

Intergovernmental Agreements

July 11, 2024



Tribal Youth Resource Center
www.TribalYouth.org

▶ BEFORE WE GET STARTED...

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▶ PRESENTERS



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▶ TRIBAL LAW AND POLICY INSTITUTE

A Native American operated non-profit:

Dedicated to providing free publication resources, comprehensive training, and technical assistance for Native nations and tribal justice systems in pursuit of our vision to empower Native communities to create and control their own institutions for the benefit of all community members, now, and for future generations.

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Vision:

Envisioning a future where Indigenous youth thrive through traditional life ways.

Purpose:

Enhancing the opportunities for Indigenous communities to expand their potential in protecting and nurturing their most sacred asset – the youth.



▶ LEARNING OBJECTIVES

Attendees will learn about:

1. the purpose and benefits of an Inter/Intra -governmental Agreement (IGA) in general;
2. the different types and forms of IGAs in general (“inter” vs “intra,” and formal and informal);
3. the different Tribe-State models for Juvenile Healing to Wellness (JHW) Court IGAs;
4. the ways that Tribal criminal jurisdiction matters for State transfers to Tribal Juvenile Courts and Juvenile Healing to Wellness (JHW) Courts and Programs;
5. the need to learn about State/county laws and court rules for transferring and/or diverting youth to Tribal court dockets or programs;
6. the IGA considerations for Tribes in PL 280 states; and
7. the specific sections of an IGA (MOU or MOA) for JHW Courts or Programs.

▶ About Inter/Intra -governmental Agreements (IGA's)



▶ Polling



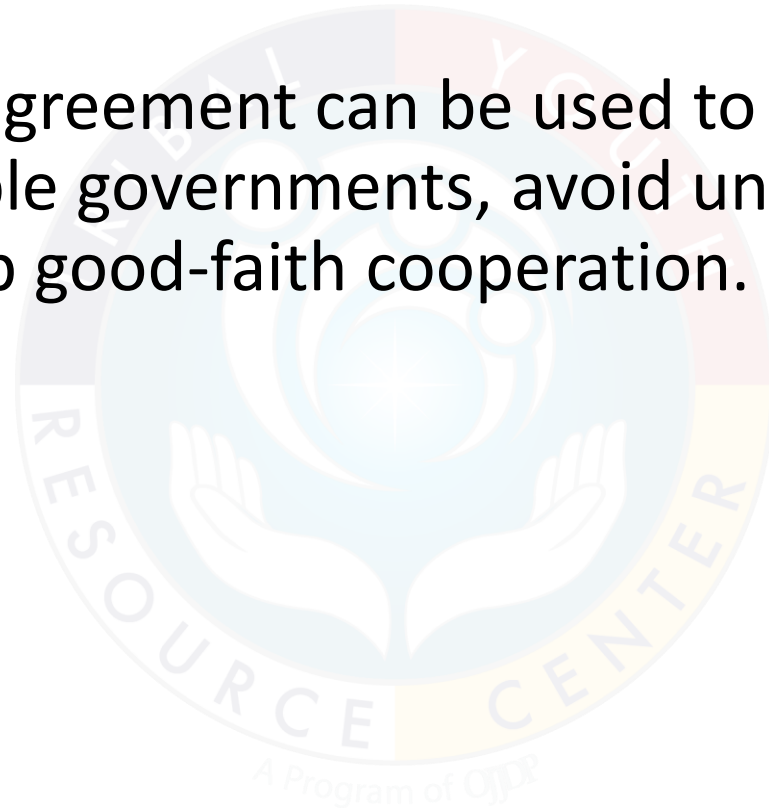
▶ WHAT IS THE PURPOSE OF AN INTER/INTRA -GOVERNMENTAL AGREEMENT (“IGA”)

Purpose:

- In general, an IGA is an agreement between parties (e.g., a Tribe and a State government) to solve problems of mutual concern.
- In the context of a Juvenile Healing to Wellness (JHW) Court, the IGA identifies the agreeing parties (the Tribal, State, county, and/or local government court systems and departments), their roles, responsibilities and commitments, along with the agreed upon team coordinated services.

▶ WHAT ARE THE BENEFITS OF AN IGA?

An intergovernmental agreement can be used to combine the services and resources of multiple governments, avoid unnecessary duplication of services, and develop good-faith cooperation.



WHAT ARE THE DIFFERENT TYPES OF IGAs?

Intra-governmental: Agreements to collaborate between the court system and agencies/departments within one government.

Example: Tribal Law Enforcement, the local school districts, Tribal Substance Use and Behavioral Health Departments, and the Tribal Courts.

Inter-governmental: Agreements to collaborate between two (or more) governments.

Example: Tribe/Tribal Court/JHW Court and the State, county, and/or local government's court system and agencies/departments, including law enforcement, probation, and service providers.

Some of the complexities of developing an IGA, include:

- the need to negotiate and coordinate with external governments and service providers
- the need to review (and often) to revise the Tribal code to make the executed agreements work

▶ WHAT ARE THE DIFFERENT FORMS IGAS TAKE?

Informal Agreements: An unwritten arrangement or understanding based upon trust between parties, that may be mutually beneficial.

Formal Agreements: Institutional agreements intended to withstand changes in staff and elected leadership and are often legally binding, resulting in each party gaining a benefit.

Many collaborations require minimal cooperation and often parties agree there is no need to document their process.

In other collaborations (such as in a JHW Court) parties formally memorialize their commitment to the process in writing – this reinforces the specifics of their collaboration for the duration of the agreement via:

- Memorandums of Agreement (MOAs)
- Memorandums of Understanding (MOUs)
- Letter Agreements

▶ WHAT ARE THE BENEFITS OF ENTERING INTO A FORMAL IGA IF YOU ARE A JHW COURT?

Benefits of a formal agreement:

- Collaborating entities have clearly defined roles, responsibilities and tasks
- There is increased accountability on the part of collaborating entities
- When staff turns over, the terms of the written agreement remain in place, and new staff can follow it
- The terms of the agreement facilitate consistent collaboration
- The agreement increases perceptions of fairness
- The fact of the agreement influences the participation of hesitant agencies/departments
- The fact of the agreement models the possibilities for other agencies/departments and other government to government projects



How Tribal Criminal Jurisdiction Matters for State/County Transfers/Diversions to Tribal Juvenile Courts and Juvenile Healing to Wellness (JHW) Courts and Programs

