

# Chapter 14: Detention Hearings

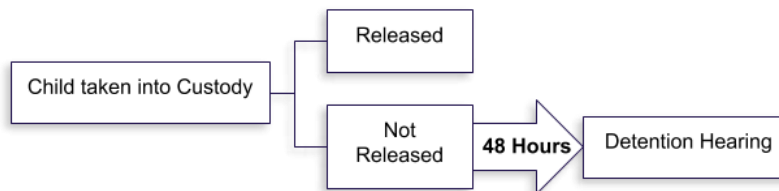
## [14.1] Overview

When a youth is not released to his or her parents soon after being taken into custody, a detention hearing is held to determine whether further detention is necessary. This chapter describes the purposes of a detention hearing, the notice requirements, the detention hearing procedure, the standards to be considered, the finding at the hearing, and provisions for a rehearing.

Keep in mind that the detention of juveniles should meet the requirements of the [Delinquency Prevention Act of 1974](#), which provides that status offenders (runaways, truants, or curfew violators) and nonoffenders (abuse/neglect victims) are not to be placed in secured detention facilities. Those youths suspected or adjudicated juvenile delinquents are not to be confined in facilities allowing regular contact with adults. If placed in a facility where adults are also confined, they must be separated by both sight and sound from the adult population.

### Section 1-9 A. Juvenile Offender--Requirement of Detention Hearing

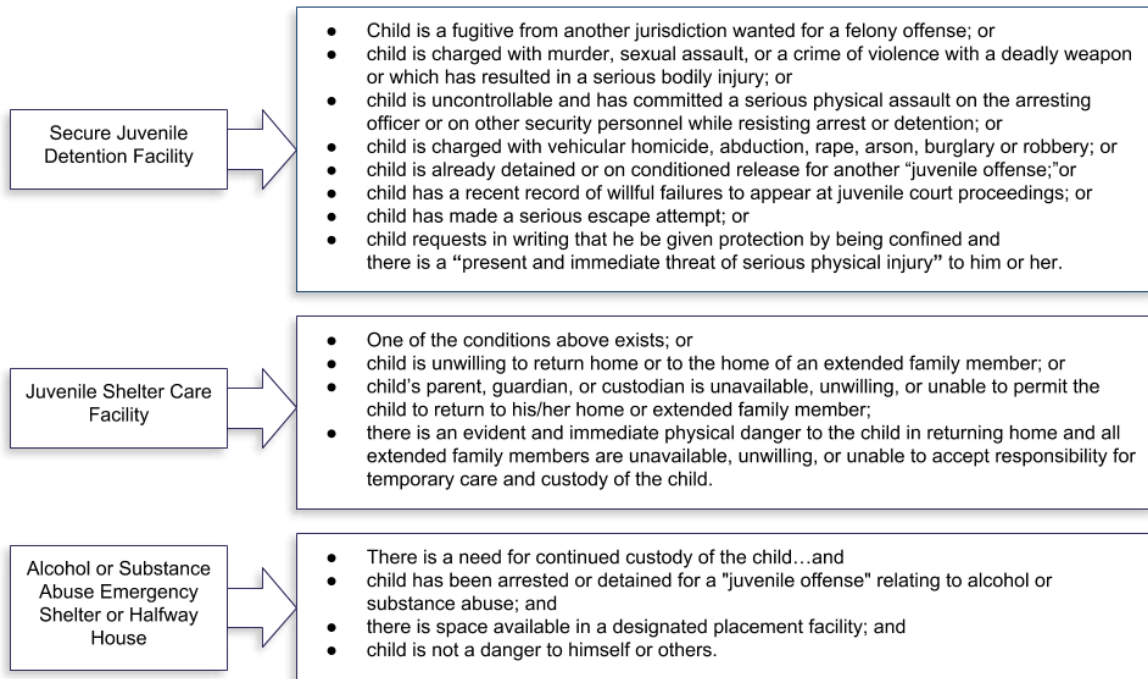
1989 BIA Tribal Juvenile Justice Code



Under [Section 1-9](#) of the [1989 BIA Tribal Juvenile Justice Code](#) if a youth is taken into custody and is not released, a detention hearing must be held within forty-eight hours. Notice of the hearing must be given to the youth, his or her “parent, guardian, or custodian,” and his or her advocate or attorney as soon as the hearing is set. These detention hearings must be conducted in juvenile court separate from other hearings. They must also be closed to the general public. At the detention hearing the judge must advise the youth and his or her parent, guardian, or custodian of their rights. The purpose of the hearing is to determine whether the detention criteria has been met for continued detention and, if it is met, whether the criteria has been met for placement in a secure detention facility versus a juvenile shelter care facility or whether the child should be referred to an alcohol or substance abuse emergency shelter or halfway house.

