

Juvenile Policy and Code Development Virtual Learning Series- Session Four

Integrity of Tribal Juvenile Court Process as a Foundation – Implications of Rights and Evidence in Juvenile Court Process

Host: The OJJDP Tribal Youth Resource Center

Presentation Date: February 5, 2021

Time: 11am AKT/ 12pm PT/ 1pm MT/ 2pm CT/ 3pm ET



Developed and Presented By:
Hon. Pat Sekaquaptewa

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Tech Reminders ☺

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Tribal Youth Resource Center



As a training and technical assistance provider for the Office of Juvenile Justice and Delinquency Prevention, the Tribal Youth Resource Center as part of the Tribal Law and Policy Institute and its partner the National Native Children's Trauma Center bring an in-depth understanding and appreciation of American Indian and Alaska Native history, customs, and Indigenous justice systems.

Native youth benefit from a value held by Native peoples:
Our Children are Sacred.

Course Presenter:



Honorable Pat Sekaquaptewa
Department of Alaska Native Studies &
Rural Development (DANSRD)
University of Alaska Fairbanks (UAF)

Justice, Hopi Appellate Court

Session Facilitation:



Anna Clough
Director, Lead Juvenile Healing to Wellness Courts
OJJDP Tribal Youth Resource Center

Tribal Youth Resource Center

Coordinated Tribal Assistance Solicitation

- Purpose Area 8- Tribal Juvenile Healing to Wellness Courts
- Purpose Area 9- Tribal Youth Programs



Overview of Session 4

- This session will review, as relevant:
 - The rights protections set out in the Model Indian Juvenile Code of 2016
 - The purposes & processes of the hearings set out in the Model Code
- This session will also cover:
 - The key figures in the juvenile court under the Model Code
 - The nuts & bolts of the juvenile court process set out in the Model Code



Earth Trekkers

<https://www.earthtrekkers.com/ultimate-guide-monument-valley/>

Learning Objectives for Session 4

- Series Participants will learn about:
 1. The Key Figures in Juvenile Court Proceedings & their Roles under the Model Code
 2. The Juvenile Case Coordinator & the Directory of Services under the Model Code
 3. Review the “Doors to Diversion” in the Juvenile Court process under the Model Code
 4. Diversion Options under the Model Code
 5. Review the Juvenile Court Process without Diversion, Juvenile Rights & Standards of Proof



<https://lawliberty.org/book-review/has-philosophy-lost-its-way/>

Key Figures in Juvenile Court Proceedings (statutory roles & responsibilities under the model code)

Definitions

§ 1.02 (h), (i), (j), & (k)

- Guardian ad Litem
- Juvenile Advocate
- Juvenile Case Coordinator
- Juvenile Presenting Officer



<https://www.businessanalystlearnings.com/ba-techniques/2018/1/12/roles-permissions-matrix>

Key Figures in Juvenile Court Proceedings (statutory roles & responsibilities under the model code)

Definitions

§ 1.02 (h)

- Guardian ad Litem (GAL)
 - an individual appointed by the Juvenile Court
 - to represent the best interests of the child
 - in proceedings conducted pursuant to the provisions of this title



<https://www.reneelazarlaw.com/blog/2017/05/how-can-a-guardian-ad-litem-help-my-massachusetts-case/>

Key Figures in Juvenile Court Proceedings (statutory roles & responsibilities under the model code)

Definitions

§ 1.02 (i)

- Juvenile Advocate (JA)
 - 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



Key Figures in Juvenile Court Proceedings

(statutory roles & responsibilities under the model code)

Definitions

§ 1.02 (j)

- **Juvenile Case Coordinator (JCC)**
 - The individual who shall be responsible for:
 1. Acting as **an unbiased liaison**
 - (between child, parents/guardians/custodians (P/G/C), agencies, service providers, school officials, etc., victims/community, the Juvenile Presenting Officer (JPO), & the Juvenile Court (JC))
 2. Coordinating **services** for children
 3. Providing **recommendations** to the Juvenile Presenting Officer, regarding ...
 - the initiation of proceedings before the Juvenile Court
 - diversion options & other alternatives
 4. Providing **recommendations** regarding the disposition
 - of matters coming before the JC



Isaac Palone with his aunt, Claudette White, who lives on the Fort Yuma Quechan Reservation in Winter Haven, California, and has been a chief tribal judge. Courtesy of Claudette White

