



CHIEF NATIONAL GUARD BUREAU INSTRUCTION

NGB-JA
DISTRIBUTION: A

CNGBI 0400.01B
12 April 2018

NATIONAL GUARD COMPLEX ADMINISTRATIVE INVESTIGATIONS

References: See Enclosure B.

1. Purpose. This instruction establishes policy and assigns responsibilities for complex administrative investigations requested by The Adjutant General (TAG) of any State or the Commanding General of the District of Columbia National Guard (both hereinafter referred to as TAG), Federal officials, or any State or Territorial Governor, pertaining to Unrestricted Reports of sexual assault with a National Guard (NG) nexus and investigated by the National Guard Bureau's Office of the Chief Counsel (NGB-JA), Office of Complex Administrative Investigations (NGB-JA/OCI), or any other matter within the authority of the Chief of the National Guard Bureau (CNGB) in accordance with (IAW) the references.
2. Cancellation. This instruction replaces its previous edition, CNGBI 0400.01A, 15 June 2017, "National Guard Complex Administrative Investigations."
3. Applicability. This instruction applies to all NG entities. Nothing in this instruction is intended to, nor should it be interpreted to, impede a State's right or ability to conduct its own investigations or otherwise exercise its sovereign authority, when required by State law.
4. Policy. Sexual assault is a serious crime. Department of Defense Directives and Army and Air Force regulations applicable to the National Guard require all unrestricted reports of sexual assault be referred to the appropriate military criminal investigative organization (MCIO) or civilian law enforcement organization (LEO) and the Sexual Assault Response Coordinator (SARC). State NG units fall under the command and control of their Governor and must comply with State law. A unit commander will not conduct internal command-directed investigations into allegations of sexual assault or delay immediately contacting the MCIO or LEO IAW Department of Defense (DoD) and Service-specific policy. If TAGs determine, after referral to the applicable MCIO or LEO,

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that further investigation of an Unrestricted Report of sexual assault is necessary, NGB-JA/OCI is available to assist TAGs by providing an administrative investigation into the allegation of sexual assault.

a. Prior to submitting a request for an NGB-JA/OCI investigation, the proposed request will be coordinated between the appropriate Staff Judge Advocate (SJA) or Legal Advisor and NGB-JA/OCI to determine that a requisite NG nexus exists or to identify a more appropriate investigative channel for the case. If NGB-JA/OCI declines to investigate, it will provide written justification and reasons for declining to investigate to the coordinating SJA or Legal Advisor.

b. Generally, a sufficient NG nexus may be found to exist when either the reported perpetrator or the sexual assault victim was or is, at the time of the reported sexual assault, a member or a civilian employee of the State's NG.

c. Specified criteria for determining whether an NG nexus exists and whether a OCI investigation may be appropriate include, but are not limited to, duty status of the reported perpetrator and victim, State, Territory, or District law regarding military justice jurisdiction and Federal and State jurisdictional and evidentiary issues or limitations on law enforcement involvement.

d. NGB-JA/OCI will specify the requisite education, training, and experience for appointing an investigator (INV) and certifying and documenting the position. This authority may be delegated to one or more individuals.

(1) Qualifications, experience, and availability will be the main factors in detailing INVs to specific investigations.

(2) All INVs are subject to background investigations.

(3) OCI INV appointments do not convey arrest or law enforcement authority.

(4) NGB-JA/OCI INVs will identify themselves as such only when detailed to conduct specific investigations by NGB-JA/OCI. An INV will not be detailed by NGB-JA/OCI to investigate cases within the INV's own State.

(5) NGB-JA/OCI may withdraw an INV's appointment for any reason. This decision is not appealable.

(6) NGB-JA/OCI investigative teams will consist of at least two INVs. One INV should be an attorney, and at least one INV should be the same gender as the victim.

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(7) NGB-JA/OCI INVs may not be assigned to investigate misconduct of senior officials (generally, O-6(P) and above; see Glossary) unless specifically authorized by an entity with requisite authority. All complaints against senior officials that are received during the official NGB-JA/OCI investigations will be referred to the NGB Inspector General (NGB-IG) and then forwarded to the proper investigative agency (typically, DoD or Service-specific Inspectors General).

e. States may request an exception to policy to allow OCI to conduct an investigation when an LEO unduly delays investigation, or for other sufficient reasons. A copy of the State's notice to LEO and the LEO response, if any, will be attached to the State's request for an exception to policy.


5. Definitions. See Glossary.

6. Responsibilities. See Enclosure A.

7. Summary of Changes. This instruction includes updated DoD policies regarding allegations of sexual assault and clarifies NG commander responsibility to properly handle investigations of sexual assault matters.

8. Releasability. This instruction is approved for public release; distribution is unlimited. Obtain copies through <<http://www.ngbpdcc.ngb.army.mil>>.

