



MILITARY DEPARTMENT OF INDIANA
JOINT FORCE HEADQUARTERS – INDIANA
2002 SOUTH HOLT ROAD
INDIANAPOLIS INDIANA 46241-4839



NGIN-ZA

2 January 2023

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Policy Number 76-23: Sexual Harassment Complaint Process

1. References.

- a. Army Directive 2022-13 (Reforms To Counter Sexual Harassment/Sexual Assault in the Army), 20 September 2022
- b. Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers), 1 April 2016
- c. Department of the Air Force Manual 1-101 (Commander Directed Investigations), 9 April 2021
- d. DoDI 1020.03, Change 1 (Harassment Prevention and Response in the Armed Forces), 29 December 2020
- e. CNGBI 9601.01 (National Guard Discrimination Complaint Program), 27 September 2015
- f. CNGBM 9601.01 (National Guard Discrimination Complaint Program), 25 April 2017
- g. NGR 600-21 (Equal Opportunity Program in the Army National Guard), 22 May 2017
- h. NG Pam 600-22/ANGP 36-3 (Investigating Military Discrimination Complaints), 26 April 2002
- i. NGB DTM 1300.01 (Limited Sexual Assault Prevention and Response Services for Sexual Harassment Complainants), 29 November 2022
- j. NGB Interim Guidance to Supplement CNGBM 9601.01 - Reforms to Counter Sexual Harassment in the National Guard, 21 December 2022
- k. Executive Order 14062, 2022 Amendments to the Manual for Courts-Martial, United States, 26 January 2022
- l. TAG Policy Memorandum 75-20: Indiana National Guard Sexual Harassment Policy, 1 July 2020

2. Purpose. This memorandum prescribes Indiana National Guard (INNG) policy for processing and investigating Sexual Harassment complaints. This memorandum does not modify or supersede the existing Indiana National Guard Sexual Assault Prevention and Response (SAPR) policy. This memorandum reinforces and updates TAG Policy Memorandum 75-20: Indiana national Guard Sexual Harassment Policy dated 1 July 2020.

3. Applicability. This policy is applicable to all personnel assigned to or employed by the Indiana National Guard.

4. Definitions.

a. Sexual Harassment [as Discrimination]. The term "sexual harassment" is defined to mean conduct that involves unwelcome sexual advances, requests for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature when:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career; or

(2) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or

(3) 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.

b. Sexual Harassment [as misconduct – Article 134]. The offense of Sexual Harassment under Article 134, UCMJ is defined by the following elements:

(1) That the accused knowingly made sexual advances, demands or requests for sexual favors, or knowingly engaged in other conduct of a sexual nature;

(2) That such conduct was unwelcome;

(3) That, under the circumstances, such conduct:

(A) Would cause a reasonable person to believe, and a certain person did believe, that submission to such conduct would be made, either explicitly or implicitly, a term or condition of a person's job, pay, career, benefits, or entitlements;

(B) Would cause a reasonable person to believe, and a certain person did believe, that submission to, or rejection of, such conduct would be used as a basis for decisions affecting that person's job, pay, career, benefits, or entitlements; or

(C) Was so severe, repetitive, or pervasive that a reasonable person would perceive, and a certain person did perceive, an intimidating, hostile, or offensive working environment; and

(4) That, under the circumstances, the conduct of the accused was either: (i) to the prejudice of good order and discipline in the armed forces; (ii) of a nature to bring discredit upon the armed forces; or (iii) to the prejudice of good order and discipline in the armed forces and of a nature to bring discredit upon the armed forces.

c. Sexual Harassment [as misconduct - Article 92]. An act of Sexual Harassment is also an offense under Article 92, UCMJ for failure to obey a lawful order or regulation prohibiting subjecting anyone to harassment, including sexual harassment, and unlawful discrimination on the basis of race, color, national origin, religion, sex (including gender identity), or sexual orientation.