▶ Polling

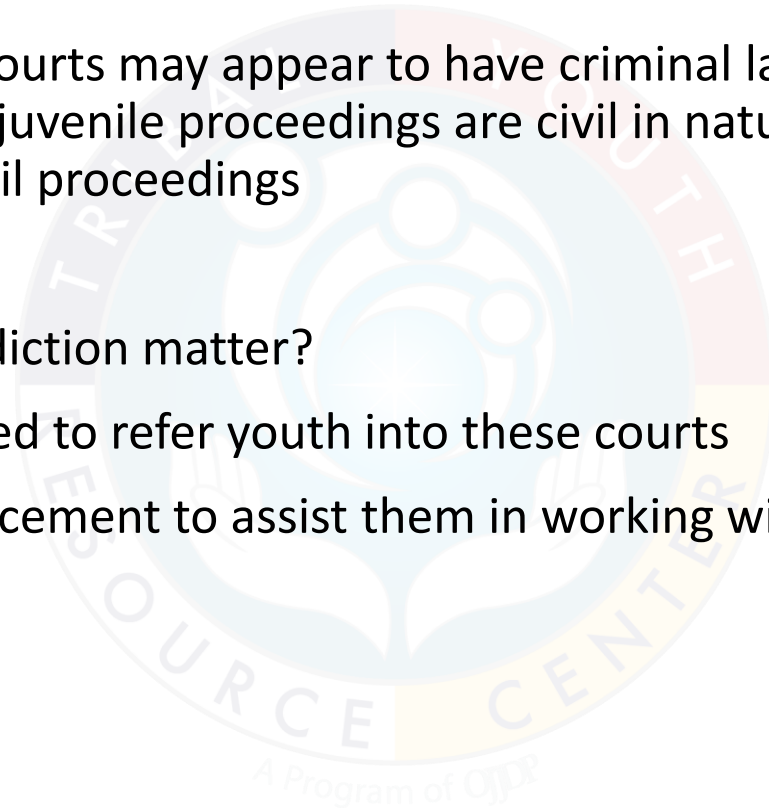


▶ WHY DOES TRIBAL CRIMINAL JURISDICTION MATTER?

Tribal Juvenile Courts and JHW Courts may appear to have criminal law characteristics, but a good number of Tribal laws governing juvenile proceedings are civil in nature and may have a provision explicitly stating that they are civil proceedings

So why does Tribal criminal jurisdiction matter?

- Criminal avenues may be used to refer youth into these courts
- These courts need law enforcement to assist them in working with counties in finding eligible juveniles





State/County/Local Government Laws and Court Rules for Transferring and/or Diverting Youth to Tribal Court Dockets or Programs

▶ WHY STATE/LOCAL LAWS & COURT RULES MATTER

The State and county in which a Tribe resides have specific laws and court rules that impact a Tribal Juvenile Court and JHW Courts—some of which could empower the JHW Court, others that could limit the JHW Court

For example:

- Some jurisdictions respect transfer, while others only allow diversion
- Worst case is that State/county/local governments do not allow any agreements to exist
- Another possibility is that they only allow referrals or diversions of cases to a program, but not to a JHW Court (we see this in Alaska)



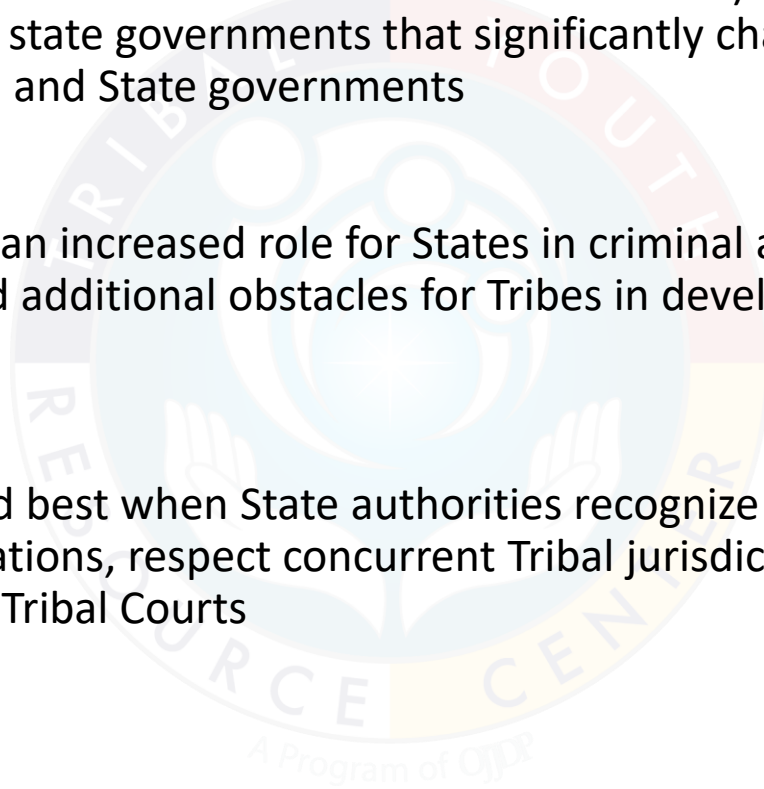
Considerations for IGAs for Tribes in PL 280 States

▶ Polling



▶ IGAs IN PL 280 STATES

- Public Law 83-280 (commonly referred to as Public Law 280 or PL 280) was a transfer of legal jurisdiction from the federal government to state governments that significantly changed the division of legal authority among Tribal, Federal, and State governments
- PL 280 generally brought about an increased role for States in criminal and civil matters involving Native/Tribal youth, and created additional obstacles for Tribes in developing and operating their justice systems
- PL 280 jurisdictions have worked best when State authorities recognize Tribal governments in government-to-government relations, respect concurrent Tribal jurisdiction, and work cooperatively with Tribal governments, police, and Tribal Courts



▶ IGAs IN PL 280 STATES

Specific considerations include...

- Transfer (vs mere referral or diversion) agreement difficulties
- Law enforcement presence, powers, and resources (joint power agreements and cross-deputization as possible avenues)
- Referrals and paths to entry
- Ability to do county detention visits (where a Tribal JHWC team or staff visit a county juvenile detention facility)
- Avenues that incentivize State/county/local courts and entities to participate in an IGA
- The possibility of having a Joint Jurisdiction JHW Court



