

# Chapter 18: Adjudications in Juvenile Proceedings

## [18.1] Overview

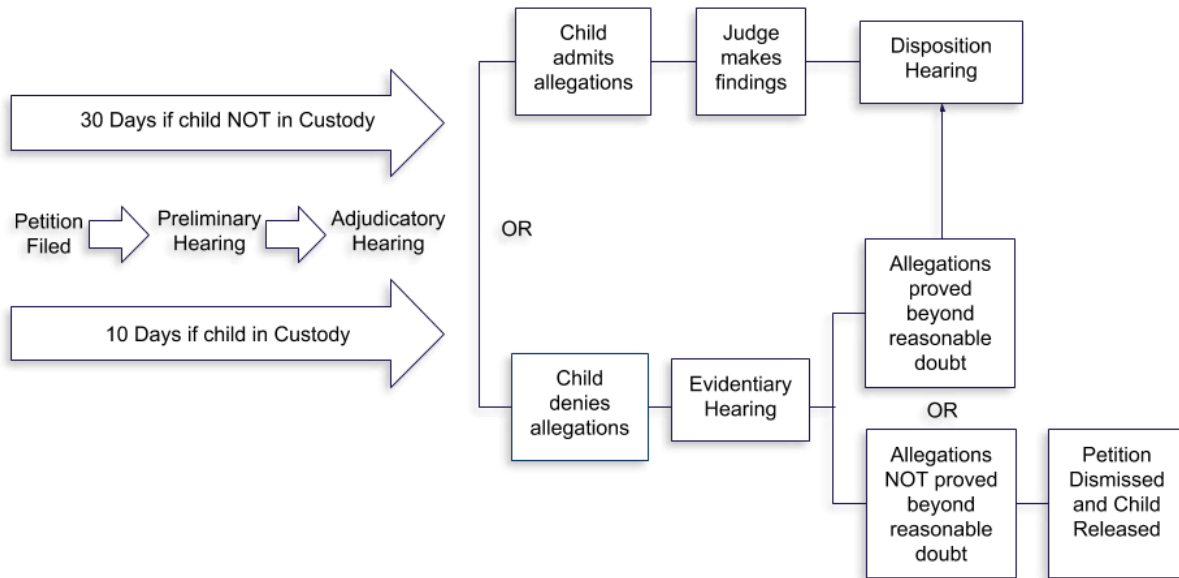
Under the 1989 BIA Tribal Juvenile Justice Code, Section 1-12, the purpose of the adjudicatory hearing is to determine whether a youth has committed a “juvenile offense.” The proceedings are closed to the general public. The timing requirements vary depending upon whether the youth has been taken into custody. If the youth is in custody, the adjudicatory hearing must be held within ten days of the filing of the petition. Otherwise, the hearing must be held within thirty days of the filing of the petition.

If the youth admits to the allegations in the petition the judge must make a record of his or her findings and schedule a disposition hearing. Alternatively, if the judge finds on the basis of proof beyond a reasonable doubt that the allegations contained in the petition are true, the judge must make a record of his or her findings and schedule a disposition hearing.

In adjudicatory hearings the judge determines whether the youth is to continue in an out-of-home placement pending disposition. If the judge finds that the allegations in the petition have not been established beyond a reasonable doubt, he or she dismisses the petition and releases the youth. The U.S. Supreme Court held in [\*In re Winship\*](#), 397 U.S. 358 (1970), that when a state undertakes to prove a child delinquent for committing a criminal act, it must do so beyond a reasonable doubt.

## Section 1-12 Juvenile Offender--Adjudicatory Proceedings

### 1989 BIA Tribal Juvenile Justice Code



## [18.2] Model Code Example

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

### [1-12 JUVENILE OFFENDER—ADJUDICATION PROCEEDINGS](#)

#### 1-12 A. Purpose and Conduct of Adjudicatory Hearing

Hearings on “juvenile offender” petitions shall be conducted by the juvenile court separate from other proceedings. The court shall conduct the adjudicatory hearing for the sole purpose of determining whether the child has committed a “juvenile offense” At the adjudicatory hearing, the child and the child’s parent, guardian or custodian shall have the applicable rights listed in 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 shall be admitted.

#### 1-12 B. Time Limitations on Adjudicatory Hearings

If the child remains in custody, the adjudicatory hearing shall be held within ten (10) days of receipt of the “juvenile offender” petition by the juvenile court. If the child is released from custody or was not taken into custody, then the adjudicatory hearing shall be held within thirty (30) days of receipt of the “juvenile offender” petition by the juvenile court.

