

# JUSTICE REIMAGINED- JOINT JURISDICTIONAL APPROACH



# AGENDA

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Overview- What is a Joint Jurisdictional Court?

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Background- How it all started

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Reimagining Possibilities- Challenges are Opportunities

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Tips for Success- Lessons Learned from Joint Courts

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Resources to Replicate the Approach

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# OVERVIEW

## WHAT IS A JOINT JURISDICTIONAL COURT?

- Two Judges Hear Cases Together
- Under Laws of: Tribe, State, Federal Govt
- In Non-adversarial Setting
- Blending Tribal Healing to Wellness and Collaborative Court Approaches
- Family Wellness Team
  - Coordinates Tribal and County Services
  - Culturally Attuning Services
  - Tailoring them for each family

NOT JUST A TRIBAL HEALING TO  
WELLNESS COURT  
NOT JUST A COLLABORATIVE COURT

Jurisdiction is exercised jointly when a tribal court judge and a state or federal court judge come together to exercise their respective authority simultaneously, bringing together justice system partners and leveraging resources to promote healing and protect public safety.

## WHEN TO USE THE JOINT JURISDICTIONAL COURT APPROACH?

- When both sovereigns have jurisdiction
- When the judicial leaders believe they can reimagine a better way
- When there is some level of partnership readiness to work together

## REIMAGINE JUSTICE

Follow in the Footsteps of Other Judges' and Partners'

- Adult Drug Court (DUI/DWI)
- Juvenile- Diversion, Delinquency, Re-Entry
- Juvenile Dependency (also called Family Drug Court)
- Any Case Type.....

