



Joint Jurisdiction MOU with Tribes

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Historical Perspective

- Understanding current tribal relations requires understanding United States historical and contemporary treatment of Indian Nations and Indian sovereignty
- Each Indian Nation has a unique history of contact, but there are common themes
- Each Indian Nation has unique culture, norms and values
- No “one size fits all”



Tribal Sovereignty

- Tribes retain nationhood status and *inherent* powers of self-governance
 - *Cherokee Nation v. Georgia* (1831); *Worcester v. Georgia* (1832)
- Indian Self-Determination and Education Assistance Act of 1975
 - Encourages “maximum Indian participation in the government and education of Indian people”
 - Self-governance: process by which tribes assume administration of federal programs by contracts or grants from certain federal agencies
- Tribes can:
 - *Define their tribal membership criteria.*
 - *Enact civil, criminal, and regulatory legislation.*
 - *Provide specific areas of law enforcement and establish a court system.*
 - *Assert jurisdiction over their people and lands.*
 - *Tax non-tribal members engaged in economic activity on tribal lands.*



Origin of Tribal Judiciaries

- Divergence of Values:
Leadership emphasize dispute resolution role,
rather than executive or legislative duties
 - Goal was mediation as opposed to ascertaining
guilt
 - Facilitator as opposed to decision-maker
- Courts of Indian Offenses
 - 1849 – Creation of the Interior Department
 - 1883 – CFR Courts are institutionalized, *Ex Parte Crow Dog*
 - Heightened need for inter-tribal/Indian-non-
Indian dispute resolution
 - Served at the pleasure of the Indian agent

INSTITUTE FOR GOVERNMENT RESEARCH

STUDIES IN ADMINISTRATION

THE PROBLEM OF INDIAN ADMINISTRATION

Report of a Survey made at the request
of Honorable Hubert Work, Secretary
of the Interior, and submitted to him,
February 21, 1928

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Modern Tribal Courts

- 1934 – Indian Reorganization Act
 - Many tribes assumed judicial functions, replacing CFR courts
- Opportunity
 - For a system that is more responsive to tribal needs and under tribal control
 - To resurrect traditions and customs
- Many courts apply large bodies of written law, as well as custom and tradition.



Jurisdiction

- “Indian Country” – 18 U.S.C. § 1151
 - Reservations, dependent Indian communities, and/or Indian allotment
 - Land held in trust
- Civil Jurisdiction
 - Inherent over Indians within Indian country (and sometime beyond, e.g. hunting and fishing rights)
 - Non-Indians: *Montana v. U.S.* (1981)
 - Non-Indian enters into consensual relationship with tribe or its members; or
 - A non-Indian’s conduct threatens or has a direct effect on the political integrity, economic security, or health or welfare of the tribe.
 - Or, act of Congress, e.g. Clean Water Act

Criminal Jurisdiction

Indian Status	Major Crime	All Other Crimes
Indian perpetrator Indian victim	Federal (under MCA) and tribal	Tribal
Indian perpetrator Non-Indian victim	Federal (under MCA) and tribal	Federal (under General Crimes Act) and tribal
Non-Indian perpetrator Indian victim	Federal (under General Crimes Act)	Federal (under General Crimes Act) and tribal (if VAWA SDVCJ)
Non-Indian perpetrator Non-Indian victim	State	State

- Major Crimes Act (MCA), 18 U.S.C. 1153: murder, manslaughter, kidnapping, maiming, sexual abuse, incest, serious assault, assault of a minor, felony child abuse, burglary, robbery, and major theft

PL 280

- 1953: Legal transfer of jurisdiction from the federal government to the states
 - *Mandatory for enumerated states*
 - *Optional for other states*
 - *Tribes had NO say (until 1968 for some tribes*)*
- State jurisdiction preferred over tribal sovereignty – federal policy that favors assimilation into non-Indian social and political communities.
- Congress cited need for
 - *Law enforcement*
 - *Civil dispute resolution*

Criminal Jurisdiction – PL 280

Indian Status	Major Crime	All Other Crimes
Indian perpetrator Indian victim*	State and tribal	State and tribal
Indian perpetrator Non-Indian victim	State and tribal	State and tribal
Non-Indian perpetrator Indian victim	State (and tribal if VAWA SDVCJ)	State (and tribal if VAWA SDVCJ)
Non-Indian perpetrator Non-Indian victim	State	State

* Under TLOA, a tribal gov't may request federal concurrent, subject to U.S. Attorney General approval

- Major Crimes Act (MCA), 18 U.S.C. 1153: murder, manslaughter, kidnapping, maiming, sexual abuse, incest, serious assault, assault of a minor, felony child abuse, burglary, robbery, and major theft

