



**National Guard Bureau
Office of Complex Investigations
Report of Assessment of the
Vermont National Guard**

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Executive Summary

On November 21, 2019, Brigadier General Gregory C. Knight, the Adjutant General of Vermont, requested assistance from the National Guard Bureau's Office of Complex Investigations (NGB -J A/ OCI) to provide a detailed assessment of the Vermont National Guard's command climate and systems with the end state of improving the Vermont National Guard and ensure the Governor's and his priorities are being implemented.

Specifically, Brigadier General Knight requested that the assessment team:

- a. Review and assess for the past three years any system/process issues with adjudication of misconduct within the Vermont National Guard and the punishment that resulted;
- b. Review and assess any system/process issues with investigation of misconduct performed by the Vermont National Guard consistent with policy and regulation;
- c. Review and assess incidents of discrimination or sexual harassment or violations of Equal Employment Opportunity/Equal Opportunity (EEO/EO) policy within the Vermont National Guard and any action that resulted;
- d. Review and assess incidents of hazing, bullying, maltreatment of subordinates within the Vermont National Guard and action that resulted;
- e. Review and assess the efficacy of the selection, promotion, and placement policies within the Vermont National Guard for both officer and enlisted, AGR, Technician, and Title 5 positions;
- f. Conduct a statewide survey of the Vermont National Guard's culture and climate, including on-site interviews with all major subordinate commands; and
- g. Assess the Vermont National Guard's adherence to and implementation of Department of Defense (DoD) and National Guard Bureau (NGB) policies and procedures under the EEO/EO and Sexual Assault Prevention and Response (SAPR) program.

Synopsis
The National Guard Bureau's Office of Complex Investigations conducted an assessment of the Vermont National Guard. The Assessment Team made findings and recommendations in the areas of EEO/EO; SAPR/sexual harassment; Personnel management, disciplinary actions; command climate/culture, and accountability.

In accordance with Chief, National Guard Bureau Manual (CNGBM) 0400.01A, the Chief Counsel for the National Guard Bureau appointed an NGB-J A/ OCI Assessment Team (hereinafter referred to as "the Team") to conduct the assessment, which occurred from January 10, 2020, until April 30, 2020.¹ The Team was directed to provide assessment findings and recommendations that could be addressed by

¹ The in-person Assessment was essentially paused from March 2020 due to COVID-19-related travel restrictions. However, the Assessment Team continued to conduct remote interviews and left a DEOMI Climate Survey open until April 30, 2020. The Team expected to resume travel and complete additional visits to Vermont in support of the Assessment later in 2020. However, when it became clear that travel would continue to be inadvisable, the Team coordinated with TAG, Vermont, who requested that the Team complete its report based on the information it had gathered through April 30, 2020.

state civilian and military leadership in order to improve the overall health and readiness of the Vermont National Guard.

As requested, the Team conducted a thorough review of all items above and action that resulted. The Team met with key leadership within the Vermont National Guard, and civilian and military members across Vermont's Joint, Army, and Air organizations. Most importantly the Team met with victims, complainants, service members, leaders, advocates, and champions for the programs they represent. This review enabled the Team to holistically evaluate these programs and the command's implementation of these programs leading to the findings and recommendations contained within this report.

Based on TAG's request and the information gathered from the VTNG, the team developed five primary lines of effort (LOE) for the assessment:

- A. Command Support Programs: Sexual Assault Prevention and Response, Sexual Harassment/Assault Response and Prevention;
- B. Command Support Programs: EEO/EO;
- C. Command Climate/Culture: Reprisal; Retaliation & Bullying; and
- D. Personnel Management: Hiring; Promotions & Assignments;
- E. Disciplinary Actions: Misconduct.

These lines of effort are discussed in separate chapters in the following assessment. Each chapter contains sections regarding analysis, findings, and recommendations for each line of effort.

The Team determined that the command climate and culture within the VTNG is generally sound, though there is room for improvement. Many of the issues of misconduct identified by the leadership were confirmed by the Assessment team. There are instances of misconduct and poor treatment of subordinates, which appear to arise primarily from the technician/full-time workforce within both the Army and Air National Guard elements of the VTNG. The team noted a lack of adequate full-time senior Non-Commissioned Officer oversight within the VTNG and the absence of properly functioning equal opportunity and SAPR processes within the VTNG generally.

Summarized Findings and Recommendations

A. Findings

LINE OF EFFORT A: Command Support Programs: Sexual Assault Prevention and Response and Sexual Harassment/Assault Response and Prevention.

Summarized findings.

a. The Vermont National Guard's written policies on sexual assault are generally consistent with current federal law, regulations, and policy; however, they lack specifics to ensure compliance within the major commands of the Vermont National Guard.

b. The Team found examples of optimal victim services on the part of the SARCs; however, ineffective program management strategies and tools hampered optimal SAPR program performance.

c. Historically, the Vermont National Guard Sexual Assault Prevention and Response Program failed to properly report and track sexual assault allegations and case data; but has improved since 2017 to the present time.

d. Case management for unrestricted reports of sexual assault was deficient, mismanaged, and, in certain circumstances, absent; but has improved during the period of the assessment, 2017 to the present.

e. Manpower, Resourcing & Credentialing were reported as deficient for the Vermont National Guard's Sexual Assault Prevention Program, which has contributed to program inefficiencies and diminished performance.

f. The Vermont National Guard SAPR Program is unable to meet the operational demand for the SAPR program as it is currently resourced.

g. The Vermont National Guard does not maintain any memoranda of understanding (MOUs) or memoranda of agreement (MOAs) with community-based resources to enhance prevention or response efforts.

h. The Vermont Army National Guard and Air National Guard SAPR Programs do not coordinate and collaborate effectively for purposes of facilitating state-level program management.

i. The Vermont National Guard collaborates and coordinates with civilian law enforcement organizations prior to conducting (and during) the administrative investigation of sexual assault allegations; however, internal coordination and communication on the status of civilian law enforcement investigations can be improved.

j. Sexual assault reporting knowledge was deficient in certain Army National Guard units.

k. Vermont National Guard service members generally found their sexual assault prevention and response climate to be adequate.

l. The Team found some instances in which the local command did not attend to, let alone prioritize, victims' needs and interests.

m. The Vermont National Guard historically conducted unauthorized command-level investigations into alleged sexual assaults, but has improved since for the period of this assessment, 2017 to 2020 and has properly referred unrestricted reports to appropriate investigatory entities.

n. The full findings for this line of effort can be found at pages 16-35 of the report.

LINE OF EFFORT B: Command Support Programs: EEO/EO.

Summarized findings.

a. The Vermont National Guard's written policies on prevention and response to allegations of illegal discrimination do not reflect current federal law, DoD, EEOC, or National Guard Bureau policies.

b. Vermont National Guard EO/ EEO/ Harassment in the Workplace policies also do not provide adequate protections for complainants.

c. The Vermont National Guard EEO/EO programs complaint resolution process does not comply with NGB Policy.

d. The Vermont National Guard EO/EEO programs lack adequate resources and command emphasis.

e. The Vermont National Guard EEO/EO programs lack fully trained and qualified personnel.

f. The Vermont National Guard's SEEM rating and supervisory scheme inhibits effective communication with senior leadership and units regarding EEO/EO program issues and training.

g. The lack of resourcing and emphasis on the Vermont National Guard's EEO/EO program has impacted the filing and disposition of sexual harassment and hostile work environment complaints.

f. Full findings for this line of effort can be found at pages 41-50 of the report.

LINE OF EFFORT C: Command Climate/Culture: Reprisal; Retaliation & Bullying.

Summarized Findings.

a. While an adequate number of members of the VTNG expressed favorable job satisfaction and trust in leadership, there is a strong perception of favoritism or a "good old boy" network that may erode that trust.

b. Civilian personnel, particularly within the ARNG, expressed broader concerns over the Organizational Effectiveness of the VTNG.

c. While an adequate number of members of the VTNG expressed favorable answers regarding reprisal and retaliation on the DEOMI Survey, interviews and written responses revealed that some junior personnel may fear voicing their leadership concerns over fear of reprisal or retaliation.

d. Further, a significant number of personnel expressed that perceptions of favoritism within the VTNG may stifle meaningful change due to fear of reprisal, retaliation, or marginalization.

e. While the Team assessed that hazing does not appear to be a significant issue within the VTNG, there are a few housekeeping issues that require VTNG senior leader attention.

f. While the Team assessed that bullying does not appear to be a major issue in the VTNG, there are indications that several personnel may feel "bullied" or marginalized as a result of perceived favoritism; for voicing concerns to their leadership; or some combination thereof. These concerns appear to be especially pronounced within ARNG Recruiting and Retention but appear to a lesser degree across the VTNG.

g. Full findings for this line of effort can be found at pages 51-62 of the report.

LINE OF EFFORT D: Personnel Management: Hiring; Promotions; and Assignments.

Summarized Findings.

a. Current VTNG organizational reporting structure and lack of clarity as to responsibilities and expectations at the senior leadership level, especially within the VTARNG, has contributed to friction at the top which has had an overall negative impact on the organization. This has contributed to decision-making that is

primarily concentrated at the lowest levels of the organization and to lack of transparency further contributing to mistrust, disengagement, and low morale at all levels of the organization.

b. Although a significant number of personnel believed that the VTNG has regulations, policies and procedures in place, there was a strong perception that their implementation and enforcement has not been effective; that they are not clearly communicated and understood; and they are not always fairly and consistently applied across the organization.

c. Policies and procedures were generally outdated, existing as draft policies, and in some cases nonexistent, which has led to significant number of personnel not having sufficient clarity of organizational expectations and lacking confidence that policies and procedures are fairly and consistently enforced in the organization.

d. There are differences within the VTNG related to the implementation of internal and external inspection and assessment programs, where the VTANG is effectively participating in these programs, while on the other hand, there was insufficient information to assess the effectiveness of such programs in the VTARNG.

e. The VTNG has unique recruiting and retention challenges that directly impact the management of personnel and the health of the organization; despite these challenges, the organization remains generally disengaged from its recruiting and retention mission.

f. While many VTNG personnel did not express unfairness related to their own selection and promotions, there is a strong perception of personal favoritism or a “good old boy” network-based selections and promotions for leadership positions. There was some indication of unfairness related to position assignments and hiring practices in the VTNG, especially for women.

g. A significant number of personnel in the VTNG expressed that they did not have a clear understanding of the organization’s selection and promotion policies and expressed perceptions of limited opportunities for promotions and progression across the organization.

h. Although enlisted selections and promotions in the VTANG are generally viewed as fair and equitable, failure at the State and Wing level to engage in effective force management has caused stagnation within the senior enlisted ranks.

i. The VTARNG does not currently have an official written publication or policy for its selection and promotion practices which has resulted in lack of transparency and fuels the strong perception across the organization that selections and promotions are based on favoritism.

j. There is a general view in the organization that AGR positions are not always merit-based, and that due to the limited availability of AGR positions, even if advertised, the positions tend to be “pre-filled” by individuals waiting for AGR openings.

k. The Team concluded that VTNG leadership at the JFHQ level is not engaged in the effective implementation of training and readiness across the organization; furthermore, units do not adequately track and report training and readiness efforts, and generally prioritize the day-to-day mission over training implementation.

l. VTNG leadership has failed to set performance expectations and address substandard performance by the full-time staff, especially when it comes to providing support to M-Day personnel, leading to significant friction between full-time and part-time personnel, which has negatively impacted the organization and the effective accomplishment of its mission.

m. A significant number of personnel have the perception that the role of the M-Day soldier has become less of a priority, and that the current culture in the organization emphasizes the full-time mission over the mission of the part-time soldier.

n. Full findings for this line of effort can be found at pages 63-86 of the report.

LINE OF EFFORT E: Disciplinary Actions and Misconduct.

Summarized Findings.

a. The Team assessed that current military legal support does not appear optimal to meet the needs of the VTNG.

b. There is a lack of clarity surrounding acceptable/unacceptable conduct (especially for fraternizations); and a lack of written policies addressing acceptable/unacceptable conduct in the VTNG.

c. The Team assessed that the VTNG suffers from a lack of transparency at all levels of the VTNG regarding the adjudication and disposition of misconduct cases.

d. The VTNG should review and improve training on when Commander Directed Investigations /15-6s are appropriate and how to conduct them more effectively.

e. The VTNG should create a consolidated action tracking system to improve oversight of all adverse administrative actions.

c. Full findings for this line of effort can be found at pages 87-102 of the report.

Recommendations.

1. The team provided five recommendations to improve command support programs in sexual assault (see pages 18-19);

2. The team provided five separate recommendations to improve the supervision and administration of the EEO/EO program (See page 42).

3. The team provided five separate recommendations to improve command climate (see page 52).

4. The team provided fifteen separate recommendations to improve personnel management practices (see pages 64-66).

5. The team provided five separate recommendations to improve administration of discipline to address allegations of misconduct (see pages 89-90) more uniformly.

Despite the issues with program compliance, the overall climate within the Vermont National Guard is positive. With some exceptions, service members generally reported confidence and trust in their immediate leaders, which has resulted in high retention across the force. The Team did not discern any specific adverse effects to the entire enterprise of the Vermont National Guard due to the deficiencies and failures in its programs and systems related to sexual assault, sexual harassment, and other workplace or service-related misconduct.

The Team has three overarching recommendations for the Vermont National Guard which must be implemented across the lines of effort identified: (1) Update or correct all written policies and procedures, protocols and practices to conform with federal law, regulation, and policy; (2) Request a National Guard Bureau staff assistance visit from relevant program offices to facilitate program, system, and relationship updates, corrections, and improvements; and (3) Reinforce program management tools, processes, and services through more deliberate communication and coordination with internal, external, and higher-echelon partners and resources.

I. Background

On November 21, 2019, Brigadier General Gregory C. Knight, the Adjutant General of Vermont, requested assistance from the National Guard Bureau's Office of Complex Investigations (NGB-JA/OCI) to provide a detailed assessment of the Vermont National Guard's command climate and systems.

Specifically, Brigadier General Knight requested that the assessment team:

- a. Review and assess for the past three years any system/process issues with adjudication of misconduct within the Vermont National Guard and the punishment that resulted;
- b. Review and assess any system/process issues with investigation of misconduct performed by the Vermont National Guard consistent with policy and regulation;
- c. Review and assess incidents of discrimination or sexual harassment or violations of Equal Employment Opportunity/Equal Opportunity (EEO/EO) policy within the Vermont National Guard and any action that resulted;
- d. Review and assess incidents of hazing, bullying, maltreatment of subordinates within the Vermont National Guard and action that resulted;
- e. Review and assess the efficacy of the selection, promotion, and placement policies within the Vermont National Guard for both officer and enlisted, AGR, Technician, and Title 5 positions;
- f. Conduct a statewide survey of the Vermont National Guard's culture and climate, including on-site interviews with all major subordinate commands; and

g. Assess the Vermont National Guard's adherence to and implementation of Department of Defense (DoD) and National Guard Bureau (NGB) policies and procedures under the EEO/EO and Sexual Assault Prevention and Response (SAPR) program. Review allegations made by service members of the Vermont National Guard through state and federal lawmakers and officials;

In accordance with Chief, National Guard Bureau Manual (CNGBM) 0400.01A, the Chief Counsel for the National Guard Bureau (NGB) appointed an NGB-JA/OCI Assessment Team (hereinafter referred to as "the Team") to conduct the assessment, which occurred from January 10, 2020, until April 30, 2020. The Team was directed to provide assessment findings and recommendations that could be addressed by state civilian and military leadership to improve the overall health and readiness of the Vermont National Guard.

History of the Vermont National Guard

The Vermont National Guard is led by The Adjutant General, Brigadier General (BG) Gregory C. Knight who was elected by the Vermont Legislature to the position in March 2019. The Adjutant General oversees the administration of and in command of the Vermont Army and Air National Guard units not in a federal active-duty status [i.e., during state active duty or when performing federally funded military duties under the provisions of Title 32 of the U.S. Code]. As such, The Adjutant General is required to comply with federal statutes, defense directives, military service, and National Guard Bureau regulations in the administration of Title 32 forces assigned to the Vermont National Guard. It is important to note that National Guard units federalized under the provisions of Title 10 of the U.S. Code are moved from state command to the Department of Defense and placed under an Army or Air Force command.

The responsibilities of The Adjutant General are established by both State and federal law. Federal law prescribes that each federally recognized state militia (the Army and Air National Guards) shall have an adjutant general who "shall perform the duties prescribed by the law of that jurisdiction" and "make such returns and reports" as the service secretaries may direct.² Vermont statutes prescribe the duties of both the Department of Military Affairs and the Adjutant General.³ The individual responsibilities of The Adjutant General are described in both compulsory and permissive fashion in Vermont statute.

In 2019, the Vermont Legislature added a position of Provost Marshall to the Vermont National Guard.⁴ The position statutorily includes responsibilities regarding response to sexual assault within the Vermont National Guard including: (1) reporting and documenting allegations of sexual assault within the Vermont National Guard; (2) coordinating and communicating with the Vermont National Guard SARC as appropriate; (3) coordinating and communicating with federal, state, and local law enforcement in relation to allegations of sexual assault by a member of the Vermont National Guard; and (4) coordinating with the State's Attorneys and Attorney General in cases related to an alleged sexual assault by a member of the Vermont National Guard.

The Vermont Army National Guard is comprised of approximately 1985 Soldiers, including a headquarters staff in Colchester and four commands located throughout three main communities: the 86th Infantry Brigade Combat Team headquartered in Jericho; a Garrison Support Command

² 32 U.S.C. §314.

³ Vt. Stat. Ann. Tit. 20, §361 and §363.

⁴ Vt. Stat. Ann. Tit. 20, §428.

headquartered in Williston; a Recruiting and Retention Battalion located in Colchester; and the 124th Regional Training Institute, headquartered in Colchester. The Vermont Air National Guard is comprised of approximately 1005 Airmen, including a headquarters staff located in Burlington and one major command: the 158th Fighter Wing located in Burlington, which includes the 229th Cyber Operations Squadron located in Northfield. It is important to note that the footprint of the VTNG spans the entire State, and there are geographically separate units at approximately sixteen locations.

II. Action Plan

In accordance with CNGBM 0400.01A, the Team developed an Action Plan, initial Request for documentation and projected calendar for the Assessment, as directed. The Team's Action Plan included the conduct of a state-wide command climate survey of the Vermont National Guard; collection and analysis of relevant documents; on-site interviews of complainants and subject matter experts (SME) of the Vermont National Guard; and site assessments visits and canvassing of Vermont National Guard service members.

The Team initiated a state-wide climate survey using the Defense Equal Opportunity Management Institute (DEOMI) survey instrument.⁵ At the request of the Team, The Adjutant General promoted participation in the DEOMI survey. The Chief of Staff and subordinate commanders encouraged service member and civilian employee participation in the survey as well. At the outset of the survey, and periodically thereafter, the Team informed the Vermont National Guard members that the survey would be completely anonymous, and no attempt would be made to identify participants. The Team advised personnel that all individually identifiable comments submitted to the survey would be maintained at the NGB level. The intent of this notification was to encourage open and honest participation in the survey. The Vermont National Guard participated in the DEOMI survey with a 59.5% overall participation (1,182 of 1,985 potential respondents) in the Army National Guard and 46.5% overall participation (467 of 1,005 potential respondents) in the Air National Guard. The results of the standard survey, detailed in appendices A-J, reiterate issues that had been raised in previous surveys conducted by the units, and provide additional information regarding groups where additional leadership attention is warranted.

Concurrent with the commencement of the DEOMI survey, the Team requested 36 distinct sets of documents associated within the organization and program areas of concern expressed by state civilian leadership. This data included both descriptive and metric information about the size, structure and location of the Vermont National Guard, internal policies and regulations, internal and external inspections, military justice and administrative disciplinary actions, internal and external investigations of criminal and non-criminal matters, military and civilian equal opportunity and equal employment opportunity complaints, civilian and military exit interviews, and federal and state governmental inquiries.⁶

⁵ DEOMI Survey is the DoD-approved climate survey tool.

⁶ As with any organizational assessment, the Team faced difficulty with ensuring a level of "scientific precision" in the collection and analysis of the large amount of data required for this assessment. The Team received data from multiple entities and in numerous formats, using a variety of terms of reference and business practices for collection, maintenance and retrieval of such data. The data analysis was hindered by the fact that the data was incomplete and partially unreliable due to user interface error. The condition of

Over the course of ten days, the Team conducted on-site interviews at five major Vermont National Guard locations and facilities and focused on interviewing command teams and canvassing traditional members of the Vermont National Guard during drill weekends. The Team conducted interviews at the Joint Force Headquarters in Colchester; the 158th Fighter Wing in Burlington, the 124th Regional Training Institute in Colchester, the 86th Infantry Brigade Combat Team Headquarters in Jericho, as well as armories in Northfield.

As a result of the COVID-19 pandemic and restriction of movement invoked by DoD, the Team was unable to return to Vermont after March 2020 to continue interviews but was able to conduct additional interviews via telephone on request and did so. Although the Team planned to conduct additional in-person interviews and canvassing sessions on at least one more drill weekend, as the pandemic continued late into 2020, it became clear that it no longer made sense to pause the assessment any longer. With the consent of TAG, Vermont, the Team agreed to use the data it had gathered thus far to generate the instant report.

The Team conducted individual interviews with Guard members, key stakeholders, and investigators. Once documents analysis was completed, the Team interviewed over 70 individuals, including complainants of EEO/EO, sexual assault, sexual harassment, and retaliation; Vermont National Guard senior leaders; as well as mid- and junior-grade officer and enlisted personnel from across the VT Army and Air National Guard. The Vermont National Guard senior leaders interviewed included the Land and Air Component Commanders, the Chief of Staff, the state Sexual Assault Response Coordinator (SARC), State Equal Employment Manager (SEEM), present and former Staff Judge Advocates, and Army and Air Inspectors General.

**The Team
conducted
over 70
interviews and
canvassed
over 250
personnel.**

While the Team reviewed all available reported allegations of sexual assault, hostile work environment, sexual harassment, other Equal Opportunity (EO) matters, and other misconduct occurring during the past three years, the Team did not investigate such reports. However, the Team interviewed individual complainants and discussed their reporting/complaint processing experiences.

Additionally, the Team conducted over a dozen requests for information, ranging from command climate surveys to case files of investigations or disciplinary actions held by the Vermont National Guard. Documents from these requests was analyzed and compared with program information provided by the relevant National Guard Bureau program office.

III. Methodology

To meet the intent of the Vermont Adjutant General's request, the Team's assessment plan centered on five lines of effort (LOE). These lines of effort were: (A) *Command Support Programs; EEO/EO*; (B) *Command Support Programs: Sexual Assault Prevention and Response and Sexual Harassment/ Assault Prevention and Response*; (C) *Command Climate/ Culture: Reprisal, Retaliation and Bullying*; (D) *Personnel Management: Hiring, Promotions, and Assignment*; and (E) *Disciplinary Actions: Misconduct*.

the data presented the Team with a challenge of organizing information and the overarching findings into a format that is clear, concise, and responsive to the decision-maker's questions and needs.

Lines of effort A, and B (*EEO/ EO; Sexual Assault Prevention and Response and Sexual Harassment/ Assault Prevention and Response*) contemplate the assessment of programs (or systems across programs). The Team organized these lines of effort to address the following four categories of analysis:

- Compliance
- Program Management
- Relationships; and
- Performance.

Under the category of *Compliance*, the Team assessed how written Vermont National Guard policies complied with federal law, regulation, and policy by the Department of Defense, the Departments of the Army and Air Force, and the National Guard Bureau. Under *Program Management*, the Team assessed how the relevant Vermont National Guard program was managed. This category of analysis is included manpower and resourcing, as well as training and credentialing of program officials. Under *Relationships*, the Team looked at the Vermont National Guard's relationship with other program stakeholders or supporting organizations and assessed the extent to which the Vermont National Guard coordinated or collaborated with appropriate stakeholders and reporting entities, to include law enforcement, the National Guard Bureau's relevant program offices, and other community organizations relevant to the program being assessed. Lastly, under *Performance*, the Team assessed the overall performance of the program using survey information from the Team's on-site interviews and focal group discussions, the DEOMI survey, and relevant staff assistance visits from National Guard Bureau program offices.

Lines of effort C, D, and E, (*Repri s a l, Retaliation and Bullying; Hiring, Promotions, and Assignment; and Misconduct*), highlight activities, outputs, and culture surrounding organizational leadership, command, and control. Accordingly, the Team determined that the categories of analysis for each line of effort should be drawn from the activities, outputs, and cultural dynamics that are specific to the assessment area under consideration.

The Team also developed targeted questions specific to each line of effort and category of analysis. These questions were refined as the Team conducted its work, and portions of these questions were reviewed by the relevant program subject matter experts within the National Guard Bureau. The Team also incorporated portions of other assessment tools used by the relevant program office in the National Guard Bureau within its assessment plan.

Team members met with over 300 organizational leaders, staff, and the rank-and-file (current and former members) in a variety of settings.

The Team collected information from a wide variety of sources. In terms of survey data, the Team used the DEOMI survey instrument to evaluate the command climate as well as the health and compliance of relevant programs. The Team also conducted on-site assessments, in which Team members met with over 300 organizational leaders, staff, and the rank-and-file. These on-site assessments allowed the Team an opportunity to collect anecdotal information and observations of command climate issues and program performance. As part of these visits, the Team would conduct focal group or one-on-one surveys with the rank-and-file, i.e., "canvassing." Canvassing consisted of face-to-face discussions with small groups of National Guard service members and civilian employees within the same general rank/ peer groups on their experience within their organization, command climate, and the overall performance of specific programs. These face-to-face discussions helped the Team identify individuals who may be able to provide more detailed information in a more

comprehensive, one-on-one, follow-up interview, and it also allowed the Team to identify potential trends or systemic issues for further research and comparison with DEOMI survey results.

The Team conducted approximately 15 interviews of individuals who requested to speak with the Team. Through the Vermont National Guard, the Team advertised their availability to any interested party who wanted to sit down with the Team to provide comments or discuss issues or concerns regarding the Vermont National Guard.

The Team sought to make itself available to meet with any person who submitted this information or wanted to submit additional information for the Team to consider. The Team used any information that it received from offices or from individual complainants, witnesses, or victims, to develop leads for additional document requests and interviews, or to refine its assessment questions and analysis.

Because the Team interviewed persons who had experienced trauma, the Team took steps to manage or mitigate the risk of re-traumatization. No victims or complainants were contacted directly for purposes of interviewing with the Team; rather the Team either encountered a victim who was interested in speaking further with the Team during its on-site assessment visits or the Team was contacted by the victim or his/her representative through its organizational email/ phone-line. Individuals were welcomed to bring their attorneys, advocates, or other persons they deemed necessary for their support during the interviews. Interviewees were informed of the purpose of the assessment and how their interview would be recorded, used, and maintained. They were informed that their participation was voluntary, and they could cease the interview at any time and for any reason.

To this end, the Team identified several areas in the assessment where the information alluded to issues, not on the part of the Vermont National Guard's execution of a program, but rather on the part of other entities or enterprises outside the organization. The Team determined that, regardless of where the information led, the Team would report the evidence and the Team's findings in the spirit of improving the relevant program or enterprise.

IV. Analysis

LINE OF EFFORT A:

Command Support Programs: Sexual Assault Response and Prevention and Sexual Harassment/Assault Response and Prevention

1. INTRODUCTION

In the Department of Defense, the prevention of sexual assault and management of victim care falls under the Sexual Assault Prevention and Response (SAPR) program. The Team assessed the Vermont National Guard's adherence to and implementation of DoD, Service, and National Guard Bureau policy in the execution of the SAPR program.⁷ The scope of this assessment included, but was not limited to any systemic/process issues with adjudication, punishment, or investigation of misconduct and any incidents of sexual harassment and any action taken that resulted.⁸ The Team also assessed the Vermont National Guard's coordination with law enforcement.⁹ Finally, the Team reviewed, in the context of SAPR program compliance, the Vermont National Guard's past responses, current protocols, and recommendations for best practices that would help ensure the safety of the men and women in the Vermont National Guard.¹⁰

Concerns with ensuring thorough investigation of sexual assault allegations and the delivery of victim services led to a substantial revision of the DoD SAPR Program and policy in 2006, culminating with the guidance in effect today. The military services have incorporated this policy into their own service regulations, and likewise, the National Guard Bureau, in coordination with the Services, has issued guidance governing both the investigation of unrestricted reports of sexual assault and the provision of victim services while in a non-federalized military status. Under these DoD, military service, and National Guard Bureau policies, unit commanders have been prohibited since 2014 from conducting internal, administrative investigations into allegations of sexual assault.¹¹

The Vermont National Guard implements its joint policy on Sexual Assault Prevention and Response through the Adjutant General (TAG) Joint Policy Memorandum, Sexual Assault Prevention and Response Program Policy,¹² which was recently updated to include parameters for communication to the force following reports of sexual assault or formal complaints of sexual harassment in the TAGs memorandum on Sexual Assault Prevention and Response (SAPR).¹³ The policy also directs leaders to participate in new facilitation-based training modules focused on data-directed and evidenced-based prevention strategies. Additionally, the Vermont National Guard has implemented a Joint Expedited Transfer Policy for Vermont National Guard Members who Report an Unrestricted Report of Sexual

⁷ Letter from Vermont Adjutant General, Gregory C. Knight, to Chief, National Guard Bureau (November 21, 2019).

⁸ *Id.*

⁹ *Id.* The use of command directed investigations is addressed as a separate line of effort, below.

¹⁰ *Id.*

¹¹ Dep't of Defense Instruction 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures, Encl. 2, pg. 21, para. 6k (1), (March 28, 2013 [Incorporating Change 4, September 11, 2020]): "A unit commander who receives an Unrestricted Report of an incident of sexual assault shall immediately refer the matter to the appropriate MCIO. A unit commander shall not conduct internal, command-directed investigations on sexual assault investigations (i.e., no referrals to appointed command investigators or inquiry officers) or delay immediately contacting the MCIO while attempting to assess the credibility of the report."

¹² NGVT-HRO-JP 6, Joint Policy Memorandum, Sexual Assault Prevention and Response Program Policy, 15 January 2019.

¹³ NGVT-TAG Sexual Assault Prevention and Response (SAPR), 31 January 2020

Assault,¹⁴ a Joint Prohibition Policy on Pornographic and Sexually Explicit Material,¹⁵ a Joint Withholding of Authority to Dispose of Sexually Based Misconduct For Senior Military Personnel,¹⁶ a Joint Policy on the Prevention of Retaliation for Reports of Sexual Assault or Harassment,¹⁷ and a Joint Command Alcohol Policy prohibiting alcohol while in uniform generally with stated exceptions.¹⁸

The Adjutant General, as the commander of the Vermont National Guard, is vested with “*primary military command authority and responsibility for ensuring reports of sexual assaults arising within the state’s non-Federalized forces are handled by trained and certified SAPR personnel.*”¹⁹ The Adjutant General will also ensure that “*policies and procedures regarding the prevention of, and response to, sexual assault within the State [National Guard is] consistent with DoD publications, CNGB Issuances, Service-Directorate issuances, and applicable State laws.*”²⁰

Recommendations to the program.

a. The program must continue with its update of SAPR/SHARP policies, with emphasis on maintaining updated references to current Chief of the National Guard Bureau and Department of Defense Regulations. This will ensure compliance by all command levels with particular emphasis on responsibilities of victims’ immediate commanders towards prevention and response.

b. The VTNG SAPR/SHARP leader training program should emphasize immediate commanders’ responsibilities in response to ensure victim, safety, communication, and reporting through SAIRO reporting and participation in the VTNG CMG.

c. VTNG SAPR/SHARP training should be accounted for in accordance with regulatory requirements to ensure compliance with training requirements of personnel. The SAPR program maintains SARCs and Victim Advocates on their list of assigned personnel who are no longer certified or assigned and therefore, it is difficult to determine which are in need of training or no longer assigned as SARCs or Victim Advocates.

d. Based on current data maintained at NGB-J1-SAPR the VTNG SAPR/SHARP program should better sustain required number of SARCs and Victim Advocates in each Brigade/Battalion/Group or Squadron. Historically, the VTANG SAPR and VTARNG SHARP program has been unable to maintain

¹⁴ NGVT-HRO-SAP (JP2017-02) Joint Policy Memorandum, Expedited Transfer of Vermont National Guard Members Who Report an Unrestricted Report of Sexual Assault, 12 January 2017.

¹⁵ NGVT-SJA (JP2017-12), Joint Policy Memorandum, Prohibition of Pornographic and Sexually Explicit Material, January 2017.

¹⁶ NGVT-SJA (JP2017-05) Joint Policy Memorandum, Withholding Authority to Dispose of Misconduct Involving Officers, Warrant Officers, and Senior Noncommissioned Officers in the Grade of E-7 and Above and Sexual Based Offenses, 12 January 2017

¹⁷ NGVT-HRO (JP2017-13) Joint Policy Memorandum, Prevention of and Response to Retaliation for Reports of Sexual Assault or Harassment, 17 January 2017.

¹⁸ NGVT-TAG (JP15-01), Joint Policy Memorandum, Command Alcohol Policy, 06 April 2015.

¹⁹ CHIEF, NATIONAL GUARD BUREAU INSTRUCTION (CNGBI) 1300.01, “Sexual Assault Prevention and Response Program,” A-7 (June 26, 2020).

²⁰ *Id.*

sufficient number of SARCs and VAs for several reasons including promotion, transfer, and attrition. The program requires better coordination with the HRO/G1 and commands to prepare for life cycle maintenance of sufficient number of SARC and VA staffing within the WING SAPR and VTARNG SHARP program.

e. Historically, the Vermont National Guard, in particular the Vermont Air National Guard, investigated sexual assault allegations incorrectly via command directed investigations, although, there has been significant improvement since 2017 with referral of sexual assault matters to military criminal investigative organization, civilian law enforcement or Office of Complex Investigation for investigation.

Background on Sexual Assault Prevention and Response Programs

The purpose of the DoD SAPR Program is to realize a “*culture free of sexual assault, through an environment of prevention, education, and training, response capability, victim support, reporting procedures, and appropriate accountability that enhances the safety and well-being of all persons covered [in the program]*.”²¹ Since 2005, the DoD Sexual Assault Prevention and Response Office (SAPRO) has issued policies, guidance, and tools to facilitate effective implementation of the SAPR program. While Congress mandated a portion of this guidance through federal law, many DoD policies and procedures were promulgated to enhance victim support and care, as well as improve prevention, accountability, and reporting.

DoD policy holds “commanders, supervisors, and managers at all levels responsible for the effective implementation of the SAPR program and policy.”²² Commanders are responsible for implementing sexual assault prevention strategies, as well as overseeing sexual assault response mechanisms, consistent with DoD and Service guidance.²³ In addition to DoD and Service guidance, commanders in the National Guard are also subject to National Guard Bureau SAPR regulations and guidance when they serve in a Title 32 U.S.C duty status.²⁴

In each State National Guard, The Adjutant General is responsible for providing a sexual assault response capability that is available 24 hours, seven days a week. Generally, the Army National Guard and Air National Guard within each state will establish service-specific capabilities to comply with service-specific requirements and policies.