# WHERE ARE JOINT JURISDICTIONAL COURTS?

Alaska: Kenaitze Indian Tribe-Alaska Court System

## California

Shingle Springs Band of Miwok Indians – El Dorado County Superior Court

Yurok Tribe-Humboldt Superior Court/Del Norte Superior Court

Hoopla Tribe-Humboldt Superior Court

## Minnesota

Leech Lake Ojibwe- Cass County & Itaska County

White Earth Nation and Mahnomen County District Court

New York/Canada: St. Regis Mohawk-U.S. and Canadian courts

## Wisconsin

Ho Chunk Nation-Jackson County

Forest County Potawatomi-Forest County

## BACKGROUND

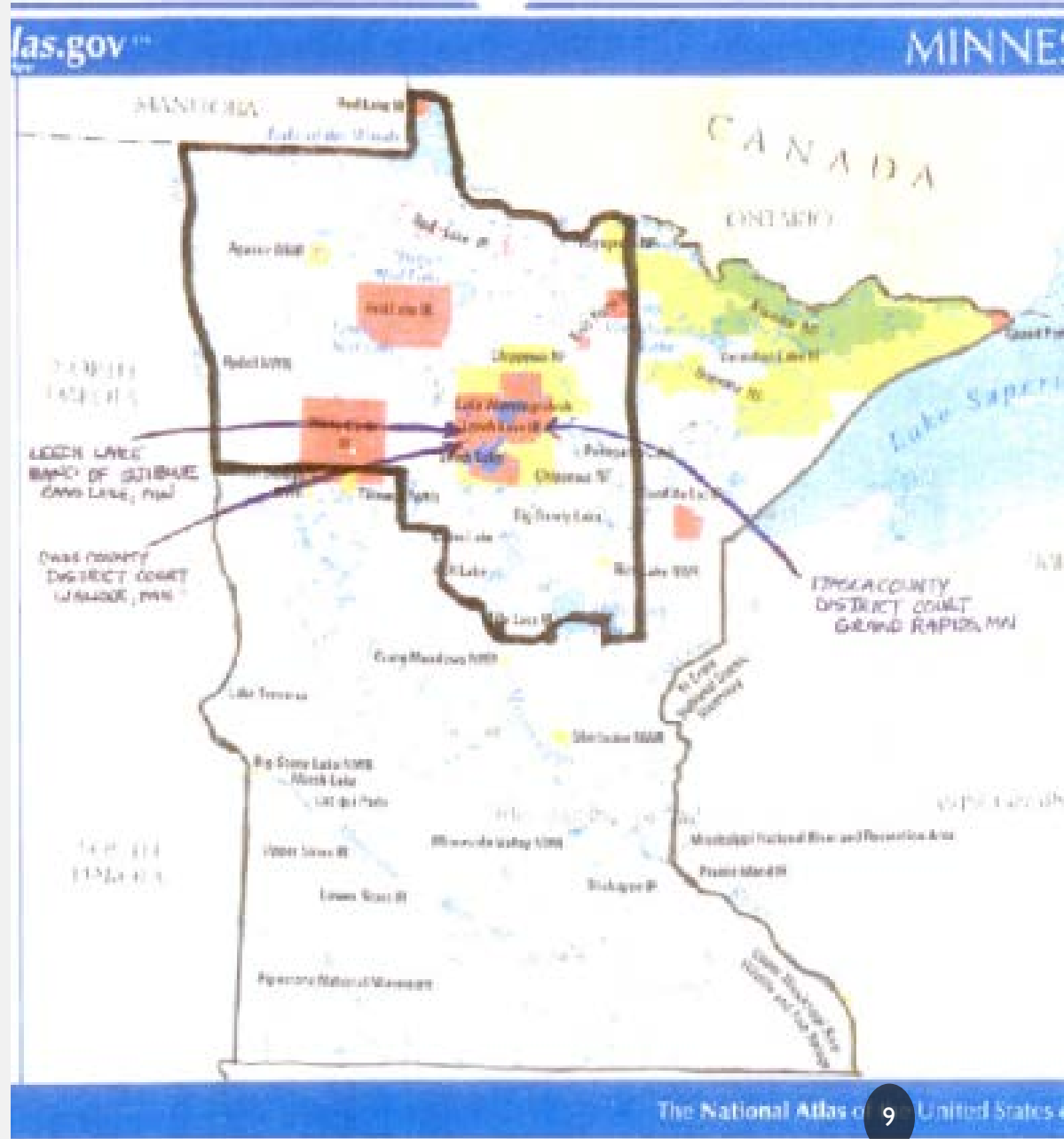
How it all Started

“Poverty, addiction,  
and hopelessness  
know no jurisdictional  
boundaries”



# MINNESOTA

- Public Law 280 State
- Native Americans overrepresented in juvenile and adult justice systems
- 21.7% of incarcerated youth are Native American



## **NATIVE AMERICANS ARE ONLY 2% OF MINNESOTA'S POPULATION, BUT....**

- HAS MORE NATIVE AMERICANS ON PROBATION THAN ANY OTHER STATE
- Account for 32% of all arrests in Northern Minnesota
- Make up 26% of the people on felony probation in MNDOC's Northern District
- Make up 47% of people on felony probation in the Ninth Judicial District

## LEECH LAKE BAND OF OJIBWE TRIBAL COURT

- 1970's established as Conservation Court
- 1980 added ICWA cases
- By 2006 handling civil, traffic, conservation, housing, dangerous dog, child protection, truancy, minor consumption, curfew
- 2009-10 added Tax Code, Family Law (divorce/custody), Probate
- No criminal codes – “building incrementally”
- Use of technology – Videoconferencing

## CASS COUNTY

- 2000-2005: 21% increase in felony DWI's
- Worst outcomes in state for children (9th graders)
  - 1st for sexually active teens
  - 2nd for out-of-home-placement and attempted suicides
  - 3rd for drinking and driving
  - 3rd for children living in poverty

## COMMON GOALS

- Reducing disproportionate minority contact
- Fewer children in out of home placement
- Addressing the epidemic of drug and alcohol abuse
- Reducing number of DWI's and traffic fatalities

## CASS COUNTY – LEECH LAKE WELLNESS COURT

- **First Joint Jurisdiction Court in the Nation-  
Cass County, replicated in Itaska County**
- Created in 2006 to address epidemic of alcohol-related crashes, deaths in Cass County
- Clients include Tribal Members and Non-Indians
- Holds Wellness Court sessions by ITV in Walker and Cass Lake
- Multi-jurisdictional, multi-agency participation
- Operated on handshake for over a year

**JOINT JURISDICTIONAL COURT**  
**OPEN TO TRIBAL MEMBERS AND NON-INDIANS**  
**LIVING ON LEECH LAKE RESERVATION**

## **FAMILY/DEPENDENCY CASES**

Child Protection Involvement in Tribal Court or State Court

## **JUVENILE DIVERSION CASES**

Cass County Probation Supervision Under Cross-appointment Order

Leech Lake Members are Diversion Board

Circle Format- Team and Family Problem-Solving Together

## **JUVENILE DELINQUENCY CASES**

Leech Lake Tribal Court Exercises Expanded Jurisdiction Over Parents

Leech Lake Tribal Court Case Managers Provide Services

Cass County Probation Supervision Under Cross-appointment Order

## **JUVENILE RE-ENTRY CASES**

Involuntary Placement in Inpatient Treatment or Juvenile Detention Facility

Cass County Probation Provides Risk/Needs Assessments and Notifies Leech Lake

Leech Lake Wraparound Care Coordinator/ Advocates Work with Youth/Family Before Placement and Upon Return

