



DoD Retaliation Prevention and Response Strategy Implementation Plan

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1. Introduction

The Department of Defense (DoD) Retaliation Prevention and Response Strategy (RPRS) outlined the following five issue areas that identified how the Department and the Military Services will prevent and respond to retaliation¹ related to reports of sexual assault or complaints of sexual harassment.

- Issue Area 1 – Standardizing Definitions
- Issue Area 2 – Closing the Gap in Knowledge
- Issue Area 3 – Building Strong & Supportive Systems of Investigation and Accountability
- Issue Area 4 – Providing Comprehensive Support to Reporters
- Issue Area 5 – Creating a Culture Intolerant of Retaliation

Each issue area addressed key opportunities where DoD and the Military Services can improve retaliation prevention and response efforts. Before the publication of the RPRS and this implementation plan, retaliation-related definitions varied across the Military Services. The Department could not consistently track retaliation reports² through disposition, which is necessary to fully understand the Department's response process and measure progress over time. There was no standardized process across the Military Services to support Service members who reported retaliation. Additionally, DoD needed improved survey questions on retaliation to better align with policy and law, as well as a consistent approach to prevent retaliation across the Department.

This plan details how DoD and the Military Services, to include the National Guard Bureau (NGB),³ will execute tasks in the identified issue areas and institutionalize a comprehensive and consistent approach to retaliation prevention and response across the Department. Moving forward, the Military Services will align their Service retaliation prevention and response strategic policies and plans with the RPRS and this implementation plan.

2. Methodology

Representatives from the Offices of the Secretary of Defense (OSD) including the Office of General Counsel (OGC), DoD Sexual Assault Prevention and Response Office (SAPRO), Office of Diversity Management and Equal Opportunity (ODMEO), Office of the Senior Advisor for Military Professionalism (SAMP), and the Service/Departmental Sexual Assault Prevention and Response (SAPR) offices established working groups to develop this implementation plan for each issue area in the RPRS. Each working group:

- Was co-led by OSD and Military Service/Departmental representatives
- Conducted stakeholder meetings to develop the solutions presented in this implementation plan
- Provided briefings to the other working groups at regular check-point meetings to discuss progress, identify outstanding issues/concerns, and determine agreements

¹ The term "retaliation" in this implementation plan refers to the various forms of misconduct described by the umbrella term of "retaliatory behavior" in Appendix B.

² The term "retaliation report" in this implementation plan is called a "retaliation complaint" by the DoD Inspector General (IG).

³ The Military Services includes the NGB for the remainder of the document.

Other key working group members included representatives from the Office of People Analytics (OPA),⁴ the DoD Inspector General (IG), Service IG offices, and relevant legal personnel. DoD SAPRO, as the action office for this effort, led and organized the check-point meetings and consolidated all identified tasks into this implementation plan. This collaborative approach generated stakeholder consensus to ensure the tasks presented in this plan can be implemented in an efficient and effective manner.

3. Solution Summary

The tasks identified in this implementation plan are designed to operationalize the solutions outlined in the RPRS. The solution summaries for each issue area respectively are:

- Standardizing Definitions – Develop and employ common definitions of retaliation across the Department to describe the full spectrum of retaliatory behavior
- Closing the Gap in Knowledge – Initiate a DoD standard for a data-driven approach to inform retaliation prevention and response mechanisms through a retaliation case tracking system, enhanced survey efforts, and regular program evaluation
- Building Strong and Supportive Systems of Investigation and Accountability – Develop a standard, comprehensive retaliation response process to ensure Service members have the means to report incidents of retaliation and obtain support throughout the resolution process, while holding offenders appropriately accountable
- Providing Comprehensive Support to Reporters – Use Sexual Assault Response Coordinators (SARCs), Sexual Assault Prevention and Response (SAPR) Victim Advocates (VAs), and Equal Opportunity Advisors (EOAs)⁵ to leverage the retaliation response process in order to facilitate a variety of support resources for Service member sexual assault victims, sexual harassment complainants, witnesses, bystanders, and first responders who are involved in a report of sexual assault or sexual harassment and subsequently report retaliation
- Creating a Culture Intolerant of Retaliation – Provide Service members, first responders, and leadership with additional education and tools to promote unit climates intolerant of retaliatory behavior, and develop procedures for holding leaders appropriately accountable

The reporting and response procedures established in this plan apply only to the populations covered by the RPRS. This includes Service members who reported sexual assault or sexual harassment and subsequently perceive retaliation, as well as uniformed witnesses, bystanders, and first responders related to those reports or complaints who also perceive some kind of retaliation for their involvement. In cases where a sexual assault victim perceives retaliatory behavior and originally filed a Restricted Report, the SARC or SAPR VA will inform the victim that formal action by the SARC and SAPR VA to assist the victim with perceived retaliatory behavior will be limited while the report remains restricted. Subsequently, victims will be informed they must convert to an Unrestricted Report if they desire SARC or SAPR VA assistance to move forward with a complaint or some other formal action. The RPRS and this

⁴ On October 1, 2016, the survey division within the Defense Manpower Data Center transitioned to the newly established Office of People Analytics (OPA).

⁵ Army SARCs/SAPR VAs will handle retaliation reports related to sexual assault and sexual harassment under their Sexual Harassment/Assault Response and Prevention (SHARP) program.

implementation plan applies to Service members only. DoD civilians are covered under separate policies and statutes.⁶

4. Task Descriptions

The following tasks, organized by issue area, identify and describe actions that DoD and the Military Services will take to implement the Plan of Action outlined in the RPRS. Many of these efforts have already begun in parallel to the development of this plan.

4.1 Issue Area 1 – Standardizing Definitions

The foundation of this implementation plan is standardized definitions of retaliation, reprisal, restriction, ostracism, and maltreatment. These terms and definitions provide a consistent understanding of these behaviors across the Military Services and will foster uniform prevention and response efforts across the Department. Using the newly created definitions (see Appendix B), the Military Services and DoD will continue to leverage a range of legally sound options to appropriately address and eliminate retaliatory behaviors. The definitions of retaliation are not limited to the context of sexual assault or sexual harassment, though the focus of the RPRS and this implementation plan is related to those contexts only.

4.2 Issue Area 2 – Closing the Gap in Knowledge

4.2.1 Create a Centralized Process to Track and Analyze Retaliation Reports and Outcomes

DoD SAPRO, in coordination with the ODMEO and the Military Services, will be responsible for collecting, analyzing, and reporting on data from all retaliation reports made by Service members related to sexual assault reports and sexual harassment complaints. Data on retaliation reports will allow the Department to measure reporting trends, assess response efforts, and guide future retaliation prevention and response initiatives. Collection procedures will be implemented in a three-phased approach:

- **Phase 1** – The first phase is comprised of data calls for DoD entities handling retaliation allegations associated with sexual assault and sexual harassment. This has already been implemented and adapted to provide data on a quarterly timeline starting in Fiscal Year (FY) 2017
- **Phase 2** – The next phase will position the most senior SARCs (or Service equivalent)⁷ as the central managers of data collection efforts for retaliation reports related to sexual assault. Senior/lead Equal Opportunity (EO) program representatives will manage data collection efforts for retaliation reports related to sexual harassment complaints

⁶ Allegations of reprisal or various forms of retaliation made by civilian employees are beyond the scope of the RPRS and this implementation plan. This implementation plan is designed to operationalize the RPRS, issued in April 2016, the scope of which was limited to the Service member population. Civilian employees seeking to report reprisal or various forms of retaliation allegations will follow procedures set forth in applicable DoD and Service-specific policies and law.

⁷ For the purpose of brevity, whenever this implementation plan references a senior SARC, the meaning includes the equivalent Department of Navy and National Guard personnel. In accordance with DoDI 6495.02, the most senior SARC, who may be 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 and certified personnel, as identified by each Service, can perform the role of a SARC for deployed units.

- Phase 3 – The final phase will require the Defense Sexual Assault Incident Database (DSAID) to be modified to function as a long-term retaliation data collection solution and system of record for retaliation reports related to reports of sexual assault. Sexual harassment complaints will be managed in the Military Services' sexual harassment data case file management systems

Phase 1 – Develop and Implement Data Calls for DoD Entities Handling Retaliation

The initial data calls for FY 2014, 2015, and 2016 are complete. DoD will continue to issue data calls in accordance with this implementation plan and Section 543 and Section 545 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017. Per Section 543, these data calls will include, at a minimum, information on each claim of retaliation in connection with a report of sexual assault in the Military Services made by or against a member of the Military Services as follows:

- A narrative description of each complaint
- The nature of such complaint, including whether the complainant claims professional or social retaliation
- The gender of the complainant
- The gender of the individual claimed to have committed the retaliation
- The nature of the relationship between the complainant and the individual claimed to have committed the retaliation
- The nature of the relationship, if any, between the individual alleged to have committed the sexual assault concerned and the individual claimed to have committed the retaliation
- The official or office that received the complaint
- The organization that investigated or is investigating the complaint
- The current status of the investigation
- If the investigation is complete, a description of the results of the investigation, including whether the results of the investigation were provided to the complainant
- If the investigation determined that retaliation occurred and whether the retaliation was an offense under Chapter 47 of Title 10, United States Code (the Uniform Code of Military Justice (UCMJ))

The retaliation data call templates consist of two portions (in spreadsheet format):

- The first captures data specific to retaliation allegations discussed at sexual assault Case Management Group (CMG)⁸ meetings
- The second captures the same data elements as the CMG template but includes additional data points specific to reports investigated by the Inspector General (IG), Military Criminal Investigation Organizations (MCIOs), or command

The Military Services distribute the data call templates to the SARCs and EOAs at each installation, who subsequently gather the data. In FY 2015, DoD began publishing the analysis and data results in the *Annual Report on Sexual Assault in the Military*.

⁸ The Military Services may organize an equivalent meeting to address retaliation related to complaints of sexual harassment to meet the requirement prescribed in the RPRS and this implementation plan.

In FY 2016, DoD expanded the retaliation data call to more fully assess reporting trends. The DSAID and/or investigation number for the sexual assault report (or sexual harassment complaint unique identifier) associated with each retaliation report is now captured on the data collection template in order to accurately track the life-cycle of reports that are referred to secondary bodies (e.g., a report discussed at the CMG that is referred to the Service IG for investigation). In FY 2017, the Military Services will submit retaliation data on a quarterly basis to DoD SAPRO to facilitate Congressional reporting as required by Section 543 and leadership oversight. The Military Services and NGB SAPR offices will continue to coordinate the compilation of the retaliation data call through the SARCs and EOAs until Phase 3 is implemented.

Phase 2 – Position the Senior SARC as Central Manager of Data Collection

In Phase 2, the Department will continue to use the data call established in the previous phase. However, the senior SARC will be positioned as the central data manager for all retaliation report data related to reports of sexual assault from uniformed victims, witnesses, bystanders, and first responders. Senior/lead EO program representatives will manage data for all retaliation reports related to sexual harassment complaints from uniformed complainants, witnesses, bystanders and first responders and will notify the senior SARC of the retaliation report.⁹ Specifically, the senior SARC will be responsible for:

- Submitting the completed retaliation data call to his/her respective Service Headquarters SAPR offices
- Collecting non-IG investigative and disposition data on retaliation reports related to sexual assault reports from investigative entities
- Coordinating with senior/lead EO program representatives to collect investigative and disposition data on retaliation reports related to sexual harassment complaints
- Collecting the written results of the investigation from the appropriate entities, including whether the complaint was substantiated, unsubstantiated, or dismissed. The senior SARC will deliver those written results to the victim
- Briefing all retaliation reports involving sexual assault and sexual harassment at the CMG, unless the investigation is under the jurisdiction of the IG or the discussion may compromise the integrity of the investigation by the MCIO or law enforcement

Commanders will designate a senior/lead EO program representative at each installation (or Service equivalent) to coordinate with the senior SARC for all reports of retaliation subsequent to complaints of sexual harassment. The senior SARC will use the retaliation data call to capture retaliation data relating to reports of sexual assault until Phase 3 is complete. The senior/lead EO program representative will notify the senior SARC of a retaliation report relating to complaints of sexual harassment and will use the retaliation data call to capture retaliation data.¹⁰ The senior/lead EO program representative will send the completed spreadsheets to the senior SARC, who will compile all retaliation data into a consolidated response and submit it to the Service SAPR offices and then to DoD SAPRO for inclusion in the *Annual Reports to Congress on Sexual Assault in the Military*, as required by Section 543 of NDAA FY 17.

⁹ In the event that a Service member reports retaliation subsequent to filing both a complaint of sexual harassment and a report of sexual assault, the SARC will work with the EOA to determine the appropriate data capture.

¹⁰ The Military Services will ensure any necessary updates to the Privacy Act System of Records Notice (SORN) are made to support this requirement.

The senior SARC and the senior/lead EO program representative will add reports of retaliation to the retaliation data call spreadsheets when it involves an allegation under investigation by an MCIO, Service IG, or command, or is addressed through other command action.¹¹ DoD SAPRO will work with DoD IG to determine the process to collect retaliation data concerning allegations under investigation or oversight of DoD IG.

Phase 3 – Modify DSAID to be Central Data Repository

The final phase of the retaliation data collection effort is to modify DSAID by developing a retaliation-specific module to track all retaliation reports relating to a report of sexual assault. The goal is for DSAID to become the sole source of retaliation data for the *FY 2019 Annual Report to Congress on Sexual Assault in the Military*. The retaliation reporting module will allow SARCs to document retaliation cases in DSAID for sexual assault reporters as well as uniformed witnesses, bystanders, and first responders related to a sexual assault report. The process maps for intake of retaliation after a report of sexual assault (see Appendix C) illustrate the retaliation reporting process and the points to open a retaliation case in DSAID. The maps differentiate two separate processes – one for a reporter going directly to a SARC or SAPR VA and another for a reporter going directly to an investigative entity, such as an MCIO or law enforcement.

