CONCURRENT JUVENILE JURISDICTION KNOWLEDGE DEVELOPMENT REPORT

A Report of Jurisdiction
on Military Installations Within Each State
Where There are Indicators of Juvenile Presence

Department of Defense
Military Community & Family Policy
Defense-State Liaison Office

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Project Objective

The National Defense Authorization Act for Fiscal Year 2019[1] expressed concern about the ability of the Department of Defense (DoD) 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.[2]

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. The memorandum states (in part):

> [W]e must do more with respect to the appropriate adjudication of PSB-CY [problematic sexual behavior in children and youth] and other behavior by juveniles on military installations that amount to illegal conduct. As the Department is Constitutionally prohibited from conducting prosecutions of individuals not subject to the Uniform Code of Military Justice (UCMJ), we must, where we are able, remove barriers to the investigation and adjudication of appropriate cases by civilian authorities, particularly of those States, Commonwealths, territories, or possessions within which our military installations are located.
>
> To that end, I am directing that the Secretaries of the Military Departments, pursuant to authority afforded under title 10, U.S.C., section 2683, and in accordance with procedures in Department of Defense Instruction (DoDI) 4165.70, "Real Property Management," and Military Department policy, seek to establish concurrent jurisdiction in areas of exclusive Federal legislative jurisdiction on military installations within the territory of the United States, such that the United States and the State, Commonwealth, territory, or possession where those military installations are located would have concurrent jurisdiction over all offenses committed on such military installations by juveniles not subject to the UCMJ.[3]

This Knowledge Development Report (KDR) and the underlying 50-state research project required to produce it, was undertaken by the Defense-State Liaison Office (DSLO) to assist in the understanding and identification of the jurisdictional status in over 1,400 military bases across the United States, and to further identify models of appropriate legislation designed to carry out the United States Department of Defense's objective to remove barriers to juvenile justice at those military installations.

An extensive body of law and history was researched to identify and describe the most important subtopics and create an evidence-based, plain language synthesis of data from credible sources. The goal of this KDR is to provide new insights while summarizing the qualitative issues related to the jurisdictional topics addressed while adhering to the highest methodological standards.

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[1] Senate Rep. No. 115-262, at 192 (2019).
[2] Inspector General, US Department of Defense, Evaluation of the Department of Defense and Department of Defense Education Activity Responses to Incidents of Serious Juvenile-on-Juvenile Misconduct on Military Installations i (2020).
[3] David L. Norquist, Deputy Secretary of Defense, Department of Defense, Establishing Concurrent Jurisdiction over Juvenile Misconduct on Military Installations within the Territory of the United States 1 (2019)[hereinafter DoD Memo Establishing Concurrent Jurisdiction].

Each subtopic is detailed, strategically written, and contains publicly available links to citations, but is also easily understood with short, high-level summaries for readers interested in a single topic:

Subtopic	High Level Summary
Introduction	An introduction to the basic concepts of jurisdiction on Federal enclaves.
Jurisdiction Shifting	A chronicle of the jurisdictional power shifts between state and federal governments (cession and retrocession) and a summary of where our justice system now stands in regard to juvenile justice on federal enclaves.
Jurisdiction on Different Federal Enclave Types	An examination of typical federal enclaves to determine whether similarly situated practical considerations can be utilized to address juvenile justice on military installations.
The Classification of Juvenile Law as Neither Civil Nor Criminal	A study of juvenile classification across the country. While often compared to criminal law, courts often find juvenile law is neither civil nor criminal. This raises unique issues.
The Many Pathways to Juvenile Jurisdiction	An explanation of the different ways states may re-acquire jurisdiction over a federal enclave, affecting the ability to determine whether concurrent jurisdiction has been authorized and validly carried out.
The Delegation of Authority and the Concept of Perfection	A survey of the ways state legislatures have delegated their authority to accept jurisdictional changes to a state official and a discussion explaining the difference between enabling statutes and self-executing statutes.
The Enforceability of Alternative Agreements	A review of the enforceability of MOU's. Where the law is silent, local agreements may provide coordination of services, but without legislative authority, utilizing this tool to manage juvenile justice may be incomplete.

Introduction

This section of the KDR provides an introduction to the basic concepts of jurisdictional shifts of power.

Jurisdiction is *governmental authority*. In the United States that authority is spread across the three branches of government – meaning the ability of a legislature to enact a law, the executive branch's power to enforce a law, and the judiciary's authority to hear and decide a case.[4] However, it is a complicated subject. Jurisdiction is not only defined by a physical boundary; it can be further divided into power over certain subject matters, and power over certain classes of individuals.

Federalism is the balance of state and federal powers of jurisdiction. In general, states have power over matters within their own boundaries, unless preempted by a federal power. The Federal Government's power extends to:

1. A subject matter specifically described in the United States Constitution. This is referred to as an enumerated power.
2. A subject matter not specifically described, but required for the Federal Government to carry out a power specifically described in the United States Constitution. This is referred to as an implied power.

Cession is the act of giving something up.[5] Article I, Section 8, Clause 17 of the United States Constitution refers to a state's voluntary act of giving up jurisdiction within its boundaries to the Federal Government on certain types of federally owned land, called **enclaves**. Courts (and later the United States Congress) determined that the jurisdiction granted to the United States on a federal enclave may vary in degree, according to the bargain struck between the state and the United States. The Federal Government may also grant some or all of that jurisdiction back to the state. Since the first grant of power is called cession, this transfer of power back to the state is known as **retrocession.**[6]

To define the resulting degrees of jurisdictional power, the Federal Government created a classification system[7] to describe the type of jurisdiction that could exist on a federal enclave:

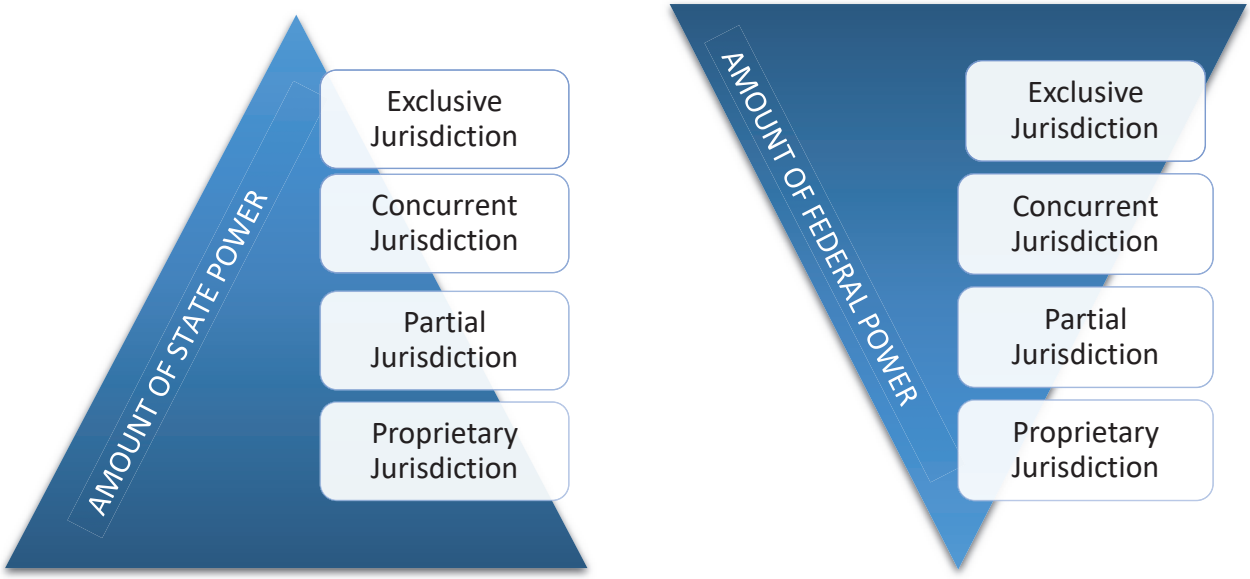
[4] Jurisdiction, *Black's Law Dictionary* (11th ed. 2019).
[5] Cession, *Black's Law Dictionary* (11th ed. 2019).
[6] Retrocession, *Black's Law Dictionary* (11th ed. 2019).
[7] General Services Administration, *Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States*, *Part I*, 13-14 (1956).

Table 1.1. Types of Jurisdiction

Type	Summary
Exclusive Jurisdiction	The Federal Government holds all legislative, executive, and judicial powers over the land; the state has ceded all authority. State civil and criminal laws do not apply.
Concurrent Jurisdiction	The state and Federal Government share the exercise of power over the same subject matters; the state may enforce laws not preempted by federal supremacy.
Partial Jurisdiction	The state grants some of its authority to the Federal Government but reserves exclusive control over a defined subject matter (like juveniles) expressly for itself.
Proprietary Jurisdiction	The Federal Government holds the same rights as any private landholder. The state retains full legislative authority over the land and the United States has only acquired an interest or title to the property.[8]

The following graphic shows the inverse relationship of these types of powers:

Graphic 1.1. Types of Jurisdiction



Historically, the Federal Government obtained exclusive federal jurisdiction on military installations in two basic ways: (1) by bargaining for it in a land acquisition at the time a military installation was formed, or (2) by keeping exclusive federal jurisdiction over a military installation that existed prior to statehood.[9]

[8] *Prof'l Helicopter Pilots Ass'n v. Lear Siegler Servs.*, 326 F. Supp. 2d 1305, 1310-1311 (D. Ala. 2004).
[9] Defense-State Liaison Office, Department of Defense, Best Practices: Concurrent Jurisdiction for Juvenile Offenses on Military Installations (on file with Defense-State Liaison Office).

Jurisdiction Shifting

The Defense-State Liaison Office seeks to help decision-makers understand the complex jurisdictional framework currently impacting the ability to prosecute and defend juvenile actions on military installations. This subtopic of the KDR contains a chronicle of the jurisdictional power shifts between state and federal governments, and a summary of where our justice system now stands in regard to juvenile justice on federal enclaves.

Cession, Retrocession, and Jurisdiction Shifting

Most military installations were established early in our Nation's history, and the United States was routinely granted exclusive federal jurisdiction over the federal enclave.[10] For families living on base, juvenile misconduct and problematic sexual behavior in children and youth occurring on military installations is left to be adjudicated in the federal court system, which lacks appropriate juvenile-focused resources and more often tries juveniles as adults.[11] However, if concurrent jurisdiction is established, the state juvenile court systems can offer more appropriate investigation, enforcement, and positive case management outcomes.[12]

History tells the story of changing national needs, from the early forts and arsenals of pioneer days to modern installations – places that are more like small cities where military offices, airstrips, and work facilities stand alongside family housing, civilian-run stores, schools, restaurants, and recreational facilities. To keep up with practical needs, state law on military installations expanded. It was practical for enclave residents to be considered state citizens for purposes of basic needs like attending public schools and voting in elections. Meanwhile, a parallel history developed to manage juvenile delinquency. Simultaneously, federal rights were expanding through judicial interpretations in the United States Supreme Court. Eventually the practical needs of military families, the recognized values of a rehabilitative instead of punitive juvenile system, and an expanded federal power converged for a strained result. The complexity was compounded by the expansion of the physical boundaries of military installations, changing military uses, and the subsequent consolidation of installations and joint service environments through base realignment and closure (BRAC) efforts.

This section chronicles the jurisdictional power shifts from states to the Federal Government, and back to the states again. This history is important for understanding the significance of the many different **cession** and **retrocession** statutes that exist today, and the ability to align the law with the individual needs of thousands of United States military families living, working, and going to school on military installations. This alignment ultimately affects a victim's access to justice, protection of juvenile rights, and the recognized value of fairly prosecuting and defending civilian acts occurring on military installations.

[10] *Id*.
[11] *Id*.
[12] *Id*.

The Creation of "Exclusive Federal Jurisdiction" on Enclaves

The first Continental Congress met in 1783 in Philadelphia to write the first United States Constitution.[13] They were so disrupted by protesting militia members demanding their unpaid wages that Congress was forced to relocate.[14] Pennsylvania authorities refused to intervene, and Congressional members realized police control within federal areas was an important consideration.[15] Madison proposed that while federal powers should govern federal enclaves, state law should "continue within the enclave as to private matters not interfering with federal functions."[16] After some debate, federal jurisdiction over federal enclaves was written into the United States Constitution, with reservation and reluctance, and only because of the perceived necessity to keep the peace.[17]

The concept was incorporated into the United States Constitution as a combination of two separate provisions:

- The **Supremacy Clause of the United States Constitution (Art. 6, Cl. 2)** indicates the United States Constitution and federal laws, of the enumerated types in the clause, have priority over any conflicting state laws.[18]
- The **Enclave Clause of the United States Constitution (Art. 1, Sec. 8, Cl. 17)** gives the United States exclusive legislative jurisdiction over land purchased by the Federal Government for the purpose of building military installations.

Taken together, the Supremacy Clause and the Enclave Clause give the Federal Government full and exclusive authority over military installations, which is referred to interchangeably as "federal legislative jurisdiction" and "exclusive federal jurisdiction." Although the creation of this power was intended to solve a very limited challenge, it was soon interpreted in a much broader way.

Supremacy, Federalism, and *McCulloch v. Maryland*

The second clause of Article VI of the United States Constitution defines the division of powers between the states and the Federal Government, known as the "Supremacy Clause." The Tenth Amendment to the United States Constitution provides that any powers not specifically delegated to the United States are reserved to the states, within their own boundaries. Taken together, this means some powers belong to the Federal Government and all remaining powers are reserved to the states. This embodies our concept of federalism and defines the balance between federal and state governments.

The landmark Supreme Court decision *McCulloch v. Maryland* expanded the supremacy of the Federal Government in 1819, holding that the United States could enact laws that might preempt state law if those laws were based on a power that was *implied* by the United States Constitution.[19] *McCulloch* is

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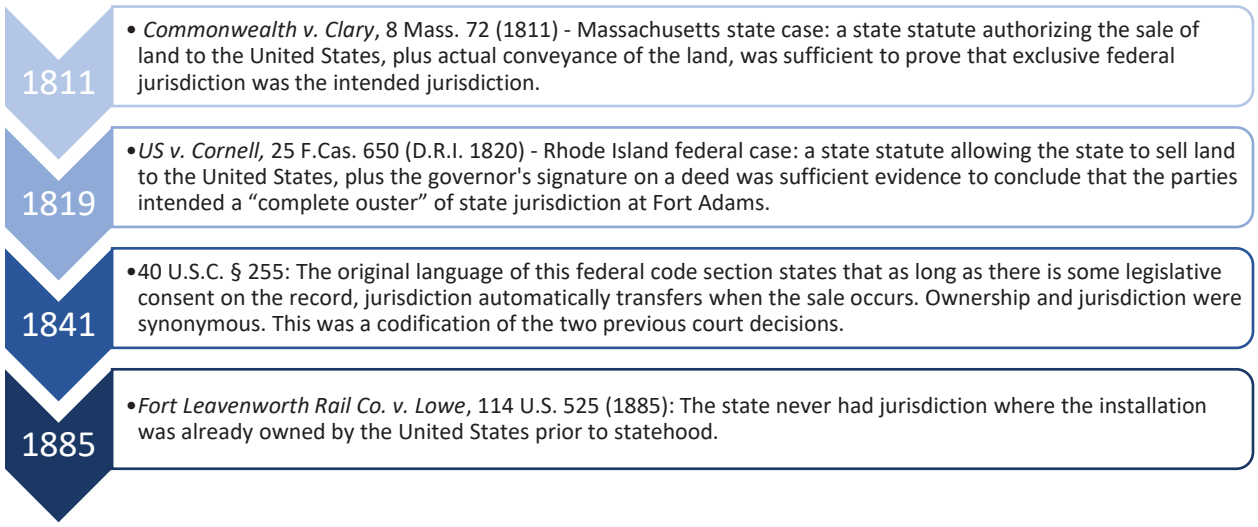
[13] Justice Joseph Story, *Commentaries on the Constitution of the United States*, Book 2, Sec. 1220 (1833).
[14] *Id*.
[15] *Id*.
[16] James Madison, *The Federalist No. 43*, at 273, 1788 (C. Rossiter ed. 1961).
[17] Joseph Story, *supra* note 13.
[18] "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States" U.S. Const. art. VI, cl. 2.
[19] *McCulloch v. Maryland*, 17 U.S. 316 (1819).

one of the most important decisions in American history in expanding United States Congressional power.[20]

When applied to federal enclaves, the prevailing theory during the 1800s was that the United States Constitution, combined with a state statute authorizing the sale of land to the United States, plus evidence of an actual land transfer, constituted sufficient evidence that there was also an intent to transfer the state's jurisdictional power, thus granting exclusive jurisdiction to the United States.

Graphic 1.2. Landmark Court Decisions



State Rights Expand on Military Installations

The need to care for military personnel was the impetus for the expansion of state law over certain subject matters on military installations. In the 1920s rental allowances were first paid, and some limited family housing was first made available on military installations.[21] The growing presence of civilians on military bases increased the responsibilities for installation commanders in charge of maintaining good order and discipline.

The expansion of state jurisdiction occurred through several key actions:

[20] Erwin Chemerinsky, *Constitutional Law* (5th ed. 2017).
[21] Families, Military, *The Oxford Companion to American Military History*, Encyclopedia.com (November 16, 2022).

Table 1.2. Landmark Federal Law and Court Decisions

1928 >	1934 >	1936 >	1937 >	1939 >
16 U.S.C. § 457	*Murray v. Joe Gerrick & Co.*[22]	40 U.S.C. § 290 & 4 U.S.C. § 104	*James v. Dravo*[23]	26 U.S.C. §3305(d)
Civil wrongful death actions were permitted for deaths occurring on a federal enclave	State civil laws in effect at time of purchase remain in effect on enclaves, unless in conflict with the United States	State worker's compensation laws and state fuel taxes were applied to civilian contractors on federal enclaves	States were allowed to bargain for some or all jurisdiction transfers to the United States when selling land	Civilian employers on federal enclaves became subject to unemployment insurance laws for their employees

This steady expansion of various state rights on federal enclaves paved the way for the United States Congress to successfully repeal 40 U.S.C. § 255, the 1841 code that originally made land transfers an automatic precursor to jurisdictional transfers. At the same time, the United States Supreme Court confirmed that states had the power to bargain for the transfer of jurisdiction at the time of sale, and states began to aggressively bargain for jurisdictional transfers that would grant them certain taxing authority.[24] Jurisdiction on federal enclaves became more like a bundle of subject matters, segmented and negotiated in portions, capable of being passed back and forth between the states and the Federal Government. A land transfer alone was no longer enough evidence to show that a state had intended to transfer *all* of its jurisdictional rights to the United States. Then in 1940, Congress passed a series of federal laws which, taken together, required that federal and state authorities act in concert to confirm their intent and codified state bargaining power.[25] This process became known as **perfection**.

A framework emerged with five common requirements to show that a valid transfer of jurisdiction had occurred:

Table 1.3. Framework for Retrocession

Clear Legislation:	A state statute showing a clear legislative intent to transfer jurisdiction.
Valid United States Request:	A designated United States representative must request the jurisdiction be transferred to the state.
Land Identification:	The affected land must be clearly identified.
Jurisdiction Type:	The extent or subject matter of the jurisdiction must be identified.
Acceptance:	The state must accept the United States' request to transfer jurisdiction.
Recording:	The items above must be clearly recorded or preserved in some way.

