

ON BASE AND BEYOND: NEGOTIATING THE MILITARY/STATE AGREEMENT

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I. Introduction

- A. In 2012, the most recent year for which statistics are available, the Office of Juvenile Justice and Delinquency Prevention (U.S. Dept. of Justice, Office of Justice Programs) reported that over 1.3 million juveniles (i.e., persons under 18 years of age) were arrested in the United States
1. About 10% of these consisted of offenses in the Violent Crime Index (i.e., murder, non-negligent manslaughter, forcible rape, aggravated assault, and robbery)
 2. Over one in five of these offenses involved burglary and theft offenses
 3. 140,000 arrests were for drug abuse violations
 4. About 60,000 were for vandalism
 5. Over 120,000 were for disorderly conduct
 6. More than 4 in 10 arrests for larceny-theft involved females, and 29% of these total arrests involved juveniles younger than 15
- B. There are no comparative statistics published, but it is a reasonable conclusion that these figure are reflected in the offense and arrest rates for juveniles on the military installation. No segment of society or enclave of citizens gets a free pass when it comes to juvenile delinquency.
- C. Unique aspects of life for juvenile dependents (see generally ABA Comm. on Youth at Risk, The Challenges to Youth In Military Families 8 (2007) - <http://www.americanbar.org/content/dam/aba/migrated/youthatrisk/docs/report.authc heckdam.pdf>)

- D. Frequent deployments of a military parent are difficult. While the non-military parent may remain on-base, she or he will often relocate to a different city or state to be with extended family, resulting in a change of schools, neighborhoods and friends for the juvenile.
- E. If the military parent is a single parent, then he or she must comply with the Family Care Plan that is required for every member of the armed forces who has dependents (whether children, siblings or parents) for whom the parent is responsible. This usually means transfer of the child to the other parent, often in another part of the country. Once again, there is a change in the juvenile's schools, neighborhoods and family friends.

II. Federal Jurisdiction

- A. A substantial number of juveniles are family members of armed forces personnel (i.e., members of the Army, Navy, Air Force, Marine Corps and Coast Guard)
- B. These dependents reside on military installations within the United States, where they receive benefits such as education, recreation services, shopping (post exchange/base exchange, and commissary) and dependent youth activities.
- C. Base commanders are by law and regulation responsible for maintaining *good order and discipline* regarding armed forces personnel as well as the safety, control, integrity and security of the military base.
 - 1. Ordinarily (but not always) the base commander is the highest-ranking officer at the military installation.
 - 2. Many base commanders delegate their authority over the installation to a garrison commander or a Deputy Installation Commander, or DIC.
 - 3. In carrying out his or her duties regarding the maintenance of safety, morale, welfare and discipline on base, the commander is advised by and consults with the Provost Marshal (the chief law enforcement officer), who is supported by Military Police (MP), Special Police (SP), Naval Investigative Service, Criminal Investigation Division, Office of Special Investigation, Shore Patrol

and other law enforcement entities on base, as well as law enforcement agencies off post which are investigating incidents on base

4. The Staff Judge Advocate (the chief lawyer on base) also advised the base commander, and do other staff officers.
 5. The base commander is in many respects like a small-town mayor. He or she is responsible for utilities, lodging, building maintenance, traffic management, bus services, shopping centers (with convenience stores such as Starbucks and McDonald's, as well as the post/base exchange and the commissary), police and fire services, entry and exit gates, hospital and medical facilities, and many other aspects of suburban living. Today's military base combines many aspects of a small city and a "gated community."
- D. The primary focus of the installation commander has always been on the preparation of assigned personnel for armed hostilities. The subordinate missions of the commander involve training, treatment and lodging –
1. Training for battle
 2. Treatment of those returning from battle and those preparing for it
 3. Lodging and related facilities for assigned personnel and their family members ("dependents")
- E. Security of the military base necessarily involves crime prevention and investigation.
1. When military personnel are involved, the trial and punishment issues are usually handled in a court-martial or with non-judicial punishment.
 2. When an adult who is not in the military is involved (e.g., a guest, adult child or non-military spouse), the court process may involve state or federal court.
- F. Historically there has been no federal mandate to create and staff social welfare programs. This responsibility has generally been left to the states, and this is especially true when it comes to the prevention and treatment of juvenile delinquency.

- G. The authority of the installation commander has historically been limited as to implementing a robust and comprehensive juvenile justice program, especially on bases which are mostly or entirely “exclusive federal jurisdiction.”
1. This has changed since the passage of the Juvenile Justice and Delinquency Prevention Act of 1974 (see below). Congress passed the statute “to remove juveniles from the ordinary criminal process in order to avoid the stigma of a prior criminal conviction and to encourage treatment and rehabilitation.” *United States v. Male Juvenile E.L.C.*, 396 F.3d 458 (1st Cir. 2005) (quoting *United States v. Female Juvenile A.F.S.*, 377 F.3d 27, 32 (1st Cir. 2004)). This federal law offers non-criminal procedures for the treatment of juveniles under federal jurisdiction who violate federal law; it also provides a criminal procedure for prosecuting juveniles as adults.
 2. To understand the Act and the limitations placed on base commanders, it is essential to understand the concept of “jurisdiction” on the military enclave. What is *jurisdiction*?
 3. This is generally an issue of local law at each base. A lot depends on when the land was obtained, how it was obtained, and any reservations in the ceding of jurisdiction. See Richard T. Altieri, *Federal Enclaves: The Impact of Exclusive Legislative Jurisdiction upon Civil Litigation*, 72 MIL .L. REV. 35 (1976).
 4. Outline of types of jurisdiction from Tab B, “Federal-State Relations On and Off Military Installations and Federal Authority over Land,” GENERAL ADMINISTRATIVE LAW DESKBOOK 2015, The Judge Advocate General’s School, U.S. Army:
 - a. Reference: AR 405-20, Federal Legislative Jurisdiction (21 FEB 74).
 - b. Exclusive legislative jurisdiction. The federal government possesses, by whatever means acquired, all of the state’s authority to legislate without reservation, except that the state concerned has reserved the right to serve criminal or civil process. These areas are often referred to as “enclaves” and exclusive federal legislative jurisdiction displaces state jurisdiction.

- i. Example: “Exclusive jurisdiction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes, except the service of all civil and criminal process of the courts of this state.” Colorado Revised Statutes § 3-1-103.
 - ii. Example: “Exclusive jurisdiction in and over any land so acquired by the United States is ceded to the United States for all purposes except the service of all civil and criminal process of the courts of this state . . .” Connecticut General Statutes § 48-1.
- c. Concurrent legislative jurisdiction. The state and federal governments both have full legislative jurisdiction. The state has reserved to itself the right to exercise, concurrently with the United States, all of the same authority.
- d. Partial jurisdiction. The state reserves some, but not all, legislative jurisdiction. For example, a state can reserve the power to tax, but cede all other powers. Another example is when the state cedes all legislative jurisdiction but reserves criminal jurisdiction.
 - i. Example: Virginia has reserved the power to exclusively license and regulate, or to prohibit, the sale of intoxicating liquors on any lands the United States acquires, and to levy a tax on the sale of oil, gas and all other motor fuels and lubricants. Va. Code Ann. § 1-400.
 - ii. Example: A Minnesota statute states, “the jurisdiction of the United States over any land or other property within this state now owned or hereafter acquired for national purposes is concurrent with and subject to the jurisdiction and right of the state . . . to punish offenses against its laws committed therein.” Minn. Stat. § 1-041.
- e. Proprietary interest. The federal government only occupies the property. The federal government has only the same rights on the land as does any landowner. As with concurrent legislative jurisdiction, the state retains all jurisdiction over the area. Examples: The federal government has only a

proprietary interest in TJAGLCS [The Judge Advocate General's Legal Center and School] and leased government housing. Keep in mind, however, that the state cannot interfere with the performance of a federal function.

III. The Juvenile Justice and Delinquency Prevention Act

- A. Passed by Congress in 1974
- B. 1984 amendments required juveniles to be tried as adults in some cases and authorized federal prosecution of juveniles for violent crimes or serious drug offenses if the Attorney General certified that the case held "a substantial federal interest."
- C. 1994 amendment - response to gang violence, increased level of violent juvenile crime. The Violent Crime Control and Law Enforcement Act allowed prosecution of juveniles as young as 13 for certain serious felonies, including first- and second-degree murder, attempted murder, and bank robbery.
- D. Federal law, however, continues to support the concept that juvenile delinquency issues ought to be left to state courts, and that the federal law enforcement should become involved only when an older juvenile engages in serious criminal conduct.
- E. Found at Chapter 403 of Title 18, U.S. Code (18 U.S.C. § 5031-42)
- F. Provisions of the Act (see APPENDIX 2 below) –
 - 1. It applies to persons under the age of 18.
 - 2. It applies to acts which would be considered crimes if they were committed by an adult.
 - 3. The Act allows the government to proceed against a person between 18 and 21 years of age for an act he or she committed before turning 18. 18 U.S.C. § 5031.
 - 4. Core of juvenile justice proceedings and jurisdictional issues are found at 18 U.S.C. § 5032; the procedures to guarantee due process to juveniles are found in the following sections.

- a. Upon arrest, law enforcement officials must inform juveniles of their rights and also notify the parents of the arrest.
 - b. An initial appearance before a magistrate is required within a reasonable time. 18 U.S.C. § 5033.
 - c. The magistrate must appoint counsel and a GAL (guardian ad litem) for the juvenile. 18 U.S.C. § 5034.
 - d. The magistrate must also make determinations regarding release of the juvenile. 18 U.S.C. § 5034.
 - e. The Act sets forth conditions for “pretrial detention.” 18 U.S.C. § 5035.
 - f. It also covers rules for speedy trial. 18 U.S.C. § 5036,
 - g. There are time limits for holding the disposition hearing for the juvenile. 18 U.S.C. § 5037.
 - h. Guidelines exist for “official detention” (i.e., confinement). 18 U.S.C. § 5037.
 - i. The use of juvenile delinquency records is covered. 18 U.S.C. § 5038.
 - j. The Act provides for rules regarding the placement of those who are determined to be delinquent. 18 U.S.C. § 5039.
 - k. There are also procedures set out for the revocation of probation. 18 U.S.C. § 5042.
5. Specific provisions of 18 U.S.C. § 5032 regarding prosecution in federal district court, transfer/surrender to state authorities
- a. When there is a felony-level offense, the Attorney General needs to certify to the federal district court the existence of one of three categories:
 - i. the juvenile court or other appropriate state court does not have jurisdiction or refuses to assume jurisdiction over the juvenile as to such alleged act of juvenile delinquency

- a) This would probably take place at a military installation with exclusive federal jurisdiction, or else one with concurrent jurisdiction and unresponsive local civilian authorities. Major Emily M. Roman, *Where There's a Will, There's a Way: Command Authority over Juvenile Misconduct on Areas of Exclusive Federal Jurisdiction, and the Utilization of Juvenile Review Boards*, ARMY LAW. May 2015 at 6.
 - ii. the state lacks available programs and services adequate for the needs of juveniles, or
 - iii. the offense charged is a crime of violence that is a felony or a specific drug offense [i.e., an offense described in section 401 of the Controlled Substances Act ([21 U.S.C. 841](#)), or section 1002(a), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act ([21 U.S.C. 952\(a\)](#)), 953, 955, 959, 960(b)(1), (2), (3)), section 922(x) or section 924(b), (g), or (h) of Title 18, U.S. Code] and there is a substantial Federal interest in the case or the offense to warrant the exercise of federal jurisdiction.
- b. Without this certification, the juvenile will be surrendered to state authorities.
- c. Delegation – While Section 5032 requires certification by the Attorney General, this authority may be delegated. The local U.S. Attorney and/or Assistant U.S. Attorney will probably sign the certification.
- d. Venue and location – The venue for the case is in the appropriate United States District Court.
- e. Charging document – This is an “information” filed by the U.S. Attorney or his/her designee
- f. Motion for transfer for adult prosecution – When a motion is filed for prosecution of the juvenile as an adult, the court must examine the

statutory factors for transfer. The court is required to grant the transfer motion if:

- i. The juvenile is at least sixteen;
 - ii. He or she faces a felony-level offense involving the actual or potential use of physical force or an enumerated drug offense; and
 - iii. The juvenile has a previous adjudication from the same list of offenses.
- g. In deciding whether to grant the transfer motion, the district court judge must consider “the interest of justice.”
- h. Factors to be considered by the court are listed in the fifth paragraph of Section 5032:
- i. the age of the juvenile’s age and his/her social background,
 - ii. the nature of the alleged offense,
 - iii. the extent and nature of the previous delinquencies,
 - iv. the juvenile’s present intellectual and psychological development,
 - v. the past treatment efforts and responses, and
 - vi. the availability of appropriate programs to treat the juvenile’s behavioral problems
- i. Paragraph six of Section 5032 requires reasonable notice to the juvenile, his or her parents, and counsel before any transfer hearing takes place, and provision is made for the assistance of counsel during the transfer hearing.
- j. *See* Major Richard L. Palmatier, Jr., *Criminal Offenses by Juveniles on the Federal Installation: A Primer on 18 U.S.C. § 5032*, ARMY LAW. 3, Jan. 1994.
6. Selected cases supporting the exercise of jurisdiction by juvenile court or family court when the offense is committed on a military base –

- a. *In re Charles B.*, 196 Misc. 2d 374, 765 N.Y.S.2d 191 (Family Court of Orange County, N.Y., 2003): The county family court has jurisdiction over a juvenile delinquency proceeding in which the respondent, a military dependent living on a military base (U.S. Military Academy, or “West Point”), was charged with various offenses on the base. The court held that –
 - i. In transferring the land to the federal government for military purposes, the state of New York did not also cede jurisdiction over civil matters; and
 - ii. There is a long-standing precedent of federal deference to state courts with regard to juveniles, noting 18 U.S.C. § 5032, and there is no legislation which preempts the interest of the state in exercising jurisdiction over juveniles who live on military bases.
- b. *State in Interest of S.*, 137 N.J. Super. 371, 349 A.2d 105 (N.J. Super. App. Div. 1975): Juvenile challenged probation and claimed that New Jersey had no jurisdiction over offenses committed on military base (Fort Dix). Court found that –
 - i. Neither federal nor state law deemed acts constituting juvenile delinquency to be crimes.
 - ii. The court affirmed the probation because federal law (18 U.S.C. § 5032) was passed to allow state handle such cases involving juveniles if the state had jurisdiction over the juvenile, would accept jurisdiction, and had available programs and services appropriate for the needs of the juvenile.
 - iii. Because this juvenile was a member of the social community of New Jersey, he was entitled to the benefit of its protective and rehabilitative juvenile services after military authorities surrendered him to the New Jersey courts.

- c. *M.R.S. v. State*, 745 So. 2d 1139 (Fla. 1st DCA 1999): Court held that a state may assert jurisdiction over an offense committed on military base (Eglin Air Force Base) if there is no conflict with federal jurisdiction. The transfer of jurisdiction in this case was made pursuant to reciprocating federal and state statutes.

G. Authority of the U.S. Magistrate Judge – see APPENDIX 2A

IV. Sharing Jurisdiction with Nearby Civilian Authorities – the “MOA”

A. Resources –

1. APPENDIX 5 – Juvenile Justice Memorandum of Agreement, 2/5/2010
2. APPENDIX 6 – Memorandum of Understanding (Georgia)
3. APPENDIX 7 – Draft Juvenile Drug Court Memorandum of Agreement

B. The use of a Memorandum of Agreement to weld together the authorities and resources of the military base and the surrounding city or county courts and agencies:

1. MOA for Ft. Benning/Muscogee and Chattahoochee Counties (Appendix 5)
2. Scope and Background –
 - a. Incidents which occur on Ft. Benning military base
 - b. Children who are deprived, neglected, abused, unruly or delinquent
 - c. Need for government supervision for their protection and supervision
 - d. Military base is not equipped to provide the above in cases involving serious offenses or repeat juvenile offenders
 - e. Three options for the base commander for adjudicating matters involving juvenile offenses
 - i. Administrative action
 - ii. Referral to U.S. magistrate for prosecution if punishable by less than six months’ confinement (18 U.S.C. § 5032 and 18 U.S.C. § 3401)
 - iii. Referral of serious cases to the U.S. Attorney for prosecution

- iv. State intervention, adjudication and disposition are usually preferable to the three above options, and such intervention is preferred by the federal government
- f. Longstanding deference to state action by federal authorities, and cases upholding state actions (adjudication, disposition) in the face of challenges regarding state authority and jurisdiction
- g. Reporting and investigation responsibilities
- h. Involvement of the Provost Marshal's Office, the Special U.S. Attorney (SAUSA), and the Installation Hearing Officer (IHO), who is an attorney at the office of the Staff Judge Advocate (SJA) on base
- i. Intake procedures include recommendation to SAUSA by IHO, consultation with the SJA, contact with the District Attorney for the appropriate county
- j. DA informs the SJA if the county will assume jurisdiction
- k. Referrals limited to those cases where on-base resources are inadequate for treatment, rehabilitation and/or deterrence, due to egregious nature of the offense or prior record of the juvenile
- l. Additional provisions for communications among the participants, and also for access to the military base for state investigators and case workers

V. J-COP (Juvenile Court On Post) – The Nature, Authority and Function of “Juvenile Review Boards” on the Military Base

- A. “The Federal Juvenile Delinquency Act severely limits the authority to bring juvenile offenses before federal courts, resulting in infrequent court adjudication of on-post juvenile offenses. In the absence of federal court adjudication, commanders at exclusive federal jurisdiction installations are limited in their ability to handle on-post juvenile misconduct. In response, commanders at such installations are resorting to administrative alternatives, including juvenile review boards, to address juvenile misconduct.” Major Emily Roman, *Where There's a Will, There's a Way: Command*

Authority over Juvenile Misconduct on Areas of Exclusive Federal Jurisdiction, and the Utilization of Juvenile Review Boards, ARMY LAW. May 2015 at 3.

- B. As Major Roman notes at Note 24 in her article –
1. “The continuing basic premise of federal juvenile law is that juvenile matters, even those arising under federal law, should be handled by state authorities whenever possible.” CHARLES DOYLE, CONG. RESEARCH SERV., RL30822, JUVENILE DELINQUENTS AND FEDERAL CRIMINAL LAW: THE FEDERAL JUVENILE DELINQUENCY ACT AND RELATED MATTERS 3 (2004), citing 18 U.S.C. § 5031 (2012)
 2. *See also* United States v. Juvenile Male, 864 F. 2d 641, 644 (9th Cir. 1988) (“The intent of federal laws concerning juveniles are to help ensure that state and local authorities would deal with juvenile offenders whenever possible, keeping juveniles away from the less appropriate federal channels since Congress' desire to channel juveniles into state and local treatment programs is clearly intended in the legislative history of 18 U.S.C.A. § 5032.”).
- C. When the offense occurs on a base with exclusive federal jurisdiction, or at a place governed by exclusive federal jurisdiction on a mixed-jurisdiction base, not only must there be a showing that the applicable state court refuses to exercise jurisdiction, there also must be a certification by the Attorney General or designee (ordinarily the local U.S. Attorney).
1. The Attorney General delegated authority over juvenile criminal proceedings to the Deputy Assistant Attorney General and the Assistant Attorney General (Criminal Division), with further delegation permissible. See *United States v. Dennison*, 652 F. Supp. 211, 213 (D.N.M. 1986); see also 28 C.F.R. § 0.57 (1992). Roman, note 32.
 2. An attorney or judge advocate officer from the base SJA office can be appointed as a Special Assistant U.S. Attorney (SAUSA) to handle the prosecution of a juvenile for a felony-level offense as an adult in U.S. district court.

3. As Major Roman points out, however, such a request for appointment of a SAUSA may be declined by the U.S. Attorney's office in the district due to –
 - a. Lack of resources and sufficient interest, as well as
 - b. The comparative insignificance of a juvenile offense in comparison to other more serious criminal cases found in federal district court.
 - c. Several of the military bases with exclusive federal jurisdiction which Major Roman surveyed for her article reported little to no court adjudication over on-post juvenile offenses, citing the local Assistant U.S. Attorney's lack of interest and resources in prosecuting juveniles). See Roman, note 34.
- D. When there is exclusive federal jurisdiction and the state will not assume jurisdiction over juveniles and the U.S. Attorney is less than forthcoming as to certification for transfer of a case to federal district court, the base commander needs to take matters into his own hands. This means the development of an on-base alternative for hearing the case involving a juvenile charged with a crime. This "juvenile court on post" – depending on the installation – may be called a Juvenile Review Board, a Juvenile Disciplinary Control Board, a Juvenile Delinquency Program, or a Youth Intervention Program.
- E. While base commanders have broad authority over the installation, their powers to provide for safety, health and welfare of those who are on the base are limited when it comes to juveniles accused of misconduct, whether the incident is shoplifting at the base exchange or sale of drugs on post. They have to rely on administrative actions to maintain morale, good order and discipline on the military installation.
- F. Overview of the inhabitants of a military base –
 1. Military personnel assigned to the installation (presence due to PCS orders – "permanent change of station"),
 2. Military personnel who are not assigned there but are present on TDY (temporary duty) orders

3. Family members (“dependents”)
 4. Military retirees and their dependents
 5. Civilian contractors and employees (e.g. base construction, road repair, utilities, base exchange employees, civilian gate guards, fast-food franchise workers, teachers at the on-base school, employees of the commissary)
 6. Visitors
- G. The base commander can, if appropriate, revoke or suspend installation privileges for misconduct. These privileges include access to the commissary, base/post exchange, and other facilities (e.g., the base fitness facility, the post theater).
- H. While this authority may be well fitted to respond to the offense (e.g., suspension of PX privileges for a juvenile’s shoplifting there), they may be worthless if the offense has nothing to do with the facility (e.g., a drug abuse offense).
- I. Furthermore, cooperation, communication and coordination are required among several agencies and entities to accomplish an effective revocation or suspension of privileges. For example, Major Roman notes that “... if a juvenile shoplifts at a PX, enforcement of a suspension of the juvenile’s PX privileges will likely require coordination between the command, installation law enforcement, Army and Air Force Exchange Service (AAFES) and its security or loss prevention personnel, the juvenile, and the juvenile’s military sponsor(s).” Roman, note 39.
- J. In addition to taking away, temporarily or permanently, the privileges of a juvenile in regard to on-base facilities, the base commander also has broad “proprietary powers” over the base and may exclude individuals from its territory. This power, which makes criminal the individual’s unlawful entry on the installation, can be exercised to prohibit access to the base for unruly juveniles. The commander may, for example, issue a “bar letter” to prohibit entry of an individual onto the military installation. The base commander may also instruct the security guards at the gates of the base to restrict any such individual from entry.

