

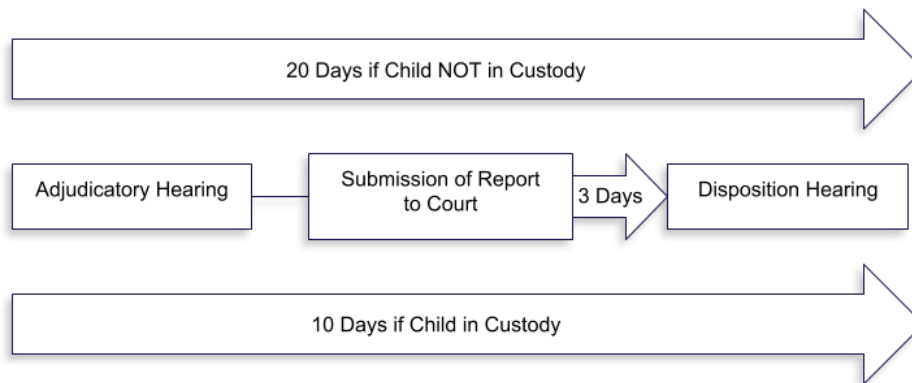
Chapter 20: Disposition in Juvenile Proceedings

[20.1] Overview

Under the [1989 BIA Tribal Juvenile Justice Code](#), a disposition hearing must be held within ten days of the adjudicatory hearing if the youth remains in custody. Otherwise, the disposition hearing must be held within twenty days of the adjudicatory hearing. The purpose of the disposition hearing is for the judge to decide the youth's "supervision, care, and rehabilitation" based upon "all relevant and material evidence," including the predisposition reports or other ordered reports or studies. The judge must also consider any alternative predisposition reports or recommendations provided by the youth or his or her advocate or attorney.

The disposition hearing is separate from the adjudicatory hearing. It is closed to the public. The youth and his parent(s), guardian(s) or custodian(s) are given the rights listed under Chapter 1-7 of the 1989 BIA Tribal Juvenile Justice Code.

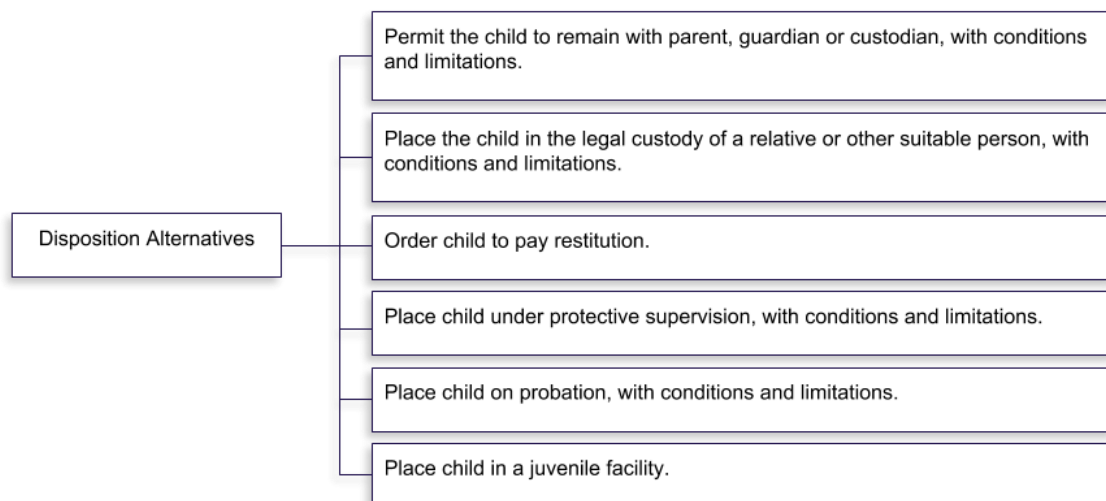
Sections 1-13 G. and 1-14 B. Juvenile Offender--Predisposition Studies and Disposition Hearings 1989 BIA Tribal Juvenile Justice Code



Today there are many different kinds of community treatment programs and youth guidance centers. As a result, contemporary dispositions contain conditions for participation and completion of these programs. The dispositions of “probation” or “suspended sentence” may often require compulsory attendance at such a community-based treatment or rehabilitation program. If the youth violates these conditions, it may result in a revocation of probation or the unsuspending of his or her sentence. Most states specify a maximum amount of time for confining a youth. All generally terminate the effect of juvenile orders when they reach the age of majority. This results in discharging the youth from further obligation and control.

