



NATIONAL GUARD BUREAU
111 SOUTH GEORGE MASON DRIVE
ARLINGTON, VA 22204-1373


24 AUG 22

MEMORANDUM FOR THE ADJUTANT GENERAL OF MAINE

Subject: National Guard Bureau Staff Assistance Review for Maine National Guard Sexual Assault and Prevention Program Findings and Recommendations

References: (a) Chief of the National Guard Bureau Instruction 0400.01B, "National Guard Complex Administrative Investigations," 12 April 2018
(b) DoDD 6495.01 23 January 2012, "Sexual Assault Prevention and Response (SAPR) Program," Incorporating Change 5, 10 November 2021
(c) Chief of the National Guard Bureau Instruction 9601.01, "National Guard Discrimination Complaint Process," 25 April 2017

1. The Staff Assistance Visit you requested regarding the Maine National Guard Sexual Assault Prevention and Response Program, sexual assault investigations, and Sexual Harassment and Equal Opportunity Programs was conducted on 27 through 30 June 2022 in accordance with the references.
2. All aspects of the programs were found in compliance with National Guard Bureau policies and guidance. Minor discrepancies were noted. Details of the findings and recommendations are included in the Attachment.
3. Point of contact is Rear Admiral Matt Kleiman; National Guard Bureau Manpower and Personnel Directorate; 703-607-0953.


ERIC K. LITTLE
Major General, USA
Director, Manpower and Personnel
National Guard Bureau

Attachments:
As stated

ATTACHMENT

STAFF ASSISTANCE VISIT INFORMATION, FINDINGS, AND RECOMMENDATIONS

1. Background. In March 2021, the Maine Legislature passed Legislative Document 625, directing a local review of the Maine National Guard (MENG) Sexual Assault Prevention and Response and Sexual Harassment (SAPR) Program.

a. The Adjutant General (TAG) of Maine sent a letter requesting the National Guard Bureau (NGB) for a full program review and the NGB conducted a Staff Assistance Visit (SAV) on 27 through 30 June 2022. Table 1 includes NGB personnel who conducted the MENG SAV.

NGB Personnel	Title and/or Office
Rear Admiral Matt Klieman	Officer-in-Charge, NGB Manpower and Personnel (NGB-J1)
Lieutenant Colonel [REDACTED]	NGB-J1 Sexual Assault and Prevention Response (NGB-J1-SAPR)
Captain [REDACTED]	NGB-J1-SAPR
Lieutenant Colonel [REDACTED]	NGB Diversity, Equity, and Inclusion (NGB-DEI)
Mr. [REDACTED]	NGB-DEI
Ms. [REDACTED]	NGB-DEI
Major [REDACTED]	NGB Office of Complex Investigations (NGB-OCI)
Captain [REDACTED]	NGB-J1 Warrior Resilience and Fitness (NGB-J1-WRF)

Table 1. NGB Personnel for MENG SAV

b. The SAV consisted of multiple historical record and document reviews, along with interviews of key personnel within the MENG (See Table 2).

MENG Personnel	Title and/or Office
Colonel [REDACTED]	101st Air Wing (ARW)/Commander
Mr. [REDACTED]	State Equal Employment Manager
Master Sergeant [REDACTED]	Equal Opportunity Advisor
Lieutenant Colonel [REDACTED]	Equal Opportunity Director
Technical Sergeant [REDACTED]	Equal Opportunity Noncommissioned Officer
Ms. [REDACTED]	Joint Force Headquarters (JFHQ) Sexual Assault Response Coordinator (SARC)
Mr. [REDACTED]	JFHQ Victim Advocate Coordinator
Ms. [REDACTED]	101st ARW SARC
Captain [REDACTED]	Provost Marshal Office
Captain [REDACTED]	Staff Judge Advocate (SJA)

Table 2. MENG Personnel Interviewed for SAV

c. A final out-brief was conducted on 30 June, and findings and recommendations were reviewed with TAG and key leaders.

2. Detailed Findings:

a. Sexual Assault Prevention and Response (SAPR).

(1) Policy and Procedures. MENG SAPR at both the National Guard Joint Force Headquarters (NG JFHQs-State) and 101st ARW levels are compliant in the requirement to establish local policy, response capability, and response oversight for victims of sexual assault as directed in both Chief of the National Guard Bureau (CNGB), and Service guidance.

