

**PROMISING STRATEGIES:
INTERGOVERNMENTAL COLLABORATIONS**

PROMISING STRATEGIES: TRIBAL-STATE INTERGOVERNMENTAL COLLABORATIONS

Tribal Law and Policy Institute
February 2024



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A product of the
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Introduction/Executive Summary

Since time immemorial, people have come together and found various ways to resolve disputes, heal individuals, and make communities whole. Today, as we look to Tribal and nontribal justice systems, we see judicial leaders and their justice partners striving to be fair and just, addressing a myriad of complex problems, and realizing that they cannot find solutions to these problems alone. This report describes a joint jurisdictional approach that is resiliency building and strengthens government-to-government relationships. It asks us to reimagine justice. It invites those who are impacted by courts, service providers, and judges to connect in new ways and rebuild justice systems so they can restore individual, family, and community function.

Reimagining justice is necessarily interjurisdictional. People’s problems do not come in neat legal boxes, and public safety and substance misuse issues do not respect boundaries between Tribal communities and their nontribal neighbors. Every day, judges are asked to decide legal questions in the face of what can seem like insurmountable problems—intergenerational poverty, addiction, racism, and hopelessness. Science and traditional Indigenous practices teach us a similar lesson: What we label as dysfunction occurs when experience alters systems in the brain and compromises function. What we label as bad behavior can be trauma passed on by colonization that translates into negative behavior or coping mechanism. The joint jurisdictional approach demonstrates that posttraumatic growth and wisdom are possible when a Tribal court judge and a State (or Federal court) judge come together to exercise their respective authority, invite their justice system partners to the table, and leverage resources to promote healing and protect public safety. And when judges come together, that collaboration improves relationships in the community at large.

The recent US Supreme Court ruling in [Oklahoma v. Castro-Huerta](#) expanding State authority to prosecute non-Indians who commit crimes against Indians in Indian country demonstrates how intergovernmental collaborations are more important than ever.¹ The ruling in [Oklahoma v. Castro-Huerta](#) held that Congress did not intend through passage of the General Crimes Act, 18 USC §1152, to preclude State court jurisdiction over crimes committed by non-Indians against Indians in Tribal communities and that State jurisdiction is intact, concurrent with Federal jurisdiction, unless otherwise precluded by Federal law.² Ignoring nearly 200 years of existing law and policy, and violating treaties, this decision expands State power while undermining the hard-fought principle that Tribes, as sovereign Nations, have the inherent right to govern themselves and their own territory. The true impact of Castro-Huerta depends on how States respond to their newly granted jurisdiction. Intergovernmental collaborations can address the issues and challenges that can arise from State authority in Indian country. They can avoid jurisdictional confusion for both States and Tribes around the authority to exercise criminal jurisdiction, which can also result in dangerous jurisdictional vacuums where the confusion leads to no one taking responsibility. Intergovernmental collaborations can address this by

¹ *Oklahoma v. Castro-Huerta*, 597 U. S._ (2022)

² *Ibid.*

fostering communication, providing jurisdictional clarification, and leveraging resources for law enforcement and justice systems to better protect communities and families.

Judges and communities are using this joint approach in creative ways to imprint resiliency in individuals, families, and communities, strengthening their respective justice systems in the process. And they are seeing results in improved government-to-government relationships, lower recidivism rates³, lower school discipline rates, higher graduation rates, increased family preservation rates, reduced domestic violence, reduced incarceration rates⁴, and cost savings.⁵

This publication features successful joint jurisdictional strategies that build resiliency and provide a new way forward in the process. The judicial leaders and their partners have undertaken different journeys because the joint approach is both flexible and locally driven. They have applied the approach across various case types, procedurally at different points in case decision making, and to improve cross-jurisdictional understanding. This report showcases six journeys with resulting variations in reimagined justice. The Family Wellness Courts in California and the Henu Community Wellness Court in Alaska are joint jurisdictional courts addressing issues stemming from substance misuse disorders, which in turn are often the problems underlying child abuse and neglect. The two judges in these joint jurisdictional courts preside side by side at hearings in cases involving drug and alcohol issues leading to criminal behavior and child welfare cases. The judges make decisions together, tackling all related family concerns. In Maine, State leaders and the Wabanaki People applied the joint approach to establish an Indian Child Welfare Act (ICWA) Workgroup as a starting place for child welfare reform. In Michigan, the joint approach led to the development of judicial training on trauma, brain science, motivational interviewing, and coaching, which has become the cornerstone of Resiliency Courts addressing child welfare cases. In New York, State leaders and the Saint Regis Mohawk Tribe have established a bail reform initiative that addresses the unequal opportunity that residents of Tribal lands face in securing pretrial release from incarceration. The authors hope that other Tribes and States will embark on their own joint jurisdictional journey and discover new ways of reimagining justice and find inspiring stories of resiliency building.

³ In 2014, the National Demographics Corporation (NDC) conducted a process, outcome, and cost evaluation that examined data from the Leech Lake Band of Ojibwe-Cass County Joint Jurisdiction Wellness Court, compared to offenders in a non-joint jurisdictional court process, from 2006 to 2012.

⁴ Id.

⁵ *Joint Jurisdiction Courts: Needs Assessment Findings and Summary Findings*. Tribal Law and Policy Institute (2022) p. 5, 20, available at: <http://www.walkingoncommonground.org/resources-tools.cfm>

Selection Criteria and Methods

The six programs featured in this publication were selected according to the following criteria:

1. **INTERGOVERNMENTAL COOPERATION:** The programs achieve benefits of coordinated, consensual, and mutually respectful relations between Tribal and nontribal justice agencies.
2. **INNOVATIVE:** The programs are distinctive and involve innovative processes that appear to present promising solutions to everyday challenges affecting Indian country justice. The programs contain a coherent strategy or vision that promises to improve a significant aspect of justice relations.
3. **REPLICABLE:** The programs can be replicated or adapted in other Tribal communities, their approaches can be used in other settings, and the level of investment needed to achieve similar outcomes and sustain the programs is not insurmountable.
4. **SUSTAINABLE:** The programs can be sustained when external funding sources are expended and when the programs are not dependent upon any one person for their continued success.
5. **CULTURALLY COMPATIBLE:** The programs, as situated within a broader justice system, are in accord with the current beliefs, understandings, values, and future goals of the community.
6. **COMMUNITY COMPONENT OF SERVICES:** The programs are strengthening the relationship of the Indian people to their community. The programs are well received and have support from the surrounding community and Tribal government.
7. **GOVERNMENT OR NONPROFIT OPERATION:** The programs operate within the Tribal Nations' governments and State courts.
8. **RESPECT FOR AND ENHANCEMENT OF TRIBAL AUTHORITY:** The programs demonstrate respect for the jurisdiction of Native Nations and States and promote Tribal administration of justice in Tribal territory.
9. **FAIRNESS:** The programs uphold nonarbitrary, just, impartial, and nondiscriminatory treatment of all persons.
10. **MANAGEMENT EFFECTIVENESS:** Once program goals are established, the programs are carried out so that goals will be achieved (e.g., appropriate rules, lines of responsibility, personnel selection, communication, and allocation of resources).

In addition, when looking at the group of promising strategies that was selected, the following criteria to examine the group as a whole were used:

- **CULTURAL VARIETY:** The programs include a variety of different cultural backgrounds. Each program has unique cultural aspects and traditions.
- **GEOGRAPHIC VARIETY:** The selected Tribal programs are located in Public Law 280 and non-Public Law 280 States and represent a variety of different locations and jurisdictional circumstances within the United States.

With these criteria in mind, the Tribal Law and Policy Institute (TLPI) in consultation with the Bureau of Justice Assistance (BJA), identified a diverse group of intergovernmental collaborations that demonstrated promising practices worth highlighting. Then on July 26, 2021, TLPI held a virtual intergovernmental collaboration meeting to highlight each of the promising practices identified.⁶ Each program had an opportunity to discuss each of their collaborations, positive outcomes, and keys to success, and to provide guidance on replication. The meeting highlighted five of the six programs mentioned and, through this meeting, the Michigan Resiliency Court was also identified. Program contacts were then identified, and interviews were conducted with leaders and key participants for each program.

