

Juvenile Policy and Code Development Virtual Learning Series- Session One

Beyond Transformative: Designing Your Tribal Juvenile Justice System/Laws- Big Picture Considerations

Host: The OJJDP Tribal Youth Resource Center

Presentation Date: August 28, 2020

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



Developed and Presented By:
Hon. Pat Sekaquaptewa
Department of Alaska Native Studies & Rural
Development (DANSRD)
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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
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Justice, Hopi Appellate Court

Session Facilitation:



Tasha Fridia
Assistant Director
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 1

- This session will cover:
 - The development of a juvenile justice system that defines & separates “dependency” & “delinquency” provisions.
 - The different treatment of truancy, status offenses, juvenile offenses & adult crimes.
 - Address juvenile justice process that supports Tribal youth.



<http://www.corrections.com/news/article/36513-the-quiet-crisis-in-native-american-juvenile-justice>

The Quiet Crisis in Native American Juvenile Justice
By Robert Winters, JD, Professor, School of Criminal Justice, Kaplan University
Published: 06/23/2014

Learning Objectives for Session 1

- Series participants will learn about how certain outdated tribal laws & processes may facilitate (& how to prevent/reduce):
 - Truancy & Status offenses
 - Juvenile Delinquency
 - Criminal conduct
 - Homelessness
 - Suicide



<https://www.indianz.com/News/2015/05/26/native-sun-news-northern-cheye-20.asp>

James King, Jr., Lame Deer Schools Truancy Officer. Photo courtesy A Cheyenne Voice

Indianz.com

Native Sun News: Lame Deer school tackles truancy problem

By Clara Caufield

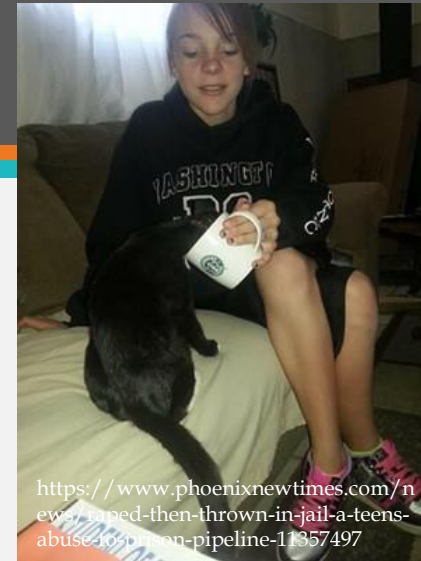
Native Sun News Correspondent

Posted: Tuesday, May 26, 2015

8/28/2020

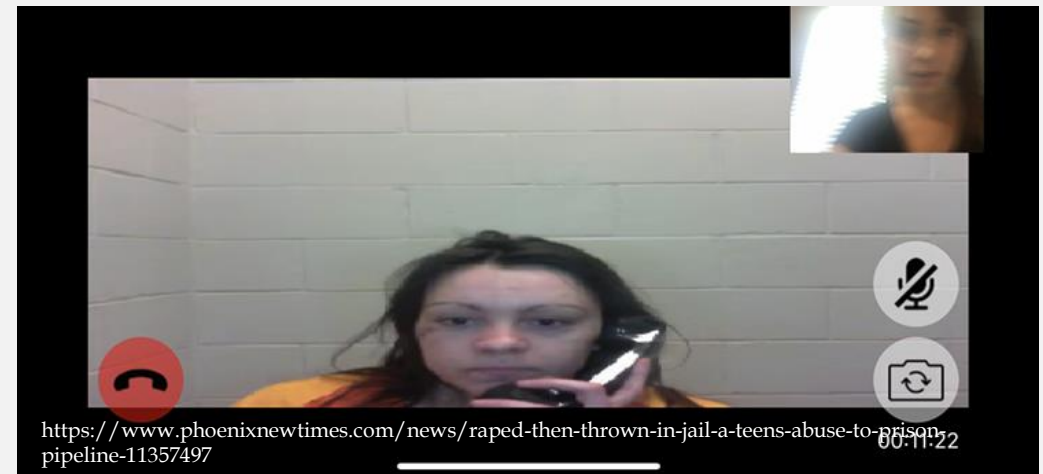
Problems with Outdated Tribal Laws & Justice Systems Negatively Impacting Native Youth

