

# STATE/TRIBAL JOINT JURISDICTIONAL COURTS IMPROVE OUTCOMES IN CIVIL AND CRIMINAL CASES

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# AGENDA

- Overview of Joint Jurisdictional Approach and Courts
- Authority for Joint Jurisdictional Courts
- Learning From Existing Joint Jurisdictional Courts
- How to Establish a Joint Jurisdictional Court
- Challenges Establishing a Joint Jurisdictional Court
- Resources to Help Implement the Joint Approach



# OVERVIEW

- What is a Joint Jurisdictional Court?
- Why Consider this Approach?
- How to Use this Approach
- When Can it be Used?



## OVERVIEW

“THE JOINT JURISDICTIONAL APPROACH IS  
A WAY OF REIMAGINING JUSTICE.”

When a tribal court judge and a state or federal court judge come together to exercise their respective authority, bringing together justice system partners and leveraging resources to promote healing and protect public safety.



## WHY ARE COURTS USING THIS APPROACH?

Reimagining justice is necessarily interjurisdictional because

“Poverty, addiction, racism, and hopelessness know no jurisdictional boundaries.”



## IMPROVED OUTCOMES

- Improved government-to-government relationships
- Lower recidivism rates
- Lower school discipline and higher graduation rates;
- Increased family preservation rates;
- Reduced domestic violence;
- Reduced incarceration rates; and
- Cost savings



# THE JOINT APPROACH- FLEXIBLE

Tribes and Courts Can Use it—

- Anytime Procedurally
- Any Case Type
  - Civil: adoption, child abuse and neglect, conservatorship, delinquency, domestic violence, family law, guardianship, truancy, termination of parental rights, and tribal customary adoption
  - Criminal: adult criminal felonies, misdemeanors, and driving under the influence/while intoxicated





# DOMESTIC VIOLENCE

- Yurok Tribe's Batterer Intervention Program
- Joint Approach with State Court



# AUTHORITY FOR THE JOINT JURISDICTIONAL COURTS

- Starting Point
  - Tribes have plenary & exclusive jurisdiction over their members and their territory
  - BUT no criminal jurisdiction over non-Indians
- PL 280 (28 USC § 1360; 18 USC § 1162)
  - Grants California criminal jurisdiction in Indian Country concurrent with tribes and limited civil jurisdiction (not civil regulatory)
- Joint Powers Agreement
- Tribal Council Resolution



## JOINT POWERS AGREEMENT

“Be it known that we the undersigned agree to, where possible, jointly exercise the powers and authorities conferred upon us as judges of our respective jurisdictions in furtherance of the following common goals: (1) Improving access to justice; (2) Administering justice for effective results; and (3) Fostering public trust, accountability, and impartiality.”



# TRIBAL RESOLUTION

- Tribal Sovereignty
- Tribal Council's Resolution as Source of Authority for the Tribal Court to Explore a Joint Court



## LEARNING FROM EXISTING JOINT JURISDICTIONAL COURTS

The First Joint Courts in the Nation- Cass and Itasca Counties (Minn.) - Leech Lake Wellness Courts

- Created in 2006 and 2007 to address epidemic of alcohol-related crashes and deaths
- Serves Tribal Members and Non-Indians
- Multi-jurisdictional, multi-agency participation
- Operated on handshakes for over a year



## TODAY- SIX MORE JOINT JURISDICTIONAL COURTS

Hoopla Tribe- Humboldt County (California)

Shingle Springs Band of Miwok Indians- El Dorado County (California)

Yurok Tribe- Humboldt County (California)

Kenaitze Indian Tribe (Kenai, Alaska)

Saint Regis Mohawk (International: New York, USA and Canada)



## ESTABLISHING A JOINT COURT-COLLABORATIVE MEETINGS

- Judges convene stakeholder meetings as equal partners
- Neutral facilitator guides 3-4 on-site meetings, each for 2-3 consecutive days
- Agree on ground rules to ensure everyone has a voice in planning
- Identify stakeholder expectations/values/feedback
- Start with mapping the current system
- Identify service gaps and opportunities to create new services
- Infuse culture and incorporate best practices
- Create program manual based on stakeholders' design



## JOINT COURTS SHARE CHARACTERISTICS IN COMMON- LEARNING FROM THEIR EXAMPLE

- Effective leadership
- Improve collaboration and break down silos
- A Blend of two court approaches
- Tailored to the tribe's culture and local court context
- Focus on root causes
- Improve outcomes and system change
- Apply sustainability and quality control strategies
- Face similar challenges
- Effective technical assistance





## BLENDING COLLABORATIVE COURTS AND TRIBAL HEALING TO WELLNESS APPROACHES

- *Judicial Involvement* with the court team and staffing and ongoing judge interaction with each participant are essential.
- *Referral Points & Legal Process* promote tribal sovereignty and due (fair) process
- *Early Identification, Screening, and Assessment*
- *Timely Services* that are holistic, trauma-informed, and wrap-around
- *Intensive Supervision* with wraparound and trauma-informed services
- *Motivational, Therapeutic, and Cultural* responses to participant's behavior.
- *Phases with Incentives and Sanctions (To Make it Right)*
- *Monitoring and evaluation*
- *Cultural competence and humility*
- *Continuing Interdisciplinary and Community Education*



## TAILORED TO THE TRIBE'S CULTURE

- Culture-specific- design must include culture bearers, such as a tribal elder, healer, or language instructor
- Culture as Medicine- tradition and cultural practices are healing on multiple levels: physically, emotionally, and spiritually.
- Research shows- connecting or reconnecting to culture is a protective factor, builds resiliency for the individual and community, and improves outcomes.



## LOCALLY DRIVEN BY PLACE

- No two joint-jurisdictional courts or their journeys are the same
- Shaped by historical and present-day impacts in the region



## DISCUSSION- CHALLENGES

- Establishing Joint Courts
  - Resistance because of concerns that it would undermine tribal sovereignty or lead to unequal treatment under the law or a breach in judicial ethics
- Extending the Joint Approach
  - Driving while under the influence (DUI) cases
  - Decision-makers do not make referrals to the court
  - Other



## HELP TO IMPLEMENT THE JOINT APPROACH

- Technical Assistance
- Resources
- Additional Reading
- Your Colleagues



# TECHNICAL ASSISTANCE

- Building the collaboration
- Facilitating the conversations
  - To identify vision, goals, concerns, solutions, service gaps, and design elements of the court to infuse cultural values and practices
- Providing cross-court and cross-system education
  - Memorializing agreements and court documents (tribal resolution, joint powers agreement, court brochure, forms, procedures, manual)
- Setting the court up for sustainability
  - Establishing a governance structure, telling its story, identifying outcome measures and grant opportunities



## RESOURCES TO HELP IMPLEMENT THE JOINT APPROACH

- California Judicial Council Toolkit for Judges (soon to be published) and Court Toolkit for Tribal/State/Federal Administrators and Clerks (2016)

<https://www.courts.ca.gov/documents/courttoolkit-tribalstatefederal-adminclerks.pdf>

- Project Team's "How-To Manual" (2016)

<http://www.ohsu.edu/projectteam/manual>

- Technical Assistance Providers through JCC Tribal/State Programs, Tribal Law and Policy Institute and others



## ADDITIONAL READING MATERIALS

- **The New Face of Justice: Joint Tribal-State Jurisdiction**, Washburn Law Journal (Vol. 47, No. 3, Spring 2008)
- **Building a Legacy of Hope: Perspectives on Joint Tribal-State Jurisdiction**, William Mitchell Law Review (Vol. 36 , Issue 2, 2010)
- **Tribal and State Courts: Strategies for Bridging the Divide**, Center for Court Innovation (2011)
- **Promising Strategies: Tribal-State Court Relations**, Tribal Law and Policy Institute/Bureau of Justice Assistance (March 2013)
- **Promising Strategies: Public Law 280**, Tribal Law and Policy Institute/Bureau of Justice Assistance (August 2013)





THANK YOU!



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# CALIFORNIA TRIBAL COURT-STATE COURT FORUM

May 2015

## Jurisdictional Issues in California Regarding Indians and Indian Country

### California Indian Tribes and Territory

California currently has approximately 110 federally recognized tribes,<sup>1</sup> with nearly 100 separate reservations or rancherias.<sup>2</sup> In addition there are currently 81 groups petitioning for federal recognition.<sup>3</sup> In the 2010 census roughly 725,000 California citizens identified as American Indian or Alaska Native either alone or in combination with other ethnicities.<sup>4</sup> This represents roughly 14% of the entire American Indian/Alaska Native population of the United States.

### General Rules (these rules apply in California unless modified by PL 280)

Tribes are sovereign and have exclusive inherent jurisdiction over their territory and members, but **not** necessarily with jurisdiction over non-Indians even within tribal territory.

Tribes are under the exclusive and plenary jurisdiction of the federal congress, which may restrict or abolish jurisdiction and sovereignty. The federal government has exercised this power a number of times to limit tribal jurisdiction, assume federal jurisdiction over a number of areas, and delegate that jurisdiction to some states. Congress has granted limited jurisdictional authority to the federal courts (under the General Crimes Act 18 USC § 1153 and the Major Crimes Act 18 USC § 1152) and to state courts (for example under Public Law 280). Congress has imposed limits on tribal courts through the Indian Civil Rights Act (ICRA 25 USC § 1301-1303).

### Public Law 280

The general jurisdictional scheme was altered in California by Public Law 280 enacted by Congress in 1953. PL 280 transferred federal criminal jurisdiction and conferred some civil jurisdiction on states and state courts in the six mandatory Public Law 280 states, which includes California. Public Law 280 is now codified in federal law as 28

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<sup>1</sup> See <http://www.bia.gov/cs/groups/public/documents/text/idc006989.pdf>

<sup>2</sup> Note that some tribes remain “landless” meaning they have no land in trust for their members, while other tribes may have more than one reservation or rancheria.

<sup>3</sup> As of November 12, 2013. See <http://www.bia.gov/cs/groups/xofa/documents/text/idc1-024418.pdf>

<sup>4</sup> See <http://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf>

U.S.C. § 1360 regarding civil jurisdiction and 18 U.S.C. § 1162 regarding criminal jurisdiction.<sup>5</sup>

Per the U.S. Supreme Court in *California v. Cabazon Band of Mission Indians* (1987) 480 U.S. 202, Public Law 280 had the following effect on California's civil and criminal jurisdiction in Indian Country:

In Pub L. 280, Congress expressly granted six States, including California, jurisdiction over specified areas of Indian country within the States and provided for the assumption of jurisdiction by other States. In § 2 [ie. 18 U.S.C. § 1162], California was granted broad criminal jurisdiction over offenses committed by or against Indians within all Indian country within the State. Section 4's [ie. 28 U.S.C. § 1360] grant of civil jurisdiction was more limited. In *Bryan v. Itasca County*, 426 U.S. 373 (1976), we interpreted § 4 to grant States jurisdiction over private civil litigation involving reservation Indians in state court, but not to grant general civil regulatory authority. *Id.*, at 385, 388-390. Accordingly, when a State seeks to enforce a law within an Indian reservation under the authority of Pub. L. 280 it must be determined whether the law is criminal in nature, and thus fully applicable to the reservation under § 2, or civil in nature, and applicable only as it may be relevant to private civil litigation in state court. (at pp. 207-208)

The "criminal/prohibitory" versus "civil/regulatory" distinction was set out by the Court in *Cabazon* as follows:

[I]f the intent of a state law is generally to prohibit certain conduct, it falls within Pub. L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Publ. L. 280 does not authorize its enforcement on an Indian reservation. (p. 209)

So, in terms of civil jurisdiction, the effect of PL 280 was merely to grant Indians access to state court forums to resolve disputes. It did not give the state jurisdiction to impose civil regulatory laws on the tribes or tribal territory. Note that the fact that there are misdemeanor criminal penalties for infraction of a law is not sufficient in and of itself to convert it from civil/regulatory into criminal/prohibitory for the purposes of Pub. L. 280. Further, PL 280 applies only to STATE laws of general application, local ordinances do not apply.

The term "Indian Country" is defined in 18 U.S.C. § 1151:

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United

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<sup>5</sup> See attached statutes.

States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

### California Criminal Jurisdiction in Indian Country pursuant to Public Law 280

Offender	Victim	Jurisdiction
Non-Indian	Non-Indian	State jurisdiction is exclusive of federal and tribal jurisdiction unless certain specific federal laws apply.
Non-Indian	Indian	Generally, state has jurisdiction exclusive of federal and tribal jurisdiction. (However, under VAWA <sup>6</sup> can have concurrent tribal, and Federal if interstate provisions (18 U.S.C. 2261, 2261A, 2262 or 922(g)(8) or (9)) apply.) Under VAWA tribes may opt to exercise some jurisdiction over non-Indians for DV offences
Indian	Non-Indian	State has jurisdiction exclusive of federal government (unless federal government has reassumed jurisdiction under the Tribal Law and order Act) but tribe may exercise concurrent jurisdiction. Federal for certain federal offences including interstate DV.
Indian	Indian	Generally, state has jurisdiction exclusive of federal government (unless federal government has reassumed jurisdiction under Tribal Law and Order Act, or unless specific federal crimes are involved) but tribe may exercise concurrent jurisdiction.
Non-Indian	Victimless	State jurisdiction is exclusive unless federal jurisdiction has been reassumed under Tribal Law and order Act.
Indian	Victimless	There may be concurrent state, tribal, and federal jurisdiction if reassumption under Tribal Law and Order Act. There is no state regulatory jurisdiction.