Data calls and Congressional reporting requirements will inform the design of the retaliation reporting module. DoD SAPRO and the Military Services will review and modify policies to reflect the process maps of Appendix C as well as the processes developed during the concept design phase. The Military Services will then report the results of this review, including timelines for updating internal policies, to DoD SAPRO. DoD SAPRO will work with DoD IG to determine the process of collecting retaliation data from DoD IG and Military Service IGs.

When the Military Services' sexual harassment data case file management systems become the system of record for retaliation data related to sexual harassment complaints, the senior/lead EO will be responsible for documenting reports of retaliation in the appropriate Military Service sexual harassment data system. This individual will also notify the senior SARC when there is an allegation of retaliation relating to a sexual harassment complaint to be briefed at the CMG. The process maps for intake of retaliation after a complaint of sexual harassment (see Appendix C) illustrate the retaliation reporting process and points to open a retaliation case in the sexual harassment data case file management systems. The maps differentiate two separate processes – one for a reporter going directly to an EOA and another for a reporter going directly to an investigative entity, such as an MCIO or law enforcement.

ODMEO will leverage a planned data warehouse to capture aggregate retaliation reports related to complaints of sexual harassment. Once this capability is functioning, it may eliminate a coordination requirement between the senior SARC and senior/lead EO program manager with

¹¹ For purposes of the retaliation data call, if retaliation allegations are investigated or result in action by commanders, it does not necessarily mean that the retaliation allegations were substantiated. The action captured by this data call is intended to demonstrate that a commander can act on a complaint of retaliation even when not substantiated or when culpability may not be proven or attributed to a particular individual. Commanders may choose to take action on such cases to reinforce acceptable behaviors among the unit and ensure good order and discipline.

the exception of CMG case briefings, as the planned data warehouse will interface with DSAID to track all retaliation data as a future enhancement.¹²

4.2.2 Improve Existing Survey Questions on Retaliation to Inform Prevention and Response Efforts

Update OPA Surveys and Focus Group Protocols

DoD SAPRO and OPA worked closely with the Military Services and other DoD stakeholders in FY 2015 to design behaviorally-based questions, consistent with Secretary of Defense directives prohibiting retaliatory behaviors, and gain a greater understanding of individuals' perceptions across a range of retaliatory behaviors. The resulting metric measured the negative behaviors respondents perceived after reporting a sexual assault. This metric also accounted for the experiences of the respondents that aligned with prohibited actions of reprisal, ostracism, and maltreatment under the Uniform Code of Military Justice (UCMJ) and/or military policies and regulations. The Department piloted this metric in the *2015 Workplace and Gender Relations Survey of Reserve Component Members* and the *2015 Military Investigation and Justice Experience Survey (MIJES)*.

DoD SAPRO and OPA also fielded the *QuickCompass Survey of SAPR-Related Responders (QSAPR)* in 2015, which assessed the opinions of SARCs on the effectiveness of CMG meetings in identifying issues of retaliation against a Service member who has made a report of sexual assault, as well as retaliation against witnesses, bystanders, and SAPR first responders related to those reports. Additional surveys of SAPR personnel will be administered, as needed, to assess the perceptions of SARCs and VAs on this issue.

DoD SAPRO and OPA incorporated a number of revisions to the retaliation metric for the *2016 MIJES* and *2016 Workplace and Gender Relations Survey of Active Duty Members (WGRA)* to capture further items of interest while ensuring alignment with DoD Policy. The *2016 WGRA* and *2016 MIJES* included additional questions to assess if the retaliatory behaviors impacted whether or not the respondent continued to participate in a report of sexual assault and to capture any relationship between the alleged retaliator and the alleged perpetrator identified in the report of sexual assault.¹³ The *2016 MIJES* asked an additional question to assess whether the respondent agreed to bring his/her allegation to a CMG. The survey questions and focus group protocols must continue to align with new or updated Departmental policies. Therefore, DoD SAPRO and OPA will continue to revise the retaliation metrics, as necessary, prior to administering each future survey.

Update Defense Equal Opportunity Management Institute (DEOMI) Organizational Climate Survey (DEOCS)

In 2016, DoD SAPRO worked with DEOMI to revise the questions regarding retaliation on the DEOCS. These questions focused on unit climate and Service members' perceptions of their

¹² Any update or modification to DSAID may require a SORN, in accordance with 5 U.S.C. 552a(e)(4); 5 U.S.C. 552a(5); see OMB Circular A-130, Appendix I, 4(c), and the Privacy Act of 1974.

¹³ Use of the terms "victim," "perpetrator," and "retaliator" include all those involved in allegations of retaliation, sexual assault, and/or sexual harassment. These terms do not convey any presumption about the guilt or innocence of the alleged offenders, nor does the term "retaliation" substantiate the occurrence of a retaliation incident.

environment rather than the aforementioned perception of retaliation. When asking about how Service members are likely to be treated after reporting sexual assault or sexual harassment, the DEOCS identifies several perceived undesirable outcomes, ranging from exclusion from social interaction to denial of career opportunities. These provide some insight into Service member opinions regarding the overall reporting climate within their unit for retaliation related to sexual assault reports. DoD SAPRO and DEOMI will continue to work together to update questions on the DEOCS as necessary to understand the relationship between unit climate and retaliatory behaviors.

4.2.3 Evaluate Retaliation Prevention and Response Effectiveness

Conduct Annual Review

DoD will include an assessment of the metrics (see Appendix D) to evaluate the efforts of the Department to prevent and respond to retaliation in the *Annual Reports to Congress on Sexual Assault in the Military*, to include elements of the RPRS and to implement Section 545 of the NDAA FY 2017. The assessment will provide a greater understanding of the type of retaliation experienced by Service members and track trends over time.

The retaliation efforts to be measured will include:

- Retaliation Reporting Systems¹⁴
- Retaliation Response Process¹⁵
- Reporter Protections
- Retaliation Prevention Efforts
- Feedback on the Retaliation Response Process
- Outreach
- Training

Similar to how the metrics are presented in the *Annual Reports to Congress on Sexual Assault in the Military*, each will include a description, implication, source, and any necessary summary points and/or notes to explain the results. Metric adjustments may be necessary once the RPRS is implemented. DoD SAPRO and ODMEIO will continually monitor whether the metrics provide sufficient information for DoD to assess the RPRS and make adjustments as needed, with concurrence from the Military Services. Current questions from the DoD annual report data call to the Military Services will inform the assessment of the Services' prevention and outreach materials and training. As the Military Services fully implement their outreach and training efforts, additional metrics to evaluate prevention, outreach, and training may be developed.

Review after 3 Years of Implementation

The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) will submit a report to the Secretary of Defense by September 30, 2020 with a complete assessment of the RPRS. This document will include an examination of the Department's progress against program metrics and non-metrics. This report will also specify any modifications in authorities, structure, or processes of the retaliation prevention and response efforts required.

¹⁴ The reporting systems metrics convey information on the allegations of retaliation.

¹⁵ The retaliation response process metrics convey information on the response to those allegations.

4.3 Issue Area 3 – Building Strong and Supportive Systems of Investigation and Accountability

4.3.1 Develop a Comprehensive Retaliation Response Process

This implementation plan outlines detailed retaliation response procedures for SARCs, SAPR VAs, and EOAs to provide optimal support to Service member sexual assault victims and sexual harassment complainants, as well as uniformed witnesses, bystanders, and first responders who report retaliation subsequent to a report of sexual assault or sexual harassment (see Appendix E).

Procedures for Sexual Assault Report-Related Retaliation

If a Service member who reported a sexual assault perceives retaliation subsequent to his/her report, or a uniformed witness, bystander, or first responder perceives retaliation related to a report of sexual assault, they may seek support from a SARC or SAPR VA. They can also report to the IG, an MCIO, or command for investigation or other appropriate action. SARCs and SAPR VAs will inform individuals that they may seek information or guidance on reporting options for retaliation from an IG, which may range from a consultation to filing a complaint. SARCs and SAPR VAs will also inform individuals that they may seek legal advice about their reporting options from a Special Victims' Counsel (SVC), Victims' Legal Counsel (VLC), or a legal assistance attorney, as appropriate.

Those advising retaliation reporters related to sexual assault should be made aware that DoD regulations state that no person will prevent or attempt to prevent a current Service member from making or preparing to make a lawful communication to a member of Congress or an IG. To avoid this potential situation, those advising reporters should be mindful of the fact that directing a person to an IG is an appropriate option in all instances. Reporters should not be discouraged from contacting an IG under any circumstances.

DoD Instruction (DoDI) 6495.02 "SAPR Program Procedures" outlines the implementation procedures of DoD's SAPR program, including procedures for SARCs and SAPR VAs, CMG meeting requirements, SAPR training for all DoD personnel, and the management of DSAID. DoDI 6495.02 will be modified to incorporate the procedures outlined in Appendix E of this plan.

Additionally, SARCs and SAPR VAs training core competencies and learning objectives (see Appendix F) will be updated to equip SARC and SAPR VAs with the knowledge to assist individuals who want to report allegations of retaliation.

Procedures for Sexual Harassment Complaint-Related Retaliation

If a Service member sexual harassment complainant perceives subsequent retaliation or a uniformed witness, bystander, or first responder related to the complaint of sexual harassment perceives retaliation, they may seek support from an EOA. Individuals can also report to the IG, an MCIO or to command for investigation, or other appropriate command action. DoD Directive (DoDD) 1350.2 "DoD Military Equal Opportunity (MEO) Program" outlines the implementing procedures of the Department's MEO program, including procedures for EOAs and EO training for all DoD personnel. DoDD 1350.2 will be updated to incorporate the procedures outlined in Appendix E of this plan.

EOAs will inform individuals that they may seek information or guidance on reporting options for retaliation from an IG, which may range from a consultation to filing a complaint. EOAs will also

inform individuals that may seek legal advice about their reporting options from a legal assistance attorney, as appropriate.

As with other SAPR personnel, EOAs advising retaliation reporters should be made aware that DoD regulations state that no person will prevent or attempt to prevent a current Service member from making or preparing to make a lawful communication to a member of Congress or an IG. Furthermore, EOAs advising reporters should be mindful of the fact that directing a person to an IG is an appropriate option in all instances, and that reporters should not be discouraged from contacting an IG under any circumstances.

EOA training core competencies and learning objectives (see Appendix F) will be revised to equip EOAs with the knowledge to assist individuals who want to report allegations of retaliation and reflect their new responsibilities.

4.3.2 Strengthen Accountability

Commanders are responsible for maintaining the good order and discipline of their respective organizations and for ensuring that all personnel under their authority are treated with dignity and respect. This responsibility includes appropriately addressing retaliatory behaviors against a Service member victim, complainant, witness, bystander, or first responder involved in a report of sexual assault or complaint of sexual harassment.

Pursuant to Title 10, U.S. Code, Section 1034, as implemented by DoDD 7050.06, "Military Whistleblower Protection," only IGs are authorized to investigate complaints or allegations of reprisal or restriction. If commanders believe that a complaint alleges restriction or reprisal/retaliation, they should contact their local IG for guidance.

A range of options currently exists to assist commanders in handling such reports and, if the reports are founded, holding alleged offenders appropriately accountable for their behavior. The Military Services, in collaboration with DoD, will develop standardized educational materials to inform commanders on how to hold individuals appropriately accountable. These materials will also address online behavior so commanders can appropriately respond to retaliatory activities involving social media.

4.3.3 Improve Social Media Policy

The use of social media, texting, and e-mailing to engage in retaliatory behavior is a form of online misconduct that undermines good order and discipline of the organization. The Military Services will modify their respective social media policies to prohibit retaliatory behavior as defined and outlined in this plan (see Appendix B). Furthermore, the Military Services and NGB will incorporate updates to existing Service social media policies in their SAPR training and education programs. This will include information about UCMJ violations, as well as an overview of DoD or Service policy or regulations with regard to improper use of social media.

4.4 Issue Area 4 – Providing Comprehensive Support to Reporters

4.4.1 Create a System of Support

The retaliation response procedures (see Appendix E) explain how SARCs, SAPR VAs, and EOAs will provide comprehensive support to individuals alleging retaliation. Senior SARCs will serve as a resource to SARCs, SAPR VAs, and EOAs when requested. These procedures will

establish a retaliation response process to address the impact of retaliatory behavior and facilitate the exchange of information between the reporters, investigative entities, and/or command, which will assist with providing responsive and personalized support.

Service member sexual assault victims who made an Unrestricted Report may always request an expedited transfer if they believe that the transfer will assist with their recovery, per DoDI 6495.02. In granting such transfers, the Military Services will also recognize that such moves may be approved in accordance with DoD policy to remove victims from sources of perceived retaliation. While DoDI 6495.02 is not applicable to uniformed sexual harassment complainants, commanders have discretion to direct interim measures, orders, and/or remedies to accommodate sexual harassment complainants alleging retaliation, when requested by the complainant. With the advice and counsel of the servicing Staff Judge Advocate (SJA) or counsel's office, commanders may consider interim measures, remedies, and accommodations such as transferring the complainant and/or the alleged offender, authorizing temporary reassignments pending the outcome of the investigation, and/or directing other administrative actions available to commanders at the appropriate levels.

4.4.2 Generate Retaliation Response System Awareness

The retaliation response procedures also explain how SARC, SAPR VAs, and EOAs will provide information regarding the definitions of retaliation and the responsible investigative entities regarding retaliatory behavior. To support this requirement, the Military Services will develop educational materials on retaliation to provide to sexual assault reporters and sexual harassment complainants at the time of their initial inquiry. Content in the educational materials will include:

- The definitions and types of retaliation (see Appendix B)
- The investigative entities and the types of retaliation that fall under their jurisdiction
- The support services a SARC, SAPR VA, or EOA can provide in the retaliation response process (see Appendix E)
- The role of the SVC/VLC or other legal assistance attorney in the retaliation response process

4.4.3 Address Crime Victims' Rights

An individual who has suffered direct physical, emotional, or financial harm, as a result of the commission of an offense under the UCMJ or a violation of existing policy or regulation, is entitled to various Crime Victim's Rights, commonly referred to as Article 6b rights or rights afforded under 18 U.S. Code, Section 3771.¹⁶ Victims of crime (whether the crime is sexual assault or a criminal form of retaliation) who believe their Article 6b rights have been violated should be advised to consult with an SVC/ VLC or a legal assistance attorney.

