



NATIONAL GUARD BUREAU

1636 DEFENSE PENTAGON
WASHINGTON DC 20301-1636

NGB DTM 1300.00
NGB-J1-SAPR
28 April 2022

MEMORANDUM FOR THE ADJUTANTS GENERAL AND THE COMMANDING GENERAL OF THE DISTRICT OF COLUMBIA

Subject: Safe-to-Report Policy for National Guard Service Member Victims of Sexual Assault

- References:
- (a) Under Secretary of Defense, Personnel and Readiness, Memorandum, "Safe-to-Report Policy for Service Member Victims of Sexual Assault," 25 October 2021
 - (b) CNGB Instruction 1300.01, "National Guard Sexual Assault Prevention and Response Program," 26 June 2020
 - (c) DoD Instruction 6495.02, Volume 1, "Sexual Assault Prevention and Response: Program Procedures," 28 March 2013, Incorporating Change 6, 10 November 2021
 - (d) DoD Directive 5105.77, "National Guard Bureau (NGB)," 30 October 2015, Incorporating Change 1, 10 October 2017
 - (e) Under Secretary of Defense Personnel and Readiness, Memorandum, "Fiscal Year 2022 Data Call on the Safe-to-Report Policy," 18 November 2021

1. Purpose. This Directive-Type Memorandum (DTM) establishes interim guidance for a Safe-to-Report Policy for National Guard Service members who are victims of sexual assault in accordance with (IAW) references a through e.

2. Applicability. This DTM applies to all elements of the National Guard and NG Service member sexual assault victims in a non-federalized or non-duty status IAW reference a. Army Directive 2022-10 only applies to Army National Guard members in a federalized status.

3. Policy. It is National Guard policy to require Commanders to assess alleged collateral misconduct against aggravating and mitigating circumstances of sexual assault cases IAW reference a. This action is required regardless of the individual who received the report of alleged sexual assault from the victim, or which authorities, military or civilian, are conducting the investigation, prosecution, or other disciplinary action.

a. This DTM does not preclude a Military Criminal Investigative Organization or a civilian law enforcement agency from continuing their investigation and documenting incidents of alleged collateral misconduct revealed during associated investigative processes in their final reports.

b. This DTM applies regardless of the outcome of the investigation. This DTM also describes the handling of alleged minor collateral misconduct involving a National Guard Service member who reported sexual assault.

4. Responsibilities. See Attachment A.
5. Procedures. See Attachment B.
6. Information Collection Requirements. See Attachment C.
7. Definitions. See Attachment D.
8. Releasability. This DTM is approved for public release; distribution is unlimited. It is available at <<https://www.ngbpmc.ng.mil/>>.
9. Records Management. This DTM and all records created as a result, regardless of media and format, must be managed in coordination with the National Guard Bureau (NGB) Directorate of Management and Administration Records Management Program.
10. Compliance. Per the Chief of the National Guard Bureau 5000.01 Issuance Series, the proponent will review this DTM annually on the anniversary of its effective date to either confirm the action has been completed or to update and extend the DTM's continued applicability, currency, and consistency with Federal, Department of Defense (DoD), and NGB policy and provide validation to the Directorate of Management and Administration Issuances Branch.



DANIEL R. HOKANSON
General, USA
Chief, National Guard Bureau

Attachments:

- A -- Responsibilities
- B -- Determination Procedures
- C -- Documenting and Reporting Procedures
- D -- Definitions

