



CHIEF NATIONAL GUARD BUREAU MANUAL

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DISTRIBUTION: A

CNGBM 0400.01
8 November 2012

CHIEF, NATIONAL GUARD BUREAU
OFFICE OF COMPLEX ADMINISTRATIVE INVESTIGATIONS

Reference(s): See Enclosure G.

1. Purpose. Pursuant to reference a, this manual sets guidance for the management, operation, and training of the Office of Complex Administrative Investigations (NGB-JA/OI) under the Office of the Chief Counsel (NGB-JA), National Guard Bureau (NGB). NGB-JA/OI provides the capability to perform complex administrative investigations regarding matters involving the non-federalized National Guard (NG) at the request of The Adjutants General (TAG) of the 54 States, Territories, and the District of Columbia.
2. Cancellation. None.
3. Applicability. This manual applies to all NG entities, the NGB (the NGB Joint Staff, the Army National Guard (ARNG) and the Air National Guard (ANG) directorates), all field activities of the NGB, and the NG of the States, Territories, and the District of Columbia.
4. Procedures. See Enclosures C and D.
5. Summary of Changes. This is the initial publication of CNGBM 0400.01.
6. Releasability. This manual is approved for public release; distribution is unlimited. NGB directorates, TAGs and the Commanding General of the District of Columbia, and Joint Force Headquarters-State (JFHQ-State) may obtain copies of this manual through www.ngbpdc.ngb.army.mil.

UNCLASSIFIED

7. Effective Date. This manual is effective upon publication.



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Enclosure(s):

- A -- Responsibilities
- B -- Organization and Management
- C -- Process for Conducting Complex Administrative Investigations Not Involving Sexual Assault
- D -- Process for Conducting Complex Administrative Investigations Involving Reports of Sexual Assault
- E -- Investigation Requirements
- F -- Notional Sexual Assault Report Vignettes
- G -- References
- GL -- Glossary

ENCLOSURE A

RESPONSIBILITIES

1. Chief Counsel. Chief Counsel shall:

a. Oversee and manage the NGB-JA/OI.

b. Determine whether a TAG request for an NGB-conducted complex administrative investigation has a sufficient NG nexus, and meets specified criteria warranting an inquiry by NGB-JA/OI. For reports of sexual assault (SA), a sufficient nexus may exist when the relationship between the alleged perpetrator and the victim of a SA report is based upon membership in the NG. Specified criteria include, but are not limited to, federal and state jurisdictional issues that limit law enforcement involvement; service requirements regarding matters reserved for investigation by the Inspector General (IG); the need for specialized training of the investigating officer; and the desire for an independent investigator to ensure fairness and impartiality during the course of the investigation. The authority to determine the appropriateness of an NGB complex investigation can be delegated, in writing, within NGB-JA by the Chief Counsel.

c. Appoint individuals who have the requisite skills, abilities, and experience as NGB-JA/OI investigators (INV). This authority may be delegated to one or more individuals within NGB-JA. A prospective INV may be required to undergo a background investigation. An appointment as an NGB-JA/OI INV does not provide authority to conduct criminal investigations. INVs will only identify themselves as NGB-JA/OI INVs when they have been specifically detailed to conduct an investigation by NGB-JA/OI. The Chief Counsel may withdraw an INV's appointment for any reason he or she feels is appropriate. The decision to withdraw an INV's appointment is not appealable.

d. Designate the uniform to be worn by NGB-JA/OI INVs while conducting investigations, to include authorizing the use of civilian clothes if such authority has been delegated from CNGB to Chief Counsel.

2. ARNG and ANG Manpower and Personnel Directorates (ARNG-G1, ANG/A1). ARNG-G-1 and ANG/A1 shall:

a. Fund all SA investigations conducted pursuant to this manual.

b. Fund any follow-on temporary duty (TDY) for the purpose of testifying at non-Title 10 criminal or administrative hearings resulting from investigations conducted pursuant to this manual.

3. NGB-JA/OI. NGB-JA/OI shall:

- a. Provide for NGB-JA/OI's operation in accordance with (IAW) reference a.
- b. Coordinate with appropriate organizations, such as the U.S. Army Criminal Investigation Command (CID) School, to provide specialized training for NGB-JA/OI INVs.
- c. Confer with the appropriate State Staff Judge Advocate (SJA), Active Guard Reserve (AGR) Judge Advocate (JA), or NG Technician JA (any of which are hereinafter referred to as State JA) as to whether a SA report or other issue merits NGB-JA/OI assistance (i.e., there is a sufficient NG nexus). Among other factors, NGB-JA/OI will consider whether the incident would be more appropriately investigated using another process, to include IG, Military Equal Opportunity (MEO), or Equal Employment Opportunity (EEO) systems.
- d. Determine whether an issue from a State NG has a sufficient NG nexus to warrant investigation by NGB-JA/OI, upon delegation by and coordinating determinations with NGB Chief Counsel.
- e. Recommend that State JAs prepare formal TAG requests for assistance, if it is determined a report or allegation has a sufficient NG nexus.
- f. Detail trained NGB-JA/OI INVs to conduct investigations using the template in Appendix C to Enclosure B (mark document "For Official Use Only" (FOUO)). More than one INV may be detailed to an investigation.
- g. Assign a case number identifier to each investigation using procedures outlined in Enclosure E.
- h. Ensure funding availability, and gather all information necessary for INV orders and travel.
- i. Provide equipment and assistance in obtaining travel, and logistical support for INVs appointed to serve as NGB-JA/OI INVs. NGB-JA/OI may assist the INV in coordination with State Military Criminal Investigative Organizations (MCIOs) or other organizations, as necessary.
- j. Review the INV Investigative Plan (IP) (see Enclosure E).
- k. Upon an investigation's completion, review the INV memorandum, executive summary, and investigative file for clarity and completeness, and forward to requesting TAG.

4. TAGs of the NG of the States, Territories, and the District of Columbia. When TAGs request assistance pursuant to this manual, they shall:

- a. Ensure State JA has coordinated with NGB-JA/OI prior to submission of such a request, to ensure it meets specified criteria and has a sufficient NG nexus warranting NGB-JA/OI investigation.
- b. Request an NGB-JA/OI investigation IAW procedures in Appendix A to Enclosure B.
- c. Assign a State point of contact (POCs) for INV, one of whose primary duty will be to provide administrative support for INV during the investigation.
- d. Ensure INVs are provided adequate workspace and administrative support when conducting the investigation.
- e. Meet, or designate a representative to meet with the INV, State Chief of Staff (CoS), State Sexual Assault Response Coordinator (SARC), State JA, State POC, and as needed, the State Public Affairs (PA) upon INV arrival at JFHQ for the investigation Read-In pursuant to Enclosure E, paragraph 6.
- f. Ensure the assigned Victim Advocate (VA) is available to the victim during and immediately after the interview process at the victim's request.
- g. Ensure INVs receive full cooperation from JFHQ, NG units, and NG members.
- h. Receive an INV Out-Brief upon an investigation's conclusion, pursuant to Enclosure E, paragraph 14.
- i. Ensure State JA provides NGB-JA/OI notification of the final action taken (see Appendix H to Enclosure E) after receipt of the INV memorandum, executive summary, and investigative file.
- j. Ensure at least one officer is qualified to investigate SAs within the state (i.e., having attended training similar to NGB-JA/OI investigator training), when it is within resources to do so.
- k. Maintain SA investigative files, which are Federal records, IAW reference b, applicable Department of Defense (DoD), Army or Air Force policies and procedures, and the Privacy Act of 1974, and applicable Air Force or Army Records Disposition Schedules. The INV memorandum, executive summary, and investigative file must be kept separately from any State or personal records.

5. State SJA or designee (State JA). State JA shall:

a. Contact NGB-JA/OI to discuss if a SA report and/or other allegation is appropriate for investigation. NGB-JA/OI may contact State JA to advise when assistance may be beneficial (e.g., regarding a report of SA not yet acted upon by TAG); however, the request must ultimately come to NGB-JA/OI from TAG through State JA channels. The State JA and NGB-JA/OI will discuss whether the issue meets specified criteria and has a sufficient NG nexus, to determine if the matter should be investigated by NGB-JA/OI or be referred to IG channels IAW references c and d, or to MEO or EEO channels.

b. Confirm civilian law enforcement (LE) is not investigating the issue.

c. Notify the appropriate MCIO of SA reports and request, in writing, MCIO investigation of the SA report.

d. Prepare request for detailing of NGB-JA/OI INV IAW Appendix A to Enclosure B if MCIO is not investigating, and mark request as FOUO.

e. Attend the INV Read-In.

f. Coordinate with state NG entities and LE, as necessary.

g. If necessary, assist the POC in gathering personnel, military, medical, and LE files requested by INV to ensure that they are available when the INV arrives to conduct the investigation.

h. Provide legal advice on state law regarding SA and related crimes, and regulations regarding rights advisement, privacy, and access to state records.

i. If the alleged perpetrator is an O-4 or above and there are substantiated allegations, notify the IG upon conclusion of investigation and receipt of the INVs memorandum, executive summary, and investigative file.

j. Notify NGB-JA/OI of actions taken in response to an investigation using the template in Appendix H to Enclosure E, and mark the document FOUO.

6. Unit Commanders. Unit Commanders shall:

a. Ensure safety of victims and witnesses.

b. Ensure INVs receive full cooperation from unit members. Cooperation does not include requiring alleged perpetrators or witnesses to testify on matters which may incriminate themselves.

c. Coordinate with POCs and INVs to ensure appropriate interview facilities and office equipment are made available.

d. 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.

e. Ensure unit members who may be considered alleged perpetrators in an investigation are handed off to another unit member using procedures in Enclosure E, paragraph 9.

f. Ensure victims of a SA that is under investigation are handed off to the VA using procedures outlined in Enclosure E, paragraph 9.

