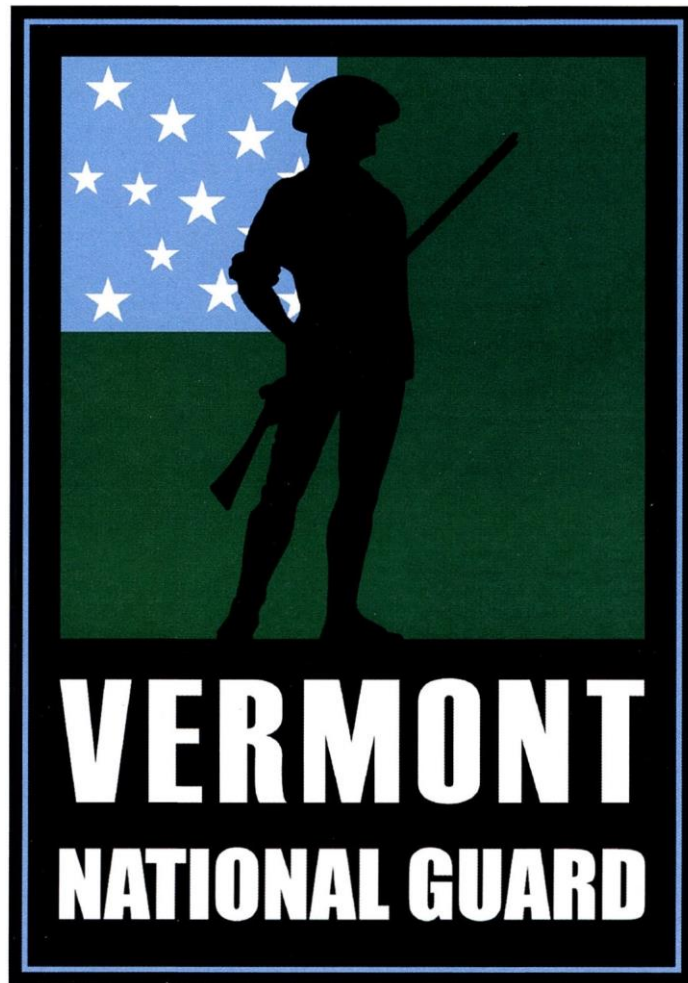


# Vermont National Guard Legislative Report

## Fiscal Year 14



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



**STATE OF VERMONT  
OFFICE OF THE ADJUTANT GENERAL  
789 VERMONT NATIONAL GUARD ROAD  
CAMP JOHNSON  
COLCHESTER, VERMONT  
05446-3099**

**MEMORANDUM FOR THE VERMONT LEGISLATURE**


**SUBJECT: Vermont National Guard 2014 Fiscal Year Report: Sexual Assault and Sexual Harassment**

As required by law, attached is the second annual Vermont National Guard Sexual Assault and Sexual Harassment Report (see Vermont Statutes Annotated, Title 20, §427). This report contains positive indicators regarding the Vermont National Guard programs. Commanders and leaders have created a climate in which survivors of sexual assault are coming forth with confidence that their reports will be taken seriously and certainty that they will receive the necessary support and care.

The Vermont National Guard has a moral obligation to keep our men and women safe from those who would attack their dignity and honor. The Vermont National Guard is unequivocal in its commitment to ensure that survivors of sexual assault, gender discrimination and discrimination based upon sexual orientation are protected, treated with decency and respect, as well as provided proper care while the perpetrators are held accountable for their wrongful actions.

As each year passes, we will strive to improve both our programs and responses to these survivors as it is our continuing commitment to the men and women of the Vermont National Guard.

**Integrity – Service – Excellence**

  
**STEVEN A. CRAY**  
Major General  
The Adjutant General

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## Chapter I: Executive Summary

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

This report is divided into two sections: Executive Summary and Report. The Report section is divided into the three subjects: Sexual Assault, Sexual Harassment and Sexual Orientation based Discrimination. Each subject covers four topics: Introduction, Program Overview, Statistical Data, and Accomplishments.

At the end of Fiscal Year (FY) 14 (1 October 2013 to 30 September 2014), the Vermont National Guard had 3,977 members. Of those members, 571 were full-time employees with the remaining 3,406 as traditional members. The following is a summary of all complaints within the three reporting subjects for FY 14:

Number of Complaints Made in the Prior Federal Fiscal Year (FY 14 = 1 Oct 13 – 30 Sep 14)							
Type of Action	Total Cases	National Guard member Accused <sup>1</sup>	National Guard member Survivor <sup>2</sup>	Military Administrative Investigation	Civilian Criminal Investigation	Line of Duty	Referral to Outside Agencies (support)
Sexual Assault: <u>Restricted</u> Reports	2	0	2	N/A	N/A	2	2
Sexual Assault <sup>3</sup> : <u>Unrestricted</u> Reports	1	1	1	1	0 <sup>4</sup>	N/A	1
Sexual Assault Total Reports	3	1	3	1	0	2	3
Sexual Harassment	7	7	6	5	0	0	0
Discrimination based on Sexual Orientation	0	0	0	0	0	0	

<sup>1</sup> While in a VTNG military status/under VTNG military jurisdiction.

<sup>2</sup> While in a VTNG military status/under VTNG military jurisdiction.

<sup>3</sup> For the purposes of this report, sexual assault is defined by DoD Directive 6495.01, 23 January 2012, “Sexual Assault Prevention and Response Program” as amended on 30 April 2013. This definition is used for the purposes of awareness, prevention and response and is not used to establish policy for legal processes or criminal investigation.

<sup>4</sup> Was referred to Civilian Authorities- they deemed the allegations not to raise to criminal misconduct; and the case was referred to the Equal Opportunity office and the case is being tracked now under EO. There is no line of duty requirement for an EO action.

## **A. Sexual Assault**

Sexual assault has no place in the Vermont National Guard (VTNG); it is an attack on the values we defend and the cohesion our units demand. In 2010, The VTNG formalized its program by establishing the Sexual Assault Prevention and Response (SAPR) program to promote the prevention of sexual assault, encourage increased reporting of the crime and improve response capabilities for survivors.

The Department of Defense (DoD) has undergone extensive changes to the Sexual Assault Prevention and Response Program over the past few years, redesigning the comprehensive SAPR Strategic Plan (with five Lines of Effort (LOEs), which are detailed in the *DoD SAPR Strategic Plan, dated April 2013*), as well as altering many strategic publications which include *The Strategic Direction to the Joint Force on the SAPR Program*, *The DoD-Wide SAPR Strategic Plan* and *The 2014-2016 SAPR Prevention Strategy*.

The VTNG SAPR program is aligned with these very detailed and comprehensive plans. The VTNG will report its efforts this year based on an all-inclusive review of each of these plans, which brought about five priorities for The VTNG SAPR Program.

The five priorities of The VTNG are:

1. Establishing a climate of prevention to promote an environment of dignity and respect as well as prevent violence within the organization;
2. Improving the response to enhance trust in the chain of command, increase reporting and reduce the possibility of ostracizing the victims;
3. Improving system accountability to provide a fair and equitable system which promotes justice, efficiency and effectiveness;
4. Focusing on the advocacy and recovery of victims from initial report through their recovery to deliver effective victim support and response, instill confidence and trust, strengthen resilience and inspire victims; and
5. Developing and implementing assessment mechanisms to standardize, measure, analyze, assess and report program progress.

The Report section will elaborate on said areas and the three reported cases of sexual assault during this reporting period— of which one was Unrestricted and two were Restricted. In addition to the newly reported cases, this section will also cover four additional reports which were carried over from prior fiscal years.

