MODEL INDIAN JUVENILE CODE

2016 Revision

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MODEL INDIAN JUVENILE CODE

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CENTER OF INDIGENOUS RESEARCH AND JUSTICE

The Center of Indigenous Research & Justice (CIRJ) was created in 2013 to carry on work started at the Native American Law Center (NALC) at the University of Washington School of Law. CIRJ has a three part mission: first, to provide direct legal representation to low-income Native American clients in tribal courts in Washington State; second, to provide training and other resources to individuals and agencies advocating for low-income Native American clients in tribal courts; and finally, to conduct and to help others conduct research on health issues increasing the likelihood that Native Americans will become court-involved, or reducing their chances of being successful once they do. The Model Indian Juvenile Code (2016 Revision) has been adapted from the Model Tribal Juvenile Code currently maintained by CIRJ, and originally developed at NALC with funding from the John D. and Catherine T. MacArthur Foundation under its Model for Change initiative.

ACKNOWLEDGMENTS

The development of the Model Tribal Juvenile Code was made possible by funding from the John D. and Catherine T. MacArthur Foundation under its Model for Change initiative, "a multi-state initiative working to guide and accelerate advances to make juvenile justice systems more fair, effective, rational and developmentally appropriate." We are indebted to the Foundation, and especially Laurie Garduque, Director of Justice Reform, for their generous support and vision.

We would also like to acknowledge the National Indian Justice Center, whose 1986 Model Indian Juvenile Code served as a starting point for the development of the Model Tribal Juvenile Code, and the Juvenile Law Committee of the Young Lawyers Division of the State Bar of Georgia, whose comprehensive Juvenile Code Revision Project helped shape early drafts of the Model Tribal Juvenile Code.

INTRODUCTION

In 1986, Congress passed Public Law 99-570, Title IV, § 4221 (codified at 25. U.S.C. § 2454), which required the Secretary of the Interior to:

> provide for the development of a Model Indian Juvenile Code which shall be consistent with the Juvenile Justice and Delinquency Prevention Act of 1974 and which shall include provisions relating to the disposition of cases involving Indian youth arrested or detained by Bureau of Indian Affairs or tribal law enforcement personnel for alcohol or drug related offenses.

Soon after, and in keeping with the further requirement that "[t]he development of such model code shall be accomplished in cooperation with Indian organizations having an expertise or knowledge in the field of law enforcement and judicial procedure and in consultation with Indian tribes," the first Model Indian Juvenile Code was created by the National Indian Justice Center.

Since the creation of the original Model Indian Juvenile Code, much has changed in the field of juvenile justice. In recent years, research has shown that adolescent brains develop later in life than previously thought, and common approaches to juvenile justice in the United States are often ineffective or, even worse, may actually increase juvenile delinquency rates. Researchers, youth advocates, and policy makers have therefore urged a move away from punitive models of juvenile justice, in favor of restorative approaches that seek to maintain accountability and community safety while focusing on the rehabilitation of children who have committed delinquent acts.

The Model Code reflects a core commitment to helping tribes respond to the needs of their children, their families, and their communities. Over many years of work in Indian country, the authors and contributors have heard from tribal judges and attorneys, and have seen for themselves, that too many tribal juvenile codes are nearly indistinguishable from adult criminal codes. Many of these codes rely heavily on fines and detention, and lack provisions for diverting children out of the juvenile justice system and into rehabilitative services. Stakeholders representing every facet of tribal juvenile justice systems have voiced frustration with these limitations, and have called for the development of more comprehensive, flexible, and effective juvenile codes.

The Model Code has been drafted to address these concerns, and its development has been has been guided by several key principles and objectives, including a consistent and rigorous preference for alternatives to secure detention. Research has shown that detention is directly harmful to children, is not an effective deterrent to risky or delinquent behavior, and can actually increase recidivism rates among juveniles. Under the Model Code, therefore, secure detention is treated as a last resort in delinquency cases and – consistent with the core protections of the Juvenile Justice and Delinquency Prevention Act of 1974, which include the deinstitutionalization of status offenders – is not an option in either child-in-need-of-services or truancy proceedings. In place of punitive sanctions such as fines and detention, the Model Code encourages rehabilitative and restorative measures including the provision of services for children and families, favors informal and community-based responses rather than formal proceedings in juvenile court, and includes opportunities for diversion at every stage of such proceedings. The provisions of the Model Code also include rigorous safeguards for the fundamental rights of children and their parents, and chief among those safeguards is the requirement that children in juvenile justice proceedings be represented by counsel. This requirement is not only vital to assuring

fundamental fairness, but is calculated to ensure the efficiency of the juvenile justice system and to promote positive outcomes which balance the needs of children with those of their communities.

It should be emphasized that the Model Code is an attempt to provide a detailed statutory framework for tribal juvenile justice systems, with the expectation that individual tribes, rather than adopting its provisions verbatim, will adapt them according to their unique needs and priorities. Similarly, while the Model Code includes general provisions allowing for the incorporation of traditional and customary practices, and for diverting matters out of judicial proceedings and into traditional forums, respect for the diversity of tribal communities requires that the adoption of more specific provisions be left to implementing tribes.

USER STATEMENT

The 1986 Model Indian Juvenile Code (hereinafter the "Model Code") was promulgated pursuant to 25 U.S.C. § 2454, to provide guidance, support and direction to tribal communities and their juvenile courts. This revision of the Model Code is general in scope, and in order to have full force and effect will need to be adapted and implemented in concert with controlling tribal constitutional, statutory and traditional law. The Model Code is intended to assist in the creation or revision of juvenile codes by tribal governments; there is no expectation on the part of the federal government that tribes will adopt the Model Code, and nothing in the provisions of the Model Code, or in the accompanying commentary, should be considered legal advice with respect to specific cases.

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CHAPTER 1

GENERAL PROVISIONS

1.01 PURPOSE

1.01.110 Purpose

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 purpose 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) 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.

(i) 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;

(C) disposition and other orders entered 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(h)

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).

§ 1.02.110(i)

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.

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.

(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.

(j) Juvenile Presenting Officer: The attorney who shall represent the Tribe in all proceedings before the Juvenile Court.

(k) Juvenile Residential Care Facility: Any residential facility, other than a secure juvenile detention facility, operated by a licensed child welfare agency.

(l) 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.

(m) 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.

(n) Secure Juvenile Detention Facility: Any public or private facility which includes construction fixtures designed to physically restrict the movements and activities of children detained therein.

§ 1.02.110(n)

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).

(o) 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.

(p) 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).

Research has 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 troubling prevalence of exposure to violence among children, juvenile courts and professionals who work with children involved in the juvenile justice system should assume 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.

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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

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.

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,

§ 1.04.110(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.

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.

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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;

(4) the child's guardian *ad litem*;

(5) the Juvenile Case Coordinator; and

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§ 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.

§ 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).

(6) the Juvenile Presenting Officer.

(b) 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.

(c) 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.

(d) 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.

(e) 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

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:

(a) 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;

(b) to bring the child before the Juvenile Court when so ordered; and

(c) 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.

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

1.05.170 Guardian *ad Litem* – Appointment

(a) The Juvenile Court shall appoint a guardian *ad litem* whenever:

(1) it appears to the Juvenile Court that the child's parent, guardian or custodian is unable or unwilling fulfill the responsibilities imposed by § 1.05.110;

(2) it appears to the Juvenile Court that the child's parent, guardian or custodian is unable or unwilling to make decisions in the best interests of the child with respect to proceedings under this title;

§ 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 in juvenile proceedings, 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."

See also the comments on § 1.04.110(c), and the references cited therein.

§ 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.

§ 1.05.170

IJA-ABA *Standards Relating to Pretrial Court Proceedings* 6.7 recommends that this appointment "should be made at the earliest feasible time after it appears that representation by a guardian *ad litem* is necessary."

The *Standards* specify that the function of the guardian *ad litem* is "to act toward the juvenile in the proceedings as would a concerned parent," 6.7(C), and that neither "the agent, counsel, or employee of a party to the proceeding" nor "an employee of the court or of the intake agency" should be appointed to this role, 6.7(D).

One effect of the latter prohibition is to prevent counsel for the child from being appointed as the child's guardian *ad litem*. As the commentary to Standard 6.7 acknowledges, "it may be less expensive and cumbersome to have one person represent the juvenile in the dual roles of counsel and guardian *ad litem*, [but] cogent arguments have been presented against dual appointment."

CONTINUED ON FOLLOWING PAGE

(3) the Juvenile Court has, in accordance with the provisions of § 1.05.130(b), excused the child's parent, guardian or custodian from the responsibilities imposed by § 1.05.110; or

(4) the court finds that it is otherwise in the child's best interests to do so.

(b) Neither counsel for the child nor the child's parent, guardian or custodian shall prohibit or impede access to the child by the guardian *ad litem*, provided that the child shall have the right to the presence of counsel during any meeting or conversation with the guardian *ad litem*.

§ 1.05.170 – CONTINUED

Chief among those arguments is that the role of counsel is to advocate for the stated interests of the child – thereby providing the child with an unequivocal voice in the proceedings – while one responsibility of the guardian *ad litem* is to determine and advocate for the child's best interests.

Dual appointment may thereby result in a conflict of interest, and is likely to compromise both the rights of the child and the professional integrity of the individual appointed.

Accordingly, counsel for the child should not be appointed to act as the child's guardian *ad litem*.

§ 1.05.170(b)

While his or her role is to stand in the place of a concerned parent, the fact remains that the guardian *ad litem* is appointed by the Juvenile Court, and will have obligations to both the child and the Juvenile Court which may conflict with the child's stated interests.

In order to fulfill these obligations, the guardian *ad litem* must be allowed to communicate, interact, and establish a trusting relationship with the child.

At the same time, the appointment of a guardian *ad litem* should not be allowed to undermine the child's basic rights and privileges, including the privilege against self-incrimination.

This subsection attempts to balance these potentially conflicting priorities, but there may be other means to accomplish this end. Statements made by the child to the guardian *ad litem* might be protected, for instance, in much the same way as statements made to the Juvenile Case Coordinator under § 2.01.190(c).

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.

† 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."

(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.

1.07 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 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; and

(c) outside of school hours.

1.07.170 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.

1.07.190 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 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 the basis for a delinquency petition filed in accordance with the provisions of Chapter 2 of this title.

1.07.210 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.

§ 1.07.190

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.

§ 1.07.210

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 a child fails to appear before the Juvenile Court after being so ordered, the Juvenile Case Coordinator shall:

(a) promptly investigate the reasons for the child's failure to appear; and

(b) make appropriate recommendations to the Juvenile Court, in keeping with the provisions of this title.

§ 1.08.210

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(b)(1) and the comments thereon), and the Model Code includes no provisions for placement outside the home in truancy cases.

Recommendations made in accordance with the provisions of this section should be consistent with the provisions of § 2.01.210 in delinquency cases, § 3.01.130 in child-in-need-of-services cases, and § 4.02.130 in truancy cases.

1.09 CUSTODY, DETENTION AND RELEASE

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.

§ 1.09.130(b)(2)

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

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 Restraint, Detention and Placement

In no case shall a child be:

(a) placed in shackles;

(b) detained in a secure juvenile detention facility, unless such detention is necessary and authorized under § 2.04.130 of this title;

(c) 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.

§ 1.09.170(b)

The Mode 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 Ziedenberg, Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities* (2006).

§ 1.09.170(b)(1)

In keeping with the provisions of the Juvenile Justice and Delinquency Prevention Act (JJDPA), 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 JJDPA 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)(2)

The Juvenile Justice and Delinquency Prevention Act (JJDPA) 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 JJDPA.

§ 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).

1.10 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.

CHAPTER 2

DELINQUENCY

2.01 RIGHTS, RULES AND PROCEDURES

2.01.110 Right to Counsel

(a) The child shall be represented by counsel at all stages of any proceedings conducted pursuant to the provisions of this chapter.

(b) The child's parent, guardian or custodian shall have the right to be represented by counsel at disposition, and in any proceedings for contempt brought against the child's parent, guardian or custodian pursuant to the provisions of this title.

2.01.130 Hearings – Advisement of Rights

At the commencement of all hearings conducted pursuant to the provisions of this chapter, the Juvenile Court shall advise the child, in language the child will easily understand:

(a) of the nature and purpose of the proceedings;

(b) of the right to counsel;

(c) of the right to remain silent, and that any statement made by the child may be considered by the Juvenile Court as evidence that the child committed a delinquent act;

(d) of the right to appeal any final order of the Juvenile Court.

2.01.150 Rules in Delinquency Proceedings

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

2.01.170 Jeopardy

In all proceedings conducted pursuant to the provisions of this chapter, jeopardy begins when:

(a) the court accepts a valid admission in accordance with the provisions of § 2.10.230; or

(b) the first witness is sworn at an adjudication hearing conducted pursuant to the provisions of § 2.10.270.

2.01.190 Admissibility of Evidence

In any proceedings on a delinquency petition brought under the provisions of this chapter:

(a) no out-of-court statement which would be inadmissible in criminal proceedings before the Tribal Court shall be admissible to establish the allegations of the delinquency petition;

§ 2.01.110(b)

The Model Code does not require the appointment of counsel for parents, as it does for children, but implementing tribes with sufficient resources may wish to consider the option.

This subsection limits parents' right to counsel to those stages of the proceedings that most directly implicate their legal interests; compare and contrast IJA-ABA *Standards Relating to Pretrial Court Proceedings* 6.5 and 6.8, which would allow parents to be represented by counsel throughout delinquency proceedings, but would limit their participation prior to disposition.

Regarding the status of parents in juvenile proceedings under the Model Code, see also § 1.04.110(c) and the comments thereon.

§ 2.01.130

The use of "language the child will easily understand" is required whenever the Juvenile Court is to address or advise the child. See, e.g., § 2.08.130 (advisement at initial hearing); § 2.10.170 (conduct of adjudication hearing); § 2.10.190 (inquiry on proffer of admission); and § 2.12.170 (entry of disposition orders).

TeamChild's *Washington Judicial Colloquies Project: A Guide for Improving Communication and Understanding in Juvenile Court* (2012) may be a useful resource for implementing tribes.

(b) no evidence which would be inadmissible in criminal proceedings before the Tribal Court because such evidence was illegally seized or obtained shall be admissible to establish the allegations of the delinquency petition;

(c) no statement made by the child to the Juvenile Case Coordinator, nor any evidence derived from such a statement, shall be admissible to establish the allegations of the delinquency petition, unless the statement is made after consultation with and in the presence of counsel;

(d) an out-of-court statement by the child shall be insufficient to support a finding that the child committed the acts alleged in the delinquency petition, unless the statement is corroborated by other evidence; and

(e) the fact that a child has at any time been a party to child-in-need-of-services proceedings shall be inadmissible to establish the allegations of the delinquency petition, and any statement made by the child during the pendency of such proceedings shall be treated as a statement made in response to custodial interrogation, and subject to the provisions of § 2.02.150.

2.01.210 Failure to Appear

(a) In all delinquency proceedings conducted pursuant to the provisions of this chapter:

(1) if a child sixteen (16) years of age or older fails to appear before the Juvenile Court after being so ordered:

(A) upon a first or subsequent failure to appear, the Juvenile Court may:

(i) issue a new summons in accordance with the provisions of § 1.08.110 of this title; and

(ii) issue a warning to the child regarding the potential consequences of a subsequent failure to appear;

(B) upon a second or subsequent failure to appear, the Juvenile Court may:

(i) issue a custody order in accordance with the provisions of § 2.03.110; and

(ii) following a hearing on the matter, impose additional or modified conditions of release in accordance with the provisions of § 2.04.170;

(C) upon a third or subsequent failure to appear, the Juvenile Court may conduct a hearing to review the need for detention in accordance with the provisions of §§ 2.04.110, *et seq.*;

§ 2.01.190(c)

This provision has been adapted from IJA-ABA Joint Commission on Juvenile Justice Standards, *Standards Relating to the Juvenile Probation Function* 2.12 (1980), which specifically affirms the privilege against self-incrimination during the sort of preliminary investigation required under §§ 2.05.110, *et seq.*

§ 2.01.190(e)

This provision is intended to safeguard the privilege against self-incrimination by limiting the admissibility of statements made in the course of child-in-need-of-services proceedings, but not to bar otherwise admissible evidence that may emerge in those proceedings.

§ 2.01.210

See § 1.08.210 and the comments thereon.

(2) if a child under sixteen (16) years of age fails to appear before the Juvenile Court after being so ordered:

(A) if the Juvenile Court finds, based on the sworn testimony of the child's parent, guardian or custodian, that the child has willfully refused to appear, the Juvenile Court may proceed in accordance with the provisions of subsection (a)(1); or

(B) in the absence of such a finding, the Juvenile Court may proceed in accordance with the provisions of subsection (a)(3);

(3) if the child's parent, guardian or custodian fails to appear before the Juvenile Court after being so ordered, or fails to bring the child before the Juvenile Court after being so ordered:

(A) upon a first or subsequent failure to appear, the Juvenile Court may:

(i) issue a new summons in accordance with the provisions of § 1.08.110 of this title; and

(ii) issue a warning to the child's parent, guardian or custodian regarding the potential consequences of a subsequent failure to appear;

(B) upon a second or subsequent failure to appear, the Juvenile Court may:

(i) issue a bench warrant, in accordance with the provisions of [the tribal code], directing that the child's parent, guardian or custodian be brought before the Juvenile Court to show cause why they should not be subject to sanctions in accordance with the provisions of this section; and

(ii) absent a showing of good cause for the failure to appear, impose upon the child's parent, guardian or custodian a fine of up to $100 (one hundred dollars);

(C) upon a third or subsequent failure to appear, the Juvenile Court may initiate proceedings for contempt against the child's parent, guardian or custodian in accordance with the provisions of [the tribal code].

(b) The other provisions of this section notwithstanding, whenever it appears from a filed affidavit or sworn testimony before the Juvenile Court that the child has failed to appear as the result of circumstances posing a substantial risk to the health, welfare, person or property of the child or others, the Juvenile Court may:

(1) issue a custody order in accordance with the provisions of § 2.03.110;

(2) following a hearing on the matter, impose additional or modified conditions of release in accordance with the provisions of § 2.04.170; and

(3) conduct a hearing to review the need for detention in accordance with the provisions of §§ 2.04.110, *et seq*.

(c) Other provisions of [the tribal code] notwithstanding, no sanctions other than those authorized by this section shall be sought or imposed for a failure to appear before the Juvenile Court in any proceedings conducted pursuant to the provisions of this chapter.

2.02 INTERROGATION

2.02.110 Interrogation and Custodial Interrogation – Definitions

For the purposes of this chapter:

(a) an interrogation occurs whenever a law enforcement officer or other official asks a child a question, or subjects a child to any words or actions, that the law enforcement officer or other official knows or should know is reasonably likely to elicit an incriminating response; and

(b) a custodial interrogation is any interrogation during which a reasonable person of the child's age and in the child's position would consider himself or herself to be unable to terminate the encounter.

2.02.130 Advisement of Rights

(a) Prior to interrogating a child, the law enforcement officer or other official shall advise the child, in language the child will easily understand:

(1) that the child has the right to remain silent, and anything the child says may be used against the child in court;

(2) that the child has the right to have his or her parent, guardian or custodian present during any questioning;

(3) that the child has the right:

(A) to be represented by counsel;

(B) to consult with counsel prior to any questioning; and

(C) to have counsel present during any questioning.

(b) Prior to initiating or resuming the interrogation of any child, the law enforcement officer or other official shall again advise the child as required by subsection (a):

(1) if there has been any lapse in time since the prior advisement, including but not limited to circumstances in which the interrogation is resumed or reinitiated after ceasing or being interrupted for any reason; or

(2) if the law enforcement officer or other official is not the person who most recently advised the child as required by subsection (a), and:

(A) the law enforcement officer or other official was not present during the prior advisement; or

(B) the child was unaware that the law enforcement officer or other official was present during the prior advisement.

§ 2.02.110(a)

See *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980), defining "interrogation" for the purposes of applying *Miranda v. Arizona*, 384 U.S. 436 (1966).

§ 2.02.110(b)

In support of the "reasonable child" standard adopted herein, see *J. D. B. v. North Carolina*, 564 U.S. ___ (2011) (holding that "a child's age properly informs the *Miranda* custody analysis").

§ 2.02.130(b)

This section has been carefully drafted to require re-advisement in cases where circumstances – such as delays or breaks in questioning, or interactions with multiple law enforcement officers – might confuse, disorient, or distract the child.

2.02.150 Inadmissible Statements and Derivative Evidence

(a) An oral, written, or other statement of a child made as a result of any interrogation shall be inadmissible as evidence against the child in any delinquency or criminal proceedings, unless:

(1) the child was advised in accordance with the provisions of § 2.02.130; and

(2) the child clearly and affirmatively waived his or her rights before being questioned.

(b) An oral, written, or other statement of a child made as a result of a custodial interrogation shall be inadmissible as evidence against the child in any delinquency or criminal proceedings, unless:

(1) the statement is made after consultation with and in the presence of counsel;

(2) an electronic recording is made of the custodial interrogation; and

(3) the recording is accurate and not intentionally altered.

(c) An oral, written, or other statement of a child made as a result of any interrogation prior to or during which the child was subjected to threats or physical punishment shall be inadmissible as evidence against the child in any delinquency or criminal proceedings.

(d) If the Juvenile Court finds that a statement is inadmissible under this section, then any statements or other evidence derived from the inadmissible statement, including subsequent statements made by the child, shall be likewise inadmissible as evidence against the child in any delinquency or criminal proceedings.

2.02.170 Other Statements

(a) The provisions of § 2.02.150 shall not preclude the admission of:

(1) a statement made by the child in open court in any Juvenile Court or Tribal Court proceeding in which the child was represented by counsel;

(2) a spontaneous statement not made in response to interrogation; or

(3) a statement made in response to a question that is:

(A) routinely asked during the processing of a child being taken into custody; and

(B) not a question that the law enforcement officer knows or should know is reasonably likely to elicit an incriminating response.

§ 2.02.150

Miranda v. Arizona, 384 U.S. 436 (1966) makes advisement and waiver prerequisites for admissibility only where the statement was made in response to custodial interrogation; thus, subsection (a) requires advisement and waiver where *Miranda* would not.

Subsection (b), meanwhile, imposes additional prerequisites for admissibility where the statement was made in response to custodial interrogation.

An underlying assumption of this section is that the typical child is inherently more susceptible to coercion than the typical adult, and that more rigorous safeguards are therefore necessary.

(b) The Tribe shall bear the burden of proving by a preponderance of the evidence that a statement falls within one of the exceptions identified in subsection (a).

2.02.190 Factors Relating to Admissibility

Before permitting any child's statement to be introduced as evidence against the child, the Juvenile Court must find that the statement was voluntarily and knowingly made, taking into account these and any other relevant factors:

(a) whether the child had the opportunity to consult with his or her parent, guardian or custodian, or counsel before making the statement;

(b) the child's age, maturity, and level of education;

(c) the child's level of intelligence and mental development; as well as the presence of any cognitive or mental disability or impairment;

(d) the child's physical and mental condition at the time the statement was made;

(e) the length of time the child was detained prior to interrogation, and the length of time the child was interrogated before making the statement;

(f) the environment in which the interrogation took place;

(g) the number of law enforcement officers who conducted or were present during the interrogation, as well as their physical characteristics and demeanor;

(h) any use of deception by the law enforcement officer(s) conducting the interrogation;

(i) whether, either prior to or during the interrogation, the child was held in isolation, deprived of food or sleep, or subjected to other potentially coercive measures.

2.02.210 Electronic Recording – Preservation and Confidentiality

(a) Any electronic recording of any statement made by a child during a custodial interrogation shall be preserved until:

(1) the child's adjudication for any delinquent acts relating to the statement is final, or the initiation of proceedings relating to such delinquent acts is barred by law;

(2) all direct appeals or actions on petitions for the writ of habeas corpus have been exhausted, or the time limit for bringing such appeals or petitions has expired;

(3) the child has been released from any detention, restrictions or other conditions or obligations imposed by the Juvenile

§ 2.02.190

The requirements of this section and § 2.04.150 must both be satisfied in order for a child's statement to be admissible against the child.

Although compliance with the requirements of § 2.04.150 is a prerequisite for admissibility, it is not a sufficient basis for finding that the child's statement was voluntarily and knowingly made.

This section therefore requires the Juvenile Court to consider a number of other factors before making such a finding.

Court in connection with any proceedings relating to the statement; and

(4) a minimum of three (3) years has passed since the original recording was made.

(b) Any electronic recording of any statement made by a child during a custodial interrogation shall be subject to the provisions of § 1.04.210 of this title.

2.03 CUSTODY AND RELEASE

2.03.110 Custody Orders

(a) The Juvenile Court may issue a written order that a law enforcement officer shall take a child into immediate custody if:

(1) the issuance of a custody order is authorized under § 2.01.210; or

(2) the Juvenile Court finds, based on a filed affidavit or sworn testimony before the Juvenile Court, that there is probable cause to believe:

(A) the child has violated conditions of release imposed by the Juvenile Court under § 2.04.170; or

(B) the child has committed a delinquent act or has violated a disposition order entered by the Juvenile Court under § 2.12.230, and:

(i) the conduct, condition or surroundings of the child pose a substantial risk to the health, welfare, person or property of the child or others; or

(ii) there is a substantial risk that the child may leave or be removed from the jurisdiction of the Juvenile Court, or will not be brought before the Juvenile Court, notwithstanding the service of a summons.

