



# Joint Jurisdiction Wellness Courts

Lauren van Schilfgaarde, Tribal Law and Policy Institute

# Historical Perspective

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



# Tribal Sovereignty

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



# Origin of Tribal Judiciaries

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

INSTITUTE FOR GOVERNMENT RESEARCH

STUDIES IN ADMINISTRATION

---

## THE PROBLEM OF INDIAN ADMINISTRATION

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

### SURVEY STAFF

LEWIS MERIAM

*Technical Director*

RAY A. BROWN

HENRY ROE CLOUD

EDWARD EVERETT DALE

EMMA DUKE

HERBERT R. EDWARDS

FAYETTE AVERY MCKENZIE

MARY LOUISE MARK

W. CARSON RYAN, JR.

WILLIAM J. SPILLMAN

# Modern Tribal Courts

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



# Jurisdiction

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

# Criminal Jurisdiction

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

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

# PL 280

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

# Criminal Jurisdiction – PL 280

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

- \* Under TLOA, a tribal gov't may request federal concurrent, subject to U.S. Attorney General approval
- Major Crimes Act (MCA), 18 U.S.C. 1153: murder, manslaughter, kidnapping, maiming, sexual abuse, incest, serious assault, assault of a minor, felony child abuse, burglary, robbery, and major theft

# Cooperative Agreements

## Benefits of collaboration

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



# Promising Practices Generally

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



# Tribal Healing to Wellness Courts

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

# Opportunities for Collaboration in Healing to Wellness Court and Drug Courts

Transfer Agreement  
for eligible  
participants

Provision of drug  
testing and other  
oversight services

Sharing of database  
information

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

Consultation for  
particular  
participants

Joint team members

Communication  
between  
Coordinators

Observation of each  
other's hearings

# Joint Jurisdiction Courts



# What is Joint Jurisdiction?

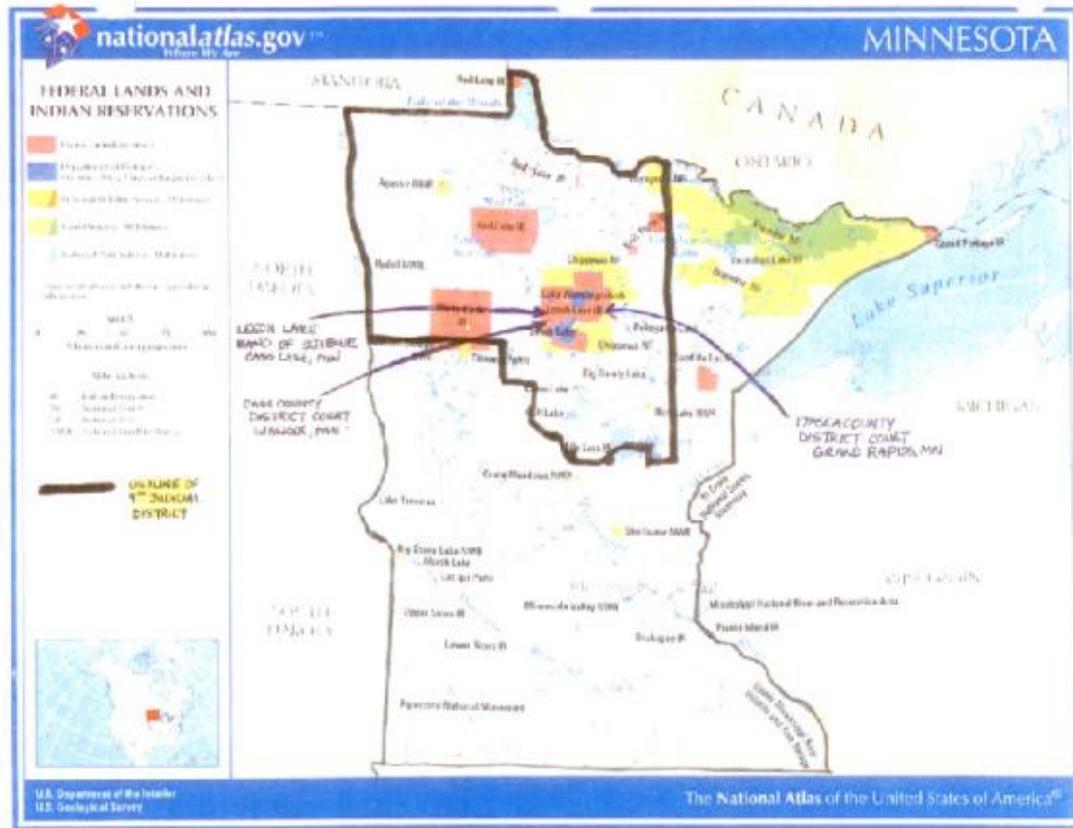
Jurisdiction is exercised jointly when a tribal court judge and a state or federal court judge come together to exercise their respective authority simultaneously, bringing together justice system partners and leveraging resources to promote healing and protect public safety.



