

Chapter 21: Nondelinquency Proceedings—Status Offenses/Family in Need of Services (FINS)

[21.1] Overview

The states' Uniform Juvenile Court Act at Section 2(4) creates a category called “unruly child” that is distinct from a youth committing a delinquent act.²⁹ The unruly child category includes a youth who is engaged in activities that are noncriminal or one in which youth violations of the law (curfew violations, running away, etc.) are committed. These activities are also known as status offenses or activities that are only considered offenses because of the young age of the youth. If an adult engaged in the same act it would not be a crime.

There was a time when many states included status offenses in the delinquent behavior category. This resulted in youth being labeled delinquent and being subject to incarceration in secure juvenile detention facilities. The Uniform Juvenile Court Act recognized that an unruly child may need the assistance of the juvenile court but that this child should not be included in the delinquent category. Section 32 prohibits the placement of an “unruly child” in a juvenile detention facility unless the juvenile court finds that the youth is not amenable to treatment or rehabilitation.

Today, most states separate status offenses from delinquent acts and place them in a nondelinquent category called “in-need-of-supervision,” or some variant of this. This is important because it separates the nonserious violator, who is often a youth with a troubled home life (often due to neglect, a lack a parental supervision, and/or where the youth has experienced a family crisis). Often this youth is not necessarily someone with criminal tendencies. The juvenile court may then treat this youth differently, by supervising and assisting without labeling the youth delinquent or subjecting him or her to the same harsh procedural requirements (e.g., criminal standards of proof) or dispositions (such as secure detention).

Under Section 1-2 of the 1989 BIA Tribal Juvenile Justice Code, the juvenile court has “exclusive and original jurisdiction” over all proceedings where an “Indian child residing in or domiciled on the reservation” is alleged to be a “juvenile offender” and where the child’s family is alleged to be “in-

²⁹ Characterizations of state juvenile justice system process are taken from Cox et al., *Juvenile Justice*.

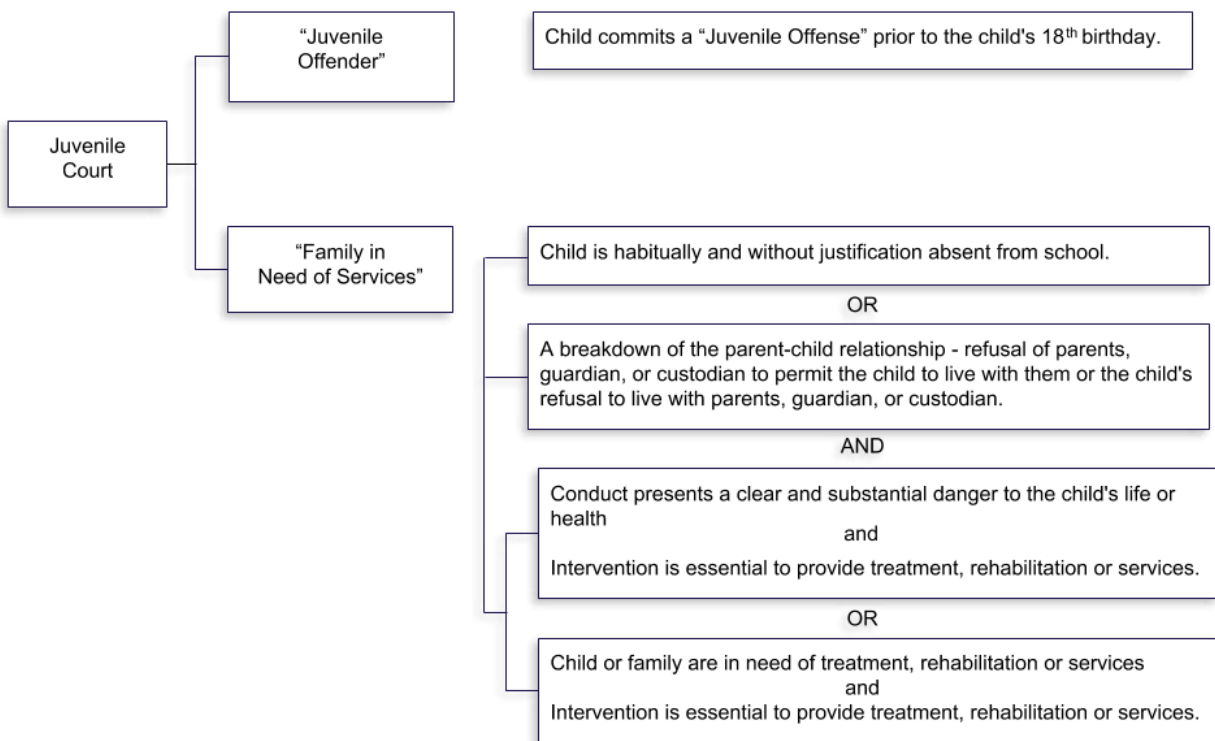
need-of-services” (a.k.a. FINS). Under Section 1-1 C (22) a “juvenile offender” is defined as a youth who commits a juvenile offense prior to his or her eighteenth birthday. A “juvenile offense” is defined as a criminal violation of the Law and Order Code committed by a person who was under the age of eighteen at the time the offense was committed (Section 1-1 C. (23)). Contrast this category with the FINS category. A FINS is defined as