ATTACHMENT A
RESPONSIBILITIES

1. Chief of the National Guard Bureau (CNGB). The CNGB will communicate with the White House, Congress, Secretary of Defense, Chairman of the Joint Chiefs of Staff, Secretaries of the Army and the Air Force, and other offices within the DoD on matters related to Safe-to-Report Policy IAW reference a on behalf of the NGB, The Adjutants General (TAGs), the Commanding General of the District of Columbia (CG), and National Guard members.
2. Vice Chief of the National Guard Bureau (VCNGB). The VCNGB will serve as the NGB representative to the White House, Secretary of Defense, and other DoD agencies to address sexual assault issues under the authority of, and at the discretion of, the CNGB.
3. Director of the Army National Guard and Director of the Air National Guard. The Director of the Army National Guard and the Director of the Air National Guard will support the National Guard Sexual Assault Prevention and Response (SAPR) Program Safe-to-Report Policy for non-Federalized Army National Guard and Air National Guard personnel IAW the references.
4. NGB Director of Staff (NGB-DS). The NGB-DS will advise the CNGB and VCNGB on all issues affecting the overall execution of the National Guard SAPR Program.
5. Director of Manpower and Personnel. The Director of Manpower and Personnel will:
 - a. Serve as the National Guard principal authority on accountability, policy, and oversight for the National Guard SAPR Program on behalf of the CNGB, including Title 32 United States Code training development, strategic planning, and data management.
 - b. Disseminate Secretary of Defense mandates, DoD SAPR Office policies, and CNGB Instructions, procedures, and plans for the National Guard SAPR Program to the Director of the Army National Guard, the Director of the Air National Guard, TAGs, and the CG.
 - c. Provide oversight for the implementation of and monitor compliance with National Guard sexual assault policies, instructions, and procedures.
6. Manpower and Personnel, Sexual Assault Prevention and Response Division Chief (NGB-J1-SAPR). The NGB-J1-SAPR Division Chief will:
 - a. Serve as principal advisor to the CNGB, VCNGB, NGB-DS, and other National Guard leaders on all SAPR matters.
 - b. Provide execution guidance to State leaders on National Guard SAPR Program management functions IAW with DoD goals and objectives.

c. Monitor compliance with Safe-to-Report Policy and procedures.

d. Establish reporting procedures to capture the information required to track incidents of minor collateral misconduct involving Service member sexual assault victims that are subject to the Safe-to-Report Policy.

7. Office of the NGB General Counsel. The Office of the NGB General Counsel will administer and maintain oversight of the Special Victims' Counsel (SVC) Program in support of the National Guard SAPR Program.

8. TAGs and the CG. TAGs and the CG will:

a. Establish policy and procedures consistent with this DTM and IAW references a through e.

b. Inform all Commanders and the State Office of the Staff Judge Advocate (OSJA) of the purpose and requirements of this DTM.

c. Provide oversight of decisions made by Commanders with the assistance of the OSJA.

d. Discuss the assessment of all cases of alleged collateral misconduct against aggravating and mitigating circumstances in sexual assault cases IAW reference a during the Case Management Group meeting.

e. Ensure the completed Safe-to-Report Determination and Disposition Memorandums are provided to the Lead Sexual Assault Response Coordinator (SARC) for record keeping and routing to the servicing SARC, OSJA, and NGB-J1-SAPR.

9. State OSJA. State OSJA will:

a. Inform Staff Judge Advocates (SJAs) of the purpose and requirements of this DTM. SJAs include those assigned to support O6 and O5 level Commanders and are also referred to as servicing SJAs.

b. Review decisions made by Commanders after consulting with their unit level SJA regarding collateral misconduct IAW this DTM and advise TAGs and the CG on any recommended revisions.

c. Maintain a copy of the final signed Safe-to-Report Determination and Disposition Memorandum.

10. Commanders. Commanders will:

a. Consult with their servicing SJA and higher-level SJA if appropriate or preferred and use their discretion to assess and make a final determination of whether the alleged collateral misconduct by a victim of sexual assault is minor or non-minor after considering all aggravating and mitigating factors (see Attachment B, Procedures).

b. Not impose disciplinary action IAW this policy if the alleged collateral misconduct is determined to be minor. However, the Commander will fulfill administrative requirements, such as referral to substance abuse screening, referral to behavioral health or medical providers for a fitness for duty determination, or suspending access to critical positions, including those under the personnel reliability program.

c. Impose discipline if the alleged collateral misconduct is determined to be non-minor using the State Code of Military Justice or equivalent to the Uniform Code of Military Justice.

d. Utilize the Safe-to-Report Disposition Memorandum to document their determination of collateral misconduct and any disciplinary actions taken. The Commander will route the memorandum through their chain of command as outlined in Attachment C.

11. Servicing SJAs. Servicing SJAs will advise the State OSJA within three days of any decisions made by Commanders who consulted with the servicing SJA on collateral misconduct.

12. National Guard State Lead SARCs. National Guard State Lead SARCs will:

a. Inform all National Guard SARCs and Victim Advocates, referred to as SAPR Professionals, of the purpose and requirements of this DTM and subsequent State policy.

b. Receive the completed "Safe-to-Report Determination and Disposition Memorandum" from TAG or the CG, and file it for record under proper security measures, provide a copy to the servicing SARC, and submit the memorandum to their NGB-J1-SAPR Regional Lead for record and data collection.