Slate

Jurisprudence

The Unique Problems Facing Native American Youths in the Criminal Justice System

By Calah Schlabach, Jose-Ignacio Castandeda Perez, Mathew Hendley, & Layne Dowdall

Key Figures in Juvenile Court Proceedings (statutory roles & responsibilities under the model code)

Definitions

§ 1.02 (j)

- Juvenile Case Coordinator (JCC)(cont.)
 - The individual who shall be responsible for:
 5. Monitoring & facilitating **compliance** by the child &P/G/Cs with ...
 - conditions of diversion agreements/ deferrals
 - conditions of release
 - Dispositions/orders of the JC
 6. Conducting mental health & other **screening** of children
 - in order to identify services
 - which may be necessary or appropriate to meet their needs
 7. Performing **related functions**
 - specifically delegated to the JCC under this title



<https://slate.com/news-and-politics/2020/10/native-american-youths-criminal-justice-system.html>
Isaac Palone, right, with Saginaw Grant, center, and the Kwatsan Lightning singers in 2015 in Yuma, Arizona Courtesy Claudette White

Key Figures in Juvenile Court Proceedings (statutory roles & responsibilities under the model code)

Definitions

§ 1.02 (k)

- Juvenile Presenting Officer (JPO)
 - the attorney
 - who shall represent the Tribe
 - in all proceedings before the JC



Tribal Youth Arrest Rates

The 2018 Government Accountability Office (GAO) report on tribal youth offenders gathered information from local, state, and federal demographic reports between 2010 and 2016. During this time, the GOA found that more than 105,000 tribal youth under the age of eighteen were arrested. This rate included local, state, and federal arrests. When looking at the arrest and detention records, it was also found that tribal youth are 50% more likely to experience more severe tactics from police and corrections officers, including the use of pepper spray, restraints, and isolation.

At the local and state level, tribal youth are most frequently arrested for alcohol or drug offenses, running away, and property crimes. When compared against youth from all other ethnic groups, the data showed that tribal youth arrest rates were about the same at this level. At the federal level, however, disparities begin to appear. Not only do tribal youth make up a disproportionate 18% of the total federal youth arrest rate, they are also often charged with more serious offenses than non-tribal youth, usually related to crimes against another person, such as assault and sex offenses. Additionally, tribal youth in federal custody receive harsher punishments than their non-tribal peers. 52% of tribal youth were sentenced to serve 13 to 36 months in federal prison, whereas 62% of non-tribal youth received sentences of 12 months or less.

Model Indian Juvenile Code (2016)

§ 1.06.110(a) – 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



NICWA:

Juvenile Justice

Involvement in the juvenile justice system is correlated with experiencing child abuse and neglect. There is significant overlap between children and youth who are involved in the child welfare system and the juvenile justice system. Like the child welfare system, AI/AN youth are disproportionately represented in the juvenile justice system. NICWA's juvenile justice research and technical assistance helped develop groundbreaking new tribal and state policies and tribal and private foundation initiatives. Our work supports promising "upstream" approaches that are proving successful. As opposed to interventions that occur after youth have been charged with an offense, providing youth with support services, building life skills, and reconnecting them with their culture addresses the root causes of delinquency.

Model Indian Juvenile Code (2016)

§ 1.06.110(b) – Directory of Services

(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;
- (4) the Juvenile Presenting Officer;
- (5) the Juvenile Advocate; and
- (6) the Juvenile Court.



<https://kjzz.org/content/733103/maricopa-county-helps-juvenile-detainees-learn-grow-community-garden-beds>

Courtesy Teresa Tschuppt/Maricopa County Juvenile Probation Department
Youth work on the garden beds at the Maricopa County Juvenile Probation Facility.

Time for some poll questions!

