

Vermont National Guard
Legislative Report

Fiscal Year 2018



“Sexual Assault and Sexual Harassment; Report”
Vermont Statutes Annotated, Title 20 §427

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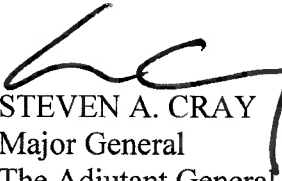
STATE OF VERMONT
OFFICE OF THE ADJUTANT GENERAL
789 Vermont National Guard Road
Colchester, Vermont 05446-3099

15 January 2019

MEMORANDUM FOR: THE VERMONT LEGISLATURE

SUBJECT: Vermont National Guard Fiscal Year "Sexual Assault and Sexual Harassment; Report"

1. As required by law, attached is the sixth annual Vermont National Guard "Sexual Assault and Sexual Harassment; Report" (see Vermont Statutes Annotated, Title 20 §427). This report contains positive indicators regarding the Vermont National Guard programs. Commanders and leaders have created a climate where survivors of sexual assault are coming forward with confidence that their reports will be taken seriously, and knowledge that they will receive the support and care necessary.
2. The Vermont National Guard has a moral obligation to keep our men and women safe from those with intentions to attack their dignity and honor. The Vermont National Guard is unequivocal in its commitment to ensure that survivors of sexual assault, sexual harassment and gender discrimination based on sexual orientation are protected, treated with dignity and respect and provided proper care, while perpetrators are held accountable for their actions.
3. As each year passes, we will continue our commitment to improve our processes, programs and response capabilities to ensure the men and women of the Vermont National Guard feel empowered to address and intervene without fear of retaliation.



STEVEN A. CRAY
Major General
The Adjutant General

Table of Contents

Chapter I: Executive Summary	1
Chapter II: Reports	2
A. Sexual Assault.....	2
1. Statistical Data	2
2. Policies	4
B. Sexual Harassment	4
1. Statistical Data	5
2. Policies.....	6
C. Discrimination Based on Sexual Orientation.....	6
1. Statistical Data	7
2. Policies.....	7
Chapter III: Organizational Assessment	8
A. Awareness	8
B. Prevention	8
C. Assessment.....	9
1. Inspection Programs	9
2. Defense Equal Opportunity Climate Survey.....	9
3. Unit Risk Inventory.....	10
4. Quarterly Updates	11
Chapter IV: Addendum.....	11
A. Sexual Assault.....	11
1. Lines of Effort and Definitions	11
2. Program Overview	12
3. Reporting Options.....	13
4. Reporting Options Flowchart.....	14
B. Sexual Harassment	15
1. Introduction	15
2. Program Overview	16
C. Discrimination Based on Sexual Orientation.....	17
1. Introduction	17
2. Program Overview	17

Chapter I: Executive Summary

In May 2013, the Governor signed into law a requirement for The Adjutant General (TAG) of Vermont to provide a report on January 15th, 2014 and annually thereafter regarding sexual assault, sexual harassment and discrimination based upon sexual orientation (see Vermont Statutes Annotated Title 20, §427, “*Sexual Assault and Sexual Harassment; Report*”).

This report is divided into four primary chapters: Executive Summary, Report, Organizational Assessment, and Addendum. The Report section is divided into three subjects: Sexual Assault, Sexual Harassment, and Sexual Orientation Based Discrimination. Each subject covers two topics: case statistics with resolution summary and policy overview.

At the end of Fiscal Year (FY) 2018 (1 October 2017 to 30 September 2018), the Vermont National Guard (VTNG) had approximately 3,500 members. Of those members, about 940 were full-time employees with the remaining as traditional members.

In FY18, the VTNG Sexual Assault Response Coordinator (SARC) tracked two reports of sexual assault in which the incident occurred within FY18 and the accused was a member of the VTNG; both cases involved civilian survivors. The SARC responded to six additional reports pertaining to incidents which occurred in previous years. In addition, the Equal Opportunity and Diversity (EO&D) Office processed six incidents of sexual harassment. No service members filed reports related to discrimination based on sexual orientation.

Definitions.

DoD Definition of Sexual Assault. Intentional sexual contact characterized by use of force, threats, intimidation, or abuse of authority or when the survivor does not or cannot consent. Includes: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy, or attempts to commit these acts (see page 12 for further detail).