Cooperative Agreements

Benefits of collaboration

- Coordinate the exercise of authority
- Share resources
- Reduce administrative costs
- Deliver services in more efficient and culturally appropriate ways
- Address future contingencies
- Save costs of litigation
- Respond to unique community needs



Promising Practices Generally

- State Police Officer Status and Cross Deputation Agreements
- Arizona Court Rule Providing State Recognition of Tribal Court Judgments
- Arizona Recognition and Enforcement of Tribal Court Involuntary Commitment Orders
- Washington Joint Executive-Legislative Workgroup on Tribal Retrocession
- New York Federal-State-Tribal Courts Forum
- Tribal Representatives in Maine Legislature
- Intertribal Court of Southern California



Tribal Healing to Wellness Courts

- Tribal adaptations of drug courts
- Appeal to
 - Focus on addiction as a disease
 - Non-adversarial
 - Focus on healing
 - Focus on holistic relationships
- “Healing to Wellness” adopted to
 - Exchange negative “drug” term for indigenous focus on “healing” and “wellness”
 - Concede that “wellness” is not a destination, but a journey

Opportunities for Collaboration in Healing to Wellness Court and Drug Courts

Transfer Agreement
for eligible
participants

Provision of drug
testing and other
oversight services

Sharing of database
information

Consultation for
particular subject
matter (e.g. cultural
activity or treatment)

Consultation for
particular
participants

Joint team members

Communication
between
Coordinators

Observation of each
other's hearings



A Guide to Build Cultural Awareness

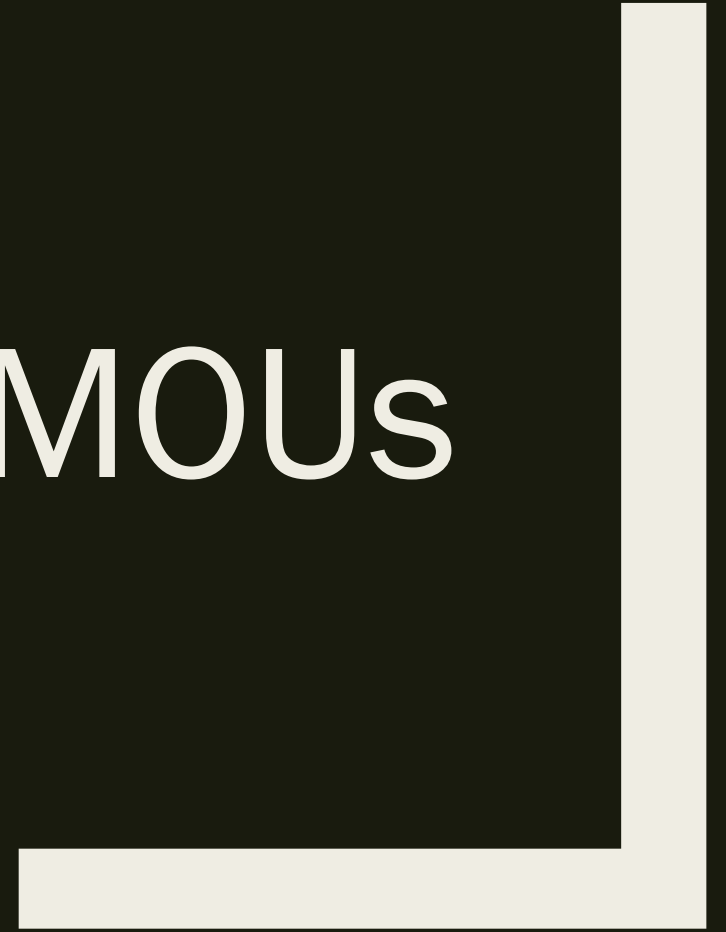
- Cultural Customs:
 - Specific cultural customs among AI/AN groups may vary significantly, even within a single community.
 - Deeply held values, general world view, patterns of communication, and interaction are often the differences that affect the helping relationship.
 - Respectful questions about cultural customs are generally welcomed, yet not always answered directly.
 - Sharing food is a way to welcoming visitors, similar to offering a handshake.

- AI/AN people communicate a great deal through non-verbal gestures.
- AI/AN people may convey truths or difficult messages through humor.
- It is often considered unacceptable for an AI/AN person to criticize another directly.
- Getting messages across through telling a story (traditional teachings and personal stories) is very common.



Communication Style

MOUs



Transfer Considerations

- Pre- or Post-adjudication
 - Similarity to other similarly situated state case
 - Ability to prosecute
 - Carrot for participation
 - Coordination between prosecutors and defense counselors
- Communication of tribal member arrest? Who decides on referrals?