## Section 1-8 F. Criteria for Selecting Juvenile Facility

### 1989 BIA Tribal Juvenile Justice Code



The 1989 BIA Tribal Juvenile Justice Code requires that both juvenile counselors and judges determine whether certain criteria have been met before continuing custody of a youth. See excerpt of 1989 BIA Tribal Juvenile Justice Code, Section 1-8 D in the following text. The 1989 Tribal Juvenile Justice Code also requires that juvenile counselors and judges determine whether further criteria have been met in deciding where to place youth—whether in a secure detention facility, a juvenile shelter care facility, or an alcohol or substance abuse emergency shelter or halfway house. The criteria for placement in secure detention are the most difficult to meet. A juvenile counselor or judge must find that one or more of the conditions set out in the following diagram exist before placement is warranted and required under the 1989 BIA Tribal Juvenile Justice Code. The 1989 BIA Tribal Juvenile Justice Code favors the release of youth to parents, guardian, custodian, or extended family and the placement of youth in a secure juvenile detention facility only as a last resort.

## [14.2] Model Code Examples

### (1989) BIA Tribal Juvenile Justice Code

#### 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.

## **1-8 JUVENILE OFFENDER—TAKING INTO CUSTODY**

### **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**

**2.05 DETENTION AND ALTERNATIVES**

**2.05.010 Adoption and Safe Families Act Compliance**

- (a) Before entering an order authorizing detention, the Juvenile Court shall determine, on a case-by-case basis:
  - (1) whether continuation in the home of the child's parent, guardian or custodian is contrary to the child's welfare; and

- (2) whether there are available services that would prevent or eliminate the need for detention.
- (b) If the child can be returned to the custody of the child's parent, guardian or custodian through the provision of services to prevent or eliminate the need for removal, the Juvenile Court shall release the child to his or her parent, guardian or custodian, and order that those services be provided.
- (c) If the child cannot be returned to the custody of the child's parent, guardian or custodian, the juvenile case coordinator shall, as soon as possible, provide referrals for services to enable the child's parent, guardian, or custodian to obtain any assistance that may be needed to effectively provide the care and control necessary for the child to return to the home.
- (d) Upon entering an order authorizing detention, and in no event later than 60 days following the child's removal from the home of the child's parent, guardian or custodian, the Juvenile Court shall determine whether reasonable efforts have been made to safely maintain the child in the home.
- (e) Upon making the determinations required by this section, the Juvenile Court shall enter written findings of fact referencing any and all evidence relied upon in reaching its decision.

#### **2.05.110 Detention - Grounds**

- (a) A child shall not be detained unless:
  - (1) there is probable cause to believe the child has committed a delinquent act;
  - (2) no less restrictive alternatives will suffice; and
  - (3) there is clear and convincing evidence that the child should be detained because:
    - (A) such detention is necessary to avert 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.
- (b) A child shall not be detained for any of the following reasons:
  - (1) to treat or rehabilitate the child prior to adjudication;

- (2) to punish the child or to satisfy demands by a victim, the police, or the community;
- (3) to allow a parent to avoid his or her legal responsibilities;
- (4) to permit more convenient administrative access to the child; or
- (5) to facilitate further interrogation or investigation.

#### **2.05.130 Least Restrictive Alternatives**

- (a) When a child is detained or subject to conditional or supervised release pursuant to the provisions of this chapter, the Juvenile Court shall order only the least restrictive conditions or placement consistent with:
  - (1) the best interests of the child; and
  - (2) the safety of the community.
- (b) Whenever the Juvenile Court orders the detention of a child, or enters an order imposing conditions upon the child's release, the order shall include a statement of the Juvenile Court's reasons for rejecting less restrictive alternatives.