13. SAPR Professionals. SAPR Professionals will:

a. Provide each sexual assault victim with information on the opportunity to consult with an SVC, and a Trial Defense Services or Area Defense Counsel representative if the victim engaged in collateral misconduct (see Appendix A) immediately before, during, or immediately after the sexual assault.

b. Not disclose information received from a victim regarding collateral misconduct to commands or leadership IAW the DoD Sexual Assault Advocate Certification Program code of ethics.

14. SVC. The SVC will inform sexual assault victims, of SVC services, and educate sexual assault victims on collateral misconduct and the role of Trial Defense Services and Area Defense Counsel in handling matters involving collateral misconduct. SVCs will refer victims of sexual assault to Trial Defense Services or Area Defense Counsel when sexual assault victims may have engaged in collateral misconduct.

ATTACHMENT B

DETERMINATION PROCEDURES

1. Following the disclosure of collateral misconduct associated with a victim of sexual assault, Commanders will use their prudent judgement and discretion in deciding whether the alleged offense is minor or non-minor. To assist in making the determination, Commanders will:

a. Consult with their servicing SJA or State OSJA.

b. Identify if the alleged offense falls under the category of non-judicial punishment within the State Code of Military Justice or is equivalent to Article 15 of the Uniform Code of Military Justice in paragraph 1.e. of Part V of the Manual for Courts-Martial, or State or local statutes. Examples of collateral misconduct generally treated as minor for the purposes of the Safe-to-Report Policy include the victim engaging in any of the following:

(1) Underage drinking at the time of the assault.

(2) An unprofessional relationship with the accused at the time of the sexual assault.

(3) Violating a lawful order, including established curfew, off-limit locations, school standards, barracks, dormitory or berthing policies, or similar matters at the time of the alleged sexual assault.

c. Assess aggravating circumstances associated with the misconduct that occurred because of a sexual assault (see Attachment A). The existence of aggravating circumstances does not automatically result in making the alleged collateral misconduct non-minor. The Commander retains the discretion to take disciplinary action against a victim for alleged collateral misconduct where aggravating circumstances render the misconduct more serious. The circumstances may include, whether the alleged misconduct intentionally or unintentionally:

(1) Resulted in or imminently threatened the failure of a specified military mission or objective.

(2) Threatened the health and safety of any person, except acts of self-harm or acts of self-defense used against the alleged subjects of an assault.

(3) Resulted in significant damage to government property, or to the personal property of others, except when such damage was the collateral result of an assault or resulted from an act of self-defense.

d. Assess mitigating circumstances, which may include:

(1) The victim's age and military experience level.

(2) Whether the accused is in a position of authority over the victim or holds a higher grade than the victim.

(3) Whether the accused engaged in actions to stalk, harass, haze, coerce, or otherwise influence the victim to engage in sexual behavior.

(4) Whether the alleged collateral misconduct was known to command prior to the report of sexual assault, and if not known, the likelihood that the alleged collateral misconduct would have been discovered if the victim hadn't disclosed or reported the sexual assault.

(5) Whether the victim engaged in misconduct after the sexual assault, where the misconduct may be a symptom of the exposure to trauma. For example, the victim engaged in underage drinking as a coping mechanism to alleviate sexual assault trauma symptoms.

2. Commanders will make a final determination of the offense as minor or non-minor based on the criteria within this DTM for alleged misconduct by victims of sexual assault in a non-Federalized status. Additional considerations will include the State, Territory, or local statutes based on the location where the misconduct occurred. Commanders may use additional guidance pertaining to non-judicial punishment to cover a wide variety of offenses, ranging from an incidental infraction during initial training to a significant dereliction of duty.

3. A Commander's determination of the alleged misconduct as minor will trigger the Safe-to-Report Policy and require that the victim does not receive any disciplinary action based on the misconduct.

4. A Commander's determination of the alleged misconduct as non-minor may result in the victim being subject to disciplinary actions. Additional considerations following a determination of non-minor may include:

a. Commanders will have the discretion on whether to discipline and when to discipline.

b. Commanders in the National Guard in the grade of O6 and above hold the authority to defer action, at their discretion, on alleged non-minor collateral misconduct by the sexual assault victims until final disposition of the sexual assault case. Commanders making the decision to defer action will not be penalized for this decision.

c. Commander consultation with the SARC and Director of Psychological Health/Behavioral Health Officer to consider the trauma to the victim and respond appropriately as to encourage reporting of sexual assault and continued victim cooperation, while also considering any civilian or military court proceedings and statute of limitations concerns.

d. If a Commander believes that it would be appropriate to document alleged non-minor collateral misconduct in the interest of rehabilitation, he or she should consider actions that minimize or eliminate impacts on the victim's career.

