



**DEPARTMENT OF THE ARMY**  
**US ARMY INSTALLATION MANAGEMENT COMMAND**  
**HEADQUARTERS, US ARMY GARRISON, FORT CARSON**  
**1626 ELLIS STREET, SUITE 200**  
**FORT CARSON, COLORADO 80913-4143**

**COPY**

**MEMORANDUM OF AGREEMENT**  
**BETWEEN**  
**THE U.S. ARMY GARRISON, FORT CARSON, CO**  
**EVANS ARMY COMMUNITY HOSPITAL, FORT CARSON, CO**  
**AND THE STATE OF COLORADO THROUGH THE**  
**EL PASO COUNTY DEPARTMENT OF HUMAN SERVICES**

**SUBJECT: Handling Child Abuse and Neglect**

**1. REFERENCES.**

- a. Army Regulation 608-18, The Army Family Advocacy Program, dated 20 October 2007
- b. Colorado Children's Code (Title 19, Colorado Revised Statutes), August 2008/2009
- c. DoDI Number 4000.19, dated 9 August 1995, Interservice and Intragovernmental Support

**2. PURPOSE.** This agreement establishes written procedures to integrate the exercise of jurisdiction vested in El Paso County and Fort Carson authorities in matters involving suspected abuse of children of military families.

**3. AUTHORITY.** The State of Colorado, through the El Paso County Department of Human Services, and under the authority granted by the Children's Code (Title 19, Colorado Revised Statutes) is responsible for the protection of abused and neglected children within El Paso County. The Garrison Commander, Fort Carson, by virtue of his inherent authority as commander, and through the specific authority granted to him under the Army Family Advocacy Program (AFAP), Army Regulation 608-18, is responsible for the protection of abused and neglected children of military families within his command, as well as for maintaining law, order, and discipline on the installation. The Garrison Commander'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. Therefore, Fort Carson relies upon the Fourth Judicial District Court to exercise its authority, when necessary, in cases of abused children of military families. The exercise of the court's jurisdiction in cases of suspected child abuse arising on the installation is supported by congressional deference to and reliance upon state child-related statutes (see e.g., The Child Abuse Prevention and Treatment Act, 42 U.S.C. 5101; The Education for the All Handicapped Children's Act, 20 U.S.C. 1412; and The Correction of Youthful Offenders Act, 18 U.S.C. 5001), and by developing case law which upholds the exercise of state civil jurisdiction within areas of

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exclusive federal legislative jurisdiction, when that exercise of state authority, as is contemplated by this agreement, will not undermine federal sovereignty. (See Matter of Kernan, 288 NYS 329 (1936); Howard v. Commissioners, 344 U.S. 624 (1953); Evans v. Corman, 398 U.S. 419 (1970); County of Arapahoe v. Dunoho, 144 Colo. 321, 356 P. 2d 267 (1960); Board v. McCorkle, 237 A.2d 640 (1968); State ex rel. D.B.S., 137 N. J. Super. 371, 349 A.2d 105 (1975); In re Terry y., 101 Cal.App. 3d 178, 161 Cal. Rptr. 452 (1980); and 18 U.S. Code, Sections 5001, 5032.

4. DEFINITIONS. For the purpose of this agreement, the following definitions apply:

a. The Fourth Judicial District Court (Court) is the court empowered with original jurisdiction to adjudicate child abuse and neglect cases in El Paso County.

b. The El Paso County Department of Human Services EPCDHS, is the agency primarily responsible for the intake, investigation, and management of child abuse cases in El Paso County and allegations of serious abuse on the Fort Carson military installation (see paragraph 4k). Joint investigations are conducted on cases that require further assistance or services.

c. Social Work Services (SWS), is the agency of the Fort Carson Evans Army Community Hospital (EACH) Medical Treatment Facility (MTF), which is responsible in assisting in the collection of information pertaining to certain military related incidents through prescreening of on-post child abuse and neglect referrals from EPCDHS (see paragraph 4 k).

