

Chapter 32: Peacemaking Courts

[32.1] Overview

There are about thirty-four tribes that currently have peacemaking courts. Some focus on youth and family, while the majority of peacemaking courts are for both adults and youth and families. Historically, tribes dealt with disputes according to their own customs and traditions. Peacemaking courts are seen as a way to continue or reassert those traditional means of dealing with conflict and disputes. Many tribes organized peacemaking courts in the 1990s. Peacemaking courts are often led by respected members of the tribe and are not necessarily led by a judge. Peacemaking allows for all parties to come together, discuss problems, voice their perspectives and concerns, and eventually come to a resolution. The goal is to restore balance and harmony to the community through consensus and personal responsibility.

We include a chapter on peacemaking courts as an example of working with youth to demonstrate their role in the community and to take responsibility for their actions. Often peacemaking can supplement tribal court sentences and can be used in conjunction with probation. If the issue that brings the youth into court is not too serious or it is the first court appearance, then a peacemaking court may be the only venue necessary to resolve the issue.

[32.2] Tribal Code Examples

Little River Band of Ottawa Indians

Peacemaking Guidelines

Section 1. Establishment of Odenaang Enjinoojimoying (A Place of Healing Many Hearts)

1.01 The Tribal Government of the Little River Band of Ottawa Indians has established a Peacemaking System to be used in cooperation with the present court system for cases involving minors and adults. Cases can be referred to Peacemaking through tribal courts, state courts, any federally recognized tribe, any historic tribe or Anishinaabek of the Three Fires, or employees of the Little River Band of Ottawa Indians.

Section 2. Vision Statement

2.01 The vision of Odenaang Enjinoojimoying is to provide a traditional conflict resolution process for children, families, and tribal employees. This process of applying traditional

values to alternative dispute resolution will focus on promoting the resolving of a problem or dispute and the healing between participants to restore their relationship.

Section 3. Philosophy

3.01 The peacemaking setting is much different from state court proceedings. Unlike the state court system, which is divisive by its nature and involves a judge or jury making the decisions for others, Peacemaking encourages people to solve their own problems. Peacemaking sessions are conducted by two Peacemakers: one male and one female to create balance. Peacemaking involves (1) discussing issues in a respectful manner; (2) assisting individuals with understanding and accepting responsibility for his/her wrongdoings; (3) promoting healthy relationships; and (4) working with participants to plan and make group decisions about future actions. Planning, respect, and consensus in Peacemaking sessions replace imposed decisions that use punishment to correct behavior. Rather than judge people, peacemaking addresses bad decisions and their consequences and substitutes healing in place of force.

Section 4. Purposes of Peacemaking

4.01 Little River Band of Odawa Indians Peacemaking Department encourages people to solve their own problems in a safe environment. In Peacemaking, decisions are reached through discussing the wrongdoing of the child, a family member, or a tribal employee, and any other underlying issues. In a Peacemaking session, the Peacemakers will use their knowledge and draw from the customs and traditions of the Anishinaabek. The Peacemakers will strive to achieve a setting that will (1) allow active participation from parents and families whose children are in trouble; (2) provide an environment for the wrongdoer to take responsibility for his/her wrongful behavior; (3) provide an environment that is safe for victims and wrongdoers to work out problems and begin the healing process; and (4) assist in locating traditional practices and teaching and community based services to children, youth, families, and others.

Section 6. Eligibility and Request for Peacemaking

6.01 Individuals for peacemaking include children, youth, adult tribal members, and tribal employees.

- (a) Children and youth who have a case pending, and adults who have a civil case pending before the Little River Band of Ottawa Indians Tribal Court.
- (b) Children and youth who have a case pending, and adults who have a civil case pending before another tribal court.

- (c) Children and youth who have a case pending, and adults who have a civil case pending before the state court in Michigan.
- (d) Members of a federally recognized tribe, state historic tribes, or any Anishinaabek who would like to voluntarily become a participant can assist in the Peacemaking process.
 - (1) Examples of possible Peacemaking session could include but not be limited to the following situations involving children, youth, adult tribal members, and tribal employees.
 - (1.1) Child in need of care.
 - (1.2) Delinquent offenders who have committed minor offenses.
 - (1.3) Youth, and adults referred to Peacemaking from another federally recognized tribe.
 - (1.4) Referral from the Case Intake Team (CIT) explained further in the Juvenile Code.
 - (1.5) Representatives from other outside agencies, i.e., school, and nontribal social services referrals.

