

Juvenile Policy and Code Development Virtual Learning Series- Session Three

History of Juvenile Justice & the Courts Juvenile Rights Innovations in the Model Tribal Juvenile Justice Codes

Host: The OJJDP Tribal Youth Resource Center

Presentation Date: November 20, 2020

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



Developed and Presented By:
Hon. Pat Sekaquaptewa

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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:



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Justice, Hopi Appellate Court

Session Facilitation:



Tasha Fridia
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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 3

- This session will cover:
 1. A comparison of the rights protections in the state juvenile courts & under the Indian Civil Rights Act (ICRA)
 2. The rights protections set out in the Model Indian Juvenile Code of 2016
 3. The purposes & processes of the hearings set out in the Model Indian Juvenile Code of 2016



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

Learning Objectives for Session 3

- Series Participants will learn about:
 1. Juvenile Rights Protections in State & Federal Courts
 2. Relevant Rights Protections in Tribal Courts under the Indian Civil Rights Act (ICRA)
 3. Juvenile Rights Protections under the Model Indian Juvenile Code (2016 Revision)
 4. Juvenile Rights Protections (& Admissibility of Statements) where Police Question or Interrogate Youth
 5. Juvenile Rights Protections (& Acceptance of Admission of Youth) at the Initial Hearing Stage
 6. Juvenile Rights Protections at the Adjudication (& Acceptance of Admission of Youth OR Tribe Proves Allegations) (Trial) Stage



<https://www.ktoo.org/2016/03/23/american-indian-girls-often-fall-through-the-cracks/>

An Oglala Lakota teenager sits in a juvenile detention center in Kyle, South Dakota. Native American girls are five times more likely than white girls to be incarcerated in juvenile facilities. The Washington Post via Getty Images

Juvenile Rights Protections Applicable to State & Federal Courts

- Right to counsel (a juvenile who is alleged to be a delinquent & at the adjudicatory stage)★
- Right to be notified of charges and time to prepare for the case (a juvenile who is alleged to be a delinquent & at the adjudicatory stage) ★
- Right to a speedy trial✦
- Right to confront & cross-examine witnesses (a juvenile who is alleged to be a delinquent & at the adjudicatory stage)★
- Right to remain silent in court (a juvenile who is alleged to be a delinquent & at the adjudicatory stage)★
- Right to a fair trial★
- Right not to be a witness against one's self or otherwise incriminate one's self★
- Right that one's juvenile case will not be transferred to the adult criminal court without due process♣
- Right not to be found a juvenile delinquent absent proof beyond a reasonable doubt ▲
- No right to a jury trial◎



<https://www.commondreams.org/news/2016/08/31/debtors-prison-kids-poor-children-incarcerated-when-families-cant-pay-juvenile-court>

★In re Gault, 387 U.S. 1 (1967)

✦Juvenile Delinquency Act, 18 U.S.C. §5036; Interstate Agreement on Detainers, 18 U.S.C. Appendix 2 §2 Articles III-VI (time limits for persons incarcerated in other jurisdictions; see also Barker v. Wingo, 407 U.S. 514 (1972))

♣Kent v. United States, 838 U.S. 541 (1966)

▲ In re Winship, 397 U.S. 358 (1970)

◎McKeiver v. Pennsylvania, 403 U.S. 528 (1971)

The Indian Civil Rights Act (ICRA)

Indian Civil Rights Act of 1968, ...

- *No Indian tribe in exercising powers of self-government shall –*
 - *(8) deny to any person within its jurisdiction ..*
 - *the equal protection of its laws*
 - *or deprive any person of liberty or property without due process of law*

25 U.S.C. § 1302(a)(8)

- *The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.*

25 U.S.C. § 1303



<https://www.nativevillage.org/Messages%20from%20the%20People/Indian%20Civil%20Rights%20Act%20of%201968.htm>

Model Indian Juvenile Code (2016 Revision)

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.



Model Indian Juvenile Code (2016 Revision)

- Chapter 2 Delinquency
 - Subchapter 2.01-Rights, Rules & 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.



