

CHAPTER XIX
JUVENILE CODE

Section 1

Purpose and Construction

The purpose of the Juvenile Code is to establish a legal framework conducive to the constructive judicial processing of children's cases where the child's conduct is in conflict with the law.

It is important that the young people of the Shoshone-Bannock Tribe receive, preferably in their own home, the care and guidance needed to prepare them to take their place as adult members of this tribe.

The Shoshone-Bannock Tribal Court shall protect the child's interest by choosing a course of action which least restricts the child's freedom and is consistent with the safety and interests of the Shoshone-Bannock Tribe. This chapter shall be liberally construed to best satisfy this purpose.

Section 2

Definitions

- (1) "Court" shall mean the Shoshone-Bannock Tribal Court when exercising jurisdiction under this chapter.
- (2) "Juvenile" shall mean any Indian, male or female, under the age of eighteen (18) years of age.
- (3) "Judge" means a duly appointed judge of the Shoshone Bannock Tribal Court.
- (4) "Adult" shall mean any person eighteen (18) years of age or older.
- (5) "Custodian" shall mean one who has physical, custody of a juvenile and who is providing food, shelter and supervision to him.
- (6) "Guardian" shall mean a person other than the juvenile's parent who is by law responsible for that juvenile.
- (7) "Detention" shall mean the temporary care of children who require secure custody for their own or the community's protection in physically restricting facilities pending court disposition.
- (8) The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this chapter.

Section 2

(Continued)

(9) "Person in Need of Supervision (PINS)" shall mean any child under the age of eighteen (18) years of age who: (a) has no parent, guardian or custodian available and willing to care for him; or (b) by reason of being wayward or habitually disobedient, is uncontrolled by his parents, guardian or custodian; or (c) has suffered or is likely to suffer a physical injury, inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement, or impairment of bodily functions; or (d) habitually so deports himself so as to injure or endanger the morals or health of himself or others; or (e) has not been provided with adequate food, clothing, shelter, medical care, education or supervision by his parent, guardian or custodian necessary for his health and well-being; or (f) has been sexually, physically or mentally abused.

Section 3

Authority of the Court

The Court is authorized to cooperate fully with any Federal, State, Tribal, Public or Private agency to participate in any diversion, rehabilitation or training programs to carry out the purposes of this chapter.

Section 4

Jurisdiction

Subject to the prior jurisdiction of the United States, the Court shall have original 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 Fort Hall Indian Reservation where the act, omission or status is prohibited by federal, state, or tribal law or ordinance or where such act, omission or status committed by such juvenile would be a crime if committed by an adult.

Section 5

Retention of Jurisdiction

Jurisdiction obtained by the Court in the case of a juvenile shall be retained by it for the purposes of this chapter until he becomes twenty-one (21) years of age, unless terminated prior thereto. If a juvenile under the jurisdiction of the Court and after attaining eighteen (18) years of age, is charged with a crime, he shall be treated as any other adult offender.

Unless the juvenile is discharged by the Court, or jurisdiction is terminated, the Court for good cause shown may reopen the case at any time and take such action with respect to such juvenile as it deems appropriate.

Section 6

Petition

Any officer of the Fort Hall Police Department or the office of the Tribal Prosecutor, having knowledge or a bona fide belief of a juvenile who is within the purview of this chapter may file a petition with the Court in such form as may be required by the Court.

The petition and all subsequent Court documents shall be entitled "In the Matter of (name of juvenile)". The petition may be made upon information and belief but it shall be made under oath. It shall set forth plainly: (1) the facts which bring the juvenile within the purview of this chapter; (2) the name, age (date of birth), and residence of the juvenile; (3) the names and residences (if different than the juvenile's) of his parents, custodian, guardian or spouse, if any. If any of the facts herein required are not known by the petitioner, the petition shall so state.

No petition shall be required where the juvenile has been issued a citation which contains a summons thereon, such as a traffic citation.

Section 7

Summons-Notice

After a petition shall have been filed and after such further investigation as the Court may direct, and if the matter is set for hearing, the Court shall issue a summons requiring the person or persons who have custody or control of the juvenile to appear personally and bring the juvenile before the Court at a time and place stated; provided, however, if a hearing is to be held, it shall be held no later than fifteen (15) days after the summons is issued unless the Court should order that the time be extended.

