



## OFFICE OF THE MAINE ATTORNEY GENERAL

### REPORT OF ATTORNEY GENERAL AARON M. FREY

Public Law 2021, Chapter 634, An Act to Enhance the Prevention of and Response to Sexual Assault and Sexual Harassment in the Maine National Guard

February 2023

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## I. Introduction

The 130<sup>th</sup> Legislature undertook a comprehensive review of the conditions contributing to the ongoing problem of sexual harassment and assault in Maine’s National Guard.<sup>1</sup> The legislative response included Resolve 2021, Chapter 21, *Resolve, Directing a Review of Crucial Needs and Lapses in Responding to and Preventing Sexual Trauma in the Maine National Guard*<sup>2</sup> (Resolve Chapter 21), and Public Law 2021, Chapter 634, *An Act to Enhance the Prevention of Response to Sexual Assault and Sexual Harassment in the Maine National Guard* (Chapter 634).<sup>3</sup> In addition, the Governor established the Advisory Council on Military Sexual Trauma to More Effectively Prevent, Deter, and Prosecute Sexual Assault and Sexual Harassment. (Executive Order 1 FY 21/22, March 24, 2022).<sup>4</sup>

Chapter 634’s multifaceted approach recognizes the crucial link fostered by communication and collaboration between civilian law enforcement, prosecutors and victim advocates, and their National Guard counterparts in military justice, command staff, and Sexual Assault Response Coordinator roles. As part of that multifaceted approach, Chapter 634 amended the Maine Code of Military Justice and the Maine Criminal Code, and required reporting from both the Maine Adjutant General and the Maine Attorney General. This report by the Attorney General, drafted pursuant to Chapter 634, provides an overview of civilian law enforcement responses to known and reported incidents of sexual assault and criminal harassment between members of the Maine National Guard, and should further reinforce that link.

In addition to requiring this report, Chapter 634 amended the Maine Criminal Code to specifically provide that notification by a commanding officer to a member of the National Guard not to engage in harassing conduct has the same effect as a similar warning given by law

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<sup>1</sup> “Maine National Guard” or “Guard” includes both the Maine Air National Guard and the Maine Army National Guard.

<sup>2</sup> See the report of Maine’s Adjutant General, Major General Douglas A. Farnham, to the Joint Standing Committee on Veterans and Legal Affairs (March 1, 2022), issued pursuant to Resolve Chapter 21, included as Appendix A.

<sup>3</sup> A copy of Chapter 634 is included as Appendix B.

<sup>4</sup> A copy of the Executive Order is included as Appendix C.

enforcement, a court, or corrections personnel, and provides the basis for future criminal enforcement. 17-A M.R.S. § 506-A(1)(A)(3).<sup>5</sup> It updated the Maine Code of Military Justice to cross-reference Maine’s crime of harassment, to ensure that convictions under 17-A M.R.S. § 506-A are punishable under the Maine Code of Military Justice. 37-B M.R.S. § 463. Chapter 634 established a designated seat on the Maine Commission on Domestic and Sexual Abuse for “a member of the military community with experience in sexual assault response,” thus further ensuring regular information exchange between civilian and military counterparts. 19-A M.R.S. § 4013(1)(A)(17). Chapter 634 also requires ongoing annual reports from the Adjutant General to the Legislature concerning incidents of sexual assault and harassment, sexual assault and harassment training, prevention measures and disciplinary actions, and summaries of the activities of any advisory groups related to prevention and response, again promoting this communication and information flow.

As applicable to this report, Chapter 634 directs the Attorney General to “review the manner in which law enforcement agencies and prosecutors within the State investigated and prosecuted allegations of sexual assault or the crime of harassment, as defined in the Maine Revised Statutes, Title 17-A, section 506-A, by members of the Maine National Guard against other members of the Maine National Guard during the 5-year period ending on March 31, 2022.” The law requires the Attorney General to examine the following:

1. The nature of each allegation, including information that was available and unavailable to the law enforcement agency at the outset of and during the course of investigation;
2. Whether the allegation was adequately and properly investigated by the law enforcement agency;
3. Whether the results of the law enforcement agency's investigation were communicated to the appropriate prosecutorial office and whether appropriate action was taken by that prosecutorial office; and

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<sup>5</sup> A person is guilty of harassment “if, without reasonable cause,” the person “engages in any course of conduct with the intent to harass, torment or threaten another person” after having been notified not to engage in such conduct by one of the identified authorities. 17-A M.R.S. § 506-A. Referenced criminal statutes are reproduced in Appendix D.

4. Whether the results of the law enforcement agency's investigation and the prosecution, if any, were communicated to the relevant officials within the Maine National Guard, if requested and appropriate.

P.L. 2021, c. 634, Part A.

This report summarizes the results of the review undertaken by the Attorney General, and, consistent with the directive of Chapter 634, includes recommendations for improving the process by which law enforcement agencies and prosecutors investigate and prosecute allegations of sexual assault and the crime of harassment between members of the National Guard.

## **II. Data Collection and Process**

Pursuant to Chapter 634, staff of the Office of Attorney General (OAG) requested the District Attorneys of the eight Prosecutorial Districts within the state to provide the Attorney General with investigative records and dispositions pertaining to allegations of sexual assault and harassment between members of the National Guard for the five-year period ending March 31, 2022. Separately, the Office of Attorney General made the same inquiry of the state, county, municipal and tribal law enforcement agencies throughout the state. The OAG requested data across the entirety of the State, recognizing that incidents of assault and harassment may occur outside the districts in which a National Guard base is located, as training of and socializing between members may take place elsewhere.

In addition, the Office of Attorney General obtained a list of alleged suspect and victim names from the Maine National Guard. OAG staff then followed up with individual District Attorneys and law enforcement agencies to request searches for cases associated with the specific names.<sup>6</sup> Attorneys within the OAG reviewed the reports and correspondence received through these inquiries.

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<sup>6</sup> Materials reviewed for purposes of this report are referenced generally and de-identified to protect privacy interests of victims, witnesses and alleged suspects, to prevent interference with or dissemination of prejudicial information

### III. Responses Received<sup>7</sup>

The OAG received responses from the District Attorneys' offices that had received reports from law enforcement, as well as from the law enforcement agencies.<sup>8</sup> Three districts reported no cases. There was some duplication in responses, where law enforcement agencies had provided their reports to the District Attorneys for review and possible prosecution, and both the District Attorney and the law enforcement agency responded with the same case. However, not every allegation reported to law enforcement had been relayed to a District Attorney office. In some cases, the investigation determined that no crime under Maine statutes had been committed, or there was insufficient information to determine whether or when a crime had occurred, as summarized further below.

Responses were received from the District Attorneys and law enforcement agencies as outlined below.

#### District I (York County)

The District Attorney reported there were no such cases received.

No responses received from law enforcement.

#### District II (Cumberland County)

The District Attorney reported there were no such cases received.

Two law enforcement agencies identified contacts from the National Guard regarding possible assaults. In one instance, the National Guard contacted the law enforcement agency regarding a possible sexual assault and indicated that the victim did

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pertaining to pending proceedings, to protect confidential criminal history record information, and to comply with federal law applicable to the National Guard. See, generally, 16 M.R.S. §§ 705, 804; 5 U.S.C. § 552a, Privacy Act of 1974, as amended.

<sup>7</sup> We recognize that the vast majority of sexual assaults are not reported to law enforcement. For statistics and references to supporting data, see the "National Statistics" regarding "Reporting and Prosecution" on the website of the Maine Coalition Against Sexual Assault, <https://www.mecasa.org/stats.html> (accessed Feb. 7, 2023).

<sup>8</sup> Several responses received described conduct outside the parameters set forth in Chapter 634, either because they occurred outside the five-year period, both parties were not members of the Guard at the time of the alleged incident, or the conduct described did not meet the elements of the statutes identified in Chapter 634.

not wish to make a report to civilian authorities. In the other, the National Guard representative advised the law enforcement agency that there had been an alleged sexual assault, but no further information was provided and there was no report from the victim.<sup>9</sup> Accordingly, there was insufficient information from which the law enforcement agency could determine whether crimes had in fact occurred, and there was no report to or review by the District Attorney.

#### District III (Androscoggin, Franklin, Oxford Counties)

The District Attorney reported two sexual assault cases, both of which were approved for prosecution and are pending trial. Given the status of these cases, no further description is provided.

Responses from several law enforcement agencies reflected other incidents as well. Reports were made by National Guard officers or command staff, but with insufficient information available to law enforcement to conduct a comprehensive investigation. For example, in one case, law enforcement was told that an incident happened “years ago” and the victim “did not want to pursue.” Insufficient information was available to determine the date of the incident or whether the conduct amounted to simple assault or a sexual assault. In another case, two attempts by law enforcement to contact the victim were unsuccessful, so the nature of the incident was not determined. In a third case reported by a third-party National Guard officer regarding a “possible” sexual assault approximately a year after the incident, the law enforcement interview of the alleged victim indicated possible inappropriate fraternization, but not a violation of Maine criminal statutes.

#### District IV (Kennebec and Somerset Counties)

The District Attorney reported one investigation submitted by law enforcement, which was reviewed and declined by the prosecutor. The case involved the delayed disclosure of allegations of unlawful sexual touching. The District Attorney’s office

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<sup>9</sup> Any observation regarding information available on first report from a Guard representative is not a critique of any such reports or military investigations, which are subject to military regulations.

referenced the statute of limitations for declining one incident, and evidentiary issues and victim reticence as reasons for declining a separate incident. The responding prosecutor noted “on-going, meaningful disciplinary action” in the Guard.

Law enforcement agencies responded with two other investigations, both concluded without being reported to the District Attorney. One investigation, reported by the Provost Marshal to law enforcement, was closed because there was no direct contact with or statement from the victim. Another matter involved a late report of a possible sexual assault made by Guard officials (a commanding officer and a representative of the Sexual Assault Response Coordinator’s Office); when the victim was interviewed, the conduct described did not meet the elements of a sexual assault. The investigation was relayed to the Guard. The civilian officer’s report and email indicate that the Guard conducted its own investigation, and the victim did not wish the matter to be pursued given that the other party was no longer a member of the Guard.

#### District V (Penobscot, Piscataquis Counties)

The District Attorney reported two cases. One report of alleged gross sexual assault was declined due to lack of evidence indicating the conduct was not consensual. Report of the incident to law enforcement was approximately six weeks after the incident, and no physical evidence was available. Reports concerning another individual reflected allegations of conduct that occurred several years prior to the complaint, when the victim and alleged perpetrator were both juveniles, prior to their time in the Guard. The last reported incident occurred while the alleged perpetrator was a member of the Guard, but the victim’s Guard status is not clear, so this case may not be within the parameters of the report. The case was declined due to “insufficient evidence.”

Law enforcement reported two additional matters that were not referred to the District Attorney’s office. In one, the victim met with civilian law enforcement and briefly described two incidents of conduct potentially within the definition of gross sexual assault that had occurred approximately nine years earlier, but indicated she wished to pursue a military rather than civilian investigation. Reports indicate that



military investigation was done, and there was no further civilian investigation. A different law enforcement agency responded with a report of possible unlawful sexual touching or assault and harassing conduct that was initially reported by a Guard attorney to law enforcement two years after the alleged incident. Interview of and subsequent follow-up with the victim reflect that the victim wanted the matter to be pursued within the Guard, and the civilian investigation was closed. Civilian law enforcement communicated directly with the Guard attorney concerning the case disposition.

#### District VI (Sagadahoc, Knox, Lincoln and Waldo Counties)

The District Attorney reported there were no such cases received.

No responses received from law enforcement.

#### District VII

The District Attorney reported two cases, one of which was charged as gross sexual assault (two counts; alternative theories, Class A and Class C) and resulted in a conviction, by plea, of aggravated assault (Class B). A second case reviewed by the District Attorney's office involving an allegation of possible unlawful sexual contact was declined due to inconsistent statements of witnesses and parties involved. The prosecutor's review refers to a separate investigation by the Guard; the results of that investigation are not available for this report.

Law enforcement responses referenced the same investigations provided by the District Attorney's office.

#### District VIII

The District Attorney reported there were no such cases received.

No responses received from law enforcement.

#### **IV. Nature of Allegations and Information Available to Law Enforcement; Adequacy of Law Enforcement Investigation**

The reports made available for review include descriptions of conduct meeting the definitions of unlawful sexual touching, 17-A M.R.S. § 260; unlawful sexual contact, 17-A M.R.S. § 255-A; and gross sexual assault, 17-A M.R.S. § 253.<sup>10</sup> In some cases only limited information was available for the OAG to review, and it could not be determined if the allegations constituted assault, 17-A M.R.S. § 207, or violation of one of the sexual assault statutes in Title 17-A, Chapter 11 referenced above. Several of the reports reflect that one or both of the persons involved were intoxicated. The reports reviewed disclosed no allegation of the use of weapons against the victim. None of the reports reflected harassment that met the elements of 17-A M.R.S. § 506-A.

Reports were most commonly made by an officer or Guard supervisor to civilian law enforcement, and often not contemporaneously with the incident—in some cases years later. Late reports affected the type and quality of evidence that could be collected (i.e., no physical evidence; memories not documented close in time to events). Reports by third parties other than the victim shed some light on the tension between the importance of allowing the victim to control reporting and the need to support or protect victims who might be reluctant to report without such support. In some cases, victims expressed a preference not to involve civilian law enforcement.

Any discussion of appropriate investigative efforts must recognize the crucial role of the victim's voice and include consideration of a victim's choice not to participate in a criminal investigation. As one would expect, much less information was available to civilian law enforcement agencies where there were late reports or victims chose to pursue other options, including internal National Guard investigations or no investigation at all. Accordingly, law enforcement should not be faulted for not completing an investigation where a victim chose options other than criminal enforcement. However, in individual cases, law enforcement can do more to follow up to confirm that the victim is aware of all options. For example, one report

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<sup>10</sup> The text of referenced criminal statutes is included in Appendix D.

reviewed indicates that law enforcement did not have contact information for the victim in a matter reported by the Provost Marshal. The law enforcement agency advised the Provost Marshal that the victim should contact the civilian law enforcement directly. The report does not reflect that the law enforcement officer used that Guard contact to try to locate the victim, but there is also no indication as to whether the victim wanted to involve civilian law enforcement.

## **V. Results of Investigations Relayed to Prosecutors; Actions Taken by Prosecutors<sup>11</sup>**

It does appear that where sufficient information was available to law enforcement to conclude that a crime had been committed, that information was relayed to the appropriate District Attorney for review. However, there was not sufficient documentation to determine whether law enforcement agencies were complying with 25 M.R.S. § 3871, enacted in 2019, which now requires law enforcement agencies to submit complaints of alleged sexual assault to the appropriate prosecutor within 60 days of receiving a complaint.<sup>12</sup> However, given that law enforcement agencies reported more cases than District Attorneys, it appears that not every report of sexual assault was reported to the local prosecutor, as is currently required. In some cases, the law enforcement agency determined that the information available did not meet the elements of a crime, and thus did not relay the case for review. Some cases pre-dated the enactment of section 3871. However, the difference in the number of cases submitted to this office by law enforcement and by District Attorneys indicates the need to remind law enforcement and prosecutors of the requirements of this statute, which does not require there to be a complete investigation or even a determination that a crime has been committed before the report is referred. As such reports are now required by statute and represent good practice, we make this recommendation below.

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<sup>11</sup> The OAG has not re-interviewed witnesses or victims. Beyond the logistical and resource challenges of locating and interviewing such persons, the charge of Chapter 634 did not justify the risk of retraumatizing victims years after these matters had been closed. The nature of a paper review limits the extent to which the OAG can assess the strengths and weaknesses of particular cases, consider the input of the victim, or second-guess the discretionary calls made by prosecutors to charge, decline or resolve cases.

<sup>12</sup> 25 M.R.S. § 3871 provides, in relevant part, “A law enforcement agency in possession of a complaint for an alleged sexual assault under Title 17-A, Chapter 11 shall within 60 days of receiving the complaint inform the appropriate prosecutor of any evidence and submit the complaint for review and a decision by the prosecutor regarding further investigation and commencement of prosecution....” This law did not become effective until 2019, and thus did not apply to all investigations reviewed here. P.L. 2019, c. 80.

Delayed disclosures limited options to pursue conduct beyond the applicable statute of limitations or for which limited evidence was available due to the passage of time. Prosecutorial decisions to approve charges and present matters to Grand Jury were appropriate, as demonstrated by the Grand Jury indictments in those cases. Two of the charged cases are pending; it is not appropriate for the OAG to comment further on those pending criminal prosecutions. One indicted case was resolved by a plea to and conviction for aggravated assault, a felony-level crime, in lieu of the charged gross sexual assault. Absent direct contact with the victim and witnesses, the OAG does not comment on this disposition.

## **VI. Communication with Maine National Guard Officials**

Investigative reports reviewed do not indicate whether Guard officials requested updates regarding the disposition of cases, and it was not apparent from the reports available to the OAG whether final decisions were communicated back to the National Guard. By their nature, investigative records are completed prior to disposition; thus as a practical matter, documentation of communication back to the Guard was generally not available, and this office followed up with individual prosecutors and office staff to request additional information on this point. Responses back to the OAG reflected substantial communication between Guard officials and District Attorney's offices and law enforcement. Specific examples follow.

