



CHIEF NATIONAL GUARD BUREAU MANUAL

NGB-JA
DISTRIBUTION: A

CNGBM 0400.01A
16 May 2018

NATIONAL GUARD COMPLEX ADMINISTRATIVE INVESTIGATIONS PROCEDURES

References: See Enclosure H.

1. Purpose. This manual establishes guidance for conducting complex administrative investigations regarding alleged reports of sexual assault (SA) and other matters, with a National Guard (NG) nexus, in accordance with (IAW) reference a.
2. Cancellation. This manual replaces its previous edition, CNGBM 0400.01, 08 November 2012, "Chief, National Guard Bureau Office of Complex Administrative Investigations."
3. Applicability. This manual applies to all NG entities. Exceptions to the procedures in this manual must be approved by the NGB Chief Counsel. Nothing in this manual will impede a States' ability to conduct investigations as required by State law.
4. Procedures. National Guard Bureau, Office of Complex Administrative Investigations (NGB-JA/OCI) provides a capability to The Adjutants General (TAGs) and the Governors of the 54 States and Territories to investigate unrestricted reports of sexual assault at the request of a TAG. The Chief of the National Guard Bureau (CNGB) may direct NGB-JA/OCI to investigate or assess any matter within his authority. This includes matters requested by the State and matters not requested by the State when within CNGB's authority. Enclosures A, B, D and E, with applicable appendices, delineate procedures for requesting and performing complex administrative investigations. Enclosure C delineates procedures for requesting and performing complex administrative investigations not involving sexual assault. Enclosure F, with applicable appendices, delineates procedures for requesting and performing state assessments.

UNCLASSIFIED

a. TAGs and commanders must refer all Unrestricted Reports of SA to the appropriate civilian Law Enforcement Organization (LEO) or Military Criminal Investigative Organization (MCIO) IAW reference c. If the LEO/MCIO declines or fails to investigate, for whatever reason, the unrestricted Report of SA must be referred to NGB-JA/OCI for coordination.

b. The referral to OCI for coordination and the submission of a signed TAG request for investigation are two distinct actions. Referral for coordination does not equate to a request for investigation. Referral to OCI for coordination must precede every TAG request for investigation to ensure that the allegation is appropriate for OCI investigation. After referral to OCI for coordination and discussion, TAG then decides whether to request an OCI investigation. TAGs should be provided with OCI's coordination input prior to their decision whether to request an OCI investigation.

c. It is important to note that if TAG determines that investigation of a sexual assault allegation is warranted and necessary, only OCI or law enforcement organizations may investigate. Commanders may not investigate sexual assault allegations with non-law enforcement command assets. Requirements pursuant to State law may add additional investigation requirements that supplement this paragraph (See Applicability section at paragraph 3 above).

d. TAGs may refer other SA Reports to OCI for coordination even if not required pursuant to reference a and this manual. For example, TAG may refer for coordination or investigation SA allegations/cases already investigated or prosecuted by civilian authorities, if TAG believes such investigation is insufficient or an OCI investigation may develop new evidence.

e. SA allegations made against Senior Officials (O-6[P] and above) referred to LEO/MCIO/OCI must also be referred to NGB-IG.


f. All requests for exceptions to the policies contained in this manual will be submitted to the NGB Chief Counsel for approval.

5. Summary of Changes. Changes include updated Department of Defense (DoD) policies, referrals of adverse information, requests for reconsideration, investigator appointments, legal review formats, evidentiary limitations, rights advisement procedures, information collection, security and release procedures, a revised definition of SA, and refined procedures for conducting investigations.

6. Releasability. This manual is approved for public release; distribution is unlimited. Obtain copies through <<http://www.ngbpdc.ngb.army.mil>>.

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7. Effective Date. This manual is effective upon publication and must be reissued, cancelled or certified as current every five years.



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Enclosures:

- A -- Requesting and Reviewing Investigations
- B -- Staff Roles for Complex Investigations Involving Sexual Assault
- C -- Staff Roles for Complex Investigations not Involving Sexual Assault
- D -- Interviews and Evidence Collection
- E -- Investigations
- F -- Conducting State Assessments
- G -- Sample Notional Sexual Assault Vignettes
- H -- References
- GL -- Glossary

ENCLOSURE A

REQUESTING AND REVIEWING INVESTIGATIONS

1. TAG Requests for Investigation. TAG requests for NGB-JA/OCI investigations will follow the format in Appendix A to Enclosure A and will be processed through State Judge Advocate (JA) channels to OCI. Referral for coordination must be made, and a discussion must take place between the State JA (or representative) and NGB-JA/OCI, prior to submission of a signed TAG request for investigation.

2. Referral of SA Allegations for Coordination.

a. TAGs and commanders must refer all Unrestricted Reports of SA to the appropriate civilian Law Enforcement Organization or Military Criminal Investigative Organization. If the LEO or MCIO declines/refuses/fails to investigate the SA report, regardless of reason, TAG or designee will refer the matter to NGB-JA/OCI for coordination. Coordination is required; however, a request for investigation remains at the discretion of the TAG. If a relevant LEO investigates a SA report, TAG may, at his or her discretion, refer reports to NGB-JA/OCI for consideration due to insufficiency of the LEO investigation. TAG may not order further internal investigation into SA allegations with non-law enforcement state assets. Only law enforcement organizations or OCI may investigate SA allegations (See Applicability section at paragraph 3 above when state law requirements may require additional investigation contrary to this policy). NGB-JA/OCI investigators will not interfere with LEO investigations. TAG requests for OCI investigations without initial referral to law enforcement organizations will follow the format in Appendix B to Enclosure A and will be processed through State JA channels to OCI as an exception to policy.

b. Reports of SA must be coordinated between the State JA or designee and NGB-JA/OCI prior to submission of the signed TAG request for investigation to ensure a requisite NG nexus exists and to ensure that a more appropriate investigative channel is not available. If NGB-JA/OCI declines to investigate a report for any reason, including lack of a sufficient NG nexus, the existence of a prior sufficient LEO/MCIO investigation, or an allegation does not meet the elements of SA as defined herein, then the referral requirement in this manual will be satisfied as long as the matter was discussed between the State JA and NGB-JA/OCI.

c. If TAG elects not to request a NGB-JA/OCI investigation, TAG may initiate appropriate action based on a prior LEO/MCIO investigation.

3. Reports of SA Involving Multiple States. If a SA report involves NG members from more than one State, TAG(s) of the alleged victim(s)' State(s) should

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request the OCI investigation. NGB-JA/OCI is responsible for coordinating and ensuring concurrence of the investigation request with all other related TAGs and ensuring that the reported perpetrators' TAG knows that the reported perpetrator should be flagged if required by service regulation. Both the alleged victim(s)' and the reported perpetrator(s)' TAGs will receive a copy of the OCI Report of Investigation (ROI). Full TAG cooperation and concurrence from all involved states is essential to an investigation. Additionally, the State JA for the TAG requesting investigation is responsible for the following:

- a. Determining if there is a LEO investigation and coordinating with the local LEO.
- b. If applicable, notifying the MCIO of a SA report and requesting documentation of the MCIO investigation.
- c. Complying with NGB-JA/OCI referral for coordination process and the request for investigation process.
- d. Providing NGB-JA/OCI information to determine if the issue is more appropriate for other investigative channels.

4. Conclusion of Investigation. Upon the conclusion of an investigation, the Chief of NGB-JA/OCI will review the report of investigation (ROI) to ensure clarity and completeness and to verify the findings are supported by a preponderance of the evidence. If the investigation includes a substantiated adverse finding against a field grade officer, the State JA is responsible for complying with the referral provisions of reference q or Air Force equivalent, if applicable (See Enclosure E).

5. Legal Review of Investigation. The Chief of NGB-JA/OCI will forward the ROI to the Administrative Law Division (NGB-JA/ADLAW) for legal review. This legal review will not constitute a legal opinion for the purposes of determining legal sufficiency under any State law. The NGB-JA/ADLAW legal review should ensure that the investigation anticipates future uses of the investigation; resolves internal inconsistencies; makes appropriate findings; and, if appropriate, makes recommendations that are feasible, acceptable, and suitable. Specifically, the legal advisor performing the legal review will determine:

- a. Whether the proceedings complied with legal requirements, including the requirements established in the appointing memorandum.
- b. Whether there are errors and, if so, whether the errors are substantial or harmless; the effect, if any, that the errors had on the proceedings; and, what action, if any, is recommended to remediate the errors.

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- c. Whether the findings of the investigation are supported by a greater weight of the evidence than supports a contrary conclusion.
 - d. Whether the recommendations, if any, are consistent with the findings.
 - e. Corrections regarding clarity or formatting will be returned to the NGB-JA/OCI Investigation Manager or Lead Investigator.
6. Approval and Forwarding. Following the NGB-JA/ADLAW legal sufficiency determination, the NGB Chief Counsel or designee will review and approve the ROI as appropriate. Once approved, NGB-JA/OCI will forward the ROI to the State JA for review under State law and coordination with the requesting TAG.

APPENDIX A TO ENCLOSURE A

SAMPLE TAG REQUEST FOR NGB-JA/OCI INVESTIGATIVE SUPPORT

FOR OFFICIAL USE ONLY (when filled out)

(Appropriate letterhead)

MEMORANDUM FOR NATIONAL GUARD BUREAU CHIEF COUNSEL

Subject: Request for Investigation Pursuant to CNGBM 0400.01A, "National Guard Complex Administrative Investigation Procedures"

1. Pursuant to CNGBM 0400.01A, I request the detailing of a NGB Complex Administrative Investigative Team to investigate an (unrestricted sexual assault (SA) report/fraud) (upon/by) (a) member(s) of the (State)(Army)(Air) National Guard. I request that you issue a detail memorandum allowing the investigator(s) to act under my authority to gain access to state personnel and records to the extent allowed under state law and regulation. (I request you gather available facts relevant to the report, provide an analysis of those facts, and a determination of whether the report is substantiated by a preponderance of the evidence.)
2. [Describe fact pattern and NG nexus without using Personally Identifiable information (PII)].
3. The matter was referred to [civilian law enforcement (CLE) or to the appropriate MCIO] who declined to investigate/failed to investigate/have not initiated an investigation at this time/did not sufficiently investigate. The CLE understands that NGB-JA/OCI investigators are administrative investigators; however, the information uncovered as part of their investigation can be used for administrative or criminal dispositions. This request has been reviewed by the State JA (and SARC if request involves SA report) and has been coordinated with NGB-JA/OCI to ensure a sufficient NG nexus exists.
4. I have initiated a flag (ARNG) or other applicable service action (ANG) for all reported perpetrators IAW the applicable regulations.

Figure 1. Sample TAG Request for NGB-JA/OCI Investigative Support

5. I will meet with your investigator(s), along with my Chief of Staff, AGR JA (or SJA or NG Technician JA), and SARC for a Read-In when they arrive at the (State) Joint Force Headquarters in order to assist in planning and conducting the investigation. I have directed my Chief of Staff, (rank and name), to ensure your investigator(s) receive the full cooperation of State NG personnel. I have directed my State JA, (rank and name), to provide your investigator(s) legal advice on state law as necessary. When the investigation is complete, I will make (myself or my delegate) available for an Out-Brief with the investigator(s).

6. Your investigator(s) will receive full cooperation from all units, National Guard members, and civilians under my authority. If your investigator(s) receive resistance regarding the investigation from any individual under my authority, with the exception of the subject or any other witness suspected of misconduct, please have them contact either my State Judge Advocate or Chief of Staff to assist in the matter.

7. Point of contact is Rank or Name; Office Symbol; phone number.

TAG Signature Block

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Figure 1 continued. Sample TAG Request for NGB-JA/OCI Investigative Support

APPENDIX B TO ENCLOSURE A

SAMPLE TAG REQUEST FOR EXCEPTION TO NGB-JA/OCI POLICY
REQUIRING NOTIFICATION OF LOCAL LAW ENFORCEMENT BEFORE
REQUESTING INVESTIGATIVE SUPPORT

FOR OFFICIAL USE ONLY (when filled out)

(Appropriate letterhead)

MEMORANDUM FOR NATIONAL GUARD BUREAU CHIEF COUNSEL

Subject: Request for Exception to Policy Requiring Coordination with Local
Law Enforcement before Requesting Investigative Support
Pursuant to CNGBM 0400.01A, "National Guard Complex
Administrative Investigations Procedures"

1. I request an exception to the policy requiring coordination with local law enforcement prior to requesting NGB-JA/OCI investigative support. The victim in this case made an unrestricted report of a non-Federal status sexual assault in the STATE National Guard. The victim indicated he/she does not desire an investigation by local law enforcement, and will not cooperate with a local law enforcement investigation. Thus, it is my belief that an NGB-JA/OCI investigation should begin immediately.
2. The victim has been fully informed of the ramifications of not cooperating with local law enforcement, including the fact that an NGB-JA/OCI investigation is unlikely to lead to a criminal conviction of the reported perpetrator or a permanent criminal record of the complaint.
3. I understand that, despite the victim's unwillingness to engage with local law enforcement, DoD Sexual Assault and Prevention and Response (SAPR) policy requires the State to report the allegation to the appropriate local law enforcement agency (or military criminal investigation organization if the reported perpetrator was in a Title 10 status during the period of any alleged misconduct).
4. In anticipation of approval of this request, attached is a request to detail a CNGB Complex Investigation Program Investigator to investigate this unrestricted report, pursuant to CNGBM 0400.01A.

