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Law

**DISPOSITION OF JUVENILE MISCONDUCT
CASES**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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This instruction provides the framework for the disposition of juvenile misconduct cases and the treatment of juvenile offenders. The purpose of this instruction is to establish policies, responsibilities, and procedures for the administrative disposition of misconduct committed by juveniles on Pope Air Force Base (AFB) and to establish the Pope AFB Juvenile Corrections Board. This instruction applies to all military sponsors; unemancipated juveniles visiting or residing on Pope AFB; and all commanders of units and organizations assigned, attached, or tenants on Pope AFB; as well as military dependents who reside off base and engage in misconduct on Pope AFB or any other military installation. For guidance pertaining to juvenile misconduct on Fort Bragg, consult XVIII Airborne Corps and Fort Bragg Regulation 190-9.

SUMMARY OF REVISIONS

This is the second revision to Pope AFB Instruction 51-101, 16 Jul 1998, Disposition of Juvenile Misconduct Cases. POPEI 51-101 creates and directs the operation of the Pope AFB Juvenile Corrections Board (JCB). This revision to the Pope AFB instruction contains the following major changes: Section **1.3.** and **1.4.** are modified to allow Pope AFB Special Assistant U.S. Attorneys to prosecute juvenile offenders in U.S. Magistrate's court; Section **1.5.** is added to clarify the role of 43 SPTG/CC and the power to delegate authority by 43 AW/CC; Section 2 is added to establish the Juvenile Corrections Board as a standing Pope AFB committee; Section 3 is modified to add relevant civilian officials from Pope AFB to the board; Section **4.1.** is modified to permit, but not require, enlisted Juvenile Corrections Board members to recuse themselves from cases involving Youthful Offenders whose sponsor(s) is an officer; Section **4.1.4.** is added to clarify the use of rules of evidence during Juvenile Corrections Board proceedings; Section **5.4.** is added to describe the responsibility of the Juvenile Hearing Officer during Juvenile Corrections Board proceedings; Section 6 is added to clarify the appeals process as well as describe suspension, mitigation, set aside, or remission of Juvenile Corrections Board action; Section 7 is added to reflect that case files and all records and information revealing the identity of Juvenile Corrections Board participants, both juvenile and sponsor, will be maintained in accordance with 5 U.S.C. 552a, in the Office of the Staff Judge Advocate, 43AW/JA.

1. Policy.

1.1. The Delinquency Prevention Act of 1974, Pub. L. 94-415, 18 U.S.C. 5031-5042 (2001), *Juvenile Justice and the Juvenile Justice System*, applies to Pope AFB. This statute states that misconduct committed by a juvenile should be disposed of outside the federal courts whenever feasible. Accordingly, this instruction establishes an administrative system in lieu of juvenile delinquency proceedings or prosecution in the U.S. Magistrate Court. This instruction complies with the policies of these laws by ensuring that an offense involving a juvenile is identified, adjudicated, and disposed of in a manner that stresses deterrence and rehabilitation of the juvenile.

1.2. The Juvenile Corrections Board Program is designed to:

1.2.1. Educate juveniles and the military sponsor/parents on the consequences of misconduct and crime (i.e., the impact crime has on the juvenile offender, the offender's family, the victim(s), and the community);

1.2.2. Rehabilitate juveniles through counseling, education, community service, restitution, and other means of corrective action as determined by the Juvenile Hearing Officer (JHO) and the Juvenile Corrections Board. Therefore, any punishments should be designed to prevent further misconduct and instill respect for the law in Pope Air Force Base's juveniles; and

1.2.3. Protect the best interest of both the juvenile and the Pope AFB community. Accordingly, the system avoids labeling the juveniles with the stigma of "criminal" or "delinquent." Instead the term "Juvenile Offender" is used in this instruction.

1.3. Participation by the juvenile in the Juvenile Corrections Program is voluntary. However, certain administrative sanctions may be taken against a juvenile offender even if the juvenile refuses to submit to the jurisdiction of the JCB. (For example, the 43 AW/CC retains the authority to bar the juvenile from base, and the 43 SPTG/CC retains the authority to terminate the juvenile's family's on-base housing privileges). Conversely, certain rehabilitative measures, such as referral to counseling, performance of community service, or participation in a work program by the juvenile offender, may only be undertaken if the juvenile agrees to submit to the jurisdiction of the JCB. If the juvenile refuses to submit to the jurisdiction of the JCB, the Federal Litigation Division of the XVIII Airborne Corps Office of the Staff Judge Advocate may prosecute the juvenile for the misconduct in the case of conduct which constitutes a felony under the United States Code. All other conduct may be prosecuted in U.S. Magistrate's Court by the Pope Air Force Base Office of the Staff Judge Advocate or the Federal Litigation Division of the XVIII Airborne Corps Office of the Staff Judge Advocate.