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



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Enclosures:

A -- Responsibilities

B -- References

GL -- Glossary

ENCLOSURE A

RESPONSIBILITIES

1. NGB-JA. NGB-JA will:

a. Oversee NGB-JA/OCI and determine whether requests for complex investigations have a sufficient NG nexus and meet specified criteria warranting an investigation by NGB-JA/OCI.

b. Review and approve all requests received from TAGs for investigations by NGB-JA/OCI.

c. Review and approve the final Report of Investigation (ROI) prior to its release to the requesting TAG. This authority may be delegated to one or more individuals.

d. Designate NGB-JA/OCI INVs' uniform while conducting investigations, including authorizing the use of civilian clothes.

2. Army National Guard (ARNG) and Air National Guard (ANG) Manpower and Personnel Directorates (ARNG-G1, ANG/A1). ARNG-G1 and ANG/A1 will:

a. Fund all necessary costs needed for sexual assault investigations.

b. Fund temporary duty to testify at non-Title 10 criminal or administrative hearings.

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

a. Administer operations IAW this instruction and reference e.

b. Coordinate with the appropriate organizations, such as the U.S. Army Military Police School and Army Criminal Investigation Command, to provide specialized training for NGB-JA/OCI INVs and ensure that all full-time INVs receive annual refresher training IAW reference e.

c. Confer with the appropriate State Staff Judge Advocate (SJA), Active Guard Reserve Judge Advocate (JA), or NG technician JA (any of which are hereinafter referred to as "SJA") as to whether a sexual assault report or other issue merits NGB-JA/OCI assistance.

d. After receiving TAG's request for investigations by NGB-JA/OCI, forward the request to NGB-JA for approval.

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- e. Inform the State SJA that the State SARC needs to be notified when a request involves allegations of sexual assault and, when applicable, remind the SJA of the victim's entitlement to Special Victim Counsel (SVC) and the reported perpetrator's right to defense counsel.
- f. Conduct initial analysis with the NGB-JA and the requesting agency for non-State requests and with the SJA to determine whether an issue has a sufficient NG nexus and is otherwise appropriate for investigation by NGB-JA/OCI.
- g. Recommend that SJAs prepare formal TAG requests for assistance if a report warrants NGB-JA/OCI investigation. Once TAG request is received, submit it to NGB-JA for approval.
- h. Appoint an NGB-JA/OCI Investigation Team to conduct the investigation, in coordination with NGB-JA.
- i. Assign a case number identifier to each investigation using procedures outlined in reference e.
- j. Ensure funding availability and gather all necessary information for INV orders and travel.
- k. Manage detailed INVs and provide logistical and coordination support during an investigation. This includes providing investigative equipment and assisting with travel arrangements.
- l. Ensure INVs in the field have 24-hour access to NGB-JA/OCI leadership.
- m. Assist the INV in coordination with State MCIOs or other organizations, as necessary.
- n. Review the ROI for clarity and completeness and forward it to NGB-JA for legal review.
- o. Forward the ROI to the requesting TAG upon approval of the NGB-JA or designee.
- p. Collect information from the States regarding final disposition of matters, following receipt of the ROI.
- q. Ensure INVs' availability following the investigation to support subsequent action by TAG or the command.
- r. Provide weekly status reports of all open investigations to the NGB-JA.

s. Maintain disposition data.

4. NGB-JA/OCI Investigations Manager (IM). The NGB-JA/OCI IM will:

a. Coordinate with the SJAs to ensure investigations are conducted in a timely and professional manner and that the findings of the investigation team are completed IAW defined legal standards contained in reference a.

b. Designate a lead INV for each investigation.

c. Review the INVs' Investigative Plan (IP), in coordination with NGB-JA/OCI leadership.

d. Upon receipt of a completed ROI from the investigation team, review the ROI before forwarding it to the Deputy Chief/Chief of NGB-JA/OCI for secondary review.

5. TAGs. TAGs will:

a. Refer Unrestricted Reports of a sexual assault to the appropriate LEO or MCIO, unless there is an exception to policy granted. If TAG determines after referral to the applicable MCIO or LEO that further investigation of an unrestricted report of sexual assault is necessary OCI is available to assist a TAG by providing an administrative investigation into the allegation of sexual assault.

b. Ensure SJAs coordinate with NGB-JA/OCI before submitting such a request to ensure it meets specified criteria to warrant an NGB-JA/OCI investigation.

c. When appropriate, request an NGB-JA/OCI investigation.

d. Assign a State point of contact (POC) for INVs whose primary duty will be to provide administrative and logistical support during the investigation.

e. Ensure INVs have adequate workspace and administrative support during the investigation.

f. Meet, or designate a representative to meet, with the INVs, State Chief of Staff (CoS), SARC, SJA, State POC, and, as needed, State Public Affairs (PA) upon INVs' arrival at NG Joint Forces Headquarters–State (NG JFHQs-State) for the investigation read-in.

g. Ensure the victim is informed regarding the NGB-JA/OCI inquiry.

