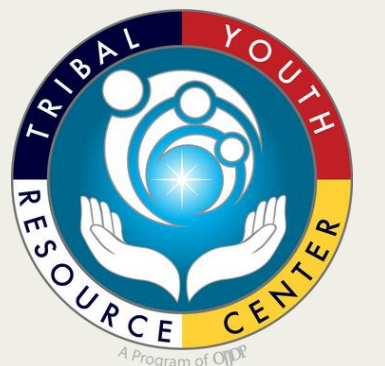


Understanding Tribal Court & the Jobs/Roles within the Tribal Justice System

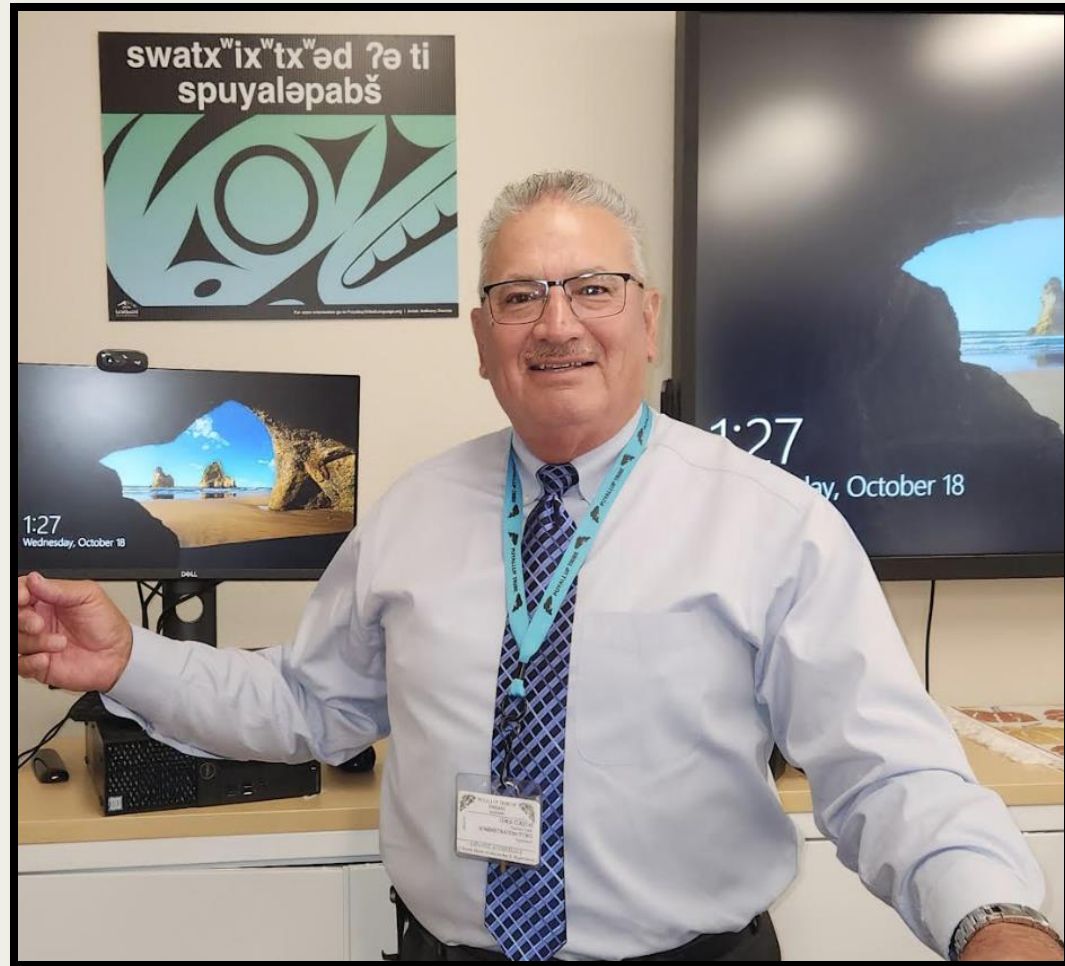
(Juvenile, Criminal, & Healing to Wellness Court)

Thursday, March 13, 2025

Tribal
Youth
Resource
Center



Presenter



Youth Healing to Wellness Court (YHWC) Consultant with Tribal Youth Resource Center (TYRC), Tribal Law & Policy Institute (TLPI)

Chris Cuestas

Tohono O'odham Nation

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Also, with the National Violence Prevention Resource Center (Tucson, Arizona)

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Presenter



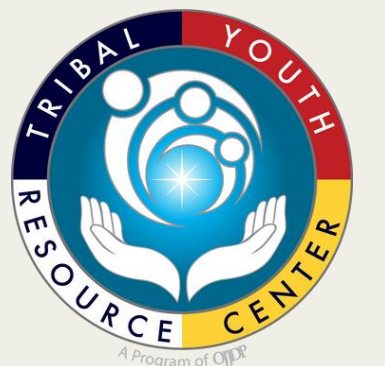
Tribal Healing to Wellness Court (THWC) Legal Specialist with the Tribal Law & Policy Institute (TLPI)

Jacob Metoxen

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Youth
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Presenter