1.4. The decision to refer the juvenile to the JCB, rather than to prosecute the juvenile in U.S. Magistrate's Court will be made by the 43 AW/JA in consultation with the Special Assistant U.S. Attorney in the Federal Litigation Division of the Office of the Staff Judge Advocate of the XVIII Airborne Corps, Fort Bragg, and the 43 AW/CC.

1.4.1. If the juvenile is referred to the JCB, the juvenile will be asked to sign, and the sponsor/parent to co-sign, a Memorandum of Agreement For Deferral of Prosecution thereby agreeing to: Submit to the jurisdiction of the JCB; accept the decision of the JCB; make restitution up to a total of \$500 to the victim(s), as determined by the JCB; and complete corrective action prescribed by the JCB. Prior to the JCB hearing, the Juvenile Corrections Board Administrator (JCBA) will advise the juvenile and his or her sponsor that he or she may submit a statement to be considered by the JCB.

1.5. 43 AW/CC or, in his/her absence, the 43 SPTG/CC, is the final approval authority for any disposition recommended by the Juvenile Corrections Board. This authority may be delegated by 43 AW/CC.

2. Juvenile Corrections Program.

2.1. The Juvenile Corrections Board Program will include a Juvenile Corrections Board as a standing committee of Pope AFB. The Board will meet regularly to review cases of juvenile misconduct upon referral by 43 AW/JA and certification that the case is appropriate for the JCB by the Juvenile Corrections Board Administrator.

3. Composition of the Juvenile Corrections Board.

3.1. The Juvenile Corrections Board will consist of the incumbents of the following positions or their designated representatives:

3.1.1. 43 SPTG/CD

3.1.2. 43 AW/JA

3.1.3. 43 SFS/CC

3.1.4. 43 AW/CCC

3.1.5. 43 MDOS/SGOHF

3.1.6. For juveniles who are sponsored by enlisted members, the member's First Sergeant and supervisor.

3.1.7. 43 AW/HC as a non-voting advisor regarding the rehabilitation process as suggested by the voting JCB members. 43 AW/HC's presence on the JCB is in an advisory capacity only.

3.1.8. Appropriate civilian base officials designated by the 43 SPTG/CD, i.e., base youth center director, etc.

3.2. 43 SPTG/CD is designated the JHO, all other incumbents or their representatives are designated Juvenile Corrections Board members.

4. Juvenile Corrections Board Procedures.

4.1. Informal Administrative Hearings. Proceedings before the Juvenile Corrections Board shall be informal hearings that are non-criminal in nature. The hearing is an opportunity for the JCB to discuss the misconduct with the alleged offender and his or her sponsor and for the alleged offender to explain his or her conduct. If, because of a disparity between the military rank of the Juvenile Offender's sponsor and the military rank of a member of the JCB or the presence of a conflict of interest between the member of the JCB and the Juvenile Offender's sponsor, the JHO shall allow the member to withdraw from deliberation or consideration of the particular case at issue.

4.1.1. During the JCB, the sponsor and juvenile may present witnesses and confront those making allegations of juvenile misconduct. Any sponsor, parent, or guardian appearing before the JCB has a right to address the JCB and/or speak on behalf of the juvenile.

4.1.2. All relevant evidence/information will be heard at the board; however, legal counsel or representation of the juvenile will not be allowed at the JCB.

