

# Chapter 13: Taking a Child into Custody

## [13.1] Overview

This chapter sets out a procedure for taking an alleged juvenile offender into custody. Most juvenile courts generally allow for youth to be taken into custody without a warrant if the law enforcement officer reasonably believes that the youth is delinquent, in need of supervision, dependent, abused, or neglected. In the case of truancy, disobedience, or neglect, in any system the legal process should begin with a summons unless waiting for the court's permission would result in an unnecessary and dangerous delay.

This section of the code should address the following:

- Under what circumstances a child can be taken into custody;
- Who decides when a child is placed in custody;
- Where a child can be placed if in custody;
- Time limits on how long a child can remain in custody;
- Notification of family; and
- Process that must be followed when a child is in custody, including when release is required.

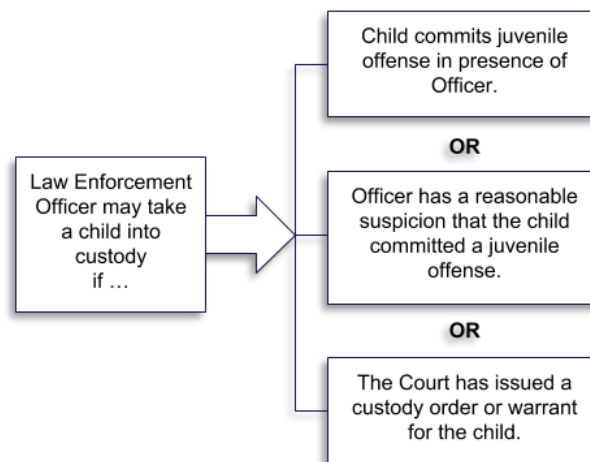
The detention of juvenile offenders must comply with the [Juvenile Justice and Delinquency Prevention Act of 1974](#) (PL 96-509) which provides that (1) juvenile status offenders and nonoffenders are not to be placed in secure detention facilities; (2) suspected or adjudicated juvenile delinquents are not to be detained or confined in facilities allowing regular contact with incarcerated adults; and (3) no juvenile is to be detained or confined in any jail or lockup for adults 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 court must designate appropriate juvenile facilities for various types of alleged “juvenile offenders” and also designate the appropriate juvenile official at these facilities to make detention decisions. Keep in mind that a Native youth has probably already experienced substantial trauma in his or her life and the event of being taken into custody by a law enforcement officer could add to that trauma. There should be a preference to place children in their homes or with a relative. Placement in foster care or other temporary care may also be appropriate in some cases. The court should exam what is reasonable to keep the youth and community safe. Communication among the

juvenile system personnel and other agencies is vitally important to find the least restrictive setting for the youth.

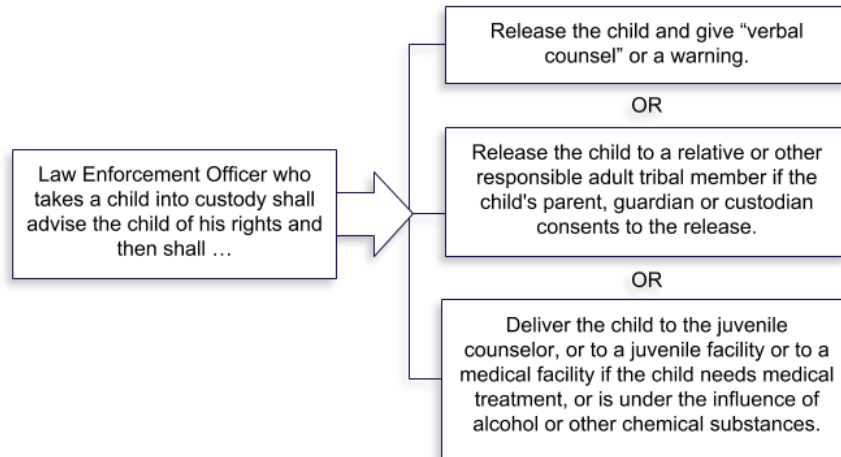
### Section 1-8 A. Taking A Child Into Custody

