



# **DoD Retaliation Prevention and Response Strategy:** **Regarding Sexual Assault and Harassment Reports**

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**APRIL 2016**

## ***Foreword***

### **DoD Retaliation Prevention and Response Strategy: Regarding Sexual Assault and Harassment Reports**

Leaders and Commanders of the Department of Defense,

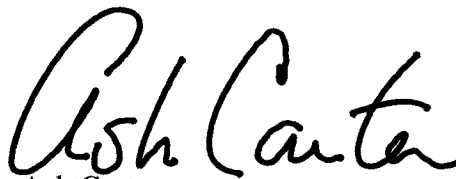
Our men and women in uniform put their lives on the line every day to keep America safe. We have a moral duty to lead them with the values of our honorable profession of arms and to ensure all serve in a safe environment.

Our most recent data show a significant percentage of military victims of sexual assault indicate they perceive some kind of retaliation after reporting the crime to authorities. The Department will not tolerate divisive behavior at odds with the military's core values.

The Secretaries of the Military Departments and the Chief of the National Guard Bureau, in coordination with the Department of Defense Sexual Assault Prevention and Response Office and the Office of Diversity Management and Equal Opportunity, have developed a retaliation prevention and response strategy pertaining to sexual assault and harassment. The Retaliation Prevention and Response Strategy provides commanders with enhanced capabilities to support reporters, as well as actions to instill greater trust and confidence within their units.

This strategy was developed to outline a synchronized retaliation prevention and response process across the Department that can provide comprehensive support to individuals who experience retaliation and can foster an ethical and just climate intolerant of retaliation. Retaliation, even the perception of retaliation, is a complex problem that will likely require a prolonged prevention and response effort. Stakeholders across the Department will work together to ensure that the strategy is effectively implemented, monitored, and improved over time. Addressing this problem is crucial to effectively addressing sexual assault and sexual harassment in the military.

I have full faith and confidence in our ability to reduce and ultimately eliminate retaliation from our ranks. Thank you for your support!



Ash Carter  
Secretary of Defense

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## Part I: Overview

Reports of sexual assault have dramatically increased over the past ten years through the combined, dedicated efforts of the Department of Defense (DoD), Service members, and Congress. At the same time, the occurrence of this crime – as estimated by official surveys – has decreased.<sup>i</sup> With each passing year, greater numbers of victims who experience sexual assault are reporting their experiences to military officials.<sup>1</sup> Increased victim reporting likely reflects a growing confidence in the sexual assault response process and is a positive step towards addressing this crime across the military.

While growing numbers of victims are making the difficult choice to report sexual assault, far too often, military victims of sexual assault and complainants of sexual harassment within DoD report they were subjected to abusive behavior by their co-workers, exclusion by their peers, or disruption of their career. National experts indicate this is a challenge experienced by many organizations that encourage greater employee reporting of misconduct. However, retaliatory behavior may ultimately stifle misconduct reporting. According to a 2012 report by the Ethics Resource Center:

Both reporters and non-reporters take cues about the consequences for reporting from the experience of others who have reported. Once employees perceive that others are retaliated against for reporting, they will refrain from coming forward when they have concerns. Misconduct that goes unreported can continue, increasing risk, because management is never given the opportunity to address the problem.<sup>iii</sup>

Retaliation<sup>2</sup> not only harms the lives and careers of victims, bystanders/witnesses, and first responders but also undermines military readiness and weakens the culture of dignity and respect. Without question, retaliation has no place in the Armed Forces.

Even though retaliation can happen to anyone who reports, or is suspected of reporting an incident, or may report an incident, this document describes systematic efforts to eliminate this problem as it applies to military members<sup>3</sup> who report sexual assault or sexual harassment.

**Reporter:** For the purposes of this document, a reporter is an Active Duty, Reserve, or National Guard Service member who is sexually assaulted or harassed while performing Active Service or inactive duty training and makes an allegation of retaliation to a DoD official. The reporter may also be someone involved in a sexual assault or sexual harassment in some other way (e.g., military witnesses/bystanders of sexual assault/sexual harassment and the first responder assisting the victim).

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<sup>1</sup> Use of “victim of sexual assault” or “complainant of sexual harassment” refers to alleged victims and does not imply whether or not the offense was committed or whether the alleged offender committed it. In addition, when referencing retaliatory experiences, this strategy makes no assumptions about whether the reporter actually suffered a form of retaliation, the intent of the individuals who allegedly engaged in retaliatory behavior, or whether retaliation occurred.

<sup>2</sup> Retaliation for reporting a criminal offense can occur in one of several ways, including reprisal (as statutorily defined in 10 USC 1034), ostracism, or maltreatment (as defined pursuant to this strategy). These three means do not cover all conduct that could qualify as retaliation – for example, it would not include an action taken by a peer or subordinate against an alleged victim in an effort to dissuade the alleged victim from participating in a prosecution; these categories must be expanded to include all potential retaliatory acts.

<sup>3</sup> The Retaliation Strategy includes provisions for Active Duty, Reserve, and National Guard Service members who report a sexual assault or sexual harassment that occurred during Active Service (as

Survey data show that an experience of past-year sexual assault is highly correlated with an experience of past-year sexual harassment.<sup>iii</sup> Thus, sexual assault and sexual harassment are co-occurring problems that require continued DoD attention. This strategy also addresses alleged retaliation against military witnesses/bystanders<sup>4</sup> and first responders to sexual assault and sexual harassment reports, in accordance with DoD Instruction (DoDI) 6495.02.

To target the full spectrum of retaliatory behavior, the Secretaries of the Military Departments and the Chief of the National Guard Bureau (CNGB), in coordination with the DoD Sexual Assault Prevention and Response Office (SAPRO), will develop a refined retaliation response process.<sup>5</sup> This retaliation response process will include notifying and coordinating with the appropriate level of command and rendering comprehensive support services to retaliation reporters by leveraging existing procedures as well as implementing new initiatives. Sexual Assault Response Coordinators (SARCs) and Victim Advocates (VAs) will coordinate reports of retaliation associated with sexual assault, and Equal Opportunity Advisors (EOAs) will manage reports of retaliation associated with sexual harassment complaints.<sup>6</sup> Under the new retaliation response process, the most senior SARC at an installation, or equivalent Department of Navy and National Guard personnel and structure,<sup>7</sup> will support a retaliation response process for retaliation associated with reporting sexual assault or harassment; collaborate with other SARCs, VAs, and EOAs, as needed; serve as a liaison to communicate with the appropriate level of command and legal advisors; synchronize data collection; and participate in retaliation discussions at the Case Management Group (CMG) or Service equivalent meetings.<sup>8</sup>

In order to eliminate retaliation in the military, DoD and the Services must ensure that commanders are appropriately informed, empowered, and resourced to create the professional environment Service members deserve. Correspondingly, members must be made aware of what resources and organizations are available to address retaliatory actions. The purpose of this strategy is to outline a uniform retaliation prevention and response process across the Department that can provide comprehensive support to individuals who experience retaliation and can foster an ethical and just climate intolerant of retaliation. The five issue areas discussed

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defined in U.S.C. Title 10, Chapter 1, section (101), and on inactive duty training) or that has a military service nexus who are served by a sexual assault response or military equal opportunity program. Reprisal against civilian employees is governed by Equal Employment Opportunity and Whistleblower Act definitions and procedures for reporting reprisal and would be handled according to those provisions.

<sup>4</sup> Witnesses/bystanders who experience retaliation will be offered response services regardless of whether their account of the situation supports the victim of sexual assault/complainant of sexual harassment or the alleged perpetrator.

<sup>5</sup> The Implementation Planning Phase will determine the role of the SARC and the strategy processes and procedures that apply to National Guard members who report retaliation when serving on Active Service, as defined in U.S.C. Title 10, Chapter 1, section (101), and on inactive duty training.

<sup>6</sup> Army SARCs/VAs will handle retaliation reports related to sexual assault and sexual harassment under their Sexual Harassment/Assault Response and Prevention (SHARP) program.

<sup>7</sup> For the purpose of brevity, whenever this strategy references a senior SARC, the meaning includes the equivalent Department of Navy and National Guard personnel, to be identified in the Implementation Planning Phase. In accordance with DoDI 6495.02, the most senior SARC, known as a Lead SARC, is designated any time there is more than one SARC on a given military installation. When there is only a single SARC on an installation, that SARC will fulfill the responsibilities of the senior SARC described in this document. For expeditionary purposes, appropriately trained personnel, as identified by each Service, can perform the role of a SARC for deployed units.

<sup>8</sup> Service equivalent meetings that address retaliation related to sexual assault or sexual harassment should occur on a monthly basis and include, at a minimum, the following participants: SARCs for retaliation related to sexual assault, EOAs for retaliation related to sexual harassment, commanding officers, and agencies involved with addressing the retaliation case.

in this strategy outline the recommended way forward, but the full details of the retaliation prevention and response process will be determined during the Implementation Planning Phase to be formally coordinated with the Services and National Guard Bureau (NGB) prior to execution. Working groups led by the Services and other key stakeholders will convene in fiscal year 2016 to determine the appropriate policies and procedures to implement this strategy.

## Issue Area 1 – Standardizing Definitions

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Congress recently directed the Secretary of Defense to establish definitions of retaliation that can be criminally enforced. The Secretary subsequently directed the Secretaries of the Military Departments to create definitions; however, the current definitions vary across the Services and lack consistency and clarity in approach.

Retaliation affecting Service members' professional opportunities typically constitutes *reprisal*.<sup>9</sup> Reprisal can involve a range of unjustified personnel actions, such as interfering with promotion, unreasonably downgrading someone's evaluation, or unfairly denying an award. There are established processes in place for the Inspector General (IG) to address reprisal complaints.<sup>10</sup>

Retaliation in the form of *ostracism*<sup>11</sup> involves exclusion from social acceptance and can include acts like bullying. The definition of what constitutes ostracism varies across the Military Departments. For example, in order to violate the punitive regulations of the Departments of the Navy and Air Force, ostracism must be committed with the intent to prevent reporting of a crime or to dissuade someone from participating in the justice process. Under the Army regulation, the crime of ostracism in some instances could be committed with no intent to prevent reporting or interfere with the administration of justice.