#### **1-12 C. Notice of Hearing**

Notice of the adjudicatory hearing shall be given to the child and the child’s parent, guardian or custodian, the child’s counsel and any other person the court deems necessary for the hearing at least five (5) days prior to the hearing in accordance with sections 1-10F and 1-10G of this code.

#### **1-12 D. Denial of Allegations**

If the allegations in the “juvenile offender” petition are denied, the juvenile court shall set a date, in accordance with section 1-12B above, to hear evidence on the petition.

#### **1-12 E. Admission of Allegations**

If the child admits the allegations of the petition, the juvenile court shall consider a disposition only after a finding that:

1. the child fully understands his rights under chapter 1-7 of this code, and fully understands the consequences of his admission;
2. the child voluntarily, intelligently, and knowingly admits all facts necessary to constitute a basis for juvenile court action; and
3. the child has not, in his statements on the allegations, set forth facts, which if found to be true, would be a defense to the allegations.

#### **1-12 F. “Juvenile Offender” Finding After Admission**

If the court finds that the child has validly admitted the allegations contained in the petition, the court shall make and record its finding and schedule a disposition hearing in accordance with chapter 1-14 of this code. Additionally, the court shall specify in writing whether the child is to be continued in an out of the home placement pending the disposition hearing.

#### **1-12 G. “Juvenile Offender” Finding After Hearing**

If the court finds on the basis of proof beyond a reasonable doubt that the allegations contained in the petition are true, the court shall make and record its finding and schedule a disposition hearing in accordance with chapter 1-14 of this code. Additionally, the court shall specify in writing whether the child is to be continued in an out of home placement pending the disposition hearing.

## 1-12 H. Dismissal of Petition

If the court finds that the allegations on the “juvenile offender” petition have not been established beyond a reasonable doubt it shall dismiss the petition and order the child released from any detention imposed in connection with the proceeding.

## [18.3] Tribal Code Example

### Sault Ste. Marie Tribal Code

#### CHAPTER 36: JUVENILE CODE

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

- (1) Hearings on juvenile offender petitions shall be conducted by the Juvenile Division separate from other proceedings. The Court shall conduct the adjudicatory hearing for the sole purpose of determining whether the child has committed a juvenile offense. At the adjudicatory hearing, the child and the child’s parent, guardian, or custodian shall have the applicable rights listed in '36.402 of this Chapter.
- (2) If the child remains in custody, the adjudicatory hearing shall be held within fourteen (14) days after the preliminary hearing. If the child is released from custody or was not taken into custody, then the adjudicatory hearing shall be held within thirty (30) days after the preliminary hearing by the Juvenile Division.
- (3) Notice of the adjudicatory hearing shall be given to the child and the child’s parent, guardian or custodian, the child’s counsel and any other person the Court deems necessary for the hearing at least seven (7) days prior to the hearing pursuant to '36.407.
- (4) If the allegations in the juvenile offender petition are denied, the Juvenile Division shall set a date to hear evidence on the petition.
- (5) If the child admits the allegations of the petition, the Juvenile Division shall consider disposition only after a finding that:
  - (a) The child fully understands his rights pursuant to '36.402, and fully understands the consequences of his admission.
  - (b) The child voluntarily, intelligently and knowingly admits all facts necessary to constitute a basis for Juvenile Division action.
  - (c) The child has not, in his statements on the allegations, set forth facts, which if found to be true, would be a defense to the allegations.

- (6) If the Court finds that the child has validly admitted the allegations contained in the petition, the Court shall make and record its findings and schedule a disposition hearing in accordance with '36.412 of this Chapter. Additionally, the Court shall specify in writing whether the child is to be continued in an out of the home placement pending the disposition hearing.
- (7) If the Court finds on the basis of proof beyond a reasonable doubt that the allegations contained in the petition are true, the Court shall make and record its findings and schedule a disposition hearing in accordance with '36.402 of this Chapter. Additionally, the Court shall specify in writing whether the child is to be continued in an out of home placement pending the disposition hearing.
- (8) If the Court finds that the allegations on the juvenile offender petition have not been established beyond a reasonable doubt, it shall dismiss the petition and order the child released from any detention imposed in connection with the proceeding.

## [18.4] Tribal Code Commentary

The Sault Ste. Marie statute at Section 36.411(1) omits the language from the 1989 BIA Tribal Juvenile Justice Code, Section 1-12 A, which excludes the public from the adjudicatory hearing: “The general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and other persons requested by the parties shall be admitted.” The literature on adolescent development recommends that these proceedings be closed to the public to avoid further stigmatizing youth and causing them present and future harm.