## WELLNESS COURT SUCCESS STORIES IMPROVED OUTCOMES BETTER TOGETHER

- Participants reunited with children/families
- Valid driver's licenses
- Employment/school
- Ending abusive relationships
- Participants have tens of thousands of days of documented sobriety between them
- Significant reduction in recidivism –
  - Leech Lake/Cass as low as 6.66% Leech Lake/Itasca 16%

(cf. Minnesota/National 60%+ & Millions of dollars saved in incarceration and out of home care costs)



REIMAGINING  
POSSIBILITIES

Challenges are  
Opportunities

“Challenges are what  
make life interesting.  
Overcoming them is  
what makes them  
meaningful.”

# NORTHERN CA EXPERIENCE

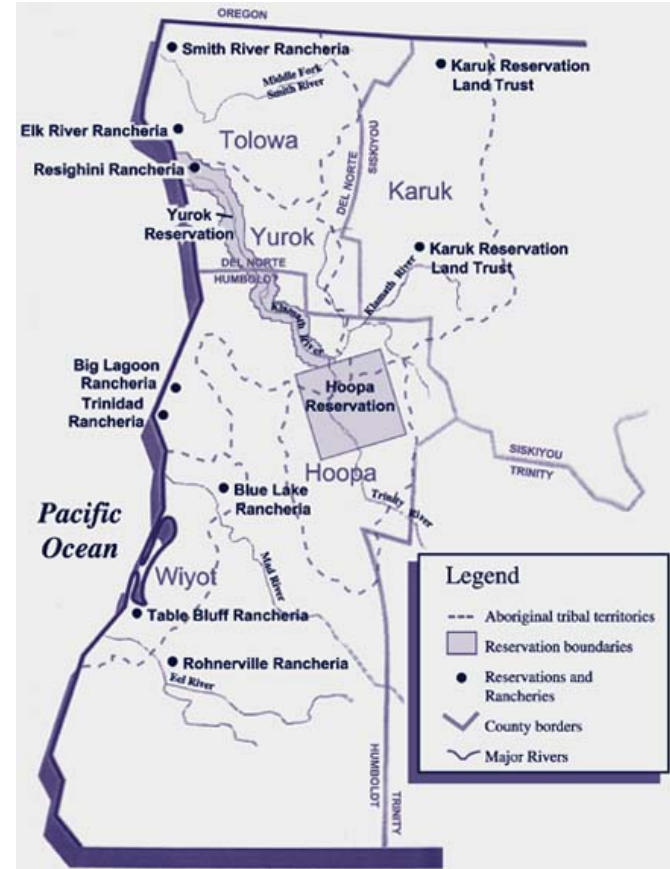
Northern CA Tribal  
Court Coalition  
(NCTCC)

Yurok-Humboldt First

Yurok-Del Norte

Hoopa-Humboldt

Karuk-Humboldt



## NORTHERN CALIFORNIA: CHOOSING THE CASE TYPE AND REPLICATING THE APPROACH



AREA OF MUTUAL CONCERN  
WOMEN, CHILDREN, FAMILIES  
INTERSECTION OF CHILD WELFARE AND  
SUBSTANCE USE

- **Antepartum maternal opioid use increased nearly 5-fold from 2000 to 2009** (hospital discharge codes study). SU is a major risk factor for pregnancy-associated deaths (MMRs)
- **NAS rates increased from 1.5 to 6.0 per 1,000 births** between 1999 and 2013. States with highest rates of opioid prescribing have highest rates of NAS.
- **MAT is treatment of choice** for OUD during pregnancy. Withdrawal is contraindicated. NAS expected and treatable.
- **Concerns about losing children:** Infants with NAS do better when they stay connected with their mothers. 24 states + DC consider SU during pregnancy to be child abuse, 23 states + DC mandatory reporting, 7 states require drug testing if suspect OU.
- Women more likely to enter treatment, stay in treatment, and maintain abstinence if they can **stay with their children**

## FUNDING TO ADDRESS REGIONAL ISSUES

- CA Judicial Council Innovation Grant
- CAPTA Dollars through the Children's Bureau (QIC Grant)
- Regional Issues
  - Massive overprescribing
  - Hot spot for rate of opioid deaths
  - Lack of access to SUD treatment- shortage of local services, no follow-up after residential treatment, and stigma/shame prevents access to prenatal care
  - Isolation- geography, no internet in some areas, no telemedicine
  - Transportation
  - Few/no jobs
  - Other

## PARADIGM SHIFT

### **Current State/County Justice Systems- generally**

- Lack of access to culture/spirituality and to our home communities
- Higher percentage of alcohol and drug related behavior resulting in imprisonment.
- Overreliance on child removal, pushing kids out and punishment
- Overreliance on incarceration and lack of a therapeutic approach to justice

IN CALIFORNIA WE ARE MAKING A SHIFT AND  
DESIGNING NEW LOCAL JUSTICE SYSTEMS THAT  
EMPOWER FAMILIES

- Respect for different traditions
- Healing individual and community trauma
- Access to tribe-specific culture/spirituality in our home communities
- Move away from punishment to healing
- Move away from supporting our families in silos to a coordinated team/extended family approach
- Conclusion: We have been facing the wrong way!