Current law and military regulations also prohibit several other forms of retaliation. Specifically, the Uniform Code of Military Justice (UCMJ) prohibits *acts of cruelty, oppression, and maltreatment*<sup>12</sup> against a crime reporter when an individual who can legally give orders to that reporter commits the acts. A range of retaliatory acts can also be prosecuted under other articles of the UCMJ, including failure to obey an order or regulation, assault, stalking, or damage/destruction of property, or in the case of non-federalized National Guard reports of retaliation, under state codes of military justice or state criminal statutes.

Forms of retaliation other than reprisal, such as ostracism and maltreatment, may be investigated by either IG or through commander-directed investigation, depending on the Service and the nature of the allegation. IG has the authority to investigate acts of ostracism and maltreatment if it determines it is IG appropriate or if those complaints are made along with a reprisal complaint or made against a senior official. Military Criminal Investigative Organizations (MCIOs) only investigate retaliatory acts that meet the threshold of a criminal offense.

While established IG and MCIO processes are capable of dealing with retaliation, they can be demanding and time-intensive for those involved. Unacceptable behavior, such as hostile remarks by co-workers, bullying, and social exclusion, may require a more timely resolution than

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<sup>9</sup> 10 U.S.C. § 1034. See Appendix B for full definitions.

<sup>10</sup> *Ibid.*

<sup>11</sup> NDAA FY 2014, SEC 1709; Air Force Instruction 36-2909; SECNAVIST 5370.7D; Army Directive 2014-20. See Appendix B for full definitions.

<sup>12</sup> UCMJ, Article 93, 10 U.S.C. § 893 (2012); Manual for Courts-Martial, United States, Pt. IV, ¶17 (2012 ed.), as amended by Executive Order 13696 (June 17, 2015).

the IG or military justice system can provide. Furthermore, there is inconsistency in how reporters' concerns are addressed when the elements of proof required for action in the IG process or justice system cannot be met.

Unprofessional and cruel conduct on social media<sup>13</sup> is an example of a particularly pernicious problem that may not have a swift and effective remedy through IG or military justice processes. Those who wish to harass, intimidate, or cause emotional distress often hide behind the perceived anonymity of social media to do so. For example, one common social media application is completely anonymous and uses a device's location services to promote localized interactions between users. While many use this application harmlessly, others have exploited it to make disparaging or hostile comments about victims of sexual assault or complainants of sexual harassment. The use of social media can make it difficult for commanders to foster an environment free from harmful attitudes or retaliatory behavior, especially when such behavior occurs away from the place of duty and is undertaken with personal electronic devices.

**Social Media:** DoD defines social media as web-based tools, websites, applications, and media that connect users and allow them to engage in dialogue, share information, collaborate, and interact.

The Department believes more must be done to address retaliation. Military justice-based solutions may help to hold individual offenders appropriately accountable, but by themselves do not necessarily foster and achieve a healthy command climate. Rather, increased prevention efforts coupled with a system of more flexible and varied response capabilities will better serve the needs of those who report retaliation, as well as the military necessity to maintain discipline, morale, and mission readiness.

### *Way Forward*

Ensuring consistency of retaliation response across the Department is an essential step in this strategy. Thus, stakeholders<sup>14</sup> will propose standardized definitions of retaliation, ostracism, and other forms of retaliation not otherwise defined for approval by the Secretary of Defense. These stakeholders will also develop legally sound educational materials to familiarize commanders with the full range of options available to address retaliatory behavior, including the military justice system, administrative actions, and other corrective means. Importantly, these definitions and educational materials will address acts conducted through social media.

## Issue Area 2 – Closing the Gap in Knowledge

According to DoD survey research in 2012 and 2014, an estimated 62% of women who filed an Unrestricted Report of sexual assault with a military authority indicated they experienced some type of retaliation associated with their report.<sup>15</sup> While the aforementioned surveys provide the Department with some limited trend data, they do not provide a full, detailed account of reporters' retaliatory experiences.<sup>16</sup>

<sup>13</sup> See DoDD 5205.16 for definition of "social media."

<sup>14</sup> Stakeholders include Military Departments, Services, IG, NGB, SAPRO, and other affected programs, in consultation with the DoD Office of General Counsel, the Judge Advocates General of the Military Departments, the Staff Judge Advocate to the Commandant of the Marine Corps, and others.

<sup>15</sup> Due to the small sample of male survey respondents who reported sexual assault, a reliable estimate of retaliation indicated by male victims could not be determined.

<sup>16</sup> It cannot be determined whether retaliation indicated by survey respondents was reported, investigated and/or substantiated.

Climate surveys of military units tell a different story. Most military members surveyed rated their commanders relatively high for efforts to encourage sexual assault reporting. Climate surveys also revealed that respondents do not believe members of their unit would retaliate against sexual assault reporters.<sup>iv</sup> The disparity between the perceptions of those military members who have and those who have not reported a sexual assault illustrates yet another challenge in dealing with retaliation. Furthermore, the Department's survey data are limited to assessing retaliation in relation to Unrestricted Reports of sexual assault. Although survey data can be helpful in defining the scope of the problem, tracking actual retaliation reports is necessary to understand the Department's response to reports of retaliation and to track trends and progress over time. DoD needs improved survey questions on retaliation and a robust means to track allegations of retaliation. Information on retaliation reports, complemented with improved survey data, will provide a more complete picture of retaliation experiences in the Department.

### *Way Forward*

The Department has already begun to address the limitations of past survey questions. Beginning in Fiscal Year 2015, DoD implemented a revised Workplace and Gender Relations Survey to more effectively assess retaliatory behavior and outcomes. The revised survey questions, which closely align with relevant language in policy and law,<sup>17</sup> should provide more information about the nature and extent of sexual assault victims' retaliatory experiences. The Department is also enhancing its current climate survey to provide commanders with an assessment of attitudes that might contribute to retaliatory behavior in their unit, including retaliatory behavior against military witnesses/bystanders and first responders.

Monthly Sexual Assault CMG meetings provide another source of information about retaliation allegations. At these installation-level meetings, commanders, senior SARCs, other service providers, attorneys, criminal investigators, and corresponding NGB authorities discuss the progress of adult sexual assault cases and efforts taken to address victims' wellbeing. A recent Secretary of Defense initiative directed CMG meetings to review retaliation allegations and refer complaints to the appropriate investigating body (e.g., responsible commanding officer, IG, MCIOs, and corresponding NGB authority). Importantly, the initiative directs action not only for retaliation experienced by victims of sexual assault, but also for retaliation against bystanders who witness sexual assault and first responders who serve victims of sexual assault (see DoD Instruction 6495.02). As it matures, this monthly dialogue will provide a means to inquire about victims' experiences and, to the extent permitted by governing legal authority, document actions taken to address retaliation allegations.

Furthermore, to promote a more comprehensive response effort for retaliation related to reports of sexual harassment, DoD policy should be modified to allow for discussion of sexual harassment-related retaliation at CMG or Service equivalent meetings. In coordination with the senior SARC, EOAs will attend the CMG or Service equivalent meetings, where they will inform the command about retaliation allegations brought to their attention and discuss an appropriate response approach.<sup>18</sup>

While surveys and CMG data offer helpful insights into the nature of retaliation, current information is largely limited to retaliation against victims of sexual assault. The Department needs comprehensive information about alleged retaliation against sexual assault victims and sexual harassment complainants, as well as military witnesses/bystanders and first responders.

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<sup>17</sup> Surveys will ultimately reflect the standardized definitions.

<sup>18</sup> Army SARCs/VAs will handle retaliation reports related to sexual assault and sexual harassment under their SHARP program.



A standardized means to track and analyze allegations of retaliation will substantially advance DoD's efforts to understand and combat the problem.

To track cases of retaliation, DoD will implement a three-phase data collection process, culminating with the inclusion of retaliation information in the Defense Sexual Assault Incident Database (DSAID). All data collection efforts will follow strict DoD privacy guidelines. DoD IG may provide data and information consistent with the authority and responsibilities under the IG Act, as amended, and implementing DoD guidance.

- The first phase will involve quarterly data calls to all agencies or officials involved in addressing retaliation (e.g., MCIOs or corresponding NGB authority, CMGs, EOAs, and commanders). EOAs managing retaliation cases related to reports of sexual harassment will attend CMGs or Service equivalent monthly meetings and provide data to the senior SARC in this forum.<sup>19</sup>
- The second phase will position the most senior SARC as the coordinator of data collection from agencies involved in handling retaliation for sexual assault and sexual harassment.
- The third phase will employ DSAID to track all retaliation allegations related to the reporting of sexual assault and sexual harassment across the Department.

These data collection activities will provide DoD with continual oversight of the retaliation response process. Three years after the response process has been fully implemented, the Under Secretary of Defense for Personnel and Readiness (USD (P&R)) will conduct a formal and comprehensive evaluation to assess the full response process and determine if any additional revisions are required.

### Issue Area 3 – Response Process: Building Strong and Supportive Systems of Investigation and Accountability

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A challenging decision that survivors of sexual assault or sexual harassment may face is whether to report the crime. They often fear the loss of control over their personal information, as well as judgment and blame by others for the incident. Should a victim proceed with reporting the crime and then experience some kind of retaliation, convincing him or her to participate in yet another investigative and adjudicative process may prove exceptionally difficult. Furthermore, after seeing how some individuals are treated for reporting sexual assault or sexual harassment, an individual who experiences retaliation may be reluctant to come forward to report his or her own experiences.

Even when a person reports retaliation, he or she is likely to experience a great deal of confusion regarding how to address retaliation allegations. Reprisal allegations are the specific domain of the IG.<sup>20</sup> Criminal acts are investigated by MCIOs, other law enforcement organizations, or, in some cases, by command. However, acts of ostracism and other abuses often lack a uniform response process across all four Services. Retaliation reporters may need the assistance of command to resolve workplace and other problems. While there are several options to address retaliation allegations, the differences between them can be obscure.

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<sup>19</sup> Army SARCs/VAs will handle retaliation reports related to sexual assault and sexual harassment under their SHARP program.

<sup>20</sup> IG has the authority to investigate acts of ostracism and maltreatment if it determines it is IG appropriate or if those complaints are made along with a reprisal complaint or made against a senior official.

