

9th Annual Healing to Wellness Court Training

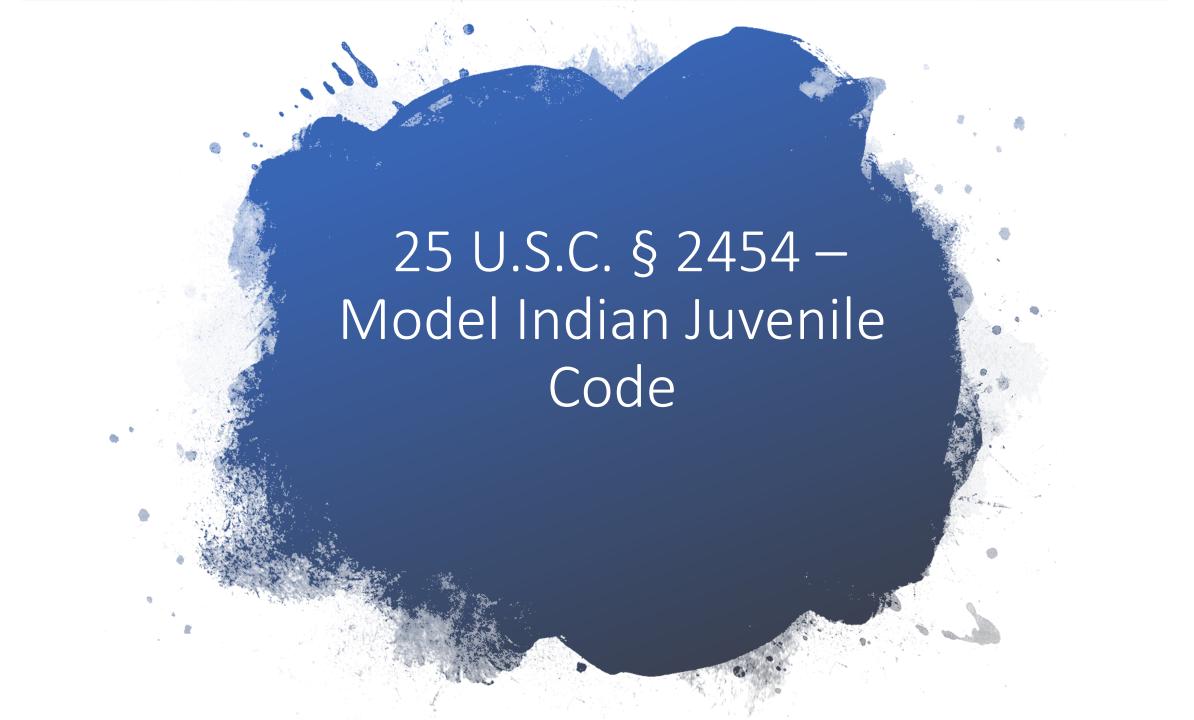
Palm Springs, CA

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General Provisions

Juvenile Delinquency

Truancy

At-Risk-Youth Code



Secure care, protection and welfare of the child

Preserving and retaining family unity whenever possible

Distinguishing between delinquent acts and need for services

For delinquent acts, focus on supervision, treatment and rehabilitation

Process ensuring rights of parties

Coordination of services

Research Check-In

 "Guide for Implementing the Balanced and Restorative Justice Model", Office of Juvenile Justice and Delinquency Prevention, https://www.ojjdp.gov/pubs/implementing/contents.html

Roles

Juvenile Advocate Juvenile Case Coordinator Juvenile Presenting Officer



Coordinates Services

Recommendations:

- Initiation of proceeding
- Diversion options
- Disposition

Monitors and Facilitates Compliance

- Diversion/deferral conditions
- Conditions of release
- Disposition and other orders



Parents

Agencies,

Service providers

Schools

Victims

Community members

Juvenile presenting officer

Court



Child

Tribe

Following adjudication, the child's parent, guardian or custodian

Research Check-In

- Parents would have right to notice, presence, and representation to the Court
- Parents would not have right to call or examine witnesses
- "Standards for Juvenile Justice: A Summary and Analysis, 2nd ed.", Institute of Judicial Administration, American Bar Association
- https://www.americanbar.org/content/dam/ab a/publications/criminal justice standards/JJ/JJ Standards Summary Analysis.pdf



