

Chapter 33: Teen Courts

[33.1] Overview

The National Association of Youth Courts defines *teen courts* (also known as youth, peer, and student courts) as a program “in which youth sentence their peers for minor delinquent and status offenses and other problem behaviors.”⁵⁶ Teen or youth courts have been growing in number since the mid-1990s. There are a few teen courts in Indian country, however, the Kake Youth Circle Peacemaking program is currently the only one that is codified within the tribal code. Other tribal teen courts may be operating, but they are not codified. This may be due to the fact that some tribal teen courts are operated by tribal agencies other than the court or by community organizations.⁵⁷

A teen court can be dispositional or adjudicatory. A dispositional court is one in which the youth has already admitted to the behavior that brings them into court, and the teen court program is established to determine a “fair and appropriate disposition”⁵⁸ for the youth. Whereas an adjudicatory teen court allows the youth to enter a not guilty plea, the court must determine their responsibility for the offense. Most teen courts allow referrals from judges, police, probation officers, and schools. Cases heard often include theft, criminal mischief, vandalism, minor assault, possession of alcohol, minor drug offenses, truancy, and other status offenses and nonviolent misdemeanor offenses.⁵⁹

There are many ways to structure a teen court. Tribes should explore different options to determine what best fits the community and cultural values. Ada Pecos Melton discusses in her article “Building Culturally Relevant Youth Courts in Tribal Communities” four basic teen court models: Adult Judge, Youth Judge, Youth Tribunal, and Peer Jury. However, a hybrid could be created as well. The Adult Judge model is one that most state programs use. It requires an adult for a judge (often times a volunteer attorney), while the youth volunteer as prosecution, defense, court clerk, bailiff, and jurors. In a Youth Judge model, a teen volunteer serves as judge. The teen has typically served as an attorney in previous sessions. All of the other roles are also filled by teen volunteers. In the Youth Tribunal there are no jurors, instead youth attorneys present the case to a youth judge or panel of youth judges. Often there is one experienced youth judge who consults with two not as experienced judges. This model is used for arraignments if a court is adjudicatory. A Peer Jury court does not use attorneys; instead a case presenter reads the facts to the court. The case presenter may

⁵⁶ http://www.youthcourt.net/?page_id=24 (accessed September 2, 2014).

⁵⁷ Ada Pecos Melton, Building Culturally Relevant Youth Courts in Tribal Communities (From Selected Topics on Youth Courts: A Monograph, P 65-91, 2004, Tracy Godwin Mullins, ed – See NCJ-208164).

⁵⁸ Taken from report: “An Update on Teen Court Legislation,” September 2006, 5. http://www.youthcourt.net/wp-content/uploads/2010/05/update_on_teen_court_legislation.pdf.

⁵⁹ Melton, Building Culturally Relevant Youth Courts in Tribal Communities, 71.

be the teen court coordinator, probation, law enforcement, or volunteer (youth or adult). A jury made up of six to eight youth poses questions to the teen and then makes sentencing recommendations. The judge is an adult.⁶⁰

There are many benefits of having a teen court, for example it provides a forum to deal with status offenses like truancy and minor offenses such as traffic violations and nonviolent crimes. Teen courts also allow for youth to participate in their tribal government and understand how courts work. Similarly, youth become engaged in their community and gain leadership skills. Those youth who are “sentenced” in the teen court can learn traditional skills through cultural-based community service, and can become more connected with their community. The court provides benefits to the tribe in that it provides opportunities for tribal agencies to work together on these issues, as well as potential opportunities to work with off-reservation agencies. Overall tribal youth who need assistance are brought into the teen court for intervention and the underlying problems can be addressed.⁶¹

As previously mentioned, the majority of tribal teen courts are not codified within tribal codes. Most are programs that receive support from different tribal agencies. Similarly, there are less state teen courts operating under legislation than there are teen court programs that operate without legislation. One benefit of codifying your teen court is the potential for funding (whether that is from the tribe or outside sources); codifying the teen court demonstrates that your program is established and has parameters. Other benefits of codification include sources for referral into the court and providing sentencing options.

[33.2] Tribal Code Example

Keex’ Kwan Judicial Peacemaking Code

Organized Village of Kake

Chapter 4: Kake Youth Circle Peacemaking

Section 1: Purpose of Kake Youth Circle Peacemaking

The Youth are our treasures of our Tribe and hope for the future. The purpose of the Kake Youth Circle Peacemaking is to encourage responsible behavior and choices among our Youth, to empower them to participate in decision-making when problems arise among their peers, and to preserve and promote the cultural values and practices of the Kake Youth Circle Peacemaking Tribe. The Consensus Agreement ordered by the Kake Youth Circle Peacemaking shall be designed to help and heal victims, wrongdoers, and the Village of Kake. This Ordinance outlines the basic structure and procedures of the Kake Youth Circle

⁶⁰ Ibid., 73.

⁶¹ Ibid., 72–3, 76.

Peacemaking, and is intended to provide a fair and equitable process that is consistent with the Organized Village of Kake Tribal Constitution, OVK tribal ordinances, the requirements of the Indian Civil Rights Act, and compatible with the unwritten laws and values of Organized Village of Kake.