Common Themes

The promising strategies highlighted in this publication all have several important common themes.⁷

First, they demonstrate strong and effective leadership from both nontribal and Tribal justice agencies engaging with their respective governments, communities, departments, and service providers. Often this leadership began in their respective judiciary. Judges are in a unique position to lead change because they can bring people to the planning table. The judges featured in this report used their power to convene a broad-based group of stakeholders together and the result was a shared vision and design for their intergovernmental justice models.

Second, they tap effective technical assistance in the planning, implementing, and sustaining of these collaborations. Technical assistance and facilitation supported the intergovernmental leadership, which included peer-to-peer learning, mapping services, and education on specific subject matters.

Third, they draw upon the best of each system, blending or complementing each other, which necessitates a paradigm shift away from the State or Federal justice system that does not typically embrace access to culture and spirituality to resolve issues in their justice systems and tend to overly rely on incarceration. Justice partners make a shift and design a new justice system that:

- Respects different traditions and accesses Tribe-specific culture/spirituality;
- Focuses on root causes;
- Moves away from punishment toward healing by drawing on the individual and community resiliencies; and

⁶ A recording of the Tribal–State–Local–Federal Intergovernmental Collaborations Virtual Meeting that was held on July 26, 2021, is available at: <http://walkingoncommonground.org/resources-tools.cfm>

⁷ These themes were also identified in the Joint Jurisdiction Needs Assessment Final report, available at: [http://www.walkingoncommonground.org/files/Joint%20Jurisdiction%20Courts%20Final%20Report%20for%20Positing%202-7-22%20\(1\).pdf](http://www.walkingoncommonground.org/files/Joint%20Jurisdiction%20Courts%20Final%20Report%20for%20Positing%202-7-22%20(1).pdf)

- Moves away from silos to supporting families in a coordinated team approach.

Fourth, they affect Tribal members by providing culturally compatible alternatives to the State justice system and, in some cases, transform their State justice system in the process. In California, the launch of the joint Family Wellness Court led to the Humboldt Superior Court creating a Family Wellness Court as an alternative to the juvenile dependency court, which is more compatible for all citizens. Tribal members of Tribes without Tribal courts in the region and non-Native people are choosing this wellness court alternative. In Michigan, the Resiliency Court led to the State court hiring a Tribal court judge as a magistrate and participation by Tribal court judges in State court problem-solving work groups.

Fifth, they focus on root causes of a shared problem that they address together. The shared problem may have initially been identified through the discovery of disproportionate rates for Tribal members, such as a high mortality rate from driving while intoxicated or opioid dependence; removal rate for abuse and neglect; opioid or other substance misuse rate; or school dropout rate. This unacceptable rate may have led them to target specific case types in a joint or complementary court, however, it is their approach together that causes the judges and their justice partners to drill down to the underlying root causes.

Sixth, as each collaboration focused on root causes, they bumped up against each other's silos. By designing their joint or complementary justice systems, they necessarily improved their collaboration.

Face-to-face relationships are crucial and create the conditions that are needed to examine, and challenge core beliefs and practices. As stakeholders learn from one another, they begin to have stronger, more positive relationships. By taking the time to move from cooperation to collaboration, these justice agencies broke down the silos that separated their justice partners.

Lastly, sustainability strategies were built into planning, implementation, and ongoing operations of these collaborations. It starts with the community's local and shared goals. It involves making structural changes, ongoing evaluation of operations, and incorporating lessons learned. In this way, these collaborations are always evolving, attuning to the local and Tribal context, and lasting beyond the personalities of the leaders and stakeholders who designed the collaboration.

The sovereign Nations and their respective State justice counterparts described in this report have demonstrated that these promising strategies are essential and result in lasting outcome and systemic changes in each of their separate and joint jurisdictional justice systems. They serve as a model for reimagining justice across all case types and any procedural point in a case in which the leaders embrace joint decision making.

Through these Promising Strategies, confrontation between Tribal and State justice systems have given way to enhanced understanding, negotiation, and cooperative action. Through networks

of relationships and innovative programs, they have knit together Tribal and State justice systems and government-to-government relations while respecting cultural and institutional differences. Through ongoing dialogue and creative responses to common concerns, current Promising Strategies hold promise of more innovative and constructive joint endeavors.

Note on This Publication

The organization of the six promising strategy sites in this publication is no indication of a ranking or any other such ordering. There are many promising strategies throughout Indian country in addition to those listed here, and this listing is in no way presented as exhaustive. Many of the sites highlighted here build upon the successes of previous efforts in Indian country. One of the goals of this publication is to highlight relatively recent efforts and not to give an historical account of the past efforts. Sites highlighted in this publication were selected based on the authors' research and knowledge. In addition, the criteria used to select sites were previously reviewed and vetted through BJA partners.

This publication is part of a larger project funded by the BJA focusing on collaborations among Tribal–State–Federal partners. In addition to this publication, the TLPI has developed a companion document describing promising strategies with Tribal–State courts. Under this grant, TLPI has also launched a significantly enhanced and updated the Walking On Common Ground website (www.WalkingOnCommonGround.org). This site provides resources for promoting and facilitating Tribal–State–Federal collaborations, including an interactive map with cooperative agreements searchable by topic. It also provides electronic versions of this publication, the Tribal–State court publication, and additional promising collaborative strategy publications to come in the near future.

Program Profiles

1. Alaska: Kenaitze Indian Tribe and State of Alaska Henu' Community Wellness Court

Start Year: 2016

Service Area: Kenai, Alaska

Target

Population: Serves adults, Native or non-Native, living in the Tribe's service area, which spans from Cooper Landing south to Ninilchik, who face legal trouble stemming from substance use.

Authority: Joint Powers Agreement

Website: <https://www.kenaitze.org/tribal-government/tribal-court/henu-community-wellness-court/>

Contact: Audrey Strickland (907) 335-7233; Astrickland@kenaitze.org

Program Description

The Henu Community Wellness Court ("Henu'") is a joint-jurisdictional therapeutic court operated by the Kenaitze Indian Tribe in collaboration with the Alaska Court System. It is the first of its kind in Alaska and draws on the experience of a similar court started in Minnesota in 2007. Henu is a post-plea pre-sentence jail diversion program for people struggling with substance misuse issues. Henu aims to serve every adult, Native or non-Native, living on the Western Kenai Peninsula who has committed a crime stemming from substance misuse. The court's vision is transforming lives for a healthier community and its mission is to support wellness and rehabilitation for those in need through a cooperative justice program to create a safe and healthy community. Henu is a drug and alcohol court that focuses on a person's entire wellness, going beyond substance misuse treatment. The court focuses on treating and healing substance misuse; restoring ties to the community; restoring relationships with family and friends; increasing a person's self-sufficiency; breaking the cycle of recidivism; working with Office of Children's Services to have children returned to their homes sooner; and giving back to the community through volunteer effort.

The Henu model is a strength-based, un'ina ("those who come to us")-centered, family-focused model, grounded in Kenaitze values and culture, based on data-driven decision making and measurable outcomes. Staff work closely with un'ina using evidence-based practices while incorporating the Kenaitze Indian Tribe traditional values to enhance the un'ina's well-being and promote self-sufficiency while they reside in the community and rebuild their lives.

Henu is an 18-month program that brings together substance use treatment and community resources by using a team approach that focuses on the individual while promoting sobriety

and traditional values. The joint jurisdictional court approaches client healing through seven main priorities: (1) treating and healing substance use; (2) restoring participant ties to the community; (3) restoring participant relationships with friends and family; (4) increasing self-sufficiency; (5) breaking the cycle of addiction and recidivism; (6) placing children in safe homes; and (7) giving back to the community through volunteer efforts.

To take part in the Henu Community Wellness Court, a participant's offense must be committed as a result of substance use. Anyone can recommend a participant, and applicants are referred through both the State and Tribal court systems. Eligible participants are approved by both the Kenaitze Tribal Court and the Kenai Superior Court multidisciplinary team members. Both Native and non-Native persons are eligible for Henu. The court focuses on high risk/high need of individuals. Henu strives for a holistic outcome that includes lifetime sobriety, healthy family reunification, and avoiding reentry into the criminal justice system and/or incarceration. The court serves adults who face legal trouble stemming from substance use, focusing on drug and alcohol offenders—including those in families with Children in Need of Aid (CINA) cases—who reside within the Tribe's service area. Defendants charged with property crimes may also be considered if the offense stems from substance use.