# The First Joint Jurisdiction Step

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





# MINNESOTA'S NINTH JUDICIAL DISTRICT

# Bamenim Anishinaabeg Approach

- Tribal Court Case Management Team
- Culture-specific; trauma-informed, strengths-based; family oriented; based on Ten Principles of Wraparound Process
- Focus on co-occurring disorders (mental health/substance abuse)
- Sustainability through reimbursement for services

# Cass County – Leech Lake Wellness Court

- Created in 2006 to address epidemic of alcohol-related crashes, deaths in Cass County
- First joint jurisdiction court in the nation
- Clients include Tribal Members and Non-Indians
- Holds Wellness Court sessions by ITV in Walker and Cass Lake
- Multi-jurisdictional, multi-agency participation
- Operated on handshake for over a year

# Joint Jurisdiction Wellness Court Teams

- Judges – State District Court Judge & Tribal Court Judge
- County Attorney
- Public Defender – Regional Native Public Defense Corp.
- Probation/Supervision – MN Dept. of Corrections and County Probation
- Law Enforcement – County Sheriff & Leech Lake Police
- Treatment Assessor/Provider – Leech Lake Outpatient & Private Treatment Providers
- Coordinator/MIS – 9th Judicial District and County Probation

# Wellness Court Success Stories

- Participants reunited with children/families
- Valid driver's licenses
- Employment/school
- Ending abusive relationships
- Participants have tens of thousands of days of documented sobriety between them
- Significant reduction in recidivism –
  - LL/Cass as low as 6.66%
  - LL/Itasca 16%
  - Minnesota/National 60%+

**Millions of dollars saved in incarceration and out of home care costs**



# Leech Lake Family Drug Court

- Child Protection Involvement in Tribal Court or State Court
- Open to Tribal Members and Non-Indians living on Leech Lake Reservation
- Participants enter Joint Jurisdiction Wellness Court

# Juvenile Diversion Program

- Open to Tribal Members and Non-Indians living on Leech Lake Reservation
- Cass County Probation provides supervision under cross-appointment order
- Leech Lake members make up Diversion Board
- Circle format with team and family problem-solving together

# Juvenile Delinquency

- Cases originate in Cass County District Court or Leech Lake Tribal Court
- Courts work together under Joint Powers Agreement
- Leech Lake Tribal Court exercises expanded jurisdiction over PARENTS
- Individualized “service” plans
- Leech Lake Tribal Court case managers provide services
- Cass County Probation provides supervision under cross-appointment order

# Juvenile Re-Entry

- Cases originate in Cass County District Court or Leech Lake Tribal Court
- Youth placed involuntarily in inpatient treatment or juvenile detention facility
- Cass County Probation provides risk/needs assessments and notifies Leech Lake
- Leech Lake Wraparound Care Coordinator/ Advocates begin working with youth/family before placement, continue after return

# Other Agreements – Leech Lake

- Joint Powers Agreement with State for Leech Lake Police services for Wellness Court
- Contract with 9th Judicial District for Guardian ad litem services
- Incarcerated parents can appear by ITV in Tribal Court for child protection hearings
- Memorandum of Agreement between Cass County and Leech Lake for Wellness Court and Juvenile Restorative Justice Program (Leech Lake flags presented to Cass County Board of Commissioners)
- Regular Joint Meetings between Leech Lake Tribal Council and Boards of Commissioners
- Cross Appointment of Cass County Probation Agents



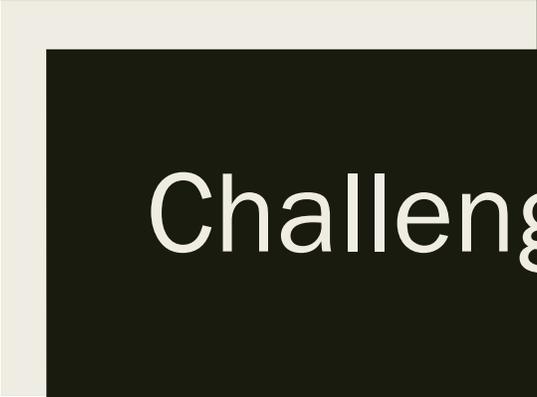


Shingle Springs Band of Miwok Indians  
and  
El Dorado County, California



Joint Jurisdictional Court 2014





# Challenges

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

# Strengths – Intra - Tribal

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

# Strengths – Intra - County

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

# Strengths – Inter

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



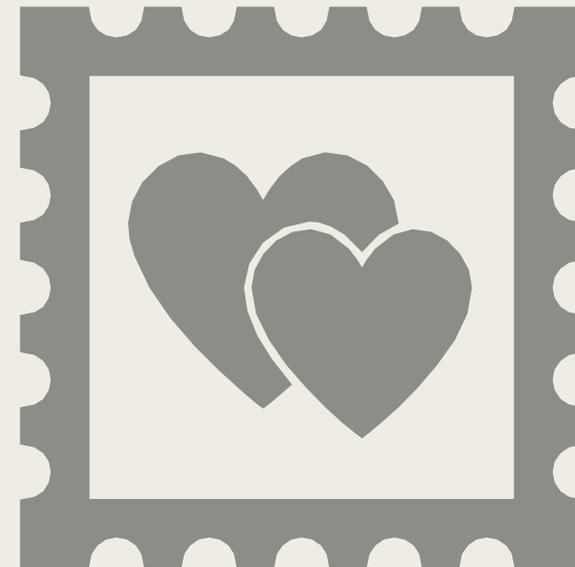
# KUCH'IM:UPUSHNU':AN U:SH

An outline of the collaborative court



# Vision and Mission

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



Juveniles and  
“transitional  
youth”

