



# California Tribal Court/State Court Forum Report

---

REPORT TO THE JUDICIAL COUNCIL  
AUGUST 30, 2012



ADMINISTRATIVE OFFICE  
OF THE COURTS

---

CENTER FOR FAMILIES, CHILDREN  
& THE COURTS

# **Binder of Materials**

## **Contents**

### **Tab A: PowerPoint Presentation (August 30, 2012): About the California Tribal Court/State Court Forum**

#### **Tab B: California Tribal Court/State Court Forum Background Materials**

1. Appointment Order for Forum Members
2. Overview
3. Principles and Values
4. Scope of Work
5. Communication Plan
6. Roster

#### **Tab C: California's Tribal Communities**

1. Research Update on Native American Statistical Abstract: Population Characteristics
2. Research Update on Native American Statistical Abstract: Violence and Victimization

#### **Tab D: California's Tribal Justice Systems**

1. Research Update on Native American Research Series: Tribal Justice Systems

#### **Tab E: Jurisdictional Discussion**

1. Jurisdictional Issues in California Regarding Indians and Indian Country:  
[www.courts.ca.gov/documents/Jurisdiction\\_in\\_California\\_Indian\\_Country.pdf](http://www.courts.ca.gov/documents/Jurisdiction_in_California_Indian_Country.pdf)
2. Issue Statements

#### **Tab F: Forum Accomplishments and Pending Projects**

1. Annual Agenda and Memo
2. Innovations in the California Courts—Connecting the Court to the Community: Tribal Courts
3. Foster Care Reform Update: Notable Tribal Court/State Court Collaborative Efforts
4. Recognition and Enforcement of Protective Orders Brochure
5. Forum-Related Educational Activities
6. Legislative Proposal: Tribal Civil Judgment Act
7. E-noticing in Indian Child Welfare Act Cases
8. Assembly Bill 1325: Tribal Customary Adoption (Cook; Stats. 2009, ch.287) —(Legislative Counsel's Digest)

#### **Tab G: California State-Federal Judicial Council Resolution and Judicial Symposium**

1. California State-Federal Judicial Council Resolution, June 1, 2012
2. Judicial Symposium Agenda (draft), October 9–10, 2012

# **Binder of Materials**

## **Contents**

### **Tab A:**

PowerPoint Presentation (August 30, 2012): About the California Tribal Court/State Court Forum

**California  
Tribal Court/State Court  
Forum**

Judicial Council Issues Meeting

August 30, 2012

*Hon. Richard C. Blake*

*Hon. Dennis M. Perluss*

---

---

---

---

---

---

---

---

**Agenda**

- California's Tribal Communities
- California's Tribal Courts
- California Tribal Court/State Court Forum Overview
- Jurisdictional Discussion
- Accomplishments
- California State-Federal Judicial Council

2

---

---

---

---

---

---

---

---

California's Tribal Communities

3

---

---

---

---

---

---

---

---

## California's Tribal Communities

- 109 federally recognized Tribes; 78 groups petitioning for federal recognition
- 720,000 California citizens identify as American Indian or Alaska Native (AI/AN)
- Represents 12% of all AI/AN population in the United States
- California's Tribes are as small as five members and as large as 5,600 members

4

---

---

---

---

---

---

---

---

## California's Tribal Courts

5

---

---

---

---

---

---

---

---

## California's Tribal Courts

- California has 20 tribal courts
- More than doubled since 2002
- Courts serve 39 Tribes
- Exercise various types of jurisdictions
- Over a range of case types

6

---

---

---

---

---

---

---

---

## California Tribal Courts

- California Tribal Courts Directory at <http://www.courts.ca.gov/14400.htm>
- Google Map of Tribal Courts at <http://g.co/maps/cvdq8>

7

---

---

---

---

---

---

---

---

## California Tribal Court/State Court Forum Overview

8

---

---

---

---

---

---

---

---

## California Tribal Court/State Court Forum

- Established May 2010
- Membership
- Values and Principles
- Scope of Work

9

---

---

---

---

---

---

---

---

## Forum's Purpose

To improve the working relationships between its members and enable the courts of each to issue and enforce their respective orders to the fullest extent allowed by law

10

---

---

---

---

---

---

---

---

## Jurisdictional Discussion (Taped Vignettes)

11

---

---

---

---

---

---

---

---

## Street Scene

12

---

---

---

---

---

---

---

---

**Family Court**

13

---

---

---

---

---

---

---

---

**Juvenile Court**

14

---

---

---

---

---

---

---

---

**Traffic Court**

15

---

---

---

---

---

---

---

---

Accomplishments

16

---

---

---

---

---

---

---

---

**Forum Accomplishments-  
Highlights**

- Share educational and other resources
- Implement local and statewide solutions

17

---

---

---

---

---

---

---

---

**Forum Proposals**

- Legislative proposal to establish a statewide procedure
- Legislative report on tribal customary adoptions pending

18

---

---

---

---

---

---

---

---

California State-Federal  
Judicial Council Resolution

19

---

---

---

---

---

---

---

---

**California State Federal Judicial  
Council Resolution**

- Forum Embraces Resolution
  - Curriculum on Jurisdiction in Indian Country
- <http://www.courts.ca.gov/8710.htm>

20

---

---

---

---

---

---

---

---

**California State Federal  
Judicial Council Resolution**

- Benchguides under review
- More in-person trainings needed

21

---

---

---

---

---

---

---

---

## Invitation

- October 9-10, 2012 Symposium
- In collaboration with the National Judicial College
- Hosted by Shingle Springs Band of Miwok Indians

22

---

---

---

---

---

---

---

---

## Forum Funding

- California Department of Social Services
- California Emergency Management Agency (Cal EMA)
- U.S. Department of Health and Human Services, Court Improvement Program (CIP)

23

---

---

---

---

---

---

---

---

## Questions?

24

---

---

---

---

---

---

---

---

# **Binder of Materials**

## **Contents**

### **Tab B: California Tribal Court/State Court Forum Background Materials**

1. Appointment Order for Forum Members
2. Overview
3. Principles and Values
4. Scope of Work
5. Communication Plan
6. Roster

## THE JUDICIAL COUNCIL OF CALIFORNIA

Effective May 19, 2012, the following appointments are made to the Judicial Council's California Tribal Court/State Court Forum advisory committee for terms ending May 19, 2014:

Hon. Richard C. Blake, Cochair

Hon. Dennis M. Perluss, Cochair

Hon. Tricia A. Bigelow

Hon. Robert L. Dondero

Hon. James R. Lambden

Hon. Abby Abinanti

Hon. April E. Attebury

Hon. Mitchell L. Beckloff

Hon. Jerilyn L. Borack

Hon. Anthony J. Brandenburg

Hon. Michael Golden

Hon. Suzanne N. Kingsbury

Hon. William Kockenmeister

Hon. Anthony Lee

Hon. Lester J. Marston

Hon. Robert Moeller

Hon. David E. Nelson

Hon. Kimberly J. Nystrom-Geist

Hon. Deborah A. Ryan

Hon. Deborah L. Sanchez

Hon. Dean T. Stout

Hon. Juan Ulloa

Hon. Claudette C. White

Hon. Christine Williams

Hon. Christopher G. Wilson

Ms. Cynthia Gomez

Mr. Olin Jones

Date: April 25, 2012

T. C. O. J.  
\_\_\_\_\_  
Chief Justice of California and  
Chair of the Judicial Council

# CALIFORNIA TRIBAL COURT/STATE COURT FORUM

## Forum Overview

### Background

California currently has 109 federally recognized tribes,<sup>1</sup> with more than 100 separate reservations or rancherias,<sup>2</sup> and another 78 groups currently petitioning for federal recognition.<sup>3</sup> Some 720,000 California citizens identified themselves in the 2010 census as American Indian or Alaska Native, either exclusively or in combination with other ethnicities.<sup>4</sup> This means roughly 12% of the entire American Indian/Alaska Native population of the United States can be found in California.

The number of tribal courts in California has more than doubled since 2002, from 9 to 22. The number of tribes with access to a tribal court increases to 39 when the Intertribal Court of Northern California (ICNC), serving 7 tribes, the Intertribal Court of Southern California (ICSC), serving 12 tribes, and the Northern California Intertribal Court System (NCICS), serving 4 tribes, are included. These courts exercise jurisdiction over more than 30 types of cases in the areas of administrative, civil, probate, family, and juvenile law.

California's state court system is the largest in the country, receiving more than nine million case filings each year across all case types. The California court system has approximately 2,000 judicial officers and operates more than 450 court facilities around the state.

Work of mutual concern to the tribes and the state includes the following projects

- Education and technical assistance on the Indian Child Welfare Act (ICWA), ongoing since 2005;
- Statewide blue ribbon commission (modeled after PEW Commission) with tribal representation, ongoing since 2006;
- Local blue ribbon commissions and other local problem-solving alliances, roundtables, forums with tribal representation and focused on Indian Child Welfare Act cases (ongoing in some jurisdictions);
- California tribal needs assessment on the impact of family violence, with the assistance of tribal consultants (e.g., Tribal Law and Policy Institute, Inter-Tribal Council of

---

<sup>1</sup> Dept. of the Interior, Bureau of Indian Affairs, *Tribal Leaders Directory* (2012).

<sup>2</sup> Some tribes remain "landless," meaning they have no land in trust for their members, while other tribes may have more than one reservation or rancheria.

<sup>3</sup> As of September 22, 2010.

<sup>4</sup> See <http://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf>.

# CALIFORNIA TRIBAL COURT/STATE COURT FORUM

California, Tribal Star) selected by tribal chairs—Native American Community Justice Project completed in 2008;

- Sharing of state court resources (such as education, court forms, grant listings, and technical assistance) with tribal court judges—ongoing since December 2009; and
- The launch of the ongoing California Tribal Court/State Court Forum, May 2010.

## **Forum Composition and Purpose**

The California Tribal Court/State Court Forum is a coalition of tribal courts of Native American tribes situated in California and courts of the State of California, who come together as equal partners to address issues common to both relating to the recognition and enforcement of court orders that cross jurisdictional lines, the determination of jurisdiction for cases that might appear in either court system, and the sharing of services between jurisdictions.

The forum comprises 27 members: 11 tribal court judges, representing 14 of the 20 tribal courts that serve more than 30 tribes in California; the Governor’s tribal adviser; the director of the California Attorney General’s Office of Native American Affairs; and 14 state court judges, including the chairs of the Judicial Council’s Access and Fairness, Civil and Small Claims, Family and Juvenile Law, Probate and Mental Health, and Traffic Advisory Committees and vice-chair of the Criminal Law Advisory Committee, as well as judges of the local state courts in counties where many of the tribal courts are situated.

Consistent with the state judicial branch’s respect for tribal sovereignty, appointments of tribal court judges to the forum were based on nominations from those tribal governments with tribal courts. The goal is to have a member appointed from each California tribe with a tribal court and to maintain equal representation between tribal court and state court judges.

The forum is convened for the express purpose of improving the working relationships among its members and enabling the courts of each system to issue and enforce their respective orders to the fullest extent.

## **Forum Objectives**

The forum’s activities address six key objectives:

1. Foster partnerships with tribes, tribal courts, and state branches of government that enable tribal and state courts to issue and enforce their respective orders to the fullest extent allowed by law
2. Foster excellence in public service by promoting state and tribal court collaboration that identifies new ways of working together at local and statewide levels and maximizes resources and services for courts;
3. Provide expertise to implement statewide solutions to improve access to courts (for example, see solutions identified in the California reports relating to domestic violence,

sexual assault, stalking, and teen dating violence in Native American communities ([www.courts.ca.gov/8117.htm](http://www.courts.ca.gov/8117.htm));

4. Identify opportunities to share educational resources between the state judicial branch and the tribal justice systems;
5. Make recommendations to committees developing judicial education institutes, multi-disciplinary symposia, distance learning, and other educational materials to include content on federal Indian law and its impact on state courts; and
6. Improve the quality of data collection and exchange related to tribe-specific information.

## Forum Meetings

Since its establishment in May 2010, the forum has met in person on four occasions (June 29, 2010, and January 13, June 17, and December 14, 2011) and regularly by conference call. To view the forum's roster, charge and scope of work, values and principles, communication plan, and meeting notes, please visit [www.courts.ca.gov/3065.htm](http://www.courts.ca.gov/3065.htm).

## Forum Accomplishments

Below are some of the key accomplishments of the forum:

1. Sharing of Resources: judicial education and technical assistance to support each other's court capacity to meet the needs of its citizens. Resources have extended to areas of court forms, collaborative justice, grants, human resources, supervised visitation, and self-help.
2. Developing New Resources: curriculum on civil and criminal jurisdiction in a Public Law 280 state, educational offerings at tribal and state court sponsored trainings, updates to existing judicial curriculum and benchguides, and creation of a website to serve as a clearinghouse of resources.
3. Collection of Tribe-Specific Data and Information
  - population characteristics ([www.courts.ca.gov/documents/resup\\_pop\\_072511\\_final.pdf](http://www.courts.ca.gov/documents/resup_pop_072511_final.pdf))
  - domestic and other violence and victimization statistics ([www.courts.ca.gov/documents/NatAmStatsAbUpdate.pdf](http://www.courts.ca.gov/documents/NatAmStatsAbUpdate.pdf))
  - tribal court directory ([www.courts.ca.gov/14400.htm](http://www.courts.ca.gov/14400.htm)) and interactive Google map of tribal court locations (<http://g.co/maps/cvdq8>) (as of July 2012)
4. Focus on Domestic Violence: recognition and enforcement of protective orders
  - *California Courts Protective Order Registry*. By sharing information on restraining and protective orders, state courts and tribal courts are better able to protect the public, particularly victims of domestic violence, and avoid conflicting orders. ([www.courts.ca.gov/15574.htm](http://www.courts.ca.gov/15574.htm))

- *Efficient and consistent process.* Following effective local tribal and state court protocols, effective July 1, 2012, the Judicial Council adopted rule 5.386, which provides that state courts, when requested by a tribal court, must adopt a written procedure or local rule to permit the fax or electronic filing of any tribal court protective order that is entitled to be registered under Family Code section 6404. ([www.courts.ca.gov/documents/SPR11-53.pdf](http://www.courts.ca.gov/documents/SPR11-53.pdf))
  - Domestic Abuse Self-Help Tribal Project to assists litigants with obtaining restraining orders in tribal courts and state courts. In this project, a nonlawyer works under the supervision of a reviewing attorney to assist the litigant. The attorney can supervise from any location through the use of technology, training, and review of the nonlawyer's work. ([www.courts.ca.gov/documents/FactSheetDASH.pdf](http://www.courts.ca.gov/documents/FactSheetDASH.pdf))
  - Tribal advocates curriculum ([www.courts.ca.gov/documents/TribalAdvocacyCurriculum.pdf](http://www.courts.ca.gov/documents/TribalAdvocacyCurriculum.pdf))
5. Focus on Civil Judgments: recognition and enforcement of tribal civil judgments
- Developed a legislative proposal. [www.courts.ca.gov/documents/LEG11-04.pdf](http://www.courts.ca.gov/documents/LEG11-04.pdf)

### Ongoing Projects

1. Sharing resources
2. Education
3. Ensuring recognition and enforcement of tribal court orders across case types (focus on civil, traffic and probate/mental health)
4. E-noticing in Indian Child Welfare Act cases

# CALIFORNIA TRIBAL COURT/STATE COURT FORUM

## Principles and Values: A Living Document

*Forum members anticipate revising this document on an ongoing basis to reflect the evolution of values over time in the course of sharing experiences and learning from one another.*

The California Tribal Court/State Court Forum is guided by the following set of overarching principles, adopted early on in its deliberations:

### History

1. Historical evolution of the United States and of federal/ and state Indian policy and law are opposite sides of the same coin. Historical perspective is essential to putting the statutes, treaties, and cases in the body of Indian law in their historical context.

### Sovereignty

2. Tribes have a unique government-to-government relationship with all other sovereigns.
3. Tribes, as sovereign entities, possess inherent authority to create their own governments and establish their own laws.
4. Among the attributes of tribal sovereignty are the jurisdiction and authority to establish justice systems to meet the needs and reflect the values and traditions of the tribal community.
5. That sovereignty is impacted by the reality of centuries of law and policy that bring the various sovereign bodies—state, tribal, and federal—to this era.

### Citizenship

6. Tribal members are citizens of their tribes, citizens of the State of California, and citizens of the United States.
7. All of these sovereign authorities agree that all citizens deserve equal access to justice.
8. It is in the best interest of all citizens for tribal courts and the Courts of the State of California to coordinate and share resources in order to achieve a seamless delivery of justice and to ensure that our citizens receive the benefit of all that both systems have to offer.

## **Tribal and State Justice Systems**

9. Tribal Courts and the Courts of the State of California are fundamentally similar; they have more in common than they have differences.
10. Tribal Courts and the Courts of the State of California share the same goals: the fair process for and quality treatment of all people who appear before them, public safety, and accountability.
11. Tribal and State justice systems will necessarily look different because there are procedural, substantive, and cultural differences in how they deliver justice.
12. Tribal and State justice systems both value justice, even as they may not always agree on what those justice systems look like.
13. Neither Tribal nor State justice systems hold exclusive franchise over the best way to deliver justice.

## **Education and the Promotion of Mutual Trust and Respect**

14. Tribal Courts and the Courts of the State of California and their justice partners have much to learn from one another, and when differences occur, tribal and state court judges agree to discuss those differences and convene justice partners to discuss them.
15. The desire for consensus and communitywide harmony serves as a philosophical foundation for Tribal Court and State Court judges to use to bridge those differences.
16. Mutual respect implies understanding and acceptance of the other person's culture, religious beliefs, and background.<sup>1</sup>
17. Mutual respect is engendered through education—gaining historical perspective, learning from one another, discussing areas of mutual concern, visiting each other's Courts—building consensus, and together finding solutions to the pressing issues confronting Tribal Courts and the Courts of the State of California for the benefit of citizens of Tribes and of the State alike.

Forum members identified a set of values to inform their work together:

- Equal Representation— Equal representation from Tribal and State justice systems
- Cooperation—Actively fostering cooperation between Tribal Courts and the Courts of the State of California;
- Sharing— Sharing available resources between Tribal Courts and the Courts of the State of California;
- Improving Access to Justice— Working cooperatively to improve access to justice by addressing jurisdictional issues and the lack of services and other resources in Indian Country; and

---

<sup>1</sup> The American Indian Religious Freedom Act (Public Law 95-341), a joint resolution of Congress passed in 1978, declared it Federal policy "to protect and preserve for American Indians their inherent right of freedom to believe, express and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians."

## CALIFORNIA TRIBAL COURT/STATE COURT FORUM

---

- Mutually Acceptable Solutions— Working cooperatively to identify and address areas of concurrent jurisdiction and establish mechanisms for the allocation, sharing and transfer of jurisdiction and working cooperatively to identify and address issues of full faith and credit and mutual enforcement of court orders.