VT Statute. Title 13, Chapter 72 includes the felony crimes of sexual assault and aggravated sexual assault, among other crimes related to minors. 13 V.S.A. § 2601a establishes a misdemeanor similar in affect to the military’s definition of “abusive sexual contact.”

Restricted Report. Confidential reporting option that does not include chain of command or an investigation; provides access to counseling, medical, legal and advocacy services.

Unrestricted Report. Need-to-know reporting option that includes chain of command and an investigation conducted by an external agency selected based on jurisdiction and survivor preference; provides access to counseling, medical, legal and advocacy services. *Open with Limited* is a sub-category of unrestricted reports used when the SARC does not have a formal report for an open investigation; most often when there is a military subject and a civilian victim.

Sexual Harassment. Sexual Harassment is a form of sex discrimination that involves unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature (see page 15 for further detail; 21 V.S.A. § 495d uses same verbiage).

Informal Resolution Request. Allegation of unlawful discrimination or sexual harassment, made either orally or in writing to the EO/EEO office by an aggrieved person that is not submitted as a formal resolution request. Final case file reviewed by National Guard Bureau (NGB).

Formal Resolution Request. Allegation of unlawful discrimination or sexual harassment that is submitted in writing by an aggrieved person to the EO/EEO Office. Final case file reviewed by NGB.

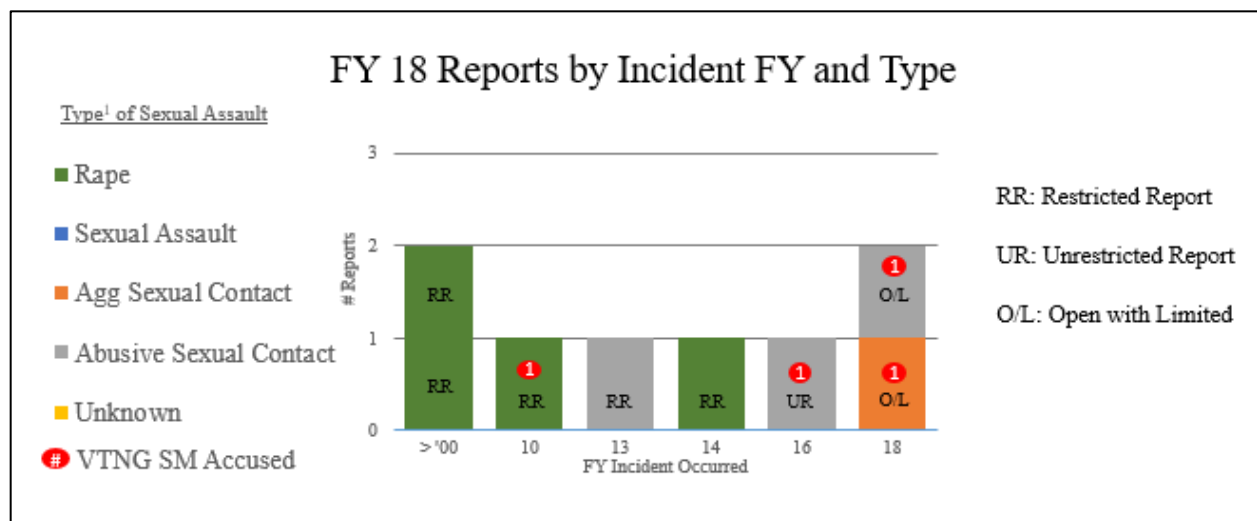
Chapter II: Reports

A. Sexual Assault

The VTNG accepts reports of sexual assault according to the Department of Defense (DoD) definition referenced above. Section 1631 of the Ike Skelton National Defense Authorization Act for FY2011 (Public Law 111-383) requires the Secretary of Defense to submit to the Committees on Armed Services of the Senate and House of Representatives an annual report on sexual assaults involving members of the Armed Forces during the preceding year, including reports from each of the Military Departments. The statistical data below reflects the reporting information submitted by the VTNG through the Defense Sexual Assault Incident Database (DSAID) and supplemental summary reports for FY18.

1. Statistical Data

The figures below display the types of sexual assault reports the VTNG received in FY18, broken down by the year each offense occurred. Of the eight total reports in FY18, two occurred prior to 2000, four between FY10 and FY16, and two within FY18.