- a family whose child has been habitually and without justification absent from school,
- a home where there has been a breakdown in the parent-child relationship such that they will not live together, and there is a clear and substantial danger to the child, or
- a situation in which the child or his family is in need of treatment or rehabilitation (Section 1-1 C. (14)).

These are essentially status offenses.

Section 1-2 Jurisdiction of the Juvenile Court

1989 BIA Tribal Juvenile Justice Code

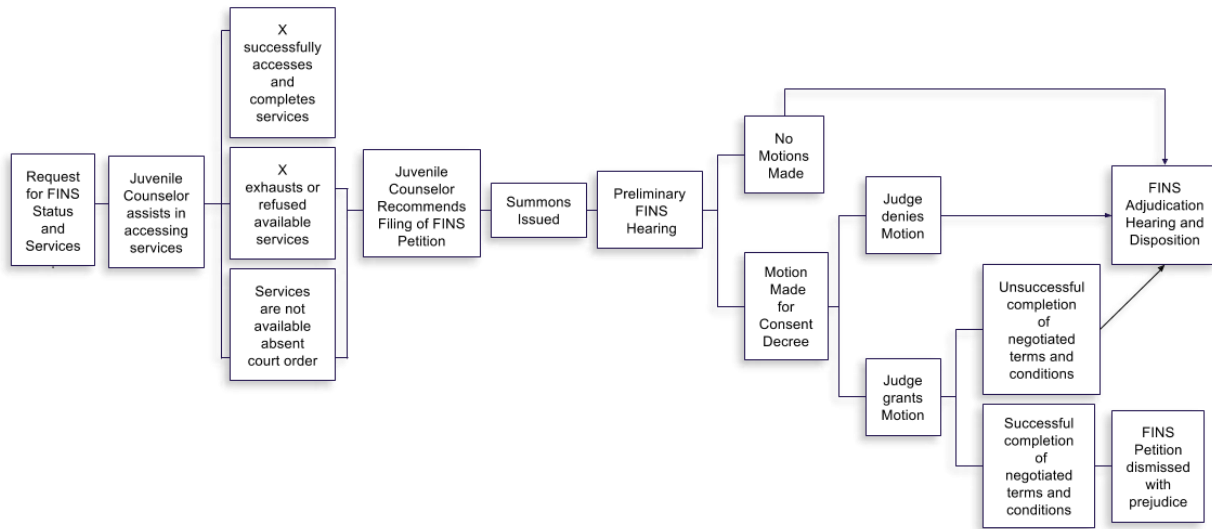


Under the 1989 BIA Tribal Juvenile Justice Code, the process for handling FINS cases mirrors the process for handling juvenile offenses with some key differences. A request for services may be submitted by the youth; his or her parent, guardian, or custodian; a social services worker; or the juvenile counselor. The juvenile counselor is then responsible for assisting the family in accessing services.

A formal Family In Need of Services (FINS) petition may be filed with the juvenile court if necessary. It may be necessary to obtain a court order to access certain types of services and/or treatment. After a petition has been filed, the juvenile presenter or prosecutor may enter into a consent decree or an agreement with the youth and his or her family to suspend the court proceedings to give the youth and the family time to successfully complete certain services or programs. If successful, the petition may be dismissed. If unsuccessful, the juvenile court process resumes and a hearing is scheduled.