# CALIFORNIA TRIBAL COURT/STATE COURT FORUM

## Charge and Scope of Work

### Charge

The California Tribal Court/State Court Forum is a coalition of the tribal courts of the Native American tribes in California and the courts of the State of California, which come together as equal partners to address issues common to both, such as recognizing and enforcing court orders that cross jurisdictional lines, determining jurisdiction for cases that might appear in either court system, and sharing services between jurisdictions. The forum will convene for the express purposes of improving the working relationship between its members and enabling the courts to issue and enforce their respective orders to the fullest extent allowed by law. The forum will make recommendations—including legislative, rule, and form proposals—to the Judicial Council either directly or jointly with the appropriate, relevant advisory committees.

### Scope of Work

#### 1. Information and Resource Sharing

The forum will identify opportunities to share educational resources, develop judicial curricula, and establish a clearinghouse for the exchange of resources to benefit the people served by tribal courts and state courts.

- ***Education and training.*** The forum will identify relevant educational opportunities for tribal court and state court judges. The Administrative Office of the Courts (AOC) will continue to make available to tribal court judges existing in-person and distance-learning educational programs and materials that are available to state court judges through its secure website. The AOC will seek funding to continue financing the attendance of tribal, state court judges, and personnel at statewide trainings.
- ***Curriculum development.*** The forum will make recommendations to the AOC to revise state court judicial education and training materials; revisions to include information regarding federal Indian law and the interjurisdictional issues that face tribal and state courts.
- ***Clearinghouse of other resources.*** The forum will identify other resources that can improve tribal court and state court relationships and support tribal court and state court capacity to serve Native Americans. Examples include (1) local protocols between tribal and state courts; (2) technical assistance to enhance or establish supervised visitation

tribal programs, self-help tribal programs, and tribal CASA programs; (3) Judicial Council forms in a format that interested tribal courts may adapt; (4) tribal grant opportunities; and (5) collaborative grant applications and letters of support for grant applications.

## 2. Jurisdictional Issues

The forum will identify jurisdictional issues across case types to ensure the recognition and enforcement of tribal court and state court orders.

- ***Recognition and enforcement of protective orders.*** Although the federal Violence Against Women Act mandates full faith and credit and enforcement for protective orders, tribal courts currently have no mechanism for entering their protective orders into CLETS (California Law Enforcement Telecommunications System) or CARPOS (California Restraining and Protective Order System). Tribal advocates and tribal judges report that law enforcement agencies do not always recognize or enforce tribal court orders as valid court orders.

The failure to recognize and enforce tribal court orders creates real issues in ensuring the protection of victims of domestic violence. Law enforcement typically will not enforce an order if it cannot verify the order in CLETS. Developing a statewide solution that does not rely on local protocols for tribal court protective order entry into CLETS would be helpful.

- ***Recognition and enforcement of other civil orders (e.g., animal control, debt collection, housing, environment, traffic).*** Tribal court judges report that in some cases where a civil matter has been fully litigated to judgment in tribal court, the tribal court judgment will not be recognized or enforced outside the reservation. They report that some state court judges do not recognize tribal court judgments and require the matters essentially to be relitigated in state court.

Relitigating matters is an inefficient use of judicial resources and increases the cost to litigants as well. Developing a clear, consistent statewide procedure for enforcement of orders would be helpful.

- ***Recognition and enforcement of other criminal orders (e.g., crimes occurring on tribal lands).*** Many jurisdictional complexities and limitations in Indian country result in the lack of recognition and enforcement of criminal orders. The difficulty in determining jurisdiction and provisions for concurrent jurisdiction of certain cases can cause conflict and confusion for law enforcement, prosecution, courts, service providers, and crime victims.

## 3. Sharing, Coordination, and Transfer of Jurisdiction; Access to Records Across Jurisdictions

The forum will identify jurisdictional issues and make recommendations that will permit tribal courts and state courts to effectively share, allocate, and transfer jurisdiction across case types.

- ***Child protection, child welfare, and juvenile justice cases.*** The Indian Child Welfare Act sets out a specific preference for tribal court jurisdiction over cases involving Native American children and requires transfer of these matters to tribal court except where there is good cause not to transfer. California statute restricts access to juvenile court records in these confidential proceedings.

Currently, federal and state statutes codify the Indian Child Welfare Act, and a rule of court gives guidance on implementation, including the transfer of cases from state court to tribal court. However, no formal mechanism exists for allocating shared jurisdiction or transferring a case in the other direction from tribal court to state court, which can result in an inefficient use of judicial resources and potentially conflicting judgments that increase the cost of litigation and undermine tribal and state justice systems.

Welfare and Institutions Code section 827 enumerates the individuals and entities that have access to confidential juvenile court records. Under this statute, tribes do not have access to these records unless they have intervened as parties. This law can result in tribal court placement orders that put children at risk of harm because the tribal courts and agencies would not have the same access to information that the state courts and local county agencies would have.

- ***Other civil cases.*** In other civil cases, there may be concurrent jurisdiction. Currently, no formal mechanism is in place to inform tribal and state courts of what cases are pending in each other's courts. Also, there is no formal mechanism for allocating shared jurisdiction, transferring cases between tribal and state court jurisdictions, and sharing records between jurisdictions. This lack can result in an inefficient use of judicial resources and potentially conflicting judgments that increase the cost to litigants and undermine tribal and state justice systems.
- ***Probation and parole oversight.*** Interjurisdictional management of probationers and parolees is another area where more interaction among agencies is warranted. In California, probationers and parolees often cross jurisdictional lines for work or family or to relocate permanently. Because tribal and state justice systems have an interest in tracking offenders, it would improve offender accountability if tribal and county probation departments and tribal and county law enforcement agencies shared this information.

#### 4. Data Issues

The forum will work to eliminate barriers to the collection and exchange of essential tribe-specific information.

- ***Law enforcement, child welfare/protection, and state court case information.*** Local and statewide databases do not collect tribe-specific information. California's law

enforcement agencies are first responders to calls for assistance on tribal lands and, as such, report crime-related data to the state of California. When reporting crime data in Indian country, however, law enforcement agencies report only aggregate numbers. They are not required by statute to report data on ethnicity or tribal affiliation—or even whether calls come from Indian reservations or other Indian lands. No provision or specific funding exists for case management systems within local and state agencies to track tribe-specific data for information relating to crime and victimization, child welfare / child protection, and state court case information.

# CALIFORNIA TRIBAL COURT/STATE COURT FORUM

## Communication Plan

The California Tribal Court/State Court Forum adopted this communication plan early on in its deliberations:

- All in-person meeting agendas and notes will be posted to the California Courts website on the Tribal Projects page at [www.courts.ca.gov/programs-tribal.htm](http://www.courts.ca.gov/programs-tribal.htm).
- All actions of the forum will be communicated by the AOC and forum members to state and tribal justice system partners as follows:
  1. State court judges will keep the Judicial Council's advisory committees informed of actions taken;
  2. Tribal court judges will each inform their tribal court stakeholders and tribal governments of their own tribes ;
  3. For tribes without tribal courts, the AOC will inform tribal chairs of federally recognized and nonrecognized Tribes;
  4. For tribes with tribal courts but no coalition member yet appointed, the AOC will inform the tribal courts' administrators;
  5. The tribal adviser to the Governor will inform the Governor; and
  6. The director of the Office of Native American Affairs, an agency of the California Attorney General's Office, will inform the Attorney General and, as needed, any appropriate law enforcement agencies.
- When forum recommendations impact other tribal, county, or state agencies, the cochairs of the forum will enlist the support of forum members and the AOC staff, as appropriate, to contact these justice partners.
- When forum activities warrant media attention, the cochairs will work with the AOC and tribal governments to coordinate press releases to media outlets, including Native American outlets such as *Indian Country Today*.

**California Tribal Court/State Court Forum  
(Members as of May 19, 2012)**

**Hon. Richard C. Blake, Forum Cochair**

(Hoopa, Yurok, Karuk)  
Chief Judge of the Hoopa Valley Tribal Court  
Chief Judge of the Smith River Rancheria Tribal Court  
Chief Judge of the Redding Rancheria Tribal Court

**Hon. Dennis M. Perluss, Forum Cochair**

Presiding Justice of the Court of Appeal,  
Second Appellate District, Division Seven  
Civil and Small Claims Advisory Committee, Chair

**Hon. Abby Abinanti**

(Yurok)  
Chief Judge of the Yurok Tribal Court

**Hon. April E. Attebury**

(Karuk)  
Chief Judge and Court Administrator of the Karuk Tribal  
Court

**Hon. Mitchell L. Beckloff**

Judge of the Superior Court of California,  
County of Los Angeles  
Probate and Mental Health Advisory Committee, Chair

**Hon. Tricia Ann Bigelow**

Presiding Justice of the Court of Appeal,  
Second Appellate District, Division Eight  
Criminal Law Advisory Committee, Vice-Chair

**Hon. Jerilyn L. Borack**

Judge of the Superior Court of California,  
County of Sacramento  
Family and Juvenile Law Advisory Committee, Member

**Hon. Anthony J. Brandenburg**

Chief Judge of the Intertribal Court of Southern California

**Hon. Robert L. Dondero**

Associate Justice of the Court of Appeal,  
First Appellate District, Division One  
Governing Committee of the Center for Judicial Education  
and Research (CJER), Vice-Chair

**Hon. Michael Golden**

Chief Judge of the Morongo Tribal Court

**Ms. Cynthia Gomez**

Tribal Adviser of the Office of Governor Edmund G.  
Brown, Jr.  
Executive Secretary of the Native American Heritage  
Commission

**Mr. Olin Jones**

(Chickasaw Nation of Oklahoma)  
Director of the Office of Native American Affairs,  
California Attorney General's Office

**Hon. Suzanne N. Kingsbury**

Presiding Judge of the Superior Court of California,  
County of El Dorado

**Hon. William Kockenmeister**

Chief Judge of the Bishop Paiute Indian Tribal Court  
Chief Judge of the Washoe Tribal Court

**Hon. James R. Lambden**

Associate Justice of the Court of Appeal,  
First Appellate District, Division Two  
Access and Fairness Advisory Committee, Chair

**Hon. Anthony Lee**

(St. Regis Mohawk)  
Chief Judge of the San Manuel Tribal Court

**Hon. Lester J. Marston**

(Chiricahua and Cahuilla)  
Chief Judge of the Blue Lake Rancheria Tribal Court

**Hon. Robert Moeller**

Chief Judge of the Chemehuevi Indian Tribal Court  
Associate Justice on the Colorado River Indian Tribes  
Tribal Court of Appeals

**Hon. David E. Nelson**

Judge of the Superior Court of California,  
County of Mendocino

**California Tribal Court/State Court Forum  
(Members as of May 19, 2012)**

**Hon. Kimberly J. Nystrom-Geist**

Judge of the Superior Court of California,  
County of Fresno  
Family and Juvenile Law Advisory Committee, Cochair

**Hon. Deborah A. Ryan**

Judge of the Superior Court of California,  
County of Santa Clara  
Traffic Advisory Committee, Member

**Hon. Deborah L. Sanchez**

(Chumash and O'odham)  
Judge of the Superior Court of California,  
County of Los Angeles

**Hon. Dean T. Stout**

Presiding Judge of the Superior Court of California,  
County of Inyo  
Family and Juvenile Law Advisory Committee, Cochair

**Hon. Juan Ulloa**

Judge of the Superior Court of California,  
County of Imperial

**Hon. Claudette C. White**

(Quechan)  
Chief Judge of the Quechan Tribal Court

**Hon. Christine Williams**

(Yurok)  
Chief Judge of the Northern California Intertribal Court  
System  
Chief Judge of the Shingle Springs Band of Miwok Indians

**Hon. Christopher G. Wilson**

Judge of the Superior Court of California,  
County of Humboldt

# **Binder of Materials**

## **Contents**

### **Tab C: California's Tribal Communities**

1. Research Update on Native American Statistical Abstract: Population Characteristics
2. Research Update on Native American Statistical Abstract: Violence and Victimization

March 2012

## Native American Statistical Abstract: Population Characteristics

The Tribal Programs and the Family and Juvenile Research staff of the Administrative Office of the Courts' Center for Families, Children & the Courts (CFCC) are developing a series of informational abstracts that bring together the available data from various sources on American Indians and Alaskan Natives (AI/AN) nationally, statewide, and tribally specific to California's AI/AN population. The purpose of these abstracts is to develop and disseminate justice-related information and links to reports to ensure the highest quality of justice and service for California's AI/AN population. This information is intended for the state judicial branch, tribal justice systems, tribal organizations, state agencies, and local agencies to support effective collaboration and tribal justice development.

*Note: This update was originally published in July 2011, with data from the 2000 Census. It was updated in March 2012 with data from the 2010 Census, and will be updated as more 2010 Census data becomes available.*

### National Tribal Population

- According to the 2010 Census, 5.2 million U.S. residents reported being AI/AN alone or in combination with some other race, and over 2.9 million reported being AI/AN alone.<sup>1</sup> Among counties in the United States, Los Angeles County (CA) had the highest population of AI/AN alone in 2000 (76,988).<sup>2</sup>
- In 2010, the majority of the AI/AN-alone population (67 percent) and the majority of the AI/AN-in-combination<sup>3</sup> population (92 percent) lived outside of tribal areas.<sup>4</sup>
- In 2010, Cherokee was the largest tribal population, representing approximately 16 percent of the total AI/AN population. The Cherokee population, at more than 819,000, is more than twice the size of the Navajo, the second-largest tribal population, at over 332,000. Other large tribal

---

<sup>1</sup> Tina Norris, Paula L. Vines, and Elizabeth M. Hoeffel, "2010 Census Briefs: The American Indian and Alaska Native Population: 2010." (Bureau of the Census, Jan. 2012), p. 4, table 1, <http://www.census.gov/prod/cen2010/briefs/c2010br-10.pdf> (as of March 5, 2012).

<sup>2</sup> U.S. Census Bureau, Census 2000, Summary File 2.

<sup>3</sup> AI/AN alone refers to the population that self-identifies as being only AI/AN. AI/AN in combination refers to the population that self-identifies as being AI/AN in combination with one or more other races.

<sup>4</sup> Norris, et al, *supra*, p. 12, figure 6.

populations (roughly 170,000 or more) include Choctaw, Mexican American Indian, Chippewa, and Sioux.<sup>5</sup>

## California Tribal Population

- In 2010, California had the largest population of AI/AN alone (362,801); the second-largest AI/AN population was in Oklahoma (321,687), followed by Arizona (296,529). California represented 12 percent of the total AI/AN-alone population in the United States. California had more than 720,000 AI/AN citizens (alone or in combination with another race) residing in both rural and urban communities.<sup>6</sup>
- Although California has the largest tribal population in the United States, it has very little tribal land. (See [http://www.waterplan.water.ca.gov/tribal2/docs/GW\\_Basins\\_and\\_Tribal\\_Trust\\_Lands\\_map.pdf](http://www.waterplan.water.ca.gov/tribal2/docs/GW_Basins_and_Tribal_Trust_Lands_map.pdf).)
- As of 2005, only 3 percent of California's AI/AN population lived on a reservation or rancheria.<sup>7</sup>
- California's Native American communities include descendants or members of 108 California-based federally recognized tribes (about 20 percent of all tribes in the United States).<sup>8</sup> As of 2008, an additional 74 tribes in California are petitioning for federal recognition.
- The California tribal population consists of a significant number of members of tribes not based in California. More than half of the Native Americans living in California are members of tribes located outside of California.<sup>9</sup>
- The AI/AN-alone or -in-combination population makes up 2 percent of California's total population. Approximately 50 percent of California's AI/AN population is AI/AN in combination with one or more other races (predominantly white), and 50 percent of California's AI/AN population identifies as AI/AN alone.<sup>10</sup>
- Cherokee is the largest tribal population in California (approximately 18 percent), followed by Apache (6 percent), Navajo (5 percent), and Choctaw (5 percent).<sup>11</sup>

---

<sup>5</sup> Norris, et al, *supra*, p. 18, figure 8. These figures are for individuals identifying as AI/AN alone or in combination with one or more other races.

<sup>6</sup> Norris, et al, *supra*, p. 7, table 2.

<sup>7</sup> National Indian Child Welfare Association, *American Indian/Alaska Native Fact Sheet for the State of California* (2005), [www.nicwa.org/states/California.pdf](http://www.nicwa.org/states/California.pdf) (as of July 8, 2011).

<sup>8</sup> For a complete listing of tribal entities by state, see the Bureau of Indian Affairs' *Tribal Leaders Directory* (Spring 2011) at [www.bia.gov/idc/groups/xois/documents/text/idc002652.pdf](http://www.bia.gov/idc/groups/xois/documents/text/idc002652.pdf) (as of July 8, 2011).

<sup>9</sup> U.S. Census Bureau, Population Division, "Table 19: American Indian and Alaska Native Alone and Alone or in Combination Population by Tribe for California: 2000," [www.census.gov/population/www/cen2000/briefs/phc-t18/tables/tab019.pdf](http://www.census.gov/population/www/cen2000/briefs/phc-t18/tables/tab019.pdf) (as of July 8, 2011).

<sup>10</sup> Norris, et al, *supra*, p. 7, table 2.

<sup>11</sup> Elias S. Lopez, Ph.D., *Census 2000 for California: A Friendly Guide* (Cal. Research Bureau, July 2002), [www.library.ca.gov/crb/02/07/02-007.pdf](http://www.library.ca.gov/crb/02/07/02-007.pdf). (as of July 8, 2011).

## County Tribal Populations

- Based on the 2000 U.S. Census, Los Angeles County (CA) has the largest AI/AN-alone population (76,988) in the United States.
- Ten California counties are included in the 50 U.S. counties with the highest AI/AN-alone populations. In addition to Los Angeles County, San Diego, San Bernardino, Orange, and Riverside Counties are among the top 20 in that group (see table 1).<sup>12</sup>
- Alpine County has the highest proportion of AI/AN-alone residents (19 percent), followed by Inyo County (10 percent), and Del Norte County (6 percent).<sup>13</sup>

County	Population	U.S. Rank
Los Angeles	76,988	1
San Diego	24,337	11
San Bernardino	19,915	14
Orange	19,906	15
Riverside	18,168	17
Sacramento	13,359	24
Fresno	12,790	26
Santa Clara	11,350	30
Kern	9,999	38
Alameda	9,146	43

Source: 2000 U.S. Census

## Education and Household Income

- Nationally, the AI/AN-alone population has a lower percentage of individuals with at least a high school diploma (71 percent) than does the general population (80 percent). This discrepancy is largely because the AI/AN population is less likely to have a bachelor's (or higher) degree (11 percent) than the general population (24 percent).<sup>14</sup>
- In California we see a similar discrepancy in educational attainment. The percentage of individuals with at least a high school diploma is lower for the AI/AN-alone population than for the California population as a whole (68 percent and 74 percent, respectively) as is the percentage of those with a Bachelor's (or higher) degree (11 percent, compared to 27 percent of California as a whole).<sup>15</sup>
- The median income for all California households is \$47,493, whereas the median income for the AI/AN-alone population is \$36,547.<sup>16</sup>
- Thirty-four percent of AI/AN households have an income of less than \$20,000. Of those, roughly half (17 percent) have an income of less than \$10,000.
- About 62 percent of all AI/AN households fall below the U.S. median household income level.