#### **2.05.150 Place of Detention**

- (a) A child alleged to have committed a delinquent act may be detained only in:
  - (1) a licensed foster home or a home approved by the Juvenile Court, which may be a public or private home or the home of a noncustodial parent or of a relative;
  - (2) a juvenile residential care facility such as a group home, staff-secure facility, or other residential facility operated by a licensed child welfare agency;
  - (3) a secure juvenile detention facility designated by the Juvenile Court; or
  - (4) a residential treatment facility, detoxification facility, or halfway house, if there is evidence of recent or ongoing alcohol or substance abuse by the child, and:
    - (A) there is clear and convincing evidence that such placement is necessary to avert a substantial risk to the health or welfare of the child; or
    - (B) detention is otherwise necessary and authorized under § 2.05.110, and the child requests or agrees to such placement in lieu of a more restrictive placement.

- (b) Detention in a secure juvenile detention facility shall in all cases be subject to the time limits set forth in § 2.13.250.

#### **2.05.170 Alternatives to Detention**

- (a) Before ordering that a child be detained, the Juvenile Court shall consider less restrictive alternatives such as:
  - (1) a court-imposed curfew;
  - (2) a requirement that the child or the child's parent, guardian or custodian report to the juvenile case coordinator at specified intervals;
  - (3) an order requiring the child to remain at home at all times when the child is not:
    - (A) in the presence of the child's parent, guardian or custodian;
    - (B) attending school or participating in other activities approved by the Juvenile Court; or
    - (C) legally required to be elsewhere;
  - (4) electronic home monitoring or similar means of monitoring the child's whereabouts;
  - (5) community supervision; and
  - (6) other types of conditional or supervised release.
- (b) Conditions of release the Juvenile Court may impose under subsection (a) shall not include bail, but may include:
  - (1) law-abiding behavior, including refraining from using or possessing alcohol or nonprescribed drugs;
  - (2) regular school attendance or continuation in a course of study designed to lead to achieving a high school diploma or the equivalent;
  - (3) compliance with a statutory curfew;
  - (4) compliance with orders prohibiting or restricting contact between the child and the alleged victim or other persons or locations connected with the alleged delinquent act;



- (5) other reasonable conditions calculated to ensure the child's appearance at future hearings and to protect the safety of the child and the community.

#### **2.05.230 Detention Hearing - Requirement and Time Limit**

- (a) Whenever a child is taken into custody pursuant to the provisions of this chapter and is not released, the Juvenile Court shall conduct a detention hearing within forty-eight (48) hours.
- (b) If the forty-eight (48) hour time limit imposed by subsection (a) would expire on a weekend or holiday, the Juvenile Court shall conduct the detention hearing on the first business day after the child is taken into custody.
- (c) Notwithstanding the provisions of [GP/Hearings – Continuances], the detention hearing shall not be continued so as to fall outside the time limits imposed by this section.
- (d) If the detention hearing is not held within the time limits imposed by this section, the child shall be released:
  - (1) to the child's parent, guardian or custodian;
  - (2) to a relative or other responsible adult in accordance with § 2.03.210; or
  - (3) to a juvenile shelter care facility or an appropriate service agency until the child's parent, guardian or custodian can be notified.

#### **2.05.250 Detention Hearing - Notice**

- (a) Written notice of the detention hearing:
  - (1) shall be served on the child, the child's parent, guardian or custodian, and counsel for the child as soon as the time for the detention hearing has been set;
  - (2) shall in all other respects be served in accordance with [GP/Summons or Other Notice – Service];
  - (3) shall contain the name of the court, the nature and purpose of the proceedings, and the date, time, and place of the hearing;
  - (4) shall advise the parties of their rights under the provisions of this title; and
  - (5) shall specify the delinquent act the child is alleged to have committed.
- (b) Where counsel has not already been appointed or retained to represent the child, the written notice required by subsection (a) shall be served on the juvenile advocate.

