



Key Message

Military installations subject to exclusive federal jurisdiction often handle juvenile offenses through the federal court system. Adopting policies that allow for concurrent jurisdiction can open the door to state resources and juvenile courts, offering better solutions, including more rehabilitative approaches, tailored to address crimes and misdemeanors of juvenile offenders.

Analysis

The John S. McCain National Defense Authorization Act for Fiscal Year 2019 (<https://www.congress.gov/congressional-report/115th-congress/senate-report/262/1>) expressed concern about the ability of the Defense Department to “protect or provide justice to the children of service members when they are sexually assaulted by other children” in DOD schools and on military bases (<https://www.dodig.mil/reports.html/Article/2340558/evaluation-of-the-department-of-defense-and-department-of-defense-education-act/>). In response, the deputy secretary of defense issued a memorandum directing the secretaries of the military departments to seek concurrent jurisdiction in order to remove juvenile justice barriers in areas of exclusive federal jurisdiction on military installations within the United States.

In these instances, various factors have affected the Defense Department’s ability to bring justice to families when children are both victims and offenders: Practical and national needs, an evolving jurisdiction framework and a juvenile system focused on rehabilitation have now converged in a way that unintentionally affects the ability of military officials to provide juvenile justice for families on base. These issues were discussed in the department’s 2024 Concurrent Juvenile Jurisdiction Knowledge Development Report, a report of jurisdiction on military installations within each state where there are indicators of juvenile presence.

State Policy Approach

The Defense Department has identified several approaches in states that facilitate the transfer of jurisdiction.

The following examples are offered to help policymakers who seek to establish concurrent state and federal jurisdiction over juvenile delinquency on military installations. These sample provisions are presented to help prevent gaps or uncertainties in legislative efforts policymakers may wish to pursue to enhance the state’s ability to increase access to justice for juveniles, victims of juvenile delinquency and their families.

The following is an example statute based on a compilation of language from similar statutes written in Maine, North Carolina, Maryland, Tennessee and Wyoming:



Comprehensive State Statute Example

Establishing concurrent jurisdiction on military installations

1. Consent of state. [STATE] consents to the establishment of concurrent jurisdiction with the United States over land now owned or hereafter acquired by the United States for military purposes within the boundaries of this state.

2. Administrative authority delegated. [STATE] authorizes [and directs] the governor to grant the United States' requests to establish concurrent jurisdiction over land owned by the United States for military purposes within the boundaries of this state, which shall be effective upon completion of:

- a. Request.** The principal officer of the military installation or other authorized representative of the United States having supervision and control over the land shall send a written request for concurrent jurisdiction to the governor. The request must (1) clearly state the subject matter for the concurrent jurisdiction request, specifically identifying whether it includes juvenile delinquency and status offenses; and (2) provide a metes and bounds description of the boundary of the concurrent jurisdiction request; and (3) indicate whether the request includes future contiguous expansions of land acquired for military purposes.
- b. Acceptance.** The governor's written acceptance shall confirm each of the elements of the request that are accepted.
- c. Filing.** The governor shall cause (1) the United States' request for concurrent jurisdiction, and (2) the governor's written acceptance, and (3) the metes and bounds description of the land to be recorded and indexed with [insert appropriate land use recording and preservation office].

3. Upon filing. The governor shall cause a certified copy of the recorded documents to be sent to the requestor.

4. Local agreements authorized. Upon the establishment of concurrent jurisdiction, any state or local agency may enter into a reciprocal agreement (memorandum of understanding) with any agency of the United States for coordination and designation of responsibilities related to the concurrency.

1. No specific jurisdiction over juvenile delinquency

North Carolina General Statutes, Chapter 7B, Article 16, Section 7B-1605

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_7B/GS_7B-1605.pdf

"When concurrent jurisdiction has been established pursuant to G.S. 104-11.1(b), the court has exclusive original jurisdiction over any case involving a juvenile who is alleged to be delinquent as the result of an act committed within the boundaries of a military installation that is a crime or infraction under State law."