(Section 2. Omitted)

Section 3. Jurisdiction of the Kake Youth Circle Peacemaking

The Kake Youth Circle Peacemaking shall have limited jurisdiction over health, safety, and welfare matters arising among the village Youth between and including the ages of 8 through 18. Those subjects include use of alcohol and illegal drugs, vandalism, trespass, theft, bullying, harassment, disorderly conduct, tardiness, truancy and juvenile curfew. However, the Kake District Court of Alaska may at any time, initially take, or take over a case when the complexity or seriousness of the situation warrants it.

Section 4. Youth Coordinator and Youth Panel

The OVK shall designate a Youth Coordinator and establish a panel of at least two youth to work with and advise the Youth Coordinator. Duties of the Youth Coordinator and Panel may include:

- Receiving petitions or referrals filed with the Kake Youth Circle Peacemaking, Tribal Youth Court.
- Answering the phone calls or receiving mail for the Youth Court.
- Maintaining files for the Court and a Court calendar.
- Helping to select Circle participants when asked to do so.
- Notifying parties and Circle participants of Circle hearings.
- Drafting Consensus Agreements for the Keeper of the Circle to sign.
- Receiving proof of Compliance with Consensus Agreements.
- Maintaining records of Youth Court finances.

Section 5. Beginning a Case by Petitioning or Referral

A. Beginning Cases by Petitions:

A case may begin by anyone giving a Petition describing an incident, problem, or situation to the Youth Coordinator, or to any one of the Organized Village of Kake Social Services and/or SEARHC (SouthEast Alaska Regional Health Consortium) Counselors. Petition

forms shall be made available at the OVK Office. The person filing a Petition shall be called the Petitioner and may be asked to sit in the Circle on the case. Two youth and staff shall meet to review the petition and decide whether or not the Kake Youth Circle Peacemaking should hold a Circle on the case. If so, they shall proceed to select Circle participants under Section 7(B) of this Ordinance. The OVK Youth Coordinator shall schedule a date for the Circle, and notify the parties.

B. Beginning Cases through Referrals:

A case may begin by a referral from a state court judge or law enforcement officer, or by referral from another tribal court. A Review meeting shall be called by the Clerk to review the referral and decide whether or not the Kake Youth Circle Peacemaking should hold a Circle on the case. If so, the OVK Tribal Youth Coordinator or designated OVK staff person shall proceed to select Circle participants. The Tribal Youth Coordinator shall schedule a date for the Circle, and notify the parties.

Section 6. Determining Circle Participants and Keeper of the Circle

Circle participants and the Keeper of the Circle shall be chosen by the Tribal Youth Coordinator or designated OVK staff.

Section 7. Notification of Circle Hearings

The Tribal Youth Coordinator shall notify the parties being accused of a wrongdoing and Circle participants about the date, time, place of Circle hearings. The notice to the parties shall include a copy of the petition or reason they are being brought to the Peacemaking Circle, and shall state that if the parties believe they are being wrongly accused that they may immediately notify the OVK Youth Coordinator who will schedule a hearing before the OVK Council. Notice for Peacemaking Circles shall be given at least three days prior to the Circle date.

Section 8. Kake Youth Circle Peacemaking

A. Peacemaking Circle:

The Kake Youth Circle Peacemaking Tribal Youth Court shall be conducted through the use of Peacemaking Circles.

B. Choosing the Circle participants and Circle Keeper:

Circle participants and the Facilitator of the Circle shall be chosen by the OVK Youth Coordinator plus two Youth from the Youth Panel, and shall not be parties in the case or live in the same household as the wrongdoer coming before the circle.

C. Circle Participants:

In general, participants of Peacemaking Circles shall include resident Youth between and including the ages of 8 and 18, [and] are selected by the Youth Coordinator and two youth. The OVK Youth Coordinator shall be present at Circle hearings in order to write the decision of the Circle on a Consensus Agreement form. Circles may also include adult community members, parents, teachers, counselors, and any other person who those choosing Circle participants decide should be in the Circle.

D. Keeper's Role for Opening and Conducting the Circle:

- The Keeper of the Circle shall begin the Circle process by opening the Circle.
- Opening the Circle may include a prayer or special comments from an Elder or someone in the Circle.
- The Keeper shall ask the participants to agree to the Oath of Confidentiality and Fairness written in Section 8 of this Ordinance.
- One person shall talk at a time with no interruptions.
- The Keeper shall outline the rules of the Circle and ask participants if there are any additional rules they would like to see the Circle go by.
- Comments shall be limited to maximum of five minutes, unless permission granted by Facilitator.
- The Keeper shall state what the situation is that the Circle will be hearing.
- The Keeper shall begin the Circle by passing the talking stick or other special object in a clockwise direction.
- The Keeper shall be responsible for keeping order in the Circle should that become necessary.
- The Keeper shall summarize the highlights of what has been said after each round of discussion.
- Participants shall show respect to one another and not point blame.
- The Keeper shall state the final consensus of the Circle, and make sure that it is an accurate summary of the Circle's decision, and sign the written Consensus Agreement after the Tribal Court Clerk or OVK Youth Coordinator has prepared it.