<sup>12</sup> U.S. Census Bureau, "Table 9: Counties with an American Indian and Alaska Native Alone Population Greater Than Zero, Ranked by Number: 2000" (Aug. 2001), [www.census.gov/population/www/cen2000/briefs/phc-t14/tables/tab09.pdf](http://www.census.gov/population/www/cen2000/briefs/phc-t14/tables/tab09.pdf) (as of July 8, 2011).

<sup>13</sup> U.S. Census Bureau's American FactFinder, Census 2000, Summary File 1, "GCT-P6. Race and Hispanic or Latino: 2000."

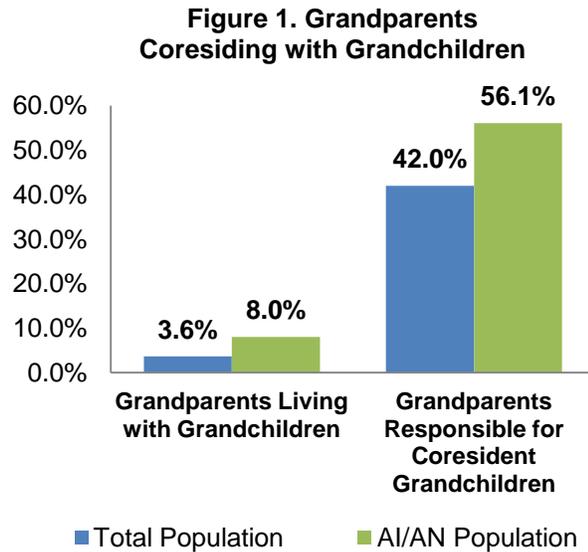
<sup>14</sup> U.S. Census Bureau's American FactFinder, Census 2000, Summary File 2 and Summary File 4, "Census 2000 Demographic Profile Highlights: Selected Population Group: American Indian and Alaska Native alone."

<sup>15</sup> *Ibid*

<sup>16</sup> *Ibid*

## Households and Families

- The AI/AN population has a lower proportion of married-couple households (45 percent) than does the U.S. population as a whole (53 percent) and a higher proportion of both male-headed and female-headed households with no spouse present (28 percent) than that of the total U.S. population (16 percent).<sup>17</sup>
- The AI/AN population has a higher average household size (3.06 persons) than does the U.S. population as a whole (2.59).<sup>18</sup>
- Nearly 4 percent of the total U.S. grandparent population (30 years old and over) live with grandchildren, whereas 8 percent of the AI/AN population of grandparents live with grandchildren.<sup>19</sup>
- AI/AN grandparents are more likely to be responsible for coresident grandchildren (56 percent) than is the total U.S. population (42 percent), as illustrated in figure 1.<sup>20</sup>



<sup>17</sup> Stella U. Ogunwole, U.S. Census Bureau, *We the People: American Indians and Alaska Natives in the United States* (2006).

<sup>18</sup> *Ibid.*

<sup>19</sup> U.S. Census Bureau, *Grandparents Living With Grandchildren: 2000* (Oct. 2003).

<sup>20</sup> *Ibid.*

**Judicial Council of California  
Administrative Office of the Courts**

Hon. Tani Cantil-Sakauye  
*Chief Justice of California  
and Chair of the Judicial Council*

Jody Patel  
*Interim Administrative Director of the Courts*

Curt Soderlund  
*Interim Chief Deputy Director*

Diane Nunn  
*Director, Center for Families, Children & the Courts*

Charlene Depner  
*Assistant Division Director, Center for Families,  
Children & the Courts*

**Production of This Report**

Alma Balmes  
*Administrative Coordinator*

Jay Fraser  
*Research Analyst*

Deana Piazza  
*Supervising Research Analyst*

Jennifer Walter  
*Supervising Attorney*

Don Will  
*Manager*

The Center for Families, Children & the Courts generates and distributes research-based information that has promise for informing the work of the courts in California and nationwide. To learn more about its work and to see more *Research Updates*, visit <http://www.courts.ca.gov/cfcc-publications.htm>.

455 Golden Gate Avenue, Sixth Floor  
San Francisco, California 94102-3688  
E-mail: cfcc@jud.ca.gov

*The views in this research update are those of the author and do not necessarily represent the official positions or policies of the Judicial Council of California.*

January 2012

## Native American Statistical Abstract: Violence and Victimization

### Introduction

The Tribal Programs and the Family and Juvenile Business Intelligence Services units of the Administrative Office of the Courts' Center for Families, Children & the Courts are developing a series of informational abstracts that bring together the available data from various sources on American Indians and Alaskan Natives (AI/AN) nationally, statewide, and tribally specific to California's AI/AN population. The purpose of these abstracts is to develop and disseminate justice-related information and links to reports to ensure the highest quality of justice and service for California's AI/AN population. This information is intended for the state judicial branch, tribal justice systems, tribal organizations, state agencies, and local agencies to support effective collaboration and tribal justice development.

### Preface

It is worth noting at the outset that while there is a great deal of research related to domestic violence and violence against women, it is often difficult to obtain statistics related to the victimization of tribal women specifically.

Very little data is available regarding tribal populations in California, and less is of recent vintage. Due to the small size of the AI/AN population (less than 2 percent of the entire U.S. population), national studies tend to obscure intertribal diversity. Finally, a historic lack of trust of authorities may often result in underreporting to both law enforcement and social service agencies, making them less reliable sources of data.

Given these limitations, one must bear in mind that the information that is available likely underestimates the scope of the problems faced by tribal populations, especially those residing in Indian Country:

In addition to underestimating the scale of sexual violence against Indigenous women, the limited data available does not give a comprehensive picture. For example, no statistics exist specifically on sexual violence in Indian Country and available data is more likely to represent urban than rural areas.<sup>1</sup>

### General Trends<sup>2</sup>

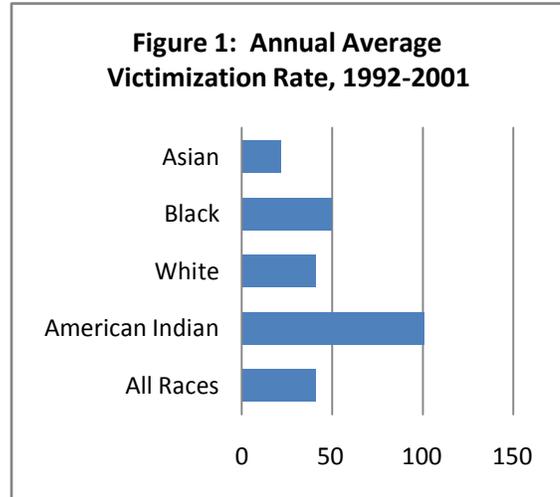
- Rates of violent victimization<sup>3</sup> for both males and females are higher among American Indians than for any other race.

---

<sup>1</sup> Amnesty International, *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA* (2007), p. 4, <http://www.amnesty.org/en/library/asset/AMR51/035/2007/en/cbd28fa9-d3ad-11dd-a329-2f46302a8cc6/amr510352007en.pdf> (as of Aug. 17, 2011).

<sup>2</sup> Unless otherwise noted, the tables and charts in this section were created using data from Steven W. Perry, Bureau of Justice Statistics, *American Indians and Crime: A BJS Statistical Profile, 1992–2002* (NCJ 203097, Dec. 2004).

- American Indians experienced a per capita rate of violence twice that of the U.S. resident population. On average, American Indians experienced an estimated 1 violent crime for every 10 AI/AN residents age 12 or older.
- The murder rate among American Indians is 7 per 100,000, a rate similar to that found among the general population, but significantly lower than that of the black population.
- The violent crime victimization rate in every age group below age 35 was significantly higher for American Indians than for all races combined.



Among American Indians age 25 to 34, the rate of violent crime victimizations was more than 2½ times the rate for persons of all races in the same age group.

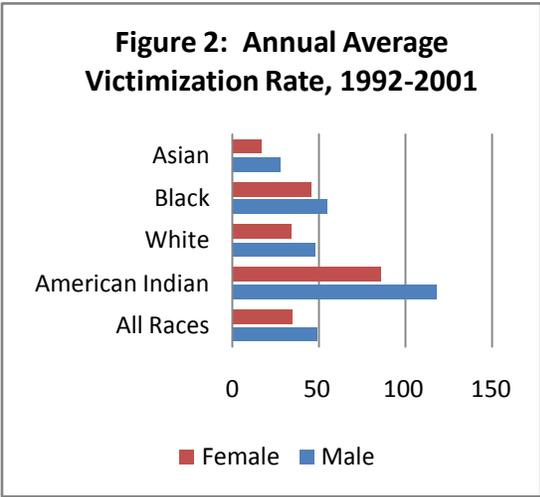
- Among persons in the 55 or older category, the American Indian victimization rate was 22 per 1,000, versus the overall rate of 8 per 1,000.
- Note that the average annual victimization rate reported through 2001 has decreased substantially in younger (12–44) age groups, but stayed the same or increased slightly among older groups, compared to the rates reported from 1992–1996. During the same period of time, these rates were decreasing across the board for all other groups.

1992–1996 <sup>4</sup>			1992–2001		
Age	All races	AI/AN	Age	All races	AI/AN
55/older	9	14	55/older	8	22
45–54	27	43	45–54	24	45
35–44	44	124	35–44	36	93
25–34	61	145	25–34	50	140
18–24	100	232	18–24	84	155
12–17	116	171	12–17	94	146

- The rate of violent victimization in each age group is higher among American Indians than that for all races combined. The victimization rate among American Indian males was 118 per 1,000 males age 12 or older, more than double that found among all males (49 per 1,000) ages 12 or older.

<sup>3</sup> Victimization rates measure the occurrence of victimizations among a specified population group. For personal crimes, this is based on the number of victimizations per 1,000 residents age 12 or older.

<sup>4</sup> Lawrence A. Greenfeld and Steven K. Smith, Bureau of Justice Statistics, *American Indians and Crime* (NCJ 173386, Feb. 1999).



- The violent victimization rate for American Indian females during this period (1992–2002) was 86 per 1,000 AI/AN females, a rate higher than that found among white females (34 per 1,000) or black females (46 per 1,000).
- Rates of violent victimization for both males and females are higher among American Indians than for any other race. The rate of violent crime experienced by American Indian women is nearly 50 percent higher than that reported by black males.

- At least 66 percent of the violent crimes experienced by American Indian victims are committed by persons not of the same race, a substantially higher rate of interracial violence than that experienced by white or black victims; 9 percent of offenders were described by the victim as black, 34 percent were described as American Indian, and the majority (57 percent) were described as white. This is similar to the experience of Asian/Pacific Islanders, who also suffer a substantially higher rate of interracial violence than white or black victims.
- American Indian victims of violence were more likely than all victims to report an offender who was under the influence of alcohol at the time of the crime. Overall, about 62 percent of American Indian victims experienced violence by an offender using alcohol, compared to the national average of 42 percent.
- Women of all races are more likely to be assaulted by a known person. American Indian/Alaskan Native women are more likely to be assaulted by intimate partners or family members, and less likely by strangers, than women of other races.

**Table 2. Average Annual Percentage of Assault Victimization Against Females by Race and Perceived Relationship Status of Offender(s), NCVS 1992–2005<sup>5</sup>**

	Intimate	Other Family	Other Known	Stranger
Total Population	26%	9%	34%	30%
<b>AI/AN</b>	<b>28</b>	<b>14</b>	<b>35</b>	<b>23</b>
White	26	9	35	30
African American	26	9	36	29
Asian American	17	11	25	47

<sup>5</sup> Ronet Bachman, Heather Zaykowski, Rachel Kallmyer, Margarita Poteyeva, and Christina Lanier, U.S. Department of Justice, *Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What Is Known* (Aug. 2008), p. 50. The –NCVSI (noted in the table heading) is the National Crime Victimization Survey. This report is an excellent review of the research regarding violence against AI/AN women and is highly recommended.

## Rape and Sexual Assault

- Federal statistics show that AI/AN women are 2.5 times more likely to be raped or sexually assaulted than women in the U.S. in general and more than one in three will be raped during their lifetimes. In 86 percent of reported rapes or sexual assaults on Native women, the perpetrators are non-Native; this disparity is not typical of any other ethnicity since perpetrators are usually found to be the same race as the victim.<sup>6</sup>
- A U.S. Department of Justice study on violence against women concluded that 34 percent of American Indian and Alaska Native women—more than one in three—will be raped during their lifetimes; the comparable figure for women as a whole in the United States is less than one in five.<sup>7</sup>
- In a 2002 study researchers interviewed 110 American Indian women at two urban and three rural American Indian agencies in California. They found that 80 percent of respondents had experienced a sexual assault in their lifetimes—26 percent had experienced forced sex in their lifetimes and 32 percent had experienced either a physical and/or sexual victimization in the past year.<sup>8</sup>

## Domestic Violence and Stalking

- Among violence victims of all races, about 11 percent of victims of intimate partners and 5 percent of victims of other family members report the offender to have been of a different race. However, among American Indian victims of violence, 75 percent of the intimate victimizations and 25 percent of the family victimizations involved an offender of a different race.<sup>9</sup>
- In a report published by the Centers for Disease Control (CDC) in 2008, 39% of American Indian women surveyed reported some form of intimate partner violence in their lifetimes. This rate is higher than the rate reported by any other race/ethnic group.<sup>10</sup>
- American Indian victims of intimate and family violence are more likely than victims of other racial groups to be seriously injured and require hospital care. Also (according to the June 2001 National Crime Victimization Survey (NCVS) on –Injuries from Violent Crime, 1992–1998), persons victimized by an intimate partner were more likely than those victimized by acquaintances or strangers to be injured (48 percent intimate partner, 32 percent family member, 20 percent stranger).

---

<sup>6</sup> Perry, *supra*.

<sup>7</sup> Patricia Tjaden and Nancy Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey* (National Institute of Justice and the Centers for Disease Control and Prevention, NCJ 183781, Nov. 2000).

<sup>8</sup> E. Zahnd, S. Holtby, D. Klein, and C. McCain, *American Indian Women: Preventing Violence and Drinking Project Final Report* (National Institute on Alcohol Abuse and Alcoholism and the Office for Research on Women's Health, 2002), cited in Bachman et al., *supra*, at p. 55.

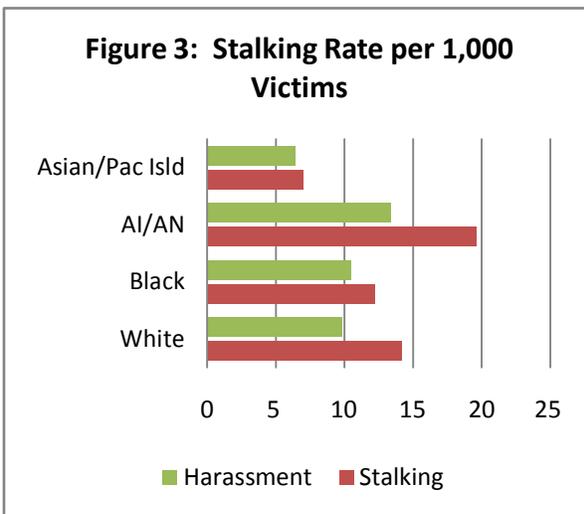
<sup>9</sup> –Intimate victimizations and –intimate violence refer to victimizations involving current and former spouses, boyfriends, and girlfriends. –Family victimizations and –family violence refer to victimizations involving parents, siblings and other relatives.

<sup>10</sup> U.S. Center for Disease Control, Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence — United States (2005) MMWR Weekly February 8, 2008 / 57(05);113-117.

**Table 3. Average Annual Percentage of Assault Victimizations Against *Females* by Race, in Which the Victim Sustained Injuries, NCVS 1992–2005<sup>11</sup>**

	<u>Percent of Victimizations in Which Victim Was Injured</u>	<u>Percent of Injuries Requiring Medical Care</u>
Total Population	61%	41%
<b>AI/AN</b>	<b>70%</b>	<b>56%</b>
White	60%	38%
African American	63%	49%
Asian American	53%	53%

- Eighty-nine percent of Native American women who reported intimate violence had suffered injuries from the violence, and 73 percent reported moderate or severe injuries, with nearly one in four (22 percent) reporting more than 20 different injury incidents. The health-related costs of violent victimization by intimates have been calculated to exceed \$5.8 billion each year.<sup>12</sup>



- The historical context of relations with government agencies may make it far less likely that AI/AN women will report sexual or intimate violence, for fear of revictimization by justice agencies.<sup>13</sup>
- 17 percent of American Indian and Alaska Native women are stalked in their lifetimes, compared to 8.2 percent of white women, 6.5 percent of black women, and 4.5 percent of Asian/Pacific Islander women.<sup>14</sup>

- The Tribal Law and Order Act of 2010 includes a requirement that protective orders issued by tribal courts be given full faith and credit by state and local agencies. In California, however, significant barriers remain. For example, tribal orders are not entered into the California Courts Protective Order Registry (CCPOR), and must be registered as foreign orders in order to be entered in CLETS (the California Law Enforcement Telecommunications System).

<sup>11</sup> Bachman, et al, *supra*, p. 49.

<sup>12</sup> Costs of Intimate Partner Violence in the United States, U.S. Centers for Disease Control and Prevention, 2003. [http://www.cdc.gov/violenceprevention/pub/IPV\\_cost.html](http://www.cdc.gov/violenceprevention/pub/IPV_cost.html) (as of Sept. 28, 2011).

<sup>13</sup> Amnesty International, *supra*, p. 49.

<sup>14</sup> Patricia Tjaden and Nancy Thoennes, *Stalking in America: Findings from the National Violence Against Women Survey*, Research in Brief (National Institute of Justice and the Centers for Disease Control and Prevention, NCJ 169592, Apr. 1998), <http://www.ncjrs.gov/pdffiles/169592.pdf> (as of Aug. 18, 2011).