7. NGB-JA/OI-detailed INVs. NGB-JA/OI-detailed INVs shall:

a. Coordinate with their supervisor to ensure availability prior to accepting INV duty. Conducting and completing investigations will be the INV's primary duty. If the proposed INV is the AGR on Title 32 orders, written permission must be obtained from the TAG (or designee) before agreeing to serve.

b. Develop an IP using guidance in Enclosure E, paragraph 5, and present the IP to NGB-JA/OI for approval (mark document as FOUO).

c. Coordinate with the State POC in fulfilling their duties as listed in Enclosure A, paragraph 8, and provide direction on the chronological order in which interviews should be conducted.

d. Notify the POC of office space and equipment necessary for conducting investigation.

e. Notify the POC of personnel, military, medical, and/or LE records needed to conduct the investigation, to ensure they are available upon arrival.

f. Plan travel and submit voucher(s) using the Defense Travel System (DTS). The INV should plan on being at the site of the investigation for seven days.

g. Before travelling, contact State JA to receive legal advice on state law regarding SA and related crimes, and regulations regarding rights advisement, privacy, and access to state records.

h. For SA investigations conducted pursuant to Enclosure D, conduct a Read-In using procedures in Enclosure E, paragraph 6, of this manual with the TAG (or designee), State CoS, State SARC, State JA, State POC, and as needed, PA, upon arrival at JFHQ.

i. Conduct a thorough and complete investigation in a timely manner, using procedures found in this manual and pursuant to the INV Detail

Memorandum. INVs are authorized to make additional related findings based upon their investigation. An investigation should typically be completed in three weeks: seven days at the site of the investigation and 14 days at the home station to complete the report and file.

j. Coordinate with VA and unit commands to ensure the needs of both victims and alleged perpetrators are met.

k. Report any barriers to conducting the investigation, or completing the memorandum, to TAG (or designee) and NGB-JA/OI.

l. Conclusion of Investigation. At the conclusion of an investigation, the INV shall:

(1) Provide an Out-Brief to the TAG or h using procedures in Enclosure E, paragraph 14 of this manual when the investigation involves a SA report.

(2) Complete a memorandum detailing findings using the guidance found in Enclosure E, paragraph 15 and the sample in Appendix F to Enclosure E of this manual (mark all documents as FOUO).

(3) Prepare an executive summary using guidance found in Enclosure E, paragraph 16, and the sample in Appendix G to Enclosure E of this manual.

(4) Assemble the investigative file using procedures found in Enclosure E, paragraph 17, of this manual.

(5) Present the memorandum, executive summary, and investigative file to NGB-JA/OI for review.

(6) If required, testify at a criminal or administrative hearing resulting from an investigation conducted pursuant to this manual.

8. State POC. State POC shall:

a. Coordinate with INV, TAG (or designee), and attendees to ensure availability of Read-In and Out-Brief when INV is traveling whenever an investigation is being conducted pursuant to Enclosure D.

b. Coordinate with INV and NG units to ensure the victims and witnesses are available for interviews, including being placed on orders, when INV is traveling. Also ensure that Sexual Assault Prevention and Response (SAPR) VAs are available to support victims during interviews whenever an investigation is being conducted pursuant to Enclosure D.

c. Schedule interviews at INV's request.

- d. Coordinate with LE to facilitate cooperation and information sharing.
- e. Before the INV's arrival, obtain copies of relevant LE, MCIO, medical (see Appendix E to Enclosure E), and military records at the INV's request.
- f. Ensure appropriate office space and equipment is made available to conduct an investigation.
- g. Assist the INV in scheduling interviews.

ENCLOSURE B

ORGANIZATION AND MANAGEMENT

1. Chief, NGB-JA/OI. Chief, NGB-JA/OI will reside in the NGB-JA.

a. The majority of NGB-JA/OI INVs will be NG members in an AGR, Technician, or M-Day status with the NG of a State or Territory, the Commonwealth of Puerto Rico, or the District of Columbia.

b. NGB-JA/OI will manage and oversee detailed INVs and assist in providing logistical and coordination support. At least one member of NGB-JA/OI will have on-call duty whenever an INV is detailed duties pursuant to this manual.

c. At least one paralegal with DTS approval authority will be assigned to NGB-JA/OI to expedite travel plans.

2. Requests for Investigation.

a. Requests for INV detail will come through State JA channels. NGB-JA/OI may contact State JA to advise when assistance may be beneficial (e.g., regarding a report of SA not yet acted upon by TAG); however, the request must ultimately come to NGB-JA/OI from TAG through State JA channels.

b. Reports involving multiple States. If a report or allegation involves NG members from more than one state, any TAG with guardsmen involved may request an investigation. The following will apply:

(1) The requesting TAG is responsible for coordinating and ensuring concurrence on an investigation with other relevant TAGs. Full TAG cooperation and concurrence is essential to an investigation.

(2) State JA of requesting TAG. The State JA for the TAG requesting investigation is responsible for the following:

(a) Determining if there is an LE investigation.

(b) Notifying appropriate MCIO of SA reports and requesting documentation of an MCIO investigation.

(c) Providing NGB-JA/OI information to enable Chief Counsel (or designee) to determine if a sufficient NG nexus and specified criteria exists.

(d) Providing NGB-JA/OI information to determine if the issue is more appropriate for MEO or EEO channels.

c. NGB/JA-OI. NGB/JA-OI will determine if there is a sufficient NG nexus and or specified criteria to warrant an inquiry.

(1) A sufficient nexus may exist when the relationship between the alleged perpetrator and the victim of a SA report is based upon membership in the NG.

(2) Specified criteria include, but are not limited to, federal and state jurisdictional issues that limit LE involvement; service requirements regarding matters reserved for investigation by IG; the need for specialized training of the investigating officer; and the desire for an independent investigator to ensure fairness and impartiality during the course of the investigation.

3. Selection and Detailing of INV. Chief, NGB-JA/OI will coordinate with Chief Counsel to choose INVs who:

a. Have specialized training in the investigation of sex crimes, or extensive experience in investigating SAs.

b. When possible, are either senior or equivalent in rank to any person whose conduct or performance of duty may be investigated, or against whom adverse findings may be made.

c. Will conduct and complete the investigation as their primary responsibility.

d. Are guardsmen in an M-Day status, a Title 32 or Title 10 AGR status, or civilian employees who meet the requirements in Enclosure B, paragraph 3.a. M-Day and NG technician INVs will be put on orders pursuant to reference m. Title 32 AGR INVs will remain on Title 32 orders, but must obtain written permission from the TAG (or designee) before accepting detail.

e. Are not a current member of the ARNG or ANG Trial Defense Service or a State's appointed military judge.

f. When possible, are located within driving distance of the primary location of investigation.

4. NGB-JA/OI Review.

a. At an investigation's conclusion, NGB-JA/OI will review the INV's memorandum, executive summary, and investigative file to ensure clarity and completeness. This review will not constitute a legal opinion for the purposes of determining legal sufficiency.

b. After review, NGB-JA/OI will forward the investigative file to State JA for recommendations to the TAG. The State NG is responsible for retention of this Federal record IAW reference b.

c. State JA may provide TAG with a legal review upon request.

d. NGB-JA/OI will retain only a copy of the INV executive summary and State JA Notice of Action

APPENDIX A TO ENCLOSURE B

SAMPLE TAG REQUEST FOR NGB-JA/OI INVESTIGATIVE SUPPORT

(Appropriate letterhead)

MEMORANDUM FOR Chief Counsel, National Guard Bureau

SUBJECT: Request for Investigator Pursuant to CNGBM 0400.01, "Chief, National Guard Bureau Office of Complex Administrative Investigations"

1. Pursuant to CNGBM 0400.01, I request the detailing of a CNGB Complex Investigation Program Investigator to investigate an *(unrestricted sexual assault report/rape/fraud) (upon/by) (a) member(s) of the (State)(Army)(Air) National Guard*. I request that you issue a detail memorandum allowing the investigator to act under my authority to gain access to state personnel and records to the extent allowed under state law and regulation.
2. *(Describe fact pattern and NG nexus without using PII.)*
3. The matter was referred to civilian law enforcement and to *(list appropriate MCIO)* who declined to investigate. This request has been reviewed by the State JA *(and SARC if request involves SA report)* and has been coordinated with NGB-JA/OI to ensure a sufficient NG nexus exists.
4. I will meet with your investigator, along with my Chief of Staff, AGR JA *(or SJA or NG Technician JA)*, and SARC for a Read-In when *he or she* arrives 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 receives the full cooperation of State NG personnel. I have directed my State JA, *(rank and name)*, to provide your investigator legal advice as necessary. When the investigation is complete, I will make *(myself or my delegatee)* available for an Out-Brief with the investigator.
5. Your investigator will receive full cooperation from all units, guardsmen, and civilians under my authority. If your investigator receives resistance in regard to the investigation from any individual under my authority, please have them contact either my Chief of Staff or me so that I may assist in the matter.
6. Your investigator's point of contact is *(XXXXXX)*, at DSN # or commercial #.

TAG Signature Block

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APPENDIX B TO ENCLOSURE B

SAMPLE INVESTIGATOR DETAIL MEMORANDUM

(Appropriate letterhead)

NGB-JA

DATE

MEMORANDUM FOR *(Investigating Officer)*

SUBJECT: Designation as Investigating Officer for Investigation XX####
Pursuant to CNGBM 0400.01, "Chief, National Guard Bureau Office of
Complex Administrative Investigations"

1. Pursuant to the attached request of The Adjutant General (TAG) of the State of XXXXXXXX, I hereby detail you to investigate the facts and circumstances of the reported *(fraud/rape/sexual assault)* described in the memorandum at Attachment 1. You are authorized to make any additional related findings based on your investigation. The completion of this investigation will be your primary duty. Your investigation should be completed in three weeks or less: seven days at the site of the investigation, 14 days at the home station to complete the report and file. 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 gather and analyze facts using your knowledge and training to determine if the report is substantiated or unsubstantiated by the preponderance of the evidence. *(If investigating SA, add: You are to use the DoD definition of Sexual Assault, found in the glossary of CNGBM 0400.01.)* You will conduct your investigation pursuant to the responsibilities, procedures, and standards detailed in CNGBM 0400.01 Enclosure B (C or D, as appropriate) and E. You must ensure your findings are consistent with credible evidence concerning these matters.