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<sup>6</sup> Violence Against Women Act

## **Full Faith and Credit**

While tribes are recognized as sovereign, they are not “states” for the purposes of the full faith and credit requirements of Article IV of the U.S. Constitution. There is general consensus (but no Supreme Court authority on point) that tribes are not encompassed by the federal full faith and credit statute (28 U.S.C. §1738). There are, however, a number of relevant federal and state provisions that mandate full faith and credit for and between tribal courts:

- ❑ Indian Child Welfare Act (25 U.S.C. § 1911 (d))
- ❑ Violence Against Women Act (18 U.S.C. § 2265)
- ❑ Child Support Enforcement Act (28 U.S.C. 1738 B)
- ❑ Uniform Child Custody Jurisdiction and Enforcement Act (Family Code §3404)

Where there is no specific statutory mandate for full faith and credit, the general rule is that tribal court orders are entitled to comity

## **Effect on Dependency and Delinquency Jurisdiction**

Under the jurisdictional regime of PL 280, State courts in California generally have jurisdiction over dependency and delinquency cases involving Indians and Indian children, even if the events occur in Indian country. However, this jurisdiction is affected by the requirements of the Indian Child Welfare Act (ICWA) and the fact that tribe’s may also exercise jurisdiction over these matters. Pursuant to ICWA (25 U.S.C. § 1911) even in PL-280 state, tribal jurisdiction is exclusive where a child is already the ward of a tribal court. Further, ICWA recognizes presumptive tribal jurisdiction over cases involving Indian children who are not already wards of a tribal court.

## **Effect on Jurisdiction in DV cases and ability to enforce protective orders**

If events take place in Indian country and either the victim or perpetrator or both are Indian, then tribal court may exercise concurrent jurisdiction with the state court. (Note that there may also be federal jurisdiction over some federally defined crimes). Tribal jurisdiction and remedies subject to limitations under the Indian Civil Rights Act and Major Crimes Act.

Civil state protective or restraining orders may be considered civil/regulatory and therefore be unenforceable in Indian country unless registered with the tribe/tribal court. Some county police departments take position that they have no authority to enforce protective orders in Indian country. Restraining orders issued in a criminal case should be enforced/enforceable on tribal lands.

Few California tribes have tribal courts or tribal police departments.

## **Laws Governing Federal Jurisdiction in Indian Country**

### **General Crimes Act:**

#### **18 U.S.C. § 1152. Laws governing**

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

### **Major Crimes Act:**

#### **18 U.S.C. § 1153. Offenses committed within Indian country**

(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

### **Embezzlement:**

#### **18 U.S.C. § 1163. Embezzlement and theft from Indian tribal organizations**

Whoever embezzles, steals, knowingly converts to his use or the use of another, willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, goods, assets, or other property belonging to any Indian tribal organization or intrusted to the custody or care of any officer, employee, or agent of an Indian tribal organization; or

Whoever, knowing any such moneys, funds, credits, goods, assets, or other property to have been so embezzled, stolen, converted, misapplied or permitted to be misapplied,

receives, conceals, or retains the same with intent to convert it to his use or the use of another--

Shall be fined under this title, or imprisoned not more than five years, or both; but if the value of such property does not exceed the sum of \$1,000, he shall be fined under this title, or imprisoned not more than one year, or both.

As used in this section, the term "Indian tribal organization" means any tribe, band, or community of Indians which is subject to the laws of the United States relating to Indian affairs or any corporation, association, or group which is organized under any of such laws.

**Public Law 280**

**Public Law 280 (Criminal Provision):**

**18 U.S.C. § 1162. State jurisdiction over offenses committed by or against Indians in the Indian country**

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

<b>State or Territory of</b>	<b>Indian country affected</b>
aska	1 Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended
alifornia	1 Indian country within the State
innesota	1 Indian country within the State, except the Red Lake Reservation
braska	1 Indian country within the State
regon	1 Indian country within the State, except the Warm Springs Reservation
isconsin	1 Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.

(d) Notwithstanding subsection (c), at the request of an Indian tribe, and after consultation with and consent by the Attorney General--



(1) sections 1152 and 1153 shall apply in the areas of the Indian country of the Indian tribe; and

(2) jurisdiction over those areas shall be concurrent among the Federal Government, State governments, and, where applicable, tribal governments.

**Public Law 280 (Civil Provisions):**

**28 U.S.C. § 1360. State civil jurisdiction in actions to which Indians are parties**

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

<i>State of</i>	<i>Indian country affected</i>
Alaska	1 Indian country within the State
California	1 Indian country within the State
Minnesota	1 Indian country within the State, except the Red Lake Reservation
Nebraska	1 Indian country within the State
Oregon	1 Indian country within the State, except the Warm Springs Reservation
Wisconsin	1 Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

## Federal Laws Requiring Full Faith and Credit

### 18 U.S.C. § 2265. Full faith and credit given to protection orders

**(a) Full faith and credit.**--Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State or tribe.

**(b) Protection order.**--A protection order issued by a State, tribal, or territorial court is consistent with this subsection if--

(1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

**(c) Cross or counter petition.**--A protection order issued by a State, tribal, or territorial court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if--

(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

**(d) Notification and registration.**--

(1) **Notification.**--A State, Indian tribe, or territory according full faith and credit to an order by a court of another State, Indian tribe, or territory shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State, tribal, or territorial jurisdiction unless requested to do so by the party protected under such order.

(2) **No prior registration or filing as prerequisite for enforcement.**--Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.

**(3) Limits on Internet publication of registration information.**--A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

**(e) Tribal court jurisdiction.**--For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe.

## **25 U.S.C. § 1911. Indian tribe jurisdiction over Indian child custody proceedings**

(d) Full faith and credit to public acts, records, and judicial proceedings of Indian tribes

The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

### **§ 1738B. Full faith and credit for child support orders**

**(a) General rule.**--The appropriate authorities of each State--

**(1)** shall enforce according to its terms a child support order made consistently with this section by a court of another State; and

**(2)** shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i).

**(b) Definitions.**--In this section:

“child” means--

**(A)** a person under 18 years of age; and

**(B)** a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.

“child's State” means the State in which a child resides.

“child's home State” means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.

“child support” means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

“child support order”--

**(A)** means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and

**(B)** includes--

**(i)** a permanent or temporary order; and

**(ii)** an initial order or a modification of an order.

“contestant” means--

**(A)** a person (including a parent) who--

**(i)** claims a right to receive child support;

**(ii)** is a party to a proceeding that may result in the issuance of a child support order; or

**(iii)** is under a child support order; and

**(B)** a State or political subdivision of a State to which the right to obtain child support has been assigned.

“court” means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.

“modification” means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

“State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title 18).

**(c) Requirements of child support orders.**--A child support order made by a court of a State is made consistently with this section if--

(1) a court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g)--

(A) has subject matter jurisdiction to hear the matter and enter such an order; and

(B) has personal jurisdiction over the contestants; and

(2) reasonable notice and opportunity to be heard is given to the contestants.

**(d) Continuing jurisdiction.**--A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order.

**(e) Authority to modify orders.**--A court of a State may modify a child support order issued by a court of another State if--

(1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and

(2)(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant; or

(B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.

**(f) Recognition of child support orders.**--If 1 or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

(1) If only 1 court has issued a child support order, the order of that court must be recognized.

(2) If 2 or more courts have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.

**(3)** If 2 or more courts have issued child support orders for the same obligor and child, and more than 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but if an order has not been issued in the current home State of the child, the order most recently issued must be recognized.

**(4)** If 2 or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.

**(5)** The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection (d).

**(g) Enforcement of modified orders.**--A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections (e) and (f).

**(h) Choice of law.--**

**(1) In general.**--In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3).

**(2) Law of State of issuance of order.**--In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the law of the State of the court that issued the order.

**(3) Period of limitation.**--In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation.

**(i) Registration for modification.**--If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification.

## **California State Laws Concerning Recognition and Enforcement of Tribal Court Orders**

### **Under the Uniform Child Custody Jurisdiction and Enforcement Act:**

#### **Family Code § 3404. Native American children**

(a) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) is not subject to this part to the extent that it is governed by the Indian Child Welfare Act.

(b) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying this chapter and Chapter 2 (commencing with Section 3421).

(c) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this part must be recognized and enforced under Chapter 3 (commencing with Section 3441).

### **Under the Uniform Interstate Family Support Act:**

#### **Family Code § 4901**

The following definitions apply to this chapter:

(s) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term “state” also includes both of the following:

- (1) An Indian tribe

### **Under the Uniform Interstate Enforcement of Domestic Violence Protection Orders:**

#### **Family Code § 6401**

In this part:

(1) “Foreign protection order” means a protection order issued by a tribunal of another state.

(2) “Issuing state” means the state whose tribunal issues a protection order.

(3) “Mutual foreign protection order” means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.

(4) “Protected individual” means an individual protected by a protection order.

(5) “Protection order” means an injunction or other order, issued by a tribunal under the domestic violence, family violence, or antistalking laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to, another individual.

(6) “Respondent” means the individual against whom enforcement of a protection order is sought.

(7) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or any branch of the United States military, that has jurisdiction to issue protection orders.

(8) “Tribunal” means a court, agency, or other entity authorized by law to issue or modify a protection order.

### **Under the Foreign Country Money Judgments Act:**

#### **Code of Civil Procedure § 1714. Definitions**

As used in this chapter:

(a) “Foreign country” means a government other than any of the following:

(1) The United States.

(2) A state, district, commonwealth, territory, or insular possession of the United States.

(3) Any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(b) “Foreign-country judgment” means a judgment of a court of a foreign country. “Foreign-country judgment” includes a judgment by any Indian tribe recognized by the government of the United States.

### **Under the Interstate and International Depositions and Discovery Act**

#### **Code of Civil Procedure § 2029.200.**

In this article:

(a) “Foreign jurisdiction” means either of the following:

(1) A state other than this state.

(2) A foreign nation.



(b) “Foreign subpoena” means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(c) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(d) “State” means a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(e) “Subpoena” means a document, however denominated, issued under authority of a court of record requiring a person to do any of the following:

(1) Attend and give testimony at a deposition.

(2) Produce and permit inspection, copying, testing, or sampling of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person.

(3) Permit inspection of premises under the control of the person.

## **Indian Civil Rights Act**

### **25 U.S.C. § 1301. Definitions**

For purposes of this subchapter, the term--

- (1) "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;
- (2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;
- (3) "Indian court" means any Indian tribal court or court of Indian offense; and
- (4) "Indian" means any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, Title 18, if that person were to commit an offense listed in that section in Indian country to which that section applies.

### **25 U.S.C. § 1302. Constitutional rights**

(a) In general

No Indian tribe in exercising powers of self-government shall--

- (1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
- (2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (3) subject any person for the same offense to be twice put in jeopardy;
- (4) compel any person in any criminal case to be a witness against himself;
- (5) take any private property for a public use without just compensation;

**(6)** deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense (except as provided in subsection (b));

**(7)(A)** require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;

**(B)** except as provided in subparagraph (C), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of \$5,000, or both;

**(C)** subject to subsection (b), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or

**(D)** impose on a person in a criminal proceeding a total penalty or punishment greater than imprisonment for a term of 9 years;

**(8)** deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

**(9)** pass any bill of attainder or ex post facto law; or

**(10)** deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

(b) Offenses subject to greater than 1-year imprisonment or a fine greater than \$5,000

A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant is a person accused of a criminal offense who--

**(1)** has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or

**(2)** is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

(c) Rights of defendants

In a criminal proceeding in which an Indian tribe, in exercising powers of self-

government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall--

**(1)** provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and

**(2)** at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

**(3)** require that the judge presiding over the criminal proceeding--

**(A)** has sufficient legal training to preside over criminal proceedings; and

**(B)** is licensed to practice law by any jurisdiction in the United States;

**(4)** prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government; and

**(5)** maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

(d) Sentences

In the case of a defendant sentenced in accordance with subsections (b) and (c), a tribal court may require the defendant--

**(1)** to serve the sentence--

**(A)** in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines to be developed by the Bureau of Indian Affairs (in consultation with Indian tribes) not later than 180 days after July 29, 2010;

**(B)** in the nearest appropriate Federal facility, at the expense of the United States pursuant to the Bureau of Prisons tribal prisoner pilot program described in section 304(c) of the Tribal Law and Order Act of 2010;

**(C)** in a State or local government-approved detention or correctional center pursuant to an agreement between the Indian tribe and the State or local government; or

**(D)** in an alternative rehabilitation center of an Indian tribe; or

(2) to serve another alternative form of punishment, as determined by the tribal court judge pursuant to tribal law.

(e) Definition of offense

In this section, the term “offense” means a violation of a criminal law.

(f) Effect of section

Nothing in this section affects the obligation of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute any criminal violation in Indian country.

