

TRIBAL/STATE JOINT JURISDICTIONAL COURTS: POLICIES,  
PROCEDURES, AND TIPS TO PROMOTE CROSS-  
JURISDICTIONAL COLLABORATION

Prepared by Jennifer Walter

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## I. Introduction

Following the introductory material, this toolkit is divided into five sections, laying out the five stages of joint-jurisdiction court development, with appendixes that provide tools to assist you with each phase of operationalizing a joint-jurisdictional court. The five stages that we have identified are:

- Planning ([Section III](#));
- Designing ([Section IV](#));
- Moving from design to reality ([Section V](#));
- Implementing ([Section VI](#)); and
- Sustaining the joint-jurisdictional court ([Section VII](#)).

We go into each of these stages in detail. Key to the first three stages are collaborative planning meetings. We recommend at least four large-group planning meetings bringing together the key players from both the state court and tribal court and their respective agencies and stakeholders. Those meetings are summarized below.

Planning Meetings	Goals	Benchmarks
<b>First Stakeholder Meeting</b> <a href="#">(Section III)</a>	Develop ground rules Establish overall vision Begin a dialogue Map the current siloed system	Develop a shared vision for the project Identify resources within each jurisdiction that can support the project
<b>Second Stakeholder Meeting</b> <a href="#">(Section IV)</a>	Demonstrate joint leadership Assess areas of support and availability of resources Begin to identify new court structures and procedures	Description of target population, eligibility criteria, and disqualification criteria Description of key components of new court and court procedures Establish workgroups Education on key components of tribal healing
<b>Third and Fourth Stakeholder Meetings</b> <a href="#">(Section V)</a>	Translate vision into written manual and court forms Adopt local rules or standing orders; memoranda of understanding Develop process to evaluate outcomes	Consensus on: <ul style="list-style-type: none"> <li>• Court manual</li> <li>• Court forms</li> <li>• Core team members</li> <li>• Court coordinator(s)</li> </ul>

We also recommend that you establish smaller workgroups to tackle specific elements of the design process, and that these workgroups meet regularly between larger planning meetings and report their progress back to the entire group each meeting.

*Note:* Not all jurisdictions are ready to launch a joint-jurisdictional court. Four separate jurisdictions attempted and—despite the tremendous dedication, effort, and work on the part of the judges and their stakeholders—chose not to implement their courts after designing them. For this reason, you may want to consider informally or more formally assessing the readiness of the tribal community, the courts, and justice partners. The Community Engagement in the State Courts initiative of the Conference of State Court Administrators (COSCA) and the National Center for State Courts<sup>1</sup> both have access and fairness surveys and other tools to help you. Another helpful readiness survey tool is the Wilder collaboration assessment survey.<sup>2</sup>

## A. Audience for Toolkit

State court judges and court administrators in California are the primary audience for this toolkit. Consistent with the Conference of Chief Justices’ resolution<sup>3</sup> stated below, this toolkit describes an innovative approach for state and tribal court judges to share jurisdiction, eliminate cross-jurisdictional issues, and leverage tribal and county services for the benefit of their court participants. This toolkit is also intended for all tribal and state justice partners who yearn for a better way of delivering justice.

The Conference endorses the following three principles developed by the Tribal Courts and State Courts Project and promulgated as part of the National Agenda:

- First, tribal, state, and federal courts should continue cooperative efforts to enhance relations and resolve jurisdictional issues.
- Second, Congress should provide resources to tribal courts consistent with their current and increasing responsibilities.
- Third, tribal, state, and federal authorities should take steps to increase the cross-recognition of judgments, final orders, laws, and public acts of the three jurisdictions.

Conference of Chief Justices, Resolution 27 (Aug. 2002)

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<sup>1</sup> The COSCA initiative toolkit was developed from four public engagement projects, one of which focused on tribal engagement in Nebraska (not yet published; Dr. Lisa Pytlik Zillig and Dr. Joseph Hamm, authors); National Center for State Courts, “Public Trust and Confidence Resource Guide,” [www.ncsc.org/topics/court-community/public-trust-and-confidence/resource-guide](http://www.ncsc.org/topics/court-community/public-trust-and-confidence/resource-guide).

<sup>2</sup> Wilder Foundation, Collaboration Factors Inventory, [https://www.wilder.org/sites/default/files/imports/Wilder%20Collaboration%20Factors%20Inventory\\_3rd%20edition\\_8-18.pdf](https://www.wilder.org/sites/default/files/imports/Wilder%20Collaboration%20Factors%20Inventory_3rd%20edition_8-18.pdf).

<sup>3</sup> For the full text of Resolution 27, see [https://ccj.ncsc.org/\\_data/assets/pdf\\_file/0015/23703/08012002-to-continue-the-improved-operating-relations-among-tribal-state-and-federal.pdf](https://ccj.ncsc.org/_data/assets/pdf_file/0015/23703/08012002-to-continue-the-improved-operating-relations-among-tribal-state-and-federal.pdf).

## B. Context: Tribal Sovereignty and Tribal Courts

Before considering a joint-jurisdiction court, it is important to understand tribal sovereignty. Tribal sovereignty means that tribes have the power to govern themselves.<sup>4</sup> Each federally recognized tribe retains the rights of an independent sovereign nation apart from the local, state, or federal government. Because each tribe is a separate nation, they each have their own governments, laws and, in many cases, courts<sup>5</sup> and law enforcement. There are approximately 314 tribal courts in the United States. Each is distinct and unique, reflecting historical influences, their tribal governments, and peoples. Some are adversarial, largely because of the history of tribal court development and the fact that the federal government established or encouraged adversarial courts, reflective of the dominant culture. Others are nonadversarial, reflective of traditional, indigenous values.

Tribal members are citizens of their tribes and the United States. They are entitled to all the benefits that flow from each of these governmental entities. Because governmental entities have the same responsibility to all their citizens, one would expect that tribal citizens have easier access to resources to meet their needs. Unfortunately, the multiplicity of jurisdictional authority can lead to tribal citizens falling through the cracks, with the result that tribal citizens are among the most underserved. Joint-jurisdictional courts can be one means for the court systems to address this issue of equity and help ensure equal access to justice.

## C. History of Joint-Jurisdiction Courts in California

In December of 2009, the Chief Justice of California and the Chief Judge of the Hoopa Valley Tribal Court (Humboldt County, California) convened a historic meeting of tribal and state court judges from throughout California at the Judicial Council offices in San Francisco. Since that meeting, tribal and state court judges have formally exercised their leadership as equal partners to address areas of mutual concern.<sup>6</sup>

In October 2013, the Judicial Council adopted rule 10.60 of the California Rules of Court establishing the Tribal Court–State Court Forum as a formal advisory committee to the council. In adopting this rule, the Judicial Council included a comment acknowledging that tribes are sovereign and citing statutory and case law recognizing tribes as distinct, independent political nations that retain inherent authority to establish their own forms of government, including tribal justice systems. The forum has addressed several shared problems related to the overlapping jurisdiction of state and tribal courts and has a long list of collaborative accomplishments<sup>7</sup> that

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<sup>4</sup> Stephen L. Pevar, *The Rights of Indians and Tribes* (4th ed. 2012).

<sup>5</sup> For more information about tribal courts, see “Native American Research Series: Tribal Justice Systems,” *California Tribal Court–State Court Forum* (June 2012), [www.courts.ca.gov/documents/TribalJusticeSystemRU.pdf](http://www.courts.ca.gov/documents/TribalJusticeSystemRU.pdf).

<sup>6</sup> For more on the Judicial Council’s Tribal Court–State Court Forum, visit [www.courts.ca.gov/3065.htm](http://www.courts.ca.gov/3065.htm).

<sup>7</sup> See “Accomplishments—Highlights (2010–2019),” *California Tribal Court–State Court Forum* (Sept. 2019), [www.courts.ca.gov/documents/TribalForum-Accomplishments.pdf](http://www.courts.ca.gov/documents/TribalForum-Accomplishments.pdf).

all started with one simple conversation between the chief judge of a tribal court and the Chief Justice of California.

Since then, the forum and the Judicial Council have supported the development of joint-jurisdictional courts by the provision of technical assistance, development of resources and education, and innovation grants.

#### **D. Why Launch a Joint Court?**

In a recent survey <sup>8</sup>of existing joint-jurisdictional courts, participants were asked about their motivations and goals in establishing their courts. Following are some of the respondents' replies:

- “To preside over our own families whose abuse and neglect cases were exclusively heard by the state court. We wanted to replicate the success of [another] Joint Family Wellness Court.”
- “To work collaboratively to assist our [tribal] families who are struggling with the impacts of alcohol and substance use and dependency.”
- “Wellness courts have been very successful in assisting people in remaining sober. We did not want to lose any more of our people to drugs. We had a good working relationship with the counties.”
- “The founders knew a wellness court couldn't be successful without the involvement of the tribe.”
- “To work collaboratively to assist our [tribal] families that are struggling.”
- “To reduce recidivism for a healthier community.”
- “To unite judiciary, criminal justice entities, substance abuse treatment providers, and the community.”

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<sup>8</sup> Jenny Walter, Korey Wahwassuck, and Suzanne M. Garcia, *Joint Jurisdiction Courts: Needs Assessment Findings* (Tribal Law and Policy Institute, Feb. 2022), p. 14, [http://walkingoncommonground.org/files/Joint%20Jurisdiction%20Courts%20Final%20Report%20for%20Posting%202-7-22%20\(1\).pdf](http://walkingoncommonground.org/files/Joint%20Jurisdiction%20Courts%20Final%20Report%20for%20Posting%202-7-22%20(1).pdf).

A joint-jurisdictional court improves outcomes for our Native children and youth and their families. When we provide wrap-around services by joining tribal and non-tribal forces and services, we see a difference. Native families, who were once disenfranchised and whose children, alienated and culturally disconnected, are now thriving. This is the same success we experience with the families who come before the state’s collaborative courts.

Presiding Judge Suzanne Kingsbury (Ret.), Superior Court of El Dorado County

Participants who have experienced both the state court and the joint-jurisdictional court report being more satisfied, engaged, and invested in the joint-jurisdictional court process, because the team is responding to the root causes that brought them into the court in the first place. These courts have demonstrated the following types of positive outcomes:

- Lower recidivism rates;
- Lower school discipline and higher graduation rates;
- Increased family preservation rates;
- Reduced incarceration rates; and
- Cost-savings.<sup>9</sup>

Participants in joint-jurisdictional courts are often reported to have better outcomes than in traditional court systems. The fundamental goal of any system change should be to improve outcomes for the community that the courts serve.

## II. Overview of Joint-Jurisdictional Courts

Using joint-jurisdictional agreements, tribal, state, and federal jurisdictions bring together their strengths, reflect the unique circumstances of different tribal nations, and find common ground to address the challenges they face. Below we provide an overview of these courts and how they operate.

### A. What Is a Joint-Jurisdictional Court?

A joint-jurisdictional court draws on the authority and resources of multiple jurisdictions serving the same community. Jurisdiction is exercised jointly when a tribal court judge and a state or federal court judge convene to exercise their respective authority simultaneously, bringing together justice system partners serving each court to promote healing and protect public safety. Joint exercise of jurisdiction allows the systems to leverage resources, reduce administrative costs, effectively deliver services that are more culturally grounded, and work collaboratively

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<sup>9</sup> *Id.* at p. 20.



and creatively toward better results for individuals involved in the civil and criminal justice systems. In a joint-jurisdictional court, a state/federal court judge and a tribal court judge preside together over a docket that provides tribal (and on occasion non-tribal) individuals, and in some cases their families, with a court-supervised alternative that emphasizes community values and culture.

## **B. Where Are They, How Long Have They Operated, and Which Case Types Do They Hear?**

As of September 2021, there were nine operational joint-jurisdictional courts in the country. (See [Appendix A](#), Operational Joint Courts.) Four of these are in California. The first joint court was established in 2006 in Minnesota. Existing joint-jurisdictional courts hear a range of civil and criminal cases:

- *Civil cases*: Adoption, child abuse and neglect, conservatorship, delinquency, domestic violence, family law, guardianship, truancy, termination of parental rights, and tribal customary adoption.
- *Criminal cases*: Adult criminal felonies, misdemeanors, and driving under the influence/while intoxicated (DUI/DWI).

## **C. What Characteristics Do These Courts Share?**

In a recent report by the Tribal Law and Policy Institute, a survey of existing joint courts found that they share the following characteristics:

- Effective leadership;
- Effective technical assistance;
- Blend two court approaches;
- Are tailored to the tribe’s culture and local court context;
- Focus on root causes;
- Improve collaboration and break down silos;
- Improve outcomes and system change;
- Apply sustainability and quality control strategies; and
- Face similar challenges.<sup>10</sup>

This toolkit uses these characteristics in describing a step-by-step approach to collaboratively design a joint-jurisdictional court. The list is not intended to be essential ingredients to launching

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<sup>10</sup> *Joint Jurisdiction Courts: Needs Assessment Findings* at p. 7.

a joint court, but instead signposts to help guide you and the collaboration as you plan, implement, and sustain your courts. (See [Appendix B](#), Common Characteristics of Joint Courts.)

Because the role of technical assistance was noted by almost all of the respondents as key to operationalizing successful joint-jurisdictional courts,<sup>11</sup> this toolkit lists technical assistance ideas and the author’s tips for consideration in each of the report’s sections.

### **III. Planning and Organization**

When the Chief Justice of California responded to the Chief Judge of the Hoopa Valley Tribal Court asking for a meeting to discuss issues in Indian country<sup>12</sup> in California, everyone there understood that they would need to build significant cross-cultural bridges. This journey required these first judges to engage in candid and tough conversations, which led them to creatively solve problems in common by applying shared values and principles and convening multiple stakeholders to address the root causes court participants face. Judicial leaders who preside over joint-jurisdictional courts have taken a very similar journey at the local level.

In this guide we recommend that you plan your joint-jurisdictional court over a series of four large group meetings, with smaller workgroups meeting on specific topics between the larger meetings.

Since stakeholders’ schedules are busy, time together is precious. With only four meetings, you want your first meeting to give everyone a very loose road map. Think about it this way:

- Your destination is your shared vision for a joint-jurisdictional court;
- Projecting a launch date lets everyone know when you plan to welcome the first joint court participants;
- Sharing the journey—which roads you will take depends on local stakeholder input and willingness to try new ways of working together; and
- Making stops along the way—these are the concrete next steps you and the stakeholders take toward implementing what starts out as your joint judges’ vision and evolves into a shared vision of all stakeholders.

This process, if your justice systems are ready to collaborate, naturally breaks down silos, improves coordination, and holds each court leader accountable for collaborating, and a new way of operating together emerges over time.

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<sup>11</sup> *Id.* at p. 10 (referring to Survey Results: Question 15).

<sup>12</sup> 18 U.S.C. § 1151 (“Indian country” defined).

## A. Starting the Process—Leadership by Judges

Joint-jurisdictional courts require leadership on behalf of the tribe, the tribe’s chief judge, and the state court’s presiding judge, and a certain degree of support from the tribal community, tribal service providers, and state court–connected service providers. In all instances, however, it has been the judges who have initiated the conversation.

In California, community outreach is an official judicial function. State court judges are encouraged to “provide active leadership within the community identifying and resolving issues of access to justice.”<sup>13</sup> This is especially true for juvenile court judges who have a unique role, under standard 5.40(e) of the Standards of Judicial Administration, “to provide active leadership within the community in determining the needs of and obtaining and developing resources and services for at-risk children and their families. At-risk children include delinquents, dependents, and status offenders.” Similarly, the tribes in California depend on their chief judge, who is either appointed or elected by the tribal government, to be an active leader within the community upholding the court’s integrity and fairness and assuring the communities’ faith and health in utilizing a tribal court.<sup>14</sup>

### Problems in common

Judges know the pressing problems that underlie the cases they hear, and so do the communities they serve. Judicial leaders who have established joint-jurisdictional courts decided to reach out to one another and discuss those problems. When we examine the types of cases these judges decided to jointly preside over, we learn that they looked beyond the presenting case problem to the underlying community concerns and root causes.

For example, the Chief Judge of the Shingle Springs Band of Miwok Indians and the presiding judge of the Superior Court of El Dorado County decided to tackle the school-to-prison pipeline locally.

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<sup>13</sup> See Cal. Rules of Court, rule 10.5, [www.courts.ca.gov/cms/rules/index.cfm?title=standards&linkid=standard10\\_5](http://www.courts.ca.gov/cms/rules/index.cfm?title=standards&linkid=standard10_5); Judicial Council of Cal., *Court Toolkit for Tribal/State/Federal Administrators and Clerks* (2016), [www.courts.ca.gov/documents/courttoolkit-tribalstatefederal-adminclerks.pdf](http://www.courts.ca.gov/documents/courttoolkit-tribalstatefederal-adminclerks.pdf) (the toolkit was produced to encourage cross-court site visits and to facilitate shared learning among local tribal, state, and federal courts in California; the toolkit is endorsed by the California Court Clerks Association, the California State–Federal Judicial Council, the California Tribal Court Clerks Association, the National Judicial College, and the Judicial Council’s Court Executives Advisory Committee and Tribal Court–State Court Forum).

<sup>14</sup> See the National American Indian Court Judges Association’s description of the ethical role of the tribal court judge at [www.naicja.org/about-us/judicial-ethics/](http://www.naicja.org/about-us/judicial-ethics/).

The establishment of our joint-jurisdiction court was motivated in large part by the implicit (and explicit) biases that tribal members faced when dealing with the education system, the legal profession, the County’s social services system, the County Probation Department and the State Court system. Many of the tribal youth had tattoos which were a source of cultural expression and pride. Unfortunately, law enforcement and educators saw the tattoos and labeled the youth as gang members without any foundation for that judgment. Tribal youth were placed into continuation and other alternative educational programs as a result of this labeling, which impacted school performance and participation. We reached out to law enforcement and the schools in our [joint-jurisdiction court] planning process and actively worked to educate them about this form of bias. Another form of bias involved the assessment of which system offered the best services/outcomes for a particular participant. Our stakeholders had to learn that neither system was better or worse, they were just different.