Section 1-14 E. Juvenile Offender--Disposition Alternatives

1989 BIA Tribal Juvenile Justice Code



Under the 1989 BIA Tribal Juvenile Justice Code at Section 1-14 E, where a judge finds that a youth is a “juvenile offender,” he or she may determine how the youth will be supervised, cared for, and/or rehabilitated. The provision sets out six disposition alternatives: allowing a youth to remain with his or her parents (or guardian or custodian), placing the youth in the legal custody of a relative (or “other suitable person”), requiring that the youth pay restitution to anyone harmed, placing the youth under “protective supervision” (this means that the youth is allowed to remain with his or her parents, relative, or other suitable person, but that the court and a health or social services agency will be monitoring and providing services), placing the youth on probation, or placing the youth in a juvenile facility. All of these options are likely to be subject to specific conditions and limitations set by the judge and included in the court order.

[20.2] Model Code Examples

(1989) BIA Tribal Juvenile Justice Code

1-14 Juvenile Offender—Disposition Proceedings

1-14 A. Purpose and Conduct of Disposition Hearing

Disposition hearings shall be conducted by the juvenile court separate from other proceedings. The court shall conduct the disposition hearing to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific “juvenile offense.” The court shall make and record its dispositional order in accordance with sections 1-14E and 1-15 of this code. At the disposition 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 public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and persons requested by the parties shall be admitted.

1-14 B. Time Limitations on Disposition Hearings

If the child remains in custody, the disposition hearing shall be held within ten (10) days after the adjudicatory hearing. If the child is released from custody or was not taken into custody, then the disposition hearing shall be held within twenty (20) days after the adjudicatory hearing.

1-14 C. Notice of Disposition Hearing

Notice of the disposition 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.

1-14 E. Disposition Alternatives

If a child is found by the court to be a “juvenile offender,” the court may make and record any of the following orders of disposition for the child’s supervision, care and rehabilitation:

1. permit the child to remain with his parent, guardian or custodian, subject to such conditions and limitations as the court may prescribe;
2. place the child in the legal custody of a relative or other suitable person, subject to such conditions and limitations as the court may prescribe;
3. order the child to pay restitution (as defined in section 1-1C of this code);

4. place the child under protective supervision (as defined in section 1-1C of this code) under such conditions and limitations as the court may prescribe;
5. place the child on probation (as defined in section 1-1C of this code) under such conditions and limitations as the court may prescribe; or
6. place the child in a juvenile facility designated by the court, including alcohol or substance abuse emergency shelter or halfway house, emergency foster home, foster home, group home, shelter home, or secure juvenile detention facility (see section 1-1C of this code for individual definitions).

1-15 C. Hearing to Modify, Revoke, or Extend Disposition Order

A hearing to modify, revoke, or extend the disposition order shall be conducted according to sections 1-14A, 1-14C, 1-14D, and 1-14E of this code.

1-15 D. Automatic Termination of Disposition Order

When the child reaches eighteen (18) years of age, all disposition orders shall automatically terminate, unless the original disposition order was made within one (1) year of the child's eighteenth (18th) birthday or after the child had reached eighteen (18) years of age, in which case the disposition order may not continue for more than one (1) year. The records concerning the child shall be destroyed according to section 1-20C of this code.