Furthermore, justice and IG processes may be lengthy, leaving victims without an immediate recourse.

Currently, there is no single resource designated to educate and guide individuals through the retaliation complaint process or provide them with updates on their case. The intent is to ensure a reporter is informed as to the appropriate avenues for addressing their specific complaints so reporters can make an informed decision as to how they will proceed. Although SARCs, VAs, and EOAs can help connect victims and complainants with support resources, they do not yet have the specific training or qualifications to navigate the current systems. Specialized legal services are also available to victims of sexual assault through the Special Victims' Counsel (SVC)/Victims' Legal Counsel (VLC), but these services (with the exception of the Marine Corps) are limited to victims of certain designated sex-related offenses, which do not include sexual harassment.<sup>21</sup> Finally, while most commanders are prepared to address misconduct, retaliatory situations can often be complex, subtle, or prone to misunderstanding. Military leadership can benefit from understanding all available means to address an allegation of retaliation.

### *Way Forward*

The Department will develop a retaliation response process to provide comprehensive support services to reporters of retaliation, to include victims of sexual assault, complainants of sexual harassment, military witnesses/bystanders, and first responders who allege retaliation in relation to a report of sexual assault or sexual harassment. SARCs, VAs, and EOAs who respond to sexual assault reports and sexual harassment complaints will also address retaliation allegations brought to their attention through the cases they support, as desired by the victim.<sup>22</sup> Importantly, the senior SARC may serve as a resource, as requested, to SARCs, VAs, and EOAs as they support the reporter. SARCs, VAs, and EOAs will also work in coordination with the SVC/VLC and/or applicable staff judge advocate (SJA) who will provide advice in filing reports of retaliation.

Depending on the nature of the allegation and the reporter's preference, SARCs, VAs, EOAs, and/or SVCs/VLCs will educate retaliation reporters about investigative agencies and other consultation options, as needed, and ensure that reporters receive support services.<sup>23,24</sup>

SARCs, VAs, and EOAs will work with reporters to refer the handling of retaliatory behavior that does not fall under the purview of IG or law enforcement to the appropriate command authority. Commanders can then take appropriate action, such as ordering a command-directed investigation (e.g., Army Regulation 15-6 investigations, Air Force Commander Directed Investigations and/or inquiries, Navy and Marine Corps Judge Advocate General Manual (JAGMAN) investigations, and NGB-JA/OCI investigations or similar process). When needed, SARCs and EOAs will serve as the liaison to communicate with commanders when addressing retaliation related to their respective purviews. Additionally, SARCs, VAs, and EOAs will refer retaliation reporters to alternative dispute resolution services and leadership consultation, upon request. When an allegation of retaliation is determined to be unsubstantiated and the reporter

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<sup>21</sup> 10 USC § 1044e(g).

<sup>22</sup> Army SARCs/VAs will handle retaliation reports related to sexual assault and sexual harassment under their SHARP program.

<sup>23</sup> Options include the command, Military Equal Opportunity, IG, MCIOs, corresponding NGB authorities, Special Victims' Counsel/Victims' Legal Counsel, and legal assistance attorneys.

<sup>24</sup> If the reporter is describing something that may be reprisal, the IG must be consulted. Reporters cannot resolve reprisal complaints through informal processes.

wishes to file an appeal, SARCs, VAs, and EOAs will direct the reporter to the appropriate responsible party entity for guidance, as is allowed by law or policy and in accordance with applicable IG guidance.

To ensure an efficient resolution process, the Secretaries of the Military Departments, CNGB, SAPRO, and the Office of Diversity Management and Equal Opportunity (ODMEO) will develop policy, procedures, timelines, and resource requirements to address matters conveyed to SARCs, VAs, and EOAs. The Secretaries of the Military Departments will also provide the SARC or EOA with consultative support from an SJA or other such legal entity they identify. The CNGB will request the Adjutants General to provide consultative support for their respective state SARCs.

Finally, the Services, in consultation with the DoD Office of the General Counsel (OGC), will develop standardized educational materials for commanders and other leaders to use when considering appropriate accountability for individuals, legally supported administrative actions, and other actions to address retaliatory behavior. These materials will also address online behavior and the measures commanders can employ to motivate responsible social media use. Such materials will familiarize commanders with the tools to hold offenders appropriately accountable, foster a climate that prevents retaliation, and promote behavior that contributes to military readiness.

#### Issue Area 4 – Response Process: Providing Comprehensive Support to Reporters

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Sexual assault victims and sexual harassment complainants may suffer from a host of negative psychological outcomes. Research suggests that sexual trauma victims may develop anxiety, post-traumatic stress, and depression. Sexual trauma victims may also engage in self-harm, self-medicate with alcohol or other substances, and withdraw from social interactions.<sup>v</sup> Retaliation, such as the rejection and blaming that a victim can experience following the reporting of a sexual assault, has the potential to re-traumatize. These experiences can compound and add to the negative psychological, interpersonal, and physical outcomes previously triggered by the sexual assault. Some survivors say that the experience of retaliation after their sexual assault or sexual harassment was worse than the experience of the sexual assault or sexual harassment itself. This is in part due to a violation of trust. Military victims who trust the system, their leadership, and their peers enough to report these incidents have that trust broken by acts of retaliation. In their journal article on re-traumatization, Dr. Rebecca Campbell and her colleagues aptly state, “The trauma of rape extends far beyond the actual assault.”<sup>vi</sup> In fact, research suggests that survivors are more likely to exhibit post-traumatic stress symptoms after enduring re-traumatization.<sup>vii</sup>

Long after an experience of sexual assault or sexual harassment, unsupportive and negative attitudes may persist and impede victims’ recovery. DoD’s system of victim support must address not only the trauma related to sexual assault and sexual harassment, but also the psychological and personal repercussions of retaliatory behavior. Expanded capabilities and resources would address these needs.

#### *Way Forward*

In addition to their duties supporting sexual assault victims and sexual harassment complainants, SARCs, VAs, and EOAs will provide all those seeking assistance for alleged retaliation related to an incident of sexual assault and sexual harassment with responsive, timely, and personalized support. Through this joint effort, the unique and distinct skillsets of SARCs, VAs, and EOAs will be leveraged to address the needs of retaliation reporters. SARCs’

familiarity with the response process and ability to work with the command at all levels will be an asset in working with reporters of retaliation. Likewise, EOAs' experience resolving equal opportunity issues at the lowest appropriate level and providing alternative dispute resolution services will fill a gap in the SAPR program's retaliation response capabilities. With additional training and support, SARCs, VAs, and EOAs will have the expertise to support retaliation reporters through the response process.<sup>25</sup>

Upon receiving a report of retaliation, SARCs, VAs, EOAs, and/or SVCs/VLCs will educate reporters on their options for resolution. Reporters will then choose the option or combination of options they would like to pursue. While safety concerns and certain reporting requirements specified in law may shape available alternatives for persons seeking assistance, SARCs, VAs, and EOAs will work to create a personalized plan that reflects the reporters' needs and addresses safety concerns.

For retaliation reporters who desire investigation of the conduct they experienced, SARCs, VAs, or EOAs will make referrals to SVC/VLCs to provide guidance on investigative options. Victims of sexual assault who are eligible for representation and who elect to be represented will receive primary support in this area from their assigned SVC/VLC, while sexual harassment complainants, military witnesses/bystanders, and first responders may seek services through a legal assistance attorney, as they desire. To the extent permitted by law, legal assistance attorneys may advise sexual harassment complainants, military witnesses/bystanders, and first responders, and/or refer them to the appropriate authorities.

SARCs, VAs, or EOAs will also offer support to those individuals who suspect they are experiencing retaliation, but wish to resolve the matter through alternative dispute resolution, education, consultation, or some other non-investigatory means. Reporters will also receive SAPR or EO services to include advocacy, coordination with stakeholders, and crisis intervention as desired and in accordance with eligibility policies. Informal resolution/intervention strategies with unit command or involved Service members can provide immediate relief for reporters who decide investigative and judicial processes do not meet their needs. Referrals to support services will also aid retaliation reporters in their recovery process.

In accordance with SAPR policy, sexual assault victims, including those who allege retaliation, may request an expedited transfer to a new unit or installation. Current policy does not expressly provide for expedited transfers for sexual harassment complainants. However, upon the request of an individual who has made a report of sexual harassment and alleged he or she experienced retaliation, the Services and NGB will allow commanders to approve making reasonable accommodations for the individual at his or her current installation (i.e., change in duty status or location).

The Department's new retaliation response capability is expected to reach a greater number of retaliation reporters than ever before and, in turn, provide the support and advocacy these reporters need and deserve. CMGs will continue to provide a forum for command and sexual assault response personnel to discuss retaliation allegations and refer cases for resolution. In addition, EOAs working with those who reported retaliation in relation to sexual harassment complaints will attend CMGs, or Service equivalent meetings, to share information about their cases and attain guidance in retaliation response.

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<sup>25</sup> As mentioned previously, if the reporter is describing something that may be reprisal, the IG must be consulted. Reporters cannot resolve reprisal complaints through informal processes.

SAPR policy already provides sexual assault victims the opportunity to communicate with a General or Flag Officer about career-related issues or administrative separations perceived to be associated with their Unrestricted Report of sexual assault. This opportunity will be extended to Service members who experience retaliation associated with filing a sexual harassment complaint, intervening as a bystander, or performing first responder duties. SARCs, VAs, EOAs, and other first responders will notify victims of sexual assault and complainants of sexual harassment of this policy provision.

## Issue Area 5 – Creating a Culture Intolerant of Retaliation

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Retaliation not only harms the lives and careers of retaliation reporters, but also undermines the cohesion of units and the climate of respect that the military demands. Dr. Patricia Harned, Chief Executive Officer of the Ethics Resource Center, explains: “There’s a toxic consequence of retaliation that extends far beyond the victim. It’s the erosion of organizational culture.”<sup>viii</sup>

The military’s strong values of unity and solidarity can have unintended consequences in toxic climates.<sup>ix</sup> When a Service member reports sexual assault or sexual harassment in such a climate, he or she may be seen as a potential threat to group unity. Thus, retaliation may ensue as a misguided way for some to protect the group. Furthermore, retaliation seems to be more likely in work environments undergoing transition.<sup>x</sup> The military, by nature, is an organization constantly changing and adapting. Frequent shifts in leadership and personnel can prevent corrosive environments from persisting, but can also contribute to instability that allows retaliation to thrive.