The court's primary goals are to reduce recidivism rates, improve the lives of participants, and build a safer and healthier community. Participants maintain consistent contact with their probation officer and court team, participate in frequent random drug screenings, and complete substance misuse treatment as well as any needed mental health treatment. The court is a four-phase program: Trust Phase: Orientation and Assessment; Belonging Phase: Education and Service Planning; Living Well Phase: Skill Development and Feedback; and Restorative Phase: Maintenance and Transition. The four phases take a minimum of 18 months to complete. The length of the program reflects a commitment to ensure that participants experience complete healing and restoration. To graduate from the program, participants must submit a Petition for Graduation; have a safety/relapse prevention plan; have ongoing safe sober housing; be working, in school, or performing service hours; complete a Pay It Forward Service Project; have 180 days of continued sobriety; follow a Life Change Plan; and follow treatment recommendations.

Participants take part in frequent random drug testing and attend individual and group outpatient treatment services and other Tribally provided activities. Henu offers a variety of services including sober living supports, substance misuse treatment, mental health counseling and Peacemaking Circles, to name a few. Kenaitze traditional values and activities are infused throughout. Participants work closely with their Tribal probation officer and the multidisciplinary team to ensure their progress. Random drug testing and intensive outpatient therapy assist in the maintenance of sobriety. All individuals are required to take Moral Recognition Therapy and participate in Peacemaking Circles. The Kenaitze Tribal Court and the State of Alaska Court have Project Coordinator counterparts who work together. Weekly status hearings are held in the Kenaitze Tribal courthouse. Multidisciplinary team meetings are held regularly. This team consists of the Alaska Superior Court Judge, Tribal Judge, District Attorney,

Public Defender or participant’s attorney, Project Coordinator, Tribal Probation Officer, and substance misuse treatment provider.

“They care about everyone’s well-being and no matter what, if someone is doing well, they want to know what they can do to help them stay on that path or if they are doing bad what could have happened differently to change it.”
—Henu Wellness Court Participant

The effectiveness of the Henu’s holistic approach was summed up by a participant, who said that “[t]he Henu wellness program has helped me immensely. They have helped me realize that thoughts that I have are not okay even when they are not directly related to drug use. For instance, not to break laws at all which probably

comes natural to most people, it actually takes considerable thought for me. Anyway, all and all the Henu team is amazing. They care about everyone’s well-being and no matter what, if someone is doing well, they want to know what they can do to help them stay on that path or if they are doing bad what could have happened differently to change it.” (OsNe Phase III to Phase IV essay).

Effective Leadership

While it took a year for the State of Alaska to approve the Henu Court, the founding judges and planning team persevered and created the Court. Since its inception, Henu has survived changes in judicial leadership and changes in the composition of the multidisciplinary team. Throughout its development, Henu team members hosted community presentations to ensure that the community understands the role, approach, and objectives of the court. Since its inception, the Kenaitze Indian Tribe and the greater community of Kenai have been very supportive of Henu’.

Effective Technical Assistance

The Kenaitze Indian Tribe received outside technical assistance and facilitation for its development.⁸ These facilitated meetings were held in 2015 in Kenai, Alaska to assist the Kenaitze Tribal Court Chief Judge and Kenai Superior Court Judge with developing this project. Meetings included representatives from State and Tribal government, law enforcement, probation, treatment providers, and community members. Other wellness court models such as the joint jurisdictional court in Minnesota were examined and adapted to fit local needs. The Kenaitze Indian Tribe has also received additional technical assistance for enhancing their joint jurisdiction court.⁹

⁸ Project T.E.A.M. (“Together Everyone Achieves More”), funded by the BJA, provided technical assistance and facilitation. The goal of Project T.E.A.M is to help Native American communities and their local, State, and Federal partners create joint jurisdiction justice collaborations.

⁹ TLPI provided additional technical assistance through their Tribal Healing to Wellness Court Training and Technical Assistance Project funded by the BJA.

Cultural Compatibility

One of the key aspects of Henu is that it is based on the Kenaitze traditional values, which permeate throughout the Court and its treatment programs, beginning with its name. In the Kahtnuht'ana Dena'ina language, "henu" literally means work, job, or task. The Court impresses upon its participants the importance and willingness to work hard, cooperate, and be helpful. The four phases of the court are also centered on the Kenaitze values: Naghe'a, meaning honesty (Orientation and Trust phase); Daggeyi meaning fellowship, working with others (Belonging phase); Vishayaghelisht'a meaning wellness (Living Well phase); and Yaghelich' meaning goodness the right way (Restoration phase). The graduation ceremony is called Yaghelichdat', meaning to walk in beauty.

The Traditional Value Wheel¹⁰ represents the Dena'ina way of life, and these values are applied to the Henu program. The program encourages health, wellness, and sobriety, bringing together family, neighbors, and the broad community. By doing so, participants come to live a true life and follow "Yaghali Tinitun": the Good Trail. Participants, known as un'ina, meaning those who come to us, also take part in the traditional components of Henu, for example, daily lunch with elders, use of the Tribal Wellness facilities, and support from Na'ini Social Services.

Henu has proven the power and impact of the traditional Tribal values of respect, honesty, and cooperation. The Peacemaking Circle, called Ts'itq'u meaning "coming together as one," is used for the participants to address personal issues; for the Multidisciplinary Team (MDT) to discuss concerns, staff changes, and planning; and at times to address appropriate sanctions. Both Native and non-Native participants, judges, and court staff have experienced the healing power of the Circle. The use of the traditional medicine bag in which symbols of healing and personal power added in ceremony are used as teaching tools on Tribal customs and culture. Objects such as the agate, dentalium, spruce hen feathers, and fur, tied together with the Dena'ina traditional stories, tell of their significance, and teach the participants of their personal value to themselves, their families, and their community.

Blended or Complementary Approaches Focusing on Shared Problem and Root Causes

Historically, the Kenaitze Tribe struggled in its efforts to achieve concurrent jurisdiction in criminal cases involving Native American individuals on Indian land because of Public Law 83-280 (commonly referred to as PL 280). Prior to PL 280, criminal jurisdiction was shared between Federal and Tribal governments, and States had no authority in criminal cases involving Tribal members or American Indian or Alaska Native (AI/AN) individuals. The passage of PL 280 in 1953 granted five States and Alaska at statehood (1959) criminal jurisdiction in cases involving Tribal members and AI/AN individuals. The situation was complicated by Tribal land issues in Alaska. Lands set apart for Natives under the Alaska Native Claims Settlement Act are not designated as Indian country as established by the Supreme Court in *Alaska v. Native Village of Venetie Tribal Government* (1998). This left the Kenaitze Tribal Court with no jurisdictional

¹⁰ Kenaitze Traditional Value Wheel is available at: <https://www.kenaitze.org/culture/>

authority to prosecute crimes that occurred in Indian country (Federal reservations, Indian allotments) because Federal reservations, except for the Annette Island Reserve, simply did not exist in Alaska.

“The Henu wellness court is a prime example of how two entities with similar goals can blend their unique talents to solve a community problem. By working together, the two courts have been able to provide a joint jurisdiction wellness court to all members of our community, both Native and non-Native. We have been able to blend the more formal organizational style of the State court with the more informal Tribal court model. All participants have been able to take advantage of services offered by both the Kenaitze Indian Tribe and the State of Alaska.”
—Hon. Anna Moran, Kenai Superior Court

Initially, the goal of the Kenaitze Tribal Court’s joint jurisdiction collaboration with the State of Alaska was to develop an effective concurrent jurisdiction process to serve Native American individuals involved in criminal court cases, including individuals with drug misuse, alcohol misuse, and co-occurring disorders. Henu’ was started in an effort to address the high number of Alaskan Natives incarcerated for substance misuse–related crimes and to tackle the high rates of recidivism in the community.

Improves Collaboration and Breaks Down Silos

The joint jurisdictional design allows access to resources from Tribal and nontribal agencies and programs. Many entities and agencies support the efforts of Henu, including Kenaitze Tribal Housing Authority, Partners for Progress, Re-entry Coalition, Alaska Alumni Group, and the Nu’it’tun Sober Living House. Faith-based organizations such as the Friendship Mission, Freedom House, and Love, INC provide a variety of needs for individual participants. The success of Henu is a direct result of its staff and community dedication to the holistic justice approach. The close proximity of all the services makes it easy for the participants to access them and to spend time together.