University of Washington Center of Indigenous Research and Justice

[Model Tribal Juvenile Code](#)

CHAPTER 2 DELINQUENCY

2.13.230 Disposition Options

- (a) Pursuant to § 2.13.170(b)(1), the Juvenile Court may enter written orders including any of the following, as best suited to the needs of the child and the safety of the community:
 - (1) an order permitting the child to remain with his or her parent, guardian or custodian, subject to such conditions and limitations as the Juvenile Court may prescribe;
 - (2) an order requiring the child or the child's parent, guardian or custodian to participate 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;

- (3) an order requiring the child's parent, guardian or custodian to participate 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;
 - (4) an order requiring the child or the child's parent, guardian or custodian to undergo a medical, psychological, or psychiatric evaluation, in accordance with § 2.12.170;
 - (5) an order requiring the child or the child's parent, guardian or custodian to undergo medical, psychological, or psychiatric treatment, where such treatment is:
 - (A) recommended by a qualified medical, psychological, or psychiatric professional; and
 - (B) necessary to:
 - (i) address conditions which contributed to the child's adjudication; or
 - (ii) allow the child to remain with or be returned to the custody of the child's parent, guardian or custodian.
 - (6) an order requiring the child to pay restitution;
 - (7) an order requiring the child to perform community service;
 - (8) an order requiring the child to attend structured after-school, evening, educational, vocational or other court-approved programs appropriate for meeting the needs of the child and providing for the safety of the community;
 - (9) an order prohibiting the child from driving a motor vehicle for a period not to exceed the date on which the child reaches 18 years of age;
 - (10) an order placing the child in the temporary legal custody of a relative or other suitable person, subject to such conditions and limitations as the Juvenile Court may prescribe;
 - (11) an order providing for supervised or conditional release in accordance with § 2.05.170; and
 - (12) an order providing for the detention or other out-of-home placement of the child in accordance with § 2.05.150.
- (b) If a child found by the Juvenile Court to have committed a delinquent act has not achieved a high school diploma or the equivalent, the Juvenile Court may enter a written

order requiring that the child pursue a course of study designed to lead to the achievement of a high school diploma or the equivalent.

[20.3] Tribal Code Examples

Sault Ste. Marie Tribal Code

CHAPTER 36: JUVENILE CODE

SUBCHAPTER IV: ORGANIZATION AND FUNCTION OF THE JUVENILE DIVISION

36.413 Disposition Proceedings

- (1) The Court shall conduct the disposition hearing to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific juvenile offense. The Court shall make and record its dispositional order. At the disposition 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 dispositional hearing shall be held within thirty (30) days after the adjudicatory hearing. If the child is released from custody or was not taken into custody, then the disposition hearing shall be held within sixty (60) days after the adjudicatory hearing.
- (3) Notice of the disposition 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 in accordance with '36.407 of this Chapter.
- (4) In the disposition hearing, the Court may consider all relevant and material evidence determining the questions presented, including oral and written reports, and may rely on such evidence to the extent of its probative value even though not otherwise competent. The Court shall consider any predisposition report, physician's report, or social study it may have ordered and afford the child, the child's parent, guardian, or custodian and the child's counsel an opportunity to controvert the factual contents and conclusions of the report(s). The Court shall also consider the alternative predisposition report or recommendations prepared by the child or the child's counsel, if any.
- (5) If a child is found by the Court to be a juvenile offender, the Court may make and record any of the following orders of disposition for the child's supervision, care and rehabilitation:

- (a) Permit the child to remain with his parent, guardian, or custodian, subject to such conditions and limitations as the Court may prescribe.
- (b) Place the child in the legal custody of a relative or other suitable person, subject to such conditions and limitations as the Court may prescribe.
- (c) Order the child to pay restitution (as defined in '36.329 of this Chapter).
- (d) Place the child under protective supervision (as defined in '36.328 of this Chapter) under such conditions and limitations as the Court may prescribe.
- (e) Place the child on probation (as defined in '36.327 of this Chapter) under such conditions and limitations as the Court may prescribe.
- (f) Place the child in a juvenile facility designated by the Court, including alcohol or substance abuse, emergency shelter or halfway house, emergency foster home, foster home, group home, shelter home, or secure juvenile detention facility.

36.414 Review, Modification, Revocation, Extension, or Termination of Dispositional Orders.

- (1) Dispositional orders are to be reviewed at the Court's discretion at least once every six (6) months.
- (2) The Court may hold a hearing to modify, revoke or extend a disposition order at any time upon the motion of:
 - (a) The child.
 - (b) The child's parents, guardian, or custodian.
 - (c) The child's counsel.
 - (d) The juvenile probation officer.
 - (e) The prosecutor.
 - (f) The institution, agency, or person vested with legal custody of the child or responsibility for protective supervision.
 - (g) The Court on its own motion.
- (3) A hearing to modify, revoke or extend the disposition order shall be conducted according to '36.412.