Figure 2. Sample TAG Request for Exception to NGB-JA/OCI Policy Requiring Notification of Local Law Enforcement Before Requesting Investigative Support

5. Point of contact is Rank/Name; Office Symbol; phone number.

TAG Signature Block

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*Figure 2 continued. Sample TAG Request for Exception to NGB-JA/OCI Policy
Requiring Notification of Local Law Enforcement Before Requesting Investigative
Support*

ENCLOSURE B

STAFF ROLES FOR UNRESTRICTED REPORTS OF SEXUAL ASSAULT NOT
UNDER INVESTIGATION BY A LEO OR MCIO

1. State JA. State JAs will:

- a. Ensure appropriate LEO is informed of the allegation. If the matter concerns a senior official as defined in the glossary, the State JA may need to notify the State IG. If a LEO or MCIO agrees to investigate, the State JA monitors the investigation for TAG and may coordinate with NGB-JA/OCI. If neither a LEO nor MCIO investigates the allegation, the State JA informs NGB-JA/OCI.
- b. Gather relevant information to refer for coordination and discuss the allegation of sexual assault with NGB-JA/OCI to include: ranks of individuals involved; where and when incident(s) took place; the status of individuals involved; and whether or not a LEO was notified.
- c. Discuss with NGB-JA/OCI whether a sufficient NG nexus exists to justify NGB-JA/OCI investigation or whether the matter should be addressed by other investigative entities or channels.
- d. If appropriate, prepare on behalf of TAG a request for NGB-JA/OCI investigation using the template in Appendix A to Enclosure A. State JA should not forward request for TAG signature prior to coordinating with NGB-JA/OCI.
- e. If the ROI returned to the state contains adverse findings against a field grade officer, comply with the referral provisions of reference q or Air Force equivalent, if applicable.
- f. Review ROI and all evidence provided therein for legal sufficiency IAW State law and provide recommendations to TAG.
- g. Process requests for reconsideration in accordance with Army Regulation 15-6 or Air Force equivalent, if applicable. If reconsideration is appropriate, forward to NGB-JA/OCI for reconsideration of its findings.
- h. Notify the Chief of NGB-JA/OCI of any personnel action taken in response to an investigation whether conducted by LEO, MCIO, or OCI; complete a NGB Form 97; and return it to Chief of NGB-JA/OCI.
- i. Provide requested investigation information to LEO, MCIO, Defense Counsel, and Special Victim's Counsel as appropriate.

j. Should the victim indicate that he or she does not desire an investigation by local law enforcement, and will not cooperate with a local law enforcement investigation, prepare, IAW Appendix B to Enclosure A, a request for an exception to the policy requiring coordination with local law enforcement prior to requesting NGB-JA/OCI investigative support. 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/LEO IAW DoD Sexual Assault and Prevention and Response (SAPR) policy.

2. Chief of NGB-JA/OCI. The Chief of NGB-JA/OCI will:

- a. Consult with the State JAs to determine if a sufficient NG nexus exists.
- b. Select and detail INVs.
- c. Coordinate with NGB and INVs' States to obtain travel orders and funding when INV is not assigned to NGB-JA/OCI.
- d. Coordinate with the State to process orders if necessary.
- e. Review and approve ROI for clarity and completeness. Once file is approved, forward the file to NGB-JA/ADLAW for legal review, and then to Chief Counsel or designee for approval.
- f. Provide the ROI to the State JA once the ROI is approved.

3. State POC. The State POC will:

- a. Coordinate with Lead INV, TAG (or designee), and other attendees to schedule Read-In/Out-Briefs.
- b. Coordinate with Lead INV and NG units to arrange alleged victim, reported perpetrator, and witness interviews, as applicable, and determine if orders are necessary for participants; provide records requested by INVs; and ensure appropriate office space and equipment are available during the investigation.
- c. Ensure that the alleged victim is informed of his/her rights as an alleged victim and the right to representation by Special Victim Counsel (SVC) and ensure the Victim Advocate (VA) is available during interview.
- d. Ensure that the reported perpetrator is counseled regarding the investigation and informed of the right to consult with a military Trial Defense Service (TDS) counsel or civilian defense counsel. Ensure the command

initiated a flagging action (ARNG) or Unfavorable File Program action (ANG) for all reported perpetrators.

e. Obtain copies of relevant LEO, MCIO, medical, military records, and other documents at the Lead INV's request, before the INVs' arrival.

4. INVs and Lead INVs. INVs will:

a. Ensure permission of his or her supervisor if selected INVs not assigned to NGB-JA/OCI. INVs must coordinate with his or her supervisor prior to accepting duty. It is the responsibility of the individual INV to coordinate with their supervisor or chain of command, not the responsibility of NGB-JA/OCI staff.

b. Coordinate the alleged victim interview with the appropriate personnel and requests authorization to access relevant medical (see Appendix D to Enclosure E), police, and military records.

c. Coordinate the reported perpetrator interview and request any evidence the reported perpetrator may have.

d. Present the Read-In IAW Enclosure E.

e. Review the investigative plan (IP) with State POC and update IP as necessary.

f. Coordinate with State JA and Sexual Assault Response Coordinator (SARC); meet with relevant agencies/departments; and update IP as necessary.

g. Travel to site and conduct investigation IAW the IP.

h. Present Out-Brief to TAG IAW Enclosure E.

i. Lead INV or delegate prepares an ROI using guidance in Enclosure E.

j. Maintain copies of documents, video, and audio files to a hard copy and/or electronic case.

5. NGB Chief Counsel. NGB CC will:

a. Authorize NGB-JA/OCI investigations. The NGB Chief Counsel or designee may delegate the authority to authorize investigations.

b. Complete Detail Memoranda to designate detailed INVs.

6. TAG. TAG will:

- a. After SJA consultation with NGB-JA/OCI, and if deemed appropriate, sign a request for NGB-JA/OCI investigative assistance and appoint a State POC.
- b. In consultation with State SJA, and if an investigation is requested, initiate or direct a flagging action or other applicable actions for all reported perpetrators IAW the applicable regulations.

ENCLOSURE C

STAFF ROLES FOR COMPLEX ADMINISTRATIVE INVESTIGATIONS NOT
INVOLVING SEXUAL ASSAULT

1. State JA. State JAs will:

a. TAG may direct the State JA to determine if an NGB-JA/OCI investigation is appropriate in cases not involving SA. Requests for a State Assessment are captured in Enclosure F.

b. The State JA determines if the matter concerns allegations of impropriety or misconduct (including criminal allegations) against a Senior Official, as defined in the glossary. If so, the matter may be required to be referred to the Service IG. If the issue involves a potential criminal matter, State JA may determine to inform an LEO or MCIO of the allegation. The NGB-JA/OCI will not open an investigation if the matter should be investigated by IG, LEO, or MCIO. However, DoD and Service IGs may request that OCI investigate senior officials. Exceptions may exist if the responsible investigating entity declines to investigate the matter, closes the case, or the final report is insufficient for the command's purposes.

c. The State JA and NGB-JA/OCI discuss whether a sufficient NG nexus exists to justify investigation, and whether the matter is more appropriately addressed by another investigative entity. Prior to discussion, the State JA should be aware of facts and allegations as reported, to include ranks of individuals involved; where and when incident(s) took place; the status of individuals involved; and whether or not the appropriate law enforcement activity was notified.

d. TAG requests investigatory support from NGB-JA/OCI using the template in Appendix A to Enclosure A and appoints a State NG POC. These requests will be made to the NGB Chief Counsel.

e. If adverse findings are made against a field grade officer, comply with the referral provisions of reference q or Air Force equivalent, if applicable.

f. State JA reviews the OCI ROI for legal issues IAW state law and provides a recommendation to TAG using information from the ROI.

g. Process requests for reconsideration in accordance with reference q or Air Force equivalent, if applicable. If reconsideration is appropriate, forward to NGB-JA/OCI for reconsideration of its findings.

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h. State JA notifies the Chief of NGB-JA/OCI of any personnel action taken in response to an investigation whether conducted by LEO, MCIO, or OCI and complete a NGB Form 97 and return it to Chief of NGB-JA/OCI.

2. Chief of NGB-JA/OCI. The Chief of NGB-JA/OCI, or designee:

a. Consults with NGB Chief Counsel to determine if a sufficient NG nexus exists. If a sufficient NG nexus does not exist, NGB-JA/OCI will not open an investigation.

b. Details Lead and other INVs. Selected INVs not assigned to OCI coordinate with supervisors before accepting investigation detail. It is the responsibility of the individual INV to coordinate with their supervisor or chain of command, not the responsibility of NGB-JA/OCI staff.

c. Completes Detail Memorandums to designate detailed INVs. An INV will not be detailed by NGB-JA/OCI to investigate cases within his or her own State.

d. Coordinates with ARNG-G1 or ANG-A1 and the State to ensure travel orders and funding are available for INVs not assigned to NGB-JA/OCI.

e. NGB-JA/OCI works with State to process orders and ships equipment, if necessary.

f. Reviews the report and files for clarity and completeness and returns them to Lead INV if changes are necessary. Once file is approved by Chief of NGB-JA/OCI, he or she forwards the file to the NGB-JA/ADLAW for legal review.

g. Upon completion of the legal review, the ROI will be forwarded to NGB-JA/CC or designee for approval. Once the ROI is approved, the Chief of NGB-JA/OCI provides a copy to the State JA.

3. Lead INVs. Lead INV:

a. Creates IP (see Enclosure E), and requests orders and plans travel using DTS, and coordinates his/her travel with other detailed INVs.

b. Receive equipment, and conduct investigation pursuant to IP.

c. If, during the course of the investigation, something occurs that could cause TAG to consider expanding, restricting, terminating or otherwise modifying any instruction in the original appointment, the INV will report the

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situation to NGB-JA/OCI with recommendations. Such request should be in writing and kept as part of the record of the investigation.

d. INVs return home and complete travel voucher using DTS.

e. Lead INV or delegate writes a memorandum detailing findings and develops an executive summary. Lead INV or delegate also prepares a ROI.

f. Lead INV saves all copies of documents, video, and audio files in an investigative file.

4. State POC. The State POC will:

a. Coordinate with Lead INV and NG units to make witnesses available for interviews, including placing interviewees, reported perpetrators, Special Victims Counsel and Defense Counsel on orders, to schedule interviews, to determine which records should be available, and to ensure appropriate room/office equipment is made available.

b. Contacts witnesses to schedule interviews and requests authorization to access relevant medical (see Appendix D to Enclosure E), police, and military records.

c. Before the INV's arrival, the State POC obtains copies of relevant LEO, MCIO, medical, military records and other documents at the Lead INV's request.

ENCLOSURE D

INTERVIEWS AND EVIDENCE COLLECTION

1. General Guidance. Conduct interviews at an ARNG facility, ANG air base, or other safe location. Video/audio recordings will be stored on a device that can be encrypted. Do not conduct in-person interviews at an interviewee's home or in hotel room, unless necessary. Telephonic interviews, although not preferable, are permissible when in-person interviews are impractical. The INV must inform all witnesses of the OCI investigation's number and provide a Privacy Act statement for the witness to execute (see Appendix C to Enclosure E). The INV must also notify each witness or their attorney if applicable, before their interview that they will be asked to swear to or affirm the truthfulness of their testimony. Following the interview, INVs will remind the interviewee that their statements are official statements, and give them an opportunity to add to or correct anything in the testimony. The witness will then be requested to appropriately swear to or affirm the truthfulness of their testimony and/or statements to the best of their knowledge and belief. Witnesses include the alleged victim, reported perpetrator and any other person interviewed. Witnesses will also be advised that they may not discuss their testimony or disclose matters under investigation with anyone except their own legal counsel, medical providers, alleged victim support personnel, or as otherwise permitted by their chain of command.

