



CHIEF OF THE NATIONAL GUARD BUREAU MANUAL

NGB-CI
DISTRIBUTION: A

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NATIONAL GUARD BUREAU OFFICE OF COMPLEX INVESTIGATIONS SEXUAL ASSAULT INVESTIGATION PROCEDURES

References: See Enclosure F.

1. Purpose. This manual provides procedural guidance for the National Guard Bureau (NGB) Office of Complex Investigations (NGB-CI) sexual assault investigations in accordance with reference a through reference e.
2. Cancellation. This manual cancels and replaces its previous edition, Chief of the National Guard Bureau (CNGB) Manual 0400.01A, 16 May 2018, "National Guard Complex Administrative Investigations and Procedures."
3. Applicability. This manual applies to all National Guard (NG) Service members and civilian employees hired under the authority of Title 5 United States Code or Title 32 United States Code. Exceptions to the policies and procedures in this manual may only be approved by the Director of NGB-CI. Nothing in this manual is intended to, nor should be interpreted to, preempt State law related to sexual assault investigations.
4. Procedures. NGB-CI provides a capability to The Adjutant General (TAG) or the Commanding General of the District of Columbia (CG) to conduct administrative investigations of unrestricted reports of sexual assault with an NG nexus at the request of TAG or the CG. Additionally, the CNGB may direct NGB-CI to investigate or assess any matter within the CNGB's authority.
 - a. Commanders, including TAGs and the CG, are prohibited from investigating any allegation of sexual assault in accordance with reference f through reference l. All unrestricted reports of sexual assault with an NG nexus will be immediately reported to the appropriate Civilian Law Enforcement Agency (LEA) or Military Criminal Investigative Organization (MCIO), and to the Sexual Assault Response Coordinator.
 - b. If, after referral to a civilian LEA or MCIO, further investigation of a sexual assault allegation is necessary to determine appropriate disposition of the allegation, TAGs or the CG may request that NGB-CI conduct an independent administrative investigation. TAGs or the CG may also request NGB-CI investigate an allegation when the victim

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declines to participate in a civilian LEA or MCIO investigation by requesting an exception to policy during coordination with NGB-CI.

c. Coordination with NGB-CI is required prior to submitting a signed TAG or CG request for investigation to ensure that the allegation is appropriate for NGB-CI investigation. TAGs and the CG are provided with NGB-CI's coordination input before deciding to request an NGB-CI investigation.

d. NGB-CI information may only be shared with authorized personnel who have a lawful government purpose to access the information, or as otherwise permitted by law. Any use, disclosure, release, or request for NGB-CI information must comply with Enclosure D.

e. NGB-CI may not investigate reports made against senior officials unless authorized by an entity with requisite authority. Complaints against a senior official discovered during an NGB-CI investigation are referred to the NGB Inspector General.

f. All requests for exceptions to the policies and procedures in this manual will be submitted to the Director of NGB-CI for consideration.

5. Summary of Changes. Changes include removing the Office of the General Counsel as the oversight authority of NGB-CI, updating guidance for Legal Reviews, removing interview and evidence collection guidance, removing NGB-CI investigator qualifications, removing responsibilities of both Investigations Manager and individual investigators, and making changes to the references providing updated guidance.

6. Releasability. This manual is approved for public release; distribution is unlimited. It is available at <<https://www.ngbpmc.ng.mil/>>.

7. Effective Date. This manual is effective upon publication and must be reviewed annually by the Proponent/Office of Primary Responsibility for continued validity, and must be revised, reissued, canceled, or certified as current every ten years.



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Enclosures:

- A -- Coordination and Investigation Procedures
- B -- Staff Roles

C -- The Adjutants General and Commanding General of the District of Columbia
Request for Reconsideration of National Guard Bureau Office of Complex
Investigations Report of Investigation Findings

D -- Requesting, Using, Disclosing, and Releasing National Guard Bureau Office of
Complex Investigations Information

E -- Requesting National Guard Bureau Office of Complex Investigations Testimony
at Trial or Hearing

F -- References

GL -- Glossary

ENCLOSURE A

COORDINATION AND INVESTIGATION PROCEDURES

1. Sexual Assault. Sexual assault is defined as an 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 offenses, rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit these acts, in accordance with reference d and reference f.
2. Mandatory Reporting Requirement. An unrestricted report of sexual assault must be reported to the appropriate civilian LEA or MCIO with jurisdiction over the offense. NGB-CI is not a substitute for civilian LEA or MCIO investigation. NGB-CI has no authority to seize evidence, obtain warrants, conduct forensic tests, make arrests, or perform other functions available to the civilian LEA or MCIO investigators.
3. Post-Reporting Referral of Sexual Assault Allegations to NGB-CI for Coordination.
 - a. TAGs and the CG must refer all unrestricted reports of sexual assault to the appropriate civilian LEA or MCIO. If the civilian LEA or MCIO declines, refuses, or fails to investigate the sexual assault report, regardless of reason, TAG, the CG, or designee must refer the matter to NGB-CI for coordination. Coordination is required; however, a subsequent request for investigation remains at the discretion of TAG or the CG. If a relevant civilian LEA investigates a sexual assault report, TAG or the CG may, at their discretion, refer reports to NGB-CI for consideration due to insufficiency of the civilian LEA investigation. TAG or the CG may not order further internal investigation into sexual allegations with non-law enforcement state assets. Only law enforcement organizations or NGB-CI may investigate sexual assault allegations (see "Applicability" in the previous section at paragraph 3 when State law requirements may require additional investigation). NGB-CI investigators will not interfere with the civilian LEA or MCIO investigations.
 - b. Reports of sexual assault must be coordinated between the State Judge Advocate (JA) or designee and NGB-CI prior to submitting the signed TAG request for investigation. Coordination ensures that:
 - (1) The required NG nexus exists.
 - (2) The allegation meets the elements of sexual assault.
 - (3) There is a reasonable likelihood that investigation by NGB-CI will materially add to information already developed about the allegation.

