



December 2018

NATIONAL GUARD

Office of Complex Investigations Should Update Policies to Require Additional Documentation for Sexual Assault Cases

GAO Highlights

Highlights of [GAO-19-109](#), a report to congressional committees

Why GAO Did This Study

Sexual assault incidents involving military service members can devastate victims and have far reaching impacts for DOD due to the potential for these crimes to undermine the department's core values, degrade mission readiness, and raise financial costs.

The National Defense Authorization Act for Fiscal Year 2018 included a provision that GAO review, among other things, the purpose and structure of OCI and its adherence to policies. This report (1) describes OCI's services and budgetary and staffing resources; and (2) evaluates OCI's policies for investigations and internal controls to ensure its policies are consistently followed. GAO analyzed OCI policy, budget, and staffing documents and interviewed OCI, DOD, Army, and Air Force officials. GAO also interviewed National Guard officials and analyzed case files for select years from a nongeneralizable sample of five states.

What GAO Recommends

GAO recommends that DOD require OCI to include supporting documentation in case files to verify a National Guard nexus exists and referral to the appropriate law enforcement organization occurs. DOD concurred with the recommendation.

View [GAO-19-109](#). For more information, contact Brenda S. Farrell at (202) 512-3604 or farrellb@gao.gov

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Office of Complex Investigations Should Update Policies to Require Additional Documentation for Sexual Assault Cases

What GAO Found

The National Guard Bureau's (NGB) Office of Complex Investigations (OCI) was established in 2012 to conduct administrative investigations into allegations of sexual assault that are not criminal in nature and are conducted only when criminal law enforcement entities, such as military criminal investigative organizations or local civilian law enforcement, have declined or do not have jurisdiction to investigate and a National Guard nexus has been identified. Since 2013, OCI has completed approximately 380 investigations of allegations of sexual assault at the request of state National Guard officials and 5 assessments of state National Guard units to review the current culture, policies, and practices for the handling of sexual assault, among other things. State National Guard officials told GAO that OCI provides the states with an unbiased or impartial third-party review of reported incidents of sexual assault. OCI is primarily funded through amounts made available for the Sexual Assault Special Victims' Counsel Program in the Department of Defense's (DOD) annual defense-wide Operation and Maintenance appropriation. This funding has increased from approximately \$1.4 million in fiscal year (FY) 2014 to almost \$5 million in FY 2018; which OCI officials attributed to increasing demands for OCI's services. OCI uses trained National Guard members temporarily assigned to the office as investigators.

NGB guidance establishes OCI investigation policies and OCI has implemented controls to help ensure key policies are followed. However, OCI has inconsistently documented how case acceptance criteria have been met. GAO's analysis of a sample of 27 case files from 5 states from FY 2016 and FY 2017 found that OCI generally adhered to key investigation policies. For example, in accordance with its policies, in all 27 case files GAO reviewed, OCI had included the state National Guard's requests to initiate an OCI investigation and executive summaries explaining OCI's determination of whether or not the allegation was substantiated. Furthermore, NGB has established two case acceptance criteria—specifically that a National Guard nexus exists and that coordination with at least one criminal investigative organization occurred. According to OCI officials, state National Guard officials are to verify these criteria are met before submitting requests for OCI to initiate an investigation of sexual assault. NGB has developed a template with standardized language that includes these criteria that the states should use. While OCI's case files included the request letters with standardized language from state National Guards indicating the state National Guard staff had determined the case acceptance criteria were met, they did not consistently include supporting documentation to verify how the case acceptance criteria were met. This is because NGB policy does not require such documentation to be included in OCI's case files. Without such documentation, OCI does not have reasonable assurance that the cases it accepts for investigation adequately meet the two criteria for case acceptance.

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Abbreviations

ADOS	active duty operational support
AR	Army Regulation
CNGBI	Chief National Guard Bureau Instruction
CNGBM	Chief National Guard Bureau Manual
DOD	Department of Defense
NGB	National Guard Bureau
O&M	Operation and Maintenance
OCI	Office of Complex Investigations
SAPR	Sexual Assault Prevention and Response
SAPRO	Sexual Assault Prevention and Response Office

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December 12, 2018

The Honorable James M. Inhofe
Chairman
The Honorable Jack Reed
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Mac Thornberry
Chairman
The Honorable Adam Smith
Ranking Member
Committee on Armed Services
House of Representatives

Sexual assault incidents involving military service members can devastate victims and can have far reaching impacts for the Department of Defense (DOD) due to the potential for these crimes to harm an individual's well-being, undermine the department's core values, degrade mission readiness, and cause increased financial costs. The National Guard Bureau (NGB)¹ established the Office of Complex Administrative Investigations (OCI)² in 2012 to conduct administrative investigations³—

¹The National Guard has two elements—the Army National Guard and the Air National Guard. The NGB is a joint activity of the Department of Defense and is managed by the Chief of the NGB. It is the channel of communications on all matters pertaining to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States between (1) the Department of the Army and Department of the Air Force, and (2) the several States.

²According to the National Guard's *Report to Congress on the Official Establishment, Manning, and Turnover Rates of the Office of Complex Administrative Investigations*, hereafter referred to as the 2018 Report to Congress, while the office was originally termed the Office of Complex Administrative Investigations to emphasize the noncriminal nature of its investigations, it is now referred to as the Office of Complex Investigations. For the purposes of this review, we refer to this office as the Office of Complex Investigations, which is consistent with the more commonly used acronym for the office (OCI) and a commonly accepted moniker for the organization.

³An administrative investigation is a fact-finding or evidence-gathering procedure which has the primary purpose of ascertaining facts, documenting and preserving evidence, and reporting the facts and evidence to the approval authority. The administrative investigations of sexual assault conducted by OCI are non-criminal in nature and are conducted at the request of the Adjutant General of a state when a civilian or military criminal investigation is unavailable or insufficient.

primarily allegations of sexual assault—involving National Guard members which the military justice system or local law enforcement cannot or will not investigate.⁴ Specifically, OCI helps fill a gap by addressing cases involving National Guard members who (1) are not subject to the Uniform Code of Military Justice; (2) were not investigated by a military criminal investigative organization due to the lack of jurisdiction; (3) were declined a criminal investigation by civilian law-enforcement organizations; or (4) were not sufficiently investigated by the civilian law enforcement agency with jurisdiction. While OCI does not conduct criminal investigations, OCI’s administrative investigations are intended to provide the Adjutants General with sufficient information to take administrative actions as appropriate to maintain good order and discipline within their National Guard units.⁵

In February 2017, we reported that the timeliness of investigations was a challenge for OCI and that 57 percent of investigations conducted in fiscal year 2015 took 6 to 9 months to complete.⁶ We recommended that the Chief of the NGB, in collaboration with the secretaries of the military departments, as appropriate, reassess OCI’s timeliness and resources to determine how to improve the timeliness of processing sexual assault investigations involving members of the Army National Guard, and identify the resources needed to improve the timeliness of these

⁴In addition to administrative investigations of allegations of sexual assault, OCI may also conduct state assessments which generally involve widespread issues that may adversely affect the good order and discipline of the National Guard.

⁵An Adjutant General is appointed by the Governor of each state; the duties of the Adjutant General are laid out in each state’s statutes, and he or she is typically the senior officer of the National Guard unit of the state. For the District of Columbia, this officer is referred to as the ‘Commanding General.’