4.4.4 Extend Pre-Administrative Separation General or Flag Officer Review

DoDI 6495.02 gives Service member sexual assault victims the opportunity to request a review from a general or flag officer (G/FO) if they experience retaliation, reprisal, restriction, ostracism, or maltreatment involving an administrative separation within one year of the final disposition of their sexual assault case.¹⁷ Sexual assault victims also have the right to communicate with a

¹⁶ Article 6b rights references Article 6b of the UCMJ.

¹⁷ DoDI 6495.02, Enclosure 4, 7.g.

G/FO if they believe there were other impacts to their military career because they reported a sexual assault.¹⁸ DoDI 6495.02 will be updated to provide this same protection to uniformed witnesses, bystanders, and first responders involved in a sexual assault report. SARCs/SAPR VAs will notify these personnel of this policy provision.¹⁹

Service members who allege retaliation associated with filing a sexual harassment complaint, or being a uniformed witness, bystander, or first responder related to the sexual harassment complaint, will be afforded the opportunity to communicate with a G/FO 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. EOAs will notify Service member complainants of sexual harassment as well as uniformed witnesses, bystanders, and first responders, of this policy provision. DoDD 1350.2 will be modified²⁰ to provide these protections to Service member sexual harassment complainants, as well as uniformed witnesses, bystanders, and first responders involved in a sexual harassment complaint.²¹

4.5 Issue Area 5 – Creating a Culture Intolerant of Retaliation

4.5.1 Prepare the Supervisors and First Responders

Core Competencies and Learning Objectives

As a method of delivering prevention strategies to the Military Services, training will be a key component to ensure Service members recognize retaliatory behavior and are equipped with tools and knowledge to better address and prevent it. This plan provides a concise, standardized listing of critical themes, core competencies, and learning objectives that should be interwoven into existing sexual assault and sexual harassment prevention and response curricula, respectively, for the following education/training audiences: Department-wide Annual/Refresher Training and Pre-Command Course / Senior Enlisted Leader Courses (see Appendix F).

Requirements for Supervisory Training

Supervisors and leaders will receive additional training and education on the retaliation response process in pre-command, supervisory, or senior enlisted professional military education courses of instruction. Additionally, leaders of units or organizations should conduct a DEOCS, as well as receive a block of education on this assessment tool and be instructed on how to use it to identify and resolve retaliatory issues/behaviors in their units/organizations.

4.5.2 Promulgate Guidance and Accountability Practices for Leadership

DoD, the Military Services, and the NGB will adjust existing SAPR and MEO policies and/or issue new policy, as required, to enhance retaliation prevention and response education by using adult learning theory-based training for military and civilian supervisors, first responders, and Service members.

¹⁸ DoDI 6495.02, Enclosure 2, 6.v.(4).

¹⁹ Service members also have a statutorily protected right to communicate with an IG regarding perceived impacts upon their career and other matters relating to complaints.

²⁰ DoD RPRS, Section 4.4, page 22.

²¹ Service members have a statutorily protected right to communicate with an IG regarding perceived impacts upon their career and other matters relating to complaints.

Promulgate Guidance

The Military Services will update all policies to address retaliation prevention-focused activities. They should reference the *2014-2016 DoD Sexual Assault Prevention Strategy* before updating any policy related to preventing retaliation after a report of sexual assault or complaint of sexual harassment.

Leadership Accountability Practices

The Military Services will establish leadership accountability practices regarding retaliation prevention and response to hold commanders appropriately accountable for their behavior and command climate. Periodic feedback on progress through formal tactics, such as counseling and informal mentorship, will be used to emphasize subordinate leader accountability.

Accountability through Assessment

Commanders will use the DEOCS to better understand Service member perceptions and experiences regarding retaliation related to sexual assault and sexual harassment. They will use the results to develop a plan of action to address command climate issues and out-brief their higher-level command. This plan will be periodically assessed to increase programmatic accountability for leadership in creating a climate intolerant of retaliation.

4.5.3 Promote Misconduct Reporting and the New Response System

Strategic Communications Efforts

The Military Services and NGB will develop and provide strategic communications guidance to educate Service members on retaliatory behaviors and clearly message and explain the retaliation response process. Communications plans should include requirements to achieve the following:

- Emphasize that reporting of any alleged crime or violation should be encouraged and free from concerns of retaliatory behavior
- Socialize the retaliation response process designed to help those who report experiencing retaliatory behavior
- Establish that those who report complaints of retaliatory behavior and related misconduct will be taken seriously, treated fairly, and provided with resources
- Reinforce the concept that ending retaliatory behavior is crucial to effectively addressing sexual assault and sexual harassment in the military
- Emphasize the Department's commitment to reinforcing a just and respectful culture intolerant of retaliatory behavior. Service members reporting sexual assault or sexual harassment should be able to do so without the fear of retaliatory behavior by their peers or leadership

Where appropriate, the Military Services and NGB will modify applicable online resources, to include strategic communications on the aforementioned elements related to retaliation reporting.

Safe Helpline, Military OneSource, and IG Resources

The Department will expand available retaliation prevention and response resources through the DoD Safe Helpline and Military OneSource. The DoD IG will also expand its website, including the DoD Hotline, to address reports of retaliation related to sexual assault and sexual harassment.

5. Resource and Manning Requirements

The Secretaries of the Military Departments, Chief of the NGB, DoD SAPRO, ODMEO, and the DoD IG will perform respective needs analyses with regard to resourcing and manning of this plan. Needs analyses must consider current gaps as well as anticipated future needs to meet the requirements of the implementation plan. Key areas of focus will include, but will not be limited to:

- Implementation of new retaliation prevention and response training requirements for:
 - First responder personnel (e.g., SARCs, SAPR VAs, and EOAs)
 - SVCs/VLCs and legal assistance attorneys
 - Investigative personnel (e.g., Service IGs, MCIOs, and law enforcement)
 - Commanders at all levels
 - All Service members
- Identification of any manning increases in first responder, legal, and/or investigative personnel
- Modification of DSAID
- Development of new and/or updates to existing policy
- Development and dissemination of strategic communications on retaliation prevention and response (e.g., awareness campaigns)
- Projection for recommended future funding needs (Program Objective Memoranda)

6. Projected Risks/Mitigation Strategies

The risks presented below were identified while developing the tasks outlined in this plan. They consist of major activities or actions that could impact other tasks and/or ultimately delay the implementation of this plan. Associated strategies were developed to mitigate these risks and will be employed when/if needed. Each of the following risks will be closely monitored throughout the implementation process. The types of risks include:

- Policy: Directed policy modifications
- Process: Changes in policy that require a significant change to the processes as depicted in Appendices C and E
- Technology: Modification to an existing technology or development of new technology
- Resources: Changes or additions to current financial requirements

| # | Risk Description | Type | Mitigation Strategy |
|---|--|------------------------|---|
| 1 | Changes to retaliation definitions will alter survey questions and focus group protocols | Policy | DoD SAPRO and OPA will continually assess the annual survey questions and focus group protocols to ensure that DoD's data reflects policy and law while providing as much trend data as possible. |
| 2 | Developmental delays for the planned MEO data | Technology / Resources | ODMEO will work closely with stakeholders to develop requirements to efficiently enhance the |

| # | Risk Description | Type | Mitigation Strategy |
|---|---|----------------------|--|
| | warehouse | | DoD-level warehouse in a timely manner. |
| 3 | Process challenges involving the MEO data warehouse | Process / Technology | DoD SAPRO and ODME0 will coordinate during the development process to guarantee consistent reporting and interface capabilities. |
| 4 | Delays for the planned DSAID retaliation module development | Technology | DoD SAPRO will work closely with stakeholders to develop requirements to efficiently enhance DSAID in a timely manner. |
| 5 | Delays in policy modifications would hinder the implementation of the retaliation response process as well as delay required updates to education and training materials and programs | Policy / Process | DoD SAPRO will leverage the SAPR Integrated Product Team (IPT) to monitor implementation of policy changes. |

7. Governance

The SAPR Strategy IPT will serve as the governing body to oversee timely implementation and execution of the RPRS and this implementation plan. SAPR Strategy IPT members include key stakeholders from OSD, the Military Services, and Departmental offices who collaborated to develop the RPRS and implementation plan, including DoD SAPRO, ODME0, DoD IG, OSD OGC, the Military Services, and NGB. Retaliation prevention and response pertaining to reports of sexual assault and/or complaints of sexual harassment will be an enduring focus area for the SAPR Strategy IPT.

8. Implementation Schedule

The following schedule lists the tasks described in this plan along with the assigned task number, type categorization, offices of primary responsibility (OPR), and projected completion dates. All completion dates correspond to the end of the identified FY (30 September). Each date is notional and dependent on funding and resource availability. The identified task categories are as follows:

- Policy: Directed policy modifications
- Process: Changes in policy that require a significant change to the processes as depicted in Appendices C and E
- Technology: Modification to an existing technology or development of a new technical solution
- Data Collection: Enhancements to current data collection efforts
- Education: Additions to training or new educational materials

| Task Number | Major Tasks | Task Type | OPRs | FY Completion Date (Notional) |
|-------------|--|-----------|--|-------------------------------|
| 1.0 | Incorporate new retaliation definitions into appropriate DoD and Military Services policy and regulations. | Policy | OGC, USD (P&R), Military Services, NGB | 2017 |
| 2.0 | Improve existing retaliation | Data | DoD SAPRO, | 2016 (complete) |

| Task Number | Major Tasks | Task Type | OPRs | FY Completion Date (Notional) |
|--------------------|---|-------------------------------|-----------------------------------|--------------------------------------|
| | survey questions to inform prevention and response efforts. <ul style="list-style-type: none"> • Revise OPA surveys and focus group protocols • Revise DEOCS to better focus retaliation questions | Collection | OPA, DEOMI | |
| 2.1 | Issue and complete data calls to collect retaliation data. | Data Collection | DoD SAPRO, Military Services | 2016 (complete) |
| 2.2 | Update instructions of the retaliation data call to position the senior SARCs as the central managers of retaliation data collection. | Process / Data Collection | DoD SAPRO, Military Services, NGB | 2017 |
| 2.3 | Review and update appropriate DoD and Military Services policy and regulations to enforce the retaliation report intake process and use of the retaliation module in DSAID. <ul style="list-style-type: none"> • Assess current policies • Modify DoDI 6495.02 based on assessment • Modify Service policies based on assessment | Policy / Process / Technology | DoD SAPRO, Military Services, NGB | 2017 |
| 2.4 | Review and update appropriate DoD and Military Services policy and regulations to enforce the retaliation report intake process and use of the MEO sexual harassment retaliation case management system of record. | Policy / Process / Technology | ODMEO, Military Services, NGB | 2017 |
| 2.5 | Modify annual report requirements in DoDI 6495.02 to include retaliation prevention and response effectiveness. | Policy | DoD SAPRO | 2017 |
| 2.6 | Complete the concept design report. | Technology | DoD SAPRO, Military Services, NGB | 2017 |
| 2.7 | Enhance MEO sexual harassment retaliation case management requirements and system of record and establish interface with DSAID. | Technology | ODMEO | 2019 |
| 2.8 | Modify DSAID to be the central | Technology | DoD SAPRO | 2019 |

| Task Number | Major Tasks | Task Type | OPRs | FY Completion Date (Notional) |
|--------------------|--|--------------------|--|--------------------------------------|
| | repository for retaliation data (develop, test, and launch retaliation module). | | | |
| 2.9 | Conduct a three year assessment to measure the effectiveness of the RPRS implementation. | Data Collection | DoD SAPRO, ODMEO, Military Services, NGB | 2020 |
| 3.0 | Update SARC and SAPR VA training core competencies and learning objectives to reflect the retaliation response process. | Education | DoD SAPRO, Military Services, NGB | 2017 |
| 3.1 | Modify SARCs and SAPR VA roles and responsibilities, CMG meetings procedures, training, and DSAID procedures in DoDI 6495.02 to include the retaliation response process. | Policy / Process | DoD SAPRO, Military Services, NGB | 2017 |
| 3.2 | Develop EOA training core competencies and learning objectives to reflect the retaliation response process. | Education | ODMEO, Military Services, NGB | 2018 |
| 3.3 | Improve social media policies and education. <ul style="list-style-type: none"> Revise social media policies to specifically prohibit retaliatory behavior according to the retaliation definitions Modify existing social media policies in SAPRO training and education programs | Policy / Education | Military Services, NGB | 2018 |
| 3.4 | Develop education materials to familiarize Service members with retaliation processes and procedures. | Education | Military Services, NGB | 2018 |
| 3.5 | Draft EOA roles and responsibilities, CMG meetings procedures, training, and database procedures in DoDD 1350.2 to include the retaliation response process. | Policy / Process | ODMEO, Military Services, NGB | 2019 |
| 4.0 | Modify DoDI 6495.02 to provide uniformed witnesses, bystanders, and first responders with the option to request a review from a general | Policy | DoD SAPRO, OGC | 2017 |

| Task Number | Major Tasks | Task Type | OPRs | FY Completion Date (Notional) |
|--------------------|--|------------------------|--------------------------------|--------------------------------------|
| | or flag officer for sexual assault related instances of retaliation. | | | |
| 4.1 | Modify DoDD 1350.2 to provide uniformed sexual harassment complainants and uniformed witnesses, bystanders and first responders with the option to request a review from a general or flag officer for sexual harassment related instances of retaliation. | Policy | ODMEO, OGC | 2017 |
| 4.2 | Develop educational materials to provide to sexual assault reporters and sexual harassment complainants at the time of a retaliation inquiry. | Process / Education | Services, NGB | 2017 |
| 5.1 | Expand available retaliation prevention and response resources through DoD Safe Helpline. | Education | DoD SAPRO | 2016 (complete) |
| 5.2 | Develop broad strategic communications to educate and message retaliation prevention and response policies, processes, and desired outcomes. | Education | Services, NGB | 2017 |
| 5.3 | Develop supervisor/leader-specific training for pre-command, supervisory, or senior enlisted advisor development courses on the retaliation response process. | Education | Services, NGB | 2017 |
| 5.4 | Update Annual/Refresher and Pre-Command/Senior Enlisted Leader training core competencies and learning objectives to reflect the retaliation response process. | Education | DoD SAPRO, Services, NGB | 2017 |
| 5.5 | Modify existing policies and/or issue new policies to enhance retaliatory behavior prevention and response education for military and civilian supervisors, first responders, and Service members. | | Services, NGB | 2018 |