In accordance with DoD guidance, service members and eligible civilians who have suffered a sexual assault may file a report of a sexual assault to receive services and care within DoD’s SAPR Program. Depending on the circumstances in which military officials receive a report, victims have the

²¹ DEPT OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, para. 4b (Incorporating Change 4, September 11, 2020).

²² DEPT OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 5, para. 1 (Incorporating Change 4, September 11, 2020).

²³ DEPT OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 5 (Incorporating Change 4, September 11, 2020).

²⁴ CHIEF, NATIONAL GUARD BUREAU INSTRUCTION 1300.01, SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM (June 26, 2020). (“This instruction establishes policy and assigns responsibilities for the National Guard (NG) Sexual Assault Prevention and Response (SAPR) Program for NG Title 32 (T32) members, and eligible civilians and dependents in accordance with (IAW) references a, b, and c.”).

option to file either a restricted or an unrestricted report. The key difference between these options is that restricted reporting permits the sexual assault victim to maintain a degree of confidentiality while still receiving necessary or desired care and treatment.²⁵ Unrestricted reporting provides victim care and support but requires the notification of both the victim and reported perpetrator's commands and the initiation of an investigation to determine whether reported perpetrator should be held accountable.²⁶

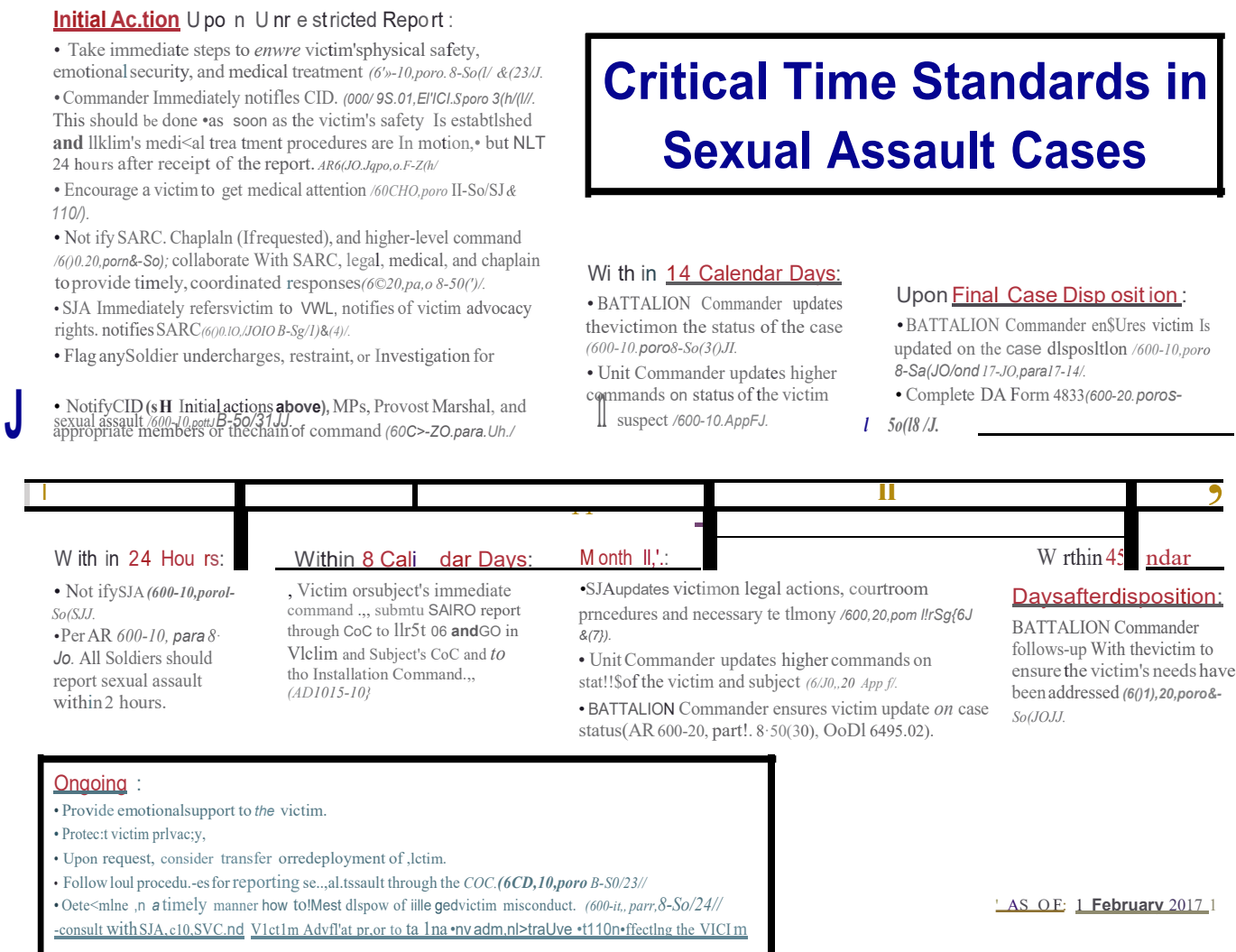


Figure 1: Sexual Assault Unrestricted Reporting Timeline

With an unrestricted report of a sexual assault, the victim and reported perpetrator's commander each serve a critical role in the response stages of the SAPR program. As Figure 1 highlights, the relevant commander for the victim and alleged offender are responsible for several actions and functions related to looking out for the safety, well-being, and privacy of victims (and offenders), as well as ensuring information is properly submitted for higher echelon oversight.

The victim's commander has many responsibilities in the SAPR response process. A significant number of these responsibilities are specifically focused on supporting and caring for the victim. These

²⁵ CHIEF, NATIONAL GUARD BUREAU INSTRUCTION 130 0.0 1, SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM GL-2 (June 26, 2020).

²⁶ CHIEF, NATIONAL GUARD BUREAU INSTRUCTION 130 0.0 1, SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM GL-3 (June 26, 2020).

responsibilities range from the urgent tasks related to the victim's safety and protection from retaliation, to more enduring actions, such as ensuring the victim's access to services and support. The victim's commander must ensure the immediate referral of the allegations to a criminal investigation organization (either military or civilian, depending on the circumstances of the case), and the commander must ensure, among other things, that the victim is provided periodic updates throughout all stages of the response and investigation stages.

All these responsibilities are detailed in the DoD Commander's 30-Day Checklist for Unrestricted Reports of Sexual Assault. However, commanders, supervisors, and managers are encouraged to refer to the relevant provisions in DoD's SAPR Instruction, applicable military service-specific policies, and for the National Guard, NGB instructions and policies, for a full compilation of a commander or supervisor's responsibilities in SAPR response functions.²⁷

Separate from commanders, the SARC also holds a crucial role in the SAPR program. Under the senior commander's supervision, the SARC is the primary program official responsible for coordinating sexual assault response efforts within an organization. The SARC is supported by Victim Advocates, who provide direct support to victims at the unit level in all stages of responding to a sexual assault, from assistance in filing a report to ensuring access to medical and social services to updates on their cases. Special Victims' Counsel also serve an important role for victims. Special Victims' Counsel are attorneys who are assigned to provide legal assistance and representation to victims of sexual assault.²⁸

Apart from these officials, there are several other key stakeholders and entities that support the SAPR program. These officials and entities include: (1) Legal services, or the legal representative for the relevant organization, e.g., the Staff or State Judge Advocate; (2) Victim's healthcare provider, mental health, chaplain, or other counseling support services; and (3) Law enforcement representatives, which can include military or civilian investigative organizations as well as the Provost Marshal. All these officials or entities, to the extent they exist within an organization, are required members of a Case Management Group, which is a DoD-mandated group, whose purpose is to coordinate on the immediate, short-term, and long-term measures to support victim well-being and recovery from a sexual assault.²⁹ A Case Management Group (CMG) is defined as a multi-disciplinary group that meets monthly to review individual cases of unrestricted reports of sexual assault. Figure 2 depicts the SAPR program process as reflected in DoD policy.

²⁷ DEPT OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 5 (Incorporating Change 4, September 11, 2020).

²⁸ 10 U.S.C. 1044e (implemented in applicable service regulations); CHIEF, NATIONAL GUARD BUREAU INSTRUCTION 0401.01A, NATIONAL GUARD SPECIAL VICTIMS' COUNSEL PROGRAM, para. 4 (September 9, 2020).

²⁹ See DEPT OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 9, paras. 1-2 (Incorporating Change 4, September 11, 2020).

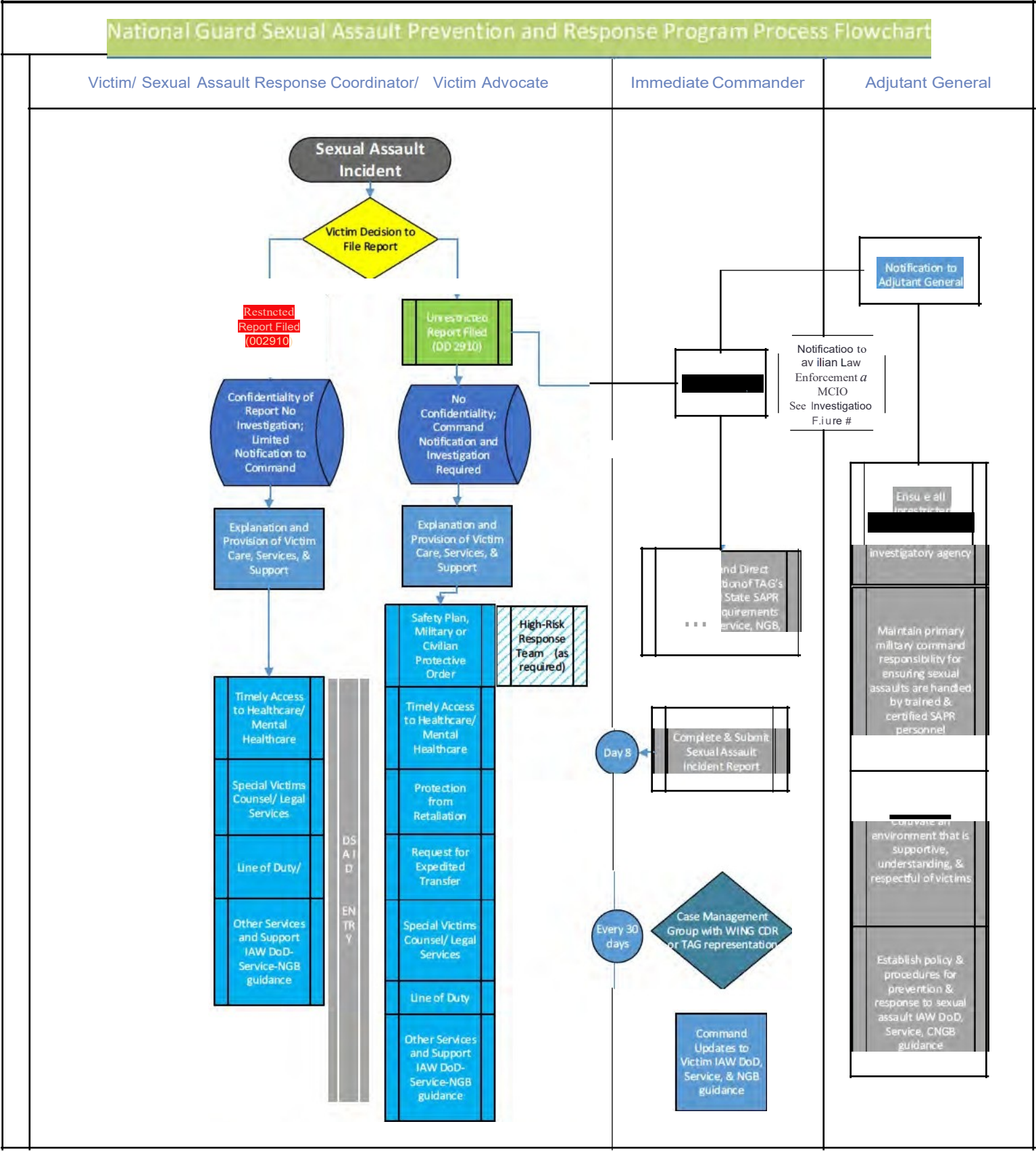


Figure 2. National Guard Sexual Assault Response Process

Background on Sexual Assault Investigations in the National Guard

By DoD policy, once a unit commander receives an unrestricted report of sexual assault, he/she must “immediately refer the matter to the appropriate MCIO [military criminal investigative organization].” Further, under MCIO policies, investigators are required to conduct a thorough inquiry into the allegation unless the matter is otherwise outside the jurisdiction of the investigating agency. When the subject is a member of the National Guard in a state or other non-federalized duty status, MCIOs lack personal jurisdiction over the offender and may lack subject matter jurisdiction over the offense. In these circumstances, DoD policy directs the MCIO to coordinate with the appropriate civilian LEA to ensure investigation of the case. Unfortunately, LEAs investigate these allegations of sexual assault pursuant to laws of the local jurisdiction, which often are not as comprehensive as military criminal laws that focus on maintaining good order and discipline in military units. The result for the Title 32 National Guard was often that unrestricted reports of sexual assault went uninvestigated or under investigated, leaving National Guard commanders with allegations of sexual assault and no investigation mechanism by which to gather facts and, when appropriate, to initiate administrative or military criminal actions to discipline offenders.

To address this gap in investigative capability, the Chief of National Guard Bureau established the Office of Complex Administrative Investigations (OCI) in 2012 to conduct administrative investigations into unrestricted reports of sexual assault. The Office of Complex Investigations investigates cases involving National Guard members who (1) are not subject to the Uniform Code of Military Justice; (2) were not investigated by a military criminal investigative organization due to the lack of jurisdiction; and where the civilian law enforcement agency with jurisdiction either (3) declined to investigate; or (4) failed to sufficiently investigate the allegation. In compliance with DoD and service policies prohibiting commanders from conducting internal sexual assault investigations, the Office of Complex Investigations does not conduct criminal investigations.³⁰ Rather, these administrative investigations are intended to provide the Adjutants General with sufficient information to take administrative actions as appropriate to maintain good order and discipline within their National Guards units.³¹

³⁰ CHIEF, NATIONAL GUARD BUREAU INSTRUCTION 0400.01B, NATIONAL GUARD COMPLEX ADMINISTRATIVE INVESTIGATIONS, para. 4, (April 12, 2018).

³¹ See generally Government Accountability Office, “Office of Complex investigations Should Update Policies to Require Additional Documentation for Sexual Assault Cases,” GAO-19-109 (December 2018).

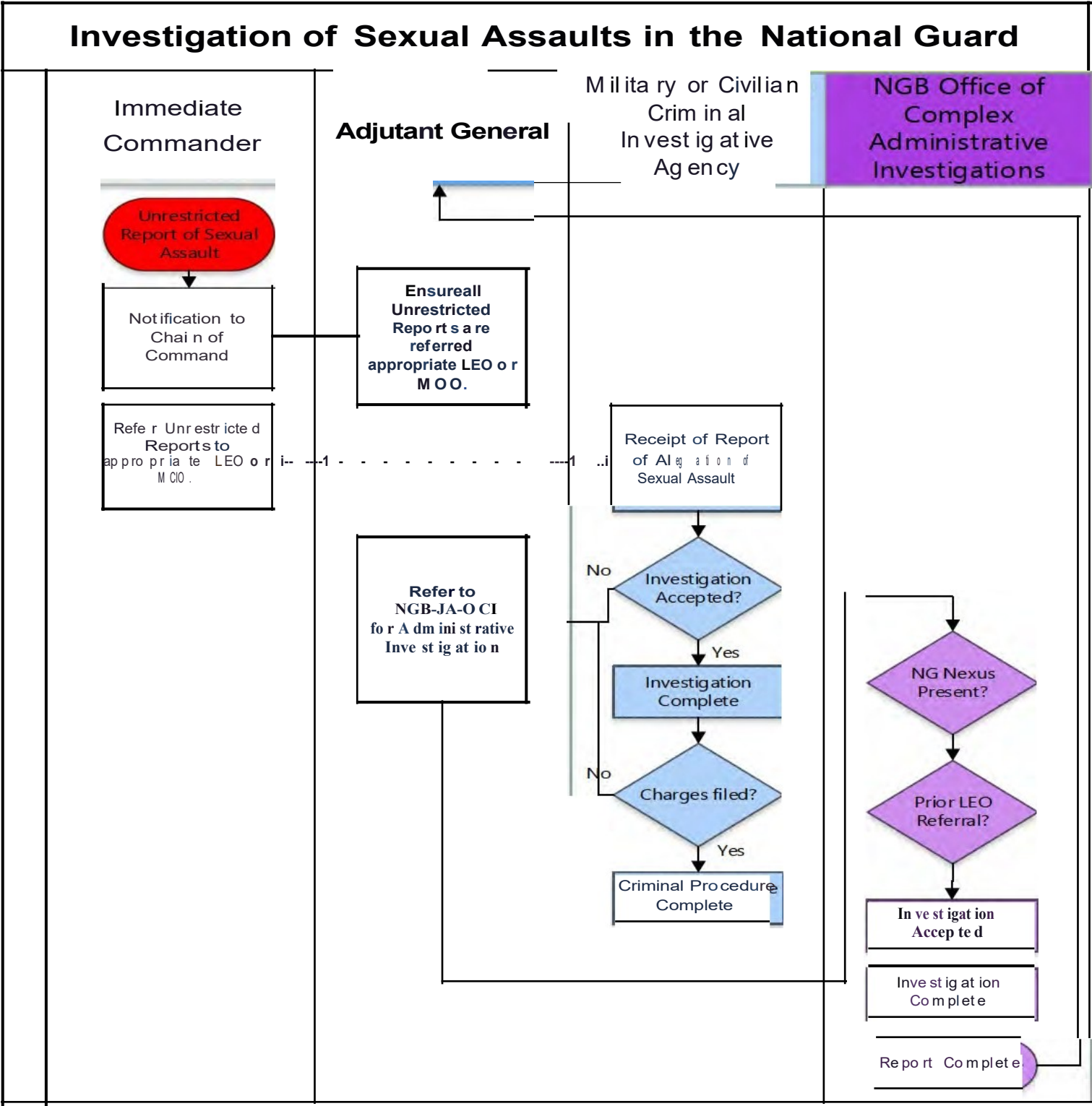


Figure 3. National Guard Sexual Assault Investigation Process

Figure 3, above, depicts the process for referring unrestricted reports of sexual assault to the National Guard Bureau's Office of Complex Investigations.

2. COMPLIANCE

The Vermont National Guard's written policies on sexual assault are generally consistent with current federal law, regulations, and policy; however, they lack specifics to ensure compliance within the major commands of the Vermont National Guard.

The Vermont Adjutant General's sexual assault prevention and response policy is reflected in NGVT-TAG Sexual Assault Prevention and Response Program, and Sexual Assault Prevention and Response (SAPR),³² which emphasizes prevention; references the TAG policy on expected conduct of personnel;³³ and emphasizes support and resources for victims and that investigation would be provided by local civilian law enforcement or OCI and not by command-directed investigation for determination of civil prosecution, state military justice or administrative action. However, the Team found compliance with this policy and the current federal law, regulations and policy was not sufficiently consistent in all major commands of the Vermont National Guard. Based upon the data provided and the interviews conducted, the Team has determined that several specified changes to federal law and regulation that occurred after 2013 were not specified in policy by the Vermont National Guard, making the program effectively non-compliant in some areas.³⁴ Many of the changes directed by DoD were developed to improve program oversight and victims' willingness to report. Additionally, many of the changes included specific guidance for relevant commanders to enable appropriate and consistent provision of care for sexual assault victims which had not been included in prior VTNG policies.

However, those specified policies, procedures, and guidance for commanders are being promulgated presently. The Team was provided draft proposed policies, procedures, and guidance. They included the following: Joint Policy Memorandum, Sexual Assault Prevention and Response Program Policy;³⁵ Draft Joint Policy Memorandum, Expedited Transfer of Vermont National Guard Members who File an Unrestricted Report of Sexual Assault;³⁶ Draft Joint Policy Memorandum, Prevention and Response to Retaliation for Reports of Sexual Assault or Harassment;³⁷ and a VTNG Commander's 30-Day Checklist.

The lack of updated specified policies in the past had contributed to deficiencies or omissions in the Vermont's National Guard's written policies on sexual assault resulting in non-compliance by subordinate commands. For example, NGVT-HRO-JP 06, Joint Policy Memorandum, Sexual Assault Prevention and

³² NGVT-HRO-JP 6, Joint Policy Memorandum, Sexual Assault Prevention and Response Program Policy, 15 January 2019, and NGVT-TAG Sexual Assault Prevention and Response (SAPR), 31 January 2020.

³³ NGVT-TAG Expectations of Conduct, 11 April 2019. The policy reiterated leadership obligation to report incidents of sexual assault incidents to the SARC to initiate an unrestricted report and appropriate further action including notification of law enforcement and that survivors may file a restricted report directly to the SARC to receive services without command notification or investigation.

³⁴ In April 2014, Chief, National Guard Bureau issued CNGB Notice 0400, which directed all commanders in the National Guard to refer all Unrestricted reports of sexual assault to the appropriate military criminal investigative organization, civilian law enforcement, or to the National Guard Bureau Office of Complex Investigations (NGB-JA/OCI).

³⁵ Draft NGVT-HRO-SAP (2020-01), Joint Policy Memorandum, Sexual Assault and Response Program Policy

³⁶ Draft NGVT-HRO (2020-02) Joint Policy Memorandum; Expedited Transfer of Vermont National Guard Members Who File an Unrestricted Report of Sexual Assault

³⁷ Draft NGVT-HRO-SAP (2020-03), Joint Policy Memorandum, Prevention and Response to Retaliation for Reports of Sexual Assault and Harassment.

Response Program Policy, NGVT-TAG Sexual Assault Prevention and Response (SAPR), and NGVT-TAG Expectations of Conduct, dated 11 April 2019, do not correctly reference the most recent guidance on the eight-day incident report (also known as the Sexual Assault Incident Response Oversight (SAIRO) Report),³⁸ a requirement mandated in Section 1743 of the National Defense Authorization Act for Fiscal Year 2014 (FY14 NDAA) for the victim's immediate commander to complete - not at a minimum the 0-5 commander as specified in the Vermont policy. This report must be provided to the installation commander if the incident is in the vicinity of a military installation, as well as the first general officer of the victim and/or reported offender's chain-of-command, if either is a member of the Armed Forces. These reports not only inform the chain-of-command but are critical to monitoring the health of a program and the extent to which the program is supporting victims and effectively managing individual cases.

NGVT-TAG Expectations of Conduct, dated 11 April 2019, do not correctly reference the most recent guidance on the eight-day incident report (also known as the Sexual Assault Incident Response Oversight (SAIRO) Report)

Section 1743 of the FY 14 NDAA prescribed several required elements of the SAIRO report, such as: (A) The time/date/location of the alleged incident; (B) Type of offense alleged; (C) Service affiliation, assigned unit, and location of the victim; (D) Service affiliation, assigned unit, and location of the offender, including information regarding whether the alleged offender has been temporarily transferred or removed from the assigned billet or ordered to restrictions or confinement; (E) Post-incident actions taken in connection with the incident, including referral of the victim to a SARC; (F) Notification of the incident to appropriate military criminal investigative organizations; (G) Receipt and processing status of a request for expedited victim transfer; and (H) issuance of any military protective orders in connection with the incident.

Shortly after enactment of Section 1743, DoD updated its instruction on the SAPR program and issued Directive-Type Memorandum (DTM) 14-007, "Sexual Assault Incident Response Oversight (SAIRO) Report,"³⁹ which provided further guidance on how to detail the actions taken to provide the necessary care and support to adult victims of sexual assault. This guidance is reiterated in CNGBM 1301.01, which was issued in 2017.⁴⁰ Whereas the SARC and the relevant investigative organization are responsible for providing input to the preparation of the SAIRO Report, the ultimate responsibility for preparing and submitting the report is placed squarely upon the relevant commander.⁴¹

Because NGVT-TAG Expectations of Conduct, dated 11 April 2019, does not include the requirements of the SAIRO Report in the expectations of victim's immediate commanders,⁴² nor, based on our review of the data provided, does any other policy, training material, or other information provided, it

³⁸ See NGVT-TAG Expectations of Conduct, 11 April 2019.

³⁹ Directive-type Memorandum (DTM) 14-007, "Sexual Assault Incident Response Oversight (SAIRO) Report", September 30, 2014 (cancelled by Dep't of Defense Instruction 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures, Enc. 5 (Incorporating Change 4, September 11, 2020)).

⁴⁰ CHIEF, NATIONAL GUARD BUREAU MANUAL (CNGBM) 1301.02, NATIONAL GUARD IMPLEMENTATION OF A SEXUAL ASSAULT INCIDENT RESPONSE OVERSIGHT AND COMMANDER'S CRITICAL INFORMATION REQUIREMENT REPORTS FOR UNRESTRICTED REPORTS, (29 October 2019).

⁴¹ See DTM 14-007, "Sexual Assault Incident Response Oversight (SAIRO) Report", September 30, 2014, Attachment 3, Table, "SAIRO Reporting Responsibility," detailing the responsibility for preparing and submitting the report to the victim or the subject's immediate commander (cancelled by Dep't of Defense Instruction 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures, Enc. 5 (Incorporating Change 4, September 11, 2020)).

⁴² See NGVT-TAG Expectations of Conduct, 11 April 2019.

leaves subordinate commanders uninformed on the specific steps to take to support adult victims of sexual assault, and to ensure such steps are documented for program monitoring and evaluation. As a result, a victim's immediate commanders may not be filing reports or participating in Case Management Groups appropriately. In fact, testimony from interviews and statements from the DEOCS survey seem to confirm that there is a level of non-compliance with these requirements when commanders support victims. The Team assesses that this is likely because they believe the responsibility lies with higher commands.

DoD SAPR Program's Commander's 30 day Checklist (discussed later in this report) is not mentioned in any of the Vermont SAPR policies

The DoDSAPR Program's Commander's 30 day Checklist (discussed later in this report) is not mentioned in any of the Vermont SAPR policies or training materials reviewed, nor is the specific role of a victim's commander within the Case Management Group.⁴³ In fact, the Case Management Group, which is a DoD-required component of the SAPR program management, is not specifically mentioned in SAPR TAG policy memoranda, or in its references.⁴⁴ The checklist includes a general description of the commander's responsibility to ensure the victim is aware of available resources for victim care as well as responsibilities and time suspension for commanders regarding SAPR advocacy, criminal investigation, safety, legal services, CMG participation, military and civilian protective orders, expedited transfers, SAIRO, privacy rights, and retaliation or ostracism protection.⁴⁵

Further, whereas the NG-VT Joint Policy Memorandum, Anti-Harassment Policy, states that all supervisors and management officials must "Ensure a workplace free from harassment and retaliation,"⁴⁶ the policy does not address the myriad of other illegal, impermissible, or otherwise hostile actions that can occur to reporters of sexual assault.⁴⁷ Separate from reprisal, persons who report an allegation of sexual assault must be protected from all forms of retaliation, including coercion, ostracism, or discrimination.⁴⁸

In addition, the Team was not provided, and therefore determined that, there were no required written policies establishing specific procedures protecting SARCs, VACs, and SAPR VAs from coercion,

⁴³ See Dep't of Defense Sexual Assault Prevention and Response, "Commander's 30-Day Checklist: For Unrestricted Reporter of Sexual Assault," <https://www.sapr.mil/sites/default/files/Commanders%2030%20Day%20Checklist.pdf>. Last visited December 2, 2020. (The victims' commander is required to "participate in the monthly CMG meeting The victims' commander is a mandatory member of the CMG and he/ she may not delegate the responsibility to attend the CMG.").

⁴⁴ See DEPT OF DEFENSE INSTRUCTION 649 5.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 9 (Incorporating Change 4, September 11, 2020).

⁴⁵ See Dep't of Defense Sexual Assault Prevention and Response, "Commander's 30-Day Checklist: For Unrestricted Reporter of Sexual Assault," <https://www.sapr.mil/sites/default/files/Commanders%2030%20Day%20Checklist.pdf>. Last visited December 2, 2020.

⁴⁶ See NGVT-J P-18, Joint Policy Memorandum, Anti-Harassment Policy, 15 September 2019.

⁴⁷ Under DoD terminology, "reprisal" is one sub-set of prohibited actions under the umbrella term: "retaliation." The definition of DoD retaliation prohibitions can be found in DoD RETALIATION PREVENTION AND RESPONSE STRATEGY: REGARDING SEXUAL ASSAULT AND HARASSMENT REPORTS (April 2016), https://www.sapr.mil/sites/default/files/DoD_Retaliation_Strategy.pdf. Last visited December 5, 2020.

⁴⁸ See Dep't of Defense Sexual Assault Prevention and Response, "Commander's 30-Day Checklist: For Unrestricted Reporter of Sexual Assault," <https://www.sapr.mil/sites/default/files/Commanders%2030%20Day%20Checklist.pdf>. Last visited December 2, 2020.

discrimination, or reprisals related to the execution of their duties or responsibilities; TAG direction to the State Staff Judge Advocate to monitor and track all unrestricted reports of sexual assault entered into DSAID through the investigation and coordinate with NG-J 1 SAPR Compliance and Accountability Officer to provide case referral outcomes and disposition information; or a safety assessment capability to ensure victims or other persons are not in physical jeopardy,

Finally, the Team assessed that although Joint Policy Memorandum, Reporting of Sexually Offensive Incidents,⁴⁹ references many important regulations and policies, it does not reference instruments or tools that were created for the specific task of helping the commander (or other program officials) in their duties.⁵⁰ Due to the absence of these tools or references, the commanders or relevant stakeholders did not know where to look for accurate guidance.

3. PROGRAM MANAGEMENT

The Team found examples of optimal victim services on the part of the SARCs; however, ineffective program management strategies and tools hampered optimal SAPR program performance.

The Team found that victims and personnel in general had significant confidence in the SARC. This is particularly true once the SARC position at the JFHQ and Wing became full-time civilian positions.⁵¹ Nearly all victims who were interviewed by the Team stated they had trust and confidence in the SARCs that were supporting them. Victims in both the Army National Guard and Air National Guard expressed their appreciation for their respective SARC's efforts to the Team, and they recounted instances in which zealous advocacy on their behalf facilitated their ability to obtain information on the status of their case or access to services. Anecdotal statements from the DEOCS surveys corroborate this.

".. victims and personnel in general had significant confidence in the SARC.."

"I was the victim of sexual assault. I did report it and I was satisfied with the SARC, my commander's level of concern and the whole process in general except for the internal investigation. I did not have confidence in the investigator I spoke with and did not feel his selection was based on his experience level of concern or subject knowledge.,,

"I think that our SARC and victims' advocates do a great job of educating and supporting our force. I think the only way to improve this area is for our leadership to support them and quickly and decisively remove Soldiers from the force that commit these acts. That is the only way we can move forward in this area.,,

"The SAPR program has come a long way. I still feel that there is work that could and needs to be done.,,

⁴⁹ NGVT-J P-10, Joint Policy Memorandum, VTNG Reporting of Sexually Offensive Incidents, 15 September 2019.

⁵⁰ For example, the policy does not mention the Department of Defense's "Commander's 30-Day Checklist: For Unrestricted Reports of Sexual Assault," which could have resolved many of the missing or incorrect elements or protocols mentioned here.

⁵¹ Anecdotal statements and survey responses from the Assessment DEOCS surveys indicated increased confidence in SARC personnel particularly in comparison with prior DEOCS surveys provided.

“Personally, I feel the VTANG has made huge strides in the SAPR program over the last few years. Commanders and supervisors are showing support of the program and allowing it to move through the appropriate steps when and if necessary. I feel the team has done a great job of continuing to educate members of the Wing on this program and will continue to do so. There are definitely still holes; not all members can effectively say what a restricted vs. unrestricted report are but the team is actively working ways for members to retain the information. More importantly, I feel they know who to call if they need assistance.”

“Some senior leaders actually take the SAPR program seriously and some say they do. I don't feel like there is 100% buy-in at the top levels and certainly improvements are needed at the supervisory level to ensure good order and discipline is upheld.”

“We have very dedicated people supporting the Wing SAPR program who are helping/saving many Airmen impacted by this issue.”

“The VTNG has a robust and effective SAPR program. There are some challenges getting VAs certified, which just takes time. There is a change in the climate of the organization, focused more on prevention and encouraging those affected to come forward. While this is a positive trend, we will be challenged to eliminate sexual harassment and assault - it would be naïve to believe we can. The VTNG can, however, provide the climate where violating law and regulation pertaining to sex-based offenses is a deterrent.”

The Vermont National Guard Sexual Assault Prevention and Response Program failed to properly report and track sexual assault allegations and case data.

The Team made several requests for information on cases of sexual assault, harassment, and military justice, and each request produced different tables of data that were incomplete and, in many respects, inconsistent. In a response to the Team's request, the Vermont National Guard provided a list of cases the state SARC was tracking of sexual assaults reported between May 2010 and February 2020 along with summaries of investigative cases. The Team noted that in some cases the dates of alleged offenses and actions taken were missing; additionally, the number of cases reflected in each data call differed from information provided by the Office of the Staff Judge Advocate or what was reported in the Legislative Report on Sexual Assault and Harassment.

The Wing SAPR program underwent an Internal Review Audit in 2017, which is continuing with follow-up.⁵² Further, the Team was given Fiscal Year 2019 Command Inspection reports for the 86th IBCT,⁵³ the 24th RTI,⁵⁴ and the GSC⁵⁵ of the VTARNG. Each of the reports indicated improvement in data collection, but also indicated significant deficiencies in trained and certified personnel, which would

⁵² Audit Number VT-2017-037, Audit of the Air National Guard Sexual Assault Prevention and Response (SAPR) Program Operations, 4th Quarter, FY 2017, March, 2018; VT-2018-003, Follow-up Audit of the Air National Guard Sexual Assault Prevention and Response (SAPR) Program Operations, 4th Quarter, FY 2017; and Memorandum for Record, Subject: Status Report of the VTANG SAPR Program Operations Audit, 23 January 2020.

⁵³ NGVT-JSC, Memorandum for Commander, Subject: Command Inspection (CIP) Results, FY 19 for the 86th IBCT (MTN), 24 October 2019

⁵⁴ NGVT-JCS, Memorandum for Commander, Subject: Command Inspection Program (CIP) Results FY19 for the 124th Regional Training Institute, 24 October 2019.

⁵⁵ NGVT-JCS, Memorandum for Commander, Subject: Command Inspection Program (CIP) Results FY 19 for the Garrison Support Command, 24 October 2019.

hinder the collection of important data, leaving the bulk of the work to the remaining few certified personnel.

Deficiencies in data collection and record-keeping undermine program management, and it contributes to 'blind spots' ... It also undermines accomplishment of the SAPR program's services in support of victims.