(b) A custody order issued in accordance with the provisions of this section shall specify:

(1) that the child is to be brought immediately before the Juvenile Court;

(2) that the child is to be returned to the custody of the child's parent, guardian, or custodian; or

(3) where the child is to be placed, in accordance with the provisions of § 2.04.150, pending a detention hearing to be conducted in accordance with the provisions of §§ 2.04.230, *et seq*.

2.03.130 Taking a Child Into Custody

(a) A law enforcement officer may take a child into custody if:

(1) the Juvenile Court has issued a custody order in accordance with the provisions of § 2.03.110; or

(2) the officer has probable cause to believe the child has committed a delinquent act.

§ 2.03.110(a)(2)

The requirement of probable cause originates in 25 U.S.C. § 1302(a)(2), and is here extended to all of the bases upon which the Juvenile Court might issue a custody order.

(b) A law enforcement officer taking a child into custody pursuant to the provisions of this section shall advise the child as required by § 2.02.130(a):

(1) at the earliest reasonable opportunity; and

(2) whether or not the law enforcement officer intends to interrogate the child.

2.03.150 Release or Delivery from Custody

(a) A law enforcement officer taking a child into custody pursuant to the provisions of § 2.03.130 shall, without unreasonable delay:

(1) if the Juvenile Court has issued a custody order in accordance with the provisions of § 2.03.110, bring the child before the Juvenile Court or place the child as specified in the custody order, and immediately notify the Juvenile Case Coordinator;

(2) if the law enforcement officer determines that no further action is required, release the child to the child's parent, guardian or custodian;

(3) if the law enforcement officer determines that the child should be referred to the Juvenile Case Coordinator as a child in need of services, release the child to the child's parent, guardian or custodian, and submit a request for services in accordance with the provisions of § 3.04.110 of this title; or

(4) if the law enforcement officer determines that the matter should be reviewed by the Juvenile Case Coordinator pursuant to the delinquency provisions of this chapter:

(A) release the child to the child's parent, guardian or custodian upon their promise to bring the child before the Juvenile Court upon the issuance of a summons under § 1.08.110 of this title; or

(B) if the law enforcement officer determines that detention is necessary and authorized under § 2.04.130, deliver the child to the Juvenile Case Coordinator, or place the child in accordance with the provisions of § 2.04.150 and immediately notify the Juvenile Case Coordinator.

(b) If the law enforcement officer has reason to believe the child is in need of medical attention, the law enforcement officer shall deliver the child to a medical facility or otherwise obtain such medical attention for the child before proceeding in accordance with the other provisions of this section.

(c) Upon releasing the child to the child's parent, guardian or custodian, the law enforcement officer shall refer the child's parent, guardian or custodian to any social, community, or tribal services or resources which may be appropriate for addressing the needs of the child and the child's parent, guardian or custodian.

2.03.170 Review and Action by Juvenile Case Coordinator

(a) Upon being notified that a child has been taken into custody pursuant to the provisions of § 2.03.130, and has not been released to the child's parent, guardian or custodian, the Juvenile Case Coordinator shall:

(1) if the Juvenile Court has issued a custody order in accordance with the provisions of § 2.03.110, confirm that the child has been placed as specified in the custody order, and proceed in accordance with the provisions of subsection (c); or

(2) if the Juvenile Court has not issued a custody order in accordance with the provisions of § 2.03.110, immediately review the need for detention under § 2.04.130, and:

(A) if the Juvenile Case Coordinator determines that detention is not necessary and authorized under § 2.04.130, release the child to the child's parent, guardian or custodian upon their promise to bring the child before the Juvenile Court upon the issuance of a summons under § 1.08.110 of this title; or

(B) if the Juvenile Case Coordinator determines that continued detention is necessary and authorized under § 2.04.130, confirm or arrange for the placement of the child in accordance with the provisions of § 2.04.150.

(b) Upon releasing the child to the child's parent, guardian or custodian, the Juvenile Case Coordinator shall refer the child's parent, guardian or custodian to any social, community, or tribal services or resources which may be appropriate for addressing the needs of the child and the child's parent, guardian or custodian.

(c) If the Juvenile Case Coordinator does not release the child to the child's parent, guardian or custodian, the Juvenile Case Coordinator shall immediately:

(1) file written notice in the Juvenile Court of:

(A) the reason, date and time the child was taken into custody;

(B) the location where the child is being detained; and

§ 2.03.150(c)

Participation in services or alternatives to formal processing in response to a law enforcement referral should be strictly voluntary on the part of both the child and the child's parents.

Note, however, that a law enforcement officer's recommendation in favor of diversion is a factor to be considered by the Juvenile Case Coordinator under § 2.05.230(g), and a law enforcement officer may submit a formal request for services under §3.04.110.

§ 2.03.170(a)(2)(A)

Implementing tribes will need to consider the specific procedures and mechanisms necessary for the Juvenile Case Coordinator to secure the child's release under this provision.

If a tribe operates its own juvenile detention facility, for instance, it may be possible for the Juvenile Case Coordinator to arrange for the child's release without the need for a court order.

Where a court order is required, procedures for obtaining such an order without the need for a formal detention hearing will expedite the child's release in cases where the Juvenile Case Coordinator determines that detention is unnecessary or inappropriate.

§ 2.03.170(b)

In many cases, this referral will orient the child and parents toward appropriate services prior to a diversion agreement or adjudicative proceedings, and action by the child and parents at this stage may have a bearing on the recommendation of the Juvenile Case Coordinator under § 2.05.210.

§ 2.03.170(c)

IJA-ABA *Standards Relating to Interim Status* 6.5 would also require the intake official to advise the child of his or her rights.

That requirement is omitted here on the grounds that advisement is already required when the child is taken into custody, § 2.03.130(b), and prior to any interrogation, § 2.02.130, and that the admissibility of the child's statements to the Juvenile Case Coordinator is limited under § 2.01.190(c).

(C) the need to conduct a detention hearing in accordance with the provisions of § 2.04.230;

(2) provide copies of the written notice required under subsection (2) to the child, the child's parent, guardian or custodian, the Juvenile Presenting Officer, and counsel for the child; and

(3) inform the child of the actions taken by the Juvenile Case Coordinator to comply with the requirements of this subsection.

(d) Where counsel has not already been appointed or retained to represent the child, a copy of the written notice required under subsection (c)(2) shall be provided to the Juvenile Advocate.

§ 2.03.170(c)(3)

The requirement that the Juvenile Case Coordinator "inform the child of the actions taken . . . to comply with the requirements of this subsection" is adapted from IJA-ABA *Standards Relating to Interim Status* 6.5, which require the "intake official" to inform the child "that his or her parent will be contacted immediately to aid in effecting release," and to "explain the basis for detention, the interim status alternatives that are available, and the right to a prompt release hearing."

§ 2.03.170(d)

IJA-ABA *Standards Relating to Interim Status* 6.5 similarly requires the "intake official" to contact a public defender to represent the child, unless the child already has an attorney.

2.04 DETENTION AND CONDITIONS OF RELEASE

2.04.010 Adoption and Safe Families Act Compliance

(a) Before entering an order authorizing detention, the Juvenile Court shall determine, on a case-by-case basis:

(1) whether continuation in the home of the child's parent, guardian or custodian is contrary to the child's welfare; and

(2) whether there are available services that would prevent or eliminate the need for detention.

(b) If the child can be returned to the custody of the child's parent, guardian or custodian through the provision of services to prevent or eliminate the need for removal, the Juvenile Court shall release the child to his or her parent, guardian or custodian, and order that those services be provided.

(c) If the child cannot be returned to the custody of the child's parent, guardian or custodian, the Juvenile Case Coordinator shall, as soon as possible, provide referrals for services to enable the child's parent, guardian, or custodian to obtain any assistance that may be needed to effectively provide the care and control necessary for the child to return to the home.

(d) Upon entering an order authorizing detention, and in no event later than sixty (60) days following the child's removal from the home of the child's parent, guardian or custodian, the Juvenile Court shall determine whether reasonable efforts have been made to safely maintain the child in the home.

(e) Upon making the determinations required by this section, the Juvenile Court shall enter written findings of fact referencing any and all evidence relied upon in reaching its decision.

2.04.110 Least Restrictive Alternatives

(a) When a child is detained or subject to conditional or supervised release pursuant to the provisions of this chapter, the Juvenile Court shall order only the least restrictive conditions or placement consistent with:

(1) the best interests of the child; and

(2) the safety of the community.

(b) Whenever the Juvenile Court orders the detention of a child, or enters an order imposing conditions upon the child's release, the order shall include a statement of the Juvenile Court's reasons for rejecting less restrictive alternatives.

§ 2.04.010

This section is included to facilitate compliance with the requirements of Title IV-E of the Social Security Act, 42 U.S.C. §§ 670, *et seq*., by implementing tribes seeking foster care reimbursements in cases where the removal of the child from his or her home occurs in the context of delinquency proceedings.

Implementing tribes who do not anticipate seeking such reimbursements may wish to omit this section in the interest of clarity and simplicity, while those who do are encouraged to seek further guidance to ensure compliance with the requirements of Title IV-E.

See, e.g., Trope, *Title IV-E: Helping Tribes Meet the Legal Requirements* (March 2010).

§ 2.04.010(e)

Findings of fact under this section should be entered for the limited purpose of meeting the requirements of Title IV-E, and should not amount to a *de facto* adjudication on the issue of whether the child has committed a delinquent act.

2.04.130 Detention – Grounds

A child shall not be detained unless:

(a) there is probable cause to believe the child has committed a delinquent act;

(b) no less restrictive alternatives will suffice; and

(c) there is clear and convincing evidence that the child should be detained because:

(1) such detention is necessary to avert a substantial risk to the health, welfare, person or property of the child or others; or

(2) there is a substantial risk that the child may leave or be removed from the jurisdiction of the Juvenile Court.

2.04.150 Place of Detention

(a) A child alleged to have committed a delinquent act may be detained only in:

(1) a licensed foster home or a home approved by the Juvenile Court, which may be a public or private home or the home of a noncustodial parent or a relative;

(2) a juvenile residential care facility;

(3) a secure juvenile detention facility designated by the Juvenile Court; or

(4) a residential treatment facility, detoxification facility, or halfway house, if there is evidence of recent or ongoing alcohol or substance abuse by the child, and:

(A) there is clear and convincing evidence that such placement is necessary to avert a substantial risk to the health or welfare of the child; or

(B) detention is otherwise necessary and authorized under § 2.04.130, and the child requests or agrees to such placement in lieu of a more restrictive placement.

(b) Detention in a secure juvenile detention facility shall in all cases be subject to the time limits set forth in § 2.12.250.

2.04.170 Conditions of Release

(a) Before ordering that a child be detained, the Juvenile Court shall consider, and may impose, conditions of release such as:

(1) a court-imposed curfew;

(2) a requirement that the child or the child's parent, guardian or custodian report to the Juvenile Case Coordinator at specified intervals;

§ 2.04.130

No provisions of the Model Code currently require a formal risk assessment.

Reasons for this omission include lingering uncertainty regarding the development, scope, effectiveness, and selection of such instruments (see, e.g., Christopher Baird, National Council on Crime and Delinquency, *A Question of Evidence: A Critique of Risk Assessment Models Used in the Justice System* (February 2009)), as well as concerns about their cultural validity and the costs associated with their implementation.

There are a multitude of screening tools available, and while some (such as the Washington State Court Juvenile Assessment) may be publicly available, many are proprietary instruments and must be purchased.

For information regarding the effective implementation of risk assessment tools in juvenile justice systems, see Gina M. Vincent et al., *Risk Assessment in Juvenile Justice: A Guidebook for Implementation* (2012).

(3) an order requiring the child to remain at home at all times when the child is not:

(A) in the presence of the child's parent, guardian or custodian;

(B) attending school or participating in other activities approved by the Juvenile Court; or

(C) legally required to be elsewhere;

(4) electronic home monitoring or similar means of monitoring the child's whereabouts;

(5) community supervision; and

(6) other types of conditional or supervised release.

(b) Conditions of release imposed by the Juvenile Court in accordance with the provisions of this section shall not include bail, but may include:

(1) law-abiding behavior, including refraining from using or possessing alcohol or non-prescribed drugs;

(2) regular school attendance or continuation in a course of study designed to lead to achieving a high school diploma or the equivalent;

(3) compliance with a statutory curfew;

(4) compliance with orders prohibiting or restricting contact between the child and the alleged victim or other persons or locations connected with the alleged delinquent act;

(5) other reasonable conditions calculated to ensure the child's appearance at future hearings and to protect the safety of the child and the community.

2.04.190 No-Contact Orders – Special Considerations

(a) An order prohibiting or restricting contact between a child and a member of the child's immediate or extended family shall be narrowly tailored, and the scope and terms of such an order shall be appropriately limited, to protect the safety of the child and the child's family.

(b) Before entering such an order, the Juvenile Court shall carefully consider:

(1) the nature of the relationship between the child and the family member;

(2) the expressed concerns and preferences of the family member;

§ 2.04.170(b)

The Model Code prohibits bail in juvenile cases on the grounds that:

(1) children should be detained only when absolutely necessary, and their ability to post bail should not be a factor in this determination;

(2) bail is unlikely to have the same incentive effect on a child as it might on an adult, because in most cases bail is likely to be posted not by the child, but by the child's parent or other adult relative; and

(3) providing for bail might encourage some presenting officers to ask for it – and some courts to set it – as a matter of course, perversely resulting in higher rates of detention.

For a discussion of issues related to the imposition of bail in juvenile cases, see the commentary to IJA-ABA *Standards Relating to Interim Status* 4.7, which would likewise prohibit the practice.

§ 2.04.170(b)(2)

Restraints on the child's liberty should be appropriately limited in scope, duration, and purpose, and this is especially true prior to adjudication.

Unlike § 2.12.230(b), therefore, this provision does not permit the Juvenile Court to order (for example) enrollment in a G.E.D. program.

§ 2.04.170(b)(5)

This subsection is intended to provide the Juvenile Court with substantial latitude to address concerns which would otherwise result in detention.

It should not be construed, however, to permit the imposition of requirements (such as compulsory treatment) that are only appropriate following adjudication.

See also the comments on § 2.04.170(b)(2).

§ 2.04.190(a)

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

(3) the potential effects of the proposed order on:

(A) the child's contact and relationships with other family members; and

(B) the relationships between the child's other family members;

(4) the likelihood that the proposed order will place undue emotional or practical burdens on the child or the child's family; and

(5) the ability and willingness of the child's family to supervise contact between the child and the family member, or otherwise address the concerns to which the proposed order is directed, without the formal intervention of the Juvenile Court.

2.04.210 Conditional Release Orders – Violations

If it appears from a filed affidavit or sworn testimony before the Juvenile Court that the child has violated conditions of release imposed in accordance with the provisions of § 2.04.170, the Juvenile Court may:

(a) issue a custody order in accordance with the provisions of § 2.03.110;

(b) following a hearing on the matter, impose additional or modified conditions of release in accordance with the provisions of § 2.04.170; and

(c) conduct a hearing to review the need for detention in accordance with the provisions of § 2.04.130.

2.04.230 Detention Hearing – Requirement and Time Limit

(a) Whenever a child is taken into custody pursuant to the provisions of § 2.03.130, and is not released to the child's parent, guardian or custodian, the Juvenile Court shall conduct a detention hearing within two (2) days.

(b) Notwithstanding the provisions of § 1.07.170 of this title, the detention hearing shall not be continued so as to fall outside the time limit imposed by this section.

(c) If the detention hearing is not held within the time limit imposed by this section, the child shall immediately be released to the child's parent, guardian or custodian.

2.04.250 Detention Hearing – Notice

(a) Written notice of the detention hearing:

(1) shall be served on the child, the child's parent, guardian or custodian, and counsel for the child as soon as the time for the detention hearing has been set;

(2) shall in all other respects be served in accordance with the provisions of § 1.08.150 of this title;

(3) shall contain the name of the court, the nature and purpose of the proceedings, and the date, time, and place of the hearing;

(4) shall advise the parties of their rights under the provisions of this title; and

(5) shall specify the delinquent act the child is alleged to have committed.

(b) Where counsel has not already been appointed or retained to represent the child, the written notice required by subsection (a) shall be served on the Juvenile Advocate.

§ 2.04.250(a)(1)

Note that if the child's parent, guardian or custodian cannot be located and served, § 1.05.170 would probably require appointment of a guardian *ad litem*.

2.04.270 Detention Hearing – Purpose

The Juvenile Court shall conduct the detention hearing for the purpose of determining:

(a) whether there is probable cause to believe the child has committed a delinquent act, unless the Juvenile Court has entered a finding of probable cause, in accordance with the provisions of § 2.04.290 or § 2.08.150, at a prior hearing;

(b) whether the child can be released without conditions;

(c) if the child cannot be released without conditions, what conditions of release, imposed in accordance with the provisions of § 2.04.170, would render detention unnecessary; and

(d) if detention is necessary and authorized under § 2.04.130, where the child should be detained pending the child's next appearance before the Juvenile Court.

2.04.290 Order on Detention Hearing

(a) At the detention hearing, the Juvenile Court shall enter a written order releasing the child without conditions unless the Juvenile Court finds, based on a filed affidavit or sworn testimony before the Juvenile Court, that there is probable cause to believe the child has committed a delinquent act.

(b) If the Juvenile Court finds that there is probable cause to believe the child has committed a delinquent act, the Juvenile

Court shall, at the conclusion of the detention hearing, enter a written order:

(1) releasing the child without conditions;

(2) releasing the child, and setting forth conditions of release imposed in accordance with the provisions of § 2.04.170; or

(3) specifying where the child is to be detained until the next hearing.

(c) If the child was taken into custody as the result of a failure to appear before the Juvenile Court, the written order entered by the Juvenile Court shall be consistent with the provisions of § 2.01.210.

(d) If the child is to be detained in a secure juvenile detention facility, the written order shall specify the date and time of the first detention review hearing to be held in accordance with the provisions of § 2.04.330.

(e) No provision of this chapter shall be interpreted to prohibit the Juvenile Court from releasing the child from detention prior to the appointment or appearance of counsel for the child.

2.04.310 Detention – Rehearing

Upon the filing of a motion for rehearing and a declaration stating the relevant facts, the Juvenile Court shall rehear the detention matter without unnecessary delay if:

(a) the child was not released at the detention hearing;

(b) the child's parent, guardian or custodian did not receive notice of the detention hearing; and

(c) the child's parent, guardian or custodian did not appear or waive appearance at the detention hearing.

2.04.330 Mandatory Detention Review Hearings

(a) The Juvenile Court shall conduct a detention review hearing before the end of each seven (7) day period in which the child is detained in a secure juvenile detention facility prior to adjudication.

(b) The Juvenile Court shall conduct the detention review hearing for the purpose of determining:

(1) whether the circumstances of the child, the posture of either party, the availability of less restrictive alternatives, or other material facts have changed since the last hearing;

(2) whether detention remains necessary and authorized under § 2.04.130; and

(3) whether the child should be released from secure detention in favor of a less restrictive alternative.

(c) At the conclusion of each detention review hearing conducted pursuant to the provisions of this section, the Juvenile Court shall enter a written order revoking, modifying, or extending its prior detention order.

(d) If the child is to remain in a secure juvenile detention facility, the written order shall specify the date and time of the next detention review hearing to be held in accordance with the provisions of this section.

(e) Notwithstanding the provisions of § 1.07.170 of this title, no detention review hearing shall be continued so as to fall outside the time limits imposed by this section.

2.04.350 Detention and Conditional Release Orders – Termination

An order of the Juvenile Court providing for either detention or conditional or supervised release shall immediately and automatically terminate, and the child shall immediately be released from any detention, restrictions or other conditions or obligations imposed thereby, if a delinquency petition is not filed within the time limits imposed by § 2.07.130.

2.05 PRELIMINARY INVESTIGATION AND RECOMMENDATION

2.05.110 Preliminary Investigation – Requirement

Whenever a child is alleged to have committed a delinquent act, the Juvenile Case Coordinator shall conduct a preliminary investigation to determine whether the interests of the child or the community require that further action be taken.

2.05.130 Preliminary Investigation – Time Limit

Where the child was taken into custody and has not been released without conditions, the Juvenile Case Coordinator shall conduct the preliminary investigation:

(a) within one (1) business day after the detention hearing, if the child has not been released; or

(b) within five (5) days after the detention hearing, if the child has been released on conditions pursuant to the provisions of § 2.04.170.

2.05.150 Informal Conference – Requirement

(a) Subject to the provisions of § 2.05.190, the Juvenile Case Coordinator shall, during the course of the preliminary investigation, conduct an informal conference to include:

(1) the child;

(2) the child's parent, guardian or custodian; and

(3) counsel for the child.

(b) Where counsel has not already been appointed or retained to represent the child, the Juvenile Case Coordinator shall notify the Juvenile Advocate prior to conducting the informal conference.

2.05.170 Informal Conference – Purpose and Conduct

(a) The purpose of the informal conference shall be:

(1) to assist the Juvenile Case Coordinator in making the recommendation required under § 2.05.210; and

(2) where the alleged facts are sufficient to support the filing of a delinquency petition, to identify and discuss services, interventions, agreements or other alternatives which would render the filing of a delinquency petition unnecessary.

(b) To the extent possible, the informal conference shall be treated as a non-adversarial effort to resolve the issues presented by the child's alleged conduct, without the intervention of the Juvenile Court.

§ 2.05.130

Time limits throughout the Model Code are aimed at minimizing delay in cases where the child is in custody or an out-of-home placement.

Where caseloads, court schedules, or other relevant factors require extension of the proposed time limits, implementing tribes should:

(1) first consider adjustments to the time limits in cases where the child is not in custody or an out-of-home placement; and

(2) endeavor to minimize the amount of time that children are subjected to out-of-home placements generally, and secure detention in particular.

§ 2.05.150(a)(3)

Although the informal conference precedes the initiation of adjudicative proceedings, and is intended to be non-adversarial in nature (see § 2.05.170(b)), counsel is essential at this stage to ensure:

(1) that the child has a clear and unequivocal voice in the discussion;

(2) that the child's rights are enforced, both during and after the informal conference; and

(3) that the child does not feel compelled to enter into a diversion agreement when the facts would not support a finding of delinquency.

(c) Subsection (b) shall not be interpreted:

(1) to require the waiver of any right or privilege by the child or the child's parent, guardian or custodian, including but not limited to the privilege against self-incrimination;

(2) to require disclosure by counsel for the child of any matter that would otherwise be confidential or protected from disclosure by any applicable rule or statute;

(3) to relieve counsel for the child of any ethical or professional obligations otherwise imposed by statute, rules of professional conduct or similar court rules; or

(4) to require counsel for the child to proceed in a manner that is inconsistent with those obligations.

(d) Statements made by the child at the informal conference shall be inadmissible, in any subsequent hearing or proceedings, as evidence that the child committed a delinquent act, but may be considered at a disposition hearing conducted in accordance with the provisions of § 2.12.150.

§ 2.05.170(d)

Together with § 2.01.190(c), this subsection is intended to safeguard the privilege against self-incrimination, and thereby mitigate what might otherwise be a strong disincentive for the child to participate in the informal conference.

2.05.190 Informal Conference – Participation Voluntary

(a) Prior to conducting the informal conference, the Juvenile Case Coordinator shall inform the child and the child's parent, guardian or custodian:

(1) of their rights under the provisions of this title;

(2) of the nature and purpose of the informal conference; and

(3) that participation in the informal conference is voluntary.

(b) If the child declines to attend or participate in the informal conference:

(1) the Juvenile Case Coordinator shall, subject to the other provisions of this section, conduct the informal conference without the participation of the child; and

(2) counsel for the child may, to the extent that such efforts are consistent with counsel's professional and ethical obligations to the child:

(A) attend and participate in the informal conference on behalf of the child; and

(B) otherwise confer with the Juvenile Case Coordinator to further the purposes of the informal conference, as set forth in § 2.05.170.

(c) The Juvenile Case Coordinator shall conduct the informal conference without the participation of the child's parent, guardian or custodian, if the child's parent, guardian or custodian:

(1) declines to attend or participate in the services planning conference; and

(2) consents to the child's participation.

2.05.210 Recommendation by Juvenile Case Coordinator

Upon concluding the preliminary investigation, the Juvenile Case Coordinator shall make one of the following recommendations to the Juvenile Presenting Officer:

(a) The Juvenile Case Coordinator shall recommend that no further action be taken in the matter, if the Juvenile Case Coordinator determines that:

(1) the alleged facts are sufficient to support neither the filing of a delinquency petition in accordance with the provisions of § 2.07.110, nor the submission of a request for services in accordance with the provisions of § 3.04.110 of this title; or

(2) the best interests of neither the child nor the community require that further action be taken.

(b) The Juvenile Case Coordinator shall recommend that the child and the child's parent, guardian or custodian enter into a diversion agreement in accordance with the provisions of § 2.06.110, if the Juvenile Case Coordinator determines that:

(1) the alleged facts are sufficient to support the filing of a delinquency petition; and

(2) the best interests of both the child and the community may be adequately addressed through one or more of the diversion options set forth in § 2.06.150.

