

Chapter 5: General Provisions of the Juvenile Justice Code

[5.1] Overview

One early decision that you will have to make is how to combine your draft laws by topic. Many contemporary tribal codes conflate the tribe’s dependency process (addressing child maltreatment) with its delinquency process (addressing juvenile and status offenses). We recommend that tribes design separate processes and draft independent statutes (codes) for the following reasons:

- The purposes of the two laws are different (child protection versus rehabilitating adolescents and holding them accountable).
- Juvenile delinquency adjudications (trials) require more stringent requirements (with statutory reinforcement of the “Juvenile 8” Rights—see [Chapter 11: Rights in Juvenile Proceedings](#)).
- The required standard of proof for juvenile delinquency adjudications is higher (beyond a reasonable doubt—see [Chapter 11: Rights in Juvenile Proceedings](#) and [Chapter 12: Evidentiary Rules in Juvenile Proceedings](#)).
- More and specific, tailored, statutory “doors” (using “informal adjustment, consent decrees, and various court orders”) are desirable for adolescents and young adults to participate in services, programs, and activities, whether for therapeutic and/or cultural purposes—see [Chapter 15: Informal Adjustment in Juvenile Proceedings](#), [Chapter 17: Presenting Officer/Prosecutor and Consent Decrees](#), and [Chapter 19: Predisposition Studies in Juvenile Proceedings](#).
- The juvenile delinquency dispositions are different and may be more severe thus requiring special protections for youth (restitution, etc. and placement in a secure juvenile detention facility, in addition to placement in the home with protective supervision, kin and foster care placements, and guardianships—see [Chapter 20: Disposition in Juvenile Proceedings](#) and [Chapter 21: Nondelinquency Proceedings—Status Offenses/Family in Need of Services \(FINS\)](#)).

A second and related decision in designing and drafting your juvenile law is whether to include two separate processes, one for juvenile offenders and one for status offenders (note that family-in-need-of-services [FINS] process is a type of “status offender” process and may be preferred as it prioritizes precourt services to youth and their families). We recommend that tribes design and include both processes in their juvenile law.

While the purposes, rights, and doors to services, programs, and activities may be the same, status offenders are treated differently in the following ways for the following reasons (see [Chapter 21: Nondelinquency Proceedings—Status Offenses/Family in Need of Services \(FINS\)](#)):

- The disposition options for status offenders are much more limited (legal custody may only be transferred temporarily, e.g., for thirty days).
- Placement outside of home, kin or other responsible adult placements, or foster care is limited to “juvenile shelter facilities” (such as shelters, halfway houses, and group homes—placement in secure juvenile detention facilities and adult penal facilities is prohibited, even with sight and sound separation).
- The disposition orders automatically terminate after a short period of time, for example, thirty days with one possible extension of ninety days.

The thinking behind treating status offenders differently than juvenile offenders is that, given what we now know about adolescent brain development, “status offending” is likely a normal part of growing up, necessitating guidance and assistance, but it does not rise to the level of actionable misconduct in the juvenile justice system, much less the criminal justice system. The statutory limits on applicable dispositions and placements protect status offenders from future juvenile justice or criminal justice system involvement. The harms of such involvement include being labeled as delinquent or a criminal (which negatively affects the youth’s self-concept going forward, e.g., thinking “I am bad” or “I am a criminal”); having a permanent, negative record; and potentially regularizing the youth’s involvement in the juvenile and criminal justice system in the future.

Your juvenile code should contain general provisions that describe the problem to be addressed by the code. If you have researched the problem of juvenile misconduct in your community, you may have specific data or conclusions about the problem. This type of information should appear in a *Findings* section of a code.

A *Purposes* section of a code explains why your community is adopting this code. It explains what you want to accomplish by adopting the code. You may have several goals or purposes in passing this law.

