

# CHAPTER 1

## GENERAL PROVISIONS

## 1.01 PURPOSES

### 1.01.110 Purposes

This title 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 provisions of this title;
- (b) to preserve and retain the unity of the family and to carry out the other purposes of this title 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 title, 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 title 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.

### § 1.01.110

The purposes articulated in this section reflect the goals and principles that have guided the development of the Model Code from its inception.

The specific language of these provisions, meanwhile, has been adapted from a number of sources, including the juvenile codes of various tribal and other jurisdictions.

Implementing tribes are encouraged to review this section carefully, and to tailor it to state their purposes as accurately as possible.

Factors which might inform this process include tribal culture and tradition, the resources available in and to the tribal community, and the structural and procedural character of the tribal court.

### § 1.01.110(d)

This subsection explicitly invokes the core principles – accountability, community safety, and competency development – of the Balanced and Restorative Justice (BARJ) Model. For a thorough discussion of the BARJ approach to juvenile justice, see Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, *Guide for Implementing the Balanced and Restorative Justice Model* (December 1998).

### § 1.01.110(e)

The Model Code attempts to set forth not only a coherent set of goals and principles, but a comprehensive procedural framework for balancing the interests, addressing the needs, and safeguarding the rights of tribal youth and their communities.

While keeping these considerations in mind, implementing tribes may wish to modify or supplement this framework based on their particular purposes, needs and resources.

## 1.02 DEFINITIONS

### 1.02.110 Definitions

- (a) Adult: A person who:
  - (1) is eighteen (18) years of age or older; and
  - (2) is not a “child” as defined herein.
- (b) Child: A person who:
  - (1) is under eighteen (18) years of age; or
  - (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:
  - (1) habitually engages in conduct that:
    - (A) is disobedient of the reasonable and lawful commands of the child’s parent, guardian or custodian; and
    - (B) poses a substantial risk to the health, welfare, person or property of the child or others;
  - (2) is a runaway as defined in subsection (k);
  - (3) engages 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 Chapter 2 of this title, is found by the Juvenile Court:
    - (A) to be unrestorably incompetent to be adjudicated; and
    - (B) in proceedings conducted in accordance with the provisions of Chapter 3 of this title:
      - (i) to have engaged in conduct that would otherwise warrant a finding of delinquency under the provisions of Chapter 2 of this title; and
      - (ii) to be in need of supervision, treatment or rehabilitation.
- (d) Custodian: An adult entrusted with the temporary physical care, custody and control of a child by the child’s parent, or otherwise entrusted with the custodial, personal or financial care of a child under tribal custom.
- (e) Delinquent Act: An act committed by a child that would be a criminal violation of [the tribal code] if committed by an adult.

### § 1.02.110(c)

This definition does not include truants, but is otherwise intended to encompass children referred to as “status offenders” under federal law (including the Juvenile Justice and Delinquency Prevention Act) – that is, children who have been “charged with or adjudicated for conduct which would not . . . be a crime if committed by an adult.” 28 C.F.R. § 31.304(h).

### § 1.02.110(c)(1)

This definition of a “child in need of services” purposely omits common criteria such as “ungovernable” or “incorrigible.”

Such labels are not only potentially stigmatizing, but are subject to such broad interpretation that normal adolescent behavior may become the basis for unnecessary and even harmful involvement in the juvenile justice system.

### § 1.02.110(e)

Adoption of the Model Code may require the amendment of existing tribal code provisions that provide for the criminal prosecution of children.

In keeping with the statement of purposes in § 1.01.110(d), the Model Code assigns jurisdiction over delinquency cases to the Juvenile Court, § 1.03.130(a), and specifies that proceedings in the Juvenile Court are non-criminal proceedings, § 1.03.150.

- (f) **Extended Family:** A child’s grandparents, great grandparents, aunts and uncles, great aunts and great uncles, brothers and sisters, brothers-in-law and sisters-in-law, nieces and nephews, first and second cousins, and step-parents.
- (g) **Guardian:** A person assigned specific rights and responsibilities by court order to care for another person and the person’s real and personal property.
- (h) **Guardian *ad Litem*:** An individual appointed by the Juvenile Court to represent the best interests of the child in proceedings conducted pursuant to the provisions of this title.
- (i) **Juvenile Advocate:** The attorney who, where private counsel has not been retained to represent a child, shall be appointed by the Juvenile Court to represent the child in proceedings conducted pursuant to the provisions of this title.
- (j) **Juvenile Case Coordinator:** The individual who shall be responsible for:
  - (1) acting as an unbiased liaison between:
    - (A) the child;
    - (B) the child’s parent, guardian or custodian;
    - (C) tribal agencies, service providers, school officials, and other persons and entities entrusted with the care and supervision of children who are members of the tribal community;
    - (D) alleged victims or other members of the community affected by the child’s alleged conduct, condition, or circumstances;
    - (E) the Juvenile Presenting Officer; and
    - (F) the Juvenile Court;
  - (2) coordinating services for all children coming within the provisions of this title;
  - (3) providing recommendations to the Juvenile Presenting Officer regarding the initiation of proceedings before the Juvenile Court, as well as diversion options and other alternatives to judicial proceedings;
  - (4) providing recommendations regarding the disposition of matters coming before the Juvenile Court in proceedings conducted pursuant to the provisions of this title;
  - (5) monitoring and facilitating compliance by the child and the child’s parent, guardian or custodian with:
    - (A) the conditions of diversion agreements and deferrals;
    - (B) conditions of release imposed by the Juvenile Court;

#### § 1.02.110(f)

Implementing tribes may wish to define “extended family” in keeping with their own customs and traditions, bearing in mind that this definition may also be significant in the context of other types of proceedings.

For example, the definition provided here is adapted from the Indian Child Welfare Act, 25 U.S.C. § 1903(2), under which “‘extended family member’ shall be as defined by the law or custom of the Indian child’s tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.” 25 U.S.C. § 1903(2).

See also Jack F. Trope, [Title IV-E: Helping Tribes Meet the Legal Requirements](#) 10-17 (March 2010).

#### § 1.02.110(i)

The terminology employed in the Model Code reflects a deliberate effort to distinguish between juvenile and criminal proceedings, and the titles assigned to officers of the Juvenile Court have been chosen to characterize their roles as accurately as possible.

Thus, the role of the Juvenile Advocate (an attorney appointed to represent children in delinquency, child-in-need-of-services, and truancy proceedings) should not be conflated with that of the “public defender” (an attorney appointed to represent adults in criminal proceedings).