1989 BIA Tribal Juvenile Justice Code



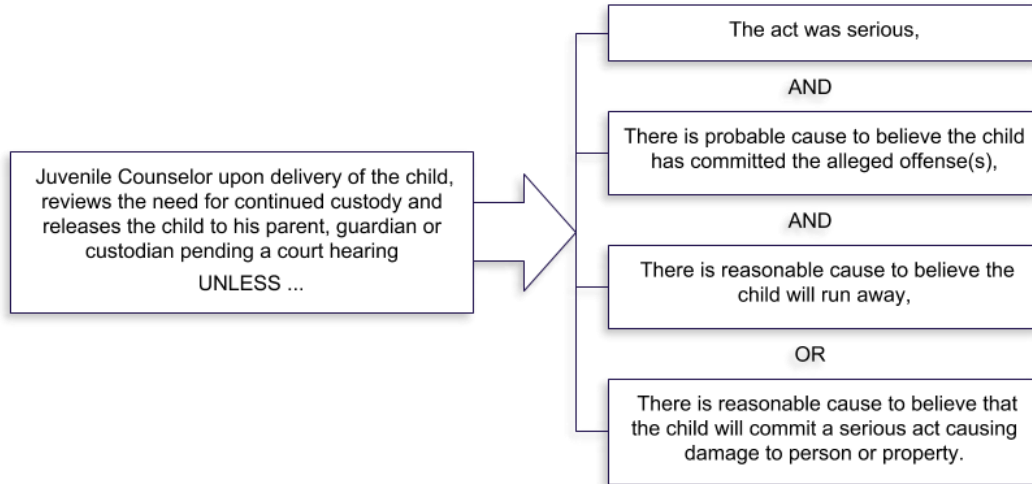
The [1989 BIA Tribal Juvenile Justice Code](#), Section 1-8 A, provides that a law enforcement officer may take a child into custody without a warrant where the youth commits a juvenile offense in the officer's presence or where the officer has a "reasonable suspicion" that the youth has committed a juvenile offense. "Reasonable suspicion" is defined in *Black's Law Dictionary* as "a particularized and objective basis, supported by specific and articulable facts, for suspecting a person of criminal [here delinquent] activity."

**Section 1-8 C. Release or Delivery from Custody**  
1989 BIA Tribal Juvenile Justice Code



The [1989 BIA Tribal Juvenile Justice Code](#), Section 1-8 C, provides that once a law enforcement officer has taken a youth into custody, he must advise the youth of his or her rights and then must either release the child to his or her parent, guardian, or custodian (or to a responsible adult tribal member with the consent of the parent, guardian, or custodian), or deliver the youth to the designated juvenile intake officer. In those cases in which the youth is in need of immediate treatment or in which he or she is under the influence of alcohol and/or drugs, he or she may be delivered to a medical facility.

**Section 1-8 D. Review by Juvenile Counselor or Juvenile Facility**  
1989 BIA Tribal Juvenile Justice Code



The 1989 BIA Tribal Juvenile Justice Code, Section 1-8 D, provides that where a youth has been taken into custody and then delivered to the appropriate juvenile intake officer, that officer must then review the need for continued custody and release the youth to his or her parent, guardian, or custodian pending a court hearing, unless the alleged act constitutes a serious juvenile offense, there is probable cause to believe that the youth committed it, and/or there is reasonable cause to believe that the youth will run away, and/or there is reasonable cause to believe that the youth will commit a future serious act to a person or property.