⁶GAO, *Sexual Assault: Better Resource Management Needed to Improve Prevention and Response in the Army National Guard and Army Reserve*, [GAO-17-217](#) (Washington, D.C.: Feb. 27, 2017).

investigations.⁷ DOD agreed with our recommendation.⁸ We provide additional details about OCI's backlog of investigations later in this report.

The National Defense Authorization Act for Fiscal Year 2018 included a provision that we review the purpose and structure of OCI, its adherence to guiding policies, and the criteria and legal authority under which it conducts investigations.⁹ This report (1) describes the services OCI provides and the budgetary and staffing resources used by the office; and (2) evaluates the extent to which OCI has policies for its sexual assault investigations and internal controls to ensure its policies, including criteria for case selection, are consistently followed.

For our first objective, we reviewed NGB and OCI documents and interviewed OCI, DOD, and state National Guard officials to identify the services provided by OCI. We reviewed OCI's budget data and information—including how the office is funded—and documentation of the office's organizational structure and staffing for fiscal years 2014 through 2018. We also interviewed relevant officials to determine the budgetary and staffing resources used by the office. In order to assess the reliability of OCI's investigations and budget data, we interviewed knowledgeable officials within OCI about the controls the office uses to ensure the validity and reliability of the data. We conducted testing of the data, which included comparing OCI's budget numbers with those received from DOD and the NGB Joint Staff for consistency, errors, and logic. We also interviewed officials in the Office of the Secretary of Defense's Sexual Assault Prevention and Response Office (SAPRO), coordinated with officials from the NGB Joint Staff, and obtained corroborating information to further support our data reliability determination. We determined the budget data related to the amount of funding OCI received for fiscal years 2014 through 2018 were sufficiently

⁷This report included a total of six recommendations focused on improvements to the Army National Guard's and Army Reserve's sexual assault programs and response; however, only one recommendation was directed at the Chief of the NGB and related to OCI.

⁸DOD did not initially concur with our recommendation because our recommendation was directed at the Secretary of the Army, and as DOD stated in its comments, OCI is NGB organization and its administrative investigations are outside the limited scope of authority of the Secretary of the Army. However, we redirected our recommendation to the Chief of the NGB and DOD stated that the Chief of the NGB was prepared to take actions in response to our report.

⁹See Pub. L. No. 115-91, § 577 (2017).

reliable for reporting and attributing these data to OCI. We were unable to determine the reliability of the discretionary funding OCI received, and therefore did not include these in our report. We also interviewed OCI officials about the steps the office takes to help ensure the reliability of its data on the number of completed investigations. We determined that the data on the number of investigations OCI had completed as of September 7, 2018, were sufficiently reliable for reporting and attributing these data to OCI.

For our second objective, we analyzed current and previous versions of Chief of the NGB guidance to determine key policies for OCI investigations and controls the office has in place. Primary among these are Chief National Guard Bureau Instruction (CNGBI) 0400.01B, *National Guard Complex Administrative Investigations* (the NGB Instruction) and Chief National Guard Bureau Manual (CNGBM) 0400.01A, *National Guard Complex Administrative Investigations Procedures* (the NGB Manual).¹⁰ We also interviewed OCI, NGB, and DOD officials to identify the criteria OCI established for determining which investigations and assessments to conduct and evaluated their efforts to determine whether they met federal internal control standards, including that management should design appropriate types of control activities to achieve the entity's objectives, such as conducting top-level reviews, assigning responsibilities, and using quality information, as well as the need for documentation.¹¹ We interviewed Army Criminal Investigation Command, Air Force Office of Special Investigations, and NGB officials about jurisdiction and legal authorities related to criminal and administrative investigations of reported allegations of sexual assault involving National Guard members. We also interviewed National Guard state officials and reviewed a sample of 27 case files from five states for fiscal years 2016 and 2017. We selected these states based on the following criteria: (1) the number of cases the states had referred to OCI, including states with a low and high number of cases; (2) the size of the state's National Guard population, both large and small member populations; and (3) geographic dispersion across the five census regions. We reviewed these case files for documentation and other evidence and compared them with a selection of key OCI policies to determine the extent to which the office is following those policies for the select case files we reviewed.

¹⁰CNGBI 0400.01B (Apr. 12, 2018) and CNGBM 0400.01A (May 16, 2018).

¹¹GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

We identified policies as key based on whether the policy met specific criteria, including whether (1) adherence to the policy was measurable in some way, for example, written documentation was produced; (2) the policy was relevant to the reporting requirements of our statutory mandate; (3) the policy was deemed essential to each phase of the investigation; (4) compliance data or information was available and could be shared with GAO in a timely manner; and (5) the policies were determined to be generally consistent across the 2012 and 2018 versions of OCI's policy documents, with a few exceptions for policies that were relevant to our mandate or essential to the investigative process. We evaluated the 27 case files against these selected key policies to determine if OCI followed these policies in our sample of OCI investigation case files. Our findings from these case files are provided solely as illustrative examples and are not generalizable to all of OCI's investigations, to the other states and territories, or to investigations conducted in the states we sampled any time before 2016 or after 2017.

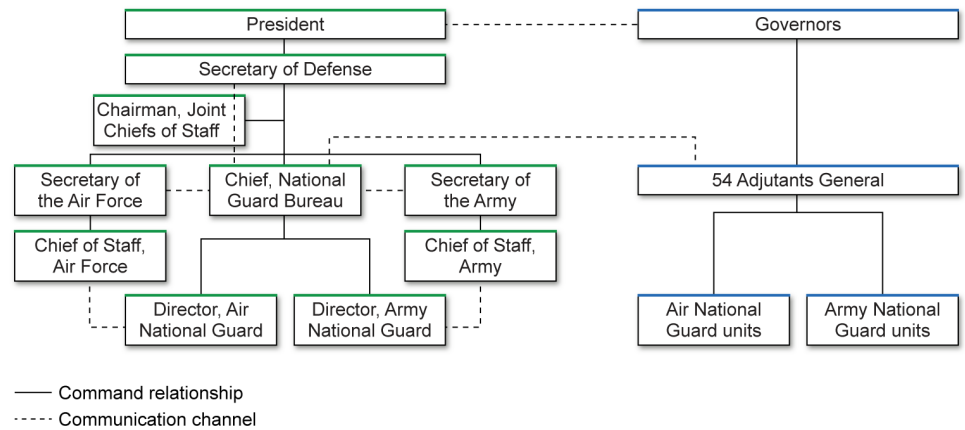
We conducted this performance audit from March 2018 to December 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The National Guard's Organizational Structure and Mission

The National Guard consists of the NGB—which includes the Office of the Chief, National Guard Bureau; the National Guard Joint Staff; the Office of the Director, Army National Guard; the Office of the Director, Air National Guard—and the National Guard units, which are located in the 50 states, 3 U.S. territories, and the District of Columbia. Figure 1 illustrates the organizational structure of the National Guard.

Figure 1: Organizational Structure of the National Guard



Source: Alaska Department of Military and Veterans Affairs. | GAO-19-109

The National Guard has both a federal- and state-level mission. The National Guard’s federal mission is to (1) maintain well-trained and well-equipped units that are ready to be mobilized by the President of the United States during war or international peacekeeping efforts, and (2) provide assistance during national emergencies, such as natural disasters or civil disturbances. The National Guard’s state-level mission is to (1) protect life and property and preserve peace, order, and public safety, and (2) provide emergency relief support during local or statewide emergencies, such as riots, earthquakes, floods, or terrorist attacks. The National Guard’s state-level mission is executed under the control of state and territory governors, and for the District of Columbia, the President.

