

# Chapter 26: Nondelinquency Proceedings—Family in Need of Services (FINS) Consent Decrees

## [26.1] Overview

The 1989 BIA Tribal Juvenile Justice Code separates the court process for youth who are alleged to have committed juvenile acts from youth and families who are “in need of services.” Youth in the latter category are handled under the Family in Need of Services (FINS) court process. This process, like the juvenile offense process, includes a consent decree possibility. That is, youth may be diverted from the full court process if they enter into a written agreement, a “consent decree,” which is approved by the judge.

Under the 1989 BIA Tribal Juvenile Justice Code FINS Consent Decree process, once a petition alleging that a youth and his or her family is a FINS has been filed, and before the judge has ruled, someone may file a motion to undertake a consent decree. If the judge grants it, it may remain in effect for six months with a possible extension of an additional six months. If the youth and his or her family meet the terms and conditions of the consent decree, the original FINS petition will be dismissed. If the youth and his or her family fail to fulfill the express terms of the consent decree, the FINS petition may be reinstated and proceed through the FINS court process.

## [26.2] Model Code Example

### (1989) BIA Tribal Juvenile Justice 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.

## [26.3] Tribal Code Commentary

None of the tribal juvenile codes reviewed contained a consent decree process.

Consent decrees—The Sault Ste. Marie juvenile code, reviewed extensively throughout this resource as an example, omits the consent decree process of the 1989 BIA Tribal Juvenile Justice Code found at Subchapter 1-8. Given current research and policy trends, it is best to provide as many diversion points as possible within both the “juvenile offender” and “status offender”/”FINS” processes. The thinking is that allegedly status-offending or FINS youth may not be as culpable and/or are not necessarily on a track to criminal offending and thus should not be mixed either with the juvenile offender population or the adult criminal population in order to protect them from harm and to preserve their potential good prospects.

## [26.4] Exercises

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

- Find and examine your juvenile code’s provisions governing FINS. Does it contain a consent decree provision?
  - If yes, what services or programs are required/available using a consent decree?
  - If no, what services or programs would you want to be available to youth before a formal hearing or adjudication using a consent decree?
- Make a list of the pros and cons of using consent decrees for status offenders and FINS youth to avoid formal hearings or adjudication.

### Read and Discuss\*

**What does a judge oversee when a youth agrees to be a party to a consent decree? What should happen when the youth violates it? Who can best advise the judge on what decision the judge should make in your system?**

Consent decree review orders contain the following information . . .

- **Court Findings**
  - Youth is making satisfactory progress in meeting the terms and conditions of the consent decree;
  - Youth is making unsatisfactory progress;
  - Youth is in violation of the consent decree; and/or

- Youth has satisfied the terms and conditions of the consent decree.
- **Order(s) to the Youth/Family**
  - Youth to remain on the consent decree;
  - Consent decree should be extended;
  - Consent decree should be modified;
  - Youth to be released due to program completion and case closed; and/or
  - Consent decree to be revoked and a petition alleging that the youth has committed a juvenile offense reinstated.
- **Additional Programs and Conditions**
  - No change;
  - New programs and conditions; or
  - Vacate programs and conditions.
- **Education, Health Care, and Disability**
  - \_\_\_\_\_ is appointed as the youth's educational decision maker to ensure the stability and appropriateness of his or her education.
  - Youth shall undergo the following evaluations, tests, counseling, and treatment:  
\_\_\_\_\_.
- **Shared Responsibility**
  - Case management responsibility is to be shared by the following agencies:  
\_\_\_\_\_.
  - The lead officer and agency are: \_\_\_\_\_.
- **Order(s) to the Juvenile Probation Officer**
  - The juvenile probation officer is directed to complete the following evaluations and report: \_\_\_\_\_.
- **The next scheduled court hearing is:** \_\_\_\_\_.