

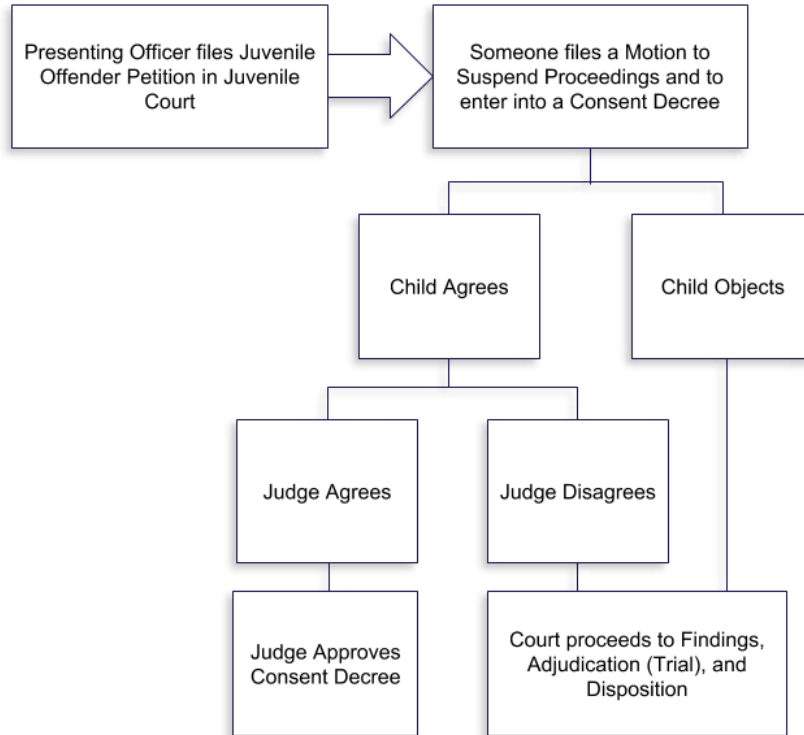
# Chapter 17: Presenting Officer/Prosecutor and Consent Decrees

## [17.1] Overview

Under the [1989 BIA Tribal Juvenile Justice Code](#), there is a second opportunity, after a petition has been filed in juvenile court, for a youth and his or her family to enter into a conditioned agreement for services and/or treatment. This type of agreement is called a “consent decree.” Under the 1989 BIA Tribal Juvenile Justice Code at Section 1-11 A, after a petition is filed, but before the judge has “entered a judgment” (issued a court order deciding whether or not the youth has committed a juvenile offense), the youth’s advocate or attorney, or the presenting officer or prosecutor, may file a motion with the court seeking to stop the court proceedings and to have a negotiated consent decree approved by the judge. This would suspend the court proceedings to see if the youth and his or her family can successfully complete requirements of the consent decree.

If the youth or his or her family objects to this process, the judge will not approve it and will proceed with the juvenile court process. If the youth and his or her family want to enter into a consent decree, the judge must still approve it before it is effective. Under the 1989 BIA Tribal Juvenile Justice Code at Section 1-11 C, a consent decree remains in force for six months. The juvenile counselor and/or the youth and his or her family may request an extension for another six months for additional services and/or treatment. If the youth and his or her family fail to fulfill the terms of the consent decree by the deadline, the presenting officer or prosecutor may file a petition to revoke the consent decree and to proceed on the original petition in juvenile court. If the youth and his or her family successfully meet the terms of the consent decree, the original petition must be dismissed with prejudice (meaning that it cannot be refiled later for the same underlying alleged offense). See 1989 BIA Tribal Juvenile Justice Code [Section 1-11 F](#).

**Section 1-11 Juvenile Offender--Consent Decree**  
1989 BIA Tribal Juvenile Justice Code



## [17.2] Model Code Example

[\(1989\) BIA Tribal Juvenile Justice Code](#)

### [1-11 JUVENILE OFFENDER—CONSENT DECREE](#)

#### 1-11 A. Availability of Consent Decree

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

### **1-11 B. Objection to Consent Decree**

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

### **1-11 E. New Juvenile Offense Complaint**

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

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

## **[17.3] Tribal Code Example**

### **Sault Ste. Marie Tribal Code**

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

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

- (1) At any time after the filing of a juvenile offender petition, the Court may, on motion of the prosecutor or that of counsel for the child, suspend the proceedings and continue the child under supervision in his own home under terms and conditions negotiated with the juvenile probation officer and agreed to by all the parties affected. The Court’s order continuing the child under supervision pursuant to this section shall be known as a consent decree.
- (2) A consent decree shall remain in force for six (6) months unless the child is discharged sooner by the juvenile probation officer. Prior to the expiration of the six (6) months period, and upon the application of the juvenile probation officer or any other agency supervising the child under a consent decree, the Court may extend the decree for an additional six (6) months in the absence of objection to extension by the child. If the child objects to the extension, the Court shall hold a hearing and make a determination on the issue of extension.

- (3) [Reserved]
- (4) If, either prior to a discharge by the juvenile probation officer or expiration of the consent decree, the child fails to fulfill the terms of the decree, the prosecutor may file a petition to revoke the consent decree. Proceedings on the petition shall be conducted according to '36.410 of this Chapter. If the child is found to have violated the terms of the consent decree, the Court may:
  - (a) Extend the period of the consent decree.
  - (b) Make any other disposition which would have been appropriate in the original proceeding.
- (5) If, either prior to discharge or expiration of the consent decree, a new juvenile offender complaint is filed against the child, the prosecutor may:
  - (a) File a petition to revoke the consent decree in accordance with subsection (4) of this Chapter.
  - (b) File a petition on the basis of the new complaint which has been filed against the child.