2. Victim Interview. At the alleged victim's request, the SVC, VA or another alleged victim support individual must be available. Defense counsel will also be available if the alleged victim is accused of collateral misconduct. Unless authorization is received from NGB-JA/OCI, all interviews must be recorded, preferably on video. Only use the Forensic Experiential Trauma Interview (FETI) technique.

3. Witness Interview.

a. Unless authorized by NGB-JA/OCI, all interviews must be recorded, preferably via video. All individuals suspected of criminal misconduct must be advised of their rights to counsel and against self-incrimination and, if requested, will be given a reasonable amount of time to consult an attorney before being questioned. INVs should consult with State JAs to ensure there are no state laws affecting the proper rights advisement. When appropriate, use Department of the Army Rights Warning Procedure/Waiver Certificate, DA Form 3881 or Air Force Statement of Suspect/Witness/Complainant, AF IMT 1168, to record that the witness understands his or her rights and elects to invoke or waive those rights and provide an oral or written statement. If any witness invokes their right to remain silent, after being read their rights or after executing the above-noted form(s), all questioning will cease.

b. If the INV discovers information leading him or her to suspect that the witness violated a provision of the applicable State Code of Military Justice or other criminal law, the INV must advise that individual of his or her rights under the Fifth Amendment and as specified in applicable State laws, as appropriate. The INV must suspend questioning when such individuals refuse to make further statements or answer questions based on these rights.

c. If a witness becomes a suspected perpetrator in the investigation, the INV must read the suspect his/her rights as described above, allow said witness access to counsel if requested, and then coordinate and provide notice to the State POC and/or State JA.

d. INVs should provide witnesses with contact information for NGB-JA/OCI if the witness later decides they have additional details to report. SARCs and VAs are not considered witnesses, and will not be interviewed without NGB-JA approval.

4. Reported Perpetrator Interview.

a. The INV must contact counsel to receive authorization to speak to the reported perpetrator, if the reported perpetrator is represented by counsel. The INV must advise the reported perpetrator of his or her rights prior to the interview and, if requested, permit the reported perpetrator a reasonable amount of time to consult an attorney. INVs 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 DA Form 3881 or AF IMT 1168. The DA Form 3881 or AF IMT 1168 must identify each known suspected violation. Record all interviews of the reported perpetrator via video, unless otherwise authorized by NGB-JA/OCI.

b. While an in-person interview is preferred, the reported perpetrator may provide a written statement. The reported perpetrator may also submit any evidence she or he believes is relevant and the names of any witnesses he or she believes may possess relevant information.

c. The State JA will, within a reasonable period of time, and prior to the NGB-JA/OCI investigative team's arrival, ensure that the reported perpetrator(s) receive notice of the SA allegation(s), and notice of right to seek and obtain military or civilian defense counsel. This notice will: be in writing; attempt to confirm the reported perpetrator's receipt of said notice; separately confirm military or civilian defense counsel's representation and provide OCI/INVs with a copy(ies) of above, so that INVs can timely and appropriately coordinate interviews.

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5. Multiple Victims and Multiple Reported Perpetrators. In cases with multiple alleged victims or multiple reported perpetrators, the INV team will consult with NGB-JA/OCI on how to proceed.

6. Modifications to Scope of Investigation. If, in the course of the investigation, something occurs that could cause TAG to consider expanding, restricting, or terminating or otherwise modifying any instruction in the original appointment, the INV will report the situation to NGB-JA/OCI with recommendations. Keep such requests as part of the record of the investigation.

7. Other Evidence.

a. Personnel Records. Records such as letters of reprimand or admonishment, or previous allegations of SA may indicate a history of a propensity to engage in behavior similar to that, which was reported, and accordingly, may provide leads to other relevant witnesses or evidence. However, only those records relevant to the investigation should be included in the final ROI. Personnel evaluation reports are also helpful for identifying potential witnesses who may be able to provide information that is not available in existing military records.

b. Law Enforcement Records. Records regarding the incident or previous incidents involving parties involved in the investigation of a SA may be relevant. INVs will coordinate with State JA to determine how to gather these documents, if desired, according to State law. If necessary under State law, INVs should request the parties' consent to gather such records. INVs should interview law enforcement personnel involved in investigating the reported assault, if possible. Include LEO/MCIO records in the final ROI.

c. Relevant Medical Records. INVs will only review medical records with patient authorization (see Appendix D to Enclosure E). If the patient does not consent and the INVs believe the information is necessary to the investigation, the INV will consult with the Chief of NGB-JA/OCI for authorization to request the records without consent. Only the minimum necessary information will be used in the ROI and a Memorandum for Record (MFR) will be included in the ROI detailing the records reviewed. INVs will view the material and produce an MFR describing the contents and the INVs' belief as to the relevance. INVs will secure the material as Personally Identifiable Information (PII), and only the MFR will be included as part of the ROI. Completion of request forms may be required prior to release of the original records from NGB-JA/OCI.

d. Explicit Visual Material. INVs will avoid taking possession of any explicit visual material (for example, photographs or video). If an interviewee offers to provide explicit visual material, INVs will have the interviewee describe what is depicted in the material. The interviewee will be instructed to save the

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material. Its location and form will be noted in an MFR included with the ROI. If the relevance of the material requires the INVs view the material, they will be required to take possession subject to (1) and (2) below, to include in the ROI.

(1) Prior to viewing or taking possession of the material, the INVs will contact NGB-JA/OCI and request the State JA to provide a written opinion on any applicable State laws, such as privacy, anti-pornography, anti-revenge pornography, or illegal recording statutes, restricting the collection of such evidence. The INVs will inquire as to possibility of making a copy of the material or a photograph of the material rather than taking the original.

(2) After receiving authorization to take possession of or make a copy of explicit material, INVs will view the material and produce a MFR describing the contents and the INVs' belief as to the relevance. INVs will secure the material as PII similar to medical records, and only the MFR will be treated as part of the ROI.

e. Other Documentary Evidence. Other documentary evidence may include, but is not limited to, relevant e-mails, texts, letters, notes, and official military documents. Unless necessary, INVs will not take possession of original documents. Inform individuals that any acquired records may become Federal records will be retained and/or released pursuant to Federal laws. If requesting governmental phone or computer records, NGB-JA should opine on the appropriateness of gathering these records for the investigation. The State JA should also provide an opinion from the perspective of applicable state law. If obtaining these records is warranted, the State JA should assist in obtaining them for the investigative team.

f. Non-Documentary Physical Evidence. Unless necessary, INVs will not take possession of non-documentary physical evidence. If an interviewee attempts to hand over such evidence, INVs will record an image of the item, without handling it, and contact LEO or MCIO to determine if they will secure the evidence. If LEO or MCIO declines, INVs will ask the interviewee to place the item in a paper bag (not plastic) and retain it in its present condition for future use. INV will place an MFR in the ROI describing the evidence and indicating the current location of the evidence or the authority in possession of the evidence.

g. Summations. INVs write summations of interviews as assigned by the Lead INV.

h. PII and Information Security. All parties or individuals that exercise control, access, handle or view any NGB-JA/OCI investigatory materials must take action to protect any collected PII and ensure compliance with applicable handling laws and regulations.

ENCLOSURE E

INVESTIGATIONS

1. Investigation Number. Each investigation is assigned a number composed of the two-digit State abbreviation, the two-digit fiscal year (FY), and a two-digit number indicating the number of investigations conducted for that State NG in that FY. For example, “MT1202” would be the number for the second Montana investigation received in FY2012.

2. Investigation Function. Facts and findings are documented to provide the basis for potential follow-on actions including, but not limited to: disciplinary administrative action; award decisions; systemic improvements in a command or agency; or appropriate accountability determinations and actions. Investigations conducted pursuant to this manual may be used as the equivalent of an investigation conducted under reference e or its successor publication if appropriate. Information gathered in an investigation conducted pursuant to this Manual may be referred to a State Equal Employment (EO) Manager for processing under the appropriate EO procedure if appropriate.

3. Investigation Plan. An investigation plan (IP) is a form of INV notes, without a set format, that NGB-JA/OCI reviews after the INV is detailed, but before the INV travels. IP modification does not require NGB-JA/OCI approval. Retain IPs in the same manner as other INV notes. IPs include information in Table 1.

IP INFORMATION
<ul style="list-style-type: none">• Identification of reported violation, offense, or incident.• Identification of potential alleged victims, reported perpetrators, and witnesses.• Jurisdictional information, including military status and where the reported perpetrators, alleged victims, and/or witnesses were when the reported events occurred.• A breakdown of evidentiary requirements. Descriptions of the documentary, testimonial, and statistical evidence required to complete the investigation, and the best means to obtain each type. Anticipated sequence of interviews, and other case activities. Anticipated timeframes to obtain and analyze evidence. Potential defenses or explanations including statements provided, and descriptions of evidence likely to challenge or support validity.• Other issues potentially affecting the investigation, including the level of LEO/MCIO cooperation, locally available resources and skills, and community and command climate.

Table 1. IP Information

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4. Read-In. INV will conduct a Read-In with TAG (or designee) and others as invited by TAG. Read-In's contain information in Table 2.

READ-IN INFORMATION
<ul style="list-style-type: none"> • A brief summary of the incident as reported. • Identification of potential alleged victims, reported perpetrators, and witnesses. • Jurisdictional information, including military status and where the reported perpetrators, alleged victims, or witnesses were when the reported events occurred. • Anticipated sequence of interviews and other case activities. • Anticipated timeframes to obtain and analyze evidence. • Other issues potentially affecting the investigation, including the level of LE/MCIO cooperation, the locally available resources and skills, and the community and command climate.

Table 2. Read-In Information

5. Investigations Involving NG Technicians or Civilian Employees.

a. INV should determine at the investigation's outset if any NG technicians or union-represented civil service employees are among potential interviewees. The preferred practice is to interview NG technicians while in a military status, and treat them as military members. Interviews that must be conducted while interviewees are in a military technician status should be treated as civilian interviews.

(1) Civilian employees, including NG technicians, must cooperate with an investigation unless they reasonably believe their interview will lead to disciplinary action or criminal charges; if so, they will not be subject to custodial interviews (for example, interviews in which the interviewee is not free to leave at will) without the approval of the Chief of NGB-JA/OCI in coordination with NGB-JA.

(2) Do not give said personnel "Kalkines warnings" or "Garrrity warnings" to compel cooperation without the express approval of the Chief of NGB-JA/OCI in coordination with NGB-JA and the requisite NG JFHQs-State JA.

b. If a NG technician or civilian employee is suspected of a crime, he or she must not be told they are subject to disciplinary action or discharge for refusing to be interviewed. If a civilian employee invokes their "Weingarten Rights," Fifth Amendment rights, or other rights against self-incrimination under State law, the INV must consult with State JA and the NGB-JA Litigation Division. In every case involving potential disciplinary action against NG

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technicians or civilian employees, the servicing civilian personnel office and labor counselor must be fully informed regarding INV interactions with employees. If the interviewee is a bargaining unit employee in a technician status, and is suspected of misconduct or of having witnessed it, he or she can invoke Weingarten Rights rules (right to union representative present when being questioned). During the investigatory interview, the following rules in table 3 generally apply (although some collective bargaining agreements are more generous).

Rules	
RULE 1	The employee must make a clear request for union representation before or during the interview. The employee cannot be punished for making this request.
RULE 2	After the employee makes the request, the investigator must choose from among three options; grant the request and delay questioning until the union representative arrives and (prior to the interview continuing); deny the request and end the interview immediately; or give the employee a clear choice between having the interview without representation, or ending the interview
RULE 3	If the investigator improperly denies the request for union representation, and continues to ask questions, he/she commits an unfair labor practice and the employee has a right to refuse to answer.
RULE 4	There are no Weingarten rights in a military status.

Table 3. Rules

6. Handoff Policy. The Handoff policy acts as a safety net for reported perpetrators under investigation, as they may be at a greater risk of suicide. Before interviewing a reported perpetrator, the INV should advise the commander to appoint a representative. Upon the interview's conclusion, INVs will immediately "hand off" the interviewee to the commander or designated representative. If an INV believes another witness should be handed-off, the INV will state any concerns about the individual's personal safety (for example, individual was emotionally distraught, etc.). Alleged victims will be handed-off to their SVC or VA, unless other arrangements have been pre-coordinated with the alleged victim and command.

7. Standard of Proof. Unless otherwise specified, INVs will use "Preponderance of the Evidence" as the standard of proof in all investigations. It is 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.

8. Findings. The number and nature of required findings depend on the investigation's scope or purpose, and on the instructions of the appointing authority. The INV normally will not exceed the scope of the investigation authorized by the appointing authority without approval, but should address issues encountered during the investigation that are related to policies, procedures, resources, or leadership, if the INV determines that those issues are relevant to the matters under investigation.

9. 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.

