

Chapter II: Reports

A. Sexual Assault

1. Introduction

The definition of sexual assault varies between agencies and criminal statutes. This report utilizes the definition of sexual assault found in the Department of Defense Directive (DoD) 6495.01;

“Intentional sexual contact characterized by use of force, threats, intimidation, or abuse of authority or when the survivor does not or cannot consent. The term includes a broad category of sexual offenses consisting of the following specific UCMJ offenses: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit these acts.”

The Department of Defense uses this definition for the purposes of awareness, prevention and response for reports of sexual assault. The VTNG SAPR-P reflects upon this definition to evaluate complaints and initiate proper processes; however, the VTNG does not use this definition to establish legal processes, conduct criminal investigations or take any disciplinary action.

Unless stated otherwise, this report will refer to sexual assault according to the DoD definition. It is important to note that the VTNG does not have jurisdiction over either a civilian or military crime of sexual assault. Under the Vermont State’s Annotated, Title 20, Section 941, the VTNG has criminal jurisdiction over “purely military offenses” and all other offenses will be tried in civil courts and prosecuted by civil authorities. As a result, all unrestricted reports of sexual assault are reported to local law enforcement for criminal investigation. If no action is taken by the civilian authorities or when any military action will not interfere with civilian actions, the VTNG contacts National Guard Bureau’s Office of Complex Investigations who will send a team of specially trained investigators to examine these allegations.

The DoD Sexual Assault Prevention and Response Office (SAPRO) organizes and reports Department progress in the SAPR-P using five levels of effort (LOE) within the *DoD SAPR Strategic Plan*. The VTNG SAPR-P reports based on slight adjustments to this guidance to provide a Vermont specific plan comprised of three out of the five LOE:

- 1) **Establish a climate of dignity and respect that actively prevents violence within the organization:** Reduce (with the goal of eliminating) the number of sexual assaults involving service members through policy and comprehensive prevention efforts which influence knowledge, skills and the motivation to intervene.

- 2) **Focus on the response to victims from initial report through recovery; promote confidence to strengthen resilience through advocacy; increase reporting:** Improve the quality of the VTNG's response to the reporting of sexual assault survivors through the implementation of programs, policies and advertising activities which advance survivor care; thereby, inspiring survivors to report sexual assaults, either restricted or unrestricted.
- 3) **Improve system accountability to provide a fair and trauma-informed system which promotes justice, efficiency and effectiveness:** Ensure the SAPR-P functions as intended; a fair and trauma-informed system which promotes justice, efficiency and effectiveness. The VTNG achieves system accountability through senior leadership oversight, data collection, analysis and reporting of case outcomes.

2. Program Overview

The VTNG hired its first full time Sexual Assault Response Coordinator (SARC) in early 2010. Under the direction of the full time SARC, the SAPR-P has created and implemented a survivor centered approach, separate from the chain of command, with statewide policies to ensure the rights and privacy of all Service members who report acts of sexual violence. In 2013, the VTNG SAPR-P received an additional asset and hired a full time Victim Advocate Coordinator (VAC) who works under the direction of the VTNG SARC.

In 2012, the National Guard Bureau established the Office of Complex Investigations (OCI) following a civilian law enforcement investigation that concludes without prosecution or in the cases where military investigations will not interfere with civilian investigations, the Adjutant General will request an OCI team of investigators (from outside the state) to conduct an investigation into allegations of sexual assault. These investigators must meet stringent requirements, have a legal or law enforcement and complete the grueling two week United States Army's Special Victim Unit's Investigator's Course held by the US Army Military Police School. The VTNG was one of the first states to utilize this program and continues to consult with the OCI on each case where sexual misconduct is alleged or suspected.

In November 2013, the DoD created the Special Victim's Counsel Program. The SVC is a judge advocate (military attorney) with specialized training to provide legal representation throughout the processes to qualifying Air and Army National Guard sexual assault victims. SVCs can attend interviews, hearings and proceedings with the survivor and communicate with investigators, prosecutors, commanders and other military personnel on behalf of the survivor. They can assist with expedited transfer requests, military protective orders or civilian protective orders. Although legal representation by a SVC in a civilian court is not authorized under this program, SVCs may assist the victim with these matters as permitted by state law. The VTNG has had an SVC since spring of 2014.

a) Policies

Currently, the VTNG has five policies⁶ directly related to the SAPR-P. Each policy plays a vital role in the improvement of the program and the climate around sexual violence within the organization.