## **B. Sexual Harassment**

The Vermont National Guard Equal Opportunity (EO) Program is a well-established program and adequately staffed to assist the command with the prevention and response to sexual harassment. Commanders support the EO Program and look to EO leaders for prevention and response guidance.

There were seven new cases reported in FY14, none of which were filed as formal complaints. Six cases pertained to sexual harassment and one alleged reprisal for being a witness in another sexual harassment complaint. Four of the seven individuals filed National Guard Bureau Complaint Forms (NGB Form 333) which is an informal complaint – two of which were resolved to the satisfaction of the harmed individual at the lower level command.

The VTNG conducted five military investigations; two remaining cases in which the individual filed the NGB 333 and the three mentioned cases which went without complaint forms being filed. In these five cases, wrongful conduct was substantiated and military disciplinary action is pending.

The Commanders utilized the Equal Opportunity Officer's recommendations to implement changes to increase prevention and promote the reporting of potential violations.

### **C. Discrimination Based on Sexual Orientation**

Treating Soldiers, Airmen and civilians with dignity and respect is a bedrock value for the VTNG, which provides no room for discrimination of any sort in the military. One of the Adjutant General's first actions upon being appointed by the Governor was to issue command guidance to ensure "everyone who is a member of the Vermont National Guard and Military Department will work in a non-discriminatory environment where we treat each other with respect and dignity." (Vermont Adjutant General, Memorandum, SUBJECT: Command Guidance, 1 April 2013).

Despite the repeal of federal law which discriminated based upon sexual orientation, the federal government has not established any special procedures specifically related to processing complaints arising from this type of discrimination. Therefore, these complaints are treated as any other complaints of misconduct. This means that the complainant may file a complaint with his/her commander, the Inspector General, the Judge Advocate, or any other member of his/her chain of command or National Guard leadership.

The VTNG had established a separate reporting requirement this fiscal year. Based upon review of these reports as well as a review of our records prior to implementing this reporting requirement, we have determined that there were no reported cases of discrimination against sexual orientation during this fiscal year.

## Chapter II: Reports

### A. Sexual Assault

#### 1. Introduction

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

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

Although the definition has changed over the years (and most recently, 30 April 2013), it has been and is used for the purposes of awareness, prevention and response for the Sexual Assault, Prevention and Response (SAPR) Program. The SAPR Program reflects upon this definition to evaluate complaints and initiate proper processes, however, it is not used to establish legal processes or criminal investigations.

Unless stated otherwise, where sexual assault is referenced throughout this report, it will be that of the nature which is defined by DoD. It is important to note that the VTNG does not have jurisdiction over either a civilian or military crime of sexual assault. Under the Vermont State’s Annotated, Title 20, Section 941, the VTNG has criminal jurisdiction over “purely military offenses” and all other offenses will be tried in civil courts and prosecuted by civil authorities. As a result, all unrestricted crimes of sexual assault are reported to local law enforcement for criminal investigation. The VTNG initiates an administrative investigation into these complaints to address other military misconduct and is very careful not to interfere with civil criminal authorities.

The DoD Sexual Assault Prevention and Response Office (SAPRO) organizes and reports Department progress in the SAPR program using the five lines of effort within the *DoD SAPR Strategic Plan*. The VTNG SAPR program will be reporting based on slight adjustments to this plan as to provide a more comprehensive and Vermont specific plan. The five priorities for the purposes of this report are as follows:

- 1) **Establish prevention strategies which promote an environment of dignity and respect, as well as diminish violence within the organization:** Reduce (with the goal of eliminating) the number of sexual assaults involving Service Members through policy and institutionalized prevention efforts which influence knowledge, skills and overall behavior.

- 2) **Improve the response to enhance trust in the chain of command, increase reporting, and reduce the possibility of ostracizing the victims:** Improve the quality of The VTNG's response to the reporting of sexual assault survivors by providing programs, implementing policies and advertising activities which advance survivor care and enhance survivors' experience with the criminal investigative and military reporting processes.
- 3) **Improve system accountability to provide a fair and equitable system which promotes justice, efficiency and effectiveness:** Ensure the SAPR program functions as it was intended; as a fair and equitable system which promotes justice, efficiency and effectiveness. System accountability is to be achieved through data collection, analysis and reporting of case outcomes, as well as through oversight review of SAPR program components.
- 4) **Focus on advocacy and recovery of victims from initial report throughout their recovery to deliver effective victim support and response, instill confidence and trust, strengthen resilience and inspire victims:** Standardize and deliver effective survivor support, response and reporting options with the goal of instilling confidence and trust, strengthening resilience as well as inspire survivors to report sexual assaults, either restricted or unrestricted.
- 5) **Develop and implement assessment mechanisms to standardize, measure, analyze, assess and report program progress:** Create a sustainable, measurable program where successes and shortfalls are promptly identified and acted upon.

## **2. Program Overview**

The VTNG hired its first full time Sexual Assault Response Coordinator (SARC) in early 2010 and has filled the position since its inception. Under the direction of the full time SARC, the SAPR Program has created and implemented a survivor centered program with statewide policies to ensure the rights and privacy of all service members who report acts of sexual violence. In 2013, The VTNG SAPR program received an additional asset for the SAPR program and hired a full time Victim Advocate Coordinator (VAC) who works under the direction of the JFHQ SARC.

The SAPR program continues to receive ongoing guidance from the Department of Defense and relevant service branches to improve its programs. This program, which is offered to survivors upon reporting, was established as an independent survivor centered program to focus on both the prevention of sexual violence and the care and recovery of service members as they execute the reporting process. The SAPR Victim Advocacy Program is a completely voluntary program, which is separate from the chain of command and works to facilitate the survivor's wants and needs within the organization.



A recent addition to the SAPR program was the development of the Office of Complex Administrative Investigations (OCI) by the National Guard Bureau (NGB). At the request of the Adjutant General, a team of investigators (from outside the state) conduct an investigation into allegations of sexual assault. These investigators not only have civilian legal and/or backgrounds of law enforcement, but are also mandated to complete the United States Army's Special Victim Unit's Investigator's Course held by the US Army Military Police School.

Another addition to the program is the advent of the Special Victim's Counsel (SVC). This is a specially qualified and trained Judge Advocate (military attorney) who is assigned to a survivor to provide a wide range of legal assistance services which includes representing the survivor through any and all military investigations and/or disciplinary actions involving the alleged offender. The VTNG has one SVC and anticipates sending another Judge Advocate this year to become qualified.

#### **a) Policies**

Currently, The VTNG has four policies directly related to the SAPR program. Each plays a vital role in the improvement of the program and the climate around sexual violence within the organization. These policies are up for review in fiscal year 2015 and are as follows:

- 1) Sexual Assault Prevention and Response Program Policy, 1 March 2013: Sexual assault degrades readiness and unit cohesion and has no place within The VTNG. Commanders will ensure that all unrestricted reports of sexual assault are reported to law enforcement and that leaders will create a positive command climate promoting the dignity and respect of all members.
- 2) Expedited Transfer of VTNG Members who Report an Unrestricted Report of Sexual Assault, 1 March 2013: Members who file an Unrestricted report of sexual assault shall be informed of the option to request a temporary or permanent transfer from their assigned command to a different location within their unit of assignment or training location and that the transfer will be approved or disapproved within 72 hours. It also protects service members from reprisal, or threat thereof and establishes a presumption in favor of transferring a member who initiates a transfer.
- 3) Prohibition of Pornographic and Sexually Explicit Material, reissued on 19 March 2013<sup>5</sup>: Introduction, purchase, possession, transfer, sale, creation, or display of any pornographic or sexually explicit photograph, videotape, CD/DVD, movie, drawing, book, website, magazine, or similar representation on or about property owned, leased, used or licensed by The VTNG is prohibited.