(c) The Juvenile Case Coordinator shall recommend the initiation of proceedings under Chapter 3 of this title, if the Juvenile Case Coordinator determines that:

(1) the alleged facts are sufficient to support the submission of a request for services under § 3.04.110 of this title;

(2) the best interests of both the child and the community may be adequately addressed through child-in-need-of-services proceedings.

§ 2.05.190(c)

See the comments on § 3.04.210(c).

§ 2.05.210

The Model Code does not provide for the transfer of delinquency cases to the tribal court for the initiation of criminal proceedings, because trying children as adults has not been shown to reduce crime, facilitate rehabilitation, or make communities safer.

On the contrary, "transferring juveniles for trial and sentencing in adult criminal court has . . . produced the unintended effect of increasing recidivism, particularly in violent offenders, and thereby of promoting life-course criminality;" and "the bulk of the empirical evidence suggests that transfer laws, as currently implemented, probably have little general deterrent effect on would-be juvenile offenders." Richard E. Redding, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* 8 (June 2010) (citations omitted).

Meanwhile, the provisions of the Model Code are drafted to provide the Juvenile Court with sufficient authority and discretion to address even serious acts of delinquency; § 2.12.310(f), for instance, allows the Juvenile Court to extend its disposition orders for up to three years – which, under 25 U.S.C. § 1302(a)(7)(C), is the maximum jail time tribal courts may impose for even the most serious criminal offenses.

Together with the likelihood that such serious matters will also be the subject of state or federal proceedings, these considerations weigh heavily against the inclusion of transfer provisions in the Model Code.

It should also be noted that even where transfer laws provide for the waiver of juvenile court jurisdiction, such waiver is extremely rare: "Nationally, the proportion of juvenile cases in which prosecutors seek waiver is not known, but waiver is granted in less than 1% of petitioned delinquency cases." Patrick Griffin et al., Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting* (September 2011).

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(d) The Juvenile Case Coordinator shall recommend that the Juvenile Presenting Officer file a delinquency petition in accordance with the provisions of § 2.07.110, if the Juvenile Case Coordinator determines that:

(1) the alleged facts are sufficient to support the filing of a delinquency petition;

(2) the best interests of either the child or the community require the intervention of the Juvenile Court; and

(3) the best interests of either the child or the community cannot be adequately addressed through child-in-need-of-services proceedings conducted pursuant to the provisions of Chapter 3 of this title.

2.05.230 Recommendation – Factors to be Considered

In determining the appropriate recommendation to be made in accordance with the provisions of § 2.05.210, the Juvenile Case Coordinator shall consider factors including:

(a) the nature and seriousness of the alleged act;

(b) the child's previous contacts with the police, the Juvenile Case Coordinator, or the Juvenile Court;

(c) the age, maturity, and individual circumstances of the child;

(d) the willingness of the child to participate in a voluntary program;

(e) the participation and input of the child's parent, guardian or custodian;

(f) the likelihood that services and resources to meet the child's needs can be identified and secured without the intervention of the Juvenile Court; and

(g) any statement expressing support for diverting the matter or addressing the matter informally and without the intervention of the Juvenile Court, made by:

(1) the complainant or the alleged victim; or

(2) any law enforcement officer familiar with the underlying facts of the matter or the circumstances of the child.

2.05.250 Notice to Juvenile Court

(a) The Juvenile Presenting Officer shall immediately file written notice in the Juvenile Court whenever:

(1) the Juvenile Court has entered a detention order, or any order imposing restrictions or other conditions or obligations upon the child in connection with the matter; and

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§ 2.05.210(b)

The IJA-ABA Joint Commission on Juvenile Justice Standards, *Standards Relating to Youth Service Agencies* 4.5 (1979) states that formal diversion is inappropriate "if, prior to the existence of the diversionary alternative, [the child] would have been released with a warning," and that in such cases, the child should merely be informed of "the services available, and their eligibility for such services through a voluntary self-referral."

The Model Code frames the issue in terms of the legal sufficiency of the allegations and the best interests of the child and the community, but does not differ from the *Standards* in principle:

Because the purpose of diversion is to reduce system involvement and penetration, the availability of diversion options should not serve to "widen the net" and draw more children into the juvenile justice system.

§ 2.05.210(b)(1)

In no instance does the Model Code make the availability of diversions options contingent upon an admission by the child.

The goal of diversion efforts should be to meet the needs of the child and the community while minimizing the need for formal proceedings in the Juvenile Court, and requiring the child to waive important rights would be a strong disincentive for the child to participate in such efforts.

Another important consideration is that many of the diversion options available under the Model Code require the participation and cooperation of the child's parents, and it would be fundamentally unfair to require an admission by the child as a prerequisite for diversion efforts which might fail in spite of the child's compliance with the conditions of a diversion agreement or deferral.

(2) the Juvenile Presenting Officer, having received and considered the recommendation of the Juvenile Case Coordinator, determines that:

(A) no further action should be taken in the matter;

(B) the matter should proceed by way of a diversion agreement; or

(C) the matter should be addressed through child-in-need-of-services proceedings conducted pursuant to the provisions of Chapter 3 of this title.

(b) Upon the filing of the written notice required by subsection (a):

(1) the Juvenile Court shall enter a written order releasing the child from any detention, restrictions or other conditions or obligations previously imposed in connection with the matter; and

(2) if the child is being detained, the Juvenile Case Coordinator shall ensure that the child is released within twelve (12) hours of the entry of the order of release.

2.06 DIVERSION AGREEMENT

2.06.110 Diversion Agreement – Form and Substance

Upon the Juvenile Presenting Officer's acceptance of a recommendation for diversion pursuant to the provisions of § 2.05.210(b), the child and the child's parent, guardian or custodian may enter into a written diversion agreement setting forth:

(a) the rights of the child and the child's parent, guardian or custodian under the provisions of this title;

(b) that entry into a diversion agreement is voluntary, and that the child or the child's parent, guardian or custodian may withdraw from the diversion agreement at any time;

(c) that withdrawal from the diversion agreement may lead to the filing of a delinquency petition; and

(d) particular conditions, which may include any of the options specified in § 2.06.150, to be fulfilled by the child and the child's parent, guardian or custodian over a period not to exceed six (6) months.

2.06.130 Diversion Agreement – Fulfillment of Conditions

(a) If the child and the child's parent, guardian or custodian fulfill the conditions of the diversion agreement, no further action shall be taken in the matter.

(b) If the child or the child's parent, guardian or custodian do not fulfill the conditions of the diversion agreement, the Juvenile Case Coordinator may:

(1) confer with the child and the child's parent, guardian or custodian for the purpose of effecting necessary or recommended modifications to the diversion agreement; or

(2) recommend that the Juvenile Presenting Officer file a delinquency petition in accordance with the provisions of § 2.07.110.

(c) Upon finding by a preponderance of the evidence that the child and the child's parent, guardian or custodian have fulfilled the conditions of the diversion agreement, the Juvenile Court shall dismiss with prejudice any subsequent delinquency petition arising out of the alleged incident.

2.06.150 Diversion Options

(a) Subject to the provisions of subsection (b), the conditions of a diversion agreement entered into pursuant to the provisions of § 2.06.110, an order deferring adjudication entered in accordance with the provisions of § 2.09.130, or an order

§ 2.06.110

IJA-ABA *Standards Relating to the Juvenile Probation Function* 2.4 would make a "community agency referral" the "only permissible nonjudicial disposition."

The commentary to Standard 2.4 addresses arguments for prohibiting the use of "nonjudicial probation" or "intake services" in favor of referrals to outside agencies; one concern is that the child may be encouraged (or even pressured) to participate in diversion efforts even though the facts would not support the filing of a petition.

The Model Code addresses these concerns by specifying that participation in diversion efforts is voluntary, § 2.05.190 and § 2.06.110(b), and providing that the child shall be represented by counsel prior to entering into a diversion agreement, § 2.05.150.

Implementing tribes that do not include provisions for the appointment of counsel should consider carefully the adoption of supplemental due process protections.

§ 2.06.110(d)

Although the duration of some treatment programs or other interventions may exceed six months, this time limit is calculated to ensure:

(1) that the child and his or her parents are not subject to an unreasonable period of monitoring or supervision in the absence of any hearings or formal findings; and

(2) that adjudicative proceedings are not unreasonably delayed if diversion efforts are unsuccessful.

§ 2.06.130(c)

This subsection is similar in purpose to IJA-ABA *Standards Relating to Youth Service Agencies* 4.10, which would allow an appeal from the decision "to resume proceedings against a juvenile who has allegedly violated the terms of [an agreement to participate in services]."

deferring disposition entered in accordance with the provisions of § 2.12.170(b), may include any of the following:

(1) referral of the child or the child's parent, guardian or custodian to social, community, or tribal services or resources appropriate for addressing the needs of the child and the child's parent, guardian or custodian;

(2) referral of the matter to a tribal elders panel, community accountability board, tribal council, or other forum suitable for addressing the needs of both the child and the community;

(3) participation in tribal peacemaking or other extrajudicial alternatives for resolving conflicts or disputes;

(4) participation by the child in cultural, educational, or other programs or activities aimed at rehabilitation, community involvement, or competency development, or which are otherwise appropriate for addressing the child's needs;

(5) participation by the child or the child's parent, guardian or custodian in an educational or counseling program designed to deter delinquent acts or other conduct or conditions which would be harmful to the child or the community;

(6) participation by the child's parent, guardian or custodian in an educational or counseling program designed to contribute to their ability to care for and supervise the child, including but not limited to parenting classes;

(7) a requirement that the child or the child's parent, guardian or custodian undergo medical, psychological, or psychiatric examination or treatment;

(8) a requirement that the child pay restitution;

(9) performance by the child of community service;

(10) a requirement that the child maintain satisfactory school attendance, or otherwise pursue a course of study designed to lead to achieving a high school diploma or the equivalent;

(11) participation by the child in structured after-school, evening, or other court-approved programs appropriate for addressing the needs of the child and providing for the safety of the community; and

(12) other reasonable conditions aimed at:

(A) holding the child accountable for his or her actions;

(B) providing for the safety and protection of the community; or

§ 2.06.150(a)(2)

In addition to specialized "healing to wellness," mental health, and drug courts, for instance, some jurisdictions have instituted "youth courts" or "peer courts" in which other juveniles address cases that meet certain criteria (such as the age of the child or the nature of the offense).

For a thorough discussion of such alternatives, including examples from tribal and other jurisdictions, see Pat Sekaquaptewa et al., Tribal Law and Policy Institute, *Guide for Drafting or Revising Tribal Juvenile Delinquency and Status Offense Laws* (June 2015).

§ 2.06.150(a)(3)

Similar alternatives might include victim-offender mediation or reconciliation programs.

§ 2.06.150(a)(12)

The list of options in subsection (a) has been drafted to provide implementing tribes with considerable latitude in identifying and selecting appropriate services, interventions, and alternatives to adjudication.

Subsection (a)(12) specifically invokes the principles of Balanced and Restorative Justice, which inform much of the Model Code (see, e.g, the comments on § 1.01.110(d)).

In addition to these guiding principles, implementing tribes should consider their own unique traditions, customs, values, and practices, as well as the services and resources available to children, families, and victims in the tribal community.

(C) promoting the development of competencies which will enable the child to become a responsible and productive member of the community.

(b) The conditions of a diversion agreement entered into pursuant to the provisions of § 2.06.110, an order deferring adjudication entered in accordance with the provisions of § 2.09.130, or an order deferring disposition entered in accordance with the provisions of § 2.12.170(b):

(1) shall not include detention in a secure juvenile detention facility, nor participation in alternative programs or services specifically intended as alternatives to secure detention or otherwise directed solely at meeting the needs of adjudicated youth; and

(2) shall not include a requirement that the child's parent, guardian, or custodian undergo medical, psychological, or psychiatric treatment, unless such treatment is:

(A) recommended by a qualified medical, psychological, or psychiatric professional; and

(B) necessary to:

(i) address conditions which contributed to the alleged delinquent act; or

(ii) allow the child to remain with or be returned to the custody of the child's parent, guardian or custodian.

§ 2.06.150(b)(1)

Secure detention should be a last resort even for adjudicated youth, and while there may be some overlap between relevant programs and services, alternatives to formal processing should be distinguished from alternatives to secure detention.

This subsection is also intended to discourage the identification of children who have not been adjudicated with those who have been found delinquent by the Juvenile Court.

2.07 DELINQUENCY PETITION

2.07.110 Delinquency Petition – Contents

(a) Adjudicative proceedings under this chapter shall be initiated by a petition:

(1) signed and filed by the Juvenile Presenting Officer on behalf of the Tribe;

(2) certifying that, to the best of the Juvenile Presenting Officer's knowledge, information and belief, there are sufficient grounds to believe the child has committed a delinquent act;

(3) setting forth with specificity:

(A) the name, birth date, residence, and tribal affiliation of the child;

(B) the name and residence of the child's parent, guardian or custodian;

(C) a citation to the specific section(s) of this title which give the Juvenile Court jurisdiction over the proceedings;

(D) a citation to the specific criminal statute or other law or ordinance which the child is alleged to have violated;

(E) a plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged acts occurred.

(b) The delinquency petition shall be accompanied by a statement signed by the Juvenile Case Coordinator and:

(1) certifying that the requirements of §§ 2.05.110, *et seq.*, were satisfied prior to the filing of the petition;

(2) stating whether the Juvenile Case Coordinator was able to conduct an informal conference as required by § 2.05.150, and if so, who was in attendance at the informal conference;

(3) stating whether the child was afforded the opportunity to enter into a diversion agreement pursuant to the provisions of § 2.06.110, and if so, whether the child entered into a diversion agreement prior to the filing of the petition; and

(4) stating whether the Juvenile Case Coordinator recommended the filing of the petition.

§ 2.07.110(a)

Throughout the Model Code, the term "proceedings" is used to refer to any activities (including, for example, pre-filing diversion efforts) undertaken pursuant to its provisions.

In order to avoid confusion, the phrase "adjudicative proceedings" is used to specify proceedings in the Juvenile Court following the filing of a petition.

§ 2.07.110(b)

IJA-ABA *Standards Relating to Youth Service Agencies* 4.7 would require a written explanation of the decision not to divert a case.

This subsection is tailored to provide the Juvenile Court with essential information regarding diversion efforts and compliance with the provisions of the Model Code, without requiring the presentation of extraneous and potentially prejudicial details prior to adjudication.

Needless to say, it is within the discretion of the Juvenile Court to make further inquiries as necessary (in order to determine, for example, whether a "judicial diversion" under § 2.08.170 is appropriate).

2.07.130 Delinquency Petition – Time for Filing

Where the child was taken into custody and has not been released without conditions, the delinquency petition shall be filed:

(a) within two (2) business days after the detention hearing, if the child has not been released; or

(b) within ten (10) days after the detention hearing, if the child has been released on conditions pursuant to the provisions of § 2.04.170.

2.07.150 Delinquency Petition – Amendment

(a) The delinquency petition may be amended to cure defects of form at any time.

(b) The delinquency petition may be amended to allege additional delinquent acts:

(1) at any time prior to the initial hearing;

(2) after the initial hearing, but no later than three (3) business days prior to the adjudication hearing, upon a showing of good cause;

(3) within three (3) business days of the adjudication hearing, only upon:

(A) a showing of good cause based on exceptional and unforeseeable circumstances; and

(B) a finding by the Juvenile Court that the amendment will not prejudice the rights of the child.

(c) The delinquency petition shall not be amended to allege additional delinquent acts after jeopardy has attached.

(d) Whenever the delinquency petition is amended, the amended petition shall be served in accordance with the provisions of § 1.08.150 of this title.

(e) Whenever the delinquency petition is amended to allege additional delinquent acts, the Juvenile Court shall, upon a motion by the child, continue the adjudication hearing for such a period as is required in the interests of justice.

§ 2.07.130

See the comments on § 2.05.130.

2.08 INITIAL HEARING

2.08.110 Initial Hearing – Time Limit

The initial hearing shall be held:

(a) within ten (10) days of the filing of the delinquency petition, if the child was taken into custody and has not been released; or

(b) within thirty (30) days of the filing of the delinquency petition, if the child was not taken into custody or has been released.

2.08.130 Initial Hearing – Conduct

(a) At the initial hearing, the Juvenile Court shall advise the child, in language the child will easily understand, of the following:

(1) the nature and purpose of the proceedings;

(2) the contents of the delinquency petition;

(3) the possible consequences if the child is found to have committed a delinquent act;

(4) the right to counsel;

(5) the privilege against self-incrimination;

(6) the right to an adjudication in accordance with the provisions of this chapter;

(7) the right to cross-examine witnesses;

(8) the right to testify, the right to subpoena witnesses, and the right to introduce evidence on the child's own behalf;

(9) the right to appeal any final order of the Juvenile Court.

(b) The Juvenile Court shall not accept an admission at the initial hearing.

2.08.150 Initial Hearing – Probable Cause Determination

At the initial hearing, the Juvenile Court shall enter a written order dismissing the delinquency petition unless the Juvenile Court finds that the delinquency petition establishes probable cause to believe the child has committed a delinquent act.

§ 2.08.110

See the comments on § 2.05.130.

2.08.170 Initial Hearing – Judicial Diversion

(a) If the Juvenile Court finds that there is probable cause to believe the child has committed a delinquent act, the Juvenile Court in its discretion may enter a written order dismissing the delinquency petition without prejudice, if the Juvenile Court determines that:

(1) the interests of both the child and the community may be adequately addressed through one or more of the diversion options set forth in § 2.06.150;

(2) the child, after consulting with and being advised by counsel, is willing to participate in an informal conference pursuant to the provisions of § 2.05.150; and

(3) either of the following conditions is met:

(A) prior to the filing of the delinquency petition, the child did not enter into a diversion agreement pursuant to the provisions of § 2.06.110; or

(B) notwithstanding the failure of a previous diversion agreement, the Juvenile Court finds reason to believe that further efforts to divert the matter may be successful.

(b) Following the dismissal of a delinquency petition under subsection (a):

(1) the child and the child's parent, guardian or custodian may enter into a written diversion agreement pursuant to the provisions of § 2.06.110; and

(2) the Juvenile Presenting Officer may re-file the delinquency petition in accordance with the provisions of § 2.07.110 if:

(A) the child and the child's parent, guardian or custodian do not voluntarily enter into a diversion agreement; or

(B) the child or the child's parent, guardian or custodian do not fulfill the conditions of the diversion agreement.

2.08.190 Initial Hearing – Discretionary Dismissal

The Juvenile Court may, upon its own motion or the motion of the child, dismiss the delinquency petition if:

(a) the Juvenile Court finds that the alleged conduct:

(1) did not actually cause or threaten the harm sought to be prevented by the statute defining the alleged delinquent act, or did so only to a trivial extent; or

(2) cannot reasonably be regarded as within the contemplation of [the tribal legislative body] in enacting the statute defining the alleged delinquent act;

§ 2.08.170

This provision allows the Juvenile Court to exercise special discretion when presented with a case in which diversion efforts may be preferable to formal adjudicative proceedings.

It was inspired in part by an Indiana provision under which the juvenile court is to approve a delinquency petition "if there is probable cause to believe that: (A) the child is a delinquent child; and (B) *it is in the best interests of the child or the public that the petition be filed*." Indiana Code § 31-37-10-2 (emphasis added).

§ 2.08.170(a)(3)(A)

IJA-ABA *Standards Relating to Youth Service Agencies* 4.10 would allow the child to appeal a decision by the intake officer not to divert the case.

Under the Model Code, a child who was not afforded the opportunity to enter into a diversion agreement could bring a motion to dismiss pursuant to the provisions of this subsection.

§ 2.08.170(a)(3)(B)

This subsection allows the Juvenile Court to encourage further diversion efforts even where a prior diversion agreement was unsuccessful.

First, the Juvenile Court may be able to suggest diversion options that were not originally considered or attempted.

Second, the mere fact of being brought before the Juvenile Court may make a considerable impression upon the child, and provide additional motivation to cooperate with diversion efforts.

(b) the alleged victim is a members of the child's family, and the Juvenile Court finds that the alleged conduct may be more appropriately addressed by the child's parent, guardian or custodian; or

(c) upon the recommendation or agreement of the alleged victim, the Juvenile Court finds that the alleged conduct may be more appropriately addressed, by:

(1) the child's parent, guardian or custodian;

(2) voluntary participation in tribal peacemaking or other extrajudicial alternatives for resolving conflicts or disputes;

(3) voluntary restitution or other conciliatory efforts or conduct on the part of the child; or

(4) other informal, traditional or community-based alternatives.

2.09 DEFERRED ADJUDICATION

2.09.110 Motion for Deferred Adjudication

(a) At any time after the filing of the delinquency petition, but prior to adjudication, the Tribe and the child may agree to move the Juvenile Court for an order deferring adjudication.

(b) The motion for deferred adjudication shall propose particular conditions, which may include any of the options specified in § 2.06.150, to be fulfilled by the child and the child's parent, guardian or custodian over a period specified in accordance with the provisions of § 2.09.150.

(c) The motion for deferred adjudication shall include a statement by the child that contains an acknowledgment of his or her rights under the provisions of this title, and a waiver of the time limits for adjudication set forth in § 2.10.110.

2.09.130 Order on Motion for Deferred Adjudication

(a) The Juvenile Court shall grant the motion for deferred adjudication only upon finding, after inquiring of both the child and counsel for the child, that the child:

(1) fully understands his or her rights under the provisions of this title;

(2) has voluntarily, intelligently, and knowingly waived the time limits for adjudication set forth in § 2.10.110; and

(3) fully understands the conditions to be imposed.

(b) Subject to the provisions of subsection (a), the Juvenile Court shall grant the motion for deferred adjudication unless the Juvenile Court finds that the proposed conditions are unreasonable, excessive or insufficient, considering:

(1) the nature and seriousness of the allegations;

(2) the needs of the child; and

(3) the safety of the community.

(c) Upon granting the motion for deferred adjudication, the Juvenile Court shall enter a written order setting forth:

(1) the findings required under subsection (a), as well as any findings required under § 2.09.150(d);

(2) the conditions to be fulfilled by the child and the child's parent, guardian or custodian during the deferral period; and

(3) the duration and ending date of the deferral period.

§ 2.09.110

The IJA-ABA Joint Commission on Juvenile Justice Standards, *Standards Relating to Adjudication* 5.2 (1979) discourages the use of "suspended adjudication."

The Model Code attempts to address the concerns expressed in the commentary to Standard 5.2 by:

(1) requiring an agreed motion by the Tribe and the child (see Standard 5.2(B)(2), requiring that the child request or consent to the suspended adjudication);

(2) omitting any admission or stipulation by the child as a requirement for deferral (see the comments on § 2.05.210(b)(1)); and

(3) providing that the child shall be represented by counsel – who can advise the child regarding the advantages and disadvantages of a deferred adjudication – in all proceedings before the Juvenile Court.

(d) Upon denying the motion for deferred adjudication, the Juvenile Court:

(1) shall enter a written order setting forth the findings required under subsection (b); and

(2) may propose alternative conditions to be considered by the parties.

2.09.150 Deferred Adjudication – Initial Deferral Period

The initial period of a deferred adjudication:

(a) shall be specified in both the motion for deferred adjudication and the order deferring adjudication;

(b) shall be limited to the period of time reasonably necessary for the fulfillment of the deferral conditions;

(c) shall not exceed six (6) months, except as provided in subsection (d); and

(d) may exceed six (6) months, but shall not exceed one (1) year, where the order deferring adjudication includes specific findings by the Juvenile Court that:

(1) due to treatment recommendations or similar considerations, fulfillment of the deferral conditions will require a longer deferral period; and

(2) the purposes of the deferral cannot be accomplished by the imposition of alternative conditions requiring a shorter deferral period.

2.09.170 Deferred Adjudication – Review Hearings

(a) Upon entering an order deferring adjudication under § 2.09.130, the Juvenile Court shall set a hearing to determine whether the child and the child's parent, guardian or custodian have fulfilled the deferral conditions.

(b) Prior to the ending date of the deferral period, the Juvenile Court may set one or more interim review hearings to monitor compliance with or fulfillment of the deferral conditions.

(c) At any review hearing conducted pursuant to the provisions of this section:

(1) the child shall bear the burden of showing, by a preponderance of the evidence, compliance with any affirmative requirement set forth in the order deferring adjudication; and

(2) the Tribe shall bear the burden of showing, by a preponderance of the evidence, that the child or the child's parent, guardian or custodian has engaged in any conduct prohibited by the order deferring adjudication.

2.09.190 Deferred Adjudication – Fulfillment of Conditions

(a) If the child and the child's parent, guardian or custodian fulfill the deferral conditions, the Juvenile Court shall, no later than the ending date of the deferral period, enter a written order:

(1) dismissing the delinquency petition with prejudice; and

(2) releasing the child from any restrictions or other conditions or obligations previously imposed by the Juvenile Court.