5. Policy.

a. It is the policy of the Indiana National Guard to provide equal opportunity for all personnel. Nobody will be subjected to harassment, including sexual harassment, or unlawful discrimination on the basis of race, color, national origin, religion, sex (including gender identity), or sexual orientation. The INNG will provide fair, equitable, and nondiscriminatory treatment of all members. This policy is designed to maintain and improve morale and productivity, foster unit cohesion and readiness, and increase the combat effectiveness of the Indiana National Guard.

b. The Indiana National Guard does not condone or tolerate unlawful discrimination or sexual harassment of any kind. I consider Sexual Harassment to be not only discrimination, but also misconduct under the Uniform Code of Military Justice.

6. Categories of Sexual Harassment.

a. Verbal. Examples of verbal sexual harassment may include, but is not limited to, telling sexual jokes; using sexually explicit profanity, threats, sexually oriented cadences, or sexual comments; whistling in a sexually suggestive manner; or describing certain attributes of one's physical appearance in a sexual manner.

Verbal sexual harassment may also include using terms of endearment such as "honey," "babe," "sweetheart," "dear," "stud," or "hunk" in referring to Soldiers, civilian coworkers, or family members.

b. Nonverbal. Examples of nonverbal sexual harassment may include, but is not limited to, cornering or blocking a passageway; inappropriately or excessively staring at someone; blowing kisses; winking; or licking one's lips in a suggestive manner.

Nonverbal sexual harassment also includes offensive printed material (for example, displaying sexually oriented pictures or cartoons); using electronic communications such as text messages, emails, chats, instant messaging, screensavers, blogs, social media sites, electronic device applications, or video conferencing; or sending sexually-oriented notes or letters.

c. Physical Contact. Examples of physical sexual harassment may include touching, patting, pinching, bumping, grabbing, kissing; or providing unsolicited back or neck rubs.

(1) There is significant overlap between that physical contact which constitutes sexual assault and that physical contact which constitutes sexual harassment.

(2) Sexual Assault, as defined by Article 120 UCMJ, is intentional sexual contact characterized by the use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent.

(3) Sexual Contact is defined as touching, or causing another person to touch, either directly or through the clothing the vulva, penis, scrotum, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person. Touching may be accomplished by any part of the body or an object.

(4) Anyone who feels they have experienced a Sexual Assault may contact the Sexual Assault Prevention and Response 24/7 Support Line at 317.247.3172.

7. Military Discrimination/Equal Opportunity Complaints. All INNG members who believe they have been discriminated against based on race, color, national origin, religion, sex-gender, or sexual orientation, or who believe they have been the victim of sexual harassment, may file a request to resolve discrimination allegations. The complaint process may proceed as follows:

a. The EO Representative (EO Advisor or EO Leader) will notify the Commander at the lowest level of the alleged discrimination to obtain a possible remedy. If the matter is resolved to the complainant's satisfaction, the matter will be closed without further action and will be documented by the EOA or EOL on a Memorandum for Record. If not resolved, the complainant may initiate the formal process by filing an NGB Form 333, "Discrimination Complaint in the Army and Air National Guard."

b. State Informal Resolution Request (IRR). An INNG member may initiate an EO complaint with the State Equal Employment Manager (SEEM) or any EO Advisor (EOA) verbally or in writing. The SEEM will determine if a member's allegations are viable for processing, for example, meeting filing time limits. The complaint will be submitted on NGB Form 333, "Discrimination Complaint in the Army and Air National Guard." INNG members must file a State IRR within 180 calendar days from the date of the alleged discrimination, or the date the member was made aware of the alleged discriminatory event or action.

c. The SEEM or EOA will acknowledge, in writing, receipt of an informal written request within seven calendar days of its receipt and will contact the NGB Equal Opportunity Office of Complaints Management and Adjudication, who will assign a tracking number to the State IRR. The INNG will take no more than 180 calendar days to process a State IRR.