6.02 Peacemaking may hear the following type of cases.

- (a) All children and youth who are facing a status offense or a nonstatute offense in the Little River Band of Ottawa Indians Tribal Court System. If another tribal court or state court request that a case be transferred to Peacemaking. Also adult civil cases.
 - (1) **Status Offense:** a violation of criminal law due to the person's status as a minor. Examples include truancy, minor in possession of alcohol, and incorrigibility.
 - (2) **Nonstatus Offense:** all crimes that are considered felonies or misdemeanors regardless of a person's age. Examples include shoplifting, larceny, and assault.
 - (3) **Civil Cases:** involves disputes, conflicts, and/or a wrongdoing committed between private individuals and/or organizations. Examples include contracts, divorce, and personal injury.
 - (4) Individuals who voluntarily seek the services of Peacemaking.

(Sections omitted)

6.05 Case Intake Team

The CIT is multidisciplinary group and they shall convene on a regular basis to determine if the case should (1) be delayed for prosecution in order to develop and implement an appropriate plan or (2) if it should be forwarded for prosecution in the Tribal Court.

6.07 Review

The CIT shall review the juvenile's progress every thirty (30) days. If at any time the CIT concludes that the juvenile is not working toward the goals of the plan, the CIT shall ask the Presenting Officer to file a petition for formal adjudication.

Section 8. Peacemaking Cases.

8.01 Steps in Peacemaking Sessions.

The following is a guideline to conduct a Peacemaking session. Alternative Dispute Resolution (ADR) may be used upon the participant request. The Peacemaking Session will follow these steps:

- (a) **Smudging.** The peacemakers will begin the session by smudging.
- (b) **Prayer.** The session will open with a prayer that is appropriate for the participants and the occasion. A peacemaker may lead the prayer or designate any person to open with the prayer.
- (c) Preparatory Instructions.
 - (1) **Introductions.** All of the participants will introduce themselves and the Peacemakers will explain the following ground rules:
 - (2) **Rules.** Describe the ground rules that all participants must follow during the Peacemaking session.
 - (2a) Peacemaking sessions are voluntary.
 - (2b) Listen with respect.
 - (2c) It is okay to disagree. There will be no name calling or personal attacks. (No cussing.)
 - (2d) Each participant will get a chance to speak, there will be no interrupting.
 - (2e) Speak for yourself and not as the representative of any group.
 - (2f) Explain that judges and lawyers have no direct role in the Peacemaking session.

- (2g) Peacemaking participants will comply with the peacemaking agreement. If they fail to follow the agreement, the Tribal Court shall enforce the agreement through a court order.
- (d) Some or all of the participants may decide that they do not want a traditional peacemaking session, and opt for an ADR session. The rules for an ADR session are the same; however the Anishinaabek customs and traditions will be absent. The participants' decision shall be respected.

8.02 Confidentiality.

Confidentiality is what builds the trust and the respect for the peacemaking process. A strict confidentiality policy shall be adhered to. Aside from the peacemaking agreement, the documents and case files are confidential. As mandatory reporters of suspected child abuse, the peacemakers are required to disclose the information to proper authorities.

8.03 Record Keeping.

All juvenile and adult Peacemaking files and records shall be destroyed six (6) months after completion and discharge from peacemaking. If the peacemaking file is part of a condition of probation, the file will remain in the probation file until the youth reaches the age of eighteen, at that time all documents, records, and case files will be destroyed.

8.04 Peacemaking Objectives.

Each participant is encouraged to discuss their issue, problems, or conflict openly. The Peacemakers will facilitate the discussion and ensure that there is balance. The Peacemakers will create a safe environment of Respect, Humility, Truth, Empathy, Trust, and Forgiveness.