Reflecting the National Guard’s federal and state roles, National Guard members may function under one of three command statuses:

- **Title 10.** When performing duty under the authority of Title 10 of the United States Code (Title 10 status), National Guard members are under the command and control of the President and are federally funded. When operating in Title 10 status, National Guard members are subject to the Uniform Code of Military Justice.¹²

¹²The military justice system is governed by a collection of statutes and regulations, including the Uniform Code of Military Justice, which is codified in Chapter 47 of Title 10 of the U.S. Code.

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- **Title 32.** When performing duty under the authority of Title 32 of the United States Code (Title 32 status), National Guard members are under the command and control of the governors, but are federally funded. For example, past missions have included providing security at the nation's airports in the immediate aftermath of the September 11, 2001 terrorist attacks and assisting the Gulf Coast in the aftermath of Hurricane Katrina. While operating in Title 32 status, National Guard members are not subject to the Uniform Code of Military Justice, but, according to OCI officials, may be subject to a state code of military justice enacted by the state legislature.
 - **State Active Duty.** When performing duty in State Active Duty status, National Guard members are under command and control of the governors and are state funded. When operating in State Active Duty status, National Guard members are not subject to the Uniform Code of Military Justice.

When performing their state-level mission, National Guard units within a state, territory, or the District of Columbia report to a state-level senior officer known as the Adjutant General, who in turn reports to either a state or territorial governor, or for the District of Columbia, the President (as Commander-in-Chief). The Adjutant General coordinates with the NGB's Army or Air National Guard, as appropriate, on such matters as staffing and unit readiness. The Army and Air National Guard in turn coordinate with Army and Air Force staff, respectively.

The Office of Complex Investigations

OCI was established in 2012 by the Chief of the NGB to perform complex administrative investigations at the request of the Adjutants General of the 50 states, the three territories, and the District of Columbia, or at the direction of the Chief of the NGB.¹³ OCI's primary purpose is to provide the state National Guards with the capability to administratively investigate reports of sexual assault having a National Guard nexus when the reports fall outside the jurisdiction of military criminal investigative organizations and are not sufficiently investigated by civilian law

¹³OCI was established within the NGB's Office of the Chief Counsel.

enforcement.¹⁴ OCI's secondary purpose is to administratively investigate other complex matters as assigned, one of which is a state assessment.¹⁵ The types of investigations conducted by OCI are further described later in this report.

Congress designated the Chief of the NGB as (1) the senior military officer responsible for the organization and operations of the NGB and (2) the principal advisor on National Guard matters to the Secretary of Defense through the Chairman of the Joint Chiefs of Staff, as well as to the Secretary and Chief of Staff of the Army, and Secretary and Chief of Staff of the Air Force.¹⁶ Further, a DOD directive states that one function of the NGB is to monitor and assist states in the organization, maintenance, and operation of National Guard units so as to provide well-trained and well-equipped units capable of augmenting the active forces.¹⁷ OCI officials stated that the Chief of the NGB has the authority to investigate matters in order to support the above statutory and regulatory obligations and authorities. Moreover, a DOD instruction makes clear that DOD components without law enforcement authority, like the NGB, have the authority to conduct only administrative investigations.¹⁸

¹⁴DOD Instruction 5505.03, *Initiation of Investigations by Defense Criminal Investigative Organizations*, provides that military criminal investigative organizations may only investigate allegations where a DOD nexus exists. According to that DOD instruction, one such possible nexus is where the subject of the investigation is affiliated with the DOD. DOD officials told us that a subject's membership in the National Guard, standing alone, does not amount to such an affiliation, unless the member was in Title 10 status when the offense allegedly occurred, the offense occurred on a federal military installation, or some other nexus exists. Instead, criminal matters involving non-federalized National Guard members (i.e., those in Title 32 or state active duty status) typically fall within the jurisdiction of civilian law enforcement for investigation and the civilian criminal justice system for prosecution. According to the NGB, state civilian criminal justice systems may decline to investigate matters involving non-federalized National Guard members due to the misperception that such members are subject to federal jurisdiction under the Uniform Code of Military Justice; inability to assert jurisdiction over the subject; differences between DOD and state penal definitions of sexual assault; or may be constrained from conducting investigations due to limited resources, among other reasons.

¹⁵According to OCI officials, complex matters include matters not involving allegations of sexual assault which are sensitive, involve high visibility issues, and require subject matter expertise or special training.

¹⁶10 U.S.C. § 10502.

¹⁷DOD Directive 5105.77, *National Guard Bureau (NGB)* (Oct. 30, 2015) (incorporating Change 1, Oct. 10, 2017).

¹⁸DOD Instruction 5505.16, *Investigations by DOD Components* (Jun. 23, 2017).

The NGB Instruction states that the Chief of OCI specifies the requisite education, training, and experience for appointing an investigator to OCI and for assigning investigators to conduct a specific investigation.¹⁹

According to OCI officials, investigators are initially selected based on their analytical and investigatory skills, as well as their experience and understanding of the civilian and military criminal justice systems.²⁰ OCI officials stated that investigators are required to complete an initial two-week training course conducted by the U.S. Army Military Police School, followed by three days of orientation conducted by OCI. OCI officials stated that investigators are also offered additional training opportunities throughout the year, including annual refresher training and professional development training.

DOD's Sexual Assault Prevention and Response Program

In response to statutory requirements, in 2005, DOD established its Sexual Assault Prevention and Response Program to promote the prevention of sexual assault,²¹ encourage increased reporting of such incidents, and improve victim response capabilities.²² DOD's program allows servicemembers to make a restricted or unrestricted report of sexual assault. DOD's restricted reporting option is designed to allow sexual assault victims to confidentially disclose an alleged sexual assault to selected individuals without initiating an official investigation and to receive medical and mental health care. DOD's unrestricted reporting option triggers an investigation by a military criminal investigative

¹⁹CNGBI 0400.01B (Apr. 12, 2018). According to OCI's *Standard Operating Procedures*, the Chief delegates training responsibilities to the Standards, Evaluation, and Training Officer. OCI officials provided documentation of annual training courses that included coordination with the Air Force Office of Special Investigations and the NGB's Sexual Assault and Prevention and Response Office.

²⁰According to OCI, investigators have a variety of legal and law enforcement experience, including the following occupations: civilian attorney, civilian law enforcement, military paralegal, military supply specialist, and ordnance officer, among others.

²¹According to DOD Directive 6495.01, *Sexual Assault Prevention and Response (SAPR) Program* (Jan. 23, 2012) (incorporating Change 3, Apr. 11, 2017), sexual assault is intentional sexual contact that is characterized by the use of force, threats, intimidation, abuse of authority, or when the victim does not or cannot consent. Sexual assault includes a broad category of sexual offenses, consisting of the following specific offenses under the Uniform Code of Military Justice: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit these acts.