- (4) When the child reaches seventeen (17) years of age, all disposition orders shall automatically terminate unless the original disposition order was made within one (1) year of the child's seventeenth (17th) birthday or after the child had reached seventeen (17) years of age, in which case the disposition order may not continue for more than one (1) year. The records concerning the child shall be destroyed according to '36.*03 [sic] of this Chapter.

36.415 Probation Violation Hearings.

- (1) If a juvenile offender is placed on probation, the Court or the juvenile probation officer may prescribe limitations on the juvenile. This may include but is not limited to house arrest and curfews as well as community service activities.
- (2) If the juvenile fails to comply with the probation requirements or commits subsequent juvenile offenses or juvenile status offenses, the Court may conduct a probation violation hearing separate from a disposition review hearing pursuant to '36.413.
- (3) The Court Clerk shall issue a notice of hearing to the juvenile. The notice shall include a copy of the probation violation petition, and a notice that the probation violation hearing will occur and that the juvenile will need to have any and all witnesses at the Court on that day. The juvenile may contact the Court Clerk for issuance of any subpoenas necessary.
- (4) The juvenile probation officer shall file a petition alleging that the juvenile has violated the conditions of the probation. The petition shall include all relevant facts regarding the violation including any dates.
- (5) At the probation violation hearing, the Court may take any relevant testimony from the juvenile probation officer and the juvenile or the juvenile's parents, guardian, or custodian or anyone else the Court deems appropriate.
- (6) If the allegations in the probation violation petition are sustained by a preponderance of the evidence, the Court may order additional probation requirements or any other disposition that the Court is permitted to order pursuant to '36.412.

Leech Lake Band of Ojibwe Judicial Code

Title 4: Juvenile Justice Code

4-13 JUVENILE OFFENDER - DISPOSITION PROCEEDINGS

(A. through E. Omitted)

Section 4-13 E. Outcome of Disposition Hearing

If a child is found by the court to be a “juvenile offender,” the court may impose such conditions as reflective of the traditions and customs of the Band and which are reasonably designed to achieve the purpose and intent of this code. The conditions the court may impose for the child’s supervision, care, and rehabilitation include but are not limited to the following:

1. permit the child to remain with parent, guardian, or custodian, subject to such conditions and limitations as the court may prescribe;
2. restrict the child to his or her residence until further order of the court except as specifically provided in the order;
3. to regularly attend school and maintain passing grades of “C” or better in all courses;
4. require the child seek and/or undergo counseling and treatment, including inpatient treatment, as may be recommended in any chemical dependency, psychiatric or psychological evaluation ordered by the court;
5. place the child in the physical custody of a relative or other suitable person, subject to the conditions and limitations as the court may prescribe;
6. order the child to pay restitution;
7. place the child under protective supervision under such conditions and limitations as the court may prescribe;
8. place the child on probation under such conditions and limitations as the court may prescribe;
9. require the child to pay up to \$100 dollar fine for the first violation and no more than \$200 dollar fine for any subsequent violation;
10. require the child perform community service in such an amount and of such a nature as the court deems appropriate for the minor’s age, circumstances, and conduct;

11. require the child to refrain from associating with named individuals, if any, found by the court to be detrimental to the minor's ability to comply with its orders;
12. require the child abstain from the use and possession of alcohol, drugs, inhalants, and prohibited use of tobacco and over-the-counter medication;
13. require the child obey all tribal ordinances and all federal, state, and local laws;
14. require the child to apologize in writing or in a traditional manner or ceremony to any persons who have been victimized by the minor's conduct; including family members, Band officials, and/or community at large;
15. place the child in a juvenile facility designated by the court, including alcohol or substance abuse emergency shelter or halfway house, emergency foster home, foster home, group home, shelter home, or secure juvenile detention facility;
16. referral of the child and his parents, guardian, or custodian to an appropriate social services agency for participation in counseling or other treatment program as ordered by the court;
17. require any family members including the minor's parent(s), guardian, or custodian, that reside with or are in regular contact with the "juvenile offender" to fully cooperate with the Juvenile Service Coordinator, treatment providers, counselors, educators, or other service providers who are engaged in implementing the conditions of probation;
18. require any family members that reside with or are in regular contact with the "juvenile offender" undergo random urinalysis, chemical and psychological assessment, parenting classes, attend counseling sessions, and any other services the court deems are in the child's best interest;
19. require the Juvenile Service Coordinator to staff the case with Leech Lake Child Welfare child protection team; [and/or]
20. Order any other services the court deems in the child's best interest.