The purpose of the FINS adjudicatory hearing is for the judge to determine whether there is “clear and convincing evidence” that the family is a “family-in-need-of-services.” If there is sufficient evidence to decide that this is the case, a disposition hearing is scheduled. The purpose of a FINS disposition hearing is for the judge to determine the placement, services, supervision, and/or legal custody of the youth and to refer or order services for the family. Placement of a FINS youth in a “juvenile shelter care facility” is permitted but cannot exceed thirty days. A “juvenile shelter care facility” is defined as “any juvenile facility, other than a school, that cares for juveniles or restricts their movement,” including an alcohol or substance abuse emergency shelter, halfway house, foster home, emergency foster home, group home, and shelter home. The 1989 BIA Tribal Juvenile Justice Code prohibits the confinement of a FINS youth in “an institution established for . . . juvenile offenders” or “a penal institution . . . used for the execution of sentences of persons convicted of crimes.

Section 1-17 to 1-19 Family in Need of Services--Initiation of Proceedings
1989 BIA Tribal Juvenile Justice Code



Under the 1989 BIA Tribal Juvenile Justice Code, in order for a formal FINS petition to be granted by a judge, the petitioner must allege either that there is a breakdown in the parent-child relationship or that there are school absences. In the case of a breakdown in the parent-child relationship, the petitioner must allege that the family is a FINS; that the petitioner has exhausted or the youth/family has refused appropriate and available services; the youth/family have participated in counseling or refused to participate in counseling; the youth has been placed in the home of a relative or the youth has refused to be so placed; the youth has sought assistance at a juvenile shelter care facility or has refused such assistance; and the youth has been placed in a foster home or refused such placement

**Section 1-17 H. Family in Need of Services--Initiation of Proceedings--Petition--Additional
Required Allegations for Breakdown in the Parent-Child Relationship**
1989 BIA Tribal Juvenile Justice Code

Petition alleging ...
"a breakdown in the parent-child relationship"
MUST INCLUDE ALLEGATIONS THAT ...

The family is a "Family in Need of Services."

They have participated in counseling or refuse to do so.

The child has been placed with a relative or refused to be placed there.

The child sought assistance at a Juvenile Shelter Care Facility or refused such assistance.

AND

The child have been placed in a foster home or refused such placement.

Under the 1989 BIA Tribal Juvenile Justice Code, in order for a formal FINS petition to be granted by a judge, the petitioner must allege either that there is a breakdown in the parent-child relationship or that there are school absences.

In the case of alleged school absences (that are "habitual and unjustifiable"), the petitioner must allege that the family is a FINS, and a school official must file a declaration including the following allegations:

1. The school held a meeting to discuss the absences and the parent, guardian, or custodian refused to attend;
2. The school provided an opportunity for counseling or an opportunity to enroll in an alternative education program (if available);
3. The school has reviewed the child's status to determine whether learning problems exist and steps have been taken to overcome them;
4. A social worker has conducted an investigation to determine whether social problems may be a cause and if they are, appropriate action is taken; and

5. The school has sought assistance from appropriate agencies or has referred the matter to a social services agency for coordinating agencies and resources.

Section 1-17 G. Family in Need of Services--Initiation of Proceedings--Petition--Additional Required Allegations for School Absence

1989 BIA Tribal Juvenile Justice Code

Petition alleging ...
“that a child is habitually and without justification
absence from school”
MUST INCLUDE ALLEGATIONS THAT ...

The family is a “Family in Need of Services.”

The school has held a meeting with the family or they have refused to attend.

The school provided an opportunity for counseling and an opportunity to enroll in an alternative educational program.

The school has conducted a review of the child's educational status (testing included medical, psychological, and/or educational) and steps have been taken to overcome learning problems.

A social worker has conducted an investigation to determine if there are social problems and action has been taken.

AND

The school has sought assistance from agencies and resources or has referred the matter to a local social services agency.

[21.2] Model Code Example

(1989) BIA Tribal Juvenile Justice Code

1-16 FAMILY IN NEED OF SERVICES—INTERIM CARE

1-16 A. Limitation on Taking into Custody

No child whose family is the subject of a proceeding alleging that the family is “in need of services” (as defined in section 1-1 C of this code) may be taken into custody unless such taking into custody is in accordance with provision for “interim care” (as defined in section 1-1 C of this code) set forth in sections 1-16 A through 1-16 J of this code.

