

**JUDICIAL PROCEEDINGS PANEL
REQUEST FOR INFORMATION SET # 5**

95. DoD and Services: Case Management Groups (CMG or Sexual Assault Review Board) monitoring retaliation of sexual assault victims (follow up questions to JPP RFI # 71).

USMC	<p>Overview: The monitoring of retaliation is being conducted at all CMGs as directed by a new section that was added to Change 2 of DoDI 6495.02: “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.” JPP RFI Question 71 asks: 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?” SARCs and SAPR VA/UVAs will refer service members with a retaliation complaint to their command and/or the IG. 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 retaliation, ostracism, maltreatment, or reprisal in conjunction with a report of sexual assault.</p>
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a. When a victim reports allegations of retaliation, who provides that information and updates to the CMG Chair?

DoD	<p>(DoD SAPRO) It depends to whom the victim disclosed the allegation of retaliation. Current policy directs the discussion of a matter disclosed by the victim to a SARC or a SAPR Victim Advocate in the CMG. However, the victim’s SVC/VLC, a criminal investigator, mental health provider, or a commander could be the primary recipient of the retaliation allegation. Ideally, this information would also be shared/coordinated with the SARC chairing the CMG process.</p>
USA	<p>During the Sexual Assault Board (SARB), after each sexual assault case review, the SARB chair asks the SARC/VA or CDR if there is any retaliation associated with the case. If there is retaliation, the SARB chair listens to the discussion and the victim’s CDR will either present prior to or during the SARB a plan of action for approval by the SARB chair. The CDR of the retaliation victim provides the SARB chair updates at the monthly meetings until the case is completed/closed.</p>
USAF	<p>(AF/CVS) The information can come from numerous sources. The SARC, with permission of the victim, provides general information regarding a report of retaliation. If an investigation is initiated by IG, OSI or the chain of command they will discuss the status of the investigation at the meeting. Once the investigation is complete, command will state the resolution and any disciplinary action.</p>

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	In other cases, the victim may disclose their retaliation to their Commander. In these situations, the Commander would provide the report of retaliation in the CMG and a plan to immediately address the issue. The report of retaliation remains on the CMG agenda for status updates, until the victim’s case has reached final disposition or has been appropriately addressed according to the installation inspector general and the CMG chair.
USN	Reports of retaliation can be provided to the CMG Chair by the victim’s VLC, SARC, SAPR VA, or Commanding Officer; and, the assigned NCIS agent or supervisor provides updates to the CMG Chair as to the status of retaliation based investigations associated with ongoing sexual assault investigations.
USMC	It will most likely be the victim’s immediate commander, but per the answer above to JPP RFI Question 95, any CMG member can and should.
USCG	The Coast Guard uses SAPR Crisis Intervention Teams (CIT). These SAPR CITs stand up within 24 hours for every Unrestricted Report of sexual assault, and provide primary coordination for sexual assault incident response by promoting safety and communication across stakeholders. Each CIT consists of the responding SARC, the assigned Coast Guard Investigative Service (CGIS) agent, a judge advocate from the servicing legal office, a uniformed physician, as well as senior representatives from the victim and alleged offender's command(s). Any one of these representatives who becomes aware of a retaliation complaint could make it known to the rest of the team in furtherance of the goals of the CIT. The attached ALCOAST 320/14 provides more information about the CIT.
ENCLOSURE: ALCOAST 320-14, SAPR Crisis Intervention Terms	

- b. How can the Chair of the CMGs be fully informed of the scope of retaliation in sexual assault cases when several of the members at the CMGs, such as Victim Advocates and Special Victim Counsel, are bound by privileges with the victim-client, which prevent them from reporting that information when the CMG Chair asks?**

DoD	(DoD SAPRO) As with any victim report, DoD supports empowering victims by providing choices and allowing them to choose their next step. It is the victim’s choice whether to disclose or allow the SARC, SAPR VA, SVC/VLC, chaplain or other personnel with whom they have had privileged communications to disclose the information (subject to the exceptions of such privileges specified in law). The SAPR policy also provides for discretion to be exercised in disclosing allegations of retaliation, reprisal, ostracism, or maltreatment when such allegations involve parties to the CMG. Unfortunately, the full scope of retaliation in sexual assault cases may never be known by the Chair of the CMG, as Department policy allows for victim choice in how they engage the response system. The Department believes that compelling victims to report retaliation would be an unwise, unproductive, and potentially injurious policy decision.
USA	Typically, if the victim reports retaliation, they want something done about it, and will authorize their SVC/VA to discuss the issue with the SARB. If the issue comes up at a SARB and the SVC/VA did not get prior approval to discuss the retaliation,