## [13.2] Model Code Examples

### (1989) BIA Tribal Juvenile Justice Code

#### 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 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.

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**University of Washington**  
**Center of Indigenous Research and Justice**  
[Model Tribal Juvenile Code](#)  
**CHAPTER 2 DELINQUENCY**

**2.03 CUSTODY AND RELEASE**

**2.03.110 Custody Orders**

The Juvenile Court may issue a written order that a law enforcement officer shall take a child into immediate custody if:

- (a) the issuance of a custody order is authorized under § 2.01.170; or
- (b) the Juvenile Court finds, based on a filed affidavit or sworn testimony before the Juvenile Court, that there is probable cause to believe:
  - (1) the child has violated conditions of release imposed by the Juvenile Court under § 2.05.170; or
  - (2) the child has committed a delinquent act or has violated a disposition order entered by the Juvenile Court under § 2.13.230, and:
    - (A) the conduct, condition or surroundings of the child pose a substantial risk to the health, welfare, person or property of the child or others; or
    - (B) there is a substantial risk that the child may leave or be removed from the jurisdiction of the Juvenile Court, or will not be brought before the Juvenile Court, notwithstanding the service of a summons.

**2.03.130 Taking a Child into Custody**

- (a) A law enforcement officer may take a child into custody if:
  - (1) the Juvenile Court has issued a custody order in accordance with § 2.03.110; or
  - (2) the officer has probable cause to believe the child has committed a delinquent act.



(b) Whenever a child is taken into custody pursuant to the provisions of subsection (a), the law enforcement officer taking the child into custody shall advise the child as required by § 2.04.130(a):

- (1) at the earliest reasonable opportunity; and
- (2) whether or not the law enforcement officer intends to interrogate the child.

### **2.03.150 Release or Delivery from Custody**

(a) A law enforcement officer taking a child into custody without a custody order or warrant shall:

- (1) if the law enforcement officer determines that no further action is required, release the child to the child's parent, guardian or custodian, and issue verbal counsel or a warning as may be appropriate;
- (2) if the law enforcement officer determines that the matter should be referred to the juvenile case coordinator pursuant to the provisions of Chapter 3, proceed in accordance with § 3.03.150; or

(3) if the law enforcement officer determines that the matter should be reviewed by the juvenile case coordinator pursuant to the provisions of this chapter:

(A) release the child to the child's parent, guardian or custodian upon their promise to bring the child before the Juvenile Court upon the issuance of a summons under [GP/Summons]; or

(B) if the law enforcement officer determines that the child cannot be safely released to the child's parent, guardian or custodian, deliver the child to the juvenile case coordinator or to a juvenile facility designated by the Juvenile Court.

(b) When the law enforcement officer believes that the child is in need of prompt medical attention, the law enforcement officer shall deliver the child to a medical facility or otherwise obtain such medical attention for the child before proceeding under subsection (a).

(c) Upon releasing the child to the child's parent, guardian or custodian, the law enforcement officer shall refer the child's parent, guardian or custodian to any social, community, or tribal services or resources which may be appropriate for addressing the needs of the child and the child's parent, guardian or custodian.

### **2.03.170 Notification of Parents and Juvenile Case Coordinator**

- (a) If a child is taken into custody and not released, the law enforcement officer taking the child into custody shall immediately notify:
  - (1) the child's parent, guardian or custodian; and
  - (2) the juvenile case coordinator.
- (b) All reasonable efforts shall be made to advise the parent, guardian or custodian of the reason the child was taken into custody, and the location where the child is being held.
- (c) If the child's parent, guardian or custodian cannot be notified, all reasonable efforts shall be made to notify a member of the child's extended family.
- (d) For the purposes of this section, "reasonable efforts" shall include telephone and personal contacts at the home, place of employment, or other locations the person to be notified is known to frequent.

