

TRIBAL-STATE COLLABORATION

How Tribes and States Can Collaborate to Better Improve the Effectiveness of Both State Drug Courts and Tribal Healing to Wellness Courts



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Historical Perspective

Understanding history is crucial to understanding current American Indians issues.

Each tribe has a unique history of contact with non-Indians and the subsequent consequences of conquest.

Major elements, however, include

- Brutality by Europeans and epidemic spread of disease
- Treaty process to obtain Indian lands
- Indian removal westward
- Reservation system
- Allotment
- Termination of Tribes
- And finally, Self-Determination



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"Savages": War on Culture

Conquest did not simply shrink Indian lands.

Federal Indian policy has a long history of shifting between implicit and explicit attacks on Indian culture, epitomized in Capt. Pratt's phrase "Kill the Indian, and save the man."



Tom, Torlino, Navajo
Carlisle Indian School

- Criminalization of Ceremonies
- Allotment
- Boarding Schools
- Termination
- Urban Relocation

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Indian Territory

"Indian Territory" – land reserved for the forced re-settlement of Native Americans.
Many "removal" treaties promised that lands set aside for the tribes would never be included within the boundaries of any state or organized territory.

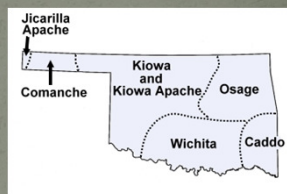
Five Tribes

First tribes removed to Oklahoma area: the Choctaw, Chickasaw, Creek, Cherokee, and Seminole.

After the Civil War, the Five Tribes were compelled to relinquish much of their lands.

Further Removal Post Civil War

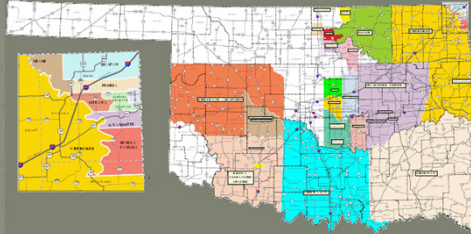
Following the removal of the Kickapoo, Miami, Delaware, and Shawnee, many Plains tribes were removed to "Indian Territory," including the Cheyenne, Arapaho, Comanche, Kiowa, and Apache.



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Oklahoma Territory

The General Allotment Act of 1887, the Curtis Act, the Five Tribes Act, and the Osage Allotment Act collectively resulted in the present "checkerboard" jurisdiction.



The Land Run of 1889 brought approximately 50,000 non-Indian settlers, paving the way towards statehood and the end of Indian Territory.

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Oklahoma

Today there are 39 federally recognized tribes in Oklahoma, though only a few occupied any part of the state prior to European contact.



According to the 2011 U.S. Census, American Indians make up 8.9% of the Oklahoma population, while only 1.2% of the U.S. population.

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Tribal Courts

Prior to European contact, native peoples practiced various forms of meaningful and productive dispute resolution.



First modern iteration of tribal courts: "Courts of Indian Offenses" (CFR), established in 1883 to both resolve disputes and enforce federal regulations, such as the criminalization of Indian dances.

1934: Indian Reorganization Act: permitting tribes to organize and adopt constitutions.

Today, tribal justice systems are diverse in concept and character and are at various stages of development.

Many courts apply large bodies of written law, as well as custom and tradition to settle disputes and address crime.

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Every Native Nation is Different

Criminal and Civil Jurisdiction is complex in Indian country, and often depends on the

- Indian status of the offender/defendant
- Indian status of the victim/plaintiff
- Location of the offense/act
- The nature of the offense/act



Additional factors include

- Federal prosecutorial discretion
- Development of the Tribal Court and/or Tribal Code
- Possible state jurisdiction (e.g. PL 280, though not in Oklahoma)
- Joint Powers Agreements and/or Memorandums of Understanding

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Addiction

- Alcohol/Drugs introduced by traders in Indian country
- Cigarette Addiction 52% - highest among all other ethnic groups
- Childhood trauma increases smoking risks
- Daily smokers are 5 times more likely to abuse alcohol
- Alcoholism is at an all time high among native people
- Most violent crimes committed in Indian country involve alcohol/drugs on both the part of the offender and the victim

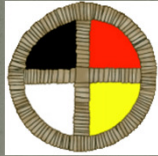
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Impacts of Addiction

- Tends to mask the real source of the problem
- Enhanced Low Self-Esteem
- Loss of sense of belonging or connection to the tribal community or group
 - Possibly stemming from historical trauma
 - Negative boarding school experience
 - Relocation
 - Assimilation

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Tribal Healing to Wellness Courts



Tribal Healing to Wellness Courts are tribal adaptations of a drug court.

