



**National Guard Bureau  
Office of Complex Investigations  
Report of Assessment of the  
Wisconsin National Guard**

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19 November 2019

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## Executive Summary

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On March 14, 2019, the Honorable Tony Evers, Governor of Wisconsin, together with U.S. Senator Tammy Baldwin, requested assistance from the National Guard Bureau's Office of Complex Investigations (NGB-JA/OCI) to provide a detailed assessment of the Wisconsin National Guard's sexual assault and harassment reporting procedures, investigation protocols and accountability measures.

Specifically, Governor Evers and Senator Baldwin requested that the assessment team:

- a. Review allegations made by service members of the Wisconsin National Guard through state and federal lawmakers and officials;
- b. Review allegations related to hostile work environment;
- c. Examine the Wisconsin National Guard's coordination with local law enforcement;
- d. Examine the Wisconsin National Guard's use of command-directed investigations for allegations of sexual assault;
- e. Conduct a statewide survey of the Wisconsin National Guard's culture and climate regarding sexual assault and sexual harassment, including on-site interviews with all major subordinate commands; and
- f. Assess the Wisconsin National Guard's adherence to and implementation of Department of Defense (DoD) and National Guard Bureau (NGB) policies and procedures under the Sexual Assault Prevention and Response (SAPR) program.

### Synopsis

The National Guard Bureau's Office of Complex Investigations conducted an assessment of the Wisconsin National Guard. The Assessment Team made findings and recommendations in the areas of Sexual Assault Prevention and Response program, Equal Opportunity/Sexual Harassment programs, command climate/culture, and accountability.

In accordance with Chief, National Guard Bureau Manual (CNGBM) 0400.01A, the Chief Counsel for the National Guard Bureau appointed an NGB-JA/OCI Assessment Team (hereinafter referred to as "the Team") to conduct the assessment, which occurred from April 12, 2019, until October 31, 2019. The Team was directed to provide assessment findings and recommendations that could be addressed by state civilian and military leadership in order to improve the overall health and readiness of the Wisconsin National Guard.

As requested, the Team conducted a thorough review of all reported allegations of sexual assault, sexual harassment and hostile work and reviewed the investigations conducted as a result of these reports. The Team met with law enforcement entities both military and civilian to understand their interaction and coordination. Most importantly the Team met with victims, complainants, service members, leaders, advocates, and champions for the programs they represent. This review enabled the Team to holistically evaluate these programs and the command's implementation of these programs leading to the findings and recommendations contained within this report.

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The Team determined there were a number of gaps and deficiencies in the Wisconsin National Guard's Sexual Assault Prevention and Response and Equal Opportunity Programs which made these programs less effective often leaving victims and others involved in the program with inadequate care and support. Aspects of these programs were not in compliance with DoD, Service, and NGB policy and as such were being implemented without the proper resourcing and oversight. The Team also found the Wisconsin National Guard's policy of conducting internal, command-directed investigations of sexual assault allegations to be in direct violation of Department of Defense, Department of the Army, Department of the Air Force, and Chief, National Guard Bureau directives, regulations, and policies.

The team's review of Wisconsin sexual assault investigative files revealed numerous deficiencies that compromised the quality, accuracy, and legality of the investigations. This impacted the quality of the investigations in three ways. First, not all Wisconsin National Guard sexual assault investigators possessed the requisite skills, experience, and training to handle special victims' crimes. Second, the lack of program oversight impacted the resourcing, timeliness, and thoroughness of the investigations. Third, the investigations did not include sufficient administrative oversight.

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## **Summarized Findings and Recommendations**

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The Team made 22 separate findings and 21 recommendations in the areas of (1) Sexual Assault Prevention and Response program implementation and management; (2) Sexual Assault Investigations; (3) Sexual Harassment and Equal Opportunity program implementation; (4) Accountability through administrative and disciplinary actions; and (5) Command Climate.

Overall the Team found that the Wisconsin National Guard's programs and systems for handling allegations of sexual assault, sexual harassment, and other workplace or service-related misconduct were non-compliant with federal law and regulation, and in various respects, deficient or failing. The Wisconsin National Guard's deliberate decision to conduct internal, command-directed investigations of sexual assault allegations were found to be in direct violation of Department of Defense; Chief, National Guard Bureau; and Service regulations and policies. More importantly, these internal investigations were deficient in a number of ways that adversely impacted commands' efforts to properly support victims of sexual assault and hold offenders accountable. The Team found the Wisconsin National Guard assumed unnecessary risk in its non-compliant and/or deficient implementation of programs and systems related to sexual assault, sexual harassment, and other workplace or service-related misconduct, and this manifested into deleterious effects on individuals who looked to the organization for adjudication, care, and support.

Despite the issues with program compliance, the overall climate within the Wisconsin National Guard is positive. Service members reported a high level of confidence and trust in their immediate leaders which has resulted in high retention across the force. Apart from a perception of favoritism and fraternization in the organization, the Team did not discern any specific adverse effects to the entire enterprise of the Wisconsin National Guard due to the deficiencies and failures in its programs and systems related to sexual assault, sexual harassment, and other workplace or service-related misconduct.

The Team has three overarching recommendations for the Wisconsin National Guard which must be implemented across the lines of effort identified: (1) Update or correct all written policies and

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procedures, protocols and practices to conform with federal law, regulation, and policy; (2) Request a National Guard Bureau staff assistance visit from relevant program offices to facilitate program, system, and relationship updates, corrections, and improvements; and (3) Reinforce program management tools, processes, and services through more deliberate communication and coordination with internal, external, and higher-echelon partners and resources.

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## **I. Background**

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- d. Examine the Wisconsin National Guard's use of command-directed investigations for allegations of sexual assault;
- e. Conduct a statewide survey of the Wisconsin National Guard's culture and climate regarding sexual assault and sexual harassment, including on-site interviews with all major subordinate commands; and
- f. Assess the Wisconsin National Guard's adherence to and implementation of Department of Defense and National Guard Bureau policies and procedures under the Sexual Assault Prevention and Response (SAPR) program.

In accordance with Chief, National Guard Bureau Manual (CNGBM) 0400.01A, the Chief Counsel for the National Guard Bureau (NGB) appointed an NGB-JA/OCI Assessment Team (hereinafter referred to as "the Team") to conduct the assessment, which occurred from April 12, 2019, until October 31, 2019. The Team was directed to provide assessment findings and recommendations that could be addressed by state civilian and military leadership in order to improve the overall health and readiness of the Wisconsin National Guard.

### **History of the Wisconsin National Guard**

The Wisconsin National Guard is led by The Adjutant General, Major General (Maj Gen) Donald P. Dunbar who was appointed to the position on September 1, 2007. The Adjutant General is in charge of the administration of Wisconsin Army and Air National Guard units not in a federal active duty status [i.e., during state active duty or when performing federally funded military duties under the provisions of Title 32 of the U.S. Code]. As such, The Adjutant General is required to comply with federal statutes, defense directives, Service and National Guard Bureau regulations in the administration of Title 32 forces assigned to the Wisconsin National Guard. It is important to note that National Guard units federalized under the provisions of Title 10 of the U.S. Code are moved from state command to the Department of Defense and placed under an Army or Air Force command.

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The responsibilities of The Adjutant General are established by both State and federal law. Federal law prescribes that each federally recognized state militia (the Army and Air National Guards) shall have an adjutant general who “shall perform the duties prescribed by the law of that jurisdiction” and “make such returns and reports” as the service secretaries may direct.<sup>1</sup> Wisconsin statutes prescribe the duties of both the Department of Military Affairs and the Adjutant General.<sup>2</sup> Notably, the administration of the National Guard, to include the provision of facilities and support, is a departmental responsibility and not an individual responsibility.<sup>3</sup> The individual responsibilities of The Adjutant General are described in both compulsory and permissive fashion in Wisconsin statute.

Other than for periods of state active duty and control of the state defense militia, The Adjutant General shall be the military chief of staff and advisor to the Governor, have control over all military property and records, audit all military accounts, prepare the training of national guard members, and provide for the lodging, transportation and feeding of national guard members.<sup>4</sup> Otherwise, The Adjutant General may, among other things, make policies and regulations for the governance of the National Guard, provide for the proper discharge of the duty of all officers of the National Guard, and bring actions for the recovery of military property wrongfully held by another.<sup>5</sup>

The Wisconsin Army National Guard is made up of approximately 7,700 Soldiers, including a headquarters staff in Madison and four major commands located throughout 67 Wisconsin communities: the 32nd “Red Arrow” Infantry Brigade Combat Team headquartered at Camp Douglas; 64th Troop Command, Madison; 157th Maneuver Enhancement Brigade, Milwaukee; and the 426th Regiment Regional Training Institute, Fort McCoy. The Wisconsin Air National Guard is made up of approximately 2,300 Airmen, including a headquarters staff in Madison and three major commands: the 115<sup>th</sup> Fighter Wing located at Truax Field, Madison; 128<sup>th</sup> Aerial Refueling Wing located at Mitchell Field, Milwaukee; and the 128<sup>th</sup> Air Control Squadron located at Volk Field, Camp Douglas.

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## II. Action Plan

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In accordance with CNGBM 0400.01A, the Team developed an Action Plan, initial Request for Documentation and projected calendar for the Assessment, as directed. The Team’s Action Plan included the conduct of: a state-wide command climate survey of the Wisconsin National Guard; collection and analysis of relevant documents; on-site interviews of complainants and subject matter experts (SME) of the Wisconsin National Guard; and site assessments visits and canvassing of Wisconsin National Guard service members.

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<sup>1</sup> 32 U.S.C. §314.

<sup>2</sup> Wisc. Stats. §321.03 and §321.04.

<sup>3</sup> Wisc. Stats. §321.03(a) and (b).

<sup>4</sup> Wisc. Stats. §321.04 (1)(a) through (r).

<sup>5</sup> Wisc. Stats. §321.04 (2)(a)- (f).



The Team initiated a state-wide climate survey using the Defense Equal Opportunity Management Institute (DEOMI) survey instrument.<sup>6</sup> At the request of the Team, The Adjutant General did not promote participation in the DEOMI survey. However, the Chief of Staff and subordinate commanders encouraged service member and civilian employee participation in the survey. At the outset of the survey, and periodically thereafter, the Team informed the Wisconsin National Guard members that the survey would be completely anonymous, and no attempt would be made to identify participants. The Team advised personnel that all individually identifiable comments submitted to the survey would be maintained at the NGB level. The intent of this notification was to encourage open and honest participation in the survey. The Wisconsin National Guard participated in the DEOMI survey with a 22.4% overall participation (1,629 of 7,258 potential respondents) in the Army National Guard and 28.9% overall participation (664 of 2,300 potential respondents) in the Air National Guard. The results of the standard survey, detailed in appendices A-J, reiterate issues that had been raised in previous surveys conducted by the units, and provide additional information regarding groups where additional leadership attention is warranted.

Concurrent with the commencement of the DEOMI survey, the Team requested 17 distinct sets of documents associated within the organization and program areas of concern expressed by state civilian leadership. This data included both descriptive and metric information about the size, structure and location of the Wisconsin National Guard, internal policies and regulations, internal and external inspections, military justice and administrative disciplinary actions, internal and external investigations of criminal and non-criminal matters, military and civilian equal opportunity and equal employment opportunity complaints, civilian and military exit interviews, and federal and state governmental inquiries.<sup>7</sup>

Over the course of 65 days the Team conducted on-site interviews at 10 major Wisconsin National Guard locations and facilities and focused on interviewing command teams and canvassing traditional members of the Wisconsin National Guard. The Team conducted interviews at the Joint Force Headquarters, 64<sup>th</sup> Troop Command Headquarters and 115<sup>th</sup> Fighter Wing in Madison, the 426 Regional Training Institute in Fort McCoy, the 32<sup>nd</sup> Infantry Brigade Combat Team Headquarters at Camp Douglas, the Combat Readiness Training Center and 128<sup>th</sup> Air Control Squadron at Volk Field, and the 157<sup>th</sup> Maneuver Enhancement Brigade and 128<sup>th</sup> Aerial Refueling Wing in Milwaukee, as well as armories in Portage, Baraboo and Green Bay.

The Team conducted individual interviews with Guard members, key stakeholders, and investigators. Once documents analysis was completed, the Team interviewed over 15 complainants of sexual assault, sexual harassment and retaliation as well as many relevant Wisconsin National Guard senior leaders. The Wisconsin National Guard senior leaders interviewed included the Land and Air Component Commanders, the Chief of Staff, the state Sexual Assault Response Coordinator (SARC), Provost Marshall, State Equal Employment Manager (SEEM), acting and former Staff Judge Advocates, and Army and Air Inspectors General. The Team also interviewed key members of the Wisconsin Department of Justice and local law enforcement officials.

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<sup>6</sup> DEOMI Survey is the DoD-approved climate survey tool.

<sup>7</sup> As with any organizational assessment, the Team faced difficulty with ensuring a level of “scientific precision” in the collection and analysis of the large amount of data required for this assessment. The Team received data from multiple entities and in numerous formats, using a variety of terms of reference and business practices for collection, maintenance and retrieval of such data. The data analysis was hindered by the fact that the data was incomplete and partially unreliable due to user interface error. The condition of the data presented the Team with a challenge of organizing information and the overarching findings into a format that is clear, concise, and responsive to the decision-maker’s questions and needs.

While the Team reviewed all available reported allegations of sexual assault, hostile work environment, sexual harassment, other Equal Opportunity (EO) matters, and other misconduct occurring during the past ten years, the Team did not investigate such reports. However, the Team interviewed individual complainants and discussed their reporting/complaint processing experiences.

Additionally, the Team conducted over a dozen requests for information, ranging from command climate surveys to case files of investigations or disciplinary actions held by the Wisconsin National Guard. Documents from these requests was analyzed and compared with program information provided by the relevant National Guard Bureau program office.

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### III. Methodology

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In order to meet the intent of the Wisconsin Governor's request, the Team's assessment plan centered on five lines of effort (LOE). These lines of effort were: (A) *Sexual Assault Prevention and Response program implementation and management*; (B) *Sexual Assault Investigations*; (C) *Sexual Harassment and Equal Opportunity program implementation*; (D) *Command Climate*; and (E) *Accountability through administrative and disciplinary actions*.

Lines of effort A, B, and C (*Sexual Assault Prevention and Response program implementation and management*; *Sexual Assault Investigations*; and *Sexual Harassment and Equal Opportunity program implementation*) contemplate the assessment of programs (or systems across programs). The Team organized these lines of effort to address the following four categories of analysis:

- Compliance
- Program Management
- Relationships; and
- Performance.<sup>8</sup>

Under the category of *Compliance*, the Team assessed how written Wisconsin National Guard policies complied with federal law, regulation, and policy by the Department of Defense, the Departments of the Army and Air Force, and the National Guard Bureau. Under *Program Management*, the Team assessed how the relevant Wisconsin National Guard program was managed. This category of analysis included manpower and resourcing, as well as training and credentialing of program officials. Under *Relationships*, the Team looked at the Wisconsin National Guard's relationship with other program stakeholders or supporting organizations and assessed the extent to which the Wisconsin National Guard coordinated or collaborated with appropriate stakeholders and reporting entities, to include law enforcement, the National Guard Bureau's relevant program offices, and other community organizations relevant to the program being assessed. Lastly, under *Performance*, the Team assessed the overall performance of the program using survey information from the Team's on-site interviews and focal group discussions, the DEOMI survey, and relevant staff assistance visits from National Guard Bureau program offices.

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<sup>8</sup> NGB Office of Complex Investigations (NGB-JA/OCI) Wisconsin National Guard State Assessment, Slide 2 [Presentation to the Governor] (Updated September 12, 2019).

Lines of effort D and E, *Command Climate and Accountability through administrative and disciplinary actions*, highlight activities, outputs, and culture surrounding organizational leadership, command, and control. Accordingly, the Team determined that the categories of analysis for each line of effort should be drawn from the activities, outputs, and cultural dynamics that are specific to the assessment area under consideration.

The Team also developed targeted questions specific to each line of effort and category of analysis. These questions were refined as the Team conducted its work, and portions of these questions were reviewed by the relevant program subject matter experts within the National Guard Bureau. The Team also incorporated portions of other assessment tools used by the relevant program office in the National Guard Bureau within its assessment plan.

Team members met with over 1,600 organizational leaders, staff, and the rank-and-file (current and former members of the WING).

The Team collected information from a wide variety of sources. In terms of survey data, the Team used the DEOMI survey instrument to evaluate the command climate as well as the health and compliance of relevant programs. The Team also conducted on-site assessments, in which Team members met with over 1,600 organizational leaders, staff, and the rank-and-file. These on-site assessments allowed the Team an opportunity to collect anecdotal information and observations of command climate issues and program performance. As part of these visits, the Team would conduct focal group or one-on-one surveys with the rank-and-file, i.e., “canvassing.” Canvassing consisted of face-to-face discussions with National Guard service members and civilian employees on their experience within their organization, command climate, and the overall performance of specific programs. These face-to-face discussions helped the Team identify individuals who may be able to provide more detailed information in a more comprehensive, one-on-one, follow-up interview, and it also allowed the Team to identify potential trends or systemic issues for further research and comparison with DEOMI survey results.

The Team conducted 78 interviews of individuals who requested to speak with the Team. Through the Wisconsin National Guard and the Governor’s Office, the Team advertised their availability to any interested party who wanted to sit down with the Team to provide comments or discuss issues or concerns regarding the Wisconsin National Guard.

The Team conducted over 78 interviews.

The Team also reviewed the letters and materials provided to it by the Governor’s Office or other state representatives. The Team sought to make itself available to meet with any person who submitted this information or wanted to submit additional information for the Team to consider. The Team used any information that it received from these offices or from individual complainants, witnesses, or victims, to develop leads for additional document requests and interviews, or to refine its assessment questions and analysis.

Because the Team interviewed persons who had experienced trauma, the Team took steps to manage or mitigate the risk of re-traumatization. No victims or complainants were contacted directly for purposes of interviewing with the Team; rather the Team either encountered a victim who was interested in speaking further with the Team during its on-site assessment visits or the Team was contacted by the victim or his/her representative through its organizational email/ phone-line. Individuals were welcome to bring their attorneys, advocates, or other persons they deemed necessary for their support during the interviews. Interviewees were informed of the purpose of the assessment

and how their interview would be recorded, used, and maintained. They were informed that their participation was voluntary, and they could cease the interview at any time and for any reason.

To this end, the Team identified a number of areas in the assessment where the information alluded to issues, not on the part of the Wisconsin National Guard's execution of a program, but rather on the part of other entities or enterprises outside the organization. The Team determined that, regardless of where the information led, the Team would report the evidence and the Team's findings in the spirit of improving the relevant program or enterprise.

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## **IV. Analysis**

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### **LINE OF EFFORT A:**

#### **Sexual Assault Prevention and Response**

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# 1. INTRODUCTION

In the Department of Defense, the prevention of sexual assault and management of victim care falls under the Sexual Assault Prevention and Response (SAPR) program. The Team assessed the Wisconsin National Guard's adherence to and implementation of DoD, Service, and National Guard Bureau policy in the execution of the SAPR program.<sup>9</sup> The scope of this assessment included, but was not limited to, a review of open and closed investigations of sexual assault and harassment as well as a review of allegations made through state and federal lawmakers and officials.<sup>10</sup> The Team also assessed the Wisconsin National Guard's coordination with law enforcement.<sup>11</sup> Finally, the Team reviewed, in the context of SAPR program compliance, the Wisconsin National Guard's past responses, current protocols, and recommendations for best practices that would help ensure the safety of the men and women in the Wisconsin National Guard.<sup>12</sup>

The Wisconsin National Guard implements its policy on Sexual Assault Prevention and Response through The Adjutant General (TAG) Policy Memorandum 35, which references DoD and National Guard Bureau policies, as well as Army Regulation 600-20 and Air Force Instruction 36-6001, which govern and set policy on the SAPR program.<sup>13</sup> The Wisconsin National Guard's implementation of its SAPR program, as it relates to Title 10 or 32 service members and Title 5 civilians, is pursuant to federal regulatory responsibilities.<sup>14</sup>

The Adjutant General, as the commander of the Wisconsin National Guard,<sup>15</sup> is vested with *“primary military command authority and responsibility for ensuring reports of sexual assaults arising within the state’s non-Federalized forces are handled by trained and certified SAPR personnel.”*<sup>16</sup> The Adjutant General will also ensure that *“policies and procedures regarding the prevention of, and response to, sexual assault within the State [National Guard is] consistent with DoD publications, CNGB Issuances, Service-Directorate issuances, and applicable State laws.”*<sup>17</sup>

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<sup>9</sup> Letter from Wisconsin Governor Tony Evers, to Chief, National Guard Bureau (March 14, 2019).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* The use of command directed investigations is addressed as a separate line of effort, below.

<sup>12</sup> *Id.*

<sup>13</sup> See TAG Policy Memorandum 35, “Wisconsin National Guard Sexual Assault Prevention and Response Program,” (May 1, 2013).

<sup>14</sup> See generally, Hazelton v. State Personnel Comm’n., 178 Wis. 2d 776, at 795 (1993) (discussing the federal regulation of the Wisconsin National Guard and in particular the general observation that the Wisconsin legislature has acquiesced to the supremacy of Congress in the area of regulation of members of the Wisconsin Army National Guard) (“The repeated references to federal law, federal regulation, department of defense, and national guard regulations lead to the conclusion that the Wisconsin legislature has acquiesced to the supremacy of Congress in the area of regulation of members of Wisconsin Army National Guard.”).

<sup>15</sup> See TAG Policy Memorandum 2, “Command Guidance for the Department of Military Affairs,” para. 2, (June 27, 2018). (“The Adjutant General serves as the commander of the Wisconsin National Guard.”).

<sup>16</sup> CHIEF, NATIONAL GUARD BUREAU INSTRUCTION (CNGBI) 1300.01, “Sexual Assault Prevention and Response Program,” A-7 (July 16, 2016).

<sup>17</sup> CHIEF, NATIONAL GUARD BUREAU INSTRUCTION (CNGBI) 1300.01, “Sexual Assault Prevention and Response Program,” A-7 (July 16, 2016).

It is through these and other federal laws, regulations, and policies that the Team assessed the Wisconsin National Guard's SAPR program as it relates to compliance, program management, relationships, and performance.

### **Background on Sexual Assault Prevention and Response Programs**

The purpose of the DoD SAPR Program is to realize a “*culture free of sexual assault, through an environment of prevention, education, and training, response capability, victim support, reporting procedures, and appropriate accountability that enhances the safety and well-being of all persons covered [in the program].*”<sup>18</sup> Since 2005, the DoD Sexual Assault Prevention and Response Office (SAPRO) has issued policies, guidance, and tools to facilitate effective implementation of the SAPR program. While Congress mandated a portion of this guidance through federal law, many DoD policies and procedures were promulgated to enhance victim support and care, as well as improve prevention, accountability, and reporting.

DoD policy holds “commanders, supervisors, and managers at all levels responsible for the effective implementation of the SAPR program and policy.”<sup>19</sup> Commanders are responsible for implementing sexual assault prevention strategies, as well as overseeing sexual assault response mechanisms, consistent with DoD and Service guidance.<sup>20</sup> In addition to DoD and Service guidance, commanders in the National Guard are also subject to National Guard Bureau SAPR regulations and guidance when they serve in a Title 32 U.S.C duty status.<sup>21</sup>

In each State National Guard, The Adjutant General is responsible for providing a sexual assault response capability that is available 24 hours, seven days a week. Generally, the Army National Guard and Air National Guard within each state will establish service-specific capabilities in order to comply with service-specific requirements and policies.

In accordance with DoD guidance, service members and eligible civilians who have suffered a sexual assault may file a report of a sexual assault to receive services and care within DoD's SAPR Program. Depending on the circumstances in which military officials receive a report, victims have the option to file either a restricted or an unrestricted report. The key difference between these options is that restricted reporting permits the sexual assault victim to maintain a degree of confidentiality while still receiving necessary or desired care and treatment.<sup>22</sup> Unrestricted reporting provides victim care

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<sup>18</sup> DEP'T OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, para. 4b (Incorporating Change 3, May 24, 2017).

<sup>19</sup> DEP'T OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 5, para. 1 (Incorporating Change 3, May 24, 2017).

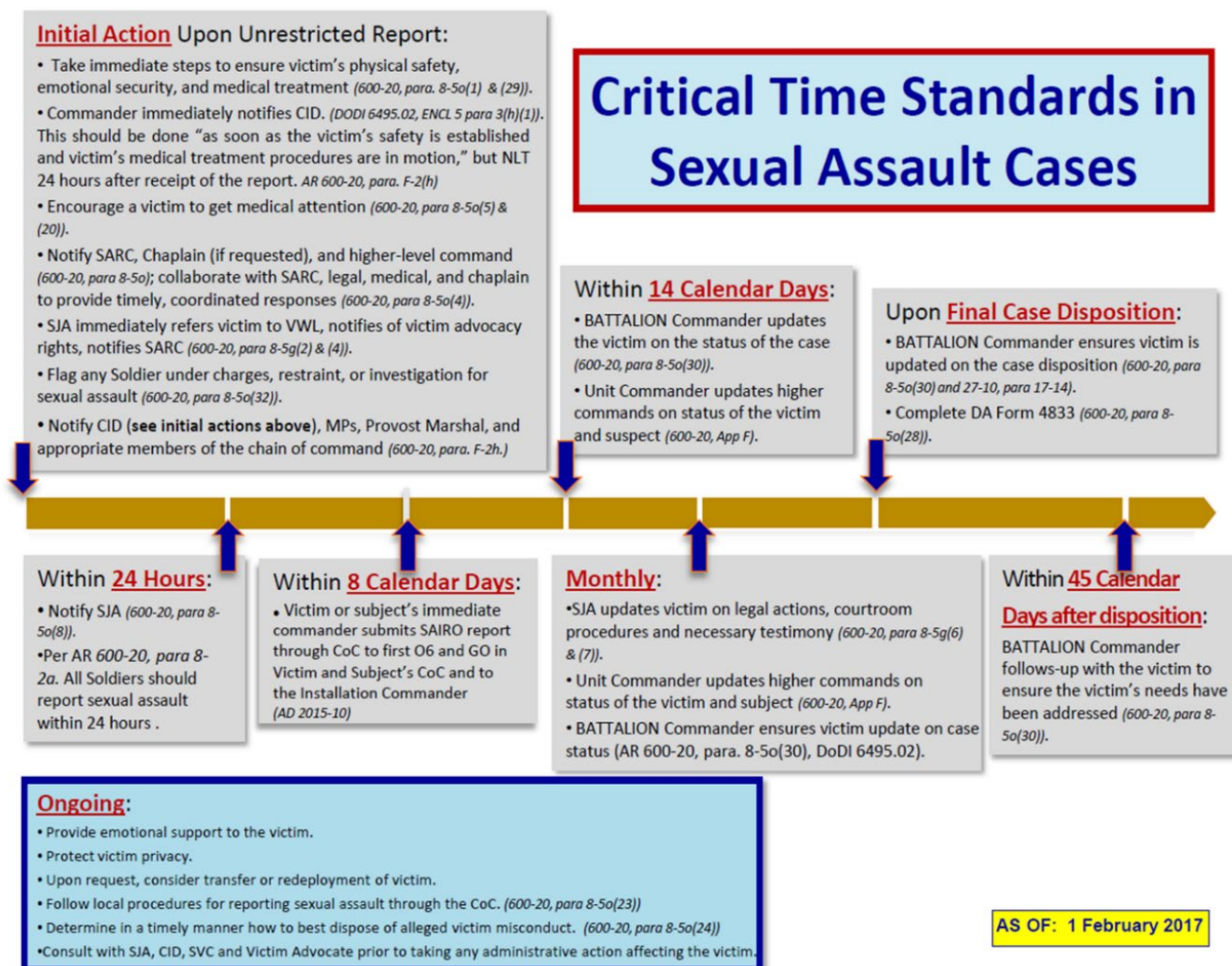
<sup>20</sup> DEP'T OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 5 (Incorporating Change 3, May 24, 2017).