3. At the conclusion of your investigation, you will prepare a memorandum and an executive summary detailing your findings for the State of (XXXXXX) TAG using the templates in Appendix F to Enclosure E and Appendix G to Enclosure E of CNGBM 0400.01. The documents must clearly either substantiate or non-substantiate the report.

4. The original memorandum and executive summary detailing your findings, along with the investigative file supporting your findings will be forwarded to the requesting TAG. A copy of the executive summary, which will not contain PII, will remain on file with this office. The investigative file should include summaries of witness interviews detailing the date, time, place, participants,

witnesses, and nature of such incidents. The file may include other documentary evidence, witness statements, computer files, photos, and other such evidence, but will not include any physical evidence.

5. Your point of contact (POC) with the *(State)* NG is *(XXXXXX)* at DSN # or commercial #. Please contact *(him/her)* 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.

6. 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 must provide witnesses with a Privacy Act Statement before you solicit any personal information (see Appendix D to Enclosure E of CNGBM 0400.01). If you are an attorney, and any individual to whom you wish to speak is represented by an attorney in the matter, you should contact the individual's attorney to request permission to speak to him or her.

7. Civilian employees and NG technicians must cooperate with your investigation unless they reasonably believe their interview will lead to disciplinary action or criminal charges. Any civilian employee or NG Technician who is an alleged perpetrator in your investigation will be given the opportunity to provide information for the investigation, but will not be compelled to do so. It is good practice for you to determine at the outset of the investigation if a union-represented civil service employee or NG technician is among the witnesses to be interviewed. If a union-represented employee attempts to invoke his or her "Weingarten Rights," or if any NG civilian employee refuses to be interviewed by asserting his or her Fifth Amendment rights or other rights against self-incrimination under state law, you must stop questioning and notify the State JA and NGB-JA Litigation Division before proceeding.

NGB Chief Counsel Signature Block

Attachment: *(State)* TAG Request for CNGBM 0400.01 Investigation

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ENCLOSURE C

PROCESS FOR CONDUCTING COMPLEX ADMINISTRATIVE INVESTIGATIONS
NOT INVOLVING SEXUAL ASSAULT

1. This Enclosure provides instructions for conducting non-SA complex administrative investigations, completed at the request of TAG or the CNGB. Investigations must demonstrate a sufficient NG nexus and meet specified criteria to warrant NGB-JA/OI inquiry.

a. A sufficient nexus may exist when the relationship between the individuals involved is based upon membership in the NG. Specified criteria include, but are not limited to, federal and state jurisdictional issues that limit LE involvement; service requirements regarding matters reserved for IG investigation; the need for specialized training of the investigating officer; and the desire for an independent investigator to ensure fairness and impartiality during the course of the investigation.

b. Typical investigations may address allegations of fraud, abuse of authority, false official statements, or similar matters. NGB-JA/OI will not conduct investigations into matters which are actively being investigated by LE or an MCIO, or are reserved for investigation by the IG pursuant to references c and d.

2. The list below is an example of the typical process for a non-SA investigation conducted pursuant to this manual.

a. TAG directs State JA to determine if an NGB-JA/OI investigation is appropriate.

b. State JA determines if the matter concerns a senior official, as defined in the glossary. If so, the matter will be referred to IG. If the issue involves a potential criminal matter, State JA will inform LE or MCIO of the allegation. If the matter should be investigated by IG, LE, or MCIO, NGB-JA/OI will not open an investigation.

c. State JA and NGB-JA/OI discuss whether a sufficient NG nexus exists to justify investigation, and whether the matter should be more appropriately addressed by IG, MEO, or EEO. Prior to discussion, State JA should be aware of incident facts as reported, to include ranks of individuals involved; where and when incident(s) took place; the status of individuals involved; and whether or not LE was notified.

d. NGB-JA/OI consults with Chief Counsel to determine if a sufficient NG nexus exists. If a sufficient NG nexus does not exist, NGB-JA/OI will not open

an investigation. Chief Counsel may delegate the authority to determine whether a sufficient NG nexus exists.

e. TAG requests investigatory support from NGB-JA/OI using the template in Appendix A to Enclosure E and appoints a State NG POC.

f. Chief, NGB-JA/OI coordinates with Chief Counsel and potential INVs for selection and detailing, with a preference for INVs located within driving distance of primary investigation locations. Selected INVs coordinate with supervisors before accepting investigation detail.

g. Chief Counsel completes an appointment memo to designate a detailed INV.

h. Chief, NGB-JA/OI coordinates with ARNG-G1 or ANG-A1 and State to ensure travel orders and funding are available.

i. INV creates INV Plan (see Enclosure E, paragraph 5) and presents it to NGB-JA/OI for approval. The INV Plan is a living document that will be revised throughout the investigation, as necessary.

j. State POC coordinates with INV and NG units to make witnesses available for interviews, including putting interviewees on orders, to schedule interviews, to determine which records need to be available, and to ensure appropriate office space and equipment is made available.

k. State POC contacts witnesses to schedule interviews and requests authorization to access relevant medical (see Appendix E to Enclosure E), police, and military records.

l. Before the INV's arrival, the State POC obtains copies of relevant LE, MCIO, medical (see Appendix E to Enclosure E), and military records at the INV's request.

m. INV requests orders and plans travel using DTS.

n. NGB-JA/OI works with State to process orders and ships equipment.

o. INV travels, receives equipment, and conducts investigation pursuant to NGB-JA/OI approved IP.

(1) On conducting interviews:

(a) General. INV keeps an electronic file of videotaped interviews and summations, as well as hard-copy summations. Interviews should be conducted at a NG armory, ANG air base, or other safe location. Interviews

should not take place at an interviewee's home. INVs will caution all interviewers not to disclose matters under investigation except with their own legal counsel.

(b) Witness interviews. All individuals suspected of criminal misconduct must be advised of their rights before being questioned. INVs should consult with State JA to ensure there are no state laws affecting the proper rights advisement. In most cases, DA Form 3881 should be used to record that the witness understands his or her rights and elects to waive those rights and make a statement. During the course of an interview, if INV discovers information leading him or her to suspect that the interviewee has violated a provision of the applicable State Code of Military Justice or other criminal law, INV must advise that individual of his or her rights under the Fifth Amendment, or as specified in the applicable state law, as appropriate. Further, INV must suspend questioning when such individuals refuse to make further statements or answer questions based on these rights (see Enclosure E, paragraph 7). INV may use the Forensic Experiential Trauma Interview (FETI) technique listed in Enclosure D, paragraph 22.a. If witness appears to be under duress during interview, contact unit command to ensure interviewee is handed off to a unit member (Enclosure E, paragraph 9). INV must provide a Privacy Act statement to the individual (see Appendix D to Enclosure E).

(c) Alleged perpetrator interview (if available). The INV must coordinate with the appropriate unit command to ensure the alleged perpetrator is handed off to a unit member immediately upon conclusion of the interview (see Enclosure E, paragraph 9). If the INV is an attorney, INV must determine if the alleged perpetrator is represented by counsel. If so, INV must contact counsel to receive authorization to speak to the alleged perpetrator. If INV receives such authorization or if alleged perpetrator is not represented, and if alleged perpetrator is suspected of criminal misconduct, the INV must advise the alleged perpetrator of his or her rights prior to interview. INVs should consult with the State JA to ensure there are no state laws affecting proper rights advisement. In most cases, DA Form 3881 should be used to record that the witness understands his or her rights, and elects to waive those rights and make a statement (see Enclosure E, paragraph 7). INV may use the Forensic Experiential Trauma Interview (FETI) technique, listed in Enclosure D, paragraph 22.a. INV must provide a Privacy Act statement to the individual (see Appendix D to Enclosure E).

(2) On gathering other evidence:

(a) Relevant military records. Records such as letters of reprimand or admonishment, which may indicate a history of propensity to engage in behavior similar to that which was reported.

(b) LE records. Records regarding the incident, or previous incidents involving parties involved in the investigation of a SA. INV must coordinate with State JA to determine how to gather these documents, if desired, according to State law. INV should also request the parties' consent to gather LE records. If the INV needs to subpoena records, contact NGB-JA/OI to determine if a DoD IG subpoena should be sought.

(c) Relevant medical records. Typically, the INV will review medical records only with patient authorization (see Appendix E to Enclosure E.) If the INV needs to subpoena records, contact NGB-JA/OI to determine if a DoD IG subpoena should be sought.

(d) Copies of other documentary evidence. Other documentary evidence may include relevant e-mails, texts, letters, notes, and official military documents. INV should ask witnesses if such relevant documents exist and if copies may be made. Except for witness statements gathered by the INV, the INV will not take possession of original documents. Individuals shall be informed that any acquired records become Federal records, and may be released pursuant to Federal laws.

p. INV returns home and completes travel voucher using DTS.

q. INV writes a memorandum detailing findings using the standards in Enclosure E, paragraphs 10 through 13 and 15, and the template in Appendix F to Enclosure E; and develops an executive summary (see Enclosure E, paragraph 16, and Appendix G to Enclosure E). INV also prepares an investigative file using guidance in Enclosure E, paragraph 17. The executive summary should not include any PII, in particular, victim or other interviewee names. These documents should all be marked "FOUO."

r. INV saves all copies of documents, video, and audio files in the investigative file on the hard drive of the laptop provided by NGB-JA/OI, and creates backup copies of all electronic files on CD or DVD. These disks, as well as the NGB-JA/OI laptop, must be password protected. INV ships the laptop and the rest of the equipment provided by NGB-JA/OI to the Chief, NGB-JA/OI. In a separate shipment, INV sends the hard copy investigative file and CDs/DVDs containing electronic files to the Chief, NGB-JA/OI for review.

s. Chief, NGB-JA/OI reviews memorandum and files for completeness.

t. Once the memorandum, executive summary, and investigative file are approved, the Chief, NGB-JA/OI, provides the hard copy file and electronic files to the State JA. NGB-JA/OI retains a copy of the executive summary.

u. State JA provides a recommendation to TAG using information from the INV memorandum and investigative file. If the report or allegations are substantiated, notify the IG if the alleged perpetrator is an O-4 or above.

v. State JA provides the Chief, NGB-JA/OI with a Notice of Action identifying any personnel action taken in response to an investigation (see Appendix H to Enclosure E.) This document will contain no PII. NGB-JA/OI retains the State JA Notice of Action with the executive summary.