- All comments made in the Circle shall be confidential.

E. Basic Rules of the Circle:

The most basic rule of the Circle is that persons shall have respect for one another. Only one person shall speak at a time, which shall be the person with the talking stick, or as directed by the Keeper of the Circle. What is said in the Circle shall stay in the Circle, and shall not be discussed outside of the Circle.

F. Order of Speaking:

Once the Keeper has opened the Circle, he or she shall pass the talking stick around the Circle and participants shall speak only when they hold the stick. If a person chooses not to speak, they may pass the stick on to the next person in the Circle. The discussion of the Circle shall continue in this manner unless the Keeper directs otherwise.

G. Process of the Circle:

The first round: quick introductions shall be made, stating name and the person being supported (victim, wrongdoer). The second round of the Circle discussion shall be for participants to voice their feelings (speaking from the heart), opinions, share information, and generally talk about the situation. After these things are thoroughly aired, the Keeper shall begin a new round of discussion focusing on appropriate solutions and sentencing.

H. Decision of the Circle:

The decisions of the Circle shall be made by consensus. The discussion in the Circle shall proceed until everyone can stand behind the decisions being made. The decision of the Circle shall be written on a Consensus Agreement form by the OVK Youth Coordinator or Court Clerk and signed by the Keeper of the Circle, by the victim, and the wrongdoer. The decision shall include who shall do specific tasks that may be decided by the Circle, who shall Mentor the wrongdoer, and specify guidelines for the sentences decided.

I. Mentors:

Specific adult mentors shall be assigned to oversee the progress of wrongdoers in completing their sentences. Mentors shall sign off on proof of compliance forms when wrongdoers complete tasks assigned in Consensus Agreements within the allowed timeframe.

J. Follow-up on Circle Consensus Agreements:

Before a Circle adjourns a session, it shall make a specific plan for how follow-up will be monitored, and may set a date to reconvene the Circle to examine the progress of a case if appropriate in 30 days. If a party is not complying with an Consensus Agreement of the

Circle, the person may be brought before the Circle again, or the case may be referred to the Kake District Court.

Section 9. Oath of Confidentiality and Fairness

Participants of the Circle shall agree to the following oath:

“I promise to not discuss what is said in this Circle outside of the Circle. I will work towards a fair agreement about what should be done.”

Section 10. Failure to Appear for a Peacemaking Circle

If a wrongdoer was served with a notice about a Circle hearing but fails to show up for a Hearing, the Kake Youth Circle Peacemaking Tribal Youth Circle may send a designated adult to get the person if the person is in the Village, or set another Circle date.

Section 11. Creative Sentencing—Options for Consensus Agreements

The Circle participants shall design sentences intended to help and heal victims, offenders, and the Village of Kake. The Circle shall assign specific adult mentors to oversee the completion of sentences. The Circle may choose one or more from the following options:

A. Community Service Work:

Work sentences shall benefit the needy, the village residents as a whole, the Elders, the victim of an offense, offenders, and/or the youth. Work sentences may include and are not limited to cutting wood, hauling water, shoveling snow, doing laundry, or cleaning homes or yards for needy people or the community hall or church, working in the school, conducting village surveys, helping the local police officer, working with carpenters or other tradesmen in the village, working in the OVK or City Offices, participating in preparations for community events, building maintenance or repair and cleaning up trash in the Village of Kake. Circle participants shall not order work sentences that only benefit themselves personally. Work sentences shall not displace persons employed in the Village or employment opportunities. Work sentences shall be completed within 30 days unless otherwise directed by the Court.

B. Restitution:

The Circle may order a wrongdoer to make restitution to his or her victims or to the Village. Restitution is defined to include payment of money, repairing property, and apologies. Restitution payment shall go through the OVK Youth Coordinator. Non-monetary restitution shall be supervised by [a] OVK Youth Coordinator or by another person designated by the Circle.

C. Apologies:

The Circle may order wrongdoers to make apologies to victims, parents or guardians, and/or to the whole village at OVK meetings or gatherings. The Circle may specify if the apologies shall be in writing or oral or both.

D. Essays and Presentations:

The Circle may order wrongdoers to write essays and/or to give presentations. The Consensus Agreement shall specify the topics for such essays and the minimum length. If a presentation is required, the audience such as the OVK Council, school or Elders shall be specified

E. Organize Events or Fundraisers:

The Circle may order wrongdoers to organize events for the Youth and village residents. Wrongdoers may also be ordered to organize fundraisers for restitution or village projects.

F. Counseling by Professional Counselors, Peacemakers, and Elders:

The Circle participants may counsel wrongdoers in a helpful spirit. The Circle may order professional counseling, as long as the counseling is available in the village, or counseling by specific Kake Elders. The Circle may also order peer counseling by specific peers, or participation in talking circles.

G. Substance Abuse Awareness Sessions and Talking Circles:

The Circle may order participation in substance abuse awareness sessions or talking circles in the Village.

H. Traditional Activities:

The Circle may order a person found in violation of an ordinance to participate in seasonally appropriate traditional activities such as fish camps, trapping, hunting, putting up fish or meat, culture camps, preparing Native foods, traditional crafts and Native language activities, and other tribally sponsored or approved traditional activities.