**Judicial Council of California  
Administrative Office of the Courts**

Hon. Tani Cantil-Sakauye  
*Chief Justice of California  
and Chair of the Judicial Council*

William C. Vickrey  
*Administrative Director of the Courts*

Ronald G. Overholt  
*Chief Deputy Director*

Diane Nunn  
*Director, Center for Families, Children & the Courts*

Charlene Depner  
*Assistant Division Director, Center for Families,  
Children & the Courts*

**Production of This Report**

Ann Gilmour  
*Attorney*

Deana Piazza  
*Supervising Research Analyst*

Jennifer Walter  
*Supervising Attorney*

Don Will  
*Manager*

Alma Balmes  
*Administrative Coordinator*

Jay Fraser  
*Research Analyst*

CFCC generates and distributes research-based information that has promise for informing the work of the courts in California and nationwide. To learn more about its work and to see more *Research Updates*, visit [www.courts.ca.gov/cfcc-publications](http://www.courts.ca.gov/cfcc-publications).

455 Golden Gate Avenue, Sixth Floor  
San Francisco, California 94102-3688  
E-mail: [cfcc@jud.ca.gov](mailto:cfcc@jud.ca.gov)

*The views in this research update are those of the author and do not necessarily represent the official positions or policies of the Judicial Council of California.*

# **Binder of Materials Contents**

## **Tab D: California's Tribal Justice Systems**

1. Research Update on Native American Research Series: Tribal Justice Systems

June 2012

## **Native American Research Series: Tribal Justice Systems**

### **Introduction**

The State/Tribal Projects and the Family and Juvenile Research units of the Administrative Office of the Courts' Center for Families, Children & the Courts are developing a series of informational abstracts that bring together the available data from various sources on American Indians and Alaskan Natives (AI/AN) nationally, statewide, and tribally specific to California's AI/AN population. The purpose of these abstracts is to develop and disseminate justice-related information and links to reports to ensure the highest quality of justice and service for California's AI/AN population. This information is intended for the state judicial branch, tribal justice systems, tribal organizations, state agencies, and local agencies to support effective collaboration and tribal justice development.

### **Preface**

This report will provide a general overview of tribal justice systems in tribes. The majority of California tribes still rely on local courts and law enforcement. However, the past 10 years has seen remarkable growth in both the number of tribal justice agencies, and the services offered.

We would like to extend special thanks to Bill Denke, Chief of the Sycuan Police Department and Chair of the California Tribal Police Chief's Association, for providing current information on tribal law enforcement agencies in California.

### **Jurisdictional Issues**

As sovereigns, tribes have legal jurisdiction over both their citizens and their lands. According to most recent census data, California is home to more people of Native American/ Alaska Native heritage than any other state in the country. There are currently 109 federally recognized Indian tribes in California and 78 entities petitioning for recognition. Tribes in California currently have nearly 100 separate reservations or rancherias. There are also a number of individual Indian trust allotments. These lands constitute "Indian Country," and a different jurisdictional scheme applies in Indian Country. For Indians and Indian Country there are special rules that govern state and local jurisdiction. There may also be federal and tribal laws that apply.

Please see <http://www.courts.ca.gov/8710.htm> and <http://www.tribal-institute.org/lists/pl280.htm> for more information on jurisdiction in Indian Country.

## **Tribal Justice Agencies**

### **Law Enforcement**

Law enforcement on tribal lands has historically been, and remains, a challenging task for tribal communities. According to the National Congress of American Indians (NCAI):<sup>1</sup>

- Police in Indian Country function within a complicated jurisdictional net, answer to multiple authorities, operate with limited resources, and patrol some of the most desolate of territory, often without assistance from partner law enforcement agencies.
- There are only 2,380 Bureau of Indian Affairs and tribal uniformed officers available to serve an estimated 1.4 million Indians covering over 56 million acres of tribal lands in the lower 48 states.
- On tribal lands, 1.3 officers must serve every 1,000 citizens, compared to 2.9 officers per 1,000 citizens in non-Indian communities with populations under 10,000.
- A total of at least 4,290 sworn officers are needed in Indian Country to provide the minimum level of coverage enjoyed by most communities in the United States.
- These departments rarely have more than one officer on duty at any time, and their officers often work without adequate backup.

Law enforcement jurisdiction varies by the location of the offense (on or off reservation land), the status of the parties (the race/ethnicity of the victim and offender), and the nature of the crime (major crime or misdemeanor). In California, a P.L. 280 State, officers who have jurisdiction on reservations include the following:

#### *Tribal Security Officers*

These officers are employed by tribes and have security duties on the reservation. They often are given jurisdiction by the tribal government to enforce tribal law and order codes violated by tribal members, and may be granted arrest powers over tribal members and Indians on the reservation only. They have arrest powers only in the capacity of a private citizen.

#### *Tribal Police Officers*

These officers are also employed by individual tribal governments and have tribal authorized police and arrest powers over tribal members committing violations of tribal law and order codes committed on reservation property. Currently, most tribal governments require at a minimum, graduation from a formal law enforcement academy.

#### *Federally Deputized Police Officers*

These include Bureau of Indian Affairs (BIA) Special Deputy Officers and Tribal Officers Holding Special Law Enforcement Commissions (SLECs). SLEC officers are a hybrid tribal/federal officer, paid by the individual tribal government, but deputized by the BIA as federal law enforcement officers with the same authority as BIA police officers. These officers are federally empowered to enforce

---

<sup>1</sup> [http://tloa.ncai.org/documentlibrary/2011/08/Talking\\_Circles\\_Report\\_Final\\_Jul11.pdf](http://tloa.ncai.org/documentlibrary/2011/08/Talking_Circles_Report_Final_Jul11.pdf) (as of 6/14/12)

federal laws on and off reservation if a nexus to the reservation exists. These officers may enforce federal laws, and arrest non-Indians for violations of federal laws. In addition, these federal officers may enforce observed violations of federal laws while off the reservation, and conduct investigations off the reservation.

A comparison of data collected for the 2002 Census of Tribal Justice Agencies<sup>2</sup> and more current information obtained from California Tribal Police Chief's Association shows a pattern of growth in tribal law enforcement across the state.

- In 2002, 20 Tribes (23 percent of California tribes, compared to 53% percent nationally) reported having a Tribal law enforcement agency. In 2012, this has grown to 39 tribes (about 37 percent of California tribes). The remaining tribes rely on some combination of state/local law enforcement.<sup>3</sup>
- In 2002, 10 agencies employed sworn officers; of these, 5 had a cross-deputization agreement with either the BIA (4) or “neighboring non-tribal authorities” (1). By 2012, this had grown to 17 agencies with sworn officers<sup>4</sup>.
- The number of agencies which operate through a PL 93-638 or self-governance contract (6) has been stable from 2002 to 2012.
- Six tribal agencies had arrest authority over non-Indians in 2002. This has risen to 17 agencies in 2012.

We do not have data that allow us to compare current California figures with tribes outside of California, but data from the 2002 census shows that California tribes rely more heavily on local law enforcement than non-California tribes (see Table 1). This is in part due to California’s status as a “PL-280” state, which cedes Federal law enforcement authority in Indian Country to some states<sup>5</sup>.

---

<sup>2</sup> Steven W. Perry, Bureau of Justice Statistics, Census of Tribal Justice Agencies in Indian Country, 2002 (NCJ 205332,) Dec. 2005. <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=543> (as of 9/19/2011). Unless otherwise noted, the data presented in this section are drawn from independent analysis of this survey.

<sup>3</sup> Id.

<sup>4</sup> Four additional tribes are in the process of establishing law enforcement agencies.

<sup>5</sup> The implications of PL-280 are extremely complex. Please refer to the Tribal Court Clearinghouse web pages (<http://www.tribal-institute.org/lists/pl280.htm>, as of 3/27/12) for further discussion and references.

**Table 1**  
***Tribal Law Enforcement Functions – 2002<sup>6</sup>***

Which of the following provide law enforcement functions for your tribe?

	California	Non-California
Sworn officers	11%	69%
BIA	7%	39%
State	19%	32%
Local	90%	37%
Tribal Law Enforcement	21%	68%
Traditional Law Enforcement	3%	7%
Game/Fish Wardens	7%	21%

Categories not listed are Village Police/Public Safety, Housing Authority, Casino Security, and "Other". Respondents could select more than one category.

- Among all reporting California tribes, 92 percent refer juvenile cases to county authorities, compared to 55 percent of non-California tribes. Eleven percent of California tribes referred juvenile cases to tribal authorities, compared to 56 percent of non-California tribes (see Table 2).

**Table 2**  
***Juvenile Justice – 2002***

For Juvenile offenses committed on your tribal land, to which justice authorities may cases be referred?

	California	Non-California
Tribal justice authorities	11%	56%
County justice authorities	92%	55%
State justice authorities	10%	21%
Federal justice authorities	3%	24%

Respondents could select more than one category.

- Five tribal agencies in California operated a detention facility of some sort. Most (85 percent) rely largely on county facilities for all or some of their detention functions.
- Eighty-five percent of California tribal agencies, including all agencies employing sworn officers, recorded the number and types of crime incidents manually and/or electronically. Three tribes shared statistics with local or state agencies, and six shared statistics with federal agencies (FBI, BIA, or both).

### **Access to Criminal History/Justice Statistics**

- Seventy-five percent of California tribes recorded crime incidents on the reservation manually and/or electronically.

<sup>6</sup> Steven W. Perry, Bureau of Justice Statistics, Census of Tribal Justice Agencies in Indian Country, 2002 (NCJ 205332,) Dec. 2005. <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=543> (as of 9/19/2011)

- Over half of the tribes had access to the National Criminal Information Center (NCIC).
- An estimated 54 tribes submitted information on tribal sex offenders to the National Sex Offender Registry (NSOR).
- Less than 12 percent of the tribes reported their justice agencies were electronically networked with other justice agencies on or off the reservation.
- Fourteen tribes routinely shared crime statistics with neighboring local governments, the State, or the FBI.
- Tribal law enforcement officers do not have access to the California Law Enforcement Telecommunication System (CLETS) unless they gain access through the National Law Enforcement Telecommunication System (NLETS).
- Tribal law enforcement officers have access to NLETS if they are Special Law Enforcement Commissions (SLEC) officers.<sup>7</sup> At this time, 7 California agencies have SLEC officers<sup>8</sup>.
- California tribes have access to the California Courts Protective Order Registry (CCPOR).

## **Tribal Courts<sup>9</sup>**

### *What is a Tribal Court?*

Tribal courts are formalized systems established by American Indian and Alaska Native tribes for resolving civil, criminal and other legal matters. There is a great deal of variation in the types of tribal courts and how they apply tribal laws. Some tribal courts resemble Western-style courts in that written laws and court procedures are applied. Others use traditional Native means of resolving disputes, such as peacemaking, elders' councils, and sentencing circles. Some tribes have both types of courts.

There are also a small number of Courts of Indian Offenses. These are courts (also known as “CFR courts”) established by the Bureau of Indian Affairs for the benefit of tribes who do not operate their own tribal court.

---

<sup>7</sup> Authority for the issuance of Special Law Enforcement Commissions is based upon Title 25, United States Code, Section 2804 (Pub. L. 101-379), 25 C.F.R. Part 12), and the Tribal Law and Order Act (Pub. L. 111-211). Under the Tribal Law and Order Act (TLOA) tribal agencies do have access to the National Law Enforcement Telecommunications System (NLETS).

<sup>8</sup> An additional 4 tribal law enforcement departments are in the process of obtaining SLECs.

<sup>9</sup> Steven W. Perry, Bureau of Justice Statistics, *Census of Tribal Justice Agencies in Indian Country, 2002* (NCJ 205332, Dec. 2005).

**Table 3**  
***Tribal Justice Systems - 2002***

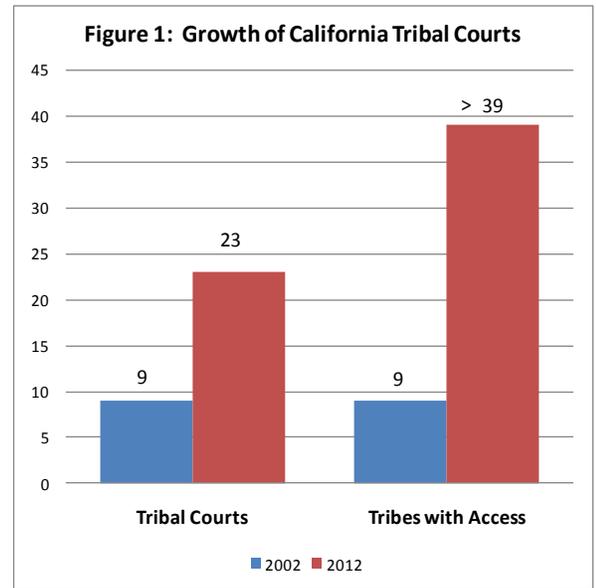
	California N=89	Non-California N=225
<b>Any Tribal Court System</b>	<b>9 (10%)</b>	<b>180 (80%)</b>
<i>Tribal courts</i>	9	167
<i>Appellate courts</i>	4	99
<i>Circuit rider system</i>	0	2
<i>Traditional Methods/Forums</i>	2	37
<i>Inter-tribal court system</i>	1	14
<i>Other</i>	1	16

- In 2002, 9 tribes<sup>10</sup> of 89 participating California tribes (10 percent) reported having a tribal court, compared to 180 of 225 reporting (59 percent) of non-California tribes. About 84% of California’s reporting tribes relied solely on state courts for services.
- In 2012, 39 tribes of 109 federally recognized California tribes (36 percent) either have a tribal court or access to a tribal court through an inter-tribal court coalition.
  - The Intertribal Court of Northern California (ICNC) serves 7 tribes.
  - The Intertribal Court of Southern California (ICSC) serves 12 tribes.
  - The Northern California Intertribal Court System (NCICS) serves 4 tribes.
- Most of these courts heard civil cases (7) and juvenile/family law cases (6). About half (4) heard domestic violence protective orders.
- Four of the tribal courts offered some kind of intermediate sanctions for adult offenders (e.g., drug/alcohol treatment, fines/restitution, counseling).
- Six tribes offered similar intermediate sanctions for juvenile offenders.
- None of the tribes maintained a probation function in 2002.
- The responding tribal courts report staffing levels of one to nine full time staff.

<sup>10</sup> The Colorado River Indian Tribe did not participate, but it has been independently confirmed that they operated a tribal court at that time so they are included.

The number of tribal courts in California has more than doubled since the 2002 survey—from 9 to 22<sup>11</sup>. The number of tribes with access to a tribal court increases to 39 when the Intertribal Court of Northern California (ICNC), representing 7 tribes, the Intertribal Court of Southern California (ICSC), representing 12 tribes, and the Northern California Intertribal Court System (NCICS), are included. Additional tribes make use of these consortia on a more limited or contract basis (see Figure 1).

Tribal courts in California currently hear more than 30 types of cases (see Table 5).



**Table 5: Case types heard by California tribal courts<sup>12</sup>**

<p><b><u>Civil/Probate</u></b>            Civil complaints for monetary damages/Small claims            Civil disputes            Conservator issues            Contract disputes            Dog/Animal control            Evictions/land disputes/possession of tribal lands            Game fish and wildlife management            Housing matters (unlawful detainer)            Name &amp; birth certificate changes            Probate</p>	<p><b><u>Administrative</u></b>            Building codes            Elections            Employment            Enrollment            Administrative procedures matters            Appeals from tribal ordinances</p> <p><b><u>Criminal</u></b>            Criminal offenses            Environmental offenses            Peace/security code violations            Nuisance            Torts            Traffic            Trespass</p>	<p><b><u>Family Law</u></b>            Dissolution of marriage            Domestic relations            Domestic violence restraining orders            Protection/Restraining orders</p> <p><b><u>Juvenile</u></b>            Juvenile delinquency            Juvenile wellness court            Truancy            Child abuse and neglect guardianships</p>
--	--	--

<sup>11</sup> To locate a Tribal Court in California, use the AOC Tribal Court Directory (<http://www.courts.ca.gov/14400.htm>). For a map of these courts, go to <http://g.co/maps/cvdq8>

<sup>12</sup> The rules and procedures of each court will vary, and an individual court may not hear all of these types of cases.

## The Tribal Law and Order Act of 2010 (TLOA)<sup>13</sup>

In recent years, the most significant development in tribal justice has been the creation of the Tribal Law and Order Act of 2010. A comprehensive description of this act and the programs and policies issuing from it is well beyond the scope of this discussion, but it would be incomplete without at least mentioning some of the major provisions contained in the TLOA.

- The TLOA requires greater accountability and coordination between federal and tribal justice authorities, for example, the filing of annual disposition reports by federal prosecutors. It also establishes the Office of Tribal Justice within the Department of Justice, providing a point of contact with tribal agencies to advise and provide technical assistance.
- It allows tribal authorities to impose increased penalties under certain circumstances (up to 3 years imprisonment and fines of \$15,000 per offense).
- Tribes in PL 280 states are now allowed to petition the Attorney General to re-assert federal jurisdiction in tribal areas. This is additional to state authority, not a replacement of it. A separate, but related provision makes it possible for tribal law enforcement and prosecutors to obtain commissions granting limited federal authority.
- The TLOA authorizes funding and grant opportunities across most areas of tribal justice, including support and training for data collection, data sharing, and reporting.

Because it is fairly recent legislation (signed into law on July 29, 2010) the immediate impact of the TLOA is only now being felt, and any long-term benefits will take some time to be realized.

---

<sup>13</sup> The full text of the TLOA is available at:

<http://www.justice.gov/usao/az/IndianCountry/Tribal%20Law%20%20Order%20Act%202010.pdf>

**Judicial Council of California  
Administrative Office of the Courts**

Hon. Tani Cantil-Sakauye  
*Chief Justice of California  
and Chair of the Judicial Council*

William C. Vickrey  
*Administrative Director of the Courts*

Ronald G. Overholt  
*Chief Deputy Director*

Diane Nunn  
*Director, Center for Families, Children & the Courts*

Charlene Depner  
*Assistant Division Director, Center for Families,  
Children & the Courts*

**Production of This Report**

Ann Gilmour  
*Attorney*

Deana Piazza  
*Supervising Research Analyst*

Jennifer Walter  
*Supervising Attorney*

Don Will  
*Manager*

Alma Balmes  
*Administrative Coordinator*

Jay Fraser  
*Research Analyst*

CFCC generates and distributes research-based information that has promise for informing the work of the courts in California and nationwide. To learn more about its work and to see more *Research Updates*, visit [www.courts.ca.gov](http://www.courts.ca.gov)

455 Golden Gate Avenue, Sixth Floor  
San Francisco, California 94102-3688  
E-mail: [cfcc@jud.ca.gov](mailto:cfcc@jud.ca.gov)

*The views in this research update are those of the author and do not necessarily represent the official positions or policies of the Judicial Council of California.*

# **Binder of Materials**

## **Contents**

### **Tab E: Jurisdictional Discussion**

1. Jurisdictional Issues in California Regarding Indians and Indian Country:  
[www.courts.ca.gov/documents/Jurisdiction\\_in\\_California\\_Indian\\_Country.pdf](http://www.courts.ca.gov/documents/Jurisdiction_in_California_Indian_Country.pdf)
2. Issue Statements

# CALIFORNIA COURTS

## THE JUDICIAL BRANCH OF CALIFORNIA

[close this page](#)

## Jurisdiction in Indian Country

According to most recent census data, California is home to more people of Native American/ Alaska Native heritage than any other state in the Country. There are currently 107 federally recognized Indian tribes in California and 78 entities petitioning for recognition. Tribes in California currently have nearly 100 separate reservations or Rancherias. There are also a number of individual Indian trust allotments. These lands constitute "Indian Country", and a different jurisdictional applies in Indian Country.