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<sup>5</sup> Policy Memorandums are reissued/ revised on a yearly basis and/or when there is a new Adjutant General, as in this case.

- 4) Withholding Authority to Dispose of Misconduct Involving All Sexual Based Offenses, 27 March 2013: The Adjutant General has withheld authority to dispose of all alleged misconduct pertaining to sexual based misconduct. This policy allows for the Adjutant General to have visibility on all sexually based offenses.

#### **b) Reporting Options**

Sexual assault is the most under reported violent crime in not only the military, but throughout the United States. A survivor's decision to report is a crucial step following a sexual assault, but reporting is often precluded by their desire for discretion. Commanders must recognize the importance of protecting the privacy of survivors under their command; a system which promotes privacy and confidentiality will have a positive impact on command climate and influence survivors to come forward.

The VTNG SAPR program offers four reporting options for service members within the VTNG. Two of which are for service members in a duty status at the time of the assault, offering both a confidential and non-confidential reporting options to ensure survivors receive the appropriate care and accountability as desired. These reporting options are titled an Unrestricted Report (non-confidential) and Restricted Report (confidential). The definition and immediate procedure of each is below.

Unrestricted Reporting: Allows an individual covered by this policy to disclose, without requesting confidentiality of Restricted Reporting, that he or she is the survivor of a sexual assault. Under this option, law enforcement is notified of the survivor's report and may be used to initiate the official investigative process. Procedure is as follows:

- 1) Survivor notifies the JFHQ Sexual Assault Response Coordinator (SARC), Wing SARC, Victim Advocate (VA), Chaplain, any healthcare personnel (HCP) or person in their chain of Command.
- 2) Upon notification of an Unrestricted Report, the JFHQ SARC or Wing SARC, with the survivor's consent, will appoint a VA to assist the survivor.
- 3) Unit Commanders, Wing SARCs and VAs will notify the JFHQ SARC within 24 hours upon receipt of an Unrestricted Report. Details regarding the incident will be limited to only those personnel who have a legitimate need-to-know.
- 4) Unit Commanders are to ensure that the Staff Judge Advocate and civilian law enforcement (if appropriate) are notified within 24 hours of the incident. Commanders also have a number of actions to be completed in accordance with a Commander's Checklist.
- 5) If not previously notified, the JFHQ SARC is responsible for notifying the first O-6 in the survivor's direct chain of command within 24 hours of receipt of the report. If the O-6 Commander cannot be reached, the appropriate Chief of Staff will be notified.

Restricted Reporting: Allows sexual assault survivors, without triggering an official investigation, the option to confidentially disclose the assault to specified individuals (SARC, SAPR VA, healthcare personnel or Chaplain) to receive medical treatment, counseling and the assignment of a SARC and SAPR VA. The information provided by the survivor will not be reported to law enforcement or to the command to initiate the official investigative process unless the survivor consents or an established exception<sup>6</sup> applies. If a survivor reports to anyone other than those listed above, a Restricted Report cannot be guaranteed. Procedure is as follows:

- 1) The survivor reports the sexual assault to the SARC, SAPR VA, healthcare personnel or Chaplain. The SARC or VA will advise the survivor of appropriate resources and referrals.
- 2) An official investigation will not begin unless the survivor later changes their mind and consents to change the report to Unrestricted, or an established exception is exercised under the DoDD 6495.01.
- 3) Chaplains have privileged communication and (with the survivor's consent) can notify the SARC for Restricted Reporting.
- 4) VAs and the Wing SARC will notify the JFHQ SARC of all Restricted Reports within 24 hours of receipt.
- 5) The JFHQ SARC will, in turn, notify the Adjutant General directly and within 24 hours, but will provide him/her only with information that cannot reasonably lead to identifying the survivor, as well as any SARC safety concerns or recommendations that may impact the unit.

Limited Reporting: Available to National Guard and Reserve members who are sexually assaulted while in a non-duty status and do not wish to trigger an official investigation. If a survivor reports to anyone other than JFHQ SARC, VA, a Chaplain, a HCP, or civilian rape crisis agencies, a limited report cannot be guaranteed. Procedure is as follows:

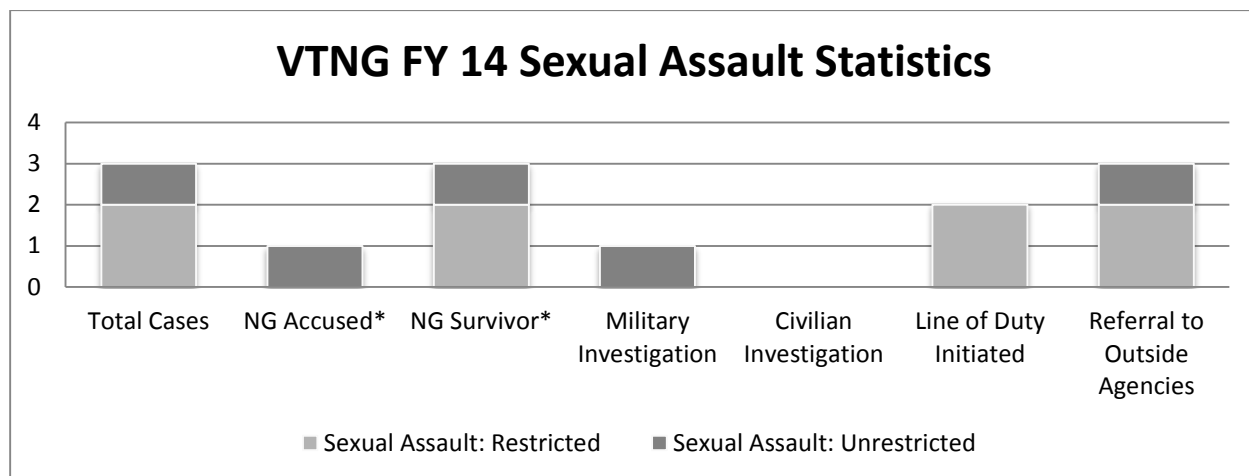
- 1) Wing SARCs and VAs will report all Limited Reports to the JFHQ SARC within 24 hours of receipt who will, in turn, notify the Adjutant General with non-identifying information.
- 2) A Soldier desiring a limited report will contact only the JFHQ SARC, VA, a Chaplain, a HCP, or civilian rape crisis agencies.

Civilian Reporting: Service members also have the option to report solely to civilian agencies. They can report to any Rape crisis hotline, law enforcement agency or civilian hospital. Confidentiality in these circumstances will be based on Vermont laws and statutes.

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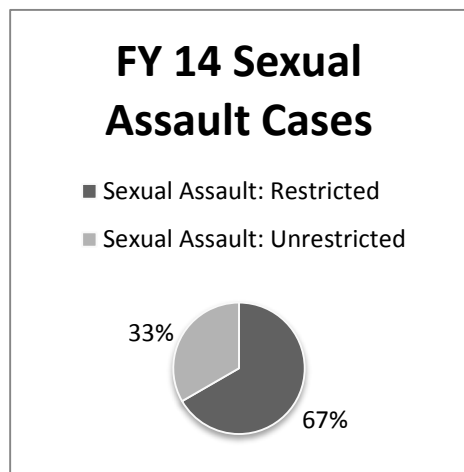
<sup>6</sup> For Exceptions to Restricted Reporting, please see attached DD form 2910.