Regarding reliance on lay advocates, see the comments on § 1.04.150.

#### § 1.02.110(j)

While the role of the Juvenile Case Coordinator is in some respects similar to that of the more conventional “juvenile probation officer,” the latter title suggests an analogy between juvenile and criminal proceedings which the Model Code eschews.

More important, however, is the fact that the responsibilities of the Juvenile Case Coordinator go far beyond monitoring compliance with court orders and conditions.

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- (C) disposition and other orders entered by the Juvenile Court;
- (6) conducting mental health and other screening of children coming within the provisions of this title, in order to identify services which may be necessary or appropriate to meet their needs; and
- (7) performing related functions specifically delegated to the Juvenile Case Coordinator under the provisions of this title.
- (k) Juvenile Presenting Officer: The attorney who shall represent the Tribe in all proceedings before the Juvenile Court.
- (l) Juvenile Residential Care Facility: Any residential facility, other than a secure juvenile detention facility, operated by a licensed child welfare agency.
- (m) Parent: The term “parent” as used in this title:
  - (1) shall include, subject to the provisions of subsection (2), all biological or adoptive parents of the child, whether singular or plural; and
  - (2) shall not include a person whose parental rights have been legally terminated, nor an unwed father whose paternity has not been acknowledged or established.
- (n) Runaway: The term “runaway” as used in this title means a child who:
  - (1) has intentionally abandoned a placement ordered by the Juvenile Court or another court having jurisdiction over the child;
  - (2) has intentionally and repeatedly violated an order of the Juvenile Court directing the child to remain at the child’s home or legal residence at specified times or under specified circumstances; or
  - (3) 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:
    - (A) with the intent to abandon the child’s home or legal residence;
    - (B) for a period of more than twelve (12) hours;
    - (C) between the hours of 8:00pm and 5:00am; or
    - (D) in circumstances presenting a substantial risk to the health, welfare, person or property of the child or others.
- (o) Secure Juvenile Detention Facility: Any public or private facility which includes construction fixtures designed to physically

#### § 1.02.110(j) – CONTINUED

Given the range and scope of these responsibilities, implementing tribes may want to give special consideration to the qualifications and training required for this position, as well as to the adoption of appropriate caseload limits. (For a discussion of such limits in the context of traditional juvenile probation systems, see Bill Burrell, *Caseload Standards for Probation and Parole* (September 2006), which sets forth juvenile probation “cases to staff ratio” standards ranging from 15:1 to 100:1, depending on whether cases are categorized as “intensive,” “moderate to high risk,” or “low risk.” See also Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, *Focus on Accountability: Best Practices for Juvenile Court and Probation* (August 1999) (“several national standard-setting groups recommend a caseload of 25 clients per probation officer for traditional probation services”) (citations omitted)).

#### § 1.02.110(o)

This definition is intended to be consistent with the provisions of the Juvenile Justice and Delinquency Prevention Act, which defines a secure detention facility as “any public or private residential facility which – (A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and (B) is used for the temporary placement of any juvenile who is accused of having committed an offense or of any other individual accused of having committed a criminal offense.” 42 U.S.C. § 5603(12).

Among the “construction fixtures” characteristic of secure detention facilities are “locked rooms and buildings, fences, or other physical structures.” 28 C.F.R. § 31.304(b).

Federal regulations also distinguish between secure detention facilities and facilities, sometimes referred to as “staff secure facilities,” in which “physical restriction of movement or activity is provided solely through facility staff.” *Id.*

See also Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, *Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 2002*, at 10-12 (October 2010).

restrict the movements and activities of children detained therein.

- (p) Truant: The term “truant” as used in this title means a child who has had:
  - (1) three (3) unexcused absences from school within a single month; or
  - (2) six (6) unexcused absences from school within a single school year.
- (q) Unexcused Absence: The term “unexcused absence” as used in this title means:
  - (1) the child has failed to attend the majority of hours or periods in a school day, or has failed to comply with a school district policy establishing more restrictive attendance requirements; and
  - (2) the absence does not fall within one of the exceptions to compulsory school attendance set forth in § 4.1.110(a), and is not an excused absence as defined by school district policy.

## 1.03 JUVENILE COURT

### 1.03.110 Juvenile Court – Name

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

### 1.03.130 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], in all matters in which:

- (a) an Indian child is alleged to have committed a delinquent act within the external boundaries of the [Reservation]; or
- (b) an Indian child residing or domiciled on the [Reservation] is alleged to be a child in need of services or a truant.

### 1.03.150 Non-Criminal Proceedings

No adjudication upon the status of any child coming within the jurisdiction of the Juvenile Court shall be deemed a conviction of a crime.

### 1.03.170 Juvenile Court – Relations with Other Agencies

The Juvenile Court:

- (a) is authorized to cooperate fully with any tribal, federal, state, public or private agency in order to participate in diversion, rehabilitation or training programs to carry out the purposes of this code;
- (b) may utilize such social services as may be furnished by any tribal, federal or state agency; and
- (c) may accept or decline transfers from other tribal or state courts for the purposes of adjudication or disposition of children alleged to have committed delinquent acts or to be children in need of services.

### 1.03.190 Juvenile Court – Trauma-Informed Practices

The Juvenile Court shall:

- (a) require all Juvenile Court staff and practitioners before the Juvenile Court to receive training regarding the effects of trauma on children and their families;
- (b) presume that all children and families coming within the provisions of this title have been impacted by trauma;
- (c) strive to maintain a calm, secure and safe court environment for children and their families, witnesses, attorneys, court staff, and

### § 1.03.110

Although for many tribes the Juvenile Court will be distinct from the Tribal Court in name only, maintaining a formal distinction between the two is one way to reinforce the unique nature, role, and function of the Juvenile Court.

### § 1.03.130

This provision is intended to give the Juvenile Court original and exclusive jurisdiction over juvenile cases, which may require the amendment of existing tribal codes.

See also the comments on § 1.02.110(e).

### § 1.03.130(b)

Some tribes may wish to limit the jurisdiction of the Juvenile Court to tribal members in child-in-need-of-services and truancy matters.

### § 1.03.190

“According to the [National Survey of Children’s Exposure to Violence] . . . an estimated 46 million of the 76 million children currently residing in the United States are exposed to violence, crime, and abuse each year.” Robert L. Listenbee, Jr. et al., *Report of the Attorney General’s National Task Force on Children Exposed to Violence* 28 (2012) (citations omitted).

