



Military and Naval Affairs

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Governor
Commander-in-Chief

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Major General
The Adjutant General

1 MAR 2022

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MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Sexual Assault Prevention and Response (SAPR) Policy

1. References:

- a. DoDI 6495.02, Sexual Assault Prevention and Response Program Procedures, 11 September 2020.
- b. AR 600-20, Army Command Policy, 24 July 2020.
- c. AFI 90-6001, Sexual Assault Prevention and Response Program, 12 October 2017.
- d. CNGBI 1300.01, Sexual Assault Prevention and Response Program, 26 June 2020.
- e. CNGBM 1300.02, National Guard Sexual Assault Incident Response Oversight and Commander's Critical Information Requirements Reports for Unrestricted Reports, 29 October 2019.
- f. CNGBM 1300.03A, National Guard Retaliation Reporting Process Related to Unrestricted Reports of Sexual Assault, 26 August 2020.
- g. DoDD 7050.06, Military Whistleblower Protection, 17 April 2015.
- h. DoD Retaliation Prevention and Response Strategy Implementation Plan, January 2017.

2. **Protecting our service members from the scourge of sexual assault and sexual harassment is my highest priority within the New York National Guard (NYNG).** As I always say, "other than Service Member safety, we have no higher priority than our strength". Safety in that context means not only the physical safety of our personnel, but also protection from sexual assault, protection from sexual harassment, and treating everyone fairly and consistently. When sexual assault or sexual harassment occur, helping the victim is paramount, while also holding the offender accountable for their action(s).

3. The purpose of our SAPR Program is to cultivate a safe and respectful environment free from all sexual violence and to provide support to victims when these harmful incidents occur. These acts have a devastating and lasting impact on victims, destroy trust, undermine unit cohesion and degrade mission readiness. We have **no tolerance** for sexual assault and sexual harassment in the NYNG. We will implement a comprehensive SAPR Program focusing on increased awareness through education and prevention efforts, victim centered support, intimidation free reporting, thorough investigation, and accountability and punishment for offenders.

4. Sexual assault is intentional sexual contact through use of force; threats; intimidation; abuse of authority; or when the victim does not or cannot give positive consent. Sexual assault includes sexual offenses of rape, aggravated sexual contact, abusive sexual contact, forcible sodomy, or attempts to commit these acts. Sexual assault occurs without regard to gender, spousal relationship, or age of the victim. Sexual assault is a crime and is punishable by both civilian law enforcement, courts and the military.

5. Consent is defined as a freely given, positive agreement between the participants to engage in any specific sexual act. You must have clear, unequivocal positive consent before engaging in sexual contact. The absence of firm or clear "no" does not mean you have consent. The lack of verbal or physical resistance does not mean you have consent. A person's submission resulting from the fear, use of force, threat of force, or placing another person in distress does not constitute consent. Because you had a previous dating, social, sexual relationship does not mean you have consent for sexual activity. The way a person is dressed does not mean they want a sexual encounter and does not constitute consent. A drunk, drugged, sleeping, unconscious, or incompetent person **can never give consent**, and if you engage in sexual activity with that person, you are committing a crime!

6. We are committed to preventing sexual violence within our ranks. **Each of us have a mandate to create a positive unit climate and environment that simply does not tolerate sexual assault or sexual harassment.** Everyone must foster and promote a positive climate that rejects sexual harassment, sexual assault, and attitudes that condone such behavior. Leaders must take direct, deliberate, conscious steps to understand, identify, and reduce environmental risks, predatory and high-risk behaviors, and personal vulnerabilities associated with sexual assaults. Everyone must recognize that their action(s) can prevent sexual assault and sexual harassment by **"stepping in and stopping it"** before it takes place. You are the key to preventing sexual assault and sexual harassment. You know what's right and what's wrong, so if you see something that's leading down a path that's not right – step in and stop it, by using bystander intervention techniques of "Direct", "Distract" or "Delegate".

7. Leaders will create and promote a positive command climate where personnel have confidence in their chain of command to report sexual assault. All NYNG Commanders at the O-6 level must establish a unit SAPR policy and appoint Sexual Assault Response Coordinators (SARCs) and Victim Advocates (VAs) as directed by service specific guidance. All commanders will post local SAPR policy letters, publish reporting options, and contact information for SAPR personnel on unit bulletin boards.