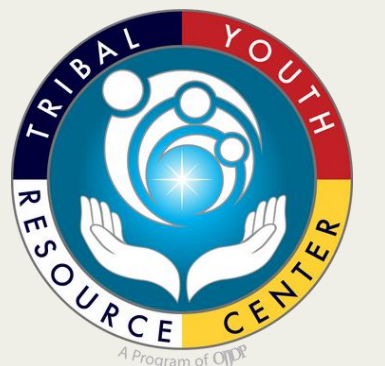
Youth Healing to Wellness Court (YHWC) Team Lead, Tribal Youth Resource Center (TYRC), Tribal Law & Policy Institute (TLPI)

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Hopi Tribe

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Learning Objectives

Attendees will learn:

1. That Tribal Courts and Tribal laws are important to the Tribal citizens and the community.
2. What Tribal Courts do.
3. The various and overlapping jobs, roles, and responsibilities which support the Tribal justice system.
4. That there is significant role confusion in Tribal Courts which can get in the way of justice, community safety, fairness, and therapeutic/cultural outcomes.
5. Role confusion may be remedied by adopting/reforming Tribal law, rules, and/or policies and procedures AND training staff on the given role, the law, processes and ethical obligations by role.



(Illustration by Tomás Karmelo Amaya, Indian Country Today)

Tribal Courts

(why they matter and what they do)



Why Tribal Courts Matter

A Well Functioning Tribal Court:

- Contributes to community safety.
- Stabilizes governance.
- Facilitates economic development.
- Ensures that Tribal laws, including custom, tradition, and culture (where specified), are applied, where relevant, in community safety and in disputes.
- Ensures fairness.
- Provides therapeutic and cultural interventions.
- Affects issues that you care about (family and child welfare, community safety, good governance, etc.).

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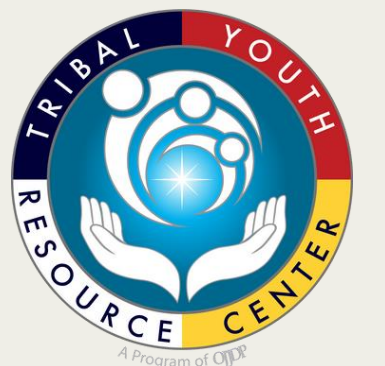


What do Tribal Courts Do?

Tribal Judges in Tribal Courts:

- Hear testimony and take evidence.
- Decide a case by applying the law to the facts of the case, specifically the:
 - Tribal Constitution.
 - Tribal Statutes (a.k.a., “Ordinances” or “Code”).
 - Tribal Court Rules of Procedure.
 - Tribal Court Rules of Evidence.

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What do Tribal Courts Do? (cont.)

Types of cases Tribal Courts hear:

- Civil (examples: child welfare, juvenile delinquency, paternity, divorce, probate, contracts, governance, etc.).
- Criminal (felonies, misdemeanors, and infractions).

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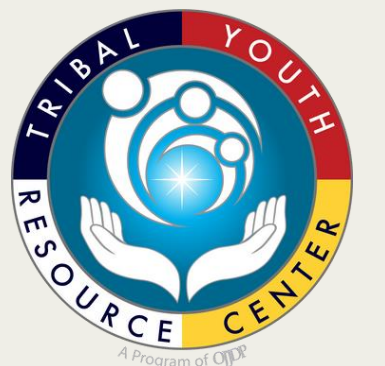
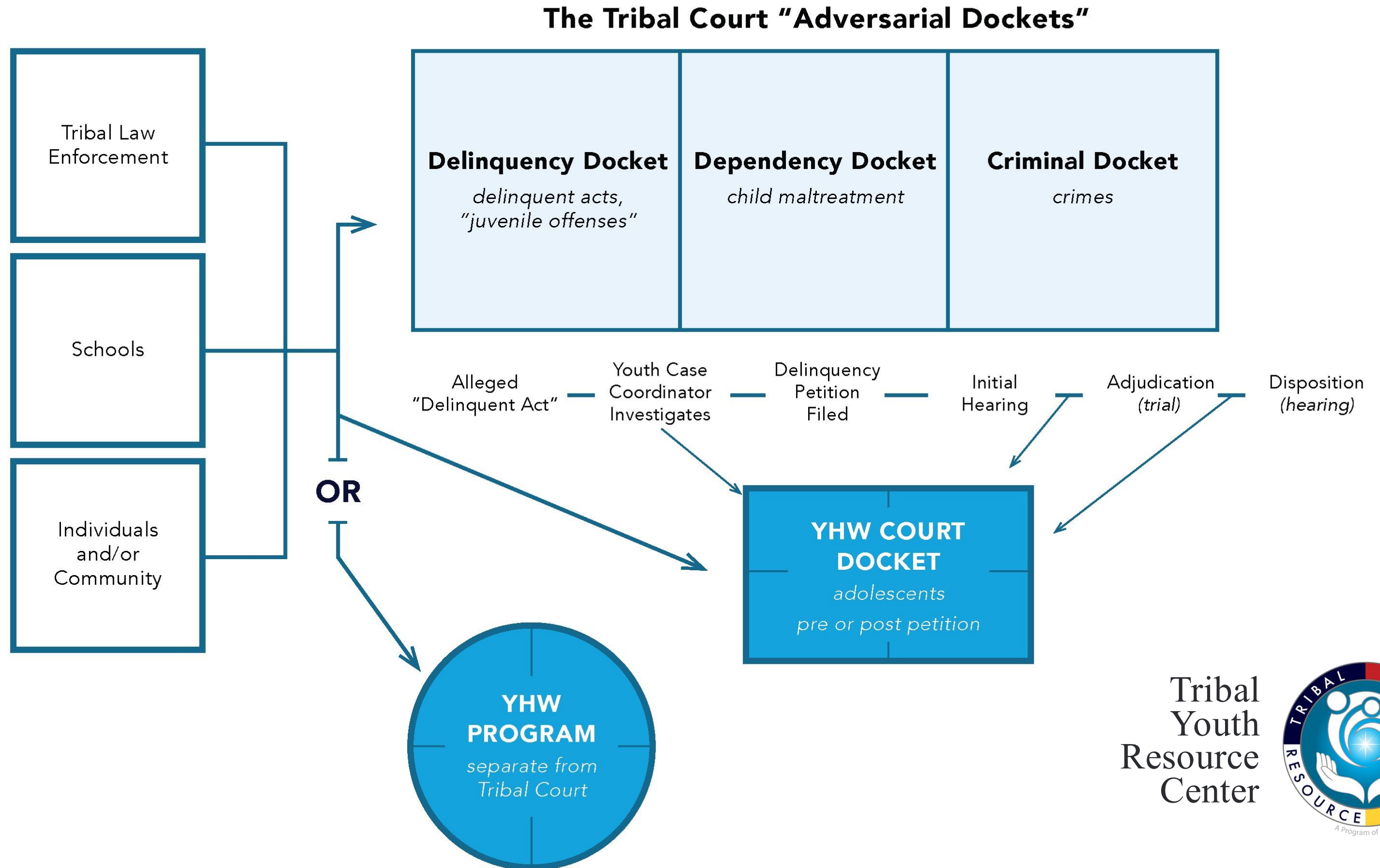