[22] *Murray v. Joe Gerrick & Co.*, 291 U.S. 315 (1934).
[23] *James v. Dravo Contracting Co.*, 302 U.S. 134, 148-49 (1937).
[24] *Id*.
[25] 33 U.S.C. § 733; 40 U.S.C. §255; 50 U.S.C. §175; 4 U.S.C. §105-110.

There was no longer an assumption that a purchase by the United States for a military purpose equated to exclusive federal jurisdiction. Ownership and jurisdiction were officially two separate issues. The court's determination now required a detailed analysis of the intent of the parties to the land transaction. The result was a chaotic matrix of jurisdictional rights that granted certain powers to the states over an increasingly wide range of subject matters, with no uniform rule for understanding these variations.

The Federal Government Defines Four Jurisdiction Types

Presented with a wide variation of jurisdictional types on federal enclaves that varied not only state to state but installation to installation, President Dwight D. Eisenhower sought to remedy the confusion regarding which jurisdiction prevailed at each military installation. He directed a committee to study jurisdiction in all federal areas in 1954.[26] The objective was to define, classify, and report on the jurisdictions that existed at every United States military installation.[27]

The first two versions of the report were published in 1956[28] and 1957.[29] The reports described the need to create terms that could adequately describe the various categories of jurisdiction that had emerged since the 1920s. The final version of the report was issued in 1962 and included a table of United States military installations and the jurisdiction type or types at each one.[30]

The full report, known as the "Eisenhower Report," did three important things:

- Established the four jurisdiction types on all federal enclaves: Exclusive, Concurrent, Partial, and Proprietorial.
- Departed from the preference to obtain Exclusive Federal Jurisdiction and recommended instead that the Federal Government hold land in a proprietorial interest whenever possible, or to hold land in concurrent jurisdiction only if absolutely necessary.
- Recommended that the Federal Government begin the process of "adjusting the status" of existing properties, to conform with these recommendations.[31]

The jurisdictional labels created by the Eisenhower Report were presumed to be true, even though by 1962, state rights had significantly eroded the concept of a truly "exclusive" federal jurisdiction, and "service of process" was labeled concurrent jurisdiction.[32] Nonetheless, the report became the basis for defining jurisdiction at installations for real property managers and Judge Advocate Generals across the military. To this day, some official maps at military installations contain the original 1956 jurisdiction designations.[33]

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[26] Interdepartmental Committee Report, *supra* note 7.
[27] *Id*.
[28] *Id*.
[29] General Services Administration, *Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States*, *Part II* (1957).
[30] General Services Administration, *Inventory Report on Jurisdictional Status of Federal Areas Within the States* (1962).
[31] *Id*.
[32] *Id*.
[33] Fort Belvoir Jurisdiction Project Map, Department of the Army (on file with Department of Defense) (see Appendix J)).

The Many Pathways to Jurisdiction

With historical developments, codifications of court interpretations, and a rising need for the management of civilians on military installations, there were now 13 different ways for federal authorities to obtain jurisdiction. They can be grouped into three basic categories, outlined below: (1) when the military installation is initially formed; (2) when the state gains or loses power by operation of law; and (3) with state legislative approval, when the Federal Government and the state form a private contract ("an alternative agreement").

(1) When the military installation is initially formed

a. When a state is formed, acquires all its land from the United States, and the Federal Government reserves for itself land designated as a military installation. Jurisdiction: In these cases, the state receives any jurisdiction the Federal Government unilaterally grants it, primarily documented in the acquisition document.

b. Federal acquisition of land from a state, after a state is already formed and ownership has vested in the state. Jurisdiction: Pre-existing state laws that are not in conflict with federal purposes or not an enumerated power remains under the jurisdiction of the state for enclave residents.

c. Federal acquisition of state lands with certain reservations held back by the state through a negotiation process. Jurisdiction: state laws that remain in effect are described by statute or agreement or in an acquisition document, remaining jurisdiction passes to Federal Government.

d. Federal taking of state lands – may be for a limited use, like a leasehold, or in full ownership with a stated enclave purpose. Jurisdiction: Courts generally hold that where a state was unable to negotiate a purchase, any state civil jurisdiction is preserved, so long as they are not in conflict with the federal purpose.

(2) When the state gains or loses power by operation of law

a. When the United States Congress enacts a law over a subject matter that is an enumerated power described in the United States Constitution.
b. When the United States Congress limits federal jurisdiction or codifies an area of common understanding when it comes to jurisdiction.
c. When a state legislature enacts an "enabling" statute or state constitutional provision that defines what jurisdiction a state intends to keep in an acquisition by the United States.
d. When the Supreme Court interprets the Constitution, United States Code, or state enabling statute. Often there is a finding that the state intended to retain certain subject matter jurisdiction on federal enclaves as a matter of public policy.
e. When a state or the Supreme Court creates law (called "common law" or "stare decisis") by interpreting a case where jurisdiction between the Federal Government and the state was at issue.

f. When a state legislature enacts a "retrocession" statute, which allows a state to recapture some jurisdiction it previously gave up.[34] In order to be valid, the state statute must describe a process consistent with the minimum requirements of the United States Code (if acquired after February 1, 1940, when 40 U.S.C. §255 was enacted). Generally the Department of Defense requests a change in jurisdiction at a specific installation, the state's assigned designee (usually the governor, attorney general, or a state commission) accepts the DoD request, and any process of "perfection" defined in the statute must be completed to prove the state's intent (common provisions include attachment of a metes and bounds or legal description, requirement to be recorded in land records, and required to be filed and kept with the secretary of state).

(3) With state legislative approval, when the Federal Government and the state form a private contract (alternative agreements):

a. **Memorandum of Understanding (MOU)** can be defined as two or more parties expressing mutual accord, or the term given to the written note which details points that people agree on.[35] It can be a noncommittal written statement detailing the preliminary understanding of parties who plan to enter into a contract or some other agreement.[36] Generally, it is not meant to be binding, and does not hinder the parties from bargaining with a third party.[37] Courts may occasionally find that a binding commitment has been made, but more often will find that it is merely evidence of a preliminary agreement.[38] An MOU may also be used after a contract already exists as a means to amend terms in the original agreement and may create useful practice and understanding between cooperating sovereigns.

b. **Memorandum of Agreement (MOA)** may address specific areas of law (subject matter limitations), or may address specific coordination procedures for law enforcement, investigation, charging decisions, prosecution, adjudication, detention, and reporting. An MOA is a draft agreement to set mutual responsibilities and scope of association.[39] An MOA can also be commonly referred to as a memorandum of understanding (MOU).[40] While an MOA is not always interpreted to be a valid contract, it may be entered into evidence as proof of a contract if there is no other written documentation. Based on the research in this KDR, it is not clear whether jurisdiction can be modified or transferred by MOA when contrary to state or federal law.

c. **Letter of Intent (LOI)** is an industry term used to describe a written agreement between parties[41], but was not found as a referred term in our research.

d. **Mutual Aid Agreement (MAA)** is collaborative and generally an enforceable contract where sovereigns agree to render aid under a specific set of circumstances. The Department of Homeland Security and the Federal Emergency Management Agency uses mutual aid agreements to establish the basis for two or more entities to share

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[34] Retrocession, *supra* note 6.
[35] Memorandum Of Understanding, *Black's Law Dictionary* (11th ed. 2019).
[36] *Id*.
[37] *Id*.
[38] *Id*.
[39] Memorandum Of Agreement, *Black's Law Dictionary* (11th ed. 2019)
[40] *Id*.
[41] Letter of Intent, *Black's Law Dictionary* (11th ed. 2019).

resources.[42] These agreements may authorize aid between communities, jurisdictions within a state, between states, between federal agencies, and/or internationally. Usually, mutual aid agreements are used in law enforcement emergencies but could in some cases be expanded and formalized to include procedures and justice systems.

These pathways are important and complex considerations when attempting to determine the existing jurisdiction at a particular military installation, and the validity of attempted jurisdiction transfers.

The Concurrent Emergence of Juvenile Justice

Prior to the creation of a formal juvenile court system, children could be tried, convicted, and sentenced in an adult criminal court.[43] By 1930, the Wickersham Commission reported that while states had special courts for juveniles, only the federal government continued to uniformly charge and try children as adults.[44] The United States Attorney General, George Wickersham, recommended that the disparity should be addressed by authorizing the Department of Justice (DOJ) to return juveniles charged with violating federal law to the juvenile authorities of their home state.[45]

Congress subsequently enacted the Federal Juvenile Delinquency Act (FJDA) in 1938 which gave the Attorney General the option to proceed against juvenile offenders as either adults or delinquents, unless the charges included offenses punishable by death or life imprisonment.[46] The first significant amendment was in 1974, when it was recodified as the Juvenile Justice and Delinquency Prevention Act (JJDPA) and incentivized state juvenile management by providing national funding for states that would commit to focusing on rehabilitation and helping juveniles avoid federal prosecution and co-location with adults.[47] Additional changes in the 1980s gave the Federal Government more power to mandate federal juvenile prosecution under specific circumstances related to drug offenses and violent personal crimes.[48] As a result, the JJDPA ended up providing very limited federal prosecutorial powers.

[42] See *Mutual Aid Agreements: Types of Agreements*, United States Dept. of Homeland Security (*see infra* Appendix L).
[43] *Allen v. United States*, 150 U.S. 551 (1893).
[44] *Report on the Child Offender in The Federal System of Justice*, National Commission on Law Observance and Enforcement (1931).
[45] *Id*.
[46] Pub.L. No. 75-666, June 16, 1938, 52 Stat. 764.
[47] Pub. L. No. 93–415, title V, § 501, Sept. 7, 1974, 88 Stat. 1133.
[48] Pub. L. No. 98-473, Title II, § 1201, Oct. 12, 1984, 98 Stat. 2149; Pub. L. No. 100-690, Title VI, § 6467(a), Nov. 18, 1988, 102 Stat. 4375.

Table 1.4. Landmark Federal Statutes

Critical Elements of Federal Juvenile Jurisdiction	
18 U.S.C. § 5031	Federal juvenile prosecution is limited to 17-year-olds and under who violate a federal law, or who are younger than 21 years when indicted for violating a federal law.
18 U.S.C. § 5032	Federal courts cannot try a juvenile in the federal system unless the act is punishable six months or more; and 1. the state does not have jurisdiction; or 2. the state refuses to assume jurisdiction; or 3. the state doesn't have adequate juvenile services; or 4. the offense is a federal crime of violence, violation of the Controlled Substances Act, or violation of federal gun laws. To establish federal jurisdiction, the United States must take an affirmative act – the United States Attorney must file a certification with the court stating that federal jurisdiction is warranted, and they have a "substantial interest" in the case.
18 U.S.C. § 5001	If someone under 21 has been arrested and charged with a federal crime, and it appears upon investigation by the Department of Justice that there is also a state offense and the state can and will assume jurisdiction, and it will be in the best interest of the Federal Government and the juvenile to do so, the Federal Government may forego their prosecution and surrender the juvenile to the state - unless it is precluded by one of the conditions listed in 18 U.S.C. § 5032 above.

The purpose of the federal juvenile delinquency proceeding is that it is in the best interest of the juvenile and society that juveniles are removed from the ordinary criminal process and to encourage treatment and rehabilitation.[49] Based on the intentionally narrow conditions under which juveniles can now be federally prosecuted, the majority of juvenile matters are prosecuted by the states. There is precedent of federal deference to state jurisdiction in matters pertaining to juveniles.[50] The nationally supported effort to focus on rehabilitation over punishment was further enhanced by providing states with the opportunity to receive federal funding for their state juvenile justice systems under the guidance of the Office of Juvenile Justice and Delinquency Prevention at the Department of Justice.

The Resulting Gap in Services

This federal juvenile framework accomplished the goal to focus on juvenile rehabilitation, however, it did not address juvenile violations taking place on military installations with federal jurisdiction. State courts do not have the authority to accept jurisdiction over cases occurring within a federal enclave with exclusive jurisdiction. There are a handful of states that legislated to accept jurisdiction over all juvenile

[49] See *United States v. Angelo D.*, 88 F.3d 856 (10th Cir. 1996); *United States v. Bilbo*, 19 F.3d 912 (5th Cir. 1994); *United States v. Brian N.*, 900 F.2d 218 (10th Cir. 1990); *United States v. Canniff*, 521 F.2d 565 (2d Cir. 1975).
[50] *Matter of In re Charles B.*, No. D-1710-03, FF 41269, 765 N.Y.S.2d 191, 2003 N.Y. Slip Op. 23619, 2003 WL 21382462 (N.Y.Fam.Ct., June 02, 2003).

delinquency proceedings on federal enclaves.[51] However, in the remaining states, a juvenile case for an act occurring on a military installation could be thrown out of state court.[52]

Where Do We Stand Today?

Practical and national needs, an evolving jurisdiction framework, a UCMJ that does not apply to on-base civilians, 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.

The jurisdictional power shifts from the State to the Federal Government and back again can seem complex. Most states gave up their powers when federal installations were initially formed. Over the next 100 years, states were given back some powers as a practical and legal matter by the United States Congress and United States Supreme Court. Finally, through **retrocession**, the ability to accept individual requests by the United States to shift jurisdiction on federal enclaves back to the state.[53] Not all states have statutes to address this return of jurisdictional power, and those that do rarely specify juvenile justice - but all 50 states hold the power to do so.

The key takeaways learned from this portion of the research are:

- The original intent of the Federal Enclaves Clause in the United States Constitution was to be able to protect people on federal enclaves, not restrict state jurisdiction.[54]
- Some Governors, Legislators, and Military Installation Commanders recognize the benefits of rehabilitating juveniles in a state system, and avoiding federal prosecution or punishment whenever possible.[55]
- Despite designations contained on 1960s era installation maps, between federal laws and United States Supreme Court holdings, few installations have a truly "exclusive" form of jurisdiction.[56]

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[51] *See infra* Section III State Reports.

[52] *U.S. v. Juvenile Male*, 939 F.2d 321 (C.A.6 (Ky.),1991) (Kentucky had no jurisdiction to adjudicate a matter on Fort Knox); see *In Int. of A.W.G.*, 184 Ga. App. 343, 361 S.E.2d 510 (1987) (court held under state law, the state retains criminal jurisdiction over persons for state offenses committed on federal property, except used by the DoD or DOJ); see generally *K.C.G. v. State*, 156 N.E.3d 1281 (Ind. 2020) (Juvenile courts can adjudicate only those disputes the legislature has authorized. When the legislature sets out statutory jurisdictional prerequisites for the juvenile court, and those are not met, the juvenile court has no power to hear and decide the matter); but see *State In Interest of D. B. S.*, 137 N.J.Super. 371 (N.J.Super.A.D. 1975) (ruling juvenile was under the jurisdiction of the court in part because they were a member of the social community and benefited from the use of schools); *District of Columbia v. P.L.M.*, 325 A.2d 600 (D.C. 1974); *M.R.S. v. State*, 745 So.2d 1139 (Fla.App. 1 Dist.,1999)(court held state may assert jurisdiction if there is no conflict with federal jurisdiction); *Matter of In re Charles B.*, No. D-1710-03, FF 41269, 765 N.Y.S.2d 191, 2003 N.Y. Slip Op. 23619, 2003 WL 21382462 (N.Y.Fam.Ct., June 02, 2003).

[53] Retrocession, *supra* note 6.

[54] *Historical Background on Seat of Government Clause*, Constitution Annotated, Congress, https://constitution.congress.gov/browse/essay/artI-S8-C17-1-1/ALDE_00001079/ (last visited October 19, 2023).

[55] See United States v. Angelo D., 88 F.3d at 856; United States v. Bilbo, 19 F.3d at 912; United States v. Canniff, 521 F.2d at 565; see also TriService Letter from Ryan D. McCarthy, Secretary of the Army, Richard V. Spencer, Secretary of the Navy, Matthew P. Donovan, Acting Secretary of the Air Force to Attorney General Barr, (October 15, 2019) (on file with Department of Defense) (*see infra* Appendix K)

[56] See *infra* Section III State Reports.

- Funding authorization for juveniles on military installations already flows from the Federal Government to the states in two forms: public school funding and state juvenile justice funding.[57]
- A transfer of juvenile jurisdiction back to the state, either in the form of concurrent or partial jurisdiction, creates clarity, provides justice for victims, and ensures fair treatment for the accused.[58]

It is therefore worth reviewing the other types of federally owned land where this kind of transition has already taken place on a national scale, namely federal facilities and national parks.

Comparison of Jurisdiction Rules on Federal Enclaves

The Federal Enclave Concept

A federal enclave is most simply described as a federal property within a state where special jurisdictional considerations apply. The United States Supreme Court has described them as islands within a state, the territory of a sister state, or territorial fictions. [59] In the context of military installations, authorization for this special jurisdiction is contained in the United States Constitution as one of the Federal Government's enumerated powers.[60]

However, there are other kinds of federal enclaves where the state may confer a special jurisdiction to the Federal Government, including but not limited to national parks, national forests, tribal lands and Indian reservations, Army Corps of Engineers waterways, and other federal facilities (i.e., post offices, courthouses, executive buildings). Examining laws on these enclaves may be instructive in considering alternative statutory mechanisms and solutions to eliminate potential barriers for juvenile justice.

