

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

99. DoD and Service IGs: Please explain the protocol for DoD IG to investigate a sexual assault victim’s claim of retaliation versus the Service IG. Provide any policies or regulations which explain which IG has primary jurisdiction to investigate the report.

DoD	<p>(DoD IG) Military members can file reprisal complaints with DoD IG or the Service IGs—the latter either at headquarters or local IGs. When a MWPA complaint is filed with DoD IG, the complaint is assigned to a WRI investigator for intake. The intake process begins with a review of the incoming complaint, as clarified and supplemented by an interview of the complainant. The complaint is then analyzed against the elements of a prima facie allegation. That is, the investigator determines whether there has been at least one protected communication, a personnel action as defined by DoD Directive 7050.06, an inference that the RMO knew about or perceived the protected communication, and the facts, if proven as alleged, raise the inference of reprisal. If so, we determine whether there is some reason for WRI to investigate the complaint. Such reasons include senior official involvement in the allegations, matters of great interest to the Inspector General or the Secretary of Defense, involvement of more than one Service, or sexual assault, to name the most common. If there is no reason compelling WRI to investigate, we generally refer cases to the Services for investigation. WRI has conducted any reprisal investigation related to reporting a sexual assault since approximately 2014.</p> <p>When a complaint is filed with a Service IG and WRI is notified of the complaint, WRI reviews the complaint to determine whether any of the reasons noted above exist for WRI to investigate; generally, the Services handle the complaints they receive, with oversight by WRI.</p>
USA	<p>(DAIG) Pursuant to 10 USC 1034 and DoDD 7050.06, DoD IG determines if a reprisal complaint will be retained at the DoD level, or referred to the Service IG for full investigation.</p>
USAF	<p>(SAF/IG) DoDD 7050.06 requires service IGs to have policies and procedures in place to receive, report and investigate allegations of reprisal, implicitly including reprisal alleged by a victim of sexual assault. If DoD receives an allegation of reprisal alleged by a victim of sexual assault, in accordance with DoDD 7050.06 DoD IG may conduct the investigation, or refer it to the service.</p>
USN	<p>This answer specifically responds to complaints of retaliation made by a sexual assault victim. Reports of retaliation and ostracism under National Defense Authorization Act for Fiscal Year 2014, Section 1709, Prohibition of Retaliation Against Members of the Armed Forces for Reporting a Criminal Offense (1709), are referred to the chain of command as command climate issues. NAVINSGEN does not have primary jurisdiction to investigate reported allegations of Section 1709 violations. Rather, Section 1709 violations are reported to NCIS (for victims who make an unrestricted report of sexual assault) and commands in the case of others who report crimes. Commands, and where necessary NCIS, can provide an immediate and tangible response to reports of retaliation, whereas the IG investigation process is often slower and provides a lower degree of resolution.</p>

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<p>USMC</p>	<p>Per FY2014 NDAA, Sec 1709, “Retaliation” encompasses both Reprisal, and Ostracism or Maltreatment. DoD IG and IGMC procedures are the same. Within 30 days of receiving the complaint, a determination to decline or investigate must be made and the Report of Investigation should be completed within 180 days of receiving the complaint.</p> <p>For ostracism or maltreatment, it is typically a commander’s responsibility to investigate. DoD IG and IGMC have the authority to investigate acts of ostracism or maltreatment if the IG determines the facts and circumstances are IG appropriate: for instance, the ostracism/maltreatment complaint is made with a reprisal complaint or made against a senior official.</p> <p>Investigative jurisdiction: DoD IG has final authority to oversee the investigation. The complainant can make the complaint at any level. Typically, DoD IG will keep the investigation if the subject is a three star or above. If the complaint comes into a service IG with an allegation against a subject that is a three star or above, the service IG will refer such a case up to DoD IG. All other complaints that come into DoD IG will typically be referred to the appropriate service IG if the subject is a two star or below except if there are inter-service components, subjects, or witnesses involved. Regardless of the above, DoD IG can always choose to retain investigative jurisdiction. SECNAVIST 5370.7D describes what matters the service IGs will investigate in this area and what types of matters they will refer to other venues.</p>
<p>USCG</p>	<p>The Coast Guard does not have its own internal IG . A retaliation complaint that is not also a complaint under the Military Whistleblower protection act may be made either to CGIS or to DHS IG. When DHS IG receives a retaliation complaint, it may investigate itself, investigate with support from CGIS, or refer the complaint to CGIS for investigation. CGIS may investigate retaliation complaints that it receives directly (other than those under the Military Whistleblower Protection Act, which are forwarded to DHS IG.) The Coast Guard's authority is derived from sections 103(c) and 888 of the Homeland Security Act of 2002 (the DHS Act), as amended; the UCMJ; 14 USC 2, 89, 93, 95; and 46 USC 63, among others (as reflected in the Agreement attached and discussed in response to RFI #98).</p>