



# Tribal-State Court Forums: Intergovernmental Collaborative Strategies to Improve Public Safety<sup>1</sup>

## Tribal-State Court Forums in Brief

Tribal and state courts interact across many issues, including child welfare, cross jurisdictional enforcement of court orders, and civil commitments, to name just a few. One of the key arenas of interaction with great potential for collaboration is the courts. Tribal and state courts can disagree on jurisdictional issues and that can interfere with addressing issues of great importance to both jurisdictions. Difficult historical realities exist in some states that create a wedge that takes hard work to mend; but with collaboration comes the trust building that ultimately increases safety and justice in Indian country

Beginning in the mid-1980s through the efforts of the Conference of Chief Justices, tribal-state court forums began to bridge some of these gaps by bringing judges and court personnel together to foster relationships, discuss areas of mutual concern, develop legislative initiatives and to find a common ground (see [www.WalkingOnCommonGround.org](http://www.WalkingOnCommonGround.org) for detailed background). Since then, several tribal-state, and sometimes federal, court forums have emerged. These forums vary somewhat in their make-up and focus, but most primarily involve tribal and state court judges, focus on issues of common concern, and meet regularly in the spirit of collaboration and mutual respect. Some areas ripe for collaboration and focus include:

- The Indian Child Welfare Act (ICWA): There is a high level of interaction between tribal and state courts on child welfare matters pursuant to ICWA, which sets federal requirements that apply to state child custody proceedings involving an Indian child who is a member of, or eligible for membership in, a federally recognized tribe. Several forums have worked together to create trainings or materials to assist state courts with ICWA's implementation, which has also resulted in the formation of tribal-state agreements. The Michigan forum played a key role in the development of its own state legislation on ICWA.
- Recognition of Tribal Court Orders by State Courts: Many forums have developed rules or protocols for recognition of orders coming out of tribal courts.
- Jurisdictional Uncertainties: Members of tribal-state court forums are more apt to simply pick up the phone and call their colleagues in other jurisdictions for quick and easy resolution of jurisdiction questions that would otherwise persist through lengthy motions and expense going through more formal mechanisms.

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<sup>1</sup> Prepared by Heather Valdez Freedman, [Tribal Law and Policy Institute](http://TribalLawandPolicyInstitute.org); March 2021. See [www.WalkingOnCommonGround.org](http://www.WalkingOnCommonGround.org) for more tribal-state-local collaboration resources.

Importantly, at their most basic level, forums also provide a crucial cross cultural education component. Many state court judges lack basic knowledge of the caseload and day to day functions in tribal court. Conversely, tribal court judges may not understand the full range of state court cases and dockets. Forums such as those in New Mexico and California place a special emphasis on the importance of cross-cultural education.

Forums take many different forms, but there are some common themes to success. Successful forums typically:

- Have co-chairs, with one tribal court judge and one state court judge taking co-leadership in the forum.
- Seek to maintain an equal balance between state and tribal participants.
- Ensure that meetings are located in tribal locations whenever possible.
- Are institutionalized through rules of the court or other state Supreme Court action, which provides some level of sustainability.
- Hold regular and consistent meetings, even if it's only one in-person meeting a year, to ensure the work of the forum moves forward.

These themes of success can be found in the approximately 13 currently active forums (see chart in Appendix for a full listing with details on each forum).

Recent law changes impacting tribal criminal jurisdiction make collaboration all the more crucial. The Tribal Law and Order Act included important provisions for “Enhanced Sentencing Authority” for tribes. This law provides, in part, that if a tribe complies with the prerequisites listed in the statute, the tribe’s criminal court is able to exercise enhanced sentencing authority and can sentence a defendant to three years and/or a \$15,000 fine for a single offense, expanding previous limitations on tribal court sentencing.

Additionally, the Violence Against Women Reauthorization of 2013 authorized tribes to exercise “Special Domestic Violence Criminal Jurisdiction” over non-Indians. This provision codifies tribal authority to investigate, prosecute, convict, and sentence non-Indians who assault Indian spouses or dating partners or violate a protection order in Indian country. VAWA 2013 also clarifies tribes’ sovereign power to issue and enforce civil protection orders against non-Indians.