ENCLOSURE D

PROCESS FOR CONDUCTING COMPLEX ADMINISTRATIVE INVESTIGATIONS
INVOLVING REPORTS OF SEXUAL ASSAULT

1. This Enclosure provides instructions for conducting complex administrative investigations to address unrestricted reports of SA not under active investigation by a LE or MCIO. Investigations must demonstrate a sufficient NG nexus and meet specified criteria to warrant NGB-JA/OI inquiry.

a. A sufficient nexus may exist when the relationship between the alleged perpetrator and the victim of a SA report is based upon membership in the NG. Specific criteria include, but are not limited to, federal and state jurisdictional issues that limit LE involvement; service requirements regarding matters reserved for IG; the need for specialized training of the investigating officer; and the desire for an independent investigator to ensure fairness and impartiality during the course of the investigation.

b. At TAG's request, NGB-JA/OI selects an INV.

2. This Enclosure provides guidance to individuals involved in the investigation of these reports and will facilitate a high degree of cooperation and coordination among all organizations involved in the investigation and response. The objectives of this Enclosure are to:

a. Provide a uniform, systematic, and structured approach to the proper investigation of unrestricted SA cases to ensure reports are appropriately addressed and perpetrators are held accountable to the best of the command's ability and authority.

b. Reduce trauma involved in these cases by ensuring professional, responsive, and responsible treatment of victims by NG entities.

c. Prevent future SAs by identifying predatory behaviors and providing information to eliminate NG sexual predators.

3. The list below is an example of the typical process for a SA investigation conducted pursuant to this manual.

a. State JA gathers relevant information to discuss the report with NGB-JA/OI. State JA passes incident facts as reported, to include ranks of individuals involved; where and when incident(s) took place; the status of individuals involved; and whether or not LE was notified. Chief, NGB-JA/OI, if aware of reported SA, may notify State JA.

- b. State JA informs appropriate MCIO of allegation. If the matter concerns a senior official, State JA notifies State IG and the matter is investigated through IG channels IAW references c and d.
- c. If LE is not investigating the incident, State JA requests MCIO investigation in writing and provides a copy of the request and response to NGB-JA/OI. NGB-JA/OI may assist State JA in preparing the request.
- d. If LE or MCIO agree to investigate, State JA follows the investigation for TAG and may coordinate with NGB-JA/OI. If neither LE nor MCIO investigate the allegation, State JA informs NGB-JA/OI.
- e. State JA and NGB-JA/OI discuss whether a sufficient NG nexus exists to justify NGB-JA/OI investigation or whether the matter should be addressed by IG, MEO, or EEO channels.
- f. NGB-JA/OI consults with Chief Counsel to determine if a sufficient NG nexus exists. The Chief Counsel may delegate the authority to authorize investigations to another member of NGB-JA.
- g. If a sufficient NG nexus exists, State JA prepares a request for NGB-JA/OI investigation using the template in Appendix A to Enclosure B.
- h. TAG signs request for NGB-JA/OI investigative assistance and appoints the State POC.
- i. Chief, NGB-JA/OI coordinates with Chief Counsel and potential INVs for selection. INV must coordinate with his or her supervisor prior to accepting duty.
- j. Chief Counsel details INV, using Appendix B to Enclosure B as a template.
- k. Chief, NGB-JA/OI coordinates with G1/A1 and INV's state to obtain travel orders and funding.
- l. INV creates an IP (see Enclosure E, paragraph 5) and presents to NGB-JA/OI for approval. An IP is a living document which should be revised as needed during the course of the investigation.
- m. State POC coordinates with INV, TAG (or designee), and other attendees to ensure availability for Read-In/Out-Brief.
- n. State POC coordinates with INV and NG units to determine victim and witness interview availability; to determine which records need to be available;

and to ensure appropriate office space and equipment is made available. State POC also ensures SAPR VA is available during interview.

o. INV personally contacts victim and/or VA to schedule interview and requests authorization to access medical (see Appendix E to Enclosure E), police, and military records.

p. POC schedules interviews with additional witnesses IAW INV instructions.

q. Before the INV's arrival, the State POC obtains copies of relevant LE, MCIO, medical (see Appendix E to Enclosure E), and military records at the INV's request.

r. INV requests orders and plans travel using DTS.

s. NGB-JA/OI works with State to process orders and ships equipment to JFHQ.

t. INV travels to JFHQ.

(1) INV receives equipment.

(2) INV presents the Read-In IAW Enclosure E, paragraph 6.

(3) INV reviews the IP with State POC and updates IP as necessary.

(4) INV coordinates with State JA and SARC; meets with relevant agencies/departments; and updates IP as necessary.

u. INV travels to site and conducts investigation IAW the IP.

(1) On conducting interviews:

(a) General. INV keeps an electronic file of videotaped interviews and summations, as well as hard-copy summations. Interviews should be conducted at a NG armory, ANG air base, or other safe location. Interviews should not take place at an interviewee's home. INVs should use interviews to determine whether the alleged perpetrator has had previous allegations of SA or previously displayed behavior that indicates a propensity to commit SA. SARC's and SAPR VAs are not considered witnesses, and will not be interviewed without NGB-JA approval. INVs will caution all interviewers not to disclose matters under investigation except with their own legal counsel.

(b) Victim interview. The VA must be available (at the victim's request). INV must inform victim of the investigation's number and provide a

Privacy Act statement (see Appendix D to Enclosure E). INV must use the FETI technique (see sub-paragraphs below). INV should determine if the victim's behavior has changed since the SA. During the interview, the INV will or will not do the following:

(i) Will acknowledge the victim's trauma/pain/difficult situation, e.g., "I know you've been through a very painful ordeal, and I'm sorry you had to experience that."

(ii) Will show empathy to put the victim at ease.

(iii) Will use open-ended questions to allow the victim to tell what happened in his or her own words. For example: "What are you able to tell me about what happened that night?" "What are you able" is a very effective way to phrase questions. Other open-ended phrases include: "Tell me more about," "Help me to understand," "What were your physical/emotional reactions," and "What was the most difficult part of this experience for you?"

(iv) Will ask the victim what they are able to remember about sensory details during the course of the SA (i.e., what victim felt, heard, smelled, etc). This technique activates memories held in several areas of the brain, resulting in a greater number of accurate details.

(v) Will use victims' own language when rephrasing questions, even if victim uses expletives in describing what occurred.

(vi) Will not pre-judge the victim's credibility or truthfulness, including indicating disbelief through tone or body language.

(vii) Will not interrupt the victim. INV must wait until victim has completed an answer at his or her pace before asking follow-up questions.

(viii) Will not ask "who, what, when, where," and especially, "why." Though this information is important, the answers to these fact-specific questions typically lie in areas of the brain that are not active during trauma. Asking these questions may result in a natural reaction of "filling-in the blanks," thereby creating false memories. In particular, asking "why" may sound judgmental and cause the victim to stop communicating. Other open-ended questions should be used to answer basic "who, what, when, where," and "why" questions.

(c) Witness interview. All individuals suspected of criminal misconduct must be advised of their rights before being questioned. INVs should consult with State JA to ensure there are no state laws affecting the proper rights advisement. In most cases, DA Form 3881 should be used to record that the witness understands his or her rights and elects to waive those

rights and make a statement. During the course of an interview, if INV discovers information leading him or her to suspect that the interviewee has violated a provision of the applicable State Code of Military Justice or other criminal law, INV must advise that individual of his or her rights under the Fifth Amendment, or as specified in the applicable state law, as appropriate. Further, INV must suspend questioning when such individuals refuse to make further statements or answer questions based on these rights (see Enclosure E, paragraph 7). INV may use the FETI technique discussed in Enclosure D, paragraph 22.a. If witness becomes a suspected perpetrator in the investigation, INV must coordinate with the appropriate unit command to ensure the individual is handed off to a unit member immediately after the interview (see Appendix E, paragraph 9). INV must provide a Privacy Act statement to the individual (see Appendix D to Enclosure E).

(d) Alleged perpetrator interview. The INV must coordinate with the appropriate unit command to ensure the alleged perpetrator is handed off to a unit member immediately upon conclusion of the interview (see Appendix E, paragraph 9). If the INV is an attorney, INV must determine if the alleged perpetrator is represented by counsel. If so, INV must contact counsel to receive authorization to speak to the alleged perpetrator. If INV receives such authorization or if alleged perpetrator is not represented, and if alleged perpetrator is suspected of criminal misconduct, the INV must advise alleged perpetrator of his or her rights prior to the interview. INVs should consult with State JA to ensure there are no state laws affecting proper rights advisement. DA Form 3881 should be used to record that the witness understands his or her rights, and elects to waive those rights to make a statement (see Enclosure E, paragraph 7). INV may use the FETI technique listed in Enclosure D, paragraph 22.a. INV must provide a Privacy Act statement to the alleged perpetrator (see Appendix D to Enclosure E).

(2) On gathering other evidence:

(a) Relevant military personnel records. Records such as letters of reprimand or admonishment, or previous allegations of SA, which may indicate a history of propensity to engage in behavior similar to that which was reported.

(b) LE records. Records regarding the incident or previous incidents involving parties involved in the investigation of a SA. INV must coordinate with State JA to determine how to gather these documents, if desired, according to State law. INV should also request the parties' consent to gather LE records. If the INV needs to subpoena records, contact NGB-JA/OI to determine if a DoD IG subpoena should be sought.

(c) Relevant medical records. Typically, the INV will review medical records only with patient authorization (see Appendix E to Enclosure E.) If the

INV needs to subpoena records, contact NGB-JA/OI to determine if a DoD IG subpoena should be sought.

(d) Copies of other documentary evidence. Other documentary evidence may include relevant e-mails, texts, letters, notes, and official military documents. INV should ask victim and other interviewees if such relevant documents exist, and if copies may be made. Except for witness statements gathered by the INV, the INV will not take possession of original documents. Individuals shall be informed that any acquired records become Federal records, and may be released pursuant to Federal laws.