- 1) Sexual Assault Prevention and Response Program Policy, 20 November 2015: Sexual assault degrades readiness and unit cohesion, and has no place within the VTNG. Commanders will report all unrestricted reports of sexual assault to law enforcement, and leaders will create a positive command climate which promotes the dignity and respect of all members.
- 2) Expedited Transfer of VTNG Members who report an Unrestricted Report of Sexual Assault, 5 June 2015: Members who file an Unrestricted report of sexual assault shall be informed of the option to request a temporary or permanent transfer from their assigned command to a different location within their unit of assignment or training. Commander will approve or disapprove the request within 72 hours. It also protects service members from reprisal or threat thereof and establishes a presumption in favor of transferring a member who initiates a transfer.
- 3) Prohibition of Pornographic and Sexually Explicit Material, reissued on 19 March 2013: Introduction, purchase, possession, transfer, sale, creation or display of any pornographic or sexually explicit photograph, videotape, CD/DVD, movie, drawing, book, website, magazine or similar representation on or about property owned, leased, used or licensed by the VTNG is prohibited.
- 4) Withholding Authority to Dispose of Misconduct Involving All Sexual Based Offenses, 27 March 2013: The Adjutant General has withheld authority to dispose of all alleged misconduct pertaining to sexual based misconduct. This policy allows for the Adjutant General to have visibility on all sexually based offenses.
- 5) Prevention and Response to Retaliation for Reports of Sexual Assault or Harassment, on 15 October 2015: Sexual assault, harassment and discrimination degrades our readiness and destroys unit cohesion. Unit readiness, and the trauma to the victim, 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.

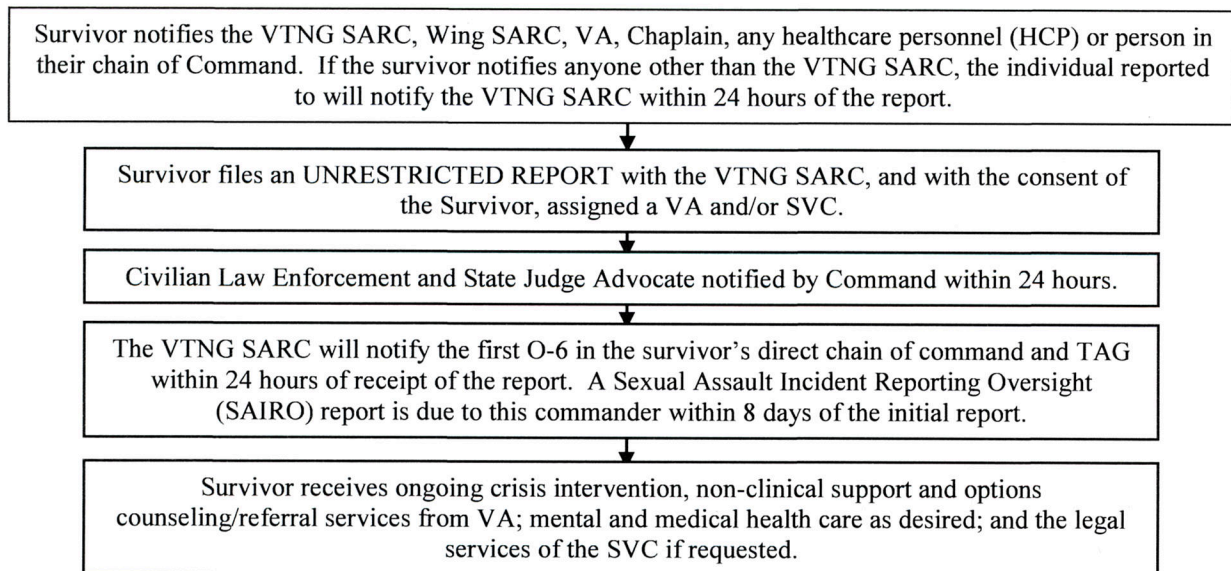
⁶ Policy Memorandums are reissued/ revised on a yearly basis or when there is a new Adjutant General.