1. Punish children & adolescents for exhibiting symptoms of maltreatment &/ or victimization
2. Lump your child maltreatment law & process with your juvenile delinquency laws
3. Lump your juvenile delinquency process with your status offense (&/or truancy) process
4. Exclusively criminally prosecute adolescents as adults
5. Put children & adolescents on “probation” with conditions where a violation constitutes a new “offense” or “crime”
6. Fail to:
 - identify problems & intervene early
 - work with families & schools
 - recognize on-rez homelessness
 - provide respite or shelter care for adolescents who cannot live at home
 - provide diversion & community programs/services



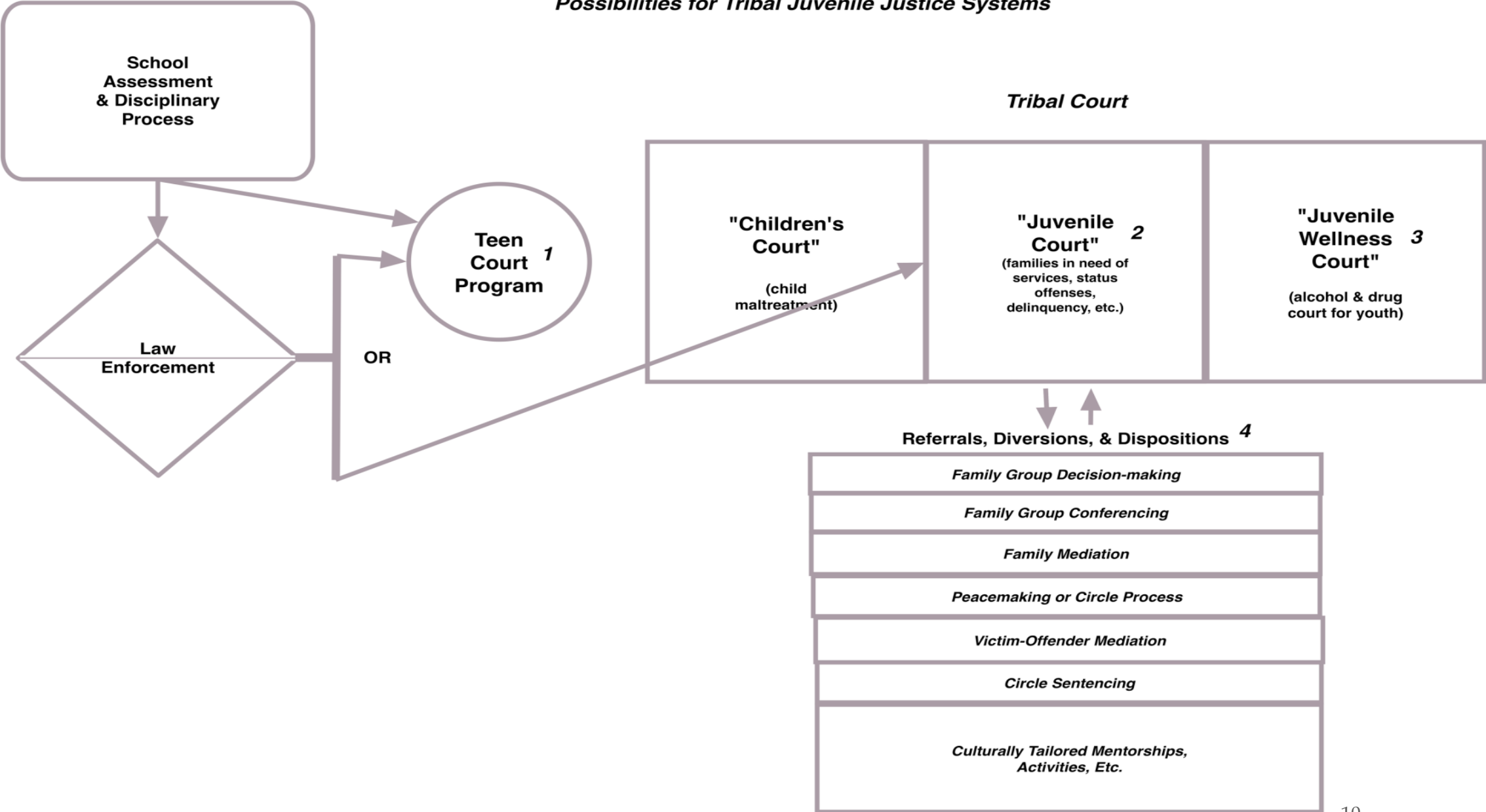
Breanna Gonzales, around age 13, the year she started getting in trouble for running away. Julieann Gonzales

