

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE MISSOURI NATIONAL GUARD, JOINT COUNTERDRUG PROGRAM
AND
THE COLUMBIA POLICE DEPARTMENT

SUBJECT: Memorandum of Understanding for Operational Support from the Missouri National Guard, Joint Counterdrug Program.

1. REFERENCES:

- a. Title 32, United States Code §502(f), National Guard Training or Other Duty in Addition to Drill and Annual Training, 2006
- b. Title 32, United States Code §112, National Guard Drug Interdiction and Counter-Drug Activities, 3 January 2012
- c. Chief National Guard Bureau Instruction (CNGBI) 3100.01B, National Guard Counterdrug Support, 06 March 2020
- d. DASD CN> Memorandum for Chief, National Guard Bureau, Subject: National Guard Counterdrug Program (CDP) Guidance, 19 March 2021
- e. Memorandum, National Guard Bureau, Subject: National Guard Bureau Counterdrug Division Implementation Guidance, 16 April 2021
- f. Chief of the National Guard Bureau Manual (CNGBM) 3100.01, National Guard Counterdrug Support, 30 July 2021.
- g. Department of Defense Instruction (DoDI) 4000.19, Support Agreements, 16 December 2020.
- h. Memorandum for Chief National Guard Bureau, Subject: National Guard Counterdrug Program (CDP) Guidance, 07 March 2022.
- i. Memorandum, National Guard Bureau, Subject: National Guard Counterdrug Division Fiscal Year 2023 Implementation Guidance, 14 July 2022.

2. PURPOSE: This Memorandum of Understanding (MOU) sets forth the agreed terms and conditions of support to the Columbia Police Department (COMO PD) by the Missouri National Guard, Joint Counterdrug Program (hereafter MONG) at the direction of the Counterdrug Coordinator (CDC). In general, the Missouri National Guard will provide Counterdrug support to federal, state, local, and tribal law enforcement agencies when requested in writing, subject to funding, and when a drug nexus is apparent. This MOU is not intended, and should not be construed, to create any right or

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benefit, substantive or procedural, enforceable by law or otherwise by any third party against the parties, the United States, or the officers, employees, agents, or other associated personnel thereof. It is understood among the parties to this agreement that requests for Counterdrug support may include federal, state, local, and tribal cooperative law enforcement efforts.

3. AUTHORITY: This MOU is entered into by the Missouri Joint Counterdrug Program pursuant to the authority contained in Title 32, Sections 112 and 502 (f) of the United States Code using guidance contained in the National Guard Bureau Counterdrug Implementation Guidance, and the following:

a. The Controlled Substances Act, Title 21, United States Code (USC) Section 873, Cooperative Arrangements;

b. Title 32 USC Section 112, authorizes the Secretary of Defense (SECDEF) to provide funds to States receiving SECDEF approval of their Governor's National Guard Counterdrug Support Plan;

c. Missouri Revised Statutes, Chapter 41, Section 475 (1994);

d. The State of Missouri Governor's Counterdrug Support Plan authorizes MONG to assist a civilian Law Enforcement Agency (LEA) with counterdrug and drug demand reduction missions and provided the authority for this memorandum.

4. EFFECTIVE DATE: This MOU takes effect beginning on the day after the last Party signs. Furthermore, both parties will conduct annual review of this MOU to ensure all support requirements are met.

5. EXPIRATION DATE: This MOU does not expire but can be terminated upon request from either party. Termination requirements are covered in Paragraph 29 "Termination" of this document.

6. DRUG NEXUS: By executing this MOU, the supported LEA certifies that Missouri National Guard personnel will only engage in support of operations or investigations that have a drug nexus.

7. PLANNED DEPLOYMENT OF SERVICE MEMBERS AND EQUIPMENT:

a. Personnel: The Joint Counterdrug Program is not a LEA and the personnel are not law enforcement officers, any support of a LEA must be in response to a request for support.

