

Chapter 15: Informal Adjustment in Juvenile Proceedings

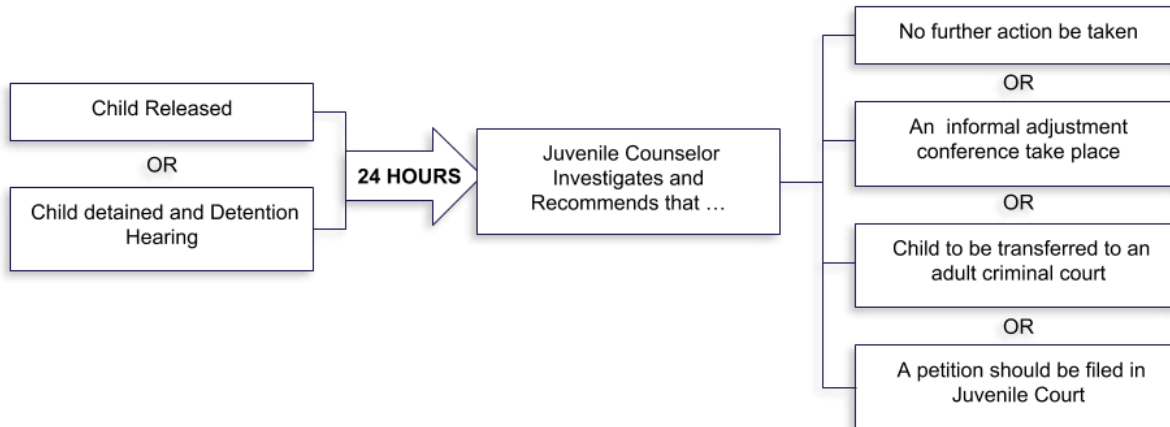
[15.1] Overview

The “informal adjustment” is a critical stage in the juvenile proceedings. It diverts the child away from the formal judicial proceeding and instead offers ways to provide help and accountability for the child with less formality. It prevents the child from being labeled a juvenile offender.

The manner in which the informal adjustment is applied may vary slightly from one court to the next, but the example of the 1989 BIA Tribal Juvenile Justice Code is typical of how it might be applied. The 1989 BIA Tribal Juvenile Justice Code, Section 1-10 A, provides for a “juvenile counselor” to review, investigate, and recommend. The juvenile counselor must do this within twenty-four hours of a youth being released from custody or within twenty-four hours of any detention hearing. The juvenile counselor may recommend that no further action be taken, that the youth and his or her parents, guardian, or custodian participate in an “informal adjustment conference,” that a presenting officer, or in some tribal jurisdictions, the prosecutor, petition to transfer the youth to adult criminal court, or that the presenting officer/prosecutor file a juvenile delinquency petition in juvenile court.

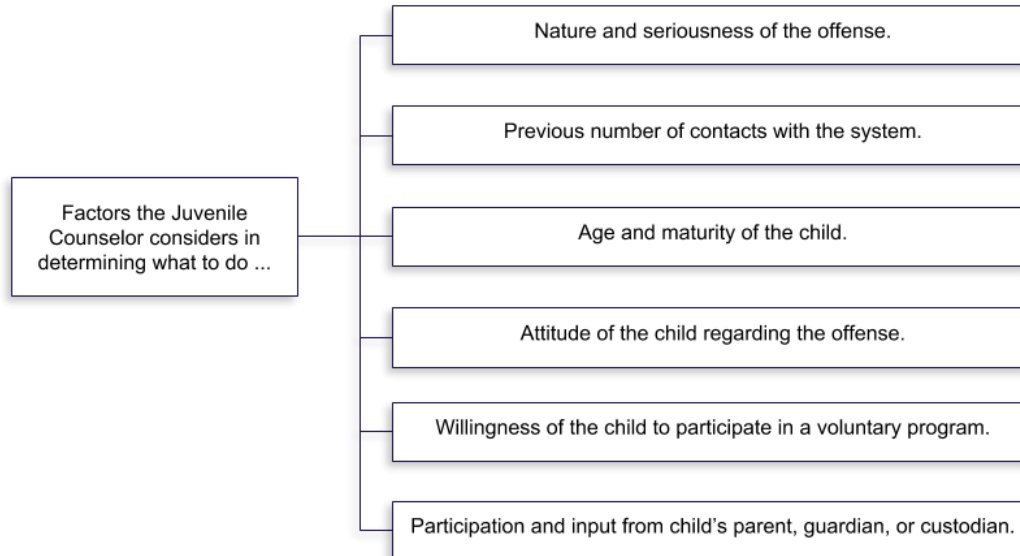
Under the 1989 BIA Tribal Juvenile Justice Code, Section 1-10 B.1, the juvenile counselor determines whether “adjustments or agreements” may be made to avoid the filing of a petition in the juvenile court. Under Section 1-10 B.2, the juvenile counselor must consider a list of factors in determining whether to recommend the filing of a formal petition in juvenile court. See the following diagram for each factor.