### **2.03.190 Review by Juvenile Case Coordinator**

- (a) Upon being notified that a child has been taken into custody and not released, the juvenile case coordinator shall immediately review the need for continued detention under § 2.05.110, and shall:
  - (1) if the juvenile case coordinator determines that no further action is required, release the child to the child's parent, guardian or custodian;
  - (2) if the juvenile case coordinator determines that the matter should be addressed pursuant to the provisions of Chapter 3, proceed in accordance with § 3.03.190; or
  - (3) if the juvenile case coordinator determines that the matter requires further action in accordance with the provisions of this chapter:
    - (A) release the child to the child's parent, guardian or custodian upon their promise to bring the child before the Juvenile Court upon the issuance of a summons under [GP/Summons]; or
    - (B) if the juvenile case coordinator determines that continued detention is necessary and authorized under § 2.05.110, arrange for the placement of the child in accordance with § 2.05.150.

- (b) Upon releasing the child to the child's parent, guardian or custodian, the juvenile case coordinator shall refer the child's parent, guardian or custodian to any social, community, or tribal services or resources which may be appropriate for addressing the needs of the child and the child's parent, guardian or custodian.
- (c) If the juvenile case coordinator does not release the child to the child's parent, guardian or custodian, the juvenile case coordinator shall immediately:
  - (1) notify the child's parent, guardian or custodian in accordance with § 2.03.170;
  - (2) file written notice in the Juvenile Court of:
    - (A) the reason the child was taken into custody;
    - (B) the location where the child is being detained; and
    - (C) the need to conduct a detention hearing in accordance with § 2.05.230;
  - (3) provide copies of the written notice required under subsection (c)(2) to the child, the child's parent, guardian or custodian, the juvenile presenting officer, and counsel for the child; and
  - (4) inform the child of the steps taken by the juvenile case coordinator to comply with the requirements of this subsection.
- (d) Where counsel has not already been appointed or retained to represent the child, the written notice required by subsection (c)(2) shall be provided to the juvenile advocate.

#### **2.03.210 Release to Relative or Responsible Adult**

Where the provisions of this chapter permit or require the release of a child to the child's parent, guardian or custodian, the child may instead be released to a relative or other responsible adult, if the child's parent, guardian or custodian consents to the release.

## [13.3] Tribal Code Examples

### Sault Ste. Marie Tribal Code

#### CHAPTER 36: JUVENILE CODE

#### **SUBCHAPTER IV: ORGANIZATION AND FUNCTION OF THE JUVENILE DIVISION**

##### **36.403 Taking a Child into Custody.**

- (1) A law enforcement officer may take a child into custody when:
  - a. The child commits a juvenile offense in the presence of the officer.
  - b. The officer has a reasonable suspicion to believe a juvenile offense has been committed by the child being detained.
  - c. An appropriate custody order or warrant has been issued by the Court authorizing the taking of a particular child.
- (2) At the time the child is taken into custody as an alleged juvenile offender, the arresting officer shall give the following warning:
  - a. The child has the right to remain silent.
  - b. Anything the child says can be used against the child in court.
  - c. The child has a right to the presence of his parent, guardian, or custodian and/or counsel during questioning.
  - d. The child has a right to an advocate or attorney at his own expense.
- (3) A law enforcement officer taking a child into custody shall give the warning listed above to any child he takes into custody prior to questioning and then shall do one of the following:
  - a. Release the child to the child's parent, guardian, or custodian and issue verbal counsel or warning as may be appropriate.
  - b. Release the child to a relative or other responsible adult member if the child's parent, guardian, or custodian consents to the release. (If the child is twelve [12] years of age or older, the child and his parent, guardian or custodian must both consent to release).
  - c. Deliver the child to the juvenile probation officer, 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.