²²Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, § 577 (2004).

organization, such as the Army Criminal Investigation Command or the Air Force Office of Special Investigations. DOD's directive for its Sexual Assault Prevention and Response Program delegates authority to the Chief of the NGB for implementing policy and procedures for the program as it applies to National Guard members in Title 32 status.²³

OCI Conducts Administrative Investigations of Sexual Assault and State Assessments, Receives Funds from DOD's Sexual Assault Program, and Uses Temporarily Assigned Investigators

OCI conducts administrative investigations of reports of sexual assault, in addition to state assessments of state National Guard units. OCI is funded through appropriations made available for DOD's Sexual Assault Special Victims' Counsel Program. Moreover, OCI is staffed with temporarily assigned National Guard members as investigators.

OCI Conducts Administrative Investigations of Sexual Assault and Assessments of State National Guard Units

Since its inception, OCI has primarily conducted administrative investigations of unrestricted reports of sexual assault, in addition to a smaller number of state assessments.²⁴ Since 2013, OCI has completed approximately 380 administrative investigations of sexual assault and 5 state assessments, as shown in figure 2.²⁵ The National Guard reported to Congress in 2018 that OCI has experienced a 350 percent increase in requests for assistance from fiscal year 2014 to fiscal year 2017; and 53

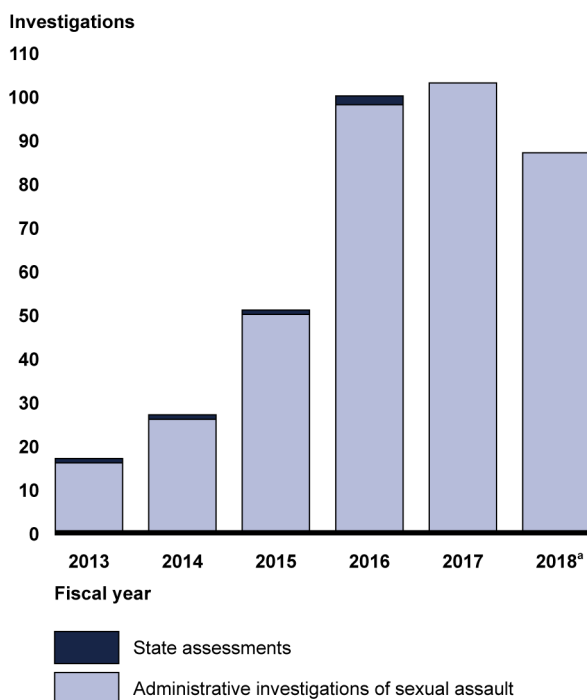
²³DOD Directive 6495.01.

²⁴The NGB Manual states that OCI may conduct administrative investigations of unrestricted reports of sexual assault, as well as investigations of complex matters not necessarily involving sexual assault, one of which is referred to as a state assessment. A state assessment's purpose is to review the current culture, policies, and practices for the handling of sexual assault and other allegations of hostile work environment and culture within the state National Guard, the command structure, and its responses to allegations of improprieties. See CNGBM 0400.01A.

²⁵These investigations were completed as of September 7, 2018.

of the 54 states and territories have requested OCI support during this period.²⁶

Figure 2: National Guard Bureau’s Office of Complex Investigations’ (OCI) Administrative Investigations of Sexual Assault and State Assessment Totals by Fiscal Year



Source: GAO analysis of National Guard Bureau’s Office of Complex Investigations’ data. | GAO-19-109

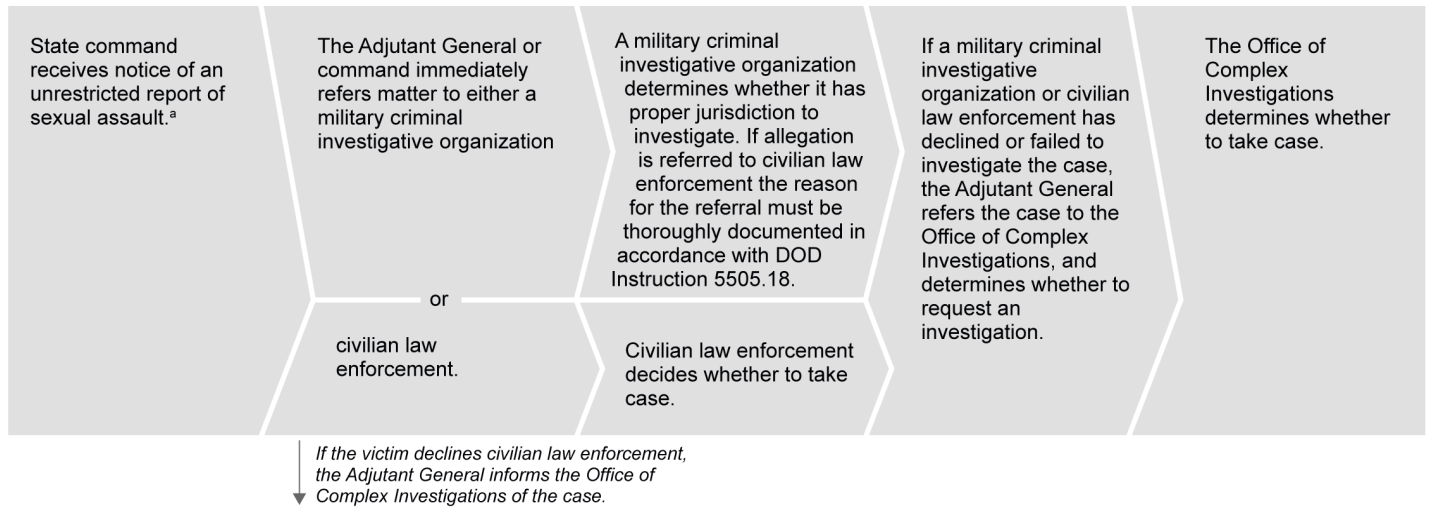
^aThis figure reflects investigations and assessments that have been completed as of September 7, 2018.

Note: Administrative investigations of sexual assault are non-criminal in nature and are conducted at the request of an Adjutant General when a civilian or military criminal investigation is unavailable or insufficient. State assessments are conducted at the request of a state official and are customized to assess widespread issues that may adversely affect the good order and discipline of the National Guard within a state. The investigations and assessments are categorized in a specific fiscal year based on the date the request was made to OCI to conduct an investigation or assessment.

OCI’s sexual assault investigations are conducted at the request of the Adjutants General and are intended to provide the Adjutants General with information to make administrative decisions. Figure 3 describes the OCI process for accepting sexual assault cases.

²⁶National Guard, *Report to Congress on the Official Establishment, Manning, and Turnover Rates of the Office of Complex Administrative Investigations* (May 18, 2018).

Figure 3: National Guard Bureau’s Office of Complex Investigations’ (OCI) Process for Accepting Sexual Assault Cases



Source: GAO analysis of National Guard Bureau information. | GAO-19-109

^aUnrestricted reports of sexual assault are made through the existing reporting channels—for example, chain of command, law enforcement, or health care provider—to notify law enforcement and are recommended for victims who desire medical treatment, counseling, and an official investigation of the allegation.

^bThe Adjutant General is the state-level senior officer of a state National Guard unit. For the District of Columbia, this officer is referred to as the “Commanding General.”

Based on its investigation, OCI provides a report to the state National Guard that includes the findings resulting from the investigation and identifies whether OCI has found the allegation to be substantiated.²⁷ OCI’s reports resulting from its sexual assault investigations do not include recommendations for action. Rather, the Adjutant General can use the report as the basis to determine whether and what type of administrative action should be taken. Such administrative actions may include a letter of reprimand, administrative separation, or other appropriate administrative remedy.

