



Legal Education Series

TRIBAL JUVENILE JUSTICE CODE

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NATIONAL INDIAN JUSTICE CENTER



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NATIONAL INDIAN JUSTICE CENTER

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The National Indian Justice Center, Inc. (the Center) is an Indian owned and operated non-profit corporation with principal offices in Petaluma, California, (707) 762-8113. The Center was created through the combined efforts of those concerned with the improvement of tribal court systems and the administration of justice in Indian country. Its goals are to design and deliver legal education, research, and technical assistance which promote this improvement.

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A major activity of the Center is the design and delivery of regional training sessions for tribal court personnel under contracts with the Bureau of Indian Affairs. Since May 1983, the Center has designed and delivered more than 70 training sessions for more than 4,500 tribal court personnel and others. These training sessions have included the following topics: Alcohol and Substance Abuse, Child Abuse and Neglect, Tribal Court Probation, Indian Civil Rights Act, Indian Youth and Family Law, Juvenile Justice Systems, Basic Criminal Law, Criminal Procedure, Advanced Criminal Law, Civil Procedure, Contracts and Personal Injury, Tribal Court Management, Evidence and Objections, Legal Writing/Ethics, Opinion Writing/Ethics, Legal Research and Analysis, and Indian Housing Law.

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PUBLICATION SERVICES

The Center offers for sale many of the written training materials that are employed in our educational programs. In the near future, the Center will publish self-study materials to aid Indian justice personnel who are unable to attend the Center's training programs.

The following is a list of the Center's training publications which may be obtained by mailing the enclosed publication order form or by calling or writing to the Center.

Indian Civil Rights Act

Indian Probate Law

Indian Youth and Family Law

Contracts and Personal Injury

Criminal Procedure

Advanced Criminal Law

Evidence and Objections

Tribal Court Management/Tribal Court Operations and Procedures Manual

Indian Housing Law

Legal Writing/Ethics

Opinion Writing/Ethics

Juvenile Justice Systems

Child Abuse and Neglect

Alcohol and Substance Abuse

Tribal Court Probation

Civil Procedure in Indian Country

Legal Research and Analysis

TRIBAL JUVENILE JUSTICE CODE

This tribal juvenile justice code was developed by Jerry Gardner and Joseph Myers of the National Indian Justice Center, James Bell of the Youth Law Center in San Francisco, California, and others. It was developed for the Bureau of Indian Affairs in order to comply with the requirements of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986.

This juvenile justice code covers juvenile delinquency proceedings (referred to in the code as "juvenile offenses" or "juvenile offender" proceedings) and a narrow range of status offenses (referred to in the code as "family in need of services" proceedings). It does not cover child abuse and neglect, guardianship and adoption proceedings. A tribal child/family protection code which covers these proceedings has also been developed by the Center.

This tribal juvenile justice code was developed in July 1987. It has undergone an extensive review and comment process since that time. This final version of the tribal juvenile justice code reflects modifications to the code as of March 1989 as a result of the review and comment process.

This juvenile justice code should be read in conjunction with the commentary which follows the code. Any tribe considering the adoption of this code should carefully review the code and the accompanying commentary to determine the extent to which the code meets the needs of their individual community and then make any necessary changes to the code before enacting it. (Note that the tribal juvenile justice code is available on floppy disks or we can make the modifications for you on the Center's word processor. Check with us concerning the cost of these services.)

Please contact us if you have any questions concerning the tribal juvenile justice code or the tribal child/family protection code.

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TRIBAL JUVENILE JUSTICE CODE

1-1 SHORT TITLE, PURPOSE AND DEFINITIONS

1-1 A. Short Title

Title 1 (Chapters 1-1 through 1-21) shall be entitled "The Juvenile Justice Code" (code).

1-1 B. Purpose

The Juvenile Justice Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

1. To preserve and retain the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this code;
2. To recognize that alcohol and substance abuse is a disease which is both preventable and treatable;
3. To remove from children committing juvenile offenses, the legal consequences of criminal behavior and to substitute therefore a program of supervision, care, and rehabilitation consistent with the protection of the _____ Community;
4. To achieve the purposes of this code in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety;
5. To separate clearly in the judicial and other processes affecting children under this code the "juvenile offender" and the "family in need of services," and to provide appropriate and distinct dispositional options for treatment and rehabilitation of these children and families;
6. To provide judicial and other procedures through which the provisions of this code are executed and enforced and in which the parties are assured a fair hearing and their civil and other legal rights recognized and enforced;
7. To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives; and;
8. To provide a forum where an Indian child charged to be "delinquent" or a "status offender" in other jurisdictions may be referred for adjudication and/or disposition.

1-1 C. Definitions

As used in this code:

1. "Adjudicatory Hearing": A proceeding in the juvenile court to determine whether a child has committed a specific "juvenile offense" or is a "child whose family is in need of services" as set forth in a petition.
2. "Adult": An individual who is eighteen (18) years of age or older (see the definition of "transfer to tribal court").

3. **"Alcohol or Substance Abuse Emergency Shelter or Halfway House":** An appropriately licensed and supervised emergency shelter or halfway house for the care and treatment of juveniles with regard to alcohol and/or substance abuse problems.
4. **"Child":** An individual who is less than eighteen (18) years old (see the definition of "transfer to tribal court").
5. **"Consent Decree":** A court order which suspends a "juvenile offender" or "family in need of services" proceeding prior to adjudication and continues the child or the family under supervision under terms and conditions negotiated with the juvenile counselor and agreed to by all parties.
6. **"Counsel":** An advocate or attorney.
7. **"Court" or "Juvenile Court":** The Juvenile Court of the _____ Tribe.
8. **"Curriculum Change":** Includes but is not necessarily limited to: (a) a change in a child's instructor, if available; (b) a change in the scheduling of a child's classes, if available; (c) reassignment of a child into another class section, if available; (d) a change in the content of a child's course of instruction, if available; and (e) a change in the child's school, if available. (See the definition of "family in need of services".)
9. **"Custodian":** A person, other than a parent or guardian, to whom legal custody of the child has been given.
10. **"Detention":** Exercising authority over a child by physically placing them in any juvenile facility designated by the court and restricting the child's movement in that facility.
11. **"Dispositional Hearing":** A proceeding in the juvenile court to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific "juvenile offense(s)" or is a child whose "family is in need of services".
12. **"Domicile":** A person's permanent home, legal home or main residence. The domicile of a child is generally that of the custodial parent or guardian. Domicile includes the intent to establish a permanent home or where the parent or guardian consider to be their permanent home. Domicile for purposes of jurisdiction is established at the time of the alleged acts.
13. **"Emergency Foster Home":** Placement with a family whose home has been licensed to accept emergency placements of children at any hour of the day or night.
14. **"Family in Need of Services":** Means:
 - (a) a family whose child, while subject to compulsory school attendance, is habitually and without justification absent from school; or
 - (b) a family wherein there is allegedly a breakdown in the parent-child relationship based on the refusal of the parents, guardian, or custodian to permit a child to live with them or based on the child's refusal to live

with his parents, guardian or custodian; and

(c) in either of the foregoing situations:

- (1) the conduct complained of presents a clear and substantial danger to the child's life or health and the intervention of the juvenile court is essential to provide the treatment, rehabilitation or services needed by the child or his family; or
- (2) the child or his family are in need of treatment, rehabilitation or services not presently being received and the intervention of the juvenile court is essential to provide this treatment, rehabilitation or services.

(See chapters 1-16 through 1-19 of this code for specific "family in need of services" procedures).

15. **"Foster Home"**: Placement with a family whose home has been licensed to accept placement of children under the age of eighteen (18).
16. **"Guardian"**: A person assigned by a court of law, other than a parent, having the duty and authority to provide care, shelter, and control of a child.
17. **"Group Home"**: A residential detention facility which is licensed to care for children under the age of eighteen (18).
18. **"He/His"**: The use of he/his means he or she, his or her, and singular includes plural.
19. **"Interim Care"**: The status of temporary physical control of a child whose family is "in need of services" (see the definition of "family in need of services").
20. **"Juvenile Counselor"**: The juvenile counselor or the juvenile probation officer or any other appropriately titled person who performs the duties and responsibilities set forth in section 1-6B of this code.
21. **"Juvenile Facility"**: Any juvenile facility (other than a school) that cares for juveniles or restricts their movement, including secure juvenile detention facilities, alcohol or substance abuse emergency shelter or halfway houses, foster homes, emergency foster homes, group homes, and shelter homes (see individual definitions).
22. **"Juvenile Offender"**: A child who commits a "juvenile offense" prior to the child's eighteenth (18th) birthday.
23. **"Juvenile Offense"**: A criminal violation of the Law and Order Code of the _____ Tribe which is committed by a person who is under the age of eighteen (18) at the time the offense was committed.
24. **"Juvenile Presenter"**: The juvenile presenter or juvenile presenting officer or juvenile petitioner or any other person who performs the duties and responsibilities set forth in section 1-6C of this code.

25. **"Juvenile Shelter Care Facility":** Any juvenile facility other than a secure juvenile detention facility (see the definitions of "juvenile facility" and "secure juvenile detention facility").
26. **"Parent":** Includes a natural or adoptive parent, but does not include persons whose parental rights have been legally terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.
27. **"Probation":** A legal status created by court order whereby a "juvenile offender" is permitted to remain in his home under prescribed conditions and under the supervision of a person designated by the court. A "juvenile offender" on probation is subject to return to court for further proceedings in the event of his failure to comply with any of the prescribed conditions of probation.
28. **"Protective Supervision":** A legal status created by court order under which a "juvenile offender" is permitted to remain in his home or is placed with a relative or other suitable individual and supervision and assistance is provided by the court, a health or social services agency or some other agency designated by the court.
29. **"Restitution":** Financial or other reimbursement by the child to the victim, and is limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to persons, and lost wages resulting from injury, which are a direct and proximate result of the delinquent act. Restitution does not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses.
30. **"Secure Juvenile Detention Facility":** A facility which (a) contains locked cells or rooms which are separated by sight and sound from any adult inmates; (b) restricts the movement of those placed in the locked cells or rooms, and (c) complies with the other requirements of the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5601 et. seq.
31. **"Shelter Home":** A residential facility which is licensed to care for children under the age of eighteen (18) in an unrestricted setting.
32. **"Transfer to Tribal Court":** Transferring a child from the jurisdiction of the juvenile court to the jurisdiction of the tribal court according to chapter 1-3 of this code which results in the termination of the juvenile court's jurisdiction over that offense.
33. **"Tribal Council":** The tribal council of the _____ Tribe.
34. **"Tribal Court":** The adult court for the _____ Tribe.