- (4) The Juvenile Probation Officer 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:
  - a. The act is serious enough to warrant continued detention.
  - b. There is probable cause to believe the child has committed the offense(s) alleged.
  - c. There is reasonable cause to believe the child will run away so that he will be unavailable for further proceedings.
  - d. There is reasonable cause to believe that the child will commit a serious act causing damage to person or property.
- (5) 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.
- (6) If the Juvenile Probation Officer determines that there is a need for continued custody of the child in accordance with subsection (4) of this Chapter, then the following criteria shall be used to determine the appropriate juvenile facility for the child:
  - a. a child may be detained in a secure juvenile detention facility as designated by the Court only if one or more of the following conditions are met:
    - i. The child is a fugitive from another jurisdiction wanted for a felony offense.
    - ii. The child is charged with murder, sexual assault or a crime of violence, a crime involving a deadly weapon or which has resulted in a serious bodily injury.
    - iii. 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.
    - iv. 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, assault, domestic assault, battery, burglary, or robbery.

- v. The child is already detained or on conditional release for another juvenile offense.
  - vi. The child has demonstrable recent record of willful failures to appear at Juvenile Division proceedings.
  - vii. The child has made a serious escape attempt.
  - viii. 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.
- b. A child may be housed in a juvenile shelter care facility as designated by the Court only if one of the following conditions exist:
- i. One of the conditions described in subsection (a) above exists.
  - ii. The child is unwilling to return home or to the home of an extended family member.
  - iii. The child's parent, guardian, custodian, or extended family member is unavailable, unwilling, or unable to permit the child to return to his home.
  - iv. 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.
- c. A child may be referred to an alcohol or substance abuse emergency shelter or halfway house if it is determined that there is a need for continued custody of the child in accordance with 36.403 of this Chapter and:
- i. The child has been arrested or detained for a juvenile offense relating to alcohol or substance abuse.
  - ii. There is space available in an alcohol or substance abuse emergency shelter or halfway house designated by the Court.
  - iii. The child is not deemed to be a danger to himself or others.

**The Cherokee Code of the Eastern Band of the Cherokee Nation**

**Chapter 7A - JUVENILE CODE**

**ARTICLE III. - TEMPORARY CUSTODY; SECURE AND NONSECURE CUSTODY; CUSTODY HEARINGS**

(Sec. 7A-19. Omitted)

**Sec. 7A-20. Duties of person taking juvenile into temporary custody.**

- (a) A person who takes a juvenile into custody without a court order under section 7A-19 shall proceed as follows:
  - 1) Notify the juvenile's parent, guardian, or custodian that the juvenile has been taken into temporary custody and advise the parent, guardian, or custodian of his right to be present with the juvenile until a determination is made as to the need for secure or nonsecure custody. Failure to notify the parent that the juvenile is in custody shall not be grounds for release of the juvenile;
  - 2) Release the juvenile to his parents, guardian or custodian if the person having the juvenile in temporary custody decides that continued custody is unnecessary;
  - 3) If the juvenile is not released under subsection (2), the person having temporary custody shall proceed as follows: In the case of a juvenile alleged to be delinquent or undisciplined, he shall request a petition be drawn. Once the petition has been drawn and verified, the person shall communicate with the intake counselor who shall consider prehearing diversion. If the decision is made to file a petition, the intake counselor shall contact the Judge or person delegated authority pursuant to Section 7A-21 if other than the intake counselor, for a determination of the need for continued custody.
- (b) A juvenile taken into temporary custody under this article shall not be held for more than 12 hours unless:
  - 1) A petition or motion for review has been filed by an intake counselor, and
  - 2) An order for secure or nonsecure custody has been entered by a Judge.

**Sec. 7A-21. Authority to issue custody orders.**

(1. and 2. Omitted)

- 3) In the case of any juvenile alleged to be within the jurisdiction of the court, when the Judge finds it necessary to place the juvenile in custody, he may order that the juvenile be

placed in secure or nonsecure custody pursuant to criteria set out in section 7A-22. Any Judge shall have the authority to issue secure and nonsecure custody orders.