Breanna Gonzales, then 17, speaking to New Times in Lower Buckeye Jail. Hannah Critchfield



Phoenix New Times
Raped, Then Thrown in Jail: A Teen's 'Abuse-to-Prison Pipeline'
HANNAH CRITCHFIELD | SEPTEMBER 26, 2019 | 10:34AM

Possibilities for Tribal Juvenile Justice Systems



Problems with Outdated Tribal Laws & Justice Systems Negatively Impacting Native Youth (cont.)

1. Punish

- find guilty (accept admissions/ guilty pleas) & detain
- children & adolescents
- for exhibiting symptoms of maltreatment &/or victimization
- As truancy &/or status offenses



When we look at the misconduct of youth, are we seeing the symptoms of something that may be cured, or are we seeing criminal activity and the makings of a criminal?



Problems with Outdated Tribal Laws & Justice Systems Negatively Impacting Native Youth (cont.)

2. Keep your laws lumped together

- lump your child maltreatment law & process (a.k.a. “children’s code”)
- with your juvenile delinquency laws (a.k.a. “juvenile or youth code”)

“Children’s Court” Child Maltreatment (dependency)	“Juvenile Court” Juvenile Delinquency, etc. (delinquency, status offenses, FINS, CINS, etc.)
Protects children	Habilitates/rehabilitates adolescents & young adults & holds them accountable
Parents “on trial” w/less focus on rights of youth and more on “best interests of child”	Adolescents/young adults “on trial” w/” tailored criminal justice system-like rights”
Must prove circumstances by a “preponderance of the evidence” or other civil standard	Must prove “guilt” “beyond a reasonable doubt” – criminal standard
Supervision and plan for parents – usually focused on parents	Statutory “doors” to diversion programs for youth w/plans for youth focused on both youth & families
Placements & guardianships for youth	Dispositions for youth including potentially secure detention, in addition to placements & guardianships

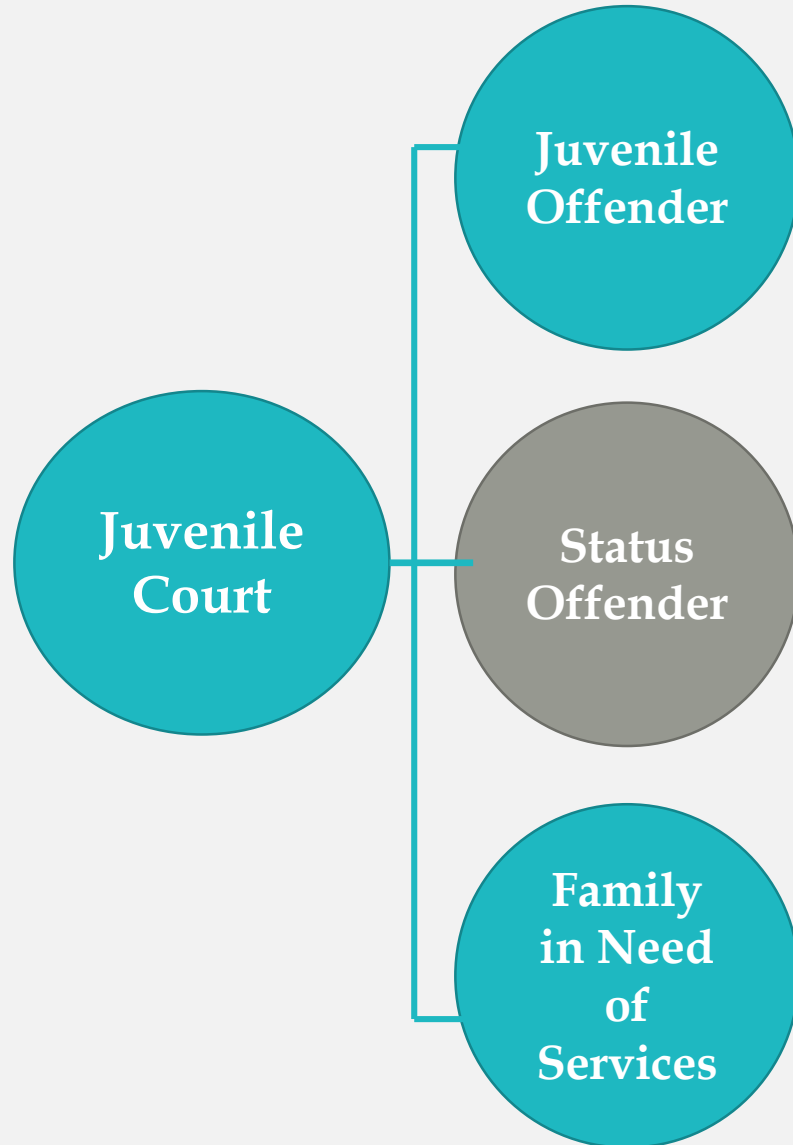
Problems with Outdated Tribal Laws & Justice Systems Negatively Impacting Native Youth (cont.)

