database provided by the AF SAPR Office via email. Each form will be entered as a separate record in the SARC's database, and the Microsoft Access database will be emailed back to the AF SAPR Office as soon as possible, but not later than the 1<sup>st</sup> of the month beginning 1 April 15.

(SARC) Enter DSAID case number: \_\_\_\_\_

(SARC) Installation Name: \_\_\_\_\_

(SARC) Date of March CMG meeting (MMDDYYYY): \_\_\_\_\_

(SARC) Was this case discussed at the monthly CMG meeting: Yes No

(SARC) Victim gender:  
Male Female

**Victim Questions:**

<p>Are you willing to participate in an interview about the possible consequences experienced by you both at work and away from work due to reporting the sexual assault?</p> <p>Yes No</p>	<p><b>If "no", then no further information is required in the form. (Enter the form data into the Access database)</b></p>
<p><b>(Ask this question if this is the first time retaliation has been discussed with the victim).</b></p> <p>Have you had any negative professional experiences following your report of sexual assault?</p> <p>Yes No</p> <p><b>(If this is not the first time retaliation has been discussed with the victim, ask the following question).</b></p> <p>Since our last discussion on this topic, have you had any new negative professional experiences following your report of sexual assault?</p> <p>Yes No</p> <p><b>(If 'no', then skip to next question.)</b></p>	<p><b>If "Yes"</b></p> <p>What happened?</p> <p>On a scale of 1 to 10 (10 being most severe), how severe would you rate these negative experiences?</p> <p>Did you refer the matter to anyone? Yes No If yes, then who? <b>(Select all that apply)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Complaint to AF IG</li> <li><input type="checkbox"/> Complaint to DoD IG</li> <li><input type="checkbox"/> Complaint to Chain of Command</li> <li><input type="checkbox"/> Complaint to AF OSI or Security Forces</li> <li><input type="checkbox"/> Other Please specify _____</li> </ul> <p>Please select the relationship between you and the person(s) with whom you had negative experiences <b>(Select all that apply)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Person(s) is in my chain of command</li> <li><input type="checkbox"/> Person(s) is superior, not in my chain of command</li> <li><input type="checkbox"/> Person(s) is a peer or co-worker</li> <li><input type="checkbox"/> Other: Please specify _____</li> </ul> <p>What is the gender of the person(s) with whom you had negative experiences? <b>(Circle only one)</b></p> <ul style="list-style-type: none"> <li>(1) Male</li> <li>(2) Female</li> <li>(3) Multiple Male</li> <li>(4) Multiple Female</li> <li>(5) Multiple Male and Female</li> </ul>

Is the person(s) with whom you had negative experiences also the perpetrator of the underlying sexual assault report?

Yes

No

I Don't Know

In your opinion, what needs to happen to resolve the situation that you are facing?

**Ask this question if this is the first time retaliation has been discussed with the victim).**

Have you had any negative social experiences following your report of sexual assault?

Yes No

**(If this is not the first time retaliation has been discussed with the victim, ask the following question).**

Since our last discussion on this topic, have you had any new negative social experiences following your report of sexual assault?

Yes No

**(If 'no', then skip to next question.)**

**If "Yes"**

What happened?

On a scale of 1 to 10 (10 being most severe), how severe would you rate these negative experiences?

Did you refer the matter to anyone? Yes No  
If yes, then who?

**(Select all that apply)**

- Complaint to AF IG
- Complaint to DoD IG
- Complaint to Chain of Command
- Complaint to AF OSI or Security Forces
- Other: Please specify \_\_\_\_\_

Please select the relationship between you and the person(s) with whom you had negative experiences

**(Select all that apply)**

- Person(s) is in my chain of command
- Person(s) is superior, not in my chain of command
- Person(s) is a peer or co-worker
- Other: Please specify \_\_\_\_\_

What is the gender of the person(s) with whom you had negative experiences?

**(Circle only one)**

- (1) Male
- (2) Female
- (3) Multiple Male
- (4) Multiple Female
- (5) Multiple Male and Female

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Is the person(s) with whom you had negative experiences also the perpetrator of the underlying sexual assault report?