(a) High levels of coordination between full-time personnel have resulted in a mutually supportive program benefitting victims and their ability to report. Recent deconfliction between SAPR and SJA offices is anticipated to result in TAG chairing the Case Management Group (CMG) and the 101st ARW returning to attendance.

(b) The assessment team did identify that the current alignment of the JFHQ SARC under the G1 had resulted in layers between the SARC and senior leadership, occasionally resulting in difficulty adequately addressing aspects of the program.

(3) Report Processing. The information provided to and reviewed by the NGB SAPR assessment team indicates that response management is being conducted appropriately. Reviews of the SAPR system of record, the Defense Sexual Assault Incident Database, reflects that command notification of reports are occurring within the required timeframes, case documentation is being properly retained, and victims are being provided referrals to services. Both SARCs are providing oversight on any collateral duty personnel providing SAPR services to victims. Additional coordination between MENG SAPR personnel and local service providers ensure that victims have awareness and access to non-MENG services. The assessment team identified one area of concern with the NG JFHQs-State program in which the SARC has experienced difficulty in coordinating with unit Commanders to complete the Sexual Assault Incident Response Oversight Report within the required eight-day timeline.

(4) Training Management. Both Army National Guard (ARNG) and Air National Guard (ANG) programs are ensuring the conduct of annual training at the Service member level and additionally ensure that any collateral duty SAPR personnel receive the required continuing education units to remain eligible to provide services. There were gaps identified in NG JFHQs-State SARC's visibility of command changes at the unit level, negatively affecting their ability to conduct one-on-one training within 30 days of those Commanders taking command. There is an additional lack of visibility on upcoming deployments of MENG units, impacting the SARC's ability to coordinate with units to ensure appropriate personnel are identified, trained, and qualified to support. The 101st ARW has faced challenges in the timely receipt of ANG SAPR training. While not unique to, or the fault of, 101st ARW personnel, the Wing has developed a

local Prevention Forum training to address SAPR, sexual harassment, drug and alcohol abuse, and suicide prevention to great effect.

(5) Manning. With the recent hiring of the NG JFHQs-State VAC, the MENG is successfully filling all required full-time SAPR positions. Three of the four required brigade-level collateral duty SAPR positions are filled. Of those identified personnel, two are currently qualified and able to provide advocacy to victims, with the third pending attendance to the 80-hour Sexual Harassment/Assault Response and Prevention Foundation Course and subsequent Department of Defense (DoD) Sexual Assault Advocate Certification Program credentialing. At the battalion level, the victim advocate requirement is two victim advocates per O-5 command. Twelve positions are identified, with three of those positions currently being waived due to low personnel count of the unit. Those waived units are still required to have one identified victim advocate. Six personnel are currently identified, with two being fully qualified and the remaining four requiring either the completion of the centralized suitability screening process and/or attendance to the Sexual Harassment/Assault Response and Prevention Foundation Course. In addition to those required, the Maine ARNG has identified eleven additional personnel throughout the State, two of who are qualified. The MENG will be hosting a Sexual Harassment/Assault Response and Prevention Foundation Course in July of 2023, and will have 10 seats within the class dedicated for MENG Service members. While the 101st ARW does not have a doctrinal requirement for Volunteer Victim Advocate, three personnel are currently fully trained and credentialed at the Wing to support its victims.

(6) CMG. The MENG has consistently adhered to the requirement to conduct a monthly CMG meeting to address open cases of sexual assault. The SAPR assessment team remotely attended the June NG JFHQs-State CMG and determined that the nature of information presented and conduct of the meeting were appropriate, in line with the meeting's purpose, and did not disclose any inappropriate or victim-identifying information. While not out of line with CNGB or Service guidance, the assessment team did identify that TAG has historically opened the CMG and chaired the programmatic review portion, but departed and delegated chair responsibility for the case review portion under the advice of the SJA. While the 101st ARW SARC attends and briefs in the NG JFHQs-State CMG, the absence of TAG for the case review had resulted in the 101st ARW holding their own CMG. In speaking with the SJA regarding the scope and nature of information presented within the current CMG format, they concurred that there were no issues with TAG chairing the full CMG.

b. Diversity, Equity and Inclusion.

(1) The general assessment is the State's Military Equal Opportunity (MEO) Complaint Program is effective, proactive and well led.