While there is no requirement that your code include both a Findings and a Purposes section, the inclusion of both of these sections can be very helpful in explaining your philosophy toward youth justice and the intent of the law. These sections are also helpful to tribal judges in interpreting the code on a daily basis. If a case is appealed, these sections will likely also be used by the appellate judges in interpreting the code.

[5.2] Model Code Examples

(1989) BIA Tribal Juvenile Justice Code

1-1 SHORT TITLE, PURPOSE AND DEFINITIONS

1-1 A. Short Title

Title 1 (Chapters 1-1 through 1-21) shall be entitled “The Juvenile Justice Code” (code).

1-1 B. Purpose

The Juvenile Justice Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

1. To preserve and retain the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this code;
2. To recognize that alcohol and substance abuse is a disease which is both preventable and treatable;
3. To remove from children committing juvenile offenses, the legal consequences of criminal behavior and to substitute therefore a program of supervision, care, and rehabilitation consistent with the protection of the _____ Community;
4. To achieve the purposes of this code in a family environment whenever possible, separating the child from the child’s parents only when necessary for the child’s welfare or in the interests of public safety;
5. To separate clearly in the judicial and other processes affecting children under this code the “juvenile offender” and the “family in need of services,” and to provide appropriate and distinct dispositional options for treatment and rehabilitation of these children and families;
6. To provide judicial and other procedures through which the provisions of this code are executed and enforced and in which the parties are assured a fair hearing and their civil and other legal rights recognized and enforced;
7. To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives; and;
8. To provide a forum where an Indian child charged to be “delinquent” or a “status offender” in other jurisdictions may be referred for adjudication and/or disposition.

University of Washington
Center of Indigenous Research and Justice
[Model Tribal Juvenile Code](#)
CHAPTER 1 GENERAL PROVISIONS

1.01.110 Purpose

This article shall be construed and interpreted to fulfill the following purposes:

- (a) to secure the care, protection, and mental and physical welfare of children coming within the jurisdiction of the [Tribe] Juvenile Court;
- (b) to preserve and retain the unity of the family and to carry out the other purposes of this article in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or the safety and protection of the community;
- (c) to distinguish, in judicial and other processes affecting children coming within the provisions of this article, between the child who has committed a delinquent act and the child in need of services, and to provide appropriate and distinct dispositional options for these children and their families;
- (d) to remove from children committing delinquent acts the legal consequences of criminal behavior, and to substitute therefore programs of supervision, treatment, and rehabilitation which:
 - (1) hold them accountable for their actions;
 - (2) provide for the safety and protection of the community; and
 - (3) promote the development of competencies which will enable them to become responsible and productive members of the community;
- (e) to set forth procedures through which the provisions of this article are to be executed and enforced, while ensuring the rights of the parties are recognized and protected; and
- (f) to coordinate services for children and their families, with an emphasis on prevention, early intervention, diversion and community-based alternatives.

[5.3] Tribal Code Examples

Zuni Tribal Code

Title IX. Zuni Children's Code

CHAPTER 1. GENERAL PROVISIONS

Section 9-1-2 Purpose, Construction and Severability

A. It is the purpose of this Children's Code to:

1. Recognize that the young people are the Zuni Pueblo's most important resource and that their welfare is paramount;
2. Secure for each child before the Court the care and guidance that is in the best interest of the child and consistent with the customs, cultural values, and laws of the Pueblo of Zuni;
3. Whenever possible preserve and strengthen family ties and a child's cultural and spiritual identity to help the child become a productive and well-adjusted member of the community;
4. Protect the peace, safety, and security of the Pueblo of Zuni and its community members;
5. Foster cooperative intergovernmental relations between the Pueblo of Zuni and the state of New Mexico and other states and tribes, with regard to the welfare of children and families; and
6. Protect the rights of Zuni parents and the sovereign and traditional right of the Zuni Pueblo to determine the best interest of children and families.