**25 U.S.C. § 1303. Habeas corpus**

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

## Legislation Affecting Jurisdiction Over Domestic Violence Cases

### 25 U.S.C. § 1304. Tribal jurisdiction over crimes of domestic violence

#### (a) Definitions

In this section:

##### (1) Dating violence

The term “dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

##### (2) Domestic violence

The term “domestic violence” means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic- or family- violence laws of an Indian tribe that has jurisdiction over the Indian country where the violence occurs.

##### (3) Indian country

The term “Indian country” has the meaning given the term in section 1151 of Title 18.

##### (4) Participating tribe

The term “participating tribe” means an Indian tribe that elects to exercise special domestic violence criminal jurisdiction over the Indian country of that Indian tribe.

##### (5) Protection order

The term “protection order”--

**(A)** means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and

**(B)** includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite order in another proceeding,

if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(6) Special domestic violence criminal jurisdiction

The term “special domestic violence criminal jurisdiction” means the criminal jurisdiction that a participating tribe may exercise under this section but could not otherwise exercise.

(7) Spouse or intimate partner

The term “spouse or intimate partner” has the meaning given the term in section 2266 of Title 18.

(b) Nature of the criminal jurisdiction

(1) In general

Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by sections 1301 and 1303 of this title, the powers of self-government of a participating tribe include the inherent power of that tribe, which is hereby recognized and affirmed, to exercise special domestic violence criminal jurisdiction over all persons.

(2) Concurrent jurisdiction

The exercise of special domestic violence criminal jurisdiction by a participating tribe shall be concurrent with the jurisdiction of the United States, of a State, or of both.

(3) Applicability

Nothing in this section--

**(A)** creates or eliminates any Federal or State criminal jurisdiction over Indian country;  
or

**(B)** affects the authority of the United States or any State government that has been delegated authority by the United States to investigate and prosecute a criminal violation in Indian country.

(4) Exceptions

**(A)** Victim and defendant are both non-Indians

(i) In general

A participating tribe may not exercise special domestic violence criminal jurisdiction over an alleged offense if neither the defendant nor the alleged victim is an Indian.

(ii) Definition of victim

In this subparagraph and with respect to a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction based on a violation of a protection order, the term “victim” means a person specifically protected by a protection order that the defendant allegedly violated.

(B) Defendant lacks ties to the Indian tribe

A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant only if the defendant--

- (i) resides in the Indian country of the participating tribe;
- (ii) is employed in the Indian country of the participating tribe; or
- (iii) is a spouse, intimate partner, or dating partner of--
  - (I) a member of the participating tribe; or
  - (II) an Indian who resides in the Indian country of the participating tribe.

(c) Criminal conduct

A participating tribe may exercise special domestic violence criminal jurisdiction over a defendant for criminal conduct that falls into one or more of the following categories:

(1) Domestic violence and dating violence

An act of domestic violence or dating violence that occurs in the Indian country of the participating tribe.

(2) Violations of protection orders

An act that--

- (A) occurs in the Indian country of the participating tribe; and
- (B) violates the portion of a protection order that--



(i) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;

(ii) was issued against the defendant;

(iii) is enforceable by the participating tribe; and

(iv) is consistent with section 2265(b) of Title 18.

(d) Rights of defendants

In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the participating tribe shall provide to the defendant--

(1) all applicable rights under this Act;

(2) if a term of imprisonment of any length may be imposed, all rights described in section 1302(c) of this title;

(3) the right to a trial by an impartial jury that is drawn from sources that--

(A) reflect a fair cross section of the community; and

(B) do not systematically exclude any distinctive group in the community, including non-Indians; and

(4) all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise special domestic violence criminal jurisdiction over the defendant.

(e) Petitions to stay detention

(1) In general

A person who has filed a petition for a writ of habeas corpus in a court of the United States under section 1303 of this title may petition that court to stay further detention of that person by the participating tribe.

(2) Grant of stay

A court shall grant a stay described in paragraph (1) if the court--

(A) finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

**(B)** after giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

(3) Notice

An Indian tribe that has ordered the detention of any person has a duty to timely notify such person of his rights and privileges under this subsection and under section 1303 of this title.

(f) Grants to tribal governments

The Attorney General may award grants to the governments of Indian tribes (or to authorized designees of those governments)--

**(1)** to strengthen tribal criminal justice systems to assist Indian tribes in exercising special domestic violence criminal jurisdiction, including--

**(A)** law enforcement (including the capacity of law enforcement or court personnel to enter information into and obtain information from national crime information databases);

**(B)** prosecution;

**(C)** trial and appellate courts;

**(D)** probation systems;

**(E)** detention and correctional facilities;

**(F)** alternative rehabilitation centers;

**(G)** culturally appropriate services and assistance for victims and their families; and

**(H)** criminal codes and rules of criminal procedure, appellate procedure, and evidence;

**(2)** to provide indigent criminal defendants with the effective assistance of licensed defense counsel, at no cost to the defendant, in criminal proceedings in which a participating tribe prosecutes a crime of domestic violence or dating violence or a criminal violation of a protection order;

**(3)** to ensure that, in criminal proceedings in which a participating tribe exercises special domestic violence criminal jurisdiction, jurors are summoned, selected, and instructed in a manner consistent with all applicable requirements; and

(4) to accord victims of domestic violence, dating violence, and violations of protection orders rights that are similar to the rights of a crime victim described in section 3771(a) of Title 18, consistent with tribal law and custom.

(g) Supplement, not supplant

Amounts made available under this section shall supplement and not supplant any other Federal, State, tribal, or local government amounts made available to carry out activities described in this section.

(h) Authorization of appropriations

There are authorized to be appropriated \$5,000,000 for each of fiscal years 2014 through 2018 to carry out subsection (f) and to provide training, technical assistance, data collection, and evaluation of the criminal justice systems of participating tribes.

### **18 U.S.C. § 2261. Interstate domestic violence**

**(a) Offenses.--**

**(1) Travel or conduct of offender.--**A person who travels in interstate or foreign commerce or enters or leaves Indian country or is present within the special maritime and territorial jurisdiction of the United States with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner, and who, in the course of or as a result of such travel or presence, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

**(2) Causing travel of victim.--**A person who causes a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

**(b) Penalties.--**A person who violates this section or section 2261A shall be fined under this title, imprisoned--

**(1)** for life or any term of years, if death of the victim results;

**(2)** for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

**(3)** for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case,

(6) Whoever commits the crime of stalking in violation of a temporary or permanent civil or criminal injunction, restraining order, no-contact order, or other order described in section 2266 of title 18, United States Code, shall be punished by imprisonment for not less than 1 year.

or both fined and imprisoned.

### **18 U.S.C. § 2261A. Stalking**

Whoever--

(1) travels in interstate or foreign commerce or is present within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel or presence engages in conduct that--

(A) places that person in reasonable fear of the death of, or serious bodily injury to--

(i) that person;

(ii) an immediate family member (as defined in section 115) of that person; or

(iii) a spouse or intimate partner of that person; or

(B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of subparagraph (A); or

(2) with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, uses the mail, any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that--

(A) places that person in reasonable fear of the death of or serious bodily injury to a person described in clause (i), (ii), or (iii) of paragraph (1)(A); or

(B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of paragraph (1)(A),

shall be punished as provided in section 2261(b) of this title.

**18 U.S.C. § 2262. Interstate violation of protection order**

**(a) Offenses.--**

**(1) Travel or conduct of offender.--**A person who travels in interstate or foreign commerce, or enters or leaves Indian country or is present within the special maritime and territorial jurisdiction of the United States, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

**(2) Causing travel of victim.--**A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b).

**(b) Penalties.--**A person who violates this section shall be fined under this title, imprisoned--

**(1)** for life or any term of years, if death of the victim results;

**(2)** for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

**(3)** for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

**(4)** as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

**(5)** for not more than 5 years, in any other case,

or both fined and imprisoned.

**18 U.S.C. § 922. Unlawful acts**

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**(g)** It shall be unlawful for any person—

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**(8)** who is subject to a court order that--

**(A)** was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

**(B)** restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

**(C)(i)** includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

**(ii)** by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

**(9)** who has been convicted in any court of a misdemeanor crime of domestic violence,

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

OFFENDER	VICTIM	JX - NON PL-280	JX - PL 280 * (18 USC 1162 & 25 USC 1321(a))
INDIAN	INDIAN	TRIBAL only for all misd.; FEDERAL for felony 18 USC 1152, 1153, 2261, 2261A, 2262, 922(g)(8) or (9); Concurrent TRIBAL & FEDERAL for TLOA felonies – but see <i>Petite Policy</i>	CONCURRENT TRIBAL for misd. & TLOA felonies; STATE for all felonies & misd. (except regulatory); MAYBE FEDERAL 18 USC 1152, 1153 (ONLY if feds reassume jdx under TLOA & tribe has not punished defendant for 1152 type of offense); FEDERAL if 2261, 2261A, 2262, 922(g)(8) or (9)
INDIAN	NON-INDIAN	FEDERAL under 18 USC 1152, 1153, 2261, 2261A, 2262, 922(g)(8) or (9); <u>unless</u> defendant punished by Tribe for 1152 crime - and then no JX; TRIBAL for Misd. and TLOA felonies	CONCURRENT TRIBAL for misd. & TLOA felonies; STATE for all felonies & misd. (except regulatory); MAYBE FEDERAL 18 USC 1152, 1153 (ONLY if feds reassume jdx under TLOA & tribe has not punished defendant for 1152 type of offense); FEDERAL if 2261, 2261A, 2262, 922(g)(8) or (9)
NON-INDIAN	INDIAN	FEDERAL for felonies & misd. 18 USC 1152, 2261, 2261A, 2262, 922(g)(8) or (9).; TRIBAL <u>ONLY</u> if VAWA 2013 & otherwise not <u>U.S. v. Oliphant</u>	CONCURRENT TRIBAL for misd. & felony ONLY if under VAWA 2013; STATE for all felonies & misd. (except regulatory); FEDERAL if 18 USC 2261, 2261A, 2262, 922(g)(8) or (9)
NON-INDIAN	NON-INDIAN	STATE exclusively – unless certain federal laws apply- FEDERAL if 2261, 2261A, 2262, 922(g)(8) or (9), etc.	State exclusively – unless certain federal laws apply (e.g., RICO, theft of mail, treason, FEDERAL if 2261, 2261A, 2262, 922(g)(8) or (9), etc.)
INDIAN	VICTIMLESS	TRIBAL but could be FEDERAL in some cases (e.g., treason, theft of mail, RICO, etc.)	CONCURRENT TRIBAL and STATE (except regulatory); FEDERAL if feds reassumed jdx under TLOA and tribe has not punished for 1152 type of offense
NON-INDIAN	VICTIMLESS	STATE but could be FEDERAL in some cases (e.g., 18 USC 1152, treason, theft of mail, RICO, etc.)	STATE exclusively but could be FEDERAL if feds reassumed jdx under TLOA and it is an 18 USC 1152 offense
INDIAN or NON-INDIAN	TRIBE	FEDERAL 18 USC 1163; concurrent w/ TRIBAL only if INDIAN offender for misd.& TLOA felonies; STATE for non-Indians unless 18 USC 1163 applies = concurrent FEDERAL	STATE (unless regulatory); FEDERAL 18 USC 1163 concurrent; concurrent with TRIBAL for misd. & TLOA felonies only if INDIAN offender

**Criminal Jurisdiction in California Indian Country under *Public Law 280, 18 U.S.C. § 1162***

Offender	Victim	Jurisdiction
Non-Indian	Non-Indian	State jurisdiction is exclusive of federal and tribal jurisdiction.
Non-Indian	Indian	California has jurisdiction exclusive of federal and tribal jurisdiction. There is no tribal jurisdiction.
Indian	Non-Indian	California has jurisdiction exclusive of federal government but tribe may have concurrent jurisdiction.
Indian	Indian	California has jurisdiction exclusive of federal government. Tribe may also exercise jurisdiction.
Non-Indian	Victimless	California has exclusive jurisdiction.
Indian	Victimless	There may be concurrent state and tribal jurisdiction. There is no state regulatory jurisdiction.



**TRIBAL HEALING TO WELLNESS COURTS:  
INTERGOVERNMENTAL COLLABORATION**

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INTERGOVERNMENTAL COLLABORATION**



**May 2021**



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Tribal Law and Policy Institute: [www.Home.TLPI.org](http://www.Home.TLPI.org)  
Tribal Court Clearinghouse: [www.TLPI.org](http://www.TLPI.org)**

[Inside Cover]



# **Tribal Healing to Wellness Courts: Intergovernmental Collaboration**

*May 2021*

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## Preface

Sovereignty is the ability to regulate the community within a territory. It is also the responsibility to do so. Inter-sovereign collaboration tempts concern of infringement, resulting in diminished or divested sovereign authority. However, experience with tribal-state Wellness Court collaborations has revealed the opposite. Innovative collaborations between tribal Healing to Wellness Courts and state courts have enhanced each sovereignty's capacity to serve, producing a healing community that is stronger than the sum of its parts. This publication seeks to examine the ways in which sovereigns have dared to cross the border and highlight how those approaches have resulted in enhanced Wellness Courts.

This publication would not have been possible without the generosity of a wonderful network of Healing to Wellness Court practitioners, tribal communities, state partners, and technical assistance providers. The Tribal Law and Policy Institute (TLPI) would like to acknowledge our joy and privilege of working with these trailblazers for the past twenty years. TLPI's experience as a training and technical assistance provider with courts innovating in this area has gifted us with an enormous amount of knowledge and the opportunity to witness tribally-driven Wellness Court innovations and collaborations as they have developed.