Appendix A: Acronyms

| | |
|----------|--|
| CDI | Command-Directed Investigation |
| CMG | Case Management Group |
| DEOCS | DEOMI Organizational Climate Survey |
| DEOMI | Defense Equal Opportunity Management Institute |
| DoD | Department of Defense |
| DoDD | Department of Defense Directive |
| DoDI | Department of Defense Instruction |
| DSAID | Defense Sexual Assault Incident Database |
| EO | Equal Opportunity |
| EOA | Equal Opportunity Advisor |
| FY | Fiscal Year |
| G/FO | General Or Flag Officer |
| IG | Inspector General |
| IPT | Integrated Product Team |
| MCIO | Military Criminal Investigative Organization |
| MEO | Military Equal Opportunity |
| MIJES | Military Investigative and Justice Experience Survey |
| NGB | National Guard Bureau |
| ODMEO | Office of Diversity Management and Equal Opportunity |
| OGC | Office of General Counsel |
| OPA | Office of People Analytics |
| OPR | Office Of Primary Responsibility |
| OSD | Office of the Secretary of Defense |
| QSAPR | QuickCompass Survey of SAPR-Related Responders |
| RPRS | Retaliation Prevention and Response Strategy |
| SAPR | Sexual Assault Prevention and Response |
| SAPRO | Sexual Assault Prevention and Response Office |
| SARC | Sexual Assault Response Coordinator |
| SJA | Staff Judge Advocate |
| SVC | Special Victims' Counsel |
| VA | Victim Advocate |
| VLC | Victims' Legal Counsel |
| UCMJ | Uniform Code of Military Justice |
| USD(P&R) | Under Secretary of Defense for Personnel and Readiness |
| WGRA | Workplace and Gender Relations Survey of Active Duty Members |

Appendix B: Definitions of Retaliation

The DoD Retaliation Prevention and Response Strategy approved by the Secretary of Defense in April 2016 directed the creation of standardized definitions of retaliation and related behaviors. Specifically, the strategy required development of “a Department-wide definition for ‘retaliation’ in general, and standardized definitions for ‘reprisal’ and ‘ostracism.’” All of the various forms of misconduct described by the definitions below fall within the umbrella term of “retaliatory behavior.”²²

I. Existing and Pending Statutory Retaliatory Behavior Definitions

A. “Maltreatment” under Article 93, Uniform Code of Military Justice (UCMJ) (10 U.S.C. § 893):

Maltreatment occurs when a person subject to the UCMJ is cruel toward, or oppresses or maltreats, any individual subject to the person’s orders.

One form of maltreatment is cruelty toward, oppression of, or maltreatment of an individual subject to one’s orders because that individual:

- (1) reported a sex-related offense or sexual harassment or is believed to have reported a sex-related offense or sexual harassment;
- (2) was the victim of a sex-related offense or sexual harassment or is believed to have been the victim of a sex-related offense or sexual harassment;
- (3) was reported by another as being the victim of a sex-related offense or sexual harassment or is believed to have been reported by another as being the victim of a sex-related offense or sexual harassment;
- (4) intervened, or attempted to intervene, to prevent or attempt to prevent a sex-related offense or sexual harassment or is believed to have intervened or attempted to intervene to prevent or attempt to prevent a sex-related offense or sexual harassment; or
- (5) has cooperated or is believed to have cooperated in an investigation, has served as a witness, will or may serve as witness, or is believed to have served as a witness, or it is believed that the individual will or may serve as a witness in the future in a criminal or disciplinary proceeding, or in an investigation, including an administrative investigation, involving a sex-related offense or sexual harassment.

B. Relevant portions of 10 U.S.C. §1034 (“Protected communications; prohibition of retaliatory personnel actions”)

- (a) Restricting Communications With Members of Congress and Inspector General Prohibited.

²² The Secretary of Defense’s April 2016 retaliation prevention and response strategy targets retaliatory actions against “Active Duty, Reserve, and National Guard Service members who report a sexual assault or sexual harassment that occurred during Active Service (as 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.” Retaliation Strategy at 3, note 3. These definitions, therefore, are limited to retaliatory behaviors against service members, including actions against other individuals, such as family members, that are intended to harm or influence a service member. With the exception of instances falling within that caveat, these definitions do not address retaliatory behaviors against Department of Defense civilian employees. The Office of Special Counsel has primary jurisdiction for civilian whistleblower reprisal complaints, but the DoD Office of Inspector General has discretion to accept such complaints for investigation under appropriate circumstances.

- (1) No person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General
- (2) Paragraph (1) does not apply to a communication that is unlawful

(b) Prohibition of Retaliatory Personnel Actions.

- (1) No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing or being perceived as making or preparing

- (A) A communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted;
- (B) A communication that is described in subsection (c)(2) and that is made (or prepared to be made) to:

- (i) a Member of Congress;
- (ii) an Inspector General (as defined in subsection (j)) or any other Inspector General appointed under the Inspector General Act of 1978;
- (iii) a member of a Department of Defense audit, inspection, investigation, or law enforcement organization;
- (iv) any person or organization in the chain of command;
- (v) a court-martial proceeding; or
- (vi) any other person or organization designated pursuant to regulations or other established administrative procedures for such communications; or

- (C) testimony, or otherwise participating in or assisting in an investigation or proceeding related to a communication under subparagraph (A) or (B), or filing, causing to be filed, participating in, or otherwise assisting in an action brought under this section.

- (2) Any action prohibited by paragraph (1) (including the threat to take any unfavorable action, the withholding or threat to withhold any favorable action, or making or threatening to make a significant change in the duties or responsibilities of a member of the armed forces not commensurate with the member's grade) shall be considered for the purposes of this section to be a personnel action prohibited by this subsection.

(c) Inspector General Investigation of Allegations of Prohibited Personnel Actions.

- (1) If a member of the armed forces submits to an Inspector General an allegation that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in paragraph (2), the Inspector General shall take the action required under paragraph (4).
- (2) A communication described in this paragraph is a communication in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:

- (A) A violation of law or regulation, including a law or regulation prohibiting rape, sexual assault, or other sexual misconduct in violation of sections

- 920 through 920c of this title (articles 120 through 120c of the Uniform Code of Military Justice), sexual harassment, or unlawful discrimination.
- (B) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
- (C) A threat by another member of the armed forces or employee of the Federal Government that indicates a determination or intent to kill or cause serious bodily injury to members of the armed forces or civilians or damage to military, Federal, or civilian property.

(3) A communication described in paragraph (2) shall not be excluded from the protections provided in this section because:

- (A) the communication was made to a person who participated in an activity that the member reasonably believed to be covered by paragraph (2);
- (B) the communication revealed information that had previously been disclosed;
- (C) of the member's motive for making the communication;
- (D) the communication was not made in writing;
- (E) the communication was made while the member was off duty; and
- (F) the communication was made during the normal course of duties of the member.

.....

(j) Definitions. In this section:

(1) The term "Member of Congress" includes any Delegate or Resident Commissioner to Congress.

(2) The term "Inspector General" means any of the following:

- (A) The Inspector General of the Department of Defense.
- (B) The Inspector General of the Department of Homeland Security, in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.
- (C) Any officer of the armed forces or employee of the Department of Defense who is assigned or detailed to serve as an Inspector General at any level in the Department of Defense.

(3) The term "unlawful discrimination" means discrimination on the basis of race, color, religion, sex, or national origin.

C. Article 132 of the UCMJ as Amended by Section 5450 of the National Defense Authorization Act for Fiscal Year 2017 and Its Effective Date

§ 932. Art. 132. Retaliation

- (a) IN GENERAL.—Any person subject to this chapter who, with the intent retaliate against any person for reporting or planning to report a criminal offense, or making or planning to make a protected communication, or with the intent to discourage any person from reporting a criminal offense or making or planning to make a protected communication—

- (1) wrongfully takes or threatens to take an adverse personnel action against any person; or
- (2) wrongfully withholds or threatens to withhold a favorable personnel action with respect to any person;

shall be punished as a court-martial may direct.

(b) DEFINITIONS.—IN THIS SECTION:

- (1) The term “protected communication” means the following:
 - (A) A lawful communication to a Member of Congress or an Inspector General.
 - (B) A communication to a covered individual or organization in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:
 - (i) A violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination.
 - (ii) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.
- (2) The term “Inspector General” has the meaning given that term in section 1034(h) of this title.
- (3) The term “covered individual or organization” means any recipient of a communication specified in clauses (i) through (v) of section 1034(b)(1)(B) of this title.
- (4) The term “unlawful discrimination” means discrimination on the basis of race, color, religion, sex, or national origin.

....

Sec. 5542. EFFECTIVE DATES

....

[T]he amendments made by this division shall take effect on the date designated by the President, which date shall be not later than the first day of the first calendar month that begins two years after the date of the enactment of this Act.

II. Definitions to be the Subject of Punitive Regulations Issued by the Military Departments

- A. Retaliatory Personnel Action – The Military Departments will issue punitive regulations that include the same provisions as Article 132 of the Uniform Code of Military Justice, as amended by the National Defense Authorization Act for Fiscal Year 2017.
- B. Ostracism – The offense of “Ostracism” consists of:
- (1) with a nexus to military service, wrongfully excluding a military member from social acceptance or membership in or association with a group of which such military member was a part or a reasonable person would conclude wanted to be a part with the intent to do any of the following:
 - (a) inflict emotional distress on the military member (“emotional distress” means a highly unpleasant mental reaction, such as anguish, grief, fright, humiliation, or fury);
 - (b) discourage reporting of a criminal offense or sexual harassment; or
 - (c) otherwise discourage the due administration of justice concerning a criminal offense or sexual harassment; and
 - (2) because the perpetrator knew or believed that:
 - (a) the member reported or was planning to report a criminal offense or sexual harassment;
 - (b) the member was a victim or alleged victim of a criminal offense or sexual harassment;
 - (c) the member was reported by another as being the victim of a criminal offense or sexual harassment;
 - (d) the member intervened to prevent or attempt to prevent a criminal offense or sexual harassment from occurring; or
 - (e) the member cooperated in an investigation or the member has served or will or may serve as a witness or otherwise cooperate in the future in a criminal, disciplinary, or administrative proceeding or investigation involving a criminal offense or sexual harassment.

III. Definitions for Statistical/Programmatic Purposes

- A. “Criminal Act for a Retaliatory Purpose in Connection with an Alleged Sex-Related Offense or Sexual Harassment”

A “Criminal Act for a Retaliatory Purpose in Connection with an Alleged Sex-Related Offense or Sexual Harassment” is any offense under the UCMJ committed in relation to what the perpetrator of the UCMJ offense knew or believed to be a sex-related offense or sexual harassment, including the reporting or witnessing thereof, because the perpetrator knew or believed that:

- (1) a member reported a sex-related offense or sexual harassment;
- (2) a member was the victim of a sex-related offense or sexual harassment;
- (3) a member was reported by another as being the victim of a sex-related offense or sexual harassment;
- (4) a member intervened to prevent or attempt to prevent a sex-related offense or sexual harassment from occurring; or

- (5) a member cooperated in an investigation or a member has served or will or may serve as a witness or otherwise cooperate in a future criminal, disciplinary, or administrative proceeding or investigation involving a criminal offense or sexual harassment.

B. “Criminal Act for Performance of Duties Concerning an Alleged Sex-Related Offense or Sexual Harassment”

A “Criminal Act for Performance of Duties Concerning an Alleged Sex-Related Offense or Sexual Harassment” is any offense under the UCMJ committed because the victim of that offense was a service member who performed duties in any of the following capacities in connection with an alleged sex-related offense or alleged sexual harassment:

- (1) a sexual assault response coordinator;
- (2) a victim advocate;
- (3) an equal opportunity or military equal opportunity advisor;
- (4) a mental health counselor;
- (5) a health care provider;
- (6) a Family Advocacy Program staff member;
- (7) a special victims’ counsel or victims’ legal counsel;
- (8) a legal assistance counsel;
- (9) a defense counsel;
- (10) a trial counsel;
- (11) a military judge;
- (12) an appellate military judge;
- (13) a non-attorney acting under the authority, supervision, or direction of a counsel listed above in subparagraphs (7) through (10) or a judge listed above in subparagraphs (11) or (12);
- (14) or an Inspector General.