Presiding Judge Suzanne Kingsbury (Ret.), Superior Court of El Dorado County

The Shingle Springs and El Dorado County joint-jurisdiction court decided to focus initially on truancy, which disrupted the attendance of tribal children in mainstream schools and moved them into the charter school. The tribe was concerned about what they viewed as “racialized” decisions to remove some Native American children from mainstream schools to placement in alternative public schools where many had very poor outcomes. An examination of these cases revealed inequitable school system and juvenile justice system decisions. As the state and tribal judges heard these cases together and wrapped around services for these young people and their families, they addressed a range of problems relating not only to truancy, but to social determinants of health,<sup>15</sup> and undertook juvenile dependency, juvenile delinquency, and adult criminal cases, thus disrupting the school-to-prison pipeline. Decision-makers in the schools, courts, and court-connected service providers learned together that they were part of systems that perpetuated inequities. Their joint-jurisdictional court, like others, have naturally evolved to hear a wide range of case types and have proven that inequities can be successfully addressed.

In another example, the chief judges of the Hoopa Valley Tribe and the Yurok Tribe, together with the presiding judges of the Superior Court of Humboldt County and the Superior Court of Del Norte County, decided that the public health crisis of substance abuse in their region was driving the number of child welfare cases up, breaking families apart, and undermining tribal communities. In California, prescription opioid, fentanyl, and heroin-related overdose death rates are significantly higher among Native Americans compared to other races/ethnicities.

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<sup>15</sup> Centers for Disease Control and Prevention, “Social Determinants of Health: Know What Affects Health” (Sept. 30, 2021), [www.cdc.gov/socialdeterminants/index.htm](https://www.cdc.gov/socialdeterminants/index.htm).

Demographic	Prescription Opioids <i>n</i> =1,556	Heroin <i>n</i> =711	Fentanyl <i>n</i> =429
White	6.90	2.96	1.67
Black	4.46	1.93	1.43
Latino	2.10	1.17	0.75
Native American	11.52	5.76	4.80
Asian	0.74	0.32	0.23

Source: California Dept. of Public Health, *Patterns of Opioid-Related Overdose Deaths in California 2011–2017* (Mar. 2019), Table 1 (2017). Data retrieved from California Opioid Overdose Surveillance Dashboard.

Humboldt and Del Norte Counties have the highest prevalence of opioid-related encounters in the state and within Indian health programs. The judges’ conversations led to a better understanding of the severity of the problem, and they are now hearing these cases together and seeing results in recovery and reunification.

It has been my honor to work with our Tribal Leaders to create these joint jurisdiction courts. Sitting next to them as we jointly preside over our court has made me a better judge and has been rewarding, because we are breaking the cycle of addiction.

Presiding Judge Joyce D. Hinrichs, Superior Court of Humboldt County

When you actually sit down and try to understand someone “different” than you, often you find they are more similar than not, and those “differences” bring their own wisdom. This expression is found within our joint wellness court in bringing together cultural uniqueness and identities into our judicial process for a better outcome by learning and growing from each other.

Presiding Judge Darren McElfresh, Superior Court of Del Norte County

**Shared values and principles**

Not all judges who launch joint-jurisdictional courts know about or understand each other’s justice systems and the (potentially) different values and principles that underlie each.<sup>16</sup> Chief Judge Abby Abinanti of the Yurok Tribal Court often remarks that “Western” justice systems are very focused on individual rights, whereas tribal justice systems are more concerned with one’s responsibility to one’s tribe and community. The judges who participated in the California Tribal Court–State Court Forum took the time to have these hard conversations about underlying values

<sup>16</sup> See *Values and Principles: A Living Document*, [www.courts.ca.gov/documents/TribalPrinciplesValues.pdf](http://www.courts.ca.gov/documents/TribalPrinciplesValues.pdf), developed by the California Tribal Court–State Court Forum.

and perspectives and developed shared values and principles. While it is not necessary to reach this common ground during the judges’ first conversation, it may be useful to develop a set of joint values and principles as a starting point from which to begin your dialogue and explore your visions for a joint-jurisdictional court.

### **Tips**

- ❖ During this initial judge-to-judge conversation, it is important to take the time to listen and get to know one another.
- ❖ You are looking for judicial champions in each other’s justice system. As a judge, you may want to talk to your peers who have initiated these types of cross-jurisdictional conversations. To avoid miscommunications, it is important to take the time to understand each other’s overlapping jurisdiction.<sup>17</sup>

### **Technical assistance available**

The Judicial Council’s Tribal-State Programs staff have assisted tribal and state court judges alike in reaching out to one another, paving the way with information about each other’s courts, suggesting materials to share, and providing introductions.

## **B. Building and Strengthening the Collaboration**

Most joint-jurisdictional courts in operation today had some collaboration before they launched their courts and rated these collaborations as much improved—either good or excellent—after their launch.<sup>18</sup> This underscores the importance of the judges’ role as convener, taking the time to form relationships with each other across jurisdictional lines and build upon those that exist among your stakeholders.

Building the collaboration is a joint exercise of leadership together and giving up individual control. You are leading the way for your shared vision of the court, trusting in the lived experiences and expertise of the stakeholders you bring to the table, setting aside time for everyone to learn from one another, and paving the way for all of you to reimagine justice.

As equal partners, draft your vision together, and then, set the conditions for this vision to become a reality by jointly convening four stakeholder meetings. Take care of logistics and set the agenda and ground rules in advance. (See [Appendix D](#), Design Tools.)

### **Tips**

- ❖ Model collaboration and joint leadership.

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<sup>17</sup> For a helpful resource, see the “Jurisdiction in Indian Country” webpage on the California Courts website at [www.courts.ca.gov/8710.htm](http://www.courts.ca.gov/8710.htm).

<sup>18</sup> *Joint Jurisdiction Courts: Needs Assessment Findings* at pp. 17–18.

- ❖ During conversations between state and county representatives and tribal community members, elders, and council members, it is important to have cultural humility to understand and value each other’s perspectives. For state and county representatives this includes acknowledging that the state system has not always done a good job at serving the tribal community, that historically, when outsiders came into tribal communities, they usually took and destroyed, which leads tribal community members to naturally distrust the joint-jurisdictional approach. They understandably are concerned that the state court judge and justice partners will undermine tribal sovereignty and usurp the tribe’s legal jurisdiction and enforce state laws against them.
- ❖ Whether you are the tribal court judge or the state court judge, you are seeking support from the tribal community. Judges who have launched joint-jurisdictional courts have engaged the tribal council, the governing body of the tribe, and their tribal community by asking to be on the agenda of a council meeting or community gathering. They have then co-presented, described their vision, provided information, listened to community members, and incorporated their input into the joint-jurisdictional court design.
- ❖ Your collaboration is a judges’ systems change meeting, and your authority will bring people from different cultures to sit at the same table. Your goal is to create a meeting of the minds across very different lived experiences.
- ❖ Allow the collaboration to grow each time you convene stakeholder meetings, as you want the process to be inclusive.

### C. Successfully Convening Stakeholders

Based on the case types or presenting problems you wish to address, and your conversations about the type of court-connected services and interventions that you believe will address the root causes of community issues bringing individuals to court, begin brainstorming a list of stakeholders to invite. This list is locally driven by existing resources—the tribal and county agencies/offices that are represented in the court cases, those governmental and nongovernmental agencies that provide critical court-connected services to the court participants, and civic leaders from the tribe and county.

Judges understand how their own justice systems work: they have multiple decision-makers, multiple formal and informal criteria for making decisions, and multiple opportunities for inclusion and exclusion at various points in these systems. Based on one study that documented some of these decision steps in a state justice system, the authors concluded that programs improved when they documented referral and admission processes to better understand and respond to selection effects,<sup>19</sup> which are negatively and disproportionately impacting people of

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<sup>19</sup> S. Belenko, N. Fabrikant, and N. Wolff, “The long road to treatment: Models of screening and admission to drug courts,” 38 *Criminal Justice and Behavior* 1222–1243 (2011), cited in National Association of Drug Court Professionals, *Equity & Inclusion: Adult Drug Court Best Practice Standard II*, [www.ndci.org/wp-content/uploads/2019/02/Equity-and-Inclusion-Toolkit.pdf](http://www.ndci.org/wp-content/uploads/2019/02/Equity-and-Inclusion-Toolkit.pdf).

color, including Native Americans. This is documented with respect to the rates of expulsion and suspension,<sup>20</sup> contact with child protective services and juvenile court,<sup>21</sup> contact with police and adult criminal court,<sup>22</sup> and juvenile disposition and adult sentencing.<sup>23</sup>

Overlapping jurisdictions, delivery service areas, court-connected service providers, and various decision-makers across justice partner agencies necessitate judges use their unique convening power to bring stakeholders together to delve into how these systems currently operate and examine how decisions are made and services are accessed.

Depending on the shared community problem and case type, the judges from the state and tribe can identify the key justice partners and decision-makers in those organizations. And using their convening power, these partners will usually come to the table when invited by the judge.

## D. Running Successful Planning Meetings

Because the stakeholder meetings are so important to the joint-jurisdiction court planning process, we suggest you take steps to ensure that they run smoothly.

### Take care of logistics in advance

Given how busy your calendars are and the stakeholders' schedules, taking care of logistics in advance is important if you want to have the broadest community reach and stakeholder investment in your vision. Because it takes time to build the collaboration and break down silos within each justice system and across jurisdictions, those who have launched joint-jurisdictional courts have found that setting aside four, two-day-long meetings over a period of eight months, with smaller workgroups meeting in between the larger meetings, has given partners the time they need to break down silos and design the court implementing their shared vision.

Consider the following when taking care of logistics for your meetings:

- *Who*: Who sends email?
- *Whom*: Which stakeholders?
- *When*: What are the dates and times for the meetings?

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<sup>20</sup> California Dept. of Education, California suspension and expulsion rates by ethnicity and county for 2014–15, <https://dq.cde.ca.gov/dataquest/SuspExp/defbyscheth.aspx?cYear=2014-15&cType=ALL&cCDS=00000000000000&cName=Statewide&cLevel=State&cChoice=DefByEth&ReportCode=DefByEth>.

<sup>21</sup> Child Welfare Information Gateway, “Racial Disproportionality and Disparity in Child Welfare,” *Issue Briefs* (Nov. 2016), [www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/](http://www.childwelfare.gov/pubs/issue-briefs/racial-disproportionality/); Kidsdata.org, “Children in Foster Care, by Race/Ethnicity,” [www.kidsdata.org/](http://www.kidsdata.org/) (under Data By Topic, Foster Care).

<sup>22</sup> Office of Juvenile Justice and Delinquency Prevention, *Literature Review: Disproportionate Minority Contact* (Nov. 2014), [www.ojjdp.gov/mpg/litreviews/Disproportionate\\_Minority\\_Contact.pdf](http://www.ojjdp.gov/mpg/litreviews/Disproportionate_Minority_Contact.pdf).

<sup>23</sup> W. J. Sabol, T. L. Johnson, and A. Caccavale, *Trends in Correctional Control by Race and Sex* (Council on Criminal Justice, Dec. 2019), [https://cdn.vmax.com/counciloncj.org/resource/collection/4683B90A-08CF-493F-89ED-A0D7C4BF7551/Trends\\_in\\_Correctional\\_Control\\_-\\_FINAL.pdf](https://cdn.vmax.com/counciloncj.org/resource/collection/4683B90A-08CF-493F-89ED-A0D7C4BF7551/Trends_in_Correctional_Control_-_FINAL.pdf).



- *Where:* Where will you hold the meetings? (Secure the locations in advance.)

### **Tips**

- ❖ Consider sending all communications to stakeholders from both judges to model that you recognize each other’s justice system and each other as equal partners in bringing together justice partners. If you delegate this administrative task, write the emails so that they are sent on behalf of both judges.
- ❖ Consider locations on or off tribal lands and the geographic distances stakeholders may have to travel and alternating between tribal and non-tribal locations.
- ❖ Book facilities in advance to ensure that you have a meeting space that can accommodate the number of stakeholders you anticipate inviting.
- ❖ Although it may be counterintuitive, include naysayers or those who show resistance to your vision, as you need to understand and overcome their resistance to gain their buy-in. In the end they can turn out to be your biggest champions.
- ❖ Collaborate on how to convene each meeting respectfully.
- ❖ Be respectful, curious, and knowledgeable of what is acceptable practice in each tribe.
- ❖ When preparing the agenda, ask if there are tribe-specific ways to set the tone for a productive meeting. Do not be surprised if meetings include blessings or prayers, smudging (i.e., lighting sage), or other tribal ceremonies. Often, these meetings begin with an invocation by a tribal leader or elder. While not part of non-tribal meetings, these ceremonies help show respect for tribal values and a willingness to accommodate those values.
- ❖ Discuss whether your meetings and joint-jurisdictional court should incorporate a land acknowledgment. Meetings or events are often opened acknowledging the ancestral and current lands of the tribe in that area as a sign of respect.<sup>24</sup>
- ❖ Consider sharing food as an important part of building relationships, particularly across tribal and non-tribal agencies.

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<sup>24</sup> You can find further information about California’s traditional tribal territories and resources concerning land acknowledgments with these resources:

- A map of the ancestral tribal groups within California, [https://www.ncidc.org/California\\_Indian\\_Pre-Contact\\_Tribal\\_Territories](https://www.ncidc.org/California_Indian_Pre-Contact_Tribal_Territories);
- A resource for tribal lands searches when conducting land acknowledgments, <https://native-land.ca/>; and
- Information about conducting land acknowledgments, <https://native-land.ca/resources/territory-acknowledgement/>.

State court judges may have to work through ethical questions in advance to ensure that they do not unintentionally create bad feelings. The ethical prohibition against receiving gifts is one that may arise. Many tribal communities honor guests and collaborators with traditional gifts such as blankets or jewelry. It is considered rude to refuse these gifts. You may want to discuss with your tribal court partners how to best navigate this issue, and your court may want to develop a policy or protocol for dealing with these gifts consistent with the exceptions set forth in the canons of the California Code of Judicial Ethics.<sup>25</sup> For example, when Tribal Court–State Court Forum members and staff were gifted necklaces, they were put on display in a place of honor in the Judicial Council offices rather than being accepted individually.

### **Establish workgroups**

Adopting a governance structure will help work get done in between in-person meetings. Some planning teams have established workgroups on specific issues that report back to the larger stakeholder group. Three types of workgroups are helpful:

- A resource group that maps services and identifies service gaps and solutions to access issues.
- A data-sharing workgroup that can identify what data would be of value to the group, existing sources of data, and any data gaps. Data is essential to the evaluation of any systems changes.
- A policy and procedures workgroup, which will become especially active toward the end of the design process. Typically, attorney stakeholders are drawn to this workgroup, but so too are directors and case managers, who are familiar with existing processes in their systems and frequently have practical ideas for how to adapt current systems to fit the new design.

Convene regular bimonthly teleconferences to advance the work in between in-person meetings, to receive updates from your workgroups, and to plan the agenda for the next upcoming stakeholder meeting. Generally, a subset of those who show up for your bimonthly teleconferences will become members of your steering committee and help you operationalize and sustain your courts. Lastly, and most importantly, the tone you set as leaders must be inclusive so that you are fostering input from all tribal and non-tribal stakeholders. Proactively invite missing partners to future meetings and encourage stakeholders to extend invitations to others.

### **Enlist facilitators**

Strong facilitation is needed to help get a joint-jurisdiction court off the ground. Skilled facilitators can be instrumental in creating an environment for open communication and can

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<sup>25</sup> Canon 4D(5) and (6) of the California Code of Judicial Ethics sets forth the limitations on a judge’s ability to accept gifts. “Gift” is not defined and nominal gifts are permitted. Typically, the items that might be given fall within the exception of nominal gifts. See also California Judges Association, Ethics Committee Advisory Opinion No. 43 (Aug. 1996), [www.caljudges.org/docs/Ethics%20Opinions/Op%2043%20Final.pdf](http://www.caljudges.org/docs/Ethics%20Opinions/Op%2043%20Final.pdf).

foster a judgment-free environment that encourages stakeholders to think outside the box and freely express ideas. They can take steps to promote listening, elicit and distill different viewpoints, ask for clarification, legitimize concerns and disagreements, seek proposals to address them, check for understanding, and build consensus so that all stakeholders are invested in their decisions. They can create opportunities for stakeholders to develop empathy and understanding and strengthen their relationships. It can be more difficult for the stakeholder than for a facilitator to focus on the listener (and not themselves), to ask probing questions, and create space for silence, communicating attentiveness and respect for everyone’s participation. Also, a stakeholder cannot very easily influence the power dynamics of a group, whereas a facilitator can have side conversations seeking the affected participants’ help with resolution outside of the group or correct for the imbalance during group discussion. A facilitator can do this by stretching the team’s thinking, encouraging participation from all points of view, and respecting everyone’s time and contribution.

A facilitator can also assist the judges in advance of the meeting by preparing the agenda, drafting ground rules, describing the judges’ vision in writing, and compiling a list of tribal and non-tribal services for court participants. And after the meeting a facilitator can draft summary notes, track action items, follow up with stakeholders who volunteered for next steps, and review draft joint-court documents.

You may have someone in your community who has served as a bridge between the tribal community and the state court. Consider whether this person will be respected by all stakeholders and is willing to serve in this capacity. If you do not have such a resource, consider applying for technical assistance grants, which will provide you with a skilled facilitator. You can also build this consulting position into an existing grant application that either the court or tribe was planning to submit. For example, collaborative court<sup>26</sup> and Coordinated Tribal Assistance Solicitation grants may be available. The Bureau of Justice Assistance and the Tribal Law and Policy Institute are also good resources for hiring a facilitator.