3. Keep your laws lumped together

- lump your juvenile delinquency process
- with your status offense process
- &/or truancy process

Process Differences	Delinquency (Juvenile Offenses)	FINS or CINS (Status Offenses)
Reasons	Crime if an adult	Absent from school, Breakdown in parent-child relationship, etc.
Transfer to Adult Criminal Court	Yes	No
Custody/Care	Secure detention possible	Shelter care only max 48 hours
Adjudication	“juvenile offender”	“family-in-need-of-services” “child-in-need-of-services”
Disposition	Remain home w/conditions Place w/relative w/conditions Restitution Probation Secure Detention Order terminates upon 18 th birthday	Remain home w/conditions Place w/relative w/conditions Refer youth/family to services Shelter care max 30 days No confinement with JO’s or jail Order terminates at 6 months or upon 18 th birthday

Model Codes' "Jurisdiction of the Juvenile Court" with Tribal Variance



National Indian Justice Center Tribal Juvenile Code (1989)

Juvenile offense: a criminal violation of the Tribe's L+O Code committed by person under 18

As defined by the tribe, usually in "definitions" provisions

Family in Need of Services: Includes where: a child is habitually and without justification absent from school
OR
a breakdown in the parent-child relationship

Model Indian Juvenile Code (2016 Revision)

Delinquent Act: An act committed by a child that would be a criminal violation of [the tribal code] if committed by an adult

Child = under 18 years of age

Child in Need of Services: A child who:
habitually engages in conduct (disobedient; poses a substantial risk to child or others)
Is a runaway
Engages in conduct prohibited by tribal code that applies only to children⁴

Tribal Examples of “Status Offenses”