1) The MONG will provide domestic Counterdrug (CD) support pursuant to Title 32, USC Section 112, personnel that are assigned to work with a LEA are assigned in a support role.

2) All MONG support outside of Missouri must be in direct support of Federal LEAs, as required by State Law (see Chapter 41.475.1.RSMo 1994), and pursuant to a mutually ratified interstate MOU between the requesting and supporting States.

3) MONG personnel and equipment may be requested for missions approved in the Missouri National Guard Counterdrug Support Plan provided such requests for MONG personnel and equipment do not adversely impact MONG readiness for its state emergency and wartime missions. Furthermore, counterdrug assistance is in addition to, and shall not preclude MONG personnel from performing required military training, including, but not limited to, weekend drills (IDT), Annual Training (AT), Professional Development and possible State Emergency Duty (SED).

4) While the MONG will attempt to provide continuity by leaving MONG personnel in place, movement of MONG personnel is at the sole discretion of the CDC.

b. Equipment:

1) The loaning of MONG equipment to the LEA will be in accordance with applicable laws and regulations and is at the discretion of CDC. Likewise, LEA equipment loaned to MONG is at the discretion of the LEA.

2) All loans of equipment will be documented in writing with at least the following information: full description of the item(s); condition at the time of the loan; length of time of the loan; location to which the item is to be returned.

3) Both parties to this agreement will contact the other party as soon as possible to report any damage caused or loss of loaned equipment.

4) Unless contrary to law or regulation, each party agrees to be financially responsible for any damage to, or loss of equipment by the other party, caused by the borrowing party's personnel through negligent conduct or willful misconduct.

8. REPORTING PROCEDURES:

a. The MONG member assigned to COMO PD will report to the Agency Supervisor and to the Counterdrug Coordinator or his designated representative.

b. Joint Counterdrug Program personnel will input statistical results into the Full Time Support Management Control System (FTSMCS) for inclusion in required reports and records.

c. The MONG will maintain compliance with Intelligence Oversight (IO) and Operations Security on all reporting in accordance with all Department of Defense (DoD) regulations and guidance.

d. Information provided to the MONG by the LEA will not be released to non-DoD sources unless in accordance with supported duties in the Program and approved by the custodian of the information.

9. COMMAND AND CONTROL:

a. The Governor of Missouri is the Commander-in-Chief of all MONG personnel. The Governor exercises command authority through the Adjutant General of Missouri (TAGMO).

b. The MONG Counterdrug Coordinator is responsible for submitting the Governor's State Plan for Counterdrug Support and managing the program. The CDC will exercise administrative responsibility over MONG personnel assigned to COMO PD through a Non-Commissioned Officer-in-Charge.

c. The appointed COMO PD officer is the day-to-day supervisory authority for MONG personnel providing counterdrug support to COMO PD.

d. MONG personnel will comply with the requirements of COMO PD policies, regulations, and procedures applicable to the support provided. Personnel issues will be brought to the attention of the Counterdrug Coordinator. Failure to adhere to agency policies and procedures will be grounds for removal from the assignment. Disciplinary actions will be coordinated between the Counterdrug Coordinator and the Agency Supervisor.

e. Joint Counterdrug Program personnel will be under the command and control of the CDC at all times. The supported LEA will notify the CDC immediately in the event that any MONG personnel are injured or suspected of misconduct. Personnel may be recalled at any time due to emergencies or other operational necessities. The CDC has the sole discretion to approve or deny modifications to a LEA support request.

f. Joint Counterdrug Program personnel will be under the direct supervision of the supported agency for all assigned duties. Joint Counterdrug Program personnel will also maintain a military chain of command. The military chain of command will take precedence at all times.

g. The MONG will handle all personnel management processes.