- (a) The objectives are to reveal the issues, problems, or conflicts to make it clear, so the participants will be able to understand, and start to resolve the issues.
- (b) Restate the purpose of the Peacemaking Session, and what the participant's roles and objectives are in this process.
- (c) Anishinaabek traditions and customs will be used to assist in the process. Developing strategies and different approaches to resolve the issues will help the participants in creating an agreement that will be beneficial to all parties involved.
- (d) Be specific about times, dates, functions, and assignments of what each person's responsibilities are, and what they will do to satisfy the agreement.
- (e) Ensure that all participants are heard and their ideas considered, and that the session is productive and constructive.

Little River Band of Ottawa Indians

Juvenile Code

Section 4. Components and Process.

4.01 Components.

- a. **Creation of the Case Intake Team.** The Case Intake Team (CIT) is created the purpose of assisting juveniles, their families, and the community at the earliest point of intervention. The Case Intake Team shall promote the stability and security of the Tribe and its families by fully exercising the Tribe's rights and responsibilities under this Code and the Indian Child Welfare Act of 1978 (25 U.S.C. § 902-1963). *See Section 6 of this Code.*
- b. **Creation of Peacemaking.** Peacemaking is created in this Code for the purpose of providing a traditional conflict-resolution process to children, youth, and families. The vision of Peacemaking is to provide opportunities for resolution and healing to the parties involved, which will promote healthier lifestyles and relationships. See Odenaang Enjinoojimoying ("*A Place of Healing Many Hearts*")—the *Peacemaking Guidelines*.

4.02. Process.

The process explained in this section provides a broad overview of this Code. All other provisions in this Code that appear to be in conflict with this Section shall govern.

- a. The Presenting Officer shall determine the type of offense (status or nonstatus) that the juvenile allegedly committed and if it falls under the jurisdiction of the Tribe. If the case falls under Tribal jurisdiction, the Presenting Officer shall forward it to the Peacemakers or Case Intake Team. See Odenaang Enjinoojimoying—*Peacemaking Guidelines* and Section 6 of this Code.
- b. The following cases shall be immediately referred to the Peacemakers:
 1. When a case represents the juvenile's first appearance before the Little River Band of Ottawa Indians' Children's Court on a status offense. This section applies regardless of whether the juvenile has committed a status and/or nonstatus offense in another court in the past.
- c. All other cases shall be forwarded to the Case Intake Team who shall forward it to the appropriate investigator. The investigator shall investigate the allegations and write a report that shall include recommendations. This report will then be presented to the Case Intake Team.

- d. The Case Intake Team shall convene on a regular basis and determine if the case should: (1) be investigated; (2) be delayed for prosecution in order to develop and implement an appropriate plan; or (3) be forwarded for prosecution in the Tribal Court.
- e. If the case is not immediately referred to the Tribal Court, the Case Intake Team shall develop an appropriate plan for the juvenile and/or family and review it on a regular basis. The plan may include Peacemaking sessions and counseling sessions.
- f. A case shall be referred to the Court for adjudication if rejected by the Case Intake Team or within nine months of when the alleged inappropriate behavior occurred. *See Section 11.03(b) of this Code.*

(Sections Omitted)

Section 8. Peacemaking.

8.01. Guidelines Governing Peacemaking.

The Tribal Judiciary shall promulgate the guidelines governing Peacemaking. *See Odenaang Enjinoojimoying—Peacemaking Guidelines.*

8.02. Cases to Be Heard.

The Peacemakers have the authority to hear:

- a. all juvenile cases involving a first-time status offense in the Little River Band of Ottawa Indians Tribal Court system;
- b. all other cases referred by the Case Intake Team;
- c. all other cases that are referred by the Tribal Court; and
- d. cases from persons requesting to voluntarily access Peacemaking.

8.03. Case Denial.

Peacemakers have the right to refuse any case after it has been referred and denied in writing by two Peacemaking groups. *See Odenaang Enjinoojimoying—Peacemaking Guidelines.*

Northern Arapaho Nation

Title 7. Peacemaker Code

SECTION 103 Establishment of Peacemaker Court.