[http://conferences.asucollegeoflaw.com/schooltopris
on/conference-speaker-ron-whitener/](http://conferences.asucollegeoflaw.com/schooltopris
on/conference-speaker-ron-whitener/)

Ron J. Whitener

Model Indian Juvenile Code (2016 Revision)

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



<https://tritonvoice.co/5016/uncategorized/kent-v-united-states-1966/>

Model Indian Juvenile Code (2016 Revision)

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**.



https://www.cartoonstock.com/directory/s/self_incrimination.asp

Model Indian Juvenile Code (2016 Revision)

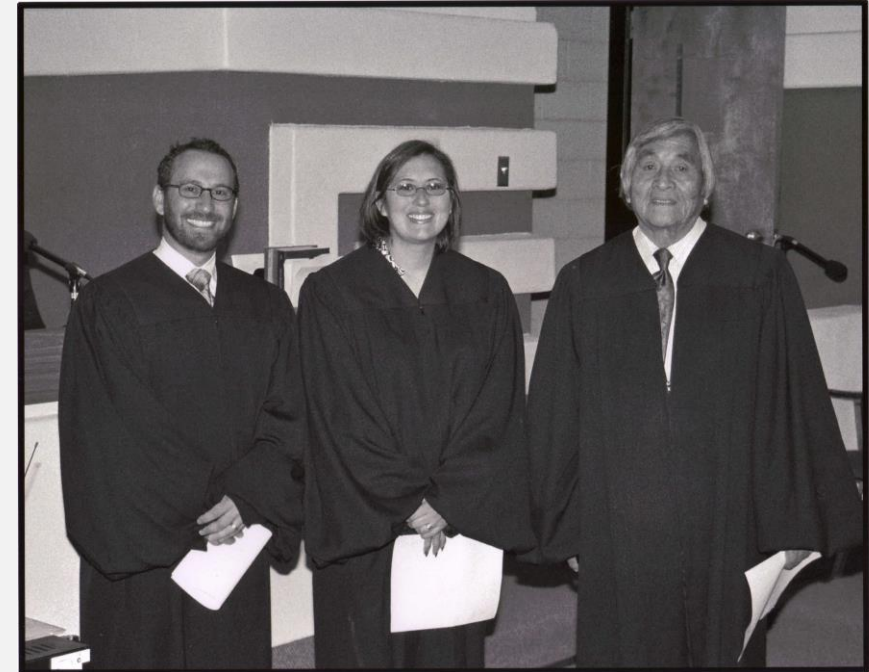
1.10.110 Right to Appeal

(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

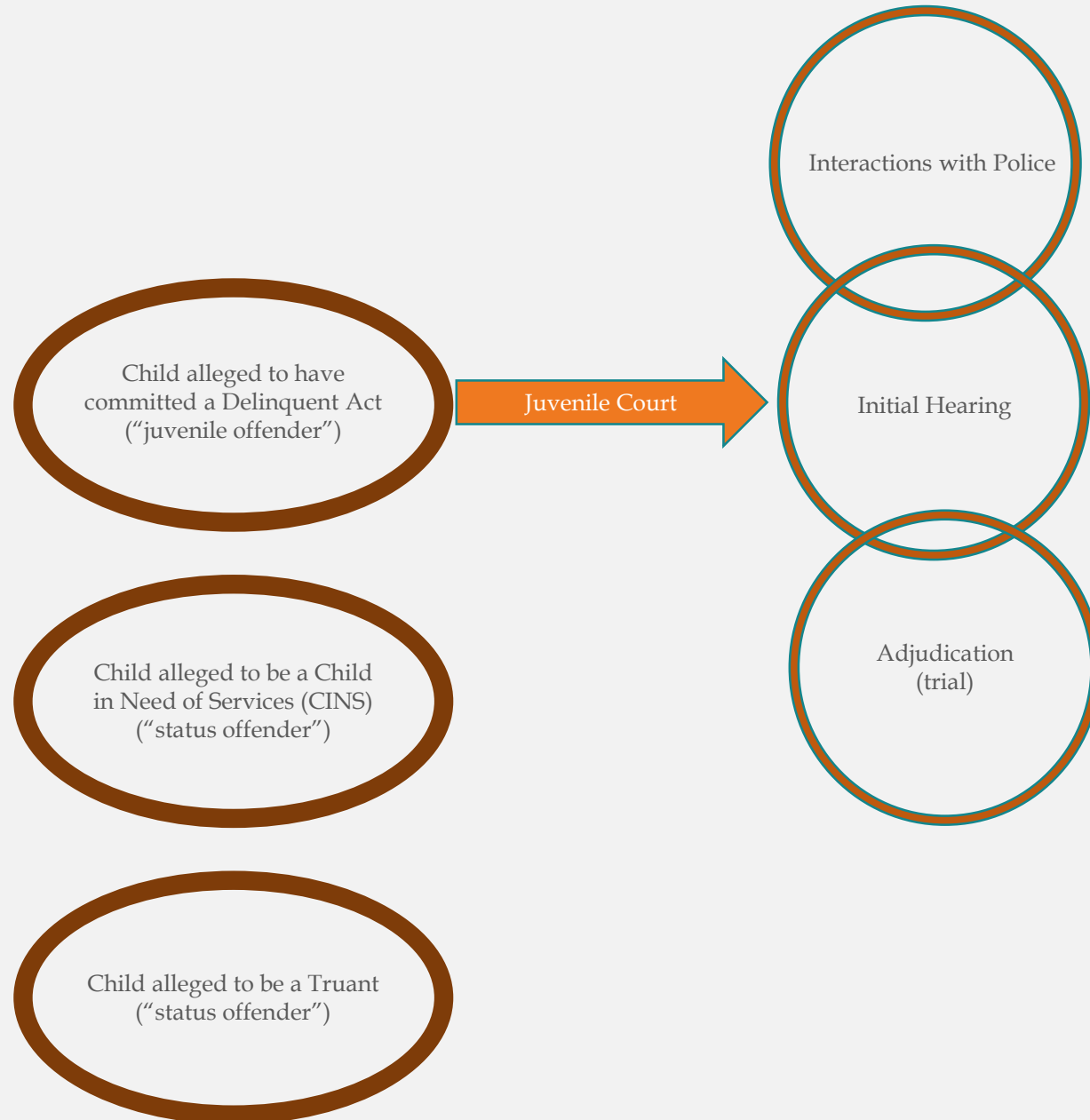
(2) a finding that the child committed a delinquent act, is a child in need of services or is a truant.