(4) Following coordination, if NGB-CI declines to investigate a report for any reason, including lack of a sufficient NG nexus, the existence of a prior sufficient civilian LEA or MCIO investigation, or if an allegation does not meet the elements of sexual assault as defined in this manual, the referral and coordination requirement in this manual is satisfied.

(5) TAG and CG requests for NGB-CI investigations without initial referral to LEA are processed through State JA channels to NGB-CI as a request for an exception to policy, subject to the final determination of the Director of NGB-CI.

c. It is NGB-CI policy to assist TAGs and the CG whenever regulations and resources permit.

d. If a TAG or the CG elects not to request an NGB-CI investigation, TAGs or the CG may initiate appropriate action based on a prior civilian LEA or MCIO investigation.

4. Requests for Investigation. Following referral and coordination, TAGs or the CG may formally request that NGB-CI conduct an administrative investigation. NGB-CI will not investigate a report of sexual assault without a formal request from TAG or the CG. Requests for NGB-CI investigations will be processed through State JA channels to NGB-CI. NGB-CI will provide submission requirements to the State JA.

5. Reports of Sexual Assault Involving Multiple States. If a sexual assault report involves NG members from more than one State, the respective TAGs or the CG should coordinate and, if appropriate, request an NGB-CI investigation. Both the victims' and the reported perpetrators' TAG or the CG will receive a copy of the NGB-CI Report of Investigation (ROI). Full TAG or CG cooperation and concurrence from all involved States is essential to an investigation.

6. Standard of Proof. NGB-CI investigations apply a preponderance of the evidence standard of proof. This is evidence which has greater weight or is more convincing than the evidence which is offered in opposition to it. In other words, evidence which shows that the fact sought to be proved is more probable than not.

7. Administrative Pause of NGB-CI Investigation. If, as determined by the Director of NGB-CI, circumstances arise which prevent NGB-CI from completing an ongoing investigation, the Director of NGB-CI will notify the State that the investigation is administratively paused until such time as the State notifies NGB-CI that the matter is resolved. Examples of such circumstances include any activation, hospitalization, or deployment of the victim, reported perpetrator, or essential witnesses making it impractical to conduct an interview. NGB-CI will promptly notify the State once the investigation resumes.

8. NGB-CI ROIs.

a. Findings. An investigation for an allegation of sexual assault will generate findings based on the elements set forth in the definition of sexual assault applicable at

the time of the alleged offense. Findings will be made for each allegation of sexual assault by the reported perpetrator against the victim, including allegations raised during the investigation and unknown at the time of the original request. Findings will be made using a preponderance of the evidence standard. Findings will not be made as to allegations by or against individuals other than the victim and reported perpetrator identified in the original request for investigation unless specifically requested by the State in a separate request.

b. Nature of Evidence. The weight of evidence is not determined by the number of witnesses or volume of exhibits, but by considering all the evidence and evaluating factors such as the witnesses' demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and other indications of veracity.

9. Out-Brief. Upon request by TAG, the CG, or the investigative team, the investigative team will provide an out-brief to TAG, the CG, or a designee. The out-brief will not discuss preliminary findings. The out-brief may discuss a summary of evidence, a discussion of the facts surrounding the incident, cooperation received, and other relevant information.

10. Legal Review. Upon the conclusion of an NGB-CI investigation, NGB-CI will conduct a legal review of the ROI.

11. Conclusion of an NGB-CI Investigation. Upon completion of the legal review and approval by the Director of NGB-CI, NGB-CI returns the ROI and all supporting evidence to the State through the State JA. NGB-CI provides interview videos to the State upon request.

12. Investigation Closure Time Standard. Absent an administrative pause or other extenuating circumstances, NGB-CI will return the completed ROI to the State within 150 days of opening the investigation.

13. Access to the ROI. Requests for ROIs will be made in accordance with Enclosure D.

14. Request for Reconsideration. TAG or the CG may request reconsideration of a finding contained in an NGB-CI ROI in accordance with Enclosure C.

ENCLOSURE B

STAFF ROLES

1. Director of NGB-CI. The Director of NGB-CI (or their designee) will:
 - a. Oversee and manage NGB-CI.
 - b. Create and disseminate procedures to implement this policy, establish guidance, and provide oversight for administrative investigations of unrestricted reports of sexual assault in the NG, consistent with applicable Department of War (DoW), the CNGB, Army NG and Air NG issuances, and applicable law.
 - c. Request funding, equipment, and training adequate for the mission.
 - d. Credential NGB-CI investigators and ensure they possess and maintain the specialized education, training skills, and experience to successfully complete assigned missions in a professional, impartial, and timely manner.
 - e. Determine if a request for NGB-CI to administratively investigate a report of sexual assault is appropriate.
 - f. Appoint qualified and impartial individuals to conduct administrative investigations and ensure that investigators adhere to established NGB-CI standards.
 - g. Establish training requirements and other criteria necessary to become a fully qualified NGB-CI investigator. Upon successful completion of all established requirements, the Director of NGB-CI will:
 - (1) Credential investigators and provide official identification
 - (2) Use discretion to waive the training requirements in this issuance if an individual has previously served as an NGB-CI investigator and demonstrated necessary experience, aptitude and competence to conduct complex investigations.
 - (3) Document in writing those individuals for which the training requirements of this issuance are waived.
 - h. Ensure all NGB-CI investigation reports receive an NGB-CI legal review.
 - i. Approve release of NGB-CI ROIs to the requesting TAG or the CG.
 - j. In accordance with applicable laws and regulations, approve or decline requests for NGB-CI investigators to testify at criminal trials or administrative hearings.

k. In accordance with Federal laws and military regulations, establish and distribute procedures to ensure the proper storage, protection, release, and use of NGB-CI reports, videos, and other evidence to ensure that the information is accessed only by authorized persons for a lawful Governmental purpose, or as otherwise authorized by law or regulation.

l. Designate the uniform or attire NGB-CI investigators wear while traveling, conducting investigations, or testifying, which includes the authorization of civilian clothes for military personnel.

m. Ensure coordination between NGB-CI, NGB Manpower and Personnel Directorates for both Army and Air, as well as the NGB Financial Management Directorate to fund the necessary costs for NGB-CI to conduct investigations and training under this policy.

n. Ensure coordination with State JA or legal advisor to determine whether a requisite NG nexus exists, the allegation meets the elements of sexual assault, and if there is a reasonable likelihood that investigation by NGB-CI will materially add to information already developed about the allegation.