1-2 JURISDICTION OF THE JUVENILE COURT

There is hereby established for the _____ Tribe of the _____ Reservation a court to be known as the _____ Juvenile Court. The juvenile court has exclusive original jurisdiction over all proceedings established in this code in which an Indian child residing in or domiciled on the reservation is:

1-2 A. Juvenile Offender

Alleged to be a "juvenile offender" as defined in section 1-1C of this code, unless the juvenile court transfers jurisdiction to the tribal court according to chapter 1-3 of this code; or

1-2 B. Family In Need of Services

Alleged to be a child whose family is "in need of services" as defined in section 1-1C of this code.

1-3 TRANSFER TO TRIBAL COURT

1-3 A. Transfer Petition

An officer of the court may file a petition requesting the juvenile court to transfer the child to the jurisdiction of the adult tribal court if the child is sixteen (16) years of age or older and is alleged to have committed an act which would have been considered a serious crime if committed by an adult.

1-3 B. Transfer Hearing

The juvenile court shall conduct a hearing to determine whether jurisdiction of the child should be transferred to tribal court. The transfer hearing shall be held within ten (10) days of receipt of the petition by the court. Written notice of the time, place and purpose of the hearing is to be given to the child and the child's parent, guardian, or custodian at least three (3) days before the hearing. At the commencement of the hearing, the court shall notify the child and the child's parent, guardian or custodian of their rights under chapter 1-7 of this code.

1-3 C. Deciding Factors in Transfer Hearing

The following factors shall be considered when determining whether to transfer jurisdiction of the child to tribal court:

1. the nature and seriousness of the offense with which the child is charged;
2. the nature and condition of the child, as evidenced by his age, mental and physical condition; and
3. the past record of offenses.

1-3 D. Standard of Proof in Transfer Hearing

The juvenile court may transfer jurisdiction of the child to tribal court only if the court finds clear and convincing evidence that both of the following circumstances exist:

1. there are no reasonable prospects for rehabilitating the child through resources available to the juvenile court; and

2. the offense(s) allegedly committed by the child evidence a pattern of conduct with constitutes a substantial danger to the public.

1-3 E. Pre-Hearing Report in Transfer Proceedings

At least three (3) days prior to the transfer hearing, the petitioner shall prepare a pre-hearing report for the juvenile court and make copies of that report available to the child and the child's advocate, parent, guardian or custodian. The pre-hearing report shall address the issues described in sections 1-3C and 1-3D above.

1-3 F. Written Transfer Order

A child may be transferred to tribal court only if the juvenile court issues a written order after the conclusion of the transfer hearing which contains specific findings and reasons for the transfer in accordance with sections 1-3C and 1-3D above. This written order terminates the jurisdiction of the juvenile court over the child with respect to the juvenile offense(s) alleged in the petition. No child shall be prosecuted in the tribal court for a criminal offense unless the case has been transferred to tribal court as provided in this chapter.

1-4 JUVENILE COURT PROCEDURE

1-4 A. Non-Criminal Proceedings

No adjudication upon the status of any child in the jurisdiction of the juvenile court shall be deemed criminal or be deemed a conviction of a crime unless the juvenile court transfers jurisdiction to the tribal court according to chapter 1-3 of this code.

1-4 B. Use in Other Proceedings

The adjudication, disposition, and evidence presented before the juvenile court shall be inadmissible as evidence against the child in any proceeding in another court, including the tribal court.

1-4 C. Rules of Procedure

The procedures in the juvenile court shall be governed by the rules of procedure for the tribal court which are not in conflict with this code.

1-5 RELATIONS WITH OTHER AGENCIES

1-5 A. Cooperation and Grants

The juvenile court is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any diversion, rehabilitation or training program(s) and to receive grants-in-aid to carry out the purposes of this code. This authority is subject to the approval of the tribal council if it involves an expenditure of tribal funds.

1-5 B. Social Services

The juvenile court shall utilize such social services as may be furnished by any tribal, federal, or state agency provided that it is economically administered without unnecessary duplication and expense;

1-5 C. Contracts

The juvenile court may negotiate contracts with tribal, federal or state agencies and/or departments on behalf of the tribal council for the care and placement of children whose status is adjudicated by the juvenile court subject to the approval of the tribal council before the expenditure of tribal funds;

1-5 D. Transfers from Other Courts

The juvenile court may accept or decline transfers from other states or tribal courts involving alleged delinquent children or alleged status offenders for the purposes of adjudication and/or disposition.

1-6 JUVENILE COURT PERSONNEL

1-6 A. Juvenile Court Judge

1. Appointment

The juvenile court judge(s) shall be appointed or elected in the same manner as the tribal court judge(s).

2. Qualifications

The general qualifications for juvenile court judge(s) shall be the same as the qualifications for tribal court judge(s). In addition, juvenile court judges shall have significant prior training and/or experience in juvenile matters.

3. Powers and Duties

In carrying out the duties and powers specifically enumerated under this juvenile justice code, judges of the juvenile court shall have the same duties and powers as judge of the tribal court, including, but not limited to, the contempt power, the power to issue arrest or custody warrants, the power to issue subpoenas, and the power to issue search warrants.

4. Disqualification or Disability

The rules on disqualification or disability of a juvenile court judge shall be the same as those rules that govern tribal court judges.

1-6 B. Juvenile Counselor/Juvenile Probation Officer

1. Appointment

The court shall appoint juvenile counselor(s) or juvenile probation officer(s) to carry out the duties and responsibilities set forth in this code. The chief judge of the tribal court shall certify annually to the tribal council the number of qualified juvenile counselor(s) or juvenile probation officer(s) needed to carry out the purpose of this code. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled "juvenile counselors" or "juvenile probation officers" or any other title which the court finds appropriate so long as they perform the duties and responsibilities set forth in this section.

2. Qualifications

The juvenile counselor must have an educational background and/or prior experience in the field of delivering social services to youth.

3. Resource Development

The juvenile court counselor shall identify and develop resources on the reservation, in conjunction with the juvenile court and the tribal council, to enhance each tribal child's potential as a viable member of the tribal community.

4. Duties:

- (a) Make investigations as provided in this code or as directed by the court;
- (b) Make reports to the court as provided in this code or as directed by the juvenile court;
- (c) Conduct informal adjustments;
- (d) Provide counseling services;
- (e) Perform such other duties in connection with the care, custody or transportation of children as the court may require.

5. Prohibited Duties

The juvenile counselor shall not be employed as or be required to perform the duties of a prosecutor, juvenile presenter or law enforcement official.

1-6 C. Juvenile Presenter

1. Appointment

The court shall appoint juvenile presenter(s) to carry out the duties and responsibilities set forth in this code. The chief judge of the tribal court shall certify annually to the tribal council the number of qualified juvenile presenter(s) needed to carry out the purpose of this code. The person(s) carrying out the duties and responsibilities set forth in this section may be labeled "juvenile presenters" or "juvenile presenting officers" or "juvenile petitioners" or any other

title which the court finds appropriate so long as they perform the duties and responsibilities set forth in this section.

2. Qualifications

The qualifications of the juvenile presenter(s) shall be the same as the qualifications for the official who acts as prosecutor for the tribal court.

3. Duties:

- (a) File petitions with the court as provided in this code;
- (b) Represent the tribe in all proceedings under this code; and
- (c) Perform such other duties as the court may order.

1-6 D. Additional Court Personnel

The court may set qualifications and appoint additional juvenile court personnel such as guardians ad litem, court appointed special advocates (CASAs), juvenile advocates, and/or referees whenever the court decides that it is appropriate to do so.

1-7 RIGHTS OF PARTIES IN JUVENILE PROCEEDINGS

1-7 A. Privilege Against Self-Incrimination

A child alleged to be a "juvenile offender" or a child whose family is "in need of services" shall from the time of being taken into custody be accorded and advised of the privilege against self-incrimination and from the time the child is taken into custody shall not be questioned except to determine identity, to determine the name(s) of the child's parent or legal custodian, or to conduct medical assessment or treatment for alcohol or substance abuse under section 1-13C of this code when the child's health and well-being are in serious jeopardy.

1-7 B. Admissibility of Evidence

In a proceeding on a petition alleging that a child is a "juvenile offender" or a child whose family is "in need of services":

- 1. an out-of-court statement that would be inadmissible in a criminal matter in tribal court shall not be received in evidence;
- 2. evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition;
- 3. unless advised by counsel, the statements of a child made while in custody to a juvenile counselor, including statements made during a preliminary inquiry, informal adjustment or predispositional study, shall not be used against the child in determining the truth of allegations of the petition;
- 4. a valid out-of-court admission or confession by the child is insufficient to support a finding that the child committed the acts alleged in the petition unless it is

corroborated by other evidence;

5. neither the fact that the child has at any time been a party to a "family in need of services" proceeding nor any information obtained during the pendency of such proceedings shall be received into evidence.

1-7 C. Fingerprinting and Photographs

A child in custody shall not be fingerprinted nor photographed for criminal identification purposes except by order of the juvenile court. If an order of the juvenile court is given, the fingerprints or photographs shall be used only as specified by the court.

1-7 D. Right to Retain Counsel

In "juvenile offender" and "family in need of supervision" cases, the child and his parent, guardian or custodian shall be advised by the court and/or its representative that the child may be represented by counsel at all stages of the proceedings. If counsel is not retained for the child, or if it does not appear that counsel will be retained, the court in its discretion may appoint counsel for the child.

1-7 E. Explanation of Rights

At his first appearance before the juvenile court, and at each subsequent appearance before the court, the child alleged to be a "juvenile offender" or a child whose family is "in need of services" and the child's parent, guardian or custodian shall be informed by the court of the following:

1. the allegations against him;
2. the right to an advocate or attorney at his own expense;
3. the right to testify or remain silent and that any statement made by him may be used against him;
4. the right to cross-examine witnesses;
5. the right to subpoena witnesses on his own behalf and to introduce evidence on his own behalf; and
6. the possible consequences if the allegations in the petition are found to be true.

1-8 JUVENILE OFFENDER--TAKING INTO CUSTODY

1-8 A. Taking A Child Into Custody

A law enforcement officer may take a child into custody when:

1. the child commits a "juvenile offense" in the presence of the officer; or
2. the officer has a reasonable suspicion to believe a "juvenile offense" has been committed by the child being detained; or

3. an appropriate custody order or warrant has been issued by the court authorizing the taking of a particular child.

1-8 B. Provision of Rights

At the time the child is taken into custody as an alleged "juvenile offender," the arresting officer shall give the following warning:

1. the child has a right to remain silent;
2. anything the child says can be used against the child in court;
3. the child has a right to the presence of his parent, guardian, or custodian and/or counsel during questioning, and;
4. the child has a right to an advocate or attorney at his own expense.