### **2.05.270 Detention Hearing - Purpose**

The Juvenile Court shall conduct the detention hearing for the purpose of determining:

- (a) whether there is probable cause to believe the child has committed a delinquent act, unless the Juvenile Court has entered a finding of probable cause, in accordance with § 2.05.290 or § 2.09.150, at a prior hearing;
- (b) whether the child can be released without conditions;
- (c) if the child cannot be released without conditions, what alternatives to detention or conditions of release, imposed in accordance with § 2.05.170, would render detention unnecessary; and
- (d) if detention is necessary and authorized under § 2.05.110, where the child should be placed pending the child's next appearance before the Juvenile Court.

### **2.05.290 Order on Detention Hearing**

- (a) At the detention hearing, the Juvenile Court shall enter a written order releasing the child without conditions unless the Juvenile Court finds, based on a filed affidavit or sworn testimony before the Juvenile Court, that there is probable cause to believe the child has committed a delinquent act.
- (b) If the Juvenile Court finds that there is probable cause to believe the child has committed a delinquent act, the Juvenile Court shall, at the conclusion of the detention hearing, enter a written order:
  - (1) releasing the child without conditions;
  - (2) releasing the child from custody, and setting forth conditions of release imposed in accordance with § 2.05.170; or
  - (3) specifying where the child is to be detained until the next hearing.
- (c) If the child is in custody as the result of a failure to appear before the Juvenile Court, the written order entered by the Juvenile Court shall be consistent with the provisions of § 2.01.170.
- (d) If the child is to be detained in a secure juvenile detention facility, the written order shall specify the date and time of the first detention review hearing to be held in accordance with § 2.05.330.

- (e) No provision of this chapter shall be interpreted to prohibit the Juvenile Court from releasing the child from detention prior to the appointment or appearance of counsel for the child.

## [14.3] Tribal Code Examples

### Sault St. Marie Tribal Code

#### **CHAPTER 36: JUVENILE CODE**

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

##### **36.404 Detention Hearing.**

- (1) Where a child who has been taken into custody is not released, a detention hearing shall be convened by the Court within seventy-two (72) hours, inclusive of holidays and weekends, of the child's initial detention.
- (2) The purpose of the detention hearing is to determine:
  - (a) Whether probable cause exists to believe the child committed the alleged juvenile offense.
  - (b) Whether continued detention is necessary pending further proceedings.
- (3) 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:
  - (a) The name of the court.
  - (b) The title of the proceeding.
  - (c) A brief statement of the juvenile offense the child is alleged to have committed.
  - (d) The date, time, and place of the detention hearing.
- (4) Detention hearings shall be conducted by the Juvenile Division 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 '36.402 of this Chapter.
- (5) The Court shall consider the evidence at the detention hearing as it pertains to the 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.

- (6) 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.
- (7) If the child is not released at the detention hearing, and a parent, guardian, custodian, or 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.

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## **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**

(7A-19. through 7A-24 Omitted)

##### **Sec. 7A-25. Hearing to determine need for continued secure or nonsecure custody.**

- (a) No juvenile shall be held under a custody order for more than five calendar days without a hearing on the merits or a hearing to determine the need for continued custody. In every case in which an order has been entered by an official exercising authority delegated pursuant to chapter 21 of this Code, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of court, if such session precedes the expiration of the five calendar day period.
- (b) Any juvenile who is alleged to be delinquent shall be advised of his right to have an attorney represent him.
- (c) At a hearing to determine the need for continued custody, the Judge shall receive testimony and shall allow the juvenile and his parent, guardian, or custodian an opportunity to introduce evidence, to be heard in their own behalf, and to examine witnesses. The Tribe shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that restraints on the juvenile's liberty are necessary and that no less intrusive alternative will suffice. The Judge shall not be bound by the usual rules of evidence at such hearings.
- (d) The Judge shall be bound by criteria set forth in section 7A-22 in determining whether continued custody is warranted.

- (e) The Judge shall impose the least restrictive interference with the liberty of a juvenile who is released from secure custody including:
  - 1. Release on the written promise of the juvenile's parent, guardian, or custodian to produce him in court for subsequent proceedings, or
  - 2. Release into the care of a reasonable person or organization, or
  - 3. Release conditioned on restrictions on activities, associations, residence, or travel if reasonably related to securing the juvenile's presence in court, or
  - 4. Any other conditions reasonably related to securing the juvenile's presence in court.
- (f) If the Judge determines that the juvenile meets the criteria in section 7A-22 and should continue in custody, he shall issue an order to that effect. The order shall be in writing with appropriate findings of fact. The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

## [14.4] 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 Sault Ste. Marie statute requires a hearing be held within seventy-two hours of the time of the youth's initial detention. The statute gives a judge the authority to use his or her discretion in determining whether continued detention is warranted or required.

