

# Tribal/State Collaboration: Transfer Agreements, Joint Jurisdiction Courts and Beyond

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# Disclaimer

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# Objectives of Today's Presentation

- Goal: Spark ideas of what kinds of collaboration are possible
  - Brief discussion about collaboration mechanics
  - Provide examples of collaborations tribes have engaged in with their state and local partners
- Goal: Have a Discussion
  - What kinds of collaborations would you like to see?
  - What support would help you make them happen?





## Why Collaborate Generally?

- Tribal jurisdiction is limited and complex
- Cases/service providers in multiple jurisdictions
- Funding streams with limited scope/difficult to access/limited to one jurisdiction
- State/local agencies struggle to provide culturally-appropriate services and ancillary services

# Why Collaborate?

Sovereignty is the ability to regulate the community within a territory.

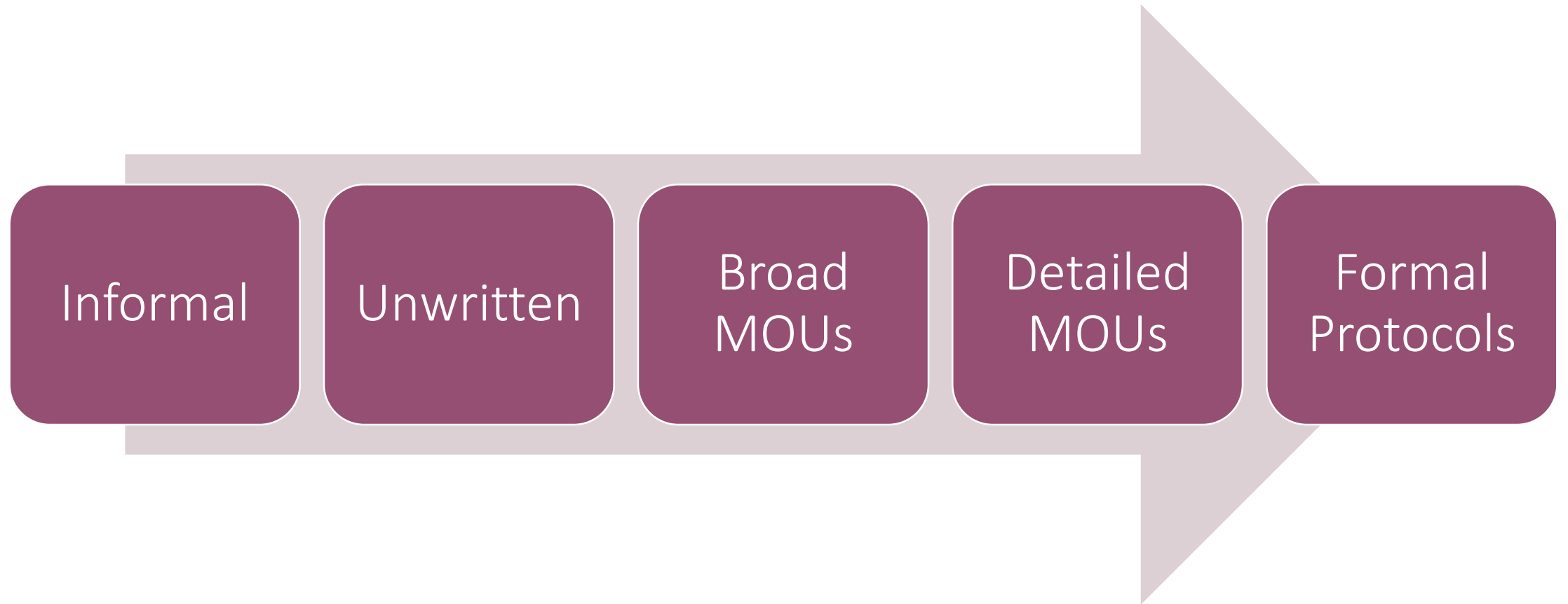
It is also the responsibility to do so.





# Why Collaborate within Wellness Courts?

- Deliver culturally appropriate services/ increase cultural competency/literacy
- Provide geographically relevant services
- Enhance supervision
- Coordinate multiple case plans
- Leverage legal incentives
- Maximize shared resources
- Respond to unique community needs
- Stay ahead of issues
- Increase funding opportunities
- Coordinate jurisdictional authority to provide necessary treatment and supervision
- Build positive relationships that can benefit other programs
- Exercise sovereignty



Kinds of Collaboration

# Informal Collaborations

## Advantages

- More efficient – less bureaucracy
- Plasticity: quickly adapt
- Requires fewer resources
- May not require legislative or executive approval
- Can be a steppingstone

## Disadvantages

- Easily dismantled, particularly by staff turnover
- No/limited enforcement mechanism
- Difficult to apply to complex issues with multiple stakeholders
- Difficult to bring to scale, i.e. serve large number of participants
- Ripe for a perception of unfairness
- Limits the role of other team members, and thereby their buy-in and ability to contribute or innovate



# Formal Agreements

## Advantages

- Clearly defined tasks and roles
- Increased accountability
- Survives staff turnover
- Added assurance
- Increased perception of fairness
- Leverages the full resources of each partner
- Models collaboration between agencies/governments

## Disadvantages

- Slow implementation process
- Increased rigidity – difficult or slow to amend
- Lack of clear funding stream
- Liability concerns
- A failed formal agreement can chill future collaborations attempts

# Formal Agreement Considerations



## Pre- or Post-Adjudication

Equal protection

Retention of carrot and stick

Coordination b/w attorneys



What triggers a referral? How will tribal members be identified?



Will probation and Wellness Court case plans/requirements be consolidated?



What authority will the Tribe have to issue incentives and sanctions?



Discharge – What's the incentive? Who authorizes?



Communication – How is case progression communicated? How is prior case info shared?

# Levels of Interaction

## WELLNESS COURT COLLABORATION

Minimal  
Cooperation

There are some efforts to provide help to the other jurisdiction so that both operate more efficiently.

Full  
Cooperation

The governments work together so that they each operate at maximum efficiency, but their operations are completely independent.

Collaboration

Each government is operating at high efficiency and actively seeking to help external governments through positive interaction.

Co-Creation

At this level each government is working collaboratively with other governments to co-create systems and tools that can be used to maximize the results for each—a joint effort.

# Minimal Cooperation



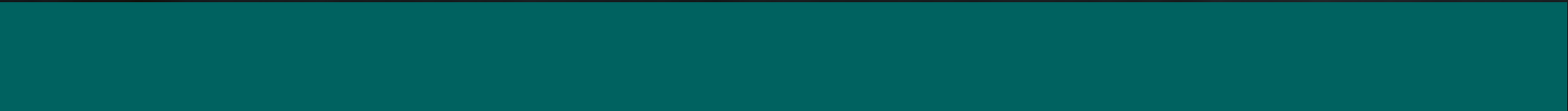
A photograph of three people seated in a row, likely at a panel discussion or training session. The person on the left is a man with dark hair, wearing a dark jacket and light-colored pants, holding a microphone. The person in the middle is a woman with blonde hair, wearing a dark top. The person on the right is a man with glasses and a beard, wearing a dark suit and tie. They are all wearing name tags. The background is a wood-paneled wall.

## Co-Training

- Makah Nation and Port Angeles Court Observations
- Pueblo of Laguna Hosts Tribal Wellness Court Teams
- Forest County Potawatomi Naloxone Trainings
- Northern Michigan Tribal Healing to Wellness Court Training
- Paiute Indian Tribe of Utah Naloxone Training Program



# Full Cooperation





A photograph of a person grilling salmon on a spit over a fire. The salmon is skewered on long wooden sticks and is being cooked over a fire. In the background, a child in a yellow shirt is visible, and a red car is parked. The scene is outdoors, likely at a fair or festival.

## Yurok Tribe

- 2012 MOUs with 2 counties to transfer adult nonviolent criminal and juvenile delinquency cases to tribal court for supervision and services
- Humboldt County
  - Transfer is optional
  - Joint supervision with Yurok as lead
- Del Norte County
  - Concurrent jurisdiction over juvenile cases
  - Adult cases – county notifies Yurok so case can be diverted to tribal court who screens them for eligibility in wellness court



# Pueblo of Pojoaque Intertribal Wellness Court

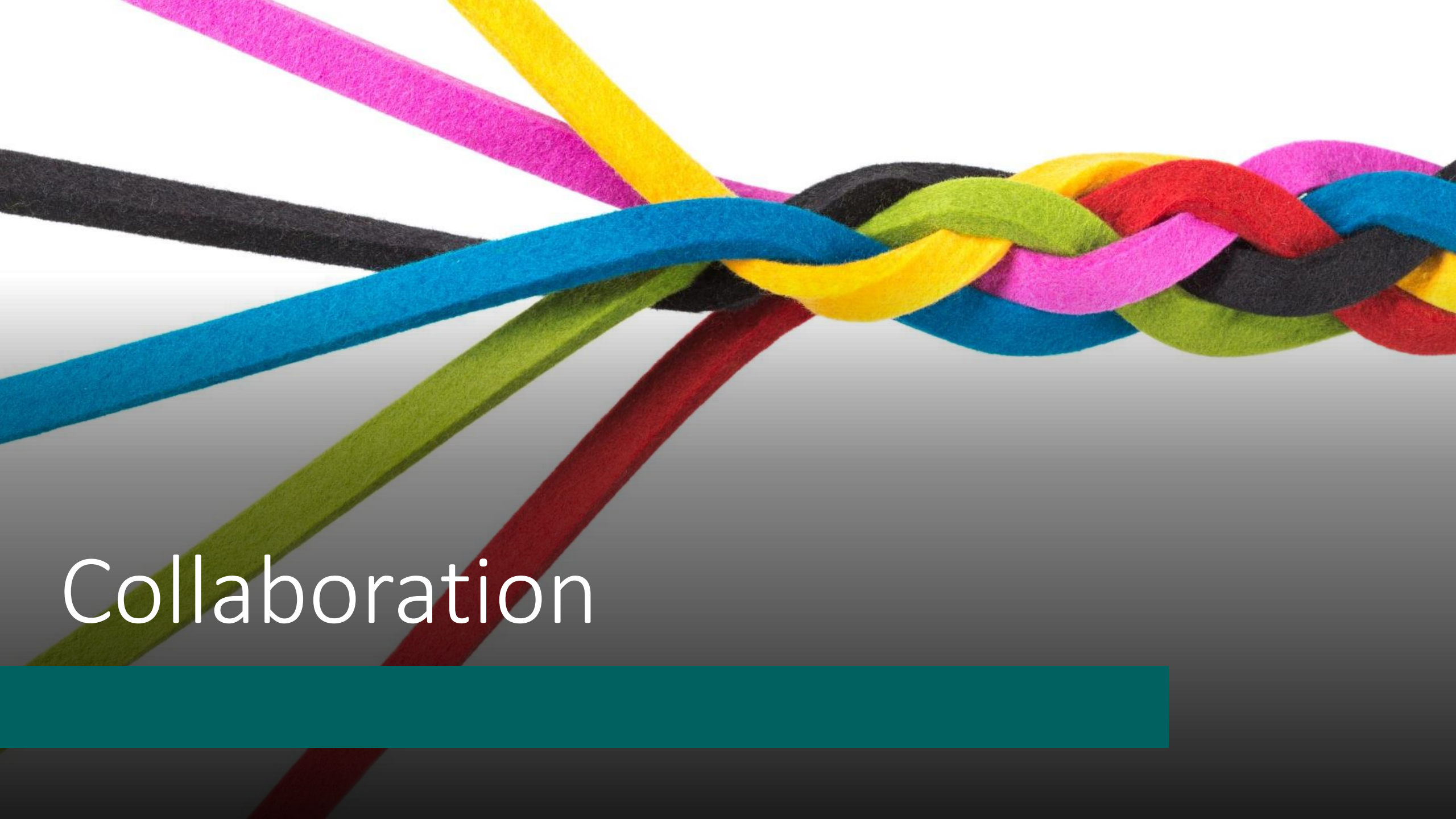
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- Collaboration
  - With neighboring Pueblos - accepted into program if eligible offense
  - With neighboring county - Wellness court as a condition of probation
  - With reentry programs - Sober living apartments
- No formal referral process
- Updates back to referring source
- Regular communication

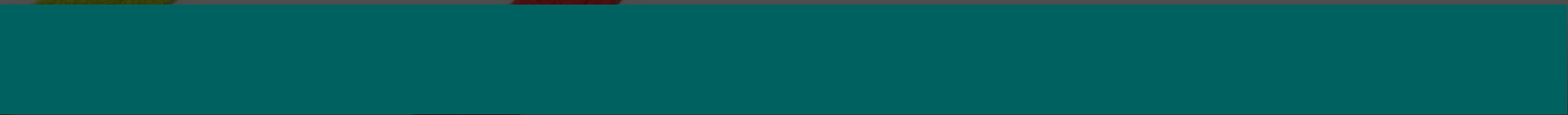


# National Judicial Opioid Task Force – Sample Court Transfer Agreement

- Acknowledging that treatment and program outcomes are often more successful for Native offenders when they are provided services that are culturally appropriate, the Conference encourages, in a 2019 resolution, more state-tribal collaboration, including the use of transfer agreements from state courts to Tribal Healing to Wellness Courts.
- [Sample Memorandum of Understanding for Tribal Healing to Wellness Court Case Transfers](#)



Collaboration





# Chickasaw Nation Recovery Resource Services

- Pontotoc County
  - The first rural state drug court in Oklahoma
  - Serves approximately 130 participants, a third are Native.
- Informally, the Chickasaw Nation provided transportation and case management services for the court.
- 2014 MOA with the County
  - Chickasaw Nation's holistic services became fully integrated into the drug court for all participants
  - Full-service substance abuse treatment
  - Assessment services
  - Recovery outpatient services and
  - Recovery intensive outpatient services





# St. Regis Mohawk

- MOU with Partridge House - inpatient treatment
- Franklin County Probation - joint supervision
- Akwesasne Justice Program and the Akwesasne Mohawk Police - information sharing and procedures for home visitation across international border



# Co-Creation

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## The First Joint Jurisdiction Step

- Leech Lake Band of Ojibwe – Cass County (2006)
  - A handshake and a commitment
  - Joint Powers Agreement
- Leech Lake Band of Ojibwe – Itasca County (2008)

# Bamenim Anishinaabeg Approach

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



# Joint Jurisdiction Wellness Court Teams

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



# Shingle Springs Band of Miwok Indians and El Dorado County, CA

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# Shingle Springs Joint Jurisdiction Family Wellness Court

- Hears: juvenile justice, child welfare, domestic violence (as part of a dependency, child custody, protective order petition, and criminal cases)
- Judges preside over all cases jointly
- One unified proceeding
  - Avoid conflicting orders
  - Address the entirety of the families' issues in a holistic fashion
- Emphasize culturally-appropriate restorative justice practices
- Wrap-around continuum of care





# Challenges

- Historical conflicts between Tribe and County
- PL-280
  - Increased conflicts
  - Decreased Tribal justice system development
- Still lack of trust in both communities
- Tribal Youth getting lost in the system
  - Charter School
  - Juvenile records

Kenaitze  
Kenai Superior Court

Henu' Community  
Wellness Court

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# Henu' Community Wellness Court



Joint-jurisdictional therapeutic court



Serves adults, Native or non-Native, who face legal trouble stemming from substance use,

Focusing on drug and alcohol offenders  
Families may be involved in dependency cases



Optimal Outcomes

Lifetime sobriety  
Healthy Family Reunification  
Avoid future involvement with criminal justice system and/or incarceration





Yurok/Humboldt  
Yurok/Del Norte  
Hoopa/Humboldt

- Joint jurisdiction family wellness courts
- Written Infrastructure
- Tribal Resolution
- Joint powers agreement
- Focus addressing families affected by pre-natal exposure

# Tribal Healing to Wellness Courts: Intergovernmental Collaboration

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## TRIBAL HEALING TO WELLNESS COURTS: INTERGOVERNMENTAL COLLABORATION

### TRIBAL HEALING TO WELLNESS COURTS: INTERGOVERNMENTAL COLLABORATION



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Tribal Law and Policy Institute: [www.Home.TLPL.org](http://www.Home.TLPL.org)  
Tribal Court Clearinghouse: [www.TLPL.org](http://www.TLPL.org)



## Other Collaboration Resources

- William Thorne and Suzanne Garcia, [\*\*Crossing the Bridge: Tribal-State-Local Collaboration\*\*](#) (Tribal Law and Policy Institute, February 2019).
- Jennifer Fahey, Hon. Korey Wahwassuck, Allison Leof, and Hon. John Smith, [\*\*Joint Jurisdiction Courts: A Manual for Developing Tribal, Local, State & Federal Justice Collaborations, 2nd ed.\*\*](#) (Project T.E.A.M., Center for Evidence-based Policy, Oregon Health & Science University, 2018).
- Hon. Korey Wahwassuck, Hon. John P. Smith, and Hon. John R. Hawkinson, [\*\*Building a Legacy of Hope: Perspectives on Joint Tribal-State Jurisdiction\*\*](#), 36:2 WILLIAM MITCHELL L. REV. 859 (2010)
- Hon. Korey Wahwassuck, [\*\*The New Face of Justice: Joint Tribal-State Jurisdiction\*\*](#), 47 WASHBURN L. J. 733 (2008).
- Jennifer Walter and Heather Valdez Freedman, [\*\*Emerging Strategies in Tribal-State Collaboration: Barriers and Solutions to Enforcing Tribal Protection Orders: December 6, 2017 Meeting Report\*\*](#) (Tribal Law and Policy Institute, February 2019).
- Heather Valdez Singleton, Kori Cordero, and Carrie Garrow, [\*\*Tribal State Court Forums: An Annotated Directory\*\*](#) (Tribal Law and Policy Institute, January 2016).
- Carole Goldberg and Duane Champagne, [\*\*Promising Strategies: Tribal-State Court Relations\*\*](#) (Tribal Law and Policy Institute, March 2013).
- Carole Goldberg and Duane Champagne, [\*\*Public Law 280\*\*](#) (Tribal Law and Policy Institute, March 2013).





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