### 3. Statistical Data

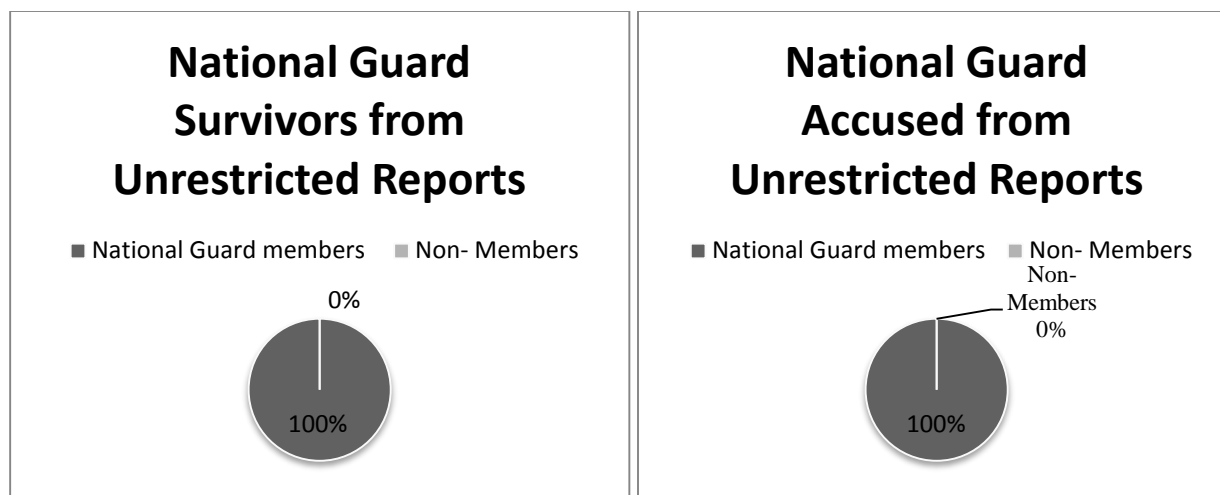


The VTNG JFHQ SARC captures all sexual assault data for annual reporting requirements and trends analysis. The data is collected utilizing case numbers with specific categories (above). These categories include (but are not limited to) the date an assault was reported, fiscal year in which it was reported, type of report, date of the offense, individual's duty status, both the survivor and offender's rank, type of assault they are reporting, military status of both the survivor and offender, investigative agency, case disposition, unit at the time of the assault and whether or not alcohol or drugs were involved.

In FY14, there were three reports of sexual assault. The left figure shows the types of sexual assault reports which were reported to The VTNG in FY14. Said reports involved one or more Service members as either the survivor or alleged offender of an investigation. The two figures on the following page reflect a breakdown of service members as survivors and accused in the unrestricted reports. In the two restricted reports, the reported offenders were active duty service members.



Of the three reports in the nature of sexual assault in FY14, one was an Unrestricted Report. The VTNG initially received two Restricted Reports and at the request of the survivor, zero reports were converted from Restricted to Unrestricted, leaving two reports remaining Restricted in FY14. Although The VTNG understands the need to provide restricted reporting, reporting these offenses as unrestricted provides the VTNG greater opportunities to provide survivor care and to ensure appropriate offender accountability.

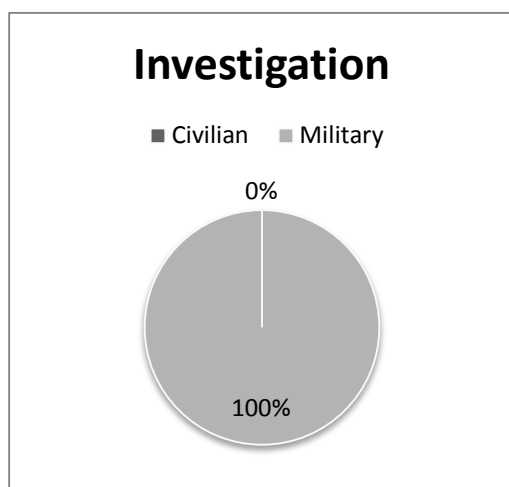


### Restricted Reporting Data:

During FY14, there were two restricted reports of sexual assault. All individuals received a line of duty determination and were referred to local support agencies. As the nature of a Restricted Report is to keep the individual's information confidential and provide referral services, the only individual outside of the JFHQ SARC who receives the information is the Adjutant General and the referred agency. The JFHQ SARC notifies the Adjutant General of non- identifying information and has the discretion to limit that information to protect the individual's confidentiality.

### Unrestricted Reporting Data:

During FY14, there was one unrestricted report of sexual assault. This was not a formal report but due to the allegation that there was an abuse of position of authority and it was unclear whether there was any actual sexual physical contact, the report was referred to a local civilian law enforcement agency.



### Disposition Data:

At the end of FY14, the VTNG had one new reported unrestricted case. As previously indicated, this report was forwarded to local law enforcement. After an interview with the individual, the action was not deemed a civilian criminal matter and referred back to the VTNG for action. As there was no allegation of any sexual physical contact, this was deemed not a matter which fell under the SAPR program. The action, however, constituted sexual harassment and was investigated under that procedure and guidance. This case is reported under the Sexual Harassment section of this report.

### **Previous fiscal year cases carried over to FY13:**

Four cases were carried over from previous fiscal years. All cases were Unrestricted Reports. Said cases were referred to civilian law enforcement. Two cases were closed; one pending further evidence, the other (which The VTNG lacked jurisdiction over) was closed by civilian law enforcement due to inability to locate individuals for interviews; one case was not investigated at the request of the survivor, and the final case was investigated resulting in civilian criminal charges for aggravated sexual assault. In the latter case, the individual was ultimately convicted and adversely separated from the Vermont National Guard.

The Office of Complex Investigations investigated the two other cases, both in which sexual misconduct was substantiated. These cases were referred to their commands and resulted in adverse disciplinary action. In addition to adverse disciplinary action, in one case, the individual was removed from the VTNG full-time work force. In both cases, the individuals have left military service.

### **Federalized Reports:**

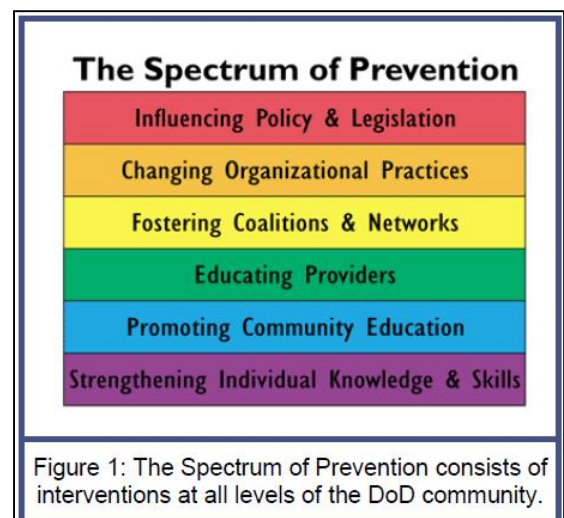
No sexual assault reports were filed involving federalized members in FY14, hence Department of Defense did not provide any information regarding incident involving VTNG Service Members.

## **4. Accomplishments**

### **Sexual Assault Prevention in FY14:**

Throughout FY14, The VTNG began to incorporate the 2012 Joint Chiefs of Staff (JCS) *Strategic Direction to the Joint Force on Sexual Assault Prevention and Response*, the DoD-*Wide SAPR Strategic Plan*, the *DOD SAPR Strategic Plan (2013)* and the *2014-2016 Prevention Strategy* into an all-inclusive Strategic Plan for The VTNG. This plan is aligned with the previously mentioned plan and structured around five multidisciplinary and complementary lines of effort: Prevention, Response, Accountability, Advocacy and Recovery, and Assessment. The VTNG will report its efforts based on the elements of this plan.