For Indians and Indian Country there are special rules that govern state and local jurisdiction. There may also be federal and tribal laws that apply.

This page contains information and resources on Native American communities in California.

Overview of [Jurisdictional Issues in California Regarding Indians and Indian Country](#) .

### Public Law 280 Curriculum

This webinar gives an introduction to issues of jurisdiction in California Indian lands. [Click here to view the webinar.](#)

### Public Law 280 Curriculum

This [curriculum](#) is intended to provide an overview of Public Law 280.

[Competencies and Learning Objectives](#)

[Lesson Plan](#)

[Powerpoint](#)

[Bibilography](#)

[Quiz](#)

More Resosurces from [Tribal Court Clearinghouse on Public Law 280](#) .

### Interjurisdictional Case Scenarios

[Guardianship](#)

[Judge to Judge Communication](#)

[Juvenile Court Jurisdiction](#)

[Traffic Stop Jurisdiction](#)

[Tribal Court Trespass](#)

[Tribal Protective Order, Court](#)

[Tribal Protective Order, Street](#)

# CALIFORNIA TRIBAL COURT/STATE COURT FORUM

The California Tribal Court/State Court Forum identified a number of legal issues within its scope of work early on in its deliberations. These issues are briefly described below:

## **Issue Statement One: Full Faith and Credit—Enforcement of Orders**

While tribes are recognized as sovereign, they are not “states” for the purpose of the full faith and credit requirements of article IV of the U.S. Constitution. There is also general consensus—but no U.S. Supreme Court authority—that tribes are not covered by the federal full faith and credit statute (28 U.S.C. § 1738). There are, however, a number of specific federal and state laws that mandate full faith and credit for and between tribal and state courts in certain types of actions:

- The Indian Child Welfare Act (25 U.S.C. § 1911(d)), or ICWA, mandates full faith and credit for tribal court custody orders concerning Indian children. ICWA also addresses the issue of jurisdiction over child welfare proceedings involving Indian children.
- The Violence Against Women Act (18 U.S.C. § 2265) mandates full faith and credit for restraining and protective orders in domestic violence situations.
- The Child Support Enforcement Act (28 U.S.C. § 1738B) mandates full faith and credit for child support orders.
- California’s Uniform Child Custody Jurisdiction and Enforcement Act (Fam. Code, § 3400 et seq.) mandates full faith and credit for tribal child custody orders.

Where there is no specific statutory mandate for full faith and credit, the general rule is that tribal court orders are entitled to comity.

Although the Violence Against Women Act mandates full faith and credit as well as enforcement for protective orders, tribal courts currently have no mechanism for entering their protective orders into CLETS (California Law Enforcement Telecommunications System) or CARPOS (California Restraining and Protective Order System). Tribal advocates and tribal judges report problems in having tribal court orders of protection recognized and enforced.

Tribal court judges report cases where they have heard a civil matter fully litigated to judgment in tribal court, only to be unable to have the tribal court judgment recognized and enforced outside the reservation. They report that state court judges may not accord full faith and credit to tribal court judgments and may require the matter to be essentially relitigated in state court.

## Issue Statement Two: Traffic

Generally California motor vehicle registration and driver's license requirements are not subject to enforcement against Indian tribal members on roads within their reservation because the California motor vehicle scheme is "civil/regulatory" rather than "criminal/prohibitory." (See 89 Ops.Cal.Atty.Gen. 6 (2006).)

However, specific aspects of the overall scheme governing traffic, such as the prohibition against driving while under the influence, can fall into the criminal/prohibitory category. (See *State v. Barros* (1998) 957 P.2d 1095; *State v. Warden* (1995) 906 P.2d 133.)

Where a tribal court is exercising jurisdiction over traffic matters on the reservation, including the prohibition of driving under the influence, is there a mechanism for tribal court orders to be acknowledged within the state system? In particular, if a tribal court suspends an individual's driver's license subsequent to a finding of guilt for driving under the influence, can that suspension be given full faith and credit or otherwise recognized by the California Department of Motor Vehicles?

## Issue Statement Three: Trespass and Orders of Exclusion

As sovereign entities, tribes have the right to control who enters their tribal lands. In some cases, a tribe may specifically exclude certain individuals from their tribal lands. An order of "exclusion" can be among the remedies that a tribal government or tribal court uses against an individual found to have committed serious offenses to the community, including domestic violence on tribal lands.

Can—and will—local law enforcement assist in removing an individual trespassing on tribal lands?

In 80 Ops.Cal.Atty.Gen. 46 (1997), the Attorney General of California concluded that:

[c]learly, under federal law ([18 U.S.C. § 1162](#)) California's criminal statutes apply to Indian reservations in the state. Tribal code provisions and orders, on the other hand, do not constitute the criminal laws of the state and have no force and effect elsewhere within California. Such tribal code provisions and orders are not enforceable by a county sheriff either within or without the reservation.

Therefore, law enforcement may not enforce orders of exclusion made under a tribal code or ordinance. Only if the action in question meets all of the elements of trespass as defined under California law will a local law enforcement officer have authority to take action—and a tribal order of exclusion will seldom meet that standard.

## **Issue Statement: Child Custody and Child Support**

Federal law contains certain mandates regarding full faith and credit for child support and custody orders. In particular, title 18 United States Code section 1738A requires states to give full faith and credit to child custody and visitation orders from another “state.” The definition of “state” in section 1738A does not include “tribe.” Title 18 United States Code section 1738B requires “states” to give full faith and credit to child support orders of another state. The definition of “state” in section 1738B includes “Indian country.”

Family Code section 3404 provides that a child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this part of the code (part 3, also known as the Uniform Child Custody Jurisdiction and Enforcement Act) must be recognized and enforced under chapter 3, commencing with section 3441.

Some tribes in the United States operate title IV-D child support programs; no California tribe currently operates such a program, although some tribes are in the process of starting one. Some tribes in California, however, are operating title IV-A TANF programs.

The most common issues that arise include having tribal custody and visitation orders recognized and enforced outside of tribal lands and having child support orders from a state court enforced on tribal lands.

## **Issue Statement: Warrants, Subpoenas, and Discovery**

As discussed throughout these materials, both federal and state law establish requirements for mutual recognition and between tribal and state courts reciprocal enforcement for certain types of final orders in some specific types of cases. In other areas, the principles of comity apply.

One area of concern raised by some tribal court judges is the cross-jurisdictional recognition and enforcement of other forms of court process, such as warrants and subpoenas. Can the forum develop a mechanism whereby tribal court processes also receive full faith and credit?

## **Binder of Materials**

### **Contents**

#### **Tab F: Forum Accomplishments and Pending Projects**

1. Annual Agenda and Memo
2. Innovations in the California Courts—Connecting the Court to the Community: Tribal Courts
3. Foster Care Reform Update: Notable Tribal Court/State Court Collaborative Efforts
4. Recognition and Enforcement of Protective Orders Brochure
5. Forum-Related Educational Activities
6. Legislative Proposal: Tribal Civil Judgment Act
7. E-noticing in Indian Child Welfare Act Cases
8. Assembly Bill 1325: Tribal Customary Adoption (Cook; Stats. 2009, ch.287) —(Legislative Counsel’s Digest)



**Judicial Council of California**  
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

---

## MEMORANDUM

---

<b>Date</b>	<b>Action Requested</b>
December 1, 2011	Please Review
<b>To</b>	<b>Deadline</b>
Members of the Executive and Planning Team	January 23, 2011
<b>From</b>	<b>Contact</b>
Judge Richard C. Blake, cochair Justice Dennis M. Perluss, cochair	Jennifer Walter Center for Families, Children, & the Courts 415-865-7687 phone 415-865-7217 fax jennifer.walter@jud.ca.gov
<b>Subject</b>	
Tribal Court / State Court Forum Annual Agenda	

---

On behalf of the Tribal Court/State Court Forum (forum), established by former Chief Justice Ronald M. George and continued by current Chief Justice Tani Cantil-Sakauye, we are writing to submit for your information and evaluation the attached annual agenda. We hope that it will serve to both educate the Executive and Planning Team on the forum's activities for calendar years 2011 and 2012, and help the judicial branch in its strategic and operational planning process. Below please find a short description of the forum and some of the minor modifications we have made to the normal agenda format to reflect the forum's unique status.

The forum was established as a coalition bringing together state and tribal court judges as equal partners. The forum was intended to provide an advisory role to the council, hence the appointment order reads, *Tribal Court/State Court Coalition Advisory Committee*. As a coalition and not an entity under the Judicial Council, it was created to serve the state judicial branch and the tribal justice systems in California, and not intended as an instrument of any one justice system. For this reason, it is not governed by a state rule of court, nor overseen by a council standing committee, because to do so would undermine the spirit in which it was established.

We respectfully submit a modified annual agenda, consistent with council governance structure for advisory committees. We recognize that to achieve the purpose for which the forum was established, the forum's activities must be coordinated with the state judicial branch.

In keeping with the vision of the forum, we have adapted the format of the annual agenda to include:

1. A statement explaining that, consistent with the forum's charge, all of its projects come from recommendations by forum members or their constituents and
2. Identification of priority level 1 for all legislatively mandated projects and rules and form proposals.

Of particular significance at this time, we note that all forum projects are supported by federal grants,<sup>1</sup> place no burden on local courts, and in fact have the potential of relieving local courts of work. To the extent that forum projects require implementation of programs, they are aligned and consistent with the council's strategic and operational plans and coordinated with the Fund Development Group within the Promising and Effective Programs Unit of the Court Programs and Services Division of the AOC.

---

<sup>1</sup> These projects are supported with funds from the Office on Violence Against Women, U.S. Department of Justice that are administered through the California Emergency Management Agency (CalEMA), the U.S. Department of Health and Human Services, Court Improvement Program, and the California Department of Social Services.

**Tribal Court / State Court Forum**  
**Annual Agenda—2012**

<b>Chair:</b>	Judge Richard C. Blake and Justice Dennis M. Perluss
<b>Staff:</b>	Ms. Jennifer Walter, Center for Families, Children, & the Courts
<b>Committee's Charge:</b> Appointed in May of 2010 to discuss issues of mutual importance to tribal and state justice systems relating to the recognition and enforcement of court orders that cross jurisdictional lines, the determination of jurisdiction for cases that might appear in either court system, and the sharing of services between jurisdictions. The forum is charged with identifying issues concerning the working relationship between tribal and state courts in California, and enabling the courts of each to issue and enforce their respective orders to the fullest extent allowed by law. The forum recommends ways to address these issues through legislative and rule/form proposals to the Judicial Council either directly or jointly with the appropriate, relevant advisory committees. It also provides expertise in identifying and promoting local and statewide solutions that do not require legislation or adoption of rules and forms.	
<b>Committee Membership:</b> The members of the forum include 11 tribal court judges, nominated by their tribes' chairs, representing 14 of the 20 tribal courts currently operating in California; the director of the California Attorney General's Office of Native American Affairs; and 13 state court judiciary, including the chairs of the California Judicial Council's Family and Juvenile Law Advisory Committee, Access and Fairness Advisory Committee, Civil and Small Claims Advisory Committee, Criminal Law Advisory Committee, and Traffic Advisory Committee as well as representatives of the local courts in counties where many of the tribal courts are situated. The forum's composition assures that projects are aligned and consistent with the council's strategic and operational plans, because it comprises many of the council's advisory committee chairs.	
<b>Origin of Projects:</b> Consistent with the forum's broad charge, it has initiated the projects contained in this agenda as a result of recommendations by forum members or their constituents.	
<b>Committee's Key Objectives for 2012:</b> <ol style="list-style-type: none"><li>1. Foster partnerships with tribes, tribal courts, and state branches of government that enable tribal and state courts to issue and enforce their respective orders to the fullest extent allowed by law;</li><li>2. Foster excellence in public service by promoting state and tribal court collaboration that identifies new ways of working together at local and statewide levels and maximizes resources and services for courts;</li><li>3. Provide expertise to implement statewide solutions to improve access to courts (for example, see solutions identified in the California reports relating to domestic violence, sexual assault, stalking and teen-dating violence in Native American communities <a href="http://www.courts.ca.gov/8117.htm">http://www.courts.ca.gov/8117.htm</a>);</li><li>4. Identify opportunities to share educational resources between the state judicial branch and the tribal justice systems.</li><li>5. Make recommendations to committees developing judicial education institutes, multi-disciplinary symposia, distance learning, and other educational materials to include content on federal Indian law and its impact on state courts; and</li><li>6. Improve the quality of data collection and exchange related to tribe-specific information.</li></ol>	

#	Project <sup>1</sup>	Priority <sup>2*</sup>	Specifications	Completion Date/Status <sup>3</sup>	Resource Needs**
1.	<ul style="list-style-type: none"> <li>Identify AOC resources that may be appropriate to share with tribal courts, and tribal court resources that may be appropriate to share with state courts. These resources may showcase collaboration between state and tribal courts.</li> </ul>		<p>Strategic Plan Goal I: Access, Fairness, &amp; Diversity</p> <p>Operational Plan Objectives:</p> <ol style="list-style-type: none"> <li>1. Ensure that all court users are treated with dignity, respect, and concern for their rights and cultural backgrounds, without bias or appearance of bias, and are given an opportunity to be heard.</li> <li>2. Identify and eliminate barriers to court access at all levels of service; ensure interactions with the court are understandable, convenient, and perceived as fair.</li> <li>4. Expand the availability of legal assistance, advice and representation for litigants with limited financial resources.</li> </ol> <p>Strategic Plan Goal IV: Quality of Justice and Service to the Public</p> <p>Operational Plan Objectives:</p>	Ongoing	<p>Resource: EDUC Contact: Bob Lowney and Gavin Lane Describe: Coordinate with CJER re program attendance and access to Serranus for judges and CEOs</p>

<sup>1</sup> If a project implements policy or is a program, identify it as *implementation* or a *program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

<sup>2</sup> Select priority level 1 (must be done) or 2(should be done).

\* This column has been left intentionally blank for all projects except legislative and rule and form proposals. The forum assigned priority level 1 to the one legislative report due in 2013, the one legislative proposal currently circulating for public comment, and the two rule and form proposals (either already adopted by the council or recommended for adoption by RUPRO). The legislative proposal that has been referred to the Family and Juvenile Law Advisory Committee has been assigned a level 2.

<sup>3</sup> Priority levels for rules and forms proposals are: 1(a) Urgently needed to conform to the law; 1(b) Urgently needed to respond to a recent change in the law; 1(c) Adoption or amendment of rules or forms by a specified date required by statute or council decision; 1(d) Provides significant cost savings and efficiencies, generates significant revenue, or avoids a significant loss of revenue; 1(e) Urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; 1(f) Otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk; 2(a) Useful, but not necessary, to implement statutory changes; 2(b) Responsive to identified concerns or problems; 2(c) Helpful in otherwise advancing Judicial Council goals and objectives.

\*\* The projects contained in this agenda are supported by grant funds. Please see cover memo for explanation.

#	Project <sup>1</sup>	Priority <sup>2*</sup>	Specifications	Completion Date/Status <sup>3</sup>	Resource Needs <sup>**</sup>
			<p>1. Foster excellence in public service to ensure that all court users receive satisfactory services and outcomes.</p> <p>3. Develop and support collaborations to improve court practices to leverage and share resources, and to create tools to educate court stakeholders and the public.</p>		
2.	<ul style="list-style-type: none"> <li>Identify appropriate resources for California Courts' On-line Self Help Center relating to domestic violence for Native Americans</li> </ul>		<p>Strategic Plan Goal I: Access, Fairness, &amp; Diversity</p> <p>Operational Plan Objectives: 1,2,4</p> <p>Strategic Plan Goal IV: Quality of Justice and Service to the Public</p> <p>Operational Plan Objectives: 1,3</p>	<p>In progress, completion date: June, 2012</p>	<p>Resource: IS Contact: Mark Gelade Describe: Coordinate web content</p>
3.	<ul style="list-style-type: none"> <li>Identify appropriate information to collect on tribal justice systems in California and make that information available online on the California Courts' website in a new section entitled "Tribal Justice Systems." This information would be designed to assist tribes to develop their</li> </ul>		<p>Strategic Plan Goal I: Access, Fairness, &amp; Diversity</p> <p>Operational Plan Objectives: 1,2,4</p> <p>Strategic Plan Goal IV: Quality of Justice and Service to the Public</p>	<p>In progress, completion date: September 30, 2012</p>	<p>Resource: IS Contact: Mark Gelade Describe: Coordinate web content</p>

#	Project <sup>1</sup>	Priority <sup>2*</sup>	Specifications	Completion Date/Status <sup>3</sup>	Resource Needs <sup>**</sup>
	tribal justice systems and the state judicial branch, its partners, and the public in learning more about tribal justice systems in California.		Operational Plan Objectives: 1,3		
4.	<ul style="list-style-type: none"> <li>Assist the state judicial branch with tribal engagement and consultation (Examples include ensuring tribal representation on the Blue Ribbon Commission, the Child Welfare Council, and at statewide and regional conferences)</li> </ul>		<p>Strategic Plan Goal II: Independence and Accountability</p> <p>Operational Plan Objective 3: Improve communication within the judicial branch, with other branches of government, with members of the bar, and with the public to achieve better understanding of statewide issues that impact the delivery of justice</p>	Ongoing	Resource: Contact: Describe:
5.	<ul style="list-style-type: none"> <li>Identify grants to implement tribal court/state court collaborations</li> </ul>		<p>Strategic Plan Goal II: Independence and Accountability</p> <p>Operational Plan Objective 3</p>	Ongoing	Resource: Court Program and Services Division (CPAS) Contacts: Martha Wright and Catharine Price Describe: Identify grants and coordinate applications