## **E. First Stakeholder Meeting**

Based on that strong foundation, you are ready for the first stakeholder meeting. The goals of this meeting are to develop a proposal for change and look for agreement with

- Ground rules for communication;
- Overall vision for the joint-jurisdictional court;
- A map of your communities’ siloed systems (tribal and non-tribal service providers);
- A governance structure: Steering committee? Workgroups? Volunteers? Teleconferences during the months you do not meet in person?; and

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<sup>26</sup> For collaborative court grants in California, see the “Grants/Funding” webpage of the California Courts website at [www.courts.ca.gov/3080.htm](http://www.courts.ca.gov/3080.htm).

- Inclusiveness—invitations to be extended to missing partners.

Since the purpose of your first meeting is to strengthen the collaboration, which will ultimately lead to a locally designed joint-jurisdictional court that implements your vision with input from your justice partners, you want to lead by example:

- Identify and follow ground rules that foster open, honest, and respectful conversations;
- Learn from one another by mapping the current siloed systems; and
- Begin a dialogue that taps stakeholders’ imagination on a proposal for change.

The ground rules help you when disagreements and conflicts arise, as you can remind participants that they agreed to specific ground rules for respectful conversations. Your vision is critically important because it guides your design. The mapping of siloed systems enables everyone to learn about the available services and leverage them for the benefit of the new court’s participants. You may be surprised by the services that exist, as well as those that are not used or are not accessible to state court participants for a variety of reasons. Stakeholders will want to problem-solve together to address those barriers to access.

Toward the end of your first stakeholder meeting, be sure to ask for volunteers for the workgroups. Be sure to ask for leads to convene these workgroups by email, telephone, or in person. Write down stakeholder agreements on each workgroup’s scope of work. Ask workgroups to report back to the bigger group at the next monthly teleconference and/or in-person meeting.

How you jointly set the agenda for the first meeting will set the tone for all subsequent meetings. Provide structure and set expectations so that stakeholders can move from cooperation to collaboration.

See Appendix C, [Tool 1: The Conversation Tool](#).

## **IV. Designing the Joint-Jurisdictional Court (Two Judges Co-Lead)**

The next step is to design your court. This part of the process requires the participants to delve into the specific issues facing the community, blend collaborative court and wellness approaches, and establish a governance model for the court. It is also an appropriate time for the second stakeholder meeting.

### **A. Locally Driven and Culturally Based**

Once you have established or strengthened your judicial relationship and held your first stakeholder meeting, you are ready to embrace a design process that is locally driven and culturally based. No two joint-jurisdictional court journeys are the same for that reason.

Nevertheless, the journey will require both judges to co-lead the stakeholder meetings and come together to understand the context within which they are asking stakeholders to respectfully educate one another and create new court processes and procedures for the benefit of those whom they serve.

Locally driven considerations when launching into the design phase include:

- Historical and present-day impacts affecting tribal communities in the region; and
- Differing perspectives of the root causes of the court case’s presenting problems.

### **Historical and present-day impacts affecting tribal communities**

“Historical trauma” is the term often used to describe historical experiences and their continuing impact on tribal communities and individuals. The term “historical trauma” comes from the descendants of the Holocaust and the Japanese Americans interned during World War II and refers to the trauma that survivors and their subsequent generations experience.<sup>27</sup> Today, the term is also used to refer to the colonization of tribal communities, which included subjugation, abuse, and coercive assimilation through boarding schools (where children were forcibly taken from their families and subjected to physical, sexual, and emotional abuse). Historical trauma also refers to the theft of land; the forced removal and relocation of families and communities; and cultural genocide, including the loss of Native language, cultural practices, social structures, and spiritual beliefs and practices.<sup>28</sup> The first generation of survivors of genocide had posttraumatic stress disorder symptoms that might have included depression, hypervigilance, anxiety, and substance abuse. As the dominant culture perpetrated cultural genocide, Native people could not practice their traditional rituals of mourning and healing, which would have provided adjustment to their loss, ceremonial and ritual mourning, and family and community support. This unresolved grief is a result of historical trauma that is transmitted down through each Native generation and is cumulative and compounded as additional traumatic events occur.<sup>29</sup>

Historians and scholars from various disciplines have documented the pervasive influence of racism on American society and culture, including effects on the health and well-being of Native Americans.<sup>30</sup> Among the many health problems affected by racial discrimination and oppression, both historical and current, are substance use disorders. Epidemiological studies have

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<sup>27</sup> H. A. Barocas and C. B. Barocas, “Wounds of the fathers: The next generation of Holocaust victims,” *6 International Review of Psycho-Analysis* 331–340 (1979); D. K. Nagata et al., “Long-term effects of internment during early childhood in third-generation Japanese Americans,” *69 American Journal of Orthopsychiatry* 19–29 (Jan. 1999).

<sup>28</sup> J. P. Gone, “A community-based treatment for Native American historical trauma: prospects for evidence-based practice,” *77 Journal of Consulting and Clinical Psychology* 751–62 (Aug. 2009).

<sup>29</sup> M. Y. Brave Heart and L. M. DeBruyn, “The American Indian Holocaust: healing historical unresolved grief,” *8 American Indian and Alaska Native Mental Health Research* 56–78 (1998).

<sup>30</sup> Monica Skewes and Arthur Blume, “Understanding the Link Between Racial Trauma and Substance Use among American Indians,” *The American Psychologist* 74 (Jan. 2019) (citing numerous studies).

documented greater drug- and alcohol-related morbidity and mortality rates among Native Americans as compared to other ethnic groups. These disorders in turn often lead to court involvement. The fact that the underlying disorders leading to court involvement are grounded in the historical trauma that tribal communities have suffered underscores the need for culturally attuned and effective interventions that the court and its court-connected service providers can use for the benefit of its participants.

In addition to the shared historical trauma of many tribal communities, tribes in different regions may have different historical trauma based on the harms specifically perpetuated on their areas. For example, the Spanish missionaries in California abused and enslaved native peoples in Southern and Central California but did not have much influence on tribes north of the Bay Area. On the other hand, tribes in Northern California were greatly impacted by the Gold Rush Era and Russian fur colonialism, whereas tribes in Southern California were not.<sup>31</sup>

Regional differences also affect the organizational capacities of stakeholders and impact the type of court-connected services you can leverage for your court participants. You need to understand the various factors that impact resource availability and accessibility. These factors include who has authority to make decisions about resource allocations and the historical relationship between various agencies.

### **Different worldviews**

Each joint-jurisdictional court operates differently because of the worldview of the specific tribe involved. Culturally based interventions are integral to their design. Each tribe has a unique culture, which is always evolving. It is based on traditional values and helps members to establish an identity and a sense of belonging in the world. It includes an oral tradition of legends, songs, dances, and stories. It informs people’s understanding of why things happen and what they can and should do to make changes.

Different perspectives also affect the words used in discussing the court participants’ presenting problems and the root causes. This in turn affects how participants understand each other and approach what a justice system will look like. The chart below, which was developed by the judges of the Yurok Tribal Court and the Superior Court of Humboldt County as part of their family wellness court, illustrates how we can misunderstand one another across cultures and value systems.

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<sup>31</sup> You can find more information about the regional histories of California’s Indians from the State of California’s Native American Heritage Commission at <http://nahc.ca.gov/resources/california-indian-history/>. Many tribes also have information about their specific histories on their websites.

Native View	Non-Native View
Law is how we live and heals people	Law is separate from us and applied neutrally
Health epidemic perpetrated against tribal communities by Big Pharma, drug cartels, and unscrupulous doctors	Rates of substance abuse: mortality, utilization of emergency rooms, medication-assisted treatment, and alcohol and other drug programs/clinics
Tribe’s children are denied an education because of disproportionate policing of children of color that engines a racialized school-to-prison pipeline	Rates of school discipline and dropping out: disproportional juvenile delinquency and adult criminal cases and rates of incarceration
Tribe’s children are forcibly removed from their families, communities, and separated from their way of life forever	Disparate impact on people of color and the poor: child abuse, termination of parental rights, and adoption
Storytelling	Evaluation
Culture is part of us	Culture is a protective factor

Probably the two most important conversations we had with our partners surrounded the value of integrating the rich Hoopa culture into the dependency process and the value of combining our joint resources when trying to help families reunify and gain strength.

Chief Judge Leona Colegrove, Hoopa Valley Tribal Court

While this toolkit gives examples of cultural interventions, it cannot give those interested in developing a joint-jurisdictional court a comprehensive list to incorporate into their joint-jurisdictional court design, because cultural interventions are tribe-specific and can only be shared by the tribal members as part of developing your joint vision. What this toolkit can do is give those within the state court system interested in establishing a joint-jurisdictional court a frame or lens through which to seek out culturally grounded interventions from your tribal partners. They usually involve the broader family and community rather than focusing exclusively on the individual before the court. Individual healing typically occurs within the community as a whole. The healed person is able to, and expected to, then help the community. Studies have shown that, although the cultural particulars differ among tribal communities, the overall emphasis on culture as medicine is indisputable among tribal populations.<sup>32</sup> As medicine, tradition and cultural practice is healing on multiple levels: physically, emotionally, and

<sup>32</sup> D. Bassett, U. Tsosie, and S. Nannauck, “‘Our culture is medicine’: Perspectives of Native healers on posttrauma recovery among American Indian and Alaska Native patients,” 16 *The Permanente Journal* 19–27 (Winter 2012). This article contains a Native healer interview guide, “Traumatic Injury, Its Consequences, and Treatment.”

spiritually. Culturally grounded interventions address the type of historical trauma tribal communities have endured.

As you strengthen your inter-jurisdictional relationships, you will find that as trust builds, so too will the sharing of indigenous knowledge and cultural practices with stakeholders. You want to be intentional, however, to invite culture bearers,<sup>33</sup> such as a tribal elder, healer, or language instructor, to both present and participate in the stakeholder meetings. Most tribal cultures do not recognize a separation between culture, spirituality, morals, community, and the law. Therefore, without the participation of these individuals and their generosity in sharing, it will be impossible to begin to reimagine justice and incorporate tribal values, practices, and culturally attuned interventions.

Research demonstrates that connecting or reconnecting to culture is a protective factor, builds resiliency for the individual and community, and improves outcomes.<sup>34</sup> Some joint-jurisdictional courts measure the court participant’s connectedness to their tribe before they enter the court, midway, and upon exiting the court, and have demonstrated that those who have successfully graduated have strengthened those connections.

Recognizing, understanding, and expressly acknowledging historical and present-day events that have impacted the community and understanding the differing perspectives of the stakeholders foster locally driven solutions that recognize cultural differences.

### **Tips**

- ❖ Find common ground by making time to understand each perspective. Don’t assume that the terms you use have the same meaning to your colleagues; intentionally unpack language so that the words and terms used are understood by all.
- ❖ Create a safe space to learn from each other.

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<sup>33</sup> “A culture bearer is someone recognized by the tribal community who is connected to the indigenous knowledge of the tribe. For a culture bearer, one’s indigenous knowledge is not only knowledge about the tribe’s traditions, values, beliefs, worldview, and practices. It is culture, a living part of every person of the tribe, inseparable from each person, and passed on from one’s ancestors.” Jenny Walter, Korey Wahwassuck, and Suzanne M. Garcia, *Joint Jurisdiction Courts: Needs Assessment Findings* (Tribal Law and Policy Institute, Feb. 2022), p. 30, note 33, [http://walkingoncommonground.org/files/Joint%20Jurisdiction%20Courts%20Final%20Report%20for%20Posting%202-7-22%20\(1\).pdf](http://walkingoncommonground.org/files/Joint%20Jurisdiction%20Courts%20Final%20Report%20for%20Posting%202-7-22%20(1).pdf).

<sup>34</sup> For relevant literature, see Center for Native Child and Family Resilience, <https://cn CFR.jbsinternational.com/literature>. For specifically incorporating culturally grounded child welfare services, see Maegan Rides At The Door and Ashley Trautman, “Considerations for implementing culturally grounded trauma-informed child welfare services: recommendations for working with American Indian/Alaska Native populations,” 13 *Journal of Public Child Welfare* 368–378 (2019), <https://doi.org/10.1080/15548732.2019.1605014>.



- ❖ Attack problems and not people—redirect and refer stakeholders to their agreed upon ground rules when there is conflict.
- ❖ Embrace conflict by giving and receiving respect.
- ❖ The state court judge should respectfully ask the tribal court judge to consider inviting a culture bearer who is willing and able to share their knowledge of the tribe’s worldview as it relates to culture as medicine for their people, and specifically those who will be participating in the joint-jurisdictional court.
- ❖ Always keep at the center or heart of your design the court participants whom you are serving, their sense of identity and belonging, whether they are connected or seeking to reconnect with their tribal community, and whether the court-connected interventions are addressing historical and present-day traumas.

## **B. Blending Collaborative Court and Tribal Healing to Wellness Approaches**

Blending these two approaches, I have observed that we can better serve all families in juvenile court when we begin to look at all our dependency cases through a wellness lens.

Presiding Judge Joyce D. Hinrichs, Superior Court of Humboldt County

Most of the joint-jurisdictional courts use a “wellness court” model, which blends the collaborative court approach used by many state courts with the tribal healing to wellness approach used by many tribal courts. Both are flexible and can be adapted to local conditions and cultures. Both focus on healing rather than retribution. Both ask judges to focus on issues other than the presenting problem, such as root causes of the court participant’s behavior, implications of that behavior for the community, and how they will coordinate intensive treatment supervision.<sup>35</sup>

With a grounding in tribal healing to wellness and collaborative, problem-solving approaches and with input from stakeholders, the judges and stakeholders learn they can apply the laws of both jurisdictions, define the caseload, choose their own family wellness team of treatment providers, and create culturally attuned responses to the participant’s behavior and the holistic needs of the family throughout the court process.

At this point, you are learning, maybe for the first time, about these two approaches, taking your shared vision for the court, and educating stakeholders. Stakeholders will learn more about each

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<sup>35</sup> See Appendix D, [Tool 1](#).

other’s ideas for a joint-jurisdictional approach while drawing on the expertise of those familiar with collaborative court approaches and tribal healing to wellness approaches.

### **Tips**

- ❖ Education is readily available online and through multiple resources, and it helps to ask stakeholders to proactively learn about the two approaches before the second in-person meeting, once they have a grounding in the goals of the collaboration to give them additional insight and understanding for the next stages of joint-jurisdictional court development. (For technical assistance, see [Section E](#) below.)
- ❖ Inviting other judges who already preside over a joint-jurisdictional court, making arrangements for stakeholders to observe a joint-jurisdictional court, giving stakeholders online resources on the two approaches, and reinforcing with them by having discussions at the in-person meeting sets the stage for getting down to the nuts and bolts of how your court will operate.
- ❖ Invite local stakeholders who are passionate about each approach and can describe the key components that helped them to create their joint-jurisdictional court.

## **C. Governance Model**

Choosing a governance model that works for both justice systems is critical, especially in fiscally challenging times. Tribal justice systems in California have always found ways to overcome these challenges, and state court systems have much to learn about their fortitude, creativity, and resiliency. State courts in California, similarly, have had to make tough choices, cut budgets where possible, and reallocate funding to meet changing priorities and resource constraints.

The majority of the joint-jurisdictional courts have adapted their core family team that staffs the court to function as a core operational team. Convened typically by court coordinators, this team meets monthly for an hour to address day-to-day issues and concerns that arise in cases, examine data, and recommend court policies to improve court functioning. It is typically empowered to invite others to join the team depending on the issues raised, and generally will not include the judges, so that they can talk freely about cases; however, should systemic issues arise that require the judges, the team will call upon them.

The majority of the joint-jurisdictional courts have adapted their steering committee to serve as the policy and planning body for the joint-jurisdiction court. Co-convened by the two judges presiding over the joint-jurisdictional court, this committee meets quarterly for two hours to discuss core operational team recommendations and make decisions on court policy and procedures.

The two longest-standing joint-jurisdictional courts, the Leech Lake Band of Ojibwe Joint Jurisdiction Healing to Wellness Courts in Cass and Itasca Counties (Minnesota), which have

been recognized for numerous awards,<sup>36</sup> have adopted this governance structure and weathered judicial, staff, tribal council, and county board of commissioner administration changes, as well as fiscal challenges. The joint-jurisdictional courts in California have also selected this governance structure.

### **Tips**

- ❖ When selecting members for the core operational team, be sure to have representation from each of the court-connected service provider organizations that are providing the direct services.
- ❖ When inviting members to join the steering committee, make sure they have decision-making authority within their organization because many of the recommended policies and procedures will require not only judicial authority but also justice partner agency authority.
- ❖ Consider recruiting and grooming your judicial successor so that there is no disruption in court services and ask steering committee members to do the same.

## **D. The Second Stakeholder Meeting**

The objectives of the second meeting are to:

- Continue to demonstrate joint leadership;
- Continue to assess government and community support and the availability of needed resources; and
- Move from mapping the current system to the new court system by beginning to identify new court structures and procedures that will be locally driven, culturally based, and adapted from family wellness courts.

### **Set the agenda for the second meeting**

Because your collaboration grows in membership each meeting, you want to always give stakeholders the road map, telescoping what the collaboration is doing and has done, as well as what you want to achieve by the end of the meeting, which is always an agreed-upon list of next steps for individual stakeholders and workgroups.

Following what both judges agreed would be the most respectful way to conduct stakeholder meetings (see [Section III.C.](#)), the judges jointly convene the second meeting: welcoming

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<sup>36</sup> Local and national awards include the Harvard Project on American Indian Economic Development's Honoring Nations Award; the National Association of Drug Court Professionals' Cultural Proficiency Courage Award; the National Criminal Justice Association's Outstanding Tribal Criminal Justice Program Award; and two awards for local government innovation, including one from the Humphrey School of Public Affairs at the University of Minnesota. The courts were also nominated for a United Nations public service award.

stakeholders, reviewing summary meeting notes, and setting the stage for forming and understanding some of the new court structures and procedures.

