

Special Investigator's Report on Alaska National Guard Sexual Harassment and Abuse Issues

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Report to the Attorney General for the State of Alaska on:

** Circumstances Surrounding Allegations of Sexual Abuse or Harassment by Members of the Alaska National Guard between 2010 and 2014*

** State and Local Law Enforcement Response to Allegations of Sexual Abuse or Harassment by Members of the Alaska National Guard between 2010 and 2014*

** Executive Branch Response to Allegations of Sexual Abuse or Harassment by Members of the Alaska Army and Air National Guard between 2010 and 2014*

** Opinion on Cases Requiring Further Investigation*

** Recommendations on How Such Matters Should Be Handled in the Future*

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May 29, 2015

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I. SCOPE OF INVESTIGATION

This investigation reports on the circumstances surrounding allegations of sexual abuse or harassment by members of the Alaska National Guard against other members of the Alaska National Guard or non-members of the Alaska National Guard between September 1, 2010 and November 30, 2014, with authorization to investigate and report on allegations arising prior to September 1, 2010. The requested investigation calls for a written report of findings including the following: (1) the nature of each allegation investigated, including information available and not available; (2) whether the allegation was subject to the Department of Defense's Restrictive Reporting System; (3) whether the known allegation was adequately investigated by state or local law enforcement and if any improprieties occurred; (4) whether reports by local or state law enforcement were forwarded to state or local prosecutors and whether the reports included a recommendation on prosecution; (5) whether appropriate action was taken by the assigned prosecutors; (6) whether the contents of an investigation by state or local law enforcement was communicated to state executive branch employees and, if so, whether appropriate action was taken by the employees who were provided with the investigation materials; (7) an opinion whether any of these cases require further investigation; and (8) recommendations for handling such matters in the future.

II. SUMMARY OF FACT FINDINGS

* Members of the Alaska National Guard who were victims of sexual assault committed by other members of the Alaska National Guard were not reporting those assaults to the Alaska National Guard Sexual Assault Response Coordinators between 2010 and 2012. They were reporting to National Guard chaplains and others that they did not trust their command to help them. Reporting of sexual assaults committed by members of the Alaska National Guard to the National Guard Sexual Assault Response Coordinators increased beginning in 2013 but barriers to reporting remain.

* Frequently cited numbers drawn from the list of sexual assaults reported to the Alaska National Guard Sexual Assault Response Coordinators are not an accurate reflection of sexual assaults committed by Alaska National Guard members. For the five year period of review (2010-2014), ten reports of sexual assault committed by an Alaska National Guard member were made to Alaska National Guard Sexual Assault Response Coordinators. Four of the ten reports were for alleged assaults that occurred prior to 2010.

* Seven of the ten reports of sexual assault where the alleged perpetrator was a member of the Alaska National Guard involve victims who did not wish to pursue criminal prosecution or who filed Department of Defense "restricted reports," expressly indicating that they did not want law enforcement involvement. Of the three reports that were "unrestricted" and thus referred to law enforcement for investigation, one report is

for an alleged assault investigated by military police and found unsubstantiated. One report is for an alleged assault committed in 2008 that, following a state law enforcement investigation, was not forwarded to the Department of Law for prosecution. One report of an alleged 2010 assault was investigated by local law enforcement, reviewed by the Department of Law for prosecution and determined inappropriate for prosecution. Following additional investigation by the National Guard, the matter is currently under advisement by the Department of Law.

* Review of other reported allegations of sexual assault and harassment committed by Alaska National Guard members found in police reports, Alaska National Guard Equal Employment/Opportunity reports, Alaska National Guard Command Climate Surveys and Sensing Sessions, Alaska National Guard personnel investigations and witness interviews indicate that sexual abuse, assault and harassment are significantly under-reported in general and that there are and have been unique barriers to reporting in the Alaska National Guard.

* Reviews of local and state law enforcement records and Department of Law records and of relevant follow-up interviews indicate that most but not all police investigations were adequate and appropriately conducted.¹ Victim interviews by law

¹ Review of police investigations included all of the 38 reports on the Alaska National Guard Matrix for 2010 through 2014 that were referred to State or local law enforcement, including cases where the alleged assailant was a civilian, an unknown person or a member of the active duty military. The review also included reports referred to police but not reported to the Alaska National Guard Sexual Assault Response Coordinators and reports made in the course of Alaska National Guard personnel investigations.

enforcement officers should, in my opinion, be recorded whenever possible. If a case is not going to be prosecuted, victims should be told the reason(s) for the decision and referred to appropriate service providers. Forensic evidence, including the results of medical examinations for injury or trauma, should be considered where consent is an issue before a charging decision is made not to go forward with possible prosecution. These practices were followed in most but not all cases reviewed.

* Command climate issues present at multiple levels in the Alaska National Guard between 2010 and 2014 likely impeded sexual assault and harassment reporting. Many of these command climate issues were known or discoverable by members of the executive branch in and after 2010.

* The Alaska National Guard has begun improvements to systemic problems. Rebuilding trust in leadership and a safe, confidential and fair response to sexual assault and harassment reporting will be challenging and will not happen overnight.

III. MATERIALS REVIEWED AND WITNESSES INTERVIEWED

Discovery requests for records relevant to the scope of the investigation were sent to all Chiefs of Police statewide, all District Attorneys statewide, the Federal Bureau of Investigation, the Municipality of Anchorage, the Alaska National Guard, the Inspector General for the Department of Defense, the Inspector General for the Army and various Assistant Attorneys General for the Alaska Department of Law.

I did not attempt to contact sexual assault victims directly to ask them to relive their trauma with me. I reached out to them through the Sexual Assault Response Coordinators and others, and some victims were willing to speak with me.

Materials reviewed include police reports and related documents and recordings, charging documents, correspondence, Alaska National Guard Climate Surveys and Sensing Session reports, Alaska National Guard Equal Opportunity Reports, the 2014 National Guard Bureau Office of Complex Investigations Command Climate Report and Survey, a matrix of Army Guard and Air Guard sexual assault reports, materials submitted by Senator Murkowski's office, materials submitted by concerned citizens, media reports, other records of the Alaska National Guard, including personnel records related to the investigation, F.B.I records, executive branch correspondence and some Department of the Army Office of the Inspector General Records. Some records requested from the federal government have not yet been received or have only been received in redacted form.

IV. OVERVIEW OF THE ALASKA NATIONAL GUARD

A. Structure and Governance

The Alaska National Guard is a component of the United States National Guard which, in turn, is part of the reserve component of the United States Armed Forces. The National Guard is a unique governmental entity in that it has both state and federal functions. National Guard members may be called into state service in the event of state

emergencies and disasters (such as earthquakes, floods, and forest fires) to conduct, e.g., search and rescue operations or to protect vital public services. National Guard members may also be called into federal service for national defense purposes.² The Alaska National Guard consists of the Alaska Army National Guard, with approximately 1,972 members, and the Alaska Air Guard, with approximately 2,309 members.

The Alaska Army National Guard maintains approximately 77 armories and other facilities across the state, including full-time operation of a launch site for a U.S. anti-missile system at Fort Greely. The Alaska Air Guard is the air force of the State of Alaska. The 176th Wing, at Joint Base Elmendorf-Richardson, is tasked with multiple missions, including global airlift, search and rescue, tactical airlift and NORAD (North American Aerospace Defense Command) air defense. The 168th Air Refueling Wing, at Eielson Air Force Base, is the only Arctic region refueling unit in the United States. The 213th Space Warning Squadron, a component of the 168th Air Refueling Wing at Clear Air Force Station provides tactical warning and attack assessment of a ballistic missile attack against the continental United States and southern Canada.

The Governor's command over the Alaska National Guard is exercised through the Adjutant General of the Alaska National Guard. The Adjutant General is appointed by

² See AS 26.05.070 (providing that the Governor of Alaska may order the "organized militia" into active state service in the event of emergencies); 32 U.S.C. § 102 (providing that the United States Congress may order National Guard units to active federal duty when needed for the national security); 10 U.S.C. § 12406 (providing that the President of the United States may call National Guard members into federal service in the event of invasion or danger of invasion, rebellion or danger of rebellion or the need to supplement the regular military).

the Governor and is the official liaison between the state and the active military in the state, the federal Department of Veterans Affairs and the Federal Emergency Management Agency in the state.³ The Adjutant General also serves as the Commissioner of the Alaska Department of Military and Veterans Affairs.

Most National Guard members serve one weekend a month and two consecutive weeks per year following basic training ("boot camp") and individual training for their military job description. They are generally referred to as the "traditional" National Guard. Traditional National Guard members can, as previously noted, be called to full-time service when they are needed to protect the state or the nation.

These traditional National Guard members are supported by full-time employees of the Army/Air Active Guard and Reserve ("AGR"), Army/Air Reserve Technicians ("ART") and federal and state civil service employees. AGR and ART personnel are full-time civil service employees performing the necessary work that supports the missions of the traditional National Guard members. However, because AGR/ART employees are typically required to serve as traditional National Guard members one weekend a month and two consecutive weeks per year as well and are subject to activation to full-time active military duty, these positions are often described as "dual status": the federal full-time employment is contingent on employment with the Alaska National Guard.⁴

³ AS 26.05.160.

⁴ *See* 32 U.S.C. §709.

Since the terrorist attacks on the World Trade Center on September 11, 2001, the missions of Alaska National Guard and National Guard units across the nation have significantly expanded. Operation Noble Eagle mobilized National Guard members around the country to provide security on military installations, airports and other key infrastructure, as well as to patrol America's borders.⁵

Alaska Air and Army National Guard units have been federally activated, often multiple times, since 9/11. Deployments include but are not limited to Afghanistan, Iraq, Kosovo, Mongolia, and the Horn of Africa. Since 9/11, more of Alaska's Army Guard members have gone to war than at any time since World War II.⁶

B. Application of Alaska Statutes and the Uniform Code of Military Justice to Members of the Alaska National Guard

Alaska law provides that crimes committed by members of the National Guard "shall be tried in civil courts and prosecuted by civil authorities except offenses of a purely military nature."⁷ Thus, Alaska National Guard members are typically subject to the same criminal law penalties and rights as all other citizens of Alaska. However, if they are "federalized" by the President of the United States or otherwise serving under Title 10 of the United States Code, such as in the event of a deployment to serve in

⁵ Greenhill, J. "*Odierno: National Guard contributions since 9/11 'Critical.'*" www.army.mil. 11 Sept. 2012.

⁶ Baker, F. "*Alaska Guard Sees Dynamic Change in Face of Deployments.*" U.S. Department of Defense. 23 August 2007.

⁷ AS 26.05.300.

combat situations, they then become subject to the Uniform Code of Military Justice (UCMJ) if a crime is committed.⁸

Instead of jury trials most commonly found in civilian criminal matters, courts-martial are conducted under the Uniform Code of Military Justice. Juries are comprised of military service members. If trial results in conviction, the case is reviewed by the convening authority - the commanding officer who referred the case for trial. The convening authority has discretion to change the findings and sentence, set aside convictions or remand the matter back to a court-martial for re-hearing. Various appellate avenues also exist.⁹

Under Article 15 of the Uniform Code of Military Justice, military commanders, including National Guard commanders, also have the authority to exercise administrative action regarding service members, such as reduction in rank, loss of pay, restrictions of privileges or involuntary separation from continued service in the National Guard for violations of the Uniform Code of Military Justice. Personnel actions of this type are available to both active duty and National Guard leaders and include Army Regulation ("AR") 15-6 Investigations for Army Guard members and Air Force CDI (Command Directed Investigations) for Air Guard members. Beginning in 2012, the Office of Complex Investigations (OCI) was created by the National Guard Bureau to investigate,

⁸ 10 U.S.C. § § 801-946.

⁹ *Id.*

among other things, sexual assault allegations involving alleged National Guard perpetrators.

Because members of the Alaska National Guard work in different state/federal capacities, jurisdictional questions of which law enforcement agency should investigate or litigate claims of criminal misconduct by National Guard members have occurred. Several cases that were examined for this report indicate that, at times, Alaska National Guard members, commanders and local law enforcement personnel may have been confused about appropriate or alternate avenues for relief when sexual assault, abuse or harassment occurs and involves a National Guard member as the alleged perpetrator.

C. Sexual Assault, Abuse and Harassment as Defined by Alaska Law and the Uniform Code of Military Justice

*** Sexual Assault**

Alaska Statutes generally define sexual assault as including attempted or actual sexual penetration or contact without consent, including when the offender knows that the victim is unaware that a sexual act is being committed, is incapacitated or is mentally incapable of consent.¹⁰ Sexual contact includes "knowingly touching, directly or through clothing, the victim's genitals, anus, or female breast; or knowingly causing the victim to touch, directly or through clothing, the defendant's or victim's genitals, anus, or female breast."¹¹

¹⁰ AS 11.41.410 - 427.

¹¹ AS 11.41.900(58)(A).

Article 120 of the Uniform Code of Military Justice and Department of Defense Directive 6495.01 generally define sexual assault as "intentional sexual contact characterized by use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent." Sexual contact is defined to include "any touching, or causing another person to touch, either directly or through the clothing, any body part of any person, if done with the intent to arouse or gratify the sexual desire of any person."