#	Project <sup>1</sup>	Priority <sup>2*</sup>	Specifications	Completion Date/Status <sup>3</sup>	Resource Needs <sup>**</sup>
6.	<ul style="list-style-type: none"> <li>Partner with the California Attorney General's Office to gain access to CLETS by tribal courts and tribal law enforcement</li> </ul>		<p>Strategic Plan Goal II: Independence and Accountability</p> <p>Operational Plan Objective 3</p>	Ongoing	<p>Resource:</p> <p>Contact:</p> <p>Describe:</p>
7.	<ul style="list-style-type: none"> <li>Make legislative recommendations to the Judicial Council to enforce tribal civil judgments</li> </ul>	1	<p>Strategic Plan Goal II: Independence and Accountability</p> <p>Operational Plan Objective 3</p>	In progress, completion date: Spring 2012	<p>Resource: OGC, OGA</p> <p>Contacts: Anne Ronan; Tracey Kenny and Dan Pone</p> <p>Describe: Coordinate drafting and legislative advocacy</p>
8.	<ul style="list-style-type: none"> <li>Provide expertise to the Judicial Council in the AOC's preparation of the statutorily mandated report from the Judicial Council to the State Legislature re tribal customary adoptions, due to the Legislature on January 1, 2013 (AB 1325, Cook)</li> </ul>	1	<p>Strategic Plan Goal II: Independence and Accountability</p> <p>Operational Plan Objective 3</p>	In progress, completion date: January 1, 2013	<p>Resource: OGA</p> <p>Contact: Tracey Kenny</p> <p>Describe: Coordinate submission of report for Council Agenda</p>
9.	<ul style="list-style-type: none"> <li>Recommend to the AOC that tribal courts have access to the California Protective Order Registry. The purpose of this project is to enable state and</li> </ul>		<p>Strategic Plan Goal III: Modernization of Management and Administration</p> <p>Operational Plan Objective 5.</p>	Ongoing	<p>Resource: IS</p> <p>Contact: David Loo</p> <p>Describe: Coordinate implementation for</p>

#	Project <sup>1</sup>	Priority <sup>2*</sup>	Specifications	Completion Date/Status <sup>3</sup>	Resource Needs <sup>**</sup>
	<p>tribal courts to see each other's protective orders, to avoid conflicting orders, and to promote enforcement of these orders</p> <p>At the request of the forum, the AOC is implementing a tribal pilot project giving 3 tribal courts read-only access to CCPOR; to be expanded to other interested tribal courts</p>		<p>Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases.</p> <p>Strategic Plan Goal VI: Branch wide Infrastructure for Service Excellence</p> <p>Operational Plan Objective 4. Implement new tools to support the electronic exchange of court information while balancing privacy and security.</p>		<p>tribal courts and tribal law enforcement</p>
10.	<ul style="list-style-type: none"> <li>Make recommendations to the AOC to develop and implement a pilot project that would electronic notice Tribes in Indian Child Welfare Act cases</li> </ul>		<p>Strategic Plan Goal III: Modernization of Management and Administration</p> <p>Operational Plan Objective 5.</p> <p>Strategic Plan Goal VI: Branch wide Infrastructure for Service Excellence</p> <p>Operational Plan Objective 4.</p>	<p>In progress, completion date depends on obtaining funding and partners</p>	<p>Resource: CPAS Contact: Catharine Price and Martha Wright Describe: Coordinate grant application and work with local courts and tribes interested in participating in pilot</p>

#	Project <sup>1</sup>	Priority <sup>2*</sup>	Specifications	Completion Date/Status <sup>3</sup>	Resource Needs <sup>**</sup>
11.	<ul style="list-style-type: none"> <li>Make recommendations to develop research abstracts on available tribal data and promote the collection of tribal data</li> </ul>		<p>Strategic Plan Goal III: Modernization of Management and Administration</p> <p>Operational Plan Objective 5.</p> <p>Strategic Plan Goal VI: Branch wide Infrastructure for Service Excellence</p> <p>Operational Plan Objective 4.</p>	Ongoing	Resource: Contact: Describe:
12.	<ul style="list-style-type: none"> <li>Coordinate information sharing to inform policymakers, tribal leaders, state court leaders about local and statewide collaborations, and enter into memoranda of understandings /inter-governmental agreements to foster collaborations</li> </ul>		<p>Strategic Plan Goal IV: Quality of Justice and Service to the Public</p> <p>Operational Plan Objective 1. Foster excellence in public service to ensure that all court users receive satisfactory services and outcomes.</p>	Ongoing	Resource: Contact: Describe:
13.	<ul style="list-style-type: none"> <li>Develop and facilitate protocol projects that identify opportunities to share, coordinate, and transfer jurisdiction</li> </ul>		<p>Strategic Plan Goal IV: Quality of Justice and Service to the Public</p> <p>Operational Plan Objective 1.</p>	Ongoing, Completion date: December 2012 for (1) guide on <i>Developing Jurisdictional Protocols</i> and (2) gathering and posting existing protocols	Resource: Contact: Describe:

#	Project <sup>1</sup>	Priority <sup>2*</sup>	Specifications	Completion Date/Status <sup>3</sup>	Resource Needs <sup>**</sup>
14.	<ul style="list-style-type: none"> <li>Make recommendations to the Judicial Council that address challenges in elder abuse and other probate cases</li> </ul>		<p>Strategic Plan Goal IV: Quality of Justice and Service to the Public</p> <p>Operational Plan Objective 1.</p>	<p>In progress, completion date: September 30, 2012</p>	<p>Resource: OGC Contact: Doug Miller Describe: Convene working group of Probate and Mental Health Advisory Committee and forum members</p>
15.	<ul style="list-style-type: none"> <li>Make recommendations to the Judicial Council that address public safety concerns, barriers to sharing traffic court orders across tribal and state jurisdictions, and challenges in the recognition and enforcement of tribal traffic orders</li> </ul>		<p>Strategic Plan Goal IV: Quality of Justice and Service to the Public</p> <p>Operational Plan Objective 1.</p>	<p>In progress, completion date: depends on information received from the California Department of Motor Vehicles</p>	<p>Resource: OGC Contact: Courtney Tucker Describe: Coordination of legal research and working with justice partners at the California Department of Motor Vehicles</p>
16.	<ul style="list-style-type: none"> <li>Recommend to the AOC that it change the name of the Judicial Branch Court Extranet/Serranus (possible new name could be Court Online Resources and Education (CORE))</li> </ul>		<p>Strategic Plan Goal IV: Quality of Justice and Service to the Public</p> <p>Operational Plan Objective 1.</p>	<p>In progress, completion date to coincide with website redesign</p>	<p>Resource: IS, Web Advisory User Committee Contact: Mark Dusman Describe: Recommendation as part of redesign of website</p>

#	Project <sup>1</sup>	Priority <sup>2*</sup>	Specifications	Completion Date/Status <sup>3</sup>	Resource Needs <sup>**</sup>
17.	<ul style="list-style-type: none"> <li>Make recommendations to the AOC to revise judicial benchguides; revisions to include information regarding federal Indian law and the interjurisdictional issues that face tribal and state courts</li> </ul>		<p>Strategic Plan Goal V: Education for Branchwide Professional Excellence</p> <p>Operational Plan Objective 1. Provide relevant and accessible education and professional development opportunities for all judicial officers (including court-appointed temporary judges) and court staff.</p>	In progress, completion date for Judges Guide to Domestic Violence: April, 2012; completion for all other benchguides: June, 2013	<p>Resource: CJER</p> <p>Contact: Bob Lowney, Bob Schindewolf</p> <p>Describe: Consult with CJER staff involved in planning judicial education programs, distance learning, and benchguide revisions</p>
18.	<ul style="list-style-type: none"> <li>Make recommendations to the AOC to educational programming for state court judges and advise on content; revisions to include federal Indian law and the interjurisdictional issues that face tribal and state courts</li> </ul>		<p>Strategic Plan Goal V: Education for Branchwide Professional Excellence</p> <p>Operational Plan Objective 1.</p>	Ongoing	<p>Resource: CJER</p> <p>Contact: Bob Lowney</p> <p>Describe: Coordinate educational programming for judges</p>

### Status of 2011 Key Objectives:

The forum did not have an annual agenda last year. The forum's accomplishments to date include the following:

1. Made recommendations to amend Welfare and Institutions Code section 827. Prepared draft and submitted to the Family and Juvenile Law Advisory Committee which will convene a working group to address the tribal access issues raised.
2. Made recommendations to collect tribe-specific data in CCMS and CCPOR as appropriate. CCMS and CCPOR now have the functionality to collect this data.

3. Recommended a rule and form proposal to revise the rule governing sending the record in juvenile appeals to clarify that if an Indian tribe has intervened in a case, a copy of the record of that case must be sent to that tribe. See link for proposal on council agenda for proposed effective date of January 1, 2013 <http://www.courts.ca.gov/SPR11-12.pdf>.
4. Recommended a rule and form proposal to establish an efficient and consistent statewide procedure for California state courts to register protective orders issued by tribal courts in California; registration of tribal court protective orders will help ensure that law enforcement agencies enforce these orders uniformly and consistently. See link for proposal on council agenda for proposed effective date of July 1, 2013 <http://www.courts.ca.gov/SPR11-53.pdf>.

The forum's progress to date on the projects listed in the 2012 agenda includes:

Project 1: Disseminated information to tribal courts and state courts on the following:

- (1) Collaborative Justice (<http://www.courts.ca.gov/documents/CollJusProjTribal.pdf>)
- (2) Supervised Visitation <http://www.courts.ca.gov/documents/TAfactsheet.pdf>
- (3) Domestic Abuse Self-Help <http://www.courts.ca.gov/documents/FactSheetDASH.pdf>

Project 3: Created "Tribal Justice Systems" tab. At this tab are resources for tribal justice systems, information on tribal jurisdiction in California, and a tribal court directory that is searchable by tribal court name and county. See <http://www.courts.ca.gov/3064.htm>.

Project 4: Assisted the Child Welfare Council and the AOC's statewide data conference with tribal engagement to seek tribal participation in both.

Project 5: Obtained funding from the Office on Violence Against Women, U.S. Department of Justice that are administered through the California Emergency Management Agency (CalEMA)

Project 7: Established a legislative subcommittee of the forum. Developed a proposal with relevant council advisory committees which is currently circulating for public comment. See <http://www.courts.ca.gov/documents/LEG11-04.pdf>

Project 9: Proposed a pilot project to give read-only access to the California Courts Protective Order Registry (CCPOR) to tribal courts. The AOC launched this pilot project to improve protections for Native American victims of violence by enabling state and tribal courts to see each other's protective orders, avoid conflicting orders, and promote uniform and consistent enforcement of these orders. Through this pilot, tribal court judges and tribal law enforcement for three California Tribes-- Hoopa, Quechan, and Yurok- now have read-only access to domestic violence and other restraining and protective orders, along with the 22 state court jurisdictions currently participating in CCPOR.

Project 10: Drafted electronic noticing proposal abstract and solicited tribal, state, and national partners.

Project 11: Completed two abstracts that summarize the following tribal data:

- (1) population characteristics ([http://www.courts.ca.gov/documents/resup\\_pop\\_072511\\_final.pdf](http://www.courts.ca.gov/documents/resup_pop_072511_final.pdf)) and
- (2) domestic and other violence and victimization (<http://www.courts.ca.gov/documents/NatAmStatsAbUpdate.pdf>)

Project 12: Forum members presented at the following conferences: (1) California Indian Law Association Conference; (2) National American Indian Judges Association; and (3) Beyond the Bench. Drafted template for proposed memorandum of agreement between the AOC and a Tribal Court or Tribal Court Coalition.

Project 13: Established protocol working group that has collected existing protocols and developed a table of contents for a guide to developing protocols.

Project 14: Convened working group of members from the forum and the Probate and Mental Health Advisory Committee to discuss the issues and make recommendations to address the issues.

Projects 17 and 18: Established education subcommittee of the forum. Through this subcommittee, the forum has provided its expertise on relevant judicial benchguides, educational content for judicial institutes, and judicial curriculum. The forum proposed revisions relating to federal Indian law to the following 10 judicial benchguides or handbooks: Native American Resource Guide for Bench Officers (2003), Traffic Court Proceedings (Benchguide 82) (rev. 1/09), Bench Handbook: The Indian Child Welfare Act (2008), Adoptions (Benchguide 130) (rev. 8/09), Custody and Visitation (Benchguide 200) (rev. 8/09), Child and Spousal Support (Benchguide 201) (rev. 4/08), Property Characterization and Division (Benchguide 202) (5/10), AB 1058 Child Support Proceedings: Establishing Support (Benchguide 203) (3/10), AB 1058 Child Support Proceedings: Enforcing Support (Benchguide 204) (3/10), Probate Administration (Benchguide 302) (12/10), Judges Guide to Domestic Violence, and the Native American Resource Guide. The forum also developed educational content for the Cow County Institute, served as faculty for one of the institute's workshops, and offered to develop a similar workshop for the Criminal Law Institute. The forum also assisted in the development of judicial curricula on Public Law 280 generally and specifically to family violence. See links for the two curricula and webinar <http://www.courts.ca.gov/8710.htm> and <http://www.courts.ca.gov/14851.htm>.

# INNOVATIONS IN THE CALIFORNIA COURTS

20 YEARS OF GREAT IDEAS

## Connecting the Court to the Community: Tribal Courts

In 2009, the Administrative Office of the Courts established, as part of the Center for Families, Children & the Courts (CFCC), a [Tribal Projects Unit](#). The purpose of this unit is to act as a liaison between the state justice system and the tribal communities and justice systems in California, in order to improve the California Native American community's access to justice and strengthen the working relationship between the state and tribal justice systems.



The need for this collaboration has been growing. According to the 2000 census, more than 600,000 American Indian and Alaskan Native citizens reside in California in both rural and urban communities— more than in any other state except Alaska. This represents roughly 13 percent of the entire American Indian/Alaska Native population of the United States. California contains approximately 600,000 acres of “Indian county” in more than 100 separate parcels scattered throughout the state. This territory is home to 107 federally recognized tribes, with another 74 tribes in the process of applying for federal recognition. As sovereign tribes, they have the authority to establish their own justice systems. There are now 17 tribal courts, up from just 7 a few years ago, and the

number is growing. These courts serve approximately 30 of the 107 tribes.

The increase in the number of tribal courts, and the legal complexity of jurisdiction, points up the need for greater understanding and collaboration between the state courts and the tribal courts. To increase understanding and build trust, the Tribal Projects Unit has produced educational curricula, a webinar, and other bench tools for judges on federal Indian law. The unit has also created a clearinghouse that provides access to resources, responds to inquiries by local courts on a wide range of tribal issues, and supports collaboration between state and tribal courts.

These efforts have already begun to bring benefits to local courts, such as:

- An understanding of the common interest shared by state and tribal courts and the people they serve;
- Increased collaboration between state and tribal courts to address interjurisdictional challenges;
- Sharing of educational and other resources;
- Progress on the recognition and enforcement of each other's court orders, thus preventing confusion and reducing costs; and
- The capacity to share information on criminal history and each other's protective orders. This sharing reduces the possibility of conflicting orders, ensures that judicial officers have the information they need to make informed decisions, and provides law enforcement officers with the information they need to protect the public.

State and tribal justice systems have a great deal of experience to share and much to learn from each other. The two systems need to work jointly to solve problems that they both face. The Tribal Projects Unit will continue to facilitate cooperation and collaboration between the state courts and tribal courts in order to ensure the highest quality of justice and service for California's Native American communities.

The Tribal Projects Unit is supported exclusively with grant funds from the U.S. Department of Justice's Office on

Violence Against Women. These funds are administered through the California Emergency Management Agency, the U.S. Department of Health and Human Services' Court Improvement Program, and the California Department of Social Services. 66 innoa courts

---

## THE TRIBAL COURT/STATE COURT FORUM: ADDRESSING SHARED CONCERNS

The Tribal Projects Unit supports the [Tribal Court/State Court Forum](#). The forum, established by former Chief Justice Ronald M. George and continued by Chief Justice Tani Cantil-Sakauye, comprises both tribal court judges and state court judges and justices. The forum makes policy recommendations to the Judicial Council on issues relating to the recognition and enforcement of court orders that cross jurisdictional lines, the determination of jurisdiction for cases that might appear in either court system, and the sharing of services between jurisdictions.

In 2008–2009, the Native American Communities Justice Project brought together more than 500 Native Americans and California court personnel to hear the voices of Native American victims of family violence. This assessment, conducted by the CFCC, reported that tribal protective orders were not being uniformly and consistently enforced, leaving victims at risk of being revictimized. The forum identified the following two solutions to these issues:

[California Courts Protective Order Registry](#). In August 2011, the Tribal Projects Unit worked with the AOC's Information Services Division to launch a pilot program that provides tribal courts with read-only access to the California Courts Protective Order Registry (CCPOR). By sharing information on restraining and protective orders, state courts and tribal courts are better able to protect the public, particularly victims of domestic violence.

Efficient and consistent procedures. A proposed statewide rule will establish an efficient and consistent statewide procedure for California state courts to register protective orders issued by tribal courts in California. The proposed rule is on the Judicial Council's consent agenda and, if adopted, will become effective July 1, 2012.





SUMMER 2011

### Imperial County: Notable Tribal Court/State Court Collaborative Efforts



Both Judge Juan Ulloa, the presiding judge of the Imperial County Juvenile Court, and Judge Claudette White, Chief Judge of the Quechan Tribal Court, are members of

the Judicial Council's California Tribal Court/State Court Forum. But their working relationship preceded the formation of the forum and is bound to enrich its work.



When Imperial County conducted a California Child and Family Services Review County Self-Assessment (CSA) in 2004, the county Department of Social Services (DSS) and Quechan Social Services had a positive working relationship and there was some informal mentoring around Indian Child Welfare Act (ICWA) cases. The Quechan tribe was an active member of the CSA team. But there was little or no collaboration between the tribal court and the juvenile court other than the attendance at state court by a tribal representative at initial and ongoing court hearings for ICWA families. DSS also had three social workers designated as tribal liaisons who were the only social workers assigned to ICWA cases.

In the early stages of developing the Imperial County Blue Ribbon Commission to collaborate around serving children and families in the child welfare system, the Quechan Tribe was not a participant. That all changed when the state court issued a no contact order in a juvenile case that conflicted with a tribal court order that had been issued in the same case. Judge White reached out to Judge Ulloa and the two began trying to work out protocols for coordinating, transferring, and monitoring cases that involved Quechan families. Much of their early work together involved learning to respect each other's traditions and to communicate about what was in the best interests of the children for which both court systems had responsibility.

In May 2009, Judges White and Ulloa both attended the statewide meeting of the Native American Communities Justice Project – Beginning the Dialogue, an AOC project funded by a grant from CalEMA which brought together tribal, state and local stakeholders and justice partners from throughout the state to discuss the family violence in tribal communities and develop collaborative strategies to effectively

address these issues. The discussions helped strengthen the working relationship between the two judges.

That work led to an active and cordial working relationship between Judges White and Ulloa. The state court began transferring cases to the tribal court when it was appropriate. The Quechan Tribe has a very active social services department and can usually provide the services needed by a family. Judge Ulloa realized that the tribal court was entitled to great respect. "We have much to learn from tribal traditions," he said, noting that the tribal concept of "family" as being much more inclusive than a blood relationship should be applied more often in family finding efforts. According to Judge White, "That link to your family and your tribe is who you are and who your family is; breaking that link by removing a child from the family and the tribe disrupts that critical relationship."