If the person so summoned shall be other than a parent or guardian of the child, then the parent or guardian or both shall also be notified of the pendency of the case and of the time and place appointed for the hearing

A subpoena may be issued requiring the appearance of any other person whose presence is required by the child, his guardian or any other person who, in the opinion of the Court, is necessary. Any person served with a summons or subpoena who fails to appear at the stated time and place, without reasonable cause, shall be subject to contempt of court.

If the whereabouts of the parents or guardians is unknown, the notice shall be given to the Bureau of Indian Affairs, Branch of Social Services.

Service of summons, subpoena, notice or other process required by this chapter shall be made by the Fort Hall Police Department, or a Probation Officer at the request of the Court, and a return must be made on the summons showing that such service has been made. The returns of service shall be filed in the record of the case.

Section 8

Payment of Travel Expenses

The Court may authorize payment of any necessary travel expenses incurred by any person summoned or otherwise required to appear at the hearing of any case coming within the purview of this chapter at an amount to be determined by the Court.

The Court may summon the appearance of any person whose presence is deemed necessary as a witness or possible resource for the care and treatment of the child, including persons whom the child or the family wishes to have present.

Section 9

Right to Counsel

As early as possible in the proceedings, and in any event before the hearing of the petition on the merits, the juvenile and his parents, or guardian, shall be notified by the Court of their right to have professional counsel represent them at their own expense. They shall also be informed that should they desire representation but cannot afford professional counsel, the Court may appoint a Court Advocate to act in their behalf at no charge for his services, and the Court shall so act at their request.

Section 10

Apprehension and Release of Juveniles

(a) Apprehension - A peace officer may take a juvenile into custody, or a private citizen of the Fort Hall Indian Reservation may detain a juvenile until the juvenile can be delivered forthwith into the custody of a peace officer, without order of the Court:

(1) When he has reasonable cause to believe that the juvenile has committed an act which would be a crime if committed by an adult; or

Section 10

(Continued)

(2) When in the presence of a peace officer or private citizen the child has violated any federal, state or tribal law or ordinance; or

(3) When there are reasonable grounds to believe the child has run away from his parents, guardian or legal custodian.

(4) A peace officer may take a juvenile into custody at any time upon a written order or warrant signed by a judge of the Court when there is reasonable cause to believe the juvenile has committed an act which would be a crime if committed by an adult where such act was committed out of the presence of the peace officer.

When a peace officer takes a child into custody, he shall notify the parent, guardian or custodian of the child as soon as possible.

- (b) Release - Unless otherwise ordered by the Court, or unless it appears to the officer taking the juvenile into custody that it is contrary to the welfare of the Fort Hall community or the juvenile, such juvenile shall be released to the custody of his parent or other responsible adult upon written promise, signed by such person, to bring the juvenile to the Court at a stated time. Such written promise shall be submitted to the Court as soon as possible. If such person shall fail to produce the juvenile as agreed, or upon notice from the Court, a summons for such person may be issued by the Court and a warrant may be issued for apprehension of the juvenile.

Section 11

Detention

When a juvenile is not released he shall be taken forthwith to the Court or place of detention specified by the Court and then not later than twenty-four (24) hours, excluding Saturdays, Sundays and holidays, shall be brought before the Court, at which time a hearing shall be held to determine where the juvenile shall be kept pending his arraignment.

No juvenile shall be held in detention longer than twenty-four (24) hours, exclusive of Saturdays, Sundays and holidays, unless a petition has been filed and the Court has signed the detention order. As, soon as the juvenile is detained by court order, his parents, guardian or legal custodian shall be informed by the Court that they may be present at detention hearing.

Section 11

(Continued)

At the detention hearing the Court will advise all parties of their rights and inform them of the nature of this hearing. The Court shall not at this hearing, accept a plea from the juvenile nor shall the Court hear any evidence upon the merits of the petition. The Court shall allow the juvenile, his parents, guardian or custodian, probation officer, the Tribal Prosecutor and any other interested party to express their opinion as to where the juvenile should be kept until the arraignment hearing. The Court shall then make the final decision.