Not surprisingly, exposure to violence and other forms of trauma is even more widespread among vulnerable populations. Research suggests that between 60 and 90 percent of youth in the juvenile justice system have been traumatized, and that the likelihood of experiencing trauma is 2.5 times higher for American Indian and Alaska Native youth than for other children. National Center for Children in Poverty, *Facts About Trauma for Policymakers: Children’s Mental Health* 1 (July 2007) (citations omitted).

See also Jessica R. Goodkind et al., *Adaptation and Implementation of Cognitive Behavioral Intervention for Trauma in Schools with American Indian Youth*, J. Clinical Child Adolescent Psychol. 858-72 (November 2010), noting that “tribally-based studies support these findings” (citing Monica C. Jones et al., *Trauma-Related Symptomatology Among American Indian Adolescents*, J. Traumatic Stress 163-73 (April 1997); Spero Manson et al., *Wounded Spirits, Ailing Hearts: PTSD and Related Disorders Among American Indians*, in *Ethnocultural Aspects of Post-Traumatic Stress Disorder* 255-83 (Anthony J. Marsella et al. eds., 1996)).

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others appearing before or coming into contact with the Juvenile Court; and

- (d) afford dignity and respect to all individuals appearing before or coming into contact with the Juvenile Court.

§ 1.03.190 – CONTINUED

Research has also shown that exposure to trauma as a child increases the risk of a variety of harms, including depression, substance abuse, domestic violence, suicide attempts, early initiation of smoking and sexual activity, sexually transmitted diseases, ischemic heart disease, and liver disease. Centers for Disease Controls and Prevention, *Adverse Childhood Experiences (ACE) Study, Major Findings* (accessed 31 January 2016).

Given the alarming prevalence of exposure to violence among children, juvenile courts and professionals who work with children involved in the juvenile justice system should presume that those children have been exposed to trauma, and should take precautions to avoid re-traumatizing them.

Juvenile courts should be characterized by peacefulness and security, and judges should model calmness and temperance, dealing respectfully with children, families, and court staff alike.

Additionally, juvenile calendars should be kept separate from adult calendars, and court facilities should include areas to which children may retreat not only for support, but for diversion from matters before the Court.

In keeping with the rehabilitative function of the juvenile justice system, juvenile courts should also establish and adhere to procedures (including those involving the taking of testimony and the presentation of evidence) which minimize confrontation and intimidation, and should be prepared to adapt those procedures in keeping with the age and maturity of the individual child.

For more on “a working concept of trauma and a trauma-informed approach,” as well as efforts “to develop a shared understanding of these concepts that would be acceptable and appropriate across an array of service systems and stakeholder groups,” see Substance Abuse and Mental Health Services Administration, United States Department of Health and Human Services, *SAMHSA’s Concept of Trauma and Guidance for a Trauma-Informed Approach* (July 2014).

“A program, organization, or system that is trauma-informed,” according to SAMHSA’s concept, “**realizes** the widespread impact of trauma and understands potential paths for recovery; **recognizes** the signs and symptoms of trauma in clients, families, staff, and others involved with the system; and **responds** by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks to actively **resist re-traumatization.**” *Id.* at 9 (emphasis in original).

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## 1.04 RIGHTS OF PARTIES

### 1.04.110 Parties in Juvenile Proceedings

The parties to all proceedings conducted pursuant to the provisions of this title shall be:

- (a) the child;
- (b) the Tribe; and
- (c) following adjudication, the child's parent, guardian or custodian.

### 1.04.130 Due Process Rights

In all proceedings conducted pursuant to the provisions of this title, the parties shall have the right to due process, including:

- (a) the right to adequate notice of all proceedings, and the opportunity to be heard before an unbiased finder of fact;
- (b) the right to discovery;
- (c) the right to testify, the right to subpoena witnesses, and the right to introduce evidence on the party's own behalf;
- (d) the right to cross-examine witnesses, except in such cases as the provisions of this title expressly permit the use of hearsay testimony; and
- (e) the right to findings which are based solely upon evidence properly admitted in hearings before the Juvenile Court.

### 1.04.150 Right to Counsel

- (a) Neither the child nor the child's parent, guardian or custodian may waive the child's right to be represented by counsel under the provisions of this title.
- (b) Where counsel has not already been appointed or retained to represent the child, the Juvenile Court shall appoint the Juvenile Advocate, or other qualified and competent counsel, to represent the child at the child's first appearance before the Juvenile Court.
- (c) Prior to the child's first appearance before the Juvenile Court, the Juvenile Advocate shall be authorized to represent the child, without formal appointment by the Juvenile Court, in any proceedings in which the child has a right to counsel under the provisions of this title.
- (d) Upon presentation by counsel for the child of an order of appointment or a court order specifically allowing such access, any tribal agency, department, authority, institution, school, or health care provider shall permit counsel for the child to inspect and copy, without the consent of the child or the child's parent,

### § 1.03.190 – CONTINUED

The [National Center for Trauma-Informed Care & Alternatives to Seclusion and Restraint](#) also provides training and technical assistance regarding trauma-informed care, as well as information about [trauma-specific interventions](#) including [The Sanctuary Model](#), the goal of which is to “help children who have experienced the damaging effects of interpersonal violence, abuse, and trauma.”

### § 1.04.110(c)

While delinquency, child-in-need-of-services, and truancy proceedings may implicate parents' rights both directly and indirectly, making parents parties to these proceedings is potentially problematic for a number of reasons, especially where the interests of the parents are adverse to those of the child.

This section attempts to balance these concerns by making parents parties at and following disposition, when orders entered by the Juvenile Court are most likely to affect them.

For a discussion of related issues, see the commentary to IJA-ABA Joint Commission on Juvenile Justice Standards, [Standards Relating to Pretrial Court Proceedings](#) 6.5 (1979), which would give parents the right “to notice, to be present, and to make representations to the court” – but not “party rights” such as the right to call or examine witnesses – at “all stages” of delinquency proceedings.

See also Liana J. Pennington, *Engaging Parents as a Legitimacy-Building Approach in Juvenile Delinquency Court*, 16(2) U.C. Davis J. Juv. L. & Pol'y 481 (2012).

### § 1.04.150

Because the assistance of counsel is essential to ensure that all of the other rights afforded to children in juvenile proceedings are meaningfully “recognized and protected,” § 1.01.110(e), the Model Code provides that all children appearing before the Juvenile Court will be represented by counsel.