1-16 B. Interim Care without Court Order

A child may be taken into interim care by a law enforcement officer without order of the court only when:

1. the officer has reasonable grounds to believe that the child is in circumstances which constitute a substantial danger to the child’s physical safety; or
2. an agency legally charged with the supervision of the child has notified a law enforcement agency that the child has run away from a placement ordered by the court under chapter 1-19 of this code.

1-16 C. Procedure for Interim Care

A law enforcement official taking a child into custody under the interim care provisions of this code shall immediately:

1. inform the child of the reasons for the custody;
2. contact the juvenile counselor who shall designate placement of the child in an appropriate juvenile shelter care facility as designated by the court;
3. take the child to the placement specified by the juvenile counselor, or in the event of the unavailability of a juvenile counselor, to an appropriate juvenile shelter care facility as designated by the court; and,
4. inform the child’s family in accordance with section 1-16 D of this code.

1-16 D. Notification of Family

The law enforcement officer or the juvenile counselor shall immediately notify the child’s parent, guardian, or custodian of the child’s whereabouts, the reasons for taking the child into

custody, and the name and telephone number of the juvenile counselor who has been contacted. Efforts to notify the child's parent, guardian, or custodian shall include telephone and personal contacts at the home or place of employment or other locations where the person is known to frequent with regularity. If notification cannot be provided to the child's parent, guardian, or custodian, the notice shall be given to a member of the extended family of the parent, guardian, or custodian and to the child's extended family.

1-16 E. Time Limitation on Interim Care

Under no circumstances shall any child taken into interim care under section 1-16 B of this code be held involuntarily for more than forty-eight (48) hours.

1-16 F. Restrictions on Placement

A child taken into interim care shall not be placed in a jail or other facility intended or used for the incarceration of adults charged or convicted of criminal offenses. If a child taken into interim care is placed in a facility used for the detention of "juvenile offenders" or alleged "juvenile offenders," he must be detained in a room separate from the "juvenile offenders" or alleged "juvenile offenders."

1-16 G. Restriction on Transportation

A child taken into interim care shall not be placed or transported in any police or other vehicle which at the same time contains an adult under arrest, unless this section cannot be complied with due to circumstances in which any delay in transporting the child to an appropriate juvenile shelter care facility would be likely to result in substantial danger to the child's physical safety. Said circumstances shall be described in writing to the supervisor of the driver of the vehicle within forty-eight (48) hours after any transportation of a child with an adult under arrest.

1-16 H. Voluntary Services

The juvenile counselor shall offer and encourage the child and the child's family, guardian, or custodian to voluntarily accept social services.

1-16 I. Voluntary Return Home

If a child has been taken into interim care under the provisions of section 1-16B of this code and the child's parent, guardian, or custodian agree to the child's return home, the child shall be returned home as soon as practicable by the child's parent, guardian, or custodian or as arranged by the juvenile counselor.

1-16 J. Shelter and Family Services Needs Assessment

If the child refuses to return home and if no other living arrangements agreeable to the child and to the child's parent, guardian, or custodian can be made, a juvenile counselor shall offer the child shelter in an appropriate juvenile shelter care facility as designated by the court which is located as close as possible to the residence of the child's parent, guardian, or custodian. The juvenile counselor also shall refer the child and his family to an appropriate social services agency for a family services needs assessment.

1-17 FAMILY IN NEED OF SERVICES—INITIATION OF PROCEEDINGS

1-17 A. Who May Submit Requests

Requests stating that a family is "in need of services" may be submitted by the child; the child's parent, guardian, or custodian; an appropriate social services agency; and/or the juvenile counselor. A request stating that a child is habitually and without justification absent from school may also be submitted by an authorized representative of a local school board or governing authority of a private school but only if the request is accompanied by a declaration in which the authorized representative swears that the school has complied with each of the steps set forth in section 1-17G of this code.

1-17 B. Referral of Requests to Juvenile Counselor

Requests stating that a family is "in need of services" shall be referred to the juvenile counselor, who shall assist either a child or a child's parent, guardian, or custodian in obtaining appropriate and available services as well as assisting in any subsequent filing of a petition alleging that the family is "in need of services."

1-17 C. Withdrawal of Request

A request stating that a family is "in need of services" may be withdrawn by the party submitting the request at any time prior to the adjudication of any petition filed in the proceedings.