We noted that in several cases, the only information available to law enforcement came from Guard officials making a report to civilian authorities. Where such reports indicated that the victim did not wish to pursue civilian criminal enforcement or that there was no further information, there was no result to relay back to the Guard. Our specific inquiry to staff of the District Attorney's office regarding one matter confirmed that the victim witness advocate had relayed information back to the Guard. In another specific case, a prosecutor confirmed that their office communicated directly with the victim rather than the Guard. In one case closed by conviction, the District Attorney provided additional information in response to our inquiry stating that he had been in direct contact with a Guard JAG officer regarding the status of the case prior to the resolution of the case. Our follow-up back to the responsible prosecutor for purposes of this report encouraged additional communication back to the Guard regarding

disposition. One prosecutor responsible for a pending prosecution responded that she had been in “frequent communication” with the JAG responsible for parallel Guard proceedings. In yet another investigation, the detective indicates in her report that she contacted the office of the Provost Marshal directly with the results of investigation. Another prosecutor wrote, “We have had numerous communications with Guard officials in our file including emails and phone calls, responding to their queries and keeping the lines of communication open.”

Based on this anecdotal evidence, the information flow regarding case disposition is highly case-specific, but appears to have improved in more recent cases. Any practices that provide for this communication should respect the victim’s choices and keep in mind victim safety. Policy and training changes within the Guard, as outlined in the March 1, 2022 report of the Adjutant General, are already addressing these communication issues. We encourage these practices to continue, as they benefit all parties.

## **VII. Recommendations<sup>13</sup>**

Most of the incidents reviewed for purposes of this report occurred prior to significant policy and programming efforts outlined in the March 1, 2022 report of the Adjutant General. Major General Farnham’s report reflects that tremendous efforts are being made within the Guard to provide training for enlisted personnel and command staff, and to enhance the availability of and access to victim services and support. The appointment of the Provost Marshal and JAG officers responsible for reporting and tracking sexual assault matters will enhance communication between the Guard and civilian law authorities. We note that cross-training (as referenced below) and better communication are happening in real time, with the Army National Guard Provost Marshal scheduled to address the elected District Attorneys in March. Accordingly, while these recommendations focus on the civilian law enforcement and

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<sup>13</sup> This report endorses but does not repeat the recommendations of the Governor’s Advisory Council on Military Sexual Trauma to More Effectively Prevent, Deter, and Prosecute Sexual Assault and Sexual Harassment (December 1, 2022), reproduced at Appendix E. We do recommend that the Adjutant General’s report of March 1, 2022, the Governor’s Advisory Council report of December 1, 2022, and this report of the Attorney General be considered together as part of any effort to implement additional policies or programs.

prosecution processes, some may overlap with and should reinforce work that is already being done.

1. All training on the investigation and prosecution of sexual assault, whenever delivered to prosecutors, law enforcement and victim witness advocates should maintain and encourage newly established levels of collaboration between the National Guard and civilian law enforcement by including components related to military justice processes generally, including references to allowable information sharing and resources for victims. Additional specific training should be provided as set out below.

2. Prosecutors, law enforcement, prosecution-based victim advocates and community-based sexual assault advocates would benefit from additional training specifically pertaining to military justice processes. The Maine Prosecutors Association should invite officials and representatives of the Guard such as Provost Marshal, JAG Officers, and Sexual Assault Response Coordinator to the annual Prosecutors Conference to provide a comprehensive training for prosecutors and victim witness advocates on the disciplinary process in the Guard, victim services and reporting options within the Guard, and applicable limitations on information sharing. This would build on training provided online in 2022 to Maine's prosecutors and presented by current JAG 1LT A.J. Chalifour, a former civilian Maine prosecutor, which began the discussion regarding reporting options within the military and unique aspects and challenges of reporting and investigating sexual assault in the military environment.

3. The State Victim Services Coordinator should build on previous collaborative trainings presented to the Maine victim witness advocates by the Maine Military Victim Services in October 2021 and through the Maine Victim Assistance Academy. District Attorneys should ensure that victim witness advocates who assist sexual assault victims in the criminal justice system can attend such trainings.

4. In 2019, the Legislature enacted 25 M.R.S. § 3871, which requires each law enforcement agency in possession of a complaint for an alleged sexual assault under Title

17-A, Chapter 11 to inform the appropriate prosecutor of the sexual assault complaint within 60 days. It was not apparent from our review of the records that these reports were made in each instance to which the statute applied. Any training relating to sexual assault for prosecutors, law enforcement, and victim advocates should include the law enforcement agency's obligation under 25 M.R.S. § 3871. Compliance with the statute should promote earlier collaboration between law enforcement and prosecutors regarding the path of the investigation and provide additional opportunities for victim witness advocates to reach out to victims with support and information specific to the criminal process.

5. Civilian prosecutors, detectives specializing in sexual assault investigations, and victim witness advocates should be available to the National Guard for training on Maine statutes and Maine's criminal justice processes.

6. Responses received from multiple law enforcement agencies did not usually reflect referrals to victim services agencies, so we cannot determine whether this is being done. Law enforcement should follow up to confirm that victims are aware of reporting and enforcement options as well as resources, and document that they have done so. Civilian law enforcement agencies should make all reasonable efforts to contact the identified victim of a reported sexual assault or harassment not only to confirm that person's choice whether to participate in a criminal investigation but also to ensure the victim has the appropriate contact information for resources from the Maine Coalition Against Sexual Assault (MeCASA) and/or the Maine Coalition to End Domestic Violence (MCEDV).

REPORT OF ATTORNEY GENERAL AARON M. FREY

Public Law 2021, Chapter 634, An Act to Enhance the Prevention of and Response to Sexual Assault and Sexual Harassment in the Maine National Guard

Appendix A

Report of Adjutant General Major General Douglas Farnham (March 1, 2022)



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**Department of Defense, Veterans and Emergency Management  
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February 28, 2022

The Honorable Craig Hickman, Senate Chair  
Joint Standing Committee on Veterans and Legal Affairs  
3 State House Station  
Augusta, Maine 04333-0003

The Honorable Christopher Caiazzo, House Chair  
Joint Standing Committee on Veterans and Legal Affairs  
2 State House Station  
Augusta, Maine 04333-0002

Dear Senator Hickman and Representative Caiazzo:

First let me state as Maine's adjutant general, I take nothing more seriously than the welfare of the men and women who sign up to serve our state and nation. Sexual assault and all forms of harassment stand in stark opposition to everything it means to wear our country's uniform and are not tolerated in the Maine National Guard. We will continue to encourage reporting and intervention, support victims, and aggressively seek action against those who fail to live up to our values.

It is with this commitment I provide the report pursuant to 2021 Resolve, Chapter 21 Resolve, Directing a Review of Crucial Needs and Lapses in Responding to and Preventing Sexual Trauma in the Maine National Guard.

While this report is in direct response to the Resolve, our Conclusions and Action Plans provide you awareness of actions we have taken and will take in response to this review. Converting our Provost Marshal to a full-time position and hiring a first-ever Victims Advocate Coordinator have immediate impacts on supporting victims and coordinating with local law enforcement. In addition, our guidance, programs, training, and resources are being significantly enhanced and are also improving as the result of new Federal legislation and policy changes, including President Biden's January executive order on sexual harassment in the military. Thank you for this opportunity to provide information on our program.

I would be happy to make myself and staff available if you would like to discuss this report in person. Please contact me if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug A. Farnham".

Major General Douglas A. Farnham  
Commissioner and Adjutant General

# H.P. 461 – L.D. 625

## Resolve, Directing a Review of Crucial Needs and Lapses in Responding to and Preventing Sexual Trauma in the Maine National Guard



Presented to the Joint Standing Committee on Veterans and Legal Affairs

130th Maine Legislature

on behalf of

Maj Gen Douglas Farnham

Maine National Guard Adjutant General

Commissioner, Department of Defense, Veterans, and Emergency Management

1 March 2022

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# Background

## Original Resolve

On June 22, 2013, the Maine's 126th Legislature passed S.P. 562 – L.D. 1504, "Resolve, Directing the Adjutant General of the State To Ensure the Maine Code of Military Justice Addresses Sexual Trauma in the Military." The Adjutant General (TAG) of Maine at that time was Army Brigadier General James D. Campbell.

"The purpose of the assessment is to determine if the Maine Code of Military Justice and other provisions of Title 37-B governing state active duty personnel in or attached to the Maine National Guard allow for the adequate prosecution of sexual assault and proper treatment of military victims of sexual assault by comparing them with specific National Guard Bureau Guidance and the provisions of the National Defense Authorization Act for Fiscal Year 2013 review that amend 10 United States Code..."

Additionally, the Legislature cited 14 areas of specific concern for the report.

The Adjutant General submitted the findings of the resolve and testified for the Committee about the report after its submission during the Second Regular Session of the 126th Legislative Session.

## Sexual Assault Prevention and Response (SAPR) Program Updates

This report refers to sexual assault and sexual harassment which are treated by two separate programmatic offices: sexual assault is handled within the Sexual Assault Prevention and Response (SAPR) office while sexual harassment is handled within the Equal Opportunity Office (EOO).

Since the 2013 report, there have been major changes in the Department of Defense and, therefore, the Maine National Guard (MENG) Sexual Assault Prevention and Response (SAPR) Program, including but not limited to:

### Special Victims' Counsel (SVC) Program

The military implemented the SVC program in 2014. The program is unique to the military justice system and is unequalled in the civilian community. At no cost to the victim/survivor, the military provides a specially trained attorney to every eligible participant who requests one. The SVC represents the victim/survivor throughout the

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*"Our most critical asset as a department is our people...Our values and expectations remain at the core of addressing this problem and I have every confidence that our force will get this right." Secretary Of Defense Lloyd Austin III*

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investigation, adjudication, and accountability process with the primary duty to zealously represent the express interests of the victim.

### Catch a Serial Offender Program

Section 543 of the National Defense Authorization Act of 2015 (PL 113291) required the Secretary of Defense to develop a plan that would allow eligible adults who file a Restricted Report to disclose suspect or incident information for the purpose of identifying individuals who have perpetrated multiple sexual assaults. In response to this requirement, the Department developed the Catch a Serial Offender Program (CATCH). This program allows victims of sexual assault to anonymously report any information they may have about their offender. If a match is identified in the CATCH program, victim/survivors are notified through the Sexual Assault Response Coordinator (SARC).

The CATCH program became fully operational on July 31, 2019. As of November 2021, the CATCH program was expanded to include eligible adults who file an unrestricted report and have not disclosed offender information to law enforcement. For more information on restricted and unrestricted reporting options, see Appendix B, DOD SAPRO Victim Reporting Options Guide.

### Civilian Sexual Assault Response Coordinator (SARC)

The SAPR program is constantly evolving. When the National Guard program began, advocacy support was an additional duty regardless of the position – SARC, SAPR VA, or VVA. In 2016, the Maine Army National Guard (MEANG) hired their first full-time, civilian SARC. This position being hired afforded all members of the MENG to have a civilian advocate for the first time. In 2021, the MEANG hired the first civilian SARC to sit at the Joint Force Headquarters; prior to 2021, the JFHQ SARC was filled by a uniformed Soldier. In February of 2022, the MENG filled a Victim Advocate Coordinator position that had long been unfilled. This is the first time this position has been filled by a civilian as well.

### Updated Resolve

On May 25, 2021, the 130th Legislature passed H.P. 461 – L.D.625, “Resolve, Directing a Review of Crucial Needs and Lapses in Responding to and Preventing Sexual Trauma in the Maine National Guard.” The Adjutant General (TAG) at this time is Air Force Major General Douglas A. Farnham. The purpose of this resolve is as follows:

“The Adjutant General shall conduct a review of the implementation of the recommendations made to the Joint Standing Committee on Veterans and Legal Affairs in the report submitted pursuant to Resolve 2013, chapter 66,” and “...identify any crucial needs and lapses in responding to and preventing military sexual trauma and determine if additional action is necessary.”

In order to accomplish this, TAG established a working group consisting of the Deputy Chief of Staff of Personnel, Joint Force Headquarters (JFHQ) SARC, 101st Air Refueling Wing (ARW) SARC, and Full Time Judge Advocate (FTJA). This group

conducted an assessment of the Maine Code of Military Justice (MCMJ) and other provisions of the Maine Revised Statutes to meet the intent of LD 625.

## 2022 Updates on Recommendations from Original 2013 Resolve

1. Mandatory administrative separation or dismissal of any member of the Maine National Guard convicted of any sexual offense;

This recommendation is being accomplished by federal regulation.

Members of the Maine National Guard convicted of any sexual assault offense are processed for administrative separation. The MENG fully supports this initiative and currently applies associated regulatory guidance when possible. In February of 2022, the MEARNG hired a full-time Provost Marshal to facilitate more frequent and effective communication with the State Police. This will reduce the time it takes for the MENG to become aware of service member arrests and convictions.

2. Retention of restricted report documentation for 50 years, if so desired by the victim, including information regarding a victim's consent regarding use of report records;

This recommendation is being accomplished by federal regulation.



In 2009, the Department of Defense developed the Defense Sexual Assault Incident Database (DSAID). Information on restricted and unrestricted reports for victims/survivors is housed in this online portal; very little to no paper documentation is now kept concerning sexual assault cases in order to maintain privacy. The

DSAID will retain the official restricted and unrestricted reports completed on the DD Form 2910 in the database for at least 50 years.

In accordance with section 1723 of FY14 National Defense Authorization Act and DoD policy, when utilized a DD Form 2911, DoD Sexual Assault Forensic Examination Report, is also retained for 50 years. The DoD Sexual Assault Forensic Examination (SAFE) kits are required to be retained for 10 years. This differs from Maine Law (24 M.R.S. 2986), which requires SAFE kits to be retained for 8 years. The Maine National Guard does not have access to a military treatment facility where SAFEs are conducted. We rely heavily on our state and local facilities to conduct these exams and maintain paperwork and chain of custody in accordance with Maine State laws.

### 3. Allowing victims to return to active duty after separation to help prosecute sex offenders;

This recommendation is being accomplished.

Victims of sexual assault may be brought into a State Active Duty status for pay purposes after separation. They may also be eligible for invitational travel pay under federal regulation if participating in an administrative separation proceeding.

### 4. The creation of an independent review panel to examine the way sexual assaults are investigated, prosecuted and adjudicated under the Maine Code of Military Justice;

This recommendation was not accomplished due to changing federal regulations.

Federal regulation promulgated between the years 2011 – 2014 was very prescriptive. The MENG follows these regulations which leave minimal room for discretion with regard to the investigation.

In February 2021, at the direction of President Biden, Secretary of Defense Lloyd J. Austin III ordered a 90-day Independent Review Commission on Sexual Assault in the military to take bold action to address sexual in the military. Additionally, the Chief of the National Guard Bureau Sexual Assault Task Force established by the National Guard Bureau in March 2021. From that Independent Review Commission report, 82 recommendations have been published. Through DoD guidance, NGB policy, and current year National Defense Authorization Act (NDAA), several changes to the SAPR program are expected to be implemented over the next several months and years.

The Maine National Guard is firmly committed to properly and transparently adjudicating substantiated unrestricted reports of sexual assault. If a further independent panel is legally created to review these cases, the MENG would be fully capable of complying with informational requests of the panel.



## 5. Annual command climate assessment surveys to track individual attitudes toward sexual assault and sexual harassment;

This recommendation is being accomplished in three ways: Defense Organizational Climate Surveys (DEOCS), Unit Risk Inventory Surveys (URIS), and through less formal means of assessing unit and squadron climates.

### Command Climate Surveys

Defense Equal Opportunity Management Institute mandates all units conduct DEOCS annually in accordance with DoDI 1350.02. All Maine Army and Air National Guard units were directed to complete the on-line survey in 2021.

### Unit Risk Inventory Surveys (URIS)

The Army conducts completely anonymous URIS. The URIS are conducted annually, pre-mobilization, post-mobilization, and when Commanders take charge of a new unit. They include up to 86 questions on topics including, but not limited to: military stressors, unit cohesion, alcohol consumption, child abuse, suicidal ideations, financial issues, hazing/bullying, sexual practices, gambling, and drug use. On the URIS version 3, dated June 2019, there are three questions that specifically address Sexual Harassment and Sexual Assault issues.

The URIS provide the Commander a snapshot of the high-risk behaviors within a unit as well as to identify areas of strength to build on. Based on the results, mitigation strategies are built and reviewed with the command team and a written plan is put in place. After 90-days, the group follows up with the Command to check on implementation, update and/or modify the plan. Another follow up is completed at the 6-month mark to develop collaborative methodologies and sustain strengths. Once the URIS are completed, they are sent to the National Guard Bureau (NGB) for review. The NGB sends Maine the results and comparison of Maine to the performance of other states.

