

Chapter 16: Petition for Juvenile Offender Proceedings

[16.1] Overview

Juvenile court proceedings begin with the filing of a petition naming the youth and sometimes the parents/guardians, alleging that the youth has committed a juvenile offense. It varies with respect to who is authorized to file a petition.

A petition generally begins with the words “in the interest of.” Petitions tend to give the name and age of the youth and the names and address of the parents. Petitions typically indicate whether a minor is currently detained and when they were taken into custody. A tribal petition would contain a provision consistent with the code provision relating to tribal affiliation and/or residence in the tribal nation that gives the juvenile court jurisdiction over certain youth. They must also contain a statement of the facts that bring the youth within the jurisdiction of the juvenile court. The petition may also contain allegations related to the child’s need for treatment or rehabilitation. Once completed, a petition is then filed with the prosecutor who then decides whether or not to prosecute. If he does so, proper notice must be given to the youth and his or her parents or guardian. The petition in every sense must be consistent with your code provisions.

16.2] Model Code Example

[\(1989\) 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 D. Filing and Content of Petition

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

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

1-10 E. Issuance of Summons

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

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

1-10 F. Content of the Summons

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

1-10 G. Service of the Summons

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

[16.3] Tribal Code Example

Sault Ste. Marie Tribal Code

CHAPTER 36: JUVENILE CODE

SUBCHAPTER IV: ORGANIZATION AND FUNCTION OF THE JUVENILE DIVISION

(36.401 through 36.405 Omitted)

36.406 Filing and Content of Petition.

Formal juvenile offender proceedings shall be instituted by a petition filed by the prosecutor on behalf of the Tribe and in the interests of the child. The petition shall set forth with specificity:

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

36.407 Issuance of Summons.

- (1) After a juvenile offender petition has been filed, the Court shall direct the issuance of summons to:
 - (a) The child.
 - (b) The child's parents, guardian, or custodian.
 - (c) The child's counsel.
 - (d) Appropriate medical and/or alcohol rehabilitation experts.
 - (e) Any other person the Court deems necessary for the proceedings.
- (2) The summons shall contain the name of the Court, the title of the proceedings, and the date, time, and place of the hearing. The summons shall also advise the parties of their applicable rights under '36.402 of this Chapter. A copy of the petition shall be attached to the summons.
- (3) The summons shall be served upon the parties at least seven (7) days prior to the hearing. The summons shall be delivered personally by a law enforcement officer or appointee of the Court. If the summons cannot be delivered personally, the Court may deliver it by registered mail. If the summons cannot be delivered by registered mail, it may be by publication. A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

[16.4] Tribal Code Commentary

Section 36.406 of the Sault Ste. Marie Tribal Code sets out the requirements for filing and content of the petition. These are identical to the requirements set out under Section 1-10 D of the 1989 BIA Tribal Juvenile Justice Code. Most other tribal code provisions are similar as well, so no further examples were given.

Section 36.407 of the Sault Ste. Marie Tribal Code increases the number of days for serving a summons on the parties to seven, as opposed to the 1989 Tribal Juvenile Justice Code's five days at Section 1-10 G.

See sample petition in the following text based upon the 1989 BIA Tribal Juvenile Justice Code

In the Juvenile Court of the X Tribe

IN THE MATTER OF:

() CHILD.

PETITION FOR

A FINDING THAT

CHILD IS A

JUVENILE OFFENDER

I, _____, Presenting Officer, on oath state on information and belief:

1. That _____ is a male/female, born on _____, who is eligible for membership/a member of _____ Tribe, who resides or may be found at _____, X reservation, in X state.

2. The names and residence addresses of the child's parents are:

The child and the persons named in this paragraph are designated respondents.

3. The Juvenile Court has original and exclusive jurisdiction over this matter where:

☐ The child resides within the X reservation.

OR

☐ The child is domiciled within the X reservation.

AND

☐ The child is alleged to be a "juvenile offender" under Section X of the Juvenile Justice Code.

AND

☐ The child is alleged to have committed a "juvenile offense," by allegedly violating the following criminal provision: _____, at Section X, of the Law and Order Code of the X Tribe.

AND

☐ At the time of the alleged commission of the juvenile offense, the child was under the age of eighteen (18).

4. The following is a plain and concise statement of facts upon which the allegations are based, including the date, time, and location at which the alleged acts occurred:

5. The child:

☐ Was not taken into custody.

☐ Was taken into custody at _____ a.m./p.m. on _____ date, and was placed with

☐ The child is/is not presently in custody.

6. It is in the best interests of the child and the public that the child be adjudged a “juvenile offender.”

I have read the Petition for a Finding that a Child is a Juvenile Offender and do hereby swear that the facts contained herein are true and correct to the best of my knowledge and belief.

Presenting Officer of the X Tribe

Subscribed and sworn to before me this _____ day of _____, 201X.

Notary Public

[16.5] Exercises

The following exercises are meant to guide you in developing the petition section of the tribal juvenile code.

- Find and examine your juvenile code’s provisions governing the drafting and filing of “petitions” or “complaints.”
 - Who is responsible for drafting and filing petitions/complaints with the juvenile court?
 - What types of information must they include?
 - Who is responsible for arguing before the judge on behalf of the petition/complaint in the tribal juvenile court?
- Make a list of the pros and cons of having your tribal social worker, child protection worker, juvenile counselor, or juvenile probation officer do the petitioning/complaining in juvenile court.
- Many tribes designate a tribal prosecutor or presenting officer to be responsible for the petition/complaint drafting/filing/arguing process. Is this desirable in your juvenile justice system?

Read and Discuss

What is the purpose of the petition? Who fills it out and signs it? What does it look like?

Tribal Trends:

- The purpose of the petition is to invoke the jurisdiction of the juvenile court, to begin the fact-finding process to determine whether the youth committed a juvenile offense (if he or she does not admit to it), and to review the need for (continued or additional) services, treatment, and/or (continued) detention or placement.
- Tribal courts vary in assigning the duty of petition drafting/signing and making arguments to the juvenile court. Some tribes use a “presenting officer” or “prosecutor,” others use a “juvenile probation officer,” or “juvenile counselor.” Still others use a “social worker” or “child protection worker” to handle the petitions.
- Petition templates should be drafted to fit the requirements of each tribe’s juvenile statute and the tribal criminal statute, as well as any statutes governing relevant diversion programs like peacemaking or wellness court.