

Bureau of Indian Affairs, Interior

§ 11.1006

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.

(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 custo-

dian. 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