<sup>21</sup> CHIEF, NATIONAL GUARD BUREAU INSTRUCTION 1300.01, SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM (July 16, 2016). (“This instruction establishes policy and assigns responsibilities for the National Guard (NG) Sexual Assault Prevention and Response (SAPR) Program for NG Title 32 (T32) members, and eligible civilians and dependents in accordance with (IAW) references a, b, and c.”).

<sup>22</sup> CHIEF, NATIONAL GUARD BUREAU INSTRUCTION 1300.01, SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM GL-2 (July 16, 2016).



and support but requires the notification of both the victim and reported perpetrator's commands and the initiation of an investigation to determine whether reported perpetrator should be held accountable.<sup>23</sup>



**Figure 1: Sexual Assault Unrestricted Reporting Timeline**

With an unrestricted report of a sexual assault, the victim and reported perpetrator's commander each serves a critical role in the response stages of the SAPR program. As Figure 1 highlights, the relevant commander for the victim and alleged offender are responsible for a number of actions and functions related to looking out for the safety, well-being, and privacy of victims (and offenders), as well as ensuring information is properly submitted for higher echelon oversight.

The victim's commander has many responsibilities in the SAPR response process. A significant number of these responsibilities are specifically focused on supporting and caring for the victim. These responsibilities range from the urgent tasks related to the victim's safety and protection from retaliation, to more enduring actions, such as ensuring the victim's access to services and support. The victim's commander must ensure the immediate referral of the allegations to a criminal investigation organization (either military or civilian, depending on the circumstances of the case), and the

<sup>23</sup> CHIEF, NATIONAL GUARD BUREAU INSTRUCTION 1300.01, SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM GL-3 (July 16, 2016).  
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commander must ensure, among other things, that the victim is provided periodic updates throughout all stages of the response and investigation stages.

All of these responsibilities are detailed in the DoD Commander's 30-Day Checklist for Unrestricted Reports of Sexual Assault. However, commanders, supervisors, and managers are encouraged to refer to the relevant provisions in DoD's SAPR Instruction, applicable military service-specific policies, and for the National Guard, NGB instructions and policies, for a full compilation of a commander or supervisor's responsibilities in SAPR response functions.<sup>24</sup>

Separate from commanders, the SARC also holds a crucial role in the SAPR program. Under the senior commander's supervision, the SARC is the primary program official responsible for coordinating sexual assault response efforts within an organization. The SARC is supported by Victim Advocates, who provide direct support to victims at the unit level in all stages of responding to a sexual assault, from assistance in filing a report to ensuring access to medical and social services to updates on their cases. Special Victims' Counsel also serve an important role for victims. Special Victims' Counsel are attorneys who are assigned to provide legal assistance and representation to victims of sexual assault.<sup>25</sup>

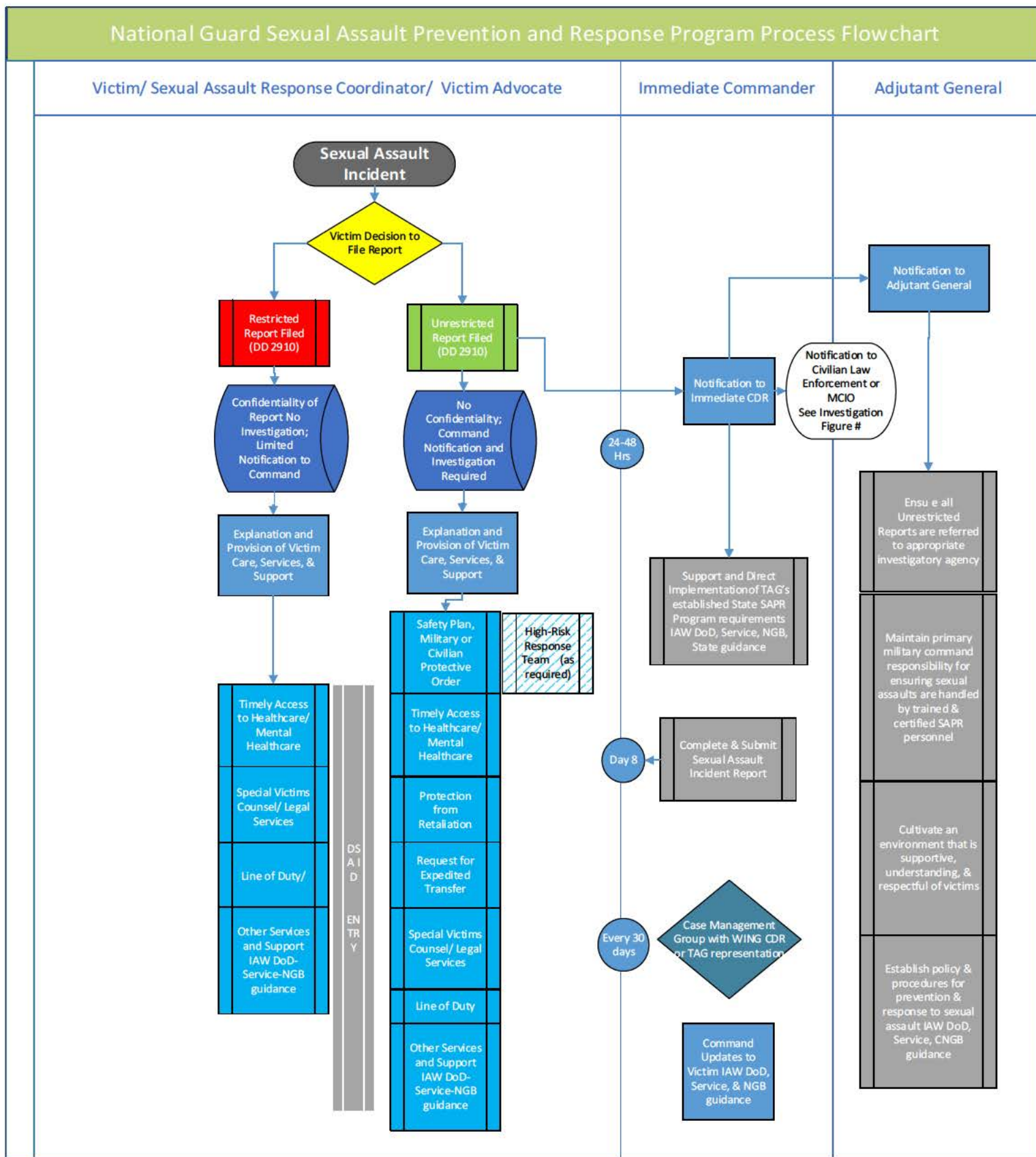
Apart from these officials, there are a number of other key stakeholders and entities that support the SAPR program. These officials and entities include: (1) Legal services, or the legal representative for the relevant organization, e.g., the Staff Judge Advocate; (2) Victim's healthcare provider, mental health, chaplain or other counseling support services; and (3) Law enforcement representatives, which can include military or civilian investigative organizations as well as the Provost Marshal. All of these officials or entities, to the extent they exist within an organization, are required members of a Case Management Group, which is a DoD-mandated group, whose purpose is to coordinate on the immediate, short-term, and long-term measures to support victim well-being and recovery from a sexual assault.<sup>26</sup> A Case Management Group (CMG) is defined as a multi-disciplinary group that meets monthly to review individual cases of unrestricted reports of sexual assault. Figure 2 depicts the SAPR program process as reflected in DoD policy.

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<sup>24</sup> DEP'T OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 5 (Incorporating Change 3, May 24, 2017).

<sup>25</sup> 10 U.S.C. 1044e (implemented in applicable service regulations); CHIEF, NATIONAL GUARD BUREAU INSTRUCTION 0401.01, NATIONAL GUARD SPECIAL VICTIMS' COUNSEL PROGRAM, para. 4 (January 6, 2015).

<sup>26</sup> See DEP'T OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 9, paras. 1-2 (Incorporating Change 3, May 24, 2017).



**Figure 2. National Guard Sexual Assault Response Process**

## 2. COMPLIANCE

**The Wisconsin National Guard's written policies on sexual assault are not consistent with current federal law, regulations, and policy.**

The Wisconsin Adjutant General implemented sexual assault prevention and response policy in TAG Policy Memorandum 35, published in May 2013.<sup>27</sup> Several changes to federal law and regulation occurred after 2013, which were not implemented by the Wisconsin National Guard, making the program effectively non-compliant since April 2014.<sup>28</sup> Many of the changes directed by DoD were developed to improve program oversight and victims' willingness to report. Additionally, many of the changes reflect specific guidance for the relevant commander to enable appropriate and consistent provision of care for all sexual assault victims.

The lack of an updated policy has contributed to deficiencies or omissions in the Wisconsin's National Guard's written policies on sexual assault. For example, the commander's checklist contained in TAG Policy Memorandum 35 does not mention the eight-day incident report (also known as the Sexual Assault Incident Response Oversight (SAIRO) Report),<sup>29</sup> a requirement mandated in Section 1743 of the National Defense Authorization Act for Fiscal Year 2014 (NDAA, FY14). This report must be provided to the installation commander if the incident is in the vicinity of a military installation, as well as the first general officer of the victim and/or reported offender's chain-of-command, if either is a member of the Armed Forces. These reports not only inform the chain-of-command but are critical to monitoring the health of a program and the extent to which the program is supporting victims and effectively managing individual cases.

Section 1743 of the NDAA, FY14 prescribes several required elements of the SAIRO report, such as: (A) The time/date/location of the alleged incident; (B) Type of offense alleged; (C) Service affiliation, assigned unit, and location of the victim; (D) Service affiliation, assigned unit, and location of the offender, including information regarding whether the alleged offender has been temporarily transferred or removed from the assigned billet or ordered to restrictions or confinement; (E) Post-incident actions taken in connection with the incident, including referral of the victim to a SARC; (F) Notification of the incident to appropriate military criminal investigative organizations; (G) Receipt and processing status of a request for expedited victim transfer; and (H) issuance of any military protective orders in connection with the incident.

Shortly after enactment of Section 1743, DoD updated its instruction on the SAPR program and issued Directive-Type Memorandum (DTM) 14-007, "Sexual Assault Incident Response Oversight

TAG Policy Memorandum 35 has not been updated since 2013 and does not include several statutory and regulatory responsibilities for commanders and program officials.

<sup>27</sup> See Memorandum For All Members of the Wisconsin Army and Air National Guard, "Wisconsin National Guard Sexual Assault Zero Tolerance Policy – TAG Policy Memorandum 35," (May 1, 2013).

<sup>28</sup> In April 2014, Chief, National Guard Bureau issued CNGB Notice 0400, which directed all commanders in the National Guard to refer all Unrestricted reports of sexual assault to the appropriate military criminal investigative organization, civilian law enforcement, or to the National Guard Bureau Office of Complex Investigations (NGB-JA/OCI).

<sup>29</sup> See TAG Policy Memorandum 35," 1 May 2013, Enc. 2, "Wisconsin National Guard Sexual Assault Prevention and Response Program."

(SAIRO) Report,”<sup>30</sup> which provided further guidance on how to detail the actions taken to provide the necessary care and support to adult victims of sexual assault. This guidance is reiterated in CNGBM 1301.01, which was issued in 2017.<sup>31</sup> Whereas the SARC and the relevant investigating organization are responsible for providing input to the preparation of the SAIRO Report, the ultimate responsibility for preparing and submitting the report is placed squarely upon the relevant commander.<sup>32</sup>

Because the TAG Policy Memorandum 35 has not been updated since 2013, it does not include the requirements of the SAIRO Report in its “Commander’s Response to Sexual Assault Checklist,”<sup>33</sup> leaving subordinate commanders uninformed on the specific steps to take to support adult victims of sexual assault, and ensure such steps are documented for program monitoring and evaluation. As a result, commanders are not filing reports or participating in Case Management Groups. When asked specifically about reporting requirements, the Wisconsin SARC stated he completes the report when he has time, noting, “I don’t know if commanders are aware that the expectation is, *they must* complete the SAIRO.”

The commander’s checklist (discussed later in this report) does not mention the commander’s role within the Case Management Group.<sup>34</sup> In fact, the Case Management Group, which is a DoD-required component of SAPR program management, is not mentioned in the TAG Policy Memorandum and its enclosures.<sup>35</sup> The checklist includes a general description of the commander’s responsibility to ensure the victim is aware of available resources for victim care.<sup>36</sup>

Whereas the TAG Policy Memorandum 35 states that service members “shall be protected from reprisal, or threat of reprisal, for filing a report[,]”<sup>37</sup> the policy does not address the myriad of other

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<sup>30</sup> Directive-type Memorandum (DTM) 14–007, “Sexual Assault Incident Response Oversight (SAIRO) Report”, September 30, 2014.

<sup>31</sup> CHIEF, NATIONAL GUARD BUREAU MANUAL (CNGBM) 1301.01, NATIONAL GUARD IMPLEMENTATION OF A SEXUAL ASSAULT INCIDENT RESPONSE OVERSIGHT REPORT, (August 8, 2017).

<sup>32</sup> See DTM 14–007, “Sexual Assault Incident Response Oversight (SAIRO) Report”, September 30, 2014, Attachment 3, Table, “SAIRO Reporting Responsibility,” detailing the responsibility for preparing and submitting the report to the victim or the subject’s immediate commander.

<sup>33</sup> See TAG Policy Memorandum 35, “National Guard Sexual Assault Zero Commander’s Response to Sexual Assault Checklist,” pg. 2 (May 1, 2013).

<sup>34</sup> See Dep’t of Defense Sexual Assault Prevention and Response, “Commander’s 30-Day Checklist: For Unrestricted Reports of Sexual Assault,” 5 (n.d.), [https://www.sapr.mil/public/docs/policy/toolkit/Commander\\_Checklist\\_for\\_Unrestricted\\_Reports\\_20150122.pdf](https://www.sapr.mil/public/docs/policy/toolkit/Commander_Checklist_for_Unrestricted_Reports_20150122.pdf). (The victim’s commander is required to “participate in the monthly CMG meeting. . . . The victim’s commander is a mandatory member of the CMG and he/she may not delegate the responsibility to attend the CMG.”).

<sup>35</sup> See DEPT OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 9 (Incorporating Change 3, May 24, 2017).

<sup>36</sup> See TAG Policy Memorandum 35, “Wisconsin National Guard Sexual Assault Prevention and Response Program,” Enc. 2, (May 1, 2013).

<sup>37</sup> See TAG Policy Memorandum 35, “Wisconsin National Guard Sexual Assault Prevention and Response Program,” Enc. 3, para. 3e, (May 1, 2013).



illegal, impermissible, or otherwise hostile actions that can occur to reporters of sexual assault.<sup>38</sup> Separate from reprisal, persons who report an allegation of sexual assault, must be protected from all forms of retaliation, include coercion, ostracism, or discrimination.<sup>39</sup>

Finally, although TAG Policy Memorandum 35 references many important regulations and policies, it does not reference instruments or tools that were created for the specific task of helping the commander (or other program officials) in their duties.<sup>40</sup> Due to the absence of these tools or references, the commanders or relevant stakeholder officials did not know where to look for accurate guidance.

### 3. PROGRAM MANAGEMENT

**The Team found examples of optimal victim services on the part of the SARCs; however, ineffective program management strategies and tools hampered optimal SAPR program performance.**

The Team found that victim's had significant confidence in the SARC. Nearly all victims who were interviewed by the Team stated they had trust and confidence in the SARCs that were supporting them. The State SARC appeared to take personal responsibility in handling over half of all the reports of sexual assault allegations filed in the state—partly out of a personal commitment to serving the victims, but also as a consequence of many victims reaching out to him directly as the most prominent SAPR program official for the Wisconsin National Guard. Victims in both the Army National Guard and Air National Guard expressed their appreciation for their respective SARC's efforts to the Team and they recounted instances in which his or her zealous advocacy on their behalf facilitated their ability to obtain information on the status of their case or access to services.

[REDACTED]

These sentiments also came out in a number of comments reflected in the DEOMI survey—a few of which are included below.

[REDACTED]

[REDACTED]

<sup>38</sup> Under DoD terminology, “reprisal” is one sub-set of prohibited actions under the umbrella term: “retaliation.” The definition of DoD retaliation prohibitions can be found in DOD RETALIATION PREVENTION AND RESPONSE STRATEGY: REGARDING SEXUAL ASSAULT AND HARASSMENT REPORTS (April 2016), [https://www.sapr.mil/sites/default/files/DoD\\_Retaliation\\_Strategy.pdf](https://www.sapr.mil/sites/default/files/DoD_Retaliation_Strategy.pdf).

<sup>39</sup> See Dep’t of Defense Sexual Assault Prevention and Response, “Commander’s 30-Day Checklist: For Unrestricted Reports of Sexual Assault,” 5 (n.d.), [https://www.sapr.mil/public/docs/policy/toolkit/Commander\\_Checklist\\_for\\_Unrestricted\\_Reports\\_20150122.pdf](https://www.sapr.mil/public/docs/policy/toolkit/Commander_Checklist_for_Unrestricted_Reports_20150122.pdf).

<sup>40</sup> For example, the policy does not include the Department of Defense’s “Commander’s 30-Day Checklist: For Unrestricted Reports of Sexual Assault,” which could have resolved many of the missing or incorrect elements or protocols mentioned here.

[REDACTED]

[REDACTED]

**Program performance was nevertheless hampered by a number of ineffective program management strategies and tools.**

Whereas Wisconsin National Guard program officials were relatively cognizant of the various management tools and processes available to facilitate optimal program management, some of these tools and processes were implemented improperly or only partially. These tools or processes include everything from record keeping functions to case management groups and effective lifecycle management of part-time victim advocates. Inadequate resourcing, training, and credentialing were other factors that hampered program performance, particularly in the Army National Guard and at the state level (otherwise identified as the Joint Force Headquarters). As a consequence of these factors and conditions, enterprise-wide program management was found to be deficient.

**The Wisconsin National Guard Sexual Assault Prevention and Response Program failed to properly report and track sexual assault allegations and case data.**

The Team made several requests for information on cases of sexual assault, harassment, and military justice, and each request produced different tables of data that were incomplete and, in many respects, inconsistent. In a response to the Team's request the Wisconsin National Guard provided a list of cases the state SARC was tracking of sexual assaults reported between May 2009 and May 2019 along with summaries of investigative cases. The Team noted that in some cases the dates of alleged offenses and actions taken were missing; additionally the number of cases reflected in each data call differed from information provided by the National Guard Bureau's SAPR Office (NGB-SAPRO).

NGB-SAPRO examined the Defense Sexual Assault Incident Database (DSAID), which is intended to be the sole system of record for monitoring sexual assault actions within DoD, and pulled all Wisconsin restricted and unrestricted reports of sexual assault that had been entered into the database. This produced a list of 79 restricted and unrestricted allegations of sexual assault. According to NGB-SAPRO data, in most instances Wisconsin failed to enter the required information into the DSAID within the mandated 48-hour period, and in 38 of 78 case files the SARC failed to enter required offense-related data. The Team also noted that in some cases the SARC entered case data into the DSAID database after the Team made its initial inquiry to the NGB SAPRO.

DSAID was observable by NGB-SAPRO and in one instance recalled by a SARC, the absence of data became significant enough that NGB-SAPRO asked the SARC if any victim services or referrals were being performed. The SARC stated that he did not enter the data because of the time required to accomplish this data entry, which would have undermined his ability to accomplish necessary victim advocacy and support services.

*..deficiencies in data collection and record-keeping undermine program management, and it contributes to 'blind spots' ... It also undermines accomplishment of the SAPR program's services in support of victims.*

This failure to enter the data has an adverse impact on not only the SARC's ability to identify and manage risk across his/her program, but also on the National Guard Bureau, Services, and DoD SAPR Offices. Missing or incomplete data hinders program oversight, and it introduces the risk that crucial management decisions on resourcing, strategies, and activities may be misdirected. In effect, deficiencies in data collection and record-keeping

undermine program management, and it contributes to 'blind spots' in identifying enterprise-wide, historic trends and characteristics of sexual assault crimes and risk factors. It also undermines accomplishment of the SAPR program's services in support of victims.<sup>41</sup> One program official admitted that, if asked, the Wisconsin National Guard SAPR program office would not be able to give an accurate and complete case history for all victims serviced or supported within the state.

**Case management for unrestricted reports of sexual assault was deficient, mismanaged, and, in certain circumstances, absent.**

DoD Instruction 6495.02 requires that a Case Management Group exercise oversight over unrestricted reports of adult sexual assault once they are filed in DSAID.<sup>42</sup> The group facilitates monthly victim updates and directs system coordination, accountability, and victim access to quality services. Per the DoD Instruction, “[a]t a minimum, each group shall consist of the following additional military or civilian professionals who are involved and working on a specific case: SARC, SAPR VA [Victim Advocate], military criminal investigator, DoD law enforcement, healthcare provider and mental health and counseling services, chaplain, command legal representative or [Staff Judge Advocate (SJA)], and victim's commander.”<sup>43</sup>

The state-level Case Management Group (and Wisconsin Army National Case Management Group), which operated at the Wisconsin Joint Forces Headquarters, was not managed properly.<sup>44</sup> Rather than acting as a forum for discussing a victim's access to services, needs, or updates, the state Case Management Group operated almost exclusively as a mechanism for tracking investigations. Specifically, the Case Management Group's focus was only on those cases in which investigatory or accountability processes had to be discussed. Based on interviews conducted with program participants, victim updates, access to services, and other victim support needs, whether actual or prospective, did not appear to be discussed, let alone prioritized as an agenda topic, during these meetings.

<sup>41</sup> See DEP'T OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 6, para. 1h(23) (Incorporating Change 3, May 24, 2017). (“1. SARC PROCEDURES. The SARC shall: . . . (23) Provide information to assist installation commanders to manage trends and characteristics of sexual assault crimes at the Military Service-level and mitigate the risk factors that may be present within the associated environment (e.g., the necessity for better lighting in the showers or latrines and in the surrounding area.”).

<sup>42</sup> DEP'T OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 9, para. 1a (Incorporating Change 3, May 24, 2017).

<sup>43</sup> DEP'T OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, pg. 117 [Glossary] (Incorporating Change 3, May 24, 2017).

<sup>44</sup> Throughout this Report, whenever the Team references the Joint Force Headquarters (JFHQ), it is also referring to the program and its officials at the state- or enterprise-level of the organization.

The state Case Management Group was also improperly organized from a leadership perspective. Per DoD policy, “*the installation commander or the deputy installation commander shall chair the Case Management Group on a monthly basis. . . . This responsibility will not be delegated.*”<sup>45</sup> According to the information provided to the Team, the state-level Case Management Group was chaired by the J-1 (Human Resources Officer), by delegation from The Adjutant General.<sup>46</sup> The state Case Management Group also did not produce minutes of its meeting,<sup>47</sup> nor did it produce any specific products that were then shared with leadership, including The Adjutant General. If any specific information needed to be communicated to The Adjutant General, then this information would be briefed in a separate meeting, in which members of the Case Management Group may attend and contribute, depending on the specific case.

Apart from the state-level Case Management Group, the Wisconsin Air National Guard did not appear to institute a formal Case Management Group for each of their respective wings until the fall of 2017. Prior to 2017, the Air National Guard Case Management Group consisted of a “quadrant chart” on cases and program management, which was shared with the wing commander. Wing-level Case Management Groups were established in the fall of 2017, pursuant to an audit recommendation by the Wisconsin National Guard U.S. Property and Fiscal Officer (USPFO). The USPFO audit of the 115<sup>th</sup> Fighter Wing found that the wings should each have their own formal Case Management Group. Based on information provided to the Team, these newly formalized Wing Case Management Groups appeared to be significantly more in-line with the requirements set forth in DoD policy. This circumstance was partially due to the fact that the Wing SARCs actively requested and received guidance on how to set up and manage a Case Management Group from the Air National Guard SAPR program manager at the National Guard Bureau. Based on information provided to the Team, the Wisconsin Air National Guard Case Management Groups were constituted in accordance with DoD policy, they kept minutes of their meetings, and they managed them pursuant to facilitating not only accountability of ongoing investigations, but also care to victims and program management issues. The Team noted however that there were no mechanisms or routines for sharing information on cases within the Air National Guard to the state SARC and the state Case Management Group. In effect, the Wisconsin National Guard’s SAPR Program was actually two separately-managed SAPR programs (an Army National Guard and an Air National Guard SAPR program). Both programs appeared to operate relatively independent from each other, with little to no collaboration, coordination, or communication as it pertained to cases within each specific service component.

Both programs appeared to operate relatively independent from each other, with little to no collaboration, coordination, or communication as it pertained to cases within each specific service component.

**The Wisconsin National Guard SAPR Program appeared to be rendering services and support, as requested, in accordance with law, regulation, and policy; however, some services appeared to be marginally utilized by victims.**

<sup>45</sup> DEP’T OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 9, para. 1b (Incorporating Change 3, May 24, 2017).

<sup>46</sup> The regular attendees of the State Case Management Group were the J1, SARC, the Chief of Staff for the Wisconsin Army National Guard, and the Staff Judge Advocate, and on occasion, the commander/O-6 in the chain of command. See Interview of Sexual Assault Response Coordinator (September 16, 2019).

<sup>47</sup> The minutes of the Case Management Group are supposed to be uploaded to GKO and DSAIDs which is not occurring.



The Team interviewed victims, all Wisconsin National Guard SARCs, and Special Victim's Counsel. Based on these interviews, the Team did not receive enough information to confidently determine whether all services were adequately explained to victims when they reported. Most victims who were interviewed by the Team could not recall how services were explained to them at the time they filed their reports.<sup>48</sup> Generally, the victims were satisfied with the support they received from the State SARC. However, to some victims, the support from the Victim Advocate was not always sufficient.

In one case, the victim filed a report of a sexual assault, only to learn over a year later that the DD Form 2910, Victim Reporting Preference Statement, was filled out improperly and she had to fill it out again with a different Victim Advocate. This victim told the Team that she received almost no information from the initial Victim Advocate as it pertains to services and other benefits. [REDACTED]

The Team also notes that certain services seemed to have been under-utilized. Specifically, victims rarely understood the benefit and availability of a Special Victims Counsel. At least three victims stated they did not have a Special Victims' Counsel appointed or present and were unaware of what role this attorney would play in their case. In Wisconsin there are two full-time Title 10 National Guard Judge Advocates who serve as Special Victims' Counsel as part of the Upper Midwest Region. As the SARC explained, victims are only advised of their right to, and availability of, their own attorney when filing the official Victim Reporting Preference Statement. But, once declined, the availability of a Special Victims' Counsel was not routinely raised again, unless the victim specifically requested it. The SARC admitted that offering services *only* at the outset of reporting is difficult as victims feel as though they are getting information by a "firehose," which can be hard to process given the stress they are under from the traumatic event and could benefit from re-engagement on these key services. However, as the state SARC explained he was concerned the fact that these attorneys were not a part of the Wisconsin National Guard would mean that they would not be able to successfully advocate for victims. Further, he believed he could provide better support to the victim based on his position within the State.

**The State SARC was improperly used as a coordinating/ briefing official for Wisconsin National Guard investigators conducting investigations into sexual assault allegations.**

As further discussed in LOE 2, Investigations, the State SARC was improperly utilized as a coordinating/ briefing official for the Wisconsin National Guard's internal sexual assault investigative capability. Before a sexual assault investigating officer was appointed, the SARC was required to coordinate with sexual assault investigators within the state in order to determine their availability. He was responsible for identifying which investigators were available for conducting investigations, and he was responsible for providing the investigator with his or her investigation 'kit' as well as any information on the allegations, including the name of the reported perpetrator and victim, police report, or other documentary evidence that the SARC received from law enforcement authorities.