Applies Sustainability and Quality Control Strategies

Though there have been changes in judges and court and treatment personnel, the Henu multidisciplinary team focus and commitment to the healing and wellness of the participants remains the same. Henu is well recognized both within the State of Alaska and Nationwide. There have been many invitations to present at the Tanana Chief Conference, Alaska BIA Providers Conference, National American Indian Court Judges Association, TJA, and Indian Nations. Public presentations at the local prison, the Chamber of Commerce, the local Bar Association, Office of Children Services, and services providers are helpful in advertising the Court and help ensure sustainability. Henu has also undergone evaluations provided by various technical providers.¹¹

¹¹ Project T.E.A.M., Northwest Professional Consultants, and SAMSHA all provided technical assistance.

2. California: Yurok Tribal Court and Humboldt Superior Court Family Wellness Court

Start Year: 2018
Service Area: Yurok Tribe
Target
Population: Families impacted by substance use dependence and child abuse or neglect
Sources of Funding: Initially, State court funding through the Judicial Council of California, and now various Federal sources
Authority: Joint Powers Agreement
Contact: Jessica Carter, Court Administrator, jcarter@yuroktribe.nsn.us, (707) 482-1350, ext.1335



Program Description

In 2018, the Yurok Tribe, a federally recognized Tribe under the judicial leadership of the Tribe's Chief Justice together with the Presiding Judge of the Humboldt Superior Court established the Family Wellness Court through a joint powers agreement.¹² The Court operates under California State law, Federal law, and Yurok Tribal law to provide an independent, culturally sensitive judicial forum, with fair processes for all people who appear before the Court. The Family Wellness Court, an alternative to the State court hearing abuse and neglect cases, is presided over by two judges—a Tribal court judge and a State court judge. The Court embraces components of Tribal Healing to Wellness and collaborative court approaches and is informed by Yurok traditions and culture.

Participants voluntarily enter the Court at any point after the filing of the dependency petition up until jurisdiction is taken by the State court. Participants, after advisement of counsel, opt into the Family Wellness Court. Tribal and nontribal services are wrapped around each participant and their family by a family wellness team. The Court uses a coordinated team approach; comprehensive, culturally competent services; frequent monitoring; and a support

¹² The first joint jurisdictional court was developed in northern Minnesota in 2006 by the Leech Lake Band of Ojibwe and the Cass County District Court. This Court hears cases involving driving while intoxicated/driving under the influence (DWI/DWU). The California Tribal Court State Court Forum, at its first meeting, learned about this innovative approach and sought to replicate the model. In 2015, six jurisdictions applied for technical assistance to establish joint courts. The Shingle Springs Band of Miwok Indians and El Dorado Superior Court obtained the grant and established the first Family Wellness Court (initially to address truancy) in California, largely through the dedicated work of former Chief Judge Christine Williams and Presiding Judge Kingsbury.

system for family recovery and child well-being. Participants advance through four phases: (1) *Trust*: Orientation, Assessments, Stabilization; (2) *Belonging*: Healthy Connections, Education, Service Planning; (3) *Settling Up*: Taking Responsibility, Giving Back, and Feedback; and (4) *Generativity*: Maintenance and Transition to Lifelong Healing.

Effective Leadership

Judicial leadership was key. The two judges started with an excellent working relationship. They had a mutual understanding and shared vision. They knew that the current system was not working and that their joint power to convene the service providers and attorneys would be the starting place for educating and modeling how to approach families in the Family Wellness Court. They understood and shared the urgency to redesign a justice system that worked for their people and citizens.

The judges have exercised leadership with their Tribal and nontribal departments separately and together. Their work is hands on, insisting on assessments, more reporting, and bringing mental health and other services to wraparound the family. Their work necessarily addresses systemic challenges, like high social worker caseloads and attorney fees that are by the case rather than the hour. The new Court's demands on social workers and attorneys are a challenge: They are asked not only to attend more hearings but also to change their mindset and approach from working cases to working alongside families.

The collaboration has had such positive outcomes in their Family Wellness Court cases that currently the two judges are expanding access to concurrent jurisdiction over drug-related criminal cases that involve Yurok Tribal members, and their joint work is reducing alcohol and other substance misuse–related crimes by providing treatment planning, case management, and court monitoring as well as assisting Yurok offenders in the reintegration process back into their community.

Effective Technical Assistance

The Family Wellness Court received outside technical assistance for its development.¹³ Technical assistance (TA) was essential in launching and sustaining their Family Wellness Court. The TA included providing an attorney/facilitator who helped the judges bring stakeholders to the table to design their Court, tap existing and new Tribal and nontribal resources, provide training, and memorialize the Court's policies and procedures: manual, court forms, brochure, and memorandums of understanding.

¹³ The law firm Hedger & Walter, LLP provided technical assistance.

The judges identified the type of training they needed, especially for their non-Tribal stakeholders on how to partner with the Yurok Tribe, engage with Tribal families, and access the culturally grounded Tribal services, all of which require one to shift one's worldview and change one's way of working.

In terms of sustaining their Family Wellness Court, the judges agreed that two positions were so critical that they should be funded: Court Coordinator and Program Manager. The Court Coordinator manages the Court's grants (compliance, reporting), conducts court orientations, maintains court files, preserves all program agreements with all court-connected programs, convenes family wellness team meetings, schedules all court hearings, and sets the agenda for and convenes the monthly core operational team and quarterly steering committee meetings.

The Program Manager facilitates the family wellness team meetings, holds team members accountable for services, ensures timely reports from team members, and helps resolve system issues or brings them to the steering or court operational meetings.

"Technical assistance is critical because outside agencies and experts can help you map existing services, identify gaps, and then integrate new ways of working together to maximize services.... Because reimagining justice requires nontribal people to understand a different way of approaching and helping Tribal members, education from technical assistance providers can offer that way to bridge the two worlds, educate, and help us create new ways of doing right by our People."
—Judge Abby Abinanti

Cultural Compatibility

The Court acknowledges the spiritual and holistic dimensions of healing as part of the path to wellness and offers traditional Yurok dances, wellness gatherings, and ceremonies to families. Before the pandemic, this meant families would let the Court know what they wanted to do, and when they did not participate, the judges and their wellness team would simply ask, just like any other service of which a family did not avail themselves. Rather than the punitive approach of a non-joint court approach, the family wellness team members have a conversation with the family, which leads to a better understanding of the family and a path to problem solving together. Pre-pandemic, the team would learn that childcare or transportation issues got in the way of families participating and then they go to work to solve the problems.

The local context is fraught with challenges that a joint Family Wellness Court must address. With the pandemic, fires, and increase in access to fentanyl and other drugs, many events like dances and wellness gatherings are postponed. The Court does not succumb to the chaos; it models the resiliency of those community members it serves. The Court is born out of necessity, creativity, and the best of both Tribal healing and collaborative/problem-solving approaches, which means that everyone works together to make sure clients' needs are met through how team members communicate with each other and clients modeling healing exchanges and providing healing opportunities. With the pandemic, these exchanges and opportunities have simply gone virtual. To enable hearings to be held virtually, the Court gives

away phones and computers to clients. Even traditional healing activities are sustained through creative virtual means. For example, clients engaged in beading are sent beading kits. The pandemic underscores that this Court is less about programs and more about people—and getting them what they need so they can heal.

Blended or Complementary Approaches Focusing on Shared Problems and Root Causes

This Court uses a therapeutic model, which blends Tribal Healing to Wellness and collaborative/problem-solving approaches. Both focus on healing and look beneath presenting problems to the root causes of each court participant's behavior. The Court holds participants/families accountable for their behavior by creating opportunities for self-healing. It celebrates participants/families and recognizes them for all (little and big) steps taken in their recovery and care for their children because those victories help participants/families overcome shame and narrate new stories about themselves. The Court holds them accountable to themselves and others by supporting actions, which can be taken by participants/families to make things right. All self-healing opportunities are tailored to the unique needs of each family.

