

Chapter 6: Subject Matter Jurisdiction

[6.1] Overview

The tribe shares jurisdiction (concurrent jurisdiction) in many juvenile cases with the federal and/or state government. All tribal codes have a general provision on jurisdiction describing the tribe's general jurisdictional powers. Additionally, tribal juvenile codes have their own section on jurisdiction. This section sets out the extent of the juvenile court's jurisdiction, describing when it has the power to act, the power over what persons, and what it has the power to do. This is known as juvenile court "subject matter jurisdiction."

In your juvenile code the jurisdiction section should refer to definitions in your juvenile code's definition section. In most tribal juvenile codes, the definition section fleshes out the juvenile court's subject matter jurisdiction—its "power over what types of persons." Sample sections are included in this resource.

Many contemporary tribal juvenile courts and their laws will reference and apply offenses defined in the tribe's criminal code to youth. These may include additional status offenses. Status offenses are acts that are illegal because of the age of the youth. Common status offenses include truancy or running away. Status offenses cannot be adequately or fairly dealt with by looking at the youth in isolation, but rather the court may need to deal with the family. Some codes thus term status offenses as "family in need of services" or "family in conflict" and give the juvenile court jurisdiction over the parents or guardians of the youth, as well as the youth. Juvenile courts in general in recent years have narrowed the number of status offenses they handle and some have even eliminated them. See [Chapter 7: Juvenile Offenses](#), [Chapter 21: Nondelinquency Proceedings—Status Offenses/Family in Need of Services \(FINS\)](#), and [Chapter 23: Nondelinquency Proceedings—Stand-Alone Status Offenses](#) for the definitions of juvenile offenses, FINS, and status offenses.

[6.2] Model Code Examples

(1989) BIA Tribal Juvenile Justice Code

1-2 JURISDICTION OF THE JUVENILE COURT

There is hereby established for the _____ Tribe of the _____ Reservation a court to be known as the _____ Juvenile Court. The juvenile court has exclusive original jurisdiction over all proceedings established in this code in which an Indian child residing in or domiciled on the reservation is:

1-2 A. Juvenile Offender

Alleged to be a “juvenile offender” as defined in section 1-1C of this code, unless the juvenile court transfers jurisdiction to the tribal court according to chapter 1-3 of this code; or

1-2 B. Family In Need of Services

Alleged to be a child whose family is “in need of services” as defined in section 1-1C of this code.

1-2 C. Definitions

(Note: Certain definitions were omitted)

As used in this code:

4. “Child”: An individual who is less than eighteen (18) years old (see the definition of “transfer to tribal court”).
14. “Family in Need of Services”: Means:
 - (a) a family whose child, while subject to compulsory school attendance, is habitually and without justification absent from school; or
 - (b) 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; and
 - (c) in either of the foregoing situations:
 - (1) the conduct complained of presents a clear and substantial danger to the child’s life or health and the intervention of the juvenile court is essential to provide the treatment, rehabilitation or services needed by the child or his family; or

- (2) the child or his family are in need of treatment, rehabilitation or services not presently being received and the intervention of the juvenile court is essential to provide this treatment, rehabilitation or services. (See chapters 1-16 through 1-19 of this code for specific “family in need of services” procedures).
22. “Juvenile Offender”: A child who commits a “juvenile offense” prior to the child’s eighteenth (18th) birthday.
23. “Juvenile Offense”: A criminal violation of the Law and Order Code of the _____ Tribe which is committed by a person who is under the age of eighteen (18) at the time the offense was committed.

**University of Washington
Center of Indigenous Research and Justice**

[Model Tribal Juvenile Code](#)

CHAPTER 1 GENERAL PROVISIONS

1.07 JUVENILE COURT

1.07.110 Juvenile Court - Name

There is hereby established the [Tribe] Juvenile Court, hereinafter referred to as the Juvenile Court.

1.07.130 Juvenile Court - Jurisdiction

The Juvenile Court shall have personal, subject matter and territorial jurisdiction to the extent permitted under the Constitution and Laws of the [Tribe] and in which an Indian residing in or domiciled on the [Reservation] is:

- (a) alleged to have committed a delinquent act as defined [herein].
- (b) alleged to be a truant as defined [herein]; or
- (c) alleged to be a child in need of services as defined [herein].

1.02 DEFINITIONS

1.02.110 Definitions

(Note: Certain definitions were omitted)

- (b) **Child:** A person who:
- (1) is under eighteen (18) years of age;

(2) is eighteen (18) years of age or older and:

- (A) is alleged, or found by the Juvenile Court, to have committed a delinquent act; and
- (B) therefore comes or remains within the jurisdiction of the Juvenile Court under the provisions of this title.