Section 12. Proof of Compliance with Circle Consensus Agreements and Failure to Comply

If a party is ordered to do something, the party shall file a Proof of Compliance form with the OVK Youth Coordinator within 7 days after completion of the Consensus Agreement forms. Mentors shall sign off on Proof of Compliance forms. Mentors shall notify the OVK Youth Coordinator in the event the person they are mentoring does not complete the requirements

of a Consensus Agreement. The OVK Youth Coordinator may schedule another Circle or report any failures to comply with Consensus Agreements to the regular Kake Youth Circle Peacemaking, schedule a Contempt of Court hearing, and provide notice to the party of the hearing.

Section 13. Appeals

A panel of three Peacemakers from the Organized Village of Kake Tribal Court shall serve as the Appellate Court for the Kake Youth Circle Peacemaking, Tribal Youth Court. A Youth who wishes to appeal a case may file a Notice of Appeal with the OVK Youth Coordinator or Court Clerk within 10 days after receiving a Consensus Agreement from the Kake Youth Circle Peacemaking, Tribal Youth Court. A Review Meeting shall be held, and the decision made to accept the appeal or not shall be made. If the appeal is accepted, the Review Team shall determine which three Peacemakers shall serve as the Appellate Court for the case. Appeals filed after 10 days shall not be considered.

[33.3] State Code Example

Wyoming State Statutes

Title 7 Criminal Procedure

Chapter 13 Sentence and Imprisonment

ARTICLE 12 - TEEN COURT PROGRAM

7-13-1201. Short title.

This act shall be known and may be cited as the “Wyoming Teen Court Program.”

7-13-1202. Definitions.

- (a) As used in this act:
 - (i) “Minor offense” means any crime punishable as a misdemeanor or the violation of any municipal ordinance, provided the maximum penalty authorized by law for the offense does not exceed imprisonment for more than six (6) months and a fine of not more than seven hundred fifty dollars (\$750.00);
 - (ii) “Supervising court” means the municipal court or circuit court by whose order a teen court program is established pursuant to rules and regulations promulgated by the Wyoming supreme court;
 - (iii) “Teen” for the purposes of this act means a person who has attained the age of thirteen (13) years of age and is under the age of majority;

- (iv) “Teen court” or “teen court program” means an alternative sentencing procedure under which regular court proceedings involving a teen charged with a minor offense may be deferred and subsequently dismissed on condition that the defendant participate fully in the teen court program and appear before a jury of teen peers for sentencing and that the defendant successfully complete the terms and conditions of the sentence imposed. This sentencing is in addition to the provisions of W.S. 7-13-301 and 35-7-1037;
- (v) “This act” means W.S. 7-13-1201 through 7-13-1205.

7-13-1203. Authority to establish teen court program.

- (a) The Wyoming supreme court shall adopt rules and regulations governing teen court by July 1, 1996.
- (b) In addition to any other power authorized, a municipal court judge, with the approval and consent of the governing body of the municipality, or any circuit court judge, with the approval and consent of the board of county commissioners, may by order establish a teen court program and training standards for participation in accordance with this act to provide a disposition alternative for teens charged with minor offenses.
- (c) In any case involving the commission of a minor offense by a teen defendant, the supervising court may, without entering a judgment of guilt or conviction, defer further proceedings and order the defendant to participate in a teen court program, provided:
 - (i) The teen defendant, with the consent of, or in the presence of, the defendant’s parents or legal guardian, enters a plea of guilty in open court to the offense charged;
 - (ii) The restitution amount, if any, owed to any victim has been determined by the supervising court;
 - (iii) The defendant requests on the record to participate in the teen court program and agrees that deferral of further proceedings in the action filed in the supervising court is conditioned upon the defendant’s successful completion of the teen court program; and
 - (iv) The court determines that the defendant will benefit from participation in the teen court program.
- (d) If the supervising court determines that the teen defendant has successfully completed the teen court program, the supervising court may discharge the defendant and dismiss the proceedings against him.

- (e) If the defendant fails to successfully complete the prescribed teen court program, the supervising court shall enter an adjudication of guilt and conviction and proceed to impose sentence upon the defendant for the offense originally charged.
- (f) Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for any purpose. If the original offense charged was a traffic offense, the court shall, within thirty (30) days after the discharge and dismissal is entered, submit to the department of transportation an abstract of the record of the court evidencing the defendant's successful completion of the teen court program. The department shall maintain abstracts received under this subsection as provided by W.S. 31-5-1214(f).

7-13-1204. Program criteria.