Jurisdiction on other enclaves depends upon factors such as the date and method of land acquisition, any federal or state statutes allocating jurisdictional powers, and any subsequent actions taken by state and federal authorities to transfer jurisdiction. This basic framework appears to be the same across all different types of federal enclaves, such as those managed by the Department of Treasury[61], General Services Administration, Department of Commerce, Department of Veterans Affairs, Department of Justice, Department of Interior, Department of Health & Human Services, and the Department of Agriculture. The following are the enclaves examined in this section.[62]

Table 1.5. Federal Enclaves

Enclave Type	Source of Authority	Research
Federal Facilities	Constitution + 40 U.S.C. § 3112	Tends to use a strict analysis of intent to find in favor of state authority whenever possible; residents generally not present.[63]
National Parks	Constitution + Title 16	Title 16 expressly declined federal jurisdiction when possible; mostly campers present, not permanent residents; distinguishes forests/parks.[64]
Military Installations	Constitution + 40 U.S.C. § 3112	Courts examine jurisdictional intent prior to 1940, fulfillment of statutory requirements

		after 1940, and use a "friction not fiction" analysis. [65]

Federal Facilities

Federal facilities include places such as post offices, Veterans Affairs hospitals, Federal court buildings, Federal executive or administration offices, ports, customs and immigration areas inside airports, Federal correctional institutions, national cemeteries, and border checkpoints. Determining which sovereign has jurisdiction in these areas tends to turn on a strict analysis of whether there is *clear evidence* that the state intended to cede some or all jurisdiction to the Federal Government, consistent with 40 U.S.C. § 3112(b) (formerly 40 U.S.C. § 255). The majority of courts in these cases find in favor of state jurisdiction.[66]

For example, in *McIntosh v. State*,[67] the issue was whether an assault on the Little Rock Federal Courthouse lawn was a state or federal matter. After then-Governor Jim Guy Tucker received a guilty verdict for fraud, a CNN reporter conducted a live broadcast outside the courthouse.[68] A man supporting Tucker approached the news crew, and when the producer stood in his way to prevent interference with the broadcast, he punched the producer four times.[69] Although the assault clearly occurred on federally owned land, the court found there was no federal jurisdiction because no record showed the state affirmatively gave up jurisdiction to the Federal Government. [70] There was a state statute granting exclusive federal jurisdiction for federal facilities, but the list of locations included seven specific buildings, and the statute had not been updated to include the federal courthouse in Little Rock.[71] The court found this statute was not sufficient proof of the state's intent to cede its criminal jurisdiction to the Federal Government.[72]

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[57] *State In Interest of D. B. S.*, 137 N.J.Super. 371 (N.J.Super.A.D. 1975) (ruling juvenile was under the jurisdiction of the court in part because they were a member of the social community and benefited from the use of schools).
[58] See TriService Letter from Ryan D. McCarthy, Secretary of the Army, Richard V. Spencer, Secretary of the Navy, Matthew P. Donovan, Acting Secretary of the Air Force to Attorney General Barr, (October 15, 2019) (on file with Department of Defense) (*see infra* Appendix K).
[59] See, e.g. *Howard v. Commissioners of Sinking Fund of City of Louisville*, 344 US 624,627, 73 S.Ct. 465, 467 (1953) and *United States v. State Tax Commission of Mississippi*, 412 US 363, 375, 93 S.Ct. 2183, 2191 (1973).
[60] *See supra* Enclave Clause p. 6.
[61] The Department of Treasury formerly managed the Coast Guard and Customs, which were placed under the jurisdiction of the Department of Homeland Security in 2003.
[62] Tribal Lands were researched for this memorandum, but ultimately not included in the analysis because tribes are a separate sovereign, not an enclave; substantial concurrent law issues are at play that limit analogies.
[63] *See infra* Federal Facilities p.18.
[64] *See infra* National Parks p.19.
[65] *See infra* Comparison to Military Installations p. 20.
[66] *James Stewart & Co. v. Sadrakula*, 309 U.S. 94, 60 S. Ct. 431, 84 L. Ed. 596 (1940) (court finding in favor of state jurisdiction at a federal post office); *In Int. of A.W.G.*, 184 Ga. App. 343, 361 S.E.2d 510 (1987) (court held under state law, the state retains criminal jurisdiction over persons for state offenses committed on federal property, except used by the DoD or DOJ); see *State v. McGuirk*, 15-0113, 2016 WL 3369560 (W. Va. June 17, 2016).
[67] *McIntosh v. State*, No. CACR97-1161, (Ark. Ct. App. Apr. 8, 1998).
[68] *Id*.
[69] *Id*.
[70] *Id*.
[71] *Id*.
[72] *Id*.

While there certainly are instances in which federal jurisdiction is upheld over state jurisdiction in federal facilities, they tend to be based on very specific factual circumstances.[73] The majority of courts, and particularly state courts, favor state jurisdiction. The practical nature of federal facilities may be behind this reasoning - they are typically relatively small in area, permanent residents are not often living there, and the agency managing the facility may not have their own designated law enforcement staff.

National Parks

The Department of Interior includes the Bureau of Land Management, Bureau of Ocean Energy Management, National Park Service, and the United States Fish and Wildlife Service, among others.[74] Like military installations, there is a mix of all four basic jurisdiction types on the land that the Department of Interior manages.

For example, federal authorities have exclusive jurisdiction over Yellowstone,[75] while they have only partial jurisdiction over Rocky Mountain National Park.[76] The Federal Government has concurrent jurisdiction alongside the state of Virginia in Colonial National Historic Park,[77] but federal authorities maintain only a proprietorial jurisdiction over Utah's Zion National Park.[78]

Title 16 of the United States Code contains the federal laws establishing and controlling 138 national parks, often including a clear description of the type of jurisdiction conferred. It also provides for recording of jurisdictional transfers in the Federal Register. Furthermore, specific statutes grant the Secretary of the Interior authority to negotiate with the States for concurrent jurisdiction within the National Park System.[79]

The most famous analysis of competing jurisdiction in a national park concerns the prosecution of multiple murders at a park in 2008.[80] Edward Fields stalked two campers in the Ouachita National Forest, hiding in the woods in a camouflage suit with a powerfully scoped rifle.[81] Fields shot and killed both campers, and federal authorities investigated and indicted Fields, eventually obtaining a guilty

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[73] See, e.g. *People v. Dowdell*, 440 N.Y. S.2d 528 (1981). After a state conviction, forgery defendant was successful in having state charges dismissed, where crime occurred in VA Hospital Pharmacy, and court found the US had exclusive federal jurisdiction because the power ceded by the state of New York, though referred to as "concurrent" actually only conferred power over SERVICE of process to the state, not concurrent jurisdiction over criminal matters. Double jeopardy had attached in the state trial, so no crime could be prosecuted by the United States

[74] *Bureaus & Offices*, United States Department of the Interior, https://www.doi.gov/bureaus (last visited June 12, 2023).

[75] 16 U.S.C. § 24.

[76] Colorado reserved for itself the right to serve civil or criminal process, the right to tax persons and corporations, the right for persons living there to vote, and on behalf of all state citizens they saved existing water rights and waterway rights-of-way. 16 U.S.C. § 198.

[77] 16 U.S.C. § 81(h) preserves Virginia civil and criminal jurisdiction over the park, and states that the legislative authority of the state shall not be diminished or affected by the creation of the national park.

[78] 1969 Department of Justice Report on Federal Legislative Jurisdiction, Appendix B Table 3.

[79] General Authorities Act of 1976.

[80] *US v. Fields*, 516 F.3d 923 (10th Cir 2008).

[81] *Id*.

verdict in federal court.[82] The jury found that Fields was eligible for the death penalty due to factors of aggravation and premeditation defined in the federal code.[83] Fields appealed, arguing for the first time on appeal that Oklahoma, not federal courts, had proper jurisdiction over the prosecution of the case.[84] The court found that federal jurisdiction was proper because although the State maintained concurrent jurisdiction with the United States, the language of the statute granted jurisdiction to the Federal Government whenever "necessary for the administration, control and protection of such lands."[85]

While this analysis is not fully equivalent to the analysis that might be undertaken in juvenile cases because it deals with a federal adult crime, it does contain significant value for examining state and federal cooperation when there is an established framework for concurrent jurisdiction. Unlike military installations, there are not likely to be many long-term residents on National Forest lands, and there is an advantage to allow state law enforcement to maintain jurisdiction. The United States Congress recognized this, and expressly declined to give exclusive jurisdiction to the Federal Government in the purchase of forest reserve lands as codified at 16 U.S.C. § 480. Instead, the federal code specifically provides that the state does not lose its jurisdiction, and any inhabitants continue to be citizens of the State.[86] This code provision has been interpreted to enable states to "maintain concurrent criminal and civil jurisdiction over national forests."[87]

Comparison to Military Installations

Despite the similarities, the largest differentiator by far between federal facilities, national parks, and military installations is the presence of a population of permanent residents. While rules evolved to expand state rights and provide more services to residents on military installations, the same was not true for other enclaves.

- In 1940, The Buck Act[88] gave junior taxing authorities the ability to levy and collect taxes from residents on military installations.
- In 1953, children living on base were considered "residents of the state" and were allowed to attend public schools.[89]
- In 1954, a civilian living in military housing was allowed to run for Mayor, deemed a resident of the state for purposes of election residency.[90]

[82] *Id*.
[83] *Id*.
[84] *Id*.
[85] *Id*.
[86] *Wilson v. Cook*, 327 U.S. 474, 487 (1946).
[87] See *US v. CA*, 655 F.2d 914, 919 (9th Cir. 1980); *US v. Fields*, 516 F.3d 923, 932–33 (10th Cir 2008).
[88] 4 U.S.C. §§ 105-110.
[89] *Central Ed. Agency v. Independent Sch. Dist of El Paso*, 152 Tex 56 (1953).
[90] *Adams v. Londeree*, 139 W.Va 748 (1954).

- In 1960, state benefits for enclave residents were recognized as a valuable way to get assistance to citizens in need. The court stated, "exclusive jurisdiction does not operate as an absolute prohibition against state laws, but merely protects" federal sovereignty.[91]

- In 1970, the United States Supreme Court declared that enclave residents could not be denied the right to vote.[92]

- In 1980, it was determined that child abuse laws should be enforced to protect children on base.[93]

- In 1989, a domestic violence exception was carved out, allowing for local law enforcement to investigate violation of a restraining order on base.[94]

Friction, Not Fiction

This led to an important doctrine called the "friction, not fiction" test, found first in the United States Supreme Court case *Howard v. Commissioners*.[95] There, the Supreme Court stated:

> The fiction of a state within a state can have no validity to prevent the state from exercising its power over the federal area within its boundaries, so long as there is no interference with the jurisdiction asserted by the Federal Government. The sovereign rights in this dual relationship are not antagonistic. Accommodation and cooperation are their aim. It is friction, not fiction, to which we must give heed.[96]

Regardless of the type of enclave, courts faced with interpreting the state's intent to give up some of its jurisdiction still generally follow the "friction, not fiction" analysis established by the United States Supreme Court in 1953.[97] The default is to honor state sovereignty whenever possible, and courts prefer not to prevent the state from exercising jurisdiction over a federal enclave unless the exercise of that state jurisdiction is in conflict with a federal law or purpose. Unfortunately, without a clear statute governing partial or concurrent jurisdiction over juvenile matters on military installations, it still leaves the certainty of jurisdiction (and the possible dismissal of a juvenile matter) up to the vagaries of litigation and prolonged appellate proceedings.

The Unique Classification of Juvenile Law

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[91] *County Comm'rs of Arapahoe County v. Donoho*, 144 Colo 321 (1960).

[92] *Evans v. Cornman*, 398 U.S. 419, 424 (1970).

[93] *In re Terry Y.*, 101 Cal.App.3d 178 (1980).

[94] *Cobb v. Cobb*, 406 Mass 21 (1989).

[95] *Howard v. Commissioners*, 344 U.S. 624 (1953).

[96] *Id*.; Some states have argued that "exclusive" federal jurisdiction does not really mean states have no criminal jurisdiction within such enclaves. Their position is that exclusive federal jurisdiction "is not an absolute prohibition against the application of state laws. Rather, its purpose is to protect the Federal Government against conflicting regulations." See *State ex rel. Children, Youth & Families Dep't*, 120 N.M. 665, 667 (N.M. Ct. App. 1995) (citing *Penn Dairies v. Milk Control Comm'n*, 318 U.S. 261, 270-71 (1943); *James v. Dravo Contracting Co.*, 302 U.S. 134, 148-49 (1937)).

[97] *Id*.

Though cases place a heavy dependence in understanding the intent of the state in conferring jurisdiction to the United States, juvenile cases are rare and juvenile jurisdiction is rarely mentioned by state statute. Therefore, in interpreting state intent, it is important to examine whether juvenile law in each state was classified civil or criminal, in order to report whether concurrent jurisdiction over juvenile matters has been granted.

The classification of juvenile law also impacts constitutional and procedural matters. Juvenile delinquency, is relatively new compared to adult crime, and includes a rehabilitation priority.[98] This means the purpose of juvenile delinquency issues is not simply to punish wrongdoers, but also, to impose rehabilitation efforts, as appropriate. In this regard, procedural matters often follow similarities found in civil law. Constitutional protections for juveniles exist, largely as a reflection of the protections offered adult criminal defendants.

This section of the KDR summarizes the concepts of jurisdiction, supremacy, criminal procedure, and reviews constitutional amendments that affect the handling of juvenile matters, particularly related to federal juvenile delinquency. In determining whether it is advantageous to pursue concurrent jurisdiction over juvenile matters on a military installation, it is important to understand the rights that juveniles are guaranteed, the complexity of their cross-jurisdictional application, and the consequence of initially pursuing federal investigation and later attempting a transfer to state court. Juvenile-specific retrocession legislation in every United States jurisdiction would avoid this unwanted result.

Jurisdiction over the Subject Matter of Juvenile Delinquency

The Federal Government has preempted juvenile prosecution of certain crimes that are related to federal offenses. 18 U.S.C. § 5031 states that juveniles up to 17-years-old are subject to federal prosecution if they commit violent felonies, drug trafficking or importation, or commit firearms offenses. However, juvenile prosecution can also be a matter of state law. For example, in California, the state legislature grants jurisdiction over juveniles to state juvenile courts based on "acts that violate *both* state and federal criminal law."[99]

This potential for conflict was resolved when the United States Congress enacted 18 U.S.C. § 5001, which provides that if someone under 21 has been arrested and charged with a federal crime – it appears upon investigation by the United States Department of Justice that there is also a state offense and the state can and will assume jurisdiction – then the United States may forego their prosecution and surrender the juvenile to the jurisdiction of the state.

However, even when jurisdiction over juvenile matters seems clear, this jurisdiction can be disrupted by examining which entity has jurisdiction over certain classifications of acts that occur on certain lands.[100]

Differences Between Civil and Criminal Proceedings

[98] *See supra* note 55.

[99] *In re Jose C.*, 45 Cal. 4th 534, 198 P.3d 1087 (2009) (holding that a state criminal offense was not preempted for a minor who committed a federal crime).

[100] The Uniform Code of Military Justice is not included in this comparative analysis. While similar to civil and criminal codes it is not applicable to juveniles. 10 U.S.C.A. § 802.

Though juvenile law is not expressly ceded or retroceded, state statutes often cede "all civil" or "all criminal" matters. To determine which entity possesses jurisdictional power over juvenile matters, it may be helpful to determine whether juvenile law is considered civil or criminal. The research indicates juvenile law is *unique* in its classification – containing hallmarks of both, but often being classified as neither civil nor criminal.[101] While juvenile laws are based on crimes defined in criminal codes, courts generally consider them to be procedurally civil in nature. The result is a separate quasi-criminal, quasi-civil area of law.

The key differences between civil and criminal proceedings are the way cases are initiated, who decides the outcome, how penalties or punishments are imposed, the constitutional laws that protect certain rights, and the requirements for standards of proof.

Criminal law is the body of law defining offenses against the community at large and regulates how suspects are investigated, charged, tried, and establishes punishments for convicted offenders.[102] Civil law is the system of law concerned with non-criminal matters between individuals.[103]
In civil cases, the parties are usually labeled plaintiffs (the filer of the lawsuit) and defendants (the responder to the lawsuit).[104] Civil lawsuits are based on a harm that has been done by the defendant's act or failure to act, and the penalty or remedy is either a requirement to act, not to act, or a requirement to pay money damages.[105] The penalties and remedies are defined by civil codes but may also be defined by common law rights, which are established through judicial decisions.[106] Civil cases can be decided by either a judge or a jury of 6-12 people.[107] To prevail, the plaintiff must show that the defendant was responsible for the harm by a "preponderance of the evidence" or by "clear and convincing evidence" depending upon the type of claim.[108] A monetary award, paid by the defendant, is the most frequent outcome if the plaintiff is successful.[109] Examples of common civil proceedings include breach of contract, negligence causing injury or death, and damage to property.[110]

An individual facing a criminal accusation is also called a defendant, and the party initiating the case is the government, called the prosecution or "the people."[111] The federal or state government can initiate a criminal case by filing an indictment or an information, notifying the defendant of the accusations and

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[101] *See infra* Section Juvenile Law is Neither Criminal nor Civil p. 22.
[102] Criminal Law, *Black's Law Dictionary* (11th ed. 2019).
[103] Civil Code, Cornell Law School, https://www.law.cornell.edu/wex/civil (last updated July 2022).
[104] *Civil Cases*, United States Courts, https://www.uscourts.gov/about-federal-courts/types-cases/civil-cases (last visited October 20, 2023).
[105] *Id*.
[106] *Civil Code*, Legal Information Institute, https://www.law.cornell.edu/wex/civil_code (last visited October 20, 2023).
[107] *Petit Jury*, United States Courts, https://www.uscourts.gov/services-forms/jury-service/types-juries (last visited October 23, 2023).
[108] *Burden of Proof*, Legal Information Institute, https://www.law.cornell.edu/wex/burden_of_proof (last visited October 20, 2023).
[109] Civil cases, *supra* note 104.
[110] *Steps in a Trial: Civil and Criminal Cases*, American Bar Association, https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/cases/ (last visited October 20, 2023).
[111] *Criminal Cases*, United States Courts, https://www.uscourts.gov/about-federal-courts/types-cases/criminal-cases (last visited October 20, 2023).

naming the criminal codes that were allegedly violated.[112] A criminal offense is any behavior proscribed by law that is punishable by a loss of freedom, and is harmful either to a specific person, the general public, or the government.[113] Criminal cases are decided by judges or juries, though juries are more common because they are constitutionally guaranteed and must be affirmatively waived by the defendant.[114] To convict the defendant, the prosecution bears the burden to prove that the defendant committed the act "beyond a reasonable doubt."[115] This standard of proof is considerably higher than those required for civil law.