10. Form. Findings will clearly state the relevant factual conclusions established by evidence, analysis of the facts using an INV's knowledge and training and an INV's conclusions. When the evidence in the record may reasonably support alternative findings, the INV should state why the finding they made is more credible and probable than other reasonable conclusions.

11. Out-Brief. The out-brief will not discuss preliminary findings. The INV Out-Brief to TAG or TAG designee will include; review of initially reported facts; a summary of the alleged victim interview; a summary of other interviews, as necessary; a discussion of facts that may have led to the incident, including community and command climate and any other relevant information the INV chooses to include, for example, the level of LEO/MCIO/command cooperation.

12. ROI. The ROI consists of an executive summary; NGB Chief Counsel transmittal letter to TAG; INV's memorandum detailing findings, with attachments; summary of alleged victim interview; summary of reported perpetrator interview; summary of other witness interviews and supporting evidence (documents such as police reports, photos, personnel records etc.), and is not to include medical records, explicit visual material, classified information, video recordings and investigators' notes. Although these items are not contained in the ROI, an MFR describing the medical records, explicit visual material, classified information, and video recordings should be included in the ROI if considered prior to reaching a finding.

13. Access to the ROI.

a. ROIs are Federal records. NGB is the only release authority for the ROI, unless the ROI is:

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(1) Required to be released pursuant to the due process requirements of a specific adverse action that has been instituted by competent authority.

(2) Authorized to be released pursuant to law or regulation.

b. Due process releases will be made pursuant to the law or regulation that governs the specific adverse action by the SJA or legal advisor of the authority instituting the adverse action or by the judicial authority presiding over the adverse action in the case of courts-martial, criminal trials, or administrative board hearings. It includes Brady materials and other exculpatory information that is required to be provided to the respondent/defense pursuant to law. NGB-JA/OCI must be notified of all proposed releases that are not based on the exceptions noted above, prior to release. Other than the exceptions noted above, no one will disclose, release, or cause to be published any part of the report, except as required in the normal course of forwarding and staffing the report, without approval from NGB-JA/OCI.

c. Requests for release of the ROI by alleged victims and reported perpetrators, that are not governed by the exceptions and procedures noted above, will be forwarded to NGB-JA/OCI by mail, or by email to:

- Chief of NGB-JA/OCI
3501 Fetchet Avenue, Joint Base Andrews, MD 20762-5157
- Email: Ng.ncr.ngb-arng.mbx.ngb-ja-oi@mail.mil

d. Individuals/entities submitting requests for ROIs under the Privacy Act (PA) and/or the Freedom of Information Act (FOIA), should send requests by mail or e-mail to:

- NGB FOIA
ATTN: NGB-JA/OIP
111 South George Mason Drive, AH2
Arlington VA 22204-1373
- Requests can also be made by E-mail: NGB.FOIA@mail.mil.

14. Release to the State.

a. Upon investigation completion, OCI will provide the complete ROI to the requesting TAG in both hard copy and electronic form. Video interviews and other materials not part of the ROI are available to the TAG upon request (see paragraph 13 above and paragraph 17 below). Other personnel who are part of the Federally recognized NG or Department of Defense (DoD) may access the ROI only upon a "need to know" basis to perform official Federal duties such as for the purpose of taking appropriate administrative or criminal action.

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b. Medical records are not part of the ROI and only the minimum necessary information will be released upon request IAW references r and s. The exceptions contained in paragraph 13 above apply to the release of medical records and the procedures contained in paragraph 13 above must be followed. Medical records will be released to SJAs upon request to the extent they are needed to comply with the exceptions contained in paragraph 13 above.

15. Other Requestors. Law enforcement agencies will submit requests directly to OCI IAW sections 552a(b)(3) and (b)(7) of reference t. NGB-JA/OCI will be responsible for maintaining the disclosure accounting and responding to requests for the disclosure accounting IAW reference t. News media and members of the public will submit requests IAW reference t and as described in subparagraph 13b above.

16. Protection of Records and Records Disposition. Unless released pursuant to the exceptions contained in paragraph 13 above, ROIs are considered FOUO and must be protected IAW reference u. Dissemination of any portion of the ROI outside of the DoD, to include sharing with State employees, is prohibited without the written consent of the NGB-JA/OCI. Records maintained by the Federally-recognized State NG are Federal records subject to the Records Disposition Schedules published by their respective Services and must be added to office file plans accordingly.

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

a. Video and audio recordings of alleged victim, reported perpetrator and witness interviews are not considered part of the ROI. NGB-JA/OCI maintains ownership of these recordings and will release them to the state or territory that requested the investigation under the conditions described below. NGB-JA/OCI 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 government representatives, specifically in their capacity as legal advisors/recorders/trial counsel to the command.

c. The State JA must safeguard the videos, audio recordings and medical records as PII, FOUO and law enforcement sensitive (LES) unless it is determined by competent legal authority that release is required by the exceptions contained in paragraph 13 above. In most instances visual inspection of the videos will satisfy the due process requirements of an adverse action and enable a respondent/accused to prepare a defense. Videos stored on a Federal government-owned device must be encrypted to the DoD standard. When transmitted by email, they will be transmitted via DoD

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systems that meet the DoD encryption standard and the email must be encrypted.

d. It is recommended that when the State JA makes the video and audio recordings and medical records not part of the ROI available for viewing, listening and inspection that it be in a proctored setting.

e. A description of the uses, to include a record of the date, time and place of each inspection, the purpose for it, and persons present, should be maintained, and the Office of the State JA should maintain the State's copy of the videos and records of inspection for at least 50 years.

18. Document Markings. Unless released pursuant to the exceptions contained in paragraph 13, documents will be marked "FOR OFFICIAL USE ONLY" at the bottom of the outside of the front cover (if there is one), the title page, the first page, and the outside of the back cover (if there is one). Internal pages of the document that contain FOUO information will be marked "FOR OFFICIAL USE ONLY" at the bottom.

19. Retention of Information. Retain all investigative records for a minimum of 50 years. Retain all elements of each case file to include the Report of Investigation, audio/video recordings, case activity record, case review record, investigative plans, and all case notes made by investigators.

20. OCI Complaints Processing. A complaint is a verbal or written communication that alleges improper conduct; insufficient qualifications of NGB-JA/OCI personnel; and untimeliness or lateness of OCI investigations/OCI reports of investigation. Complaints that are subject to specific statutory or regulatory requirements will be handled accordingly. "Victim-related inquiries" will be handled according to DoD and NGB SAPRO policy. Complaints as defined above will be handled as follows:

a. Chief of NGB-JA/OCI or designee will, if possible, notify the NGB Chief Counsel or designee within 2 working days after receipt of a complaint, and respond within 20 working days thereafter.

b. If the complaint was originally received by the NGB Chief Counsel or designee and referred to OCI, OCI will respond within 20 working days upon receipt.

c. NGB-JA will make an initial determination whether the complaint must be referred to a non-NGB-JA organization (for example, referral to law enforcement). If not referred, NGB-JA/CC or /DCC will:

(1) Determine the scope and type of any inquiry IAW regulations relevant for the particular issue.

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(2) Determine what person(s) or organization(s) will conduct the inquiry.

(3) Ensure that corrective action is taken if required.

(4) Provide a timely response to the complainant.

21. Retention of Complaint Records. NGB-JA/OCI will retain records of the complaint, inquiry, response to complainant, corrective action, and any other relevant records for 50 years. Access to the records will be limited to NGB Chief Counsel or designee, NGB-JA/OCI, and NGB-JA/ADLAW. Access will be granted to other personnel on a need to know basis.

22. Request for Reconsideration. Reference q provides that certain individuals may request reconsideration of the findings of an AR 15-6 Investigation. It is the State's responsibility to process requests for reconsideration in accordance with reference q or Air Force equivalent, if applicable. TAGs are not limited by the criteria contained in reference q and can request reconsideration at their discretion. If TAG determines that reconsideration is warranted, based on the provisions of reference q or otherwise, TAG will request that NGB-JA/OCI reconsider its findings and will provide all information upon which TAG's decision was made.

23. Referral of Adverse Information. When an investigation includes a finding containing adverse information (as defined in the glossary) regarding a field grade officer, the portion of the ROI and supporting evidence pertaining to the adverse information may need to be referred to the officer in accordance with reference q or Air Force equivalent, if applicable. It is the State Judge Advocate's responsibility to comply with the referral provisions of reference q or Air Force equivalent, if applicable.

APPENDIX A TO ENCLOSURE E

SAMPLE COMMANDER'S CHECKLIST ADDRESSING UNRESTRICTED
REPORTS OF SEXUAL ASSAULT

	Make sure the alleged victim is safe. Do not question him or her about the incident, but gather enough information to address immediate health care and safety needs.
	Ask the alleged victim if he or she needs to go to hospital. If a SA took place within the past several weeks or if he or she has any physical ailments connected to the SA, encourage him or her to do so. If necessary, transport the alleged victim to a hospital.
	Immediately contact the SARC at JFHQs-State.
	Contact the appropriate law enforcement organization. If either the alleged victim or the reported perpetrator is on Title 10 orders, or if the reported assault took place on a federal installation, contact the appropriate MCIO (CID or OSI) or civilian LEO. If neither the alleged victim nor reported perpetrator is on Title 10 orders and if the reported assault did not take place on a Federal installation, contact civilian LEO.
	If possible, secure the scene of the SA and restrict the entrance area until LEO/MCIO arrives.
	If possible, segregate the reported perpetrator(s) and witnesses until LEO or MCIO arrive. The reported perpetrator(s) should continue working, but should not be allowed to speak to each other about the matter. Order them to not erase anything from their government cellular telephones or other portable communication devices. Restrict their access to computers and other communication devices. Aside from their assigned counsel and the chain of command, do not allow reported perpetrators to discuss the matter.
	Contact the State AGR JA or NG technician JA immediately.
	Cooperate with LEO and MCIO and ensure supervisors provide full support to the investigation, consistent with law. Do not pressure or force reported perpetrator(s) to speak with or provide materials or statements to INVs.
	Do not publicize the incident. Discourage others from discussing the incident openly, as it could re-alleged victimize the alleged victim and discourage reporting.
	If contacted by the press regarding a reported SA or DA, refer them to PA at JFHQ-State.

Figure 3. Sample Commander's Checklist Addressing Unrestricted Reports of Sexual Assault

APPENDIX B TO ENCLOSURE E

SAMPLE SJA/POC PRE-INVESTIGATION CHECKLIST

	State JA Only: When an unrestricted report of SA is obtained, first determine if LEO has been notified and is investigating. If not, notify LEO and/or MCIO. If LEO or MCIO, as applicable, decline, coordinate with NGB-JA/OCI to determine if a sufficient nexus exists for an NGB sponsored investigation prior to the TAG request being staffed.
	State JA Only: After coordination with NGB-JA/OCI, create TAG request if appropriate.
	If identified by TAG as POC, these duties are his or her primary duties and take precedence over all other duties once investigative team is detailed.
	POC – Notify NGB-JA/OCI if any of the potential witnesses are NG technicians.
	POC – Obtain personnel records for the reported perpetrator and/or the alleged victim.
	POC – Obtain any past adverse actions for reported perpetrator and/or alleged victim.
	POC – Obtain all previous NCOERs/OERs for reported perpetrator and/or alleged victim.
	POC – Obtain medical records, if possible, related to investigation as requested by Lead INV.
	POC – Obtain LE records related to the investigation, if possible. Strongly encourage alleged victims to report incident to local law enforcement, even if they choose not to have the incident investigated. This makes an official report in case the reported perpetrator has another allegation in the civilian population.
	POC – Obtain relevant emails/texts related to investigation per State JA guidance.
	POC – Ensure unit flags or initiates an Unfavorable File Program action on reported perpetrator per ARNG/ANG guidance.
	POC – Ensure unit makes all witnesses, and defense counsel available, including placing members on official orders during the investigation.
	POC – Ensure all known alleged victims and witnesses are notified of their need to testify, and are instructed to not discuss the matter.
	POC – Ensure the reported perpetrator is notified of the allegations against him or her and offered an opportunity to consult with counsel prior to INV arriving. This must be done sufficiently before the investigation team’s scheduled arrival to ensure a reasonable amount of time for the reported perpetrator to actually consult with counsel.

Figure 4. Sample SJA/POC Pre-Investigation Checklist

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	POC – Arrange for a dedicated room for the INV to operate that is quiet and free from distractions.
	POC – Coordinate with the Lead INV to prepare witness lists and travel plans.
	POC – Send documentation obtained prior to the arrival of the INV Team to the Lead INV so the INV team is able to review it and develop a plan.
	Schedule a TAG In-Brief once the arrival of the INV Team is confirmed.