Both of these significant laws will necessitate increased capacity in all aspects of tribal justice systems. Tribal courts that exercise this authority will need open communication and good relationships with state courts to ensure success, and state judicial personnel will require education on these laws and ongoing information on tribal implementation. Additionally, many tribes contract with state and local correctional facilities to house their inmates. Tribes who exercise this authority may need to house an increased number of inmates and some for longer sentences. A state and local correctional facility that has a good working relationship with the tribe may better understand the tribe’s needs.

As more tribal and state judges come together to take action, it becomes apparent that collaboration is a key strategy to leverage limited resources, build relationships and bridge jurisdictional gaps to improve safety and justice in Indian Country.

### Appendix A: Chart of Tribal State Court Forums

State	Year Formed	Membership	Authority	Key Accomplishments Highlights
<b>Arizona</b>	1990	At least seven tribal members; six state members; one State Bar member; four federal members; and two public members	AZ Supreme Court Administrative Order No. 2007-25	<ul style="list-style-type: none"> <li>✓ Judicial Roundtable with State and Tribal Juvenile Judges</li> <li>✓ Regional Cross-Jurisdictional Community Supervision Summits</li> <li>✓ Enforcement of tribal court involuntary commitment orders</li> <li>✓ Indian law question on the state bar examination</li> <li>✓ Extradition statute for persons to and from Indian jurisdiction</li> <li>✓ State rule on certification of questions of law from federal and tribal courts</li> <li>✓ State rule for the recognition of tribal court civil judgements</li> <li>✓ Arizona ICWA Manual</li> </ul>
<b>California</b>	2010	Over thirty members total: all tribal and state court judges and one non-judicial member	Rule of Court, Rule 10.60. Tribal Court-State Court Forum	<ul style="list-style-type: none"> <li>✓ Monthly Forum E-Update</li> <li>✓ Tribal/State/Federal Court Administrator Toolkit</li> <li>✓ Curriculum on civil and criminal jurisdiction in a Public Law 280 State</li> <li>✓ Tribal court directory</li> <li>✓ Cross-cultural court exchanges</li> <li>✓ Documentary on Tribal Justice</li> <li>✓ Joint Jurisdictional Family Wellness Court</li> <li>✓ Rule governing Title IV-D case transfers to tribal court</li> <li>✓ Tribal Court Civil Money Judgment Act</li> <li>✓ California Courts protective order registry</li> <li>✓ Domestic Abuse Self-Help Tribal Project</li> <li>✓ Adoption of Rule 5.386 ensuring efficient and consistent process</li> <li>✓ Jurisdictional Tools for Law Enforcement and Judges</li> <li>✓ Info Bulletin on Recognition &amp; Enforcement of Tribal Protection Orders</li> <li>✓ Judicial toolkit on Federal Indian law</li> <li>✓ Public Law 280 and family violence curriculum for judges</li> <li>✓ Tribal advocates curriculum</li> <li>✓ Tribal communities and domestic violence judicial bench guide</li> <li>✓ Published Tribal Elder Abuse Benchguide</li> <li>✓ Focus on Juvenile Cases: rule proposals, legislative proposals, and legislative reports in juvenile appeals.</li> </ul>
<b>Idaho</b>	1993	Tribal and state court judges; representative from the U.S. District Court; and legal scholar (serves as consultant)	Supreme Court of Idaho Court Order	<ul style="list-style-type: none"> <li>✓ Idaho Tribal-State Court Bench Book 2014 Edition</li> <li>✓ As a committee of the State Supreme Court, the Forum can propose rules and action to the Supreme Court's Administrative Conference for consideration</li> <li>✓ Standardized domestic violence protection orders</li> </ul>