(c) **Child in Need of Services:** A child who is found by the Juvenile Court:

- (1) to habitually engage in conduct that:
 - (A) is disobedient of the reasonable and lawful commands of the child's parent, guardian, or custodian; and
 - (B) poses an imminent threat to the physical safety of the child or others.
- (2) to be a runaway as defined [herein];
- (3) to have engaged in conduct prohibited by a provision of the tribal code that applies only to children; or
- (4) following the filing of a delinquency petition in accordance with [the provisions of this title]:
 - (A) to be unrestorably incompetent to be adjudicated; and
 - (B) in proceedings conducted in accordance with the provisions of [this chapter]:
 - (i) to have engaged in conduct that would otherwise warrant a finding of delinquency under [the delinquency provisions of this title]; and
 - (ii) to be in need of supervision, treatment or rehabilitation.

(e) **Delinquent Act:** An act, committed by a child, that would be a criminal violation of [the tribal code] if committed by an adult.

(k) **Runaway:** The term "runaway" as used in this title means:

- (1) A child who, without good cause and without the consent of his or her parent, guardian or custodian, is intentionally absent from the child's home or legal residence:
 - (1) with the intent to abandon the child's home or legal residence;
 - (2) for a period of more than 12 hours;
 - (3) between the hours of 8:00 pm and 5:00 am; or

- (4) in circumstances presenting an imminent threat to the child's physical safety.
- (2) A child who has intentionally abandoned a placement ordered by the Juvenile Court or another court having jurisdiction over the child.

[6.3] Tribal Code Examples

Sault St. Marie Tribal Code

Chapter 36: Juvenile Code

SUBCHAPTER II: JURISDICTION OF THE JUVENILE DIVISION

36.201 Jurisdiction.

- (1) There is hereby established for the Sault Ste. Marie Chippewa Indians Tribal Court a division to be known as the Juvenile Division. The Juvenile Division has exclusive original jurisdiction over all proceedings established in this Chapter in which an Indian child is:
 - a) alleged to be a juvenile offender as defined in '36.324 of this Chapter, unless the Juvenile Division transfers jurisdiction to the Tribal Court according to '36.202 of this Chapter; or (Section on transfer to adult court)
 - b) alleged to be a child who violates the provisions of subchapter V, VI, VII, or VIII of this Chapter. (Sec. V, Status Offenses; Sec. VI, Compulsory School Offenses; Sec. VII, Curfew; Sec. VIII, Provision Related to Alcohol and Drugs)
- (2) The Juvenile Division shall have exclusive original jurisdiction over all proceedings under this Chapter in which a child is alleged to be a juvenile offender as defined in '36.324 of this Chapter.

SUBCHAPTER III: DEFINITIONS

(Note: Certain definitions were omitted)

36.303 Adult.

“Adult” means an individual who is seventeen (17) years of age or older (see the definition of transfer to Tribal Court).

36.306 Child.

“Child” means an individual who is less than seventeen (17) years old (see the definition of transfer to Tribal Court).

36.324 Juvenile Offender.

“Juvenile offender” means a child who commits a juvenile offense or juvenile status offense prior to the child’s seventeenth (17th) birthday.

36.325 Juvenile Offense.

“Juvenile offense” means a criminal violation of Chapter 71 of the Tribal Code, which is committed by a person who is under the age of seventeen (17) at the time the offense was committed.

36.327 Juvenile Status Offense.

“Juvenile status offense” means a violation of the provisions of subchapters V, VI, VII, and VIII committed by a person who is under the age of seventeen (17) at the time the offense was committed.

36.340 Transfer to Tribal Court.

“Transfer to Tribal Court” means transferring a child from the jurisdiction of the Juvenile Division to the jurisdiction of the Tribal Court according to '36.203 of this Chapter, which results in the termination of the Juvenile Division’s jurisdiction over that offense.

36.341 Tribal Lands.

“Tribal lands” shall mean:

- (1) all land within the limits of the Tribe’s reservation, including trust land, fee patented land, and rights of way running through the reservation, and
- (2) all land outside the boundaries of the Tribe’s reservation held in trust by the United States for individual members of the Tribe or for the Tribe, and
- (3) all other land considered “Indian Country” as defined by 18 U.S.C. '1151 that is associated with the Tribe.

36.344 Tribal Child.

“Tribal child” means a child who is either:

- 1) a member; or
- 2) the biological child of a member; or
- 3) lives on the tribal lands.