The Cherokee Code of the Eastern Band of the Cherokee Nation

Chapter 7A—JUVENILE CODE

ARTICLE V. LAW ENFORCEMENT PROCEDURES IN DELINQUENCY PROCEEDINGS

Sec. 7A-53. Dispositional alternatives for delinquent juvenile.

The court exercising jurisdiction over a juvenile who has been adjudicated delinquent may use the following alternatives:

- (1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:
 - a. Require that a juvenile be supervised in the juvenile's own home by the Eastern Band of Cherokee Indians Juvenile Services, a court counselor, or other personnel may be available to the parent, guardian, or custodian or the juvenile as the judge may specify; or
 - b. Place the juvenile in the custody of a parent, guardian, custodian, relative, agency offering placement services, or some other suitable person; or
 - c. Place the juvenile in the custody of the Eastern Band of Cherokee Indians Juvenile Services.
- (2) Excuse the juvenile from compliance with the compulsory school attendance law when the court finds that suitable alternative plans can be arranged by the family through other community resources for one of the following:
 - a. An education related to the needs or abilities of the juvenile including vocational education or special education;
 - b. A suitable plan of supervision or placement; or
 - c. Some other plan that the court finds to be in the best interests of the juvenile.
- (3) Order the juvenile to cooperate with a community-based program, an intensive substance abuse treatment program, or a residential or nonresidential treatment program. Participation in the programs shall not exceed 12 months.
- (4) Require restitution, full or partial, payable within a 12-month period to any person who has suffered loss or damage as a result of the offense committed by the juvenile. The court may determine the amount, terms, and conditions of the restitution. If the juvenile participated with another person or persons, all participants should be jointly and severally responsible for the payment of restitution; however, the court shall not require

the juvenile to make immediate restitution if the juvenile satisfies the court that the juvenile does not have, and could not reasonably acquire, the means to make restitution.

- (5) Impose a fine related to the seriousness of the juvenile's offense. If the juvenile has the ability to pay the fine, it shall not exceed the maximum fine for the offense if committed by an adult.
- (6) Order the juvenile to perform up to 100 hours supervised community service consistent with the juvenile's age, skill, and ability, specifying the nature of the work and the number of hours required. The work shall be related to the seriousness of the juvenile's offense and in no event may the obligation to work exceed 12 months.
- (7) Order the juvenile to participate in the victim-offender reconciliation/mediation program.
- (8) Place the juvenile on probation under the supervision of a court counselor and impose any combination of the following conditions:
 - a. That the juvenile remain on good behavior;
 - b. That the juvenile shall not violate any laws;
 - c. That the juvenile not violate any reasonable and lawful rules of a parent, guardian, or custodian;
 - d. That the juvenile attend school regularly;
 - e. That the juvenile maintain passing grades in up to four courses during each grading period and meet with the court counselor and a representative of the school to make a plan for how to maintain those passing grades;
 - f. That the juvenile not associate with specified persons or be in specified places;
 - g. That the juvenile refrain from use or possession of any alcoholic beverage or controlled substance as described in section 14-25.2 of the Cherokee Code;
 - h. That the juvenile abide by a prescribed curfew;
 - i. That the juvenile submit to a warrantless search at reasonable times;
 - j. That the juvenile submit to substance abuse monitoring and treatment;
 - k. That the juvenile cooperate with electronic monitoring;
 - l. That the juvenile participate in a life skills or an educational skills program;