HOOPA-  
HUMBOLDT  
JOINT  
JURISDICTION  
COURT





## LEGAL CONTEXT

### WHAT CAN HAPPEN WHEN TWO JUDGES EXERCISE JURISDICTION CONCURRENTLY?

- Under PL 280, state courts in California generally have jurisdiction over dependency cases involving Indians and Indian children, even if the events occur in Indian country.
- However, this jurisdiction is affected by the requirements of the Indian Child Welfare Act (ICWA) and the fact that Tribes may also exercise jurisdiction over these matters.
- Under ICWA (25 U.S.C. § 1911), Tribal jurisdiction is exclusive where a child is already the ward of a tribal court. ICWA recognizes presumptive Tribal jurisdiction over cases involving Indian children who are not already wards of a tribal court and requires full faith and credit for and between tribal and state courts

## CHILD WELFARE CONTEXT WHY FOCUS ON SUBSTANCE ABUSE?

- **There is a consistent link between child welfare issues and substance abuse in the family-80-90%**
- Children in the child welfare system whose parents have substance abuse problems are
  - Younger than other children in the system
  - More likely to be the victims of neglect rather than abuse
  - More likely to be placed in foster care rather than served while remaining at home.

## CHILD WELFARE CONTEXT DOMESTIC VIOLENCE

- High prevalence of exposure in child welfare cases
- Children often the hidden or silent victims
- Immediate Impacts: generalized anxiety, sleeplessness, nightmares, difficulty concentrating, high activity levels, increased aggression, increased anxiety, intense worry, school performance affected
- Long-term Impacts: physical health problems, behavior problems in adolescence (delinquency, alcohol/drug abuse), emotional difficulties in adulthood (depression, anxiety, PTSD)
- Overall: can learn destructive lessons about use of violence/power in relationships

## WHAT DOES THE SCIENCE TELL US? TREATMENT WORKS!

- Rate of abstinence from drugs of abuse is comparable to medication compliance in diabetes and hypertension
- Brief interventions in pregnancy are as effective as traditional treatment modalities.
- Interventions in prenatal care setting significantly reduce rates of low birth weight, prematurity, newborn seizures, NICU admissions, infant mortality, and long term intellectual disabilities in the child
- Early intervention for children affected by prenatal substance exposure significantly enhances the child's long-term developmental trajectory
- Interventions attuned to protective factors, like community and culture builds resilience and improves outcomes.



## HOW TO MAKE IT WORK

- Tribal Engagement
  - Council and Community
- County Engagement
  - Breaking down Siloes
- Tribal/County Relationships
  - Stakeholder meetings
  - Keeping eye on the prize with focused action planning
  - Addressing challenges

## KEY COMPONENTS

- Identifies Families Early
- Provides Timely Access to Assessment and Treatment Services
- Uses Treatment Strategies That Have Proven Successful
  - Family Mentors
  - Evidenced-based and trauma-informed
  - Culturally attuned treatment services for parents, children, and families, tapping their resiliencies by strengthening their connection to their tribes

## KEY COMPONENTS CONTINUED

- Frequent Two Judge Contact with Families
  - Single biggest influence on the success of participation
- Therapeutic and Motivational Responses
  - Parents have a brain disorder that influences their thinking and actions
  - We know they are going to mess up, but “we are there to catch them when they stumble”
- Tribe-Specific and Culturally Appropriate Responses
  - Based on phase of program and length of sobriety
  - Informed by tribal values
  - Tailored for each family with the family

## GOALS AND ACCOMPLISHMENTS

- Tribal/County relationships are strengthened
- Tribal Sovereignty is better understood and strengthened
- Title IVE Agreements are advanced
- Cultural/Community ties are reconnected and strengthened
- Evidenced-based practices are tailored for each community
- Silos are broken down across departments in a County and inter-jurisdictionally between the Tribe and County
- Leveraged services and new services— Road to Resilience