The Peacemaker Court of the Northern Arapaho Nation is hereby established as a department of the Shoshone and Arapaho Tribal Court (“Tribal Court”) of the Wind River Indian Reservation, Wyoming. The chief judge of the Tribal Court shall supervise the activities of the Peacemaker Court and shall exercise supervisory control over any Peacemaker appointed pursuant to these rules.

SECTION 104 Scope.

Subject to the limitations under Section 203, a judge of the Tribal Court may appoint a Peacemaker in a community where the parties to the dispute are members of the Northern Arapaho Tribe, or Indians residing on the Wind River Indian Reservation, Wyoming, or where the matter in dispute involves certain personal and community relationships including, but not limited to, the following:

- (a) Marital disputes and disputes involving family strife;
- (b) Disputes among parents and children;
- (c) Minor disputes between neighbors as to community problems such as nuisances, animal trespass or annoyance, disorderly conduct, breaches of the peace and like matters;
- (d) Alcohol use or abuse by family members or neighbors;
- (e) Conduct causing harm, annoyance, or disunity in the immediate community;
- (f) Minor community business transactions of a sum of \$1,500 or less; and
- (g) Any other matter which the chief or associate judge of the Tribal Court finds should or can be resolved through the use of the Peacemaker Court.

(Sections Omitted)

SECTION 202 Powers of Peacemakers.

Peacemakers are officers of the Tribal Court when acting as a Peacemaker and performing the functions of the Peacemaker Court under these rules, and they shall have the privileges and immunities of court officers. Peacemakers shall have the power to:

- (a) Mediate disputes among persons involved in the peacemaking process by attempting to get them to agree as to the nature and scope of the problems affecting them and to agree on what should be done to resolve those problems;

- (b) Use traditional Northern Arapaho culture and other ways of mediation and community problem solving;
- (c) Instructor lecture individuals on the traditional Northern Arapaho teachings relevant to their problem or conduct;
- (d) Compel persons involved in a dispute, affected by it, or in any way connected with it, to meet to discuss the problem being worked on and to participate in all necessary peacemaking efforts; and
- (e) Use any reasonable means to obtain the peaceful, cooperative, and voluntary resolution of a dispute subject to peacemaking. No force, violence, or the violation of rights secured to individuals by the American Indian Civil Rights Act will be permitted.
- (f) If parties to a dispute agree in writing or orally before the Tribal Court, a Peacemaker may arbitrate a dispute by hearing all sides of it and then issuing a decision. Any such decision will have the effect of a court judgment when submitted to the Tribal Court for entry as a written judgment. Such decision may be appealed pursuant to the rules of the Tribal Court regarding civil appeals.

SECTION 203 Limitations; Peacemakers Not Judges.

Peacemakers shall only have the authority to use traditional and customary Northern Arapaho methods and other accepted nonjudgmental methods to mediate disputes and obtain the resolution of problems through agreement. Peacemakers shall not have the authority to decide a disputed matter unless all parties to the dispute agree to such authority. Appointed Peacemakers shall not have authority to hear any appeal from any decision of:

- (a) The Northern Arapaho Business Council;
- (b) The Tribal Court including, but not limited to, any appeal from a final decision of the Tribal Appellate Court;
- (c) Employers, when the decision of the employer is regarding any rights or obligations of the employer or employee governed by personnel policies or procedures of the employer.

(Sections Omitted)

PART 600 — TRANSFER OF CASES FROM TRIBAL COURT TO PEACEMAKER COURT

SECTION 601 General Policy.

Certain civil and criminal actions in Tribal Court may be transferred to the Peacemaker Court where they fall within one of the kinds of matters within the jurisdiction of the Peacemaker

Court described in Sec. 104, or where it is in the interest of justice to make such a referral for good cause shown.

SECTION 602 Civil Matters.

Civil actions falling within the provisions of Sec. 104 may be referred to Peacemaker Court with the written stipulation of all the parties to the action or for good cause shown to the Tribal Court.

SECTION 603 Criminal Matters.

Any criminal matter may be transferred to the Peacemaker Court where:

- (a) The case does not involve injury to a person or property;
- (b) Where the victim to the alleged offense consents;
- (c) Where the offense is a victimless crime; or
- (d) Where there is a finding of guilty, the victim consents to peacemaking, and peacemaking would be an appropriate condition of probation for achieving harmony and reconciliation with the victim.

