

Chapter 9: Relations with Other Agencies and Courts

[9.1] Overview

The tribe's ability to incarcerate a youth is limited by the Indian Civil Rights Act (ICRA) to one year, although a tribal nation may expand that jurisdiction to three years under the Tribal Law and Order Act (TLOA) of 2010 for certain crimes provided the tribe guarantees certain rights to defendants. There are situations when the federal government may take jurisdiction over some Native youth in Indian country and other situations in which the tribe encourages the federal government to take jurisdiction over certain youth due to their criminal history and seriousness of the crime. A tribe may feel incarceration for a longer period than the one year is necessary to protect the public or to rehabilitate the youth. The federal government may have resources for rehabilitation that are not available to the tribe. The federal government also has the ability to consider whether the youth will be tried in the juvenile system or the adult system based on the crime and background of the juvenile.

In Indian country in [Public Law 280](#) states or similarly legislated states, the state and tribe may have concurrent jurisdiction over juvenile matters in many situations. Even in Indian nations where the federal government is engaged in concurrent jurisdictions, states are involved in off-reservation delinquent activity. The state would also have the ability to incarcerate for more than one year and in some limited cases this may be a suitable and just option. The state would also have the ability to hold a juvenile accountable in an adult court, provided the situation meets the criteria of the state.

The state juvenile or the federal system may have more resources than the tribe and the youth's needs may be better addressed in the state or federal system. In such a situation the tribe may be encouraging the state or federal government to take action.

There are other situations in which the state, federal system, and tribe may need to work together for the benefit of the child and community. A youth may be involved in an offense outside of Indian country, and the state may believe that the tribe has the most suitable resources to rehabilitate the youth. A tribe may be involved with a youth in the tribal juvenile system, but seek nontribal services.

Coordination and cooperation between all jurisdictions that could address juvenile matters related to members or tribal residents of your jurisdiction ensures that the youth of your community receive the best services available. Statutes providing the authorization to enter into MOUs with other jurisdiction and with nontribal programs will help in providing comprehensive services to the juvenile and the community.

Cooperating with other entities may open up possibilities for grant funds for programs that can benefit tribal youth. Authorization is needed for a juvenile court to enter into a grant with another entity.

Additionally, social services may be involved in many of the juvenile court delinquency or status offenses. Ensuring that the power is given to the juvenile court to access and order action from social service agencies is vital. Depending upon the situation that might be tribal, state, or federal social service agencies.

Treatment or incarceration may also require the juvenile court to enter into agreements with programs that provide services to youth. Ensuring that the juvenile court has the ability to negotiate these agreements is important to their effective operation.

It may be helpful to review [Chapter 4: Criminal Offenses](#).

[9.2] Model Code Examples

(1989) BIA Tribal Juvenile Justice Code 1-5 RELATIONS WITH OTHER AGENCIES

1-5 A. Cooperation and Grants

The juvenile court is authorized to cooperate fully with any federal, state, tribal, public, or private agency in order to participate in any diversion, rehabilitation, or training program(s) and to receive grants-in-aid to carry out the purposes of this code. This authority is subject to the approval of the tribal council if it involves an expenditure of tribal funds.

1-5 B. Social Services

The juvenile court shall utilize such social services as may be furnished by any tribal, federal, or state agency provided that it is economically administered without unnecessary duplication and expense;

1-5 C. Contracts

The juvenile court may negotiate contracts with tribal, federal, or state agencies and/or departments on behalf of the tribal council for the care and placement of children whose status is adjudicated by the juvenile court subject to the approval of the tribal council before the expenditure of tribal funds;

1-5 D. Transfers from Other Courts

The juvenile court may accept or decline transfers from other states or tribal courts involving alleged delinquent children or alleged status offenders for the purposes of adjudication and/or disposition.

[9.3] Tribal Code Examples

Sault Ste. Marie Tribal Code

[Chapter 36: Juvenile Code](#)

SUBCHAPTER II: JURISDICTION OF THE JUVENILE DIVISION

36.210 Transfers from Other Courts.

The Juvenile Division may accept or decline transfers from other states or tribal courts involving alleged delinquent children or alleged status offenders for the purposes of adjudication and/or disposition. Proceedings transferred pursuant to the provisions of any state or federal law shall be deemed to have been commenced within the jurisdiction of the Juvenile Division. Proceedings transferred to the Juvenile Division shall be identical with proceedings originally filed in the Juvenile Division.