Figure 4 continued. Sample SJA/POC Pre-Investigation Checklist

APPENDIX C TO ENCLOSURE E

SAMPLE PRIVACY ACT STATEMENT AND ADVISEMENT

Authority: 10 U.S.C. 10502, DoD Directive 6495.01, DoD Directive 6495.01, DoD Instruction 5505.18, DoD Instruction 5505.19, CNGB 0400.01 Series.

Purpose: The individual's name, unit, and contact information is being collected and maintained for the purpose of the agency being able to contact the individual for clarification or additional details regarding their statement.

Routine Uses: Records may be disclosed to state officials in the state or states that requested the investigation be conducted or which have any criminal or administrative jurisdiction over individuals impacted by the investigation.

To Federal, State, local agency or an individual or organization, if there is reason to believe that such agency, individual or organization possesses information relating to the investigation and the disclosure is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant.

To attorney or other professional or job-specific licensing, accreditation, and/or disciplinary authorities as required to support relevant investigations and proceedings.

Information is used for purposes above, in addition to the DoD "Blanket Routine Uses" (http://dpclo.defense.gov/privacy/SORNs/blanket_routine_uses.html) on the Defense Privacy and Civil Liberties Office website.

DISCLOSURE:

Disclosure of personal information is voluntary; however, failure to do so may hinder the ability of this office to contact you in reference to this investigation.

Routine Uses: The individual's name, unit, and contact information is being collected and maintained for the purpose of the agency being able to contact the individual for clarification or additional details regarding their statement.

Acknowledgment: I understand the provisions of the Privacy Act of 1974 as related to me through the foregoing statement.

(Signature and date)

Printed Name

Phone Number

Email

Figure 5. Sample Privacy Act Statement and Advisement

APPENDIX D TO ENCLOSURE E

NATIONAL GUARD FORM 401

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA) AUTHORIZATION FORM FOR CIVILIAN MEDICAL PROVIDER <small>The proponent agency is NGB-JA. The Prescribing Directive is CNGBM 0400.01 (For military medical Provider, use DD Form 2870)</small>	
SECTION I - HOSPITAL / MEDICAL PROVIDER	
HOSPITAL / MEDICAL PROVIDER NAME:	
HOSPITAL / MEDICAL PROVIDER ADDRESS:	
SECTION II - PATIENT INFORMATION	
PATIENT NAME:	D.O.B: (YYYYMMDD)
PATIENT ADDRESS:	
SECTION III - DISCLOSURE STATEMENT	
<p>I hereby authorize the hospital (includes hospital/clinic administrative staff, examining physicians, nurses, and other allied health care personnel) or medical provider and its agents to disclose ("disclose" includes release of records/ material, and to provide information/testimony) all medical records* and any related protected health information to any investigator detailed by the National Guard Bureau Office of Complex Administrative Investigations (NGB-JA/ OCI) for the purpose of conducting investigations relating to or resulting from a reported Sexual Assault (as defined by DoDD 6495.02) or other violent crime.</p> <p><i>*All medical records include inpatient/outpatient records, medical, dental, optical, psychiatric, alcohol/chemical/substance abuse, HIV/ Aids, pharmaceutical, hospital or physician records, office notes, narrative summaries, telephone messages, correspondence to/from/ about me, diagnostic testing results, bills, statements and invoices whether or not you created those records as long as the records are in your control or possession.</i></p> <p>THIS AUTHORIZATION SHALL EXPIRE ON: _____ (YYYYMMDD)</p> <p>I understand that I have the right to revoke this authorization, in writing, at any time by sending a written notification to this hospital or medical provider. If I revoke this authorization, it will have no effect on actions already taken based on this form. I understand information disclosed under this authorization may be further disclosed by recipient and may no longer be protected by federal or state law. This hospital or medical provider will not condition examination or give treatment to the individual signing this authorization form.</p>	
SECTION V - PATIENT OR PERSONAL REPRESENTATIVE INFORMATION	
PATIENT / REPRESENTATIVE NAME:	DATE: (YYYYMMDD)
RELATIONSHIP TO PATIENT:	TELEPHONE NUMBER:
PATIENT / REPRESENTATIVE CURRENT ADDRESS:	
SIGNATURE: _____	

Figure 6. National Guard Form 401

APPENDIX E TO ENCLOSURE E

SAMPLE NATIONAL GUARD BUREAU FORM 97

NATIONAL GUARD BUREAU STATE REPORT OF DISCIPLINARY OR ADMINISTRATIVE ACTION <small>The proponent agency is NGB-JA. The prescribing directive is CNGBM 0400.01.</small> <small>FOUO when information is entered.</small>		
1 - CONTROL INFORMATION		
THRU:	OCI CASE NUMBER:	
	MP REPORT NUMBER:	
TO:	SUB-INSTALLATION / CIVILIAN POLICE AGENCY NUMBER:	
REFERRED BY:	REFERRAL DATE:	REFERRAL DATE:
<p>The State Judge Advocate is responsible and accountable for completing NGB Form 97 with support documentation (copies of nonjudicial punishments, court-martial orders, reprimands, etc) for all OCI investigations conducted for the State NG. The State Judge Advocate is responsible and accountable for completing NGB Form 97 with supporting documentation in all cases investigated by OCI. The NGB Form 97 will be returned to OCI within 60 days of the state's receipt of the OCI Report of Investigation and thereafter updated at 60 day intervals until all actions are complete. <u>A separate form is required for each individual reported perpetrator who is identified in the OCI Report of Investigation, and for any other individual who is the subject of any action as a result of the OCI Report (for example, a supervisor who receives a reprimand).</u> Accurate and complete disposition reports are required to meet installation, command, HQDA, DAF, DOD, and federal statutory reporting requirements. The data is used to identify crime trends, establish command programs in law enforcement and other activities, and to ensure that resources are made available to support commanders who must address issues of soldier/airman and family member indiscipline.</p> <p>In state court-martial cases, a conviction of an offense at court-martial may be for a different, or lesser included offense. List the offense for which the individual was convicted at court-martial in the remarks section. "Sub-Installation" (Block 1) is used to enter report number from a civilian law enforcement agency police report. Other information on the civilian law enforcement agency (e.g. civilian law enforcement agency address) may be entered in the remarks section.</p>		
2 - OFFENDER OR OTHER INDIVIDUAL INFORMATION		
LAST NAME:	UNIT:	
FIRST NAME:	GRADE:	
MIDDLE NAME:	DATE OF BIRTH:	
Was a DNA sample collected from the offender? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown POC:		
3 - ACTION TAKEN		
Administrative	<input type="checkbox"/> Non- Adverse Referrals	<input type="checkbox"/> Adverse Personnel Action
<input type="checkbox"/> Non-Judicial or Article 15 (see details below)	<input type="checkbox"/> Judicial Court Martial or Civilian Criminal Court	
Non-Judicial Punishment Authority	<input type="checkbox"/> Summarized <input type="checkbox"/> Principal Assistant	<input type="checkbox"/> Company Grade <input type="checkbox"/> GCMCA Imposed <input type="checkbox"/> Field Grade <input type="checkbox"/> General Officer Imposed
Judicial Punishment Authority	<input type="checkbox"/> Summary Court Martial <input type="checkbox"/> Civilian Criminal/Magistrate	<input type="checkbox"/> General Court Martial Jurisdiction: Other:

NGB FORM 97,

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Figure 7. Sample National Guard Bureau Form 97

[illegible]

Figure 7 continued. Sample National Guard Bureau Form 97

5 - ADMINISTRATIVE ACTIONS							
Non- Adverse:			Adverse:				
Agency	Date Referred	Date Responded	Date Imposed	Type of Action	Oral	Written Local	Written OMPF
Family Advocacy				Counseling/ Concern	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Drug/Alcohol Abuse				Reprimand	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Special Referral				Censure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Equal Opportunity				Admonition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Legal Office							
Mental Health							
Relief Agency							
Adverse:							
Date Imposed	Description						
	Withholding of Privileges						
	Adverse Performance Evaluation (OER/NCOER/Academic Report)						
	Relief for Cause (OER/NCOER)						
	Mandatory Reassignment						
	Transfer (such as rehabilitative)						
	Adverse Record Entry - Flag						
	Bar to Reenlistment						
	Letter of Reprimand. Where Filled:						
	Withholding of Promotion						
	Delay of Promotion						
	Promotion Revocation						
	Clearance Revocation						
	Control Roster (downgrade of clearance, PRP reclassification)						
	Resignation						
	Retirement						
	Retirement at Lower Grade	From:	To:				
	Transfer to Inactive Reserve						
	Removal from the AGR program	Date effective:					
	Military Occupational Specialty Reclassification						
	Civilian Debarment	Duration:	<input type="checkbox"/> Days	<input type="checkbox"/> Months	<input type="checkbox"/> Years		
	Civilian/Technician Job Termination						
	Civilian/Technician Job Suspension	Duration:	<input type="checkbox"/> Days	<input type="checkbox"/> Months	<input type="checkbox"/> Years		

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Figure 7 continued. Sample National Guard Bureau Form 97

5 - ADMINISTRATIVE ACTIONS (Continued)			
	Civilian/Technician Leave Without Pay	Duration:	<input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years
	Loss of Warrant		
	Voluntary Disclosure		
	Restitution (to US Government)	Amount US\$:	
	Restitution (to third party Non-US Government)	Amount US\$:	
	Civil-Civil Action Initiation		
	Other (return to States, etc.)		
6 - DETAILS OF ADMINISTRATIVE SEPARATION			
Date Imposed:	Regulation:	Chapter:	
Characterization:			Effective Date:
NOTE: Proceed to SJA's Remarks (Block 10a) if you chose Administrative Action in Block 6 or 7.			
7 - NON-JUDICIAL/JUDICIAL SANCTIONS			
Date Adjudged	Sanction		
	Fine	Amount US\$:	
	Forfeiture	Amount US\$:	Duration: <input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years
	Extra Duty	Days:	
	Correctional Custody	Days:	
	Confinement	Duration:	<input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years
	Bad Conduct Discharge	Effective Date:	
	Dishonorable Discharge	Effective Date:	
	Reduction in Grade	From:	To:
	Probation	Duration:	<input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years
	Special Assignment	Duration:	<input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years
	Total Forfeiture (all pay/allowances)	Duration:	<input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years
	Protective Order	<input type="checkbox"/> Civil <input type="checkbox"/> Military	Duration: From: To:
	Death Sentence		
	Civil Recovery	Amount US\$:	
	Civil Award	Amount US\$:	
	Dismissal (Officer only)	Effective Date:	

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Figure 7 continued. Sample National Guard Bureau Form 97

8 - SUSPENDED ACTIONS	
Were any Sanctions Suspended? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Note: If no sanctions were suspended, proceed to "SJA's Remarks" (Block 9a).	
Suspended Sanction	Suspended Sanction Information
Fine	Date Suspended: Suspension Duration: <input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years <input type="checkbox"/> Life <input type="checkbox"/> Undetermined
	Suspended Portion US\$:
	Suspension Conditions:
Forfeitures	Date Suspended: Suspension Duration: <input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years <input type="checkbox"/> Life <input type="checkbox"/> Undetermined
	Suspended Portion US\$:
	Suspension Conditions:
Extra Duty	Date Suspended: Suspension Duration: <input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years <input type="checkbox"/> Life <input type="checkbox"/> Undetermined
	Suspended Portion Time: <input type="checkbox"/> Days <input type="checkbox"/> Months
	Suspension Conditions:
Restriction	Date Suspended: Suspension Duration: <input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years <input type="checkbox"/> Life <input type="checkbox"/> Undetermined
	Suspended Portion Time: <input type="checkbox"/> Days
	Suspension Conditions:
Correctional Custody	Date Suspended: Suspension Duration: <input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years <input type="checkbox"/> Life <input type="checkbox"/> Undetermined
	Suspended Portion Time: <input type="checkbox"/> Days
	Suspension Conditions:
Confinement	Date Suspended: Suspension Duration: <input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years <input type="checkbox"/> Life <input type="checkbox"/> Undetermined
	Suspended Portion Time: <input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years <input type="checkbox"/> Life
	Suspension Conditions:
Reduction in Grade	Date Suspended: Suspension Duration: <input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years <input type="checkbox"/> Life <input type="checkbox"/> Undetermined
	Suspension Conditions:
Probation	Date Suspended: Suspension Duration: <input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years <input type="checkbox"/> Life <input type="checkbox"/> Undetermined
	Suspended Portion Time: <input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years <input type="checkbox"/> Life <input type="checkbox"/> Undetermined
	Suspension Conditions:
Special Assignment	Date Suspended: Suspension Duration: <input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years <input type="checkbox"/> Life <input type="checkbox"/> Undetermined
	Suspended Portion Time: <input type="checkbox"/> Days <input type="checkbox"/> Months
	Suspension Conditions:
Total Forfeiture	Date Suspended: Suspension Duration: <input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years <input type="checkbox"/> Life <input type="checkbox"/> Undetermined
	Suspended Portion Time: <input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years <input type="checkbox"/> Life
	Suspension Conditions:
Civil Recovery	Date Suspended: Suspension Duration: <input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years <input type="checkbox"/> Life <input type="checkbox"/> Undetermined
	Suspended Portion US\$:
	Suspension Conditions:
Civil Award	Date Suspended: Suspension Duration: <input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years <input type="checkbox"/> Life <input type="checkbox"/> Undetermined
	Suspended Portion US\$:
	Suspension Conditions:
Administrative Separation	Date Suspended: Suspension Duration: <input type="checkbox"/> Days <input type="checkbox"/> Months <input type="checkbox"/> Years <input type="checkbox"/> Life <input type="checkbox"/> Undetermined
	Suspension Conditions:

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Figure 7 continued. Sample National Guard Bureau Form 97

9 - SJA'S REMARKS (Continued)	
11 - REPORTING OFFICER	
Name:	Grade:
Official E-Mail Address:	
Signature Field	Signature Date:

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Figure 7 continued. Sample National Guard Bureau Form 97

ENCLOSURE F

CONDUCTING STATE ASSESSMENTS

1. State Assessment. Every State Assessment is custom tailored to the Requesting Official's (RO) needs and consistent with DoD policy. The NGB Chief Counsel will keep the CNGB and VCNGB apprised of developments pertaining to the assessment and may exercise authority, directing control over any aspect of the assessment when required. However, typically the Assessment Team lead, with input from their legal advisor, and NGB-JA/OCI, will plan and execute the assessment. Below are the typical guidelines for a State assessment.

a. RO contacts NGB Chief Counsel to determine if requesting an NGB-JA/OCI State Assessment is appropriate.

b. Chief Counsel will review whether the matter concerns allegations of impropriety or misconduct (including criminal allegations) against a Senior Official, as defined in the glossary. If so, the matter may be required to be referred to the Service Inspector General (IG). If the issue involves a potential criminal matter, the NGB Chief Counsel will advise RO to inform LEO or MCIO of the allegation. NGB-JA/OCI generally will not conduct an assessment into matters that are otherwise being or should be investigated by IG, LEO, or MCIO. DoD and Service IG, however, may request that NGB-JA/OCI investigate senior officials.

c. RO requests investigatory support from NGB-JA/OCI using the template in Appendix A to Enclosure F and appoints a State NG POC generally the State Chief of Staff.

d. State Assessments are generally led by a Senior Official appointed by the Chief Counsel or Chief of the National Guard Bureau in the grade of O-7 or above. Supporting members of a State Assessment Team (AT) are identified based on their subject matter expertise and are appointed by the Chief Counsel. See template appointment in Appendix B to Enclosure F. AT members may be added throughout the assessment based on the needs of the lead AT member.

e. NGB-JA/OCI provides logistical support and equipment for the AT and coordinates with NG-JS CoS, NG-GOMO, ARNG-G1, and ANG-A1 to ensure travel orders and funding are available

f. AT legal advisor creates Action Plan (AP) (see Appendix C to Enclosure F) and presents it to Chief Counsel for approval. The AP is a living document that will be revised throughout the assessment, as necessary.

g. State POC coordinates with AT Lead and NG units to schedule RO in-brief and make logistical arrangement for the AT.

h. When requested, State POC makes witnesses available for interviews, including putting interviewees, reported perpetrators, Special Victims Counsel and defense counsel on orders, to schedule interviews, to determine which records should be available.

i. AT members request orders and plans travel using DTS, and coordinates his/her travel with other detailed INVs.

j. Coordination for funding for State Assessments are the responsibility of the NGBJS until NGB-JA/OCI becomes a program of record.

k. The AT will not conduct inquiry into open unrestricted reports of sexual assault. Should any allegations of sexual assault arise, AT will immediately notify the RO so the matter may be referred to the proper law enforcement or investigatory entity, IAW with CNGB and/or DoD policy.

l. The AT will not expand the scope of the investigation without consulting with the RO and NGB Chief Counsel.

2. Phases of Action Plan.

a. Phase I: Intake. NGB Chief Counsel or his or her designee will conduct initial visit with RO to refine assessment intent and scope of inquiry. Following this meeting, the AT lead and team will meet with State POC to discuss investigation needs and seek administrative support. Climate Survey and Data Collection will occur immediately following initial visit. Phase I ends when Data Request is submitted and a proposed calendar for the assessment is developed.

(1) Command Climate Survey – lead DEOMI Survey Coordinated Directly with DEOMI. Survey should be anonymous and web based. Survey must be directed at ANG, ARNG and Civilians supporting the State based on specific metrics of the requesting state. In addition to the standard survey template, the AT will develop 10 state specific metered questions and five write in questions. Due to the sensitive nature of the survey and concern for retaliation, access to the survey is limited to the OCI chain of command. Survey must be widely available for both full time and part time (traditional) personnel. Recommended Survey time is 2 months.

(2) Data Collection. The AT will finalize the Action Plan to include a refined data request which identifies information for the State to compile prior to initiating investigation. Recommended data collection time is 4 weeks.

b. Phase II: Interviews and Review. AT will return to State to review documentation gathered in Phase I and to collect additional information through interviews. Team will travel to various NG facilities across the State to encourage information sharing and broadest possible overview for assessment. Interviews will be reduced to summations for INVs review and videotaped, if necessary. Rights warnings will be read when required. At no time will AT interfere with ongoing criminal investigation. Recommended Interview and Review time is 6-8 weeks.

c. Phase III: Assessment. The AT will return to NGB to assess data and draft preliminary report once all investigative information is compiled and the command climate survey is complete. Recommended Assessment time is 4-6 weeks.

d. Phase IV: Finalize Report. Once the AT completes the report it will be submitted to NGB-JA for legal review and then to the NGB Chief Counsel for additional editing, review and adjudication. The final report will be presented to the RO during final out-brief. Recommended time to finalize report is 4-6 weeks depending on the State's agreed upon coordination timeline.

3. Conducting Interviews. Conducting interviews at NG facilities or other locations.

a. Video/audio recordings are at the discretion of the AT lead; however, if they are made they will be stored on a device that can be encrypted to the DoD standard. In-person interviews should not take place at an interviewee's home or in hotel rooms, unless necessary. Telephonic interviews, although not preferable, are permissible when in-person interviews are impractical.

b. Witnesses will be provided a Privacy Act statement/notice to execute (see Appendix D to Enclosure F), and will be cautioned against disclosing their testimony and any matters under investigation with anyone except personal legal counsel, medical providers, or as otherwise permitted by their chain of command.

c. All individuals suspected of criminal misconduct must be advised of their rights to counsel and against self-incrimination and, if requested, will be given a reasonable amount of time to consult an attorney before being interviewed.

d. If any witness appears to be under stress or duress during interview, contact unit command to ensure interviewee is handed off to a unit member (Enclosure E, paragraph 6).

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e. AT members will reduce interviews to summations which will be used to inform the recommendations in the final report (see Appendix E to Enclosure F).

4. Record Keeping. The AT saves all copies of documents, video, and audio files in a State assessment file IAW this manual and the Privacy Act.

APPENDIX A TO ENCLOSURE F
SAMPLE REQUEST FOR ASSESSMENT

Chief
National Guard Bureau
United States Department of Defense

RE: Request for Assessment, Office of Complex Administrative Investigations

Dear *insert name of CNGB*,

I request an Assessment of the *State National Guard* by the Office of Complex Investigations (OCI). I would like the Assessment team to review: any perceptions of hostile work environment, favoritism and lack of fair treatment, equal opportunity and sexual harassment concerns, and sexual assault prevention and response concerns within the State. I request that the Chief Counsel issue a detail memorandum allowing the team to act under my authority to gain access to state personnel and records to the extent allowed under law and regulation.

As the Adjutant General, I want to ensure my service members are operating in an environment that directly reflects the values of the National Guard at all times. While I am confident of the quality of my organizations personnel and their performance to standards, I believe a qualified third party review of our command climate will provide us the data points we need to be truly excellent. Therefore, I believe that OCI is the necessary and appropriate course of action.

I am willing to meet with your team lead in order to assist in planning and conducting the Assessment. I have directed the *insert name and number* to ensure your team receives the full cooperation of *State National Guard* personnel. I have also directed my judge advocate to provide legal advice as necessary and will direct the full cooperation of all units, guardsmen and women, and civilians within the State National Guard who are under my authority to assist with this effort. My POC is *Name* but please feel free to contact me directly should you have any questions.

Figure 8. Sample Request for Assessment

APPENDIX B TO ENCLOSURE F

SAMPLE APPOINTMENT MEMORANDUM

MEMORANDUM FOR *Named Senior Official*

Subject: Designation as Lead Assessment Officer for Assessment *Number (State+Year)*

1. Pursuant to the attached request from the *Requesting Official (RO for the State National Guard*, I hereby detail you to assess the facts and circumstances of the reported issues described in the memorandum at Attachment 1. You are authorized to make any additional related findings based on your investigation. The completion of this assessment will be your primary duty. Your assessment should be completed in eight weeks or less. If you need more time to complete your duties, please contact NGB-JA/OI immediately to request approval to extend the mission and ensure your orders can be extended.
2. You are to independently review and assess: *list language from the RO's request for example reports of sexual assault, and harassment, among members of the State NG; the command climate and the impact on good order and discipline; the management and oversight of State NG; and allegations of fraud.* This review will include a review of the current culture, policies and practices of the *State NG (Army and Air)* for the handling of sexual assault and other allegations of hostile work environment and culture within the *State NG* and the command structure and its responses to allegations of improprieties. Please review the relationship between the *State NG* and community police and alleged victim service entities. Do not interfere with investigations that are ongoing without approval. You are further directed to conduct a command climate survey that includes the entire *State NG*. You will have access to State/Federal personnel and records to the extent allowed under State/Federal law and regulation.
3. You are to gather and analyze facts using your knowledge and training to determine if the report is substantiated or unsubstantiated by the preponderance of the evidence. You will conduct your assessment pursuant to the responsibilities, procedures, and standards detailed in CNGBM 0400.01A Enclosure B, C and E. You must ensure your findings are consistent with credible evidence concerning these matters.

Figure 9. Sample Appointment Memorandum

4. Assessment team members are authorized to wear professional business attire to conduct the investigation. Assessment Team (AT) member's rank will be used throughout the course of the assessment. All AT members will provide input and assist in all aspects of the assessment regardless of rank.
5. At the conclusion of your assessment, you will prepare a memorandum and an executive summary detailing your findings for the RO using the templates provided by your lead legal advisor.
6. If you suspect at any time that senior officer misconduct may have occurred, you will stop whatever action you are undertaking and immediately consult with your legal advisor, NGB-JA, or, NGB-IG. Similarly, if you believe that any individual you intend to speak with may have violated a provision of the *State* military code or other State/Federal law, you will likewise stop whatever action you are undertaking and immediately consult with your legal advisor.
7. You must provide witnesses with a Privacy Act Statement before you solicit any personal information. Additionally, during the course of your interviews (military or civilian) ensure that the appropriate rights warnings are provided (in consultation with the legal advisor). If you suspect that any individual you intend to interview may have violated a provision of the *State* Code of Military Justice, Uniform Code of Military Justice, or other criminal law, you must advise that individual of his or her rights under the Fifth Amendment or as specified in the applicable state law, as appropriate. Further, you must suspend questioning when such individuals refuse to make further statements or answer questions based on these rights. You should provide personnel the opportunity to speak with you or your team or to provide information to aid in assisting in your duties, but personnel will not be compelled to do so.
8. Your point of contact (POC) with the State is *insert name, title and contact data*. Please contact POC immediately to receive more information regarding this incident; to coordinate travel, interviews, and logistics; and to determine which records you will need available when you arrive for the investigation.
9. The undersigned is the POC; 571-256-7368.