Under each of these plans, a primary goal is to “institutionalize prevention” utilizing what is known as the *Spectrum of Prevention*. This concept is meant to be a multi-faceted approach to preventing violence. In addition to incorporating these strategic plans into our ongoing efforts and institutionalizing prevention within The VTNG, The VTNG *Cultural Transformation Task Force* has met quarterly to report each unit’s progress



with goals related to violence prevention throughout the organization.

Some of the goals accomplished from the task force this past year included building effective relationships between responders, enhancing unit level SAPR/SHARP training, conducting or attending SAPR awareness events, conducting SAPR program compliance inspections and developing and posting unit level policy to ensure survivors are provided appropriate rights, protections and services.

The VTNG SAPR program also began implementing recommendations from the Governor's Task Force on the Prevention of Domestic and Sexual Violence's review of Vermont sexual violence programs. This included revising The VTNG SAPR webpage, creating social media accounts and incorporating primary prevention into our training and education. For the purposes of this report, primary prevention will be characterized as: *"Population-based and/or environmental and system-level strategies, policies, and actions that prevent sexual violence from initially occurring. Such prevention efforts work to modify and/or entirely eliminate the events, conditions, situations, or exposure to influences (risk factors) that result in the initiation of sexual violence and associated injuries, disabilities, and deaths".*<sup>7</sup>

The VTNG implemented and continued a variety of training and education programs for Service members featuring primary prevention topics and diversity enlightenment sessions. These sessions covered a wide range of topics from social justice theory, the social construction of gender roles, healthy masculinity, skill building for bystanders, positive and informed consent, healthy sexuality and safe dating. Additional methods included specialized sexual assault training tailored for key positions throughout the organization, to include senior leaders, commanders, first responders, SAPR personnel and individual services members.

Additionally, on April 3rd, 2014, Governor Shumlin proclaimed April as Sexual Assault Awareness and Prevention Month (SAAM), stating "WHEREAS, the Vermont National Guard is moving forward to create a culture where all service members feel responsible for preventing sexual violence and survivors feel empowered to report crimes against them, let us all rededicate ourselves this April to lead the nation in preventing sexual violence and breaking the silence surrounding sexual violence;"

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

- Classes hosted on primary prevention topics:
  - Social Justice Frameworks
  - The Social Construction of Gender Roles and Healthy Masculinity
  - Healthy Sexuality and Safe Dating
  - Positive and Informed Consent
  - Skill Building for Bystanders

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<sup>7</sup> Sexual violence prevention: beginning the dialogue. Atlanta, GA: Centers for Disease Control and Prevention; 2004.

- Movies screened and followed with discussions weekly:
  - The Bro-Code
  - The Invisible War
  - Killing Us Softly 4
  - Jackson Katz TED Talk
- Other SAAM Events included:
  - SAAM Kick-off Ceremony: Event in which establishing SAAM was initially announced.
  - VTNG Facility Poster Campaigns: Units posted updated sexual assault information in all facilities, to include posters, reporting procedures and updated contact information.
  - ANG Teal Boot Display and Clothesline Project: Teal combat boots with signs displaying sexual assault statistics in unit orderly rooms.
  - Formation Briefings: Units incorporated SAPR messages into unit safety briefings during unit training formations as a reminder of reporting options and the importance of reporting, provide a strong leadership message against sexual violence acts and contact information for UVAs and SARCs.
  - Dismantling Rape Culture Conference: Conference hosted by University of Vermont.
  - Special Edition of the Quarterly newsletter: Issue provided information on the VTNG Legislative, listed myths which enable sexual offenders, gave a brief overview of NDAA FY14 Title XVII sexual assault, prevention and response reforms, and also tested the knowledge of the reader with review of a question and answer section.

### **Sexual Assault Prevention in FY15:**

In May 2013, the Adjutant General stood up a task force to transform the culture of The VTNG in which the Deputy Adjutant General heads. The mission of this task force is to “Employ a multidisciplinary approach in prevention, response, accountability, stakeholder knowledge, advocacy and recovery and assessment to prevent all types of violence and enhance our response”. Under the auspices of this task force, there is a task force initiative to improve the prevention and response to violence within the organization which has five main goals. These goals align with The VTNG Strategic Plan and are as follows:

- Establish a climate of prevention to promote an environment of dignity and respect while preventing violence within the organization.
- Improve the response to enhance trust in the chain of command, increase reporting and reduce the occurrence of survivors being ostracized.
- Improve system accountability to provide a fair and equitable system which promotes justice, efficiency and effectiveness.



- Focus on advocacy and recovery of survivors from the initial reporting through their recovery to deliver effective support and response, instill confidence and trust, strengthen resilience and inspire survivors.
- Develop and implement assessment mechanisms to standardize, measure, analyze, assess and report program progress.

In FY15, the VTNG hopes to demonstrate sustained engagement and resolve to eliminate sexual assault within the VTNG by promoting senior leadership involvement in SAPR programs, fostering collaboration among the VTNG and civilian stakeholders and implementing primary prevention education into all SAPR/SHARP training blocks. Moreover, the VTNG hopes to continue to reach out to survivors of sexual assault, civilian advocacy groups and veterans' organizations to inform them of SAPR program progress and gain their feedback.

### **Improving our Responses in Reporting in FY14:**

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

- Army officers and non-commissioned officers are now required to incorporate SAPR concerns into their annual evaluation. The rated individual's evaluation will now include goals and objectives in furtherance of committing themselves to eliminating sexual harassment and assault and to fostering climates of dignity and respect in their units.
- Memorandums of Agreements have been established between The VTNG and over two-thirds (53 agreements out of 75 agencies) of the Law Enforcement Agencies throughout the state of Vermont (including Vermont State Police and Vermont Special Investigation Units) allowing both entities to exchange information from investigations involving sexual assault with cases in which the alleged offender was on military orders at the time of incident and the survivor consents to the sharing of their information.
- Memorandum of Understanding between The VTNG and Vermont Network is pending signatures.
- Standard Operating Procedures for The VTNG SAPR Program submitted for signature.
- DoD Sexual Assault Advocate Certification Program, with 21 VAs and SARCs trained and nationally credentialed.
- Strengthening Military-Civilian Community Partnerships regarding response to Sexual Assault. Through collaboration, the VTNG has augmented and enhanced its SAPR program with a vast array of survivor services which are not/ cannot be offered through the VTNG.
- Specialized Training: Senior Leader Training, Responder Training, SARCs and SAPR VAs, Commanders Training:

- 22 Army and Air senior leaders<sup>8</sup> received specialty SAPR Senior Leader training
- 22 Commanders received SAPR Commander specific training
- 100% of Chaplains and Chaplain's Assistants received Chaplain specific training
- 100% of Judge Advocate personnel received JAG responder training
- 70% of Advocates and SARCs trained and credentialed
- Use of National Guard Bureau's Office of Complex Administrative Investigations for reported sexual assault cases
- 48% of ARNG members SHARP Training (due to Army training preparations for the Joint Regional Training Center this fiscal year, originally scheduled SHARP training was postponed, which led to cancellation, hence FY15 training will be closely monitored by the SAPR Committee and leadership)
- 91% of ANG members received annual SAPR training

### **Improving our Responses in Reporting in FY15:**

To improve our response in FY15, The VTNG SAPR program will be conducting extensive reviews of Sexual Assault Policies and Procedures in order to ensure that both language and content is centered around the survivor, primary prevention, bystander intervention, leadership and encompasses holistic survivor care which is recovery oriented.