1-8 C. Release or Delivery from Custody

A law enforcement officer taking a child into custody shall give the warnings listed in section 1-8B to any child he takes into custody prior to questioning and then shall do one of the following:

1. release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate; or
2. release the child to a relative or other responsible adult tribal member if the child's parent, guardian or custodian consents to the release. (If the child is ten (10) years of age or older, the child and his parent, guardian or custodian must both consent to the release); or
3. deliver the child to the juvenile counselor, or to a juvenile facility as designated by the court, or to a medical facility if the child is believed to need prompt medical treatment, or is under the influence of alcohol or other chemical substances.

1-8 D. Review by Juvenile Counselor or Juvenile Facility

The juvenile counselor or juvenile official at the juvenile facility (as designated by the court) shall, immediately upon delivery of the child for custody, review the need for continued custody and shall release the child to his parent, guardian or custodian in order to appear at the hearing on a date to be set by the court, unless:

1. the act is serious enough to warrant continued detention and;
2. there is probable cause to believe the child has committed the offense(s) alleged; and
3. there is reasonable cause to believe the child will run away so that he will be unavailable for further proceedings; or
4. there is reasonable cause to believe that the child will commit a serious act causing damage to person or property.

1-8 E. Notification of Family

If a child is taken into custody and not released to his parent, guardian or custodian, the person taking the child into custody shall immediately attempt to notify the child's parent, guardian or custodian. All reasonable efforts shall be made to advise the parent, guardian or custodian of the reason for taking the child into custody and the place of continued custody. Such reasonable efforts shall include telephone and personal contacts at the home or place of employment or other locations where the person is known to frequent. If notification cannot be provided to the child's parent, guardian or custodian, the notice shall be given to a member of the extended family of the parent, guardian or custodian and to the child's extended family.

1-8 F. Criteria for Selecting Juvenile Facility

If the juvenile counselor or juvenile official at the juvenile facility (as designated by the court) determines that there is a need for continued custody of the child in accordance with section 1-8D of this code, then the following criteria shall be used to determine the appropriate juvenile facility for the child:

1. A child may be detained in a **Secure Juvenile Detention Facility** (as defined in section 1-1C of this code) as designated by the court only if one or more of the following conditions are met:
 - (a) the child is a fugitive from another jurisdiction wanted for a felony offense; or
 - (b) the child is charged with murder, sexual assault, or a crime of violence with a deadly weapon or which has resulted in a serious bodily injury; or
 - (c) the child is uncontrollable and has committed a serious physical assault on the arresting officer or on other security personnel while resisting arrest or detention; or
 - (d) the child is charged with committing one of the following acts which would be an offense if the child were an adult: vehicular homicide, abduction, rape, arson, burglary or robbery or
 - (e) the child is already detained or on conditioned release for another "juvenile offense,"
 - (f) the child has a demonstrable recent record of willful failures to appear at juvenile court proceedings; or
 - (g) the child has made a serious escape attempt; or
 - (h) the child requests in writing that he be given protection by being confined in a secure confinement area and there is a present and immediate threat of serious physical injury to the child.
2. A child may be housed in a **Juvenile Shelter Care Facility** (as defined in section 1-1C of this code) as designated the the court only if one of the following conditions exist:
 - (a) one of the conditions described in section 1-8F(1) above exists; or

- (b) the child is unwilling to return home or to the home of an extended family member; or
 - (c) the child's parent, guardian, custodian, or an extended family member is unavailable, unwilling, or unable to permit the child to return to his home;
 - (d) there is an evident and immediate physical danger to the child in returning home, and all extended family members are unavailable, unwilling, or unable to accept responsibility for temporary care and custody of the child.
3. A child may be referred to an **Alcohol or Substance Abuse Emergency Shelter or Halfway House** (as defined in section 1-1C of this code) if it is determined that there is a need for continued custody of the child in accordance with section 1-8D of this code and (1) the child has been arrested or detained for a "juvenile offense" relating to alcohol or substance abuse, (2) there is space available in an alcohol or substance abuse emergency shelter or halfway house designated by the court; and (3) the child is not deemed to be a danger to himself or others.

1-9 JUVENILE OFFENDER--DETENTION HEARING

1-9 A. Requirement of Detention Hearing

Where a child who has been taken into custody is not released, a detention hearing shall be convened by the court within forty-eight (48) hours, inclusive of holidays and weekends, of the child's initial detention under chapter 1-8 of this code.

1-9 B. Purpose of Detention Hearing

The purpose of the detention hearing is to determine:

- 1. whether probable cause exists to believe the child committed the alleged "juvenile offense"; and
- 2. whether continued detention is necessary pending further proceedings.

1-9 C. Notice of Detention Hearing

Notice of the detention hearing shall be given to the child and the child's parent, guardian or custodian and the child's counsel as soon as the time for the detention hearing has been set. The notice shall contain:

- 1. the name of the court;
- 2. the title of the proceedings;
- 3. a brief statement of the "juvenile offense" the child is alleged to have committed; and

4. the date, time, and place of the detention hearing.

1-9 D. Detention Hearing Procedure

Detention hearings shall be conducted by the juvenile court separate from other proceedings. At the commencement of the detention hearing, the court shall notify the child and the child's parent, guardian or custodian of their rights under chapter 1-7 of this code. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and other persons requested by the parties or the court shall be admitted.

1-9 E. Standards to be Considered at Detention Hearing

The court shall consider the evidence at the detention hearing as it pertains to the detention criteria set forth in sections 1-8D and 1-8F of this code.

1-9 F. Finding at Detention Hearing

The court shall issue a written finding stating the reasons for release or continued detention of the child. If the court determines that there is a need for continued detention, the court shall specify where the child is to be placed until the adjudicatory hearing.

1-9 G. Rehearing the Detention Matter

If the child is not released at the detention hearing, and a parent, guardian, or custodian or a relative was not notified of the hearing and did not appear or waive appearance at the hearing the court shall rehear the detention matter without unnecessary delay upon the filing of a motion for rehearing and a declaration stating the relevant facts.

1-10 JUVENILE OFFENDER--INITIATION OF PROCEEDINGS

1-10 A. Investigation by the Juvenile Counselor

The juvenile counselor shall make an investigation within twenty-four (24) hours of the detention hearing or the release of the child to his parent, guardian or custodian, to determine whether the interests of the child and the public require that further action be taken. Upon the basis of his investigation, the juvenile counselor shall:

1. recommend that no further action be taken; or
2. suggest to the child and the child's parent, guardian or custodian that they appear for an informal adjustment conference under sections 1-10B and 1-10C of this code; or
3. request the juvenile presenter to begin transfer to adult tribal court proceedings under chapter 1-3 of this code; or
4. recommend that the juvenile presenter file a petition under section 1-10D of this code. The petition shall be filed within forty-eight (48) hours if the child is in custody. If the child has been previously released to his parent, guardian, custodian, relative or responsible adult, the petition shall be filed within ten (10) days.

1-10 B. Informal Adjustment

1. During the course of the preliminary investigation to determine what further action shall be taken, the juvenile counselor shall confer with the child and the child's parent, guardian or custodian for the purpose of effecting adjustments or agreements that make the filing of the petition unnecessary.
2. The juvenile counselor shall consider the following factors in determining whether to proceed informally or to file a petition:
 - (a) nature and seriousness of the offense;
 - (b) previous number of contacts with the police, juvenile counselor or the court;
 - (c) age and maturity of the child;
 - (d) attitude of the child regarding the offense;
 - (e) willingness of the child to participate in a voluntary program, and;
 - (f) participation and input from the child's parent, guardian or custodian.

1-10 C. Informal Conference

1. After conducting a preliminary investigation, the juvenile counselor shall hold an informal conference with the child and the child's parent, guardian or custodian to discuss alternative courses of action in the particular case.
2. The juvenile counselor shall inform the child, the child's parent, guardian or custodian of their basic rights under chapter 1-7 of this code. Statements made by the child at the informal conference shall not be used against the child in determining the truth of the allegations in the petition.
3. At the informal conference, upon the basis of the information obtained during the preliminary investigation, the juvenile counselor may enter into a written agreement with the child and the child's parent, guardian or custodian specifying particular conditions to be observed during an informal adjustment period, not to exceed six (6) months. The child and the child's parent, guardian or custodian shall enter into the agreement with the knowledge that consent is voluntary and that they may terminate the adjustment process at any time and petition the court for a hearing in the case.
4. The child shall be permitted to be represented by counsel at the informal conference.
5. If the child does not desire to participate voluntarily in a diversion program, the juvenile counselor shall recommend that the juvenile presenter file a petition under section 1-10D of this code.
6. Upon the successful completion of the informal adjustment agreement, the case shall be closed and no further action taken in the case.
7. If the child fails to successfully complete the terms of his informal adjustment

agreement, the juvenile counselor may recommend that a petition be filed in the case under section 1-10D of this code.

1-10 D. Filing and Content of Petition

Formal "juvenile offender" proceedings shall be instituted by a petition filed by the juvenile presenter on behalf of the tribe and in the interests of the child. The petition shall be entitled, "In the matter of _____, a child" and shall set forth with specificity:

1. the name, birthdate, residence, and tribal affiliation of the child;
2. the names and residences of the child's parent, guardian or custodian;
3. a citation to the specific section(s) of this code which give the court jurisdiction over the proceedings;
4. a citation to the criminal statute or other law or ordinance which the child is alleged to have violated;
5. a plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged acts occurred; and
6. whether the child is in custody and, if so, the place of detention and time he was taken into custody.

1-10 E. Issuance of Summons

After a "juvenile offender" petition has been filed, the court shall direct the issuance of summons to:

1. the child;
2. the child's parent, guardian or custodian;
3. the child's counsel;
4. appropriate medical and/or alcohol rehabilitation experts, and;
5. any other person the court deems necessary for the proceedings.

1-10 F. Content of the Summons

The summons shall contain the name of the court, the title of the proceedings, and the date, time, and place of the hearing. The summons shall also advise the parties of their applicable rights under chapter 1-7 of this code. A copy of the petition shall be attached to the summons.

1-10 G. Service of the Summons

The summons shall be served upon the parties at least five (5) days prior to the hearing. The summons shall be delivered personally by a law enforcement official or appointee of the court. If the summons cannot be delivered personally, the court may deliver it by registered mail. If the summons cannot be delivered by registered mail, it may be by publication. A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

1-11 JUVENILE OFFENDER--CONSENT DECREE

1-11 A. Availability of Consent Decree

At any time after the filing of a "juvenile offender" petition, and before the entry of a judgment, the court may, on motion of the juvenile presenter or that of counsel for the child, suspend the proceedings and continue the child under supervision in his own home under terms and conditions negotiated with the juvenile counselor and agreed to by all the parties affected. The court's order continuing the child under supervision under this section shall be known as a "consent decree."