2. TAG or CG. TAG or the CG will:

a. Ensure all unrestricted reports of a sexual assault are referred to the appropriate MCIO or civilian LEA. If TAG or the CG determines, after referral to the applicable MCIO or civilian LEA, that further investigation is necessary, NGB-CI is available to assist TAGs by providing an administrative investigation into the allegation of sexual assault. TAGs or the CG may also request NGB-CI investigate an allegation when the victim declines to participate in a civilian LEA or MCIO investigation by requesting an exception to policy during coordination with NGB-CI.

b. Ensure State Staff Judge Advocates coordinate with NGB-CI before submitting a request for investigation.

c. After coordination between the State Staff Judge Advocate and NGB-CI, request an NGB-CI investigation.

d. Assign a State point of contact whose primary duty is to provide administrative and logistical support during the investigation.

e. Ensure State point of contact and the Commander provide investigators adequate workspace and administrative support during the investigation.

f. Meet, or designate a representative to meet, with the NGB-CI investigators, State Chief of Staff, State Principal Sexual Assault Response Coordinator, Victim's Wing or Brigade Sexual Assault Response Coordinator, State Staff JA, State point of contact,

and, as needed, State Public Affairs upon arrival of the investigators at NG Joint Force Headquarters-State for the investigation read-in.

- g. Ensure the victim is informed of the NGB-CI investigation.
 - h. Ensure the victim remains advised and aware of their right to a Special Victims' Counsel (SVC) and to a defense counsel if suspected of committing collateral misconduct.
 - i. Ensure the Victim Advocate and any assigned SVC or defense counsel are available to the victim during and immediately after the interview process, at the victim's request.
 - j. Ensure the reported perpetrator is counseled, in writing, about any allegations against them after State Staff Judge Advocate coordination with NGB-CI has determined that NGB-CI investigation is appropriate and prior to NGB-CI opening a case for investigation. Ensure the reported perpetrator is informed of their right to defense counsel at the time of counseling.
 - k. Ensure that a flagging action (if Army NG only) is initiated for all reported perpetrators.
 - l. Ensure investigators receive full cooperation from NG Joint Force Headquarters-State, NG units, and NG Service members.
 - m. Uphold procedures established to ensure the proper storage, protection, release, and use of NGB-CI reports, videos, and other evidence, ensuring that NGB-CI information is accessed only by authorized persons for a lawful Government purpose, or as otherwise authorized by law.
3. State JA. The State JAs (or TAG or CG designated legal advisor) will:
- a. Promptly inform NGB-CI of the unrestricted sexual assault report if a civilian LEA or MCIO agrees to investigate a case referred by TAG or CG, monitor the investigation, and coordinate with NGB-CI, if neither a civilian LEA nor MCIO investigates the allegation.
 - b. When directed by TAG or CG, gather relevant information to refer to NGB-CI for coordination and discuss the allegation of sexual assault with NGB-CI, including ranks of individuals involved; where and when incidents took place; the status of individuals involved; whether or not a civilian LEA or MCIO was notified and investigated; and other relevant information.
 - c. Discuss with NGB-CI whether a requisite NG nexus exists, the allegation meets the elements of sexual assault, and if there is a reasonable likelihood that investigation by NGB-CI will materially add to information already developed about the allegation.

- d. Prepare, on behalf of TAG or the CG, a formal request for NGB-CI investigation.
- e. As directed by TAG or the CG, attend or send a representative to the NGB-CI investigators' briefing.
- f. Prior to initiation of an NGB-CI investigation:
 - (1) Ensure that victims of sexual assault are properly advised of rights they may have to an SVC and, where a victim's misconduct may be an issue, to defense counsel.
 - (2) Verify that any person alleged to have committed sexual assault is formally notified of the allegation against them and properly advised of any right they may have to defense counsel.
 - (3) Ensure a flagging action (if Army NG) or other action applicable to Air NG members is initiated against any person alleged to have committed sexual assault, in accordance with applicable regulations.
 - (4) Provide NGB-CI with the name and contact information for each lawyer (for example, SVC, defense counsel, or civilian attorney) known to represent a reported victim, perpetrator, witness, or other relevant party.
 - (5) Obtain evidence, such as relevant personnel, military, medical, law enforcement files or reports, and related administrative investigations. Provide all such evidence to NGB-CI with the corresponding TAG or CG request memorandum.
 - (6) Advise and assist NGB-CI and NGB-CI investigators on relevant aspects of State law pertaining to the investigation, such as taking statements from witnesses or obtaining documents or assistance from civilian LEAs, medical providers, or other organizations local to the State. Provide investigators legal advice on State law regarding sexual assault and related crimes and regulations regarding rights advisement, privacy, access to state records, and obtaining telephone and computer records. If necessary, assist in obtaining documentary evidence (such as telephone and computer records) for investigators in accordance with applicable State law.
- g. Upon completion of an NGB-CI investigation:
 - (1) Conduct an independent legal review of the ROI, applying the appropriate State and Federal law to the facts, prior to advising or making recommendations to TAG or the CG. NGB-CI does not make findings in the ROI on misconduct and issues pertaining to good order and discipline which are not relevant to the sexual assault investigation although such evidence may be contained therein. The State JA should notify TAG or the CG of any potential collateral misconduct or larger policy issues not analyzed in the ROI.

(2) Determine whether an applicable law or regulation requires that information contained in a ROI be reported to another entity, such as an Inspector General. If the ROI contains adverse information regarding a State or civilian employee, notify the appropriate personnel department, as permitted by law.

(3) Follow applicable referral provisions when an NGB-CI ROI contains adverse information against any Service member.