*** Sexual Abuse of a Minor**

Alaska law generally prohibits any sexual contact with a child under 13 if the offender is 16 or older. Alaska law prohibits solicitation of, or sexual penetration or contact with, minors in multiple other contexts depending on the age of the offender, the age of the minor, whether the offender occupies a position of authority over the person or minor and whether the offender shares the same household with the victim.¹²

Article 120 of the Uniform Code of Military Justice generally prohibits engaging in any sexual conduct with a child under 12 years of age. It further prohibits sexual contact with a child older than 12, where force, threat, unconsciousness, drugs or alcohol are involved.

¹² AS 11.41.410-.470.

* **Sexual Harassment**

Alaska law defines the crime of Harassment as, among other things, subjecting another person to offensive physical contact.¹³ It also prohibits publishing or distributing electronic or printed materials that show the other person engaged in a sexual act or that show the genitals, anus or female breast of the other person. It also prohibits repeated telephone calls at extremely inconvenient hours and obscene telephone calls or electronic communications.¹⁴

The Uniform Code of Military Justice treats sexual harassment as a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct is explicitly or implicitly a condition of a person's job, pay, or career or when such conduct creates an intimidating, hostile or offensive work environment.¹⁵

D. Historical Perspective to Sexual Abuse, Assault and Harassment Allegations in the Military and the National Guard

Although sexual assault in the military, including the National Guard, is not a new issue, it was not until 2005 that the Department of Defense approved a comprehensive service-wide policy on prevention and response and created the Sexual Assault

¹³ AS 11.61.120(a)(5) and AS 11.61.110.

¹⁴ AS 11.61.120(a)(3) & (4).

¹⁵ 10 U.S.C. § 1561.

Prevention and Response Office (SAPRO).¹⁶ SAPRO, in turn, oversees the Sexual Assault Prevention and Response (SAPR) program.

A 2012 Pentagon anonymous survey found that approximately 26,000 men and women reported they were sexually assaulted during military service, with conduct ranging from groping to rape. Of those, only 3,374 cases, less than 20%, were reported to authorities. A Pentagon report found that 5,061 military members actually reported cases of sexual assault in 2013, with only 376 cases resulting in conviction.¹⁷

Preliminary findings of a 2014 survey by Rand Corporation indicate that 20,000 service members said they had experienced at least one incident of unwanted sexual contact in the past year, representing nearly 5% of active duty women and 1% of active duty men. Preliminary findings of the survey further indicate that 62% of women who experienced a sexual assault and reported it felt some type of retribution or retaliation, with social retaliation accounting for the largest form of perceived retribution.¹⁸ This survey also indicates that approximately 87% of men will not make an official report if they are sexually assaulted.¹⁹

¹⁶ DoD Directive 6495.01.

¹⁷ Cooper, Helene, *"Pentagon Study Finds 50% Increase in Reports of Military Sexual Assaults."* The New York Times. 28 May 2014.

¹⁸ Kime, Patrick, *"Incidents of rape in military much higher than previously reported."* Military Times. 4 December 2014.

¹⁹ U.S. Government Accountability Office, *GAO-15-284*. 19 March 2015.

The Office of Complex Investigations statewide survey of Alaska Army and Air Guard members reflects that 200 members reported that they were victims of harassment or discrimination within the prior one-year period (April 2013 - April 2014). Of these reports, 27 were specific to sexual harassment, with the majority occurring in the Army Guard.²⁰ Since only approximately 25% of statewide National Guard members responded to the survey, simple extrapolation suggests that many more members than those that answered the survey were sexually harassed or assaulted in this one-year period alone.²¹

V. SEXUAL ASSAULT/ABUSE/HARASSMENT REPORTING OPTIONS

Victims of sexual abuse, assault and harassment may report their experiences to police, family or friends, religious advisors, sexual assault advocacy or counseling service providers, medical personnel, private counselors and/or veterans counseling

²⁰ The Department of Defense's June 3, 2014 Climate Survey for the Alaska Air National Guard indicates on pages 7, 14 and 15 that three men were sexually harassed within the past year, and none reported the harassment. The Climate Survey for the Alaska Army National Guard indicates on pages 7, 14 and 15 that nineteen men and five women were sexually harassed within the past year. Fourteen members reported the harassment to a supervisor; three reported to Equal Opportunity/Equal Employment representatives; seven did not report to anyone; and none filed formal complaints. This survey did not specifically ask whether the person surveyed was the subject of a sexual assault.

²¹ This method of extrapolation, i.e., drawing a conclusion for a larger identified group from a much smaller survey group, was used by the Department of Defense to estimate the total number of service members who experienced some form of unwanted sexual contact in 2012. It is also a survey tool often used in political polling. Such extrapolation assumes that the smaller survey group is sufficiently random to be a fair predictor of the larger group for purposes of extrapolation.

services. Alaska National Guard members may also report to and seek services from the National Guard Bureau Sexual Assault Prevention & Response Program (for sexual assaults) and the Army Guard and Air Guard Equal Opportunity and Equal Employment Offices (for sexual harassment, hostile work environment and other work-related discrimination or unfair practices).

National Guard Bureau Sexual Assault Prevention & Response Program (SAPR)

The National Guard Bureau Sexual Assault Prevention & Response Program (SAPR) has been a work in progress since the program was first announced.²² Under the current program, a victim of sexual assault may make either a "restricted report" of assault or an "unrestricted report" of assault. Regardless of the type of report selected, the overarching goal of the program is to help the victim be aware of and connect with appropriate resources such as health care, counseling, compensation and information concerning justice system options.

A restricted report enables military members and their dependents 18 years of age or older to report allegations of sexual assault to a Sexual Assault Response Coordinator, healthcare personnel, trained Victim Advocate or chaplain/religious advisor without triggering an investigation and notification of identity to the chain of command or law

²² A detailed history and explanation of the program can be found at www.jointservicesupport.org.

enforcement. If the victim elects, a Victim Advocate is assigned and the victim is eligible for legal assistance, just as when an unrestricted report is made.

There are limitations on restricted reporting. Victims cannot obtain an expedited transfer or a military protective order to assure no further unwanted contact with the alleged perpetrator.²³ Although restricted reporting protects the victim's confidentiality, there is also no criminal law enforcement involvement, meaning offenders will not be held accountable for their actions, and victims could be forced to work with or for the offender because commanding officers lack of knowledge of the circumstances. Finally, even when a victim desires restricted reporting, that option can be unavailable or lost under the current regulatory scheme if the victim tells someone within the victim's chain of command about the assault and that person is not a designated recipient for restricted reports or if superiors learn of the assault through independent sources.

Provisions of Army Regulation 600-20 and its counterparts, Department of Defense Directive 6495.01-02, 32 Code of Federal Regulation 635.28 and Code of Federal Regulation 105.8,²⁴ addressing restricted reporting are not, in my opinion, models

²³ DoD Directive 6495.01, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM 4 (January 23, 2012 Incorporating Change 1, Apr. 20, 2013).

²⁴ Each Service has slight variations in its policy language involving restricted reports. The Air Force policy provides:

SARCs [Sexual Assault Response Coordinators] and VAs [Victim Advocates] should also notify victims that any disclosure of information about their sexual assault to individuals other than the SARC, VA or Healthcare Personnel may result in the initiation of an official investigation regarding the allegations that the victim disclosed.

of clarity as to just how, when and in what circumstances restricted reports of sexual assault in the National Guard lose their status as restricted reports and must include notification to the chain of command of the National Guard. My interviews suggested that many National Guard members believe that if a National Guard member reports any sexual assault to another member of the National Guard, even if that assault occurred while the member was in civilian status and/or if the assault involved a civilian perpetrator, the National Guard member who hears of the assault has a legal obligation to report the assault to the chain of command.

There are, in my view, shades of grey in the Department of Defense policy about restricted and unrestricted reporting of sexual assaults. By example, 32 Code of Federal Regulations 105.8(a)(5) provides:

In establishing the Restricted Reporting option, DoD recognizes that a victim may tell someone (e.g., roommate, friend, family member) that a sexual assault has occurred before considering whether to file a Restricted or Unrestricted Report.

(i) A victim's communication with another person (e.g., roommate, friend, family member) does not, in and of itself, prevent the victim

AFI 36-6001 ¶3.1.9.8.2. The Army policy provides:

In the event that information about a sexual assault is disclosed to the commander from a source independent of the restricted reporting avenues, or to law enforcement from other sources, the commander will report the matter to law enforcement and law enforcement remains authorized to initiate its own independent investigation of the matter presented. Additionally, a victim's disclosure of his/her sexual assault to persons outside the protective sphere of the persons covered by this policy may result in an investigation of the allegations.

AR 600-20 Appendix H-5(e).

from later electing to make a Restricted Report. Restricted Reporting is confidential, not anonymous reporting. However, if the person to whom the victim confided the information (e.g., roommate, friend, family member) is in the victim's officer and or non-commissioned officer chain of command or DoD [Department of Defense] law enforcement, there can be no Restricted Report. (emphasis added)

This provision leaves some questions regarding restricted reports, particularly as they pertain to National Guard members. If, by example, a victim reports a sexual assault while in civilian status and/or by a civilian assailant to a friend not in the victim's direct chain of command but in the National Guard, there is some question whether that friend has the obligation to report the identity of the victim to a National Guard supervisor. If so, such a "tattletale" rule could deter reporting within the National Guard.

The highly accomplished current statewide sexual assault coordinator for the Alaska National Guard advised me that so long as an assault occurs while a Guard member is in civilian status and involves another civilian, the victim can make a restricted report through National Guard channels even if civilian police have become involved. While this exception makes good sense, it is not clearly set forth in the regulation or policies governing restricted reports.

An "unrestricted" report is generally any report of sexual assault if made to any person other than specific persons entitled to take restricted reports, i.e., Sexual Assault Response Coordinators, designated healthcare providers and Victim Advocates. If an unrestricted report of sexual assault is made, the Sexual Assault Response Coordinator is

notified and assigns a Victim Advocate to the victim. The Adjutant General is informed, chain of command is informed on a need-to-know basis and law enforcement is notified.

Sexual Harassment Reports to National Guard Equal Opportunity Offices

As previously noted, sexual harassment complaints in the National Guard are limited to incidents of harassment that have sexual context but do *not* involve physical touching. This might include such things as inappropriate comments or verbal overtures for sexual favors. Where touching of any part of the body for sexual gratification is involved, the military will treat such an event as a sexual assault, and the reporter is referred to the Sexual Assault Response Coordinator.

When sexual harassment occurs, members of the National Guard, Title 32 Active Guard Reserve members, applicants for National Guard service and National Guard beneficiaries may file an informal or formal complaint. An informal complaint is a complaint that may be resolved by working with the parties involved, chain of command or others. Formal complaints are made in writing and involve a formal complaint, formal investigation and findings, personnel action where appropriate and the right to appeal.

VI. 2010-2014 FINDINGS REGARDING SEXUAL ASSAULTS AND HARASSMENT

A. Victims Seldom Report Sexual Assault or Harassment; Military Victims Face Unique Challenges to Reporting Sexual Assault or Harassment

The Justice Department estimates that 68% of sexual assaults are not reported to police.²⁵ Shame, self-blame, avoidance/blocking the incident, fear of retribution and fear of not being believed are commonly cited reasons why sexual assaults are so seldom reported to authorities.

For military members, including Alaska National Guard members, there are unique challenges. Vanessa Meade of Alaska Veterans Organization for Women (AVOW) related that many service women do not feel comfortable in going to the Veterans Health Administration medical facilities for help because they fear loss of confidentiality. While the Anchorage Veterans Administration medical facility has a sexual assault response coordinator, Meade said that, until recently, the coordinator was in a cubicle in the hall. Improvements are being made. Veterans Administration counselors are now doing outreach counseling one day a week through the Y.W.C.A. in Anchorage.

Dr. Marie Bateman of the Vet Center in Anchorage, explained that there are far greater barriers to reporting sexual assault in the military because basic training for

²⁵ Justice Department, *National Crime Victimization Survey: 2008 - 2012*.

military work is team building and trust that you can depend on the person to your left and to your right to protect you in war or the other dangerous missions that call for military assistance. Sexual assault survivors are also afraid that they will be shunned. As Dr. Bateman put it, "shunning is the biggest way to punish in the Army."

One long-time Alaska National Guard Victim Advocate stated that "leadership numbers," presumably referring to the number of official reports made to the National Guard, for victims of sexual assault are misleading. The Victim Advocate reported that at least ten victims seek assistance each year but choose not to file an official report.

B. Specific Barriers to Reporting Sexual Assault or Harassment in the Alaska National Guard Include a History of Mishandled Complaints, Tolerance of or Long Delay in Responding to Some Sexual Misconduct Complaints and a Widely Held Perception of Cronyism and Unequal Treatment

Mishandled Complaints

One barrier to reporting sexual assaults in the Alaska National Guard involves allegedly mishandled sexual assault reports. By example, it was reported that one young recruit was the victim of a sexual assault (predating 2010) in training school and went to a National Guard Sexual Assault Response Coordinator for help. This was in fact helpful, but the recruit was held back for a later class.

According to the reporter, a senior officer "went ballistic" that the recruit had been moved back a class and demanded to know why. The recruit's commander told him that since the recruit was working with a Sexual Assault Response Coordinator, he could only

guess what happened.

According to the reporter, the senior officer told others in the unit the recruit's identity and situation. He also shared the information with a group of friends who were at his home for poker. One of the poker players worked with the recruit's parent and told the parent - the one person the victim did not want to know what had happened.