(b) If the child or the child's parent, guardian or custodian does not fulfill the deferral conditions, the Juvenile Court may enter a written order:

(1) continuing the review hearing to allow additional time for the child or the child's parent, guardian or custodian to fulfill the deferral conditions;

(2) modifying the deferral conditions;

(3) extending the deferral for an additional period not to exceed three (3) months; or

(4) revoking the order deferring adjudication and setting the case for adjudication in accordance with the provisions of §§ 2.10.110, *et seq*.

(c) The Juvenile Court shall not enter an order extending the deferral period or modifying the deferral conditions unless the child, after consulting with and being advised by counsel, consents to the proposed extension or modification.

§ 2.09.190(c)

Permitting extension or modification without the child's consent would compromise the voluntary nature of the deferral, as well as the child's right to a timely adjudication.

2.10 ADJUDICATION

2.10.110 Adjudication Hearing – Time Limit

The adjudication hearing shall be held:

(a) within ten (10) days of the initial hearing, if the child was taken into custody and has not been released; or

(b) within thirty (30) days of the initial hearing, if the child was not taken into custody or has been released.

2.10.130 Adjudication Hearing – Purpose

The Juvenile Court shall conduct the adjudication hearing for the purpose of determining whether the child has committed a delinquent act.

2.10.150 Adjudication Hearing – Burden of Proof

The Tribe shall bear the burden of proving the allegations of the delinquency petition beyond a reasonable doubt.

2.10.170 Adjudication Hearing – Conduct

(a) The Juvenile Court shall conduct the adjudication hearing without a jury and, to the fullest extent practicable, in language the child will easily understand.

(b) At the commencement of the adjudication hearing, the Juvenile Court:

(1) shall first advise the child in accordance with the provisions of § 2.01.130; and

(2) shall then inquire whether the child admits or denies the allegations of the delinquency petition.

2.10.190 Proffer of Admission – Inquiry by Juvenile Court

(a) Before accepting an admission by the child to the allegations of the delinquency petition, the Juvenile Court:

(1) shall inquire of the child, in language the child will easily understand:

(A) concerning the number and duration of meetings between the child and counsel;

(B) whether the child is satisfied that counsel has conducted a thorough factual investigation of the matter;

§ 2.10.110

See the comments on § 2.05.130.

§ 2.10.190

Many of the provisions in this section are modeled after similar provisions in IJA-ABA *Standards Relating to Adjudication* 3.6, which would allow the court to accept an admission only after determining that the child "was give the effective assistance of an attorney."

Care has been taken to preserve the confidentiality of communications between the child and counsel; for example, neither the child nor counsel is required to divulge detailed information regarding their discussions, the factual investigation of the case, or counsel's advice to the child.

(C) whether the child is satisfied that counsel has answered to the child's questions, and has clearly explained:

(i) the nature of the proceedings, including the purpose of the adjudication hearing and the procedures to be followed if the child denies the allegations or if the Juvenile Court does not accept an admission by the child;

(ii) the child's rights under the provisions of this chapter;

(iii) the alternatives to an admission by the child; and

(iv) the likely consequences of an admission by the child;

(2) shall inquire of counsel for the child:

(A) concerning the number and duration of meetings between the child and counsel;

(B) whether counsel has conducted a thorough factual investigation of the matter;

(C) whether counsel has thoroughly researched, investigated, and addressed any legal issues presented by the matter; and

(D) whether counsel is satisfied:

(i) that the child understands each of the items set forth in subsection (a)(1)(C); and

(ii) that there are no compelling factual or legal defenses or arguments which the Juvenile Court should hear or consider before accepting an admission by the child;

(3) shall inquire of the Juvenile Presenting Officer, whether the Juvenile Presenting Officer is satisfied that there is independent evidence, admissible in accordance with the provisions of this chapter, to corroborate an admission by the child;

(4) shall inquire of the parties and the Juvenile Case Coordinator, whether the proffer of admission by the child is based upon an agreement between the parties regarding disposition recommendations to be submitted to the Juvenile Court in accordance with the provisions of §§ 2.11.110, *et seq.*;

(5) shall provide the child's parent, guardian or custodian an opportunity to be heard with regard to any matter addressed pursuant the preceding subsections.

§ 2.10.190(a)(2)

Both counsel and the Juvenile Court should proceed carefully where compelling factual or legal issues might be raised in the child's defense.

This subsection allows counsel to alert the Juvenile Court to the existence of such issues without disclosing the substance of counsel's advice to the child, and without calling attention to disagreements between counsel and the child.

It differs, in this respect, from IJA-ABA *Standards Relating to Adjudication* 3.6, which would have the court inquire directly "concerning what advice the attorney gave [the child] concerning whether to admit or deny the allegations of the petition," as well as "whether there has been any conflict between them as to whether respondent should admit an allegation of the petition."

As the Commentary to Standard 3.6 explains: "[A] juvenile court judge who determines that the plea of admit is being entered against the advice of counsel should properly conduct further inquiry to determine whether the plea, if accepted, would be voluntary and intelligent."

This is a compelling concern, which the Model Code attempts to address without compromising either the confidentiality of communications between counsel and the child, or counsel's obligation to advocate for the child's stated interests.

§ 2.10.190(a)(3)

Like IJA-ABA Joint Commission on Juvenile Justice Standards, *Standards Relating to Prosecution* 5.3 (1979), this subsection is meant to ensure that the child is not encouraged to admit where the facts are insufficient to support a finding of delinquency.

In many cases, however, the child may be prepared to admit to the commission of a delinquent act, but not to all of the alleged facts; and in some cases, facts which are not essential to a finding of delinquency may have unforeseen collateral consequences.

Unlike Standard 5.3, therefore, this subsection does not require "presentation on the record of independent evidence indicating that the juvenile has committed the acts alleged in the petition."

§ 2.10.190(a)(5)

IJA-ABA *Standards Relating to Adjudication* 3.7 would require the Juvenile Court to inquire whether the child's parents concur with the child's decision to admit, and to consider their responses in deciding whether to accept the child's admission.

(b) Nothing in this section shall be interpreted:

(1) to require disclosure by counsel for the child of any matter that would otherwise be confidential or protected from disclosure by any applicable rule or statute;

(2) to relieve counsel for the child of any ethical or professional obligations otherwise imposed by statute, rules of professional conduct or similar court rules; or

(3) to require counsel for the child to proceed in a manner that is inconsistent with those obligations.

2.10.210 Admission on Agreed Recommendations

(a) If the proffer of admission by the child is based upon an agreement regarding the disposition recommendations to be submitted to the Juvenile Court:

(1) the Juvenile Case Coordinator shall provide the Juvenile Court with a written summary of those recommendations, prepared in accordance with the provisions of § 2.11.130(c); and

(2) the Juvenile Court shall review the written summary, and make further inquiries as necessary, to determine:

(A) whether the child and the child's parent, guardian or custodian fully understand the disposition recommendations; and

(B) whether the child and the Juvenile Case Coordinator have in fact reached an agreement regarding the disposition recommendations.

(b) If the recommendations set forth in the full predisposition report are materially different from those presented to the Juvenile Court prior to the acceptance of an admission by the child, the child shall be permitted to withdraw the admission.

2.10.230 Admission – Acceptance by Juvenile Court

The Juvenile Court shall accept an admission by the child and proceed to disposition only upon finding:

(a) that the child fully understands each of the items set forth in § 2.10.190(a)(1)(C);

(b) that the child voluntarily, intelligently, and knowingly admits facts sufficient to support a finding that the child committed a delinquent act;

(c) that the child has not, in his or her admission or in response to the inquiries required by § 2.10.190(a)(1), set forth facts which, if found to be true by the Juvenile Court, would be a defense to the allegations;

§ 2.10.210(a)(1)

Requiring the Juvenile Court to review the full predisposition report (see § 2.11.110) prior to accepting an admission would be problematic for several reasons.

First, it would require the Juvenile Case Coordinator to prepare the predisposition report prior to adjudication, in spite of the fact that the child might change his or her mind and decide not to admit, or the possibility that the Juvenile Court might not accept the proffered admission.

Moreover, in cases where an agreement is reached shortly before the scheduled adjudication hearing, the preparation of a full predisposition report might require that the hearing be continued, whereas the preparation of the written summary required under subsection (a)(1) should not necessitate a delay in the proceedings.

Finally, requiring the Juvenile Court to review a thorough disposition report during the adjudication hearing is likely to be impractical, and will in many cases result in the presentation of substantial prejudicial information prior to the acceptance of the child's admission.

§ 2.10.210(b)

This provision reflects a concern for the demands of fundamental fairness, and implementing tribes may wish to consider other grounds for allowing the child to withdraw his or her admission.

IJA-ABA *Standards Relating to Adjudication* 3.3, for instance, would allow an admission to be withdrawn if the court "decides not to grant the concessions contemplated by the plea agreement."

(d) that there are no other compelling factual or legal bases for declining to accept the admission.

2.10.250 Admission of Allegations – Substance

An admission by the child to the allegations of the delinquency petition shall not require an admission to all of the alleged facts, but only to those facts necessary to support a finding by the Juvenile Court that the child committed a delinquent act.

2.10.270 Denial of Allegations

(a) If the child denies the allegations, the Juvenile Court shall proceed to hear evidence on the delinquency petition.

(b) If the child stands mute, refuses to answer, or answers evasively, the Juvenile Court shall enter a denial of the allegations and proceed to hear evidence on the delinquency petition.

2.10.290 Finding on Adjudication

(a) If, having accepted an admission by the child, or upon hearing all evidence properly admitted at the adjudication hearing, the Juvenile Court finds that the allegations of the delinquency petition have been proven beyond a reasonable doubt, the Juvenile Court shall:

(1) enter its finding in writing;

(2) set the matter for disposition in accordance with the provisions of §§ 2.12.110, *et seq.*; and

(3) specify in writing whether the child is to be continued in any out-of-home placement pending the disposition hearing.

(b) If the Juvenile Court finds that the allegations of the delinquency petition have not been proven beyond a reasonable doubt, it shall enter a written order dismissing the petition and releasing the child from any detention, restrictions or other conditions previously imposed in connection with the delinquency proceedings.

2.11 PREDISPOSITION REPORTS AND EXAMINATIONS

2.11.110 Predisposition Report – Requirement

Prior to the disposition hearing, the Juvenile Case Coordinator shall prepare a written predisposition report setting forth recommendations concerning the disposition of the case, including a specific plan for the supervision, treatment or rehabilitation of the child, and giving preference to the least restrictive dispositional alternatives appropriate for:

(a) holding the child accountable for his or her actions;

(b) providing for the safety of the child and the community; and

(c) developing competencies which will enable the child to become a responsible and productive member of the community.

2.11.130 Predisposition Report – Contents

(a) The predisposition report shall address, in a concise, factual, and unbiased manner, only those matters relevant to the disposition of the case, which may include but shall not be limited to:

(1) a description of the child's home environment, family relationships, and background;

(2) information regarding the child's maturity, cognitive and emotional development, and emotional and mental health;

(3) the results and recommendations of any relevant medical, psychological, psychiatric, or other examinations or evaluations conducted by a qualified professional;

(4) a discussion of the child's educational status, including, but not limited to, the child's strengths, abilities, and special educational needs;

(5) the identification of appropriate educational and vocational goals for the child, examples of which may include:

(A) regular school attendance and completion of the child's current grade;

(B) attainment of a high school diploma or its equivalent;

(C) successful completion of literacy or vocational courses; or

(D) enrollment in an apprenticeship, internship or similar program;

(6) a summary of the Juvenile Court's factual findings, along with relevant information regarding the nature and circumstances of the delinquent act;

§ 2.11.110

This section once again invokes the core principles of the Balanced and Restorative Justice (BARJ) Model; see the comments on § 1.01.110(d) for more information.

See also the comments on § 2.04.130, regarding the use of formal risk assessment instruments.

§ 2.11.130(a)

IJA-ABA Joint Commission on Juvenile Justice Standards, *Standards Relating to Dispositional Procedures* 2.1-2.5 (1979) include detailed recommendations regarding the nature, scope, and collection of information to be presented to the court prior to disposition, while IJA-ABA *Standards Relating to the Juvenile Probation Function* 3.3 address the form and substance of the predisposition report, along with the scope and conduct of the underlying investigation.

(7) the impact on the community of the delinquent act, as well as any restitution or conciliatory efforts voluntarily undertaken by the child; and

(8) a summary of the child's prior contacts with the juvenile justice system.

(b) The predisposition report shall include a detailed explanation of:

(1) the sources of all information included;

(2) the necessity of the proposed disposition, taking into account the particular needs of the child and the safety of the community; and

(3) the anticipated benefits to the child and the community of the proposed disposition.

(c) If, prior to adjudication, the child and the Juvenile Case Coordinator reach an agreement regarding the disposition recommendations to be submitted to the Juvenile Court, the Juvenile Case Coordinator shall:

(1) prepare a written summary of the agreed recommendations; and

(2) prior to the adjudication hearing, furnish copies of the written summary to the Juvenile Presenting Officer, the child, counsel for the child, and the child's parent, guardian or custodian.

2.11.150 Alternative Predisposition Reports or Recommendations

The child and the child's parent, guardian or custodian may prepare alternative predisposition reports or recommendations to be submitted for consideration by the Juvenile Court in accordance with the provisions of § 2.11.210.

2.11.170 Predisposition Examinations and Investigations

(a) Following an adjudication hearing at which the child is found to have committed a delinquent act, and prior to the entry of any disposition orders, the Juvenile Court may enter a written order:

(1) requiring the child undergo a medical, psychological, or psychiatric examination; or

(2) requiring the child's parent, guardian or custodian undergo a medical, psychological, or psychiatric examination, where their ability to care for or supervise the child is an issue before the Juvenile Court;

§ 2.11.170(a)(2)

Under the provisions of the Model Code, the authority of the Juvenile Court to enter orders directed to the child's parents expands considerably following adjudication.

In order to safeguard parents' due process rights, § 1.04.110(c) makes parents parties at this stage of the proceedings, and § 2.01.110(b) confers on parents the right to be represented by counsel at disposition.

In addition, provisions affecting parents' rights and interests are generally limited in scope and applicability; here, for instance, the Juvenile Court may order a child's parent to undergo an examination only if "their ability to care for or supervise the child is an issue before the Juvenile Court."

For a discussion of similar statutory provisions, as well as the due process concerns they may raise, see Mindy M. Willman, *Express and Implied Limits on Juvenile Courts' Authority to Order Parental Drug Tests*, 43 Idaho L. Rev. 837, 853-54 (2007).

(3) directing the Juvenile Case Coordinator:

(A) to investigate any matter relevant to the disposition of the case, including but not limited to any matter described in § 2.11.130(a); and

(B) to address the results of that investigation in the predisposition report or, where the predisposition report has already been submitted, in a supplemental report.

(b) Where the results of any examination or investigation ordered by the Juvenile Court pursuant to the provisions of this section are not available at the disposition hearing:

(1) the Juvenile Court may enter such orders on disposition as the Juvenile Court finds appropriate, considering the evidence before it at the disposition hearing; and

(2) upon receiving the results of any such examination or investigation, the Juvenile Court:

(A) may, upon the Juvenile Court's own motion, conduct a hearing to review its disposition orders in accordance with the provisions of § 2.12.270; and

(B) shall, upon the motion of any party, conduct a hearing to review its disposition orders in accordance with the provisions of § 2.12.270.

2.11.190 Predisposition Reports and Examinations – Confidentiality

Any reports prepared and the results of any examinations ordered in accordance with the provisions of this chapter shall be subject to the provisions of § 1.04.210 of this title.

2.11.210 Predisposition Reports and Examinations – Filing and Service

(a) Any reports or examination results to be considered by the Juvenile Court at any hearing conducted pursuant to the provisions of this chapter shall be filed in the Juvenile Court and served upon the Juvenile Presenting Officer, the Juvenile Case Coordinator, counsel for the child, and the child's parent, guardian or custodian, at least three (3) days prior to the hearing, in accordance with the provisions of § 1.08.150 of this title.

(b) The time limit imposed by subsection (a) may be waived upon the agreement of the parties and the Juvenile Court.

§ 2.11.210(a)

The child is deliberately omitted in this subsection, in order to prevent the unmediated presentation of potentially distressing, confusing, or otherwise problematic information, findings, conclusions, or opinions.

One assumption underlying this omission is that both the child's parents and counsel for the child will exercise appropriate discretion in reviewing and discussing the report with the child (and that doing so will, in most cases, fall within counsel's professional obligations to the child).

2.12 DISPOSITION

2.12.110 Disposition Hearing – Time Limit

(a) The disposition hearing shall be held:

(1) within ten (10) days of the adjudication hearing, if the child was taken into custody and has not been released; or

(2) within twenty (20) days of the adjudication hearing, if the child was not taken into custody or has been released.

2.12.130 Disposition Hearing – Purpose

The Juvenile Court shall conduct the disposition hearing for the purpose of determining:

(a) whether the child is in need of supervision, treatment or rehabilitation; and

(b) the appropriate disposition of the matter.

2.12.150 Disposition Hearing – Conduct

At the disposition hearing, the Juvenile Court:

(a) shall afford the parties the opportunity:

(1) to present documentary or testimonial evidence concerning the appropriate disposition of the matter; and

(2) to controvert, and to cross-examine the sources of, the contents and conclusions of any reports, testimony, or other evidence to be considered by the Juvenile Court pursuant to the provisions of this section;

(b) shall consider the predisposition report and recommendations prepared by the Juvenile Case Coordinator, as well as any alternative predisposition report or recommendations prepared by the child or the child's parent, guardian or custodian; and

(c) may consider any evidence, including hearsay, which it finds to be relevant, reliable, and helpful in making the determinations required under § 2.12.130.

2.12.170 Orders on Disposition

(a) If the Juvenile Court finds that the child is not in need of supervision, treatment or rehabilitation, it shall dismiss the proceedings and enter a written order releasing the child from any detention, restrictions or other conditions previously imposed in connection therewith.

§ 2.12.110

See the comments on § 2.05.130.

(b) If the Juvenile Court finds that the child is in need of supervision, treatment or rehabilitation, the Juvenile Court may enter:

(1) any written disposition orders authorized under § 2.12.230; or

(2) a written order deferring disposition for a period not to exceed six (6) months, and setting forth:

(A) particular conditions, which may include any of the options specified in § 2.06.150, to be fulfilled by the child and the child's parent, guardian or custodian during the deferral period; and

(B) the ending date of the deferral period.

(c) In exercising its discretion under subsection (b), the Juvenile Court:

(1) shall enter a written order deferring disposition, in accordance with the provisions of subsection (b)(2), unless the Juvenile Court determines that the best interests of either the child or the community cannot be adequately addressed through one or more of the diversion options set forth in § 2.06.150; and

(2) shall in all cases enter the least restrictive orders appropriate considering:

(A) the nature and seriousness of the delinquent act;

(B) the circumstances, age, mental and physical condition of the child;

(C) the child's culpability, as indicated by the circumstances of the particular case; and

(D) the child's past record of delinquency, if any.

(d) All orders entered by the Juvenile Court pursuant to the provisions of subsection (b) shall be:

(1) explained to the child in language the child will easily understand; and

(2) accompanied by a written statement of:

(A) the facts relied upon by the Juvenile Court in entering those orders; and

(B) the reasons for rejecting less restrictive alternatives.

2.12.190 Deferred Disposition – Review Hearings

(a) Upon entering an order deferring disposition under § 2.12.170(b)(2), the Juvenile Court shall set a hearing to determine whether the child and the child's parent, guardian or custodian have fulfilled the deferral conditions.

(b) Prior to the ending date of the deferral period, the Juvenile Court may also set one or more interim review hearings to monitor compliance with or fulfillment of the deferral conditions.

(c) At any review hearing conducted pursuant to the provisions of this section:

(1) the child shall bear the burden of showing, by a preponderance of the evidence, compliance with any affirmative requirement set forth in the order deferring disposition; and

(2) the Tribe shall bear the burden of showing, by a preponderance of the evidence, that the child or the child's parent, guardian or custodian has engaged in any conduct prohibited by the order deferring disposition.

2.12.210 Deferred Disposition – Fulfillment of Conditions

(a) If the child and the child's parent, guardian or custodian fulfill the deferral conditions, the Juvenile Court shall, no later than the ending date of the deferral period, enter a written order:

(1) dismissing the delinquency petition with prejudice; and

(2) releasing the child from any restrictions or other conditions or obligations previously imposed by the Juvenile Court.

(b) If the child or the child's parent, guardian or custodian does not fulfill the deferral conditions, the Juvenile Court may enter a written order:

(1) continuing the review hearing to allow additional time for the child or the child's parent, guardian or custodian to fulfill the deferral conditions;

(2) modifying the deferral conditions;

(3) extending the deferral for an additional period not to exceed three (3) months; or

(4) revoking the order deferring disposition.

(c) Upon revoking the order deferring disposition, the Juvenile Court may proceed to enter any written disposition orders authorized under § 2.12.230.

2.12.230 Disposition Options

(a) Pursuant to the provisions of § 2.12.170(b)(1), the Juvenile Court may enter written orders including any of the following, as best suited to the needs of the child and the safety of the community:

(1) an order permitting the child to remain with his or her parent, guardian or custodian, subject to such conditions and limitations as the Juvenile Court may prescribe;

(2) an order requiring the child or the child's parent, guardian or custodian to participate in an educational or counseling program designed to deter delinquent acts or other conduct or conditions presenting a threat to the welfare of the child or the community;

(3) an order requiring the child's parent, guardian or custodian to participate in an educational or counseling program designed to contribute to their ability to care for and supervise the child, including but not limited to parenting classes;

(4) an order requiring the child or the child's parent, guardian or custodian to undergo a medical, psychological, or psychiatric evaluation, in accordance with the provisions of § 2.11.170;

(5) an order requiring the child or the child's parent, guardian or custodian to undergo medical, psychological, or psychiatric treatment, where such treatment is:

(A) recommended by a qualified medical, psychological, or psychiatric professional; and

(B) necessary to:

(i) address conditions which contributed to the child's adjudication; or

(ii) allow the child to remain with or be returned to the custody of the child's parent, guardian or custodian.

(6) an order requiring the child to pay restitution;

(7) an order requiring the child to perform community service;

(8) an order requiring the child to attend structured after-school, evening, educational, vocational or other court-approved programs appropriate for meeting the needs of the child and providing for the safety of the community;

(9) an order prohibiting the child from driving a motor vehicle for a period not to exceed the date on which the child reaches eighteen (18) years of age;

§ 2.12.230(a)(2)-(5)

Regarding orders directed to the child's parents, see the comments on § 2.11.170(a)(2).

§ 2.12.230(a)(8)

Some jurisdictions, for example, operate evening and weekend reporting centers to provide additional supervision and structure for adjudicated youth, without the costs and risks associated with secure detention.

These reporting centers may utilize existing youth agency facilities or community recreation centers, and also provide children with educational, nutritional, and health services, as well as positive social interactions and mentoring opportunities.

(10) an order placing the child in the temporary legal custody of a relative or other responsible adult, subject to such conditions and limitations as the Juvenile Court may prescribe;

(11) an order providing for supervised or conditional release in accordance with the provisions of § 2.04.170; and

(12) an order providing for the detention or other out-of-home placement of the child in accordance with the provisions of § 2.04.150.

(b) If a child found by the Juvenile Court to have committed a delinquent act has not achieved a high school diploma or the equivalent, the Juvenile Court may enter a written order requiring that the child pursue a course of study designed to lead to the achievement of a high school diploma or the equivalent.

2.12.250 Detention – Limitations

(a) The Juvenile Court shall not enter a disposition order providing for the detention or other out-of-home placement of the child unless:

(1) no less restrictive alternatives will suffice; and

(2) there is clear and convincing evidence that the child should be detained because:

(A) such detention is necessary to avert a substantial risk to the health, welfare, person or property of the child or others;

(B) there is a substantial risk that the child may leave or be removed from the jurisdiction of the Juvenile Court; or

(C) each of the following conditions is met:

(i) the child has repeatedly failed to comply with the disposition orders of the Juvenile Court;

(ii) less restrictive alternatives have repeatedly failed to bring the child into compliance; and

(iii) detention or out-of-home placement is reasonably calculated to bring the child into compliance.

(b) The Juvenile Court shall not enter a disposition order providing for the detention or other out-of-home placement of the child for any of the reasons set forth in § 1.09.170(d) of this title.

(c) In no event shall a child be detained in a secure juvenile detention facility for a total period exceeding that for which an adult could be incarcerated for the same act under the Tribal Code.

(d) For the purposes of interpreting and applying subsection (c), the total period of secure detention:

(1) shall include any period during which the child was detained in a secure juvenile detention facility prior to adjudication; and

(2) shall be limited, where the child is found to have committed multiple delinquent acts in connection with a single incident, to the period for which an adult could be incarcerated for the most serious of those acts under the Tribal Code.

2.12.270 Disposition Orders – Review

(a) The Juvenile Court shall conduct a hearing to review any disposition orders entered pursuant to the provisions of § 2.12.170(b)(1):

(1) at least once every six (6) months, if the child is not detained or in an out-of-home placement;

(2) at least once every thirty (30) days, if the child is detained in a secure juvenile detention facility; and

(3) at least once every forty-five (45) days, if the child is in an out-of-home placement other than detention in a secure juvenile detention facility.