FIGURE 1

YOUTH HEALING TO WELLNESS COURT VS. PROGRAM



Jobs & Roles in the Tribal Justice System

Each of the job positions/roles (in the following slides) contributes to the delivery of justice within the Tribal community.

- Each position/role is critical and operates under the applicable law and the required written procedures.
- The persons in these positions must perform their assigned function to ensure community safety, rule of law, fairness, the equal application of the law, and the provision of services.
- Understanding these roles and their unique functions within the Tribal justice system and in the community, is also important in understanding YHWC operations and team and steering committee roles and responsibilities.

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Jobs & Roles in the Tribal Justice System (cont.)

Law Enforcement Officer

- First responder.
- Initially memorializes the incident.
- Partners with the Prosecutor in the investigation and case preparation.
- As first responders in criminal cases, acts as the initial point of contact, securing the scene, preserving evidence, and potentially apprehending suspects.
- All while ensuring the safety of victims and the public.



KTOO

For Quinhagak tribal officers, law enforcement training means feeling prepared for a job they were already doing July 2, 2019, by Anna Rose MacArthur, KYUK-Bethel.

Jobs & Roles in the Tribal Justice System (cont.)

Social Worker/Child Protective Services (CPS) Worker/ Sometimes called an “Indian Child Welfare Act (ICWA) Worker”

- Safeguards the well-being of children who are at risk of abuse or neglect.
- Investigates reports of child maltreatment.
- Assesses family situations, interviews children, parents, and other relevant parties.
- Collaborates with law enforcement and other community resources to determine the validity of allegations.
- Arranges foster care placements.
- Facilitates access to medical care, counseling, and educational services.
- Provides parents with resources such as parenting classes or substance abuse treatment.



University of Washington, School of Social Work

Social work practicum gives students hands-on experience in tribal law
Updated on January 24, 2025

The Tulalip Tribal Court Practicum was developed in close collaboration between Prof. Brenda Williams and her colleagues at the School of Social Work: Stan De Mello, Morna McEachern and Dean Michael Spencer. In 2020, the first team of two MSW students and four law students began collaborating on casework to see if they could integrate social work services with a legal team to create what Williams describes as a “holistic public defense team.”



Jobs & Roles in the Tribal Justice System (cont.)

Defense Attorney/Advocate

- Represents an individual against the power of the Tribe.
- “Policing the police” to determine if there has been an unconstitutional search, a coerced confession, etc.
- Attempts to ensure that the prosecutor is adhering to the professional requirement not merely to convict, but to do justice and comply with his obligations to turn over material to the defense.
- Reminds the judge of the constitutional mandate as well as the professional obligation to protect the rights of the defendant rather than treat him as a docket number to be quickly processed and sent to jail.



Jobs & Roles in the Tribal Justice System (cont.)

Prosecutor

- Represents the Tribe in juvenile and criminal cases.
- Works with law enforcement agencies to investigate crimes.
- Prosecutes cases in court.
- Prioritizes working with victims and witnesses.
- Carefully evaluates the evidence presented and protects the rights of the accused.
- Represents the people of their Tribal community.



The Southern Ute Tribe welcomes prosecutor Friday - April 19, 2024, by Jeremy Wade Shockley

Jobs & Roles in the Tribal Justice System (cont.)