The Department’s sexual assault and sexual harassment prevention efforts have a role to play in reducing retaliation. Over time, breaking down myths and reducing the stigma associated with reporting sexual assault and sexual harassment can have a positive impact on the potential for retaliation. However, civilian research indicates that without preventive measures, increased misconduct reporting may actually give rise to an increase in the experience of retaliation for those who report. Prevention efforts must eliminate permissive environments in which retaliation may occur.

Researchers at the Ethics Resource Center have identified several factors that characterize organizations with low levels of retaliation. Strong ethics and compliance programs and training efforts, along with robust systems of accountability, are key elements of cultures that do not tolerate retaliation. The Ethics Resource Center also identifies leaders as a central component of retaliation prevention. Retaliation declines when employees perceive their leaders as trustworthy and committed to ethics.<sup>xi</sup> These components and others used by DoD to foster a positive command climate will be essential to eliminating retaliation.

### *Way Forward*

Leadership is paramount in fostering an ethical and just climate intolerant of retaliation. DoD created this comprehensive Retaliation Prevention and Response Strategy to specifically leverage leadership engagement to combat retaliatory behavior. The Department aims to further reinforce a just and respectful culture by utilizing existing research on workplace ethics, organizational culture change, harassment in social media, and other related topics.

Accordingly, the Secretaries of the Military Departments will enhance their departments’ training of military and civilian supervisors to more effectively respond to reporters of misconduct, anticipate and proactively address potential problems in the unit that may arise due to a report

of misconduct, and appropriately respond to retaliation when it does occur. Through this training, leaders will be equipped to communicate the repercussions of retaliatory misconduct and publicize measures taken to address varying forms of retaliatory behavior. Additionally, enhanced training will be developed for those who work with victims of sexual assault and complainants of sexual harassment (i.e., SARCs, VAs, EOAs, and SVCs/VLCs) to ensure that they are thoroughly prepared for their role in the response process. Stakeholders will work together during the Implementation Planning Phase to discuss training approaches and the appropriate leads for training module development.

The Department will continue to empower leaders with assessment tools, including retaliation reporting data and the Defense Equal Opportunity Management Institute's (DEOMI) *Organizational Climate Survey (DEOCS)*, to aid them in detecting potential retaliatory behavior within their units. Providing supervisors and commanders with appropriate training and assessment tools will prepare them to combat retaliation in their units. As such, supervisors and first-line leaders will be held appropriately accountable for reinforcing a professional culture, building trust and respect in their units, and addressing retaliatory behavior should it occur. Senior leaders will be required to take steps to conduct evaluations of all officers and noncommissioned officers on how they address unit climate in this regard. Further, the Secretaries of the Military Departments will establish well-defined guidelines for online behavior that will emphasize how "off duty" conduct can affect one's career and professional reputation and its nexus to good order and discipline. Taken together, these efforts will promote a culture of trust, confidence, and unfettered sexual assault and sexual harassment reporting.

Finally, SAPRO, ODMEO, DEOMI, the Secretaries of the Military Departments, and the CNGB will develop training and strategic communications to increase awareness about the problem of retaliation and the retaliation reporting process. Training and communications will not only address retaliation against sexual assault victims and sexual harassment complainants, but also against others involved in the response process (i.e., witnesses/bystanders and first responders). Existing sexual assault and sexual harassment training, as well as bystander intervention training, will be augmented to promote intervention in retaliatory circumstances tied to a report of sexual assault or sexual harassment, and to ensure that "well intended" support to victims is not discouraged. Service members should not fear helping a unit member in need of support and encouragement, if that support is provided in an appropriate way.

A comprehensive program of training, strategic communications, and leadership support and accountability will enable the Department to build an organizational culture intolerant of retaliation. Through these efforts, every Service member will know that retaliation against those who report misconduct, or intervene on their behalf, is entirely inconsistent with the military's core values.

## Conclusion

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The persistence of sexual assault and sexual harassment in the Armed Forces is unacceptable. The Department's focus on this problem will not waver until all sexual assault and sexual harassment is eradicated. Eliminating sexual assault and sexual harassment is not possible without the brave men and women who come forward to report acts of sexual assault and sexual harassment. It is unconscionable that these individuals may experience retaliation for doing their part to ensure that the military is safe and honorable. The Department will not tolerate this divisive behavior so at odds with the military's core values. Commanders and leaders at every level have the ability and the duty to stop retaliation and create the professional culture American citizens demand and Service members deserve.

This Strategy provides commanders with enhanced capabilities to support reporters, as well as actions to instill greater trust and confidence within their units. Further, this strategy will require new processes, procedures, and protections in order to promote trust, confidence, transparency, and appropriate accountability in how the Department takes care of its military personnel. Although it proposes new policies and procedures, this strategy is designed to augment and formalize existing Sexual Assault Prevention and Response (SAPR) processes while extending certain processes to the Military Equal Opportunity (MEO) program. The majority of responsibilities (i.e., Sexual Assault Response Coordinators (SARCs)) are specified in current DoD policy (DoDI 6495.02). New responsibilities for SARCs include coordinating with Equal Opportunity Advisors (EOAs) regarding data collection and participation in Case Management Group Meetings (CMGs).

Retaliation is a complex problem that will likely require a prolonged prevention and response effort. Moving forward, stakeholders across the DoD will work together to ensure it is effectively implemented, monitored, and improved over time. The following section of the strategy highlights each issue area and the corresponding actions required to effect dramatic change. The leads for issue area will develop implementation plans and any corresponding policy changes to ensure these recommendations are executed as quickly as possible, in accordance with existing law.

## Part II: Plan of Action

### Issue Area 1 – Standardizing Definitions

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**What We Propose:** A standardized definition of retaliation across the Department.

**The Problem:** There is inconsistency within the Department as to what constitutes retaliation, and Service definitions of certain forms of retaliation vary.

**The Solution:** Develop common definitions of retaliation and related behaviors to define the full spectrum of retaliatory behavior.

#### *1.1 Create a Standardized Definition of Retaliation*

Stakeholders will recommend standardized legal definitions of retaliation and retaliatory behavior for approval by the Secretary of Defense. OGC will have final authority to recommend such standardized definitions to the Secretary, but will work with stakeholders for this action, including the Offices of the Judge Advocates General (OTJAGs) of the Military Departments, the Office of the SJA to the Commandant of the Marine Corps, IG, SAPRO, ODMEQ, and DEOMI. OGC, working with the stakeholders described above, will recommend a Department-wide definition for “retaliation” in general, and standardized definitions for “reprisal” and “ostracism.” The Department’s definitions will incorporate those for “reprisal” contained in 10 USC § 1034 and implementing DoD guidance, in conjunction with what was directed in Section 1709 of the FY 2014 National Defense Authorization Act (NDAA). The Secretaries of the Military Departments will subsequently align their definitions for retaliation and retaliatory behavior with those approved by the Secretary of Defense.

#### *1.2 Identify and Describe the Full Spectrum of Retaliatory Behavior*

Definitions of retaliation and related behaviors must address not only experiences that fall under the purview of the IG and MCIOs, but also the full range of retaliatory behaviors in order to respond to victim needs and encourage continued reporting of crime. Department research indicates such behavior may include, but is not limited to, social exclusion, bullying, online misconduct, and other retaliatory behaviors that warrant command attention and intervention. Moreover, the definitions will consider the roles of those involved with the reporting and response to a crime or violation (e.g., military witnesses/bystanders and first responders).

### Issue Area 2 – Closing the Gap in Knowledge

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**What We Propose:** A data-driven approach to inform retaliation prevention and response, including a centralized process to integrate data from retaliation cases, robust survey efforts, and timely evaluation of retaliation prevention and response efforts.

**The Problem:** Although most of the organizations tasked to address retaliation have developed their own systems to track these cases, there is no centralized location within the Department to record a standard set of retaliation case variables in order to generate a Department-wide picture. Without a centralized system, the Department’s efforts to understand and combat this problem are greatly limited. In addition, while past DoD surveys provided some trend information on retaliation, they were not able to capture the full breadth of victims’ experiences or the environments where such incidents occurred. Finally, the Department lacks a long-term process to assess the effectiveness of efforts to prevent and respond to retaliation.



**The Solution:** Initiate a data-driven approach to inform retaliation prevention and response through a retaliation case tracking system, enhanced survey efforts, and regular program evaluation. The Department will implement a three-phase data collection and analysis process to track cases of retaliation, culminating with the integration of retaliation cases in DSAID. The Department will also devise and implement enhanced survey questions to gain a better understanding of retaliation from the reporter's perspective.<sup>26</sup> Finally, to determine if any additional modifications in authorities, structure, or process are required, the Department will assess the retaliation response process annually and conduct a comprehensive evaluation after three years of operation.

### *2.1 Create a Centralized Process to Track and Analyze Retaliation Complaints and Outcomes*

DoD SAPRO will be responsible for collecting, analyzing, and reporting on data from all retaliation allegations related to sexual assault and sexual harassment. Data on retaliation allegations will allow the Department to assess the scope of response efforts and help implement future prevention and response strategies. This data collection and analysis effort will proceed in three phases as the retaliation prevention and response capability is developed and implemented over time. The timeline for these three phases will be determined during the implementation development phase for this strategy. DoD IG may provide data and information consistent with the authority and responsibilities under the IG Act, as amended, and implementing DoD guidance. All data collection efforts will follow strict DoD privacy guidelines.

The first phase of data collection/analysis will begin immediately and involve data calls to the different DoD organizations that handle retaliation cases. SAPRO, in conjunction with the Secretaries of the Military Departments, will identify a common set of data elements to capture from each DoD entity that handles retaliation allegations associated with sexual assault and sexual harassment. These entities include Sexual Assault CMGs, EOAs, command-appointed investigators of retaliation, and MCIOs. These entities will provide information about the nature of each incident, including information on the individuals involved and how the retaliation complaint was addressed from initial allegation to investigation and final disposition. EOAs managing retaliation cases related to reports of sexual harassment will attend CMGs, or Service equivalent meetings, and, to the extent permitted by governing legal authority, provide data to the senior SARC in this forum.<sup>27</sup> SAPRO will consolidate and analyze the data received.