In addition, the Sexual Assault Prevention and Response Committee, chaired by the Director of the Joint Staff, have several initiatives planned for FY15. These initiatives include publishing a VTNG SAPR Program Strategic Plan, publishing Memorandums of Understandings with various sexual assault programs across the state to augment and enhance our SAPR Program and establishing a quarterly update of the SAPR Program for the Adjutant General.

The VTNG will also be developing surveys for survivors, commanders and survivor advocates following dispositions of their reports and is planning on hosting a forum of Victim Advocates, Senior Leaders and Commanders at the annual Victim Advocate refresher training to improve organizational processes and survivor concerns.

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

### **Improving System Accountability in FY14:**

A major accomplishment for the SAPR program and system accountability in FY 14 was the release of the Directive-type Memorandum (DTM) 14-007 – “Sexual Assault Incident Response Oversight (SAIRO) Report”. The SAIRO provides general or flag officer (G/FO) level commanders with oversight within 8 calendar days over the local response to an Unrestricted Report or an independent investigation of sexual assault to assure survivor care, visibility and transparency to Senior Leaders and system accountability.

Another effort to improve system accountability is the Internal Control Program – this is a self-inspection based upon internal and external requirements. In FY14, there were 46 areas reviewed with 43 found to be compliant. The three areas which were non-compliant this fiscal year included formalizing internal operating procedures, development of external agreements with non-military entities, and increasing numbers of trained SAPR personnel. Shortly after the close-out of FY 14, the first two areas were completed and found compliant. The VTNG SAPR Committee is establishing a plan to address the issue regarding trained SAPR personnel in the upcoming FY 15.

The VTNG also implemented the Defense Equal Opportunity Management Institute (DEOMI) Organizational Climate Survey Report to electronically capture data related to the climate of a unit, which can be specifically tailored to individual unit’s needs and provides a comprehensive report of the data to commanders. This report specifically includes four questions related to the SAPR program:

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

In addition to this report providing raw data of the organizational climate, it also offers commanders feedback on opportunities to improve. The data from this report is being analyzed and will be utilized to suggest further recommendations for FY15.

Finally, system accountability within The VTNG was addressed through the Sexual Assault Prevention and Response Committee (SAPR-C), chaired by the Director of the Joint Staff, that meets on a bi-monthly basis to address state level concerns pertaining to the SAPR program. The SAPR-C ***provides executive oversight, procedural guidance and feedback concerning the installation’s SAPR program.*** This committee reviews the state’s prevention program and the response to any sexual assault incidents occurring within The VTNG. This includes ***reviewing cases and procedures to improve processes, system accountability and survivor access to quality services.***

### **Improving System Accountability in FY15:**

Throughout FY15 The VTNG plans to address system accountability by continuing to monitor and evaluate program performance, providing guidance with respect to all VTNG activities related to sexual assault prevention and response and attempting to conduct individual after action reviews of The VTNG's use of the Office of Complex Investigations and Civilian Special Investigative Units to make recommendations and continually improve services. In addition to after action reviews with the investigation units, The VTNG has been developing a Sexual Assault Prevention and Response Program Improvement plan. Upon final disposition of the case, this plan will review all sexual assault cases from initial reporting to completed dispositions at designated points of interest as a means to improve process and procedures in a timely manner.

### **Focusing on Advocacy and Recovery in FY14:**

FY14 saw drastic improvements in the advocacy arena for survivors of sexual violence. Early in FY14, The VTNG began to utilize the National Guard Bureau's Special Victim's Counsel (SVC) program, which brought about several positive features for survivors throughout the reporting process. This program provides sexual violence survivors with a military trained Judge Advocate to provide legal assistance beginning with the investigation phase through the conclusion of the case and establishes an attorney client relationship with the survivor – a protected communication. This allows the survivor to freely and confidentially obtain legal advice and guidance on all issues pertaining to the investigatory and disciplinary process as well as address collateral misconduct which might arise during the case. The SVC will further assist with obtaining expedited transfers, Military Protective Orders, civilian protective orders and the like. The VTNG not only has utilized the National Guard program, but has also sent one of its own Judge Advocates to a special qualifying school and now has, within its ranks, a SVC.

The VTNG continued to collaborate with civilian community advocates to provide holistic survivor care through the military and civilian coordination team, county task force meetings and local advocate meetings. It was written into policy that the SAPR Program would specifically provide gender responsive, culturally competent and recovery oriented services to survivors of sexual violence and as such, The VTNG provides state training and education focused on these topics to all advocates.

Lastly, The VTNG has worked to ensure that all survivors of sexual violence have an opportunity to provide input on the SAPR Program and process and have a voice on influencing change based on their experiences. With the permission of a survivor, The VTNG was able to utilize a survivor's story and her perception of the process as a case study to discuss the process in detail with senior leaders across the organization, which led the leadership to a more thorough understanding of a survivor's perspective.

### **Focusing on Advocacy and Recovery in FY15:**

Looking into FY15, the VTNG hopes to host a survivor forum in which volunteer survivors participate in a discussion with the SARC and senior leadership. From this, senior leadership will gain a heightened understanding of survivor experiences and treatment in military units as well as a better understanding of the investigative, accountability and advocacy response systems from a survivor's perspective. This would allow the survivors an opportunity to have their voices heard, as well as the SAPR program and senior leadership the ability to better assess the impact of the SAPR program on individuals and to evaluate possibilities for program and policy improvements.

### **Assessment Mechanisms in FY14:**

Our goal is to incorporate responsive, meaningful and accurate systems of measurement and evaluation into every aspect of our programs in order to determine the impact we are having on reducing (with hope to eliminate) sexual assault. A critical VTNG capability is the SAPR Office, which serves as the single point of authority, accountability and oversight of the state's SAPR program policy. As such, The VTNG employs a variety of capabilities such as the Defense Sexual Assault Incident Database (DSAID), DEOMI surveys (described in Priority 3) and internal control inspections and assessments to ensure VTNG-wide compliance with the SAPR program.

The Defense Sexual Assault Incident Database (DSAID) is a secure, case-level data system for documenting sexual assault reports and managing cases. DSAID is a web-based system used as a centralized repository for Service-specific case-level sexual assault data and contains Sexual Assault Prevention and Response (SAPR) data. DSAID allows for ad-hoc query and reporting, case management and business management functionality. This system improves the data collection and reporting environment in which the JFHQ SARC operates and also assists in allowing DoD SAPRO and the Services remain flexible in extracting the right data to meet changing oversight needs.

The Cultural Transformation Task Force and the SAPR Committee provide additional methods to measure and analyze program success across The VTNG.

### **Assessment Mechanisms in FY15:**

Looking forward into FY15, The VTNG will implement survivor surveys and host military and civilian consultation forums around prevention efforts and trends analysis to build upon as well as improve our assessment mechanisms. We will also analyze and assess variances in Restricted/Unrestricted Reporting across The VTNG, analyze SAPR data to identify case disposition trends and assess the feasibility of incorporating sexual assault prevention training into other VTNG Programs.

## **B. Sexual Harassment**

### **1. Introduction**

National Guard Regulation 600-21, Equal Opportunity Program in the Army National Guard is the guiding directive for the Vermont Army National Guard Equal Opportunity Program. The objective of this program is to formulate, direct and sustain a comprehensive effort, ensuring fair treatment of all soldiers based solely on merit, fitness and capability which supports readiness. Specifically, this effort is designed to:

- Provide EO for all ARNG military personnel.
- Contribute to mission accomplishment, cohesion, and readiness.
- Create and sustain effective units by eliminating discriminatory behaviors or practices that undermine teamwork, mutual respect, loyalty and shared sacrifice of the men and women of the ARNG.