(4) Advise on the proper storage, protection, disclosure, release, and use of the information provided to the State by NGB-CI, such that it is only shared with authorized personnel who have a lawful governmental purpose to access the information, or as otherwise permitted by applicable laws and regulations. Refer to Enclosure D.

h. Process requests for reconsideration of NGB-CI ROI findings in accordance with Enclosure C.

i. Process requests for information in accordance with Enclosure D.

j. Should the victim indicate that they do not desire an investigation by local law enforcement and will not cooperate with a local law enforcement investigation, coordinate an exception to policy for NGB-CI investigation with the Chief, NGB-CI Legal Division. A request for an exception to policy under this section does not negate the obligation to report the sexual assault allegation to the applicable MCIO or civilian LEA in accordance with DoW Sexual Assault and Prevention and Response policy.

4. State Point of Contact. The State point of contact will:

a. Coordinate with Lead Investigator, TAG, the CG, or their designee, and other attendees to schedule briefings.

b. Coordinate with Lead Investigator and NG units to arrange victim, reported perpetrator, and witness interviews, as applicable, and determine if orders are necessary for participants; provide records requested by investigators; and ensure appropriate office space and equipment are available during the investigation.

c. In coordination with unit Commanders, ensures the appropriate room and equipment are available to investigate.

d. Assist investigators in rescheduling interviews as necessary.

5. NGB-CI Legal Division Chief. The NGB-CI Legal Division Chief (or their designee):

a. Advises the Director of NGB-CI and NGB-CI staff on applicable law, departmental directives, regulations, instructions, and policies concerning a wide variety of legal issues relevant to sexual assault investigations.

- b. Maintains NGB-CI forms required to request an investigation.
 - c. Ensures that all NGB-CI ROIs are reviewed for legal sufficiency.
 - d. Reviews all requests for NGB-CI investigators to testify in trials or administrative hearings and provide advice to the Director regarding same.
 - e. Receives and reviews requests for reconsideration of ROI findings in accordance with Enclosure C.
 - f. Receives and approves official use requests in accordance with Enclosure D.
6. Investigators and Lead Investigators. Investigators and Lead Investigators will:
- a. Conduct administrative investigations in accordance with NGB-CI training and procedures.
 - b. Coordinate the victim interview with the appropriate personnel and request authorization to access relevant medical, police, and military records.
 - c. Coordinate the reported perpetrator interview and request any evidence the reported perpetrator may have.
 - d. Notify each witness or their attorney, if applicable, before their interview that they will be asked to swear or affirm the truthfulness of their testimony.
 - e. Advise witnesses that they may not discuss their testimony or disclose matters under investigation with anyone except their own legal counsel, medical providers, or victim support personnel.
 - f. Ensure, if requested by the victim, the SVC, Victim Advocate or another victim support individual is available. Defense counsel will also be available if the victim is accused of collateral misconduct.
 - g. Unless authorized by NGB-CI, record all interviews, preferably using video.
 - h. Advise the reported perpetrator of their rights to counsel and against self-incrimination prior to the interview and, if requested, permit the reported perpetrator a reasonable amount of time to consult an attorney. Investigators should consult with the State JA to ensure there are no State laws affecting proper rights advisement, or additional language that must be included on the Department of Army Form 3881, "Army Rights Warning Procedure/Waiver Certificate," or Department of the Air Force Form 1168, "Air Force Statement of Suspect/Witness/Complainant".
 - i. Allow the reported perpetrator to provide a written statement if an in-person interview is not possible. The reported perpetrator may also submit any evidence they

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believe is relevant and the names of any witnesses they believe possess relevant information.

j. Advise an individual of their rights under the Fifth Amendment if information is discovered leading the investigator to suspect that the witness violated military or criminal law. The investigator must suspend questioning when such individuals refuse to make further statements or answer questions based on these rights.

k. If a witness becomes a suspected perpetrator in the investigation, read the suspect their rights as described above, allow said this new suspect access to counsel if requested, and coordinate and provide notice to the State JA.

l. Provide witnesses with contact information for NGB-CI if the witness later decides they have additional details to report.

m. Not conduct interviews of Sexual Assault Response Coordinators and Victim Advocates without NGB-CI Legal Division Chief approval. They are not considered witnesses.

n. Upon the conclusion of a reported perpetrator interview, immediately "hand off" the interviewee to the Commander or designated representative. If an investigator believes another witness should be handed-off, the investigator will state any concerns about the individual's personal safety (for example, the individual was emotionally distraught). Victims will be handed-off to their SVC or Victim Advocate, unless other arrangements have been pre-coordinated with the victim and the command.

o. Present an in-brief and out-brief at the request of TAG.

p. Prepare an ROI using NGB-CI guidance.

ENCLOSURE C

THE ADJUTANTS GENERAL AND COMMANDING GENERAL OF THE DISTRICT OF COLUMBIA REQUEST FOR RECONSIDERATION OF NATIONAL GUARD BUREAU OFFICE OF COMPLEX INVESTIGATIONS REPORT OF INVESTIGATION FINDINGS

1. TAG or the CG Request for Reconsideration. Only TAG or the CG may request reconsideration of a finding contained in an NGB-CI ROI. Only the Director of NGB-CI may approve a request to reconsider a finding.

a. Request for reconsideration must be made in writing to the Director within 90 calendar days of the State's receipt of the ROI from NGB-CI. The Director will consider requests received outside this time frame if accompanied by a compelling reason for the delay.

b. TAGs or the CG may request reconsideration of the findings of an ROI based on the discovery of new evidence, or based on mistake of law, mistake of fact, or administrative error. TAGs' or the CG's request must clearly delineate the basis for the reconsideration request and provide all relevant information to support the request. Disagreeing with the ROI's findings is not a basis for reconsideration.