Also note that the provisions of the Model Code presume counsel will be a qualified attorney; tribes that rely on lay advocates are exhorted to ensure they are held to the same professional and ethical standards as licensed attorneys.

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guardian, or legal custodian, any records relating to the child involved in the case.

#### **1.04.170 Privilege Against Self-Incrimination**

- (a) Every child coming within jurisdiction of the Juvenile Court shall be accorded and advised of the privilege against self-incrimination, and the child's exercise of the privilege shall not be used against the child in any proceedings conducted pursuant to the provisions of this title.
- (b) No statement, admission or confession made by, nor incriminating information obtained from, a child in the course of any screening, assessment, evaluation, or treatment undertaken in conjunction with proceedings under this title, including but not limited to that which is court-ordered, shall be admitted into evidence in any proceedings before the Juvenile Court or the Tribal Court.

#### **1.04.190 Fingerprinting and Photographs**

- (a) A child shall not be fingerprinted or photographed, nor have any tissue sample taken, for purposes of identification in connection with any matter coming within the provisions of this title, except by written order of the Juvenile Court.
- (b) Fingerprints, photographs or tissue samples taken pursuant to a written order of the Juvenile Court shall be used only as specified in the written order.

#### **1.04.210 Records – Confidentiality**

- (a) Except by an order of the Juvenile Court entered in accordance with the provisions of subsection (b), all records and files pertaining to any proceedings conducted pursuant to the provisions of this title, including but not limited to law enforcement records and court files, shall be confidential and shall not be open to inspection to any but the following:
  - (1) the child, provided that:
    - (A) the child's request for inspection has been made through counsel for the child;
    - (B) the Juvenile Court enters an order permitting inspection by the child without the intervention of counsel; or
    - (C) the child has reached eighteen (18) years of age;
  - (2) counsel for the child;
  - (3) the child's parent, guardian or custodian, except as provided in subsection (b);
  - (4) the child's guardian *ad litem*;

#### **§ 1.04.150 – CONTINUED**

For thorough discussions of the crucial role of counsel in juvenile proceedings, see Judith B. Jones, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, [Access to Counsel](#) (June 2004), as well as the [National Juvenile Defense Standards](#) (2012) developed by the [National Juvenile Defender Center](#).

#### **§ 1.04.150(a)**

Providing for waiver of the right to counsel creates an unacceptable risk that children will forego representation in juvenile proceedings, even where such waiver is not in their best interests. See, e.g., Jones, *supra*, at 2.

Notably, IJA-ABA [Standards Relating to Pretrial Court Proceedings](#) 6.1 would allow juveniles to waive any right *except* the right to counsel.

#### **§ 1.04.150(b)**

The purpose of this subsection is to ensure that the child is represented by counsel in all proceedings before the Juvenile Court, and that counsel is appointed at the earliest opportunity.

#### **§ 1.04.150(c)**

Under the provisions of the Model Code, there are some proceedings that may occur prior to the child's first appearance before the Juvenile Court, but in which the child is to be represented by counsel. (See, e.g., § 2.05.150; § 3.06.130.)

The purpose of this subsection is to ensure representation in such proceedings without requiring the involvement of the Juvenile Court.

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#### **§ 1.04.170(b)**

See Lourdes M. Rosado & Riya S. Shah, Juvenile Law Center, [Protecting Youth from Self-Incrimination when Undergoing Screening, Assessment and Treatment within the Juvenile Justice System](#) (January 2007).

- (5) the Juvenile Case Coordinator; and
- (6) the Juvenile Presenting Officer.
- (b) The Juvenile Court may enter an order providing that specific records and files pertaining to proceedings conducted pursuant to the provisions of this title shall not be open to inspection by the child's parent, guardian or custodian, following:
  - (1) a hearing on the matter, at which the child shall be represented by counsel and the child's parent, guardian or custodian shall have the right to be represented by counsel; and
  - (2) a finding by the Juvenile Court that such inspection would jeopardize the mental or physical welfare of the child.
- (c) The Juvenile Court may, on a case-by-case basis, enter an order permitting the inspection, by specified persons or agencies, of records and files which would otherwise be confidential under subsection (a), following:
  - (1) a hearing on the matter, at which the child shall be represented by counsel; and
  - (2) a finding by the Juvenile Court that such inspection is in the best interests of the child.
- (d) All records and files pertaining to any child who is subject to the provisions of this title shall be kept separate from records and files pertaining to adults.
- (e) The name, picture, place of residence, or any other identifying information concerning any child, parent, guardian or custodian, or any person appearing as a witness in any proceedings held pursuant to the provisions of this title, shall not be published in any newspaper, newsletter, electronic publication, or internet site, and shall not be given for any other publicity.
- (f) Any person who violates any provision of this section shall be ordered to appear before the Juvenile Court to show cause why they should not be held in contempt.

#### **1.04.230 Records – Expungement**

- (a) All records and files pertaining to any proceedings conducted pursuant to the provisions of this title, including but not limited to law enforcement records and court files, shall be expunged when the child reaches twenty-five (25) years of age.
- (b) No further inspection or use of any record or file to be expunged in accordance with the provisions of this section shall be permitted.

## 1.05 PARENTAL RESPONSIBILITIES

### 1.05.110 Parental Responsibilities

- (a) The parent, guardian or custodian of any child coming within the jurisdiction of the Juvenile Court under the provisions of this title shall have the following responsibilities:
  - (1) to attend all Juvenile Court hearings involving the child, or to show cause before the Juvenile Court why they should be excused from any hearing they are unable to attend;
  - (2) to bring the child before the Juvenile Court when so ordered; and
  - (3) to monitor the child's compliance with all orders entered or conditions imposed by the Juvenile Court, and to make all reasonable efforts to ensure that the child complies with such orders or conditions.
- (b) Where the responsibility imposed by § 1.05.110(a)(1) conflicts with the work schedule of the child's parent, guardian, or custodian, or would otherwise cause undue hardship for the child's parent, guardian, custodian or family, the Juvenile Court:
  - (1) shall, whenever possible, permit the child's parent, guardian or custodian to attend the hearing by phone, video conferencing technology, or similar means; and
  - (2) may consider the availability and practicability of such alternatives in determining whether the child's parent, guardian or custodian should be excused from attending the hearing.