Restricted Reporting Data:

Case #	Incident Year	Survivor status time of incident	Accused status at time of incident	Type of Assault	LOD	Referrals
00487	2013	VTNG / F / E-3	Civilian / M	Ab. Sexual Contact	Not Requested	Yes
00488	2014	VTNG / F / E-3	Civilian / M	Rape	Not Requested	Yes
00468	1995	AD ¹ / F / E-1	AD / M / Unknown	Rape	Yes	Yes
00065	1981	AD / M / E-1	AD / M / Unknown	Rape	Yes	Yes
00349	2010	VTNG / F / E-4	AD / M / E-7	Rape	Yes	Yes

Unrestricted & Open with Limited Reporting Data:

Case #	Incident Year	Survivor status time of incident	Accused status at time of incident	Type of Assault	LOD	Referrals
00440	2016	VTNG / F / E-7	VTNG / M / E-8	Ab. Sexual Contact	Not Requested	Yes
00486 (O/L)	2018	Civilian / F	VTNG / M / E-6	Ab. Sexual Contact	N/A	N/A
00458 (O/L)	2018	Civilian / F	VTNG / M / E-7	Agg. Sexual Contact	N/A	N/A

FY18 Disposition Data: Reports Involving Accused VTNG Service Members

Report FY	Case Number	Incident FY	Type of Report	Allegation	Disposition
2017	00315	2017	Unrestricted	Abusive Sexual Contact	NGB OCI ² substantiated: GOMOR issued, pending WOFR
2018	00440	2016	Unrestricted	Abusive Sexual Contact	Pending NGB OCI investigation
2018	00486	2018	Open / Limited	Abusive Sexual Contact	Found Guilty in Civ court: pending MIL action
2018	00458	2018	Open / Limited	Aggravated Sexual Contact	Pending CIV action, MIL action to follow

¹ Active Duty (AD), either Army or Air Force

² Every unrestricted report is referred to local law enforcement and investigated either by law enforcement or the Office of Complex Investigations out of National Guard Bureau, based on the preference of the survivor

Federalized Reports:

No sexual assault reports were filed involving federalized members in FY18, hence the DoD did not provide any information regarding incidents involving VTNG service members.

2. Policies

Currently, the VTNG has five policies directly related to the SAPR program. 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, January 2019: Recently updated to include parameters for communication to the force following reports of sexual assault or formal complaints of sexual harassment. Formally directs leaders to participate in new facilitation based training modules focused on data-directed and evidenced-based prevention strategies.
- 2) Expedited Transfer of VTNG Members who report an Unrestricted Report of Sexual Assault, January 2018: As a trauma-informed benefit designed to promote options and flexibility, 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 or training schedule. The commander will approve or disapprove the request within 72 hours.
- 3) Prohibition of Pornographic and Sexually Explicit Material, reissued on January 2018: Introduction, purchase, possession, transfer, sale, creation or display of any pornographic material 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 Members of the Vermont National Guard, October 2018: TAG has re-emphasized a prior standing policy that withheld authority to dispose of all alleged sexually based misconduct. This policy allows for TAG to have visibility on all sexually based offenses.
- 5) Prevention of and Response to Retaliation for Reports of Sexual Assault or Harassment, on January 2018: 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.

B. Sexual Harassment

The VTNG reports statistical data for sexual harassment annually in accordance with Public Law 11 2-239, 126 STAT. 1764, Section 579(b) to the National Guard Bureau who consolidates data from each State. During FY18, the VTNG reported six sexual harassment cases. None of these cases included formal discrimination resolution request processing. In

accordance with the intent of the person effected, five of the cases were resolved through leadership inquiry or the investigative process. National Guard Bureau Complaints Management Division authorized one case to remain in abeyance while the accused is under investigation for another offense.

Sex based incidents which do not rise to the informal or formal resolution request process as defined in Military National Guard Manual 9601.01 are processed in accordance with VTNG Reporting of Sexual Harassment policy on form 333-1. Internal incidents are given VTNG Equal Opportunity Case Numbers, i.e. 18-03. Military Cases which initiated an informal resolution request are subject to National Guard Bureau Complaints Management Division assignment of a case number. The State Equal Employment Manager obtains the number and must send the final disposition to the Guard Bureau for closure, i.e. NGB EO Case I-2018-127-MI-A-S.

A formal punitive counseling results in an unfavorable written record. The counseling establishes a record which could form the basis for aggregated discipline, transfer or barring from certain positions, or an evaluation of “unsatisfactory” on performance measures for failing to supporting the Adjutant General’s Diversity and Inclusion Policy. The individual cases depicted below offer a summary of response and accountability to incidents of sexual harassment.