Indian Child alleged to commit delinquent act within external boundaries

Indian child residing or domiciled on Reservation who is a truant or in need of services



Notice

Discovery

Testify, subpoena witnesses, introduce evidence

Cross exam, except where Code allows hearsay testimony

Findings based solely on evidence before the court



Right to appointed counsel except where privately retained

Neither the Child nor parent/guardian/custodian may waive right

Counsel has right to access records of the child from all agencies, departments, schools, etc. under jurisdiction of the tribe



Child has right and exercise can't be used against them

No statements may be used from screening, assessments, evals or treatment

No fingerprints, photos or tissue samples without court order

Research Check-In

- "Protecting Youth from Self-Incrimination when Undergoing Screening, Assessment and Treatment within the Juvenile Justice System", Juvenile Law Center
- https://jlc.org/sites/default/files/publication-p dfs/protectingyouth.pdf



Research Check-In

- "Guidance Manual for Monitoring Facilities
 Under the Juvenile Justice and Delinquency
 Prevention Act of 2002", Office of Juvenile
 Justice and Delinquency Prevention.
- https://cyfd.org/docs/OJJPD Guidance Manual 2010.pdf
- Campaign Against Indiscriminate Juvenile Shackling
- https://njdc.info/campaign-againstindiscriminate-juvenile-shackling/



Juvenile Case Coordinator shall maintain directory of public, private and tribal services and resources available to children and families

Must annually revise

Must annually disseminate

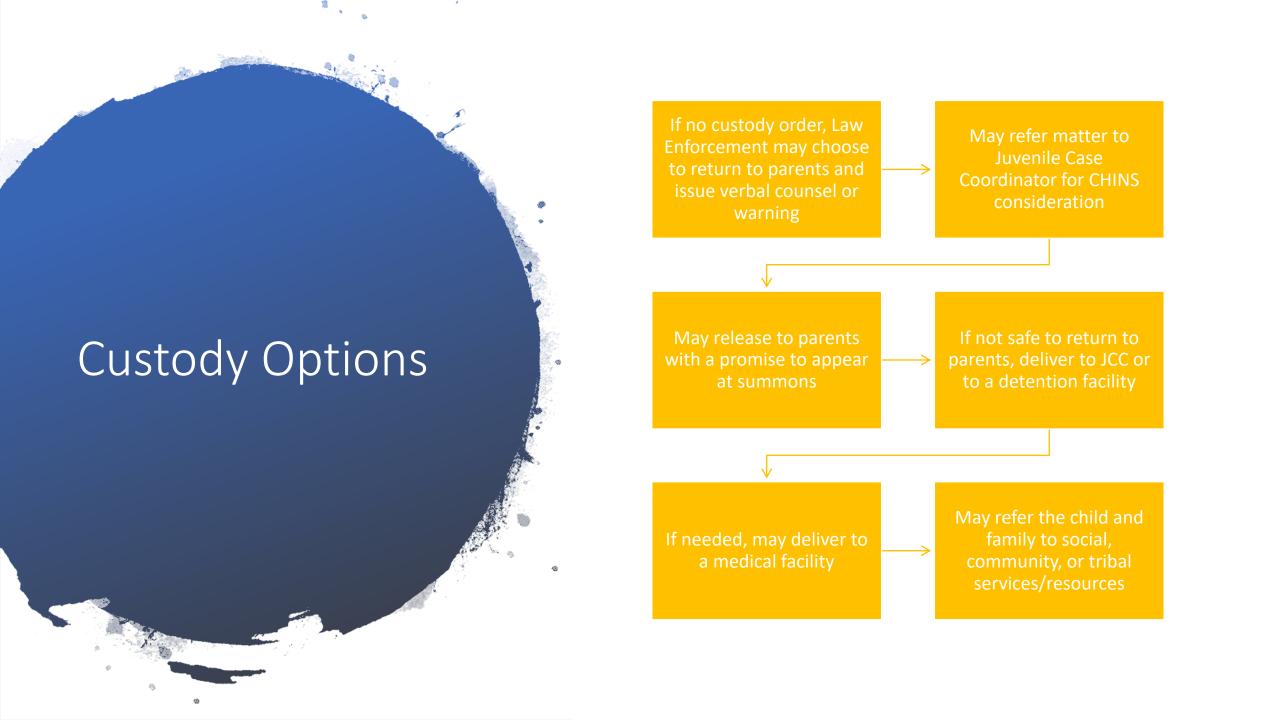


Child has right to appointed counsel at all stages

Parent/Guardian/Custodian has right to counsel at disposition or at any contempt proceedings against them

