

Chapter 7: Juvenile Offenses

[7.1] Overview

Tribal juvenile codes have their own section on “subject matter jurisdiction.” This section acts in a dual capacity, often in conjunction with a definitions section to describe what constitutes a “delinquent act,” “juvenile offense,” or a “juvenile crime.” These categories are to be distinguished from “status offenses” or the conduct giving rise to a Family In Need of Services (FINS). Juvenile offenders are subject to a secure detention sanction whereas status offenders or FINS clients are not. Aside from delimiting tribal power and tribal court adjudicatory jurisdiction, these definitions describe the conduct that will bring a youth and his or her family within both the rehabilitative and punitive power of the tribal government.

As such, these definitions should be reflective of actual typical youth misconduct in the region but also known risky behaviors requiring timely intervention given existing resources. Keep in mind that it is now well documented that many states experienced unfounded “moral panics” that fueled punitive statutory reforms in the 1990s and 2000s where youth were viewed as super predators who should be handled by the adult criminal systems. This was bad policy based on misperceptions and unsubstantiated reports of youth crime. In defining your tribe’s “juvenile offenses” use reliable data on the needs of youth in four areas: family problems, mental health, problems with substance use, and youth misconduct. Be sure to include your local treatment providers and youth service providers in the discussion as they will know the circumstances and needs of the youth population. Their perspectives will be invaluable in defining what conduct should trigger tribal government intervention and rehabilitation for youth and their families.

The following facts about adolescents’ development should influence establishment of a juvenile court system focused on habilitation and rehabilitation as opposed to sanction:

1. Teenagers are less competent decision makers than adults. Although capacities for reason and understanding (cognitive abilities) approach adult levels by about age sixteen, evidence suggests they may be less capable than are adults of using these capacities in making real-world choices.
2. Emotional and psychosocial development lags behind cognitive. Adolescents are considerably more susceptible to peer influence than are adults, more likely to focus on immediate rather than long-term consequences, and are more impulsive and subject to mood fluctuations.
3. They are more likely to take risks and probably less skilled in balancing risks and rewards.

4. Personal identity is fluid and unformed in adolescence. This is a period when individuals separate from their parent, experiment (often in risky endeavors), and struggle to figure out who they are¹³.

It may be helpful to review [Section 2.2: Philosophical Choices](#).

[7.2] Model Code Examples

[\(1989\) BIA Tribal Juvenile Justice Code](#)

[1-1 SHORT TITLE, PURPOSE AND DEFINITIONS](#)

1-1 C. Definitions

As used in this code:

(1. through 22. Omitted)

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

1.05.110 Definitions

(a. through d. Omitted)

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

¹³ Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice*, Cambridge, Massachusetts: Harvard University Press (2008) 151.

[7.3] Tribal Code Examples

The Cherokee Code of the Eastern Band of the Cherokee Nation

Chapter 7A - JUVENILE CODE

ARTICLE I. IN GENERAL

Sec. 7A-2. Definitions.

Unless the context clearly requires otherwise, the following words have the listed meanings:

(Certain Definitions Omitted)

- (f) Delinquent juvenile shall mean any juvenile who is less than 16 years of age who has committed a criminal offense under tribal or federal laws, including violation of the motor vehicle laws.
- (m) Juvenile shall mean any person who is less than 18 years of age and is not married, emancipated, or a member of the armed services of the United States. A juvenile who is married, emancipated, or a member of the armed forces shall be prosecuted as an adult for the commission of a criminal offense. Wherever the term “juvenile” is used with reference to rights and privileges, that term encompasses the attorney for the juvenile as well.

The Klamath Criminal Code

Title 2 Chapter 19

JUVENILE OFFENSES

19.313 Juvenile in Possession of Alcohol or Tobacco.

It is a crime for a juvenile to buy, attempt to buy, or misrepresent his or her age in attempting to buy alcoholic liquor or tobacco products. It is also a crime for a juvenile to transport, possess, or consume alcoholic liquor or tobacco products. A juvenile who possesses or consumes tobacco product for ceremonial uses under the supervision of a responsible adult is not guilty of an offense under this provision.

19.314 Firearms.

It is a crime for a juvenile to discharge a firearm on the Reservation unless the juvenile discharges the firearm under the supervision of a parent, guardian, or other responsible adult acting with the permission of the juvenile’s parent or guardian. However, if the juvenile is

twelve (12) years of age or older and has completed a hunter's safety course accredited by the Tribes or the State of Oregon, the juvenile is not guilty of an offense under this provision.