Criminal punishment may include fines payable to the government or the party harmed, incarceration, or significant loss of freedom.[116] For this reason, adult defendants in criminal proceedings are given additional constitutional protections such as the right to legal counsel, the right to avoid self-incrimination, the right to an appeal, and the right to a speedy trial by a jury of their peers.[117]

Juvenile Law is Neither Civil nor Criminal

Like criminal proceedings, the prosecutor in a juvenile proceeding is the government, and may be referred to as the petitioner.[118] Likewise, a juvenile person is generally referred to as a juvenile, offender, child, or respondent.[119] The elements of an offense are typically defined by crimes described in the adult criminal code, but punishments are not.[120] Certain offenses known as "status" offenses, which would not be offenses if committed by an adult (truancy, runaway, alcohol possession), are often found in a separate juvenile code.[121] The age of majority may range from 18 to 20 years old.[122] The burden of proof for the adjudication of a punishment is often evidence "beyond a reasonable doubt,"

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[112] *Steps in a Trial: Bringing the Charge*, American Bar Association, https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/bringingcharge/ (last visited October 23, 2023).
[113] *Crime*, Legal Information Institute, https://www.law.cornell.edu/wex/crime (last visited October 23, 2023).
[114] See "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury" AND/OR: Ramos v. Louisiana, No. 18-5924, slip op. at 4 (U.S. Apr. 20, 2020) (explaining that the Constitution guarantees criminal jury trials twice—not only in the Sixth Amendment, but also in Article III) (emphasis in original); see also Neder v. United States, 527 U.S. 1, 30 (1999) (Scalia, J., dissenting in part) (When this Court deals with the content of this [criminal jury trial] guarantee—the only one to appear in both the body of the Constitution and the Bill of Rights—it is operating upon the spinal column of American democracy).
[115] Criminal Cases, *supra* note 111.
[116] *Sentencing*, Legal Information Institute, https://www.law.cornell.edu/wex/sentencing (last visited October 23, 2023).
[117] *Sixth Amendment*, Legal Information Institute, https://www.law.cornell.edu/constitution/sixth_amendment (last visited October 20, 2023).
[118] *Juvenile Delinquency & the Legal Process*, Justia, https://www.justia.com/criminal/offenses/other-crimes/juvenile-crimes/juvenile-delinquency/ (last visited October 23, 2023).
[119] *Juvenile Delinquent*, Legal Information Institute, https://www.law.cornell.edu/wex/juvenile_delinquent (last visited October 23, 2023).
[120] *Criminal Sentencing in Juvenile Court & Possible Legal Penalties*, Justia, https://www.justia.com/criminal/offenses/other-crimes/juvenile-crimes/sentencing-in-juvenile-court/ (last visited October 23, 2023).
[121] *Status Offenses by Juveniles & Legal Consequences*, Justia, https://www.justia.com/criminal/offenses/other-crimes/juvenile-crimes/status-offenses/ (last visited October 20, 2023).
[122] *Upper and Lower Age of Juvenile Court Delinquency and Status Offense Jurisdiction*, Office of Juvenile Justice and Delinquency Prevention, https://www.ojjdp.gov/ojstatbb/structure_process/qa04102.asp (last visited October 23, 2023).

but may also be the standard of "by a preponderance of the evidence" or "clear and convincing evidence" for lesser offenses.[123] Juvenile cases are decided by a judge or commissioner, not juries.[124] Punishments are intended to be rehabilitative instead of punitive, therefore, outcomes more rarely include incarceration and judges may require a variety of therapeutic options.[125]

Following is a summary of the primary differences between civil, criminal, and juvenile law:

Table 1.6. Comparison of Bodies of Law

	Civil Law	Criminal Law	Juvenile Law
Parties	plaintiff & defendant (both private parties)	government & defendant	government or petitioner & juvenile, offender, delinquent, respondent, or child
Basis	damages or harm done as defined under civil codes	offenses based on criminal codes	behavioral violations or "status" offenses if not a crime when committed by an adult (i.e., truancy)
Procedural Terms	complaint, answer, trial, judgement, and order	arrest, charges, information, indictment, trial, sentencing, imprisonment	petition, response, proceeding, adjudication, disposition, placement
Punishment	award of money damages or order for specific performance	incarceration, loss of freedom and/or fines or damages paid to individuals and governments	rehabilitative measures, probation, short confinement in juvenile correction facilities, fines or damages paid to individuals and governments
Burden of Proof	Preponderance of the evidence or Clear, cogent and convincing evidence	Beyond a reasonable doubt	Beyond a reasonable doubt for charges involving imprisonment, preponderance, or clear, cogent and convincing evidence for lesser offenses
Trier of Fact	Judges and juries	Judges and juries, with constitutional right to jury trial	Judges or Special Tribunals, no constitutional right to jury trial

These differences extend beyond mere terminology. In 1967, the United States Supreme Court officially recognized the fundamental difference of juvenile proceedings from other kinds of proceedings.[126] The

[123] *Constitutional Rights Legally Protecting Defendants in the Juvenile Justice System*, Justia, https://www.justia.com/criminal/offenses/other-crimes/juvenile-crimes/constitutional-rights-for-juvenile-defendants/ (last visited October 20, 2023).
[124] *Id*.
[125] *Id*.
[126] *In re Gault*, 387 US 1, 87 S.Ct 1428 (1967).

court held that juvenile courts are not criminal proceedings, but more like civil proceedings because they do not result in criminal punishment.[127] Yet the Court in *Gault* also held that juveniles were entitled to the same due process protections as adults in criminal proceedings, including extension of the right to an attorney and the privilege against self-incrimination.[128]

An examination of the *location* of procedural rules in state codes (rules that dictate how petitions and motions to the court are filed, how discovery is handled, and hearings are conducted) reveals that juvenile proceedings are most often contained in civil codes or their own distinct codes.[129] They are often grouped with other laws such as a children's welfare code, family and domestic law, child abuse statutes, or a health and social services code.[130] In general, if a state does not have a specific juvenile code that dictates these procedures, or where a juvenile code of procedures exists but is silent on a certain aspect of procedure, general civil procedure rules are used for juvenile proceedings.[131]

Only four states place juvenile procedural laws in their criminal code:

Table 1.7a. Juvenile Law in State Codes

Placement in Code	States
CIVIL - juvenile procedures located in family law, social services, welfare code, etc.	Alabama, Alaska, Arkansas, California, Delaware, Georgia, Hawaii, Iowa, New Hampshire, New York, Illinois, Indiana, Michigan, Minnesota, Maryland, Massachusetts, Mississippi, Missouri, North Dakota, Ohio, Oregon, Texas, Vermont, Virginia
SEPARATE - juvenile procedures completely separate from civil and criminal codes	Arizona, Colorado, Idaho, Kentucky, Louisiana, Montana, Nebraska, New Jersey, Nevada, New Mexico, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Washington, West Virginia, Wyoming
CRIMINAL - juvenile procedures found in criminal code	Connecticut, Florida, Maine, Wisconsin

Criminal Procedure and Constitutional Rights for Juveniles

The adjudication of a juvenile case must also conform to all criminal and civil constitutional requirements. This is called "Criminal Procedure" and defines the processes and procedural steps that must be followed in all criminal matters.

There can be significant differences in federal and state criminal procedures which affect important considerations like investigative stops and searches, arrest procedures, process of service, investigatory powers, the right to legal counsel, law enforcement interactions with the accused, pretrial discovery deadlines and requirements, record sealing and gag orders, and the presence or absence of charging requirements, such as the ability for a prosecutor to make a charging decision versus the requirement to convene a grand jury.

[127] *Id*.
[128] *Id*.
[129] See *infra* Table 1.7a. Juvenile Law in State Codes.
[130] *Id*.
[131] *Gault*, *supra* note 126.

Many procedures happen at the early onset of an investigation, and the result of a failure to follow the correct criminal procedure can be devastating to the case – from failure to admit certain evidence up to and including dismissal or reversal of a case.[132]

The application is further complicated in juvenile settings, where some constitutionally protected rights – but not all – may be extended to juveniles. Notice of charges to prepare a defense, a hearing with legal representation, rights of confrontation and cross-examination, and protections against self-incrimination are protected rights of juveniles.[133] However, a juvenile's right to a jury trial is not constitutionally protected.[134] Though no opinion won the support of a majority of Justices, Justice Blackmun's opinion (joined by Justice Burger and Justice White) reasoned that a juvenile proceeding was not a "criminal prosecution" within the terms of the Sixth Amendment and thus, jury trials were not automatically required.[135]

(1) Fourth Amendment Search and Seizure

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

This amendment means people have the right to be free from an unreasonable governmental intrusion in any place where a person has a reasonable and justifiable expectation of privacy, and the government cannot exercise an unreasonable control over a person or thing.[136] The Fourth Amendment's search and seizure protections are extended to juveniles.[137]

If a juvenile commits a delinquent act on a military installation with concurrent jurisdiction, there may be subtle but important differences between federal and state protections concerning the definition of *unreasonable privacy restrictions, expectations, or control over the person.* For example, the Fifth Circuit held the Fourth Amendment requires that a juvenile arrested without a warrant is entitled to a probable cause hearing.[138]

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[132] See, e.g. *Mapp v. Ohio*, 367 U.S. 643 (1961), *McNabb v. United States*, 318 U.S. 332 (1943), *Miranda v. Arizona*, 384 U.S. 436 (1966), and *Gideon v. Wainwright*, 372 U.S. 335 (1963).
[133] *Gault*, *supra* note 126.
[134] *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).
[135] *Id*.
[136] *What Does the Fourth Amendment Mean?,* Administrative Office of the United States Courts, https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does-0#:~:text=The%20Constitution%2C%20through%20the%20Fourth,deemed%20unreasonable%20under%20the%20law. (last visited October 19, 2023).
[137] *New Jersey v. T.L.O.*, 469 U.S. 105, S. Ct. 733, 738, (1985) (held the Fourth Amendment protection for a search and seizure was extended to a juvenile); *United States v. Doe*, 801 F. Supp. 1562 (E.D. Tex. 1992) addressed constitutional rules relative to federal juvenile delinquency proceedings under 18 U.S.C. §§ 5031-5042.
[138] *Gerstein v. Pugh*, 420 U.S. 103, 95 S. Ct. 854 (1975).

(2) Fifth Amendment Rights of Due Process, Double Jeopardy, and Self-Incrimination

The Fifth Amendment to the United States Constitution states:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

This amendment guarantees three major rights for defendants. First, it ensures they receive adequate notice of the accusations against them, and an opportunity to be heard, which is called the "due process" of law. It also guarantees an individual cannot be tried more than once concerning the same offense, and the right to avoid self-incrimination. Juveniles are entitled to the protections of the Fifth Amendment.[139] This means a juvenile case cannot be adjudicated unless appropriate guarantees are in place. These guarantees may be defined differently by the state and the Federal Government.

(3) Sixth Amendment Rights of Confrontation, Speedy Trial, Jury Trial, and Legal Representation

The Sixth Amendment to the United States Constitution requires:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

This amendment guarantees criminal defendants a variety of rights, such as the right to an attorney, the right to a speedy trial, and the right to confront his or her accusers ("Confrontation Clause").

As applied to juveniles, the Court in *McKeiver v. Pennsylvania* held that while juveniles do not have a right to trial by jury, the states may permit juveniles to have the right to a jury trial.[140] Moreover, children are persons under the United States Constitution and the United States Constitution applies to them; however, courts have also held that the United States Constitution does not apply to juveniles with the same force and effect.[141]

The Significance of Juvenile Law Classification

[139] *Gault*, *supra* note 126.
[140] McKeiver *supra* note 134.
[141] *Tinker v. Des Moines Indep. Cmty Sch. Dist*., 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969).

In addition to the constitutional and procedural impact, the classification of juvenile law also influences the enforceability of retrocession in juvenile matters. South Dakota's retrocession statute allows a state to accept full or partial jurisdiction from the Federal Government (retrocession) in any "criminal or civil" matter. It also authorizes the governor to accept such retrocessions. South Dakota Codified Law § 1-1-1.1 provides:

> By appropriate executive order, the Governor may accept on behalf of the state, retrocession of full or partial jurisdiction, **criminal or civil**, over any roads, highways, or other lands in federal enclaves … within the state where such retrocession has been offered by appropriate federal authority. Documents concerning such action shall be filed in the Office of the Secretary of State and in the office of the register of deeds of the county wherein such lands are located.

If juvenile law is *neither* civil nor criminal, the validity of any attempts to transfer juvenile jurisdiction in South Dakota could be challenged.

At first glance, it appears South Dakota treats juvenile violations as criminal, at least substantively. There is no separate offense code for juveniles. Offenses for which a juvenile may be adjudged "delinquent" are found in the adult criminal code, which states that a child will be considered delinquent if they violate a "federal, state, or local law or regulation for which there is a penalty of a criminal nature for an adult."[142]

There are additional offenses for truancy, runaways, and underage alcohol consumption which are prohibited acts for children, but obviously would not be criminal violations for adults. These offenses are defined in Title 26, which is neither criminal nor civil, but contained in a completely separate section of the state statutes, entitled "Minors."

South Dakota follows the holding of *In Re Gault* which states juvenile hearings are to be "conducted in accordance with rules of civil procedure."[143] The South Dakota Supreme Court recognized that the "rigid requirements of criminal procedure do not lend themselves to thoroughly pursuing the purpose of juvenile court proceedings."[144] Because this court views juvenile proceedings as an "alternative to criminal prosecution" the laws are found in the criminal code, but the proceedings are still "civil in nature" and the "Code of Criminal Procedure [does] not apply."[145] The court further states juvenile delinquency is a "special proceeding" that is an alternative to criminal prosecution.[146]

[142] S.D. Codified Laws § 26-8C-2.
[143] S.D. Codified Laws § 26-7A-34(1) (2022).
[144] *State v. Jones*, 521 N.W.2d 662, 667 (1994).
[145] *Id*.
[146] *Id*.

Other states that classify juvenile law as neither civil nor criminal include:

- **Oregon**: Evidence code applies to "all civil, criminal and juvenile proceedings." *Matter of RJS*, 318 Or.App. 351, 354 (2022).

- **Kentucky**: "Juvenile proceedings are a distinct legal creature involving aspects of criminal prosecution and civil practice." *R.S. v. Com.*, 423 S.W.3d 178, 183 (Kentucky 2014).

- **Nebraska**: "We have long held that juvenile court proceedings are special proceedings" with the purpose of the adjudication phase being "to protect the interests of the child." *In re Interest of Karlie D.*, 283 Neb. 581, 587, 590 (2012).

- **Texas**: Juvenile law is "an unlikely and sometimes perplexing hybrid of civil and criminal law." *In re H.V.*, 252 S.W. 3d 319, 324 (Tex. 2008).

- **Ohio**: The "unique context of juvenile court proceedings are different from those applicable to criminal and civil proceedings." *In re Z.R.*, 2015-Ohio-3306, 15 and "Juvenile courts occupy a unique place in our legal system." *In re M.H.*, 2010-Ohio-689, 35 (quoting *In re C.S.*, 2007-Ohio-4919, 65).

- **Colorado**: "Juvenile proceedings, while in some aspects similar to adult criminal trials, also share aspects of civil proceedings" and because of "the unique nature and purpose of juvenile proceedings, not all of the rights constitutionally assured to an adult accused of a crime are available to a juvenile in a delinquency proceeding." *People ex rel. A.C.*, 991 P.2d 304, 306 (Colo. 1999).

- **Louisiana**: "[T]he unique nature of the juvenile system is manifested in its non-criminal, or "civil," nature, its focus on rehabilitation and individual treatment rather than retribution, and the state's role as *parens patriae* in managing the welfare of the juvenile in state's custody." *In re C.B.*, 708 So.2d 391, 396-97 (Louisiana 1998).

- **Florida**: "Juvenile delinquency proceedings are neither wholly criminal nor civil in nature. The United States Supreme Court has refused to simplistically categorize juvenile proceedings as either 'criminal' or 'civil,' avoiding thereby a wooden approach." *P.W.G. v. State*, 702 So.2d 488, 490-91 (Fla. 1997).

- **California**: Criminal procedures should not apply in delinquency matters. *San Bernardino County Dept. of Public Social Services v. Superior Court*, 283 Cal.Rptr. 332, 345 (Calif. 1991).

- **Illinois**: "[T]his court has recognized the unique nature of juvenile proceedings and the value of retaining a distinction between the juvenile and criminal process." *In re S.R.H.*, 96 Ill.2d 138, 143 (Ill. 1983).

- **Alabama**: "[J]uvenile proceedings are unique and are significantly different from purely civil cases." *Matter of Ward*, 351 So.2d 571, 574 (Ala. 1977).

In determining whether it is advantageous to pursue concurrent jurisdiction over juvenile matters on a military installation, it is important to understand the rights that juveniles are guaranteed, the complexity of their cross-jurisdictional application, and the consequence of initially pursuing federal investigation and later attempting a transfer to state court. Juvenile law is a unique category of law developed to address the specific needs of the juvenile offender. In the majority of states, juvenile codes do not strictly fall under civil or criminal codes. Case law also reflects the unique nature of juvenile proceedings. Because of this distinctive classification, states that have reserved jurisdiction over "criminal and civil matters" on federal enclaves may still create gaps in their ability to adjudicate juvenile cases. Closing this gap can be accomplished by enacting or amending retrocession laws to specifically include juvenile proceedings as separate and distinct from other civil and criminal matters. The following is a summary of Juvenile Procedural Code locations by region:

Table 1.7b. Juvenile Law in State Codes by Region

Region	State	Juvenile Code	Civil Code	Criminal Code
NORTHWEST	Alaska		·	
	Idaho	·		
	Montana	·		
	Oregon		·	
	Washington	·		
	Wyoming	·		
PAC SOUTHWEST	Arizona	·		
	California		·	
	Hawaii		·	
	New Mexico	·		
	Nevada	·		
	Utah	·		
MIDWEST	Colorado	·		
	Iowa		·	
	Kansas	·		
	North Dakota		·	
	Nebraska	·		
	South Dakota	·		
SOUTH CENTRAL	Arkansas		·	
	Louisiana	·		
	Missouri		·	
	Mississippi		·	
	Oklahoma	·		
	Texas		·	

Region	State	Juvenile Code	Civil Code	Criminal Code
GREAT LAKES	Illinois		·	
	Indiana		·	
	Michigan		·	
	Minnesota		·	
	Ohio		·	
	Wisconsin			·
NEW ENGLAND	Connecticut			·
	Maine			·
	New Hampshire		·	
	Rhode Island	·		
	Vermont		·	
	Massachusetts		·	
MID-ATLANTIC	New Jersey	·		
	Pennsylvania	·		
	Maryland		·	
	Virginia		·	
	New York		·	
	Delaware		·	
	West Virginia	·		
SOUTHEAST	Alabama		·	
	Florida			·
	Georgia		·	
	Kentucky	·		
	North Carolina	·		
	South Carolina	·		
	Tennessee	·		

Alternative Mechanisms to Statutory Jurisdictional Transfer

Whenever state statutes are unclear concerning the delegation of authority, the transfer of juvenile jurisdiction specifically, or whether the transfer has been adequately evidenced, it is the natural act of cooperating jurisdictions to create systems that enforce fluidity and responsibility, and support the relationships between military installations and civilian authorities. This section summarizes how such alternative mechanisms are defined, DoD's instructions on their use, how military installations may be utilizing this tool to manage juvenile justice matters, and how alternative agreements have been interpreted by the courts.

Types of Alternative Mechanisms

Alternative mechanisms or agreements may commonly be called a Memorandum of Understanding (MOU), Memorandum of Agreement (MOA), Letter of Intent (LOI), or sometimes Mutual Aid Agreement (MAA). The DoD only references the use of an MOU or MOA in DoDI 4000.19 "Support Agreements."[147] LOI and MAA are provided for context of other agreements used by civilians, government agencies, and other private entities. This KDR primarily uses the term MOU, however, conventionally the phrases are used interchangeably.

DoD defines an MOU as a tool to document a mutual understanding between any two or more parties that does not contain an expectation of payment, and under which the parties do not rely on each other to execute or deliver on any responsibilities.[148] MOU can also be defined as two or more parties expressing mutual accord, or the term given to the written note which details points that people agree on.[149] It can be a noncommittal written statement detailing the preliminary understanding of parties who plan to enter into a contract or some other agreement.[150] Generally, it is not meant to be binding, and does not hinder the parties from bargaining with a third party.[151] Courts may occasionally find that a binding commitment has been made, but more often will find that it is merely evidence of a preliminary agreement.[152] An MOU may also be used after a contract already exists as a means to amend terms in the original agreement and may create useful practice and understanding between cooperating sovereigns.

DoD defines an MOA as a tool to document agreements and execute or deliver support with or without reimbursement between any two parties.[153] An MOA can also be defined as a way to address specific areas of law (subject matter limitations), or may address specific coordination procedures for law enforcement, investigation, charging decisions, prosecution, adjudication, detention, and reporting. An MOA is a draft agreement to set mutual responsibilities and scope of association.[154] An MOA is also commonly referred to as an MOU.[155] While an MOA is not always interpreted to be a valid contract, it may be entered into evidence as proof of a contract if there is no other written documentation. Based on the research in this KDR, it is not clear whether jurisdiction can be modified or transferred by MOA when contrary to state or federal law.

LOI is an industry term used to describe a written agreement between parties,[156] but was not found as a referred term in this research.

