



CHIEF NATIONAL GUARD BUREAU INSTRUCTION

NGB-ZA
DISTRIBUTION: A

CNGBI 1303.01
06 August 2012

EXPEDITED TRANSFER OF MILITARY SERVICE MEMBERS WHO FILE UNRESTRICTED REPORTS OF SEXUAL ASSAULT

Reference(s): See Enclosure A.

1. Purpose. This instruction establishes policy and procedures to expedite the transfer of National Guard Title 32 Service members who file an Unrestricted Report of sexual assault in accordance (IAW) with reference a.
2. Cancellation. None.
3. Applicability. This instruction applies to the National Guard Bureau (NGB) (the NGB Joint Staff, the Army National Guard (ARNG) and the Air National Guard (ANG) directorates), and the National Guard of the 54 States, Territories, and the District of Columbia.
4. Policy. It is NGB policy that:
 - a. Any threat to life or safety of a Service member shall be immediately reported to command and law enforcement authorities. A request to transfer the victim under these circumstances will be handled IAW established Service regulations. It is recognized that circumstances may also exist that warrant the transfer of a Service member who makes an Unrestricted Report of sexual assault, but may not otherwise meet established criteria affecting their immediate transfer. These Service members may request a transfer pursuant to the procedures set forth in this instruction.
 - b. Military Service members who file an Unrestricted Report of sexual assault shall be informed at the time of making the report, or as soon as practical, of the option to request a temporary or permanent transfer from their assigned command, or to a different location within their unit of assignment or Inactive Duty Training location.

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c. A presumption shall be established in favor of transferring a Service member who initiates a transfer request following a credible report of sexual assault. The commander, or the appropriate approving authority, shall determine whether or not the report is credible immediately upon receipt. The commander shall consider the advice of the supporting judge advocate, other concerned legal advisors, the Sexual Assault Response Coordinator (SARC), and the available objective evidence.

d. Service members shall initiate and submit the transfer request to their commander in writing. Victims shall be encouraged to include any and all of their concerns in the written request to aid the commander in understanding all of their needs to make an appropriate decision. The commander shall document the date and time the request was received.

e. Expedited transfers of Service members who file an Unrestricted Report shall be limited to sexual offenses defined in reference a and reference b, as well as the applicable state criminal code.

f. Every reasonable effort must be made to minimize disruption of the normal career progression of a Service member who seeks a transfer based on a credible report that he or she was the victim of sexual assault. The appropriate commander shall directly counsel the Service member to ensure that he or she is fully informed regarding reasonably foreseeable career impacts, the potential impact of the transfer or reassignment on the investigation and case disposition, the initiation of other adverse action against the alleged offender, and other possible consequences. Service members requesting the transfer shall be informed that they may have to return for the adjudication of the case.

g. Bonus and Special Pays. In accordance with reference c, paragraph 020203, E., if the Service member was paid a bonus or special pay for a period of enlistment under a written agreement and requests an expedited transfer due to sexual assault, every effort will be made to not require repayment of the unearned portion of that pay or benefit.

(1) The first general officer in the relevant chain of command has final authority and will make the decision on a case-by-case basis. Determination of repayment of an unpaid portion, full payment, or waiver, should be made based on whether the unearned portion is appropriate due to a personnel policy or management objective, equity or good conscience, or is in the best interest of the United States.

(2) The general officer should also determine whether or not the member should repay any remaining unpaid portion of a pay or benefit related to the member military specialty as the result of an expedited transfer request. Every

effort should be made to consider the expedited transfer for sexual assault in the same way as a hardship, illness, or injury that precludes the member from fulfilling the service conditions specified in the written bonus agreement for the relevant military specialty.

h. Expedited transfer procedures will be established within available resources and authorities for members of the ARNG and ANG who make Unrestricted Reports of sexual assault. If the Service member so requests, the commander should allow for separate training on different weekends or times from the alleged offender or training with a different unit in the home drilling location to ensure the transfer places no undue burden on the Service member and his or her family. Potential transfer of the alleged offender instead of the Service member should also be considered. At a minimum, the alleged offender's access to the Service member who made the Unrestricted Report shall be appropriately restricted.

i. If the Service member is Title 32 Active Guard Reserve, the commander must approve or disapprove the Service member request for a permanent change of station (PCS), permanent change of assignment (PCA), or unit transfer within 72 hours of receipt. The decision to approve the request shall be immediately forwarded to the designated activity that processes PCS, PCA, or unit transfers.

j. If the commander disapproves the Service member request, the member shall be given the opportunity to request review by the first general officer in the Service member chain of command. The decision to approve or disapprove the request must be made by the general officer within 72 hours of submission. If the request is approved, orders will be expeditiously initiated and processed to complete the move.

k. Commanders shall make every reasonable effort to minimize disruption to the normal career progression of a Service member who reports that he or she is a victim of a sexual assault.

l. Service members who file Unrestricted or Restricted Reports of sexual assault shall be protected from reprisal or threat of reprisal.

5. Definitions. See glossary.

6. Responsibilities.

a. The Adjutants General (TAG) of the 54 States, Territories, and the District of Columbia shall:

(1) Require that Service members who make an Unrestricted Report of sexual assault be informed by the SARC, Victim Advocate, or the relevant

commander at the time of making the report, or as soon as practical, of the option to request transfer from the current command to a different position or location within their assigned command.