SECTION 604 Criminal Probation.

The Tribal Court may, as a condition of criminal probation, require the defendant to submit to the Peacemaker Court for traditional and customary counseling, instruction, and lectures appropriate to his or her offense. The Tribal Court may require the defendant to pay a reasonable fee as required of other parties before the Peacemaker Court pursuant to Section 307.

SECTION 605 Transfer on Condition.

Any case may be transferred to the Peacemaker Court on any reasonable condition, with a stay of proceedings before the Tribal Court, and the Tribal Court may reassume jurisdiction over a case upon breach of or the failure to satisfy any condition imposed.

Navajo Nation

Title 7. Courts and Procedure: Chapter 3. Judicial Branch: Subchapter 10. Navajo Nation Peacemaking Program (Hózhóójí Naat'áanii) *

7 NAVAJO CODE § 409

§ 409. Establishment

It is hereby recognized and affirmed that there is a Navajo Nation Peacemaking Program (Hózhóójí Naat'áanii) within the Judicial Branch of the Navajo Nation. The Peacemaking Program shall be the central point of peacemaking information and coordination with the Navajo Nation Judicial Branch.

§ 410. Purposes

The purposes of the Navajo Nation Peacemaking Program include to promote a nonadversarial forum for solving disputes where the parties to the dispute voluntarily agree or are referred to peacemaking; to promote peacemaking counseling services to clients of the Navajo Nation Courts; to promote peacemaking support and assistance to Navajo Nation Courts when requested to make recommendations on sentencing; to provide education and training on Navajo culture, traditions, and other Navajo accepted beliefs to individuals, organizations, and communities; to provide support and technical assistance to peacemakers; to promote the research, development, and learning of Navajo culture, traditions, and other Navajo-accepted beliefs in support of judicial and community programs; and to provide problem-solving assistance to peacemakers, judges, court staff, and others concerning the peacemaking process. Peacemaking is intended to promote healing and reestablish harmony among those persons participating in peacemaking.

§ 411. Responsibility and Authority

The Navajo Nation Peacemaking Program shall have the authority and power to undertake the following functions and duties:

- A. To conform the procedures of Hózhóójí Naat'áanii to traditional Hózhóójí Naat'áanii concepts, including K'é, clanship, and other principles of Navajo culture, traditions, and other Navajo-accepted beliefs, establish standards and procedures for that process, and otherwise develop standards, principles, and procedures for the development of Hózhóójí Naat'áanii in accordance with Navajo culture, traditions, and other Navajo-accepted beliefs and the laws of the Navajo Nation.
- B. To maintain a list of peacemakers and provide technical support to peacemakers to facilitate the conduct of peacemaking.

- C. To periodically evaluate the techniques of peacemakers and the peacemaking process.
- D. To authorize peacemakers to enter into funding agreements with the Judicial Branch for mileage and training.
- E. To perform such other functions and duties that are in accordance with Navajo Nation law and purposes of the Navajo Nation Peacemaking Program and that will promote the practice of peacemaking.

§ 412. Personnel

The Navajo Nation Peacemaking Program shall be administered by a Peacemaking Program Coordinator. All personnel, including the coordinator, shall be subject to Navajo Nation Judicial Branch personnel policies and procedures approved by the Judiciary Committee of the Navajo Nation Council.

§ 413. Legislative Oversight

The Navajo Nation Peacemaking Program shall operate under the legislative oversight of the Judiciary Committee of the Navajo Nation Council pursuant to the powers granted that Committee in 2 N.N.C. § 571 et seq. The Navajo Nation Peacemaking Program shall operate pursuant to a Plan of Operation approved by the Judiciary Committee of the Navajo Nation Council.

* Not available online as of May 2015.

[32.3] Tribal Code Commentary

The tribal statutes highlighted provide examples of things to consider when structuring a peacemaking court.