- K. Barring juveniles from the military base may be an appropriate response to on-post juvenile misconduct by nonfamily members, but it may also pose a hardship for juvenile dependents if the parents work on the base, live there or use the schools, medical facilities, shopping facilities and other resources on the base.
- L. Housing on base is another tool in the quiver of the commander. Military personnel are often provided with on-base housing which costs nothing. Revocation of on-base housing, located near the servicemember's place of work, will cause inconvenience and, in many cases, increased expense since the Basic Allowance for Housing which is paid to those who live off-base may not fully cover the cost of off-base lodging. Put another way, the quarters provided on post for a family are often much better and less expensive than equivalent lodging outside of the installation. Thus this privilege means powerful leverage when it comes to controlling or deterring the misconduct of juvenile dependents.
- M. Military privileges are strong incentives to cooperate. When there is the potential for revocation of privileges – for the juvenile or for the parents (also known as “sponsors,”) – the base commander may seek to utilize a juvenile review board to provide tried and proven coordination between agencies and offices involved and to provide monitoring and referral to needed resources.
- N. There are cases, however, where military privileges are not useful in persuading, cajoling or coercing cooperation. For example, what if Roberta Roe, the custodial parent, is not a member of the military? If Roberta is the ex-wife of Staff Sergeant Rick Roe and she lives off-base, she cannot lose her on-base housing for failure to cooperate with the military authorities when their son commits a shoplifting offense at the base exchange. If Roberta was not married to Rick for 20 years during his military service, she does not have an ID card or exchange privileges, then the base commander has nothing to use for leverage with her, and the exclusive jurisdiction which exists at Fort Swampy may mean that there is no meaningful punishment, probation, treatment or rehabilitation for the juvenile.
- O. Juvenile review boards can give useful options to be base commander in addressing on-base misconduct by juveniles. A local base regulation establishes the Board and

sets out its membership. Usually the members include those who know the most about juvenile offenses (e.g., emergency services personnel, lawyers from the Staff Judge Advocate's Office, officers from the Provost Marshal) and those who can assist with understanding the offense and its context, as well as treatment and rehabilitation (e.g., social workers and chaplaincy personnel). These JRB's represent a non-adversarial way of dealing with on-base juvenile misconduct. They can give the juvenile and his or her sponsors (i.e., parents) a chance to appear and reply to the charges or claims as to of misconduct. The JRB also recommends the appropriate disposition for the case, but ordinarily the final determination as to disposition lies with the president of the Board, who is usually the base commander.

- P. It is Army policy to retrocede unnecessary federal legislative jurisdiction to the state concerned. U.S. Dep't of Army, Reg. 405-20, "Federal Legislative Jurisdiction" at 2, para. 5. In appropriate cases, commanders can ask for retrocession of exclusive federal legislative jurisdiction over juveniles, that is they can request state assumption of jurisdiction to provide assistance with on-post juvenile offenses. State assumption of jurisdiction when there is exclusive jurisdiction at the base would facilitate the garrison commander's authority over juvenile misconduct by letting military officials to handle offenses which occur on-base by means of juvenile review boards. Other cases could still be referred to the local county court for adjudication and disposition as with any other juvenile matter. In cases where the juvenile fails to cooperate and the military sponsor refuses to comply with board procedures and recommendations, the board can still make a referral to state authorities. This would also be the case if the nature of the offense is such that the case needs to be transferred to state court.
- Q. Using a joint methodology – the juvenile review board on-base, and the juvenile court as well when the circumstances warrant this – can help the commander to maintain safety, morale, good order and discipline, and it can also provide for treatment and rehabilitation for juveniles.

APPENDIX 1 – Resources

Major Emily M. Roman, *Where There's a Will, There's a Way: Command Authority over Juvenile Misconduct on Areas of Exclusive Federal Jurisdiction, and the Utilization of Juvenile Review Boards*, ARMY LAW. 35, May 2015

Alicia K. Embly, *Federal Jurisdiction over Juveniles: Who Decides?* 64 Mo. L. Rev. 171 (1999)

Major Richard L. Palmatier, Jr., *Criminal Offenses by Juveniles on the Federal Installation: A Primer on 18 U.S.C. § 5032*, ARMY LAW. 3, Jan. 1994.

Jean M. Radler, *Treatment, under Federal Juvenile Delinquency Act (18 U.S.C.A. §§ 5031-5042), of juvenile alleged to have violated law of United States*, 137 A.L.R. Fed. 481 (Originally published 1997)

U.S. Attorneys' Manual – Federal Juvenile Delinquency Code:

<https://www.justice.gov/usam/criminal-resource-manual-117-federal-juvenile-delinquency-code>

APPENDIX 2 – 18 U.S.C. § 5031-5042

18 USC 5031. For the purposes of this chapter, a “juvenile” is a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday, and “juvenile delinquency” is the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult or a violation by such a person of section 922(x).

18 USC 5032. A juvenile alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), (3)), section 922(x) or section 924(b), (g), or (h) of this title, and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State. For purposes of this section, the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

If an alleged juvenile delinquent is not surrendered to the authorities of a State pursuant to this section, any proceedings against him shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, in chambers or otherwise. The Attorney General shall proceed by information or as authorized under section 3401(g) of this title, and no criminal prosecution shall be instituted for the alleged act of juvenile delinquency except as provided below.

A juvenile who is alleged to have committed an act of juvenile delinquency and who is not surrendered to State authorities shall be proceeded against under this chapter unless he has requested in writing upon advice of counsel to be proceeded against as an adult, except that, with respect to a juvenile fifteen years and older alleged to have committed an act after his fifteenth birthday which if committed by an adult would be a felony that is a crime of violence or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959), or section 922(x) of this title, or in section 924(b), (g), or (h) of this title, criminal prosecution on the basis of the alleged act may be begun by motion to transfer of the Attorney General in the appropriate district court of the United States, if such court finds, after hearing, such transfer would be in the interest of justice. In the application of the preceding sentence, if the crime of violence is an offense under section 113(a), 113(b), 113(c), 1111, 1113, or, if the juvenile possessed a firearm during the offense, section 2111, 2113, 2241(a), or 2241(c), “thirteen” shall be substituted for “fifteen” and “thirteenth” shall be substituted for “fifteenth”. Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to the preceding sentence for any offense the Federal jurisdiction for which is predicated solely on Indian country (as defined in section 1151), and which has occurred within the boundaries of such Indian country, unless the

governing body of the tribe has elected that the preceding sentence have effect over land and persons subject to its criminal jurisdiction. However, a juvenile who is alleged to have committed an act after his sixteenth birthday which if committed by an adult would be a felony offense that has as an element thereof the use, attempted use, or threatened use of physical force against the person of another, or that, by its very nature, involves a substantial risk that physical force against the person of another may be used in committing the offense, or would be an offense described in section 32, 81, 844(d), (e), (f), (h), (i) or 2275 of this title, subsection (b)(1)(A), (B), or (C), (d), or (e) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b)(1), (2), (3)), and who has previously been found guilty of an act which if committed by an adult would have been one of the offenses set forth in this paragraph or an offense in violation of a State felony statute that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed, shall be transferred to the appropriate district court of the United States for criminal prosecution.

Evidence of the following factors shall be considered, and findings with regard to each factor shall be made in the record, in assessing whether a transfer would be in the interest of justice: the age and social background of the juvenile; the nature of the alleged offense; the extent and nature of the juvenile's prior delinquency record; the juvenile's present intellectual development and psychological maturity; the nature of past treatment efforts and the juvenile's response to such efforts; the availability of programs designed to treat the juvenile's behavioral problems. In considering the nature of the offense, as required by this paragraph, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms. Such a factor, if found to exist, shall weigh in favor of a transfer to adult status, but the absence of this factor shall not preclude such a transfer.

Reasonable notice of the transfer hearing shall be given to the juvenile, his parents, guardian, or custodian and to his counsel. The juvenile shall be assisted by counsel during the transfer hearing, and at every other critical stage of the proceedings.

Once a juvenile has entered a plea of guilty or the proceeding has reached the stage that evidence has begun to be taken with respect to a crime or an alleged act of juvenile delinquency subsequent criminal prosecution or juvenile proceedings based upon such alleged act of delinquency shall be barred.

Statements made by a juvenile prior to or during a transfer hearing under this section shall not be admissible at subsequent criminal prosecutions.

Whenever a juvenile transferred to district court under this section is not convicted of the crime upon which the transfer was based or another crime which would have warranted transfer had the juvenile been initially charged with that crime, further proceedings concerning the juvenile shall be conducted pursuant to the provisions of this chapter.

A juvenile shall not be transferred to adult prosecution nor shall a hearing be held under section 5037 (disposition after a finding of juvenile delinquency) until any prior juvenile court records of such juvenile have been received by the court, or the clerk of the juvenile court has certified in writing that the juvenile has no prior record, or that the juvenile's record is unavailable and why it is unavailable.

Whenever a juvenile is adjudged delinquent pursuant to the provisions of this chapter, the specific acts which the juvenile has been found to have committed shall be described as part of the official record of the proceedings and part of the juvenile's official record.

18 USC 5033. Whenever a juvenile is taken into custody for an alleged act of juvenile delinquency, the arresting officer shall immediately advise such juvenile of his legal rights, in language comprehensive to a juvenile, and shall immediately notify the Attorney General and the juvenile's parents, guardian, or custodian of such custody. The arresting officer shall also notify the parents, guardian, or custodian of the rights of the juvenile and of the nature of the alleged offense.

The juvenile shall be taken before a magistrate judge forthwith. In no event shall the juvenile be detained for longer than a reasonable period of time before being brought before a magistrate judge.

18 U.S.C. 5034. The magistrate judge shall insure that the juvenile is represented by counsel before proceeding with critical stages of the proceedings. Counsel shall be assigned to represent a juvenile when the juvenile and his parents, guardian, or custodian are financially unable to obtain adequate representation. In cases where the juvenile and his parents, guardian, or custodian are financially able to obtain adequate representation but have not retained counsel, the magistrate judge may assign counsel and order the payment of reasonable attorney's fees or may direct the juvenile, his parents, guardian, or custodian to retain private counsel within a specified period of time.

The magistrate judge may appoint a guardian ad litem if a parent or guardian of the juvenile is not present, or if the magistrate judge has reason to believe that the parents or guardian will not cooperate with the juvenile in preparing for trial, or that the interests of the parents or guardian and those of the juvenile are adverse.

If the juvenile has not been discharged before his initial appearance before the magistrate judge, the magistrate judge shall release the juvenile to his parents, guardian, custodian, or other responsible party (including, but not limited to, the director of a shelter-care facility) upon their promise to bring such juvenile before the appropriate court when requested by such court unless the magistrate judge determines, after hearing, at which the juvenile is represented by counsel, that the detention of such juvenile is required to secure his timely appearance before the appropriate court or to insure his safety or that of others.

18 USC 5035. A juvenile alleged to be delinquent may be detained only in a juvenile facility or such other suitable place as the Attorney General may designate. Whenever possible, detention shall be in a foster home or community based facility located in or near his home community. The Attorney General shall not cause any juvenile alleged to be delinquent to be detained or confined in any institution in which the juvenile has regular contact with adult persons convicted of a crime or awaiting trial on criminal charges. Insofar as possible, alleged delinquents shall be kept separate from adjudicated delinquents. Every juvenile in custody shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, education, and medical care, including necessary psychiatric, psychological, or other care and treatment.

18 USC 5036. If an alleged delinquent who is in detention pending trial is not brought to trial within thirty days from the date upon which such detention was begun, the information shall be dismissed on motion of the alleged delinquent or at the direction of the court, unless the Attorney General shows that additional delay was caused by the juvenile or his counsel, or consented to by the juvenile and his counsel, or would be in the interest of justice in the particular case. Delays attributable solely to court calendar congestion may not be considered in the interest of justice. Except in extraordinary circumstances, an information dismissed under this section may not be reinstated.