1. Statistical Data

Case Number	Incident Year	Survivor status time of incident	Accused status at time of incident	Incident Description	Disposition
18-03	2018	VTNG/ M / E4	VTNG / M / E7	Crude/offensive remarks	Accused was given a formal counseling.
NGB EO Case I-2018-127-MI-A-S	2018	MING / F / PV2	VTNG / M / A1C	Unwanted sexual attention	Accused was given a formal counseling.
18-05	2018	VTNG / F / E4	VTNG / M / E4	Crude/offensive remarks	EOL facilitated conversation on prevention countermeasures, informal counseling to the accused.
18-10	2018	VTNG / F / E6	VTNG / M / E8	Crude/offensive remarks	Accused provided an informal counseling, unit apology
18-12	2018	Tech / F / GS07	Tech / M / WS5	Crude/offensive remarks	Technician counseling on employee record.
NGB EO Case I-2018 158-VT-F-S	2018	VTNG / F / E6	VTNG / M / E8	Unwanted sexual attention	Case in abeyance pending investigation on another matter.

2. Policies

The VTNG policy to report Sexual Harassment Incidents was updated in February 2018. The policy is in support of Public Law 112-239, 126 STAT. 1764, and Section 579(b) which requires the Secretary of Defense to collect information and data on substantiated incidents of sexual harassment involving members of the Armed Forces for the preceding fiscal year. The definition of sexual harassment applicable to this report is described in DoD Directive 1350.2, Department of Defense Military Equal Opportunity (MEO) Program. The data in this report includes information on formal and informal sexual harassment complaints. VTNG leaders understand the requirement to solicit the Equal Opportunity and Sexual Harassment and Assault Response Program Managers for recommendations when responding to sex based incidents. When aggrieved persons do not wish to file in accordance with resolution request processing procedures, Commanders are still required to conduct an inquiry and initiate actions to hold offenders accountable and restore a respectful command climate.

The State Equal Employment Manager and the Sexual Assault Response Coordinator consider formal cases and incident reports when determining trends or problem areas. This generates a feedback loop for commanders to use this information to drive training focus and improve prevention strategies.

- 1) NGVT-HRO 2017-10 Equal Employment Opportunity Policy, August 2017 Promotes equal employment opportunity as well as identifies and eliminates discriminatory practices and policies (to include sexual harassment) in the VTNG. This policy applies to all Federal civilian employees and applicants for employment.
- 2) NGVT-HRO 2017-08 Equal Opportunity Policy, August 2017 Promotes equal opportunity as well as identifies and eliminates discriminatory practices and policies (to include sexual harassment) in the VTNG. This policy applies to all VTNG personnel serving in a Title 32 status, to include NG technicians when activities occur while the member serves in a military pay status or raises fitness for duty concerns in the reserve components.
- 3) NGVT-HRO-JP-10 VTNG Reporting of Sexual Harassment, February 2018 The policy provides guidance regarding the reporting of all incidents of sexual harassment through the Equal Opportunity channels. This is a reporting requirement only and does not supersede either of the policies listed above.

C. Discrimination Based on Sexual Orientation

Department of Defense Directive 1020.02E, Diversity Management and Equal Opportunity in the DoD effective June 8, 2015 establishes policy and assigns responsibilities to provide an overarching framework for addressing unlawful discrimination and promoting equal opportunity, diversity and inclusion through a multitude of executive orders, directives and policies. The policy added sexual orientation to protected class status and results in treating these issues as with other claims of protected class discrimination.

1. Statistical Data

During FY18, the VTNG received no reported cases of discrimination, hazing or bullying based on sexual orientation.

2. Policies

In October 2018 the VTNG published an Anti-Harassment Policy. The policy augments discrimination policies whereby if a person does not identify the harassment on the basis of a protected class the command still has an obligation to inquire, hold violators accountable and preserve a workplace free from harassment of all forms. Army Directive 2016-025 (Civilian Employee Redress for Sexual Orientation and Gender Identity Discrimination) nest with DoD 1020.02E to provide equal employment opportunity to all employees and applicants for employment. These employees or applicants for employment may seek redress through the Army Equal Employment Opportunity Program. All Army employees—including lesbian, gay, bisexual, and transgender employees—should be able to perform their jobs in an environment free from any unlawful discrimination. The Air Force Instruction 36-2706 dated 5 October 2010 provides institutional protections for harassment based on sexual orientation in accordance with Executive Order 11478 and 13160, the U.S. Office of Special Counsel (OSC), for civilian employees. Sexual Orientation harassment by military personnel may be punishable under UCMJ, Article 92, and should be addressed through command channels.

