



STATE OF VERMONT
OFFICE OF THE ADJUTANT GENERAL
789 Vermont National Guard Road
Colchester, Vermont 05446-3099

NGVT-PWD-SAP (100)

May 17, 2022

MEMORADUM FOR SEE DISTRIBUTION

SUBJECT: Joint Policy Memorandum (Policy # 2022-09) Prevention and Response to Retaliation for Reports of Sexual Assault or Harassment

1. References.

- a. AFI 90-301, Inspector General Complaints Resolution, 28 December 2018 (Incorporating Change 1, 30 September 2020).
- b. AFI 90-6001, Sexual Assault Prevention and Response Program, 15 July 2020 (Incorporating Change 1, 26 March 2021).
- c. AR 600-20, Army Command Policy, 24 July 2020.
- d. CNGBI 1300.01, National Guard Sexual Assault Prevention and Response Program, 26 June 2020.
- e. DoDD 6495.01, Sexual Assault Prevention and Response (SAPR) Program, 23 January 2012 (Incorporating Change 5, 10 November 2021).
- f. DoDD 7050.06, Military Whistleblower Protection, 17 April 2015 (Incorporated Change 1, 12 October 2021).
- g. DoDI 6495.02, Volume 1, Sexual Assault Prevention and Response: Program Procedures, 28 March 2013 (Incorporating Change 6, 10 November 2021).

2. Purpose. To establish the Vermont National Guard (VTNG) policy on the prevention and response to retaliation for reports of sexual assault or harassment.

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3. Effective Date. This policy is effective immediately when signed. All previous versions are obsolete.

4. Applicability. This policy applies to all employees assigned to the Vermont Air National Guard and Vermont Army National Guard, herein referred to as the Vermont National Guard (VTNG). The term employees covers all service members regardless of duty status including Title 5 National Guard employees and Title 32 Federal Technicians.

5. Definitions. See Enclosure 1 for complete list.

a. Reprisal: Taking or threatening to take an adverse personnel action because the individual reported, prepared to report, or was perceived as having reported a sexual assault, sexual harassment complaint, or complaint of discrimination based on sexual orientation.

b. Retaliation: Includes ostracism and acts of maltreatment committed against an individual who reported, prepared to report, or was perceived as having reported a sexual assault, sexual harassment complaint, or complaint of discrimination based on sexual orientation.

6. Policy.

a. Sexual assault, sexual harassment, and discrimination based on sexual orientation (all of which is hereafter referred to as sexual misconduct) degrades our readiness and destroys unit cohesion. Unit readiness, and the trauma to the survivor is further impacted when retaliation or reprisal occurs against those who have demonstrated the courage to come forward with reports of sexual misconduct. The VTNG will not tolerate retaliation of any kind against those involved in a report of sexual misconduct; to include comments or posts on social media (i.e. Facebook, Twitter, Instagram, Snapchat, YikYak or the like).

b. Leaders will create and promote a positive command climate in which all members have the confidence in their chain of command to report crimes of sexual misconduct immediately. This includes an environment free from retaliation and reprisal. Leaders will ensure that all members of our VTNG community treat survivors with the utmost dignity and maintain respect for their privacy.

c. Commanders are responsible for preventing and responding to retaliation and/or reprisal against all individuals involved in a report of sexual misconduct, to include the alleged offender(s). O-3 level, or higher, commanders will immediately complete a reprisal plan and will counsel all individuals involved in a report of sexual misconduct

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upon receipt of the initial report [see Enclosures 2 and 3 respectively]. This responsibility **cannot** be delegated.

d. Allegations of reprisal, will be referred, tracked, adjudicated and reported within the Sexual Assault Prevention and Response (SAPR) Office or the Office of the Inspector General (IG). Those who report reprisals are protected under the Military Whistleblower Protection Act (Reference f).

e. A survivor may discuss retaliation with SARC personnel through DD Form 2910-2, Retaliation Reporting Statement for Unrestricted Sexual Assault Cases, but choose whether or not to forward the report for an investigation. SAPR personnel will assist the survivor in contacting the appropriate agency (Command and/or IG). Sexual Assault Response Coordinator's (SARCs) will gather information regarding these reports and input data in the Defense Sexual Assault Incident Database to be discussed in the monthly Case Management Group.