In Spring 2010, the Imperial County self-help center applied for and received a grant from the AOC, funded by CalEMA, to support increased collaboration with the Quechan tribal Court and improve services to Native American victims of family violence. Through that grant a protocol was developed to facilitate the registration of tribal court protective orders with the superior court to help ensure enforcement of these orders. Also through this grant, on August 19, 2010, Judges White and Ulloa convened a summit at the Quechan reservation which included tribal and county law enforcement and other stakeholders. They discussed Public Law 280, jurisdiction and law enforcement on tribal lands and strategies to improve the working relationship between all agencies.

Both Judges White and Ulloa participated in the 2010 Summit sponsored by the AOC for local foster care commissions and they have continued their work together. "We are thankful to the AOC for bringing us together," Judge White noted. One current project that they are tackling together is increasing the number of tribal foster homes, in part by helping families go through the legal expungement of old criminal charges that are preventing them from getting licensed. They are planning an Expungement Day sometime later this year. In addition, they are jointly working on some workshops and presentations for the Quechan community. Judge Ulloa is facilitating an educational rights workshop and is encouraging the continued work between the tribal court and the Imperial Self-Help Center. They are also meeting to enhance communication and develop policies on "Notice" among the state court, tribal court, probation department, and the Quechan Social Services Department to further meet the needs of youth and their families. And finally, they are in discussion about the need for some training for law enforcement that would help the different agencies that serve the county and tribal communities better understand the courts' roles and responsibilities and learn to be more culturally responsive to the community. And, of course, the judges are continuing their work together on the Tribal Court/State Court Forum.

The California Tribal Court/State Court Forum is a coalition of the various Tribal Courts of the Native American Tribes situated in California and the Courts of the State of California. Former Chief Justice Ronald M. George appointed the members of the forum in 2010 and charged them with addressing issues common to both tribal and state courts relating to the recognition and enforcement of court orders that cross jurisdictional lines, the determination of jurisdiction for cases that might appear in either court system, and the sharing of services between jurisdictions. The forum was convened for the express purpose of improving the working relationship between its members and enabling the courts of each to issue and enforce their respective orders to the fullest extent allowed by law. For more information about the forum please contact Ann Gilmour at [ann.gilmour@jud.ca.gov](mailto:ann.gilmour@jud.ca.gov) or 415-865-4207 or Jennifer Walter at [jennifer.walter@jud.ca.gov](mailto:jennifer.walter@jud.ca.gov) or 415-865-7687.

## Are there Native Americans in my county?

The AOC's July 2011 *Research Update*\* on the Native American population of California includes a number of demographic facts:

- ◆ California is home to 12 percent of the total Native American population of the United States, more than any other state.
- ◆ More than half of California's Native Americans belong to tribes originating in other states; Cherokee represent the state's largest tribal population (18 percent), followed by Apache (6 percent), and Navajo and Choctaw (5 percent each).
- ◆ Only 3 percent of Native Americans in California live on reservations or rancherias.

## How can judges from tribal and state courts work together to benefit California's tribal communities?

- ◆ Contact your counterpart in the other court and suggest swapping invitations to observe court proceedings, participate in justice system meetings, and learn more about one another's courts and procedures.
- ◆ Communicate directly with the other court to identify and resolve issues of mutual concern.
- ◆ Convene cross-jurisdictional meetings with law enforcement agencies and other justice partners.
- ◆ Conduct joint local or regional trainings to address issues common to your justice systems.

\* [www.courts.ca.gov/documents/resup\\_pop\\_072511\\_final.pdf](http://www.courts.ca.gov/documents/resup_pop_072511_final.pdf)

## FOR MORE INFORMATION

The Tribal Projects Unit, a program of the AOC's Center for Families, Children & the Courts, provides support to local courts on tribal issues and assists with the development of policies, positions, and programs to ensure the highest quality of justice and service for California's Native American communities. The unit also serves as a liaison to those communities in cases relating to the Indian Child Welfare Act (ICWA) and family violence matters.

To learn more about the Tribal Projects Unit or for assistance with issues related to a tribal matter, call Jennifer Walter at 415-865-7687 or visit

[www.courts.ca.gov/programs-tribal.htm](http://www.courts.ca.gov/programs-tribal.htm)

# RECOGNITION AND ENFORCEMENT OF TRIBAL PROTECTIVE ORDERS

Information for tribal court and state court judges on matters involving domestic violence

Copyright © 2012 by Judicial Council of California/  
Administrative Office of the Courts



Judicial Council of California  
Administrative Office of the Courts  
Center for Families, Children & the Courts  
455 Golden Gate Avenue  
San Francisco, California 94102-3688  
415-865-4200  
[www.courts.ca.gov](http://www.courts.ca.gov)



ADMINISTRATIVE OFFICE  
OF THE COURTS

CENTER FOR FAMILIES, CHILDREN  
& THE COURTS

This pamphlet is intended to help tribal court and state court judges learn more about the recognition and enforcement of each other's protective orders in matters where domestic violence affects individuals of American Indian or Alaskan Native heritage.

## What is the extent of the problem of domestic violence among Native Americans?

Domestic violence is a particularly troubling issue in Native American communities.

- ◆ 39% of American Indian women report some form of intimate partner violence in their lifetimes, higher than the rate reported by any other race or ethnic group.
- ◆ American Indian victims of intimate and family violence are more likely than victims of other racial groups to be seriously injured and require hospital care.
- ◆ Among American Indian victims of violence, 75 % of intimate victimizations and 25% of family victimizations involve an offender of a different race.

For detailed statistics and citations, see the AOC's Native American Statistical Abstract: Violence and Victimization (January 2012) at [www.courts.ca.gov/documents/Tribal-NAmericanStatsAbstract.pdf](http://www.courts.ca.gov/documents/Tribal-NAmericanStatsAbstract.pdf).

## What is the federal Violence Against Women Act (VAWA)?

The federal Violence Against Women Act, or VAWA (42 U.S.C. chapter 136, subchapter III), was enacted by Congress in 1994 to address the problem of states' inconsistent enforcement of domestic violence laws. VAWA's purpose is "to encourage States, Indian tribal governments, and units of local government to treat domestic violence as a serious violation of criminal law." Congress amended the act in 2000 and 2005.

---

**Full Faith and Credit .** Both VAWA and California law mandate full faith and credit for protective orders issued by tribal courts in accordance with VAWA requirements. (See 18 U.S.C. § 2265; and California's Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (Fam. Code, §§ 6400–6409).)

Under these laws, a protective order issued by a tribal or sister-state court is entitled to full faith and credit and enforcement and does not need to be registered in California.

---

## What challenges may hinder enforcement of protective orders for Native Americans?

In practice, despite the full faith and credit mandate, many law enforcement agencies and officers will not enforce a protective order unless it can be verified in the California Restraining and Protective Orders System (CARPOS) through the California Law Enforcement Telecommunication System (CLETS). State and county law enforcement agencies have access to CLETS and can enter and view protective orders, but most tribal law enforcement agencies do not have access. Absent a local law enforcement protocol or the state court's registering a tribal protective order, it will not be entered in CARPOS.

Another challenge is to avoid conflicting or redundant protective orders issued by tribal courts and state courts.

## What solutions exist to these challenges?

The California Tribal Court/State Court Forum, established in May 2010, discussed these issues and recommended two viable solutions, see below.

---

**Efficient and consistent process.** Effective July 1, 2012, rule 5.386 of the California Rules of Court requires all state courts, upon request by a tribal court, to adopt a written procedure or local rule permitting the fax or electronic filing of any tribal court protective order entitled under Family Code section 6404 to be registered. Learn more at [www.courts.ca.gov/documents/SPR11-53.pdf](http://www.courts.ca.gov/documents/SPR11-53.pdf).

**California Courts Protective Order Registry.** Through this dedicated online database, state courts and tribal courts can view each other's protective orders. Courts that have access to the registry are better able to protect the public, particularly victims of domestic violence, and avoid issuing conflicting orders. Learn more at [www.courts.ca.gov/15574.htm](http://www.courts.ca.gov/15574.htm).

---

## Is there a tribal court in my jurisdiction?



To learn if there's a tribal court in your county, please visit the California Tribal Courts Directory ([www.courts.ca.gov/14400.htm](http://www.courts.ca.gov/14400.htm)) or the tribal court map (<http://lg.co/maps/cvdq8>).

# CALIFORNIA TRIBAL COURT/STATE COURT FORUM

## Related Educational Activities

With grant funding, the Administrative Office of the Courts (AOC) staffs the California Tribal Court/State Court Forum, a coalition of tribal and state court judges who come together as equal partners to examine issues common to both relating to the recognition and enforcement of court orders that cross jurisdictional lines, the determination of jurisdiction for cases that might appear in either court system, and the sharing of services between jurisdictions. The forum is convened for the express purpose of improving working relationships among its members and enabling the courts of each to issue and enforce their respective orders to the fullest extent.

The forum comprises 27 members: 11 tribal court judges, representing 14 of the 20 tribal courts in California (these courts serve more than 30 tribes in California); the tribal advisor to the California Governor; the director of the California Attorney General's Office of Native American Affairs; and 14 members of the state judiciary, including the chairs of the Judicial Council's Family and Juvenile Law Advisory Committee, Access and Fairness Advisory Committee, Civil and Small Claims Advisory Committee, Probate and Mental Health Advisory Committee, Traffic Advisory Committee, and the vice-chair of the Criminal Law Advisory Committee, as well as representatives of the local courts in counties where many of the tribal courts are situated.

In response to the forum's recommendations to revise judicial benchguides and expand judicial education programming materials to include information on federal Indian law and the interjurisdictional issues that face tribal and state courts, the AOC applied for grant funding to develop curricula for judges on federal Indian law as it applies to all civil and criminal cases, provide training, and post educational resources. This has resulted in a number of informative educational programs and projects:

### **Educational Programs: In-Person Events**

- On June 17, 2011, forum members convened educational sessions for judges on the History of California Indians and Dynamics of Domestic Violence in Native Communities, Structure of Tribal Governments, Tribal Court Development in California, and Models of Tribal Court State Court Collaboration.
- On October 14, 2011, forum members addressed the California Indian Law Association Conference on the work of the forum and the legislative proposal to recognize and enforce tribal civil orders.
- On October 25, 2011, forum members addressed the National American Indian Judges Association Conference on the work of the forum and the electronic noticing initiative.

## CALIFORNIA TRIBAL COURT/STATE COURT FORUM

- In December, 2011, forum members conducted five sessions at the annual Beyond the Bench Conference:
  - *Tribal Court Live: Understanding How Tribal Courts Work and How to Work With Them*  
This mock trial led by Chief Judge Claudette White of the Quechan Tribal Court involved a marital dissolution case and explored issues of child custody, division of property, and protective orders. It examined some of the jurisdictional issues that may arise in tribal court and between tribal and state courts and how best to address and resolve them.
  - *Tribal Customary Adoption: Lessons Learned*  
This session discussed experiences in implementing California's tribal customary adoption law since it went into effect on July 1, 2010. Panelists included participants in a tribal customary adoption case in San Francisco that recently finalized. We heard perspectives on tribal customary adoption (TCA) from the tribal attorney, county counsel, minor's attorney, social worker, and the attorney for the adoptive parents, and the panelists discussed the challenges they faced in implementing TCA as a permanent plan.
  - *Recognition and Enforcement of Tribal Protective Orders*  
In this session, tribal and state court judges discussed jurisdiction on tribal lands and in tribal court, federal and state law concerning enforcement and recognition of tribal court protective orders, existing procedures for the mutual recognition and enforcement of protective orders, and proposed changes to the California Rules of Court.
  - *Child Support and Tribal Communities: Myths and Realities*  
With the growing number of tribal courts, tribal TANF agencies, tribal child support agencies, and the growth of the 107 recognized tribes in California as major employers, tribal/state court jurisdiction in general and child support matters in particular have become an emerging area of the law affecting many families in California. This session brings together a tribal judge, a local child support attorney, and the State Department of Child Support Services Tribal Liaison for a discussion of where we are jurisdictionally and collaboratively, and where we hope to be in the future.
  - *ICWA for Minors' and Parents' Attorneys*  
The Indian Child Welfare Act (ICWA) establishes unique procedural and substantive requirements for dependency proceedings involving Indian children. Although most of the responsibility for complying with the requirements of ICWA fall to the child welfare agency and the courts, appointed counsel for minors and parents have an important role to play as well. Learn how to use ICWA to advance your clients' interests and understand the role that you as counsel play in protecting your clients' rights under ICWA.
- On December 14, 2011, forum members met with other state judicial branch leaders at the Leadership Forum. Chief Justice Tani G. Cantil-Sakauye, presiding judges and court executive officers, and members of the Judicial Council's Family and Juvenile Law Advisory Committee, the Collaborative Justice Advisory Committee, the Domestic Violence Task

## CALIFORNIA TRIBAL COURT/STATE COURT FORUM

Force were among the attendees. This event offered an opportunity for tribal and state leaders to meet, forge relationships, and learn from one another. The Leadership Forum identified concrete tools and collaborative strategies to respond to the needs of those most vulnerable in the current economic climate: foster children and their families; families struggling with homelessness and poverty, mental illness, substance abuse, divorce, and custody issues; the self-represented; communities dealing with gangs and other issues of violence; and those reentering communities and families, such as returning veterans or offenders under community supervision or parole.

- On June 18, 2012, forum members participated in a plenary panel at the California rural judges' conference, the "Cow County Institute," addressing assessments of lethality and risk in cases involving domestic violence.

### **Educational Projects: Curriculum and Benchguides**

- Developed curriculum on federal Indian law relating to civil and criminal jurisdiction in a Public Law 280 state for state court judges, with updates to be drafted as needed; this curriculum has been used to teach workshops at Beyond the Bench, the Cow County Rural Judges Institute, and a forum webinar. To view the curricula and webinar online, visit [www.courts.ca.gov/8710.htm](http://www.courts.ca.gov/8710.htm) and [www.courts.ca.gov/14851.htm](http://www.courts.ca.gov/14851.htm).
- Developed and distributed training video for judges with courtroom and noncourtroom scenarios that raise questions about cross-jurisdictional issues between state and tribal courts in a range of areas, including domestic violence.
- Completed curriculum for tribal advocates on the subject of domestic violence and how to navigate the state court system.
- Completed revisions to the Child Support Benchguide and the Child Custody and Visitation Benchguide.
- Completed new chapters on tribal communities and domestic violence for inclusion in the Judges Guide to Domestic Violence Cases benchguide and the Native American Resource Guide.

### **Ongoing Educational Activities**

- Update the judicial benchguides, as needed, to incorporate issues that arise between tribal and state courts. These benchguides cover a wide range of topics, including domestic violence.
- Plan a workshop for September 14, 2012 at the California Partnership to End Domestic Violence Conference in San Diego.

## CALIFORNIA TRIBAL COURT/STATE COURT FORUM

- Plan, in partnership with the National Judicial College's National Tribal Justice Center, a judicial educational symposium that will be hosted by the Shingle Springs Rancheria (El Dorado County) on October 9–10, 2012. Some of the topics may include the Tribal Law and Order Act, transfer of cases between state and tribal courts, how and when state courts refrains from taking cases where there is concurrent jurisdiction, tribal court/state court commitment process, probate, elder abuse cases and traffic cases, and designing a protocol, toolkit, or webinar for court use after the symposium.
- Update, as needed, the tribal projects web page, which serves as a clearinghouse of resources for local courts on (1) forum activities; (2) ICWA services; (3) family violence; (4) tribal communities of California; (5) tribal justice systems, including an up-to-date directory of tribal courts searchable by tribal court or county name; and (6) tribal/state collaborations nationally and in California. (See the tribal projects page on the California Courts website at [www.courts.ca.gov/programs-tribal.htm](http://www.courts.ca.gov/programs-tribal.htm).)
- Advise on ICWA training, provided locally and regionally, to courts that request training (grant funding to provide up to 10 sessions per year).

The Code of Civil Procedure would be amended to read:

1 SECTION 1. Section 1714(b) of Title 11 of Part 3 of the Code of Civil Procedure is amended to  
2 delete “‘Foreign country judgment’ includes a judgment by any Indian tribe recognized by the  
3 government of the United States.”

4 SEC. 2. A new Title 11.1 of Part 3 of the Code of Civil Procedure is added to read:

5 1730. This title may be cited as the Tribal Court Civil Judgment Act.

6 1731. (a) This title governs the procedures by which the superior courts of the State of  
7 California recognize and enter tribal court judgments of any federally recognized Indian tribe.  
8 Determinations regarding recognition and entry of a tribal court judgment pursuant to state law  
9 shall have no effect upon the independent authority of that judgment. To the extent not  
10 inconsistent with this title, the California Code of Civil Procedure shall apply.

11 (b) This title does not apply to the following tribal court judgments:

12 (1) for taxes, fines, or other penalties;

13 (2) for which federal law requires that states grant full faith and credit recognition under  
14 Section 1911 of Title 25 of the United States Code (for custody orders concerning Indian  
15 children under Indian Child Welfare Act), Section 2265 of Title 18 of the United States Code  
16 (for protection orders under the Violence Against Women’s Act), Section 1738B of Title 28 of  
17 the United States Code (for child support orders under the Child Support Enforcement Act);

18 (3) for which state law provides for recognition under Section 3404 of the Family Code  
19 (for child support orders recognized under the Uniform Child Custody Jurisdiction and  
20 Enforcement Act); Section 4900 et seq. of the Family Code (for other forms of family support  
21 orders under the Uniform Interstate Family Support Act); or Section 6400 et seq. of the Family  
22 Code (for domestic violence protective orders), or

23 (4) for decedent estates, guardianships, conservatorships, internal affairs of trusts,  
24 powers of attorney, or other tribal court judgments that arise in proceedings that are or would be  
25 governed by the Probate Code in California.

26 (c) Nothing in this title shall be deemed or construed to expand or limit the jurisdiction of  
27 either the State of California or any Indian tribe.

28 1732. As used in this title:

29 (1) “Due process,” for purposes of this act, means the right to be represented by legal  
30 counsel, to receive reasonable notice and an opportunity for a hearing, to call and cross examine  
31 witnesses and to present evidence and argument to an impartial decision maker.

32 (2) “Good cause” means a substantial reason, taking into account the prejudice or  
33 irreparable harm a party will suffer if a hearing is not held on an objection or not held within the  
34 time periods established by this title.

35 (3) “Applicant” means the person or persons who can bring an action to enforce a tribal  
36 court judgment.

37 (4) “Respondent” means the person or persons against whom an action to enforce a  
38 tribal court judgment can be brought.