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- h. Ensure victims are advised of their right to SVC and to a trial defense attorney if suspected of committing collateral misconduct.
- i. Ensure the Victim Advocate (VA) and any assigned SVC or defense counsel are available to the victim during and immediately after the interview process, at the victim's request.
- j. Ensure the reported perpetrator is informed of the allegations against him or her prior to the arrival of the investigative team and is made aware of his or her right to counsel.
- k. Ensure that a flagging action (ARNG) or Unfavorable File Program action (ANG) is initiated for all reported perpetrators.
- l. Ensure INVs receive full cooperation from NG JFHQs-State, NG units, and NG members.
- m. Ensure SJAs provide NGB-JA/OCI notification of any action taken as a result of the investigation.

6. SJA or Designee. SJAs will:

- a. Contact NGB-JA/OCI to discuss whether a sexual assault report or other allegation is appropriate for NGB-JA/OCI investigation.
- b. Notify the appropriate LEO having criminal jurisdiction over the report or allegation and ensure the LEO has been provided the opportunity to conduct the investigation.
- c. Sexual assaults that occurred while the reported perpetrator was in a Title 10 status will be referred to the appropriate MCIO for investigation IAW references b and c.
- d. Prepare TAG request for NGB-JA/OCI Investigative Support if LEO declines an investigation.
- e. Prepare a Request for Exception to Policy if a victim has expressed a desire that a LEO not be notified. Do not submit the Exception to Policy request to the TAG for signature until after discussing the matter with NGB-JA/OCI.
- f. Attend or send a representative to the NGB-JA/OCI INV Read-In.
- g. Coordinate with State NG entities and LEOs, as necessary.

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h. Assist the POC in gathering personnel, military, medical, and LEO files to ensure that they are available when OCI INVs arrive to conduct the investigation. If possible, provide these documents to INVs prior to the start of the investigation.

i. Provide OCI INVs legal advice on State law regarding sexual assault and related crimes and regulations regarding rights advisement, privacy, access to state records, and obtaining telephone and computer records. If necessary, assist in obtaining documentary evidence (such as telephone and computer records) for INVs IAW applicable State law.

j. Review the OCI ROI for legal sufficiency IAW State law to assess whether any adverse actions may be initiated and advise TAG as appropriate.

k. Notify OCI of any actions taken in response to an investigation.

7. Unit Commanders. Unit commanders will:

a. Refer Unrestricted Reports of sexual assault that occurred while the reported perpetrator was in a Title 10 status to the appropriate MCIO (for example, the Army Criminal Investigation Division or the Air Force Office of Special Investigations). In accordance with DoD and/or Service policy, a unit commander will not conduct internal command directed investigations into allegations of sexual assault or delay immediately contacting the MCIO or LEO.

b. Refer Unrestricted Reports of sexual assault that occurred while the reported perpetrator was in a T32 status to LEO (for example, State Police, sheriff's office or local police). If the victim declines to cooperate with the LEO, the command will refer the incident to OCI to discuss if the allegation is appropriate for investigation.

c. Ensure the safety of victims and witnesses.

d. Ensure INVs receive full cooperation from unit members.

e. Ensure appropriate interview facilities and office equipment are available to INVs.

f. Ensure requested witnesses are available for interviews. This responsibility may include putting witnesses on orders between drill weekends to ensure availability and accountability for refusal to cooperate or for making false statements.

g. Ensure unit members who may be considered reported perpetrators in an investigation are handed off to a responsible unit member, who will be available following the members' interview to ensure members' safety.

h. Ensure sexual assault victims are handed off to the SVC, VA, or other appropriate victim support personnel.

i. Consult with SJAs when seeking to comply with any aspect of this instruction when determining whether the facts and circumstances of a report potentially constitute a sexual assault.

8. NGB-JA/OCI-Detailed INVs. NGB-JA/OCI-detailed INVs will:

a. Conduct and complete thorough investigations in a timely manner.

b. Draft the ROI IAW established NGB-JA/OCI time and quality standards.

c. Coordinate with supervisors to ensure availability prior to accepting INV duty.

d. Plan travel and submit voucher(s) using the Defense Travel System. The INV should plan on being at the site of the investigation for seven days and will not be accompanied by any guests.

e. Conduct a read-in with the TAG (or designee), State CoS, State SARC, SJA, State POC, and, as needed, PA, upon arrival at NG JFHQs-State for Special Victim Offenses (SVO) investigations.

f. Coordinate with the SVC or VA, Trial Defense Services (TDS) or defense counsel, and unit commands to ensure that the needs of both victims and reported perpetrators are met.

g. Provide an out-brief to TAG or the TAG's representative when the investigation involves a sexual assault report.

h. Report any barriers to conducting or completing the investigation in the time allotted to OCI.

i. Draft and assemble the Investigative ROI containing detailed findings and supporting documentation.

j. Identify how evidence and other exhibits will be labeled and filed.

k. Present the ROI to the NGB-JA/OCI IM for initial review.

l. Modify the ROI for necessary clarity or completeness, as directed by the Chief of NGB-JA/OCI.