10. SCOPE OF OPERATIONS: Joint Counterdrug Program personnel will operate in accordance with a LEA support request as approved by the CDC. MONG will provide the following counterdrug support to COMO PD operations in Missouri.

a. Linguist Support (Mission 2a). Assist the United States Marshals Service in translation, transcription of audio/video tapes seized documents, and other information media. MONG personnel will not participate in active/real time Title III conversation

monitoring or directly participate in interrogation activities. MONG CD will not maintain or store final products in MONG facilities or databases.

b. Investigative Case and Analyst Support (Mission 2b). Focus on four core competencies: Link Analysis, document exploitation, commodity-financial analysis, and case construction. Other duties include: Approved Criminal Analyst duties in support of drug law enforcement or counter-terrorism agencies includes the creation of graphs, charts, maps, and toll analysis of suspected individuals or organizations; assistance in the design, development, and daily maintenance of operational intelligence databases; compilation, review, and input of raw data; preparation of reports necessary for successful investigational and prosecutorial purposes; performance of necessary case research; mastery and daily utilization of analyst specific software and hardware systems; appropriate or coordinated dissemination of criminal information; and conducting strategic and tactical analysis of case information. Additional analyst duties may include but are not limited to the establishment and conduct of liaison tasks with other analysts or relevant agencies; preparation of statistical information; development and presentation of oral and written briefings; as well as any other analytical duties deemed necessary by COMO PD. All intelligence activities must be conducted in accordance with appropriate DOD regulations. MONG will not maintain or store final products in National Guard facilities or databases.

c. Domestic Cannabis Eradication Support (Mission 3a). Support LEA domestic cannabis suppression and eradication operations. This includes, but not limited to, aerial support, logistics support, communications support, intelligence, planning support, operational staff coordination, and eradication operations but not destruction of marijuana contraband.

d. Aerial Reconnaissance (Mission 5b). The LEA will seek support from its own organic assets. In the event that COMO PD tools are not available, and under this agreement between the agencies, the CDC will conduct reconnaissance/observation of airspace or surface areas (land and internal waterways of the US) for illegal drug activities which include, but are not limited to, cultivation of marijuana or delivery of illegal drugs. Prior to taking any action regarding this activity, consult directly with COMO PD Office of General Counsel (OGC). Reconnaissance may be directed toward suspected drug trafficking airstrips/drop zones/corridors or suspicious aircraft/watercraft/motor vehicles. A Law Enforcement Officer (LEO) must be present or in direct contact for all aviation FLIR/IR sensor missions. LEOs are authorized to fly on aircraft to validate and approve missions provided the purpose is to facilitate counterdrug activities. Missions may require site security for aircraft and ground radar. Approved equipment and techniques include, but are not limited to:

- 1) Aerial visual techniques, including infrared/thermal imagery, and photographic reconnaissance.
- 2) Photo reconnaissance/film processing.

11. FORCE PROTECTION OR RULES FOR USE OF FORCE: MONG personnel will also comply with all force protection measures as established by the United States Marshals Service.

a. Prior to beginning the mission, the supported LEA will provide the MONG with all known information regarding potential or actual threats and hazards to personnel and equipment. Joint Counterdrug Program personnel will operate under and comply with the Rules for the Use of Force (RUF) orders established by The Adjutant General for the State of Missouri. Only specifically authorized MONG personnel shall carry issued weapons. The MONG CDC authorizes these individuals to be armed with the concurrence of the supported LEA. Each LEA will follow their own policy concerning firearms discharge and use of deadly force. Joint Counterdrug Program personnel should not be placed into situations that could be life threatening since they have not received the appropriate law enforcement training for this type of situation.

b. Joint Counterdrug Program personnel have the right to use force only, if necessary, to defend themselves or in the defense of others. The member can only use the amount of force necessary to achieve self-protection or preservation. Members are only to use deadly force if all lesser means of force have been exhausted or are unavailable, will only use the minimum force immediately necessary to defend against the unlawful use of deadly force and only if the risk of injury to innocent persons or bystanders are not increased by the use of deadly force.