(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).



Hopi Appellate Court (~2006)
Justice Pro Tem, Justin Richland, Justice Pro Tem, Patricia Sekaquaptewa, Chief Justice, Emory Sekaquaptewa

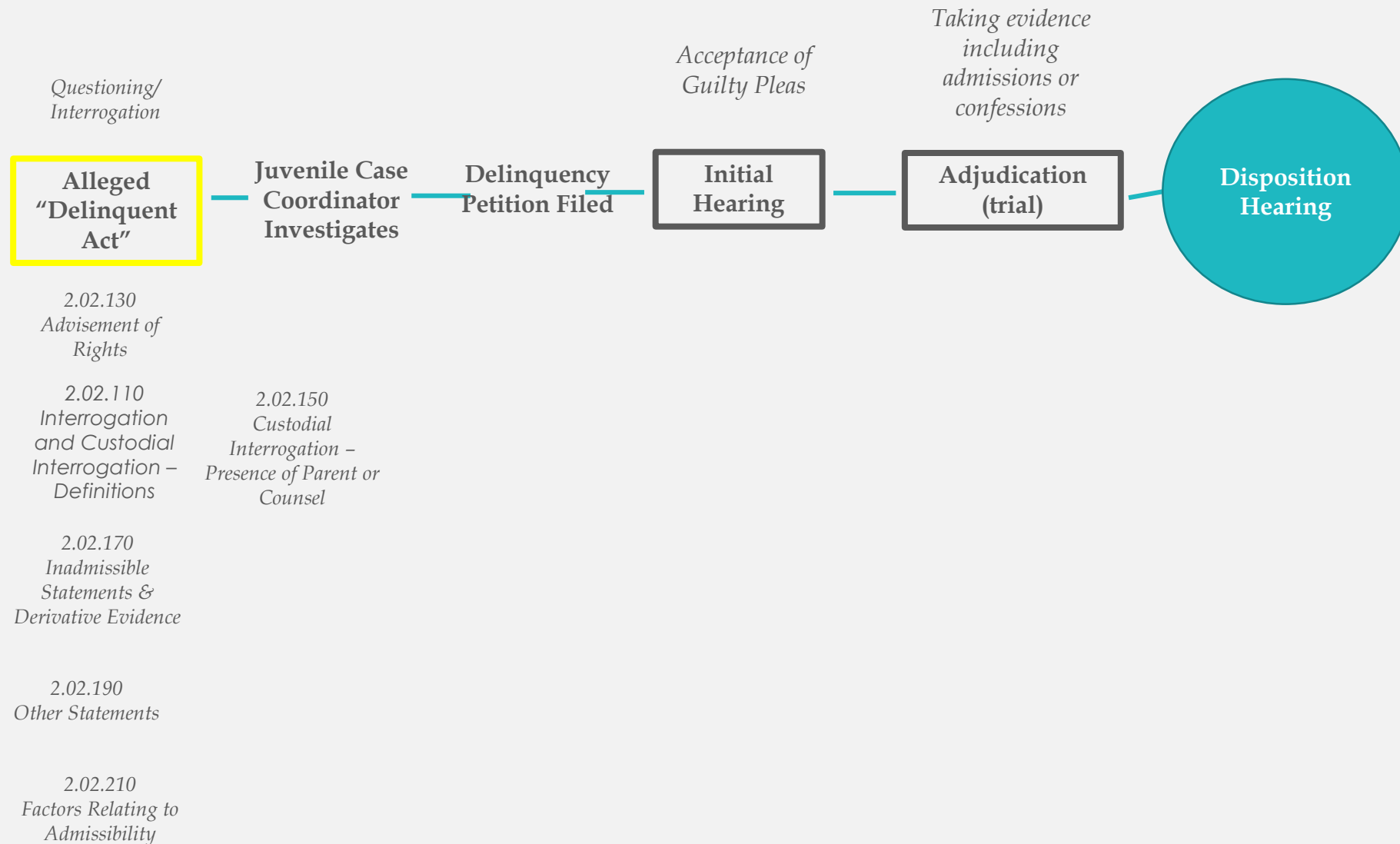
Stages of Tribal Juvenile Justice Process where Rights Protections Matter the Most (under the Model Juvenile Indian Code (2016 Revision))