- (a) A teen court program may be established under this act in accordance with the following criteria:
 - (i) The judge of the teen court shall be the judge of the supervising court or an attorney admitted to practice in this state appointed by the supervising court to serve in a voluntary capacity and shall serve at the pleasure of the supervising court;
 - (ii) Procedures in teen court shall be established by order of the supervising court in conformance with the provisions of this act and shall be subject to any uniform procedures for teen courts as may be prescribed by the Wyoming supreme court;
 - (iii) The supervising court may authorize the use of its courtroom and other facilities by the teen court program during times when the courtroom and facilities are not required for the normal operations of the supervising court;
 - (iv) The teen defendant, as a condition of participation in the teen court program, may be required to pay a nonrefundable fee not to exceed ten dollars (\$10.00). Fees collected under this paragraph by a municipal court shall be credited to the treasury of the municipality. Fees collected under this paragraph by a circuit court shall be credited to the treasury of the county;
 - (v) The teen court program may involve teens serving as voluntary teen court members in various capacities including, but not limited to jurors, prosecutor-advocates, defender-advocates, bailiffs, clerks and supervisory duties;
 - (vi) Every teen defendant appearing in teen court shall be accompanied by a parent or guardian;

- (vii) The teen court jury shall impose restitution, if any, in the amount established by the supervising court;
- (viii) The supervisory court, in accordance with the rules and regulations promulgated by the Wyoming supreme court, shall establish a range of sentencing alternatives for any case referred to teen court. Sentencing alternatives shall include, but not be limited to:
 - A. Community service as authorized by the supervising court;
 - B. Mandatory participation in law related education classes, appropriate counseling, treatment or other education programs;
 - C. Require the teen defendant to participate as a juror or other teen court member in proceedings involving teen defendants;
 - D. Fines, not to exceed the statutory amount.
- (ix) The teen court jury shall not have the power to impose a term of imprisonment.

7-13-1205. Juvenile courts authorized to establish teen court program.

- (a) Notwithstanding any other provision of the Juvenile Justice Act, W.S. 14-6-201 through 14-6-252, a juvenile court may establish and offer a teen court program substantially complying with the provisions of this act as an alternative to any disposition authorized by W.S. 14-6-229(d), provided:
 - (i) Participation in the teen court program shall be limited to teens charged under the Juvenile Court Act with having committed a minor offense and who have been adjudicated delinquent;
 - (ii) The juvenile and all parties to the proceeding, including any guardian ad litem appointed in the juvenile court proceeding to represent the best interests of the juvenile, consent to the juvenile's participation in the teen court program;
 - (iii) The juvenile and the juvenile's parents or guardian waive any rights to confidentiality otherwise available under the Juvenile Court Act; and
 - (iv) The juvenile court finds that participation in the teen court program would be in the best interest of the juvenile.

[33.4] Tribal Code and State Legislation Commentary

The tribal code is helpful in providing examples of integrating cultural practices into a court process that is not adversarial and can assist youth. Although the Kake program is technically called a Peacemaking Court, it is also a teen court. Many aspects of the Kake program could be adapted into a tribal teen court. The Wyoming teen court provides helpful examples that can be applied to tribes as well.

Purpose

It is a good idea to have the reasons listed as to why the tribe wants a teen court. In Chapter 4, “Kake Youth Circle Peacemaking,” Section 1, the Kake Village explains that the program not only empowers youth, but preserves cultural values and practices. It also emphasizes how important the youth are to the tribe. It is a good practice to explain that the program is consistent with the tribal constitution, tribal ordinances, ICRA, and unwritten cultural values.

Authority to Establish

Laying out the power to establish the teen court is a good practice. The state of Wyoming in Section 7-13-1203 explains that the Wyoming Supreme Court lays out the rules for lower courts to set up teen courts in their jurisdictions. A municipal court or circuit court judge may establish a teen court program as long as the governing body approves and consents to the program. The teen court is defined as a “disposition alternative for teens charged with minor offenses.”⁶² This exact language may not fit all tribes, but it is a good example to describe which government branch(es) of tribal government has the power to establish the teen court.

Further, in Section 7-13-1205 the Wyoming statute explains that a juvenile court may “establish and offer” a teen court. However, the teen court program must follow the acts requirements such as described later in the section “Who Participates?”

Jurisdiction

In Section 3 of the Kake code, it explains that teen court jurisdiction is over youth between ages eight through eighteen years of age. The program has a limited jurisdiction over health, safety, and welfare matters that occur among the village youth. The matters include alcohol and drug use, vandalism, trespass, theft, bullying, harassment, disorderly conduct, tardiness, truancy, and juvenile curfew. The Kake District Court can initially take or take over a case if it is too complex or serious for the teen court.

⁶² Wyoming Code §7.13.1203.

Youth Panel and Youth Coordinator

Section 4 of the Kake code lays out the youth coordinator and youth panel roles. The village chooses a youth coordinator and a panel of two or more youth. Their duties include receiving referrals and petitions, taking phone calls, receiving mail, maintaining court files, assisting with the court calendar, assisting in selecting teen court participants, notifying participants and parties of hearings, drafting consensus agreements, receiving consensus agreement proof of compliance, and maintaining youth court finance records.

These roles are helpful in defining what the youth court organizational staff will do. These roles and expectations can be altered to what best fits a particular tribal culture and how involved the staff will be with the teen court.

How a Case Comes into the Teen Court

According to the Kake code Section 5, a case enters the teen court through either petition or referral. Anyone can file a petition (which describes an incident, problem, or situation) with the teen court youth coordinator, village social services, or Southeast Alaska Regional Health Consortium Alaska Counselors. Petition forms are at the Organized Village of Kake office. The person filing the petition (“petitioner”) may be asked to participate in the circle. Two youth and staff will meet to review the petition and decide whether or not to take the case.