1-17 D. Authorization to File Petition

A petition alleging that a family is "in need of services" shall not be filed unless the juvenile presenter has determined and endorsed upon the petition that the filing of the petition is in the best interest of the child and his family.

1-17 E. Petition—Required Signatures

A petition alleging that a family is "in need of services" shall be signed by both the juvenile presenter and the party submitting the request as authorized in section 1-17 A of this code.

1-17 F. Petition—Form and Contents

A petition alleging that a family is “in need of services” shall be entitled, “In the Matter of the Family of ____, a child,” and shall set forth with specificity:

1. the name, birth date, and residence address of the child and whether the child is the complainant or respondent in the proceedings;
2. the name and residence address of the parents, guardian, or custodian of the child and whether the parents, guardian, or custodian are the complainant or respondent in the proceedings;
3. that the family is a “family in need of services” as defined in section 1-1 C of this code.

1-17 H. Petition—Additional Required Allegations for Breakdown in the Parent-Child Relationship

In addition to the allegations required under section 1-17 F of this code, a petition alleging that there is a breakdown in the parent-child relationship shall also allege that the filing of the petition was preceded by complying with each of the following that are applicable and appropriate:

1. the child and his family have participated in counseling or either the child or his family has refused to participate in family counseling;
2. the child has been placed in the home of a relative, if available, or the child has refused placement in the home of a relative;
3. the child has sought assistance at an appropriate juvenile shelter care facility for runaways or the child has refused assistance from such a facility; and
4. the child has been placed in a foster home or the child has refused placement in a foster home.

1-17 I. Summons in a Family in Need of Services Proceeding

After a petition alleging that a family is “in need of services” has been filed, summonses shall be issued directed to the child, the child’s parent, guardian, or custodian, their counsel and to such other persons as the court considers proper or necessary parties. The content and service of the summons shall be in accordance with sections 1-10 F and 1-10 G of this code.

1-18 FAMILY IN NEED OF SERVICES—CONSENT DECREE

1-18 A. Availability of Consent Decree

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

1-18 B. Objection to Consent Decree

If the child or his parents, guardian, or custodian object to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

1-18 C. Court Determination of Appropriateness

If the child or his parents, guardian, or custodian do not object, the court shall proceed to determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

1-18 D. Duration of Consent Decree

A consent decree shall remain in force for six months unless the family is discharged sooner by the juvenile counselor. Prior to the expiration of the six months period, and upon the application of the juvenile counselor or any other agency supervising the family under a consent decree, the court may extend the decree for an additional six months in the absence of objection to extension by the child or his parents, guardian, or custodian. If the child or his parents, guardian, or custodian object to the extension the court shall hold a hearing and make a determination on the issue of extension.

1-18 E. Failure to Fulfill Terms and Conditions

If, either prior to discharge by the juvenile counselor or expiration of the consent decree, the child or his parents, guardian, or custodian fail to fulfill the express terms and conditions of the consent decree, the petition under which the family was continued under supervision may be reinstated in the discretion of the juvenile presenter in consultation with the juvenile counselor. In this event, the proceeding on the petition shall be continued to conclusion as if the consent decree had never been entered.

1-18 F. Dismissal of Petition

After a family is discharged by the juvenile counselor or completes a period under supervision without reinstatement of the petition alleging that the family is in need of services, the petition shall be dismissed with prejudice.

1-19 FAMILY IN NEED OF SERVICES—HEARINGS AND DISPOSITION

1-19 A. Conduct of Hearings

“Family in need of services” hearings shall be conducted by the juvenile court separate from other proceedings. At all hearings, the child and the child’s family, 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.

1-19 B. Notice of Hearings

Notice of all “family in need of services” hearings shall be given to the child, the child’s parent, guardian, or custodian, their 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 1-10 F and 1-10 G of this code.

1-19 C. Adjudicatory Hearing

The court, after hearing all of the evidence bearing on the allegations contained in the petition, shall make and record its findings as to whether the family is a “family in need of services.” If the court finds on the basis of clear and convincing evidence that the family is a “family in need of services,” the court may proceed immediately or at a postponed hearing to make disposition of the case. If the court does not find that the family is a “family in need of services” it shall dismiss the petition.

1-19 E. Disposition Hearing

In that part of the hearing on dispositional issues all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value even though not competent had it been offered during the part of the hearings on adjudicatory issues. 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.