Connecticut General Statutes, Substitute House Bill No. 5373, Section 1, Section 48-1

<https://www.cga.ct.gov/2022/ACT/PA/PDF/2022PA-00063-ROOHB-05373-PA.PDF>



“(2) If the United States Attorney, or the United States District Court, for the district of Connecticut waives exclusive jurisdiction in any matter relating to a violation by a minor, as defined in section 1-1d, of federal law within the boundaries of any military installation of the United States Department of Defense located on any land provided for in subsection (a) of this section, the state shall exercise concurrent jurisdiction with the United States over such military installation in such matter.”

If the existing state statute regarding the enforceability of state law on military installations does not specifically mention concurrent or shared jurisdiction over juvenile delinquency, an amendment to the state legislature clarifying that intent could be proposed. In some jurisdictions juvenile law may be considered civil or criminal, and some jurisdictions consider it to be its own body of law. Even if concurrent jurisdiction over criminal law has been established, a court could still interpret a juvenile delinquency proceeding as “noncriminal” and find that state jurisdiction over juveniles is not included.

Both North Carolina and Connecticut have statutes that specifically mention juveniles. This clarifies state authority and helps prevent juvenile matters from going adjudicated.

2. Clear description of jurisdictional real property boundaries

If the existing state statute does not clearly define the boundaries of the lands affected by the jurisdictional transfer, consider proposing an amendment to the state legislature that would clarify that intent.

Georgia Code, Title 50, Chapter 2, Article 2, Section 50-2-27 (b) (2010)

<https://law.justia.com/codes/georgia/2010/title-50/chapter-2/article-2/50-2-27>

Tennessee Code, Title 4, Chapter 1, Part 1, Section 4-1-105 (2010)

<https://law.justia.com/codes/tennessee/2010/title-4/chapter-1/part-1/4-1-105/>

Georgia and Tennessee both require describing the land “by metes and bounds.”

New Mexico Statutes, Chapter 19, Article 2, Section 19-2-2 (2010)

<https://law.justia.com/codes/new-mexico/2020/chapter-19/article-2/section-19-2-2/>

Maine Statutes, Title 1, Chapter 1, Section 8

<https://legislature.maine.gov/statutes/1/title1sec8.html>

New Mexico and Maine both require “a description adequate to permit accurate identification of the boundaries of the land or other area [...]”

Wyoming Statutes, Title 19, Chapter 7, Article 3, Section 19-7-301

<https://law.justia.com/codes/wyoming/2022/title-19/chapter-7/article-3/section-19-7-301/>

Wyoming goes one step further, and specifically includes future expansion or consolidation of lands for a military installation. This is very helpful in clearly establishing jurisdictional intent for modern military installations, which are constantly undergoing consolidations, expansions and reductions. In their land requirement description, Wyoming adds, “(a) [...] together with such other lands in the state as are now or hereafter acquired or held by the United States for military purposes, either as additions to the posts above named or as new military posts or reservations, established for the common defense.”



3. Authorizing an administrator to handle individual military installation requests

Code of Virginia, Title 1, Chapter 4, Section 1-408

<https://law.lis.virginia.gov/vacode/title1/chapter4/section1-408/>

“Whenever a duly authorized official or agent of the United States, acting pursuant to authority conferred by the United States Congress, notifies the Governor that the United States desires or is willing to relinquish to the Commonwealth the jurisdiction, or a portion thereof, held by the United States over lands located in the Commonwealth, as designated in such notice, the Governor may, in his discretion, accept such relinquishment. Such acceptance shall be made by sending a notice of acceptance to the official or agent designated by the United States to receive such notice of acceptance. The Governor shall send a signed copy of the notice of acceptance, together with the notice of relinquishment received from the United States, to the Secretary of the Commonwealth, who shall maintain a permanent file of said notices.

