



**MILITARY DEPARTMENT OF ARKANSAS
OFFICE OF THE ADJUTANT GENERAL
CAMP JOSEPH T. ROBINSON
NORTH LITTLE ROCK, ARKANSAS 72199-9600**

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MAJOR GENERAL
THE ADJUTANT GENERAL

NGAR-HRO-SARC

10 July 2013

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: The Adjutant General's Policy 2013-26, Sexual Assault Reporting Procedures

1. References:

- a. Department of Defense Directive 6495.01, Sexual Assault Prevention and Response Program, dated 23 January 2012.
- b. Department of Defense Instruction 6495.02, Sexual Assault Prevention and Response Program Procedures, dated 28 March 2013.
- c. AR 600-20, Army Command Policy, Chapter 8, Sexual Assault Prevention and Response Program, dated 18 March 2008.
- d. Air Force Policy Directive 36-60, Sexual Assault Prevention and Response (SAPR) Program, currently under revision as of 1 July 2013.
- e. AFI 36-6001, Sexual Assault Prevention and Response (SAPR) Program, 29 September 2008, Incorporating Change 1, 30 September 2009, Certified Current 14 October 2010.
- f. Chief National Guard Bureau Manual 0400.01, dated 8 November 2012.

2. This policy supersedes: The Adjutant General's Policy 2007-02, Sexual Assault Prevention and Response - Guard Members Only, The Adjutant General's Policy 2011-01, Review of Sexual Assault Cases, and Chief of Staff Directive 2012-02, Sexual Assault Reporting Procedures.

ARKANSAS'S TOTAL FORCE... READY, RELEVANT, RESPONSIVE

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3. Purpose: This policy outlines the procedures to report any occurrences of sexual assault involving military personnel assigned to the Arkansas National Guard.

4. Background: The Arkansas National Guard has worked and continues to work diligently to develop and implement a comprehensive policy that strengthens military readiness by preventing sexual assault, enhancing victim support, and improving system accountability. These procedures further outline the command's response to a report of sexual assault and outlines responsibilities of each member and level of command/supervision to respond to such a report. These procedures consist of three distinct phases: reporting, assistance, and command response.

5. Definitions:

a. Sexual Assault is defined as intentional sexual contact characterized by use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent. Sexual assault includes rape, forcible sodomy (oral or anal sex), indecent assault (unwanted, inappropriate sexual contact or fondling), or attempts to commit these acts. Sexual assault can occur without regard to gender or spousal relationship or age of victim.

b. Consent is defined as "Words or overt acts indicating a freely given agreement to the sexual conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the accused's use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating relationship or the manner of dress of the person involved with the accused in the sexual conduct at issue shall not constitute consent. There is no consent where the person is sleeping or incapacitated, such as due to age, alcohol or drugs, or mental incapacity."

c. Sexual Assault Response Coordinator (SARC/Wing SARC) is defined as "The single point of contact at an installation or within a geographic area who oversees sexual assault awareness, prevention, and response training; coordinates medical treatment, including emergency care, for victims of sexual assault; and tracks the services provided to a victim of sexual assault from the initial report through final disposition and resolution." SARC's who are assigned at the Brigade (BDE) level are "trained and responsible for coordinating the SAPR Program as a collateral duty in a specified area of a deployed theater." BDE SARC's will serve as a Victim Advocate where a state SARC or installation SARC is available.

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d. Victim Advocate (VA) is defined as "A person who, as a victim advocate, shall provide non-clinical crisis intervention, referral, and ongoing non-clinical support to adult sexual assault victims. Support will include providing information on available options and resources to victims. The SAPR VA, on behalf of the sexual assault victim, provides liaison assistance with other organizations and agencies on victim care matters and reports directly to the SARC when performing victim advocacy duties."

6. Policy: The Arkansas National Guard will respond to sexual assaults utilizing the framework laid out in this policy. This framework is not all-inclusive, so all Arkansas National Guardsmen are directed to seek additional guidance from the state SARC or Wing SARC with any questions or guidance regarding situations that do not appear to fit within this framework. Inaction on the part of members or leaders/supervisors is always an inappropriate response. Leaders/Supervisors who fail to act on reports of sexual assault can expect appropriate disciplinary action.