(e) Non-documentary physical evidence. The INV will never take possession of non-documentary physical evidence. If an interviewee attempts to hand over such evidence, the INV will record an image of the item without handling it, and contact LE or MCIO to determine if they will secure the evidence. If LE or MCIO declines, INV will ask the interviewee to place the item in a paper bag (not plastic) and retain the item in its present condition in case LE or MCIO request it in the future.

v. INV presents Out-Brief to TAG IAW Enclosure E, paragraph 14.

w. INV returns home and completes travel voucher using DTS.

x. INV writes a memorandum detailing findings using the standards in Enclosure E, paragraphs 10 through 13 and 15, and the template in Appendix F to Enclosure E; and develops an executive summary (see Enclosure E, paragraph 16, and Appendix G to Enclosure E). The memorandum and executive summary must state whether the SA report is substantiated or not. INV must use the DoD definition of SA, found in the glossary of this document. INV also prepares an investigative file using guidance in Enclosure E, paragraph 17. The executive summary should not include any PII, in particular, victim, alleged perpetrator, or other interviewee names. These documents should all be marked "FOUO."

y. INV saves all copies of documents, video, and audio files in the investigative file on the hard drive of the laptop provided by NGB-JA/OI, and creates backup copies of all electronic files on CD or DVD. These disks, as well as the NGB-JA/OI laptop, must be password protected. INV ships the laptop and the rest of the equipment provided by NGB-JA/OI to the Chief, NGB-JA/OI. In a separate shipment, INV sends the hard copy investigative file and CDs/DVDs containing electronic files to the Chief, NGB-JA/OI for review.

z. Chief, NGB-JA/OI reviews the memorandum and files for completeness.

aa. Once the memorandum, executive summary and investigative file are approved, the Chief, NGB-JA/OI provides the hard copy file and electronic files to the State JA. NGB-JA/OI retains a copy of the executive summary.

bb. State JA provides a recommendation to TAG using information from the INV memorandum and investigative file. If the report is substantiated, notify the IG if the alleged perpetrator is an O-4 or above.

cc. State JA provides the Chief, NGB-JA/OI with Notice of Action identifying any personnel action taken in response to an investigation (see Appendix H to Enclosure E). This document will contain no PII. NGB-JA/OI retains State JA Notice of Action with the executive summary file and MCIO investigation request/response.

dd. At LE request, State JA provides investigation information to LE and MCIO.

ENCLOSURE E

INVESTIGATION REQUIREMENTS

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 conducted in FY 2012.

2. Investigation Function. To ascertain and document facts pertaining to the incident or issue. Facts and findings may 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. An investigation conducted pursuant to this manual may be used as the equivalent of an investigation conducted under reference e or its successor publication if appropriate. The file may be redacted. Information gathered in an investigation conducted pursuant to this manual may be referred to a State Equal Employment Manager for processing under the appropriate MEO or EEO process if appropriate. The file may be redacted.

3. Investigator Function. INVs analyze facts, determine whether reports are substantiated or not, and present findings to requesting TAGs. INVs are not considered criminal investigators or LE personnel.

4. Attorney as INV. If the INV is an attorney, he or she must determine if an interviewee is represented by counsel in the matter being investigated. If so, INV must contact counsel to receive authorization to speak to his or her client. If Attorney INVs have questions regarding this obligation, they should consult their State Bar and service Judge Advocate General rules to ensure they are in compliance.

5. IP. A form of INV notes, without a set format, that must be reviewed by NGB-JA/OI after INV is detailed but before INV travels. The IP should change throughout the course of the investigation, particularly in regard to subparagraph d. IP modification does not require NGB-JA/OI approval, but assistance is available during the course of the investigation. The IP will not be made part of the investigative file and will be disposed of in the same manner as other INV notes. IP should include:

- a. Identification of reported violation, offense, or incident.
- b. Identification of potential victims, alleged perpetrators, and witnesses.

c. Jurisdictional information, including military status and where the alleged perpetrators, victims, and/or witnesses were when the alleged events occurred.

d. Conclusions drawn from evidence analysis. In SA investigations, this includes evidence-based conclusions on alleged perpetrators' possible modus operandi.

e. Descriptions of the documentary, testimonial, and statistical evidence required to complete the investigation, and the best sources and means of obtaining each type.

f. Anticipated sequence of interviews, and other case activities.

g. Anticipated timeframes to obtain and analyze evidence.

h. Statements of provided or potential explanations or defenses, and descriptions of the evidence likely to challenge or support their validity.

i. 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.

6. Read-In. For SA investigations conducted pursuant to Enclosure D, INV will conduct a Read-In with the TAG (or designee), State CoS, State SARC, State JA, State POC, and as needed, PA upon arrival at JFHQ. Read-In will include:

a. A brief summary of the incident, including the "who, what, when, where, why," and "how," as reported.

b. Identification of potential victims, alleged perpetrators, and witnesses.

c. Jurisdictional information, including military status and where the alleged perpetrators, victims, and/or witnesses were when the alleged events occurred.

d. Anticipated sequence of interviews, and other case activities.

e. Anticipated timeframes to obtain and analyze evidence.

f. 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.

7. Rights advisement. All individuals suspected of criminal misconduct must be advised of their rights before being questioned. INVs should consult with State JA to ensure there are no state laws affecting proper rights advisement. In most cases, DA Form 3881 should be used to record that the witness understands his or her rights, and elects to waive those rights and make a statement. When an INV suspects the witness' involvement in criminal activity only after the interview has started and incriminating evidence is uncovered, the INV must immediately advise that individual of his or her rights under the Fifth Amendment, or as specified in the applicable State law. When a witness invokes the right to remain silent, questioning must cease, but the INV may re-approach the witness at a later time. When a witness invokes the right to counsel, questioning must cease, but the witness may continue speaking. Questioning can resume in the presence of the witness' attorney. In either case, no negative inference can be made against an individual who elects to assert Federal rights regarding self-incrimination pursuant to references f and g, or State rights regarding self-incrimination. However, these rights apply only to information that might be used to incriminate the witness and cannot be invoked to avoid questioning on matters that do not involve violations of criminal law. In addition, the rights can only be asserted by an individual who would be accused of the crime, and cannot be asserted to avoid incriminating other individuals. Any person refusing to provide information must specifically state that the refusal is based on the protection afforded by the Fifth Amendment, Article 31 (reference f), or applicable State law. If the witness refuses based on the protections of Article 31 or the Fifth Amendment, the INV will consult with the State JA to determine whether the reason for refusal is well taken; if not, the witness may be ordered to answer. INVs will not compel witnesses to incriminate themselves through questioning, or to make statements or produce evidence immaterial to the issue that might degrade them.

8. Investigations Involving NG technicians or Civilian Employees. INV should determine at the investigation's outset if any NG technicians or union-represented civil service employees are among potential interviewees. NG technicians may be interviewed while on military orders, and treated as a military member; or while in their status as military technicians, pursuant to reference h, and treated as civilians. 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 (i.e., interviews in which the interviewee is not free to leave at will) without approval by NGB-JA. Such personnel must not be given a "Kalkines warning." 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. Should a civilian employee invoke 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 technicians and/or civilian employees, the servicing civilian personnel office and labor counselor must be fully informed regarding INV interactions with employees.

9. Hand-off policy. Acts as a safety net for alleged perpetrators under investigation, as reference d warns that they may be at a greater risk of committing suicide. Before interviewing an alleged perpetrator, the INV should advise the commander to allow a representative to be appointed. Upon the interview's conclusion, INVs will immediately "hand off" the interviewee to the commander or designated representative. If an INV believes another witness needs to be handed-off, the INV should state any concerns about the individual's personal safety (e.g., individual was emotionally distraught, etc.), and hand them off to a command representative (victims will be handed-off to VA).

10. Standard of proof. For complex administrative investigations conducted pursuant to this manual, the standard of proof is the "preponderance of evidence" (see Glossary).

11. Findings. Clear and concise statements of fact that can be readily deduced from evidence gathered in the investigation. Findings are directly established by evidence in the record or are an INV's conclusion of fact. Negative findings (e.g., that the evidence does not establish a fact) are often appropriate. The number and nature of required findings depend on the investigation's purpose. Investigations conducted pursuant to Enclosure D of this manual must use the DoD definition of SA.

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

13. Form. Findings will be stated in a form that clearly reflects the relevant facts established by evidence, analysis of the facts using an INV's knowledge and training, and an INV's conclusions. For a single issue, findings are usually stated in chronological order. For several distinct issues, findings are usually stated separately for each issue and chronologically within issues. Each finding must list the evidence that supports that finding.

14. Out-Brief. The INV Out-Brief to the TAG or ATAG will include:

- a. A review of facts as initially reported.
- b. A summary of the victim interview.
- c. A summary of the other interviews, as necessary.

d. A determination of whether the reported SA is substantiated or not, if the determination has been made at that time.

e. A discussion of factors which may have led to the incident, including community and command climate.

f. Any other relevant information the INV chooses to include, e.g., the level of LE/MCIO/command cooperation.

15. INVs Memorandum Detailing Findings. The INV memorandum, with PII, will be completed in the format found in Appendix F to Enclosure E, and will include the following:

a. A background statement detailing the report that led to investigation, as set forth in the Request for Investigative Support.

b. A summary of the investigation (who, what, when, where, why, and how).

c. A statement detailing relevant and material facts, primarily from victim and witness interviews.

d. An analysis of facts, and the relationships among evidence, to include an analysis of victim and other interviewee credibility. In SA cases, this includes INV knowledge regarding how sexual predators act and how trauma victims react to traumatic experiences.

e. A statement that the allegation is either substantiated or not substantiated. The INV must use the DoD definition of SA.

f. A comment section explaining any challenges the INV faced in completing the investigation, including delays. Identify incidents and the factors which may have led to resistance, including community and command environment. Document the role and participation of any assisting INV.

16. Executive Summary. A relevant and concise one-page document designed to inform State NG and NGB leaders of the investigation and its outcome, without using PII.