- m. That the juvenile possess no firearm, explosive device, or other deadly weapon;
 - n. That the juvenile report to a court counselor as often as required by the court counselor;
 - o. That the juvenile make specified financial restitution or pay a fine;
 - p. That the juvenile be employed regularly if not attending school; and
 - q. That the juvenile satisfy any other condition determined appropriate by the court
- (9) Prohibit the juvenile from operating a motor vehicle for as long as the court retains jurisdiction over the juvenile or for any shorter period of time;
- (10) Impose a curfew upon the juvenile;
- (11) Order that the juvenile not associate with specified persons or be in specified places;
- (12) Impose confinement on an intermittent basis in an approved detention facility. Confinement shall be limited to not more than five 24-hour periods, the timing of which is determined by the court in its discretion.
- (13) Order that the juvenile be confined in an approved juvenile detention facility for a term of up to 14 24-hour periods, which confinement shall not be imposed consecutively with intermittent confinement pursuant to subsection (12) of this section at the same dispositional hearing. The timing of this confinement shall be determined by the court in its discretion.
- (14) Order the juvenile to cooperate with placement in a wilderness program.
- (15) Order the juvenile to cooperate with placement in a residential treatment facility, an intensive nonresidential treatment program, an intensive substance abuse program, or in a group home, including but not limited to the Cherokee Children's Home.
- (16) Order the juvenile to cooperate with a supervised day program requiring the juvenile to be present at a specified place for all or part of every day or of certain days. The court also may require the juvenile to comply with any other reasonable conditions specified in the dispositional order that are designed to facilitate supervision.
- (17) Order the juvenile to participate in a regimented training program.
- (18) Order the juvenile to be placed on house arrest.
- (19) Suspend imposition of a more severe, statutorily permissible disposition with the provision that the juvenile meet certain conditions agreed to by the juvenile and specified

in the dispositional order. The conditions shall not exceed the allowable dispositions for the level under which disposition is being imposed.

- (20) Order the residential placement of a juvenile in a multipurpose group home.
- (21) Place the juvenile in a training school for a period of not less than six months. (Ord. No. 289, 7-17-00)

TITLE XI CHOCTAW YOUTH CODE

CHAPTER 3. JUVENILE OFFENDER PROCEDURE

§11-3-28 Dispositional Alternatives

- (1) If a minor has been adjudged a juvenile offender, the Youth Court may make the following dispositions:
 - (a) place the minor on probation subject to conditions set by the Youth Court;
 - (b) upon consent of all parties, transfer disposition to a Court-approved alternative disposition forum such as Choctaw Teen Court subject to the terms and conditions of said alternative disposition which shall be approved by the Youth Court; or
 - (c) place the minor in an institution or facility for detention, or in the care of an agency designated by the Youth Court.
- (2) The dispositional orders are to be in effect for the time limit set by the Youth Court, but no order shall continue after the minor reaches the age of twenty-one (21) years of age.
- (3) The dispositional orders are to be reviewed at the Youth Court's discretion, but at least once every six (6) months.

[20.4] 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 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 at Section 36.413 (1) omits the following language from the 1989 BIA Tribal Juvenile Justice Code at Section 1-14 A:

“Disposition hearings shall be conducted by the juvenile court separate from other proceedings. (Emphasis added.) The court shall conduct the disposition hearing to determine how to resolve a case after it has been determined at the adjudicatory hearing that the child has committed a specific ‘juvenile offense.’”

In the state systems there is a “bifurcated” hearing process, meaning that they do not hold the adjudicatory hearing and the disposition hearing in the same hearing. This is because there are different evidentiary rules applicable to each type of hearing. In an adjudicatory hearing only evidence bearing on “guilt” of the allegations contained in the petition is allowed, while at the disposition hearing, the judge may look at the totality of the youth’s circumstances. The danger in conflating the two hearings is that the judge may consider irrelevant but prejudicial information in determining guilt for a particular alleged act (e.g., information about a youth’s friends or the youth’s general home circumstances and/or conduct).