d. The Family Advocacy Case Review Committee (CRC) is an Army program established by Army Regulation designed to promote the growth, development and general welfare of children and by interceding on their behalf when necessary. The CRC is a multi-disciplinary team organized, subject to the direction of the installation commander, and supervised by the MTF commander.

e. The Police/Provost Marshal Division (P/PMD) coordinates all law enforcement activity on Fort Carson, and is primarily responsible with CID for investigating crimes involving child abuse on the installation. The P/PMD coordinates such investigations with the U.S. Army Criminal Investigation Command (CID), and Federal State law enforcement authorities, as appropriate.

f. The P/PMD, Report Point-of-Contact (RPOC) for Fort Carson receives all reports of child abuse occurring on post (526-2333 or 911 for all emergencies). The RPOC notifies SWS and EPCDHS.

g. EPCDHS Child Abuse Hotline number is 444-5700.

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h. Child abuse includes, but is not limited to, child sexual abuse and child neglect caused by physical or mental injury, sexual contact or exploitation, drug exposed infants, children exposed to the manufacturing of drugs, emotional abuse and injurious environment, negligent treatment, or maltreatment of a child under the age of eighteen, 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. A serious case of child abuse is abuse which results in any of the following: death, internal injuries, brain damage/skull fracture/subdural hemorrhage, bone fracture, dislocation/sprain, poisoning, burns/scalding, severe cuts/lacerations, multiple or serious bruises, sexual abuse (by sibling, parent, relative), failure to thrive, life threatening neglect, and any other physical injury that seriously impairs the health or physical well-being of a child. Nothing in this definition changes the definitions in AR 608-18 as it pertains to CRC determinations.

j. An off-post incident is an act of child abuse involving a military Family, which occurs beyond the boundaries of Fort Carson and within the jurisdiction of El Paso County.

k. An on-post incident is an act of child abuse involving a military Family, which occurs within the boundaries of Fort Carson or which is referred to Fort Carson from sources outside the jurisdiction of El Paso County.

l. A military-related incident is an act of child abuse within El Paso County not involving a child of a military Family but nevertheless of interest to Fort Carson authorities by virtue of the military status of the alleged abuser or of the occurrence of the incident within the boundaries of Fort Carson.

m. A child of a military Family is a person under the age of 18 who is a natural, adopted child or stepchild of any Soldier, regardless of rank or location of duty assignment, and or any other military service member.

n. Third party offenders (non-parental person who abuse children while in the caretaker role) will be referred to local law enforcement agencies that have jurisdiction unless that perpetrator is under 10 years of age. Those cases will be managed by EPCDHS. Verbal notification will be made to EPCDHS on all third party offenders.

## 5. REPORT AND NOTIFICATION REQUIREMENTS.

Every Soldier and civilian member of the military community is encouraged to report non-privileged information about known and suspected cases of child abuse to the RPOC/ P/PMD. This includes persons in addition to those required to report abuse

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pursuant to the Colorado Children's Code, C.R.S. 19-3-304 (see Attachment I). The RPOC will notify SWS, EPCDHS or other authorities, as appropriate, of all on-post incidents of child abuse, or incidents of spouse abuse where children are present, in addition to notifying the appropriate authorities on-post as required by Army Regulation and this Agreement. EPCDHS will notify the RPOC of all off-post incidents of child abuse in a timely manner and may request a check of the Army Central Registry when they notify SWS of the report.