17. Investigative File. Includes the "Investigators Memorandum Detailing Findings," with PII; and an executive summary, without PII. All pages should be marked sequentially; on original witness-signed documents, page numbers should be marked using methods that will not damage document use. May include copies or photos of original evidence, identifying where the original items are located. The investigative file must be organized as follows:

- a. TAB 1. “Investigators Memorandum Detailing Findings,” including as attachments, the TAG Request for Investigative Support, Chief Counsel’s Investigator Detail Memorandum, and INV’s executive summary.
- b. TAB 2. Victim interview, including original summation and supporting evidence provided by or regarding victim. Separate evidence with sub-TABs, starting with summation of victim interview at TAB 4.a. If none, insert page stating, “No victim interview.” Each additional piece of evidence should have a separate sub-TAB, starting at 4.b. If multiple victims, start first victim at TAB 4.a., with summation of first victim interview at TAB 4.a.1. Evidence from second victim would begin at TAB 4.b., with interview summation at TAB 4.b.1. Evidence from additional victims should be numbers accordingly.
- c. TAB 3. Witness interviews, including original summations, signed rights advisements, and supporting evidence provided by or regarding witness. For multiple witnesses a separate sub-TAB, starting with TAB 5.a., should be created for each individual, with the first interview summation at TAB 5.a.1. The first piece of supporting evidence from the first witness should be marked as TAB 5.a.2. Evidence from additional victims should be numbered accordingly. If no witness interviews, insert page stating, “No witness interviews or evidence.”
- d. TAB 4. Alleged perpetrator interview, including original summation, signed rights advisement (if any), and supporting evidence provided by or regarding alleged perpetrator. Separate evidence with sub-TABs, starting with summation of alleged perpetrator interview at TAB 6.a. Each additional piece of evidence should have a separate sub-TAB, starting at 6.b. For multiple alleged perpetrators, separate sub-TABs, starting with TAB 6.a., should be created for each individual. If no interview of alleged perpetrator, insert page stating, “No alleged perpetrator interview,” and a MFR indicating why. If alleged perpetrator was represented by counsel, include written authorization or denial from the alleged perpetrator’s attorney, or Memorandum for Record (MFR) recording approval or denial to interview.
- e. TAB 5. LE records. If none, insert page stating, “No LE Records.”
- f. TAB 6. Victim medical records and HIPAA authorization (see Appendix E to Enclosure E). If none, insert page stating, “No medical records.”
- g. TAB 7. Copies of additional documentary evidence which do not logically fit under one of the other TABs. Organize evidence by separate sub-TABs, starting with TAB 7.a.

APPENDIX A TO ENCLOSURE E

SAMPLE COMMANDER'S CHECKLIST: ADDRESSING UNRESTRICTED
REPORTS OF SA

This checklist provides instructions for National Guard (NG) commanders who receive unrestricted reports of sexual assault (SA). An unrestricted report of SA is the process that an individual uses to disclose, without requesting confidentiality or Restricted Reporting, that he or she is the victim of a SA. A report may be made by a victim, witness, or an individual who heard about the SA. The safety of the victim is the first concern. Once victim safety is ensured, commanders or their designees must immediately notify the appropriate civilian law enforcement (LE) or Military Criminal Investigative Organization (MCIO), Army Criminal Investigations Division (CID) or Air Force Office of Special Investigation (OSI) organization. Commanders must also contact the Sexual Assault Response Coordinator (SARC) located at the Joint Force Headquarters State (JFHQ). It is imperative that commanders do not hinder a criminal investigation by investigating the matter themselves. Commanders must not perform informal inquiries, including questioning victims, alleged perpetrators, or other witnesses about the incident. Questions asked of the victim should be limited to what is necessary to deal with his or her immediate health care needs.

	Make sure victim is safe. Do not question him or her about the incident, but get enough information to address immediate health care needs.
	Ask the victim if he or she needs to go to hospital. If SA took place within the past 30 days or if he or she has any physical ailments connected to the SA, encourage him or her to do so. If necessary, transport the victim to hospital.
	Immediately contact the SARC at JFHQ. The National Guard Bureau (NGB) Sexual Assault Prevention and Response (SAPR) Phone # is 571-215-9392.
	Contact the appropriate LE and or military law enforcement. If either the 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. If neither the victim nor reported perpetrator is on Title 10 orders and if the reported assault did not take place on a federal installation, contact LE.
	If possible, secure the scene of the SA and restrict the entrance area until LE/MCIO arrives.
	If possible, segregate the reported perpetrator(s) and witnesses who are on orders until LE or MCIO arrive. The perpetrator(s) should continue working, but shouldn't be allowed to speak to each other or use cellular telephones or other portable communication devices until LE or MCIO arrives. Order them not to erase anything from their cellular telephones or other portable communication devices. Don't allow them to discuss the matter with anyone.
	Contact the State Active Guard Reserve (AGR) or NG Technician Judge Advocate (JA) immediately to inform them of the reported SA.
	Cooperate with LE and MCIO and ensure supervisors provide full support to the investigation, consistent with law. Do not pressure or force alleged perpetrator(s) to speak with or provide materials or statements to investigators.
	Do not publicize the SA and discourage others from discussing the incident openly, as it could re-victimize the victim and prevent future victims from reporting SA.
	If contacted by the press regarding a reported SA, refer them to Public Affairs at JFHQ.

APPENDIX B TO ENCLOSURE E

SAMPLE INVESTIGATOR CHECKLIST: NON-SA INVESTIGATION

	The National Guard Bureau Office of Complex Administrative Investigation under the Chief Counsel (NGB-JA/OI) contacts an Investigator (INV) to determine availability.
	INV coordinates with supervisor for approval for temporary duty (TDY) to conduct investigation.
	NGB-JA/OI details the INV to conduct an investigation. Investigation will be the INVs primary responsibility.
	INV prepares an Investigative Plan (IP) (Enclosure E, paragraph 5), and presents it to NGB-JA/OI for approval.
	INV contacts State National Guard (NG) point of contact (POC) to coordinate travel, ensure command and witnesses availability to determine which records need to be available when INV arrives, and to arrange for an appropriate office space and equipment.
	INV schedules witness interviews, and requests authorization to access necessary medical (see Appendix E-5), LE, and military records.
	POC obtains necessary medical (see Appendix E-5), LE, and military records. These records should be available by the time the INV arrives.
	INV requests orders and schedules travel via the Defense Travel System (DTS), and travels to investigation site.
	INV meets with State NG POC, obtains any additional records, and presents IP. INV also consults with State JA to determine if there are any state laws affecting proper rights advisement.
	INV conducts interviews with witnesses in an efficient, logical sequence. If INV is an attorney and there is legal counsel for an alleged perpetrator, INV must obtain his or her authorization to interview alleged perpetrator. If not represented, INV (Attorney and non-attorney) must advise alleged perpetrator and any other witness, if INV suspects criminal misconduct, of their rights (Enclosure E, paragraph 7, DA Form 3881)). INV video records all interviews and prepares written summaries.
	INV requests copies of all relevant documents, text messages, e-mails, texts, letters, notes, and official military documents. INV should ask witnesses if such relevant documents exist, and, if so, should make copies.
	After initial round of interviews, INV determines outstanding factual issues and updates IP.
	INV conducts additional initial witness interviews and follow-up interviews to resolve factual disputes.
	INV determines if there are outstanding factual issues, updates IP, and gathers additional evidence as necessary.
	INV returns to home station and completes travel voucher in DTS.
	INV writes Memorandum Detailing Findings in accordance with (IAW) Enclosure E, paragraph 15 and Appendix F to Enclosure E and executive summary (no PII) IAW Enclosure E, paragraph 16 and Appendix G to Enclosure E, and prepares Investigative File IAW Enclosure E, paragraph 17.
	INV creates electronic files on NGB-JA/OI laptop and copies on CD/DVD and ships IAW Enclosure C, paragraph 2.r to NGB-JA/OI for review.

APPENDIX C TO ENCLOSURE E

SAMPLE INVESTIGATOR CHECKLIST: SA INVESTIGATION

	The National Guard Bureau Office of Complex Administrative Investigations under the Chief Counsel (NGB-JA/OI) contacts investigator (INV) to determine availability.
	INV coordinates with supervisor to approve temporary duty (TDY) to conduct investigation.
	Chief Counsel details INV to conduct investigation.
	INV prepares initial IP (Enclosure E, paragraph 5) and presents to NGB-JA/OI for approval.
	INV contacts State National Guard (NG) point of contact (POC) prior to investigation to coordinate travel; to brief The Adjutants General (TAG) (or designee) and attendees of Read-In and Out-Brief; to ensure command and witnesses are available; to determine which records are needed; and to ensure appropriate office space and equipment are available.
	INV contacts victim(s) and Victim Advocate (VA) to schedule interview(s) and requests authorization to access relevant medical (see Appendix E to Enclosure E), civilian law enforcement (LE), and military records.
	INV contacts witnesses to schedule interviews and requests authorization to access relevant medical (see Appendix E to Enclosure E), LE, and military records.
	Pursuant to INV direction, the POC obtains relevant medical (see Appendix E to Enclosure E), LE, and military records. These records should be available when the INV arrives.
	INV requests orders and schedules travel via the Defense Travel System (DTS).
	INV travels to Joint Force Headquarters (JFHQ) and presents Read-In in accordance with (IAW) Enclosure E, paragraph 6.
	INV meets with State NG POC, obtains any additional records, and presents Investigative Plan (IP). INV also meets with Sexual Assault Response Coordinator (SARC) and other JFHQ staff members as necessary.
	INV consults with State Judge Advocate (JA) to determine if there are any state laws affecting investigation, including proper rights advisement.
	INV travels to the investigation site and interviews victim using the Forensic Experiential Trauma Interview (FETI) technique. VA should be allowed to attend. Interview should be recorded on video and a written summary of interview will be completed. INV must inform victim of Investigation number.
	In SA investigations, INV amends IP to comment on possible modus operandi of alleged perpetrator based on details from the victim(s) interview and other evidence. INV should consider the possible modus operandi when interviewing the alleged perpetrator(s) and other witnesses to determine if alleged perpetrator(s) has engaged in similar behavior in the past or if there is evidence of relevant prior misconduct, offenses, or convictions.
	INV conducts interviews with witnesses in the most efficient and logical manner and sequence. Use FETI technique if possible. If the alleged perpetrator(s) is represented by an attorney, the attorney INV must obtain authorization to interview the alleged perpetrator from his or her counsel. INV (attorney and non-attorney) must advise alleged perpetrator and any other witnesses INV suspects of criminal misconduct. INV video records all interviews and prepares written summaries.
	INV requests copies of all relevant documents, text messages, e-mails, texts, letters, notes, and official military documents. INV should ask witnesses if relevant documents exist, and, if so, make copies of the originals.
	If the interviewer discovers credible evidence that a crime is in the process of being committed or is about to be committed, that poses a significant threat to the health and safety of any service member or civilian, notify the State NG POC and immediately report to MCIO and/or

	LE (follow this step where necessary throughout investigation).
	After the initial round of interviews, the INV will determine the outstanding factual issues and update the IP.
	INV conducts additional witness interviews to resolve factual disputes, and gathers additional evidence as necessary.
	Once INV determines there are no additional facts to be gathered, INV prepares and presents Out-Brief to TAG IAW Enclosure E, paragraph 14.
	INV travels home and completes travel voucher in DTS.
	INV writes Memorandum Detailing Findings in accordance with (IAW) Enclosure E, paragraph 15 and Appendix F to Enclosure E and executive summary (no PII) IAW Enclosure E, paragraph 16 and Appendix G to Enclosure E, and prepares the Investigative File IAW Enclosure E, paragraph 17.
	INV creates electronic files on a NGB-JA/OI laptop and copies on CD/DVD and ships IAW Enclosure D, paragraph 3.y to NGB-JA/OI for review.