(2) The SEEM did not maintain a complete file of every complaint in one location. While every needed document was accessible, they were located in various locations (hard copy with SEEM, hard copy with SJA, electronic copy with SEEM).

(3) Complaint forms have minimal amount of data to understand allegations, and sometimes reference other documents. Allegations need to be short, concise and include all pertinent data without need of supporting information.

(4) All investigations reviewed demonstrated competent Investigating Officers (IOs) assigned to the cases. Further, to facilitate better investigations, the State has already launched a unique IO training program that will identify and train a group of IOs in advance of a complaint so the State can draw from better trained and prepared IOs as opposed to being assigned such duties on ad hoc basis.

(5) The State does an excellent job of gathering all the relevant evidence in an MEO complaint. Without exception, all relevant witnesses are interviewed and sworn testimony taken.

(6) While the IOs gathered all the relevant evidence, they did not make findings and conclusions as required by the IO appointment orders and Ref C.

(7) Complaint files included a worksheet for a Reprisal Prevention Plan, but the worksheet was often incomplete, and it was unclear if properly implemented.

(8) Every case had IO appointment orders, but the orders were oriented to the Title 10 MEO process, not the Title 32 MEO process.

(9) Every case had a Notice of Proposed Resolution (NPR) and, while the current NPRs do not include the findings and conclusions of the investigation as required by regulation, the State did include actions (to include adverse actions) taken as a result of the complaint. This transparency is commendable and one of the primary reasons few cases go formal from the State. It is also commendable that State leaders brief the NPRs in most instances, again bolstering the prestige and effectiveness of the MEO program.

c. NGB Office of Complex Investigations (NGB-OCI).

(1) Reporting. The information provided by the MENG SJA shows that unrestricted reports of sexual assault are being reported to civilian law enforcement as required by Ref A. The information provided shows these allegations are being reported in a timely manner, often the same day or the following day as the date of the unrestricted report, and that TAG requested that NGB-OCI conduct an investigation when this was deemed appropriate after the conclusion of a law enforcement investigation.

(2) MENG Provost Marshal. The MENG has recently created and staffed a full-time Provost Marshal position. This position was created in part to act as a liaison with civilian law enforcement and has been empowered to obtain case reports from law enforcement agencies and prosecutors. The Provost Marshal stated that he is the person responsible for ensuring cases are timely reported to civilian law enforcement,

and that his practice is to follow-up throughout the pendency of the civilian investigation and any resulting criminal proceedings, and to track the case to completion. The Provost Marshal indicated he has had good success in obtaining reports and information on cases from various law enforcement entities since filling the position. Although this is a relatively new program, the procedures and authority outlined by the Provost Marshal show great promise and may be an example of a best practice for other States to adopt.

(3) Actions on Substantiated Cases. According to the MENG NG JFHQs-State SJA, de facto practices in the Maine ARNG are to give reported perpetrators a no-contact order while an investigation into a sexual assault allegation is pending and to initiate administrative separation proceedings against reported perpetrators in all substantiated allegations of sexual assault (in addition to other available actions). According to the Maine ANG SJA, these are also the practices in the Maine ANG. The initiation of discharge proceedings indicates the MENG utilizes available remedies to remove perpetrators from the military in substantiated cases.

(4) Maine ANG Cases. The Maine ANG operates relatively autonomously within the MENG, but follows the same de facto practices with regard to no-contact orders and the initiation of administrative discharge proceedings in substantiated cases. The bulk of the Maine ANG is the 101st ARW. The Commander of the 101st ARW demonstrated clear and detailed knowledge of recent allegations of sexual assaults within the wing and the actions taken on those allegations. This demonstrates that the issue is a priority for the wing command.

d. Prevention Workforce.

(1) Summary. MENG has been successful in ensuring that there is a structure in place for the prevention workforce personnel. The prevention workforce positions will fall under the State Human Resource Office with alternate courses of action are being reviewed; two of which involve either establishing a Resiliency Directorate (J9). The J9 Resiliency Director is a Government Schedule-14 and would have to be funded by the State or the alignment of the prevention workforce under the Deputy Joint Chief of Staff.