- 1) NGVT-HRO-JP 2018-23 Anti-Harassment Policy, October 2018 Establishes policy, prescribes procedures, and assigns responsibility to preserve a workplace free from harassment in compliance with Equal Employment Opportunity Commission Management Directive 715, which establishes that model EEO programs must issue policies and procedures for addressing all forms of harassment. This policy is separate from VTNG EEO Policy 2017-10 resolution request process, which provides remedial relief to an employee affected by unlawful harassment under the VTNG Joint Civilian Discrimination Complaints instruction Guide, 1 July 2017.

Chapter III: Organizational Assessment

The VTNG views the awareness and prevention of sexual misconduct as separate yet intrinsically linked approaches. Therefore, the paragraphs below summarize the efforts as a whole rather than by individual programs and concludes with a description of how the VTNG measures the effectiveness of these strategies.

A. Awareness

Many public health initiatives rely on strategies that raise awareness of a given issue in an effort to achieve a desired outcome. Sexual violence campaigns have long utilized this approach, most notably with Sexual Assault Awareness & Prevention Month (SAAPM). The following is a list of strategies employed by the VTNG in FY18 to increase awareness:

- Sexual Assault Awareness & Prevention Month
 - Social Media postings
 - Classes
 - Clothesline Display
 - Sandwich Boards
 - Tabling in collaboration with Norwich University
- Social Media postings
- Mandatory Trainings
- Family Program newsletter articles
- Posters throughout facilities
- SAAPM 5k event
- Bi-annual JDEC Newsletter

B. Prevention

These strategies target behaviors or environmental factors which contribute to a given issue and include awareness efforts as well as policy, social norms campaigning, and training programs. In FY18, the VTNG conducted the following prevention focused actions:

- Bystander intervention training
 - Air Force: Green Dot
 - Army: Step Up
- Lean In Series
- Unconscious Bias Training
- Joint Diversity Executive Council
- Military Women's Program
- Army: Community Health & Promotion Council
- Air: Integrated Delivery System & Community Action Information Board

C. Assessment:

The military has several formal programs designed to assess program implementation and effectiveness. These include the Organization Inspection Program (OIP), and Military Inspection & Controls. Additionally, the VTNG formally surveys soldiers and airmen to determine the health and wellness of individuals and units; these surveys include the Defense Equal Opportunity Climate Survey and the Unit Risk Inventory. Finally, the VTNG SAPR-P provides quarterly updates to TAG and other stakeholders.

1. Inspection Programs

The OIP is an Army quality assurance program conducted in a cascading sequence: State level program managers establish a checklist of measurable standards developed from DoD and Army regulation as well as state specific policy. Beginning in January, battalions will inspect companies, after which the brigades inspect the battalions. Finally in September, state program managers inspect the brigades. To meet the standard for the SAPR checklist, units must demonstrate that their soldiers understand state policy, receive training annually, and have credentialed Victim Advocates (VA) to report to and know how to make a report. Each year units score well, with the largest areas of improvement typically focused on the credentialing of VAs and capturing mandatory training conducted in digital tracking systems. The Equal Opportunity and Diversity use a checklist to affirm staffing, climate assessments, posting and training is being accomplished in accordance with Army Regulations. The Air National Guard Equal Opportunity Program conducts Staff Assistance Visits to ensure compliance with internal checklists. Other Military Inspection & Control self-assessments are done annually based on DoD and Service specific regulations.

Similarly, the VTNG conducts Military Inspection & Control self-assessments annually based on DoD and Service specific regulations. In FY18, the VTNG SAPR-P identified a shortage of credentialed VAs as the only non-compliant item.

2. Defense Equal Opportunity Climate Survey (DEOCS)

The VTNG Organizational Assessment program is a mandatory requirement from the Under Secretary of Defense for Personnel and Readiness. The instrument used is developed by Department of Defense at the Defense Equal Opportunity Management Institute (DEOMI). The assessment tool is called the DEOMI Organizational Climate Survey (DEOCS), which is a commander's management tool that proactively assesses critical organizational climate dimensions that can impact the organization's mission. Commanders at Squadron and Company level and higher in the National Guard are required to conduct an initial assessment within six months of assuming command and every twenty-four months thereafter.