²⁷According to OCI’s Standard Operating Procedures, OCI investigators make the determination about whether to substantiate or not substantiate a report of sexual assault. The lead investigator prepares the findings document which includes, among other things, a bottom-line-up-front statement as to whether the case is substantiated or not substantiated. All team members review the draft Report of Investigation and make changes, as appropriate, before the report undergoes reviews by the Investigations Manager, Deputy Chief Counsel, and OCI Chief. The Deputy Chief Counsel and the OCI Chief sign the final Report of Investigation.

OCI may also conduct a state assessment at the request of a state official, such as the Adjutant General or Governor. Each state assessment reflects the informational needs of the requesting official. According to NGB policy, the office will generally not conduct an assessment into criminal matters, and the assessment will also not include investigations of unrestricted reports of sexual assault. According to OCI officials, state assessments generally involve matters that are widespread issues and may adversely affect the good order and discipline of the National Guard, such as hostile work environment or concerns regarding a state Guard's approach to sexual assault prevention and response. At the conclusion of an assessment, OCI provides a report to the requesting official that may include recommended actions to address problems identified as a result of the assessment.

In addition, according to OCI officials, the Chief of the NGB has the authority to direct inquiries into matters affecting the good order of the National Guard. OCI officials stated that OCI has the capacity to conduct inquiries at the direction of the Chief of the NGB and which are not performed at the request of a state official.²⁸ For example, according to OCI officials, in 2014, the Chief of the NGB directed OCI to conduct an inquiry to evaluate the fiscal stewardship of the National Guard. National Guard officials stated that this was the only inquiry of this kind that the office has performed. Adjutants General and their staffs stated that OCI provides the states with an unbiased or impartial third-party review of reported incidents of sexual assault. Officials from one state stated that they could not identify an alternative entity that could provide this service if OCI did not exist.²⁹

²⁸As noted in the background of this report, DOD Directive 5105.77 states that one function of the NGB is to monitor and assist states in the organization, maintenance, and operation of National Guard units so as to provide well-trained and well-equipped units capable of augmenting the active forces. Moreover, DOD Instruction 5505.16 makes clear that DOD components without law enforcement authority, like the NGB, have the authority to only conduct administrative investigations.

²⁹According to NGB and DOD policy, a unit commander may not conduct internal command-directed investigations into allegations of sexual assault or delay immediately contacting the military criminal investigative organization or local law enforcement. See DODI 6495.02, *Sexual Assault Prevention and Response (SAPR) Program Procedures* (Mar. 28, 2013) (incorporating Change 3, May 24, 2017) and CNGBI 0400.01B, *National Guard Complex Administrative Investigations* (Apr. 12, 2018).

OCI Is Funded through Appropriations Made Available by Congress for DOD's Sexual Assault Special Victims' Counsel Program

OCI is primarily funded through amounts made available by Congress for transfer to the services for the Sexual Assault Special Victims' Counsel Program in annual Operation and Maintenance, Defense-wide (O&M, Defense-wide) appropriations.³⁰ According to OCI officials, the office estimates its annual budgetary needs based on an analysis of prior fiscal year's case load and expected personnel, travel, and training costs in the upcoming fiscal year. OCI, along with the National Guard's Special Victims' Counsel Program, submits its budget requirements to DOD SAPRO. SAPRO then submits a consolidated request for inclusion in DOD's overall budget request.³¹ According to OCI and DOD officials, OCI does not receive its allotment of transferred amounts until late in the fiscal year.³² When the transferred amounts are received into Army and Air National Guard O&M and Military Personnel accounts, amounts initially allotted for OCI are reprogrammed to other activities that supported OCI earlier in the fiscal year.³³

OCI's overall funding has increased since 2014. According to an OCI official, the funding increase has been in response to increasing requests for OCI's services by the states and territories. Specifically, in fiscal year 2014, OCI funding was approximately \$1.4 million, and by fiscal year 2018 total funding was almost \$5 million. Figure 4 shows OCI's funding levels from fiscal year 2014 through fiscal year 2018.

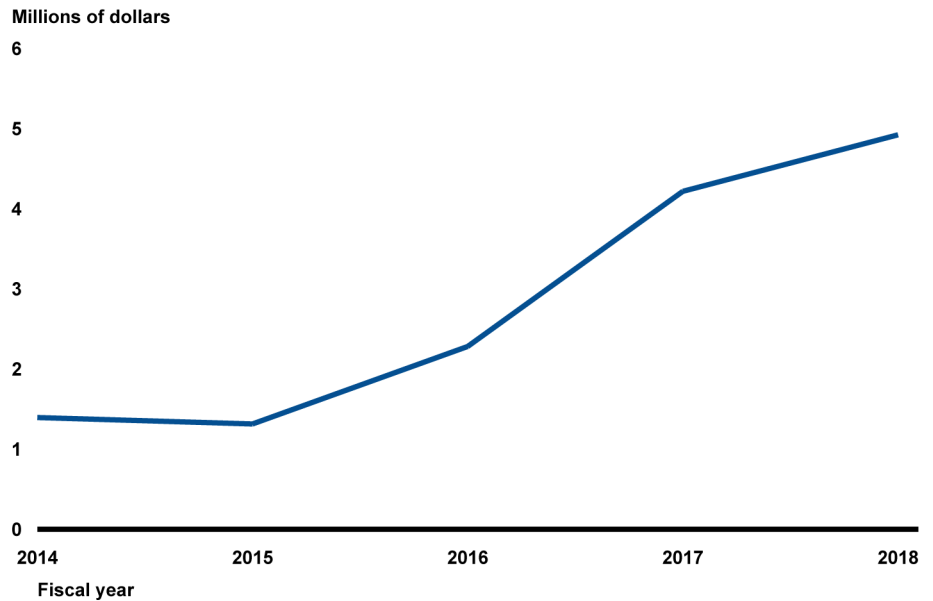
³⁰O&M, Defense-wide amounts designated for the continued implementation and expansion of the Sexual Assault Special Victims' Counsel Programs are authorized to be transferred to the Departments of the Army, the Navy, and the Air Force in support of service-level programs. As part of their oversight responsibility, SAPRO initiates the transfer of designated O&M, Defense-wide appropriation amounts to various service appropriation accounts. Transferred amounts received by the services, including the Army and Air National Guards, are then allotted to activities supporting service-level sexual assault special victims programs.

³¹SAPRO is responsible for oversight of the Department's sexual assault policy. SAPRO works with the Services and the civilian community to develop and implement prevention and response programs.

³²In fiscal year 2018, for example, SAPRO initiated transfer of designated O&M, Defense-wide amounts on July 6, 2018. The fiscal year ends September 30.

³³Appropriated O&M, Defense-wide amounts authorized to be transferred to the services for Sexual Assault Special Victims' Counsel Program are merged with and available for the same purposes and for the same time period as the appropriations to which the funds are transferred. Therefore, once transferred amounts are received into a service appropriation account, those amounts may be reprogrammed to any activity supported by that appropriation account.

