

Bureau of Indian Affairs, Interior

§ 11.1105

present with the minor until an investigation to determine the need for shelter care is made by the children's court.

§ 11.1104 Shelter care.

(a) A minor alleged to be a minor-in-need-of-care may be detained, pending a court hearing, in the following places:

(1) A foster care facility authorized under tribal or state law to provide foster care, group care or protective residence;

(2) A private family home approved by the tribe; or

(3) A shelter care facility operated by a licensed child welfare services agency and approved by the tribe.

(b) A minor alleged to be a minor-in-need-of care may not be detained in a jail or other facility used for the detention of adults. If such minor is detained in a facility used for the detention of juvenile offenders, he or she must be detained in a room separate from juvenile offenders, and routine inspection of the room where the minor is detained must be conducted every 30 minutes to assure his or her safety and welfare.

§ 11.1105 Preliminary inquiry.

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

(1) Whether probable cause exists to believe the minor is a minor-in-need-of care; and

(2) Whether continued 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 is a minor-in-need-of-care.

(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 obtain the presence of the parent, guardian or custodian. If it appears that further efforts are likely to produce the parent, guardian or custodian, the children's court shall re-

cess for no more than 24 hours and direct that continued efforts be made to obtain the presence of the parents, guardian or custodian.

(d) All the rights listed in §11.906 of this part shall be afforded the parties in the minor-in-need-of care preliminary inquiry except that the court is not required to appoint counsel if the parties cannot afford one. Notice of the inquiry shall be given to the minor, and his or her parents, guardian or custodian and their counsel as soon as the time for the inquiry has been established.

(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 shelter care.

(f) If the children's court finds that probable cause exists to believe the minor is a minor-in-need-of-care, the minor shall be released to the parents, guardian or custodian, and ordered to appear at the adjudicatory hearing, unless:

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

(2) There is reasonable cause to believe that the minor is in immediate danger from parents, guardian or custodian and that removal from them is necessary; or

(3) There is a 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 the minor pursuant to paragraph (f) of this section to a relative or other responsible adult tribal member if the parents, guardian or custodian of the minor consent to the release. If the minor is ten years to age or older, the minor and the parents, guardian or custodian must both consent to the release.

(h) Upon finding that probable cause exists to believe that the minor is a minor-in-need-of-care and that there is a need for shelter care, the minor's shelter care shall be continued. Otherwise, the complaint shall be dismissed and the minor released.