7. Reporting: It is the responsibility of all members of the Arkansas National Guard to report incidents of sexual assault involving guardsmen that they personally witness. Every member of the Arkansas National Guard is accountable for fostering a climate where sexist behaviors, sexual harassment, and sexual assault are not tolerated, condoned or ignored; where dignity, trust, and respect are core values we live by and define how we treat one another; where victims' reports are treated with the utmost seriousness, their privacy is protected and they are treated with sensitivity; where bystanders are motivated to intervene because offensive or criminal conduct is neither tolerated or condoned; and where offenders know they will be held appropriately accountable by an effective system of justice. I require that commanders and leaders at all levels be diligent in ensuring that actions are taken to remove personnel from the ranks of the Arkansas National Guard who are found to have committed these crimes. We must make full use of the Arkansas Military Code, Non-Judicial Punishment, Administrative Removal or Involuntary Separation actions, or any allowable combination of these actions.

a. Victims who wish to report a sexual assault should report by notifying a VA or SARC immediately. Reporting to these trained personnel will ensure the victim confidentiality and the restricted reporting option.

b. Commanders should report sexual assaults they become aware of immediately to a VA, Wing SARC, or the state SARC. The state SARC will then ensure all reporting requirements

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and suspense times are met. The state SARC can be reached at (501) 454-2452 during duty hours and non duty hours.

(1) Commanders should educate victims about their option of filing a police report to offer the victim the opportunity to make such decision for themselves. The VA assigned by the state SARC will assist the victim in this process by providing support and accompanying the victim during this process. The victim is responsible for obtaining a police report number when a report is filed. Command will be held accountable for notifying the state SARC of the jurisdiction in which the report is made. The state SARC is responsible for obtaining a copy of the filed report upon completion of the report by the investigative authority.

(2) A unit commander who receives an Unrestricted Report of an incident of sexual assault shall immediately refer the matter to the appropriate investigative authority if a report has not yet been filed. This, in most cases, is local law enforcement who has jurisdiction over a case (jurisdiction will default to the city or county in which the incident occurred). If the assault occurred on an installation, the report should be made to the installation Public Safety Department.

c. Bystanders should report sexual assault by reporting the incident to a member of the chain of command, VA, Wing SARC, or the state SARC.

8. Victims have two reporting options, a restricted or an unrestricted report.

a. Unrestricted

(1) If the victim presents to law enforcement or chain of command, the victim is automatically limited to an unrestricted reporting option only. The respective SARC should be notified immediately (i.e., Wing SARC or state SARC) using the attached Serious Incident Report (SIR) format. SIR's should only be forwarded to the respective SARC; however, if the Joint Operations Center (JOC) receives a report, they will immediately forward the report to the state SARC who will determine distribution. The SARC will assign a VA who will assist the victim in understanding and completing the Victim Reporting Preference Statement (DD Form 2910, May 2013). A unit commander shall not conduct internal command directed investigations on sexual assault.

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(2) Unrestricted reporting triggers an investigation, command notification, and allows a person who has been sexually assaulted to access medical treatment and counseling. If a victim elects this reporting option, he/she may not change from an Unrestricted to a Restricted Report.

(3) If the subject, victim, or both are service members, the command notified of the sexual assault will report the incident to the state SARC within one hour of receipt using the attached SIR format. Non-PII only will be reported to include both victim and alleged offender. The state SARC will then make the required reporting to only those with a legitimate "need to know" within one hour of receipt.

(4) Collateral misconduct by the victim of a sexual assault is one of the most significant barriers to reporting assault because of the victim's fear of punishment. Commanders shall have discretion to defer action on alleged collateral misconduct by the sexual assault victims (and shall not be penalized for such a deferral decision) until final disposition of the sexual assault case, taking into account the trauma to the victim and responding appropriately so as to encourage reporting of sexual assault and continued victim cooperation, while also bearing in mind any potential speedy trial and statute of limitations concerns.