6. INTAKE PROCEDURES.

a. The EPCDHS and SWS share joint responsibility for the intake assessment of information about child abuse. EPCDHS will have primary responsibility for the non-criminal investigation of child abuse and neglect cases occurring both on and off post. The EPCDHS investigator will notify the P/PMD and SWS office and request assistance if necessary. SWS personnel as well as EPCDHS personnel acting as agents of the Army must comply with the requirements of Article 31 (b), Uniform Code of Military Justice (U.C.M.J.), that is, they must inform personnel subject to the UCMJ of the nature of the accusation and inform him or her that no statement regarding the offense is required, and that any statement made may be used against him or her in a court of law. All incidents of suspected child abuse, which occur on Fort Carson, Colorado, will be reported to the P/PMD, 526-2333. The P/PMD will in turn notify the Criminal Investigative Department (CID) and Military Police Investigator (MPI) Duty Agent/Investigator of the incident. The case will be evaluated and a decision will be made as to which agency will conduct the criminal investigation into the incident. If a felony has occurred, either in violation of the U.C.M.J. or the Colorado Revised Statutes, CID will conduct the investigation. All misdemeanor crimes will be investigated by MPI.

b. All off-post incidents will be investigated by EPCDHS with assistance from other civilian authorities, when appropriate. When requested, and upon approval by post authorities, SWS may assist in investigation of an off-post incident. All off-post incidents of suspected child abuse involving military Families will be reported to SWS at intake. Various agencies within the Department of the Army must be notified of certain types of criminal activity. This will facilitate early coordination between the Staff Judge Advocate's (SJA) Office and the District Attorney's Office to determine which agency will prosecute the incident.

c. When a report of child abuse is received on post, SWS will complete a prescreening assessment and immediately report information about the case to EPCDHS. Similarly, EPCDHS, upon receiving a report of child abuse involving the children of military Families from sources other than SWS, will provide SWS the case information as expeditiously as possible.

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d. Reports of child abuse and suspected abuse of children of military Families residing on Fort Carson with the potential for high visibility will be brought to the attention of the Fort Carson Public Affairs Office (PAO) as soon as possible by SWS. Agencies contacted by the media and/or the general public seeking information about such cases should be referred to the Public Information Section of the PAO at 526-4143. Such incidents occurring during non-duty hours should be reported to the PAO on-call person through the Installation Staff Duty Officer at 526-3400.

e. Upon receipt of a report of an on-post incident, EPCDHS will seek, in appropriate cases, authority for temporary protective custody or emergency protection orders through the Court. Authority for custody is sought and received by the on-call judge. Upon a grant of authority by a judge, EPCDHS will coordinate with SWS for the initiation of child protective proceedings, and will notify the parties and the Court of the hearing date and time.

f. All children who are removed from their homes on the installation for their own protection, that is, the circumstances or conditions are such that continuing the child in the care or custody of the parents presents imminent danger to the child's life or health, will be examined at the MTF prior to leaving the installation when appropriate. Parental consent for a medical examination in such cases is not required.

g. Cases of child abuse involving military Families, which are investigated by CID/MPI, will be coordinated with EPCDHS. Both EPCDHS and the military investigative agency will cooperate as much as possible concerning the availability of witnesses, victims, reports, etc. to ensure the expeditious completion of the criminal investigation. The safety of the child is the first concern. Evidence of criminal wrongdoing developed during the EPCDHS interviews and investigations will be brought to the immediate attention of the military investigative agency conducting the criminal investigation.

## 7. COURT REPRESENTATION.

a. If a military member is accused of child abuse and the abuse occurs on the installation (exclusive federal jurisdiction), appropriate disposition will be determined by the service member's command.

b. Presentation of non-criminal cases involving the welfare of abused children to the Court is the responsibility of EPCDHS working with the El Paso County Attorney. Representatives of the Family Advocacy Case Review Committee (FACRC) will be made available along with relevant documentation to assist in the preparation and presentation of cases as prescribed by Army Regulation 27-40.

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c. The District Attorney's Office is normally responsible for the criminal prosecution of those felony and misdemeanor cases involving child abuse incidents which arise within its jurisdiction.

d. In addition to the normal subpoena process, the El Paso County Attorney, District Attorney, and EPCDHS will comply with federal government requirements in order to obtain records or testimony for litigation. A summary of these requirements is provided at Attachment II. It is understood that the availability of such records or testimony may be a crucial factor in the District Attorney's decision whether to prosecute a particular case.

e. To receive the required approval for release of records or appearance of Army personnel as witnesses in litigation, the El Paso County Attorney or District Attorney will make timely coordination with the Administrative Law Division of the SJA's office (telephone 526-0538).