Under DoD and National Guard Bureau policies, the SARC's primary role is to coordinate the response to sexual assault allegations, which is specific to advocacy services, care, and support on behalf of the victim. SARCs, Victim Advocates, and Special Victims Counsel bear responsibilities that

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<sup>48</sup> DD Form 2910, Restricted/Unrestricted Report.

are specific to representing the interests of the victims, which allow them to form, based on the specific circumstances, duty-bound relationships with their victims as clients.

Putting the SARC in this role as a coordinating official for sexual assault investigations not only burdened the SARC with requirements that were outside of his competency and capability to perform, but it also created a conflict of interest, placing the independence of the investigation at risk. The SARC was operating as the coordinating official for an investigation into allegations concerning two parties, one of whom he was required to serve as an advocate. Individuals who are (or were) the subject of these investigations could argue that these investigations were being unduly shaped or tilted against their interest as a consequence of the SARC's inherent role as an advocate for the victim. The State SARC concurred with the Team's observation in this regard stating: "*I definitely think the potential is definitely there for [ . . . ] a major conflict [of interest].*"

The SARCs involvement in the investigations and client advocacy as discussed above exemplifies the blurring of responsibilities of the state SARC who should facilitate for victim services but should not serve as the victim's investigative coordinator or counsel.

**Manpower, Resourcing & Credentialing were reported as deficient for the Wisconsin Army National Guard's Sexual Harassment/Assault Response and Prevention (SHARP) Program, which has contributed to program inefficiencies and diminished performance.<sup>49</sup>**

The Team found the manpower, resourcing, and credentialing of the Wisconsin Army National Guard SAPR Program was deficient. The Team noted persistent shortages in part-time Victim Advocates (discussed below), which compelled the SARCs to assume more victim advocacy responsibilities at the expense of program management requirements.

Under DoD policy, SARCs must "[e]xercise oversight responsibility for SAPR Victim Advocates authorized to respond to sexual assaults when they are providing victim advocacy services."<sup>50</sup> They are also required to "[p]erform victim advocacy duties, as needed."<sup>51</sup> However, as mentioned above, the State SARC and, to some extent the Victim Advocate Coordinator, seemed to assume a disproportionate amount of victim advocacy responsibilities, without appropriate systems and management tools in place to accommodate their prioritization of advocacy services over program management.

The National Guard Bureau Army National Guard (NGB ARNG) SHARP Program Office conducted an inquiry into the Wisconsin Army National Guard SAPR Program in December 2018. During this inquiry, the NGB SHARP Program Office found that only three of the 28 authorized Victim Advocates and one SARC were fully trained and credentialed.<sup>52</sup> In September 2019, the Team interviewed a number of Wisconsin National Guard program managers. During this interview, the program managers

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<sup>49</sup> The Army refers to its SAPR Program by its legacy moniker, SHARP. For the purposes of this report, the Team will use the DoD mandated terminology SAPR.

<sup>50</sup> DEP'T OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 6, para. 1h(7) (Incorporating Change 3, May 24, 2017).

<sup>51</sup> DEP'T OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 6, para. 1h(8) (Incorporating Change 3, May 24, 2017).

<sup>52</sup> See Memorandum, "SUBJECT: Trip Report for Wisconsin Army National Guard (WIARNG) ...3-4 December 2018," (December 13, 2018).

stated they had 27 fully-trained and credentialed Victim Advocates and five to eight additional Victim Advocates awaiting schools or screening.

To resolve this discrepancy the Team initiated further discussions between NGB ARNG SHARP Program Office and the Wisconsin Army National Guard SAPR program managers in November 2019 and confirmed the original data provided by NGB ARNG SHARP. The Wisconsin National Guard has only three of 28 fully trained and qualified battalion Victim Advocates and further none of the eight authorized brigade SARC/Victim Advocates are fully trained and qualified.<sup>53</sup>

Apart from the actual number of Victim Advocates supporting the Wisconsin SAPR Program, the Team also identified risk in the Wisconsin SAPR Program's lifecycle management of its Victim Advocates. The State SARC acknowledged that the Wisconsin SAPR Program did not have a good system for managing the transfer or departure of current Victim Advocates within the state. In certain circumstances, a Victim Advocate would get promoted and accept a position in another unit without informing the State SARC. This became problematic because the losing unit would no longer have the Victim Advocate. Additionally, this circumstance was not properly reported to the State SARC. Based on information provided to the Team, the program appeared to have had a sufficient number of Victim Advocates per unit several years ago. However, due to transfers, discharges, and other forms of attrition, the number of Victim Advocates dropped off precipitously to the low levels that made the program non-compliant in December 2018. Without a system in place to monitor and track Victim Advocates, there is a risk that an adequate number of Victim Advocates will never be attained.

**Manpower and Resourcing of the Wisconsin Air National Guard SAPR Program was strengthened with the establishment of full-time SARC positions in each wing in 2016; however, the Team found instances of residual program/ resourcing deficiencies.**

Prior to 2016, the Wisconsin Air National Guard did not have any full-time SARCs; rather the position of SARC was held as a collateral duty by the respective Executive Officer for each wing. In October 2017, a fully trained and certified SARC served a full-time role in the 115<sup>th</sup> Fighter Wing.<sup>54</sup>

In the case of the 128<sup>th</sup> Air Refueling Wing, the most prominent issue, which still persists, was the ability of the SARC to meet with victims in a confidential setting. When the SARC first assumed her duties in May 2016, she did not have an office space, which impacted her ability to support victims. Eventually, the SARC was moved into a shared office with the Financial Planning Advisor/Counselor. While this was an improvement, the SARC was still faced with challenges regarding victims' confidentiality. This issue has been identified as a deficiency by the local command, and the unit is working on creating a new office space for the SARC.

**The Wisconsin Army National Guard SHARP/State SAPR Program is unable to meet the operational demand for the SAPR program as it is currently resourced.**

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<sup>53</sup> Based on information provided by the NGB SAPRO, despite repeated briefings on the exact requirements for program manning, the Wisconsin Army National Guard SAPR Program Managers mistakenly believed that the only requirement for working with victims was receipt of D-SAACP certification. See Email NGB SAPRO to NGB-JA/OCI, RE: MEETING NOTES: Wisconsin ARNG SARC-VA Numbers, November 14, 2019.

<sup>54</sup> Although the hiring of the full-time SARC occurred in October 2016, due to training delays, the SARC was not certified until October 2017.

The Wisconsin National Guard SAPR Program has not undergone a manpower study to evaluate its current requirements. The Team was informed that the Wisconsin SAPR Program was in the deliberative stage of determining its actual manpower requirements, and a proposal for additional manpower was expected to go up for further Wisconsin National Guard senior leader review. This effort is long overdue. The Team found that insufficient resourcing impeded the Victim Advocates and SARCs from providing adequate victim support and uniform training. Manpower shortages within the Wisconsin National Guard SAPR Program appeared to be addressed predominantly with temporary details of enlisted Soldiers, who did not have the skills or training required to support the program. In addition, the State SARC stated that his program has had to assume additional demands for the program's services related to domestic violence and family assistance, which may not be accurately captured in the current resourcing for the Wisconsin National Guard SAPR Program.

Approximately three years ago, the Wisconsin National Guard's Family Advocacy program manager approached the State SARC to request an informal arrangement whereby service-member dependents who may have been involved in a sexual assault could be referred to a Wisconsin National Guard SAPR Victim Advocate to facilitate discussions about reporting options in a more confidential setting. The State SARC stated that the number of family advocacy referrals *"has gotten out of control"*, citing receipt of approximately 10-20 referrals last year alone. It cannot be understated: the time required to properly support victims of sexual assault and domestic violence is significant. These programs are huge undertakings that cannot be supported effectively without proper resourcing. The State SARC, as evident, has been unable to take any time off. He operates 24/7 to provide services to the Wisconsin Army National Guard. Notably, the SARC also acknowledged that *"[e]veryday I come to work is like crisis mode."*

"Everyday that I  
come to work is  
like crisis mode."

Interview of Sexual  
Assault Response  
Coordinator  
(September 16, 2019).

**The annual SAPR training completion rate appeared to be relatively in-line with the national average; however, interviews of leaders at all levels, as well as anecdotal evidence from victims and witnesses, revealed gaps in awareness of prevention and response processes, protocols, and strategies.**

As discussed in the Performance Section, the Team believes that one reason some victims may have felt a lack of care and support on the part of the organization may be traced to the fact that leaders are not being appropriately trained on their responsibilities in the SAPR program.

For 2018, Wisconsin Army National Guard appeared to reach an annual SAPR training completion rate that was comparable to the national average. The NGB ARNG SHARP Program Manager found that 91 percent of Soldiers were reported as having completed SHARP training in the Digital Training Management System (DTMS) for fiscal year 2018.<sup>55</sup> The national average is 93 percent.<sup>56</sup> The Team did not identify any deficiencies with the Wisconsin Air National Guard training.

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<sup>55</sup> Memorandum, "SUBJECT: Trip Report for Wisconsin Army National Guard (WIARNG) .... 3-4 December 2018," para. 5c, (December 13, 2018).

<sup>56</sup> Memorandum, "SUBJECT: Trip Report for Wisconsin Army National Guard (WIARNG).... 3-4 December 2018," para. 5c, (December 13, 2018).

Based on information provided to the Team, training for unit commanders, particularly the Army National Guard, was inadequate. Generally speaking, one-on-one training for unit commanders was only provided to the brigade level —no one-on-one training was provided to unit commanders at the echelons of battalion or company. A number of commanders at all echelons voiced to the Team their desire to receive training on their responsibilities as commanders. The State SARC admitted that in discussing the training of commanders, more could be done. He confirmed that the training had been reduced from 60 to 30 minutes without any correlation to the effectiveness of such training.

As it pertains to unit-level training, the State SARC also commented:

*I happen to know units that receive SHARP training in the form of “There is a slide deck printed on the table, sign the roster next to it [in order] to say that you’ve looked at it”. . . . [and] People just sign the roster without looking at it.*

#### **4. RELATIONSHIPS**

**The Wisconsin National Guard does not maintain any memoranda of understanding (MOUs) or memoranda of agreement (MOAs) with community-based resources to enhance prevention or response efforts.**

Based on the information provided to the Team, victims of sexual assault appeared to be routinely referred to civilian medical facilities in the course of filing an unrestricted report of sexual assault for purposes of facilitating a Sexual Assault Forensic Examination (SAFE) (if appropriate) as well as other medical care services when requested by the victim. Upon request by the victim, victims appeared to have been routinely accompanied by the SARC in these cases. The Team did not receive any evidence indicating a SARC had failed to support his or her victim with respect to requesting services from a local civilian entity or community-based resource.

While the State SARC stated that the organization did not seek to formalize relationships or communication channels with outside civilian entities simply because its not necessary to document what are already the recognized responsibilities of these entities. The SARC also believed that maintaining these agreements would be impractical given the number of different facilities across the state.

The DoD SAPR program regulation does not require formal relationships with local, community-based resources; however, it encourages commanders to leverage local civilian entities for purposes of enhancing or augmenting sexual assault prevention and response programs.<sup>57</sup> The DoD regulation also alludes to the value of using agreements to provide DoD reimbursable healthcare (to include psychological care) and forensic examinations for service members.<sup>58</sup>

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<sup>57</sup> DEP’T OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 5, para. 4 (Incorporating Change 3, May 24, 2017); *Id.*, at para. 9(j) (“Each commander shall implement SAPR prevention program that: . . . (j). Identifies and utilizes community-based resources and partnerships to add depth to prevention efforts.”).

<sup>58</sup> See DEP’T OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Enc. 2, para. ak (Incorporating Change 3, May 24, 2017).



**The Wisconsin Army National Guard and Air National Guard SAPR Programs do not coordinate and collaborate effectively for purposes of facilitating state-level program management.**

There is no single mechanism or body overseeing, monitoring, or reporting on the Sexual Assault Prevention and Response program across the entire state. Based on interviews with program officials, the Army National Guard and Air National Guard operate their own, independent SAPR programs. As a consequence of the different service organizations, the state SARC had only minimal oversight over the Wisconsin Air National Guard SAPR Program.

The state SARC related that he has raised concerns with the Air National Guard on the extent to which frequent Air National Guard SARC turnover could be impacting the accountability of official reports of sexual assault made in the Air National Guard. These reports contain highly sensitive information on a sexual assault victim, and he was concerned about the security of these forms and the effectiveness of the handoffs between incoming and outgoing Air National Guard SARCs. Additionally, based on interviews with program officials, there was no formal mechanism or routine for meeting to collaborate on potential enterprise-wide strategies to address or mitigate state-wide issues, trends, or risks.

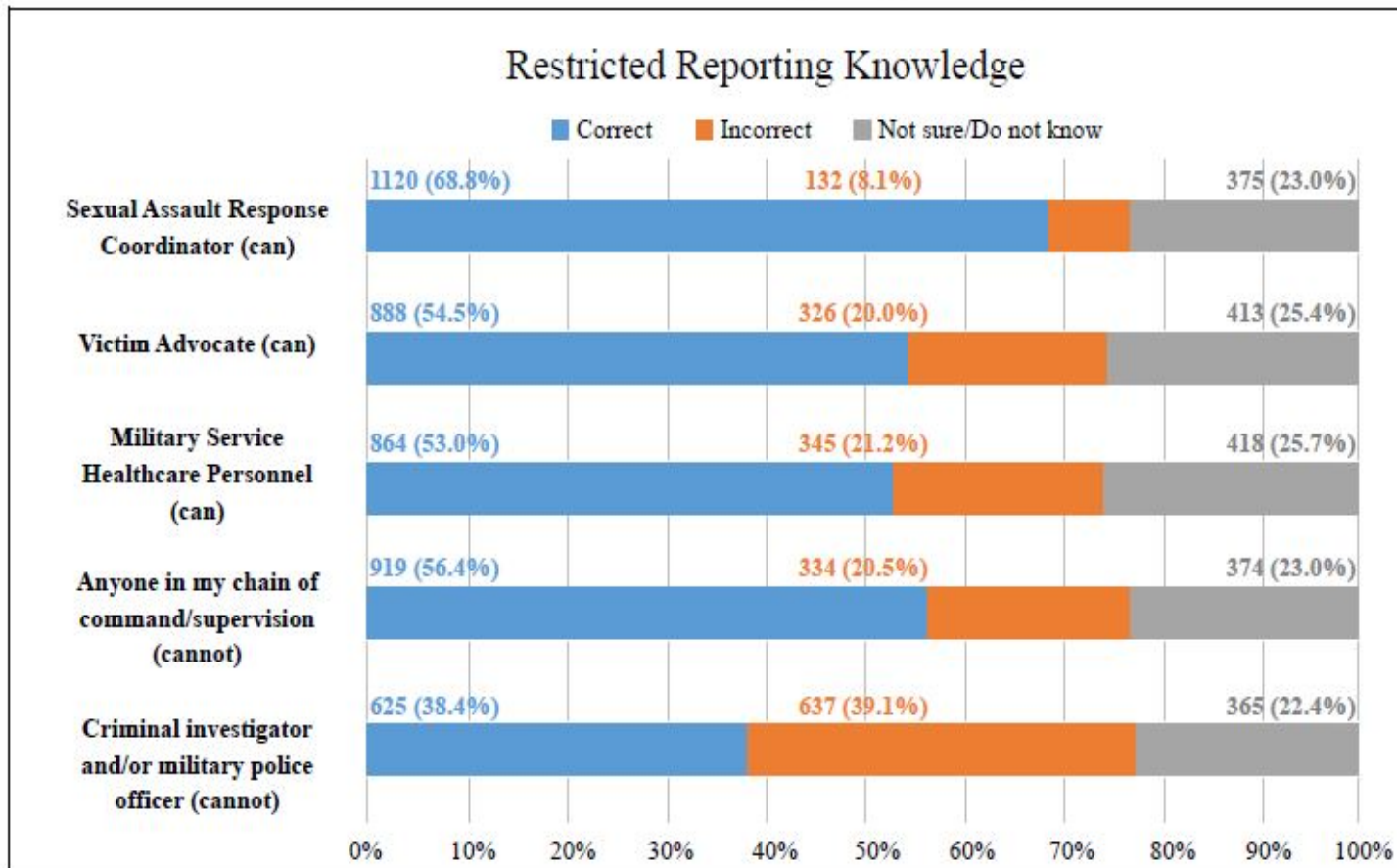
Because there is no single program manager overseeing, monitoring, or reporting on the Army National Guard and Air National Guard SAPR programs across the state, risks endemic to either program may not be appropriately understood as state-wide (or enterprise-wide) risks by senior leaders. More importantly, prevention and response strategies to these risks may be inappropriately stove-piped. In the absence of a state-level program, any opportunities for synergy between the organizations, as well as opportunities for sharing best practices and lessons learned, is lost.

## **5. PERFORMANCE**

### **A. Performance at the Prevention Stage**

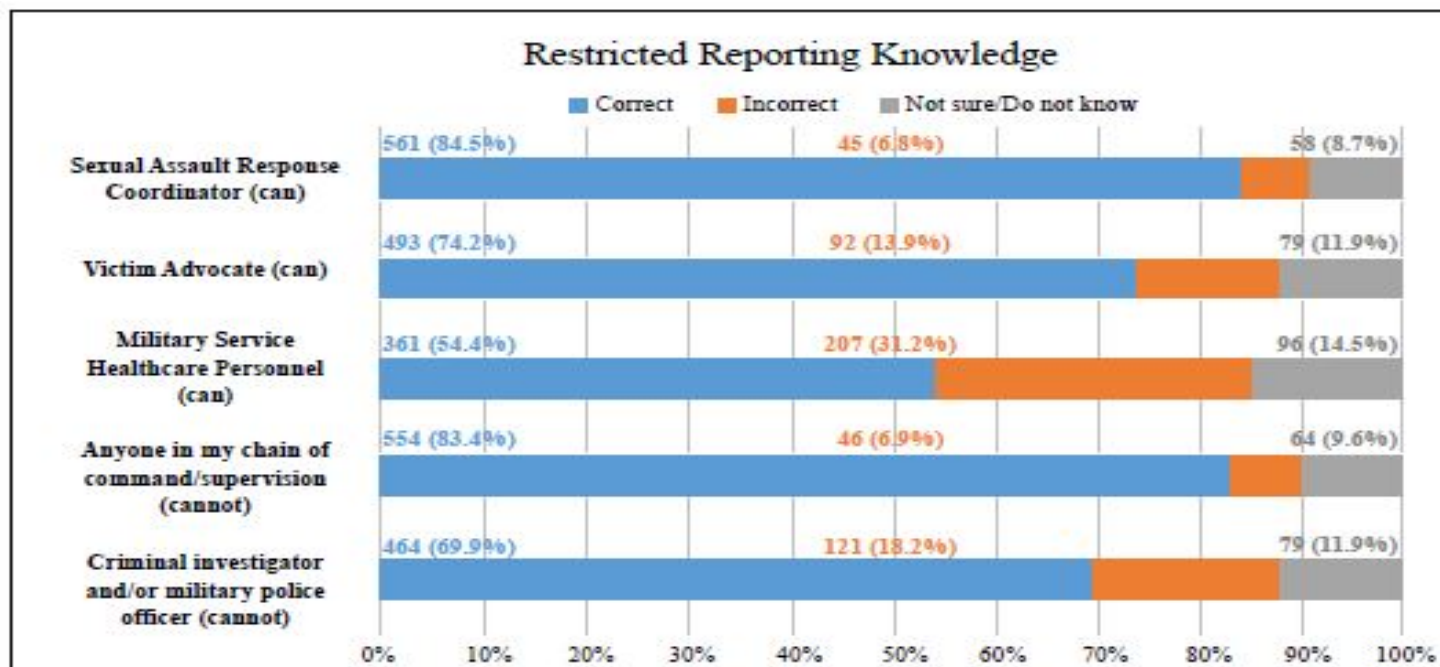
**Sexual assault reporting knowledge was deficient in certain Army National Guard units.**

Based on a review of the DEOMI survey results and canvassing the Team found reporting knowledge in the Army National Guard deficient. Within the Army National Guard, 69 percent of respondents to the DEOMI survey correctly identified the SARC as an individual who could receive a restricted report. Only approximately 55 percent understood that a victim advocate could receive a restricted report, and only 38 percent of respondents correctly identified that a military or criminal investigative organization was not able to receive a restricted report. This was consistent with data collected during canvassing efforts.



**Figure 3. Army National Guard Reporting Knowledge**

The Air National Guard, on the other hand, generally shows a higher percentage of favorable responses, with 70-89 percent of respondents exhibiting accurate reporting knowledge.



**Figure 4. Air National Guard Reporting Knowledge**

**Wisconsin National Guard service members generally found their sexual assault prevention and response climate to be adequate.**

Based on DEOMI survey results, the Wisconsin National Guard has achieved attributes of an adequate Sexual Assault Prevention and Response Climate. For example, 89 percent of those service members who took the DEOMI survey responded that they found their immediate supervisor models respectful behavior.<sup>59</sup> Eighty-two percent of these same service members responded that they found their immediate supervisor would stop individuals who are talking about sexual topics at work.<sup>60</sup> Also, 91 percent of Army National Guard service members who took the DEOMI survey stated they believed their chain of command/ supervision would take a report of sexual assault seriously.<sup>61</sup> Overall 84 percent of Army National Guard service members provided favorable responses to questions on their unit's sexual assault prevention climate, and 88 percent of those surveyed provided a favorable response to questions on their unit's sexual assault response climate.<sup>62</sup>

Across the Wisconsin Air National Guard, the prevention and response climate received an adequate percentage of favorable responses along the same lines as the Army National Guard. Within the 115 Fighter Wing of the Wisconsin Air National Guard, 88 percent of those service members who took the DEOMI survey responded that they found their immediate supervisor models respectful behavior.<sup>63</sup> Eighty-nine percent of these same service members responded that they found their immediate supervisor would stop individuals who are talking about sexual topics at work.<sup>64</sup> Also, 94 percent of Air National Guard service members who took the DEOMI survey stated they believed their chain of command/ supervision would take a report of sexual assault seriously.<sup>65</sup> Eighty percent of Air National Guard service members stationed or assigned to Volke Field provided favorable responses to questions on their unit's sexual assault prevention climate.<sup>66</sup> Finally, 85 percent of Air National Guard service members of the 128th Aerial Refueling Wing provided favorable responses to questions on their unit's sexual assault prevention climate, and 92 percent of those surveyed provided a favorable response to questions on their unit's sexual assault response climate.<sup>67</sup>

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<sup>59</sup> Defense Organizational Climate Survey (DEOCS) Report, WI ARNG, Admin. No. 1905177, pg. 17, Table 2.13 (September 13, 2019).

<sup>60</sup> Defense Organizational Climate Survey (DEOCS) Report, WI ARNG, Admin. No. 1905177, pg. 17, Table 2.13 (September 13, 2019).

<sup>61</sup> Defense Organizational Climate Survey (DEOCS) Report, WI ARNG, Admin. No. 1905177, pg. 18, Table 2.14 (September 13, 2019).

<sup>62</sup> Defense Organizational Climate Survey (DEOCS) Report, WI ARNG, Admin. No. 1905177, pg. 10, Figure 4 (September 13, 2019).

<sup>63</sup> Defense Organizational Climate Survey (DEOCS) Report, 115<sup>th</sup> Fighter Wing, Admin. No. 1905178, pg. 17, Table 2.13 (September 13, 2019).

<sup>64</sup> Defense Organizational Climate Survey (DEOCS) Report, 115<sup>th</sup> Fighter Wing, Admin. No. 1905178, pg. 17, Table 2.13 (September 13, 2019).

<sup>65</sup> Defense Organizational Climate Survey (DEOCS) Report, 115<sup>th</sup> Fighter Wing, Admin. No. 1905178, pg. 18, Table 2.14 (September 13, 2019).

<sup>66</sup> Defense Organizational Climate Survey (DEOCS) Report, 115<sup>th</sup> Fighter Wing, Admin. No. 1905178-3, pg. 8 (September 13, 2019).

<sup>67</sup> Defense Organizational Climate Survey (DEOCS) Report, 115<sup>th</sup> Fighter Wing, Admin. No. 1905178-4, pg. 8 (September 13, 2019).



## B. Performance at the Response Stage

**The Team found instances in which the local command did not attend to, let alone prioritize, victims' needs and interests.**

Anecdotal accounts from interviews and surveys describe how the organizational environment failed to provide adequate care and support to victims. One individual wrote in the DEOMI survey the following (with certain details redacted for privacy purposes):

[REDACTED]

In some cases, the victims do not avail themselves of certain services for fear of being publicly identified as a victim of sexual assault. For example, in the military, members that are injured while on duty require a line of duty evaluation record to document their injury. This is usually initiated by the command. Failure to file a line of duty can result in a delay or denial of medical services. In one instance, the Team met a victim who did not trust that the leadership would safeguard the request for a line of duty determination. Consequently, she opted not to file one. This may have prevented that victim from receiving future medical treatment and counseling to which she was entitled.

[REDACTED]

[REDACTED]

Another victim recalled the struggle she had in navigating the bureaucracy to receive updates and support in her case. In discussing how the organization treated her, she stated:

[REDACTED]

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The Team found instances in which concern for victims' safety was not part of the local command Team's response to an unrestricted report of sexual assault. In one case, a victim of a penetrative sexual assault recalled having to interact with her perpetrator on numerous occasions after she filed her unrestricted report of a sexual assault. On multiple occasions, one or both individuals were carrying loaded weapons while the investigation was still ongoing.

[REDACTED]

The victim had complained to her supervisory chain of command, and she recalled hearing words to the effect of, "[REDACTED]."68 In this same case, the victim lamented the degree to which the command had taken an interest in the perpetrator's welfare, which did not seem to be the same for her. "[REDACTED]"

In another case, the victim was treated as the subject of an investigation into sexual misconduct and was the subject of inquiry, despite evidence suggesting she may have instead been the victim of a sexual assault. The victim went through nearly three and a half years of various investigations and proceedings regarding her allegations and was flagged due to her involvement in the matter. Frustrated with the lack of support she received she ultimately decided to leave the military as soon as her term of service expired. Her case unresolved she left without traditional favorable military recognition.

The Team noted that the organization did not consistently take a victim's trauma into account when making decisions on his or her career. This observation was best illustrated in one anecdote offered by a SAPR program official.

[REDACTED]

In another case, a victim reported her command not only failed to support her continued care, but she was also admonished for it. "[REDACTED]" The lack of leader support has taken its toll on the organization, which was summarized by one victim who stated:

[REDACTED]

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<sup>68</sup> DoD's "Commander's 30-Day Checklist" specifically places a victim's immediate safety as a priority even before a matter is even referred to a criminal investigation. See Dep't of Defense Sexual Assault Prevention and Response, "Commander's 30-Day Checklist: For Unrestricted Reports of Sexual Assault," 2 (n.d.), [https://www.sapr.mil/public/docs/policy/toolkit/Commander\\_Checklist\\_for\\_Unrestricted\\_Reports\\_20150122.pdf](https://www.sapr.mil/public/docs/policy/toolkit/Commander_Checklist_for_Unrestricted_Reports_20150122.pdf).