**Section 1-10 A. Juvenile Offender--Initiation of Proceedings--Investigation
by Juvenile Counselor**
1989 BIA Tribal Juvenile Justice Code

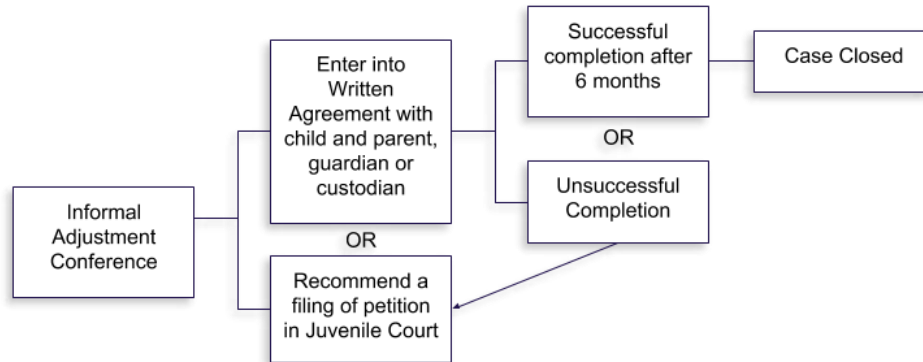


Section 1-10 A of the [1989 BIA Tribal Juvenile Justice Code](#) sets out the process and requirements for an informal conference. The purpose of the conference is to discuss alternative courses of action, including “diversion programs.” If the youth and his parents, guardian, or custodian are agreeable, they may enter into a written agreement specifying the terms and conditions of the given diversion program. Under the 1989 BIA Tribal Juvenile Justice Code, the “informal adjustment period” is limited to six months. If the youth successfully completes his or her diversion program (a.k.a. agreement with its terms and conditions) within this time frame, the case is closed and no further action is required or taken. If, however, the youth fails to successfully complete his or her diversion program, the juvenile counselor may recommend that the presenting officer or prosecutor file a petition in juvenile court, thus initiating the juvenile court process. If a youth and his or her parent, guardian, or custodian, does not wish to participate in any diversion program, they may decline to do so and the juvenile counselor must recommend that the presenting officer/prosecutor file a petition in juvenile court.

Section 1-10 B. 2. Juvenile Offender--Initiation of Proceedings--Informal Adjustment
1989 BIA Tribal Juvenile Justice Code



Section 1-10 C. Juvenile Offender--Initiation of Proceedings--Informal Conference
1989 BIA Tribal Juvenile Justice Code



There are all kinds of assessments, evaluations, examinations, services, treatment, and programs that may comprise any given type of “diversion program.” The terms and conditions for these make up the terms and conditions that go into the agreement signed by the youth and his or her parent, guardian, or custodian. Diversion programs are the core of any effective tribal juvenile justice system and may require referrals, consent decrees, and/or sentencing orders or other types of court orders that “divert” youth. The U.S. Department of Justice through its Office of Juvenile Justice and Delinquency Prevention lists and describes evidence-based models for juvenile programming. They divide these into the categories of “immediate sanctions,” “intermediate sanctions,” “residential,” and “reentry.”

The immediate sanctions may be applicable through referral by a juvenile counselor as part of an informal adjustment period. Some of the intermediate sanctions, residential, and reentry options are likely to require a court order for various reasons. See the following chart for a list of applicable models. Many of the special courts or special calendars are described in [Section 2.4 Collaborative Justice Courts in the Juvenile Court Systems](#) of this resource. Also, go to [OJJDP’s Model Programs Guide](#) for a full description of the model and evaluation research on the model’s efficacy.