The second phase of data collection/analysis will begin once the retaliation response process is implemented. In this phase, the senior SARC will serve as the central manager of data collection on retaliation cases and will eventually take over most of the processes discussed above. An initial paper-based or electronic spreadsheet will be used to capture all retaliation reports received by SARCs, VAs, and EOAs, the option(s) the reporter requests to resolve the issue, and the source of the retaliation complaint (e.g., sexual assault report, sexual harassment complaint, or bystander action). The second data effort will capture the retaliation reporter's notification to IG and/or MCIO about the allegation. For all remaining reports, the senior SARC will document efforts taken to address and/or resolve the matter, including notifications to senior leaders, support services provided, investigative efforts employed, corrective actions recommended, and the possibility of reports not being substantiated. Finally, the senior SARC will complete a third data form with final case disposition, demographics of the alleged offender, punishments rendered, administrative corrections taken, appeals filed, and policy modifications

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<sup>26</sup> Surveys will ultimately reflect terms and definitions approved by the Secretary of Defense.

<sup>27</sup> Army SARCs/VAs will handle retaliation reports related to sexual assault and sexual harassment under their SHARP program.

within ten days of the final disposition rendered. These data collection efforts will be routed through the servicing General Court-Martial Convening Authority (GCMCA)<sup>28</sup> or corresponding State National Guard authority, the appropriate Service or NGB headquarters office, and to SAPRO for data consolidation and analysis.

In the third phase of data collection/analysis, DSAID will be modified to serve as the central repository for not only sexual assault cases, but also retaliation cases related to the reporting of sexual assault and sexual harassment. This third phase will take place once gaps in retaliation case data are fully addressed and DSAID is updated to accommodate retaliation reporting data. The system will collect and maintain information on retaliation related to a report of sexual assault or sexual harassment. Senior SARCs will be primarily responsible for entering case information into the database.

### *2.2 Improve Existing Survey Questions on Retaliation to Inform Prevention and Response Efforts*

SAPRO and Defense Manpower Data Center (DMDC) have begun the effort to improve the Department's understanding of retaliatory behavior through the development and implementation of revised questions for existing survey efforts in Fiscal Year 2015. The questions, which align with current language in policy and law, ask respondents about specific retaliatory behavior and will provide more detail into the nature of victims' experiences. DMDC regularly fields three different surveys that will now contain revised retaliation questions: the *Survivor Experience Survey*, the *Military Investigation and Justice Experience Survey*, and the *Workplace and Gender Relations Surveys*. DMDC and SAPRO will also field surveys to assess retaliation response efforts from the perspective of SARCs and VAs. Finally, SAPRO and DEOMI will work with the military Services to augment the *Organizational Climate Survey* to help commanders identify factors within their unit climate that can contribute to a retaliatory environment.

### *2.3 Evaluate Retaliation Prevention and Response Program Effectiveness*

SAPRO will review the effectiveness of this strategy annually. This includes the retaliation response process, the reporting systems, and reviews of prevention and outreach materials. Three years after approval of this strategy, the USD (P&R) will assess the new retaliation response process and prevention efforts to determine if additional modifications in authorities, structure, or process are required. The evaluation process will involve an assessment of progress on key program metrics. Such an assessment may review reports of retaliation (through the retaliation case tracking system), the effectiveness of retaliation reporter protections, prevention, training efforts, and feedback from reporters of retaliation.

## Issue Area 3 – Response Process: Building Strong and Supportive Systems of Investigation and Accountability

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**What We Propose:** A standardized retaliation reporting and resolution support process.

**The Problem:** There are several avenues for victims, first responders, or witnesses to file retaliation complaints. Complaints involving reprisal allegations may be filed with the IG. Complaints involving alleged criminal misconduct may be filed with either MCIOs or command. Complaints involving other types of alleged retaliatory behavior that do not fall under the

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<sup>28</sup> For non-Service member subjects, information will be routed through the GCMCA of the reporter.

purview of IG or MCIOs may be brought to the attention of the command. There is no easy reference guide of available options for the many different forms of retaliation. Service members are likely to find independently evaluating and executing the appropriate course of action to be challenging or confusing. Additionally, the Department lacks a uniform response process to provide reporters of retaliation with assistance.

**The Solution:** The Department will develop a comprehensive retaliation response process to ensure victims have the ability to report incidents of retaliation and obtain support throughout the resolution process and to hold offenders appropriately accountable. SARCs, VAs, and EOAs who respond to sexual assault reports and sexual harassment complaints will also address any retaliation reports arising from the sexual assault and sexual harassment cases they support. Senior SARCs will support the retaliation response process by serving as a resource to SARCs, VAs, and EOAs, when needed, managing data collection on retaliation, communicating with command and legal advisors, and coordinating discussions of these retaliation allegations at CMG meetings. SARCs, VAs, and EOAs will require additional training, access to resources, and staff to fulfil these new responsibilities. Details on requirements and resourcing will be determined during the Implementation Planning Phase of this effort.

### *3.1 Develop a Comprehensive Retaliation Response Process*

The retaliation response process will involve an education period during which SARCs, VAs, EOAs, or SVCs/VLCs and/or legal assistance personnel provide reporters of retaliation information about their options for resolution. SARCs, VAs, and EOAs will provide general referral information on reporter options and will refer reports to the SVCs/VLCs or other legal assistance personnel for a more in-depth education on options. Reporters may then choose the option or combination of options they would like to pursue, if any. While safety concerns and certain reporting requirements specified in law may shape available alternatives for persons seeking assistance, SARCs, VAs, and EOA will work to create a personalized plan that reflects the reporters' needs.

Key aspects of the response process will include:

- Procedures to direct reporters who would like to pursue an investigation to address their retaliation allegations to the IG for reprisal allegations and to law enforcement or, in certain circumstances, command, for criminal complaints.<sup>29,30</sup> Following a reporter's stated interest in an investigation of his or her retaliation allegation, the SARC, VA, or EOA will immediately refer the reporter to the appropriate investigative agency. In addition, the reporter will be offered an opportunity to consult with an SVC/VLC or other legal assistance personnel prior to engaging with investigative agencies. SARCs, VAs, and EOAs will not restrict or otherwise interfere with communications to the IG or MCIOs. Rather, they will inform retaliation reporters of their options and consultation services, as well as support them through the process.
- Procedures to enable communication with the relevant commander when a reporter wishes to pursue an investigation relating to allegations that do not fall under the purview of IG or MCIO. The commander will then, as appropriate, refer the allegation for investigation by law enforcement or another appropriate means (e.g., Army Regulation

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<sup>29</sup> 10 U.S.C. §1034.

<sup>30</sup> IG also has the authority to investigate acts of ostracism and maltreatment if it determines it is IG appropriate or those complaints are (a) made along with a reprisal complaint or (b) made against a senior official.

15-6 investigations, Air Force Commander Directed Investigations and/or inquiries, Navy and Marine Corps JAGMAN investigations, and NGB-JA/OCI investigations or similar process). SARCs, VAs, and EOAs will remain informed through CMGs, at which commanders will discuss, to the extent permissible under governing legal authority, their progress in resolving the retaliation allegations, any command actions taken, and case dispositions.

- Modification of Department policy to allow for discussion, to the extent permissible under governing legal authority, of cases of retaliation associated with the reporting of sexual harassment at sexual assault CMG meetings or Service equivalent meetings.
- Making available alternative means for reporters to resolve their retaliation allegations, including alternative dispute resolution, education, and other means. SVC/VLCs, legal assistance personnel, or EOAs will be made available to help reporters address their concerns (orally or in writing) to the alleged retaliator(s), request intervention by a co-worker, use their chain of command, or ensure that appropriate personnel are identified when alternative dispute resolution is required.<sup>31</sup> Wherever appropriate, the SARC/VA may refer the reporter to the local EOA or others to facilitate resolution at the lowest appropriate level. Furthermore, EOAs, SARCs, and VAs will request the assistance of the senior SARC, when needed, to serve as a resource and coordinate with command and legal advisors.<sup>32</sup>
- Updated Service policies to require commanders, to the extent permissible under governing legal authority, to regularly update senior SARCs on case status and provide them with command action and case disposition information. Service policies will also be modified to ensure that retaliation reports referred to command will be investigated by an individual independent from the immediate unit or organization where the alleged retaliation is occurring.
- Direction to senior SARCs to make every effort to provide updates to commanders whose personnel are involved in a retaliation report. Additionally, the senior SARC will be responsible for capturing all response activity on a given installation or within a similar naval organizational structure and report general case status information to the governing GCMCA or State Adjutant General, Military Service, or NGB headquarters, and USD (P&R). Based on Service organizational requirements, the GCMCA<sup>33</sup> may delegate this reporting requirement to a Special Court-Martial Convening Authority (SPCMCA) and require periodic updates on case status.
- Direction to senior SARCs to work closely with installation SJAs and SVCs/VLCs to appropriately refer reports made to them and ensure the appropriate authority is engaged to resolve the matter. For reports that fall under the purview of IG, SARCs, VAs, and EOAs will inform retaliation reporters of the procedures to contact IG officials for reporting and updates on their case, should the reporter desire to make the report directly to IG without SVC/VLC or other legal consultation.
- Training to ensure that SARCs, VAs, and EOAs have sufficient information to counsel reporters on available resources for filing an appeal, where permitted by law or policy, or how to have cases reviewed by the appropriate authority. Service policy will be modified to include a required number of days within which the victim will be informed of the

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<sup>31</sup> Alternative means of resolution do not necessarily foreclose a commander from the option to take disciplinary action independent of what the reporter requests in order to ensure good order and discipline.

<sup>32</sup> In order to avoid interference with the military judicial process, DoD and the Services will take appropriate measures to ensure that cases associated with active investigations are not referred for alternative dispute resolution.

<sup>33</sup> For non-Service member subjects, information will be routed to the GCMCA of the reporter.

action taken, to the extent permitted by governing legal authority. While there are no new appeal rights afforded by this proposal, SARCs, VAs, and EOAs must receive sufficient preparation and training to help reporters identify available appeal processes and guide them to the appropriate authorities for follow-up.