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*Healing to Wellness Courts are the manifestation of a community coalescing to heal. They are a modern take on restorative traditions. It is fitting, that in Wellness Court we strive to listen and care, and in our pursuits our community bonds also heal.*

*Lauren van Schilfgaarde, Technical Assistance Provider*

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Every community we work with has been incredibly generous with their time and resources: willing to speak to other tribal practitioners and share lessons learned and documents used to operate their own court. As a technical assistance provider, TLPI shares these stories with the Wellness Court community—linking individual tribal practitioners to their peers working on similar issues in other regions. Despite this, in the tribal-state collaboration context, many fruitful and effective collaborations are not well known or well-documented outside of the jurisdiction served. This publication is an attempt to make the information about the collaborations we've encountered available more broadly.

We thank each tribal practitioner who has taken the time to share or verify the information in this publication. Special thanks to our frequent partner, the National American Indian Court Judge's Association (NAICJA) for its work building and maintaining an important and relevant web resource *Tribal Access to Justice Innovation* (TAJI). TAJI helps tribal justice practitioners learn about emerging and promising justice-related programs in Indian country by putting a



spotlight on practical information detailing how Native nations are addressing common challenges. TAJI has put a spotlight on several Wellness Court collaborations that will be discussed later in this publication and served as an essential reference. We encourage readers to explore the TAJI site by visiting [www.TribalJustice.org](http://www.TribalJustice.org).

## About This Resource

The Healing to Wellness Court model is premised on bucking the siloed status quo in favor of multi-disciplinary collaboration to improve the outcomes of court-involved substance abusers. Collaboration is essential. Intergovernmental collaboration is merely an extension of this premise. This publication is intended to assist Tribal Healing to Wellness Courts that are interested in building intergovernmental collaborations, including tribal-state collaborations. Whether the Wellness Court has been operational for decades or is still in the planning process, collaboration is essential.

Like the Wellness Court model, intergovernmental collaborations have developed organically, through innovation that meets the needs and contexts of the courts and their communities. As a result, there are many different existing collaborations that take many different forms. This resource will frame the subject by providing a brief history of Tribal Healing to Wellness Courts, discuss some common traits found in existing collaborations, and then use those common traits to discuss actual collaborations that are operating in the Tribal Wellness Court context.

For a more comprehensive examination of the Wellness Court model, we highly recommend TLPI's *Tribal Healing to Wellness Courts Publication Series*.<sup>1</sup> Similarly, for a further examination of tribal-state collaborations more generally, we recommend TLPI's *Tribal-State Collaboration Project*<sup>2</sup> and the *Tribal Justice Collaborative Project*.<sup>3</sup> These resources, along with others, are referenced throughout this publication and listed in the appendix. This publication builds upon those resources and seeks to stimulate discussions within Wellness Courts as they determine what kinds of collaborations would best serve their communities.

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<sup>1</sup> TRIBAL LAW AND POLICY INSTITUTE, TRIBAL HEALING TO WELLNESS COURT PUBLICATION SERIES, <https://www.home.tlpi.org/tribal-healing-to-wellness-courts>.

<sup>2</sup> TRIBAL LAW AND POLICY INSTITUTE, TRIBAL-STATE COLLABORATION PUBLICATIONS, <https://www.home.tlpi.org/tribal-healing-to-wellness-courts>.

<sup>3</sup> TRIBAL LAW AND POLICY INSTITUTE, TRIBAL JUSTICE COLLABORATIVE, <https://www.home.tlpi.org/tribal-justice-collaborative>.

## Chapter 1: Tribal Healing to Wellness Courts—Historical Context

The adversarial justice system, like substance use disorders, is a colonial import, imposed on tribes regardless of how it likened to traditional justice systems. In many ways, the story of Tribal Healing to Wellness Courts and the collaborations they imbue are a testament to the resurgence of indigeneity. They are as diverse as the communities they serve. The following section discusses the history of Healing to Wellness Courts to contextualize their role in tribal justice systems and as collaborators.

### The Drug Court Movement

The modern Wellness Court is linked to the formation of drug courts in state systems. The United States' "War on Drugs" resulted in a large increase of drug-related cases in state criminal justice systems, increased drug-related convictions, and overcrowded jails and prisons.<sup>4</sup> Those who were imprisoned as a result of this policy were often subject to traumatization by the prison system and, upon release, faced stigma and other barriers to re-integrating with society. Compounding the problem, those who were imprisoned were usually not afforded meaningful treatment for their substance abuse and its underlying causes—the very reason they were incarcerated in the first place.<sup>5</sup> Criminal justice systems quickly became overburdened and, ultimately, it was found that incarceration was not having the desired deterrent or rehabilitative effect policy makers may have hoped. In response, the drug court approach was developed to process substance abuse cases in a way that systematically prioritized treatment—tethering treatment to judicial authority,

### The term *Healing to Wellness Court*

Early on, Native nations that were developing their own Wellness Courts preferred to avoid the term "drug court" and searched for a new term that would connect culturally to the tribal community and clearly incorporate alcohol abuse cases. Today, Tribal Healing to Wellness Courts have several names including: Wellness Court, Healing Court, Treatment Court, Substance Abuse Court, Alternative Court, and many Native names that reflect the communities they serve. TLPI prefers the term "Tribal Healing to Wellness Court," a nod to both the healing and wellness aspects of the approach as well as the idea that wellness is an ongoing journey. This publication will use "Healing to Wellness Court" and "Wellness Court" interchangeably.

<sup>4</sup>Joseph Thomas Flies-Away, Jerry Gardner, and Carrie Garrow, [Overview of Tribal Healing to Wellness Courts](#), 1 (Tribal Law and Policy Institute, 2014).

<sup>5</sup>Ingrid A. Binswanger et al., "[Return to drug use and overdose after release from prison: A qualitative study of risk and protective factors](#)," *Addiction Science & Clinical Practice* 7, No. 1, 3 (2012); C. J. Mumola & Jennifer C. Karberg, [Drug Use and Dependence, State and Federal Prisoners, 2004](#) (Department of Justice, Office of Justice Programs, Bureau of Justice Statistics 2006).

## The Wellness Court Model

A Wellness Court is a docket of cases for participants diagnosed with a substance use disorder. The “types” of Wellness Courts can vary depending on the target population and/or reasons for court involvement (triggering case). They can range from criminal, to child abuse or neglect, to targeting juveniles or veterans. Multi-disciplinary teams coordinate services. Participants’ needs are assessed, and a case plan is developed. The team, along with the participant, meet weekly to ensure participant engagement, and pivot as needs change. Accountability is collective and immediate. The participant progresses through phases, generally taking at least one year to complete.

multi-disciplinary input, and personal accountability. These drug courts were successful, and what began as a grassroots initiative became a nation-wide trend.<sup>6</sup>

### Wellness Courts

Word of the drug court movement spread to Indian country, where many tribal communities were confronting intergenerational substance use issues and severe alcoholism. As interest and research grew, tribal advocates explored how the drug court model could have a positive impact within Native nations. They also noted that the model could easily be tailored to reflect traditional tribal justice systems and reinforce tribal values related to restorative justice. The nature of the Wellness Court model reflects many consensus-based, non-adversarial, traditional indigenous dispute-resolution systems.<sup>7</sup> In August 2003, tribal-specific drug court curriculums were drafted and adapted from state and national efforts and were used for the first formal tribal drug court training sessions.<sup>8</sup>

Tribal Healing to Wellness Courts are not simply tribal courts that hear cases involving alcohol- and drug use-related issues. A Wellness Court is a special court docket-collaborative with the responsibility to hear diverted cases involving individuals who struggle with substance use-related issues. The court partners with all the service providers to create a bundle stronger than the sum of its parts. Participants must complete a program of extensive supervision and treatment. The team must gather, listen to each other, and

determine how best to respond and support the participant in real time. The Wellness Court thus brings the full weight of all interveners.

<sup>6</sup> Lurigio, Arthur J., *The First 20 Years of Drug Treatment Courts: A Brief Description of their History and Impact*, 72: 1 FED. PROBATION J. 2008 (“By April 2007, more than 1,000 specialized drug courts were operational in all 50 states as well as the District of Columbia, Guam, and Puerto Rico.”).

<sup>7</sup> Flies-Away et al., *Overview of Tribal Healing to Wellness Courts*, 1.

<sup>8</sup> TRIBAL LAW AND POLICY INSTITUTE, *TRIBAL HEALING TO WELLNESS COURTS: THE KEY COMPONENTS* (U.S. Department of Justice, Bureau of Justice Assistance, April 2003).

In criminal cases, this can include the judge, prosecutor, defense counselor, treatment specialists, probation officers, law enforcement and correctional personnel, educational and vocational experts, community leaders, and traditional healers. In child welfare cases, the team will also include child welfare workers, those who serve families, and others who have expertise in child development. Because team members represent formerly siloed agencies, the team must develop new, and frequently innovative, information-sharing protocols. Their hierarchal chains of command must adapt to accommodate the consensus and community of the team.

The participant is asked to address their struggle with substance use in a non-confrontational, but frequently meeting forum. Participant case plans can include bi-weekly therapy, bi-weekly drug testing, weekly community service, education or vocational training, sobriety meetings, and, critically, weekly court. The structure of the court supports a higher level of accountability for participants by leveraging the coercive power of the judicial system to achieve abstinence and alter their behavior through the combination of judicial supervision, treatment, drug testing, incentives, sanctions, case management, and appropriate cultural components.

Yet, the structure of the court, the representatives on the team, the components of the case plan—all the Wellness Court is designed locally. The resulting design of a Wellness Court program reflects the unique strengths, circumstances, and capacities of each Native nation.<sup>9</sup>

Tribal Healing to Wellness Courts are guided by the *Tribal Ten Key Components*<sup>10</sup>—the fundamental essentials of the drug court concept. Fashioned after the *Ten Key Components* initially formatted for state drug courts,<sup>11</sup> the *Tribal Healing to Wellness Court Ten Key Components* were crafted to reflect tribal notions of healing and wellness, particularly the concept of a healing to wellness journey, and the collaborative effort involved with supporting such a journey.<sup>12</sup> The *Tribal Ten Key Components* are the basic operational characteristics that all Healing to Wellness Courts should share as benchmarks for performance. They are also used by the federal Bureau of Justice Assistance in consideration of drug court grant awards. Additional information and tips for implementing the 10 Key Components can be found in the *Family Treatment Court Best Practice Standards* and the *Tribal 10 Key Components' Suggested Practices with the (National Association of Drug Court Professionals) NADCP's Best Practices*<sup>13</sup> as well as in the Appendix.

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<sup>9</sup> Flies-Away et al., [Overview of Tribal Healing to Wellness Courts](#), 2–3.

<sup>10</sup> Joseph Thomas Flies-Away, Carrie Garrow, and Pat Sekaquaptewa, [Tribal Healing to Wellness Courts: The Key Components](#), 2nd ed. (Tribal Law and Policy Institute, 2014), [hereinafter *The Key Components*].

<sup>11</sup> National Association of Drug Court Professionals Drug Court Standards Committee, [Defining Drug Courts: The Key Components](#) (U.S. Department of Justice, Bureau of Justice Assistance, reprinted October 2004).

<sup>12</sup> Flies-Away et al., [The Key Components](#).

<sup>13</sup> Hon. Carrie Garrow, [TRIBAL 10 KEY COMPONENTS' SUGGESTED PRACTICES WITH NADCP'S BEST PRACTICES](#).



## Collaboration Benefits in Wellness Court

- Delivery of culturally appropriate services
- Provision of geographically relevant services
- Enhanced supervision
- Coordination of multiple case plans
- Leveraged legal incentives
- Maximization of shared resources
- Reduction of administrative costs
- Increased cultural competency
- Better ability to stay ahead of issues
- Reduced litigation costs
- Increased funding opportunities
- Coordinated jurisdictional authority
- Development of positive relationships that can benefit other programs
- Increased assertions of sovereignty

## Wellness Courts as Opportunities for Tribal-State Collaboration

Wellness Courts are collaborative by design. The model is an intentional disruption of the siloed, adversarial approach, in which services are offered only after a protracted battle and providers rarely interact. To better serve participants, all the agencies that interact with the participant, including the court, supervision, treatment, and other service providers come together for weekly meetings to update each other. This multi-disciplinary and multi-departmental effort is dynamic, outside the typical procedures, and requiring participation and cohesion among staff from different agencies, with different job responsibilities and different training backgrounds.

In flipping the focus from the case to the participant, the Wellness Court must ask whether the participant's needs truly end at the jurisdictional border. Many communities find their participants not only have needs but also have prior and even simultaneous cases in neighboring communities. Many courts find their jurisdictional limitations impede their ability to effectively serve their participants.

Wellness Courts, with their experience in building collaborations, have the skills needed to develop strong partnerships with state and local entities. Conversely, states and local entities such as counties see Wellness Courts reducing social and economic costs of substance abuse that can ripple throughout an entire region.