Juvenile Intake Officer (example: “Juvenile Case Coordinator” under the Model Indian Juvenile Code of 2016)

- Acts as an unbiased liaison between the child, their parent, guardian, or custodian, tribal agencies, service providers, school officials, alleged victims, the prosecutor, and the Tribal Juvenile Court.
- Coordinates services for children.
- Provides recommendations to the prosecutor re filing a petition and diversion.
- Provides recommendations to the judge re disposition options.
- Monitors and facilitates compliance by the child and their P/G/C with the conditions of diversion agreements and deferrals, conditions of release, and dispositions and other orders.
- Conducts mental health and other screening of children to identify services that meet their needs.



NPR

Juvenile Justice System Failing Native Americans, Studies Show
July 31, 2015 5:43 PM ET

Heard on All Things Considered
By Laurel Morales

Jobs & Roles in the Tribal Justice System (cont.)

Youth Healing to Wellness Court (YHWC) Coordinator

- Seek funding (grants and donations).
- Build partnerships with referral sources.
- Ensure that all YHWC candidates are screened.
- Orient new participants and families.
- Provide YHWC team management functions: coordinate training, oversee YHWC staffings, keep records.
- Establish and maintain community partnerships.
- Market the YHWC and educate stakeholders.
- Ensure that data collection and reporting requirements are being met.
- Ensure that the team receives comprehensive training (e.g., cross-training between treatment and justice professionals).



Bernalillo County Metropolitan Court / Native American Specialty Court hosts Winter Feast in recognition of renewed year of recovery.

The Metropolitan Court's Urban Native American Healing to Wellness Court hosted its annual Winter Feast on Weds. Jan. 22 to recognize a renewed year of recovery for program participants and to celebrate their progress.

Jobs & Roles in the Tribal Justice System (cont.)

YHWC Case Manager (YHWC Probation Officer)

- Conduct case planning needs assessments.
- Use validated risk and need assessment tools (Risk/Need/Responsivity (RNR)), as part of individualized and culturally appropriate case planning.
- Develop plans and goals based on need and responsivity factors.
- Refer for clinical assessments and treatment if indicated.
- Make home, school and office visits.
- Conduct curfew checks.
- Refer youth and families to services.
- Monitor referral compliance and progress.
- Conduct periodic random alcohol and drug tests.
- Serve as a liaison between YHWC team, the court, and the probation (case management) staff.
- Use participant and programmatic data to enhance the YHWC.



Kitsap Sun
Local News
Kitsap's 'Drug Court Saved My Life'
By Josh Farley of the Kitsap Sun
April 24, 2010

Jobs & Roles in the Tribal Justice System (cont.)

Wraparound Care Coordinator

- Conduct wraparound case planning needs assessments.
- Refer for clinical assessments and treatment if indicated.
- Orient the family and youth.
- Stabilize crisis.
- Engage other team members.
- Develop an initial plan of care.
- Develop crisis/safety plan.
- Revisit and update the plan.
- Complete necessary documentation and logistics.
- Plan for cessation of formal Wraparound.
- Create a “commencement” (graduation ceremony).
- Follow-up with the family.



Puyallup Tribe of Indians
On September 26, 2023
Wrap Around Program Department Spotlight
By Molly Bryant, Puyallup Tribal News

Wrap Around Navigator Nicolette Viken said she has always thought of the program as a “blanket.” Staff members partner with multiple programs and services within the Tribe to help support people navigating difficult systems.

Jobs & Roles in the Tribal Justice System (cont.)

Judge

- The Tribal Court judge is often the “finder of fact.”
- Applies the relevant law and says what it means.
- Judges are tasked with presiding over trials and maintaining order.
- Judges review whether there are any issues with respect to the evidence submitted.
- Judges provide instructions to juries prior to their deliberations.
- Judges must decide the facts of the case and make a ruling.
- Judges are also responsible for sentencing convicted criminal defendants.
- Some cases are heard and settled by a jury.



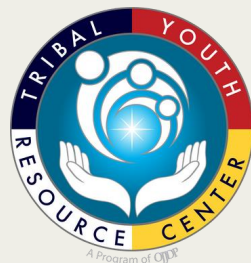
Indianz.com

Navajo Nation now requires a law degree for top chief justice

Wednesday, November 4, 2015

The Chief Justice of the Navajo Nation Supreme Court must hold a law degree under a bill that was signed into law by President Russell Begaye.

The change will help the tribe come into compliance with the Tribal Law and Order Act of 2010 and the Violence Against Women Act of 2013. Both laws require a presiding judge with "sufficient legal training" and someone who is licensed to practice law by "any jurisdiction" in the United States.



Tribal Youth Resource Center | TribalYouth.org

Jobs & Roles in the Tribal Justice System (cont.)

Probation Officer

- Investigates, supervises, monitors, counsels, enforces court probation orders to reduce reoffending.
- Serves as the community corrections arm of the Tribal justice system.
- Investigates and supervises an individual under supervision whom the courts have conditionally released to the community on probation.
- Serves as the court's fact-finder.
- Provides an individual under supervision with treatment, to help ensure that individuals previously convicted of crime obey the law rather than commit further crime.



Confederated Salish & Kootenai Tribes
CSKT Probation & Parole

Our mission is to provide a framework for adult and juvenile probationers in order for them to become productive citizens of the community. The Tribal Probation Department can provide rehabilitative measures by offering diversion opportunities, educational opportunities, treatment opportunities, compliance incentives, job training opportunities, which will instill work habits, give the probationer a sense of self-worth, which will aid in maintaining the family unit, fulfill fine obligations, fulfill incarceration requirements, pay restitution, satisfy the probationers debt to society, and be released from Probation/Parole as successful.