Neither fingerprints nor photographs shall be taken of any juvenile taken into custody without consent of a judge, unless a peace officer determines it necessary for the detection and apprehension of an unknown offender. When fingerprints are taken, copies of the fingerprint cards shall not be sent to central, state or federal depositories except in national security cases or marked "for identification" only; and cards shall be removed from the Fort Hall Police file and destroyed by the Police Chief thereof; (a) if the decision after investigation of the case is that no basis for court jurisdiction exists; or (b) when the juvenile charged reaches his twenty-first birthday, if there has been no record of violation of law after reaching his eighteenth birthday.

Peace officer's records of juvenile shall be kept separate from records of adults and shall not be open to public inspection.

Section 12

Arraignment

Without unnecessary delay a hearing shall be scheduled after the detention hearing at which the juvenile shall be arraigned. The Court shall again inform all parties of their rights and shall inform them of the nature of this hearing. The judge shall then read the contents of the petition to the juvenile and inform him of the charge therein. The judge shall then satisfy himself that the juvenile understands the charge after which the judge shall ask the juvenile (or his representative) to enter a plea of guilty or not guilty.

If the plea entered is guilty, the judge shall then satisfy himself that the plea is voluntary and 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 desires to be sentenced immediately or at some later date.

In no event, however, shall a judge sentence a juvenile without first having read a probation officer's report of said juvenile.

If the plea entered is not guilty, the judge shall then set the matter for a trial at a date which is satisfactory to the defendant and the tribal prosecutor. Said trial shall be heard without unnecessary delay.

Once a plea has been entered, the Court may entertain motions from either party to either modify or continue its detention order. The Court may then make a decision on said motions.

The Court shall not allow the introduction of any evidence upon the merits of the petition at the arraignment.

Section 13

Trial

All juvenile cases shall be adjudicated by the Court on a trial basis without a jury. When more than one juvenile is involved in a specific act within the purview of this chapter the trial may be held jointly in obtaining the evidence necessary to establish participation of each juvenile in the act and then heard separately as far as the findings of the social study and disposition are concerned. Cases of juveniles of the same family involved in the same act may be heard at one hearing.

The trial shall be conducted in an informal manner and may be adjourned from time to time. Stenographic notes or other transcript of the hearings shall be required. The general public shall be excluded and only such persons admitted as the Judge shall find to have a direct interest in the case or in the work of the Court. The presence of the juvenile may be waived by the Court at any stage of the proceedings.

If any of the parties appear without counsel of any kind, the Court shall, before commencing the trial, inform them of their right to counsel as explained earlier at the arraignment.

The Rules of Evidence of this Law and Order Code shall apply in Juvenile cases.

If the allegations of the petition are sustained by proof beyond a reasonable doubt, the Court shall find the juvenile guilty of the offense charged in said petition.

Section 13

(Continued)

The Court shall then ask the juvenile if he wants to be sentenced immediately or postpone disposition.

If the juvenile chooses to postpone sentencing, the judge shall set a date on the Court docket for such disposition. There shall be no unnecessary delay in this regard.

If the juvenile is found guilty of the offense charged and the date for disposition is postponed at the request of the juvenile or in the discretion of the Court, the Court may hear motions on the matter of the place of detairment of the juvenile pending said hearing. The Court will then make the final decision.

Section 14

Sentencing (Disposition)

After a juvenile has been found guilty of an offense, he shall be sentenced by the Court. This hearing shall be called a Disposition Hearing or Sentencing. At this hearing the judge shall again inform the parties of their right to counsel at this stage of the proceedings. The Court may hear sworn testimony from either side solely on the issue of sentencing. The Court shall indicate whether it has consulted the report of the probation officer concerning the juvenile before the Court. At the close of the evidence, if any, the Court will then hear the recommendations of the prosecutor, the probation officer, the juvenile (or his representative), and any other person who might have pertinent knowledge of the background and needs of the juvenile before the Court. The judge will then render a sentence in open Court.