Yet, collaborations between tribes and states are historically limited. The U.S. Supreme Court noted in 1903 that tribes

“own no allegiance to the states, and receive from them no protection. Because of the local ill feeling, the people of the states where they are found are often their deadliest enemies.”<sup>14</sup> For many, the barriers impeding collaboration have not eased in the subsequent decades. The systems—framed in imperial sovereign versus sovereign jurisdictional battlegrounds, clouded with heavy historical traumas—are poor settings for alliances. There are legitimate legal, political, and social reasons for refraining from inter-jurisdictional collaborations.

But in the Wellness Court context, we have found reasons to engage. The participant continues to benefit from the breakdown of silos, including those between sovereigns. And in the midst of coming together, courts have embarked on healing for themselves, their systems, and their communities. The Wellness Court, a tool for participants suffering internally, brings the community together to heal the person. In doing so, it happens that the coming together is also bringing external healing. In a 2012 working group report on Tribal-State court collaboration, attendees specifically identified Wellness Courts as a ripe collaborative forum, in which “[t]hey appear to be created locally to specifically handle the issues of the tribe and county involved.”<sup>15</sup>

The following chapter discusses ways to frame discussions about collaborations generally to set the stage for discussions about the specific methods of collaboration.

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<sup>14</sup> *Lone Wolf v. Hitchcock*, 187 U.S. 553, 567 (1903).

<sup>15</sup> Maureen White Eagle and Heather Valdez Singleton, [Tribal-State Court Collaboration Working Group Report](#), 12 (Tribal Law and Policy Institute, April 2013).

## Chapter 2: Building a Collaboration

Wellness Court collaborations are only one type of governmental collaboration. States, local jurisdictions, tribes, and agencies collaborate in many areas, from natural resource management to healthcare. Inter-governmental collaborations have produced numerous benefits including better services, increased amount and range of services, increased insight, and regional solutions to problems that do not recognize jurisdictional boundaries.<sup>16</sup> In TLPI's 2019 publication *Crossing the Bridge: Tribal-State-Local Collaboration*,<sup>17</sup> Judge William Thorne and Suzanne Garcia reflected on the process of how governments can build successful collaborations. They identified some general best practices:

- 
- Set initial goals
  - Create your team
  - Set realistic timelines and expectations
  - Define collaboration
  - Assess the groups' readiness to collaborate
  - Establish communication and internal decision-making ground rules
  - Establish common values
  - Know the history and the context
- 

A collaboration's initial goals should be rooted in coming together, rather than solving the largest, most systemic challenges (that's for later). For some Indigenous communities, the initial goal is simply to share and understand each other's perspective.<sup>18</sup> To foster this, collaborations must seek a conciliatory and welcoming atmosphere. An atmosphere of "yes, and" instead of "no, but."<sup>19</sup> Some collaborations have proceeded too quickly, charging into implementation before the collaborators had a chance to coalesce through consensus.

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<sup>16</sup> William Thorne and Suzanne Garcia, [Crossing the Bridge: Tribal-State-Local Collaboration](#), 2 (Tribal Law and Policy Institute, February 2019).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*, 9.

<sup>19</sup> *Id.*



Teams must be willing to engage in a respectful exchange of ideas, a commitment to learning about each other, and a willingness to jointly own a challenge and build a solution together.<sup>20</sup> Membership must therefore be selective. Not every person is ready to participate on a team. There should be a balance of power and representation; diverse perspectives; and demonstrated interest, expertise, and experience.<sup>21</sup>

While team members should not be selected simply based on their position within a particular department, team members should have the ability to commit themselves and their departments to the collaboration—a tricky balance.

The team should take time to learn about each other, their families, and the community they represent. Through regular meetings and learning about each other’s practices, collaborative partners have built trust and developed professional relationships—rippling benefits beyond the collaborative project.<sup>22</sup> Especially when working with tribes, working relationships must be based on an understanding of the history, culture, and present concerns of the tribe and their justice system.<sup>23</sup> Building trust requires a willingness to dig in and listen. Perceived disinterest, ignorance, and bias have thwarted would-be collaborations. So too has comparing or categorizing systems as better or superior to others. “People don’t have to like each other to work together, but they do need to know each other and have a level of trust.”<sup>24</sup>

The team should build upon small successes. Small “wins” build relationships of trust that allow for ongoing work, as well as permitting an opportunity to circle back.<sup>25</sup> Collaborations should be given a space in which to succeed. This means working toward realistic goals, parsed out into bite-sized phases with enforced timelines and feasible assignments. It also means that the process of coming together is ongoing. Broad-based participation exists at both the first meeting and the thirtieth. Collaborations with longevity utilize personal relationships, but solidify their impact through communication plans, regular meetings, mutual commitments, and ongoing education.



With open minds, we can learn much from each other. The wisdom of collaboration becomes apparent as the common ground is uncovered and explored.

Hon. Michael Petoskey

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<sup>20</sup> Jennifer Walter and Heather Valdez Freedman, [Emerging Strategies in Tribal-State Collaboration: Barriers and Solutions to Enforcing Tribal Protection Orders: December 6, 2017 Meeting Report](#), 2 (Tribal Law and Policy Institute, February 2019).

<sup>21</sup> Thorne and Garcia, [Crossing the Bridge: Tribal-State-Local Collaboration](#), 13 and Appendix C.

<sup>22</sup> Walter and Valdez Freedman, [Emerging Strategies](#), 8.

<sup>23</sup> *Id.*, 12.

<sup>24</sup> White Eagle and Valdez Singleton, [Tribal-State Court Collaboration Working Group Report](#), 9.

<sup>25</sup> Thorne and Garcia, [Crossing the Bridge: Tribal-State-Local Collaboration](#), 17.



“[T]his commitment to solve problems together is what drives them to be persistent and creative in their efforts to reach out across jurisdictions and educate one another and their partners.”

Walter and Freedman at 12.

### ***Intra-governmental* and *Inter-governmental* Collaborations**

The Healing to Wellness Court model generally consists of *intra-governmental* collaboration. ***Intra-governmental*** collaborations cross different agencies of one government. For example, the court, the police department, and the department of social services attending the same staffing for a Wellness Court participant is *intra-governmental* collaboration. ***Inter-governmental*** collaborations cross multiple governments. For example, the county district attorney’s office contacting the adjacent Native nation’s Wellness Court when a tribal citizen under the age of 18 has been arrested or charged with a crime is *inter-jurisdictional* collaboration. *Intergovernmental* collaborations tend to occur between physically adjacent governments.

In many cases, developing an *inter-governmental* collaboration will be more complex than developing an *intra-governmental* collaboration. Creating cohesion and developing trusting relationships within one government can be a heavy lift. Creating those trusting relationships between two separate governments in which they both may be facing funding shortages, staff turnover, and bureaucracies can double the work. Separate sovereigns must also navigate potentially different goals, different lines of supervision, different historical contexts, and no mandate for good-faith cooperation. While noting the critical importance (and often daunting task) of *intra-governmental* collaborations, this publication will focus largely on *inter-governmental* collaboration activities.

### **Informal and Formal Agreements**

Collaborations can be categorized as informal or formal. Many collaborations require minimal cooperation and the partners may agree there is no need to document their process. In other circumstances, the partners memorialize their commitment and process in writing. While informal agreements tend to develop organically, formal agreements can originate either organically or with the original intent that the collaboration will be reinforced in writing. Each type of collaboration has its benefits and challenges.

## Informal Agreements

Informal agreements can take many shapes but are generally a verbal agreement based on personal relationships. Here, the term “informal” simply means an unwritten arrangement or understanding based upon the trust of the parties. An informal agreement can be mutually beneficial—but does not have to be. Typically, simple, informal collaborations are most successful when the incentives to cooperate are high and the cost of collaborating is low. Minimal, informal collaborations are often a vital first step toward building positive relationships that can lead to future collaborations.

The benefits of an informal agreement:

- Can include plasticity: the collaboration can quickly shift and adapt to new contexts;
- Needs quick and responsive implementation;
- Requires fewer resources to develop and maintain;
- May not require explicit legislative, executive, or even agency approval; and
- Can be a steppingstone to stronger relationships and further collaborations.

Some disadvantages:

- Include no or few enforcement mechanisms;
- Are often personal-relationship dependent and are therefore vulnerable to staff turnover;
- Are difficult to apply to complex issues with multiple stakeholders;
- Are difficult to bring to scale, that is serve many participants or offer multiple services;
- Are ripe for a perception of unfairness; and
- Limit the role of other team members, and thereby their buy-in and ability to contribute or innovate.

Informal agreements have spawned the sharing of information, joint trainings, and even whole Wellness Courts.

## Formal Agreements

Formal agreements can also take many shapes but are generally a written, institutional agreement intended to withstand changes in staff and elected leadership. These agreements can be legally binding (i.e., they have an enforcement mechanism). Normally, with formal agreements, each party to the agreement is gaining a benefit. In the Wellness Court context, formal inter-governmental collaborations can ensure smooth operations in complex cases and projects with long durations.

The benefits of a formal agreement:

- Clearly defined collaboration tasks and roles of each collaborator;
- Increased accountability, both within a government and between governments;
- Survival of staff turnover;
- Added participant, department, and community assurance;
- Increased perception of fairness;
- The full resources of each partner are leveraged;
- Increased likelihood of buy-in from hesitant agencies; and
- A model for other agencies and governments.

Some disadvantages:

- Slow and long implementation process, both to get partners to consensus and to commit a complex arrangement to writing;
- Increased rigidity: difficult and time consuming to modify the agreement;
- Concerns of liability must be overcome;
- Lack of clear funding stream; and
- A thwarted attempt to formalize an agreement can sabotage an otherwise successful informal agreement.

## Levels of Interaction

Another way of thinking about collaborations is to consider the nature of the interaction needed to meet the goals of the partnership. First, formalized and fully integrated collaborations can be effective, but are not necessarily superior to informal, narrow-scope partnerships. Both can be roads to success. Collaborators must consider the dynamics of their tribal/state relations and their goals, common and otherwise. Second, this work appears to assume that a more integrated level of collaboration is necessarily better than a less integrated level of collaboration. Third, and significantly, this work does not consider the role and importance of tribal self-determination: that it is for each tribe to decide what level of interaction is in the best interests of their community. Thorne and Garcia in *Crossing the Bridge*<sup>26</sup> propose the following model to conceive of levels of interaction:

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<sup>26</sup> Thorne and Garcia, [Crossing the Bridge: Tribal-State-Local Collaboration](#), 15.

# Levels of Interaction



These “levels” are fluid. In situations in which there is minimal cooperation the jurisdictions or agencies are not necessarily at cross-purposes. There are some efforts to work together, just not on a regular basis. When a partner needs something, like information about a participant, they call the other jurisdiction. But there is no written agreement or regular meeting. When there is full cooperation the two jurisdictions work together regularly on an issue with a set process—such as a calendared day on which they share information without being asked. When agencies or jurisdictions are collaborating, they might meet to think about how they can accomplish mutual goals, but each continues to use their own process. And finally, when jurisdictions or agencies are co-creating, they find ways to merge their processes, so the method used to accomplish a task, and perhaps the paperwork used to memorialize that process, has been developed together.

Keep in mind that no one level of collaboration is preferable to another. A Tribal Healing to Wellness court team may decide that only minimal cooperation with a county or state partner is warranted given their participants’ needs, the current relationship with that partner, and the partner’s ability to provide services. For example, the county’s behavioral health may have no expertise or interest in delivering culturally grounded services and, therefore, minimal cooperation is in the best interests of the Native community. In the alternative, the same court team may have a long-standing, trusting relationship with a different county program and may

want a relationship with that agency that involves co-creation of programs and integrated service delivery. “Successful” collaboration is defined by individual communities and the optimum level of interaction will always depend on their goals and the context in which the collaboration takes place.

## Co-Training

One type of oft-overlooked collaboration is co-training. Wellness Courts are unique in their blending of legal, behavioral health, and social service expertise to create a program model that tethers a court’s authority to prosecute crime to the latest substance abuse treatment modalities. This hybrid model is rife with learning curves. A court and legal staff that is accustomed to practicing retributive and adversarial criminal court will need to learn the science of addiction and restorative justice models. Likewise, counselors and medical professionals must adapt to a court model and learn to balance its sanction authority with solid treatment principles. As such, treatment courts are rapidly evolving and the evidence base, particularly for Healing to Wellness Courts, can only expand. What constituted a best practice a decade ago may no longer be supported by the latest research. Whether the court is in the planning stages or has been operational for decades, continuing training is essential. Fortunately, co-training and peer-to-peer learning is widely practiced among Wellness Court professionals.

With minimal collaboration required, Wellness Courts have many collaboration possibilities when it comes to training.

1. A tribe can learn and benefit from another tribe’s expertise.
2. A tribe can learn from their county or state counterparts (or vice versa).
3. A tribe can work with their county, state, and/or tribal counterparts to conduct a mutually beneficial training event.

Regardless of approach, co-trainings are usually mutually beneficial and a great opportunity to share resources or address an issue impacting the collaborating jurisdictions.