ATTACHMENT C

DOCUMENTING AND REPORTING PROCEDURES

1. Commanders will document their decision on a memorandum using their State or unit letterhead, with the subject line "Safe-to-Report Determination/Disposition Notification," and include the required information identified below IAW reference e.

a. Defense Sexual Assault Incident Database Case Number of the Unrestricted Sexual Assault Report for the National Guard Service member (victim) in the alleged collateral Misconduct IAW reference a:

b. Victim Service affiliation (at time of incident):

- (1) Army National Guard.
- (2) Air National Guard, to include NGB Space Operations.
- (3) None.
- (4) Protected.
- (5) Not available at time of report.

c. Victim pay grade (at time of report): (E-, O-, GS-, SES, NF-).

d. Victim Gender:

- (1) Female.
- (2) Male.
- (3) Protected.
- (4) Unknown.
- (5) Not available at time of report.

e. Date the DD Form 2910, "Victim Reporting Preference Statement" was signed: [Month Day, Year].

f. Was the NGB Safe-to-Report Guidance used to assess the sexual assault victim's alleged collateral misconduct?

- (1) Yes.
- (2) No.

g. Use of Safe-to-Report Policy.

(1) If item "f" was "Yes," answer "Not Applicable, Safe-to-Report Policy was used."

(2) If item "f" was "No," select from one of the following:

(a) Collateral misconduct was non-minor.

(b) Collateral misconduct was known before the sexual assault report.

(c) Collateral misconduct occurred after the sexual assault report.

(d) Collateral misconduct accusation was not credible.

h. If the victim's alleged collateral misconduct is determined to be "non-minor," the Commander took the following action:

(1) No disciplinary action taken.

(2) Disciplinary action taken before final sexual assault case disposition.

(3) Disciplinary action was taken after final asexual assault case disposition.

(4) Not applicable: collateral misconduct was deemed "minor."

i. What, if any, adverse action was taken in response to the collateral misconduct? Identify all adverse actions that apply. Provide the date of the final actions taken.

(1) Court-martial charges preferred.

(2) Non-judicial punishment.

(3) Administrative discharge.

(4) Other adverse administrative action (for example, letter of reprimand added to victim's official personnel file, bar to reenlistment, relief from duties, negative efficiency report related to the collateral misconduct), or other actions that will likely impact the Service member's career.

(5) Minor administrative action (for example, written counseling not placed in the official personnel file, verbal counseling, or other actions that likely won't impact the Service member's career).

(6) Action pending.

(7) No action taken [provide explanation] and provide the date the decision was made not to impose disciplinary action.

(8) Other [provide explanation].

j. Provide a short narrative of the alleged collateral misconduct incident. Do not include any personally identifiable information. The narrative must include:

(1) Whether the collateral misconduct was deemed "minor" or "non-minor."

(2) The reasons why the collateral misconduct was deemed "minor" or "non-minor."

(3) An explanation of any applicable aggravating or mitigating circumstances (see Attachment A) in determining whether the Service Member's conduct was deemed "minor" or "non-minor."

(4) A description of disciplinary actions taken for the collateral misconduct (if any).

(5) A listing of referrals to support services or removal from duty position (if any), such as a referral to substance abuse screening if the minor collateral misconduct involves any kind of substance abuse, referral to behavioral health or medical providers for a fitness for duty determination, or suspending access to critical positions such as positions in the personnel reliability program. It may be appropriate to temporarily decertify the victim from the personnel reliability program status or other critical positions until appropriate evaluations can be conducted.

k. Date of case disposition: [Month, Day, Year].

l. Date decision briefed at Case Management Group: [Month, Day, Year].

m. State National Guard membership, at time of the report, if different than the current organization.

2. The victim's immediate Commander will route the memorandum through their chain of command, servicing SJA, OSJA, Assistant TAG, or Deputy TAG to TAG. Each addressee will endorse the memorandum and acknowledge being briefed or consulted and will identify their concurrence or non-concurrence with the collateral duty determination as written. TAG's or the CG's office will coordinate with the National Guard State Lead SARC to receive a final copy of the memorandum.