7. Commanders are responsible for ensuring SARCs, SAPR VAs, and other SAPR professionals are free from coercion, discrimination, or reprisal related to the execution of their SAPR duties and responsibilities. These individuals will utilize their Chain of Command, Office of the IG, or Equal Opportunity Advisor (EOA) to identify any concerns. Installation commanders, and commanders in comparable locations, will direct that “**Reporting Options for Retaliation related to an Unrestricted Report of Adult Sexual Assault**” are posted in high-traffic locations, and posted information will include:

a. “Reporting Options for Adult Victims of Sexual Assault” described above; however, not all Retaliation reporters will be eligible for a Special Victims Counsel.

b. Information for the DoD Office of the Inspector General Hotline for Whistleblower Reprisal Complaints.

c. Information about how individuals who believe they have been retaliated against related to a report of a sexual assault may report Retaliation allegations, including a(n):

(1) Adult Sexual Assault Victim, who has previously made an Unrestricted Report of sexual assault,

(2) Adult Sexual Assault Victim’s adult family member (e.g., spouse, son, daughter),

(3) Witness,

(4) Bystander associated with a sexual report,

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(5) SARC or SAPR VA on the case, or

(6) Responder.

8. The proponent office for this policy memorandum is the Prevention and Wellness Directorate. The POC is Ms. Nicole Sorrell, VTNG SARC at (802) 338-3149, (802) 324-9225 or nicole.e.sorrell.civ@army.mil. Survivors may also contact the DoD Safe Helpline: (877) 995-5247.

3 Encls

1. Definitions

2. Counseling for Survivors/Complainants

3. Counseling for Alleged Offenders

GREGORY C. KNIGHT

Major General, VTNG

The Adjutant General

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ENCLOSURE 1: DEFINITIONS

Case Management Group (CMG):

A multi-disciplinary group that meets monthly to review individual unrestricted sexual assault cases. The group is chaired by The Adjutant General who may delegate to the Deputy Adjutant General or the Director of the Joint Staff but no further. This group facilitates monthly victim updates and directs system coordination, accountability, and victim access to quality services. For unrestricted report case reviews the CMG shall consist of the following: Chair, JFHQ SARC, JFHQ Victim Advocate Coordinator (VAC), Unit Victim Advocate (UVA), Chaplain, Director of Psychological Health, command legal representative (SJA), Victim's O-6 level Commander or AO and the Special Victim's Counsel.

Reprisal:

Taking or threatening to take an adverse unfavorable personnel action, or, withholding or threatening to withhold a favorable personnel action, with respect to a member of the Armed Forces or DoD Civilian because the member reported, prepared to report, or was perceived as having reported or prepared to report a sexual assault. Retaliatory action taken by chain of command. Personnel action is defined as any action concerning that affects, or has the potential to affect, that individual's current position or career, such as promotion; a disciplinary or corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards, or training; referral for a mental health evaluation; or any other significant change in duties or responsibilities inconsistent with the military member's or DoD Civilian's grade.

Examples include: promotion interference; disciplinary or other corrective actions; and unfair decision on pay, benefits, awards, or training. (Military Whistleblower Protection Act, 10 U.S.C. § 1034, as implemented by DoDD 7050.06)

Retaliation:

Ostracism and acts of maltreatment, as designated by the relevant Military Department, committed against a member of the Armed Forces or DoD Civilian who reported a sexual assault or a sexual harassment complaint. Retaliatory action taken by peers, co-workers, or chain of command. Examples include: exclusion from social acceptance, activities or interactions; blaming; insulting or bullying; assault; physical or psychological force or threat; and abusive or unjustified treatment that results in physical or mental harm.

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ENCLOSURE 2: COUNSELING FOR SURVIVORS/COMPLAINANTS

Apply verbiage to appropriate, service specific format (i.e. Army, DA Form 4856 or Air, AF IMT 174)

Purpose/Reason for Counseling:

The purpose of this counseling is an event-oriented counseling to educate you of your rights following the SEXUAL ASSAULT / SEXUAL HARASSMENT / SEXUAL ORIENTATION DISCRIMINATION report that you filed on [DATE]. This counseling is not punitive in nature, it is intended to ensure that you are aware of your resources if you are to experience any form of retaliation or reprisal in connection to this report.

Key Points of Discussion/Summary of Counseling:

Definitions: See the attached Prevention and Response to Retaliation for Reports of Sexual Assault and Harassment. (Enclosure 1)

Command Emphasis:

Sexual assault, sexual harassment and sexual orientation discrimination degrades our readiness and destroys unit cohesion. Unit readiness, and the trauma to the survivor, is further impacted when retaliation or reprisal occurs against those who have demonstrated the courage to come forward with one of these reports. The Vermont National Guard will not tolerate retaliation of any kind against those involved in a report of sexual assault, sexual harassment, or sexual orientation discrimination, to include comments or posts on social media.

You have the right to an environment free of reprisal or retaliation in connection to this report, it is my (*Commander's*) responsibility to provide that environment for you.