(b) The Juvenile Court shall conduct the hearing for the purpose of determining:

(1) whether the child and the child's parent, guardian or custodian are in compliance with those disposition orders;

(2) the extent to which those disposition orders have accomplished their intended purposes;

(3) whether those disposition orders should:

(A) continue in effect without modification or extension;

(B) be terminated in accordance with the provisions of § 2.12.290(b); or

(C) be modified or extended in accordance with the provisions of § 2.12.310.

(c) Where the child is detained or in an out-of-home placement, the Juvenile Court shall consider:

(1) whether the circumstances of the child, the availability of less restrictive alternatives, or other material facts have changed since the last hearing;

(2) whether detention or other out-of-home placement remains necessary and authorized under § 2.12.250; and

(3) whether the child should be released from detention or other out-of-home placement in favor of a less restrictive alternative.

(d) At any review hearing conducted pursuant to the provisions of this section:

(1) the child shall bear the burden of showing, by a preponderance of the evidence, compliance with any affirmative requirement set forth in the disposition orders entered by the Juvenile Court; and

(2) the Tribe shall bear the burden of showing, by a preponderance of the evidence, that the child or the child's parent, guardian or custodian has engaged in any conduct prohibited by the disposition orders entered by the Juvenile Court.

2.12.290 Disposition Orders – Duration and Termination

(a) Disposition orders entered by the Juvenile Court shall continue in force for not more than one (1) year, unless they are extended in accordance with the provisions of § 2.12.310.

(b) The Juvenile Court may terminate a disposition order prior to its expiration if it appears to the Juvenile Court, following a hearing conducted upon its own motion or the motion of any party, that the purposes of the disposition order have been accomplished.

(c) With the exception of an order requiring the child to pay restitution, all disposition orders affecting the child shall automatically terminate, and the child shall be discharged from any further obligations in connection with the delinquency proceedings, when the child reaches twenty-one (21) years of age.

2.12.310 Disposition Orders – Modification or Extension

(a) Following a modification hearing conducted upon its own motion or the motion of any party, the Juvenile Court may modify or extend its disposition orders if the Juvenile Court finds by clear and convincing evidence that such modification or extension is necessary to accomplish the purposes of the orders to be modified.

(b) The modification hearing shall be held:

(1) within ten (10) days of the detention hearing, if the child was taken into custody as the result of an alleged violation of a disposition order, and has not been released; or

(2) within thirty (30) days of the filing of the motion for modification, if the child was not taken into custody as the result of an alleged violation of a disposition order, or has been released.

(c) Where the modification hearing is to be held upon the motion of the Juvenile Court, notice of the modification hearing shall be accompanied by a statement of the specific facts upon which the motion for modification is based.

(d) In making the determination required by subsection (a), the Juvenile Court may consider:

(1) the extent to which the child and the child's parent, guardian or custodian have complied with any disposition orders previously entered by the Juvenile Court;

(2) evidence that the child has committed a subsequent delinquent act;

(3) changes in treatment or other recommendations relied upon by the Juvenile Court in entering the orders to be modified; and

(4) any other material changes in the circumstances of the child or the child's family, parent, guardian or custodian.

(e) All modified disposition orders shall be subject to the requirements of § 2.12.170(c) and § 2.12.170(d).

(f) An extension ordered in accordance with the provisions of this section shall not exceed six (6) months from the expiration of the prior order, and in no event shall the duration of a disposition order be extended:

(1) for longer than reasonably necessary to accomplish the purpose of the order;

(2) beyond a total of three (3) years; or

(3) past the date on which the child shall reach twenty-one (21) years of age.

§ 2.12.310(f)

The time limit in this section corresponds with the maximum review period under § 2.12.270(a).

2.12.330 Disposition Orders – Violations

(a) The violation of a disposition order entered pursuant to the provisions of § 2.12.170(b)(1) may be reported to the Juvenile Case Coordinator, who may file a motion for modification pursuant to the provisions of § 2.12.310.

(b) A child detained as the result of an alleged violation of a disposition order shall immediately be released unless a modification hearing is held within the time limits imposed by § 2.12.310(b), and

(1) the Juvenile Court enters, in accordance with the provisions of § 2.12.310, modified disposition orders providing for continued detention; or

(2) the alleged violation includes the commission of a delinquent act, and:

(A) a new delinquency petition is filed prior to the modification hearing; and

(B) continued detention, pending further delinquency proceedings, is necessary and authorized under § 2.04.130.

CHAPTER 3

CHILD IN NEED OF SERVICES

3.01 RIGHTS, RULES AND PROCEDURES

3.01.110 Right to Counsel

(a) The child shall be represented by counsel:

(1) at any services planning conference conducted pursuant to the provisions of §§ 3.06.110, *et seq.*, and at all stages of any subsequent proceedings conducted pursuant to the provisions of this chapter; and

(2) at all stages of any proceedings conducted pursuant to the filing of a child-in-need-of-services petition in accordance with the provisions of § 3.07.130.

(b) The child's parent, guardian or custodian shall have the right to be represented by counsel at disposition, and in any proceedings for contempt brought against the child's parent, guardian or custodian pursuant to the provisions of this chapter.

3.01.130 Failure to Appear

(a) In all child-in-need-of-services proceedings conducted pursuant to the provisions of this chapter:

(1) if a child sixteen (16) years of age or older fails to appear before the Juvenile Court after being so ordered:

(A) upon a first or subsequent failure to appear, the Juvenile Court may:

(i) issue a new summons in accordance with the provisions of § 1.08.110 of this title; and

(ii) issue a warning to the child regarding the potential consequences of a subsequent failure to appear;

(B) upon a second or subsequent failure to appear, the Juvenile Court may:

(i) when feasible, issue a temporary custody order, in accordance with the provisions of § 3.02.110, directing that the child be brought immediately before the Juvenile Court; and

(ii) following a hearing on the matter, issue a written order imposing additional or modified supervisory conditions in accordance with the provisions of § 3.03.170;

(C) upon a third or subsequent failure to appear, the Juvenile Court may:

(i) issue a temporary custody order in accordance with the provisions of § 3.02.110; and

§ 3.01.110(b)

See the comments on § 2.01.110(b).

§ 3.01.130

See § 1.08.210 and the comments thereon, and the comments on § 1.09.170(b)(1).

Unlike the Juvenile Justice and Delinquency Prevention Act, the Model Code does not include a "valid court order" exception to the prohibition against the secure detention of status offenders; the options set forth in this section are limited accordingly.

(ii) conduct a hearing to review the need for placement in accordance with the provisions of §§ 3.03.110, *et seq*.;

(2) if a child under sixteen (16) years of age fails to appear before the Juvenile Court after being so ordered:

(A) if the Juvenile Court finds, based on the sworn testimony of the child's parent, guardian or custodian, that the child has willfully refused to appear, the Juvenile Court may proceed in accordance with the provisions of subsection (a)(1); or

(B) in the absence of such a finding, the Juvenile Court may proceed in accordance with the provisions of subsection (a)(3);

(3) if the child's parent, guardian or custodian fails to appear before the Juvenile Court after being so ordered, or fails to bring the child before the Juvenile Court after being so ordered:

(A) upon a first or subsequent failure to appear, the Juvenile Court may:

(i) issue a new summons in accordance with the provisions of § 1.08.110 of this title; and

(ii) issue a warning to the child's parent, guardian or custodian regarding the potential consequences of a subsequent failure to appear;

(B) upon a second or subsequent failure to appear, the Juvenile Court may:

(i) issue a bench warrant, in accordance with the provisions of [the tribal code], directing that the child's parent, guardian or custodian be brought before the Juvenile Court to show cause why they should not be subject to sanctions in accordance with the provisions of this section; and

(ii) absent a showing of good cause for the failure to appear, impose upon the child's parent, guardian or custodian a fine of up to $100 (one hundred dollars);

(C) upon a third or subsequent failure to appear, the Juvenile Court may initiate proceedings for contempt against the child's parent, guardian or custodian in accordance with the provisions of [the tribal code].

(b) The other provisions of this section notwithstanding, whenever it appears from a filed affidavit or sworn testimony before the Juvenile Court that the child has failed to appear as the result of circumstances posing a substantial risk to the health, welfare,

person or property of the child or others, the Juvenile Court may:

(1) issue a temporary custody order in accordance with the provisions of § 3.02.110;

(2) following a hearing on the matter, issue a written order imposing additional or modified supervisory conditions in accordance with the provisions of § 3.03.170; and

(3) conduct a hearing to review the need for placement in accordance with the provisions of §§ 3.03.110, *et seq*.

(c) Other provisions of [the tribal code] notwithstanding, no sanctions other than those authorized by this section shall be sought or imposed for a failure to appear before the Juvenile Court in any proceedings conducted pursuant to the provisions of this chapter.

3.02 TEMPORARY CUSTODY

3.02.110 Temporary Custody Orders

(a) The Juvenile Court may issue a written order that a law enforcement officer shall take a child into temporary custody if:

(1) the issuance of a temporary custody order is authorized under § 3.01.130; or

(2) the Juvenile Court finds, based on a filed affidavit or sworn testimony before the Juvenile Court, that there are reasonable grounds to believe:

(A) the child is a runaway as defined in § 1.02.110(m) of this title; or

(B) the present circumstances of the child pose a substantial risk to the health, welfare, person or property of the child or others.

(b) A temporary custody order issued in accordance with the provisions of this section shall specify:

(1) prior to the filing of a child-in-need-of-services petition in accordance with the provisions of § 3.07.130, that the child is to be returned to the custody of the child's parent, guardian, or custodian; or

(2) following the filing of a child-in-need-of-services petition in accordance with the provisions of § 3.07.130:

(A) that the child is to be brought immediately before the Juvenile Court;

(B) that the child is to be returned to the custody of the child's parent, guardian, or custodian; or

(C) where the child is to be placed, in accordance with the provisions of § 3.03.150, pending a placement hearing to be conducted in accordance with the provisions of §§ 3.03.210, *et seq*.

3.02.130 Taking a Child into Temporary Custody

A law enforcement officer may take a child into temporary custody if:

(a) the Juvenile Court has issued a temporary custody order in accordance with the provisions of § 3.02.110;

(b) the child voluntarily agrees to or requests services or shelter; or

(c) there are reasonable grounds to believe:

(1) the child is a runaway as defined in § 1.02.110(m) of this title; or

§ 3.02.130

Temporary custody under the provisions of this chapter should not be a precursor to continued detention, nor a pretense for detaining a child suspected of committing a delinquent act, and should be distinguished as clearly as possible from arrest in a criminal matter or custody in a delinquency case.

Unlike § 2.03.130, therefore, this section does not require the law enforcement officer to advise the child of his or her rights – but this in no way abrogates the child's rights under the provisions of the Model Code.

A child who has been taken into temporary custody still enjoys the privilege against self-incrimination, for instance, and must be advised of his or her rights in accordance with the provisions of § 2.02.130 prior to any interrogation.

(2) the present circumstances of the child pose a substantial risk to the health, welfare, person or property of the child or others.

3.02.150 Release or Delivery from Temporary Custody

(a) A law enforcement officer taking a child into temporary custody pursuant to the provisions of § 3.02.130 shall, without unreasonable delay:

(1) if the Juvenile Court has issued a temporary custody order in accordance with the provisions of § 3.02.110, bring the child before the Juvenile Court or place the child as specified in the temporary custody order; and immediately notify the Juvenile Case Coordinator; or

(2) if the Juvenile Court has not issued a temporary custody order in accordance with the provisions of § 3.02.110, release the child to the child's parent, guardian or custodian.

(b) If the law enforcement officer has reason to believe the child is in need of medical attention, the law enforcement officer shall deliver the child to a medical facility or otherwise obtain such medical attention for the child before proceeding in accordance with the other provisions of this section.

(c) Upon releasing the child to the child's parent, guardian or custodian, the law enforcement officer shall refer the child's parent, guardian or custodian to any social, community, or tribal services or resources which may be appropriate for addressing the needs of the child and the child's parent, guardian or custodian.

3.02.170 Action by Juvenile Case Coordinator

(a) Upon being notified that a child has been taken into temporary custody pursuant to a temporary custody order issued by the Juvenile Court in accordance with the provisions of § 3.02.110, and has not been released to the child's parent, guardian or custodian, the Juvenile Case Coordinator shall:

(1) confirm that the child has been placed as specified in the temporary custody order;

(2) file written notice in the Juvenile Court of:

(A) the date and time the child was taken into temporary custody;

(B) the location where the child has been placed; and

(C) the need to conduct a placement hearing in accordance with the provisions of § 3.03.210;

§ 3.02.150(c)

As noted in the comments on the corresponding delinquency section, § 2.03.150(c), participation in services or alternatives to formal processing in response to a law enforcement referral should be strictly voluntary on the part of both the child and the child's parents.

Note, however, that a law enforcement officer may submit a formal request for services under §3.04.110.

(3) provide copies of the written notice required under subsection (2) to the child, the child's parent, guardian or custodian, the Juvenile Presenting Officer, and counsel for the child; and

(4) inform the child of the actions taken by the Juvenile Case Coordinator to comply with the requirements of this subsection.

(b) Where counsel has not already been appointed or retained to represent the child, a copy of the written notice required under subsection (a)(3) shall be provided to the Juvenile Advocate.

§ 3.02.170(a)(4)

This subsection is identical to § 2.03.170(c)(3) of the delinquency provisions; see the comments on that subsection, which note that it was adapted from IJA-ABA *Standards Relating to Interim Status* 6.5.

§ 3.02.170(b)

This subsection is identical to § 2.03.170(d) of the delinquency provisions; see the comments on that subsection, which note that IJA-ABA *Standards Relating to Interim Status* 6.5 includes a similar requirement.

3.03 OUT-OF-HOME PLACEMENT AND SUPERVISORY CONDITIONS

3.03.010 Adoption and Safe Families Act Compliance

(a) Before entering an order subjecting the child to out-of-home placement, the Juvenile Court shall determine, on a case-by-case basis:

(1) whether continuation in the home of the child's parent, guardian or custodian is contrary to the child's welfare; and

(2) whether there are available services that would prevent or eliminate the need for out-of-home placement.

(b) If the child can be returned to the custody of his or her parent, guardian or custodian through the provision of services to prevent or eliminate the need for removal, the Juvenile Court shall return the child to the custody of the child's parent, guardian or custodian, and order that those services be provided.

(c) If the child cannot be returned to the custody of his or her parent, guardian or custodian, the Juvenile Case Coordinator shall, as soon as possible, provide referrals for services to enable the child's parent, guardian, or custodian to obtain any assistance that may be needed to effectively provide the care and control necessary for the child to return to the home.

(d) Upon entering an order subjecting the child to out-of-home placement, and in no event later than sixty (60) days following the child's removal from the home of the child's parent, guardian or custodian, the Juvenile Court shall determine whether reasonable efforts have been made to safely maintain the child in the home.

(e) Upon making the determinations required by this section, the Juvenile Court shall enter written findings of fact referencing any and all evidence relied upon in reaching its decision.

3.03.110 Least Restrictive Alternatives

(a) When a child is subject to supervisory conditions or out-of-home placement under the provisions of this chapter, the Juvenile Court shall order only the least restrictive conditions or placement consistent with:

(1) the best interests of the child; and

(2) the safety of the community.

(b) Whenever the Juvenile Court enters an order imposing supervisory conditions or subjecting the child to out-of-home placement, the order shall include a statement of the Juvenile Court's reasons for rejecting less restrictive alternatives.

§ 3.03.010

See the comments on § 2.04.010.

§ 3.03.010(e)

See the comments on § 2.04.010(e).

3.03.130 Out-of-Home Placement – Grounds

A child shall not be subject to out-of-home-placement under the provisions of this chapter unless:

(a) a child-in-need-of-services petition has been filed in accordance with the provisions of § 3.07.130;

(b) there are reasonable grounds to believe the child is a child in need of services;

(c) no less restrictive alternatives will suffice; and

(d) there is clear and convincing evidence that such placement is necessary:

  (1) to avert a substantial risk to the health, welfare, person or property of the child or others; or

  (2) because there is a substantial risk that the child may leave or be removed from the jurisdiction of the Juvenile Court.

3.03.150 Out-of-Home Placement – Options

A child alleged to be a child in need of services may be placed only in:

(a) a licensed foster home or a home approved by the Juvenile Court, which may be a public or private home or the home of a noncustodial parent or a relative;

(b) a juvenile residential care facility; or

(c) a residential treatment facility, detoxification facility, or halfway house, if there is evidence of recent or ongoing alcohol or substance abuse by the child, and:

  (1) there is clear and convincing evidence that such placement is necessary to avert a substantial risk to the health or welfare of the child; or

  (2) out-of-home placement is otherwise necessary and authorized under § 3.03.130, and the child requests or agrees to such placement in lieu of a more restrictive placement.

3.03.170 Supervisory Conditions

(a) Before ordering that a child be subject to out-of-home placement, the Juvenile Court shall consider, and may impose, supervisory conditions such as:

  (1) a court-imposed curfew;

  (2) a requirement that the child or the child's parent, guardian or custodian report to the Juvenile Case Coordinator at specified intervals;

(3) an order requiring the child to remain at home at all times when the child is not:

(A) in the presence of the child's parent, guardian or custodian;

(B) attending school or participating in other activities approved by the Juvenile Court; or

(C) legally required to be elsewhere;

(4) electronic home monitoring or similar means of monitoring the child's whereabouts;

(5) community supervision; and

(6) other reasonable conditions calculated to ensure adequate supervision of the child during the pendency of the proceedings.

(b) Supervisory conditions imposed by the Juvenile Court in accordance with the provisions of this section shall not include bail.

3.03.190 Supervisory Conditions – Violations

If it appears from a filed affidavit or sworn testimony before the Juvenile Court that the child has violated supervisory conditions imposed in accordance with the provisions of § 3.03.170, the Juvenile Court may:

(a) issue a temporary custody order in accordance with the provisions of § 3.02.110;

(b) following a hearing on the matter, impose additional or modified supervisory conditions in accordance with the provisions of § 3.03.170; and

(c) conduct a hearing to review the need for out-of-home placement in accordance with the provisions of § 3.03.130.

3.03.210 Placement Hearing – Requirement and Time Limit

(a) Whenever a child is taken into temporary custody pursuant to a temporary custody order issued by the Juvenile Court in accordance with the provisions of § 3.02.110, and is not released to the child's parent, guardian or custodian, the Juvenile Court shall conduct a placement hearing within two (2) days.

(b) Notwithstanding the provisions of § 1.07.170 of this title, the placement hearing shall not be continued so as to fall outside the time limit imposed by this section.

(c) If the placement hearing is not held within the time limit imposed by this section, the child shall immediately be released to the child's parent, guardian or custodian.

§ 3.03.170(a)(6)

Conditions imposed under this subsection should be appropriately limited in scope, duration, and purpose, and should not include requirements (such as compulsory treatment) that are only appropriate following adjudication.

See also the comments on § 2.04.170(b)(2) and § 2.04.170(b)(5).

§ 3.03.170(b)

Note that the Model Code consistently prohibits the imposition of bail in juvenile proceedings.

See § 2.04.170(b) and the comments thereon, as well as § 4.04.130(c)(1).

3.03.230 Placement Hearing – Notice

(a) Written notice of the placement hearing:

(1) shall be served on the child, the child's parent, guardian or custodian, and counsel for the child as soon as the time for the placement hearing has been set;

(2) shall in all other respects be served in accordance with the provisions of § 1.08.150 of this title;

(3) shall contain the name of the court, the nature and purpose of the proceedings, and the date, time, and place of the hearing; and

(4) shall advise the parties of their rights under the provisions of this title; and

(5) shall specify the Juvenile Court's reason for considering an out-of-home placement.

(b) Where counsel has not already been appointed or retained to represent the child, the written notice required by subsection (a) shall be served on the Juvenile Advocate.

§ 3.03.230(a)(1)

See the comments on § 2.04.250(a)(1).

3.03.250 Placement Hearing – Purpose

The Juvenile Court shall conduct the placement hearing for the purpose of determining:

(a) whether there are reasonable grounds to believe the child is a child in need of services, unless the Juvenile Court has made such a finding, in accordance with the provisions of § 3.03.270 or § 3.08.150, at a prior hearing;

(b) whether the child can be returned to the custody of the child's parent, guardian or custodian without supervisory conditions;

(c) if the child cannot be returned to the custody of the child's parent, guardian or custodian without supervisory conditions, what supervisory conditions, imposed in accordance with the provisions of § 3.03.170, would render out-of-home placement unnecessary; and

(d) if out-of-home placement is necessary and authorized under § 3.03.130, where the child should be placed pending the child's next appearance before the Juvenile Court.

3.03.270 Order on Placement Hearing

(a) At the placement hearing, the Juvenile Court shall enter a written order returning the child to the custody of the child's parent, guardian or custodian, without conditions, unless the Juvenile Court finds, based on a filed affidavit or sworn testimony before the Juvenile Court, that there are reasonable grounds to believe the child is a child in need of services.

(b) If the Juvenile Court finds that there are reasonable grounds to believe the child is a child in need of services, the Juvenile Court shall, at the conclusion of the placement hearing, enter a written order:

(1) returning the child to the custody of the child's parent, guardian or custodian without conditions;

(2) returning the child to the custody of the child's parent, guardian or custodian, and setting forth any supervisory conditions imposed by the Juvenile Court; or

(3) specifying where the child is to be placed until the next hearing.

(c) If the child was taken into temporary custody as the result of a failure to appear before the Juvenile Court, the written order entered by the Juvenile Court shall be consistent with the provisions of § 3.01.130.

(d) No provision of this chapter shall be interpreted to prohibit the Juvenile Court from returning the child to the custody of the child's parent, guardian or custodian prior to the appointment or appearance of counsel for the child.

3.03.290 Placement – Rehearing

Upon the filing of a motion for rehearing and a declaration stating the relevant facts, the Juvenile Court shall rehear the placement matter without unnecessary delay if:

(a) the child was not returned to the custody of the child's parent, guardian or custodian at the placement hearing;

(b) the child's parent, guardian or custodian did not receive notice of the placement hearing; and

(c) the child's parent, guardian or custodian did not appear or waive appearance at the placement hearing.

3.04 REQUEST FOR SERVICES AND INITIAL CONSULTATION

3.04.110 Request for Services

(a) A written request for services may be submitted to the juvenile cases coordinator by any of the following persons who believes a child is a child in need of services:

(1) the child;

(2) the child's parent, guardian or custodian;

(3) a member of the child's extended family;

(4) the child's guardian *ad litem*;

(5) a social services agency;

(6) a school official;

(7) a law enforcement officer.

(b) If the Juvenile Case Coordinator has reason to believe that a child is a child in need of services, the Juvenile Case Coordinator may:

(1) prepare a written request for services on the Juvenile Case Coordinator's own initiative; and

(2) otherwise proceed in accordance with the provisions of this chapter.

(c) To the extent possible, the request for services shall set forth plainly and with specificity:

(1) the name, age, residence address, and present location of the child;

(2) the name and age of the child's parent, guardian, or custodian;

(3) the name, age, and relationship to the child of all persons living within the child's home;

(4) the reason(s) for the request, and the nature of the services requested;

(5) whether any of the information required under this subsection is unknown.

3.04.130 Review by Juvenile Case Coordinator

(a) Upon receiving a request for services, the Juvenile Case Coordinator shall:

(1) provide a copy of the request to counsel for the child or, where counsel has not already been appointed or retained to represent the child, to the Juvenile Advocate; and

§ 3.04.110(a)

The list of individuals who can submit a request for services is intended to be as comprehensive as possible, while being limited to likely sources of accurate and reliable information about the child.

The Juvenile Presenting Officer is excluded in order to avoid any confusion about his or her role in ongoing or subsequent juvenile proceedings.

The inclusion of law enforcement officers is specifically intended to provide them with a formal response option in cases that warrant more than a voluntary referral to services, but not a citation for delinquency.

One underlying assumption of this section, however, is that anyone with concerns regarding a child's conduct or well-being could bring those concerns to one of the individuals listed here, or to the Juvenile Case Coordinator, who could then submit or prepare a formal request for services.

§ 3.04.110(a)(3)

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

§ 3.04.130(a)(1)

While § 3.01.110 requires that the child be represented by counsel only at and following the services planning conference (see §§ 3.06.110, *et seq*.), this subsection is intended to ensure notice to counsel at the earliest stages of any proceedings under this chapter.

Needless to say, the Juvenile Advocate should not only maintain the confidentiality of any information received pursuant to the provisions of this section, but will need to adopt practices and procedures to identify and avoid conflicts of interest.

(2) review the request to determine if the alleged facts give rise to a reasonable belief that the child is a child in need of services.

(b) If the request for services is incomplete, or if the Juvenile Case Coordinator is unable to make the determination required under subsection (a), the Juvenile Case Coordinator:

(1) subject to the provisions of § 3.04.210, may conduct an initial consultation with the child and the child's parent, guardian or custodian, in accordance with the provisions of § 3.04.190; and

(2) shall conduct additional inquiries as necessary, provided that, subject to the provisions of § 3.04.230, such inquiries may be directed only to:

(A) the person who submitted the request for services;

(B) any source of information identified by the person who submitted the request for services; and

(C) the child's parent, guardian or custodian.