Every joint-jurisdictional court must have the full support of key court-connected service providers, both tribal and non-tribal, as well as the public. The collaboration process outlined in this toolkit is intended to help you build this support; however, it will be up to you to determine whether key partners are on board or not, and if not, what extra steps need to be taken to overcome the challenges of resistant partners. (See [Section V.A.](#))

### **Pre-court, court, and post-court procedures**

There are many roads you can take to identify some of these procedures. A well-facilitated discussion that focuses on the specific ways that stakeholders want to design their court can work. Engaging stakeholders in discussion of the key components of the blended approach and specifically those that you wish to incorporate into your new court design can also lead to identifying new procedures and structures. This toolkit includes a tool that can help structure small group discussions on pre-court, court, and post-court activities, which can later be shared in the large group to further the goal of ultimately producing a manual for the court. (See Appendix D, [Tool 2.](#)) The more detailed the collaboration, the easier it will be to draft the court manual.

At the end of the second meeting, your shared vision for a new court is taking shape, and you are beginning to achieve the following benchmarks:

- A description of the target population and eligibility criteria and disqualification criteria.
- A description of key components of your new court, drawing on tribal healing to wellness and collaborative court approaches.
- A description of pre-court, court, and post-court procedures.
- Workgroup members building relationships and making strides on:
  - Compiling court-connected resources and addressing access issues (Resource Group);
  - Identifying pre-court, court, and post-court activities (Policies and Procedures Group); and
  - Identifying what data and information should be collected to monitor participant success and program success (Data Group).
- Education on the key components of tribal healing to wellness and collaborative/problem-solving courts.

### **Tips**

- ❖ Open-ended focus questions help with small and large group discussions.

- ❖ Focus questions can encourage stakeholder creativity: What do we need to create for our model to work?
- ❖ Focus questions can help stakeholders buy in to the design and implementation: What can I bring to the table to make this happen? What do I need from others to help me? Given the answers to these questions, what are the next steps and within which workgroup do we agree to undertake the next steps?
- ❖ Facilitator guidance can help stakeholders answer the nuts-and-bolts questions, not just from each of their points of view but also—and most importantly—through the lens of the participant and the participant’s family.

## E. Technical Assistance

The Judicial Council of California has many resources on collaborative courts. You can contact staff at the Center for Families, Children & the Courts, and they can direct you to specific collaborative court research, speakers, or other materials. The California Association of Collaborative Courts provides a list of types of collaborative courts.<sup>37</sup> The Tribal Law and Policy Institute has a wealth of information on tribal healing to wellness courts.<sup>38</sup> The joint-jurisdictional courts that responded to the Tribal Law and Policy Institute survey all reported that having a skilled facilitator had been critical for their collaboration during every stakeholder meeting. (For more resources, see [Appendix D](#).)

## V. Formalizing Your Vision

Your creativity and that of your justice partners in establishing and strengthening relationships is the only limitation on the ways in which you decide together to use each other’s facilities, draw upon each other’s programs, and memorialize agreements. This toolkit section will help you to memorialize the new court’s policies and procedures so that all stakeholders are prepared to launch on the date you have set and welcome the court’s first participants.

### A. Ratifying Governance Structures

Now is the time to create support for your new joint-jurisdictional court by formalizing its governance.

#### **Demonstrating joint leadership through a joint powers agreement**

Most joint-jurisdictional courts were established based on a shared desire by the two judges to develop a court to better serve their shared community, a handshake, and a very simple joint powers agreement. In California, all three currently operational joint-jurisdictional courts adopted virtually the same language as was used by the first joint-jurisdictional court in the

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<sup>37</sup> Available at [www.ca2c.org/types-of-collaborative-justice-courts/](http://www.ca2c.org/types-of-collaborative-justice-courts/).

<sup>38</sup> Available at <http://wellnesscourts.org/>.

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

### **Buy-in and support**

Every joint-jurisdictional court must have the full support of the state court leadership such as the court executive office and presiding judge, and the tribe’s governing body, which in California is the tribal or general council. Tribal resolutions typically address the authority of the council and the authority of the tribal court, acknowledge that the two justice systems are equal and parallel justice systems and describe the shared purpose for which they have come together, endorse the joint partnership agreement between its chief judge and the presiding judge of the state court, and expressly support the joint-jurisdictional court. State judges or other stakeholders have sought the support of the county board of supervisors by making a presentation and keeping the board updated on the new court’s progress.

## **B. The Third and Fourth Stakeholder Meetings**

During the third and fourth meetings you are translating your shared vision with the lived and professional experience of your stakeholders into a clearly written manual and court forms, establishing essential court operations, and preparing to document the impact of your new court.

### **Manual and forms**

Samples of manuals and forms are contained in [Appendix E](#). Those who have been successful have delivered improved outcomes and system changes. Below are steps your collaboration can take to develop the court’s manual and forms while simultaneously ensuring the court’s design improves participant outcomes, makes system changes, and addresses racialized injustice.

Strive to efficiently take down all the ideas that have generated enthusiasm and consensus and through your workgroups translate them into policies and procedures that guide the steps that every stakeholder, no matter which agency, tribal or non-tribal, can follow. One way to think about how to accomplish this is that you are using the same process the collaboration used to map pre-court, court, and post-court activities. Just as when blending the two court approaches and deciding which components you will keep or adapt, you want to slowly work through the details, from both the participant and stakeholder points of view. Much of this work will have been done during the second stakeholder meeting and workgroup meetings. If you have sufficient information, the workgroups can begin drafting the manual for approval by the larger stakeholder group. Some jurisdictions have hired a facilitator who can elicit the information, draft, and redraft based on stakeholder input. Many have borrowed extensively from other joint-jurisdictional court manuals and forms.

### **Tips**

- ❖ Walking through a hypothetical case can help stakeholders get real about these details.
- ❖ Getting input from former graduates of your courts will be invaluable.
- ❖ There is a middle road you are aiming for when it comes to detail. You want just the right amount of detail to give everyone comfort about their roles and expectations. If you become too detailed and formalistic, you can get bogged down and stakeholders may become overwhelmed. If you are not detailed enough, stakeholders will not be comfortable launching the court with you. As you aim for the right level of detail, be advised that those who have designed joint-jurisdictional courts will tell you that they are always evolving, and so what you memorialize today in your manual and court forms will look very different in the future.
- ❖ Sample manuals and court forms provide a foundation.

### **Documentation of joint-jurisdictional court operations**

In addition to developing a court manual and forms, joint-jurisdictional courts have taken additional steps to document their court operations. They have memorialized the joint-jurisdictional collaboration within the court system by adopting a local rule of court or standing order. They have adopted memorandums of understanding between tribal and non-tribal service providers that describe access to services by court participants and communication protocols among providers. (See [Appendix E](#).)

### **Tip**

- ❖ Since these courts are always evolving, it is useful to document and calendar an annual review of the documentation so that it reflects the new operations.

### **Evaluation**

Joint-jurisdictional courts typically adopt outcome measures that have been associated with evidenced-based practices and have been adapted so that they incorporate the tribe-specific worldview, culture, and laws of the specific tribal nation exercising jurisdiction with the non-tribal court. This new face of justice that is locally designed is the driver of the court's positive outcomes and promising practices.

By incorporating culturally based, locally designed interventions, these courts have developed many promising practices that meet significant needs, such as housing, employment, education, prenatal care, mental health treatment, alcohol and drug treatment, childcare, and other needs related to social determinants of health.

By the end of the fourth stakeholder meeting, you are looking to have consensus on the following:

- Court manual
- Court forms
- Core team members
- Court coordinator(s)

### ***Tips***

- ❖ Use the strengths of stakeholders who know how to set up data-tracking systems and can coordinate the collection of data.
- ❖ Be clear about the outcomes and system changes the collaboration wants to bring about.
- ❖ Remember that people drive positive outcomes and system change.

### **C. Outstanding Issues**

It is not unusual to encounter resistance as you establish your new court. Below is a list of some of the areas of resistance you can anticipate encountering as you formalize your court vision. You should know that all joint-jurisdictional courts have struggled with one or more of these issues, yet nevertheless overcame them and launched their courts:

- Equity and Inclusion
- Judicial ethical concerns
- Attorney concerns
- Confidentiality



## Equity and Inclusion

In view of recent events in our communities and through the nation, we are at an inflection point in our history. It is all too clear that the legacy of past injustices inflicted on African Americans persists powerfully and tragically to this day. Each of us has a duty to recognize there is much unfinished and essential work that must be done to make equality and inclusion an everyday reality for all.

We must, as a society, honestly recognize our unacceptable failings and continue to build on our shared strengths. We must acknowledge that, in addition to overt bigotry, inattention and complacency have allowed tacit toleration of the intolerable. These are burdens particularly borne by African Americans as well as Indigenous Peoples singled out for disparate treatment in the United States Constitution when it was ratified. We have an opportunity, in this moment, to overcome division, accept responsibility for our troubled past, and forge a unified future for all who share devotion to this country and its ideals.

We state clearly and without equivocation that we condemn racism in all its forms: conscious, unconscious, institutional, structural, historic, and continuing. We say this as persons who believe all members of humanity deserve equal respect and dignity; as citizens committed to building a more perfect Union; and as leaders of an institution whose fundamental mission is to ensure equal justice under the law for every single person.

In our profession and in our daily lives, we must confront the injustices that have led millions to call for a justice system that works fairly for everyone. Each member of this court, along with the court as a whole, embraces this obligation. As members of the legal profession sworn to uphold our fundamental constitutional values, we will not and must not rest until the promise of equal justice under law is, for all our people, a living truth."

Supreme Court of California Statement on Equality and Inclusion

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Equity and inclusion are by far the most common challenge. After all, racialized injustice stems from decades of systems reinforcing bias; dismantling these systems touches the implicit and explicit biases we all hold. Examples of explicit bias include the views that the state justice system and the non-tribal provider services are superior to those of the tribe, that tribal communities lack the capacity to govern and manage finances, and that they operate kangaroo courts. When establishing a joint-jurisdictional court and seeking buy-in from justice partners, these types of biases can undermine the court's launch and the team's cooperation in supporting the family to avail themselves of services.

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<sup>39</sup> Statement available at: <https://newsroom.courts.ca.gov/news/supreme-court-california-issues-statement-equality-and-inclusion>

Because no one likes to admit to their biases, they may show up in the following ways:

- State court attorney appearances that undermine the collaborative nature of the court;
- Service providers who undermine each other and alienate the client from either the tribal service providers or the county providers; and
- State court judges who see only deficits in the tribal community or family before them.

Implicit bias, also known as unconscious bias, refers to the attitudes and beliefs we all hold but may be unaware of or unable to easily control. These biases affect our everyday understanding, actions, and decisions in an unconscious manner. The Implicit Association Test<sup>40</sup> has been used to examine implicit bias toward Native Americans. While these negative stereotypes have persisted in the dominant culture, data is only now beginning to be collected that demonstrate this negative attitudinal bias toward Native American people.<sup>41</sup> Implicit bias can enter into discussions and decisions when making assumptions about the safety of a proposed tribal family and home, the traditions of another culture, or giving up on an individual to take responsibility for their behavior, to become clean and sober, and to be a positive influence on family and community.

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<sup>40</sup> The Implicit Association Test (IAT) (<http://implicit.harvard.edu/>) “is a procedure designed to measure social knowledge that may operate outside awareness or control.” Brian A. Nosek et al., “Pervasiveness and correlates of implicit attitudes and stereotypes,” *European Review of Social Psychology* 18:1, 36-88 (2007), DOI: [10.1080/10463280701489053](https://doi.org/10.1080/10463280701489053).

“The IAT is a computerized task that measures implicit or automatic associations between stimuli by examining how quickly certain stimuli are associated with evaluative attributes (e.g., positive or negative). Determination of implicit bias on the IAT is based on the assumption that responses to compatible judgment stimulus pairs (e.g., *snakes-dangerous*) will be more automatic, and hence faster, than for incompatible judgment pairs (e.g., *flowers-dangerous*) because of the greater strength of the conditioned association between the stimuli. Racial attitudes are thought to operate in much the same way.” John Chaney, Amanda Burke, and Edward Burkley, “Do American Indian mascots = American Indian people? Examining implicit bias towards American Indian people and American Indian mascots,” 18 *American Indian and Alaska Native Mental Health Research* 42, 45 (2011), internal citations omitted, <https://files.eric.ed.gov/fulltext/EJ943868.pdf>.

<sup>41</sup> Kathalena Avendano et al., “Implicit racial attitudes of Caucasian college students toward American Indians,” paper presented at the annual convention of the American Psychological Association, Toronto, Canada, August 2003; “Research Reveals America’s Attitudes about Native People and Native Issues,” *Cultural Survival* (June 27, 2018), <https://www.culturalsurvival.org/news/research-reveals-americas-attitudes-about-native-people-and-native-issues>; and “I is for Ignoble: Stereotyping Native Americans,” Jim Crow Museum, Ferris State University, Big Rapids, MI (Feb. 22, 2018), <https://www.ferris.edu/HTMLS/news/jimcrow/native/homepage.htm>.

We must question our ingrained judicial tendencies. It is common in juvenile court to automatically detain a child whose parents are products of the child welfare system. I remember just this type of case in joint-jurisdictional court. And I have no doubt that detention in that case would have led to dependency, which would likely have resulted in another Indian child being lost to the system. Instead, we provided intensive, targeted, supervised, and culturally grounded family maintenance services and it really worked for this family.

Presiding Judge Suzanne Kingsbury (Ret.), Superior Court of El Dorado County

## **Solutions**

- ❖ Recognize that anti-bias training is an ongoing commitment that individuals and organizations must undertake. Exercise leadership in your courts and with court-connected service providers to prioritize anti-bias training so that there is a shared language, sensitivity, and urgency to take collective action. Remember that:
  - What has been built up over decades takes time to dismantle;
  - What drives system change are individuals, like you and your stakeholders; and
  - What the collaboration is engaged in is hard work: bridging different worldviews, unlearning strongly held beliefs, and reimagining a new way to deliver justice.
- ❖ Sometimes, individuals are not ready to see their privileges and biases. They will typically self-select out of the collaboration. If not, you may have to exercise your influence to educate, educate, educate, and as a last resort, pilot the joint court without those individuals so that they can see with their own eyes.

## **Judicial ethical concerns**

State court judges sometimes express concerns about judicial independence, neutrality, ex parte communications, and paternalism. Stakeholders may challenge both judges' independence, not comprehending how each judge will exercise their own judgment, share what they learn, and arrive at the same decision. Typically, attorneys will challenge the judges' neutrality and raise the concern about ex parte communications, because the tribal judge likely knows the participant and their family, and shares this information, when relevant, with the family's team. While this situation would lead to judicial recusal and limitation of the communication in a state court, it is handled with disclosures just as it is dealt with in collaborative courts in the state court system.

## **Attorney concerns**

Defense and parent attorneys may be resistant to the joint-jurisdictional approach for the same types of reasons as they would be reluctant for their clients to participate in a collaborative court. Sometimes they perceive the court as too onerous for the client in the following ways: too many hearings, too many people looking into their business, and too many social interventions

representing opportunities for those individuals and service providers to do more harm than good.

Defense attorneys may also challenge the joint court as paternalistic, digging into their client’s life, asking too much of the client, and monitoring the client too closely. Just as in collaborative courts in the state court system, court skeptics appreciate the desire to help, but are concerned that the new court may do more damage than good.

Additionally, attorneys may be concerned about their ethical obligations to their client when they find themselves agreeing with the prosecutor that instead of outpatient treatment, their client needs residential treatment, or agreeing with the social worker that it is premature to return the child home to their client.

Prosecutors may be resistant to the joint-jurisdictional approach for similar reasons that have been voiced against collaborative courts. They may worry that they will be perceived as soft on crime. As part of the family wellness team, the prosecutor’s first response to a positive drug test would not be to argue for incarceration, but to understand that relapse is part of the recovery process.

### **Solutions**

- ❖ Recognizing that these core judicial and attorney values and ethics can be undermined in conventional state courts is the first step to addressing these concerns. Having candid, peer-to-peer conversations about what to do to safeguard these values and ethical concerns can help alleviate them. So, too, can observing and hearing firsthand how differences of opinion are discussed and how they result in more well-informed decisions by the team and by the two judges.
- ❖ Another strategy is connecting judges and attorneys with their colleagues who once held their views, but no longer do, because their experience in a collaborative or joint-jurisdictional court has taught them otherwise.
- ❖ Sharing articles<sup>42</sup> that describe how collaborative practice falls squarely within the ethical boundaries of the legal profession encourages lawyers and judges to move beyond the simple prescriptions of the model ethical rules and to think about transforming the quality of justice at a time when the public is demanding a timelier, more personally responsive, fairer, and less racialized system of justice.
- ❖ Collaborative practice and the joint-jurisdictional model call on lawyers to exercise their skills to avoid as well as resolve disputes; similarly, it calls on judges to use their

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<sup>42</sup> Robert F. Cochran, Jr., “Legal Ethics and Collaborative Practice Ethics,” 38 *Hofstra Law Review* 4 (2009); Marla N. Greenstein, “Viewing Judicial Ethics Through a New Lens,” *The Judges’ Journal* (ABA) (May 13, 2020), [www.americanbar.org/groups/judicial/publications/judges\\_journal/2020/spring/viewing-judicial-ethics-through-new-lens/](http://www.americanbar.org/groups/judicial/publications/judges_journal/2020/spring/viewing-judicial-ethics-through-new-lens/).

settlement skills. Training can help address attorney and judicial concerns. If you are undertaking a joint family dependency treatment court, the National Center on Substance Abuse and Child Welfare offers a four-hour tutorial specifically created for attorneys.<sup>43</sup> In addition, the American Bar Association will tailor training to address these types of attorney concerns.

## Confidentiality

Agency-to-agency communication is key to a successful joint-jurisdictional approach. Exchanges of confidential information must consider Health Insurance Portability and Accountability Act (HIPAA) requirements, as well as applicable confidentiality provisions of the Code of Federal Regulations,<sup>44</sup> relevant California statutes<sup>45</sup> as well as participants' concerns about their privacy.