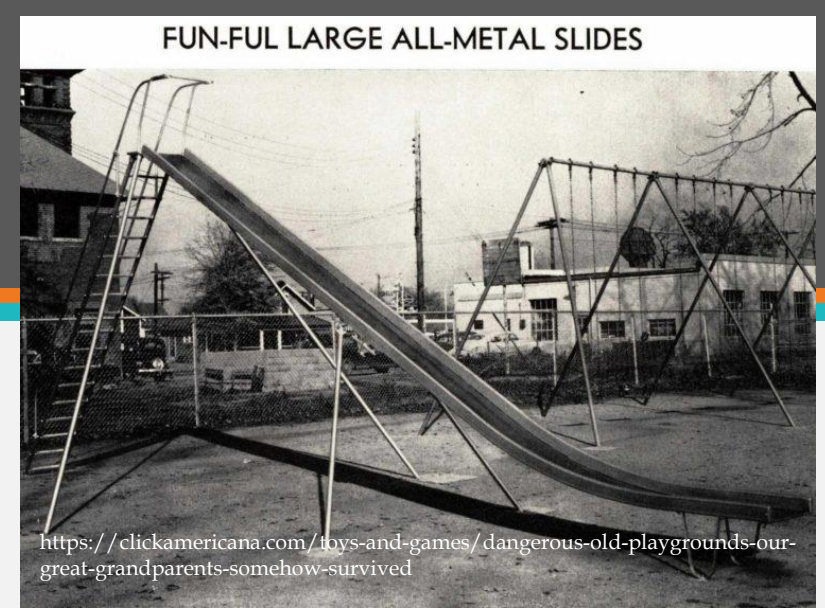
Sample Allegation

“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 (e)



<https://maryloudriedger2.wordpress.com/2012/02/19/visiting-hopi-mission-school/>



<https://clickamericana.com/toys-and-games/dangerous-old-playgrounds-our-great-grandparents-somehow-survived>

Assault

Hopi Code, Chapter 7, §3.7.1 (B)

- A person commits assault by ...
 - attempting to cause
- OR
- recklessly causing
- physical injury
- to another person

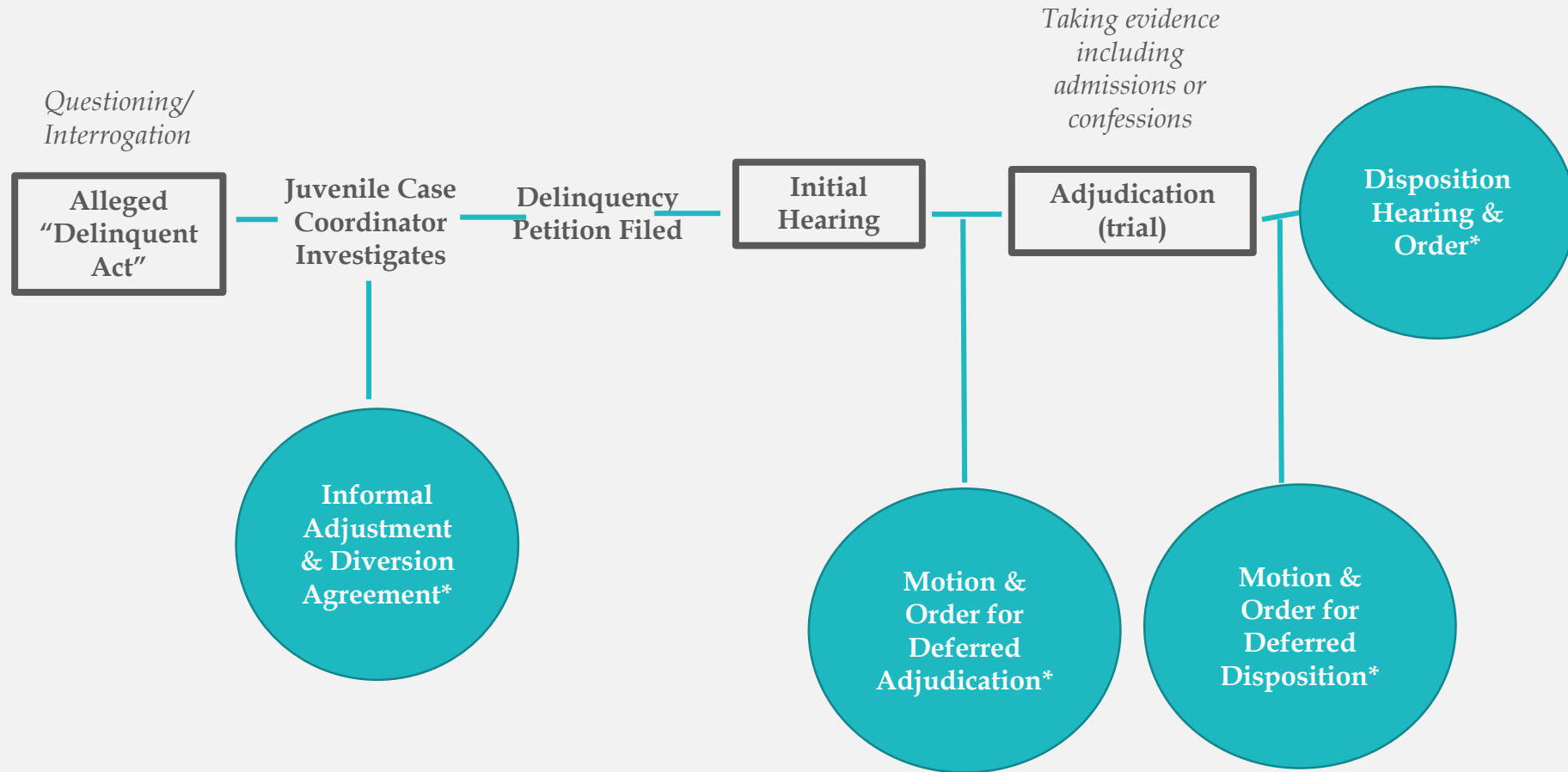
Definition of "reckless" – conduct such as to evince disregard of, or indifference to, consequences, under circumstances involving danger to life or safety to others, although no harm was intended