12. PUBLIC AFFAIRS SUPPORT:

a. Information released to the media concerning MONG support to LEAs will be coordinated between the LEA and MONG public affairs/information officers. Participating MONG personnel or specific units will not be identified by name, address or photograph unless cleared through the CDC who will be responsible for obtaining a release through applicable National Guard channels.

b. The lead party for the dissemination of information will be the LEA and therefore members of the MONG will refer all questions from the media to the LEA for reply. The MONG public affairs office may provide guidance on issues specific to the National Guard as appropriate.

c. The United States Marshals Service will be the lead agency for releasing public information to the news media and will bear primary responsible for public affairs matters.

d. MONG CD support information will be treated as "FOR OFFICIAL USE ONLY." MONG personnel will not make any public affairs disclosures or discuss details regarding CD support operations with the media.

e. Any public request for information from MONG records will be processed under the Freedom of Information Act (FOIA).

f. Operational inquiries from the media will be directed to the United States Marshals Service. The MONG PAO in Jefferson City will handle inquiries of a non-operational nature that are specific to the MONG.

g. MONG members may be asked to review RFIs from Geographic Combatant Commands and subordinates. We request LEA support these requests as necessary. LEA rules for dissemination will be followed at all times. This supports a whole of government approach to counter threats to U.S. National Security posed by drug smuggling and illicit activities while balancing limited DOD resources.

13. SAFETY: The safety of MONG personnel is the primary concern of the CDC and will be emphasized in planning and execution of operations. The successful accomplishment of all MONG missions with minimum risk is paramount. Joint Counterdrug Program personnel will adhere to the CDC's safety policy at all times. Joint Counterdrug Program personnel should not knowingly be sent to, or directed to enter a hostile environment where there is a high probability of encountering life threatening situations or direct contact with suspects.

14. ARREST, SEARCHES, SEIZURES, AND EVIDENCE:

a. Joint Counterdrug Program personnel will not, except in exigent circumstances, directly participate in law enforcement activities such as arresting or conducting searches of individuals or private property. Additionally, MONG personnel will not enter into the chain of custody of evidence but may provide LEA officials with technical support for digital evidence extraction, preservation, and analysis.

b. All activities performed by MONG personnel shall be strictly limited to support of LEA counterdrug operations. MONG personnel shall not collect, retain, or disseminate information on United States persons or store LEA sensitive products on MONG databases. Absent exigent circumstances, MONG personnel shall not participate in the apprehension of suspects, or search and seize any property. MONG personnel may support digital forensic efforts after the Fourth Amendment search and seizure has been executed by the LEA.

c. MONG personnel will not be deputized or cross designated with Title 21 Investigative authority.

15. COUNTERDRUG ANALYSIS OVERSIGHT RESPONSIBILITIES:

a. All NG Service members handle sensitive information IAW the supported organization's guidance, authorities, and oversight required by 28 Code of Federal Regulation (CFR) Part 23, "Criminal Intelligence Systems Operating Policies." The CD

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Coordinator appoints an additional duty Security Manager who is responsible for personnel security.

1) CD members must comply with DoD, Service, NGB, State, Territory, or District of Columbia, and supported agency, rules and procedures for information handling during CD activities conducted in support of COMO PD.

2) The criminal information NG Service members process and analyze, as well as any analytic products are the property of COMO PD and are not subject to intelligence oversight. NG Service members will not use DoD/CD computers, systems and networks to enter, store, or transmit criminal data or information.

3) CD Coordinators must coordinate with LEAs to ensure support provided by CD personnel is conducted IAW applicable State, local, and Tribal law and policy, in addition to all DoD, Service, and NGB regulations. CD Coordinators will conduct checks the daily routines and actual duties performed by CD personnel to ensure activities are conducted IAW all applicable laws, rules, and regulations.

b. MONG will:

1) Assume full responsibility for salary, benefits, personnel records, and other administrative actions of MONG personnel supporting COMO PD.

2) Ensure MONG personnel wear appropriate attire, as operationally dictated, while working in COMO PD locations.