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	or they believe the question is beyond the scope of the client's authorization, the SVC/VA can simply ask the victim how much information they would like the SVC/VA to share. Depending on the specific circumstances surrounding each case, the SVC/VA may be able to speak in hypotheticals to avoid releasing any client confidences or privileged information.
USAF	(AF/CVS) The victim decides what will be released. Confidentiality will not be breached at the CMG without express consent. In those cases where consent is not given, a SARC can talk generally about the report of retaliation but must do so in a way that does not disclose the identity of the victim or give any facts that could be used to identify the victim.
USN	This is a victim-driven system in which the Chair of the CMG primarily receives retaliation-related information based upon the request of the victim. The Chair does not necessarily need to know the scope of retaliation, if informed at all, and if so the Chair needs to know only enough to refer the report to the appropriate investigator. The SARC, SAPR VA, or VLC must obtain victim consent to release information to the CMG. If the victim does not wish to share the information with the CMG, then such information remains confidential. Victims can choose to disclose the full report to the appropriate investigator.
USMC	SAPR personnel such as SARCs or VAs must have the victim's consent to disclose such privileged communications. The victim's immediate commander is responsible for informing the Chair if a victim has informed him/her that there is ongoing retaliation. After the victim consents to disclosure of privileged communications, covered SAPR personnel could brief the victim's commander or CMG Chair to ensure they are appropriately informed. IGs with cognizance and authority over retaliation complaints are not covered by the aforementioned privilege (all communications with the IG are protected from disclosure as a protected communication, however). IGs are currently required to provide status updates up to DoD IG, not down to the command level/CMG.
USCG	The CIT members may only engage in discussion and review information that is not sensitive to the investigation, does not violate privileges, and does not fall outside the release authority of the individual members. The purpose of the group is to coordinate timely response and ensure that the victim's interests, subject's rights, and investigative goals are top priorities. They would not fully discuss or engage with a retaliation allegation except to the extent that this information was disclosable, and discussion was necessary in furtherance of the CIT's delineated goals.

c. If the MCIO investigates the retaliation complaint, does the MCIO agent provide a status update to the CMG chair at the monthly CMG meetings?

DoD	(DoD SAPRO) Yes, generally. MCIOs currently provide investigative status updates to the CMG. Per DoDI 5505.18, MCIOs must investigate allegations of retaliation against victims of sexual assault. When such allegations are part of the criminal investigation, MCIOs will provide a status update that includes this information.
USA	CID briefs the CMG on retaliation cases on a monthly basis, at the same time the sexual assault investigations are briefed. Both DODI 5505.18 and 6495.02 requires

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	the MCIOs to conduct investigations on criminal retaliation/reprisals (such as physical assaults, threats, stalking, property damage, etc.), when associated with a sexual assault investigation. Having the DODIG investigate such retaliations/reprisals instead of the MCIO could adversely affect an on-going sexual assault investigation, might result in missed charges when an offender is referred to a court martial by a Service, could preclude the CMG from being briefed on retaliation cases on a monthly basis, as well as other as of yet unknown second and third order effects.
USAF	(Air Force Office of Special Investigations (AFOSI)) AFOSI policy AFOSIMAN 71-122V1, para 4.3.3.3.3.1., reads in part, “A designated representative from AFOSI will participate in CMG meetings to provide appropriate updates on unrestricted cases to improve reporting, facilitate monthly victim updates, and to discuss process improvements to ensure system accountability and victim access to quality services.” Therefore, AFOSI participation in the CMG facilitates open discussion and sharing of information. Any information regarding allegations of retaliation would be included in the monthly AFOSI update to the CMG.
USN	Yes, the assigned NCIS agent or supervisor provides updates to the CMG Chair as to the status of retaliation based investigations associated with ongoing sexual assault investigations.
USMC	If a MCIO is involved then suspected criminal acts have occurred and the MCIO representative should be prepared to update the CMG Chair. However, the victim’s immediate commander is responsible for informing the Chair on all matters related to the retaliation complaint, to include the investigation, if applicable.
USCG	While the specifics of the criminal investigation will not generally be reviewed, team members will discuss appropriate courses of actions for each specific case and carry out those actions within their own technical authorities and expertise in coordination with each other.

d. Do/could CMGs receive monthly updates on the status of IG investigations relating to retaliation?

USA	(DAIG) IG representatives do not currently attend the monthly CMG meetings. Service regulations regarding the CMG could be amended to provide for an IG representative to attend or to have the IG provide the SARC with updates for the CMG.
USAF	(SAF/IG) AFI 90-6001, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM paragraph 8.3.6.3.3 requires the inspector general to handle all allegations of reprisal and/or restriction in accordance with 10 USC 1034, DoDD 7050.06 and AFI 90-301. Since the installation or host wing commander is the chair of the CMG, he will automatically be apprised of the status of IG investigations in his role as the appointing authority. Beyond that, maintaining the integrity of the IG system requires that information about reprisal cases be restricted to saying that the investigation is on-going or not.
USN	The IG does not generally investigate retaliation (see SECNAVINST 5370.7D), but refers any complaints of retaliation (ostracism and maltreatment) it receives to the command or the MCIO, as appropriate, outside the CMG process. MCIOs are mandated to investigate reports of retaliatory acts made by victims of sexual assault

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	(in unrestricted reports), therefore MCIOs would be the appropriate body to brief the CMG – which they do. Information related to IG investigations into allegations of reprisal is not released until the investigation is complete. At that time the results of the investigation are provided to the appropriate commands per procedures already in place, outside of the CMG.
USMC	CMG Chairs inquire and receive updates on retaliation, but they are not privy to IG investigations unless the IG is part of the CMG. Any information an IG would be able to provide would be consistent with the authority and responsibilities under the IG Act, as amended, and implementing DoD and DON regulations.
USCG	The Coast Guard does not have an IG. If CGIS is investigating a related matter, the CGIS special agent may provide an update as described in response to question 95c. The DHS IG would normally not participate in the CIT meetings.