A case may enter the court by referral from a state court judge or law enforcement officer or from another tribal court. The clerk will call for a review meeting to determine if the teen court will take the case. It would also be helpful if the code stated that the Kake court can refer a case to the teen court. This would simply further strengthen tribal court authority and jurisdiction over the teen court.

According to Wyoming statute 7-13-1203, a case enters the teen court by a teen defendant committing a minor offense. The court determines that the teen defendant will benefit from a teen program. The court has the option to defer the proceedings (and not enter a judgment) and order the teen defendant into the teen court program. However, the teen defendant must enter a guilty plea to the offense in open court with the consent of his or her parent or guardian. Any restitution amount must be determined by the court. The teen defendant must request on the record to participate in the teen court program; he or she must also agree that deferring the proceedings in the supervising court is conditioned on his or her successfully completing the teen court program.

The Wyoming statute gives the court discretion over who enters the program. It is positive that the judgment against the teen can be deferred while he or she completes the program. The requirements allow the teen to demonstrate that he or she wants to participate in the program. It also allows the court to have a guilty plea in case the teen does not complete the program.

Who Participates?

In the Kake code, Section 6 explains that the youth coordinator or designated Organized Village of Kake staff will choose the teen court circle participants. This allows the program to have discretion over who participates. This also can be problematic because there are no clear rules as to who is admitted, however it is up to the individual tribal court to decide who participates based on norms and culture.

According to the Wyoming statute 7-13-1205, teens may participate in the teen court program if they have committed a minor offense and have been adjudicated delinquent. The teen and parent/guardian (or guardian ad litem) must consent to the teen's participation in the program. The teen and parent/guardian must waive any rights to confidentiality available under the Juvenile Court Act. Also the court must decide that the program is in the teen's best interest. This process only includes teens who have committed an offense and does not allow for the program to allow participants who may need the program, but have not been convicted of an offense. Whereas the Kake program has the potential to admit teens who may be in trouble, but have not been convicted of an offense.

How the Program Functions

According to the Wyoming statute 7-13-1205, the teen court allows the teen into the court as described in "How a Case Comes into the Teen Court" and "Who Participates?" Under 7-13-1204, the judge in the teen court shall be a judge in the supervising court or an attorney admitted to practice in Wyoming, who is appointed by the supervising court. The teen court will take place in the supervising court's courtroom. The teen participant is required to pay a nonrefundable fee of ten dollars, which goes to the county treasury. It is not clear if the fee goes back into the program, but that is a possibility for tribes to exercise if they choose. The jurors, prosecutor-advocates, defender-advocates, bailiffs, and clerks may be teens who are involved with the teen court. Every teen defendant appearing in teen court must be accompanied by a parent or guardian.

Under Section 12-5, if the teen completes the program, then the court may dismiss the proceedings against him or her. If the teen does not complete the program, then the court will enter the guilty plea and will impose a sentence for the original offense. This ensures that the teen completes the program and that if he or she does not, then the teen will be sentenced for their offense.

According to the Kake code Section 8, the teen court (which also functions as a peacemaking circle) is based on respect. The tenets are tribally based and are different than that of the Wyoming court. The steps of the Kake program are spelled out in great detail. Only one person is allowed to speak at a time and everything spoken in the circle is to be kept confidential. The leader of the circle (keeper) begins the circle discussion with introductions and stating the names of the victim and wrongdoer. The second round allows for participants to speak their feelings and opinions, share information, and talk about the situation. Finally, the keeper leads a discussion on solutions and sentencing. Any decision that the circle makes must be by consensus. Adult mentors will be assigned to watch over

the wrongdoers in completing their sentences. This circle program works according to Kake culture and has many beneficial components that allow all participants to be heard.

Sentencing

The Wyoming statute Section 7-13-1204, lays out sentencing options for the teen court program. The teen court can impose restitution. The supervisory court can impose community service and mandatory participation in law-related education classes; prescribe appropriate counseling, treatment, or other education programs; require the teen defendant to participate as a juror or other teen court member in proceedings involving teen defendants; and impose fines. These sentencing options are good ones and allow the court discretion in working with the teen. However, they do not cover any potential culture issues that tribes may want to include.

The Kake code in Section 11 allows for cultural issues in sentencing. The program assigns an adult mentor to oversee the completion of the sentencing options. The options include community service; restitution; apologies; essays and presentations; organizing events or fundraisers; counseling by professional counselors, peacemakers, and elders; substance abuse awareness sessions and talking circles; and/or traditional activities. These options allow the circle to be creative in sentencing and integrate the teen into traditional and community practices as appropriate.

[33.5] Exercises

The following exercises are meant to guide you in developing the teen court–related sections of the tribal juvenile code.

- How do we want to structure our teen court—adjudicatory or dispositional?
- Who could make referrals into the teen court?
- What types of cases would the teen court hear?
- What type of model fits our community: Adult Judge, Youth Judge, Youth Tribunal, Peer Jury, or a hybrid?
- How involved will adults be in the teen court?
- What kind of sentencing options will the court provide?
- What traditional/cultural activities can be used in sentencing?