Another sexual assault claim of improper investigation and reprisal dates back to 2006 at Fort Greely. This report details a sexual assault committed by a soldier against another soldier's wife while he was away. The letter contends that senior officials essentially swept the allegation under the rug and that the complaining husband was, shortly after the reported assault, removed from the National Guard on largely pretextual grounds.

Another victim has publicly spoken about her 2007 rape in Anchorage while serving with the Alaska National Guard. She believes someone slipped a drug in her drink. She was violently raped by an unknown person. Late for duty the next day, she showed her supervising sergeant her discharge paperwork from the Elmendorf Emergency Room and her supervisor convinced her to speak with a chaplain. Shortly afterwards, an officer approached her, demanding to know what happened.

The officer said he would have to tell her sergeant but no one else would know. She contends that, a week later, when she returned to work, everyone knew, and she believes that the officer breached her confidentiality. The officer has publicly denied the

allegations. The victim states that the Sexual Assault Response Coordinator would not take her report because it was "too late."²⁶ This victim advocates convincingly that the violation of a victim's confidentiality should be penalized, and penalizing such violations is one of the recommendations of this report.

Betty Doe²⁷ asserts that she was sexually assaulted several times by a supervising National Guard member prior to 2010. She felt that her other supervisors tried to make her have the matter investigated in-house. She asserts that the alleged perpetrator told her that a supervisor told him to tell her to "kennel her fucking dogs."

After Betty Doe went to police and obtained a restraining order from a state court, she felt isolated and shunned by her largely male co-workers. Her assailant was appointed a lawyer, but she was told she did not need one. She resigned from the Guard several months later, before the investigation concluded. Review of the personnel investigation in this matter indicates that several of her co-workers questioned her credibility and morals without providing any evidence to support their claims. Given her resignation from the National Guard, no findings were ever made and no adverse personnel action against the accused occurred as a result of the incidents.

²⁶ Mauer, Richard, "*Rape victim says Alaska National Guard violated her confidentiality.*" Alaska Dispatch News. 11 September 2014.

²⁷ No identifying names are used in this public report, even for those victims who have previously elected to "go public" with their complaints.

In 2009, Edith Doe, who has also gone public with her complaints, filed a restricted report of sexual assault with the Guard but also notified police, and then waited four years to learn what was happening with her report.

Evidence was supposed to be sent to the State Crime Lab for DNA testing and the matter was suspended pending receipt of the Crime Lab report. The lab test request fell through the cracks and results were not obtained for almost four years.²⁸ Edith Doe also claims that the former Alaska National Guard Sexual Assault Response Coordinator (SARC) provided no help.²⁹ Edith Doe went public with her complaints in October 2013.³⁰

Cathy Doe filed a report of sexual assault in 2009, claiming sexual assault by another National Guard member. She felt she was retaliated against as a result. She reported that the Office of the Inspector General verified her claim of reprisal, but that the process emotionally devastated her, causing her to leave the Guard.

²⁸ This is a case of a suspected civilian assailant investigated by local law enforcement. The failure to follow up on the materials sent to the State Crime Lab was clearly a serious oversight by police, and I was told that the officer involved was reprimanded.

²⁹ The former Statewide Sexual Assault Response Coordinator has relocated, and I was not able to locate her. I am told that her notes indicate that Edith Doe declined having a Victim Advocate assigned. After Edith Doe went public, the current Sexual Assault Response Coordinator reached out to her to provide services.

³⁰ Cockerham, Sean, "*Alaska National Guard unit being investigated for allegations of sexual misconduct.*" McClatchy DC. 27 October 2013.

Dana Doe filed a restricted report of sexual assault in 2010. She felt that her confidentiality had been breached when a senior officer approached one of her friends, asking if she was the one who filed the restricted report and asking about the circumstances of the assault. She feared retaliation if she went public with her report because that same senior officer had brought her attacker into the National Guard.

The Alaska National Guard Sexual Assault Response Coordinator during this time period was a contract employee. Several witnesses felt that she was not strict enough about maintaining client confidentiality.

Tolerance of Sexual Misconduct

Few individual investigations and/or personnel actions for sexual misconduct occurred prior to 2013, or, if they did occur, they were not provided to me. However, one 2012 command-directed investigation of sexual harassment involving multiple victims of unwanted sexual advances and/or inappropriate comments was addressed swiftly following notice, with appropriate recommended action for the offender, including reprimand, demotion and ultimate termination of employment with the Alaska National Guard.

Other investigations of National Guard members in several different units in different geographic locations around the state did not reflect such prompt action in response to complaints of sexual misconduct, harassment or assault. Investigations into members of the Army Guard Recruiting and Retention unit reflected a very long history

of alleged misconduct and complaints to leadership. Multiple witnesses in investigations beginning in 2013 reported that they feared going against the status quo conduct of certain senior members of the unit would end their careers with the National Guard.

An exhaustive 2013 investigation of alleged sexual misconduct at the Fort Greely-based 49th Missile Defense Battalion resulted in the June 2013 suspension of Lt. Col. Joseph Miley from command. The investigation grew from allegations by soldiers in the unit that Lt. Col. Miley either permitted or condoned fraternization and extramarital affairs among the soldiers under his command. It was not alleged that Lt. Colonel Miley personally engaged in any type of sexual misconduct. The suspension was announced in a public statement from the Army's Space and Missile Command in Huntsville, Alabama.

Many witness statements regarding misconduct at Fort Greely referred to years of sexual misconduct and inaction, with at least one offender being recommended for promotion despite having recently been reprimanded for having an "inappropriate relationship" with a junior soldier in his chain of command.

In yet another unit elsewhere in the state, allegations of sexual harassment and hostile work environment involving multiple victims going back to 2011 were finally investigated and confirmed as a continuing issue in 2014. The Investigating Officer concluded that the conduct was "a direct result of low morale and a toxic command climate" with "a lack of trust and respect with the soldiers and the unit command team."

One National Guard Victim Advocate also described seeing victim bashing. The Victim Advocate was stationed at a National Guard base when an investigation with multiple victims was initiated against a National Guard "team leader." According to the Victim Advocate, one senior Alaska National Guard officer wanted the investigation to go forward. The Victim Advocate suspected other senior leadership may have tried to influence law enforcement decisions. As the Victim Advocate put it, "[this base] was ripe with toxic leadership."

Cronyism

Many people whom I spoke to talked about the Alaska National Guard as much like a family, even if an occasionally dysfunctional one. It is my view that this feeling of family is one of the greatest strengths of the Alaska National Guard. Unfortunately, it can also be a serious weakness.

In the active duty military, members are typically rotated frequently, meaning that they will be interacting with different commanders, peers and subordinates as assignments change. In contrast, state National Guard members are residents, or typically become residents, of the state where they serve and typically continue serving that state during the entire course of their military careers. This continuity creates a relatively small, stable work force that, after years of working together, can experience a true feeling of family.

My investigation also revealed that it is not at all uncommon for membership in the National Guard to be generational, with membership in the National Guard a proud family tradition. Similarly, many members of the Alaska National Guard, as I suspect is true with other state National Guard units, met and married their spouses while in the National Guard, and both spouses serve in the National Guard.

Finally, my investigation also revealed that it is not uncommon for National Guard relatives, such as spouses or children, to be hired as contractors or as Active Guard Reserve employees supporting the traditional Guard. By example, the wife and uncle of one member of the Army National Guard Recruiting and Retention unit were civilian contractors for the National Guard. The children and spouses of several senior officials in the Alaska National Guard were civilian National Guard contractors or National Guard members.

While the friend and family affiliations of the Alaska National Guard can be a true strength, they can also result in systemic weaknesses when internal controls are not in place to insure that all members of the Alaska National Guard family are treated equally and fairly and that there is uniform accountability for misconduct. Such close ties can also create real or perceived barriers to reporting problems about "family" members.

Major General Katkus and Lt. Colonel Joseph Lawendowski have a long-standing professional relationship and are reputed to be friends and neighbors. Maj. Gen. Katkus was Lt. Col. Lawendowski's supervisor before being named Adjutant General, and

thereafter, Maj. Gen. Katkus ordered that Lt. Col. Lawendowski report directly to him, which is not consistent with typical National Guard command structure. This created a widely held perception that Army Guard Recruiting and Retention personnel had a favored position with the General.

Recruiting and retention was also very important during this time. Alaska National Guard members were being deployed to multiple war zones, and successful recruiting and retention were critical to the success of missions. Brigadier General Leon Bridges reported that "buckets of money" were poured into military recruiting and retention nationwide given the demands of war on multiple fronts. Significant bonuses were being paid for each new recruit or re-enlistment. "The Mission," as it was known, was to maintain sufficient forces to meet the country's need for combat-ready troops.

Sworn statements made in 2013 and 2014 investigations into the Army National Guard Recruiting and Retention unit include assertions of years of sexual harassment, assault or other misconduct by multiple Recruiting and Retention personnel. As one Recruiting and Retention member stated, "Mission was King, behavior wasn't a factor as long as you were getting soldiers in boots."

Other members of the unit stated that because of the close personal relationships among supervisors within and outside the unit, they did not believe reporting misconduct would have appreciable results but would instead spell the end of their own careers with the National Guard. Whether such cronyism was real or perceived, the family-like nature

of the National Guard can and did create barriers to reporting misconduct.

C. Victims Made Few Formal Reports of Sexual Assault Committed by Other Members of the Alaska National Guard to the National Guard's Sexual Assault Response Coordinators between 2010 and 2014

My investigation quickly revealed that the National Guard's Army and Air Sexual Assault Response spreadsheet or matrix (the "Matrix") of all reported sexual assaults to the Sexual Assault Response Coordinators is not an appropriate measure of sexual assaults committed by Alaska National Guard members.

The Matrix under-reports sexual assaults by National Guard members because the National Guard's Sexual Assault Response Program services are not available to the general public. These services are only available to National Guard members and their dependents, with some additional services available to technicians and others working for the National Guard. Thus, civilian victims not otherwise associated with the National Guard are not on the Matrix.

Most members of the Alaska National Guard are civilians most of the time. When they leave National Guard duty, they return to villages, towns and cities across Alaska. Logic suggests that if National Guard members are sexually assaulted when not on National Guard duty, they turn to their local support resources and local law enforcement for help. Thus, it is likely that some under-reporting to the National Guard occurs simply because of the nature of traditional National Guard service.

The Matrix also over-reports sexual assaults by National Guard members because it includes sexual assaults committed by civilians against National Guard members or their adult dependents, even when such assaults occurred when the National Guard member was in a civilian capacity. While the Matrix includes information about whether the suspected assailant was a member of the Guard or a civilian at the time of the alleged assault, simple reference to the numbers of reports in the Matrix can be misleading. By example, the Matrix includes one restricted report referred from Texas to Alaska only for tracking.

It is a credit to the National Guard and all branches of the military that they provide members and their dependents sexual assault survivor services regardless of whether the military members were assaulted in their citizen status or military status and regardless of the status of the perpetrator as a member of the military. However, inclusion of the "citizen" assaults in evaluating the circumstances surrounding allegations of sexual assault and harassment in the National Guard between 2010 and 2014 can lead, as previously noted, to potentially misleading conclusions.³¹

As reported in 2013 by Sean Cockerham, the chaplains "said victims have been coming to them for years, and that the *majority were assaulted by fellow guard members*. The chaplains said victims don't trust their commanders to help because of a history of

³¹ I also reviewed the cases involving non-Guard civilian assailants and some of my observations about better police practices in some cases stem from that review. Since consideration of the civilian cases was not requested in the contract description, they are not specifically addressed in this report.

mishandled complaints, in which victims felt that nothing was being done."³² The single restricted report of sexual assault by a National Guard member the same year (2010) when chaplains and others were reporting that multiple victims were not coming forward is consistent with a fear of reporting Guard member misconduct to leadership. Unfortunately, that trend continued, as more fully discussed later in this report.

Because of the issues that I perceived surrounding the use of the National Guard Matrix as a means of determining sexual assaults committed by Alaska National Guard members, I elected to attempt to draw information on known allegations of sexual abuse, assault and harassment from multiple sources: (1) the Sexual Assault Response Coordinator Matrix; (2) statewide police reports; (3) Alaska National Guard Equal Opportunity complaints; (4) Office of the Inspector General records of reprisal complaints related to sexual assault or harassment; (5) Alaska National Guard personnel records; and (6) information from other first responders, such as religious advisors, National Guard victim advocates, community-based victim counselors and healthcare/Wounded Warrior resources.

³² Cockerham, Sean, "*Alaska National Guard unit being investigated for allegations of sexual misconduct.*" McClatchy DC. 27 October 2013 (emphasis added).

1. Ten reports of sexual assault alleged to have been committed by members of the Alaska National Guard were made to Alaska National Guard Sexual Assault Response Coordinators for the five year period between 2010 and 2014

Of the 38 Alaska National Guard Sexual Assault Response Coordinator's (SARC) Matrix "reports" reviewed, covering the five-year time frame from January 1, 2010 to December 31, 2014, ten reports involve alleged perpetrators who were members of the Alaska National Guard. Seven reports were restricted reports that were not referred to law enforcement at the election of the victim. The three unrestricted reports were referred to local, state or military police.

2010

One restricted report of sexual assault committed by a member of the Alaska National Guard was made in 2010. As a restricted report, it was not referred to law enforcement for investigation at the election of the victim.