The URIS, along with the Command Climate Surveys, are then reviewed by the Maine Commander's Readiness and Resiliency Counsel (CR2C). The CR2C is comprised of prevention staff including but not limited to: Suicide Prevention, Alcohol and Substance Abuse Prevention, Mental Health professionals, Chaplains, Equal Opportunity representative, and Sexual Assault Response Coordinator. The CR2C recommends plans of action for Commanders to address and reduce high-risk behavior.

### Additional Climate Assessments

Leaders within the organization utilize less formal means of surveying to gain a sense of the climate within each unit. These one-on-one, direct interactions with leadership are an important part of the climate assessment process.

- Open Door Policies. Command Teams maintain an open door policy which allows any Soldier to discuss issues of negative climate within the unit.
- Air Guard Out and Abouts. An Out and About is an outreach process where Equal Opportunity personnel conduct unit visits. It is used to gather equal opportunity and human relations information, as well as organizational effectiveness factors that may impact morale and mission readiness. Although these visits are typically accomplished every other year, they can also be done at a Commander's request when they would like a more current assessment of the unit's climate.
- Army Senior Leader Interaction. Brigade Commander recently visited all subordinate units with the FTJA, SARC, Provost Marshal, and EO officer to stress the importance of maintaining a positive climate where Sexual Harassment and Sexual Assault are not tolerated. Soldiers were encouraged to ask questions and interact with Senior Leadership about individual concerns.
- Air Force Sit with a SARC. The Air National Guard conducted informal "Sit with a SARC" sessions. Airmen were encouraged to ask questions and have open conversations with the subject matter expert on matters of creating a positive unit climate and the negative effects of Sexual Harassment and Sexual Assault.
- Sensing Sessions. After formal surveys, follow-up sensing sessions and focus groups with randomly selected unit members from randomly selected units were completed if determined necessary by unit or squadron Commanders.
- EO Officer/SARC Staff Visits. The EO officer and SARC periodically visit various unit locations throughout the state to make themselves available to all Soldiers and Airmen, to informally assess the unit climate.

## 6. Mandatory insurance coverage for mental and physical health issues, including abortions in cases of rape or incest for service women and military family members;

This recommendation is being partially accomplished.

If a service member experiences mental and physical health issues as a result of a sexual assault and is not covered by insurance, they may be able to receive medical coverage under a military line of duty (LOD). An approved LOD will prompt payment for physical and mental health care related to the assault. With changes in NDAA 2013, federal funds can be used to perform an abortion in cases where the pregnancy is the

result of rape or incest for eligible service members. This does not apply to family members, as they are not eligible to receive medical coverage under a military LOD.

The MENG service members do not have mandatory insurance coverage or benefits when they are not in a duty status; however, service members can choose to purchase TRICARE Reserve Select. The State of Maine provides free and confidential SAFEs for sexual assault victims. They may also be eligible for: free prophylaxis to prevent sexually transmitted infections; sexually transmitted infection testing; emergency contraceptive to prevent pregnancy; abortions in cases of rape or incest; and mental health counseling.

## 7. Required sexual assault prevention and intervention in pre-command and command courses for officers and relevant personnel;

This recommendation is being accomplished.

Each branch HQ implements a program for different levels of leadership. In accordance with DoDI 6495.02, vol. 2, Sexual Assault Prevention and Response: Education and Training. MENG members are required specific educational goals and training at many different levels and times throughout a service member's career including, but not limited to:

- Initial Entry
- Officer Accession
- Pre and Post-deployment
- Annual Refresher
- Pre-command
- At Primary Military Education
- General Officer/Flag Officer
- Military Recruiters and Instructors

On February 16, 2022, in response to the Federal changes in the SAPR program, the Department of the Army sent out an order requiring additional training for all civilian supervisors, Commanders, and leaders – squad level and higher. This training is required to be completed in person or virtually live by September 30, 2022. The SAPR Professionals will be trained to provide the training. Topics include but are not limited to: scenarios to facilitate discussion of appropriate behavior; changes in restricted reporting; directs senior Commanders to publicize how to report sexual assault, inside or outside the chain of command; directs all leaders to encourage reporting of sexual assault and retaliation; how to explain to subordinates the requirement to report allegations of reprisal, retaliation, ostracism, and maltreatment after a report of sexual

assault. The MEARNG is currently developing a plan on how to execute this training in accordance with the Army guidance.

## 8. Notification to Maine National Guard personnel of the options available for the correction of military records that reflect any retaliatory personnel action consequent to a report of sexual assault or sexual harassment;

This recommendation is being accomplished.

Soldiers and Airmen who make a formal complaint of sexual harassment on National Guard Bureau (NGB) Form 333 are counseled regarding their right to make a good faith complaint and not be subject to any form of retaliation or reprisal. All persons involved in the filing, including the complainant, witnesses providing testimony, or those named as a principal agency witness of an EO complaint are afforded protection against reprisal. The commander discusses reprisal prevention with all concerned and provide the reprisal prevention plan to the inquiry/investigating officer for inclusion in the official case file.

As part of Army discharge packets, the Soldier signs a memorandum asking: “Did you file an unrestricted report of a sexual assault in which you were a victim within the past 24 months?” and “If the answer is yes, do you believe that this separation action is a direct or indirect result of your sexual assault, or of filing the unrestricted report?” A SARC or VA can provide the victim with resources to facilitate the process of countering reprisal or requesting a record correction.

## 9. Prohibition against the use of a moral waiver for recruitment of anyone convicted of a sexual offense;

This recommendation is being accomplished.

The NGB policy addresses waivers for sexual offenses and the provision, as written, removes any room for command discretion. Current regulations specifically preclude appointment (non-waiverable) of a convicted/registered sex offender – for enlistments, commissions, warrants and promotions.

For the Army, all applicants convicted of sexual offenses are prohibited from enlistment or appointment, per Army Regulation 601-210 Regular Army and Reserve Components Enlistment Program, and Personnel Policy Operational Memorandum (PPOM) 21-047 (ARNG Accession Options Criteria). No waivers are authorized. Any sexual offense charges (regardless of outcome that did not result in a conviction) requires a suitability review from the Army National Guard's Accessions Suitability Office (ASO). The ASO determines enlistment eligibility on a case-by-case basis in these instances. This removes command discretion at the state level.

This means if an applicant self-reports or if a police records check finds a conviction for any crime of a sexual nature, the individual is permanently disqualified for service. If the applicant disputes the police record, the individual was charged but found not guilty, or charges were dropped, then they must compile the relevant documentation and send it to the ASO at NGB. The ASO reviews the case and determines whether or not the applicant is eligible for military service.

#### 10. Active duty retention of survivors until the completion of a line of duty determination to ensure completion of an official investigation and adjudication of the sexual offense case;

This recommendation is being accomplished.

The MENG may be able to retain survivors while investigations are ongoing; however, LOD determinations for medical benefits can be completed without the member remaining in active duty status. These service members may also be entitled to certain services via the Vet Center or the Wounded Warrior Program.

#### 11. Development of a policy for and documented annual review of required initial and annual sexual assault prevention training for all new enlistees and members of the Maine National Guard, respectively;

This recommendation is being accomplished.

Training is currently documented using military databases. The SARC reviews the data at least quarterly, reports are sent to NGB and briefed at staff call periodically. The Chief of the National Guard Bureau also sends training status slides to TAG quarterly.

Sexual Assault Prevention training occurs annually and is mandatory for all service members regardless of rank, occupation or specialty. The training provides scenario-based, real-life situations to demonstrate the entire cycle of prevention, intervention, reporting, response and accountability procedures. Training explains the difference between sexual harassment and sexual assault and that both are unacceptable forms of behavior. Training emphasizes the distinction between civil and criminal actions.

New Army National Guard recruits begin with one weekend a month in the Recruit Sustainment Program and the Air National Guard recruits begin with one weekend a month in the Student Flight. These new service members receive a mandatory block of instruction on SAPR to clarify the nature of sexual assault in the military environment,

encourage bystander intervention, provide resources and reporting options, and educate service members about the consequences of sexual assault.

## 12. Development of a policy addressing data collection and retention requirements to track reports of sexual harassment, sexual assault and rape from the date of an incident report to case closure;

This recommendation is being accomplished.

For sexual assault reporting, there are several DoD regulations guiding the data collection and retention requirements to track reports of sexual assault and rape from the date of an incident report to case closure. The MENG utilizes the DSAID to track restricted and unrestricted reports of sexual assault. It is important to note that a limited amount of data is required to be entered into the database. Only the JFHQ SARC and Wing SARC have access to DSAID for sexual assault case reporting and tracking. There are minimum requirements; however, the SARC or VA taking a sexual assault report will never require a victim/survivor to share any information they do not want to share. All information known at the time of reporting is input into the DSAID; additionally, new information is entered into the database as it becomes known. Cases remain open in DSAID as long as individuals want to continue receiving and are eligible for military advocacy services.

## 13. Annual briefing by the Adjutant General to the Governor and the joint standing committee of the Legislature having jurisdiction over veterans and legal affairs, including a summary of all sexual assault and rape incidents, their status and the outcomes, including the duty status of adjudicated and administratively dismissed military offenders and military victims;

This recommendation is going to be accomplished.

Since the last report, TAG met with the Governor on high-priority issues regarding the MENG as needed. There were no regularly scheduled meetings to discuss Sexual Harassment or Assault specifically. The MENG TAG has committed to meeting with the Governor and VLA annually on sexual harassment and assault metrics, statistics, programmatic changes, and any challenges the program is facing. Due to confidentiality requirements under the DOD regulation, the MENG SAPR program is vigilant about maintaining confidentiality of sexual assault victims/survivors. Any information TAG provides will be sanitized, non-identifying information so as not to jeopardize ongoing investigations or the privacy rights of victims, witnesses, and alleged perpetrators.

14. Development of a policy to ensure convicted felons who meet national sex offender registry requirements are placed on that registry;

The MENG does not have the authority to take action on this recommendation.

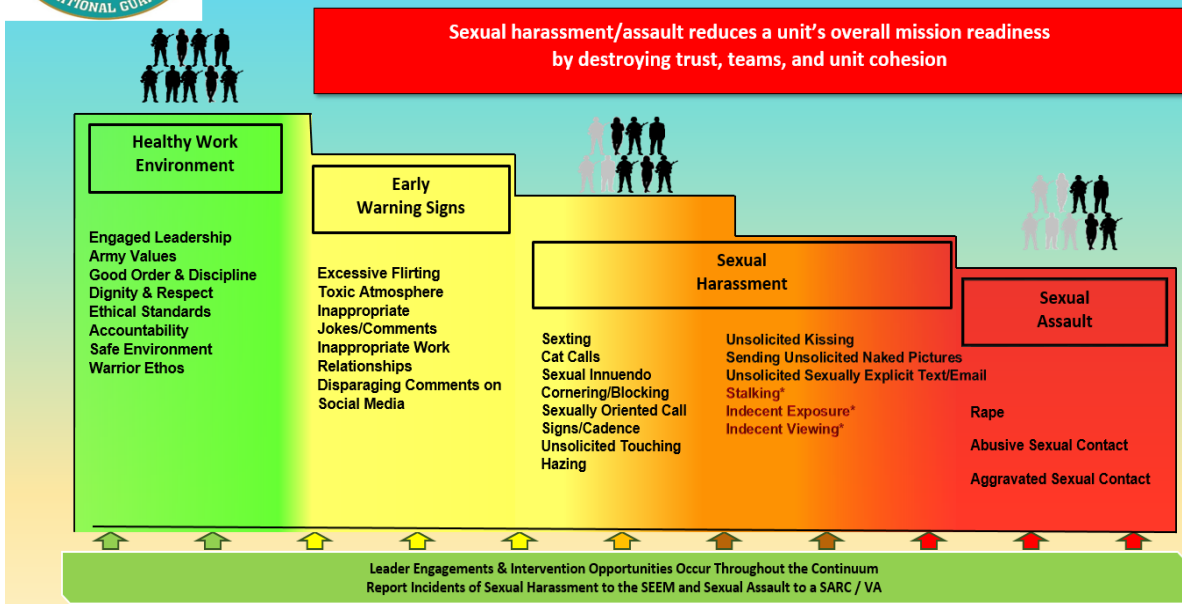
Since the MENG only has the ability to conduct non-judicial and administrative punishments, not criminal convictions, the MENG has no authority to ensure convicted felons register with the national sex offender registry. The MENG relies on local law enforcement agencies and the district courts to ensure convicted offenders are placed on the national sex offender registry as required.

## Prevention and Support Efforts

The DoD has identified the need for more sexual harassment and assault prevention and intervention training for service members. The annual mandatory trainings have shifted to focus more on prevention and intervention strategies. The Continuum of Harm shown here is one training topic presented to MENG service members. This shows how sexual harassment and sexual assault degrade mission readiness if bystander intervention is not implemented.



## Continuum of Harm Impacts on Readiness



Since Maine does not have local access to an active duty military base for medical treatment, Family Advocacy Program services, and other advocacy services provided on active duty posts and bases, MENG relies heavily on civilian coalitions and partnerships to support victims/survivors of sexual assault and prevent sexual assault within our ranks. Without these key organizations, service members may not be able to receive enough advocacy and services needed to heal after a sexual assault.

Deterrence can be considered a prevention technique. The MENG has recently staffed and hired a full-time Provost Marshal to ensure effective liaising with law enforcement. This dedicated asset will reduce timelines for execution of internal processes.

## Conclusions and Action Plans

The military SAPR Program is quickly changing at the federal level to meet the needs of the military. In order to keep up with these changes and provide better support to victims/survivors and Commanders, the MENG has hired two full-time personnel: a Victim Advocate Coordinator (VAC) to help for immediate response and Provost Marshal (PM) to help with the investigation and civilian law enforcement process. These two positions will make a more robust program providing faster response, support, and coordination for victim/survivors.

- The VAC is a credentialed VA responsible for providing 24/7 response and support to victim/survivors with restricted and unrestricted reports of sexual



assault. The VAC is also responsible for recruiting part-time SAPR Professionals, getting them fully credentialed, and providing training for SAPR Professionals, Commanders, and MENG units on SAPR issues.

- Since the MENG has no authority to investigate unrestricted allegations of sexual assault, it is important to maintain close, constant communication with our civilian law enforcement who perform these investigations. The PM is responsible for coordinating response between the MENG and civilian law enforcement. This provides clarity throughout the investigation process for victims/survivors. The PM has authority to collect police reports involving MENG members. The PM will also coordinate with the Maine District Attorney's Office on whether or not they will take a case to trial. This quick coordination keeps Command and SAPR Professionals, and victim/survivors informed.

In addition, TAG has been and will continue to meet regularly with the Governor and her staff to provide updates on sexual assault and harassment in the MENG, provide statistics on reports of sexual assault in the MENG, and propose actions for how to improve response efforts, as well as identify additional resources for addressing these challenges. The MENG will also provide a report to the Legislative committee of jurisdiction with reporting statistics and information similar to what is provided to the Governor's Office.

The following are five (5) action plans that the MENG, as directed by the Governor, is taking to improve upon the sexual harassment and assault support and response processes.

### Action Plan 1: Streamlining Military and Civilian Protection Orders

The MENG is drafting legislation to amend 17-A M.R.S. § 506-A to provide legal authority to the orders of Military Commanders outside of duty times. Currently, Military Commanders can issue orders for military members in their command to have no contact with other service members; however, those service members can only be held accountable when they are on military status or military property. While these are lawful orders, they are not recognized in state courts. Because of this gap, there may be no consequences for harassment once military training is over and the service member is off of the military installation – where service members spend most of their time.

The MENG victims of sexual harassment and assault can and do avail themselves of the civilian protective order process; however, the MENG believes victims of sexual harassment and assault would benefit from military Commanders being able to execute a protection order that would also be recognized in state courts and effective outside a military installation.

### Action Plan 2: Post-Discharge Travel Funds

The MENG will make post-discharge travel funds available to eligible service members and former service members involved in sexual assault or sexual harassment court

proceedings. Once a victim of sexual assault or sexual harassment has left the military, they can be put on a State Active Duty order to participate in investigations, boards, prosecute sex offenders or complete other administrative matters.

These orders require travel and its associated costs that can be prohibitive to those who have experienced sexual assault or sexual harassment. These costs should not be borne by the victims. Thus, the MENG will locate funding and make it available for their use.

### Action Plan 3: MOA between MECASA and MENG

The MENG will enter into a formalized memorandum of agreement with the Maine Coalition Against Sexual Assault. The MENG relies on community sexual assault support centers around the state to augment our SAPR personnel in the provision of advocacy and support services. Our service members live and work in communities across the state and our full-time SAPR assets are located in Augusta and Bangor. An MOA would strengthen the growing connection between MENG SAPR Team and MECASA (and the sexual assault support centers by default), more clearly define roles and maximize the existing working relationship between these entities. With an MOA in place, our service members and their family members, whether survivors of sexual violence or not, will have the most robust prevention and response resources possible available to them. The MENG SAPR Team will continue to educate their partners in advocacy around the state about the uniqueness of provision of services to service members and their family members, and, in turn, be educated about trends, legislative changes, and available community resources, and share what is learned with MENG leadership, service members, and family members.