Why rights protections matter more for those alleged to be "juvenile offenders":

- Stigma
- Police/Court Record
- Registered Sex Offender
- Secure Detention
- Jail/Prison
- Other Punishments

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



Model Indian Juvenile Code (2016 Revision)

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.



<https://youth.gov/youth-topics/juvenile-justice>

Model Indian Juvenile Code (2016 Revision)

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;

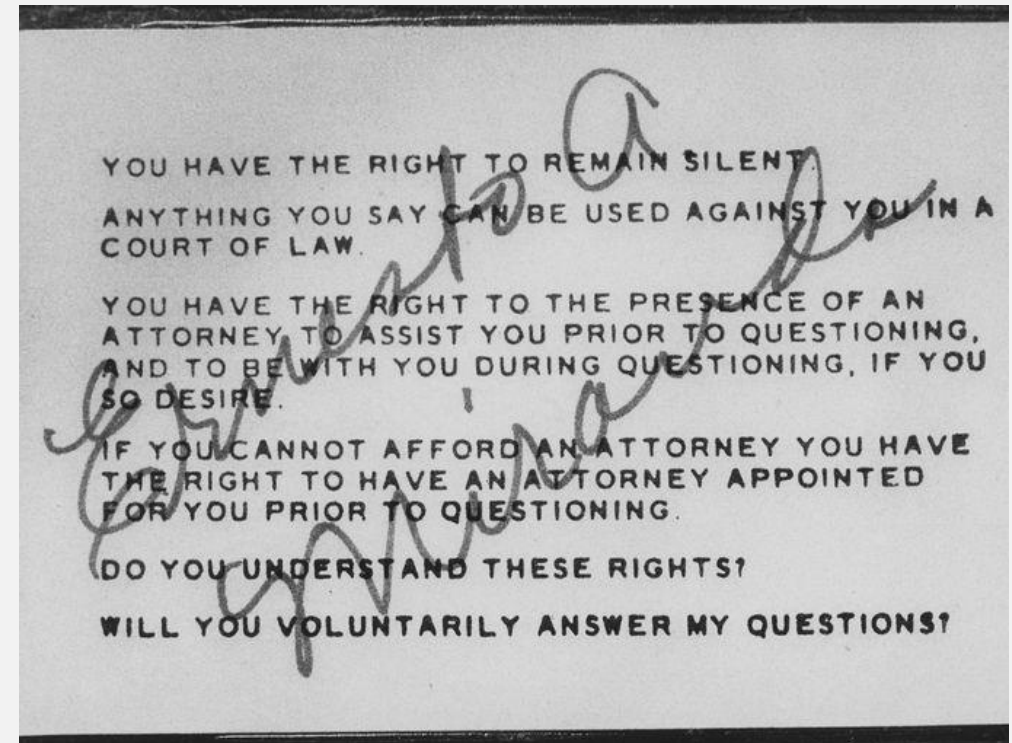
(2) that the child has the right to have his or her parent, guardian or custodian present during any questioning;

(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.