This failure to enter the data has an adverse impact not only on the SARC's ability to identify and manage risk across his/her program, but also on the National Guard Bureau, Services, and DoD SAPR Offices. Missing or incomplete data hinders program oversight, and it introduces the risk that crucial management decisions on resourcing, strategies, and activities may be misdirected.

In effect, deficiencies in data collection and record-keeping undermine program management, and it contributes to 'blind spots' in identifying enterprise-wide, historic trends and characteristics of sexual assault crimes and risk factors. It also undermines accomplishment of the SAPR program's services in support of victims.⁵⁶

Case management for unrestricted reports of sexual assault was deficient, mismanaged, and, in certain circumstances, absent; but has improved since 2017.

The 2017 and 2018 follow-up USPFO audit of the 158th Fighter Wing SAPR program found deficiencies in annual training and tracking for the Case Management Group; training for Volunteer Victim Advocates, including quarterly refresher training; SAIRO Reporting; a link to the Office of the Staff Judge Advocate on sexual assault convictions; establishing internal controls to maintain SAIRO reports once a commander is no longer available who initiated the report; and establishing a Memorandum of Agreement or Understanding with local medical facility to provide support to sexual assault victims for the wing. The Vice Commander of the 158th Fighter Wing concurred with these findings and initiated a plan to correct them in 2018.⁵⁷

By January 2020, all recommendations for compliance were corrected except for tracking and training Volunteer Victim Advocates, and a Memorandum of Agreement or Understanding with a local hospital.⁵⁸ In response to these continued deficiencies, the WING SARC established a training plan/training material to ensure VVAs receive quarterly refresher training (1 hr per quarter) and other training opportunities; locally and in collaboration with the JFHQ SARC. However, due to other mission requirements, several VVAs have had to focus on primary AFSC mission requirements and have been unable to support the SAPR program. Those VVAs are being asked to step down and retraining replacements will not be required because all replacement VVAs will follow the training plan as developed. The Wing SARC was unable to implement the remaining Audit recommendations regarding a Memorandum of Agreement or Understanding with a local hospital because: 1) the COA needed to be vetted through the JFHQ SARC to ensure TAG intent was met and efforts were not repeated; 2) establishing contact with the University of Vermont Medical Center (UVM-MC) continues to be an ongoing challenge; 3) a new Wing Sexual Assault Prevention and Response Program Manager (SAPR-PM) was hired

⁵⁶ See DEPT OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 6, para. 1h (23) (Incorporating Change 4, September 11, 2020). ("I. SARC PROCEDURES. The SARC shall. . . (23) Provide information to assist installation commanders to manage trends and characteristics of sexual assault crimes at the Military Service-level and mitigate the risk factors that maybe present within the associated environment (e.g., the necessity for better lighting in the showers or latrines and in the surrounding area).").

⁵⁷ Memorandum for USPFO, Subject: SAPR Audit Recommendations and Management Response, 28 February 2018.

⁵⁸ Memorandum for Record, Subject: Status Report of the VTANG SAPR Program Operations Audit, 23 January 2020.

in February 2019; and 4) a new JFHQ SARC was hired in September of 2019. The new SAPR-PM has drafted a new MOU for the UVM-MC.

Manpower, Resourcing & Credentialing were reported as deficient for the Vermont National Guard's Sexual Assault Prevention Program, which has contributed to program inefficiencies and diminished performance.

The Chief National Guard Bureau Instruction on the National Guard Sexual Assault Response Program recently revised in 2020 requires each Wing to have a full-time SARC as the wing's primary point of contact and that each brigade commander maintains one certified collateral duty brigade SARC, one certified collateral-duty Victim Advocate and two certified VA's at each battalion.

Based on the records maintained by NGB-J I-SAPR as of November 25, 2020 of defense sexual assault advocate certification program (D-SAACP) certified personnel in the Vermont National Guard, there was a full time SARC at the WING and at the state NG level, however, there was not the required number of collateral duty SARCs per brigade nor Victim Advocates, nor are there sufficient Victim Advocates at each Battalion or Group required. (See Table 1 below). In the Vermont Army National Guard there are 3 Brigades and 12 Battalions requiring 30 D-SAACP certified trained personnel. In November, 2020, there were a total of 20 certified trained personnel, including the State level SAPR Program Manager and Victim Advocate. On the Air National Guard side, there was one full-time SARC, along with 4 other personnel for a Fighter Wing consisting of 4 Groups and 9 Squadrons.

NATIONAL ORGANIZATION FOR VICTIM ASSISTANCE
D-SAACP administered by NOVA for OoD SAPRO

NATIONAL GUARD: All Applicants													
As of November 25, 202009:02													
(LA: "Latest Application" AC: "Active Certification")													
AC/Type	ACStatus	ACAooro ved LC	ACValid Star tin2	ACValidThn1	ACGr_ide	/IC Rank	AC Affiliation	IICAffilSt a n,s	ACPos ition	ACInsta llad on Name	ACCommand Location	State-	
Now	Approved	Lovoll	5/2 3/2 019	5/ 31/ 2 021	G12	CIV	Alt Forco	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
Renewal	Approved	LevelJ	2/ 26/ 2019	2/ 28/ 2021	02	1st Lt	Air Force	National Guard	SARC	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
New	Approved	Level I	11/ 19/ 2019	11/ 30/ 2021	EG	1st Sgt	Air Force	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
Renewal	Approved	Level II	2/ 2 5/ 2020	2/ 28/ 2 022	ES	SMSgt	Air Force	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
New	Approved	Level I	11/ 2 1/ 2019	11/ 30/ 2021	66	TSgt	Air Force	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
New	Approved	Level I	11/ 24/ 2 020	11/ 30/ 2022	E6	SSG	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
Renewal	Approved	Level J	11/ 20/ 2019	11/ 30/ 2021	02	1LT	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
New	Approved	Level J	2/ 27/ 2019	2/ 28/ 2021	E6	SSG	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
Renewal	Approved	Lovoll	2/ 2 5/ 2019	2/ 28/ 2 021	E7	SFC	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
New	Approved	Level I	11/ 24/ 2020	11/ 30/ 2022	EG	SSC	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
New	Approved	Level I	8/ 27/ 2019	8/ 31/ 2021	EG	SSC	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
Renewal	Approved	Lovoll	11/ 19/ 2020	11/ 30/ 2022	04	MAJ	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
Now	Approved	Level I	11/ 2 3/ 2 020	11/ 30/ 2022	03	CPT	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
New	Approved	Level I	11/ 19/ 2019	11/ 30/ 2021	E6	SSG	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
Renewal	Approved	Level I	8/ 2 4/ 2020	8/ 31/ 2 022	E6	SSG	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
Renewal	Approved	Level I	5/ 2/ 2019	5/ 31/ 2021	B6	SSG	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
Renewal	Approved	Level U	8/ 28/ 2019	8/ 31/ 2021	G12	CIV	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
Renewal	Approved	Level I	11/ 1 9/ 20 20	11/ 30/ 2022	OS	LTC	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
Renewal	Approved	Level I	2/ 2 5/ 2020	2/ 28/ 2022	W2	CW2	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
New	Approved	Lovoll	8/ 30/ 2 019	8/ 31/ 2021	02	1LT	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
Renewal	Approved	Level I	5/ 2 2/ 2019	5/ 31/ 2021	W3	CW3	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
Renewal	Approved	Level I	2/ 26/ 2019	2/ 28/ 2021	03	CPT	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
Renewal	Approved	Level J	5/ 2/ 2019	5/ 31/ 2021	E6	SSG	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	
New	Approved	Level I	2/ 26/ 2020	2/ 28/ 2022	E6	SSG	Army	National Guard	SAPRVA	Vermont Air National Guard	158th Fighter Wing (ACC)	VT	

Table 1. National Guard Active Certified SARC/ VA's in VTNG as of 25 November 2020

The Team found the manpower, resourcing, and credentialing of the Vermont National Guard SAPR Program was deficient. The Team noted persistent shortages in part-time Victim Advocates (discussed below), which compelled the program SARCs to assume more victim advocacy responsibilities at the expense of program management requirements.

Under DoD policy, SARCs must “[e]xercise oversight responsibility for SAPR Victim Advocates authorized to respond to sexual assaults when they are providing victim advocacy services.”⁵⁹ They are also required to “[p]erform victim advocacy duties, as needed.”⁶⁰ However, as mentioned above, the State SARC and, to some extent the Victim Advocate Coordinator, seemed to assume a disproportionate amount of victim advocacy responsibilities, without appropriate systems and management tools in place to accommodate their prioritization of advocacy services over program management.

Apart from the actual number of Victim Advocates supporting the Vermont SAPR Program, the Team also identified risk in the Vermont SAPR Program’s lifecycle management of its Victim Advocates. The Vermont SAPR Program did not have a good system for managing the transfer or departure of current Victim Advocates within the state. In certain circumstances, a Victim Advocate would get promoted and accept a position in another unit without informing the State SARC. This became problematic because the losing unit would no longer have the Victim Advocate. Additionally, this circumstance was not properly reported to the State SARC. Based on interviews of SAPR and command personnel, the program appeared to have had enough Victim Advocates per unit several years ago. However, due to transfers, discharges, and other forms of attrition, the number of Victim Advocates dropped to precipitously low levels, rendering the program non-compliant. This is consistent with the findings in the 158th SAPR Audit where the command noted VVA’s “have had to focus on primary AFSC mission requirements and have been unable to support the SAPR program as a VVA.”⁶¹ Therefore, without a system in place to monitor and track Victim Advocate attrition there is a risk that an adequate number of Victim Advocates may never be attained.

The Vermont National Guard SAPR Program is unable to meet the operational demand for the SAPR program as it is currently resourced.

The Vermont National Guard SAPR Program has not undergone a manpower study to evaluate its current requirements. This effort is long overdue. The Team found that insufficient resourcing impeded the Victim Advocates and SARCs from providing adequate victim support and uniform training. Manpower shortages within the Vermont National Guard SAPR Program appeared to be addressed predominantly with temporary details of enlisted Soldiers, who did not have the skills or training required to support the program. In addition, the State SARC stated that his program has had to assume additional demands for the program’s services related to domestic violence and family assistance, which may not be accurately captured in the current resourcing for the Vermont National Guard SAPR Program.

The annual SAPR training completion rate appeared to be relatively in-line with the national average; however, interviews of leaders at all levels, servicemembers, as well as anecdotal evidence from the DEOCS surveys, revealed gaps in awareness of prevention and response processes, protocols, and strategies.

⁵⁹ DEPT OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 6, para. 1h (7) (Incorporating Change 4, September 11, 2020).

⁶⁰ DEPT OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 6, para. 1h (8) (Incorporating Change 4, September 11, 2020).

⁶¹ Memorandum for Record, Subject: Status Report of the VTANG SAPR Program Operations Audit, 23 January 2020.

As discussed in the Performance Section, the Team believes that one reason some victims may have felt a lack of care and support on the part of the organization may be traced to the fact that leaders are not being appropriately trained on their responsibilities in the SAPR program.

Based on information provided to the Team, training for unit commanders, particularly the Army National Guard, was inadequate. One-on-one training for unit commanders was only provided to the brigade level — no one-on-one training was provided to unit commanders at the echelons of battalion or company. Several commanders at all echelons voiced to the Team their desire to receive training on their responsibilities as commanders.

4. RELATIONSHIPS

The Vermont National Guard does not maintain any memoranda of understanding (MOUs) or memoranda of agreement (MOAs) with community-based resources to enhance prevention or response efforts.

Based on the information provided to the Team, victims of sexual assault appeared to be routinely referred to civilian medical facilities while filing an unrestricted report of sexual assault for purposes of facilitating a Sexual Assault Forensic Examination (SAFE) (if appropriate), as well as other medical care services when requested by the victim. Upon request by the victim, victims appeared to have been routinely accompanied by the SARC in these cases. The Team did not receive any evidence indicating a SARC had failed to support his or her victim with respect to requesting services from a local civilian entity or community-based resource.

The DoD SAPR program regulation does not require formal relationships with local, community-based resources; however, it encourages commanders to leverage local civilian entities for purposes of enhancing or augmenting sexual assault prevention and response programs.⁶² The DoD regulation also alludes to the value of using agreements to provide DoD reimbursable healthcare (to include psychological care) and forensic examinations for service members.⁶³

However, the 2017 and 2018 Wing SAPR Audit Report did find the lack of a formal MOU with local civilian medical providers like the University of Vermont was a recommendation for improved service for the program and the Wing command agreed to continue to seek formal agreements with local civilian community-based resources in its response to the audit in January 2020.⁶⁴

The Vermont Army National Guard and Air National Guard SAPR Programs do not coordinate and collaborate effectively for purposes of facilitating state-level program management.

There is no single mechanism or body overseeing, monitoring, or reporting on the Sexual Assault Prevention and Response program across the entire state. Based on interviews with program officials, the Army National Guard and Air National Guard operate their own, independent SAPR programs. Because

⁶² DEPT OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 5, para. 4 (Incorporating Change 4, September 11, 2020); *Id.*, at para. 9(j) (“Each commander shall implement SAPR prevention program that: . . . (j). Identifies and utilizes community-based resources and partnerships to add depth to prevention efforts.”).

⁶³ See DEPT OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 2, para. ak (Incorporating Change 4, September 11, 2020).

⁶⁴ Memorandum for Record, Subject: Status Report of the VTANG SAPR Program Operations Audit, 23 January 2020.

of the different service organizations, the state SARC had only minimal oversight over the Vermont Air National Guard SAPR Program.

The state SARC related that he has raised concerns with the Air National Guard on the extent to which frequent Air National Guard SARC turnover could be impacting the accountability of official reports of sexual assault made in the Air National Guard. These reports contain extremely sensitive information on a sexual assault victim, and she was concerned about the security of these forms and the effectiveness of the handoffs between incoming and outgoing Air National Guard SARCs. Additionally, based on interviews with program officials, there was no formal mechanism or routine for meeting to collaborate on potential enterprise-wide strategies to address or mitigate state-wide issues, trends, or risks.

Because there is no single program manager overseeing, monitoring, or reporting on the Army National Guard and Air National Guard SAPR programs across the state, risks endemic to either program may not be appropriately understood as state-wide (or enterprise-wide) risks by senior leaders. More importantly, prevention and response strategies to these risks may be inappropriately stove piped. In the absence of a state-level program, any opportunities for synergy between the organizations, as well as opportunities for sharing best practices and lessons learned, is lost.

The Vermont National Guard collaborates and coordinates with civilian law enforcement organizations prior to conducting (and in the course of) the administrative investigation of sexual assault allegations; however, internal coordination and communication on the status of civilian law enforcement investigations can be improved.

The Team found that, as a matter of routine, the Vermont National Guard generally reached out to civilian law enforcement when it received an unrestricted report of sexual assault. According to the Vermont National Guard officials that the Team interviewed, the Vermont National Guard does not maintain any written agreements with local civilian law enforcement.

As a general practice, the Army National Guard and Air National Guard maintained separate channels of communication with civilian law enforcement officials. Air National Guard SAPR officials coordinated with Air National Guard Security Forces in order to obtain copies of local civilian police reports or other civilian law enforcement investigatory files. On the Army National Guard side, the Provost Marshall (PMO) for the Joint Forces Headquarters serves as the primary conduit to civilian law enforcement.

If an incident occurred on a military installation such that it would generate a significant incident report (SIR), then this SIR would be reported up from the installation to the joint operations center (JOC) at the Vermont National Guard Joint Forces Headquarters, which would ensure that both the Air National Guard Security Forces and the Army National Guard PMO would be made aware of the incident. From an installation security standpoint, the PMO and Security Forces regularly share information on persons who are barred from post or who may pose a physical security risk. However, there was no standard practice by which a civilian law enforcement investigation (including closure report) of a sexual assault of an Air National Guard member would be shared with or reported to the PMO and vice versa.

As a matter of routine, SAPR program officials (normally the SARC) would ask for updates from the PMO or the installation Security Forces, who would then reach out to the relevant civilian law enforcement agency for the status of an investigation. Vermont National Guard officials stated that it was common for many civilian law enforcement officials to complete their investigation and fail to notify the

Vermont National Guard, but generally speaking there did not appear to be any notable impediments or difficulties in communicating with local law enforcement.

The Team found instances in which concern for victims' safety was not part of the local command Team's response to an unrestricted report of sexual assault. In one case, a victim of a sexual assault recalled having to interact with her perpetrator on numerous occasions after she filed her unrestricted report of a sexual assault. There was little indication that these instances of continued contact with the subject of an investigation and eventually substantiated perpetrator were considered at the CMG meetings from interviews with the victim and discussions with the victim's SVC who made it well known to the command, the G-1/HRO, and SAPR program that the victim did not feel safe attending Annual Training a couple of years in a row with the perpetrator of her assault. But the victim was informed essentially as long as the perpetrator was in the Vermont National Guard, he would attend "AT if he was in good standing."

The victim informed the Team that the perpetrator of her assault was not flagged upon initiation of his sexual assault investigation and was not flagged until after substantiation of the charge. The victim said the perpetrator's flag was then allegedly backdated to the initiation of the investigation. After substantiation of the charges, but before the perpetrator's administrative separation, the victim and perpetrator would have attended Annual Training in the same location, at the same time. The victim complained she did not feel safe if this was to occur, particularly since weapons qualification was scheduled during Annual Training. The victim was informed that the perpetrator would be at the same rang. She still complained that she still did not feel safe. Several months after substantiation of the charges a GOMOR was issued to the perpetrator at that Annual Training. The perpetrator was returned from Annual Training and submitted his resignation, which was revoked to initiate separation. Separation proceedings took several months to complete. The perpetrator was again scheduled to attend Annual Training at the same time as the victim and at that time the victim was told if the perpetrator was in good standing, he would attend Annual training. The perpetrator did not attend Annual Training having gone AWOL. Details of the actions taken against the perpetrator were not communicated to the victim by her immediate commander, but by the SARC or SJA. From the point of filing an unrestricted report until the separation action was completed took 17 months.

The victim lamented the degree to which the command had taken an interest in the perpetrator's welfare, which command did not seem to do the same for her.⁶⁵

5. PERFORMANCE

A. Performance at the Prevention Stage

Sexual assault reporting knowledge was deficient in certain Army National Guard units.

Based on a review of the DEOMI survey results and canvassing, the Team found reporting knowledge in the Army National Guard deficient. Within the Army National Guard, 71 percent of respondents to the DEOMI survey correctly identified the SARC as an individual who could receive a restricted report. Only approximately 59 percent understood that a victim advocate could receive a restricted report, and only 57 percent of respondents correctly identified that a military or criminal

⁶⁵ DoD's "Commander's 30-Day Checklist" specifically places a victim's immediate safety as a priority even before a matter is even referred to a criminal investigation. <https://www.sapr.mil/sites/default/files/Commanders%2030%20Day%20Checklist.pdf>. Last visited December 2, 2020.

investigative organization was not able to receive a restricted report. This was consistent with data collected during canvassing efforts.

The overall restricted sexual assault reporting knowledge of the Vermont Army National Guard was 58%.

Figure 6. Restricted Reporting Knowledge.

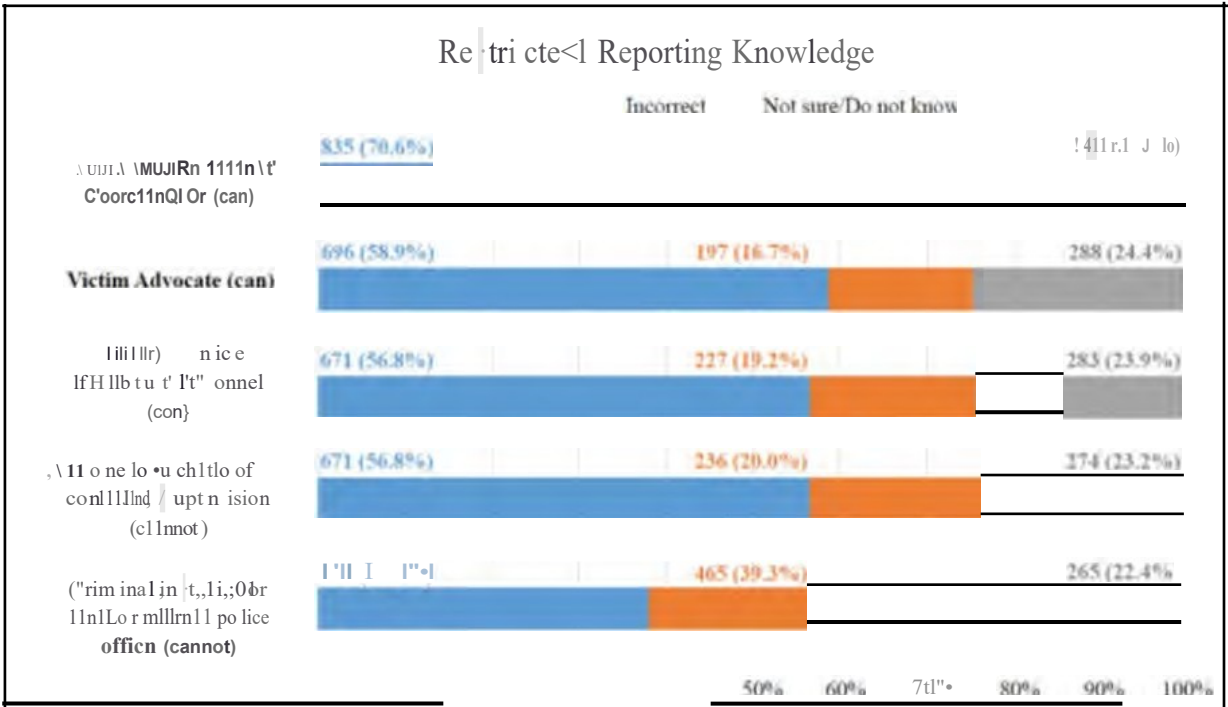


Figure 3. Army National Guard Reporting Knowledge

The Vermont Air National Guard, on the other hand, generally showed a higher percentage of favorable responses, with 64% percent of respondents exhibiting overall accurate reporting knowledge.

Figure 6. Respondents' Restricted Reporting Knowledge.

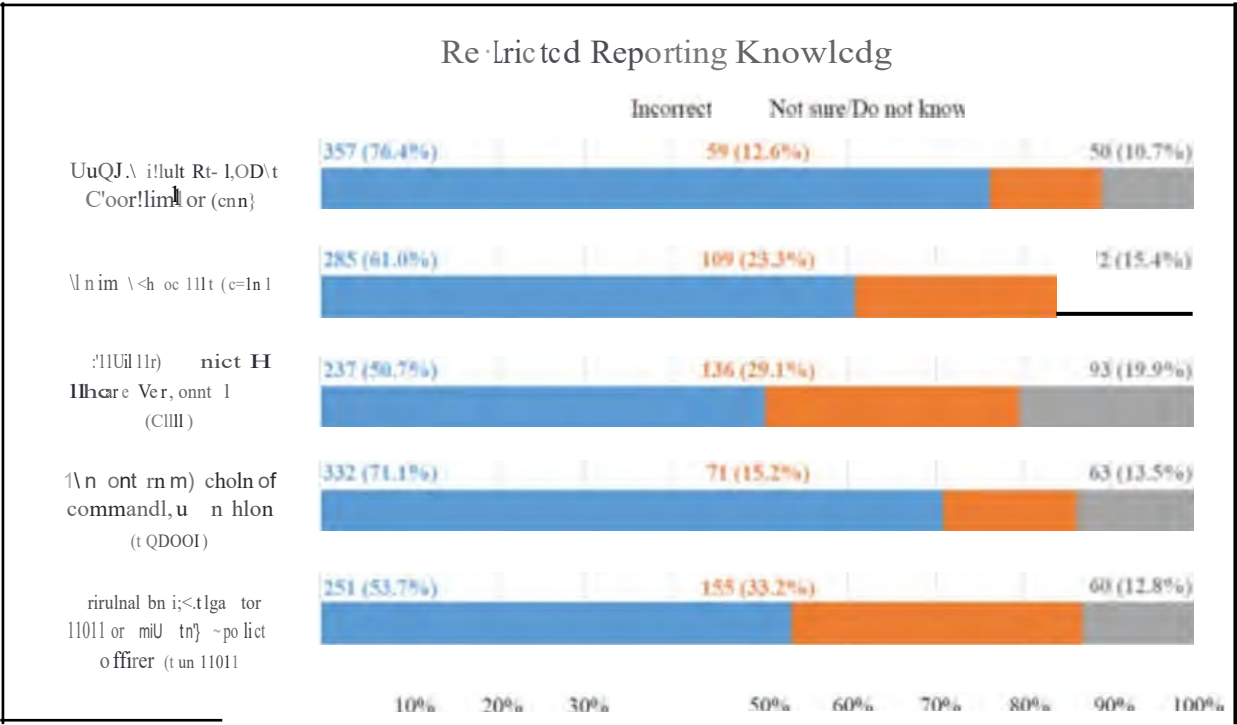


Figure 4. Air National Guard Reporting Knowledge

Vermont National Guard service members generally found their sexual assault prevention and response climate to be adequate.

Based on DEOMI survey results , the Vermont Army National Guard has achieved attributes of an adequate Sexual Assault Prevention and Response Climate. For example, ninety-two percent of those service members who took the DEOMI survey responded that they found their immediate supervisor models respectful behavior.⁶⁶ Eighty-eight percent of these same service members responded that they found their immediate supervisor would stop individuals who are talking about sexual topics at work.⁶⁷ Also, ninety-four percent of Army National Guard service members who took the DEOMI survey stated they believed their chain of command/ supervision would take a report of sexual assault seriously.⁶⁸ Overall eighty-four percent of Army National Guard service members provided favorable responses to questions on their unit's sexual assault prevention climate, and ninety-one percent of those surveyed provided a favorable response to questions on their unit's sexual assault response climate.⁶⁹

Across the Vermont Air National Guard, the prevention and response climate received an adequate percentage of favorable responses along the same lines as the Army National Guard. Within the 158th Fighter Wing of the Vermont Air National Guard, ninety-three percent of those service members who took

⁶⁶ Defense Organizational Climate Survey (DEOCS) Report, VT ARNG, Admin. No. 200 197 3, pg. 17, Table 2.13 (May 28. 2020).
⁶⁷ Defense Organizational Climate Survey (DEOCS) Report , VT ARNG, Admin. No. 200 197 3, pg. 17, Table 2.13 (May 28, 2020).
⁶⁸ Defense Organizational Climate Survey (DEOCS) Report, VT ARNG, Admin. No. 200 1973 , pg. 18, Table 2.14 (May 28.2020).
⁶⁹ Defense Organizational Climate Survey (DEOCS) Report, VT ARNG, Admin. No. 200 1973 , pg. 10, Figure 4 (May 28 , 2020).

the DEOMI survey responded that they found their immediate supervisor models respectful behavior.⁷⁰ Eighty-eight percent of these same service members responded that they found their immediate supervisor would stop individuals who are talking about sexual topics at work.⁷¹ Also, ninety-six percent of Air National Guard service members who took the DEOMI survey stated they believed their chain of command/ supervision would take a report of sexual assault seriously.⁷² Eighty-nine percent of Air National Guard service members provided favorable responses to questions on their unit's sexual assault prevention climate.⁷³ Finally, ninety-two percent of those surveyed provided a favorable response to questions on their unit's sexual assault response climate.⁷⁴

B. Performance at the Response Stage

The Team found some instances in which the local command did not attend to, let alone prioritize, victims' needs and interests.

DEOMI surveys describe how the organizational environment failed to provide adequate care and support to victims.

"I do not feel challenged within this organization. I believe that only certain personnel are afforded opportunities for both challenging assignments and upward progression. You need to be part of the in crowd and there are factions within the organization with their own agendas. They do not support the TAG and they are not held accountable; they are rewarded for toxic and subversive behaviors. They harbor perpetrators of both sexual assault and harassment, they continue to advocate for their retention even when presented with evidence. We have subversive morally and ethically challenged individuals (some are at the most senior levels)."

"We continue to provide tacit approval of sexism and sex offenders. Leadership often uses the term 'Good Soldier' rather than holding them accountable. Even those found guilty after full investiga[tions] are given letters of recommendation by leadership. Some of these offenses are so bad they should be on the Sex Offender Registry, yet we try to retain them. We need to do what is morally and ethically right. Our constituents within Vermont are relying on us to provide a safe location for their sons and daughters to serve and we cannot promise that based on our current climate. Even when given the opportunity we do not hold leaders accountable that advocate for these individuals which is another form of tacit approval."

"If you put a fox in a chicken coop, it will kill all the chickens. If you do this multiple times at some point you are as responsible for the deaths of the chickens as the fox. At some point those that move sexual harassers from unit to unit are just as responsible and need to be dealt with. They have created more casualties among our ranks. Justifying it by putting the blame on the victim for the consequences to the offender to get permission to move the offender to the next unit instead of removing them from the Guard."

⁷⁰ Defense Organizational Climate Survey (DEOCS) Report, VTANG, Admin. No. 2001971, pg. 17, Table 2.13 (May 28, 2020).

⁷¹ Defense Organizational Climate Survey (DEOCS) Report, VTANG, Admin. No. 2001971, pg. 17, Table 2.13 (May 28, 2020).

⁷² Defense Organizational Climate Survey (DEOCS) Report, VTANG, Admin. No. 2001970, pg. 18, Table 2.14 (May 28, 2020).

⁷³ Defense Organizational Climate Survey (DEOCS) Report, VTANG, Admin. No. 2001971, pg. 8, (May 28, 2020).

⁷⁴ Defense Organizational Climate Survey (DEOCS) Report, VTANG, Admin. No. 2001971, pg. 8 (May 28, 2020).

“Why has it taken our organization 24 months to process and execute FED REC Revocation of a company grade office for assault against another company grade office? Why did members of the Army Senior Leadership Counsel speak in favor of retaining Company grade officers with a General Officer Letter of Reprimand for Sexual Assault? Why did the victim of sexual assault who reported in a restricted manner have to testify at a public forum to during FED REC Revocation process?”

“Because I don't feel supported by my immediate leadership in my day-to-day functions, I can't say that I would feel supported by my immediate leadership if I was victim to a sexual assault or harassment incident.”

The Vermont National Guard had a history of conducting command-level investigations of sexual assaults, however, for the period of review between 2017 to 2020, the Vermont National Guard properly referred all matters to an MCIO, Civilian LEA, or OCI except for potentially one instance.

Since 2014 sexual assault investigations of unrestricted sexual assault reports should not be conducted by a command, but must be referred to either an MCIO, a civilian law enforcement agency, or if declined by the former, then OCI.

From 2010 until February 2020 based upon VTNG DSAID data provided to the Team, the VTNG has had a total of twenty five (25) unrestricted reports of sexual assault. Of those twenty five matters, fourteen (14) were referred to either MCIO or civilian law enforcement and investigated. Two (2) matters were referred to OCI. Two (2) matters were listed as “N/A.” Seven (7) matters were listed as investigated by the VTNG or by AR15-6 investigations or CDIs. From 2017 to February 2020, only one (1) unrestricted report of sexual assault was listed as having a pending AR 15-6 investigation after being declined by civilian law enforcement from an incident in July, 2019 while the servicemembers were in a non-duty status.

The Team requested all AR-15-6 Investigations and/or CDI Reports of Investigation of sexual assaults and sexual harassment matters for the periods of 2017 to 2020. The Team received two Reports of Investigation related to that query.

One Report of Investigation was a preliminary inquiry regarding claims of sexual harassment involving civilians in September 2019 which clearly was not pertinent.

The other Report of Investigation was an AR 15-6 investigation from the period of 2017 to February 2020 in which the Vermont National Guard Commander ordered the investigation to determine if a civilian guilty plea and conviction for sexual assault while in a non-duty status by a service member would be a sufficient basis for an administrative separation in accordance with AR 135-178, Chapter 11 for Misconduct. Therefore, the AR-15-6 investigation was not specifically to investigate the alleged sexual assault and was proper. However, this Report of Investigation which involved an incident in New York State and occurred in September 2018 did not match the details from the data provided of the July, 2019 unrestricted report which had a “pending AR 15-6 Investigation.”

The team did not receive the AR 15-6 Report of Investigation related to this July 2019 unrestricted report⁷⁵ nor information whether this matter was eventually referred to OCI after being declined by

⁷⁵ The DSAID # for this matter is UUNG-00000452-2019-00409.

civilian law enforcement. At the very least, it is clear that there may still exist within the Vermont National Guard confusion regarding the fact that unrestricted sexual assault matters must be investigated by external entities and not by internal command inquiries and this should be stressed.⁷⁶

The team did not request the reports of investigation of AR 15-6 Investigations or Command Directed Investigations outside of the period of time the TAG asked the team to assess which was 2017 to 2020.

⁷⁶ Dep't of Defense Instruction 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures, Encl. 2, pg. 21, para. 6k (1), (March 28, 2013 [Incorporating Change 4, September 11, 2020]): "A unit commander who receives an Unrestricted Report of an incident of sexual assault shall immediately refer the matter to the appropriate MCIO. A unit commander shall not conduct internal, command-directed investigations on sexual assault investigations (i.e., no referrals to appointed command investigators or inquiry officers) or delay immediately contacting the MCIO while attempting to assess the credibility of the report." For matters involving sexual assault, investigations are limited to an MCIO, civilian LEA or OCI. For sexual harassment claims, investigations should of complaints should be conducted either under the military equal opportunity complaint procedures of CNGBI/CNGBM 9601.01, an IG investigation under DoDI 1020.3 or and equal employment opportunity complaint procedure by Investigation and Resolutions Division of DCPAS for civilian, and dual status military technician EEOC complaints. All with external oversight by NGB or the EEOC.

LINE OF EFFORT B:

Command Support Programs: EEO/EO

1. INTRODUCTION

The Vermont National Guard (VTNG) Equal Opportunity/Equal Employment Opportunity (EEO/EEO) Program and policies do not comply with EEO, Department of Defense (DoD), and National Guard Bureau (NGB) policies and regulations. This results in gaps in service to military members, technicians, and civilian personnel regarding complaints processing, specialty emphasis programs, and reprisal/retaliation prevention programs for the VTNG. Both VT Army National Guard and Air National Guard EO/EEO personnel utilize ad hoc procedures to resolve matters involving unlawful discrimination and prevention, which does not allow for transparency, consistency, and oversight of the program. This results in distrust of the process and impedes the command's ability to resolve issues involving unlawful discrimination and sexual harassment in an efficient and prompt manner.