#### 8. TREATMENT PROGRAMS.

a. It is the policy of all parties to this Agreement that, within budgeting, personnel, and regulatory constraints, all available medical and social assets for use in treatment programs will be used. In all cases involving the abuse of children of military Families, any assets of Fort Carson, which are available for use for aid in treatment, may be integrated into EPCDHS or court-mandated treatment plans. Availability of assets will be determined by the FACRC, with concurrence of the MFT commander or the Fort Carson Commanding General, when necessary.

b. The EPCDHS shall exercise primary responsibility for the development and implementation of treatment programs for military Family cases in which there has been court involvement. The SWS shall exercise primary responsibility for all other cases. On a case-by-case basis, oversight authority for all or portions of a treatment program may be delegated by the primary responsible agency to the other with the concurrence of both in the interest of program efficiency.

c. In the event a SWS treatment program requires intervention by the Court, EPCDHS, working with the District Attorney or County Attorney, will 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 PURPOSES OTHER THAN LITIGATION.

Access to military records required by the District Attorney's Office and the El Paso County Attorney's Office and EPCDHS for the investigation and evaluation of child abuse allegations or processing or treatment of children, will be made available by the

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appropriate records custodian upon proper request. In response to a proper request, the Chief, SWS, will arrange with Patient Administration Division and other Army agencies for the release of necessary information. A summary of the procedures for making a proper request is contained at Attachment II (paragraphs 3 through 5).

#### 10. REPORTS.

The EPCDHS will make regular reports to the FACRC on the status of all open cases. SWS will ensure documentation is in FACRC minutes.

#### 11. COMMUNICATIONS.

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

#### 12. COOPERATION.

The Garrison Commander, Fort Carson, will ensure the cooperation of all Fort Carson officials with the El Paso County representatives to the extent allowed by Army Regulation.

#### 13. IMPLEMENTATION INSTRUCTIONS.

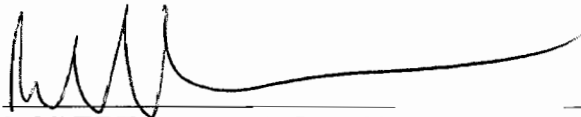
a. DHS will provide the services described in this MOA at no cost to Fort Carson or the U.S. Army.

b. Effective Date. This agreement becomes effective upon last signature of all parties, and will be reviewed on an annual basis.

c. Review/Modifications. This MOA may be subject to review at any time upon request by either party. Under normal circumstances, 30 days written notice will be provided if the agreement is to be unilaterally modified, suspended, or terminated. A legal review will be obtained before any modifications are made to the agreement.

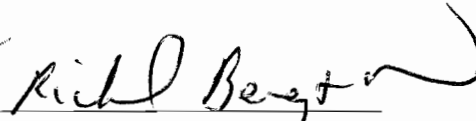
d. Termination Date. This MOA may be terminated by mutual consent of all parties or 90 days following written notice to the other party.

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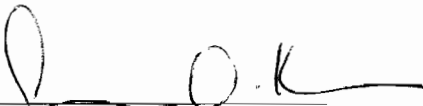
ROBERT F. McLAUGHLIN  
COL, FA  
GARRISON COMMANDER

9-14-2010  
(Date)



RICHARD BENGTTSSON  
Director  
El Paso County Department of Human Services

10-4-10  
(Date)



JIMMIE O. KEENAN  
COL, AN  
Commanding  
USA MEDDAC, Fort Carson

31 Aug 2010  
(Date)



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ATTACHMENT I

Memorandum of Agreement

Between

The U.S. Army, Fort Carson and the State of Colorado through

The El Paso County Juvenile Authorities

Under Colorado Revised Statute Section 19-3-304(2) and (2.5), any persons listed below who have reasonable cause to know or suspect that a child has been subjected to abuse or neglect or has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect are required to report or cause a report to be made to the County Department of Social Services or local law enforcement agency.