### Action Plan 4: Provide MENG a Seat on the Maine Commission on Domestic and Sexual Abuse

The MENG is drafting legislation to provide a dedicated seat on the Maine Commission on Domestic and Sexual Abuse for a representative of the MENG with experience in sexual assault response, as designated by 19-A M.R.S. § 4013 establishes the Maine Commission on Domestic and Sexual Abuse (Commission), the Commission does not formally include any members who represent the military community. While the MENG sends an attendee to these meetings whenever possible, formal and full membership on this Commission will provide the MENG an opportunity to represent and advocate to the benefit of service members during policy making procedures.

### Action Plan 5: Create an Advisory Council for Victim/Survivor Support

Working closely with the MENG, the Governor's Office will create an advisory council to formalize a permanent communication structure among relevant parties to ensure that survivors of sexual assault and harassment who are serving or have served in the National Guard are connected to all available resources. The advisory council will also be charged with reviewing best practices to improve the Maine National Guard's responses to sexual assault and sexual harassment within its ranks with particular

regard to how the Guard can support Maine's state and local law enforcement and prosecutors respond to individual cases when appropriate.

# Appendix A: Abbreviations

ANG – Air National Guard

ARNG – Army National Guard

DEOCS – Defense Organizational Climate Surveys

DOD – Department of Defense

DODI – Department of Defense Instruction

DSAID – Defense Sexual Assault Incident Database

FTJA – Full-time Judge Advocate

JFHQ – Joint Force Headquarters

MCMJ – Maine Code of Military Justice

MEANG – Maine Air National Guard

MEARNG – Maine Army National Guard

MECASA – Maine Coalition Against Sexual Assault

MENG – Maine National Guard

MOA – Memorandum of Agreement

MRSA – Maine Revised Statutes Annotated

NDAA – National Defense Authorization Act

NGB – National Guard Bureau

PL – Public Law

SAPR – Sexual Assault Prevention and Response

SAPRO – Sexual Assault Prevention and Response Office

SARC – Sexual Assault Response Coordinator

SVC – Special Victims' Counsel

TAG – The Adjutant General

URIS – Unit Readiness Inventory Survey

VA – Victim Advocate



# Appendix B: Reporting Options

DEPARTMENT OF DEFENSE  
SEXUAL ASSAULT PREVENTION  
AND RESPONSE OFFICE



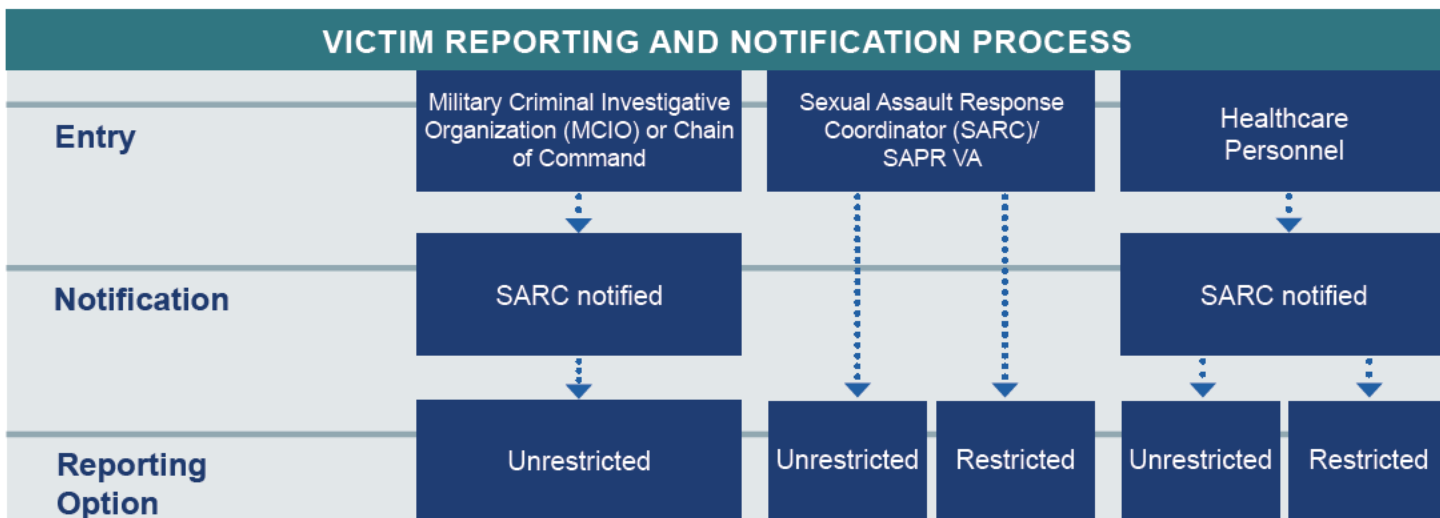
## Victim Reporting Options Guide

Deciding whether to report a sexual assault is a deeply personal decision. However, reporting can be a gateway to recovery. The Department's Restricted and Unrestricted reporting options allow Service members who experienced sexual assault to exercise control over how and when they engage with resources.

DoD's response services include:

- Confidential access to a Sexual Assault Prevention and Response Victim Advocate (SAPR VA), regardless of reporting option selected
- Support from highly trained personnel, including Medical and Mental Healthcare providers, Special Victims' Counsel (SVC) /Victims' Legal Counsel (VLC), and Chaplains

- Professional investigative and legal response from personnel, specially trained to work with victims of sexual assault, domestic violence, and child abuse
- A variety of support, recovery and safety options, including Expedited Transfer, Military Protective Order, Catch a Serial Offender Program, Case Management Group reviews and updates, and victim safety assessments
- 24/7, worldwide, anonymous and confidential support at Safe Helpline – a specialized, secure online service that provides help and information anytime, anywhere. Find more information at [safehelpline.org](https://www.safehelpline.org).



Criminal investigators and command officials will be notified when an Unrestricted Report is made.

### CARE & RECOVERY SERVICES

After an incident of sexual assault, those affected can seek many of the same care and recovery services

Available Services for Unrestricted Reporting Option		Available Services for Restricted Reporting Option	
<ul style="list-style-type: none"> <li>■ SAPR Support Services</li> <li>■ Health Care</li> <li>■ Mental Health Care</li> <li>■ Forensic Exam (if indicated)</li> </ul>	<ul style="list-style-type: none"> <li>■ Legal Consultation &amp; Representation through SVC/VLC</li> <li>■ Spiritual Support</li> <li>■ Command Response</li> <li>■ Investigation</li> <li>■ Prosecution</li> </ul>	<ul style="list-style-type: none"> <li>■ SAPR Support Services</li> <li>■ Health Care</li> <li>■ Mental Health Care</li> <li>■ Forensic Exam (if indicated)</li> </ul>	<ul style="list-style-type: none"> <li>■ Legal Consultation &amp; Representation through SVC/VLC</li> <li>■ Spiritual Support</li> <li>■ Catch a Serial Offender (CATCH) Program</li> </ul>

## Service members and their adult military dependents have two reporting options

### REPORTING OPTION

# 1

### UNRESTRICTED REPORT

An **Unrestricted Report** allows you to receive medical treatment, advocacy services, and legal support. As part of this option, DoD law enforcement initiates an investigation and your chain-of-command is notified. You have the right to be reasonably protected and may also be eligible for other protections, including a Military Protective Order and/or a civilian protective order. You may also be eligible for an Expedited Transfer.

### REPORTING OPTION

# 2

### RESTRICTED REPORT

A **Restricted Report** allows you to receive SVC/VLC legal advice and medical and advocacy services, but does not trigger an investigation. Information will be provided to Command that does not reveal your identity, nor that of the alleged offender.

Only these professionals can accept a Restricted Report:

- Sexual Assault Response Coordinator (SARC)
- Sexual Assault Prevention and Response (SAPR) Victim Advocate (VA)
- Healthcare providers and healthcare support personnel



**You do not have to tell law enforcement or your commander about your sexual assault to receive care and other forms of assistance**

Also, victims who filed a Restricted Report may **anonymously disclose suspect information** to the Catch a Serial Offender (CATCH) Program to identify repeat offenders. If other reports about the same suspect are identified in CATCH, victims can decide to change their report from Restricted to Unrestricted to participate in a criminal investigation of the suspect.

Find more information at [www.sapr.mil/catch](http://www.sapr.mil/catch)

## YOU ARE NOT ALONE Dedicated Response Resources

Professionals are available everywhere the military operates to help connect victims of sexual assault with information and resources:

# 1

### Sexual Assault Response Coordinator (SARC)

An installation resource who provides confidential support and coordinates care for a victim of sexual assault throughout the investigation and recovery process.

# 2

### SAPR Victim Advocate (VA)

An advocate who provides one-to-one confidential support, education, and resources to a victim of sexual assault under the supervision of the SARC.

# 3

### Military Chaplain

Priests, ministers, and other religious clergy can provide confidential spiritual advice and counseling to a victim of sexual assault. While Chaplains cannot take reports of sexual assault, they can put you in touch with a SARC or SAPR VA if you so request.

# 4

### Sexual Assault Medical Forensic Examiner (SAMFE)

A specially-trained medical professional who can conduct a Sexual Assault Forensic Examination (SAFE) and address medical concerns associated with sexual assault.

# 5

### Special Victims' Counsel or Victims' Legal Counsel (SVC/VLC)

A military attorney who provides victims with confidential legal advice, representation, and assistance with exercising their rights throughout the investigative and justice process. Communications with these attorneys are protected and cannot be shared with anyone. Victims may consult with an SVC or VLC prior to making a report.

# 6

### Special Victim Investigation and Prosecution Capability

Criminal investigators, prosecutors, and other legal support personnel who work together and are specially-trained to assist victims of sexual assault, domestic violence, and child abuse.

For more information, please visit [sapr.mil](http://sapr.mil);

For confidential victim assistance, call or visit the DoD Safe Helpline at 877-995-5247 or [safehelpline.org](http://safehelpline.org)

REPORT OF ATTORNEY GENERAL AARON M. FREY

Public Law 2021, Chapter 634, An Act to Enhance the Prevention of and Response to Sexual Assault and Sexual Harassment in the Maine National Guard

Appendix B

P.L. 2021, Chapter 634

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-TWO

H.P. 1511 - L.D. 2029

**An Act To Enhance the Prevention of and Response to Sexual Assault and Sexual Harassment in the Maine National Guard**

Be it enacted by the People of the State of Maine as follows:

**PART A**

**Sec. A-1. Review; report.** The Attorney General shall review the manner in which law enforcement agencies and prosecutors within the State investigated and prosecuted allegations of sexual assault or the crime of harassment, as defined in the Maine Revised Statutes, Title 17-A, section 506-A, by members of the Maine National Guard against other members of the Maine National Guard during the 5-year period ending on March 31, 2022. For purposes of this section, "Maine National Guard" includes both the Maine Air National Guard and the Maine Army National Guard. At a minimum, the review must include an examination of:

1. The nature of each allegation, including information that was available and unavailable to the law enforcement agency at the outset of and during the course of investigation;
2. Whether the allegation was adequately and properly investigated by the law enforcement agency;
3. Whether the results of the law enforcement agency's investigation were communicated to the appropriate prosecutorial office and whether appropriate action was taken by that prosecutorial office; and
4. Whether the results of the law enforcement agency's investigation and the prosecution, if any, were communicated to the relevant officials within the Maine National Guard, if requested and appropriate.

By February 15, 2023, the Attorney General shall submit a report to the joint standing committee of the Legislature having jurisdiction over veterans affairs summarizing the results of the review and including recommendations for improving the process by which law enforcement agencies and prosecutors investigate and prosecute allegations of sexual assault and the crime of harassment between members of the Maine National Guard in the



future. The committee may report out legislation regarding the subject matter of the report to the 131st Legislature in 2023.

## PART B

**Sec. B-1. 5 MRSA §4653, sub-§1, ¶B**, as amended by PL 2019, c. 359, §1, is further amended to read:

B. If the alleged harassment does not meet the definition in section 4651, subsection 2, paragraph C or is not related to an allegation of domestic violence, violence against a dating partner, sexual assault, stalking or harassment as described in Title 17-A, section 506, subsection 1, paragraph A-1 or A-2, a copy of a notice to stop harassing the plaintiff issued to the defendant pursuant to Title 17-A, section 506-A, subsection 1, paragraph A, subparagraph (1), division (a) or subparagraph (3) or a statement of good cause why such a notice was not sought or obtained. The court has discretion, based on the nature of the allegations as well as any further inquiry that the court may make of the plaintiff, to issue an order even if notice to stop harassing the plaintiff has not been issued to the defendant as described in Title 17-A, section 506-A, subsection 1, paragraph A, subparagraph (1), division (a) or subparagraph (3).

**Sec. B-2. 17-A MRSA §506-A, sub-§1, ¶A**, as amended by PL 2009, c. 246, §1, is further amended by amending subparagraph (1), division (b) to read:

(b) A court in a protective order issued under Title 5, section 4654 or 4655 or Title 19-A, section 4006 or 4007; or

**Sec. B-3. 17-A MRSA §506-A, sub-§1, ¶A**, as amended by PL 2009, c. 246, §1, is further amended by amending subparagraph (2) to read:

(2) If the person is an adult in the custody or under the supervision of the Department of Corrections, after having been forbidden to engage in such conduct by the Commissioner of Corrections, the chief administrative officer of the facility, the correctional administrator for the region or their designees; or

**Sec. B-4. 17-A MRSA §506-A, sub-§1, ¶A**, as amended by PL 2009, c. 246, §1, is further amended by enacting a new subparagraph (3) to read:

(3) After having been notified, in writing or otherwise, while the person was a member of the National Guard, not to engage in such conduct by a commanding officer. A person violates this subparagraph regardless of whether the person is a member of the National Guard when the person engages in the conduct and regardless of where the conduct occurs. The notification not to engage in such conduct expires one year from the date of issuance.

**Sec. B-5. 17-A MRSA §506-A, sub-§3**, as enacted by PL 1991, c. 566, §3, is amended to read:

3. For the purposes of this section, "immediate family" means spouse, parent, child, sibling, stepchild and stepparent, "National Guard" has the same meaning as in Title 37-B, section 102, subsection 1 and "commanding officer" has the same meaning as in Title 37-B, section 402, subsection 4.

**Sec. B-6. 19-A MRSA §4013, sub-§1, ¶A**, as amended by PL 2021, c. 174, §9, is further amended by amending subparagraph (10) to read:

(10) Up to 4 3 members-at-large, appointed by the Governor;

**Sec. B-7. 19-A MRSA §4013, sub-§1, ¶A**, as amended by PL 2021, c. 174, §9, is further amended by amending subparagraph (15) to read:

(15) One member, appointed by the Governor, who is a representative of a tribal court; ~~and~~

**Sec. B-8. 19-A MRSA §4013, sub-§1, ¶A**, as amended by PL 2021, c. 174, §9, is further amended by amending subparagraph (16) to read:

(16) One member, appointed by the Governor, who is a representative of tribal government.; and

**Sec. B-9. 19-A MRSA §4013, sub-§1, ¶A**, as amended by PL 2021, c. 174, §9, is further amended by enacting a new subparagraph (17) to read:

(17) One member, appointed by the Governor, who is a member of the military community with experience in sexual assault response.

**Sec. B-10. 37-B MRSA §3, sub-§1, ¶D**, as repealed and replaced by PL 2017, c. 475, Pt. A, §63 and amended by PL 2019, c. 377, §6, is further amended by enacting a new subparagraph (24) to read:

(24) The Adjutant General shall provide current and former members of the National Guard who were the victims of sexual assault or sexual harassment while members of the National Guard and who are involved in administrative or Maine Code of Military Justice proceedings related to the sexual assault or sexual harassment with financial assistance to fully cover the expenses of traveling to and from and participating in those proceedings.

**Sec. B-11. 37-B MRSA §3, sub-§1, ¶D**, as repealed and replaced by PL 2017, c. 475, Pt. A, §63 and amended by PL 2019, c. 377, §6, is further amended by enacting a new subparagraph (25) to read:

(25) By February 15, 2023 and annually thereafter, the Adjutant General shall submit a report to the joint standing committee of the Legislature having jurisdiction over veterans affairs containing:

(a) Data regarding all reported incidents of sexual assault and sexual harassment within the National Guard in each of the preceding 10 years, including information on the current duty status of victims and the outcome of any state or federal criminal or Maine Code of Military Justice proceedings arising out of such incidents, to the extent that the sharing of such data and information is not prohibited by federal law or federal regulation and can be presented in a way that does not identify, and that cannot be used with other information to identify, any victim of sexual assault or sexual harassment. If necessary to protect the identity of victims of sexual assault or sexual harassment, the Adjutant General may submit a summary of specific items of data or information required to be included in the report;

(b) A description of all sexual assault and sexual harassment prevention training provided to members of the National Guard in the preceding year;

(c) A description of the current practices and procedures for the prevention of sexual assault and sexual harassment and investigation of and disciplinary actions taken in response to reports of sexual assault and sexual harassment in the National Guard; and

(d) A summary of the activities during the preceding year of any advisory council or special study group convened by the Governor or the department or in which officials of the department have been asked to participate whose duties involve, at least in part, examining or making recommendations regarding the prevention of or the response to sexual assault and sexual harassment in the National Guard or, if no advisory council or special study group with such duties engaged in activities during the preceding year, a statement to that effect.