OJJDP Model Programs Guide for Juvenile Services and Programming

<http://www.ojjdp.gov/mpg>

Immediate Sanctions	Intermediate Sanctions	Residential	Reentry
Afterschool/Recreation	Afterschool/Recreation	Cognitive Behavioral Treatment	Aftercare
Cognitive Behavioral Treatment	Cognitive Behavioral Treatment	Correctional Facilities	Cognitive Behavioral Treatment
Conflict Resolution/Interpersonal Skills	Day/Evening Reporting Center	Day/Evening Reporting Center	Day/Evening Reporting Center
Diversion	Drug Court	Group Home	Reentry Court
Drug/Alcohol Therapy/Education	Drug/Alcohol Therapy/Education	Residential Treatment Centers	Vocational/Job Training
Family Therapy	Family Therapy	Wilderness Camps	
Gender-Specific Programming	Gender-Specific Programming		
Parent Training	Home Confinement		
Teen/Youth Court	Mental Health Court		
Restorative Justice	Probation Services		
Wraparound/Case Management	Restorative Justice		
	Shelter Care		
	Wraparound/Case Management		

Quick Reference: 16 Steps for Planning a Diversion Program*

A. Purpose

1. **Objectives:** The main purpose(s) for developing a diversion program will need to be identified.
 - What will be the primary objectives of the diversion program?
 - In your community, what stakeholders from the juvenile justice public/private youth services systems will be involved to provide input and support in shaping the development of your diversion program?
2. **Referral Decision Points:** There are various points within the juvenile justice processing continuum where youth can be targeted for diversion.
 - At what point or points will referral decisions be made?
 - Who, within the processing spectrum, will be responsible for making the decision to divert youth?
3. **Extent of Intervention:** The diversion program must consider the kind and degree of intervention it will have in the youth's life.
 - What degree of intervention(s) will the program utilize?
 - Will the program provide the youth with a written contract (either formal or informal)?

B. Oversight

4. **Operations:** It is necessary to determine who will have primary responsibility for implementing and operating the diversion program and what the level of community oversight will be.
 - What agency or entity will establish and maintain the program policies, provide staffing, and take responsibility for program outcomes?
 - Will an advisory board or panel be developed to oversee the development of policies and procedures for the diversion program?
 - How will the engagement and buy in of stakeholders be obtained?
5. **Funding:** Jurisdictions developing or implementing a diversion program must determine how the program will be funded and sustained for both the short and the long run.

- How will the diversion program be funded?
- Are secure funding streams currently in place that can help to sustain the program in the future?
- Has the possibility of using other local, state, or federal resources to help support the diversion program or key aspects of the program been explored?

C. Intake Criteria

6. **Referral and Eligibility:** A diversion program will need to establish criteria that specify who is eligible for entry into the diversion program.
 - What youth will be eligible for diversion?
 - What offenses will be accepted for diversion? Are there any offenses that might make a youth ineligible and will there be options for discretion?
 - Are there any offenses that might make a youth ineligible and will there be options for discretion?
7. **Screening and Assessment:** Diversion programs may utilize evidence-based screening and assessment tools to assess risk, needs, and behavioral or mental health problems.
 - Will any screening and/or assessment methods/tools be used to determine a youth's eligibility, and if so, how will these tools be chosen and who will administer them?
 - For what purposes will screening and assessment be used?
 - Are there any protocols in place to deal with the sensitive nature of information collected and how, if at all, it can be shared among child-serving agencies?

D. Operation Policies

8. **Participant Requirements:** It is important to determine the conditions and responsibilities youth will have to follow in order to ensure meaningful program participation.
 - What obligations and conditions will the program require for the youth's participation and successful completion?
 - How will requirements focus on youths' strengths, address behavioral health needs, satisfy victim concerns, and involve community efforts?

9. **Services:** The diversion program will need to consider what services, if any, will be provided to the youth by the program or through referral to community-based services, as well as how those services will be administered.
- What services will be provided for the youth while participating in the diversion program?
 - Will the diversion program need to perform an inventory of community services, and if so, who will be responsible for this effort?
 - Will the diversion program encourage or require the youth's family to participate in services?
 - Are there any agreements in place or MOU among the program and community service providers that will better facilitate services to the youth?
10. **Incentives:** Incentives should be employed by a diversion program in order to motivate youth and caretakers to meet the terms of the diversion program and to ensure successful program completion.
- Will the diversion program use any incentives to motivate youth and/or caretakers throughout the diversion process? If so, what forms of incentives will be used?
 - Is the use of incentives economically feasible for the diversion program and what funding source will support incentives?
 - Will the court agree to dropping charges against the youth or expunging records once the youth successfully completes the terms of diversion?
11. **Consequences of Failure to Comply:** Consequences must be specified for youth since some may have trouble fulfilling the terms of their diversion, either by failing to comply with the program's requirements or by declining to participate altogether.
- Will there be any negative consequences for youth who fail to comply with the diversion program's requirements? If so, what will these sanctions be?
 - Will the youth ultimately be formally processed for failing to comply with diversion?
12. **Program Completion/Exit Criteria:** Criteria must be established that will define when a youth has successfully completed the terms of their diversion and is ready to exit the program.