Native Village of Barrow Tribe Juvenile Delinquency Prevention and Rehabilitation Code *****

1-1 SHORT TITLE, PURPOSE, AND DEFINITIONS

1-1 C. Definitions

(Note: Certain definitions were omitted)

As used in this Code, except where the context clearly suggests otherwise:

4. **Amusement Device:** Any machine or device designed to be operated or used for playing a game upon the insertion of a coin, trade check or slug, and which is played or operated essentially for amusement and entertainment, but does not mean or include any machine or device used exclusively for the vending of merchandise.
5. **Child or Juvenile:** Any person under the age of eighteen (18) years old who is a member or eligible for membership in the Native Village of Barrow Tribe or other person under the age of eighteen (18) years old where consent is obtained.
7. **Controlled Substance:** Any substances listed in 9.20.040 of the Barrow Municipal Code or AS 11.71.140 through AS 11.71.190 or any amendments thereto, including imitation controlled substances as defined by AS 11.73.099(3).
11. **Delinquent Act:** Any one of the acts set out in Chapter 1-2 of this Code committed by a child, the commission of which would bring that child within the jurisdiction of the juvenile court.
12. **Delinquent Child:** A child who commits a delinquent act prior to the child's eighteenth (18) birthday.
15. **Drug Paraphernalia:** All items, equipment devices, products and materials which are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, as further defined in 9.20.040 of the City of Barrow Municipal Code, as that Code may from time to time be amended.

20. **Inhalant:** Any product, legal or illegal, that can be inhaled in order to obtain a high, including but not limited to glue, rubber cement, paint thinner, spray paint, and markers.

1-2 DELINQUENT ACTS

The acts set out in this section, when committed by a child, shall be deemed to be delinquent acts that would bring the child within the jurisdiction of the juvenile court pursuant to this Code. The juvenile court may order secure detention, among other rehabilitative remedies, for a child who has been adjudged to have committed any of the acts set out in Sections 1-2A, 1-2B, 1-2C, and 1-2D.

1-2 A. Acts Harming People or Animals

1. **Reckless Endangerment:** Recklessly engaging in conduct that creates a substantial risk of serious physical injury to another person.
2. **Throwing or Shooting at People or Animals:** Throwing or shooting any stone, shot or other object into or across any street or alley, or in any place where it is likely to hit another person or an animal wrongfully, or throwing or shooting any stone, shot or other object at any person, vehicle, or animal, except in case where such is justifiably in defense of oneself, of another person or of property.
3. **Cruelty to Animals:** Knowingly inflicting severe physical pain, prolonged suffering or death on an animal.
4. **Possession or Use of Weapons:** Knowingly possessing or using a weapon, other than an ordinary pocket knife, except that it shall not be considered a delinquent act for a child to possess a weapon and to use such weapon for hunting purposes with the consent of his or her parents.

1-2 B. Acts against Public Order

1. **Disorderly Conduct:** Engaging in fighting, public indecency, or other acts that in some manner disturb the public or are hazardous to the public.
2. **Dangerous or Reckless Driving:** Operating any land or water vehicle in a dangerous or reckless manner, with excessive speed that is a threat to the safety of the community, or while under the influence of alcohol or drugs.
3. **Excessive Noise:** Creating unreasonable noise which disturbs the peace and privacy of another person in their residence. As used in this section, noise is unreasonable if, considering the nature and purpose of the juvenile's conduct and the circumstances known to the juvenile, including the nature of the location and the time of day or night, the

conduct involves a gross deviation from the standard of conduct that a reasonable person would follow in the same situation. “Noise” does not include speech that is constitutionally protected.

4. **Gambling:** Engaging in any monetary gambling, wagering, or betting activity.

1-2 C. Acts against Property

1. **Fire Starting:** Intentionally starting a fire or causing an explosion which recklessly places another person or any property in danger. For purposes of this section, “another person” includes but is not limited to fire and police service personnel or other public employees who respond to emergencies, regardless of rank, functions, or duties being performed.
2. **Vandalism:** Willfully cutting, removing, defacing, or in any manner injuring any building, fence or enclosure, street, bridge, or other property without the express permission of the owner of the property at issue.
3. **Tampering with Vehicles:** Starting or otherwise meddling with, entering, occupying, loitering in, taking, or driving away any automobile or other vehicle belonging to another, without the consent of the owner or person in charge thereof.
4. **Throwing or Shooting at Property:** Throwing or shooting any stone, shot, or other object into or across any street or alley, or in any place where such action is likely to injure property, or throwing or shooting any stone, shot, or other object at any vehicle, structure, electric light, or other property of another (whether public or private), except in cases where such action is justifiably in defense of oneself, of another person, or of property and discharging any slingshot, firearm, pellet gun, or BB gun within one hundred yards of any residential structure, any business, any area used for storage of equipment or vehicles, or any tribal playground, softball field or cemetery, except in cases where such action is done justifiably in defense of oneself, of another person, or of property.
5. **Trespass:** Willfully or in any manner trespassing or intruding upon property not one’s own against the will of the owner, occupant, or agent thereof.
6. **Theft:** Taking the property of another person without that person’s consent, with the intent to steal or deprive the rightful owner of possession.
7. **Depositing Sharp Objects:** Throwing or depositing in any street or other public place any broken glass, bottles, crockery, nails, or other substance whatsoever whereby the feet or body of any person or property may be injured.
8. **Release of Dogs:** Willfully or intentionally releasing the confined dog of another person.