<b>Kansas</b>	2016	Equal tribal and state court judge participation	None	<ul style="list-style-type: none"> <li>✓ Provided training to state court judges on ICWA Guidelines at the 2018 Judicial Conference.</li> <li>✓ Recommended amendments to Supreme Court Rule 116, which created an exemption allowing an out-of-state attorney representing a tribe, parent, or Indian custodian in an ICWA proceeding to file a motion for admission <i>pro hac vice</i> to appear in a Kansas court without paying the application fee or associating with a Kansas attorney. The amended rule went into effect May 8, 2019.</li> <li>✓ Statute passed that requires district courts to offer full faith and credit to tribal court judgments pursuant to Supreme Court Rule. (K.S.A 60-3020, effective July 1, 2019.) Submitted proposed implementing rule to the Supreme Court for consideration.</li> </ul>
<b>Michigan</b>	2014 (similar project began in 1992)	Equal tribal and state court judge participation	Administrative Order No. 2014-12	<ul style="list-style-type: none"> <li>✓ Creation of the State Bar American Indian Law Standing Committee</li> <li>✓ Creation of the State Bar American Indian Law Section</li> <li>✓ Michigan Judicial Institute makes training available to tribal court judges</li> <li>✓ MI Court Rule 2.615: provides for recognition of tribal courts judgements</li> <li>✓ Annual MI Bar Directory information about tribal courts and governments</li> <li>✓ Addition of federal forum members</li> </ul>
<b>Minnesota</b>	Informally in 1996	Tribal and state court judges	State participants recognized by the SC in 2002. Included in MN Supreme Court's FY14-15 and FY16-17 Strategic Plans	<ul style="list-style-type: none"> <li>✓ Developed state comity rule, adopted in 2004 and amended in 2018.</li> <li>✓ Advocated for the full implementation of the Minnesota Indian Family Preservation Act (MIFPA).</li> <li>✓ Expanded tribal court access to state court information</li> <li>✓ Implemented <a href="#">Tribal Court State Court Forum website</a> in August 2017.</li> <li>✓ Co-sponsored "Why Treaties Matter," a nationally recognized travelling exhibit developed by the Minnesota Indian Affairs Council, the Minnesota Humanities Center, and the Smithsonian Institution's National Museum of the American Indian.</li> <li>✓ Celebrated 10<sup>th</sup> Anniversary of the Cass County / Leech Lake Joint Jurisdiction Wellness Court.</li> <li>✓ Provided ongoing education regarding Tribal Courts, State Courts, ICWA, and MIFPA</li> </ul>
<b>Nebraska</b>	2018	Equal state and tribal participation: all the sovereign court systems within Nebraska	None	<ul style="list-style-type: none"> <li>✓ Listening sessions in Omaha, Macy, Winnebago, and Niobrara.</li> </ul>

<b>New Mexico</b>	2006	Fourteen members total	State Supreme Court Order No. 8500	<ul style="list-style-type: none"> <li>✓ Project Passport: A uniform first page for all state orders of protection and several tribal courts.</li> <li>✓ Pilot Testing Juvenile Detention Alternative Initiatives</li> <li>✓ Received Outstanding Criminal Justice Program Award from the National Criminal Justice Associate in 2013</li> <li>✓ ICWA bench cards</li> <li>✓ Travel scholarships for 6-16 trial judges to participate in training events</li> <li>✓ Reviewing the State's implementation of ICWA</li> <li>✓ Comprehensive website with forum committee updates and resources including contact information for tribal courts</li> <li>✓ Creation of Drug Court Committee</li> <li>✓ Creation of Service Committee working on the following: <ul style="list-style-type: none"> <li>○ model orders for tribal access to other needed state services;</li> <li>○ the development of a lay counsel or a lay advocate program for better representation in tribal courts;</li> <li>○ drafting a model ordinance/law that can be used by tribes in implementing the federal VAWA law;</li> <li>○ the identification of an index and/or online directory of state services,</li> <li>○ improved tribal notification by the state of tribal youth in state custody</li> </ul> </li> </ul>
<b>New York</b>	2003	Tribal court judges; state court judges; federal court judges; and reps from state agencies	The state court judges are currently working on institutionalizing the Forum with the adoption of a court rule or administrative order	<ul style="list-style-type: none"> <li>✓ A Second Listening Conference (2016)</li> <li>✓ Native Bail Reform Initiative and pilot program in Franklin County</li> <li>✓ First Annual ICWA Conference (April 3, 2019) (CLE diversity credit)</li> <li>✓ Establishment of subcommittees including, among others: Strategic Planning Committee, NAGPRA Legislation Committee, Native Bail Reform Initiative Committee, Website Committee and the Teach ICWA Committee.</li> <li>✓ Adoption of legislation recognizing tribal marriages</li> <li>✓ A court comity rule for recognition of tribal court judgments</li> <li>✓ A special edition of the New York State Bar Journal on ICWA, with articles authored by forum members</li> <li>✓ A Teach ICWA initiative to continue ICWA training for attorneys (through Continuing Legal Education), child care professionals, and judges</li> <li>✓ A First Listening Conference for state, federal, and tribal court judges and justice system personnel.</li> </ul>