Figure 4: National Guard Bureau’s Office of Complex Administrative Investigations (OCI) Funding, Fiscal Years 2014 through 2018



Source: GAO analysis of Office of Complex Investigations' data. | GAO-19-109

Note: These totals do not include additional funding OCI received from the Army and Air National Guards, because we were unable to determine the reliability of these funding data. However, between fiscal years 2014 and 2018, OCI received varying amounts of additional funds—referred to as discretionary funding—from the Army and Air National Guards.

According to the NGB's 2018 manual, the NGB Joint Staff is responsible for coordinating funding for OCI's state assessments. OCI officials said that costs related to state assessments may be funded through available NGB O&M amounts. However, the officials also said that OCI does not track its expenditures related to state assessments separately from those related to its sexual assault investigations.

According to OCI officials, OCI does not receive reimbursement from the states and territories for the cost of its investigations. OCI officials further stated that OCI investigators are part of the federal oversight of the federally recognized and funded units and members of the State National Guards. As such, states do not reimburse DOD for the cost of investigations performed by OCI. According to an OCI briefing document, a benefit of the office is its ability to conduct sexual assault investigations for the states which alleviates the need for Adjutants General to choose between funding such investigations versus other mission needs.

OCI Investigators Are Temporarily Assigned National Guard Members

According to the National Guard's 2018 Report to Congress, OCI primarily relies on National Guard members staffed temporarily to the office as investigators to conduct its sexual assault investigations and state assessments.³⁴ The report stated that, since fiscal year 2015, OCI has used active duty operational support (ADOS) orders to maintain a staff of National Guard members, including between 22 and 28 investigator positions and 4 administrative and support positions.³⁵ That report further stated that in fiscal year 2018, OCI hired one additional full-time Active Guard Reserve enlisted position and one Department of the Army civilian position. According to OCI officials, the office's investigative staff consists primarily of individuals with legal or law enforcement experience. See appendix I for more information on the organizational structure of OCI.

In its 2018 Report to Congress, the National Guard stated that, of those OCI staff serving on ADOS orders, more than half serve in their position for one year or less, which was a contributing factor to longer investigative timelines and a backlog of requests for investigation.³⁶ In February 2017, we found that the timeliness of investigations was a challenge for OCI and that 57 percent of investigations conducted in fiscal year 2015 took 6 to 9 months from the time a case was referred until the investigation was completed. We made a recommendation that the Chief of the NGB reassess OCI's timeliness and resources and identify the resources needed to improve the timeliness of these investigations.³⁷

As of October 2018, the Office of the Chief Counsel has taken some steps to address this recommendation, which according to OCI officials

³⁴National Guard, *Report to Congress on the Official Establishment, Manning, and Turnover Rates of the Office of Complex Administrative Investigations* (May 18, 2018).

³⁵ADOS is an authorized voluntary tour of active duty intended to provide the necessary skilled manpower assets to support existing or emerging requirements. Members of the National Guard may not serve more than 1,095 days in an active duty status, including ADOS, in any 1,460 day period, or they must be counted against the active duty strength of the relevant service. See 10 U.S.C. § 12301(d), 10 U.S.C. § 115(b)(2), and DOD Instruction 1215.06, *Uniform Reserve, Training and Retirement Categories for the Reserve Components* (Mar. 11, 2014) (incorporating Change 1, May 19, 2015).

³⁶From fiscal year 2014 through 2017, approximately 29 percent of investigators remained on the job for nine months or less, 54 percent of investigators left within one year, and 90 percent of investigators left within two years.

³⁷[GAO-17-217](#). Since we made a recommendation related to the timeliness and resourcing of OCI's investigations in February 2017, we are not making a similar recommendation in this report.

include, for example, starting to develop a strategic plan to address the office's long term staffing and funding needs. In its 2018 Report to Congress, the National Guard stated that OCI's current manning and resourcing strategy of one-year ADOS tours, coupled with unprogrammed funding, impairs the office's ability to recruit and sustain a stable, experienced workforce, resulting in longer investigation timelines and a growing backlog of requests for assistance which OCI struggles to meet.³⁸ According to the National Guard's 2018 Report to Congress, OCI's backlog of investigation requests grew from 7 cases in fiscal year 2014 to 55 in fiscal year 2017. According to OCI officials, the office continued to experience a backlog in fiscal year 2018.

OCI Has Policies for Sexual Assault Investigations and Controls to Help Ensure Key Policies Are Followed, but Has Inconsistently Documented How Case Acceptance Criteria Are Met

NGB guidance establishes policies for OCI's investigations, and OCI has implemented internal controls to help ensure it follows key policies. NGB guidance also establishes two criteria that allegations of sexual assault must meet for OCI to begin an investigation; however, this guidance does not require OCI to consistently include documentation in its case files related to how its case acceptance criteria are met.

National Guard Bureau Guidance Establishes OCI Investigation Policies

The NGB Instruction delineates the authority and responsibilities of NGB and state officials and the NGB Manual serves as the implementing guidance.³⁹ According to OCI officials, the office's investigative process was designed based on the Army's Procedures for Administrative

³⁸National Guard, *Report to Congress on the Official Establishment, Manning, and Turnover Rates of the Office of Complex Administrative Investigations* (May 18, 2018).

³⁹CNGBI 0400.01B (Apr. 12, 2018) and CNGBM 0400.01A (May 16, 2018). DOD Directive 6495.01 delegates authority to the services and the NGB to develop policies for handling sexual assault prevention and response. In accordance with this authority, the Chief of the NGB developed guidance for the National Guard.

Investigations and Boards of Officers.⁴⁰ To determine the allegations OCI will investigate, NGB policy includes specific requirements for OCI's coordination with state officials such as the Adjutant General and legal staff.

According to NGB guidance, OCI officials will work with state officials to determine the appropriateness of sending a case to OCI, but state National Guard officials are responsible for formally requesting an OCI investigation. NGB policy also includes requirements for OCI investigators and outlines policies for the investigation process. The NGB Manual has additional requirements for the office's dissemination of investigation results back to the state National Guard. Based on the content of the NGB policy, OCI also created Standard Operating Procedures to guide the activities that are designated as the office's responsibilities.⁴¹

OCI Has Implemented Internal Controls to Help Ensure Key Policies Are Followed

Based on our review, we found that OCI has internal controls to help ensure stakeholders follow key policies, including a review of final investigation reports and checklists to monitor activity. OCI's review of its investigations and case files includes both administrative and legal reviews conducted by officials within OCI and the NGB's Office of the Chief Counsel, including both administrative staff and leadership. Similar to the Army's administrative investigations procedures, OCI's reports of investigation undergo a review process which confirms that case files include all required documentation and provide sufficient evidence for the report's conclusions. Investigators have primary responsibility for storing administrative and evidentiary case documents, and a team of quality control administrators works with investigators to store and publish case files in accordance with OCI's policies. According to OCI officials, once investigators produce a report of investigation and determine whether to substantiate the allegation, the Investigations Manager reviews the investigators' determinations before sending the report to the office's Deputy Chief to review. According to OCI's Standard Operating Procedures, after the Deputy Chief's review, OCI submits the report for

⁴⁰Army Regulation (AR) 15-6 (Apr. 1, 2016). This guidance specifies the policies and procedures for administrative investigations within the Army. Procedures for AR15-6 Investigations include guidance on the requirements for who can conduct administrative investigations, what subjects can be investigated, and what type of due process and legal controls must be in place during the course of the investigation.

