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. SARCs 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. SARCs 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. SARCs 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. SARCs 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 1st 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:

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? Yes No	**If "no", then no further information is required in the form. (Enter the form data into the Access database)**
(**Ask this question if this is the first time retaliation has been discussed with the victim**). Have you had any negative professional 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 professional 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

	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 "Yes"** What happened? On a scale of 1 to 10 (10 being most severe), how severe would you rate these negative experiences?
(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.)**	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

	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? **(SARCs: proceed to the SARC Assessment.)**	**Yes** **No** **(The victim questions are complete.)**

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

_____

_____

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 MCIO
(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:_____
_____
_____