b) Reporting Options

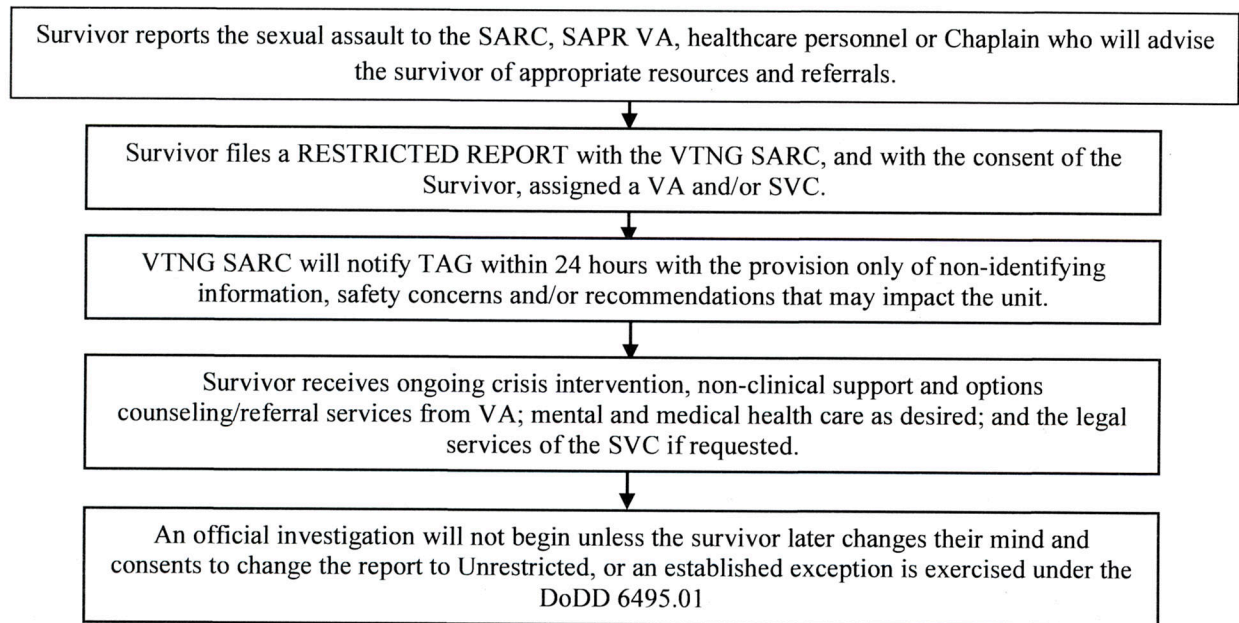
A survivor's decision to report is a crucial step following a sexual assault, but the survivor's desire for privacy often precludes reporting. Commanders must recognize the importance of establishing a system that promotes the privacy and confidentiality of survivors under their command in order to mitigate re-victimization and encourage reporting.

The VTNG SAPR-P offers four reporting options for Service members within the VTNG. Two of which relate to Service members in a duty status at the time of the assault, offering both confidential and non-confidential reporting options to ensure survivors receive the appropriate care and accountability. Below are the definitions and immediate procedures for Unrestricted (non-confidential) and Restricted (confidential) reports.

Unrestricted Reporting: Allows an individual covered by this policy to disclose that s/he is the survivor of a sexual assault, without requesting confidentiality of Restricted Reporting. Under this option, law enforcement is notified of the survivor's report, allowing them to initiate the official investigative process. Procedure summarized below:



Restricted Reporting: Allows sexual assault survivors, without triggering an official investigation, the option to confidentially disclose the assault to specified individuals (SARC, SAPR VA, healthcare personnel or Chaplain) to receive medical treatment, counseling and the assignment of a SARC and SAPR VA. Command will remain unaware of the report and will not notify law enforcement unless an established exception applies. If a survivor reports to anyone other than those listed above⁷, the VTNG cannot guarantee a Restricted Report.

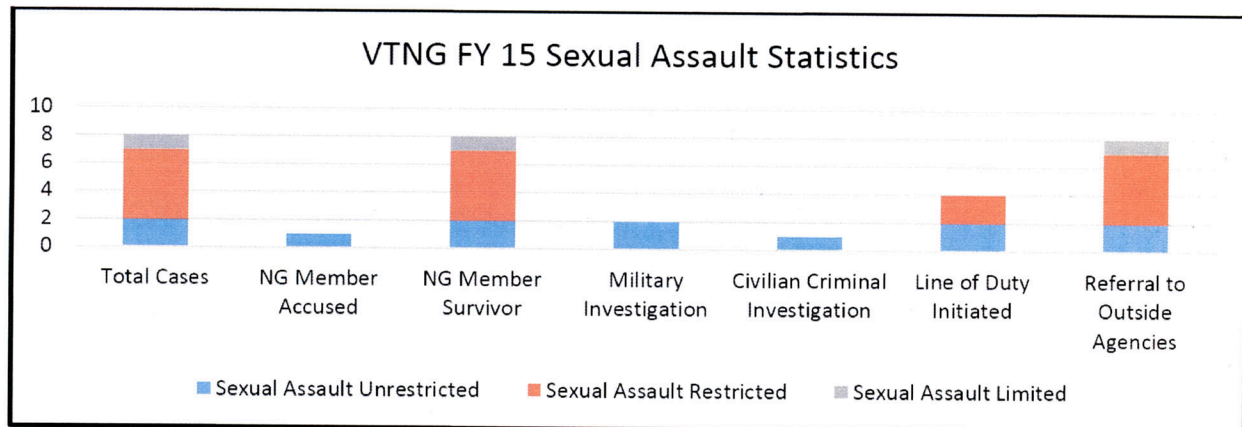


Limited Reporting: Available to National Guard and Reserve Members sexually assaulted while in a non-duty status and do not wish to initiate an official investigation. The VTNG cannot guarantee a Limited Report if a survivor reports to anyone other than VTNG SARC, VA, Chaplain, Health care professional, or civilian rape crisis agencies. Wing SARCs and VAs will submit all Limited Reports to the VTNG SARC within 24 hours of receipt who will, in turn, notify The Adjutant General with non-identifying information.

