



CHIEF NATIONAL GUARD BUREAU NOTICE

NGB-JA/OCI
DISTRIBUTION: A

CNGBN 0400
16 April 2014

INTERIM REVISION TO CNGB SERIES 0400.01

References: See Enclosure A.

1. Purpose. This notice provides the following interim changes to references a and b:

a. Implements Department of Defense (DoD) Sexual Assault Prevention and Response (SAPR) policy and procedures for National Guard members on duty pursuant to Title 32 U.S. Code, reference c, and in accordance with references d and e.

b. Directs commanders to refer all Unrestricted Reports of sexual assault to the appropriate Military Criminal Investigative Organization (MCIO), civilian law enforcement, or to the National Guard Bureau Office of Complex Administrative Investigation (NGB-JA/OCI), in accordance with references d and e.

c. Clarifies the appropriate definition for “sexual assault” in determining which reports must be referred.

2. Cancellation. None.

3. Applicability. This notice applies to all elements of the National Guard, the Office of the Chief of the National Guard Bureau, the National Guard Joint Staff, the Army National Guard, and the Air National Guard, all field activities of National Guard Bureau, the National Guard of the States, Territories, and the District of Columbia.

4. Background.

a. Reference d states, “A unit commander who receives an Unrestricted Report of an incident of sexual assault shall immediately refer the matter to the

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appropriate MCIO. A unit commander shall not conduct internal command directed investigations on sexual assault (i.e., no referrals to appointed command investigators or inquiry officers) or delay immediately contacting the MCIOs while attempting to assess the credibility of the report.” However, MCIOs often lack jurisdiction to conduct criminal investigations into National Guard matters when an assault occurred while members were in a Title 32 status. Under relevant law or policies, civilian law enforcement may also decline to investigate certain cases while members were in a Title 32 status.

b. NGB-JA/OCI was established, in part, to offer a resource for conducting administrative investigations of sexual assaults within the National Guard when law enforcement declines to investigate such reports or the law enforcement investigation is unavailable or insufficient for use in military administrative actions.

5. Action or Procedure.

a. Commanders.

(1) Commanders who receive an Unrestricted Report of sexual assault that occurred while the reported perpetrator was in a Title 10 status must refer the matter to the appropriate MCIO (for example, the Army Criminal Investigation Division or the Air Force Office of Special Investigations).

(2) Commanders who receive an Unrestricted Report of sexual assault that occurred while the reported perpetrator was in a Title 32 status must refer the matter to a civilian law enforcement entity with jurisdiction over the crime (for example, the Federal Bureau of Investigation, sheriff’s office or local police).

(3) Commanders will not make a credibility assessment of a sexual assault report prior to referring it to law enforcement or NGB-JA/OCI for investigation.

(4) Commanders are strongly encouraged to consult with their Judge Advocates when seeking to comply with any aspect of this notice, including when determining whether or not the facts and circumstances of a report potentially constitute a sexual assault.

(a) IAW reference c, “sexual assault” means “Intentional sexual contact characterized by use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent. The term includes a broad category of sexual offenses consisting of the following specific [Uniform Code of Military Justice (UCMJ)] offenses: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit these acts.

(b) For the purposes of this policy, “sexual contact” is defined as:

1 Touching, or causing another person to touch, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, or degrade any person; or

2 Any touching, or causing another person to touch, either directly or through the clothing, any body part of any person, if done with an intent to arouse or gratify the sexual desire of any person. Touching may be accomplished by any part of the body.

(c) Although specific UCMJ offenses identified above may not ultimately constitute a “sexual assault” or other sexual crime in some jurisdictions (including under certain state codes of military justice), if the alleged act meets the definition herein, it must still be referred to law enforcement.

(5) Commanders will not conduct internal command directed investigations into a sexual assault report (for example, no referrals to appointed command investigators or inquiry officers).

(6) Commanders may direct investigations into Command Climate, reporting procedures, relevant training deficiencies, or other related issues so long as these investigations do not interfere with local law enforcement or NGB-JA/OCI's investigation.

(7) Commanders have discretion to defer action on alleged collateral misconduct by the sexual assault victims (and will not be penalized for such a deferral decision), until final disposition of the sexual assault case, taking into account the trauma to the victim and responding appropriately so as to encourage reporting of sexual assault and continued victim care, in accordance with reference d.

b. NGB-JA/OCI Referrals.

(1) If a relevant law enforcement entity declines to investigate a sexual assault report, regardless of reason, The Adjutants General (TAG) or their designees will refer the matter to NGB-JA/OCI for consideration following the referral process below.

(2) If a relevant law enforcement entity investigates a sexual assault report, TAGs may, at their discretion, refer reports involving National Guard members to NGB-JA/OCI for consideration. However, NGB-JA/OCI investigators will not interfere with law enforcement investigations.

(3) Referrals to NGB-JA/OCI will follow the same procedures as TAG requests in accordance with reference b. Prior to submitting a signed TAG request for an NGB-JA/OCI investigation, reports of sexual assault must be coordinated between the State Staff Judge Advocate (SJA) or designee, and NGB-JA/OCI to ensure a requisite National Guard nexus exists or to identify a more appropriate investigative channel. If NGB-JA/OCI declines to investigate a report for any reason, including for example, due to lack of a sufficient National Guard nexus or the report does not rise to a sexual assault as defined herein, then the referral requirement in this notice will be satisfied as long as the matter was discussed between the State SJA or designee, and NGB-JA/OCI.

6. Releasability. This notice is approved for public release; distribution is unlimited. National Guard Bureau directorates, TAGs, the Commanding General of the District of Columbia, and Joint Force Headquarters-State may obtain copies of this notice through <<http://www.ngbpdc.ngb.army.mil>>.

7. Effective Date. This notice is effective on the date signed and will expire one year from the date of signature unless cancelled earlier.



FRANK J. GRASS
General, USA
Chief, National Guard Bureau

Enclosure:

A-- References

ENCLOSURE A

REFERENCES

- a. CNGB Instruction 0400.01, 30 July 2012, “Chief, National Guard Bureau Office of Complex Investigations”
- b. CNGB Manual 0400.01, 08 November 2012, “Chief, National Guard Bureau Office of Complex Administrative Investigations”
- c. Title 32 U.S.C.
- d. DoD Instruction 6495.02, 28 March 2013, Incorporating Change 1, 12 February 2014, “Sexual Assault Prevention and Response (SAPR) Procedures”
- e. DoD Directive 6495.01, 23 January 2012 Incorporating Change 1, 30 April 2013 Incorporating Change 1, 30 April 2013, “Sexual Assault Prevention and Response (SAPR) Program”
- f. Uniform Code of Military Justice, 10 U.S.C. Chapter 47