(5) While Commanders shall not conduct internal Command Directed Investigations (CDI) or AR 15-6 investigations regarding sexual assault, they can conduct a commander's inquiry on any collateral misconduct on the part of the alleged offender; i.e. misuse of government property, supplying minors with alcohol, conduct unbecoming an Officer/NCO, false official statement, etc. Prior to the command inquiry the Commander will consult with Brigade, Wing or State Judge Advocate General (JAG) for assistance outlining investigative details. The servicing Staff Judge Advocate (SJA) will advise the Commander regarding when and how to conduct investigations into collateral misconduct without interfering with law enforcement investigations. Commanders can then conduct the commander's inquiry to determine collateral misconduct. Results will be forwarded to the first General Officer (GO) in the chain of command for disposition.

b. Restricted

(1) The victim presents to a SARC or VA who will assist the victim in understanding and completing the DD Form 2910 dated May 2013. If the victim presents to a medical professional or Chaplain, the individual notified will report the sexual assault, with the victim's consent, to the state SARC who will then assign the victim a VA.

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(2) Restricted reporting is confidential, not anonymous, reporting. A victim's communication with another person (e.g., roommate, friend, family member) does not, in and of itself, prevent the victim from electing to make a Restricted Report. However, if the person to whom the victim confided the information is in the victim's officer and non-commissioned officer chain of command or DoD law enforcement, there can be no Restricted Report.

(3) The state SARC shall report the sexual assault using non-PII to The Adjutant General (TAG) or designee within one hour of receipt.

(4) If a victim elects this reporting option, a victim may change from a Restricted Report to an Unrestricted Report.

9. Assistance:

a. Unrestricted:

(1) The state SARC will assign a VA, who will facilitate medical care and provide referrals and non-clinical support to the victim. The VA will assist the victim in understanding and completing the DD Form 2910 dated May 2013. The VA will provide follow-up care to the victim until the victim reports no longer needing VA services.

(2) Victims of sexual assault shall have access to medical treatment and counseling for injuries and illness incurred from a sexual assault inflicted upon a Service member when performing in a duty status. These medical entitlements remain dependent on a Line of Duty (LOD) determination and will be processed by the state SARC upon the victim's election on the DD Form 2910 dated May 2013.

(3) If requested by the victim, the command should allow for separate training on different weekends or times from the alleged offender or with a different unit in the home drilling location to ensure undue burden is not placed on the victim and his or her family. Potential transfer of the alleged offender instead of the victim should also be considered. A No Contact Order shall be issued by the commander if/when necessary and shall remain in effect until such time as the commander terminates the order or issues a replacement order.

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b. Restricted:

(1) The state SARC will assign a VA, who will facilitate medical care and provide referrals and non-clinical support to the victim. The VA will assist the victim in understanding and completing the DD Form 2910, May 2013. The VA will provide follow-up care to the victim until the victim reports no longer needing VA services. Restricted reporting does not allow for command intervention and an official investigation will not be initiated.

(2) Victims of sexual assault shall have access to medical treatment and counseling for injuries and illness incurred from a sexual assault inflicted upon a Service member when performing in a duty status. These medical entitlements remain dependent on a LOD determination and will be processed by the state SARC upon the victim's election on the DD Form 2910, May 2013.

10. Response:

a. Unrestricted

(1) A victim's decision to decline to participate in an investigation or prosecution should be honored by all personnel charged with the investigation and prosecution of sexual assault cases, including, but not limited to, commanders, DoD law enforcement officials, and personnel in the victim's chain of command. A victim's decision to decline to participate in an investigation does not relieve a commander of his/her responsibility to take appropriate action on collateral misconduct by the alleged offender.

(2) Investigations will be referred to local law enforcement by the commander notified of a sexual assault. The state SARC will obtain a copy of the police report and monitor civilian investigations until a determination by the prosecuting attorney is made. If an allegation is not prosecuted by civilian authorities, the Sexual Assault Prevention and Response Committee (SAPRC) will make a recommendation to the TAG to either request or not request an investigation through the Office of Complex Investigations (OCI) at National Guard Bureau (NGB).

