

Bureau of Indian Affairs, Interior

§ 11.1005

(a) A citation to the specific section(s) of this part which gives the children's court jurisdiction of the proceedings;

(b) A citation to the section(s) of this part which the minor is alleged to have violated;

(c) The name, age, and address of the minor who is the subject of the complaint, if known; and

(d) A plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged facts occurred.

§ 11.1001 Warrant.

The children's court may issue a warrant directing that a minor be taken into custody if the court finds there is probable cause to believe the minor committed the delinquent act alleged in the complaint.

§ 11.1002 Custody.

A minor may be taken into custody by a law enforcement officer if:

(a) The officer observes the minor committing a delinquent act; or

(b) The officer has reasonable grounds to believe a delinquent act has been committed that would be a crime if committed by an adult, and that the minor has committed the delinquent act; or

(c) A warrant pursuant to § 11.1001 has been issued for the minor.

§ 11.1003 Law enforcement officer's duties.

A law enforcement officer who takes a minor into custody pursuant to § 11.1002 of this part shall:

(a) Give the following warnings to any minor taken into custody prior to any questioning:

(1) The minor has a right to remain silent;

(2) Anything the minor says can be used against the minor in court;

(3) The minor has the right to the presence of counsel during questioning; and

(4) If he or she cannot afford counsel, the court will appoint one.

(b) Release the minor to the minor's parent, guardian, or custodian and issue a verbal advice or warning as

may be appropriate, unless shelter care or detention is necessary.

(c) If the minor is not released, make immediate and recurring efforts to notify the minor's parents, guardian, or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until an investigation to determine the need for shelter care or detention is made by the court.

§ 11.1004 Detention and shelter care.

(a) A minor alleged to be a juvenile offender may be detained, pending a court hearing, in the following places:

(1) A foster care facility approved by the tribe;

(2) A detention home approved by the tribe; or

(3) A private family home approved by the tribe.

(b) A minor who is 16 years of age or older may be detained in a jail facility used for the detention of adults only if:

(1) A facility in paragraph (a) of this section is not available or would not assure adequate supervision of the minor;

(2) The minor is housed in a separate room from the detained adults; and

(3) Routine inspection of the room where the minor is housed is conducted every 30 minutes to assure his or her safety and welfare.

§ 11.1005 Preliminary inquiry.

(a) If a minor is placed in detention or shelter care, the children's court shall conduct a preliminary inquiry within 24 hours for the purpose of determining:

(1) Whether probable cause exist to believe the minor committed the alleged delinquent act; and

(2) Whether continued detention or shelter care is necessary pending further proceedings.

(b) If a minor has been released to the parents, guardian or custodian, the children's court shall conduct a preliminary inquiry within three days after receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the minor committed the alleged delinquent act.

§ 11.1006

25 CFR Ch. I (4-1-06 Edition)

(c) If the minor's parents, guardian or custodian is not present at the preliminary inquiry, the children's court shall determine what efforts have been made to notify and to obtain the presence of the parents, guardian, or custodian. If it appears that further efforts are likely to produce the parents, guardian or custodian, the children's court shall recess for no more than 24 hours and direct that continued efforts be made to obtain the presence of parents, guardian or custodian.

(d) All the rights listed in § 11.906 shall be afforded the parties in a preliminary inquiry.

(e) The children's court shall hear testimony concerning:

(1) The circumstances that gave rise to the complaint or the taking of the minor into custody; and

(2) The need for detention or shelter care.

(f) If the children's court finds that probable cause exists to believe the minor performed the delinquent act, the minor shall be released to the parents, guardian or custodian, and ordered to appear at the adjudicatory hearing unless:

(1) The act is serious enough to warrant continued detention or shelter care;

(2) There is reasonable cause to believe the minor will run away and be unavailable for further proceedings; or

(3) There is reasonable cause to believe that the minor will commit a serious act causing damage to person or property.

(g) The children's court may release a minor pursuant to paragraph (f) of this section to a relative or other responsible adult tribal member if the parent, guardian, or custodian of the minor consents to the release. If the minor is ten years of age or older, the minor and the parents, guardian or custodian must both consent to the release.

(h) Upon a finding that probable cause exists to believe that the minor has committed the alleged delinquent act and that there is need for detention or shelter care, the minor's detention or shelter care shall be continued. Otherwise, the complaint shall be dismissed and the minor released.

§ 11.1006 Investigation by the presenting officer.

(a) The presenting officer shall make an investigation following the preliminary inquiry or the release of the minor to his or her parents, guardian or custodian to determine whether the interests of the minor and the public require that further action be taken. Upon the basis of this investigation, the presenting officer may:

(1) Determine that no further action be taken;

(2) Begin transfer proceedings to the Court of Indian Offenses pursuant to § 11.907 of this part; or

(3) File a petition pursuant to § 11.1007 of this part to initiate further proceedings. The petition shall be filed within 48 hours of the preliminary inquiry if the minor is in detention or shelter care. If the minor has been previously released to his or her parents, guardian or custodian, relative or responsible adult, the petition shall be filed within ten days of the preliminary inquiry.

§ 11.1007 Petition.

(a) Proceedings under §§ 11.1000-11.1014 of this part shall be instituted by a petition filed by the presenting officer on behalf of the tribe and in the interests of the minor. The petition shall state:

(1) The name, birth date, and residence of the minor;

(2) The names and residences of the minor's parents, guardian or custodian;

(3) A citation to the specific section(s) of this part which gives the children's court jurisdiction of the proceedings;

(4) A citation to the section(s) of this part which the minor is alleged to have violated; and

(5) If the minor is in detention or shelter care, the time the minor was taken into custody.

§ 11.1008 Date of hearing.

Upon receipt of the petition, the children's court shall set a date for the hearing which shall not be more than 15 days after the children's court receives the petition from the presenting officer. If the adjudicatory hearing is not held within 15 days after filing of