## TIPS FOR SUCCESS

Lessons Learned from all  
Joint Jurisdictional Courts

- Joint jurisdiction goes beyond collaboration to create a new type of system
- Collaboration is more than cooperation
- Collaboration between governments starts with relationships between two or more people sharing common goals

## TIPS FOR SUCCESSFUL COMMUNICATION

- Strong facilitation helps get things off the ground
- Establish ground rules for communication
- Establish mutual understanding, trust, and respect by
  - Being open, inclusive, patient, and flexible
  - Sharing ideas and success stories
- Conflict is a reality
  - Seek areas of agreement and stay focused on results
  - Agree to disagree – healthy disagreement builds better decisions
  - Assign a final decisionmaker if the team fails to reach consensus

## TIPS FOR PLANNING

- Map the current system and be realistic about the services the court can provide
- Identify opportunities for improvement
- Measure results: “what gets measured, gets funded”
- Let the planning team create – people support what they help create
- Be persistent and always reinforce common goals and common vision
- Don’t be afraid to try something new
- Ensure local needs determine court structure and that planning team members understand various applications of joint jurisdiction courts
- Plan for transitions of leadership and staff by creating “warm hand-off” to support successors

## TIPS FOR INCORPORATING CULTURE

- Ensure culture and its healing properties are incorporated into the planning, development and implementation of the court structure
- Educate team on the Tribe-specific history and culture
- Educate team on best practices, which include those that are evidenced-based and draw upon the protective factors that belonging to a community provides and has been documented with Tribal communities

## WHEN THINGS GET TOUGH

- Remember...change is hard
- Systems don't collaborate, people do
- Helpers have their own histories of trauma  
– acknowledge it, own it, and work on it
- Focus on common goals
- **DON'T GIVE UP!!!!**

# GETTING THERE TOGETHER

Our mothers  
Our infants  
Our families  
Our communities



## RESOURCES AND DISCUSSION

Healing to Wellness  
Collaborative Courts  
Joint Jurisdiction  
Trauma Informed  
Practices  
Indigenous Healing



## HEALING TO WELLNESS & COLLABORATIVE COURTS

Tribal Healing to Wellness (produced by Tribal Law and Policy Institute) and Family Dependency Treatment Courts (produced by CA Association of Collaborative Courts and American Bar Association)

- [www.wellnesscourts.org/tribal-key-components/index.cfm](http://www.wellnesscourts.org/tribal-key-components/index.cfm)
- [www.ca2c.org/defining-drug-courts-ten-key-components/](http://www.ca2c.org/defining-drug-courts-ten-key-components/)
- <https://cff-cav56vrdcl.netdna-ssl.com/wp-content/uploads/2018/07/Seven-Common-Ingredients-for-Family-Treatment-Courts.pdf>



## FAMILY DEPENDENCY TREATMENT COURTS

- Tutorials produced by the National Center for Substance Abuse and Child Welfare
  - [Tutorial 1: Understanding Child Welfare and the Dependency Court: A Guide for Substance Abuse Treatment Professionals](#)
  - [Tutorial 2: Understanding Substance Use Disorders, Treatment, and Family Recovery: A Guide for Child Welfare Professionals](#)
  - [Tutorial 3: Understanding Substance Use Disorders, Treatment, and Family Recovery: A Guide for Legal Professionals](#)

## JOINT JURISDICTION COURTS

- The New Face of Justice: Joint Tribal-State Jurisdiction, Washburn Law Journal (Vol. 47, No. 3, Spring 2008)
- Building a Legacy of Hope: Perspectives on Joint Tribal-State Jurisdiction, William Mitchell Law Review (Vol. 36 , Issue 2, 2010)
- “Joint Jurisdiction Courts:A Manual for Developing Tribal, State & Federal Justice Collaborations” (2nd Edition) Available at [www.walkingoncommonground.org](http://www.walkingoncommonground.org)

## TRAUMA-INFORMED PRACTICES

- Trauma-Informed Practices and Tribal Families produced by SAMHSA  
<https://ncsacw.samhsa.gov/resources/trauma/tribal-families-and-trauma-exposure.aspx>
- National Child Traumatic Stress Network (NCTSN)

# INDIGENOUS HEALING

Produced by Capacity Building Center for Tribes:  
<https://www.youtube.com/playlist?list=PLR4JDLysJ7WOiKV9DRP5IWolII7TaKlek>

[1. We Are All Connected](#)

[2. Individual & Family Healing](#)

[3. Community & Organizational Healing](#)

Indigenous Cultural Wellbeing Measures Literature Review, compiled by Lisa G. Dirks, Southcentral Foundation (2016)

THANK YOU!

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