County social workers and attorneys are still learning how to approach Yurok families: The tables have to be turned to show that the attorneys and providers are all there to help the families, which means to ask and hear what they really need.

Case plans reflect additional services only available through the Tribe. Peer counselors are embedded into the Court and their role is integrated into a blended case plan. Families and their peer counselors have dinners, go to community events, and exercise together. Both the Tribal and nontribal court judges are also sometimes a part of these healing opportunities with families in their community.

Improves Collaboration and Breaks Down Silos

The formation of this Court improved collaboration and communication between State and Tribal entities, however, vigilance is needed to ensure that it continues. The Program Manager position can help with this because it is their number one priority, and they have the skill set to manage and mediate this continuous collaboration and communication.

The joint jurisdictional design also allows access to resources from Tribal and nontribal agencies and programs. Many entities and agencies support the efforts of the Family Wellness Court, including the Yurok Tribe's Health and Human Services (providing cash assistance, child safety, family advocacy, parenting services, nutritional assistance, youth life skills and leadership development, alcohol and drug treatment services, elder services, childcare), Probation (providing case management and Batterer-Intervention Program), and Education Department (providing support services designed to ensure academic success while building and maintaining the Yurok cultural identity and assisting to provide for the health, education, economy, and social well-being of members; and to preserve and promote Yurok culture, language, and religious beliefs and practices). The K'ima:w Medical Clinic and United Indian

Health Centers, as well as county-based organizations and coalitions such as First Five, Healthy Moms, The Rx Safe Humboldt Coalition (which works to reduce overuse of opioids in Humboldt County), Nurse-Family Partnership, Open Door Community Health Services, St. Joseph's Health Medical Group, and County Office of Education, which provide a variety of needs for individual participants.

Applies Sustainability and Quality Control Strategies

Like all successful joint jurisdictional courts, this Court has established systems for:

- 1) Collecting, tracking and evaluating data;
- 2) Revising court procedures;
- 3) Engaging in ongoing education; and
- 4) Leveraging resources.

The Court applies these controls through a steering committee and a core operational committee.

The steering committee, cochaired by the two judges, meets quarterly and serves as the policy arm for the Court. The core operational team, convened by the Court Coordinator meets monthly to address issues and concerns that arise in cases, examine data, and recommend court policies to improve court functioning.

While this Court applies the type of promising practices, which sustain these types of courts, it is the Court and stakeholder relationships that make the real difference. "And it is the need to fund these courts, not through grants, but through a reliable and consistent funding stream, which is necessary," says Judge Abinanti.

3. California: Hoopa Valley Tribal Court and Humboldt Superior Court Family Wellness Court

Start Year: 2019
Service Area: Hoopa Valley Tribe
Target
Population: Families of Tribal member(s) impacted by substance use dependence and child abuse or neglect
Sources of Funding: Initially, grant funding through the Northern California Tribal Courts Coalition (NCTCC), and now through various Federal sources, including Bureau of Prisons (BOP), BJA, Coordinated Tribal Assistance Solicitation (CTAS), Office of Juvenile Justice Delinquency Prevention (OJJDP), and Substance Abuse and Mental Health Services Administration (SAMHSA), and the California Department of Corrections and Rehabilitation (CDCR) and their Office of Victim & Survivor Rights & Services (OVSRS) grant funds.
Authority: Joint Powers Agreement
Website: <https://www.hoopacourt.com/hoopa-valley-family-wellness-court>
Contact: Hazel Ferris, hoopacourt@gmail.com, (707) 267-8051

Program Description

In 2019, the Hoopa Valley Tribe, a federally recognized Tribe with an elected Chief Justice together with the Presiding Judge of the Humboldt Superior Court replicated the joint court created with the Yurok Tribe. Following this model, the two judges established the Family Wellness Court addressing families impacted by substance use dependency through a joint powers agreement as an alternative to the State's court processing of abuse and neglect cases. The Family Wellness Court is presided over by two judges—a Tribal court judge and a State court judge—and operates under California State law, Federal law, and Hoopa Tribal law. The Court embraces components of Tribal Healing to Wellness and collaborative court approaches and is informed by Hoopa traditions and culture.

The Family Wellness Court follows a similar entry process and four-phase structure to the one established by the Yurok Tribe and the Humboldt Superior Court. Participants can opt in and voluntarily enter the Court at any point the filing of the dependency petition. Upon entry, Tribal and nontribal services are wrapped around each participant and their family by a family wellness team. The Court uses a coordinated team approach; comprehensive, culturally competent services; frequent monitoring; and a support system for family recovery and child well-being.

Effective Leadership

Effective leadership was essential to launching and sustaining the joint Family Wellness Court. It required leadership on the part of the two judges to bring the two separate justice systems together, maximize and leverage resources on behalf of the families, and ultimately better serve their citizens.

The judges focused on systemwide education and engaged both together and separately those who needed to buy into the process: Tribal Council, Tribal community, Tribal and County Social Services, and all the other providers who provide the wraparound services to support the families in the joint court.

The Tribal Council voted to apply for the grant that made it possible to launch the Court. The Chief Judge, who was elected after the grant was awarded, invited the Presiding Judge to accompany her to Tribal Council meetings, to co-present their vision and she continued to apprise the Council every step of the way up until the launch date, and then afterward sought a Tribal Council liaison who continues to serve on the Court's Advisory Committee, which meets monthly to review policies and operational procedures.

The Chief Judge convened and obtained invitations to attend existing community meetings, dinners, and events. She led by listening to those impacted by the State of child welfare services and learned how the new Family Wellness Court could improve on the existing State court system by dismantling preconceived notions of what justice looked like. And during the pandemic, she did not stop, but instead has continued to use social media and electronic surveys, always providing incentives (like gas cards and stipends) for community member engagement.

“It is vital to continue community engagement and highlight the joint court’s achievements especially through those who successfully exit the Family Wellness Court, as they are the best spokespeople and mentors.”
—Judge Leona Colegrove

As Judge Colegrove says, “It is vital to continue community engagement and highlight the joint court’s achievements especially through those who successfully exit the Family Wellness Court, as they are the best spokespeople and mentors.”

Effective Technical Assistance

The Family Wellness Court received outside technical assistance for its development.¹⁴ “Because you don’t know what you don’t know, it can be hard to identify where to begin or how to bring two separate jurisdictions together,” says Judge Colegrove. Technical assistance providers can help stakeholders try on new ideas in the design and operations of the court.

¹⁴ The law firm Hedger & Walter, LLP provided technical assistance.

They bring promising practices from other jurisdictions and help court staff with risk management and problem areas that only an outsider can see.

Cultural Compatibility

The Hupa People are rich in culture. The wraparound Tribal services that are part of the Family Wellness Court all have a strong element of cultural preservation and observance of Tribal sovereignty. Connecting and reconnecting to culture is integrated into the way services are provided. Family wellness team members engage participants and their families in holistic, traditional, often hands-on mentorship within an intergenerational supportive, extended family environment that incorporates culture. The Court uses a cultural assessment tool to learn about each participant's understanding of the Hupa Culture and their desire to learn about and strengthen these cultural connections. Questions relate to where they grew up and their connections to the Hupa ancestral and present-day land, their family villages and ancestry, traditional Hupa customs/laws, knowledge of ceremonies (such as the deerskin dance, jump dance, and flower dance; regalia making; basket weaving; jewelry making), and subsistence and survival activities (like fishing, hunting, eeling, smoking or canning salmon, gathering traditional foods, and giving such foods to Hupa Elders).

Blended or Complementary Approaches Focusing on Shared Problems and Root Causes

This Court blends two approaches: Tribal Healing to Wellness used by many Tribal courts and collaborative/problem-solving used by many State courts. Both focus on healing and look beneath presenting problems to the root causes of each court participant's behavior. When it is done right, the members of the family wellness team, regardless of whether they are Tribal or nontribal, approach participants respectfully, asking them how they can help, tailoring wraparound services, and coordinating intensive treatment with frequent court supervision. The judges ensure that the Tribal voices are heard.

Improves Collaboration and Breaks Down Silos

The formation of this Court improved collaboration and communication between State and Tribal entities, however, vigilance is needed to ensure that it continues.