### 1.05.130 Excuse from Parental Responsibilities

- (a) The child's parent shall be excused from the responsibilities imposed by § 1.05.110 if the child is under the care and control of a guardian or custodian as the result of a court order.
- (b) The child's parent, guardian or custodian may be excused from the responsibilities imposed by § 1.05.110 if it appears to the Juvenile Court that there may be a conflict of interest between the child and the child's parent, guardian or custodian.
- (c) A showing that the child's parent, guardian or custodian has voluntarily transferred physical custody of the child to another person shall not excuse the child's parent, guardian or custodian from the responsibilities imposed by § 1.05.110.

### 1.05.150 Parental Non-Compliance

Any parent, guardian or custodian who fails to comply with the requirements of § 1.05.110 may be ordered to appear before the

#### § 1.05.110

This section proceeds from the assumption that the involvement of the child's parents is not only appropriate, but essential to the proper functioning of the juvenile justice system.

Needless to say, the list of enforceable requirements set forth here should not be construed as limiting the role of parents in juvenile proceedings.

Among the "proper functions" of parents, for instance, IJA-ABA *Standards Relating to Pretrial Court Proceedings* 6.5 includes "consultation with the juvenile and the juvenile's counsel . . . , presence at all hearings, and participation in the planning of dispositional alternatives."

Nor should efforts to engage parents be limited to the enforcement of these provisions. On the contrary, the Juvenile Court, the Juvenile Case Coordinator, and (to the extent that such efforts are consistent with their obligations to the child) the Juvenile Advocate should all make affirmative efforts to facilitate the participation and cooperation of parents in juvenile proceedings.

This may entail educating parents about the juvenile justice system; explaining and clarifying pleadings, proceedings, diversion agreements, court orders, or other matters; accommodating parents' work schedules and other obligations; and referring parents to services and resources aimed at removing barriers to their involvement.

Regarding the status of parents in juvenile proceedings, see also the comments on § 1.04.110(c), and the references cited therein.

#### § 1.05.110(b)

See also § 1.07.170(d).

#### § 1.05.130(b)

The IJA-ABA *Standards Relating to Pretrial Court Proceedings* make the "intake department" responsible for the identification of such conflicts at "the earliest feasible stage," 5.3, and would allow the court to "exclude or restrict the participation of a parent whose interests . . . are adverse to those of the [child]," 6.5.

Juvenile Court to show cause why they should not be held in contempt.

## 1.06 SERVICES FOR CHILDREN AND FAMILIES

### 1.06.110 Directory of Services

- (a) The Juvenile Case Coordinator shall compile and maintain a directory of public, private, and tribal services and resources available to children and families who are members of the tribal community, which may include, but need not be limited to:
- (1) crisis intervention services;
  - (2) individual, group, or family counseling;
  - (3) family mediation;
  - (4) victim-offender mediation or reconciliation;
  - (5) delinquency prevention and diversion programs;
  - (6) assistance and education for victims or perpetrators of domestic violence;
  - (7) parent training, education and support;
  - (8) homemaker or parent aide services;
  - (9) housekeeping and childcare services;
  - (10) short-term respite care;
  - (11) runaway centers and emergency shelters;
  - (12) residential placement options for children in the juvenile justice system;
  - (13) chemical dependency evaluations, treatment and interventions;
  - (14) mental health screening, assessment, treatment and services;
  - (15) educational assessments, evaluations and advocacy;
  - (16) special education, tutorial, and remedial academic services;
  - (17) vocational, job training, and employment services;
  - (18) programs for building resiliency skills; and
  - (19) community, cultural, social and recreational activities.
- (b) In order to ensure that the directory of services is current and comprehensive, in compiling and maintaining the directory the Juvenile Case Coordinator shall consult periodically with:
- (1) tribal and community agencies or other entities providing or coordinating services to children and families;
  - (2) local school officials;
  - (3) tribal and local law enforcement officials;

### § 1.06.110

Numerous provisions of the Model Code are directed toward securing services for children involved in the juvenile justice system, as well as children who might become system-involved in the absence of diversion agreements or voluntary efforts to obtain services.

Those services may be provided by a wide variety of public and private agencies, and their availability may depend on factors ranging from legislative appropriations and grant funding to community needs and organizational priorities. †

This section therefore requires the Juvenile Case Coordinator to maintain a current directory of such services, not only to facilitate the development of effective diversion agreements, guide the formulation of appropriate disposition recommendations, and assist the Juvenile Court in the entry of comprehensive disposition orders, but as a reference for law enforcement officers coming into contact with children and families and, most importantly, as a resource for children and families themselves.

In compiling and maintaining this directory, the Juvenile Case Coordinator should give special consideration to the availability and inclusion of evidence-based practices (EBPs) and trauma-informed services and interventions.

For more information about EBPs, including a searchable database of reviewed interventions, see the Substance Abuse and Mental Health Services Administration's [National Registry of Evidence-Based Programs and Practices](#) (NREPP).

For more information about trauma-informed practices, see § 1.03.190 and the comments thereon.

CONTINUED ON FOLLOWING PAGE

- (4) the Juvenile Presenting Officer;
  - (5) the Juvenile Advocate; and
  - (6) the Juvenile Court.
- (c) The Juvenile Case Coordinator shall provide regularly updated copies of the directory of services to:
- (1) the Juvenile Court;
  - (2) the Juvenile Presenting Officer;
  - (3) the Juvenile Advocate;
  - (4) tribal law enforcement;
  - (5) all persons appearing before the Juvenile Court as guardians *ad litem*; and
  - (6) any tribal agencies or departments providing or coordinating services to children and families.
- (d) Within thirty (30) days of the enactment of the provisions herein by [the tribal legislative body], the Juvenile Court shall enter a written order:
- (1) directing the Juvenile Case Coordinator to compile the directory of services, and to furnish copies thereof as required by subsection (c), within a period not to exceed sixty (60) days from the enactment of the provisions herein; and
  - (2) establishing a schedule for maintaining and updating the directory of services, allowing for a period not to exceed one (1) year between updates.

#### **1.06.130 Child Welfare Referral**

If there is reason to believe that a child who is the subject of any proceedings conducted pursuant to the provisions of this title may be abused or neglected, the Juvenile Court shall direct the Juvenile Case Coordinator to request that the tribe's child welfare agency review the underlying facts of the case and conduct any further investigation which may be required.