Jobs & Roles in the Tribal Justice System (cont.)

Tribal Court Clerk/Court Administrator

- Serve both an administrative and logistical role in a juvenile and criminal trial courts.
- Ensure the smooth operation of proceedings and maintaining accurate records.
- Act as the custodian of court records
- Manage case files.
- Provide essential support to judges, attorneys, and the public.



Ramona Tsosie
Sage Education



Jennifer Leal
Field of Tribal Courts

Jennifer R. Leal is a descendant from the Washoe Tribe of Nevada and California and Mono Lake Paiute tribal communities. She started her tribal court career as a tribal court administrator at her tribe's court, the Washoe Tribal Court.



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Hypothetical Fact Pattern

(Ronald, Tracy, & Herbert)



(Illustration by Tomás Karmelo Amaya, Indian Country Today)



Incident and Case Review for Intake into the Tribal Juvenile Justice System

Tribal paraprofessionals in the often, combined roles of court clerk, intake officer, probation officer, coordinator, and/or case manager, may find themselves intaking youth for multiple (contradictory) purposes:

- A child who is alleged to be abused or neglected.
- A child who is a victim of a crime.
- As child who is alleged/admitted to have committed a status offense, e.g., truancy, not obeying parents, etc.
- A child who is alleged/admitted to have committed a delinquent act.
- A child who is alleged to have committed a crime.
- A child who is a witness to to a crime.
- A child who needs counseling or other professional services.
- A child who may be eligible for the Youth Healing to Wellness Court (YHWC).

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Hypothetical Fact Pattern

Early Saturday morning, tribal police responded to a domestic disturbance call at house #1293 Shell Dr. on the Reservation. Upon arrival, police found 14-year-old Ronald who was standing at the door with a bloody shirt and yelling that his dad (Herbert) had stabbed his mother. Police immediately made entry and saw the victim, Tracy (Ronald's mother), laying on the ground with blood on her shirt. Police then saw the defendant (Herbert) standing in the kitchen and visibly intoxicated. One officer rendered aid to the victim (Tracy) while another officer made contact with the defendant (Herbert). The defendant immediately became defensive and said that Tracy attacked him. The officer looked at the counter near where the defendant was standing and saw a knife with blood on it and materials typically used to cook methamphetamine. The officer also noticed a strong smell of ammonia. The officer detained the defendant (Herbert).

Ronald was visibly upset and shaking while police helped his mother. He began yelling at his father "Why did you do that?!" before an officer walked the boy outside. The officer asked the boy to take a few deep breaths before recognizing signs and symptoms that the youth was under the influence of methamphetamine and alcohol. The officer asked the Ronald if he could pat him down for his own safety and upon doing so, found methamphetamine paraphernalia. The officer detained the youth.

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Hypothetical Fact Pattern (cont.)

Family members and Social Services eventually arrived. Family reported that Ronald had not been to school for several months after having been suspended and charged for assaulting another student. Police did a warrant check on the boy's parents and discovered both had a warrant for a recent non-appearance. Family then told police that the boy's mother had recently confronted his father about cooking methamphetamine and selling it, and that Ronald had started to use within the last month or so. The boy's mother, Tracy, is well-respected in the community, but the boy's father, Herbert, had recently fallen on hard times, losing his job before the Ronald's mother left him.

The father, Herbert, was charged with attempted homicide, manufacturing, and a slew of other offenses. Federal investigators are involved. Ronald was also taken into custody and charged with possession of paraphernalia, public intoxication, and he still has his pending assault case. He will have his initial appearance on Monday afternoon.

Is Ronald (the boy) eligible for the YHWC?

How would the YHWC Coordinator find out about Ronald in your Tribal Justice System?

Problems/ Circumstances

- Youth is both a victim and a witness.
- Youth faces a juvenile and/or criminal charge (there is a warrant out for him).
- Youth may be subject to a petition for a status offense (truancy).
- Father is charged with a crime.
- Family Services is on the scene and may act on what they observe/learn.
- Unknown, without a background check, whether youth is eligible for YHWC.

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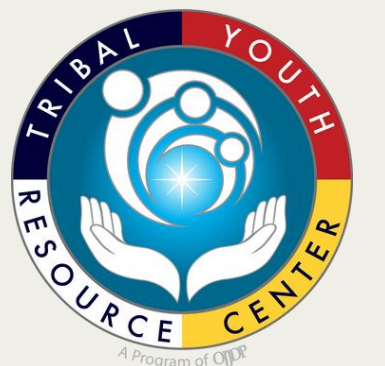


Potential Issues

Preliminary interviews with youth where they are a potential witness, victim, or defendant may:

- Interfere with an investigation.
- Undermine a prosecution.
- Constitute witness tampering.
- Undermine the defense of the father.
- Undermine the defense of the youth.
- Cause one to be compelled to testify in a juvenile or criminal trial.