The joint jurisdictional design allows access to resources from Tribal and nontribal agencies and programs. Many entities and agencies support the efforts of the Family Wellness Court, including the Hoopa Valley Tribe's Behavioral Health Services, Social Services, Probation, Housing, and Police, K'ima:w Medical Clinic, United Indian Health Centers, Two Feathers Native American Services, as well as county-based organizations and coalitions such as First Five, Healthy Moms, The Rx Safe Humboldt Coalition (which works to reduce overuse of opioids in Humboldt County), Nurse-Family Partnership, Open Door Community Health Services, St. Joseph's Health Medical Group, and County Office of Education, which provide a variety of needs for individual participants.

Applies Sustainability and Quality Controls

Like all successful joint jurisdictional courts, this Court has established systems for:

1. Collecting, tracking, and evaluating data;
2. Revising court procedures;
3. Engaging in ongoing education; and
4. Leveraging resources.

The Court applies these controls through a steering committee and a core operational committee. The steering committee meets quarterly and serves as the policy arm for the Court. The Hoopa Tribal Court also has a Judicial Project Advisory Team, which interfaces with the steering committee through the Chief Justice to ensure that the Court can change course when it needs to adjust policies or adopt improved procedures that are aligned with the Tribal justice system.

The core operational team, convened by the co-court coordinators meets monthly to address issues and concerns that arise in cases, examine data, and recommend court policies to improve court functioning. It invites others to join the team depending on the issues raised, and generally does not include the judges, so that they can talk freely about cases; however, the team calls in the judges when systemic issues arise that need the judges' attention. The judges are presently addressing the gatekeeper function of how families enter the Family Wellness Court at the core operational team level.

This Court has successfully leveraged resources. Over a three-year period, the Hoopa Valley Tribal Court has raised more than ten million dollars, close to half that is for wellness courts in general, including the joint Family Wellness Court to build out Tribal wraparound services.

4. New York: Saint Regis Mohawk Tribe and Town of Bombay Court Native Bail Reform Initiative

Start Year: 2018
Service Area: Saint Regis Mohawk Tribe Reservation
Target
Population: Tribal members
Sources of
Funding: US Department of Justice Coordinated Tribal Assistance Program
Authority: Oral Agreement
Website: https://www.srmt-nsn.gov/tribal_court
Contact: Hon. Carrie Garrow, Chief Judge, Saint Regis Mohawk Tribe; carrie.garrow@srmt-nsn.gov; (315) 502-2416

Program Description

The Native Bail Reform Initiative is a Tribal pretrial supervision program between the Saint Regis Mohawk Tribal Court and the Bombay Town Court, a State trial court in Franklin County, New York. The initiative addresses the disparate impacts the State criminal justice system has on Native Americans arrestees and ensures they attend court appearances. Native American defendants who are deemed appropriate for the program but who would normally be held on bail are instead released without bail to the supervision of a Tribal program. These defendants are monitored by the Tribe and have access to culturally appropriate services during their release.

Through this collaboration, the Bombay Town Court notifies the Native Bail Reform Program coordinator when a defendant is Native American and either bail/bond will be determined, or the defendant will be released under supervision. This provides an alternative to bail/bond that is nearly always unavailable to residents of Native American reservations in New York and diverts defendants who would normally be released under the supervision of the Franklin County Probation Department to the supervision of the Tribe's program coordinator. The local State court does not relinquish authority, but rather uses the program as an alternative to commercial bail/bond practices. The Tribe's program coordinator or assistant coordinator evaluates each individual using a culturally relevant screening tool. If compliance problems occur, the Town of Bombay Court is promptly notified, recommendations for potential response are provided, and the program participant is brought back before the Town of Bombay Court to make a new release determination. With the passage of bail reform in New York State, defendants are not in custody, however, they are still referred to this program, which uses a joint approach, for services based on a risk assessment and culturally relevant needs assessment conducted by the Tribe's pretrial services officer.

Effective Leadership

This joint initiative grew out of the New York Federal–State–Tribal Courts and Indian Nations Justice Forum and is being replicated in Saint Lawrence County.

The Bombay Town Court and the Saint Regis Mohawk Tribal Court previously developed a system for referring Tribal members to the Tribe’s Healing to Wellness Court in cases involving substance misuse, so there was an existing partnership to build upon. The program was developed by a committee consisting of State and Tribal court judges, New York Tribal–State Forum representatives, and Office of Court Administration officials.

“We see a problem and work on it both at the local level and on the forum. It’s these relationships that make creative breakthroughs like this program possible. It’s important to start small, think big, and don’t give up.”
—Chief Judge Carrie Garrow

Effective Technical Assistance

Technical assistance was utilized to help establish this program.¹⁵ In 2015, the TA providers facilitated planning meetings of the committee comprised of State and Tribal court judges, New York Federal–State–Tribal Court and Indian Nations Justice Forum representatives, and Office of Court Administration officials. The TA providers also made design recommendations and helped pursue grant funding. Today the program is piloting a new risk assessment tool that is an improvement on the current tool, the Virginia Pre-trial Risk Assessment Instrument. With this new tool, the program can better assess and address issues of historical trauma.

As part of the planning process, TA providers traveled to Franklin County to observe the Bombay Town Court, visited the Saint Regis Mohawk Tribe reservation, and facilitated a full-day planning workshop. During the workshop, the Saint Regis Mohawk Tribal Court Chief Judge described criminal and civil jurisdiction on its Tribal lands and TA providers described supervised release models from around the country. The planning committee also explored existing State and Tribal court practices, including some of the jurisdictional complexities resulting from the international border with Canada that bisects the Saint Regis Mohawk Tribes’ territory and examined preliminary court data. The planning committee created a criminal case flow chart to ensure everyone had a common understanding of case processing and the current bail system. Through dialogue and collaboration, the planning committee created the preliminary project design.

Cultural Compatibility

Incarceration (including pretrial confinement) is inconsistent with Tribal traditions and customs. This program ensures Native Americans accused of crimes are not incarcerated and that they live up to their obligations to appear in court. The program’s screening tool is designed to be

¹⁵ TA provided by the Center for Court Innovation.

culturally appropriate. When someone is accepted into the program, the Saint Regis Mohawk pretrial services officer can ensure that supervision is responsive and culturally sensitive, because they know the Tribal member and their family, and connect them to Tribally run services, which range from mental health, substance misuse treatment, and domestic violence prevention services to name a few. All have culturally relevant services integrated into their programs.

Blended or Complementary Approaches Focusing on Shared Problem and Root Causes

Before bail reform in New York State, residents of Tribal lands were faced with an unequal opportunity to secure pretrial release from incarceration because they could not use their reservation land as security for a bond. They were frequently left with only the option of a cash bond because of Federal and Tribal restrictions on alienation. Without the cash, Native American defendants remained in jail pending disposition of their cases. Finally, defendants who could not post bond were frequently known to plead guilty just to get out of jail, resulting in criminal convictions with lifelong consequences. The impacts of such criminal convictions were far-reaching and serious because the majority of employment opportunities on Tribal lands are government jobs, and Tribal policies often prohibit the hiring of individuals with criminal convictions. This bail reform program gave rise to an understanding between the two jurisdictions that even defendants who were not in custody would do better if referred to the Tribe's pretrial services officer. Presently, at the time of arraignment, the defendant is referred to the Tribe. The pretrial services officer conducts a risk assessment, which identifies as a number the level of risk for the defendant to return to jail. Based on this number, the pretrial services officer recommends whether the defendant should enter the program and this recommendation is relayed to the nontribal/Town Court.

Improves Collaboration and Breaks Down Silos

Justice system data compiled by the New York Division of Criminal Justice Services indicated that the Bombay Town Court had one of the largest caseloads in the State involving Native American defendants, so the situation was ripe for collaboration between the Bombay Town Court and the Saint Regis Mohawk Tribal Court. Today, it is ripe for collaboration in Saint Lawrence County where the numbers are equally high.

An initial planning meeting was held at the Franklin County Courthouse with various stakeholders for the Native Bail Reform Initiative Pilot Program. Representatives from the Center for Court Innovation, Saint Regis Mohawk Tribal Court, Town of Bombay Court, Franklin County Court, and the New York State Office of Courts also participated in the meeting.