(c) In conducting additional inquiries pursuant to the provisions of this section, the Juvenile Case Coordinator:

(1) shall exercise discretion so as to protect the privacy of the child and the child's family; and

(2) subject to the provisions of § 3.04.230, shall not disclose the substance of the request for services to persons other than:

(A) the child;

(B) the child's parent, guardian or custodian; and

(C) counsel for the child.

3.04.150 Residential Respite Services

The Juvenile Case Coordinator shall attempt to secure short-term residential respite services for any child alleged to be a child in need of services, if:

(a) the Juvenile Case Coordinator determines that the child or the child's parent, guardian or custodian would benefit from residential respite services;

(b) the child and the child's parent, guardian or custodian agree; and

(c) residential respite services are available within a reasonable distance from the child's home.

3.04.170 Determination by Juvenile Case Coordinator

(a) If it does not appear to the Juvenile Case Coordinator that the child is a child in need of services, the Juvenile Case Coordinator:

(1) shall nonetheless refer the child and the child's parent, guardian or custodian to any social, community, or tribal services or resources which may be appropriate to address issues or concerns raised by the alleged facts;

(2) shall inform the person who submitted the request for services, in writing, of the Juvenile Case Coordinator's determination, including a brief statement of the reasons for that determination;

(3) shall provide a copy of the information required under subsection (2) to counsel for the child or, where counsel has not already been appointed or retained to represent the child, to the Juvenile Advocate; and

(4) subject to the provisions of § 3.04.230, shall take no further action in the matter.

(b) If it appears to the Juvenile Case Coordinator that the child is a child in need of services, the Juvenile Case Coordinator shall, within five (5) business days of receiving the request, and subject to the provisions of § 3.04.210, conduct an initial consultation with the child and the child's parent, guardian or custodian.

3.04.190 Initial Consultation – Purpose and Conduct

(a) The purpose of the initial consultation shall be:

(1) to review with the child and the child's parent, guardian or custodian the contents of the request for services;

(2) to assist the Juvenile Case Coordinator in making, confirming or reviewing the determination required under § 3.04.130(a)(2); and

(3) to identify and discuss:

(A) the particular needs and circumstances of the child and the child's family;

(B) any additional issues or concerns raised by the alleged facts; and

(C) services and resources available to address those needs, issues and concerns.

(b) If, at the conclusion of the initial consultation, it does not appear to the Juvenile Case Coordinator that the child is a child in need of services, the Juvenile Case Coordinator shall proceed in accordance with the provisions of § 3.04.170(a).

(c) If, at the conclusion of the initial consultation, it appears to the Juvenile Case Coordinator that the child is a child of need of services, the Juvenile Case Coordinator shall:

(1) together with the child and the child's parent, guardian or custodian, develop a voluntary plan for services in accordance with the provisions of § 3.05.110; or

(2) within ten (10) business days of the initial consultation, and subject to the provisions of § 3.06.150, convene a services planning conference in accordance with the provisions of §§ 3.06.110, *et seq*.

3.04.210 Initial Consultation – Participation Voluntary

(a) Prior to conducting the initial consultation, the Juvenile Case Coordinator shall inform the child and the child's parent, guardian or custodian:

(1) of their rights under the provisions of this title;

(2) of the nature and purpose of the initial consultation; and

(3) that participation in the initial consultation is voluntary.

(b) If the child declines to attend or participate in the initial consultation, the Juvenile Case Coordinator shall, subject to the other provisions of this section, conduct the initial consultation without the participation of the child.

(c) If the child's parent, guardian or custodian declines to attend or participate in the initial consultation, the Juvenile Case Coordinator shall, within ten (10) business days, and subject to the provisions of § 3.06.150, convene a services planning conference in accordance with the provisions of §§ 3.06.110, *et seq*.

3.04.230 Additional Inquiries or Disclosures – Where Permitted

No provision of this chapter shall be construed to prohibit the Juvenile Case Coordinator from making additional inquiries or disclosure as permitted by law, or from taking further action pursuant to the provisions of [the tribal code] or other applicable laws, where the alleged facts give rise to:

(a) a reasonable belief that a crime or delinquent act has been committed; or

(b) a legal duty to report the alleged facts, including but not limited to cases of alleged child abuse or neglect.

§ 3.04.190(c)(1)

Note that under § 3.04.210 the child may decline to participate in the initial consultation and, by extension, the development of the voluntary plan for services.

Also note, however, that if the child repeatedly fails to cooperate in the subsequent implementation of the plan, the Juvenile Case Coordinator may recommend the filing of a child-in-need-of-services petition in accordance with the provisions of § 3.07.110.

§ 3.04.210(c)

Contrast this subsection with § 2.05.190(c) of the delinquency provisions.

Whereas the child's participation alone may influence the Juvenile Case Coordinator's recommendation in a delinquency case, an implicit assumption of this chapter is that the cooperation of the child's parents is essential to the development of a voluntary plan for services.

3.05 VOLUNTARY PLAN FOR SERVICES

3.05.110 Voluntary Plan for Services – Contents and Requirements

(a) A voluntary plan for services developed pursuant to the provisions of this chapter shall set forth, in writing:

(1) the rights of the child and the child's parent, guardian or custodian under the provisions of this title;

(2) an acknowledgment that participation in the plan for services is voluntary, and neither the child nor the child's parent, guardian or custodian is obligated to comply with the plan for services;

(3) the anticipated course of action to be taken if:

(A) the child or the child's parent, guardian or custodian declines to participate in or does not comply with the plan for services; or

(B) the outcomes and goals set forth in the plan for services are not accomplished within a reasonable period of time, to be specified in accordance with the provisions of subsection (a)(9);

(4) the specific conduct and circumstances upon which the allegation that the child is a child in need of services is based;

(5) the specific services and resources available to address:

(A) the particular needs of the child and the child's parent, guardian or custodian; and

(B) any additional issues or concerns raised by the alleged facts;

(6) a comprehensive plan for ensuring that the child and the child's parent, guardian or custodian obtain the services and resources needed;

(7) the specific actions to be taken by the child and the child's parent, guardian or custodian in accordance with the plan, including the frequency and location of appointments for services and contact with the Juvenile Case Coordinator;

(8) the anticipated outcomes of the plan and its implementation, including measurable, individualized goals for the child and the child's parent, guardian or custodian;

(9) an estimate of the time which will be needed to accomplish the anticipated outcomes, which shall not exceed six (6) months;

(10) a schedule for reviewing the effectiveness of the plan and the progress of the child and the child's parent, guardian or custodian toward achieving the anticipated outcomes.

(b) The Juvenile Case Coordinator shall provide a copy of the voluntary plan for services to counsel for the child or, where counsel has not already been appointed or retained to represent the child, to the Juvenile Advocate.

3.05.130 Voluntary Plan for Services – Monitoring and Review

(a) The Juvenile Case Coordinator shall periodically review the progress of the child and the child's parent, guardian or custodian toward accomplishing the anticipated outcomes of the voluntary plan for services.

(b) The periodic review required under subsection (a):

(1) shall include regular, scheduled contact between the Juvenile Case Coordinator, the child, and the child's parent, guardian or custodian; and

(2) where appropriate given the circumstances and needs of the child and the child's parent, guardian or custodian, may include:

(A) home visits at times and intervals set forth in the voluntary plan for services and agreed to by the child's parent, guardian or custodian; and

(B) subject to written consent by the child and the child's parent, guardian or custodian, as may be necessary, communication between the Juvenile Case Coordinator and:

(i) any person or agency providing services to the child or the child's parent, guardian or custodian in accordance with the voluntary plan for services; and

(ii) school officials or support staff responsible for meeting the child's educational needs and monitoring the child's educational progress.

3.05.150 Termination of Proceedings

(a) Prior to the filing of a child-in-need-of-services petition, the Juvenile Case Coordinator shall terminate all proceedings initiated pursuant to the provisions of this chapter upon determining that:

(1) the outcomes and goals of the voluntary plan for services have been accomplished; or

(2) it otherwise appears that the child is no longer a child in need of services.

§ 3.05.110(b)

See the comments on § 3.04.130(a)(1).

§ 3.05.150

Prior to the filing of a child-in-need-of-services petition, the provisions of this chapter assign responsibility for decisions regarding the initiation, continuation, and termination of proceedings to the Juvenile Case Coordinator.

An implicit assumption of these provisions is that once a services planning conference has been convened (see §§ 3.06.110, *et seq.*), the Juvenile Case Coordinator will give due consideration to the recommendations of the services planning committee.

Also note that under § 3.01.110, the child will be represented by counsel at and following the services planning conference, ensuring advocacy for the child's position in the event of any disagreement regarding the basis or need for continued proceedings.

(b) Upon terminating the proceedings pursuant to the provisions of this section, the Juvenile Case Coordinator:

(1) shall refer the child and the child's parent, guardian or custodian to any social, community, or tribal services or resources from which they may continue to benefit;

(2) shall inform the person who submitted the request for services, in writing, that the matter has been resolved;

(3) shall provide a copy of the information required under subsection (2) to counsel for the child or, where counsel has not already been appointed or retained to represent the child, to the Juvenile Advocate; and

(4) subject to the provisions of § 3.04.230, shall take no further action in the matter.

3.06 SERVICES PLANNING CONFERENCE

3.06.110 Services Planning Conference – Requirement

(a) Subject to the provisions of § 3.06.150, the Juvenile Case Coordinator shall convene a services planning conference:

(1) if the Juvenile Case Coordinator, the child, and the child's parent, guardian or custodian cannot agree on a plan for services;

(2) if the Juvenile Case Coordinator, the child, and the child's parent, guardian or custodian agree on a plan for services, and:

(A) the child or the child's parent, guardian or custodian does not comply with the plan; or

(B) the plan otherwise proves ineffective or unsuccessful;

(3) if the Juvenile Case Coordinator requires additional assistance in developing an appropriate plan for services; or

(4) at the request of the child or the child's parent, guardian or custodian.

(b) Where counsel has not already been appointed or retained to represent the child, the Juvenile Case Coordinator shall notify the Juvenile Advocate prior to convening the services planning conference.

3.06.130 Services Planning Conference – Purpose and Conduct

(a) The purpose of the services planning conference shall be to assemble a multidisciplinary committee to identify and discuss:

(1) the particular needs and circumstances of the child and the child's parent, guardian or custodian;

(2) any additional issues or concerns raised by the alleged facts; and

(3) services and resources available to address those needs, issues and concerns.

(b) The composition of the services planning committee shall be based on the particular needs of the child and the child's parent, guardian or custodian, and may include, in addition to the Juvenile Case Coordinator:

(1) an official from the child's school;

(2) a juvenile mental health professional;

(3) a substance abuse treatment professional;

(4) tribal elders or community leaders;

(5) service providers;

(6) a family counselor or mediator;

(7) trained and responsible peer or youth representatives;

(8) other professionals or community members requested or recommended by:

(A) the child;

(B) the child's parent guardian or custodian;

(C) the Juvenile Case Coordinator; or

(D) other members of the services planning committee.

(c) The child shall be represented by counsel at the services planning conference.

(d) At the conclusion of the services planning conference, the services planning committee shall, together with the child and the child's parent, guardian or custodian, develop a voluntary plan for services in accordance with the provisions of § 3.05.110.

3.06.150 Services Planning Conference – Participation Voluntary

(a) Prior to convening the services planning conference, the Juvenile Case Coordinator shall inform the child and the child's parent, guardian or custodian:

(1) of their rights under the provisions of this title;

(2) of the nature and purpose of the services planning conference; and

(3) that participation in the services planning conference is voluntary.

(b) If the child declines to attend or participate in the services planning conference:

(1) the services planning conference shall proceed, subject to the other provisions of this section, without the participation of the child; and

(2) counsel for the child may, to the extent that such efforts are consistent with counsel's professional and ethical obligations to the child, attend and participate in the services planning conference on behalf of the child.

(c) The Juvenile Case Coordinator shall recommend that the Juvenile Presenting Officer file a child-in-need-of-services petition in accordance with the provisions of § 3.07.130, if:

(1) the child's parent, guardian or custodian declines to attend or participate in the services planning conference; and

(2) the Juvenile Case Coordinator makes each of the determinations required under § 3.07.110.

§ 3.06.130(d)

Note that under § 3.06.150, the child may decline to participate directly in the services planning conference and, by extension, the development of the voluntary plan for services.

Also note, however, that if the child repeatedly fails to cooperate in the subsequent implementation of the plan, the Juvenile Case Coordinator may recommend the filing of a child-in-need-of-services petition in accordance with the provisions of § 3.07.110.

See also the comments on § 3.04.190(c)(1).

§ 3.06.150(c)

See the comments on § 3.04.210(c).

3.06.170 Review Conferences

(a) The Juvenile Case Coordinator shall convene a review conference with the services planning committee:

(1) within ten (10) business days of a request by the child, the child's parent, guardian or custodian, or any member of the services planning committee; or

(2) upon determining:

(A) that adjustments or modifications to the voluntary plan for services are necessary; or

(B) that the voluntary plan for services is likely to be ineffective or unsuccessful.

(b) The purpose of the review conference shall be:

(1) to review the progress of the child and the child's parent, guardian or custodian toward accomplishing the anticipated outcomes of the voluntary plan for services;

(2) to address any issues or concerns raised by the child, the child's parent, guardian or custodian, the Juvenile Case Coordinator, or members of the services planning committee; and

(2) where necessary, to consider and effect adjustments or modifications to the voluntary plan for services.

3.06.190 Conferences – Time and Location

All reasonable efforts shall be made to ensure that the time and location selected for any conference with the services planning committee is convenient for the child and the child's parent, guardian or custodian.

3.07 CHILD-IN-NEED-OF-SERVICES PETITION

3.07.110 Recommendation for Child-in-Need-of-Services Petition

(a) The Juvenile Case Coordinator shall recommend that the Juvenile Presenting Officer file a child-in-need-of-services petition in accordance with the provisions of § 3.07.130, if the Juvenile Case Coordinator determines that:

(1) the alleged facts are sufficient to support the filing of a child-in-need-of-services petition;

(2) the filing of a child-in-need-of-services petition will serve the best interests of the child and the child's parent, guardian or custodian;

(3) services and resources to meet the needs of the child and the child's parent, guardian or custodian are available;

(4) an order of the Juvenile Court will make the timely delivery of those services and resources more likely; and

(5) there is no substantial likelihood that the child and the child's parent, guardian or custodian will benefit from further attempts to resolve the matter through the implementation of a voluntary plan for services, because:

(A) the child's parent, guardian or custodian has declined to attend or participate in a services planning conference or the implementation of a voluntary plan for services; or

(B) repeated efforts to resolve the matter through the implementation of a voluntary plan for services, including multiple conferences with the services planning committee, have been unsuccessful.

(b) The Juvenile Case Coordinator and the services planning committee shall diligently attempt to prevent the filing of a child-in-need-of-services petition.

(c) The Juvenile Presenting Officer shall not file a child-in-need-of-services petition except upon the recommendation of the Juvenile Case Coordinator.

3.07.130 Child-in-Need-of-Services Petition – Contents

(a) Adjudicative proceedings under this chapter shall be initiated by a petition:

(1) signed and filed by the Juvenile Presenting Officer on behalf of the Tribe;

(2) certifying that, to the best of the Juvenile Presenting Officer's knowledge, information and belief, there are

§ 3.07.110

See the comments on § 3.05.150.

§ 3.07.110(a)(5)(B)

This subsection is intended to encompass cases in which the child repeatedly fails to cooperate in the implementation (as opposed to the development) of a voluntary plan for services.

See also the comments on § 3.04.190(c)(1) and § 3.06.130(d).

§ 3.07.130(a)

Regarding the phrase "adjudicative proceedings," see the comments on § 2.07.110(a).

sufficient grounds to believe that the child is a child in need of services;

(3) setting forth with specificity:

(A) the name, birth date, residence, and tribal affiliation of the child;

(B) the name and residence of the child's parent, guardian or custodian;

(C) a citation to the specific section(s) of this code which give the Juvenile Court jurisdiction over the proceedings;

(D) a plain and concise statement of the facts upon which the petition is based.

(b) The child-in-need-of-services petition shall be accompanied by a statement signed by the Juvenile Case Coordinator and:

(1) certifying that the requirements of §§ 3.04.130, *et seq.*, were satisfied prior to the filing of the petition;

(2) briefly setting forth all efforts taken by the Juvenile Case Coordinator, the services planning committee, the child, and the child's parent guardian or custodian, to resolve the matter prior to the filing of the petition; and

(3) affirming that the Juvenile Case Coordinator:

(A) has made each of the determinations required under § 3.07.110(a); and

(B) has therefore recommended the filing of the petition.

3.07.150 Child-in-Need-of-Services Petition – Time for Filing

The child-in-need-of-services petition shall be filed within five (5) days after the recommendation by the Juvenile Case Coordinator.

§ 3.07.150

Ideally, most child-in-need-of-services cases will be resolved without the filing of a petition.

In cases where the intervention of the Juvenile Court is required, the time limits in this chapter are intended to minimize not only the time that children and their parents are subject to judicial proceedings, but any delay in the identification and delivery of necessary services.

3.08 INITIAL HEARING

3.08.110 Initial Hearing – Time Limit

The initial hearing shall be held within fourteen (14) days of the filing of the child-in-need-of-services petition.

3.08.130 Initial Hearing – Conduct

At the initial hearing, the Juvenile Court shall advise the child, in language the child will easily understand, of the following:

(a) the nature and purpose of the proceedings;

(b) the contents of the child-in-need-of-services petition;

(c) the possible consequences if the child is found to be a child in need of services;

(d) the right to counsel;

(e) the privilege against self-incrimination;

(f) the right to an adjudication in accordance with the provisions of this chapter;

(g) the right to cross-examine witnesses;

(h) the right to testify, the right to subpoena witnesses, and the right to introduce evidence on the child's own behalf;

(i) the right to appeal any final order of the Juvenile Court.

3.08.150 Initial Hearing – Determination of Reasonable Grounds

At the initial hearing, the Juvenile Court shall enter a written order dismissing the child-in-need-of-services petition unless the Juvenile Court finds that the child-in-need-of-services petition sets forth reasonable grounds to believe the child is a child in need of services.

§ 3.08.110

As noted in the comments on § 3.07.150, time limits in this chapter are intended to minimize any delay in adjudicative proceedings.

While this section does not impose a shorter time limit where the child is in an out-of-home placement, such cases should be given priority on the Juvenile Court calendar.

See the comments on § 2.05.130.

3.09 SUSPENSION OF PROCEEDINGS

3.09.110 Motion to Suspend Proceedings

(a) At any time following the filing of the child-in-need-of-services petition, but prior to adjudication, the child may move the Juvenile Court to suspend adjudicative proceedings for a period of up to six (6) months, to allow for further attempts to resolve the matter through the implementation of a voluntary plan for services.

(b) The Juvenile Court shall grant a motion brought pursuant to the provisions of this section if:

(1) the child's parent, guardian or custodian agrees to participate in further attempts to resolve the matter through the implementation of a voluntary plan for services;

(2) the Juvenile Case Coordinator agrees that:

(A) further efforts to resolve the matter without the intervention of the Juvenile Court will serve the best interests of the child and the child's parent, guardian or custodian; and

(B) services and resources to meet the needs of the child and the child's parent, guardian or custodian are available, and the timely delivery of those services and resources may be accomplished without the intervention of the Juvenile Court.

(c) Upon granting a motion brought pursuant to the provisions of this section, the Juvenile Court shall enter a written order:

(1) suspending all adjudicative proceedings in the matter for a period to be specified by the Juvenile Court;

(2) tolling the time limit for adjudicative proceedings, as set forth in § 3.10.110, until a corresponding date to be specified by the Juvenile Court; and

(3) in the discretion of the Juvenile Court, or upon the request of any party, setting a hearing for the purpose of determining whether the petition should be dismissed, or the proceedings reinstated, in accordance with the provisions of § 3.09.130.

3.09.130 Dismissal of Petition or Reinstatement of Proceedings

(a) Prior to the date specified in accordance with the provisions of § 3.09.110(c)(2), the Juvenile Case Coordinator shall notify the Juvenile Court, in writing, whether the matter has been resolved through the implementation of a voluntary plan for services.

(b) A copy of the notice required under subsection (a) shall be served upon the child, the child's parent, guardian or custodian, and the Juvenile Presenting Officer in accordance with the provisions of § 1.08.150 of this title.

(c) Upon the filing of the notice required under subsection (a), the Juvenile Court shall:

(1) if the matter has been resolved through the implementation of a voluntary plan for services, enter a written order dismissing the child-in-need-of-services petition; or

(2) if the matter has not been resolved through the implementation of a voluntary plan for services:

(A) enter a written order reinstating adjudicative proceedings in the matter; and

(B) issue a new summons in accordance with the provisions of § 1.08.110 of this title.

3.10 ADJUDICATION

3.10.110 Adjudication Hearing – Time Limit

The adjudication hearing shall be held within fourteen (14) days of the initial hearing.

3.10.130 Adjudication Hearing – Purpose

The Juvenile Court shall conduct the adjudication hearing for the purpose of determining whether the child is a child in need of services.

3.10.150 Adjudication Hearing – Burden of Proof

The Tribe shall bear the burden of showing, by clear and convincing evidence, that the child is a child in need of services.

3.10.170 Adjudication Hearing – Conduct

(a) The Juvenile Court shall conduct the adjudication hearing without a jury and, to the fullest extent practicable, in language the child will easily understand.

(b) At the adjudication hearing, the Juvenile Court may consider any evidence, including hearsay, which the Juvenile Court finds to be:

(1) relevant to the determination of whether the child is a child in need of services; and

(2) sufficiently reliable to satisfy the requirements of due process.

3.10.190 Finding on Adjudication

(a) If, upon hearing all evidence properly admitted at the adjudication hearing, the Juvenile Court finds that the child is a child in need of services, the Juvenile Court shall enter its finding in writing and:

(1) proceed immediately to a disposition hearing, to be conducted in accordance with the provisions of §§ 3.12.130, *et seq.*; or

(2) if the Juvenile Court finds good cause to continue the disposition hearing:

(A) set the matter for disposition in accordance with the time limits set forth in § 3.12.110; and

(B) specify in writing whether the child is to be continued in any out-of-home placement pending the disposition hearing.

§ 3.10.110

See the comments on § 3.08.110.

(b) If the Juvenile Court does not find that the child is a child in need of services, it shall enter a written order dismissing the petition and releasing the child from any obligations or conditions previously imposed in connection with the child-in-need-of-services proceedings.

3.11 PREDISPOSITION REPORTS AND EXAMINATIONS

3.11.110 Predisposition Report – Requirement

Prior to the disposition hearing, the Juvenile Case Coordinator shall prepare a written predisposition report setting forth recommendations concerning the disposition of the case, including a specific plan for services to meet the needs of the child and the child's parent, guardian or custodian.

3.11.130 Predisposition Report – Contents

(a) The predisposition report shall address, in a concise, factual, and unbiased manner, only those matters relevant to the disposition of the case, which may include but shall not be limited to:

(1) a description of the child's home environment, family relationships, and background;

(2) information regarding the child's maturity, cognitive and emotional development, and emotional and mental health;

(3) the results and recommendations of any relevant medical, psychological, psychiatric, or other examinations or evaluations conducted by a qualified professional;

(4) a discussion of the child's educational status, including, but not limited to, the child's strengths, abilities, and special educational needs;

(5) the identification of appropriate educational and vocational goals for the child, examples of which may include:

(A) regular school attendance and completion of the child's current grade;

(B) attainment of a high school diploma or its equivalent;

(C) successful completion of literacy or vocational courses; or

(D) enrollment in an apprenticeship, internship or similar program;

(6) a summary of any factual findings entered by the Juvenile Court; and

(7) a summary of the child's prior contacts with the juvenile justice system.

(b) The predisposition report shall include a detailed explanation of:

(1) the sources of all information included;

(2) the necessity of the proposed disposition and plan for services, taking into account the particular needs of the child and the child's parent, guardian or custodian; and

(3) the anticipated benefits to the child and the child's parent, guardian or custodian of the proposed disposition and plan for services.

§ 3.11.170(a)(2)
See the comments on § 2.11.170(a)(2).

3.11.150 Alternative Predisposition Reports or Recommendations

The child and the child's parent, guardian or custodian may prepare alternative predisposition reports or recommendations to be submitted for consideration by the Juvenile Court in accordance with the provisions of § 3.11.210.

3.11.170 Predisposition Examinations and Investigations

(a) Following an adjudication hearing at which the child is found to be a child in need of services, and prior to the entry of any disposition orders, the Juvenile Court may enter a written order:

(1) requiring the child undergo a medical, psychological, or psychiatric examination;

(2) requiring the child's parent, guardian or custodian undergo a medical, psychological, or psychiatric examination, where their ability to care for or supervise the child is an issue before the Juvenile Court; or

(3) directing the Juvenile Case Coordinator:

(A) to investigate any matter relevant to the disposition of the case, including but not limited to any matter described in § 3.11.130(a); and

(B) to address the results of that investigation in the predisposition report or, where the predisposition report has already been submitted, in a supplemental report.