This voluntary survey has 21 climate factors designed to assess the "shared perceptions" of respondents about formal and informal policies and practices. The DEOCS focuses on three primary areas: Organizational Effectiveness (OE), Equal Opportunity (EO)/Equal Employment Opportunity (EEO)/Fair Treatment, and Sexual Assault Prevention & Response (SAPR). The DEOCS poses 56 questions/items to measure the 21 climate factors: Nine Organizational

Effectiveness factors (31 questions/items); Six EO/EEO/Fair Treatment factors (17 questions/items); and Six Sexual Assault Factors (8 questions/items). A majority of items use a seven-point “Strongly Agree — Strongly Disagree” scale with a “Neither Agree nor Disagree” middle point. Definitions of terms used in the DEOCS are provided to enhance respondents’ frame of reference. Finally, the DEOCS compares your organization's unit-level climate factor favorability percentages against similar type units in your Service, and to your parent Service overall.

In 2018 the 158th Fighter Wing surveyed all the squadrons with a total response rate of 47%. Thirty-four Army Guard units were surveyed with a total response rate of 30%. Response rates of greater than 20% for organizational surveys result in high data confidence rates. EO Directors reviewed the DEOCS Overall Unit Summary and inserted major trends into compliance reports for the National Guard Bureau. All of the major groupings had adequate scores. The Army Guard Sexual Assault Response Climate scored in the 90% positive range although we continue to see the Sexual Assault Reporting Knowledge in needs improvement score despite our training and posting efforts. We attribute the low score to the way the question is asked in the survey and have reported this to DEOMI.

One of the strengths identified in the sexual assault segment of the survey is the service member’s recognition of risk regarding behavior which may lead to sexual assault and the service member’s subsequent willingness to intervene. The VTNG also assesses a favorable response to the reporting climate. Service members overwhelmingly believe their command will take reports of sexual assault seriously and will respond appropriately. Each Army unit is required to appoint an EO Leader who works with the Commander to implement strategies to improve command climate.

Managing the climate assessment program is an essential task for EO Managers and an important tool for Commanders. The staffing, training and back-fill for EO Leaders is a priority for the VTNG.

3. Unit Risk Inventory (URI)

URI is an Army mandated requirement completed by each soldier during their annual health screening. The URI assesses the individual’s proclivity for risky behaviors such as alcohol and drug use, delinquency, sexual risk taking, and suicidal behavior.

The Center for Disease Control (CDC) identifies 12 risk factors associated with sexual violence. Of those 12, the URI happens to directly measure four. Because of a > 60% participation rate from the Vermont Army National Guard, the URI provides data with a confidence rate of over 98%. Trend analysis over the last three years indicates a decrease in behaviors reported for each of these risk factors. For example, “rode with a driver under the influence” and, “having multiple sexual partners” served as the most significant improvements (6%).

Based on this data, the VTNG assesses that the combined efforts of the SAPR and EO&D-P, as well as trainings offered by the Suicide Prevention, Resiliency, and Army

Substance Abuse Prevention programs are having a positive impact to reduce the risk of sexual violence in the organization.

4. Quarterly Updates

Each quarter the VTNG SAPR-P and EO&D-P provide separate updates to key stakeholders. During these briefings, the programs provide statistical trend data as well as identified best practices and anticipated initiatives. These briefings serve as an opportunity to ensure shared understanding throughout the leadership team as well as to hold the programs accountable for their efforts.

Chapter IV: Addendum

A. Sexual Assault

1. Lines of Effort and Definitions

Sexual assault has no place in the VTNG; it attacks the values we defend and the cohesion our units demand. In 2010, the VTNG formalized its approach by establishing the SAPR-P to promote the prevention of sexual assault, encourage increased reporting, and improve response capabilities for survivors. Since that time, the VTNG continues to assess its programs resulting in improvements in processes and procedures which directly impact the confidence members of the VTNG have in the program and VTNG leadership.

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

The definition of sexual assault varies between agencies and criminal statutes. This report utilizes the definition of sexual assault found in the DoD Directive 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 DoD 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. The VTNG does not use this definition to establish legal processes, conduct criminal investigations or take any disciplinary action.