3) Screen MONG personnel applying for CD support duty and provide COMO PD with the current security clearance status of personnel assigned to them.

4) In no event charge any indirect cost rate to COMO PD for administration or implementation of this MOU.

c. The Columbia Police Department will:

1) Provide MONG personnel the necessary orientation and training to successfully support COMO PD CD operations.

2) Provide MONG personnel with adequate workspace and equipment necessary to perform CD support missions.

3) Provide MONG personnel access to required data when determined necessary to accomplish assigned CD duties. This includes access to parking and other appropriate facilities.

4) Pay temporary duty expenses incurred by MONG personnel for travel in support of COMO PD operations. Requests for payment of authorized reimbursable expenses shall be coordinated with and approved by the CDC.

5) Determine if warrants and/or permits are required for any operation; obtain all required warrants/permits and serve required warrants.

16. LEGAL RESPONSIBILITIES (Acquisition of Warrants and Permits): COMO PD is responsible for obtaining legal authorizations and warrants required to permit information handling.

17. UNIFORMS AND TASK-SPECIFIC ATTIRE:

a. CD Coordinators may authorize the wear of civilian clothing for the direct performance of FTNGD-CD duty only when one or more of the following conditions is present.

1) The military duty performed is in a physical office of the supported LEA or CBO and the senior LEA or CBO official requests that NG personnel not wear military uniforms.

2) The military duty is in support of a LEA CD activity which might subject NG personnel to hostile targeting if affiliation with the CD activity were known.

3) The military duty is in support of a LEA CD activity in which military affiliation or detection might compromise LEA investigations.

b. Authorizations of non-standard uniforms must be written and maintained in the Counterdrug Program records. Non-standard duty uniforms do not include LEA-issued uniforms or other apparel or badging resembling any civilian LEA. NG CD personnel must ensure their physical appearance and apparel does not lead members of the public to perceive NG CD personnel as law enforcement officers.

18. LOGISTICS SUPPORT COORDINATION: CD equipment will be procured via Federal or State funds subject to availability.

a. Equipment purchased with CD Operations and Maintenance funds are subject to ARNG or ANG supply directives and regulations based on the type of funds used to acquire the equipment and maintained on the Federal Property Book.

b. Equipment purchased with State Funds (V226 or V227) are subject to state equipment directives and guidance and maintained on the State Property Book.

19. AIR AND GROUND TRANSPORTATION REQUEST: The Missouri Counterdrug Program does not directly participate in Air or Ground Transportation Missions.

Counterdrug personnel may facilitate LEA transportation requests as necessary by forwarding these requests to the appropriate civilian/military entity. Prior to taking any action regarding this activity, consult directly with COMO PD Legal Counsel.

20. COORDINATION FOR HAZARDOUS MATERIAL SUPPORT: MONG Service members cannot engage in substance or hazardous material identification, or disposal activities nor establish such organic capabilities. The Counterdrug SM will notify chain of command if hazardous material support is requested by COMO PD. Counterdrug Coordinator may facilitate support coordination between the WMD-CST Commander and COMO PD.

21. SUBPOENAS OR OTHER ORDERS TO APPEAR: The supported LEA will immediately notify MONG personnel in the event they are subpoenaed, or otherwise ordered to appear in any court. Joint Counterdrug Program personnel will report such order to appear in court to their respective military command and Judge Advocate. If MONG personnel are ordered to appear in court, the supported LEA will assist the MONG personnel to obtain pre-trial counsel and preparation from the prosecuting attorney responsible for the case.

22. DUTY HOURS, UNIFORM WEAR & WORK SCHEDULES: Duty hours and work schedules shall be in accordance with the LEA support request. All MONG personnel maintain additional military duties as part of their regular National Guard unit. As such, MONG personnel will be required to attend Inactive Duty Training (monthly drills as required), Annual Training (not to exceed 30 days) and schools related to military qualifications/professional development as required. In addition, all MONG personnel are authorized 30 days of leave per year, as approved by the CDC. Personnel will wear appropriate military uniforms on duty unless this requirement has been explicitly waived by the CDC or their designated representative.