Air National Guard Instruction 36-7 Air National Guard Military Equal Opportunity Program is the guiding instruction by order of the Chief National Guard Bureau which defines the Military Equal Opportunity policy as essential for unit effectiveness and mission readiness. The guidance in this instruction is to assist commanders in building a strong and cohesive team which pursues unit success and readiness, works to resolve interpersonal differences as well as strives to develop and maximize the personal potential of unit members.

### **2. Program Overview**

Victims of sexual harassment in the Army or Air National Guard will follow procedures in accordance with National Guard Regulation 600-22 National Guard Military Discrimination Complaint System. Any aggrieved individual, covered by the regulation, who believes that he or she has been illegally discriminated against due to race, color, national origin, religion, gender (including sexual harassment) or reprisal for having engaged in a protected equal opportunity activity, in a matter subject to the control of the VTNG has the ability to file an individual complaint of discrimination.

The chain of command will be the primary channel for resolving discrimination complaints. Individuals are encouraged to use command channels for redress of grievances. Allegations of discrimination will be referred for processing by the lowest appropriate command level in accordance with this regulation. This provides the commander an opportunity to assist the complainant, inquire into the issues and allegations, administer corrective action and to attempt to resolve the complaint (when possible). The sole mechanism for appealing the disposition of an informal complaint shall be to file a formal complaint. A formal complaint will be filed by completing NGB Form 333, Discrimination Complaint in the Army and Air National Guard.

### 3. Statistical Data

Recently, this issue has received national attention and as a result, the United States Congress has established reporting requirements. Specifically, section 579(b) of the National Defense Authorization Act for Fiscal Year 2013 (NDAA FY2013) requires the Secretary of Defense to collect and submit to Congress (by March 1, 2014) information and data on substantiated incidents of sexual harassment involving members of the Armed Forces for the preceding year (Fiscal Year 2013) as part of the report required pursuant to section 1631 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011. The following, in accordance with this new federal law, is the Fiscal Year 2014 VTNG report:

<b>FY14 DATA COLLECTION TEMPLATE FOR INFORMAL SEXUAL HARASSMENT INCIDENTS</b>	
Section 579(b) of the National Defense Authorization Act for Fiscal year 2013 (NDAA FY 2013) requires the Secretary of Defense to collect and submit to Congress, by march 1, 2014, information and data on substantiated incidents of sexual harassment involving members of the Armed Forces for the preceding year, Fiscal Year 2013, as part of the report required pursuant to section 1631 of the Ike Skelton National Defense Authorization Act for Fiscal year 2011.	
<b>Instructions:</b> 0 Enter appropriate number (#) in each column for the required fiscal year. 0 Where the information is available, but there are no numbers, write zero (0). 0 Where the information is not available, write "N/A". 0 The total number of complaints should equal the summed number of subcategories below each total (for example, the total number of formal complaints should equal the summed number of substantiated, unsubstantiated, and pending formal complaints).	
<b>A: Total Number of Sexual Harassment Complaints</b>	
Total Informal Complaints referred for investigation/inquiry	7
<b>Substantiated</b> Informal Complaints referred for investigation/inquiry	7
<b>Unsubstantiated</b> Informal Complaints referred for investigation/inquiry	0
<b>Pending</b> Informal Complaints referred for investigation/inquiry	0
<b>B: Complaints Involving the Same Offender</b>	
Total Informal Complaints involving the same offender	2
<b>Substantiated</b> Informal Complaints involving the same offender	2
<b>Unsubstantiated</b> Informal Complaints involving the same offender	0
<b>Pending</b> Informal Complaints involving the same offender	0
<b>C: Number Complainants and Offenders</b>	
Informal Complaint investigation with one complainant and one offender	6
Informal Complaint investigation with one complainant and more than one offender	0
Informal Complaint investigation with more than one complainant and one offender	1
Informal Complaint investigation with more than one complainant and more than one offender	0
<b>D: Number Reports forwarded to General Court Martial convening Authority (GCMCA)</b>	
Total reports forwarded to GCMCA	5
Reports forwarded to GCMCS within 72 hours	5
Reports forwarded to GCMCS beyond 72 hours	2
<b>E: Length of time between incident and Informal Report for substantiated Complaints</b>	
total substantiated informal complaints (# from A above)	7
Substantiated informal complaints made less than 60 days following the incident	7

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Substantiated informal complaints made more than 60 days following the incident	0
Unknown	0
<b>F: Location of Substantiated Complaints</b>	
On Duty (i.e. during duty hours)	6
Off Duty (i.e., during time off)	1
Location of incidents that occurred:	
On a Military Installation	7
Deployed to a combat zone or to an area where complainant drew imminent danger pay	0
During any type of military combat training	0
On TDY/TAD, at sea or during field exercises/alerts	0
During military occupational specialty school/technical training/advanced individual training	1
During recruit training/basic training	0
During the delayed entry program	0
During Officer Candidate or Training School/Basic or Advanced Officer Course or Warrant Officer Course	0
Non-military locale	0
State armories and reserve centers	7
<b>G: Completed Sexual Harassment Investigations</b>	
Total investigations of Informal Complaints as of close of FY14	7
Total investigations of Informal Complaints as of close of FY14	0
Completed investigation of Informal complaints as of close of FY14	7
<b>H: Final Disposition for Offenders in Completed Investigations</b>	
Offenders in Informal complaints (total)	7
Offenders pending command action as of close of FY14 (total)	5
Offenders for whom command action was completed as of close of FY14 (total)	2
Courts-martial	0
Non-judicial punishments	0
Discharges in lieu of court-martial	0
Discharges in lieu of disciplinary action	0
Referred to agency outside of DoD	0
Other adverse or administrative action	2
<b>J: Summary of Characteristic Information: Informal Complaints</b>	
<b>J1: Alleged Offender(s) by Grade and Gender</b>	
E1-E4	0
E5-E9	7
W01-W02	0
W03-W05	0
O1-O3	0
O4-O10	0
DoD/Service civilian employee (total)	0
GS 1-12	0
GS 13-15	0
SES	0
DoD/Service civilian contractor	0
Gender (male)	7
Gender (female)	0
<b>J2: Complainant(s) by Grade and Gender</b>	
E1-E4	2
E5-E9	4



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W01-W02	0
W03-W05	0
01-03	0
04-010	0
DoD/Service civilian employee (total)	0
GS 1-12	0
GS 13-15	0
SES	0
DoD/Service civilian contractor	1
Gender (male)	0
Gender (female)	7
<b>J3: Identify Nature of Allegation(s)</b>	
Substantiated Incidents of Crude/Offensive Behavior	5
Substantiated Incidents of Unwanted Sexual Attention	2
Substantiated Incidents of Sexual Coercion	0
<b>J4: Relationship of Alleged Offender to Complainant</b>	
Military coworker or peer	1
In Chain of Command	3
Military subordinate	1
Military person of higher rank/grade who was not in Chain of Command	1
Other military person(s)	0
Person in the local community	0
DoD/Service civilian employee(s) total	0
GS 1-12	0
GS 13-15	0
SES	0
DoD/Service civilian contractor(s)	1
Same unit	6
Same gender	0
Different gender	7
<b>J5: Other Comments (e.g., appeals, remedies, management actions, victim assistance)</b>	
For FY14, All leaders involved in the response to EO incidents and or cases of Sexual Harassment improved their efficiency. They also increased the level of professional involvement they solicited to resolve issues expediently with maximum efforts of restoring benefits to victims for all substantiated cases.	
Command Information	
Unit/MSC	
Vermont National Guard	
Commanders Rank and Name	
Maj Gen Steven Cray, The Adjutant General Vermont	
Date Completed	
September 30th, 2014	

#### **4. Accomplishments**

The Vermont National Guard Equal Opportunity Programs (Army and Air) are both well established and adequately staffed. Each Service has a program manager who has direct access to the Adjutant General.

