

## Attachment 2

### **Developing a Memorandum of Understanding Between the Installation Staff Judge Advocate and the Local District Attorney's Office**

In many domestic violence cases involving service members and their families, there is overlapping criminal jurisdiction. For an offense committed off the installation by a military member, the local District Attorney (DA) and the military both have jurisdiction to prosecute the case, but only the DA has jurisdiction over offenses committed by a civilian family member. In the case of offenses committed on the installation, the command always has jurisdiction over military personnel, and depending on the installation, the local DA will either share jurisdiction over military personnel with the command and over civilian personnel with the U.S. Attorney or have no jurisdiction over military personnel and civilians. When the local DA has no jurisdiction on an installation, only the U.S. Attorney may prosecute civilians who commit offenses there. When there is overlapping jurisdiction, who prosecutes a particular case or class of cases is a matter of formal or informal agreement.

While some installations have entered into formal agreements with local DAs on exercising overlapping criminal jurisdiction, others have only developed informal working relationships. These informal relationships can be difficult to maintain due to staff turnover. Installations are often surrounded by multiple jurisdictions, making it even more difficult to maintain open and regular communications with numerous local district attorney offices. Furthermore, these civilian agencies may not have a formal internal policy dictating steps to take when either the victim or the alleged offender is an active duty member.

Given these obstacles to successful informal working relationships and procedures, a formal Memorandum of Understanding (MOU) between the installation SJA and local DA's office can improve the sharing of information and strengthen procedures for dealing with domestic violence incidents, MOUs can be used to:

- (1) clarify jurisdictional issues for the investigation and prosecution of incidents,
- (2) define the mechanism whereby local law enforcement reports, civilian protection orders (CPOs) or court orders defining pretrial conditions for active duty members will be forwarded on to the appropriate installation SJA, and,
- (3) foster cooperation and collaboration between the installation and local civilian agencies.

Although MOUs can be crafted to address issues specific to an installation and the communities surrounding it, there are several issues that MOUs should address:

- A general statement of the purpose of the MOU.
- An explanation of jurisdictional issues that affect respective responsibilities for investigating and prosecuting incidents occurring on and off of the installation.

- Procedures for transmitting police reports, CPOs and orders defining pretrial conditions from the district attorney to the SJA regarding domestic violence incidents involving active duty service members.
- Designation of the title of the installation legal office (such as the Staff Judge Advocate (SJA)) recipient of such information from the local district attorney's office.
- Procedures for providing, upon request, a history of domestic violence incidents involving specific active duty members to the district attorney's office.
- Exchange information and facilities during the course of an investigation and prosecution.
- Regular meetings between the district attorney's office and the SJA to review cases and MOU procedures.

The following sample Memorandum of Understanding contains provisions that could be used or modified by installations to meet specific needs. Since both jurisdictional issues and installation standing procedures on dealing with civilians alleged to have committed offenses on the installation vary widely, this sample does not include specific provisions on those two points.

**Memorandum of Understanding Between  
(INSTALLATION) SJA and  
(COUNTY/CITY) District Attorney's Office**

1. **PURPOSE:** To establish written procedures concerning the exchange of information, case investigation and prosecution, and coordination of efforts and assets between the (INSTALLATION) SJA and the (COUNTY/CITY) District Attorney (DA) in domestic violence cases involving active duty military personnel assigned to the (INSTALLATION) and their family members.
  
2. **GENERAL:** This Memorandum of Understanding (MOU) does not create additional jurisdiction or limit or modify existing jurisdiction vested in the parties. This MOU is intended exclusively to provide guidance and documents an agreement for general support between the (INSTALLATION) SJA and the (COUNTY/CITY) DA. Nothing contained herein creates or extends any right, privilege, or benefit to any person or entity. See United States v. Caceres, 440 U.S. 741 (1979).
  - A. **[Insert paragraph here defining jurisdiction for both the (INSTALLATION) SJA and (COUNTY/CITY) DA.]**
  
3. **RESPONSIBILITIES:**
  - A. **The (COUNTY/CITY) DA agrees to perform the following actions:**
    - (1) When the victim in a domestic violence incident has been identified as an active duty service member or a family member of one, the (COUNTY/CITY) DA shall provide the victim with basic information, acquired from the Installation SJA (below), about (INSTALLATION) resources available to domestic violence victims.
    - (2) When investigating or prosecuting domestic violence cases, the (COUNTY/CITY) District Attorney (DA) shall determine whether the alleged offender is an active duty service member assigned to (INSTALLATION). If the alleged offender is an active duty member assigned to (INSTALLATION), the DA shall contact the (INSTALLATION) SJA to inform the SJA of the pending investigation or prosecution. Upon request, the DA shall forward copies of relevant police reports, civil protection orders, and any orders specifying pre-trial conditions to the SJA.
    - (3) When investigating a domestic violence case involving an active duty member assigned to (INSTALLATION) who is alleged to be the offender, the DA shall consult with the SJA with respect to prosecution of the individual under the appropriate state law or under the Uniform Code of Military Justice (UCMJ).

- (4) During the course of the DA's investigation or prosecution of a crime of domestic violence allegedly committed by an active duty service member assigned to (INSTALLATION), the DA shall keep the SJA informed of the status of the case through regular contacts. The DA shall notify the SJA specifically of any changes in confinement status or pre-trial release conditions.
- (5) When, after consultation, the SJA and the DA have determined that the alleged offender will be subject to procedures under the UCMJ, the DA shall cooperate during the investigation and disciplinary action to the greatest extent possible by sharing information and facilitating the interviewing of witnesses.
- (6) As new attorneys begin working in the (COUNTY/CITY) DA, their immediate supervisor will provide them with copies of this MOU and basic instruction for executing the provisions of this MOU.

**B. The (INSTALLATION) SJA agrees to perform the following actions:**

- (1) The (INSTALLATION) SJA shall provide the (COUNTY/CITY) DA with basic information, in the form of quick reference cards or brochures, about installation resources available to domestic violence victims.
- (2) When investigating a domestic violence case involving an active duty member assigned to (INSTALLATION) who is alleged to be the offender, the SJA shall, in cases where the state has jurisdiction, consult with the local DA to determine whether the individual will be prosecuted under the appropriate state law or whether the command will pursue disciplinary action under the UCMJ.
- (3) Upon request, the SJA shall forward copies of relevant police incident reports and military protection orders to the DA.
- (4) When, after consultation, the DA and the SJA have decided that the alleged offender will be prosecuted under state law, the SJA shall cooperate during the investigation and prosecution to the greatest extent possible by sharing information and facilitating the interviewing of witnesses.
- (5) As new personnel begin duty with the (INSTALLATION) SJA, their immediate supervisor will provide them with copies of this MOU and basic instructions on executing the provisions of this MOU.

**4. EFFECTIVE ADMINISTRATION AND EXECUTION OF THIS MOU:**

- A.** This MOU shall be reviewed annually and shall remain in full force and effect until specifically abrogated by one of the parties to this agreement with sixty (60) days notice to the other party.

- B.** Effective execution of this agreement can only be achieved through continuing communication and dialogue between the parties. It is the intent of this MOU that communication will be used to resolve questions, misunderstandings or complaints that may arise that are not specifically addressed in this MOU.
- C.** Personnel from the (INSTALLATION) SJA and from the (COUNTY/CITY) DA's Office shall meet, as necessary and appropriate, to discuss open cases involving active duty service members and to review and revise provisions of this MOU.