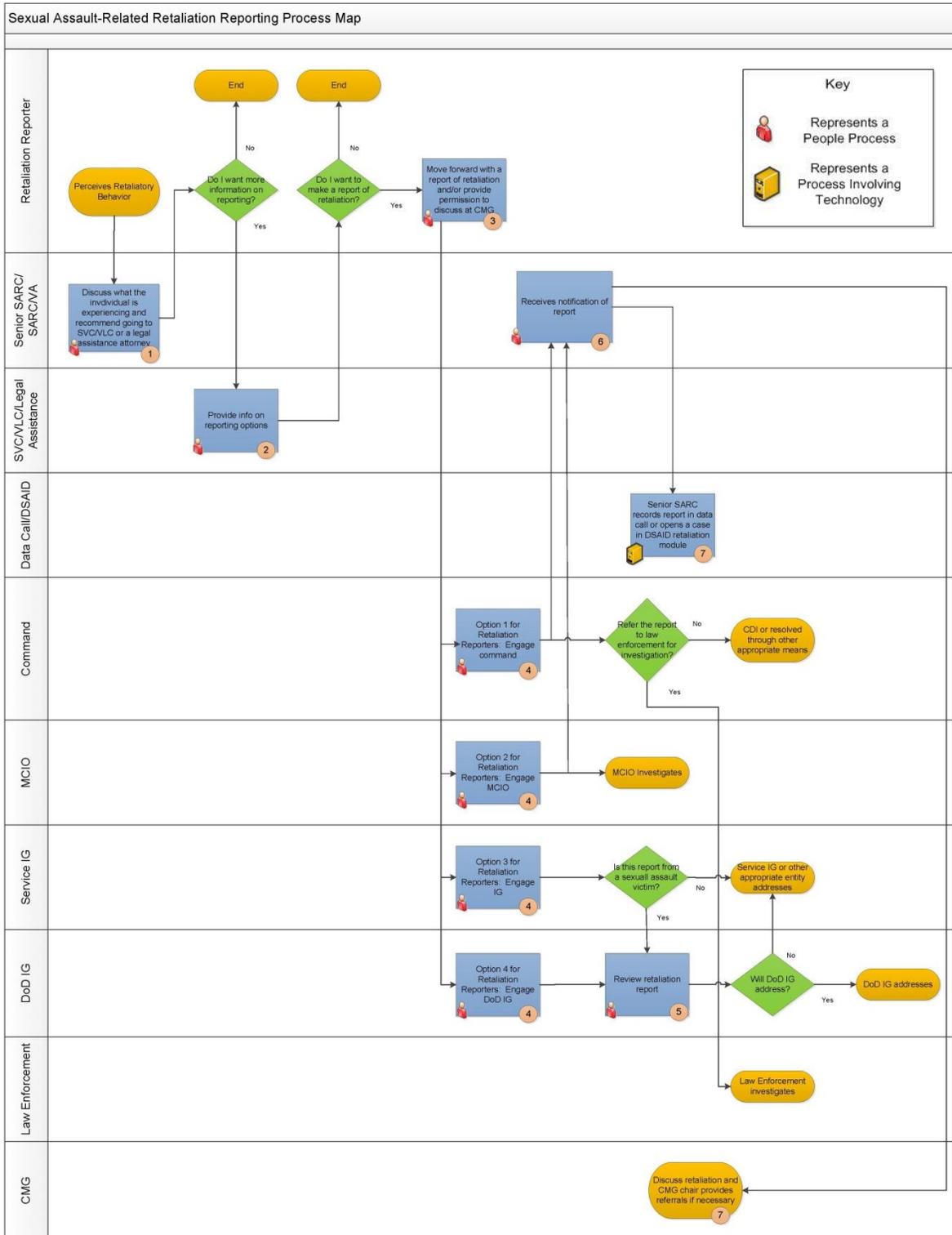
IV. Related Definitions

- A. Protected Communication – This term is defined for DoD purposes by the table at page 12 of Department of Defense Directive 7050.06 (April 17, 2015) or subsequent editions of that issuance.
- B. Personnel Action – This term is defined for DoD purposes by Department of Defense Directive 7050.06 (April 17, 2015) or subsequent editions of that issuance.
- C. Reprisal – This term is defined for DoD purposes by Department of Defense Directive 7050.06 (April 17, 2015) or subsequent editions of that issuance. That issuance defines reprisal as: “Taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making, preparing to make, or being perceived as making or preparing to make a protected communication.”
- D. Restriction – This term is defined for DoD purposes by Department of Defense Directive 7050.06 (April 17, 2015) or subsequent editions of that issuance. That issuance defines restriction as: “Preventing or attempting to prevent a current Service member from making or preparing to make a lawful communication to a member of Congress or an IG.”

- E. Sex-related offense – (1) A violation of article 120, 120a, 120b, 120c, or 125 of the UCMJ or a comparable Federal or State criminal statute; (2) any other sexual misconduct punishable under the UCMJ or a Federal or State criminal statute; (3) any attempt to commit an offense listed in subparagraphs (1) or (2); (4) any conspiracy to commit an offense listed in subparagraphs (1) or (2); and (5) any solicitation to commit an offense listed in subparagraphs (1) or (2).
- F. Sexual harassment – Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career; (2) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment. There is no requirement for concrete psychological harm to the victim for an act or actions to constitute sexual harassment; an act is or acts are sufficient to constitute sexual harassment if they are so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the environment as hostile or offensive. The term sexual harassment includes anyone in a supervisory or command position using or condoning any form of sexual behavior to control, influence, or affect the career, pay, or job of a military member. The term sexual harassment also includes any military member or civilian employee making deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature in the workplace.
- G. Social media – Social media are web-based tools, websites, applications, and media that connect users and allow them to engage in dialogue, share information, collaborate, and interact. The definitions in Sections II through IV above include using social media – whether on-duty or off-duty through the use of government or personal devices – in a manner that meets any of those definitions.

Appendix C: Retaliation Reporting Process Maps

These process maps show how retaliation reports are made beginning with the SARC or SAPR VA. The numbered items under each process map provide more detail on the process.



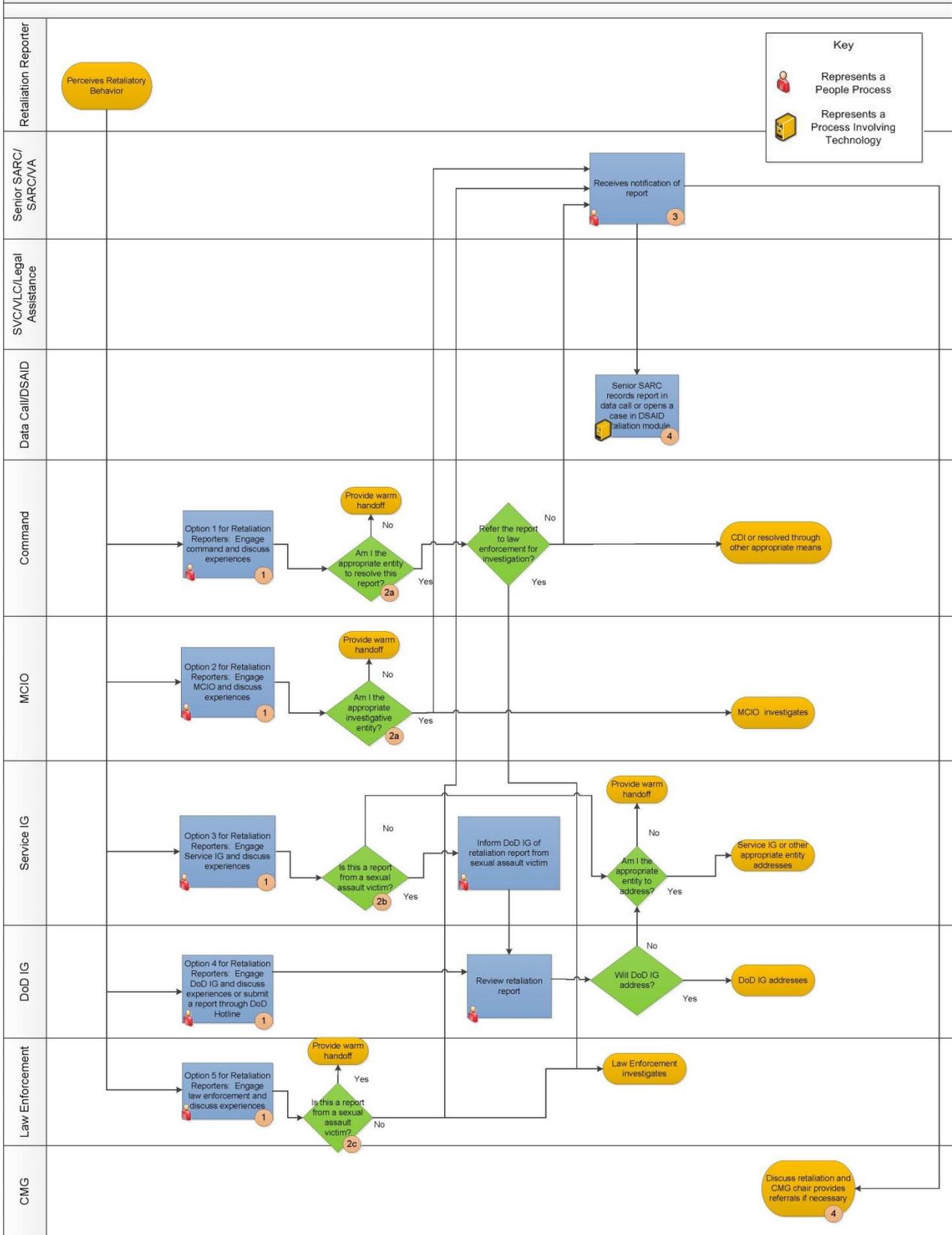
The process map above shows the steps for uniformed sexual assault victims and witnesses, bystanders, and first responders to report retaliation and for a senior SARC to record a retaliation report in the retaliation data call or open a case in the retaliation module in DSAID (once developed). It also shows options to investigate or resolve retaliation reports depending on the nature of the retaliation report. While the response process is not complete until case disposition, the purpose of this process map is to show the intake of the retaliation report to the commencement of the investigation or other command actions.

1. If an individual comes to a SARC or a SAPR VA to speak about perceived retaliation, the SARC or SAPR VA will discuss what the individual is experiencing and provide an overview of the types of retaliation and the investigative entities. The SARC or SAPR VA will recommend that the individual consult with an SVC, VLC, or a legal assistance attorney before deciding to report retaliation. The SARC or SAPR VA will also explain that the individual can go to an IG at any time during the process.
2. The SVC, VLC, or legal assistance attorney may discuss retaliation, reporting options, and the investigative and military justice processes prior to the reporter seeking resolution of the retaliation allegation.
3. The individual will decide on a course of action after receiving advice from the SVC, VLC, or legal assistance attorney (if such advice is sought by the individual) or decide to not report retaliation.
4. There are a range of options for reporters to resolve their retaliation reports, and the SVC, VLC, or legal assistance attorney may assist with evaluating these options, including seeking command action.
5. If a sexual assault victim reports retaliation through the DoD Hotline or the Service IG, the report will be sent to the DoD IG. The DoD IG will then review the case to determine how to address the report. If the DoD IG conducts the investigation, it will notify the retaliation reporter and the Service IG of the DoD IG's role.
6. Within a week of receiving the report and opening an investigation, the investigative entity²³ will notify the senior SARC and provide the following data points:
 - a. Reporter's name
 - b. Reporter's ID number and type
 - c. Type of reporter (sexual assault victim, witness, bystander, or first responder)
 - d. Investigative number of retaliation report (if applicable/MCIO)
 - e. Date of the associated sexual assault report (month and year if known)
 - f. Name of the victim in the associated sexual assault report if different than retaliation reporter
 - g. Type of investigative entity (command, MCIO, or law enforcement)
7. The senior SARC will document the retaliation report in the retaliation data call or open a case in the retaliation module. In the event the investigation is under the jurisdiction of the IG or the discussion will compromise the integrity of the investigation by the MCIO or law enforcement, it will not be discussed at the CMG.²⁴

²³ DoD SAPRO will work with DoD IG to determine the process of collecting retaliation data from DoD and Service IGs.

²⁴ During the concept design phase of modifying DSAID, the working group will determine if a temporary data collection tool, like the DD Form 2965, will be developed to assist SARCs with data collection.

Sexual Assault-Related Retaliation Reporting Process Map – Independent Investigation



Some retaliation reporters may decide to go directly to an investigator to make a report of retaliation without informing SAPR personnel. The above process shows the steps for a Service member who is a sexual assault victim, bystander, witness, or first responder to report retaliation by going directly to the investigation entity. It also shows options to investigate or resolve retaliation reports depending on the nature of the retaliation report. While the response process is not complete until case disposition, the purpose of this process map is to show the intake of the retaliation report to the commencement of the investigation or other command action.