An MAA is collaborative and generally an enforceable contract where sovereigns agree to render aid under a specific set of circumstances. The Department of Homeland Security and the Federal Emergency

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[147] Office of the Under Sec'y of Def. for Acquisition and Sustainment, Instr. 4000.19, Support Agreements, p. 10-11 (December 16, 2020) [hereinafter Instruction 4000.19].
[148] *Id*.
[149] Memorandum of Understanding, *Black's Law Dictionary* (11th ed. 2019).
[150] *Id*.
[151] *Id*.
[152] *Id*.
[153] Instruction 4000.19, *supra* note 147.
[154] Memorandum of Agreement, *Black's Law Dictionary* (11th ed. 2019).
[155] *Id*.
[156] Letter of Intent, *Black's Law Dictionary* (11th ed. 2019).

Management Agency uses MAAs to establish the basis for two or more entities to share resources.[157] These agreements may authorize aid between communities, jurisdictions within a state, between states, between federal agencies, and/or internationally.[158] Usually, MAAs are used in law enforcement emergencies but could in some cases be expanded and formalized to include procedures and justice systems.

Historic Department of Defense Guidance in reference to MOUs for Concurrent Jurisdiction

Between half and three quarters of active and reserve installations may require some enabling legislation to support MOUs for concurrent jurisdiction of juvenile offenses.[159]

The Department of Defense (DoD) has issued guidance regarding how to establish concurrent jurisdiction over juvenile misconduct on military installations and when to establish an MOU. The following memorandums, reports, or instructions provide MOU guidance to the DoD and the service branches regarding how to relinquish exclusive jurisdiction:

- 2019 Deputy Secretary Memo on Establishing Concurrent Jurisdiction[160]
- DoD Instruction 5525.07[161]
- Army Directive 2019-13: Response to Major Juvenile Misconduct and Referral of Civilian Criminal Offenses to Civilian Authorities[162]

The above guidance identifies the preferred method for establishing jurisdiction through legislative authority. When that is not possible, they all identify an MOU as an alternative method for referring juvenile cases to civilian prosecutors. Specific examples from the documents are provided below.

Deputy Secretary Memo Regarding Intent to Establish Concurrent Jurisdiction (2019):

In a memo distributed on June 4, 2019, the Deputy Secretary of Defense encouraged installation commanders to:

> "[e]nter into memoranda of understanding or agreements with the servicing U.S. Attorney's Office, as well as State, Commonwealth, territory, or possession authorities to memorialize procedures and apportion responsibilities, with respect to the

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[157] *Mutual Aid Agreements*, *supra* note 42.
[158] *Id*.
[159] Mark E. Sullivan, *On Base and Beyond: Negotiating the Military/State Agreement*," https://www.ncjfcj.org/wp-content/uploads/2019/12/Negotiating-the-Juv_Justice-Agt.pdf, 26 Appendix 2A – Authority of United States Magistrate.
[160] DoD Memo Establishing Concurrent Jurisdiction,*supra* note 3.
[161] Office of the General Counsel of the Dept. of Def. and the Office of the Inspector General of the Dept. of Def., Instr. 5525.07, Implementation of the Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes (March 5, 2020)[hereinafter Instruction 5525.07].
[162] Mark T. Esper, Secretary of the Army, Dir. 2019-13, Response to Major Juvenile Misconduct and Referral of Civilian Criminal Offenses to Civilian Authorities (March 21, 2019)[hereinafter Directive 2019-13].

> investigation and adjudication of offenses committed on such military installations by juveniles…."[163]

Further, the 2019 Concurrent Jurisdiction Memo outlines that while an MOU may also be considered and used as an interim measure pending finalization of retrocession, it is important that installation commanders understand the MOU does not confer criminal jurisdiction, but merely establishes a process for referral of cases.[164] If establishing concurrent jurisdiction over juvenile offenses is not feasible or recommended, commanders should pursue MOUs with local law enforcement and prosecution authorities for the referral of juvenile misconduct to local or state juvenile or family courts, when consistent with the law in their jurisdiction.[165]

DoD Instruction 5525.07

DoD Instruction 5525.07*, Implementation of the Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes*, directs commanders of installations to enter into an MOU with the Office of the United States Attorney with jurisdiction over the installation detailing procedures for exercising prosecutorial authority over alleged offenses occurring on the installation that are subject to prosecution in a United States District Court.[166]

Army Directive 2019-13

Similar to the Deputy Secretary of Defense 2019 Memo, the Army's 2019 Directive on Major Juvenile Misconduct and Referral of Civilian Criminal Offenses to Civilian Authorities states (in part):

> (1) Juvenile Offenses. For U.S.-based installations with exclusive Federal jurisdiction, ceding jurisdiction over juvenile offenses to the State through retrocession is the preferred method for facilitating civilian jurisdiction over major juvenile offenses.
>
> a. Retrocession of Exclusive Criminal Jurisdiction. Senior commanders will seek to establish concurrent jurisdiction with the State for juvenile offenses committed on the installation through retrocession of jurisdiction… supported by an MOU addressing the process and responsibilities between the parties.
>
> b. Memorandum of Agreement. Consistent with the law in their jurisdiction, if establishing concurrent jurisdiction over juvenile offenses is not feasible or recommended, commanders will pursue MOAs with local law enforcement and prosecution authorities for the referral of major juvenile misconduct cases to local or State juvenile or family courts… Commanders may also consider entering into MOAs as an interim measure pending finalization of the retrocession.

[163] DoD Memo Establishing Concurrent Jurisdiction, *supra* note 3.
[164] *Id*.
[165] *Id*.
[166] Instruction 5525.07, *supra* note 161.

c. Alternate Referral Process. If neither retrocession, nor an MOA is feasible or recommended, commanders will consider referral without an MOA for potential adjudication.[167]

Response to the Usage of Alternative Agreements on Military Installations

In the November 2019 Report to Congress, the Army Secretary initially observed that several jurisdictions were pursuing or re-drafting existing MOUs to refer juvenile cases to the local juvenile courts.[168] This was done as either an interim measure pending finalization of retrocession or because of local preference of MOUs to retrocession.[169] The Secretary further stated that "[f]or installations with very low incidents of major juvenile crime, MOUs may be more cost-effective means of referring juvenile cases to local civilian authorities than formally establishing concurrent jurisdiction."[170] However, the Army reported concerns from local civilian authorities over the cost or resources required to adjudicate juvenile cases arising from military installations.[171]

Multiple installations currently use an MOU to refer cases. These installations include Fort Carson, Fort Moore (formerly Fort Benning), Fort Riley, Fort Leonard Wood, West Point, and Fort McCoy.[172] Several installations indicated drafting was underway for future use.[173] These installations include Fort Huachuca, Fort Eisenhower (formerly Fort Gordon), Aberdeen Proving Ground, Fort Jackson, Fort Bliss, and Fort Cavazos (formerly Fort Hood).[174]

How Alternative Agreements are Interpreted by Courts

Courts generally view alternative agreements as initial negotiations or documents clarifying procedures and processes from an existing authority and not enforceable standing alone.[175] The following sections provide examples of instances when MOUs, MOAs, or other agreements have been used between agencies.

Federal Court Review:

A Federal Agency's power to promulgate regulations is limited to the authority delegated to it by Congress.[176] In our federal system of government, it is not uncommon for Congress to charge executive

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[167] Directive 2019-13, *supra* note 162.
[168] Dept. of the Army, Dept. of Def., Report to Congress on Army Efforts to Relinquish Legislative Jurisdiction of Criminal Offenses (Nov. 2019) [hereinafter Army Report to Congress].
[169] *Id*.
[170] *Id*.
[171] *Id*.
[172] *Id*.
[173] *Id*.
[174] *Id*.
[175] See generally *Earth Island Institute v. Mosbacher*, 929 F.2d 1449 (9th Cir. 1991) (agencies do not have the discretion to issue regulations which conflict with statutory language); *US v. Duncan*, 34 M.J. 1232, 1241 (1992) (an agreement between DoD and DOJ did not have the ability to alter jurisdiction); but see *Reynolds Metals Co. v. Rumsfeld*, 564 F.2d 663 (1977)(agreement neither diminished nor increased either party's rights and duties, and was based on well-established authority).
[176] *Bowen v. Georgetown University Hospital*, 488 US 204, 109 S.Ct 468 (1988).

agencies with overlapping duties and coterminous responsibilities.[177] To avoid unnecessary expense and confusion, agencies frequently enter into an MOU by which they agree to share information, coordinate the discharge of their duties, and assign primary responsibility for coterminous functions.[178] In *Duncan*, the DoD and DOJ entered an MOU that assigned prosecutorial priority between their prosecutorial staffs and provided for coordination of the government's prosecutorial efforts.[179] The two departments interpreted this agreement to mean the DOJ had the power to force the DoD to pause courts-martial proceedings. If this were enforced, it was effectively interfering with the DoD's courts-martial jurisdiction.[180] The court held the agreement did not have the authority to extinguish jurisdiction.[181] An interdepartmental agreement can neither modify the statutory contours of a court's jurisdiction nor divest an agency of its statutory powers.[182]

In *Reynolds Metals Co. v. Rumsfeld*, an MOU between the Equal Employment Opportunity Commission (EEOC) and Department of Labor (DOL) was found valid by the court.[183] The EEOC and DOL executed an MOU to establish procedures for exchanging information and transmission of complaints.[184] The agencies based their joint activity on well-defined authority.[185] The Civil Rights Act of 1964 authorizes the commission to cooperate with other public agencies and the DOL's acts were in service of both the Civil Rights Act and implementation of Executive Order 11246 (later modified by Executive Order 11375).[186] [187] The MOU was properly published in a federal register as prescribed by 5 U.S.C. § 552(a)(1), and although it was not promulgated in accordance with 5 U.S.C. § 553,[188] when the enforceability of the MOU was challenged, the Court held notice and comment is required in administrative rule making if the rule makes a substantive impact on the rights and duties of the person subject to regulation.[189] Here, the MOU neither diminishes nor increases either party's rights and duties, it merely administers the procedure for transmission of the complaint to the appropriate committee.[190]

If concurrent jurisdiction does not exist, and there is an attempt to refer a juvenile matter only through MOU without legislative authority, it could be challenged that the authorities are attempting to improperly modify jurisdiction as in *Duncan*, rather than establish procedures for information sharing as in *Reynolds*.

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[177] *US v. Duncan*, 34 M.J. 1232, 1241 (1992).
[178] *Id*.
[179] *Id*.
[180] *Id*.
[181] *Id*.
[182] *Earth Island Institute v. Mosbacher*, 929 F.2d 1449 (9th Cir. 1991) (agencies do not have the discretion to issue regulations which conflict with statutory language).
[183] *Reynolds Metals Co. v. Rumsfeld*, 564 F.2d 663 (1977).
[184] *Id*.
[185] *Id*.
[186] *Id*.
[187] Authorities to ensure nondiscrimination in government employment.
[188] Requires advance public notice and an opportunity for interested persons to comment on the proposal.
[189] *Reynolds*, *supra* note 183.
[190] *Id*.

State Court Review:

As an example, in the State of Virginia, LOIs and MOUs are generally unenforceable "agreement[s] to agree."[191] This is particularly true when the parties are negotiating in good faith toward a final contract.[192] However, parties can include binding provisions in an MOU so long as there is "mutual assent of the contracting parties to terms reasonably certain under the circumstances to have an enforceable contract."[193]

An MOU is enforceable when the agreement is based on legislative authority and supported by an intent to be bound coupled with consideration. In other words, MOUs are enforceable when authorized under provisions in federal or state codes. Virginia has used MOUs to detail processes and steps in the transfer of property out of federal ownership in accordance with existing statutes. Portions of federal land at the Lorton Correctional Complex were transferred out of federal ownership in Fairfax County and an MOU was used to ensure compliance with all legislation regulating potential adverse effects on historic lands.[194] An MOU was also used between the Department of Homeland Security and the Arlington Police Department, authorized by the provisions of 40 U.S.C. § 1315, DHS Delegation 17001, NNPPD Delegation 17007.00, Federal Protective Service Director Memorandum,[195] and Virginia Code 15.2-1726. This MOU outlined the scope and responsibilities of each party in providing mutual support for the protection of federal property and persons thereon.[196] What is most pertinent in the enforceability of these MOUs is founded in the authority granted in federal and state code.[197]

In conclusion, the research has shown that alternative agreements such as MOUs are generally only enforced when supported by an authorizing state statute. An agreement alone cannot confer jurisdiction without the approval of the state legislature. The DoD memorandums, reports, or instructions outlined in this KDR clearly state that MOUs are a preferred method, however, absent clear legislative consent over juvenile matters, there is the potential for jurisdiction to be challenged in the courts when based solely on an MOU. Alternative agreements are frequently interpreted as "agreements to agree" and therefore are not considered a binding or enforceable contract. While valuable to define voluntary cooperation, an alternative agreement alone is highly unlikely to validly confer jurisdiction, unless the ability to manage this cooperation has been delegated to local authorities by the state legislature.

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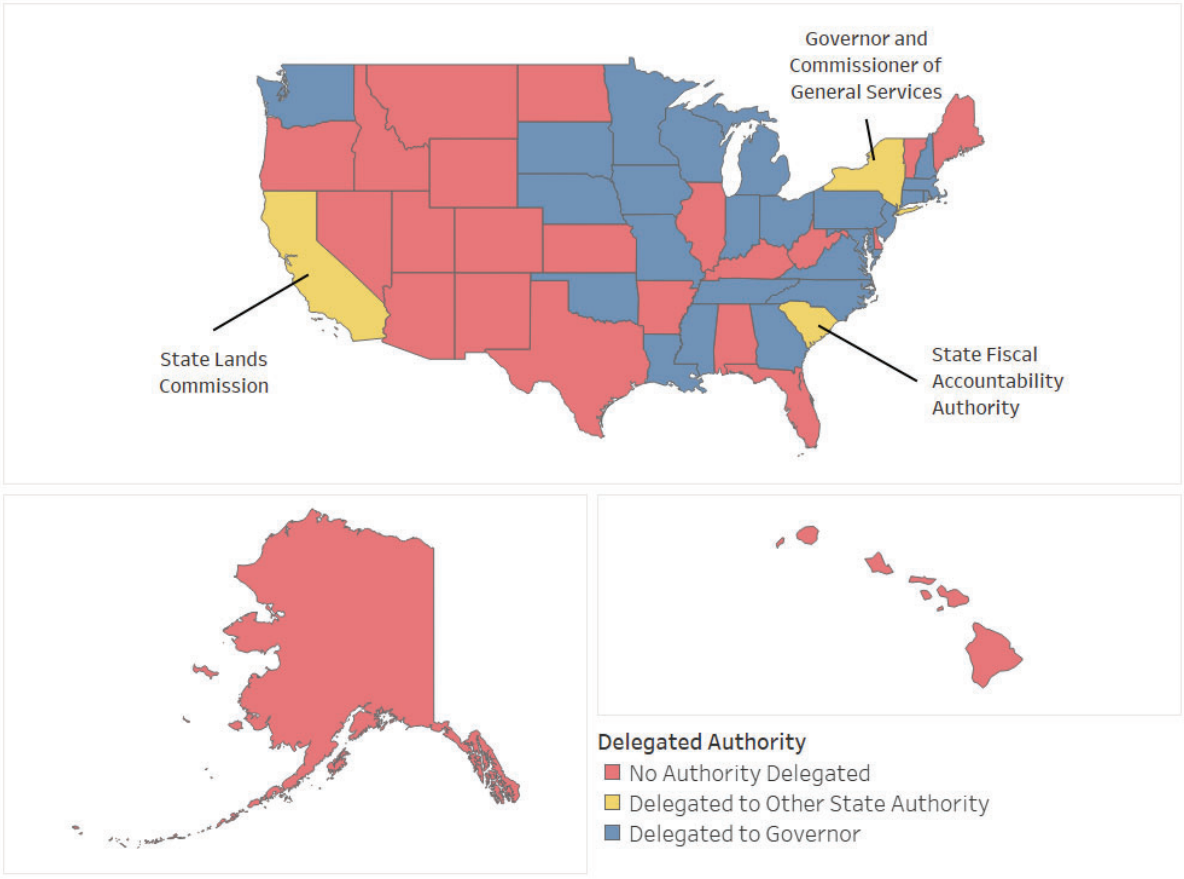
[191] *W.J. Schafer Assocs., Inc. v. Cordant, Inc.*, 254 Va. 514, 493 S.E.2d 512, 515 (1997).
[192] *Beazer Homes Corp. v. VMIF/Anden Southbridge Venture*, 235 F.Supp.2d 485, 493 (E.D.Va. 2002).
[193] *Allen v. Aetna Ca. & Sur. Co.*, 222 Va. 361, 281 S.E.2d 818,820 (1981).
[194] Memorandum of Agreement Between the General Services Administration, Bureau of Land Management, County of Fairfax, Fairfax Park Authority, Fairfax County Public Schools, Federation of Lorton Communities, Lorton Heritage Society, Northern Virginia Regional Park Authority, Virginia Department of Historic Resources, and Advisory Council on Historic Preservation (2001) (https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/laurelhill/history/moa.pdf).
[195] FPS Director granted authority to enter into and sign agreements with other law enforcement agencies.
[196] Memorandum of Understanding Between the United States Department of Homeland Security, National Protection and Programs Directorate Federal Protective Service, and County Board of Arlington County by the Arlington County Police Department (2016) (https://public.powerdms.com/ARLVAPD/documents/850124).
[197] Example provided above is an instance of land ownership and jurisdiction being transferred from the Federal Government to the State. This was successfully accomplished, first through statutory authority consenting to the transfer, then through coordination of federal and state agencies in MOUs.

The Delegation of Authority and the Concept of Perfection

The Defense-State Liaison Office observed that state statutes frequently delegate authority to another state representative. This section explores how this authority is commonly delegated, and the multiple levels of authority that can be delegated.

Graphic 1.3. Delegation of Authority by State for Retrocession



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Authority and Limitations Delegated by the Legislature

At times, the legislature of a jurisdiction will deem it in their best interest to delegate various powers to a representative of the state regarding retrocession. Generally, this is done through an enabling statute where the legislature preemptively accepts the Federal Government's request to retrocede jurisdiction over lands within their control. Frequently, this authority is delegated to the Governor of the State, however, there are also examples of the power being given to the Attorney General or the Lands Commission.

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[198] Illinois and Colorado have delegated authority to the Governor in specific instances regarding individual military installations but does not delegate authority in a statewide retrocession statute. See *infra* Section III State Reports and Appendix F.

The legislature may limit the power of the state actor in various ways. In the statute, the legislature may limit the types of jurisdiction that is authorized to be accepted, the conditions under which jurisdiction may be accepted, and/or the process required to accept or reject the request.

For example, some legislatures may only authorize acceptance of partial or concurrent jurisdiction. This could be interpreted to mean the Federal Government may not seek to retrocede exclusive jurisdiction without express acceptance from the legislature. There is also precedence of legislatures only authorizing acceptance of jurisdiction over only civil law, only criminal law, or even only misdemeanors or certain classes of felonies. This does not mean the state will never accept jurisdiction over the matters they have not pre-accepted, it simply means the legislature would need to pass new legislation authorizing acceptance.