18 USC 5037. (a) If the court finds a juvenile to be a juvenile delinquent, the court shall hold a disposition hearing concerning the appropriate disposition no later than twenty court days after the

juvenile delinquency hearing unless the court has ordered further study pursuant to subsection (d). After the disposition hearing, and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to [28 U.S.C. 994](#), the court may suspend the findings of juvenile delinquency, place him on probation, or commit him to official detention which may include a term of juvenile delinquent supervision to follow detention. In addition, the court may enter an order of restitution pursuant to section 3556. With respect to release or detention pending an appeal or a petition for a writ of certiorari after disposition, the court shall proceed pursuant to the provisions of chapter 207.

(b) The term for which probation may be ordered for a juvenile found to be a juvenile delinquent may not extend—

(1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of—

(A) the date when the juvenile becomes twenty-one years old; or

(B) the maximum term that would be authorized by section 3561(c) if the juvenile had been tried and convicted as an adult; or

(2) in the case of a juvenile who is between eighteen and twenty-one years old, beyond the lesser of—

(A) three years; or

(B) the maximum term that would be authorized by section 3561(c) if the juvenile had been tried and convicted as an adult.

The provisions dealing with probation set forth in sections 3563 and 3564 are applicable to an order placing a juvenile on probation. If the juvenile violates a condition of probation at any time prior to the expiration or termination of the term of probation, the court may, after a dispositional hearing and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to [section 994 of title 28](#), revoke the term of probation and order a term of official detention. The term of official detention authorized upon revocation of probation shall not exceed the terms authorized in section 5037(c)(2)(A) and (B). The application of sections 5037(c)(2)(A) and (B) shall be determined based upon the age of the juvenile at the time of the disposition of the revocation proceeding. If a juvenile is over the age of 21 years old at the time of the revocation proceeding, the mandatory revocation provisions of section 3565(b) are applicable. A disposition of a juvenile who is over the age of 21 years shall be in accordance with the provisions of section 5037(c)(2), except that in the case of a juvenile who if convicted as an adult would be convicted of a Class A, B, or C felony, no term of official detention may continue beyond the juvenile's 26th birthday, and in any other case, no term of official detention may continue beyond the juvenile's 24th birthday. A term of official detention may include a term of juvenile delinquent supervision.

(c) The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend—

(1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of—

(A) the date when the juvenile becomes twenty-one years old;

(B) the maximum of the guideline range, pursuant to [section 994 of title 28](#), applicable to an otherwise similarly situated adult defendant unless the court finds an aggravating factor to warrant an upward departure from the otherwise applicable guideline range; or

(C) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult; or

(2) in the case of a juvenile who is between eighteen and twenty-one years old—

(A) who if convicted as an adult would be convicted of a Class A, B, or C felony, beyond the lesser of—

(i) five years; or

(ii) the maximum of the guideline range, pursuant to [section 994 of title 28](#), applicable to an otherwise similarly situated adult defendant unless the court finds an aggravating factor to warrant an upward departure from the otherwise applicable guideline range; or

(B) in any other case beyond the lesser of—

(i) three years;

(ii) the maximum of the guideline range, pursuant to [section 994 of title 28](#), applicable to an otherwise similarly situated adult defendant unless the court finds an aggravating factor to warrant an upward departure from the otherwise applicable guideline range; or

(iii) the maximum term of imprisonment that would be authorized if the juvenile had been tried and convicted as an adult.

Section 3624 is applicable to an order placing a juvenile under detention.

(d)

(1) The court, in ordering a term of official detention, may include the requirement that the juvenile be placed on a term of juvenile delinquent supervision after official detention.

(2) The term of juvenile delinquent supervision that may be ordered for a juvenile found to be a juvenile delinquent may not extend—

(A) in the case of a juvenile who is less than 18 years old, a term that extends beyond the date when the juvenile becomes 21 years old; or

(B) in the case of a juvenile who is between 18 and 21 years old, a term that extends beyond the maximum term of official detention set forth in [section 5037\(c\)\(2\)\(A\)](#) and [\(B\)](#), less the term of official detention ordered.

(3) The provisions dealing with probation set forth in [sections 3563](#) and [3564](#) are applicable to an order placing a juvenile on juvenile delinquent supervision.

(4) The court may modify, reduce, or enlarge the conditions of juvenile delinquent supervision at any time prior to the expiration or termination of the term of supervision after a dispositional hearing and after consideration of the provisions of [section 3563](#) regarding the initial setting of the conditions of probation.

(5) If the juvenile violates a condition of juvenile delinquent supervision at any time prior to the expiration or termination of the term of supervision, the court may, after a dispositional hearing and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to [section 994 of title 18](#) [sic – should be title 28], revoke the term of supervision and order a term of official detention. The term of official detention which is authorized upon revocation of juvenile delinquent supervision shall not exceed the term authorized in [section 5037\(c\)\(2\)\(A\)](#) and [\(B\)](#), less any term of official detention previously ordered. The application of [sections 5037\(c\)\(2\)\(A\)](#) and [\(B\)](#) shall be determined based upon the age of the juvenile at the time of the disposition of the revocation proceeding. If a juvenile is over the age of 21 years old at the time of the revocation proceeding, the mandatory revocation provisions of [section 3565\(b\)](#) are applicable. A disposition of a juvenile who is over the age of

21 years old shall be in accordance with the provisions of section 5037(c)(2), except that in the case of a juvenile who if convicted as an adult would be convicted of a Class A, B, or C felony, no term of official detention may continue beyond the juvenile's 26th birthday, and in any other case, no term of official detention may continue beyond the juvenile's 24th birthday.

(6) When a term of juvenile delinquent supervision is revoked and the juvenile is committed to official detention, the court may include a requirement that the juvenile be placed on a term of juvenile delinquent supervision. Any term of juvenile delinquent supervision ordered following revocation for a juvenile who is over the age of 21 years old at the time of the revocation proceeding shall be in accordance with the provisions of section 5037(d)(1), except that in the case of a juvenile who if convicted as an adult would be convicted of a Class A, B, or C felony, no term of juvenile delinquent supervision may continue beyond the juvenile's 26th birthday, and in any other case, no term of juvenile delinquent supervision may continue beyond the juvenile's 24th birthday.

(e) If the court desires more detailed information concerning an alleged or adjudicated delinquent, it may commit him, after notice and hearing at which the juvenile is represented by counsel, to the custody of the Attorney General for observation and study by an appropriate agency. Such observation and study shall be conducted on an out-patient basis, unless the court determines that inpatient observation and study are necessary to obtain the desired information. In the case of an alleged juvenile delinquent, inpatient study may be ordered only with the consent of the juvenile and his attorney. The agency shall make a complete study of the alleged or adjudicated delinquent to ascertain his personal traits, his capabilities, his background, any previous delinquency or criminal experience, any mental or physical defect, and any other relevant factors. The Attorney General shall submit to the court and the attorneys for the juvenile and the Government the results of the study within thirty days after the commitment of the juvenile, unless the court grants additional time.

18 USC 5038. (a) Throughout and upon the completion of the juvenile delinquency proceeding, the records shall be safeguarded from disclosure to unauthorized persons. The records shall be released to the extent necessary to meet the following circumstances:

- (1) inquiries received from another court of law;
- (2) inquiries from an agency preparing a presentence report for another court;
- (3) inquiries from law enforcement agencies where the request for information is related to the investigation of a crime or a position within that agency;
- (4) inquiries, in writing, from the director of a treatment agency or the director of a facility to which the juvenile has been committed by the court;
- (5) inquiries from an agency considering the person for a position immediately and directly affecting the national security; and
- (6) inquiries from any victim of such juvenile delinquency, or if the victim is deceased from the immediate family of such victim, related to the final disposition of such juvenile by the court in accordance with section 5037.

Unless otherwise authorized by this section, information about the juvenile record may not be released when the request for information is related to an application for employment, license, bonding, or any civil right or privilege. Responses to such inquiries shall not be different from responses made about persons who have never been involved in a delinquency proceeding.

(b) District courts exercising jurisdiction over any juvenile shall inform the juvenile, and his parent or guardian, in writing in clear and nontechnical language, of rights relating to his juvenile record.

(c) During the course of any juvenile delinquency proceeding, all information and records relating to the proceeding, which are obtained or prepared in the discharge of an official duty by an employee of the court or an employee of any other governmental agency, shall not be disclosed directly or indirectly to anyone other than the judge, counsel for the juvenile and the Government, or others entitled under this section to receive juvenile records.

(d) Whenever a juvenile is found guilty of committing an act which if committed by an adult would be a felony that is a crime of violence or an offense described in section 401 of the Controlled Substances Act or section 1001(a), 1005, or 1009 of the Controlled Substances Import and Export Act, such juvenile shall be fingerprinted and photographed. Except a juvenile described in subsection (f), fingerprints and photographs of a juvenile who is not prosecuted as an adult shall be made available only in accordance with the provisions of subsection (a) of this section. Fingerprints and photographs of a juvenile who is prosecuted as an adult shall be made available in the manner applicable to adult defendants.

(e) Unless a juvenile who is taken into custody is prosecuted as an adult neither the name nor picture of any juvenile shall be made public in connection with a juvenile delinquency proceeding.

(f) Whenever a juvenile has on two separate occasions been found guilty of committing an act which if committed by an adult would be a felony crime of violence or an offense described in section 401 of the Controlled Substances Act or section 1001(a), 1005, or 1009 of the Controlled Substances Import and Export Act, or whenever a juvenile has been found guilty of committing an act after his 13th birthday which if committed by an adult would be an offense described in the second sentence of the fourth paragraph of [section 5032 of this title](#), the court shall transmit to the Federal Bureau of Investigation the information concerning the adjudications, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matters were juvenile adjudications.

18 USC 5039. No juvenile committed, whether pursuant to an adjudication of delinquency or conviction for an offense, to the custody of the Attorney General may be placed or retained in an adult jail or correctional institution in which he has regular contact with adults incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges.

Every juvenile who has been committed shall be provided with adequate food, heat, light, sanitary facilities, bedding, clothing, recreation, counseling, education, training, and medical care including necessary psychiatric, psychological, or other care and treatment.

Whenever possible, the Attorney General shall commit a juvenile to a foster home or community-based facility located in or near his home community.

18 USC 5040. The Attorney General may contract with any public or private agency or individual and such community-based facilities as halfway houses and foster homes for the observation and study and the custody and care of juveniles in his custody. For these purposes, the Attorney General may promulgate such regulations as are necessary and may use the appropriation for "support of United States prisoners" or such other appropriations as he may designate.

18 USC 5041. REPEALED

18 USC 5042. Any juvenile probationer shall be accorded notice and a hearing with counsel before his probation can be revoked.

