



SECRETARY OF THE ARMY
WASHINGTON

21 MAR 2019

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Directive 2019-13 (Response to Major Juvenile Misconduct and Referral of Civilian Criminal Offenses to Civilian Authorities)

1. References. Applicable references are in the enclosure.
2. Purpose. This directive establishes policies and procedures for the Army's response to major juvenile offenses occurring on Army installations, as well as the referral of both adult and juvenile criminal cases to civilian authorities.
3. Applicability. This directive applies to the Regular Army, Army National Guard/Army National Guard of the United States, and U.S. Army Reserve. Joint basing guidance is provided in accordance with Department of Defense joint basing implementation guidance, applicable joint base memorandums of agreement, and Department of Defense supplemental guidance.
4. Definitions. For the purpose of this directive, the following definitions apply:
 - a. Major juvenile misconduct is defined as any act by a person who has not attained the age of majority as defined by applicable Federal or State law, but who has attained the minimum age for juvenile delinquency as defined by applicable Federal or State law, that would be classified as a felony crime in accordance with the applicable Federal, State, or local civilian law if an adult committed the act.
 - b. Juvenile problematic sexual behavior is defined as behaviors initiated by children and youth under the age of 18 that involve sexual body parts (genitals, anus, buttocks, or breasts) in a manner that deviates from normative or typical sexual behavior and are developmentally inappropriate and/or potentially harmful to the individual initiating the behavior or others.
5. Background. Civilian criminal misconduct occurring on Army installations, including juvenile-on-juvenile sexual assault, threatens the safety, health, welfare, and morale of Soldiers, Civilians, and Family members who comprise Army communities. The Army must improve its response to allegations of major juvenile misconduct and attempt to facilitate the referral of major juvenile cases to State authorities who are often best positioned to determine the appropriate disposition for alleged major juvenile misconduct. To improve law enforcement response to civilian crime occurring on an installation and ensure appropriate disposition of criminal offenses, U.S.-based

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installations with exclusive Federal jurisdiction must also seek to establish concurrent criminal jurisdiction for civilian criminal offenses.

6. Policy

a. Major Juvenile Misconduct. Response to major juvenile misconduct occurring on U.S. and overseas installations is a senior commander responsibility.

(1) Review and Implementation. Within 60 days of the date of this directive, senior commanders will review and improve policies for responding to allegations of major juvenile misconduct occurring on installations under their command. Command policies will:

- ensure the care and safety of the victim,
- ensure the safety of the community,
- ensure immediate investigation of the allegations,
- account for the privacy interests and potential medical needs of both the victim and alleged offending juvenile,
- ensure alleged misconduct is recorded into the Army Law Enforcement Reporting and Tracking System (ALERTS) or other database where appropriate, and
- facilitate the referral of cases to civilian authorities for investigation and/or determination of appropriate disposition.

(2) Report and Investigation of Juvenile Problematic Sexual Behavior. Each incident of juvenile-on-juvenile sexual assault or problematic sexual behavior occurring on an Army installation will be reported, investigated, and resolved in accordance with applicable law, policies, and procedures.

(3) Victim Assistance

(a) Senior commanders will ensure a command representative informs the victim (or if a minor, the victim's parents or guardians) of the command's policy for referring cases to civilian authorities. The command representative will also provide the victim (or if a minor, the victim's parents or guardians) with the contact information for the civilian investigative or prosecution authority, preferably the department responsible for assisting victims of crime.

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(b) For cases involving juvenile-on-juvenile problematic sexual behavior OR sexual misconduct, the installation Family Advocacy Program Manager will be informed promptly and will coordinate victim assistance and advocacy services with the victim (or if a minor, the parents of juvenile victims) and alleged juvenile offenders.

(4) Notifications to Gaining Command

(a) In cases when a child or youth is alleged to have engaged in problematic sexual behavior, is undergoing treatment, and is pending relocation to another Army or nonmilitary community, the installation's military treatment facility Family Advocacy Program will notify the gaining installation's military treatment facility Family Advocacy Program or civilian equivalent to ensure continuity of care, pursuant to Army Regulation (AR) 608-18 (The Family Advocacy Program) (reference j).

(b) Any Family member who is registered or required to register as a sex offender under any provision of the law must provide proof of registry to the installation provost marshal's office before occupancy or overnight visitation in on-post housing, pursuant to AR 420-1 (Army Facilities Management) (reference h). Failure to do so will result in the eviction of the host sponsor from housing.

(c) Commanders will take all practical and reasonable measures to ensure the safety and security of other installation juveniles consistent with Federal and State law, Department of Defense instructions, and Army regulations.

(5) Command Administrative Action. Appropriate command responses to juvenile misconduct include the consideration of command administrative actions, including the early return of dependents (for juvenile Family members outside the continental United States); barring from the installation; removal from Government on-post housing (or requesting removal to military housing privatization initiative partners); suspension or revocation of Army Air Force Exchange Service or Army morale, welfare, and recreation privileges; or other action. Commanders will not impose administrative action that interferes with a host nation's authority and ability to adjudicate the alleged juvenile misconduct.