Recommendations to the program

a. As a result of National Defense Authorization Act 2017 [FY17 NDAA], amendments to 10 U.S.C. § 10508, subsequent regulatory changes, and the Chief of the National Guard Bureau's designation, the Adjutants General are now the "head of the agency" responsible for administering National Guard employees and military service members. This includes responsibility for EEO purposes for Title 5 civilian employees, and Title 32 dual status military technician personnel. This change in the law required VTNG establish a joint EEO complaints procedure for National Guard Title 5 civilian employees and dual status military technician personnel in the VTNG. This was directed by NGB-EI in 2017 through CNGBN 9600, which directed all state National Guards to establish an EEO Complaints Processing regulation in compliance with EEOC, DoD regulations, and the pertinent federal statutes by October 2017. VTNG only promulgated a policy and guide. VTNG must promulgate a compliant EEO Complaints Processing regulation immediately. At minimum, this regulation must provide for processing individual complaints of discrimination to include the requirements contained in §§ 1614.105 through 1614.110 and in § 1614.204 of section 29 Code of Federal Regulations (C.F.R.), and consistent with all other applicable provisions contained in the Equal Employment Commission's Management Directives 110 and 715.

b. The VTNG EO/EEO program must be separated from the Human Resources Office (HRO) and should be aligned with the Personal Staff of the Adjutant General or the Deputy Adjutant General, with a direct report by the State Equal Employment Manager (SEEM) or EEO Director to the Adjutant General. The EO/EEO Director or SEEM cannot be rated/supervised by the HRO/G-1/A-1 or Judge Advocate (JA). This is a conflict of interest pursuant to Equal Employment Opportunity Commission (EEOC), DoD, and NGB policies and regulations.

c. Collateral duty or full-time personnel EO/EEO professionals cannot be personnel from the HRO/G-1/A-1 or JA. This is also a conflict of interest pursuant to Equal Employment Opportunity Commission (EEOC), DoD, and NGB policies and regulations.

d. Special Emphasis Program personnel cannot be from the EO/EEO complaints processing program or rated by the SEEM or EEO Director or involved in the EO/EEO complaints processing program. Collateral duty Special Emphasis Program personnel can be from the HRO/G-1/A-1.

e. Equal Opportunity professionals must process and promote a retaliation prevention program and complaints process in accordance with DoD and NGB policy and regulation.

Background on Equal Opportunity and Equal Employment Opportunity in the National Guard

In the DoD, including the National Guard, the command is responsible for the prevention of unlawful discrimination, including preventing harassment, and hostile work environment under the EEO/EO program. The EO program is also known as the Military Equal Opportunity program (MEO). The Team assessed the VTNG's adherence to and implementation of Federal, DoD, and NGB policy in the execution of its EEO/EO program. The scope of this assessment included a review of allegations of discrimination in the Vermont EEO/EO discrimination complaints programs, and a statewide survey of the VTNG's culture and climate regarding illegal discrimination. Specifically, the team reviewed all open and closed cases of unlawful discrimination that were reported between to DoD and the EEOC from May 2016 and September 2019. The team also incorporated information collected from the statewide DEOMI survey of the VTNG's climate regarding sexual harassment and unlawful discrimination, as well as during on-site interviews with major subordinate commands and military members interested in speaking with the assessment team.

Military Equal Opportunity in the National Guard

The Secretary of Defense directed the Chief, National Guard Bureau to implement Title VI of the Civil Rights Act of 1964 (nondiscrimination in federally assisted programs) as it applies to the National Guard and to create, in accordance with Title VI, an MEO program in the non-federalized Army and Air National Guard with CNGB as the government official having final decision authority over formal discrimination complaints and oversight over the program.⁷⁷ Historically, the Chief, National Guard Bureau managed the MEO program through Army National Guard Regulation (NGR) 600-22/Air National Guard Instruction (ANGI) 36-3 for complaints processing; and overall MEO program management was accomplished through ANGI 36-7 and NGR 600-21. In 2017, the complaints process was updated and consolidated into the CNGB Instruction/Manual 9601.01 series. Thus, for complaints processing, NGR 600-22/ANGI 36-3 was rescinded and superseded. ANGI 36-7 was superseded by AFI 36-2710 in June 2020, recognizing NGB-EI's authority over Title 32 MEO complaints processing and the Adjutant General's authority over Title 5 civilian and dual status military technician EEO complaints processing. Overall EO/EEO program functions and responsibilities for the ARNG are managed under the applicable NGR, and for the ANG, are managed by the AFI where specified.⁷⁸

The Adjutant General is responsible for the State MEO program.⁷⁹ The State Equal Employment Manager (SEEM) serves as "The Adjutant General's central point of contact for all complaints of illegal discrimination arising within the state National Guard,"⁸⁰ and for managing the MEO program in the

⁷⁷ CNGB is the responsible DoD official, who implements nondiscrimination in federally assisted programs as it applies to the National Guard, in accordance with DoDD 5500.11 which implements sections 2000d through 2000d-7 of Title 42, United States Code (Title VI of the Civil Rights Act of 1964, as amended).

⁷⁸ See National Guard Regulation 600-21, "Equal Opportunity Program in the Army National Guard," (May 22, 2017); Air Force Instruction 36-2710, "Equal Opportunity Program," (18 June 2020).

⁷⁹ See Chief, National Guard Bureau Instruction 9601.01, "National Guard Discrimination Complaint Program" (September 27, 2015).

⁸⁰ Chief, National Guard Bureau Instruction 9601.01, "National Guard Discrimination Complaint Program," Enc. A, para. 9 (September 27, 2015).

state.⁸¹ The SEEM's specific responsibilities are to: monitor and track the progress of all open and closed EO complaints; and to timely coordinate and notify National Guard Bureau Office of Equity and Inclusion, Complaints Management and Adjudication (NGB-EI/CMA) of all complaints, both formal and informal, so the complaints can be tracked. The SEEM also exercises oversight over the EO personnel in each unit, known as Equal Opportunity Leaders (EOLs) and/or Equal Opportunity Advisors (EOAs) for the Army National Guard and Military Equal Opportunity Practitioners for the Air National Guard.⁸²

Equal Employment Opportunity in the National Guard

Civilian EEO was historically governed in the Army National Guard and Air National Guard by regulations from the National Guard Bureau;⁸³ however recent statutory amendments to section 709 of Title 32, and section 10508 of Title 10, United States Code regarding the processing of civilian EEO complaints within State National Guard programs prompted a new regulatory scheme.⁸⁴ In May 2017, the Chief, National Guard Bureau issued CNGB Notice 9600, which required states to publish an EEO complaints process, as mandated by 29 C.F.R. Part 1614.104 and Federal Equal Employment Opportunity Commission Management Directives by no later than 1 October 2017. In accordance with the requirements of 28 C.F.R. § 1614.104, each State National Guard was to "adopt procedures for processing individual and class complaints of discrimination that include the provisions contained in §§ 1614.105 through 1614.110 and in § 1614.204, and that are consistent with all other applicable provisions of this part and the instructions for complaint processing contained in the Commission's Management Directives." This regulation required State National Guards to establish procedures in a regulation which notified employees of the complaints procedures to include EEO pre-complaint processing (29 C.F.R. §1614.105); individual EEO complaints (29 C.F.R. §1614.106); dismissal of EEO complaints (29 C.F.R. §1614.107); investigation of EEO complaints (29 C.F.R. §1614.108); EEO hearings (29 C.F.R. §1614.109); final actions by agencies on EEO complaints (29 C.F.R. §1614.110); and EEO class complaints (29 C.F.R. §1614.204).⁸⁵ States could use the Model State National Guard Joint Civilian Discrimination Complaint Instruction referenced in CNGB Notice 9600 at paragraph 5.b to promulgate their respective State's complaint processing regulation.⁸⁶

⁸¹ See Air Force Instruction 36-2710, "Equal Opportunity Program," para. 1.3.33.1 (18 June 2020).

⁸² See National Guard Regulation 600-21, "Equal Opportunity Program in the Army National Guard," (May 22, 2017) para. 1-3 *f & g*; Air Force Instruction 36-2710, "Equal Opportunity Program," (18 June 2020), para. 1.3.29.

⁸³ National Guard Regulation (AR) 690-600/Air National Guard Instruction (AF) 40-1614, Volumes I and II, "National Guard Civilian Discrimination Complaint System;" 15 March 1993.

⁸⁴ See Public Law 114-328, "National Defense Authorization Act for Fiscal Year 2017," (December 23, 2016). In September, 2015, CNGBI 9601.01, "National Guard Discrimination Complaint Program," paragraph 2, rescinded and replaced National Guard Regulation (NGR) (AR) 690-600/(AF) 40-1614, 15 March 1993, Volumes I and II, "National Guard Civilian Discrimination Complaint System;" and NGR 600-22/Air National Guard Instruction 36-3, 30 March 2001, "National Guard Military Discrimination Complaint System." However, Congress in the 2016 NDAA gave dual status military technicians limited EEO rights and required the conversion of all non-dual status technicians to Title 5 civilian employees requiring amendment of 10 U.S.C. §10508 granting to the Chief, National Guard Bureau, authority over National Guard employees (technician and Title 5) which he delegated to the Adjutant Generals to employ and administer and made the Adjutant General's "heads of agencies" for administrative hearing purposes like the EEOC.

⁸⁵ See Chief, National Guard Bureau Notice 9600, "State National Guard Civilian Equal Employment Opportunity Complaint Processing and Reporting Guidance," (May 10, 2017) and 29 C.F.R. §1614.104.

⁸⁶ at URL https://gko.portal.ng.mil/Joint/Staff/D09/_layouts/15/WopiFrame.aspx?sourcedoc={4ED0FAE1-8292-4955-A0CE-750B1205B281}&file=Sample%20Model%20NG%20EEO%20Regulation.docx&action=default

2. COMPLIANCE

The Vermont National Guard's Written Policies on Prevention and Response to Allegations of Illegal Discrimination Do Not Reflect Current Federal Law, DoD, EEOC, or National Guard Bureau Policies.

The Vermont TAG Policy Memoranda addressing EEO and harassment in the workplace was updated in 2019. However, because of changes to federal law and pursuant to CNGBN 9600, "State National Guard Civilian Equal Employment Opportunity Complaint Processing and Reporting Guidance," (May 10, 2017) and 29 CFR § 1614.104, the Vermont National Guard did not promulgate an Equal Employment Opportunity complaints procedures regulation for processing individual and class complaints of discrimination. Such a regulation must include the provisions contained in §§ 1614.105 through 1614.110 and in § 1614.204 of section 29 C.F.R. and must be consistent with all other applicable provisions contained in the Equal Employment Commission's Management Directives 110 and 715. The EEO and harassment in the workplace policies, and the Joint Civilian Discrimination Complaints Instruction Guide, June 2017,⁸⁷ do not meet this requirement, especially about the procedures for filing complaints of illegal discrimination by Title 5 civilians and dual status technicians; investigation; and the rights of complainants.

At minimum, a state National Guard's EEO regulation must: contain a pre-complaint process that advises individuals in writing of their rights and responsibilities;⁸⁸ have an agency program to promote equal employment opportunity that includes a formal complaint process and that the agency will investigate the claim within 180 days of filing;⁸⁹ include the ability to dismiss complaints;⁹⁰ state that the agency will investigate formal complaints of discrimination⁹¹ using Investigation Resolution Division;⁹² provide that the complainant will have a right to request an EEOC hearing before an Administrative Judge;⁹³ note the agency shall issue a written final agency decision;⁹⁴ and provide for class complaints.⁹⁵

An example of required elements for a state National Guard EEO regulation was provided by NGB-EI in 2017 in the Model State National Guard Joint Civilian Discrimination Complaint Instruction referenced in CNGBN 9600 and made available to all state National Guard SEEMs.

⁸⁷ NGVT-JP-17, "Joint Policy Memorandum (NGVT-JP-17), Equal Opportunity Policy," 15 September 2019 and the VT Joint Civilian Discrimination Complaints Instruction Guide, 1 July 2017.

⁸⁸ 29 C.F.R. § 1614.105.

⁸⁹ 29 C.F.R. § 1614.106.

⁹⁰ 29 C.F.R. § 1614.107.

⁹¹ 29 C.F.R. § 1614.108.

⁹² DoDI, 1400.25, Vol 1614, "DoD Civilian Personnel Management System: Investigation of Equal Employment Opportunity (EEO) Complaints," November 5, 2015.

⁹³ 29 C.F.R. §1614.109.

⁹⁴ 29 C.F.R. §1614.110.

⁹⁵ 29 C.F.R. §1614.204.

CONTROLLED

UNCLASSIFIED

INFORMATION

Because the VTNG EEO program does not have a compliant complaints processing regulation but only a “guide,” the organization does not respond properly to allegations of discrimination, or other related actions. In addition, employees and managers are not provided accurate information on rights and procedures under current federal law and DoD and NGB policies.

As a result, EEO complaints that should be processed under a compliant EEO process in many instances are investigated by Command Directed Investigations or AR 15-6 Investigations by military personnel instead of by an Investigation Resolution Division. Informal complaints are also investigated in this manner. As a result, complaints are not processed by trained Equal Employment Opportunity counselors trained to remain neutral and process the complaint, assist in the formation of the charges, and seek resolution of the issues if possible, through Alternative Dispute Resolution or other means as a neutral party; and then, if not resolved, compose a final report, and provide for a complainant a right to file a formal complaint along with the complainant’s rights.

Therefore, commands, the HRO, and individual employees are unaware of the process and that conducting a Command Directed Investigation or AR 15-6 investigation does not abrogate the right of the employee to file an EEO complaint. The team discovered several complaints that were processed as military investigations alone, and where individual complainants and their commands were unaware that the complaint could have or should have been processed in the EEO process. Further, EEO complaints were forwarded and investigated by the Inspector General. Although that is an acceptable venue, the individual complainant still had a right to file an EEO complaint seeking individualized resolution and was not aware of this avenue.

This result can be seen in the EEOC 715 and 462 reports for the past several years, which revealed no informal or formal complaints, notwithstanding evidence of several complaints of sexual harassment and discrimination that were investigated via military investigation.

Vermont National Guard EO/ EEO/ Harassment in the Workplace Policies also Do Not Provide Adequate Protections for Complainants.

CNGBI 9601.01 requires that Adjutants General encourage personnel to participate in the complaint process without fear of retaliation with the intent to ensure complainants are forthcoming.⁹⁶ In order to comply with this policy, every state National Guard was mandated to implement a Retaliation Protection Plan in 2017.⁹⁷ Interviews with the SEEM, unit commanders, and Equal Opportunity Advisors confirmed such measures were not being implemented in Vermont.

Additionally, commands must convey the opportunity for service members to make an anonymous complaint.⁹⁸ Several Vermont National Guard policies addressed anonymous complaints; however, the Team found that these policies served as a deterrent. For example, Joint Policy Memorandum, VTNG Equal Opportunity Policy states at paragraph “f” that “EO personnel must report specific allegations of unlawful discrimination or sexual harassment to the chain of command upon

⁹⁶ CHIEF, NATIONAL GUARD BUREAU INSTRUCTION 9601.01, NATIONAL GUARD DISCRIMINATION COMPLAINT PROGRAM, A-4, 8h. (September 27, 2015).

⁹⁷ DOD RETALIATION PREVENTION AND RESPONSE STRATEGY IMPLEMENTATION PLAN (January 2017).

⁹⁸ Chief National Guard Bureau Manual 9601.01, National Guard Discrimination Complaint Process, para. 4. b. (April 27, 2017). “All NG members who wish to remain anonymous must notify the State Equal Employment Manager, ANG Equal Opportunity (EO) practitioner or the Adjutants General designated representative (hereinafter collectively referred to as the State representative), when first initiating an informal resolution request under Enclosure A of this manual.”

discovery. For this reason, communications to EO personnel do not have any privilege of confidentiality.” Other policies emphasized reporting potential EO complaints to the chain of command.

Reporting EO violations directly to the chain of command takes away the option of anonymity, and it also raises separate concerns about program oversight and deterrence. When the EO representative is not included in the reporting channel, complaints are not accurately accounted for, processed, and reported in EO channels. Members may not be provided with thorough information regarding their rights and timelines associated with making complaints, and leaders are unable to try and address concerns raised. Additionally, when reporting is limited to command channels, service members may be deterred from reporting complaints at all. This was emphasized by a comment in the DEOMI survey which provided:

“There is a belief in the organization that the person who brings the issue up is just as likely to be ‘punished’ as the offender. Though one will be documented and punished administratively. The other is likely to gain a reputation that leads commands to not want the person, thus affecting the Soldiers career.”

This may be the reason that in the last several years there has not been an EO complaint filed, either informal or formal, in the VTNG. Rather, the VTNG has been utilizing AR 15-6 investigations and Command Directed Investigations of incidents of harassment and discrimination. These could have been concurrently or singly processed as EO complaints with TAG and NGB oversight, rather than internal command directed investigations.

3. PROGRAM MANAGEMENT

The Vermont National Guard EEO/EO Programs Complaint Resolution Process Does Not Comply with NGB Policy.

CNGBM 9601.01 prescribes certain procedures intended to protect the integrity of the MEO resolution process and the command from false and unjust accusations. Where the complaint is not initially received by the SEEM, the unit EOA is responsible for forwarding National Guard Bureau Form (NGB Form) 333 to the SEEM. The SEEM is required to acknowledge, in writing, receipt of an informal written request within seven calendar days of its receipt and to contact NGB-EI-CMA to obtain a tracking number for each case. The SEEM should then communicate back down the unit EOA and provide that number to the unit level EOA, allowing all EO personnel to track case progression of the complaint through the inquiry, proposed resolution, and final decision stages as described in Figure 1 below.

Informal Resolution Request (IRR)



Figure 1. National Guard Informal Resolution Request Process

The Vermont SEEM formally acknowledges, in writing, receipt of an informal written request, and then contacts NGB- EI- C MA to obtain a tracking number from NGB- EI- C MA; and as a result, NGB- EI- CMA provides a tracking number to the lower level EOA for processing. Complaints are, therefore, properly tracked throughout the complaint process, providing complainants and commanders with adequate communication regarding complaints or resolution. However, when complaints are directed to the command and the command directs an investigation, the matter is not tracked nor is there adequate oversight of the complaints for the TAG, the SEEM, the command, and the complainant.

In reviewing individual cases and based on member interviews, the Team found several servicemembers whose complaints in EO were processed in via command directed investigations. Therefore, there was no record of a review of the complaints or the creation of proposed resolutions to the complaint. Without proper oversight of both the complaint and proposed resolutions through the complaint process, the SEEM is unable to provide proper oversight leading to perceptions regarding unfair or unequal treatment and to provide that information to the TAG and NGB.

The Vermont National Guard EO/EEO Programs lack adequate resources and command emphasis.

Based on the force structure and organization of the Vermont National Guard, DoD and National Guard Bureau policy directs that eight EO professionals should be trained, certified, and assigned across the four major commands of the Army National Guard and six EOLs should be trained, certified and assigned across the six major commands of the Air National Guard.

Currently, the Vermont National Guard has one full time SEEM and one part-time EOL to educate and service over 2,909 Army and Air service members (including Dual Status Military Technicians and AGR personnel) and 38 Title 5 National Guard civilian employees. There is one fully trained EOL in the Air National Guard, but there is no EOA in the Army National Guard. This was attributed to high personnel turnover and natural career progression of qualified EO professional staff in major subordinate commands.⁹⁹ The Team found that current personnel management business practices within the Vermont Army National Guard failed to consider the impact of promotion and

⁹⁹ As in the Air National Guard, the role of EOA is an additional function Soldiers perform along with other assigned duties. However, soldiers assigned as EO professionals may not hold leadership positions.

reassignment of EO professionals on the program's ability to provide continuity of service and support within subordinate commands without first training new EO professionals. Due to this gap in assignment, the SEEM is personally managing all ARNG complaints in Vermont, which appeared to impact the confidence in the Vermont National Guard MEO program at the lower echelons. Further, the ANG EOL is under the impression that the ANG program is separate and distinct from the EO/EEO program, which is under the direction of the SEEM. This is not true, the programs, both EO and EEO, are joint programs. In effect, the MEO/EEO complaint process at the lowest unit level was non-existent for lack of trained personnel.

Commanders play a pivotal role in the implementation of a successful EEO/EO program. The EEO/EO program is ultimately a command support program and, therefore, the commander has the responsibility to provide adequate resources for the EO program, which includes trained personnel who can assist in the processing of EO complaints, and briefing unit members and employees annually about their right to file discrimination complaints, how to file complaints, and the time limits for such filing and processing of the complaint. Commanders also have the responsibility to take action to end unlawful discrimination or sexual harassment when a formal complaint is substantiated.

The Team found that commanders were aware of their responsibility to emphasize EO/EEO policies but were frustrated in what many perceived as a lack of authority to effectively manage personnel assigned to their unit or command. One commander expressed his frustration when asked about the disposition of a harassment complaint, stating that he felt his hands were tied and he could not take administrative action on any type of investigation that was withheld to the brigade or TAG level. Additionally, due to lack of communication with leadership, another commander was unaware of what action if any was being taken in a case.

The Vermont National Guard EEO/EO Programs lack fully trained and qualified personnel.

CNGBI 9601.01 prescribes the training requirements for the SEEM. The SEEM must receive 16 hours of specified training within 60 days of appointment, including National Guard Discrimination Complaint Program processing and a case-by-case review of all open and pending complaints in the state.

The SEEM also has the crucial duty of ensuring that his EO/EEO practitioners at geographically separated units are trained in accordance with EEOC, National Guard Bureau, Army, Air Force, and DOD rules, regulations, and policies, and are adequately resourced to accomplish their fact-finding and resolutions responsibilities.

The Team found that it logically followed that due to a lack of trained EO/EEO practitioners, Soldiers, Airmen, and employees lacked an understanding of the EO/EEO program and the complaint filing process throughout the Vermont National Guard. The Team canvassed members throughout the Vermont National Guard and determined that most personnel interviewed were unfamiliar with the process for making a discrimination or harassment, and over half of the Vermont National Guard's Soldiers and Airmen interviewed or canvassed did not know the name of their EOA/EOL.

4. RELATIONSHIPS

The Vermont National Guard's SEEM rating and supervisory scheme inhibits effective communication with senior leadership and units regarding EEO/EO program issues and training.

To ensure senior leadership awareness of issues related to the EEO/EO program, the SEEM needs unimpeded access to The Adjutant General, without having to first go through other layers of leadership at the state. In the Vermont National Guard, the SEEM is currently rated by, and required to communicate all issues and concerns regarding the program through, the Human Resource Officer, which inhibits his ability to coordinate the state's EO program effectively.

The SEEM reported to the Team his low comfort level of requesting a meeting with the TAG through the Human Resource Officer. It is a conflict of interest under EEOC Management Directive 110, NGR 600-21, and AFI 36-2710 for the SEEM and EO/EEO professionals involved in the EO/EEO complaint system to be aligned with, rated by, or affiliated with Human Resources or a Personnel department. The EO/EEO program must report directly to the "head of the Agency" who is the TAG. The TAG may designate another member of his staff, i.e. the ATAG, to exercise supervisory responsibility; but the supervisor cannot be Human Resource or the Staff Judge Advocate.

It will be incumbent upon the SEEM to facilitate and cultivate growth of the EO office, not just of the Officer/Advisor, but growth of the entire office. The SEEM should serve as a unifying force between all EO offices and should keep communication flowing between geographically separated units and National Guard Bureau's Office of Equity and Inclusion. Ensuring that the SEEM has direct access to The Adjutant General will assist the SEEM in exercising these critical communication functions.

5. PERFORMANCE

The lack of resourcing and emphasis on the Vermont National Guard's EEO/EO Program has impacted the filing and disposition of sexual harassment and hostile work environment complaints.

There is both a lack of command awareness and command involvement in the EEO/EO process at lower echelons, causing missed opportunities for commanders to resolve personnel issues at the lowest level and increased risk of improper handling of EEO/EO complaints. The Vermont National Guard relies heavily on utilizing general administrative investigative procedures to investigate allegations of discrimination. Investigatory methods specific for discrimination investigations, such as Leadership Inquiry Reports in accordance with CNGBM 9601.01, or a Report of Investigation by the Investigation Resolution Division, permit commanders to gather facts efficiently and quickly so any adverse or corrective action by management can occur shortly after the alleged misbehavior. The Team noted that at the unit level, many commanders were internally processing EO/EEO related complaints using command-directed investigations completely outside of the EEO /EO program.

Once resources are properly allocated, unit and wing commanders will have EOAs/ EOLs to assist them in using the EO channels for processing and investigating local EO complaints. The increased availability of EOAs and EOLs should cause a rise in education of the EO program and rise in reporting to a realistic number, illuminating issues for the command to resolve.

LINE OF EFFORT C:

Command Climate/Culture: Reprisal; Retaliation; and Bullying

1. INTRODUCTION

The Team assessed the organizational and command climate within the Vermont National Guard. In general, the command climate within each VTNG unit is sound and well-focused on mission accomplishment. However, interviews and DEOCS survey data revealed a consistent theme that many VTNG personnel across the organization have a deeply rooted fear that senior leadership will not treat them fairly if they highlight or voice problems in their units. This pervasive fear appears to stem from past senior leadership, as well as a perception that an unofficial “good old boy” network of favoritism is operating within the VTNG. This has an undeniable chilling effect on the current senior leadership’s efforts to make changes for the better.

The team assessed the organizational and command relationship/culture within individual units themselves, and assessed the relationship of these units with VTNG senior leadership. In addition to reviewing the command climate through DEOMI led survey process, the team identified and analyzed three primary focus areas: trust and confidence in the organization; allegations of misconduct in the form of hazing, bullying and maltreatment; and allegations of reprisal. Each of these focus areas are discussed in sequence below.

Recommendations for the VTNG:

- a. The VTNG should conduct an enterprise-wide review of the systems and processes within the VTNG, particularly about transparency of personnel policies and administration of discipline, which may be fostering the perception of favoritism within the VTNG.
- b. Increased leadership focus at TAG level on the health of the civilian force within the VTNG. Consideration should be given to civilian personnel morale, as well as increased opportunity for personnel to have direct access to senior leadership to ensure their concerns are addressed. Leadership should also consider “civilian only” sensing sessions, including separate sessions that may allow minority personnel to express their concerns without fear of maltreatment or reprisal.
- c. The VTNG leadership, should ensure that refresher training on Department policy regarding hazing and bullying is conducted; that leadership reinforces its lack of tolerance for hazing; and that TAG anti-hazing and bullying policies are widely disseminated and posted in unit areas.
- d. Regarding possible ongoing hazing in the Fire Department, VTNG leadership should consider a command-directed inquiry or management review into these allegations.
- e. Based on the seemingly lower percentage of favorable responses in the ARNG Recruiting and Retention Battalion in the areas of bullying and hazing, the VTNG should focus additional efforts in ensuring climate issues are appropriately addressed within that organization.

2. TRUST AND CONFIDENCE IN THE ORGANIZATION

While an adequate number of members of the VTNG expressed favorable job satisfaction and trust in leadership, there is a strong perception of favoritism or a “good old boy” network that may erode that trust.

As noted in Air Force Instruction 1-1, Air Force Standards, "trust...is essential in today's military"¹⁰⁰ In the context of sexual assault Air Force policy further provides "Sexual assault undermines our mission readiness, directly contradicts our core values, and *erodes the trust and confidence* upon which our institution is built. All Airmen have the enduring responsibility to foster a climate of dignity and respect and to promote and ensure a culture that will not tolerate sexual assault or behaviors that support it."¹⁰¹

ADP 6-22, *Army Leadership, and the Profession*, also provides that the trust and confidence of subordinates in their leadership is essential not only to teamwork and mission accomplishment, but also in maintaining good order and discipline within military organizations.¹⁰² Building trust leads to mutual confidence among leaders and subordinates.¹⁰³

The climate survey is designed to examine the unit membership's ability to trust leadership and their concern for the welfare of their members. The command climate survey questions relate to the overall climate and morale of members of the respective units. These questions focus on the unit member's degree of trust with their immediate supervisors and with the senior leadership of their detachments.

The Team assessed the trust and confidence of subordinates in all levels of leadership, from immediate supervisors to unit-level leaders to senior leadership through written comments to the DEOMI Survey, individual interviews, and observations gathered during site visits with subordinate commands. While overall assessment of the Vermont National Guard reflects a military and civilian work force of highly dedicated personnel who take great pride in the organization and in military service, the Team notes that trust and confidence can be eroded by the perceptions of favoritism; preference toward the active (versus part-time) force; and the lack of transparency in the areas of both accountability and personnel actions.

The DEOMI survey revealed an adequate percentage of favorable responses for job satisfaction and trust in leadership. In job satisfaction, overall, approximately 79 percent of ARNG and 81 percent of ANG respondents answered positively.¹⁰⁴

Overall trust in the organization or the organization's systems meant to protect people appeared to follow the same general trend. Trust within the organization or its systems, as opposed to leaders, was not a specific question asked as part of the DEOMI survey; however, a close reading of written responses in the DEOMI survey suggested that generally, there is trust in the organization or in the organization's systems, to protect people from reprisal or retaliation. In the ARNG, approximately 86 percent of respondents agreed to some degree that they believed the chain of command would address concerns about discrimination without fear of retaliation or reprisal, and in the ANG, 87 percent of respondents agreed to some degree.¹⁰⁵

¹⁰⁰ DEPT OF THE AIR FORCE INSTRUCTION 1-1, AIR FORCE STANDARDS, para. 1.3, (August 7, 2012).

¹⁰¹ Ibid, at paragraph 1.7.4.5 *citing* Dep't of the Air Force Instruction 36-6001, Sexual Assault Prevention and Response (SAPR) Program.

¹⁰² DEPT OF THE ARMY DOCTRINE PUBLICATION (ADP) 6-22, ARMY LEADERSHIP AND THE PROFESSION, para. 2-16, (July 2019).

¹⁰³ Ibid, at paragraph 5-1.

¹⁰⁴ See Defense Organizational Climate Survey (DEOCS) Report, VT ARNG, Admin. No. 2001973, pg. 7, Figure 2 (May 28, 2020) (79%); Defense Organizational Climate Survey (DEOCS) Report, ANG, Admin. No. 2001971, pg. 7, Figure 2 (May 28, 2020) (81%).

¹⁰⁵ DEOCS Report, VTARNG, pg. 30, Table 2.10; DEOCS Report, VTANG, pg. 16, Table 2.10.

The relatively small percentage of individuals who expressed distrust in the VTNG's organizational systems cannot be overlooked, particularly because in some cases those individuals did not fear reprisal, but rather felt that their concerns simply would not be addressed. More concerning is that a significant number of members perceive that favoritism exists within the VTNG. As part of the locally developed questions, nearly 38% of ARNG, and 38% of ANG respondents either strongly disagreed or disagreed with the statement that: "Favoritism or a "Good old Boy" network are NOT apparent at any level of the Vermont National Guard."¹⁰⁶ Individual respondents to the DEOCS survey at the ARNG and ANG mentioned the phrase "good old boy" over 30 separate times in their comments, and not one of those comments denied the existence of such an organization.¹⁰⁷

"Vermont is the most 'Old Boy' club I have ever seen in...the military. It is appalling."

- DEOCS Survey Written Response

In answer to one question about whether favoritism exists, a respondent stated *"The [organization] has a 'good Old Boy' mentality and has rewarded those within [that] group. I and others feel like we could go to the AG about our concerns without reprisals, but none of us feel like it would do any good.,,"*

Another respondent stated, *"Reporting discrimination may be met with reprisal or retaliation depending on the person who is accused. I feel some leaders still participate in the 'Good Old Boy' school of thought and protect those they like. I hope the new TAG is going to weed out those leaders and restore confidence in the Soldiers and Airmen in the leadership."*

In describing confidence in the organization to handle sexual assault/Harassment, yet another responded stated, *"I have witnessed inappropriate sexual comments many times. I have talked to ... the 'victims' and they did not want any further action taken. It is clear they were afraid to have it broadcast for fear of reprisal or inability to promote as fast as their peers. In all honesty, those that are making the comments seem to be the same demographic... [those] that are in the good old boy program that are untouchable."*

Whether or not such a "good old boy" network exists within the VTNG, the Team assesses that the perception of one exists, particularly about how leaders are selected, and how all personnel assignments are made, to include the school selection process. To combat the perception of favoritism, the Team recommends that VTNG leadership conduct an enterprise-wide review of its personnel policies to ensure full transparency in its promotion, selection, and assignment processes. The Team further recommends a full review of whether there is transparency in the administration of justice and handling of misconduct, particularly at the leadership level.

¹⁰⁶ DEOCS Report, VTARNG, pg. 30, local question 7; DEOCS Report, VTANG, pg. 30, local question 7.

¹⁰⁷ Section C.3., below, includes a number of additional specific examples of how the perceived "good old boy" network of entrenched members of the VTNG may prevent individuals from expressing their concerns to, and about, leadership for fear of reprisal or retaliation.

Civilian personnel, particularly within the ARNG, expressed broader concerns over the Organizational Effectiveness of the VTNG.

The DEOMI survey indicated caution based on the lack of favorable responses from civilian personnel in the following areas: commitment, organizational performance, group cohesion, trust in leadership, and job satisfaction.¹⁰⁸ Additionally, the survey indicated that civilian personnel perceived that improvement was needed in the areas of senior leadership and organizational processes.¹⁰⁹ The Team noted that the Air National Guard survey did not indicate the same level of concern from civilian employees; civilians perceived that the VTNG was operating adequately or excellent in all of the areas mentioned above.¹¹⁰

The Team received specific feedback regarding perceived treatment of civilian personnel within the VTNG:

One respondent noted that they desired *“more [leadership] interaction with civilian personnel.”*

Another respondent expressed concern over certain members of the civilian workforce who are retired from the VTNG and perceived as members of the aforementioned “good old boy” network. The respondent expressed concern that at least one of these employees routinely harasses other civilian employees and that *“leadership is fully aware of this issue and will not do anything.”*

Others noted a perceived lack of recognition of the achievements of civilian personnel. One respondent stated that *“as a civilian, it is super frustrating being paid less than other federal agencies and then doing something in which military members get awards or recognition and we do not.”*

The Team recommends increased leadership focus at TAG level on the health of the civilian force within the VTNG. Consideration should be given to civilian personnel morale, as well as increased opportunity for personnel to have direct access to senior leadership to ensure their concerns are addressed. Leadership should also consider “civilian only” sensing sessions, including separate sessions that may allow minority personnel to express their concerns without fear of maltreatment or reprisal.

3. ALLEGATIONS OF REPRISAL AND RETALIATION.

An adequate number of members of the VTNG expressed favorable answers regarding fear of reprisal and retaliation for reporting dissatisfaction with leadership-focused issues on the DEOMI Survey.

The DEOMI survey revealed an adequate percentage of favorable responses for job satisfaction and trust in leadership. In job satisfaction, overall, approximately 79 percent of ARNG and 81 percent of ANG respondents answered positively.¹¹¹

¹⁰⁸ DEOCS Report, VTARNG, pg. 9, Figure 3, Organizational Effectiveness Subgroup Comparison.

¹⁰⁹ DEOCS Report, VTARNG, pg. 9, Figure 3, Organizational Effectiveness Subgroup Comparison.

¹¹⁰ DEOCS Report, VTANG, pg. 9, Figure 3, Organizational Effectiveness Subgroup Comparison.