## Solutions

- ❖ Use a universal release of information drafted by the tribal attorney and county counsel. Additionally, any key nonprofits that are providing court-connected services will also need to be consulted on the use of a universal release.
- ❖ Some joint-jurisdictional courts have used standing orders, local rules, and memorandums of understanding, or MOUs, between agencies to safely share confidential information. (See Appendix E, [Tool 3](#).)

## Tips

- ❖ Consider practicing the essential philosophy from Dr. Stephen Covey, who recommends that we “seek first to understand, then to be understood.”<sup>46</sup>
- ❖ “Opening yourself up to another worldview will assist you in understanding what occurs inside and outside native communities.” Dottie LeBeau, Lakota Elder.
- ❖ Since implicit biases are unconscious, using tools and self-reflection are the means through which each of us can discover these biases.
- ❖ Look to solutions described above, but if they do not work for your collaboration, take a leap of faith and try a different solution.

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<sup>43</sup> This is a free, online training that provides 4.5 hours of Minimum Continuing Legal Education credit. (The center has similar trainings tailored for substance abuse and child welfare professionals.)

<sup>44</sup> For example, 42 C.F.R. part 2 (Confidentiality of Substance Use Disorder Patient Records); see 42 C.F.R. §§ 2.11, 2.13(a), 2.31, and 45 C.F.R. § 164.508 relating to disclosures with a authorization.

<sup>45</sup> Civ. Code, §§ 56.10(a) and 56.11.

<sup>46</sup> See Stephen Covey, *The 7 Habits of Highly Effective People: Powerful Lessons in Personal Change* (1989), Habit 5.

## VI. Implementation

Implementing your court and launching on your target date does not require that you have everything in place. In fact, most judges and stakeholders will tell you that, no matter how many forms or how detailed their court manual was or how confident they felt about their new court, it took a leap of faith to implement and to trust that they would work out operational details along the way.

Just as with collaborative court development, it is easy for the “type A” stakeholders to fall into the trap of wanting to nail down every operational detail of the joint-jurisdictional court. At some point, the judges simply have to say, “We are ready to launch.” It will reassure everyone if you also commit to working out any kinks and addressing unanticipated problems at regular meetings.

Presiding Judge Suzanne Kingsbury (Ret.), Superior Court of El Dorado County

The following implementation steps will help you take that leap.

### A. Ensure the Joint Court Is Properly Staffed

#### Court coordinator

Most joint-jurisdictional courts have a court coordinator. This person or persons is responsible for conducting court orientations, ensuring participants are legally eligible for the joint-jurisdictional court, maintaining court files, maintaining all program agreements with all court-connected programs, convening and participating in the core team meetings, scheduling all court hearings, and setting the agenda for and convening the monthly core operational team and quarterly steering committee meetings. (For more information, see [Section IV.C.](#), Governance Model.)

#### Core team

The core team is a multidisciplinary team that functions as a part of the client’s extended family. Its purpose is to empower the family to design and implement a family wellness plan that describes S.M.A.R.T. (specific, measurable, attainable, realistic, and time-bound) behavioral milestones and interventions that advance the strengths and personal power of the participating family. The team uses collective case management of participant/family wellness plans that are closely and regularly monitored for progress and impediments. The team works to not only solicit and connect with treatment and other useful resources, but also to support and supervise the components of the participant’s/family’s wellness plan. The team supports the family through the court process, which typically is divided into four court phases.<sup>47</sup> The team makes

<sup>47</sup> All joint-jurisdictional courts, like collaborative courts and tribal healing to wellness courts, have phases; however, the number and naming of them does vary to reflect the locally and culturally created expectations for the participants as they reach graduation.

recommendations and decisions regarding any action that should be taken with each participant/family. The core team works together to support the participant/family to shape their behavior by being mindful to not place excessive demands on participants/families, which can overwhelm them and cause them to give up. These will be incorporated into the family wellness plan. The team, with the family, will identify short-term goals and long-term goals.

The composition of the team is very important. All team members need to work together to build a trusting relationship with families, talk directly and candidly, and give positive encouragement and reinforce positive behaviors. They have frequent contact with the families, staying apprised of how each family is doing through the family wellness team meetings.

Team members include at a minimum the participant/family, the tribal court judge and state superior court judge, key county and tribal representatives who would typically be involved in the given case type, and participant/family-identified supports. The team may also include the tribal court’s presenting officer, attorneys, and other court-connected service providers depending on the root causes to be addressed (e.g., substance-use disorder treatment providers, public health nurse, mental health treatment providers, police officers, probation officers, social service workers, traditional knowledge holders and healers, elders, education and employment representatives, and other community representatives depending on the family’s circumstances and identified supports).

### ***Tips***

- ❖ Prehearing staffing meetings go smoothly when the court has a court coordinator who can facilitate discussion and the order of speakers is understood in advance. Consideration should be given to having the judges speak last to correct for any power imbalance or deference to the judges.
- ❖ Staffing meetings benefit court participants when the participants know what is expected of them, feel heard, and there is a warm handoff (i.e., in front of the participant and family) to needed services.

## **B. Issue a Joint Press Release**

The tribe and your court usually have someone who is designated as their media contacts. The two judges should request that these two individuals work together to both draft and time the press release. They will be able to guide you as to the contents of the press release and the type of quotes they would like to include to attract the interest of local media.

## **C. Handle Logistics**

Take care of all the logistics for court hearings and staffing, including the following:

- *Who*: Identify your first court participants. Designate the core team members.

- *When:* Calendar at a time that works with each justice system’s dockets and with sufficient time for a staffing meeting to immediately precede the hearing.
- *Where:* Identify the location of court.
- *How:* Do you have the technology, and will the court facilitate video hearings? Where will the two judges sit? How will you welcome and address the court participants and the core team members? How will staffing and hearings be conducted so that they are culturally grounded and respectful?
- *What:* Review with the court coordinator(s) the court documents you will need to hear the first case.

### **Tips**

- ❖ Some joint-jurisdictional courts demonstrate that they are two equal and parallel justice systems coming together by raising both the tribal and state flags.
- ❖ Most joint-jurisdictional courts typically alternate on and off reservation hearings both to show mutual respect and to better serve the needs of citizens who may live on or off tribal lands.

## **D. Technical Assistance**

The Judicial Council of California and the Tribal Law and Policy Institute have a wealth of information on drafting court policies, procedures, rules, and forms. The joint-jurisdictional courts have reported that a skilled facilitator can greatly assist judges with forward momentum in the face of challenges, and that this same person can also help with the drafting. Similarly, identifying someone locally who can help with evaluation and telling your court’s story can be important for the success of the court. (For more information, see [Section VII.B.](#) below and [Appendix F.](#))

## **VII. Stewardship and Sustainability**

Joint-jurisdictional courts sustain themselves by finding ways to preserve the structural changes that they have made within and across their justice or court-connected service system and creating an iterative process whereby the governing structure makes policy and practice improvements based on the evaluation of quantitative and qualitative information.



The Hoopa Valley Tribal Court has gone from a \$450,000 budget to nearly a \$2 million annual budget in just two short years, because we are making improvements based on evaluating how well we, together with our county partners, are able to meet the needs of our community. Our staff has more than tripled, the majority being tribal members, who are able to provide much-needed services in and out of Tribal Court and our Joint Family Wellness Court. These services are tailored to meet victims, youth, and addicted persons. Through extensive community input, strategic planning, and evaluation, we improve, our story unfolds, and our community is strengthened.

Chief Judge Leona Colegrove, Hoopa Valley Tribal Court

Successful joint-jurisdictional courts are always evolving. These courts have taken intentional and ongoing steps to:

- Collect, track, and evaluate data;
- Draft and revise court procedures;
- Establish a governing structure with succession planning (steering committee and core operational team);
- Engage in ongoing education (cross-jurisdictional and multidisciplinary); and
- Leverage resources.

### **A. Rethinking Evaluation—Telling Our Story Together**

The trick is to think of evaluation as a process you are building together into the plan and design for the joint-jurisdictional court. Be intentional in developing the evaluation process so that it:

- Is culturally grounded and has ongoing feedback from the broader tribal community (requiring tribal community engagement);
- Measures change with agreed-upon measures (looking at root causes, presenting problems, and funding reporting requirements);
- Is meaningful to participants and the broader tribal community (allows court participants to meaningfully engage with the process and the broader tribal community to assess the new justice system);
- Is conducted periodically (before court intervention, as a baseline; at least once during the court process; and upon court case closing); and

- Is doable (within the capacity of the court and stakeholder organizations—that is, it can be administered easily by court-connected service providers and the court).

**Culturally grounded.** Joint-jurisdictional courts require that the story be told by the communities who are most affected, so it is critical that the type of quantitative and qualitative information you identify and how you intend to collect it is acceptable to each tribal community. Tribal community consultation and participation is an essential step in the design, data collection, and reporting phases of the evaluation. This will help ensure that when you tell your unique and local story it is culturally grounded, and the process is locally acceptable and appropriate. Not only are the interventions culturally grounded and different from a collaborative court, but the story you are telling is about the healing of the tribal community, as well as the individual participants. Culturally grounded services not only impact the individual, they have an exponential impact on the individual’s family and strengthen the entire tribal community if you continuously engage the tribal community in the design and evaluation process. In this way, your court operations are constantly evolving to meet the community’s needs. Examples of culturally grounded interventions can be found in Appendix D, [Tool 1](#).

**Measuring change.** You will want to develop ways to evaluate the effectiveness of your joint-jurisdictional court and measure change for several reasons. Funders seeking evidence of effectiveness or cost benefit are one reason motivating evaluations, but you will also want to ensure that your evaluation questions and tools also meet your needs or those of the courts, court participants, or the wider community in ensuring that the joint jurisdictional court is achieving its intended goals. You will want to know that the programs you are undertaking are fulfilling your goals and improving outcomes for the individuals and families you serve. The planning process might need to include a way of working out mutually acceptable evaluation questions or even parallel sets of questions. This might also require using a range of methods, and gathering different kinds of evidence, for a single outcome measure.

Where can you start? Evidenced-based practices<sup>48</sup> that measure S.M.A.R.T. goals (specific, measurable, attainable, realistic, and time-bound) already have outcome measures that funders have approved. Statutory frameworks will also point to possible outcome measures for your courts. The very first joint-jurisdictional courts heard driving-while-intoxicated cases and participants demonstrated lower recidivism rates: there were 60 percent fewer rearrests one year after program entry and participants committed 44 percent fewer property crimes and had no new felony arrests two years after program entry.<sup>49</sup> They demonstrated lower incarceration rates

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<sup>48</sup> See links to various federal clearinghouses of evidence-based practices at National Institutes of Health, Evidence-Based Practices & Programs, <https://prevention.nih.gov/research-priorities/dissemination-implementation/evidence-based-practices-programs>; and California Dept. of Social Services, California Evidence-Based Clearinghouse for Child Welfare, [www.cdss.ca.gov/ocap/res/pdf/2016\\_CEBC\\_Fact\\_Sheet.pdf](http://www.cdss.ca.gov/ocap/res/pdf/2016_CEBC_Fact_Sheet.pdf).

<sup>49</sup> NPC Research, [Cass County/Leech Lake Band of Ojibwe Wellness Court: Process, Outcome, and Cost Evaluation Report \(2014\)](#), p. III (examining data from the joint-jurisdiction court compared to offenders in a non-joint-jurisdictional court process, from 2006 to 2012).

because they achieved positive outcomes, which also translates into significant cost savings.<sup>50</sup> And disproportional impacts<sup>51</sup> will also guide you in identifying outcome measures. While these tend to focus on presenting problems, you may want to dig deeper to the root causes and consider the types of outcomes that other joint-jurisdictional courts have used. Existing joint-jurisdictional courts serve high-need clients and significantly meet many of their needs, including those related to chemical health, housing, employment,<sup>52</sup> physical health, emotional health, education, and transportation. These courts also address public trust and confidence as well as implicit biases, both of which can be measured.

**Meaningful.** Outcomes are easier to measure than processes, and yet it is the very nature of the joint-jurisdictional court approach, practices, and processes that account for their success and the satisfaction of their participants and the broader tribal community. Employ culturally grounded qualitative methods in data collection protocols that include “indigenous ways of knowing.”<sup>53</sup> These may include interviews and the gathering of anecdotal information and experiences as well as other sources of data.

Make the evaluation process meaningful to participants and the tribal community it serves by getting feedback on questions and considering a talking circle or Native-oriented focus group to seek information from court participants and the tribal community. As part of asking for their permission to be a part of an evaluation, give them an overview of the purpose and consider how to make the process a conversation. Once the process is understood, consent forms can be signed, if necessary, informing participants about how the information discussed will be used by the joint-jurisdictional court and how their privacy will be protected. The process works best if

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<sup>50</sup> *Id.*

<sup>51</sup> See various links for agencies and organizations that study disproportionality in state justice systems: schools and child welfare, California Dept. of Education, [www.cde.ca.gov/sp/se/qa/disproportionality.asp](http://www.cde.ca.gov/sp/se/qa/disproportionality.asp); juvenile justice, Board of State and Community Corrections, [www.bscc.ca.gov/s\\_reducingracialandethnicdisparitiessubcommittee/](http://www.bscc.ca.gov/s_reducingracialandethnicdisparitiessubcommittee/); criminal justice, [www.racialequitytools.org/resourcefiles/sentencing.pdf](http://www.racialequitytools.org/resourcefiles/sentencing.pdf).

<sup>52</sup> In 2015, the Alcohol and Drug Abuse Division for the Leech Lake Band of Ojibwe-Itasca County Joint Jurisdiction Wellness Court and Wilder Research of St. Paul, Minnesota, conducted a two-year impact evaluation of participants enrolled in the Leech Lake-Itasca County Wellness Court from July 1, 2013, through June 30, 2015.

<sup>53</sup> P. Cochran et al., “Indigenous ways of knowing: Implications for participatory research and community,” 98 *American Journal of Public Health* 22–27 (2007); *Indigenous Program Evaluation: Annotated Bibliography*, <https://icwrn.uvic.ca/wp-content/uploads/2011/01/Indigenous-Program-Evaluation-annotated-bib.pdf>; Lisa G. Dirks, *Indigenous Cultural Wellbeing Measures Literature Review* (Anchorage, AK: Southcentral Foundation, Sept. 2016), [http://arisepartnership.org/wp-content/uploads/2017/02/CITC\\_Cultural\\_Wellbeing\\_Measures\\_Review\\_Table\\_20160930\\_FINAL.pdf](http://arisepartnership.org/wp-content/uploads/2017/02/CITC_Cultural_Wellbeing_Measures_Review_Table_20160930_FINAL.pdf).

*Digital story-telling: Substance Abuse and Mental Health Services Administration*, “Share Your Story,” [www.samhsa.gov/brss-tacs/recovery-support-tools/share-your-story](http://www.samhsa.gov/brss-tacs/recovery-support-tools/share-your-story).

*Evaluation/tell our story together: National Association of Drug Court Professionals, Sharing Your Treatment Court Story: A Guide to Help You Prepare*, <http://nadcpconference.org/wp-content/uploads/2018/05/A-22.pdf>; Sarah Walker et al., “American Indian perspectives on evidence-based practice implementation: results from a statewide tribal mental health gathering,” *Administration and Policy in Mental Health* (Nov. 2013), [https://www.researchgate.net/publication/258638147\\_American\\_Indian\\_Perspectives\\_on\\_Evidence-Based\\_Practice\\_Implementation\\_Results\\_from\\_a\\_Statewide\\_Tribal\\_Mental\\_Health\\_Gathering](https://www.researchgate.net/publication/258638147_American_Indian_Perspectives_on_Evidence-Based_Practice_Implementation_Results_from_a_Statewide_Tribal_Mental_Health_Gathering).

everyone is in a circle and a team approach is used: one person facilitates, asking a small number of focus questions, reading nonverbal cues, developing a dialogue, and asking follow-up questions, where appropriate, while another person takes notes, capturing participant ideas and quotes.

With some planning and consultation with the tribal stakeholders, the facilitator can set a good tone for the evaluation process and may ask a tribal member to open the talking circle with a few remarks, prayer, song and/or smudging, which refers to the burning of sage or cedar or herbs that is traditional for the tribe to utilize on such occasions. Although mainstream American society views a “prayer” as a strictly religious activity that the court should avoid, in tribal communities a blessing or prayer is a cultural tradition that is conducted at the start of any gathering or event to ensure it has begun positively and simultaneously honoring their tribal ancestors. The tradition of an opening and often closing prayer as well, sometimes accompanied by song and smudging, is essential to respecting the tribe’s cultural traditions and is foundational to a successful collaboration. Sometimes, a participant will close with an impromptu sharing of their own, such as a poem that speaks to their perception of how the joint-jurisdictional court has changed them. If done well, the collection of this information is empowering for the participants because they understand that their information will be used to help the joint-jurisdictional court evolve. During one evaluation, the author remembers court participants being grateful to be part of the evaluation process and was pleased that the monthly informal peer support gatherings they started would, as a result of the evaluation, become an integral part of the court process and one that the court would include as part of its funding requests. Regardless of whether an individual graduates from the joint-jurisdictional court, their experience is valued, and they can report on incremental successes. Similarly, when you engage the tribal community in the design and rely on their feedback to improve the court experience and court-connected services, not only do you improve your court, but the tribal community can speak to the level of resilience and healing in their community.

***Doable.*** Lastly, do not get overly ambitious in what you will measure, as your new court is dependent on the organizations that provide court-connected services to the participants to collect the data. Data collection takes time away from service delivery and many of the service providers have very limited resources, so be sure to respectfully ask whether these providers have the organizational capacity to collect the data. If you are jointly identifying the data, developing the tools, and using the intentional steps above, what you will be able to practicably collect will naturally be considered by your tribal and non-tribal justice partners. Some joint-jurisdictional courts, such as the Leech Lake Band of Ojibwe–Cass County Wellness Court in Minnesota, use a simple but effective spreadsheet or roster that tracks length of time in the program, which phase of the program the participant is in, length of sobriety, results of urinalysis tests, sanctions imposed, amount of participant fee still owed, next report date, and general notes. (See [Appendix D](#).)