[The Laws of the Confederated Salish and Kootenai Tribes, Codified](#)

TITLE III, CHAPTER 3 YOUTH

Part 1 - Purpose, Definitions, and Jurisdiction

(3-3-101. and 3-3-102. Omitted)

3-3-103. Jurisdiction of the Youth Court.

The Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation have established a court known as the Confederated Salish and Kootenai Tribal Youth Court. The court has exclusive original jurisdiction over all proceedings established in this code in which an Indian youth is residing in or domiciled on the reservation, alleged to be a “Youth Offender” or “Youth in Need of Supervision,” as defined in Section 3-3-102 of this Chapter, unless the Youth Court transfers jurisdiction to the Tribal Adult Court or a State District Youth Court according to this code. Youth Court does not have jurisdiction over traffic or fish and game offenders, these matters are referred to the appropriate Tribal Court division.

(3-2-104. Omitted)

3-2-105. Definitions.

(Note: Certain definitions were omitted)

- (2) “Child” means any person less than eighteen (18) years of age.
- (7) “Delinquent Child” means a child who has committed a delinquent act according to the provisions of the Codes of the Confederated Salish and Kootenai Tribes.
- (8) “Domicile” means the place considered to be the child’s home, according to the traditions and customs of the child’s Tribe, or the place where the child is living and is expected to continue living for an indefinite period of time.
- (15) “Indian Youth or Indian Child” means a child of Indian descent who is either enrolled or enrollable in an Indian tribe, band, community, or who is a biological descendant of an enrolled member and has significant contacts or identification with an Indian community.
- (25) “Youth” means any person less than eighteen (18) years of age.
- (34) “Youth Court” means the Court established by the Confederated Salish and Kootenai Tribes, to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the Youth Court, the judge, and juvenile probation officers.

- (37) “Youth in Need of Supervision” means a youth who commits an offense prohibited by law which if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:
- a) Violates any Tribal, Montana municipal, State, or federal law regarding use of alcoholic beverages or tobacco by minors, except that traditional cultural use of tobacco shall not be a youth offense;
 - b) Habitually disobeys the reasonable and lawful demands of his parents, or guardian or is ungovernable and beyond their control;
 - c) Being subject to compulsory school attendance, is habitually truant from school; or
 - d) Has committed any of the acts of a delinquent youth but whom the Youth Court in its discretion chooses to regard as a youth in need of supervision;
 - e) Runaway; or
 - f) Curfew.
- (38) “Youth Offender”: A youth who commits a “Youth Offense” or a “Status Offense” prior to the youth’s eighteenth (18th) birthday.
- (39) “Youth Offense”: A violation of the law and order code of the Confederated Salish and Kootenai Tribes, or equivalent city, state, or federal law, which is committed within the exterior boundaries of the Flathead Indian Reservation by a person who is under the age of eighteen (18) at the time the offense was committed.

Zuni Tribal Code

Title IX. Zuni Children's Code

CHAPTER 3. CHILDREN’S COURT

Section 9-3-1. Children’s Court Establishment and Jurisdiction

- A. **Original Jurisdiction.** There is hereby established the Zuni Tribe’s Children’s Court. Except as may otherwise be provided in this code, the Children’s Court has original jurisdiction over all proceedings brought under the Zuni Children’s Code, and any other proceeding for the commitment of the minor, or the appointment of a guardian or custodian or similar arrangements for care, custody, protection, or best interests of the minor, whether or not arising from a proceeding under this Code.

- B. **Concurrent Jurisdiction.** The Children’s Court shall have concurrent jurisdiction over any minor who within another jurisdiction, commits an act deemed illegal by the criminal laws of that jurisdiction provided that the minor is a resident of the Zuni reservation or under the jurisdiction of the court.
- C. **Composition.** The court shall include the Healing to Wellness Court and other forums for alternative dispute resolution and mediation under the supervision and authority of the court.

Section 9-1-3. Definitions:

(Note: Certain definitions were omitted)

- 7. **Child.** A person under 18 years of age.
- 13. **Delinquent Act.** An act, which if committed by an adult, would be designated as a crime under the Zuni Criminal Code or the laws of the state of New Mexico. The term “delinquent act” should also include the possession or consumption of alcohol by a minor.
- 20. **Indian.** A person who is a member or eligible to be a member of a federal recognized tribe, band, community, or Native Alaska village, group, or regional corporation as defined in 43 U.S.C. §1601, et seq.
- 21. **Juvenile Offender.** A person who commits a delinquent act prior to his eighteenth birthday, and includes a person who remains subject to the jurisdiction of the Court because of an act committed prior to his eighteenth birthday.
- 24. **Minor in Need of Care.** A minor who is:
 - A. Neglected by a parent, guardian, custodian, other adult, or other care provider;
 - B. Abused by a parent, guardian, custodian, other adult, or other care provider; or
 - C. A status offender.