2011

One restricted report was made where the alleged assailant was a member of the Alaska National Guard in 2011. Because it was a restricted report, it was not referred to law enforcement for investigation at the election of the victim.

2012

One unrestricted report of sexual assault in 2012 to a Sexual Assault Response Coordinator involves an alleged National Guard assailant. The police report indicates that the victim told police that the victim advised the National Guard command of the

event and wanted to document the event. However, the report states that the victim requested no further police action.

Police suspended the matter such that it could be reopened by the victim at some future date. It is my opinion that it was appropriate for the police to respect the victim's wishes. This matter was also the subject of personnel action by the Alaska National Guard, and the perpetrator's employment with the National Guard was terminated.³³

2013

In 2013, one restricted report was made for a sexual assault in 2008 by another Guard member while the victim and assailant were deployed overseas. Again, as a restricted report, this report could not, based on the choice of the victim, be referred to law enforcement.

One restricted report was made unrestricted in 2013, and four new unrestricted reports involve incidents where both the reporter and accused were Alaska National Guard members. The first of these reports involves an incident that was investigated by military police prior to 2010 and found unsubstantiated. The reporter asserted that she had been denied essential services at the time and wished services now. A Victim Advocate was assigned. As this was a military investigation, state or local police were

³³ This sexual assault report would be considered Harassment in the Second Degree under Alaska law (offensive touching of the buttocks over clothing), but which potentially constitutes Sexual Assault under the Uniform Code of Military Justice (intentional touching of any part of the body over or under clothing with the intent to arouse or gratify sexual desire). Notably, multiple witnesses testified to sexually harassing behavior by this offender in the personnel investigation but this single report appears to be the only official report of such harassment.

not involved.

The second report involves an assault that was initially a restricted report in an earlier year. The victim elected to seek law enforcement involvement in 2013, and that year, the National Guard referred the matter to the Department of Law. The Department of Law declined to prosecute. Additional evidence has been submitted to the Department of Law in 2014 and 2015 and a final determination is pending.

The third report involves an event that occurred approximately one year earlier. The victim advised state law enforcement that she did not wish to prosecute; she simply did not want to deploy with the offender. It is my opinion that it was appropriate for law enforcement to respect the victim's wishes.

At the request of the victim, no further action was taken other than personnel action. The suspect did not deploy and was the subject of an administrative personnel action. This personnel investigation also included multiple witnesses who stated that they were also subjected to sexual assault and/or harassment by the suspect, although only one formal report was apparently made/retained.³⁴

Unfortunately, the personnel proceeding in this matter was, in my opinion, unreasonably delayed and the suspect "voluntarily" resigned from the National Guard

³⁴ One witness told me that additional complaints of sexual assault or harassment were made against this individual, but those other complaints are not in the personnel file that I received in discovery from the National Guard. (The personnel file that I received includes only National Guard victims.) As I do not know the identity of other alleged victims, I could not confirm this claim.

before any final personnel action was taken. I recommend that additional investigation/action be taken in this matter to protect community safety.³⁵

The fourth and fifth reports in 2013 involve the same National Guard member and two different National Guard perpetrators, with both events having occurred approximately one year earlier. The victim reported the incidents to civilian law enforcement but elected not to proceed and did not return law enforcement's calls. A Victim Advocate was assigned. The matters were closed. I cannot fault this response by law enforcement given the victim's decision not to proceed.

2014

Two reports of sexual assault by Alaska National Guard perpetrators were made in 2014. In one case, the victim declined to participate in the investigation by the police. That matter is suspended until/unless the victim is willing to go forward. I cannot fault this response by police.

The second case involves an incident dating back many years. The police have concluded their investigation and have not recommended the matter for prosecution. This decision falls within prosecutorial discretion boundaries based on my review of the facts.

³⁵ This public version of my report to the Attorney General has been modified to exclude references to or inclusion of materials and opinions that are, in my opinion, otherwise protected by privacy laws or common law privileges, including but not limited to opinions regarding possible future legal or administrative actions. My goal for this report is to be as transparent as possible without violating the law or potentially compromising any future criminal or civil investigation of facts or issues that surfaced during the course of this investigation.

2. Four reports of sexual assault alleged to have been committed by "unknown" assailants were made to Alaska National Guard Sexual Assault Response Coordinators for the five-year period between 2010 and 2014

Four of the reports made to Alaska National Guard Sexual Assault Response Coordinators during the five-year period of review include reports where the status/identity of the perpetrator is listed as unknown. Since identity is unknown, I reviewed these reports, as it is at least possible that the alleged assailants were associated with the National Guard. Two of the reports are restricted reports, and therefore no further information could be determined other than the fact that a report was made.

The third report involves an Alaska National Guard member's spouse as victim and an unknown assailant. The victim declined to participate in an investigation. Police suspended the case until/unless the victim is willing to participate in an investigation. A Victim Advocate has been assigned. The police response here is appropriate under the circumstances.

The fourth unidentified perpetrator report involved an out-of-state individual believed to possibly be in the active duty military. The matter was reported to military and civilian law enforcement who have, despite significant effort, been unable to find a suspect matching the description of the alleged assailant. I recommend that this case be reopened based on information learned during my investigation.

3. Two reports of sexual assault alleged to have been committed by active duty military personnel were reported to Alaska National Guard Sexual Assault Response Coordinators for the five-year period between 2010 and 2014

Of the two reports to Alaska National Guard Sexual Assault Response Coordinators for the five-year period between 2010 and the end of 2014, one report involves an alleged sexual assault by a member of the active duty military. The matter went to a military court martial and resulted in acquittal. The other "report" is a restricted report concerning an alleged assault by an active duty member of the military. The report was transferred from Texas to Alaska solely for tracking purposes.

D. Some Reports of Sexual Assault, Abuse or Harassment Were Made to Police, Equal Opportunity and Employment Advisors, First Responders and in the Course of Personnel Investigations

1. Reports to state and local police

There is no statewide tracking system for offenses committed by Alaska National Guard members. In an effort to capture as many reports of sexual assault, abuse or harassment as possible, a request was sent to every Police Chief and District Attorney statewide for any cases that they or their co-workers could remember from 2010 to 2014 involving members of the Alaska National Guard. This effort, based on memories going back five years, almost certainly does not include all reports to police. However, the effort, along with the assistance of others, resulted in locating and reviewing the following cases not already included in the SARC Matrix.

1JU-14-01265 CR: State v. James Leblanc-Tweedy. The Indictment charges two counts of Sexual Abuse of a Minor in the Second Degree (sexual penetration with minor 13-15). This case is pending trial as of 5/25/2015.

1JU-14-01270 CR: State v. Harris Graves. The Indictment charges one count of Sexual Abuse of a Minor in the Second Degree (sexual penetration with minor 13-15). This case is pending trial on July 27, 2015 as of 5/25/2015.

1KE-14-00752 CR: State v. John Smith. The Information charges Harassment in the Second Degree, Stalking in the Second Degree, and Assault in the Third Degree. All cases are identified as involving domestic violence. This case is set for a change of plea on June 5, 2015 as of 5/27/ 2015.

State v. John Smith: 3AN-14-09497 CR. The Complaint charges Harassment in the Second Degree, Stalking in the Second Degree, and Assault in the Third Degree. The Information Replacing Complaint charges Stalking in the Second Degree and Harassment in the Second Degree. The charges are identified as involving domestic violence. This case is pending trial as of 5/27/2015.

Anchorage Police Report 11-2535. This report and related documents and information gained during the investigation include a report of sexual assault occurring during an overseas deployment by a member of the National Guard who prematurely died under unusual circumstances before making a formal report of the sexual assault to police. I was unable to obtain all materials associated with this investigation, particularly

including detailed forensic analysis from the autopsy. It is my opinion that this investigation should be reopened, at least for purposes of verifying correct forensic analysis and full investigation.

State v. Thomas Hopson: 2BA-12-00613 CR and 2BA-12-00632 CR. These cases both charged one count of Sexual Abuse of a Minor in the Second Degree (sexual penetration with minor 13-15). The charge in 2BA-12-00632CR was dismissed and Mr. Hopson pleaded guilty to the charge in 2BA-12-00613CR. CourtView records reflect that Mr. Hopson was sentenced to 30 years in prison with 15 years suspended.

Alaska State Trooper Report AK15003351. This is the investigation of a sexual assault. The victim described the assault to the police but asked that the matter not proceed to prosecution of the perpetrator. The investigating officer agreed not to further investigate unless the victim decided otherwise. It is my opinion that following the victim's wishes was a proper response by law enforcement. This is a case where the victim also testified in personnel actions, and the alleged perpetrator is subject to termination of employment with an "other than honorable" discharge.

Anchorage Police Department Report 10-26206. This is the investigation of a sexual assault. It is my recommendation that this matter be reopened based on information discovered during the course of this investigation, as more fully set forth in my original report. I note that I do not believe that the information discovered during this

investigation was available or could likely have been discovered at the time of the incident.

AST 11-39870 (Possession of Child Pornography and Unlawful Exploitation of Minor). This police report was found while reviewing personnel files. The report describes "sexting" between a National Guard member and his seventeen-year-old live-in girlfriend who was also pregnant with their child. The prosecutor declined prosecution given the age of the victim, the victim's wishes and the relationship of the parties. This decision falls within prosecutorial discretion boundaries in my opinion.

2. Reports to Equal Opportunity/Equal Employment Opportunity personnel

Internal reports of sexual harassment, as sexual harassment is defined under the Uniform Code of Military Justice, directed at Alaska National Guard members are typically handled by the Alaska National Guard Equal Employment/Equal Opportunity Officers. For the years in question (2010-2014), the Alaska National Guard Statewide Equal Employment Manager maintained essentially no relevant records. This problem was identified by the National Guard Bureau Office of Complex Investigations in their September 2014 report: "The Team requested a roster of all EEO/EO complaints going back 10 years; however, there was no clear record-keeping system available that would provide that information."³⁶

³⁶ National Guard Bureau Office of Complex Investigations Report of Assessment of the Alaska National Guard, page 8. 4 September 2014.

By the time I arrived for my investigation in February 2015, a new Statewide Equal Employment Manager was being trained for the position. The Alaska National Guard was moving from planning to implementing the multiple recommendations made by the Office of Complex Investigations team regarding Equal Opportunity and Equal Employment, including case tracking, program oversight, providing well-trained and certified personnel for the program, including a new position for Fort Greely, and increasing leadership support of the Equal Employment and Equal Opportunity programs.

In an effort to find as many known reports of harassment between 2010 and 2014 as possible, despite the obvious barrier of initially finding essentially no written records in the statewide office, I requested that the Air Guard provide any records that they might have for their respective Wings. Both the 168th and 176th Wings had complete records for the Air Guard for the years in question.

The 176th Wing had only two formal complaints of discrimination filed between 2010 and 2014 and neither involved sexual harassment claims. There were 169 consultations, with no informal or formal complaints filed at or after the consultation.

The 168th Wing had three informal complaints of sexual harassment between 2010 and 2014. One informal complaint of sexual harassment was resolved with a no contact order, prohibiting contact between the complainant and accused, followed by a Commander's Inquiry, which involved an adverse personnel action. One informal complaint of sexual harassment was resolved by terminating the employee's employment

with the Alaska National Guard. The record of action taken in the oldest case was no longer available as the Air Guard record retention period for this material is two years, although the Air Guard maintains its records for four years. A total of 28 consultations occurred between 2010 and 2014, with no formal or informal complaints filed at or after those consultations.

The new Alaska National Guard Statewide Equal Employment Manager ultimately located Army National Guard annual reports for FY 2010, 2011 and 2014. These documents indicate that no sexual harassment complaints, formal or informal, were filed during these time periods.

I found references to Army National Guard Equal Opportunity complaints, however, when reviewing personnel investigation materials. By example, one sexual assault report to the Sexual Assault Response Coordinator originated as an Equal Opportunity complaint and the investigation of that matter resulted in interviews with four more victims of sexual assault or harassment who did not file complaints with the National Guard or for whom complaints cannot now be found.

It is my opinion that the Army National Guard annual reports regarding sexual harassment and other forms of discrimination are more likely the result of extremely poor record-keeping than overt cover-up. However, it is also my opinion that these annual reports do not accurately portray sexual harassment, hostile work environment or discrimination in the Alaska Army National Guard, including those reports that resulted

in adverse personnel actions. Rather, it appears that a number of command-directed investigations were initiated without formal complaints being filed.

As earlier noted, the 2014 Climate Assessment Survey and Report by the Office of Complex Investigations reveals that twenty-four members of the Army National Guard experienced sexual harassment within the prior twelve months. Fifteen members stated on the survey that they reported the sexual harassment to a supervisor or to EO/EEO personnel. 67% were dissatisfied with the way their complaint was handled. Assuming that the annual reports are even remotely accurate, this data suggests that supervisors were not turning to trained Equal Opportunity/Employment Advisors to assist with the investigation of sexual harassment complaints and complaints were not documented.

3. Office of the Inspector General reports of reprisal

I did not receive any Office of the Inspector General records regarding investigation or findings of reprisal against victims of sexual harassment or assault for the period from 2010 to 2014. I did, however, talk to a survivor of a sexual assault that occurred prior to 2010. That victim's account of the assault by a fellow National Guard member, report to a superior and the painful experiences thereafter with the National Guard, even when she "won" her reprisal complaint, led to the victim ultimately leaving the National Guard.