## Chapter 3: Wellness Court Collaboration Profiles

The following section will examine different inter-governmental collaborations using the characteristics of informal/formal and the *Five Levels of Interaction* to frame the conversation. By using these characteristics, this resource attempts to emphasize that collaboration is a fluid spectrum of informal and formal agreements and may include both “zero cooperation” and “co-creation” collaborations within any one Wellness Court. For example, a Wellness Court may have a cooperative relationship with state law enforcement but may not be cooperating with state child welfare. This chapter will not examine examples of “zero cooperation.” For more information on any collaboration highlighted in this section, or to request contact information for a Wellness Court, please contact the TLPI at [wellness@TLPI.org](mailto:wellness@TLPI.org) or visit [www.WellnessCourts.org](http://www.WellnessCourts.org).

## Minimal Cooperation

**Levels of Interaction**  
WELLNESS COURT COLLABORATION

Minimal Cooperation

**There are some efforts to provide help to the other jurisdiction so that both operate more efficiently.**

### Makah Nation and Port Angeles Court Observations

The Port Angeles drug court has a high caseload of nearly 100 participants and the judge has extended a standing invitation to the Makah Nation of Washington’s Healing Court to observe their staffings and hearings. After the court observations, the Makah Healing Court team can meet with the judge and case workers to debrief and ask questions. The conversations have led to some changes to the Makah Healing Court and has been a valuable partnership. Makah Nation has used these staffing and drug court observation sessions as a way of gaining exposure to new ideas and to build relationships with Port Angeles court staff to strengthen their informal and minimal collaboration in cases involving supervision of probation cases and case transfers. The Makah Nation’s Healing Court informal collaborations with the local country drug court in most instances requires no cooperation on cases and requires minimal cooperation in others.

**Website:** [makah.com](http://makah.com)

### Pueblo of Laguna and Tulalip Tribes Hosts Tribal Wellness Court Teams

The Pueblo of Laguna of New Mexico’s Community Wellness Court began in 2005. The Tulalip Tribes Healing to Wellness Court (in Washington) began in 2016. Given their longevity and experience, the courts have become valuable peer-to-peer learning resources. As part of the National Drug Court Institute’s Mentor Court Program, these courts have worked with new and developing Wellness Courts across Indian country.<sup>27</sup> In addition to working as a mentor court, both the Pueblo of Laguna and the Tulalip Tribes have an informal open-door policy in which any Healing to Wellness Court can request to observe staffing and hearings to learn from the tribes’ experience and dialogue with their Wellness Court team. The tribes collaborate with

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<sup>27</sup> National Drug Court Institute, [Mentor Court Program](#).



other Wellness Courts informally to provide mentorship, but requires no cooperation on court cases.

**Website:** <https://www.lagunapueblo-nsn.gov/pol-judicial-services.aspx>

**Website:** [tulaliptribalcourt-nsn.gov/ProgramsAndServices/WellnessCourt](http://tulaliptribalcourt-nsn.gov/ProgramsAndServices/WellnessCourt)

## Forest County Potawatomi Community Wellness Court and the Paiute Indian Tribe of Utah Partnerships to Host Naloxone Trainings

The Forest County Potawatomi Community of Wisconsin's Wellness Court and the AIDS Resource Center of Wisconsin work together to conduct free Naloxone trainings. The training events are organized by the Forest County Potawatomi Wellness Court Coordinator. Trainings are provided to Forest County Potawatomi employees and a separate set of trainings are offered both to interested tribal members on and off reservation land and to non-members in the neighboring county.<sup>28</sup>

Similarly, the State of Utah provides free Naloxone training programs to individuals and organizations to address the opioid crisis. In March 2018, the Paiute Indian Tribe of Utah approved Naloxone trainings for their community. The Tribal Behavioral Services Department conducts a truncated version of the Utah state training and provides trainees with Naloxone kits from the Utah Naloxone Program. This collaboration has been mutually beneficial: the Paiute Indian Tribe benefits from the state-funded Naloxone kits and gets to provide valuable training to the community. The State of Utah conserves staff time and resources and can reach more individual trainees.

**Website:** [www.fcpotawatomi.com](http://www.fcpotawatomi.com)

**Website:** [www.utahpaiutes.org](http://www.utahpaiutes.org)

## Multi-Tribal Michigan Tribal Healing to Wellness Court Training

Northern Michigan—area tribes collaborated with TLPI to provide a free, one-day Wellness Court and Treatment Court training available to all area tribes, which included the Bay Mills Indian Community, the Grand Traverse Band of Ottawa and Chippewa Indians, the Keweenaw Bay Indian Community, the Lac Vieux Desert Band of Lake Superior Chippewa Indians, the Little Traverse Bay Bands of Odawa Indians, the Saginaw Chippewa Indian Tribe, and the Sault Ste. Marie Tribe of Chippewa Indians. The training covered medication-assisted treatment, tele-health, a judge's and coordinator's panel, substance-exposed newborns and maternal health, and engaging child welfare. The Saginaw Chippewa Indian Tribe donated a large training forum and extended an invitation to others. This joint training is an example of a way to share resources and build relationships within the tribal and non-tribal community.

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<sup>28</sup> Val Niehaus, "[Free Naloxone Training Held](#)," Potawatomi Traveling Times, Vol. 23, No. 7 (October 1, 2017).

For the Saginaw Chippewa Indian Tribe, this joint training is part of an ongoing education outreach effort. They work with the local chapter of Families Against Narcotics (FAN); have sponsored two tribal, state, and federal opioid summits;<sup>29</sup> have hosted a judges' summit, inviting all neighboring county judges to the tribe for lunch, a cultural experience, court tour, and presentation of available tribal services; and serve on a substance abuse committee with six counties to better address opioid misuse in the region.<sup>30</sup>

**Website:** [wellnesscourts.org/events/?a=668](https://wellnesscourts.org/events/?a=668)

## Reflection on Minimal Cooperation

Jurisdictions practicing minimal cooperation are putting forth effort to provide help to the other jurisdiction so that both operate more efficiently. These collaborations generally entail a nominal sharing of information in exchange for significant gains in trust and camaraderie. The Makah Nation, the Pueblo of Laguna, and the Tulalip Tribes each participate in court observations, providing opportunities for current and future practitioners to see a court in action, followed by an intimate dialogue about how the court functions and what best practices emerge. The Pueblo of Laguna and the Tulalip Tribes were each designated by the National Drug Court Institute as a Mentor Court, signifying external endorsement of their practices and thereby drawing visitors from across the country. However, court observations need not be exclusive to Mentor Courts. In fact, as the Makah Nation exemplifies, by visiting their Port Angeles Court neighbor they can share both ideas and resources. Similarly, Forest County Potawatomi, the Paiute Indian Tribe, and the Michigan-area tribes each pooled their training resources with neighbors—maximizing efficiency and bringing the tribal and non-tribal community together for a common goal. By thinking regionally, the communities balanced the need to train on national best practices coupled tailored regional topics of concern, all with the monumental benefit of networking with neighbor practitioners.

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<sup>29</sup> See e.g., [Michigan Statewide Tribal Opioid Summit](#), June 12–13, 2019.

<sup>30</sup> For an excellent resource, see Hon. Patrick M. Shannon, "[A Tribal Court's Response to the Prescription Drug and Opioid Crisis](#)," Michigan Bar J. 35 (August 2019).

## Full Cooperation



### Yurok Tribe, Humboldt County, and Del Norte County Supervision MOUs

In 2012, the Yurok Tribe signed a Memoranda of Understanding (MOU) with the neighboring counties of Humboldt and Del Norte in California that allowed for the transfer of cases to the tribal court. Under this agreement, cases involving Yurok citizens transfer from the county to tribal court for supervision and linkage to services.<sup>31</sup> The agreement applies to both adult nonviolent criminal and juvenile delinquency cases.

The MOU with Humboldt County allows for discretion by the county court. Transfer to tribal court is optional, not mandatory. Humboldt County retains jurisdiction and defendants may be subject to county ankle monitors even when the case is transferred. The Yurok Tribal court, however, takes the lead on the probation and supervision and keeps the county apprised of the defendant's progress with their case plan and any probation violations. For many defendants, this makes both logistical and cultural sense, as they reside within the tribal community and travel to the county courthouse can be burdensome.

As with the MOU with Humboldt County, under the MOU with Del Norte County the Yurok Tribe shares concurrent jurisdiction over juvenile cases. Adult cases, however, are handled differently. Under this MOU, Del Norte's probation, district attorney, and police departments have agreed to notify the Yurok Tribal Court when they have a formal probation, arrest/citation interaction with a Yurok citizen so that citizens might be diverted to the Tribal Court rather than having the case heard in the Del Norte County Court. Under the MOU, Del Norte County has the option of acknowledging concurrent jurisdiction when Yurok (1) writes a direct citation to tribal court or (2) petitions for the transfer of the case.

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<sup>31</sup> For more information on this and other collaborations, please see the Native American Indian Court Judges Association Tribal Access to Justice Innovation (TAJI) initiative at: <http://www.TribalJustice.org/>.

“Although the MOUs themselves did not cost the Tribe or State courts anything, the capacity developed through the Wellness Program is primarily responsible for the expansion of jurisdiction and the resulting caseload of non-violent offenders and juveniles on probation.”<sup>32</sup>

**Website:** [www.yuroktribalcourt.org](http://www.yuroktribalcourt.org)

## Pueblo of Pojoaque Path to Wellness Court Referral Collaborations

### Inter-Tribal

The Pueblo of Pojoaque of New Mexico’s Path to Wellness Court is a robust program, serving an average of twenty participants at a time. The Pueblo of Pojoaque is near several pueblos and members of other tribes frequently cross jurisdictions. As a result, it is not uncommon for a tribal member to have multiple ties, or criminal cases, across multiple jurisdictions. In consultation with the Pueblo of Pojoaque Path to Wellness Court, other tribal pueblos, especially those that do not operate their own Wellness Court, may order eligible defendants to complete Pojoaque’s Path to Wellness Court as a condition of the sentencing court’s probation or parole. In each case, the partnering tribe retains jurisdiction over the Wellness Court participant, but supervision and Wellness Court participation is monitored by the Pojoaque Wellness Court and its multi-disciplinary team. The Pojoaque’s Path to Wellness Court has sole discretion and governance over staffing, funding, and policies and procedures. No formal referral protocol exists, but once accepted, each participant is formally enrolled in the program and subject to its written policies. All participants must agree to submit to jurisdiction of the Pojoaque Wellness Court for purposes of sanctions, including short jail terms. The Wellness Court probation officer provides periodic updates, usually monthly, to participating tribes. In turn, supervision of the participant, including drug and alcohol testing, is generally turned over to the Pueblo of Pojoaque probation officer. The referring jurisdiction determines the frequency of reports and may impose its own requirements on the participants.

### Tribal-County

If a Native person with ties to the Pojoaque Valley area has a case before a state court, the state court can make the Path to Wellness Court program a condition of probation for eligible defendants. For these cases, the Pojoaque probation officer maintains a relationship with the various public defender offices and coordinates most of the referrals. The probation officer shares eligibility information for the program and their current capacity. The county public defender uses this information to discuss the possibility of a Wellness Court referral with the client, judge, and prosecution team. Once referred, the Wellness Court issues its own orders, officially enrolling the participant in the program and provides updates to the county court. The state courts must agree that the Pojoaque Path to Wellness court can jail the participant as a

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<sup>32</sup> Tribal Access to Justice Innovation Website, “Yurok Tribe—Criminal Assistance Program—Memoranda of Understanding with Del Norte and Humboldt Counties”, available at: [www.tribaljustice.org/places/specialized-court-projects/yurok-tribe-criminal-assistance-program-memoranda-of-understanding-with-del-norte-and-humboldt-counties/](http://www.tribaljustice.org/places/specialized-court-projects/yurok-tribe-criminal-assistance-program-memoranda-of-understanding-with-del-norte-and-humboldt-counties/).

sanction if needed. The referring jurisdiction determines frequency of reports and may impose other requirements on the participant.

## Reentry

The Pueblo of Pojoaque Path to Wellness Court program has sober living apartments as a resource. Because sober housing is an essential part of a parole plan, people in reentry have self-referred to the Path to Wellness Court, agreeing to its jurisdiction and program policies to get the assistance and services they need to successfully transition out of incarceration. The Path to Wellness Court has assisted Indians and non-Indian alike, accepting participants into the program as part of their reentry plan. There are capacity restrictions, but the Court has informally received and fulfilled requests from the county at the behest of individuals in reentry.

**Website:** [www.pojoaque.org/community/tribal-courts](http://www.pojoaque.org/community/tribal-courts)

## National Judicial Opioid Task Force—Sample Court Transfer Agreement

The National Conference of Chief Justices is a membership association of the highest judicial officers of the states aimed at improving the administration of justice, rules and methods of procedure, and the organization and operation of state court and judicial systems. In 2019, the Conference adopted a resolution to encourage greater collaboration between state and tribal courts to address the opioid epidemic.<sup>33</sup> Acknowledging that treatment and program outcomes are often more successful for Native offenders when they are provided services that are culturally appropriate, the Conference encourages more state-tribal collaboration, including the use of transfer agreements from state courts to Tribal Healing to Wellness Courts. The National Judicial Opioid Task Force,<sup>34</sup> formed in 2017 by the Conference of Chief Justices and the Conference of State Court Administrators, developed a sample Memorandum of Understanding for Tribal Healing to Wellness Court case transfers to serve as a template to better facilitate these types of inter-jurisdictional cooperation.<sup>35</sup>

### Supplemental Material:

- [Sample Memorandum of Understanding for Tribal Healing to Wellness Court Case Transfers](#)

**Website:** [www.cj.ncsc.org](http://www.cj.ncsc.org)

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<sup>33</sup> Conference of Chief Justices and Conference of State Court Administrators, [Resolution 1: To Encourage Greater Collaboration between State and Tribal Courts to Address the Opioid Epidemic](#) (February 13, 2019).