d. The SEEM will also notify the JFHQ Staff Judge Advocate (SJA) Office of the State IRR. The JFHQ SJA office will consult with the Chief of Staff for the INANG, INARNG, or 38th Infantry Division, as applicable, who will select an Investigating Officer (IO) for appointment. The JFHQ SJA Office will prepare an IO Appointment Memorandum for the first O6 Commander in the subject's chain of command to appoint an IO from outside the subject's assigned brigade-sized element to conduct a formal EO investigation into the complaint and to submit a Report of Investigation (ROI) within 60 days. The ROI must be reviewed by the servicing SJA office to ensure legal sufficiency, and reviewed with the SEEM to ensure compliance with administrative sufficiency before submitting the report to the commander. This will include a written legal review of the investigation.

e. The applicable commander will review the ROI to determine the appropriate resolution (which will be reviewed by the next higher commander).

f. The Commander will meet with the member and explain the proposed resolution within 30 days of receiving the ROI. The member will indicate if they will accept the proposed resolution, withdraw the State IRR, or file an NGB Formal Resolution Request (FRR).

(1) EO investigations do not address criminal charges. They only determine whether discrimination did or did not occur. Misconduct will be investigated in a separate, parallel investigation, but may be conducted by the same Investigating Officer.

(2) Recommendations are based on the "make whole" remedy theory as applied to administrative processing and adjudication of discrimination complaints. The "make whole" remedy theory is that the complainant should be where they would have been, absent discrimination. In other words, recommendations for firing of personnel and other adverse actions that do not remedy the discriminatory act are not congruent with the intent of the National Guard Military Discrimination Complaint System and established case law. Such recommendations may be the result of the misconduct investigation.

h. Notice of Proposed Resolution (NPR). The applicable Commander, in consultation with the SEEM, will conduct a final interview with the member and provide them with an NPR. The notice will inform the member of the ROI findings and conclusions, and the commander's proposed disposition and remedy. Members will indicate on the NPR their acceptance of the proposed resolution, withdrawal of the State IRR or their intent to file an NGB FRR. The final interview concludes the State resolution process, and the SEEM will forward the NPR to NGB upon completion of the process along with the Report of Investigation.

i. NGB FRR. INNG members must file an NGB FRR with the SEEM within 30 calendar days of receipt of the NPR, or the final interview. It will be filed on NGB Form 333, and it must contain a signed statement from the member identifying the individual(s) involved, the unit/organization involved, and a description of the action(s) or practice(s) forming the basis of the alleged discrimination.

j. Commanders will use the Report of Investigation (ROI) transmittal letter at Enclosure B of NGB Interim Guidance to Supplement CNGBM 9601.01 - Reforms to Counter Sexual Harassment in the National Guard (21 December 2022) when providing a copy of the ROI to the complainant at the completion of the investigation and prior to NGB issuing an NPR.

k. ROI Review. NGB will issue an NGB NPR which will include NGB's findings and recommendations. If discrimination or harassment is substantiated, the NGB NPR may recommend appropriate remedial actions to the INNG.

l. If discrimination or harassment is substantiated, and remedial measures are recommended in the NGB NPR, the member will be informed by the SEEM of the completion of remedial actions within 60 calendar days of receipt of the NGB NPR. The member may file a hearing request to seek remedies for a State's noncompliance with NGB recommendations after 60 calendar days following receipt of the NGB NPR.

m. If discrimination or harassment is unsubstantiated, in whole or in part, the member may file a request for a hearing within 30 calendar days of receipt of the NGB NPR.

n. State NG Action. The SEEM must submit a written response to NGB and to the member within 30 calendar days of receipt of the NGB NPR pertaining to NGB's recommended resolution. Thereafter, the SEEM will provide a periodic update on the State's continuing remedial efforts every 30 calendar days to NGB, and will issue a notice to NGB and the member upon the completion of remedial actions.

8. Sexual Harassment Misconduct Investigations. Separate from the discrimination complaint investigation, commanders will investigate all allegations of sexual harassment as misconduct under the UCMJ.

a. If sufficient information exists to permit the initiation of an investigation, commanders will notify the JFHQ SJA office, to the extent practicable, within 72 hours of receipt of the complaint, with a detailed description of the facts and circumstances.

b. In consultation with the JFHQ SJA Office, the Chief of Staff for the INANG, INARNG, or the 38th Infantry Division, as applicable, will select an Investigating Officer (IO) for appointment. The JFHQ SJA Office will prepare an IO Appointment Memorandum for the first O6 Commander in the subject's chain of command to appoint an IO from outside the subject's assigned brigade-sized element to conduct the investigation.