**may also be considered adult crimes under tribal criminal code*

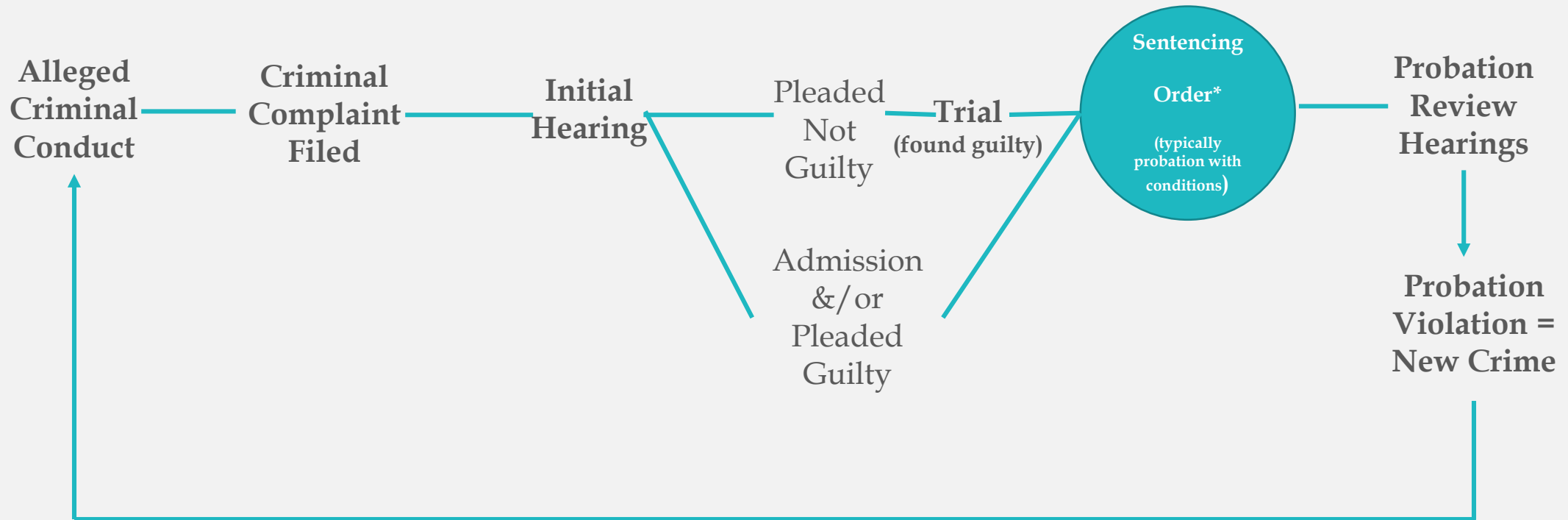
Blackfeet

- Curfew violation
- Loitering about games of chance
- Loitering about retail liquor establishment
- Possession of alcohol
- Possession of drugs
- Truancy
- Inhaling
- Motor vehicle violations

Leech Lake

- Curfew violation
- Truancy
- Possession and/or consumption of alcohol and/or controlled substance
- Possession and/or consumption of tobacco
- Inhaling
- Misuse of over the counter drugs
- Disorderly conduct
- Running away