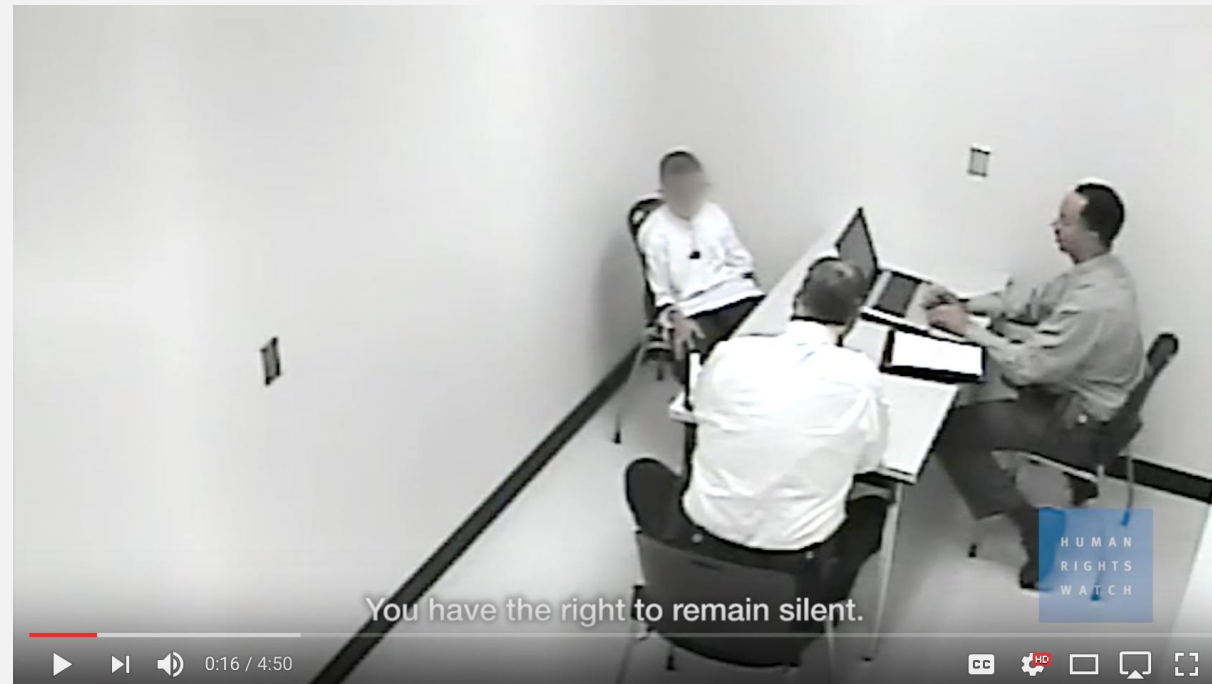


<https://www.azcentral.com/story/news/local/arizona/2016/06/15/miranda-rights-law-land-not-tribal-lands/85926332/>

Model Indian Juvenile Code (2016 Revision)

2.02.150 Custodial Interrogation – Presence of Parent or Counsel

No child shall be subject to custodial interrogation unless the child's parent, guardian or custodian, or counsel for the child, is present.



<http://fairsentencingforyouth.org/miranda-rights-for-youth/>

Model Indian Juvenile Code (2016 Revision)

2.02.170 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.

<continued on next slide>



<http://childrenandthelawblog.com/children-really-understand-miranda-rights/>

Do Children Really Understand Their Miranda Rights?

In light of a recent event, in which Ashley, a 10 year old girl was arrested and interrogated for the alleged sexual assault of a 4 year old boy while playing doctor, I have begun to wonder, among other things, "Do children really understand their Miranda rights?"

Model Indian Juvenile Code (2016 Revision)

2.02.170 Inadmissible Statements and Derivative Evidence (cont.)

(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.



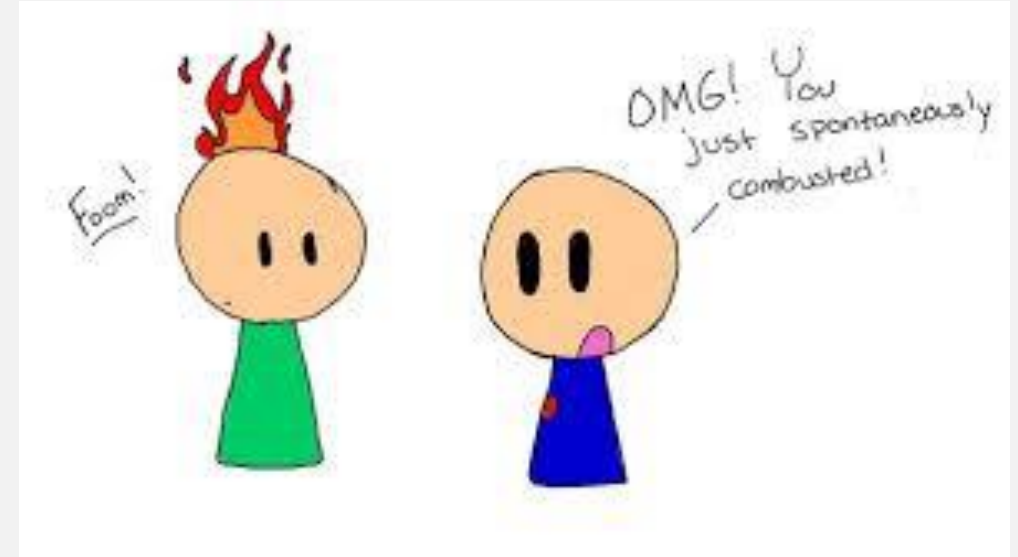
<https://jjie.org/2013/11/07/false-confessions-nyc-still-struggles-in-aftermath-of-central-park-five/>