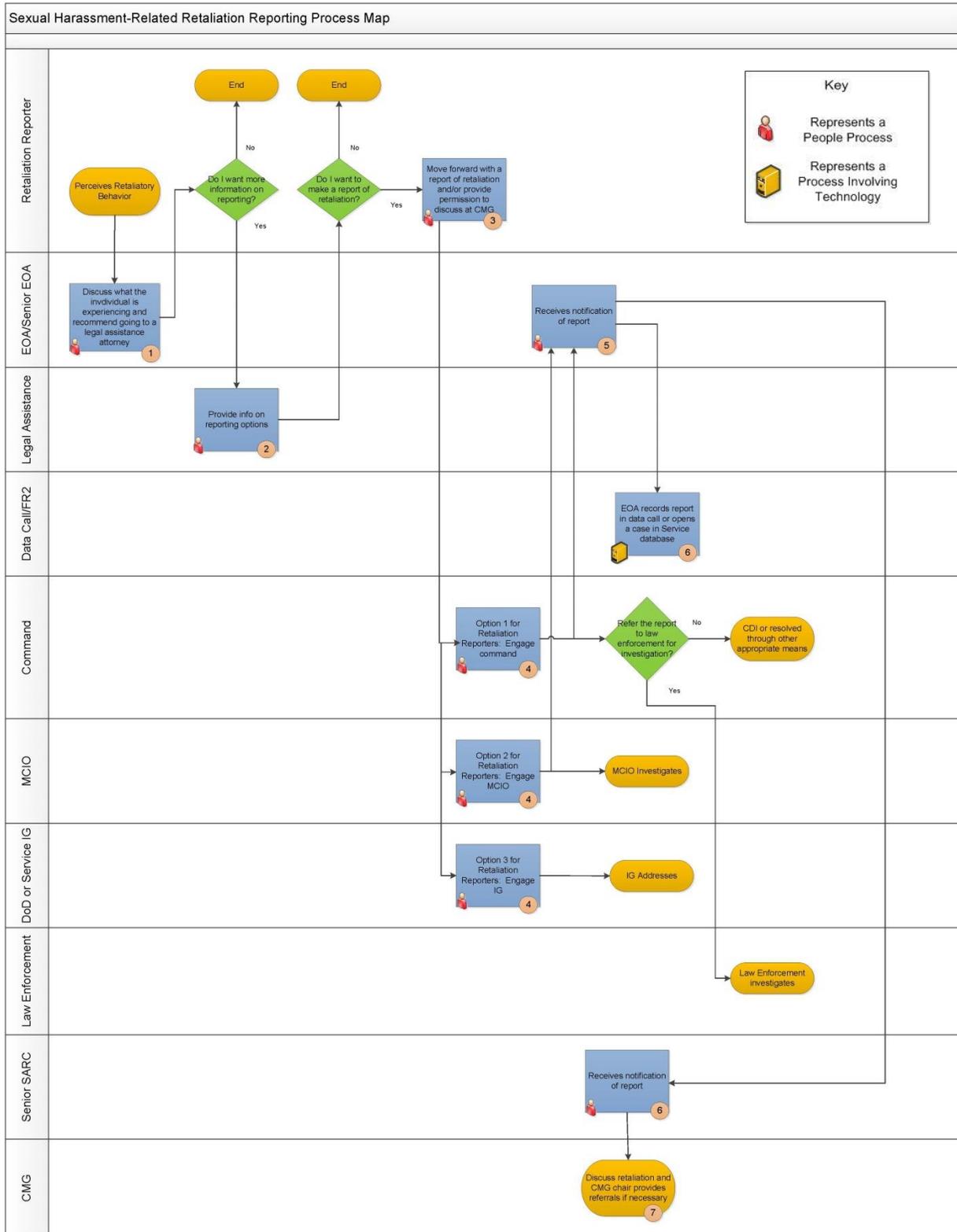
1. A retaliation reporter may decide to go directly to command, an MCIO, Service IG, DoD IG, or law enforcement to report retaliation allegations.²⁵
2. The investigative entity will then discuss what the individual is experiencing to determine if it is the appropriate entity to conduct an investigation.
 - a. If not, it will provide a referral (or warm hand off, if possible) to the appropriate investigative entity
 - b. If a sexual assault victim reports retaliation through the Service IG, the report will be sent to the DoD IG. The DoD IG will then review the case to determine if it will be the investigative entity. If the DoD IG conducts the investigation, it will notify the retaliation reporter and the Service IG of the DoD IG's role
 - c. If a sexual assault victim, witness, bystander, or first responder who is involved in an open sexual assault investigation reports retaliation through law enforcement, the law enforcement agency will provide a warm hand off to an MCIO
3. Within a week of opening an investigation, the investigative entity²⁶ will notify the senior SARC and provide the following data points:
 - a. Reporter's name
 - b. Reporter's ID number and type
 - c. Type of reporter (sexual assault victim, witness, bystander, or first responder)
 - d. Investigative number of retaliation report (if applicable/MCIO)
 - e. Date of the associated sexual assault report (month and year if known)
 - f. Name of the victim in the associated sexual assault report if different than retaliation reporter
 - g. Type of investigative entity (command, MCIO, or law enforcement)

The senior SARC will document the retaliation report in the retaliation data call or open a case in the retaliation module. In the event the investigation is under the jurisdiction of the IG or the discussion will compromise the integrity of the investigation by the MCIO or law enforcement it will not be discussed at the CMG.

²⁵ The investigative entity will remind individuals that they may seek information or guidance on reporting options for retaliation from an IG, or legal advice on reporting options from an SVC, VLC, or a legal assistance attorney. Contact with the IG may range from consultation to filing a report. Commanders may not investigate reprisal allegations that fall within prohibitions of 10 U.S.C. Section 1034.

²⁶ DoD SAPRO will work with DoD IG to determine the process of collecting retaliation data from DoD and Service IGs.

These process maps show how retaliation reports are made beginning with the EOA. The numbered items under each process map provide more detail on the process.

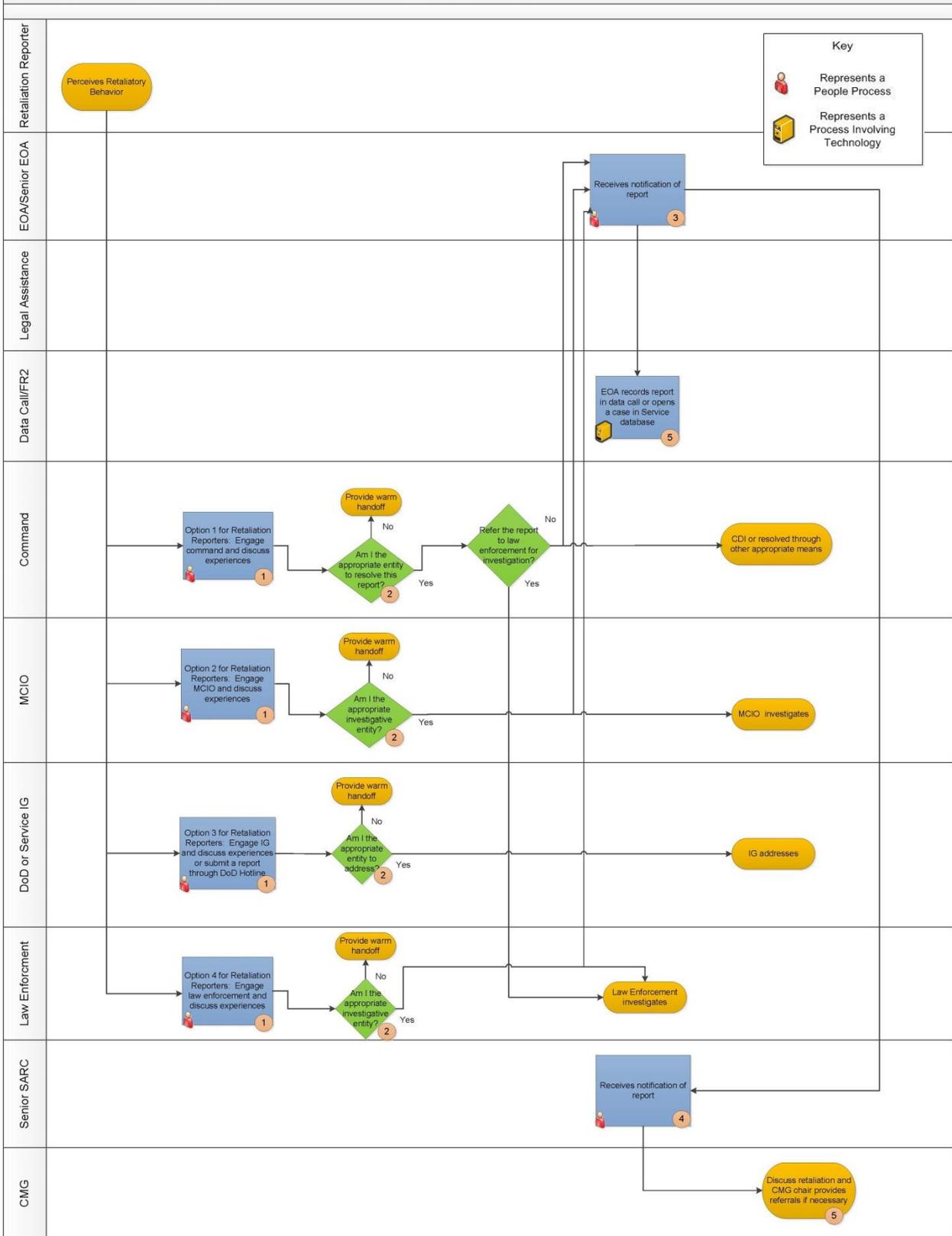


The process map above shows the steps for uniformed sexual harassment complainants and bystanders, witnesses, or first responders to report retaliation and for an EOA to record a retaliation report in the retaliation data call or open a case in the Military Services' sexual harassment data case file management system. It also shows options to investigate or resolve retaliation reports depending on the nature of the retaliation report. While the response process is not complete until case disposition, the purpose of this process map is to show the intake of the retaliation report to the commencement of the investigation or using other command action.

1. If an individual comes to an EOA to speak about perceived retaliation, the EOA will discuss what the individual is experiencing and provide an overview of the types of retaliation and the investigative entities. The EOA will recommend that the individual consult with a legal assistance attorney before deciding to report retaliation. The EOA will also explain that the individual can go to an IG at any time during the process.
2. The legal assistance attorney may discuss retaliation, reporting options, and the investigative and military justice processes prior to the reporter seeking resolution to the retaliation allegation.
3. The individual will decide on a course of action after receiving advice from the legal assistance attorney (if such advice is sought by the individual) or decide to not report retaliation.
4. There are a range of options for reporters to resolve their retaliation reports, and the legal assistance attorney may assist with evaluating these options, including seeking command action.
5. Within a week of receiving the report and opening an investigation, the investigative entity²⁷ will notify the EOA and provide the following data points:
 - a. Reporter's name
 - b. Reporter's ID number and type
 - c. Type of reporter (sexual assault complainant , witness, bystander, or first responder)
 - d. Investigative number of retaliation report (if applicable/MCIO)
 - e. Date of the associated sexual harassment complaint (month and year if known)
 - f. Name of the complainant in the associated sexual harassment complaint if different than retaliation reporter
 - g. Type of investigative entity (command, MCIO, Service IG, DoD IG, or law enforcement)
6. The EOA will then record a retaliation report in the retaliation data call or open a case in the Service's sexual harassment data case file management system and notify the senior SARC.
7. The senior SARC will discuss the report at the CMG, unless the investigation is under the jurisdiction of the IG or the discussion will compromise the integrity of the investigation by the MCIO or law enforcement.

²⁷ DoD SAPRO will work with DoD IG to determine the process of collecting retaliation data from DoD and Service IGs.

Sexual Harassment-Related Retaliation Reporting Process Map – Independent Investigation



Some retaliation reporters may decide to go directly to an investigator to make a report of retaliation without informing the EOA. The above process shows the steps for a Service member who is a sexual harassment complainant, bystander, witness, or first responder to report retaliation by going directly to the investigation entity. It also shows options to investigate or resolve retaliation reports depending on the nature of the retaliation report. While the response process is not complete until case disposition, the purpose of this process map is to show the intake of the retaliation report to the commencement of the investigation or other command action.

1. A retaliation reporter may decide to go directly to command, an MCIO, Service IG, DoD IG, or law enforcement to report retaliation allegations.²⁸
2. The investigative entity will then discuss what the individual is experiencing to determine if it is the appropriate entity to conduct an investigation. If not, it will provide a referral (or warm hand off, if possible) to the appropriate investigative entity.
3. Within a week of opening an investigation, the investigative entity²⁹ will notify the EOA and provide the following data points:
 - a. Reporter's name
 - b. Reporter's ID number and type
 - c. Type of reporter (sexual harassment complaint, first responder, witness, or bystander)
 - d. Investigative number of retaliation report (if applicable/MCIO)
 - e. Date of the associated sexual harassment complaint (month and year if known)
 - f. Name of the victim in the associated sexual harassment complaint if different than retaliation reporter
 - g. Type of investigative entity (command, MCIO, Service IG, DoD IG, or law enforcement)
4. The EOA will notify the senior SARC of the retaliation report relating to a sexual harassment complaint and then record a retaliation report in the retaliation data call or open a case in the Service's sexual harassment data case file management system.
5. The senior SARC discusses the report at the CMG, unless the investigation is under the jurisdiction of the IG or the discussion will compromise the integrity of the investigation by the MCIO or law enforcement.

²⁸ The investigative entity will remind individuals that they may seek information or guidance on reporting options for retaliation from an IG, or legal advice on reporting options from an SVC, VLC, or a legal assistance attorney. Contact with the IG may range from consultation to filing a report. Commanders may not investigate reprisal allegations that fall within prohibitions of 10 U.S.C. Section 1034.

²⁹ DoD SAPRO will work with DoD IG to determine the process of collecting retaliation data from DoD and Service IGs.