Models for Transfers & Diversions for JWCs

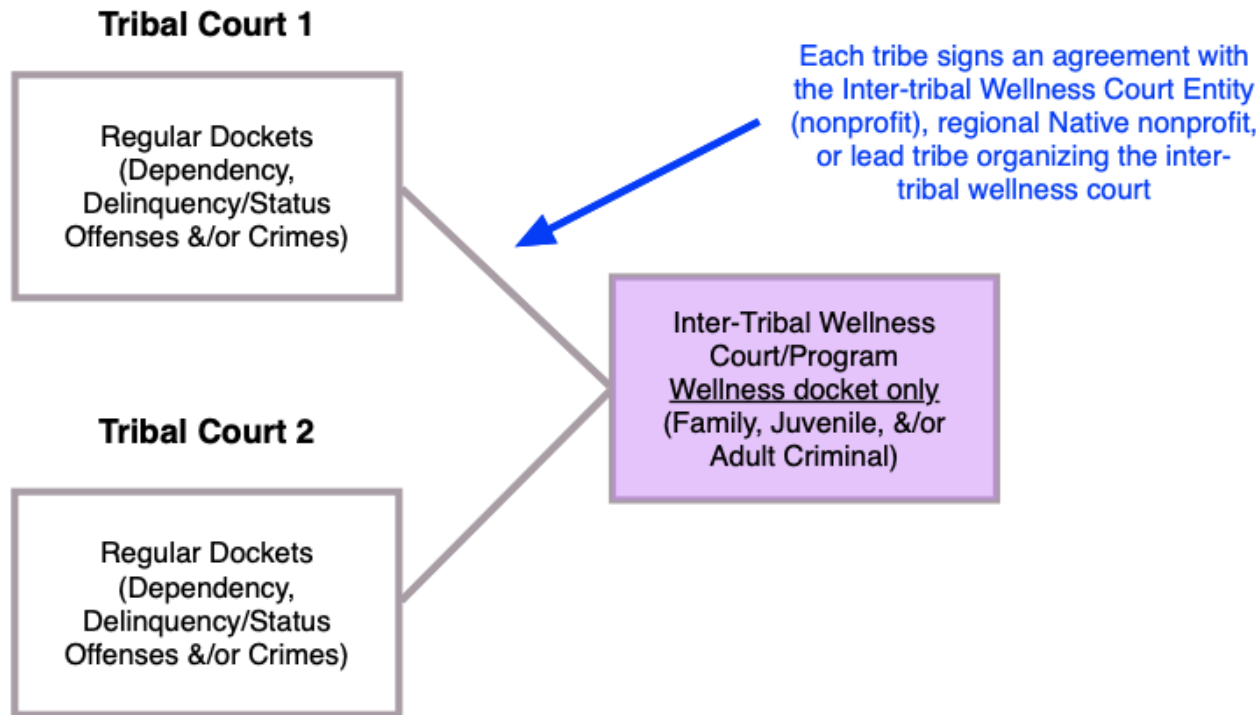
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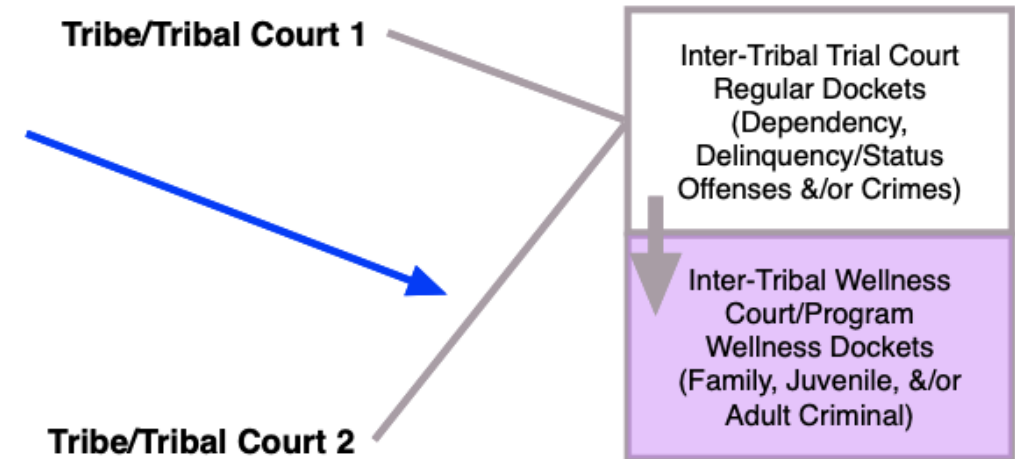


TWO MODELS FOR AN INTERTRIBAL WELLNESS COURT

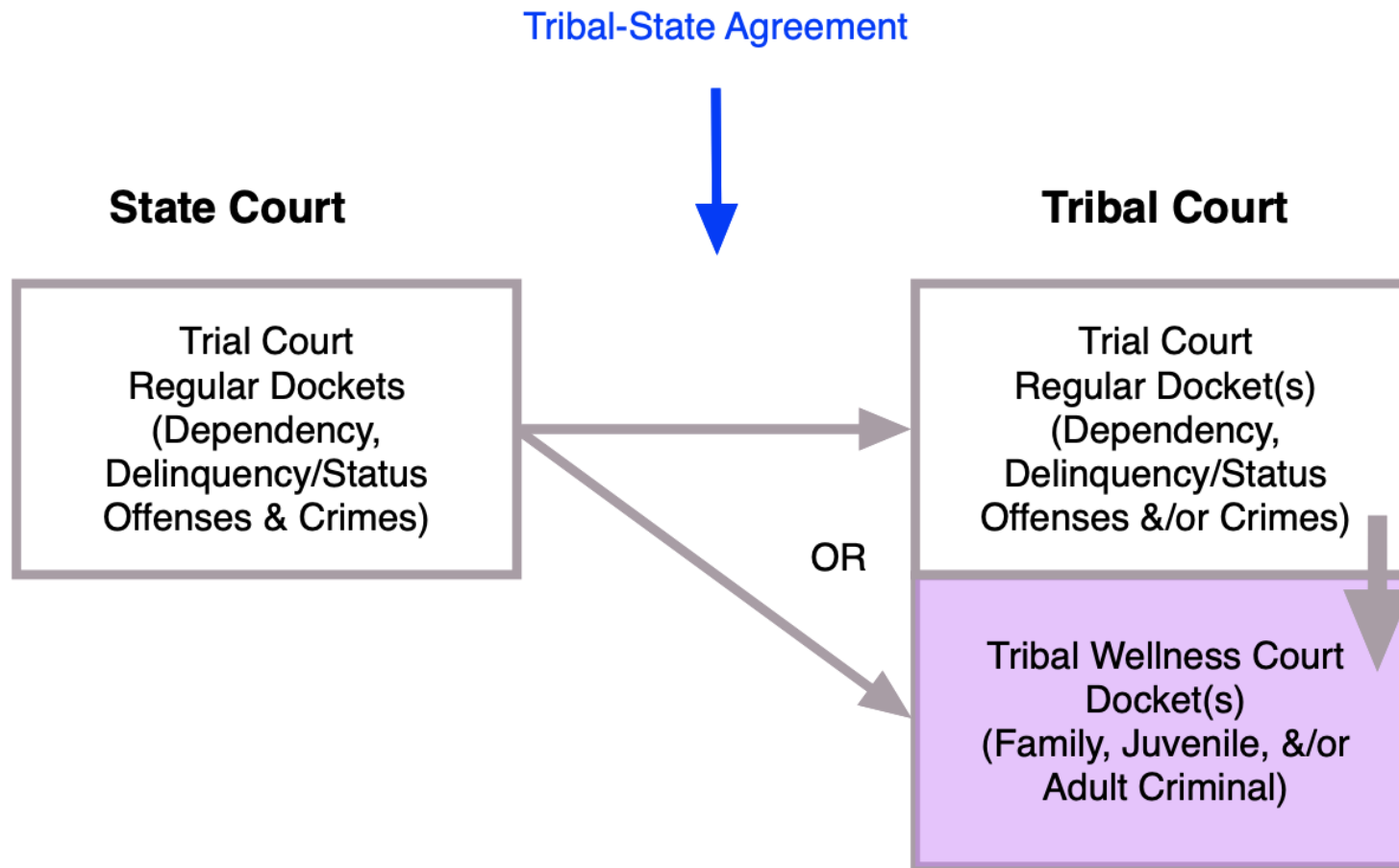
**Model 1 - Inter-Tribal Wellness Court
(Wellness Docket Only)**