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m. Testify at a criminal or administrative hearing resulting from an investigation.

9. Lead INVs. Lead INVs will:

a. Develop an IP and present it to NGB-JA/OCI IM for approval.

b. Coordinate with the State POC in fulfilling their duties and provide direction on the order in which interviews should be conducted.

c. Notify the State POC of room and equipment needed to conduct the investigation.

d. Notify the State POC of personnel, military, medical, or LEO records needed to conduct the investigation and ensure they are available before or upon arrival.

e. Contact the SJA to receive legal advice on State law regarding SVOs and related crimes, along with regulations concerning rights advisement, privacy, and access to State records.

f. Coordinate with SVC and TDS counsel or civilian defense counsel to meet with and interview their respective clients.

g. Coordinate travel with the other members of the NGB-JA/OCI INV team for the read-in and investigation.

h. Assign duties to members of the investigative team, including witness interviews and writing various sections of the ROI.

i. Manage the investigation and detailed NGB-JA/OCI INVs.

j. Serve as the POC among the team, State POC, and NGB-JA/OCI.

10. State POC. State POC will:

a. Coordinate with the Lead INV, TAG (or designee), and attendees to ensure availability of attendees at the read-in and out-brief.

b. Coordinate with the Lead INV and NG units to ensure the victims and witnesses, SVC, reported perpetrators, and defense counsel are available for interviews, including being placed on orders.

c. Coordinate with the reported perpetrator's command to ensure he or she is informed of the allegations and of the investigation.

- d. Schedule interviews at OCI INV request.
- e. Coordinate with the LEO to facilitate cooperation and information sharing.
- f. Obtain copies of relevant LEO, MCIO, medical, military records, and other documents at the Lead INV's request.
- g. Ensure the appropriate room and equipment are available to conduct an investigation.
- h. Assist INVs in rescheduling interviews, as necessary.

ENCLOSURE B

REFERENCES

- a. DoD Directive 6495.01, 23 January 2012 (Incorporating Change 3, 11 April 2017), "Sexual Assault Prevention and Response (SAPR) Program"
- b. DoD Instruction 6495.02, 28 March 2013 (Incorporating Change 3, 24 May 2017), "Sexual Assault Prevention and Response (SAPR) Procedures"
- c. DoD Instruction 5505.18, 22 March 2017 (Incorporating Change 1, 13 February 2018), "Investigation of Adult Sexual Assault in the Department of Defense"
- d. DoD Instruction 5505.19, 03 February 2015 (Incorporating Change 2, 23 March 2017), "Establishment of Special Victim Investigation and Prosecution (SVIP) Capability within the Military Criminal Investigative Organizations (MCIOs)"
- e. CNGB Manual 0400.01A, 09 February 2018, "National Guard Complex Administrative Investigations Procedures"

GLOSSARY

PART I. ACRONYMS

ANG	Air National Guard
ARNG	Army National Guard
CNGB	Chief of the National Guard Bureau
CoS	Chief of Staff
DoD	Department of Defense
IAW	In accordance with
INV	Investigator
IP	Investigative Plan
JA	Judge Advocate
LEO	Law enforcement organization
MCIO	Military criminal investigative organization
NG	National Guard
NGB-IG	Inspector General
NGB-JA	Office of the National Guard Bureau Chief Counsel
NGB-JA/OCI	Office of Complex Investigations
PA	Public Affairs
POC	Point of contact
ROI	Report of Investigation
SARC	Sexual Assault Response Coordinator
SJA	Staff Judge Advocate
SVC	Special Victim Counsel
SVO	Special Victim Offense
TAG	The Adjutant General
TDS	Trial Defense Services
VA	Victim advocate

PART II. DEFINITIONS

Nexus -- Connection or link for reports of sexual assault, when the relationship between the reported perpetrator and victim is based upon one or both of their memberships in the National Guard.

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

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, senior officials are Army National Guard general officers and retired general officers, promotable colonels, and Senior Executive Service civilians.

Sexual Assault -- Intentional sexual contact characterized by use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent, 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 Assault Response Coordinator -- The single point of contact at an installation or within a geographic area who oversees sexual assault awareness, prevention, and response training; coordinates medical treatment, including emergency care, for victims of sexual assault; and tracks the services provided to a victim from the initial report through final disposition and resolution.

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