



National Judicial Opioid Task Force and Tribal Law & Policy Institute

Tribal-State Court Forums: Addressing the Opioid Crisis

Tribal and state courts interact across many issues, including child welfare, enforcement of court orders, and civil commitments, to name just a few. One key topic with great potential for collaboration is the justice system's response to the nation's opioid crisis, which has brought devastating impacts upon both state and tribal communities.

Long histories of mistrust compound the likelihood that tribal and state courts will misunderstand, misinterpret, or disagree about issues of great importance. A lack of coordination can create dire consequences to safety and justice.

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 for detailed background). Since then, several tribal-state 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 recent examples of 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.
- **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.

Over two million Americans have an opioid use disorder. The misuse of opioids has caused 40,000 deaths and has an economic impact of over \$500 billion reported in 2016. The demands placed upon state and tribal courts far exceed their capacity to respond. In addition to the impacts on criminal justice, family court dockets are seeing increases in children placed in foster care and infants born with neo-natal abstinence syndrome. Both tribal and state courts have developed effective programs and interventions, yet many state and tribal communities remain underserved. Like destructive forces before it, opioid misuse crosses jurisdictional boundaries yet requires culturally responsive remedies. Tribal-state court forums should be utilized to share resources and expertise, expand access to programs, and develop and support best practices and the most effective interventions in response to the crisis.

Forums also provide an opportunity for crucial cross-cultural education. 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. The national opioid crisis is a unique opportunity to provide judicial education and training for tribal and state judges about the nature and impacts of opioid use and abuse, effective intervention strategies, and a broad range of related issues.

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 is only one in-person meeting a year, to ensure the work of the forum moves forward.

In addition to the opioid crisis, 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 is 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, January 2016.

National Convening of Tribal State Court Forums Report. Tribal Law and Policy Institute, 2017.

Promising Strategies: Tribal State Court Relations. Tribal Law and Policy Institute, March 2013.

Michigan's Judiciary Success Stories: How Tribal, State and Federal Courts are Collaborating to Benefit Michigan Families. Michigan Tribal State Federal Judicial Forum, 2017.

Joint Jurisdiction Courts: A Manual for Developing Tribal, Local, State & Federal Justice Collaborations. Jennifer Fahey, JD, MPH, Hon. Korey Wahwassuck, Alison Leof, PhD, Hon. John Smith, Project T.E.A.M., Center for Evidence-Based Policy, Oregon Health & Science University, May 2016.

State and Tribal Courts: Strategies for Bridging the Divide. Center for Court Innovation, 2011.

Walking on Common Ground: Pathways to Equal Justice. Fox Valley Technical College, July 2005.

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.

Walking On Common Ground Website.
www.WalkingOnCommonGround.org

