



CHIEF NATIONAL GUARD BUREAU INSTRUCTION

NG-J1-SAPR
DISTRIBUTION: A

CNGBI 1303.01A
06 August 2014

EXPEDITED TRANSFER, REASSIGNMENT, OR REMOVAL OF NATIONAL GUARD MEMBERS DUE TO AN UNRESTRICTED REPORT OF SEXUAL ASSAULT

References: See Enclosure A.

1. Purpose. This instruction establishes policy and assigns responsibilities to expedite the transfer of National Guard Title 32 (T32) Guard members in accordance with (IAW) reference a, who file an Unrestricted Report of sexual assault IAW reference b. This instruction also implements the statutory authority permitting an appropriate commanding officer (CO) to temporarily and administratively reassign or remove a T32 Guard member who is accused of committing a sexual assault or related offense IAW reference c.

2. Cancellation. None.

3. Applicability. This instruction is applicable to the National Guard of the States, Territories, and the District of Columbia.

4. Policy. It is National Guard policy that:

a. Any threat to life or safety of a Guard member is immediately reported to command and law enforcement authorities. A request to transfer a Guard member under these circumstances is handled IAW established Service regulations. However, a Guard member who files an Unrestricted Report of sexual assault has the option to request consideration of an expedited transfer by their CO.

b. Guard members receive information at the time they file an Unrestricted Report of sexual assault, or as soon as practical, from the Sexual Assault Response Coordinator (SARC), Sexual Assault Prevention and Response Victim Advocate (SAPR VA), Joint Force Headquarters-State (JFHQ-State) Victim Advocate Coordinator (VAC), or the victim's CO, of their option to request a

UNCLASSIFIED

temporary or permanent transfer from their assigned command, or to a different location within their unit of assignment or Inactive Duty Training (IDT) location.

c. Expedited transfers are limited to sexual assault against adults as defined in the glossary of reference a and includes rape and sexual assault in violation of reference d and forcible sodomy in violation of reference e, and the applicable State criminal code of sex crimes.

d. When a Guard member was paid a bonus or special pay for a period of enlistment under a written agreement and requests an expedited transfer due to sexual assault, then the Secretary of the military department concerned has the discretion to, at some point in the process, render a case-by-case determination that the member's repayment, or the military department's full payment, of an unpaid portion of the pay or benefit is appropriate IAW paragraph 020204.B of reference f.

e. When requested by a Guard member, the CO should allow for separate training on alternate weekends or times from the subject of an investigation or training with a different unit in the home drilling location to minimize undue burden on the Guard member and his or her family. At a minimum, the subject's access to the Guard member who made the Unrestricted Report is appropriately controlled.

f. The appropriate CO may consider a temporary non-punitive administrative reassignment of a Guard member who is accused of committing a sexual assault or related offense, or remove that member from a position of authority or his or her assignment. These options are afforded to enhance protection and balance the interests of a victim of sexual assault and the subject of the associated investigation, and for the purpose of maintaining good order and discipline in accordance with reference c.

5. Definitions. See Glossary.

6. Responsibilities.

a. Guard Members. Guard members will submit a written request for expedited transfer to their CO.

b. COs. The CO or an appropriate approving authority will document the date and time a request is submitted and:

(1) Immediately make a credible report determination after considering the advice of the supporting Judge Advocate, other concerned legal advisors, the SARC, and the available evidence based on law enforcement or the Office of the National Guard Bureau Chief Counsel's Office of Complex Investigations.

(2) Establish a presumption in favor of transferring the Guard member following a credible report of sexual assault.

(3) Consider the following when making a decision to approve or disapprove the request:

- (a) The Guard member's reasons for the request.
- (b) Potential administrative reassignment of the subject of an investigation instead of reassigning the Guard member requesting the transfer.
- (c) Nature and circumstance of the offense.
- (d) Whether a temporary transfer would meet the needs of the Guard member making the request and the operational needs of the unit.
- (e) Training and duty status of the Guard member requesting the transfer.
- (f) Availability of other positions within the State.
- (g) Upon consultation with the investigating authority, status of the investigation, potential impact on the investigation, and future disposition of the offense.
- (h) Location of the subject of the investigation.
- (i) Subject's status as a Service member or civilian.
- (j) Other pertinent circumstances or facts.