¹¹¹ DEOCS Report, VT ARNG, pg. 7, Figure 2 (79%); DEOCS Report, ANG, pg. 7, Figure 2 (81%).

Overall trust in the organization or the organization's systems meant to protect people appeared to follow the same general trend. Trust within the organization or its systems, as opposed to leaders, was not a specific question asked as part of the DEOMI survey; however, a close reading of written responses in the DEOMI survey suggested that generally, there is trust in the organization or in the organization's systems, to protect people from reprisal or retaliation. In the ARNG, approximately 86 percent of respondents agreed to some degree that they believed the chain of command would address concerns about discrimination without fear of retaliation or reprisal, and in the ANG, 87 percent of respondents agreed to some degree.¹¹²

However, interviews and written responses revealed that some junior personnel may fear voicing their leadership concerns over fear of reprisal or retaliation.

The Team noted the following statements, which are representative of the concerns articulated by, and about, junior members of the VTNG.¹¹³

"As a junior officer or enlisted member, we should be able to identify someone who can be a mentor. We are lacking leaders that want to fill those roles."

"Junior members are still reluctant to come forward, and for some that do, do not want to participate in the investigat[ion] for fear of reprisal. Leaderships continued emphasis is essential, but the perception that no one will believe the member persists. I am not sure how to change this perception and until we do, predators will continue to victimize these junior members."

"People need to be held accountable for their actions regardless of rank. Being someone who is lower enlisted often [I] see someone higher up with more rank make mistakes and get no punishment. [A]ll I am asking is for those leaders and individuals to have integrity and do the right thing and to lead by example. No one will want to join the Vermont Guard if they feel it is unfair and that they can never succeed. We should not feel that the higher chain of command does not listen to what we have to say about our ideas and thoughts on what could change the unit for a better. The lower enlisted has voices that need to be heard and not have our ideas be tossed out the window."

Further, a significant number of personnel expressed that perceptions of favoritism within the VTNG may stifle meaningful change due to fear of reprisal, retaliation, or marginalization.

The following statements address perceived favoritism and how it prevents at least some members of the VTNG from fully articulating their concerns.

"The organization in and of itself has the potential to be effective and successful. However, the Constant and Obvious personally motivated decisions are obvious to many of the Soldiers and the 'good ole boys club' mentality makes it difficult for anyone to try to be forward thinking and better the Unit, for fear of retaliation."

"Reporting discrimination may be met with reprisal or retaliation depending on the person who is accused. I feel some leaders still participate in the 'Good Old Boy' school of thought and protect those they

¹¹² DEOCS Report, VTARNG, pg. 30, Table 2.10; DEOCS Report, VTANG, pg. 16, Table 2.10.

¹¹³ Consistent with the format of the DEOMI survey, the Team considers junior personnel to include junior officers, junior enlisted personnel, and junior civilians.

like. I hope the new TAG is going to weed out those leaders and restore confidence in the Soldiers and Airmen in the leadership.”

“AGRs and senior leaders bully and mistreat M-day soldiers and people who are not in the ‘Good ol Boys’ club all the time.”

“Yes, the upper-level leadership of the VT Army Nation[al] Guard are mostly products of the ‘Good old Boys Club’ and they have carried that mentality with them ...Units are constantly manipulating the timing of posting job vacancies for full-timers so they can get the soldier they want, not the soldier that deserves it...”

“I have witnessed favoritism with assignments and promotions based on the ‘good ole boy’ network and not based on qualifications, education and experience. This needs to stop. It's detrimental to the Vermont National Guard and hinders recruitment and retention.”

“Vermont is the most ‘Old Boy’ club I have ever seen in...the military. It is appalling.”

“[T]he ‘Good Old Boy’ system does not just benefit men. There are also women who benefit from this and there is a perception that some women in the organization are also unfairly promoted. The ‘Good Old Boy’ perception mainly benefits those in the full-time work-force or those that have significant connections to the full-time work-force.”

“The Organization is infected with ‘good old boy’ syndrome.”

“Good ol boy system still seems to be prevalent in the AGR world.”

“Eliminate the ‘good old boy’ system. The same people, in the same jobs, for too many years creates a social barrier that can be difficult to penetrate and hinders the mission.”

“I think this reverts back to the Good Ole Boy Club. Favoritism happens all the time when it comes to promotions. If you know the right people and suck up, you will get promoted. Those who do the job and try to do right by reporting things are withheld from promotion for no reason.”

Consistent with the discussion in subsection 2 above, the Team recommends an enterprise-wide review of the systems and processes within the VTNG, particularly about personnel policies and administration of discipline, which may be fostering the perception of a “good old boy” network within the VTNG.

4. ALLEGATIONS OF HAZING AND BULLYING.

The Team assessed allegations of hazing and bullying within the VTNG via the DEOCS survey, individual interviews, and canvass interviews involving larger groups of personnel. As an initial matter, the Team wishes to highlight Department policy on hazing and bullying so that the VTNG can understand the context in which the DEOCS survey results and interviews were analyzed.

Department policy defines hazing as “Conduct through which a military member(s), or a DoD civilian employee(s), intentionally, without a proper military or other governmental purpose, but with a nexus to military service or DoD civilian employment, physically or psychologically injures or creates a risk of physical or psychological injury to one or more military members for the purpose of initiation into, admission into,

affiliation with, change in status or position within, or as a condition for continued membership in any military or DoD civilian organization. Hazing includes, but is not limited to, the following when performed without a proper military or other governmental purpose: any form of initiation or congratulatory act that involves physically striking another in an injurious manner or manner endangering the health or safety of another, or threatening to do the same; pressing any object into another person's skin, regardless of whether it pierces the skin (e.g., "pinning" or "tacking" on of rank insignia, aviator wings, jump wings, diver insignia, badges, medals, or any other object); oral or written berating of another for the purpose of belittling or humiliating; encouraging another to engage in illegal, harmful, demeaning, or dangerous acts; playing abusive or malicious tricks; branding, handcuffing, duct taping, tattooing, shaving, greasing, or painting; or, subjecting to excessive or abusive use of water or the forced consumption of food, alcohol, drugs, or any other substance."¹¹⁴

Department policy defines bullying as "an act of aggression by a military member or members, or Department of Defense civilian employee or employees, with a nexus to military service or Department of Defense civilian employment, with the intent of harming a military member, Department of Defense civilian, or any other persons, either physically or psychologically, without a proper military or other governmental purpose. Bullying may involve the singling out of an individual from his or her co-workers, or unit, for ridicule because he or she is considered different or weak. It often involves an imbalance of power between the aggressor and the victim. Bullying can be conducted using electronic devices or communications, and by other means, as well as in person."¹¹⁵

While the Team assessed that hazing does not appear to be a significant issue within the VTNG, there are housekeeping issues that require VTNG senior leader attention.

Within the ARNG, nearly 98% of respondents to the DEOMI survey indicated that acts of hazing were not part of an initiation process within their workplaces.¹¹⁶ That number approached 99% in the ANG.¹¹⁷

Comments from respondents regarding incidents of hazing largely echoed these favorable percentages:

"I have not witnessed or experienced hazing, bullying, or mistreatment."

"I have never witnessed hazing, bullying or mistreatment."

"I have not witnessed or experienced hazing, bullying, or mistreatment of either military or civilian personnel by their supervisory chain of command."

"I have not witnessed or experienced hazing, bullying or mistreatment of either military or civilian personnel by anyone in my unit regardless of the position or status in my unit. If I did witness something like that, I would not hesitate to report to my leadership and follow up with the report accordingly."

¹¹⁴ Deputy Secretary of Defense Memorandum, "Hazing and Bullying Prevention and Response in the Armed Forces," dated 23 December 2015.

¹¹⁵ Deputy Secretary of Defense Memorandum, "Hazing and Bullying Prevention and Response in the Armed Forces," dated 23 December 2015.

¹¹⁶ DEOCS Report, VTARNG, pg. 25, Figure 11

(97.9%). ¹¹⁷ DEOCS Report, VTANG, pg. 25, Figure 11

(98.7%). CONTROLLED UNCLASSIFIED

A few respondents indicated that they had witnessed, heard of, or experienced incidents that they considered hazing. One respondent stated: *“I have witnessed some hazing or bullying but never to an extreme that was needed to step in. We are a military even though just part time. We are not a prep school.”*

Another individual reported witnessing hazing but immediately addressed it: *“I witnessed a form of hazing/ bullying and addressed it with both individuals and it has since stopped.”*

Yet another respondent indicated that several soldiers were hospitalized during what they believed was a hazing incident at JRTC but did not provide additional information about the incident. Another stated that they believed some hazing may be occurring among some minority populations within the VTNG; but again, no specifics were provided regarding these incidents. Finally, there were multiple mentions of possible hazing incidents in the ANG Fire Department that still may be ongoing.

Because these statements seemed out of character with consolidated ARNG and ANG results, the Team examined individual unit data from the DEOCS survey to determine whether the hazing results from one or more units differed significantly from overall averages. In particular, the ARNG Recruiting and Retention Battalion stood out; in that organization, only 79.2% of responses were favorable regarding incidents of hazing.¹¹⁸

Considering these relatively isolated alleged incidents, the Team recommends that VTNG leadership, to the extent it has not already, ensures that refresher training on Department policy regarding hazing is conducted; that leadership reinforces its lack of tolerance for hazing; and that TAG anti-hazing and bullying policies are widely disseminated and posted in unit areas.

Regarding possible ongoing hazing in the Fire Department, the Team recommends that VTNG consider a command-directed inquiry or management review into these allegations.

Finally, based on the seemingly lower percentage of favorable responses in the ARNG Recruiting and Retention Battalion, the Team recommends that VTNG leadership focus additional efforts in ensuring climate issues are appropriately addressed within that organization.

Further, while the Team assessed that bullying does not appear to be a major issue in the VTNG, there are indications that a significant number of personnel may feel “bullied” or marginalized as a result of perceived favoritism; for voicing concerns to their leadership; or some combination thereof. These concerns appear to be especially pronounced within ARNG Recruiting and Retention but appear to a lesser degree across the VTNG.

In overall ARNG survey responses, nearly 96% of respondents to the DEOMI survey indicated that acts of hazing were not part of an initiation process within their workplaces.¹¹⁹ That number approached 94% in the ANG.¹²⁰

¹¹⁸ DEOCS Report, VTARNG Recruiting and Retention, Admin. No. 2001973-2, (May 28, 2020); pg. 25, Figure 11 (79.2%).

¹¹⁹ DEOCS Report, VTARNG, pg. 25, Figure 12 (95.7%).

¹²⁰ DEOCS Report, VTANG, pg. 25, Figure 11 (94.2%).

As with incidents of hazing, there were many comments from respondents regarding incidents of bullying largely echoed these favorable percentages, most to the effect of *"I have never witnessed hazing, bullying or mistreatment."*

However, comments from the DEOMI survey as well as in multiple interviews revealed significantly more concern over, or personal experience with, bullying than hazing. In at least some cases, the incidents of bullying or mistreatment appear to be related to perceptions of favoritism within the VTNG. The Team noted the following statements regarding incidents of perceived bullying.

"I have witnessed bullying, character defamation, and continuous breach of PHI, I have also witnessed personal opinions towards someone which caused the mission of a client to not be helped. I have watched my coworkers struggle with being around specific individuals due to their behaviors out of fear and nothing be done."

"I have been bullied on numerous occasions by my former AGR supervisor, a field grade officer."

"One of my full-time supervisors' bullies some of his employees. He is both demeaning and condescending to professionals that are female. He does not do this to male subordinates."

"I have witnessed bullying of other military personnel by their supervisory chain of command."

"I have experienced being lightly bullied by someone because they just don't like me."

"I have had some unit members, 'pick' at certain individuals. I usually monitor this. I focus on putting a stop to it before it gets out of hand by speaking to individuals and let them know what I expect ... it happens all the time Soldiers who have issues or are whistle blowers are labeled as 'bad Soldiers' and are treated terribly throughout their career and are afraid to get help."

"Belittling occurs quite often...from the top down. I am disappointed I do not speak up, but they are supposed to be the leaders I look up to. Once they have you in their crosshairs, they will pick at your weakness until they break you. They talk down to anyone below their rank but are quite nice to those that out rank them. I keep waiting for them to say, you made it, now you all can be part of the team. But I do not think that will ever happen. They are also 'stacking the deck' with the latest officer moves. It is truly clear they want the 'yes Sir/Ma'am' officers in place. Multiple officers and NCOs have been in their crosshairs."

"AGRs and senior leaders bully and mistreat M-day soldiers and people who are not in the "Good ol Boys" club all the time. Also, if a soldier has either a physical or mental issue they are oppressed and forced out of the organization rather than given help or encouraged to get help. They are also labeled as lazy or troublemakers."

"I have not witnessed any direct bullying or mistreatment but there is a lot of malicious gossip that happens and creates a toxic environment. 'I.e., this person doesn't know how to do their job'. I've seen this create an environment where subordinates are afraid to ask questions or raise concerns because they are intimidated by those that talk like this."

"I have witnessed mistreatment of other military members ... I did not have to report the issue I went to the source and told them what they were doing and told them it was not ok. We are still working on it, but improvements have been made."

“I have not only seen a field grade officer bully their full-time staff. I have been a target of a field grade officer who felt they could do as they please, regardless of anybody's input. The bullying included being given unlawful orders and being micromanaged as result of not conforming to the officer's agenda.”

“Yes. Our Platoon [Sergeant] constantly bullies soldiers. He is completely unprofessional. He has put moral through the floor in this unit. He will be the first to throw someone under the bus and the last to admit he is at fault.”

“Yes, I have been bullied and harassed to the point of rage. I have seen others harassed...to the point of tears of rage and imminent violence...I have always given feedback about these issues when given the opportunity, but who to tell is not as clear as you might think. Even now, right this second, if I were experiencing the same harassment again, I have no idea who the right person to call would be or how to begin looking for that information. I would not go to my immediate supervisor, and I would likely not be taken seriously. After one of the harassment incidents mentioned above, I went ... for help [and] was reprimanded, threatened & lectured.”

“There can be better accountability of lower-level leadership (E-5-E7), I have noticed and received unfair treatment in the past by people slightly senior to me that like to boss and sometimes bully. There seems to be nobody to check their actions, and insufficient resources/ systems available for someone to feel comfortable reporting it. I have noticed that after we recently changed our management structure this issue has slightly improved, but it is a work in progress. The higher-level leadership always talks about the importance of recruitment and especially retention... because of the above issue I have witnessed approximately 7 to 10 people in my shop who either left in frustration or were bullied out.”

Because these statements again seemed out of character with consolidated ARNG and ANG results, the Team examined individual unit data from the DEOCS survey to determine whether the bullying results from one or more units differed significantly from overall averages. In particular, the Team has assessed that concerns of the type articulated above appear to be more pronounced within ARNG Recruiting and Retention. Of particular concern, only 58.3% of responses were favorable regarding incidents of bullying, well below the consolidated ARNG average.¹²¹ To be clear though, the statements cited above spanned across the entire VTNG.

Considering the anecdotal alleged incidents of bullying described above, and like the recommendations made within the hazing section above, the Team recommends that VTNG leadership, to the extent it has not already, ensures that refresher training on Department policy regarding bullying is conducted; that leadership reinforces its lack of tolerance for bullying; and that TAG anti-hazing and bullying policies are widely disseminated and posted in unit areas.

Finally, based on the significantly lower percentage of favorable responses in the ARNG Recruiting and Retention Battalion, the Team recommends that VTNG leadership focus additional efforts in ensuring climate issues are appropriately addressed within that organization.

¹²¹ DEOCS Report, VTARNG Recruiting and Retention, pg. 25, Figure 12 (58.3%).

LINE OF EFFORT D:

Personnel Management: Hiring; Promotions; and Assignments

1. INTRODUCTION

The Team made observations and addressed findings related to its mandate to assess the efficacy of the selection, promotion, and placement policies and procedures within the VTNG for officer and enlisted personnel, as well as personnel in AGR and Technician (T32 and T5) status, for the time from 2017 to 2019. Analysis of this section is primarily based on data and information obtained from the DEOMI survey, personnel interviews, climate and exit surveys conducted, unit self-assessments and inspections for that time, and applicable VTNG policies and procedures. To assess this LOE, the Team focused on evaluating whether, for the requested time, there was any evidence of actual or perceived inequities or failed processes and procedures with selections and promotions, position assignments and hiring practices, and training, readiness, and advancement opportunities of personnel.

To provide a better overall picture of the efficacy of personnel management practices, however, the Team also made observations specific to the organizational structure of the VTNG, accountability practices by leadership, recruiting and retention challenges, and the management of VTNG personnel based on their status, especially personnel in AGR and Technician status. These four themes (organizational structure, leadership accountability, recruiting and retention, and AGR/Technician management) consistently surfaced during interviews, in written comments as part of the DEOMI survey, and in personnel canvassing conversations. As a result, the Team found it necessary to review and evaluate these areas of concern (whether actual or perceived) and incorporate them into its overall findings and recommendations. In fact, the Team concluded that these areas of concern have had some impact (either direct or indirect) on all LOEs the Team was asked to evaluate and assess with this report. Furthermore, the Team believes that if the VTNG focuses on addressing the issues related to these concerns, it would inevitably also be addressing issues specifically pertaining to the other individual LOEs.

The Team did not investigate or validate organizational inequities in any of the above areas of concern for the time requested. The Team, however, notes areas for program improvement. Specifically, the VTNG should take time to carefully evaluate its overall organizational structure, review its accountability practices (taking greater care to clarify and implement policies across the organization), reassess its current recruiting and retention policies, and create more consistent AGR/Technician management standards across the organization. In addition, greater transparency with decision-making, processes, and regulatory compliance in all areas – and especially in personnel management – would likely improve unit personnel confidence in the command's organizational processes and its leadership.

Recommendations for the VTNG:

a. The Team recommends that VTNG further evaluate and correct perceived confusion regarding its organizational structure, especially as the current structure pertains to JFHQ interaction with individual service elements and the VTNG. The Team assesses that this might be done by streamlining the chain of command, better defining the various roles and responsibilities within JFHQ as they relate to both Air and Army operations, and more effectively communicating across all levels of the organization.

b. The VTNG must reassess how policies are developed, implemented, and communicated across the organization.

(1) Based on the observations made in this report, the Team recommends that the VTNG conduct a thorough review of its current policies and procedures to assess which are currently lacking and which need to be updated to follow NGB and Service regulations.

(2) The Team recommends that the VTNG ensure all policies and procedures are made easily accessible and digitally available to all VTNG personnel. This could most effectively be implemented by creating direct website access to all policies and procedures.

(3) The Team strongly encourages the VTNG to implement a regular internal review process for policies and procedures (to be accomplished every 2 to 5 years) to ensure that policies and procedures consistently remain up to date and in compliance with Service and NGB regulations.

c. The Team recommends the VTNG to develop solutions that create transparency across the organization and to establish regular communications and conversations with Airmen and Soldiers about the overall state of the VTNG.

d. The VTNG should review its participation in organizational assessment and inspection processes to ensure that they conform to Service policy.

e. The VTNG should review its exit survey procedures and consider implementing a process that clarifies to personnel the value of the exit survey to the organization; produces a report that is informative in nature, easy to navigate, and easily accessible to commanders; and ensures that senior leadership utilizes this tool rather than allowing it to become another obsolete yet required organizational task.

f. The Team assesses that the VTNG must address core, internal, organizational issues with recruiting and retention, and the lack of accountability by commanders in this regard.

g. The Team notes the need for improvement and more direct JFHQ engagement with VTNG promotion policies, to include promotion policies for Traditional Drill Status Guardsmen and Active Guard and Reserve (AGR) personnel.

h. The Team recommends that the VTNG review and update personnel promotion and assignment policies IAW Service and NGB policies to instill confidence and transparency in VTNG personnel management.¹²²

(1) The VTNG must ensure that its promotion and assignment policies, on both the ARNG and ANG side, are based on final, written products that are widely disseminated and easily accessible to every member of the VTNG. Specifically, the Team recommends publishing updated VTNG promotion policies on Guard Knowledge Online (GKO) or other organizational website for clarity and transparency and easy access by organizational personnel.

(2) The Team recommends VTNG G1, J1, and Force Support Squadron consult with NGB counterparts to obtain updated Army, Air, and Human Resources Office promotion and assignment policy templates from a “best practice” state. Further, recommend that the VTNG schedule an external assistance visit from NGB or another National Guard state to assist in the review of VTNG promotion policies and procedures.

¹²² This includes ensuring compliance with NGR 600-5 (The Active Guard and Reserve (AGR) Program Title 32, Full Time National Guard Duty (FTNGD) Management), 21 September 2015; NGR (AR) 600-100 (Commissioned Officers – Federal Recognition and Related Personnel Actions), 15 April 1994; NGR 600-101 (Warrant Officers – Federal Recognition and Related Personnel Actions), 10 September 2018; NGR 600-200 (Enlisted Personnel Management), 31 July 2009; NGR 601-1 (Army National Guard Strength Maintenance Program), 01 January 2019; and other applicable regulations, directives and instructions.

i. The VTNG should develop and institute more structured, consistent, and transparent metrics for promotions and advancement in the organization.

j. The VTNG should review its current force structure and develop management strategies and procedures that address current promotion practices among its full-time force; in addition, VTNG should evaluate whether certain full-time positions could be structured as rotational or tenured positions to expand opportunities in the organization.

k. The Team recommends that the VTNG draft a comprehensive training policy and establish a robust training implementation plan that supports the Training Management doctrine and Total Force mission of the Army and Air Force, respectively. The training policy and guidance should then be effectively communicated across the organization.

l. The VTNG should increase emphasis on PME completion rates for officer and enlisted personnel. This will increase individual Service member eligibility for promotion across the VTNG but could also have direct impact of retention rates. The Team further recommends TAG and senior leader review of PME status quarterly to ensure command emphasis on enrollment across the force.

m. The Team recommends commanders and first line supervisors maximize opportunities for unit personnel to participate in in-residence/hands-on training opportunities, subject to unit mission requirements.

n. The Team recommends command leadership set up a process that effectively manages and balances high-ops tempo unit expectations and requirements with access to actual training opportunities. Furthermore, provide clear messaging as mission and operational priorities change as soon as they change so that personnel can shift those priorities accordingly and obtain the needed readiness training.

o. The VTNG should develop and implement guidance that aims to address and balance the needs of personnel (both full-time and part-time) with the need of accomplishing the mission of the organization.

(1) The Team recommends the VTNG specifically review and update policies/guidance related to full-time position duties and responsibilities, including expectations for in-person work hours, flex schedule and telework opportunities, and advertisement and application process for position availability. Furthermore, ensure full-time position policies and procedures align with Service and NGB regulations.

(2) The Team recommends the VTNG reevaluate and redefine the responsibilities and expectations from its full-time and part-time forces and more effectively integrating part-time personnel into the organization's full-time mission.

2. ORGANIZATIONAL STRUCTURE

Current VTNG organizational reporting structure and lack of clarity as to responsibilities and expectations at the senior leadership level, especially within the VTARNG, has contributed to friction at the top, which has had an overall negative impact on the organization. This has contributed to decision-making that is primarily concentrated at lower levels of the organization, and to lack of transparency, further contributing to mistrust, disengagement, and low morale at all levels of the organization.

The Team found that the majority of VTNG personnel believe there is a need to clarify and streamline the chain of command within the organization. Lack of clarity as to responsibilities and expectations at the senior leadership level, especially within the VTARNG, has contributed to friction at the top, which has had an overall negative impact on the organization. This also seems to have contributed to decision-making that is primarily concentrated at lower levels of the organization, which makes it less likely for outcomes and resolutions to personnel actions to be reported up the chain of command. This, in turn, prevents senior leadership from having the necessary visibility and clarity into organizational efficiencies and standards. Furthermore, this has led to lack of transparency across the organization, which has translated to mistrust, disengagement, and low morale at all levels of the organization.

Based on multiple interviews and written comments from surveys, the Team noted that there is lack of clarity and understanding among VTNG personnel of the chain of command and direct reporting responsibilities. Witness interviewees often described the organizational leadership structure to be “confusing and convoluted.” This confusion and need for clarity are evident at all levels of the organization irrespective of rank or position, but especially more so among the VTARNG. Furthermore, challenges with the organizational structure surfaced in discussions related to the integration of the F-35 within the VTANG and the IBCT on the VTARNG side.

The majority of VTARNG personnel identified the Land Component Commander (LCC) as the commander of the VTARNG with day-to-day operations being the responsibility of the Director of the Joint Staff (DJS). The fact that the LCC position is an MDAY position has created some concern as to who personnel report to when the LCC is not readily accessible for decision-making. Some described the interaction with the LCC as “challenging” due to accessibility. When most of the organization has closer interaction with the DJS on a day-to-day basis, naturally, most would perceive this to be the position of decision-making and authority. This generally creates confusion as the DJS takes more responsibility in day-to-day decision making which can easily spill over into taking on LCC duties and responsibilities. Multiple interviewees suggested that the DJS should be the primary leadership position for the VTARNG. While others viewed that position better structured under the authority of the LCC. Not only did the Team identify that there is confusion specific to these two positions of authority, but there has been strong indication that this has also led to friction at the joint staff level. The Team did not investigate this friction specifically, but finds it is important to note in this report.

Confusion around leadership responsibilities and authorities within the organization have led to communication breakdowns, lack of transparency with actions taken, questions around who makes final decisions on what actions, delay in taking timely actions (whether administrative in nature, such as placement and hiring decisions, or disciplinary in nature), inability to effectively hold people accountable (both as information flows up and down the organizational chain). Most of all, this creates lack of confidence in the organization and especially in personnel raising issues through the chain of command if they feel it was not properly resolved at the unit/brigade level.

This organizational discrepancy has created a culture of handling personnel issues at the lowest command levels possible, even in cases when actions may warrant a more serious review or handling at a higher joint staff level. The Team did not have sufficient information to link specific cases or actions that may fall under this category. However, this was a finding discerned by the Team from multiple personal interviews conducted at every level of the VTARNG.

Another point of organizational friction was the historical tendency of the TAG to lead through his staff instead of through the Commanders in his organization. With the more recent change in TAG leadership, however, many personnel identified that this may already be changing across the organization. Personnel

identified that the current TAG has now been more regularly and actively engaged with Commanders, suggesting an ongoing shift in this area at the highest level of the VTNG.

The Team also identified that there may have been some inconsistencies in organizational responsibilities and expectations in the past based on whether the TAG position was filled by an Air or Army representative. Based on interviews conducted, this seems to have affected the credibility of leadership at the highest levels in the organization. It is also possible that these opinions are based on Service biases that exist across the organization. There was not sufficient information for the Team to assess how perceived organizational inconsistencies presented themselves to make any recommendations.

There also seems to be a general belief that the VTNG fails to take advantage of opportunities to engage and work as a joint team. There was some concern that interaction between Air and Army elements is minimal, and that both Services should have equal footing at the JFHQ level. In certain circumstances when VTNG-wide policies are considered, the ANG perceives that it is not necessarily included in conversations or input related to impact for them in general. One such example would be the impact of the VTNG strategic plan on the ANG, especially as it relates to the National Defense Strategy. This also relates back to the issue identified previously of the JFHQ historically not seeking the direct input from Commanders. Furthermore, VTANG personnel felt that they have no communication channel or accessibility to the JFHQ. Ensuring that JFHQ engages and is accessible to the organization jointly, as a team, would greatly improve and strengthen the capability and efficiency of the joint staff.

A. VTANG F-35 Integration

A major concern within the VTANG is addressing organizational issues that have arisen from the integration of the F-35. From multiple interviews, the Team identified that in the past there has been mistrust and lack of transparency between the Wing and JFHQ. Although this has started to improve, the challenge for the VTANG is balancing its direct MAJCOM/ACC reporting and oversight requirements as they relate to the F-35 mission, and its JFHQ reporting responsibilities as part of the VTNG mission. Interviews revealed a concern integrating the F-35 mission within the VTNG while not losing its National Guard identity. As a result, there needs to be more clarity related to reporting requirements and expectations for the Wing by the JFHQ, so that they can be effective in accomplishing both their active duty and their National Guard mission.

Internal to the VTANG, a majority of VTANG personnel appear to lack trust and confidence in their leadership. While this appears to stem primarily from past commander transgressions that negatively impacted Wing morale, morale continues to be an issue. The Team assesses that one major reason for morale issues is that the F-35 integration has led to resentment by support staff personnel. This is due to a feeling of over-prioritization of the Operations Group mission at the expense of the rest of the organization. Currently, there is an “us vs. them” mentality between the Operations Group and the rest of the Wing, who are simply viewed as support staff to the Operations Group and the F-35 mission, rather than being recognized as being part of the team. Interviews and canvassing conversations with the Team also revealed that personnel felt communication at the Wing is “stove piped,” such that they would not feel comfortable to approach leadership to resolve issues or concerns that are not being addressed. As a result, morale within the Wing has continued to plummet further. This further adds to credibility and trust issues with leadership that continue to be prevalent among Airmen. Despite recent changes in leadership, few Airmen, other than those directly involved with the new F-35 mission, feel good about the direction of the organization, and believe that positive changes will take place. In general, there is a sense of uncertainty with the new F-35 mission across the entire VTANG; this adds to the diminishing morale as Airmen lack clarity what will be expected of them and if their efforts would even be valued or recognized.

B. Relationship between the 86th IBC T and the VTNG.

Organizational challenges also exist for the VTARNG when it comes to the recent reorganization of 86th BDE from an armored brigade to an Infantry Brigade Combat Team (IBCT) as part of the Army's transformation for the 21st century. The BDE represents the largest component of the VTARNG, but for many Soldiers, the IBCT mission does not necessarily translate to the overall VTNG mission.

Specifically, there is a general view that the 86th IBCT's close relationship with 10th Mountain Division has created some friction in the organization, especially at the joint staff level. This has allowed the 86th IBCT to operate more independently from the rest of the VTARNG, and it has often bypassed joint staff decision-making. The prevailing view among personnel is that BDE Commander generally does not have much interaction with the TAG. Overall, there is perceived lack of clarity as to the BDE Commander's direct responsibilities within the VTNG chain of command. Another organizational challenge has been the part-time nature of the BDE Commander's position and the fact that, generally, BDE Commanders tend to transition out of the VTNG by taking out-of-state Title 10 broadening assignments. Furthermore, to maintain combat readiness, the 86th IBCT has specialized schools, integration, and joint training opportunities, which do not necessarily translate well into state training requirements and engagement. On the other hand, BDE personnel felt that reporting to two separate headquarters was burdensome, due to their high operational tempo and lack of manning.

Based on the above findings, the Team recommends that VTNG further evaluate and correct perceived confusion regarding its organizational structure, especially as the current structure pertains to JFHQ interaction with individual service elements and the VTNG. The Team assesses that this might be done by streamlining the chain of command, better defining the various roles and responsibilities within JFHQ as they relate to both Air and Army operations, and more effectively communicating across all levels of the organization. There needs to be more clarity as to who reports to whom, when, and what actions are the responsibility of which positions; and how communication should flow within the chain of command. This includes communicating expectations on a regular basis not only to Commanders, but to the organization. The VTNG could especially benefit from adopting a VTNG communication plan that clearly defines required communications and available distribution channels across the organization. Better defining and communicating its priorities, expectations, and responsibilities to both Commanders and VTNG personnel will provide the necessary transparency and clarity that currently seems to be contributing to a culture mistrust and low morale.

3. ORGANIZATIONAL ACCOUNTABILITY

The Team defines "organizational accountability" as the ability to effectively establish, communicate, and follow regulations, policies, and procedures; and specifically, the ability for the organization to uphold its principles and standards by holding individuals within the organization accountable. To evaluate the effectiveness of policies and procedures within the organization, the Team requested documentation of current policies and procedures and considered DEOMI survey results and individual interviews.

The Team assesses that although a significant number of personnel believed that the VTNG has regulations, policies and procedures in place, there was a strong perception that their implementation and enforcement has not been effective; that they are not clearly communicated and understood; and they are not always fairly and consistently applied across the organization.

Through interviews, the Team discovered that a significant number of the VTNG population believed that policies and procedures are in place, but they did not necessarily know or understand those policies or where to find them other than maybe on bulletin boards every now and then. Multiple interviews and comments from the DEOMI survey also indicated that the VTNG has not been highly effective in the

implementation and enforcement of its policies. In some cases, individuals expressed that even if a written policy is in place, it is not as important as the action behind it, and for most that implementation was not evident. There was a prevalent view that the VTNG does not hold personnel accountable for their actions; including both individuals not being held to the standards prescribed in policies, as well as senior leadership not holding Commanders accountable for the implementation of the organization's policies and procedures.

These perceptions were also reflected in the DEOMI survey results. According to the survey, dissatisfaction with organizational processes is much more prevalent among Army personnel. With a mere 43% responding favorably, non-supervisory personnel in the VTARNG expressed extreme dissatisfaction ("improvement needed" category) with organizational processes. Similar level of dissatisfaction is also prevalent among the civilian population (42% favorably responding) and the junior civilian force (48% favorably responding).¹²³ Furthermore, major dissatisfaction (the "caution" category) with organizational processes was also expressed by senior officers and women, with only 68% and 67% respectively responding favorably.¹²⁴ On the other hand, organizational process effectiveness for the VTANG was the lowest among non-supervisors and the junior civilian force. Non-supervisors and junior civilians expressed major dissatisfaction ("caution" category) with organizational processes with 68% of non-supervisors and 68% of junior civilians responding favorably to current organizational processes.¹²⁵ These results clearly suggest a need for the VTNG to reassess how policies are developed, implemented, and communicated across the organization.

Policies and procedures were generally outdated, existing as draft policies, and in some cases nonexistent, which has led to significant number of personnel not having sufficient clarity of organizational expectations and lacking confidence that policies and procedures are fairly and consistently enforced in the organization.

Policies and procedures were generally outdated and, in some cases, nonexistent; while others were provided to the Team in draft format.¹²⁶ There was further indication that the development of policies and procedures has not been a priority for the organization. The VTNG only recently introduced its strategy and vision to the organization, but the drafting of this policy was brought up in interviews as an example of failed organizational leadership. It was suggested that once the project of drafting the strategy and vision was undertaken, the organization failed to prioritize it, thus rendering it a two-and-a-half-year-long project.

Furthermore, the organization seems to be operating primarily through checklists and internal unit procedures, which may not always align with the requirements and standards established by service regulation or policy. This also suggests that the VTNG has not prioritized the development, implementation, and regular review of its policies and procedures, which leads to additional challenges with ensuring that the implementation and enforcement of policies and procedures is consistent and fair across the organization. In fact, a significant number of VTNG personnel expressed that policies were not always clear to them, and that they had no confidence that they were fairly and consistently enforced in the organization. This is reflected in the DEOMI survey results specific to organizational effectiveness and was consistently mentioned in interviews and conversations with personnel.

¹²³ Defense Organizational Climate Survey (DEOCS) Report, VT ARNG, Admin. No. 2001973, pg. 9, Figure 3 (May 28, 2020).