This National Guard member's feeling of reprisal because of her report of a sexual assault was described as like being cut off from family. However, this victim also found

that some National Guard leaders, in the victim's words, "protected" her and tried to help her cope with the issues associated with the assault and the reprisal.

This victim turned to sources outside the National Guard for counseling. The victim gave glowing reviews of the "Vet Center" and its director for the counseling provided. This victim turned to this entity at least in part because it is, as the victim put it, "really confidential." I was told later by an Anchorage Vet Center counselor that Vet Centers do not track their clients by social security number and will not disclose confidential information obtained without the written consent of the patient.

4. Reports to other "First Responders"

My list of "first responders" to matters involving reports of sexual assault, abuse and harassment includes friends and family, religious advisors, sexual assault response coordinators, victim advocates, counselors, healthcare professionals, superior officers and police. I was obviously not able to conduct a statewide survey of this large group. For most, privilege rules would prohibit them from breaking confidences or disclosing any identifiable information. I did conduct some interviews to attempt to determine where, if they were not reporting to the Alaska National Guard Sexual Assault Response Coordinators or Equal Opportunity Advisors, Alaska National Guard victims were going for help.

A military chaplain is trained to serve any spiritual need, regardless of religious affiliation. Alaska National Guard Chaplains Koch, McGovern, Cavens and Friese did

not seek out public attention and for years tried to work within the National Guard structure to address the increasing number of concerns that they were hearing from National Guard members about sexual and other misconduct within the National Guard. The only motive that I could find for their actions was a desire to help the National Guard members they serve. Chaplain Koch described the past five years as more stressful than his war-zone deployments.

I was not able to precisely quantify the exact number of persons reporting to chaplains that they were afraid to report their situations involving sexual harassment or abuse to superiors. According to Chaplains Koch and McGovern, "red flags" were beginning to appear before 2010. By late 2009, they and other chaplains and chaplain assistants were being told that victims were afraid to come forward with complaints.

Other resources for sexual assault victims are the many local resource centers for domestic violence and/or rape survivors. I do not know how many victims sought assistance from women's shelters and counseling centers across the state, such as STAR (Standing Together Against Rape) and others like it. For men, there are few such resource centers, although a medical ombudsman told me of several males who sought services from the Wounded Warrior unit but refused to report their sexual assault experiences to the former statewide National Guard Sexual Assault Response Coordinator.

One other seemingly unlikely resource for victims was Lt. Col. Ken Blaylock, former supervisor of the Army Guard Recruiting and Retention unit. Blaylock was a trusted confidant for at least several victims who have confirmed that relationship. He pointed them to the police and the Sexual Assault Response Coordinator. According to Lt. Col. Blaylock, some went, some never have.

5. Personnel investigations

There are thousands of pages of documents related to personnel investigations during the five-year period of my review, 2010 to 2014. It is within these documents that most of the reports of misconduct, sexual and otherwise, widely circulated in the media reside.

Most of the personnel records reviewed involve investigation of sexual misconduct that, while distasteful, does not constitute a crime under Alaska law but which can be actionable and/or the basis for administrative personnel action under the Uniform Code of Military Justice. This conduct includes such activities as the following: engaging in adultery and/or sexual relations with subordinates, National Guard recruits or the spouses of National Guard members; engaging in sexual relations with civilians and/or other National Guard members during work hours or in National Guard buildings or vehicles; having junior soldiers act as "look outs" while engaging in sexual relations on National Guard time or in National Guard buildings or vehicles or with spouses of National Guard members; and creating a hostile work environment, including by

discussing sexual topics in the workplace, soliciting sexual favors, making sexualized comments, giving inappropriate sexual gifts or "gags" (such as buying a thong for a junior soldier or sending used pantyhose to another soldier), and sending sexual texts, pictures, signs or Facebook posts to or about co-workers. Several personnel investigations involved allegations of sexual assault and sexual harassment as defined by Alaska and/or military law and some of these investigations revealed multiple victims of the same perpetrator over a period of years.

As earlier noted, few individual investigations and/or personnel actions for sexual misconduct occurred prior to 2013, or if they did, records relating to such investigations and personnel actions were not produced. I did not find any indication that the witness statements collected in the exhaustive Fort Greely 2013 investigation were provided to Equal Opportunity Advisors for further investigation or action. I found multiple allegations of sexual misconduct that soldiers made to their lower-level chain of command that went unanswered, in some cases for years. I recommend that the Alaska National Guard carefully review this investigation and the interviews conducted to determine whether further action should be taken at different levels of the command structure if the allegations made are true. If there is to be full accountability, it should be at every level of the command.

In or about 2013, funds became available for a National Guard sexual assault investigator. A former Alaska National Guard member and former Anchorage Police

Department officer, Major (now Lt. Col.) Jane Wawersik, was hired by Maj. Gen. Katkus for the position. Many of the personnel investigations that followed were conducted by Lt. Col. Wawersik, although investigations were also conducted by other officers, some of whom clearly undertook extensive investigations.

These investigations had a cascading effect. Information gained from interviews in some of the early investigations indicated misconduct by other National Guard members and Lt. Col. Wawersik sought permission to initiate new investigations. The new investigations were authorized and initiated through Lt. Col. Wawersik's immediate superiors, Gen. Jorgensen or Gen. Bridges.

Multiple investigations have been completed, resulting in pending or final actions ranging from reduction in rank to Withdrawal of Federal Recognition and removal from the Alaska National Guard with an "other than honorable" characterization of service. Of the 21 personnel investigations that I reviewed that resulted in findings of sexual misconduct ranging from harassment/hostile work environment to sexual assault, the breakdown of personnel actions taken or in the process of being taken is as follows:

PERSONNEL ACTION
TAKEN/ANTICIPATED³⁷

NO. OF INDIVIDUALS

Involuntary separation from service with designation of service as other than honorable	7
Involuntary separation with designation of service as general honorable	3
2-step reduction in rank	1
1-step reduction in rank	2
General Officer Letter of Reprimand	4 (with 3 of the 4 removed from supervisory positions)
5-day suspension	1

In one case, the alleged perpetrator voluntarily left the National Guard before the personnel action was final. National Guard attorney Gregory Vanison advised me that the National Guard cannot force people to remain in the Guard if their enlistment period is over. Since this investigation was not yet complete at the time of voluntary separation, no further action was directly taken by the National Guard.

In another case, where a reduction in rank was recommended, the alleged perpetrator was medically discharged from the National Guard before final personnel action could be taken. Captain Vanison advised that a medical discharge for service-

³⁷ While some of these personnel actions are final, others are still in the process of evidentiary hearing, further review, appeal, or the subject of lawsuits. Some actions are also delayed pending the outcome of medical/disability evaluations.

related injuries "trumps" any other personnel action except separation under other than honorable conditions.

In a third case, the victim left the National Guard before the investigation was complete. Therefore, no findings were made, and no action was taken.

Where the investigations turned up potentially uncharged crimes, they have been generally referred to local and state law enforcement for further investigation. During the course of my investigation, the Anchorage Police Department was conducting a line-by-line review of several of the National Guard investigations to determine if criminal charges should be pursued.

6. Command Climate Surveys

The 2014 Office of Complex Investigations Report relied heavily on the results of its Climate Survey to draw many of its conclusions, including that "[a]ctual and perceived favoritism, ethical misconduct, and fear of reprisal are eroding trust and confidence in AKNG leadership" and that sexual abuse "victims do not trust the system due to an overall lack of confidence in the command."³⁸ In order to better assess the circumstances surrounding allegations of sexual abuse, assault and harassment during the years of my review, I requested copies of all Climate Surveys and the results between 2010 and 2014. I received all Air Guard surveys but only a few Army Guard surveys.

³⁸ 2014 Office of Complex Investigations Report at 2-3.

I am told that Climate Surveys occur by unit with any change of command so that a new commander can have a sense of unit strengths and weaknesses with the new command. At least prior to 2012, Climate Surveys could also be requested by the Adjutant General through the Office of the Inspector General.

The 2014 Office of Complex Investigations Report states that the team reviewed Climate Surveys for the preceding five years and the survey results in 2014 "confirmed the issues identified by the Team during their onsite interviews and reiterated issues that had been raised in the 22 previous surveys conducted by the National Guard."³⁹

My investigation did not include close analysis of the prior Defense Equal Opportunity Management Institute (DEOMI) surveys (which include hundreds of pages of data) referenced in the Office of Complex Investigations Report. Witness interviews suggest that many National Guard members felt that they were "over-surveyed" and further felt frustrated that they were not apprised of the results of the surveys or of specific actions taken in response to the survey results.

It appears that, except for the 2014 Office of Complex Investigations DEOMI survey, all DEOMI surveys between 2010 and 2014 were unit surveys rather than full Alaska National Guard membership surveys. I was, however, able to obtain a 2011 joint Air/Army Guard survey requested through the Office of the Inspector General. That survey was sent to all Alaska National Guard members of the rank of E-7 and above. The

³⁹ 2014 Office of Complex Investigations Report at 10.

2011 Office of the Inspector General survey had a very high response rate.⁴⁰ Of twenty questions directly related to senior leadership in the Army Guard, the responses on eighteen questions fell into the "red zone," indicating pervasive negative responses. I do not have as precise a breakdown for responses from Air Guard members but the overall Air/Army survey results reflect significant perceived problems with the senior leadership command climate. Some of the most serious perceived concerns relate to the following: (1) high levels of stress/conflict within units; (2) whether personnel were held to the same professional and personal standards; (3) standards of discipline; (4) effectively leading by example and developing subordinates; and (5) senior leadership integrity.

E. Most but Not All State and Local Law Enforcement Responses to Allegations of Sexual Abuse, Assault or Harassment by Members of the Alaska National Guard Were Appropriate

I reviewed all cases referred from the National Guard to local or state law enforcement and those cases that were otherwise identified by various law enforcement agencies as involving Alaska National Guard members as alleged or potential perpetrators or victims. As noted in my summary of findings, it is my opinion that sexual assault victim statements should be recorded whenever possible. Prosecution of sexual assault cases often hinges on the credibility of the victim, as these crimes seldom have eye witnesses. A recorded (or videotaped) statement presents the facts as perceived by

⁴⁰ The 2014 Office of Complex Investigations Survey had a response rate of less than 25%. The 2011 survey had a response rate of approximately 36%.

the victim, not as perceived through the lens of a third person. Recorded interviews were done in most but not all cases. None of the interviews were videotaped.

It is my opinion that victims should be told, at least verbally, if their case is not going to be prosecuted and the reason(s) for the decision. Victims should also be told about available resources, including referral to counselors, advocates and the Alaska Office of Victim's Rights. It is my opinion that this action provides some measure of acknowledgement, closure and direction for victims. There are some cases where the reports indicate advice of this type was given. Other reports are silent on the subject and I therefore do not know if such advice was given.

Finally, it is my opinion that forensic evidence, such as the results of sexual assault medical examinations, should typically be considered where consent is an issue before a charging decision is made not to go forward with possible prosecution. Such examinations record, among other things, signs of internal trauma or injury that can be indicative of non-consensual sex. Review and consideration of forensic evidence was done in most but not all reports reviewed.

The above observations include what I perceive to be "best practices." I did not find any cases where the failure to follow best practices necessarily impacted the resulting disposition of the case.

I recommend that two sexual assault investigations be reopened, at least for consideration of information discovered during this investigation.⁴¹ I recommend that one open investigation remain in that status until all new evidence has been received and evaluated so that any final charging decision is based on the best available evidence. It is my opinion that the victim should be consulted before a final decision is made. I also recommend that one death investigation be reopened, at least for review and consideration of forensic evidence, or lack of the same, that I was not able to fully review for this report.

F. Command Climate Issues that May Have Affected the Reporting of Sexual Assault and Harassment within the Alaska National Guard/Air Guard Were Known or Discoverable to the Executive Branch in and after 2010

1. Notice of state and local police investigations/reports

My contract requires that I report, at minimum, whether the contents of an investigation by state or local law enforcement was communicated to state executive branch employees and whether, in my opinion, appropriate action was taken by the executive branch employees who were provided the contents of an investigation.

I found no evidence that the contents of law enforcement investigations resulting from the ten reports of sexual assault made to the Alaska National Guard Sexual Assault Response Coordinators were communicated to state executive branch employees (other

⁴¹ The specifics of these recommendations are not included in this public report because doing so could hamper further investigation and/or law enforcement actions.

than employees in the District Attorney's Offices or the Deputy Attorney General (Criminal Matters) except in one instance.

A Department of Law prosecutor notified Maj. Gen. Katkus that the Department was declining prosecution of a case referred for consideration. The letter did not include the police report. That letter was forwarded to Mike Nizich. It is my belief that this letter was in response to a request from Maj. Gen. Katkus for a final action determination by law enforcement so that a National Guard personnel action could proceed.

The police reports/charging records involving incidents not otherwise on the National Guard Matrix were not, to my knowledge, forwarded to Executive Branch employees other than those who might have been working with/for law enforcement on a specific case. While I do not have evidence that the actual police report was forwarded to Executive Branch employees, a citizen complainant wrote lengthy emails to, among others, Nancy Dahlstrom (Governor Parnell's Special Advisor on Military Affairs), Mike Nizich (Governor Parnell's Chief of Staff) and Sharon Leighow (Governor Parnell's press secretary) in/around late 2013/2014 urging, among other things, an independent investigation into the untimely death of a young, healthy member of the Alaska National Guard who died from what was described on the death certificate as an "undetermined" cause.