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Welcome To Teen Court

At legally authorized teen courts across the country, teens decide the real-life fate of other teens who've committed low-level offenses. The weirdest part? It seems to work — so why aren't there more of them?

One day after school last December, 15-year-old Michael took the stand in a Brooklyn courtroom. His crime: jumping a subway turnstile instead of paying for the \$2.50 ride, classified as the most serious level of misdemeanor in New York.

"How are you feeling today?" the jury foreman asked him.

"Nervous," Michael said. (His name has been changed since he is a minor.) He had walked in with a scowl, but now looked like he was about to cry.

The New York Police Department takes turnstile jumping very seriously. More than 37,000 people received incarceration time for fare evasion from 2008 to the first half of 2014, according to state data; 1,802 of them were minors.

If Michael didn't take care of his ticket before his next birthday, he could have even become one of the nearly 50,000 16- and 17-year-olds who end up in the state's criminal courts every year, most of whom are charged with nonviolent crimes — New York is one of only two states where the age of adult criminal responsibility is 16. The overwhelming majority of youths sentenced to incarceration, 80%, are black and Latino.

But adults wouldn't decide Michael's fate that afternoon. Instead of giving him a ticket, the police officer who caught Michael trying to sneak into the subway sent him to teen court, which is run for and by teenagers.

The judge Michael faced was a teen. The jury members were teens. His "youth advocate" defender, as well as the "community advocate" who played a vaguely prosecutorial role, were teens as well.

“We are here to help you, not to judge you,” the 17-year-old foreperson reassured Michael before the questioning began.

Teen court, also called youth or peer court, may sound like the premise of a sitcom, but there are more than 1,000 youth court programs in 49 states and the District of Columbia, according to the National Association of Youth Courts, and some states have even passed teen court-related legislation.

Teen courts are a diversion program, not a court of law, and the majority don’t adjudicate guilt or innocence the way real courts do. Instead, the goal is to determine a fair sentence for first offenders who have admitted guilt for low-level offenses rather than throwing them to the mercy of the criminal justice system. Advocates also believe teens can get through to other teens in a way out-of-touch adults cannot. Some jury members are former “respondents” who went through the teen court system themselves.

“Here we treat respondents as people who have stories to tell that go beyond the mistake they made,” said Jah-Neyce, a 17-year-old member of the Red Hook Youth Court. “In a regular court, the judge doesn’t really care who you are.”

Teen court hasn’t been around very long — 20 years ago, there were only 78 in operation, according to the National Youth Court Database — although some say its roots stem back to the late 19th century, when social welfare leader William Reuben George founded the George Junior Republic in Freeville, New York, which promoted youthful self-government. His son-in-law may have founded the first youth court in the 1960s.

Police, probation officers, schools, district attorney’s offices, or family and criminal courts may refer minors to teen court who have already confessed to low-level crimes ranging from marijuana possession to shoplifting to assault. The jury attempts to target the root cause of an offender’s actions, after which they might be referred to social services, face community service, attend mandated motivational group counseling, or write a personal essay or public apology.

Advocates say positive peer pressure is more cost-effective than scaring nonviolent offenders straight. It costs about \$500 to send a kid to teen court compared to the roughly \$5,500 cost per child of appearing in juvenile court, said Jack Levine, program director of the National Association of Youth Courts.

But not everyone is so convinced that it’s a great idea.

Some critics are horrified at the prospect of going so easy on crime. “This scheme combines the worst of soft sentencing and silly gimmicks,” Centre for Crime Prevention’s Peter Cuthbertson told the Daily Mail last summer after a peer court opened in West Yorkshire, England. Those on the other side of the spectrum are concerned by a study and anecdotal evidence that suggested police

might refer some kids to teen court who would have otherwise simply been sent home with a stern lecture.

Others are just skeptical that the program actually prevents reoffending. Every teen court is different — some employ adult judges, while peers preside over others, and there's a vast variation in referral sources — so it's difficult to evaluate their effectiveness. Teen court participation also typically requires a formal or informal admission of guilt, which means it's hard to compare it to the traditional court system. And, since teen court is designed for first-time offenders with low-level offenses, recidivism rates are low to begin with.

The lack of concrete data may be the reason why few people know teen courts exist — municipalities strapped for cash aren't typically excited to invest in something that isn't proven to work.

Though teen courts seem popular with some legal experts — the former New York State chief judge launched a fund to provide financial support and has unsuccessfully lobbied for legislation — funding is scarce. Most courts in New York are funded by local government, although they can also receive money from the state and federal government, private donors, and local school districts and foundations. Although the majority of youth courts in New York state have an annual operating budget of \$50,000 or less, New York's youth courts are barely scraping by, their employees say.

"People love the idea of youth court," said Beth Broderick, project director of the Staten Island Youth Justice Center, which hosts the borough's youth court, "but they don't seem to want to pay for it."

But some research is promising. An Urban Institute study of four courts found that those who attended teen court had less than half the one-year recidivism rate of those who passed through the juvenile justice system. Advocates compare that to extensive research that shows that imprisoning young offenders actually increases their odds of committing more serious crimes and returning to prison while also making them less likely to graduate from high school.