(2) Training and Hiring. MENG is categorized as a small State and has been authorized five full time equivalent (FTE) Prevention Workforce Personnel in Fiscal Year 2022-2023. Three ARNG FTEs, two positioned at the NG JFHQs-State and one positioned at a Brigade. Two Air National Guard FTEs at the NG JFHQs-State, with one ANG FTE held which is the Attorney Advisor. Funding for ARNG assets was sent on 05 May and ANG was given authority to hire on 01 June. There is a plan in place to hire all four Prevention Workforce Personnel prior to the end of Fiscal Year 2022. Interviews have concluded for the Government Schedule-13 position, the Integrated Primary Prevention Officer. TAG signed the selection announcement for the Government Schedule-13 on 05 July 2022. The next phase of hiring will soon commence for the remaining three prevention personnel with the possible utilization of the direct hiring authority.

(3) Budget Execution. The MENG was sent \$112,500 on 05 May 2022 for the three ARNG FTEs; no ARNG funds have been obligated as of 30 June 2022. MENG was sent \$37,500 for one ANG FTE; no ANG funds have been obligated as of 05 July 2022.

4. Recommendations.

a. SAPR.

(1) Sexual Assault Incident Response Oversight Completion. NGB-J1-SAPR recommends that upon receipt of an unrestricted case of sexual assault, and subsequent notification of the victim's commander, the SARC provide the commander a templated copy of the Sexual Assault Incident Response Oversight and advise them on the timeline for completion. In addition, the SARC should provide oversight on the submission of the report, and in the event of a delinquent submission, engage with the next level of command to prompt submission.

(2) SAPR Deployment Requirements. The SARCs limited visibility on MENG deployments and resulting inability to coordinate with command teams on the SAPR personnel requirements has the potential to negatively impact unit readiness and deployability. NGB SAPR recommends that the NG JFHQs-State SARC establish consistent lines of communication with MENG Mobilization Officer to identify deploying units to assist in coordinating the SAPR training and DoD Sexual Assault Advocate Certification Program credentialing of unit identified personnel.

(3) Collateral Duty Manning. The successful implementation of collateral duty SAPR personnel is crucial in maximizing avenues of reporting and availability of support for victims. This utilization of collateral duty personnel additionally affords additional bandwidth for full-time SAPR personnel to affect their program management responsibilities. As such, NGB-J1-SAPR recommends that MENG units take steps to identify appropriate personnel to fill the existing collateral duty vacancies. Additionally recommend that full-time NG JFHQs-State SAPR personnel continue to collaborate with identified Service members, MENG HRO personnel, and NGB-J1-SAPR to facilitate timely suitability screenings, training attendance, and certification.

(4) CMG. With the updated recommendation from SJA to TAG regarding his chairing of the full Case Management Group, NGB-J1-SAPR recommends that the MENG execute in that manner. This will not only maximize TAGs awareness of the status of victims within his organization, but also result in the attendance of the 101st ARW Commander, ensuring that both senior leaders are updated concurrently and allowing for collaboration and mutual visibility at the highest levels.

(5) SARC Alignment. The SARC's access to, and ability to engage with, TAG and other MENG senior leaders on a routine and as needed basis is key in their role as the primary advisor to the TAG on the implementation of his SAPR program. In order to maximize this access and eliminate potential barriers, NGB-J1-SAPR

recommends that the NG JFHQs-State SARC position be realigned under the MENG Chief of Staff to be in line with other critical staff positions such as the Inspector General and SJA.

(6) Case Disposition. In order to validate command action taken in response to substantiated cases of sexual assault in the MENG as identified in section 3.c.(3) of this report, the NGB-J1-SAPR assessment team recommends that the MENG SARCs coordinate with SJA personnel to submit a DD 3114 “Department of Defense Uniform Command Disposition Report” to NGB-J1-SAPR upon final disposition of any law enforcement or OCI investigation pertaining to a case of sexual assault. DD Form 3114s are required to close DSIAD cases and provide data for the Annual Report on Sexual Assault in the Military.

b. Diversity, Equity, and Inclusion.

(1) Appointment of an Anti-Harassment Program Manager to assist in discriminatory harassment that either doesn't meet the severe and pervasive threshold or does not result in an adverse action.

(2) Sustain Equal Opportunity Programs including Annual Reporting (ANSR, 3018), Complaint Management, and Command Climate Assessments

(3) Sustain digital platform for EEO counselors, sensing sessions with civilian population, and continue to leverage the diversity council to advance MD715 Initiatives.