APPENDIX 2A – Authority of U.S. Magistrate

18 U.S.C. § 3401 – Misdemeanors; application of probation laws

- (a) When specially designated to exercise such jurisdiction by the district court or courts he serves, any United States magistrate judge shall have jurisdiction to try persons accused of, and sentence persons convicted of, misdemeanors committed within that judicial district.
- (b) Any person charged with a misdemeanor, other than a petty offense may elect, however, to be tried before a district judge for the district in which the offense was committed. The magistrate judge shall carefully explain to the defendant that he has a right to trial, judgment, and sentencing by a district judge and that he may have a right to trial by jury before a district judge or magistrate judge. The magistrate judge may not proceed to try the case unless the defendant, after such explanation, expressly consents to be tried before the magistrate judge and expressly and specifically waives trial, judgment, and sentencing by a district judge. Any such consent and waiver shall be made in writing or orally on the record.
- (c) A magistrate judge who exercises trial jurisdiction under this section, and before whom a person is convicted or pleads either guilty or nolo contendere, may, with the approval of a judge of the district court, direct the probation service of the court to conduct a presentence investigation on that person and render a report to the magistrate judge prior to the imposition of sentence.
- (d) The probation laws shall be applicable to persons tried by a magistrate judge under this section, and such officer shall have power to grant probation and to revoke, modify, or reinstate the probation of any person granted probation by a magistrate judge.
- (e) Proceedings before United States magistrate judges under this section shall be taken down by a court reporter or recorded by suitable sound recording equipment. For purposes of appeal a copy of the record of such proceedings shall be made available at the expense of the United States to a person who makes affidavit that he is unable to pay or give security therefor, and the expense of such copy shall be paid by the Director of the Administrative Office of the United States Courts.
- (f) The district court may order that proceedings in any misdemeanor case be conducted before a district judge rather than a United States magistrate judge upon the court's own motion or, for good cause shown, upon petition by the attorney for the Government. Such petition should note the novelty, importance, or complexity of the case, or other pertinent factors, and be filed in accordance with regulations promulgated by the Attorney General.
- (g) The magistrate judge may, in a petty offense case involving a juvenile, exercise all powers granted to the district court under [chapter 403 of this title](#). The magistrate judge may, in the case of any misdemeanor, other than a petty offense, involving a juvenile in which consent to trial before a magistrate judge has been filed under subsection (b), exercise all powers granted to the district court under [chapter 403 of this title](#). For purposes of this subsection, proceedings under [chapter 403 of this title](#) may be instituted against a juvenile by a violation notice or complaint, except that no such case may proceed unless the certification referred to in [section 5032 of this title](#) has been filed in open court at the arraignment.
- (h) The magistrate judge shall have power to modify, revoke, or terminate supervised release of any person sentenced to a term of supervised release by a magistrate judge.
- (i) A district judge may designate a magistrate judge to conduct hearings to modify, revoke, or terminate supervised release, including evidentiary hearings, and to submit to the judge proposed findings of fact and recommendations for such modification, revocation, or termination by the judge, including, in the case of revocation, a recommended disposition under [section 3583\(e\) of this title](#). The magistrate judge shall file his or her proposed findings and recommendations.

INFORMATION PAPER

Subject: INTRODUCTION TO LEGISLATIVE JURISDICTION OVER MILITARY
INSTALLATIONS

1. Meaning and significance of Federal jurisdiction

a. "Jurisdiction" here refers to the authority to legislate within a geographically defined area. When the United States exercises Federal jurisdiction over particular land, it can enact general, municipal legislation applying within that land. There is other legislative authority that Congress may exercise based not on jurisdiction over land, but upon subject matter and purpose. For instance, Article I, Section 8, of the U.S. Constitution grants Congress the power to make rules for the government and regulation of the land and naval forces. In either event, congressional authority must trace back to some specific grant in the Constitution.

b. Legal questions about legislative jurisdiction must be considered on a tract-by-tract basis because different measures of jurisdiction apply to parcels of land acquired at different times. The local District Engineer may help to determine the location of particular tracts of land and documents pertaining to them. Whether Federal legislative jurisdiction exists in some measure will determine if Federal or States laws, or both, apply within the area. For example, jurisdiction may determine whether Federal or State courts will have jurisdiction over criminal defendants. The power of the State to tax persons and private property on the installation as well as the applicability of State civil laws generally will be dependent on the measure of jurisdiction. Importantly, jurisdiction will also significantly affect the ability of State administrative and law enforcement officials to act on the installation.

2. Types of legislative jurisdiction. The Federal Government does not always have the exclusive power to legislate when it has jurisdiction. Some State legislative authority may remain. The documents that vest jurisdiction in the United States indicate the measure of legislative jurisdiction obtained. The types of jurisdiction can be thus classified:

a. Exclusive legislative jurisdiction. "Exclusive legislative jurisdiction" arises where the Government has received all the authority of the State to legislate with no reservation by the State of any authority except the right to serve civil and criminal process.

By statute, Congress allows some State laws to operate on enclaves (areas of exclusive legislative jurisdiction) even where the State has not reserved the right to exercise such powers; this is not an exercise of State authority but rather of Federal authority. Since there are disadvantages to exclusive Federal jurisdiction, it should be sought only when State or local laws interfere with military operations.

b. Concurrent legislative jurisdiction. "Concurrent legislative jurisdiction" arises where, in granting to the United States authority that would otherwise amount to exclusive legislative jurisdiction over an area, a State reserves the right to exercise authority concurrently with the United States.

c. Partial legislative jurisdiction. "Partial legislative jurisdiction" arises where the Federal Government has been granted some legislative authority over an area by a State which reserves to itself the right to exercise, alone or concurrently with the United States, other authority constituting more than the right to serve civil or criminal process in the area. In other words, either the Federal Government, or the State, or both, have some legislative authority, but less than complete legislative authority. An example would be where a States reserves only jurisdiction over criminal offenses, allowing the United States to exercise all other sovereign rights concurrently with the States, but denying it legislative jurisdiction over crimes.

d. Proprietorial interest only (no Federal legislative jurisdiction. The term "proprietary interest" describes situations where the Federal Government has acquired some degree of ownership of an area in a State but has not obtained any measure of the State's legislative authority over the area. Congress may have authority to act with respect to activities on this land flowing from independent constitutional authority, but it cannot act through its power to exercise legislative jurisdiction.

3. Pros and Cons. The type of legislative jurisdiction over a particular area may determine the ability of military commanders to effectively police the area, and to authorize searches of places where the fruits or instrumentalities of crime may lay.

a. Law enforcement

(1) Exclusive legislative jurisdiction. In areas of exclusive federal jurisdiction, the Federal Government is solely responsible for law enforcement. A State cannot enforce its laws except to serve civil or criminal process. The military commander has full authority to maintain good order and discipline and can deploy law enforcement assets, which are accountable to him, as necessary. On the other hand, there is no obligation of the State to assist in law enforcement, or to provide Government services such as sewage, trash removal, road maintenance and fire protection.

(2) Concurrent legislative jurisdiction. In areas of concurrent legislative jurisdiction, a State reserves the right to exercise law enforcement authority concurrently with the United States. This allows the commander to maintain good order and discipline, and provides the additional benefit of cooperation with State law enforcement in maintaining the peace. Only in those rare instances when State or local laws interfere with military operations is this cooperation not desirable.

(3) Partial legislative jurisdiction. In areas of partial legislative jurisdiction a State may reserve jurisdiction over criminal offenses and their enforcement, allowing the United States to exercise all other sovereign rights concurrently with the States, but denying it jurisdiction over crimes. Partial legislative jurisdiction may therefore negatively impact a commander's ability to effectively police a particular area.

(4) Proprietorial interest only. In areas where the Federal Government has only a proprietorial interest, it likely cannot effectively enforce Federal criminal law, as it has no sovereign right to do so.

b. Criminal search and seizure

(1) A commander who has control over the place where the property or person to be searched is situated or found has the power to authorize a search pursuant to Military Rule of Evidence 315(d)(1), Manual for Courts-Martial, United States (2000).

(2) "Control" over a place is often determined by whether it is owned by the Government, or privately owned, and whether it is located aboard the installation or off-post. However, the type of legislative jurisdiction may also inform this inquiry.

(3) A major concern involves housing, located on or off military installations, owned by private developers and rented by service members pursuant to the Military Housing Privatization Initiative (MHPI).¹ There are no reported cases where a commander's authority to authorize searches in privatized housing areas has been challenged. Nevertheless, there is reason to believe that the type of legislative jurisdiction in privatized housing areas may impact this inquiry.

(4) In United States v. Moreno,² the installation commander authorized a search of the on-base credit union's records. The Air Force Court focused on whether the commander had control over the credit union³ and held that the search was reasonable because the "commander had law enforcement responsibilities over the on-base

¹ MHPI, *supra* note 7, at 10 U.S.C. §§ 2871-2885.

² 23 M.J. 622 (A.F.C.M.R. 1986)).

³ *Moreno*, 23 M.J. at 624.

credit union."⁴ The court also cited the terms of the credit union's lease, which "authorized base law enforcement personnel to enter the credit union at any time for inspection and inventory and when necessary for the protection of the interests of the government."⁵

(5) In areas of partial legislative jurisdiction and areas where the Federal Government has only a proprietorial interest, the commander may not have law enforcement responsibilities for particular areas. This may limit the commander's ability to authorize searches of places for the fruits and instrumentalities of crime.

4. List. The following list is unofficial. Verify the legislative jurisdiction of a particular installation with the local installation Staff Judge Advocate.

EXCLUSIVE JURISDICTION

Installations listed below have exclusive Federal legislative jurisdiction over all or most of their acreage.

Aberdeen Proving Ground	MacDill AFB
Andrews AFB	Marine Corps Air Station Beaufort
Barksdale AFB	Marine Corps Air Station Cherry Point
Bolling AFB	Marine Corps Air Station New River
Brooks AFB	Marine Corps Air Station Yuma
Cannon AFB	Marine Corps Base Camp Lejeune
Dugway Proving Ground	Marine Corps Recruit Depot San Diego
Ellsworth AFB	McChord AFB
Fort Belvoir	Naval Air Station Fort Worth
Fort Bragg	NAS Joint Reserve Base New Orleans
Fort Carson	NAS Patuxent River
Fort Chaffee	Naval Construction Bn Center Gulfport
Fort Dix	Naval Station Annapolis
Fort Eustis	Naval Station Newport

⁴ *Id.* (citing *Cafeteria and Rest. Workers Union v. McElroy*, 367 U.S.886 (1961) and *United States v. Banks*, 539 F.2d. 14 (9th Cir. 1976).

⁵ *Moreno*, 23 M.J. at 624.

Fort Hamilton	Naval Station Washington
Fort Jackson	Naval Weapons Station Earle
Fort Knox	Offut AFB
Fort Lee	Patrick AFB

EXCLUSIVE JURISDICTION

Fort Mccoy	Picatinny Arsenal
Fort McNair	Pine Bluff Arsenal
Fort Mcpherson	Presidio of Monterey
Fort Meade	Pueblo Army Depot
Fort Monmouth	Randolph AFB
Fort Monroe	Red River Army Depot
Fort Myer	Scott AFB
Fort Polk	Seymour Johnson AFB
Fort Sam Houston	Shaw AFB
Hanscom AFB	Tooele Army Depot
Hill AFB	Tyndall AFB
Holloman AFB	U.S. Military Academy
Keesler AFB	U.S. Naval Academy
Kirtland AFB	Wright Patterson AFB
Lackland AFB	
Langley AFB	

CONCURRENT JURISDICTION

Installations listed below have Federal legislative jurisdiction concurrent with State legislative jurisdiction over all or most of their acreage.

Fairchild AFB	Marine Corps Base Hawaii
Fort A.P. Hill	Naval Air Station Whidbey Island
Fort Pickett	Naval Base Pearl Harbor
Fort Shafter	Schofield Barracks
Hickam AFB	

PROPRIETORIAL INTEREST ONLY

Installations listed below have only a proprietorial interest (no federal legislative jurisdiction) over all or most of their acreage.