Evidence

(in no particular order)

- The Hopi Mission School purchased & installed a new super high slide for the playground (according to an invoice & a work order)
- Three boys, Adam, Barney, & Charlie, tell Classmate X that it would be funny to lure a boy they do not like (Harold) to the top of the slide and push him off
- Classmate X sees two boys push Harold off the top of the slide
- At recess on Monday, September 15, 2020 EMS is called to respond to a boy (Harold) who is found to have a broken arm and other bruises
- Classmate X tells the Principal what was said and that he recalls smelling alcohol on the breath of Adam, Barney, & Charlie

Chapters 1 (General Provisions) & 2 (Delinquency) - Delinquency Proceedings
- Model Indian Juvenile Code (2016 Revision)



* Points of referral, diversion, and/or order to therapeutic court docket, community-based programs, etc.

Model Indian Juvenile Code (2016)

§ 2.06.150(a) – 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 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;



<https://www.nhnews.com/news/2009/dec/15/navajo-peacemaking-project-safe-schools-at-star-school>

S.J. Wilson/NHO Lucinda Barney Godinez pays attention at a recent Site Coordinator Meeting for the Navajo Peacemaking Project hosted by Borrego Pass Community School.

Navajo-Hopi Observer

Navajo Peacemaking and Safe Schools at STAR School

Originally Published: December 15, 2009 5:44 p.m.

As a Safe Schools/Healthy Students initiative, the Navajo Peacemaking/Safe Schools Project (NP/SS) joins a highly successful movement to create safe schools for our students.

The Navajo Peacemaking Project provides students with various services, including Navajo Peacemaking, mental health services through the Navajo Family Treatment Center for Children and Their Families, Navajo Nation Law Enforcement, Voices, the 40 Developmental Assets and more. The program is designed to produce socially responsible, respectful and successful students - who possess the tools to avoid behaviors that might land them into the judicial system.

Model Indian Juvenile Code (2016)

§ 2.06.150(a) – Diversion Options

(a) (cont.)

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



http://www.tribaltribune.com/news/article_a3edd786-fc22-11ea-a11d-931f7b62ad95.html

Tribal Tribune

Donley, Pakootas graduate from Tribes' Healing to Wellness Court
Justus Caudell/Tribal Tribune
Sep 21, 2020

"Two years ago when I got in the program, I was bad," said Donley. "I was bad. I had already given up. I figured this was just my life. I never, ever, ever dreamed I would be where I am right now. I didn't know how to start. All I knew was the drugs. Healing to Wellness gave me the tools, they showed me guidance and they helped me to heal. I did have some bumps in the road. I'm not perfect, none of us are, but now I will never give up. I will always fight, and I will always heal."

The Healing to Wellness Court was first announced in Aug. 2017, and the court saw their first graduates in Jan. 2019.

The Healing to Wellness Court is offered as a diversionary program for non-violent drug and alcohol offenders in Colville Tribal Courts through an agreement between the public defender's office and the prosecutor's office.

Model Indian Juvenile Code (2016)

§ 2.06.150(a) – Diversion Options (cont.)

(a) (cont.)

