

## Policy Guidance for State, Local and Tribal Justice Leaders: Advancing Intergovernmental Collaborative Strategies to Improve Public Safety

This issue brief is part of series of [12 modules](#) tailored for state, local and tribal justice leaders that provide policy guidance for establishing and maintaining intergovernmental collaborative strategies in various subject areas to improve public safety in Indian country. Each module addresses a different subject area and consists of a summary and background of the topic, examples of promising approaches, “practice tips,” and a directory of available resources. Briefs were developed by the National Criminal Justice Association (NCJA) Center for Justice Planning (NCJP) and Nation Congress of American Indians in partnership with other national tribal training and technical providers and subject matter experts including: the American Probation and Parole Association; Center for Court Innovation; National Criminal Justice Training Center of Fox Valley Technical College; the Tribal Law and Policy Institute; Western Community Policing Institute; and Judge Korey Wahwassuck, Leech Lake Tribal Court and Judge John Smith, Cass County District Court.

### Tribal-State Court Forums in Brief<sup>1</sup>

Tribal and state courts interact across many issues, including child welfare, cross jurisdictional enforcement of court orders, and civil commitments, to name just a few. One of the key arenas of interaction with great potential for collaboration is the courts. Tribal and state courts can misunderstand, misinterpret and disagree about issues of great importance to both jurisdictions. Long histories of mistrust exist in some states that create a wedge that can be hard to mend, but a lack of coordination can create dire consequences to safety and justice in Indian country.

Beginning in the mid-1980s through the efforts of the Conference of Chief Justices, tribal-state court forums began to bridge some of these gaps by bringing judges and court personnel together to foster relationships, discuss areas of mutual concern, develop legislative initiatives and to find a common ground (see [www.WalkingOnCommonGround.org](http://www.WalkingOnCommonGround.org) for detailed background). Since then, several tribal-state, and sometimes federal, court forums have emerged. These forums vary somewhat in their make-up and focus, but most primarily involve tribal and state court judges, focus on issues of common concern, and meet regularly in the spirit of collaboration and mutual respect. Some areas ripe for collaboration and focus include:

- The Indian Child Welfare Act (ICWA): Several forums have worked together to create trainings or materials to assist state courts with ICWA’s implementation. The Michigan forum played a key role in the development of its own state legislation on ICWA.
- Recognition of Tribal Court Orders by State Courts: Many forums have developed rules or protocols for recognition of orders coming out of tribal courts.

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<sup>1</sup> This brief was authored by the Tribal Law and Policy Institute ([www.TLPI.org](http://www.TLPI.org)) in collaboration with the National Criminal Justice Association (NCJA) Center for Justice Planning (NCJP).

- Jurisdictional Uncertainties: Members of tribal-state court forums are more apt to simply pick up the phone and call their colleagues in other jurisdictions for quick and easy resolution of jurisdiction questions that would otherwise persist through lengthy motions and expense going through more formal mechanisms.

Importantly, at their most basic level, forums also provide a crucial cross cultural education component. Many state court judges lack basic knowledge of the caseload and day to day functions in tribal court. Conversely, tribal court judges may not understand the full range of state court cases and dockets. Forums such as those in New Mexico and California place a special emphasis on the importance of cross-cultural education.

Forums take many different forms, but there are some common themes to success. Successful forums typically:

- Have co-chairs, with one tribal court judge and one state court judge taking co-leadership in the forum.
- Seek to maintain an equal balance between state and tribal participants.
- Ensure that meetings are located in tribal locations whenever possible.
- Are institutionalized through rules of the court or other state Supreme Court action, which provides some level of sustainability.
- Hold regular and consistent meetings, even if it's only one in-person meeting a year, to ensure the work of the forum moves forward.

Recent law changes impacting tribal criminal jurisdiction make collaboration all the more crucial. The Tribal Law and Order Act included important provisions for “Enhanced Sentencing Authority” for tribes and the Violence Against Women Reauthorization of 2013 authorized tribes to exercise “Special Domestic Violence Criminal Jurisdiction” over non-Indians. Tribal courts that exercise this authority will need open communication and good relationships with state courts to ensure success, and state judicial personnel will require education on these laws and ongoing information on tribal implementation.

As more tribal and state judges come together to take action, it becomes apparent that collaboration is a key strategy to leverage limited resources, build relationships and bridge jurisdictional gaps to improve safety and justice in Indian country.