**(Circle only one)**

Yes

No

I Don't Know

In your opinion, what needs to happen to resolve the situation that you are facing?

Is any of the information you discussed here something you would want to discuss with your Commander?  <b>(SARCs: proceed to the SARC Assessment.)</b>	<b>Yes</b>  <b>No</b>  <b>(The victim questions are complete.)</b>
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**SARC Assessment:**

**(These questions are for the SARC, not the victim)  
Do not ask these questions to the victim.**

Based on the discussion above, what form of alleged retaliation do you as the SARC feel the victim has described, if any?

**(Circle your answer)**

Social

Professional

Both social and professional

None

Describe the remedial action taken, if any, on behalf of the victim who made the retaliation report, and the outcome of that action

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Select the CMG Action Regarding Retaliation Report Case

**(Select all that apply)**

- (1) Information referred to IG
- (2) Information referred to Command
- (3) Information referred to MCI/O
- (4) Safety plan updated for victim of alleged retaliation
- (5) Expedited transfer considered for victim of alleged retaliation
- (6) Transfer for alleged retaliator
- (7) No action taken, please specify the reason(s) below
- (8) Other, please specify below

'Other' or 'No Action Taken': Please specify: \_\_\_\_\_

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SCHEDULE FOR MARINE CORPS SEXUAL ASSAULT RESPONSE COORDINATOR  
ALL-HANDS RETALIATION TRAINING

5 May 2015	6 May 2015	7 May 2015	11 May 2015
1800-1900 EST	1000-1100 EST 1500-1600 EST 1800-1900 EST	1000-1100 EST 1500-1600 EST 1800-1900 EST	1000-1100 EST 1500-1600 EST

Link to DCO Webinar Classroom:

<https://connectcol.dco.dod.mil/sarcretaliationtraining/>

Registration for the webinars should begin NLT 13 April 2015.

The webinar will cover:

- Definitions of retaliation, reprisal, maltreatment, ostracism
- Reporting avenues for victims
- Procedures for SARCs and VAs when retaliation is reported to them by a victim
- Discussing retaliation at CMGs

Upon completion of the training, SARCs will be required to provide the training to their respective UVAs. SARCs can train their UVAs in person, via teleconference, or via webinar.

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8. DTM on SAIRO report:

<http://www.dtic.mil/whs/directives/corres/pdf/DTM14007.pdf>

DODI on Special Victim Investigation and Prosecution:

<http://www.dtic.mil/whs/directives/corres/pdf/550519p.pdf>

DODI on Family Advocacy Program:

<http://www.dtic.mil/whs/directives/corres/pdf/640001p.pdf>

SECNAVINST 5370.7D (Military Whistleblower Reprisal Protection):

<http://doni.daps.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-300%20Manpower%20Personnel%20Support/5370.7D.pdf>

See ALNAVS:

086-14, Preliminary Hearing,

052/14, IMPLEMENTATION OF SECTION 1744 OF THE FY14 NATIONAL DEFENSE AUTHORIZATION ACT RELATED TO ELEVATED REVIEW OF DISPOSITION DECISIONS REGARDING CERTAIN SEX-RELATED OFFENSES

051/14 IMPLEMENTATION OF CERTAIN PROVISIONS OF THE FY14 NATIONAL DEFENSE AUTHORIZATION ACT RELATED TO CONVENING AUTHORITY DISPOSITION CONSIDERATIONS AND POST-TRIAL ACTIONS

050/14 IMPLEMENTATION OF SECTION 1705 OF THE FY14 NATIONAL DEFENSE AUTHORIZATION ACT RELATED TO COURT-MARTIAL JURISDICTIONAL LIMITS AND MINIMUM SENTENCES FOR CERTAIN SEX OFFENSES

049/14 IMPLEMENTATION OF CERTAIN PROVISIONS OF THE FY14 NATIONAL DEFENSE AUTHORIZATION ACT RELATED TO CRIME VICTIM RIGHTS