Another example of a limitation on the authority delegated is when the statute specifies the conditions under which jurisdiction may be accepted. Often this is seen when the language states the Governor or other authorized state actor may accept or deny when it is deemed to be in the best interest of the State. The research does not indicate how a state or court would interpret what is or is not in the best interest of the State which could invalidate an acceptance or denial of retrocession.

The power granted to the state actor may give them the authority to use their discretion when deciding if acceptance is proper. However, the authority delegated may not allow them this discretion and instead require them to accept or deny, and then follow a set of procedures to document the event.

Lastly, a common limitation of delegation is the procedure required to request, accept, deny, and/or record retrocession in order to accomplish perfection. Multiple statutes and case law deem retrocession not completed unless or until the procedure is followed and perfected.

Table 1.8. Delegation of Authority by State[199]

States Delegating Retrocession Authority	States who have not Delegated Retrocession Authority	Other*
California	Alaska	Alabama
Colorado**	Arkansas	Arizona
Connecticut	Delaware	Florida
Georgia	Hawaii	Nevada
Illinois**	Idaho	Texas
Indiana	Kansas	Utah
Iowa	Kentucky	Vermont
Louisiana	Maine	
Maryland	Montana	
Massachusetts	New Mexico	
Michigan	North Dakota	
Minnesota	Oregon	
Mississippi	West Virginia	
Missouri	Wyoming	
Nebraska		
New Hampshire		
New Jersey		
New York		
North Carolina		
Ohio		
Oklahoma		
Pennsylvania		
Rhode Island		
South Carolina		
South Dakota		
Tennessee		
Virginia		
Washington		
Wisconsin		

* Legislature has delegated cession authority

**Legislature delegated authority to Governor regarding specific installations, but does not delegate authority in a statewide retrocession statute

[199] See *infra* Section III State Reports and Appendix F.

Examples

(1) General Delegation of Authority

Cal. Gov't Code § 113: "The Legislature, ***acting through the State Lands Commission,*** hereby consents to the retrocession of jurisdiction by the United States over land within this state upon and subject to each and all of the following express conditions:…"

Ohio Rev. Code Ann. § 159.04 (B): "***The governor may accept***, on behalf of the state, retrocession of full or partial jurisdiction over any roads, highways, or other lands in federal enclaves where the appropriate federal authority offers the retrocession. The governor shall deliver the documents executed by the federal authority and the governor concurring in the retrocession, for recording, to the office of the recorder of the county in which the lands are located."

Idaho Code Ann. § 58-708 (1): "Notwithstanding any current jurisdiction authorized by existing state or federal statute, the state of Idaho hereby accepts the transfer of either partial or concurrent jurisdiction over juvenile offenders as defined in 20-502(15), Idaho Code, from the United States on military installations or portions of military installations upon request from the United States, and ***delegates and directs the governor*** to ensure the legal completion of such requests."

(2) Sample language limiting the type of jurisdiction

Idaho Code Ann. § 58-708 (1): "Notwithstanding any current jurisdiction authorized by existing state or federal statute, the state of Idaho hereby accepts the ***transfer of either partial or concurrent jurisdiction over juvenile offenders*** as defined in 20-502(15), Idaho Code, from the United States on military installations or portions of military installations upon request from the United States, and delegates and directs the governor to ensure the legal completion of such requests."
"(4) The transfer of jurisdiction ***shall not be exclusive jurisdiction***, shall not affect any other existing jurisdiction other than granting Idaho courts jurisdiction under the Juvenile Corrections Act and as further defined in section 20-505, Idaho Code, and shall not affect any other jurisdiction or jurisdiction agreements. The particulars of coordination efforts may be further negotiated in a Memorandum of Understanding and/or Law Enforcement Cooperation Agreement."

MD. Code Ann., Gen. Prov. § 6-202: "Notwithstanding § 6–201(a) of this subtitle, for the purpose of enforcing the civil or criminal laws of the State, the Governor may enter into an agreement with the United States to ***establish full or partial concurrent jurisdiction of the State and the United States*** over any land in the State held by the United States."

(3) Sample language of directive authority

Idaho Code Ann. § 58-708 (1): "Notwithstanding any current jurisdiction authorized by existing state or federal statute, the state of Idaho hereby accepts the transfer of either partial or concurrent jurisdiction over juvenile offenders as defined in 20-502(15), Idaho Code, from the United States on military installations or portions of military installations upon request from the United States, and ***delegates and directs the governor*** to ensure the legal completion of such requests."

Wash. Rev. Code § 37.04.050 (1): "Upon the filing of a legally adequate notice with the governor by the secretary or administrator of any agency of the United States of America owning or having exclusive jurisdiction over certain property, ***the governor is authorized and directed to accept*** such jurisdiction as is necessary to establish concurrent jurisdiction between the United States and the state of Washington over the property as described in such notice and to the extent and periods of time authorized in such notice. The acquisition of such concurrent jurisdiction shall become effective upon filing the documents signifying such acceptance in the office of the secretary of state of the state of Washington."

(4) Sample language of discretionary authority

Ind. Code § 4-20.5-18-2: "The governor is authorized to accept for the state the retrocession of jurisdiction if the governor considers retrocession ***to be in the best interest*** of the state."

La. Stat. Ann § 52:3: "The governor is authorized, ***whenever he deems it desirable and in the public interest***, to accept on behalf of the state of Louisiana the retrocession of jurisdiction over lands owned by the United States of America where such retrocession has been offered by the appropriate federal authorities who shall set forth the lands affected."

(5) Sample language of procedure:

Idaho Code Ann. § 58-708 (2): "Any person designated by the United States of America may file with the governor a request for change in jurisdiction over juvenile offenders on certain property or portions of a property operating as a military installation, and the governor is hereby authorized and directed to accept such request, ensuring adequate prosecution and access to justice for juvenile offenders and protection for their victims which occur on military installations in Idaho.
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"(3) A legally adequate notice must contain all of the following: (a) A description of the property or portion of the property over which the transfer of juvenile jurisdiction is sought, described in terms legally sufficient to identify the boundaries of the property or portion; (b) A description of the existing jurisdiction over the property or portion of property held by the United States; (c) A description of the jurisdiction over juvenile offenders that the United States proposes to be transferred, indicating whether it is intended to be partial (all juvenile offender jurisdiction is to be vested in the state) or concurrent (shared jurisdiction over juvenile offenders, which must be determined on a case by case basis); and (d) A statement by the requesting person that they have authority to make the request on behalf of the United States.
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"(5) The transfer of jurisdiction over juvenile offenders shall become effective upon (a) The governor's filing of the documents signifying such request and acceptance in the office of the secretary of state of the state of Idaho; and (b) The governor's filing of the documents signifying such request and acceptance in the applicable local office or offices of county land records."

Ind. Code § 4-20.5-18-3: "Retrocession of jurisdiction under this chapter must be perfected as follows:
(1) An agent of the United States authorized to dispose of property must give written notice of the retrocession to the governor.
(2) The governor must accept the retrocession on behalf of the state on the written notice.
(3) The notice, with the governor's acceptance, must be:
(A) recorded in the office of the recorder of the county where the property is located; and

(B) filed in the land office."

Many legislatures utilize the delegation of retrocession authority to streamline the process of retrocession. This is most commonly accomplished by a delegation of authority to the governor. Legislatures can limit this power in the language of the statute. Frequently, the limitations will include specifying the types of jurisdiction authorized to be retroceded and the process that must be followed in order to accomplish retrocession. A comprehensive statute includes clear language granting authority, defines the authority of the delegate, the type of jurisdiction permitted to be retroceded, a step-by-step process, and a filing requirement to ensure retrocession of jurisdiction has successfully been accomplished.

A Model Framework

In order to aid policymakers seeking to establish concurrent state and federal jurisdiction over juvenile delinquency on military installations, the following sample provisions are presented to help prevent gaps or uncertainties in any 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.

No Specific Jurisdiction over Juvenile Delinquency

If the existing state statue 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 which specifically mention juveniles. This clarifies state authority and helps prevent juvenile matters from going unadjudicated.

- N.C. Gen. Stat. § 7B-1605: "When concurrent jurisdiction has been established, "the (state juvenile) 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."

- Conn. Gen. Stat. Ann. § 48-1.(c): "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."

Classification of Juvenile Status Offenses

Status offenses are juvenile offenses that states wish to proscribe by law which would not be crimes if committed by adults. These status offenses include things like juveniles who run away from home,

consume alcohol or tobacco products, violate curfews, do not attend school (truancy), and a general category referred to as being "unmanageable" or "incorrigible." This is important because certain behaviors may be classified as status offenses, and status offenses may not be included in the state's definition of "juvenile delinquency." If policymakers wish to allow the state to have jurisdiction over this category of juvenile offenses, an amendment to the state legislature would clarify that intent.

North Carolina does this by creating a special term for juveniles who have committed status offenses, making it clear that these juveniles are also specifically included in statute:

> A "vulnerable juvenile" is "any juvenile who, while less than 10 years of age but at least 6 years of age, commits an act within the boundaries of a military installation that is a crime or infraction under State law and is not a delinquent juvenile."[200]

Clear Description of Jurisdictional Real Property Boundaries

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

Georgia[201] and Tennessee[202] both require describing the land "by metes and bounds." New Mexico[203] and Maine[204] both require "a description adequate to permit accurate identification of the boundaries of the land or other area."

Wyoming goes one step further, and specifically includes future expansion or consolidation of lands for a military installation.[205] This clearly establishes jurisdictional intent for modern military installations which may undergo consolidations, expansions, and reductions. In their land requirement description Wyoming adds, "together with such other lands 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."[206]

Authorizing an Administrator to Handle Individual Military Installation Requests

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.[207] 94% of states (34 out of 36)[208] with retrocession and/or cession statutes have chosen to delegate this authority to their governors. Delegation can be accomplished responsibly

[200] N.C. Gen. Stat. § 7B-1501.
[201] Ga. Code Ann. § 50-2-27 (b).
[202] Tenn. Code Ann. § 4-1-105.
[203] N.M. Stat. Ann. § 19-2-2.
[204] Me. Rev. Stat. tit. 1 § 8.
[205] Wyo. Stat. Ann. § 19-7-301 (a).
[206] *Id*.
[207] In the absence of delegated authority, all jurisdictional transfer requests would be directed to the State Legislature.
[208] See *supra* Table 1.8. Delegation of Authority by State and *infra* Appendix F.

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.

Connecticut and Iowa are two examples of the 31 states that delegate this authority to the Governor.

> Conn. Gen. Stat. Ann. § 48-1 (b) (1): "The Governor may accept, on behalf of this state, from the appropriate federal authority retrocession of full or partial jurisdiction over any land provided for in subsection (a) of this section."

> Iowa Code § 1.17: "By appropriate executive order, the governor may accept on behalf of the state full or partial cession or retrocession of federal jurisdiction, criminal or civil, over any lands, except Indian lands, in federal enclaves within the state where such cession or retrocession has been offered by appropriate federal authority."

Washington is an example of a state that has delegated the responsibility to their Governor without affording the Governor discretion concerning whether to accept the request.

> Wash. Rev. Code § 37.04.050(1): "[T]he governor is authorized *and directed to accept* such jurisdiction as is necessary to establish concurrent jurisdiction between the United States and the state of Washington over the property as described in such notice and to the extent and periods of time authorized in such notice."

California is an example of a state that delegates this authority to a Land Use Board.

> Cal. Gov't Code § 113: "The Legislature, acting through the State Lands Commission, hereby consents to the retrocession of jurisdiction by the United States over land within this state upon . . . notice of the proposed retrocession [that] has been given to the clerk for the board of supervisors of each county in which the federal lands are located at least 15 days before the proposed retrocession is considered by the State Lands Commission."

South Carolina is an example of a state that delegates authority to a fiscal authority, in coordination with their Secretary of State.

> S.C. Code Ann. § 3-1-150: "Whenever a duly authorized official or agent of the United States, acting pursuant to authority conferred by the Congress, notifies the Budget and Control Board or any other State official, department or agency, that the United States desires or is willing to relinquish to the State the jurisdiction, or a portion thereof, held by the United States over the lands designated in such notice, the Budget and Control Board may, in its discretion, accept such relinquishment. Such acceptance may 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 Budget and Control Board 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 State, who shall maintain a permanent file of the notices."

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 – the county recorder.

> Ind. Code § 4-20.5-18-3: "Retrocession of jurisdiction under this chapter must be perfected as follows: (1) An agent of the United States authorized to dispose of property must give written notice of the retrocession to the governor. (2) The governor must accept the retrocession on behalf of the state on the written notice. (3) The notice, with the governor's acceptance, must be: (A) recorded in the office of the recorder of the county where the property is located; and (B) filed in the land office."

Massachusetts is an example of a state that specifies the effective date of the transfer of jurisdiction, and gives record-keeping duties to the city or town clerk.

> Mass. Gen. Laws Ann. ch. 1 § 7A: "Such acceptance of retrocession shall take effect in each case upon the written acceptance by the governor of a notice of retrocession signed by the duly authorized officer or agent of the United States having supervision and control over the property being retroceded. A copy of the notice of retrocession and the written acceptance thereof shall be filed with the state secretary and the city or town clerk of the city or town in which the affected property is located, and in the case of property located in more than one city or town, with the clerk of each municipality in which the property is located."

Virginia is an example of another state with a detailed process for effectively transferring jurisdiction:

> Va. Code Ann. §1-408: "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."

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 (MOU), and further expanded by written executive level policies and procedures. In order 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.

Virginia and Arizona provide examples of this kind of authorizing language in other areas of law, which could be used as sample language for a juvenile jurisdiction statute.

- Va. Code Ann. § 15.2-1726: "Any locality may, in its discretion, enter into a reciprocal agreement with any other locality, any agency of the federal government exercising police powers, the police of any public institution of higher education in the Commonwealth appointed pursuant to subsection B of § 23.1-812, the Division of Capitol Police, any private police department certified by the Department of Criminal Justice Services, or any combination of the foregoing, for such periods and under such conditions as the contracting parties deem advisable, for cooperation in the furnishing of police services."

- Ariz. Rev. Stat. Ann. § 37-620(a)(B)(a): "(a) This subdivision is effective only after a memorandum of understanding has been completed with the sheriff of a county that has territory within the Barry M. Goldwater range to address lead investigative agency responsibilities on specific crimes and other coordinating matters."

This type of MOU authority could also include additional language not limiting the MOU to "investigative agency responsibilities" or "furnishing of police services." Rather, it could also reference "legal system coordination, including formal juvenile delinquency or status offense filing decisions." This is not a requirement included in any existing examples and would require original drafting.

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, 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 that are tailored to the needs and realities of the community.

Following is a model statute based on a compilation of language from similar statutes written in Maine, North Carolina, Maryland, Tennessee, and Wyoming, together with a sample letter that may be utilized by Installation Commanders once the statute has been passed and after consultation with the Office of General Counsel (OGC) attorney.

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 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; and

b. Acceptance. The Governor's Written Acceptance shall confirm each of the elements of the request that are accepted; and

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.

Sample Installation Commander Request for Concurrent Jurisdiction

Date

Governor of [STATE]
Official Address for Governor's Office
City, State 00000-0000

Dear Governor [NAME]:

As an authorized representative of the United States, I respectfully request your support in the United States' efforts to establish concurrent jurisdiction for [criminal and] juvenile offenses occurring at [MILITARY INSTALLATION].

The 2019 National Defense Authorization Act required the Secretary of Defense to establish a policy addressing the response to alleged juvenile-on-juvenile problematic sexual behavior occurring on military installations. The impetus for this directive is to ensure justice where the Federal Government's ability to adjudicate offenses or determine other appropriate dispositions are limited by federal juvenile law. Congress further directed that the Secretaries of the Military Departments seek to establish concurrent jurisdiction over matters involving both juvenile and adult offenses on military bases that involve civilians, who are not subject to the United States Code of Military Justice (UCMJ).

To that end, in accordance with [cite newly enacted law], as an authorized representative of the United States having supervision and control over [MILITARY INSTALLATION], I am officially requesting your acceptance of the establishment of concurrent jurisdiction over the subject matters of [criminal law,] juvenile delinquency, and juvenile status offenses at [a designated portion of] [MILITARY INSTALLATION]. The specific boundaries for this request to transfer jurisdiction are more clearly described in the metes and bounds, attached. This request for concurrent jurisdiction [DOES/DOES NOT] include future contiguous expansions of [MILITARY INSTALLATION].

I look forward to working with you regarding the details of this issue, including any assistance I may provide in establishing a Memorandum of Understanding for the coordination of our local efforts, as the Legislature of [STATE] has authorized.

Sincerely,
[INSTALLATION COMMANDER]

Conclusion

The National Defense Authorization Act for Fiscal Year 2019[209] (NDAA) expressed concern about the ability of the Department of Defense (DoD) and Department of Defense Education Activity (DoDEA) to "protect or provide justice to the children of service members when they are sexually assaulted by other children" in DoD schools and particularly on military bases.[210] The Deputy Secretary of Defense issued a memorandum directing the Secretaries of the Military Departments to seek concurrent jurisdiction where possible, in order to remove juvenile justice barriers in areas of exclusive federal jurisdiction on military installations within the United States.

This KDR assists in the understanding and identification of the jurisdictional status in over 1,400 military installations across the United States, and to further identify models of appropriate legislation designed to carry out the Department of Defense's objective to remove barriers to juvenile justice at those military installations. An extensive body of legislation and history was researched to identify and describe the most important subtopics and create an evidence-based, plain language synthesis of data from industry-standard sources. The KDR provides new insights while also summarizing the qualitative issues related to the jurisdictional topics addressed and adhering to the highest methodological standards.

The specific State reports in Section III take this research into consideration and provide a jurisdiction-by-jurisdiction analysis for the use of installation commanders, policy makers, and other stakeholders.

[209] Senate Report 115-262 *supra* note 1.
[210] Inspector General *supra* note 2.

Section III – State Reports

Section III of this report was created as the result of a year-long research study conducted by the Defense-State Liaison Office, and contains the specific research, data points and process flow charts required to conduct an analysis of both existing legislative conditions and recommended improvements for state leaders who wish to improve access to juvenile justice on Military Installations in their own jurisdictions.

An effort of this magnitude has not been undertaken since the 1962 Inventory Report on Jurisdictional Status of Federal Areas Within the States, a report commissioned by President Eisenhower which required four years of study, data collection and report writing.

Each state report has been standardized and can stand alone or be compared alongside other states. The report includes:

- a narrative of statehood history as it relates to state and federal jurisdiction
- a summary of current day cession and retrocession laws in each state
- excerpts from the relevant portions of statutory text
- citations for any significant legal opinions that may impact retrocession
- a list of military installations in the State
- a visual representation of installation locations within the State
- publicly available links and citations for legal references
- a process questionnaire to determine an installation's current condition
- a flowchart of the existing state retrocession laws, with identified governance gaps
- a summary of best practice recommendations for each jurisdiction

This portion of the report is meant to be a companion to Section I, which contains relevant research articles and explanations that more deeply cover the substantive materials and contains a Best Practices Gap Analysis that forms the basis for the retrocession flowcharts. Together, these are useful tools for understanding a complex topic and still seeing a clear path forward in each state for the administration of juvenile justice on Military Installations in the United States.