- 4.1.3. Statements made by the juvenile in connection with the investigation of the alleged offenses or made at the JCB hearing will not be used against the juvenile should any subsequent criminal proceeding become necessary.
- 4.1.4. Neither the Federal Rules of Evidence nor the Military Rules of Evidence apply in any form to JCB proceedings.
- 4.2. Once the juvenile agrees to submit to the jurisdiction of the JCB, and a JCB hearing is convened, the JCB will:
 - 4.2.1. Consider the evidence to determine whether the juvenile committed the alleged offense(s) using the preponderance of the evidence standard;
 - 4.2.2. Design an appropriate administrative sanction, rehabilitative, education, or work program, or combination thereof;
 - 4.2.3. Impose the corrective action/administrative sanction in an effort to rehabilitate the juvenile offender and deter the juvenile from committing further acts of misconduct; and
 - 4.2.4. Suspend prosecution of the charges and then dismiss the charges if the juvenile successfully fulfills the terms and conditions of the corrective action prescribed by the JCB.
- 4.3. Parties Present. Attendance during a hearing shall be limited to the following persons:
 - 4.3.1. The Juvenile Corrections Board members.
 - 4.3.2. The military sponsor of the juvenile.
 - 4.3.3. The parent(s) or guardian(s) of the juvenile.
 - 4.3.4. The juvenile.
 - 4.3.5. The Juvenile Corrections Board Administrator, or designated representative.
 - 4.3.6. Other persons may be permitted access to the hearing room while the Board is in session with the express permission of the chairperson. The chairperson has the authority to deny a request for other parties to be present. Attorneys are not permitted to appear on behalf of the juvenile or his or her family regardless of parental consent.
- 4.4. Record of Proceedings. Recommendations for action by the Juvenile Corrections Board shall not constitute a criminal record. All proceedings before the Board are closed and information derived from the hearing is not released outside the Air Force without the consent of the parent or an offender over the age of majority.
- 4.5. Deliberation. After all parties have had an opportunity to speak, the chairperson shall recess the hearing for deliberations. The Board shall then decide whether the juvenile was involved in the alleged misconduct. A majority of the members present is sufficient for such a finding. A quorum requires at least three of the above-listed members.
- 4.6. Finding of No Involvement. If the Board determines that the juvenile was not involved in the alleged misconduct, the chairperson, through the Board Administrator, shall send the juvenile, his or her parents, and the sponsor a letter indicating this finding.
- 4.7. Finding of Involvement. If the Board finds the juvenile was involved in the alleged misconduct, the Board may do the following:

- 4.7.1. Take no action.
- 4.7.2. Verbally reprimand the juvenile and/or his parents and/or sponsor before the hearing adjourns.
- 4.7.3. Refer the juvenile to the Mental Health Services, Family Advocacy Office, the Chaplain, or other appropriate agency for counseling with the consent of the parent or guardian.
- 4.7.4. Refer the juvenile to the Pope AFB Drug and Alcohol Abuse Program, with the consent of his or her parents.
- 4.7.5. Specific Punishments:
 - 4.7.5.1. Give a written reprimand to the juvenile and/or his parent, guardian, or military sponsor.
 - 4.7.5.2. Require restitution up to the amount of \$500.
 - 4.7.5.3. Require probation (supervised or unsupervised) up to one year.
 - 4.7.5.4. Require the juvenile's attendance at "Think Smart" or similar program designed to give the juvenile offender a first look at the adult prison system.
 - 4.7.5.5. Impose a special curfew.
 - 4.7.5.6. Assign community service tasks to be performed by the juvenile, with the consent of the parents.
 - 4.7.5.7. Recommend the installation commander place certain base areas or facilities off-limits to the juvenile.
 - 4.7.5.8. Recommend termination of the sponsor's military family housing privilege.
- 4.7.6. Any combination of the above actions.
- 4.7.7. Barment from Installation. In addition to the actions listed in paragraphs [4.7.1.](#) through [4.7.6.](#), the Juvenile Corrections Board may recommend the installation commander bar the juvenile from entering Pope AFB.
- 4.8. The installation commander retains the authority to order another hearing on any matter and after notice to the parents or guardians, to change a disposition of the Juvenile Corrections Board.
- 4.9. The Deputy Support Group Commander shall deliver the JCBs final decision to the youth and the youth's parents.

5. Responsibilities.

- 5.1. Juveniles are responsible for:
 - 5.1.1. Upon signing the Memorandum of Agreement for Deferral of Prosecution, submitting to the jurisdiction of the JCB; making restitution up to a total of \$500 to the victim(s), as determined by the JCB; accepting the decision of the JCB; and completing the corrective action prescribed by the JCB;
 - 5.1.2. Cooperating with Security Forces, Air Force Office of Special Investigations, JCBA, JHO, and the JCB; and

5.1.3. Cooperating in rehabilitative efforts.

5.2. Sponsors are responsible for:

5.2.1. The conduct of their children; (N.C. Gen. Stat. 1-538.1, provides that parents may be held liable in state court for up to \$2000 for damage to property or persons caused by their children).

5.2.2. Upon co-signing the Memorandum of Agreement for Deferral of Prosecution, agreeing to make restitution up to a total of \$500 to the victim(s), as determined by the JCB; aiding the juvenile offender in completing the corrective action; and, if prescribed by the JCB, participating in the rehabilitation of the juvenile offender.

5.2.3. Cooperating with Security Forces, OSI, JCBA, JHO, and JCB.

5.2.4. Ensuring that juveniles in their charge comply with all federal and state laws and regulations, as well as Pope AFB regulations, instructions, and directives.