After reviewing the report, the committee may report out legislation related to the report.

**Sec. B-12. 37-B MRSA §463** is enacted to read:

**§463. Harassment**

**1. Prohibition; criminal harassment.** Any person subject to this Code who commits an offense prohibited under Title 17-A, section 506-A is guilty of that offense under this Code.

**2. Punishment.** Any person found guilty of an offense prohibited under Title 17-A, section 506-A must be punished as a court-martial may direct.

**Sec. B-13. Maine Commission on Domestic and Sexual Abuse; transition.** Notwithstanding the Maine Revised Statutes, Title 19-A, section 4013, subsection 1, paragraph A, the members of the Maine Commission on Domestic and Sexual Abuse serving immediately prior to the effective date of this Act continue to serve as members of the commission for the terms for which they were appointed until the Governor appoints their successors.

**Sec. B-14. Report by Adjutant General.** The Adjutant General shall include in the report required by the Maine Revised Statutes, Title 37-B, section 3, subsection 1, paragraph D, subparagraph (25) due February 15, 2023 the following additional information:

1. A copy of any report prepared by the United States National Guard Bureau, Office of Complex Investigations regarding any evaluation of the Maine National Guard's policies and procedures with respect to sexual assault prevention and response, sexual assault investigations and sexual harassment and equal opportunity programs or, if no report is available, an update on the progress of any related evaluation in the process of being conducted by the Office of Complex Investigations; and

2. A copy of any report submitted to the Governor by the Advisory Council on Military Sexual Trauma established by the Governor in Executive Order 1 FY 21/22.

REPORT OF ATTORNEY GENERAL AARON M. FREY

Public Law 2021, Chapter 634, An Act to Enhance the Prevention of and Response to Sexual  
Assault and Sexual Harassment in the Maine National Guard

Appendix C

Executive Order 1 FY21-22



Office of  
The Governor

No. 1 FY 21/22  
DATE March 24, 2022

**AN ORDER ESTABLISHING THE GOVERNOR'S ADVISORY COUNCIL ON  
MILITARY SEXUAL TRAUMA TO MORE EFFECTIVELY PREVENT, DETER, AND  
PROSECUTE SEXUAL ASSAULT AND SEXUAL HARRASSMENT**

**WHEREAS**, the Maine National Guard has issued its Report to the Legislature in response to L.D. 625, *Resolve, Directing a Review of Crucial Needs and Lapses in Responding to and Preventing Sexual Trauma in the Maine National Guard* ("Report"); and

**WHEREAS**, the Report highlights the need to improve communication and collaboration among the members of the Maine National Guard, state, county and elected law enforcement, prosecutors, judicial officers, advocates, and sexual assault survivors; and

**WHEREAS**, survivors of military sexual trauma deserve a fair, timely, and comprehensive process for reporting such incidents and a dedicated pathway for communicating any problems or barriers they experience; and

**WHEREAS**, improving relationships among the federal, state, and local criminal justice systems, federal National Guard Bureau regulations and personnel, and survivor support systems will provide more prompt and equitable responses to complaints of sexual assault and harassment within the Maine National Guard, deterring such acts, and promoting a culture of respect, professionalism and equal opportunity;

**NOW, THEREFORE**, I, Janet T. Mills, Governor of the State of Maine, pursuant to Me. Const. Art V, Pt. 1, §§ 1 & 12, do hereby Order as follows:

**I. ESTABLISHMENT AND PURPOSE**

The Advisory Council on Military Sexual Trauma is hereby established. The purpose of the Advisory Council is to follow up on issues addressed in the Report, to ensure that survivors are connected to all available resources, to designate a point of contact for survivors seeking to report problems they have

experienced during the investigative process, and to improve the Maine National Guard's response to sexual assault and sexual harassment within its ranks, with particular focus on coordinating state and local law enforcement and prosecutors and National Guard personnel as they respond to individual cases.

The Advisory Council shall:

- A. Identify best practices in reporting and preventing sexual trauma in the Maine National Guard;
- B. Identify barriers to reporting sexual trauma in the Maine National Guard;
- C. Identify state resources available to respond to and prevent sexual trauma within the Maine National Guard;
- D. Improve communication between the Maine National Guard, state, county, and local law enforcement, and prosecutors regarding investigation and prosecution of criminal acts between members of the Maine National Guard;
- E. Ensure that relevant violations of the Military Code of Justice are communicated to Maine Authorities;
- F. Propose an amendment to 17-A M.R.S. § 506-A, *Harassment*, in order for the courts to recognize military orders to cease harassment;
- G. Identify resources available within the state of Maine to support survivors of sexual assault and harassment and make sure these resources are promptly provided to members of the Maine National Guard;
- H. Identify a process that will ensure survivors have an opportunity to communicate problems they have experienced during the reporting and investigative process and ensure this input from survivors is incorporated into any Maine National Guard policy changes or actions;
- I. Improve communication between survivors of military sexual trauma, state prosecutors and state, county, and local law enforcement;
- J. Identify ways the Department of Defense, Veterans and Emergency Management can increase its involvement in the state's response to sexual trauma in order to better inform its internal policies;
- K. Identify federal policies and resources, including those of the U.S. Department of Defense and the National Guard Bureau, available to support efforts to respond to and prevent sexual trauma in the Maine National Guard;
- L. Make recommendations to the Governor as appropriate to enhance the prevention, reporting, and timely prosecution of sexual assault and sexual harassment within the Maine National Guard.

## **II. Membership**

The Advisory Council shall consist of ten members to be appointed by, and serve at the pleasure of, the Governor.

- 1. The Commissioner of Defense, Veterans and Emergency Management, or the Commissioner's designee, who shall serve as chair;
- 2. The Commissioner of Public Safety or the Commissioner's designee;

3. The Attorney General or the Attorney General's designee;
4. The President of the Maine Prosecutors Association or the President's designee;
5. The President of the Maine Sheriffs' Association or the President's designee;
6. The President of the Maine Chiefs of Police Association or the President's designee;
7. The Chair of the Maine Commission on Domestic and Sexual Abuse, or the Chair's Designee;
8. One member who is the executive director of a statewide coalition against sexual assault;
9. One member who is an advocate for survivors or identifies as a survivor of military sexual trauma and who participated in the military justice or state court system; and
10. One member representing an organization that works with survivors of military sexual trauma.

The Chief Justice of the Supreme Judicial Court is requested to appoint a representative of the Judicial Branch to serve the Council in an advisory capacity.

### **III. Proceedings**

The Chair will preside at, set the agenda for, and schedule Advisory Council meetings. The Advisory Council shall meet as often as necessary to complete the assigned duties. To the extent practicable, all meetings shall be open to the public and held in locations determined to by the Advisory Council or will be held virtually, but the proceedings of the Advisory Council are not otherwise "public proceedings" within the meaning of 1 M.R.S. § 402(2)(F). The Department of Defense, Veterans, and Emergency Management shall staff the Advisory Council as resources permit.

### **IV. Recommendations**

The Advisory Council shall submit its recommendations to the Governor on or before December 1, 2022, after which submission the Advisory Council will continue to meet at least annually to ensure response efforts continue to meet the needs of survivors.

### **V. Compensation**

Members of the Council shall serve without compensation.

### **VI. Effective Date**

The Effective Date of this Order is March 24, 2022.



Janet T. Mills, Governor

REPORT OF ATTORNEY GENERAL AARON M. FREY

Public Law 2021, Chapter 634, An Act to Enhance the Prevention of and Response to Sexual  
Assault and Sexual Harassment in the Maine National Guard

Appendix D

Statutes



**§207. Assault**

1. A person is guilty of assault if:

A. The person intentionally, knowingly or recklessly causes bodily injury or offensive physical contact to another person. Violation of this paragraph is a Class D crime; or [PL 2001, c. 383, §10 (NEW); PL 2001, c. 383, §156 (AFF).]

B. The person has attained at least 18 years of age and intentionally, knowingly or recklessly causes bodily injury to another person who is less than 6 years of age. Violation of this paragraph is a Class C crime. [PL 2001, c. 383, §10 (NEW); PL 2001, c. 383, §156 (AFF).]

[PL 2001, c. 383, §10 (RPR); PL 2001, c. 383, §156 (AFF).]

2.

[PL 2001, c. 383, §10 (RP); PL 2001, c. 383, §156 (AFF).]

3. For a violation under subsection 1, the court shall impose a sentencing alternative that involves a fine of not less than \$300, which may not be suspended except as provided in subsection 4.

[PL 2019, c. 113, Pt. B, §10 (AMD).]

**4. Finding by court necessary to impose other than minimum fine.** In the case of an individual, the court may suspend all or a portion of a minimum fine under subsection 3 or impose a lesser fine other than the mandatory fine if the court finds by a preponderance of the evidence that there are exceptional circumstances that justify imposition of a lesser financial penalty. In making a finding of exceptional circumstances, the court may consider:

A. Reliable evidence of financial hardship on the part of the individual and the individual's family and dependents; [PL 2019, c. 113, Pt. B, §11 (NEW).]

B. Reliable evidence of special needs of the individual or the individual's family and dependents; [PL 2019, c. 113, Pt. B, §11 (NEW).]

C. Reliable evidence of the individual's income and future earning capacity and the individual's assets and financial resources from whatever source; [PL 2019, c. 113, Pt. B, §11 (NEW).]

D. Reliable evidence regarding any pecuniary gain derived from the commission of the offense; and [PL 2019, c. 113, Pt. B, §11 (NEW).]

E. The impact of imposition of the mandatory fine on the individual's reasonable ability to pay restitution under chapter 69. [PL 2019, c. 113, Pt. B, §11 (NEW).]

[PL 2019, c. 113, Pt. B, §11 (NEW).]

**SECTION HISTORY**

PL 1975, c. 499, §1 (NEW). PL 1985, c. 495, §4 (AMD). PL 2001, c. 383, §10 (RPR). PL 2001, c. 383, §156 (AFF). PL 2005, c. 12, §JJ1 (AMD). PL 2019, c. 113, Pt. B, §§10, 11 (AMD).

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**§251. Definitions and general provisions**

1. In this chapter the following definitions apply.

A. "Spouse" means a person legally married to the actor, but does not include a legally married person living apart from the actor under a defacto separation. [PL 1975, c. 499, §1 (NEW).]

B. [PL 1989, c. 401, Pt. A, §2 (RP).]

C. "Sexual act" means:

(1) Any act between 2 persons involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other;

(2) Any act between a person and an animal being used by another person which act involves direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other; or

(3) Any act involving direct physical contact between the genitals or anus of one and an instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.

A sexual act may be proved without allegation or proof of penetration. [PL 1985, c. 495, §5 (RPR).]

D. "Sexual contact" means any touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact. [PL 1985, c. 495, §6 (AMD).]

E. "Compulsion" means the use of physical force, a threat to use physical force or a combination thereof that makes a person unable to physically repel the actor or produces in that person a reasonable fear that death, serious bodily injury or kidnapping might be imminently inflicted upon that person or another human being.

"Compulsion" as defined in this paragraph places no duty upon the victim to resist the actor. [PL 1991, c. 457 (AMD).]

F. "Safe children zone" means on or within 1,000 feet of the real property comprising a public or private elementary or secondary school or on or within 1,000 feet of the real property comprising a day care center licensed pursuant to Title 22, section 8301-A. [PL 1997, c. 768, §1 (NEW).]

G. "Sexual touching" means any touching of the breasts, buttocks, groin or inner thigh, directly or through clothing, for the purpose of arousing or gratifying sexual desire. [PL 2003, c. 138, §1 (NEW).]

[PL 2003, c. 138, §1 (AMD).]

**SECTION HISTORY**

PL 1975, c. 499, §1 (NEW). PL 1975, c. 740, §44 (AMD). PL 1981, c. 252, §1 (AMD). PL 1985, c. 495, §§5,6 (AMD). PL 1989, c. 401, §A2 (AMD). PL 1991, c. 457 (AMD). PL 1997, c. 768, §1 (AMD). PL 2003, c. 138, §1 (AMD).

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**§253. Gross sexual assault**

1. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:

- A. The other person submits as a result of compulsion, as defined in section 251, subsection 1, paragraph E. Violation of this paragraph is a Class A crime; [PL 2003, c. 711, Pt. B, §2 (AMD).]
- B. The other person, not the actor's spouse, has not in fact attained the age of 14 years. Violation of this paragraph is a Class A crime; or [PL 2003, c. 711, Pt. B, §2 (AMD).]
- C. The other person, not the actor's spouse, has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime. [PL 2003, c. 711, Pt. B, §2 (NEW).]  
[PL 2003, c. 711, Pt. B, §2 (AMD).]

2. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:

- A. The actor has substantially impaired the other person's power to appraise or control the other person's sexual acts by furnishing, as defined in section 1101, subsection 18, paragraph A, administering or employing drugs, intoxicants or other similar means. Violation of this paragraph is a Class B crime; [PL 2007, c. 474, §1 (AMD).]
- B. The actor compels or induces the other person to engage in the sexual act by any threat. Violation of this paragraph is a Class B crime; [PL 2001, c. 383, §15 (AMD); PL 2001, c. 383, §156 (AFF).]
- C. The other person suffers from mental disability that is reasonably apparent or known to the actor, and which in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the person has the right to deny or withdraw consent. Violation of this paragraph is a Class B crime; [PL 2001, c. 383, §15 (AMD); PL 2001, c. 383, §156 (AFF).]
- D. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual act. Violation of this paragraph is a Class B crime; [PL 2001, c. 383, §15 (AMD); PL 2001, c. 383, §156 (AFF).]
- E. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class B crime; [PL 2007, c. 102, §1 (AMD).]
- F. The other person, not the actor's spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student or the actor was a substitute teacher who had instructional, supervisory or disciplinary authority over the student at any time during the 12 months prior to the sexual act. Violation of this paragraph is a Class C crime; [PL 2021, c. 360, §1 (AMD).]
- G. The other person, not the actor's spouse, has not attained the age of 18 years and is a resident in or attending a children's home, child care facility, facility operated by a family child care provider, children's residential care facility, drug treatment center, youth camp licensed under Title 22, section 2495 or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over the other person or the actor was a substitute teacher who had instructional, supervisory or disciplinary authority over the student at any time during the 12

months prior to the sexual act. Violation of this paragraph is a Class C crime; [PL 2021, c. 360, §2 (AMD).]

H. The other person has not in fact attained the age of 18 years and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term care and welfare of that other person. Violation of this paragraph is a Class B crime; [PL 2001, c. 383, §16 (AMD); PL 2001, c. 383, §156 (AFF).]

I. The actor is a psychiatrist, a psychologist or licensed as a social worker or counseling professional or purports to be a psychiatrist, a psychologist or licensed as a social worker or counseling professional to the other person and the other person, not the actor's spouse, is a current patient or client of the actor. Violation of this paragraph is a Class C crime; [PL 2019, c. 494, §1 (AMD).]

J. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes the other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class C crime; [PL 2011, c. 542, Pt. A, §11 (AMD).]

K. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor. Violation of this paragraph is a Class C crime; [PL 2017, c. 300, §1 (AMD).]

L. The actor is employed to provide care to a dependent person, who is not the actor's spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect. Violation of this paragraph is a Class C crime; [PL 2021, c. 567, §8 (AMD).]

M. The other person has not expressly or impliedly acquiesced to the sexual act and the actor is criminally negligent with regard to whether the other person has acquiesced. Violation of this paragraph is a Class C crime; or [PL 2021, c. 608, Pt. E, §1 (AMD).]

N. The actor is a law enforcement officer acting in performance of official duties and the other person, not the actor's spouse, is under arrest, in custody or being interrogated or temporarily detained, including during a traffic stop or questioning pursuant to an investigation of a crime. For the purposes of this paragraph, "law enforcement officer" has the same meaning as in Title 25, section 2801-A, subsection 5. Violation of this paragraph is a Class B crime. [PL 2019, c. 438, §3 (NEW).]

[PL 2021, c. 567, §8 (AMD); PL 2021, c. 608, Pt. E, §1 (AMD).]

3.

[PL 2017, c. 300, §3 (RP).]

4.

[PL 2001, c. 383, §18 (RP); PL 2001, c. 383, §156 (AFF).]

5.

[PL 2001, c. 383, §19 (RP); PL 2001, c. 383, §156 (AFF).]

6.

[PL 2019, c. 113, Pt. B, §12 (RP).]

7.

[PL 2019, c. 113, Pt. B, §13 (RP).]