1-11 B. Objection to Consent Decree

If the child objects to a consent decree, the court shall proceed to findings, adjudication and disposition of the case. If the child does not object, but an objection is made by the juvenile presenter after consultation with the juvenile counselor, the court shall, after considering the objections and the reasons given, proceed to determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

1-11 C. Duration of Consent Decree

A consent decree shall remain in force for six (6) months unless the child is discharged sooner by the juvenile counselor. Prior to the expiration of the six (6) months period, and upon the application of the juvenile counselor or any other agency supervising the child under a consent decree, the court may extend the decree for an additional six (6) months in the absence of objection to extension by the child. If the child objects to the extension the court shall hold a hearing and make a determination on the issue of extension.

1-11 D. Failure to Fulfill Terms and Conditions

If, either prior to a discharge by the juvenile counselor or expiration of the consent decree, the child fails to fulfill the terms of the decree, the juvenile presenter may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted according to chapter 1-14 of this code. If the child is found to have violated the terms of the consent decree, the court may:

1. extend the period of the consent decree; or
2. make any other disposition which would have been appropriate in the original proceeding.

1-11 E. New Juvenile Offense Complaint

If, either prior to discharge or expiration of the consent decree, a new "juvenile offender" complaint is filed against the child and the juvenile counselor has conducted a preliminary inquiry and authorized the filing of a petition upon a finding that informal adjustment is not in the best interest of the child and public, the juvenile presenter may:

1. file a petition to revoke the consent decree in accordance with the section 1-11D of this code; or
2. file a petition on the basis of the new complaint which has been filed against the child.

1-11 F. Dismissal of Petition

A child who is discharged by or who completes a period under supervision without reinstatement of the original "juvenile offense" petition shall not again be proceeded against in any court for the same offense alleged in the petition or an offense based upon the same conduct, and the original petition shall be dismissed with prejudice. Nothing in this section precludes a civil suit against the child for damages arising from this conduct.

1-12 JUVENILE OFFENDER--ADJUDICATION PROCEEDINGS

1-12 A. Purpose and Conduct of Adjudicatory Hearing

Hearings on "juvenile offender" petitions shall be conducted by the juvenile court separate from other proceedings. The court shall conduct the adjudicatory hearing for the sole purpose of determining whether the child has committed a "juvenile offense" At the adjudicatory hearing, the child and the child's parent, guardian or custodian shall have the applicable rights listed in chapter 1-7 of this code. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and other persons requested by the parties shall be admitted.

1-12 B. Time Limitations on Adjudicatory Hearings

If the child remains in custody, the adjudicatory hearing shall be held within ten (10) days of receipt of the "juvenile offender" petition by the juvenile court. If the child is released from custody or was not taken into custody, then the adjudicatory hearing shall be held within thirty (30) days of receipt of the "juvenile offender" petition by the juvenile court.

1-12 C. Notice of Hearing

Notice of the adjudicatory hearing shall be given to the child and the child's parent, guardian or custodian, the child's counsel and any other person the court deems necessary for the hearing at least five (5) days prior to the hearing in accordance with sections 1-10F and 1-10G of this code.

1-12 D. Denial of Allegations

If the allegations in the "juvenile offender" petition are denied, the juvenile court shall set a date, in accordance with section 1-12B above, to hear evidence on the petition.

1-12 E. Admission of Allegations

If the child admits the allegations of the petition, the juvenile court shall consider a disposition only after a finding that:

1. the child fully understands his rights under chapter 1-7 of this code, and fully understands the consequences of his admission;
2. the child voluntarily, intelligently, and knowingly admits all facts necessary to constitute a basis for juvenile court action; and

3. the child has not, in his statements on the allegations, set forth facts, which if found to be true, would be a defense to the allegations.

1-12 F. "Juvenile Offender" Finding After Admission

If the court finds that the child has validly admitted the allegations contained in the petition, the court shall make and record its finding and schedule a disposition hearing in accordance with chapter 1-14 of this code. Additionally, the court shall specify in writing whether the child is to be continued in an out of the home placement pending the disposition hearing.

1-12 G. "Juvenile Offender" Finding After Hearing

If the court finds on the basis of proof beyond a reasonable doubt that the allegations contained in the petition are true, the court shall make and record its finding and schedule a disposition hearing in accordance with chapter 1-14 of this code. Additionally, the court shall specify in writing whether the child is to be continued in an out of home placement pending the disposition hearing.

1-12 H. Dismissal of Petition

If the court finds that the allegations on the "juvenile offender" petition have not been established beyond a reasonable doubt it shall dismiss the petition and order the child released from any detention imposed in connection with the proceeding.

1-13 JUVENILE OFFENDER -- PREDISPOSITION STUDIES: REPORTS AND EXAMINATIONS

1-13 A. Predisposition Study and Report

The court shall direct the juvenile counselor to prepare a written predisposition study and report for the court concerning the child, the child's family, environment, and any other matter relevant to need for treatment or other appropriate disposition of the case when:

1. the child has been adjudicated as a "juvenile offender"; or
2. a notice of intent to admit the allegations of the petition has been filed.

1-13 B. Contents of Predisposition Study and Report

The report shall contain a specific plan for the child, aimed at resolving the problems presented in the petition. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child under the proposed plan. Preference shall be given to the dispositional alternatives which are least restrictive of the child's freedom and are consistent with the interests of the community.

1-13 C. Medical Assessment and Treatment for Alcohol or Substance Abuse

The juvenile court may order a medical assessment of a child arrested or detained for a "juvenile offense" relating to or involving alcohol or substance abuse to determine the mental or physical state of the child so that appropriate steps can be taken to protect the

child's health and well-being.

1-13 D. Pre-Adjudication Examination of Emotionally or Developmentally Disabled Child

Where there are indications that the child may be emotionally disturbed or developmentally disabled, the court, on a motion by the juvenile presenter or that of counsel for the child, may order the child to be tested by a qualified psychiatrist, psychologist, or licensed psychometrician prior to a hearing on the merits of the petition. An examination made prior to the hearing, or as a part of the predisposition study and report, shall be conducted on an outpatient basis unless the court finds that placement in a hospital or other appropriate facility is necessary.

1-13 E. Pre-Disposition Examinations

The court may order an examination of a child adjudicated as a "juvenile offender" by a physician, psychiatrist or psychologist. The court may also, following the adjudicatory hearing, order the examination by a physician, psychiatrist or psychologist of a parent or custodian who gives his consent and whose ability to care for or supervise a child is an issue before the court at the dispositional hearing.

1-13 F. Transfer for Diagnosis

The court may order that a child adjudicated as a "juvenile offender" be transferred to an appropriate facility for a period of not more than sixty (60) days for purposes of diagnosis with direction that the court be given a written report at the end of that period indicating the disposition which appears most suitable.

1-13 G. Submission of Reports

Evaluations, assessments, dispositional reports and other material to be considered by the court in a juvenile hearing shall be submitted to the court and to the parties no later than three (3) days before the scheduled hearing date. A declaration including reasons why a report has not been completed shall be filed with the court no later than three (3) days before the scheduled hearing date if the report will not be submitted before the deadline. The court may in its discretion dismiss a petition if the necessary reports, evaluations or other material have not been submitted in a timely manner.

1-14 JUVENILE OFFENDER--DISPOSITION PROCEEDINGS

1-14 A. Purpose and Conduct of Disposition Hearing

Disposition hearings shall be conducted by the juvenile court separate from other proceedings. The court shall conduct the disposition hearing to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific "juvenile offense." The court shall make and record its dispositional order in accordance with sections 1-14E and 1-15 of this code. At the disposition hearing, the child and the child's parent, guardian or custodian shall have the applicable rights listed in chapter 1-7 of this code. The public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and persons requested by the parties shall be admitted.

1-14 B. Time Limitations on Disposition Hearings

If the child remains in custody, the disposition hearing shall be held within ten (10) days after the adjudicatory hearing. If the child is released from custody or was not taken into custody, then the disposition hearing shall be held within twenty (20) days after the adjudicatory hearing.

1-14 C. Notice of Disposition Hearing

Notice of the disposition hearing shall be given to the child and the child's parent, guardian or custodian, the child's counsel and any other person the court deems necessary for the hearing at least five (5) days prior to the hearing in accordance with sections 1-10F and 1-10G of this code.

1-14 D. Evidence and Reports

In the disposition hearing, the court may consider all relevant and material evidence determining the questions presented, including oral and written reports, and may rely on such evidence to the extent of its probative value even though not otherwise competent. The court shall consider any predisposition report, physician's report or social study it may have ordered and afford the child, the child's parent, guardian or custodian and the child's counsel an opportunity to controvert the factual contents and conclusions of the report(s). The court shall also consider the alternative predisposition report or recommendations prepared by the child or the child's counsel, if any.

1-14 E. Disposition Alternatives

If a child is found by the court to be a "juvenile offender," the court may make and record any of the following orders of disposition for the child's supervision, care and rehabilitation:

1. permit the child to remain with his parent, guardian or custodian, subject to such conditions and limitations as the court may prescribe;
2. place the child in the legal custody of a relative or other suitable person, subject to such conditions and limitations as the court may prescribe;
3. order the child to pay restitution (as defined in section 1-1C of this code);
4. place the child under protective supervision (as defined in section 1-1C of this code) under such conditions and limitations as the court may prescribe;
5. place the child on probation (as defined in section 1-1C of this code) under such conditions and limitations as the court may prescribe; or
6. place the child in a juvenile facility designated by the court, including alcohol or substance abuse emergency shelter or halfway house, emergency foster home, foster home, group home, shelter home, or secure juvenile detention facility (see section 1-1C of this code for individual definitions).

**1-15 JUVENILE OFFENDER -- REVIEW,
MODIFICATION, REVOCATION, EXTENSION OR
TERMINATION OF DISPOSITIONAL ORDERS**

1-15 A. Mandatory Review of Disposition Order

Dispositional orders are to be reviewed at the court's discretion at least once every six (6) months.

1-15 B. Modification, Revocation, or Extension of Disposition Order

The court may hold a hearing to modify, revoke, or extend a disposition order at any time upon the motion of;

1. the child;
2. the child's parent, guardian or custodian;
3. the child's counsel;
4. the juvenile counselor;
5. the juvenile presenter;
6. the institution, agency or person vested with the legal custody of the child or responsibility for protective supervision; or
7. the court on its own motion.

1-15 C. Hearing to Modify, Revoke or Extend Disposition Order

A hearing to modify, revoke or extend the disposition order shall be conducted according to sections 1-14A, 1-14C, 1-14D and 1-14E of this code.

1-15 D. Automatic Termination of Disposition Order

When the child reaches eighteen (18) years of age, all disposition orders shall automatically terminate, unless the original disposition order was made within one (1) year of the child's eighteenth (18th) birthday or after the child had reached eighteen (18) years of age, in which case the disposition order may not continue for more than one (1) year. The records concerning the child shall be destroyed according to section 1-20C of this code.

