

# Chapter 27: Nondelinquency Proceedings—Family in Need of Services (FINS) Dispositions

## [27.1] Overview

Under the 1989 BIA Tribal Juvenile Justice Code FINS parties (status offenders and their families) are subject to more limited disposition alternatives than would be juvenile offenders.<sup>37</sup> For example, they are not found to be offenders of any type, they are not subject to secure detention, they are not subject to “probation,” and the court orders are of a more limited duration (e.g., six months maximum). The goal of the FINS process is to identify risky behaviors and/or need areas and to use the tribal court process to intervene to provide services to the youth and his or her family members. The goal is not to adjudicate the guilt of an offender or to punish for an offense. FINS youth (a.k.a. “status offenders”) have not committed any juvenile offenses or crimes and should not be stigmatized as offenders.

## [27.2] Model Code Example

### (1989) BIA Tribal Juvenile Justice Code

#### 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

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<sup>37</sup> Characterizations of state juvenile justice system process are taken from Cox et al., *Juvenile Justice*.

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

- (b) or other agency designated by the court, is found by the court to be qualified to receive and care for the child, or;
- (c) 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.

## **[27.3] Tribal Code Example**

### **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-53A. Dispositional alternatives for undisciplined juveniles.**

The following alternatives for disposition shall be available to the court exercising jurisdiction over a juvenile who has been adjudicated undisciplined. The court may combine any of the applicable alternatives when the court finds it to be in the best interests of the juvenile:

- (1) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the judge may:

- a. Require that the juvenile be supervised in the juvenile's own home by a court counselor, or other personnel as may be available to the court, subject to conditions applicable 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, residential agency offering placement services, or some other suitable person; or
  - c. Place the juvenile in the custody of the Cherokee Children's Home, or other similar type facility.
- (2) Place the juvenile under the protective supervision of a court counselor so that the counselor may:
- i. Assist the juvenile in securing social, medical, and educational services; and
  - ii. Visit and work with the family as a unit to ensure the juvenile is provided proper supervision and care. This supervision may be issued for a period of up to three months, with an extension of an additional three months in the discretion of the court. In addition, the court may impose any combination of the following conditions which may relate to the needs of the juvenile, including:
    - a. That the juvenile remain on good behavior and not violate any laws;
    - b. That the juvenile attend school regularly;
    - c. 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;
    - d. That the juvenile not associate with specified persons or be in specified places;
    - e. That the juvenile abide by a prescribed curfew;
    - f. That the juvenile report to a court counselor as often as required by the court counselor;
    - g. That the juvenile be employed regularly if not attending school; and
    - h. That the juvenile satisfy any other conditions determined appropriate by the court.

- (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.

## [27.4] Tribal Code Commentary

The 1989 BIA Tribal Juvenile Justice Code at Section 1-19 F sets out the disposition alternatives for Family in Need of Services (FINS) youth and their families. Specifically, the provision focuses on placing the youth; on the provision of social, counseling, and treatment services; and “those conditions and limitations the court may prescribe.” The FINS court orders are only effective for up to six months and placement orders “in an appropriate juvenile shelter care facility” are limited to a maximum of 120 days. All FINS orders terminate automatically when the youth reaches the age of eighteen.

Contrast the 1989 BIA Tribal Juvenile Justice Code provisions with the dispositional alternatives of the Eastern Band of Cherokee, which defines its status offenders as “a juvenile adjudicated undisciplined.” Similar to the FINS process, it includes placement provisions (supervision in own home, in custody of parent, guardian, custodian, relative, “other suitable person,” residential agency, and facilities including the option of placing youth in the Cherokee Children’s Home). The Eastern Band of Cherokee code also includes a provision whereby a youth is placed under the protective supervision of a “court counselor” who assists the youth and family with social, medical, and educational services and who visits the family to assist the family in providing proper supervision and care. The maximum duration for such supervision is six months. Finally, the court may set conditions for the youth and his or her family members. These may include:

- Good behavior,
- School attendance,
- Maintaining passing grades,
- Not associating with specified persons/places,
- Curfew,
- Employment if not attending school, and
- Any other conditions.

The Eastern Band of Cherokee Code modifies the FINS process to hardwire in existing tribal services and positions, such as the Cherokee Children's Home and the court counselor. Having such tribal services/positions targeted to assisting tribal youth who are involved with the tribal court is ideal.

## [27.5] Exercises

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

- Find and examine your juvenile code's provisions governing FINS/status offenders. Does your juvenile code have separate disposition provisions for FINS youth or status offenders than it does for juvenile delinquents/offenders?
  - Are FINS youth/status offenders subject to being put in secure juvenile detention facilities?
- Make a list of the pros and cons of mixing FINS youth/status offenders with juvenile delinquents/offenders in a juvenile facility (whether a secure detention facility or just a group home).
- Make a list of the placement/detention options for FINS youth/status offenders that you would like to develop or contract for in your community.

## Read and Discuss\*

### Should status offenders be put in secure detention facilities?

"Status offenders do not require secure detention to ensure their compliance with court orders or to protect public safety. However, recent data indicate that one-third of all youth held in juvenile detention centers are detained for status offenses and technical violations of probation (Arthur, 2001). Detaining youth in facilities prior to adjudication should be an option of last resort only for serious, violent, and chronic offenders and for those who repeatedly fail to appear for scheduled court dates. Secure detention and confinement are almost never appropriate for status offenders and certain other small groups of offenders—those who are very young, vulnerable, first-time offenders; those charged with non-serious offenses; and those with active, involved parents or strong community-based support systems. . . . The public's heightened concern about crime and the increased emphasis on juvenile accountability in the past two decades may have further contributed to the juvenile justice system's reliance on secure detention and confinement for most juvenile offenders. Clearly, quality and accessible community-based alternatives must exist to enable the judicious use of expensive detention and confinement programs to meet the needs of both the juvenile offender and the community."

\*Taken from James Austin, Kelly Dedel Johnson, and Ronald Weitzer, *Alternatives to the Secure Detention and Confinement of Juvenile Offenders*, OJJDP Juvenile Justice Bulletin (September 2005) p. 1.