2. Review of Reconsideration Request by Director. The Director of NGB-CI or their designee will review TAG's or the CG's request for reconsideration of an NGB-CI ROI. All decisions regarding reconsideration will be made by the Director.

a. For requests based on new evidence or mistake of law, the Director of NGB-CI will determine whether the submitted evidence or alleged mistake impacts the ROI such that the finding is no longer supported by a preponderance of the evidence. New evidence is information that was not considered during the investigation and was not reasonably available for consideration. The Director will determine whether the information submitted with the request is new evidence that was not reasonably available at the time of the investigation.

b. If there is a factual mistake or administrative error, the Director of NGB-CI will determine if the record contains substantial evidence to support the ROI's findings. Substantial evidence is that degree of evidence which a reasonable person might accept as adequate to support a conclusion. This is a lower standard of proof than preponderance of the evidence. A finding supported by substantial evidence will be upheld, notwithstanding the argument that the evidence might also be viewed in a way which could support a different finding.

c. If the Director of NGB-CI determines that the initial finding is no longer supported by the evidence, NGB-CI will prepare a supplemental ROI and update all NGB-CI associated databases and records accordingly. When the original finding is upheld, NGB-CI will provide the reasons for decision in writing.

d. The Director of NGB-CI will return the decision to TAG or the CG within 60 days of receiving the request if no additional investigation or evidence is required. However, if the Director of NGB-CI determines that additional investigation is required to address the request for reconsideration, the Director of NGB-CI will return the decision within 120 days. Any additional evidence collected will be provided to TAG or the CG with the reconsideration decision.

ENCLOSURE D

REQUESTING, USING, DISCLOSING, AND RELEASING NATIONAL GUARD
BUREAU OFFICE OF COMPLEX INVESTIGATIONS INFORMATION

1. Classification and Safeguards. The following classification and safeguards apply to NGB-CI records and information.

a. NGB-CI records are Federal records and will be marked "CUI" (Controlled Unclassified Information) in accordance with reference m and any clarifying guidance issued by the Director of NGB-CI. Safeguarding requirements and incident response measures for misuse or unauthorized disclosure of CUI must be implemented.

b. Misuse of CUI is subject to penalties established in applicable laws, regulations, or Government-wide policies. Senior leaders, Commanders, and supervisors at all levels must consider and take appropriate administrative, legal, or other corrective or disciplinary action to address CUI misuse or unauthorized disclosure commensurate with the appropriate law, regulation, or government-wide policy.

c. Personnel will minimize the risk of unauthorized access to NGB-CI records by ensuring NGB-CI information is never left unattended where unauthorized personnel are present. NGB-CI records will be disclosed only to authorized personnel who need the record to perform their official duties.

d. NGB-CI records in digital form will be maintained and handled in accordance with all applicable Federal information security and privacy controls and requirements. In accordance with reference n, NGB-CI records will be encrypted at rest and in transit.

2. Access to NGB-CI Information. The following governs access to NGB-CI records and information.

a. Access, disclosure, release, use, or any form of dissemination of NGB-CI records includes, for purposes of this section, any visual or auditory access, oral disclosure, explanation of contents, or reproduction of material contained in investigative records, reports, audio-visual recordings, or related documents and media of NGB-CI origin. Access to NGB-CI records should always be restricted to the minimum number of persons necessary.

b. Access to NGB-CI records is limited to those DoW, Department of the Army, or Department of the Air Force employees and Service members whose official duties as Title 5 employees or Service members of the United States (U.S.) Army NG or Air NG permit them to access such records for a lawful Federal Government purpose.

c. Access to NGB-CI records may also be disclosed to those State officials whose official duties permit them to have access to such records in the scope of their specific responsibilities in support of the Army NG or Air NG of their respective State, Territory,

or the District of Columbia. Disclosures under this paragraph can only be made if the purpose for the disclosure is compatible with the authorized purpose for which the record is collected as discussed in reference o. Disclosures properly made under this paragraph to authorized State officials are a routine use in accordance with reference p and must be accounted for by the NG of the relevant State in accordance with Section C4.5 of reference o.

3. NGB-CI Records Incorporated into Service or DoW Actions, Investigations, or Proceedings. The following governs the use of NGB-CI records or information in other actions, investigations, or proceedings:

a. NGB-CI records provided to the NG may be used by TAG, the CG, or other Commanders or officials, for Service or DoW-regulated actions, investigations, or proceedings. This includes actions taken before courts-martial convened by the authority of the Military Departments or in administrative proceedings conducted by or on behalf of a DoW Component.

b. Decisions on making disclosures of NGB-CI records to parties and officials for a “lawful Federal government purpose” within the scope of a Service or DoW action, investigation, or proceeding should be made case-by-case by the appropriate official, as determined by the relevant law or military regulation relating to the matter at hand.

c. Requests made to NGB-CI to disclose records for an official use must clearly articulate the lawful Government purpose for which the record is required. Simply stating that the information is needed to represent a client is insufficient. Requesters must clearly identify a legal right to the information and the specific action or proceeding for which the information is needed.

d. In cases where the allegation of sexual assault is not substantiated, TAGs or the CG should permit an SVC attorney to view the NGB-CI ROI in order to determine if there is cause for TAG or the CG to request reconsideration of the finding.

e. In cases where the allegation of sexual assault is substantiated, or where other misconduct is uncovered, NGB-CI information should be disclosed to the requestor’s legal counsel in accordance with the due process rights created by initiating an administrative or military justice action. Such requests for NGB-CI information should be directed to the authority which controls the administrative or military justice action, and not to NGB-CI.

f. Information contained in an NGB-CI ROI which is not relevant to the requestor’s lawful Government purpose should be redacted prior to disclosure.

g. Requests for NGB-CI participation in any trial, investigation, proceeding, or other action will be processed in accordance with Enclosure E of this manual.

h. When copies of NGB-CI records, or portions thereof, are inserted in, or attached to, a record produced during an action, or conducting an investigation or proceeding under a Service or DoW regulation, the relevant Service or DoW regulation dictates the maintenance, handling, use, or disclosure requirements and protocols for the incorporated or attached records, subject to any litigation holds.

i. Upon completion of a DoW or Service action, investigation, or proceeding for which NGB-CI records were requested or required, the copies of the NGB-CI records will be disposed of in accordance with the Service or DoW regulation applicable for that action, investigation, or proceeding. If the applicable regulation does not direct a process for record disposal, the NGB-CI records must be promptly destroyed or returned to NGB-CI in accordance with this manual.

j. If an organization in receipt of copies of NGB-CI records determines that no DoW or Service action will be taken based on these records, they are instructed to promptly destroy their copy of the NGB-CI record.