The Laws of the Confederated Salish and Kootenai Tribes, Codified

Title III, Chapter 3 YOUTH

Part 1 - General Provisions and Definitions

Section 3-2-101. Policy

The Confederated Salish and Kootenai Tribes (Tribes) recognize Indian children as the Tribes' most important resource, and declare it to be the policy of the Tribes to treat Indian children in accordance with their paramount importance. Indian children shall be entitled to a permanent, physical and emotional environment necessary to promote their successful development into productive, responsible adults. It is the policy of the Tribes to prevent the unwarranted break-up of Indian families by adopting procedures that recognize family member rights while utilizing the best interests of the child standard. Finally, it is the policy of

the Tribes, when permanent out-of-home placements are necessary, that those placements be accomplished through guardianship and adoption in the child's extended family; legal adoption outside the Tribes shall be the least preferred alternative.

Sault Ste. Marie Tribal Code

CHAPTER 36: JUVENILE CODE

SUBCHAPTER I: PREAMBLE

36.102 Purpose.

The Juvenile Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

- (1) To preserve and retain the unity of the family whenever possible and to provide for the care, protection and wholesome mental and physical development of children coming within the provisions of this Chapter.
- (2) To recognize that alcohol and substance abuse is a disease, which is both preventable and treatable.
- (3) To remove from children committing juvenile offenses, the legal consequences of criminal behavior and to substitute therefore a program of supervision, care, and rehabilitation consistent with the protection of the Sault Ste. Marie Tribal Community.
- (4) To achieve the purposes of this Chapter in a family environment whenever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety.
- (5) To separate clearly in the judicial and other processes affecting children under this Chapter the juvenile offenses and the juvenile status offenses, and to provide appropriate and distinct dispositional options for treatment and rehabilitation of these children and families.
- (6) To provide judicial and other procedures through which the provisions of this Chapter are executed and enforced and in which the parties are assured a fair hearing and their civil and other legal rights recognized and enforced.
- (7) To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention, and community-based alternatives.

- (8) To provide a forum where an Indian child charged to be delinquent or a status offender in other jurisdictions may be referred for adjudication and/or disposition.

The Cherokee Code of the Eastern Band of the Cherokee Nation

Chapter 7A - JUVENILE CODE

ARTICLE I. - IN GENERAL

Sec. 7A-1.—Purpose

This chapter shall be interpreted and construed so as to implement the following purposes and policies:

- a. To divert juvenile offenders from the juvenile system through the intake services authorized herein so that juveniles may remain in their own homes and may be treated through community-based services when this approach is consistent with the protection of the public safety;
- b. To provide procedures for the hearing of juvenile cases that ensure fairness and equity and that protect the constitutional rights of the juveniles and parents; and
- c. To develop a disposition in each juvenile case that reflects consideration of the facts, the needs and limitations of the child, the strengths and weaknesses of the family, and the protection of the public safety.

[5.4] Tribal Code Commentary

A good number of tribes have used the 1989 BIA Tribal Juvenile Justice Code as a foundation for the drafting of their juvenile codes. The alternative, the University of Washington's Center of Indigenous Research and Justice Model Tribal Juvenile Code was completed and made public in the fall of 2014. At the time of first publication of this resource, tribes had not yet had an opportunity to review and incorporate its provisions. Both of the model codes provide good language and may be relied upon as a template that should then be modified to include tribe-specific findings, purposes, and policies.

The Zuni code recognizes that children are the pueblo's most important resource. It emphasizes the importance of the cultural and spiritual identity of a child. The stated purpose is to provide guidance to youth consistent with cultural values. It also recognizes the importance of providing community safety and security and keeping a family together. Another goal of the code is to promote intergovernmental cooperation, while recognizing the sovereignty of the Zuni's to determine what is in the best of interest of Zuni children and families.