5.3. Juvenile Corrections Board Administrator.

5.3.1. The Juvenile Corrections Board Administrator will be responsible for:

5.3.1.1. Coordinating all Board activities, including reviewing and recommending referral of cases to the JCB,

5.3.1.2. Scheduling hearings;

5.3.1.3. Providing a liaison between the Juvenile Corrections Board and respondents;

5.3.1.4. Preparing documents reflecting the Board's results;

5.3.1.5. Maintaining program information and providing data to the 43AW/CC when requested;

5.3.1.6. Recognizing trends and evaluating overall program effectiveness;

5.3.1.7. Soliciting and maintaining a list of base agencies willing to participate in the community service program;

5.3.1.8. Coordinating community service directed actions with the particular base agency involved and establishing on-site supervision by the agency involved; and

5.3.1.9. Tracking hours worked and for monitoring the accomplishment of the community service obligation.

5.3.2. The Administrator is responsible for reviewing juvenile incidents presented for referral by 43 AW/JA. Prior to referring any case to the Board, the Administrator shall ensure that the alleged misconduct is corroborated by facts. In addition, the Administrator will review the case to determine whether it is suitable for Juvenile Corrections Board consideration. In this analysis, the Administrator should take the following factors into consideration: The seriousness of the misconduct, previous misconduct, the likelihood that the Board will have a positive effect upon the juvenile, mitigating circumstances, and the availability of the juvenile. If the Administrator finds that the case is unsuitable for Juvenile Corrections Board consideration, the Administrator will refer it back to 43 AW/JA for disposition.

5.3.3. Notice. At least five duty days prior to a scheduled Juvenile Corrections Board hearing, the Administrator should send or deliver written notice to the parent or guardian of the juvenile who

has been referred to the Board. The notice shall be hand-delivered or sent to the last known address. The notice shall include the date, time and place of the hearing, the alleged misconduct, and a statement that attendance at the hearing is a mandatory formation for military personnel. At least three duty days prior to a scheduled hearing, the Administrator will deliver a copy of the case file to each board member.

5.3.4. Board Results. To ensure timely action is taken, the Administrator shall, within five duty days of a Juvenile Corrections Board hearing, prepare documents consistent with the Board's decision and recommendations and send them to 43 SPTG/CC or the installation commander for approval and signature, if appropriate. Upon approval, the Administrator may release the approved actions to the juvenile's parent or guardian. Failure to comply with the five-duty daytime period shall not in anyway affect the validity of the board results.

5.4. Juvenile Hearing Officer. The JHO is responsible for conducting the JCB hearings.

5.5. Installation Commander. The wing commander, as installation commander, is responsible for good order on Pope AFB and responding to breaches of good order and discipline by adults and juveniles. Responsibility for responding to breaches of order by juvenile offenders is delegated to the 43 SPTG/CC.

6. Appeals of Juvenile Corrections Board Actions.

6.1. Appeals of Board actions may be made, for good cause, to the 43 SPTG/CC. If the 43 SPTG/CC does not grant the appeal, further appeal may be made to 43 AW/CC. The 43 SPTG/CC or 43 AW/CC may suspend, mitigate, remit, or set aside any unexecuted portion of an approved board action. Decisions by 43 AW/CC are final.

6.1.1. Suspension. Execution of all or part of the punishment action is postponed for a specific probationary period with the understanding that it will be automatically remitted at the end of that period if the juvenile offender does not engage in any further misconduct.

6.1.2. Mitigation. The reduction of the type or amount of unexecuted punishment to a less severe punishment of the same general nature.

6.1.3. Remission. The cancellation of any unexecuted portion of a punishment.

6.1.4. Set Aside. Cancellation of the punishment in whole or in part when the appeal authority determines that, considering all the circumstances of the case, the punishment would result in a clear injustice. Set aside should not be a routine measure for an offender who simply avoids future misconduct. Suspension, mitigation and remission are designed for those situations.

6.2. Vacation of Suspension. Where a prior action has been approved and suspended, 43 SPTG/CC may vacate the suspension upon another act of misconduct by the same juvenile without referring the case to another Juvenile Corrections Board.

7. Command Action and Records.

7.1. The command action taken will be documented on the appropriate incident report and filed as prescribed by regulations governing the use of DD Form 1569, **Incident/Complaint Report**.