#### **36.409 Dismissal of Petition.**

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

#### **36.410 Preliminary Hearing**

- (1) The Court shall conduct a preliminary hearing within fourteen (14) days of the date of filing the petition or in cases of alternative sentencing within fourteen (14) days of the filing of the petition to revoke a consent decree.
- (2) The Court shall read the allegations of the petition in open Court unless waived and shall advise the child and parents of the rights in Section 36.402. After advising the child and parents of the rights, the Court shall allow the child an opportunity to deny or admit the allegations and make a statement of explanation.
- (3) If the child admits the allegations, the Court may proceed directly to disposition pursuant to Section 36.413.

## [17.4] Tribal Code Commentary

The Sault Ste. Marie statute after Section 36.408 (1) and before Section 36.408 (2) omits the paragraph (Section 1-11 B. of the 1989 BIA Tribal Juvenile Justice Code):

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

The 1989 BIA Tribal Juvenile Justice Code provision at Section 1-11 B. provides for the youth and/or the presenting officer or prosecutor to object to the proposed consent decree. Under, Section 1-11 B, if the youth objects, the matter must proceed to findings, adjudication, and disposition. Under Section 1-11 B, if the presenting officer or prosecutor objects, the final decision is left to the judge. This 1989 BIA Tribal Juvenile Justice Code provision may be undesirable if the tribe wants the judge to use his or her discretion to decide whether to dismiss a petition even if a youth will not agree to a consent decree, and the judge would still be using his or her discretion to decide whether to approve a consent decree even absent the language regarding the objection of a presenting officer or prosecutor.

The 1989 BIA Tribal Juvenile Justice Code at Section 1-11 E. states:

If either, prior to discharge or expiration of the consent decree, a new “juvenile offender” complaint is filed against the *child and the juvenile counselor has conducted a preliminary inquiry and authorized the filing of a petition upon a finding that informal adjustment is not in the best interest of the child and public*, the juvenile presenter may: 1. file a petition to revoke the consent decree in accordance with the section 1-11 D of this code; or 2. file a petition on the basis of the new complaint which has been filed against the child.

The Sault Ste. Marie statute at Section 36.408 (4) omits the language: “and the juvenile counselor has conducted a preliminary inquiry and authorized the filing of a petition upon a finding that informal adjustment is not in the best interest of the child and public” from the 1989 Tribal Juvenile Justice Code at Section 1-11 E. The Sault Ste. Marie statute removes the requirement that would handicap the presenting officer or prosecutor in seeking to revoke an original consent decree. Under the 1989 BIA Tribal Juvenile Justice Code language, a presenting officer or prosecutor would not be authorized to seek to revoke the consent decree for the first offense before and unless a juvenile counselor decided to recommend the filing of a petition in juvenile court for a second offense. The Sault Ste. Marie provision gives presenting officers and prosecutors more discretion to revoke an original consent decree given a subsequent new offense. However, it definitely prejudices the youth and his or her family by taking away their existing chance to succeed in their services and treatment. In deciding which approach to follow, a tribe should consider what entity in their system would be

in the best position to make case-by-case decisions about whether a youth and his or her family can succeed in a given case plan—the juvenile counselor/probation officer, or the presenting officer/prosecutor?

The Sault Ste. Marie statute at Section 36.410 provides for a preliminary hearing for the purpose of revoking consent decrees and gives the youth an opportunity to deny or admit to the allegations of the petition and to explain anything they would like to explain. The preliminary hearing functions like an arraignment in a criminal proceeding where a criminal defendant is given a chance to plead and where other preliminary matters are handled prior to a trial.

## [17.5] Exercises

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

- Find and examine your juvenile code’s provisions governing the “consent decrees,” if any.
  - Who is authorized to file petitions/motions for consent decrees in the juvenile court?
  - What services and/or programs are available to youth through the consent decree?
  - What are the requirements for granting a consent decree?
  - What happens to the youth if the judge will not grant a consent decree?
  - What happens if a consent decree is not successfully completed or violated in some way by the youth?
- Make a list of the pros and cons of having a consent decree process in your juvenile justice system.

## Read and Discuss\*

- **When do consent decrees work? For what types of youth with what types of problems?**
- **Does the use of the consent decree really depend upon what services and programs are available?**
- **How do we assure that consent decrees will be made available to youth and their families in a way that is fair and reasoned?**

Montana findings:

- Cases involving American Indian juveniles were 50 percent to 80 percent less likely to be resolved through a consent decree after petition for adjudication.
- Cases were more likely to result in consent decrees when the juvenile was a school dropout and where the current offense was a felony offense that was something other than an offense against property.

- Consent decree outcomes were less likely when the cases involved male juveniles, juveniles with a history of mental illness, and in cases in which the current offense was a drug offense.

\*Taken from Report: “Assessing the Mechanisms That Contribute to Disproportionate Minority Contact in Montana’s Juvenile Justice Systems,” December 2012, Social Science Research Laboratory University of Montana, Missoula.  
<http://mbcc.mt.gov/data/SAC/RAI/DMCAssessRep.pdf>.