Establishing Peacemaking Courts

The Little River Band of Ottawa Indians (“Little River”) has a specific “Peacemaking Guidelines” code and also covers peacemaking courts in their Juvenile Code. In Section 1.01 the peacemaking guidelines (“guidelines”) explain that the peacemaking court can be used in conjunction with the current court system. It also states that both juveniles and adults can participate. The Northern Arapaho Nation (“Northern Arapaho”) explains in Section 103 that the peacemaking court operates under the tribal court. Similarly, the chief judge may exercise oversight of the peacemaking court. In Section 409 of the Navajo Nation Code (“Navajo”) the peacemaking court is established within the Navajo Nation Judicial Branch.

It is up to your tribe to decide how much oversight the judicial branch has over the peacemaking court and the details of how it operates within your tribal government.

Vision, Philosophy, Objectives, and Purpose of Peacemaking

In the Little River guidelines Section 2.01, the vision includes working with children, which is important because it reaffirms the tribal commitment in using the peacemaking process to assist juveniles. It is also important to note that the tribe uses traditional conflict resolution and values in the process. Similarly, the focus is on resolving issues and healing. It is important to have these, or similar, terms memorialized in the code because it demonstrates the tribes' support of such programs.

The Little River peacemaking court philosophy is stated in Section 3.01. It explains how the peacemaking process is different from state court in that peacemakers do not judge the participants. In addition, the peacemaking system is not adversarial like Western courts. The peacemakers assist the participants to solve their own problems. It also emphasizes the importance of respect and healing.

In Section 4.01 of the Little River guidelines the tribe explains the purposes of peacemaking. The goal is to have participants solve their own problems. In doing so, “the wrongdoer” takes responsibility and all can heal; in addition, traditional practices and community services are sought out for the participants. Within Navajo code Section 410, the Nation explains its purposes of peacemaking within its jurisdiction. The peacemaking program is not adversarial and may make sentencing recommendations to the Navajo Nation Courts. The peacemaking program provides education and training on Navajo culture, traditions, and teachings to participants. The program seeks to promote healing and harmony to its participants. Both of these programs emphasize the nonadversarial nature of the peacemaking process and the importance of traditional culture.

Under Section 8.04 of the Little River guidelines, the peacemaking court objectives are to reveal the issues, problems, or conflicts to make it clear, so the participants will be able to understand and start to resolve the issues. The objectives are met by ensuring that everyone is heard, using customs and traditions, all within a safe environment.

Who Is Eligible, What Types of Cases Can Be Heard

The Little River Guidelines Section 6.01 states that children, youth, adult tribal members, and tribal employees are eligible for peacemaking. It delineates that children and youth who have civil cases pending before the Little River Court, another tribal court, or the state court in Michigan are eligible. Other possible situations are child in need of care, delinquent offenders who have committed minor offenses, youth referred to peacemaking from another federally recognized tribe, a referral from the Case Intake Team (CIT) (a multidisciplinary team that works for the tribe and intervenes in juvenile issues to assist), and referrals from other outside agencies, that is, school and nontribal social services referrals. This is important because the scenarios in which a juvenile can come into the peacemaking court are set out in the code.

In the Little River Guidelines Section 6.02 and the Little River Juvenile Code 8.02 the tribe explains what cases can be heard in the peacemaking court: all children and youth who are facing a first time status offense, a nonstatute offense, or civil case in the Little River Band of Ottawa Indians Tribal Court System, or a request from another tribal court or state court that a case be transferred to peacemaking. The peacemaking court can also hear all other cases referred by the CIT, all other cases that are referred by the Tribal Court; and cases from persons requesting to voluntarily access peacemaking.

Under Northern Arapaho Section 104 peacemaking court participants must be members of the Northern Arapaho tribe or an Indian residing on the Wind River Indian Reservation. The peacemaking court can also hear an issue if it involves certain personal and community relationships including, but not limited to, the following: marital disputes, disputes among parents and children, minor disputes between neighbors, alcohol use or abuse by family members or neighbors, or any other matter that the chief or associate judge of the Tribal Court finds should or can be resolved through the use of the Peacemaker Court.

Process/Steps of Peacemaking

An example of how a peacemaking session may be conducted is described in the Little River Guidelines Section 8.01. This includes a traditional opening and prayer, introductions, rules, and the opportunity to use Alternative Dispute Resolution if desired.