**Sec. 7A-22. Criteria for secure or nonsecure custody.**

- (a) Nonsecure custody shall be rendered unless secure custody is appropriate under the criteria set out in subsections (b), (c) and (d) of this section.
- (b) When a request is made for secure custody, the Judge may order secure custody only where he finds there is a reasonable factual basis to believe that the juvenile actually committed the offense as alleged in the petition, and:
  - 1) That the juvenile is presently charged with one or more felonies, or
  - 2) That the juvenile has willfully failed to appear on the pending delinquency charge or has a record of willful failures to appear at court proceedings, or
  - 3) That by reason of the juvenile's threat to flee from the court's jurisdiction or circumstances indicating preparation or design to flee from the court's jurisdiction, there is reasonable cause to believe the juvenile will not appear in court on a pending delinquency charge unless he is detained, or
  - 4) That the juvenile is an absconder from any training school or facility in this or another state, or
  - 5) That the juvenile has a recent record of adjudications for violent conduct resulting in serious physical injury to others, the petition pending is for delinquency and the charge involves physical injury, or
  - 6) That by reason of the juvenile's recent self-inflicted injury or attempted self-injury there is reasonable cause to believe the juvenile should be detained for his own protection for a period of less than 24 hours while action is initiated to determine the need for inpatient hospitalization, provided that the juvenile has been refused admittance by any appropriate hospital, or
  - 7) That the juvenile alleged to be undisciplined by virtue of his being a runaway may be detained for a period of no more than 82 hours to facilitate evaluation of the juvenile's need for medical or psychiatric treatment or to facilitate reunion with his parents.
- (c) When a juvenile has been adjudicated delinquent, the Judge may order secure or nonsecure custody pending the dispositional hearing or pending placement of a



delinquent juvenile. The Judge may also order secure custody for a juvenile who is alleged to have violated the terms of his probation or conditional release.

- (d) In determining whether secure custody should be ordered, the Judge should consider the nature of the circumstances of the offense; the weight of the evidence against the juvenile; the juvenile's family ties, character, mental condition, and school attendance record; and whether the juvenile is on conditional release. If the criteria for secure custody as set out in subsection (b) or (c) are met, the Judge may enter an order directing an officer to assume custody of the juvenile and to take the juvenile to the place designated in the order.

**Sec. 7A-23. Order for secure or nonsecure custody.**

- (a) The custody order shall be in writing and shall direct a law enforcement officer to assume custody of the juvenile and to make due return on the order. A copy of the order shall be given to the juvenile's parent, guardian, or custodian by the official executing the order. If the order is for secure custody, copies of the petition and custody order shall accompany the juvenile to the detention facility or holdover facility of the jail.
- (b) An officer receiving an order for custody which is complete and regular on its face may execute it in accordance with its terms and need not inquire into its regularity or continued validity, nor does he incur criminal or civil liability for its due service.

**Sec. 7A-24. Place of secure or nonsecure custody.**

- (a) A juvenile meeting the criteria set out in Section 7A-22(a) may be placed in nonsecure custody with the Department of Social Services or an appropriate person designated in the order for temporary residential placement in:
  - 1) A licensed foster home or a home otherwise authorized by law to provide such care, or
  - 2) Any other home or facility approved by the court and designated in the order.
- (b) A juvenile meeting the criteria set out in section 7A-22(b) may be temporarily detained in an approved detention home or regional detention facility which shall be separate from any jail, lockup, prison, or other adult penal institution.

## [13.4] Tribal Code Commentary

Please note that a good number of tribes have used the 1989 BIA Tribal Juvenile Justice Code provisions as a starting point. The alternative University of Washington's Center of Indigenous Research and Justice Model Tribal Juvenile Code provisions were completed and made public in the fall of 2014 and at the time of first publication of this resource, tribes had not yet reviewed them. The 1989 BIA Tribal Juvenile Justice Code provisions allow a law enforcement officer to take custody of a youth given only a "reasonable suspicion"<sup>26</sup> to believe that a juvenile offense has been committed while the University of Washington provisions require the higher standard of "probable cause."<sup>27</sup>

The Sault Ste. Marie code allows a law enforcement officer to take a child into custody when the child commits a juvenile offense in the presence of the officer, the officer has a reasonable suspicion to believe a juvenile offense has been committed, or the juvenile court has issued a custody order. This is a fairly standard provision. The juvenile is read his rights and then the officer must decide what to do with the child. This section is very similar to the 1989 Tribal Juvenile Justice Code and the diagrams earlier in the chapter outline the potential responses.