The program resulted in improved judge-to-judge collaboration as evidenced by regular letter communication between the Town Court Judge and the Tribal Court Judge regarding the case status—from case acceptance to how the person is doing, and whether custody is warranted. The many individuals in the Tribal departments and those other individuals that are tapped to provide services collaborate to ensure that the defendant, whether they are on the reservation

or off the reservation in New York State or Canada, show up to court. Through this collaboration, not one defendant ever failed to show up to Court.

Applies Sustainability and Quality Control Strategies

To remain sustainable, the program focuses on increasing the number of courts it works with and increasing the number of participants in the current program. By applying these strategies, the program will ensure that it has the numbers to justify maintaining pretrial services when grant funding runs out. The Saint Regis Mohawk Tribal Court also has a CTAS Purpose Area #2 grant and is working on a strategic plan to determine whether the Tribe should exercise criminal jurisdiction, which may increase the need for pretrial services. For quality control strategies, the program uses an evidence-based risk assessment. The program is also pilot testing a new risk assessment tool developed by Center for Court Innovation specifically for Tribes. The program tracks the success of pretrial supervision participants, and this information is used to determine if any adjustments need to be made to services provided to program participants.

5. Maine: Tribal State ICWA Workgroup

Start Year: 1999
Service Area: Maine
Target
Population: Wabanaki and Maine citizens
Sources of
Funding: Contract with State of Maine and Cutler Institute
Authority: State and Tribes
Website: <https://www.wabanakireach.org/>
Contact: Esther Anne, facilitator Esther.anne@maine.edu

Program Description

In response to a 1999 Child and Family Services Review that concluded that Maine was not in compliance with the Indian Child Welfare Act (ICWA), the Maine Office of Child and Family Services (OCFS) and Tribal child welfare staff formed a Tribal State ICWA Workgroup to address compliance issues. In 2008, the members of the original ICWA Workgroup conceptualized, established, and guided the process of the historic Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission and established Wabanaki REACH: Restoration, Engagement, Advocacy, Change, and Healing. The ICWA Workgroup, comprised of Tribal and State representatives, developed a declaration of intent and wrote a mandate that would eventually be signed by State and Tribal leaders: chiefs of the five Tribal communities and the governor of the State. This is not a joint jurisdictional court, nor a Tribal Healing to Wellness court or problem-solving/collaborative court, but rather an intergovernmental collaboration between the State of Maine and the Wabanaki Nations that draws upon traditional Indigenous ways to help agencies develop a different mindset, where the focus is not on compliance, but instead on undoing historic harms and focusing on building a support structure around Native children and reunifying them with their families. This results in an approach that is not one size fits all, but a customized fit for each child and their families.

The Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission was the first in the United States to unearth the history of harm perpetrated on the Wabanaki people as the starting place for child welfare reform. The commission began its work in 2013 with three goals: truth, healing, and change. The commission sought answers to the essential questions of what has helped or hindered the effective implementation of ICWA in Maine; what do we do with what we have learned, and where do we head from here? Over 27 months, the five-member commission investigated and documented the truth about Maine's child welfare practice with Wabanaki people. The commission reviewed State documents and interviewed more than 150 people, mostly Wabanaki who had experience with the State child welfare system; Native child

welfare staff, attorneys, and judges; foster and adoptive parents; State child welfare staff, attorneys, judges, guardians ad litem, and policy makers, among others. As a result, the commission issued a report with recommendations aimed at undoing historic harms and implementing best practices for child welfare with Native people. Wabanaki REACH provided guidance to the commission by educating Maine and Wabanaki people about the process, gaining the support of Tribal and State leaders, preparing and supporting people through the truth telling process, and accepting the responsibility of ensuring the implementation of the commission's recommendations.

Effective Leadership

The value of relationships is at the core of this effort. As Martha Proulx from the Maine Office of Children and Family Service put it, "The value of this truth and reconciliation [process] is that it is a true partnership that we are undertaking as equals. It is a government-to-government effort to understand what happened, to promote healing for Wabanaki communities, and to improve child welfare practice."

Effective Technical Assistance

The ICWA group received technical assistance and facilitation to help organize the process of creating the truth commission.¹⁶ During this process, expert consultants were brought in from national and international organizations.

Cultural Compatibility

The commission's recommendations honor the Wabanaki traditions by supporting healing and celebrating the Tribal cultural resurgence within the Wabanaki confederacy so that both individuals and communities may be strengthened. Many Tribal people reported finding significant strength in returning to traditions, language, arts, and other parts of their culture. Suggestions included creation of longhouses, language centers and classes; places in which rituals of birth, coming of age, and death may be celebrated; food and economic sovereignty; healing circles; and traditional health and wellness methods. Other suggestions included welcome home ceremonies for people who are returning to their territory after time away.

Blended or Complementary Approaches Focusing on Shared Problem and Root Causes

The commission viewed the problem through a lens of interconnected causes, including institutional racism in State systems and the public; the effects of historical trauma; and a long history of contested sovereignties and jurisdictions between the State and the Tribes.

The commission understood that both Wabanaki and non-Native people want children to be safe and recognize that, at times, they need to be removed from their immediate families. The

¹⁶ The Cutler Institute provided technical assistance and facilitation.

commission learned that all people, Wabanaki and non-Native, carry trauma from their lived experiences and shared the goal that the right supports must be made available to children and families.

The truth and reconciliation/restoration approach became a way to unlearn old ways and build a community of people who not only have a shared understanding of the long-term impacts of the generational harms done to Indigenous people since first contact but are committed to transforming the present-day systems that privilege the dominant culture and oppress those on the margins and promoting best practices that ensure Native cultures are preserved and strengthened.

Improves Collaboration and Breaks Down Silos

From the beginning, relationships were strained within the ICWA workgroup. Tribal members doubted the State's commitment to ICWA, and State representatives struggled over how to prioritize ICWA to make the changes that were needed. Despite the mistrust between the Tribes and the State, the workgroup developed an effective working relationship and achieved tangible results, including a mandatory, one-day ICWA training for State workers; a video featuring interviews with Wabanaki people who had spent part or all of their childhood in Maine's foster care system prior to the ICWA; a case review protocol; a new Indian Child Welfare Policy for the State agency; and Wabanaki people delivered the training on ICWA to caseworkers.

To create lasting change, the truth of Wabanaki people's experiences with State child welfare needed to be revealed and acknowledged, and a process for healing had to be created. Members were committed to developing a new type of relationship that represents openness and transparency, honesty, and mutual respect, and were committed to developing of a new kind of relationship that could uphold the spirit, letter, and intent of the ICWA. To accomplish this, the commission and its staff traveled thousands of miles to communities in Maine to hear testimony and sit in circle with Wabanaki and Maine people. Commission members reviewed State documents, recorded interviews with more than 150 people, and created opportunities for people to heal and learn from what they uncovered.

Applies Sustainability and Quality Control Strategies

The commission made several recommendations that have provided a road map for sustaining the work of the ICWA Workgroup and Wabanaki REACH.

1. Respect Tribal sovereignty and commit to resolve and uphold Federal, State, and Tribal jurisdictions and protocols at both the State and local levels.
2. Honor Wabanaki choices to support healing as the Tribes see fit and celebrate the cultural resurgence of the Tribes within the Wabanaki confederacy so that both individuals and communities may be strengthened. Among the suggestions we have heard: the creation of

longhouses, language centers, and classes; places in which rituals of birth, coming of age, and death may be celebrated; food and economic sovereignty; healing circles; and traditional health and wellness modalities. Other suggestions included welcome home ceremonies for people who are returning to their territory after a time away.

3. Develop Department of Health and Human Services (DHHS) legal and judicial trainings that go beyond the basic checklists and toolkits to recognize bias and build cultural awareness at all levels of leadership and accountability in ways that frame ICWA within historical context.

4. With the counsel of the Tribes, develop a policy to monitor regular compliance with ICWA, the selection of ICWA liaisons, and the eventual provision of a supervisory-level staff member responsible for ICWA in each DHHA district office.

5. Create better and more consistent support for non-Native foster and adoptive families so that Wabanaki children have the strongest possible ties to their culture.