The Cherokee Code of the Eastern Band of the Cherokee Nation

Chapter 7A - JUVENILE CODE

ARTICLE I. - IN GENERAL

(7A-1. and 7A-2. Omitted)

Sec. 7A-3.—Jurisdiction.

The Cherokee Court has exclusive, original jurisdiction over any case involving an Indian juvenile who, regardless of whether he or she is domiciled within the territory of the Eastern Band of Cherokee Indians, is alleged to have committed a delinquent, undisciplined or unlawful act within the territory of the Tribe. In addition, the Cherokee Court has jurisdiction over the parent, guardian, or custodian of a juvenile who is under the jurisdiction of the court pursuant to this section if the parent, guardian, or custodian has been served with a summons pursuant to section 7A-18. For purposes of determining jurisdiction, the age of the juvenile at the time of the alleged offense governs. For juveniles alleged to have committed a delinquent, undisciplined or unlawful act within the territory of the Tribe, the minimum age is six years of age. The court also has exclusive original jurisdiction of the following proceedings:

- (1) Proceedings to determine jurisdiction;
- (2) Proceedings to determine whether the juvenile is within the jurisdiction of the court;
- (3) Proceedings to determine whether the facts alleged constitute a delinquent or undisciplined offense;
- (4) Proceedings to determine whether the facts are sufficiently serious to warrant court action;
- (5) Proceedings to obtain assistance from community resources when court action is not necessary;
- (6) Proceedings to determine whether a juvenile who is on conditional release and under after-care supervision of the court counselor has violated the terms of his conditional release;
- (7) Hearing procedures;
- (8) Proceedings for expunction of records of juveniles adjudicated delinquent or undisciplined.

Sec. 7A-4.—Retention of jurisdiction.

When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court or, until the delinquent juvenile reaches his 16th birthday

and until the undisciplined juvenile reaches his 18th birthday, except as provided otherwise in this section. The court has continuing jurisdiction over a delinquent juvenile who is in custody and over proceedings to determine whether a delinquent juvenile is on probation or who is under the post-release supervision of the court has violated the terms of the delinquent juvenile's probation or the delinquent juvenile's post-release supervision. In addition, the court retains jurisdiction over the parent, guardian, or custodian of a juvenile who is under the jurisdiction of the court pursuant to this section if the parent, guardian, or custodian has been served with a summons pursuant to section 7A-18.

[6.4] Tribal Code Commentary

A good number of tribes have used the 1989 [BIA Tribal Juvenile Justice Code](#) as a starting point for their juvenile code structure and jurisdiction provisions. The alternative, the University of Washington's Center of Indigenous Research and Justice [Model Tribal Juvenile Code](#) was completed and released in the fall of 2014. At the time of the first publication of this resource, no tribes had yet reviewed the University of Washington model code. Both model codes provide comprehensive and useful templates for tribal juvenile codes.

The Sault Ste. Marie Tribe calls their juvenile court a juvenile division. The division has exclusive and original jurisdiction over an Indian child alleged to be a juvenile offender (unless the division transfers the child to adult court) and over a juvenile alleged to have committed a status offense, alcohol drug offense, curfew, or compulsory school offense. Exclusive and original jurisdiction means the division would be the first and only division of the tribal court to handle the juvenile cases.

Sault Ste. Marie defines a *child* as person under the age of seventeen. It refers to an "Indian child" in the jurisdiction section, but does not define *Indian child* in the code. It does define *tribal child* as one who is a member or is a child of a member, or a child living on tribal land. The term *tribal child* is used throughout the code.

The section then defines *tribal land*. The tribal code gives jurisdiction over an alleged child offender even if the child is not a tribal member, but lives on tribal land. Juvenile offender and status offender are also both necessary definitions to understand the extent of the juvenile division's jurisdiction.

The tribes of the Flathead Indian Reservation call their juvenile court the Confederated Salish and Kootenai Tribal Youth Court. The court has original and exclusive jurisdiction over an Indian youth alleged to be a "youth offender" or "youth in need of supervision."

An *Indian youth* is defined as a child less than eighteen years of age who is a child of Indian descent, either enrolled, eligible for enrollment, or a descendant of an enrolled member and has significant contacts with the community and identification with an Indian community.

A *youth offender* is defined in the code's definitions section as one who commits either a youth offense or a status offense. A "youth in need of supervision" is one that commits a status offense, such as one who violates curfew, consumes alcohol or drugs, fails to comply with parental rules, or is a runaway. The court may transfer jurisdiction over the youth to the adult tribal court under certain circumstances. The section also notes that it does not have jurisdiction over traffic or game violations.