The Sault Ste. Marie statute at Section 36.411(2) increases the number of days for the holding of an adjudicatory hearing if a youth is in custody: “If the child remains in custody, the adjudicatory hearing shall be held within fourteen (14) days after the preliminary hearing.” Compare the Section 1-12 B from the 1989 BIA Tribal Juvenile Justice Code: “If the child remains in custody, the adjudicatory hearing shall be held within ten (10) days of receipt of the ‘juvenile offender’ petition by the juvenile court.” The Sault Ste. Marie statute contains a “preliminary hearing” stage not included in the 1989 BIA Tribal Juvenile Justice Code. Preliminary hearings are a necessary part of any court process. Although they were not provided for under the 1989 BIA Tribal Juvenile Justice Code, it would still be possible to use them but they would have to take place before the adjudicatory hearing and within the tight time frames of the code. This likely explains the increase in the time limit under the Sault Ste. Marie statute.

The Sault Ste. Marie statute at Section 36.411 (3) increases the number of days for providing notice of the adjudicatory hearing: “Notice of the adjudicatory hearing shall be given to the child and the child’s parent, guardian, or custodian, the child’s counsel and any other person the Court deems necessary for the hearing at least seven (7) days prior to the hearing pursuant to '36.407.” Compare

the 1989 Tribal Juvenile Justice Code provision at Section 1-12 C: “Notice of the adjudicatory hearing shall be given . . . at least five (5) days prior to the hearing. . . .” The Sault Ste. Marie provision is more protective of the youth’s rights in the sense that it provides two additional days of notice and thus preparation for the hearing.

## [18.5] Exercises

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

- Find and examine your juvenile code provisions governing “hearings” and/or “adjudications.” How soon after the filing of petition must your juvenile judge hold a hearing?
- What “findings” are the judge required to make (“juvenile delinquent,” “juvenile offender,” “status offender,” “FINS,” etc.)?
- What “standard of proof” is required to prove that a youth is a “juvenile delinquent” or “juvenile offender,” (e.g., “proof beyond a reasonable doubt”)?

## Read and Discuss\*

**When do you think that a trial (adjudication) is necessary and what protections should youth have?**

### Facts and Case Summary: *In re Gault* 387 U.S. 1 (1967)

Gerald (“Jerry”) Gault was a fifteen-year-old accused of making an obscene telephone call to a neighbor, Mrs. Cook, on June 8, 1964. After Mrs. Cook filed a complaint, Gault and a friend, Ronald Lewis, were arrested and taken to the Children’s Detention Home. Gault was on probation when he was arrested, after being in the company of another boy who had stolen a wallet from a woman’s purse.

At the time of the arrest related to the phone call, Gault’s parents were at work. The arresting officer left no notice for them and did not make an effort to inform them of their son’s arrest. When Gault’s mother did not find Gault at home, she sent his older brother looking for him. They eventually learned of Gault’s arrest from the family of Ronald Lewis. When Mrs. Gault arrived at the Detention Home, she was told that a hearing was scheduled in juvenile court the following day.

The arresting officer filed a petition with the court on the same day of Gault’s initial court hearing. The petition was not served on Gault or his parents. In fact, they did not see the petition until more than two months later, on August 17, 1964, the day of Gerald’s *habeas corpus* hearing. The June 9 hearing was informal. Not only was Mrs. Cook not present, but no transcript or recording was made, and no one was sworn in prior to testifying. Gault was questioned by the judge and there are

conflicting accounts as to what, if anything, Gault admitted. After the hearing, Gault was taken back to the Detention Home. He was detained for another two or three days before being released. When Gault was released, his parents were notified that another hearing was scheduled for June 15, 1964.

Mrs. Cook was again not present for the June 15th hearing, despite Mrs. Gault's request that she be there "so she could see which boy that done the talking, the dirty talking over the phone." Again, no record was made and there were conflicting accounts regarding any admissions by Gault. At this hearing, the probation officers filed a report listing the charge as lewd phone calls. An adult charged with the same crime would have received a maximum sentence of a \$50 fine and two months in jail. The report was not disclosed to Gault or his parents. At the conclusion of the hearing, the judge committed Gault to juvenile detention for six years, until he turned 21.

Gault's parents filed a petition for a writ of *habeas corpus*, which was dismissed by both the Superior Court of Arizona and the Arizona Supreme Court. The Gaults next sought relief in the Supreme Court of the United States. The Court agreed to hear the case to determine the procedural due process rights of a juvenile criminal defendant.

\* Taken from the U.S. Courts website maintained by the Administrative Office of the U.S. Courts on behalf of the Federal Judiciary, FACTS AND CASE SUMMARY: IN RE GAULT. Go to <http://www.uscourts.gov/educational-resources/get-involved/constitution-activities/sixth-amendment/right-counsel/facts-case-summary-gault.aspx>.