7.2. Case files and all records and information revealing the identity of JCB participants, both juvenile and sponsor, will be maintained in accordance with The Privacy Act of 1974, 5 U.S.C. 552a

(2001) in the Office of the Staff Judge Advocate, 43AW/JA. Case file information will not be disclosed to any person or organization outside of the Department of Defense, unless the disclosure is authorized under the Privacy Act of 1974.

7.2.1. No independent system of records of proceedings will be generated or retained by the Administrator, the JHO or the members of the Juvenile Corrections Board after the Board's decision and recommendations have been forwarded to 43 SPTG/CC for approval.

7.2.2. 43 AW/JA will provide case files and records to 43 AW/CC and 43 SPTG/CC upon request for the purposes of resolving issues raised on appeal by juveniles. After a final decision has been reached regarding such appeals, the case files and records shall be returned to 43 AW/JA.

WINFIELD W. SCOTT III, Colonel, USAF
Commander

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

Fort Bragg Juvenile Justice System, XVII Airborne Corps and Fort Bragg Regulation 190-9 (1997).

The Privacy Act of 1974, Pub. L. No. 93-579, 5 U.S.C. 552a (2001).

The Delinquency Prevention Act of 1974, Juvenile Justice and the Juvenile Justice System, Pub. L. 94-415, 18 U.S.C. 5031-5042 (2001).

Strict Liability for Damage to Person or Property by Minors, N.C. Gen. Stat. 1-538.1 (2001).

Abbreviations and Acronyms

AAFES—Army and Air Force Exchange Service

AFB—Air Force Base

AW—Airlift Wing

CC—Commander

CD—Deputy Commander

DoD—Department of Defense

HC—Base Chaplain

JA—Judge Advocate

JCB—Juvenile Correction Board

JCBA—Juvenile Correction Board Administrator

JHO—Juvenile Hearing Officer

NCOIC—Noncommissioned Officer in Charge

OIC—Officer in Charge

AFOSI—Air Force Office of Special Investigations

SFS—Security Forces Squadron

SPTG—Support Group

U.S.—United States

U.S.C.—United States Code

XVIII —the Roman numeral for eighteen (18)

Terms

Juvenile—Any unmarried, unemancipated, person under the age of 18 years who is not in military active duty status. A person is unemancipated if he/she has not attained his or her eighteenth birthday; is not living separate and apart from the military sponsor parent; nor the spouse of a service member.

Juvenile Offender—A juvenile who has been determined by the Juvenile Hearing Officer (JHO), in accordance with procedures set forth in this regulation, to have engaged in misconduct, or committed a misdemeanor on Pope AFB or any other military installation.

Misconduct—A violation of a federal, state, or local statute, installation regulations or instructions; or conduct disruptive to good order and discipline on Pope AFB. Examples include, but not limited to, any of the following: Pattern of disobedience of the lawful rules set forth by security police or recreation supervisors, etc., disrespect to military or civil servant personnel, or physical assault or battery upon any of these persons. Loitering about the streets, parking lots, and/or buildings of Pope AFB or Fort Bragg during the hours of darkness. Vandalism or destructive behavior up to \$500 in damages. Shoplifting from a Base Exchange/Post Exchange, Commissary, or other AAFES institution.

Preponderance of the Evidence—The standard of proof necessary to find that the juvenile committed the act in question. This standard is met when the evidence as a whole shows that it is more probable than not that the fact sought to be proved (that the juvenile committed the act) actually occurred.

Sponsor—An airman who is the parent or guardian of a juvenile alleged to have committed misconduct on Pope AFB or any other installation. A sponsor includes the host of a guest from off-base parents and/or guardians, who have responsibility for the conduct of juveniles in his or her charge.

Supervised Probation—Probation, which requires scheduled appearances by a juvenile offender and the juvenile's sponsor/parents before the Juvenile Corrections Board Administrator (JCBA).

Unsupervised Probation—A period of evaluation in which the execution of administrative sanction by the juvenile offender, who has admitted the misconduct, is suspended on the expectation of good behavior.

Juvenile Corrections Board—The committee charged with reviewing cases of juvenile misconduct.

Juvenile Corrections Board Administrator (JCBA)—Appointed by the 43 SPTG/CC to manage and coordinate every aspect of the JCB and the JCB Program. Acts as OIC or NCOIC of the Juvenile Corrections Board Program. Acts as the focal point and liaison between juvenile, sponsor, JCB, and all agencies involved. Acts as probation officer by requiring juvenile offender and the juvenile offender's sponsor/parent to make scheduled appearances before him or her.

Juvenile Hearing Officer (JHO)—The chairperson of the JCB, or the next senior-most member of the JCB available on the date of the hearing.