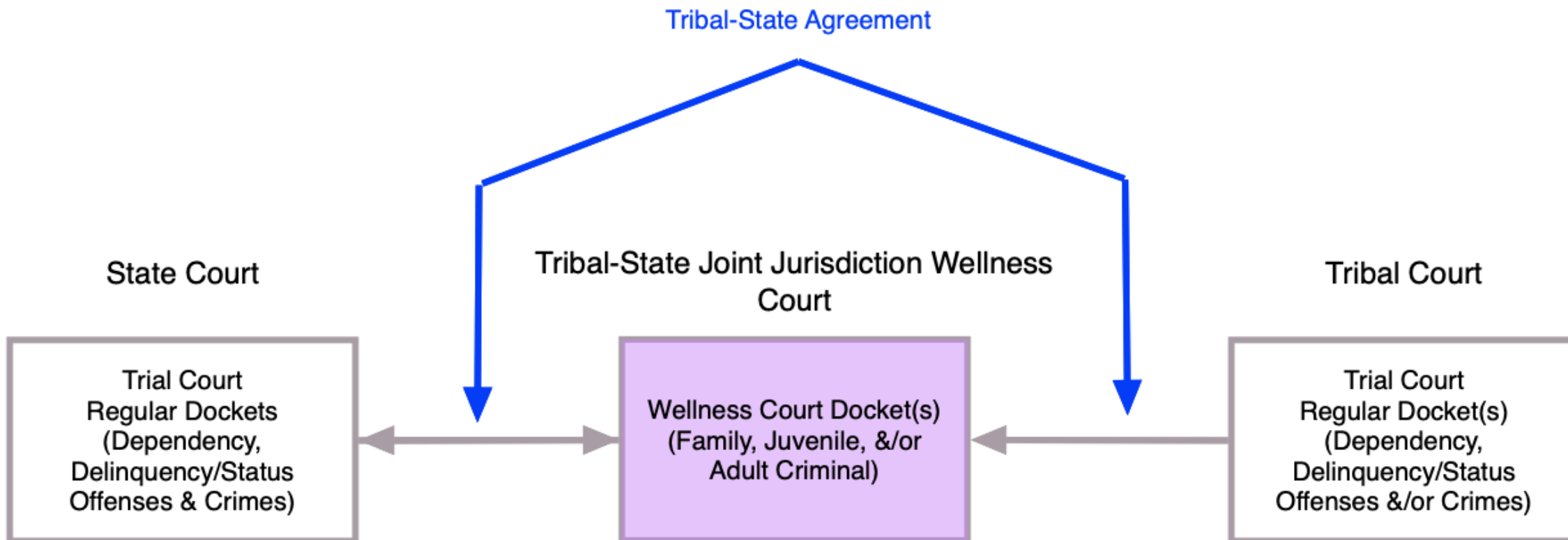
**Model 2 - Inter-Tribal Wellness Court
(Regular & Wellness Dockets)**



STATE TRANSFER/DIVERSIONS TO TRIBAL COURT/TRIBAL HEALING TO WELLNESS COURT



▶ **TRIBE-STATE JOINT JURISDICTION WELLNESS COURT (WELLNESS DOCKET ONLY)**



▶ What goes into a specific IGA (MOA or MOU)?

The Types and Sections of an IGA (MOU or MOA) for JHW Courts or Programs



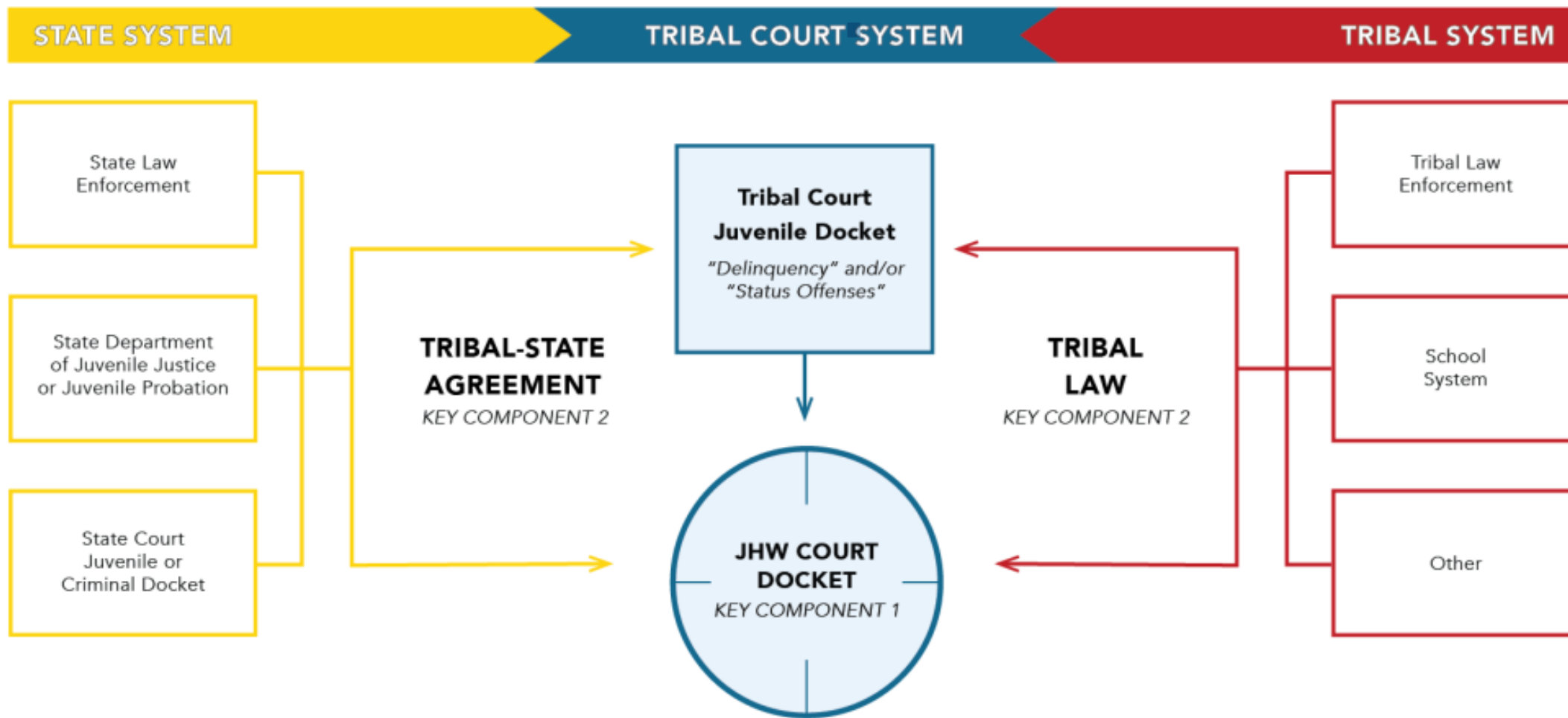
▶ Polling



FIGURE 9

REPORTS, REFERRALS, TRANSFERS AND/OR DIVERSIONS

How Native/Tribal Youth Move from State to Tribe, and/or within the Tribe



WHAT WE ARE SEEING (THE TYPES OF IGAS BEING NEGOTIATED)