Confidentiality and Record Keeping

The Little River Guidelines set out some good strategies for confidentiality and record keeping. In Section 8.02 the guidelines explain that peacemakers must abide by confidentiality, including keeping documents and case files confidential. However, in the case of suspected child abuse the peacemakers are required to disclose information to proper authorities. In Section 8.03 the guidelines state that all peacemaking files are to be destroyed six months after peacemaking is completed. However, if the peacemaking is a condition of probation then the file will stay with probation until the juvenile is eighteen years old. At that point, all the documents and files will be destroyed. It is important for peacemaking court participants to feel comfortable and safe with the process. Laying out confidentiality requirements in the code memorializes the courts commitment to confidentiality and the expectations of the peacemaking court process.

Peacemaker's Role and Authority

In Section 202 of the Northern Arapaho code, the peacemaker's powers are defined. They are given the power to mediate disputes between peacemaking court participants; use traditional Northern Arapaho culture mediate and instruct individuals; move the peacemaking process along; and issue decisions that are binding in court. In Section 203, the Northern Arapaho code explains that peacemakers can only use custom, tradition, and nonjudgmental methods in peacemaking court. They can only hear a case if all parties agree to participate in peacemaking court. They do not have

the authority to hear an appeal from a decision of the business council, tribal court, or an employer. It is a good practice to define what the peacemaker can and cannot do.

The peacemaking court authorities and power are described in the Navajo Nation code Section 411. The peacemaking court ensures that Navajo culture, traditions, and beliefs determine the peacemaking process and procedures. The peacemaking court also keeps a list of peacemakers and provides them with support. The peacemakers and the peacemaking process are also subject to review by the peacemaking court. Here, the peacemaking court has a list of enumerated powers that it exercises independent of the peacemakers.

Transfer from Other Courts

In Section 601, the Northern Arapaho code states that only certain civil and criminal cases (described in Section 104) may be transferred into the peacemaking court, unless a referral shows good cause. Section 603 explains which criminal matters can be transferred: the case does not involve injury to a person or property; a case in which the victim to the alleged offense consents; a case in which the offense is a victimless crime; or a case in which there is a finding of guilty, the victim consents to peacemaking, and peacemaking would be an appropriate condition of probation for achieving harmony and reconciliation with the victim. This ensures that victims are not compelled to participate if they are not comfortable.

In Section 604, the code authorizes the tribal court to transfer a defendant on criminal probation into the peacemaking court for traditional and customary counseling, instruction and lectures appropriate to his or her offense. Section 605 explains that any case can be transferred into the Northern Arapaho peacemaking court on any condition, while the case is stayed in tribal court. If the condition is not completed, then tribal court will reassert jurisdiction over the case.

Unique Issues for Juvenile Cases

The Little River Band of Ottawa Indians has a juvenile code that specifically addresses juvenile participation in peacemaking court. In the Guidelines Section 6.05, the CIT's role is stated. The CIT determines whether a juvenile case will be forwarded to prosecution or if it will be delayed for participation in the peacemaking court. Under guidelines Section 6.07, if a juvenile case is referred to peacemaking court, the CIT will review the case every thirty days. If the juvenile is not making progress the CIT will defer to prosecution to move forward on formal adjudication.

Little River Juvenile Code 4.01 (b) explains that peacemaking is established to provide traditional conflict resolution for children, youth, and families, as well as provide healing for all involved in the process. Section 4.02 outlines the process of peacemaking for juveniles. A juvenile's first offense in the Little River tribal court will be immediately referred to the peacemaking court. All other cases will proceed through the CIT, which refers the case to an investigator who in turn investigates and makes a recommendation. The CIT can determine how a case will proceed and develop a plan for the juvenile and/or family if not immediately forwarded to the tribal court. If the CIT rejects a case

then the case will be referred to tribal court. It is helpful to have timelines and procedures spelled out in the code.

[32.4] Exercises

The following exercises are meant to guide you in developing the peacemaking related sections of the tribal juvenile code and or the tribal peacemaking code.