1-16 FAMILY IN NEED OF SERVICES -- INTERIM CARE

1-16 A. Limitation on Taking Into Custody

No child whose family is the subject of a proceeding alleging that the family is "in need of services" (as defined in section 1-1C of this code) may be taken into custody unless such taking into custody is in accordance with provision for "interim care" (as defined in section 1-1C of this code) set forth in sections 1-16A through 1-16J of this code.

1-16 B. Interim Care Without Court Order

A child may be taken into interim care by a law enforcement officer without order of the court only when:

1. the officer has reasonable grounds to believe that the child is in circumstances

which constitute a substantial danger to the child's physical safety; or

2. an agency legally charged with the supervision of the child has notified a law enforcement agency that the child has run away from a placement ordered by the court under chapter 1-19 of this code.

1-16 C. Procedure for Interim Care

A law enforcement official taking a child into custody under the interim care provisions of this code shall immediately:

1. inform the child of the reasons for the custody;
2. contact the juvenile counselor who shall designate placement of the child in an appropriate juvenile shelter care facility as designated by the court;
3. take the child to the placement specified by the juvenile counselor, or in the event of the unavailability of a juvenile counselor, to an appropriate juvenile shelter care facility as designated by the court; and,
4. inform the child's family in accordance with section 1-16D of this code.

1-16 D. Notification of Family

The law enforcement officer or the juvenile counselor shall immediately notify the child's parent, guardian or custodian of the child's whereabouts, the reasons for taking the child into custody, and the name and telephone number of the juvenile counselor who has been contacted. Efforts to notify the child's parent, guardian or custodian shall include telephone and personal contacts at the home or place of employment or other locations where the person is known to frequent with regularity. If notification cannot be provided to the child's parent, guardian or custodian, the notice shall be given to a member of the extended family of the parent, guardian or custodian and to the child's extended family.

1-16 E. Time Limitation on Interim Care

Under no circumstances shall any child taken into interim care under section 1-16B of this code be held involuntarily for more than forty-eight (48) hours.

1-16 F. Restrictions on Placement

A child taken into interim care shall not be placed in a jail or other facility intended or used for the incarceration of adults charged or convicted of criminal offenses. If a child taken into interim care is placed in a facility used for the detention of "juvenile offenders" or alleged "juvenile offenders," he must be detained in a room separate from the "juvenile offenders" or alleged "juvenile offenders."

1-16 G. Restriction on Transportation

A child taken into interim care shall not be placed or transported in any police or other vehicle which at the same time contains an adult under arrest, unless this section cannot be complied with due to circumstances in which any delay in transporting the child to an appropriate juvenile shelter care facility would be likely to result in substantial danger to the child's physical safety. Said circumstances shall be described in writing to

the supervisor of the driver of the vehicle within forty-eight (48) hours after any transportation of a child with an adult under arrest.

1-16 H. Voluntary Services

The juvenile counselor shall offer and encourage the child and the child's family, guardian or custodian to voluntarily accept social services.

1-16 I. Voluntary Return Home

If a child has been taken into interim care under the provisions of section 1-16B of this code and the child's parent, guardian or custodian agree to the child's return home, the child shall be returned home as soon as practicable by the child's parent, guardian or custodian or as arranged by the juvenile counselor.

1-16 J. Shelter and Family Services Needs Assessment

If the child refuses to return home and if no other living arrangements agreeable to the child and to the child's parent, guardian or custodian can be made, a juvenile counselor shall offer the child shelter in an appropriate juvenile shelter care facility as designated by the court which is located as close as possible to the residence of the child's parent, guardian or custodian. The juvenile counselor also shall refer the child and his family to an appropriate social services agency for a family services needs assessment.

1-17 FAMILY IN NEED OF SERVICES -- INITIATION OF PROCEEDINGS

1-17 A. Who May Submit Requests

Requests stating that a family is "in need of services" may be submitted by the child; the child's parent, guardian or custodian; an appropriate social services agency; and/or the juvenile counselor. A request stating that a child is habitually and without justification absent from school may also be submitted by an authorized representative of a local school board or governing authority of a private school but only if the request is accompanied by a declaration in which the authorized representative swears that the school has complied with each of the steps set forth in section 1-17G of this code.

1-17 B. Referral of Requests to Juvenile Counselor

Requests stating that a family is "in need of services" shall be referred to the juvenile counselor, who shall assist either a child or a child's parent, guardian or custodian in obtaining appropriate and available services as well as assisting in any subsequent filing of a petition alleging that the family is "in need of services".

1-17 C. Withdrawal of Request

A request stating that a family is "in need of services" may be withdrawn by the party submitting the request at any time prior to the adjudication of any petition filed in the proceedings.

1-17 D. Authorization to File Petition

A petition alleging that a family is "in need of services" shall not be filed unless the juvenile presenter has determined and endorsed upon the petition that the filing of the petition is in the best interest of the child and his family.

1-17 E. Petition--Required Signatures

A petition alleging that a family is "in need of services" shall be signed by both the juvenile presenter and the party submitting the request as authorized in section 1-17A of this code.

1-17 F. Petition--Form and Contents

A petition alleging that a family is "in need of services" shall be entitled, "In the Matter of the Family of, a child," and shall set forth with specificity:

1. the name, birthdate and residence address of the child and whether the child is the complainant or respondent in the proceedings;
2. the name and residence address of the parents, guardian or custodian of the child and whether the parents, guardian or custodian are the complainant or respondent in the proceedings;
3. that the family is a "family in need of services" as defined in section 1-1C of this code;
4. that the petitioner has exhausted or the respondent has refused appropriate and available services as evidenced by a report which shall be prepared and submitted by the juvenile counselor at the same time the petition is filed, or, in the case of petition based upon a child's alleged habitual and unjustifiable absence from school, that a declaration as required under section 1-17A of this code has been filed by a school official; and
5. the court intervention is necessary to secure services which are accessible to the court; and
6. the additional required allegations set forth in either section 1-17G or section 1-17H of this code.

1-17 G. Petition--Additional Required Allegations for School Absence

In addition to the allegations required under section 1-17F of this code, a petition alleging that a child is habitually and without justification absent from school shall also allege the following:

1. that the school and a child's parent, guardian or custodian have held a meeting or the child's parent, guardian or custodian has refused to attend a meeting to discuss the child's habitual and unjustified absence from school;
2. that the school has provided an opportunity for counseling to determine whether a curriculum change (as defined in section 1-1C of this code) would resolve the child's problem and if the local school board or governing authority of a private

school provides an alternative education program, that the child has been provided with an opportunity to enroll in the alternative education program;

3. that the school has conducted a review of the child's educational status which may include medical, psychological and/or educational testing of the child in accordance with the school regulations to determine whether learning problems may be a cause of the child's absence from school and, if so, what steps have been taken to overcome the learning problems;
4. that the social worker or other appropriate official of the child's school has conducted an investigation to determine whether social problems may be a cause of the child's absence from school and, if so, that appropriate action has been taken; and
5. that the school has sought assistance from appropriate agencies and resources available to the local school board or private school, or has referred the matter to a local social services agency for the purpose of utilizing and coordinating such agencies and resources.

1-17 H. Petition--Additional Required Allegations for Breakdown In The Parent-Child Relationship

In addition to the allegations required under section 1-17F of this code, a petition alleging that there is a breakdown in the parent-child relationship shall also allege that the filing of the petition was preceded by complying with each of the following that are applicable and appropriate:

1. the child and his family have participated in counseling or either the child or his family has refused to participate in family counseling;
2. the child has been placed in the home of a relative, if available, or the child has refused placement in the home of a relative;
3. the child has sought assistance at an appropriate juvenile shelter care facility for runaways or the child has refused assistance from such a facility; and
4. the child has been placed in a foster home or the child has refused placement in a foster home.

1-17 I. Summons in a Family in Need of Services Proceeding

After a petition alleging that a family is "in need of services" has been filed, summonses shall be issued directed to the child, the child's parent, guardian or custodian, their counsel and to such other persons as the court considers proper or necessary parties. The content and service of the summons shall be in accordance with sections 1-10F and 1-10G of this code.

1-18 FAMILY IN NEED OF SERVICES -- CONSENT DECREE

1-18 A. Availability of Consent Decree

At any time after the filing of a petition alleging that a family is "in need of services,"

and before the entry of a judgment, the court may, on motion of the juvenile presenter or that of the child, his parents, guardian or custodian, or their counsel, suspend the proceedings and continue the family under supervision under terms and conditions negotiated with juvenile counselor and agreed to by all the parties affected. The court's order continuing the family under supervision under this section shall be known as a "consent decree."

1-18 B. Objection to Consent Decree

If the child or his parents, guardian or custodian object to a consent decree, the court shall proceed to findings, adjudication and disposition of the case.

1-18 C. Court Determination of Appropriateness

If the child or his parents, guardian or custodian do not object, the court shall proceed to determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

1-18 D. Duration of Consent Decree

A consent decree shall remain in force for six months unless the family is discharged sooner by the juvenile counselor. Prior to the expiration of the six months period, and upon the application of the juvenile counselor or any other agency supervising the family under a consent decree, the court may extend the decree for an additional six months in the absence of objection to extension by the child or his parents, guardian or custodian. If the child or his parents, guardian or custodian object to the extension the court shall hold a hearing and make a determination on the issue of extension.

1-18 E. Failure to Fulfill Terms and Conditions

If, either prior to discharge by the juvenile counselor or expiration of the consent decree, the child or his parents, guardian or custodian fail to fulfill the express terms and conditions of the consent decree, the petition under which the family was continued under supervision may be reinstated in the discretion of the juvenile presenter in consultation with the juvenile counselor. In this event, the proceeding on the petition shall be continued to conclusion as if the consent decree had never been entered.

1-18 F. Dismissal of Petition

After a family is discharged by the juvenile counselor or completes a period under supervision without reinstatement of the petition alleging that the family is in need of services, the petition shall be dismissed with prejudice.

1-19 FAMILY IN NEED OF SERVICES -- HEARINGS AND DISPOSITION

1-19 A. Conduct of Hearings

"Family in need of services" hearings shall be conducted by the juvenile court separate from other proceedings. At all hearings, the child and the child's family, guardian or custodian shall have the applicable rights listed in chapter 1-7 of this code. The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and other persons requested by the parties shall be admitted.

1-19 B. Notice of Hearings

Notice of all "family in need of services" hearings shall be given to the child, the child's parent, guardian or custodian, their counsel, and any other person the court deems necessary for the hearing at least five (5) days prior to the hearing in accordance with sections 1-10F and 1-10G of this code.

1-19 C. Adjudicatory Hearing

The court, after hearing all of the evidence bearing on the allegations contained in the petition, shall make and record its findings as to whether the family is a "family in need of services." If the court finds on the basis of clear and convincing evidence that the family is a "family in need of services," the court may proceed immediately or at a postponed hearing to make disposition of the case. If the court does not find that the family is a "family in need of services" it shall dismiss the petition.