We are seeing primarily “Memorandums of Understanding” (MOUs)

- These are “agreements in principle” which may be reworked later into a binding contract in a later “Memorandum of Agreement” (MOA)

There tend to be two different kinds of *inter*-governmental MOUs:

- The Tribe/Tribal Court and the County Court, County’s District Attorney, and the County Juvenile Probation Department
- AND
- The Tribe/Tribal Court and the School District

The *intra*-governmental agreements tend to be agreements between:

- The Tribal Judicial System, Prosecutor, Public Defender, Social Services, Health and Wellness, Cultural Resources, and Public Safety
- The entit(ies) providing substance use disorder and mental health disorder treatment at various levels of care
- Indian Health Services
- Prevention Programs



▶ Example: Tribe 1

Intra-
governmental
Agreement
(a JHW Court
MOU)

EXAMPLE: INTRA-GOVERNMENTAL AGREEMENT PROVISIONS BEING NEGOTIATED (A JHW COURT MOU)

The Parties:

- Tribal Judicial System
- Tribal Prosecutor
- Tribal Public Defender
- Tribal Health & Wellness
- Tribal Guardian Ad Litem
- Tribal Cultural Resources
- Tribal Public Safety
- Health Promotion/Disease Prevention
- Recovery Center
- Indian Health Services



▶ EXAMPLE: INTRA-GOVERNMENTAL AGREEMENT PROVISIONS BEING NEGOTIATED (A JHW COURT MOU)(CONT.)

Purpose:

“This memorandum is an agreement in principle setting forth the anticipated roles, responsibilities, and expectations of the parties ... to participate in the development and operation of the [Tribal Juvenile Healing to Wellness Court (JHWC)] ... by providing braided services supporting substance abuse and mental health assessments, treatment, case management, service coordination, life skills building, and cultural engagement.”

Mission:

“The [Tribal Juvenile Healing to Wellness Court (JHWC)] will effectively use community resources to rebuild healthy families and communities for future generations through our commitment to providing education, treatment, and resources for our children, and by strengthening our values and traditions.”

EXAMPLE: INTRA-GOVERNMENTAL AGREEMENT PROVISIONS BEING NEGOTIATED(A JHW COURT MOU)(CONT.)

All signatories agree to the following:

1. Adhere to the mission statement
2. Adhere to the guidelines in the JHWC Policies and Procedures
3. Be familiar with and adhere to any applicable federal, state and tribal confidentiality laws
4. and policies applying to personal health information and substance abuse treatment information
5. Director/designated official of each signatory department or agency will participate collectively on JHWC Advisory Committee and attend its meetings
6. Contribute as requested to the development of a given Wellness Plan for an identified participant
7. Attend JHWC Team meetings and/or communicate case recommendations to the JHWC Coordinator prior to hearing dates to help determine treatment progress, update individual treatment plans, and make joint decisions concerning compliance and incentives or sanctions
8. Attend and participate in case review hearings as requested
9. Attend JHWC and/or Drug Court trainings and conferences, when funding is available

▶ EXAMPLE: INTRA-GOVERNMENTAL AGREEMENT PROVISIONS BEING NEGOTIATED (A JHW COURT MOU)(CONT.)

Things the following persons/entities agrees to:

Tribal Justice System:

1. Provide staff support and courtroom facilities necessary for the JHWC
2. Schedule and provide notice of all JHWC team meetings and court hearings, record hearings, and court case management
3. Administer and report on all programmatic matters relating to the JHWC
4. Provide all participant case management services including development of individualized Wellness plans, monitoring of compliance, facilitating participant access to treatment and other services, and reporting on participant status to the JHWC team and to the JHWC Judge
5. Coordinate collection and compilation of participant status reports from all JHWC team members for use at team meetings and court reviews

▶ EXAMPLE: INTRA-GOVERNMENTAL AGREEMENT PROVISIONS BEING NEGOTIATED (A JHW COURT MOU)(CONT.)

Things the following persons/entities agrees to:

JHW Court Judge:

1. Preside over JHWC court sessions
2. During court sessions motivate participants toward success in their treatment while holding them accountable for their actions
3. Ensure that all cases are staffed prior to court sessions
4. Participate as a member of the JHWC team
5. Monitor participants' progress in relation to their case plan and address compliance by delivering incentives and sanctions
6. Promote collaborative, non-adversarial and power-sharing relationships between JHWC team members

▶ EXAMPLE: INTRA-GOVERNMENTAL AGREEMENT PROVISIONS BEING NEGOTIATED (A JHW COURT MOU)(CONT.)

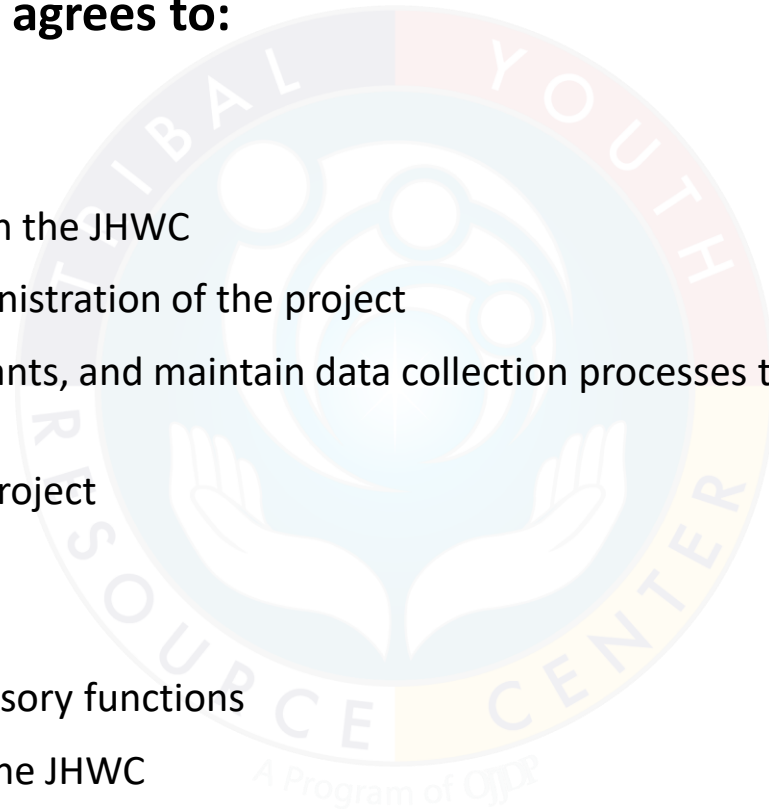
Things the following persons/entities agrees to:

JHW Court Coordinator:

