

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE UNITED STATES ATTORNEY'S OFFICE FOR THE MIDDLE DISTRICT OF  
GEORGIA,  
THE FORT BENNING MANEUVER CENTER OF EXCELLENCE,  
AND  
THE DISTRICT ATTORNEY'S OFFICE FOR THE CHATTAHOOCHEE JUDICIAL CIRCUIT

SUBJECT: Referral of Juvenile Criminal Offenses on the Fort Benning Military Reservation to State Authorities.

1. Purpose.

This document memorializes the agreement among the above-listed parties regarding the parameters and procedures for federal authorities to refer and thereby consent to the exercise of jurisdiction by the State of Georgia over offenses committed by juveniles, as defined by Georgia law, on the Fort Benning Military Reservation ("Fort Benning"). This agreement does not create, limit, or modify the authority or jurisdiction of any signatory hereto.

2. Background and Authority.

a. Fort Benning is a federal enclave, and area of exclusive federal jurisdiction, mainly located within the geographic boundaries of Muscogee County and Chattahoochee County, Georgia. The U.S. Attorney's Office for the Middle District of Georgia ("U.S. Attorney's Office") is solely responsible for prosecuting offenses committed by juveniles on Fort Benning. Juvenile delinquency proceedings are not considered criminal in nature and fall under the developing case law which upholds the exercise of state civil jurisdiction within areas of exclusive federal jurisdiction where that exercise of state authority, as contemplated by this agreement, will not undermine federal sovereignty. Such deference to and reliance on state authority in the area of juvenile matters is manifest in Congressional statutes, Department of the Army regulations, and past agreements and practice between Chattahoochee County and Fort Benning.

b. In many cases, the federal criminal justice system lacks the facilities, resources, and expertise appropriate to treat and rehabilitate juvenile delinquents. The State of Georgia, by contrast, through its juvenile court system and agencies tasked with the treatment and rehabilitation of juveniles, possesses the facilities, resources, and expertise appropriate for juvenile offenders.

c. Congress, through the enactment of the Federal Juvenile Delinquency Act, 18 U.S.C. § 5031 et seq., recognizes that in certain instances prosecution of juvenile offenders by state authorities is preferable to prosecution in the federal system. Under this statutory paradigm, the

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U.S. Attorney's Office must refer juveniles to state court for adjudication unless certain enumerated criteria are met.

d. The United States Attorney's Office may refer a juvenile matter to the District Attorney's Office for the Chattahoochee Judicial Circuit ("District Attorney's Office"). The District Attorney's Office may then elect to exercise jurisdiction over juvenile offenses committed on Fort Benning if it determines, on a case-by-case basis, such referral to the state is appropriate and consistent with the requirements of the Federal Juvenile Delinquency Act. Referral to state prosecutors of juvenile offenses committed within areas of exclusive federal jurisdiction is consistent with Congressional intent and does not undermine federal or state sovereignty.

e. The District Attorney's Office is responsible for the prosecution of juveniles pursuant to O.C.G.A. § 15-18-6.1.

f. The Fort Benning Garrison Commander has the responsibility for maintaining good order and discipline on Fort Benning and for safeguarding members of the Fort Benning Community. This responsibility includes the authority to take administrative action against civilians, including juveniles, who commit misconduct on Fort Benning. Pursuant to Maneuver Center of Excellence Regulation 210-5, the Fort Benning Juvenile Misconduct Action Authority may issue administrative sanctions and require supervised probation in a community service work program under the supervision of the military sponsor or parent.

### 3. Party Responsibilities.

#### a. Case Review.

(1) The U.S. Attorney's Office, through the Special Assistant U.S. Attorney ("SAUSA") and Criminal Division Chief, or his/her designee, will review all cases involving juvenile misconduct on Fort Benning. After review, the Criminal Division Chief will determine if referral to state authorities to exercise jurisdiction is appropriate. If so, the case will be referred to the Juvenile Court Assistant District Attorney for review through the SAUSA.

(2) No case will be referred to the District Attorney's Office unless reviewed and approved by the Criminal Division Chief of the U.S. Attorney's Office, or his/her designee.