Found on <http://www.public.navy.mil/BUPERS-NPC/REFERENCE/MESSAGES/ALNAVS/Pages/ALNAV2014.aspx>

9. Raise to command or IG, ALNAV 030/14 (Retaliation against Members of the Armed Forces Reporting a Criminal Offense):

<http://www.public.navy.mil/bupers-npc/reference/messages/Documents/ALNAVS/ALN2014/ALN14030.txt>

Raise to command or IG, SECNAVINST 5370.7D (Military Whistleblower Reprisal Protection):

<http://doni.daps.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-300%20Manpower%20Personnel%20Support/5370.7D.pdf>

Marine Corps Sexual Assault Prevention and Response Program  
[http://www.marines.mil/portals/59/MCO%201752\\_5B.pdf](http://www.marines.mil/portals/59/MCO%201752_5B.pdf)

Request Mast to Commander, NAVMC 1700.23F (Request Mast Procedures):  
<http://www.hqmc.marines.mil/Portals/146/Docs/info%20and%20Downloads/NAVMC%20DIR%201700.23F.pdf>

File a complaint of wrongs under Article 138, UCMJ or under section 1150 Navy Regulation (Complaints of Wrongs - found in Ch. 3, JAGMAN):  
<http://www.jag.navy.mil/library/instructions/JAGMAN2012.pdf>

Victims' Legal Counsel - found in Ch. 6, LEGADMINMAN:  
[http://www.marines.mil/Portals/59/Publications/MCO%20P5800\\_16A%20CH%201-6%20PT%201.pdf](http://www.marines.mil/Portals/59/Publications/MCO%20P5800_16A%20CH%201-6%20PT%201.pdf)

Board for Corrections of Naval Records Instructions (BCNR):  
<http://www.hqmc.marines.mil/Agencies/OfficeofLegislativeAffairs/CongressionalCorrespondenceSection/BoardforCorrectionsofNavalRecords.aspx>

MARADMIN 227/12 (Expedited Transfer of Military Service Members who File Unrestricted Reports of Sexual Assault):  
<http://www.marines.mil/News/Messages/MessagesDisplay/tabid/13286/Article/110634/expedited-transfer-of-military-service-members-who-file-unrestricted-reports-of.aspx>

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**UNCLAS**

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FM COMDT COGARD WASHINGTON DC  
TO ALCOAST

BT

UNCLAS //N05800//

ALCOAST 208/14

COMDTNOTE 5800

SUBJ: MILITARY WHISTLEBLOWER PROTECTION

A. Section 1709, National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66

B. Discipline and Conduct, COMDTINST M1600.2 (series)

1. In order to maintain the integrity of our service, no Coast Guard member should feel threatened because he or she reported criminal activity. The service expects its members to demonstrate moral courage when faced with an adverse situation. Retribution against Coast Guard personnel who report a criminal offense undermines the military justice system and erodes good order and discipline.

2. In accordance with reference (a), Coast Guard personnel shall not retaliate against an alleged victim or other member of the Armed Forces who reports a criminal offense. This prohibition constitutes a lawful general order, is punitive, and is applicable to all Coast Guard personnel without further implementation. A violation by a person subject to the Uniform Code of Military Justice (UCMJ) is punishable as a violation of Article 92, UCMJ.

3. For the purpose of this order, retaliation against a military member is one of the following actions taken because that member, either formally or informally, reported a criminal offense:

A. Taking or threatening to take an unfavorable or adverse personnel action, or withholding or threatening to withhold a favorable personnel action,

B. Ostracism, which is the exclusion from social acceptance, privilege, or friendship with the intent to discourage that individual from reporting a criminal offense or otherwise discourage the due administration of justice, or

C. Maltreatment, which is treatment by peers or by other persons, that, when viewed objectively under all the circumstances, is abusive or otherwise unwarranted, unjustified, and 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 does not require a senior-subordinate relationship as is required for maltreatment under Article 93, UCMJ.

3. This order will be incorporated into the next revision of reference (b).

4. ADM P. F. Zukunft, Commandant, sends.

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