Civilian Reporting: Service members also have the option to report solely to civilian agencies. They can report to any rape crisis hotline, law enforcement agency or civilian hospital. Vermont laws and statutes govern confidentiality in these circumstances. The VTNG SAPR-P does not track Civilian Reports.

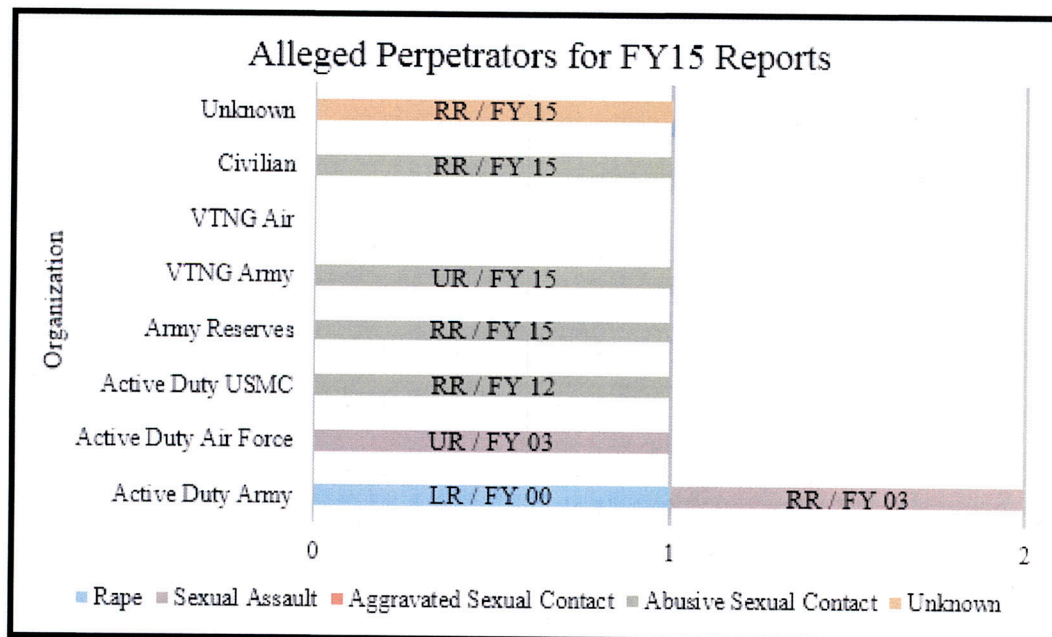
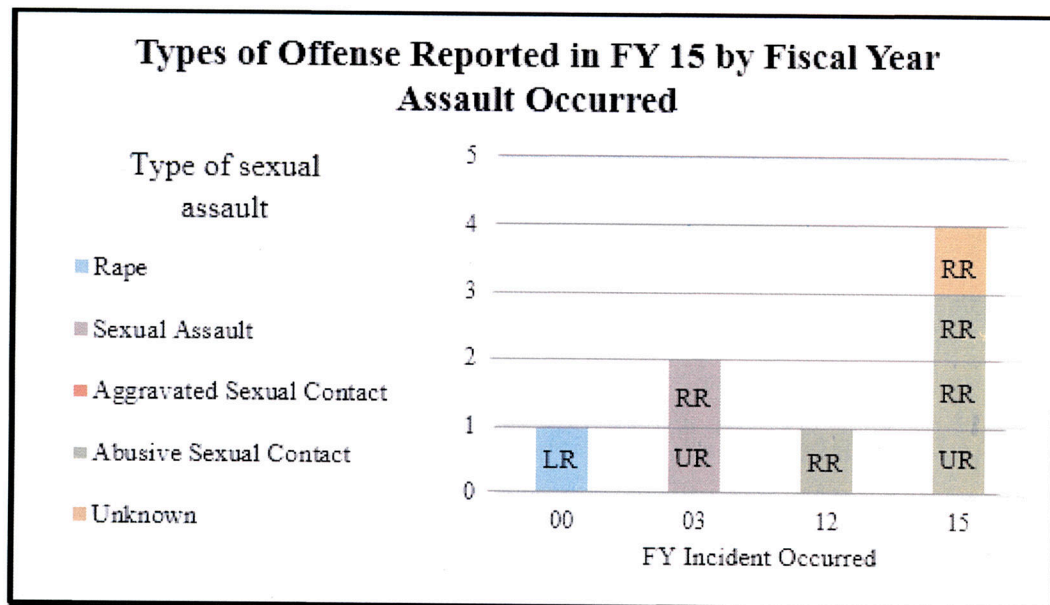
⁷ For Exceptions to Restricted Reporting, please see attached DD form 2910.