- Direction to SARCs and VAs to coordinate with SVCs/VLCs, as appropriate, when the reporter is a sexual assault victim who elects to be represented. The Services will also update their policies to make available appropriate legal consultation and assistance to complainants of sexual harassment who make a complaint of retaliation, and to military witnesses/bystanders and first responders to sexual assault and sexual harassment who allege retaliation. Military Department and Service policies will also be updated to provide senior SARCs with legal consultative support from the servicing SJA or other specified legal entities.<sup>34</sup>

### *3.3 Strengthen Accountability*

The Services, supported by the TJAGs and SJA to the Commandant of the Marine Corps, will develop and disseminate appropriate educational materials for commanders that address available means to hold individuals appropriately accountable for retaliatory behavior, as well as available administrative or other actions. These materials will also familiarize commanders with options available to them to promote responsible online behavior and to hold Service members appropriately accountable for inappropriate online behavior.

### *3.4 Improve Social Media Policy*

The USD (P&R) will provide a draft social media policy to the Secretary of Defense, with advice from the committee described below and subject to a legal sufficiency determination by OGC.

The committee will include representatives of the following: OGC; the Chairman of the Joint Chiefs of Staff; the Chiefs of the Military Services and the CNGB, who will ensure that each Service provides a representative to the committee with command experience; the General Counsels of the Military Departments; the Counsel for the Commandant of the Marine Corps; the TJAGs for the Military Departments; the SJA to the Commandant of the Marine Corps; the NGB Office of Chief Counsel; the Director of SAPRO; the Director of ODMEQ; and the Director of DEOMI.

The draft social media policy will include:

- A definition of retaliatory behavior and prohibition of Service members' use of social media to engage in such behavior, separately addressing on-duty and off-duty behavior.
- Identification of social media uses to be prohibited by punitive regulations, separately addressing on-duty and off-duty behavior and use of government equipment.
- Identification of social media uses that are inappropriate but not prohibited by punitive regulations, separately addressing on-duty and off-duty behavior and use of government equipment.
- Prescription of the means by which allegations of violations of the social media policy will be reported, investigated, and adjudicated.
- Identification of the range of actions commanders may take to address either Service members' social media use in violation of punitive regulations or Service members' inappropriate use of social media.

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<sup>34</sup> Personnel assigned to military treatment facilities are often provided consultative support from a medical legal advisor. This may be a consultation model to be considered for SARCs.

- A requirement for the Military Departments to publish educational materials and conduct training to ensure Service members understand the proper use of social media and proper social media behavior standards in keeping with the Department's values.

## Issue Area 4 – Response Process: Providing Comprehensive Support to Reporters

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**What We Propose:** A comprehensive system of support for those who report retaliation related to a report of sexual assault or sexual harassment.

**The Problem:** The Department lacks uniform support services to address retaliation reporters' needs. Sexual assault victims and sexual harassment complainants may receive support from SARCs and EOAs, but there is no standard process to assist them with retaliation concerns. Additionally, witnesses/bystanders and first responders who experience retaliation related to a sexual assault or sexual harassment report have no specialized resource to turn to for support.

**The Solution:** SARCs, VAs, and EOAs will leverage the proposed, standardized retaliation response process to facilitate a variety of support resources for those victims, complainants, witnesses/bystanders, and first responders who are involved in a report of sexual assault or sexual harassment and subsequently report retaliation. These key personnel will work with command, SVCs/VLCs, and the servicing SJA to understand the conditions that may have contributed to the alleged misconduct and how to address problems immediately, using administrative actions, command engagement, personnel moves, and other measures whenever possible and as appropriate.

### *4.1 Create a System of Unconditional Support*

SARCs, VAs, and EOAs will offer comprehensive support services to individuals alleging retaliation in relation to a sexual assault and sexual harassment case, to include victims of sexual assault, complainants of sexual harassment, military witnesses/bystanders and first responders to sexual assault and sexual harassment allegations. SARCs, VAs, and EOAs will provide support to reporters throughout the retaliation response process. Senior SARCs will serve as a resource to SARCs, VAs, and EOAs when needed and work with the chain of command and others as appropriate to address the impact of retaliatory behavior and facilitate the exchange of information between the reporter and the agencies or command organizations involved. Support will last for as long as the reporter requests support while in the military or until the matter has reached its final disposition.

SARCs, VAs, and EOAs will provide reporters of alleged retaliation with responsive, timely, and personalized support that respects their recovery and/or life challenges. SARCs, VAs, and EOAs will not only help reporters understand their options in the complaint process, but also provide a pathway to requested support services (e.g., education, on-going updates, referrals to support services, alternative dispute resolution services, and transfer requests).

Expedited transfers are a powerful support option for victims of sexual assault. Although expedited transfers are not available for those who file sexual harassment complaints, the Services and National Guard will allow commanders to approve making reasonable accommodations for sexual harassment complainants alleging retaliation at their current installation (i.e., change in duty status or location), when requested by the complainant and approved by command.

#### *4.2 Generate Retaliation Response System Awareness*

SAPRO, ODMEO, the Secretaries of the Military Departments, and the Chiefs of the Military Services and NGB will develop procedures to educate sexual assault and sexual harassment reporters on the retaliation response process and the services provided by SARCs, VAs, and EOAs. Those making reports of sexual assault and reports of sexual harassment will be provided with information about the services available for those who suspect they may be experiencing retaliation. If a reporter requests assistance from a SARC, VA or, EOA in connection with a suspected retaliatory situation, the SARC, VA or EOA will assist the reporter throughout the retaliation response process. SARCs, VAs, EOAs, and/or SVCs/VLCs will educate the reporter on the larger retaliation response process and the breadth of support and services available. Victim communications with SARCs and VAs will be considered confidential in accordance with DoDI 6495.02, such that communications with a SARC or VA about retaliation will not affect the restricted status of an underlying Restricted Report of sexual assault. Barring disclosure of threats to life and safety, a reporter may elect to decline services for retaliation at any time and any conversations will be considered protected to the extent provided by law.

#### *4.3 Enforce Crime Victims' Rights<sup>35</sup>*

The Secretaries of the Military Departments will implement policies that identify uniform procedures for investigation, tracking, and reporting of allegations of Article 6b rights violations (other than those arising from the court-martial process) and advising commanders regarding dispositions. (Alleged Article 6b violations arising from the court-martial process will be addressed through the appropriate legal means.) SARCs and VAs will support the sexual assault reporter as the Service-specified authority proceeds to investigate, mediate, and advise commanders regarding disposition of alleged Article 6b violations. Senior SARCs may be the specified authority to record reports and track disposition; however, SARCs and VAs shall not be the specified authority to investigate, arbitrate allegations or advise commanders. The Secretaries of the Military Departments will report annually to the Secretary of Defense through OGC on the Article 6b violation allegations specified above and their associated dispositions.

#### *4.4 Extend Pre-Administrative Separation General or Flag Officer Review*

Service members who allege retaliation associated with filing a sexual harassment complaint, intervening as a bystander, or performing first responder duties will be afforded the opportunity to communicate with an appropriate General or Flag Officer in their chain of command regarding career-related impacts and administrative separation actions they perceive to be associated with the complaint or involvement in the incident. SARCs, VAs, and EOAs will notify complainants of sexual harassment and bystanders of this policy provision.

### **Issue Area 5 – Creating a Culture Intolerant of Retaliation**

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**What We Propose:** Educate and prepare DoD personnel to prevent retaliation.

**The Problem:** According to DoD survey research, a significant portion of Service members who made Unrestricted Reports of sexual assault indicated that they experienced some form of retaliation associated with their report. While over half of surveyed female Service members who made an Unrestricted Report to DoD indicated they experienced behavior consistent with

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<sup>35</sup> See 10 U.S.C. § 806b for description of crime victims' rights and for Article 6b see <https://www.govtrack.us/congress/bills/113/s1041/text>.

social exclusion or other forms of maltreatment, an appreciable portion also indicated that their careers might have been negatively affected by reporting their sexual assault.

**The Solution:** Provide leadership with the additional education and tools to create a climate in which retaliation is not tolerated and develop procedures to hold leaders appropriately accountable for their efforts. Additionally, the Department will set clear expectations for online behavior that will be integrated into Service core value education. Prevention efforts will be reinforced through enhancing existing sexual assault and sexual harassment strategic communications campaigns, education, and training. These endeavors will emphasize both the importance of maintaining an environment where crimes can be reported without fear of retaliation, as well as new processes designed to help reporters of retaliation.

### *5.1 Prepare the Supervisors and First Responders*

The Secretaries of the Military Departments and the CNGB will issue policy to require retaliation prevention and response training for military and civilian supervisors. This training will teach supervisors how to combat attitudes and beliefs that result in retaliation after a report of sexual assault and sexual harassment, identify retaliation associated with reporting, address retaliatory behavior with appropriate administrative and disciplinary procedures, promote healthy unit climates where misconduct reporting is encouraged, and connect those who report retaliation to appropriate resources. The policy will identify how and when supervisors, when handling retaliation, will be trained and assessed throughout their military careers. Supervisory preparation may take the form of both training and on-the-job experiences, and should reflect skills commensurate with one's grade and/or responsibilities. Additionally, training modules will be developed to inform support staff who interact with victims of sexual assault and complainants of sexual harassment about their role in the retaliation reporting process.

### *5.2 Promulgate Guidance and Accountability Practices for Leadership*

The Secretaries of the Military Departments and the CNGB will promote and promulgate policy in accordance with Department retaliation prevention efforts. Such guidance will emphasize the impact reporting of misconduct has on a unit's readiness and mission accomplishment, as well as other detrimental effects of retaliation.

Likewise, the Secretaries of the Military Departments will also prescribe appropriate measures to hold supervisors and leaders appropriately accountable for preventing, detecting, and addressing retaliatory behavior. These measures may include regular Service assessments of existing and new response processes specified in this document, annotations on fitness and/or evaluation reports, and other means derived through ongoing General or Flag Officer oversight and/or steering activities. Such measures should consider what steps a supervisor/leader took to assess unit climate, how the rated leader dealt with matters that came to his or her attention, and how the leader took steps to promote a healthy climate and prevent retaliation.