The Confederated Salish and Kootenai tribes recognize that the welfare of children is paramount and that each child before their court should receive the care and guidance needed to become responsible adult members of their community. They also recognize the importance of maintaining family ties and strengthening the child's individual, cultural, and tribal identity. The Policy Section of their code highlights the importance of customs and traditions and states that they will be incorporated into the code to the greatest extent possible.

The Sault Ste. Marie Tribal Code requires the court provide services to care for the mental and physical needs of children before the juvenile court. The code specifically mentions alcohol abuse as a preventable and treatable disease, a common problem in delinquency cases. The code intends to remove the consequences of criminal behavior from a juvenile, and instead provide supervision, care, and rehabilitation consistent with the safety concerns of the community. The juvenile court is also a forum for tribal children adjudicated delinquent in other jurisdictions and referred to the Sault Ste. Marie Nation for adjudication and disposition.

The Eastern Band of Cherokee has set up a juvenile system designed to divert children from the court system. During intake the children are diverted to appropriate services. Keeping children in their homes and receiving help through community-based services is their goal. Juveniles' and their parents' constitutional rights are protected in their juvenile system. The juvenile system focuses on the strength and weaknesses of the child and family with a view toward protecting the public.

Note that most contemporary tribal juvenile codes do not, but should distinguish between children (ages 0–10), adolescents (ages 11–17), and young adults (ages 18–25). These distinctions are desirable given current research on the development of the human brain and adolescents. For purposes of tribal juvenile code development, the research findings implicate the jurisdiction of the juvenile court (as opposed to the dependency or criminal court—children should be handled by the dependency court, and even young adults, on a case-by-case basis, should be handled by the juvenile court); the definition of status offenses versus juvenile offenses; when, if ever, an adolescent should be transferred to adult criminal court; when, if ever, a young adult should be subject to the mitigated punishment and dispositional jurisdiction of the juvenile, as opposed to the criminal court, and the types of educational, therapeutic, and cultural services, programs, and activities that are best suited to each age group.

[5.5] Exercises

The following exercises are meant to guide you in writing the findings and purposes section of the tribal juvenile code.

- Make a list of the challenges that youth face in your community. Describe the current tribal, state, and/or federal system(s) for dealing with youth misconduct in your community (if you can, flow chart what happens)
 - How is truancy handled?
 - How is alcohol or drug use handled?
 - How is physical assault handled?
- Discuss the guiding philosophy/values that you want for your juvenile justice system and code
 - Habilitation and rehabilitation (helping youth grow and heal)?
 - Restorative justice (requiring youth to repair harm done)?
 - Punishment/retribution (punishing youth)?
 - Accountability (holding youth accountable for their conduct)?
 - Public safety (protecting the public from youth misconduct/harms)?

Points for discussion*

Are any of these national findings, related to Native juvenile delinquency, true in your community? Are there other findings in your community?

National findings:

- Most delinquent acts by Native youth are low-level offenses, many involving alcohol.
- Native youth receive disproportionately severe sanctions for delinquent acts, such as confinement or transfer to adult justice systems.
- There are inadequate law enforcement resources in Indian country.
- State and federal systems lack cultural competence and fail to attend to Native youths' needs.
- There is an overreliance on incarceration of Native youth.
- There is a lack of support and resources for tribal justice systems.
- Forty-four percent of the Native population is under twenty-five.
- Native youth are twice as likely as white youth and three times as likely as minority youth to commit suicide.

- Gangs are becoming common in Indian country.
- Native youth suffer disproportionately from risk factors leading to delinquency: poor health, poverty, low education attainment, violence, depression, and substance abuse.
- Native youth are overrepresented in the federal and state juvenile justice systems.

Taken from Neelum Arya and Addie Rolnick, “A Tangled Web of Justice, American Indian and Alaska Native Youth in Federal, State, and Tribal Justice Systems,” Policy Brief, Race and Ethnicity Series, Volume 1. Go to http://www.campaignforyouthjustice.org/documents/CFYJPB_TangledJustice.pdf.