Altus AFB	Mcguire AFB
Beale AFB	Minot AFB
Charleston AFB	Moody AFB
Davis-Monthan AFB	Naval Air Station Corpus Christi
Dyess AFB	Naval Air Station Fallon
Eglin AFB	Naval Air Station Key West
Fort Drum	Naval Air Station Meridian
Fort Irwin	Naval Air Station Willow Grove
Grand Forks AFB	Naval Air Weapons Station China Lake
Hurlburt Field	Naval Weapons Station Seal Beach
Laughlin AFB	Naval Submarine Base Kings Bay
Little Rock AFB	Nellis AFB
Los Angeles AFB	Pope AFB

PROPRIETORIAL INTEREST ONLY

Luke AFB	U.S. Air Force Academy
MCB, 29 Palms	Yuma Army Proving Ground

PARTIAL FEDERAL LEGISLATIVE JURISDICTION

Installations listed below have some Federal legislative jurisdiction over all or most of their acreage, but the State has reserved the right to exercise certain aspects of legislative authority over that land, by itself or concurrently with the United States. Whether the United States, the State concerned, or both have legislative jurisdiction over criminal offenses can only be ascertained by looking at the documents granting the Federal Government legislative jurisdiction for each installation.

Fort Gillem	Marine Corps Air Station Miramar
Fort Gordon	Marine Corps Logistics Base Albany
Fort Hood	Maxwell AFB

Fort Indiantown Gap	McConnell AFB
Fort Leonard Wood	Naval Base Ventura County
Fort Leavenworth	Naval Post Graduate School
Fort Riley	Naval Support Activity Millington
Fort Stewart	Red Stone Arsenal
Fort Story	Robins AFB
Goodfellow AFB	Sheppard AFB
Hunter Army Airfield	Vandenberg AFB
Malstrom AFB	Whiteman AFB

MIXED: PARTIAL AND PROPRIETORIAL INTEREST ONLY

Installations listed below have a significant number of acres with partial legislative jurisdiction and a significant number over which it has no legislative jurisdiction. Whether the United States, the State concerned, or both have legislative jurisdiction over criminal offenses on the land over which there is partial Federal legislative jurisdiction can only be ascertained by reviewing the documents granting the Federal Government legislative jurisdiction for each installation.

Fort Hunter Ligget	Naval Air Station Brunswick
Fort Rucker	Naval Amphibious Base Little Creek
MCB Camp Pendleton	Naval Amphibious Base Coronado
MCLB Barstow	Travis AFB
Naval Air Station Atlanta	

MIXED: EXCLUSIVE AND ONE OR MORE OTHER TYPES

Installations listed below have exclusive Federal legislative jurisdiction over a significant portion of their acreage, but also have concurrent, partial, or not legislative jurisdiction over a significant number of acres. In the case of most of these installations, the portion of the installation with exclusive jurisdiction was the portion first acquired. Accordingly, this portion frequently is the built-up area of the installation, where crimes often occur. Land added to installations later is often used for training areas.

Exclusive, partial

F.E. Warrant AFB
Fort Campbell
March AFB

Exclusive, concurrent

Fort Lewis
MCRD Parris Island

Exclusive, partial &
proprietary interest only

Biggs Army Airfield
Carlisle Barracks
Edwards AFB
Fort Sill
Naval Station Norfolk
Marine Corps Base Quantico

Partial, exclusive

Fort Benning
Fort Bliss

Exclusive, proprietary interest only

Columbus AFB
Dover AFB
Fort Detrick
Fort Huachuca
Mountain Home AFB
Naval Air Station North Island
Naval Air Station Oceana
Naval Air Station Mayport
Naval Station San Diego
Naval Submarine Base Groton
Naval Training Center Great Lakes
Tinker AFB
Umatilla Army Depot

Concurrent, exclusive

Naval Station Bremerton

MIXED: CONCURRENT AND PROPRIETORIAL INTEREST ONLY

Installations listed below have a significant number of acres with concurrent legislative jurisdiction and a significant number over which there is no Federal legislative jurisdiction. States may exercise jurisdiction over criminal offenses throughout these installations. The United States has criminal jurisdiction only on those acres over which it has concurrent legislative jurisdiction with the State.

MIXED: CONCURRENT AND PROPRIETORIAL INTEREST ONLY

Eielson AFB

Fort Richardson

Elmendorf AFB

Fort Wainwright

Fort Greely

Naval Weapons Station Charleston

APPENDIX 4 – Example of Army Regulation re Juvenile Offense Jurisdiction re Military Base
TRADOC [U.S. Army training and Doctrine Command] Regulation 27-2

“Military Justice Jurisdiction, Civilian Criminal Jurisdiction on Fort Eustis and Designation of Superior Competent Authorities”

Excerpt - - Chapter 3 Civilian Criminal Jurisdiction on Fort Eustis

3-1. Exclusive and concurrent jurisdiction. Fort Eustis is governed by exclusive and concurrent Federal jurisdiction.

a. Exclusive jurisdiction. A Special Assistant United States Attorney (SAUSA) assigned to the CJA Office, Fort Eustis, prosecutes criminal acts involving civilians occurring within the exclusive federal jurisdiction of Fort Eustis.

b. Concurrent jurisdiction. The City of Newport News Commonwealth’s Attorney may prosecute criminal acts involving civilians occurring in areas under concurrent federal and local jurisdiction. These cases are normally prosecuted by the Fort Eustis SAUSA, under the direction of the CJA and United States Attorney’s Office. In the event that the City of Newport News Commonwealth’s Attorney seeks to prosecute a case involving TRADOC civilian personnel, the OSJA, TRADOC, will coordinate with the CJA, Fort Eustis, and United States Attorney’s Office, as appropriate. In such cases, the CJA, Fort Eustis, and the United States Attorney’s Office will normally negotiate with the Commonwealth’s Attorney to determine which sovereign will exercise jurisdiction.

3-2 Juveniles. The CJA, Fort Eustis, is responsible for the management and supervision of juvenile prosecutions and dispositions on Fort Eustis. Juvenile offenders are normally handled administratively through the Fort Eustis Juvenile Review Board under the direction of the Fort Eustis Garrison Commander. In cases which are inappropriate for the Juvenile Review Board, the United States Attorney’s Office may issue a waiver of jurisdiction and the Fort Eustis SAUSA may refer the matter to the City of Newport News Commonwealth’s Attorney for action pursuant to a memorandum of understanding provided that the Commonwealth has jurisdiction.

APPENDIX 5 – Juvenile Justice Memorandum of Agreement, 2/5/2010

Superior Court of Muscogee County
Ex Parte # 10-112
By MLL

Juvenile Justice Memorandum of Agreement

FILED IN OFFICE

2010 FEB -5 A 10:14

Purpose: Fort Benning wishes to enter in to a memorandum of agreement with the state juvenile courts of Muscogee and Chattahoochee Counties, in order to hear certain cases involving juvenile misconduct that occurs on Fort Benning, Georgia.

CLERK OF SUPERIOR COURT
MUSCOGEE COUNTY GEORGIA

General: Children who are deprived, neglected, abused, unruly, or delinquent have the right to government supervision for their protection and rehabilitation. This supervision includes, in certain cases, an adjudication of a juvenile's status as a delinquent or unruly child. Fort Benning is not equipped to provide the necessary levels of protection and rehabilitation in situations involving serious or repeat juvenile matters. Fort Benning currently has three options available for adjudicating matters involving juveniles. First, Fort Benning can take administrative action against the juvenile and his or her sponsor if they consent. Second, Fort Benning can refer the case to the Federal Magistrate for disposition, but only if the offense is punishable by less than six months of confinement (18 USCS § 5032 and 18 USCS § 3401). Finally, Fort Benning has the option of referring certain serious cases to the Attorney General for investigation and certification to the appropriate federal district court in accordance with 18 USCS § 5032. These options are not always effective or practicable in disposing of juvenile matters. In many situations involving offenses committed by juveniles, state involvement is preferred to provide the appropriate level of deterrence and rehabilitation.

Authority: There is a long standing precedent of federal deference to state jurisdiction in matters pertaining to juveniles as indicated by 18 USCS § 5032 and 18 USCA § 1832. Because the exercise of state jurisdiction in matters involving juveniles is encouraged by federal statute and because juvenile courts are not criminal courts, there is no jurisdictional impediment. This principle is exemplified by In the matter of Charles B., 765 N.Y.S.2d 191 (2003), which involved a dispute over the jurisdiction of a juvenile who committed a crime on the property of The United States Military Academy at West Point. The court determined that because the New York Family Court was not a criminal court and because there is a long standing precedent of federal deference to state jurisdictional matters pertaining to juveniles, that it did have jurisdiction over the juvenile. The court noted that, except in certain circumstances described by 18 USCS § 5032, the federal government should not proceed against a juvenile delinquent. Similar determinations have been made in the cases of M.R.S. v. State, 745 So. 2d 1139 and State of New Jersey In the Interest of D.B.S., Juvenile Appellant, 137 N.J. Super. 371. Finally, it is important to note that Fort Gordon and Warner Robbins AFB have already implemented agreements with the state in order to allow state courts to preside over certain juvenile cases.

Reporting and Investigation: All active duty members and civilian employees of Fort Benning are responsible for reporting acts of juvenile delinquency to the Provost Marshal Office for action. Investigations will be conducted by the Provost Marshal's Office or appropriate military

investigative agency. Once it is determined that a juvenile has committed an offense on post, the Provost Marshal's Office or appropriate investigative agency will notify the Special Assistant United States Attorney (SAUSA) and the Installation Hearing Officer located at the Office of the Staff Judge Advocate.

Intake Procedures: Once the Installation Hearing Officer is notified, she will review the investigative materials and will make a recommendation to the SAUSA for disposition. In situations where the SAUSA determines that state involvement is desired, the SAUSA, in consultation with the Staff Judge Advocate or his designee, will contact the District Attorney for either Muscogee or Chattahoochee County, depending on the location of the offense, and provide a written request for the appropriate District Attorney's Office to assume jurisdiction of the case. These requests will be routed through the Department of Juvenile Justice. The written request will include the name and contact information of the juvenile offender, the nature of the offenses, and copies of all investigative materials. Upon receipt of the written request from the SAUSA, the District Attorney will inform the SAUSA in writing if the District Attorney's Office will assume jurisdiction of the case. The Provost Marshal's Office and the SAUSA will support the District Attorney by providing relevant information and subsequent investigatory materials to the District Attorney. All requests for information or assistance will be made to the SAUSA. Each potential request by the SAUSA to the District Attorney's Office to assume jurisdiction will undergo at least four levels of review by the Office of the Staff Judge Advocate and the Department of Juvenile Justice before being sent to the District Attorney. Referral requests will be restricted to only those cases in which the alleged crime is so egregious that the options available to Fort Benning for disposition are grossly inadequate, or in which the alleged offender has a prior history of misconduct and Fort Benning's procedures have been exhausted without achieving any effective deterrence or rehabilitation of the juvenile. In all cases, acceptance of jurisdiction by the relevant District Attorney's Office shall be with the consent and at the discretion of the District Attorney concerned.

Communications: Effective execution of this agreement can only be achieved through constant communication and through dialogue among and between the parties. It is the policy of the members of this agreement that access to all parties will remain open and that the resulting channels of communication will be used whenever questions, misunderstandings, or complaints arise.

Base Access: The Provost Marshal Office shall develop a procedure to ensure reasonable access to Fort Benning for state investigators and caseworkers involved in juvenile matters referred to the state for disposition.

Effective Date: This Memorandum of Agreement will become effective upon completion of all signatories.

Periodic Review: This Memorandum of Agreement will be reviewed triennially by the appropriate authorities.

Miscellaneous: The original of this Memorandum of Agreement will be maintained by the Fort Benning Office of the Staff Judge Advocate, who shall provide copies thereof to all signatories.

