



DEPARTMENT OF DEFENSE SEXUAL ASSAULT PREVENTION AND RESPONSE OFFICE

Retaliation Overview Judicial Proceedings Panel Public Meeting, April 10, 2015

I) Working Terminology

- Retaliation is an umbrella term encompassing actions taken both by the chain of command and peers/coworkers; it is defined in NDAA FY 14 SEC. 1709 as follows: (a) taking or threatening to take an adverse personnel action, or withholding or threatening to withhold a favorable personnel action, with respect to a member of the Armed Forces because the member reported a criminal offense; (b) ostracism and such acts of maltreatment, as designated by the Secretary of Defense, committed by peers of a member of the Armed Forces or by other persons because the member reported a criminal offense
- Reprisal is defined in the DoDD 7050.06 as “taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making or preparing to make a protected communication”; the definition of reprisal is similar to the NDAA FY 14 SEC. 1709 definition of Retaliation, part (a); both are referred to more informally as *professional retaliation*
 - E.G., Promotion interference; disciplinary or other corrective action; transfer or reassignment; performance evaluation; unfair decision on pay, benefits, awards, or training; referral for mental health evaluation; other significant change in duties or responsibilities inconsistent with the military member’s grade
- Ostracism, as defined above in part (b) of the NDAA FY14 SEC. 1709 definition of Retaliation, is referred to more informally as *social retaliation*; per Military Service regulations, however, ostracism must involve either the intent to discourage someone from reporting of a criminal offense or otherwise discourage the due administration of justice
 - E.G., Exclusion from social acceptance, activities or interactions; denying privilege of friendship just because they reported or intend to report a crime; blaming; subject of insults or bullying
- Other related offenses include “acts of cruelty, oppression or maltreatment (as these terms are described in paragraph 17c(2) of Manual for Courts-Martial, United States, Part IV Punitive Articles, 2012 Edition) committed against a victim, an alleged victim or another member of the Armed Forces because the individual reported a criminal offense or was believed to have reported a criminal offense” when such acts are taken by those to whose orders the victim is subject

II) Enforcement/Accountability

- Reprisal/Professional Retaliation: exclusively handled by DoD IG or Service IG
- Ostracism/Social Retaliation: typically handled by Services - either MCIOs or the command

III) Indicators of Retaliation

- Direct feedback from victims indicated retaliation was an issue after reporting a sexual assault; the DoD has taken steps to address this issue by updating policy, implementing initiatives, and seeking assessment mechanisms to capture qualitative data by adding questions on the perception of retaliation to surveys and focus group inquiries

- The 2012 Workplace and Gender Relations Survey (WGRA) results and the 2014 RAND Military Workplace Study (MWS) PRELIMINARY results showed over half of victims who reported a sexual assault perceived some kind of retaliation either by peers, coworkers or the chain of command; RAND: Of the women who experienced Unwanted Sexual Contact and made a report to a DoD authority, 62% perceived some kind of professional retaliation (32%), social retaliation (53%), adverse administrative action (35%), and/or punishment (11%) [Data not reportable for men.]
- The 2014 Survivor Experience Survey (SES) and a snapshot of the DEOMI Equal Opportunity Climate Survey fielded during 2014 also included questions on retaliation after reporting a sexual assault; results of the SES indicated that many victims experienced social and/or professional retaliation after reporting their assault; of note, the results of the SES showed 73% of victims who indicated they were retaliated against after reporting would still recommend reporting to others, and would chose to report again; the DEOCS results showed that overall, surveyed Service members rated their climates as quite favorable (3.4 out of 4), meaning they did not observe indications that victims would experience retaliation for reporting.
- Focus group feedback in the 2014 effort conducted by the Defense Manpower Data Center showed participants believed victims may experience some kind of retaliation after reporting a sexual assault from peers and, on a lesser level, from some in the chain of command
- Additional analysis on retaliation will be available in the FY14 Annual Report to Congress