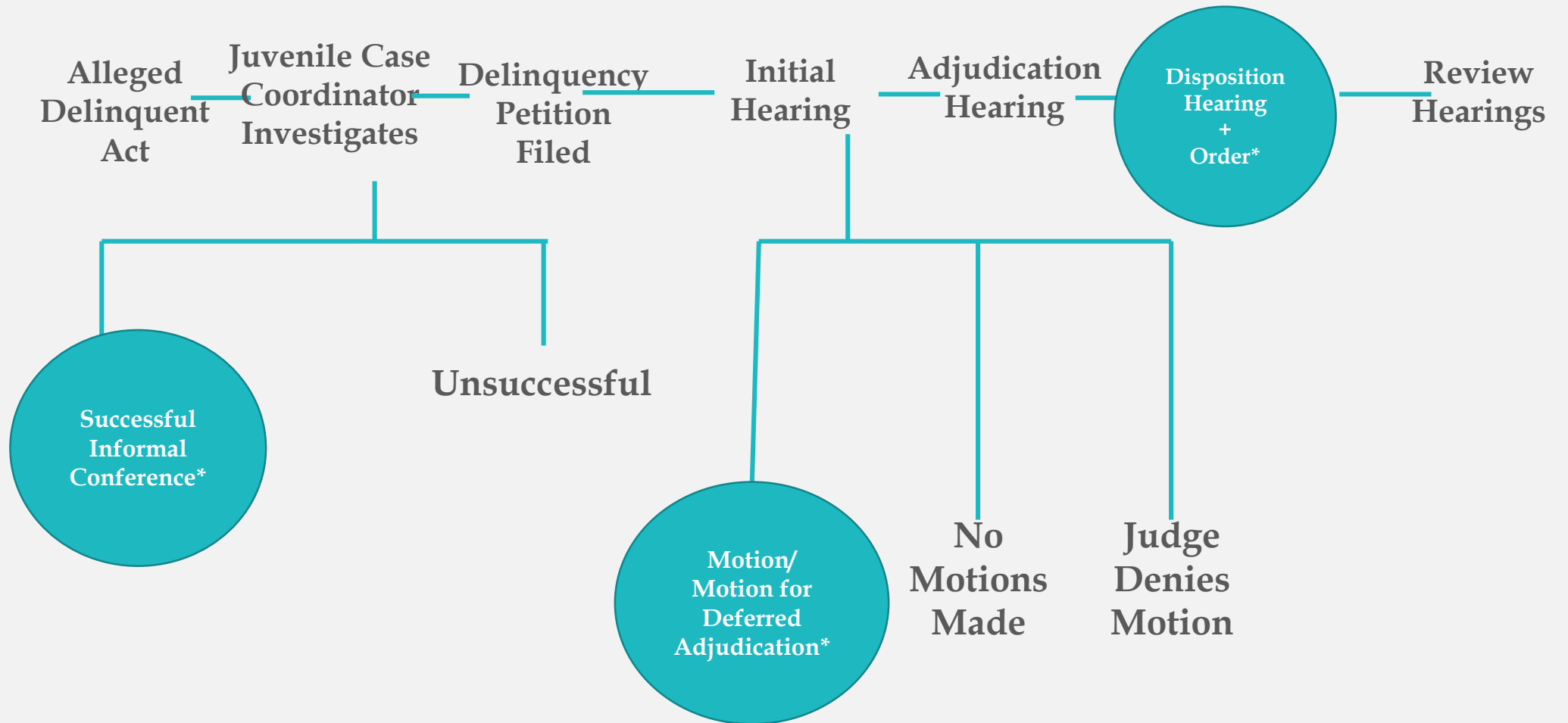
Outdated Tribal Juvenile Justice System



* NO points of referral, diversion, and/or order to therapeutic court docket or community-based program

Chapter 2- Delinquency

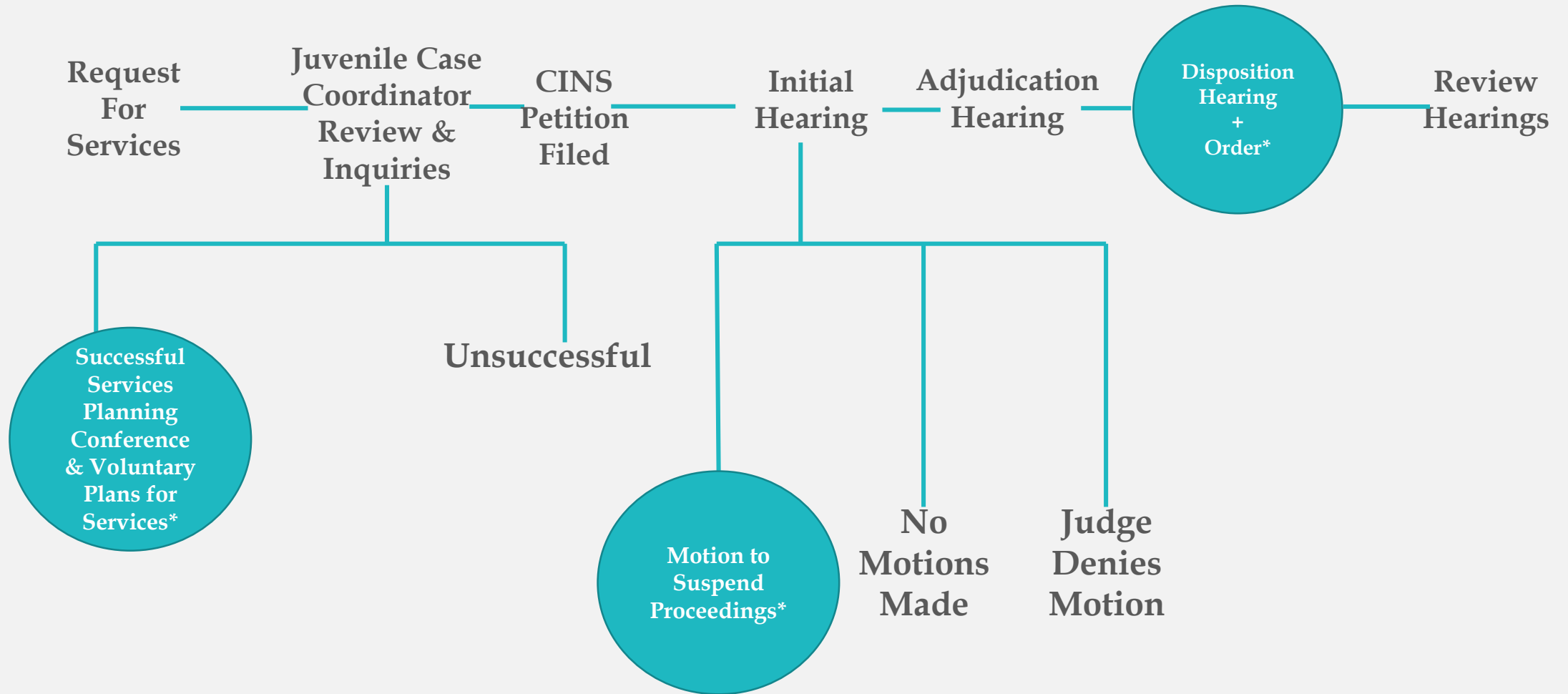
- Model Indian Juvenile Code (2016 Revision)



