

RESOLUTION OF THE GOVERNING BODY OF
THE THREE AFFILIATED TRIBES OF THE
FORT BERTHOLD RESERVATION

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

WHEREAS, The Constitution and Bylaws of the Three Affiliated Tribes authorizes and empowers the Tribal Business Council to engage in activities for the welfare and benefit of the tribes and tribal members; and

WHEREAS, It has become apparent that the existing Child Welfare and Juvenile Code is too cumbersome and taxing upon the Court system; and

WHEREAS, An efficient and effective Child Welfare Code is of extreme importance to the Three Affiliated Tribes;

THEREFORE BE IT RESOLVED, that a new Juvenile Code is herenow adopted.

C E R T I F I C A T I O N

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 11 members of whom 7 constitutes a quorum, 10 were present at a Special Meeting, thereof duly called, noticed, convened and held on the 6 day of March, 1981; that the foregoing resolution was duly adopted at such meeting by the affirmative vote of 10 members, 0 members opposed, 0 members abstained, 0 members not voting, and that said resolution has not been rescinded or amended in any way.

Chairman (voting) (~~not voting~~).

DATED THIS 6 DAY OF March, 1981.

Lillie Walker
SECRETARY, TRIBAL BUSINESS COUNCIL

ATTEST:

Arvin H. Banta
CHAIRMAN, TRIBAL BUSINESS COUNCIL

JUVENILE CODE

I. General Provisions.

A. Definitions as used in this chapter:

1. "Child means an individual who is:
 - a. Under the age of eighteen years and is neither married and cohabiting with spouse nor in the military service of the United States; or
 - b. Under the age of twenty years with respect to a delinquent act committed while under the age of eighteen years.
2. "Delinquent act" means an act designated a crime under the law, or of a state if the act occurred in that state, or under federal law, and the crime does not fall under subdivision c of subsection 4 and is not a traffic offense as defined in subsection 9.
3. "Delinquent child" means a child who has committed a delinquent act and is in need of a treatment or rehabilitation.
4. "Unruly child" means a child who:
 - a. Is habitually and without justification truant from school;
 - b. Is habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable; or who is willfully in a situation dangerous or injurious to the health, safety, or morals of himself or others; or
 - c. Has committed an offense applicable only to a child; and
 - d. In any of the foregoing is in need of treatment or rehabilitation.
5. "Deprived child" means a child who:
 - a. Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of his parents, guardian, or other custodian;
 - b. Has been placed for care or adoption in violation of law; or
 - c. Has been abandoned by his parents, guardian, or other custodian.
6. "Shelter care" means temporary care of a child in physically unrestricted facilities.
7. "Protective supervision" means supervision ordered

by the court of children found to be deprived or unruly.

8. "Custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court.
 9. "Traffic offense" means a violation of an ordinance or resolution governing the operation of a vehicle upon the highways or the waterways by a child who has been issued a valid operator's license or permit if one is required.
- B. Rights and duties of legal custodian. A custodian to whom legal custody has been given by the court under this chapter has the right to the physical custody of the child and the right to determine the nature of the care and treatment of the child, including ordinary medical care as well as medical or surgical treatment for a serious physical condition or illness which in the opinion of a licensed physician requires prompt treatment. The custodian also has the right and duty to provide for the care, protection, training, and education, and the physical, mental, and moral welfare of the child, subject to the conditions and limitations of the order and to the remaining rights and duties of the child's parents or guardian.

II. Informal adjustment.

- A. Before a petition is filed, the juvenile supervisor or other officer of the court designated by it, subject to its direction, may give counsel and advice to the parties and impose conditions for the conduct and control of the child with a view to an informal adjustment if it appears:
- a. The admitted facts bring the case within the jurisdiction of the court;
 - b. Counsel, advice and conditions, if any, for the conduct and control of the child without an adjudication would be in the best interest of the public and the child; and
 - c. The child and his parents, guardian or other custodian consent thereto with knowledge that consent is not obligatory.
- B. The giving of counsel and advice and any conditions imposed for the conduct and control of the child cannot extend beyond nine months from the day commenced unless extended by the court for an additional period not to exceed six months and does not authorize the detention of the child if not otherwise permitted by this chapter.
- C. An incriminating statement made by a participant to the person giving counsel or advice and in the discussions or conferences incident thereto shall not be used against the declarant over objection in any hearing except in a hearing on disposition in a juvenile court proceeding or in a criminal proceeding against him after conviction for the purpose of a presentence investigation.

proving, with clear and convincing evidence, that it is in the best interests of the minor child that the child be removed and, without removal, serious emotional or physical harm would result to the child.

VI. Deprived child (minor-in-need of care).

A. A child may be removed from the child's lawful home or any other residence if the child is a minor-in-need of care.

B. The removal shall only be done after the following has been completed:

1. Petition signed under oath has been executed and filed with the Tribal Court.
2. The petition, along with notice of hearing, is served upon the legal custodians of the minor child and minor child. This notice shall be served upon the legal custodian of the minor child at least five (5) days prior to the scheduled hearing.
3. A hearing before the Tribal Court establishing, by clear and convincing evidence, that the child is a child in need of care and supervision, and the legal custodian has not been providing the necessary care and supervision.