23. WORK SPACE REQUIREMENTS: The supported LEA will provide parking, appropriate workspace and use of communication equipment (including phone, personal computer and internet/email capabilities) for MONG personnel.

24. LEA FUNDING: This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds. Even where one party has agreed (or later does agree) to assume a particular financial responsibility, written agreement must be obtained before incurring an expense expected to be assumed by another party. All obligations of, and expenditures by the parties are subject to their respective budgetary and fiscal processes and availability of funds pursuant to all laws, regulations, and policies applicable thereto. The parties acknowledge that there is no intimation, promise, or guarantee that funds will be available in future years.

25. SALARIES & BENEFITS: All MONG personnel serve in military status on fulltime National Guard duty. As such, the MONG will pay all related salaries, allowances and benefits for MONG personnel. The supported LEA shall not pay any monetary bonus or

other monetary award to any MONG personnel without the advanced approval of the CDC.

26. EQUITABLE SHARING PROGRAM: The supported LEA agrees that the MONG may participate in equitable sharing (asset forfeiture). MONG CDTF requests equitable sharing of federally forfeited assets as permitted by federal law and policy. COMO PD will submit an application for this respective share, based upon the level of participation, in an investigation resulting in the seizure and subsequent forfeiture of assets and in compliance with all applicable laws governing the disposition of forfeited assets, including the Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies (March 2024).

27. LIABILITIES:

a. The Agency acknowledges that the United States of America is liable for the negligent, wrongful acts or omissions of its agents and employees while acting within the scope of their employment to the extent permitted by the Federal Tort Claims Act, 28 USC 1346.

b. No hold harmless agreements are required in agreement between MONG and other federal agencies. The Federal Government may not hold harmless a state or other jurisdiction. The CDC will contact the NG Chief Counsel (NGB-JA), though NGB-J32, if incidents arise with the possibility of civil liability on the part of MONG personnel.

28. RENEGOTIATION/MODIFICATION: This MOU may be altered or otherwise modified, if done in writing. Changes to the scope of work or functions of MONG must be approved by the CDC. Agreements must be renegotiated when laws, regulations, and/or support requirements change in such a manner that the agreement cannot be executed.

29. TERMINATION: Either party may terminate this MOU at any time by written or verbal notification to the other party. If notification of termination is delivered verbally, written confirmation shall follow within five business days. The supported LEA recognizes that MONG personnel maybe mobilized and called to active federal military duty as part of their normal military unit. In addition, the supported LEA understands that MONG operations are subject to and dependent upon annual appropriated funding.

30. CORRESPONDENCE: All correspondence to be sent and notices to be given pursuant to this MOU will be addressed, if to the LEA, to City of Columbia, 701 East Broadway, Columbia, MO 65201, if to the Missouri National Guard, to Missouri National Guard Counterdrug Program, 2302 Militia Drive, Jefferson City, MO 65101-1203, or as may from time to time otherwise be directed by the parties.

31. LIMITATIONS AND SEVERABILITY: Nothing herein waives, limits, or modifies any party's sovereign rights or immunities under applicable law. If any provision of this

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MOU is held to be illegal, in conflict with federal law, or otherwise invalid, the remaining provisions shall be considered severable and not be affected by such determination, and the rights and obligations of the parties shall be construed and enforced as if the MOU did not contain the particular illegal or invalid provision.

32. POINTS OF CONTACT: The primary POCs for this memorandum are listed on the attached Addendum entitled Annual MOU Review form. Other POCs will be defined and updated, if necessary, as part of the MOU Review.

33. ANNUAL REVIEW DUE DATES: The CDC will conduct an annual review of this MOU to ensure all support requirements are met. See the attached Addendum Annual MOU Review document.

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City of Columbia, Missouri

Jill Schlude
Chief of Police
Columbia Police Department

(Date)

(Date)

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