There is particular interest in how drug courts can address alcoholism and its associated crime that is prevalent in Indian country, especially in a non-adversarial nature.

The term “Healing to Wellness Courts” was adopted to

- (1) incorporate two important Native concepts - both Healing and Wellness and
- (2) promote the program’s efforts to promote wellness for program participants as an on-going journey.

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Treatment of Alcohol/Drug Use & Trauma Among Native American’s

- Wellness Court process is not a new method
- Crime and conflict were historically addressed through customary and traditional methods
- Traditional native people focus on community
- Modern ways are individualized
- Community vision is what guides native people

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Tribal Healing to Wellness Court & State Drug Court Distinctions

- Tribes & Indian Country
 - Jurisdiction
 - Tribal Courts
 - Tribal Judges
 - Tribal Affiliation
 - Team members/community members
 - Specific Tribal Populations Served

- County/State
 - Jurisdiction
 - Western Model Courts
 - General Populations Served



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Cultural Sensitivity

- Cultural competency is one of the critical principals of care
- Not all tribal customs and traditions are the same
- Not all methods of seeking traditional healing are the same
- Not all native people will be open to participating in cultural orientated activates
- Careful consideration on the team's part to approach cultural teaching and customs in their programs



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Collaborative Benefits

- Expression & Exercise of Sovereignty – *Community & Nation Building*
- Cross Sovereign Education & Understanding
- Collective Confrontation-Team Work/Holistic Approach - *culturally accordant*
- Promotes and/or Maintains Culture & Tradition
- Stretches/Strategically Utilizes Limited Resources
- Enhances Services to Citizens/Communities



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Barriers to Collaboration

- Collaboration is *not* telling or being told what to do
- Slippery Slope to becoming a State Actor or Tribal Actor
 - *Assume responsibilities without compensation*
 - *Assume liability*
 - *Appearance of surrendering sovereignty and/or independence*
- When Historical Issues have not been addressed
 - *Collaborators must understand the cultural trauma underlying each community*
 - *Simultaneously, we must move on: empathy over guilt*

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Promising Practices

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

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Opportunities for Collaboration in Healing to Wellness Court and Drug Courts

- Transfer Agreement for eligible participants
- Provision of drug testing and other oversight services
- Sharing of database information
- Consultation for particular subject matter (e.g. cultural activity or treatment)
- Consultation for particular participants
- Joint team members
- Communication between Coordinators

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The Leech Lake – Cass County – Itasca County Model

Joint Powers Agreement:

Tribal Court and State Courts agreed to work jointly on common goals of:

1. Improving access to justice
2. Administering justice for effective results
3. Fostering public trust, accountability, and impartiality

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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

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Leech Lake – Cass County Wellness Court

- First joint jurisdiction court in the nation
- Operational in 2006
 - DWI Court Model
 - Court sessions by ITV in Walker and Cass Lake
- Clients include Tribal Members and Non-Indians
- Multi-jurisdictional, multi-agency participation
- Operated on handshake for over a year

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Wellness Court Success Stories

- Participants reunited with children/families
- Valid driver's licenses
- Employment/school
- National award for tutor of year/CNN intern
- Ending abusive relationships
- 42 participants with 10,568 days of documented sobriety
- Significant reduction in recidivism

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“The execution of the Joint Powers Agreements between the Tribal Court and State District Courts...are an important example of how broader inter-governmental relations can begin to come full circle back to that of co-equal sovereigns.”

- Leo Brisbois (White Earth Ojibwe)
President of Minnesota State
Bar Association

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Cherokee Juvenile Wellness Court

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Thank You



Your support of Tribal Healing to Wellness Courts is greatly appreciated....

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Tribal Law & Policy Institute



The Tribal Law and Policy Institute is a Native American owned and operated non-profit corporation organized to design and deliver education, research, training, and technical assistance programs which promote the enhancement of justice in Indian country and the health, well-being, and culture of Native peoples.

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