- How will the diversion program monitor a youth's success or failure during program participation?
- How will successful program completion be defined, and will there be established exit criteria?

E. Legal Protections

13. **Information Use:** The diversion program will need to consider what procedures and protocols should be in place that will establish how sensitive information is collected and will be kept confidential.
 - What will be the conditions/guidelines for the use of information obtained during the youth's participation in the diversion program?
 - How will policies concerning the collection and use of information be clearly established and conveyed to youth and caretakers prior to participation in diversion?
14. **Legal Counsel:** In the absence of a state statute or local policies, the program should have established guidelines for the role of counsel.
 - What role will defense counsel play? Are there local policy provisions in place or statutory guidelines that establish the role of counsel?
 - Will the diversion program make counsel available to youth and family?

F. Quality

15. **Program Integrity:** It is important to carefully attend to the diversion program's development and maintenance to ensure continued quality and program fidelity.
 - Are there clear policies and procedures that will be put into manual form for program personnel to maintain program quality and fidelity?
 - How will training be developed and delivered for diversion program personnel?
 - How will information be collected and in what formats?
 - Will the program conduct a process evaluation?
16. **Outcome Evaluation:** To ensure the diversion program is meeting its objectives and goals, a record keeping and data collection system should be in place to assist in providing periodic evaluations.

- What kind of record keeping and data collection will be used to provide periodic evaluations of the diversion program and monitor achievement of goals and objectives?
- What youth and program outcomes will be used to measure success?

*Taken from Attention Homes—Boulder Colorado—Adolescent Residential Care Program. Go to www.attentionhomes.org

[15.2] Model Code Examples

(1989) BIA Tribal Juvenile Justice Code 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.

CHAPTER 2 DELINQUENCY

2.06 PRELIMINARY INVESTIGATION AND RECOMMENDATION

2.06.110 Preliminary Investigation - Requirement

Whenever a child is alleged to have committed a delinquent act, the juvenile case coordinator shall conduct a preliminary investigation to determine whether the interests of the child or the community require that further action be taken.

2.06.130 Preliminary Investigation - Time Limit

The juvenile case coordinator shall conduct the preliminary investigation:

- (a) within twenty-four (24) hours after the detention hearing, if the child remains in custody;
or
- (b) within five (5) days after the detention hearing, if the child has been released on conditions pursuant to § 2.05.170.

2.06.150 Informal Conference - Requirement

- (a) Subject to the provisions of § 2.06.190, the juvenile case coordinator shall, during the course of the preliminary investigation, conduct an informal conference to include:
 - (1) the child;
 - (2) the child's parent, guardian or custodian; and
 - (3) counsel for the child.
- (b) Where counsel has not already been appointed or retained to represent the child, the juvenile case coordinator shall notify the juvenile advocate prior to conducting the informal conference.

2.06.170 Informal Conference - Purpose and Conduct

- (a) The purpose of the informal conference shall be to identify and discuss services, interventions, agreements or other alternatives which would render the filing of a delinquency petition unnecessary.

- (b) To the extent possible, the informal conference shall be treated as a nonadversarial effort to resolve the issues presented by the child's alleged conduct, without the intervention of the Juvenile Court.
- (c) Subsection (b) shall not be interpreted:
 - (1) to require the waiver of any right or privilege by the child or the child's parent, guardian or custodian, including but not limited to the privilege against self-incrimination;
 - (2) to require disclosure by counsel for the child of any matter that would otherwise be confidential or protected from disclosure by any applicable rule or statute;
 - (3) to relieve counsel for the child of any ethical or professional obligations otherwise imposed by statute, rules of professional conduct or similar court rules; or
 - (4) to require counsel for the child to proceed in a manner that is inconsistent with those obligations.
- (d) Statements made by the child at the informal conference shall be inadmissible, in any subsequent hearing or proceedings, as evidence that the child committed a delinquent act, but may be considered at a disposition hearing conducted in accordance with § 2.13.150.

2.06.190 Informal Conference - Attendance and Participation Voluntary

- (a) Prior to conducting the informal conference, the juvenile case coordinator shall inform the child and the child's parent, guardian or custodian:
 - (1) of their rights under the provisions of this title;
 - (2) of the nature and purpose of the informal conference; and
 - (3) that participation in the informal conference is voluntary.
- (b) The juvenile case coordinator shall conduct the informal conference:
 - (1) without the participation of the child, if the child declines to attend or participate;
or
 - (2) without the participation of the child's parent, guardian or custodian, if:
 - (A) the child's parent, guardian or custodian declines to attend or to participate; and

- (B) the child's parent, guardian or custodian consents to the child's participation.
- (c) If the child declines to attend or to participate directly in the informal conference, counsel for the child may, to the extent that such efforts are consistent with counsel's professional and ethical obligations to the child:
 - (1) attend and participate in the informal conference on behalf of the child; and
 - (2) otherwise confer with the juvenile case coordinator to further the purpose of the informal conference, as set forth in § 2.06.170.