4. Freedom of Information Act and Privacy Act of 1974. The following governs the application of reference p and reference q (Freedom of Information Act (FOIA)) and ("the Privacy Act of 1974") to NGB-CI records and information.

a. NGB-CI records will be released, in accordance with reference q, this manual, and other applicable laws, regulations, or policies.

b. All Privacy Act requests for access to NGB-CI records will be handled in accordance with this manual, NGB-CI's system of records notice (Notice required by reference p), reference r through reference s, and other applicable laws, regulations, or policies.

c. Individuals wishing to obtain NGB-CI records under FOIA, or those seeking access to information about themselves under reference p and reference q, should submit a request at <<https://www.foia.gov/>> or through e-mail at <ngb.foia@army.mil>. Requests sent through the U.S. Postal Service should be addressed to NGB-Office of Information Protection (IP), 4TS-TI 193, 111 South George Mason Drive, Arlington, VA 22204-1373.

5. Release of NGB-CI Records Pursuant to Civil Litigation. The following governs the release of NGB-CI records and information in connection with civil litigation.

a. Civil litigation, as defined in reference t, refers to all pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before civilian courts, commissions, boards (including the Armed Services Board of Contract Appeals), or other tribunals, foreign and domestic. This term includes responses to discovery requests, depositions, and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving litigation.

b. In accordance with reference u, the NGB General Counsel is the official channel of communication on all civil litigation matters pertaining to the NG. All lawsuits and potential lawsuits involving NGB-CI records must be reported to the NGB General Counsel Litigation Division and the Director of NGB-CI, in accordance with this Enclosure.

6. Disclosure to Civil or Criminal Law Enforcement. The following governs the release of NGB-CI records and information in connection with civil or criminal law enforcement.

a. Disclosure of NGB-CI records may be made by TAG or their designee (for example, the State Provost Marshal) to any Federal, State, or local LEA that has an investigative or law enforcement interest in the matter, provided the disclosure is not in contravention of any law, regulation, or directive, and the purpose for making the disclosure is compatible with the authorized purpose for which the record was collected (as discussed in reference o). Disclosures properly made under this paragraph to non-DoW (or non-Service) law enforcement elements are a routine use in accordance with reference o and must be accounted for by the NG of the relevant State in accordance with reference o.

b. Disclosures of NGB-CI records may be made under reference o to another non-DoW agency or to an instrumentality of any U.S. Governmental jurisdiction for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality made a written request to the agency which maintains the record, specifying the particular portion desired, and the LEA for which the record is sought, in accordance with reference o.

7. Disclosures to Congress from the NG. Requests for information from the U.S. Congress will be forwarded to the Director of NGB-CI, through the NGB-Office of Legislative Liaison. Congressional requests for NGB-CI records will be processed in accordance with reference v. Responses to Congressional requests and inquiries will be approved by the Director of NGB-CI, prior to their return to the NGB Office of Legislative Liaison.

8. Disclosures to the News Media. Inquiries from the news media to NGB-CI must be referred to the NGB Strategic Communications and Public Affairs Office (NGB-PA) for appropriate action. News media inquiries directed to a State should be directed to the State Public Affairs office. A State's Public Affairs office should alert the NGB- PA of the request.

9. All Other Requests or Inquiries for NGB-CI Records. The Director of NGB-CI is the authorizing official for all other requests to access or disclose NGB-CI records, including requests to disclose NGB-CI records to other Federal (in other words, non-DoW), State, or local non-LEAs, entities, or officials. This includes any State military actions taken outside of Title 32 or Title 10 authority, such as before a court-martial convened by the

authority of a State military department in a State Active Duty status, or in any State administrative proceedings conducted by or on behalf of a State official.

10. Incidents or Breaches Involving NGB-CI Records. The following governs incidents or breaches involving NGB-CI records and information.

a. NGB-CI records contain personally identifiable information and information of a sensitive nature. If they are lost, stolen, or compromised, the potential exists for the records to be used for unlawful purposes, such as identity theft, fraud, stalking, or harassment. The personal impact on the affected individual could be significant.

b. In accordance with reference w, an “incident” is an occurrence that either:

(1) Actually, or imminently, jeopardizes without lawful authority, the integrity, confidentiality, or availability of information or an information system.

(2) Constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies.

c. A “breach” is the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or any similar occurrence where:

(1) A person other than an authorized user accesses or potentially accesses personally identifiable information.

(2) An authorized user accesses or potentially accesses personally identifiable information for an other than authorized purpose.

d. Individuals must report an actual or suspected incident, including a breach, in any medium or form (including paper, oral, and electronic), in accordance with this manual, and reference w through reference y. At a minimum, a breach must be reported to:

(1) The relevant first line supervisor, relevant Privacy Official, and if cyber-related, the relevant Information System Security Officer or equivalent official for the organization, as soon as possible, but no later than one hour after discovery.

(2) The Chief of the NGB Privacy and Civil Liberties Directorate, within 24 hours of discovery.

(3) The Director of NGB-CI, within 72 hours of discovery.

e. Refer to reference w through reference y for further guidance on reportable information and requirements for incidents and breaches.

11. Access to Video Recordings and Other Material Not Part of the ROI.

a. Video and audio recordings of victim, reported perpetrator and witness interviews are not considered part of the ROI. NGB-CI maintains ownership of these recordings and will release them to the State, Territory, or the District of Columbia that requested the investigation under the conditions described below. NGB-CI will not release the recordings to any other party or individual, except as provided by law, regulation, judicially signed subpoena or court order.

b. Video and audio recordings will be provided to the State JA upon request for use by JA personnel in their official capacity as State government representatives, specifically in their capacity as legal advisors, recorders, or trial counsel to the command.

c. The State JA must safeguard the videos, audio recordings and medical records as personally identifiable information, CUI and law enforcement sensitive unless it is determined by competent legal authority that release is required. In most instances visual inspection of the videos will satisfy the due process requirements of an adverse action and enable a respondent or accused to prepare a defense. Videos stored on a Federal Government-owned device must be encrypted to the DoW standard. When transmitted by email, they will be transmitted using DoW systems that meet the DoW encryption standard and the email must be encrypted.