<sup>34</sup> National Center for State Courts, National Judicial Opioid Task Force: <https://www.ncsc.org/opioidtaskforce>.

<sup>35</sup> Hon. Gregory G. Pinski and Lauren van Schilfgaarde, "[Sample Memorandum of Understanding for Tribal Healing to Wellness Court Case Transfers](#)," National Judicial Opioid Task Force (September 2018).

## Reflection on Full Cooperation

Full cooperative jurisdictions work together so that they each operate at maximum efficiency, but their operations are completely independent. The “case transfer” is most emblematic of the full cooperation model. While sovereigns operate independently, they openly acknowledge each other and work together to maximize resources for the participant—in this case—by transferring state supervision authority to the tribe. The National Conference of Chief Justices has acknowledged this beneficial arrangement, particularly in the Wellness Court context. In their 2019 resolution and sample MOU, they endorse the practice of state case transfers to Tribal Healing to Wellness Courts. While their sample MOU promotes one formalized version of case transfer, the Yurok Tribe and the Pueblo of Pojoaque each practice variations on this inter-jurisdictional “case sharing” concept. It is likely no coincidence that jurisdictions engaging in full cooperation are in fact engaging in multiple forms of cooperation.

The Yurok Tribe encompasses two different counties, and with it two distinct MOUs. The case transfer MOU with Humboldt County provides for significant county discretion, while the case transfer MOU with Del Norte County provides for more direct tribal input. Yet both MOUs provide for continuous tribal-county communication and collaboration. The Pueblo of Pojoaque similarly serves tribal citizens prosecuted by the county. The Pueblo of Pojoaque has expanded the eligibility of their services beyond just tribal members. In a unique variation, the Pueblo of Pojoaque has additionally negotiated case transfers from other neighboring tribes, previewing a collaborative approach detailed in the following text.

## Collaboration



### Ho-Chunk Nation Drug Testing Collaboration

The Ho-Chunk Nation operates an adult and a family Healing to Wellness Court. Several participants had cases in the neighboring Jackson County Circuit Court that were transferred over to the Wellness Court as a sentencing option, a condition for expungement, or to effect faster family reunification. Each Wellness Court participant is subject to random drug testing.

The Ho-Chunk Nation historically handled all drug testing for their Wellness Court participants, including holidays and weekends. Holidays and weekends, however, became a challenge because the Assistant Clerk for Healing to Wellness Court and Family Wellness Court had to be available twenty-four hours a day, seven days a week. The solution was to enter into an agreement with the Black River Memorial Hospital to conduct drug testing on holidays and weekends. Because of this agreement, Ho-Chunk staff are able to have full holidays and weekend leave while maintaining the best practice of randomized and weekend drug testing for their participants. The Wellness Court provides the testing supplies and training to the hospital staff and hospital lab technicians conduct the drug testing. If a positive result is obtained, the sample is sent to a second laboratory for confirmation and all results are e-mailed to court coordinators on a regular basis.<sup>36</sup>

**Website:** [www.ho-chunknation.com](http://www.ho-chunknation.com)

### Chickasaw Nation Recovery Resource Services

Pontotoc County is home to the first rural state drug court in Oklahoma, serving approximately 130 participants, a third of which are Native. On an informal basis, the Chickasaw Nation of Oklahoma provided transportation and case management services for the court. In 2014, the Chickasaw Nation signed a Memorandum of Agreement (MOA) with the county, formalizing

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<sup>36</sup> Ken Luchterhand, "[Ho-Chunk Treatment Court Programs Join Forces with Black River Memorial Hospital](#)," Hocak Worak (May 12, 2017).

and increasing the level of cooperation between both governments. Under the MOA, the Chickasaw Nation’s holistic services became fully integrated into the drug court.<sup>37</sup> These services include therapeutic, navigational (case management), transportation, peer support, twelve-step sponsorship groups, community involvement, employment, compliance, education, health integration, and cultural enhancement opportunities.<sup>38</sup> Eligible participants include Chickasaw citizens and citizens of other Native nations who have a Chickasaw spouse and/or Chickasaw dependents.

**Website:** [www.chickasaw.net/Services/Recovery-Resource-Services.aspx](http://www.chickasaw.net/Services/Recovery-Resource-Services.aspx)

### Saginaw Chippewa Indian Tribe of Michigan Tribal-County MAT Agreement, Co-Trainings, and Informal Joint Staffings

The Saginaw Chippewa Indian Tribe of Michigan developed their Wellness Court in 2013. Since its creation, the staff have worked diligently to educate themselves about substance use-related issues and to develop both inter- and intra-governmental collaborations. First, the tribe has a Medically Assisted Treatment (MAT) program in operation for almost seven years. They have an informal agreement with county law enforcement that allows them to continue administering MAT to incarcerated individuals.<sup>39</sup> Second, the tribe’s Wellness Court staff enjoy a positive working relationship with the Saginaw County drug court. On an informal basis, staff are invited to participate on county drug court cases involving tribal members. Finally, the court is active in educating and raising awareness about substance use issues.

**Website:** [www.sagchip.org](http://www.sagchip.org)

### Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians Coos County and Lane County Joint Team Members and Cotraining

The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (CTCLUSI) do not have a land base, but they do provide services in five counties. The CTCLUSI Wellness Court collaborates most often with Coos County. Coos County Community Corrections, which provides post-sentencing supervision, refers cases to the CTCLUSI Wellness Court and serves as a member of the Wellness Court team for that case. This partnership has led to both co-training and additional discussions about expanding the existing collaborations into other areas. CTCLUSI is providing training about Indian law (that include Continuing Legal Education [CLE] credits) to defense attorneys and municipal judges. The juvenile court judge for the county has facilitated expressed an interest in sharing cases. CTCLUSI has visited the Lane County juvenile

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<sup>37</sup> Gene Lehmann, “[Unique Chickasaw Nation partnership improving lives, community](#),” Chickasaw Times (June 2018).

<sup>38</sup> Amber Hoover, Regena Frye, and C. J. Aducci, “[Unconquered and Unconquerable: A Chickasaw Nation Approach to Wellness and Recovery for Native American Treatment Court Participants](#),” National Association of Drug Court Professionals Conference, PowerPoint Slide 11 (July 2019).

<sup>39</sup> See e.g., Isabella County Sheriff Office Memo: “[Medical Assisted Treatment of Inmates \(M.A.T.\)](#),” September 13, 2017.



and adult treatment courts and discussed the coordination of cultural services for tribal member participants.

**Website:** [www.ctclusi.org/tribalcourtpeacegiving](http://www.ctclusi.org/tribalcourtpeacegiving)

## **Saint Regis Mohawk Healing to Wellness Court Inter-Sovereign Team Members and Information Sharing**

### **Inpatient Provider as Team Member**

The Saint Regis Mohawk Healing to Wellness Court has been operational since 2010 and has developed both a criminal Wellness Court and a family Wellness Court. To better serve participants, the Wellness Court developed a collaboration with Partridge House—an inpatient addiction provider for American Indians. Partridge House is supervised by the tribe’s alcohol and chemical dependency program and is an active member of the Wellness Court team. Frequently tribal members will go to Partridge House as a condition of their plea agreement with the county. The Wellness Court limits entry until participants have finished their inpatient treatment. The partnership allows enrollment into the Wellness Court to be a seamless process—participants graduate and immediately are accepted into the Wellness Court. The Wellness Court similarly structures seamless entry for self-referrals and for cases part of a family court proceeding.

### **County Probation Provides Supervision and Attends Wellness Court Hearings**

The Saint Regis Mohawk Healing to Wellness Court works with the Franklin County Department of Probation as an essential partner for participants who are mandated to community supervision. Franklin County Probation provides supervision services to the St. Regis Mohawk court. Participants remain within the jurisdiction of the county courts while they enter the Healing to Wellness Court. Franklin County Probation is technically not a part of the Wellness Court team—workers do not attend staffings. But they do attend hearings to share and receive information to ensure all providers are on the same page. As Chief Judge Carrie Garrow has pointed out, it is a problem-solving relationship. In having probation at hearings, they ensure that they are unified in what they tell the participant and also that the participant is consistent with what the participant tells the court, probation, and service providers.

### **International Information Sharing**

The Saint Regis Mohawk Healing to Wellness Court has collaborated with the Akwesasne Justice Program and the Akwesasne Mohawk Police to ensure systematic information sharing with the Canadian justice system. The northern portion of the Saint Regis Mohawk territory is contiguous with Canada, overlapping the international boundary between the United States and Canada. Given this geography, people can have warrants or cases on both sides of the border. The Mohawk Council of Akwesasne governs the northern portion of the territory and

through the partnership with the St. Regis Mohawk Wellness Court, information on these cases is shared. This not only increases accountability; it helps participants manage both cases. Both the courts and the participants are more aware of services that are available through each partner which gives the participants more opportunities and more choices. Finally, the partners have worked out a process to facilitate home visits across jurisdictions.

#### **Supplemental Materials:**

- **Assessment of The Criminal Justice System on the St. Regis Mohawk Indian Reservation**

**Website:** [www.srmt-nsn.gov](http://www.srmt-nsn.gov)

### **Reflection on Collaboration**

Collaborative jurisdictions operate at high efficiency and actively seek to help external governments through positive interaction. Like the full cooperation models detailed in the preceding text, the Ho-Chunk Nation has a case transfer agreement with their neighboring Jackson County. Yet their agreement with Black River Memorial Hospital showcases the benefits of approaching collaborations creatively. Collaborations need not always be judge-to-judge or court-to-court. They also need not always entail a comprehensive MOU outlining the responsibilities of multiple agencies (though many do!). By sharing resources, in this case drug-testing responsibilities, the jurisdictions maximize participant outcomes.

Conversely, the Chickasaw Nation offered its resources to the county. The Chickasaw Nation did not originally intend to have a formal MOA with Pontotoc County. But the occasional supply of transportation and case management services organically transitioned into a full integration of services. Chickasaw citizens and families have access to Chickasaw services, and the county can more efficiently disperse county resources to other participants. Similarly, while tribal members are incarcerated by the state, the Saginaw Chippewa Tribe cooperates with the county to integrate medication-assisted treatment to its citizens.

A different, but innovative expression of the collaboration model are inter-jurisdictional team members. The Saginaw Chippewa Tribe, the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, and the Saint Regis Mohawk each had a need for more information sharing. As needed, county personnel will sit in on either hearings and/or staffings, ranging from probation officers to inpatient treatment providers. The full integration of these new team members, and the accompanying role and authority they bring to the team, varies. The jurisdictions continue to operate separately. Yet, the welcoming of a new inter-jurisdictional team members not just overcomes the enormous information gaps inherent between separate sovereigns but it is also a nod to the restorative approach upon which Wellness Courts are built. The participants' needs, as opposed to the system's needs, drive the team and their actions.

## Co-Creation



**Levels of Interaction**  
WELLNESS COURT COLLABORATION

**Co-Creation**

**At this level each government is working collaboratively with other governments to co-create systems and tools that can be used to maximize the results for each—a joint effort.**

Under the right circumstances, co-creation can be a brilliant solution to a regional issue. A truly equal partnership between sovereigns can conserve resources, streamline operations, encourage comprehensive approaches to cross-jurisdictional problems, and provide tribal members easier access to state and county services. The following collaboration profiles are designed to highlight the possibilities for co-creation in the Wellness Court context. While joint jurisdiction courts are prominently featured, they are not the only co-creation project possible. In addition, while joint jurisdiction courts have shown incredible promise and have worked for some communities, the context that allows them to work is crucial. Joint jurisdiction will not be a good fit for every community. Conversely, not all joint jurisdiction courts must operate within a Wellness Court model. The joint jurisdiction framework might also be applied to non-drug related cases. Co-creation can potentially increase communication and implementation barriers because it can double the number of partners and team members if each government is represented at every level of the project.

### Leech Lake Joint Jurisdiction Adult Wellness Courts

The Leech Lake Band of Ojibwe (Leech Lake) tribal court has been in operation for decades, hearing child welfare cases since the 1980s and slowly expanding court operations to cover other civil matters. Minnesota is a Public Law 280 state<sup>40</sup> and Leech Lake does not exercise criminal jurisdiction, so tribal members are criminally charged and prosecuted by the state. The Leech Lake reservation overlaps with four Minnesota counties: Beltrami, Cass, Hubbard, and Itasca. Under the leadership of Judge Korey Wahwassuck and Judge John P. Smith, the Leech Lake Band, Cass County, and Itasca County developed a novel joint jurisdiction approach, circumventing centuries of sovereign clashes.

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<sup>40</sup> Public Law 83-280 (commonly referred to as Public Law 280 or P.L. 280) was a transfer of legal jurisdiction from the federal government to state governments that significantly changed the division of legal authority among tribal, federal, and state governments. Public Law 280 generally brought about an increased role for state in criminal and civil matters and prompted numerous obstacles to individual tribes in the development of their justice systems. For additional information on Public Law 280, please see the Tribal Law and Policy Institute's Public Law 280 publication series at <https://www.home.TLPI.org/public-law-280-publications->.