1-19 D. Predisposition Studies, Reports and Examinations

The court may order any appropriate predisposition study, report or examination under chapter 1-13 of this code.

1-19 E. Disposition Hearing

In that part of the hearing on dispositional issues all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value even though not competent had it been offered during the part of the hearings on adjudicatory issues. The court shall consider any predisposition report, physician's report or social study it may have ordered and afford the child, the child's parent, guardian or custodian and the child's counsel an opportunity to controvert the factual contents and conclusions of the report(s). The court shall also consider the alternative predisposition report or recommendations prepared by the child or the child's counsel if any.

1-19 F. Disposition Alternatives

If the court finds that a family is a "family in need of services," the court may make and record any of the following orders of disposition, giving due weight to the need to preserve the unity of the family whenever possible:

1. permit the child to remain with his parents, guardian or custodian subject to those conditions and limitations the court may prescribe, including the protective supervision (as defined in section 1-1C of this code) of the child by a local social services agency;
2. referral of the child and his parents, guardian or custodian to an appropriate social services agency for participation in counseling or other treatment program as ordered by the court;
3. transfer legal custody of the child to any of the following if the family is found to be a "family in need of services" due to a breakdown in the parent-child relationship:

- (a) a relative or other individual who, after study by the juvenile counselor or other agency designated by the court, is found by the court to be qualified to receive and care for the child, or;
- (b) an appropriate agency for placement of the child in an appropriate juvenile shelter care facility (as defined in section 1-1C of this code) for a period not to exceed thirty (30) days;

with simultaneous directed referral of the family to a social services agency for counseling and/or other social assistance. A child may be placed under this section for an additional period not to exceed ninety (90) days after a hearing to determine the necessity of an additional placement.

1-19 G. Restriction on Dispositional Placements

The child shall not be confined in an institution established for the care and rehabilitation of "juvenile offenders" unless a child whose family is found to be "in need of services" is also found to be a "juvenile offender". Under no circumstances shall a child whose family is found to be "in need of services" be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of crimes.

1-19 H. Modification, Revocation or Extension of Disposition Order

The court may hold a hearing to modify, revoke or extend a disposition order at any time upon the motion of:

1. the child
2. the child's parent, guardian, or custodian;
3. the child's counsel;
4. the juvenile counselor;
5. the juvenile presenter;
6. the institution, agency or person vested with legal custody of the child or responsibility for protective supervision; or
7. the court on its own motion.

1-19 I. Termination of Disposition Order

Any disposition order concerning a "family in need of services" shall remain in force for a period not to exceed six (6) months. The disposition order concerning a child whose family is found to be "in need of services" shall also automatically terminate when the child reaches his eighteenth (18th) birthday or is legally emancipated by the court.

1-20 JUVENILE RECORDS

1-20 A. Juvenile Court Records

A record of all hearings under this code shall be made and preserved. All juvenile court records shall be confidential and shall not be open to inspection to any but the following:

1. the child;
2. the child's parent' guardian or custodian;
3. the child's counsel;
4. the juvenile court personnel directly involved in the handling of the case; or
5. any other person by order of the court, having a legitimate interest in the particular case or the work of the court.

1-20 B. Law Enforcement Records

Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All law enforcement records shall be confidential and shall not be open to inspection to any but the following:

1. the child;
2. the child's parent' guardian or custodian;
3. the child's counsel;
4. law enforcement personnel directly involved in the handling of the case;
5. the juvenile court personnel directly involved in the handling of the case; or
6. any other person by order of the court, having a legitimate interest in the particular case or the work of the court.

1-20 C. Destruction of Records

When a child who has been the subject of any juvenile court proceeding reaches his eighteenth (18th) birthday, or the disposition order is terminated if the disposition order extends beyond his eighteenth (18th) birthday, the court shall order the clerk of the court to destroy both the law enforcement records and the juvenile court records. The clerk of the court shall respond to all records inquiries as if no records had ever existed.

1-21 JUVENILE APPEALS

1-21 A. Who Can Appeal

Any party to a juvenile court hearing may appeal a final juvenile court order, including all transfer, adjudication and/or disposition orders except that the tribe cannot appeal an adjudication order.

1-21 B. Time Limit for Appeal

Any party to appeal a final juvenile court order or disposition shall file a written notice of appeal with the court within thirty (30) days of the final order or disposition.

1-21 C. Record

For purposes of appeal, a record of proceedings shall be made available to the child, his parent, guardian or custodian, and the child's counsel. Costs of obtaining this record

shall be paid by the party seeking the appeal.

1-21 D. Stay of Appeal

A final court order or disposition of a hearing may be stayed by such appeal.

1-21 E. Conduct of Proceedings

All appeals shall be conducted in accordance with the tribal code and tribal court rules of procedure so long as those provisions are not in conflict with the provisions of this juvenile code.

TRIBAL JUVENILE JUSTICE CODE

Commentary

COMMENTARY

INTRODUCTION

This commentary is intended to serve as a tool in understanding the tribal juvenile justice code. It is also intended to serve as a tool to use in adapting the code to meet the needs of an individual community. Each section number of the commentary corresponds to the same section number of the tribal juvenile justice code. (Note that not all sections have a commentary.) The most efficient way to use this commentary is to read it together with the tribal juvenile justice code.

This juvenile justice code covers juvenile delinquency proceedings (referred to in the code as "juvenile offenses" or "juvenile offender" proceedings) and a narrow range of status offenses (referred to in the code as "family in need of services" proceedings). It does not cover child abuse and neglect, guardianship and adoption proceedings. A tribal child/family protection code which covers these proceedings has also been developed by the National Indian Justice Center.

Chapters 1-1 through 1-7, chapter 1-20, and chapter 1-21 apply to both "juvenile offender" and "family in need of services" proceedings. Chapters 1-8 through 1-15 apply only to "juvenile offender" proceedings. Chapters 1-16 through 1-19 apply only to "family in need of services" proceedings.

JUVENILE OFFENDERS

"Juvenile offender" proceedings concern alleged criminal offenses committed by a person who is under the age of eighteen (18) at the time the offense was committed. Most juvenile codes define juvenile delinquent acts as acts which, if committed by an adult, would be a crime. Most juvenile codes label this juvenile as a "delinquent," but in some cases a less stigmatizing label of "offender" is used. We have decided to use the less stigmatizing label of "offender" or "juvenile offender" in this code. A basic philosophy of juvenile law is that children are more amenable to treatment or rehabilitation than are adults. This assumption supports the practice of treating children in a different and special way.

FAMILY IN NEED OF SERVICES

This code includes detailed provisions for handling a narrow range of status offense cases. These provisions represent the emerging trend in many juvenile justice systems to limit and yet make more effective the court's jurisdiction over the child who has committed a "status" offense, that is, behavior which is an offense only for persons who have not attained adult status. Truancy, running away and ungovernability represent the more common "status" offenses.

The movement toward decreasing the role of the juvenile court in the status offense area is based on recognition of the fact that a status offense is seldom, if ever, solely the fault of the child and/or that the juvenile justice system is ill suited to deal with this type of problem. A growing number of states and tribes have enacted juvenile codes which decrease judicial involvement in status offense cases. A number of model juvenile codes have been developed which recommend the total elimination of status offense provisions.

One emerging concept is that the status offender cannot be adequately or fairly dealt with by looking at the child in isolation, but rather that the focus must be on the family unit as a whole. Consequently, juvenile codes have used terms such as "family in conflict," "family in need of assistance" or "family in need of services" to reinforce this concept.

After considering the varying approaches, we have decided to use the term "family in need of services" (or "FINS") and to draft a limited and more effective process for handling these types of cases. We decided that most tribal court systems would still need to handle this narrow range of status offense cases. (However, if a tribe decides that they want to totally eliminate these types of cases from their juvenile code, they should delete chapters 1-16 through 1-19 of this code and all references to "family in need of services" remaining in the code.)

Chapter 1-1 Short Title, Purpose and Definitions

1-1B Purpose

This section sets out the purpose and philosophy of this juvenile justice code. (Note that purpose #2 is taken from the Indian Health Service/Bureau of Indian Affairs agreement implementing the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986.) Any tribe which is considering adopting this code should carefully review these identified purposes to determine whether these purposes are consistent with the needs of their community and should also list any additional purposes which reflect the needs of their individual community. If the code is adopted, it is important that the court keep these purposes in mind throughout the juvenile court proceedings.

1-1C Definitions

The definitions are set out in alphabetic order and most of these definitions are self-explanatory with the following exceptions:

- * The definition for "family in need of services" encompasses two types of families. The first type is the family whose child "habitually and without justification" is absent from school. The second type is the family which demonstrates a breakdown in the parent-child relationship, either by the parent's refusal to allow the child to live in the home or the child's refusal to do so. Before either type of family can be defined as a FINS, the second part of the definition must also be met: (1) the conduct must be a "clear and substantial danger to the child" and court intervention is essential to resolve the problem, OR (2) the family needs "treatment, rehabilitation or services not presently being received" and court intervention is essential to provide it. (It should also be noted that the definitions for "curriculum change" and "interim care" also refer to "family in need of services" proceedings.)
- * The definition for "Secure Juvenile Detention Facility" requires that these facilities comply with the requirements of the Juvenile Justice and Delinquency Prevention Act. This code is required to include these requirements (see section 4221 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986). Since many tribes have experienced difficulty in complying with all of the requirements of the Juvenile Justice and Delinquency Prevention Act it may be necessary to take a close look at these requirements. (See the commentary concerning chapter 1-8 of this code).

- * The definition of "restitution" makes a distinction between special and general damages. The first sentence sets out the special damages which are compensable whereas the second sentence describes general damages which are not. The reason for this distinction is that restitution is generally ordered by the court as a part of a child's disposition with no hearing held on the issue. Unlike a defendant in a civil action who can contest the amount of damages he may have to pay, the child cannot contest the amount of restitution. Therefore to eliminate any possibility that the restitution may constitute a taking of property without due process of law, restitution is limited to those special damages set out in the first sentence which are easily ascertainable. This means the victim of the delinquent act must present proof of his or her loss by means of bills or other written verified statement such as an employer's state of wage loss. As another safeguard, these special damages must be a direct and proximate result of the delinquent act. This would require a victim to present evidence such as a doctor's report which would verify that the victim's injuries were directly and proximately caused by the child's act.
- * "Child" is defined as "an individual who is less than eighteen (18) years old," but it is possible to define a "child" as "an unemancipated individual who is less than eighteen (18) years old" if the tribe decides that emancipated youth do not need the special services of the juvenile court.

