

## **Memorandum of Agreement between the Yurok Tribe and Del Norte County to Coordinate Dispositions Involving Adult Yurok Offenders**

### Background:

The Yurok Tribe is a federally recognized Indian Tribe with aboriginal territory including lands now within the boundaries of Del Norte County and Humboldt County in the State of California. The Yurok Tribal Court ("**Tribal Court**") is now hearing Civil Offenses with Adult Yurok Offenders ("**Offenders**") some of whom are in need of Yurok Wellness Court services.

The **Tribal Court** currently hears adult civil matters in compliance with the Yurok Civil Offense Code, and it has been the practice of the **Tribal Court** to defer matters involving Yurok adult criminal matters to the Del Norte County Superior Court ("**Superior Court**") and Probation Department ("**Department**"). The District Attorney's Office ("**DA**") charges crimes and/or offers diversion for certain offenses. Federal, state, and Tribal laws and policies recognize a strong preference for matters involving **Offenders** to be heard in **Tribal Court**.

Representatives from the **Tribal Court**, the **Superior Court**, the **DA**, and the **Department** have been in consultation to develop procedures to handle coordination of cases involving **Offenders** between the two jurisdictions. The parties wish to collaborate in developing culturally appropriate interventions for **Offenders**, to ensure offender accountability while restoring safety and healing to our communities.

### Agreement:

The **Tribal Court** and the **Department** AGREE to the following:

1. Notification: The **Department** agrees to screen for Native American Adult Offenders and to notify the **Tribal Court** in the event an **Offender** who is enrolled with the Yurok Tribe ("**Tribe**") is cited or picked up by the **Department** or Del Norte County/California state law enforcement. The **DA** agrees to screen for Native American Adult Offenders who might be diverted so not referred via charging to the **Department** or **Superior Court**. The **Tribal Court** agrees to establish with the **DA** a confidential screening process using the offices of the Tribe's enrollment for all new offenders, and to work with the **Department** to review current files, including probationers for possible referral.
2. Offenses: If an **Offender** is criminally charged with a non-violent offense (see Appendix A which defines such an offense) which involved substance abuse, either as an element of the offense, or as a contributing factor to the commission of the offense the two

jurisdictions may seek to coordinate disposition of the case in **Tribal Court** as set forth in this Agreement.

3. Information Sharing: The **Department/DA** and **Tribal Court** will obtain written releases of information for general verbal communication regarding **Offenders**, as well as to obtain the case file as set forth in Paragraph 12. The **Department** will endeavor to provide the **Tribal Court** with direct access to state adult information for adults under **Tribal Court** jurisdiction subject to county confidentiality obligations.
4. Confidentiality: All parties shall maintain strict confidentiality over all physical and electronic case files and **Offender** information pursuant to applicable federal, Tribal and state laws.
5. Assessments: The **Department/DA** and **Tribal Court** shall timely conduct an assessment and will make a joint determination regarding which jurisdiction will handle primary disposition of the **Offender** case. Cases (non-violent offenses) to be considered include those cases that may come within any of the following:
  - a. Diversion by request of the **DA** (pre-charging)
  - b. Pre-sentencing referral
  - c. Probation violation
  - d. Referral by the **Superior Court**
6. Conditional Postponements: In circumstances where an **Offender** has admitted to a type of offense meeting the **Tribal Court's** criteria, and/or is subject to a probation violation the **Department** may postpone filing a probation report on the condition that the matter be filed in **Tribal Court** and that the **Offender** timely complete the participant contract agreement and any other conditions ordered by the **Tribal Court**, and agreed to by the **Department**, the **Offender**, victim, (if any) family members and other participating parties. The **Tribal Court** shall acknowledge in writing to the **Department** that it is including the matter in its docket. The **DA** may also offer deferment of filing a case so the matter maybe diverted pursuant to the same protocol. Any **Superior Court** referral will be handled pursuant to the procedure appropriate to the status of the referent in terms of where that offender is in the process.
7. Dismissal or Referral back to Department: the **Tribal Court** will report to the **Department** within the timeline agreed by the parties regarding the success of the **Offender's** compliance with his or her contract and orders. If the **Offender** has successfully completed his or her developed plan, the **Tribal Court** will join the **Department/DA** in seeking dismissal of the matter in **Superior Court** and dismissing the matter in the **Tribal Court**. If the **Offender** does not succeed

in completing his or her plan within the ordered timelines the **Tribal Court** may extend the timeline to allow for successful completion of the case plan or refer the adult back to the **Department/DA** for filing with the **DA's** office and sentencing, which may include incarceration.