#### **§ 1.06.110 – CONTINUED**

† On the issue of funding for tribal justice systems, see Attorney General's Advisory Committee on American Indian and Alaska Native Children Exposed to Violence, *Ending Violence so Children Can Thrive* 52-53 (November 2014):

"The U.S. Department of the Interior (DOI) through the Bureau of Indian Affairs (BIA) provides limited funding for tribal court systems, but the funding level is far too low and the BIA has historically denied any tribal law enforcement and tribal court funding to tribes in jurisdictions . . . where congressionally authorized concurrent state jurisdiction has been established. Furthermore, efforts to fund tribal justice systems such as the Indian Tribal Justice Act of 1993 . . . have repeatedly *authorized* increased tribal court funding, but the long promised funding has never materialized in the form of actual *appropriations*.

"Since the late 1990s, the U.S. Department of Justice (DOJ) has also become a significant additional federal source of tribal justice funding. Tribes have utilized DOJ grant funding to enhance various and diverse aspects of their tribal justice systems, from the enhancement of tribal codes, to the implementation of Juvenile Healing to Wellness Courts . . . to the design of unique tribal youth programs. While these grants have offered immense support, they are a far cry from the consistent, tribally driven approach that is needed in Indian country."

#### **§ 1.06.110(a)(14)**

For a discussion of efforts to develop systems of care for children's mental health in tribal communities, including a summary of strengths and challenges "common to the tribal . . . development process," see National Indian Child Welfare Association, *Lessons Learned: Observations and Reflections on 20 Years of Tribal Systems of Care* (September 2015).

## **1.07 RULES AND PROCEDURES**

### **1.07.110 Rules – Generally**

Proceedings before the Juvenile Court shall be governed by the rules of evidence and procedure which govern proceedings before the Tribal Court, to the extent that such rules are not in conflict with the provisions of this title.

### **1.07.130 Calculation of Time Limits**

- (a) Subject to the provisions of subsection (b), all time limits set forth in the provisions of this title shall be measured in calendar days, inclusive of weekends and holidays, unless otherwise specified.
- (b) If, under the provisions of this title, the time limit for any action would otherwise expire on a weekend or holiday, the time limit for such action shall be extended to the next business day.

### **1.07.150 Findings by the Juvenile Court**

Wherever the Juvenile Court is required to make findings under the provisions of this title, and the standard of proof for such findings is not specified under the provisions of this title or other applicable law, the standard of proof for such findings shall be a preponderance of the evidence.

### **1.07.170 Hearings – Scheduling**

All hearings conducted pursuant to the provisions of this title shall be closed to the public, and shall be scheduled, to the extent possible:

- (a) on a calendar or in a location separate from hearings before the Tribal Court;
- (b) so as to assign the highest priority to cases in which the child is detained in a secure juvenile detention facility;
- (c) outside of school hours; and
- (d) so as to accommodate the work schedule of the child's parent, guardian or custodian.

### **1.07.190 Hearings – Continuances**

- (a) The time limit within which any hearing is required to be held under the provisions of this title may be extended only if the Juvenile Court grants a continuance pursuant to the provisions of this section.
- (b) The Juvenile Court shall grant a continuance only upon a showing of good cause and only for that period of time shown to be necessary by the moving party.



- (c) Whenever the Juvenile Court grants a continuance, it shall enter the facts which require the continuance into the court record.
- (d) If a party makes no objection to a continuance, the absence of such an objection shall be deemed consent to the continuance.
- (e) If the child is detained in a secure juvenile detention facility, no continuance may be granted without the child's consent.

#### **1.07.210 No Derivative Proceedings**

- (a) Except as provided in subsections (b) and (c), and other provisions of [the tribal code] notwithstanding, the fact that a child has violated an order of the Juvenile Court shall not be the basis for subjecting the child to:
  - (1) punitive sanctions;
  - (2) charges of delinquency; or
  - (3) a finding of contempt.
- (b) Where the violation consists of an alleged act which would constitute a delinquent act in the absence of the order violated, the alleged act may be the basis for a delinquency petition filed in accordance with the provisions of Chapter 2 of this title.
- (c) Where the child is alleged to have violated a no-contact or protection order, and the violation of such an order would constitute a violation of [specific provision(s) of the criminal code], the alleged violation may be the basis for a delinquency petition filed in accordance with the provisions of Chapter 2 of this title.

#### **1.07.230 Use of Disposition and Evidence in Other Proceedings**

Neither the adjudication nor disposition of any child in accordance with the provisions of this title, nor any evidence admitted in a hearing before the Juvenile Court, shall be admissible as evidence against the child in any proceeding in another court, including the Tribal Court.

#### **§ 1.07.210**

This section has been drafted in keeping with two principal objectives of the Model Code: first, to ensure that juvenile court proceedings (including delinquency proceedings) are restorative rather than punitive; and second, to address the needs of tribal children and their communities while minimizing youth involvement in the juvenile justice system.

While subsection (a)(2) bars delinquency charges based on the violation of a court order, subsection (b) is included to ensure that the child may still be held accountable for otherwise delinquent acts.

Meanwhile, if the tribal code includes specific provisions making the violation of a no-contact or protection order a crime, the exception in subsection (c) allows the violation of such orders to be the basis for delinquency charges as well.

Note, however, that the Juvenile Court may generally modify its orders, or take other remedial actions, when those orders fail to accomplish their intended purposes. See, e.g., § 2.03.110(a)(2) (custody orders based on violation of conditions of release or disposition orders); § 2.04.210 (modification of conditions of release and review of the need for detention based on violation of conditions of release); § 2.12.310 (modification of disposition orders) and § 2.12.330(a) (motion for modification based on violation of disposition orders).

If the Juvenile Court enters orders intended to protect the child or the community, for instance, and the child violates those orders, the Juvenile Court may find that more restrictive orders are necessary – not to punish the child for noncompliance, but to accomplish the purposes of the original orders.

#### **§ 1.07.230**

The Model Code has been drafted to maintain a clear and rigorous distinction between juvenile and criminal proceedings, and to ensure that juvenile proceedings are restorative rather than punitive in nature.

Allowing evidence and findings from Juvenile Court proceedings to be used against the child in other proceedings would undermine both of these objectives, and this section therefore prohibits any such use.