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**LINE OF EFFORT B:**

**Investigations of Sexual Assault**

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## 1. INTRODUCTION

Concerns with ensuring thorough investigation of sexual assault allegations and the delivery of victim services led to a substantial revision of the DoD SAPR Program and policy in 2006, culminating with the 2014 guidance in effect today. The military services have incorporated this policy into their own service regulations, and likewise, the National Guard Bureau, in coordination with the Services, has issued guidance governing both the investigation of unrestricted reports of sexual assault and the provision of victim services while in a non-federalized military status. Under these DoD, military service, and National Guard Bureau policies, unit commanders have been prohibited since 2014 from conducting internal, administrative investigations into allegations of sexual assault.<sup>69</sup>

By DoD policy, once a unit commander receives an unrestricted report of sexual assault, he/she must “immediately refer the matter to the appropriate MCIO [military criminal investigative organization].” Further, under MCIO policies, investigators are required to conduct a thorough inquiry into the allegation unless the matter is otherwise outside the jurisdiction of the investigating agency. When the subject is a member of the National Guard in a state or other non-federalized duty status, MCIOs lack personal jurisdiction over the offender and may lack subject matter jurisdiction over the offense. In these circumstances, DoD policy directs the MCIO to coordinate with the appropriate civilian law enforcement agency (LEA) to ensure investigation of the case. Unfortunately, LEAs investigate these allegations of sexual assault pursuant to laws of the local jurisdiction, which often are not as comprehensive as military criminal laws that focus on maintaining good order and discipline in military units. The result for the Title 32 National Guard was often that unrestricted reports of sexual assault went uninvestigated or underinvestigated, leaving National Guard commanders with allegations of sexual assault and no investigation mechanism by which to gather facts and, when appropriate, to initiate administrative or military criminal actions to discipline offenders.

To address this gap in investigative capability, the Chief of National Guard Bureau established the Office of Complex Administrative Investigations (OCI) in 2012 to conduct administrative investigations into unrestricted reports of sexual assault. The Office of Complex Investigations investigates cases involving National Guard members who (1) are not subject to the Uniform Code of Military Justice; (2) were not investigated by a military criminal investigative organization due to the lack of jurisdiction; and where the the civilian law enforcement agency with jurisdiction either (3) declined to investigate; or (4) failed to sufficiently investigate the allegation. In compliance with DoD and service policies prohibiting commanders from conducting internal sexual assault investigations, the Office of Complex Investigations does not conduct criminal investigations.<sup>70</sup> Rather, these administrative investigations are intended to provide the Adjutants General with sufficient information to take administrative actions as appropriate to maintain good order and discipline within their National Guards units.<sup>71</sup>

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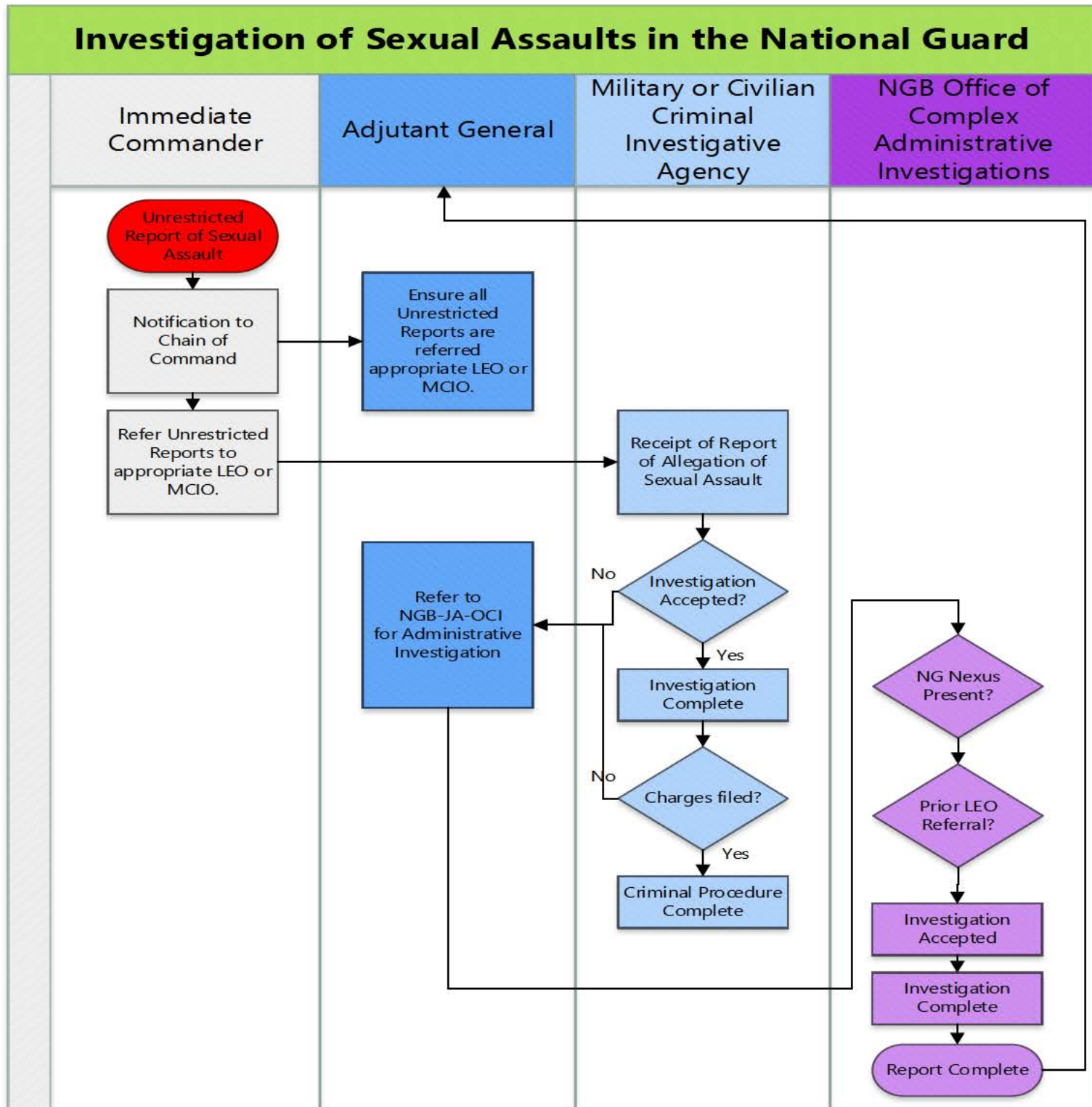
<sup>69</sup> DEP’T OF DEFENSE INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Encl. 2, pg. 21, para. 6k(1), (March 28, 2013 [Incorporating Change 3, May 24, 2017]): “A unit commander who receives an Unrestricted Report of an incident of sexual assault shall immediately refer the matter to the appropriate MCIO. A unit commander shall not conduct internal, command-directed investigations on sexual assault investigations (i.e., no referrals to appointed command investigators or inquiry officers) or delay immediately contacting the MCIO while attempting to assess the credibility of the report.”

<sup>70</sup> CHIEF, NATIONAL GUARD BUREAU INSTRUCTION 0400.01B, NATIONAL GUARD COMPLEX ADMINISTRATIVE INVESTIGATIONS, para. 4, (April 12, 2018).

<sup>71</sup> See generally Government Accountability Office, “Office of Complex investigations Should Update Policies to Require Additional Documentation for Sexual Assault Cases,” GAO-19-109 (December 2018).

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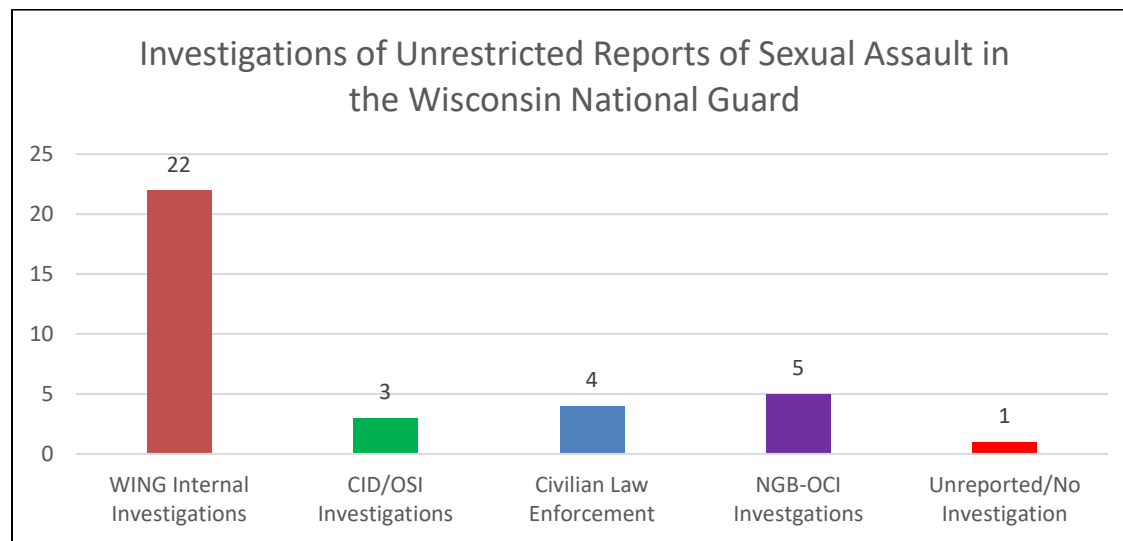
**Figure 5. National Guard Sexual Assault Investigation Process**

Figure 5 above depicts the process for referring unrestricted reports of sexual assault to the National Guard Bureau's Office of Complex Investigations.

## 2. COMPLIANCE

### **The Wisconsin National Guard's decision to use its own investigators violated DoD, Service, and NGB policy against internal, command-directed investigations of sexual assaults.**

The Team reviewed investigation documents on 35 unrestricted reports of sexual assault in the Wisconsin National Guard that were reported from May 1, 2009, to May 31, 2019. Local law enforcement conducted criminal investigations permitting further civilian prosecution or military administrative action in four of these cases. Army Criminal Investigations Division (CID) conducted criminal investigations in three of these cases which occurred either in a deployed status or on a federal military installation. The Office of Complex Investigations investigated five of these cases. The Wisconsin National Guard used internal investigative capabilities to conduct command-directed, administrative investigations in the 22 remaining cases, and one unrestricted report of sexual assault was never investigated by either law enforcement or military administrative investigators.<sup>72</sup> To evaluate the impact of the decision by the Wisconsin National Guard leadership to conduct internal investigations, the Team reviewed and contrasted the management and handling of these 22 cases in order to assess investigative integrity, notwithstanding the violation to DoD policy that the program represented.



**Figure 6. Investigations of Sexual Assault in Wisconsin National Guard since 2009**

In reviewing the five cases that the Wisconsin National Guard senior leadership referred to the Office of Complex Investigations, the Team noted that the subject(s) or victim(s) resided in another state or the circumstances surrounding the allegations appeared to be exceptionally complex and perhaps the involvement of a known internal investigative capability would have resulted in questions regarding legality from the other state. However, the Team was unable to locate any written policy or guidance detailing specific criteria used to determine grounds for referral to internal investigators or the Office of

<sup>72</sup> Two cases investigated by the Wisconsin National Guard occurred prior to the creation of NGB-JA/OCI. In addition, for the one case in which there was no investigation, the Team learned during the drafting of the Report that this case has been referred to NGB-JA/OCI for investigation.



Complex Investigations, and witnesses were unable to articulate any selection criteria used by the The Adjutant General in making his decision.

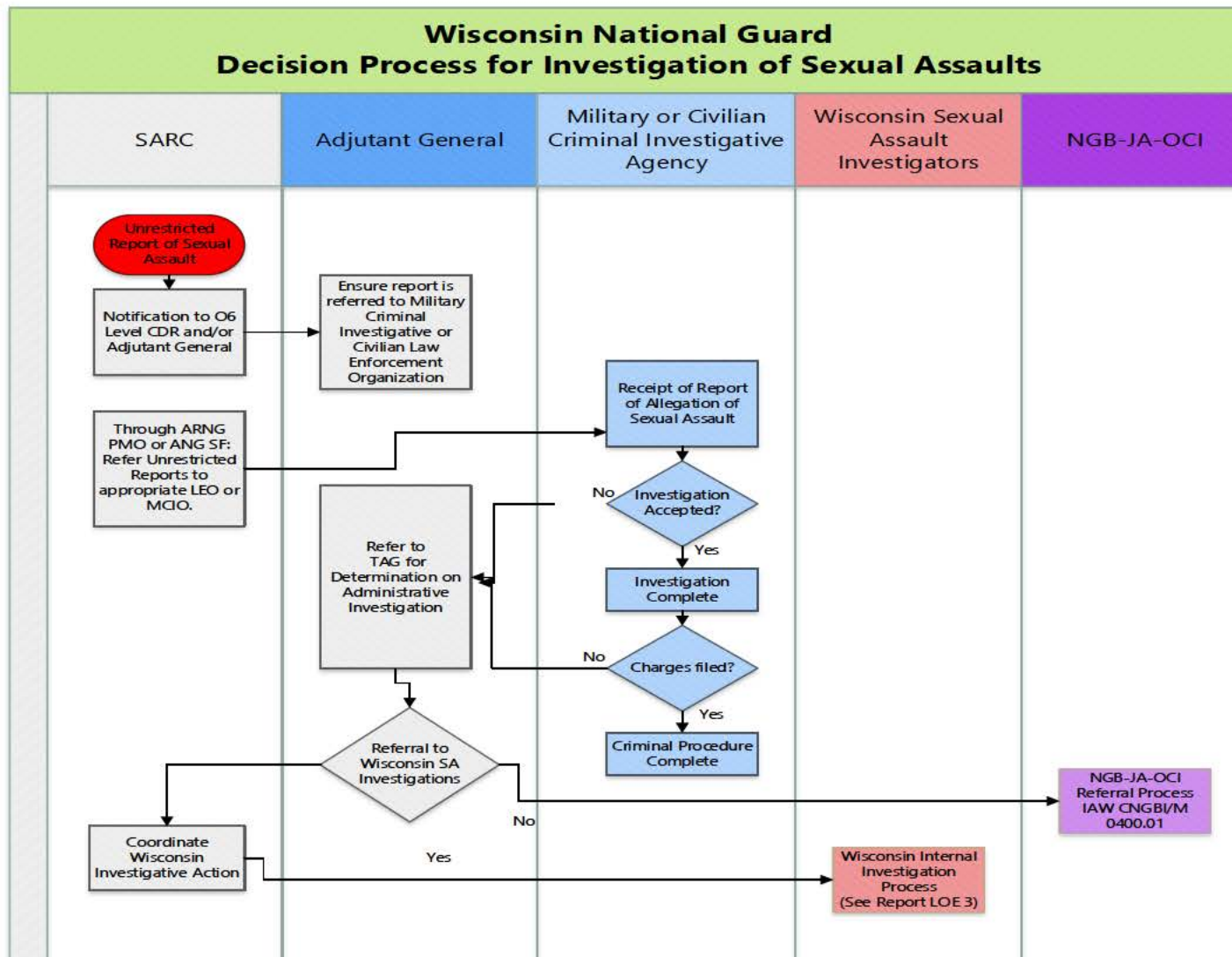
Under the Adjutant General's guidance, the Wisconsin National Guard stood up a sexual assault investigative capability within the state.<sup>73</sup> When required, Wisconsin National Guard sexual assault investigating officers are placed on federally funded orders under Title 32 U.S. Code to conduct the sexual assault investigations for the Wisconsin National Guard. Wisconsin National Guard investigators tasked with investigating sexual assaults routinely reference CNGB regulations as both their authority and guidance for conducting sexual assault investigations. In some cases, these investigators identified themselves as "National Guard Bureau Investigators"—even though they conducted their investigations exclusively under the auspices of the Wisconsin National Guard.<sup>74</sup>

According to personnel interviewed by the Team, the Wisconsin National Guard's perceived authority to refer investigations to its own investigators, despite DoD and National Guard Bureau policy to the contrary, rested on a unique interpretation of the Adjutant General as the "head of an administrative agency"—rather than as a military commander subject to DoD regulation. According to senior level witnesses, the Adjutant General interpreted DoD, Service, and National Guard Bureau policy prohibiting the use of internal investigators as a policy that only encumbered "unit commanders," but not Adjutants General. Amongst the rank-and-file of the Wisconsin National Guard, there was a general understanding that military commanders were prohibited from conducting investigations into allegations of sexual assaults. Accordingly, when an unrestricted report of sexual assault was received, the Adjutant General was immediately notified and the action was referred to civilian law enforcement for investigation. In the rare instances of incidents occurring on a federal installation, such as Fort McCoy, then the military criminal investigative organization would be contacted for investigation. Upon completion of the civilian (or military) law enforcement investigation, if no criminal prosecution was pursued, then the matter would return to the Adjutant General for further administrative investigation and/or action. The relevant Wisconsin National Guard commander, SARC, and SJA would meet with the Adjutant General to discuss the propriety of referring the matter to a Wisconsin National Guard investigator or the OCI. See figure 7 for a graphic depiction of the sexual assault investigation process within the Wisconsin National Guard.

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<sup>73</sup> As late as September 2019, the Assessment Team was informed that the Wisconsin National Guard was still conducting internal, command-directed investigations of sexual assaults.

<sup>74</sup> See *e.g.*, Memorandum for Wisconsin Army National Guard – Army Chief of Staff and Staff Judge Advocate General's Office, "SUBJECT: Findings for Sexual Assault Investigation Case Number 20180718-C; Sexual Assault Investigation Performed Pursuant to CNGBM 0400.01, "Chief, National Guard Bureau Office of Complex Investigations," (December 10, 2018), identifying the investigating officer as an "Investigator" for the "National Guard Bureau Office of Complex Investigations."; At least one victim stated that she was under the impression that the investigation was a "National Guard Bureau investigation." When she was interviewed by the Wisconsin National Guard investigator, she was not represented by a Special Victim Counsel. See interview of sexual assault victim.



**Figure 7. Wisconsin National Guard Investigation Process**

If an internal investigation was directed, the SARC was responsible for contacting the various Wisconsin sexual assault investigators to determine their availability. Upon the investigator's selection by the SARC, the Chief of Staff for the Wisconsin Army National Guard (or in a few instances another colonel for the relevant unit) would typically sign the investigator's appointment letter. The investigator would then meet with the SARC to obtain any relevant additional details on the allegations, receive copies of any police reports or other documentary evidence that the SARC received from law enforcement authorities, and receive investigation equipment.

### 3. PROGRAM MANAGEMENT

**The Wisconsin National Guard lacks the formal training and oversight necessary to produce quality sexual assault investigations.**

*...one investigator admitted to not being competent to conduct sexual assault investigations.*

There was no consistent selection process for Wisconsin National Guard's sexual assault investigators. Not all of the investigators possessed the requisite skills, experience, and training to

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conduct administrative sexual assault investigations and one investigator admitted to not being competent to conduct sexual assault investigations. Two of the three investigators interviewed by the Team had previous civilian law enforcement experience in handling special victims crimes; however, none had significant experience with respect to latent, non-penetrative sexual assaults, which formed the majority of the type of sexual assaults that occurred in the Wisconsin National Guard. None of the investigators had received any substantive civilian law enforcement training relevant to special victims crimes or other sexual crimes in the past two years. While all of the investigators completed the initial two-week, Special Victims Capability course at Fort Leonard Wood, Missouri they did not participate in the refresher training put on by the Office of Complex Investigations. This training is conducted annually and includes updates to federal law and policy specifically regarding the evolving definition of sexual assault and regulatory guidance on how the Office of Complex Investigation administrative investigations are to be conducted. Some of the investigators interviewed expressed concern regarding their limited training and total lack of oversight and feedback provided in their investigations.

The personnel that conducted these investigations did so without the authority or supervision of law enforcement officials or the National Guard Bureau Office of Complex Investigations. Accordingly, there was no established oversight for the Wisconsin National Guard sexual assault investigators. This lack of program management impacted the resourcing and timeliness of the investigations. On average, investigators were appointed to conduct an investigation approximately nine months after the initial report to command. There were significant delays in receiving orders to conduct the investigations. Unlike MCIOs and the Office of Complex Investigations, the Wisconsin National Guard is not resourced to conduct sexual assault investigations and therefore has to locate additional funding to place investigators on orders. This also impacted the type of equipment used by the investigators. While the Office of Complex Investigations employs both interrogative and forensic technology approved for use by the U.S. Army Criminal Investigations Command, the Wisconsin National Guard investigators were given an investigation kit by the SARC, which consisted of an off-the-shelf camcorder, a government laptop computer for notes, and a second audio recorder. Additionally, these resourcing challenges impacted the staffing of the investigations.

Investigators were required to conduct their investigations entirely on their own, i.e., without a partner. This runs contrary to National Guard Bureau policy on the conduct of sexual assault investigations, which requires at least two investigators, and where practicable one investigator should be the same gender as the victim.<sup>75</sup> This requirement serves to ensure diversity in perspective, to guard against potential personal bias in any one investigator, and to limit investigator exposure to potentially dangerous situations. In nearly all Wisconsin sexual assault investigations, Wisconsin National Guard investigators acted alone when interviewing witnesses, including victims and subjects. This prompted at least one investigator to raise legitimate concerns about personal safety. All of the investigators who were interviewed felt that the quality of the investigations were hindered by this condition; however, they understood that working in teams was not possible because of the limited number of investigators in the state and funding issues.

The Wisconsin National Guard sexual assault investigations did not include sufficient administrative oversight, often resulting in incomplete findings and recommendations. Apart from the initial in-brief provided by the SARC and SJA, there was no indication that the investigators had a technical chain-of-command or supervisor from which they could obtain feedback on the preparation or conduct of their investigations, including the quality of their investigative reports. There was no

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<sup>75</sup> CHIEF, NATIONAL GUARD BUREAU INSTRUCTION 0400.01, NATIONAL GUARD COMPLEX ADMINISTRATIVE INVESTIGATIONS (April 12, 2018).

established quality control system by which investigators could review each other's products or reports, and there was no established routine by which best practices or lessons learned were shared amongst the investigators. Whereas some investigators collaborated informally from time-to-time on the status or conduct of investigations, these informal communications were largely happenstance and only between one or two of the investigators and never as a group.

There was no internal, written standard operating procedure for the conduct of the investigations or the preparation of reports. Investigators routinely referred to CNGBI 0400.01 as their primary reference for the investigations; however, most investigators did not base the conduct of their investigation or the preparation of their reports on the latest versions of the CNGBI 0400.01B and CNGBM 0400.01A.<sup>76</sup>

The reports of investigation were accompanied by audio-visual recordings of witness, subject, and victim interviews; however, no investigator could affirm that these recordings were actually reviewed by anyone for purposes of verifying the accuracy and completeness of summaries made of witness, victim, or subject statements. The Team found that in some instances the summaries were not an accurate or complete reflection of what was actually stated by the interviewee.<sup>77</sup>

None of the investigators that were interviewed stated they prepared written investigatory plans before commencement of their investigations. They did not submit or discuss investigatory plans with the SJA, and none of the investigators recalled receiving any substantive (let alone written) legal advice on how the investigation should proceed. All of the investigators stated they felt they could go to their local SJA for questions or advice during the course of the investigation, and in some instances they did seek and obtain legal advice. However, with the rare exception of some email correspondence noted in one case, investigators did not appear to receive this advice in writing.

Upon completion of the investigation, investigators did not appear to receive any feedback on their investigations. None of the investigators that were interviewed stated they were notified on the disposition of the case or whether the approving authority had accepted or rejected the findings of their investigation. None of the investigators were provided a copy of the legal review of their reports and, with the exception of courts martial, none of the investigators that were interviewed stated they were ever asked to appear before any adjudicative body, including administrative boards, as an expert witness for a case.<sup>78</sup>

#### **4. RELATIONSHIPS**

**The Wisconsin National Guard collaborates and coordinates with civilian law enforcement organizations prior to conducting (and in the course of) the administrative investigation of sexual assault allegations; however, internal coordination and communication on the status of civilian law enforcement investigations can be improved.**

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<sup>76</sup> CNGBI 0400.01, the National Guard Bureau's statement of policy, was originally published on July 30, 2012. An Interim Notice was issued on April 16, 2014 and CNGBI 0400.01A was issued on June 15, 2017. CNGBI0400.01B, the most recent version of this policy statement, was issued on April 12, 2018. CNGBM 0400.01, the National Guard Bureau's manual for implementation of policy, was originally published on November 8, 2012. A revised version, CNGBM 0400.01A, was published on May 16, 2018.

<sup>77</sup> *E.g.*, *Compare* Report of Investigation for WI-20180718-C, pg. 4 and Audio-visual Recording/ Victim Statement, DA 2823.

<sup>78</sup> *C.F.* Interview of Investigating Officer B who mentioned being called an expert witness in a 2015 State court martial.

The Team found that, as a matter of routine, the Wisconsin National Guard reached out to civilian law enforcement when it received an unrestricted report of sexual assault. According to the Wisconsin National Guard officials that the Team interviewed, the Wisconsin National Guard does not maintain any written agreements with local civilian law enforcement. One official stated that the organization did not seek to formalize relationships or communication channels with civilian law enforcement simply because it is not necessary to document what are already the recognized responsibilities of these civilian entities.

As a general practice, the Army National Guard and Air National Guard maintained separate channels of communication with civilian law enforcement officials. Air National Guard SAPR officials coordinated with Air National Guard Security Forces in order to obtain copies of local civilian police reports or other civilian law enforcement investigatory files. On the Army National Guard side, the Provost Marshall (PMO) for the Joint Forces Headquarters served as the primary conduit to civilian law enforcement.

If an incident occurred on a military installation such that it would generate a significant incident report (SIR), then this SIR would be reported up from the installation to the joint operations center (JOC) at the Wisconsin National Guard Joint Forces Headquarters, which would ensure that both the Air National Guard Security Forces and the Army National Guard PMO would be made aware of the incident. From an installation security standpoint, the PMO and Security Forces regularly share information on persons who are barred from post or who may pose a physical security risk. However, there was no standard practice by which a civilian law enforcement investigation (including closure report) of a sexual assault of an Air National Guard member would be shared with or reported to the PMO and vice versa.

As a matter of routine, SAPR program officials (normally the SARC) would ask for updates from the PMO or the installation Security Forces, who would then reach out to the relevant civilian law enforcement agency for the status of an investigation. Wisconsin National Guard officials stated that it was common for many civilian law enforcement officials to complete their investigation and fail to notify the Wisconsin National Guard, but generally speaking there did not appear to be any notable impediments or difficulties in communicating with local law enforcement.

Because of the sensitive nature of the records, the PMO does not, as a matter of routine, maintain records received from civilian law enforcement. The general practice is to serve solely as a conduit for obtaining and passing on police records to the SARC and the SJA, as appropriate.

If the allegation of sexual assault was originally raised to the local chain of command, the SARC or victim advocate would ask the victim of the sexual assault if they would like to contact civilian law enforcement on their own, or if they prefer the unit to contact civilian law enforcement on their behalf. As one official stated, sometimes victims of sexual assault do not want the sexual assault to be investigated by civilian law enforcement. In these situations, the local command, PMO or Security Forces still contacted civilian law enforcement for the purpose of notification, providing the victim's contact information and closing out the civilian law enforcement investigation. As a matter of routine, Wisconsin National Guard officials would not proceed to conduct their own investigation until civilian law enforcement had either declined to initiate or completed its investigation.

Even though the PMO and the Security Forces were the primary conduit for information on civilian law enforcement investigations, neither appeared to be regular attendees at the relevant Case

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Management Group. This circumstance is particularly notable because, as a matter of DoD policy, a law enforcement representative is a mandatory member of the Case Management Group for purposes of providing updates to the group on the status of an investigation. At least one Wisconsin National Guard program official agreed with the value of better coordination:

*I think the State is doing a lot of the correct steps, but I think if we bring a few more of the right people together, kind of overlap those programs...I think we would have quicker turnaround or better support because every case is different.*

**The Wisconsin National Guard has explored other civilian law enforcement options for conducting sexual assault investigations; however, the Wisconsin National Guard has not used these options.**

The Wisconsin National Guard has pursued other internal state options for conducting sexual assault investigations. Specifically, the Wisconsin National Guard sought and obtained a memorandum of understanding (MOU) with the Wisconsin Department of Justice (DOJ) for the purpose of conducting investigations of sexual assaults involving Wisconsin National Guard members. The MOU was signed in October 2018 by the Adjutant General and the Attorney General of Wisconsin. The Team was provided a copy of this MOU by the Wisconsin DOJ. The Team notes that the MOU primarily outlines the basis by which the Wisconsin DOJ would consider a referral of a sexual assault investigation from the Wisconsin National Guard, and if accepted, what actions it would take as part of its investigation.<sup>79</sup>

The MOU does not explain the underlying background or rationale by which the Wisconsin National Guard would want the Wisconsin DOJ to conduct an investigation into sexual assault allegations involving a Wisconsin National Guard member. However, based on other information provided to the Team, the apparent intent of the MOU is to maximize other state resources that could minimize the use of National Guard Bureau investigators.<sup>80</sup>

Although the Wisconsin National Guard has referred two unrestricted reports of sexual assault to the Wisconsin DOJ in accordance with the MOU, the Wisconsin DOJ has not actually conducted any investigations pursuant to this MOU. Through interviews with Wisconsin DOJ officials, the Team further learned that DOJ lacks the type of special investigative capability contemplated by the MOU.