"Teens take risks without understanding the long-term consequences," said Dory Hack, director of Youth Justice Capacity Building at the Center for Court Innovation, a nonprofit that works closely with the New York State Unified Court System. "We strongly feel that youth court is a better way to respond to many minor offenses than the criminal system. We want them to have a positive experience and feel heard."

In New York City's youth courts, where teen members are paid a small monthly stipend after undergoing intensive training and hear cases twice a week, annual compliance rates average 93%, Hack said.

There are more than 80 youth courts in New York State (called "youth" because some respondents are as young as 10 years old, although members are 14-18). The Center for Court Innovation

operates five youth courts in New York City and one in Newark, New Jersey. In 2013, the Red Hook Youth Court heard 146 cases, most for larceny, truancy, and assault. The Staten Island Youth Court heard 170, many for shoplifting, thanks to the borough's most popular teen hangout: the mall.

For New Yorkers 16 and older, the alternative to youth court isn't necessarily jail time, but the "escalation of a case through the system," Hack said. In other words, if a kid like Michael doesn't show up to court, or is later charged with another offense, he might face increasingly serious consequences. By housing the courts in community centers, the Center for Court Innovation hopes to connect at-risk kids who come to youth court with other services they might need close to home. Some sessions take place in real-life courtrooms, like the youth court at Youth and Community Programs at the Red Hook Community Justice Center, which was founded as the nation's first multi-jurisdictional community court in 2000, while others, like Staten Island's, are conducted in repurposed office rooms.

"There's an air of legitimacy because of what the kids bring to it," said Broderick, adding that many respondents and their families are "really stressed" by a traditional courtroom setting.

During youth court sessions in Staten Island and Red Hook, teen respondents walked in looking nervous or defensive — most said they had never heard of youth court before, and had no idea what to expect — but quickly opened up once they realized the jury was on their side.

After everyone in the room cited a crucial confidentiality oath — every so often, a jury member and a respondent run into each other in their high school cafeteria — the cases began. One 11th-grader, clad in sequined Uggs, said that her friend had convinced her to shoplift a bag from H&M and that she struggled with peer pressure. The court assigned her an essay on that topic, along with three hours of community service and a behavior workshop. A pair of sisters who were reported truant explained in separate sessions that their mother had taken them to McDonald's for breakfast because they had a half-day at school. In many states, truancy charges can carry serious offenses for both kids and their parents, but the court decided that the sisters hadn't done anything wrong and let them go without any sanctions.

Michael, the turnstile jumper, was questioned more relentlessly.

First, the community advocate assigned to his case (the kids switch positions regularly) argued that the city loses out on funding thanks to fare evasion, and that younger kids might copy Michael's actions and get a ticket or face actual jail time. Michael's advocate, who had met with Michael before the hearing to get to know him better, said he possessed "a multiple of positive attributes," had a good relationship with his family and friends, and had never dealt with the police before. Plus, Michael "liked to play handball after school."

The jury then peppered Michael with questions, speaking as quickly as only teens can.

Did Michael have money with him? (No.) Did he ask anyone, say, in his school office, to borrow some before deciding to jump the turnstile? (No.) Had he ever been suspended? (Yes, twice; once for hitting a teacher, but that was in fifth grade.) Did he feel like anyone deserved an apology? (Yes: the MTA.) Who was his role model? (Biggie Smalls, which elicited some hidden grins from the otherwise professional jury). What were his future goals? (College, although he only said so after some encouragement from the jury.) How would his experience in youth court get in the way of them?

In a closing statement, the community advocate said Michael “lacked motivation and spoke too quickly.”

But his advocate defended him.

“He stated if given the chance he would apologize to the MTA, he does not skip school anymore, and he has learned not to jump the turnstile,” he said before thanking Michael for participating.

“We know how hard it is to admit to one’s fault in front of his peers.”

The jury left the room to deliberate. Some members felt that Michael had learned his lesson, but others thought he was just saying what they wanted to hear.

“He has future goals!” one teenager said in Michael’s defense.

“Well, only after you told him what they should be,” said another. “You had to prompt him.”

Ultimately, the jury assigned Michael a group counseling course, since they felt he needed a group for motivation’s sake, and a letter of apology to the MTA.

Michael and his mother then met with a youth court staffer so she could explain how the center would help him finish his sanctions in time — and that if he didn’t show up, it could stay on his permanent record, at least until he turned 18. (Most jurisdictions send kids who don’t complete their sanctions in time back to the traditional juvenile justice system.) Michael’s mother said she didn’t speak English or have an email account; the staffer told her not to worry.

“The goal isn’t to punish,” a 15-year-old jury member named Marcos said. “But if we see a pattern, we want to help kids fix it up. We all want what’s best for them.”

Asana, 17, who judged Michael’s case, used to think that “every man behind bars is a criminal,” she said. Then, she listened to an elementary schooler explain why he stole an iPhone. He told the court that he only did it because an older group of boys had threatened his family. The experience made Asana cry.

“It made me think of my brothers and sisters,” she said. “Now I’m not so biased.”