Chapter 1-2 Jurisdiction of the Juvenile Court

This chapter sets forth exclusive original jurisdiction for the juvenile court over all proceedings in which an Indian child residing or domiciled on the reservation is alleged to be a "juvenile offender" or a child whose "family is in need of services." If a tribe needs to establish more detailed or different jurisdictional provisions, these provisions should be included in this chapter. For instance, the tribe may want to consider (1) authorizing the juvenile court to transfer a case to another juvenile court upon a showing of good cause for the transfer; (2) providing for continuing jurisdiction over a person who is 18 years old or older but emotionally immature or otherwise in need of the special treatment provided in juvenile court; and/or (3) establishing for routine handling of minor traffic offenses by the adult court.

Chapter 1-3 Transfer to Tribal Court

This chapter sets out detailed provisions for the transfer of jurisdiction from the juvenile court to the adult criminal court in very limited circumstances. The transfer can only occur if the child is at least sixteen (16) years old, the child is alleged to have committed an act which would have been considered a serious crime if committed by an adult, and all of the provisions of chapter 1-3 are complied with. The provisions in this chapter are designed to comply with the requirements of the Indian Civil Rights Act and the U.S. Supreme Court decisions in *Kent v. U.S.*, 383 U.S. 541 (1966) and other relevant cases.

This chapter does not define a "serious" crime because the exact criminal provisions vary from tribal code to tribal code. What is intended is only very serious crimes such as those included in the Major Crimes Act. A tribe may want to list out what constitutes a "serious" crime in more detail either in this chapter or in the definitions section.

Chapter 1-4 Juvenile Court Procedure

This chapter contains three provisions with regard to juvenile court procedure:

1. juvenile court proceedings are non-criminal in nature;
2. the adjudication, disposition and evidence presented in juvenile court are inadmissible in any other proceeding; and
3. juvenile court rules of procedure should be the same as the tribal court rules of procedure unless they are in conflict with other provisions of the juvenile code.

Chapter 1-5 Relations With Other Agencies

This chapter provides the juvenile court with a great deal of flexibility in dealing with other agencies. This type of flexibility is needed for the juvenile court to be able to use all possible resources to meet the needs of the children and families who appear before the juvenile court.

As currently drafted, the code makes this authority subject to the approval of the tribal council if it involves an expenditure of tribal funds. This restriction may not be necessary if the administrative structure of the tribe provides for juvenile court control over their budget. In addition, if the juvenile court is to be considered a tribal organization under P.L. 93-638, it could be set out in this chapter. (It would also require an authorizing tribal council resolution.)

Chapter 1-6 Juvenile Court Personnel

1-6 A. Juvenile Court Judge

This section establishes that juvenile court judges shall be treated in the same manner as tribal court judges with regard to appointment, qualifications, powers and duties, and disqualification or disability. Rather than include separate sections in this code with regard to the contempt power, the power to issue arrest or custody orders the power to issue subpoenas, and the power to issue search warrants, the code simply provides that judges of the juvenile court shall have the same duties and powers as tribal court judges with regard to these and other duties and powers. (Additional, more specific appointment procedures, qualifications, powers and duties, etc., could be set out in this section.)

1-6 B. Juvenile Counselor/Juvenile Probation Officer

This code uses the title "juvenile counselor" for the person who performs the duties and responsibilities set forth in this section. However, it is made clear both in this section and in the definitions section that the persons carrying out these duties and responsibilities may be labeled "juvenile counselor," "juvenile probation officer," or any other title which the court finds appropriate.

This section establishes that "the court" shall appoint the juvenile counselor(s) and that the "chief judge" of the tribal court shall certify annually to the tribal council the number of qualified juvenile counselor(s) needed." If the appointment and reporting procedures are handled differently for a specific tribe, these provisions should be modified accordingly. Additionally, a provision requiring budgetary primacy for the juvenile court could be inserted here.

The juvenile counselor as established in this code is a distinct position from that of a law enforcement officer or that of a prosecutor or juvenile presenter. This is necessary so that the juvenile presenter can open up lines of communication with the child and gain the trust of the child. (Additional, more specific appointment procedures, qualifications, powers and duties, etc., could be set out in this section.)

1-6 C. Juvenile Presenter

This code uses the title "juvenile presenter" for the person who performs the duties and responsibilities set forth in this section. The title "juvenile presenter" is used to avoid confusing juvenile proceedings with adult criminal proceedings. However, it is made clear both in this section and in the definitions section that the person carrying out these duties and responsibilities may be labeled "juvenile presenter" or "juvenile presenting officer" or "juvenile petitioner" or any other title the court finds appropriate.

This section establishes that "the court" shall appoint the juvenile presenter(s) and that "the chief judge of the tribal court shall certify annually to the tribal council the number of qualified juvenile presenters needed." If the appointment and reporting procedures are handled differently for a specific tribe, these provisions should be modified accordingly. Again, a provision requiring budgetary primacy for the juvenile court could be inserted here. (Additional, more specific appointment procedures, qualifications, powers and duties, etc., could be set out in this section.)

1-6 D. Additional Court Personnel

This section gives the court wide latitude in appointing additional court personnel whenever the court decides that it is appropriate to do so. (More specific provisions concerning these positions could be set out in this section.)

Although the Indian Civil Rights Act only provides that a defendant is entitled to counsel "at their own expense," a number of tribes provide defense advocates. If the tribe provides defense advocates or juvenile advocates, the code should probably be modified to also include a section setting forth the provisions for the appointment, qualifications, and duties of juvenile advocates.

Chapter 1-7 Rights of Parties in Juvenile Proceedings

This chapter sets out the rights of the child and his parent, guardian or custodian during all phases of juvenile court proceedings. This chapter is designed to comply with the requirements of the Indian Civil Rights Act and the purposes of this juvenile justice code. It should be read in conjunction with the training materials on Civil Rights and Juvenile Justice in the National Indian Justice Center's training manual on Juvenile Justice Systems.

Although the Indian Civil Rights Act only provides that a defendant is entitled to counsel "at their own expense," a number of tribes provide defense advocates. If the tribe does provide defense advocates or juvenile advocates, then sections 1-7D and 1-7E should be changed to reflect this fact.

Similarly, the Indian Civil Rights Act has not been interpreted to require jury trials in juvenile proceedings. However, if the tribe does choose to provide jury trials, then chapter 1-7 should be modified accordingly.

Chapter 1-8 Juvenile Offender-Taking Into Custody

This chapter sets out the procedure for taking an alleged "juvenile offender" into custody. Section 1-8A sets out the only instance in which a law enforcement officer may take an alleged "juvenile offender" into custody. Section 1-8B sets out the rights which the officer must read to the alleged "juvenile offender". (Note that if the tribe provides juvenile advocates, then section 1-8B should be modified accordingly.)

Section 1-8C gives the law enforcement officer discretion with regard to releasing the child to his parent or relative or delivering the child to the juvenile counselor, a juvenile facility or a medical facility.

Section 1-8D provides that the child shall be released unless the criteria in section 1-8D are met. This section provides that it is the juvenile counselor or the designated official at the juvenile facility--and not the law enforcement official--who makes the decision at this point with regard to continued custody.

Section 1-8E sets out detailed requirements with regard to notification of the family.

Section 1-8F sets out detailed criteria for determining the appropriate juvenile facility for the child if continued custody is appropriate under Section 1-8D. Again, this section provides that it is the juvenile counselor or the designated official at the juvenile facility--not the law enforcement official--who makes the decision with regard to the selection of the appropriate juvenile facility.

It should be noted that this section requires the juvenile court to designate the appropriate juvenile facilities for various types of alleged "juvenile offenders" and to also designate the appropriate juvenile official at these facilities to make detention decisions. Furthermore, the juvenile court needs to communicate this information to the law enforcement agencies, juvenile counselors and the juvenile facilities.

The detention of juvenile offenders must comply with the Juvenile Justice and Delinquency Prevention Act of 1974 (P.L. 96-509) which provides that (1) juvenile status offenders and non-offenders are not to be placed in secure detention facilities; (2) suspected or adjudicated juvenile delinquents are not to be detained or confined in facilities allowing regular contact with incarcerated adults; and (3) that no juvenile is to be detained or confined in any jail or lock-up for adults by 1985 except in low population density areas or where appropriate facilities are unavailable. Many tribal juvenile justice systems have had difficulty meeting the requirements of this Act.

The specific provisions of the Juvenile Justice Delinquency Prevention Act are as follows:

Section 223(a)(12)(A) providing that juveniles who are status offenders or nonoffenders such as dependent or neglected children "shall not be placed in secure detention facilities or secure correctional facilities";

Section 223(a)(13) providing that juveniles suspected or judged to be delinquent according to Section 223(a)(12)(A) "shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges"; and

Section 223(a)(14) providing that within five years of the Juvenile Justice Amend-

ments of 1980 becoming law, that "no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall promulgate regulations which (A) recognize the special needs of areas characterized by low population density with respect to the detention of juveniles; and (B) shall permit the temporary detention of such adult facilities of juveniles accused of serious crimes against persons, subject to the provisions of paragraph (13), where no existing acceptable alternative placement is available."

(See also sections 1-1C(30), 1-16F, and 1-19G and the corresponding commentary sections for other provisions of this code which relate to the Juvenile Justice and Delinquency Provision Act.)

Chapter 1-9 Juvenile Offender-Detention Hearing

This chapter sets out the requirement of a detention hearing, the purposes of a detention hearing, the notice of detention hearing, detention hearing procedure, standards to be considered at the detention hearing, finding at detention hearing, and rehearing the detention matter.

Chapter 1-10 Juvenile Offender-Initiation of Proceedings

Section 1-10A provides that the juvenile counselor shall make an investigation to determine what action should be taken. This is the juvenile counselor's most important and difficult duty. Although the juvenile counselor decides whether to proceed or not, he can ask for advice and professional opinions. He should consult with social workers, teachers, officials with local juvenile rehabilitation programs, the juvenile presenter, and others.

Sections 1-10B and 1-10C provide for an informal adjustment and informal conference in appropriate cases. The informal adjustment is a critical stage in the juvenile proceedings and places a great deal of responsibility on the juvenile counselor. An informal adjustment diverts a child away from the judicial system. If an informal adjustment is made, the child does not appear in court and is not labeled a "juvenile offender." Procedural protections to safeguard the rights of the child have been incorporated into section 1-10C. No child may be forced to participate in an informal agreement. If a child protests and denies any wrongdoing, a petition should be filed so that the court may hear the facts and enter an order. In this way, the child has had his "day in court" and will not feel aggrieved by an informal adjustment.

Section 1-10D sets out the filing procedures for "juvenile offender" petitions and the contents of these petitions. The juvenile court should consider developing standard forms for petitions and other pleadings. Sections 1-10E, 1-10F and 1-10G set out the information with regard to the issuance, contents and service of summons.

