

Chapter 25: Nondelinquency Proceedings—Family in Need of Services (FINS) Breakdown in Parent-Child Relationship

[25.1] Overview

The 1989 BIA Tribal Juvenile Justice Code’s Family in Need of Services (FINS) provisions include youth conduct that would be labeled as “incorrigible,” “unmanageable,” “ungovernable,” or “unruly,” in other jurisdictions.³⁶ The preferred label, “ungovernable” is defined as being beyond the control of parents, guardians, or custodians or being disobedient of parental authority.

Ungovernability is a single unifying description for a broad number of delinquent acts. Some argue that the state governments have left the definition intentionally vague in order to have more power over “ungovernable youth.” However, it is generally accepted that it is not appropriate to charge every youth who fails to comply with the requests of his or her parent as “ungovernable.” Rather it is appropriate to do so when the continued disobedience may cause harm to the youth or another person. Common problems stemming from ungovernability include running away, truancy, or breaking curfew. The juvenile justice system may be able to help a parent whose child continuously exhibits:

- Serious and deliberate threats of physical harm to family members;
- Acts of intimidation toward household members;
- Deliberate injury to home structures, grounds, furnishings, or pets;
- Serious and repeated violations of curfew; and/or
- Refusing to go to school.

³⁶ Characterizations of state juvenile justice system process are taken from *Ungovernable/Incorrigible Youth Literature Review* (Development Services Group, Inc., 2009).

Parental conduct demonstrating that a parent does not have the basic tools to deal with misbehavior in a healthy fashion may include:

- A lack of time,
- An authoritative parenting style,
- Abuse, and/or
- Alcohol or drug use within the home.

The 1989 BIA Tribal Juvenile Justice Code provisions reject the “incorrigible” or “ungovernable” language and opt instead to provide FINS jurisdiction over two categories: (1) a child that is “habitually and without justification absent from school,” and (2) where there is “a breakdown in the parent-child relationship.” The 1989 BIA Tribal Juvenile Justice Code at Section 1-1 C.14, defines “Family-in-Need-of-Services” to include, “a family wherein there is allegedly a breakdown in the parent-child relationship based upon the refusal of the parents, guardian, or custodian to permit a child to live with them or based upon the child’s refusal to live with his parents, guardian or custodian.” However, the code further requires that “the conduct . . . presents a clear and substantial danger to the child’s life or health . . . ; or the child and his family are in need of treatment, rehabilitation, or services. . . .” This appears to ensure that FINS petitions will not be filed against youth who are merely “acting like teenagers.”

It may be helpful to review [Section 3.2 \(M\) Support for Parents](#) in the overview.

[25.2] Model Code Example

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

[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.

(Certain Sections Omitted)

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.

[25.3] Tribal Code Example

Sault Ste. Marie Tribal Code

CHAPTER 36: JUVENILE CODE

SUBCHAPTER V: STATUS OFFENSES

36.501 Status Offenses.

It is a violation of this Chapter for a child to runaway, be incorrigible or commit a violation of subchapters VI, VII, or VIII.

36.502 Initiation of Proceedings.

- (5) In addition to the allegations required under subsection (3) of this Chapter, a petition alleging that the child is incorrigible shall also allege that the filing of the petition was preceded by complying with each of the following that are applicable and appropriate:
- (a) The child and his family have participated in counseling or either the child or his family has refused to participate in family counseling;
 - (b) 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.

[25.4] Tribal Code Commentary

The Sault Ste. Marie statute at Section 36.502 (5) reads:

“In addition to the allegations required under subsection (3) of this Chapter, a petition alleging *that the child is incorrigible* (emphasis added) shall also allege that the filing of the petition was preceded by complying with each of the following that are applicable and appropriate:

- (a) The child and his family have participated in counseling or either the child or his family has refused to participate in family counseling;
- (b) 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.”