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

Chapter 3 - Child in Need of Services

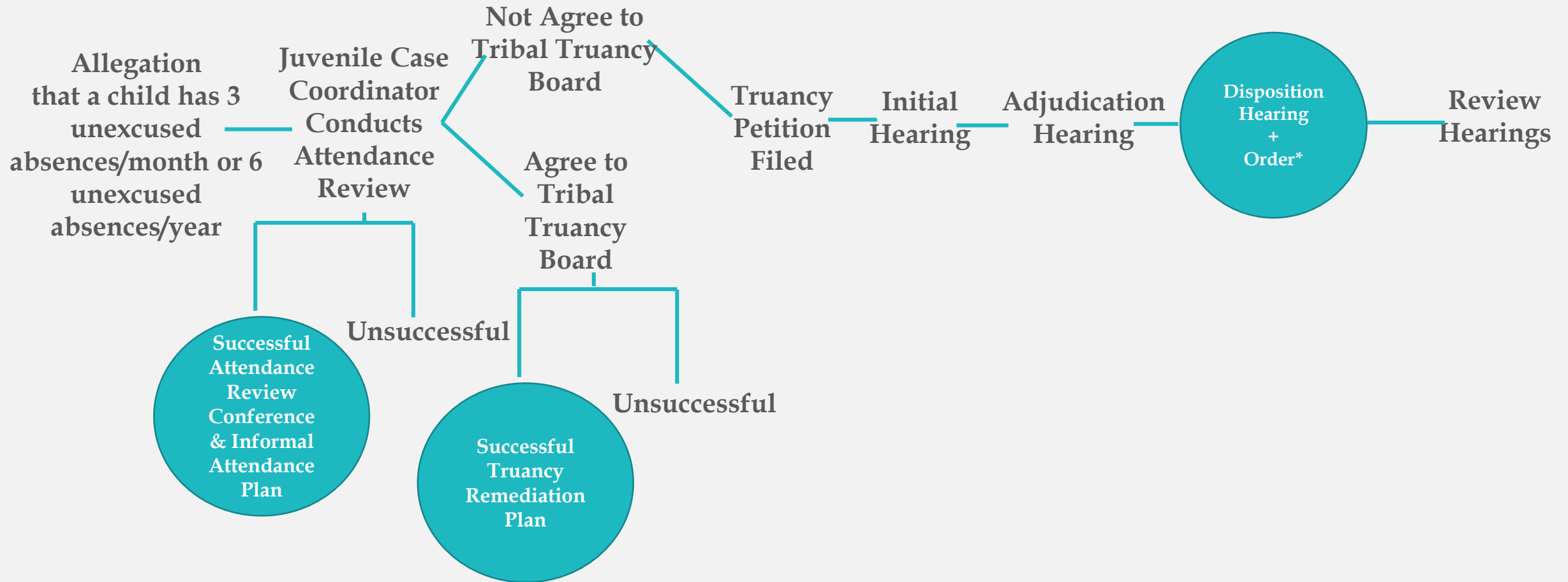
- Model Indian Juvenile Code (2016 Revision)



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

Chapter 4 - Truancy

- Model Indian Juvenile Code (2016 Revision)



* Order to attend an alternative education program, a skill center, a dropout prevention program, or other public program which can provide appropriate education services; to educational, social, community or tribal services or resources; to a tribal elders' panel; etc.

4. Exclusively criminally prosecute adolescents as adults



Friends, family, and community members protest the Maricopa County Attorney's Office's decision to charge two teenage inmates with past histories of trauma, Breanna Gonzales, 17, and Valentina Gloria, 19, with severe crimes. Hannah Critchfield

Phoenix New Times

Raped, Then Thrown in Jail: A Teen's 'Abuse-to-Prison Pipeline'
HANNAH CRITCHFIELD | SEPTEMBER 26, 2019 | 10:34AM

Problems with Outdated Tribal Laws & Justice Systems Negatively Impacting Native Youth (cont.)