(6) Juvenile Review Boards. Garrison commanders will consider the use of Juvenile Review Boards as a tool to address allegations of minor on-post juvenile misconduct and promote the rehabilitation of on-post juvenile offenders. Commanders may develop and implement local rules on the composition and convening of the Review Boards that best meets the needs and resources of their respective command while respecting the privacy interests of the alleged juvenile offender. Commanders are

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reminded that Review Boards are not an appropriate forum for addressing major juvenile misconduct.

b. Referral of Cases to Civilian Authorities

(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, pursuant to 10 United States Code section 2683 (reference a). A retrocession will be supported by a memorandum of agreement (MOA) addressing the process and responsibilities between the Army, State, and U.S. Department of Justice for the referral of alleged major juvenile misconduct to the appropriate State court or prosecution authority. Within 90 days of this directive, commanders of exclusive Federal jurisdiction installations, including U.S. Army Reserve garrisons, will engage with area authorities at the Federal, State, and local levels, including the local U.S. Attorney's Office, to determine interest and feasibility in the retrocession of exclusive jurisdiction for major juvenile misconduct. Jurisdiction over individual cases involving juveniles should only be relinquished when the State has procedures under which cases involving juvenile cases can be adjudicated in a juvenile proceeding, unless the offense is of sufficient gravity that adjudication as an adult is appropriate. Installation commanders are reminded that, pursuant to AR 405-20 (Federal Legislative Jurisdiction) (reference g), the Deputy Assistant Secretary of the Army (Installations, Housing, and Partnerships) is the approval authority for all retrocession actions. The Office of the Army General Counsel will review all requests for retrocessions. Commanders will coordinate efforts for retrocession with the U.S. Attorney for the relevant district, the U.S. Army Corps of Engineers, and the Office of the Judge Advocate General's Criminal Law Division.

(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, which are not criminal courts yet address juvenile misconduct. Commanders pursuing retrocession agreements may also consider entering into MOAs with local law enforcement and prosecution authorities as an interim measure pending finalization of the retrocession. Commanders should understand that MOAs do not confer criminal jurisdiction to the State, but establish a process for referring juvenile cases to State juvenile or family courts. All MOAs addressing the

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referral of juvenile cases to State or local juvenile or family courts will be coordinated with the Office of the Judge Advocate General's Criminal Law Division and applicable U.S. Attorney's Office.

(c) Alternate Referral Process. If neither retrocession with the State nor an MOA with the local prosecution authorities is feasible or recommended, commanders will consider (i) referring juvenile cases to State or local prosecutors without an MOA for potential adjudication in State juvenile or family courts and (ii) referring juvenile cases to the local U.S. Attorney's Office for potential adjudication in Federal court.

(2) Civilian Adult Criminal Offenses. For U.S.-based installations with exclusive Federal jurisdiction, senior commanders will seek to establish concurrent jurisdiction with the State for civilian adult criminal offenses committed on the installation through retrocession of jurisdiction pursuant to reference a. A retrocession will be supported by an MOA addressing the process and responsibilities between the Army, State, and Department of Justice for the referral of civilian adult criminal offenses to the appropriate prosecution authority. Within 90 days of this directive, commanders of exclusive Federal jurisdiction installations, including Army Reserve garrisons, will engage with area authorities at the Federal, State, and local levels, including the local U.S. Attorney's Office, to determine interest and feasibility in the retrocession of exclusive criminal jurisdiction for civilian adult criminal offenses. Commanders of installations with exclusive Federal jurisdiction should understand that an MOA with the State or local civilian authority without a retrocession agreement does not confer criminal jurisdiction to the State or local authority.

(a) U.S.-Based Installations With Concurrent Jurisdiction. Commanders will review and assess current formal agreements with local law enforcement and prosecution authorities to determine whether modification is necessary to better respond to both civilian and juvenile misconduct.

(b) Overseas Installations. Commanders of overseas Army installations will continue to comply with existing international agreements and regulations. Commanders must ensure their response to alleged civilian misconduct includes robust coordination and collaboration with host nation authorities.

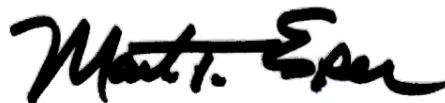
c. Reporting Requirement. Within 90 days of the date of this directive, and continuing every 90 days thereafter until completion, commanders of U.S.-based installations with exclusive Federal jurisdiction, including Army Reserve garrisons, will provide a status on their command's efforts to enter into a retrocession agreement with its host State to the Office of the Judge Advocate General's Criminal Law Division. By 15 October of each year, The Judge Advocate General will provide a consolidated

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status report to Army senior leadership, the Office of the Chief Legislative Liaison for appropriate coordination with Congress, and the Department of Defense Office of General Counsel.

7. Proponent. The Assistant Secretary of the Army (Manpower and Reserve Affairs) is the proponent for this policy and will coordinate with members of the Army Secretariat and Army Staff to implement its provisions into relevant Army regulations within 2 years of the date of this directive.

8. Duration. The provisions of this directive will remain in effect until publication of the revised regulations.



Mark T. Esper

Encl

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REFERENCES

- a. Title 10, United States Code, section 2683 (Relinquishment of legislative jurisdiction; minimum drinking age on military installations).
- b. Title 18, United States Code, section 3771 (Crime victims' rights).
- c. Title 18, United States Code, chapter 403 (Juvenile Delinquency).
- d. John S. McClain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232, section 1089 (2018).
- e. U.S. House of Representatives Report No. 115-874 (2018) (Conference Report to Accompany H.R. 5515, John S. McClain National Defense Authorization Act for Fiscal Year 2019).
- f. Department of Defense Instruction 5525.07 (Implementation of the Memorandum of Understanding (MOU) Between the Departments of Justice (DoJ) and Defense Relating to the Investigation and Prosecution of Certain Crimes), June 18, 2007.
- g. AR 405-20 (Federal Legislative Jurisdiction), 21 February 1974, Reprinted With Change 1.
- h. AR 420-1 (Army Facilities Management), 12 February 2008, Including Rapid Action Revision Issued 24 August 2012.
- i. AR 600-20 (Army Command Policy), 6 November 2014.
- j. AR 608-18 (The Family Advocacy Program), 30 October 2007, Including Rapid Action Revision Issued 13 September 2011.

Enclosure