39 (5) “Tribal court” means any court or other tribunal of any federally recognized Indian  
40 nation, tribe, pueblo, band, or Alaska Native village, duly established under tribal or federal law,  
41 including courts of Indian Offenses organized pursuant to Title 25, Part 11 of the Code of  
42 Federal Regulations.

43 (6) “Tribal court judgment” means any written judgment, decree, or order of a tribal  
44 court that (a) was issued in a civil action or proceeding that is final, conclusive, and enforceable  
45 by the tribal court in which it was issued, (b) is duly authenticated in accordance with the laws  
46 and procedures of the tribe or tribal court, (c) is one of the following: (i) a money judgment  
47 (including judgment in a civil action or proceeding to enforce civil regulatory laws of the tribe);  
48 (ii) a judgment for possession of personal property; (iii) a judgment for possession of real  
49 property; (iv) a judgment for sale of real or personal property; or (v) a judgment requiring the  
50 performance of an act not described in subdivisions (i) to (iv), inclusive, or requiring forbearance  
51 from performing an act. As used in this section, “civil action or proceeding” refers to any action  
52 or proceeding that is not criminal, except for those actions or proceedings from which judgments  
53 and orders are expressly excluded in section 1731.

54 1733. (a) An application for entry of a judgment under this act shall be filed in a superior  
55 court.

56 (b) Subject to the power of the court to transfer proceedings under this title pursuant to Title  
57 4 (commencing with Section 392) of Part 2, the proper county for the filing of an application is  
58 either of the following:

59 (1) The county in which any respondent resides or owns property.

60 (2) If no respondent is a resident, any county in this state.

61 (c) A case in which the tribal court judgment amounts to twenty-five thousand dollars  
62 (\$25,000) or less is a limited civil case.

63           1733.1. (a) An applicant may apply for recognition and entry of a judgment based on a  
64 tribal court judgment by filing an application pursuant to section 1733.

65           (b) The application shall be executed under penalty of perjury and include all of the  
66 following:

67           (1) A statement setting forth the name and address of the tribal court that issued the  
68 judgment to be enforced and the date of the tribal court judgment or any renewal thereof.

69           (2) A statement setting forth the name and address of the party seeking recognition.

70           (3) (A) Where the respondent is an individual, a statement setting forth the name and last  
71 known residence address of the respondent.

72           (B) Where the respondent is a corporation, a statement of the corporation's name, place of  
73 incorporation, and whether the corporation, if foreign, has qualified to do business in this state  
74 under the provisions of Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of  
75 the Corporations Code.

76           (C) Where the respondent is a partnership, a statement of the name of the partnership,  
77 whether it is a foreign partnership, and if it is a foreign partnership, whether it has filed a  
78 statement pursuant to Section 15800 of the Corporations Code designating an agent for service of  
79 process.

80           (D) Where the respondent is a limited liability company, a statement of the company's  
81 name, whether it is a foreign company, and if so, whether it has filed a statement pursuant to  
82 Section 17060 of the Corporations Code.

83           (E) Except for facts that are matters of public record in this state, the statements required  
84 by this paragraph may be made on the basis of the applicant's information and belief.

85           (4) A statement that an action in this state to enforce the tribal court judgment is not  
86 barred by the applicable statute of limitations.

87           (5) A statement, based on the applicant's information and belief, that the tribal court  
88 judgment is final and that no stay of enforcement of the tribal court judgment is currently in  
89 effect.

90           (6) If seeking recognition and entry of a money judgment, a statement of the amount of  
91 award granted in the tribal court judgment remaining unpaid, and if accrued interest on the tribal  
92 court judgment is to be included in the California judgment, a statement of the amount of interest  
93 accrued on the tribal court judgment (computed at the rate of interest applicable to the judgment  
94 under the law of the tribal jurisdiction in which the tribal court judgment was issued), a statement

95 of the rate of interest applicable to the money judgment under the law of the jurisdiction in which  
96 the tribal judgment was issued, and a citation to supporting authority.

97 (7) If seeking entry of a judgment, order, or decree providing for relief other than  
98 monetary relief, applicant shall include:

99 (i) A statement of the terms and provisions of such relief as provided in the tribal court  
100 judgment, order, or decree and the extent to which responding party has complied with such  
101 terms and provisions,

102 (ii) A statement that the tribal court judgment is not barred by state law.

103 (8) A statement that no action based on the tribal court judgment is currently pending in  
104 any state court and that no judgment based on the tribal court judgment has previously been  
105 entered in any proceeding in this state.

106 (c) The following items shall be attached to the application:

107 (1) An authenticated copy of the tribal court judgment, certified by the judge or clerk of  
108 the tribal court;

109 (2) A copy of the tribal court rules of procedure pursuant to which the judgment was  
110 entered; and

111 (3) A declaration under penalty of perjury by the tribal court clerk, applicant, or  
112 applicant's attorney stating, based on personal knowledge, that the case that resulted in the entry  
113 of the judgment was conducted in compliance with the tribal court's rules of procedure.

114 1733.2. (a) Promptly upon the filing of the application, the applicant shall serve upon the  
115 respondent a notice of filing of the application to recognize and enter the tribal court judgment,  
116 together with a copy of the application and any documents filed with the application. The notice  
117 of filing shall be in a form prescribed by the Judicial Council and inform the respondent that the  
118 respondent has 30 days from service of the notice of filing within which to file objections to the  
119 enforcement of the judgment. The notice shall include the name and address of the applicant and  
120 the applicant's attorney, if any; and the text of sections 1734 and 1735 of this title.

121 (b) Except as provided in subdivision (c) of this section, service shall be made in the manner  
122 provided for service of summons by Article 3 (commencing with Section 415.10) of Chapter 4 of  
123 Title 5 of Part 2.

124 (c) If a respondent is the State of California or any of its officers, employees, departments,  
125 agencies, boards, or commissions, service of the notice of filing on that respondent may be by  
126 mail to the Office of the Attorney General.

127 (d) The fee for service of the notice of filing under this section is an item of costs  
128 recoverable in the same manner as statutory fees for service of a writ as provided in Chapter 5  
129 (commencing with Section 685.010) of Division 1 of Title 9 of Part 2, but the recoverable  
130 amount for such fee may not exceed the amount allowed to a public officer or employee of this  
131 state for such service.

132 (e) The applicant shall file a proof of service of the notice promptly following service.

133 1734. (a) If no objections are timely filed in accordance with section 1735, the clerk shall  
134 certify that no objections were timely filed, and a judgment shall be entered.

135 (b) The judgment entered by the superior court shall be based on and contain the provisions  
136 and terms of the tribal court judgment. The judgment shall be entered in the same manner and  
137 have the same effect and shall be enforceable in the same manner as any civil judgment, order, or  
138 decree of a court of this state.

139 1735. (a) Any objection to the recognition and entry of the tribal court judgment shall be  
140 served and filed within 30 days of service of the Notice of Filing. If any objection is filed within  
141 this time period, the superior court shall set a time period for replies and set the matter for a  
142 hearing. The hearing must be held by the superior court within 45 days from the date the  
143 objection is filed unless good cause exists for a later hearing. The only grounds for objecting to  
144 the recognition or enforcement of a tribal court judgment are the grounds set forth in  
145 subdivisions (b) and (c) of this section.

146 (b) A tribal court judgment shall not be recognized and entered if the respondent  
147 demonstrates to the superior court that at least one of the following occurred:

148 (1) The tribal court did not have personal jurisdiction over the respondent.

149 (2) The tribal court did not have jurisdiction over the subject matter.

150 (3) The tribal court judge was not impartial.

151 (4) The respondent was not afforded due process.

152 (c) The superior court may, in its discretion, recognize and enter or decline to recognize and  
153 enter a tribal court judgment on any one of the following equitable grounds:

154 (1) The tribal court judgment was obtained by extrinsic fraud.

155 (2) The tribal court judgment conflicts with another final judgment that is entitled to  
156 recognition.

157 (3) The tribal court judgment is inconsistent with the parties' contractual choice of forum.

158 (4) Recognition of the tribal court judgment or the cause of action upon which it is based  
159 is against the fundamental public policy of this state or the United States.

160 (d) If objections have been timely filed, the applicant has the burden of establishing that the  
161 tribal court judgment is entitled to recognition under section 1733.1. If the applicant has met its  
162 burden, a party resisting recognition of the tribal court judgment has the burden of establishing  
163 that a ground for nonrecognition stated in subdivision (b) or (c) exists.

164 1736. The superior court shall grant a stay of enforcement if the respondent establishes one  
165 of the following to the superior court:

166 (a) An appeal from the tribal court judgment is pending or may be taken in the tribal court.  
167 Under this subdivision, the superior court shall stay state execution of the tribal court judgment  
168 until the proceeding on appeal has been concluded or the time for appeal has expired.

169 (b) A stay of enforcement of the tribal court judgment has been granted by the tribal court.  
170 Under this subdivision, the superior court shall stay enforcement of the tribal court judgment  
171 until the stay of execution expires or is vacated.

172 (c) Any other circumstance exists where the interests of justice require a stay of  
173 enforcement.

174 1737. An action to recognize a tribal court judgment or any renewal thereof shall be  
175 commenced within the earlier of the time during which the tribal court judgment is effective  
176 within the territorial jurisdiction of the tribal court or 10 years from the date that the tribal court  
177 judgment became effective in the tribal jurisdiction.

178 1738. (a) The superior court may, after notice to all parties, attempt to resolve any issues  
179 raised regarding a tribal court judgment under section 1733.1 or section 1734 of this title, by  
180 communicating with the tribal court judge who issued the judgment.

181 (b) The court must allow the parties to participate in the communication.

182 (c) A record must be made of a communication under this section.

183 1739. (a) The Uniform Foreign-Country Money Judgments Recognition Act (Chapter 2  
184 (commencing with Section 1713) of Title 11 of Part 3) applies to all actions commenced in  
185 superior court before the effective date of this title in which the issue of recognition of a tribal  
186 judgment is raised.

187 (b) This title applies to all actions to enforce tribal court judgments as defined herein  
188 commenced in superior court on or after the effective date of this title. A judgment entered under  
189 this act does not limit the right of a party to seek enforcement of any part of a judgment, order, or

190 decree entered by a tribal court that is not encompassed by the judgment entered under this act.

191 1740. The Judicial Council shall adopt rules and forms as necessary to implement this title.

192

# CALIFORNIA TRIBAL COURT/STATE COURT FORUM

## E-noticing in Indian Child Welfare Act (ICWA) Cases

Failure to give proper notice in Indian Child Welfare Act cases continues to be one of the most common grounds for reversal in California. Without proper notice, the substantive protections of the Act may not be afforded to Indian children. The result is a disparity in the population of Native American children under the jurisdiction of California juvenile courts: 16.6 per 1,000 Native American children, according to the latest data, compared to 5.5 per 1,000 children for the total child welfare population in California.<sup>1</sup>

Electronic notice would provide immediate actual notice to the tribal chair or appropriate designee as listed in the Federal Register and to those tribal personnel tasked with determining from tribal records whether a child is a member or eligible for membership in the tribe. E-noticing offers faster identification of children and more fluid application of the Act's protections. It should also result in considerable savings to the pilot counties in terms of social worker hours and mailing expenses, and to the courts through a reduction in the number of notice issues raised on appeal. Electronic notice can be accomplished with Simple Notice Application (SNAP), a proprietary software application developed by the Los Angeles County Counsel's Office. SNAP can be adapted to transmit electronic notice through secure, confidential telecommunication lines to those tribes participate in the pilot. More than half of the American Indian/Native Alaskan residents of California are members of tribes located outside the state.<sup>2</sup> If funded and implemented in California, this pilot project could be duplicated in other states and sustained nationally with the savings accrued in each state.

This e-noticing initiative represents a collaboration of the National Center for State Courts, the National Center for Juvenile and Family Court Judges, the Cherokee Nation, the Los Angeles County Counsel's Office, and the AOC.

---

<sup>1</sup> California Dept. of Social Services, *Annual Progress and Services Report* (June 30, 2011) , p. 147.

<sup>2</sup> Cherokee represent the largest subset of California's native population with some 18 percent of live births, followed by Apache at 6 percent and Navajo and Choctaw at 5 percent each. See U.S. Census 2010. The Los Angeles County Department of Family and Children Services has identified citizens in its caseload from the Apache, Blackfeet, Chickasaw, Chippewa, Choctaw, Hopi, Navajo, Sioux, and Yaqui tribes.

## **Assembly Bill No. 1325**

### **CHAPTER 287**

An act to add and repeal Section 8600.5 of the Family Code, and to amend, repeal, and add Sections 294, 358.1, 361.5, 366.21, 366.22, 366.25, 366.26, 366.3, 16120, 16508, and 16508.1 of, and to add and repeal Section 366.24 of, the Welfare and Institutions Code, relating to Indian children. [Approved by Governor October 11, 2009. Filed with Secretary of State October 11, 2009.]

### **California Legislative Counsel's Digest**

AB 1325, Cook. Tribal customary adoption.

(1) Existing law governs the removal of a child who has suffered or is at risk of suffering abuse or neglect from the home of the child's parent or guardian and the placement of that child in foster care. These provisions require the juvenile court to, among other things, conduct noticed detention, periodic status review, and dispositional hearings regarding the child, and direct the court to order, review, and receive into evidence social studies or evaluations regarding the child, including recommendations for placement. Under certain circumstances, the juvenile court may terminate parental rights and place the child for adoption or in long-term foster care, among other options for permanent placement. These provisions require county social workers to conduct the social studies or evaluations and to prepare reports and make recommendations to the court regarding temporary and long-term placement of the child, as specified. Existing federal law, the Indian Child Welfare Act, and state law govern the placement of children who are or who may be Indian children, as specified. This bill would revise those provisions to require the juvenile court and social workers to consider and recommend tribal customary adoption, as defined, as an additional permanent placement option, without termination of parental rights, for a dependent child. The bill would provide that a tribal customary adoption order would have the same force and effect as an order of adoption. By imposing new duties on social workers, the bill would impose a state-mandated local program.

(2) Existing law governs independent and agency adoptions. This bill would specifically exempt tribal customary adoptions from those provisions.

(3) The bill would require the Judicial Council to adopt rules of court and necessary forms to implement tribal customary adoption as a permanent plan for Indian children before July 1, 2010. The bill would also require the Judicial Council to complete a study of these provisions and report its findings to the Legislature on or before January 1, 2013.

(4) The amendments implementing tribal customary adoption would become operative on July 1, 2010, and would be repealed on January 1, 2014.

(5) This bill would permit the Department of Social Services to adopt emergency regulations to implement and administer the provisions of this bill.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

## **Binder of Materials Contents**

### **Tab G: California State-Federal Judicial Council Resolution and Judicial Symposium**

1. California State-Federal Judicial Council Resolution, June 1, 2012
2. Judicial Symposium Agenda (draft), October 9–10, 2012

# California State-Federal Judicial Council

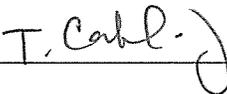
## RESOLUTION (Adopted on June 1, 2012)

WHEREAS, the California State-Federal Judicial Council is committed to direct and personal communication among judges of the California state, federal, and tribal courts concerning matters of mutual interest and concern;

WHEREAS, the California State-Federal Judicial Council is committed to coordinating with the California Tribal State Court Forum to explore and develop methods to use scarce judicial assets so as to benefit the three systems and Native American citizens of the state;

WHEREAS, the California State-Federal Judicial Council acknowledges the importance of judicial education as a tool to improve communication, foster understanding, and maximize resources;

BE IT THEREFORE RESOLVED, that the California State-Federal Judicial Council, in collaboration with the California Tribal State Court Forum, will identify opportunities to share educational resources and encourage the development of judicial education programming and materials on federal Indian law and its impact on federal, state, and tribal courts in order to improve the process and outcomes for Native American citizens throughout the State of California.



---

Tani G. Cantil-Sakauye, Co-Chair,  
California State-Federal Judicial Council  
Chief Justice of California



---

Arthur Alarcón, Co-Chair  
California State-Federal Judicial Council  
Senior Circuit Judge, U.S. Court of  
Appeals, Ninth Circuit



Advancing Justice in Tribal Communities



ADMINISTRATIVE OFFICE  
OF THE COURTS  
CENTER FOR FAMILIES, CHILDREN  
& THE COURTS

## JUDICIAL SYMPOSIUM

A Conference on Public Law 280  
and Tribal Court/State Court Collaboration

OCTOBER 9–10, 2012

Shingle Springs Rancheria  
5281 Honpie Road  
Placerville, California 95667

## Agenda

### TUESDAY, OCTOBER 9

- 7:30 – 8:30 a.m. Continental Breakfast and Registration
- 8:30 – 9:00 a.m. Welcome Ceremony Blessing  
*Mr. Nicholas Fonseca, Chairman of Shingle Springs Band of Miwok Indians*
- 9:00 – 9:45 a.m. A Day in the Life of a Tribal Judge  
(TBD)
- 9:45 – 10:45 a.m. Federal Indian Law: A Primer, pt. 1—Tribal Law and Order Act; Indian Civil Rights Act  
(TBD)
- 10:45 – 11:00 a.m. Break
- 11:00 a.m. – 12:00 p.m. Federal Indian Law: A Primer, pt. 2—Public Law 280; Jurisdictional Issues  
(TBD)
- 12:00 – 1:00 p.m. Working Lunch: Group Discussion
- 1:00 – 2:00 p.m. Report Back From Small Groups  
(TBD)
- 2:00 – 2:15 p.m. Break
- 2:15 – 3:15 p.m. State of Tribal Courts  
(TBD)
- 3:15 – 3:30 p.m. Break
- 3:30 – 4:30 p.m. Ethics  
(TBD)
- 4:30 p.m. Adjourn



*This project was supported by Grant No. 2010-IC-BX-K001, awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime. Points of view or opinions presented in the materials are those of the author and do not represent the official position or policies of the U.S. Department of Justice.*

**WEDNESDAY, OCTOBER 10**

- 7:30 – 8:30 a.m. *Continental Breakfast and Registration*
- 8:30 – 9:30 a.m. Collaboration Success Stories  
*(TBD)*
- 9:30 – 9:45 a.m. *Break*
- 9:45 – 10:45 a.m. Elder Issues  
*(TBD)*
- 10:45 a.m. – 12:00 p.m. Law Enforcement  
*(TBD)*
- 12:00 – 1:00 p.m. *Lunch*  
The Teague Protocol (Raasch)
- 1:00 – 1:45 p.m. DMV Issues  
*(TBD)*
- 1:45 – 2:00 p.m. *Break*
- 2:00 – 3:00 p.m. Tribal Judges Panel
- 3:00 – 3:45 p.m. California Tribal Court/State Court Forum Report
- 3:45 – 4:00 p.m. Closing Ceremony