## **Additional Resources on Tribal-State Court Forums**

***Tribal-State Court Forums: An Annotated Directory.*** Tribal Law and Policy Institute, July 2015. Available at: [www.WalkingOnCommonGround.org](http://www.WalkingOnCommonGround.org)

***Promising Strategies: Tribal State Court Relations.*** Tribal Law and Policy Institute, March 2013. Available at: [https://www.walkingoncommonground.org/files/TLPI%20Promising%20Strategies%20Tribal-State%20Court%20Relations\\_FINAL\\_Updated%208-15-13.pdf](https://www.walkingoncommonground.org/files/TLPI%20Promising%20Strategies%20Tribal-State%20Court%20Relations_FINAL_Updated%208-15-13.pdf)

**Promising Strategies: Public Law 280.** Tribal Law and Policy Institute, March 2013. Available at: [https://www.walkingoncommonground.org/files/TLPI%20Promising%20Strategies%20280\\_FINAL\\_Updated%20%208-16-13.pdf](https://www.walkingoncommonground.org/files/TLPI%20Promising%20Strategies%20280_FINAL_Updated%20%208-16-13.pdf)

**State and Tribal Courts: Strategies for Bridging the Divide.** Center for Court Innovation, 2011. Available at: <http://www.courtinnovation.org/sites/default/files/documents/StateAndTribalCourts.pdf>

**Walking on Common Ground: Pathways to Equal Justice.** Fox Valley Technical College, July 2005. Available at: [https://www.walkingoncommonground.org/files/WOCG\\_Draft%20Report%20FVTC.pdf](https://www.walkingoncommonground.org/files/WOCG_Draft%20Report%20FVTC.pdf)

**Tribal Court-State Court Forums: A How-To-Do-It-Guide to Prevent and Resolve Jurisdictional Disputes and Improve Cooperation Between Tribal and State Courts.** William Thorne, Spring/Summer 1996. The Tribal Court Record. Available at: <https://www.walkingoncommonground.org/files/Resources%201%20TribalCourtStateForumHow2Guide.pdf>

**Walking On Common Ground Website.** Available at: [www.WalkingOnCommonGround.org](http://www.WalkingOnCommonGround.org)

## Tribal State Court Forums: Overview

State	Year Formed	Membership	Authority	Key Accomplishments
<b>Arizona</b>	1990	Four federal members, six state members, at least seven tribal members, one State Bar member, and two public members.	AZ Supreme Court Administrative Order No. 2007-25	<ul style="list-style-type: none"> <li>✓ Enforcement of tribal court involuntary commitment orders</li> <li>✓ Indian law question on the state bar examination</li> <li>✓ Extradition statute for persons to and from Indian jurisdiction</li> <li>✓ State rule on certification of questions of law from federal &amp; tribal courts</li> <li>✓ State rule for the recognition of tribal court civil judgments</li> </ul>
<b>California</b>	2010	Over thirty members—all tribal and state court judges - and one non-judicial member.	Rule of Court, Rule 10.60. Tribal Court-State Court Forum	<ul style="list-style-type: none"> <li>✓ Curriculum on civil and criminal jurisdiction in a Public Law 280 State</li> <li>✓ Tribal specific data on domestic violence</li> <li>✓ California Courts protective order registry</li> <li>✓ Tribal advocates curriculum</li> <li>✓ Tribal communities and domestic violence judicial bench guide</li> <li>✓ Judicial toolkit on Federal Indian law</li> <li>✓ Rule governing Title IV-D case transfers to tribal court</li> <li>✓ Tribal Court Civil Money Judgment Act</li> <li>✓ Cross-cultural court exchanges</li> </ul>
<b>Idaho</b>	1993	Tribal and state court judges; rep from the U.S. District Court; Prof (serves as a consultant).	Supreme Court of Idaho Court Order	<ul style="list-style-type: none"> <li>✓ Idaho Tribal-State Court Bench Book 2014 Edition</li> <li>✓ As a committee of the State Supreme Court, the Forum can propose rules and action to the Supreme Court's Administrative Conference for consideration</li> <li>✓ Standardized domestic violence protection orders</li> </ul>

