

TRIBAL-STATE CONSORTIUMS: DEVELOPMENT AND EMERGING ISSUES

June 1, 2018

Tribal State Consortium Regional Meeting

Hosted by the Tulalip Tribe



This project was supported by subgrant No. F17-31103-217 awarded by the state administering office for the STOP Formula Grant Program. The opinions, findings, conclusions, and recommendations expressed in this program are those of the author(s) and do not necessarily reflect the views of the state or the U.S. Department of Justice, Office on Violence Against Women. Grant funds are administered by the Office of Crime Victims Advocacy, Community Services and Housing Division, Washington State Department of Commerce.



AGENDA

- Forum/Consortium Best Practices
- Fertile Areas for Problem-Solving
 - Child Welfare
 - Domestic Violence
 - Juvenile Justice and School to Prison Pipeline
 - Criminal Cases
 - Human Trafficking
- Resources to Help



HIGHLIGHTS
SUCCESSFUL FORUMS/CONSORTIA

- Partnership Between Equals
- Committed Leadership
- Prioritize Areas of Mutual Concern
- Identify Shared Goals
- Focus on Problem-Solving
- Sustain Solutions



PARTNERSHIP BETWEEN EQUALS

Capturing Strengths of Your Collaboration



LEADERSHIP IS COMMITTED

- State Supreme Court or State Judicial Council
 - Appoints of Key Members
 - Recognizes Ongoing Collaboration
 - Prioritizes Collaboration's Work
- Tribal Leaders Decide Representation



IDENTIFY AREAS OF MUTUAL CONCERN
FIND COMMON GROUND
PRIORITIZE ISSUES TO WORK ON

- From Tribal Judges' Perspective:
 - From State Judges' Perspective:
- What are the cross-jurisdictional issues that could be smoother?



IDENTIFY SHARED GOALS

- For Example:
 - Fewer children in out of home care
 - Address epidemic of drug and alcohol abuse
 - Reduce disproportionate impact
 - Address crimes related to domestic violence, sexual assault, or family violent crimes



BENEFITS OF COLLABORATION

- Leverage scarce resources
- Make new funding sources and services available
- Direct hand in healing while protecting public safety
- Cultural Understanding - Eliminate “us v. them” attitude
- Strengthen services to families and communities
- Increase public trust and confidence
- Lower recidivism/re-entry rates and stop the revolving door of the juvenile dependency and juvenile delinquency, and criminal justice systems

QUICKLY ACHIEVABLE SOLUTIONS
HOW ARE WE GOING TO GET THERE?

- What is the low hanging fruit?
 - Tackle those first: short-term fixes
 - Celebrate and build on those successes
- What are some of the harder issues requiring longer-term fixes?



SUSTAINING SOLUTIONS
WHAT'S IT GOING TO TAKE?

- **Education**
 - Listening sessions, cross-court educational exchanges
 - Convening or participating in training together
 - Creating multi-media projects, publications, online materials etc.
- **Sharing resources**
 - Among AOC, local tribal courts, and state courts
 - Creative jurisdictional initiatives
- **Policy**
 - Rule-making, legislation, developing local protocols



HEALING INDIVIDUAL AND COMMUNITY

“We know that we have more to learn from you [tribal courts] than you have to learn from us.”

- Hon. Michael F. Cavanagh, Michigan Supreme Court

“I’m looking at: How did we resolve things before our cultural interruption, when invasion occurred? We were village people, and we sat around and had discussions. My purpose is to help you think up how to make it right if you made a mistake.... For me, jail is banishment. It’s the last resort.”

- Hon. Abby Abinanti, Chief Judge, Yurok Tribal Court



FERTILE AREAS FOR PROBLEM-SOLVING

- Child Welfare
- Domestic Violence and Sexual Assault
- School to Prison Pipeline
- Criminal Cases
- Human Trafficking



CHILD WELFARE- CALIFORNIA EXAMPLE

- Priority- Child Welfare Cases
- Problems- Indian Child Welfare Act Compliance
- Low Hanging Fruit = Local Success
 - Local Standing Order of State Court to Share Child Protection Services Information
- Build on Local Success
 - Codified Practice in State Statute
- Celebrate Success
 - Acknowledge Local Judicial and Other Social Reform Leaders



CHILD WELFARE- SUSTAINING SUCCESS TRIBAL STATE PROGRAMS

- Job Aids
- Laws, Rules, and Regulations
- Expert Witness
- Education- curriculum and distance learning
- Statewide directory of services
- Tribal customary adoption
- STEPS to Justice- Child Welfare
http://www.courts.ca.gov/documents/STEPS_Justice_childwelfare.pdf