(4) Directly counsel the Guard member to ensure he or she is fully informed regarding:

- (a) Reasonably foreseeable career impacts.
- (b) The potential impact of the transfer or reassignment on the investigation and case disposition or the initiation of other adverse action against the subject, and other potential consequences.
- (c) When applicable, the impact on benefits, such as bonus payment or recoupment.
- (d) The possibility that he or she may have to return for the adjudication of the case.

(5) Approve or disapprove a request:

(a) Submitted by a T32 Guard member for a unit transfer or permanent change of assignment (PCA) within 72 hours of receipt of the request.

(b) Submitted by a T32 Active Guard and Reserve member for a permanent change of station (PCS), PCA, or unit transfer within 72 hours of receipt of the request in coordination with the JFHQ-State Human Resource Office IAW references g and h.

(6) Decision Disposition.

(a) Approved. Immediately forward the approval decision to the designated activity that processes PCS, PCA, or unit transfers.

(b) Disapproved.

1. Immediately forward the disapproval decision with written justification to the first general officer (GO) in the Guard member's chain of command.

2. Inform the Guard member of the right to request a review by the first GO in his or her chain of command.

c. GO. GOs will, when requested by the Guard member, review a CO's recommended disapproval of a request and approve or disapprove the expedited transfer within 72 hours of receipt.

(1) If a GO approves a request, then he or she instructs staff to expeditiously initiate and process orders to complete the move.

(2) If a GO disapproves a request, then he or she provides the following information in writing to The Adjutant General (TAG) or the Commanding General of the District of Columbia (CG) and furnishes a copy to the Service Director:

(a) Name of the Guard member who requested transfer.

(b) Date the Guard member submitted his or her request for an expedited transfer.

(c) Reasons for recommending disapproval of the request.

d. TAGs and the CG. TAGs and the CG will:

(1) Establish procedures to implement this instruction within all States, Territories, and the District of Columbia.

(2) Require the SARC, SAPR VA, JFHQ-State VAC, or CO to inform each Guard member at the time of making the Unrestricted Report, or as soon as practical, of the option to request transfer from the assigned command to a different position or location within his or her assigned command.

(3) Require the CO or the appropriate approving authority to make a determination on transfer requests based on a credible report of sexual assault and provide justification of the decision in writing.

e. Directorate of Manpower and Personnel, Sexual Assault Prevention and Response Office, National Guard Joint Staff (NG-J1-SAPR). NG-J1-SAPR will coordinate with the Army National Guard (ARNG) and Air National Guard (ANG) Sexual Assault Prevention and Response Program offices on the implementation of this instruction for T32 Guard members, and establish and implement a reporting process of expedited transfer-request data for reports to the Chief of the National Guard Bureau.

f. JFHQs-State and Wing SARCs. JFHQs-State and Wing SARCs will:

(1) Verify that the victim elected an Unrestricted Report for sexual assault and signed the DD Form 2910 at reference i. Provide the victim with a copy of the form for future reference.

(2) Tell the victim to submit a written request for transfer to the CO.

(3) Discuss concerns with a Guard member who has indicated a desire to request an expedited transfer to ensure the member is aware of possible ramifications a transfer may pose and to support their ability to make an informed decision. Concerns may include a Guard member's status, position, possible training requirements, or benefits; for example, bonuses.

(4) Tell the victim that if he or she files a Restricted Report IAW reference b, and requests an expedited transfer, then he or she must affirmatively change his or her reporting option to "Unrestricted Reporting" on DD Form 2910.

(5) Immediately document the request in the Defense Sexual Assault Incident Database upon notification of an expedited transfer request from a T32 sexual assault victim.

7. Summary of Changes. This instruction is a revision of CNGBI 1303.01, dated 06 August 2012.

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 within five years of its publication.