⁴¹Office of Complex Administrative Investigations, *Standard Operating Procedures and Investigative Reference Manual*, version 3.1 (Aug. 10, 2018).

review by an independent legal counsel in the Administrative Law Division of the NGB's Office of the Chief Counsel. Furthermore, OCI's procedures state that all OCI reports of investigation must be reviewed by both the Chief of OCI and the Deputy Chief Counsel before being submitted to the state that requested the investigation.

In addition to the internal controls implemented through OCI's report review process, OCI officials stated that the office also developed checklists designed to support internal policy adherence. For example, the review process includes an Investigator Checklist which outlines investigation policies and a Quality Control Checklist for administrators to ensure that the final report of investigation includes specific documentation and is coordinated appropriately, consistent with policy.⁴² Alongside these checklists, OCI's Standard Operating Procedures provide guidance to ensure that OCI investigators securely store private and sensitive information, particularly video recordings of personnel related to the case.⁴³

Our analysis of a non-generalizable sample of 27 case files from 5 states from fiscal years 2016 and 2017—out of a total of approximately 225 cases for those same years—found that OCI generally adhered to key policies.⁴⁴ For example, OCI included the Adjutants General requests to initiate the OCI investigation and executive summaries explaining OCI's determination of whether or not the allegation was substantiated in all 27 case files. However, 4 of 27 case files in our sample contained investigation request letters with personally identifiable information. OCI policy states that these letters should not include such information. OCI officials stated that they are unable to control the information the state National Guards include in their request letters; however, OCI officials also stated that investigators are expected to work with the states to get this information removed.

⁴²OCI has also developed a checklist for the state legal staff to guide their coordination with OCI and a binder checklist that outlines storage requirements for evidence and verifies completion of specific review steps.

⁴³Office of Complex Administrative Investigations, *Standard Operating Procedures and Investigative Reference Manual*, version 3.1 (2018).

⁴⁴Our findings from these case files are not generalizable to all of OCI's investigations, to the other states and territories, or to investigations conducted in the states we sampled any time before 2016 or after 2017. As such, they are provided solely as illustrative examples.

National Guard Bureau Policies Outline Case Acceptance Criteria, but OCI's Case Files Inconsistently Include Supporting Documentation to Show How the Criteria Have Been Met

NGB policies describe two criteria that allegations of sexual assault must meet for OCI to initiate and conduct an investigation. First, OCI may only conduct administrative investigations of sexual assault with an identified National Guard nexus. The NGB Instruction defines a National Guard nexus as generally existing when the reported perpetrator or the alleged victim is or was—at the time of the reported incident—a member or civilian employee of the National Guard.⁴⁵ Officials stated that this includes National Guard members in Title 32 or state active duty status. Second, OCI may investigate a case only after a military criminal investigative organization or civilian law enforcement has declined to investigate a case, when a victim declines investigation by civilian law enforcement, or when a civilian law enforcement organization did not sufficiently investigate. Table 1 describes the OCI criteria to administratively investigate sexual assault cases with a National Guard nexus.

Table 1: National Guard Bureau's Office of Complex Investigations Criteria to Conduct Administrative Investigations of Sexual Assault

Criteria	Examples
Establish a National Guard nexus	National Guard member in Title 32 status.
	National Guard member in state active duty status.
	Civilian employed by state National Guard.
Determine there is not a more appropriate investigative body	No other investigative body is conducting a concurrent investigation.
	Military criminal investigative organization or civilian law enforcement has declined the case.
	Civilian law enforcement has failed to investigate the case.
	Civilian law enforcement did not initiate an investigation.
	Civilian law enforcement did not sufficiently investigate a case.
	Victim declines civilian law enforcement investigation.

Source: GAO analysis of National Guard Bureau information. | GAO-19-109.

The NGB Manual includes a template that the states should use when submitting requests for OCI to initiate an investigation of an unrestricted report of sexual assault. The template includes standardized language that the state National Guard staff determined the existence of a National Guard nexus and confirmed coordination with at least one criminal investigative organization prior to requesting OCI's assistance. All 27

⁴⁵CNGBI 0400.01B (Apr. 12, 2018).

written requests from the Adjutants General included in the sample of case files we analyzed included a statement that used this standardized language and indicated that the state National Guard staff had determined the existence of a National Guard nexus and confirmed coordination with at least one criminal investigative organization prior to requesting OCI's assistance, consistent with NGB policy.

However, we found that OCI's case files do not consistently include supporting documentation to show how the case acceptance criteria—specifically the determination of a National Guard nexus and verification of coordination with the appropriate criminal investigative organizations—were met. This is because NGB policy does not require that OCI collect and include any additional documentation for verification purposes in its case files. In our review of OCI's case files, we found that 12 of the 27 case files did not include additional supporting documentation, such as police reports or e-mail correspondence with the appropriate criminal investigative organizations. We also found that 7 of the 27 case files did not include supporting documentation of both the nexus determination and coordination with the appropriate criminal investigative organizations. According to OCI officials, the office relies on state National Guard officials' evaluation and determination about the nexus criteria and does not always receive supporting documentation to verify the criteria have been met before initiating an investigation. OCI officials further stated that this is due, in part, to the fact that the NGB and Adjutants General cannot require local law enforcement to produce documentation related to their investigations because neither entity has subpoena power over state law enforcement organizations. However, in response to our concerns about the lack of supporting documentation to verify the state National Guard officials' evaluations of the criteria, in October 2018, OCI officials shared a draft memorandum template that they developed for verifying how the two case acceptance criteria were met.

Standards for Internal Control in the Federal Government state that management should design control activities to achieve objectives and respond to risks.⁴⁶ More specifically, documentation of such activities should be readily available for examination, properly managed, and maintained. Those standards state that documentation is a necessary part of an effective internal control system and is required to demonstrate design, implementation, and operating effectiveness. Without a

⁴⁶[GAO-14-704G](#).

requirement that supporting documentation related to the National Guard nexus and criminal investigative organization coordination efforts is included in each case file, OCI does not have reasonable assurance that the cases it is investigating adequately meet the two criteria for case acceptance.

Conclusions

Through the creation of the Office of Complex Investigations in 2012, the NGB has taken steps to address a gap by exercising its investigative authority to address those instances of sexual assault involving National Guard members that the military justice system or local law enforcement could not or would not investigate. OCI has implemented processes and procedures to help ensure that its policies are followed. However, the NGB does not require OCI to include supporting documentation in its case files for verifying how state National Guard officials determined that case acceptance criteria have been met. Without a requirement to collect and maintain such supporting documentation as part of its case files, OCI does not have reasonable assurance that it is only undertaking investigations that meet case acceptance criteria.

Recommendation for Executive Action

The Secretary of Defense should ensure that the Chief of the National Guard Bureau, in coordination with the Office of Complex Investigations, includes a requirement in its guidance to collect and maintain supporting documentation as part of its case files that verifies whether and how (1) the National Guard nexus exists, and (2) the allegation has been referred to the appropriate military criminal investigative organization or civilian law enforcement organization prior to opening an OCI investigation. (Recommendation 1)

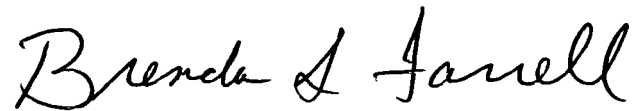
Agency Comments

We provided a draft of this report to DOD for review and comment. In its written comments, reproduced in appendix II, DOD concurred with our recommendation and noted actions it was taking. DOD also provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, and other interested parties, including the Chief of the National Guard Bureau, the National Guard Bureau's Office of Chief Counsel, and the Office of Complex

Investigations. In addition, this report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff has any questions regarding this report, please contact Brenda Farrell at (202) 512-3604 or farrellb@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix III.