<b>North Dakota</b>	1994	Eighteen members: tribal court judges; state court judges; representatives of tribal and state court administrative support; three public members with interest/expertise in tribal/state judicial systems	State Supreme court Administrative Rule of the Court 37	<ul style="list-style-type: none"> <li>✓ Developing draft agreements on sharing of information between state and tribal juvenile courts</li> <li>✓ Amended civil procedure rules that mandate recognition of tribal court orders and judgments</li> <li>Developing a protocol for child support collection</li> </ul>
<b>Oregon</b>	2015	Eighteen judges: equal tribal and state representation	Memorandum of Understanding between the Oregon Judicial Department and the Nine Federally Recognized Tribes of Oregon	<ul style="list-style-type: none"> <li>✓ Rule change to Uniform Trial Court Rule 3.170, creating an exemption allowing an out-of-state attorney representing a tribe or Indian parent in an ICWA proceeding to appear in an Oregon court without paying a court fee or associating with an Oregon attorney</li> <li>✓ Training and education on full faith and credit for tribal protection orders</li> <li>✓ Cross-cultural court and tribe visits</li> </ul>
<b>Utah</b>	2011		None	<ul style="list-style-type: none"> <li>✓ Statewide ICWA assessment</li> <li>✓ ICWA training for all state court judges and child welfare attorneys</li> <li>✓ Annual Indian Child Welfare Conference</li> <li>✓ Successful recruitment of Native American foster homes</li> </ul>
<b>Washington</b>	2013	All state and tribal court judges are invited; several workgroups and committees; two co-chairs	None	<ul style="list-style-type: none"> <li>✓ Travel scholarship funding for tribal court judicial officers and court personnel to attend trainings and conferences</li> <li>✓ Held state wide meetings at the Washington Fall Judicial Conference.</li> <li>✓ Delivered Regional Meetings at the Suquamish Tribe, Swinomish Indian Tribal Community, Quinault Indian Nation, Confederated Tribes of the Colville Reservation, and Tulalip Tribes, respectively.</li> <li>✓ Recommended Amendments to Washington Superior Court Civil Rule 82.5 that provided for enforcement of tribal court orders and allowed communication between state and tribal courts. The amended rule went into effect September 2019.</li> <li>✓ Sought &amp; received a State Attorney General Opinion regarding the Full Faith and Credit enforcement of tribal court protection orders.</li> <li>✓ Encouraged State Court Clerks giving Tribal Domestic Violence Protection Orders a state cause number to be entered into their systems.</li> </ul>

<b>Wisconsin</b>	1996	Five tribal judges; a tribal attorney; the director of state courts; five circuit court judges; a legislative liaison; and a district court administrator	None	✓ Discretionary Transfer of Civil Cases to Tribal Court – which allows for transfer through the application of enumerated standards.
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## Appendix B: Dos and Don'ts

The following general guidelines can assist tribes and states with making smart choices that have shown to be successful and to avoid common pitfalls

### **Tribal/State Court Forum Dos and Don'ts**

*(Based on the experience of the Arizona Court Forum as reported by the National Center for State Courts, 1992)*

#### **Membership**

- DO select forum members from diverse perspectives who have demonstrated interest, expertise, or experience in addressing Indian law issues.
- DON'T select forum members based only on their position within the judiciary or elsewhere.

#### **Mutual Respect**

- DO acknowledge differences between tribal and state court systems and seek ways of cooperating consistent with those differences.
- DON'T characterize either system as better/worse or more/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 forum members or subcommittees to be accomplished within established time frames.
- DON'T delay too long before dividing the work of the forum into tasks that can be accomplished within the time frames established.

#### **Solutions**

- DO emphasize creative solutions to jurisdictional issues that avoid litigation and 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 jurisdictional issues.
- DON'T seek to address jurisdictional issues solely through large-scale change in the law or legal systems.