The Sault Ste. Marie statute at Section 36.413 (1) states: “The Court shall make and record its dispositional order.” It then omits the following language from the 1989 BIA Tribal Juvenile Justice Code at Section 1-14 A: “The court shall make and record its dispositional order *in accordance with sections 1-14E and 1-15 of this code.*”(Emphasis added). Section 1-14 E of the 1989 BIA Tribal Juvenile Justice Code specifies six dispositional alternatives. Section 1-15 of the 1989 BIA Tribal Juvenile Justice Code specifies the requirements for reviewing, modifying, revoking, and/or extending disposition orders. The Sault Ste. Marie omission may be insignificant with respect to the 1989 BIA Tribal Juvenile Justice Code Section 1-14 E in that the omission does not have a different legal effect where the 1989 BIA Tribal Juvenile Justice Code Section 1-14 E is discretionary for a judge in any case. However, there are mandatory requirements under 1989 BIA Tribal Juvenile Justice Code Section 1-15, such as the requirement that dispositional orders be reviewed once every six months or that disposition orders must automatically terminate at certain points. It appears that Sault Ste. Marie was attempting to give the judge more discretion in selecting dispositional alternatives and in the review, modification, revocation, extension, and/or automatic termination of disposition orders. This could undermine certain protections in the 1989 BIA Tribal Juvenile Justice Code provided for youth and their families.

The Sault Ste. Marie statute at Section 36.413 (1) omits the following highlighted language from the 1989 BIA Tribal Juvenile Justice Code at Section 1-14 A:

“At the disposition 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 public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and persons requested by the parties shall be admitted.*”(Emphasis added.)

The Sault Ste. Marie omission makes dispositional hearings open to the public. Scholars conducting research on adolescents recommend that juvenile proceedings remain closed to the public to avoid stigmatization and present and future harm to youth.

The Sault Ste. Marie statute at Section 36.413 (2) modifies the following italicized text:

- (2) If the child remains in custody, the dispositional hearing shall be held within *thirty (30) days* after the adjudicatory hearing. If the child is released from custody or was not taken into custody, then the disposition hearing shall be held within *sixty (60) days* after the adjudicatory hearing. (Emphasis added).

Compare the 1989 BIA Tribal Juvenile Justice Code at Section 1-14 B:

If the child remains in custody, the disposition hearing shall be held within *ten (10) days* after the adjudicatory hearing. If the child is released from custody or was not taken into custody, then the disposition hearing shall be held within *twenty (20) days* after the adjudicatory hearing. (Emphasis added.)

The Sault Ste. Marie provision increases the time limit for the holding of a dispositional hearing where a youth remains in custody (from 10 days to 30 days), and where a youth is not in custody (from 20 to 60 days). This gives the tribal court, its juvenile counselor, and other service providers more time to conduct investigations, reviews, evaluations, examinations, and assessments and to produce written recommendations to the judge. However, it also infringes upon the rights of the youth and his or her family by potentially extending the period of custody for up to twenty more days or simply delaying “sentencing” for up to forty more days. There is a delicate balance between the needs of the system and the needs and rights of youth and their families. The 1989 BIA Tribal Juvenile Justice Code provisions tend to default to the needs and rights of youth and their families. However, the timing of required process needs to be tailored to the realities of the tribal system—where the leadership, policy, and law of the system are accountable and responsive to those served.

The Sault Ste. Marie statute at Section 36.414 (4) modifies the following italicized text:

- (4) When the child reaches *seventeen (17) years* of age, all disposition orders shall automatically terminate unless the original disposition order was made within one (1) year of the child’s *seventeenth (17th) birthday* or after the child had reached *seventeen (17) years* of age, in

which case the disposition order may not continue for more than one (1) year. (Emphasis added).

Compare the 1989 BIA Tribal Juvenile Justice Code provision at Section 1-15 D:

When the child reaches eighteen (18) years of age, all disposition orders shall automatically terminate, unless the original disposition order was made within one (1) year of the child's eighteenth (18th) birthday or after the child had reached eighteen (18) years of age, in which case the disposition order may not continue for more than one (1) year.

The Sault Ste. Marie provision reduces the age from eighteen to seventeen for when disposition orders must automatically terminate. The Sault Ste. Marie Juvenile Court is empowered to exercise juvenile court jurisdiction only over those who may commit juvenile offenses before their seventeenth birthday. By contrast the 1989 BIA Tribal Juvenile Justice Code creates a juvenile court that may exercise jurisdiction over a youth who may commit a juvenile offense before their eighteenth birthday. The 1989 Tribal Juvenile Justice Code also provides for extensions of juvenile court jurisdiction beyond a youth's eighteenth birthday under certain circumstances (e.g., where a youth's disposition order was made within a year of or after his eighteenth birthday). Scholars and researchers studying adolescents argue that the brain is not fully developed until closer to age twenty-five. They advocate for an extension of juvenile court jurisdiction even beyond age eighteen where the circumstances warrant it.