Rhode Island

Introduction

The Defense-State Liaison Office (DSLO) has prepared this report to educate policymakers in Rhode Island concerning the status of the law as it relates to juvenile jurisdiction on military installations within the state, and what can be done to ensure the fullest access to juvenile justice at these locations.

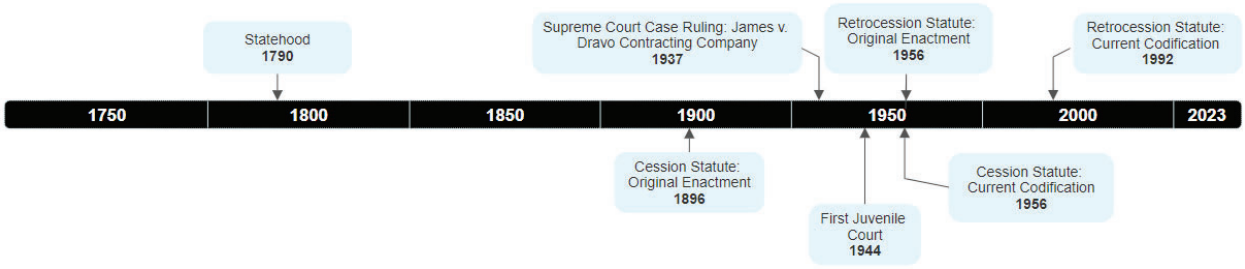
Overview of Rhode Island's Concurrent Jurisdiction Laws

Rhode Island has a statutory framework to transfer jurisdiction from the State to the United States and from the United States to the State. The State Legislature has not established jurisdiction over juveniles at military installations within its borders by statute. Adoption of four amendments is appropriate to resolve the following identified issues, and ensure the ability to establish concurrent juvenile jurisdiction at military installations in Rhode Island: (1) a clause that specifically incorporates juvenile law into the existing authorization; (2) a clause that requires clear identification and recording of the boundaries of the jurisdiction; (3) a clause that automatically includes military installation boundary expansions as a part of the jurisdictional territory; and (4) a clause that creates clear procedures for offer, acceptance, and record-keeping regarding the transfer of jurisdiction.

Whenever these changes are lawfully established, a memorandum of understanding (MOU) may still be used to establish specific coordination needs at the installation level.

Rhode Island's Jurisdiction History

Rhode Island became a state on May 29, 1790,[1] and the state's first juvenile court was established in 1944.[2] Following is a timeline of major jurisdictional events in Rhode Island:



[1] *Rhode Island Anniversary 230th Anniversary of Statehood (1790),* United States Census Bureau, https://www.census.gov/newsroom/stories/rhode-island-admission-anniversary.html (last visited June 12, 2023).
[2] *Historic Cases in Youth Justice*, Office of Juvenile Justice and Delinquency Prevention, https://ojjdp.ojp.gov/events/historic-cases-in-youth-justice (last visited June 12, 2023).

The Transfer of Jurisdiction

The United States and Rhode Island may negotiate and authorize jurisdiction on a federal enclave. Absent clear legislative authority establishing concurrent jurisdiction over juvenile matters, there is a risk jurisdiction can be challenged in the courts if based solely on an MOU.[3]

In early United States history, the jurisdiction to govern over land was presumed to automatically pass to the United States whenever state land was to be used for a military installation. However, by 1937, states were given the right to bargain for *how much and what kind* of jurisdiction they gave up to the United States in these transfers.[4] These transfers of jurisdiction were known as **cession** when passing from the state to the United States. Later, it became necessary for some or all of the jurisdiction to be transferred back to the state. These transfers are known as **retrocession**. Retrocession became more popular across the country after 1940,[5] but its adoption was not uniform:

- Some retrocession statutes were added as a new section to existing cession statutes.
- Some retrocession statutes were enacted as stand-alone statutes.
- Some states enacted retrocession statutes for certain federal lands, but not all classifications.
- Some states never enacted retrocession statutes at all.

Following is the framework for cession and retrocession adopted by this State.

Existing Cession Laws

Rhode Island consents to the transfer of jurisdiction from Rhode Island to the United States with certain reservations and conditions:

---

[3] *US v. Duncan*, 34 M.J. 1232, 1241 (1992). Though agencies may enter into MOUs to assign duties, these agreements do not have the authority to extinguish jurisdiction. See also, *Earth Island Institute v. Mosbacher*, 929 F.2d 1449 (9th Cir. 1991). An interdepartmental agreement can neither modify the statutory contours of a court's jurisdiction nor divest an agency of its statutory powers.

[4] *James v. Dravo Contracting Company*, 302 U.S. 134 (1937). A State may refuse exclusive federal jurisdiction and retain jurisdiction consistent with the governmental purposes for which the property is acquired. "A transfer of legislative jurisdiction carries with it not only benefits but obligations, and it may be highly desirable, in the interest both of the national government and of the State, that the latter should not be entirely ousted of its jurisdiction. The possible importance of reserving to the State jurisdiction for local purposes which involve no interference with the performance of governmental functions is becoming more and more clear as the activities of the Government expand and large areas within the States are acquired. There appears to be no reason why the United States should be compelled to accept exclusive jurisdiction, or the State be compelled to grant it in giving its consent to purchases." *Id.*, at 148.

[5] Once the United States Supreme Court held in *Dravo* that a state could reserve legislative authority, it became necessary for Congress to amend 18 U.S.C. § 7(3), by adding the words "so as," restoring criminal jurisdiction over those places previously presumed to be under exclusive Federal legislative jurisdiction, and to enact 40 USC § 255, requiring the United States to file with the state a formal request of jurisdiction, "exclusive or partial as he may deem desirable." See H.R. Rep. No. 1623, 76th Cong., 3d Sess. 1 (1940); S. Rep. No. 1788, 76th Cong., 3d Sess. 1 (1940).

R.I. Gen. Laws Ann. § 42-1-2 : Jurisdiction of state – Land ceded to United States

"The jurisdiction of the state shall extend to, and embrace, all places within the boundaries thereof, **except as to those places that have been ceded to the United States, or have been purchased by the United States with the consent of the stat**e. Provided, however, with respect to all land, the jurisdiction over which shall have been ceded to the United States by the state of Rhode Island, the **state of Rhode Island shall have and hereby does retain concurrent jurisdiction with the United States of and over that lan**d, for the **sole and only purpose of serving and executing thereon civil and criminal process** issuing by virtue of and under the laws and authority of the state of Rhode Island."

R.I. Gen. Laws Ann. § 42-2-2. Exemption from taxation.

"The lots, parcels, or tracts of land selected pursuant to § 42-2-1, together with the tenements and appurtenances for the purposes mentioned in § 42-2-1, shall be held exempt from taxation by the state of Rhode Island."

R.I. Gen. Laws Ann. § 42-2-8 : Execution of state process

"All civil and criminal processes issued under the authority of this state or of any department, division or officer thereof may be served and executed on any lot, piece, parcel or tract of land acquired by the United States under the authority of this chapter, and in any buildings or structures that may be erected thereon, in the same manner as if jurisdiction had not been ceded under the authority of this chapter."

State Reservations

Certain powers may be reserved or held back by the state when it makes a general grant of authority to the United States government. Rhode Island reserved the following powers:

Service of Process

- "[T]he state of Rhode Island shall have and hereby does retain concurrent jurisdiction with the United States of and over that land, for the sole and only purpose of serving and executing thereon civil and criminal process." [6]

Existing Retrocession Laws

Rhode Island consents to the transfer of jurisdiction from the United States to Rhode Island with certain conditions. The process for a transfer of jurisdiction from the United States to the State is not defined in statute.

[6] 42 R.I. Gen. Laws Ann. § 42-1-2 and 42 R.I. Gen. Laws Ann. § 42-2-8.

42 R.I. Gen. Laws Ann. § 42-56.2-9. Acceptance of Relinquishment of Federal Jurisdiction

"The governor is authorized, empowered, and may accept on behalf of the state, relinquishment of federal jurisdiction over any property situated within the state and subject to the legislative jurisdiction of the United States government."

Barriers to Juvenile Justice in Existing Framework

A fifty-state analysis of existing frameworks identified ways to close potential gaps in the statutory structure. Closing these gaps through legislative amendments can remove barriers to the establishment of concurrent jurisdiction between the State and the United States over juvenile matters on military installations.

The gap analysis of Rhode Island's framework is as follows:

Step One: Regarding the transfer of jurisdiction from the State to the United States (cession):

1. Does the State have a general statutory structure to transfer jurisdiction from the State to the United States? **Yes**, in R.I. Gen. Laws Ann. § 42-1-2.
2. Does the structure reserve at least concurrent jurisdiction to the State? **No. This is a potential gap.** The statute reserves only concurrent jurisdiction "for the sole and exclusive purposes of service of process." R.I. Gen. Laws Ann. § 42-1-2.
3. Does the structure specifically include juveniles? **No.**
    → If juveniles are not specifically identified, are juveniles classified under a category of law that is identified? **No. This is a potential gap.** Juvenile law is classified as "civil" in Rhode Island. *State v. Day*, 911 A.2d 1042 (R.I. 2006). However, the State does not reserve concurrent jurisdiction over civil, criminal, nor juvenile matters by statute.
4. Does the structure have a requirement to clearly define the land effected by the transfer of jurisdiction? (e.g., filing the deed, metes and bounds, legal description) **No. This is a potential gap.**
5. Does the structure include future expansions of military installations? **No. This is a potential gap.**
6. Does the structure delegate the power to approve the transfer of jurisdiction to another entity? **No. This is a potential gap.**
7. Are there clear procedures for offer, acceptance, and record-keeping regarding the transfer of jurisdiction? **No. This is a potential gap.**
    → Even if this gap is remedied, courts adjudicating proper jurisdiction will examine whether there is sufficient evidence to show that the procedural steps were followed.
8. Is there direct case law regarding the status of jurisdiction over juvenile offenses on military installations in the State? **No.**

Step Two: Regarding the transfer of jurisdiction back to the State (retrocession):

1. Does the State have a general statutory structure allowing the transfer of jurisdiction from the United States back to the State? **Yes**, in R.I. Gen. Laws Ann. § 42-56.2-9.

2. Does that statutory structure specifically include juveniles? **No.**
3. Does that statutory structure have a requirement to clearly define the land effected by the transfer of jurisdiction? (e.g., filing the deed, metes and bounds, legal description) **No, this is a potential gap.**
4. Does the statutory structure include future expansions of military installations? **No, this is a potential gap.**
5. Does the statutory structure delegate the power to approve the transfer of jurisdiction to another entity? **Yes**, the governor.
6. Are there clear procedures for offer, acceptance, and record-keeping regarding the transfer of jurisdiction? **No. This is a potential gap.**
    → Even if this gap is remedied, courts adjudicating proper jurisdiction will examine whether there is sufficient evidence to show that the procedural steps were followed.
7. Is there direct case law interpreting the status of jurisdiction over juvenile offenses on military installations in the State? **No.**

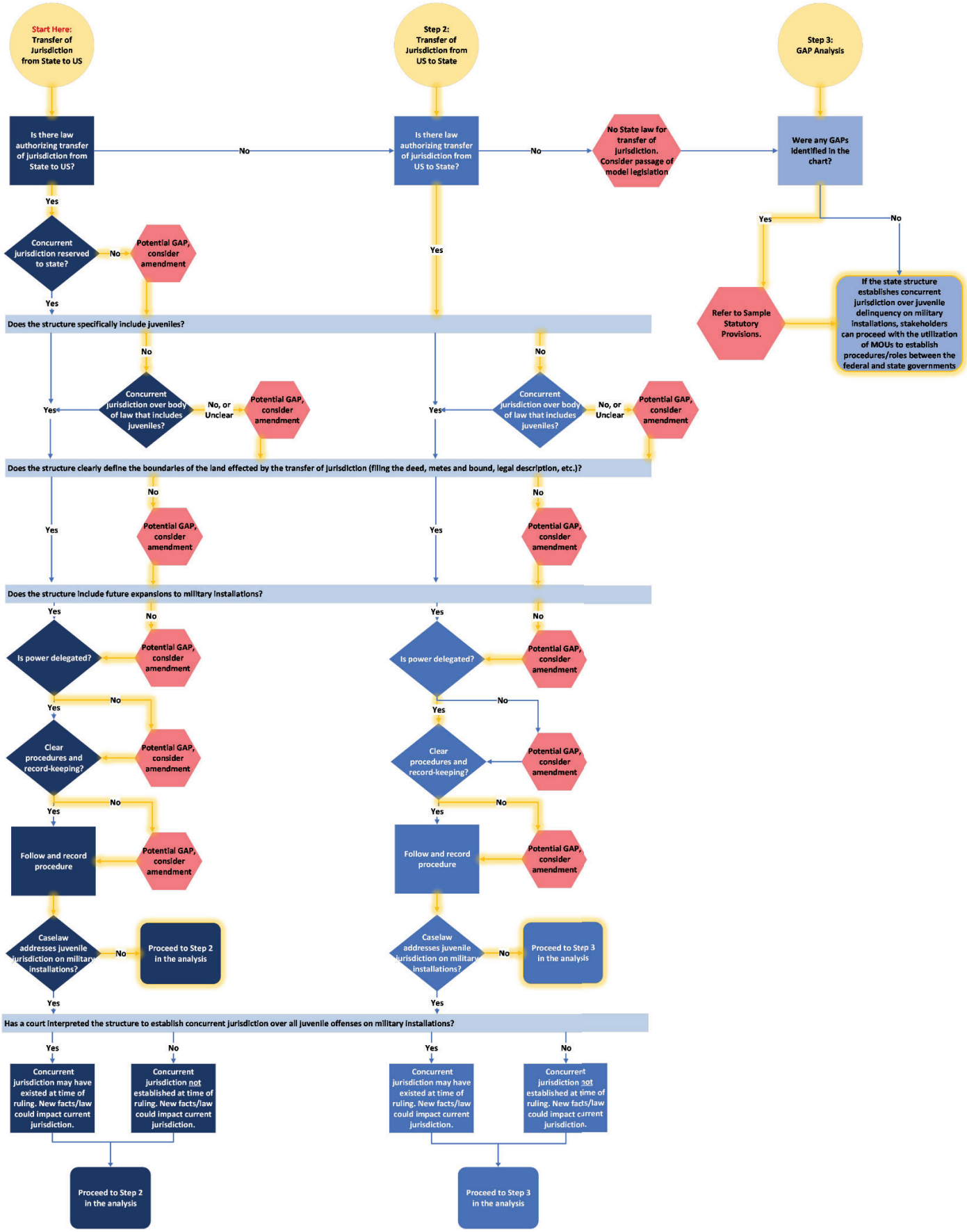
Step Three: Resolving the Legislative Gaps:

1. Were any Gaps identified in the chart? **Yes. See Table 39.1 for specifics.**
2. Once concurrent jurisdiction over juveniles is lawfully established at an installation, an MOU can then be used by local authorities to establish specific coordination needs.

Table 39.1 – Barriers to Juvenile Justice in Rhode Island's Existing Framework

Gap	Why it is Important	Best Practice
Does not explicitly identify juveniles.	Juvenile law is unique. Even if concurrent jurisdiction exists over civil or criminal matters, it is not definitive this would extend to juvenile delinquency.	Include model language explicitly identifying juveniles.
Does not require the affected lands to be defined at the time of transfer.	A jurisdictional challenge may occur when it is unclear what the jurisdiction is on particular parcels of the installation.	Include model language advising the Installation Commander to identify the lands affected by the transfer of jurisdiction.
Does not indicate if the status of jurisdiction includes future expansions to the military installation.	Military installations frequently expand, realign, and consolidate. If a framework does not take into account these possibilities, there is the potential previous grants/establishments of concurrent jurisdiction are "frozen in time" and do not extend to any changes after the cession/retrocession.	Include model language advising the Installation Commander to indicate if the request to transfer jurisdiction includes any future expansions of the installation.
Does not offer a clear procedure for offer, acceptance, and record-keeping regarding the transfer of jurisdiction.	When transfers of jurisdiction occur but are not documented in a publicly accessible location, tracking the jurisdictional status for a military installation can be challenging. This could result in a dispute regarding if the United States or the State have jurisdiction to adjudicate a matter.	Include model language requiring transfers of jurisdiction to be recorded.

The next page provides a visual representation of Rhode Island's current framework.



Establishing/Confirming Juvenile Jurisdiction on Military Installations

Even when a legislature has authorized the ability to pursue concurrent jurisdiction over juvenile matters, there are additional steps to ensure individual installations have actually secured concurrent jurisdiction to investigate and adjudicate these matters:

1. Confirm whether state law allows for the exercise of jurisdiction over violations of federal law by a juvenile when concurrent jurisdiction exists between the State and United States.

2. Confirm whether state statute allows participating federal agencies (such as the United States Attorney and other relevant state, family, or youth agencies) to receive and disclose juvenile information.

In Rhode Island, there are sufficient statutes in place to allow Rhode Island to exercise jurisdiction over violations of federal law by a juvenile, but there is not a framework for the sharing of juvenile information between participating agencies.

The existing framework for juvenile matters on military installations includes:

14 R.I. Gen. Laws Ann. § 14-1-5. Exclusive Jurisdiction

"The court shall, as set forth in this chapter, have exclusive original jurisdiction in proceedings:
"(1) Concerning any child residing or being within the state who is: **(i) Delinquent**; (ii) Wayward; (iii) Dependent; (iv) Neglected; or (v) Mentally disabled;
"(2) Concerning adoption of children;
"(3) To determine the paternity of any child alleged to have been born out of wedlock and to provide for the support and disposition of that child in case that child or the child's mother has residence within the state; and
"(4) [Deleted by P.L. 2021, ch. 39, § 3 and P.L. 2021, ch. 40, § 3]
"(5) Referred to the court in accordance with the provisions of § 14-1-28."

R.I. Gen. Laws Ann. § 14-1-3. Delinquent and Dependent Children
…
"(5) defines **"Delinquent," when applied to a child,** to mean and include **any child** who has committed any offense that, if committed by an adult, would constitute a felony, or **who has on more than one occasion violated any of the other laws of the state or of the United States** or any of the ordinances of cities and towns, other than ordinances relating to the operation of motor vehicles."

