

# Chapter 22: Nondelinquency Proceedings—Family in Need of Services (FINS) Interim Care

## [22.1] Overview

Interim care in the state systems has to do with preadjudication or pretrial detention.<sup>30</sup> In the state systems there has been a long history of detaining both status offenders and juvenile offenders, and sadly even abandoned or maltreated children, in secure juvenile detention facilities, sometimes before a juvenile court has even exercised its jurisdiction over the youth. The 1989 Tribal Juvenile Justice Code provisions would remedy such practices and prevent harm to status offenders (a.k.a. “FINS eligible youth”) by authorizing taking them into custody only under certain circumstances (where there is a substantial danger to the youth’s physical safety or where they have run away from a placement) and limiting their placement to juvenile shelter care facilities.

## [22.2] 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

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<sup>30</sup> Characterizations of state juvenile justice system process are taken from Cox et al., *Juvenile Justice*.

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.

## **[22.3] Tribal Code Commentary**

**Interim Care.** The Sault Ste. Marie statute omits the entire “FINS Interim Care” portion of the 1989 BIA Tribal Juvenile Justice Code at Subchapter 1-16. This subchapter prohibits taking a FINS youth into custody unless it is for purposes of “interim care” and where a law enforcement officer either has reasonable grounds to believe that the youth is in substantial danger or where an agency has reported that the youth has run away from a placement. In these instances, the provisions require that the law enforcement officer tell the youth why he or she is being taken into custody, arrange for placement, and notify the youth's family. The provisions limit involuntary interim care to forty-eight hours.

A FINS youth in interim care cannot be placed in a jail, and if placed with juvenile offenders, he or she must be detained in a separate room. The youth cannot be transported with adults under arrest. The provisions also specify that the youth and his or her family must be offered social services. Finally, if it is possible, the youth should be returned home, otherwise the juvenile counselor must offer “shelter in an appropriate juvenile shelter care facility . . . which is located as close as possible to the residence. . . .” Sault Ste. Marie's omission of the interim care provisions suggests that the tribe will permit status offenders to be taken into custody and detained like and with juvenile offenders. This is likely due to insufficient options and resources, but it is not recommended as it does not sufficiently protect mere status offending youth.

## [22.4] Exercises

The following exercises are meant to guide you in writing the interim care section of the tribal juvenile code. The following exercises are meant to guide you in developing the FINS interim care sections of the tribal juvenile code.

- Find and examine your juvenile code’s provisions governing interim care (placements for youth before they are brought to a juvenile court hearing). What are the required placement options and time limits for placement?
- Make a list of actual available, temporary, placement options for youth prior to court hearings in your community.
- In other jurisdictions they have “respite care” placements—temporary out-of-home placements for youth with services and programing for youth and their families. Make a list of the pros and cons for a respite care program in your community.

### Read and Discuss\*

**Is our tribe replicating the bad historical practices of states in detaining status offenders (FINS eligible youth) before tribal court hearings take place?**

Does the following description of past state practices sound familiar?

“The detention of juveniles prior to adjudication or disposition of their cases represents one of the most serious problems in the administration of juvenile justice. The problem is characterized by the very large numbers of juveniles incarcerated during this stage annually, the harsh conditions under which they are held, the high costs of such detention, and the harmful after-effects detention produces. These difficulties are caused or compounded by profound defects in the system of juvenile justice itself: the inadequacy of the information and the decision-making process that leads to detention, in the delays between arrest and ultimate disposition, and in the lack of visibility and accountability that pervades the process.”

\*Taken from *Standards Relating to Interim Status: Re Release, Control, and Detention of Accused Juvenile Offenders between Arrest and Detention*, Chicago: American Bar Association, (1979).