Unless stated otherwise, the annual report will refer to sexual assault according to the DoD definition. Note that the VTNG does not have jurisdiction over either a civilian or military crime of sexual assault. Under Vermont Statutes Annotated, Title 20, §941, the VTNG has criminal jurisdiction over “purely military offenses;” civil courts will prosecute all other offenses. As a result, all unrestricted reports of sexual assault are reported to local law enforcement for criminal investigation. If civilian authorities take no action or when any military action will not interfere with civilian actions, the VTNG contacts National Guard Bureau’s Office of Complex Investigations (OCI) who will send a team of specially trained personnel to investigate these allegations.

2. Program Overview

The VTNG hired its first full time 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 who works under the direction of the VTNG SARC. Most recently in 2016, the 158th Fighter Wing hired a full time SARC to manage the prevention and response program for the Vermont Air National Guard.

In 2012, the National Guard Bureau established the OCI. Following a civilian law enforcement investigation that concludes without prosecution³ 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 background and complete a two week course held by the US Army Military Police

³ Prosecution includes resolution through the VT Community Justice Center process, which works directly with a victim to reach a conclusion agreeable to the victim.

School. Vermont 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 (SVC). 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.

3. 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 which promotes the privacy and confidentiality of survivors under their command in order to mitigate re-victimization and encourage reporting.

The VTNG SAPR-P offers three reporting options for service members which provide both confidential and non-confidential options to ensure survivors receive appropriate care and to hold offenders accountable. Service members who choose to report a sexual assault will elect either the unrestricted (non-confidential) or the Restricted (confidential) option by completing the DD Form 2910: Victim Reporting Preference Statement. Procedures for each reporting option are depicted in Figure 1: Sexual Assault Response Flow Chart on page 10.

Unrestricted Reporting: Allows an individual covered by this policy to disclose that they are a survivor of a sexual assault, without requesting confidentiality of restricted reporting. Under this option, either the command or the survivor will notify law enforcement, allowing them to initiate the official investigative process.

Restricted Reporting: Allows sexual assault survivors 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 without triggering an official investigation. 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 above⁴ the VTNG cannot guarantee a restricted report.

Open with Limited Information: Available to service members who refuse or decline services, or opt-out of participating in the investigative process. This classification may also be used for third-party reports of sexual assault, when the local law enforcement refuses to provide survivor information, when the incident includes a civilian survivor and a military subject, or in any other case where the survivor has not signed a DD Form 2910: Victim Reporting Preference Statement.

⁴ For Exceptions to Restricted Reporting, please see attached DD form 2910.

B. Sexual Harassment

The objective of the Military Equal Opportunity Program is to formulate, direct and sustain a comprehensive effort that ensures fair treatment of all service members based solely on merit, fitness, and capability that supports readiness. It is the policy of the VTNG to provide Equal Opportunity for all personnel and ensure they will not be subjected to harassment, including sexual harassment and unlawful discrimination.

1. Introduction

The definition of sexual harassment applicable to this report is described in DoD Directive 1350.2, "Department of Defense Military Equal Opportunity (MEO) Program. "Sexual Harassment is a form of sex discrimination that involves unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay or career or
- Submission to or rejection of such conduct by a person is used as a basis for career or employment decision affecting that person, or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

Public Law 112-239, 126 STAT. 1764, Section 579(b) requires the Secretary of Defense to collect information and data on substantiated incidents of sexual harassment involving members of the Armed Forces for the preceding fiscal year. The detailed report is required from each State National Guard annually in December.

In accordance with DoD Directive (DoDD) 1350.2, an allegation of sexual harassment that is submitted in writing to the authority designated for receipt of such complaints is a formal complaint. For the VTNG, the Human Resource Equal Opportunity Office manages the complaint process using National Guard Form 333. An informal complaint is an allegation of sexual harassment, made either orally or in writing that is not submitted as a formal complaint on National Guard Form 333. The sole mechanism for appealing the disposition of an informal complaint shall be to file a formal complaint. A substantiated complaint is when an allegation of sexual harassment in an informal or formal complaint is confirmed for a finding of sexual harassment through an inquiry or investigative process.

Published 8 June 2015, DoDD 1020.02E Subject: Diversity and Equal Opportunity in the DoD established policy and assigned responsibilities to provide an overarching framework assisting in the prevention of unlawful discrimination by promoting equal opportunity, diversity and inclusion by utilizing the following:

- A. The DoD Diversity and Inclusion Management Program, in accordance with the authority in Executive order 13583.
- B. The DoD Military Equal Opportunity (MEO) Program in accordance with DoDD 1350.2.