Figure 9 continued. Sample Appointment Memorandum

APPENDIX C TO ENCLOSURE F

SAMPLE ACTION PLAN

ASSESSMENT OF STATE NATIONAL GUARD (XXNG)

1. Purpose. To lay out the proposed 4-part action plan for conducting an independent inquiry and assessment into the XXNG.
2. Background. On *date* the *Requesting Official (RO)* for the *State National Guard* submitted a request to the Chief of the National Guard Bureau to direct an assessment of the XXNG. Specifically he requested an assessment team (AT) to review “any perceptions of hostile work environment, favoritism and lack of fair treatment, equal opportunity and sexual harassment concerns, and sexual assault prevention and response concerns within the XXNG.” RO further requested that the Chief Counsel issue a detail memorandum allowing the team to act under RO’s authority “to gain access to state personnel and records to the extent allowed under law and regulation.”
3. Action Plan.
 - a. Phase I: Intake. The AT will conduct an initial meeting with RO to refine the assessment intent and scope of inquiry. Following this meeting AT will meet with RO’s representative to discuss assessment needs and seek administrative support. Recommended time for Phase I is x weeks.
 - (1) Command Climate Survey – lead DEOMI Survey coordinated with DEOMI. Survey should be anonymous and web based. Survey must be directed at the entire XXNG workforce. Survey must be widely available for both full time and part-time (traditional) personnel. Recommended Survey time is 60 days. The AT will promote the survey during drill weekends to provide emphasis on survey completion and anonymity. Survey will be disseminated through OCI email account.
 - (2) Data Collection – AT will need the following information to be compiled in specified format prior to initiating investigation. Proposed State POC identified. Recommended data collection time is x weeks.
 - (a) Matrix of all misconduct, criminal investigations, and current disposition for all XXNG military personnel (T10, T32, and SAD) over the last 10 years: SJA
 - (b) Matrix of all EO/MEO complaints and disposition for all civilian and military personnel over the last 10 years: State EO

Figure 10. Sample Action Plan

(c) Compilation of all current *XXNG* command policies and procedures regarding but not limited to: sexual assault, sexual harassment, reprisal, retaliation, fraternization, alcohol and substance abuse, ethical conduct, and command climate: *XXNG* Chief of Staff

(d) Matrix of all reports of sexual assault T10, SAD, and T32 involving *XXNG* members and disposition over the last 10 years: SARC

(e) Compilation of all command directed investigations into sexual assault, harassment, discrimination, retaliation, fraud over the last 10 years: SJA

(f) Copy of UCI, USR, ORI, and ESOHCAMP for past 8 years: XP/IGI
Copy of any EPA NOV's at the *XXNG* level for the past 8 years: Environmental Manager, CES

(g) A copy of all Exit interviews maintained by the retention office for the past 8 years: Retention/ Air Force Recruiting Information Support System (AFRISS)

(h) Compilation of all command climate surveys and sensing sessions involving the *XXNG* conducted by EO and/or IG in last 8 years: SEEM/IG

(i) Compilation of any and all allegations pertaining to fraud within the *XXNG*: USPFO

b. Phase II: Interviews and Review. The AT lead will return to the *State* to review documentation gathered in Phase I and to collect additional information through interviews. Team will travel to various *XXNG* facilities across the *State* to encourage information sharing and broadest possible overview for assessment. Interviews will be reduced to summations for investigator review and videotaped when necessary. Privacy and Article 31 rights will be read when required. At no time will Assessment Team interfere with any potential criminal investigation. Recommended interview and review time is x weeks. Based on data currently provided to the AT focus will be on the following areas:

(1) Command Climate. AT will conduct interviews with senior and junior leaders to identify systematic problems or successes within the *XXNG* and review final results of DEOMI survey.

(2) Justice. AT will meet with state legal advisors to include *XXNG* SJA, to discuss processing of criminal matters that occur within or by members of the *XXNG*.

Figure 10 continued. Sample Action Plan

(3) Policy. AT will review command policies regarding but not limited to sexual assault, sexual harassment, reprisal, retaliation, fraternization, alcohol and substance abuse, ethical conduct, and command climate. AT will also conduct interviews with senior and junior members to discuss awareness and compliance with state policies.

(4) Administrative and Disciplinary Action: AT will conduct review of data provided and conduct interviews regarding all administrative inquiries and investigations that occurred. The intent is not to challenge the administrative or disciplinary action taken but to identify practices and procedures for the handling of these matters within the XXNG.

(5) Access to IG/EO/SARC: AT will review formal and informal complaints as well as conduct interviews with ANG members to assess their access to these programs.

c. Phase III: Assessment. Once all information is compiled AT will return to NGB to assess data and draft preliminary report. Recommended Phase III Assessment time is x weeks.

d. Phase IV: Finalize Report. Once AT completes report it will be submitted to NGB-JA for legal review. The report may also be provided to RO for review and comment if desired. The final report will be presented to RO during final out-brief. Recommended time to finalize report is x weeks.

4. Additional Variables. Below is a list of additional variables that may impact the investigation.

a. Support of XXNG leadership is key to ensuring access to personnel and facilities.

b. Open allegations of Sexual Assault. The AT will not conduct inquiry into open unrestricted reports of sexual assault. Should any new allegations of sexual assault arise, AT will immediately notify the RO so the matter may be referred to the proper law enforcement or investigatory entity, IAW with CNGB and/or DoD policy.

c. Support of DEOMI in initiating and compiling command climate survey as well as support from XXNG Leadership regarding the participation in the survey. The stronger the participation in the survey the more data the AT will acquire regarding strengths and weaknesses as viewed by the XXNG. The survey needs to be discussed by NG leadership and available to the largest population possible.

Figure 10 continued. Sample Action Plan

d. Coordination with state prosecutor and local law enforcement is necessary to ensure accurate information regarding the allegations of sexual assault/harassment.

5. Based on the action plan outlined above the proposed assessment should take xx months.

6. Point of contact for this data request is *name at phone and email*.

Figure 10 continued. Sample Action Plan

APPENDIX D TO ENCLOSURE F

SAMPLE PRIVACY ACT STATEMENT AND ADVISEMENT

I acknowledge that I have received the following advisement under the guidelines of the Privacy Act. This statement is provided to individuals by Federal agencies in compliance with the provisions of the Privacy Act of 1974 (Public Law 93-579), who are requested to furnish personal information about themselves regarding factual information requested below.

Authority: 10 U.S.C. 10502, DoD Directive 6495.01, DoD Directive 6495.01 CNGB 0400.01 Series.

Purpose: To conduct an assessment of the *State* National Guard that will be presented to The Adjutant General *and/or* any other appropriate state or federal National Guard leaders.

Routine Uses: The individual's name, unit, and contact information is being collected and maintained for the purpose of the agency being able to contact the individual for clarification or additional details regarding their statement.

Information is used for purposes above, in addition to the DoD "Blanket Routine Uses" (http://dpclo.defense.gov/privacy/SORNs/blanket_routine_uses.html) on the Defense Privacy and Civil Liberties Office website.

DISCLOSURE:

For Military Personnel: Disclosure of personal information is mandatory and failure to do so may subject the individual to disciplinary action.

For Civilian Employees of the Army and Air Force: Failure to disclose personal information in relation to individual's position responsibilities may subject the individual to adverse personnel action.

For All Other Personnel: Disclosure of personal information is voluntary and no adverse action can be taken against individuals refusing to provide information about them.

Acknowledgment: I understand the provisions of the Privacy Act of 1974 as related to me through the foregoing statement.

(Signature and date)

Printed Name

Phone Number

Email

Figure 11. Sample Privacy Act Statement and Advisement

APPENDIX E TO ENCLOSURE F

SAMPLE WITNESS INTERVIEW SUMMATION

Name

On *date* at approximately 0900, Name, spoke to the Investigation Team regarding investigation *OCI Case number* appointed pursuant to CNGBM 0400.01, "Chief, National Guard Bureau Office of Complex Administrative Investigations." This interview was conducted in the NGB Office of Complex Investigations (OCI) interview room designated at the USPFO Building on *x location and state* and lasted approximately 120 minutes. The witness was advised of the Privacy Act guidelines and disclosure requirements IAW 10 U.S.C. 10502. Present at this interview were: *Names of those present*. This summary finalized with editing and concurrence of co-investigator name on *date*.

Summary of the interview:

Name has served 18 years as a member of the XXNG. History of Positions within XXNG.

Summarized information relevant to the assessment. Remember the summations will be part of the final report and will be used to form the recommendations in the report.

Key take-aways: spell out the specific lines of effort this witness supports or informs.

Name
Investigator

Figure 12. Sample Witness Interview Summation

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ENCLOSURE G

SAMPLE NOTIONAL SEXUAL ASSAULT REPORT VIGNETTES

Disclaimer: Vignettes are provided to assist decision makers in determining whether a report of SA has a NG nexus sufficient for investigation by NGB-JA/OCI. They do not reflect official policies or positions of the NGB or the DoD.

Scenario A:

Two days before the end of Annual Training at a state-owned training facility, SSG Doe's unit hosted an informal "after-hours" party in the common picnic area to celebrate a successful two week training period without injuries, accidents or misconduct. Alcohol freely flowed and the party lasted well into the evening. When the party was over, the Executive Officer, CPT Hook, offered to walk SSG Doe to her room to ensure she arrived safely. SSG Doe said CPT Hook unlocked her door and led her in because it was dark outside. Once inside the room, CPT Hook helped SSG Doe take off her boots and jacket and helped her lie down. The next thing SSG Doe remembers is awakening the next morning with only her socks and T-shirt on. SSG Doe believes she may have had sexual intercourse because her genital region was swollen and sore. The day after the party, CPT Hook winked and smiled at SSG Doe after formation. SSG Doe was embarrassed and wanted to forget the matter because she is married but has since had trouble sleeping, completing college assignments, and preparing to attend drill even though it has been 26 days since annual training. Saturday of the first drill period after annual training, SSG Doe told her squad leader she wanted to speak with the unit VA. After speaking with the VA, SSG Doe filed a restricted report of sexual assault with the SARC.

The situation described in this scenario would not be appropriate for investigation by NGB-JA/OCI; it was received as a restricted report. If SSG Doe had told her squad leader she wanted to speak to a VA because she was sexually assaulted, it would be appropriate for NGB-JA/OCI investigation. SSG Doe's squad leader is not authorized to receive a restricted report of SA, so any information he or she receives regarding a NG-related SA must be investigated. If SSG Doe files a restricted report, as she has done in this scenario, and subsequently wishes to have her report changed to an unrestricted report, the incident may be appropriate for NGB-JA/OCI investigation. See Scenario B.

Figure 13. Sample Notional Sexual Assault Report Vignettes

Scenario B:

Same fact pattern as Scenario A but SSG Doe files an unrestricted report.

The situation described in this scenario may be appropriate for investigation by NGB-JA/OCI. The alleged victim made an unrestricted report, and both the alleged victim and the alleged perpetrator are members of the NG. Further, this incident occurred while both parties were on Title 32 annual training orders. This incident should immediately be reported to both LEO and to the appropriate MCIO. If either LEO or an MCIO conduct a complete investigation into this matter, NGB-JA/OCI will not investigate.

Scenario C:

MSG Troop is the full-time Readiness Non-Commissioned Officer (NCO) for an Engineer unit. He is a high-speed, former local college track star and is well-liked among unit members. MSG Troop's commander is CPT New. On Sunday morning of a drill weekend, CPT New is approached by SPC Slacker. SPC Slacker told CPT New he went to a party at MSG Troop's house the previous evening with several other unit members. SPC Slacker said he was drinking shots of tequila with MSG Troop and became extremely intoxicated. He said he passed out in MSG Troop's spare bedroom, then awoke, naked, with MSG Troop sodomizing him. SPC Slacker said he passed out again and did not wake up until the morning, when MSG Troop told him it was time to go to drill. Upon hearing of the incident, CPT New contacted the SARC and notified LEO and CID. After a preliminary inquiry, LEO refused to investigate the matter, saying it was "a Guard thing." CID also declined to investigate because the incident occurred when neither the alleged victim nor the alleged perpetrator were in an active status or were performing inactive duty training.

The incident described in this scenario would be appropriate for investigation by NGB-JA/OCI. The alleged victim made an unrestricted report and both the alleged victim and the alleged perpetrator are in the same NG unit. Even though this incident occurred when neither party was in a duty status (it occurred after both parties were released from duty for the day), the incident has a sufficient NG nexus because the individuals were at the same party because they were performing their NG drill together. Since neither LE nor MCIO are conducting an investigation, NGB-JA/OCI may investigate. Since the LEO refused to investigate the matter, the State SJA must consult with OCI regarding the allegation. After consultation, it is the TAG's discretion whether to request an OCI investigation.

Figure 13 continued. Sample Notional Sexual Assault Report Vignettes

Scenario D:

Same fact pattern as Scenario C but MSG Troop's civilian brother is the alleged perpetrator. This SA described in this scenario may still be appropriate for investigation by NGB-JA/OCI. It was received as an unrestricted report and neither LEO nor MCIO are conducting an investigation. Even though the alleged perpetrator is not with the NG, the alleged victim was at the party because it was drill weekend (result would not change if occurred during annual training rather than drill weekend), the host of the party is a NG member, and the alleged perpetrator is related to an NG member. There may be a sufficient NG nexus because each individual's attendance at the party had a connection to the NG. While command cannot take any action against MSG Troop's brother, TAG may request an investigation to determine if the unit has alcohol abuse issues. Additionally, the command may want to determine if MSG Troop has any culpability in his brother's attack. If the party had not been at MSG Troop's house or if the perpetrator was neither a NG member nor a family member of a Guardsman, this report may not meet the NG nexus requirement.