(2) Require that a commander or the appropriate approving authority make a determination based on a credible report of sexual assault and provide his or her reasons and justification on the transfer of a Service member in writing.

b. The relevant commander shall consider:

(1) The Service member reason(s) for the request.

(2) Potential transfer of the alleged offender instead of the requesting Service member.

(3) Nature and circumstances of the offense.

(4) Whether a temporary transfer would meet the Service member needs and the unit operational needs.

(5) Training and duty status of the victim requesting the transfer.

(6) Availability of positions within other State units.

(7) Status of the investigation and potential impact on the investigation and future disposition of the offense, upon consultation with the investigating authority.

(8) Location of the alleged offender.

(9) Alleged offender status (Service member or civilian).

(10) Other pertinent circumstances or facts.

c. NGB-J1-SAPR shall:

(1) In coordination with ARNG and ANG, establish National Guard Title 32 procedures to implement this CNGBI within the 54 States, Territories, and the District of Columbia.

(2) Establish a documentation system to gather data on expedited transfer requests for reports to Chief, National Guard Bureau.

d. Joint Force Headquarters-State (JFHQ-State) and Wing SARCs shall:

(1) Ensure the victim has elected an Unrestricted Report for sexual assault by signing a DD Form 2910, "Victim Reporting Preference Statement," located at the DoD Forms Management Program website at <http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>, reference d. Provide the victim with a copy of the form for future reference.

(2) Inform the victim of the need to submit a written request for transfer to the commander to support understanding victim needs and an appropriate decision. If, after being fully informed of the possible ramifications of the transfer request, the victim elects not to proceed with his or her request, the victim will be required to submit a written withdrawal request.

(3) Meet with the Service member who has indicated a desire to transfer to discuss any related concerns. Concerns may include member status, position, possible training requirements and benefits, (i.e. bonuses, etc.) before initiating the transfer. This procedure will ensure the member is aware of any possible ramifications the transfer may pose and support an informed decision.

(4) Inform the victim that if he or she files a Restricted Report IAW reference a, and requests an expedited transfer, he or she must affirmatively change their reporting option to Unrestricted Reporting on the DD Form 2910.

(5) Track and document all requests for expedited transfers from Title 32 sexual assault victims and report them monthly to ARNG and ANG sexual assault prevention and response (SAPR) program managers, for further reporting to Army and Air Force.

7. Summary of Changes. This is the initial publication of CNGBI 1303.01.

8. Releasability. This instruction is approved for public release; distribution is unlimited. National Guard components, NGB directorates, TAGs, the Commanding General of the District of Columbia, and JFHQ-State may obtain copies of this instruction through www.ngbpd.cngb.army.mil.

9. Effective Date. This instruction is effective upon publication.


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Enclosure(s):

A -- References
GL -- Glossary

ENCLOSURE A

REFERENCES

- a. DoD Directive 6495.01, January 23, 2012, "Sexual Assault Prevention and Response (SAPR) Program"
- b. Title 10, U.S.C., Chapter 47, The Uniform Code of Military Justice (UCMJ)
- c. DoD 7000-14-R, Volume 7-A, Chapter 2, March 2011, "Repayment of Unearned Portion of Bonuses and Other Benefits"
- d. <<http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>>
- e. Title 32, U.S.C. § 502 (f)
- f. DoD Directive 5100.87, February 19, 2008, "Department of Defense Human Resources Activity (DoDHRA)"
- g. DoD Instruction 6495.02, June 23, 2006, "Sexual Assault Prevention and Response Program Procedures"
- h. Army Directive 2011-19, 3 Oct 11, "Expedited Transfer or Reassignment Procedures for Victims of Sexual Assault"
- j. Directive Type Memorandum (DTM) 11-063, 6 Dec 11, subject: Expedited Transfer of Military Service Members Who File Unrestricted Reports of Sexual Assault

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

ANG	Air National Guard
ARNG	Army National Guard
IAW	In accordance with
JFHQ-State	Joint Force Headquarters State
NGB	National Guard Bureau
PCA	Permanent Change of Assignment
PCS	Permanent Change of Station
SARC	Sexual Assault Response Coordinator
SAPR	Sexual assault prevention and response
TAG	The Adjutant General

PART II. DEFINITIONS

Credible Report -- Having reasonable grounds to believe that an offense constituting sexual assault has occurred.

DD 2910 -- Victim Reporting Preference Statement document that allows a victim of sexual assault the option to report the assault in a restricted or unrestricted manner. Only unrestricted reports qualify for expedited transfer options.

Unrestricted Report -- Defined in reference a.

Restricted Report -- Defined in reference a.

SAPR Victim Advocate -- A person who provides non-clinical crisis intervention, referral, and ongoing non-clinical support to adult sexual assault victims.

Sexual assault -- Intentional sexual contact characterized by use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent. Sexual assault includes rape, forcible sodomy (oral or anal sex), and other unwanted sexual contact that is aggravated, abusive, or wrongful (including unwanted and inappropriate sexual contact), or attempts to commit these acts as defined in reference a and reference b.

Title 32 Active Guard Reserve -- For the purpose of this CNGBI, Active Guard/Reserve refers to National Guard Service members serving on Full-Time National Guard Duty IAW reference e.