Appendix D: RPRS Metrics

| Metric/Non-Metric | Populations Included in Metric | Current Data Source | Items to Measure from the RPRS | Purpose |
|---|--|-----------------------|---|--|
| 1. Number of Individuals Alleging Retaliation Discussed at CMG or Service equivalent | <ul style="list-style-type: none"> – Sexual assault victims – Sexual harassment complainants – Witnesses, bystanders, and first responders relating to a sexual assault report or a sexual harassment complaint | Retaliation Data Call | Reporting Systems | Metric to assess reporting trends associated with allegations of retaliatory behaviors addressed by installation CMGs. |
| 2. Number of Reports Received by IGs, MCIOs, Law Enforcement, and Command | <ul style="list-style-type: none"> – Sexual assault victims – Sexual harassment complainants – Witnesses, bystanders, and first responders relating to a sexual assault report or a sexual harassment complaint | Retaliation Data Call | Reporting Systems | Metric to assess reporting trends associated with allegations of retaliatory behaviors addressed by investigative entities within DoD. |
| 3. Follow-on Actions Taken from Retaliation Discussed at CMGs a. Percentage of retaliation allegation cases in which the CMG or Service equivalent took at least | <ul style="list-style-type: none"> – Sexual assault victims – Sexual harassment complainants | Retaliation Data Call | Retaliation Response Process & Reporter Protections | Metric to better understand and report the outcomes of the CMG process. |

| Metric/Non-Metric | Populations Included in Metric | Current Data Source | Items to Measure from the RPRS | Purpose |
|--|---|--|--------------------------------|---|
| one action b. Total number of actions taken by the CMG or Service equivalent in response to retaliation allegations (e.g., expedited transfer, information referred, safety plan updated, briefings/trainings for unit, etc.) | <ul style="list-style-type: none"> – Witnesses, bystanders, and first responders relating to a sexual assault report or a sexual harassment complaint – Alleged retaliators | | | |
| 4. Perceptions of Retaliation by Sexual Assault Victims a. WGRA (Victim Perspective) b. MIJES (Victim Perspective) | <ul style="list-style-type: none"> – Sexual assault victims | DEOCS, WGRA, MIJES | Prevention | Metric to assess the scope of the problem of retaliatory behaviors related to sexual assault. |
| 5. Perceptions of Retaliation by Sexual Harassment Complainants a. WGRA (Complainant Perspective) | <ul style="list-style-type: none"> – Sexual harassment complainants | DEOCS, WGRA | Prevention | Metric to assess the scope of the problem of retaliatory behaviors related to sexual harassment. |
| 6. Reporter Experience – MIJES and WGRA a. Responses to: <i>“With whom did you discuss your retaliation allegation?”</i> b. Responses to: <i>“What action was taken if made an official complaint or reported to supervisor?”</i> c. Responses to: <i>“Did you agree to have your retaliation allegation discussed at the CMG?”</i> | <ul style="list-style-type: none"> – Sexual assault victims | MIJES (new questions for 2016 MIJES), WGRA | Feedback from Reporters | Metrics to assess the degree to which victims engage in the listed services covered by the DoD RPRS. |
| 7. Command Climate – DEOCS a. Leadership trust (e.g., I trust that my organization’s leadership will treat me fairly) b. Leadership support for SAPR (e.g., command creates an | <ul style="list-style-type: none"> – All Service members | DEOCS | Prevention | Metric to assess features of the command climate that could facilitate progress of the RPRS. An increase in leadership trust, support for SAPR, and focus on the continuum of harm may be associated with improved efforts by command to address and reduce |

| Metric/Non-Metric | Populations Included in Metric | Current Data Source | Items to Measure from the RPRS | Purpose |
|--|---|-----------------------|---|--|
| <p>environment where victims feel comfortable reporting sexual assault)</p> <p>c. Leadership addresses continuum of harm (e.g., command promotes a unit climate based on “respect and trust”)</p> <p>d. Perceived likelihood of retaliation from leadership if one were to report sexual assault and sexual harassment</p> | | | | retaliatory behaviors. |
| <p>8. Organizational Climate – DEOCS</p> <p>a. Organizational cohesion (e.g., members look out for each other’s welfare)</p> <p>b. Unhelpful behaviors (e.g., certain members are purposely excluded from social work group activities)</p> <p>c. Perceived likelihood of retaliation from unit if one were to report sexual assault and sexual harassment</p> | – All Service members | DEOCS | Prevention | Metric to assess features of the organizational (unit) climate that could hinder or facilitate progress of the RPRS. An increase in organizational cohesion and decrease in unhelpful behaviors may be associated with reduced retaliatory behavior when individuals report sexual assault or sexual harassment. |
| <p>9. Outcomes from Reports Received by IGs, MCIOs, Law Enforcement, and Command</p> <p>a. Outcomes for Alleged Retaliator</p> <p>b. Actions Taken to Support Retaliation Reporter</p> | <p>– Sexual assault victims</p> <p>– Sexual harassment complainants</p> <p>– Witnesses, bystanders, and first responders relating to a sexual assault report or a sexual harassment</p> | Retaliation Data Call | Retaliation Response Process & Reporter Protections | Non-metric to provide a greater understanding of the disciplinary actions taken to hold alleged offenders appropriately accountable and assess trends over time. |

| Metric/Non-Metric | Populations Included in Metric | Current Data Source | Items to Measure from the RPRS | Purpose |
|--|--|-----------------------|--------------------------------|--|
| | complaint – Alleged retaliators | | | |
| 10. Matter(s) Investigated for the Report of Retaliation a. Reprisal b. Restriction c. Ostracism d. Cruelty, Oppression, or Maltreatment e. Other matters | – Sexual assault victims – Sexual harassment complainants – Witnesses, bystanders, and first responders relating to a sexual assault report or a sexual harassment complaint | Retaliation Data Call | Reporting Systems | Non-metric to provide a greater understanding of the kinds of retaliatory experiences reported to DoD authorities and assesses trends over time. |
| 11. Source of the Report a. Sexual Assault Victim b. Sexual Harassment Complainant c. Witness/Bystander d. First Responder | – Sexual assault victims – Sexual harassment complainants – Witnesses, bystanders, and first responders relating to a sexual assault report or a sexual harassment complaint | Retaliation Data Call | Reporting Systems | Non-metric to provide a greater understanding of the types of individuals reporting retaliation and to assess trends over time. |

Appendix E: Retaliation Response Procedures

The following procedures outline what a SARC or SAPR VA will do to respond to a retaliation allegation from a uniformed victim of sexual assault or a uniformed witness, bystander, or first responder to a sexual assault. A brief explanation of the types of retaliation is provided to the sexual assault reporter when signing the DD Form 2910, with SAPR personnel reviewing the types of retaliation listed in section D6. The following procedures begin when an individual comes to a SARC or SAPR VA after perceiving retaliatory behavior.

1. SARC/SAPR VA Intake Procedures: If the individual comes to a SARC/SAPR VA to speak about perceived retaliation, the SARC/SAPR VA will:
 - a. Discuss what the individual is experiencing concerning perceived retaliation
 - b. Explain the types of retaliation and investigative entities (IG, law enforcement, MCIO, and command) by providing an informational sheet
 - c. Explain that the individual can go to an IG at any time during the process. Visits to the IG may range from consultation to filing a complaint
 - d. Offer support throughout the process, to include providing referrals (e.g. SVC, VLC, or legal assistance for legal advice) and accompanying the victim to meetings with command, investigators, and other first responder personnel, if requested
 - e. Write a Memorandum for Record to record date of discussion, any referrals given, and the point of contact associated with the referral (this procedure is optional)
 - f. Discuss with the individual the options to consult with an IG, SVC/VLC, or a legal assistance attorney concerning retaliatory behavior, reporting options, and the investigative and military justice processes, as appropriate, and prior to engaging an investigative entity or seeking alternative means for resolving the retaliatory behavior allegation
 - g. Follow-up with the individual to ask if the individual proceeded with making a retaliation report after speaking with the SVC/VLC or legal assistance attorney (if the individual elected to speak with an SVC/VLC or legal assistance attorney) or if the individual wants the allegation to be discussed at CMG instead of going directly to an investigative entity
 - h. Receive notification of the report from an investigative entity or command and record the report in the retaliation data calls or open a case in the retaliation module in DSAID, once developed

Note: If the victim made a Restricted Report, the SARC/SAPR VA will inform the victim that formal action regarding the perceived retaliation is limited and will require conversion to an Unrestricted Report if the intent is to link the retaliation to a report of sexual assault or have the allegations investigated³⁰
2. CMG Discussion of Retaliation Allegations
 - a. The senior SARC will confirm with the SARC and SAPR VA if there is a retaliation report to discuss at CMG
 - b. The senior SARC will provide the servicing SJA office with information on retaliation reports to be presented at CMG if the senior SARC has concerns regarding privileged communications

³⁰ Sexual assault victims who made a Restricted Report do not have to convert to an Unrestricted Report to file a complaint with an IG or the DoD Hotline.

- c. CMG attendees will discuss the retaliation report including whether the victim is represented (except for cases under the jurisdiction of the IG³¹ or the discussion will compromise the integrity of an investigation by an MCIO or law enforcement agency)
- d. After disclosure of the retaliation report at the CMG meeting, the CMG chair will provide referrals to an MCIO, IG, EO, or a subordinate commander or some other follow-on action if action or an investigation is not already underway³²
- e. If the retaliation reporter is a sexual assault victim, the commander will provide an update on the status of the case to the victim. Commanders will provide updates to witnesses, bystanders, or first responders to a sexual assault

3. Resolving a Retaliation Report

- a. The senior SARC will inform the retaliation reporter's commander if the reporter wishes to pursue action relating to allegations that do not fall under the jurisdiction of the IG or the MCIO. Allegations of restriction or reprisal fall within the jurisdiction of the IG in accordance with 10 U.S.C 1034 and as such, an investigative determination will be made by the IG. Depending on the facts of the case, allegations of ostracism, maltreatment, or other retaliatory behavior may fall within the jurisdiction of the IG if, for example, it is determined that they are inextricably linked to restriction or reprisal.
 - i. The commander will then decide whether to refer the report for investigation by law enforcement or seek resolution through other appropriate means (e.g., Command-Directed Investigation (CDI) or through coordination with an SVC/VLC)
 - ii. An individual independent of the originating unit or organization of the alleged retaliation will investigate the retaliation reports referred to command
 - iii. The reporter and the SARC/SAPR VA will remain informed of the investigation through the chain of command, if desired
- b. The SARC/SAPR VA will work with the reporter, making available alternative means for the reporter to resolve the retaliation allegations.
 - i. SVC/VLCs are available to help the retaliation reporter in a variety of ways, such as communicating with the alleged retaliator verbally or in writing to address reporter concerns, requesting intervention from a coworker, utilizing the reporter's chain of command, or other means of action

³¹ Allegations of restriction or reprisal fall within the jurisdiction of the IG in accordance with 10 U.S.C. 1034. Depending on the facts of the case, allegations of ostracism, maltreatment, or other retaliatory behavior may fall within the jurisdiction of the IG if, for example, it is determined that they are inextricably linked to restriction or reprisal. MCIOs conduct investigations concerning Article 93.

³² Follow-on actions include: referral to Service IG, DoD IG, DoD Hotline, Command, MCIO, or MEO; informal/verbal counseling of alleged retaliator(s); briefings/trainings for alleged retaliator(s) and/or unit/installation; new policies implemented by command in unit/installation; transfer of retaliation reporter at his/her request; transfer of retaliation reporter due to a regularly scheduled PCS move; alleged retaliator(s) moved (transfer, relocation, reassignment, deployment); military protective order issued or civilian protective order obtained by retaliation reporter; safety plan updated for retaliation reporter; unfavorable personnel action, punishment, or administrative action against the retaliation reporter reversed through command intervention; negative treatment of retaliation reporter put to a stop through command intervention; alleged retaliator(s) later held appropriately accountable following a referral of the allegation by the CMG (Court-martial, Nonjudicial Punishment, Administrative Discharge, or Other Adverse Administrative Action); or no action taken.

- ii. Wherever appropriate and desired, the SARC/SAPR VA may assist with coordinating resolution at the lowest appropriate level
- iii. SARCs and SAPR VAs may request the assistance of the senior SARC, when needed, to serve as a resource and coordinate with command and SVC/VLC or staff judge advocate to address legal questions from SARCs
- c. If a sexual assault victim reports retaliation through the DoD Hotline or the Service IG, the report will be sent to the DoD IG. The DoD IG will then review the case to determine if it will be the investigative entity. If the DoD IG decides to conduct the investigation, it will notify the retaliation reporter and the Service IG of the investigation
- d. The senior SARC will notify the appropriate level of command of the retaliation report as soon as possible (if the retaliation report is against the immediate commander or first-line supervisor, the next level of command will be notified). If the SARC has concerns about violating privileged communications, the SARC will consult with the servicing SJA office prior to notifying command
- e. The senior SARC will make every effort to provide updates to commanders whose personnel are involved in a retaliation report
- f. Commander(s) of the Service member(s), who is a subject of a retaliation report, will provide in writing a case status and all disposition data, to include any administrative or judicial action taken, stemming from a retaliation investigation to the senior SARC

Equal Opportunity Advisor (EOA)³³ Procedures for Uniformed Sexual Harassment Complainants, Witnesses, Bystanders, and First Responders Who Perceive Retaliation

1. EOA Intake Procedures: If the individual comes to an EOA to speak about perceived retaliation, the EOA will:
 - a. Discuss what the individual is experiencing concerning perceived retaliation
 - b. Explain the types of retaliation and investigative entities (IG, law enforcement, MCIO, and command) and provide an informational sheet
 - c. Explain that the individual can go to an IG at any time during the process. Visits to the IG may range from consultation to filing a complaint
 - d. Offer assistance throughout the process, to include providing referrals (e.g. legal assistance) and accompanying the individual to meetings with command, investigators, and other first responder personnel, if requested
 - e. Explain that the senior SARC will be informed when the individual files a retaliation report and/or if the command or the investigative entity discusses the report at the CMG
 - f. Discuss with the individual the options to consult with an IG or a legal assistance attorney concerning retaliatory behavior, reporting options, and the investigative and military justice processes, as appropriate, prior to engaging an investigative entity or seeking alternative means for resolving the retaliatory behavior allegation
 - g. Follow-up with the individual to ask if the individual proceeded to file a retaliation report after speaking with the legal assistance attorney (if the individual elected to speak with an SVC/VLC or legal assistance attorney) or if the individual wants the allegation to be discussed at CMG instead of going directly to an investigative entity
 - h. Receive notification of the report from the senior SARC and record the report in the retaliation data calls or open a report the Service's case file management system, once developed

2. CMG Discussion of Retaliation Reports
 - a. The senior SARC will coordinate with the EOA to determine whether the individual is seeking legal assistance and/or if there is a retaliation report to discuss at the CMG
 - b. The senior SARC will provide the servicing SJA office with information on retaliation reports to be discussed at the CMG to review any concerns regarding privileged communications
 - c. Attendees will discuss the retaliation reports unless the discussion will compromise the integrity of the investigation by an MCIO or law enforcement agency, or compromise privileged communications, per SJA determination
 - d. Cases under the jurisdiction of IG will not be presented, discussed, or tracked at the CMG
 - e. After discussion of the retaliation report at the CMG, the chair will provide referrals to the appropriate investigative entity for action including law enforcement agency, Service IG, DoD IG, DoD Hotline, or a subordinate commander as appropriate

³³ For the Army Sexual Harassment/Assault Response and Prevention Program (SHARP), Army SARCs will respond to and assist with retaliation allegations and reports relating to a sexual harassment complaint.