## **1.08 SUMMONS, NOTICE AND SERVICE**

### **1.08.110 Summons**

- (a) Upon the filing of a delinquency petition, a child-in-need-of-services petition or a truancy petition under the provisions of this title, the Juvenile Court shall issue a written summons, to be served in accordance with the provisions § 1.08.150, to:
  - (1) the child,
  - (2) the child's parent, guardian or custodian; and
  - (3) any other person whose presence the Juvenile Court deems necessary for the initial hearing.
- (b) The summons issued under subsection (a) shall:
  - (1) contain the name of the court, the title of the proceedings, and the date, time, and location of the initial hearing;
  - (2) advise the parties of their rights under the provisions of this title; and
  - (3) be accompanied by a copy of the delinquency petition.
- (c) The Juvenile Court may endorse upon the summons an order directing the child's parent, guardian or custodian, to bring the child before the Juvenile Court.
- (d) Where counsel has not already been appointed or retained to represent the child, a copy of the summons shall be served upon the Juvenile Advocate in accordance with the provisions of § 1.08.150.

### **1.08.130 Notice of Hearings**

Unless the provisions of this title specify otherwise, notice of any hearing conducted pursuant to the provisions of this title shall be served on the child, the child's parent, guardian or custodian, counsel for the child, and any other person the Juvenile Court deems necessary for the hearing, at least five (5) days prior to the hearing, in accordance with the provisions of § 1.08.150.

### **1.08.150 Summons or Other Notice – Service**

- (a) Whenever notice of any hearing is required under the provisions of this title, such notice shall be delivered:
  - (1) personally, by a law enforcement officer or an officer of the Juvenile Court;
  - (2) by registered or certified mail, with the return receipt to be signed only by the addressee, in which case service shall be deemed effective upon delivery; or

- (3) electronically, in accordance with the provisions of § 1.08.170.
- (b) If notice cannot be delivered by one of the means authorized in subsection (a), it may be delivered by regular first-class mail, in which case service shall be deemed effective on the third day after mailing.
- (c) Counsel for any represented party shall be served, in accordance with the provisions of this section, with a copy of any notice required under the provisions of this title.
- (d) Where counsel has not already been appointed or retained to represent the child, the written notice to counsel required by subsection (c) shall be served on the Juvenile Advocate.

#### **1.08.170 Electronic Service and Filing**

- (a) The Juvenile Court may adopt rules permitting the parties to file motions, pleadings, and other documents by e-mail, facsimile, or other electronic means.
- (b) Service of any notice or filing upon a party may be accomplished by e-mail, facsimile, or other electronic means, if that party has filed written notice in the Juvenile Court consenting to service by such means.
- (c) A party may withdraw consent to electronic service by written notice, filed in the Juvenile Court and served upon the other parties in accordance with the provisions of § 1.08.150.
- (d) Electronic service or filing under the provisions of this section shall be deemed effective on the business day following its electronic transmission, unless rules adopted and published by the Juvenile Court provide otherwise.
- (e) Electronic service or filing by any party under the provisions of this section shall be reasonably calculated to comply with the provisions of § 1.04.210.
- (f) The written notice required under subsection (b) shall include an affirmation that the consenting party has taken appropriate measures to ensure the confidentiality of electronic notices or filings to be received by that party.
- (g) Safeguards required for compliance with subsections (e) and (f) shall include:
  - (1) restricting, to the extent necessary for compliance with the provisions of § 1.04.210, access to e-mail accounts, fax machines, or other accounts, hardware or software within the party's control and used by the party to send or receive electronic notice or service;
  - (2) securing access to such accounts, hardware or software by the use of passwords, security codes, or other security

measures reasonably calculated to ensure the confidentiality of electronic notices or filings to be sent or received by the party;

- (3) reasonable measures to ensure the confidentiality of any printed, archival, backup, or other electronic or hard copies of such notices or filings shall be likewise protected;
- (4) any other appropriate measures or procedures which may be required under the circumstances.

#### **1.08.190 Service – Waiver**

- (a) Service may be waived by any person by written stipulation or by voluntary appearance before the Juvenile Court.
- (b) The child may waive service only if the child has consulted with counsel and the Juvenile Court, after personally addressing the child and counsel for the child, finds such waiver to be knowing, voluntary, and in the child’s best interests.

#### **1.08.210 Failure to Appear – Investigation and Recommendation**

In all proceedings conducted pursuant to the provisions of this title, if the child or the child’s parent, guardian or custodian fails to appear before the Juvenile Court after being so ordered, the Juvenile Case Coordinator shall:

- (a) promptly investigate the reasons for the failure to appear;
- (b) where appropriate, provide the child and the child’s parent, guardian or custodian with information and referrals to social, community, or tribal services or resources which may be appropriate for addressing factors contributing to the failure to appear; and
- (c) make appropriate recommendations to the Juvenile Court, in keeping with the provisions of this title.

#### **§ 1.08.210(b)**

Regarding efforts to engage parents in juvenile justice proceedings, see the comments on § 1.05.110.

Information and referrals provided pursuant to this subsection might include: general information about the functioning of the juvenile justice system; clarification of the purpose of particular hearings; information emphasizing the importance of parental involvement, and the role of parents, in the juvenile justice system; and referrals, information, or support to address transportation, child care, or other family needs.

#### **§ 1.08.210(c)**

Each chapter of the Model Code includes separate provisions governing failures to appear, because the options available to the Juvenile Court vary depending on the nature of the proceedings.

Secure detention, for example, is permitted only in delinquency cases (see § 1.09.170(a) and the comments thereon), and the Model Code includes no provisions for placement outside the home in truancy cases.

Accordingly, recommendations made pursuant to this subsection should be consistent with the provisions of § 2.01.210 in delinquency cases, § 3.01.150 in child-in-need-of-services cases, and § 4.02.130 in truancy cases.

## **1.09 CUSTODY, DETENTION AND RELEASE**

### **§ 1.09.130(b)(2)**

Regarding the definition of “extended family,” see the comments on § 1.02.110(f).

#### **1.09.110 Notification of Juvenile Case Coordinator**

Whenever a child is taken into custody or temporary custody pursuant to the provisions of this title, the law enforcement officer taking the child into custody or temporary custody shall notify the Juvenile Case Coordinator, in writing, of:

- (a) the date, time, and circumstances of the law enforcement officer’s contact with the child;
- (b) the reason the child was taken into custody;
- (c) to whom the child was released, or where the child was placed; and
- (d) any services or resources to which the law enforcement officer referred the child’s parent, guardian or custodian in accordance with the provisions of this title.