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ For example, the Team received a draft promotion policy form the VTANG, which at the time of the assessment had not been approved or implemented. Interviews revealed that the Wing currently utilizes a promotion checklist that lists the requirements followed for promotions.

A significant number of personnel have the perception that the VTNG lacks transparency and fails to communicate organizational health and other information effectively across the organization, leading to lack of accountability and mistrust in the organization.

There also seems to be a need for VTNG leadership to have regular and candid conversations with Airmen and Soldiers about the overall state of the VTNG as an organization. Both Airmen and Soldiers felt administrative issues or issues of widely-known misconduct in the past had been handled behind closed doors; often leaving everyone guessing whether regulations or procedures were followed or if actions were applied equitably across the organization. For many, in recent years, rather than getting information directly from leadership, the primary source of information has been the media. Others identified that when Commanders address DEOCS survey or other organizational self-assessment results, rather than taking responsibility for the negative feedback provided, Commanders would only try to explain and defend feedback and rarely propose solutions. Many written comments and interviews revealed a perception of consistent “passive-aggressive leadership” across the organization. The lack of communication and transparency, for many, ultimately translates to lack of accountability and mistrust in the organization.

There are differences within the VTNG related to the implementation of internal and external inspection and assessment programs. While the Team assessed that the VTANG is effectively participating in these programs, there was insufficient information to assess the effectiveness of such programs in the VTARNG.

AFI 1-2,¹²⁷ lays out the expectations and responsibilities of commanders. In addition, it gives commanders the legal authority and responsibility to inspect their subordinates and subordinate units. AFI 90-201¹²⁸ provides guidance on evaluating leadership effectiveness, management performance, aspects of unit culture and command climate, and the ability to minimize waste, and prevent fraud and abuse.¹²⁹ The Team determined that the VTANG actively participates in the Air Force Inspection System. The last Unit Effectiveness Inspection (UEI) took place from 6 to 10 September 2018, and the most recent VTANG climate survey, other than the DEOMI survey initiated by the assessment Team, was conducted on 13 February 2020.¹³⁰ The Team determined that the VTANG conducts periodic Unit Self-Assessments as well as periodic external assessments. The Unit Self-Assessment Program is a critical component of the Air Force Inspection System that ensures organizational compliance with Service regulations and policies.

According to the 2018 UEI, the Base Training Program was identified as not meeting sufficient standards, where six out of twelve units could have benefited from unit training Staff Assisted Visits (SAV).¹³¹ The 2018 UEI pointed out multiple deficiencies and issues with the health and status of the VTANG’s unit training programs.¹³² Generally, conducting regular SAVs enables each commander to highlight outstanding

¹²⁷ AFI 1-2, Commander’s Responsibilities, 8 May 2014.

¹²⁸ AFI 90-201, The Air Force Inspection System, 20 November 2018.

¹²⁹ Under AFI 90-201, the Air Force Inspection System consists of four components: Management Inspection System, Unit Effectiveness Inspection, Commander’s Inspection, and Unit Self-Assessment Program.

¹³⁰ Defense Organizational Climate Survey (DEOCS) Report, 158th FW, Admin. No. 19125845, (February 13, 2020).

¹³¹ 158th FW Unit Effectiveness Inspection Report, 06 Sep 2018-10 Sep 2018, UEI.ACC.90632s.90633, 9 November, 2018.

¹³² *Id.* at para. 1.2.3. pgs. 12 through 17.

performance and identify training deficiencies within the unit training program. The Team recommends the VTANG work on improving its compliance with AFI 36-2201¹³³ and utilizing SAVs on a regular basis across all units to be able to successfully evaluate the effectiveness of its unit-level training programs.

According to AR 1-201,¹³⁴ commanders, program managers, and directors from the battalion level up and State Adjutants General will establish inspection policy for subordinate levels of command. Organizational Inspection Programs (OIPs) will be designed to ensure the overall mission readiness of the organization and subordinate units.¹³⁵ Due to lack of documentation, the Team was not able to determine whether the VTARNG has been conducting its organizational inspection programs in accordance with AR 1-201. The Team, however, recommends that this should be evaluated further and ensure that it become an organizational priority.

Exit surveys are a powerful assessment tool that can assist with the evaluation of an organization's health specific to the retention of personnel. However, this tool is only as effective as its application. The VTANG provided the Team a spreadsheet of summarized exit survey responses without receiving any of the referenced attachments in the document, which would have contained individual's comments. The spreadsheet provided only general entries of member's exit responses. This data was not helpful to the assessment Team in identifying service member's reasons behind their separations. The VTARNG, on the other hand, provided detailed individual responses to exit interviews, but it was not clear how and if this information is used by the organization, e.g., through some form of reporting to senior leadership. In general, the Team recommends review of the existing exit survey procedures, and implementation of a process that clarifies to personnel the value of the exit survey to the organization; produces a report that is informative in nature, easy to navigate, and easily accessible to commanders; and ensures that senior leadership utilizes this tool rather than allowing it to become another obsolete yet required organizational task.

4. RECRUITING AND RETENTION

The VTNG has unique recruiting and retention challenges that directly impact the management of personnel and the health of the organization; despite these challenges, the entire organization remains generally disengaged from its recruiting and retention mission.

As it relates to personnel management, the assessment Team specifically wanted to address challenges it identified with the recruiting and retention mission of the VTNG. Multiple comments from the DEOMI survey, past climate surveys, exit surveys, and interviews suggested that personnel management issues within the organization were causally linked to the unique recruiting and retention challenges faced by the VTNG. In addition, personnel across the organization had the perception that commanders do not focus on, or put enough effort into, the retention of personnel. Retention of personnel is generally linked to internal organizational factors, such as available opportunities, awards for performance, and the overall morale of the organization, among other factors. As such, these internal factors are within the control of the organization. There is little evidence, however, that VTNG leadership has acknowledged or taken notice of this fact. Although VTNG leadership is aware of the organization's recruiting and retention challenges, it has largely remained disengaged from addressing them.

¹³³ AFI 36-2201, Air Force Training Program, 15 September 2010

¹³⁴ AR 1-201, Army Inspection Policy, 25 February 2015.

¹³⁵ AR 1-201 identifies five principles that apply to all Army inspections. These principles provide guidelines for commanders, State Adjutants General, program managers, directors, staff principles, IGs and all Army inspectors and support the five basic elements of inspection: Purposeful, Coordinated, Focused on Feedback, Instructive, and Followed Up and Corrective Actions Taken.

According to interview statements, the VTNG has had a steady retention loss over the past 10 years. Recruiting and retention in the VTNG is dependent of two sets of factors: those that are external to the organization and those that are internal to the organization. Outside factors are generally circumstances that cannot be changed or controlled at the organizational level. Specific to the VTNG, those include increasing housing costs, high property taxes, lack of employment opportunities, population decline, and lack of population diversity in the State. These external factors make it especially challenging to recruit and retain new personnel. The only way to manage them would be through the promotion of specific incentives that could offset the burden on young recruits to join and remain in the VTNG.

Internal factors, on the other hand, are those that are linked directly to organizational practices. For example, VTNG recruiters having to utilize Military Entrance Processing Stations (MEPS) located in Maine and New York (3 to 4 hours away). The long drive in this case becomes a burden for interested recruits, often leading to a mere 50% return in potential recruitments. Internal factors in general, however, are more likely to affect retention rates rather than recruiting rates. Negative organizational practices, such as personnel mismanagement, lack of communication and transparency, a perception of limited promotion and career progression opportunities, mistrust in the chain of command, and low morale in the organization, generally lead to higher rates of personnel leaving the organization. The Team has identified that all the above organizational practices exist in the VTNG, and that they have directly contributed to the low retainability of service members.

Unique to the VTANG is the fact that the F-35 integration led to many Airmen transitioning to active-duty status. Although these numbers are not officially considered as a retention loss, they continue to impact the overall VTNG organizational structure. As priorities shift to the F-35 mission, it has resulted in an increase in retirements and separations. Ongoing personnel issues within the VTANG recruiting and retention unit, to include investigations of misconduct, the lack of sufficient recruiting personnel, and a demoralized staff, have added additional strain on the recruiting and retention mission. Although the VTARNG has a considerably larger number of recruiters, they also struggle with similar pressures. All these factors are strictly organization-driven but have the potential of being managed more effectively through the direct involvement of the organization's leadership.

Many Soldiers are aware of the recruiting and retention challenges but have expressed that VTNG leadership has not truly made this a priority for the organization. Not only that, but in some instances, individuals believed that personnel who commanders should otherwise have discharged for misconduct, would often be retained as a way of dealing with recruiting and retention challenges. This seems to have created a culture of tolerance for misconduct and commanders being more willing to "turn a blind eye" to personnel behavior, including when it comes to misconduct by recruiters themselves. The failure to address the core issues with recruiting and retention and the lack of accountability by commanders in this regard is an issue that warrants more serious attention at the highest levels of the VTNG.

Considering both the harsh external and internal recruiting and retention factors that currently impact the VTNG, it is no surprise that recruiting, and retention remain one of the most challenging missions for the organization. It is also no surprise that recruiting units both on the Air and Army side have felt overburdened with responsibility, demoralized by long work hours and constant travel, and have faced multiple instances of investigations related to administrative actions and misconduct within their units. Multiple interviews and written comments suggested that recruiters are not getting support from their direct chain of command when they voice concerns and challenges with their day-to-day mission. There seems to be a sense that recruiting exists in a vacuum, and that the "job of recruiting" is entirely the responsibility of the recruiter. Placing such a burden on the shoulders of the recruiters alone, however, has contributed to continued demoralization of the recruiting force and a recruiting and retention mission that is burdened by dysfunction.

5. PERSONNEL MANAGEMENT

A. Selections and Promotions

While a large number of VTNG personnel did not express unfairness related to their own selection and promotions, there is a strong perception of personal favoritism or a “good old boy” network based selections and promotions for leadership positions.

To assess promotion trends across the organization, the Team requested personnel promotion data for the specified time period, as well as policies and practices regarding promotion boards and criteria for promotion. Based on the Team’s review of the data made available, the Team could not effectively assess whether VTNG promotes personnel based on merit. In general, personnel did not express concerns over their own selections or promotions not having been based on merit. However, individual interviews and written responses from the DEOMI and other climate surveys suggest a strong perception of favoritism in selection and promotion practices especially with leadership positions. This perception was equally prevalent within the VTANG and the VTARNG. For further discussion of perceived favoritism within the VTNG, please see LOE C, above.

A significant number of personnel within the VTNG expressed that they did not have a clear understanding of the organization’s selection and promotion policies, which is consistent with personnel’s overall low confidence in VTNG leadership around the implementation of organizational policies and processes.

The DEOMI survey and the in-person interviews reflected an inconsistent understanding of the organization’s selection and promotion policy by members of both the VTARNG and VTANG. For example, AFI 36-2502¹³⁶ establishes the minimum qualifications for promotion of Air Force personnel, but it also places responsibility with the TAG for implementation of policies and procedures within their respective state or territory.¹³⁷ While the TAG may establish additional eligibility criteria for promotion, criteria may not be added that would result in, or have the appearance of resulting in, a promotion based upon favoritism rather than upon performance.¹³⁸ The State Command Chief or equivalent, on the other hand, has responsibility for the development of a STEP II promotion program competitive selection process that is executable and accountable. It was not evident to the Team, whether the TAG and State Command Chief positions within the VTNG, have had an active implementation role of the organization’s promotion and selection processes. As a result, the Team notes the need for improvement and more direct JFHQ engagement with VTNG promotion policies, to include promotion policies for Traditional Drill Status Guardsmen and Active Guard and Reserve (AGR) personnel.

This recommendation is also consistent with DEOMI survey data, reflecting low confidence ratings with organizational processes for both VTANG and VTARNG.¹³⁹ These data points represent growing need for VTNG

¹³⁶ AFI 36-2502, Enlisted Airman Promotion/Demotion Programs), 12 December 2014.

¹³⁷ AFI 36-2502, ENLISTED AIRMAN PROMOTION/DEMOTION PROGRAM; AFI 36-2618 ENLISTED FORCE STRUCTURE, 5 July 2018; AFI 36-2501, Officer Promotions and Selective Continuation.

¹³⁸ Id.

¹³⁹ Defense Organizational Climate Survey (DEOCS) Report, VTANG, Admin. No. 2001971, pg. 9, Figure 3 (May 28, 2020) and Defense Organizational Climate Survey (DEOCS) Report, VT ARNG, Admin. No. 2001973, pg. 9, Figure 3 (May 28, 2020).

organizational improvement through updates and publications of personnel promotion and assignment policies. Service policies outline the promotion process for Service members. NGB regulations, policies, and instructions further outline procedures for Traditional Guardsmen, DSG, and AGR promotion and assignment. While regulations extend broad authorities to the state and territorial TAGs for the management of Service members within their command, promotion and assignment policies at the state and territorial level must remain in compliance with Service policies.

(1) VTANG Selections and Promotions

While the VTANG has made considerable effort to make its selection and promotion process more consistent, equitable, and transparent, it did not have an officially approved promotion policy in place; and there continues to be a strong perception among Airmen that there is a culture of pre-selection and promotion favoritism.

The Team received a draft promotion policy from the VTANG, which at the time of the assessment had not been approved or implemented. Interviews revealed that the Wing currently utilizes a promotion checklist that lists the promotion requirements followed.¹⁴⁰ Although lacking an officially approved promotion policy, the current view among VTANG leadership is that promotions and selections over the past year have improved. This is a view primarily shared by those with visibility into the Wing promotion process; it is not reflected by the majority of ANG personnel, who generally have the perception of a culture of pre-selection and promotion favoritism. This remains the predominant perception mainly due to several officer command directed moves taking place in recent years.

In a continuous effort, the VTANG seems to have made some improvement in ensuring the selection and promotion process more consistent, equitable and transparent. The Wing has recently made its first female fighter pilot selection. Some interviews suggested that the female pilot selection was mainly in response to continued negative press and publicity related to gender inequality and treatment at the Wing. Others, however, believed the selection to have been based on character, competence, and qualifications, and see this as an opportunity for the VTANG to shift its culture not only towards integration of the F-35, but more so toward better integration and more opportunities for females in the organization.

Another example is a recently instituted force management meeting to provide Chiefs the opportunity to collaborate for control grades and to engage Commanders for input. However, because this process is not based in a written policy that effectively communicates the purpose, process, and qualification requirements used, it has been perceived as being secretive and biased. As a result, the Team assessed that for the majority of Airmen, such actions at the leadership level are viewed with mistrust and hold little promise for change. In fact, Airmen generally believe that such actions are taken to protect the leadership rather than to look out for the good of individuals and the organization as a whole as seen by anecdotal comments in the DEOCS survey.

“Promotions and the order of merit of whatever the conventional term is for it. Perception is that people get promoted who are “in favor” and left to wait otherwise. I don’t trust the group of senior NCOs responsible for selecting promotees.”

“People need to be held accountable and recognized when they are top performers. Awards, recognition, promotions, need to be based on merit. Not necessarily individual merit, but by being the most deserving

¹⁴⁰ The team did not have an opportunity to review a copy of this checklist to identify whether it complied with required NGB and Air Force standards.

out of the greater whole. There are a lot of people who, if someone wants them to get some reward, a great reason can be found - but that does not mean they are more deserving than the person standing next to them. This would help put the more deserving, skilled, and able employees at the top, and not the employee who just have someone looking out for them."

"I've witnessed promotions of individuals after numerous members came forward to explain negative instances involving work performance and poor attitudes to the work center supervisor."

"Hiring actions, promotions, and assignments. They were not resolved. There is a clear network of SNCO's that all have each other's back. I have seen deserving airmen not get hired over someone that was not and deserving airmen that did not get promoted over undeserving airmen. Our standards for hiring, promotions, and assignments are weighted much to greatly towards the "feelings" of the supervisors of the shops."

"I have heard rumors that "orders of merit" lists exist for promotions at the Senior NCO level and for attending PME courses. I am not sure of the validity of these rumors but it seems that the "order of merit" is determined more by personal relationships than it is by actual merit."

"Yes. I think this reverts to the Good Ole Boy Club. Favoritism happens all the time when it comes to promotions. If you know the right people and suck up, you will get promoted. Those who do the job and try to do right by reporting things are withheld from promotion for no reason."

"Many people hired over a more qualified personnel due to their past history, age and relationships with supervisors. There is a couple SMSgt's within the group who have personally compromised certain sections with their personal reasons. These are the same SMSgts who have been promoted wrongly and are not displaying their rank as they should. They can talk the talk, but they cannot walk the walk. It is unfortunate, but you have to stick by your decisions now that they have been promoted. This unit has lived off the "make one mistake and we hang you" vs. you do good and we recognize you."

Although enlisted selections and promotions in the VTANG are generally viewed as fair and equitable, failure at the State and Wing level to engage in effective force management has caused stagnation within the senior enlisted ranks.

Failure to engage in effective force management has caused stagnation within the senior enlisted ranks. Enlisted selections and promotions in the VTANG have had a better track record. For most NCO positions, there is an application process that has given the perception of fairness, but that perception changes as it relates to positions at the E-8 - 9 levels. Furthermore, based on statements from 158th FW leaders during interviews, nearly 50% of the Wing's 1st Sergeant population is now female.¹⁴¹

AFI 36-2502 states that promotions of E-1 to E-4 grades is based on time in Service and time in grade considerations. Personnel must demonstrate satisfactory progression in their career upgrade training and must meet all other minimum qualifications, such as a passing physical fitness test score, and personnel must be free from disciplinary matters. Promotion of E-5 and E-6 require that eligible personnel complete upgrade training and professional military education (PME), in addition to the other minimum qualifications. Each promotion to E-6 and above must be considered in light of its impact on the unit and state force management plan, in addition to the immediate and long-range potential of the member to serve in the next higher grade. Team interviews with VTANG personnel indicate that there has not been a deliberate force management plan in place. Failure to engage in effective force management has caused stagnation within the senior enlisted ranks. While a Selective Retention Review Board is not required, it is a useful force

¹⁴¹ This statement could not be verified by the data provided which did not break down gender/rank by positions in the VTANG.

management tool for commanders. Effective force management reduces overgrade assignments, excess manpower, and lack of progression within the ranks.

(2) VTARNG Selections and Promotions

Interviews and survey comments by VTARNG serve members revealed a belief of a broken promotion system and an organization that lacks interest in the career progression of its force. There is an overall sense of limited opportunities for promotions and progression across the organization, especially by the enlisted force, who experience their career progression stalling at the E-7 level. Furthermore, Soldiers expressed frustration with the lack of visibility and processing of promotions in the organization. In some cases promotees experienced years of delay in promotion as a result of ineffective processing and mishandling of promotion packets. These experiences have had a demoralizing effect on the VTARNG enlisted force, leading to early separations as Soldiers seek opportunities outside the organization, and further exacerbating the organization's retention challenges.

Similar to the VTANG, among the officer ranks and the higher-ranking senior enlisted positions, VTARNG service members predominantly believe that selections and promotions are made through connections, a favoritism approach, rather than based on character and qualifications. In multiple conversations, Soldiers expressed concern that individuals placed in certain positions may not have been as qualified for the job, but were selected for the position in order to make them promotable and advance their career ahead of individuals who may have otherwise had more experience and better qualifications to do the job. Having to navigate these deeply-entrenched organizational selection and promotion practices has pushed quality personnel out of the organization, and further demoralizes those who remain in the organization.

The VTARNG does not currently have an official written publication or policy for its selection and promotion practices which has resulted in lack of transparency and fuels the strong perception across the organization that selections and promotions are based on favoritism.

Currently the VTARNG does not have an official written publication or policy for selections and promotions. Interviews revealed that the organization used to have a VT PAM that provided policy guidance and transparency for the officer promotion process. This PAM was rescinded in 2011 for unknown reasons and was not replaced. The VTARNG now uses an Officer Career Management Plan (OCMP) as a tool for managing and processing officer selections and promotions.¹⁴² Generally, officers who have been in place for more than 18 months are asked to identify desires and opportunities for potential vacancies. All O-5 and O-6 officer promotions and assignments within the organization are then evaluated by an Officer Senior Leadership Council, which is comprised of members of the Officer Career Management Board (OCMB).¹⁴³ Board membership for the Basic Branch MAJ/LTC and Specialty Branch Boards will consist of a Board President (VTARNG Colonel or above), 2 additional VTARNG COLs, 2 Out-of-State COLs and a Board Recorder (without vote). All board members will be appointed by The Adjutant General (TAG) and will reflect, to the maximum extent possible, the diversity of the Officers being considered. Although this process provides some transparency with officer promotions and selections, there is still a general view within the organization, that selections for certain leadership positions are easily influenced and manipulated; and that in the past

¹⁴² JFHQ-VTARNG, Standing Operating Procedure, Officer Career Management Program, July 2019

¹⁴³ Id. at pg. 8. Board membership for the Basic Branch CPT Board will consist of a Board President (VTARNG LTC), 2 VTARNG MAJs, 2 Out-of-State MAJs and a Board Recorder (without vote). Board membership for the Basic Branch MAJ/LTC and Specialty Branch Boards will consist of a Board President (VTARNG Colonel or above), 2 additional VTARNG COLs, 2 Out-of-State COLs and a Board Recorder (without vote). All board members will be appointed by The Adjutant General (TAG) and will reflect, to the maximum extent possible, the diversity of the Officers being considered.

and especially have reflected selection not based on ability, but rather on popularity among other senior leaders.

“Favoritism, Yes. People who have not held the required key leadership assignments being offered leadership positions (BN and SQN Commands) without advertising the position and offering those who have worked hard to meet those key leadership requirements the opportunity to compete for the position. I have witnessed or know of numerous other instances like this situation. It appears complaints fall on deaf ears and the practice continues. This is a major issue that causes good Soldiers and Airmen to leave service early. If this issue can be addressed successfully, moral would most certainly increase in the VT National Guard.”

“The only shortcoming, I see within this area is that not all practices are truly fair, especially concerning Branch regarding promotions. It may be my opinion, but I see that promotions for line units/BDE are given the priority when it comes to boards. There has been education recently on how things work, and the OCMB (Officer Career Management Board), which is a move in the right direction. However, I have seen some colleagues not promoted when they should have been through no fault of their own despite having proper education, command time, glowing OERS, and occupation of the proper slot. They were eventually promoted, but the process jaded my own perception of the organization's fairness.”

“Was not picked for a command position even though she was the most qualified officer and most experienced. A male officer who does not hold the MOS was chosen. Has a personal relationship with the selecting official from several years ago. This made the female who was not chosen want to leave the state for a better opportunity.”

A significant number of personnel expressed strong perceptions of active favoritism and an overall sense that promotions and progression in the VTARNG is based on pre-selection and favoritism.

Like the VTANG, among the officer ranks and the higher ranked senior enlisted positions, VTARNG service members predominantly believe that selections and promotions are made through connections, a favoritism approach, rather than basing decision on character and qualifications. Soldiers at various levels of the organization expressed concern that individuals placed in certain positions in the past may not have been as qualified for the job but were selected for the position to make them promotable and advance their career ahead of individuals who may have otherwise had more experience and better qualifications to do the job. Having to navigate these deeply entrenched organizational selection and promotion practices has pushed quality personnel out of the organization and further demoralized those who remain in the organization.

A significant number of VTARNG personnel expressed perceptions of limited opportunities for promotions and progression across the organization, especially by enlisted members wanting to advance in more senior level positions; this is generally due lack of procedural transparency in the organization and due to failure at the State and Battalion level to engage in effective force management practices.

Interviews and survey responses by VTARNG service members revealed a perception of a broken promotion system and an organization that lacks interest in the career progression of its force. There is an overall sense of limited opportunities for promotions and progression across the organization, especially by the enlisted force, who, like the VTANG, experience their career progression stalling at the E-7 level. Furthermore, Soldiers expressed frustration with the lack of visibility and processing of promotions in the organization. In some cases, promotees experienced years of delays in promotion because of ineffective processing and mishandling of promotion packages. These experiences have had an ongoing demoralizing effect on the VTARNG enlisted force leading to early separations as Soldiers seek opportunities outside the organization and further exacerbating the organization's retention challenges.

B. Assignments and Hiring Practices

There was some indication of unfairness related to position assignments and hiring practices in the VTNG, especially for women, which relates back to the perception among service members that favoritism drives personnel management decisions.

To assess allegations of inequity in position assignments and hiring, the Team primarily relied on interviews, DEOMI survey results, and some documentation reflecting personnel assignments. The Team did not receive any further documentation from the VTNG with guidance on how opportunities for assignment are advertised and how applicants were selected. The Team found that position assignments and hiring practices were to an extent equitable, but that “who you know” in the organization is a considerable factor. Interviews and DEOMI survey results reflected some degree of confidence that the VTNG provides equal opportunity for assignments irrespective of race, color, religion, national origin, gender, and sexual orientation. Female officers and enlisted personnel generally indicated they felt the assignments they were chosen for were because of their abilities and qualifications. Individuals believed hiring practices in their units were good, but often pointed out the perception that other parts of the organization may be influenced by favoritism.

Multiple service members in the VTARNG reported examples females being bypassed for positions despite having more qualifications for the job than the individuals who were hired. Furthermore, additional statements indicated a perception that women are less likely to be acknowledged for their performance and more likely to be excluded from opportunities. This has also been a challenge with the Maintenance Group for the VTANG, which is comprised of 15% females, the majority of whom tend to get pushed out of those positions due to stigmas and historic perceptions of male “crudeness” associated with the maintenance shop positions. Without effective processes and policies in place to provide structure and transparency, instances like these will only continue to solidify a perception of inequity in the treatment of women across the organization.

There is a general view in the organization that the filling of AGR positions is not always merit-based, and that due to the limited availability of AGR positions, even if advertised, the positions tend to be “pre-filled” by individuals waiting for AGR openings.

The VTNG did not provide policies or internal guidance related to the selection of individuals for AGR positions. Based on comments received, however, many do not believe that process to be based on merit. For example, DSGs feel they rarely have an opportunity to fill AGR slots since they get primarily advertised internally, and in most cases, there is already an individual waiting to get hired into the position. Although the issues related to the availability and hiring into AGR positions are not unique to the VTNG, there is significantly higher friction in the VTNG related to this due to a general sense of resentment between full-time and part-time personnel.¹⁴⁴ More leadership clarity and transparency with the selection process for AGR positions could alleviate some of the hiring issues identified here.

The statements below represent some of the concerns identified related to the hiring of personnel into AGR positions.

“I have absolutely seen favoritism or cronyism in action. For boarded processes, such as AGR hiring, I have seen (and been advised) to make the scores fit a predetermined preference.”

¹⁴⁴ There is further discussion of this dynamic later in this section.

“AGR vacancies created, full time workforce immediately contacts individuals that they want to take the position (even when individuals are not qualified).”

“Stop giving away AGR jobs to individuals who just want the paycheck. Give those jobs to the members who are actually a good fit for the job and will actually do the work involved.”

“The role of the National Guard and most of the force is M-day.... The second and third order effects of hiring ‘buddies’ not the BEST candidate are in my opinion what we are experiencing.”

“Primarily for hiring actions, especially for AGR positions. It is well known within the organization that you have to “know somebody” to land an AGR job, regardless of your qualifications. PD's are often written with a person already in mind and boards are more of a “pop quiz” of how well you know the unit you are applying to work for. I am not sure how you'd change this, but I just feel there needs to be more emphasis on qualifications vs. what you could study for. That is one of the best things about the NG - we have a TON of people with loads of civilian experience that we could benefit from but we often limit ourselves.”

“...there are many members who end up being strung along for many years doing temp tech tours, orders, indef tours, etc. with the understanding that someday they will be given a full-time job. It's understandable that this process could take a year or two, but I have seen valued members kept in such a position for 7+ years and still not be given the stability of a permanent position...”

“Seems a bit more difficult for DSG's to move ahead in rank due to only certain slots being available, causing people to jump ship elsewhere to progress in rank, or just leave altogether.”

“There are not enough training and promotional opportunities for DSG'S. A lot of times it seems we are overlooked by full time members.”

“Most recent job advertisement, the perceived candidate they wanted was denied a transfer packet by his O6 command, so they pulled the advertisement, changed the policy, and just like that he gets the job. One soldier on the board was the Godfather to the applicant's kids. ... I do feel favoritism over hiring actions and this assignment did happen.”

C. Training, Readiness, Advancement Opportunities

To assess training, readiness, and advancement opportunities, the Team reviewed past inspection reports, documentation made available related to status of personnel training (e.g., PowerPoint presentations), and relied heavily on DEOMI survey comments and interviews with personnel of all ranks. Based on information available, the Team concluded that the VTNG does not adequately track and report its training and readiness efforts. Furthermore, there is a perception that training, and advancement opportunities are not readily made available to personnel and personnel often must make the “mission of the day” a priority over training or readiness participation.

The Team concluded that VTNG leadership at the JFHQ level is not engaged in the effective implementation of training and readiness across the organization; furthermore, units do not adequately track and report training and readiness efforts and generally prioritize the day-to-day mission over training implementation.

Generally, it is the TAG's responsibility to establish training policy, provide guidance on the implementation of training requirements, and assist with training resources and technology as necessary in

support of the Army's Training Management doctrine¹⁴⁵ and the Air Force's Total Force mission.¹⁴⁶ Once the TAG establishes a robust training implementation plan, unit commanders must rigorously implement the training plan and ensure training is adequately tracked and reported in the organization. Furthermore, the TAG is responsible for protecting command and staff from external or internal forces attempting to interfere with the implementation of the organization's training plans.

The Team identified that the VTNG does not have a robust training implementation plan. It was not clear if the organization has an existing training policy or force readiness guidance; no such policy or guidance were provided to the assessment Team. Interviews and other documentation, such as unit inspection reports, revealed that the organization does not effectively communicate or track accomplished training goals and expectations. In addition, due to the overall high operations tempo in the organization, planned organized training during drill weekends was not always made available in some units. Personnel are primarily expected to track and complete necessary training independently with little to no documentation or tracking taking place at the unit level. Based on observed and reported readiness metrics, the lack of organized training during drill weekend accounts for several personnel readiness, equipment maintenance, and accountability deficiencies in the organization.

A 2008 Unit Effectiveness Inspection (UEI)¹⁴⁷ identified significant training deficiencies with the VTANG training program, stating that the program "needs immediate attention" for not meeting the force training requirements under Chapter 6 of AFI 36-2201, (*Air Force Training Program*), dated 15 September 2010. According to the UEI report, "[m]embers in upgrade training were missing required documentation to verify that members received and completed training according to the AFI. Training records were incomplete and lacked training progression for members in upgrade training. Throughout the wing, multiple members were over 36 months in upgrade training with no mandatory progress reviews conducted/documented. Additionally, the A1-3 Unit Training Manager (UTM) MICT Communicator was marked 'complied' for items that were not actually complied with." Additional deficiencies in the report included failing to document training efforts and maintain proper records, not providing monthly Status of Training (SOT) reporting to unit commanders or quarterly SOT briefings to the installation commander and command chief. In some instances, UTMs and supervisors did not always validate the accuracy of training records prior to upgrading personnel.

The Team did not receive sufficient documentation pertaining to VTARNG training records and readiness tracking. Based on this, it can be inferred, that the VTARNG likely has similar challenges when it comes to properly tracking and maintain training records. There is a prevalent view that there is little interest or engagement by JFHQ on training and readiness. Personnel expressed that "the State staff doesn't prioritize or push readiness or understand it." The recent reorganization of the 86th IBCT, which represents the largest component of the VTARNG, has been a major advantage to the organization with the overall readiness and proficiency of BDE personnel. Because the 86th IBCT is embedded in the mission of the 10th Mountain Division, BDE personnel have been able to receive their tactical readiness and proficiency training from the active-duty component.

Specific feedback related to BDE training and readiness included:

"10th mountain is huge help with tactical readiness and proficiency."

¹⁴⁵ APD 7-0, (Training), dated 31 July 2019, available at <https://armypubs.army.mil> and the Central Army Registry site at <https://atiam.train.army.mil/catalog/dashboard>.

¹⁴⁶ AFI 36-2201 (*Air Force Training Program*), dated 15 September 2010, Chapter 6, Air Force On-The-Job Training Administration.

¹⁴⁷ VTANG 2018 Unit Effectiveness Inspection, paragraph 1.2.3.3, providing a detail list of identified unit training deficiencies.

“10th mountain really embraced AUP and the 86th. Their ability to provide senior leader mentorship, equipment and training seats drastically helped the combat readiness of the BDE and was hugely appreciated by VT.”

“86th has had 4 JRTC rotations in last 10 years”

There is a strong perception that VTNG leadership at all levels is not actively engaged with providing personnel adequate support with training, counseling and mentorship, and career progression and development.

Training is an integral part of every unit’s mission and there is a direct relationship between training and career progression. According to AFI 36-2201, “[w]hile the supervisor’s primary responsibility is to plan a program outlining specific short term mission related goals for the trainee, overall success depends on the supervisor’s ability to advise and assist Airmen to reach long range career objectives. Supervisors must take an active role in the trainees career progression.”¹⁴⁸ Similarly, APD 7-0, directs commanders to “prioritize the development and training of their leaders.”¹⁴⁹ VTNG personnel report that supervisory counseling and mentorship rarely takes place in the organization. In some instances, supervisors did not consistently complete initial evaluations for newly assigned individuals,¹⁵⁰ and other instances involved personnel not receiving counseling or performance feedback due to the high operations tempo of the unit.

Multiple respondents noted the lack of counseling and mentorship in their units.

“Lack of counseling. Most commanders don’t do initial counseling when placed in new positions.”

“Counseling and mentorship are challenging with the high OPTEMPO in the IBCT. Could be better for sure.”

“Our environment is TOXIC and as an officer I struggle to find genuine mentorship. There is a significant LACK of trust and genuine concern with how we take care of our Soldiers. Our SM know that they are just a number.”

“Mentorship happens but we don’t write it down enough.”

Others expressed concerns over the lack of interest on the part of commanders and supervisors in the career progression of their personnel. Some reiterated that no counseling is taking place and suggested that they feel stuck in their positions and career fields.

“...we are lacking in counseling. I have been in ... for a while and have never been counseled. Also, the VT Guard is losing Soldiers. Maybe if there was some career progression (currently stagnant at the E-7 level) or movement every couple of years, those who have been in a while might stay longer once their contracts are up.”

“Any option to cross train, other duties and opportunities and anything to not be in these critically manned fields is off the table. So, most people are just going to get out because they are stuck in a job they do not like. If

¹⁴⁸ AFI 36-2201 (Air Force Training Program), dated 15 September 2010, Chapter 6, Air Force On-The-Job Training Administration.

¹⁴⁹ APD 7-0, (Training), 4-18, dated 31 July 2019; and FM 7-0, (Train to Win in a Complex World), dated 5 October 2016, which supplements APD 7-0 and provides specific information on training Army Reserve Component units.