A screenshot from the confession tape of Raymond Santana of the Central Park Five

Model Indian Juvenile Code (2016 Revision)

2.02.190 Other Statements

- (a) The provisions of § 2.02.170 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.



<https://bizibit.deviantart.com/art/Spontaneous-Combustion-80357443>

Model Indian Juvenile Code (2016 Revision)



<https://jeffreybutts.net/2001/10/15/encyc2001/>

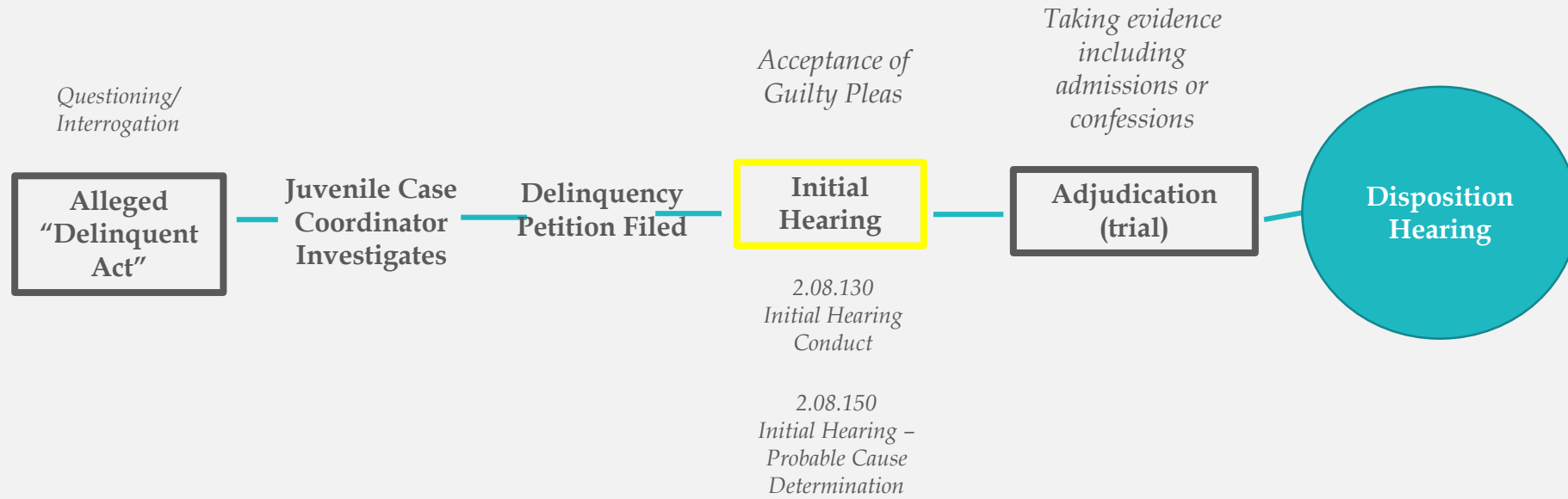
2.02.210 Factors Relating to Admissibility

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.

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>

Model Indian Juvenile Code (2016 Revision)

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:

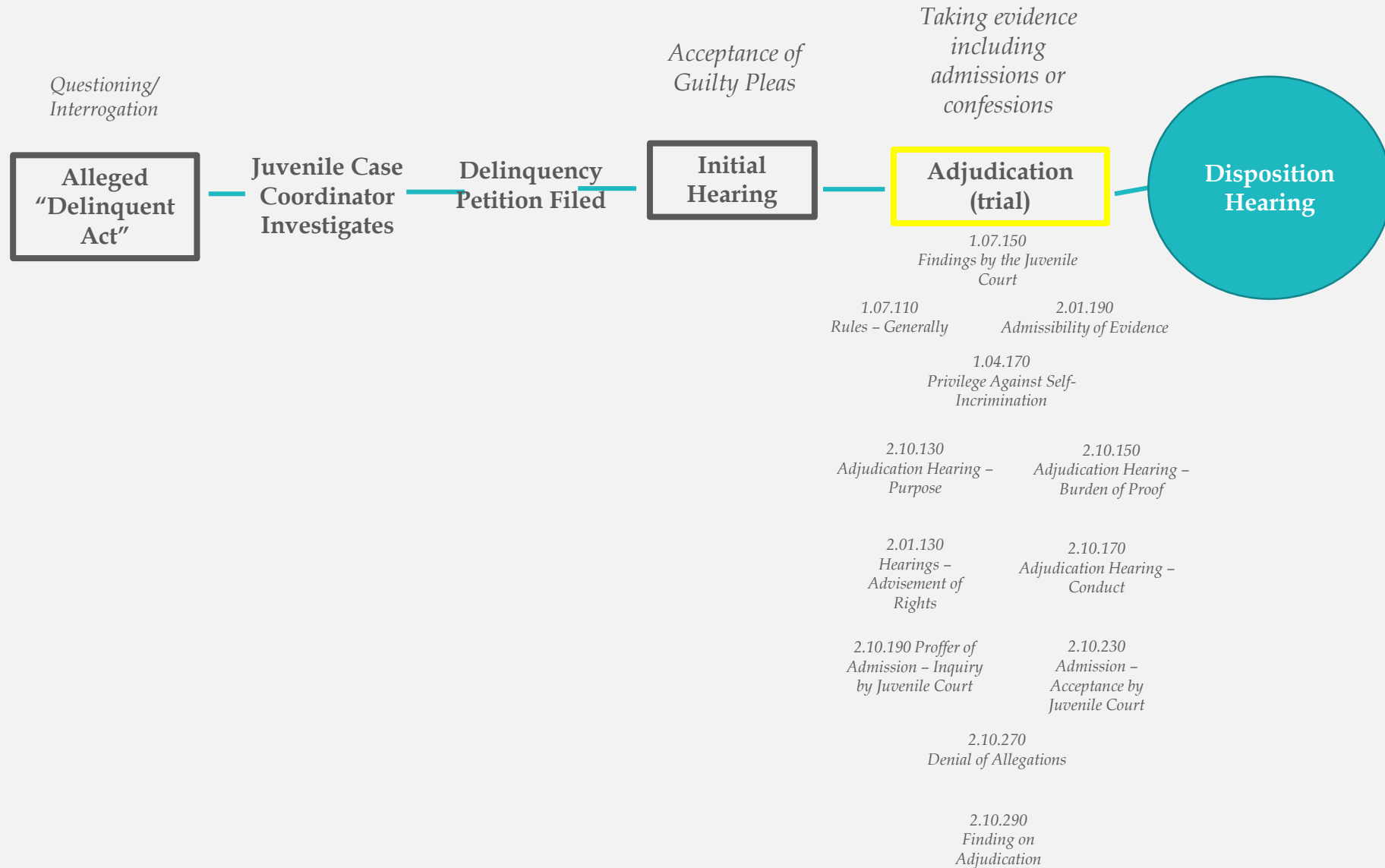
- (1) the nature and purpose of the proceedings;
- (2) the contents of the delinquency petition;
- (3) the possible consequences if the child is found to have committed a delinquent act;
- (4) the right to counsel;
- (5) the privilege against self-incrimination;
- (6) the right to an adjudication in 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.



<http://www.latimes.com/local/la-me-yurok-tribal-judge-20140305-dto-htmlstory.html>

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)

2.10.170 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.



<https://02varvara.files.wordpress.com/2010/10/01-bart-simpson-i-didnt-do-it-e1286561352317.jpg>

Model Indian Juvenile Code (2016 Revision)

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;

(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;

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<https://www.justipedia.com/what-do-i-need-to-know-about-admitting-guilt/2/20695>

Model Indian Juvenile Code (2016 Revision)

2.10.190 Proffer of Admission – Inquiry by Juvenile Court (continued)

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

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<https://www.apnews.com/2b3fca70e70f4568bf16d355c3636187>

Model Indian Juvenile Code (2016 Revision)

2.10.190 Proffer of Admission – Inquiry by Juvenile Court (continued)

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

(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.

(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.