### *5.3 Promote Misconduct Reporting and the New Response System*

The Secretaries of the Military Departments will develop and execute strategic communications to emphasize that reporting of any alleged crime or violation should be encouraged and free from concerns of retaliation. These communications will socialize the new processes designed to help those who report experiencing retaliation associated with reporting sexual assault or sexual harassment. Communications to Service members and through all levels of leadership will establish that those who report allegations of retaliation and related misconduct will be taken seriously, treated fairly, and provided with resources to address such concerns. Sexual harassment and sexual assault prevention training will be augmented to address retaliation. Key



prevention programs, such as bystander intervention initiatives, will address not only the importance of intervening to prevent sexual assault and sexual harassment, but also the need to intervene against retaliation. In addition, the Department will expand on existing resources available through the DoD Safe Helpline and Military OneSource<sup>36</sup>.

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<sup>i</sup> Sexual Assault Prevention and Response Office. (2015). *Department of Defense Annual Report on Sexual Assault in the Military: Fiscal Year 2014*. Retrieved from [http://sapr.mil/public/docs/reports/FY14\\_Annual/FY14\\_DoD\\_SAPRO\\_Annual\\_Report\\_on\\_Sexual\\_Assault.pdf](http://sapr.mil/public/docs/reports/FY14_Annual/FY14_DoD_SAPRO_Annual_Report_on_Sexual_Assault.pdf).

<sup>ii</sup> Ethics Resource Center. (2012). *Retaliation: When Whistleblowers Become Victims: A Supplemental Report of the 2011 National Business Ethics Survey*. Retrieved from [http://www.ethics.org/files/u5/RetaliationFinal\\_0.pdf](http://www.ethics.org/files/u5/RetaliationFinal_0.pdf).

<sup>iii</sup> Sexual Assault Prevention and Response Office. (2015). *Department of Defense Annual Report on Sexual Assault in the Military: Fiscal Year 2014*. Retrieved from [http://sapr.mil/public/docs/reports/FY14\\_Annual/FY14\\_DoD\\_SAPRO\\_Annual\\_Report\\_on\\_Sexual\\_Assault.pdf](http://sapr.mil/public/docs/reports/FY14_Annual/FY14_DoD_SAPRO_Annual_Report_on_Sexual_Assault.pdf).

<sup>iv</sup> *Ibid.*

<sup>v</sup> Peterson, Z. D., Voller, E. K., Polusny, M. A., & Murdoch, M. (2011). Prevalence and consequences of adult sexual assault of men: Review of empirical findings and state of the literature. *Clinical Psychology Review, 31*, 1-24; Resick, P. A. (1993). The psychological impact of rape. *Journal of Interpersonal Violence, 8*, 223-255; Zinzow, H. M., et al. (2008). Sexual assault, mental health, and service use among male and female veterans seen in Veterans Affairs primary care clinics: A multi-site study. *Psychiatry Research, 159*, 226-236.

<sup>vi</sup> Campbell, R., Wasco, S. M., Ahrens, C. E., Sefl, T., & Barnes, H. E. (2001). Preventing the 'second rape:' Rape survivors' experiences with community service providers. *Journal of Interpersonal Violence, 16*, 1239-1259, at p. 1240.

<sup>vii</sup> Campbell, R., & Raja, S. (2005). The sexual assault and secondary victimization of female veterans: Help-seeking experiences in military and civilian social systems. *Psychology of Women Quarterly, 29*, 97-106; Campbell, R., Barnes, H. E., Ahrens, C. E., Wasco, S. M., Zaragoza-Diesfeld, Y., & Sefl, T. (1999). Community services for rape survivors: Enhancing psychological wellbeing or increasing trauma? *Journal of Consulting and Clinical Psychology, 67*, 847-858.

<sup>viii</sup> The Ninth Public Meeting of the Judicial Proceedings Panel on Sexual Assault in the Military was held on April 10, 2015 in Washington, DC at p. 141.

<sup>ix</sup> Horne, C. (2001). The enforcement of norms: Group cohesion and meta norms." *Social Psychology Quarterly, 64*, 253-266.; Morris, M. (1996). By force of arms: Rape, war, and military culture. *Duke Law Journal, 45*, 651-781.

<sup>x</sup> Ethics Resource Center. (2012). *Retaliation: When Whistleblowers Become Victims: A Supplemental Report of the 2011 National Business Ethics Survey*. Retrieved from [http://www.ethics.org/files/u5/RetaliationFinal\\_0.pdf](http://www.ethics.org/files/u5/RetaliationFinal_0.pdf).

<sup>xi</sup> *Ibid.*

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<sup>36</sup> This timeline will be pursued to the extent possible, in accordance with existing contract stipulations and timeframes.

## APPENDIX A: Acronyms

CMG	Case Management Group
CNGB	Chief of the National Guard Bureau
DEOMI	Defense Equal Opportunity Management Institute
DMDC	Defense Manpower Data Center
DoD	Department of Defense
DoDD	Department of Defense Directive
DSIID	Defense Sexual Assault Incident Database
EOA	Equal Opportunity Advisor
FY	Fiscal Year
GCMCA	General Court-Martial Convening Authority
IG	Inspector General
NGB-JA/OCI	National Guard Bureau Office of Complex Administrative Investigation
MCIO	Military Criminal Investigative Organization
MEO	Military Equal Opportunity
NDAAs	National Defense Authorization Act
NGB	National Guard Bureau
ODMEO	Office of Diversity Management and Equal Opportunity
OGC	Office of General Counsel
OTJAG	Office of the Judge Advocate General
SAPR	Sexual Assault Prevention and Response
SAPRO	Sexual Assault Prevention and Response Office
SARC	Sexual Assault Response Coordinator
SJA	Staff Judge Advocate
SPCMCA	Special Court-Martial Convening Authority
SVC	Special Victims' Counsel
TJAG	The Judge Advocate General
VA	Victim Advocate
VLC	Victims' Legal Counsel
UCMJ	Uniform Code of Military Justice
USD (P&R)	Under Secretary of Defense for Personnel and Readiness

## APPENDIX B: Definitions

### DoD Retaliation Prohibitions:

*Reprisal:* 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 (as defined in 10 U.S.C. § 1034). The DoD IG or Service IG, in support of DoD IG, exclusively handles reprisal. Examples of reprisal include promotion interference; unwarranted disciplinary or other corrective action; punitive transfer or reassignment; unfavorable performance evaluation not supported by performance; unfair decision on pay, benefits, awards, or training; non-indicated referral for mental health evaluation; and other significant downgrades in duties or responsibilities inconsistent with the military member's grade.

*Ostracism:* Examples of ostracism include improper exclusion from social acceptance, activities or interactions; denying privilege of friendship due to reporting or planning to report a crime; blaming; and subjecting to insults or bullying. Specific definitions of ostracism differ across the Department:

- Navy and Air Force Definitions: Exclusion from social acceptance, privilege or friendship with the intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice (as defined in Air Force Guidance Memorandum 2015-01 to Air Force Instruction (AFI) 36-2909; Secretary of the Navy Instruction (SECNAVIST) 5370.7D).
- Army Definition: Excluding from social acceptance, privilege or friendship a victim or other member of the Armed Forces because: (a) the individual reported a criminal offense; (b) the individual was believed to have reported a criminal offense; or (c) the ostracism was motivated by the intent to discourage reporting of a criminal offense or otherwise to discourage the due administration of justice (as defined in the Army Directive 2014-20).

*Cruelty, Oppression, or Maltreatment:* For the purposes of this document acts of cruelty, oppression, or maltreatment are committed against an individual 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 individual is subject (see paragraph 17c(2) of Manual for Courts-Martial, United States, Part IV Punitive Articles, 2012 Edition). Cruelty, oppression, and maltreatment are acts that occur without a valid military purpose, and may include physical or psychological force or threat or abusive or unjustified treatment that results in physical or mental harm.

Military Equal Opportunity (MEO) Program: The DoD-wide military program of equal opportunity that is accomplished through efforts by the DoD Components. It provides an environment in which Service members are ensured an opportunity to rise to the highest level of responsibility possible in the military profession, dependent only on merit, fitness, and capability (as defined in DoDD 1350.2).

Protected Communication: A protected communication is any lawful communication to a Member of Congress or an Inspector General (IG), as well as any communication made to a person or organization designated under competent regulations to receive such communications, which a member of the Armed Forces reasonably believes reports a violation of law or regulation, including rape, sexual assault, sexual harassment, unlawful discrimination, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial or

specific danger to public health or safety (per 10 U.S.C. § 1034 and DoD Directive (DoDD) 7050.06).

Reporter: For the purposes of this document, a reporter is an Active Duty, Reserve, or National Guard Service member who is sexually assaulted or harassed while performing Active Service, or inactive duty training and makes an allegation of retaliation to a DoD official. The reporter may also be someone involved in a sexual assault or sexual harassment in some other way (e.g., military witnesses/bystanders of sexual assault/sexual harassment and the first responder assisting the victim).

Retaliation: For the purposes of this document, retaliation is an umbrella term encompassing illegal, impermissible, or hostile actions taken by the chain of command or peers/coworkers as a result of making or being suspected of making a protected communication (e.g., a report of sexual assault or a complaint of sexual harassment). Retaliation for reporting a criminal offense can occur in one of several ways, including reprisal (as legally defined in 10 USC 1034), ostracism, or maltreatment (as defined pursuant to this strategy). These three means do not cover all conduct that could qualify as retaliation. For example, it would not include an action taken by a peer or subordinate against an alleged victim in an effort to dissuade the alleged victim from participating in a prosecution; these categories must be expanded to include all potential retaliatory acts.

Sexual Assault: Intentional sexual contact characterized by use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent. The crime of sexual assault includes a broad category of sexual offenses consisting of the following specific UCMJ offenses: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit these offenses (as defined in DoDD 6495.01).

