

Part II: Workbook

The workbook portion of this resource is designed to be used by a group of people including tribal and justice system leaders and personnel, representatives from service agencies, community members, and representatives of youth and their families who are interested in developing or revising a tribal juvenile code. Please refer to Part I of this resource to identify key community members that might be included in this group (Chapter 1, section 1.7, “How to Organize to Create a Juvenile Code”). Part II, the workbook, is designed to be used by both individuals and groups as a starting point for value and policy discussions, system planning and design, and the drafting of specific provisions on identified subtopics.

Code development is often considered a boring, dry matter, but selecting the key provisions that appear in most juvenile codes and looking at options will stimulate discussion on the provisions your community really needs and wants and the provisions that support your cultural beliefs about youth and family. A tribal juvenile code should reinforce community values and set out the structure and process for your juvenile justice system. Further, developing or revising a juvenile code will force a hard look at your existing juvenile justice system, including educational, therapeutic, and cultural services, programs, and activities, whether they are located in or near the community, or are a part of the existing tribal court and/or its affiliates.

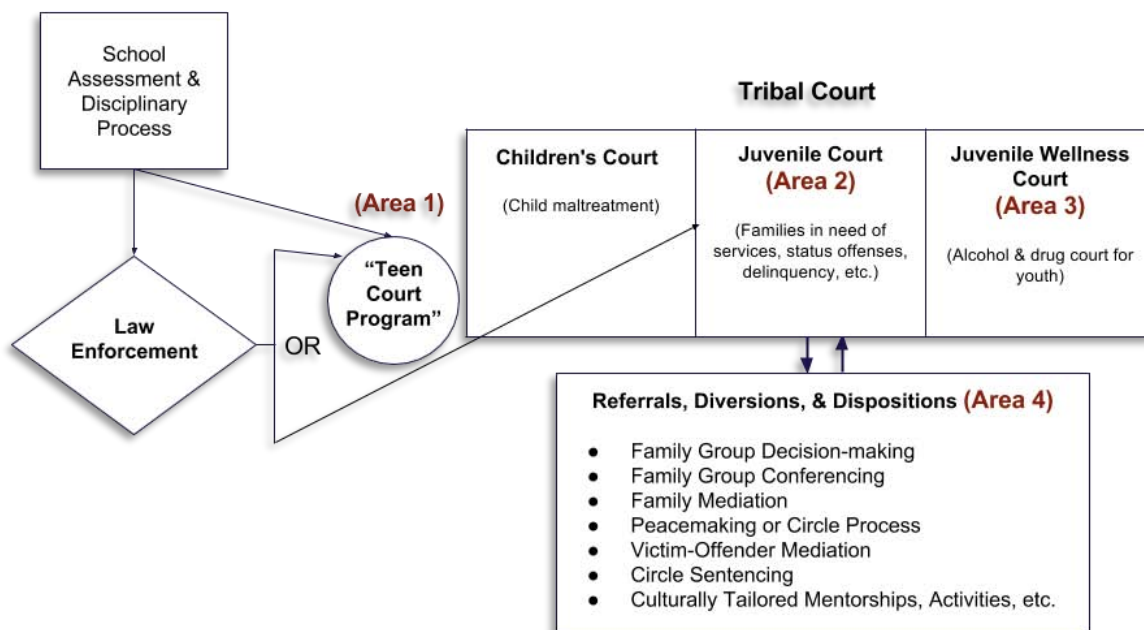
Each chapter in Part II leads the group to make decisions that will affect the final structure and provisions of the tribal juvenile code. While this resource is not designed to serve as a template for the drafting of a juvenile code word for word, it should be used to help your group identify your community’s priority needs, values, and policy preferences relative to the selected provisions of a juvenile code. Once these decisions are made, they may be communicated to an attorney or someone with legal training to help in drafting the final code. The group should always review the attorney’s draft to ensure that it follows the groups’ wishes.

Each chapter of the workbook takes a key section of the juvenile code and provides:

- **Overview:** An overview of the code section.
- **Model and Tribal Code Examples:** Examples of juvenile code sections from other tribes or in some cases model codes.
- **Tribal Code Commentary:** A brief explanation of the code examples.
- **Exercises:** A series of questions that ask your group to evaluate your current situation, discuss key provisions, and record your decisions.

To assist your group in identifying which “key sections” to focus on, we provide a bird’s eye view of the possible, known juvenile justice system components in the following text, with a corresponding table of relevant provisions to work on. We provide this aid with the caveat that each tribal community will innovate as they see fit. You will find a diagram mapping a hypothetical tribal juvenile justice system below. The diagram includes the resources to develop all possible areas, from the school assessment and disciplinary process to a teen court, to the juvenile court and/or juvenile wellness court, and including referrals, diversions, and dispositions. The Teen Court Program is designated as Area 1. The Juvenile Court is designated as Area 2. The Juvenile Wellness Court is designated as Area 3. Finally, the popular (in tribal circles) Referrals, Diversions, and Dispositions are designated as Area 4. Each area corresponds to the required statutory provisions in the tables following the diagram, and to the chapters in the workbook. Review the diagram, determine where your group wishes to focus its juvenile law development or reform efforts, identify which area or areas you wish to develop or reform, and review the corresponding chapters in the workbook. For best results, work with your group to complete and document your answers and decisions with respect to the exercises at the end of each chapter.