(b) Where the results of any examination or investigation ordered by the Juvenile Court pursuant to the provisions of this section are not available at the disposition hearing:

(1) the Juvenile Court may enter such orders on disposition as the Juvenile Court finds appropriate, considering the evidence before it at the disposition hearing; and

(2) upon receiving the results of any such examination or investigation, the Juvenile Court:

(A) may, upon the Juvenile Court's own motion, conduct a hearing to review its disposition orders in accordance with the provisions of § 3.12.230; and

(B) shall, upon the motion of any party, conduct a hearing to review its disposition orders in accordance with the provisions of § 3.12.230.

§ 3.11.210(a)
See the comments on § 2.11.210(a).

3.11.190 Predisposition Reports and Examinations – Confidentiality

Any reports prepared and the results of any examinations ordered in accordance with the provisions of this chapter shall be subject to the provisions of § 1.04.210 of this title.

3.11.210 Predisposition Reports and Examinations – Filing and Service

(a) Any reports or examination results to be considered by the Juvenile Court at any hearing conducted pursuant to the provisions of this chapter shall be filed in the Juvenile Court and served upon the Juvenile Presenting Officer, the Juvenile Case Coordinator, counsel for the child, and the child's parent, guardian or custodian, at least three (3) days prior to the hearing, in accordance with the provisions of § 1.08.150 of this title.

(b) The time limit imposed by subsection (a) may be waived upon the agreement of the parties and the Juvenile Court.

3.12 DISPOSITION

3.12.110 Disposition Hearing – Time Limit

(a) The disposition hearing shall be held immediately following the adjudication hearing, unless the Juvenile Court finds good cause to continue the disposition hearing.

(b) If the Juvenile Court finds good cause to continue the disposition hearing, the disposition hearing shall be held:

(1) within ten (10) days of the adjudication hearing, if the child is in an out-of-home placement; or

(2) within twenty (20) days of the adjudication hearing, if the child continues to reside with the child's parent, guardian or custodian.

3.12.130 Disposition Hearing – Purpose

The Juvenile Court shall conduct the disposition hearing for the purpose of determining:

(a) what services and resources are most likely to meet the needs of the child and the child's parent, guardian or custodian; and

(b) the appropriate disposition of the matter.

3.12.150 Disposition Hearing – Conduct

At the disposition hearing, the Juvenile Court:

(a) shall afford the parties the opportunity:

(1) to present documentary or testimonial evidence concerning the appropriate disposition of the matter; and

(2) to controvert, and to cross-examine the sources of, the contents and conclusions of any reports, testimony, or other evidence to be considered by the Juvenile Court pursuant to the provisions of this section;

(b) shall consider the predisposition report and recommendations prepared by the Juvenile Case Coordinator, as well as any alternative predisposition report or recommendations prepared by the child or the child's parent, guardian or custodian; and

(c) may consider any evidence, including hearsay, which it finds to be relevant, reliable, and helpful in making the determinations required under § 3.12.130.

3.12.170 Orders on Disposition

(a) Upon the conclusion of the disposition hearing, the Juvenile Court may enter any written disposition orders authorized under § 3.12.190.

§ 3.12.110

See the comments on § 2.05.130 and § 3.07.150.

(b) In exercising its discretion under subsection (a), the Juvenile Court shall enter the least restrictive orders appropriate considering the needs of the child and the child's parent, guardian or custodian.

(c) All orders entered by the Juvenile Court pursuant to the provisions of this section shall be:

(1) explained to the child in language the child will easily understand; and

(2) accompanied by a written statement of:

(A) the facts relied upon by the Juvenile Court in entering those orders; and

(B) the reasons for rejecting less restrictive alternatives.

§ 3.12.190(a)(2)-(6)

Regarding orders directed to the child's parents, see the comments on § 2.11.170(a)(2).

3.12.190 Disposition Options

(a) Pursuant to the provisions of § 3.12.170, the Juvenile Court may enter written orders including any of the following, as best suited to the needs of the child and the child's parent, guardian or custodian:

(1) an order permitting the child to remain with his or her parent, guardian or custodian, subject to such conditions and limitations as the Juvenile Court may prescribe;

(2) an order referring the child or the child's parent, guardian or custodian to social, community, or tribal services or resources appropriate for addressing the needs of the child and the child's parent, guardian or custodian;

(3) an order referring the child or the child's parent, guardian or custodian to a tribal elders panel or other body capable of addressing the needs of the child and the child's parent, guardian or custodian;

(4) an order requiring the child's parent, guardian or custodian to participate in an educational or counseling program designed to contribute to their ability to care for and supervise the child, including but not limited to parenting classes;

(5) an order requiring the child or the child's parent, guardian or custodian to undergo a medical, psychological, or psychiatric evaluation, in accordance with the provisions of § 3.11.170;

(6) an order requiring the child or the child's parent, guardian or custodian to undergo medical, psychological, or psychiatric treatment, where such treatment is:

(A) recommended by a qualified medical, psychological, or psychiatric professional; and

(B) necessary to:

(i) address conditions which contributed to the child's adjudication; or

(ii) allow the child to remain with or be returned to the custody of the child's parent, guardian or custodian.

(7) an order requiring the child to attend structured after-school, evening, educational, vocational or other court-approved programs appropriate for meeting the needs of the child;

(8) an order prohibiting the child from driving a motor vehicle for a period not to exceed the date on which the child reaches eighteen (18) years of age;

(9) an order placing the child in the temporary legal custody of a relative or other responsible adult, subject to such conditions and limitations as the Juvenile Court may prescribe;

(10) an order imposing supervisory conditions in accordance with the provisions of § 3.03.170; and

(11) an order providing for the out-of-home placement of the child in accordance with the provisions of § 3.03.150.

(b) If a child found by the Juvenile Court to be a child in need of services has not achieved a high school diploma or the equivalent, the Juvenile Court may enter a written order requiring that the child pursue a course of study designed to lead to the achievement of a high school diploma or the equivalent.

(c) If a child is found by the Juvenile Court to be a child in need of services as the result of the child engaging in sexual intercourse or other sexual activity, the Juvenile Court may enter a written order requiring the child and the child's parent, guardian or custodian to participate in an educational program that provides comprehensive information about pregnancy prevention, reproductive health and disease prevention, including HIV/AIDS education.

3.12.210 Out-of-Home Placement – Limitations

(a) The Juvenile Court shall not enter a disposition order providing for the out-of-home placement of the child unless:

(1) no less restrictive alternatives will suffice; and

(2) there is clear and convincing evidence that the child should be placed outside the child's home because:

(A) such placement is necessary to avert a substantial risk to the health, welfare, person or property of the child or others;

(B) there is a substantial risk that the child may leave or be removed from the jurisdiction of the Juvenile Court; or

(C) each of the following conditions is met:

(i) the child has repeatedly failed to comply with the disposition orders of the Juvenile Court;

(ii) less restrictive alternatives have repeatedly failed to bring the child into compliance; and

(iii) the out-of-home placement is reasonably calculated to bring the child into compliance.

(b) The Juvenile Court shall not enter a disposition order providing for the out-of-home placement of the child for any of the reasons set forth in § 1.09.170(d) of this title.

3.12.230 Disposition Orders – Review

(a) The Juvenile Court shall conduct a hearing to review any disposition orders entered pursuant to the provisions of § 3.12.170:

(1) at least once every three (3) months, if the child is not in an out-of-home placement; and

(2) at least once every forty-five (45) days, if the child is in an out-of-home placement.

(b) The Juvenile Court shall conduct the hearing for the purpose of determining:

(1) whether the child and the child's parent, guardian or custodian are in compliance with those disposition orders;

(2) the extent to which those disposition orders have accomplished their intended purposes;

(3) whether those disposition orders should:

(A) continue in effect without modification or extension;

(B) be terminated in accordance with the provisions of § 3.12.250(b); or

(C) be modified or extended in accordance with the provisions of § 3.12.270.

§ 3.12.230(a)(1)

This review period is calculated to ensure that the child receives timely and effective services, and is in keeping with the limited duration of disposition orders in child-in-need-of-services proceedings.

See § 3.12.250(a) and the comments thereon.

(c) Where the child is in an out-of-home placement, the Juvenile Court shall consider:

(1) whether the circumstances of the child, the availability of less restrictive alternatives, or other material facts have changed since the last hearing;

(2) whether out-of-home placement remains necessary and authorized under § 3.12.210; and

(3) whether the child should be released from out-of-home placement in favor of a less restrictive alternative.

(d) At any review hearing conducted pursuant to the provisions of this section:

(1) the child shall bear the burden of showing, by a preponderance of the evidence, compliance with any affirmative requirement set forth in the disposition orders entered by the Juvenile Court; and

(2) the Tribe shall bear the burden of showing, by a preponderance of the evidence, that the child or the child's parent, guardian or custodian has engaged in any conduct prohibited by the disposition orders entered by the Juvenile Court.

3.12.250 Disposition Orders – Duration and Termination

(a) Disposition orders entered by the Juvenile Court shall continue in force for not more than six (6) months, unless they are extended in accordance with the provisions of § 3.12.270.

(b) The Juvenile Court may terminate a disposition order prior to its expiration if it appears to the Juvenile Court, following a hearing conducted upon its own motion or the motion of any party, that the purposes of the disposition order have been accomplished.

(c) All disposition orders affecting the child shall automatically terminate, and the child shall be discharged from any further obligations in connection with the child-in-need-of-services proceedings, when the child reaches eighteen (18) years of age.

3.12.270 Disposition Orders – Modification or Extension

(a) Following a modification hearing conducted upon its own motion or the motion of any party, the Juvenile Court may modify or extend its disposition orders if the Juvenile Court finds by clear and convincing evidence that such modification or extension is necessary to accomplish the purposes of the orders to be modified.

§ 3.12.250(a)

The provisions of this subsection and § 3.12.270(f) are intended to provide adequate time to identify and implement necessary services, while limiting the time that children and their parents are subject to judicial supervision outside of proceedings to address delinquency, abuse or neglect.

§ 3.12.250(c)

To ensure the child may be held accountable for his or her delinquent acts without the need for criminal proceedings, § 2.12.290(c) allows the Juvenile Court to exercise jurisdiction in delinquency cases until the child reaches 21 years of age.

While an individual over 18 years of age might continue to benefit from services, however, there is no analogous basis for extending the authority of the Juvenile Court in child-in-need-of-services cases.

(b) The modification hearing shall be held:

(1) within ten (10) days of the placement hearing, if the child is in an out-of-home placement as the result of an alleged violation of a disposition order; or

(2) within thirty (30) days of the filing of the motion for modification, if the child is in the custody of the child's parent, guardian or custodian.

(c) Where the modification hearing is to be held upon the motion of the Juvenile Court, notice of the modification hearing shall be accompanied by a statement of the specific facts upon which the motion for modification is based.

(d) In making the determination required by subsection (a), the Juvenile Court may consider:

(1) the extent to which the child and the child's parent, guardian or custodian have complied with any disposition orders previously entered by the Juvenile Court;

(2) evidence that the child has either continued or desisted engaging in conduct bringing the child within the definition of a child in need of services, as set forth in § 1.02.110(c) of this title;

(3) changes in treatment or other recommendations relied upon by the Juvenile Court in entering the orders to be modified; and

(4) any other material changes in the circumstances of the child or the child's family, parent, guardian or custodian.

(e) All modified disposition orders shall be subject to the requirements of § 3.12.170(b) and § 3.12.170(c).

(f) An extension ordered in accordance with the provisions of this section shall not exceed three (3) months from the expiration of the prior order, and in no event shall the duration of a disposition order be extended:

(1) for longer than reasonably necessary to accomplish the purpose of the order;

(2) beyond a total of one (1) year; or

(3) past the date on which the child shall reach eighteen (18) years of age.

3.12.290 Disposition Orders – Violations

(a) The violation of a disposition order entered pursuant to the provisions of § 3.12.170 may be reported to the Juvenile Case Coordinator, who may file a motion for modification pursuant to the provisions of § 3.12.270.

§ 3.12.270(f)

The time limit in this section corresponds with the maximum review period under § 3.12.230(a).

See also the comments on § 3.12.250(a).

§ 3.12.270(f)(3)

See the comments on § 3.12.250(c).

(b) A child in an out-of-home placement as the result of an alleged violation of a disposition order shall immediately be returned to the custody of the child's parent, guardian or custodian unless a modification hearing is held within the time limits imposed by § 3.12.270(b), and:

(1) the Juvenile Court enters, in accordance with the provisions of § 3.12.270, modified disposition orders providing for out-of-home placement; or

(2) the alleged violation includes the commission of a delinquent act, and:

(A) a delinquency petition is filed prior to the modification hearing; and

(B) continued detention, pending further delinquency proceedings, is necessary and authorized under § 2.04.130.

CHAPTER 4

TRUANCY

4.01 COMPULSORY SCHOOL ATTENDANCE

4.01.110 Compulsory School Attendance

(a) Every Indian child under eighteen (18) years of age residing or domiciled on the [Reservation] shall attend a public or tribal school full-time when school is in session, unless:

(1) the child is attending a private school certified by [the state or other certifying jurisdiction];

(2) the child is receiving home-based instruction as defined in subsection (c); or

(3) the superintendent of the school district in which the child resides has excused the child from attendance because the child:

(A) is physically or mentally unable to attend school;

(B) is attending a residential school certified by [the state or other certifying jurisdiction] to meet the needs of the child;

(C) is detained in a secure juvenile detention facility or other correctional facility;

(D) has been temporarily excused upon the request of his or her parent, guardian or custodian for purposes agreed upon by the school authorities and the parent; or

(E) is sixteen (16) years of age or older and:

(i) is regularly and lawfully employed, and either the parent agrees that the child should not be required to attend school or the child is emancipated in accordance with applicable law; or

(ii) has already met graduation requirements in accordance with state board of education rules and regulations.

(b) The parent, guardian or custodian of any Indian child under eighteen (18) years of age residing or domiciled on the [Reservation] shall ensure that the child complies with the requirements set forth in subsection (a).

(c) For the purposes of this chapter, instruction shall be home-based if:

(1) the instruction consists of planned and supervised instructional and related educational activities established by [the state or other certifying jurisdiction];and

See the comments on § 1.03.130(b).

(2) such instruction is provided by a parent who is:

(A) instructing only his or her child, under the supervision of a person certified for such instruction by [the state or other certifying jurisdiction]; or

(B) deemed sufficiently qualified to provide home-based instruction by the superintendent of the school district in which the child resides.

4.01.130 Compulsory School Attendance – Notice

(a) The Tribe shall provide annual notice of the compulsory education requirements set forth in § 4.01.110 to:

(1) every Indian child under eighteen (18) years of age residing or domiciled on the [Reservation]; and

(2) the parent, guardian or custodian of every such child.

(b) The notice requirement set forth in subsection (a) may be satisfied:

(1) by posting the required notice on the Tribe's web site;

(2) by publishing the required notice in a tribal newsletter or newspaper which is freely available to families residing on the [Reservation];

(3) by similar measures reasonably calculated to provide actual notice of the compulsory attendance requirements set forth in § 4.01.110.

§ 4.01.130

See the comments on § 1.03.130(b).

4.02 RIGHTS, RULES AND PROCEDURES

4.02.110 Right to Counsel

(a) The child shall be represented by counsel at all stages of any proceedings conducted pursuant to the filing of a truancy petition in accordance with the provisions of § 4.06.130.

(b) The child's parent, guardian or custodian shall have the right to be represented by counsel at disposition, and in any proceedings for contempt brought against the child's parent, guardian or custodian pursuant to the provisions of this chapter.

4.02.130 Failure to Appear

(a) In all truancy proceedings conducted pursuant to the provisions of this chapter:

(1) if a child sixteen (16) years of age or older fails to appear before the Juvenile Court after being so ordered:

(A) upon a first or subsequent failure to appear, the Juvenile Court may:

(i) issue a new summons in accordance with the provisions of § 1.08.110 of this title; and

(ii) issue a warning to the child regarding the potential consequences of a subsequent failure to appear;

(B) upon a second or subsequent failure to appear, the Juvenile Court may:

(i) when feasible, issue an order directing a law enforcement officer to apprehend the child and bring the child immediately before the Juvenile Court; and

(ii) following a hearing on the matter, issue a written order imposing additional or modified supervisory conditions in accordance with the provisions of §§ 4.04.110, *et seq*.;

(2) if a child under sixteen (16) years of age fails to appear before the Juvenile Court after being so ordered:

(A) if the Juvenile Court finds, based on the sworn testimony of the child's parent, guardian or custodian, that the child has willfully refused to appear, the Juvenile Court may proceed in accordance with the provisions of subsection (a)(1); or

(B) in the absence of such a finding, the Juvenile Court may proceed in accordance with the provisions of subsection (a)(3);

§ 4.02.110(b)

See the comments on § 2.01.110(b).

§ 4.02.130

See § 1.08.210 and the comments thereon, and the comments on § 1.09.170(b)(1).

The Model Code does not provide for placement outside the home in truancy cases and, unlike the Juvenile Justice and Delinquency Prevention Act, does not include a "valid court order" exception to the prohibition against the secure detention of status offenders; the options set forth in this section are limited accordingly.

(3) if the child's parent, guardian or custodian fails to appear before the Juvenile Court after being so ordered, or fails to bring the child before the Juvenile Court after being so ordered:

(A) upon a first or subsequent failure to appear, the Juvenile Court may:

(i) issue a new summons in accordance with the provisions of § 1.08.110 of this title; and

(ii) issue a warning to the child's parent, guardian or custodian regarding the potential consequences of a subsequent failure to appear;

(B) upon a second or subsequent failure to appear, the Juvenile Court may:

(i) issue a bench warrant, in accordance with [the provisions of the tribal code], directing that the child's parent, guardian or custodian be brought before the Juvenile Court to show cause why they should not be subject to sanctions in accordance with the provisions of this section; and

(ii) absent a showing of good cause for the failure to appear, impose upon the child's parent, guardian or custodian a fine of up to $100 (one hundred dollars);

(C) upon a third or subsequent failure to appear, the Juvenile Court may initiate proceedings for contempt against the child's parent, guardian or custodian in accordance with the provisions of [the tribal code].

(b) The other provisions of this section notwithstanding, whenever it appears from a filed affidavit or sworn testimony before the Juvenile Court that the child has failed to appear as the result of circumstances posing a substantial risk to the health, welfare, person or property of the child or others, the Juvenile Court may:

(1) issue a temporary custody order in accordance with the provisions of § 3.02.110 of this title; and

(2) following a hearing on the matter, issue a written order imposing additional or modified supervisory conditions in accordance with the provisions of §§ 4.04.110, *et seq*.

(c) Other provisions of [the tribal code] notwithstanding, no sanctions other than those authorized by this section shall be sought or imposed for a failure to appear before the Juvenile Court in any proceedings conducted pursuant to the provisions of this chapter.

4.03 TEMPORARY CUSTODY

4.03.110 Taking a Child into Temporary Custody

A law enforcement officer may take a child into temporary custody if:

(a) the child is absent from school during school hours;

(b) the absence does not fall within one of the exceptions set forth in § 4.1.110(a); and

(c) the absence is not an excused absence as defined by school or school district policy.

4.03.130 Release or Delivery from Temporary Custody

(a) A law enforcement officer taking a child into temporary custody pursuant to the provisions of § 4.03.110 shall, without unreasonable delay:

(1) release the child to the child's parent, guardian or custodian; or

(2) transport the child to the child's school, or to an appropriate educational center or agency.

(b) If the law enforcement officer has reason to believe the child is in need of medical attention, the law enforcement officer shall deliver the child to a medical facility or otherwise obtain such medical attention for the child before proceeding in accordance with the other provisions of this section.

(c) Upon releasing the child to the child's parent, guardian or custodian, the law enforcement officer shall refer the child's parent, guardian or custodian to any social, community, or tribal services or resources which may be appropriate for addressing the needs of the child and the child's parent, guardian or custodian.

§ 4.03.130(c)

See the comments on § 3.02.150(c).

4.04 SUPERVISORY CONDITIONS

4.04.110 Least Restrictive Alternatives

(a) When a child is subject to supervisory conditions under the provisions of this chapter, the Juvenile Court shall order only the least restrictive conditions consistent with the best interests of the child.

(b) Whenever the Juvenile Court enters an order imposing supervisory conditions under the provisions of this chapter, the order shall include a statement of the Juvenile Court's reasons for rejecting less restrictive alternatives.

4.04.130 Supervisory Conditions

(a) The Juvenile Court may impose supervisory conditions in accordance with the provisions of this section if:

(1) a truancy petition has been filed in accordance with the provisions of § 4.06.130;

(2) there are reasonable grounds to believe the child is a truant; and

(3) the child:

(A) continues to accumulate unexcused absences; or

(B) fails to appear before the Juvenile Court after being so ordered:

(i) repeatedly; or

(ii) as the result of circumstances posing a substantial risk to the health, welfare, person or property of the child or others.

(b) Supervisory conditions imposed by the Juvenile Court in accordance with the provisions of this section may include:

(1) a court-imposed curfew;

(2) a requirement that the child or the child's parent, guardian or custodian report to the Juvenile Case Coordinator at specified intervals;

(3) an order requiring the child to remain at home at all times when the child is not:

(A) in the presence of the child's parent, guardian or custodian;

(B) attending school or participating in other activities approved by the Juvenile Court; or

(C) legally required to be elsewhere;

(4) community supervision; and

§ 4.04.110(a)

The safety of the community should not be an issue in truancy cases, and is therefore not included as a consideration in this section, as it is in § 2.04.110 and § 3.03.110.

(5) other reasonable conditions calculated to ensure the child's regular school attendance and appearance at future hearings.

(c) Supervisory conditions imposed by the Juvenile Court in accordance with the provisions of this section shall not include:

(1) bail;

(2) electronic home monitoring or similarly intrusive measures; or

(3) any out-of-home placement of the child.

4.04.150 Supervisory Conditions – Violations

If it appears from a filed affidavit or sworn testimony before the Juvenile Court that the child has violated supervisory conditions imposed in accordance with the provisions of § 4.04.130, the Juvenile Court may, following a hearing on the matter, impose additional or modified supervisory conditions in accordance with the provisions of § 4.04.130.

§ 4.04.130(b)(5)

Conditions imposed under this subsection should be appropriately limited in scope, duration, and purpose, and should not include requirements (such as compulsory treatment) that are only appropriate following adjudication.

See also the comments on § 2.04.170(b)(2) and § 2.04.170(b)(5).

§ 4.04.130(c)(1)

Note that the Model Code consistently prohibits the imposition of bail in juvenile proceedings.

See § 2.04.170(b) and the comments thereon, as well as § 3.03.170(b).

4.05 INFORMAL TRUANCY PROCEEDINGS

4.05.110 Initial Action Upon Child's Failure To Attend School

Upon determining that a child has had three (3) unexcused absences within any single month, or six (6) unexcused absences in the current school year, the Juvenile Case Coordinator:

(a) shall immediately notify the child's parent, guardian or custodian, in writing or by telephone;

(b) shall inform the child's parent, guardian or custodian of the potential consequences of additional unexcused absences; and

(c) shall, within five (5) business days, and subject to the provisions of § 4.05.150, conduct an attendance review conference with the child and the child's parent, guardian or custodian.

4.05.130 Attendance Review Conference – Purpose and Conduct

(a) The purpose of the attendance review conference shall be:

(1) to review the causes for the child's unexcused absences; and

(2) to discuss steps to improve the child's school attendance, which may include:

(A) obtaining more individualized or remedial instruction;

(B) adjusting the child's educational program or school or course assignment;

(C) enrolling in appropriate vocational courses or seeking appropriate work experience;

(D) enrolling the child in an alternative school or educational program;

(E) assisting the child and the child's parent, guardian or custodian to obtain services or resources that might eliminate or ameliorate the causes for the child's unexcused absences; or

(F) referring the child to a tribal truancy board.

(b) At the conclusion of the attendance review conference, the Juvenile Case Coordinator shall:

(1) together with the child and the child's parent, guardian or custodian, develop an informal attendance plan in accordance with the provisions of § 4.05.170; or

(2) within ten (10) business days of the attendance review conference, and subject to the provisions of § 4.05.230, convene a tribal truancy board in accordance with the provisions of § 4.05.190.

§ 4.05.130(b)(1)

Under § 4.05.150, either the child or the child's parents may decline to participate in the attendance review conference and, by extension, the development of the informal attendance plan.

If the child continues to accumulate unexcused absences, however, the Juvenile Case Coordinator may be required to convene a tribal truancy board in accordance with the provisions of § 4.05.190.

4.05.150 Attendance Review Conference – Participation Voluntary

(a) Prior to convening the attendance review conference, the Juvenile Case Coordinator shall inform the child and the child's parent, guardian or custodian:

(1) of their rights under the provisions of this title;

(2) of the nature and purpose of the attendance review conference; and

(3) that participation in the attendance review conference is voluntary.

(b) If the child declines to attend or participate in the attendance review conference, the Juvenile Case Coordinator shall, subject to the other provisions of this section, conduct the attendance review conference without the participation of the child.

(c) If the child's parent, guardian or custodian declines to attend or participate in the attendance review conference, the Juvenile Case Coordinator may:

(1) within ten (10) business days, and subject to the provisions of § 4.05.230, convene a tribal truancy board in accordance with the provisions of § 4.05.190; or

(2) conduct the attendance review conference without the participation of the child's parent, guardian or custodian, if:

(A) the Juvenile Case Coordinator determines that the factors contributing to the child's truancy may be addressed without the participation of the child's parent, guardian or custodian; and

(B) the child's parent, guardian or custodian consents to the child's participation.