Chapter 1-11 Juvenile Offender--Consent Decree

This chapter sets forth provisions with regard to a consent decree, that is, a court order which suspends a "juvenile offender" proceeding prior to adjudication and continues the child under terms and conditions negotiated with the juvenile counselor and agreed to by all parties. The consent decree basically provides the court with another opportunity in appropriate cases for an informal adjustment or diversion even after the petition has been filed.

Chapter 1-12 Juvenile Offender--Adjudication Proceedings

This chapter sets forth provisions with regard to "juvenile offender" adjudication proceedings.

One matter of particular importance is the issue of whether adjudicatory and other juvenile court proceedings should be public or closed proceedings. Traditionally, juvenile courts have been closed hearings because it has been felt that the notoriety and publicity of an open hearing would interfere with the rehabilitative "case work" atmosphere of the juvenile court system. However, there has been a recent trend to open at least some types of juvenile court proceedings (such as all delinquency hearings or at least the adjudicatory hearing) to the public or to give the alleged delinquent the option as to whether the hearings should be public or closed. It has been argued that closed proceedings may encourage some judges to be lax in their application of the law, that the benefits of closed hearings are unproven and that opening juvenile court hearings will generate community support for the court.

We have tentatively decided to provide for closed hearings in this code because it is the current practice in most tribal court systems. However, we would encourage each tribe to carefully examine the arguments for and against open hearings with regard to the needs of your individual communities.

Chapter 1-13 Juvenile Offender--Pre-Disposition Studies; Reports and Examinations

This chapter provides the juvenile court with a great deal of flexibility with regard to predisposition studies, reports and examinations while at the same time protecting the rights of the child in the preadjudication stage of the proceedings. The juvenile court should consider developing standard forms and procedures with the various service agencies.

Chapter 1-14 Juvenile Offender--Disposition Proceedings

This chapter sets forth provisions with regard to the purpose and conduct of disposition hearings, time limitations on disposition hearings, notice of disposition hearings, evidence and reports in disposition hearings, and disposition alternatives. The disposition alternatives in section 1-14E are designed to give the court wide latitude in fashioning an appropriate disposition for the individual "juvenile offender."

Chapter 1-15 Juvenile Offender--Review, Modification, Revocation, Extension or Termination of Dispositional Orders

This chapter sets forth provisions with regard to the review, modification, revocation, extension or termination of dispositional orders. Dispositional orders are to be reviewed at least once every six (6) months. Section 1-15B lists the parties who can move to modify, revoke or extend a disposition order. Section 1-15C provides that a hearing to modify, revoke or extend a disposition order shall be conducted according to sections 1-14A, 1-14C, 1-14D and 1-14E of this code (that is, conducted the same way as the initial disposition hearing with the same notice requirements, the same rules with regard to evidence and reports and the same disposition alternatives).

Chapter 1-16 Family In Need of Services--Interim Care

This chapter contains the interim care provisions for "family in need of services" proceedings. It authorizes crisis intervention without a court order and restraint of children only when they are in substantial danger or they have run away from an out-of-home placement authorized under the FINS disposition section.

Section 1-16A emphasizes the relationship between the interim care provisions and the FINS provisions. Interim care provides guidelines for taking the status offender into custody without a court order whereas the FINS provisions specify the procedures for judicial intervention in a status offense situation. This section makes it clear that the only method for taking the status offender into custody must be in accordance with interim care and not because there may be grounds for the filing of a FINS petition.

Section 1-16B sets forth the conduct and situation of the child which must exist before a law enforcement officer can take the child into custody. It also is the basis of the standard of care the officer must exercise so as not to falsely imprison or detain the child.

Section 1-16C insures that the officer taking the child into interim care will either immediately notify the juvenile counselor, if available, or if not, take the child to an appropriate juvenile shelter care facility as designated by the court without unnecessary delay.

Notification to the child and his or her parents is also required. Section 1-16D mandates that the law enforcement officer give the child and parent the reason for the interim care custody. Such notice does not place an unreasonable burden on the officer while at the same time it does alert both the child and parent to the justification for the state's intervention.

Section 1-16E sets out the time limits for interim care. Many model codes and state codes require a six-hour limit or different variations for different types of cases. We decided to provide that this time period be increased to forty-eight (48) hours to relieve the pressures a six-hour time limit would put on law enforcement officials on isolated reservations. Any longer time limit would be subject to challenge in federal court. a tribe, however, should carefully examine this time limit and their resources and consider reducing it to twenty-four (24) hours if possible.

Sections 1-16F and 1-16G place restrictions on the placement and transportation of a child in interim care. Neither a jail nor other correctional facility can be utilized nor can the child be placed in a vehicle containing an adult under arrest. The restriction on the facility where the child may be placed is in accord with the federal Juvenile Justice and Delinquency Prevention Act of 1974. (See the commentary concerning chapter 1-8 of this code.) The restitution on transporting the child with an adult arrestee protects not only the child from any potential danger of assault but also eliminates any law enforcement liability which could result if the child were injured. However, a provision has been added which allows a child to be placed in the same vehicle with an adult under arrest if, and only if, a delay in transporting the child "would be likely to result in substantial danger to the child's physical safety." The reasons for such delay must be in writing and submitted to the driver's supervisor within forty-eight (48) hours.

Section 1-16H corresponds to the goal of diverting children and their families from court proceedings. It also gives guidance and care to the child, helps to strengthen family ties, and prevents further exacerbation of a problem in its early stages. Section 1-16I provides for the child's return home if both the child and parents agree. The purpose of section 1-16J is to authorize as much available social service support for the child and his family as is possible without court intervention.

Chapter 1-17 Family In Need of Services--Initiation of Proceedings

This chapter sets forth provisions with regard to initiation of FINS proceedings. Section 1-17A provides that a child; the child's parent, guardian or custodian; an appropriate social service agency; and/or the juvenile counselor may submit a request stating that the "family is in need of services." It also provides that a truancy request may also be submitted by a school, but only if it is accompanied by a declaration stating that the school has complied with each of the steps set forth in section 1-17G.

Section 1-17B provides that all FINS requests for services must be referred to the juvenile counselor. The intent is to have the juvenile counselor provide the case planning function for all FINS cases.

Section 1-17C provides that a FINS request for services can be withdrawn at any time prior to adjudication of the petition. This is to encourage the informal resolution of family disputes and not to force a family to go through a judicial proceeding which may be inappropriate to the family's needs.

Sections 1-17D and 1-17E emphasize the role the juvenile presenter is to play in the initiation of a FINS proceeding. All FINS petitions must have the endorsement by the juvenile presenter that the filing is in the best interests of both the child and the family. Both the party submitting the request for services and the juvenile presenter must sign the petition. By requiring the requesting party to also sign, the importance of the proceeding will be emphasized to that person, whether it be the child, parent or school official.

Sections 1-17F, 1-17G, and 1-17H set out the form and contents of a FINS petition. Besides the parties' names and addresses, various allegations must be made. In all petitions, the FINS definition outlined in section 1-1C must be set out, as well as that "appropriate and available" services have been pursued and that the intervention of the court is now necessary to obtain further services. Once the petition is filed, the juvenile counselor must prepare a report of all the services which the parties have pursued prior to coming to the court for assistance. However, in the case of a truancy petition, an affidavit of a school official, as required under section 1-17A, can take the place of the report. (The juvenile court should consider developing standard forms for FINS petitions.)

If the petition is based on truancy, five further allegations are required (section 1-17G). These include a meeting between the school and parents, academic counseling, psychological and/or educational testing, an investigation by a social worker, as well as assistance from appropriate outside agencies. These requirements reflect the belief that the child's school is the most appropriate agency to handle educational problems, not the juvenile court.

If the petition alleges a family breakdown, the petition must contain an allegation that the parties have either pursued or refused counseling, placement of the child with a relative (if available), as well as shelter care and foster care, if any of these are appropriate (section 1-17H).

All of these allegations reflect the belief that all possible resources should be pursued before the court is involved. It is felt that a true family problem is best resolved on a voluntary basis, rather than by resort to a court's mandating that the parties obtain help.

Finally, section 1-17I sets out the procedure for issuing and serving FINS summons.

Chapter 1-18 Family in Need of Services--Consent Decree

This chapter sets forth provisions with regard to a consent decree; that is, a court order which suspends a FINS proceeding prior to adjudication and continues the family under terms and conditions negotiated with the juvenile counselor and agreed to by all parties. The FINS consent decree basically provides the court with the same opportunity as provided in "juvenile offender" cases for an informal adjustment or diversion in appropriate cases even after the petition has been filed.

Chapter 1-19 Family in Need of Services--Hearings and Disposition

This chapter contains general provisions for the conduct of all FINS hearings, notice of all FINS hearings, adjudicatory hearings, predisposition studies, reports and examinations, disposition hearings, disposition alternatives, restrictions on disposition placements, modification, revocation, or extension of disposition orders and termination of disposition orders. Basically, this section tracks the general hearing procedure for "juvenile offender" proceedings with the provision of different disposition alternatives in FINS cases.

It should be noted that this chapter does not set out time limits for each of the steps in a FINS proceeding because of concern that time limits might force the court to go through with formal proceedings rather than taking adequate time to explore possible informal resolutions of the problem. However, a tribe should carefully examine this issue before adopting this code. Even if this code is adopted without FINS proceeding time limits, it may become necessary to amend the code at a later time to add time limits if families begin to suffer due to unnecessary delays.

Chapter 1-20 Juvenile Records

This chapter sets forth provisions with regard to juvenile court records, law enforcement records, and destruction of records. The primary objective of this chapter is to ensure confidentiality of all juvenile court and law enforcement records concerning juvenile offenders and FINS proceedings. The free access given to the child; the child's parent, guardian or custodian; and the child's counsel is necessary to insure that the child and his counsel can prepare an adequate defense, correct false information, and prepare alternative disposition recommendations. Access to these records is limited to those juvenile court and law enforcement personnel who are "directly involved in the handling of the case."

Section 1-20C provides that both the juvenile court and the law enforcement records shall be destroyed at the child's eighteenth birthday or at the termination of the disposition order. Retention of records can be harmful because the child may later suffer job discrimination, denial of educational opportunities, and denial of military service. Destroying the records will give the child the opportunity to start over without the shadow of his juvenile record trailing him.

Section 1-20C provides for the court to automatically destroy these records. The child does not have to request that the court destroy the records. Once the records have been destroyed, the juvenile court and law enforcement can respond to inquiries by stating that no records exist. It should be noted that section 1-20C does not apply to "juvenile offender" cases which are transferred to adult criminal court according to chapter 1-3 of this code.

It is possible that a tribe may decide to modify section 1-20C to allow keeping "family in need of services" records when there are other minors still residing in the home as long as the records are never used against the juvenile who has turned eighteen (18) years of age.

Chapter 1-21 Juvenile Appeals

This chapter sets out the procedure for handling juvenile court appeals.