## Appendix C: Additional Resources on Tribal-State Court Forums

***Crossing the Bridge: Tribal-State-Local Collaborations.*** Tribal Law and Policy Institute, February 2019. Available at: [www.WalkingOnCommonGround.org](http://www.WalkingOnCommonGround.org)

***Tribal-State Court Forums: An Annotated Directory.*** Tribal Law and Policy Institute, July 2015. Available at: [www.WalkingOnCommonGround.org](http://www.WalkingOnCommonGround.org)

***Promising Strategies: Tribal State Court Relations.*** Tribal Law and Policy Institute, March 2013. Available at: [https://www.walkingoncommonground.org/files/TLPI%20Promising%20Strategies%20Tribal-State%20Court%20Relations\\_FINAL\\_Updated%208-15-13.pdf](https://www.walkingoncommonground.org/files/TLPI%20Promising%20Strategies%20Tribal-State%20Court%20Relations_FINAL_Updated%208-15-13.pdf)

***Promising Strategies: Public Law 280.*** Tribal Law and Policy Institute, March 2013. Available at: [https://www.walkingoncommonground.org/files/TLPI%20Promising%20Strategies%20280\\_FINAL\\_Updated%20%208-16-13.pdf](https://www.walkingoncommonground.org/files/TLPI%20Promising%20Strategies%20280_FINAL_Updated%20%208-16-13.pdf)

***State and Tribal Courts: Strategies for Bridging the Divide.*** Center for Court Innovation, 2011. Available at: <http://www.courtinnovation.org/sites/default/files/documents/StateAndTribalCourts.pdf>

***Tribal Court-State Court Forums: A How-To-Do-It-Guide to Prevent and Resolve Jurisdictional Disputes and Improve Cooperation Between Tribal and State Courts.*** William Thorne, Spring/Summer 1996. The Tribal Court Record. Available at: <https://www.walkingoncommonground.org/files/Resources%201%20TribalCourtStateForumHow2Guide.pdf>

***Walking On Common Ground Website.*** Available at: [www.WalkingOnCommonGround.org](http://www.WalkingOnCommonGround.org)

## U.S. Department of Justice Resources

The Department of Justice (DOJ) provides support and [training and technical assistance \(TTA\)](#) to further practical and specialized knowledge that implements and enhances justice system efforts. DOJ supports TTA that is specifically geared toward tribes and across broader topic areas, including problem-solving courts. The DOJ Bureau of Justice Assistance is committed to preventing and controlling crime, violence, and substance abuse and improving the functioning of criminal justice systems in American-Indian and Alaska Native communities. See links below:

- Bureau of Justice Assistance TTA ([bja.gov](http://bja.gov))
- [BJA National Training and Technical Assistance Center \(bjatta.bja.ojp.gov\)](http://bjatta.bja.ojp.gov)
- Tribal Justice and Safety Website ([justice.gov/tribal](http://justice.gov/tribal))

## **DOJ Coordinated Tribal Assistance Program**

The DOJ launched its Coordinated Tribal Assistance Program (CTAS) in FY 2010 to provide funding and flexibility to address tribal criminal justice and public safety needs. The grants provide funding to support intervention in nine purpose areas including justice systems and alcohol and substance abuse (Purpose Area 3) and corrections and correctional alternatives (Purpose Area #4). Through CTAS the Department has awarded over \$620 million to hundreds of American Indian and Alaska Native communities. The Tribes are using these funds to enhance law enforcement, bolster justice systems, prevent and control delinquency and strengthen the juvenile justice system, serve sexual assault and elder victims, and support other efforts to combat crime. For more information please click [here](#) or go to <https://www.justice.gov/tribal/grants>.

## **Tribal Civil and Criminal Legal Assistance Program**

The [Tribal Civil and Criminal Legal Assistance \(TCCLA\) Program](#) provides grants, policy leadership, training, and technical assistance to support federally recognized tribal nations in enhancing their tribal justice systems and improving access to those systems. Grants are targeted to non-profit organizations with a 501(c)(3) tax status and serve to strengthen and improve the representation of all defendants in criminal cases and low income tribal members in civil causes of action under the jurisdiction of Indian tribes. Nonprofits may also provide tribal court capacity building to Indian tribes, if requested. Lastly funds support training and technical assistance that supports the development and enhancement of tribal justice systems. For more information, visit TCCLA webpage: [https://www.bja.gov/ProgramDetails.aspx?Program\\_ID=102](https://www.bja.gov/ProgramDetails.aspx?Program_ID=102).



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