1. Screen referred juveniles for participation in the JHWC
2. Maintain responsibility for day-to-day administration of the project
3. Coordinate services with partners, participants, and maintain data collection processes to support program services, operations, and reporting requirements
4. Supervise the overall management of the project

Tribal Court Administrator:

1. Provide oversight, management and supervisory functions
2. Contribute a percentage of time in-kind to the JHWC

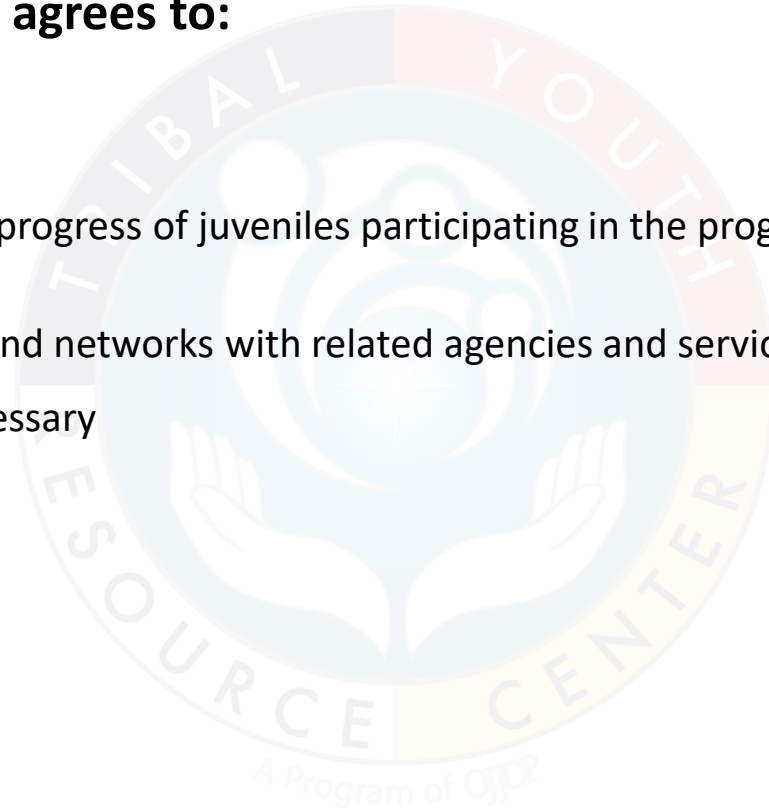


▶ EXAMPLE: INTRA-GOVERNMENTAL AGREEMENT PROVISIONS BEING NEGOTIATED (A JHW COURT MOU)(CONT.)

Things the following persons/entities agrees to:

Tribal Compliance Officer:

1. Responsible for monitoring and tracking the progress of juveniles participating in the program as detailed in their individualized treatment plans
2. Reports on the progress of the participants and networks with related agencies and services
3. Conducts home visits and other visits as necessary



▶ EXAMPLE: INTRA-GOVERNMENTAL AGREEMENT PROVISIONS BEING NEGOTIATED (A JHW COURT MOU)(CONT.)

Things the following persons/entities agrees to:

Tribal Prosecutor:

1. Responsible for processing juveniles pre-trial to participate in the JHWC
2. Pursues the original charges per court procedure, where the juvenile is unsuccessful in meeting program requirements
3. Assists the the filings to support transition into the JHWC or from the JHWC
4. Holds juveniles accountable for the actions under applicable laws
5. Protects the rights of victims, where the offender is a participant in the JHWC

Public Defender:

1. When appointed by the Tribal Court, advocates for the JHWC participant according to professional and ethical practices
2. Consults with participants and advises them of their rights
3. Assists participants in understanding the JHWC both prior to and following admission to the JHWC

▶ EXAMPLE: INTRA-GOVERNMENTAL AGREEMENT PROVISIONS BEING NEGOTIATED (A JHW COURT MOU)(CONT.)

Things the following persons/entities agrees to:

Recovery Center:

1. Contingent on, and in coordination with, the JHWC staff, provides case management, including assessment, evaluation, case planning, and links to services and supports needed by participants
2. Conducts participant alcohol and drug screening and refers positive screens for laboratory testing as required by the JHWC policies and procedures and the approved testing protocol
3. Provides complete reports of testing results for participants prior to court hearings
4. Given the applicable Indian Health Service eligibility criteria, assesses all participants in a timely fashion, and makes treatment recommendations to the JHWC team
5. Recommendations must include, but are not limited to: the level of care, initial substance abuse treatment goals and objectives, identified ancillary services, a specific treatment program outline (i.e., schedule of visits, length of stay, etc.)
6. Provides quality substance abuse services to JHWC participants
7. Generates and maintains treatment plans throughout the case plan, as applicable
8. When needed, helps identify and facilitates referrals of JHWC participants to higher levels of care and then assists in the follow-up treatment planning

▶ EXAMPLE: INTRA-GOVERNMENTAL AGREEMENT PROVISIONS BEING NEGOTIATED (A JHW COURT MOU)(CONT.)

Things the following persons/entities agrees to:

Indian Health Services:

1. Provides a licensed clinical counselor or provider with equivalent skills and training to work with JHWC participants and their families
2. Completes necessary assessments and treatment plans to support mental and behavioral health issues
3. Provides behavioral health evaluations as determined to be necessary through screening
4. Refers when necessary and supports continued care services for IHS-eligible youth in the JHWC
5. Providers, when available, will participate in JHWC staffings, and will provide a progress report for JHWC participants
6. Providers will confer with the JHWC team on recommendations as permitted under applicable confidentiality rules or requirements



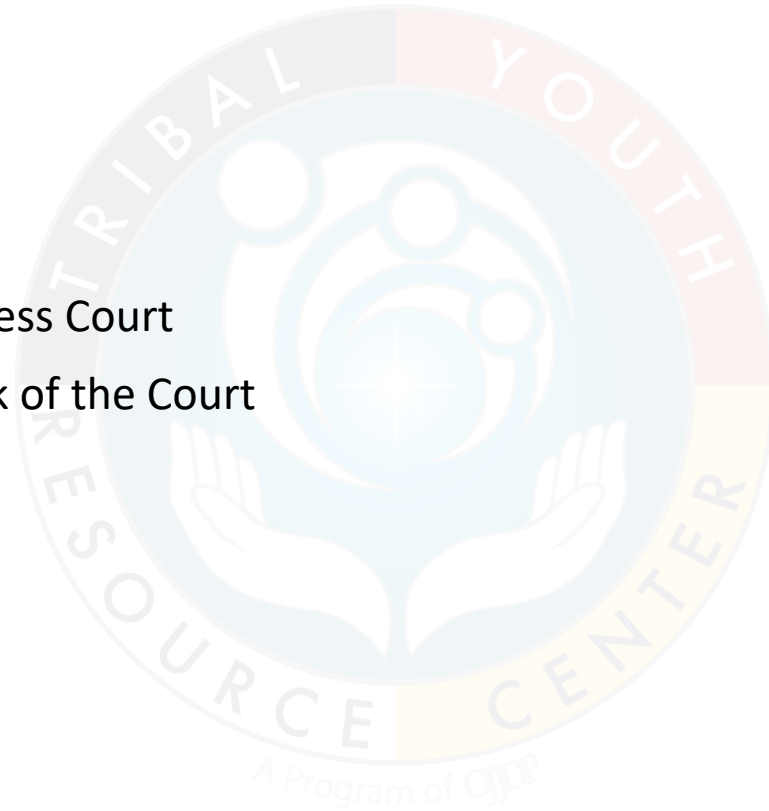
▶ Example: Tribe 2

Inter-governmental
Agreement
(a JHW Court MOU with
State/County)