5. Put them on probation

- Put children & adolescents on “probation”
- with conditions
- where a violation of the conditions
- constitutes a new “offense” or “crime”



<https://www.publicnewsservice.org/2018-05-10/juvenile-justice/report-juvenile-probation-should-focus-on-help-not-punishment/a62461-1>

Public News Service

Report: Juvenile Probation Should Focus on Help, Not Punishment
May 10, 2018

SACRAMENTO, Calif. — A new report says the current juvenile probation system just doesn't work - and should be revamped to focus on helping kids rather than punishing them and making them comply with complex rules.

The study explored ways of effectively modernizing probation for young people while still keeping the public safe. Steve Bishop, senior associate with the Annie E. Casey Foundation Juvenile Justice Strategy group, which produced the report, suggested diverting the massive caseloads of nonviolent youth to more focused programs aimed at positive behavior changes rather than punitive measures.

"The research that we have about adolescent development is pretty convincing that young people respond better to rewards, incentives, opportunities, experiences, things like that that better motivate them than the threat of punishment," Bishop said. 21

6. Failures

- Fail to:
 - a. identify problems & intervene early
 - b. work with families & schools
 - c. recognize on-rez homelessness
 - d. provide respite or shelter care for adolescents who cannot live at home
 - e. provide diversion & community programs/services



https://www.santafenewmexican.com/news/native-americans-in-juvenile-detention-get-incarceration-but-no-rehabilitation/article_ec6d1ce4-91e0-5ad4-96ba-9f1bd2a23f56.html

Tony Ghost-Redfeather, 18, said he grew up surrounded by alcoholism and violence on Pine Ridge Reservation in South Dakota. The teenager has attempted suicide. Illustrates JUVENILE-RESERVATIONS (category a), by Sari Horwitz © 2014. The Washington Post. Moved Friday, Nov. 28, 2014. (MUST CREDIT: Washington Post photo by Nikki Kahn)

Santa Fe - New Mexican
Few options for at-risk Native American kids
By Sari Horwitz
The Washington Post Nov 29, 2014

Lessons Learned

(for law changes & law implementation)

- Do not punish children & adolescents for exhibiting symptoms of maltreatment &/ or victimization
- Separate your child maltreatment law & process from your juvenile delinquency laws & process
- Separate your juvenile delinquency laws & process from your status offense (FINS or CINS) laws & process
- Separate out your truancy laws & process
- Prosecute adolescents as appropriate
- Do not put children & adolescents on “probation” with conditions where a violation of probation constitutes a new “offense” or “crime”



<https://unityinc.org/nevada-native-youth-embrace-past-present-at-future-at-summer-camp/>

About 60 Native students participated in the first ever Native American Cultural Summer Camp sponsored by the Nevada Indian Education program held last month in Lake Tahoe.

United National Indian Tribal Youth (UNITY)

Posted: September 18, 2019

Nevada Native youth embrace past, present at future at summer camp

Resources

- National Indian Justice Center (NIJC) Tribal Juvenile Justice Code (1989)
Available at: <http://www.tribal-institute.org/lists/juvenile.htm>
- Model Indian Juvenile Code (2016 Revision)
Available at: <http://www.tribal-institute.org/lists/juvenile.htm>
- Sekaquaptewa, P., Abananti, A., White Eagle, M., Halpern Beetso, C. (Revised June 2015). Tribal Legal Code Resource: Juvenile Justice, Guide for Drafting or Revising Tribal Juvenile Delinquency and Status Offense Laws. Tribal Legal Code Resource: Juvenile Justice. Tribal Law and Policy Institute
Available at: <http://www.tribal-institute.org/lists/juvenile.htm>
- Session 1 based on the materials below in the Tribal Legal Code Resource: Juvenile Justice, Guide for Drafting or Revising Tribal Juvenile Delinquency and Status Offense Laws
Available at:
 - Part II of the Workbook - <http://www.tribal-institute.org/download/jjg/Part%20II.%20Workbook.pdf>
 - Chapter 6, Subject Matter Jurisdiction - <http://www.tribal-institute.org/download/jjg/Chapter%206.pdf>
 - Chapter 7, Juvenile Offenses - <http://www.tribal-institute.org/download/jjg/Chapter%207.pdf>
 - Chapter 21, Non-delinquency Proceedings, Status Offenses/Family in Need of Services (FINS), <http://www.tribal-institute.org/download/jjg/Chapter%2021.pdf>

Resources

- Tribal Youth Resource Center,
www.TribalYouth.org
- Tribal Law and Policy Institute,
www.home.TLPI.org



Thank you

Thank you for your presence today.

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