SUBCHAPTER X: ADDITIONAL MATTERS

(36.1001 through 36.1004 Omitted)

36.1005 Cooperation and Grants.

The Juvenile Division is authorized to cooperate fully with any federal, state, tribal, public, or private agency in order to participate in any diversion, rehabilitation, or training program(s) and to receive grant-in-aid to carry out the purposes of this Chapter. This authority is subject to the approval of the Sault Ste. Marie Tribal Board of Directors if it involves an expenditure of tribal funds.

36.1006 Social Services.

The Juvenile Division shall utilize such social services as may be furnished by any tribal, federal, or state agency provided that it is economically administered without unnecessary duplication and expense.

36.1007 Contracts.

The Juvenile Division may negotiate contracts with tribal, federal, or state agencies and/or departments on behalf of the Tribal Board of Directors for the care and placement of children whose status is adjudicated by the Juvenile Division subject to the approval of the Tribal Council before the expenditure of tribal funds.

Laws of the Confederated Salish and Kootenai Tribes, Codified

TITLE III, Chapter 3 YOUTH

Part 2: Transfer to Adult Tribal Court or State District Youth Court

(3-3-201. Omitted)

3-3-202. Transfer of Jurisdiction to State District Youth Court.

The Youth presenter shall have discretionary authority to transfer a juvenile offender to State Youth District Court based on input provided by the Juvenile Probation Office and consistent with the factors set forth in subsection 2 below.

- 1) A juvenile offender may be transferred to State Youth District Court only if:
 - a) the offender is alleged to have committed a serious crime: and/or
 - b) transfer will access services or funding for the youth not available through the Tribe.
- 2) The Youth presenter shall consider the following factors to determine transfer:
 - a) the nature and seriousness of the alleged offense,
 - b) the youth's nature and condition as evidenced by his/her age, mental and/or physical condition,
 - c) the youth's past record of offenses,
 - d) availability of funding for treatment, and
 - e) services that are available through state youth district court that are not available through Tribal Youth Court.
- 3) **Transfer report.** The juvenile officer shall prepare a transfer report for the Youth Court Presenter to consider that addresses the issues described in subsections 1 and 2 above. This report shall be attached to the motion of transfer.

[9.4] Tribal Code Commentary

The 1989 BIA Tribal Juvenile Justice Code authorizes the juvenile court to cooperate with any federal, state, tribal, public, or private agency to participate in any diversion, rehabilitation, or training program to carry out the purposes of the code. The court may also enter into grants to aid in carrying out this purpose. Only expenditures of funds must be approved by the tribal council. It also is authorized to utilize social service agencies (federal, tribal, or state) and negotiate contracts with agencies on behalf of the tribal council for care and placement of children subject to approval by the tribal council. It may also accept or decline transfers from other states or tribal courts involving cases of alleged delinquent children.

The Sault Ste. Marie Tribal Code also permits acceptance or declination of transfers from other courts and the court is to treat transfers like action commenced in their juvenile court. The remaining sections of their code are similar to the 1989 BIA Tribal Juvenile Justice Code.

The section from the Confederated Salish and Kootenai Nation specifically addresses transfer from their juvenile court to the state court, which is similar to the criteria for transfer to an adult court. However, it specifically focuses on treatment or rehabilitative services available through the state that are not available through the tribe system. The code requires a transfer report specifically addressing each of the criteria required for transfer.

[9.5] Exercises

The following exercises are meant to guide you in developing the relationships with other agencies/governments sections of the tribal juvenile code.

- Find and examine your tribe's code provisions governing cooperation with other agencies and/or governments—with whom may your juvenile court enter into agreements and for what?
- Find and examine any MOUs or Memorandums of Agreement (MOAs) relevant to your juvenile court—who does it bind and to do what?
- Make a list of agencies and/or governments that you would like to negotiate with for the provision of services—what services?

Read and Discuss*

Should we enter into agreements with the state to provide services that we do not have like mental health screening, assessment, and treatment?