The Vermont Adjutant General is a member of the National Joint Diversity Executive Council (NGB-JDEC). The National Guard Bureau's Joint Diversity Executive Council continues to carry out Chief of National Guard Bureau priorities related to the cultural climates of the National Guard.

The established State Joint Diversity Executive Council (VT-JDEC) continues to manage initiatives under the current strategic diversity plan. An objective within the plan is gender equality; increased gender diversity is a catalyst for cultural climates of dignity and respect. The Adjutant General's Cultural Transformation Task Force augments the VT-JDEC initiatives of gender equality. The Task Force focus is on Prevention of Sexual Harassment, Assault and an improved response program. Another spear of the Task Force is gender equality, focusing on the continued improved representation of women throughout all levels of the organization. The Task Force continues to monitor the integration of women assigned to the 86 Infantry Brigade Combat Team (IBCT); during FY14, seven women were assigned to the Infantry and Calvary Battalions of the IBCT. The Task Force leaders continue to communicate with unit members and monitor the transformation process to ensure the maintenance of respectful climates and encourage synergy during this transitional phase.

In January 2014, the Vermont Adjutant General approved a joint policy, "Reporting of Sexual Harassment" in support of the Vermont Statue and the Secretary of Defense requirement to report all incidents of sexual harassment. This is a reporting requirement only and does not displace the current regulations, guidance and policies on handling these actions at the lowest level of command along with other procedural requirements IAW NGR 600-22/ANGI 36-3. The policy requires Commanders to report incidents related to sexual harassment through Equal Opportunity channels and provides the Joint Force Headquarters Human Resource Officer the ability to identify multiple offender trends as well as recommend targeted actions to deter possible violations.

As for training and educating within the force, 2,377 VTNG personnel participated in various training opportunities for the prevention of sexual harassment and assault during FY14, 310 of which completed additional Anti-Discrimination Training.

During FY14, the task force implemented a diversity enlightenment series with over two-hundred and seventy-eight participants. This series included small group discussions on social justice issues such as gender equality, sexual harassment and cultural climates which encouraged reporting and challenging both problematic language and behavior when encountered.

In addition to the education series, the required Sexual Harassment and Response Program (SHARP) training was conducted at every unit level. Diversity and Equal Opportunity training was conducted for every unit with a focus on interactive discussion and intervention techniques.

Command climate assessments were conducted for over 90% of all Army units and the entire Air National Guard. These assessments included questions pertaining to Sexual Harassment, Assault and Equal Opportunity. The State Sexual Harassment Assault and Response Coordinator and State Equal Employment Manager reviewed these assessments and provided guidance and feedback to Commanders allowing them to implement changes in their units.

## **C. Sexual Orientation Based Discrimination**

### **1. Introduction**

As it was clear from last year's report, there were significant changes made on a national level impacting how The VTNG addresses discrimination based upon sexual orientation. First, the "Don't Act Don't Tell Repeal Act of 2010" repealed a 1993 law (United States Code, Title 10, §654), which prevented individuals who identify as gay, lesbian or bisexual from serving openly in the military. As a result, the services were mandated to provide an entire host of benefits to same sex domestic partners (see Secretary of Defense, Memorandum, SUBJECT: Extending Benefits to Same-Sex Domestic Partners of Military Members, 11 February 2013). Second, in a landmark decision, on 26 June 2013, the United States Supreme Court struck down section 3 of the Defense of Marriage Act (DOMA) in *United States v. Windsor*, 570 U.S. (2013) (Docket No. 12-307). DOMA had been in effect since 1996 and prevented same-sex couples whose marriages were recognized by their home state from receiving the hundreds of benefits available to heterosexual married couples under federal law. As a result of this decision, the DoD issued further guidance on extending additional benefits to same-sex spouses of military members (see Memorandum, Under Secretary of Defense, SUBJECT: Further Guidance on Extending Benefits to Same-Sex Spouses of Military Members, 13 August 2013). The VTNG fully implemented this guidance in the previous year.

### **2. Program Overview**

DoD has expressly prohibited sexual orientation from being a factor in accession, promotion or other personnel decision-making. To ensure Service Members have a means of reporting discrimination based upon sexual orientation, The Adjutant General signed Joint Policy Memorandum- Reporting Requirements for Complaints of Discrimination Based Upon Sexual Orientation 25 July 2014. This guidance directs Service Members who feel they have been discriminated against or harassed due to their sexual orientation to make a report to their company commander or the Inspector General. They are also encouraged to seek legal assistance from their Servicing Judge Advocate.

The policy further makes clear that The VTNG will not tolerate discrimination based upon sexual orientation. It states

“Good order and discipline is the foundation of the Vermont National Guard. It results in keeping units strong and believing that their fellow Service Members will treat them with the upmost dignity, respect and fairness. General military policy requires the promotion of an environment free from personal, social or institutional barriers that prevent Service Members from rising to the highest level of responsibility possible and prohibits the evaluation of Service Members on bases other than individual merit, fairness and capability. Discrimination based upon sexual orientation violates these basic tenants and is deemed unacceptable and unlawful in the Vermont National Guard.”

Upon reporting discrimination, the process is to treat these actions similar to other complaints by members who have been victims of hazing, work-place violence, and the like. This process provides the commander with the ability to conduct administrative military investigations into these allegations and administer military disciplinary action, when it is warranted by the findings of the investigation. The victim and/or survivor also have the right to seek a line of duty determination for any injuries resulting in the misconduct. In cases where the conduct complained of is suspected to constitute a civilian crime, the action will be referred to civilian law enforcement for investigation.

### **3. Statistical Data**

The VTNG Joint Policy referred to above provides for a periodic reporting by commands of all action/complaints involving this type of discrimination. This policy came into effect on 25 July 2014. There were no reported cases since that date. Prior to that date, a review of VTNG records by the Inspector General, Equal Opportunity Office and the Judge Advocate Office did not reveal any complaints.

### **4. Accomplishments**

There have been several major Sexual Orientation-related milestones within the last calendar year.

- On July 21, 2014, President Obama signed an amendment to Executive Order (E.O.) 11246, adding sexual orientation and gender identity<sup>2</sup> to the list of protected categories in the existing Executive Order. Originally signed by President Lyndon B. Johnson on September 24, 1965, EO 11246 prohibits federal contractors and subcontractors and federally-assisted construction contractors and subcontractors who generally have contracts which exceed \$10,000 from discriminating in employment decisions on the basis of race, color, religion, sex, or national origin. It also requires covered contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. E.O. 11246 is administered by the Office of Federal Contract Compliance Programs

(OFCCP) within the U.S. Department of Labor. The VTNG Equal Employment Manager has tentatively been identified to oversee discrimination complaints based on sexual orientation and gender identity. Gender identity equality is a VTNG agency priority which the organization is currently amending its EO policy to include.

- The VTNG has committed resources in FY15 to accomplish formal training for Senior Leaders in support of Executive Order 11246. Upon completion of this training The VTNG will develop policies and implement procedures in support of EO 11246.
- The VTNG has an established ad hoc committee currently comprised of The VTNG Staff Judge Advocate, Sexual Assault Response Coordinator, Equal Employment Manager, and the Inspector General to address various concerns related to this report (to include discrimination resulting from an individual's sexual orientation). This committee will continue to develop policies, practices and procedures to identify, train, report and investigate this type of wrongful conduct.