(1) Exceptions requiring appointment of an IO from the same brigade-sized element as the subject will be approved in writing by the first general officer in the chain of command and included as an enclosure to the investigation. This authority may not be delegated. Reasons for exceptions may include, but are not limited to, unit geographic location and type of mission.

(2) If a discrimination complaint (via NGB Form 333) has also been initiated, the IO will conduct a joint AR 15-6 or DAFI 1-101 investigation and military discrimination complaint investigation and will prepare separate reports for each.

c. Commanders will ensure subjects under investigation are administratively flagged in accordance with AR 600-8-2 and TAG Policy Memo 13-22 (Suspension of Favorable Personnel Actions (Flag) Policy). Commanders who allow offenders to receive favorable personnel actions when said personnel should have been flagged will be subject to possible disciplinary action.

d. The responsibilities of the Investigating Officer appointed for the misconduct investigation (in addition to the military discrimination complaint investigation, if applicable) will take precedence over all other military duties. The IO will have 60 days from the date of this appointment to conduct the investigation and complete the report(s). No further extensions will be granted.

e. The completed report(s) must be reviewed for legal sufficiency by the JFHQ SJA Office or servicing SJA Office, and a written legal review will be provided to the Appointing Authority. The servicing SJA Office will ensure legal compliance with the investigation and will ensure the due process rights of the alleged offender are afforded before any adverse administrative actions are taken.

f. Military Protective Orders (MPOs). The first O-6 in the subject's chain of command will implement mechanisms to protect complainants of sexual harassment and victims of sexual assault. This may be accomplished with a verbal or written order, and will be documented by a counseling statement ordering the alleged perpetrator to stay away from the complainant. It may also be accomplished with an MPO, when warranted.

(1) Commanders must consult with their servicing Judge Advocate prior to issuing an MPO to determine whether it is warranted.

(2) MPOs are warranted when ALL the following criteria are met: 1. to safeguard a victim, 2. to quell a disturbance, and 3. to maintain good order and discipline.

(3) If all the criteria are not met for issuance of an MPO, Commanders must issue an order for the subject to stay away from the alleged victim and must take affirmative steps to enforce the order.

g. Involuntary Separation Policy. Commanders will initiate involuntary administrative separation proceedings for all Soldiers against whom there is a substantiated complaint of sexual harassment. Separation proceedings will be processed through the chain of command to the JFHQ SJA Office for appropriate action.

(1) Rehabilitation.

(A) A commander may rehabilitate a Soldier against whom there is a minor substantiated complaint of sexual harassment, as determined by the commander in consultation with the servicing judge advocate. The first O-6 commander in the subject's chain of command will make a determination as to whether a substantiated sexual harassment complaint is minor.

(B) Efforts to rehabilitate a Soldier deemed to have engaged in a minor substantiated complaint of sexual harassment must include the following components: sexual harassment refresher training, individual corrective counseling, and monitoring of behavior for a period of time as determined appropriate by the first O-6 commander in the Soldier's chain of command.

(C) Exceptions. Substantiated complaints wherein the offender attempted or engaged in quid pro quo behavior, sexual touching offenses where the offender was the superior in a superior-subordinate relationship, or substantiated complaints involving repeat offenders are NOT appropriate for rehabilitation.

h. Publication of Results. Commanders will publish the nature and results of all judicial, non-judicial, and/or administrative actions taken against the offender (including letters of reprimand) and will disseminate this information to troops via unit newsletters, bulletin boards, and other communications channels. Prior to publication, redactions required by the Privacy Act will be approved by the servicing Office of the Staff Judge Advocate or Brigade Judge Advocate.

i. Documentation Requirement. If a military discrimination complaint or a misconduct investigation regarding sexual harassment is substantiated, the subject's immediate Commander will ensure the offender's evaluation report is documented to show he or she did not support EO policies during the rated period. If the service member is too junior to have an evaluation (E4 and below), Commanders will document the substantiated complaint in a reprimand filed in the offender's official military personnel file (OMPF). These documentation requirements are not discretionary, and Commanders who do not comply with this requirement will be subject to possible disciplinary action.