## **5. PERFORMANCE**

**A review of Wisconsin sexual assault investigative files revealed numerous, significant deficiencies that compromised the accuracy and legality of the investigations.**

The Team found numerous, significant deficiencies that compromised the accuracy and legality of the Wisconsin National Guard sexual assault investigations. The Team noted many reports of

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<sup>79</sup> The team notes that whereas the MOU contains some basic provisions on jurisdiction, costs and liability, there does not appear to be any follow-on addenda addressing the actual business rules and framework for implementation.

<sup>80</sup> Email from [Redacted], Wisconsin Department of Justice, "DMA MOU," (Sept. 13, 2018, 10:35pm), ("The purpose of the MOU is mainly to get the federal National Guard Bureau off the back of the TAG—NGB is currently stepping in on all investigations that don't otherwise have a neutral third party.")

investigations did not properly address the elements of sexual assault in their findings.<sup>81</sup> Wisconsin National Guard officials did not discuss these administrative and substantive errors with the investigators. Because the investigators were not provided substantive feedback on the preparation and conduct of their investigations, as well their reports, they were never made aware of significant deficiencies with their reports.

In some instances, significant deficiencies were specifically noted by the reviewing Wisconsin National Guard attorney, who still found the report of investigation legally sufficient.<sup>82</sup> In fact, all legal reviews that were reviewed by the Team reached a conclusion that the relevant report was “legally sufficient” in spite of any notable errors or insufficient evidence in support of the findings.<sup>83</sup> In two cases, the reviewing attorney had stated the investigation was legally sufficient, yet the attorney disagreed with the investigating officer’s findings.<sup>84</sup> In another case, the investigator did not adequately address or inquire into clear inconsistencies between witnesses, the subject, and the victim, which went to the element of consent.<sup>85</sup> For this case in particular, the inconsistency was so apparent and compelling that it prompted two commanders to file memoranda for record or information papers discussing their concerns with the investigator’s errors and perceived bias.<sup>86</sup> One commander stated, “I noted several [interviews] that were, in my opinion, incomplete and follow up investigative steps were not taken.”<sup>87</sup> The other commander in the same case remarked in his “Talking Paper”:

*I thought it prudent to highlight some potential concerns that exist with the investigation, . . . [such as] selective use of statements [and] . . . comments by the investigating officer [which] cause me to question to [sic] accuracy and neutrality of the findings.*

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<sup>81</sup> See e.g., Report of Investigation for Case 20180718-C, (December 10, 2018); Report of Investigation for Case WI16JI01, (September 30, 2016).

<sup>82</sup> See Legal Review of Investigation Number WI17LG01, (September 10, 2017).

<sup>83</sup> See e.g., Legal review of Sexual Assault Investigation against [REDACTED] para. 2a-c, (January 20, 2016) stating, [REDACTED] (August 29, 2017).

<sup>84</sup> See Legal review of Sexual Assault Investigation against, Case File 20180718-B, para. 3a-c, (November 20, 2018) stating, [REDACTED] ]” See also Legal Review for Report of Investigation for Case 20180329, (July 23, 2018).

<sup>85</sup> See Report of Investigation for Case W17LG01, (August 29, 2017); See also Legal Review of Investigation Number WI17LG01, (September 10, 2017); *Id.* at para. 5. (“[REDACTED]”).

<sup>86</sup> See Report of Investigation for Case W17LG01, (August 29, 2017); See also Legal Review of Investigation Number WI17LG01, (September 10, 2017).

<sup>87</sup> See Memorandum, “Case – W17LG01, Sexual Assault,” (March 15, 2018).

In another case, the investigator had interviewed almost thirty witnesses, most of whom knew the subject of the investigation, but only three or four of whom remotely knew the victim and could speak to her credibility. Finally, in certain cases, the investigator was given (or uncovered) multiple alleged instances of a potential sexual assault, but he or she only investigated one or two of the alleged incidents in detail.

**The Wisconsin National Guard's sexual assault investigative capability lacked credibility.**

The credibility of the Wisconsin National Guard's investigative capability came up in various comments provided during the recent DEOMI survey. As one service member wrote in the DEOMI survey: "[REDACTED]

" Still

another commenter wrote:

[REDACTED] anization should have sought OCI assistance instead of appointing an unqualified investigating officer.

Still another service member stated:

These comments echo the concerns articulated by members of Congress who have proposed legislation to totally remove all authority of the commander when dealing with sexual assault prompting DoD policy changes mentioned earlier that mandated commanders could not conduct internal sexual assault investigations.<sup>88</sup>

**Victims involved in the state investigation process believed their reports were not being taken seriously by the command.**

A number of victims who were interviewed by the Team were disappointed by the investigation process. In certain instances, victims were actually given a copy of the report of investigation in which the allegations of sexual assault were substantiated before the command had taken action. In these specific cases, the victims were upset to find out later that the command disagreed with the investigator's findings. In certain instances, the victim was informed that an investigator had substantiated the allegations of sexual assault, but concerns with the investigation prompted the command to issue non-judicial punishment or a letter of reprimand.

Several comments from the DEOMI survey support this finding.

<sup>88</sup> Military Justice Improvement Act, first introduced as S. 967 in 2013 currently listed as S. 1789.



[REDACTED]

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Victims (and the subjects of investigations) were often placed in an informational vacuum. As one victim stated:

*Figuring out who was doing what, trying to hold somebody accountable. What has to happen next? ... Who is in charge of that and when is it due? That's the part that, all along, I have been very, very frustrated with, because it seems like pinpointing that, which is essential to making things happen, has been exhausting.*

This informational vacuum extended not only to basic updates on the case, but also, in certain circumstances, the actual services and rights of a victim during an investigation of sexual assault allegations. In one case, the victim lamented the fact that she had to constantly seek out updates on her case, and she was never made aware of some of the basic services available to her.

*A lot of this could have been avoided if I had an SVC [special victims counsel] from the start. I don't think we would be sitting here today if I had the right resources from the beginning. And I didn't. I didn't know SVCs existed until after my investigation [by the Wisconsin National Guard] was completed.*

One victim reinforced this statement. *“We can't go back and change how this process genuinely changed me as a human. But if we can take really good look at what happened here and not do that again.”*

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**LINE OF EFFORT C:**

**Sexual Harassment and Equal Opportunity**

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## 1. INTRODUCTION

In the Department of Defense, command issues that include the prevention of discrimination, harassment, and hostile work environment fall under the Equal Employment Opportunity/Equal Opportunity Office (EEO/EO) program, a subset of which is the Military Equal Opportunity Program (MEO). The Team assessed the Wisconsin National Guard's adherence to and implementation of DoD, Service, and National Guard Bureau policy in the execution of the EEO/EO program. The scope of this assessment included a review of allegations of hostile work and a statewide survey of the Wisconsin National Guard's culture and climate regarding sexual harassment. The team reviewed all open and closed cases of sexual harassment and a hostile work environment that were reported between May 2009 and September 2019. The team also incorporated information collected from the statewide DEOMI survey of the Wisconsin National Guard's culture and climate regarding sexual harassment and the on-site interviews with all major subordinate commands.

### **Background on Equal Opportunity in the National Guard**

The Secretary of Defense directed the Chief, National Guard Bureau to implement Title VI of the Civil Rights Act of 1964 as it applies to the National Guard and to create, in accordance with Title VI, a MEO program in the non-federalized Army and Air National Guard with CNGB having final decision authority over formal discrimination complaints and oversight over the program. Historically, the Chief, National Guard Bureau managed the MEO program through Army National Guard Regulation (NGR) 600-22/Air National Guard Instruction (ANGI) 36-3 for complaints processing. Program management was regulated by ANGI 36-7 and NGR 600-21. In 2017, the complaints process was updated and consolidated into the CNGB Instruction/Manual 9601.01 series. Thus, for complaints processing, NGR 600-22/ANGI 36-7 has been superseded. Program management functions and responsibilities continue to be managed under the applicable NGR/ANGI.<sup>89</sup>

The Adjutant General is responsible for the State EO program.<sup>90</sup> The State Equal Employment Manager (SEEM) is responsible for serving as "The Adjutant General's central point of contact for all complaints of discrimination arising within the state National Guard,"<sup>91</sup> and managing the MEO program in the state.<sup>92</sup> The SEEM's specific responsibilities are to: monitor and track the progress of all open and closed EO complaints; timely coordinate and notify National Guard Bureau Office of Equity and Inclusion, Complaints Management and Adjudication (NGB-EI-CMA) of all complaints, both formal and informal so the complaints can be tracked. The SEEM also exercises oversight over the EO counselors in each unit known as Equal Opportunity Leaders (EOLs) and/or Equal Opportunity Advisors (EOAs).

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<sup>89</sup> See NATIONAL GUARD REGULATION 600-21, EQUAL OPPORTUNITY PROGRAM IN THE ARMY NATIONAL GUARD, (May 22, 2017); AIR NATIONAL GUARD INSTRUCTION 36-7, AIR NATIONAL GUARD MILITARY EQUAL OPPORTUNITY PROGRAM, (April 25, 2003).

<sup>90</sup> See CHIEF, NATIONAL GUARD BUREAU INSTRUCTION 9601.01, NATIONAL GUARD DISCRIMINATION COMPLAINT PROGRAM (September 27, 2015).

<sup>91</sup> CHIEF, NATIONAL GUARD BUREAU INSTRUCTION 9601.01, NATIONAL GUARD DISCRIMINATION COMPLAINT PROGRAM Enc. A, para. 9 (September 27, 2015).

<sup>92</sup> See AIR NATIONAL GUARD INSTRUCTION 36-7, AIR NATIONAL GUARD MILITARY EQUAL OPPORTUNITY PROGRAM, para. 2.4 (April 25, 2003).

Civilian EO/EEO was historically governed by Army National Guard and Air National Guard regulations as well; however recent statutory amendments to section 709 of Title 32, U.S. Code and section 10508 of Title 10 of the U.S. Code, regarding processing civilian EEO complaints within State National Guard programs, prompted a new regulatory scheme.<sup>93</sup> In May 2017, the Chief, National Guard Bureau issued CNGB Notice 9600, which requires states to establish guidance in accordance with the Adjutant General statutory complaint processing and reporting obligations as mandated by 29 C.F.R. Part 1614 and Federal Equal Employment Opportunity Commission Management Directives.<sup>94</sup> States may use the National Guard Bureau Model State National Guard Joint Civilian Discrimination Complaint Instruction to update or promulgate their own respective State Complaints Processing Policy in accordance with this CNGB Notice.

## 2. COMPLIANCE

### **The Wisconsin National Guard's written policies on prevention and response to allegations of sexual harassment and hostile work environment do not reflect current federal law and DoD and National Guard Bureau policies.**

The Wisconsin TAG Policy Memoranda addressing MEO, EEO, and harassment in the workplace have not been updated since 2007. Several changes to federal law and regulation occurred after 2013, which were not included in the Adjutant General's written guidance, making the MEO, EEO, and harassment in the workplace policies out of date, especially with regard to the scope of individuals included as a protected class. DoD policy includes gender identity and sexual orientation as protected classes, but the Wisconsin National Guard policy has not expanded to include these groups.<sup>95</sup>

There is no mention of gender identity or sexual orientation in either of the Wisconsin National Guard policies on MEO or EEO. For example, TAG Policy Memorandum 22 provides that military personnel are "protected from discrimination on the basis of race, color, national origin, religion and sex."<sup>96</sup>

Wisconsin National Guard policies against harassment in the workplace also do not include gender identity or sexual orientation within the protected classes. In TAG Policy Memorandum 4, "Wisconsin Department of Military Affairs (DMA) and Wisconsin National Guard (WING) are committed to maintaining a work environment that is free of discrimination and harassment based on a person's sex, race, color, age, religion, disability, or national origin."<sup>97</sup>

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<sup>93</sup> See Public Law 114-328, National Defense Authorization Act for Fiscal Year 2017, (December 23, 2016).

<sup>94</sup> See CHIEF, NATIONAL GUARD BUREAU NOTICE 9600, STATE NATIONAL GUARD CIVILIAN EQUAL EMPLOYMENT OPPORTUNITY COMPLAINT PROCESSING AND REPORTING GUIDANCE, (May 10, 2017).

<sup>95</sup> DEP'T OF DEFENSE DIRECTIVE 1350.02, DEPARTMENT OF DEFENSE MILITARY EQUAL OPPORTUNITY (MEO) PROGRAM, pg. 14 (Glossary) (Inc. Chg. 2, June 8, 2015).

<sup>96</sup> TAG Policy Memorandum 22, "Equal Employment Opportunity (EEO) Rights and Obligations," para. 1 (September 1, 2007).

<sup>97</sup> TAG Policy Memorandum 4, "Policy against Harassment in the Workplace," para. 1 (September 1, 2007).

The Team noted the SEEM addressed this issue by using an Equal Opportunity Resource Card, which identifies “sex” and “sexual orientation” as protected classes in EEO/EO training.<sup>98</sup> There was no information regarding whether it was the leadership’s intent to update current Wisconsin National Guard official regulations or policies accordingly. Additionally, the Wisconsin National Guard has not established a specific policy pertaining to civilian employees and military technicians.

Because these policies have not been updated since 2007, there is the risk that the organization may not respond properly to allegations of harassment, discrimination, or other related actions towards members of these protected classes. In addition, members of these protected classes may also not be given accurate information on their rights under current federal law and DoD and NGB policies.

**Wisconsin National Guard MEO/ EEO/ Harassment in the Workplace policies also do not provide adequate protections for complainants.**

CNGBI 9601.01 requires that Adjutants General encourage personnel to participate in the complaint process without fear of retaliation with the intent to ensure complainants are forthcoming.<sup>99</sup> In order to comply with this policy, every state National Guard was mandated to implement a Retaliation Protection Plan in 2017. Interviews with the SEEM, unit commanders, and Equal Opportunity Advisors confirmed such measures were not being implemented in Wisconsin.<sup>100</sup>

Additionally, commands must convey the opportunity for service members to make an anonymous complaint. Several Wisconsin National Guard policies addressed anonymous complaints; however, the Team found that these policies served as a deterrent. For example, TAG Policy Memorandum 4 states that “[w]hile the [Division of Military Affairs] and [Wisconsin National Guard] leadership will seriously consider all complaints, anonymous complaints pose a unique challenge, and will, in most cases, be referred to the chain of command/supervision for appropriate inquiry.”<sup>101</sup>

The Team also found that this policy was not being implemented at lower echelons, as none of the Wisconsin National Guard unit command policy memoranda for MEO mention the opportunity to make an anonymous complaint. For example, current and prior 32 Infantry Brigade Combat Team MEO/EEO unit command memoranda direct the complainant to their chain of command or the Wisconsin Army National Guard Deputy Inspector General with no mention of the EO representative. Not only does reporting EO violations directly to your chain of command take away the option of anonymity, it also raises separate concerns about program oversight and deterrence. When the EO representative is not included in the reporting channel complaints are not accurately accounted for, processed, and reported in EO channels. Members may not be provided with thorough information regarding their rights and timelines associate with making complaints and leaders are unable to try and address concerns raised.

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<sup>98</sup> Wisconsin National Guard, Equal Opportunity Resource Card (2019).

<sup>99</sup> CHIEF, NATIONAL GUARD BUREAU INSTRUCTION 9601.01, NATIONAL GUARD DISCRIMINATION COMPLAINT PROGRAM, A-4, 8h. (September 27, 2015).

<sup>100</sup> DoD RETALIATION PREVENTION AND RESPONSE STRATEGY IMPLEMENTATION PLAN (January 2017).

<sup>101</sup> TAG Policy Memorandum 4, “Policy against Harassment in the Workplace,” para. 2 (September 1, 2007).

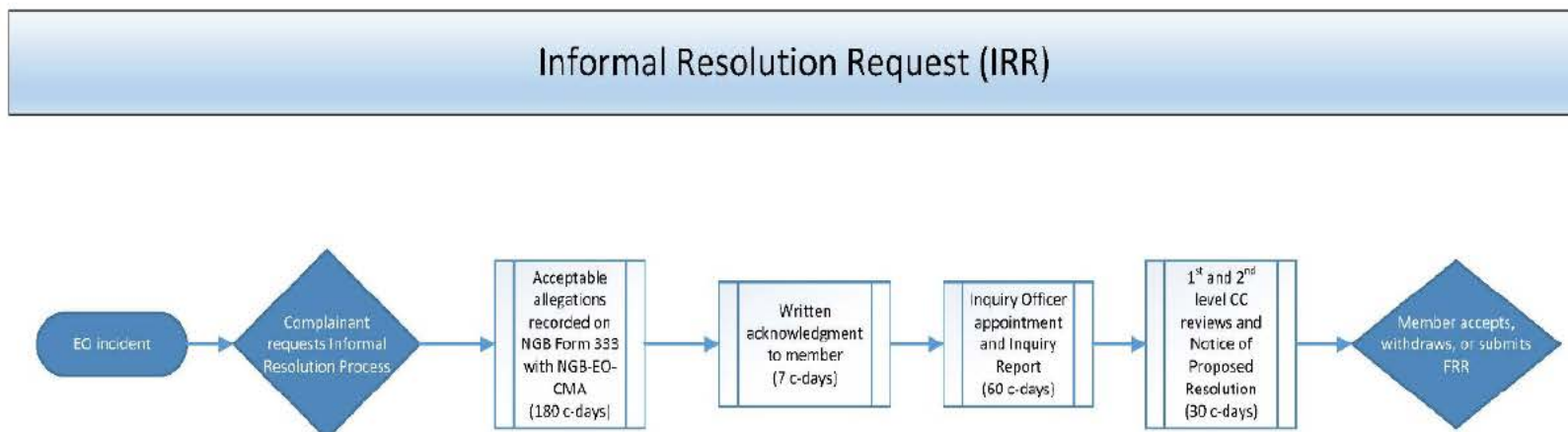
Additionally, when reporting is limited to command channels, service members may be deterred from reporting complaints at all. This was emphasized by a comment in the DEOMI survey which provided:

[REDACTED]

### 3. PROGRAM MANAGEMENT

**The Wisconsin National Guard EEO/EO programs complaint resolution process does not comply with NGB policy.**

CNGBM 9601.01 prescribes certain procedures intended to protect the integrity of the MEO resolution process and the command from false and unjust accusations. Where the complaint is not initially received by the SEEM, the unit EOA is responsible for forwarding the National Guard Bureau Form (NGB Form) 333 to the SEEM. The SEEM is required to acknowledge, in writing, receipt of an informal written request within seven calendar days of its receipt and contact NGB-EI-CMA to obtain a tracking number for each case. The SEEM should then communicate back down the unit EOA and provide that number to the unit level EOA, allowing all EO personnel to track case progression of the complaint through the inquiry, proposed resolution and final decision stages as described in Figure 8 below.



**Figure 8. National Guard Informal Resolution Request Process**

The Wisconsin SEEM does not formally acknowledge, in writing, receipt of an informal written request;<sup>102</sup> does not contact NGB-EI-CMA to obtain a tracking number from NGB-EI-CMA and as a result is unable to provide a tracking number to the lower level EOA for processing.<sup>103</sup> Complaints are, therefore, not properly tracked throughout the complaint process leaving complainants and commanders without adequate communication regarding complaints or resolution.

In reviewing the individual cases, the Team also found no record of an Inquiry Officer being appointed to complete an inquiry report raising concerns regarding whether or not the complaint had been properly investigated. Nor was there any record of a review of the complaints or the creation of proposed resolutions to the complaint. Without proper review of both the complaint and proposed resolutions through the complaint process the SEEM is unable to provide proper oversight leading to perceptions regarding unfair or unequal treatment.

**The Wisconsin National Guard EEO/EO Programs lacked adequate resources and command emphasis.**

Based on the force structure and organization of the Wisconsin National Guard, DoD and National Guard Bureau policy directs that eight EO professionals should be trained, certified and assigned across the four major commands of the Army National Guard and six EOLs should be trained, certified and assigned across the six major commands of the Air National Guard.

Currently, the Wisconsin National Guard has one full time SEEM and one part-time EOL to educate and service over 9,550 Army and Air service members. There is one fully-trained EOL in the Air National Guard but there is no EOA in the Army National Guard. This was attributed to high turnover and natural career progression of qualified EO professional staff in major subordinate commands.<sup>104</sup> The Team found that current personnel management business practices within the Wisconsin Army National Guard failed to consider the impact of promotion and reassignment of EO professionals on the program's ability to provide continuity of service and support within subordinate commands without first training new EO professionals. Due to this gap in assignment, the SEEM is personally managing all ARNG complaints in Wisconsin which appeared to impact the confidence in the Wisconsin National Guard MEO program at the lower echelons. In effect, the MEO complaint process at the lowest unit level was non-existent.

Commanders play a pivotal role in the implementation of a successful EEO/EO program. The EEO/EO program is ultimately a command support program and, therefore, the commander has the responsibility to provide adequate resources for the EO program, which includes trained personnel who can assist in the processing of EO complaints, and briefing unit members and employees annually about their right to file discrimination complaints, how to file complaints, and the time limits for such filing and processing of the complaint. Commanders also have the responsibility to take action to end unlawful discrimination or sexual harassment when a formal complaint is substantiated.

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<sup>102</sup> Policy requires this be provided within seven calendar days of complaint receipt.

<sup>103</sup> The Team found that of the 94 complaints recorded on the SEEM's tracker, she reported that 8 open cases had been assigned NGB form 333 case numbers and forwarded up to NGB. However, NGB-EI-CMA did not have any of those cases. Instead, they had seven open cases listed, which the SEEM did not have recorded. This tends to indicate that EOAs/EOLs at the unit level forwarded the NGB-333 form directly to NGB-EI-CMA.

<sup>104</sup> As in the Air National Guard, the role of EOA is an additional function Soldiers perform along with other assigned duties. However, soldiers assigned as EO professionals may not hold leadership positions.

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The Team found that commanders were aware of their responsibility to emphasize EO policies but were frustrated in what many perceived as a lack of authority to effectively manage personnel assigned to their unit or command which effectively elevates complaints to the state command and SEEM level. One commander expressed his frustration when asked about the disposition of a harassment complaint stating that he felt his hands were tied and he could not take administrative action on any type of investigation that was withheld to the brigade or TAG level. Additionally, due to lack of communication with his leadership he was unaware of what action if any was being taken in that case.

**The Wisconsin National Guard EEO/EO Programs lacked fully trained and qualified personnel.**

CNGBI 9601.01 prescribes the training requirements for the SEEM. The SEEM must receive 16 hours of specified training within 60 days of appointment including National Guard Discrimination Complaint Program processing and a case-by-case review of all open and pending complaints in the state. The SEEM must also receive training prescribed for EO professional and any additional training applicable to State and National Guard Discrimination Complaint Program duties. The Wisconsin National Guard SEEM lacked this required training.

The SEEM also has the crucial duty of ensuring that her EOAs/EOLs at geographically separated units are trained in accordance with National Guard Bureau, Army, Air Force, and DOD rules, regulations, and policies and adequately resourced to accomplish their fact-finding and resolutions responsibilities.

The Team found that it logically followed that due to a lack of trained EOAs/EOLs the Soldiers and Airmen lacked an understanding of the EO program and the complaint filing process throughout the Wisconsin National Guard. The Team canvassed over 1,600 members throughout the Wisconsin National Guard and determined that most personnel interviewed were unfamiliar with the process for making a discrimination or harassment and over half of the Wisconsin National Guard's 9,558 Soldiers and Airmen did not know the name of their EOA/EOL. Often, Soldiers and Airmen thought that their assigned Victim Advocate who handled Sexual Assaults also were the EOAs/ EOLs.

#### **4. RELATIONSHIPS**

**The Wisconsin National Guard's SEEM rating and supervisory scheme inhibits effective communication with senior leadership and units regarding EEO/EO program issues and training.**

To ensure senior leadership awareness of issues related to the EEO/EO program, the SEEM needs unimpeded access to the Adjutant General, without having to first go through other layers of leadership at the state. In the Wisconsin National Guard, the SEEM is currently rated by, and required to communicate all issues and concerns regarding the program through, the Human Resource Officer inhibiting her ability to coordinate the state's EO program effectively.

The SEEM reported to the Team her low comfort level of requesting a meeting with the TAG through the Human Resource Officer. She also expressed that her physical placement in the Human Resource Office has a chilling effect on the number of Soldiers and Airmen who report complaints to her.

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The Team was unable to assess the SEEM's relationship with supporting EOAs/EOLs due to a lack of resourcing, but once resourced it will be incumbent upon the SEEM to facilitate and cultivate growth of the EO office, not just of the Officer/Advisor, but growth of the entire office. The SEEM should serve as a unifying force between all EO offices and should keep communication flowing between geographically separated units and National Guard Bureau's Office of Equity and Inclusion.

**The Wisconsin National Guard's SAPR Program does not coordinate or collaborate effectively with EO/EEO officials and entities for sexual assault/harassment allegations.**

The Office of the Under Secretary of Defense for Personnel and Readiness published its renewed strategic approach to prevent sexual assault in April 2019, entitled, "Prevention Plan of Action for 2019-2023". This plan features a comprehensive approach to sexual assault prevention, which recognizes the essentiality of combating sexual harassment and other precursors or contributing factors to sexual assault. In the military, the need for an overlap between command support programs addressing sexual harassment and sexual assault can be "much greater than in most civilian contexts."<sup>105</sup> "Women who were sexually harassed in the military workplace were 14 times more likely to indicate also being sexually assaulted during the same year than those who were not sexually harassed."<sup>106</sup> Men who were sexually harassed in the military workplace, even more so, were "almost 50 times more likely to indicate being sexually assaulted."<sup>107</sup>

The Department of Defense defines and responds to sexual harassment and assault separately, "in line with distinctions made in the military and civilian criminal justice systems."<sup>108</sup> However, the DoD has recognized the importance of considering harassment and retaliation issues as a part of the SAPR Case Management Group's portfolio of topics for consideration and follow-up coordination. In Wisconsin, there was no established mechanism or routine for sharing enterprise-wide perspectives on risks, lessons learned or best practices between the EO, IG and SAPR programs.

While in Wisconsin, the team met several Soldiers and Airmen who reported that they had been sexually assaulted to SAPR program officials. Their allegations were investigated and unsubstantiated for assault, but substantiated for sexual harassment. However, their cases were not passed on to the state SEEM for processing the sexual harassment complaint within the MEO program, resulting in a lack of offender accountability. This lack of a "warm-hand" off demonstrates a clear example of the failure of two command programs to share information.

## 5. PERFORMANCE

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<sup>105</sup> Valerie A. Stander and Cynthia J. Thomsen, *Sexual Harassment and Assault in the U.S. Military: A Review of Policy and Research Trends*, 181 *MILITARY MEDICINE* 20, 20 (2016).

<sup>106</sup> *Sexual Assault and Sexual Harassment in the U.S. Military: Volume 2*, Andrew R. Morral, et al. (eds.) RAND 92 (2014).