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Responding to Potential Issues

- Each person in each position must undertake their duties and meet their responsibilities given their required procedures/timelines.
- Ignoring, circumventing, or interfering with the “flow” of the required process may undermine the juvenile or criminal case(s), making the delivery of justice and/or services difficult, e.g., preliminarily interviewing a witness, victim, and/or potential defendant.
- Each person in each position should *follow the process set out in their Tribal law* (statute/ordinance/code, rules of procedure and rules of evidence, and in their policies and procedures manuals).

What processes do you follow under Tribal law (i.e., does your Tribe have all of the law, rules, and policies and procedures in place to support a Tribal juvenile court and a Healing to Wellness Court)?

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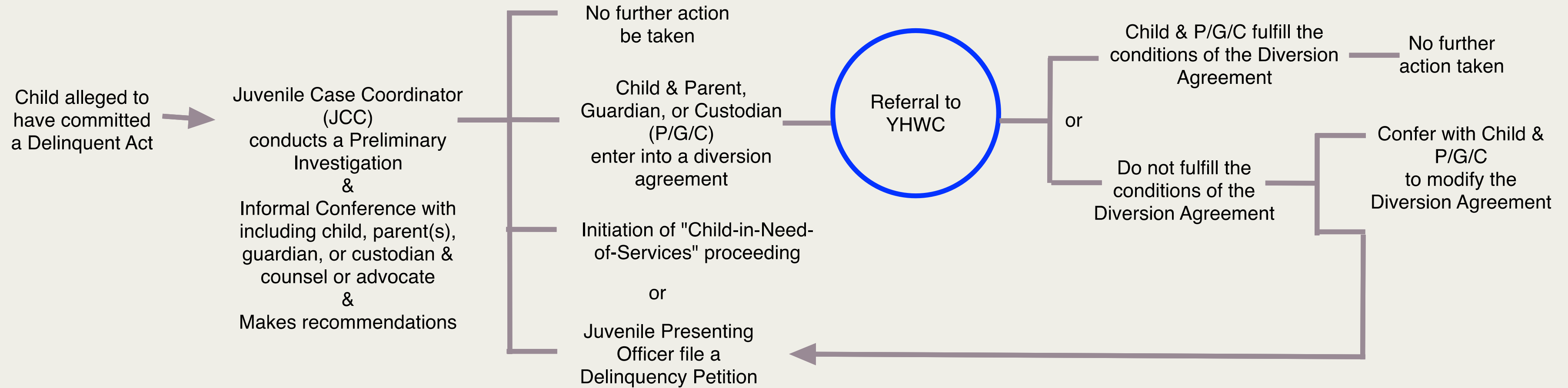
Pre-Petition Process under Model Indian Juvenile Code

(Involving the Court Clerk, Probation
Officer, Coordinator, and/or Case
Manager)



Do you have a Juvenile Code with a Pre-Petition Process that diverts to a YHWC?

Pre-Petition Process under Model Indian Juvenile Code



Tribal Youth Resource Center



Example: Eligibility for YHWC

- 1 Are between the ages 14 to 17 years old at the time of referral.
- 2 Have been arrested or convicted of alcohol/drug offenses or alcohol/drug related crimes having to do with alcohol or other drugs as defined in the Tribal Code.
- 3 Have non-alcohol/drug related offenses that were committed while under the influence, or were committed to support addiction or dependency, or are substantially related to the use or abuse of alcohol or drugs.
- 4 Have previously been on supervised probation in the past and are currently failing on probation partly due to continued drug or alcohol use.
- 5 Score moderate to high in both the risk and needs and substance abuse is identified as one of the top three needs.
- 6 Are ordered to complete the YHWC as a condition of their probation.

Post-Petition Process under Model Indian Juvenile Code

(Involving Law Enforcement, the
Prosecutor, Defense Counsel, the
Judge, & the Probation Officer)

Do you have a Juvenile Code that defines “delinquent acts”?

Delinquent Act (under Model Juvenile Code) Section 1.02.110 (e)

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

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Do you have a Law & Order Code that defines “crimes”?

Example:

Section 3.15.1. Use or Possession of a Controlled Substance

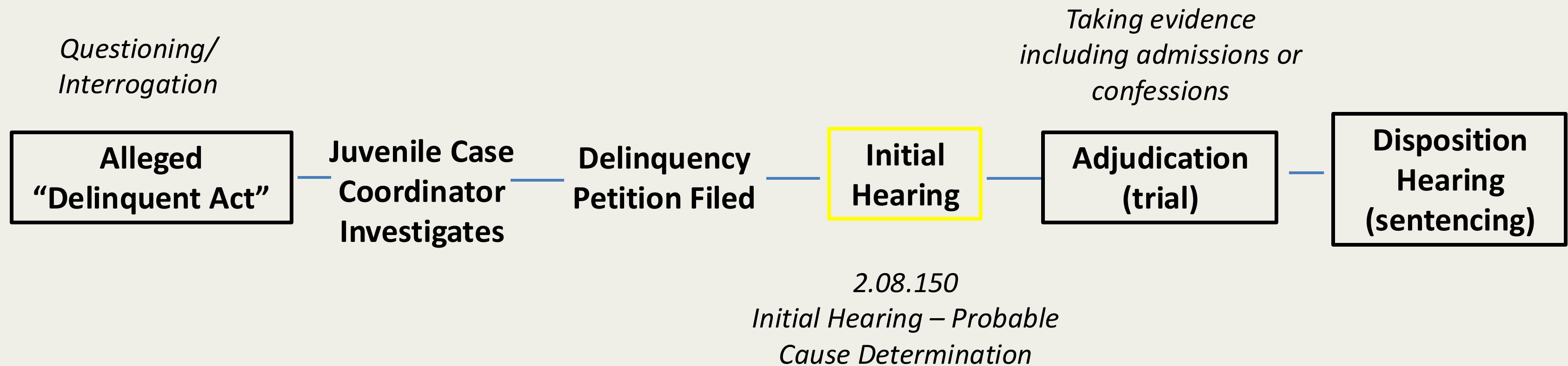
A. A person who knowingly uses or possessed controlled substances for personal use is guilty of an offense. In addition to any jail sentence or fine the court may impose, the court shall require the person to obtain a biopsychosocial assessment from a behavioral health entity and comply with the recommendations.