Idaho Memorandum of Agreement to Support the Tribal Community Incentive Program, the Tribal Re-entry Program, and/or the Tribal Mental Health Program

WHEREAS,

- the Idaho Juvenile Justice Commission has identified parenting and families, community resources, and reintegration as priority needs in the 3-Year Plan for 2012–2014
- the Idaho Juvenile Justice Commission is the State Advisory Board for the Juvenile Accountability Incentive Block Grant
- the Tribal Community Incentive Program (CIP) is designed to fill gaps in local services or resources to serve juvenile offenders who are at a high risk of commitment to the Department locally where families can participate more fully in their treatment and increase the likelihood of their success
- the Tribal Re-Entry Program (REP) is designed to provide resources to fill gaps in local services to serve juvenile offenders returning to the community from state commitment to increase the likelihood of successful reintegration
- the Idaho Department of Juvenile Corrections is the state agency designated to administer funds for tribal mental health services (MHP) for juvenile offenders
- juvenile offenders, whether remaining in, or returning to their community require individualized services based on reliable instruments in accordance with their unique needs and potential
- the successful reintegration of juvenile offenders leaving Department custody and the effective treatment of juvenile offenders in the local community benefits juveniles, families, the State of Idaho, the tribal, and its communities
- the Department and the Tribe understand the importance of connecting with existing community or county councils whose function is to staff cases for services
- statistical data gathered from county systems statewide recognizes approximately sixty-eight percent of juveniles in detention have diagnosed mental health needs
- the success of these programs is dependent on the continued cooperation and partnerships between the State, the Tribe and the Tribe's Juvenile Probation Department

NOW, THEREFORE, the Department and the Tribe each agree as to the following:

In order to receive CIP, REP, or MHP funds, The TRIBE shall:

- Convene screening teams for CIP and MHP applications
- Convene a pre-commitment team to determine a juvenile offender's eligibility for CIP
- Approve and authorize the Case Plan
- Initiate applications for services and provide supervision for participating juveniles
- Provide monitoring of any terms or conditions of treatment established by the screening team
- Use the following screening tools to identify specific needs and challenges of the juvenile offender
- Submit reports
- Review invoices from providers and certify that services were rendered as approved and payment is authorized
- Request reimbursement from the Department within forty-five (45) days of service
- Adhere to all applicable laws, rules, and guidelines, including procurement laws

The DEPARTMENT shall:

- Reimburse the Tribe or Provider for allowable and approved treatment costs identified by a screening team for juveniles remaining in their community until funds have been exhausted, funding is otherwise discontinued, or either party terminates the Agreement by giving the other party thirty (30) days written notice
- Reimburse the Tribe or Provider for allowable and approved treatment costs deemed important by a community treatment team for juveniles leaving state custody until funds have been exhausted, funding is otherwise discontinued, or either party terminates the Agreement by giving the other party thirty (30) days written notice
- Reimburse the Tribe or Provider for allowable and approved treatment costs identified by a screening team for mental health services for juvenile offenders until funds have been exhausted, funding is otherwise discontinued, or either party terminates the Agreement by giving the other party thirty (30) days written notice
- Complete a YLS/CMI while the juvenile is in state custody.

The DEPARTMENT and the TRIBE, in order to support these programs to keep juveniles in their community, or successfully reintegrate juvenile offenders in state custody back into their homes, communities and families, also agree as follows:

- The Department and Tribe Juvenile Probation Officers will participate in routine staffings for each participating juvenile, prior to his or her release from Department custody, to jointly support REP.
- The parties to this Agreement understand that the success of these programs is dependent on the collaboration of all, and commit to a partnership toward that goal.
- The parties to this Agreement will work with existing services or councils, where appropriate, to develop the system of care for the juvenile and their family. This may include, but is not limited to, identifying new formal and informal resources for the system of care, ensuring families have a voice through family involvement in screening teams, linking to more neighborhood-based delivery systems, increasing research-based programs, and developing training across different agencies and services in the system of care.

*Taken from Memorandum of Agreement to Support the Tribal Community Incentive Program, the Tribal Re-entry Program, and/or the Tribal Mental Health Program. Go to <http://www.idjc.idaho.gov/wp-content/uploads/2014/01/Memorandum-of-Agreement-Tribal1.pdf>