1-2 D. Alcohol and Controlled Substances

1. **Possession, Consumption or Being under the Influence of Controlled Substances:** Knowingly consuming, possessing or being under the influence of a controlled substance. Provided, however, that it is not a delinquent act for a juvenile to possess or consume a controlled substance for bona fide religious purposes based on tenets or teachings of a church or religious body, in a quantity limited to the amount necessary for religious purposes, and dispensed by a person recognized by the church or religious body. Provided further that a juvenile does not commit a delinquent act by consuming, possessing, being under the influence of a controlled substance which has been lawfully prescribed for him by a medical doctor. To qualify for this exception, the substance must be in the physical possession of the juvenile for whom it was prescribed or his parent or guardian.
2. **Possession of Alcohol with Intent to Sell:** Possessing an alcoholic beverage with the intent to sell it.
3. **Possession or Use of Inhalants:** Intentionally inhaling or being under the influence of the gas or vapors of any nonprescribed inhalant with the purpose of reaching a high.
4. **Carrying or Transportation of Controlled Substances:** Carrying, transporting, or aiding in the transportation of any controlled substance or any drug paraphernalia. Provided, however, that a juvenile does not commit a delinquent act by carrying or transporting a substance which has been lawfully prescribed for him by a medical doctor. To qualify for this exception, the substance must be in the physical possession of the juvenile for whom it was prescribed or his parent or guardian.
5. **Manufacture, Sale, or Distribution of Controlled Substances:** Participating or aiding in the manufacture, sale, or distribution of controlled substances.
6. **Possession of Drug Paraphernalia:** Knowingly possessing any drug paraphernalia.

* Not available online, as of April 2015.

[7.4] Tribal Code Commentary

While 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, others alter the definition of “juvenile offender” to either include status offenses or to delineate specific juvenile offenses and/or status offenses. The alternative, 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 provisions for tribal juvenile codes.

The tribal statutes highlighted offer three different approaches in defining juvenile offenses. The first is to define juvenile offenses by reference to an existing criminal statute or statutes. For example, the Eastern Band of Cherokee provisions define a “delinquent juvenile” as a person who is less than sixteen years of age who has committed a criminal offense under tribal or federal laws, including violations of motor vehicle laws. The second approach is to adopt a tribal criminal code but to carve out a set of juvenile offenses separate from the adult crimes. See, for example, the Klamath Criminal Code, which has a separate section entitled “Juvenile Offenses” where it defines two crimes—“Juvenile in Possession of Alcohol or Tobacco” and “Firearms.”

A third approach is to set out a list of juvenile offenses in the tribal juvenile court law. See the Native Village of Barrow’s Code, which divides twenty-two delinquent acts into four categories and defines them—acts harming people or animals, acts against public order, acts against property, and acts dealing with alcohol and controlled substances. Whichever approach is used, it is important to craft specific provisions targeted at youth behavior and to understand the purpose for crafting the provision. Is this intended to be a juvenile offense as opposed to a status offense where youth will be subject to secure detention and potential court supervision until they turn eighteen? Does the defined behavior capture risk factors identifying youth who need certain available therapeutic interventions? Do we prefer to establish a juvenile court system that handles only status offenders or that will use only a Family In Need of Services (FINS) process (where there will be no secure detention, there will be limited durations for tribal court supervision, and there will be a heavy focus on family habilitation/ rehabilitation)?

[7.5] Exercises

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

- Find and examine your juvenile code’s section defining “delinquent act,” “juvenile offense,” or “juvenile crime”—what misconduct is targeted?
- Does your juvenile code include “status offenses” (conduct or misconduct that is not criminal and that may only be committed by a minor, e.g., truancy, curfew violations, running away, and possession and use of tobacco/inhalants)?
- Find and examine your juvenile code’s “disposition” section—does your juvenile code treat juvenile offenders and status offenders the same?