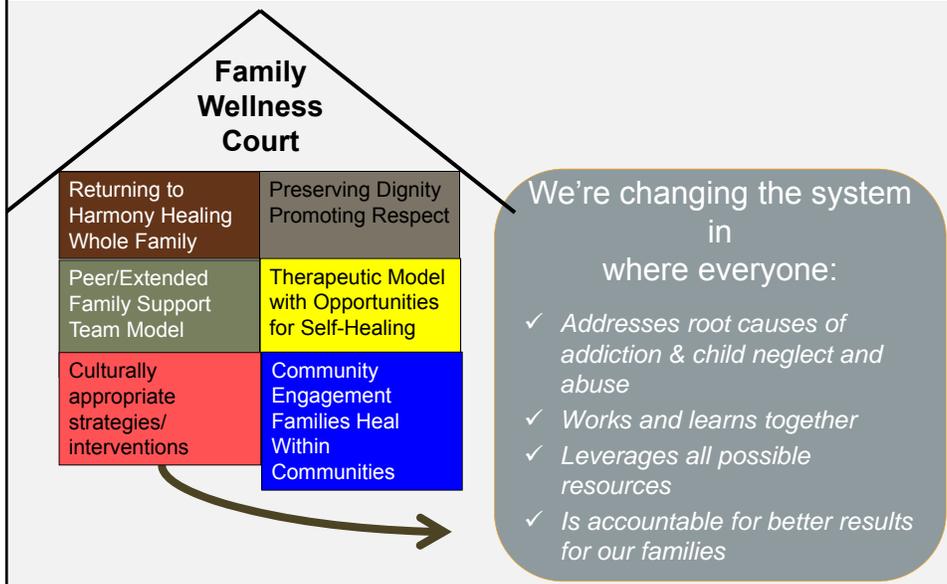


CREATIVE JURISDICTIONAL APPROACHES



15

Joint Jurisdictional Court- Alternative to Juvenile Court
Justice Reform- Paradigm Shift



DOMESTIC VIOLENCE

- Legal Barriers
- Recognition and Verification of Protection Services by Non-tribal Justice Partners
 - County Law enforcement
 - County prosecutors
 - State judges

7

DV- LEGAL BARRIERS

- When tribal protection orders (TPO) do not meet full faith and credit requirements under VAWA
- Common legal deficiencies
 - Insufficient facts to exercise jurisdiction
 - Insufficient facts showing TPO was violated
 - Inadequate notice

8

DV- LAW ENFORCEMENT NOT RECOGNIZING TPO

- Ongoing education of law enforcement
- Revision of tribal protection orders to look more like state court orders
- Adoption of Project Passport or HOPE card
- Addition of VAWA's full faith and credit language in TPO
- Addition of State's Top Cop endorsement and Educational Video

19

DV- ENFORCEMENT RELATING TO INTERJURISDICTIONAL SHARING AND ENTRY OF TPO INTO NAT'L CRIME INFORMATION CENTER DATABASE

- MOUS
 - One Pueblo in New Mexico enters TPOs for all Pueblos in region
 - Cross-deputation and cross-commission agreements
 - County contractual agreements with tribes for LE
 - County LE serves notice to persons to be restrained in tribal court
 - Prosecutors charging habitual offenders who flee tribal jurisdiction
- Registration by statute or rule
- Tribal Access Program- provides tribes access to national crime information systems

20

JUVENILE JUSTICE- SCHOOL TO PRISON PIPELINE

- Shingle Springs Band of Miwok Indians and El Dorado Superior Court in CA
 - 5 families successfully completed the program last year
 - No new school referrals since end of last school year
 - Increased collaboration with County School Attendance and Review Board and Probation to provide early intervention



JUVENILE DIVERSION PROGRAM

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

JUVENILE DELINQUENCY

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

JUVENILE RE-ENTRY

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

CRIMINAL CASES

- Punitive approach to criminal justice has failed: U.S. has 5 percent of the world's population but 25 percent of its population of prisoners, a disproportionate number of them people of color.
- Dominant state courts learn from tribal courts.

25

CRIMINAL CASES- ALCOHOL AND DRUGS

- Impaired Driving: Joint Jurisdictional Court
 - Minn.: Cass & Itasca Counties District Courts and the Leech Lake Band of Ojibwe
- Non-violent Offenses:
 - CA: Del Norte and Mendocino Counties and Northern California Tribal Courts (diversion and post-adjudication)
 - Alaska: Kenai Court and Kenaitze Indian Tribe (Joint)

26

CRIMINAL CASES- BAIL

- Disparate treatment because of Indian defendants ability to make bail
- St Regis Mohawk Tribe and New York
 - Joint risk assessment (Vera) and intake interview (to verify answers by calling employers and family members, and confirm criminal history) generate score representing the defendant's degree of risk of nonappearance and of commission of another crime

27

HUMAN TRAFFICKING

- National Council on Juvenile and Family Court Judges- Victoria Sweet and Judge Richard Blake
- GAO Trafficking Report 2017
- Rising Waters, Rising Threats: The Human Trafficking of Indigenous Women in the Circumpolar Region of the United States and Canada, by V. Sweet (2014) [MSU Legal Studies Research Paper No. 12-01](#)

28

WHAT ARE YOUR PRIORITIES?

- How can I help either directly or by connecting you to others and resources?

29

RESOURCES TO HELP

- Your Colleagues on Other Forums
- National Nonprofits and Associations (just a few)
 - CASEY Family Programs
 - Center for Court Innovation
 - DV Problem-Solving Courts (2010)
<https://www.ncjrs.gov/pdffiles1/nij/grants/229659.pdf>
 - Indian Country Child Trauma Center
 - Native American Rights Fund
 - National Council on Juvenile and Family Court Judges
 - Tribal Law and Policy Institute

30

TRIBAL LAW AND POLICY INSTITUTE



- Tribal Domestic Violence Courts/Dockets: www.tribal-institute.org/lists/dvcourts.htm (factsheets, webinars, how to create docket)
- Tribal Protection Orders: www.tribalprotectionorder.org
- Tribal-State Collaboration Project
 - On-Site Training and Technical Assistance to Courts and Law Enforcement
 - Resources on Collaboration
 - “Tribal-State Court Forums Annotated Directory” and Promising Strategies Publication Series
 - Hosts and Maintains www.WalkingOnCommonGround.org: tribal-state collaboration resources including interactive map and MOU analysis



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THANK YOU!

- Questions and Answers
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