- Find and examine your tribal codes to see if you have any provisions related to mediation or “peacemaking” (note that these might be contained in a judicial code, court establishment code, and/or court rules).
 - Who is eligible to participate in peacemaking?
 - What types of issues can be handled by the current process?
 - What is the outcome of the peacemaking (how will a juvenile court judge know what happened)?
- If possible, flow chart what happens in your peacemaking process from beginning to end.
- Make a list of the pros and cons of using peacemaking as part of your juvenile justice process.
- Make a list of any needed changes to accommodate juveniles and their families (e.g., where in the juvenile code would you divert to peacemaking, or what types of peacemakers should be recruited/trained to work with juveniles and their families)

Read and Discuss

What is peacemaking? How does it work?

FORT McDOWELL YAVAPAI NATION, SCOTTSDALE, ARIZ., Dec. 6, 2011—Twelve practitioners and policymakers from both tribal and state courts participated in a roundtable about Indian peacemaking with an eye toward introducing peacemaking in non-Indian settings.

The roundtable was sponsored by the U.S. Department of Justice’s Bureau of Justice Assistance, in collaboration with the Center for Court Innovation.

Peacemaking is a traditional Native American approach to justice. While the exact form peacemaking takes varies among tribes, it usually consists of one or more peacemakers—often community elders—who gently guide a conversation involving not only those directly involved in an offense or conflict but family members, friends, and the larger community. Most forms of peacemaking follow a few simple rules. Among them, according to Barry Stuart, the retired chief judge of the Yukon Territorial Court, are “don’t dump and run”—in other words, participants must

stay until the end and listen respectfully to all speakers. Other rules include “speak the truth” and “no shaming or blaming,” Stuart said.

While conventional Anglo-Western criminal courts generally focus on determining a defendant’s guilt and sentence, peacemaking is restorative, focusing less on punishing the individual and more on mending relationships and healing the community. It does this by creating a safe space that nurtures participatory skills and new connections.

Peacemaking also differs from mediation. Barbara A. Smith, a justice on the Supreme Court of the Chickasaw Nation, said that the difference between western mediation and Indian peacemaking is that “mediation is about an issue; peacemaking is about relationships. . . . The key is the peacemakers go in not with the thought of solving the issue. Instead, it’s about helping everyone learn to talk to one another” so that they can resolve the problem themselves.

Stanley L. Nez, peacemaker liaison in the Aneth Judicial District of the Navajo Nation, said peacemaking has deep roots in Indian culture, religion and outlook. Native Americans value harmony and interconnectedness, he said, noting that harmonious relationships among humans are just as important as a harmonious relationship among the basic elements of the universe—“earth, air, water, and fire.”

David D. Raasch, an associate judge with the Stockbridge-Munsee Tribal Court, said a peacemaking session is less structured than a courtroom, where procedures are dictated by case law and legislation. Peacemaking is “like opening the floodgates on a dam. The water can flow where it will flow,” he said.

All participants agreed that peacemaking is perpetrator, victim, families and the community at large to address the damage caused by an offense and put safeguards in place to reduce the likelihood of recidivism.

“We say all the people in the circle are now probation officers because they can call together another circle if the [offender] does something wrong,” said Michael A. Jackson, the keeper of the circle in the Village of Kake and magistrate in Alaska District Court.

By the end of the roundtable, which took place over a day and a half, participants seemed to agree that it was possible to adapt the key components of peacemaking for use in a non-tribal setting, including a state court.

The peacemaking roundtable is one of several initiatives sponsored by the Center for Court Innovation’s Tribal Justice Exchange. Funded by the U.S. Department of Justice, the Exchange encourages state and tribal practitioners to consider the question: What lessons can state and tribal courts learn from each other? The hope is the answers will help strengthen both tribal and state court systems by expanding knowledge of proven strategies and fostering mutual understanding.

The peacemaking roundtable was moderated by Brett Taylor with assistance from Aaron Arnold and Erika Sasson. The roundtable will be summarized in a report, scheduled to be completed in early 2012, that will serve as a resource for those interested in creating peacemaking programs in their communities, tribal and non-tribal.

*Taken from “Can Peacemaking Work Outside of Tribal Communities?,” Center for Court Innovation, September 25, 2014. Go to <http://www.courtinnovation.org/research/can-peacemaking-work-outside-tribal-communities>.