Ms. Dahlstrom states that she forwarded the emails that she received from this citizen to Mr. Nizich. She did not know how much of this information, if any, was

thereafter relayed to the Governor. Ms. Dahlstrom also states that she left a large packet of the allegations and other information she obtained at the front desk of the Federal Bureau of Investigation in Anchorage with the hope they might be able to determine if investigation was appropriate. Ms. Dahlstrom states that she has since been in contact with the Federal Bureau of Investigation to confirm they have these materials.

2. Executive branch notice that victims were not reporting sexual assaults/harassment

As noted, the Executive Branch was not receiving official reports of sexual assault/harassment in the Alaska National Guard for most of the years in review. One reason is that, for most of the five years under investigation, very few reports of sexual assault or harassment committed by Alaska National Guard members were made through official Alaska National Guard sexual assault or harassment channels, i.e., the Sexual Assault Response Coordinators and Human Relations/Equal Opportunity Advisors. Rather, four chaplains from the Alaska Air and Army Guard and others were reporting that National Guard members were not coming forward with sexual misconduct reports because they did not trust their command to help them.

According to the chaplains whom I spoke with, Maj. Gen. Katkus simply refused to acknowledge that there was a problem. And, when the chaplains and others sought help from National Guard representatives at the federal level and from senior State of Alaska officials, it seemingly became an endless loop of asking people for help who refused to acknowledge a problem.

According to Chaplains Koch and McGovern, one senior officer had regular "temper flares" against other senior officers. Chaplain Koch wanted to try to mediate. He took his concerns to Maj. Gen. Katkus. At the next senior staff meeting, the senior officer was "steaming mad" at Chaplain Koch. Chaplain Koch perceived that this kind of response to dissension or complaint was too common in the command climate.

2010

By January of 2010, Sean Parnell was Governor and Tom Katkus was Adjutant General. At some point thereafter, Maj. Gen. Katkus elected to modify typical chain-of-command protocols and directed that Recruiting and Retention's commander, Lt. Col. Lawendowski, would report directly to him. Other significant and contentious senior leadership position changes also began to be made.

In March of 2010, Maj. Gen. Katkus and Colonel DeHaas were told by members of a local police department that a member of the Army Guard had stated to police that he was importing and distributing large quantities of illegal drugs in National Guard vehicles and on National Guard time.⁴² Police officers listed other Army Guard personnel who were also "persons of interest" in their drug investigation. They also told Maj. Gen.

⁴² This National Guard member was not charged with this conduct and my investigation did not reveal evidence that the member was actually ever caught distributing or even in possession of illegal drugs. Rather, the evidence in my possession indicates that this member volunteered this information to police after a friend was found by police in possession of a large quantity of illegal drugs while driving a vehicle registered to another Alaska National Guard member. This investigation has concluded. The National Guard member provided information that assisted law enforcement in making subsequent arrests, although none of them involved members of the Alaska National Guard.

Katkus and Colonel DeHaas that the National Guard member had agreed to act as an undercover informant on behalf of the police.

At approximately the same time that the National Guard member was agreeing to be a confidential informant, Dana Doe⁴³ reported that she was raped by another Guard member. She filed a restricted report with the National Guard Sexual Assault Response Coordinator. Lt. Col. Blaylock states that shortly after making her report, a senior official asked him if Doe was the victim that had made the restricted report of rape and if he knew anything about it. Lt. Col. Blaylock reports that he said "no." Blaylock related the contents of this conversation with the senior official to Dana Doe.

During this same timeframe, Lt. Col. Blaylock relates that a fellow National Guard member came to him, saying words to the effect that he had hurt women and moved drugs and was afraid. Lt. Col. Blaylock reports that he encouraged him to talk to a police officer who was also a member of the National Guard and a friend of Blaylock.

Lt. Col. Blaylock also related to that police officer that he knew of four sexual assault victims that were afraid to report their assaults. The officer encouraged Blaylock to have them contact him so that the police could help them. According to a statement by the National Guard member who went to Blaylock, Blaylock ordered him to talk to the police officer and not to tell his chain of command because the chain of command could

⁴³ All "Does" in this report are pseudonyms to protect the victims' identities.

not be trusted. The National Guard member told his chain of command. The National Guard member met with the police officer but gave him no information.

Within a day of the meeting between the police officer and the National Guard member, Lt. Col. Blaylock states that Maj. Gen. Katkus called another meeting. Several members of the local police department were present with Maj. Gen. Katkus and Chief of Staff DeHaas. At the meeting, Lt. Col. Blaylock relates that he was brought in and berated by both Maj. Gen. Katkus and Col. DeHaas for not disclosing names of sexual assault victims when asked and was ordered to disclose the names of sexual assault victims that had come to him. He refused. General Katkus has stated in an interview, which I did not attend, that he does not specifically recall this meeting but that he would have wanted Lt. Col. Blaylock to provide any information about sexual assaults to the National Guard Sexual Assault Response Coordinators so that the victims could receive appropriate services.

Shortly after this meeting, a National Guard personnel investigation was directed against Lt. Col. Blaylock.⁴⁴ During the investigation, a "no contact" order was issued prohibiting members of the confidential informant's unit from having contact with Blaylock. Relying principally on the disputed testimony of the National Guard member who asserted that he was "ordered" by Blaylock to go to police, the Investigating Officer found that Lt. Col. Blaylock improperly interfered in "ongoing personnel actions"

⁴⁴ Normally, personnel investigations are subject to strict privacy laws that do not allow for public dissemination. Lt. Col. Blaylock expressly authorized this disclosure.

involving the confidential informant and purposely undermined the chain of command. The finding also includes criticism of Blaylock's interactions with sexual assault victims, indicating that Blaylock did not understand the policies and procedures for sexual assault reporting in AR (Army Regulation) 600-20.⁴⁵

The initial recommendation was for a General Officer Letter of Reprimand and that Lt. Col. Blaylock be removed from his command. Lt. Col. Blaylock's commander accepted the recommendation for a Letter of Reprimand but rejected the proposal that Blaylock be removed from command. After consideration of Lt. Col. Blaylock's rebuttal, the commander further reconsidered, concluding on December 5, 2010 that the Letter of Reprimand should not be filed in Blaylock's personnel file. He instead wrote a letter to Lt. Col. Blaylock advising that, while he was not going to go forward with a formal Letter of Reprimand, Lt. Col. Blaylock's actions, even if well-intentioned, had the potential to harm investigations or referrals that were not within the scope of his authority or expertise.

Dana Doe has stated that she felt partly to blame for Blaylock's investigation. She also felt even more afraid to make her sexual assault report unrestricted/public for fear that a similar fate might await her.

⁴⁵ Army Regulation 600-20 is a massive regulation governing everything from military grade and rank to sexual assault and harassment prevention and response. However, 32 C.F.R. 105.8(a)(5) is widely interpreted to mean that if a victim confides a sexual assault to a person in the victim's chain of command, immediate notification to the Sexual Assault Response Coordinator and the unit commander is necessary.

It is my opinion that Lt. Col. Blaylock and some senior National Guard leaders were unfortunately working at cross-purposes. There is evidence that indicates that some senior National Guard leaders viewed Lt. Col. Blaylock as a conspiracy theorist who was not beyond reaching unfounded conclusions about persons who he felt had wronged him. For his part, Lt. Col. Blaylock harbors strong negative feelings about and distrust of at least several senior National Guard leaders.

Frightened victims will not likely trust a system if they believe that they or their friends will be punished for not sharing the details of a sexual assault on demand. However, no matter how well-intentioned Lt. Col. Blaylock may have been, he lacked the authority to, by example, issue orders that could have ensured that the victim would not have to work with the suspect while an investigation went forward. Such an order issued, but only after the victim elected to make her report unrestricted. Had there been a conversation, rather than an apparent power struggle, the victim's interests might have been better served.⁴⁶

As has been exhaustively covered in the media, and as was reported to me by the chaplains involved, telephonic meetings with chaplains and Governor Parnell occurred twice in late 2010, and Chief of Staff Nizich was designated as the chief contact person for further conversation and information. Mike Nizich had multiple email exchanges

⁴⁶ Lt. Col. Blaylock has made many very serious allegations about several members of the Alaska National Guard. To the extent that those allegations involve the subject of my report, I did not find evidence to support many of them. Where evidentiary support was found for his allegations involving the subject of my report, that information is included in this report.

with the chaplains and others regarding the allegations. One lengthy, detailed account of the problems with drugs, alcohol and sexual assault within the Guard concluded with, "We are a train wreck happening."

Several witnesses advised me that victims of sexual assault met with Katie TePas, the Office of the Governor's Domestic Violence and Sexual Assault Response Coordinator, to express their frustration with the National Guard and police handling of their allegations. I have not yet been able to confirm these meetings with Ms. TePas. Ms. TePas emailed Mike Nizich on November 7, 2010, summarizing her meeting with Chaplain Koch. She described Chaplain Koch as appearing to be "very credible" in his report that sexual assault cases were not being handled properly and that victims were not reporting due to fear of reprisal.

Other letters of concern were also directed to the Governor. One letter provides detailed information regarding alleged mishandling of sexual assault complaints by a senior officer. Other letters, from current and retired senior members of the Alaska National Guard, include detailed accounts of alleged abuses of power and reprisals by several senior National Guard officers.⁴⁷

Chief of Staff Mike Nizich has stated that he contacted the FBI in 2010 regarding the complaints alleging criminal conduct. The FBI states that it was made aware of the allegations regarding criminal conduct within the Alaska National Guard in 2010. The

⁴⁷ Not all of these letters address alleged sexual harassment or assault. Many letters relate to personnel complaints.

FBI initiated a preliminary investigation based on allegations of potential obstruction of justice. To date, the FBI has not acquired sufficient evidence to support a violation of federal law.

Complaints did not stop at the Governor's Office. A request for a National Guard Bureau/Department of Defense Office of the Inspector General inquiry into multiple alleged instances/patterns of misconduct by a senior officer was submitted by Alaska National Guard members in the fall of 2010.⁴⁸

2011

In early 2011, the Department of the Army Office of the Inspector General issued findings of misconduct by an Alaska National Guard senior official. Redacted Freedom of Information Act materials include findings that this official engaged in misconduct, including the following: (1) diverting an Army helicopter from its assigned route to make an unscheduled stop in Idaho so that moose antlers from Alaska could be delivered to a taxidermist; (2) diverting approximately \$2,500 from a program fund to purchase, from a private vendor, engraved coins that the official gave out at special events or to special people; (3) overcharging the government for personal travel expenses; (4) holding an unauthorized political fundraiser in the official's home; and (5) directing National Guard employees to organize a sports tournament for private purposes, authorizing

⁴⁸ In July of 2010, a tragic crash of a Boeing C-17 Globemaster at Joint Base Elmendorf-Richardson resulted in the death of all four persons aboard as the team was preparing for an airshow in a few days. Active duty Air Force and Alaska Air National Guard members perished in the crash. While the crash is not tied directly to the issues I investigated, it likely had some impact on morale, particularly within the Alaska Air Guard.

administrative leave for the tournament, and, after being told by Human Relations that such leave was not authorized, failing to rescind the offer of administrative leave.

Moreover, the investigating officer found that the evidence suggested that the senior official may have influenced a witness to change the witness's testimony regarding the circumstances of the moose antler helicopter ride.

I have no reason to believe that Governor Parnell or his staff were informed of the Office of the Inspector General findings or any subsequent action related to the findings. I have confirmed that fact with Randy Ruaro, Policy Director and Special Counsel to the Governor. One of my recommendations is to refer the findings of the Office of the Inspector General for further action as appropriate. Another of my recommendations is that the Governor immediately receive any future Office of the Inspector General finding substantiating misconduct by a member of the Alaska National Guard.

The chaplains continued their emails to the Governor's Office through 2011, repeatedly advising that members were being retaliated against by senior officials. In October 2011, another letter included a list of names of senior officers in the National Guard that the Governor or his representatives should contact, as well as their contact information and suggested questions that should be put to them. These were officers who felt they could not report outside the chain of command but could answer questions if directly asked by their Commander in Chief - the Governor.

By December 22, 2011, Chaplain Rick Cavens accused Chief of Staff Nizich of betraying the chaplains' confidentiality. Mr. Nizich denied doing so.

2012

An anonymous letter was sent to members of the Legislature in early 2012. It alleged misconduct ranging from misuse/misappropriation of funds and government property to acceptance/cover-up of sexual misconduct and assault. It is not known if all members of the Alaska Legislature received this letter. The Governor's Office received a copy.

The 2011 Office of the Inspector General survey of both Alaska Air and Army National Guard members was, as earlier noted, negative. The survey results, without comments, were provided to Ms. Dahlstrom on/about April 18, 2012, who in turn appears to have forwarded notice of the survey to Mike Nizich the next day. Alaska's senators were also hearing these concerns. Senators Murkowski and Begich each pursued further investigation of allegations of misconduct in the National Guard through federal channels, such as the Inspector General's Offices of the Department of the Army and Department of Defense. An aide to Senator Begich also sent at least one email expressing concern to Chief of Staff Mike Nizich.