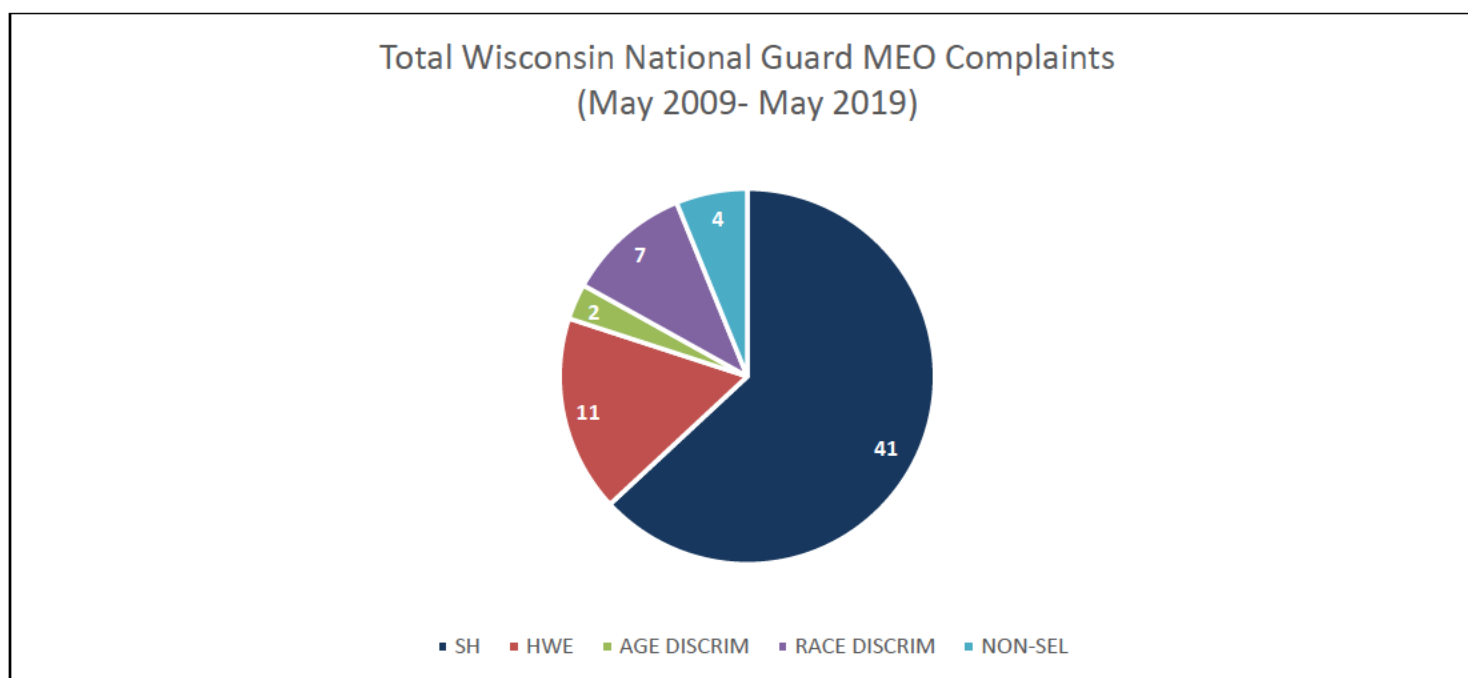
<sup>107</sup> *Sexual Assault and Sexual Harassment in the U.S. Military: Volume 2*, Andrew R. Morral, et al. (eds.) RAND 92 (2014).

<sup>108</sup> Valerie A. Stander and Cynthia J. Thomsen, *Sexual Harassment and Assault in the U.S. Military: A Review of Policy and Research Trends*, 181 *MILITARY MEDICINE* 20, 20 (2016); *C.f.*, The Army retains sexual harassment within its SAPR program, commonly referred to as Sexual Harassment/ Assault Prevention and Response or SHARP.

**The lack of resourcing and emphasis on the Wisconsin National Guard’s EEO/EO Program has impacted the filing and disposition of sexual harassment and hostile work environment complaints.**

There is both a lack of command awareness and command involvement in the MEO process at the lower echelons, causing missed opportunities for commanders to resolve personnel issues at the lowest level and increased risk of improper handling of MEO complaints. The Wisconsin National Guard relies heavily on utilizing general administrative investigative procedures to investigate allegations of discrimination.<sup>109</sup> Investigatory methods specific for discrimination investigations, such as a Leadership Inquiry Report in accordance with CNGBM 9601.01 or a Report of Investigation as specified in NG-PAM 600-22, permit commanders to gather facts efficiently and quickly so any adverse or corrective action by management can occur shortly after the alleged misbehavior. The Team noted that because there are insufficient EOAs/EOLs available at the unit level, many commanders were internally processing EO related complaints outside of the EEO/EO program.

Once resources are properly allocated, unit and wing commanders will have EOAs/ EOLs to assist them in using the EO channels for local EO complaints. The increased availability of EOAs and EOLs should cause a rise in education of the EO program and rise in reporting to a realistic number, illuminating issues for the command to resolve.



**Figure 9. Wisconsin National Guard MEO complaints since 2009**

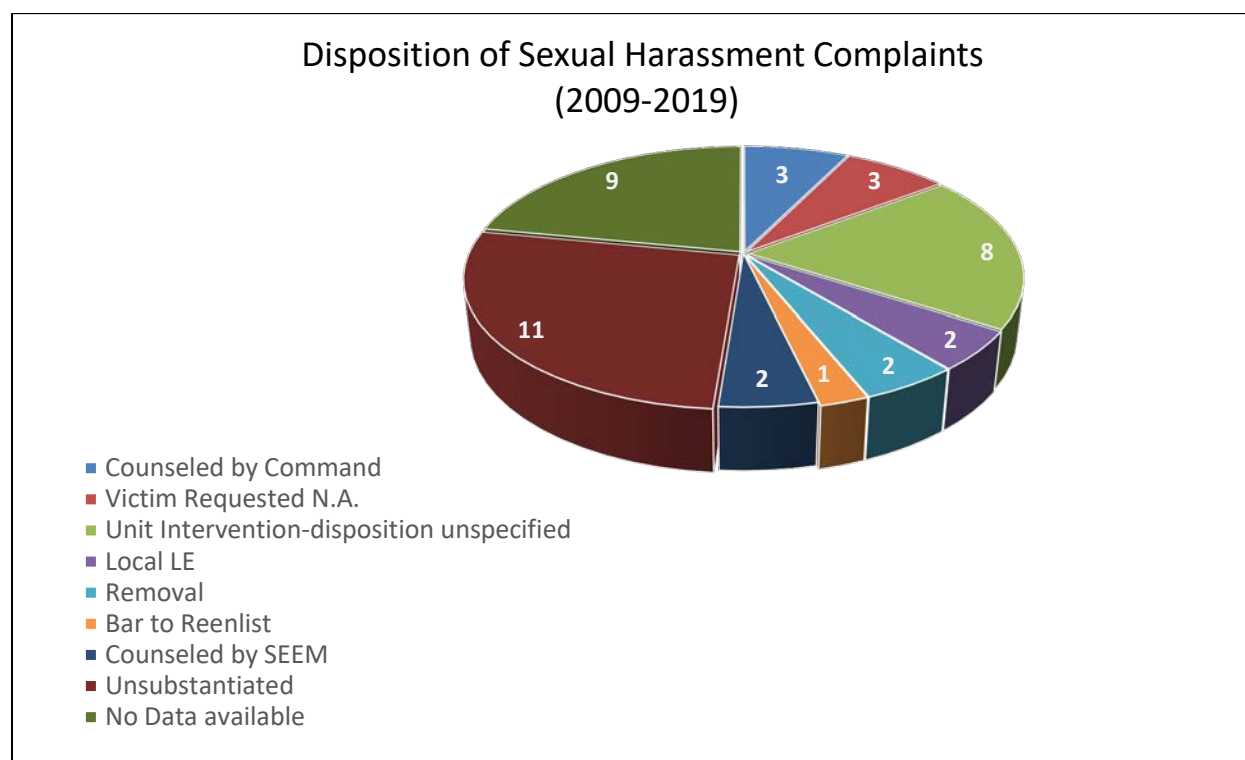
The Team reviewed 94 EO complaints made to the Wisconsin National Guard, which includes: sexual harassment, hostile work environment, racial discrimination, gender discrimination, age discrimination, and non-selection for promotion for reasons unrelated to discrimination (see figure 9 above). The Team focused on the EEO/EO programs performance in the areas of sexual harassment and hostile work environment, which made up 80% of the complaints (75 of 94) filed during that time period.

<sup>109</sup> DEP’T OF ARMY REGULATION 15-6, PROCEDURES FOR ADMINISTRATIVE INVESTIGATIONS AND BOARDS OF OFFICERS (April 1, 2016); SEC’Y OF THE AIR FORCE, OFFICE OF THE INSPECTOR GENERAL, AIR FORCE COMMANDER’S DIRECTED INVESTIGATION GUIDE (February 18, 2016).

## A. Sexual Harassment

Sexual Harassment is a form of gender discrimination that involves unwelcome advances for sex or physical contact, requests for favors involving sex or other verbal or physical conduct of that nature when: “(1) Submission to or rejection of 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 interferes with an individual’s performance or creates an intimidating, hostile, or offensive environment.”<sup>110</sup>

The Team reviewed 41 EO complaints for sexual harassment filed under the MEO program between 2009-2019 in the Wisconsin National Guard (Air and Army combined). Of these 41 cases, only 80% (32) included a documented investigation of which 21 were substantiated. The dispositions for those cases are depicted below: Counseled by Commander (3), Victim Requested No Action (3), Unit Leadership Intervention-disposition unspecified (8), Local LE Involvement (2), Removal from school/command (2), Bar to reenlistment (1), Counseled by SEEM (2). There was no record or institutional memory regarding any investigation or action being taken in the remaining 20% of the cases (9).



**Figure 10. Wisconsin National Guard Sexual Harassment Complaints and Action**

<sup>110</sup> DEP’T OF THE ARMY REGULATION 600-20, ARMY COMMAND POLICY (November 6, 2014); See also CHIEF, NATIONAL GUARD BUREAU INSTRUCTION 9601.01, NATIONAL GUARD DISCRIMINATION COMPLAINT PROGRAM (September 27, 2015); and NG PAM 600-22/ANGP 36-3, INVESTIGATING MILITARY DISCRIMINATION COMPLAINTS (April 26, 2002).

The disposition of these and other sexual harassment allegations handled outside of the MEO program are discussed in greater detail under Line of Effort E, Accountability.

## **B. Hostile Work Environment**

A hostile work environment is defined as *[d]iscriminatory conduct or behavior in the workplace that is unwelcome and offensive to an employee or group of employees based on race, color, religion, sex (including pregnancy) or sexual orientation, national origin, age (40 or older), disability or genetic information.*<sup>111</sup> In order to rise to the level of environmental concern, the discriminatory or harassing behavior must be so *severe or pervasive as to create a hostile or abusive work environment.*<sup>112</sup> This includes, but is not limited to, offensive jokes, slurs, epithets, or name calling, physical assaults or threats, intimidation, ridicule, or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.

Over the span of ten years in the Wisconsin National Guard there were only 11 complaints of hostile work environment recorded. Out of those 11 cases, only six were substantiated. The team analyzed the processing of these cases and found that although substantiated, they were not disposed of in accordance with National Guard Bureau policy. Two of the cases were referred to a command directed inquiry, two of the cases reported unit level action, and in two cases, the complainant refused to move forward with the complaint for fear of reprisal.

The DEOC survey conducted does not specifically address complaints of hostile work, however there were a number individual comments submitted which addressed a hostile working environment, as articulated in one comment provided by a Wisconsin National Guard member:

[REDACTED]

"113

In response to the targeted statement "*Racial slurs, comments, and/or jokes are used in my workplace,*" 436 (27%) Army National Guard members and 151 (22%) Air National Guard members agreed with this statement. When presented the targeted statement, "*Sexist slurs, comments, and/or jokes are used in my workplace,*" 458 (28%) Army National Guard members and 172 (26%) Air National Guard members agreed with this statement. The number of hostile work environment complaints filed (11), when contrasted against the high number of positive responses to the targeted statements, may indicate a lack of trust and confidence in either the effectiveness of the MEO program or the integrity of command responses. This contrast nevertheless supports concerns regarding the overall climate in Wisconsin.

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<sup>111</sup> CHIEF, NATIONAL GUARD BUREAU INSTRUCTION 9601.01, NATIONAL GUARD DISCRIMINATION COMPLAINT PROGRAM (September 27, 2015).

<sup>112</sup> *Petrosino v. Bell Atlantic*, 385 F.3d 210 (2d Cir. 2004). See also NG PAM 600-22/ANGP 36-3, INVESTIGATING MILITARY DISCRIMINATION COMPLAINTS, para. 5-6d (April 26, 2002).

<sup>113</sup> In evaluating the integrity of the WING EO program, the Team reviewed the 2019 DEOCS survey responses which illustrate the negative impacts of the WING's failure to uphold the EO program.

There may be several reasons why individuals choose not to report issues like harassment and hostile work. As we mentioned above, the training and experience of the program manager and supporting staff was deficient which could translate into lower levels of reporting due to lack of knowledge regarding available options. Another explanation could rest with concerns that the leadership is either going to reprimand them for making the complaint or they won't take the report seriously.

In response to the targeted statement contained within the DEOMI survey "*If I see or hear about sexual assault, sexual harassment or hostile work environment I feel comfortable reporting to my leadership without fear of reprisal,*" 229 (14%) of Army National Guard members and 98 (15%) Air National Guard members disagreed or were neutral. In response to the targeted statement "*I believe that any report of sexual assault, harassment or hostile work will be taken seriously by my leadership,*" 206 (13%) of Army National Guard members and 82 (12%) of Air National Guard members disagreed or were neutral.

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**LINE OF EFFORT D:**

**Command Climate**

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## 1. INTRODUCTION

The Team assessed the organizational and command climate within the Wisconsin National Guard through interviews and using the results of the statewide DEOMI survey. The professionalism and dedication of Wisconsin National Guard members, both military and civilian personnel, is very high. Extensive in-person interviews displayed a work force of dedicated personnel with a high degree of commitment, pride, and dedication to the organization and its mission.

While the assessment focused on areas of concern outlined in the Background section of this report, the Team conducted a holistic review of the organization's processes under the current and previous Adjutants General. In total, 2,293 Wisconsin National Guard service members and civilian personnel responded to the DEOMI survey. This equates to nearly one quarter of the work force.

The results of the survey, detailed in Appendices A-J, validated the issues identified by the Team during their onsite interviews; reiterated issues that had been raised in the previous surveys conducted by the Wisconsin National Guard; and provided additional information regarding groups where additional leadership attention is warranted.

The written comments to the DEOMI Survey exposed three broad areas of focus to the Team: allegations of fraternization, favoritism (specifically, disparity of treatment between traditional and Active Guard Reserve service members), and trust and confidence in the organization. Each of these focus areas are discussed in sequence below.

## 2. ALLEGATIONS OF FRATERNIZATION

**The DEOMI survey, and service member comments during on-site canvassing, indicate that there is a pervasive perception within certain units of the Wisconsin National Guard that Service members of different ranks engaged in improper relationships.**

The concept of fraternization within the military is distinctly different than that of the civilian world. Such relationships are prohibited because they compromise the integrity of supervisory authority of the military chain of command. Even the perception of unfairness or bias on the part of a supervisor or leader can adversely impact the authority of the command, morale of the subordinates, and the command's ability to maintain discipline.

Army Regulation 600-20, *Army Command Policy*, 06 November 2014, specifically prohibits dating, sexual and shared living relationships between officers and enlisted Soldiers, and between non-commissioned officers and junior enlisted Soldiers.<sup>114</sup> This regulation also specifically prohibits ongoing business relationships and gambling between officers and enlisted Soldiers, and between non-commissioned officers and junior enlisted Soldiers. Likewise, Air Force Instruction 36-2909, *Professional and Unprofessional Relationships*, provides the same or similar specific prohibitions and general policy for ANG personnel. Within the Wisconsin National Guard, TAG Policy Memorandum 10, *Relationships between Wisconsin National Guard Personnel; Fraternization* proscribes relationships

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<sup>114</sup> DEP'T OF THE ARMY REGULATION 600-20, ARMY COMMAND POLICY para. 4-14c(2) (November 6, 2014).

between Wisconsin National Guard members, including dual-status technicians, of the same or different rank.

The Team reviewed 16 allegations of fraternization referred to the Wisconsin National Guard leadership over the past decade. All cases were investigated; to include allegations concerning field grade officers and enlisted service members. The investigations determined the fraternization allegations to be substantiated in eleven instances, and administrative disciplinary action was taken in each of those cases. In four of five investigations which resulted in an unsubstantiated determination, the subjects of those investigations also received administrative letters of reprimand.

The DEOMI Survey results indicating a perception of unaddressed fraternization validated the Team's observations during site visits and through canvassing sessions. Most service members reported either hearing about an improper relationship between members of different ranks or having observed conduct that raised a question of fraternization. Further, members of these units perceive that leadership either ignored the improper relationships or failed to hold offenders accountable for their actions. However, as noted above the Team determined that, when allegations of improper relationships were reported, the Wisconsin National Guard leaders investigated the allegations and took some form of disciplinary action.

Over 180 respondents expressed some form of reluctance to report misconduct due to either a fear of reprisal or a lack of confidence that leadership would take the matter serious. A significant number of service members surveyed, expressed the existence of *a cultural reluctance to report misconduct*. This reluctance appears grounded in perceptions of favoritism and an overall lack of trust and confidence in senior leadership to hold offenders accountable as discussed, below.

### **3. ALLEGATIONS OF FAVORITISM/ PREFERENTIAL TREATMENT**

Whereas the Team did not validate the existence of favoritism/preferential treatment within the Wisconsin National Guard, the DEOMI survey results nevertheless noted a *perception* of favoritism/preferential treatment in both the Army and Air National Guards. Although favoritism/preferential treatment cannot be found in specific incidents, the perception that it exists can be equally disruptive to an organization.

Favoritism is not specifically defined within DoD or Service regulations. Air Force Instruction 1-1, *Air Force Standards*, notes

*With respect to relationships between superiors and subordinates, whether they are other military members or civilian employees, there is a balance that recognizes the appropriateness of a relationship. Social interaction that contributes appropriately to unit cohesiveness and effectiveness is encouraged. Relationships are unprofessional, whether pursued and conducted on or off-duty, when they detract from the superior-to-subordinate authority, or reasonably create the appearance of favoritism, misuse of an office or position, or the abandonment of organizational goals for personal interests.*

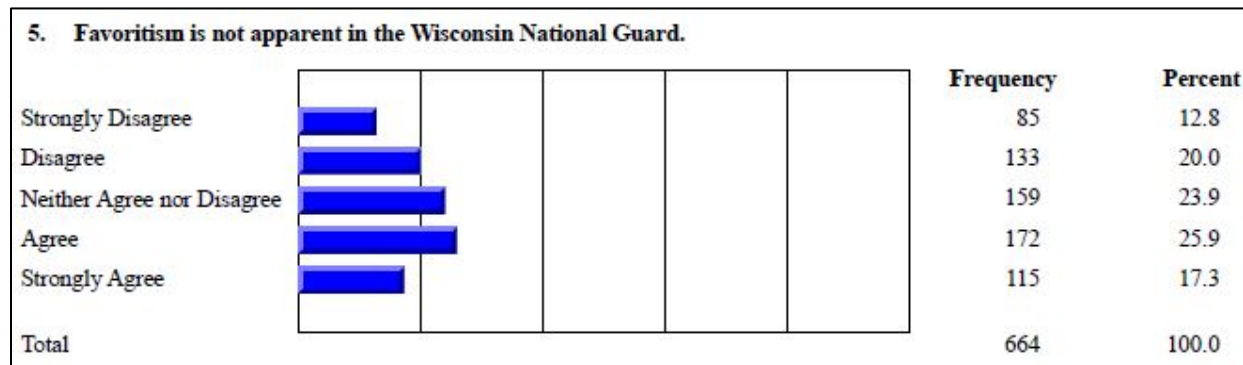
Therefore, the appearance of favoritism detracts from the organization.<sup>115</sup>

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<sup>115</sup> DEP'T OF THE AIR FORCE INSTRUCTION 1-1, AIR FORCE STANDARDS, para. 2.2.2, (August 7, 2012).

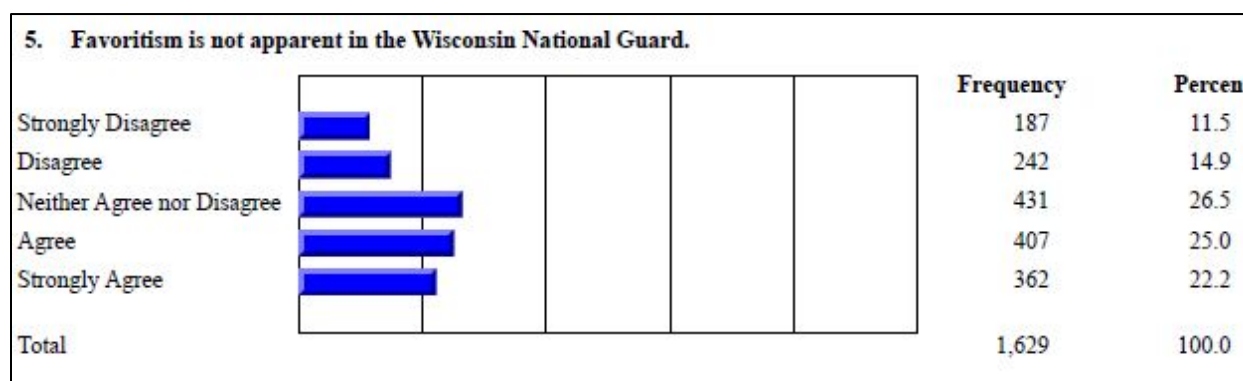
To gauge the health of the command climate within the Wisconsin National Guard, the Team posed the targeted statement regarding favoritism, “Favoritism is not apparent in the Wisconsin National Guard.” Generally, the higher the percentage of agreement with this statement indicates a healthier command climate.

In response to this target statement, less than half of the Wisconsin Air National Guard agreed or strongly agreed that favoritism was not apparent.<sup>116</sup> In the 115<sup>th</sup> Fighter Wing, noted in Figure 11 below, almost 33 percent of the respondents disagreed with the statement that favoritism is not apparent in the Wisconsin National Guard. Similar to the 115<sup>th</sup> Fighter Wing, at Volke Field, over 31 percent of the respondents also disagreed with this statement.



**Figure 11. Wisconsin Air National Guard Response.**

In the Army National Guard, the results were only slightly better than the Air National Guard, with 47 percent of personnel responding positively to the statement: “Favoritism is not apparent in the Wisconsin National Guard.”<sup>117</sup>



**Figure 12. Wisconsin Army National Guard Response.**

<sup>116</sup> Defense Organizational Climate Survey (DEOCS) Report, 115<sup>th</sup> Fighter Wing, Admin. No. 1905178, pg. 29, Question #5 (September 13, 2019). Within the 115<sup>th</sup> Fighter Wing, only 47 percent of respondents agreed or strongly agreed that favoritism was not present. In the 128 Aerial Refueling Wing, only 38 percent of respondents agreed or strongly agreed that favoritism was not present. At Volke Field, only 39 percent agreed or strongly agreed that favoritism is not apparent in the Wisconsin National Guard.

<sup>117</sup> Defense Organizational Climate Survey (DEOCS) Report, WI ARNG, Admin. No. 1905177, pg. 29, Question #5 (September 13, 2019). In the 32 Infantry Brigade Combat Team, slightly more than 50 percent of respondents agreed or strongly agreed that favoritism was not apparent.<sup>117</sup> In the 157 Maneuver Enhancement Brigade, only 41 percent of respondents agreed or strongly agreed that favoritism was not apparent.<sup>117</sup> In the 64 Troop Command, 45 percent of respondents agreed or strongly agreed with this statement.<sup>117</sup> In the 426 Regional Training Institute and the Recruiting and Retention Battalion, only 35 and 40 percent, respectively, of respondents agreed or strongly agreed that favoritism was not apparent.

In Figure 12 above, over 26 percent of respondents within the Army National Guard disagreed with this statement, which suggests the perception of favoritism is at least an issue in some Army National Guard units.

Perceptions of favoritism expressed within the written responses to the DEOMI survey related to how discipline was administered among different categories of military personnel; i.e., commissioned versus non-commissioned officers, enlisted personnel versus officers, Active Guard Reserve personnel versus traditional personnel. As discussed more fully in the accountability section below, these perceptions appear to stem from untimely and inconsistent disciplinary actions and the failure of intermediate and senior leadership to communicate those actions to lower echelons.

“ [REDACTED] ”

[REDACTED] ”

[REDACTED] ”

[REDACTED] ”

Interviews reflected a pervasive viewpoint among unit members who perceive that officer and enlisted leaders extend favoritism based on familiar relationships within the Wisconsin National Guard. The Team noted that Traditional Guard members had a higher perception of unfair or disparate treatment than their AGR service members in the areas of assignments, opportunities to attend military schools and even acceptance into the AGR program. The DEOMI survey data points, coupled with the concerns articulated to the Team during site visits, suggests that the perception of favoritism is a concern within the Wisconsin National Guard.

#### 4. TRUST AND CONFIDENCE IN THE ORGANIZATION

As noted in Air Force Instruction 1-1, Air Force Standards “trust...is essential in today’s military”<sup>118</sup> In the context of sexual assault Air Force policy further provides “Sexual assault undermines our mission readiness, directly contradicts our core values, and *erodes the trust and confidence* upon which our institution is built. All Airmen have the enduring responsibility to foster a climate of dignity and respect and to promote and ensure a culture that will not tolerate sexual assault or behaviors that support it.”<sup>119</sup>

<sup>118</sup> DEP’T OF THE AIR FORCE INSTRUCTION 1-1, AIR FORCE STANDARDS, para. 1.3, (August 7, 2012).

<sup>119</sup> Ibid, at paragraph 1.7.4.5 *citing* Dep’t of the Air Force Instruction 36-6001, Sexual Assault Prevention and Response (SAPR) Program.

ADP 6-22, *Army Leadership and the Profession*, also provides that the trust and confidence of subordinates in their leadership is essential not only to teamwork and mission accomplishment, but also in maintaining good order and discipline within military organizations.<sup>120</sup> Building trust leads to mutual confidence among leaders and subordinates.<sup>121</sup>

The Team assessed the trust and confidence of subordinates in all levels of leadership, from immediate supervisors to unit-level leaders to senior leadership through written comments to the DEOMI Survey, individual interviews, and observations during site visits with subordinate commands. While overall assessment of the Wisconsin National Guard reflects a military and civilian work force of highly dedicated personnel who take great pride in the organization and in military service, the Team notes that trust and confidence can be eroded by the perceptions of favoritism and the lack of transparency in the areas of both accountability and personnel actions.

The DEOMI survey revealed an adequate percentage of favorable responses for job satisfaction and trust in leadership. In job satisfaction, overall, approximately 79 percent of respondents answered positively.<sup>122</sup> This rating was fairly balanced between women and men, with an 80 and 79 percent approval rating respectively. The highest rating for job satisfaction was within senior officer personnel, with a 90 percent positive rating, and lowest among junior enlisted, with a 75 percent rating. Within the Wisconsin Army National Guard, approximately 84 percent of the respondents expressed trust and confidence in the immediate supervisory level of leadership. In the Air National Guard this percentage was slightly lower. At Volke Field and within the 128 Aerial Refueling Wing, approximately 81 percent of respondents expressed trust in their leadership. In comparison, the 115<sup>th</sup> Fighter Wing mirrored the results of the Army National Guard, with 84 percent of respondents expressing trust in their leadership.