2.06.210 Recommendation by Juvenile Case Coordinator

Upon concluding the preliminary investigation, the juvenile case coordinator shall make one of the following recommendations to the juvenile presenting officer:

- (a) The juvenile case coordinator shall recommend that no further action be taken in the matter, if the juvenile case coordinator determines that:
 - (1) the alleged facts are insufficient to support the filing of a delinquency petition ; or
 - (2) the best interests of neither the child nor the community require that further action be taken.
- (b) The juvenile case coordinator shall recommend that the child and the child's parent, guardian or custodian enter into a diversion agreement in accordance with § 2.07.110, if the juvenile case coordinator determines that:
 - (1) the alleged facts are sufficient to support the filing of a delinquency petition; and
 - (2) the interests of both the child and the community may be adequately addressed through one or more of the diversion options set forth in § 2.07.150.
- (c) The juvenile case coordinator shall recommend the initiation of proceedings under Chapter 3 of this title, if the juvenile case coordinator determines that:
 - (1) the alleged facts are sufficient to support the filing of a request for services under § 3.05.110;
 - (2) the best interests of both the child and the community may be adequately addressed through child-in-need-of-services proceedings.

- (d) The juvenile case coordinator shall recommend that the juvenile presenting officer file a delinquency petition in accordance with § 2.08.110, if the juvenile case coordinator determines that:
 - (1) the alleged facts are sufficient to support the filing of a delinquency petition;
 - (2) the best interests of either the child or the community require the intervention of the Juvenile Court; and
 - (3) the best interests of either the child or the community cannot be adequately addressed through proceedings conducted pursuant to Chapter 3 of this title.

2.06.230 Recommendation - Factors to Be Considered

In determining the appropriate recommendation to be made in accordance with § 2.06.210, the juvenile case coordinator shall consider factors including:

- (a) the nature and seriousness of the alleged act;
- (b) the child's previous contacts with the police, the juvenile case coordinator, or the Juvenile Court;
- (c) the age, maturity, and individual circumstances of the child;
- (d) the willingness of the child to participate in a voluntary program;
- (e) the participation and input of the child's parent, guardian or custodian;
- (f) any statement by the complainant or the alleged victim expressing support for diverting the matter or addressing the matter informally and without the intervention of the Juvenile Court;
- (g) the likelihood that services and resources to meet the child's needs can be identified and secured without the intervention of the Juvenile Court.

2.06.250 Notice to Juvenile Court

- (a) The juvenile presenting officer shall immediately file written notice in the Juvenile Court whenever:
 - (1) the Juvenile Court has entered a detention order, or any order imposing restrictions or other conditions or obligations upon the child in connection with the matter; and
 - (2) the juvenile presenting officer, having received and considered the recommendation of the juvenile case coordinator, determines that:

- (A) no further action should be taken in the matter;
 - (B) the matter should proceed by way of a diversion agreement; or
 - (C) the matter should proceed under Chapter 3 of this title.
- (b) Upon the filing of the written notice required by subsection (a):
- (1) the Juvenile Court shall enter a written order releasing the child from any detention, restrictions or other conditions or obligations previously imposed in connection with the matter; and
 - (2) if the child is being detained, the juvenile case coordinator shall ensure that the child is released within 12 hours of the entry of the order of release.

2.07 DIVERSION AGREEMENT

2.07.110 Diversion Agreement - Form and Substance

- (a) Upon the juvenile presenting officer's acceptance of a recommendation for diversion pursuant to § 2.06.210(b), the child and the child's parent, guardian or custodian may enter into a written diversion agreement with the juvenile case coordinator.
- (b) The diversion agreement shall specify particular conditions, which may include any of the options specified in § 2.07.150, to be fulfilled by the child and the child's parent, guardian or custodian over a period not to exceed six (6) months.
- (c) The juvenile case coordinator shall advise the child and the child's parent, guardian or custodian, and the written diversion agreement shall state:
 - (1) that entry into a diversion agreement is voluntary, and that the child or the child's parent, guardian or custodian may withdraw from the diversion agreement at any time; and
 - (2) that withdrawal from the diversion agreement may lead to the filing of a delinquency petition.