Research Check-In

- "IJA-ABA Standards for Juvenile Justice: Standards Relating to Pretrial Court Proceedings", Institute of Judicial Administration, American Bar Association
- https://www.americanbar.org/content/dam/ab a/publications/criminal justice standards/JJ/JJ Standards Pretrial Court Proceedings.pdf





If taken into custody, officer must immediately notify parents and JCC

If parents unavailable after reasonable efforts, member of child's extended family

Custody Review by JCC



Upon notification of detention, JCC must review need for continued detention under detention criteria



JCC may:

Release to parents and with no further process beyond notice of available services

May proceed under CHINS provisions

Release to parents with promise to appear according to summons

Arrange for continued detention if criteria met

- Must notify parents of continued detention
- Must notify Juvenile Court of reasons for detention, location, and need to conduct detention hearing
- Must notify Juvenile Advocate



Any questioning by law enforcement or official that is reasonably likely to elicit an incriminating response

Custodial interrogation is any questioning where a reasonable person of the child's age and position would consider themselves unable to leave

Advisement of Miranda-like rights upon any questioning

Custodial interrogation must be recorded and preserved



Makes findings to preserve compliance with ASFA

- Taking child out of home is contrary to child's welfare
- Whether available services would prevent the need for detention

Return to care of parents if providing services allow

If not returned to care of parents, JCC shall refer to services which may result in return to care of parents

No later than 60 days following removal of child, Juvenile Court must determine if reasonable efforts made

Grounds for Detention

Upon Probable Cause

No less restrictive alternatives

Clear and convincing evidence that child should be detained because:

Necessary to avert a substantial risk to health, welfare person or property of child or others; or

Substantial risk child may leave or be removed from jurisdiction of the Juvenile Court

Not Grounds For Detention

Treatment or rehabilitation prior to adjudication

Punishment

Satisfy demands of victims, police, community

To allow a parent to avoid their parental responsibilities

To permit convenient access to the child

To facilitate interrogation or investigation

Least Restrictive Alternatives

Required for detention or conditional or supervised release

Least restrictive conditions or placement consistent with:

- Best interests of the child; and
- Safety of the community

Upon detention or conditions of release, Juvenile Court must make findings of why LRAs were rejected



Foster home, relative placement,

Juvenile residential care facility such as group home or staff-secure facility

Secure detention facility

Treatment facility, detox, halfway houses



Curfew

Child or parents check in with JCC

Home detention (when not required to be in school or places approved by Juvenile Court

Electronic home monitoring

Community supervision

NO BAIL

No contact orders BUT must be narrowly tailored if restricting access to family (p. 39)



Detention Hearing

 Within 48 hours of custody without release

• If 48 hours expires on weekend or holiday, on first business day

Mandatory Detention Review



Each 7-calendar day period child is detained in secure juvenile detention facility



Reviews:

Have circumstances changed? LRAs now available? Change in posture of the Parties? (recant, new evidence)



Sets next review

Research Check-In

- "IJA-ABA Standards for Juvenile Justice: Standards Relating to Interim Status", Institute of Judicial Administration, American Bar Association
- https://www.americanbar.org/content/dam/ab a/publications/criminal justice standards/JJ/JJ Standards Interim Status.pdf



Upon allegation, JCC must investigate whether child or community interests require further action

If child is detained, within 24 hours of the detention hearing

If released on conditions, within 5 days after detention hearing



Within Preliminary Investigation, JCC conducts informal conference with:

Child Parent Juvenile Advocate

Non-adversarial effort to resolve issues of child's conduct without intervention of Court