Possibilities for Tribal Juvenile Justice Systems



Please note that most tribes will need to develop or reform the foundation of their juvenile justices' system—their Juvenile Court in Area 2, before going on to add the desired special dockets (e.g., Wellness Court in Area 3, or desired referrals, diversions, and dispositions in Area 4. A Teen Court in Area 1 and Peacemaking and Circle Process in Area 4 may take the form of either a special docket or a diversion program, depending upon how it is set up.

In our review of the approximately thirty publicly available tribal juvenile codes, we have identified numerous important deficits with respect to the Juvenile Court in Area 2 (and that may impact the other areas), including codes that:

- Lump child maltreatment and juvenile delinquency laws together;
- Lump both juvenile “crimes” and status offenses together;
- Are heavy on punishment of juvenile and status offenders;
- Are light on protecting and fostering youth, including treatment, habilitation, and rehabilitation;
- Allow for transfer to adult criminal court;
- Apply the juvenile delinquency court process, including the use of probation and “sentencing” to secure detention, to status offenders;
- Lack multiple referral and/or diversion provisions (e.g., informal resolution, consent decree, and court ordered diversion);
- Lack comprehensive case management, treatment planning, and implementation that involve the family as part of the juvenile court process;
- Lack diversion dockets (e.g., wellness court) and/or programs (e.g., mediation, peacemaking, and circle process);
- Fast track youth to secure juvenile detention facilities through
- Use of inadmissible confessions (out-of-court statements),
- Use of involuntary or unintelligent admissions in court (“guilty pleas”), and/or
- Use of criminal contempt of court for probation violations (can turn a status offense into a crime);
- Apply lower, civil, standards of proof of an offense, as opposed to proof beyond a reasonable doubt;
- Fail to provide youth with basic “Juvenile 8” civil rights (most of ICRA does not apply to juveniles, except for due process and equal protection);
- Fail to provide youth with paid for legal counsel;
- Lack provisions for appropriately identifying and considering trauma in the juvenile court process; Lack provisions protecting against (re)traumatization in the juvenile justice process; and

- Lack provisions for identifying and integrating local tribal culture, custom, traditions, and/or generally accepted practices.

It is important to recognize that the Juvenile Court in Area 2 provides the foundation for all other innovative dockets, referrals, diversions, and dispositions, for those tribes that choose to retain their coercive sovereign powers over juvenile matters as a last resort, and instead of transferring tribal youth to the federal and state systems. A tribe that chooses to exercise the full range of its sovereign powers will need to commit to reforming Area 2 to ensure therapeutic and fair justice for tribal youth and their families.

Checklist for Developing or Reforming a Juvenile Court (Area 2)

Provision(s)	Comments	Add or Change this?
Subject Matter Jurisdiction	Which youths should be in court? For what types of misconduct?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Transfer	To adult criminal tribal court? To federal or state juvenile court?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Agreements	With agencies and other governments	Yes <input type="checkbox"/> No <input type="checkbox"/>
Juvenile Records	Confidential proceedings, records vs public records, & expungement/destruction	Yes <input type="checkbox"/> No <input type="checkbox"/>
Rights of Youth	From questioning, to custody & interrogation, to court	Yes <input type="checkbox"/> No <input type="checkbox"/>
Rules of Evidence	Special rules for juveniles	Yes <input type="checkbox"/> No <input type="checkbox"/>
Custody & Detention	Special rules for juveniles	Yes <input type="checkbox"/> No <input type="checkbox"/>
Detention Hearings	When you may or should place youth in secure juvenile detention facilities or not	Yes <input type="checkbox"/> No <input type="checkbox"/>
Intake, Referral, Diversion	Informal adjustment, consent decrees, and/or court ordered diversion	Yes <input type="checkbox"/> No <input type="checkbox"/>
Juvenile Offender Process	Trials for Juvenile Crimes	Yes <input type="checkbox"/> No <input type="checkbox"/>
FINS/Status Offender Process	Hearings for Family in Need of Services/Status Offenses	Yes <input type="checkbox"/> No <input type="checkbox"/>
Disposition Hearings	Placements, supervision, services, probation, restitution, diversions, detention	Yes <input type="checkbox"/> No <input type="checkbox"/>
Truancy – a special status offense	Unexcused absences from school as symptom of need for services	Yes <input type="checkbox"/> No <input type="checkbox"/>
Trauma Sensitive Provisions	Indian youth tend to be vulnerable and traumatized requiring special processes & services which they are not getting	Yes <input type="checkbox"/> No <input type="checkbox"/>
Integrating Culture, Customs, Traditions	Juvenile Court laws & processes	Yes <input type="checkbox"/> No <input type="checkbox"/>