B. A first conviction shall carry a mandatory minimum sentence of sixty (60) days in jail to be served consecutive to any other jail sentence imposed and a \$500.00 fine. Such sentence shall not be otherwise suspended or deferred and no parole, probation or other early release shall be authorized.



Juvenile Delinquency Process

Model Indian Juvenile Code (2016)



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The Model Indian Juvenile Code Protections for Youth - Interrogation

2.02 INTERROGATION

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 proceeding, **unless**:
- 1) The child was advised [of his or her rights]; and
 - 2) The child clearly and affirmatively waived his or her rights before being questioned.
- (b) An oral, written, or other statement of a child made as a result of a **custodial interrogation** shall be **inadmissible** as evidence against the child in any delinquency or criminal proceedings, **unless**:
- 1) The statement is made after consultation with and in the presence of counsel;
 - 2) An electronic recording is made of the custodial interrogation; and
 - 3) The recording is accurate and not intentionally altered.

- (a) **If the Juvenile Court finds that a statement is inadmissible ..., 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.**

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The Model Indian Juvenile Code Protections for Youth – Initial Hearing

2.08 INITIAL HEARING

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) [nature of proceeding, contents of petition, possible consequences, right to counsel, right to an adjudication, right to cross-examine witnesses, right to testify, subpoena witnesses, right to introduce evidence, and the right to appeal]

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

2.08 INITIAL HEARING

2.08.150 Initial Hearing – Probable Cause Determination

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

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The Model Indian Juvenile Code Protections for Youth – Adjudication