Make a list of the juvenile offenses you wish to target.

Read and Discuss*

What are the common youth “crimes”?

Top 25 Crimes, Offenses and Violations Referred to Youth Justice Diversion Programs

1. **Theft/Larceny**—Typical Cases: Shoplifting, Stealing a Bicycle, Stealing from Backpacks and Lockers
2. **Vandalism**—Typical Cases: Tagging and Graffiti, Drawing on Public Restroom Walls, Keying a Car and Cutting Auto Tires
3. **Alcohol Offenses**—Typical Cases: Underage Purchase or Possession, Underage Consumption of Alcohol, Providing Alcohol to Underage Persons, Possessing an Open Container in Public/Car
4. **Disorderly Conduct**—Typical Cases: Fighting in a Public Place, Cursing at a Teacher, Flashing, Mooning and Indecent Exposure
5. **Simple Assault or Battery**—Typical Cases: Bullying When It Amounts to Assault, Child/Parent Physical Disagreements, Shoving or Pushing a Person
6. **Possession of Marijuana**—Typical Cases: Possessing Small Amounts of Marijuana, Smoking Marijuana in a Public Place
7. **Tobacco Offenses**—Typical Cases: Illegally Purchasing Tobacco, Chewing or Smoking Tobacco at School, Providing or Enabling Youth to Use Tobacco
8. **Curfew Violations**—Typical Cases: Sneaking Out of Home after Curfew, Walking Home after Curfew, Violating a Park Curfew
9. **School Disciplinary Offense**—Typical Cases: Disrupting Class, Food Fights and Cheating, Violating the Dress Code
10. **Traffic Violations**—Typical Cases: Speeding or Failing to Yield, Not Wearing a Seat Belt, Riding in the Back of a Pickup Truck
11. **Truancy**—Typical Cases: Cutting Class, Having Excessive Tardies, Violating Court Order to Attend School
12. **Criminal Trespass**—Typical Cases: Entering a Vacant Building, Entering Land or a Dwelling without Permission, Returning to a Store after Being Banned
13. **Mischief/Criminal Nuisance**—Typical Cases: Damaging a Mailbox, Egging or Toilet-papering a House, Picking Flowers in a Restricted or Private Area

14. **Possession of Drug Paraphernalia**—Typical Cases: Having a Pipe in Pocket with Resin, Using Drug Paraphernalia to Use a Controlled Substance, Possessing Drug Paraphernalia to Grow Marijuana
15. **Harassment**—Typical Cases: Bullying, Making Telephone Calls without Good Reason, Insulting or Taunting Another Person to Provoke a Disorderly Response
16. **Fraud**—Typical Cases: Writing Bad Checks, Impersonating Another Person, Committing Fraud Via E-Mail
17. **Burglary**—Typical Cases: Enter Friends or Relatives Homes to Steal Something, Entering a School Building to Steal Something, Entering a Home/School and Causing Damage
18. **False Reporting**—Typical Cases: Pulling a Fire Alarm, Calling in False 911 Calls, Calling in a Bomb Threat
19. **Loitering**—Typical Cases: Hanging Out in a Group in Front of a Building, Smoking in Groups on the Street Corner, Being in a Park or Store after Closing
20. **Possession of Stolen Property**—Typical Cases: Having a Bicycle You Know Is Stolen, Receiving Stolen Goods from a Friend, Being in the Company of Someone Who Is Stealing
21. **Possession of a Weapon**—Typical Cases: Unlawfully Possessing Pepper Spray, Possessing a BB or Pellet Gun While Underage, Carrying Weapons Like Metal Knuckles or Nunchucks
22. **Reckless Endangerment**—Typical Cases: Throwing Snowballs at Cars, Hanging on to a Moving Car, Speeding Out of a Parking Lot
23. **Resisting an Officer without Violence**—Typical Cases: Lying to a Police Officer, Including One's Age, Running Away from Law Enforcement, Refusing to Move When Ordered by an Officer
24. **Runaways**—Typical Cases: Running Away from a Noncustodial Parents House, Going to Another City/State When Forbidden by a Parent, Staying at a Friend or Families House without Parent Permission
25. **Unauthorized Use of a Motor Vehicle**—Typical Cases: Driving without a License, Unlawfully Using All-Terrain Vehicles (ATVs), Taking Parents or Friends Car without Permission

* Taken from Global Youth Justice. Go to http://www.globalyouthjustice.org/TOP_25_CRIMES.html.