¹⁵⁰ VTANG 2018 Unit Effectiveness Inspection, paragraph 1.2.3.3, providing a detail list of identified unit training deficiencies.

organizations and the Air Force tried to help the people get on the career path, they wanted more than more people would stay in.”

“I recommend that Sr. leaders set the example by taking an active interest in the careers of their subordinates. I have never been counseled in my career (good or bad). ... I literally do not know how long I will be assigned to my current position, what my next position might be nor what the SR. leaders have planned for me in the long run. Despite this shortcoming, I continue to give my all and support the VTNG 100%.”

Furthermore, there seems to be a perception among VTNG members that Professional Development (PD) and Professional Military Education (PME) are not valued, and that the organization emphasizes technical based knowledge over professional development. Others indicated that they felt there were “not enough slots, selections, and opportunities to accomplish PME,” primarily referring to the limited availability for in-residence PD/PME attendance and participation. Reported data of personnel eligible for promotion further reflected inconsistencies in PME completion rates for VTNG personnel. While PME is an individual responsibility, the Team noted the opportunity for increased command emphasis for its timely completion

When training and readiness is not prioritized by an organization, or when training programs are not properly maintained, it affects not only the quality of training received by the members, it could potentially also cause mission failure due to lack of training capability. An effective training program requires commander and supervisory involvement at all levels. The key to successful training programs is deliberate support from leadership, clear expectations, and effectively articulating the impact of proper training on mission execution. As a result, the Team recommends that the VTNG draft a comprehensive training policy and establish a robust training implementation plan that supports the Training Management doctrine and Total Force mission of the Army and Air Force, respectively. The training policy and guidance should then be effectively communicated across the organization.

Finally, the VTNG should increase emphasis on PME completion rates for officer and enlisted personnel. This will increase individual Service member eligibility for promotion across the VTNG but could also have direct impact of retention rates.

D. VTNG Full Time and Part Time Force

VTNG leadership has failed to set performance expectations and to address substandard performance by the full-time staff, especially when it comes to providing support to M-Day personnel, leading to significant friction between full-time and part-time personnel. This has negatively impacted the organization and the effective accomplishment of its mission.

In assessing personnel management in the VTNG, the Team identified significant friction between the organization’s full-time personnel, consisting of Active Guard Reserve (AGR), Federal (technician), and civilian contractors, and its part-time (M-Day) force. Interviews and numerous written comments from the DEOMI survey revealed that many believe there are different standards and expectations from full-time and part-time personnel, which has had a direct impact on working relationships and overall mission accomplishment. Particularly, a significant number of service members expressed frustration that full-time staff are held to a lower performance standard, especially when it comes to supporting the mission of M-Day personnel. Many believe that VTNG leadership, commanders, and supervisors have failed to set performance expectations with the full-time staff and have consistently tolerated substandard performance specific to their support of the M-Day mission.

Verbal and written statements indicated that full-timers are consistently observed to arrive late for duty, leave early, and not be available to address M-Day issues and concerns when needed. Many believe that

full-time personnel are taking advantage of the “full-time nature” of their positions during drill days and have experienced full-timers complaining having to be there on weekends. A significant number of M-Day personnel expressed frustration about the “indifference of fulltime personnel providing the necessary support to part time soldiers.” This has become especially burdensome to M-Day personnel part of high ops tempo units, which are generally overburdened with deployments, operations, and readiness trainings.

The Team noted the following statements regarding the perception of substandard performance by full-time personnel in supporting the M-Day mission.

“... The function of our AGR workforce is to assist the M-day force. Our organization does not function that way, and there is ZERO accountability for our AGR force...”

“The AGR system in the state is a mafia that only looks out for itself and uses the M-day force as a resource to enhance their own careers.”

“There is a difference between the expectations [of AGR and MDAY members]. AGR’s have been known and seen to push the limits with office hours and uniform compliance and general expectations of professional conduct and compliance with organizational policies.”

“The Majority of the AGR Staff is a joke. ... They only care about themselves and can literally get away with whatever they want. They are not held accountable for anything if their paperwork, numbers, and drill planning are complete. The fulltime staff can care less if soldiers get paid or have health insurance as long as they themselves have orders, health insurance and a good career path in place for themselves.”

“Hold the people on AGR position to the military standard because they seem to have a technician mentality of “It’s 1600 time to go” when they complain that they have too much work to do accomplish and they keep up with the demand. They also have the tendency to only want the promotion only to get more money but do not want to put forth the effort of the added responsibilities i.e., Senior NCO roles.”

A significant number of personnel have the perception that the role of the M-Day soldier has become less of a priority, and that the current culture in the organization emphasizes the full-time mission over the mission of the part-time soldier.

With the VTNG taking on more and more active-duty operational responsibilities, some service members expressed concern that the role of the M-Day soldier has become less of a priority, and that the organization is transitioning away from its traditional National Guard mission. In some instances, personnel believe that the M-Day force would not be able to sustain the current and anticipated ops tempo increase in the organization. This has inadvertently created a culture of “putting the full-time mission first.” This is reflected in statements by full-time personnel suggesting that *“the burden of work is on the full timers and very little is expected of the MDAY soldier (at all levels).”* While on the other hand, M-Day personnel have voiced concerns that, with the changing ops tempo of the organization, leadership has placed unrealistic expectations on the part-time force.

The Team received specific feedback addressing the lack of prioritization with the M-Day mission and their perceived role:

“DSG’s are held to an active-duty standard with none of the benefits.”

“The state has lost focus on the M-Day soldier and what level of commitment they can dedicate to the guard. I am not sure if this is being driven from a national level that want the National Guard to be more active

duty like. The full-time staff, Tech and AGR, seem inadequate to accomplish all the administrative tasks required when the focus i[s] training centric.”

“There can be a better empowerment of M-Day soldiers and leadership by the AGR members actively involving and respecting the M-day leadership and the decisions they make.”

“M-DAY soldiers feel like they are always on the outside of the organization looking in. Increased OPTEMPO has disproportionately affected M-DAY personnel with additional strains on family and civilian careers.”

“[In] some cases though where getting the mission done [is preferred] rather than getting part timers involved; Must deliberately train them so need not be pushed out when in need for the mission.”

“DSGs are not afforded the opportunity to perform duties due to all requirements having to be performed in 2 days where technicians are here to get them done throughout the month.”

“Compensated time for MDAY officers is an issue. Expectation is that they keep up with the requirements in an unpaid status.”

The Team also noted that personnel are concerned with the ineffective communication and exchange of information between the full-time and part-time forces. This challenge is not unique to the VTNG but should continue to be reviewed and addressed.

“Communication between full-time and MDAY is challenging. For M-Day’s it is challenging to stay plugged in to the day to day since you are obviously not there every day. This is also true for AGR / M-DAY communication is challenging at the senior leader level because of the lack of context with the bigger picture.”

“The saying is “it’s all on the portal” is the catch phrase for distributing all of the important organizational information. Only problem is that the MDAY Soldiers cannot access “the Portal.”

“I feel the M-Day soldier is forgotten, misinformed and they do not have the same opportunities as the full-time work-force (AGR’s). I have been in many units across the entire VTARNG and I notice and recognize how entitled, privileged and I would go on to say arrogant the full-time staffers are. They need to be a little humbled and know their job would not be there unless for the M-Day soldier.”

Furthermore, there is a general view that M-Day personnel have more limited opportunities in the organization. This includes fewer opportunities when it comes to assignment selections, promotions, hiring into AGR positions, training opportunities, and award recognitions.

“I don’t think DSGs get as many TDY opportunities.”

“Full time personnel have more opportunities [for] military education, promotions, and AGR opportunities.”

“I was told by full time AGR staff that I could not attend [training] until all full-time staff went. After they went (and one took a promotion I was competing for) I was sent to school.”

“AGR opportunities are pre-selected instead of distributed equally among groups. Leftover resources come out to technicians.”

“[C]onsider evaluating traditional guardsmen for awards, and recognition. There is a perception full time staff and those with less than full time civilian employment who volunteer for extra assignments receive awards. However, traditional guardsmen balancing civilian careers with military commitments are infrequently recognized for discretionary efforts for the unit.”

The Team notes that the challenges identified by personnel between the full-time and part-time force warrant significant attention by the VTNG. The general observation is that the shift of the organization’s mission toward a more active-duty role, has resulted in more day-to-day pressure on the full-time force. Overburdened by the demands of its full-time mission, full-time personnel have naturally disengaged from their support role and responsibilities toward the part-time force. This needs to be proactively addressed to ensure the success of the VTNG mission. This includes leadership having to reevaluate and redefine the responsibilities and expectations from its full-time and part-time forces and more effectively integrating part-time personnel into the organization’s full-time mission. This can be accomplished by developing and implementing guidance that aims to address and balance the needs of personnel (both full-time and part-time) with the need of accomplishing the mission of the organization.

LINE OF EFFORT E:

Disciplinary Actions: Misconduct

1. INTRODUCTION

The Team was tasked to assess whether the Vermont National Guard investigates cases of misconduct consistent with policy and regulation, as well as whether any systemic or process issues exist with the adjudication of such misconduct and the resulting punishment. To make a proper assessment of this line of effort, the Team requested to review documents and records that track incidents of misconduct at the unit and brigade levels, as well as the State level. Specifically, the Team requested a matrix of all misconduct, criminal investigations, and current disposition for VTNG full-time and part-time military personnel (T10, T32, and State Active Duty) from 2017 to 2019; a matrix of all disciplinary and/or adverse actions (to include copies of counseling records and PIPs) pertaining to military technicians taken under TPRs, to include an indication of whether any employee filed a grievance or appeal concerning any such personnel action and the resulting disposition; and copies of the 158th Fighter Wing's Status of Discipline Reports for the past 3 years. Among other relevant documents, the Team also asked for paper and/or digital copies of all VTNG command policies and procedures pertaining but not limited to sexual assault, sexual harassment, reprisal, retaliation, ethical conduct, and command climate.

The Team assessed from interviews and the DEOCS that there was a significant negative perception by servicemembers that Soldiers and Airmen were not being held accountable for misconduct in a fair and even manner. The Team defined "accountability" as the obligation of an individual or organization to account for its activities, accept responsibility for them, and to disclose the results in a transparent manner.¹⁵¹ Accountability, both personal and organizational, is critical to maintaining good order and discipline, and must be demanded and exacted at all levels of an enterprise, particularly the most senior levels.

Responsibilities, actions, and communication are the foundational principals of accountability. For this assessment, the Team evaluated three areas of concern with regard to accountability to include: Leadership Roles and Responsibilities, Military Justice, and Administrative Actions. Certain responsibilities are inherent in leadership, while others are overtly defined or mandated. From a military perspective, accountability encompasses not only the military justice system, but also administrative provisions, both of which necessarily require three core actors through whom accountability is achieved.

Effective senior leaders demonstrate appropriate conduct through personal actions and decision-making and promote such conduct to subordinates through two-way communication and reinforcement. Whether and how leadership communicates and reinforces these accountability activities to Soldiers and Airmen determine the effectiveness of accountability.

The Team was provided from the Office of the Staff Judge Advocate a spreadsheet of VTARNG Administrative Actions conducted between 2017 to the present.¹⁵² The data revealed that for the period of time between 2017 and 2019, there were 116 reports of Army National Guard general misconduct

¹⁵¹ <http://www.businessdictionary.com/definition/accountability.html>.

¹⁵² VT OSJA, Administrative Actions Excel Spreadsheet in response to the Teams request for data. The data was limited to the VTARNG and only provided generally the types of administrative actions and dispositions, but no other identifying information. The Team did not receive a response from the VTANG OSJA.

provided by the Vermont National Guard.¹⁵³ The Team also received information on Dual Status Technician discipline for the same period and found out of the 14 matters disciplined under the technician /civilian regulations, at least 7 of them would have constituted misconduct under the military standard as well.¹⁵⁴ The Team also obtained from the SARC, DSAID data showing 3 administrative investigations into allegations of sexual assault and sexual harassment where the Vermont National Guard accounted for these cases outside of general military disciplinary actions.¹⁵⁵ The Team attempted to conduct a detailed inspection of a representative sampling of documentation regarding this misconduct. The Team examined each opportunity for accountability against the type of offense committed, the means by which accountability was rendered, the punishment rendered and the current disposition of the individuals involved. The goal of this review was not to find objection to the action taken by the leaders, but to determine whether there was sufficient process and oversight available for these actions to enable leaders to make the most informed decisions.

To validate the observations deduced through metric and documentary review, the Team conducted additional interviews as necessary to measure the effectiveness of accountability within the Vermont National Guard, including with commanders and enlisted leaders at all levels below Joint Forces Headquarters, and servicemembers, including victims of sexual assault, sexual harassment and EO/EEO complainants. To encourage full and frank disclosure, no formal statements were taken.

Finally, the Team conducted site visits with every major command to determine the level of transparency with which senior and intermediate leadership communicates accountability.

Recommendations for the VTNG:

- a. Review current military legal support, particularly full-time support, to determine whether it is optimal to meet the needs of the VTNG.
- b. Provide more clarity surrounding acceptable/unacceptable conduct (especially for fraternizations) and reflect those in written policies.
- c. Provide greater transparency to all levels of the VTNG on the adjudication and disposition of misconduct cases through regular status of discipline bulletins or other creative communication efforts.
- d. Review and improve training on when Commander Directed Investigations / 15-6 investigations are appropriate, and how to conduct more efficiently and effectively.
- e. Create an action tracking system to improve oversight of all adverse administrative actions. This system (whether paper or electronic, centralized or decentralized) should include: the date of misconduct; the date it became known to leadership; the date an inquiry or investigation began, was

¹⁵³ The Team only considered matters involving Chapter 11 (Misconduct), GOMARs, Article 15's conducted, and civilian convictions noted for the years 2017 to 2019. Other administrative separation actions were not considered although, they may have had a misconduct aspect to them.

¹⁵⁴ VTNG HRO provided a Listing of Technician Disciplinary cases from 2017 to 2019, indicating their case number, status, component (VTANG or VTARNG), the charge and disposition.

¹⁵⁵ VTNG SARC provided an Excel spreadsheet of DSAID filings from 2010 to February 2020 which provided DSAID numbers, whether the reports were restricted, unrestricted or restricted with limited services, the component of the subject and disposition if known.

completed and received a legal review (if an inquiry/ investigation was necessary); the date the adverse administrative action was initiated; the date the documents and notice of adverse action are provided to the service member; the date an action arrives at the Joint Forces Headquarters (JFHQ) for processing; the date the action receives a legal review by the JFHQ SJA; and the date the action arrives at the Assistant Adjutant Generals Air and Army or TAG's desk for action, execution or appellate consideration.

2. LEADERSHIP ROLES AND RESPONSIBILITIES

A. Senior Leadership Communication

While standards of personal conduct are adequately communicated to the Vermont National Guard, there is a lack of communication regarding accountability, leading to a perception of differing standards to resolve misconduct.

The DEOMI Survey results, and Team discussions with service members during on-site visits, reveal a perception that higher command does not share information with lower leadership levels in a timely enough fashion to enable those subordinate leaders to communicate accountability actions to their troops. In response to the targeted statement "*Leadership applies the same standards across the organization to resolve misconduct and disciplinary issues.*" 64 percent of Vermont Army National Guard respondents and 61 percent of Vermont Air National Guard respondents agreed or strongly agreed.¹⁵⁶ These results contrast with the Organizational Effectiveness Subgroup Comparison regarding trust in leadership, which found in the Vermont Army National Guard an 86 percent trust in leadership, while 89 percent of the Vermont Air National Guard trusted their leadership.¹⁵⁷ The Adjutant General communicated standards of appropriate conduct within the Vermont National Guard through several TAG Policy Memoranda.¹⁵⁸

TAG Policy Memorandum, *Expectations of Conduct*, states in its first paragraph, "You will ensure all members of the VTNG you interact with understand they are a valued member of the team, regardless of differences in gender, race, religion, color, ethnic background or sexual orientation." In paragraph two, The Adjutant General requires individual responsibility for good order and discipline and that all members of the Vermont National Guard who "...witness any behavior not in line with good order and discipline, military customs and courtesy, and professional conduct you will intervene and take appropriate action." In the third paragraph, The Adjutant General sets the standard of conduct for his subordinate leaders in stating, "Leaders of the VTNG will hold you accountable if you choose to mistreat others or fail to take action when you observe misconduct."

The Team reviewed the written comments provided in the DEOMI survey and spoke with individual Soldiers and Airmen at their training sites, to validate the effectiveness of The Adjutant General's communication of the Vermont National Guard policy on *Expectations of Conduct*. The Team found more than 100 instances of comments to the effect that the severity of most punishment depends

"TAG priorities memo is good but in the Wing we lead by actions."

¹⁵⁶ Defense Organizational Climate Survey (DEOCS) Report, Admin. No. 2001973, pg. 30, Question #10 (May 28, 2020) and Defense Organizational Climate Survey (DEOCS) Report, Admin. No. 2001971, pg. 30, Question #10 (May 28, 2020).

¹⁵⁷ Ibid, at pg. 9, Figure 3: OE Subgroup Comparison.

¹⁵⁸ NGVT-TAG, Memorandum, SUBJECT: Expectations of Conduct, 11 April 2019; and NGVT-TAG, Memorandum; SUBJECT: Command Philosophy, 9 March 2019.

on how "connected" the offender is.¹⁵⁹ While this general perception may not reflect how accountability is actually administered, the prevalence of this perception suggests that it forms at least one "reality" within the Vermont National Guard. Of note, this perception also appears to overlap with the Team's findings that there is at least a perception of a "good old boy" network operating within the VTNG. Another general perception expressed through a significant number of comments to the DEOMI survey is the failure of leadership to effect and adequately communicate accountability for misconduct. The Team found this circumstance caused subordinates to distrust leadership's commitment to accountability, and it may have influenced the willingness of subordinates to report misconduct in the future.¹⁶⁰

B. Accountability at Brigade and Wing Leadership Levels

Leaders at the brigade, wing and separate unit levels have the tools available to exact accountability of offenders for disciplinary infractions in a timely manner, but believe they are restrained by other factors.

Prompt action is essential for military discipline to have the proper corrective effect.¹⁶¹ Each commander in the chain of command has independent yet overlapping discretion to dispose of offenses within the limits of the officer's authority. Within military discipline, the commander at the lowest level makes the initial decision regarding disposition and customarily executes that decision, if within his or her limits of authority.

"I feel at times we lack the directness required when someone makes a mistake to address and hold them accountable."

- DEOCS Survey Written Response

While nothing prevents a senior leader from withholding authority to himself or herself to dispose of offenses in individual cases or types of cases, the senior leader's exercise of this prerogative should not prevent lower unit commanders from advising on disciplinary matters or maintaining discipline within their unit. In the Vermont National Guard, TAG Joint Policy Memorandum JP2017-05, *Withholding Authority to Dispose of Misconduct Involving Officers, Warrant Officers and Senior Noncommissioned Officers in the Grade of E-7 and above and Sexually Based Offenses*, reserves authority to The Adjutant General for actions against Officers and Senior Noncommissioned Officers and all sexually based offenses.¹⁶² As noted below, the Vermont Code of Military Justice provides that a conviction by a summary court-martial is not a criminal conviction, because all

"Soldiers and Airmen need to be held accountable and punished for violations to the policies in order to improve the effectiveness of the organization as a whole."

DEOMI Survey written response

¹⁵⁹ 1,649 service members responded to the survey initiated by the Team.

¹⁶⁰ Based on written responses to Short Answer Questions *"Have you witnessed or experienced instances of sexual assault or sexual harassment in your unit? If so, did you report the conduct to your leadership? If not, why not?"* "Have you witnessed or experienced any incidents of misconduct that the unit and leadership knew about but failed to address? If so, please provide an example."

¹⁶¹ See, generally, Army Regulation 27-10, *Military Justice*, (May 11, 2016), and Air Force Instructions 51-201, *Administration of Military Justice*, (January 18, 2019), and 51-202, *Nonjudicial Punishment*, (March 6, 2019).

¹⁶² NGVT-SJA (JP20-17-05), TAG Memorandum, SUBJECT: Joint Policy Memorandum, *Withholding Authority to Dispose of Misconduct Involving Officers, Warrant Officers, and Senior Noncommissioned Officers in the Grade of E-7 and Above and Sexual Based Offenses*. 12 January 2017.

military justice action in Vermont by statute must be for purely military offenses. The Adjutant General expressly stated that his intent in issuing TAG Policy Memorandum JP2017-05 was not to impede the independent authority of a commander to take appropriate action under the Vermont Code of Military Justice or administrative action. However, the Team found through multiple leader interviews that the policy had a chilling effect, effectively questioning senior leadership confidence in subordinate commanders. Further, commanders believe this policy limited their ability to achieve accountability of offenders within a reasonable time, both of which unwittingly resulted in the abdication of leader responsibility at lower echelons.

Multiple Army National Guard brigade commanders expressed frustration with a perceived lack of authority to address instances of serious misconduct with their units. In contrast, Air National Guard wing commanders generally expressed comfort with their ability to address similar misconduct, an observation consistent with an Air Force culture of decentralized management. There was a clear understanding among the commanders at the brigade/wing level that the Adjutant General holds command authority with regards to discipline of service members in the Vermont National Guard. However, all commanders at the brigade/wing level expressed frustration with the length of time needed for senior leadership to decide on the disposition of serious disciplinary matters.

At the battalion and squadron level, one level below the Brigade and Wing, several leaders expressed frustration that matters of serious misconduct such as sexual assault or harassment were withheld to the O6 level or higher with no input from the battalion/squadron or company/group commander. The general perception among field grade leaders is that the disciplinary process takes too long and is not transparent to the mid-level leadership or their subordinates.

Comments to the DEOMI Survey validate this perception.

“Need timely and decisive decision making at the state JAG level LCC and LCC CSM at state level are both M-DAY which significantly effects disciplinary action timeliness and effectiveness for E8 and above misconduct issues.”

“Commanders are typically M-day and are not effectively informed as to what they can do to punish Soldiers for misconduct.”

“Passive-aggressive leadership - not very direct – WG/CC is direct – do by example; in the past could have been more direct approach – uncomfortable but necessary.”

“Liberal bias in the state makes it hard to crack down on some things hard Punishment for misconduct in state is slow. More rapid adjudication is needed for cases. Perceived to never be closed out.”

Several respondents to the DEOMI survey expressed the importance of timely actions to achieve accountability and the need to communicate those accountability measures:

“I would hesitate to say, “failed to address”, but I am more familiar than most with just how long disciplinary or similar actions normally take in this organization. That length of time, in my opinion, is a huge challenge and leads to people assuming (often wrongly) that nothing happened - because in many cases they are right for a while (several months at times). I believe in most cases some action eventually is taken. Speeding up those processes would go a long way to improving this perception.”

"Some senior officers need to hold accountable for their subordinate actions through counseling and/or flagging or removal from ADOS if those subordinate personnel are faced with punitive charges.... or for making decisions for the organization without the consent of the Chain of Command at the LCC and/or TAG level. Manipulating information or withholding information is not what I would call a professional way to conduct the business of the VTNG. This contradicts the message of the senior Chain of Command and allows personal narratives and/or agendas to become priority which can undermine the effectiveness of the enterprise across the board."

«I think that in an effort to maintain our numbers, we have lowered our standards of discipline and conduct within our unit, as well as moved away from who we are as Green Mountain Boys.»

- DEOCS SurveyWritten Response

The Team assessed a general discrepancy between Army and Air National Guard commanders' understanding as to who holds ultimate command authority over the Vermont National Guard.

Both Army and Air National Guard commanders generally expressed comfort with their ability to address instances of serious misconduct within their units. However, when asked who has ultimate command authority over the VTNG (in cl u d i n g authority with regards to discipline of service members), Air National Guard leaders (both officer and enlisted) consistently responded that the Wing Commander holds ultimate authority over all Airmen; an observation consistent with the Air Force's culture of

decentralized management. In contrast, Army National Guard brigade commanders generally referred to the TAG as holding ultimate command authority over their soldiers. This discrepancy is not uncommon among other State Guard units, however, more clarity and better understanding as to who has what responsibilities at the highest levels of the VTNG and who holds ultimate command authority might be appropriate in ensuring more effective adjudication of misconduct cases.

C. Transparency of Accountability

A general perception exists within the Vermont National Guard that The Adjutant General and other senior leaders within the Vermont National Guard do not hold offenders accountable.

As stated earlier, whether and how senior leadership communicates accountability actions to Soldiers and Airmen has a direct correlation to the effectiveness of accountability measures. With hold ing the authority to dispose of sen ior leader milit ary offenses to the highest-level places several additional responsibilities on The Adjutant General. First is the responsibility to take action to hold offenders accounta ble in a timely manner. As discussed above, leaders and soldiers at every echelon below the Joint Force Headquarters level expressed frustration with the length of time between commission of an offense and the discipline of the offender.

The Adjutant General also assumes the responsibility to effectively communicate how and why individuals are held accountable across multiple echelons of the organization. Failure to effectively communicate the consequences of misconduct creates the perception that the leadership lacks either the moral high ground or willingness to take appropriate steps when disciplinary matters arise.

During the Team's visits to individual units for canvassing operations, the Team received numerous statements which reflect the perceptions of Soldiers and Airmen on accountability actions taken and the transparency of how and why those actions were taken.

“With that lack of misconduct transparency, what is unknown is the fairness and equality of disciplinary action taken.”

“Feels that a quarterly status of discipline report distributed to each organization would help improve transparency of adjudication of misconduct.”

“A certain level of transparency would help with this perception; let members know that actions have consequences, without releasing individual information.”

D. The Role of the Legal Advisor

The Legal Support provided by the Vermont National Guard Office of the Staff Judge Advocate was untimely on matters regarding adjudication of misconduct primarily due to a severe lack of manpower resources, combined with overuse of AR 15-6 Investigations or Command Directed Investigations.

The Team assessed that the legal support provided was less than optimal for support of command's response to misconduct, primarily due to manpower constraints. During interviews with Vermont Judge Advocates, they discussed the challenges in articulating to their leadership their possible overuse of internal investigative capabilities.

The Judge Advocates and higher command should emphasize that there are areas of misconduct which have specified directives on how they are to be investigated and should be conducted using those external oversight mechanisms.¹⁶³ Further, it was clear from these interviews, that the legal staff, both on the Army and Air Guard, were overtaxed from the amount of work it had particularly because of the overreliance on formal military investigations, particularly considering the full-time staff consisted solely of one full-time Judge Advocate.

Comments to the Team gathered via interviews and the DEOCS validated that VT needs additional full-time legal support.

“JAG feels only vehicle have to formalize/ do something/ respond to a claim is through CDI.”

“CDI's (15-6s) have been used instead of commanders making decisions in the past and he is trying to teach his group commanders to make the hard decisions that are fair, firm and consistent with organizational priorities. Investigations and misconduct – Tendency to handle issues at the lowest level. Favoritism and inconsistent discipline between the squadrons was tolerated. Getting better now.”

“Leadership at the highest levels acknowledged that JAG representation is woefully short in the state. Hopes to take any under-executed Technician funds can be diverted to adding another full-time GS JAG officer.”

¹⁶³ For matters involving sexual assault, investigations are limited to an MCIO, civilian LEA or OCI. For sexual harassment claims, investigations should of complaints should be conducted either under the military equal opportunity complaint procedures of CNGBI/CNGBM 9601.01, an IG investigation under DoDI 1020.3 or and equal employment opportunity complaint procedure by Investigation and Resolutions Division of DCPAS for civilian, and dual status military technician EEOC complaints. All with external oversight by NGB or the EEOC.

“Need timely and decisive decision making at the state JAG level, LCC and LCC CSM at state level are both M-DAY which significantly effects disciplinary action timeliness and effectiveness for E8 and above misconduct issues.”

“Recommendation - Would love to have full-time JAG at the wing. One of his top wishes...Improve timeliness and accountability to the Airmen so they could see legal and disciplinary issues resolved in a timely fashion.”

“Full time paralegal or JAG would keep something from falling, etc.”

“JAG support is thin in the state and that increases legal exposure for leadership throughout the state.”

“Recommendation for a full-time para-legal both on the air and army (JFHQ) for adequate JAG representation.”

“In the past, JAG availability was lacking but seem to slowly be getting better.”

3. MILITARY JUSTICE AND ADMINISTRATIVE ACTION

The Adjutant General, like any commander, exercises discretionary command authority over military personnel within his command. When issues of good order and discipline come before The Adjutant General, he has a wide range of actions available based on what he decides is the appropriate course of action. Due to potential challenges associated with the prosecution of offenses under the Vermont Code of Military Justice (VTCMJ), commanders often rely on administrative measures or tools to maintain order and discipline within their force. These tools generally include informal counseling; a written memorandum of counseling (MOC) or reprimand (MOR); annotating misconduct on a member's evaluation/performance report; withholding or delaying (or modifying) promotions; change in duty assignments, shift assignments or transfers; administrative demotion; removing active guard/reserve (AGR) members from their full-time orders; and, finally, administrative separation from the National Guard.

Although the VTCMJ is similar to the UCMJ¹⁶⁴ the VT MJ provides that general courts martial may only be convened by the Governor.¹⁶⁵ Any conviction adjudicated by a general court martial for which an accused may receive fines not exceeding \$ 200.00, sentence forfeiture of pay and allowances, reprimand, dismiss or dishonorably discharge from the service, and reduce noncommissioned officers in rank¹⁶⁶

¹⁶⁴ The State of Vermont enacted its own Code of Military Justice. This code closely mirrors the federal Uniform Code of Military Justice (UCMJ). The UCMJ has undergone several revisions, most recently with the Military Justice Act of 2016, and the VTCMJ contains provisions to automatically conform individual sections with changes to its federal counterpart (See 20 V.S.A. §945). Vermont is not unique in this respect as many states have conforming provisions within their state codes of military justice.

¹⁶⁵ 20 V.S.A. § 942a (a).

¹⁶⁶ 20 V.S.A. § 942a (a) (1).

At the special court martial level, The Adjutant General, or the commanding officer of a battalion or similar unit may convene a special courts martial.¹⁶⁷ Vermont law provides a special courts martial may try any person subject to the military code of Vermont, except a commissioned or warrant officer, for any crime of a purely military nature and has the same powers of punishment as a general court-martial, except that a fine may not exceed \$ 100.00.¹⁶⁸ The commanding officer of a unit may appoint a summary court of one officer to adjudge an enlisted for breach of discipline and for minor violations. The court, when satisfied of the guilt of the soldier may fine a maximum of \$25.00 for any single offense, a reduction in rank, and not more than one month's forfeiture of pay and allowances.¹⁶⁹

As noted above, TAG Joint Policy Memorandum JP2017-05, *Withholding Authority to Dispose of Misconduct Involving Officers, Warrant Officers and Senior Noncommissioned Officers in the Grade of E-7 and above and Sexual Based Offenses*, reserves authority to The Adjutant General for actions against Officers and Senior Noncommissioned Officers and all sexually based offense¹⁷⁰ and effectively withholds summary and special courts martial convening authority to the Adjutant General within the Vermont Army or Air National Guard. This withholding policy effectively limits the judicial authority of all Brigade and WING commanders below the Adjutant General to criminal and non-criminal proceedings in the form of a special or summary court martial for enlisted members only for non-sexually based misconduct.

In the military justice system, a secondary option for commanders is non-judicial punishment (NJP). Non-judicial punishment provides commanders with an essential and prompt means to maintain good order and discipline and promote positive behavior changes in service members without the stigma of facing a court-martial conviction. The burden of proof remains the same as for convened courts martial, beyond a reasonable doubt. If the commander is convinced of the individual's guilt, they can direct a range of punishment authorized under state law more swiftly than the traditional courts-martial route. In Vermont there is a provision that would require the accused to accept the NJP, thus the accused may not demand trial by court-martial in lieu of non-judicial punishment.¹⁷¹

A. Challenges in Assessing Disciplinary Action

The Vermont National Guard lacks sufficient internal controls to manage the administration of discipline for service member misconduct.

There was no consolidated tracking mechanism for misconduct. The Team requested the Vermont National Guard to provide all reports of Army and Air National Guard misconduct from 2017 to the present to assess accountability actions. In response, the Vermont National Guard provided different spreadsheets and documents containing data on Army and Air National Guard separations, disciplinary actions taken, withdrawals of federal recognition, military equal opportunity, and equal employment opportunity complaints, administrative investigations, and sexual assault investigations.

¹⁶⁷ 20 V.S.A. § 942a (b).

¹⁶⁸ 20 V.S.A. § 942a (b) (1) and (2).

¹⁶⁹ 20 V.S.A. § 942a (c).

¹⁷⁰ NGVT-SJA (JP20-17-05), TAG Memorandum, SUBJECT: Joint Policy Memorandum, Withholding Authority to Dispose of Misconduct Involving Officers, Warrant Officers, and Senior Noncommissioned Officers in the Grade of E-7 and Above and Sexual Based Offenses, 12 January 2017.

¹⁷¹

These spreadsheets were supplemented by the Vermont National Guard throughout the course of the assessment.

The Team learned from interviews that disciplinary records are maintained at the brigade/wing level and only reported to higher leadership levels if (1) information is requested from the higher level or (2) the misconduct demanded resolution through more than summary courts martial or non-judicial punishment.

Like the decentralized nature of sexual assault prevention and response program management at the state level, disciplinary actions requiring less than general or special courts martial operate in bifurcated systems for the Army National Guard and Air National Guard. While service-specific regulation and customs dictate this bifurcation for military justice actions, those same service-specific regulations impose certain record keeping and filing requirements on the imposing authority. Without a requirement to centralize these records at the level of full-time legal staff, the degree of bifurcation exhibited in the Vermont National Guard decreases the organizational awareness of The Adjutant General, and his joint staff.

The Vermont Army National Guard provided an Excel spreadsheet of misconduct for the specified period requested. The Team reviewed the administrative actions taken and their respective adjudication to the extent such information was made available through records; however, the Team heavily relied on interviews conducted with individuals who were directly involved in the investigation and final adjudication of reported incidents or misconduct or who had direct knowledge of general administrative actions taken at the unit and brigade levels.

In addition, the Team also relied on the specific Army and Air Force regulations related to the administration of military justice and administrative processes of investigations, such as Army Regulation 27-10, *Military Justice*, (May 11, 2016), Army Regulation 15-6, *Procedures for Administrative Investigations and Boards of Officers* (April 1, 2016), Air Force Instructions 51-201, *Administration of Military Justice*, (January 18, 2019), 51-202, *Nonjudicial Punishment*, (March 6, 2019), and SAF/IGQ *Commander Directed Investigations (CDI) Guide*, (February 18, 2016).

The VTNG's lack of sufficient internal controls, to include consolidated tracking of misconduct and adjudication of disciplinary actions, results in the inconsistent application of discipline.