2.10 ADJUDICATION

2.10.130 Adjudication Hearing - Purpose

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

2.10.150 Adjudication Hearing – Burden of Proof

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

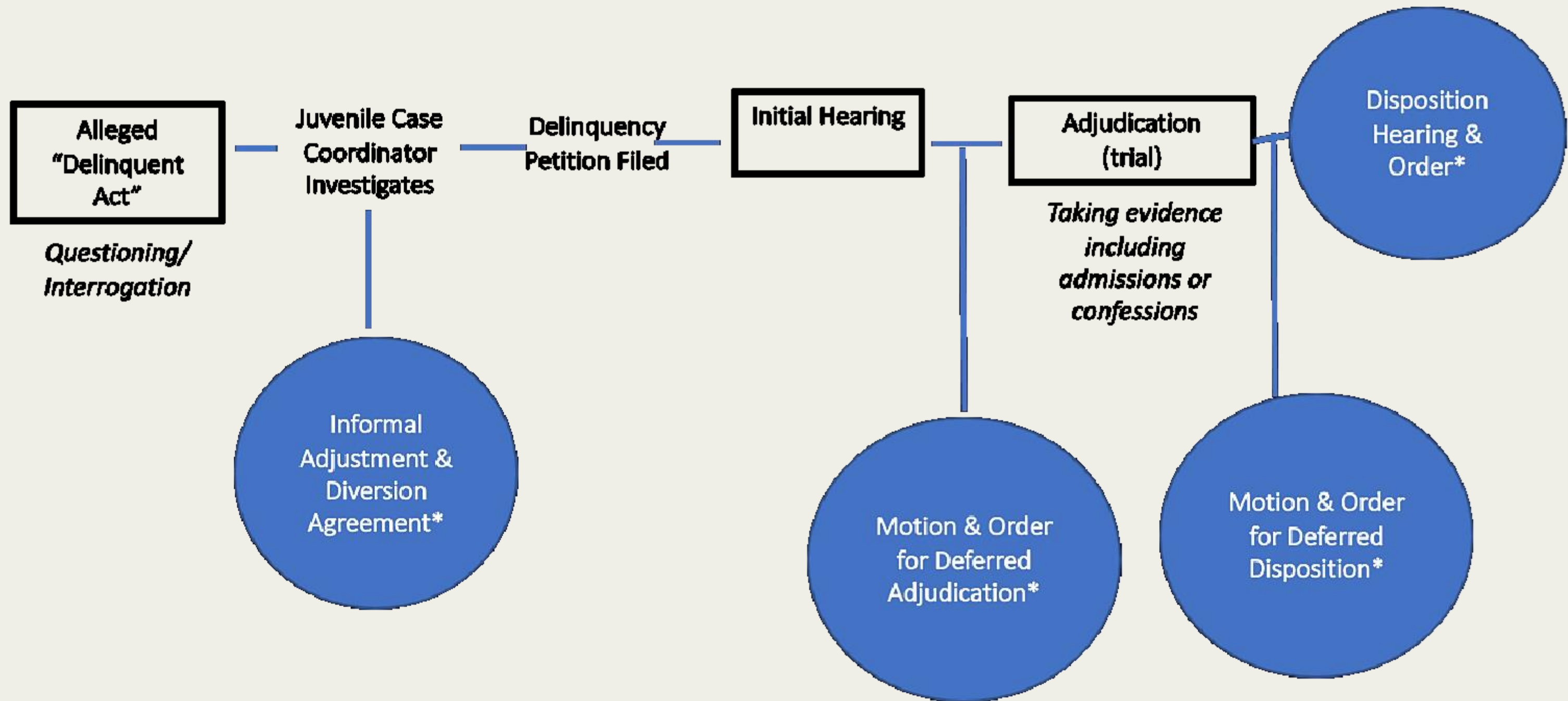
2.10.170 Adjudication Hearing– Conduct

- (a) The Juvenile Court shall conduct the adjudication hearing without a jury and, to the fullest extent practicable, in language the child will easily understand.
- (b) At the commencement of the adjudication hearing, the Juvenile Court:
- 1) Shall first advise the child [of his or her rights]; and
 - 2) **Shall then inquire whether the child admits or denies the allegations of the delinquency petition.**

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Points of Referral, Diversion/Court Order to YHWC Under the Model Indian Juvenile Code



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

Lessons Learned

Attendees will have learned:

1. Tribal Courts do important work to keep Tribal communities safe, to decide disputes, to ensure fairness, and to provide therapeutic and cultural services.
2. There are many overlapping job positions/roles in the Tribal justice adversarial and therapeutic/cultural systems that should have their duties, and the processes they follow, set out in Tribal law, rules, and/or policies and procedures – check to see whether these need to be further developed.

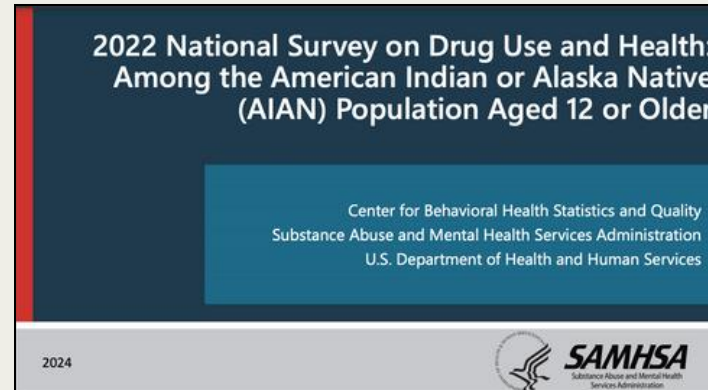
Due to limited funding, many job positions are combined and are staffed by paraprofessionals who may lack specified training; this has resulted in significant role confusion in Tribal justice systems, which can get in the way of justice, community safety, fairness, and therapeutic/cultural outcomes – check to see if you need to get more training.

Many Tribes lack a juvenile code - the Model Indian Juvenile Code of 2016 provides useful provisions to work with Native/Tribal youth.

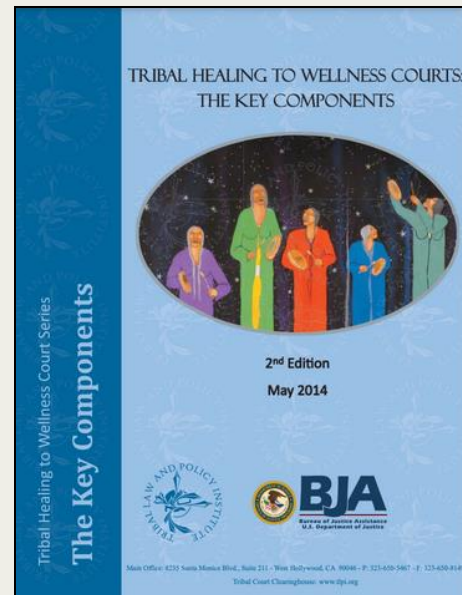
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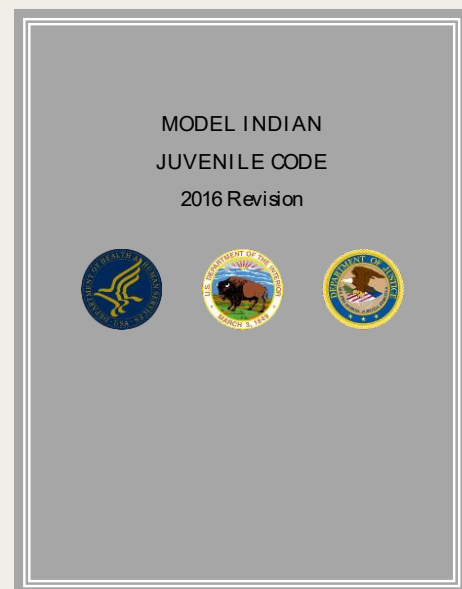
YHWC Resources



2022 National Survey on Drug Use and Health Among the American Indian or Alaska Native (AIAN) Population Aged 12 or Older



The Tribal Healing to Wellness Court Key Components



Model Indian Juvenile Code (2016)

Tribal Youth Resource Center