The Sault Ste. Marie statute at Section 36.415 establishes a process for probation hearings and placing youth on probation. Potential outcomes include house arrest and curfew, among other conditions and limitations. Grounds for probation revocation must be proven by a preponderance of the evidence.

Many tribes use probation as the primary dispositional alternative for juvenile offenders. In the state systems probation is the most frequent disposition for juvenile offenders. With probation, a youth is released with the understanding that freedom is conditioned on continuing good behavior and compliance with the terms of probation. Violations of probation may result in a probation revocation and the imposition or execution of the original sentence. The terms of probation are approved and ordered by the judge and may take the form of agreeing to:

- Obey all laws
- Regularly attend school
- Not associate with delinquents or criminals
- Stay within the jurisdiction
- Regularly report to probation officer for counseling and supervision
- Curfews

- Alcohol and drug testing
- Counseling
- Community service
- Restorative justice (restitution, letters of apology, victim impact panels/classes, community service, victim/offender conferencing, community panels, restorative justice peer juries, restorative group conferencing, circle sentencing, etc.)

In the state systems the terms of probation must be reasonable and relevant to the offense for which probation was ordered (see, e.g., [People v. Dominguez](#) [1967] [condition that female not become pregnant not relevant to offense of robbery]).

[20.5] Exercises

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

- Find and examine your juvenile code's provisions setting out possible "dispositions"—make a list of the possible outcomes for youth under your juvenile code

Examples from other codes ...

- Youth to remain with parent, guardian, or custodian with conditions and limitations
- Youth placed with relative or other person with conditions and limitations
- Youth placed in respite care (temporary out-of-home placement with youth and family services and programming)
- Youth placed in shelter care (e.g., foster care)
- Youth and family referred to services (e.g., counseling/groups/classes, screening and assessment for physical and mental health services, and substance use/abuse and treatment services, etc.)
- Youth placed on probation with conditions and limitations
- Youth ordered to pay restitution
- Youth ordered to participate in victim-offender mediation, "circle process," or "sentencing circles"
- Youth [and family] ordered to participate in family mediation or "peacemaking"
- Youth ordered to be placed in a residential treatment facility
- Youth ordered to be placed in a juvenile facility or secure juvenile detention facility

- Youth ordered to participate in a therapeutic docket (e.g., wellness [drug] court)
- Youth ordered to participate in a community-based program (e.g., a cultural program, mentoring programs, and/or teen court, etc.)

Make a list of other disposition options and/or diversion programs you wish to develop and include in your juvenile justice system.

Read and Discuss*

What disposition options are available locally and nonlocally?

The Boys Town Model (the “Boys Town Integrated Continuum of Care”):

- **Residential Treatment Center**
 - A medically directed program in a secure environment for children with psychiatric disorders.
- **Intervention and Assessment Services**
 - Thirty-day program providing care for abused, neglected, runaway, and delinquent youth by removing them from dangerous situations, assessing their needs, and beginning to work toward family reunification or other permanent care.
- **Family Home Program**
 - Provides a family for children ages ten to eighteen. Six to eight boys or girls, many with serious emotional and behavioral problems, live in each single-family home with a married couple called Family Teachers. Children learn social skills, attend school, participate in extracurricular activities, and take part in daily chores and activities.
- **Foster Family Services**
 - Foster parents, trained and supported by Boys Town, who open up their homes in the community to children who need a safe place to live. The length of stay varies depending on the child’s needs. Foster parents work to reunify children with their parents or other caregivers, whenever possible.
- **In-Home Family Services**
 - The goal is to keep children in their home or to help them reunite with their family whenever possible. On call Family Consultants teach families how to handle issues after they arise and how to prevent them from becoming more disruptive.
- **Community Support Services**

- A wide variety of resources that can help children and families learn how to help themselves, or receive specialized care, or educational assistance.

*Taken from Boys Town at <http://www.boystown.org>.