3. Statistical Data

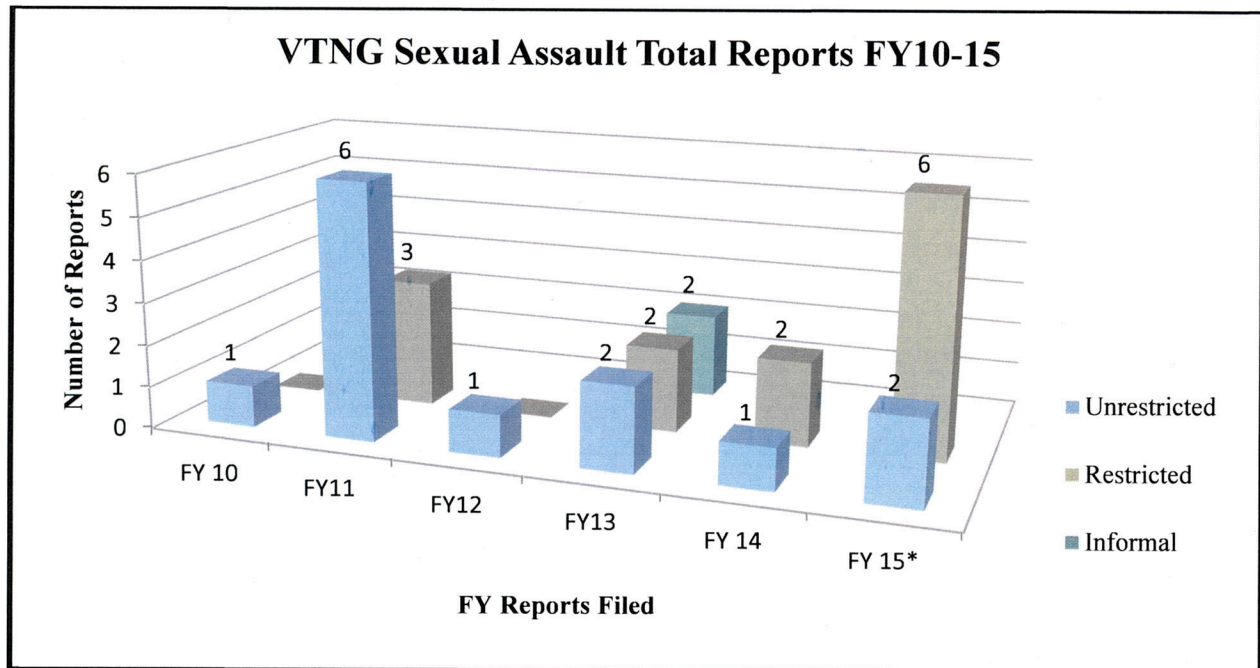


The VTNG SARC captures all sexual assault data for annual reporting requirements and trends (below) analysis utilizing case numbers with specific categories (above). These categories include (but not limited to) the report date of an assault, type of report, date of the offense, individual's duty status, both the survivor and offender's rank and military status if applicable, type of assault reported, investigative agency, case disposition, unit at the time of the assault and any use of alcohol or drugs by either party.

In FY15, the VTNG SARC received eight reports of sexual assault; one of which was allegedly perpetrated by a VTNG Service Member. The figures below display the types of sexual assault reports the VTNG received in FY15 broken down by the year the offence occurred. Of the eight reports received in FY15, one occurred in FY00, two in FY03, one in FY12 and four in FY15.



The prevalence of historical reporting in FY15 indicates improved trust and confidence in the SAPR system and the resources now available to survivors through agencies such as the Veterans Affairs and local community partners.



Restricted Reporting Data:

Survivors made five Restricted reports of sexual assault in FY15. Two of the individuals requested and received a line of duty determination, and the SARC referred all five to local support agencies. The VTNG also received one Limited Report in FY15 (which is counted in the total restricted reports). The individual filed this report concerning an offense that had occurred in FY00 but is no longer a Service member. The survivor did receive support and referrals to outside agencies as appropriate, but the VTNG SARC could not accept the case as restricted or unrestricted due to eligibility restrictions.

Unrestricted Reporting Data:

Survivors filed two Unrestricted reports of sexual assault in FY15. One Unrestricted report stemmed from an alleged offense that occurred in FY03 while the Service member served on Active Duty with the Air Force. The Air Force's investigative agency, and the Office of Special Investigations has taken the case and that investigation *remains pending*. Local law enforcement investigated the other unrestricted report; the State's Attorney decided not to prosecute the alleged offender. The action; however, constituted various other violations to include sexual harassment. As a result, the VTNG investigated the case under that procedure and guidance. Both survivors received Line of Duty determinations and referrals to outside agencies as appropriate.