Avenues of Redress:

You may bring concerns of retaliation to your chain of command, or your Victim Advocate (VA) / Equal Opportunity Advisor (EOA).

You may bring concerns of reprisal to your chain of command, your Victim Advocate (VA) / Equal Opportunity Advisor (EOA) or the Inspector General (IG).

If you have submitted an unrestricted report of Sexual Assault, your case is discussed monthly at the Case Management Group, a small committee comprised of the Director of the Joint Staff, the State SARC, your Victim Advocate, the State Judge Advocate, the

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first O-6 (or representative) in your chain of command and the Human Resources Officer. If you report experiences of retaliation or reprisal to either your chain of command or your Victim Advocate, these experiences and the Command's reprisal plan/action will be reviewed. The purpose of this is to ensure accountability and to prevent any re-victimization you may experience from retaliation or reprisal.

If you have reported a Formal Sexual Harassment Complaint or a Formal Sexual Orientation Discrimination Complaint, the EOA will work with your chain of command to ensure resolution.

You are protected from reprisal under the Department of Defense Directive 7050.06, Military Whistleblower Protection, 17 April 2015 (Incorporated Change 1, 12 October 2021). Under this Directive you may report reprisal to the IG who will conduct an investigation into your report and will provide appropriate recommendations for Command to action.

Plan of Action / Recommendations and Advice of Counselor:

It is not your fault that you have experienced this SEXUAL ASSAULT / SEXUAL HARASSMENT / SEXUAL ORIENTATION DISCRIMINATION and this unit will not convey in any way that you are at fault. If you experience any form of retaliation or reprisal as defined above and in Joint Policy Memorandum (Policy # 2022-09) Prevention and Response to Retaliation for Reports of Sexual Assault or Harassment, you may report these actions directly to me (your Commander), your Victim Advocate (VA) / Equal Opportunity Advisor (EOA) or the Inspector General (IG) as appropriate.

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ENCLOSURE 3: COUNSELING FOR ALLEDGED OFFENDERS

Apply verbiage to appropriate, service specific format (i.e. Army, DA Form 4856 or Air, AF IMT 174)

Purpose/Reason for Counseling:

The purpose of this counseling is an event-orientated counseling. Specifically, _____ (counseling must state the circumstances of the counseling such as “*You are being investigated by the Burlington PD for aggravated sexual assault...*” or “*You are suspected of sexually harassing...*” or “*You are being investigated for discriminating against SM for sexual orientation*”. (This should include the date and other circumstances surrounding the event).

Key Points of Discussion/Summary of Counseling:

The alleged conduct degrades our readiness and destroys unit cohesion. During the investigation/inquiry into these allegations, you are to adhere to the high standards expected of a member of the Vermont National Guard. This includes any retaliation or reprisal (Enclosure 1: Definitions) or the appearance thereof against any person bringing forth these allegations or witnesses to these allegations. You are also entitled to be free from retaliation or reprisal. If you feel you are either, you have the right to report this to the IG.

This counseling is not provided as a punitive measure under the provisions of Article 15, UCMJ, but as an administrative measure to stress that continued behavior may result in initiating actions to separate you from the Vermont National Guard under the appropriate regulations (**Officers only:** ...and/or initiate proceedings to withdraw your federal recognition). If you are involuntarily separated, you could receive an Honorable discharge; a General, Under Honorable Conditions discharge; or an Under Other Than Honorable Conditions discharge. If you receive an Honorable discharge, you will be qualified for most benefits resulting from military service. An involuntary Honorable discharge, however, may disqualify you from re-entering the service and receiving transitional benefits (e.g. health benefits) and the Montgomery G.I. Bill. If you receive a General, Under Honorable Conditions discharge, you will be disqualified from re-entering the service and you will be ineligible for some benefits, including the Montgomery G.I. Bill. If you receive an Under Other Than Honorable discharge, you will be ineligible for re-entry and for most benefits, including the Montgomery G.I. Bill. You may also face difficulty in obtaining civilian employment, as employers have a low regard for General or Under Other Than Honorable Condition discharges. You are directed to correct the deficiencies outlined above or initiation of elimination proceedings may be necessary.

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Plan of Action / Recommendations and Advice of Counselor:

You will not discuss this case with anyone unless specifically authorized. This includes on any form of social media. This is a direct order.

If you experience retaliation or reprisal in connection to the report made against you, you may report these experiences directly to me (your Commander) or to the Inspector General (IG).

Additional Items for the Command to Include as Appropriate:

Command must Flag Service members under investigation. You are required to self-report any additional criminal action to the Command should it occur. In addition, the Command has the option to suspend your Security Clearance, modify Drill or AT schedules, require an escort while on installations, etc.