## SECTION HISTORY

PL 1975, c. 499, §1 (NEW). PL 1975, c. 740, §§48,49 (AMD). PL 1979, c. 701, §21 (AMD). PL 1981, c. 252, §3 (AMD). PL 1983, c. 326, §§1-4 (AMD). PL 1985, c. 247, §2 (AMD). PL 1985, c. 414, §§2,3 (AMD). PL 1985, c. 495, §§7,8 (AMD). PL 1985, c. 544 (AMD). PL 1985, c. 737, §A41 (AMD). PL 1987, c. 255, §2 (AMD). PL 1989, c. 401, §A4 (RPR). PL 1991, c. 569 (AMD). PL 1993, c. 432, §1 (AMD). PL 1993, c. 687, §§1-3 (AMD). PL 1995, c. 429, §1 (AMD). PL 1995, c. 560, §K82 (AMD). PL 1995, c. 560, §K83 (AFF). PL 1997, c. 768, §2 (AMD). PL 2001, c. 354, §3 (AMD). PL 2001, c. 383, §§14-20 (AMD). PL 2001, c. 383, §156 (AFF). RR 2003, c. 2, §25 (COR). PL 2003, c. 711, §B2 (AMD). PL 2007, c. 102, §1 (AMD). PL 2007, c. 474, §§1, 2 (AMD). PL 2009, c. 211, Pt. B, §15 (AMD). PL 2011, c. 423, §§1-3 (AMD). PL 2011, c. 464, §5 (AMD). PL 2011, c. 542, Pt. A, §11 (AMD). PL 2011, c. 691, Pt. A, §13 (AMD). PL 2013, c. 179, §2 (AMD). PL 2015, c. 509, §1 (AMD). PL 2017, c. 300, §§1-3 (AMD). PL 2019, c. 113, Pt. B, §§12, 13 (AMD). PL 2019, c. 438, §§1-3 (AMD). PL 2019, c. 494, §1 (AMD). PL 2021, c. 360, §§1, 2 (AMD). PL 2021, c. 567, §8 (AMD). PL 2021, c. 608, Pt. E, §1 (AMD).

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**§255-A. Unlawful sexual contact**

1. A person is guilty of unlawful sexual contact if the actor intentionally subjects another person to any sexual contact and:

A. The other person has not expressly or impliedly acquiesced in the sexual contact and the actor is criminally negligent with regard to whether the other person has acquiesced. Violation of this paragraph is a Class D crime; [PL 2021, c. 608, Pt. E, §2 (AMD).]

B. The other person has not expressly or impliedly acquiesced in the sexual contact, the actor is criminally negligent with regard to whether the other person has acquiesced and the sexual contact includes penetration. Violation of this paragraph is a Class C crime; [PL 2021, c. 608, Pt. E, §3 (AMD).]

C. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual contact. Violation of this paragraph is a Class D crime; [PL 2001, c. 383, §23 (NEW); PL 2001, c. 383, §156 (AFF).]

D. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual contact and the sexual contact includes penetration. Violation of this paragraph is a Class C crime; [PL 2001, c. 383, §23 (NEW); PL 2001, c. 383, §156 (AFF).]

E. The other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 3 years older. Violation of this paragraph is a Class C crime; [PL 2001, c. 383, §23 (NEW); PL 2001, c. 383, §156 (AFF).]

E-1. The other person, not the actor's spouse, is in fact less than 12 years of age and the actor is at least 3 years older. Violation of this paragraph is a Class B crime; [PL 2003, c. 711, Pt. B, §3 (NEW).]

F. The other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 3 years older and the sexual contact includes penetration. Violation of this paragraph is a Class B crime; [PL 2001, c. 383, §23 (NEW); PL 2001, c. 383, §156 (AFF).]

F-1. The other person, not the actor's spouse, is in fact less than 12 years of age and the actor is at least 3 years older and the sexual contact includes penetration. Violation of this paragraph is a Class A crime; [PL 2003, c. 711, Pt. B, §3 (NEW).]

F-2. The other person, not the actor's spouse, is in fact either 14 or 15 years of age and the actor is at least 10 years older than the other person. Violation of this paragraph is a Class D crime; [PL 2011, c. 464, §9 (NEW).]

G. The other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent. Violation of this paragraph is a Class D crime; [PL 2001, c. 383, §23 (NEW); PL 2001, c. 383, §156 (AFF).]

H. The other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent and the sexual contact includes penetration. Violation of this paragraph is a Class C crime; [PL 2001, c. 383, §23 (NEW); PL 2001, c. 383, §156 (AFF).]

I. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution

and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class D crime; [PL 2007, c. 102, §2 (AMD).]

J. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person and the sexual contact includes penetration. Violation of this paragraph is a Class C crime; [PL 2007, c. 102, §3 (AMD).]

K. The other person, not the actor's spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student or the actor was a substitute teacher who had instructional, supervisory or disciplinary authority over the student at any time during the 12 months prior to the sexual contact. Violation of this paragraph is a Class D crime; [PL 2021, c. 360, §3 (AMD).]

L. The other person, not the actor's spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student and the sexual contact includes penetration or the actor was a substitute teacher who had instructional, supervisory or disciplinary authority over the student at any time during the 12 months prior to the sexual contact and the sexual contact included penetration. Violation of this paragraph is a Class C crime; [PL 2021, c. 360, §4 (AMD).]

M. The other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person. Violation of this paragraph is a Class C crime; [PL 2001, c. 383, §23 (NEW); PL 2001, c. 383, §156 (AFF).]

N. The other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person and the sexual contact includes penetration. Violation of this paragraph is a Class B crime; [PL 2001, c. 383, §23 (NEW); PL 2001, c. 383, §156 (AFF).]

O. The other person submits as a result of compulsion. Violation of this paragraph is a Class C crime; [PL 2001, c. 383, §23 (NEW); PL 2001, c. 383, §156 (AFF).]

P. The other person submits as a result of compulsion and the sexual contact includes penetration. Violation of this paragraph is a Class B crime; [PL 2001, c. 383, §23 (NEW); PL 2001, c. 383, §156 (AFF).]

Q. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class D crime; [PL 2011, c. 542, Pt. A, §12 (AMD).]

R. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that other person as a person with



an intellectual disability or autism and the sexual contact includes penetration. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class C crime; [PL 2011, c. 542, Pt. A, §12 (AMD).]

R-1. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor. Violation of this paragraph is a Class D crime; [PL 2011, c. 423, §4 (NEW).]

R-2. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor and the sexual contact includes penetration. Violation of this paragraph is a Class C crime; [PL 2011, c. 423, §4 (NEW).]

S. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled. Violation of this paragraph is a Class E crime; [PL 2005, c. 450, §1 (AMD).]

T. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled and the sexual contact includes penetration. Violation of this paragraph is a Class D crime; [PL 2005, c. 450, §1 (AMD).]

U. The actor is a psychiatrist, a psychologist or licensed as a social worker or counseling professional or purports to be a psychiatrist, a psychologist or licensed as a social worker or counseling professional to the other person and the other person, not the actor's spouse, is a current patient or client of the actor. Violation of this paragraph is a Class D crime; [PL 2019, c. 494, §2 (AMD).]

V. The actor is a psychiatrist, a psychologist or licensed as a social worker or counseling professional or purports to be a psychiatrist, a psychologist or licensed as a social worker or counseling professional to the other person and the other person, not the actor's spouse, is a current patient or client of the actor and the sexual contact includes penetration. Violation of this paragraph is a Class C crime; [PL 2019, c. 494, §3 (AMD).]

W. The actor is employed to provide care to a dependent person, who is not the actor's spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect. Violation of this paragraph is a Class D crime; or [PL 2021, c. 567, §9 (AMD).]

X. The actor is employed to provide care to a dependent person, who is not the actor's spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect and the sexual contact includes penetration. For the purposes of this paragraph, "domestic partners" means 2 unmarried adults who are domiciled together under a long-term arrangement that evidences a commitment to remain responsible indefinitely for each other's welfare. Violation of this paragraph is a Class C crime. [PL 2011, c. 423, §6 (NEW).]

[PL 2021, c. 567, §9 (AMD); PL 2021, c. 608, Pt. E, §§2, 3 (AMD).]

## SECTION HISTORY

PL 2001, c. 354, §3 (AMD). PL 2001, c. 383, §23 (NEW). PL 2001, c. 383, §156 (AFF). RR 2003, c. 2, §26 (COR). PL 2003, c. 711, §B3 (AMD). PL 2005, c. 450, §§1,2 (AMD). PL 2007, c. 102, §§2, 3 (AMD). PL 2011, c. 423, §§4-6 (AMD). PL 2011, c. 464, §§9-11 (AMD). PL 2011, c. 542, Pt. A, §12 (AMD). PL 2011, c. 691, Pt. A, §§14, 15 (AMD). PL 2015, c. 509, §2 (AMD). PL 2019, c. 494, §§2, 3 (AMD). PL 2021, c. 360, §§3, 4 (AMD). PL 2021, c. 567, §9 (AMD). PL 2021, c. 608, Pt. E, §§2, 3 (AMD).

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**§260. Unlawful sexual touching**

**1. Unlawful sexual touching.** A person is guilty of unlawful sexual touching if the actor intentionally subjects another person to any sexual touching and:

A. The other person has not expressly or impliedly acquiesced in the sexual touching and the actor is criminally negligent with regard to whether the other person has acquiesced. Violation of this paragraph is a Class D crime; [PL 2021, c. 608, Pt. E, §4 (AMD).]

B. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual touching. Violation of this paragraph is a Class D crime; [PL 2003, c. 138, §5 (NEW).]

C. The other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 5 years older. Violation of this paragraph is a Class D crime; [PL 2003, c. 138, §5 (NEW).]

D. The other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appraising the nature of the touching involved or of understanding that the other person has the right to deny or withdraw consent. Violation of this paragraph is a Class D crime; [PL 2003, c. 138, §5 (NEW).]

E. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class D crime; [PL 2007, c. 102, §4 (AMD).]

F. The other person, not the actor's spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student or the actor was a substitute teacher who had instructional, supervisory or disciplinary authority over the student at any time during the 12 months prior to the sexual touching. Violation of this paragraph is a Class D crime; [PL 2021, c. 360, §5 (AMD).]

G. The other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person. Violation of this paragraph is a Class D crime; [PL 2003, c. 138, §5 (NEW).]

H. The other person submits as a result of compulsion. Violation of this paragraph is a Class D crime; [PL 2003, c. 138, §5 (NEW).]

I. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class D crime; [PL 2011, c. 542, Pt. A, §13 (AMD).]

J. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled. Violation of this paragraph is a Class E crime; [PL 2011, c. 423, §7 (AMD).]

K. The actor is a psychiatrist, a psychologist or licensed as a social worker or counseling professional or purports to be a psychiatrist, a psychologist or licensed as a social worker or counseling professional to the other person and the other person, not the actor's spouse, is a current patient or client of the actor. Violation of this paragraph is a Class D crime; [PL 2019, c. 494, §4 (AMD).]

L. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor. Violation of this paragraph is a Class D crime; or [PL 2011, c. 423, §9 (NEW).]

M. The actor is employed to provide care to a dependent person, who is not the actor's spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect. Violation of this paragraph is a Class D crime. [PL 2021, c. 567, §10 (AMD).]

[PL 2021, c. 567, §10 (AMD); PL 2021, c. 608, Pt. E, §4 (AMD).]

#### SECTION HISTORY

RR 2003, c. 2, §27 (COR). PL 2003, c. 138, §5 (NEW). PL 2005, c. 450, §§3-5 (AMD). PL 2007, c. 102, §4 (AMD). PL 2011, c. 423, §§7-9 (AMD). PL 2011, c. 464, §12 (AMD). PL 2011, c. 542, Pt. A, §13 (AMD). PL 2011, c. 691, Pt. A, §16 (AMD). PL 2015, c. 509, §3 (AMD). PL 2019, c. 494, §4 (AMD). PL 2021, c. 360, §5 (AMD). PL 2021, c. 567, §10 (AMD). PL 2021, c. 608, Pt. E, §4 (AMD).

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**§506-A. Harassment****(CONFLICT)****(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)**

1. A person is guilty of harassment if, without reasonable cause:

A. The person engages in any course of conduct with the intent to harass, torment or threaten another person:

(1) After having been notified, in writing or otherwise, not to engage in such conduct by:

(a) Any sheriff, deputy sheriff, constable, police officer or justice of the peace. The notification not to engage in such conduct expires one year from the date of issuance; or

(b) **(FUTURE CONFLICT: Text as amended by PL 2021, c. 634, Pt. B, §2)** A court in a protective order issued under Title 5, section 4654 or 4655 or Title 19-A, section 4006 or 4007;

(b) **(TEXT EFFECTIVE 1/01/23) (FUTURE CONFLICT: Text as amended by PL 2021, c. 647, Pt. B, §31)** A court in a protective order issued under Title 5, section 4654 or 4655 or Title 19-A, former section 4006 or 4007 or Title 19-A, section 4108 or 4110; or

(2) If the person is an adult in the custody or under the supervision of the Department of Corrections, after having been forbidden to engage in such conduct by the Commissioner of Corrections, the chief administrative officer of the facility, the correctional administrator for the region or their designees; or

(3) After having been notified, in writing or otherwise, while the person was a member of the National Guard, not to engage in such conduct by a commanding officer. A person violates this subparagraph regardless of whether the person is a member of the National Guard when the person engages in the conduct and regardless of where the conduct occurs. The notification not to engage in such conduct expires one year from the date of issuance.

Violation of this paragraph is a Class E crime; or [PL 2021, c. 634, Pt. B, §§2-4 (AMD); PL 2021, c. 647, Pt. B, §31 (AMD); PL 2021, c. 647, Pt. B, §65 (AFF).]

B. The person violates paragraph A and, at the time of the harassment, the person has 2 or more prior Maine convictions under this section in which the victim was the same person or a member of that victim's immediate family or for engaging in substantially similar conduct to that contained in this paragraph in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime. [PL 2007, c. 476, §23 (AMD).]

[PL 2021, c. 634, Pt. B, §§2-4 (AMD); PL 2021, c. 647, Pt. B, §31 (AMD); PL 2021, c. 647, Pt. B, §65 (AFF).]

2.

[PL 2001, c. 383, §67 (RP); PL 2001, c. 383, §156 (AFF).]

3. For the purposes of this section, "immediate family" means spouse, parent, child, sibling, stepchild and stepparent, "National Guard" has the same meaning as in Title 37-B, section 102, subsection 1 and "commanding officer" has the same meaning as in Title 37-B, section 402, subsection 4.

[PL 2021, c. 634, Pt. B, §5 (AMD).]

**SECTION HISTORY**

PL 1975, c. 740, §67 (NEW). PL 1981, c. 456, §A59 (AMD). PL 1987, c. 736, §36 (AMD). PL 1991, c. 566, §§2,3 (AMD). PL 1993, c. 475, §§4,5 (AMD). PL 1995, c. 694, §D24 (AMD). PL

1995, c. 694, §E2 (AFF). PL 1997, c. 267, §§1,2 (AMD). PL 1997, c. 267, §3 (AFF). PL 2001, c. 383, §§66,67 (AMD). PL 2001, c. 383, §156 (AFF). PL 2007, c. 476, §23 (AMD). PL 2009, c. 246, §1 (AMD). PL 2021, c. 634, Pt. B, §§2-5 (AMD). PL 2021, c. 647, Pt. B, §31 (AMD). PL 2021, c. 647, Pt. B, §65 (AFF).

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**§3871. Submission of sexual assault cases for review for prosecution**

A law enforcement agency in possession of a complaint for an alleged sexual assault under Title 17-A, chapter 11 shall within 60 days of receiving the complaint inform the appropriate prosecutor of any evidence and submit the complaint for review and a decision by the prosecutor regarding further investigation and commencement of prosecution. Failure of a law enforcement agency to inform the appropriate prosecutor of any evidence and submit a complaint to the appropriate prosecutor within 60 days as required by this section does not affect the validity of a later submission and prosecution. [PL 2019, c. 80, §1 (NEW); RR 2019, c. 1, Pt. A, §29 (RAL).]

**SECTION HISTORY**

PL 2019, c. 80, §1 (NEW). RR 2019, c. 1, Pt. A, §29 (RAL).

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REPORT OF ATTORNEY GENERAL AARON M. FREY

Public Law 2021, Chapter 634, An Act to Enhance the Prevention of and Response to Sexual  
Assault and Sexual Harassment in the Maine National Guard

Appendix E

Governor's Advisory Council Report (December 1, 2022)



# GOVERNOR'S ADVISORY COUNCIL RESOLUTION

**Executive Order 1FY 21/22 Establishing the  
Governor's Advisory Council on Military Sexual  
Trauma to More Effectively Prevent, Deter, and  
Prosecute Sexual Assault and Sexual Harassment**



Initial Recommendations Submitted to the Governor of Maine

Chair

CPT Dustin J. Martin

Maine Army National Guard Provost Marshal

Department of Defense, Veterans, and Emergency Management

1 December 2022

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## Establishment and Purpose: Original Resolve

On June 22, 2013, the Maine's 126th Legislature passed S.P. 562 – L.D. 1504, "Resolve, Directing the Adjutant General of the State to Ensure the Maine Code of Military Justice Addresses Sexual Trauma in the Military." The Adjutant General (TAG) of Maine at that time was Army Brigadier General James D. Campbell.

