

CHAPTER 4B  
JUVENILE DELINQUENCY

4B-1 PURPOSE

4B-1.01 The purposes of this Chapter shall be the following:

- (1) To preserve and strengthen family ties whenever possible;
- (2) To preserve and strengthen children's cultural and ethnic identity whenever possible;
- (3) To improve any home conditions or environment that may be contributing to a child's delinquency;
- (4) To protect the peace and security of the Kootenai Indian Reservation and its individual residents from the negative effects of juvenile delinquency;
- (5) To establish basic rights of children and families and provide a system of procedure and law to ensure fairness to all parties who come before the Court under this Chapter;
- (6) To recognize and incorporate customs and traditions of the Kootenai Tribe of Idaho and incorporate those customs and traditions into the rehabilitation of juveniles who are adjudicated delinquent by the Court.

4B-2 DEFINITIONS

4B-2.01 As used herein, except as may be specifically provided otherwise, the following definitions shall apply.

- (1) "Adult" shall mean a person 18-years-of age or older, or a person otherwise emancipated.
- (2) "Child" shall mean a person who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.
- (3) "Custodian" shall mean a person, other than a parent or guardian, to whom custody of a child has been given.
- (4) "Delinquent Act" shall mean an act that would be a crime if committed by an adult.

(5) "Detention" shall mean exercising authority over a child by physically placing him in any facility designated by the Court and restricting the child's movement in that facility.

(6) "Guardian" shall mean a person assigned by a court of law other than a parent, having duty and authority to provide care and control of a child.

(7) "Habitual Status Offender" shall mean any minor who has been found to have committed three (3) status offenses within twelve months.

(8) "Home detention" shall mean a dispositional alternative available to the Court whereby a juvenile offender may be released to the parent or legal guardian provided that the juvenile offender may not be out between the hours of 7:00 P.M. and 7:00 A.M. nor go beyond fifty (50) yards of the residence in which the Court ordered them to be detained without twenty-four (24) hour prior approval of the Court.

(9) "Indian" shall mean any member of a federally recognized Indian tribe, band or community, or any Alaska Native, or a person considered by the community to be Indian.

(10) "Juvenile" shall have the same meaning as "child".

(11) "Juvenile Offender" shall mean a juvenile who has been adjudicated as delinquent by the Court.

(12) "Minor" shall have the same meaning as "child".

(13) "Parent" shall include a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

(14) "Secure juvenile facility" shall mean a facility which (1) contains locked cells or rooms which are separated by sight and sound from any adult inmates; (2) restricts the movement of those placed in the locked cells or rooms, and (3) complies with the other requirements of the

Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5601 et. seq.

(15) "Status Offense" shall mean an offense applicable to a child due to their age, such as truancy and curfew violations.

#### 4B-3 JURISDICTION

##### 4B-3.01 Original Jurisdiction

The Court shall have jurisdiction over any Indian juvenile and over any Indian adult who was a juvenile at the time of any act, omission or status, found or living within the Kootenai Indian Reservation where the act, omission or status is prohibited by Tribal or applicable state or federal law or ordinance or where such act, omission or status committed by a juvenile would be a crime if committed by an adult.

##### 4B-3.02 Extended Jurisdiction

The Court shall have original jurisdiction in all proceedings coming under the terms of this Chapter. The Court shall have continuing jurisdiction until the juvenile reaches age eighteen (18), provided, however, that jurisdiction over a juvenile offender can be extended to age twenty-one (21), if done before the juvenile is eighteen (18) in order to retain jurisdiction to impose sentence or to have time to execute the full sentence.

##### 4B-3.03 Jurisdiction over parents

Whenever a juvenile is found to come under the purview of this Chapter, the Court shall have jurisdiction and authority to have the juvenile and the juvenile's parent(s), legal guardian or custodian sign a probationary contract with the Court containing terms and conditions that the juvenile and the juvenile's parent(s), legal guardian or custodian must adhere to as a condition of the juvenile's probation. The probationary contract may provide that upon a violation or breach of the terms and conditions of the probationary contract the juvenile's parent(s), legal guardian or custodian, the Court may order that the parent(s), legal guardian or custodian provide community service, attend parenting classes or undergo other treatment or counseling.

##### 4B-3.04 Capacity

A child under the age of eight (8) years of age is deemed incapable of committing a crime.

##### 4B-3.05 Trial as adult

The Tribal Prosecutor or the child may file a petition requesting the Court to try a child as an adult if the child is fourteen (14) years of age or older and is alleged to have committed a violent offense, such as those enumerated in the Major Crimes Act, 18 U.S.C. § 1153. Once the petition is filed, the Court shall conduct a hearing on the matter.

(1) The Court may try the minor as an adult only if it finds clear and convincing evidence that:

(a) there are no reasonable prospects for rehabilitating the child through resources available to the Court; and

(b) the act(s) allegedly committed by the child demonstrate conduct which constitutes a substantial danger to the public.

(2) The Court shall issue a written order that the child shall be tried as an adult with respect to the delinquent acts alleged in the petition after the conclusion of the hearing.