6. Explore the creation of more Native foster homes in general and additional Native therapeutic homes in particular.

7. Resolve as quickly as possible issues with Title IV-E funds.¹⁷

8. Fund the renewal of the ICWA Workgroup and involve them in designing and implementing training so that all levels of leadership are involved; their work may well include training people on the new Bureau of Indian Affairs regulations being developed on ICWA.

9. Explore the expansion of Tribal courts to include the Maliseet and Micmac communities, should these communities express a desire to do so, and explore as well what funding possibilities exist for this initiative. Also hear concerns from those who do not feel well represented by the courts.

10. Resolve problems surrounding blood quantum, census eligibility, and the provision of services for children, as these issues are often contested and unclear.

11. Support the work of Maine-Wabanaki REACH in both Wabanaki and non-Native communities to foster truth, healing, and change.

12. Reinstate the Maine governor's executive order of 2011 that recognizes "the special relationship between the State of Maine and the sovereign Native American Tribes located

¹⁷ P.L. 110-351 amended part E of title IV of the Social Security Act at §479B allowing Federally recognized Indian Tribes, Tribal organizations, and Tribal Consortia to apply for direct funding from the Federal government. Tribes can also operate the program through an agreement with a State. Title IV-E provides for Federal reimbursement based on an individual child's eligibility for the cost of room and board for individual children in foster care or at imminent risk of foster care, adoption assistance, and an optional program of kinship guardianship assistance. Reimbursement is also provided for administration including training and case management.

within the State of Maine.” This executive order also recognizes that the “unique relationship between the State of Maine and the individual Tribes is a relationship between equals.”

13. Create ways for people to continue to add to the archive at Bowdoin College and look beyond the mandate to keep these truth-telling conversations flowing at every level: in Tribal communities, among the general public and within agencies that work with Wabanaki people.

14. Develop ways to expand on the work of Chapter 403 of the Public Laws of Maine of 2001, “An Act to Require Teaching of Maine Native American History and Culture in Maine’s Schools,” also known as LD291, so there is an enlarged understanding of bias and genocidal practices in the greater community and Wabanaki-State relations are held in a broader framework.

6. Michigan: Resiliency Court

Start Year: 2020

Service Area: Currently the effort has been centered on one urban court (Detroit, Michigan) and one suburban court (Ann Arbor, Michigan), and involves three Tribal courts (Grand Traverse Band of Ottawa and Chippewa Indians, Sault Ste. Marie Tribe of Chippewa Indians, and Little Traverse Bay Bands of Odawa Indians).

Target

Population: Native and non-Native families impacted by juvenile courts handling abuse and neglect cases

Sources of

Funding: Development was purely organic in design, and initially there was no funding in place to support the work. Casey Family Programs is now supporting the effort.

Authority: Tribal Court Judges and State Court Judges

Website: <https://www.courts.michigan.gov/administration/offices/child-welfare-services/cws-training-and-development/resiliency-court-training/>:

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Program Description

The Resiliency Court attempts to change the approach judges are using in handling child welfare and related matters, with a focus on success for families and healing, rather than just compliance. Judges learn to create a safety net that is individualized for each family and incorporates Tribal traditions. Judges learn that relationships are the key to resiliency. The Resiliency Court started with a basic foundation in trauma and brain science and then proceeded to teaching Motivational Interviewing techniques. From there, Resiliency Court organizers started online practice sessions, including a coaching phase for judges. Organizers recognized that the approach would be helpful to both State and Tribal judges, so both are involved. One judge who participated in the first coaching session said that the approach has resulted in “remarkable changes” in the demeanor of the participants and the efficacy of the hearings. Although this is not a joint jurisdictional court, nor a Tribal Healing to Wellness court or problem-solving/collaborative court, this intergovernmental collaboration was included because it is still a government-to-government effort that draws upon both evidenced-based practices and traditional Indigenous ways to help Tribal and State judges develop a different mindset, where the focus is not on compliance, but instead on what helps a family succeed: building a support structure around a family. This results in an approach that is not one size fits all, but a customized fit for each family.

Over time, virtual training sessions were developed, including eight sessions of motivational interviewing and two trauma sessions. During training sessions, judges and partners learn the

theory and skills to engage families. The trainings include practice sessions during which participants learn how to interact with and how to best engage with families. The practice sessions have now turned to coaching sessions based on courtroom observations and includes the Tribal and State judges going back and forth. Recordings of the trainings provide flexibility, and the training and coaching sessions show how the Tribal judge and State judge interact.

Effective Leadership

The leadership of judges on the Tribal-State Forum in Michigan and those working with the Casey Family Programs Judicial Engagement Team in Detroit gave rise to Resiliency Courts. In 2014, University of Michigan professors, Dr. Brad Lundahl and Dr. James Henry provided judicial training on Motivational Interviewing techniques and trauma. Judges received a strong foundation on how to engage, listen, understand, and communicate with parties. The short timeline for development of this initiative is testament to the effectiveness of the leaders who created it.

The training, which is the impetus for the Resiliency Courts, were launched in just a few months. In November–December 2020, Dr. Henry joined the planning team and in January 2021, Dr. Lundahl came on board. In February 2021, the trainings began. These experts have donated a significant amount of their time and expertise to create this program.

Effective Technical Assistance

While no technical assistance providers assisted with creation of the Resiliency Court, a team of experts and judges designed and implemented the program.

Cultural Compatibility

Communication is key to this program. Judges learn to become more self-aware and how to communicate so that they identify and get the support families need to build resilience. With this type of training and new approach, the tone/dynamic of hearings change and provides jurists with the tools to uplift and improve courtroom culture and communication with children and parents in child welfare proceedings. Resiliency Court members participate in regular group discussions (approximately 1 hour in length) led by national experts.¹⁸ The purpose of the group discussion is to answer questions, discuss specific issues, and engage in discussion on how to apply this information in the courtroom.

Blended or Complementary Approaches Focusing on Shared Problems and Root Causes

Development of the approach is founded on the concept that trauma in children and families must be understood and healed, and that courts must be more than simply “trauma-informed.”

¹⁸ The different recordings can be found at: <https://www.courts.michigan.gov/administration/offices/child-welfare-services/cws-training-and-development/resiliency-court-training/>

As Judge William Thorne, who helped create the program said, “The antidote to trauma is resilience; it helps inoculate against future crises. Resiliency allows kids to survive some of the worst trauma. We can’t protect kids from the world, but we can equip them to survive it, and we know what builds resilience: relationships build resilience.” As one judge who participated in training observed, “I should have been building resilience instead of insisting on compliance.”

Improves Collaboration and Breaks Down Silos

This approach applies the lessons from collaborative justice and joint jurisdictional efforts in the State of California, which showed that interactions between Tribal and State judges raises acceptance by the other system.¹⁹ Judges in Ann Arbor, Michigan are more receptive to this approach because of State court Judge Tim

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—Judge William Thorne

Connors’ work on the Peacemakers program. Other more urban areas such as Detroit, Michigan are comfortable with Ann Arbor, Michigan’s approach and bridges are being built. As the work continues, Tribal–State relationships are morphing, and conversations are starting because both State and Tribal judges see the value in this approach. State judges no longer think of Tribal judges as “those people”; now they are “one of us” and Tribal judges are treated as equals. Systems are beginning to change as a result of this work. As development of this approach progressed, a State court administrator incorporated a Tribal court judge into the problem-solving group working in Wayne County, Michigan on juvenile delinquency issues. In Ann Arbor, Tribal and State court judges are working together on ICWA cases, and there is presumptive transfer to Tribal court in these cases; however, in Detroit there are data tracking problems so currently there are not enough ICWA cases to pursue this training/collaborative approach. The formation of the Resiliency Court improved collaboration and broke down many silos, however, vigilance is needed to prevent those silos from building back up.

Applies Sustainability and Quality Controls

While the Resiliency Court idea started with trauma and motivational interviewing training in Michigan, the approach has created an instrument of “change” that is easily replicable and can be used in other jurisdictions. For all judges to embrace this new approach means confronting and changing how State courts typically work. Resiliency Court planners are exploring ways to reach more judges and are working to get permission from the Michigan Supreme Court to review videos of hearings, however, this will require a change in State law and practice and will take some time to implement.

¹⁹ For example, in San Diego, California, the number of Indian children in out-of-home placement dropped from 487 to 3 over the course of fifteen years, with a consortium of seven Tribes’ judges working in State court.