### Challenges in the evaluation process: distrust and small sample sizes

Historically, data have been collected by non-Native researchers who have studied tribal communities and told their stories. The literature is rife with examples of how researchers and evaluators from outside a tribal community have betrayed the community’s trust by failing to conduct research in a collaborative and respectful manner: exploiting tribal members’ stories to advance research careers; failing to understand and thus misrepresent tribal culture; identifying and then stereotyping, stigmatizing, and otherwise damaging the reputation of tribal communities; and taking without giving back to contribute to the community’s health and well-being.<sup>54</sup>

The way to address this distrust is to better understand this context and appreciate the lens through which many Native people see and experience information.

As indigenous peoples, we have always been gatherers of data, of information. We’ve always been creators of original technology. And so, I was brought up with knowing that that was the ancestral knowledge from which I came.

Abigail Echo-Hawk, Chief Research Officer, Seattle Indian Health Board,  
and Director, Urban Indian Health Institute

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Another challenge is the small sample sizes that you will have when telling your story and evaluating your court. In California, tribal communities are relatively small and range from approximately 7,000 members to just a few individuals, and thus the number of court cases will be small. Moreover, confidentiality is a very real issue. With very little information about a given case the individual community members can easily be identified. Therefore, discussions about which data, its use, and finding ways to de-identify the data through aggregating it is critically important when deciding how you will tell the story of your joint-jurisdictional court.

#### Tips

- ❖ Be mindful that the use of terms like “research,” “data,” and “evaluation” will be loaded for some because of the distrust described above.

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<sup>54</sup> See Native American Center for Excellence Substance Abuse Prevention, *Steps for Conducting Research and Evaluation in Native Communities*, [www.samhsa.gov/sites/default/files/nace-native-american-evaluation-literature-review.pdf](http://www.samhsa.gov/sites/default/files/nace-native-american-evaluation-literature-review.pdf). For example, the Havasupai Tribe had given DNA samples to university researchers in the hope that they might provide genetic clues to the tribe’s devastating rate of diabetes. But they learned that their blood samples had been used to study many other things, including mental illness and theories of the tribe’s geographical origins that contradict their traditional stories, and that their ancestor’s blood had been unceremoniously stored in a freezer marked with the researcher’s name.

<sup>55</sup> <https://crosscut.com/2019/05/abigail-echo-hawk-art-and-science-decolonizing-data>

- ❖ It is never too early to begin these conversations because what gets measured, gets funded.
- ❖ Build evaluation/telling your story into the planning and design of your joint-jurisdictional court.
- ❖ Evaluation informs joint-court system improvements.

### **Technical assistance**

Evaluation resources may be found through neighboring colleges, universities, AmeriCorps, and technical assistance grants. If your court already has a collaborative court, the Judicial Council of California’s collaborative programs<sup>56</sup> may provide technical assistance.

## **B. Resources: Education and Funding**

From the very first meeting when you gather the stakeholders to design the court, you are laying the foundation for multidisciplinary and cross-jurisdictional training to be a part of court operations and an ongoing expectation for team members.

Education about Indian history in the United States and California in particular and the continuing impacts of this history on tribal people and families today is important for establishing understanding between tribal and non-tribal stakeholders.

Despite a lack of specific funding for direct services and training, most of the judges have established their joint courts with no additional funding. In California, this is true of the first joint-jurisdictional court, the Shingle Springs Band of Miwok Indians Tribal Court and the Superior Court of El Dorado County Family Wellness Court. In Northern California, the Yurok Tribe and Hoopa Valley Tribe obtained federal funds through the Children’s Bureau (U.S. Department of Health and Human Services) with a grant from the Center for Family Futures, a national nonprofit. The Superior Court of Humboldt County obtained state funds through a grant from the Judicial Council’s Court Innovations Grant Program. The Superior Court of Del Norte County launched its joint court with the Yurok Tribe without any additional funding, just as the El Dorado court did. Sustaining the joint courts is not so much of a problem; however, growing them without additional funding so that they can undertake additional case types and increase the number of court participants has been a challenge.

Funding sources that tribes in California and local state courts can explore include:

- Federal Title IV-E dollars;
- Federal court improvement funds;
- Federal Coordinated Tribal Assistance Solicitation grants;
- Federal Bureau of Justice Administration grants; and

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<sup>56</sup> Judicial Council of Cal., “Collaborative Justice Courts,” [www.courts.ca.gov/programs-collabjustice.htm](http://www.courts.ca.gov/programs-collabjustice.htm).

- Federal and state collaborative court grants; and
- Grants from foundations.

### **Tips**

- ❖ Consider education as a standing agenda item for both the steering committee and core operational team. Ask members to share upcoming educational events and whether they are open to the members of the committee and team. Seek assistance from the Judicial Council’s Tribal-State Programs staff to develop or support educational programs.
- ❖ Consider designating co-leads (tribal and non-tribal individuals who will be responsible for maximizing educational resources). In this way, you will be building into your governance oversight ongoing education that is cross-cultural and cross-disciplinary.
- ❖ Do not reinvent the wheel when it comes to education. There are a number of educational resources that you can use to convene a focus group discussion and educate each other. (See Appendix F, [Tool 3](#).)
- ❖ Do not overlook the expertise and lived experience in your communities. They are invaluable and an integral part of building regular, ongoing, multidisciplinary, cross-jurisdictional, and cross-cultural educational programs for you, as judges, and the service providers who both staff your court and serve your court participants.
- ❖ What gets measured, gets funded!
- ❖ Consider a standing agenda item for funding on the steering committee agenda.
- ❖ Coordination of grant applications is much easier if you have the key decision-makers at the table to decide whether a grant is a good match for the joint-jurisdictional court and/or court-connected services.
- ❖ Rather than competing for funding, consider sharing the grant application and reporting responsibilities by planning for grants together, piggy-backing one grant on another to fill gaps in services, and decide which justice partner is in the best position to be the lead applicant. Letters of support are easily obtained for such grants when you are intentionally planning and writing grants together.

## **VIII. Conclusion**

What is genuinely exciting about the joint-jurisdictional approach is that it provides a framework and process for discussing and acting on a problem of mutual concern to both justice systems. It stimulates new ideas and, perhaps even more importantly, draws new people into thinking about and acting on the selected problem and its root causes. It is significant that this approach appeals to those with very different worldviews, languages, cultures, expertise, and lived experiences. It

permits everyone who has a stake in their justice systems to participate in a conversation that makes them feel more hopeful, more empowered, and less vulnerable to the ways that state justice systems currently operate. It is also wonderful that it attracts people who are trained and/or believe in the methods of science—who like data, information, and research. It allows the social sciences on which the state justice systems depend to complement traditional indigenous knowledge and practices. And its pragmatic spirit—the resourceful, determined search for reimagining justice, looking to new ways of how systems and people can work better together—is a breath of fresh air in the ideological and pendulum-swinging debates that are strangling creativity within justice circles and all too often keeping people apart.



## Appendix A. Operational Joint Courts

Name	Location	Case Type(s)	Launched
Leech Lake Band of Ojibwe–Cass County Wellness Court	Cass County, Minnesota	Abuse and Neglect Adoption Conservatorship Delinquency Domestic Violence DUI/DWI Family (dissolution, custody, visitation) Guardianship Tribal Customary Adoption Truancy	Spring 2006  First joint court in the U.S.
Leech Lake/Itasca County Wellness Court	Itasca County, Minnesota	Post-conviction drug/alcohol dependence violations	July 2007
St. Regis Mohawk	U.S., Canada, New York, Town of Bombay		September 2010
Ho-Chunk Nation–Jackson County	Jackson County, Wisconsin	DUI/DWI	Winter 2012
Family Wellness Court (Kuch'im:upushnu':anu:sh) Shingle Springs Band of Miwok–Superior Court of El Dorado County Joint Court	California	Abuse and Neglect Adult Criminal (misd.) Conservatorship Delinquency Guardianship Protection Orders Truancy (point of entry)	April 2015
Henu Community Wellness Court (Kenaitze Indian Tribe–Kenai Court, Alaska Court System)	Alaska	Abuse and Neglect Adoption Criminal-Felony Conservatorship Domestic Violence DUI/DWI Family (dissolution, custody, visitation) Guardianship Tribal Customary Adoption	December 2016

Name	Location	Case Type(s)	Launched
Joint Family Wellness Court (Yurok Tribe–Superior Court of Humboldt County)	Humboldt County, California	Abuse and Neglect	January 2018
Joint Family Wellness Court (Yurok Tribe–Superior Court of Del Norte County)	Del Norte County, California	Abuse and Neglect	March 2019
Joint Family Wellness Court (Hoopa Valley Tribe–Superior Court of Humboldt County)	Humboldt County, California	Abuse and Neglect Guardianship	April 2019

## Appendix B. Common Characteristics of Joint Courts

Characteristic	Description
<p><b>Have Effective Leadership</b></p>	<p>Because judges have the power to convene, they are in a unique position to bring a broad-based group of stakeholders together to develop a shared vision and design for the joint court.</p> <p>Other community leaders and officials also play a critical role because of the government-to-government relationship that is foundational to two independent justice systems coming together and adhering to the laws and respecting the cultures of each.</p> <p>Obtaining tribal resolutions from tribal leadership and joint powers of agreement from both the presiding judge and chief or presiding judge of both courts early on in the planning process is important to initiating the joint-jurisdictional approach to address the shared concern.</p>
<p><b>Use Effective Technical Assistance</b></p>	<p>Having effective technical assistance is important when planning, implementing and sustaining a joint-jurisdictional court.</p> <p>A skilled facilitator is highly recommended when designing a joint court to create an environment for open communication and sharing ideas. The facilitator can create opportunities for stakeholders to develop empathy and understanding and strengthen their relationships. A facilitator can also take steps to promote listening, elicit and distill different viewpoints, ask for clarification, legitimize concerns and disagreements, seek proposals to address them, check for understanding, and build consensus.</p> <p>A skilled facilitator can provide technical assistance in many of the steps associated with the design of a joint court, such as:</p> <ul style="list-style-type: none"> <li>• Building the collaboration;</li> <li>• Cross-court and cross-system education;</li> <li>• Assisting the collaboration as it identifies a vision, goals, and how it will incorporate cultural values and practices;</li> <li>• Memorializing agreements and court documents (tribal resolution, joint powers agreement, court brochure, forms, procedures, manual);</li> <li>• Establishing a governance structure; and</li> <li>• Setting the court up for sustainability by helping the collaboration identify outcome measures, evaluation mechanisms, and grant opportunities.</li> </ul>
<p><b>Break Down Silos and Improve Collaboration</b></p>	<p>As stakeholders learn from one another, they begin to have stronger, more positive relationships, and when they take the time to move beyond cooperation to collaboration, these silos can be broken down.</p> <p>Cooperation is accomplished when participants agree to engage in an activity where each person is responsible for solving a portion of the problem and be accountable to themselves and each other. Collaboration goes beyond cooperation; it is a coordinated, synchronous activity that is the result of a continued attempt to construct a shared conception of a problem and solution.</p>

Characteristic	Description
	<p>True collaboration is messy and hard. It does not mean building false consensus. It means giving up some control and being vulnerable; it requires respect for other people’s roles, thoughts, and what they bring to the table; it means discerning when to fall on one’s sword and when to back down. Collaborative problem-solving requires us to get outside our comfort zones and to tolerate some tension; if it didn’t ask so much of us, it would be easy to do.</p>
<p><b>Are Tailored to Tribe’s Culture and Local Court Context</b></p>	<p>Stakeholders understood that they could create a new and better justice system together if they designed the joint court so that it was culturally grounded in the specific tribal cultures of their citizens.</p> <p><i>(For information on cross-cultural court exchanges, see Appendix C, <a href="#">Tool 2</a>.)</i></p>
<p><b>Blend Two Court Approaches: Tribal Healing to Wellness and Collaborative/ Problem-Solving</b></p>	<p>By blending approaches, justice partners necessarily undergo a paradigm shift and design a new justice system that:</p> <ul style="list-style-type: none"> <li>• Respects different traditions and accesses tribe-specific culture/spirituality;</li> <li>• Moves away from punishment to healing by drawing on the individual and community resiliencies; and</li> <li>• Focuses on root causes.</li> </ul> <p><i>(For the key components of each court, see Appendix D, <a href="#">Tool 1</a>.)</i></p>
<p><b>Focus on Root Causes</b></p>	<p>All joint courts focused on the root causes of a shared problem they wished to address. They identified the shared presenting problem as unacceptable, such as the mortality rate from driving while intoxicated, the removal rate for abuse and neglect, the opioid or other substance abuse rate, or school dropout rate. The collaborations realized that they were able to drill down to the underlying root causes because all the right core team justice partners were focused, with the court participant and family, on their specific needs and strengths.</p>
<p><b>Improve Outcomes and System Change</b></p>	<p>The joint-jurisdictional courts use evidence-based practices that have been adapted so that they are grounded in the tribe-specific worldview, culture, and laws of the specific tribal nation exercising jurisdiction with the non-tribal court.</p> <p>System change is people driven. It is a process, and like any process, it can be filled with stops and starts. It is a normal part of this process to encounter obstacles and challenges, diversions, and changes of course. Since these are to be expected, planning teams should not become frustrated or be discouraged by the challenges encountered along the way. Instead, celebrate them and learn to use them. What can seem at first like obstacles to success can actually be opportunities to make lasting change and can lead to innovative solutions. Keep in mind that systems don’t collaborate, people do—face-to-face relationships are crucial.</p> <p>All joint-jurisdictional courts adopt outcome measures, which typically include the usual state and federal outcomes. Further, they incorporate cultural practices that indigenous wisdom teaches us work, and research confirms. Examples include talking circles, “aunties/uncles” (also known as peer coaches/mentors), and connecting or reconnecting with culture.</p>

Characteristic	Description
<p><b>Apply Sustainability and Quality Control Strategies</b></p>	<p>When we aim to sustain the joint court, we try to assure that it will be supported and kept up to meet the community’s goals. Sustainability strategies must be built into planning, implementation, and ongoing operations. 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 courts are always evolving, attuning to the local and tribal context, and moving beyond the personalities of the leaders and stakeholders who designed the joint court.</p> <p>Strategies include:</p> <ul style="list-style-type: none"> <li>• Memorialize the joint court agreements, policies and procedures, court forms, and participant manual;</li> <li>• Establish a governance structure that regularly reviews, evaluates, and revises the joint-court documents above; and</li> <li>• Design and execute ongoing evaluation. Consider hiring an evaluator with experience in evaluating tribal programs and measuring culturally rooted outcomes at the very beginning of the joint-jurisdictional court’s development so that baseline data and benchmark data can be collected for formal evaluation purposes. Remember: what gets measured, gets funded.</li> </ul>
<p><b>Anticipate Potential Challenges</b></p>	<p>Joint courts describe the following challenges: insufficient planning, inadequate staffing, geographic distance, lack of funding, and sustaining their courts.</p> <ul style="list-style-type: none"> <li>• <i>Planning.</i> Engaging partners from each jurisdiction (tribal, state, federal, and county) in planning is critical. It is never too early to involve tribal council and the leadership from both jurisdictions in the planning process.</li> <li>• <i>Staffing.</i> Inadequate staffing, turnover at staff and tribal leadership levels, and hesitation from justice partners are challenges. Attorneys were noted as sometimes standing in the way of development of the joint court. And not having a court coordinator for the joint court was also a common challenge.</li> <li>• <i>Geographic distance.</i> Because tribal communities are often remote from the state and county courthouses and services, situated in areas with little to no public transportation or cell reception, collaboration to address and overcome access issues is essential in order to plan, implement, and sustain the joint-jurisdictional court. Many joint-jurisdictional courts use video appearances, hold the court alternately on the reservation, and bring service providers to the families.</li> <li>• <i>Lack of funding for direct services and training.</i> Despite a lack of funding for direct services and training, most of the judges in these jurisdictions have established joint courts with no additional funding for services.</li> </ul>
<p><b>Source:</b> Adapted from <i>Joint Jurisdiction Courts: Needs Assessment Findings</i> (Tribal Law and Policy Institute, Feb. 2022).</p>	

## Appendix C. Planning Tools

### Tool 1. The Conversation Tool

Collaboration between governments starts with relationships between two or more people connecting and sharing common goals.

#### Resources

*Court Toolkit for Tribal/State/Federal Administrators and Clerks* (2016),

[www.courts.ca.gov/documents/courttoolkit-tribalstatefederal-adminclerks.pdf](http://www.courts.ca.gov/documents/courttoolkit-tribalstatefederal-adminclerks.pdf).

This toolkit encourages cross-court site visits and to facilitate shared learning among local tribal, state, and federal courts in California. The toolkit is endorsed by the following groups: the California Court Clerks Association, the California State-Federal Judicial Council, the California Tribal Court Clerks Association, the National Judicial College, and the Judicial Council’s Court Executives Advisory Committee and Tribal Court–State Court Forum.

“California Tribal Courts Directory” webpage on the California Courts website,

[www.courts.ca.gov/14400.htm](http://www.courts.ca.gov/14400.htm).

“Find Your Court” webpage on the California Courts website, [www.courts.ca.gov/find-my-court.htm?query=browse\\_courts](http://www.courts.ca.gov/find-my-court.htm?query=browse_courts).

“Tribal/State Programs” webpage on the California Courts website, [www.courts.ca.gov/programs-tribal.htm](http://www.courts.ca.gov/programs-tribal.htm).

These programs provide technical assistance to tribal and state court judges in connecting with one another.