#### 4B-4 CUSTODY

##### 4B-4.01 Taking juveniles into custody

A Tribal police officer may take a juvenile into custody when:

(1) the juvenile commits a delinquent act in the presence of the officer;

(2) the officer has probable cause to believe the juvenile has committed a delinquent act;

(3) a custody order or warrant for juvenile has been issued by the Court;

(4) when the officer has probable cause to believe the juvenile has committed a status offense; or

(5) when the officer has probable cause to believe that the juvenile has violated conditions of their probation.

4B-4.02 Notification of Rights

A Tribal police officer taking a juvenile into custody shall inform the child that:

(1) he or she has a right to remain silent;

(2) anything he or she says can be used against him in court;

(3) he or she has a right to the presence of his parent, guardian, or custodian and/or counsel during questioning; and

(4) he or she has a right to an attorney at his own expense.

4B-4.03 Custody Procedures

(1) While in custody, a juvenile shall not be finger printed or photographed except by order of the Court.

(2) After taking a juvenile into custody the officer shall:

(a) release the juvenile to the juvenile's parent, guardian or custodian and issue verbal warning as may be appropriate;

(b) release the juvenile to a relative or other responsible adult if the child's parent, guardian or custodian consents to the release; or

(c) deliver the juvenile to a juvenile shelter care facility or a secure juvenile facility.

4B-5 INITIATION OF PROCEEDINGS

4B-5.01 Petitions and Citations. Every juvenile proceeding shall be initiated by the filing of a petition or citation, which shall state the following:

(1) The name of the officer issuing a citation or the Tribal Prosecutor filing the petition, the name of the juvenile and address, if known;

(2) A short statement of the facts constituting the offense in ordinary language. If the acts constitute more than one offense, each offense shall be stated separately;

(3) A petition or complaint must be signed and dated by the issuing officer or the Tribal Prosecutor and may be signed by a complaining witness.

4B-5.02 Time of Petition or Citation. No petition or citation shall be filed charging the commission of any offense defined by this Code unless the offense charged was committed within one (1) year of the date of the petition or citation.

4B-6 JUVENILE PROCEEDINGS GENERALLY

4B-6.01 Juvenile Hearing Procedures

During proceedings in juvenile matters, unless otherwise provided by this Chapter, the rules of procedure shall be the same as that for adult criminal proceedings, except:

(1) the child has no right to a jury trial; and

(2) the general public shall be excluded.

4B-6.02 Notice in Juvenile Proceedings

For all juvenile proceedings before the Court, notice of the proceedings shall be given to the juvenile; his parent, guardian, or custodian; and their attorneys or spokespersons, if any; within the time limits set for a particular proceeding.

4B-6.03 Parental Attendance in Court

When a juvenile is ordered into court, a parent, guardian or custodian shall be ordered by the Court to be present during the court hearing. It will be up to the discretion of the Court if both parents are to appear in court.

4B-7 JUVENILE PROCEEDINGS

4B-7.01 Detention Hearing

(1) When a juvenile is placed into secured confinement upon being taken into custody, the Court shall hold a detention hearing within two (2) days of the initial detention, excluding Saturdays, Sundays and Tribally-recognized holidays. At such hearing, the Court shall determine:

(a) whether probable cause exists to believe the juvenile committed the alleged delinquent act; and

(b) whether continued detention is necessary pending further proceedings.

(2) If the Court determines that there is a need for continued detention, it shall specify whether the juvenile is to be under home detention or confined in a secure juvenile facility until the adjudicatory hearing.

#### 4B-7.02 Admit/Deny Hearing

(1) The admit/deny hearing is in the nature of an adult arraignment. The Court may combine an admit/deny hearing with the detention hearing if doing so shall not violate the juvenile's right to due process, otherwise, the Court shall schedule the admit/deny hearing after the detention hearing without unnecessary delay.

(2) At the admit/deny hearing, the Court shall read the petition or citation to the juvenile and shall inform the juvenile of his rights:

- (a) to cross-examine witnesses;
- (b) to subpoena witnesses and to introduce evidence on his own behalf;
- (c) to the privilege against self-incrimination; and
- (d) to an attorney at his own expense.

(3) The Court shall inform the juvenile that he or she has no right to a jury trial, and that juvenile hearings are closed to the public. The Court shall also inform the juvenile of the possible consequences if the allegations in the petition are found to be true.

(4) If the judge is satisfied that the juvenile understands the charge, the judge shall then ask the juvenile (or his representative) to enter a plea of "admit" or "deny."

(a) If the plea entered is admit, the judge shall then insure that the plea is knowing, voluntary and intelligent; that the juvenile fully understands the impact and consequences of such a plea (such as a waiver of a trial, an admission of all the facts alleged in the petition, etc.) The judge shall then accept the plea and inquire of the juvenile (or his representative) whether he or she desires to be sentenced immediately or at a later date.

(b) If the plea entered is deny, the judge shall then set a date for an adjudication hearing.