Screening and Assessment

- How will county identify tribal members?
- How long between arrest/conviction and clinical assessment?
- What tools will be used? By whom?



Transfer Considerations

- Extraneous Probation/Parole Requirements
 - Will Wellness Court requirements suffice?
 - Can cases be consolidated?
- Services
 - Residency? Access to services?
- Incentives and Sanctions
 - What authority will Tribe have?
 - Can jail be used?



Discharge

- Does the Wellness Court have the authority to determine discharge?
- Benefits of graduation?
 - Case dismissal
 - Sentence deferral
 - Expungement
- Termination
- What next? -- Case transferred back to County?

Transfer Considerations

- Data management and information sharing protocols
- Agreement modification clause
 - *Joint steering committee*
 - *Judges*
- Specify agencies and departments

Joint Jurisdiction Courts



The First Joint Jurisdiction Step

- Leech Lake Band of Ojibwe – Cass County (2006)
 - *A handshake and a commitment*
 - *Joint Powers Agreement*
- Leech Lake Band of Ojibwe – Itasca County (2007)
- Project T.E.A.M.
 - *3 pilot sites*

Other Joint Jurisdiction Courts

- Saint Regis Mohawk – U.S. & Canadian Courts
- Yurok Tribe – Del Norte & Humboldt County
- Ho Chunk Nation – Jackson County
- Forest County Potawatomi – Forest County
- White Earth Nation & Mahnomen County District Court

Shingle Springs Band of Miwok Indians and El Dorado County, California



Joint Jurisdictional Court 2014



Location



Challenges

- Historically, conflicts between Tribe and County.
- California is a PL-280 State.
 - *Increased conflicts.*
 - *Decreased Tribal justice system development.*
- Still lack of trust in both communities.
- Tribal Youth getting lost in the system.
 - *Charter School.*
 - *Juvenile records.*

Strengths – Intra - Tribal

- Shingle Springs believes Wellness Court is good governance.
- General funds available to fund the court.
- Established a Wellness Board of key personnel and officials to recommend Wellness plans for individuals.
- Robust health clinic with many services on the reservation.

Strengths – Intra - County

- El Dorado County has extensive experience with “specialty” court models and success
- County Leaders are favorable to progressive approaches to juvenile justice

Strengths – Inter

- Strong relationship with El Dorado County Court since Tribal Court began.
- Tribal Court State Court Forum
- Collaboration on Truancy Cases
 - *Student Attendance Review Board (SARB)*



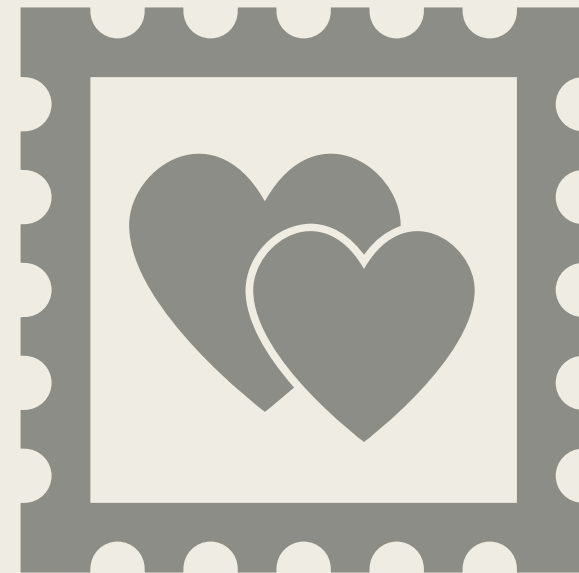
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An outline of the collaborative court



Vision and Mission

- Collaboratively created a Vision and Mission:
- The Court's Vision: One safe, strong community of thriving families created through trust and healing.
- The Court's Mission: Joining together to provide justice through trust, respect, and love by empowering youth and families to create positive change.



Juveniles and
“transitional
youth”

Up to age 24

Not limited to
drug offenses

Target Population

Wrap-around

Planning to use a wrap around model to serve the whole family.



Could mean having a youth who has a “dependency” case where we are providing services across several generations.

Division of Work



- Will be relying on county probation for supervision of this caseload.
- Will be relying on Tribal Health and Wellness Center for the majority of services.
- County DA and Public Defenders will play a role as well as Tribal Attorney.
- Plan to involve County CASA with special tribal recruitment and training.

Division of Work (2)

- Social Services from both sides.
- Law enforcement from both sides.
- Judges from both sides.
- Continued participation from the larger steering committee/advisory group regarding policies and procedures.



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