(4) Sustain the states selection of Investigating officers coupled with a unique IOs training program standardizing a bench of trained IOs to effectively facilitate investigations of alleged discrimination.

(5) SEEM must maintain comprehensive and well-organized complaint files and must diligently police the files to ensure they are well organized and complete. It is recommended that all electronic complaint files mirror hard copy files to ensure both are complete records of the complaint.

(6) State should coordinate to have NGB EI instruction regarding framing the claim every other year at a minimum to reinforce standards in this regard and ensure newly appointed EO personnel understand the importance of framing the claims when a complaint is made.

(7) The State's program of maintaining a standing group of trained IOs should be considered a best practice across the States, Territories, and the District of Columbia and the State is commended for investing the time and resources into this effort.

(8) SJA and SEEM coordinate with NGB EI review return on investment compilation requirements and specifically findings and recommendation requirements.

(9) To protect Complainants and the chain of command, NGB EI recommends the SEEM train subordinate EO personnel on the importance of a Reprisal Prevention Plan and how it must be implemented to be effective. Further recommend SJA review such plans as a part of their legal support of the MEO complaint programs to ensure the command understands the legal liability for failing to complete or properly implement the Reprisal Prevention Plan.

(10) While detailed and generally effective, the IO appointment orders need to be revised to show the proper authority and Commanders must be trained on the differences between an MEO investigation and a general Commander's investigation.

(11) State should include actual findings and conclusions in the NPRs and sustain the other aspects of this task.

c. OCI.

(1) Written Policies. NGB-OCI recommends the MENG consider adopting written policies formalizing their de facto policies on no-contact orders while sexual assault allegations are pending and administrative discharge proceedings for reported perpetrators when allegations are substantiated. NGB-OCI recommends the MENG consult with the Maine ARNG and Maine ANG SJAs to incorporate and follow DoD, NGB, and Service guidance in adopting any written policies. The MENG has a written policy on SAPR (TAG Policy 22-01). NGB-OCI recommends the MENG regularly review this policy in consultation with the Maine ARNG and Maine ANG SJAs to incorporate the latest DoD, NGB, and Service guidance.

(2) Commander's Briefings. Although there is a SARC briefing required for new Commanders, there is currently no tracking system to ensure that Commanders are receiving this briefing. It is important that Commanders are aware of both their reporting responsibilities and also what allegations of sexual assault might consist of, as these allegations can include a broad range of conduct. NGB-OCI recommends that the MENG institute a system to ensure Commanders are receiving these briefings, and recommends the MENG consider conducting regular Commanders' briefings on all of the official guidance on the issue, including DoD, NGB, Service, and MENG policies.

(3) Maine ANG SJA. The Maine ANG has multiple drill-status SJAs but does not have a full-time SJA. As allegations of sexual assault and pending investigations and follow-on action can take a significant amount of time to coordinate and track outside of drill weekends, NGB-OCI recommends the Maine ANG consider resourcing a full-time SJA.

d. Prevention Workforce.

(1) Summary. Recommend MENG resume the Wellness Council; a Joint Council will be critical in ensuring that both Air Force and Army equities are captured to best support joint integrated prevention system in the State. Coordinate with the

NGB-J1-WRF Resiliency Branch to ensure State Joint Council efforts are aligned. Recommend MENG ensure that all mandatory surveys, such as unit risk inventories and the Defense Equal Opportunity Management Institute Organizational Climate Survey, are being administered at the highest level of compliance yearly. Prevention personnel will need to work with appropriate stakeholders to ensure that access to the surveys will be readily available to them. The survey data will be critical in assisting the prevention workforce in the first step of the prevention process, which is understanding and defining the problem.

(2) Training and Hiring. The MENG should continue to move forward with the hiring actions for the remainder of the prevention workforce personnel and prevention workforce personnel should be sent to DoD Sexual Assault Prevention and Response Training directly following in processing requirements. Recommend considerations are made to send the Lead Human Resource Officer or Deputy Human Resource Officer to the DoD Sexual Assault Prevention and Response Training prior to the end of the fiscal year. Recommend State Human Resource Office manage the 30 hours of continuing education unit requirement per year for Prevention Workforce Personnel.

(3) Budget Execution. Recommend the MENG begin to create the equipment and supplies list and work with the appropriate office to purchase necessary equipment and supplies before the arrival of the prevention workforce personnel.