8. Concurrent Jurisdiction: If a matter involving an **Offender** has already been filed in state court and the parties agree that disposition shall be determined in **Tribal Court**, jurisdiction with the **Tribal Court** shall be concurrent with the state court. However, nothing herein shall prevent the **Tribal Court** from petitioning to transfer jurisdiction of any case if it deems such action necessary. Both Courts can and may exercise jurisdiction, however the purpose of this agreement is to redress behavior that is not acceptable in either of our communities and the parties believe the best way to do that is to work together with certain **Offender(s)**. Nothing herein shall be construed as conferring jurisdiction where it does not exist nor to abdicate jurisdiction in any manner contrary to the law.
9. Cultural Component: **Tribal Court** shall order culturally appropriate services and case plan activities including a restorative justice component for all **Offenders**.
10. Tribal Court Appearances: **Department** personnel are not required to appear in **Tribal Court** but may do so to assist with setting the appropriate sanctions if requested by the **Tribal Court**, or the **Department** desires.
11. Legal Advocate: The **Tribal Court** shall appoint a Legal Advocate to assist with the work of implementing this agreement for **Offenders** in those cases the **Tribal Court** deems that such an appointment would be appropriate.
12. Case File: When the **Department** has verified that the **Tribal Court** has potential jurisdiction over the **Offender**, the **Department** will timely forward to the **Tribal Court** a copy of the police report, releases of information, any applicable assessments, accountability agreements, contact information of involved parties and any other relevant documentation.
13. Contact Information: The contact person for the Tribal Court is Jessica Carter, Tribal Court Programs Administrator. The electronic mailing address is [jcarter@yuroktribe.nsn.us](mailto:jcarter@yuroktribe.nsn.us) and the mailing address is:

Yurok Tribal Court  
P.O. Box 1027  
Klamath, California 95548

The contact person for the Department is **Tom Crowell**, Chief Probation Officer. The electronic mailing address is tcrowell@co.del-norte.ca.us and the mailing address is:


County of Del Norte  
Probation Department  
450 H. Street  
Crescent City, CA 95531

14. The **Tribal Court**, the **Department**, and the **DA** may develop protocols, procedures and/or forms to assist with implementation of this Agreement between them.
15. The **Tribal Court**, the **Department**, and the **DA** agree that the Tribal Court Programs Administrator, the **DA**, and the **Department** Chief, or the parties' specific designees, shall meet and attempt to resolve any issues that arise on any topics which are the subject of this Agreement, prior to termination of this Agreement. This Agreement may be modified with the written agreement of both sides.
16. Any nontribal party may require an appropriate time waiver from any person before his or her case is transferred or referred to the Tribal Court.
17. Nothing in this agreement shall be deemed a waiver by the Yurok Tribe of its sovereign immunity, rights, powers or privileges.
18. This MOU is meant to outline policies for voluntary cooperation among the parties. It does not confer any rights in third persons, and specifically not in defendants. Any party may withdraw from the MOU at any time and any case previously referred by a nontribal party will be transferred back to the withdrawing party at that party's request.

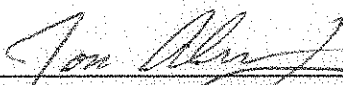
  
Thomas P. O'Rourke, Chairperson  
Yurok Tribe

8-27-12


Date

  
Hon. William H. Follett, Superior Court Judge  
Del Norte Superior Court


August 20, 2012  
Date

  
Jon Alexander, District Attorney  
Del Norte County


Date 8/16/2012

  
Sandra Linderman, Court Administrative Officer  
Del Norte Superior Court *Executive*

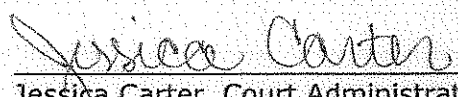
Date 8/30/12

  
Tom Crowell, Chief Probation Officer  
Del Norte County Probation Department

Date 8/10/12

  
Abby Abinanti, Chief Judge  
Yurok Tribal Court

Date 8/27/2012

  
Jessica Carter, Court Administrator  
Yurok Tribal Court

Date 8-23-2012

## **Appendix A**

*Violent Offender for such purposes means a person who:*

1. Is charged with of a felony offense that is punishable by a term of imprisonment exceeding one year or more during which the offense or conduct:
  - (A) the person carried, possessed, or used a firearm or dangerous weapon;
  - (B) there occurred the death of or serious bodily injury to any person; or
  - (C) there occurred the use of force against the person of another, without regard to whether any of the circumstances described in subparagraph (A) or (B) is an element of the offense or conduct; or
2. Has one or more convictions for a felony crime of violence involving the use or attempted use of force with the intent to cause death or serious bodily harm to another person.

## **Appendix B**

This MOU is meant to outline policies for voluntary cooperation among the parties. It does not confer any rights in third persons, and specifically not in defendants. Any party may withdraw from the MOU at any time and any case previously refereed by a nontribal party will be transferred back to the withdrawing party at that party's request.

Nothing herein shall be construed as conferring jurisdiction where it does not exist nor to abdicate jurisdiction in any manner contrary to the law.

Any nontribal party may require an appropriate time waiver from any person before his/her case is transferred or referred to the Tribal Court.

The foregoing provisions are to be incorporated into the MOU.