



Protect Our Defenders Comment on Retaliation

IMPACT OF RETALIATION ON VICTIMS

Survivors who seek assistance from Protect Our Defenders (POD) have often faced a wide range of retaliation after reporting a sexual assault. This retaliation comes from peers, mental health staff, and--frequently--from the survivor's own chain of command. For survivors already struggling to cope in the aftermath of an assault, this further victimization often leads to profoundly detrimental outcomes for victims' health and careers.

Retaliation also creates a chilling environment for any potential witnesses and other victims of sexual violence. At POD, we often hear from survivors who delayed reporting, or never reported, after seeing the retaliation other survivors face. As a result, tolerance of retaliatory behavior creates an environment where sexual predators are able to remain undetected.

In our work with survivors, we have heard from those facing a wide range of social and professional reprisal after reporting a sexual assault, including:

- Direct professional retaliation, such as:
 - Holding survivors to higher standards than their peers
 - Disciplining survivors with unduly harsh punishments for minor infractions
 - Command-directed mental health referrals and evaluations that discredit victims
 - Downgraded performance evaluations
 - Failure to maintain survivors' confidentiality
 - Harsh command climates that fail or refuse to accommodate survivors' needs
 - Punishment for minor collateral misconduct
- Legal retaliation, such as:
 - Initiating an investigation into the victim for false reporting, e.g. when a victim stops cooperating with the military justice process or an investigation finds insufficient evidence
 - Criminal prosecution for collateral misconduct or minor misconduct following an assault
- Punitive approach to symptoms of trauma and post-traumatic stress disorder (PTSD), including a lack of accommodations, discipline rather than support or care, and involuntary administrative separation when medical retirement is more appropriate.
- Social retaliation and harassment, including the spreading of rumors by both peers and the chain of command

SOLUTIONS FOR RETALIATION

To address the retaliation that so many service members face after reporting a sexual assault, POD believes the following reforms are urgently needed:

- Systematically track reports of retaliation, including case outcomes, and make this information available to the public in an anonymized form, similar to the current system for tracking sexual assault reports.
- Consider expanding the definition of “retaliation,” particularly for purposes of prevention and victim support, and develop strategies to address retaliation that does not reach the level of crime. Much of the retaliation survivors face may not rise to the level of criminal behavior or may simply be difficult to prove. However, victims must be provided with protections and accommodations even when no criminal action is ultimately taken against those who treat them negatively following their experience or report of sexual assault.
- Ensure victims have an independent entity to report retaliation to outside their chain of command, such as the DOD IG or a central DOD hotline.
- Create additional safeguards to ensure that, when a victim has been diagnosed with PTSD, they are not wrongfully separated for another mental health condition (e.g. personality disorder, adjustment disorder) or minor misconduct stemming from PTSD. Particularly when a victim has conflicting diagnoses and an administrative separation is pending, the victim should be allowed to go through a Medical Evaluation Board (MEB) to determine the nature of their medical conditions, and priority should be given to the Integrated Disability Evaluation System (IDES) for discharge proceedings.

Protect Our Defenders also supports all reforms proposed by Human Rights Watch in their May 2015 report, *Embattled: Retaliation against Sexual Assault Survivors in the US Military*, which was developed in partnership with Protect Our Defenders after careful consultation with the Department of Defense (DOD), sexual assault response personnel, and survivors of military sexual assault.

We would like to highlight the following reforms as especially timely and necessary:

- Strengthen the Military Whistleblower Protection Act, particularly by aligning the burden of proof standard to be consistent with federal civilian practices, expanding protections for whistleblowers, allowing whistleblowers to request that the DOD Inspector General (IG) conducts investigations, and ensuring the Boards for Correction are better equipped to provide appropriate recourse. Many key provisions are part of the Legal Justice for Servicemembers Act of 2015.
- Prohibit disciplinary action or criminal charges against victims for minor misconduct that came to the military’s attention due to the victim’s report of sexual assault.
- Strengthen the capacity of Special Victims Counsel to respond to retaliation in different forms and expand access to their services.