9. Reporting Sexual Harassment and Sexual Assault.

a. Per existing policy, harassment complaints involving sexual assault allegations must be immediately reported to the JFHQ or Wing SARC before taking action or calling any other person, entity, or consult. The only exception is an emergency situation where first responders or medical personnel are needed. This is not a change to existing policy regarding responding to sexual assault reports.

b. Sexual harassment complaints not involving sexual assault allegations must be reported to the JFHQ SJA office, to the extent practicable, within 72 hours of receipt of

the complaint, with a detailed description of the facts and circumstances, as detailed in paragraph 8.

10. Limited Sexual Assault Prevention and Response Services for Sexual Harassment Complainants.

a. INNG service members who file a sexual harassment complaint or believe they were subjected to sexual harassment are eligible to receive limited services through the SAPR program. These services will include crisis intervention, safety assessments, referrals to resources, filing retaliation complaints, support in obtaining Military Protective Orders and Civilian Protective Orders, and Special Victims' Counsel consultation and representation.

b. INNG SAPR professionals will not intake, initiate, or process sexual harassment complaints, but will offer a referral of all sexual harassment complainants to the State Equal Employment Manager (SEEM) for reporting options and processing of the complaint. Referrals to the SEEM will only be made with the complainant's permission.

c. INNG SAPR professionals will offer crisis intervention, advocacy, and ongoing non-clinical safety assessments, conduct warm hand-offs to appropriate services, assist with obtaining a Military Protective Order or Civilian Protective Order, or assist with filing a retaliation complaint with an Inspector General to INNG Service members who have experienced sexual harassment.

d. The INNG SEEM will facilitate a warm hand-off between an eligible INNG service member and the SARC upon the request of a member after being informed of options related to confidential reporting or upon receiving a report of sexual harassment.

e. The INNG SEEM will notify the SARC of a safety concern pertaining to an eligible INNG service member who filed a sexual harassment complaint and will complete a warm hand-off to the assigned SAPR personnel. Safety items that merit a referral to the SARC include if the complainant is:

(1) being stalked by the subject;

(2) receiving threats of harm by the subject, coworkers, or friends and family of the subject;

(3) being harassed on social media by the subject or anyone associated with the complaint;

(4) feeling ostracized or excluded at work; or

(5) feeling hopeless.

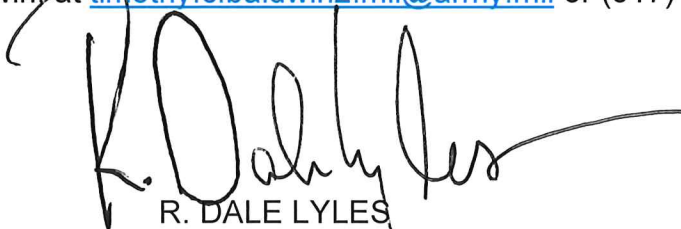
f. When an INNG SAPR professional is notified of a sexual harassment complainant by the SEEM or an eligible INNG service member, INNG SAPR professionals will:

NGIN-ZA

SUBJECT: Policy Number 76-23: Sexual Harassment Complaint Process

- (1) receive warm hand-offs of eligible sexual harassment complainants from the SEEM;
- (2) offer services to eligible INNG service members who believe they have experienced sexual harassment;
- (3) complete initial and ongoing non-clinical safety assessments;
- (4) coordinate with the servicing Director of Behavioral Health personnel if safety concerns are identified, either by SAPR personnel or the SEEM; and
- (5) track sexual harassment complainant data monthly and submit to the SARC.

11. The point of contact for this memorandum is the Indiana National Guard Staff Judge Advocate, COL Timothy C. Baldwin, at timothy.c.baldwin2.mil@army.mil or (317) 247-3371.



R. DALE LYLES
Major General, INNG
The Adjutant General

DISTRIBUTION:
A, B, C, D, E, & F