

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

**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.**

<b>USA</b>	<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>
<b>USAF</b>	<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>
<p><b>USN</b></p>	<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.