#### 4B-7.03 Adjudicatory Hearing

(1) Any time prior to the adjudicatory hearing, the Court may order one or more conferences to consider matters that would promote a fair and expeditious trial.

(2) The Court shall conduct the adjudicatory hearing to determine whether the juvenile has committed a delinquent act or status offense. The hearing shall be private and closed. The Court shall hear testimony and take evidence concerning the circumstances which gave rise to the petition or citation. If the Court finds beyond a reasonable doubt that the allegations contained in the petition or citation are true it shall adjudicate the juvenile as delinquent.

(3) Upon a juvenile being adjudicated delinquent, the Court shall schedule a disposition hearing and specify whether the child is to be in home detention or held in a secure juvenile facility pending the hearing.

#### 4B-7.04 Disposition Hearing

(1) Any date for a dispositional hearing shall be set by the Court at the conclusion of an adjudication hearing when a juvenile is adjudicated delinquent.

(2) The Court shall conduct the dispositional hearing to determine what sanctions shall be imposed upon the juvenile for his delinquent act. The hearing shall be private and closed. The Court may consider all relevant and material evidence, including oral and written reports, concerning the juvenile and his circumstances. The Court shall afford the juvenile, the juvenile's parent, guardian or custodian, and the juvenile's counsel, to speak regarding the juvenile's circumstances and to address any factual statements or conclusions presented in any oral or written reports presented as evidence.

(3) In entering a disposition order, the Court shall have broad discretionary authority with respect to the sanctions imposed, including but not limited to: imposing a fine and/or detention time, community service hours, restitution, counseling, treatment, or other alternatives the Court determines are just. The burden of the sanction

should fall primarily on the juvenile rather than on the parent.

#### 4B-8 JUVENILE COURT RECORDS

##### 4B-8.01 Juvenile Record Access and Confidentiality

(1) Court files concerning juvenile cases shall be kept separate from the records and files of adults. Juveniles shall be referred to solely by their initials in Court proceedings and orders. Other than the juvenile's initials, docket number, specific charges and specific convictions, all court records and law enforcement records related to juveniles shall be confidential and shall not be open to inspection to any but the following:

- (a) the juvenile;
- (b) the juvenile's parent, guardian or custodian;
- (c) the juvenile's counsel;
- (d) law enforcement, juvenile court, and social services personnel directly involved in the handling of the case;
- (e) the tribal prosecutor; and/or
- (f) other prosecuting attorneys or courts of competent jurisdiction upon a showing of extraordinary need.

(2) The victim of misconduct shall be entitled to the name of the juvenile involved and the name of the juvenile's parents or guardian.

(3) Records or statistical information may be released for purposes of legitimate research or study upon order of the Court as long as such information does not identify or tend to reveal the identity of any individual upon which it is based.

##### 4B-8.02 Expungement of Records

(1) Any person who has been adjudicated in a case under this Chapter may, after the expiration of five (5) years from the date of termination of the continuing jurisdiction of the Court, or after reaching age 18, whichever is the soonest, petition the Court for the expungement of his record in the Court. Upon filing the petition, the

Court shall set a date for a hearing and shall notify the Tribal Prosecutor of the pendency of the petition and of the date of the hearing.

(2) If the Court finds upon the hearing that the petitioner demonstrates rehabilitation through no further adjudications of delinquency or conviction of a crime under Tribal, federal, state, or provincial laws as an adult, and that no such proceedings have been instituted or are pending against him, the Court shall order sealed all records in the petitioner's case in the custody of the Court and all such records in the custody of any other agency or official subject to its jurisdiction; and shall further order all references to the adjudication removed from all indices and from all other records available to the public.

(3) Copies of such order shall be sent to each agency or official named in the order. Upon the entry of such order, the proceedings in the petitioner's case shall be deemed never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter. Inspection of such records may thereafter be permitted only by the Court upon petition by the person who is the subject of such records or by any other court of competent jurisdiction, and only to persons named in such petition.

#### 4B-9 STATUS OFFENSES

##### 4B-9.01 Curfew

A juvenile commits a curfew violation if he or she is on the streets, highways or any place open to the public between the weekday hours of 9:00 p.m. to 6:00 a.m. and weekend hours of 10:00 p.m. to 6:00 a.m. From June 1 through September 1, the curfew shall be 11:00 p.m. to 6:00 a.m.

This section shall not apply if the juvenile is under the immediate supervision of a parent, guardian or custodian, or is attending an official public meeting or gathering or authorized school function supervised by adults.

##### 4B-9.02 Truancy

A juvenile commits a truancy violation if he or she willfully and unjustifiably fails to attend school when he or she is required to attend.

4B-9.03        Runaway

A juvenile commits a runaway violation if he or she flees from the control of his parent, guardian or custodian, or when he or she is away from his home or place the parent, guardian or custodian has designated for him to be for twenty-four (24) consecutive hours.

4B-9.04        Tobacco

A juvenile commits a tobacco violation if he or she buys, accepts or possesses any cigarette, electronic cigarette, cigar or tobacco in any form.