Trust in the organization or the organization's systems meant to protect people, however, appeared to come out differently. Trust within the organization or its systems, as opposed to leaders, was not a specific question asked as part of the DEOMI survey; however, a close reading of written responses in the DEOMI survey suggested a lack of trust in the organization or in the organization's systems, to protect people from reprisal or retaliation. In the Army National Guard approximately 9 percent of respondents disagreed that they believed the chain of command would address concerns about discrimination without fear of retaliation or reprisal.<sup>123</sup> This circumstance arose in some of the comments as well, whether by implication or directly stating they feared reprisal or retaliation. Some comments expressed a fear of speaking about a particular issue or incident in the survey out of fear of identification and what this may bring. In other comments, the respondent specifically stated that they had a fear of reprisal or retaliation, whether because of a prior incident or experience or because of their perception of the organization.

In an answer to one question about whether favoritism exists, a respondent stated, "[REDACTED]

" Another respondent stated, "[REDACTED]

<sup>120</sup> DEP'T OF THE ARMY DOCTRINE PUBLICATION (ADP) 6-22, *ARMY LEADERSHIP AND THE PROFESSION*, para. 2-16, (July 2019).

<sup>121</sup> *Ibid*, at paragraph 5-1.

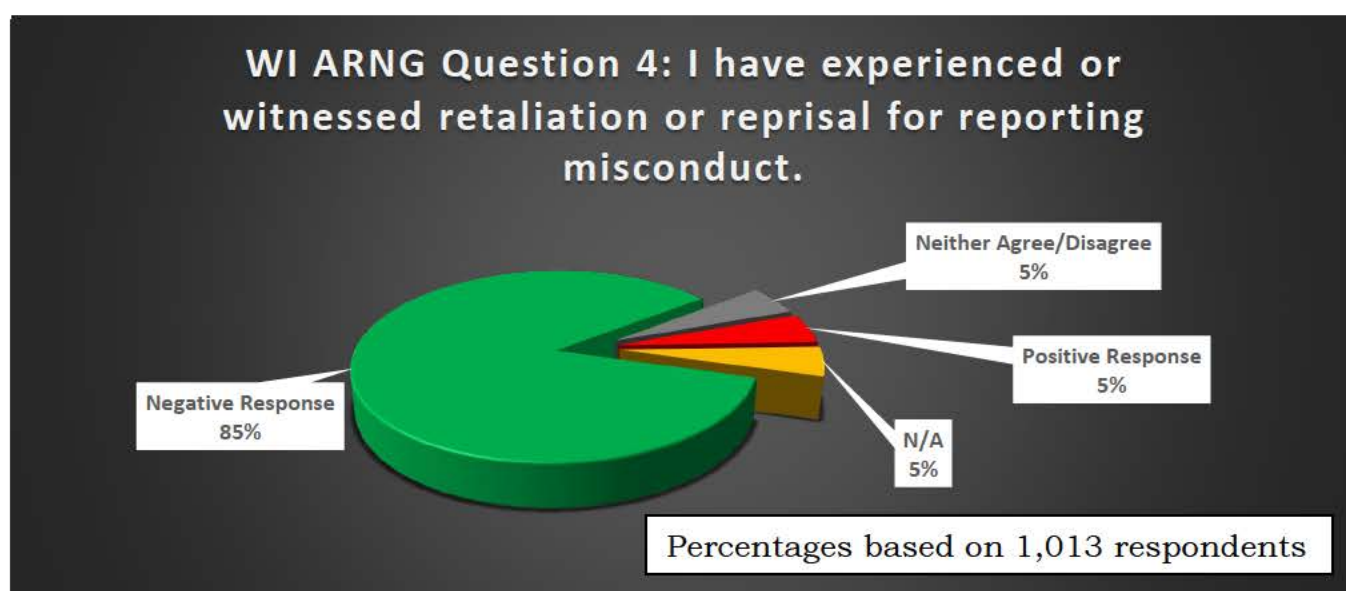
<sup>122</sup> See Defense Organizational Climate Survey (DEOCS) Report, WI ARNG, Admin. No. 1905177, pg. 7, Figure 2 (September 13, 2019) (78%); Defense Organizational Climate Survey (DEOCS) Report, Volke Field, Admin. No. 1905178-3, pg. 7, Figure 2 (September 13, 2019) (79%); Defense Organizational Climate Survey (DEOCS) Report, 128 ARW, Admin. No. 1905178-4, pg. 7, Figure 2 (September 13, 2019) (79%); Defense Organizational Climate Survey (DEOCS) Report, 115<sup>th</sup> Fighter Wing, Admin. No. 1905178, pg. 7, Figure 2 (September 13, 2019) (80%).

<sup>123</sup> Defense Organizational Climate Survey (DEOCS) Report, WI ARNG, Admin. No. 1905177, Table 2.10, pg. 16 (September 13, 2019).



\_\_\_\_\_.” In describing confidence in the organization to handle sexual assault/harassment, one responded stated, \_\_\_\_\_

The Air National Guard appeared to reflect an even higher perception of fear of reprisal or retaliation, and comments appeared to track with at least a diminished trust in the organization or the organization’s systems that are meant to protect people from reprisal or retaliation. In response to the question, do you believe you can use your chain of command to address concerns about discrimination without fear of retaliation or reprisal, approximately 12 percent of respondents at both the 115<sup>th</sup> Fighter Wing and Volke Field disagreed with this statement.<sup>124</sup> Within the 128 Aerial Refueling Wing, approximately six percent of respondents disagreed and an additional five percent of respondents slightly disagreed with this statement.<sup>125</sup> Approximately 13 percent of respondents at both Volke Field and the 115<sup>th</sup> Fighter Wing also disagreed with the statement that they feel comfortable in approaching unit leadership with any issues or requests.<sup>126</sup>



**Figure 13. Wisconsin Army National Guard Responses.**

The Team’s discussions with unit members during its on-site, one-on-one and focal group discussions appeared to track relatively close to the DEOMI survey results, as noted in Figures 13 and

<sup>124</sup> Defense Organizational Climate Survey (DEOCS) Report, 115<sup>th</sup> Fighter Wing, Admin. No. 1905178, Table 2.10, pg. 16 (September 13, 2019); Defense Organizational Climate Survey (DEOCS) Report, Volke Field, Admin. No. 1905178-3, Table 2.10, pg. 16 (September 13, 2019).

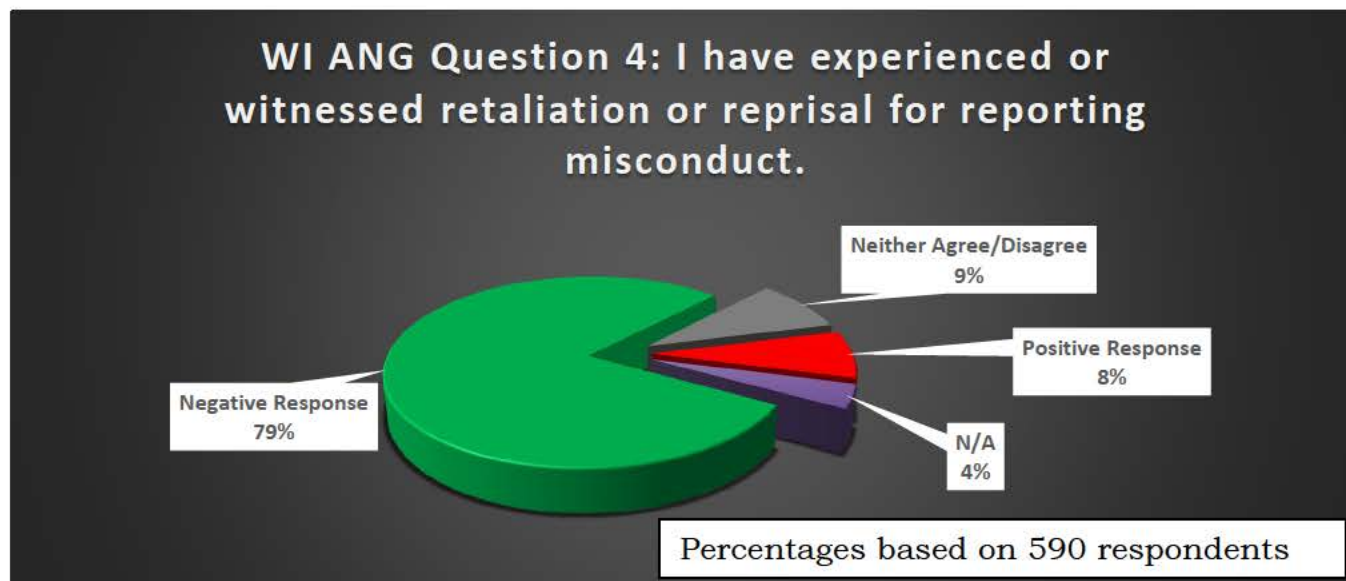
<sup>125</sup> Defense Organizational Climate Survey (DEOCS) Report, 128 ARW, Admin. No. 1905178-4, Table 2.10, pg. 16 (September 13, 2019).

<sup>126</sup> Defense Organizational Climate Survey (DEOCS) Report, 115<sup>th</sup> Fighter Wing, Admin. No. 1905178, pg. 28, question #1 (September 13, 2019); Defense Organizational Climate Survey (DEOCS) Report, Volke Field, Admin. No. 1905178-3, pg. 28, question #1 (September 13, 2019).



14. One of the questions that the Team members asked during these discussions was whether any individual had experienced or witnessed retaliation or reprisal for reporting misconduct during their time with the Wisconsin National Guard. The graphics above and below depict some of these results.

In the Army National Guard, approximately 5 percent of the individuals the Team spoke with reported that they had experienced or witnessed retaliation or reprisal for reporting misconduct. In the Air National Guard, this number was fairly higher at 8 percent.



**Figure 14. Wisconsin Air National Guard Responses.**

As discussed in the LOE for *Accountability*, communication between the leadership and the members of the organization may play a part in this diminished trust. At the 128th Aerial Refueling Wing, over 26 percent of respondents disagreed with the statement that communication flows effectively from senior leadership to all levels of the organization.<sup>127</sup> Over 20 percent and 24 percent disagreed with this statement at the 115<sup>th</sup> Fighter Wing and Volke Field respectively.<sup>128</sup> Within the Army National Guard, approximately 16 percent of respondents disagreed that communication flows effectively from senior leadership to all levels of the organization.<sup>129</sup>

When communication between leadership and its members is muddled, the risk of miscommunication and misperception will increase. Coupled with the deficiencies and gaps in programs and systems noted earlier in this Report, an organization may find that a level of mistrust exists particularly in those individuals who have looked to the organization for support and care through these programs and systems. This statistic may not necessarily be reflected in enterprise-wide

<sup>127</sup> Defense Organizational Climate Survey (DEOCS) Report, 128 ARW, Admin. No. 1905178-4, pg. 30, question #8 (September 13, 2019).

<sup>128</sup> Defense Organizational Climate Survey (DEOCS) Report, 115<sup>th</sup> Fighter Wing, Admin. No. 1905178, pg. 30, question #8 (September 13, 2019); Defense Organizational Climate Survey (DEOCS) Report, Volke Field, Admin. No. 1905178-3, pg. 30, question #8 (September 13, 2019).

<sup>129</sup> Defense Organizational Climate Survey (DEOCS) Report, WI ARNG, Admin. No. 1905177, pg. 30, question #8 (September 13, 2019).

surveys, but it nevertheless will become apparent in the interviews of victims and other stakeholders for these programs.

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**LINE OF EFFORT E:**

**Accountability**

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## 1. ACCOUNTABILITY DEFINED

The Team's mandate was to assess, among other areas addressed in this report, the Wisconsin National Guard's accountability measures in response to substantiated allegations of sexual assault and sexual harassment.<sup>130</sup> The Team defined "Accountability" as the obligation of an individual or organization to account for its activities, accept responsibility for them, and to disclose the results in a transparent manner.<sup>131</sup> Accountability, both personal and organizational, is critical to maintaining good order and discipline, and must be demanded and exacted at all levels of an enterprise, particularly the most senior levels.

Responsibilities, actions and communication are the foundational principals of accountability. For the purpose of this assessment the Team evaluated three areas of concern with regard to accountability to include: Leadership Roles and Responsibilities, Military Justice, and Administrative Actions. Certain responsibilities are inherent in leadership, while others are overtly defined or mandated. From a military perspective, accountability encompasses not only the military justice system, but also administrative provisions, both of which necessarily require three core actors through whom accountability is achieved.

Effective senior leaders demonstrate appropriate conduct through personal actions and decision making and promote such conduct to subordinates through two-way communication and reinforcement. Whether and how leadership communicates and reinforces these accountability activities to Soldiers and Airmen determine the effectiveness of accountability.

The Team reviewed over 190 reports of Army and Air National Guard general misconduct provided by the Wisconsin National Guard and conducted a detailed inspection of a representative sampling of documentation regarding this misconduct. The Team also reviewed over 30 administrative investigations into allegations of sexual assault and sexual harassment where the Wisconsin National Guard accounted for these cases outside of general military disciplinary actions. The Team examined each opportunity for accountability against the type of offense committed, the means by which accountability was rendered, the punishment rendered and the current disposition of the individuals involved. The goal of this review was not to find objection to the action taken by the leaders but to determine whether there was sufficient process and oversight available for these actions to enable leaders to make the most informed decisions.

To validate the observations deduced through metric and documentary review, the Team conducted additional interviews as necessary to measure the effectiveness of accountability within the Wisconsin National Guard, including with commanders and enlisted leaders at all levels below Joint Forces Headquarters, and victims of sexual assault, sexual harassment and EO/EEO complainants. To encourage full and frank disclosure, no formal statements were taken.

Finally, the Team conducted site visits with every major command to determine the level of transparency with which senior and intermediate leadership communicates accountability.

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<sup>130</sup> Letter from the Honorable Tammy Baldwin, U.S. Senator, Chief, National Guard Bureau (March 14, 2019). *See also* Wisconsin Governor Tony Evers, to Chief, National Guard Bureau (March 14, 2019).

<sup>131</sup> <http://www.businessdictionary.com/definition/accountability.html>.

## 2. LEADERSHIP ROLES AND RESPONSIBILITIES

### A. Senior Leadership Communication

**While standards of personal conduct are adequately communicated to the Wisconsin National Guard, there is a lack of communication of accountability actions to reinforce appropriate conduct.**

The DEOMI Survey results, and Team discussions with service members during on-site visits, reveal a perception that The Adjutant General does not share information with lower leadership levels in a timely enough fashion to enable those subordinate leaders to communicate accountability actions to their troops. In response to the targeted statement “*Communication flows effectively from senior leadership to all levels of the organization,*” 63 percent of Army National Guard respondents and 62 percent of Air National Guard respondents agreed or strongly agreed.<sup>132</sup> These results contrast with the responses to the targeted statement, “*I have confidence in the leaders at my level/unit.*” Army National Guard respondents agreed or strongly agreed with this statement 82 percent, while 81 percent of Air National Guard respondents agreed or strongly agreed.<sup>133</sup> The Adjutant General communicated standards of appropriate conduct within Wisconsin National Guard through several TAG Policy Memoranda:

TAG Policy Memorandum 35, *Wisconsin National Guard Sexual Assault Zero Tolerance Policy*, states in its first paragraph, “Sexual assault is a crime and is not tolerated in the Wisconsin National Guard.” In paragraph two, The Adjutant General recognizes that all members of the Wisconsin National Guard “share a responsibility to ensure a climate of mutual respect and trust.” In the third paragraph, The Adjutant General sets the standard of conduct for his subordinate leaders in stating, “We will assure immediate care [of the victim] and take the complaint seriously.”

While these are clear statements of The Adjutant General’s expectations of subordinates throughout the organization, most field grade officers interviewed stated they read these policies when first issued, but few could confirm what the policies said. Likewise, the majority of non-commissioned officers and enlisted personnel were aware of written policies on sexual assault and fraternization, but few had ever read these policies, relying instead on annual briefings from leaders and peers.

*"[M]ost field grade officers interviewed stated they read these policies when first issued, but few could confirm what the policies said."*

The Team reviewed the written comments provided in the DEOMI survey and spoke with individual Soldiers and Airmen at their training sites, to validate the effectiveness of The Adjutant General’s communication of the Wisconsin National Guard Sexual Assault Prevention and Response Program’s standards, objectives and consequences. The Team found more than 100 instances of comments to the effect that the severity of most punishment depends on how “connected” the offender is within the full-time force.<sup>134</sup> While this general perception may not reflect how accountability is

<sup>132</sup> Defense Organizational Climate Survey (DEOCS) Report, Admin. No. 1905178, pg. 30, Question #8 (September 13, 2019) and Defense Organizational Climate Survey (DEOCS) Report, Admin. No. 1905177, pg. 30, Question #8 (September 13, 2019).

<sup>133</sup> Ibid, at pg. 29, Question #6.

<sup>134</sup> 2,293 service members responded to the survey initiated by the Team.



actually administered, the prevalence of this perception suggests that it forms at least one “reality” within the Wisconsin National Guard. Another general perception expressed through a significant number of comments to the DEOMI survey is the failure of leadership to effect and adequately communicate accountability for misconduct. The Team found this circumstance caused subordinates to distrust leadership’s commitment to accountability, and it may have had an effect on the willingness of subordinates to report misconduct in the future.<sup>135</sup>

## **B. Accountability at Brigade and Wing Leadership Levels**

### **Jurisdictional withholding under TAG Policy Memorandum 34 as implemented effectively limited the ability of leaders at the brigade, wing and separate unit levels to exact accountability of offenders in a timely manner.**

Lapses in leadership accountability arise when subordinate leaders are unduly constrained in exercising their personal discretion in exacting accountability through military discipline. Prompt action is essential for military discipline to have the proper corrective effect.<sup>136</sup> Each commander in the chain of command has independent yet overlapping discretion to dispose of offenses within the limits of the officer’s authority. Within military discipline, the commander at the lowest level makes the initial decision regarding disposition and customarily executes that decision, if within his or her limits of authority.

While nothing prevents a senior leader from withholding authority to himself or herself to dispose of offenses in individual cases or types of cases, the senior leader’s exercise of this prerogative should not prevent lower unit commanders from advising on disciplinary matters or maintaining discipline within their unit. In the Wisconsin National Guard, TAG Policy Memorandum 34, *Military Justice and Senior Commander Notification*, reserves general and special courts martial convening authority to The

Adjutant General and any general officer in command of a force within the Wisconsin Army or Air National Guard.<sup>137</sup> As noted *below*, the Wisconsin Code of Military Justice provides that a conviction by a summary court-martial is not a criminal conviction. The Adjutant General expressly stated that his intent in issuing Policy Memorandum 34 is not to impede the independent authority of a commander to take appropriate action under the Wisconsin Code of Military Justice. However, the Team found through multiple leader interviews that the policy had a chilling effect, effectively questioning senior leadership confidence in subordinate commanders. Further, commanders believe this policy limited their ability to achieve accountability of offenders within a reasonable time, both of which unwittingly resulted in the abdication of leader responsibility at lower echelons.

The authority to take action at company or battalion gets held well above the battalion level. There is no clarity on what the end result is.

- Field Grade Officer

<sup>135</sup> Based on written responses to Short Answer Questions “Have you witnessed or experienced any incidents of favoritism, discrimination, or unaddressed misconduct?”, “Would you feel confident reporting a matter to the Sexual Assault Response Coordinator, Special Victim Counsel Services, Victim Advocate, State Inspector General, Judge Advocate, Chaplain and State Equal Employment Manager without any negative repercussions from my co-workers, peers, and fellow members of the Wisconsin National Guard?” and “Have you reported concerns or complaints to your unit leadership and were they addressed to your satisfaction?”.

<sup>136</sup> See, generally, Army Regulation 27-10, *Military Justice*, (May 11, 2016), and Air Force Instructions 51-201, *Administration of Military Justice*, (January 18, 2019), and 51-202, *Nonjudicial Punishment*, (March 6, 2019).

<sup>137</sup> Dated September 24, 2008.



Multiple Army National Guard brigade commanders expressed frustration with a perceived lack of authority to address instances of serious misconduct with their units. In contrast, Air National Guard wing commanders generally expressed comfort with their ability to address similar misconduct; an observation consistent with an Air Force culture of decentralized management. Additionally, at least one brigade commander noted that the disciplinary authority of Army National Guard commanders appeared inconsistent with that of Air National Guard commanders. There was a clear understanding among the commanders at the brigade/wing level that the Adjutant General holds command authority with regards to discipline of service members in the Wisconsin National Guard. However, all commanders at the brigade/wing level expressed frustration with the length of time needed for senior leadership to decide on the disposition of serious disciplinary matters.

At the battalion and squadron level, one level below the Brigade and Wing, several leaders expressed frustration that matters of serious misconduct such as sexual assault or harassment were withheld to the O6 level or higher with no input from the battalion/squadron or company/group commander. The general perception among field grade leaders is that the disciplinary process takes too long and isn't transparent to the mid-level leadership or their subordinates.

Comments to the DEOMI Survey validate this perception.

“ [REDACTED] ”

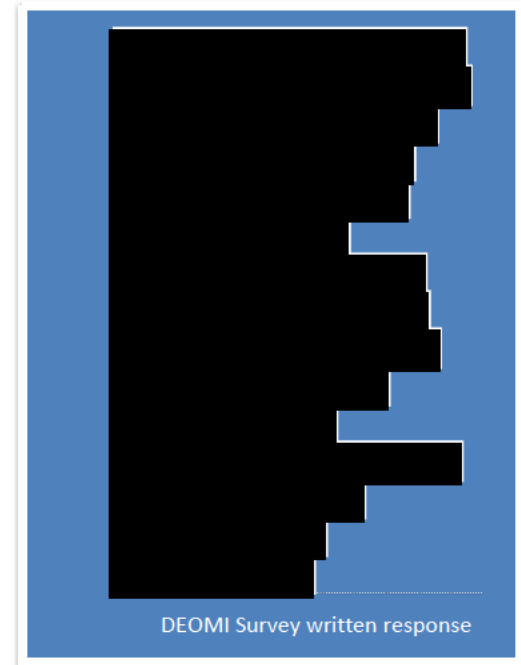
“ [REDACTED] ”

One respondent to the DEOMI survey expressed the importance of timely actions to achieve accountability and the need to communicate those accountability measures:

[REDACTED]

### C. Transparency of Accountability

**A general perception exists within the Wisconsin National Guard that The Adjutant General and other senior leaders within the Wisconsin National Guard do not hold offenders accountable.**



As stated earlier, whether and how senior leadership communicates accountability actions to Soldiers and Airmen has a direct correlation to the effectiveness of accountability measures. Withholding the authority to dispose of all military offenses to the highest level places several additional responsibilities on The Adjutant General. First is the responsibility to take action to hold offenders accountable in a timely manner. As discussed above, leaders and soldiers at every echelon below the Joint Force Headquarters level expressed frustration with the length of time between commission of an offense and the discipline of the offender.

“People want to see offenders disciplined when they do something wrong.”

– Junior Enlisted Member

The Adjutant General also assumes the responsibility to effectively communicate how and why individuals are held accountable across multiple echelons of the organization. Failure to effectively communicate the consequences of misconduct creates the perception that the leadership lacks either the moral high ground or willingness to take appropriate steps when disciplinary matters arise.

During the Team’s visits to individual units for canvassing operations, the Team received numerous statements which reflect the perceptions of Soldiers and Airmen on accountability actions taken and the transparency of how and why those actions were taken.

*“Quality of communications from senior leadership down needs to improve. People at lower levels don’t know that is going on [with respect to discipline and accountability].”*

*I’m not sure that the punishment given out always fits the offense. For instance, we see [people] who are accused of sexual [misconduct] simply moved from unit to another with no more than a slap on the wrist.” - Company Grade Officer and echoed by multiple Non-Commissioned Officers and junior enlisted members at several site visits.*

*“On each occasion, the Company Commander took appropriate action. The problem appears to be with that discipline being carried out/maintained at higher levels in our organization.”*

#### **D. The Role of the Legal Advisor**

**The Legal Support provided by the Wisconsin National Guard Office of the Staff Judge Advocate was ineffective or lacked competency on matters regarding the investigation of sexual assault.**

It was the Team’s impression that the legal support provided was less than optimal for the investigation of sexual assault. There were at times challenges in articulating the legal basis for their leadership's position regarding the use of internal investigative capabilities. Equally disconcerting was the seeming lack of understanding of the applicable law and policy regarding sexual assaults in the military and the distinction between sexual assault and sexual harassment.

The Team met with a number of assigned legal advisors for the Wisconsin National Guard and none of them could articulate the legal basis for the use of internal sexual assault investigators. Yet, every time the legal advisor participated in discussions with the leadership regarding the referral of a report of sexual assault, they were presented with a new opportunity to advise correctly and either did not correctly advise or were ineffective. Further, it was clear from these interviews, the legal staff was

aware of the inconsistent interpretation of law and policy, and they lacked formal training regarding administrative sexual assault investigations.

### **3. MILITARY JUSTICE AND ADMINISTRATIVE ACTION**

The Adjutant General, like any commander, exercises discretionary command authority over military personnel within his command. When issues of good order and discipline come before The Adjutant General, he has a wide range of actions available based on what he decides is the appropriate course of action. Due to potential challenges associated with the prosecution of offenses under the Wisconsin Code of Military Justice (WCMJ), commanders often rely on administrative measures or tools to maintain order and discipline within their force. These tools generally include: informal counseling; a written memorandum of counseling (MOC) or reprimand (MOR); annotating misconduct on a member's evaluation/performance report; withholding or delaying (or modifying) promotions; change in duty assignments, shift assignments or transfers; administrative demotion; removing active guard/reserve (AGR) members from their full-time orders; and, finally, administrative separation from the National Guard.

Similar to the UCMJ, the WCMJ<sup>138</sup> provides that general courts martial may only be convened by the Governor, the Adjutant General, a general officer in command, and a commander of a division, separate brigade or separate wing.<sup>139</sup> Any conviction adjudicated by a general court martial for which an accused may receive a sentence of confinement for more than one year is a felony offense under Wisconsin law.<sup>140</sup>

At the special courts martial level, an installation commander, a commander of a unit down to the detached battalion or separate squadron may also convene these courts martial.<sup>141</sup> Wisconsin law provides that any conviction by a special court martial is a misdemeanor and any conviction by a summary court-martial is not a criminal conviction.<sup>142</sup> From a punitive or deterrent perspective, confinement up to one year and forfeiture of two-thirds pay per month for that period are the maximum punishments that special courts martial may adjudge.<sup>143</sup> Confinement up to one month and forfeiture of two-thirds pay for one month is the maximum punishment that summary courts martial may adjudge.<sup>144</sup>

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<sup>138</sup> Enacted in 2008, the State of Wisconsin modeled the WCMJ on the ABA-recommended model state code of military justice. This code closely mirrors the federal Uniform Code of Military Justice (UCMJ) in existence in 2008. The UCMJ has undergone several revisions since, most recently with the Military Justice Act of 2016, and the WCMJ contains no provisions to automatically conform individual sections with changes to its federal counterpart. However, the WCMJ was amended in April 2014 to include certain revisions to the UCMJ, most notably to include revisions to the sexual crimes provisions of the WCMJ. Wisconsin is not unique in this respect as many states do not have conforming provisions within their state codes of military justice and some states have never enacted a state code of military justice.

<sup>139</sup> Wis. Code of Mil. Jus., §322.022.

<sup>140</sup> Wis. Code of Mil. Jus., §322.056(2).

<sup>141</sup> Wis. Code of Mil. Jus., §322.023.

<sup>142</sup> Wis. Code of Mil. Jus., §322.056(3) and (4).

<sup>143</sup> Wis. Code of Mil. Jus., §322.019.

<sup>144</sup> Wis. Code of Mil. Jus., §322.020(2).

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As noted above, TAG Policy Memorandum 34 withholds general and special courts martial convening authority to the Adjutant General and any general officer in command of a force within the Wisconsin Army or Air National Guard. This withholding policy effectively limits the judicial authority of all WING commanders below the Adjutant General to non-criminal proceedings in the form of a summary court martial.