8. Service members can make reports of sexual assault and receive services regardless of the status in which the assault occurred (i.e. on duty, off duty, or by a civilian or military assailant). There are two reporting options: restricted and unrestricted.

a. Restricted reporting enables a member to receive services through the SAPR program confidentially, without command involvement or an investigation. Only SARCs, VAs, medical providers, or chaplains can know the details of a restricted report.

b. Unrestricted reporting offers the member services with the addition of command support and a law enforcement investigation. With unrestricted reporting, only personnel with a legitimate need to know can access details of the assault. The victim's privacy remains of utmost concern.

9. Leaders will handle details of unrestricted reports properly, in accordance with references above. Treat sexual assault victims with dignity, fairness, and respect for privacy. The priority in these situations is always victim safety and care. Leaders will take immediate steps to ensure the victim's physical safety, emotional security, medical treatment needs, and referral to the New York State Police. The enclosures outline the reporting options available, the flowchart for responding to each, and the Commander's Checklist for unrestricted reports.

10. Leaders must immediately contact the Joint Force Headquarters (JFHQ) or Wing SARC upon first identification of a possible sexual assault. The SARC will follow protocols, make sure the victim receives care, and notify the appropriate civilian or military law enforcement agency. You will not address sexual assault allegations at any command level through mediation, internal investigation of any kind or other internal action. We do not conduct any internal investigations into unrestricted sexual assault. The immediate Commander will submit the Sexual Assault Incident Response Oversight (SAIRO) report through the specified members of the chain of command within eight days of the triggering event (see reference e).

11. Initial disposition authority for sexual assault cases is limited to the first O-6 in the reporting chain of command and is not delegable. Disposition may only be made after coordination with Staff Judge Advocate (SJA) and the JFHQ or Wing SARC. This includes any investigations, non-judicial punishment, letters of reprimand, and separation initiation. I retain my authority as The Adjutant General to withhold disposition authority for any particular sexual assault case to my level.

12. Members of the NYNG who report sexual assault, witnesses, intervening bystanders, and SAPR personnel will not face coercion, restriction, ostracism, maltreatment, or threats thereof. Report any concerns through the JFHQ or Wing SARC, immediate Commander, a Commander outside of member's chain of command, Special Victims Council (SVC), or the Inspector General (IG).

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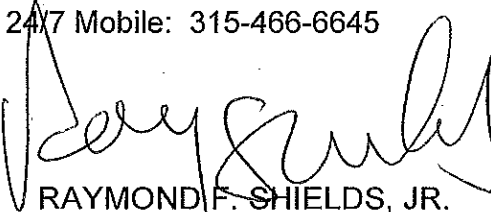
SUBJECT: Sexual Assault Prevention and Response Policy (SAPR)

13. Personnel that come forward to report a sexual assault will not be subject to any form of retaliation. This includes "illegal, impermissible, or hostile actions taken by a Service Member's chain of command, peers, or coworkers as a result of making or being suspected of making a protected communication" as defined in DoD 7050.06, Military Whistleblower Protection. In its current iteration, that Directive covers a wide range of communications, including, for example, reports of sexual assault or harassment, and any reporting of harassment should be protected. Retaliatory behaviors are listed in the Instruction, including reprisals, "ostracism, maltreatment, and criminal acts for a retaliatory purpose in connection with an alleged sex-related offense or sexual harassment; or for performance of duties concerning an alleged sex-related offense or sexual harassment." This section notes that further types of retaliation are found in the DoD Retaliation Prevention and Response Strategy Implementation Plan, issued in January 2017.

14. Personnel that come forward to report a sexual assault will not be subject to any form of reprisal. This form of retaliation includes "taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making, preparing to make, or being perceived as making or preparing to make a protected communication" pursuant to the Military Whistleblower Protection Act

15. The JFHQ SARC (NYARNG) or Wing SARCs (NYANG) serve as the central points of contact for coordinating appropriate and responsive care for sexual assault victims, as well as principal advisors to command on SAPR policy and procedures. Contact information for each location is:

- a. JFHQ Office: 518-786-4734 or 24/7 Mobile: 518-339-7586
- b. 105 AW Office: 845-563-1234 or 24/7 Mobile: 845-476-2084
- c. 106 RQW Office: 631-723-7338 or 24/7 Mobile: 631-603-8526
- d. 107 ATKW Office: 716-236-3088 or 24/7 Mobile: 716-228-7736
- e. 109 AW Office: 518-344-2015 or 24/7 Mobile: 518-925-6108
- f. 174 ATKW Office: 315-233-2409 or 24/7 Mobile: 315-466-6645


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