▶ EXAMPLE: INTER-GOVERNMENTAL AGREEMENT (A JHW COURT MOU WITH STATE/COUNTY)

The Parties:

- County Court Judge
- County Court Clerk of the Court
- Tribal Juvenile Healing to Wellness Court
- Tribal Court Administrator/Clerk of the Court
- County Probation Department
- County District Attorney



▶ EXAMPLE: INTER-GOVERNMENTAL AGREEMENT (A JHW COURT MOU WITH STATE/COUNTY) (CONT.)

Purpose:

“The parties to this agreement strive to maximize resources, foster collaboration between our sovereigns, and ensure that participants have access to culturally appropriate treatment, support reduced rates of youth delinquency, empower and support tribal youth and families, promote self-sufficiency through positive behavioral change, and promote community and family connections that ultimately increase youth opportunities to find meaningful roles within the [Tribe] and [X County].

Therefore, the parties to this agreement agree to transfer potentially eligible Tribal members who are charged with a non-violent alcohol or drug related criminal offense or a probation violation by [X County] to the jurisdiction of the [Tribe’s JHWC].”

Mission:

“[The Tribal Juvenile Healing to Wellness Court (JHWC)] is a transformative judicial process that may be categorized within the growing number of ‘problem-solving’ courts. JHWC applies focused judicial responsiveness in conjunction with treatment, mentorship, cultural connectivity, and community engagement to support youth sobriety, wellness and future autonomy. The [JHWC] team will provide a holistic approach to each individual case and develop a plan for support while also holding each participant accountable through the judicial system and promoting their long-term wellness.”

▶ **EXAMPLE: INTER-GOVERNMENTAL AGREEMENT (A JHW COURT MOU WITH STATE/COUNTY) (CONT.)**

Things the following persons/entities agrees to:

County Juvenile Probation Department (CJPD):

1. Agrees to work as a supportive and collaborative partner with the Tribal JHWC with the understanding that the JHWC will assume the lead role in all accepted cases that are referred to or diverted to the JHWC and shall conduct services as stipulated in this agreement
2. The JHWC Probation Officer will have access to CJPD files that have a current Release of Information as approved by the participating family members
3. The State Superior Court and the CJPD retain technical jurisdiction in the cases for those participating in the JHWC
4. Work supportively and collaborative in efforts to enhance case management through conducting Risk Assessments, case planning, case reviews, court reports, compliance monitoring, responses to progress or violations, program training, field responses in addition to program data collection, planning and communications, following the JHWC's lead
5. If a case is referred back to the CJPD, due to program completion or failure, the CJPD will continue to work collaboratively with the JHWC for the next steps and will continue to serve as a bridging agency between both the Tribal Court and the State's Superior Court, as needed

▶ EXAMPLE: INTER-GOVERNMENTAL AGREEMENT (A JHW COURT MOU WITH STATE/COUNTY) (CONT.)

Things the following persons/entities agrees to:

County District Attorney (County DA or DA):

1. If a case is referred to the County District Attorney's Office (County DA or DA) by the CJP, the DA will review and determine if formal juvenile charges should be filed in the Superior Court
2. Some cases (primarily felonies) have to be referred to the DA. When the DA reviews a case, the first step is to review the law enforcement reports and to attempt to determine if the DA believes that a case can be proven beyond a reasonable doubt using the legally admissible evidence
3. Looks at the "elements" of an alleged crime (what has to be proven to show a judge that a crime was committed) and any anticipated "affirmative defenses" (what the defense can show a judge that would be a defense to the alleged crime)
4. When charges have been filed, the DA shall make recommendations to the Superior Court Judge assigned to the case

EXAMPLE: INTER-GOVERNMENTAL AGREEMENT (A JHW COURT MOU WITH STATE/COUNTY) (CONT.)

Things the following persons/entities agrees to:

State Superior Court Judge (for designated county):

1. Become familiar with the Tribal JHWC and the services offered
2. In circumstances where a juvenile wardship petition is filed in the Superior Court, work with the DA and CJPD to identify Indian children eligible to participate in the JHWC
3. Review a child's case, and the information provided by CJPD, and the Tribe's Probation Department, to determine if a child would be well served by ordering the child to participate in the JHWC
4. Where appropriate, the Superior Court Judge may order the child to participate in the JHWC (under Section 654.2 – the judge may order the child to participate in the JHWC as part of an “informal program of supervision (diversion)” and the judge would specify what the JHWC would require; under Section 602 – the judge may order the child to participate in the JHWC as a “term and condition of probation. The judge would specify what the JHWC would require.)
5. Review the case as required by State law, to verify compliance with the JHWC
6. In circumstances where the child does not comply with the JHWC, and the case is set for hearing before the Superior Court, work with the CJPD, the Tribal Probation Department, and the Tribal Court, to modify the terms of probation as appropriate.



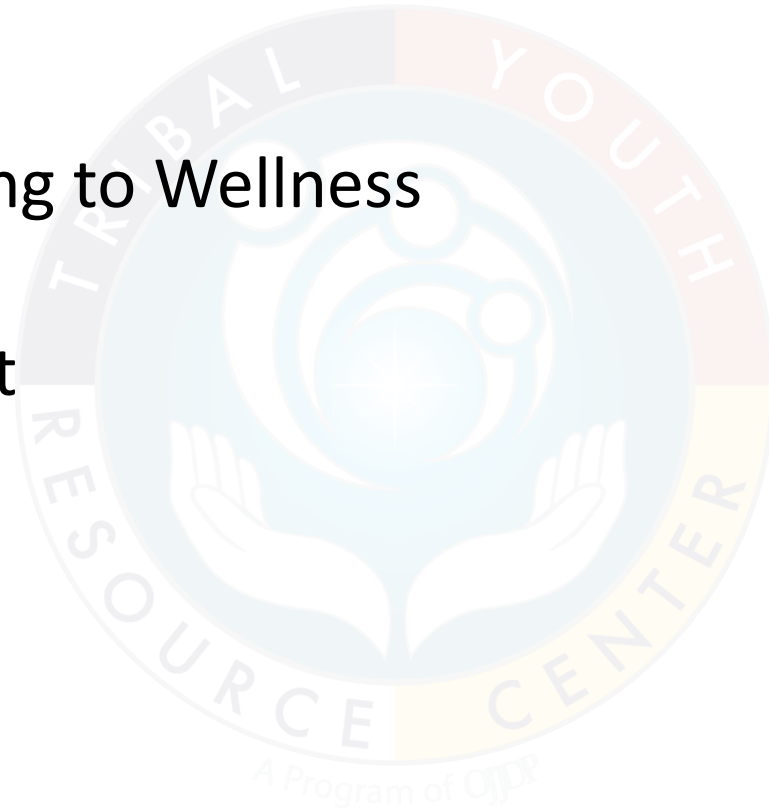
▶ Example: Tribe 3

Inter-governmental
Agreement
(a JHW Court MOU
with School District)

EXAMPLE: INTER-GOVERNMENTAL AGREEMENT (A JHW COURT MOU WITH SCHOOL DISTRICT)

Parties:

- Tribal Juvenile Healing to Wellness Court (JHWC)
- Public School District



▶ EXAMPLE: INTER-GOVERNMENTAL AGREEMENT (A JHW COURT MOU WITH SCHOOL DISTRICT) (CONT.)