Up to age 24

Not limited to  
drug offenses

Target Population

# Wrap-around

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



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

# Division of Work



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

# Division of Work (2)

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



Kenaitze Indian Tribe –  
Kenai Superior Court –  
Kenai Community  
Joint Jurisdiction Project

# Project Vision

- Transforming lives for a healthier community

# Project Mission

- Supporting wellness and rehabilitation for those in need through a cooperative justice program to create a safe and healthy community.

# Project Goals

1. A safer and healthier community
2. Building innovative and effective justice solutions through collaboration
3. Reduce incarceration
4. Better treatment outcomes and sustained healing and wellness by breaking cycles
5. Successfully rehab to sustain crime reduction, reduce recidivism and reduce collateral consequences
6. More families recruited and an emphasis on helping children
7. Promote self-sufficiency for a more productive community
8. Embracing cultural values
9. Building connections and relationships through respect

# Characteristics a “typical” person in need of the program looks like:

- CINA Cases - Families with substance abuse addictions
- Long Term Jail Sentence with addictions
- Individuals facing felony convictions with diversion

# Optimum outcome for individual using program

- Life time sobriety
- Reunification with family/healthy family environment
- Avoid additional future charges
- Avoid possible felony convictions
- Avoid incarceration

# Other Joint Jurisdiction Courts

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

## Wellness Court Collaborations

The work of a Healing to Wellness Court often impact and involves multiple jurisdictions. Many Wellness Courts have established referral and transfer agreements to serve tribal members and Native offenders who are charged or convicted off of tribal lands. The extent of collaborations range across the spectrum from informal acknowledgment to joint jurisdiction courts. This webpage details some of those collaborations between sovereigns.

[Sample Court Transfer Agreement - State and Tribal Healing to Wellness Courts](#), National Judicial Opioid Taskforce, National Conference of Chief Justices (2018).

6/24/17 - [Henu' Community Wellness Court](#) announces its grand opening, a joint jurisdiction court by the Kenaitze Indian Tribe and the State of Alaska Court System.



[Joint Jurisdiction Courts: A Manual for Developing Tribal, Local, State & Federal Justice Collaborations](#), Jennifer Fahey, JD, MPH, Hon. Korey Wahwassuck, Alison Leof, PhD, Hon. John Smith, [Project T.E.A.M.](#), Center for Evidence-Based Policy, Oregon Health & Science University (June 2018).

This manual is a roadmap for tribal and community leaders who want to develop joint jurisdiction courts or initiatives in their own communities. It is intended to be a guide, articulating the process developed in one Minnesota community and adopted by other jurisdictions, as well as providing information on creating new joint jurisdiction initiatives.

### Supplementary Materials

This manual includes references to supplementary materials which may assist tribes and their partners in establishing and managing joint jurisdiction courts.

### Joint Power Agreements and Memoranda of Understanding

- [Leech Lake Tribal Council Resolution on joining Cass County Wellness Court](#)
- [Joint Powers Agreement between the Leech Lake Band of Ojibwe and the Cass County District Court](#)
- [Interagency Agreement between the Leech Lake Band of Ojibwe Tribal Court and the Leech Lake Band of Ojibwe Human Services](#)
- [Memorandum of Understanding between the Cass County Probation Department and the Leech Lake Band of Ojibwe Tribal Court](#)
- [Memorandum of Agreement between the Cass County Attorney and the Leech Lake Band of Ojibwe Tribal Court Prosecutor](#)
- [Joint Powers Agreement between the State of Minnesota, the Cass County/Leech Lake Band of Ojibwe Wellness Court, and the Cass County Probation Department regarding court staffing](#)
- [Memorandum of Agreement between Cass County, the Minnesota Ninth Judicial District, and the Leech Lake Band of Ojibwe regarding the Wellness Court and Juvenile Restorative Justice Program](#)

### Program Evaluations



# The Tribal Law and Policy Institute

Lauren van Schilfgaarde

[Lauren@tlpi.org](mailto:Lauren@tlpi.org)

8235 Santa Monica Blvd.  
Ste. 211  
West Hollywood, CA 90046  
(323) 650-5467  
[wellness@tlpi.org](mailto:wellness@tlpi.org)  
[www.WellnessCourts.org](http://www.WellnessCourts.org)