2.07.130 Diversion Agreement - Fulfillment of Conditions

- (a) If the child and the child's parent, guardian or custodian fulfill the conditions of the diversion agreement, no further action shall be taken in the matter.
- (b) If the child or the child's parent, guardian or custodian do not fulfill the conditions of the diversion agreement, the juvenile case coordinator may:

- (1) confer with the child and the child's parent guardian or custodian for the purpose of effecting necessary or recommended modifications to the diversion agreement; or
 - (2) recommend that the juvenile presenting officer file a delinquency petition in accordance with § 2.08.110.
- (c) Upon finding by a preponderance of the evidence that the child and the child's parent, guardian or custodian have fulfilled the conditions of the diversion agreement, the Juvenile Court shall dismiss with prejudice any subsequent delinquency petition arising out of the alleged incident.

2.07.150 Diversion Options

- (a) Subject to the provisions of subsection (b), the conditions of a diversion agreement entered into pursuant to § 2.07.110, an order deferring adjudication entered in accordance with § 2.10.130, or an order deferring disposition entered in accordance with § 2.13.170(b), may include any of the following:
- (1) referral of the child or the child's parent, guardian or custodian to social, community, or tribal services or resources appropriate for addressing the needs of the child and the child's parent, guardian or custodian;
 - (2) referral of the matter to a tribal elders panel, community accountability board, tribal council, or other forum suitable for addressing the needs of both the child and the community;
 - (3) participation in tribal peacemaking or other extrajudicial alternatives for resolving conflicts or disputes;
 - (4) participation by the child in cultural, educational, or other programs or activities aimed at rehabilitation, community involvement, or competency development, or which are otherwise appropriate for addressing the child's needs;
 - (5) participation by the child or the child's parent, guardian or custodian in an educational or counseling program designed to deter delinquent acts or other conduct or conditions which would be harmful to the child or society;
 - (6) participation by the child's parent, guardian or custodian in an educational or counseling program designed to contribute to their ability to care for and supervise the child, including but not limited to parenting classes;

- (7) a requirement that the child or the child's parent, guardian or custodian undergo medical, psychological, or psychiatric examination or treatment,
 - (8) a requirement that the child pay restitution;
 - (9) performance by the child of community service;
 - (10) a requirement that the child maintain satisfactory school attendance, or otherwise pursue a course of study designed to lead to achieving a high school diploma or the equivalent;
 - (11) participation by the child in structured after-school, evening, or other court approved programs appropriate for addressing the needs of the child and providing for the safety of the community; and
 - (12) other reasonable conditions aimed at:
 - (A) holding the child accountable for his or her actions;
 - (B) providing for the safety and protection of the community; or
 - (C) promoting the development of competencies which will enable the child to become a responsible and productive member of the community.
- (b) The conditions of a diversion agreement entered into pursuant to § 2.07.110, an order deferring adjudication entered in accordance with § 2.10.130, or an order deferring disposition entered in accordance with § 2.13.170(b):
- (1) shall not include detention in a secure juvenile detention facility, nor participation in alternative programs or services specifically intended as alternatives to secure detention or otherwise directed solely at meeting the needs of adjudicated youth; and
 - (2) shall not include a requirement that the child's parent, guardian, or custodian undergo medical, psychological, or psychiatric treatment, unless such treatment is:
 - (A) recommended by a qualified medical, psychological, or psychiatric professional; and
 - (B) necessary to:
 - (i) address conditions which contributed to the alleged delinquent act; or
 - (ii) allow the child to remain with or be returned to the custody of the child's parent, guardian or custodian.

[15.3] Tribal Code Examples

Pascua Yaqui Tribe Code

TITLE 5 – CIVIL CODE

CHAPTER 7 – JUVENILES

SUBCHAPTER B JUVENILE OFFENSES

Section 120 Informal Adjustment (5 PYTC § 7-120)

- (A) During the course of the preliminary investigation to determine what further action shall be taken, the juvenile counselor and presenting officer shall confer with the child and the child's parents for the purpose of effecting adjustments or agreements that make the filing of the petition unnecessary.
- (B) The presenting officer shall consider the following factors in determining whether to proceed informally or to file a petition:
 - (1) Nature and seriousness of the offense.
 - (2) Previous number of contacts with police, juvenile counsel or the Court.
 - (3) Age and maturity of the child.
 - (4) Attitude of the child regarding the offense.
 - (5) Willingness of the child to participate in a voluntary program.
 - (6) Participation and input of the child's parents.
- (C) Informal Conference.
 - (1) After conducting the preliminary investigation, the presenting officer shall hold an informal conference with the child and the child's parents, guardian, or custodian to discuss alternative courses of action in the particular case.
 - (2) The presenting officer shall inform the child, the child's parents, guardian, or custodian of their basic rights under 3 PYT R.Juv.P. Rule 20. 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 information obtained during the preliminary investigations, the presenting officer may enter into a written agreement with the child and the child's parents, guardian, or custodian, specifying particular conditions to be observed during the informal adjustment

period, not to exceed six months. The child and the child's parents, 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 on the case.