1-19 F. Disposition Alternatives

If the court finds that a family is a “family in need of services,” the court may make and record any of the following orders of disposition, giving due weight to the need to preserve the unity of the family whenever possible:

1. permit the child to remain with his parents, guardian, or custodian subject to those conditions and limitations the court may prescribe, including the protective supervision (as defined in section 1-1 C of this code) of the child by a local social services agency;
2. 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;
3. transfer legal custody of the child to any of the following if the family is found to be a “family in need of services” due to a breakdown in the parent-child relationship:
 - a. a relative or other individual who, after study by the juvenile counselor or other agency designated by the court, is found by the court to be qualified to receive and care for the child, or;
 - b. an appropriate agency for placement of the child in an appropriate juvenile shelter care facility (as defined in section 1-1 C of this code) for a period not to exceed thirty (30) days; with simultaneous directed referral of the family to a social services agency for counseling and/or other social assistance. A child may be placed under this section for an additional period not to exceed ninety (90) days after a hearing to determine the necessity of an additional placement.

1-19 G. Restriction on Dispositional Placements

The child shall not be confined in an institution established for the care and rehabilitation of “juvenile offenders” unless a child whose family is found to be “in need of services” is also found to be a “juvenile offender.” Under no circumstances shall a child whose family is found to be “in need of services” be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of crimes.

1-19 I. Termination of Disposition Order

Any disposition order concerning a “family in need of services” shall remain in force for a period not to exceed six (6) months. The disposition order concerning a child whose family is found to be “in need of services” shall also automatically terminate when the child reaches his eighteenth (18th) birthday or is legally emancipated by the court.

[21.3] Tribal Code Commentary

See Chapters 22 and 24 through 27 for detailed tribal code commentary on the separate topics of Family in Need of Services (FINS) interim care, FINS referral to juvenile counselor, FINS breakdown in parent-child relationship, FINS consent decrees, and FINS dispositions.

[21.4] Exercises

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

- Find and examine your juvenile code’s provisions governing FINS or a comparable designation.
 - First determine whether these provisions govern child abuse/neglect or juvenile delinquency/status offenses—if child abuse/neglect, you may be in the wrong code
- Make a list of the types of (mis)conduct and/or circumstances that constitute a FINS or “status offense”
 - Truancy?
 - Curfew violations?
 - Running away?
 - Incurigibility?
 - Substance use?
 - Other?
- Check the “disposition” provisions of your juvenile code. Do they apply the same disposition alternatives to FINS youth and status offenders as they do to juvenile delinquents/offenders?
- Are your FINS youth/status offenders subject to secure juvenile detention?

Read and Discuss*

Do your tribal laws require that tribal and/or other agencies provide certain services to youth and their families before petitions may be filed in court?

What types of services would be critical?

The experience of the states and New York’s innovative approach:

- The states have a long history of detaining status offenders, for example, placing chronically truant or runaway youth in secure detention facilities
- Several states have enacted “children in need of services” (“CHINS”) type processes to replace the status offender label and to create new social services or probation services for youth
- Today juvenile offenses laws vary greatly from JINS (Juveniles In Need of Supervision), CINA (Child In Need of Assistance), FINS, etc.
- New York’s approach is to provide services first:
 - Early assessment of New York’s approach indicates that such programs can result in fewer youth becoming court involved and more youth remaining at home
 - The New York statute requires state agencies to focus on family services first for “persons in need of supervision” (“PINS”)
 - The New York courts cannot accept a PINS petition unless the petitioner has already participated in family services
 - The statute requires that state agencies document their efforts to enroll youth and their families in appropriate, individualized community services which must include . . .
 - Providing families with information on local services that will alleviate the need to file a petition (short-term respite care, family crisis counseling, and dispute resolution programs, etc.)
 - Holding at least one conference with the youth and the family to discuss alternatives to filing a petition
 - Assessing whether the youth would benefit from residential respite care
 - Recording and analyzing whether diversion services are needed and whether they should be offered on an ongoing basis
 - A petition can be filed only if the agency indicates that it has terminated diversion services because there was not substantial likelihood that the youth or his or her family will benefit from further attempts

*Taken from Jessica R. Kendall, *Juvenile Status Offenses: Treatment and Early Intervention*, Chicago, IL: American Bar Association, Division for Public Education, (2007).