Disposition Data for FY15 Unrestricted Reports			
Investigative Agency	Cases	Details	Disposition
Civilian	1	Non-prosecutable	N/A
Military	2	1) Active investigation pending with AF Criminal Investigations (Office of Special Investigations) 2) Civilian and military investigations	1) Action still pending 2) Administrative actions and initiation of Non-judicial discipline

Federalized Reports:

No sexual assault reports were filed involving federalized members in FY15, hence DoD did not provide any information regarding incident involving VTNG Service members.

4. Accomplishments

- Establish a climate of dignity and respect that actively prevents violence within the organization:

FY 15 Accomplishments:

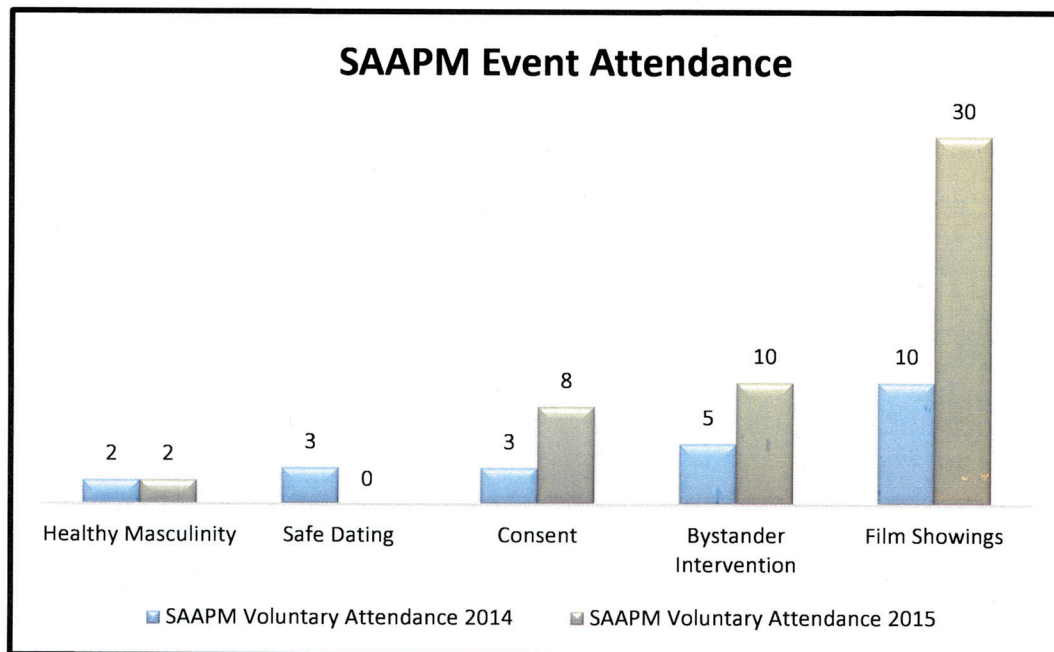
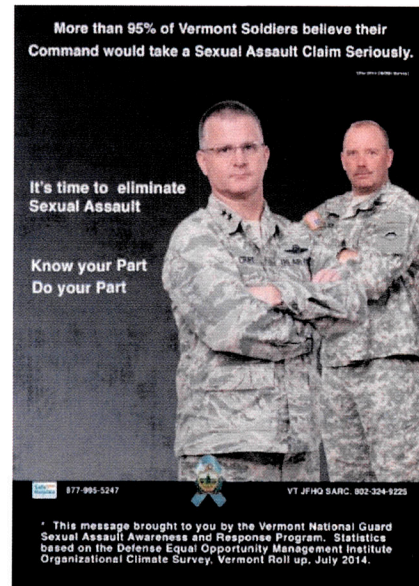
The VTNG implemented and continued a variety of training and education programs for Service members featuring primary prevention topics and diversity enlightenment sessions. Additional methods included specialized sexual assault training tailored for key positions throughout the organization, to include senior leaders, commanders, first responders, SAPR services members. Additionally, on April 3rd, 2015, Governor Peter Shumlin proclaimed April as Sexual Assault Awareness and Prevention Month (SAAPM).

In efforts to draw recognition to Sexual Assault Awareness and Prevention Month, the following events took place throughout the month of April:

- Classes hosted on primary prevention topics:
 - The Social Construction of Gender Roles and Healthy Masculinity
 - Healthy Sexuality and Safe Dating
 - Positive and Informed Consent
 - Skill Building for Bystanders
- Screenings and discussions based on the film, "*Miss Representation*."

Other SAAPM Events included:

- VTNG Social Norms Campaign: Posters featuring key leaders and unit members using locally generated statistics from Command Climate Surveys to promote the prevalence of bystander intervention attitudes across the force. Includes the national DoD messaging theme: “It’s Time to Eliminate Sexual Assault; Know Your Part, Do Your Part.”
- ANG Teal Boot Display and Clothesline Project: Teal combat boots with signs displaying sexual assault statistics in unit orderly rooms.
- SAAPM Governor’s Proclamation.