(3) The JAG office will request an investigation through OCI at NGB upon the TAG's request.

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(4) JAG will review the complete investigative file sent from NGB-JA/OI and report findings and recommendations to the TAG or designee.

(5) Authority to dispose of disciplinary actions related to sexual assault is specifically withheld by the TAG to the first GO in the victim's chain of command. GOs disposing of disciplinary cases involving sexual assault will insure that the state SARC is informed of final disciplinary actions for data entry purposes.

(6) Commanders shall provide victims of a sexual assault who filed an Unrestricted Report monthly updates regarding the current status of any ongoing investigative, medical, legal, or command proceedings regarding the sexual assault until the final disposition.

b. Restricted

(1) If a victim approaches a SARC and/or SAPR VA and begins to make a report, but then changes his/her mind and leaves without signing the DD Form 2910, May 2013, the SARC or VA is not under any obligation or duty to inform investigators or commanders about the report and will not produce the report or disclose the communications surrounding the report. The SARC is not required to open an unrestricted report.

(2) The timing of filing a Restricted Report is crucial. The victim MUST take advantage of the Restricted Reporting option BEFORE the SARC is informed of any investigation. The SARC then shall inform the victim of an ongoing independent investigation of the sexual assault. If an independent investigation begins AFTER the victim has formally elected Restricted Reporting, the independent investigation has NO impact on the victim's Restricted Report and the victim's communications and SAFE kit remain confidential, to the extent authorized by law.

11. Upon notification by the State SARC that Air Force Office of Special Investigators (AFOSI), U.S. Army Criminal Investigation Command (CID), local law enforcement, and OCI have declined to proceed with action, the appropriate Army or Air National Guard Commander may conduct an investigation to the extent allowable according to policy and regulation. The first GO in the chain of command may appoint an Investigating Officer (IO) to investigate the allegation of sexual assault. The IO will be advised to meet with JAG and the SARC prior to beginning their investigation in order to assist them in their process.

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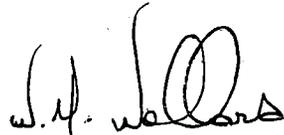
12. For additional information regarding this policy, individuals may contact the state SARC at (501) 454-2452. Victims can also receive confidential and immediate support 24 hours a day by calling the DoD SAFE Helpline at (877) 995-5247.

Encl:

SA Flowchart

Commander SA Checklist

Example SIR Report

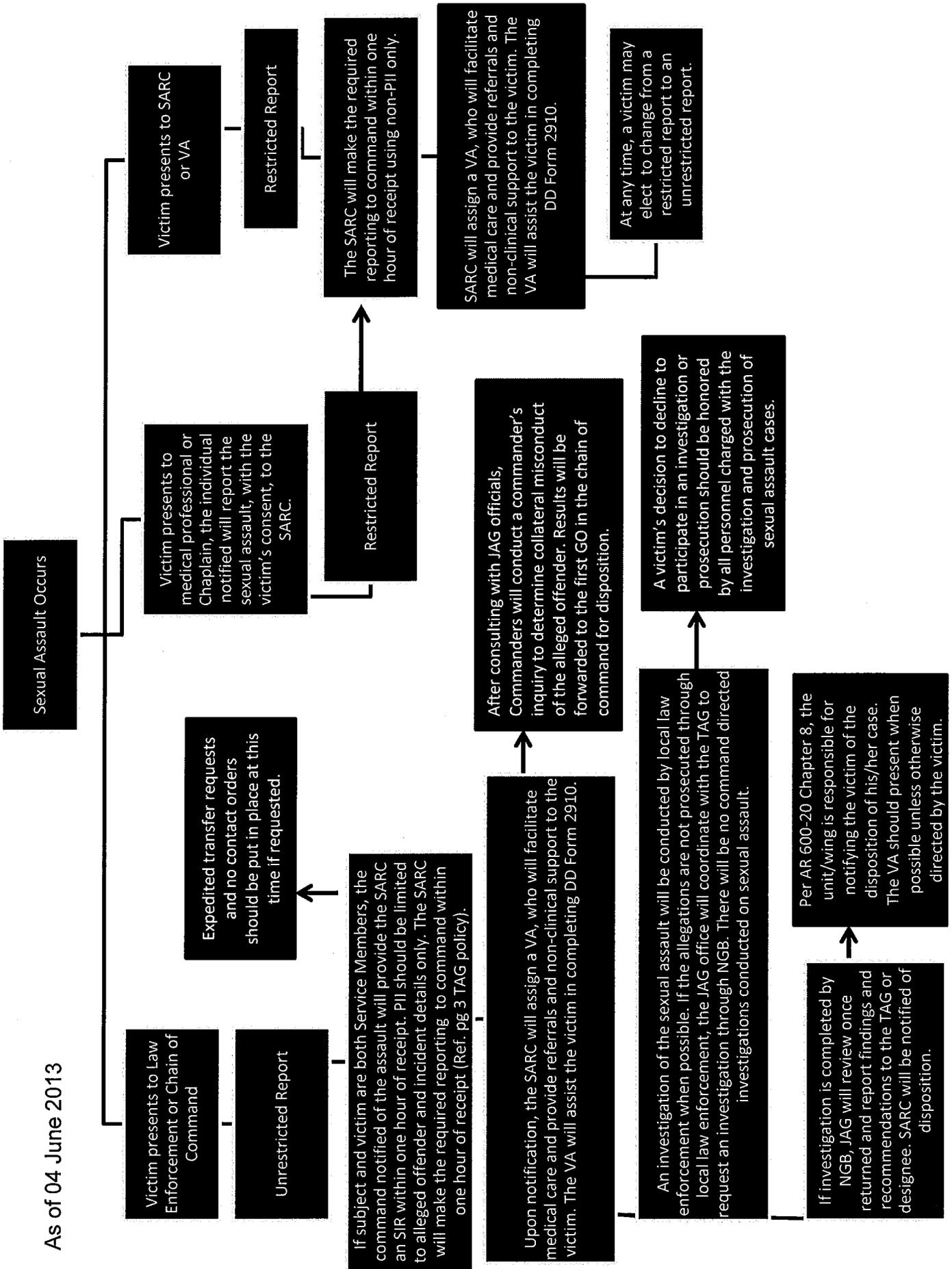


WILLIAM D. WOFFORD

Major General

The Adjutant General

As of 04 June 2013



**Arkansas National Guard
Sexual Assault Prevention and Response Program**

Commander/Leader Sexual Assault Checklist

(Note: These actions are to be taken by the commander/leader in the event of receiving an UNRESTRICTED report of sexual assault)

1. ___ Ensure the physical safety of the victim-determine if the alleged offender is still nearby and if the victim needs protection.
2. ___ Advise the victim of the need to preserve evidence (i.e., not bathing, showering, changing garments, eating or drinking).
3. ___ Educate the victim on the option to report the incident and get a medical examination immediately (even if the incident occurred prior to the past 72 hours).
4. ___ Ensure the state SARC is notified immediately via SIR using non-PII only. The SIR format to be used can be found as an attachment to TAG Policy 2013-26. The report should not be shared with any other sources and sent directly to Jessica.b.hamilton.civ@mail.mil; do not CC other persons. The state SARC will immediately assign a Victim Advocate (VA).
5. ___ Ensure the Victim Advocate (VA) assigned by the state SARC facilitates medical care (Sexual Assault Forensic Examination, SAFE), provides referrals and non-clinical support, and completes the DD 2910, May 2013 with the victim upon arrival. Ask if the victim needs other support personnel (for example, a personal friend, chaplain, or family member) to immediately join the victim. Notify chaplain accordingly.
6. ___ Notify appropriate authorities (for example, CID, Installation Public Safety, local law enforcement etc.) of the alleged sexual assault as soon as the victim's immediate safety is assured, and medical treatment procedures elected by the victim are initiated.

