



Josh Kaul
Wisconsin Attorney General

P.O. Box 7857
Madison, WI 53707-7857

NEWS FOR IMMEDIATE RELEASE

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**AG Kaul Announces Conclusion of Review of Sexual Assault Cases
Previously Investigated by the Wisconsin National Guard**

MADISON, Wis. – Attorney General Josh Kaul announced today the conclusion of a review by the Wisconsin Department of Justice (DOJ) of more than 30 sexual assault cases previously investigated by the Wisconsin National Guard (WING) between 2009 and 2019. While that review has not resulted in any new criminal charges, DOJ has informed Governor Tony Evers, U.S. Senator Tammy Baldwin, and counsel for the Wisconsin National Guard of observations from the DOJ review for policymakers’ consideration.

“Sexual assault is a violent crime that must always be taken seriously. This process ensured that reports submitted during the time period when the Wisconsin National Guard was found to have mishandled reports were reviewed by an experienced prosecutor, investigator, and victim services specialist,” said Attorney General Kaul. “As a result of this review, DOJ has made several observations that policymakers can and should consider as they work to improve the Wisconsin National Guard’s response to sexual assault and to prevent future cases of sexual assault.”

All of the cases reviewed by DOJ pre-date Governor Evers’ Executive Order 62, issued on December 9, 2019, which directed WING to address the findings and recommendations in the National Guard Bureau Office of Complex Investigations’ (OCI) report. The cases reviewed by DOJ therefore necessarily pre-date the corrective actions WING has undertaken in response to the Governor’s Executive Order. DOJ did not conduct a review of those corrective actions, nor did it conduct a comprehensive review of WING’s procedures for sexual assault prevention and

response, which were the focus of the OCI report. DOJ's observations from the cases it reviewed include the following:

- **Fraternization & Alcohol**

Some of the cases involved complaints of and investigations into fraternization between National Guard members of different grades or ranks, and many of the cases involved the consumption of alcohol by alleged offenders. DOJ reviewed Chapter 4 of Army Regulation 600-20, which addresses prohibited relationships and fraternization between soldiers (4-14 – 4-16). While DOJ recognizes that this is an Army Regulation, not a rule specific to WING, and DOJ does not have expertise regarding this rule or how it was developed, DOJ found the explanation of the difference between permitted and prohibited relationships complicated and subject to misinterpretation. The consequences for violations are also highly discretionary.

The “prohibited relationships” described in AR 600-20, Chapter 4, should be more plainly and succinctly expressed and defined, and the consequences for violations should be clear and reflect the seriousness of the abuse of position and power inherent in these violations. Focused trainings on a regular basis addressing the rules regarding fraternization, the reasons for the rules, the avenues for safe reporting including whistle-blower protections, recommended practices for bystander intervention, and penalties for violating fraternization policies could also increase compliance with the rules and promote prompt reporting and intervention. In addition, the dangers associated with excessive consumption of alcohol should be taken into account and regularly emphasized, including through trainings and in the review and approval of WING events.

- **Investigations**

Some of the cases reviewed by DOJ involved investigative measures taken by WING that were not conducted in a trauma-informed manner, and in at least one case investigated by OCI, disciplinary investigations were unacceptably intertwined with the sexual assault investigation. Sexual assault investigations should always be undertaken based upon trauma-informed methods and protocols and be independent from other investigations. Investigations should also commence as promptly as possible following the filing of an unrestricted report.

- **Victim Services**

In some cases, there was a failure to keep survivors well-informed of the status of their report. To ensure continuity of advocacy and representation, to the extent possible the special victims' counsel (SVC) program coordinated by the National Guard Bureau should assign the same SVC to a survivor until the case is closed. The survivor and their SVC should be kept apprised of the status of the investigation, and survivors should have the opportunity to ask questions and offer input for consideration.

The OCI report identified certain unrestricted reports of sexual assault that were made during the ten-year time period subject to OCI's assessment. In January 2020, DOJ began a review of these unrestricted reports in order to ensure that each case was carefully reviewed for an assessment of whether further investigation was needed and whether the case should be referred to a district attorney. DOJ victim service specialists also responded to outreach from some survivors who contacted DOJ.

Of the cases reviewed by DOJ:

- three cases already had been prosecuted by a district attorney's office;
- four cases had previously been appropriately investigated by local law enforcement, reviewed by a district attorney's office, and declined for prosecution;
- at least 12 cases involved conduct that could not be prosecuted because it occurred outside the statute of limitations;
- three cases were referred by DOJ for further review by a district attorney's office;
- three cases were not referred by DOJ for further review due to requests expressed by the survivor;
- in seven cases, DOJ concluded that further investigation or referral to a district attorney's office would not result in a prosecution; and
- in one case, there was not sufficient information to conduct a review.

Some of the cases reviewed by DOJ involved conduct that, while not chargeable criminally, was nonetheless degrading, harassing, and highly inappropriate in any setting.

To conduct this review, DOJ assembled two separate multi-disciplinary teams (MDTs) to thoroughly review every unrestricted report of sexual assault made to WING between 2009 and 2019. Each MDT consisted of a prosecutor from the DOJ

Criminal Litigation Unit, a special agent from the DOJ Division of Criminal Investigation (DCI), and a victim specialist from the DOJ Office of Crime Victim Services (OCVS). DOJ selected each member of the MDTs because of their extensive experience working on sexual assault cases. The MDTs met numerous times, collectively reviewing over 4,000 pages of documents.

Following review by the MDTs, a larger group from DOJ, including leadership from the Division of Legal Services, DCI, and OCVS, met regularly to discuss each case and recommended next steps. Based on these discussions, the MDTs conducted additional review, connected with local law enforcement, or at times contacted the survivor or their representative. Throughout, the review was trauma-informed, and survivor wellness was paramount.