ENCLOSURE E

REQUESTING NATIONAL GUARD BUREAU OFFICE OF COMPLEX
INVESTIGATIONS TESTIMONY AT TRIAL OR HEARING

1. General. NGB-CI may permit investigators to testify virtually, by telephone, or in-person, if requested to do so by competent authority. If an investigator is requested to testify in person, all travel expenses are the responsibility of the requester. As detailed below, the method for requesting that NGB-CI investigators testify (whether virtually or in-person) vary for a military action (Title 10, Title 32, or State Active Duty) or a civilian proceeding under civilian jurisdiction.

2. Requesting NGB-CI Testimony for Proceedings Under Military Jurisdiction.

a. Requests for NGB-CI investigators to testify at a military trial or hearing must be routed through the appropriate organizational legal adviser to the Legal Division Chief of NGB-CI.

b. To increase the likelihood of witness availability, requests should be received by NGB-CI at least 30 calendar days before the requested date of testimony and include the following information:

- (1) A general description of the procedure or action and the forum.
- (2) A brief statement of the relevance of the matters sought to the proceedings at hand.
- (3) A description of the documents, information, or the expected testimony sought.
- (4) The date and time when the documents, information, or testimony sought must be produced; the requested location for production; and, if applicable, the estimated length of time that attendance of the witness will be required.
- (5) A statement of understanding that the production of the witness, if applicable, will be at no expense to the NGB or the witness, and that travel expenses, if any, are the responsibility of the requester.

c. NGB-CI investigators may testify as to the facts and circumstances of a case, including personal observations and facts uncovered. NGB-CI investigators may not testify as to the NGB-CI internal deliberative process.

3. Requesting NGB-CI Testimony for Proceedings Under Civilian Jurisdiction.

a. Requests or subpoenas for NGB-CI investigators to testify in any civilian trial, lawsuit, or hearing (whether State, Federal, or other) must be routed to the Legal

Division Chief of NGB-CI, through the NGB General Counsel Litigation Division in accordance with reference t and reference u.

b. To increase the likelihood of witness availability, requests should be received at least 30 calendar days before the requested date of testimony and include the following information:

- (1) A general description of the procedure or action and the forum.
- (2) A brief statement of the relevance of the matters sought to the proceedings.
- (3) A description of the documents, information, or the expected testimony sought.
- (4) The date and time when the documents, information, or testimony sought must be produced; the requested location for production; and, if applicable, the estimated length of time that attendance of the witness will be required.
- (5) A statement of understanding that the production of the witness, if applicable, will be at no expense to the NGB or the witness, and that travel expenses, if any, are the responsibility of the requester.

ENCLOSURE F

REFERENCES

PART I. REQUIRED

- a. Chief of the National Guard Bureau (CNGB) Instruction 0400.01C, 17 February 2026, “National Guard Bureau Office of Complex Investigations – Sexual Assault Investigations”
- b. Public Law 112-81, 31 December 2011, “National Defense Authorization Act for Fiscal Year 2012”
- c. Public Law 113-66, 26 December 2013, “National Defense Authorization Act for Fiscal Year 2014”
- d. Public Law 117-81, 27 December 2021, “National Defense Authorization Act for Fiscal Year 2022”
- e. Public Law 118-159, 23 December 2024, “National Defense Authorization Act for Fiscal Year 2025”
- f. Department of Defense (DoD) Instruction 6495.02, Volume 1, 28 March 2013 “Adult Sexual Assault Prevention and Response Program Policies,” Incorporating Change 9, 18 March 2025
- g. DoD Directive 6495.01, 23 January 2012 “Sexual Assault Prevention and Response (SAPR) Program,” Incorporating Change 6, 26 March 2025
- h. Instruction 5505.18, 22 March 2017, “Investigation of Adult Sexual Assault in the Department of Defense,” Incorporating Change 5, 26 July 2024
- i. Department of the Air Force Instruction 90-6001, 15 July 2020, “Sexual Assault Prevention and Response (SAPR) Program,” Incorporating Guidance Memorandum, 16 July 2025
- j. Army Regulation 600-20, 06 February 2025, “Army Command Policy”
- k. Army Regulation 600-52, 11 February 2025, “Sexual Harassment/Assault Response and Prevention Program”
- l. CNGBI 1300.01, 26 June 2020, “National Guard Sexual Assault Prevention and Response Program”
- m. DoD Instruction 5200.48, 06 March 2020, “Controlled Unclassified Information (CUI)”

- n. United States Office of Management and Budget, Circular A-130, 28 July 2016, "Management of Federal Information Resources"
- o. DoD Manual 5400.11-R, 14 May 2007, "Department of Defense Privacy Program"
- p. Title 5 United States Code (U.S.C.) Section 552, "The Freedom of Information Act," as amended by the "FOIA Improvement Act of 2016"
- q. DoD Manual 5400.07, 25 January 2017, "DoD Freedom of Information Act (FOIA) Program," Air Force Manual 33-302, 27 April 2018, "Freedom of Information Act Program"
- r. DoD Instruction 5400.11, 29 January 2019, "DoD Privacy and Civil Liberties Programs," Incorporating Change 1, 8 December 2020.
- s. Title 32 Code of Federal Regulations, Section 310.25, "National Guard Bureau Exemption"
- t. DoD Instruction 5405.02, 17 May 2024, "Release of Official Information in Litigation and Presentation of Witness Testimony by DoD Personnel (Touhy Regulation)"
- u. CNGB Instruction 0405.01, 21 July 2017, "Litigation"
- v. CNGB Instruction 0500.01, 08 November 2012, "National Guard Bureau Relations with Congress"
- w. United States Office of Management and Budget Circular, M-17-12, 03 January 2017, "Preparing for and Responding to a Breach of Personally Identifiable Information"
- x. DoD Manual 5400.11, Volume 2, 06 May 2021, "DoD Privacy and Civil Liberties Programs: Breach Preparedness and Response Plan," Incorporating Change 1, 24 April 2025
- y. Cybersecurity and Infrastructure Security Agency, 01 April 2017, "Federal Incident Notification Guidelines"