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

Tulalip tribal elder and Elders Panel member William Shelton, now deceased, explains how the diversion program works to the Indian Law & Order Commission in their visit to Tulalip Tribal Court in September 2011.
Photo/ Brandi N. Montreuil, Tulalip News



<https://www.tulalipnews.com/wp/tag/tulalip-tribal-court-elders-panel/>

Tulalip News

First-time offenders learn accountability through diversion program run by tribal elders

Posted on March 19, 2014 by admin

In it’s sixth year, Tulalip Tribal Court’s Elders Panel is a diversion program that uses traditional Tulalip culture and the wisdom and experiences of Tulalip elders to reach first-time offenders and eliminate re-offending.

The panel meets every two weeks with non-violent first-time offenders, ages 18-42, who have been charged with minor criminal offenses such as possession of alcohol or marijuana, or criminal mischief. ****

Enrollment in the program is voluntary but comes with a large incentive to complete it. Defendants receive deferred prosecutions on their criminal charges for the length of their enrollment in the program, usually a year. Upon successful completion of the program, charges are dismissed. This is the one of the largest incentives a diversion program can offer a first-time offender; it is a chance to rebuild a life.

The panel requires defendants to actively engage in their community and culture to learn the impact their actions create, not just in their life, but the lives of their family members and community members. Requirements include regular appearances before the panel, writing letters of apology, community service, substance abuse treatment, curfews, UA’s, anger management classes, mental health evaluations, and no new violations. Cultural participation can include family research and traditional spiritual activities.

Model Indian Juvenile Code (2016)

§ 2.06.150(a) – Diversion Options (cont.)

- (a) (cont.)
- 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 deferring disposition** entered
 - in accordance with the provisions of § 2.12.170(b),
- **may include** any of the following:
 - 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
 - C. promoting the **development of competencies** which will enable the child to become a responsible and productive member of the community.



Tribal Tribune
Lezard completes tribes' Healing to Wellness Court
Justus Caudell/Tribal Tribune
Nov 4, 2019

NESPELEM - Colville tribal member Thomas Lezard completed the Colville Tribal Healing to Wellness Court, receiving a dismissal with prejudice of his charges from the Colville Tribal Prosecutor's Office in a ceremonial event, Oct. 15 at the tribal court.

"I don't have much to say," said Lezard, upon receiving a Pendleton blanket and certificate of completion from the program. "I just want to thank the committee and the Healing to Wellness Court for giving me the opportunity to be in this program and for having patience with me and for mentoring me down this long road of sobriety. Thank you, guys. Thank you for believing in me."

The program, which is offered as a diversionary program for non-violent drug and alcohol offenders in tribal courts through an agreement between the public defender's office and the prosecutor's office, is broken into four phases.

In the final phase, most participants are given the reins.

"In phase four, the majority of the time, they're already done with their chemical dependency," explained Judge Sophie Nomee, who runs the court. "They're done with outpatient. They're usually just on their own to see if they can start to make it on their own, becoming independent on their own choices. They check in less. They get UA'd less, possibly once per month. We start them off day-by-day at the start, and they learn to become independent and make their own choices. That's where Thomas is now."

"Our last resort is jail, and we think of other sanctions if they fall or if they have a bump in their road. You don't punish them by jail," said Judge Nomee. "We think of having them write an essay or going to sweat or chopping wood for elders or picking up garbage or even just presenting something on what led them, what triggered them, to have a bump in the road. We pick them up and dust them off to tell them, 'Okay. Let's go again.' Many people fail on this road. Many people fail. It's not our job to judge them. It's their job to judge themselves and learn from their mistakes. This is a choice that Thomas made, and I'm glad he made this choice."

Model Indian Juvenile Code (2016)

§ 2.06.150(b) – Diversion Options (cont.)

(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:

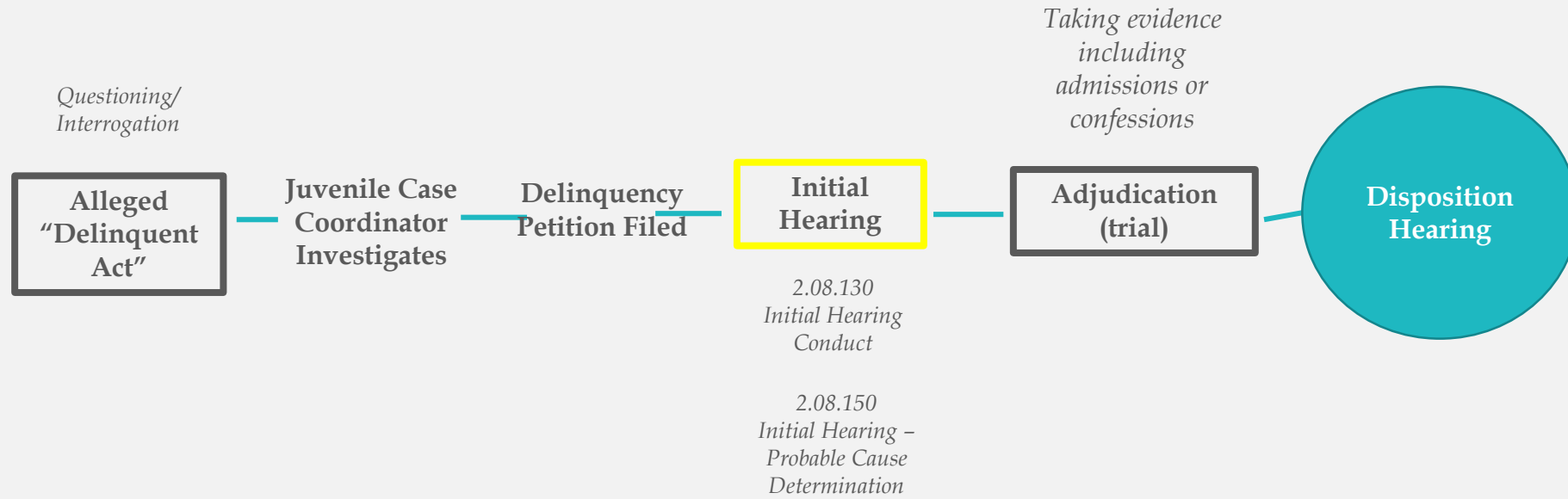
(i) address **conditions which contributed to the alleged delinquent act**; or

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



Time for some poll questions!

Chapters 1 (General Provisions) & 2 (Delinquency) - Delinquency Proceedings
- Model Indian Juvenile Code (2016 Revision)



Model Indian Juvenile Code (2016 Revision)

2.08.150 Initial Hearing – Probable Cause Determination

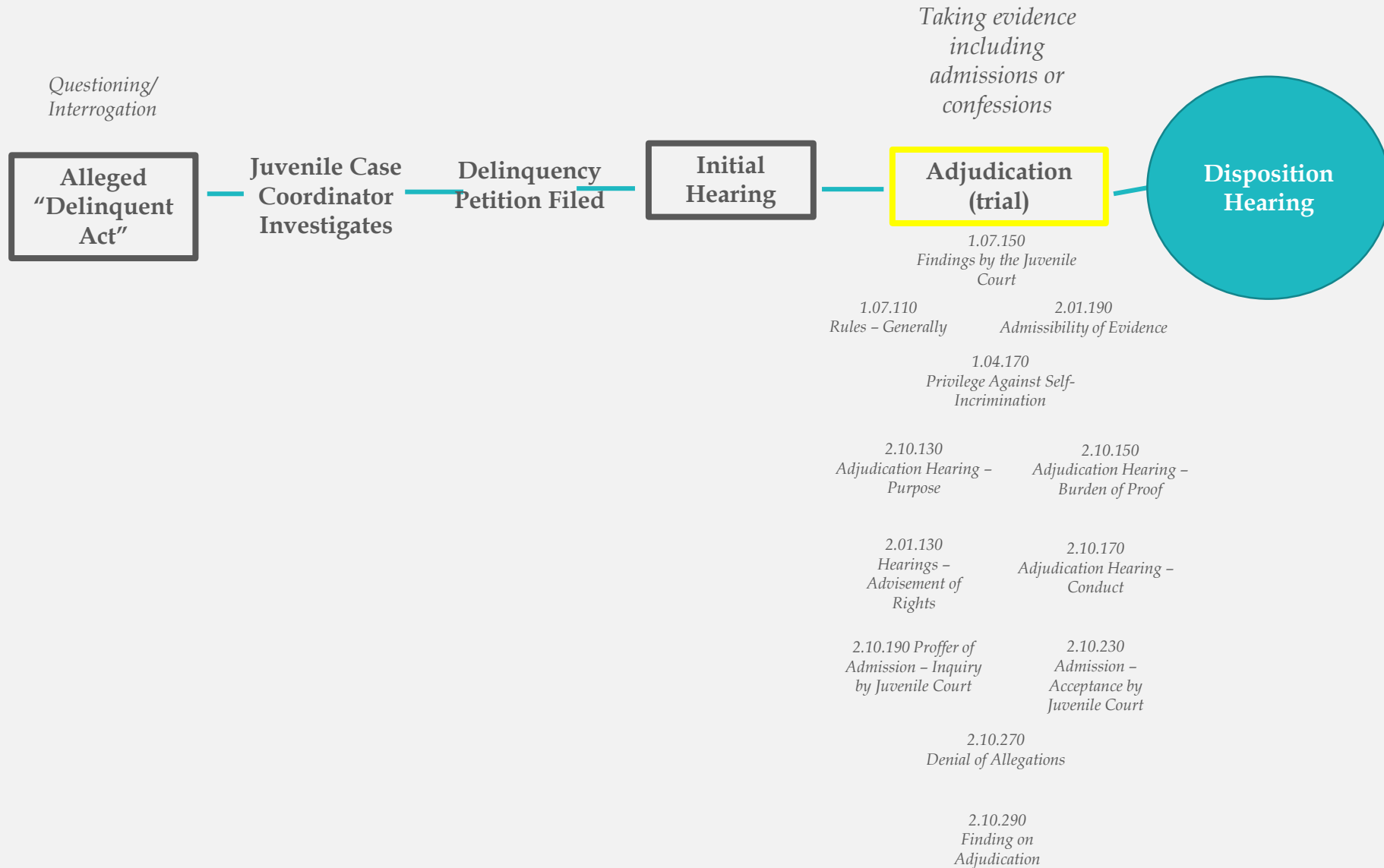
At the **initial hearing**, the **Juvenile Court** shall **enter** a written **order dismissing** the **delinquency petition unless** the **Juvenile Court finds** that the **delinquency petition establishes probable cause** to believe the child has committed a delinquent act.