<http://www.indianz.com/News/2015/017005.asp>

Model Indian Juvenile Code (2016 Revision)

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



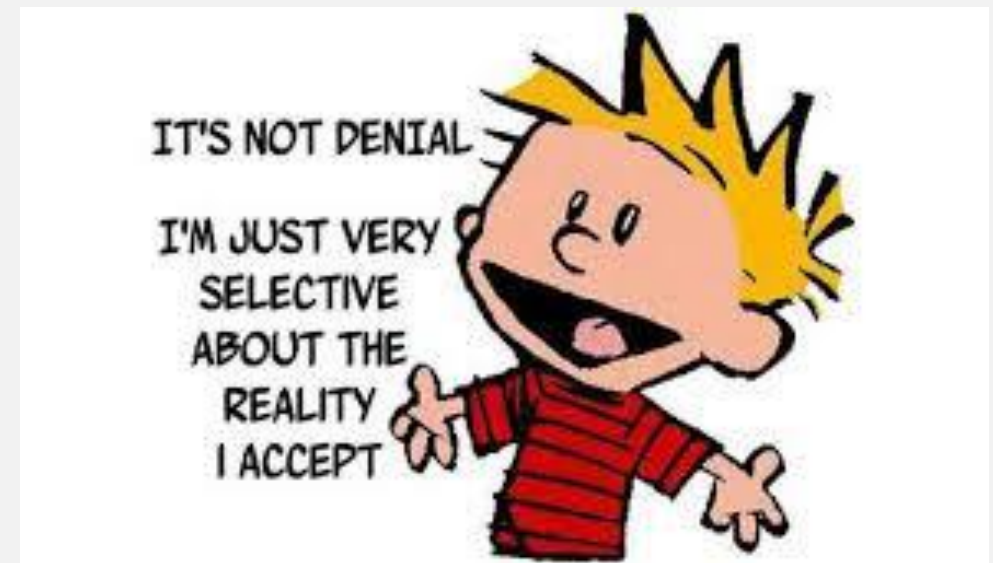
<https://www.nashvillescene.com/news/article/13037415/for-a-teens-impulsive-unthinkable-act-cyntoia-brown-got-an-adults-life-sentence-was-justice-served>

Model Indian Juvenile Code (2016 Revision)

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.



<http://dailycaring.com/caregiver-stress-are-you-in-denial/>

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/>

Model Indian Juvenile Code (2016 Revision)

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;
- (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 § 2.02.170.



<http://www.defendingyoumn.com/its-all-hearsay-or-is-it/>

Model Indian Juvenile Code (2016 Revision)

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.

11/20/2020



<http://jac.sheriffleefl.org/wp-content/uploads/2014/07/oath1.jpg>

Lessons Learned

1. Tribes are not bound by U.S. Supreme Court case law or the Juvenile Delinquency Act process requirements for federal courts – regarding the rights of juveniles in tribal court
 - Juvenile rights in tribal court are set out in tribal constitutions and statutes
2. The Indian Civil Rights Act (ICRA) does not set out specific rights for juveniles within a tribe's jurisdiction, rather it provides a general right to due process for "any person within [the tribe's] jurisdiction"
 - Tribal judges may read into Section 8 of ICRA (right to due process) many, if not all, of the rights applicable to juveniles under state and/or federal law
3. The Model Indian Juvenile Code provides juvenile rights protections similar to, with some additions, what the U.S. Supreme Court requires of states

Lessons Learned (cont.)

4. The Model Indian Juvenile Code Requires the Following where Police Question or Interrogate Youth:
 - Advisement of Rights
 - No child shall be subject to custodial interrogation absent the presence of the child's parent, guardian, custodian or counsel
 - This is enforced by making inadmissible statements and derivative evidence inadmissible as evidence against the child in tribal court proceedings

5. The Model Indian Juvenile Code Requires the Following at the Tribal Court's Initial Hearing:
 - The Tribal Court must find that there is probable cause to believe that a child has committed a delinquent act or dismiss a delinquency petition
 - The Tribal Court shall not accept a child's admission at this hearing stage

Lessons Learned (cont.)

6. The Model Indian Juvenile Code Requires the Following at the Adjudication (Trial) Stage, where the Youth Admits to the Allegation:
 - The purpose of the hearing is to determine whether the child committed a delinquent act
 - The hearing shall be before a judge, not a jury
 - The judge shall inquire whether the child admits or denies the allegations
 - The judge must follow a detailed process before accepting any admission (including finding that the child fully understands, that he/she voluntarily, intelligently, & knowingly admits to the facts; and that there are no compelling factual or legal bases for declining to accept the admission)

7. The Model Indian Juvenile Code Requires the Following at the Adjudication (Trial) Stage, where the Youth Denies the Allegation:
 - If a child denies the allegations or stands mute/refuses to answer/answers evasively, the judge shall proceed to hear evidence on the delinquency petition
 - The Tribe bears the burden of proof of the allegations beyond a reasonable doubt
 - Section 2.01.290 governs what evidence is admissible
 - If the judge finds that the allegations of the delinquency petition have not been proved beyond a reasonable doubt, he/she shall enter an order dismissing the petition & releasing the child

Resources

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



Thank you.

Thank you for your presence
today.

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