(3) Upon receipt of the case for consideration, the District Attorney's Office will determine whether: 1) the offender is a juvenile as defined by state law; 2) a violation of law occurred; 3) their agency can exercise appropriate jurisdiction; and, 4) it is appropriate to exercise state jurisdiction. The District Attorney's Office will endeavor to make the foregoing determinations within twenty (20) days of receipt of all pertinent documents.

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(4) The District Attorney's Office will notify the SAUSA whether they agree to exercise jurisdiction over the case. If the District Attorney's Office does agree, the U.S. Attorney's Office will execute all necessary documents to effectuate the transfer. If the District Attorney's Office declines to exercise jurisdiction, the U.S. Attorney's Office will retain jurisdiction over the case.

(5) Once a case has been transferred to the District Attorney's Office, the U.S. Attorney's Office agrees it will not initiate federal juvenile delinquency or federal criminal charges against the juvenile unless the District Attorney's Office later refuses to prosecute or dispose of the case as described in paragraph 3.b.4.

(6) The Garrison Commander can take administrative action against the juvenile pursuant to Fort Benning regulations regardless of whether criminal or delinquency proceedings are initiated against the juvenile. The SAUSA, upon request, will inform the District Attorney's Office what administrative actions have taken place.

b. Support.

(1) Once federal jurisdiction is deferred to the District Attorney's Office, Fort Benning and the U.S. Attorney's Office will continue to support the investigation and assist with witness coordination and transportation. Such assistance excludes witness compensation except as otherwise allowed for under regulations in effect at the time the request is made.

(2) The SAUSA will continue to act as a liaison between the District Attorney's Office, the offices located on Fort Benning, and the U.S. Attorney's Office.

(3) The Fort Benning Garrison Commander will coordinate with the Fort Benning Directorate of Emergency Services, U.S. Army Criminal Investigation Division, and other Department of Defense personnel stationed on Fort Benning who are involved in the investigation, to ensure cooperation and assistance with the District Attorney's Office in the preparation and presentation of the case. This assistance includes, but is not limited to: initial and follow up investigations, interview of witnesses and/or subject juveniles, gathering evidence, storing evidence, obtaining necessary laboratory testing of evidence, submission of evidence to police laboratories, and testifying in court. The U.S. Attorney's Office will ensure similar cooperation from federal law enforcement agencies.

(4) The District Attorney's Office will prepare and file all documents necessary to prosecute the case pursuant to Georgia's Juvenile Code (O.C.G.A. § 15-11-1 et seq.). Prosecution or disposal of the case pursuant to Georgia law will be in the sole and exclusive discretion of the District Attorney's Office. Such discretion includes dismissal of petitions without adjudication or prosecution. Should the District Attorney's Office dismiss a petition without adjudication, they will promptly notify the SAUSA and the Criminal Division Chief of

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the U.S. Attorney's Office. Such dismissal may result in the U.S. Attorney's Office pursuing charges through the Federal Juvenile Delinquency Act in a manner consistent with statutory and constitutional confines.

4. Communication. Effective execution of this agreement can only be achieved through constant communication and dialogue among and between the parties. It is the policy of all signatories that access to all parties will remain open whenever questions, misunderstandings, or complaints arise. When personnel leave the positions described herein, their replacement will notify the other parties as soon as possible.

5. Effective Date and Periodic Review. This agreement will become effective on the date it is signed by all parties and will be reviewed biannually. This agreement will renew automatically and remain in force and effect until such time as a new memorandum is executed or the agreement is terminated.

6. Effect on Other Agreements. This Memorandum of Understanding shall supersede and terminate any prior Memorandum of Understanding discussing the prosecution of juvenile misconduct occurring on Fort Benning.

7. Termination. Any party may terminate this agreement, for any reason, upon thirty (30) days prior written notice. Termination of this agreement will have no bearing on cases that have been, may be, or will be transferred to the District Attorney's Office.

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District Attorney  
Chattahoochee Judicial Circuit

\_\_\_\_\_  
(date)

\_\_\_\_\_  
Presiding Judge  
Chattahoochee Judicial Circuit

\_\_\_\_\_  
(date)

\_\_\_\_\_  
United States Attorney  
Middle District of Georgia

\_\_\_\_\_  
(date)

\_\_\_\_\_  
Fort Benning Maneuver Center of Excellence

\_\_\_\_\_  
(date)