A 2012 DEOMI survey of one of the Air Guard Wings reflected serious issues with morale and preferential treatment. Thirty-five percent of survey responses disagreed with the statement that "morale in the unit is high." Over thirty percent responded

unfavorably to the statement that “my chain of command rewards and recognizes the most deserving members in my unit.”

2012 was also a year in which the National Guard Bureau sent a team to assist the National Guard Air and Army sexual assault prevention programs. Both the Air and Army Guard had hired Sexual Assault Response Coordinators in the recent past.

Careful in their report to state that they were not there to "investigate" but rather to assist the program, the report nonetheless highlights the improvement of the program with the hiring of a new Statewide Sexual Assault Response Coordinator in 2012.

The report states that Maj. Gen. Katkus met separately with the Program Team and Alaska Sexual Assault Response Coordinators. The report also states that he believed his program was "solid" and he identified "IG [Inspector General] and Congressional Inquiry as being the reason for the [National Guard Bureau] visit." The report indicates the team's function was to provide assistance and that it was not acting as an inspection team. The report further states that a recent survey of the 176th Wing of the Air Guard included a comment that "I can think of three women who have been assaulted in our Wing and are afraid to report it." In contrast, there was only one report of a sexual assault through official channels in the entire Alaska National Guard (both Air and Army) in all of 2012.

Lt. Colonel Lawendowski, formerly commander of the Army Recruiting and Retention unit, was also named as Senior Operations Officer in 2012. Lt. Colonel Knowles took over the command of the Recruiting and Retention unit.

2013

Newly-hired National Guard investigator Lt. Col. Wawersik began investigating various allegations of sexual misconduct at the Alaska National Guard in 2013. Each investigation brought out additional allegations of sexual and other misconduct, and Lt. Col. Wawersik and other appointed investigators became immersed in multiple claims of sexual misconduct, some going back years.

As earlier noted, another investigation of sexual misconduct was pursued at Fort Greely in 2013. That investigation resulted in a Department of the Army suspension of the Fort Greely commander. Email exchanges with the Governor's Office make clear that the Governor and his staff were at least aware of the suspension of the Commander at Fort Greely.

In late summer 2013, several National Guard chaplains and one victim met with now Governor Bill Walker and now Chief of Staff Jim Whitaker to discuss their concerns about National Guard leadership. They also met with Senator Fred Dyson and his Chief of Staff, hoping to take their concerns to the Governor by a senior and respected legislator. Chaplain Koch reported to me that Senator Dyson's efforts to persuade the Governor to take additional action were unsuccessful.

In October 2013, Sean Cockerham wrote the first media account of investigations of sexual misconduct in the Alaska National Guard, including comments by the chaplains that the issues had been raised for years with senior command.⁴⁹ Cockerham also interviewed a National Guard victim of sexual assault who reported that she had been waiting years for justice.

Senator Hollis French was also asking questions of the Governor during this time period, many of which are similar to the questions posed in my investigation regarding reports referred to local law enforcement.

Chaplains Koch and McGovern report that at a meeting on/about December 6, 2013, McHugh Pierre, Deputy Commissioner of Veterans and Military Affairs, met with them, encouraging them to bring concerns to him first, particularly regarding the legislature. On December 9, 2013, Pierre met with the chaplains again and asked them to sign a document to the effect that they would not report Alaska National Guard problems outside the chain of command or would only do so in their personal capacities.

The chaplains advised that they wanted their lawyer, Wayne Anthony Ross, to review the document before they signed it. Pierre took back the document and advised that Wayne Anthony Ross should call him with questions. Ross thereafter wrote Pierre, asking to see the document. No further direct communication between Ross and Pierre appears to have occurred.

⁴⁹ S. Cockerham, "*Alaska National Guard unit being investigated for allegations of sexual misconduct.*" McClatchyDC. 27 October 2013.

2014

In February 2014, Chaplain Koch again asked Senator Dyson, through his Chief of Staff Chuck Kopp, to make another attempt to have the Governor take affirmative action regarding the identified issues in the Guard. The Governor met with Senator Dyson and, at Dyson's suggestion, called Lt. Col. Wawersik, the National Guard investigator responsible for many of the ongoing sexual misconduct investigations undertaken in the preceding year.

Lt. Col. Wawersik recommended an investigation by the Office of Complex Investigations of the National Guard Bureau. The Governor in turn made that request on February 28, 2014. The National Guard Bureau agreed to undertake a full investigation.

By early 2014, many personnel investigations were complete. Recommendations by the investigating officers where misconduct was verified ranged from General Officer Memorandum of Reprimand to separation from service, i.e., termination of employment, with an "other than honorable" discharge. An "other than honorable" discharge in turn results in elimination of all military retirement and veterans benefits.

A new full-time lawyer also began duty with the National Guard in early 2014, Captain Gregory Vanison. He was tasked with much of the legal work associated with the various personnel actions. Capt. Vanison reported that he was met with over thirty pages of personnel investigations awaiting legal review and further action.

According to Capt. Vanison, Maj. Gen. Katkus held a meeting with senior officers in April 2014, emphasizing that he did not want to see "other than honorable" discharges unless the conduct was extreme and that he wanted to find "other tools in the tool box" to address the misconduct. Captain Vanison stated that General Katkus stated that it was difficult enough to recruit members for the National Guard; he did not want to see extreme action taken without adequate justification.

The National Guard personnel system regarding investigations of misconduct generally follows the following steps: (1) initiation of an investigation by a commanding officer, who in turn appoints an Investigating Officer; (2) investigation, findings and recommended action by the Investigating Officer; (3) review and acceptance, rejection or modification of any of the fact findings or action recommendations at each successive ascending level of the chain of command; (4) evidentiary hearing before a Board of Officers if separation from service or withdrawal of federal recognition is sought; and (5) further review rights if the Board finds that the allegations are true and that adverse action should be taken.

Review of the disciplinary process for the many investigations undertaken indicates that recommendations by the initial investigating officer were adopted in most cases. Several exceptions stand out that suggest the possibility of undue command influence, potentially resulting in inconsistent treatment of similar offenders. However, these personnel actions were not final at the time of gubernatorial transition and changes

were made after the transition such that the personnel actions by and large seem consistent with the level of offense and with one another.

In May 2014, the long-awaited Army Office of the Inspector General report requested by Senator Murkowski in June 2013 was delivered. A one-page letter advised that, following investigation, "AKNG [Alaska National Guard] climate sensing sessions did not identify concerns regarding sexual assault or sexual harassment reporting, and that [t]he Adjutant General (TAG), AKNG, and other AKNG officials did not cover up any reported sexual assault incidents."

"Climate sensing sessions" were initiated by the Office of the Inspector General in approximately 2012. Such sessions involve bringing together relatively small groups of National Guard members to discuss concerns and recommendations with a representative of the Office of the Inspector General and more senior command members.

Review of the sensing session materials provided to me for the 2012 to 2013 period did not reference sexual assault and harassment one way or the other, and it is not clear to me if these topics were part of an agenda for the sessions. However, one sensing session result from the Alaska National Air Guard in March 2014 includes comments that suggest concerns with reporting sexual assault.⁵⁰ Noted comments from the session include the following:

- "Several thought there's still a stigma w/ reporting sexual assault."

⁵⁰ It does not appear that the results of this sensing session were known to the investigator(s) who completed the Office of the Inspector General investigation.

- "Allegations [are] swept under the rug."
- "Culture where women are expected to adapt or careers suffer"
- "Very prevalent in [two named units]"

The Office of Complex Investigations report, released to the public at the direction of Governor Parnell on or about the same day it was issued, September 4, 2014, was scathing, documenting a broken equal employment opportunity program, barriers to the reporting of sexual harassment and assault due to poor command climate and a host of other problems. General Katkus was asked to resign and did. Other National Guard leaders were also removed or retired.

On or about September 26, 2014, Randy Ruaro denied document requests pertaining to National Guard issues of sexual misconduct in their entirety, citing victim privacy interests, executive privilege and other grounds. On October 8, 2014, Alaska Public Media and other media outlets brought suit over the blanket denial of records. To my knowledge, the lawsuit was the first time the Alaska Department of Law became aware of the requests.

A court order followed on October 30, 2014, directing the disclosure of public records and the production of a privilege log of materials withheld, with reasons given for withholding records. My interview with one of the attorneys charged with this daunting task within the timelines set by the court was to the effect that Attorney General Michael Geraghty directed that the review proceed within the timeline set by the court. He also

directed that for any close question about whether a privilege might justify redaction, the question should be resolved by favoring public disclosure.

Within days of the media's lawsuit, portions of personnel investigations into the allegations of sexual misconduct in the Alaska National Guard were leaked to the press. A media storm ensued. Since the media suit was filed, the Department of Law has undertaken significant efforts to insure the initial email disclosures were sufficient. It is my opinion that the attorneys have worked to make public disclosures as transparent as possible. The hours spent on this task have been enormous - and costly - and necessary in this circumstance.

With the benefit of hindsight and investigation, there is little question at this point that the command climate in the Alaska National Guard during the years in question was not conducive to reporting complaints of any kind, let alone the seldom reported incidences of sexual assault and harassment. Chaplain Cavens described the main problem as having some leaders who were bullies. As he put it, sexual assault and harassment are by-products of bullying.⁵¹ While Chaplain Cavens may be correct, it is my opinion that there were other factors that clearly contributed to command climate and other problems within the Alaska National Guard.

⁵¹ By most accounts, General Katkus was described as typically calm, cool and collected, apparently giving latitude to his subordinates to accomplish mission goals as they deemed appropriate. Some witnesses reported that he appeared detached from the day-to-day operations around him although others were supportive of his leadership style.

Systems were in place for reporting sexual harassment and assault in the Alaska National Guard between 2010 and 2014. I did not find evidence that top leaders in the Alaska National Guard took overt actions to discourage reporting of harassment or sexual assault after 2010. Rather, Generals Katkus and Jorgensen hired and authorized Lt. Col. Wawersik specifically to investigate such misconduct. Several victims whom I spoke with also described General Bridges as very supportive.

The core problems, in my estimation, were much more discrete. While human resource systems were in place, the trained employees, oversight and leadership support necessary to make those systems work effectively and uniformly were missing in key areas, as discussed in detail in the 2014 Office of Complex Investigations Report.

Maintenance of accurate statewide records of sexual harassment reports did not occur for the Army National Guard between 2010 and 2014. There was also poor recordkeeping of sexual assaults in the Army National Guard until after the current Statewide Sexual Response Coordinator was hired in 2012.

A casual review of the statewide records, or lack thereof, would have suggested that there were no problems with sexual assault and harassment because so few reports were logged as having been made. However, review of the very low number of official sexual assault and harassment/discrimination/reprisal complaints made against members of the Alaska National Guard during the years in question measured against the multiple unofficial complaints made to the chaplains and others and found in command climate

survey/sensing session results and comments and sworn witness statements in personnel investigations clearly reflect multiple problems with sexual harassment and assault, a lack of confidence in reporting sexual assault and harassment and serious command climate concerns, at least in certain units.

The above represents some, but certainly not all, of the "circumstances surrounding allegations of sexual abuse and harassment" in the Alaska National Guard that were requested for this report.

G. Other Matters Discovered During This Investigation

Several other issues were raised during the course of this investigation that bear note. First, several reports concerning problems with military courts-martial for sexual assaults were brought to my attention. The State of Alaska does not control such proceedings but I have attached a very thoughtful letter and supplemental email by Dr. Martin Atrops regarding a sexual assault court-martial in which he was involved. He advised me that, with his client's consent, I could release his thoughts about the very painful process that he and his client endured to the Attorney General.⁵²

Several reports alleging recruiting fraud and other financial misconduct within the Alaska National Guard were also brought to my attention. Also attached is documentation submitted to me regarding those allegations; I recommend transmitting

⁵² These materials are separately attached to this report.

the documents to law enforcement for investigation.⁵³ I did not investigate fraud or other financial misconduct in the Alaska National Guard. I was told that at least some of these allegations were investigated. Given the serious nature of the allegations and the troubling documents that I reviewed, I recommend that the results of these investigations be made public.⁵⁴

VII. POSITIVE STEPS ARE BEING TAKEN TO ADDRESS SEXUAL ASSAULT AND HARASSMENT IN THE ALASKA NATIONAL GUARD

A large flashing neon sign with the Department of Defense "Safe Hotline" information for reporting sexual assault greeted me on each of my visits to Joint Base Elmendorf-Richardson. This 24-hour hotline is independently operated through RAINN (Rape, Abuse, & Incest National Network) under a contract with the Department of Defense. Specially trained staff provide help in three ways: online at SafeHelpline.org, by telephone, 877-995-5247, or by SMS/text message. The service is available virtually worldwide. The website also contains detailed information on available resources and reporting options. The Alaska National Guard Sexual Assault Response Coordinator speaks highly of this service, stating that callers have been immediately referred to her when seeking help through the Hotline.

⁵³ These Alaska National Guard financial records are separately attached to this report. Because these records contain business records and/or records that may be part of an open investigation of the Alaska National Guard and may be privileged, they are submitted confidentially.

⁵⁴ Mr. Buttry reports that he submitted the documents alleging recruiting fraud five years ago to, among others, General Katkus. Mr. Buttry states that he has not yet received a response.