### **Joint Jurisdiction Court with Cass County**

Cass County and Leech Lake have a cooperative law enforcement agreement. In March 2006, Cass County asked Leech Lake to join in the development of a Wellness Court to address high rates of driving while intoxicated (DWI) cases. The Court has a two-judge model—the tribal court judge and the state court judge sit together to hear cases. A joint powers agreement, the paperwork that articulates the vision, mission, and the authority under which each court operates, was signed about a year later. As the Court teams worked together, they developed procedures and other paperwork as needed.

### **Joint Jurisdiction Court with Itasca County**

In 2008, primarily due to the success of the first joint jurisdiction court with Cass County, Leech Lake implemented a second joint jurisdiction court with Itasca County. As with Cass County, the agreement to work together is memorialized through a joint powers agreement. The Court uses a family-centered model, in which all cases involving a family—from juvenile delinquency and diversion issues to child in need of protection or services (CHIPS) cases, can be heard by the two judges and the family can be wrapped in services to meet their needs. When a family decides not to participate in the two-judge court model, Itasca County judges will often travel to the tribal court and hear cases in the tribes' courtroom.

Both joint jurisdiction courts have been incredibly successful for participants and have served as a model for possibilities in the tribal-state collaboration realm. The Leech Lake success has increased the prominence of, and respect for, tribal courts within the state, and the tribe and neighboring counties collaborate as the need arises. A treatment program used by the Wellness Courts is licensed by both the tribe and the county.

#### **Supplemental Materials:**

- Hon. Corey Wahwassuck, Hon. John P. Smith, and Hon. John R. Hawkinson, *Building a Legacy of Hope: Perspectives on Joint Tribal-State Jurisdiction*, 36:2 William Mitchell L. Rev. 859 (2010)
- Jennifer Fahey, Hon. Corey Wahwassuck, Allison Leof, and Hon. John Smith, *Joint Jurisdiction Courts: A Manual for Developing Tribal, Local, State & Federal Justice Collaborations, 2nd ed.* (Project T.E.A.M., Center for Evidence-Based Policy, Oregon Health & Science University, 2018).

Website: [www.llojibwe.org/court/court.html](http://www.llojibwe.org/court/court.html)

### **Shingle Springs Joint Jurisdiction Family Wellness Court**

The Shingle Springs Band of Miwok Indians (Shingle Springs) and the El Dorado Superior Court in California have a Joint Jurisdiction Collaborative Court. The court has a two-judge model—the tribal court judge and the state court judge sit together and offer one unified proceeding. The

Court hears a wide range of issues, including substance-related juvenile justice, child welfare, child custody, and protection orders related to domestic violence. The Court is intended to provide system-involved youth and their families with a court-supervised alternative that emphasizes culturally appropriate restorative justice practices. The program's wraparound continuum of care consists of prevention, intervention, and post-adjudication services. Program staff uses a teamwork approach to address needs of program participants using a culture-specific, trauma-informed, strength-based, and evidence-based approach.

Prior to implementation of this system, the state court and the tribal court would hear these cases separately, often making conflicting orders, working at purposes, or failing to address the entirety of the families' issues in a holistic fashion. This Family Wellness Court aims to break down these silos. As soon as a child or youth comes to the attention of tribal or county authorities, the court can wrap the child and family with a multitude of tribal and county services specially designed to meet the needs of each family member. The goal of the court is to break the school to prison cycle of dysfunctional behavior to provide parents and children with achievable goals to improve self-confidence; result in positive life choices; and give children and their families a true connection to tribal history and culture, inspiring them to become leaders in their community. This Joint Jurisdiction Family Wellness Court was the first of its kind in California.

**Supplemental Materials:**

- [Family Wellness Court Participant Manual](#)
- [Family Wellness Court Program Manual](#)

Website: [www.shinglespringsrancheria.com/tribal-court/](http://www.shinglespringsrancheria.com/tribal-court/)

## Kenaitze Joint Jurisdiction Henu' Community Wellness Court

The Henu' Community Wellness Court is a collaboration between the Kenaitze Indian Tribe (Kenaitze) and the Kenai Superior Court on the Kenai peninsula in Alaska. This court is a joint-jurisdictional therapeutic court that serves adults and their families, Native or non-Native, who face legal troubles stemming from substance use. Cases can involve criminal issues and/or child dependency issues. In addition, individuals charged with property crimes may also be considered if the offense stems from substance use. Participants work closely with a probation officer and court team, complete frequent random drug screenings, and receive substance use treatment and mental health counseling as needed. Each jurisdiction has a separate project coordinator to manage the program and weekly status hearings are held in the Kenaitze tribal courthouse.

Website: [www.kenaitze.org/tribal-government/tribal-court/henu-community-wellness-court/](http://www.kenaitze.org/tribal-government/tribal-court/henu-community-wellness-court/)

## Yurok Joint Jurisdiction Family Wellness Courts Hoopa Valley Joint Jurisdiction Family Wellness Court

The Yurok Tribe worked with neighboring Humboldt County to implement a joint jurisdiction family wellness court. The partnerships that were developed during the planning phase of this court's creation led to additional partnerships. The Yurok Tribe and neighboring Del Norte County agreed to work together to create an additional joint jurisdiction family wellness court, and the Hoopa Valley Tribe came together with Humboldt County to create a third joint jurisdiction family wellness court.

The joint jurisdiction courts are voluntary. Tribal and county child welfare work together to assess and serve the family before a petition is filed. If a child dependency petition is filed by county child welfare in the state court, the family is screened for eligibility for the joint jurisdiction court and asked if they would like to participate.

All three joint jurisdiction courts depend on grant funding. The courts that were created with Humboldt County have one court coordinator designated to the program, but the majority of the remaining staff are a combination of tribal and county agency professionals with many team positions dually filled by each government. Staffings are held prior to each hearing. Core operational team meetings are held monthly. Steering Committee meetings are convened by the judges and held quarterly.

All three courts are formalized using joint powers agreements between the tribe and county, and an operation manual.

**Website:** <http://yuroktribe.org>

## Reflection on Co-Creation

Co-creation governments work collaboratively with other governments to co-create systems and tools that can be used to maximize the results for each—a joint effort. It is no coincidence that joint jurisdiction courts are *the* prominent example of co-creation systems. Joint jurisdiction courts leverage the jurisdictional authority and menu of services of each government for the benefit of the community. It is also no coincidence that joint jurisdiction courts are predominantly located within P.L. 280 jurisdictions. Jurisdiction in Indian country is famously complex, and P.L. 280 exacerbates that complexity in many ways, while also lifting the role and participation of the states. Of course, joint jurisdiction need not be limited to P.L. 280 jurisdictions, just as co-creation collaborations need not be limited to joint jurisdiction courts. Critically, co-creation is a joint effort. In each profile, the planning, the staffing, and the leadership was a partnership. These collaborations are time intensive, responsive to community needs, and, at least at this moment, rare. Yet their existence, particularly evidenced by the Yurok and Hoopa, suggest a tendency to spread.

## Closing Comments

Wellness Courts capacity to solve problems creatively through collaboration has unsurprisingly expanded inter-jurisdictionally. Yet still, the variety and scope of inter-jurisdictional collaborations showcase the critical consideration that each collaboration must be suitable for the context and partnerships in which they operate. Teams, agencies, courts, governments, and communities must each be ready and open to collaboration. Though, small collaborations are often the fuel for more expansive collaborations down the road. In the right context, in which a solid relationship exists, an informal collaboration based on a verbal agreement and goodwill can provide terrific results for a community. In other contexts, formalized agreement provide stability. The kind of collaboration that best meets the needs of your Wellness Court will be specific to your situation. We hope these profiles spark an idea. Whether you are revisiting a current collaboration to improve it or thinking about how to initiate an entirely new collaboration, have a discussion about will work best for your community. There may not yet be a model for the collaboration you are envisioning. We are eager for you to make one.

## Appendix A: Collaboration Resources

- William Thorne and Suzanne Garcia, *Crossing the Bridge: Tribal-State-Local Collaboration* (Tribal Law and Policy Institute, February 2019).
- Jennifer Fahey, Hon. Korey Wahwassuck, Allison Leof, and Hon. John Smith, *Joint Jurisdiction Courts: A Manual for Developing Tribal, Local, State & Federal Justice Collaborations, 2nd ed.* (Project T.E.A.M., Center for Evidence-Based Policy, Oregon Health & Science University, 2018).
- Hon. Korey Wahwassuck, Hon. John P. Smith, and Hon. John R. Hawkinson, *Building a Legacy of Hope: Perspectives on Joint Tribal-State Jurisdiction*, 36:2 WILLIAM MITCHELL L. REV. 859 (2010)
- Hon. Korey Wahwassuck, *The New Face of Justice: Joint Tribal-State Jurisdiction*, 47 WASHBURN L. J. 733 (2008).
- Jennifer Walter and Heather Valdez Freedman, *Emerging Strategies in Tribal-State Collaboration: Barriers and Solutions to Enforcing Tribal Protection Orders: December 6, 2017 Meeting Report* (Tribal Law and Policy Institute, February 2019).
- Heather Valdez Singleton, Kori Cordero, and Carrie Garrow, *Tribal State Court Forums: An Annotated Directory* (Tribal Law and Policy Institute, January 2016).
- Carole Goldberg and Duane Champagne, *Promising Strategies: Tribal-State Court Relations* (Tribal Law and Policy Institute, March 2013).
- Carole Goldberg and Duane Champagne, *Public Law 280* (Tribal Law and Policy Institute, March 2013).
- Walking on Common Ground – Resources for Promoting and Facilitating Tribal-State-Federal Collaboration: <http://walkingoncommonground.org/>.



## Appendix B: Tribal-State-Local Collaboration Dos and Don'ts

### Membership

- ✓ DO select team members from diverse perspectives who have demonstrated interest, expertise, or experience in addressing Indian law issues.
- ✗ DON'T select members based only on their position within a particular department or elsewhere.

### Mutual Respect

- ✓ DO acknowledge differences between tribal and state systems and seek ways of cooperating consistent with those differences.
- ✗ DON'T characterize either system as better or worse or less sophisticated than the other.

### Scope

- ✓ DO proceed in phases with predetermined time frames, including a study phase in which issues are identified, before implementing recommendations.
- ✗ DON'T devote resources to implementation until a consensus is reached concerning priority issues and recommendations.

### Persistence

- ✓ DO design a process that invites broad-based participation in identifying issues and making recommendations.
- ✗ DON'T be discouraged by lack of participation or lack of progress.

### Performance

- ✓ DO assign manageable tasks to team members or subcommittees to be accomplished within established time frames.
- ✗ DON'T delay too long before dividing the work of the team into tasks that can be accomplished within the time frames established.

### Solutions

- ✓ DO emphasize creative solutions to issues that are consistent with the rights of the parties, sovereignty, and judicial independence.
- ✗ DON'T emphasize jurisdictional limitations.

### Communications

- ✓ DO emphasize person-to-person communication and education to address issues.
- ✗ DON'T seek to address issues solely through large-scale change in the law or legal systems.

William Thorne and Suzanne Garcia, *Crossing the Bridge: Tribal-State-Local Collaboration*, 28 (Tribal Law and Policy Institute, February 2019).



INSERT SEAL

## SUPERIOR COURT OF CALIFORNIA

DEL NORTE COUNTY  
450 H Street #209  
Crescent City, CA 95531  
(707) 445-7256  
(707) 441- 4500 fax

## YUROK TRIBAL COURT



230 Klamath Blvd.  
Klamath, CA 95548  
(707) 482-1350  
(707) 482-0105 fax

### **Family Wellness Court**

#### **Court's Vision**

One strong, healthy community where children are safe and families thrive because parents are provided a path to recover, heal, and grow.

#### **Court's Mission**

To operate a joint jurisdictional court that empowers families to make healthy decisions and breaks the cycle of addiction and child abuse & neglect through:

- A coordinated team approach;
- Comprehensive, culturally competent services;
- Frequent monitoring; and
- Building a support system for family recovery and child well-being.

#### **Court's Inherent Powers**

The Court uses its inherent powers derived from authority delegated by the Yurok Tribal Council and Article IV of the California Constitution to provide an independent, culturally sensitive judicial forum, with fair processes for all people who appear before the Court.

### **Joint Powers Agreement**

Be it known that we, the undersigned, agree to, where possible, jointly exercise the powers and authorities conferred upon us as judges of our respective jurisdictions in furtherance of the following common goals: (1) protecting the dignity of participants;

(2) providing participants meaningful access to culturally appropriate substance abuse treatment; (3) providing due process in a fair and equitable manner while restoring balance to families and to the community; (4) engaging tribal and non-tribal communities to break the cycle of addiction and child abuse & neglect; and (5) maximizing Court-connected services by sharing available tribal and county resources.

Dated: DATE

A handwritten signature in black ink, appearing to read 'Abby Abinanti', written in a cursive style.

Judge William D. Follett  
Presiding Judge  
Del Norte Superior Court

Judge Abby Abinanti  
Chief Judge  
Yurok Tribal Court