Signatories

Wayne Jemigan, Jr. 2-5-10
Chattahoochee County Juvenile Court Judge

W. L. Remmon, Judge 2/5/10
Kim Ok
Muscogee County Juvenile Court Judge
Presiding Judge, Cherokee Circuit (Juvenile)
2/5/10

Julia Slater
Chattahoochee County District Attorney

Julia Slater
Muscogee County District Attorney

Chattahoochee County Department of Juvenile Justice

APPENDIX 6 – Memorandum of Understanding (Georgia)



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
US ARMY INSTALLATION MANAGEMENT COMMAND
ATLANTIC REGION
HEADQUARTERS, UNITED STATES ARMY GARRISON
1 KARKER STREET, MCGINNIS-WICKAM HALL
FORT BENNING, GEORGIA 31905-5000

MEMORANDUM OF UNDERSTANDING BETWEEN FORT BENNING, THE GEORGIA DEPARTMENT OF HUMAN RESOURCES, MUSCOGEE COUNTY AND CHATTAHOOCHEE COUNTY

1. **PURPOSE:** This understanding establishes written procedures to integrate the exercise of jurisdiction vested in the Georgia Department of Human Resources (DHR) acting by and through the Muscogee services, the Muscogee and Chattahoochee County Departments of Children Services, the Muscogee County Courts and Fort Benning military authorities, in matters involving the abuse of children of military Families.

2. **GENERAL:**

a. This understanding does not purport to create additional jurisdiction, nor to limit or modify the existing jurisdiction vested in the parties. This understanding supersedes all previous understandings between DHR, Muscogee and Chattahoochee County juvenile authorities and Fort Benning, Georgia, pertaining to child abuse.

b. The intent of the parties in entering into this understanding is to provide for the legal, timely, and effective protection of the children of military Families when those children are alleged to be abused or neglected. The parties agree that the most effective way to protect the children is to adopt a coordinated methodology for the reporting and investigation of allegations of abuse and neglect and for the adoption of treatment alternatives. The provisions of this understanding are to be interpreted to accomplish this intent.

3. **AUTHORITY:** The Georgia Department of Human Resources, under the authority of OCGA 49-5-8 and 19-7-5, through the Muscogee County and Chattahoochee County Departments of Family and Children Services, is responsible for the protection of all abused or neglected children within Muscogee and Chattahoochee Counties. Muscogee and Chattahoochee courts are responsible for the protection of children under OCGA 19-9 and 15-11. The Commanding General, Fort Benning, by virtue of his inherent authority as Commander, and through specific authority granted to him under the Army Family Advocacy Program Spouse and Child Abuse Program, Army Regulation 608-18, is responsible for the protection of abused children of military Families within his command; as well as for maintaining law, order, and discipline on the installation. The Commanding General's authority to provide protection for children of military Families is limited, however, by the lack of a federal judicial framework in which the status of children can be adjudicated and in which appropriate, judicially-managed remedies can be mandated. Fort Benning, therefore, relies upon Muscogee County and Chattahoochee County Juvenile Courts to exercise their authority, where necessary, in case of abused children of

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SUBJECT: Fort Benning, Georgia Department of Human Resources, Muscogee County and Chattahoochee County – Memorandum of Understanding

military Families. The parties to this understanding do not intend that the exercise of the juvenile court's jurisdiction shall be interpreted to undermine federal sovereignty.

4. **DEFINITIONS:** For the purpose of this understanding, the following definitions apply as included in Army Regulation 608-18:

a. The Muscogee County and Chattahoochee County Juvenile Courts, hereinafter referred to as the "Court," are the courts empowered with original jurisdiction to adjudicate child abuse cases in Muscogee County and Chattahoochee County, respectively.

b. The Department of Human Resources, Division of Family and Children Services, acting by and through the Muscogee County and Chattahoochee County Divisions of Family and Children Services, hereinafter referred to as "DFCS," is the agency primarily responsible for the intake, investigation, and management of child abuse cases in Muscogee County and Chattahoochee County.

c. Family Advocacy Program-Clinical, hereinafter referred to as "FAP-C," is the agency of the Fort Benning Medical Treatment Facility, hereinafter referred to as the "MTF," which is primarily responsible for the intake, investigation, and management of on-post child abuse and certain military-related incidents, and for collection of information pertaining to off-post child abuse.

d. The Family Advocacy Program, hereinafter referred to as the "FAP," is an Army program established by Army Regulation designed to promote the growth, development, and general welfare of children of Army Families by coordinating human services provided to such children and by interceding on their behalf when necessary.

e. The Fort Benning Case Review Committee hereinafter referred to as the CRC, is a multi-disciplinary team, appointed and supervised by the MTF commander, subject to the direction of the Fort Benning Commander, to handle cases of military children and Families where the children have been, or are suspected to be, abused.

f. The Directorate of Emergency Services, hereinafter referred to as the "DES," coordinates all law enforcement activity on Fort Benning, and is primarily responsible for investigating crimes involving child abuse on the installation. The DES coordinates such investigations with the U.S. Army Criminal Investigation Command, and federal and state law enforcement authorities, as appropriate.

g. The DES serves as the report point-of-contact, hereinafter referred to as the "RPOC," for Fort Benning, and receives all reports of child abuse occurring on post. The RPOC notifies all agencies required to be notified by regulation and this understanding.

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SUBJECT: Fort Benning, Georgia Department of Human Resources, Muscogee County and Chattahoochee County – Memorandum of Understanding

h. Child abuse includes child sexual abuse and child neglect, and means the physical or mental injury, sexual abuse or exploitation, negligent treatment or maltreatment of a child under the age of 18, by a person (including any employee of a residential facility or any staff person providing out-of-home care) who is responsible for the child's welfare, under circumstances which indicate that the child's health or welfare is harmed or threatened thereby.

i. An off-post incident is an act of child abuse involving a military Family, which occurs beyond the boundaries of Fort Benning and within the jurisdiction of Muscogee and Chattahoochee Counties.

j. An on-post incident is an act of child abuse involving a military Family which occurs within the boundaries of Fort Benning or which is referred to Fort Benning from sources outside the jurisdiction of Muscogee and Chattahoochee Counties.

k. A military-related incident is an act of child abuse within Muscogee and Chattahoochee Counties not involving a child of a military Family, but nevertheless of interest to Fort Benning authorities by virtue of the military status of the alleged abuser or of the occurrence of the incident within the boundaries of Fort Benning.

l. A child of a military Family is a person under the age of 18 who is a natural or adopted child or stepchild of any Soldier, regardless of rank or location of duty assignment, and of any other military Service Member stationed at Fort Benning.

m. Department of the Army (DA) Personnel: Military and Civilian personnel employed by DA, including nonappropriated fund activity employees, other specific individuals hired through contractual understanding by or on behalf of the DA, the U.S. Military Academy Cadets, and the Reserve Officer Training Cadets.

5. REPORT AND NOTIFICATION REQUIREMENTS: Every Soldier and Civilian member of the military community should report information about known and suspected cases of child abuse to the RPOC or the appropriate military law enforcement agency. The RPOC or the appropriate law enforcement agency will notify FAP-C and DFCS of all on-post incidents of child abuse, in addition to notifying the appropriate authorities on-post as required by Army Regulation and understanding. The DFCS will notify FAP-C of all known and suspected military-related, off-post cases of child abuse within seven workdays of receipt of complaint. All on-post incidents will be reported to the DPS.

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SUBJECT: Fort Benning, Georgia Department of Human Resources, Muscogee County and Chattahoochee County – Memorandum of Understanding

6. INTAKE PROCEDURE:

a. The DFCS and FAP-C share joint responsibility for the intake of information about child abuse. The authorities are responsible for the intake of information surrounding child abuse. On-post incidents will be initially investigated by DFCS and post medical, law enforcement, and FAP-Clinical personnel. Off-post incidents will be investigated by DFCS with involvement of other Civilian authorities, where appropriate. When requested, and upon the approval of post authorities, FAP-Clinical social workers may assist in investigation of off-post incidents. Military-related incidents within the boundaries of the installation may initially be investigated by military law enforcement authorities to determine the extent of military criminal and administrative interests involved, and will thereafter be reported to DFCS or other Civilian authorities.

b. Upon receipt of a report of an on-post incident, DFCS will seek, in appropriate cases, authority for temporary protective custody through the Court. Upon a grant of authority by a juvenile court judge, DFCS will place the child(ren), arrange for the initiation of child protective proceedings, and will notify the parties and the Court of the hearing date and time.

c. All children who are removed from their homes on the installation for their own protection will be first examined at the MTF prior to being taken off the installation. Parental consent for medical examination in such cases is not required.

7. COURT REPRESENTATION: The presentation of cases to the Court is the responsibility of DFCS, working with the Special Assistant Attorney General. Representatives of the CRC, however, will be made available in appropriate cases to assist in the preparation and presentation of cases before the court.

8. TREATMENT PROGRAMS:

a. It is the policy of all parties to this understanding that, within budgeting, personnel, and regulatory constraints, all available medical and social resources for use in treatment programs will be used. In all cases involving the abuse of children of military Families, any resources of Fort Benning, which are available for use to aid in treatment, may be integrated into DFCS or court-mandated treatment plans. Availability of military resources will be determined by the CRC, with concurrence of the MTF Commander or the Fort Benning Commander, where necessary.

b. The DFCS will exercise primary responsibility for the development and implementation of a treatment plan for all off-post and military-related cases and for all on-post cases that may be augmented by the CRC. On a case-by-case basis, oversight

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SUBJECT: Fort Benning, Georgia Department of Human Resources, Muscogee County and Chattahoochee County – Memorandum of Understanding

authority may be delegated to others with the concurrence of the CRC, in the interest of program efficiency.

c. In the event a treatment program requires intervention by the Court, DFCS, after consultation with FAP-C, working with the Special Assistant Attorney General, may seek appropriate judicial remedies, including any necessary modifications to the existing treatment program, and will assume primary responsibility for the implementation of any subsequent court-ordered treatment plan.

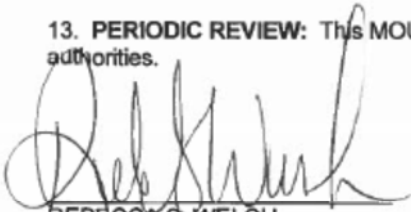
9. **RECORDS ACCESS:** Access to military records needed by Muscogee and Chattahoochee County authorities for the investigation, processing, treatment, or prosecution of child abuse cases will be made available by the appropriate records custodian according to applicable laws and regulations. Request for records will be made through the Patient Administrator Division, Martin Army Community Hospital, who will arrange for the release of necessary information.

10. **REPORTS:** The DFCS will make periodic reports as requested to the CRC on the status of all open cases.

11. **COMMUNICATIONS:** Effective execution of this understanding can only be achieved through constant communications and through dialogue among and between the parties. It is, therefore, the policy of the members of this understanding that access to all parties will remain open and that the resulting channels of communication will be used whenever questions, misunderstandings, or complaints arise.

12. **COOPERATION:** The Commanding General, Fort Benning, will ensure the cooperation of all Fort Benning officials with Muscogee and Chattahoochee County Representatives, in accordance with this Memorandum of Understanding.


13. **PERIODIC REVIEW:** This MOU will be reviewed annually by the appropriate authorities.