Criteria for continued detention of youth at detention hearing—The Sault Ste. Marie statute at Section 36.404 (5) omits the criteria, set out at 1989 Tribal Juvenile Justice Code Section 1-9 E for when a judge determines whether continued detention is warranted or required: "The court shall consider the evidence at the detention hearing as it pertains to the detention criteria set forth in sections 1-8 D and 1-8 F of this code." Compare: "The Court shall consider the evidence at the detention hearing as it pertains to the detention of the child" at Sault Ste. Marie statute, Section 36.404 (5). This is a significant omission as it gives the judge total discretion to decide whether to continue to detain a youth and where to detain the youth.

## [14.5] Exercises

The following exercises are meant to guide you in writing the detention hearing section of the tribal juvenile code.

- Find and examine your juvenile code's provisions governing the detention hearing and placement/detention alternatives—what are the designated placement/detention options?
- Make a list of the actual placement/detention options available both in your community and in neighboring towns/cities.
- Make a list of what placement/detention options you would like to develop or contract for in your community and/or in neighboring towns/cities.

## Read and Discuss\*

### Should we consider developing an adolescent “respite care” program?

Attention Homes' Adolescent Residential Care program provides residential treatment to adolescents in crisis. We offer them emotional and behavioral support in a safe, structured, RCCF-licensed (Residential Child Care Facility) home-like setting. We use a systems approach to improve family dynamics and relationships. This program operates out of our Chase Court home.

**Service Demographic**—Services are provided to youth, ages 12–18, who are abused, neglected, troubled, delinquent, recovering, from families in crisis and/or are beyond the control of their parents. Residents are typically referred to us through social services departments or the court and juvenile systems. Teens may be privately referred through their families. Services are provided on a sliding scale fee structure based on income level and family size.

**Evidence-based Practices**—Our program's design is based on best practices of successful youth residential care programs displaying the following characteristics: “family involvement, supervision and support by caring adults, a skill-focused curriculum, service coordination, development of individual plans, positive peer influence, building self-esteem, family-like atmosphere, and planning and support for post-program life” (Colorado State University Social Work Research Center).

Attention Homes' behavior change program, “Choices,” is a strength-based system of choices and consequences supported by Cognitive Behavioral Therapy (CBT). CBT teaches residents positive decision-making skills. CBT is an intervention of choice for many RCCFs and is also used to teach residents to better manage their emotions and resulting behavior.

**Respite/Extended Care**—Teens develop an individual behavior plan, participate in group curriculum and learn how to regulate and stabilize their behavior and emotions through our behavioral level system.

**Substance Abuse**—Youth practice skills to learn how to function sober in the larger community. They participate in NA/AA, psycho-educational and life skills groups, and are helped finding part-time employment and important educational opportunities.

**Transitional Living**—Teens may stay up to several months before moving on to a safe and appropriate long-term placement. While at Attention Homes they learn independent living skills, and have help in finding part-time employment and important educational opportunities.

**Services**—Boys and girls living in our Adolescent Residential Care program are provided the following services:

- Safety, stability, security and supervision in a highly structured, RCCF-licensed, home-like environment
- Shelter and healthy meals
- Case management and individual, group and family coaching
- “Choices” behavioral-change level system program anchored in cognitive behavioral therapy
- In-home psycho-educational groups
- Regular attendance at Alcoholics Anonymous/Narcotics Anonymous groups
- Frequent, random poly-urine analysis screens
- Opportunities to practice pro-social skills
- Community-based living norms for home, school, work and recreation
- Access to accredited educational options and job training
- Access to physical, dental and mental health care
- Access to recreational activities and community service projects
- Life skills lessons and positive adult role models
- Access to part-time employment
- Experiential educational opportunities
- Optional aftercare services

\*Taken from “The Dangers of Detention: The Impact of Incarcerating Youth in Detention and other Secure Detention Facilities,” The Justice Policy Institute Report, <http://www.justicepolicy.org>.