Attendance of Child and/or parents is voluntary



Recommendations to Juvenile Presenting Officer (JPO)

- Facts insufficient to support delinquency petition filing
- If facts sufficient, not in best interests of child or community

Recommendation of diversion agreement

Recommendation of initiation of proceedings



May divert proceeding for a period not to exceed 6 months

Is voluntary

Failure to comply may result in petition filing

Research Check-In

- Formal diversion inappropriate if prior to existence, child would have been released with a warning
- "IJA-ABA Standards for Juvenile Justice: Standards Relating to Youth Service Agencies", Institute of Judicial Administration, American Bar Association
- https://www.americanbar.org/content/dam/ab a/publications/criminal justice standards/JJ/JJ Standards Youth Service Agencies.pdf



Referral to services

Referral to community board, elders, tribal council, etc.

Participating in Peacemaking Circle

Participating in cultural, educational activities

Participation in education or counseling

Medical, psychological or psychiatric exam or treatment

Restitution

Community Service

School attendance

After school programs



Within 48 hours of detention hearing if child is in custody

Within 10 days after detention hearing if released on conditions



Within 10 days of filing of petition if child is in detention

Within 30 days of filing of petition if child is released or not taken into custody



- Interests of child and community can be addressed through diversion
 - If child is willing to participate in informal conference
 - If no pre-filing diversion was entered; or
 - If previous diversion attempt failed, but Court has reason to believe further efforts may be successful.
- If Juvenile Court finds the alleged conduct:
 - Did not actually cause or threaten the harm statute seeks to prevent
 - Was not reasonably within the contemplation of the legislative body's intent
 - Victim is family of child and Court finds family is appropriate to address the matter
 - Victim believes other alternatives are appropriate to address child's conduct



After filing, but pre-adjudication

Child acknowledges rights and waives time limits for adjudication

May use any option available for diversion

Deferred Adjudication – Time Limits

Limited time reasonable to fulfill conditions



Shall not exceed 6 months unless:

Treatment needs require longer deferral time

Purpose of deferral cannot be accomplished in shorter period



Within 10 days of the initial hearing if child is in custody

Within 30 days of the initial hearing if child was not taken into or was released from custody



Advised of rights

Child may either, after rights, admit or deny allegations in petition

Admission requires Court inquiry of:

- Number and duration of meetings between child and counsel
- Whether child is satisfied counsel sufficiently investigated the matter
- Whether child is satisfied counsel has answered their questions and explained:
- Nature of proceedings
- The child's rights
- Alternatives to admission
- Likely consequences of admission



Number and duration of meetings between counsel and child

Counsel's investigation

Counsel's research on legal matters

Whether Counsel is satisfied that:

Child understands proceeding and consequences

No compelling factual or legal defenses or arguments which Court should hear



Juvenile Presenting Officer

• Sufficient independent evidence, admissible, to corroborate admission?

Juvenile Case Coordinator and Parties

 Whether admission is based upon agreement of the Parties re: disposition recs?

Parents/Guardians/Custodians

 Anything they wish to address with the Juvenile Court

Research Check-In

- Counsel may alert Court of compelling legal or factual issues prior to any admission
- Court may inquire about counsel advice to admit or deny
- Court may inquire as to parent's thoughts on choice to admit
- "IJA-ABA Standards for Juvenile Justice: Standards Relating to Adjudication", Institute of Judicial Administration, American Bar Association
- https://www.americanbar.org/content/dam/ab a/publications/criminal justice standards/JJ/JJ Standards Adjudication.pdf



Within 10 days of the Adjudication hearing, if child is in custody

Within 20 days of Adjudication if child was released or not taken into custody



- JCC prepares written pre-dispo report with recs, including plan for supervision, treatment or rehab, with LRAs to:
 - Hold child accountable for actions
 - Provides for safety of the child and community
 - Develops competencies of the child to become responsible and productive





No LRAs will suffice

Clear and convincing evidence:

- Necessary to avert a substantial risk to health, welfare, person or property
- Substantial risk of child leaving or being removed from jurisdiction; or
- Child has repeatedly failed to comply with dispo orders or LRAs have repeatedly failed
- Detention or out-of-home placement is reasonably calculated to result in compliance