## Tribal State Court Forums: Overview

State	Year Formed	Membership	Authority	Key Accomplishments
<b>Michigan</b>	2014 (similar project began in 1992)	Equal Tribal and State Court judge participation.	Administrative Order No. 2014-12	<ul style="list-style-type: none"> <li>✓ Creation of the State Bar American Indian Law Standing Committee</li> <li>✓ Creation of the State Bar American Indian Law Section</li> <li>✓ Michigan Judicial Institute makes training available to tribal court judges</li> <li>✓ MI Court Rule 2.615: provides for recognition of tribal court judgments</li> <li>✓ Annual MI Bar Directory information about tribal courts and governments</li> <li>✓ Addition of federal forum members</li> </ul>
<b>Minnesota</b>	Informally in 1996.	Tribal and state court judges.	State participants recognized by the SC in 2002. Included in 2013 MN Supreme Court's Strategic Plan	<ul style="list-style-type: none"> <li>✓ Developed state comity rule, adopted in 2004.</li> <li>✓ Advocated for the full implementation of the Minnesota Indian Family Preservation Act.</li> <li>✓ Providing on-going judicial education regarding Tribal Courts.</li> </ul>
<b>New Mexico</b>	2006	14 members: equal state and tribal participation	State Supreme Court Order No. 8500	<ul style="list-style-type: none"> <li>✓ Formally recognized as a Supreme Court advisory body in 2006</li> <li>✓ Received Outstanding Criminal Justice Program Award from the National Criminal Justice Associate in 2013</li> <li>✓ Uniform first page for domestic violence protection orders</li> <li>✓ ICWA bench cards</li> <li>✓ Travel scholarships for 6-16 trial judges to participate in training events</li> </ul>

## Tribal State Court Forums: Overview

State	Year Formed	Membership	Authority	Key Accomplishments
New York	2003	State, tribal and federal court judges and reps from state agencies.	The state court judges are currently working on institutionalizing the Forum with the adoption of a court rule or administrative order.	<ul style="list-style-type: none"> <li>✓ Adoption of legislation recognizing tribal marriages</li> <li>✓ A court comity rule for recognition of tribal court judgments</li> <li>✓ A special edition of the New York State Bar Journal on ICWA, with articles authored by forum members</li> <li>✓ ICWA training for attorneys, child care professionals, and judges</li> <li>✓ Listening Conference for state, federal, and tribal court judges and justice system personnel.</li> </ul>
North Dakota	1993	18 members: tribal & state court judges, reps of tribal and state court admin. support; 3 public members w/ interest/expertise in tribal/state judicial systems.	State Supreme court Administrative Rule of the Court 37	<ul style="list-style-type: none"> <li>✓ Amended civil procedure rules that mandate recognition of tribal court orders and judgments</li> <li>✓ Developing a protocol for child support collection</li> </ul>
Utah	2011		None.	<ul style="list-style-type: none"> <li>✓ Statewide ICWA assessment</li> <li>✓ ICWA training for all state court judges and child welfare attorneys</li> <li>✓ Annual Indian Child Welfare Conference</li> <li>✓ Successful recruitment of Native American foster homes</li> </ul>
Wisconsin	1996 (Reestablished)	Equal tribal and state judge participation; tribal attorney; leg liaison; a dist. court admin; and the director of state courts	None.	<ul style="list-style-type: none"> <li>✓ Discretionary Transfer of Civil Cases to Tribal Court – which allows for transfer through the application of enumerated standards (AKA “Teague Protocol”).</li> </ul>

The following general guidelines can assist tribes and states with making smart choices that have shown to be successful and to avoid common pitfalls.

## **Tribal/State Court Forum Dos and Don'ts**

(Based on the experience of the Arizona Court Forum as reported by the National Center for State Courts, 1992)

### **Membership**

- DO select forum members from diverse perspectives who have demonstrated interest, expertise, or experience in addressing Indian law issues.
- DON'T select forum members based only on their position within the judiciary or elsewhere.

### **Mutual Respect**

- DO acknowledge differences between tribal and state court systems and seek ways of cooperating consistent with those differences.
- DON'T characterize either system as better or worse or more or less sophisticated than the other.

### **Scope**

- DO proceed in phases with predetermined time frames, including a study phase in which issues are identified, before implementing recommendations.
- DON'T devote resources to implementation until a consensus is reached concerning priority issues and recommendations.

### **Persistence**

- DO design a process that invites broad-based participation in identifying issues and making recommendations.
- DON'T be discouraged by lack of participation or lack of progress.

### **Performance**

- DO assign manageable tasks to forum members or subcommittees to be accomplished within established time frames.
- DON'T delay too long before dividing the work of the forum into tasks that can be accomplished within the time frames established.

### **Solutions**

- DO emphasize creative solutions to jurisdictional issues that avoid litigation and are consistent with the rights of the parties, sovereignty, and judicial independence.
- DON'T emphasize jurisdictional limitations.

### **Communications**

- DO emphasize person-to-person communication and education to address jurisdictional issues.
- DON'T seek to address jurisdictional issues solely through large-scale change in the law or legal systems.



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