#### **1.09.130 Notification of Parent, Guardian or Custodian**

- (a) Whenever a child taken into custody or temporary custody pursuant to the provisions of this title is not immediately released to the child’s parent, guardian or custodian, the law enforcement officer taking the child into custody or temporary custody shall immediately notify the child's parent, guardian or custodian of:
  - (1) the reason the child was taken into custody or temporary custody; and
  - (2) the location where the child has been placed.
- (b) This section shall be construed to require:
  - (1) all reasonable efforts to notify the child’s parent, guardian, or custodian in accordance with the provisions of subsection (a); and
  - (2) if the child's parent, guardian or custodian cannot be notified, all reasonable efforts to notify an adult member of the child’s extended family.
- (c) For the purposes of this section, “reasonable efforts” shall include telephone and personal contacts at the home, place of employment, or other locations the person to be notified is known to frequent.

### 1.09.150 Release to Parent, Guardian or Custodian – Alternatives

Where the provisions of this title permit or require the release of a child to the child's parent, guardian or custodian, the child may instead be:

- (a) released to a relative or other responsible adult, with the consent of the child's parent, guardian or custodian; or
- (b) delivered to the Juvenile Case Coordinator, a juvenile residential care facility, or an appropriate service agency until the child's parent, guardian or custodian can be notified.

### 1.09.170 Restrictions on Detention and Placement

In no case shall a child be:

- (a) detained in a secure juvenile detention facility, unless such detention is necessary and authorized under § 2.04.130 of this title;
- (b) detained in a jail, adult lock-up or other adult detention facility;
- (c) subject for any reason to solitary confinement; or
- (d) detained in a secure juvenile detention facility or subject to other out-of-home-placement for any of the following reasons:
  - (1) to treat or rehabilitate the child prior to adjudication;
  - (2) to punish the child or to satisfy demands by a victim, the police, or the community;
  - (3) to allow the child's parent, guardian or custodian to avoid his or her legal responsibilities;
  - (4) to permit more convenient administrative access to the child; or
  - (5) to facilitate interrogation or investigation.

### 1.09.190 Limitations on Physical Restraints

- (a) Handcuffs, shackles, chains, irons, straitjackets, or similar restraints shall not be used on a child during any Juvenile Court proceedings, and must be removed prior to the child being brought into the courtroom, unless the Juvenile Court finds that:
  - (1) no less restrictive alternatives, such as the presence of law enforcement officers, bailiffs or other court personnel, will suffice; and
  - (2) such restraints are necessary:
    - (A) to avert a substantial risk to the health, welfare, person or property of the child or others; or

### § 1.09.170(a)

The Model Code treats secure detention as a last resort – acceptable only in those cases where it is strictly necessary to ensure the safety of the child or the community – on the grounds that it is harmful to children, is not an effective deterrent to risky or delinquent behavior, and can actually increase recidivism rates among juveniles.

For a discussion of these concerns, including the “profoundly negative impact” of detention on children, see Barry Holman & Jason Zidenberg, Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (2006).

It should also be noted that, in keeping with the provisions of the Juvenile Justice and Delinquency Prevention Act (JJDP), 42 U.S.C. § 5633(a)(11), the Model Code does not permit children to be detained in secure facilities except in delinquency proceedings; and while the JJDP makes an exception for status offenders who have violated a “valid court order,” 42 U.S.C. § 5633(a)(11)(A)(ii), the Model Code does not include such an exception.

### § 1.09.170(b)

The Juvenile Justice and Delinquency Prevention Act (JJDP) would allow juveniles to be detained in adult facilities only in very limited circumstances, for very limited periods of time, and only where “such juveniles do not have contact with adult inmates.” 42 U.S.C. § 5633(a)(13).

The Model Code does not allow for the detention of children in adult facilities under any circumstances, and implementing tribes that wish to create exceptions to this rule are strongly encouraged to adopt restrictions at least as rigorous as those found in the JJDP.

### § 1.09.170(d)

This subsection is adapted from IJA-ABA Joint Commission on Juvenile Justice Standards, *Standards Relating to Interim Status* 3.3 (1979).

### § 1.09.190

This section has been adapted from model legislation put forth by the National Juvenile Defender Center (NJDC).

For an extensive discussion of the risks posed by physical restraint, including the ways in which this practice “unnecessarily humiliates, stigmatizes, and traumatizes young people,” see the numerous resources compiled by the NJDC.

- (B) because there is a substantial risk that the child may flee from the courtroom.
- (b) Prior to authorizing the use of restraints in accordance with the provisions of subsection(a), the Juvenile Court shall provide the child an opportunity to be heard through counsel.
  - (c) Upon authorizing the use of restraints in accordance with the provisions of subsection(a), the Juvenile Court shall enter written findings of fact in support of its decision.
  - (d) If the Juvenile Court finds that restraints are necessary only because there is a substantial risk that the child may flee from the courtroom, the Juvenile Court may only authorize the use of leg restraints.
  - (e) Any restraints authorized by the Juvenile Court shall allow the child sufficient movement of his or her hands to read and handle documents and writings necessary for the hearing.
  - (f) Under no circumstances shall a child be restrained to a stationary object or another person.

## **1.10 APPEALS**

### **1.10.110 Right to Appeal**

- (a) Subject to the limitation set forth in subsection (b), any party to any proceedings conducted pursuant to the provisions of this title may appeal from:
  - (1) any final order of the Juvenile Court, including but not limited to all disposition orders; and
  - (2) a finding that the child committed a delinquent act, is a child in need of services or is a truant.
- (b) The Tribe shall not be permitted to appeal an order dismissing a delinquency petition in accordance with the provisions of § 2.10.290(b).

### **1.10.130 Rules in Appellate Proceedings**

Appeals from the Juvenile Court shall be conducted in accordance with the appellate rules governing appeals from the Tribal Court, to the extent that:

- (a) such rules are not in conflict with the provisions of this title;
- (b) the time limits imposed by such rules, when applied in conjunction with the provisions of this title, do not unduly burden the right to appeal.

### **1.10.150 Time Limit for Appeal**

Written notice of the appeal shall be filed within fourteen (14) days after the entry of the final order or finding of the Juvenile Court.

### **1.10.170 Record of Proceedings**

- (a) Within three (3) business days of the filing of the notice of appeal, a record of the proceedings shall be made available to the child, the child's parent, guardian or custodian, and counsel for the child.
- (b) The record of the proceedings shall be provided without cost, except that the costs of any transcription services shall be payable by the party seeking the appeal.

### **1.10.190 Stay on Appeal**

The Juvenile Court shall stay any order from which a party has filed written notice of appeal in accordance with the provisions of § 1.10.150, unless the Juvenile Court finds, after consideration of any reasonable alternatives, that enforcement of the order is necessary to avert a substantial risk to the health, welfare, person or property of the child or others.