Probable Cause - A common definition is "a reasonable amount of suspicion, supported by circumstances sufficiently strong to justify a prudent and cautious person's belief that certain facts are probably true"



<http://www.nebraskayouthadvocates.org/confined-without-cause-constitutional-right-prompt-probable-cause-determinations-youth>

Chapters 1 (General Provisions) & 2 (Delinquency) - Delinquency Proceedings
- Model Indian Juvenile Code (2016 Revision)



Model Indian Juvenile Code (2016 Revision)

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.

Adjudication - a formal judgment on a disputed matter.



<https://www.youtube.com/watch?v=h7hrLXSdZg4>

Model Indian Juvenile Code (2016 Revision)

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**.

“Beyond a Reasonable Doubt” Defined –

In a criminal case, though, the standard of proof is significantly higher. Instead of having to prove a case by a “preponderance of the evidence,” the standard is “beyond a reasonable doubt.” Instead of just having to be more convincing than the other side, the side making the claim has to eliminate any reasonable possibility that they are incorrect. If they leave even the slightest doubt in existence after the case is over, then the side making the claim will lose.



<https://federalcriminallawcenter.com/2016/04/the-definition-of-beyond-a-reasonable-doubt/>

Lessons Learned

1. The **key positions** for a tribal juvenile justice system, under the Model Code, include: **Guardians ad Litem**, a **Juvenile Advocate**, a **Juvenile Case Coordinator**, & a **Juvenile Presenting Officer**;
2. The **Juvenile Case Coordinator**, under the Model Code, fills the role of what was once called the “juvenile probation officer,” but with an expanded role, include the creation & maintenance of a “**Directory of Services**;”
3. The Model Code provides for four potential “**doors to diversion**,” from the Juvenile Court process, which include: by “**diversion agreement**,” by “**deferred adjudication**,” by “**deferred disposition**,” and by a “**disposition order**;” AND
4. Remember that, **if a young person’s case is not “diverted”** from the Juvenile Court process to, e.g., a Tribal Healing to Wellness Court Program (or other program), **the case proceeds in the Juvenile Court** – through the initial hearing, the adjudication (trial), and through the disposition hearing(s) and review hearings – **with the potential for secure detention**.

Time for some poll questions!

Resources

- Tribal Youth Resource Center,
<https://www.TribalYouth.org>
- Tribal Law and Policy Institute:
<https://www.home.TLPI.org>



Thank you for your presence today.

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