- (4) The child is 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 presenting officer shall file a petition under 3 PYT R.Juv.P. Rule 50.
- (6) Upon successful completion of the informal adjustment agreement, the case shall be closed with no further action taken in the case.
- (7) If the child fails to complete the terms of his informal adjustment agreement, the presenting officer may file a petition in the case under 3 PYT R.Juv.P. Rule 50.

Sault St. Marie Tribal Code

CHAPTER 36: JUVENILE CODE

SUBCHAPTER IV: ORGANIZATION AND FUNCTION OF THE JUVENILE DIVISION

36.405 Bekaadziwiin (Peaceful Life)

- (1) The Sault Ste. Marie Chippewa Tribal Court shall promulgate the guidelines governing Peacemaking.
- (2) The Tribal Prosecutor shall present cases that meet the Bekaadziwiin guidelines to the Tribal Peacemaking Committee. The Tribal Peacemaking Committee shall review all cases presented and shall:
 - a. decide not to proceed with any action.
 - b. refer the matter to Bekaadziwiin for peacemaking.
 - c. develop a case plan for the juvenile.
 - d. refer the matter to the Juvenile Division.
- (3) The Tribal Peacemaking Committee may request the Tribal Prosecutor to file a formal petition upon a finding that the case plan has not been substantially followed.
- (4) The Peacemakers shall have the authority to hear the following cases consistent with the established Bekaadziwiin guidelines:

- a. any juvenile offenses.
- b. any juvenile status offenses.
- c. any other cases that are referred by the Tribal Court.
- d. cases from individual Tribal members requesting to voluntarily access Peacemaking.

Warm Springs Tribal Code

Chapter 360 Juveniles

II. JUVENILE PROCEDURE

360.220 Diversion.

- (1) Upon the petition of the Juvenile Coordination/Presenting Officer or any interested party, and based upon a written diversion plan agreed to by the Juvenile Coordinator/Presenting Officer, the juvenile and the juvenile's parent(s), guardian, or custodian, the Juvenile Judge may direct that the case proceed to a diversion program, provided that the following conditions are met:
 - (a) The admitted facts bring the case within the jurisdiction of the Juvenile Court;
 - (b) An informal disposition of the matter would be in the best interests of the juvenile and the Warm Springs Tribe; and
 - (c) The juvenile and his or her parent, guardian, or custodian voluntarily consent to an informal disposition of the matter.
- (2) The written diversion plan, which shall be presented to the Juvenile Judge with a petition for approval of diversion, as provided in Section (1) above, shall consider a number of alternatives to a formal jurisdictional hearing in Juvenile Court. Alternatives shall include, but are not limited to, the following:
 - (a) Refer the juvenile and the parent, guardian, or custodian to a community agency for needed assistance;
 - (b) Order terms of supervision, calculated to assist and benefit the juvenile, which regulate the juvenile's activities and which are within the ability of the juvenile to perform;
 - (c) Accept an offer of restitution if voluntarily made by the juvenile.
- (3) A program for diversion of a juvenile matter shall not exceed twelve (12) months in duration.

- (4) The Juvenile Coordinator/Presenting Officer shall, during the course of the diversion program, review the juvenile's progress every thirty (30) days. At the end of the first thirty (30) days, and every thirty (30) days thereafter during the period of the diversion program, the Juvenile Coordinator/Presenting Officer shall submit a monthly report on the status of the diversion program to the Juvenile Judge. If, at any time after the initial thirty (30) day period but before the end of the diversion program, the Juvenile Coordinator/Presenting Officer determines that satisfactory progress is not being achieved, the Juvenile Coordinator/Presenting Officer shall request that the Court schedule a formal jurisdictional hearing in the matter. Upon the juvenile's satisfactory completion of the informal diversion program, the petition will be dismissed.

[15.4] Tribal Code Commentary

The Pascua Yaqui statute at Section 120 is almost identical to the 1989 BIA Tribal Juvenile Justice Code at Sections 1-10 B and C. The only significant difference is the omission of “guardian or custodian” in its Section 120(A) and 120 (B)(6). Compare the 1989 BIA Tribal Juvenile Justice Code's Section 1-10 B.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. . . .” Also compare the 1989 BIA Tribal Juvenile Justice Code's Section 1-10 B.2. “The juvenile counselor shall consider the following factors in determining whether to proceed informally or to file a petition: . . . (f) participation and input from the child's parent, guardian, or custodian.” These omissions of “guardian or custodian” in the Pascua Yaqui statute appear to be inadvertent as later sections include this language.