FY 16 Plan:

In May 2013, The Adjutant General stood up a task force to transform the culture of the VTNG which the Deputy Adjutant General leads. The mission of this task force is to “employ a multidisciplinary approach in prevention, response, accountability, stakeholder knowledge, advocacy and recovery and assessment to prevent all types of violence and enhance our response.”

The task force has established five primary goals to improve the prevention and response to violence within the organization:

- a) Establish a climate of prevention to promote an environment of dignity and respect while preventing violence within the organization.
- b) Improve the response to enhance trust in the chain of command, increase reporting and reduce the occurrence of survivors feeling ostracized.
- c) Improve system accountability to provide a fair and equitable system which promotes justice, efficiency and effectiveness.
- d) Focus on advocacy and recovery of survivors from the initial reporting through their recovery to deliver effective support and response, instill confidence and trust, strengthen resilience and inspire survivors.
- e) Develop and implement assessment mechanisms to standardize, measure, analyze, assess and report program progress.

In FY16, the VTNG hopes to demonstrate sustained engagement and work on sexual assault within the VTNG by promoting senior leadership involvement in SAPR programs, fostering collaboration among the VTNG and civilian stakeholders, and by implementing primary prevention education into all SAPR/SHARP training blocks. Moreover, the VTNG will continue to reach out to survivors of sexual assault, civilian advocacy groups and veterans' organizations to inform them of SAPR program progress and gain their feedback.

- Focus on the response to victims from initial report through recovery; promote confidence to strengthen resilience through advocacy, increasing reporting:

FY 15 Accomplishments:

Diverse in priorities, the process of improving our sexual assault response includes multiple policy and program enhancements. The enhancements relevant to these priorities include the following:

- a) Starting in FY14, DoD requires all Army officers and non-commissioned officers to incorporate SAPR concerns into their annual evaluation. The rated individual's evaluation will now include goals and objectives in furtherance of committing themselves to eliminating sexual harassment and assault and to fostering climates of dignity and respect in their units.
- b) Memorandums of Agreement established between the VTNG and over two-thirds (66 agreements out of 75 agencies) of the Law Enforcement Agencies throughout the state of Vermont allowing both entities to exchange

information pertaining to investigations involving sexual assault, domestic violence, and any case deemed to be of a serious nature in which the alleged offender acted while on military orders at the time of incident and the survivor consents to the sharing of their information.

- c) Memorandum of Understanding between the VTNG and Vermont Network.
- d) Standard Operating Procedures for the VTNG SAPR Program completed and signed.
- e) DoD Sexual Assault Advocate Certification Program, with 23 VAs and SARCs trained and nationally credentialed.
- f) Strengthening Military-Civilian Community Partnerships regarding response to Sexual Assault. Through collaboration, the VTNG has augmented and enhanced its SAPR-P with a vast array of survivor services.
- g) Publication of new Prevention and Response to Retaliation Policy.
- h) Specialized Training: Senior Leader Training, Responder Training, SARCs and SAPR VAs, Commanders Training:
 - 74 Army and Air senior leaders⁸ received specialty SAPR Senior Leader training
 - 22 Commanders received SAPR Commander specific training
 - 100% of Chaplains and Chaplain's Assistants received Chaplain specific training
 - 70% of Advocates and SARCs trained and credentialed
 - Use of National Guard Bureau's Office of Complex Administrative Investigations for reported sexual assault cases
 - 72% of ARNG members SHARP Training
 - 95% of ANG members received annual SAPR training

⁸ The term "senior leaders" as defined by The VTNG includes all officers in the rank of O5 Commanders; O6, Colonel, and above (to include flag and general officers), enlisted members in the rank of E9, Sergeant Major, and above, and all warrant officers in the rank of CW4 and above.

FY 16 Plan:

From March 28 to April 8, 2016 the VTNG SAPR Program will host an 80 Hour Certification Course. This 80 hour course is a prerequisite for VAs to receive certification through the National Organization of Victim Advocacy (NOVA). As a result, the VTNG will increase the number of VAs certified to work with sexual assault survivors to at least 90% of the Department of Defense's manning requirements for Brigades and Battalions. This will create a network of knowledgeable VA professionals, capable of delivering trainings, distributing accurate and timely information of a dynamic SAPR-P, and acting as a point of contact for Commanders/Service members to access procedural and referral information.

On April 1-2, 2016, the VTNG SAPR Program will deliver 16 hours of continuing education to credentialed Air and Army VAs. Each VA is required to complete 32 hours of continuing education in order to maintain their certification. The training in March will focus on specific Advocacy skills; to include, active listening, person centered communication, empathy building and power / privilege / bias awareness. This continuing education will equip our VAs to effectively serve survivors through a trauma informed model throughout the recovery process.

The VTNG SARC will attend and complete the 2016-2017 Vermont Victim's Assistance Academy delivered by the Center for Crime Victim Services.