___ Limit the details regarding the incident to only those personnel who have a legitimate need to know.

___ Take action to safeguard the victim from any formal or informal investigative interviews or inquiries, except by those personnel who may have a "need to know", including but not limited to, CID investigators, police officers (military/civilian) etc.)

___ Collect only the necessary information (for example, victim's identity, location and time of the incident, name and/or description of alleged offender (s)). Do not ask detailed questions and/or pressure the victim for responses.
7. ___ Ensure civilian/military Authorities notify victims and witnesses of their rights through a completed Victims and Witnesses of Crime form, DD Form 2701, or civilian equivalent.

8. ___ Ensure the victim is made aware, and encouraged to exercise, their options during each phase of the medical, investigative, and legal processes. The victim's assigned VA can assist with this process.
9. ___ Make appropriate administrative and logistical coordination for movement of victim or alleged offender or allow the victim separate training on different weekends or times from the alleged offender. Issue a No Contact Order if/when necessary.
10. ___ Flag (Suspension of Favorable Personnel Actions) any Service member under investigation of sexual assault and suspend the Service member's security clearance IAW AR 600-20 Chapter 8 and AR 600-8-2. (ARNG only)
11. ___ Commanders will verify Expiration of Term of Service (ETS) for both the victim and alleged offender. Notify the state SARC. Commanders have the discretion to involuntarily extend alleged offenders until case disposition.
12. ___ Provide the victim monthly updates regarding the current status of any ongoing investigative, medical, legal, or command proceedings regarding the sexual assault until the final disposition.
13. ___ Consider deferring discipline for victim misconduct until the final disposition of the case. Notify the assigned VA or state SARC prior to taking any administrative or disciplinary action affecting the victim.
14. ___ Continually monitor the victim's well-being, particularly if there are any indications of suicidal ideation, and ensure appropriate intervention occurs as needed.
15. ___ Consult with the servicing legal office, criminal investigative organization, and the state SARC prior to taking any administrative action affecting the victim. Commanders will refer to AR 600-20 Chapter 8 prior to discharging any person who has filed a sexual assault report while serving in the Military to ensure proper documentation is completed. (ARNG only)

Office Symbol

Date

MEMORANDUM FOR RECORD

SUBJECT: Serious Incident Number 13-01 (FY plus unit sequence tracking number)

1. Category: (Category 2, 2 or 3)
2. Type of Report: Initial/Final (use this option only)
3. Type of Incident: Alleged Sexual Assault (use this option only)
4. Date/Time of incident:
 - a) Approximate Date of incident: yyyyymmdd
 - b) Time of incident: choose one below:
 - (1) Morning; 0000-0600
 - (2) Daytime; 0600-1800
 - (3) Night; 1800-2400
5. Location: Location of Incident
6. Other Information:
 - a) Victim Status: choose one below (add Mil branch, if app):
 - (1) Active
 - (2) Reserve
 - (3) Guard
 - (4) Dependent
 - (5) Civilian
 - b) Number of Victim(s):
 - c) Number of Alleged Assailants:
 - d) Nature/Type of Assault: (if known) choose from below:
 - (1) Rape
 - (2) Sodomy (anal or oral)
 - (3) Childhood Sexual Assault
 - (4) Unwanted Sexual Contact (aggravated, abusive, wrongful, or undetermined)
 - (5) Other
 - e) Alcohol Involved:

7. Personnel involved

a) Subject/Service Member: (Information in this section should only be provided if the information cannot lead to the identification of parties involved.)

- (1) Rank: (alleged offender(s) and victim(s))
- (2) SSN: Do not include
- (3) Race: (alleged offender(s) and victim(s))
- (4) Sex: (alleged offender(s) and victim(s))
- (5) Age: (alleged offender(s) and victim(s))
- (6) Position: Do not include
- (7) Security clearance: (alleged offender only) YES/NO
- (8) Unit & station: (alleged offender(s) and victim(s))
- (9) Duty status: (alleged offender(s) and victim(s))

8. Summary of Incident: Non-PII will be used in the description. Reference personnel involved as the victim and the alleged offender.

9. Remarks:

10. Publicity:

11. Unit reporting

12. Point of contact: