



National Judicial Opioid Task Force

Sample Court Transfer Agreement - State and Tribal Courts

The following document is designed and recommended for use in jurisdictions where state court judges – especially those who preside over adult drug court programs – operate in proximity to the location of a Tribal Healing to Wellness Court. Acknowledging that treatment and program outcomes are often more successful for American Indian/Alaskan Native offenders when they are provided interventions, accountability, and services that are culturally appropriate, some state court programs have entered into agreements with their tribal court colleagues who preside over Healing to Wellness Courts to allow for the transfer of adult tribal members who are arrested and/or criminally charged in state courts.

This document was initially created by Judge Gregory G. Pinski, a District Judge in Great Falls, Montana and Lauren van Schilfgaarde of the Tribal Law and Policy Institute. It has now been adopted and recommended by the National Judicial Opioid Task Force.

Note: The references in the document to “County Name” are designed to allow for the insertion of the appropriate state court entity or entities responsible for the adjudication, supervision, and treatment of adult offenders who have the authority to enter into such agreements on behalf of the jurisdiction. Because the structure of state courts, adult probation, and drug treatment and other service providers differ from state to state, the necessary parties must be identified and inserted as appropriate for each jurisdiction.

**Sample Memorandum of Understanding for
Tribal Healing to Wellness Court Case Transfer between**

[County Name]

and

[Tribe Name]

Section 1:

[Tribe Name] and [County Name] (“parties”) to this Agreement endorse the mission and goals of the [Name of Tribal Healing to Wellness Court] (“Wellness Court”) so that [Vision Statement] (e.g. Native participants may eliminate future criminal behavior, meaningfully engage with their community, and improve the quality of their lives). The parties recognize that for the Wellness Court mission to be successful, cooperation and collaboration must occur within a network of agencies and jurisdictions.

Section 2:

The parties to this Agreement support the following mission statement:

[Tribal Healing to Wellness Court Mission Statement]

Section 3:

The parties agree that there are ten tribal key components under which the respective agencies will work cooperatively. They are:

1. Wellness Court brings together alcohol and drug treatment, community healing resources, and the justice process by using a team approach to achieve the physical and spiritual healing of the individual participant, and to promote Native nation building and the well-being of the community.
2. Participants enter Wellness Court through various referral points and legal processes that promote tribal sovereignty and the participant’s due (fair) process rights.
3. Eligible court-involved substance-abusing parents, guardians, juveniles, and adults are identified early through legal and clinical screening for eligibility and are promptly placed into the Wellness Court.
4. Wellness Court provides access to holistic, structured, and phased alcohol and drug abuse treatment and rehabilitation services that incorporate culture and tradition.
5. Wellness Court participants are monitored through intensive supervision that includes frequent and random testing for alcohol and drug use, while participants and their families benefit from effective team-based case management.
6. Progressive rewards (or incentives) and consequences (or sanctions) are used to encourage participant compliance with the Wellness Court requirements.

7. Ongoing involvement of a Wellness Court judge with the team and staffing, and ongoing judge interaction with each participant are essential.
8. Process measurement, performance measurement, and evaluation are tools used to monitor and evaluate the achievement of program goals, identify needed improvements to the Wellness Court and 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 promote effective Wellness Court planning, implementation, and operation.
10. The development and maintenance of ongoing commitments, communication, coordination, and cooperation among Wellness Court team members, service providers and payers, the community and relevant organizations, including the use of formal written procedures and agreements, are critical for Wellness Court success.

Section 4: Agreement

The [**Tribal Court**] and the [**County Department**] AGREE to the following:

1. **Notification:** The **County Department** agrees to screen for American Indian/Alaska Native (“AI/AN”) adult offenders and to notify the **Tribal Court** in the event an offender that is enrolled with the **Tribe** is cited or arrested by the **County Department or State Law Enforcement**. The **District Attorney** (“DA”) agrees to screen for AI/AN adult offenders who might be diverted and notify the **Tribal Court**. The **Tribal Court** agrees to establish with the **DA** a confidential screening process using the offices of the Tribe’s enrollment, and to work with the **County Department** to review current files, including probationers for possible referral.
2. **Eligibility:** If an adult, tribal member offender is criminally charged with an offense, has a criminogenic assessment of high-risk to reoffend, and is flagged for potentially having a substance use disorder, the two jurisdictions may seek to coordinate disposition of the case in **Tribal Court** as set forth in this Agreement.
3. **Referral:** Cases to be considered include those cases that may come within any of the following:
 - a. Diversion by request of the **DA**
 - b. Pre-sentencing referral
 - c. Condition of probation
 - d. Probation violation
 - e. Referral by the **Superior Court**
4. **Information Sharing:** The **County Department** and **Tribal Court** will obtain written releases of information for general verbal communication regarding candidates and participants. The **County Department** will, as feasible, provide the **Tribal Court** with direct access to demographic and case information for adult referrals under **Tribal Court** jurisdiction subject to county confidentiality obligations.

5. Confidentiality: All parties shall maintain strict confidentiality over all physical and electronic case files and candidate/participant information pursuant to applicable Federal, Tribal, and State laws.
6. Assessments: The **County Department** and **Tribal Court** shall conduct a timely assessment and will make a joint determination regarding which jurisdiction will handle primary disposition of the participant cases.
7. Conditional Postponements: In circumstances where a participant has admitted to a type of offense meeting the **Tribal Court's** criteria, and/or subject to a probation violation the **County Department** may postpone filing a probation report on the condition that the matter be filed in **Tribal Court** and that the participant timely complete the participant contract agreement and any other conditions ordered by the **Tribal Court**, and agreed by the **County Department, participant, and victim**. The **Tribal Court** shall acknowledge in writing to the **County Department** that it is including the matter in its docket.
8. Jurisdiction: As a condition of entry into Wellness Court the participant must voluntarily agree to all conditions of the Wellness Court.
9. Case File: Upon the participant's entry into the Wellness Court, the **County 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.
10. Sanctions: The Wellness Court will have the authority to sanction the participant for any violation of Wellness Court requirements. Possible sanctions may include community service or incarceration. The Tribe will absorb any costs of sanctions for all participants, including those transferred pursuant to this agreement, including any incarceration costs.

[Or]

The Wellness Court will have the authority to sanction the participant for any violation of Wellness Court requirements. Possible sanctions may include community service or incarceration. If incarceration is recommended by the Wellness Court, a formal violation will be filed in **Superior Court**, which will thereby hold a hearing, determine an appropriate jail sanction if any, and absorb any jail costs therefrom.

11. Dismissal or Referral back to County Department: The **Tribal Court** will report to the **County Department** within the timeline agreed by the parties regarding the success of the participant's compliance with his or her contract and orders. If the participant successfully graduates from the Wellness Court, as determined by the **Tribal Court**, the **Tribal Court** will join the **Department/DA** in seeking dismissal of the matter in **Superior Court** and dismiss the matter in the **Tribal Court**. If the participant does not successfully graduate within the ordered timeline the **Tribal Court** may extend the timeline to allow for successful graduation. At any point, the **Tribal Court** may terminate the participant from the Wellness Court and refer the participant back to the

County Department/DA for filing with the **DA's** office and sentencing, which may include incarceration.

12. Cultural Component: **Tribal Court** may order culturally appropriate services and case plan activities including a restorative justice component for all participants.
13. Tribal Court Appearance: **County 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.
14. Legal Advocate: While the **Tribal Court** is not bound to provide defense counsel, the **Tribal Court** may appoint a Legal Advocate to assist participants in those cases the **Tribal Court** deems that such an appointment would be appropriate.
15. Contact Information:
Insert Tribal Court contact information and address.
Insert County Department contact information and address.
16. Policies and Procedures: The **Tribal Court** will operate the Wellness Court pursuant to its internal Wellness Court policies and procedures. The **Tribal Court**, the **County Department**, and the **DA**, may develop protocols, procedures and/or forms to assist with implementation of this agreement between them.
17. The **Tribal Court**, the **County 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.
18. Nothing in this agreement shall be deemed a waiver of either party's sovereign immunity, rights, powers or privileges.
19. This MOU is meant to outline policies for voluntary cooperation among the parties. It does not confer any rights in third person, 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 the party's request.

Signatures