The 1989 BIA Tribal Juvenile Justice Code was finalized before the launch of a national wraparound case management initiative in the early 2000s. Contemporary tribal juvenile justice codes should include, within the role and mandates of their equivalent of “Juvenile Counselor,” the duty to conduct case management activities, preferably of the “wraparound” type that ensures tailored, individualized, and comprehensive case management for youth and their families.

The Sault Ste. Marie Tribal Code at Section 36.405 replaces the 1989 BIA Tribal Juvenile Justice Code's “informal adjustment” process with a designated “peacemaking” process. The purpose and nature of the Sault Ste. Marie peacemaking process is set out in a separate set of guidelines. The prosecutor is authorized to take cases to a Peacemaking Committee that then will decide whether to proceed with peacemaking, do nothing, develop a case plan, or refer the entire matter back to the juvenile court system. We note that while it is the prerogative of sovereign tribal nations to further local values, ways, and priorities, it would be in the interest of these nations to add such peacemaking or other traditional or hybrid processes onto their informal adjustment processes, rather than replacing the informal adjustment process wholesale—to accommodate diversions to additional programs like wellness court (drug court), or any of the many programs or services listed

in the preceding table, and where such program or service is not covered as part of the peacemaking program.

The Warm Springs Code is somewhat similar to the 1989 BIA Tribal Juvenile Justice Code; however it references specific types of adjustments such as:

- Referring the juvenile and the parent, guardian, or custodian to a community agency for assistance.
- Prescribing terms of supervision that assist and benefit the juvenile by regulating the juvenile's activities.
- Accepting an offer of restitution voluntarily made by the juvenile.

It also requires the diversion plan be submitted to the judge for approval. Supervision can be up to one year and at a minimum monthly monitoring is required by statute.

[15.5] Exercises

The following exercises are meant to guide you in developing the informal adjustment sections of the tribal juvenile code.

- Find and examine your juvenile code to determine whether you have “informal adjustment” provisions (or any process where a juvenile counselor or probation officer assists youth and their families with a case plan and/or treatment plan before a hearing or trial takes place). What factors make the youth eligible for this?
- Identify who is responsible for such case management and/or treatment planning.
- Make a list of available services (health care, mental health, substance use/abuse, etc.).
- Make a list of available diversion programs (mentoring, educational, therapeutic, cultural, wellness court, teen court, peacemaking, mediation, etc.).
- Make a list of desired but as of yet unavailable services and programs

Read and Discuss*

Should your tribe require early and follow-up mental health screening and assessments for youth involved in the juvenile justice system by statute?

“[R]egardless of the level of care or geographic region of the country, the majority of youth in the juvenile justice system meet the criteria for at least one mental health diagnosis. Overall 70.4 percent of youth were diagnosed with at least one mental health disorder, with girls experiencing a higher rate of disorders (81%) when compared to males (66.8%). For many of the youth in the study their mental health status was complicated by the presence of more than one disorder. Of those youth who were diagnosed with a mental health disorder, 79.1 percent met criteria for at least one other mental health diagnosis. The majority of youth who met criteria for a mental health diagnosis were also diagnosed with a co-occurring substance use disorder. Among those youth with at least one mental health diagnosis, approximately 60 percent also met criteria for a substance use disorder.”

Selected “Core Principles”:

- Youth should not have to enter the juvenile justice system solely in order to access mental health services or because of their mental illness.
- Whenever possible and when matters of public safety allow, youth with mental health needs should be diverted into evidence-based treatment in a community setting.
- If diversion out of the juvenile justice system is not possible, youth should be placed in the least restrictive setting possible, with access to evidence-based treatment.
- Information collected as part of a preadjudicatory mental health screen should not be used in any way that might jeopardize the legal interests of youth as defendant.
- Whenever possible, families and/or caregivers should be partners in the development of treatment decisions and plans made for their children.
- Multiple systems bear responsibility for these youth. While at different times, a single agency may have primarily responsibility, these youth are the community’s responsibility and all responses developed for these youth should be collaborative in nature, reflecting the input and involvement of the mental health, juvenile justice, and other systems.

*Taken from Kathleen R. Skowyra and Joseph J. Cocozza, PhD, “Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System,” a report by the National Center for Mental Health and Juvenile Justice Policy Research Associates, Inc. (2007).