- C. The DoD Civilian Equal Employment Opportunity (EEO) Program in accordance with DoDD 1440.1.
- D. The DoD Civil Rights Program in accordance with DoDD 5500.11 and DoDD 1020.1.

2. Program Overview

Any aggrieved individual, covered by the aforementioned directives, who believes he or she has been illegally discriminated against due to any of the following, has the ability to file an individual complaint of discrimination: race, color, religion, national origin, gender (including sexual harassment), and/or reprisal for engaging in a protected equal opportunity activity, in a matter subject to the control of the VTNG.

The active Army maintains one Sexual Harassment Assault & Response Prevention (SHARP) Program which handles the full spectrum of sexually based offenses from harassment to violent rapes. In the National Guard, the Equal Opportunity Management Office coordinates the response to all sexually based offenses determined to be harassment. The State Sexual Assault Response Coordinator (SARC) handles all crimes of sexual assault. The VTNG SARC and the State Equal Employment Manager (SEEM) work together on prevention efforts with regard to the spectrum of sexual harm.

The SEEM and the SARC jointly monitor Unit Climate Assessments which solicit information pertaining to sexually based offenses, trust in the organization and knowledge of reporting options. NGVT-HRO-JP-10 VTNG Reporting of Sexual Harassment, February 2018 policy provides guidance for reporting minor sexually based infractions such as using offensive language related to sex or in the event a complainant does not wish to file officially and command is aware and has determined not to open an investigation. The policy instructs leaders at the lowest level to record the incident and channel through the Equal Opportunity Leaders to the Joint Force Headquarters Equal Opportunity Office. Both the SEEM & SARC have the opportunity to review minor incidents and how leadership responded to the situation at the unit level. By reviewing these incident reports and the responses by the leadership, the SEEM & SARC may identify trends and make recommendations to improve conditions thwarting more serious violations from occurring.

The VTNG integrates messages of dignity and respect into every message for service members. These words permeate the mission, vision and values of the organization. The long history of the Military's diversity and ability to unify teams continues to be the foundation for new and innovative strategies preventing sexually based offenses. Our prevention training nests with Active Component training; the National Guard has unique opportunities to partner with other stakeholders to enhance strategies which promote respectful cultures.

The VTNG has a robust Joint Strategic Diversity Plan managed through the Joint Diversity Executive Council (JDEC). The JDEC reports quarterly to Regional JDEC Representatives who send consolidated reports to the Chief of the National Guard Bureau

Office of Diversity and Inclusion. The VT-JDEC has sub-committees representing the Asian, Black, Hispanic, American Indian/Alaskan Native, Persons with Disabilities and the Federal Women's Program.

The VTNG developed a special sub-committee under the Federal Women's Program, entitled VTNG Military Women's Program. *The MWP mission is to enhance readiness by increasing the representation of competent women in all grades and occupations. Develop an exchange of ideas and information to promote cross-cultural harmony and team synergy.* The VTNG created the MWP to focus on the challenges military women face serving in majority male organizations.

Research demonstrates the nexus between gender equality and power based sexual misconduct. Therefore, the VTNG actively conducts several events to promote gender equality and to increase the representation of women in command positions. The MWP reports gender representation annually to the Senior Leaders of the VTNG in a thorough report that identifies the overall percentage of women: representation in each grade, occupation, command rates, retention rates, full time status as well as the representation of women in newly opened combat arm occupations and units. The programs will continue to coordinate and synchronize efforts in an effort to prevent sexual misconduct of any sort and to create inclusive environments free of harassment.

C. Discrimination Based On Sexual Orientation

1. Introduction

On June 8, 2015, the DoD added sexual orientation to the Diversity and Inclusion Management, Military Equal Opportunity (MEO), Civilian Equal Opportunity, and the DoD Civil Rights Programs (*Department of Defense Directive 1020.02E, Diversity Management and Equal Opportunity in the DoD*). The policy adds sexual orientation to protected class status. Collectively, these programs promote equal opportunity, diversity and inclusion management, and they are designed to prevent unlawful discrimination and harassment throughout the military.

2. Program Overview

In July 2015 the Secretary of Defense announced no service member shall be involuntarily separated or denied reenlistment or continuation of active or reserve service on the basis of their gender identity, without the personal approval of the Under Secretary of Defense for Personnel and Readiness. The VTNG Equal Opportunity & Diversity Office is the central office for inquires.