PART II. RELATED

- z. Army Regulation 20-1, 23 March 2020, "Inspector General Activities and Procedures"
- aa. Department of Air Force Instruction 90-301, 04 January 2024, "Inspector General Complaints Resolution"

- bb. DoD Instruction 6025.18, 13 March 2019, "Health Insurance Portability and Accountability Act (HIPPA) Privacy Rule Compliance in DoD Health Care Programs"
- cc. DoD Instruction 6495.02, Volume 1, Enclosure 4, Paragraph 10, 28 March 2013, "Resources for Victims to Report Retaliation, Reprisal, Ostracism, Maltreatment, Sexual Harassment, or to Request an Expedited/Safety Transfer or Military Protective Order (MPO)/Civilian Protective Order (CPO)," Incorporating Change 9, 18 March 2025
- dd. Army Regulation 15-6, 22 June 2025, "Procedures for Administrative Investigations and Boards of Officers"
- ee. Department of the Air Force Manual 1-101, 09 April 2021, "Commander Directed Investigations (CDI)"
- ff. Army Regulation 25-55, 19 October 2020, "The Department of the Army Freedom of Information Act Program"
- gg. Army Regulation 40-66, 17 June 2008, RAR 04 January 2010, "Medical Record Administration and Health Care Documentation"
- hh. Army Regulation 600-8-2, "Suspension of Favorable Personnel Actions (Flag)," 05 April 2021
- ii. Army Directive 2022-10, 06 July 2022 "Safe-to-report for Victims of Sexual Assault"
- jj. 10 United U.S.C. Chapter 47, "Uniform Code of Military Justice"
- kk. 10 U.S.C. § 1034, "Protected Communications; Prohibition of Retaliatory Personnel Actions"
- ll. 10 U.S.C. § 12301(d), "Reserve Components Generally"
- mm. 32 U.S.C. § 102, "General Policy"
- nn. Public Law Number 108-375, Section 577, 28 October 2004, "DoD Policy and Procedures on Prevention and Response to Sexual Assaults Involving Members of the Armed Forces," also found in the "Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005"
- oo. DoD Instruction 5505.19, 08 October 2024, "Military Criminal Investigative Organizations' Special Victim Investigation and Prosecution Capability"
- pp. Department of Air Force Instruction 36-2907, 14 October 2022, "Personnel – Adverse Administrative Actions," Incorporating Change 2, 18 July 2025

GLOSSARY

PART I. ACRONYMS

CG	Commanding General of the District of Columbia
CNGB	Chief of the National Guard Bureau
DoW	Department of War
LEA	Law Enforcement Agency
MCIO	Military Criminal Investigative Organization
NG	National Guard
NGB	National Guard Bureau
NGB-CI	National Guard Bureau Office of Complex Investigations
ROI	Report of Investigation
SVC	Special Victims' Counsel
TAG	The Adjutant General
U.S.	United States
VA	Postal Abbreviation for the Commonwealth of Virginia

PART II. DEFINITIONS

Civilian Law Enforcement Organization -- Non-military law enforcement entities, including but not limited to State Police organizations, sheriff's offices, or local police departments.

Commander -- A Commissioned or Warrant Officer who, by virtue of rank and assignment, exercises primary command authority over a Department of War organization or prescribed territorial area. All references to "Commander" in this manual also include the military and civilian heads of Department of War organizations in accordance with reference g.

Commanding General of the District of Columbia -- The senior officer of the National Guard unit in the District of Columbia.

Military Criminal Investigative Organization -- The Department of the Army Criminal Investigation Division, the Naval Criminal Investigative Service, and the Air Force Office of Special Investigations, in accordance with reference h.

National Guard Nexus -- The legal connection necessary for National Guard Bureau Office of Complex Investigations to investigate reports of sexual assault, specifically when either the reported perpetrator or sexual assault victim was, or is, at the time of the reported sexual assault, a Service member or a civilian employee hired under the authority of Title 5 United States Code or Title 32 United States Code.

Preponderance of the Evidence -- Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which, as a whole, shows that the fact sought to be proved is more probable than not.

Report of Investigation -- A written report using a standardized format which summarizes the administrative investigation conducted by National Guard Bureau Office of Complex Investigation investigators of the reported sexual assault and which is intended to provide The Adjutant General or the Commanding General of the District of Columbia with a sound basis for decisions.

Senior Official -- As determined by the relevant service Inspector General regulation. In the Army National Guard, a senior official is generally an active or retired general officer, Colonels with a Certificate of Eligibility who is also assigned to or nominated for a general officer billet, or current or former member of the Senior Executive Service or equivalent. In the Air National Guard, a senior official is any active or retired Air National Guard military officer in grades O-7 (Brigadier General) and above, and any officer selected for promotion to O-7 (Brigadier General) with a Certificate of Eligibility, and current or former members of the Senior Executive Service or equivalent.

Sexual Assault -- An 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 offenses, such as rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit these acts in accordance with reference f.

Standard of Proof -- The degree or level of proof demanded in a specific case, for example, "beyond a reasonable doubt," "compelling evidence," or "preponderance of the evidence."

Substantiate -- To establish the facts through competent evidence using the appropriate standard of proof.

Substantiated Finding -- A finding supported by a preponderance of the credible evidence.

The Adjutant General -- Typically the senior officer of the National Guard unit in a State or Territory.

Unrestricted Report of Sexual Assault -- A process that an adult individual uses to disclose, without requesting confidentiality or Restricted Reporting, that he or she is a sexual assault victim.

Unsubstantiated Finding -- A finding not supported by a preponderance of the credible evidence.