The Court shall have broad discretionary power with respect to sentencing and its authority shall include, but shall not be limited to:

- (1) Sentencing the juvenile to the maximum sentence and/or fine required or suggested in the Law and Order Code for the crime committed; or
- (2) Placing the juvenile under the care and supervision of the probation officer under such conditions as the Court deems appropriate; or
- (3) Committing the juvenile to a suitable school or institution; or
- (4) Placing the juvenile in the care and custody of his parents or some other guardian or custodian under such conditions as the Court may deem appropriate; or
- (5) Making use of any available Federal, State, Private, Public or Tribal facilities designed for the rehabilitation of juvenile delinquents; or

Section 14

(Continued)

(6) Requiring the juvenile to make restitution for any damage done as a result of his offense, in a manner and form prescribed by the Court; or

(7) Any other care and treatment as the Court may deem best. In support of any order or decree the Court may require the parents, guardian or other persons having the custody of the juvenile, or any other person who has been found by the Court to be encouraging, causing or contributing to the acts or conditions which bring the juvenile within the purview of this chapter, to do or refrain from doing any acts required or forbidden by law, when the judge deems such requirement necessary for the welfare of the juvenile. In case of failure to comply with such requirement, the Court may proceed against such person for contempt of Court. No adjudication by the Court of the status of any juvenile shall be deemed a conviction nor shall such adjudication operate to impose any of the civil disabilities ordinarily resulting from conviction, nor shall any juvenile be deemed a criminal by reason of such adjudication. Whenever the Court shall commit a child to any institution or agency it shall transmit with the order of commitment a summary of its information concerning the juvenile which may aid in protection, guidance and well-being of the juvenile, and such institution or agency shall give to the Court such information concerning such juvenile as the Court may at any time require.

Section 15

Appeal

An appeal may be taken by any juvenile who was affected by a final order of the Shoshone-Bannock Tribal Court on the trial level. The Rules of Appellate Procedure of the Law and Order Code of the Shoshone Bannock Tribes shall apply in all juvenile appeals insofar as they are consistent with the needs and circumstances of juveniles and the purposes of this chapter.

Section 16

Support of Committed Juvenile

Whenever a juvenile is placed by the Court in custody other than that of his parents, or is given medical, psychological or psychiatric treatment under order of the Court, and no provision is otherwise made by law or by the Court for the support of such juvenile or payment for such treatment, the Court may, after giving the parent a reasonable opportunity to be heard, order and decree that such parent shall pay in such manner as the Court may direct, such sum, within his ability to pay, as will cover in whole or in part the support and treatment of such juvenile. If such parent shall wilfully fail or refuse to pay such sum, the Court may proceed against him as for contempt or other civil remedies.

Section 17

Records of Juveniles

The Court shall maintain a record of all proceedings under this chapter in a file cabinet separate and apart from its adult files. The records under this chapter shall not be open to public inspection and the names of juveniles shall not be released to any newspapers, radio or television, or other media source in violation of the Tribal Privacy Act.

Section 18

Expungement of Record

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. The prosecutor and any other person who may have relevant information about the petitioner may testify at the hearing.

If the Court finds upon the hearing that the petitioner has not been convicted on a cause amounting to a crime under federal, state, or tribal laws involving moral turpitude if committed by an adult, and that no such proceedings have been instituted against him, and if the Court further finds that the rehabilitation of the petitioner has been attained to the satisfaction of the Court, it 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 said adjudication removed from all indices and from all other records available to the public. However, a special index of such expungement proceedings and records shall be kept by the Court ordering expungement, which said index shall not be available to the public and which shall be revealed only upon order of a Court of competent jurisdiction.

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.

Section 19

Encouraging Violations

Any person who by any act or neglect encourages, aids or causes a juvenile to come within the purview or jurisdiction of this chapter, or who after notice that a driver's license of any such juvenile has been suspended or revoked under the provisions of this chapter or any other chapter of this code knowingly permits or encourages said juvenile to operate a motor vehicle during the period that such driver's license is suspended, shall be guilty of a misdemeanor. The Court may impose conditions upon any person found guilty under this section, and so long as such person shall comply therewith to the satisfaction of the Court, the sentence imposed may be suspended. No sentence under this section shall exceed six (6) months imprisonment or \$500.00 or both.