- f. The EOA, in coordination with the senior SARC and/or servicing legal assistance personnel, will provide updates to the reporting individual
3. Resolving a Retaliation Report
- a. The senior SARC, upon being informed by the EOA, will inform the retaliation reporter's commander if the reporter wishes to pursue action relating to reported conduct that does not fall under the jurisdiction of the IG or MCIO. Allegations of restriction or reprisal fall within the jurisdiction of the IG in accordance with 10 U.S.C. 1034, and as such, an investigative determination will be made by the IG. Depending on the facts of the case, ostracism, maltreatment or other retaliatory behavior may fall within the jurisdiction of the IG if, for example, it is determined that they are inextricably linked to restriction or reprisal
 - i. The commander will then decide whether to refer the report for investigation by law enforcement or address it through other appropriate investigative means (e.g., CDI/15-6)
 - ii. When referred to command for investigation, an individual independent of the originating unit or organization of the alleged retaliation will investigate the retaliation reports
 - iii. The chain of command will ensure that the Senior SARC, EOA, and retaliation reporter all remain informed throughout the process
 - b. The EOA will work with the reporter, making available alternative means for the reporter to resolve the retaliation allegations, including alternative dispute resolution, mediation, and other means
 - i. Legal assistance personnel are made available to help the retaliation reporter in a variety of ways, such as communicating with the alleged retaliator verbally or in writing to address reporter concerns, requesting intervention from a coworker, utilizing the reporter's chain of command, or other means of action
 - ii. Wherever appropriate and desired, the EOA may assist with coordinating resolution at the lowest appropriate level
 - iii. EOAs may request the assistance of the senior SARC to serve as a resource and coordinate with command and legal assistance attorneys or staff judge advocate to address legal questions from SARCs
 - c. The senior SARC will notify the appropriate level of command of the retaliation report unless the retaliation report is against the immediate commander or first-line supervisor, then the next level of command will be notified and assume responsibility for the case
 - d. The senior SARC, in coordination with the EOA, will make every effort to provide updates to commanders whose personnel are involved in a retaliation report and/or retaliation investigation
 - e. Commander(s) of the Service member(s), who is a subject of a retaliation report, will provide in writing a case status and all disposition data, to include any administrative or judicial action taken, stemming from a retaliation investigation to the senior SARC

Appendix F: Core Competencies and Learning Objectives

New Retaliation Response Process Learning Objectives for SARCs and SAPR VAs

| Under SARC/SAPR VA CC 3: Respond to victim reports and manage crises effectively | | |
|---|---|---|
| Learning Objectives | Content and/or Suggested Delivery | References |
| Provide overview of retaliatory behavior, the investigative entities, and resources available for a Service member who reported a sexual assault or was a witness, bystander, or first responder to a sexual assault report and experienced retaliatory behavior. | <ul style="list-style-type: none"> • Provide an awareness of the retaliation response process (DoD and Service), including all available resources for retaliation reporters • Retaliation reporters will be informed that they can also seek resolutions from a myriad of support personnel to include SARC/VA, IG, MCIO, SVC/VLC, legal assistance attorney, command and IG • Use an informational sheet or pamphlet to communicate this information | <ul style="list-style-type: none"> • <i>DoD Retaliation Prevention and Response Strategy (RPRS): Regarding Sexual Assault and Harassment Reports (April 2016)</i> • <i>Implementation Plan to the RPRS, Issue Area #3/4 – Response process (yet to be published)</i> |
| Recommend to reporters to go to an IG, SVC/VLC, or legal assistance attorney before making a report of retaliation to gain a more in-depth understanding of which investigative entity or alternative means may be the best to resolve the retaliatory behavior. | <ul style="list-style-type: none"> • Sexual assault victims can continue to seek representation from an SVC/VLC. Witnesses, bystanders, or first responders to a sexual assault report can seek advice from a legal assistance attorney • An SVC/VLC or legal assistance attorney may describe reporting options (IG, appropriate law enforcement agency, or command), and the investigative and military justice processes prior to engaging an investigative entity | <ul style="list-style-type: none"> • <i>Implementation Plan to the RPRS, Issue Area #3/4 (yet to be published)</i> |
| Recognize that reporters can go directly to the IG at any time and impeding someone's contact with the IG is restriction and is illegal. | <ul style="list-style-type: none"> • Retaliation reporters can go to any investigative entity at any time. Visits to the IG may range from consultation to filing a complaint | <ul style="list-style-type: none"> • Retaliation Response Process in the <i>Implementation Plan to RPRS, Issue Area #3/4 (yet to be published)</i> • According to 10 U.S. Code, Section 1034, no person may restrict a member of the Armed Forces in lawful communication with a member of Congress or an IG. |

| Understand how the trauma of retaliation may be different for sexual assault victims than it is for witnesses, bystanders, and first responders. | <ul style="list-style-type: none"> Retaliation following a sexual assault has the potential to re-traumatize a victim. These experiences can compound and add to the negative psychological, interpersonal, and physical outcomes previously triggered by the sexual assault | <ul style="list-style-type: none"> <i>RPRS, Issue Area 4, (April 2016)</i> |
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| Under SARC/SAPR VA CC 4: Coordinate services and advocate for victims | | |
| Learning Objectives | Content and/or Suggested Delivery | References |
| With the retaliation reporter's consent, present oral updates to command on retaliation reports from sexual assault victims and uniformed witnesses, bystanders, and first responders relating to a sexual assault report. | <ul style="list-style-type: none"> At every CMG meeting, the Chair will ask CMG members if the retaliation reporter, witnesses, bystanders, or first responders have experienced any incidents of retaliation, reprisal, ostracism, or maltreatment. (DoDI 6495.02 July 2015 – E9.2.i.) | <ul style="list-style-type: none"> <i>Implementation Plan to RPRS, Issue Area #3/4 (yet to be published)</i> |
| Coordinate with EOAs to discuss retaliation reports from uniformed sexual harassment complainants or uniformed witnesses, bystanders, and first responders to a sexual harassment complaint at CMG meetings or Service equivalent. (SARCs only) | <ul style="list-style-type: none"> The SARC will confirm with the EOA and legal assistance attorney, if the complainant is seeking legal assistance, if there is a retaliation allegation to discuss at CMG | <ul style="list-style-type: none"> <i>Implementation Plan to RPRS, Issue Area #3/4 (yet to be published)</i> |
| Ensure retaliation communications by victims are handled as privileged communications and manage disclosure of reporter information to other parties. | <ul style="list-style-type: none"> The senior SARC will consult with the servicing SJA office on retaliation allegations to be presented at the CMG if the senior SARC has concerns regarding privileged communications | <ul style="list-style-type: none"> <i>Implementation Plan to RPRS, Issue Area #3/4 (yet to be published)</i> MRE 513 and 514 |

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| Provide support throughout the retaliation response process to uniformed sexual assault victims, witnesses, bystanders, and first responders to a sexual assault and assist with making available alternative means for resolving a retaliation report. | <ul style="list-style-type: none"> The SARC will offer support throughout the process, to include providing referrals (e.g. SVC/VLC/legal assistance attorney) and accompanying the victim to meetings with command, investigators, and other first responder personnel, if requested | <ul style="list-style-type: none"> Retaliation Response Process in the <i>Implementation Plan to RPRS, Issue Area #3/4</i> (yet to be published) |
| Facilitate resolution of a retaliation report by coordinating with local EOA if requested by reporter. | <ul style="list-style-type: none"> Wherever appropriate and desired, the SARC/SAPR VA may assist with coordinating resolution at the lowest appropriate level | <ul style="list-style-type: none"> Retaliation Response Process in the <i>Implementation Plan to RPRS, Issue Area #3/4</i> (yet to be published) |
| Under SARC/SAPR VA CC 8: Uphold ethical standards | | |
| Learning Objectives | | References |
| Maintain and manage the input of data into DSAID for all reports of retaliation relating to a sexual assault. (SARCs only) | <ul style="list-style-type: none"> The SARC will open a case in the retaliation module in DSAID after receiving a notification from an investigative entity | <ul style="list-style-type: none"> Retaliation Reporting Process Maps in the <i>Implementation Plan to RPRS, Issue Area #2</i> (yet to be published) |

New Retaliation Response Process Core Competencies and Learning Objectives for EOAs

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| Proposed EOA CC: Provide assistance, coordination and referral services during in-take | | |
| Learning Objectives | Content and/or Suggested Delivery | References |
| Pending promulgation and OSD approval of retaliation definitions, implement retaliation complaint processing procedures and timely complaint processing requirements. | <ul style="list-style-type: none"> Perform retaliation intake process to assist with service member retaliation issue identification and reporting Understand and facilitate timely assistance and response actions, including investigation referral, complaint processing findings, dispositions, and resolution rates. Support engagement and assistance efforts | <ul style="list-style-type: none"> Explain retaliation reporting process for concerns of retaliation, including reprisal, restriction, ostracism and maltreatment, as defined by <i>Implementation Plan to RPRS, Issue Area #1</i> |

| Proposed EOA CC: Maintain retaliation reporting data management and emerging technologies | | |
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| Learning Objectives | Content and/or Suggested Delivery | References |
| Maintain retaliation reports and, as directed, manage the input of case data into Service-specific case management system for all reports of retaliation subsequent to complaints of sexual harassment. | <ul style="list-style-type: none"> Currently in development, a planned data warehouse will be used to display strategic dashboard of data to increase accountability on retaliation reporting and timely retaliation report processing | <ul style="list-style-type: none"> Service MEO personnel, in coordination with the Senior SARC, will maintain retaliation report data in accordance with Retaliation Reporting Process Maps in the <i>Implementation Plan to RPRS, Issue Area #2</i> |

New Core Competencies and Learning Objectives for Service Members

| Under Service Member CC 4 (Retaliatory Behavior): Describe retaliatory behavior experienced by reporters of sexual assault and sexual harassment and its impact on the military | |
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| Learning Objectives | References |
| Define Retaliatory Behavior. | <ul style="list-style-type: none"> <i>DoD Retaliation Prevention and Response Strategy (RPRS): Regarding Sexual Assault and Harassment Reports</i> (April 2016) <i>Implementation Plan to RPRS, Issue Area #1 – Definitions</i> (yet to be published) |
| Communicate the difference between the various types of retaliatory behavior: restriction, reprisal, ostracism, maltreatment, criminal acts. | <ul style="list-style-type: none"> Explaining the distinction between the types of retaliatory behavior, emphasizing the distinction between civil and criminal actions. As outlined in the <i>Implementation Plan to RPRS, Issue Area #1 – Definitions</i> (yet to be published) FY17 NDAA |
| Under Service Member CC 2 (Prevention and Response): Describe strategies to prevent retaliatory behavior against reporters of sexual assault or sexual harassment and support resources for victims of retaliation | |
| Learning Objectives | References |
| Describe Strategies for retaliatory behavior bystander intervention. | <ul style="list-style-type: none"> Identifying prevention strategies and behaviors that may reduce retaliatory behavior including bystander intervention, risk reduction, and mutual respect, creating a healthy command/unit climate, and Service social media policy review |

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| <p>Provide overview of available resources for Service members who reported a sexual assault or sexual harassment and experienced retaliatory behavior.</p> | <ul style="list-style-type: none"> • Providing an awareness of the retaliation response program (DoD and Service) and command personnel roles and responsibilities, including all available resources for victims <i>DoD RPRS</i> (April 2016) and <i>Implementation Plan to RPRS, Issue Area #3/4 – Response process</i> (yet to be published) • Victims of retaliatory behavior will be informed that they can also seek assistance from a myriad of support personnel to include SARC/SAPR VA, EOA, IG, MCIO, SVC/VLC, and legal assistance attorney; and in some cases be directly referred to IG for their case. (<i>Implementation Plan to RPRS, Issue Area #3/4 – Response process</i> (yet to be published)) |
| <p>Identify command personnel roles and responsibilities. (Pre Command/Senior Enlisted and Professional Military Education Only)</p> | <ul style="list-style-type: none"> • Providing an awareness of the retaliation response program (DoD and Service) and command personnel roles and responsibilities <i>DoD RPRS Regarding Sexual Assault and Harassment Reports</i> (April 2016) and <i>Implementation Plan to RPRS, Issue Area #3/4 – Response process</i> (yet to be published) |
| <p>Identify command climate strategies for preventing retaliatory behavior against reporters of sexual assaults. (Pre Command/Senior Enlisted and Professional Military Education Only).</p> | <ul style="list-style-type: none"> • Identifying and remedying environmental factors specific to the location that may facilitate the commission of retaliatory behavior acts • Identifying prevention strategies and behaviors that may reduce retaliatory behavior, including bystander intervention, risk reduction, and social media policy understanding |
| <p>Describe the procedure when the alleged retaliation perpetrator is the commander or in the victim's chain of command. (Pre Command/Senior Enlisted and Professional Military Education Only).</p> | <ul style="list-style-type: none"> • Providing information to victims when the alleged perpetrator is the commander or in the victim's chain of command, to go outside the chain of command to report the offense to an IG. Victims will be informed that they can also seek assistance from an SVC/VLC or a legal assistance attorney |