In the military justice system, a secondary option for commanders is non-judicial punishment (NJP). Non-judicial punishment provides commanders with an essential and prompt means to maintain good order and discipline and promote positive behavior changes in service members without the stigma of facing a court-martial conviction. The burden of proof remains the same as for convened courts martial, beyond a reasonable doubt. If the commander is convinced of the individual's guilt, they can direct a range of punishment authorized under state law more swiftly than the traditional courts-martial route. In Wisconsin there is no provision that would require the accused to accept the NJP, thus the accused may demand trial by court-martial in lieu of non-judicial punishment.

#### **A. Challenges in Assessing Disciplinary Action**

##### **The Wisconsin National Guard lacks sufficient internal controls to manage the administration of discipline for service member misconduct.**

There was no consolidated tracking mechanism for misconduct. The Team requested the Wisconsin National Guard to provide all reports of Army and Air National Guard misconduct from 1 May 2009 to the present in order to assess accountability actions. In response, the Wisconsin National Guard provided six different spreadsheets containing data on Army and Air National Guard separations, disciplinary actions taken, withdrawals of federal recognition, military equal opportunity and equal employment opportunity complaints, administrative investigations and sexual assault investigations. Three of these spreadsheets were supplemented by the Wisconsin National Guard throughout the course of the assessment.

The Team learned from interviews that disciplinary records are maintained at the brigade/wing level and only reported to higher leadership levels if (1) information is requested from the higher level or (2) the misconduct demanded resolution through more than summary courts martial or non-judicial punishment.

The Team further noted the Wisconsin National Guard did not consistently track matters referred to or initiated by local law enforcement or the disposition. When information regarding civilian law enforcement activity was requested by the Team, the information had to be pulled together by personnel familiar with the allegation or with connections to local law enforcement or the state prosecutor. The military lawyers interviewed by the Team stated that civilian convictions were a matter of soldier and airman readiness and addressed under Wisconsin Army National Guard Policy Memorandum 120, discussed in greater detail below. Each military lawyer, Army and Air, confirmed that they conducted searches of the Wisconsin Consolidated Court Automation Programs (CCAP) Case Management system to determine whether qualifying civilian convictions impacted a military member's ability to serve in the Wisconsin National Guard.

Similar to the decentralized nature of sexual assault prevention and response program management at the state level, disciplinary actions requiring less than general or special courts martial operate in bifurcated systems for the Army National Guard and Air National Guard. While service-

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specific regulation and customs dictate this bifurcation for military justice actions, those same service-specific regulations impose certain record keeping and filing requirements on the imposing authority. Without a requirement to centralize these records at the level of full-time legal staff, the degree of bifurcation exhibited in the Wisconsin National Guard decreases the organizational awareness of The Adjutant General, and his joint staff.

## **B. Performance of Military Justice**

### **The Wisconsin National Guard has an active military justice program.**

The Wisconsin National Guard has a well-developed state code of military justice and actively engages in both judicial and non-judicial punishment under the state code provisions. Since the 2008 revision to the WCMJ, the Wisconsin National Guard convened four courts martial, all of which involved either allegations of sexual assault or sexual harassment. Two cases involving penetrative sexual assault were originally convened as general courts martial, with one of these cases being dismissed and reconvened as a special court martial. Both of these cases resulted in the entry of a negotiated plea by the defense.<sup>145</sup>

Two cases involving sexual harassment were also convened as special courts martial and resulted in the entry of a negotiated plea by the defense. In both cases, the military judge imposed no sentence of confinement, but ordered the defendant dismissed through administrative discharge.<sup>146</sup> To date, the Wisconsin National Guard has yet to conduct a contested trial. Placed in the broader military discipline and accountability perspective, the Wisconsin National Guard reported 184 cases of disciplinary action against Army or Air National Guard members since February 2009.

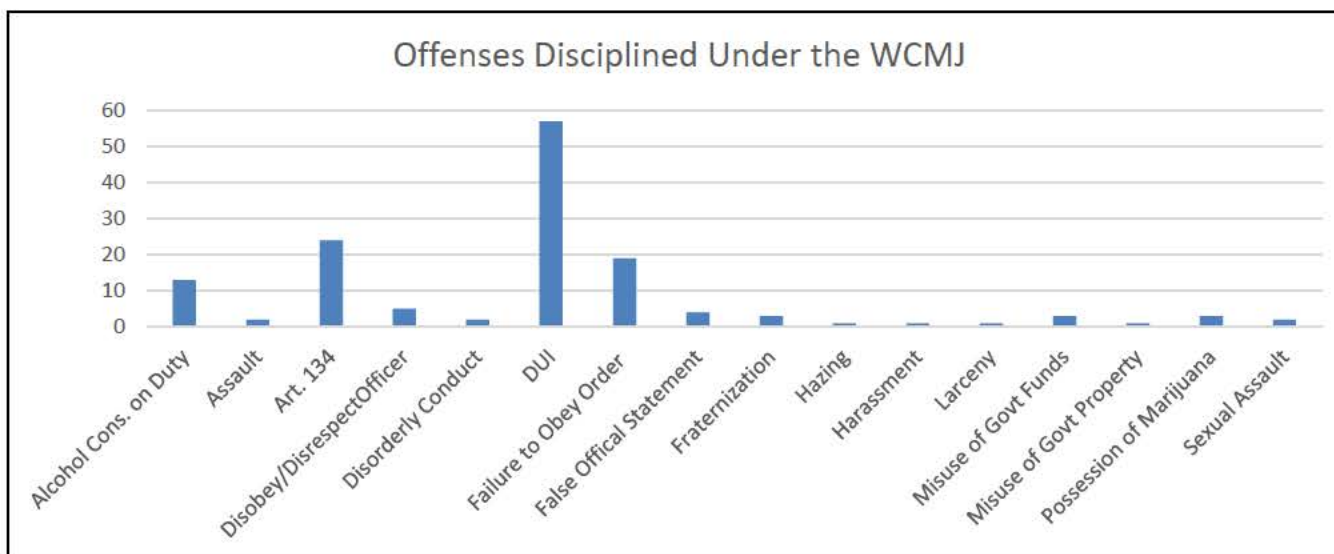
In addition to the four cases of judicial action discussed above, 67 cases of service member misconduct resulted in non-judicial punishment pursuant to Article 15, WMCJ—11 Air National Guard and 56 Army National Guard cases. Of the Army National Guard cases, hazing and harassment was cited in two cases, sexual harassment was cited four times, and adultery and fraternization was cited in four cases. Other offenses for which non-judicial punishment was deemed an appropriate form of accountability include Absent Without Leave, failure to report to place of appointed duty, disobedience of a lawful order, alcohol consumption, disrespect to an officer, assault, and destruction of government property.

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<sup>145</sup> In the two penetrative sexual assault cases, the military judge sentenced the defendants sentenced to 30 days and 15 days confinement, respectively, and received negative characterization of service upon discharge.

<sup>146</sup> According to Wisconsin National Guard officials, the military judge was not limited by the plea agreement in his judgment.



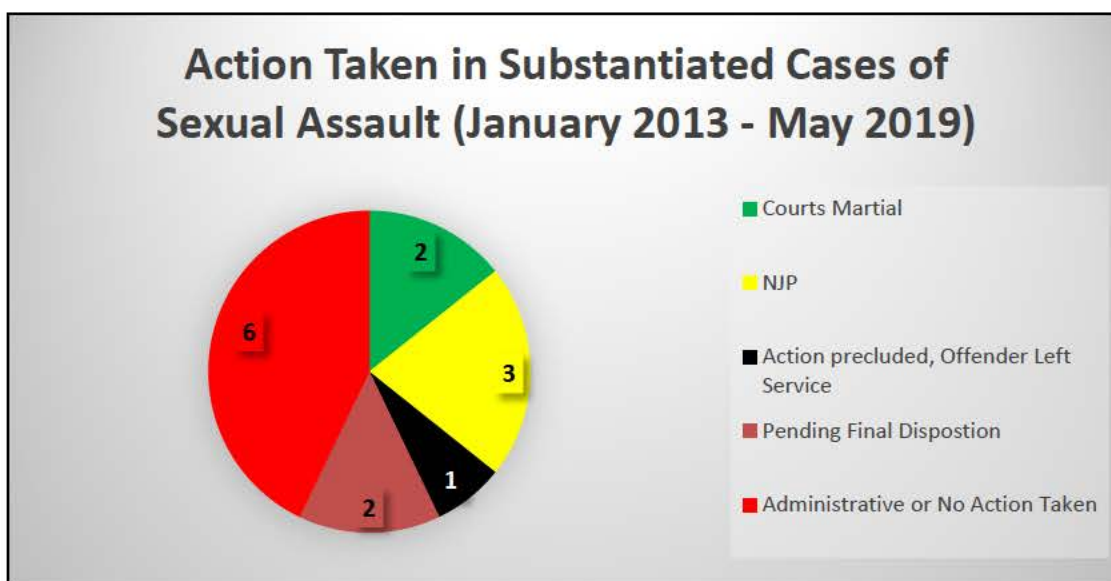


**Figure 15. Offenses Disciplined under the WCMJ**

The remaining 104 cases of disciplinary action were addressed through administrative actions.

### 1. Military Justice and Administrative Actions Taken in Sexual Assault Cases

The Team examined 35 unrestricted reports of sexual assault between from May 2009 to September 2019. Among these 35 reports, two reports reflected civilian victims and one report reflected an unknown assailant. Therefore, 32 unrestricted reports involved National Guard members as both the victim and reported perpetrator. Eight of these 32 unrestricted reports involved incidents occurring before January 1, 2013. Investigators, either internal to Wisconsin or from the Office of Complex Investigations, substantiated 14 of 24 reports of sexual assault. Figure 16 shows the disciplinary actions taken against offenders in these cases.



**Figure 16. Actions Taken in Substantiated Cases of Sexual Assault**



## 2. Military Justice and Administrative Actions Taken in Sexual Harassment Cases

As noted in previous sections of this report, the Wisconsin National Guard lacks formal, internal controls to ensure that allegations of sexual misconduct are accurately distinguished between assault and harassment. Additionally, the Wisconsin National Guard does not accurately describe the specific offense in every case of military disciplinary action, which inhibited the Team analyzing the State's response to incidents of sexual harassment.

The Team was able to identify 60 cases of sexual harassment within the Army National Guard and 13 cases of sexual harassment within the Air National Guard from the information provided by the Wisconsin National Guard. As noted earlier in this report, only 41 cases of sexual harassment were reported through the Wisconsin National Guard MEO program. Thus, the Team determined that 32 cases of sexual harassment were not addressed within program guidelines.

The Wisconsin National Guard failed to punish offenders using the WCMJ in nearly 75 percent, or 19 out of 73, of these cases. The document review revealed that the Wisconsin National Guard took disciplinary action under the WCMJ in six cases.<sup>147</sup> An additional 13 cases of military discipline cited failure to obey order or regulation, a violation of Article 92 of the WCMJ, as one of the bases for punishment.<sup>148</sup> The Wisconsin National Guard issued punitive reductions of one or more rank pursuant to Article 15, WCMJ in two cases of sexual harassment. The Wisconsin National Guard rendered accountability through administrative actions in the remainder of these cases.

### C. Administrative Actions

#### **The Wisconsin National Guard does not comply with service-specific regulatory requirements for reporting unfavorable information on substantiated misconduct.**

The Team discovered that the Wisconsin National Guard policies and regulations do not comply with service-specific regulatory requirements for the reporting of unfavorable information. Service regulations regarding unfavorable information based on substantiated misconduct permit the Army and Air Force to consider all available relevant information when choosing Soldiers and Airmen for positions of significant trust and authority (POSTA) or positions or appointments screened for suitability. In Wisconsin, Deputy Adjutant General, Army (DAG-AR) Policy Memorandum 120, *Wisconsin Army National Guard Policy for Reporting Unfavorable Information and Criminal Convictions*, cites a version of AR 600-37 that was published more than 30 years ago. Further, Policy Memorandum 120 does not require commanders to refer non-judicial punishment or punitive administrative action for filing in that service member's personnel file.

While each of the Army regulations cited herein apply to the Army National Guard while in federal service (the "ARNGUS") as well as the Army National Guard while in a Title 32 status (the "ARNG"), only certain Air Force regulations dealing with accountability apply to the Air National Guard when not in federal service. However, two service regulations which do apply to the Army or Air National Guard

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<sup>147</sup> Based on the Wisconsin National Guard's characterization of the most serious offense as sexual harassment. Another eight cases of military discipline simply list misconduct as the basis for punishment without providing any additional detail.

<sup>148</sup> The active Army, and many states, punish substantiated allegations of sexual harassment as violations of Article 92 for failing to obey Army Regulation 600-20, Command Policy.

not in federal service are AFI 36-2907, *Unfavorable Information File*, and AR 600-37, *Unfavorable Information*.<sup>149</sup> AFI 36-2907 requires Air Guard commanders, through the TAG as the general court martial convening authority, to initiate an unfavorable information filing for letters of reprimand, caution or admonition which include “confirmed evidence of unlawful discrimination or sexual harassment.”<sup>150</sup> AR 600-37 requires commanders, at all levels, to “ensure that a Soldier’s performance-disciplinary folder is annotated when a court-martial conviction, non-judicial punishment, or punitive administrative action for a sex-related offense is received. Punitive administrative action means any adverse administrative action initiated as a result of the sex-related offenses identified below and includes, but is not limited to, memoranda of reprimand, admonishment, or censure,” regardless of the level of command issuing the administrative action.<sup>151</sup>

The Wisconsin National Guard issued administrative letters of reprimand or concern in 64 cases of service member misconduct. The Wisconsin National Guard produced primary and supporting documentation for seven administrative letters of reprimand. Of seven cases where Army National Guard commanders issued letters of reprimand, five cases involved officers and resulted in the permanent filing of the letter of reprimand in the service member’s Official Military Personnel File. The single enlisted administrative reprimand involved an allegation of sexual assault and also resulted in the permanent filing of the letter of reprimand in the service member’s Official Military Personnel File. The remaining 57 administrative letters of reprimand or concern were issued within the Air National Guard and none resulted in the permanent filing within the service member’s military personnel file or the creation of an Unfavorable Information File. Members interviewed by the Team spoke about the lack of accountability. One member stated, “[Service member] that has clearly displayed inappropriate behavior to include fraternization and sexual misconduct over the course of several years and is still allowed to serve is NOT sending any positive messages about supporting reported sexual harassment.”

“[Service member] that has clearly displayed inappropriate behavior to include fraternization and sexual misconduct over the course of several years and is still allowed to serve is NOT sending any positive messages about supporting reported sexual harassment.”

While several examples of failure in accountability exist within the context of the Wisconsin National Guard’s Sexual Assault Prevention and Response program, one incident is particularly informative as to the second and third order of effects which can occur where such a lack of accountability is allowed endure. The incident involved an [REDACTED] and a [REDACTED]. The victim filed an unrestricted sexual assault report and the matter was investigated by local law enforcement.

Civilian law enforcement investigated the assault, which led them to charge the perpetrator with one count of felony Second Degree Sexual Assault under Wisconsin criminal laws. After a two-day trial over a year after the incident occurred, a jury found the perpetrator not-guilty.

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<sup>149</sup> DEP’T OF THE AIR FORCE INSTRUCTION 35-2907, UNFAVORABLE INFORMATION FILING (November 24, 2014); DEP’T OF THE ARMY REGULATION 600-37, UNFAVORABLE INFORMATION (December 19, 1986).

<sup>150</sup> DEP’T OF THE AIR FORCE INSTRUCTION 35-2907, UNFAVORABLE INFORMATION FILING, Table 2.2, (November 24, 2014).

<sup>151</sup> DEP’T OF THE ARMY REGULATION 600-37, UNFAVORABLE INFORMATION, para. 3-4 (December 19, 1986).

Subsequent to the verdict, the Wisconsin National Guard conducted an administrative investigation into potential misconduct of the perpetrator, which occurred prior to the sexual assault incident, and potential misconduct collateral to the sexual assault incident. As part of that administrative investigation, the Wisconsin National Guard asked for and received the local law enforcement investigative file and the transcript of trial from the civilian, State court action. After conducting his own investigation, the Investigating Officer found that the perpetrator violated numerous standards of conduct and committed at least two separate violations of the WCMJ. The Investigating Officer recommended “*prompt separation from the [Wisconsin Army National Guard].*”<sup>152</sup>

While Army regulations provide that a National Guard Soldier may not be separated based on conduct that has been the subject of military or federal judicial proceedings resulting in an acquittal there are limited circumstances which include judicial proceedings conducted in a State court when “*the separation is approved by Headquarters, Department of the Army, and Office of the Chief, National Guard Bureau.*”<sup>153</sup> In this case, the perpetrator had been tried in State court and, thus, Wisconsin Army National Guard leaders were not precluded from at least initiating an administrative separation based upon the law enforcement investigative file. Nevertheless, the Team learned that no administrative action occurred in this matter. When asked the reason for lack of action, Wisconsin National Guard senior officials stated The Adjutant General considered the perpetrator’s conduct protected by the constitutional notion of jeopardy. There was no legal review provided to support this assertion and the Team could not find any authority to support such an assertion.

The victim has since left the National Guard. The Team attempted to contact her to determine why she did not remain within the National Guard, but she did not respond to our attempts. Her response is not unique in the Wisconsin National Guard. Out of 17 unrestricted reports of sexual assaults filed in the Wisconsin National Guard, 15 victims departed the Wisconsin National Guard after their term of service and one victim stated she was [REDACTED]

Several comments from both the canvassing operations and the DEOMI survey highlight the impacts of the allegation of sexual assault, the trial and acquittal of Reported Perpetrator and the subsequent failure of senior leadership to implement its Zero Tolerance policy for sexual assault across the organization.

One service member wrote they were appalled that an [REDACTED] Soldier that had an allegation of sexual assault substantiated during investigation was still actively working in the Wisconsin National Guard. “[REDACTED]

Out of 17 unrestricted reports of sexual assaults filed in the Wisconsin National Guard, 15 victims departed the Wisconsin National Guard after their term of service.

<sup>152</sup> Memorandum for Commander, Headquarters 32<sup>nd</sup> Infantry Brigade Combat Team, Subject 15-6 Informal Investigation Findings and Recommendation – [Reported Perpetrator Rank and Name] Misconduct.

<sup>153</sup> See e.g., DEP’T OF THE ARMY REGULATION 135-178, ENLISTED ADMINISTRATIVE SEPARATIONS (December 7, 2017).

[REDACTED]

In addition to those administrative accountability measures available for enlisted personnel, the Army and Air Force have prescribed certain administrative accountability measures for supervisory personnel, both commissioned and non-commissioned officers.<sup>154</sup> Both regulations require that substantiated sexual offenses must be documented in the offender's permanent personnel evaluation records.<sup>155</sup> While the Team did not review all evaluation records of Wisconsin National Guard commissioned and non-commissioned officers, those evaluation records for sexual offenders reviewed did not include any reference to the substantiated sexual offense. The failure to properly document detrimental conduct of supervisory personnel allows sexual offenders to not only remain in military service, but potentially rise to positions of greater power. For those who are aware of the sexual misconduct and the apparent lack of accountability, the presence of such a leader significantly damages their morale and erodes their confidence in more senior leadership to exact accountability.

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<sup>154</sup> See DEP'T OF THE ARMY REGULATION 623-3, EVALUATION REPORTING SYSTEM (June 20, 2019); DEP'T OF THE AIR FORCE INSTRUCTION 36-2406, OFFICER AND ENLISTED EVALUATION SYSTEMS (November 8, 2016).

<sup>155</sup> DEP'T OF THE ARMY REGULATION 623-3, EVALUATION REPORTING SYSTEM, para. 3-26b, (June 20, 2019); DEP'T OF THE AIR FORCE INSTRUCTION 36-2406, OFFICER AND ENLISTED EVALUATION SYSTEMS, para. 1.8.2.2, (November 8, 2016).

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## V. Assessment Team's Findings and Recommendations

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**A. Sexual Assault Response Program:** The Team made 6 separate findings and 5 recommendations to improve the execution of the Sexual Assault Response Program in the Wisconsin National Guard.

### 1. Findings Sexual Assault Prevention and Response Program

1. The Wisconsin National Guard's written policies on sexual assault are not consistent with current federal law, regulations, and policy.
2. The Team found examples of optimal victim support on the part of the Sexual Assault Response Coordinators; however, ineffective program management tools hampered optimal Sexual Assault Response and Prevention program performance.
3. Manpower, resourcing, and credentialing were found to be deficient, which contributed to program inefficiencies and diminished performance.
4. Whereas the annual Sexual Assault Prevention and Response program training completion rate appeared to be relatively on par with national averages, anecdotal evidence from interviews with program officials, victims, and leaders at all levels, as well as results from the DEOMI survey, revealed gaps in awareness of prevention and response processes, protocols and strategies.
5. The Wisconsin Army National Guard and Air National Guard Sexual Assault Prevention and Response Programs do not coordinate and collaborate effectively for purposes of facilitating state-level program management.
6. The Team found instances in which the commanders and leaders did not attend to or prioritize, victims' needs and interests.

### 2. Recommendations: Sexual Assault Prevention and Response Program

1. The Wisconsin National Guard's written policies should be updated to comply with current federal law, regulations, and policy.
  - a. The Wisconsin National Guard should provide an opportunity for relevant National Guard Bureau program offices to review and comment on any update Wisconsin National Guard's written policies on Sexual Assault Prevention and Response prior to publication.

b. Wisconsin National Guard Sexual Assault Prevention and Response Program should request a staff assistance visit from the National Guard Bureau for the purpose of reviewing and mentoring the accomplishment of program updates and improvements pursuant to findings and recommendations of this report.

2. The Wisconsin National Guard should evaluate force structure and manning to ensure adequate resourcing of the Sexual Assault Prevention and Response program.

3. The Wisconsin National Guard should evaluate and establish roles and responsibilities, inclusive of the Services and Joint Staff, within the Sexual Assault Prevention and Response Program in order to better synchronize program management, services, and information flow to senior leadership.

4. The Wisconsin National Guard should evaluate the oversight for the Wisconsin Sexual Assault Prevention and Response Program in order to improve coordination, collaboration, and state-level program management.

5. Recommend leaders within the Wisconsin National Guard receive training on their roles and responsibilities to sexual assault victims.

**B. Investigations of Sexual Assault:** The Team made 3 separate findings regarding the Wisconsin National Guard's investigation of sexual assault and 1 recommendations to ensure compliance with federal law and policy.

#### 1. Findings: Investigations of Sexual Assault

1. The Wisconsin National Guard's decision to use its own investigators violated DoD, Service, and National Guard Bureau policy against internal, command-directed investigations of sexual assaults.

2. The Team found that the quality and legality of the investigations was negatively impacted as a result of this decision.

3. As a result of the varying and disputable quality of the investigations, the credibility of the sexual assault investigations in the state suffered to the detriment of all parties.

#### 2. Recommendations: Investigations of Sexual Assault

1. The Wisconsin National Guard must stop conducting internal investigations into sexual assault and update command guidance to comply with DoD, Service, and National Guard Bureau policies against internal, command-directed investigation of sexual assaults.



**C. Sexual Harassment and Equal Employment Opportunity:** The Team made 6 separate findings and 5 recommendations to improve the execution of the Sexual Harassment and Equal Employment Opportunity Program across the Wisconsin National Guard.

#### 1. Findings: Sexual Harassment and Equal Employment Opportunity

1. The Wisconsin National Guard's written policies on prevention and response to allegations of sexual harassment and hostile work environment do not reflect current federal law and DoD and National Guard Bureau policies.

2. Wisconsin National Guard MEO/ EEO/ Harassment in the Workplace policies also do not provide adequate protections for complainants.

3. The Wisconsin National Guard EEO/EO programs lacked adequate resources, command emphasis and fully trained and qualified personnel.

4. The Wisconsin National Guard's SEEM supervisory scheme inhibits unimpeded access to The Adjutant General regarding EEO/EO Program issues and training.

5. The Wisconsin National Guard's SAPR Program does not coordinate or collaborate effectively with EO/EEO officials and entities for sexual assault/harassment allegations.

6. The lack of resourcing and emphasis on the Wisconsin National Guard's EEO/EO Program has impacted the filing and disposition of sexual harassment and hostile work environment complaints.

#### 2. Recommendations: Sexual Harassment and Equal Employment Opportunity

1. The Wisconsin National Guard's written policies should be updated to comply with current federal law, regulations, and policy and enhance protections for complainants.

2. The Wisconsin National Guard should evaluate force structure and manning to ensure adequate resourcing of the MEO/EEO programs to ensure commanders have EOAs/ EOLs to assist them in using the EO channels for local EO complaints.

3. The Wisconsin National Guard should identify those MEO/EEO personnel that require training and prioritize their access to training.

4. The Wisconsin National Guard should consider establishing mechanisms to improve lines of communication between the SEEM and The Adjutant General.

5. The Wisconsin National Guard's MEO/EO Program should improve coordination with the Sexual Assault Response Program and consider including the SEEM as part of the SAPR Case Management Group to identify potential harassment and retaliation issues and improve cross-programmatic coordination.

**D. Command Climate:** The Team found that the Wisconsin National Guard reflects a military and civilian work force of highly dedicated personnel who take great pride in the organization and in military service. Additionally, the data revealed members exhibited trust and confidence in their leadership. Notwithstanding there were 2 findings regarding perceptions of both fraternization and favoritism and 1 recommendation to improve program transparency.

#### 1. Findings: Command Climate

1. There is a perception of fraternization within the Wisconsin National Guard.
2. The perceptions of favoritism and the lack of transparency in the areas of both accountability and personnel actions set the conditions for erosion of trust and confidence in the organization.

#### 2. Recommendations: Command Climate

1. Review best practices employed by other states to improve transparency of personnel management and implement through iterative training and the publication of personnel management policies.

**E. Accountability:** The Team made 5 separate findings and 9 recommendations to improve accountability across the Wisconsin National Guard.

#### 1. Findings: Accountability

1. Jurisdictional withholding under TAG Policy Memorandum 34 as implemented effectively limits the ability of leaders at the brigade, wing and separate unit levels to exact accountability of offenders in a timely manner.
2. A general perception exists within the Wisconsin National Guard that The Adjutant General and other senior leaders within the Wisconsin National Guard do not hold offenders accountable.

3. The Wisconsin National Guard lacks sufficient internal controls to manage the administration of discipline for service member misconduct.

4. The Wisconsin National Guard inconsistently holds offenders accountable for substantiated allegations of sexual assault and sexual harassment.

5. The Wisconsin National Guard does not comply with service-specific regulatory requirements for reporting unfavorable information on substantiated misconduct.

## 2. Recommendations: Accountability

1. Review TAG Policy Memoranda on Justice to improve implementation to enable commanders at brigade/wing and lower echelons to achieve accountability for all misconduct, but particularly sexual assault and sexual harassment.

2. Implement internal controls such as a military justice tracker for echelons below brigade to better manage the administration of discipline for service member misconduct.

3. Refer questions regarding legal competence in the provision of legal support to matters involving administrative sexual assault investigations as a Professional Responsibility concern to the appropriate Senior Counsel for review in accordance with Service Policy.

4. Centralize all military justice disposition records, Army and Air, at the Office of the State Judge Advocate.

5. Review current manning structure within Office State Judge Advocate to ensure adequate coordination between Army and Air legal communities at the Joint Force Headquarters.

6. Improve coordination between the legal and personnel offices (OSJA and J-1/G-1/A-1) to ensure filing of unfavorable information regarding sexual misconduct.

7. Review prior administrative actions involving sexual misconduct to ensure proper filing of unfavorable information.

8. Communicate all disciplinary actions to the force through commander engagements from brigade to the company level at least biannually.

9. NGB conduct follow up site assistance visits to review implementation of recommendations.

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**Assessment Team's Comments**

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