Compare 1989 BIA Tribal Juvenile Justice Code Section 1-17 H:

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* (emphasis added) 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* (emphasis added)
4. *the child has been placed in a foster home or the child has refused placement in a foster home.* (emphasis added)

The Sault Ste. Marie statute replaces the 1989 BIA Tribal Juvenile Justice Code’s “breakdown in the parent-child relationship” with being “incorrigible,” which it defines at Section 36.301 to mean “a child who is repeatedly disobedient to the reasonable and lawful commands of his or her parents,

guardian, or custodian.” The 1989 BIA Tribal Juvenile Justice Code does not define a “breakdown in the parent-child relationship” but under its definition of “Family in Need of Services” at Section 1-1 C (14), the juvenile court, under its FINS process, has jurisdiction over:

a family wherein there is allegedly a breakdown in the parent-child relationship based on the refusal of the parents, guardian, or custodian to permit a child to live with them or based on the child’s refusal to live with his parents, guardian, or custodian . . .

Both provisions target conduct resulting in the difficulty of the youth and his or her parents, guardian, or custodian to live together. The 1989 BIA Tribal Juvenile Justice Code language redirects blame away from the youth and looks to the detrimental status—an inability to continue living together. This may be preferred where the targeted behaviors may range from a youth physically abusing his or her parent to refusing to consistently follow a parent imposed curfew, to prolonged verbal fighting between family members. There may not be an easy way to identify bad conduct where there are deeply strained underlying family dynamics.

1989 BIA Tribal Juvenile Justice Code Section 1-17 H also requires additional allegations in petitions that the Sault Ste. Marie statute omits when it comes to status offenders—a required additional allegation that the youth has sought or refused services at a shelter or has been placed or refused placement in a foster home. This “additional allegation” requirement puts the judge on notice of what has been attempted and where the youth is currently placed (or not). It is likely that Sault Ste. Marie, at the time their statute was drafted, lacked a shelter or foster home system.

[25.5] Exercises

The following exercises are meant to guide you in writing the FINS “breakdown in the parent-child relationship” section of the tribal juvenile code.

- Find and examine your juvenile code’s provisions defining “incorrigible,” “ungovernable,” or any conduct, misconduct, or circumstances where youth and their parents/guardians are not getting along. What conduct/misconduct/circumstances are targeted?
- Find and examine your juvenile code’s provisions defining truancy, curfew violation, running away, possession/use of tobacco and/or inhalants. What conduct/misconduct/circumstances are targeted?
- Make a list of the services that you have that will support youth and families with these problems.
- What ideal list of conduct/misconduct/circumstances should be targeted and what services will you need that you do not have?

Read and Discuss*

How do we fix “ungovernable” youth?

Research on the contributing factors of ungovernable behavior often focuses on . . .

- the relationship dynamics between a youth and his or her family
 - family is the key factor in the prosocial development of youth
 - family dysfunction is an important influence on future delinquent and antisocial behavior
 - interventions improving family functioning to reduce problem behaviors include . . .
 - family skills training
 - family education
 - family therapy
 - family services
 - family preservation programs
- parental behaviors and practices
 - parents are the most critical factor in the social development of children—the following buffer youth against problem behaviors . . .
 - supportive parent-child relationships
 - positive discipline methods
 - close monitoring and supervision
 - parental advocacy for their children
 - parental pursuit of needed information and support
 - interventions to improve fundamental parenting practices include . . .
 - behavioral parent training
 - parent education
 - parent support groups
 - in-home parent education or parent aid
 - parent involvement in youth groups
- presence of caring, supportive adults in the youth’s life provide youth with someone to relate to and the ability to be in a relationship . . .
 - at risk youth who are involved with at least one caring adult are more likely to withstand the range of negative influences . . .
 - poverty

- parental addiction
- family mental illness
- family discord
- Mentoring programs reduce risk factors and enhance protective factors that buffer children from risk
 - They provide positive adult contact
 - They enhance healthy beliefs
 - They enhance opportunities for involvement
 - They reinforce appropriate behavior
 - They provide personal connectedness, supervision and guidance, skills training, career or cultural enrichment opportunities, a knowledge of spirituality and values, a sense of self-worth, and goals and hope for the future

*Taken from *Ungovernable/Incorrigible Youth Literature Review*, Development Services Group, Inc., (2009).