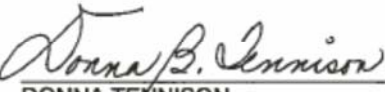

REBECCA S. WELCH
Family Advocacy Program Manager
3 Feb 2016
(Date)



ANDREW C. HILMES
Colonel, Armor
Garrison Commander
10 Feb 2016
(Date)


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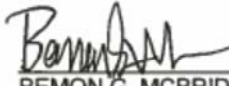
SUBJECT: Fort Benning, Georgia Department of Human Resources, Muscogee County and Chattahoochee County – Memorandum of Understanding


JENA JONES
Interim Director, Muscogee County
Division of Family & Children Services
1/22/16
(Date)


DONNA TENNISON
Director, Chattahoochee County
Division of Family & Children Services
3 Feb. 16
(Date)


JOEY M. LOUDERMILK
Judge, Juvenile Court of Chattahoochee
Judicial Circuit
Jan 29, 2016
(Date)


WARNER L. KENNON
Presiding Judge on the Juvenile Court
January 22, 2016
(Date)


BEMON G. MCBRIDE, III
Chief Judge, Chattahoochee
Judicial Circuit
July 29, 2016
(Date)

Juvenile Drug Treatment Court Memorandum of Agreement

Purpose: Fort Benning wishes to enter into a memorandum of agreement with the Muscogee County Juvenile Drug Treatment Court in order to hear cases involving juvenile offenders who commit minor offenses occurring at Fort Benning, Georgia, involving alcohol or illicit narcotics use, or misused prescription medication.

General: As a consequence of more than a decade of ongoing combat operations, military families have experienced significant strains. Pressures on children from prolonged and repeated deployments, often compounded by additional stress from a parent’s mental or physical injuries sustained during combat operations, place a significant portion at risk of misbehavior (Lester et. al., 2011: p. 155). Although not all military children under pressure resort to misbehavior and acting out, alcohol and drug use is a risk factor for some of these children (Cozza, 2011: p. 179). Fort Benning’s status the Nation’s premiere center for combat arms training and the home of the Armor and Infantry Schools, the 75th Ranger Regiment, and a combat brigade, has produced a collection of families who are at risk of criminal consequences among the juvenile population. Telling in Fort Benning’s juvenile offense statistics for 2012, approximately seven percent of juvenile offenses have in some way related to drugs or alcohol (Molder, 2013). Although an established *Juvenile Justice Memorandum of Agreement* covers more serious offenses at Fort Benning, that formal agreement only pertains to “egregious” crimes (Sup. Ct., Muscogee Cty., 2010: p. 2). The value of the instant Memorandum is that it addresses more minor, routine offenses, which do not rise to the level of certification by the United States Attorney (Dep’t of Justice, 2013: § 9-8.110), but which present significant need for an intensive treatment program. The Muscogee County Juvenile Drug Treatment Court is an ideal program to address the needs of Fort Benning’s drug and alcohol-involved juvenile offenders because it has developed a nationally celebrated program, recognized for consistent reductions of recidivism through its multi-faceted interventions.

Authority: There is a long standing precedent for federal deference to state jurisdiction in matters pertaining to juveniles as indicated by 18 USCS § 5032 and 18 USCA § 1832. Because the exercise of state jurisdiction in matters involving juveniles is encouraged by federal statute and because juvenile courts are not criminal courts, there is no jurisdictional impediment. This principle is exemplified by In the Matter of Charles B, 765 N.Y.S.2d 191 (2003), which involved a dispute over the jurisdiction of a juvenile who committed a crime on the property of The United States Military Academy at West Point. The court determined that because the New York Family Court was not a criminal court and because there is a long standing precedent of federal deference to state jurisdictional matters pertaining to juveniles, that it did have jurisdiction over the juvenile. The court noted that, except in certain circumstances described by 18 U.S.C. § 5302, the federal government should not proceed against a juvenile delinquent. Similar determinations have been made in the cases of M.R.S. v. State, 745 So. 2d 1139 and State of New Jersey In the Interest of D.B.S., Juvenile Appellant, 137 N.J. Super. 371. Finally, it is important to note that Fort Gordon and Warner Robbins AFB have already implemented agreements with the state in order to allow state courts to preside over certain juvenile cases.

Reporting and Investigation: All active duty members and civilian employees of Fort Benning are responsible for reporting acts of juvenile delinquency to the Provost Marshal Office for action. Separately, the Criminal Investigation Division's Drug Suppression Team has primary responsibility for detecting and investigating all offenses on Fort Benning involving illegal narcotics (Dep't of Army, AR 195-2: ¶ 3-3a.(2)). Responsibility for juvenile investigations not involving narcotics will be conducted by the Provost Marshal's Office (Dep't of Army, AR 190-30: ¶ 4-2f.). Once it is determined that the juvenile has committed an offense on post, the investigating agency will notify the Special Assistant United States Attorney (SAUSA) and the Installation Hearing Officer (IHO), both of whom work at the Office of the Staff Judge Advocate. Depending upon the nature of a given offense, a given juvenile's case may be simultaneously processed for criminal action as well as administrative review under Fort Benning's Regulation pertaining to the Juvenile Misconduct Action Authority, a program that exists to determine what administrative measures should be instituted to prevent recidivism or threats to the safety and order of Fort Benning (MCoE Reg. 210-5: ¶ 7-1). These measures can include action by the Garrison Commander including the requirement of the child's military sponsor to provide supervision at all times while on the installation to a bar from the installation for all purposes short of necessary medical care (MCoE Reg. 210-5: ¶ 7-6a.-h.). For families living on the installation, the practical consequence of such a bar is eviction from military housing.

Intake Procedures:

a. Initial Case Screening

Once the SAUSA and IHO are notified of a juvenile offense, they will review the facts and circumstances of the alleged offense to determine (1) whether the case involves drugs, alcohol, or misuse of prescription narcotics on the face of the allegations; and (2) whether such drug and alcohol involvement is evident in the juvenile's history, the basic eligibility requirements for Juvenile Drug Treatment Court participation. If the case is not one that the U.S. Attorney seeks to certify for prosecution in Federal Magistrate or District Court, and is one that the SAUSA and IHO favor for Juvenile Drug Treatment Court participation, the SAUSA will make contact with the Juvenile Drug Treatment Court program administrator for a preliminary assessment of suitability for program participation.

b. Program Suitability Assessment

Upon the Program Administrator's initial favorable impression of suitability, the SAUSA, IHO, and a representative from the Juvenile Misconduct Authority will expeditiously arrange for a joint mental health and professional assessment of the juvenile and his or her family. The Program Administrator and Juvenile Drug Treatment Court Team, including the Juvenile Drug Treatment Court Judge, will use the information developed during the joint mental health and professional assessment to formulate an opinion on preliminary acceptance into the program. The Program Administrator will communicate the preliminary suitability determination to the SAUSA and IHO in writing.

a. Concurrence from the District Attorney's Office

For any case in which the Juvenile Drug Treatment Court Program Administrator has found a Fort Benning juvenile to be suitable for participation in the program, the SAUSA will communicate a formal written request to the District Attorney, through her designee for Juvenile Drug Treatment Court Enrollment (DA's Designee) with the name and contact information for the juvenile offender, a concise description of the facts, and a copy of the Program Administrator's favorable suitability determination. After reviewing the submitted documentation, the DA's designee will provide the SAUSA with a positive or negative response, in writing, for approval of enrollment, within a reasonable amount of time.

b. Formal Institution of Criminal Complaint

The SAUSA will ensure that the appropriate law enforcement agency issues a criminal citation reflecting an appropriate violation of a punitive provision of *Official Code of Georgia* for all DA-approved Fort Benning juveniles. The SAUSA will provide the original citation to the IHO, who will draft and file an official "Complaint in the Juvenile Court Muscogee County, Georgia" with the Clerk of the Juvenile Court, thereby commencing the formal process for placing the juvenile on the Juvenile Drug Treatment Court's Docket.

c. Synchronization with Fort Benning's Juvenile Misconduct Action Authority

Recognizing that a juvenile who is enrolled in the Juvenile Drug Treatment Court will likely have simultaneous responsibilities to undergo assessment and administrative action by Fort Benning's JMAA, the IHO and the JMAA Representative at the Office of the Staff Judge Advocate will maintain periodic contact with the Program Administrator to account for the juvenile's participation the treatment program. In preparation for the JMAA's initial adjudication or eventual hearing (MCoE Reg. 210-5: ¶ 7-3, 7-4), the Program Administrator will complete a brief written synopsis of the juvenile's progress, noting any recommendations or concerns for the JMAA's consideration. Such reports will be transmitted to the IHO. During the course of the treatment program, the JMAA may request additional details or recommendations from the Program Administrator.

d. Communications

Effective execution of this agreement can only be achieved through constant communications and through dialogue among and between the parties. It is the policy of the members of this agreement that access to all parties will remain open and that the resulting channels of communication will be used whenever questions, misunderstandings, or complaints arise. Success within the Juvenile Drug Treatment Court program also depends particularly upon the regular participation of the military parent in necessary counseling and other meetings. The JMAA will institute measures to encourage full participation by any military sponsor in his or her child's treatment. To accomplish this goal, the JMAA will interface with commanders and

the parent/sponsor's military unit to assist in creating flexible arrangements that will accommodate maximum participation.

a. Base Access and Juvenile Oversight Activity

The Provost Marshal Office shall develop a procedure to ensure reasonable access to Fort Benning for state investigators and caseworkers involved in juvenile matters referred to the state for disposition. To accommodate state officers' oversight of the juvenile's progress and to effectuate court-ordered corrective measures, including, but not limited to urinalyses, searches, and electronic monitoring, the Provost Marshal and the OSJA will obtain necessary consent and waivers by the parent/sponsor, juvenile, or other individual with privacy or proprietary rights.

Effective Date: This Memorandum of Agreement will become effective upon completion of all signatories.

Periodic Review: This Memorandum of Agreement will be reviewed at least annually by the appropriate authorities.

Miscellaneous: The original of this Memorandum of Agreement will be maintained by the Fort Benning OSJA, who shall provide copies thereof to all signatories. Furthermore, obligations appearing in any Standing Operating Procedure developed in support of this Memorandum are incorporated by reference into this Memorandum of Agreement upon approval by the Treatment Court Judge, the DA Designee, and the SAUSA.

References:

Cozza, Stephen J., *Meeting the Wartime Needs of Military Children and Adolescents*, in CARING FOR VETERANS WITH DEPLOYMENT-RELATED STRESS DISORDERS: IRAQ, AFGHANISTAN, AND BEYOND 171 (Josef I. Ruzek et al. eds., 2011) (citing to marijuana use as a representative example of the consequences of deployment-related stress on a 16 year-old military family member).

Lester, Patricia et al., *Wartime Deployment and Military Children: Applying Prevention Science to Enhance Family Resilience*, in RISK AND RESILIENCE IN U.S. MILITARY FAMILIES 149 (Shelly MacDermid Wadsworth & David Riggs eds., 2011).

Molder, Norman, Ft. Benning Directorate of Emergency Servs., Mil. Police Investigations, Criminal Statistics Summary (Jan. 23, 2013).

Sup. Ct., Muscogee Cty., Juvenile Justice Memorandum of Agreement (Feb. 5, 2010).

U.S. DEP'T OF ARMY, MANEUVER CTR. OF EXCELLENCE, REG. 210-5 (Feb. 22, 2012).

U.S. DEP'T OF ARMY, REG. 195-2, CRIMINAL INVESTIGATION ACTIVITIES (Sept. 6, 2011).

U.S. DEP'T OF ARMY, REG. 190-30, MILITARY POLICE INVESTIGATIONS (Nov. 1, 2005).

Signatories

Chattahoochee County Juvenile Court Judge

Muscogee County Juvenile Court Judge/
Juvenile Drug Treatment Court Judge

Chattahoochee County District Attorney/
Muscogee County District Attorney

Chattahoochee County Department of Juvenile Justice

Fort Benning Juvenile Misconduct Action Authority

Special Assistant United States Attorney
Fort Benning, GA