C. A minor child may be taken into custody of the Tribal Child Welfare Program immediately and prior to a hearing upon the matter as set forth in paragraph "B" above if the following is completed:

1. Child Welfare Program or law enforcement personnel determine that an emergency exists which threatens the well-being of the child and only the immediate taking into custody by the Child Welfare Program can prevent injury, either emotional or physical, of the minor child, or that the minor child has run away from his parents, guardian or custodian.
2. If custody is taken pursuant to paragraph C subsection 1 above, there shall be caused to be served upon the legal custodian the following:
 - a. Petition and affidavit setting out the emergency notice of hearing and ex-parte temporary custody order.
 - b. The ex-parte temporary custody order shall only be signed by either a Tribal Court juvenile judge or magistrate, after they have been presented the petition and affidavit to review and the judge or magistrate is convinced that an emergency exists which threatens the emotional or physical well-being of the minor child and the only solution is that the Child Welfare Program obtain temporary custody pending a hearing on the matter. Such order shall be reduced to writing no later than 24 hours thereafter.
3. Pursuant to the laws of arrest.

D. A hearing upon the removal of any child from the child's

legal custodian shall be held no later than fifteen (15) days from the removal of the child pursuant to paragraph C above, or fifteen (15) days from the serving of the petition and notice of hearing pursuant to paragraph B above.

- E. If the court finds the child to be a deprived child (minor-in-need of care), the court may make the following disposition best suited to protect the physical, mental, emotional and moral welfare of the child:
1. Permit the child to remain with his or her parents, guardian or custodian subject to any appropriate conditions, limitations and/or supervisions;
 2. Transfer custody to:
 - a. an individual after appropriate home-study studies have been performed and the court finds to be qualified to care for the child;
 3. Any agency approved by the Child Welfare Program, including the Child Welfare Program itself.
- F. Unless a child is found to be delinquent or unruly, that child shall not be confined to an institution or other facility designed or operated for the benefit of delinquent children.

VII. Termination of parental rights.

- A. The court may order the termination of parental rights of a parent with respect to his or her child if:
1. The parent has abandoned the child;
 2. The child is a deprived child and the court finds that the conditions and causes of the deprivation are likely to continue and by reason thereof the child is suffering or will probably suffer serious physical, mental, moral or emotional harm; or
 3. The parent has given written consent to terminate and the court believes the consent to be voluntary, intelligible and without undue duress. No consent shall be valid if given within ten (10) days of the birth of the child.
- B. The standard of proof needed to terminate a parental interest is beyond a reasonable doubt.
- C. The contents of the petition to terminate shall be as set forth in section III above.

VIII. Disposition of delinquent child.

- A. If a child is found to be a delinquent child the court may make any of the following orders of disposition best suited to the child's treatment, rehabilitation and welfare:
1. Similar to disposition if a deprived child (minor-in-need of care) not to extend beyond the child's 18th birthday.
 2. Probation with appropriate conditions and restric-

tions not to exceed the child's 20th birthday.

3. Placing child in an institution for delinquent child not to extend beyond the child's 18th birthday.
- B. If the child is deemed unruly, any disposition set forth in paragraph IX subsection A, may be made except the child may not be sent to the State Industrial School of North Dakota or any other similar institution.
 - C. After a petition has been filed alleging delinquency based on conduct which is designated a crime or public offense under the laws, including local ordinances or resolutions of a state, the court before hearing the petition on its merits may transfer the offense for prosecution to the appropriate court having jurisdiction of the offense if:
 - a. The child is over 17 or more years of age and requests the transfer; or
 - b.
 1. The child was sixteen or more years of age at the time of the alleged conduct;
 2. A hearing on whether the transfer should be made is held;
 3. Notice in writing of the time, place, and purpose of the hearing is given to the child and his parents, guardian, or other custodian at least three (3) days before the hearing; and
 4. The court finds that there are reasonable grounds to believe that:
 - a. The child committed the delinquent act alleged;
 - b. The child is not amenable to treatment or rehabilitation as a juvenile through available facilities;
 - c. The child is not treatable in an institution for the mentally retarded or mentally ill; and
 - d. The interests of the community require that the child be placed under legal restraint or discipline.
 - D. The transfer terminates the jurisdiction of the juvenile court over the child with respect to the delinquent acts alleged in the petition.
 - E. No child, either before or after reaching eighteen years of age, shall be prosecuted for an offense previously committed unless the case has been transferred as provided in this section.
 - F. Statements made by the child after being taken into custody and prior to a request under subdivision a of subsection 1, or the service of notice under subdivision b of subsection 1, or at the hearing under this section are not admissible against him over objection in the criminal proceedings following the transfer.

IX. Confidentiality.

- A. All records shall be kept confidential, open only to the Juvenile Clerk, Juvenile Judge and Child Welfare Program.

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RECEIVED

FEB 03 1981

TO: Child Welfare
Juvenile Judge
Tribal Business Council

THREE AFFILIATED TRIBES

FROM: John O. Holm

RE: Juvenile Code

Enclosed please find the new proposed Juvenile Code. I am very sorry for the delay.

I believe it is much simpler and easier to implement than the prior code, yet I believe it will be quite effective.

There is scheduled for 1:00 p. m. on February 4, 1981, a meeting of the Child Welfare Office and Juvenile Judge. This is an implementing discussion. Any one who desires to appear please feel free to attend.

I missed my 5 page promise by a page; sorry.

John