"The purpose of the assessment is to determine if the Maine Code of Military Justice and other provisions of Title 37-B governing state active duty personnel in or attached to the Maine National Guard allow for the adequate prosecution of sexual assault and proper treatment of military victims of sexual assault by comparing them with specific National Guard Bureau Guidance and the provisions of the National Defense Authorization Act for Fiscal Year 2013 review that amend 10 United States Code..."

Additionally, the Legislature cited 14 areas of specific concern for the report.

The Adjutant General submitted the findings of the resolve and testified for the Committee about the report after its submission during the Second Regular Session of the 126th Legislative Session.

## Sexual Assault Prevention and Response (SAPR) Program Updates

This report refers to sexual assault and sexual harassment which are treated by two separate programmatic offices: sexual assault is handled within the Sexual Assault Prevention and Response (SAPR) office while sexual harassment is handled within the Equal Opportunity Office (EOO).

Since the 2013 report, there have been major changes in the Department of Defense and, therefore, the Maine National Guard (MENG) Sexual Assault Prevention and Response (SAPR) Program, including but not limited to:

### Special Victims' Counsel (SVC) Program

The military implemented the SVC program in 2014. The program is unique to the military justice system and is unequalled in the civilian community. At no cost to the victim/survivor, the military provides a specially trained attorney to every eligible participant who requests one. The SVC represents the victim/survivor throughout the investigation, adjudication, and accountability process with the primary duty to zealously represent the express interests of the victim.

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*"Our most critical asset as a department is our people...Our values and expectations remain at the core of addressing this problem and I have every confidence that our force will get this right." Secretary Of Defense Lloyd Austin III*

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### Catch a Serial Offender Program

Section 543 of the National Defense Authorization Act of 2015 (PL 113291) required the Secretary of Defense to develop a plan that would allow eligible adults who file a

Restricted Report to disclose suspect or incident information for the purpose of identifying individuals who have perpetrated multiple sexual assaults. In response to this requirement, the Department developed the Catch a Serial Offender Program (CATCH). This program allows victims of sexual assault to anonymously report any information they may have about their offender. If a match is identified in the CATCH program, victim/survivors are notified through the Sexual Assault Response Coordinator (SARC).

The CATCH program became fully operational on July 31, 2019. As of November 2021, the CATCH program was expanded to include eligible adults who file an unrestricted report and have not disclosed offender information to law enforcement. For more information on restricted and unrestricted reporting options, see Appendix B, DOD SAPRO Victim Reporting Options Guide.

### Civilian Sexual Assault Response Coordinator (SARC)

The SAPR program is constantly evolving. When the National Guard program began, advocacy support was an additional duty regardless of the position – SARC, SAPR VA, or VVA. In 2016, the Maine Army National Guard (MEANG) hired their first full-time, civilian SARC. Hiring this position afforded all members of the MENG the opportunity to have an embedded civilian advocate for the first time. In 2021, the MEANG hired their first civilian SARC to sit at the Joint Force Headquarters; prior to 2021, the JFHQ SARC was filled by a uniformed Soldier. In February of 2022, the MENG filled a Victim Advocate Coordinator position that had long been unfilled. This is the first time this position has been filled by a civilian as well.

### Updated Resolve

On May 25, 2021, the 130th Legislature passed H.P. 461 – L.D.625, “Resolve, directing a Review of Crucial Needs and Lapses in Responding to and Preventing Sexual Trauma in the Maine National Guard.” The Adjutant General (TAG) at this time is Air Force Major General Douglas A. Farnham. The purpose of this resolve is as follows:

“The Adjutant General shall conduct a review of the implementation of the recommendations made to the Joint Standing Committee on Veterans and Legal Affairs in the report submitted pursuant to Resolve 2013, chapter 66,” and “...identify any crucial needs and lapses in responding to and preventing military sexual trauma and determine if additional action is necessary.”

In order to accomplish this, TAG established a working group consisting of the Deputy Chief of Staff of Personnel, Joint Force Headquarters (JFHQ) SARC, 101st Air Refueling Wing (ARW) SARC, and Full Time Judge Advocate (FTJA). This group conducted an assessment of the Maine Code of Military Justice (MCMJ) and other provisions of the Maine Revised Statutes to meet the intent of LD 625. TAG submitted a response to H.P. 461 - LD 625 in March of 2022.

## Establishment of Governor's Advisory Council

In March of 2022, the Governor's Office issued an Executive Order that established the Governor's Advisory Council on Military Sexual Trauma to prevent, deter, and prosecute sexual assault and sexual harassment more effectively. The purpose of the council was as follows:

"The purpose of the Advisory Council is to follow up on issues addressed in the Report, to ensure that survivors are connected to all available resources, to designate a point of contact for survivors seeking to report problems they have experienced during the investigative process, and to improve the Maine National Guard's response to sexual assault and sexual harassment within its ranks, with particular focus on coordinating State, local law enforcement, prosecutors, and National Guard personnel as they respond to individual cases."

Following the establishment of the Advisory Council, the Governor's Office appointed 11 members from various backgrounds and career fields. These members are as follows:

- 1 Chair: Captain Dustin J. Martin, Provost Marshal, Maine National Guard
2. Lucia Chomeau Hunt, Esq., Maine Commission on Domestic and Sexual Abuse
3. Hon. Michael Sauschuck, Commissioner, Maine Department of Public Safety
4. Hon. Aaron M. Frey, Esq., Attorney General
5. Hon. Maeghan Maloney, Esq., Kennebec and Somerset County District Attorney; President, Maine Prosecutors Association
6. Sherriff Christopher Wainwright, Oxford County Sherriff; Maine Sheriffs' Association Designee.
7. Chief Scott Stewart, Brunswick Police; Maine Chiefs of Police Association Designee
8. Elizabeth Ward Saxl, Executive Director, Maine Coalition Against Sexual Assault
9. Rebecca Cornell du Houx, LCSW, Executive Director, Sisters in Arms Center
10. Mary Rose Callain, LCSW, LADC, VA Maine MST Coordinator
11. Hon. Jed French, District Court Judge, Maine District Court, Maine Judiciary Designee

## Initial Meeting: September 8

On September 8, 2022, The Governor's Advisory Council held its first meeting at the Burton M. Cross building located in Augusta, Maine. All members assigned to the council were present. Additional attendees for this meeting were members from the Maine Army and Air National Guard who are directorates of the programs that are implemented when handling cases of sexual assault or sexual harassment. These programs included Sexual Assault Prevention and Response (SAPR), Equal Employment Opportunity (EEO), Behavioral Health, Integrated Primary Prevention Program (IPPP), Victim Advocate Councilor (VAC), Judge Advocate General (JAG), and other select members from the Maine Army and Air National Guard Command team and Staff. The purpose of these members being present is to help in explaining the programs they oversee and assist in answering any questions. There were also a handful of members of the public who attended the meeting, primarily from community

based sexual assault support centers and the Maine Coalition Against Sexual Assault (MECASA).

During the meeting the committee discussed the history of changes the Army has gone through and sequence of events that lead to the development of the Advisory Council. The purpose statement in the Executive Order was discussed which provided the council members with the needed and necessary guidance and direction for being able to work through the topic questions. The council members also received a class on the SAPR program which was taught by both the Army and Air Sexual Assault Response Coordinators. This class gave the council members a brief introduction on the program to assist them in understanding what the Army National Guard and Air National Guard currently do when responding to claims of Sexual Assault, Sexual Harassment, and Sexual Trauma.

The meeting concluded with the council members identifying how and when they would meet to discuss the topic questions assigned in the executive order. These questions were organized into categories to assist in working through them in an organized fashion. These categories are Reporting, Systems Response (Administrative, Criminal, and Civil response), Systems Response (Advocacy and MH Services), and Prevention. It was agreed that we would discuss Reporting (topic questions A, B, H, J, K) on September 20; Systems Responses from an administrative, criminal, and civil response (topic questions C, D, E, F, H, I, J, K) on October 5; Systems response from an advocacy and mental health response (topic questions C, G, J, K) on October 20; and Prevention (topic questions A, C, J, K) on November 3. All questions were tailored to fit the topic discussions. Additionally, all meetings were held in a public space to maximize participation. These meetings were not recorded or streamed with the exception of November 3. At this meeting the Governor's Office made a remote option available for members and survivors/victims to participate. During this meeting, one survivor expressed their appreciation for the work the Advisory Council was doing and the ability to be able to attend remotely.

Listed below are the recommendations the Governor's Advisory Council was able to make in response to the goal set by the Governor's Executive Order. The council recognizes that some of these recommendations may conflict with federal law and Department of Defense policies or require state or federal legislation to be accomplished. To the extent that any of the below recommendations conflict with federal law or regulation, the council understands that federal law and policy will prevail.

## A. Identify best practices in reporting and preventing sexual trauma in the Maine National Guard;

Best Practices for reporting and preventing sexual trauma in the Maine National Guard include supporting a fully resourced prevention and response team, a well-educated force, and adequate external support to assist in expediting processes and mitigating reporting barriers. The Maine National Guard utilizes internal resources provided and regulated by the federal government, alongside State resources, to support prevention and reporting sexual trauma. The Maine National Guard is required to maintain options for restricted and unrestricted reporting of sexual assault.

The Maine National Guard provides victim advocacy at various levels of command to support prevention and reporting. Advocacy personnel for the Maine National Guard includes but is not limited to the Sexual Assault Response Coordinators (SARC), Victim Advocates, Behavioral Health staff, specially trained attorneys called Special Victims Counsel, Provost Marshal, and Chaplains to name a few.

The requirements for staffing the collateral duty victim advocate team varies between the Army National Guard and the Air National Guard. The Air Force/Air National Guard (ANG) mandates that there are only as many credentialed advocates as are necessary to support the workload. Currently the ANG has 3 credentialed victim advocates. The Army/Army National Guard (ARNG) requirements are more strictly prescribed. There will also be variances for units that are mobilized. In a Title 32 status, the ARNG mandates that each brigade has a credentialed Sexual Assault Response Coordinator and a credentialed victim advocate and that each battalion have two credentialed victim advocates. When a unit mobilizes to a Title 10 status, the requirement is expanded and requires that each company have two credentialed victim advocates deploying with them. Due to the lengthy process to credential a new advocate, the ARNG has, historically had difficulty manning collateral duty advocate positions.

Unit leadership and SAPR Professionals train the entire force annually on the mandatory Sexual Harassment and Assault Response Program (SHARP) which includes prevention, intervention, reporting, and reprisal. The organization also requires training per DOD regulation of all individuals biannually in ethics and fraternization. The organization uses Climate Surveys and, on the ARNG side, Unit Risk Inventory surveys to inform leadership about trends within units including Soldier and Airman Satisfaction, risky behavior, trust and confidence, and other concerns. The ARNG recently began publishing information about administrative actions applied against Soldiers violating various regulatory standards to promote consistency in punishments and as a general deterrent. The ANG leadership is in the process of building a similar product, working with their Judge Advocate to determine the best way to make this available to the members of the ANG.

The SARC is responsible for support needs of the survivor utilizing internal and external resources. Following Department of Defense Regulation, SAPR Professionals accept disclosure and complete an intake with each eligible victim/survivor. This ensures that they receive a comprehensive list of support services and reporting options available to



them. Per regulation, there is a limited number of people who are aware of a Restricted Report, including the SARC, full time victim advocates who may be working with the victim/survivor, or a volunteer victim advocate working with the victim/survivor. With the Restricted Reporting option, eligible reporters can receive various support services, but an investigation is not initiated. This means that administrative action against the reported offender if they are a military member will not be available due to the restricted nature.

If a survivor chooses to report, there are generally two reporting options—restricted and unrestricted. A restricted report allows survivors to access certain services through the SARC. When an Unrestricted report is made, the commander is notified and becomes part of the support team for the victim/survivor. This support team includes but is not limited to the commander, the SARC, the Victim Advocate assigned to the case, legal to include the Judge Advocate and Special Victims Counsel, and the Provost Marshal. The command team manages immediate personnel needs (re-assignments/limitations, no-contact orders where applicable, etc.).

Maine law enforcement agencies are responsible for the investigation of criminal charges. In the event the reported offender is a member of the Maine National Guard, and the agency or district attorney's office decides not to pursue criminal investigation for any reason or if the case does not lead to a full criminal conviction; the Office of Complex Investigation (OCI) can be requested by TAG and will complete an administrative investigation. OCI will provide the final report and recommendations to the JAG. The Command Team utilizes the criminal conviction, records of the criminal investigation, or substantiated report from the OCI investigation for administrative punishment and separation from the military. The Provost Marshal supports investigation requirements acting as the law enforcement liaison for the Maine National Guard.

**Recommendation A1:** Develop Memorandums of Understanding between the MENG via the Provost Marshal with local District Attorney's offices, and Maine Coalition Against Sexual Assault (MECASA) to assist with jurisdiction and department selection for Sexual Assault allegations within the Maine National Guard.

- a. The Provost Marshal should report criminal activity to District Attorney. District Attorney office assists Provost Marshal in determining jurisdiction and how the case will be investigated.
- b. District Attorney office provides a victim witness advocate that can work with the victim during the criminal court proceedings. MENG Sexual Assault Response Coordinator (SARC) provides an advocate to work with the survivor as well and coordinate any military-specific needs. The SARC will also offer support from a local sexual assault center advocate according to guidelines outlined in a Memorandum of Understanding (MOU) with MECASA and/or the local sexual assault centers.
- c. MECASA assists victim advocates in supporting law enforcement efforts. This should be done through them hiring a Military specific liaison tasked with managing resources available to support Military requirements.

- d. Maine National Guard SAPR Professionals attend MECASA 40-hour training to maintain understanding of state systems and the way they work. In addition, MECASA/local sexual assault centers and the SAPR office will work together to provide cross training as outlined in the MOU.

**Recommendation A2:** The committee recommends the Governor continue this advisory council to follow up on these recommendations. We suggest the council meet at least four meetings a year. Specific areas of concern for the committee going forward would be review of the Attorney General's Office's criminal case review and ongoing data collection efforts.

**Recommendation A3:** The proposed MECASA military liaison should develop and administer an independent survey separate from the Unit Climate or Unit Risk Inventory surveys. This will assist all parties with additional information about potential problems. Third party effort will assist in reducing reporting barriers due to trust concerns within the organization.

**Recommendation A4:** Fully staff certified/trained victim advocates as soon as possible.

**Recommendation A5:** Incorporate additional training that encourages peer support, early intervention, and small unit leader responsibilities, specifically with emphasis on Military Protection Orders, re-traumatization, blame, reprisal, ostracization, protection, authority. Include external (and internal) resources for reporting in new recruit trainings. Add MECASA & SiAC to multiple circulating informational resources throughout the organization (i.e newsletters, Family Program, Behavioral Health, Yellow Ribbon events etc.)

**Recommendation A6:** Commit to enhance the MENG's work to develop and promote women in leadership positions, such as a MENG Women's Leadership conference and potentially developing a formal mentorship program.

**Recommendation A7:** As part of new prevention team within the MENG they will consult with soldiers and agencies such as MECASA to help them develop prevention assessments. To the extent it is not inconsistent with federal law or policy The committee strongly recommends that data will be collected in two ways (1) an anonymous survey and (2) focus groups organized by gender identity. These assessments should evaluate experiences of sexual harassment and sexual assault, including witnessing these, and trust in command. However, they should also evaluate broader causes of sexual harm, such as (1) MENG's members understanding of bystander role and how comfortable they would feel intervening in sexual harassment and assault of varying severity, (2) how they perceive a report would be handled, (3) experiences and perceptions of gender norms and sexuality, (4) experiences with alcohol and substances related to MENG, (5) environmental/situational experiences that have led Guard members to feel unsafe (certain sleeping arrangements, tasks, etc.), and (6) MENG members knowledge of sexual harassment and sexual assault

definitions and reporting procedures. Aggregate forms of this data will be made to this Advisory Council going forward.

**Recommendation A8:** Advisory Council members also acknowledge that addressing sexual harassment is an important piece of addressing both sexual harassment and sexual assault, but the Advisory Council did not have the opportunity to study this area in the 2022 meetings. Should the Advisory Council continue its work, it recommends that the group spend an entire meeting in 2023 reviewing the MENG sexual harassment regulations, processes, and policies to make specific recommendations about that process.

### B. Identify barriers to reporting sexual trauma in the Maine National Guard;

Barriers to reporting sexual trauma in the Maine National Guard include lack of education of support services and reporting options, fear of reprisal, lack of confidence in the chain of command, and fear of re-traumatization. Fear of retaliation includes concerns about how the chain of command will treat victim/survivor and supporters, how peers will interact with victim/survivor/supporters, and how the perpetrator or reported offender in the event the reported offender is a member of the Maine National Guard will react. Concerns about the chain of command stem from lack of confidentiality/anonymity, concerns about retaliation, and how seriously the chain of command will pursue accountability/justice.