Purpose:

“The purpose of this Memorandum is to provide a framework for any future binding contract regarding the [Tribal Juvenile Healing to Wellness Court (JHWC)] between the [JHWC] and the [School District].”

Obligation of the Partners:

“ The Partners acknowledge that no contractual relationship is created between them by this Memorandum, but agree to work together in the true spirit of partnership to ensure that there is a united visible and responsive leadership of the Project and to demonstrate financial, administrative and managerial commitment to the Project by means of the following ...”

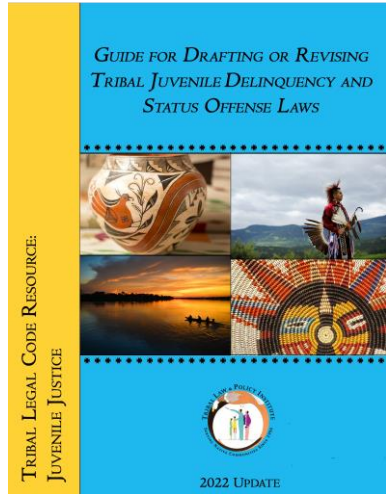
EXAMPLE: INTER-GOVERNMENTAL AGREEMENT (A JHW COURT MOU WITH SCHOOL DISTRICT) (CONT.)

Things the following persons/entities agrees to:

Public School District:

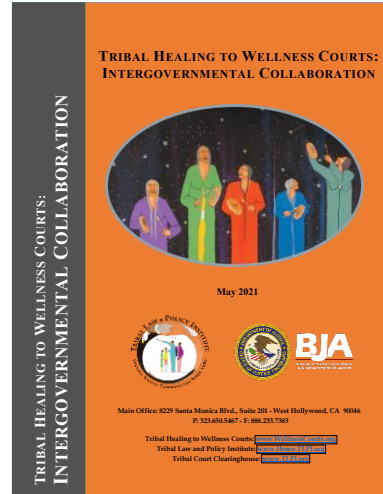
1. Become a partner in the healing and wellness of the X Tribal community, by actively and fully participating in the JHWC
2. Allow school staff to serve as members of the JHWC Advisory Committee
3. Allow school staff to participate in the work of the JHWC staffing team as needed for weekly case staffing, and as often as possible
4. Upon request and at least two hours prior to the weekly JHWC staffing meetings, provide progress reports for JHWC participants, including grades, attendance, participation in court ordered activities, and other information pertinent to the JHWC
5. To comply with FERPA, participants and/or parents will be required to sign permissions for this information to be given to the JHWC, as a requirement of participation in the JHWC
6. Provide assistance to the JHWC participant with transportation to counseling and/or other court ordered sessions, whenever feasible
7. Provide full and complete reports to the appropriate JHWC Probation Officer of Coordinator, including an immediate report when a participant fails to appear on time for scheduled services or any indication that a participant is altering or falsifying a drug or alcohol screen, and/or any other violations of the treatment program and sobriety rules
8. Allow JHWC team members and school staff to attend JHWC trainings and criminal justice conferences when funding is available

RESOURCES



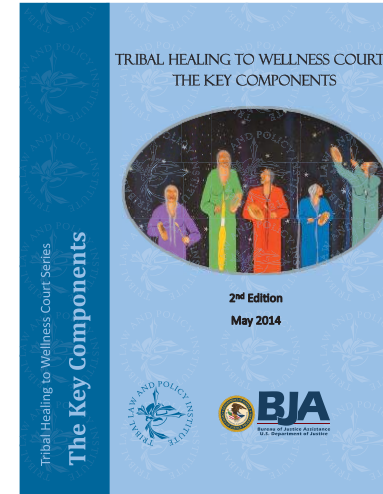
The Guide for Drafting or Revising Tribal Juvenile Delinquency and Status Offense Laws (Chapter 31 – Tribal Juvenile Healing to Wellness Court)

Available at:
<https://ojjdp.ojp.gov/publications/2022-guide-tribal-juvenile-delinquency-status-offense-laws.pdf>



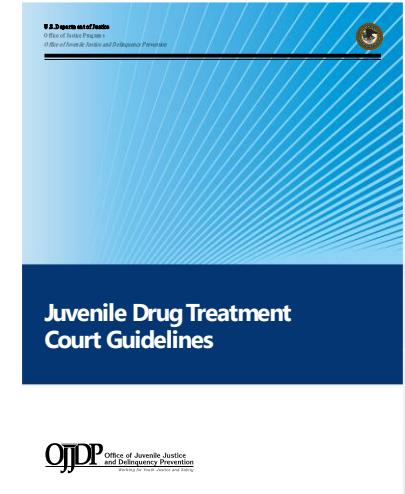
Tribal Healing to Wellness Courts: Intergovernmental Collaboration (2021)

Available at:
<https://wellnesscourts.org/wp-content/uploads/2024/05/Tribal-Healing-to-Wellness-Court-Intergovernmental-Collaboration-May-20-2021.pdf>



The Tribal Healing to Wellness Court Key Components

Available at:
<https://www.home.tlpi.org/tribal-healing-to-wellness-courts>



The Juvenile Drug Treatment Court Guidelines

Available at:
<https://ojjdp.ojp.gov/programs/juvenile-drug-treatment-court-guidelines>

Continue Today's Discussion in the Grantee Portal Forum!

- OJJDP Tribal Grantees are invited to continue discussing the topics covered in today's online learning event in the Grantee Portal forum
- To access the forum, sign into the Grantee Portal (www.tribalyouth.org/grantee-login) and click "Forum" in the navigation bar
- Email TribalYouth@TLPI.org with any questions about how to access the Grantee Portal forum
- *What is the Grantee Portal?* The Grantee Portal is a new centralized resource hub on the TYRC website where OJJDP Tribal grantees can build relationship with other programs funded by OJJDP and access a wide variety of materials to support the planning, implementation, and sustainability of your grants. All points of contact with OJJDP Tribal Grantees have an account.



QUESTIONS? COMMENTS?





CONTACT US!



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**TRIBAL YOUTH
RESOURCE CENTER**

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Thank You and Closing in A Good Way