**Checklist for Developing or Reforming the Process for Referrals,
Diversions, and Dispositions (Area 4)**

Desired Services or Program	Comments	Add or Change this?
Treatment Planning & Management? (youth & family)*	As part of Juvenile Court intake, referral, &/or diversion	Yes <input type="checkbox"/> No <input type="checkbox"/>
Case Planning & Management? (youth & family)*	As part of Juvenile Court intake, referral, &/or diversion	Yes <input type="checkbox"/> No <input type="checkbox"/>
Family Group Decision-making***	Family involvement in treatment & case planning	Yes <input type="checkbox"/> No <input type="checkbox"/>
Family Group Conferencing***	Family involvement in reparations to those harmed, healing, & reintegration	Yes <input type="checkbox"/> No <input type="checkbox"/>
Family Meditation**	Family meditation of any issues the family identifies	Yes <input type="checkbox"/> No <input type="checkbox"/>
Peacemaking or Circle Process**	Often community involvement in reparations to those harmed, healing, and reintegration of perpetrator into community	Yes <input type="checkbox"/> No <input type="checkbox"/>
Victim-Offender Mediation**	Reparations & healing between perpetrator & those harmed	Yes <input type="checkbox"/> No <input type="checkbox"/>
Circle Sentencing **	Reparations & healing between perpetrator & those harmed	Yes <input type="checkbox"/> No <input type="checkbox"/>
Culturally tailored mentorships, activities, etc.** * may be written into juvenile statute (code) ** usually had its own informal or formal rules governing process	Cultural values, education, mentorships, rites of passage, cleansing & healing ceremonies, etc.	Yes <input type="checkbox"/> No <input type="checkbox"/>

Checklist for Developing or Reforming Area 3

Key Components	Policy, procedure, law, or rule, &/or agreements	Work on this aspect?
Uses a team approach: <ul style="list-style-type: none"> ▪ Tribal Juvenile and/or Family Court ▪ Alcohol & drug treatment ▪ Mental health treatment ▪ Community healing resources 	<ul style="list-style-type: none"> ▪ Wellness Court establishment statute ▪ Inter-agency agreements ▪ Inter-governmental agreements 	Yes <input type="checkbox"/> No <input type="checkbox"/>
Youth are referred to, or are court order by Tribal Juvenile/Family Court, to Wellness Court, using a fair process	Juvenile Court statute <ul style="list-style-type: none"> ▪ Informal Adjustment ▪ Consent Decree ▪ Court Order 	Yes <input type="checkbox"/> No <input type="checkbox"/>
Youth have to be eligible: <ul style="list-style-type: none"> ▪ Substance using or abusing ▪ Alleged to have committed an eligible offense 	Wellness Court establishment Statute <ul style="list-style-type: none"> ▪ Jurisdiction/Eligibility 	Yes <input type="checkbox"/> No <input type="checkbox"/>
Treatment is different: <ul style="list-style-type: none"> ▪ Frequent court supervision (e.g., bi-monthly) ▪ Happens in phases over time (e.g., 1 yr plus) ▪ Alcohol &/or drug treatment ▪ Mental health treatment ▪ Culture incorporated 	<ul style="list-style-type: none"> ▪ Inter-agency agreements ▪ Third-party contracts ▪ Wellness Court Policies & Procedures <ul style="list-style-type: none"> ▪ Phased Treatment Plan 	Yes <input type="checkbox"/> No <input type="checkbox"/>
Intensive case management & alcohol/drug testing	Wellness Court Policies & Procedures	Yes <input type="checkbox"/> No <input type="checkbox"/>
Judge & team use frequent rewards & sanctions to get Youth to comply with their conduct & treatment plans	Wellness Court Policies & Procedure	Yes <input type="checkbox"/> No <input type="checkbox"/>
Judge leads the team & interacts with Youth as judge & mentor in and out of Wellness Court hearings	N/A but could be in Wellness Court Policies & Procedures	Yes <input type="checkbox"/> No <input type="checkbox"/>
Wellness Court has a monitoring and evaluation plan & data collection to make sure what they are doing this working	N/A	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have a interdisciplinary & community education plan & operations	<ul style="list-style-type: none"> ▪ Inter-agency agreements ▪ Inter-governmental agreements 	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have Wellness Court policies, procedures, & agreements	<ul style="list-style-type: none"> ▪ Wellness Court Policies & Procedures ▪ Inter-agency & Inter-governmental Agreements 	Yes <input type="checkbox"/> No <input type="checkbox"/>