4.05.170 Informal Attendance Plan

An informal attendance plan developed pursuant to the provisions of this chapter shall set forth, in writing:

(a) a plain statement of the compulsory education requirements set forth in § 4.01.110;

(b) the rights of the child and the child's parent, guardian or custodian under the provisions of this title;

(c) an acknowledgment that participation in the informal attendance plan is otherwise voluntary, and neither the child nor the child's parent, guardian or custodian is obligated to comply with the informal attendance plan;

(d) the anticipated course of action to be taken if the child continues to accumulate unexcused absences;

§ 4.05.150(c)

Contrast this subsection with § 3.04.210(c) of the child-in-need-of-services provisions.

If the factors contributing to the child's truancy are relatively simple or easily addressed, the participation of the child's parents may not be essential at this stage.

In more difficult cases, however, the Juvenile Case Coordinator may find it necessary to convene a tribal truancy board, at which point the provisions of this chapter treat the participation of the child's parents as a corresponding necessity.

(e) the causes of the child's unexcused absences, and any perceived barriers to regular school attendance by the child;

(f) the specific services and resources available to assist the child and the child's parent, guardian or custodian to ensure regular school attendance by the child;

(g) a comprehensive plan for ensuring that the child and the child's parent, guardian or custodian obtain the services and resources needed; and

(h) the specific actions to be taken by the child and the child's parent, guardian or custodian in accordance with the plan, including the frequency and location of appointments for services and contact with the Juvenile Case Coordinator.

4.05.190 Tribal Truancy Board – Requirement

(a) Subject to the provisions of § 4.05.230, the Juvenile Case Coordinator shall convene a tribal truancy board:

(1) if the Juvenile Case Coordinator, the child, and the child's parent, guardian or custodian cannot agree on an informal attendance plan;

(2) if the Juvenile Case Coordinator determines that an informal attendance plan will be inadequate to ensure regular school attendance by the child; or

(3) if the child accumulates more than one (1) unexcused absence following the attendance review conference and the implementation of an informal attendance plan.

(b) Where counsel has not already been appointed or retained to represent the child, the Juvenile Case Coordinator shall notify the Juvenile Advocate prior to convening the tribal community truancy board.

4.05.210 Tribal Truancy Board – Composition and Purpose

(a) The composition of the tribal truancy board shall be based on the particular needs of the child and the child's parent, guardian or custodian, and may include:

(1) an official from the tribe's education department or the child's school;

(2) a juvenile mental health professional;

(3) a substance abuse treatment professional;

(4) tribal elders or community leaders;

(5) service providers;

(6) a family counselor or mediator;

(7) trained and responsible peer or youth representatives;

§ 4.05.190(b)

While § 4.02.110 requires that the child be represented by counsel only upon the filing of a truancy petition (see §§ 4.06.110, *et seq*.), this subsection is intended to ensure that counsel is notified well in advance of any adjudicative proceedings.

See also the comments on § 3.04.130(a)(1).

(8) other professionals or community members requested or recommended by:

(A) the child;

(B) the child's parent guardian or custodian;

(C) the Juvenile Case Coordinator; or

(D) other members of the tribal truancy board.

(b) The tribal community truancy board shall meet with the child and the child's parent, guardian or custodian:

(1) to identify and discuss the particular needs of the child and the child's parent, guardian or custodian, with the goal of ensuring regular school attendance by the child;

(2) to assist the child and the child's parent, guardian or custodian in obtaining services and resources that might eliminate or ameliorate the causes for the child' unexcused absences; and

(3) to consider, where appropriate, recommending to the school district that the child enroll in another school, an alternative education program, an education center, a skill center, a dropout prevention program, or other public or private educational program.

(c) At the conclusion of the child's first meeting with the tribal truancy board, the tribal truancy board shall, together with the child and the child's parent, guardian or custodian, develop a truancy remediation plan in accordance with the provisions of § 4.05.250.

4.05.230 Tribal Truancy Board – Participation Voluntary

(a) Prior to convening the tribal truancy board, the Juvenile Case Coordinator shall inform the child and the child's parent, guardian or custodian:

(1) of their rights under the provisions of this title;

(2) of the nature and purpose of the tribal truancy board; and

(3) that meeting with the tribal truancy board is voluntary.

(b) If the child declines to meet with the tribal truancy board, the tribal truancy board shall proceed, subject to the other provisions of this section, without the participation of the child.

(c) If the child's parent, guardian or custodian declines to meet with the tribal truancy board, the Juvenile Case Coordinator shall recommend that the Juvenile Presenting Officer file a truancy petition in accordance with the provisions of § 4.06.130.

§ 4.05.210(c)

Under § 4.05.230, the child may decline to meet with the tribal truancy board and, by extension, to participate in the development of the truancy remediation plan.

If the child continues to accumulate unexcused absences, however, the Juvenile Case Coordinator may be required to recommend the filing of a truancy petition in accordance with the provisions of § 4.06.110.

§ 4.05.230(c)

See comments on § 4.05.150(c).

4.05.250 Truancy Remediation Plan

A truancy remediation plan developed pursuant to the provisions of this chapter shall set forth, in writing:

(a) each of the items required for inclusion in an informal attendance plan under § 4.05.170; and

(b) a schedule for reviewing the effectiveness of the plan.

4.05.270 Truancy Remediation Plan – Monitoring and Review

(a) The Juvenile Case Coordinator shall periodically review the effectiveness of the truancy remediation plan.

(b) The periodic review required under subsection (a):

(1) shall include regular, scheduled contact between the Juvenile Case Coordinator, the child, and the child's parent, guardian or custodian; and

(2) where appropriate given the circumstances and needs of the child and the child's parent, guardian or custodian, may include:

(A) school visits at any time;

(B) home visits at times and intervals set forth in the truancy remediation plan and agreed to by the child's parent, guardian or custodian; and

(C) subject to written consent by the child and the child's parent, guardian or custodian, as may be required by law, communication between the Juvenile Case Coordinator and:

(i) any person or agency providing services to the child or the child's parent, guardian or custodian in accordance with the truancy remediation plan; and

(ii) school officials or support staff responsible for meeting the child's educational needs and monitoring the child's educational progress.

4.05.290 Review Meetings

(a) Subject to the provisions of subsection (c), the Juvenile Case Coordinator shall convene a review meeting of the tribal truancy board:

(1) within ten (10) business days of a request by the child, the child's parent, guardian or custodian, or any member of the tribal truancy board; or

(2) upon determining:

(A) that adjustments or modifications to the truancy remediation plan are necessary; or

(B) that the truancy remediation plan is likely to be ineffective or unsuccessful.

(b) The purpose of the review meeting shall be:

(1) to review the child's school attendance;

(2) to address any issues or concerns raised by the child, the child's parent, guardian or custodian, the Juvenile Case Coordinator, or members of the tribal truancy board; and

(3) where necessary, to consider and effect adjustments or modifications to the truancy remediation plan.

(c) Where the child has accumulated at least sixty (60) days of regular school attendance without an unexcused absence, the Juvenile Case Coordinator shall not convene a review meeting of the tribal truancy board except:

(1) upon the request of the child or the child's parent, guardian or custodian; or

(2) where the Juvenile Case Coordinator, a member of the tribal truancy board, a school official or a service provider has recommended that services or resources being provided to the child or the child's parent, guardian or custodian be reduced or discontinued.

4.05.310 Meetings – Time and Location

The time and location selected for any meeting of the tribal truancy board shall be convenient for the child and the child's parent, guardian or custodian, and no such meeting shall be scheduled during school hours.

4.06 TRUANCY PETITION

4.06.110 Recommendation for Truancy Petition

(a) The Juvenile Case Coordinator shall recommend that the Juvenile Presenting Officer file a truancy petition in accordance with the provisions of § 4.06.130:

(1) if the child's parent, guardian or custodian declines to meet with a tribal truancy board;

(2) if the tribal truancy board, the child, and the child's parent, guardian or custodian cannot agree on a truancy remediation plan;

(3) if the child accumulates more than two (2) unexcused absences following the implementation of a truancy remediation plan developed in accordance with the provisions of § 4.05.250; or

(4) if the child is in imminent danger of losing credit or being required to repeat a grade level as the result of the child's unexcused absences.

(b) The Juvenile Case Coordinator and the tribal truancy board shall diligently attempt to prevent the filing of a truancy petition.

(c) The Juvenile Presenting Officer shall not file a truancy petition except upon the recommendation of the Juvenile Case Coordinator.

4.06.130 Truancy Petition – Contents

(a) Adjudicative proceedings under this chapter shall be initiated by a petition:

(1) signed and filed by the Juvenile Presenting Officer on behalf of the Tribe;

(2) certifying that, to the best of the Juvenile Presenting Officer's knowledge, information and belief, there are sufficient grounds to believe that the child is a truant;

(3) setting forth with specificity:

(A) the name, birth date, residence, and tribal affiliation of the child;

(B) the name and residence of the child's parent, guardian or custodian;

(C) a citation to the specific section(s) of this code which give the Juvenile Court jurisdiction over the proceedings;

(D) a plain and concise statement of the facts upon which the petition is based.

§ 4.06.130(a)

Regarding the phrase "adjudicative proceedings," see the comments on § 2.07.110(a).

(b) The truancy petition shall be accompanied by a statement signed by the Juvenile Case Coordinator and:

(1) affirming that the Juvenile Case Coordinator has recommended the filing of the petition;

(2) certifying that the requirements of §§ 4.05.110, *et seq.*, were satisfied prior to the filing of the petition; and

(3) briefly setting forth:

(A) all efforts taken by the Juvenile Case Coordinator, the tribal truancy board, the child, and the child's parent guardian or custodian, to resolve the matter prior to the filing of the petition; and

(B) facts showing that one or more of the conditions set forth in § 4.06.110(a) has been satisfied.

4.06.150 Truancy Petition – Time for Filing

The truancy petition shall be filed within five (5) days after the recommendation by the Juvenile Case Coordinator.

4.06.170 Truancy Petition – Dismissal and Refiling

(a) Prior to adjudication, the Juvenile Court shall enter a written order dismissing the truancy petition, without prejudice, upon a showing by the child that, following the child's most recent unexcused absence, the child has accumulated sixty (60) days of regular school attendance without another unexcused absence.

(b) Following the dismissal of a truancy petition in accordance with the provisions of subsection (a):

(1) the Juvenile Presenting Officer may refile the petition if the child accumulates one (1) or more unexcused absences during the school year in which the order was entered; and

(2) the Juvenile Court shall otherwise amend the written order entered in accordance with the provisions of subsection (a) to dismiss the petition with prejudice at the end of the school year in which the order was entered.

§§ 4.06.150-170

The time limits in this chapter are intended to expedite proceedings following the filing of a truancy petition, not only to ensure the timely identification and delivery of necessary services, but to minimize the risk that continued truancy will result in the escalation of problematic behaviors, the loss of academic credit, or other negative consequences for the child.

Those time limits also make it unlikely that the provisions of § 4.06.170 will ever come into play; that section is nonetheless included to ensure that children and their parents are not subject to prolonged or unnecessary judicial proceedings in the absence of continued truancy.

See also § 4.10.230(c)(1), which provides for the termination of disposition orders at the end of any school year in which the child has accumulated sixty (60) days of regular attendance without another unexcused absence.

4.07 INITIAL HEARING

4.07.110 Initial Hearing – Time Limit

The initial hearing shall be held within seven (7) days of the filing of the truancy petition.

4.07.130 Initial Hearing – Conduct

At the initial hearing, the Juvenile Court shall advise the child, in language the child will easily understand, of the following:

(a) the nature and purpose of the proceedings;

(b) the contents of the truancy petition;

(c) the possible consequences if the child is found to be a truant;

(d) the right to counsel;

(e) the privilege against self-incrimination;

(f) the right to an adjudication in accordance with the provisions of this chapter;

(g) the right to cross-examine witnesses;

(h) the right to testify, the right to subpoena witnesses, and the right to introduce evidence on the child's own behalf;

(i) the right to appeal any final order of the Juvenile Court.

4.07.150 Initial Hearing – Determination of Reasonable Grounds

At the initial hearing, the Juvenile Court shall enter a written order dismissing the truancy petition unless the Juvenile Court finds that the truancy petition sets forth reasonable grounds to believe the child is a truant.

4.08 ADJUDICATION

4.08.110 Adjudication Hearing – Time Limit

The adjudication hearing shall be held within seven (7) days of the initial hearing.

4.08.130 Adjudication Hearing – Purpose

The Juvenile Court shall conduct the adjudication hearing for the purpose of determining whether the child is a truant.

4.08.150 Adjudication Hearing – Burden of Proof

The Tribe shall bear the burden of showing, by clear and convincing evidence, that the child is a truant.

4.08.170 Adjudication Hearing – Conduct

(a) The Juvenile Court shall conduct the adjudication hearing without a jury and, to the fullest extent practicable, in language the child will easily understand.

(b) At the adjudication hearing, the Juvenile Court may consider any evidence, including hearsay, which the Juvenile Court finds to be:

(1) relevant to the determination of whether the child is a truant; and

(2) sufficiently reliable to satisfy the requirements of due process.

4.08.190 Finding on Adjudication

(a) If, upon hearing all evidence properly admitted at the adjudication hearing, the Juvenile Court finds that the child is a truant, the Juvenile Court shall enter its finding in writing and:

(1) proceed immediately to a disposition hearing, to be conducted in accordance with the provisions of §§ 4.10.130, *et seq.*; or

(2) if the Juvenile Court finds good cause to continue the disposition hearing, set the matter for disposition in accordance with the time limits set forth in § 4.10.110.

(b) If the Juvenile Court does not find that the child is a truant, it shall enter a written order dismissing the petition and releasing the child from any obligations or conditions previously imposed in connection with the truancy proceedings.

4.09 PREDISPOSITION REPORTS AND EXAMINATIONS

4.09.110 Predisposition Report – Requirement

Prior to the disposition hearing, the Juvenile Case Coordinator shall prepare a written predisposition report setting forth recommendations concerning the disposition of the case, including a specific plan for services to meet the needs of the child and the child's parent, guardian or custodian.

4.09.130 Predisposition Report – Contents

(a) The predisposition report shall address, in a concise, factual, and unbiased manner, only those matters relevant to the disposition of the case, which may include but shall not be limited to:

(1) a description of the child's home environment, family relationships, and background;

(2) information regarding the child's maturity, cognitive and emotional development, and emotional and mental health;

(3) the results and recommendations of any relevant medical, psychological, psychiatric, or other examinations or evaluations conducted by a qualified professional;

(4) a discussion of the child's educational status, including, but not limited to, the child's strengths, abilities, and special educational needs;

(5) the identification of appropriate educational and vocational goals for the child, examples of which may include:

(A) regular school attendance and completion of the child's current grade;

(B) attainment of a high school diploma or its equivalent;

(C) successful completion of literacy or vocational courses; or

(D) enrollment in an apprenticeship, internship or similar program;

(6) a summary of any factual findings entered by the Juvenile Court; and

(7) a summary of the child's prior contacts with the juvenile justice system.

(b) The predisposition report shall include a detailed explanation of:

(1) the sources of all information included;

(2) the necessity of the proposed disposition and plan for services, taking into account the particular needs of the child and the child's parent, guardian or custodian; and

(3) the anticipated benefits to the child and the child's parent, guardian or custodian of the proposed disposition and plan for services.

4.09.150 Alternative Predisposition Reports or Recommendations

The child and the child's parent, guardian or custodian may prepare alternative predisposition reports or recommendations to be submitted for consideration by the Juvenile Court in accordance with the provisions of § 4.09.210.

4.09.170 Predisposition Examinations and Investigations

(a) Following an adjudication hearing at which the child is found to be a truant, and prior to the entry of any disposition orders, the Juvenile Court may enter a written orders:

(1) requiring the child undergo educational, medical, psychological, or psychiatric examination; or

(2) directing the Juvenile Case Coordinator:

(A) to investigate any matter relevant to the disposition of the case, including but not limited to any matter described in § 4.09.130(a); and

(B) to address the results of that investigation in the predisposition report or, where the predisposition report has already been submitted, in a supplemental report.

(b) Where the results of any examination or investigation ordered by the Juvenile Court pursuant to the provisions of this section are not available at the disposition hearing:

(1) the Juvenile Court may enter such orders on disposition as the Juvenile Court finds appropriate, considering the evidence before it at the disposition hearing; and

(2) upon receiving the results of any such examination or investigation, the Juvenile Court:

(A) may, upon the Juvenile Court's own motion, conduct a hearing to review its disposition orders in accordance with the provisions of § 4.10.210; and

(B) shall, upon the motion of any party, conduct a hearing to review its disposition orders in accordance with the provisions of § 4.10.210.

4.09.190 Predisposition Reports and Examinations – Confidentiality

Any reports prepared and the results of any examinations ordered in accordance with the provisions of this chapter shall be subject to the provisions of § 1.04.210 of this title.

4.09.210 Predisposition Reports and Examinations – Filing and Service

(a) Any reports or examination results to be considered by the Juvenile Court at any hearing conducted pursuant to the provisions of this chapter shall be filed in the Juvenile Court and served upon the Juvenile Presenting Officer, the Juvenile Case Coordinator, counsel for the child, and the child's parent, guardian or custodian, at least three (3) days prior to the hearing, in accordance with the provisions of § 1.08.150 of this title.

(b) The time limit imposed by subsection (a) may be waived upon the agreement of the parties and the Juvenile Court.

4.10 DISPOSITION

4.10.110 Disposition Hearing – Time Limit

(a) The disposition hearing shall be held immediately following the adjudication hearing, unless the Juvenile Court finds good cause to continue the disposition hearing.

(b) If the Juvenile Court finds good cause to continue the disposition hearing, the disposition hearing shall be held within ten (10) days of the adjudication hearing.

4.10.130 Disposition Hearing – Purpose

The Juvenile Court shall conduct the disposition hearing for the purpose of determining:

(a) what services and resources are most likely to ensure regular school attendance by the child; and

(b) the appropriate disposition of the matter.

4.10.150 Disposition Hearing – Conduct

At the disposition hearing, the Juvenile Court:

(a) shall afford the parties the opportunity:

(1) to present documentary or testimonial evidence concerning the appropriate disposition of the matter; and

(2) to controvert, and to cross-examine the sources of, the contents and conclusions of any reports, testimony, or other evidence to be considered by the Juvenile Court pursuant to the provisions of this section;

(b) shall consider the predisposition report and recommendations prepared by the Juvenile Case Coordinator, as well as any alternative predisposition report or recommendations prepared by the child or the child's parent, guardian or custodian; and

(c) may consider any evidence, including hearsay, which it finds to be relevant, reliable, and helpful in making the determinations required under § 4.10.130.

4.10.170 Orders on Disposition

(a) Upon the conclusion of the disposition hearing, the Juvenile Court may enter any written disposition orders authorized under § 4.10.190.

(b) In exercising its discretion under subsection (a), the Juvenile Court shall enter the least restrictive orders appropriate considering the needs of the child and the child's parent, guardian or custodian.

(c) All orders entered by the Juvenile Court pursuant to the provisions of this section shall be:

(1) explained to the child in language the child will easily understand; and

(2) accompanied by a written statement of:

(A) the facts relied upon by the Juvenile Court in entering those orders; and

(B) the reasons for rejecting less restrictive alternatives.

4.10.190 Disposition Options

(a) Pursuant to the provisions of § 4.10.170, the Juvenile Court may enter written orders including any of the following, as best suited to the needs of the child and the child's parent, guardian or custodian:

(1) an order requiring the child to maintain regular attendance at the child's current school;

(2) an order requiring the child to attend another public school, an alternative education program, a skill center, a dropout prevention program, or other public program which can provide appropriate educational services for the child;

(3) an order referring the child or the child's parent, guardian or custodian to educational, social, community, or tribal services or resources appropriate for addressing needs or issues which contributed to the child's adjudication;

(4) an order referring the child or the child's parent, guardian or custodian to a tribal elders panel or other body capable of addressing needs or issues which contributed to the child's adjudication;

(5) an order requiring the child and the child's parent, guardian or custodian to meet with a tribal truancy board and participate in the development of a truancy remediation plan; or

(6) an order requiring the child's parent, guardian or custodian to participate in an educational or counseling program designed to contribute to their ability to care for and supervise the child, including but not limited to parenting classes;

(7) an order requiring the child to undergo a medical, psychological, or psychiatric evaluation, in accordance with the provisions of § 4.09.170;

§ 4.10.190(a)(3)-(6)

Regarding orders directed to the child's parents, see the comments on § 2.11.170(a)(2).

Note that the truancy provisions of the Model Code do not provide for orders requiring parents to undergo examination or treatment.

(8) an order requiring the child to undergo medical, psychological, or psychiatric treatment, where such treatment is:

(A) recommended by a qualified medical, psychological, or psychiatric professional; and

(B) necessary to address conditions which contributed to the child's adjudication.

(b) Disposition orders entered by the Juvenile Court under subsection (a) shall not include any out-of-home placement of the child.

4.10.210 Disposition Orders – Review

(a) At least once per month, the Juvenile Court shall conduct a hearing for the purpose of reviewing any disposition orders entered pursuant to the provisions of § 4.10.170, and determining:

(1) whether the child and the child's parent, guardian or custodian are in compliance with those disposition orders;

(2) the extent to which those disposition orders have accomplished their intended purposes;

(3) whether those disposition orders should:

(A) continue in effect without modification or extension;

(B) be terminated in accordance with the provisions of § 4.10.230(b); or

(C) be modified or extended in accordance with the provisions of § 4.10.270.

(b) At any review hearing conducted pursuant to the provisions of this section:

(1) the child shall bear the burden of showing, by a preponderance of the evidence, compliance with any affirmative requirement set forth in the disposition orders entered by the Juvenile Court; and

(2) the Tribe shall bear the burden of showing, by a preponderance of the evidence, that the child or the child's parent, guardian or custodian has engaged in any conduct prohibited by the disposition orders entered by the Juvenile Court.

4.10.230 Disposition Orders – Duration and Termination

(a) Disposition orders entered by the Juvenile Court shall continue in force for not more than six (6) months, unless they are extended in accordance with the provisions of § 4.10.250.

(b) The Juvenile Court may terminate a disposition order prior to its expiration if it appears to the Juvenile Court, following a hearing conducted upon its own motion or the motion of any party, that the purposes of the disposition order have been accomplished.

(c) The Juvenile Court shall enter an order terminating all disposition orders affecting the child, and discharging the child from any further obligations in connection with the truancy proceedings, upon a showing by the child that:

(1) at the end of the most recent school year, and following the child's most recent unexcused absence, the child has accumulated sixty (60) days of regular school attendance without another unexcused absence;

(2) the child has graduated from high school; or

(3) the child has completed an alternative course of study resulting in the achievement of a high school diploma or the equivalent.

(d) All disposition orders affecting the child shall automatically terminate, and the child shall be discharged from any further obligations in connection with the truancy proceedings, when the child reaches eighteen (18) years of age.

§ 4.10.230(c)(1)

Like § 4.06.170, this subsection is included to ensure that children and their parents are not subject to prolonged judicial proceedings or supervision in the absence of continued truancy.

4.10.250 Disposition Orders – Modification or Extension

(a) Following a modification hearing conducted upon its own motion or the motion of any party, the Juvenile Court may modify or extend its disposition orders if the Juvenile Court finds by clear and convincing evidence that such modification or extension is necessary to accomplish the purposes of the orders to be modified.

(b) The modification hearing shall be held within ten (10) days of the filing of the motion for modification.

(c) Where the modification hearing is to be held upon the motion of the Juvenile Court, notice of the modification hearing shall be accompanied by a statement of the specific facts upon which the motion for modification is based.

(d) In making the determination required by subsection (a), the Juvenile Court may consider:

(1) the extent to which the child and the child's parent, guardian or custodian have complied with any disposition orders previously entered by the Juvenile Court;

(2) evidence that the child has either maintained regular school attendance or continued to accumulate unexcused absences;

(3) changes in services or other recommendations relied upon by the Juvenile Court in entering the orders to be modified; and

(4) any other material changes in the circumstances of the child or the child's family, parent, guardian or custodian.

(e) All modified disposition orders shall be subject to the requirements of § 4.10.170(b) and § 4.10.170(c).

(f) An extension ordered in accordance with the provisions of this section shall not exceed three (3) months from the expiration of the prior order, not including summer vacation, and in no event shall the duration of a disposition order be extended:

(1) for longer than reasonably necessary to accomplish the purpose of the order; or

(2) past the date on which the child shall reach eighteen (18) years of age.

§ 4.10.250(f)

Unlike the corresponding delinquency and child-in-need-of-services provisions – § 2.12.310(f) and § 3.12.270(f), respectively – this section does not impose an absolute time limit on disposition orders because, under § 4.01.110, the requirement that the child attend school remains in effect until the child reaches eighteen (18) years of age.

4.10.270 Disposition Orders – Violations

The violation of a disposition order entered pursuant to the provisions of § 4.10.170 may be reported to the Juvenile Case Coordinator, who may file a motion for modification pursuant to the provisions of § 4.10.250.