The Zuni Tribe's Children's Court has jurisdiction over minors, defined as children less than eighteen years of age, actions brought under the Children's Code for an alleged delinquent act or child in need of care proceeding. An act committed by a child, which if committed by an adult would be designated as a crime under the Zuni Criminal Code or the laws of the state of New Mexico, is a "delinquent act." The term *delinquent act* includes the possession or consumption of alcohol by a minor. Status offenses are not considered delinquent acts, but rather justify a proceeding for "a minor in need of care."

The Zuni tribal court has concurrent jurisdiction over a minor who commits a delinquent act in a state jurisdiction, but is a resident. Zuni has a Healing to Wellness Court and other alternate dispute-resolution options that fall under the juvenile court jurisdiction.

The Eastern Band of Cherokee makes it clear that it not only has jurisdiction over the proceedings and the minor, but also the parents or guardians of the minor. Because most rehabilitative proceedings require the cooperation of the parents, this provides additional power to enforce a juvenile court order. The Eastern Band of Cherokee has also placed a minimum age requirement of six years of age. A delinquent child at sixteen years of age will no longer be appearing in juvenile court for acts after the age of sixteen, although subject to the court until eighteen if involved with the juvenile court before sixteen years of age.

Note again 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) to conform with the current research and findings on the development of the human brain. These findings implicate the jurisdiction of the juvenile court. Children should be handled by the dependency court, adolescents should be handled by the juvenile court, and even young adults, on a case-by-case basis, should be handled by the juvenile court. These findings also implicate a reconsideration of what should be considered a juvenile offense versus what should be considered a status offense or misconduct warranting intervention by the juvenile justice system through its FINS process.

[6.5] Exercises

The following exercises are meant to guide you in developing a jurisdiction section for your juvenile code that meets the needs and concerns of youth in your community.

- Find and examine your tribe's general jurisdiction code provision (it may be located in your constitution and/or your judicial or court establishment code)—who comes within the tribe's jurisdiction?
- Find and examine your tribal court's subject matter jurisdiction code provision for the juvenile court (in your juvenile code)—are there age requirements?
- What types of conduct or circumstances bring youth within the jurisdiction of your juvenile court?
- Make a list of who you want your tribal juvenile court to have jurisdiction over.
 - Members
 - Resident nonmember Natives/Indians
 - Resident non-Natives/Indians
 - What ages?
 - 0–10 “child”
 - 11–17 “adolescent”
 - 18–25 “young adult”
 - Gender

Points for discussion *

Do adolescents have the psychological capabilities necessary to function as competent defendants in court?

Should juveniles accused of juvenile or criminal offenses be held to the same standards of blameworthiness as adults and punished in the same way as adult criminals who have committed similar crimes?

How does exposing juveniles to especially punitive sanctions affect their behavior, development, and mental health?

- During the past two decades, policies and practices concerning the treatment of juvenile offenders in the United States became increasingly punitive, as evidenced by the increase in the number of juveniles tried as adults and the expanded use of harsh sanctions within both the juvenile and criminal justice systems.

- This was a break from the traditional model of juvenile justice, which emphasized rehabilitation rather than punishment as its core purpose that had prevailed for most of the twentieth century.
- Policy makers, practitioners, and mental health professionals need to be familiar with the developmental changes that occur during childhood and adolescence in the capabilities and characteristics that are relevant to their competence to stand trial, their criminal culpability, and their likely response to treatment.
- Brain maturation continues well into adulthood [~25 years of age]—compared to adults, adolescents are more susceptible to peer influence, less oriented to the future, more sensitive to short-term rewards, and more impulsive.
- The research on adolescent brain, cognitive, and psychosocial development supports the view that adolescents are fundamentally different from adults in ways that warrant their different treatment in the justice system.
- An analysis of factors that mitigate criminal responsibility under the law indicates that adolescents are inherently less culpable than are adults and should therefore be punished less severely.
- In addition, studies of competence to stand trial indicate that those who are under 16 are more likely to be incompetent than are adults, raising questions about the appropriateness of trying younger adolescents in criminal court.
- Studies of the impact of punitive sanctions on adolescent development and behavior, including prosecuting and sanctioning adolescents as adults, indicate that they do not deter adolescents from breaking the law and may in fact increase recidivism. In contrast, family-based interventions have been shown to be both effective and cost effective.

*Taken from Laurence Steinberg, “Adolescent Development and Juvenile Justice,” *Annu. Rev. Clin. Psychol.* 5 (2009): 47–73.