To assess misconduct within the VTNG, the Team requested copies of all reported misconduct and subsequent disposition (administrative and criminal) for the VTNG full-time and part-time personnel over the past 3 years. In analyzing the information provided by the VTARNG, there were 116 reports of misconduct, of which 2 were cases of urinalyses failures; 25 cases involving sexual assault (6 were unrestricted); 2 cases reported as civilian criminal misconduct (such as assault); 93 cases designated as general misconduct; 1 case involving fraud; and 12 other cases involving military misconduct. The Team noted there was a lack of consistency in the tracking of various cases that are reported to the command; in fact, it took multiple requests from the Team before any specific misconduct data could be obtained. Overall, there seems to be a lack of consistent punishment for like offenses, to include inconsistencies between the Air and Army National Guard in general.

Regarding matters that primarily involved the VTARNG, most allegations of misconduct were investigated pursuant to Army Regulation 15-6.¹⁷² Allegations involving VTANG members were typically investigated by Commander-Directed Investigations (CDI) pursuant to the SAF/IGQ CDI Guide.¹⁷³

While several instances of misconduct were investigated by the applicable MCIO or local law enforcement, there was little evidence that the VTNG maintained situational awareness of these matters. The Team noted a high level of misconduct occurring within the VTANG Recruiting and Retention Command. Several command directed investigations initiated in 2017 and 2018 found that, during the period of 2015-2019, several noncommissioned officers within this command were engaged in misuse of government vehicles, fraud, adultery, inappropriate relationships, and sexual assault. Several of these cases are pending administrative action.

The Team's interviews conducted with the Staff Judge Advocate, Deputy Staff Judge Advocate, the Investigating Officer, and the Commanders directly involved in adjudicating these cases, revealed that the Recruiting and Retention Command had been the target of multiple investigations; however, none of these investigations resulted in prosecution of the allegations under investigation due to jurisdictional issues or lack of evidence.

The Team learned that during the period investigated, the commander of the Recruiting and Retention Command reported directly to the VT TAG. This was a deviation from the normal reporting chain of VTNG units in comparison to both his predecessor and successor in command. This arrangement may not be optimal.

Both Army and Air National Guard witnesses testified that when they approached leadership regarding misconduct, it was handled out of sight, often leaving people wondering if misconduct issues were even addressed. A prior Recruiting and Retention chief was known and referred himself to be "untouchable." This led to questions of the previous Commander's potential inaction due to perceptions of bias and favoritism. The Team did not investigate the validity of these allegations.

B. Administration and Management of Justice

The Team assessed that there is a perception across the VTNG that discipline is not administered consistently or fairly and is often driven by favoritism.

VTNG members serving in a Title 32 or State Active-Duty Status are subject to state criminal law. Vermont's Code of Military Justice (VTCMJ) expressly withholds jurisdiction for any crime that can be tried by civil authorities.¹⁷⁴ Therefore, "common law" crimes such as rape, indecent exposure/touching,

¹⁷² See VTNG OSJA, AR 15-6 Guide for the Investigating Officer, January 2017

¹⁷³ Some instances of misconduct are not appropriate for investigation under AR 15-6 or AF CDI processes, e.g., sexual assaults; General Officer matters; reprisal complaints; and certain other matters. According to the AF CDI Guide, Chapter 2.1, Matters Appropriate for a CDI, refers to commanders "initiate[ing] an investigation into matters within their command when another investigative channel does not exist or is less suitable. For example, investigations into matters that will likely result in a court-martial or other judicial action would normally be referred to the Air Force Office of Special Investigations or Security Forces." The VTNG OSJA AR 15-6 Guide, notes that "if directives contain guidance more specific than set forth in AR 15-6 or conflicts with 15-6 procedures, the more specific guidance will control."

¹⁷⁴ Codified at 20 V.S.A. §941

and all other assaults cannot be criminally prosecuted under the VTCMJ – but must instead be referred to civilian authorities. This leaves only “offences of a purely military nature” – such as insubordination, malingering, asleep at post, drunk on duty to be tried by military courts martial under the VTCMJ. As a result, VTNG commanders instead rely heavily upon administrative action to address misconduct.

Commanders currently can appoint summary courts-martial, invoke article 15 punishments, administratively separate, demote, and issue reprimands to enlisted members.¹⁷⁵ There are few administrative measures available to address officers involved regarding misconduct for local commanders. The most common tool used in VTNG was the letter of reprimand with an occasional withdrawal of federal recognition as the only real and immediate consequence for officer misconduct.¹⁷⁶ The Team noted a general lack of understanding regarding the permanency of officially filed letters of reprimand; as a result, several letters that had been permanently filed were erroneously removed from officer’s personnel files in contradiction to Army and National Guard policy.¹⁷⁷ Meanwhile other locally filed letters of reprimand with an annotated expiration date of 2-3 years should have been removed, but they were still in the service members’ personnel files at the time of the assessment.

Administrative Action, summary courts-martial, and Article 15 punishments are the primary tool for commanders to restore order and discipline within their ranks but it must be swift and it must be lawful. As the processing of what appeared to the Team to be routine administrative matters lagged, so did the confidence in leadership and the perception that misconduct is not managed fairly and effectively:

“Issues are compounded when legal decisions and review are delayed. Justice delayed is justice denied. Have representation when Soldiers need it most.”

“Urinalysis packets for hot UA seem to take a longer time to process than normal.”

(1) Vermont Air National Guard

Most of the VTANG commanders and senior enlisted members cited that they had a close relationship with the Wing Staff Judge Advocate (now the Joint Force Headquarters Staff Judge Advocate (JFHQ SJA)).¹⁷⁸ Commanders indicated that they had the SJA’s ear; however, it was the Team’s perception that many matters were handled behind closed doors and seemingly without the direct knowledge by the VTANG Deputy SJA, who lacked knowledge of many of the past or pending VTANG disciplinary matters. Commanders seem to have had accessibility to adequate military justice advice, but that advice may have been in favor of protecting the Commanders rather than seeking the

¹⁷⁵ See AR 135-178, Enlisted Administrative Separations, 7 November 2017, and AFI 36-3208, Administrative Separation of Airmen, 09 July 2004

¹⁷⁶ See NGR 635-101, Officer Withdrawal of Federal Recognition.

¹⁷⁷ AR 600-37, paragraphs 7-1 and 7-2, provide that appeals and petitions for removal of unfavorable information be directed to the Department of the Army Suitability and Evaluation Board (DASEB) for action, States cannot unilaterally elect to remove information regardless of what the letter states or the officer giving the letter intended. The subject of the letter has the burden to provide evidence of a clear and convincing nature that the allegations are untrue or unjust, in whole or in part, thereby warranting removal. See also ARNG-HRZ Memorandum for Military personnel Management Officers of All States DTD 29 July 2013 *Authority for Removal of IPERMs Documents* (PPOM #13-028).

¹⁷⁸ At the time of the assessment the Wing SJA was in the process of transitioning to the JFHQ SJA position, while the Deputy SJA remained in an “acting” role. During the interview with the Deputy SJA, was not to clear of his current role and referred to doing what he is told – not sure if he is the “acting” SJA or SJA or what role he is playing presently.

proper resolution and adjudication of actions of misconduct. Even if that were not the case, there seems to be such a perception based on the interviews conducted by the Team:

"Misc onduct is addressed butthe disciplinary action is never posted or fallowed up on to the lower levels."

"Investigations and misconduct- Tendency to handle issues at thelowest level. Favoritism and inconsistent discipline between the squadrons was tolerated. Getting better now."

"Definite different treatment with adjudication across rank/ status enlisted / officer."

"I am unsure if everything is handled equally around the board. I am not sure the difference between who is kicked out of the military over a failed u rinalys is, who is demoted or stripped of responsibilities, and who is slapped on the wrist. Ifeel that some people have been quickly removed, while others are under watch for a period and then no longer watched over. I wish Iunderstood that answer, because it has been the reason for my questioning favoritism or fair punishment."

The Wing SJA conducted annual Status of Discipline briefings to Commanders, but it was not clear whether there was a case tracking system in place.

Of particular concern, the DEOCS survey revealed only 67 percent of VTANG Airmen agreed that discipline is fairly administered in the Wing.

Table 2.7 Organizational Processes

Question	Strongly Di sagree	Disagree	Slightly Disagree	Neither Agree nor Disagree	Slightly Agree	Agree	Sti-ong ly Agree
Programs are in place to address military membel's' and employees' concel'ns.	1 (0%)	12 (3%)	11 (2%)	37 (8%)	65 (14%)	220 (47%)	121 (26%)
Discipline is administered fairly.	24 (5%)	35 (7%)	23 (5%)	67 (14%)	63 (13%)	175 (37%)	80 (17%)
Decisions al'e made after reviewing relevant information.	11 (2%)	13 (3%)	17 (4%)	63 (J3%)	59 (13%)	216 (46%)	88 (19%)
Total	3%	4%	4%	12%	13%	44%	21%
		10%				78%	

(2) Vermont Army National Guard

It is not that actions of misconduct are unanswered, but multiple witnesses seemed quite disheartened as to how long it takes for the legal and administrative review process to take place within the VTARNG. Several witnesses described requests for legal review/adjudication that take several months, even years, to resolve; knowing it takes so long Commanders are not incentivized to go through the process and attempt to handle internally or not at all. These concerns are causally related to the full-time manning challenges noted above, and were echoed in Team interviews:

"The unit failed to process a flag over 6 months after an unrestricted sexual assault report was filed."

The DEOCS survey and interviews conducted by the Team highlighted a lack of trust of the leadership based on perceived instances of favoritism and bias by the senior leadership when responding to substantiated allegations of inappropriate relationships and other matters of misconduct.

"Fraternization is occurring within the organization and the policy needs to be changed and further clarified."

"Fraternization exists but tolerated. Small state mentality."

"Fraternization policy could be updated and clarified. Challenge at the DJS level is that issues are identified and addressed at echelons below the command group office. Issues also involve business relationships between two parties as well."

"There are multiple instances where Soldiers carry on unprofessional relationships both inside and outside of work. These include sexual relationship that do not get squashed due to trying to keep morale up. RRB again, is notorious for behavior such as this. Both between peers but, also between seniors and subordinates."

The DEOCS survey revealed that 72 percent of the VTARNG Soldiers agree discipline is fairly administered.

Table 2.7 Organizational Processes

Question	Strongly Disagree	Disagree	Slightly Disagree	Neither Agree nor Disagree	Slightly Agree	Agree	Strongly Agree
Programs are in place to address military members' and employees' concerns.	20 (2%)	37 (3%)	27 (2%)	118 (10%)	126 (11%)	583 (49%)	270 (23%)
Discipline is administered fairly.	50 (4%)	72 (6%)	64 (5%)	149 (13%)	109 (9%)	503 (43%)	234 (20%)
Decisions are made after reviewing relevant information.	30 (3%)	43 (4%)	33 (3%)	165 (14%)	109 (9%)	560 (47%)	241 (20%)
Total	3%	4%	3%	12%	10%	46%	21%
		11%				77%	

C. Adjudication of Misconduct and Resulting Punishment

The Vermont National Guard does not comply with service-specific regulatory requirements for reporting unfavorable information or substantiated misconduct.

The Team discovered that the Vermont National Guard policies and regulations do not comply with service-specific regulatory requirements for the reporting of unfavorable information. Service regulations regarding unfavorable information based on substantiated misconduct permit the Army and Air Force to consider all available relevant information when choosing Soldiers and Airmen for positions of significant trust and authority (POSTA) or positions or appointments screened for suitability.

While each of the Army regulations cited herein apply not only to the Army National Guard while in federal service (the “ARNGUS”) but also to the Army National Guard while in a Title 32 status (the “ARNG”), only certain Air Force regulations dealing with accountability apply to the Air National Guard when not in federal service. However, two service regulations which do apply to the Army or Air National Guard not in federal service are AFI 36-2907, *Unfavorable Information File*, and AR 600-37, *Unfavorable Information*.¹⁷⁹ AFI 36-2907 requires Air Guard commanders, through the TAG as the general court martial convening authority, to initiate an unfavorable information filing for letters of reprimand, caution or admonition which include “confirmed evidence of unlawful discrimination or sexual harassment.”¹⁸⁰ AR 600-37 requires commanders, at all levels, “ensure that a Soldier’s performance-disciplinary folder is annotated when a court-martial conviction, non-judicial punishment, or punitive administrative action for a sex-related offense is received. Punitive administrative action means any adverse administrative action initiated because of the sex-related offenses identified below and includes, but is not limited to, memoranda of reprimand, admonishment, or censure,” regardless of the level of command issuing the administrative action.¹⁸¹

The Vermont National Guard issued administrative letters of reprimand or concern in 7 cases of service member misconduct. The Vermont National Guard produced primary and supporting documentation for none of the administrative letters of reprimand. Of seven cases where National Guard commanders issued letters of reprimand, we are aware of one which resulted in the permanent filing of the letter of reprimand in the service member’s Official Military Personnel File. The single officer administrative reprimand involved an allegation of sexual assault and resulted in the permanent filing of the letter of reprimand in the service member’s Official Military Personnel File. However, in that instance it took more than a year to have the reprimand placed in the service member’s Official Military Personnel File. Members interviewed by the Team spoke about the lack of accountability. One member stated, “*We need to air out our dirty laundry, and show case completion statistics because a lot of things are kept under wraps.*”

In addition to those administrative accountability measures available for enlisted personnel, the Army and Air Force have prescribed certain administrative accountability measures for supervisory personnel, both commissioned and non-commissioned officers.¹⁸² Both regulations require that substantiated sexual offenses must be documented in the offender’s permanent personnel evaluation records.¹⁸³ While the Team did not review evaluation records of Vermont National Guard commissioned and non-commissioned officers, interviews and DEOCS survey anecdotal statements described instances where evaluation records for sexual offenders reviewed did not include any reference to the substantiated sexual offense. The failure to properly document detrimental conduct of personnel allows sexual offenders to not only remain in military service, but potentially rise to positions of greater power. For those who are aware of the sexual misconduct and the apparent lack of accountability, the presence of such a leader significantly damages their morale and erodes their confidence in more senior leadership to exact accountability

¹⁷⁹ DEP’T OF THE AIR FORCE INSTRUCTION 35-2907, UNFAVORABLE INFORMATION FILING (November 24, 2014); DEP’T OF THE ARMY REGULATION 600-37, UNFAVORABLE INFORMATION (December 19, 1986).

¹⁸⁰ DEP’T OF THE AIR FORCE INSTRUCTION 35-2907, UNFAVORABLE INFORMATION FILING, Table 2.2, (November 24, 2014).

¹⁸¹ DEP’T OF THE ARMY REGULATION 600-37, UNFAVORABLE INFORMATION, para. 3-4 (December 19, 1986).

¹⁸² See DEP’T OF THE ARMY REGULATION 623-3, EVALUATION REPORTING SYSTEM (June 20, 2019); DEP’T OF THE AIR FORCE INSTRUCTION 36-2406, OFFICER AND ENLISTED EVALUATION SYSTEMS (November 8, 2016).

¹⁸³ DEP’T OF THE ARMY REGULATION 623-3, EVALUATION REPORTING SYSTEM, para. 3-26b, (June 20, 2019); DEP’T OF THE AIR FORCE INSTRUCTION 36-2406, OFFICER AND ENLISTED EVALUATION SYSTEMS, para. 1.8.2.2, (November 8, 2016).

V. Assessment Team's Findings and Recommendations

A. Sexual Assault Response Program and Sexual Harassment/ Assault Response and Prevention: The Team made 5 separate findings and 5 recommendations to improve the execution of the Sexual Assault Response Program in the Vermont National Guard.

Findings: Sexual Assault Prevention and Response Program

1. The program had not historically maintained updated references to CNGB and DoD regulations and has not incorporated those changes to the SAPR/SHARP policies within an acceptable time-period which has affected compliance with and the success of the program and has fostered confusion at lower-level commands on responsibilities and requirements for victim's immediate commanders. Recently, the SAPR/SHARP program has updated some, but not all policies and presently has draft policies in review which do incorporate compliance by all command levels with particular emphasis on responsibilities of victim's immediate commanders towards prevention and response. However, references in those draft policies need review and updating because many of the referenced policies and regulations have undergone revision/changes in 2020.

2. The Team found victim's and subject's immediate commander's training did not emphasize victim or subject's commander's sexual assault response responsibilities to ensure victim or subject safety, communication, and reporting through SAIRO reporting and participation in the VTNG CMG.

3. The Team found the VTNG SAPR/SHARP training requires better tracking to ensure compliance with training requirements of personnel.

4. The Vermont National Guard does not have adequate resourcing of the Sexual Assault Prevention and Response program.

5. The Team found one instance in the period of time we were to assess where the data provided indicated a pending AR 5-6 investigation of an unrestricted sexual assault matter. The Vermont National Guard's continued use of its internal command directed investigations of sexual assault matters violates DoD, Service, and National Guard Bureau policy against internal, command-directed investigations of sexual assaults. The Team found instances in which the commanders and leaders did not record or delayed posting a FLAG for personnel under investigation, did not record or delayed properly posting GOMARs, or failed to denote positive findings of sexual assault or harassment in officer, noncommissioned officer or enlisted evaluations as required.

Recommendations: Sexual Assault Prevention and Response Program

1. The Vermont National Guard's written policies should be updated to comply with current federal law, regulations, and policy. If it chooses, The Vermont National Guard should provide an opportunity for relevant National Guard Bureau program offices to review and comment on any update Vermont National Guard's written policies on Sexual Assault Prevention and Response prior to publication or should request a staff assistance visit from the National Guard Bureau for the purpose of reviewing and mentoring the accomplishment of program updates and improvements pursuant to findings and recommendations of this report.

2. The Vermont National Guard should evaluate and establish roles and responsibilities, inclusive of the Services and Joint Staff, within the Sexual Assault Prevention and Response Program to better synchronize program management, services, and information flow from senior leadership to subordinate commanders, in particular victim's commanders.

3. The Vermont National Guard should evaluate the oversight for the Vermont Sexual Assault Prevention and Response Program training program to improve coordination, collaboration, and state-level program management and accountability. The SAPR program needs to better track unit, battalion, squadron, Wing and Brigade training to ensure compliance. Further, the SAPR program needs to establish tracking for overall command training and individual commander training which it does not presently capture sufficiently.

4. The Vermont National Guard should evaluate force structure and manning to ensure adequate resourcing of the Sexual Assault Prevention and Response program Voluntary Victim Advocate personnel in the units, battalions, squadrons, Wing and Brigade training to ensure compliance with regulatory requirements. The Vermont National Guard should evaluate the oversight for the Vermont Sexual Assault Prevention and Response Program to improve coordination, collaboration, and state-level program management to ensure adequate Volunteer Victim Advocates when personnel transfer, attrite, or otherwise move from units as result of promotion/demotion.

5. The Vermont National Guard should refer to external investigations sexual assault and sexual harassment matters and update command guidance to comply with DoD, Service, and National Guard Bureau policies referring to external investigation unrestricted reports of sexual assaults matters to MCIO, civilian law enforcement or OCI and sexual harassment matters to the IG or EO/EEO.

B. Equal Employment Opportunity/Equal Opportunity: The Team made 5 separate findings and 5 recommendations to improve the execution of the Sexual Harassment and Equal Employment Opportunity Program across the Vermont National Guard.

Findings: Sexual Harassment and Equal Employment Opportunity

1. The Vermont National Guard's written policies on prevention and response to allegations of sexual harassment and hostile work environment do not reflect current federal law and DoD and National Guard Bureau policies. The EEO/EO program had not historically maintained updated references to CNGB and DoD regulations and has not incorporated those changes to the EEO/EO policies within an acceptable time-period which has affected compliance with and the success of the program and has fostered confusion at lower-level commands on responsibilities and requirements for processing EEO/EO complaints.

2. The Vermont National Guard's SEEM supervisory scheme inhibits unimpeded access to The Adjutant General regarding EEO/EO Program issues and training. The SEEM/EEO Director should not be supervised or rated by the HRO/GI/AI. This is an organizational conflict of interest. The SEEM/EEO Director are meant to be neutral parties to the EEO/EO process while the HRO/ GI / AI represents the command/management. For the same reason, the SEEM/EEO cannot be aligned with the Office of the Staff Judge Advocate.

3. The Vermont National Guard EEO/EO programs lacked adequate resources, command emphasis and fully trained and qualified personnel. Collateral duty or full-time personnel EO/EEO professionals cannot be personnel from the HRO/ G-1 / A-1 or JA. This is a conflict of interest.

4. Special Emphasis Program personnel cannot be from the EO/EEO complaints processing program or rated by the SEEM or EEO Director or involved in the EO/EEO complaints processing program.

5. Vermont National Guard EEO/EO policies also do not provide adequate protections against retaliation and reprisal in complainants in accordance with NGB and DoD policy and regulations. The lack of resourcing and emphasis on retaliation/reprisals in the Vermont National Guard's EEO/EO Program has impacted the filing and disposition of sexual harassment and hostile work environment complaints.

Recommendations: Equal Employment Opportunity/Equal Opportunity

1. The Vermont National Guard's written policies should be updated to comply with current federal law, regulations, and policy and enhance protections for complainants. In particular, the Vermont National Guard lacks an EEO regulation for complaints processing for civilian employee discrimination complaints to include the requirements contained in §§ 1614.105 through 1614.110 and in § 1614.204 of section 29 Code of Federal Regulations (C.F.R.), and consistent with all other applicable provisions contained in the Equal Employment Commission's Management Directives 110 and 715. A sample model NG EEO complaints processing regulation was made available to all SEEMs in 2017 and can be found at https://gko.portal.ng.mil/Joint/Staff/D09/SEEM%20Library/Forms/A11Item_s.as_px?Root_Folder=%2FJoint%2FStaff%2FD09%2FSEEM%20Library%2FResolution%20Process%2FCivilian%20EEO%20Process&FolderCTID=0x012000440622F901BEBA44864CDA1CE7E0E52A&View=%7BF2272F0E%2D99A7%2D4DA5%2D93D4%2D603D45D97D0F%7D. Last visited December 10, 2020.

2. The VTNG EO/EEO program must be separated from the Human Resources Office (HRO) and should be aligned with the Personal Staff of the Adjutant General or the Deputy Adjutant General, with a direct report by the State Equal Employment Manager (SEEM) or EEO Director to the Adjutant General.

3. Collateral duty or full-time EO/EEO professionals cannot be personnel from the HRO/G-1/A-1 or JA. This is a conflict of interest.

4. Special Emphasis Program personnel cannot be from the EO/EEO complaints processing program or rated by the SEEM or EEO Director or involved in the EO/EEO complaints processing program. The Vermont National Guard should evaluate force structure and manning to ensure adequate resourcing of the MEO/EEO programs to ensure commanders have EOAs/ EOLs, EO professionals and EEO Counselors to assist them in using the EEO/EO channels for local EEO/EO complaints and remove areas of organizational conflict. Further, all EEO/EO offices should be removed

from within the HRO/GI/AI and be standalone offices. The Vermont National Guard should identify those EEO/EO personnel that require training and prioritize their access to training to ensure required personnel in its units, Battalions, squadrons, Wing and Brigade.

5. Equal Opportunity professionals must process and promote a retaliation/ reprisal prevention program and complaints process in compliance with DoD and NGB policy and regulation.

C. Command Climate : The Team found that the Vermont National Guard reflects a military and civilian work force of highly dedicated personnel who take great pride in the organization and in military service. The Team made 6 findings and 5 recommendations related to command climate.

Findings: Command Climate

1. While an adequate number of members of the VTNG expressed favorable job satisfaction and trust in leadership, there is a strong perception of favoritism or a "good old boy" network that may erode that trust.

2. Civilian personnel, particularly within the ARNG, expressed broader concerns over the Organizational Effectiveness of the VTNG.

3. While an adequate number of members of the VTNG expressed favorable answers regarding reprisal and retaliation on the DEOMI Survey, interviews and written responses revealed that some junior personnel may fear voicing their leadership concerns over fear of reprisal or retaliation.

4. Further, a significant number of personnel expressed that perceptions of favoritism within the VTNG may stifle meaningful change due to fear of reprisal, retaliation, or marginalization.

5. While the Team assessed that hazing does not appear to be a significant issue within the VTNG, there are a few housekeeping issues that require VTNG senior leader attention.

6. While the Team assessed that bullying does not appear to be a major issue in the VTNG, there are indications that several personnel may feel "bullied" or marginalized as a result of perceived favoritism; for voicing concerns to their leadership; or some combination thereof. These concerns appear to be especially pronounced within ARNG Recruiting and Retention but appear to a lesser degree across the VTNG.

Recommendations: Command Climate

1. The VTNG should conduct an enterprise-wide review of the systems and processes within the VTNG, particularly regarding transparency of personnel policies and administration of discipline, which may be fostering the perception of favoritism within the VTNG. Further, the VTNG should review best practices employed by other states to improve transparency of personnel management and implement through iterative training and the publication of personnel management policies.

2. There should be increased leadership focus at TAG level on the health of the civilian force within the VTNG. Consideration should be given to civilian personnel morale, as well as increased opportunity for personnel to have direct access to senior leadership to ensure their concerns are addressed. Leadership should also consider "civilian only" listening sessions, including separate sessions that may allow minority personnel to express their concerns without fear of maltreatment or reprisal.

3. The VTNG leadership should ensure that refresher training on Department policy regarding hazing and bullying is conducted; that leadership reinforces its lack of tolerance for hazing; and that TAG anti-hazing and bullying policies are widely disseminated and posted in unit areas.

4. Regarding possible ongoing hazing in the Fire Department, VTNG leadership should consider a command-directed inquiry or management review into these allegations.

5. Based on the seemingly lower percentage of favorable responses in the ARNG Recruiting and Retention Battalion in the areas of bullying and hazing, the VTNG should focus additional efforts in ensuring climate issues are appropriately addressed within that organization.

D. Personnel Management: Hiring; Promotions; and Assignments: The Team made 19 separate findings and 15 recommendations to improve accountability across the Vermont National Guard.

Findings: Personnel Management: Hiring; Promotions; and Assignments

1. Current VTNG organizational reporting structure and lack of clarity as to responsibilities and expectations at the senior leadership level, especially within the VTARNG, has contributed to friction at the top which has had an overall negative impact on the organization. This has contributed to decision-making that is primarily concentrated at the lowest levels of the organization and to lack of transparency further contributing to mistrust, disengagement, and low morale at all levels of the organization.

2. Although a significant number of personnel believed that the VTNG has regulations, policies and procedures in place, there was a strong perception that their implementation and enforcement has not been effective; that they are not clearly communicated and understood; and they are not always fairly and consistently applied across the organization.

3. Policies and procedures were generally outdated, existing as draft policies, and in some cases nonexistent, which has led to significant number of personnel not having sufficient clarity of organizational expectations and lacking confidence that policies and procedures are fairly and consistently enforced in the organization.

4. A significant number of personnel have the perception that the VTNG lacks transparency and fails to communicate organizational health and other information effectively across the organization, leading to lack of accountability and mistrust in the organization.

5. There are differences within the VTNG related to the implementation of internal and external inspection and assessment programs, where the VTANG is effectively participating in these programs,

while on the other hand, there was insufficient information to assess the effectiveness of such programs in the VTARNG.

6. The VTNG has unique recruiting and retention challenges that directly impact the management of personnel and the health of the organization; despite these challenges, the organization remains generally disengaged from its recruiting and retention mission.

7. While many VTNG personnel did not express unfairness related to their own selection and promotions, there is a strong perception of personal favoritism-based selections and promotions for leadership positions.

8. A significant number of personnel in the VTNG expressed that they did not have a clear understanding of the organization's selection and promotion policies, which is consistent with personnel's overall low confidence in VTNG leadership around the implementation of organizational policies and processes.

9. While the VTANG has made considerable effort to make its selection and promotion process more consistent, equitable, and transparent, it did not have an officially approved promotion policy in place; and there continues to be a strong perception among Airmen that there is a culture of pre-selection and promotion favoritism.

10. Although enlisted selections and promotions in the VTANG are generally viewed as fair and equitable, failure at the State and Wing level to engage in effective force management has caused stagnation within the senior enlisted ranks.

11. The VTARNG does not currently have an official written publication or policy for its selection and promotion practices which has resulted in lack of transparency and fuels the strong perception across the organization that selections and promotions are based on favoritism.

12. A significant number of personnel expressed strong perceptions of an active "good old boy" network and an overall sense that promotions and progression in the VTARNG is based on pre-selection and favoritism.

13. A significant number of VTARNG personnel expressed perceptions of limited opportunities for promotions and progression across the organization, especially by enlisted members wanting to advance in more senior level positions; this is generally due lack of procedural transparency in the organization and due to failure at the State and Battalion level to engage in effective force management practices.

14. There was some indication of unfairness related to position assignments and hiring practices in the VTNG, especially for women, which relates back to the perception among service members that favoritism drives personnel management decisions.

15. There is a general view in the organization that AGR positions are not always merit-based, and that due to the limited availability of AGR positions, even if advertised, the positions tend to be "pre-filled" by individuals waiting for ARG openings.

16. The Team concluded that VTNG leadership at the JFHQ level is not engaged in the effective implementation of training and readiness across the organization; furthermore, units do not adequately track and report training and readiness efforts, and generally prioritize the day-to-day mission over training implementation.

17. There is a strong perception that VTNG leadership at all levels is not actively engaged with providing personnel adequate support with training, counseling and mentorship, and career progression and development.

18. VTNG leadership has failed to set performance expectations and address substandard performance by the full-time staff, especially when it comes to providing support to M-Day personnel, leading to significant friction between full-time and part-time personnel, which has negatively impacted the organization and the effective accomplishment of its mission.

19. A significant number of personnel have the perception that the role of the M-Day soldier has become less of a priority, and that the current culture in the organization emphasizes the full-time mission over the mission of the part-time soldier.

Recommendations: Personnel Management: Hiring; Promotions; and Assignments

1. The Team recommends that VTNG further evaluate and correct perceived confusion regarding its organizational structure, especially as the current structure pertains to JFHQ in interaction with individual service elements and the VTNG. The Team assesses that this might be done by streamlining the chain of command, better defining the various roles and responsibilities within JFHQ as they relate to both Air and Army operations, and more effectively communicating across all levels of the organization.

2. The VTNG must reassess how policies are developed, implemented, and communicated across the organization.

3. The Team recommends the VTNG to develop solutions that create transparency across the organization and to establish regular communications and conversations with Airmen and Soldiers about the overall state of the VTNG.

4. The VTNG should review its participation in organizational assessment and inspection processes to ensure that they conform to Service policy.

5. The VTNG should review its exit survey procedures and consider implementing a process that clarifies to personnel the value of the exit survey to the organization; produces a report that is informative in nature, easy to navigate, and easily accessible to commanders; and ensures that senior leadership utilizes this tool rather than allowing it to become another obsolete yet required organizational task.

6. The Team assesses that the VTNG must address core, internal, organizational issues with recruiting and retention, and the lack of accountability by commanders in this regard.

7. The Team notes the need for improvement and more direct J FHQ engagement with VTNG promotion policies, to include promotion policies for Traditional Drill Status Guardsmen and Active Guard and Reserve (AGR) personnel.

8. The Team recommends that the VTNG review and update personnel promotion and assignment policies IAW Service and NGB policies to instill confidence and transparency in VTNG personnel management.¹⁸⁴

9. The VTNG should develop and institute more structured, consistent, and transparent metrics for promotions and advancement in the organization.

10. The VTNG should review its current force structure and develop management strategies and procedures that address current promotion practices among its full-time force; in addition, VTNG should evaluate whether certain full-time positions could be structured as rotational or tenured positions to expand opportunities in the organization.

11. The Team recommends that the VTNG draft a comprehensive training policy and establish a robust training implementation plan that supports the Training Management doctrine and Total Force mission of the Army and Air Force, respectively. The training policy and guidance should then be effectively communicated across the organization.

12. The VTNG should increase emphasis on PME completion rates for officer and enlisted personnel. This will increase individual Service member eligibility for promotion across the VTNG but could also have direct impact of retention rates.

13. The Team recommends commanders and first line supervisors maximize opportunities for unit personnel to participate in in-residence/ hands-on training opportunities, subject to unit mission requirements.

14. The Team recommends command leadership set up a process that effectively manages and balances high-ops tempo unit expectations and requirements with access to actual training opportunities. Furthermore, provide clear messaging as mission and operational priorities change as soon as they change so that personnel can shift those priorities accordingly and obtain the needed readiness training.

15. The VTNG should develop and implement guidance that aims to address and balance the needs of personnel (both full-time and part-time) with the need of accomplishing the mission of the organization.

E. Military Justice and Administrative Actions on Discipline / Misconduct: The Team made 5 separate findings and 9 recommendations to improve accountability across the Vermont National Guard.

Findings: Military Justice and Administrative Actions on Discipline/Misconduct

Guard Duty (FT NGD) Management (The National Guard), 21 September 2015; NGR (AR) 600-100 (Commissioned Officers - Federal Recognition and Related Personnel Actions), 15 April 1994; NGR 600-101 (Warrant Officers - Federal Recognition and Related Personnel Actions), 10 September 2018; NGR 600-200 (Enlisted Personnel Management), 31 July 2009; NGR 601-1 (Army National Guard Strength Maintenance Program), 01 January 2019; and other applicable regulations, directives and instructions.

1. The Team assessed that current military legal support does not appear optimal to meet the needs of the VTNG.
2. There is a lack of clarity surrounding acceptable/unacceptable conduct (especially for fraternizations); and a lack of written policies addressing acceptable/unacceptable conduct in the VTNG.
3. The Team assessed that the VTNG suffers from a lack of transparency at all levels of the VTNG regarding the adjudication and disposition of misconduct cases.
4. The VTNG should review and improve training on when Commander Directed Investigations / 15-6s are appropriate and how to conduct them more effectively.
5. The VTNG should create a consolidated action tracking system to improve oversight of all adverse administrative actions.

Recommendations: Military Justice and Administrative Actions on Discipline/Misconduct

1. Review current manning structure within Office State Judge Advocate to ensure adequate coordination between Army and Air legal communities at the Joint Force Headquarters.
2. Review TAG Policy Memorandum on Justice and Conduct to improve implementation to enable commanders at brigade/ wing and lower echelons to achieve accountability for all misconduct, but particularly fraternization, sexual assault, and sexual harassment.
3. Centralize all military justice disposition records, Army and Air, at the Office of the State Judge Advocate. Implement internal controls such as a military justice tracker for echelons below brigade to better manage the administration of discipline for service member misconduct. Improve coordination between the legal and personnel offices (OSJA and J-1/ G-1/ A-1) to ensure filing of unfavorable information regarding sexual misconduct. Communicate all disciplinary actions to the force through commander engagements from brigade to the company level at least biannually.
4. Ensure commanders receive training on when Commander Directed Investigations / 15-6s are appropriate. Emphasize certain investigations, like sexual assault, EEO/EO, and retaliation have specific directives about their investigation. Refer questions regarding matters involving administrative investigations to the appropriate Senior Counsel for review in accordance with Service Policy.
5. Centralize all military justice disposition records, Army and Air, at the Office of the State Judge Advocate.

Assessment Team's Comments

Statement on Handling of Federal Records. This document is a federal record and must be maintained in accordance with applicable DoD, NGB, 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.