- Improve system accountability to provide a fair and trauma-informed system which promotes justice, efficiency and effectiveness:

FY 15 Accomplishments:

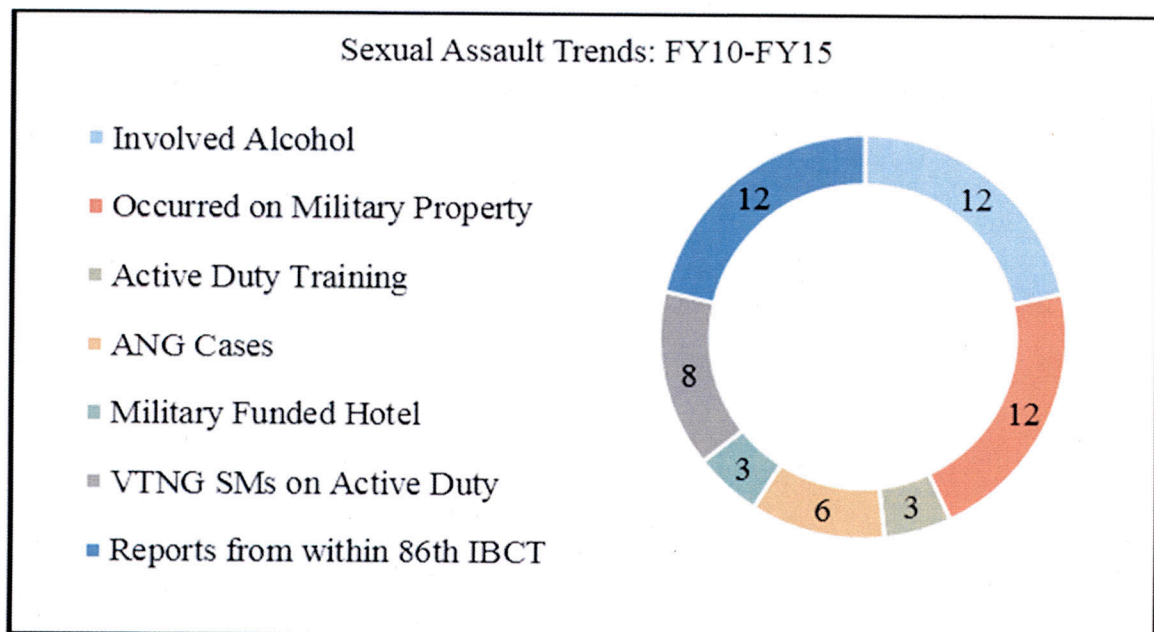
The Internal Control Program –a self-inspection based upon internal and external requirements examines 46 areas to assess the state of the program. FY15's assessment found the program complied with 45 items. In order to meet all components, the VTNG must meet manning requirements for Brigade and Battalion level Victim Advocates. Hosting the 80 Hour Certification Course as described above will assist the VTNG SAPR-P in meeting this requirement in FY16.

The VTNG implemented the Defense Equal Opportunity Management Institute (DEOMI) Organizational Climate Survey Report to electronically capture data related to the climate of a unit, the survey allows for specifically tailored questions to individual unit's needs and provides a comprehensive report of the data to commanders. This report specifically includes four questions related to the SAPR-P:

- Perception of leadership support
- Perception of barriers to reporting sexual assault
- Bystander intervention climate
- Individual knowledge of reporting options

The Defense Sexual Assault Incident Database (DSAID) is a secure web-based system used as a centralized repository for Service-specific case-level sexual assault data. DSAID allows for ad-hoc query and reporting as well as case management functionality. This system improves the data collection and reporting environment in which the VTNG SARC operates and also assists in allowing DoD SAPRO to extract the appropriate data to meet dynamic oversight needs.

Finally, the Director of the Joint Staff chairs the SAPR Committee (SAPR-C) that meets bi-monthly to provide executive oversight, procedural guidance and feedback concerning the installation's SAPR-P. This committee reviews the State's prevention program and the response to any sexual assault incidents occurring within the VTNG. This includes reviewing cases and procedures to improve processes, system accountability and survivor access to quality services.



Note: Of the 24 total cases, half involved alcohol, occurred on Military Property and were filed by Service Members within the 86th IBCT (MTN)

FY 16 Plan:

Throughout FY16 the VTNG SAPR Program will brief The Adjutant General quarterly to evaluate program performance and provide guidance with respect to all VTNG activities related to sexual assault prevention and response. The VTNG will conduct individual after action reviews of the use of the Office of Complex Investigations and Civilian Special Investigative Units to make recommendations and continually improve services. Additionally, the VTNG will implement survivor surveys that will analyze and assess variances in Restricted/Unrestricted reporting across the VTNG to identify trends and assess the feasibility of incorporating sexual assault prevention training into other VTNG programs.