R.I. Gen. Laws Ann. § 38-2-2 : Definitions
...
"(4) "**Public record" or "public records"** shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, magnetic or other tapes, electronic data processing records, computer stored data (including electronic mail messages, except specifically for any electronic mail messages of or to elected officials with or relating to those they represent and correspondence of or to elected officials in their official capacities), or other material regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. **For the purposes of this chapter, the following records shall not be deemed public:**
…

"(C) **Child custody and adoption records, records of illegitimate births, and records of juvenile proceedings before the family court.**
"(D) **All records maintained by law enforcement agencies for criminal law enforcement and all records relating to the detection and investigation of crime, including those maintained on any individual or compiled in the course of a criminal investigation by any law enforcement agency**. Provided, however, such records shall not be deemed public only to the extent that the disclosure of the records or information (a) Could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings; (b) Would deprive a person of a right to a fair trial or an impartial adjudication; (c) Could reasonably be expected to constitute an unwarranted invasion of personal privacy; (d) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution that furnished information on a confidential basis, or the information furnished by a confidential source; (e) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions; or (f) Could reasonably be expected to endanger the life or physical safety of any individual. Records relating to management and direction of a law enforcement agency and records or reports reflecting the initial arrest of an adult and the charge or charges brought against an adult shall be public."
…

R.I. Gen. Laws Ann. § 14-1-64. Disposition of juvenile records

"(a) All police records relating to the arrest, detention, apprehension, and disposition of any juveniles **shall be kept in files separate and apart from the arrest records of adults and shall be withheld from public inspection**, but the police report relating to the arrest or detention of a juvenile shall be open to inspection and copying upon request and upon payment of copying costs in accordance with § 38-2-4 by the parent, guardian, or attorney of the juvenile involved. After disposition of an offense and upon execution of an appropriate release and upon payment of copying costs in accordance with § 38-2-4 by the parent, guardian or attorney of the juvenile involved, records relating to the arrest, detention, apprehension and disposition of the juveniles shall be open to inspection and copying by the parent, guardian, or attorney of the juvenile involved.
"(b) Notwithstanding subsection (a) of this section, the identity of any juvenile waived pursuant to § 14-1-7.1 or certified and convicted pursuant to § 14-1-7.2 shall be made public."

Relevant Judicial Rulings

Past judicial interpretations of statutes or constitutional provisions are important because they create binding precedents that future courts must generally apply and follow. In determining the appropriate court for juvenile complaints to be heard, the courts will examine how similar issues have been resolved in previous cases. However, interpretations may evolve as diverging fact patterns and newly identified issues arise. Over time, courts may modify, refine, or distinguish doctrines and interpretations through subsequent cases. The cases provided here are examples of how courts in Rhode Island have interpreted jurisdiction (and if available, juvenile jurisdiction) on federal enclaves.

Rhode Island does not have any relevant reported case law regarding jurisdiction on federal enclaves.

Summary

Rhode Island has a statutory framework to transfer jurisdiction from the State to the United States and from the United States to the State. The State Legislature has not established jurisdiction over juveniles at military installations within its borders by statute. Adoption of four amendments is appropriate to resolve the following identified issues, and ensure the ability to establish concurrent juvenile jurisdiction at military installations in Rhode Island: (1) a clause that specifically incorporates juvenile law into the existing authorization; (2) a clause that requires clear identification and recording of the boundaries of the jurisdiction; (3) a clause that automatically includes military installation boundary expansions as a part of the jurisdictional territory; and (4) a clause that creates clear procedures for offer, acceptance, and record-keeping regarding the transfer of jurisdiction.

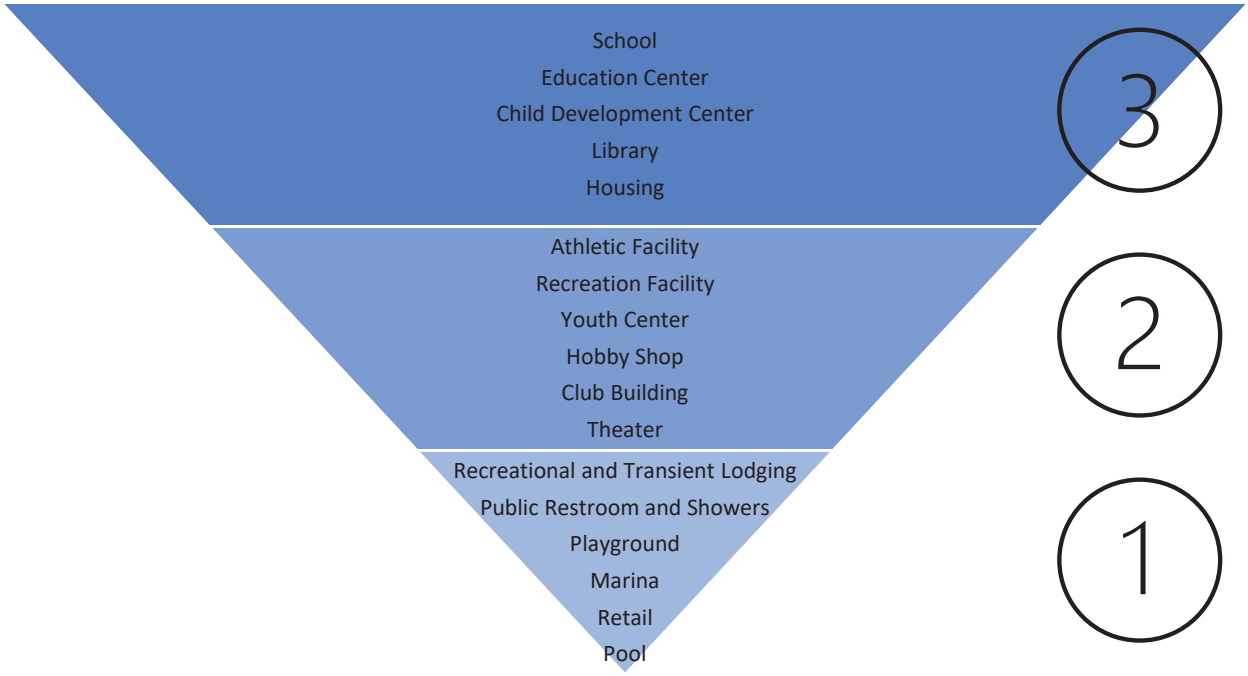
In order to determine whether concurrent jurisdiction has actually been established at individual installations, further inspection of the facts is required. Once concurrent jurisdiction is established or confirmed, pursuant to the recommendation of the Secretary of Defense, stakeholders can proceed with the utilization of a memorandum of understanding (MOU) to establish procedures and roles between local agencies.

Report of Specific Military Installations in Rhode Island

In 1976, the Federal Government compiled a document identifying the type of jurisdiction for each federal area within each State.[7] In 2020, each military branch reported the updated status of jurisdiction for each military installation to the Undersecretary of Defense.[8] This is the data utilized for this portion of the report.

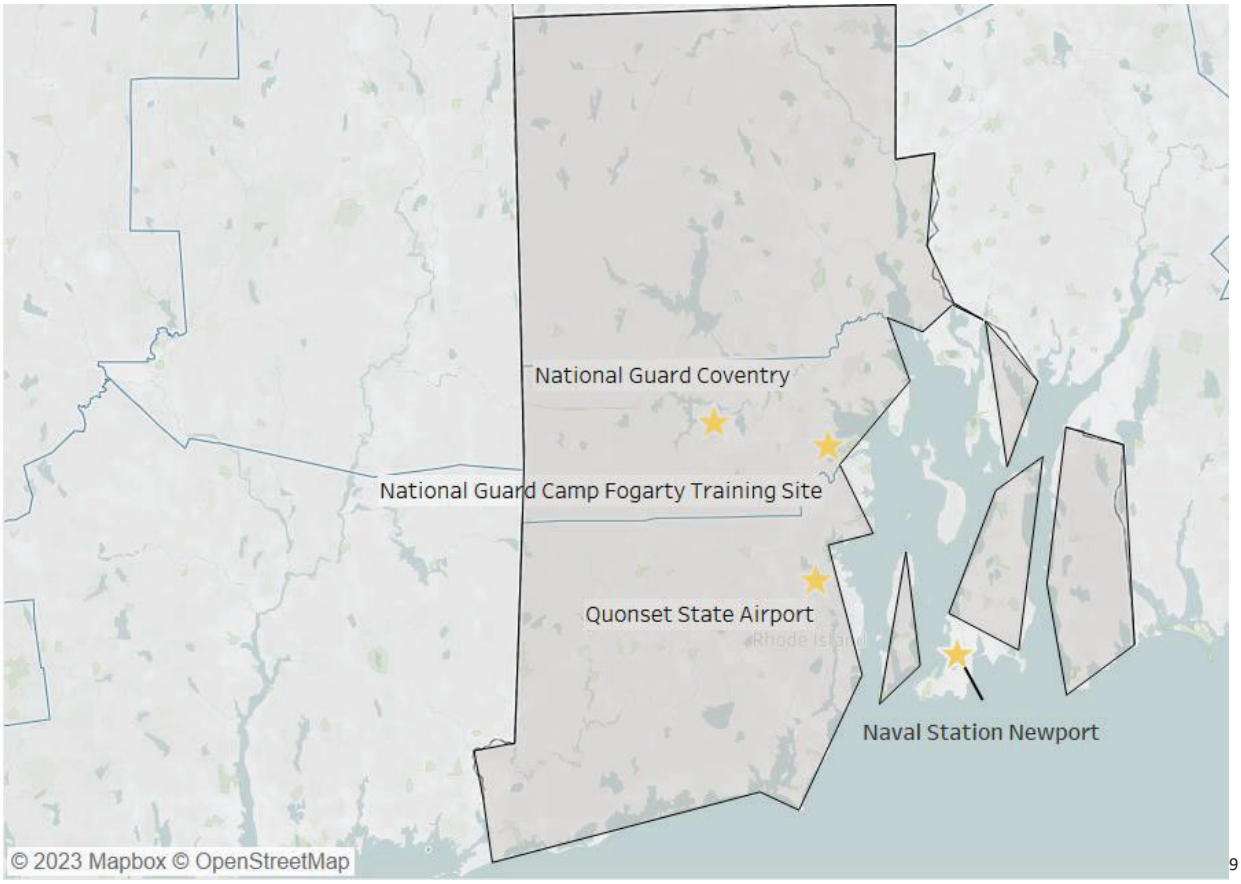
The graphic and the map that follows include only installations where there is a likelihood of juvenile presence. There may be other installations or sites in the State that are not relevant to this report which are not included. Indicators of juvenile presence were derived from military facility codes (FACs) which include locations such as schools, swimming pools, commissaries, parks, playgrounds, movie theaters, gyms, childcare facilities, and housing located on the installation. Those indicators were then given a specific weight to give more significance to certain data points, allowing for a more accurate representation of the indicators of juvenile presence. Facilities likely to serve only or mostly juveniles were given a higher importance value.

Table 39.2 – Categories of Military Facility Codes Related to Juveniles and the Weights Assigned to Them Indicating Likelihood of a Juvenile Presence.



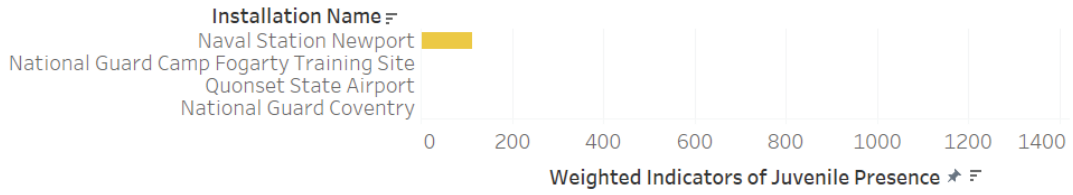
[7] General Services Administration, *Inventory Report on Jurisdictional Status of Federal Areas within the States*, (June 30, 1962) [hereinafter Inventory Report].
[8] Memorandum from Ellen M. Lord, Under Sec'y of Def., to Deputy Sec'y of Def. on Establishing Concurrent Jurisdiction on Military Installations (Mar. 14, 2020) (on file with the Department of Defense).

Map 39.1 – Installations in Rhode Island with a Juvenile Presence



[9]

Graph 39.1 – Weighted Indicators of Juvenile Presence in Rhode Island by Installation



[10]

[9] Installations depicted on map have facilities likely to indicate a juvenile presence. Source: *Juvenile Justice Information System*, Department of Defense (2023) (on file with the Department of Defense).
[10] *Juvenile Justice Information System*, Department of Defense (2023) (on file with the Department of Defense).

In Rhode Island, the jurisdiction over several installations is included by reference in the cession and retrocession statutes passed by the legislature for the entire state. In addition to these laws, the legislature has passed statutes applicable to specific installations about jurisdiction. Following are descriptions of military installations with a juvenile presence or installation-specific statute(s) in Rhode Island:

Naval Station Newport in Newport County is home to the Naval War College, established in 1880, and Naval Hospital established in 1909.[11] It has approximately 2,200 permanent active-duty personnel and 17,000 students processed annually.[12] The housing is comprised of 325 student quarters and 425 staff quarters on the installation.[13] Rhode Island consents to cede jurisdiction for the installation by statute.[14] The state cedes exclusive jurisdiction and only reserves the power for service of process.[15] The Navy reports the establishment of concurrent jurisdiction is in progress.[16] A finding of exclusive jurisdiction is consistent with these facts.

42 R.I. Gen. Laws Ann. § 42-1-3 : Tracts ceded to United States – Reserved jurisdiction

…

"(44) A tract of land situated in the town of Middletown, encompassing the Naval Station Newport's Fire Fighter Trainer complex; referred to as AREA VIII in the attached deed."

The **Air National Guard** hosts multiple sites in Rhode Island. The only site with indicators of juvenile presence is **Quonset Point Air National Guard Base** (the former Naval Air Station Quonset Point), which is located in Washington County[17] in North Kingstown, RI, approximately 20 miles south of Providence, RI.[18] The 143rd Airlift Wing moved to Quonset State Airport in 1980.[19] The installation reports proprietary jurisdiction.[20]

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[11] *Naval Station Newport In-Depth Overview*, Military OneSource, https://installations.militaryonesource.mil/in-depth-overview/naval-station-newport (last visited June 12, 2023).
[12] *Id*.
[13] *Naval Station Newport Housing*, Military OneSource, https://installations.militaryonesource.mil/military-installation/naval-station-newport/housing/housing (last visited June 12, 2023).
[14] 42 R.I. Gen. Laws Ann. § 42-1-3.
[15] *Id*.
[16] Ellen M. Lord, *supra* note 8.
[17] *Quonset Air National Guard Base*, Base Directory, https://www.basedirectory.com/quonset-air-national-guard-base-directory (last visited June 12, 2023).
[18] *Id*.
[19] *143rd Airlift Wing History*, 143rd Airlift Wing, https://www.143aw.ang.af.mil/About-Us/Fact-Sheets/Display/Article/451677/143rd-airlift-wing-history/ (last visited September 22, 2023).
[20] Ellen M. Lord, *supra* note 8.

The **Rhode Island National Guard** hosts multiple sites in Rhode Island. The Army did not report the jurisdiction status for these specific sites.[21] The sites with indicators of juvenile presence includes:

- **Camp Fogarty Training Site** is located in southeastern Rhode Island, approximately 15 miles south of Providence, RI.[22] It was originally established in 1939 as the United States Naval Construction Battalion Center.[23] It served as a rifle range in World War II, then in 1967, was renamed Camp Fogarty and leased to the Rhode Island Army National Guard by the U.S. Navy.[24] In 1993 the installation was officially transferred from the U.S. Navy to the RIARNG under the Base Realignment and Closure Act.[25] It encompasses over 17,800 acres of land (including all the outlying training ranges)[26]and trains over 37,000 personnel in a year.[27] Training facilities are used by all military branches, federal and state law enforcement, fire departments, and youth organizations.[28]
- **Coventry National Guard Station** is located in Washington, RI.[29]

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[21] Ellen M. Lord, *supra* note 8.
[22] Army National Guard, *Camp Fogarty Training Site, Rhode Island* (December 2019) https://www.denix.osd.mil/orap/denix-files/sites/31/2021/01/2019_RI121184411100_CampFogartyTS.pdf.
[23] *Id*.
[24] *Id*.
[25] *Id*.
[26] *Id*.
[27] [27] Office of the Adjutant General, Annual Report 2017, Rhode Island National Guard (July 2017) https://ri.ng.mil/Portals/31/Documents/RI%20National%20Guard%20Annual%20Report%202017.pdf.
[28] *Id*.
[29] Juvenile Justice Information System, *supra* note 10.

Legend 39.1. Military Branch Icons

Air Force		Army		Navy	
Marines		Space Force			

Table 39.3. Jurisdiction and MOA Status by Installation

Installation	Reporting Branch	Jurisdiction Status	MOA Status
Naval Station Newport		State consent established for retrocession; additional procedural steps required.	No MOA reported.
Quonset Point Air National Guard Base		State access to juvenile jurisdiction established.	No MOA reported.
Camp Fogarty Training Site		State consent established for retrocession; additional procedural steps required.	No MOA reported.
Coventry National Guard Station		State consent established for retrocession; additional procedural steps required.	No MOA reported.

The installation described in this section does not have facilities likely to indicate a juvenile presence.[30] The installation is governed by the statute passed by the legislature for the specific installation.

The **AF Reserve Training Center (Peters-Fournier Airport)** does not have indicators of juvenile presence.[31] Rhode Island consents to cede jurisdiction for the installation by statute.[32] The state cedes exclusive jurisdiction and only reserves the power for service of process.[33]

42 R.I. Gen. Laws Ann. § 42-1-3 : Tracts ceded to United States – Reserved jurisdiction

…

"(35) A parcel of land lying within the reservation of the Peters-Fournier Airport of Rhode Island situated in the towns of Lincoln and Smithfield, ceded to the United States for the express purpose of establishing and developing upon the land a specialist training center for the United States air force reserve and for the erection of buildings, utilities, and other structures for military uses in this regard;…."

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[30] At the time of writing, this installation did not have facilities identified to be an indicator of juvenile presence. Accordingly, it is not depicted on Map 39.1 or Graph 39.1 and only included here to explain the legislation passed by the State for this specific installation.

[31] Juvenile Justice Information System, *supra* note 10.

[32] 42 R.I. Gen. Laws Ann. § 42-1-3.

[33] *Id*.

The installations described in this section are no longer in service. The installations were governed by the statute passed by the legislature for the specific installation.

Fort Adams
42 R.I. Gen. Laws Ann. § 42-1-3 : Tracts ceded to United States – Reserved jurisdiction
…
"(18) A tract of land on Brenton's Neck, in Newport, being the site of Fort Adams;…."

Fort Walcott
42 R.I. Gen. Laws Ann. § 42-1-3 : Tracts ceded to United States – Reserved jurisdiction
…
"(19) Goat Island in the harbor of Newport, being the site of Fort Walcott and a lighthouse;…."

Dutch Island
42 R.I. Gen. Laws Ann. § 42-1-3 : Tracts ceded to United States – Reserved jurisdiction
…
"(20) Dutch Island, between Jamestown and Narragansett, purchased for the purpose of a lighthouse and the location of a fort;…."

Fort Wetherill
42 R.I. Gen. Laws Ann. § 42-1-3 : Tracts ceded to United States – Reserved jurisdiction
…
"(29) A tract of land south of Jamestown, on Conanicut Island, Rhode Island, being the site of Fort Wetherill;…."

Fort Getty
42 R.I. Gen. Laws Ann. § 42-1-3 : Tracts ceded to United States – Reserved jurisdiction
…
"(30) A tract of land on the northwesterly shore of Conanicut Island, commonly known as Fox Hill, being the site of Fort Getty;…."

Fort Kearny
42 R.I. Gen. Laws Ann. § 42-1-3 : Tracts ceded to United States – Reserved jurisdiction
…
"(31) A tract of land south of Saunderstown, on the westerly shore of Narragansett Bay, commonly known as Boston Neck, being the site of Fort Kearny;…."