**Recommendation B1:** Utilize military protection orders (MPOs) for safety and protections of Survivors when reporting, when a survivor consents.

**Recommendation B2:** Utilize and issue Harassment Warnings authorized by 17-A M.R.S. § 506-A. This document should be maintained by the Provost Marshal and with the consent of the survivor will be shared with the local law enforcement agency where the survivor lives. See Attachment A.

**Recommendation B3:** Increase education of support services and reporting options, include options for reporting retaliation and reprisal that is outside the victim/survivor/supports chain of command, including but not limited to SARC, the command team using their open-door policies, the Provost Marshal, and the state Inspector General

### C. Identify state resources available to respond to and prevent sexual trauma within the Maine National Guard;

Resources available to respond to and prevent sexual trauma within the Maine National Guard include the SARC, Victim Advocates, Provost Marshal, Military Equal Employment Manager, Behavioral Health, Integrated Prevention Personnel, Command, Safety, Family Program personnel, and Chaplains. These entities are the current prevention work force and work together to educate and advise Soldiers and leadership as well as respond cohesively when needed. The Integrated Primary Prevention Program (IPPP) is a newly formed workforce that will take an integrated, scientific approach to prevent sexual assault, harassment, and other forms of self-directed and inter-personal violence throughout the MENG.

**Recommendation C1:** Consult with survivor focused local veteran organizations such as SiAC, to create a Peer Support Team that will work to increase engagement/intervention opportunities that will ultimately encourage reporting and subsequent response.

**Recommendation C2:** Increase access to behavioral health providers. Most of our MENG members aren't eligible to utilize the MST program at TOGUS or other VA hospitals in the country. Many clinicians will not support the use of tri-care due to low reimbursement rates for services and costly administrative requirements. To encourage more providers to utilize Tri-Care, the committee recommends the Governor propose legislation to create a state fund that could bridge the compensation gap and make more outside health providers available to service members. Additionally, develop a roster of clinicians with knowledge of military culture (either previously served or have completed a training on military service, such as those on the 'Blue Star' list). Continue educating the public on military culture through the Director of Psychological Services (DPS), SARC, Chaplains and other support services.

**Recommendation C3:** Provide information on the number of women who have been promoted, and how many have left within the MENG due to issues of sexual assault or harassment.

**Recommendation C4:** The Governor should engage with the state's Congressional delegation to propose national legislation to allow for Line of Duty (LOD) processing for a Guard member assaulted by another Guard member when not in a duty status.

- a. Current limitations require that the survivor must be in a duty status (drill, annual training, or other orders) to qualify for LOD consideration. Army/Air will pay for required health care of an approved LOD injury regardless of individuals' insurance coverage.

**D. Improve communication between the Maine National Guard, state, county, and local law enforcement, and prosecutors regarding investigation and prosecution of criminal acts between members of the Maine National Guard;**

The Maine National Guard evaluated its ability to effectively communicate with state, county and local, law enforcement agencies, as well as local prosecutors and observed a lapse in effective communication. To rectify this issue, the Provost Marshal position was founded to assist in bridging the communication gap between these agencies and the Maine National Guard and to act as the primary liaison for the transfer and sharing of information and tracking of investigations. Additionally, the position was appointed in accordance with Title 37-B, which assigns the position as an authorized agency that allows the collection of criminal history and investigative reports for the purpose of carrying out its official duties.

Despite the establishment of this new position and its authority in state law, the MENG identified a lack of willingness by state, county, and local law enforcement agencies to share information with the Provost Marshal. This is due to the lack of understanding of the Provost Marshal position.

**Recommendation D1:** It is recommended to have the Provost Marshal attend one meeting of the Maine Prosecutors Association, one regional Chief of Police meeting, and one Maine Sheriffs' Association meeting each year to aid in the understanding of this position, network with local law enforcement agencies, and ultimately streamline the communication and information transfer between agencies.

E. Ensure that relevant violations of the Maine Code of Military Justice are communicated to Maine Authorities.

Maine National Guard utilizes Serious Incident Reports to communicate serious injuries and relevant violations of the Maine Code of Military Justice to the Provost Marshal, Lead SARC and organizational leadership. When an Unrestricted Report of sexual assault is filed with the SAPR Program, the Lead SARC and/or commanders coordinate with the Provost Marshal for assistance with Maine Authorities.

**Recommendation E1:** Provide Serious Incident Reporting (SIR) training to all leadership required to attend the pre-command course.

F. Propose an amendment to 17-A M.R.S. § 506-A, Harassment, in order for the courts to recognize military orders to cease harassment.

The request for a proposed amendment to 17-A M.R.S. § 506-A was rendered moot in light of the Legislature's passing of PL 2021, c.634, Pt. B, Sec. B-4, which amended the harassment statute to include written or verbal cease harassment orders issued by commanding officers as criminally enforceable orders.

G. Identify resources available within the state of Maine to support survivors of sexual assault and harassment and make sure these resources are promptly provided to members of the Maine National Guard.

The Maine National Guard has a variety of support personnel who are equipped to respond to and support survivors of sexual assault and sexual harassment. SAPR Professionals are trained per the DOD/NGB and branch specific standard to provide crisis intervention, perform non-clinical safety assessments, perform an intake, and provide continued support at the request of the victim/survivor. During that intake process, other community-based resources are discussed and/or referred. In the event a victim/survivor discloses an assault to the Provost Marshal, Inspector General, State Equal Opportunity Manager, Military Equal Employment, Commander, the Judge Advocate, or someone else who may be a mandated reporter, that entity will notify the Lead SARC and the Lead SARC will themselves reach out to the member who made the disclosure or will assign a victim advocate to reach out to that member to offer support. In the event a member of the Maine National Guard discloses an event to a SAPR professional or any other support entity that is deemed to be sexual harassment, they will receive a warm hand-off to the State Equal Employment Manager or the Military Equal Opportunity personnel. Resources available within the Maine National Guard to respond to and to support survivors of sexual assault include but are not limited to the SARC, Victim Advocates, Provost Marshal, State Equal Employment Manager, Military Equal Opportunity, Behavioral Health, Command, Safety, Family Program, healthcare personnel, Judge Advocates, and Chaplain. Survivors are often referred to community

based private and nonprofit support services that exist throughout the state. Organizations like MECASA and Sisters in Arms along with Veteran's Affairs will assist in bringing awareness to and securing those resources.

**Recommendation G1:** The SARC will offer support from a local sexual assault center advocate according to guidelines outlined in a Memorandum of Understanding (MOU) with MECASA and/or the local sexual assault centers.

**Recommendation G2:** With the consent of survivors, the SARC will also offer a direct referral to Pine Tree Legal Assistance. Specifically, the SARC will explain that Pine Tree Legal attorneys can offer representation in a civil Protection from Harassment, Protection from Abuse, or Title IX proceeding, if the survivor is planning to utilize any of those systems.

H. Identify a process that will ensure survivors have an opportunity to communicate problems they have experienced during the reporting and investigative process and ensure this input from survivors is incorporated into any Maine National Guard policy changes or actions.

Per regulation, The Adjutant General chairs the monthly Sexual Assault Case Management Group where Unrestricted Cases of sexual assault are discussed with a victim-centric focus. At the Case Management Group, the assigned victim advocate and/or the SARC, upon approval by the victim/survivor, can and will share any concerns the victim/survivor may have. This is an ongoing process and available at any time.

**Recommendation H1:** MECASA military liaison is made available to support the Lead SARC in an effort to remove barriers where possible. With the victim/survivor's permission, the Lead SARC would present issues to leadership for possible changes in policy. Third party presence/effort will help eliminate barriers.

**Recommendation H2:** Encourage outside support entities such as SiAC and MECASA to publicize notice of quarterly meetings and opportunity to comment through various means including membership lists and social media. SiAC and MECASA will also take information and comments for those who want to make anonymous comments and will also support survivors as needed to make public comment.

I. Improve communication between survivors of military sexual trauma, state prosecutors and state, county, and local law enforcement;

The Provost Marshal position is a newly established position for the Maine Army National Guard. The intended purpose behind this position is to act as the liaison between state, local, and county agencies as well as Maine District Attorneys' offices. Building the communication between state agencies and the DA's offices will assist in the transfer of information and tracking of cases through the criminal justice system resulting in a more informed survivor. Additionally, the SARC is a vital role in the care and recovery of the soldier. In most situations, the SARC is the first person to communicate with the survivor and has firsthand knowledge on their issues and concerns.

**Recommendation I1:** Ensure communication between the SARC and Provost Marshal and OSJA to help relay and communicate issues and concerns from the survivor.

J. Identify ways the Department of Defense, Veterans and Emergency Management can increase its involvement in the state's response to sexual trauma in order to better inform its internal policies;

**Recommendation J1:** Identify, collect and provide to the counsel currently available aggregate data relevant to perceptions on sexual assault and harassment within the Maine National Guard to better determine ways to increase involvement and better inform internal policies.

K. Identify federal policies and resources, including those of the U.S. Department of Defense and the National Guard Bureau, available to support efforts to respond to and prevent sexual trauma in the Maine National Guard;

A list of all pertinent policies and resources to include U.S. Department of Defense, National Guard bureau, and TAG policies were provided to committee members. See Attachment B and Attachment C for a review of these provided documents.

L. Make recommendations to the Governor as appropriate to enhance the prevention, reporting, and timely prosecution of sexual assault and sexual harassment within the Maine National Guard.

**Recommendation L1:** Engage with Maine's congressional delegation to propose legislation that allows VA services to be available to currently serving members. Currently there are financial and eligibility limitations which limits resources for currently serving members.

**Recommendation L2:** Educate the force on the administrative investigation process and options for commanders to permit all parties involved to be excused from Drill, AT, or orders (paid) during investigation process.

## Conclusion

The members of the Governor's Advisory Council were able to accomplish multiple meetings with open discussion on Maine National Guard programs and its ability to support survivors of sexual harassment and sexual assault. These meetings were productive and many recommendations for change and improvement were offered as a result. All members assigned came to the meetings with the mindset as to how they could help in making things better. The council believes that implementing the above recommendations will improve the overall response as well as a coordinated effort to support the victims/survivors from the Maine National Guard programs and the State of Maine programs. All members of the Advisory Council understand that Sexual

Harassment and Sexual Assault are difficult issues to understand but are further complicated when adding in the complex dynamics, culture, processes, and procedures the Military has. These complex issues were under further constraint due to the lack of time to be able to meet and talk. Additionally, we were not able to view data on many issues which may cause a barrier going forward for viewing progress. It is important that these meetings continue as outlined in the Executive Summary to allow opportunities to assess effectiveness and re-focus efforts were deemed necessary. The meetings going forward will continue to be held in public spaces and will be scheduled a month in advance. All members will be allowed to send a list of preferred participants to be added to the list of invitees. A remote option will be provided to allow for maximum participation both in person or remotely. Having the remote option will allow for a period of time during the meetings for survivors/victims or other invitees or community members to have a chance to speak and provide questions if they wish. It will also be important, if available, to have representation from someone knowledgeable on the programs of SAPR, EEO, and JAG. With the continuation of these meetings, it is recommended that a report will continue to be submitted to the Governor's Office on the continued efforts of the council members.





## Attachment B: Police Memo



DEPARTMENT OF THE ARMY  
JOINT FORCE HEADQUARTERS, CAMP CHAMBERLAIN  
MAINE NATIONAL GUARD  
23 BLUE STAR AVE  
AUGUSTA ME 04333-0033

NGME-ARJ

Date: 23 JUN 2022

MEMORANDUM FOR The Adjutant General, 23 Blue Star AVE, Camp Chamberlain,  
Augusta, ME

SUBJECT: RELEVANT SEXUAL ASSAULT REGULATIONS AND DIRECTIVES

1. Chief of the National Guard Bureau (NGB) Instructions
  - a. CNGBI 0400.01B National Guard Complex Administrative Investigations (See Attached)
  - b. CNGBI 1300.01 Sexual Assault Prevention and Response Program (See Attached)
  - c. CNGBI 1303.01A, 06 August 2014, "Expedited Transfer, Reassignment, or Removal of National Guard Members Due to an Unrestricted Report of Sexual Assault.
2. Chief of NGB Manuals
  - a. CNGBM 1300.02 "National Guard Sexual Assault Incident Response Oversight and Commander's Critical Information Requirements Reports for Unrestricted Reports (See Attached).
  - b. CNGBM 1300.04 NG Expedited Transfer Program for Members with Unrestricted Reports of Sexual Assault
3. DOD Instructions and Directives
  - a. DoD Dir 6495-01 "Sexual Assault Prevention and Response (SAPR) Program," Incorporating Change 3, 11 April 2017
  - b. DoDI 6495.02 "Sexual Assault Prevention and Response (SAPR) Program Procedures," Incorporating Change 3, 24 May 2017
  - c. DoDI 6495.03, Defense Sexual Assault Advocate Certification Program (D-SAACP)
  - d. DoDI 6400.07 "Standards for Victim Assistance Services in the Military Community," Incorporating Change 2, 6 July 2018
4. Army Regulation / Directives
  - a. AR 600-20 c.7 Sexual Harassment/Assault Response and Prevention Program
  - b. ARMY DIR 2021-30 Sexual Harassment / Assault Response and Prevention Services for DA Civilians
  - c. ARMY DIR 2021-16 Immediate Actions to Improve the Sexual Harassment/Assault Response and Prevention Program
  - d. ALARACT 027/2022 Additional Sexual Harassment / Assault Response and Prevention Program Guidance: Expedited Transfers, 24-Month SARC and VA Stabilization, and SHARP Personnel Incentives

NGME- ARJ

SUBJECT: RELEVANT SEXUAL ASSAULT REGULATIONS AND DIRECTIVES

5. Air Force Instructions / Policy Directives
  - a. AFI 90-6001, 15 July 2020, "Sexual Assault Prevention and Response (SAPR) Program Incorporating Change 1, 26 March 2021
  - b. AFPD 90-60, 20 March 2019 "Sexual Assault Prevention and Response (SAPR) Program"
  - c. DAFI 36-2910, ch 2.36, ch 3.2.2.9.1, ch 4, Line of Duty (LOD) Determination, Medical Continuation (MEDCON) and Incapacitation (INCAP) Pay
  - d. DAFI 36-3211, 24 June 2022, Military Separations
6. POC is the undersigned at [alvah.j.chalifour.mil@army.mil](mailto:alvah.j.chalifour.mil@army.mil) or (207) 480-0951.

ALVAH J. CHALIFOUR, JR.  
1LT, JA  
Judge Advocate

## Attachment C: Policy Memo



DEPARTMENT OF THE ARMY  
JOINT FORCE HEADQUARTERS  
MAINE NATIONAL GUARD  
23 Blue Star Ave, Camp Chamberlain  
AUGUSTA ME 04333-0033

NGME-ARO-PM

04 OCT 2022

MEMORANDUM FOR The Governor's Advisory Council

SUBJECT: RELEVANT EQUAL OPPORTUNITY REGULATIONS AND DIRECTIVE

1. Chief of NGB Manuals
  - a. CNGBN 9600- EEO Complaint Processing and Reporting Guidance (10 May 2017)
2. DOD Instructions and Directives
  - a. DoD Instruction 1350.2, DoD Military Equal Opportunity (MEO) Program
  - b. DoD Instruction 1020.03 - Harassment Prevention and Response in the Armed Forces
3. Army Regulation / Directives
  - a. NGR AR 600-21 – EO Program in the ARNG
4. TAG Policy Directives
  - a. TAG 21-04; Maine National Guard Policy on Equal Employment Opportunity
  - b. TAG 21-09; Maine National Guard Policy on Equal Opportunity
  - c. TAG 21-12; Military Procedures for Discrimination and Harassment Request for Resolution (Complaints)
  - d. TAG 21-13; Prevention of Sexual Harassment
6. POC for this memorandum is CPT Dustin Martin at [dustin.j.martin.mil@army.mil](mailto:dustin.j.martin.mil@army.mil) or (207) 430-5393.

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# Appendix A: Abbreviations

ANG – Air National Guard

ARNG – Army National Guard

DEOCS – Defense Organizational Climate Surveys

DOD – Department of Defense

DODI – Department of Defense Instruction

DPS – Director of Psychological Services

DSAID – Defense Sexual Assault Incident Database

FTJA – Full-time Judge Advocate

JFHQ – Joint Force Headquarters

MCMJ – Maine Code of Military Justice

MEANG – Maine Air National Guard

MEARNG – Maine Army National Guard

MECASA – Maine Coalition Against Sexual Assault

MENG – Maine National Guard

MOA – Memorandum of Agreement

MRSA – Maine Revised Statutes Annotated

NDAA – National Defense Authorization Act

NGB – National Guard Bureau

PL – Public Law

SAPR – Sexual Assault Prevention and Response

SAPRO – Sexual Assault Prevention and Response Office

SARC – Sexual Assault Response Coordinator

SiAC – Sisters in Arms Center

SVC – Special Victims' Counsel

TAG – The Adjutant General

URIS – Unit Readiness Inventory Survey

VA – Victim Advocate