APPENDIX D TO ENCLOSURE E

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 determine and present facts, and findings surrounding allegations or complaints, including allegations of sexual assault, against Army or Air National Guard personnel and/or activities to the State Adjutant General or other appropriate 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.

Routine Uses: 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)

APPENDIX E TO ENCLOSURE E

SAMPLE HIPAA AUTHORIZATION FORM

Hospital/Medical Provider Name
Hospital/Medical Provider Address
Patient Name
Patient Address
Patient Date of Birth

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/OI) 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.

(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.)

This authorization shall expire on _____ (MM/DD/YY).

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.

Signature of Patient or Patient's Personal Representative Date of Signature

Personal Representative's Relationship/Capacity to Patient

Printed Name, Address & Telephone Number of Personal Representative

APPENDIX F TO ENCLOSURE E

SAMPLE INVESTIGATOR MEMORANDUM DETAILING FINDINGS

(NGB-JA Letterhead)

OFFICE SYMBOL

DATE

MEMORANDUM FOR: *(The Adjutant General of the State of XXXXXXXXXX)*

SUBJECT: Findings from Investigation Number XX#### Performed Pursuant to CNGBM 0400.01, "Chief, National Guard Bureau Office of Complex Administrative Investigations"

1. References:

- a. Investigator Detail Memorandum, *dated XX XXXX XXXX*
- b. Request for Investigator Pursuant to CNGBM 0400.01, "Chief, National Guard Bureau Office of Complex Administrative Investigations"
- c. CNGBM 0400.01, "Chief, National Guard Bureau Office of Complex Administrative Investigations"

2. Background: On *[date]* you *[name and title of the TAG]* requested an investigation be conducted pursuant to CNGBM 0400.01. The purpose of the investigation was to determine the facts and circumstances surrounding the *[purpose of the investigation as set forth in the Request for Investigative Support]*. Additionally, I was charged with providing an analysis of those facts and circumstances to determine if the report is either substantiated or unsubstantiated by a preponderance of the evidence.

3. Summary: *[BLUF - a single, clear statement of findings of the investigation; should answer the commander's question "What happened?" WHO, WHAT, WHERE, WHEN, and WHY?]*

4. Statement of Relevant & Material Facts: *[Each fact should cite the exhibit from which it appeared. Most of this information will come from interviews with the victim, the alleged perpetrator, and witnesses. Should not include opinions; this section is for facts only. Generally, the facts should be listed in chronological order. All relevant and material facts should be included. Exhibits should be labeled alphabetically.]*

- a. Victim Interview_____ [Enclosure ()]
- b. Alleged perpetrator (if conducted)_____ [Enclosure ()]
- c. Witness 1 Interview_____ [Enclosure ()]
- d. Witness 2 Interview_____ [Enclosure ()]

5. Analysis: *In this section, the INV should include how the different exhibits relate to each other, and how the fact either lends credence to the report or not. INV should make determinations regarding the credibility of the victim, witness, and alleged perpetrator, but ensure those conclusions are supported by the facts and by INV knowledge and training. For SA investigations, the INV should use his/her knowledge of how sexual predators act and how trauma victims react to traumatic events.*

6. Findings: **After carefully considering the evidence, I find the report of /allegation/ is/is not substantiated by the preponderance of the evidence** (sentence should be bold). My finding is based upon: *[Each sub-paragraph below should reach one conclusion supporting the decision to substantiate or not substantiate and must be based upon the evidence.]*

- a. _____ [Enclosure ()].
b. _____ [Enclosure ()].

7. Investigators Comments: *[Provides an explanation of any unusual challenges INV faced in completing investigation. INV should identify any resistance received from LE, command, or other entities in this section. INV should also discuss factors which may have led to the incident, including community and command environment, as well as any additional information necessary for a complete understanding of the investigation. Finally, INV should identify delays, extensions requested and granted, difficulties, irregularities, or other problems encountered (e.g. absence of material witness, difficulty in obtaining certain resources, tangible evidence) in completing the investigation. If additional INVs assisted in the investigation, document their role/participation.]*

8. This document is a Federal record and must be maintained in accordance with applicable DoD, Army, or Air Force records retention policies and procedures. This record is also subject to the Privacy Act of 1974 and will be handled accordingly.

9. The point of contact for this memorandum is the undersigned at DSN NUMBER, and bestinvestigator@us.army.mil.

[insert number] Enclosures

1. Request for Investigative Support
2. Investigator Detail Memorandum
3. Executive Summary

BEST INVESTIGATOR
CPT, IN

FOR OFFICIAL USE ONLY

APPENDIX G TO ENCLOSURE E

SAMPLE INVESTIGATOR'S EXECUTIVE SUMMARY

(Appropriate letterhead)

OFFICE SYMBOL

DATE

MEMORANDUM FOR: *(The Adjutant General of the State of XXXXXXXXXX)*

SUBJECT: Executive Summary of Investigation Number XX#### Performed Pursuant to CNGBM 0400.01, "Chief, National Guard Bureau Office of Complex Administrative Investigations"

1. I conducted an investigation into a reported Sexual Assault, investigation number XX####, in accordance with the procedures in CNGBM 0400.01. A detailed explanation of my findings is contained in the report of investigation to which this executive summary is attached.

2. **I determined the report of sexual assault *was/was not* substantiated.** In my investigation, I interviewed ## witnesses, including the victim **(Do not identify the victim, alleged perpetrator, or any witnesses on this document. It must not contain any PII.)** I *did/did not* interview the alleged perpetrator. *Provide a brief amount (1-3 sentences) additional information regarding your decisions to either substantiate or not, including your perceived credibility of the victim, alleged perpetrator (if interviewed), and witnesses, including providing examples of corroborating/contradictory evidence you found most compelling, without revealing PII.*

3. This document is a Federal record and must be maintained in accordance with applicable DoD, Army or Air Force records retention policies and procedures. This record is also subject to the Privacy Act of 1974 and will be handled accordingly.

4. The point of contact for this memorandum is the undersigned at DSN NUMBER, and *bestinvestigator@us.army.mil*. My POC in State JA for this investigation was *XXXXXXXXXXXXXXXXXXXX* at *telephone number and e-mail address*.

Investigator Signature Block

FOR OFFICIAL USE ONLY

APPENDIX H TO ENCLOSURE E

SAMPLE STATE JA NOTICE OF ACTION

(Appropriate letterhead)

OFFICE SYMBOL

DATE

MEMORANDUM FOR: NGB-JA/OI

SUBJECT: Notice of Action Taken In Response to Findings from Investigation Number XX####,

1. *INV rank and name* conducted an investigation into a reported *Sexual Assault or other incident*, investigation number *XX####*, IAW the procedures in CNGBM 0400.01. The executive summary from that investigation is attached.

2. After reviewing the investigator's report and file, the Adjutant General of the State of *XXXXXXXXXX*, *TAG Rank and Name*, has decided to *take the following actions/take no action*;

a. Action 1 (conduct a discharge board?) on one soldier. (Do not include any personally identifiable information);

b. Action 2, (conduct a discharge board?) on one airman. (Do not include any personally identifiable information);

3. The point of contact for this memorandum is the undersigned at DSN *NUMBER*, and *StateJA@us.army.mil*.

State JA Signature Block

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ENCLOSURE F

NOTIONAL SEXUAL ASSUALT REPORT VIGNETTES

Disclaimer: Vignettes are provided for the instructional purpose of teaching how to determine whether a report of SA has a sufficient NG nexus sufficient to be investigated by NGB-JA/OI. 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) 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 broke up, the Executive Officer, Captain (CPT) Hook, offered to walk Staff Sergeant (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 lay 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 her 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 is reluctant to come to drill even though it has been 26 days since AT. On Saturday of the first drill period after AT, 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 with the SARC.

This SA described in this scenario would not be appropriate for investigation by NGB-JA/OI; 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/OI 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/OI investigation. See scenario B.

Scenario B:

Same fact pattern as Scenario A but SSG Doe files an unrestricted report. This SA described in this scenario may be appropriate for investigation by NGB-JA/OI. It was received as an unrestricted report and both the victim and the alleged perpetrator are members of the NG. Further, this incident occurred while both parties were on Title 32 AT orders. This incident should immediately be reported to both LE and to the appropriate MCIO. If either LE

or an MCIO conduct a complete investigation into this matter, NGB-JA/OI will not investigate.

Scenario C:

Master Sergeant (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 Specialist (SPC) Slacker. SPC Slacker told CPT New he went to a party at MSG Troops' 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 didn't wake up until that 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 LE and CID. After a preliminary inquiry, LE refused to investigate the matter, saying it was "a guard thing." CID also declined to investigate because the incident occurred when neither the victim nor the alleged perpetrator were in an active status or were performing inactive duty training IAW reference e, paragraph 2.a.(2).