Persons required to report child abuse and neglect pursuant to the above:

Physician or surgeon, including a physician in training

Child health associate

Medical examiner or coroner

Dentist

Osteopath

Optometrist

Chiropractor

Chiropodist or podiatrist

Registered nurse or licensed practical nurse

Hospital personnel engaged in the admission, care or treatment of patients

Christian Scientist practitioner

Public or private school official or employee

Social worker or worker in any facility or agency that is licensed

Certified mental health professional

Dental hygienist

Psychologist

Physical therapist

Veterinarian

Peace officer

Pharmacist

Commercial film and photographic print processor

Fire fighter

Victim's Advocate

Licensed professional counselors

Licensed marriage and family therapists

Unlicensed psychotherapists

Civilian clergy (Army Chaplains prohibited per Chief of Chaplains guidance)

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ATTACHMENT II

Memorandum of Agreement

Between

The U.S. Army, Fort Carson and the State of Colorado Through  
The El Paso County Juvenile Authorities

1. Information to be provided by Army personnel to the District Attorney, County Attorney, or El Paso County Department of Human Services, which was obtained through performance of their official duties, may be released only in accordance with regulations governing the release of official Army information. 32 C.F.R. sec. 97.6(c), Department of Defense (DOD) Directive 5405.2, and Army Regulation (AR) 27-40 govern the release of official information and appearance of Department of Army military and civilian personnel in response to litigation-related requests.

a. These provisions prohibit Army personnel from disclosing official information contained in Army files or any information acquired in the performance of their official duties, whether through testimony, deposition or interview, without the prior written approval of the installation Staff Judge Advocate (SJA). In accordance with these regulations, when official information is sought through a litigation-related request, the individual seeking the information must set forth in writing, and with reasonable specificity, the nature and relevance of the information sought. In his approval, the SJA may impose limits on the information to be released under appropriate laws and regulations.

b. Official records may be released for litigation once the Staff Judge Advocate has determined, in writing, that the requested information is releasable. If it is determined that the information should not be released, the requestor will be so notified.

2. Army personnel may not provide expert opinions or testify as expert witnesses without Headquarters, Department of the Army approval. Such approval is rare. Army medical personnel may testify as to facts, observation, treatment prescribed and course of recovery with prior approval of the Staff Judge Advocate, but may not offer opinions or expert testimony.

3. Records protected by the Privacy Act (5 U.S. C. sec 552a, et seq.) (including medical records) may be released only with the written consent of the subject or pursuant to the order of a court of competent jurisdiction. This requires the signature of a judge or magistrate, and not of an attorney or clerk of court. As an exception to the general Privacy Act restriction on release of information, records may be provided or information based on the records disclosed, when the head of a law enforcement agency makes a written request to the Army agency which maintains the record specifying the particular information sought and the law enforcement purpose for which it is sought.

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4. Therefore, based on authorization of the subject of the record or an order of a court of competent jurisdiction, the Family Advocacy Case Review Committee (FACRC) files may be released to the County or District Attorney's Office for litigation purposes. Authorization by the subject of the record or a court order is not required, however, to release these same files to the EPCDHS.

5. An "...appropriate order of a court of competent jurisdiction granted after application showing good cause therefore..." is required before records or information concerning the identity, diagnosis, prognosis, or treatment of any patient in the Army Alcohol and Drug Abuse Prevention and Control Program may be released (42 U.S.C. sec 290ee-3). For this reason, a subpoena issued by the court, rather than by an attorney, is required to compel testimony concerning information protected by this statute.

6. Should you have further questions concerning the procedures to obtain official information, you may contact the Administrative Law Division of the Office of the Staff Judge Advocate at (719) 526-0538.