3. The National Guard Lead SARC will retain a copy of the memorandum consistent with required safeguards, and provide a copy to the servicing SARC, OSJA, and respective Service Regional Lead and Program Manager at NGB-J1-SAPR Division.

4. NGB-J1-SAPR will consolidate the information from all memorandums received from the States, Territories, and the District of Columbia onto the required spreadsheet and submit it IAW reference e through the electronic tasking system to the DoD SAPR Office.

ATTACHMENT D

DEFINITIONS

Aggravating Circumstances -- Conditions or factors that increase the severity or culpability of the misconduct that are considered in deciding upon the disciplinary actions or lack thereof. Actions that intentionally or unintentionally resulted, or imminently threatened to result in failure of a specified military mission or objective, threatened the health and safety of any person (not including self-harm or self-defense), caused significant damage to government property or personal property of others, except when such damage was caused by the assault or a result of self-defense in accordance with reference a.

Collateral Misconduct -- Victim misconduct that might be in time, place, or circumstance associated with the victim's sexual assault incident.

Disciplinary Actions -- In the context of this Directive-Type Memorandum, disciplinary actions include officially documented command actions initiated against the victim of sexual assault in response to alleged collateral misconduct. These documented actions may include letters of reprimand or written records of counseling in official files, imposition of non-judicial punishment, a formal filing of charges, initiation of involuntary administrative separation proceedings, or an administrative demotion in accordance with reference a.

National Guard State Lead Sexual Assault Response Coordinator -- The National Guard Joint Force Headquarters--State Sexual Assault Response Coordinator for each State, Territory, and the District of Columbia that serves as the State Lead Sexual Assault Response Coordinator for their State, Territory, or the District of Columbia in accordance with reference b.

Minor Collateral Offenses -- In the context of this Directive-Type Memorandum, acts or omissions that are minor offenses using the criteria identified under Article 15 of the State Code of Military Justice, or equivalent to Article 15 of the Uniform Code of Military Justice in paragraph 1.e. of Part V of the Manual for Courts-Martial will generally apply. Whether an offense is minor depends on several factors: the nature of the offense and the circumstances surrounding its commission; the offender's age, rank, duty assignment, record, and experience; and the maximum sentence imposable for the offense if tried by general court-martial. Ordinarily, a minor offense is an offense, which the maximum sentence imposable would not include a dishonorable discharge or confinement for longer than one year if tried by general court-martial in accordance with reference a.

Mitigating Circumstances -- Conditions or factors which may decrease the gravity of alleged collateral misconduct, its impact on good order and discipline, and concern that it may be service discrediting. These factors do not justify or excuse the misconduct, but are considered in deciding upon disciplinary actions or lack thereof to support the health and well-being of the victim in accordance with reference a.

Non-Minor Collateral Misconduct -- Action(s) that intentionally or unintentionally resulted or imminently threatened to result in failure of a specified military mission or objective; threatened the health and safety of any person (not including self-harm or self-defense); significant damage to government property or personal property of others, except when such damage was caused by the assault or a result of self-defense in accordance with reference a.

Sexual Assault -- For the purposes of this Safe-To-Report Policy, sexual assault is defined as alleged penetrative and non-penetrative violations of the applicable version of Article 120, Uniformed Code of Military Justice, or equivalent State Code of Military Justice, or State or local statute; alleged violations of Article 125 for acts of forcible sodomy of a victim age 16 years old or older occurring before 01 January 2019, or equivalent State Code of Military Justice, or State or local statute; alleged attempts and conspiracies to commit any of these offenses in accordance with reference a.

Sexual Assault Prevention and Response Professionals -- Located within the States, these personnel include sexual assault response coordinators (National Guard Joint Force Headquarters--State, Wing, and Brigade), National Guard Joint Force Headquarters--State Victim Advocate Coordinators, and Sexual Assault Prevention and Response Victim Advocates, which include unit Victim Advocates and Volunteer Victim Advocates in accordance with reference b.

Unprofessional Relationship -- A relationship that violated law, regulation, or policy in place at the time of the sexual assault in accordance with reference a.

Victim(s) -- For the purposes of this Safe-to-Report Policy, victim(s) refers to individuals who disclose or report a sexual assault allegation in accordance with reference a. It does not include third party reporters and is not intended to presume the guilt or innocence of an alleged offender.