This SA described in this scenario would be appropriate for investigation by NGB-JA/OI. It was received as an unrestricted report and both the 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. Additionally, their relationship is clearly based upon their membership in the NG. Since neither LE nor an MCIO are conducting an investigation into this matter, NGB-JA/OI may investigate.

Scenario D:

Same fact pattern as Scenario D but MSG Troop's civilian brother is the perpetrator. This SA described in this scenario may still be appropriate for investigation by NGB-JA/OI. It was received as an unrestricted report and neither LE nor an MCIO are conducting an investigation into the matter. Even though the alleged perpetrator is not with the NG, the victim was at the party because it was drill weekend (result would not change if occurred during AT rather than drill weekend), the host of the party is an 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 Troops brother, TAG may request an investigation to determine if the unit has alcohol abuse issues and "taking care of the Guard family" 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 Troops 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, but never on the same weekend. Their units have never performed AT together. SSG Tank and MSG Rifle went to High School together and have known each other for over 20 years. Earlier in the month, two weeks before SSG Tanks drill weekend and three weeks before MSG Rifle's, 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 doesn't remember what happened next, but 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 LE, who took a report but declined to investigate due to lack of physical evidence.

This SA described in this scenario may not be appropriate for investigation by NGB-JA/OI; while it was received as an unrestricted report, the parties date and relationship have little nexus to the NG. If the incident would have happened during AT or during a drill weekend, the nexus would be stronger. It would be stronger still if both parties were drilling or at AT. Finally, if the parties were in the same unit or if the NG was substantially related to their relationship, then this scenario might be appropriate for investigation by NGB-JA/OI.

Scenario F :

CPT Morgan was performing AT 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 wouldn't investigate because Ms. Local had made "several BS rape allegations in the past."

This SA described in this scenario may be appropriate for investigation by NGB-JA/OI; a militarily unaffiliated civilian can't file a restricted SA report and neither LE nor an MCIO are conducting an investigation into the matter. While the victim was not a member of the NG, CPT Morgan and Mr. Civvy would not have been at the bar together if they hadn't been working together for the NG,

so there is some nexus to the NG. If CPT Morgan and Mr. Civvy had not been working together just prior to the incident, their drinking together would have little to nothing to do with their NG affiliation, thus the incident would have less 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 LE, who took a statement but told Mr. Big they wouldn't 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/OI. While it is not being investigated by LE, CPT Morgan's civilian employment and his relationship with Ms. Queue have little nexus to the NG. If there were other NG members drinking with CPT Morgan, the nexus would be stronger and this scenario might be appropriate for investigation by NGB-JA/OI.

ENCLOSURE G

PART I. REFERENCES

- a. CNGB Instruction 0400.01, 30 July 2012, "Chief, National Guard Bureau, Office of Complex Administrative Investigations"
- b. Deputy Secretary of Defense Directive Type Memorandum 11-062, 11 June 2012, "Document Retention in Cases of Restricted and Unrestricted Reports of Sexual Assault"
- c. Army Regulation 20-1, 29 November 2010, "Inspector General Activities and Procedures"
- d. Air Force Instruction 90-301, 23 August 2011, "Inspector General Complaints Resolution"
- e. National Guard Regulation 600-22, 30 March 2011, National Guard Military Discrimination Complaint System.
- f. Article 31, Uniformed Code of Military Justice
- g. Fifth Amendment to the United States Constitution
- h. 32 United States Code (U.S.C.) § 709
- i. 10 U.S.C. § 10502
- j. DoD Directive 6495.01, 23 January 2012, "Sexual Assault Prevention and Response Program"
- k. DoD "Blanket Routine Uses" http://dpclo.defense.gov/privacy/SORNs/blanket_routine_uses.html
- l. 32 U.S.C. § 316, 502, 503, 504, or 505

PART II. RELATED

- m. 10 U.S.C. § 12301(d)
- n. 32 U.S.C.
- o. DoD Directive 5105.77, 21 May 2008, "National Guard Bureau (NGB)"

GLOSSARY

PART I. ABBREVIATIONS AND 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 National Guard Bureau
CNGBI	Chief National Guard Bureau Instruction
CNGBM	Chief National Guard Bureau Manual
CoS	Chief of Staff
CPT	Captain
DoD	Department of Defense
DoDD	Department of Defense Directive
DoDI	Department of Defense Instruction
DTS	Defense Travel System
EEO	Equal Employment Opportunity
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
JFHQ	Joint Forces Headquarters
LE	Civilian Law Enforcement
MCIO	Military Criminal Investigative Organization (CID, OSI)
M-Day	Traditional National Guardsman under Title 32, U.S.C.
MEO	Military Equal Opportunity
MFR	Memorandum for Record
MSG	Master Sergeant
NCO	Non-Commissioned Officer
NG	National Guard
NGB	National Guard Bureau
NGB-JA	Office of the Chief Counsel, National Guard Bureau
NGB-JA/OI	National Guard Bureau, Office of Complex Administrative Investigations
NGB-J1	National Guard Bureau Manpower and Personnel Directorate
OSI	Air Force Office of Special Investigations
PA	Public Affairs

PII	Personally Identifiable Information
POC	Point of Contact
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
SPC	Specialist
TAG	The Adjutant General
TDY	Temporary Duty
TJAG	The Judge Advocate General
VA	Victim Advocate

PART II. DEFINITIONS

Forensic Experiential Trauma Interview -- Interview technique taught by Army CID to obtain psycho-physiological evidence from different areas of the brain, which can help re-create a traumatic event from a victim's perspective.

Full-Time National Guard Duty -- Training or other duty, other than inactive duty, performed by a member of the ARNG of the United States or the ANG of the United States in the members' status as a member of the NG of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia pursuant to reference 1, for which the member is entitled to pay from the U.S. or for which the member has waived pay from the U.S.

"Kalkines Warning" --Type of notice to Federal sector civilian employee which should never be given in pursuant to an investigation under this manual, unless approved by NGB-JA. In a Kalkines warning, the employee is told that (1) he or she is subject to discharge for not answering and (2) statements he or she makes (and the information gained as a result of these statements) **cannot** be used against him or her in criminal proceedings. Even if an investigator does not actually give *Kalkines* warnings, if the investigator compels the alleged perpetrator to give a statement, the information in the statement (and the information gained as a result of the statement) cannot be used in criminal proceedings.

Modus Operandi -- Method of operating or doing things.

NG Technician -- A federal civilian employee hired under reference n employed and administered by TAG for specified purposes. NG technicians are required to maintain membership in the NG and to wear their uniforms while performing technician duties. As such, technicians, who have many of the

same rights as Title 5 federal employees, are often difficult to distinguish from NG members in a military status.

Nexus -- Connection or link. For reports of SA, a sufficient nexus may exist when the relationship between the alleged perpetrator and the victim of a SA report is based upon one or both of their membership in the NG. Factors to consider when determining if a sufficient NG nexus exists include (not an exhaustive list): NG membership of alleged perpetrator and/or victim, status of parties when incident took place (drill weekend/AT or not), and relationship between victim and alleged perpetrator outside of NG. See notional vignettes in Enclosure F.

Personally Identifiable Information (PII) -- Information that can be used to distinguish or trace an individual's identity, such as his or her name, Social Security Number, date and place of birth, mother's maiden name, and biometric records, including any other personal information that is linked or linkable to a specified individual, such as age; military rank; civilian grade; marital status; race; salary; home/office telephone numbers; other demographic, biometric, personnel, medical, and financial information, etc.

Preponderance of Evidence -- Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; i.e., evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence, which does not necessarily mean the greater number of witnesses, but opportunity for knowledge, information possessed, and manner of testifying determines the weight of testimony.

Restricted Reporting -- Reporting option that allows SA victims to confidentially disclose the assault to specified individuals IAW reference e.

SAPR Victim Advocate (VA) -- A person who provides non-clinical crisis intervention, referral, and ongoing non-clinical support to adult sexual assault victims. Support will include providing information on available options and resources to victims. The VA, on behalf of the sexual assault victim, provides liaison with other organizations and agencies on victim care matters.

Senior Official -- In the ANG, a senior official is defined as any active or retired ANG military officer in grades O-7 (brigadier general) select and above, ANG Colonels with a Certificate of Eligibility; and current or former members of the Senior Executive Service (SES) or equivalent. In the ARNG, a senior official is defined as an ARNG general officer and retired general officers, promotable colonels, and SES civilians.

Sexual Assault (SA) -- Intentional sexual contact, characterized by the use of force, threats, intimidation, abuse of authority or when the victim does not or cannot consent. SA includes rape, forcible sodomy and other unwanted sexual contact that is aggravated, abusive, or wrongful (to include unwanted and inappropriate sexual contact), or attempts to commit these acts.

Sexual Assault Prevention and Response Program -- A DoD program for the Military Departments and the DoD components that establishes SAPR policies to be implemented worldwide. The program objective is an environment and military community intolerant of SA.

Sexual Assault Response Coordinator (SARC) -- The single point of contact at an installation or within a geographic area that oversees SA awareness, prevention, and response training; coordinates medical treatment, including emergency care, for victims of SA; and tracks the services provided to a victim of SA 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 truth by proof or competent evidence.

Substantiated Finding -- An allegation will be considered substantiated if INV determines that the preponderance of the credible evidence supports the allegation.

Unrestricted Reporting (of Sexual Assault) -- A process that an individual covered by reference e uses to disclose, without requesting confidentiality or Restricted Reporting, that he or she is the victim of a sexual assault. Under these circumstances, the victim’s report provided to healthcare personnel, the SARC, a SAPR VA, command authorities, or other persons is reported to law enforcement and may be used to initiate an official investigative process.

Unsubstantiated Finding -- A report will be considered unsubstantiated if INV cannot establish the proof of the allegation by a preponderance of the credible evidence. A finding of unsubstantiated does not mean the allegation is a false allegation.

Weingarten rights -- The right of employees to have union representation at investigatory interviews which occur when a supervisor questions an employee to obtain information which 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 of his/her *Weingarten* rights; it is the employee's responsibility to know and request.