IV) Policy & Legislation – Timeline on Retaliation-Related Items

- **DoDD 7050.06 – Military Whistleblower Protection:** Original in 2004; updated in 2007
- **NDAA FY 12 SEC. 582:** Consideration of Application for Permanent Change of Station or Unit Transfer Based on Humanitarian Conditions for Victim of Sexual Assault or Related Offense
- **NDAA FY 13 SEC. 578:** General or Flag Officer Review of and Concurrence in Separation of Members of the Armed Forces Making an Unrestricted Report of Sexual Assault
- **DoDI 6495.02, in the “Policy” section unequivocally states (March 2013):** Service members who file Unrestricted and Restricted Reports of sexual assault shall be protected from reprisal, or threat of reprisal, for filing a report.
- **DoDI 6495.02 in Enc. 2 in the “Responsibilities of the Secretaries of the Military Departments” requirements (March 2013):** Establish procedures to protect victims of sexual assault from coercion, retaliation, and reprisal in accordance with DoD Directive 7050.06, “Military Whistleblower Protection,” July 23, 2007; Establish Military Service-specific guidance to ensure collateral misconduct is addressed in a manner that is consistent and appropriate to the circumstances, and at a time that encourages continued victim cooperation; Establish procedures to require commanders to protect the SARC and SAPR VA from coercion, retaliation, and reprisals, related to the execution of their duties and responsibilities.
- **DoDI 6495.02 in Enc. 5, “Commander SAPR Response Procedures.” Each Commander shall (March 2013):** Protect sexual assault victims from coercion, discrimination, or reprisals. Commanders shall protect SARCs and SAPR VAs from coercion, discrimination, or reprisals related to the execution of their SAPR duties and responsibilities.
- **NDAA FY 14 SEC. 1709:** Prohibition of Retaliation Against Members of the Armed Forces for Reporting a Criminal Offense

- **MPP Enlisted DoDI 1332.14, (January 2014) "Enlisted Administrative Separations":** Additional Requirements for Involuntary Administrative Separation of Enlisted Service Members Who Made an Unrestricted Report of Sexual Assault
- **10 USC 1034 (NDAA FY 14 SEC. 1709):** Addresses protected communications and the prohibition of retaliatory personnel actions; Recently updated to expand protections, including a clarification to ensure communications of rape, sexual assault, or other sexual misconduct in violation of articles 120 through 120c of the Uniform Code of Military Justice (UCMJ) were considered "protected communications" under 10 USC 1034

V) Recent SecDef Initiatives Addressing Retaliation

- 10 Feb 2015 SecDef Memo on the MSA Report (APY 13-14)
 - USD/P&R, in collaboration with OGC, DoD IG, and the Military Services, will conduct "a comprehensive review of the mechanisms available to address both social and professional forms of retaliation, to include appropriate conduct on social media"
- 3 Dec 2014 SecDef Memo on the POTUS Report (FY 12-14)
 - Enhance First-line Supervisor Skills and Knowledge - to include recognizing signs of possible acts of retaliation
 - Engage Command to Prevent Retaliation – new procedures for installation commanders who serve as SAPR Case Management Group Chairs
- SecDef Directive Type Memo – December 2011
 - Directing the implementation of an Expedited Transfer Policy

VI) Ongoing/Potential Next Steps

- **Safe Helpline Reporting Option (April 2015):** *Option for Service members who experienced retaliation to safely and securely report their experience to either SAPRO or the DoD IG via "Military Feedback Form"; Link to DoD IG page*
- **Expanded Survey Development:** *New Survey questions under development to achieve greater clarity via WGRA, Survivor Experience Survey, and the Military Justice Experience Survey*
- **Follow –Up Study via Database:** *Potential study to capture the rate and type of retaliation experienced by those who filed an Unrestricted Report of sexual assault*
- **Expanded Survey Analysis:** *Perform additional studies on the existing survey results to identify insights, gaps and areas to expand*
- **UCMJ Amendment on Retaliation:** *DoD is considering recommending a legislative proposal to OMB that the UCMJ be amended by adding a punitive article on retaliation*
- **Develop DoD Action Plan for Retaliation:** *Operationalize the SecDef-directed comprehensive review of the mechanisms available to address both social and professional forms of retaliation, to include appropriate conduct on social media*