#### Conversation Prompts

- Get to know one another: *Why did you become a judge? What do you care most about?*
- At this link, <https://www.courts.ca.gov/documents/TribalPrinciplesValues.pdf>, you will find a list of shared values and principles that guide the Tribal Court–State Court Forum, an advisory committee of the Judicial Council of California. These may serve as prompts to start a conversation about your shared values and principles.
- *What is the jurisdiction of each court?*  
*Is the tribal court one of general jurisdiction or limited or special jurisdiction, having been given authority by the tribe to hear only particular types of cases, or which can be exercised only under the limitations and circumstances set forth by tribal code provisions or other law?*
- *What problems do your courts face? Your communities?*
- *The following is a list of case types and presenting problems. Which of these are pressing problems in your community? Which of these do you want to discuss in more detail with each other?*

## Tool 2. Building the Collaboration

### Brainstorming Stakeholders

Review the list of potential case types on the left and potential justice partners on the right and together circle the case types and stakeholders who you think should be invited.

Case Type	Stakeholders
Adoption/Tribal Customary Adoption	Court administrator/court executive officer
Child Abuse and Neglect	Tribal/county social services
Conservatorship	Tribal/non-tribal Temporary Assistance for Needy Families
Delinquency	Tribal/county behavioral health
Domestic Violence	Attorney for child
Family Law (custody and visitation)	Tribal presenting attorney
Guardianship	Tribal attorney
Truancy	Attorney for defendant
Adult criminal misdemeanors	Attorney for parents
Adult criminal felonies	County counsel
DWI	District attorney
Homeless cases	Tribal/county law enforcement
Veterans cases	Tribal/county probation
Gender-specific cases (girls joint court)	Tribal/county office of education and/or Head Start
Other?	Local medical clinics and hospitals United Indian Health Services Local nonprofits: First 5, CASA

## Recording Our Initial Agreements

Questions	Agreements
<b>Whom will we serve?</b>	
<b>Which case type(s) (i.e., presenting problems)?</b>	
<b>What root causes can we identify?</b>	
<b>How will we build the collaboration?</b> <ul style="list-style-type: none"> <li>• <b>Who:</b> Who sends email?</li> <li>• <b>Whom:</b> Which stakeholders?</li> <li>• <b>When:</b> What are the dates and times for meetings?</li> <li>• <b>Where:</b> Where will we hold the meetings? (Secure the locations in advance.)</li> </ul>	
<b>Is there technical assistance available?</b> <ul style="list-style-type: none"> <li>• <b>Facilitator for stakeholder meetings?</b></li> <li>• <b>Evaluator to help us tell our story (nearby college or university)?</b></li> <li>• <b>Grant opportunities?</b></li> </ul>	
<b>What is our vision for this new court?</b>	

## Opportunities for Cross-Cultural Exchanges

When building your collaboration, be mindful of different lived experiences and worldviews relating to the following overlapping concepts:

- Knowledge, indigenous ways of knowing, oral tradition, traditional ways of life and ceremony, elders, roles and responsibilities;
- Nationhood and sovereignty;
- Connection to land and place and spirituality;
- Relationships (laws of relationships, kinship);
- Indigenous collectivism versus Western Eurocentric individualism;
- Linguistic diversity and language revitalization;
- Stewardship and sustainability;
- Holistic and community well-being versus individual well-being;



- Concepts of assimilation (colonization, Eurocentrism, decolonization, paternalism, cultural genocide, and the legacy of the Missions and residential schools);
- Societal inequities and health implications (i.e., socioeconomic gaps, disproportionality in educational and justice systems, racism, stereotyping, suicide rate, substance abuse, negative associations with schools, mental health, behavioral health and other wellness issues).

## **Resources**

- Assessments: stakeholder relationships and public trust and confidence in each justice system;<sup>57</sup>
- Exercises to strengthen relationships; and
- Planning and debriefing meeting: identify strengths, champions, partners on the fence, missing stakeholders to invite for next time.

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<sup>57</sup> The National Center for State Courts has developed a number of tools and resources on how to improve public trust and confidence in the state courts; see <https://www.ncsc.org/topics/court-community/public-trust-and-confidence/resource-guide>. The Tribal Law and Policy Institute is in the process of creating a more targeted assessment tool that will examine the stakeholder relationships among tribal, state, and county partners.

### Tool 3. Telling Our Story

The author has used this tool to facilitate a shared vision of the values underlying nonprofits and joint-jurisdictional courts to guide the creation of the court and a shared vision for what it will look like and how those creating it and participating in it will know what is created is successful.

Story Components	[Name of joint-jurisdictional court]
<b>We know and believe</b>	Describe what you know about those your court will serve and what values you bring to this project.
<b>We advance our Vision of</b>	Insert vision
<b>... and seek to</b> (impact)	Describe presenting problems and root causes.
<b>By serving</b> (court participants)	Describe court participants.
<b>In</b> (geographic area)	Describe where court participants live.
<b>Through</b> (court program)	A Joint-jurisdictional Court (In which a tribal court and state court judge exercise their respective authority simultaneously. In our joint-jurisdictional court, a state court judge and a tribal court judge preside together over a docket that provides tribal (and non-tribal) individuals, and in some cases their families, with a court-supervised alternative that is trauma informed and emphasizes community values and culture.)
<b>And emphasizing our competitive advantage of</b>	<ul style="list-style-type: none"> <li>• To bring together justice system partners to promote healing and protect public safety</li> <li>• To leverage tribal and non-tribal resources</li> <li>• To reduce administrative costs</li> <li>• To effectively deliver services that are culturally based</li> <li>• To achieve better results for individuals</li> </ul>
<b>We are sustainable by</b> (funding sources and other strategies: governance, education, and evaluation)	Describe funding and other strategies: <ul style="list-style-type: none"> <li>• Diversified fund development strategy that includes in-kind contributions, pooled resources, joint grants, etc.</li> <li>• Governance structure</li> </ul>

This tool will get you started; however, it will be important to convene a team that develops a story/evaluation process that is culturally grounded, measures change, is meaningful to participants and the broader tribal community, and is conducted periodically. For more resources, see Appendix F, Stewardship and Sustainability, [Tool 1](#).



## **Appendix D. Design Tools**

### **Tool 1. Culturally Based and Locally Driven: Blending Tribal and Non-Tribal Approaches**

#### **Integrating the Specific Culture of the Tribe**

This list is intended to spark conversation about tribe-specific cultural components that the two judges may wish to incorporate into their court’s program.

- Giving a traditional gift at transition/phase advancement ceremony
- Involving tribal elders
- Involving tribal mentors
- Exploring the re-creation of practices (e.g., a men’s group to lead to traditional sweat house activities, or similar activities for women)
- Participating in or learning about gathering food/materials and fishing/hunting
- Learning the genealogy and history of an individual’s family, particularly in terms of historical trauma suffered by relatives/victims
- Conducting group sessions that include making ribbon shirts, beading, baskets, dolls, etc.
- Making community service (if required) part of a traditional activity
- Maintaining a cultural advisor on staff
- Convening counseling groups that include tribal identity, recognize historical trauma, and incorporate tribal healing customs
- Building a healthy community of connections
- Using Native language in programming
- Exploring participants’ needs (e.g., domestic violence prevention) and whether there are cultural alternative programs for victims and perpetrators, and for parenting, coparenting with ex-partners, etc.
- Offering to participants enrollment in a cultural class and/or to attend traditional/cultural events and activities
- Smudging (a purification practice that involves burning a bundle of dried herbs such as sage)
- Using a drum
- Assessing cultural/community connections

## Locally Driven

Many of the joint-jurisdictional courts have blended a collaborative/problem-solving state court approach with a tribal healing to wellness approach. There are a number of different collaborative courts<sup>58</sup> drawing on the key components of those approaches.

### **Family Dependency Treatment Courts—Key Components**

1. Organization and structure supported by evidence-based practices.
2. Judicial leadership working collectively with justice partners.
3. Policies and procedures developed with equity and inclusion lens.
4. Early identification, screening, and assessment.
5. Timely, high-quality, and appropriate substance use disorder treatment.
6. Comprehensive case management, services, and supports for families.
7. Therapeutic responses to behavior.
8. Monitoring and evaluation to measure effectiveness of treatment, services, and other programs.<sup>59</sup>
9. Emphasis on the team’s and individual’s commitments to cultural competence and humility.

### **Tribal Healing to Wellness Courts—Key Components**

1. *Individual and Community Healing Focus.*  
Brings together alcohol and drug treatment, community healing resources, and the tribal justice process; team approach used to achieve the physical and spiritual healing of participants and promote Native nation building and community well-being.
2. *Referral Points and Legal Process.*  
Various referral points and the legal process promote tribal sovereignty and the participants’ due (fair) process rights.
3. *Screening and Eligibility.*  
Eligible court-involved, substance-abusing parents and adults are identified early through legal and clinical screening for eligibility.

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<sup>58</sup> For a list of collaborative courts, see California Association of Collaborative Courts, [www.ca2c.org/types-of-collaborative-justice-courts/](http://www.ca2c.org/types-of-collaborative-justice-courts/). Look up the key components and/or standards of the specific collaborative court.

<sup>59</sup> Center for Children and Family Futures and National Association of Drug Court Professionals, *Family Treatment Court Best Practice Standards* (2019), [www.nadcp.org/wp-content/uploads/2019/09/Family-Treatment-Court-Best-Practice-Standards\\_Final2.pdf](http://www.nadcp.org/wp-content/uploads/2019/09/Family-Treatment-Court-Best-Practice-Standards_Final2.pdf).

4. *Treatment and Rehabilitation.*  
Provides access to holistic, structured, and phased alcohol and drug abuse treatment and rehabilitation services that incorporate culture and tradition.
5. *Intensive Supervision (Case Management and Alcohol/Drug Testing).*  
Effective team-based case management in which participants are monitored through intensive supervision that includes frequent and random testing for alcohol and drug use.
6. *Incentives and Sanctions.*  
Progressive rewards (or incentives) and consequences (or sanctions) are used to encourage participant compliance with court requirements.
7. *Judicial Interaction.*  
Ongoing involvement of the judge with the court team and staffing, and ongoing judge interaction with each participant, are essential.
8. *Monitoring and Evaluation.*  
Process evaluation and performance measurement and evaluation are tools used to monitor and evaluate the achievement of program goals, identify needed improvements to the court process, determine participant progress, and provide information to governing bodies, interested community groups, and funding sources.
9. *Continuing Interdisciplinary and Community Education.*  
Continuing interdisciplinary and community education promote effective court planning, implementation, and operation.
10. *Team Interaction (Policies and Procedures, Interagency, Third Party, and Intergovernmental Agreements).*  
The development and maintenance of ongoing commitments, communication, coordination, and cooperation among court team members, service providers, the community and relevant organizations, including the use of formal written procedures and agreements, are critical for success.<sup>60</sup>

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<sup>60</sup> Tribal Law and Policy Institute, *Tribal Healing to Wellness Courts: The Key Components* (2d ed. May 2014), [www.wellnesscourts.org/files/Tribal%20Healing%20to%20Wellness%20Courts%20The%20Key%20Components.pdf](http://www.wellnesscourts.org/files/Tribal%20Healing%20to%20Wellness%20Courts%20The%20Key%20Components.pdf).

## Tool 2. Pre-Court, Court, and Post-Court Activities

### *Identification, Eligibility, Referral, Advisement, Orientation*

#### **Identification**

- How?

**Name Point Person(s)**  
**Tribal and County Representative**

#### **Eligibility**

- Joint Screening
  - Participant is a Tribal member or eligible for membership;
  - Participant is open to wellness team and assessment/treatment/services;
  - Other criteria; and
  - After attorney advisement, participant is volunteering for the Joint-jurisdictional Court

**Tribal and County Representative**

- Initial presentation to and discussion with family
- Email court coordinators asking if everyone agrees the participant is eligible
- If team agrees, then referral is made to:
- If team does not agree, phone call to reach consensus

**Tribal and County Representative**

**Court Coordinators**

#### **Referral**

- Completes *Eligibility Referral Form (Who can refer?)*
- Sends to Court Coordinators

**Tribal and County Representative**

#### **Attorney Advisement**

- Parent chooses Joint-jurisdictional Court after advisement
- Sends signed *Participation Agreement* to court coordinators

**Attorney**

#### **Orientation**

- Schedules orientation where family is
  - Within 7 days of date petition is filed, if child is not detained
  - To trail the initial hearing unless parents agree to have initial hearing in Joint FWC
- Invites social workers
- Conducts orientation
- Confirms legal eligibility

**Court Coordinators**

**Court Coordinators**

**Tribal and County Representative**

**Court Coordinators**

*Preparation for Hearings*

File Preparation, Acceptance into Joint Family Wellness Court, Family Wellness Team Meetings, Scheduling Court Dates

**Court File Preparation**

**Point Person(s)**

- Assures file contains requisite documents/forms
  - Referral*
  - Participation Agreement*
  - Releases*

**Court Coordinators**

- Calendar motions (separately from informal hearings)

**Court Coordinators**

- Maintains duplicate court files for judges

**Court Coordinators**

**Acceptance**

**Judges**

- Describe the Court’s approach, confirm family is legally eligible and participation is voluntary after informed consent
- Review Court documents are in order: *Referral, Participation Agreement, and Releases*
- Sign *Order of Acceptance*

**Team**

- Determine team members with court participant/family

***Depends on case type and court-connected services***

- Build a trusting relationship with court participant/family

**Team**

Talk directly and candidly, giving positive encouragement, and reinforcing positive behaviors. Always foster each other’s relationships with the court participant/family.

- Have frequent contact with the court participants

**Team**

Stay apprised of how each court participant/family is doing.

Team members minimally include: \_\_\_\_\_

**Next Court Dates**

**Court Coordinators**

- Calendar and notice Team Meetings
- Calendar and notice Informal Court Hearings (Phase 1—every two weeks)
- Calendar and notice statutory hearings



### *Team Meetings*

#### **Before Team Meetings**

**Court Coordinators**

- Maintains communication/connection among team members
- Gathers information from team members prior to team meetings/staffings
- Prepares case/participant files

#### **Team Meetings**

- Welcomes team members/facilitates meeting **Court Coordinators**
- Identifies candidates for commencement/graduation **Team**
- Schedules commencement **Court Coordinators**
- Reviews any new potential families **Team**
- Reviews participant’s *Wellness Plan*  
(*recommend go in consistent order; judges should go last*) **Team**
- Recommends opportunities for healing **Team**
- Creates a hard-copy calendar for each participant/family **Court Coordinators**
- Updates participant/family calendar **Team**
- Recommends revisions to *Wellness Plan* **Team**
- Review Hearing Preparation **Team**
- Any team issues to discuss? **Team**
- Training/Teaching Items? **Team**

#### **Off-Calendar Weeks: Communication Among Team Members**

**Team**

- Email and phone one another regularly to assure that court participant/family’s care and supports are coordinated and seamless.
- Review the participant’s calendar to help the team be accountable to one another.
- Ensure that no one team member is expecting the court participant/family to do something which is not doable as part of their *Wellness Plan*.
- Meet or conference call to discuss family during the off-calendar court weeks as determined by the team during their post-court hearing debrief. The wellness court coordinators will convene these team meetings.
- If the family has a setback, email fellow team members on the day you learn of the setback so that the team can wrap the family in supportive services.

## *Court Hearings and Assessments*

### **Informal Hearings**

- Submit written update X days before hearing
- Remind team members
- Compile written updates before hearing

**Team Members**  
**Court Coordinators**  
**Court Coordinators**

### **Statutory Hearings**

- Submit reports as per California statutes
- Submit written updates X days before hearing

**Team Members**

### **Post-Court**

- Debriefing  
Meet after each informal court hearing for half an hour, also known as post-court debriefs. During these debriefings, the team decides whether they need to meet on the off-calendar weeks.
- Court records management  
Ensure duplicate files contain requisite documents/forms/orders

**Team Members**

**Court Coordinators**

### **Court Assessments**

Ensure assessments are completed and in the court files (*these will depend on the case type*). Below is an example for family dependency treatment court:

**Court Coordinators**

- American Society of Addiction Medicine (ASAM)*
- Cultural Connections* (Tool created by the Tribe)
- Family Wellness*  
(Tool can be created by the collaboration or some have used the *North Carolina Family Assessment Scales*.) Domains based on social determinants of healthcare assessed during the first court phase, as close to entry into the Court, and again upon advancement to phase 3 and at commencement
- Ages and Stages Questionnaires:*    *ASQ: 3*    *ASQ-SE*
- Child Welfare Services assessments as required by the State and Tribe*
- Other Screening*

## Appendix E. Implementation Tools

### Tool 1. Foundational Documents (Joint Powers Agreement, Tribal Resolution, and Memorandum of Understanding)

California Joint Jurisdiction Court Resources, [www.courts.ca.gov/17422.htm](http://www.courts.ca.gov/17422.htm).

### Tool 2. Manuals

Family Wellness Court (Shingle Springs Band of Miwok Indians and Superior Court of El Dorado County), *Family Wellness Court: Joint Jurisdictional Court Manual* (2015), [www.courts.ca.gov/documents/ShingleSpringsElDoradoFamilWellnessCourtManual.pdf](http://www.courts.ca.gov/documents/ShingleSpringsElDoradoFamilWellnessCourtManual.pdf).

Joint Family Wellness Court (Yurok Tribal Court and Superior Court of Del Norte County), [www.courts.ca.gov/documents/YurokDelNorteJointFamilyWellnessCourtManual.pdf](http://www.courts.ca.gov/documents/YurokDelNorteJointFamilyWellnessCourtManual.pdf).

Family Wellness Court (Yurok Tribal Court and Superior Court of Humboldt County), [www.courts.ca.gov/documents/YurokHumboldtFamilyWellnessCourtManual.pdf](http://www.courts.ca.gov/documents/YurokHumboldtFamilyWellnessCourtManual.pdf).

Family Wellness Court (Hoopa Valley Tribal Court and Superior Court of Humboldt County): <https://www.courts.ca.gov/documents/HoopaHumboldtJointPowersAgreement.pdf>

*Note:* As court forms are case type–specific and regularly updated, please contact the joint-jurisdictional court for copies of their forms.