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

Enclosures:

A -- References
GL -- Glossary

ENCLOSURE A

REFERENCES

PART I. REQUIRED

- a. DoD Instruction 6495.02, 28 March 2013, Change 1, 12 February 2014, “Sexual Assault Prevention and Response (SAPR) Program Procedures”
- b. DoD Directive 6495.01, 23 January 2012, Change 1, 30 April 2013, “Sexual Assault Prevention and Response (SAPR) Program”
- c. PL 113-66, Subtitle B, § 1713, “Temporary Administrative Reassignment or Removal of a Member on Active Duty Accused of Committing a Sexual Assault or Related Offense”
- d. 10 U.S.C. § 920, “Rape and Sexual Assault Generally”
- e. 10 U.S.C. § 925, “Forcible Sodomy; Bestiality”
- f. DoD 7000-14-R, Volume 7-A, Chapter 2, July 2013, “Repayment of Unearned Portion of Bonuses and Other Benefits”
- g. NGR (AR) 600-5, 20 February 1990, “The Active Guard/Reserve (AGR) Program Title 32, Full-Time National Guard Duty (FTNGD)”
- h. ANG Instruction 36-101, 03 June 2010, “Air National Guard Active Guard Reserve (AGR) Program”
- i. DD Form 2910, “Victim Reporting Preference Statement,”
< www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2910.pdf >

PART II. RELATED

- j. 32 U.S.C. § 502 (f)

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

ANG	Air National Guard
ARNG	Army National Guard
CG	Commanding General of the District of Columbia
CO	Commanding Officer
GO	General Officer
IAW	In accordance with
IDT	Inactive Duty Training
JFHQs-State	Joint Force Headquarters-State
NG-J1-SAPR	Directorate of Manpower and Personnel, Sexual Assault Prevention and Response Office, National Guard Joint Staff
PCA	Permanent Change of Assignment
PCS	Permanent Change of Station
SAPR VA	Sexual Assault Prevention and Response Victim Advocate
SARC	Sexual Assault Response Coordinator
TAG	The Adjutant General
T32	Title 32
VAC	Victim Advocate Coordinator

PART II. DEFINITIONS

Credible Report -- Either a written or verbal report made in support of an expedited transfer that is determined to have credible information.

Restricted Report -- Reporting option that allows sexual assault victims to confidentially disclose the assault to a Sexual Assault Response Coordinator, Sexual Assault Prevention and Response Victim Advocate, or healthcare personnel and receive medical treatment, including emergency care, counseling, and assignment of a Sexual Assault Response Coordinator and Sexual Assault Prevention and Response Victim Advocate, without triggering an investigation. The victim's report, including the information acquired from a SAFE Kit, is not reported to law enforcement or to the command to initiate an official investigative unless the victim consents or an established exception applies; previously referred to as Confidential Reporting.

Sexual Assault Prevention and Response Victim Advocate -- A person who provides non-clinical crisis intervention, referral, and ongoing non-clinical support to adult sexual assault victims, which will include providing information on available options and resources; provides liaison assistance with other organizations and agencies on behalf of the sexual assault victim

regarding victim care matters and reports directly to the Sexual Assault Response Coordinator when performing victim advocacy duties.

Sexual Assault -- Intentional sexual contact characterized by the use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent; a broad category of sexual offenses consisting of rape, aggravated sexual contact, abusive sexual contact, forced oral or anal sex, or attempts to commit these offenses.

Title 32 Active Guard and Reserve -- For the purpose of this instruction, Active Guard and Reserve refers to National Guard Service members serving on Full-Time National Guard Duty status in accordance with reference h.

Unrestricted Report -- Reporting option for sexual assault victims who do not request confidentiality of the assault or Restricted Reporting. The victim's report is provided to healthcare personnel, the Sexual Assault Response Coordinator, a Sexual Assault Prevention and Response Victim Advocate, command authorities, or other persons is reported to law enforcement and may be used to initiate an official investigation.