By the time of my arrival at National Guard Headquarters in February 2015, a new Statewide Equal Employment Manager was in place and in training. A new Victim's Counsel (lawyer) was also in place. The Provost Marshall hired in 2014 was actively pursuing a formal Memorandum of Understanding with law enforcement agencies around the State to improve the exchange of information between Alaska National Guard leadership and state and local law enforcement agencies. The three Sexual Assault Coordinators and various Victim Advocates whom I spoke with are well-trained and dedicated. Attorney Vanison reports that the National Guard Bureau is sending additional lawyers to assist in completing personnel actions.

Commander Updates have been held very regularly since the September 2014 report by the Office of Complex Investigations. Following receipt of that report, five teams were established to plan steps to implement the OCI recommendations regarding the following: (1) sexual assault; (2) equal opportunity; (3) coordination with local law enforcement; (4) command climate; and (5) fraud. I was able to attend one such meeting. Some of the positive steps taken at that point included the following: Air Guard Selection/Retention evaluations for every Air Guard member every year; increased sexual assault awareness training; training for ten Equal Opportunity Advisors; selection and training of sexual assault response coordinators/victim advocates/equal employment advisors, including both men and women in those roles; and a new tracking system for human resource/personnel actions.

One challenge often repeated is that service as a Victim Advocate or Sexual Assault Response Coordinator is largely an unfunded mandate, with National Guard members volunteering to take on these duties in addition to their required duties. The statewide Sexual Assault Response Coordinator is the only civilian employed to work full-time as a Coordinator. Similar concerns were expressed with respect to Equal Opportunity Advisor staffing and funding to ensure an adequate program.

This assignment also allowed me the opportunity to meet with the new Adjutant General/Commissioner of the Department of Military and Veterans Affairs, Laurie Hummel and her Deputy Commissioner, Robert Doehl. Both were exceptionally open and helpful and appear committed to rebuilding trust, respect and pride in serving in the Alaska National Guard. I also learned from this assignment that the Alaska National Guard has performed and continues to perform truly amazing missions on behalf of our State and country.

VIII. RECOMMENDATIONS

A. Listen to the Chaplains

History makes clear that the failure to listen to the chaplains was a mistake. Chaplain Cavens related that chaplains hear a great deal in hallways and parking lots and places in between. As he put it, people can and do talk to chaplains in the parking lot. Going to a counselor requires that you admit you have a problem.

B. Protect Victim Confidentiality and Empower the Silent Victims

**** Sanction Breach of Confidentiality and Promote Expanded Victims' Rights***

Loss of confidentiality is a very serious concern for sexual assault, abuse and harassment victims. When victim identity or otherwise protected confidential information about crime victims is wrongfully disclosed, there should be consequences. For Alaska National Guard members, the wrongful disclosure of protected confidential information should carry prompt, predictable and consistent adverse personnel consequences. Consequences should, where circumstances warrant, include criminal prosecution.

Alaska Statute 11.56.860 defines the Class A misdemeanor offense of "Misuse of Confidential Information" as including the use of confidential information "in a manner not connected with the performance of official duties" by a public servant. Sexual assault or abuse victim identity is not a public record and other identifying information about such victims is considered confidential under Alaska law.⁵⁵ "Public servant" is defined in AS 11.81.900(a)(54) as including an officer or employee of the State.

While members of the Alaska National Guard are in State of Alaska service, application of this statute could result in criminal consequences for disclosure of confidential victim information. However, application of this statute to Alaska National Guard members is problematic because of the hybrid federal/state nature of typical National Guard service. Moreover, when National Guard members are in federalized

⁵⁵ See AS 12.61.140; AS 12.61.100; AS 12.61.120(a); AS 12.61.130(a).

service, the Uniform Code of Military Justice applies. Finally, federal regulations require notice of a sexual assault to the "chain of command" in most cases. So long as this requirement exists, there also exists the potential for confusion as to just how much notice at just what levels of the chain of command is necessary.

There are, however, multiple federal laws protecting victim confidentiality. 32 CFR 105.8(a)(4) is specific to restricted reports of sexual assault in the military. It provides in pertinent part:

(4) Disclosure of confidential communications. In cases where a victim elects Restricted Reporting, the SARC [Sexual Assault Response Coordinator], SAPR VA [Sexual Assault Prevention Response Victim Advocate], and healthcare personnel may not disclose confidential communications or the SAFE [Sexual Assault Forensic Evidence] and the accompanying Kit to DoD [Department of Defense] law enforcement or command authorities, either within or outside the DoD, except provided in this part. In certain situations, information about a sexual assault may come to the commander's or DoD law enforcement official's (to include MCIO's [Military Criminal Investigative Organizations]) attention from a source independent of the Restricted Reporting avenues and an independent investigation is initiated. In these cases, a SARC, SAPR VA, and healthcare personnel are prevented from disclosing confidential communications under Restricted Reporting, unless an exception applies. *Improper disclosure of confidential communications or improper release of medical information are prohibited and may result in disciplinary action pursuant to the UCMJ [Uniform Code of Military Justice] or other adverse personnel or administrative actions.* (emphasis added)

This provision offers protection from disclosure of confidential information in a restricted report and expressly contemplates disciplinary action pursuant to the Uniform Code of Military Justice for a breach of confidentiality.

For unrestricted reports of sexual assault where an investigation occurs, there are also some military confidentiality safeguards in place, with significant 2015 amendments to the Military Rules of Evidence designed specifically to provide greater protections for victim confidentiality and other victim rights.

The FY 2015 NDAA [National Defense Authorization Act], signed into law in December 2014, provides positive changes for sexual assault victims in multiple respects. Section 534 of the Act requires the Secretary of Defense to establish a process ensuring that victims of sexual assault crimes are given an opportunity to express a preference about whether their case is prosecuted by the military or by local/state prosecutors. If victims choose having their case prosecuted by local/state prosecutors, the military has a duty to notify the local prosecutor of the victim's preference and must inform the victim about the prosecutor's decision regarding prosecution.

Sections 535 and 537 of the Act call for modification of military rules of evidence, specifically including the rules regarding rape shield evidence (i.e., Military Rule of Evidence 412) and evidence covered by the psychotherapist-patient privilege (i.e., Military Rule of Evidence 513). The modifications expand victim confidentiality. By example, they expand the psychotherapist-patient privilege to include additional licensed mental health professionals and increase the burden of proof for a party seeking production of mental health records.

Section 536 of the Act provides for "writ of mandamus" review of decisions related to disclosure of otherwise privileged material if the victim disagrees with a court-martial ruling on admissibility. Section 533 of the Act expands the definition of a victim of sexual assault entitled to appointment of Special Victims Counsel, i.e., a lawyer. The Special Victims Counsel represent victims throughout the criminal process.⁵⁶

Other major modifications beneficial to sexual assault victims included in the National Defense Authorization Act for Fiscal Year 2015 are the following: (1) evaluations of command climate must include appraisals of how sexual assault allegations are evaluated, as well as protection of victims from reprisal, including ostracism and group pressure (Section 508); (2) correction boards must have a confidential process for reviewing the characterization of discharges of victims of sexual assaults (Section 547);⁵⁷ (3) a process is established for the review of decisions by the command not to prosecute certain offenses (Section 541); and (4) the defense of good military character is essentially abrogated for sex offenses and other offenses for which good military character is irrelevant (Section 536).⁵⁸

⁵⁶ See Military Justice Policy & Legislation Branch, "*FY 2015 NDAA Implementation Smartbook*," 19 December 2014 (specifically referencing sections 533 -537 of the Act).

⁵⁷ Historically, some sexual assault victims have asserted that they were characterized as having "personality disorders" after reporting sexual assaults and these diagnoses at times resulted in discharges under other than honorable conditions. This review process is in response to those inequities.

⁵⁸ Military Justice Policy & Legislation Branch, "*FY 2015 NDAA Implementation Smartbook*," 19 December 2014.

****Acknowledge and Apologize for Past Mistakes***

I recommend acknowledgement and apology for past mishandling of victim complaints and privacy rights within the Alaska National Guard. While the statute of limitations likely bars prosecution for violation of privacy rights prior to 2010, it is not too late to apologize.

****Seek Authorization for Continued Alaska-based Special Victims Counsel***

Following the National Guard Bureau Office of Complex Investigations Report in September 2014, the National Guard Bureau authorized a one-year commitment for an Alaska-based Special Victim's Counsel who is available to provide legal advice to victims. This one-year commitment will shortly expire. A trained Alaska-based lawyer for National Guard victims of current and past sexual assault would clearly assist current and future victims and would be a valuable resource for those who may still come forward as confidence in the official system hopefully continues to grow.

****Expand State Resources for the Silent Victims***

I recommend considering establishing a secure online forum, i.e., message board and chat room, on the State of Alaska Council on Domestic Violence and Sexual Assault website for survivors of sexual assault and domestic violence, both within and outside the military, but with a focus board/chat room for military victims.

The military's sexual assault hotline developed and maintained by the nation's largest anti-sexual assault organization, RAINN, is a wonderful tool for sexual assault

survivors to access specially trained counselors with expertise on military resources and with the ability to point victims to available local resources. However, it is not uniquely Alaskan. The Hotline also does not provide a message board/chat room that might allow sexual assault survivors who are still unable to discuss their own trauma in person another avenue of support. A secure online resource for those victims who may never be able to discuss their painful experience even with a counselor could, in my view, benefit Alaskans.

C. Trust but Verify Command Climate/Leadership Effectiveness

All government leaders must place some trust in the subordinates whom they choose to run the government. However, some means of verifying that the proverbial ship is on course should be in place before the ship hits the rocks, as occurred in this course of events.

I recommend that the Alaska National Guard/Department of Military and Veterans Affairs maintain a summary of all climate survey and sensing session data as the data is collected. Those summaries should be available to the Governor/Commander in Chief on request or periodically (such as quarterly) as directed by the Governor. I recommend that where survey data indicates significant command climate issues, such as falling below national standards or into the "red zone" indicated on DEOMI surveys, such information should immediately be communicated to the Governor. To the extent that such data and/or summaries of such data can be further disclosed without violation of state or

federal privacy laws, it should also be communicated to the Alaska Legislature, the Alaska Congressional delegates and the public.⁵⁹

I recommend that the National Guard/Department of Military and Veterans Affairs also maintain a summary of all human resource complaints regarding allegations of sexual misconduct, hostile work environment, discrimination, harassment, reprisal and/or fraud by National Guard members; such information should be available to the Governor on request or periodically (such as quarterly) as directed by the Governor. This information should also be communicated to the Alaska Legislature, the Alaska Congressional delegates and the public as indicated above.

I recommend that a full Alaska National Guard DEOMI survey of the type conducted by the Office of Complex Investigations in 2014 is conducted annually for the next two years and thereafter at least every two years, with the results provided to the Governor on request and to the others as indicated above.

I recommend developing protocols or agreements for information sharing between the Alaska Department of Law, the National Guard Bureau and other federal and military agencies involved with the Alaska National Guard. Such protocols should address

⁵⁹ The 2014 Office of Complex Investigations Report states at page 57 that "[c]ommanders and junior members interviewed scoffed at the surveys, stating that initially they thought leadership wanted to know what the issues were, but after the members reported discontent on numerous assessments without any apparent change in the system, they gave up." This sentiment is at least part of the reason that I recommend that survey summaries be available not only to National Guard and government leaders but also to all members of the National Guard and the public. It is important that members of the National Guard know that their voices will be heard and that their concerns will be addressed.

notification to/coordination with the Governor on personnel issues including verified findings of misconduct by members of the Alaska National Guard by the Offices of the Inspector Generals and/or felony criminal investigations by state or federal agencies of members of the Alaska National Guard. Deputy Commissioner of the Department of Military and Veteran Affairs Robert Doehl appears to be uniquely well-qualified for this task.

I recommend that options for supporting state agency involvement in National Guard sexual assault and equal opportunity complaints be further explored, such as involvement by the Alaska Commission on Human Rights in training and other support functions. Coordination between the federal government and State of Alaska resource agencies has the potential to more robustly protect National Guard employees from workplace assault, harassment and discrimination with at least the potential for cost savings over the current dual federal/state avenues of addressing such issues.

It is beyond the scope of this report to present a more detailed proposal. I suggest that the starting point is a meeting of federal and state representatives of legal services, i.e., the Department of Law and National Guard Judge Advocates; state and federal equal opportunity advisors; state, federal and other sexual assault and victim protection service providers; and state/federal personnel experts to explore options to improve services and cut duplicative costs.

I recommend that, to the extent possible, the Governor meet personally with both the leaders and the Privates (and others in between) in the Alaska National Guard on at least an annual basis. Participation in one or more Office of the Inspector General sensing sessions is also suggested.

D. Pursue Appropriate Personnel and Criminal Referrals

My recommendations for further action on certain sexual assault/harassment reports are included in my case-by-case analysis submitted under separate cover to the Attorney General. Those specific recommendations are not included in this public report so as to not interfere with or compromise further criminal or personnel investigations.

I recommend that the Alaska Army National Guard designate someone to carefully review the 2012 Fort Greely investigation to determine if any of the reports from that investigation should be referred to Equal Opportunity Advisors or to the police for further investigation.

I recommend that adverse personnel action and/or police investigation should be considered regarding any Alaska National Guard member for whom verified findings of misconduct have been made by the Office of the Inspector General and that specific action be taken with respect to any particularized finding referenced in this report.

Please feel free to contact me with any questions.