Sexual Assault Prevention and Response (SAPR) Program: A DoD program for the Military Departments and the DoD Components that establishes adult sexual assault prevention and response strategies to be implemented worldwide. The program objective is an environment and military community intolerant of sexual assault. Key SAPR personnel and processes are described below:

*SAPR Personnel:*

- **Sexual Assault Response Coordinator (SARC)**: A SARC is the single point of contact at an installation or within a geographic area who oversees sexual assault awareness, prevention and response training. This individual coordinates medical treatment, including emergency care, for victims of sexual assault and tracks the services provided to a victim of sexual assault from the initial report through final disposition and resolution (as defined in DoDD 6495.01). [In accordance with DoD Instruction 6495.02, a "Lead SARC" is designated anytime there is more than one SARC on a given military installation. When there is only a single SARC on an installation, that SARC will fulfill the responsibilities of the senior SARC (or Service equivalent) described in this document.].
- **SAPR Victim Advocate (VA)**: A person who provides ongoing non-clinical crisis intervention, referral, and ongoing non-clinical support to adult sexual assault victims. Support will include providing information on available options and resources to victims. The VA, on behalf of the sexual assault victim, provides liaison assistance with other organizations and agencies on victim care matters and reports directly to the SARC when performing victim advocacy duties (as defined in DoDD 6495.01).

### *SAPR Reporting Options:*

- Unrestricted Reporting: A process that an individual uses to disclose, without requesting confidentiality, that he or she is the victim of a sexual assault. Under these circumstances, the victim's report provided to healthcare personnel, a SARC/VA, command authorities, or other persons is reported to law enforcement and may be used to initiate the official investigative process.
- Restricted Reporting: Reporting option that allows sexual assault victims to confidentially disclose the assault to specified individuals (i.e., SARC/ VA, or healthcare personnel) and receive medical treatment, including emergency care, counseling, and assignment of a SARC or VA, without triggering an official investigation. This reporting is available for Service members and their adult dependents.

Sexual Harassment: A form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (as defined in DoDD 1350.2):

- Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career
- Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person
- Such conduct has the purpose or effect of reasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment

This definition emphasizes that workplace conduct, to be actionable as "abusive work environment" harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or offensive. ("Workplace" is an expansive term for Military members and may include conduct on or off duty, 24 hours a day). Any person in a supervisory or command position who uses or condones any form of sexual behavior to control, influence, or affect the career, pay, or job of a Military member or civilian employee is engaging in sexual harassment. Similarly, any Military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature in the workplace is also engaging in sexual harassment.

Social Media: DoD defines social media as web-based tools, websites, applications, and media that connect users and allow them to engage in dialogue, share information, collaborate, and interact.

Special Victims' Counsel (SVC) / Victims' Legal Counsel (VLC): Attorneys who are assigned to provide legal assistance in accordance with 10 U.S.C. § 1044e and Service regulations (as defined in DoDD 6495.01). The Army, Air Force, National Guard, and Coast Guard refer to these professionals as SVCs, while the Navy and Marine Corps refer to them as VLCs.

## **APPENDIX C: Retaliation Response Requirements for Key Personnel**

SARCs, VAs, and EOAs will be the primary points of contact and support for reporters of retaliation after reporting sexual assault and sexual harassment, addressing any retaliation reports that arise from the cases or complaints they manage. The most senior SARC at the installation, garrison, or comparable Department of Navy or NGB personnel and structure will support a unified retaliation response process within the Department.<sup>1</sup> Specifically, senior SARCs will serve as a resource to other SARCs, VAs, and EOAs, as needed and requested, serve as a liaison to communicate with command and legal advisors, and coordinate data collection.

SARCs, VAs, and EOAs will assist reporters with choosing the resolution process that meets their needs, filing a report with IG and/or MCIOs, accessing support services throughout the resolution process, and other services that might help to resolve allegations. The retaliation response role encompasses support to the actual reporter of sexual assault and sexual harassment, those who were military witnesses/bystanders, and first responders to the alleged crime or misconduct.

### Position Requirements: SARCs, VAs, and EOAs

- Completion of preparatory training from a variety of areas, including identification of retaliation, investigation referral, complaint processing, and Department special victim programs (e.g., sexual assault prevention and response, sexual harassment); such preparatory training could take the form of a certification process
- Engagement in alternative dispute resolution (EOAs only)
- Requisite skill in:
  - Identifying and addressing retaliation
  - Assisting reporters of crime with support and referrals to assistance resources
  - Advising others in promotion of healthy unit climates
  - Responding to reported violations of crime victims' rights

### Roles and Responsibilities (at a minimum): SARCs, VAs, and EOAs

- Educate reporters on the larger retaliation response process and the breadth of support services available
- Assist reporters with understanding their options in the complaint process and offer a pathway to support services
- Provide reporters with responsive, timely personalized support and regular updates
- Refer reporters to IG for assistance, when appropriate, and inform them about means to contact IG for case updates
- Assist reporters in resolving their allegations by referring them to the appropriate means of resolution (e.g. alternative dispute resolution, education, etc.)
- Support, as requested, those whose complaint resolution falls underneath IG or MCIOs
- Continue support for as long as the reporter requests support while in the military or until the matter has reached its final disposition
- At the reporter's request, may inform the reporter of available resources for filing an appeal to have the case reviewed by another authority, where appropriate and permitted by law
- Assist command with retaliation prevention efforts

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<sup>1</sup> See Appendix D for a full explanation of the Notional Retaliation Response Process.

- Reconcile data on a monthly basis with the senior SARC

Roles and Responsibilities (at a minimum): Senior SARCs

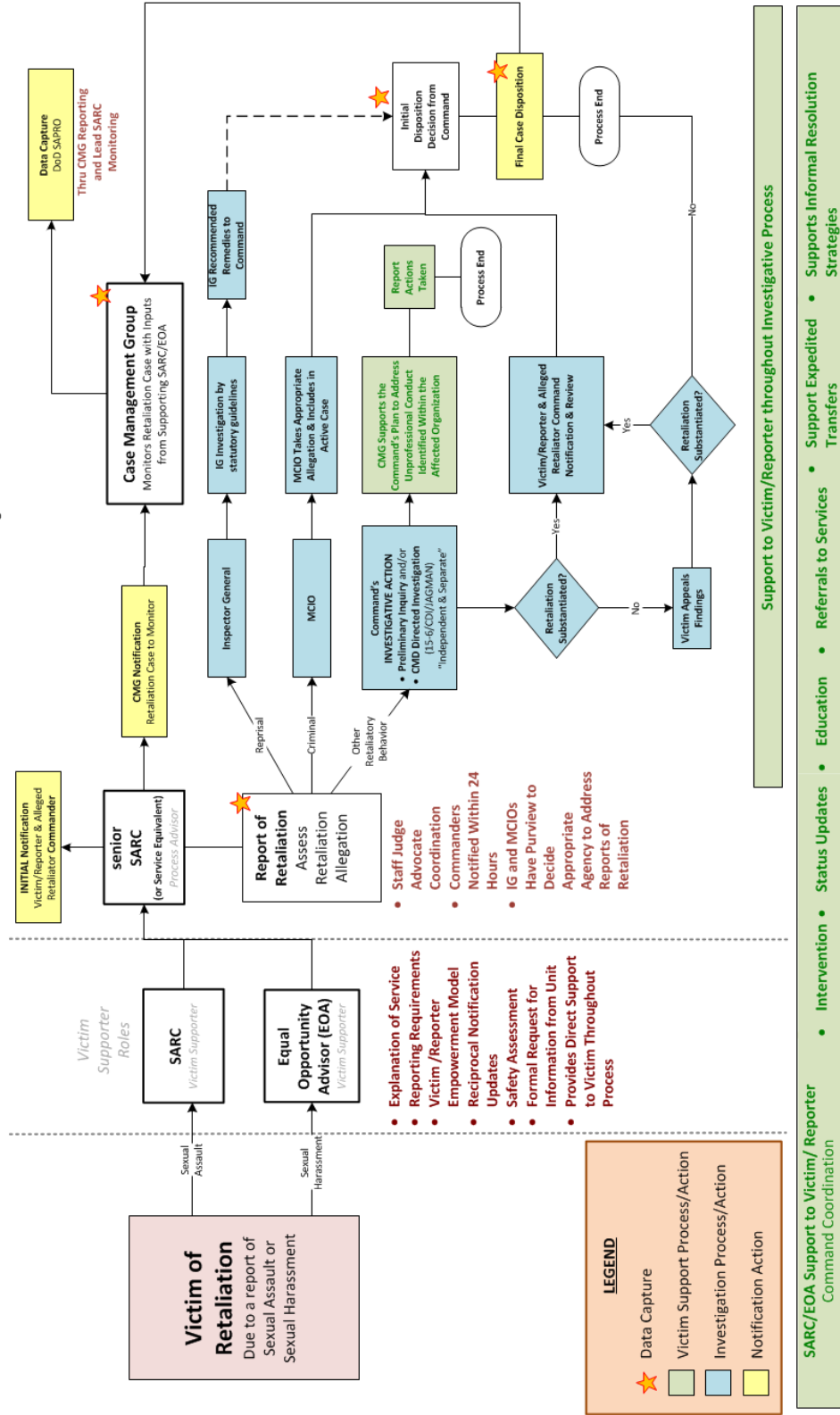
- Provide referrals and assistance as needed to SARCs, VAs, and EOAs working with reporters of retaliation, if needed and requested
- Work with command and others as appropriate to address the impact of retaliatory behavior on the command climate
- Provide updates to and seek support from commanders whose personnel are involved in a retaliation allegation
- Request reports of command action and case disposition from commanders as part of the CMG
- Seek consultative support from an SJA or other such legal entity as provided for in the senior SARC's respective Service regulations
- Capture and reconcile data associated with all efforts to address retaliation

Policy Requirements:

- Create policy to expand the SARC, VA, and EOA positions, their authorities, and the process for which they will be responsible
- Create policy for commanders to respond to requests for information, reports of command action, and/or case disposition from senior SARCs or EOAs
- Create data sharing and capture agreements with the MCIOs
- Request closed case data and case status updates from the Service and DoD IGs, to be provided at their discretion
- Develop an interim data capture, analysis, and reporting structure and initiate the creation of a centralized data system

# APPENDIX D: Notional Retaliation Response Process

## Notional Retaliation Response Process\*



\*Army SARCs/VAs will handle retaliation reports related to sexual assault and sexual harassment under their Sexual Harassment/Assault Response and Prevention program (SHARP)