A handwritten signature in black ink that reads "Brenda S. Farrell". The signature is written in a cursive style with a large initial "B".

Brenda S. Farrell
Director
Defense Capabilities and Management

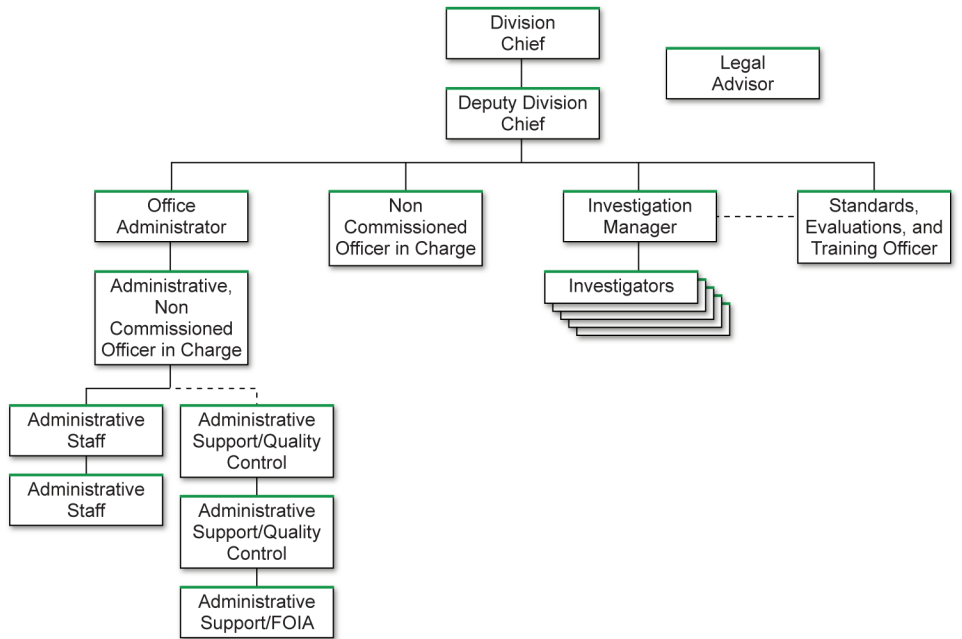
Appendix I: Organizational Structure of The National Guard Bureau's Office of Complex Investigations

The Office of Complex Investigations (OCI) was established within the National Guard Bureau's Office of the Chief Counsel. To conduct its sexual assault investigations and state assessments, OCI primarily relies on Guard members staffed temporarily to the office as investigators. From August 2012 through September 2014, the office operated with three full-time personnel, who administered the program and conducted investigations with investigative personnel who received assignments as an extra duty. Since fiscal year 2015, however, OCI has used one-year active duty operational support (ADOS) orders to maintain a staff of National Guard members, including between 22 and 28 investigator positions and 4 administrative and support positions.¹ In fiscal year 2018, the office was primarily staffed with traditional Guard members on ADOS tours—4 administrative support personnel and 24 investigators—in addition to one full time Active Guard and Reserve enlisted position and one Department of the Army civilian position. According to OCI officials, the office's investigative staff consists primarily of individuals with legal or law enforcement experience. Figure 5 illustrates the organizational structure of OCI.

¹10 U.S.C. 12301(d). ADOS is an authorized voluntary tour of active duty intended to provide the necessary skilled manpower assets to support existing or emerging requirements. Members of the National Guard may not serve more than 1,095 days in an active duty status, including ADOS, in any 1,460 day period, or they must be counted against the active duty strength of the relevant service. See 10 U.S.C. § 12301(d), 10 U.S.C. § 115(b)(2), and DOD Instruction 1215.06, *Uniform Reserve, Training and Retirement Categories for the Reserve Components* (Mar. 11, 2014) (incorporating Change 1, May 19, 2015).

Appendix I: Organizational Structure of The National Guard Bureau's Office of Complex Investigations

Figure 5: Organizational Structure of the Office of Complex Investigations (OCI)



Source: National Guard Bureau's Office of Complex Investigations' Information. | GAO-19-109

Appendix II: Comments from the Department of Defense



NATIONAL GUARD BUREAU
111 SOUTH GEORGE MASON DRIVE, AH2
ARLINGTON VA 22204-1373

19 November 2018

Ms. Brenda Farrell
Director, Defense Capabilities Management
U.S. Government Accountability Office (GAO)
411 G Street, NW
Washington DC 20548

Dear Ms. Farrell,

This is the Department of Defense response to the GAO Draft Report, GAO-19-109, '*NATIONAL GUARD: Office of Complex Investigations Should Update Policies to Require Additional Documentation for Sexual Assault Cases,*' dated October 31, 2018 (GAO Code 102687).

The National Guard Bureau (NGB) appreciates the diligent and thorough work of GAO in conducting the examination of the Office of Complex Investigations (OCI) in preparing this report. NGB accepts and concurs with the recommendations contained therein. Furthermore, in accordance with GAO's recommendation, NGB has begun the process of updating the regulatory guidance for OCI to include supporting documentation that establishes the National Guard nexus and documents the type of coordination made by the requesting state with law enforcement.

Please contact me if you have any questions at 571-225-1612 or erin.k.mcmahon.mil@mail.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "Erin", is positioned above the typed name.

Erin K. McMahon
Deputy Chief Counsel
National Guard Bureau

GAO DRAFT REPORT DATED OCTOBER 31, 2018
GAO-19-109 (GAO CODE 102687)

**“NATIONAL GUARD: OFFICE OF COMPLEX INVESTIGATIONS SHOULD
UPDATE POLICIES TO REQUIRE ADDITIONAL DOCUMENTATION FOR SEXUAL
ASSAULT CASES”**

**DEPARTMENT OF DEFENSE COMMENTS
TO THE GAO RECOMMENDATION**

RECOMMENDATION: The GAO recommends that the Secretary of Defense should ensure that the Chief of the National Guard Bureau, in coordination with the Office of Complex Investigations, includes a requirement in its guidance to collect and maintain supporting documentation as part of its cases files that verifies whether and how (1) the National Guard nexus exists and (2) the allegation has been referred to the appropriate military criminal investigative organization or civilian law enforcement organization prior to opening an OCI investigation.

DoD RESPONSE: DoD concurs with the draft report as written and notes, that in accordance with the stated recommendation, NGB has begun the process of updating the regulatory guidance for OCI to include supporting documentation that establishes the National Guard nexus and documents the type of coordination made by the requesting state with law enforcement.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Brenda S. Farrell, (202) 512-3604 or farrellb@gao.gov

Staff Acknowledgments

In addition to the contact named above, Kimberly Seay, Assistant Director; Johana Ayers; Maurice Belding; Vincent Buquicchio; Serena Epstein; Laura Ann Holland; Amie Lesser; Wayne McElrath; Stephanie Moriarty; Clarice Ransom; Ramon Rodriguez; Michael Silver; Jennifer Weber; and Nell Williams made key contributions to this report.

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