### Tool 3. Sample Program Participation Documents<sup>61</sup>

#### AUTHORIZATION FOR RELEASE OF INFORMATION

Parent's Name: \_\_\_\_\_; Case Number: \_\_\_\_\_

Date of Birth: \_\_\_\_\_;

Name and Date of Birth of Child(ren):

\_\_\_\_\_  
\_\_\_\_\_

This is a required form which must be signed by participants after consultation with their attorneys. Participants are asked to give their permission for confidential behavioral health information to be shared with their family wellness team and other family participants involved in the Joint Family Wellness Court (JFWC). Participants are further requested to give permission for the JFWC team to access, use, or discuss the child's educational records.

#### Purpose and Type of Information About Me

- (1) \_\_\_ I understand that the people and agencies listed below need my protected health information to help me and my family.
- (2) \_\_\_ I understand that the type of information about me that will be shared is:
- (a) mental health history;
  - (b) development disabilities;
  - (c) alcohol/drug use history;
  - (d) drug and alcohol test results;
  - (e) progress with treatment plans; and
  - (f) barriers to successful completion of treatment plans.
- (3) \_\_\_ I understand that the reason the people and agencies listed below will share this information is to:
- (a) identify my treatment needs
  - (b) match my treatment needs with appropriate treatment programs;
  - (c) coordinate my care;
  - (d) discuss attendance and progress in treatment;

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<sup>61</sup> The following documents including the Authorization for Release of Information, Participation Agreement and Parent's Statement are redacted samples used by a joint-jurisdictional family treatment/wellness court. Further information and samples can be found in the National Drug Court Institute, *The Drug Court Judicial Benchbook*, Chapter 9, Confidentiality, p. 192.

[www.wellnesscourts.org/files/NDCI%20Judicial%20Benchbook%20Chapter%209.pdf](http://www.wellnesscourts.org/files/NDCI%20Judicial%20Benchbook%20Chapter%209.pdf).

- (e) adjust treatment services based on the feedback from me and my family wellness team members;
  - (f) achieve improved health outcomes and more effective care for me and my family; and
  - (g) meet reporting requirements.
- (4) \_\_\_ I am the child(ren)'s parent listed above and my right to make educational decisions for the child(ren) has not been limited or terminated by the court.

### My Rights

- (1) \_\_\_ I understand that my protected health information is confidential under federal law. 42 CFR Part 2, and the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR Parts 160 and 164, govern the confidentiality of behavioral health information (mental health and substance use disorder information).
- (2) \_\_\_ I understand and agree that I can refuse to sign this authorization.
- (3) \_\_\_ I voluntarily agree to the disclosure of my health information.
- (4) \_\_\_ I understand that the individuals listed below and those who work with them may re-disclose my information only in connection with their official duties as related to the JFWC.
- (5) \_\_\_ I understand that my consent will remain in effect until my involvement with the JFWC has ended.
- (6) \_\_\_ I understand that I have the right to withdraw my consent at any time, by sending a signed notice stopping this authorization to \_\_\_\_\_ at \_\_\_\_\_. The authorization will cease on the date my valid revocation request is received. However, if I revoke my consent, my case cannot be heard in the JFWC.
- (7) \_\_\_ I have a right to a copy of this authorization.
- (8) \_\_\_ I have the right to have a copy of my child(ren)'s educational records which are released.
- (a) I wish to receive a copy of such records: yes \_\_\_ no \_\_\_.

### Consent

- (1) I, \_\_\_\_\_, authorize the following individuals and their agencies to exchange information with each other:
- (a) Judges who preside over the Joint Family Wellness Court.
  - (b) Family wellness case managers and clinicians including \_\_\_\_\_ and \_\_\_\_\_.
  - (c) Substance use (abuse) treatment employees including \_\_\_\_\_, group leaders, and individual counselors;
  - (d) Mental health treatment employees including \_\_\_\_\_, group leaders, and individual counselors;
  - (e) My medical care providers \_\_\_\_\_;

- (f) Other family wellness team members, including \_\_\_\_\_ County Office of Education; Court Appointed Special Advocates of \_\_\_\_\_ County; First Five of \_\_\_\_\_ County; Healthy Moms; Tribal Medical Center; Native American Family Services; Local [List relevant Tribal service agencies]; and United Indian Health Services; and \_\_\_\_\_.
- (2) I, \_\_\_\_\_, authorize verbal and written (including email and fax) communication with the persons and agencies listed above.
- (3) I, \_\_\_\_\_, agree to permit disclosure of my confidential information to fellow JFWC participants, because I understand that hearings are held with other JFWC participants and their families.
- (4) Under the Family Educational Rights and Privacy Act of 1974 (FERPA) and California state law, I authorize any school district, district, county office of education, or individual or entity maintaining my child(ren)'s records to release these educational records to and discuss them with the JFWC family wellness team. These records include but are not limited to attendance, academic, individualized education program (IEP), medical, social, psychological, disciplinary, developmental, speech/language, and achievement-test records.

\_\_\_\_\_  
SIGNATURE OF PARTICIPANT

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of Witness

Date \_\_\_\_\_

## PARTICIPATION AGREEMENT

*Instructions: You will need to fill out this Agreement for each of your children.*

Child's Name: \_\_\_\_\_ Parent's Name: \_\_\_\_\_

Family Wellness Court Case Number: \_\_\_\_\_

- (1) My attorney gave me the *Petition*, which describes what the social worker believes is going on with my children and family.
- (2) I understand that the *Petition* has been filed in the Superior Court of \_\_\_\_\_ County and a case has been opened.
- (3) I have discussed the *Petition* and my case with my attorney.
- (4) I understand that my case can be heard in the Superior Court of \_\_\_\_\_ County, the \_\_\_\_\_ Tribal Court, or in the Family Wellness Court (FWC).
- (5) My attorney has explained my rights in each of these courts.
- (6) I have discussed the FWC with my attorney and I choose to participate in the FWC.
- (7) By agreeing to participate in the FWC, I understand that I will have two judges who will hear my case: a \_\_\_\_\_ Tribal Court judge and a Superior Court of \_\_\_\_\_ County judge, and that they will make orders together in my case.
- (8) By agreeing to participate in the FWC, I understand that the Superior Court of \_\_\_\_\_ County is not transferring my case; that the FWC will open a case for my family; that the judges will apply \_\_\_\_\_ tribal law, California law, and federal law in my case.
- (9) I understand that in the FWC, I will have a family wellness team who will help me learn to meet the needs of my family and the steps I can take to heal myself and care for my child(ren).
- (10) I understand that in the FWC, my family wellness team will help me with my family wellness plan, which will include services and supports for my recovery and the health and welfare of my child(ren).
- (11) I agree to attend all FWC meetings with my family wellness team and follow through with the services and supports in my family wellness plan.
- (12) I understand that the FWC will regularly and randomly test me for alcohol and drugs.
- (13) I agree to attend all FWC court hearings.
- (14) I understand that during FWC team meetings and court hearings, the judges and team members will get information about my family.\* (For example, how my children are doing and what my participation and progress has been in court-ordered treatment programs.)

- (15) I understand that I have the right to an attorney at every FWC hearing, and I agree to give up this right at all hearings except:
- (a) If the court considers taking my child(ren) from me (detention);
  - (b) When the court decides if the social worker statements in the petition are true (jurisdiction);
  - (c) When the court decides what I need to do to graduate from the FWC (disposition); and
  - (d) At six-month review hearings (status reviews).
- (16) Except for detention, jurisdiction, disposition, and status review hearings, I understand that other FWC participants who are not parties to my case may be in court with me.
- (17) I understand that I can cancel agreements 1 through 16 at any time.
- (18) I understand and agree that the FWC has authority to hear my case; I cannot later change my mind and decide the FWC had/has no authority to hear my case.

\* I have given my permission to share this information in a separate form, *Authorization for Release of Information*.



### PARENT’S STATEMENT

I have read this *Participation Agreement* or someone has read it to me. I have discussed each statement with my attorney. After consulting with my attorney about the Family Wellness Court, I understand and agree with each statement and wish to participate in Family Wellness Court.

\_\_\_\_\_  
PARENT’S SIGNATURE

\_\_\_\_\_  
DATE

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### ATTORNEY’S STATEMENT

I am the attorney of record for the parent. I have reviewed this form with my client. I have explained each of the items in the *Participation Agreement*, and have explained to the parent all of his or her constitutional and statutory rights and answered all of his or her questions in regard to those rights and this agreement to participate in the Family Wellness Court. I have also discussed with the parent the facts of his or her case, the possible defenses to the pending allegations pursuant to Welfare and Institutions Code section 300, and the possible consequences of participation in the Family Wellness Court.

I concur in my client’s decision to accept the joint jurisdiction of the Family Wellness Court and to enter into this Agreement to participate in the Family Wellness Court.

\_\_\_\_\_  
ATTORNEY’S SIGNATURE

\_\_\_\_\_  
DATE

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## Appendix F. Stewardship and Sustainability

### Tool 1. Evaluation

#### Our Vision

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#### What Will Our Joint Court Look Like?

As two judges, we will hear cases together and

- Apply the laws of the tribe and the State of California;
- Convene the necessary tribal and county service providers;
- Coordinate culturally grounded services;
- Evaluate our court;
- Serve individuals/families who choose our court (otherwise they would have their cases heard in state court); and
- Maintain a nonadversarial setting.

#### Which Case Type(s)

---

#### How Will We Know If We Have Achieved Our Vision?

As two judges, we recognize that we will need the lived experience and expertise of the court participants and our justice partners to know whether we have achieved our vision.

As we design our joint-jurisdictional court with our justice partners, we will identify new court processes and participant outcomes, and measure both agreed-upon outcomes and court participant satisfaction. We agree to create mechanisms to tell our story that are within the organizational capacity of the court and our justice partners.

#### What Evaluation Basics Will Guide Us?

The following is a summary<sup>62</sup> that we can use to develop mechanisms to evaluate our court.

#### *What types of questions?*

##### (1) *Court Processes*

Is the court operating efficiently and effectively? Are participants being informed of their court option in a timely manner, and if they enroll do they receive their assessments and services in a timely manner? Is the required data obtained and recorded? Do court team members have the information they need to do their jobs?

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<sup>62</sup> Excerpted from *Joint Jurisdiction Courts: Needs Assessment Findings* (Tribal Law and Policy Institute, Feb. 2022).

(2) *Participant Outcomes*

Is the court effective at achieving its goal of better participant outcomes? Are there any particular parts of the court intervention that are associated with better outcomes? (For example, intensity of treatment or number of visits, type of services provided, nature of originating “offense” or incident?)

(3) *Satisfaction With Court-Connected, Coordinated, Culturally Grounded Services*

Do court clients and the community at large feel well served? Do core team members all feel heard? Are tribal and non-tribal government leaders supportive? Has tribal and non-tribal mapping of services been updated so that core team members know what services are available to court participants?

**What data to collect?**

- (1) *Quantitative data*—data that are directly measurable and comparable; examples include assessment scores and “units” of services received.
- (2) *Survey data*—surveys ask a certain population (clients or community) the same questions and average the scores.
- (3) *Qualitative data*—information that cannot be easily measured, for example, a written incident report from social services, law enforcement, or probation; a participant petition to move between phases; or a participant exit interview. Surveys can also include qualitative data or open-response questions.

**When?**

Collect as early as possible and review quarterly.

**Sample Tools**

What will be measured?	How will data be collected?	Who is responsible for collecting data?
Entry points for screening	Intake forms	
Entities screening/referring	Intake forms	
Referral mechanisms	Referral forms	
Identify high-frequency utilizers	Excel or database?	
Number of individuals referred, eligible, and enrolled in court-connected interventions	Case notes, court orders, intakes	
Number of Plans of Safe Care (POSC) created	POSC	
Number of closed diversion cases (closed due to successful completion, failed completion, involuntary, and voluntary)	Case notes, court orders	Courts
Number of closed joint-court cases (closed due to graduation, involuntary, and voluntary)	Case notes, court orders	Courts
Use of peer recovery services	Peer notes	
Use of medication-assisted treatment (MAT)	MAT notes	MAT provider
Use of recovery and other support services	Referrals, case notes, court orders	Court coordinators and tribal/county social workers
Number of overdose events and prenatal exposed infant births	Case notes, court orders, public health	Project manager, hospitals, California Rural Indian Health Board, database?

## **Tool 2. Governance Template**

### **Steering Committee**

- What is it? Describe scope of work by tailoring the description in the toolkit.
- Who cochairs? Provide names of Tribal Court Judge and State Court Judge.
- Who convenes? Provide names of Court Coordinators or, if no positions, consider delegating on a rotational basis between each justice system.
- When does it meet? Quarterly on \_\_\_\_\_ at time: \_\_\_\_\_
- Standing agenda items?
- Who are the members?

### **Core Operational Team**

- What is it? Describe scope of work by tailoring the description in the toolkit.
- Who cochairs? Provide names of Tribal Court Judge and State Court Judge.
- Who convenes? Provide names of Court Coordinators or, if no positions, consider delegating on a rotational basis between each justice system.
- When does it meet? Monthly on \_\_\_\_\_ at time: \_\_\_\_\_
- Standing agenda items?
- Who are the members?

### Tool 3. Educational Resources

When blending the tribal healing to wellness approach with the mainstream state court approach, you may want to consult the following types of resources: California tribal communities, tribal justice systems in California and jurisdiction, indigenous healing and tribal healing to wellness, collaborative/problem-solving courts, and trauma-informed services.

#### California Tribal Communities and Tribes

“California Tribal Communities,” [www.courts.ca.gov/3066.htm](http://www.courts.ca.gov/3066.htm).

To learn more about the specific tribal communities in your region, visit the tribe’s website. Also, contact the California Governor’s Office of the Tribal Advisor and view the online Directory of Tribal Governments, <https://tribalaffairs.ca.gov/welcome-to-the-tribal-government-directory/>.

#### Tribal Justice Systems in California and Jurisdiction

“Tribal Justice Systems,” [www.courts.ca.gov/3064.htm](http://www.courts.ca.gov/3064.htm); “Jurisdiction in Indian Country,” [www.courts.ca.gov/8710.htm](http://www.courts.ca.gov/8710.htm).

To learn more about the specific tribal justice systems in your region, visit the California judicial branch’s Tribal Court Directory, [www.courts.ca.gov/14400.htm](http://www.courts.ca.gov/14400.htm), and the tribe’s website provided in the directory.

#### Indigenous Healing

*Indigenous Healing*, a series of three webinars produced by the Child Welfare Capacity Building Center for Tribes, U.S. Department of Health and Human Services, is available at [www.youtube.com/playlist?list=PLR4JDLysJ7WOiKV9DRP5IWoLII7TaKIEk](http://www.youtube.com/playlist?list=PLR4JDLysJ7WOiKV9DRP5IWoLII7TaKIEk):

- *Indigenous Healing: We Are All Connected*
- *Indigenous Healing: Individual and Family Healing*
- *Community and Organizational Healing*

*Indigenous Cultural Wellbeing Measures Literature Review*, compiled by Lisa G. Dirks (Anchorage, AK: Southcentral Foundation, Sept. 2016), [http://arisepartnership.org/wp-content/uploads/2017/02/CITC\\_Cultural\\_Wellbeing\\_Measures\\_Review\\_Table\\_20160930\\_FIN\\_AL.pdf](http://arisepartnership.org/wp-content/uploads/2017/02/CITC_Cultural_Wellbeing_Measures_Review_Table_20160930_FIN_AL.pdf).

#### Tribal Healing to Wellness

Tribal Law and Policy Institute, “Tribal Healing to Wellness Courts: The Tribal Key Components,” [www.wellnesscourts.org/tribal-key-components/index.cfm](http://www.wellnesscourts.org/tribal-key-components/index.cfm).

California Association of Collaborative Courts, “Ten Key Components of Collaborative Courts,” [www.ca2c.org/defining-drug-courts-ten-key-components/](http://www.ca2c.org/defining-drug-courts-ten-key-components/).

ABA Center on Children and the Law, “Seven Common Ingredients for Family Treatment Courts,” *Child Law Practice Today* (May 1, 2017), [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/child\\_law\\_practice/vol-36/may-june-2017/seven-common-ingredients-for-family-treatment-courts/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-36/may-june-2017/seven-common-ingredients-for-family-treatment-courts/).

### **Collaborative Courts**

California Association of Collaborative Courts, [www.ca2c.org](http://www.ca2c.org).

Collaborative Justice Courts, [www.courts.ca.gov/programs-collabjustice.htm](http://www.courts.ca.gov/programs-collabjustice.htm).

### **Family Dependency Treatment Court**

Tutorials produced by the National Center on Substance Abuse and Child Welfare are available at <https://ncsacw.samhsa.gov/training/default.aspx>:

- *Tutorial for Substance Use Disorder Treatment Professionals*
- *Tutorial for Child Welfare Professionals*
- *Tutorial for Legal Professionals*

Center for Children and Family Futures and National Association of Drug Court Professionals, *Family Treatment Court Best Practice Standards* (2019), [www.nadcp.org/wp-content/uploads/2019/09/Family-Treatment-Court-Best-Practice-Standards\\_Final2.pdf](http://www.nadcp.org/wp-content/uploads/2019/09/Family-Treatment-Court-Best-Practice-Standards_Final2.pdf).

### **Trauma-Informed Practices**

PACES (Positive and Adverse Childhood Experiences) Connection, <https://www.pacesconnection.com/>.

National American Indian Court Judges Association, “Trauma-Informed Court Systems: A Webinar for Tribal Communities” (July 27, 2017), presented by Victoria Sweet, Program Attorney, National Council of Juvenile and Family Court Judges, [https://www.youtube.com/watch?v=kt7PAehJS\\_s](https://www.youtube.com/watch?v=kt7PAehJS_s)

The National Child Traumatic Stress Network (NCTSN), [www.nctsn.org](http://www.nctsn.org).

D. Bassett, U. Tsosie, and S. Nannauck, “‘Our culture is medicine’: Perspectives of Native healers on posttrauma recovery among American Indian and Alaska Native patients,” 16 *The Permanente Journal* 19–27 (Winter 2012), [www.ncbi.nlm.nih.gov/pmc/articles/PMC3327107/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3327107/).

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