Diverting Cases to Wellness Court: Strategies for Creative Collaborations for Tribes in Alaska, P.L. 280, and Beyond

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Origin of Tribal Judiciaries

- **Divergence of Values:**
  - Leadership emphasize dispute resolution role, rather than executive or legislative duties
  - Goal was mediation as opposed to ascertaining guilt
  - Facilitator as opposed to decision-maker

- **Courts of Indian Offenses**
  - 1849 – Creation of the Interior Department
  - 1883 – CFR Courts are institutionalized, *Ex Parte Crow Dog*
  - Heightened need for inter-tribal/Indian-non-Indian dispute resolution
  - Served at the pleasure of the Indian agent
Modern Tribal Courts

- 1934 – Indian Reorganization Act
  - Many tribes assumed judicial functions, replacing CFR courts

- Opportunity
  - For a system that is more responsive to tribal needs and under tribal control
  - To resurrect traditions and customs

- Many courts apply large bodies of written law, as well as custom and tradition.
Jurisdiction

  - Reservations, dependent Indian communities, and/or Indian allotment
  - Land held in trust

Civil Jurisdiction
- Inherent over Indians within Indian country (and sometime beyond, e.g. hunting and fishing rights)
  - Non-Indian enters into consensual relationship with tribe or its members; or
  - A non-Indian’s conduct threatens or has a direct effect on the political integrity, economic security, or health or welfare of the tribe.
- Or, act of Congress, e.g. Clean Water Act
**Criminal Jurisdiction**

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<tr>
<th>Indian Status</th>
<th>Major Crime</th>
<th>All Other Crimes</th>
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- Major Crimes Act (MCA), 18 U.S.C. 1153: murder, manslaughter, kidnapping, maiming, sexual abuse, incest, serious assault, assault of a minor, felony child abuse, burglary, robbery, and major theft
PL 280

- 1953: Legal transfer of jurisdiction from the federal government to the states
  - Mandatory for enumerated states
  - Optional for other states
  - Tribes had NO say (until 1968 for some tribes*)

- State jurisdiction preferred over tribal sovereignty – federal policy that favors assimilation into non-Indian social and political communities.

- Congress cited need for
  - Law enforcement
  - Civil dispute resolution
## Criminal Jurisdiction – PL 280

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* Under TLOA, a tribal gov’t may request federal concurrent, subject to U.S. Attorney General approval

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Cooperative Agreements

Benefits of collaboration

- Coordinate the exercise of authority
- Share resources
- Reduce administrative costs
- Deliver services in more efficient and culturally appropriate ways
- Address future contingencies
- Save costs of litigation
- Respond to unique community needs
Interjurisdictional Promising Practices

- State Police Officer Status and Cross Deputation 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
Tribal Healing to Wellness Courts

- Tribal adaptations of drug courts
- Appeal to
  - Focus on addiction as a disease
  - Non-adversarial
  - Focus on healing
  - Focus on holistic relationships
- “Healing to Wellness” adopted to
  - Exchange negative “drug” term for indigenous focus on “healing” and “wellness”
  - Concede that “wellness” is not a destination, but a journey
Culturally-Based Treatment

- Regain a practical ethnic identity
- Gain a healthy social network committed to the participants’ recovery
- Make a religious, spiritual, or moral recommitment to themselves and their community
- Reengage in recreational/volunteer or vocational activities
- Gain a social role in the community
- Strengths-based!
Key Component 4: Incorporating Culture and Tradition

- Smudging
- Traditional gifts
- Feasts
- Name ceremony
- Native language
- Genealogy assignment
- Craft classes
Key Component 5: Intensive Supervision

- Service projects for elders
- Service projects for cultural centers, language programs
- Building the sweat lodge
- Meal preparation
- Community event clean-up
Graduation Honoring

- Feast
- Family engagement
- Community engagement
- Blanket ceremony
- Traditional gift
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 prior case history(ies)
- Consultation for particular subject matter (e.g. cultural activity or treatment)
- Consultation for particular participants
- Joint team members
- Communication between Coordinators
- Joint Jurisdiction Courts
Transfer Considerations

- Pre- or Post-adjudication
- Extraneous Probation/Parole Requirements
  - Will Wellness Court requirements suffice?
  - Can cases be consolidated?
- Services
  - Residency? Access to services?
- Incentives and Sanctions/Discharge
  - What authority will Tribe have?
  - Can jail be used?
THINGS TO REMEMBER ABOUT ALASKA

Timeline

- Russians – 1730s
- Treaty of cession and sale to United States - 1867
- Gold rushes – 1895 (Hope); 1896 (Klondike); 1899 (Nome); 1902 (Fairbanks)
- Statehood – 1959
- Prudhoe Bay oil discovery – 1968
- Alaska Native Claims Settlement Act – 1971
- Venetie ICWA decision – 1991
- Federally Recognized Indian Tribe List Act – 1994
- Venetie land decision – 1998
Public Safety in Rural Alaska

- Numerous rural communities have no or limited law enforcement presence
- Domestic violence and substance abuse touch all parts of a community
- Drug and alcohol importation known within the community
- Effective public safety requires a commitment from all involved
Civil diversion Agreement

■ What:
  - A voluntary agreement between the State and Alaska Tribes

■ Purpose:
  - To create a path for Alaska Tribes to handle certain misdemeanors in Tribal Court as opposed to State Court
  - Increases public safety with more local control
CDA: how it works

- State and Tribe agree on a diversion framework

- People who commit certain state law offenses would be able to choose whether they wanted their case heard in State or Tribal court

- Both *tribal members and nonmembers* may choose diversion to tribal court
CDA: Three requirements

- Offender *agrees* to civil diversion
- Law Enforcement *refers* a case to Tribal Court
- Tribe *accepts* the offender into Tribal Court
Other diversion opportunities

- **Division of Juvenile Justice MOU**
  - Diversion program for juveniles with offenses committed in or near the village.
  - DJJ diverts appropriate referrals to Alaska Tribe’s Diversion Program.
  - If juvenile doesn’t complete Alaska Tribe’s diversion – case is jointly staffed and referral may be closed.

- **Alaska Criminal Rule 11(i) Agreements**
  - With consent of victim, prosecutor and defendant the judge may refer a case to a ‘restorative justice program’ (this includes an Alaska Tribe’s court).
  - Alaska Tribe’s sentencing proceeding and written report identifies sentencing recommendations – including culturally relevant activities, drug and alcohol assessments and treatment, restitution and other remedies.
  - Judge carefully considers recommendations.
Thank you!