Scenario E:

MSG Melanie Rifle and SSG Jimmy Tank are in different ARNG units, which drill at the same armory. Earlier in the month, two weeks before their drill weekend, they went on their first, and last, date. SSG Tank picked MSG Rifle up from her house at approximately 1900 on a Saturday and drove them to dinner at a popular restaurant. During dinner, both MSG Rifle and SSG Tank drank heavily. After dinner, they went to a bar where SSG Tank bought shots of whiskey, which he pressured MSG Rifle to drink. MSG Rifle became extremely intoxicated. She does not remember what happened next, but she woke up naked in SSG Tank's bed the next morning. At her next drill, MSG Rifle told her commander what had occurred. The commander contacted the SARC and LEO, who conducted a thorough investigation. However, due to lack of physical evidence, the local prosecutor declined to prosecute.

The incident described in this scenario may not be appropriate for investigation by NGB-JA/OCI. While it was received as an unrestricted report, local LEO already thoroughly investigated the matter. Although the local prosecutor declined to prosecute, the commander may still be able to take administrative action against SSG Tank. If sufficient evidence gathered by the local LEO exists for the commander to take action, then there is no reason for investigation by NGB-JA/OCI. If local LEO refuses to provide the information gathered during its investigation, however, NGB-JA/OCI investigation may be appropriate.

Figure 13 continued. Sample Notional Sexual Assault Report Vignettes

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Scenario F:

CPT Morgan was performing annual training at JFHQ for two weeks, working on a special project for Mr. Civvy, a GS-14 in charge of training. On the last day of the project, CPT Morgan and Mr. Civvy decided to grab a couple of beers together at Mr. Civvy's favorite bar before heading home. A few beers turned into many beers and CPT Morgan began flirting with the bartender, Julie Local, who knew Mr. Civvy. Mr. Civvy, who lived nearby, left CPT Morgan behind and took a taxi home. The next day, Ms. Local came to Mr. Civvy's office and told him she had been raped by CPT Morgan. Mr. Civvy contacted LE, who took a statement but told Mr. Civvy they would not investigate because Ms. Local had made "several BS rape allegations in the past."

The incident described in this scenario may be appropriate for investigation by NGB-JA/OCI; a civilian who is not affiliated with the NG (that is, as a dependent) cannot file a restricted SA report and neither LEO nor an MCIO are conducting an investigation into the matter. While the alleged victim was not a member of the NG, CPT Morgan and Mr. Civvy would not have been at the bar together if they had not been working together for the NG, so there is some nexus to the NG.

Scenario G:

CPT Morgan (same individual as Scenario F) was working at his civilian job at Accountants R Us. On a Friday after work (not a NG drill weekend), CPT Morgan and his boss, Mr. Big (no NG affiliation), decided to grab a couple of beers together at Mr. Big's favorite bar before heading home. A few beers turned into many beers, and CPT Morgan began flirting with the bartender, Suzy Queue, who knew Mr. Big. Mr. Big, who lived nearby, left CPT Morgan behind and took a taxi home. The next day, Ms. Queue came to Mr. Big's office and told him she had been raped by CPT Morgan. Mr. Big contacted LEO, who took a statement but told Mr. Big they would not investigate because Ms. Queue had made "several BS rape allegations in the past." Mr. Big fired CPT Morgan for engaging in "disgusting" behavior and called CPT Morgan's commander to "tell him what kind of animal he had in his unit."

This SA described in this scenario may not be appropriate for investigation by NGB-JA/OCI. While it is not being investigated by LEO, CPT Morgan's civilian employment and his relationship with Ms. Queue have questionable nexus to the NG. If other NG members had been drinking with CPT Morgan, the nexus would be stronger and this scenario might be appropriate for investigation by NGB-JA/OCI.

Figure 13 continued. Sample Notional Sexual Assault Report Vignettes

ENCLOSURE H

REFERENCES

- a. CNGB Instruction 0400.01B, 12 April 2018, "National Guard Complex Administrative Investigations"
- b. Title 32 United States Code (U.S.C.), "National Guard"
- c. DoD Instruction 6495.02, 28 March 2013, "Sexual Assault Prevention and Response (SAPR) Program Procedures," Incorporating Change 3, 24 May 2017
- d. DoD Directive 6495.01, 23 January 2012, "Sexual Assault Prevention and Response (SAPR) Program," Incorporating Change 3, 11 April 2017
- e. DoD Instruction 5505.18, 22 March 2017, "Investigation of Adult Sexual Assault in the Department of Defense," Incorporating Change 1, 13 February 2018
- f. DoD Instruction 5505.19, 03 February 2015, "Establishment of Special Victim Investigation and Prosecution (SVIP) Capability Within the Military Criminal Investigative Organizations (MCIOs)," Incorporating Change 2, 23 March 2017
- g. 10 U.S.C. Chapter 47, "Uniform Code of Military Justice"
- h. Army Regulation 20-1, 29 November 2010, "Inspector General Activities and Procedures"
- i. Air Force Instruction 90-301, 27 August 2015, Certified Current 08 July 2016, "Inspector General Complaints Resolution"
- j. CNGB Instruction 9601.01, 27 September 2015, "National Guard Discrimination Complaint Program"
- k. Fifth Amendment to the United States Constitution
- l. 10 U.S.C. § 10502, "Chief of the National Guard Bureau: Appointment; Adviser on National Guard Matters; Grade; Succession"
- m. DoD, Defense Privacy, Civil Liberties, and Transparency Division, "Blanket Routine Uses" <<http://dpcl.d.defense.gov/Privacy/SORNsIndex/Blanket-Routine-Uses/>>
- n. 32 U.S.C. § 316, "Detail of Members of Army National Guard for Rifle Instruction of Civilians"

- o. 32 U.S.C. §§ 502, “Required Drills and Field Exercises”; 503, “Participation in Field Exercises”; 504, “National Guard Schools and Small Arms Competitions”; or 505, “Army and Air Force Schools and Field Exercises”
- p. 10 U.S.C. § 12301(d), “Reserve Components Generally”
- q. Army Regulation 15-6, 01 April 2016, “Procedures for Administrative Investigations and Boards of Officers”
- r. DoDI 6025.18, 09 December 2009, “Privacy of Individually Identifiable Health Information in DoD Health Care Programs”
- s. Army Regulation 40-66, 17 June 2008, “Medical Record Administration and Health Care Documentation”
- t. 5 U.S.C. 552, “The Freedom of Information Act,” as amended by the “Open Government Act of 2007” and the “Open FOIA Act of 2009”
- u. Army Regulation 25-55, 1 November 1997, “The Department of the Army Freedom of Information Act Program”

GLOSSARY

PART I. ACRONYMS

AF	Air Force
AGR	Active Guard Reserve
ANG	Air National Guard
AR	Army Regulation
ARNG	Army National Guard
AT	Annual Training
CID	Army Criminal Investigations Division
CNGB	Chief of the National Guard Bureau
CoS	Chief of Staff
DoD	Department of Defense
DTS	Defense Travel System
EO	Equal Opportunity
ESOCHAMP	Environmental, Safety and Occupational Health Compliance
FETI	Forensic Experiential Trauma Interview
FOUO	For Official Use Only
FTNGD	Full Time National Guard Duty
FY	Fiscal Year
IAW	In accordance with
IG	Inspector General
INV	Investigator
IP	Investigative Plan
JA	Judge Advocate
LEO	Civilian Law Enforcement Organization
MCIO	Military Criminal Investigative Organization (CID, OSI)
M-Day	Traditional National Guardsman
MEO	Military Equal Opportunity
MFR	Memorandum for Record
NG	National Guard
NGB-JA	Office of the National Guard Bureau Chief Counsel
NGB-JA/OCI	Office of Complex Investigations
NGB-JA/ADLAW	Administrative Law Division
NG JFHQs-State	National Guard Joint Forces Headquarters-State
ORI	Operational Readiness Inspection
OSI	Air Force Office of Special Investigations
PII	Personally Identifiable Information
POC	Point of contact
RO	Requesting Official
ROI	Report of Investigation
SA	Sexual Assault
SAPR	Sexual Assault Prevention and Response

SARC	Sexual Assault Response Coordinator
SecDef	Secretary of Defense
SES	Senior Executive Service
SJA	Staff Judge Advocate
SOP	Standard Operating Procedures
SVC	Special Victim Counsel
TAG	The Adjutant General
TDY	Temporary Duty
UCI	Unit Compliance Representative
USR	Unit Safety Representative
VA	Victim Advocate

PART II. DEFINITIONS

Unless otherwise noted, these terms and definitions are for the purposes of this Manual.

Adverse Information -- Adverse information is any substantiated adverse finding or conclusion from an officially documented investigation or inquiry or any other credible information of an adverse nature. To be credible, the information must be resolved and supported by a preponderance of the evidence.

“Garrrity Warning” -- An advisement of rights usually administered by state or local investigators to public employees who may be the subject of an internal investigation. This type of warning should never be given in pursuant to an investigation under this manual, unless approved by the Office of the National Guard Bureau Chief Counsel.

Forensic Experiential Trauma Interview -- Interview technique taught by Army CID to obtain psycho-physiological evidence, which can help re-create a traumatic event from an alleged victim’s perspective.

“Kalkines Warning” -- An advisement of rights usually administered by federal investigators to public employees who may be the subject of an internal investigation. This type of warning should never be given in pursuant to an investigation under this manual, unless approved by the Office of the National Guard Bureau Chief Counsel.

National Guard Technician -- A Federal civilian employee hired under Reference 1 employed and administered by The Adjutants General for specified purposes.

Nexus -- For reports of Sexual Assault, a sufficient nexus may exist when the relationship between the reported perpetrator and the alleged victim is based

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upon one or both of their memberships in the National Guard. Factors for determining if a sufficient National Guard nexus exists include National Guard membership of the reported perpetrator or alleged victim, the status of parties when the incident took place (drill weekend/Annual Training or not), and the relationship between the alleged victim and reported perpetrator outside of the National Guard. See notional vignettes in Enclosure G.

Personally Identifiable Information -- Information that can be used to distinguish or trace an individual's identity, such as name, Social Security number, date and place of birth, mother's maiden name, biometric records, home phone numbers, and other demographic, personnel, medical, and financial information.

Preponderance of 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.

Restricted Reporting -- Reporting option that allows adult alleged victims to confidentially disclose the assault to specified individuals without initiating the investigative process or notification to the alleged victim's or alleged perpetrator's commander.

Sexual Assault Prevention and Response Victim Advocate -- A person who provides nonclinical crisis intervention, referral, and ongoing nonclinical support to adult sexual assault alleged victims. Support includes providing alleged victims with information on available options and resources.

Senior Official -- In the Air National Guard, any active or retired Air National Guard military officer in grades O-7 (brigadier general) select and above, Air National Guard colonels with a Certificate of Eligibility, and current or former members of the Senior Executive Service or equivalent. In the Army National Guard, a senior official is defined as an Army National Guard general officer, retired general officer, promotable colonel, or Senior Executive Service civilian.

Sexual Assault -- Intentional sexual contact characterized by use of force, threats, intimidation, or abuse of authority or when the alleged 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.

Sexual Contact -- 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; 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.

Sexual Assault Prevention and Response Program -- A Department of Defense program for the Military Departments and the Department of Defense components that establishes sexual assault prevention and response policies to be implemented worldwide. The program objective is an environment and military community intolerant of sexual assault.

Sexual Assault Response Coordinator -- The single point of contact at an installation or within a geographic area that oversees sexual assault awareness, prevention, and response training; coordinates medical treatment, including emergency care, for alleged victims of sexual assault; and tracks the services provided to an alleged victim of sexual assault from the initial report through final disposition and resolution.

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 utilizing the appropriate standard of proof.

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

Unrestricted Reporting -- A process that an individual uses to disclose, without requesting confidentiality or Restricted Reporting, that he or she is an alleged sexual assault victim.

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

Weingarten Rights -- The right of employees to have union representation at investigatory interviews when a supervisor questions an employee to obtain information that could be used as a basis for discipline or asks an employee to defend his or her conduct. If an employee has a reasonable belief that discipline or other adverse consequences may result from what he or she says, the employee has the right to request union representation. Management is not required to inform the employee these rights; it is the employee's responsibility to know and request.