Section 20

Probation Officers

Whenever a juvenile is committed to the care of any person, the matter may be assigned by the Court to a probation officer, who shall require a report quarterly, or more often if the Court so orders, from the custodian to whom the juvenile has been committed, reporting on the juvenile's welfare and condition. The report shall be filed with the Court.

The probation officer shall make preliminary inquiries and social studies, and such other investigations as the Court may direct. Upon the placing of any person upon probation or under protective supervision, the probation officer shall explain to the juvenile and the parents or other persons concerned, the meaning and conditions of the probation or protective supervision. The probation officer shall keep informed concerning the conduct and conditions of each person on probation or under protective supervision and shall report to the Court accordingly. Probation officers shall use all suitable methods to aid such persons to bring about improvements in their conduct and to effect a speedy rehabilitation. The probation officer shall also be present in Court when cases are heard concerning juveniles or others placed on probation or under protective supervision.

The probation officer shall also fulfill the same functions as described above for adult offenders according to the particular situation. A social report will include school attendance, family adjustment and problems, peer group relations, interview by worker, parental involvement, etc.

Section 21

Bureau of Indian Affairs

The Court Clerk will notify the BIA Branch of Social Services each morning during the week of any juvenile who is to appear in Court and the time and date of his hearing.

Section 22

Parental Attendance in Court

When a juvenile is ordered into Court, a parent or parents, or legal 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. A copy of the order of release of the juvenile, should he be released, shall be given to the parent designating time of Court appearance.

Section 23

Removal from Reservation

The Court may permit removal of a neglected, dependent or delinquent juvenile from the reservation by the person or institution to whose custody the juvenile is given, on condition that such custodian produce the juvenile when required by the Court. In its discretion, the Court may require bond to insure that the custodian will return the juvenile on order of the Court. The removal of a neglected, dependent or delinquent juvenile from the reservation should be permitted only in extreme cases.

Section 24

Curfew

It shall be unlawful for any unmarried person under the age of eighteen (18) years to be in any public place upon the Fort Hall Reservation or in any other place other than his/her normal place of residence or employment between the hours of ten o'clock p.m. and five thirty a.m. Sunday through Thursday, and between the hours of twelve o'clock a.m. and six o'clock a.m., Friday through Saturday.

This Section shall not apply if the person is under the immediate supervision of an adult parent or guardian, or is attending an official public meeting or gathering or authorized school function without supervision.

Any person who is found guilty of violating the provisions of this Section may be sentenced to a term of imprisonment not to exceed thirty (30) days, or fined not more than One-Hundred Dollars (\$100), or both.

Section 25

Habitual Truancy

It shall be unlawful for any person required to be enrolled in a public school system, under either State or Tribal Law, to be habitually truant.

Section 25

(Continued)

An habitual truant is any such person who, under the Attendance and Truancy Policy of the Shoshone Bannock (Sho-Ban) School of the Fort Hall Reservation, repeatedly has violated the attendance regulations established thereby.

Any person who is found guilty of violating the provisions of this Section may be sentenced to a term of imprisonment not to exceed thirty (30) days or fined not more than one-hundred dollars (\$100.00), or both such jail sentence and fine.

Section 26

Sale and Use of Tobacco-Minors

It shall be unlawful for any person under the age of eighteen (18) years to buy, accept or have in his possession any cigarette, cigar or tobacco in any form.

Any such minor who is found guilty of violating the provisions of this Section may be sentenced to a term of imprisonment not to exceed thirty (30) days, or fined not more than one-hundred dollars (\$100.00), or both such jail sentence and fine.

Section 27

Runaway

It shall be unlawful for any person between the ages of twelve (12) and eighteen (18) years of be away from the home or custody of his parent, guardian or custodian for a period of more than twenty-four (24) consecutive hours.

Any person who is found guilty of violating the provisions of this Section may be sentenced to a term of imprisonment not to exceed thirty (30) days, or fined not more than one-hundred dollars (\$100.00), or both such jail sentence and fine.

Section 28

Status Offenses - Standard of Proof

For purposes of Sections 24, 25, 26, and 27 of this Chapter, the standard of proof required for conviction of said offenses shall be proof beyond a reasonable doubt. This Section does alter or change the burden of proof established in any other Chapter or Section of this Law and Order Code.