Upon the sending of the notice of acceptance to the designated official or agent of the United States, the Commonwealth shall immediately have such jurisdiction over the lands designated in the notice of relinquishment as the notice shall specify.

Upon receipt of a copy of the notice of relinquishment and a copy of the notice of acceptance, the Secretary of the Commonwealth shall immediately give written notice of such change in jurisdiction to the Attorney General and the attorney for the Commonwealth of the city or county in which such lands are located. The Secretary of the Commonwealth shall also certify a copy of each of the notices to the clerk of court in which deeds are admitted to record for the city or county in which such lands are located. The clerk shall record the notices in his deed book and index them in the name of the United States and the Commonwealth.”

State legislatures hold the authority to define how jurisdiction over lands in their state will be handled overall. Legislatively delegating administration of the actual transfer process to another state official avoids the need for installation commanders to pursue a legislative effort for each and every future jurisdiction transfer request. In the absence of delegated authority, all jurisdictional transfer requests would be directed to the state legislature.

Ninety-four percent of states (34 out of 36) with retrocession and/or cession statutes have chosen to delegate this authority to their governors. Delegation can be accomplished responsibly by creating specific detailed rules and processes regarding who is capable of accepting, responding to, and keeping records for these transfers.

If your existing statute does not delegate authority to accept future jurisdictional transfer requests to another state actor, officer, elected official, commission or other entity, consider designating a government entity who can be authorized to accept retrocession on behalf of the state government.

If the state legislature chooses to delegate administration to another state officer, creating clear procedures directly within the legislation is a responsible measure to clearly authorize statewide uniformity for the steps that must be taken.



Indiana is an example of a state that not only clearly defines the steps required to effectively transfer or share jurisdiction (known as “perfection”), but it also provides a clear process for record-keeping through an existing governmental structure.

4. Allowing for customized community-based coordination at the local level between state and federal authorities

When the legislature grants both the federal and state governments shared or concurrent authority over juveniles, a best practice includes allowing local jurisdictions to work out the details concerning decision-making to account for the many varied approaches across different areas of the state with varying juvenile needs and capabilities. The relevant agencies have several details and decisions to consider. These may include determining which law enforcement agency will initially investigate, who will be responsible to testify, which entity makes the initial prosecution decision and how these decisions will be coordinated and communicated.

For example, in a state with concurrent jurisdiction, if the federal government makes the initial decision and elects not to prosecute a juvenile, the state legislature could establish a system of designated agents through which that decision is communicated promptly to the proper state authorities so that they can make follow-up inquiries, assignments and decisions.

Such a process is traditionally memorialized through statutes, negotiated by local entities through informal agreements known as a memorandum of understanding, and further expanded by written executive level policies and procedures. To effectively authorize this activity and make MOUs binding in the judicial system to withstand jurisdictional challenges, they would ideally be authorized by the state legislature and included in the state retrocession statute.

5. No existing jurisdiction over civilian activities on military installations

Finally, if there is no state statute that defines whether the state or the federal government has jurisdiction over civilian activities occurring on military installations, a new state law would clearly and comprehensively address all of the issues identified in detail in this chapter. To summarize, the statute should:

- Clearly define juveniles, either by definition or by referring to an existing state statute.
- Specifically identify “juvenile delinquency and status offenses” as the included subject matter.
- Require that the military installation’s boundaries be clearly identified, including future expansions and consolidations.
- Delegate authority to a state official who is capable of accepting and recording evidentiary transactions. This is so that installation commanders at each base within the state can avoid the need to pursue a legislative effort for each and every future jurisdiction transfers.
- Make the limits and responsibilities of that delegation clear, including the procedures for record-keeping.
- Legislatively authorize an MOU that can be developed at the local level, which allows city and county law enforcement, judicial officers, prosecution and defense attorneys to work out logistics tailored to the needs and realities of the community.