The Eastern Band of Cherokee follows this process when a youth is taken into custody without a court order.

- Notify the juvenile's parent, guardian, or custodian that a child is in custody and advise them of their right to be present when a determination is made as to the need for "secure or nonsecure" custody.
- Release the juvenile to parent, guardian, or custodian if the officer believes continued custody is unnecessary.
- If not released, then the officer requests that a petition be drawn. The petition goes to the intake counselor to consider prehearing diversion. If a decision is made to file a petition the intake counselor contacts the judge for a determination of continued custody.
- No juvenile can be held for more than twelve hours unless a petition is filed by the intake counselor and an order for secure or nonsecure custody has been entered by a judge.

The Eastern Band of Cherokee uses the terms *secure* and *nonsecure custody*. Nonsecured custody is a placement with social services or another person used for temporary residential placement in a

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<sup>26</sup> According to *Black's Law Dictionary*, a "reasonable suspicion" is a "particularized and objective basis, supported by specific and articulable facts, for suspecting a person of criminal activity," or here, of delinquent activity.

<sup>27</sup> According to *Black's Law Dictionary*, a law enforcement officer has "probable cause" if he or she has "a reasonable ground to suspect that a person has committed or is committing a crime . . . more than a bare suspicion but less than evidence that would justify a conviction." Here, again, we would be looking at whether a law enforcement officer had a reasonable ground to suspect that a youth has committed a delinquent act.

licensed foster home or any other home or facility approved by the court. Some communities have safe homes for youth in these situations. A secure facility would include a regional detention facility or a detention home, although the code requires that the juvenile must not come into contact with adult prisoner in a detention facility.

A judge can order secured custody of a juvenile accused of offending only if the juvenile:

- Is charged with one or more felonies.
- Has willfully failed to appear on this or other delinquency proceedings.
- Threatens or has made plans to flee the jurisdiction.
- Is an absconder from a training school or facility.
- Has a recent record of violent conduct resulting in serious bodily harm to others.
- Has recent self-inflicted injury and should be detained for his own protection for a period of twenty-four hours while action is initiated to determine need for inpatient hospitalization.
- Is alleged to be a runaway and may be detained for a period of no more than eighty-two hours to facilitate evaluation of the juvenile's need for medical or psychiatric treatment or to facilitate reunion with his parents.

## [13.5] Exercises

The following exercises are meant to guide you in writing provisions governing taking a youth into custody and placing youth in a secure juvenile detention facility or in a juvenile shelter care facility under the tribal juvenile code.

- Find and examine your juvenile code's provisions governing the taking of youth into custody.
  - Under what circumstances can a youth be taken into custody?
  - What are the parental/guardian/custodian notification requirements?
  - When and where may a youth be placed/detained?
  - For how long?
- Make a list of current placement/detention options for youth.

Make a list of the types of placement/detentions options you would like to develop or contract for.

## **Read and Discuss\***

**What happens to youth in secure detention facilities in your area?**

National findings:

- Youth are physically and emotionally separated from their families and communities
- Youth find themselves in an environment of chaos and violence
- Youth experience neglect
- Youth become depressed and many become suicidal
- Youth will have an chance of recidivism (more delinquency and/or crime when they get out)
- Youth will be mixed into a “dumping ground of mentally ill youth”
- If a person is mentally ill already they will get worse

\*Taken from “The Dangers of Detention: The Impact of Incarcerating Youth in Detention and other Secure Detention Facilities,” The Justice Policy Institute Report.