

THE CASE OF

Tribal-State Joint Jurisdiction Wellness Courts

COMMUNITY JUSTICE SERVICES

March 2022

Key facts and figures



Year of establishment

2006



Scope of service

Wellness court that serves as diversion for driving while intoxicated cases



Type of justice problems addressed

Public Safety



Geographical scope

Cass County, Minnesota and Itasca County, Minnesota



Legal entity

Tribal Court and State Court



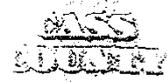
Regulatory embeddedness

Memorandum of Understanding between the courts (for the first year, it was based on a “handshake” between the courts). Both courts are exercising jurisdiction together



Costs of services for citizens (average and range)

For every taxpayer dollar invested in the program, there is a \$1.13 return after 5 years[1]



JOINT POWERS AGREEMENT

BE IT KNOWN THAT we the undersigned agree to, where possible, jointly exercise the powers and authorities conferred upon us as Judges of our respective jurisdictions in furtherance of the following common goals:

1. Improving access to justice;
2. Administering justice for effective results; and
3. Fostering public trust, accountability, and impartiality.

IN WITNESS WHEREOF, we hereunto set our hands and affix our seals this ____ day of July 2007.



Korey Wahnassuck, Chief Judge
Leech Lake Tribal Court



John P. Smith, District Judge
Cass County District Court

The above reproduced Joint Powers Agreement between the Leech Lake Tribal Court and the Cass County District Court is reproduced from Cass County Leech Lake Band of Ojibwe Wellness Court: From Common Goals to Common Ground Presentation (last accessed on 7 February 2022).

Background and History[2]

In 2006, the Leech Lake Band of Ojibwe Tribal Court and the Cass County District Court (Minnesota), with the Cass County Probation Department and Minnesota Department of Corrections, entered into an agreement to create the multi-jurisdictional Cass County and Leech Lake Band of Ojibwe Wellness Court.[3] The first of its kind in the United States, the wellness court's jurisdiction is jointly shared by both the tribe and the state and developed as an effort to stem the number of repeat-Driving While Intoxicated (DWI) offenders who were also tribal members.

Notably, these cases – which are criminal in nature – were previously only handled by the state court because tribes in Minnesota are generally without criminal jurisdiction. [4] But through this post-conviction, post-sentencing DWI court – available to both tribal members and non-members – tribal and state court judges jointly preside over proceedings that focus on improving the wellness of the individual coming before them rather than to mete out punishment. An entirely voluntary program, the individuals who are eligible for this program are 18 years of age or older, have committed multiple DWI offenses, and have been determined to be chemically dependent. In addition, the program screens participants to ensure that they are physically and mentally willing and able to participate in the program and meet its conditions – such as willingly and knowingly undergoing treatment, willing to seek employment and/or pursue their education, and willing to accept court sanctions.[5] Individuals who participate embark on a three-part journey over almost two years:

- Phase 1 – Treatment Stage (3 months) – chemical assessment and treatment program (attend court sessions every two weeks)
- Phase 2 – Transition Stage (minimum of 6 months) – apply recovery skills to sustain sobriety and maintain individualized case plan (attend court sessions every two weeks)
- Phase 3 – Living Well Stage (minimum of 12 months for felony convictions and 6 months for gross misdemeanor convictions) – continue to abstain and maintain recovery (attend court sessions monthly)“Graduation from the program also requires participants to address their addiction by maintaining 180 days of sobriety, demonstrating an understanding of their addiction, and creating a plan for relapse prevention. Participants must also address challenges in other parts of their lives, such as education, employment and housing.”[6]

The mission of the Wellness Court is to reduce the number of repeat substance dependent and DWI offenders by using a coordinated team approach [7] with the Tribal Court Judge, the County District Judge, prosecutor, defense attorney, law enforcement personnel, social services workers, probation and treatment specialists, to quickly identify and intervene with selected non-violent substance-abusing offenders to break the cycle of substance abuse, addiction, and crime [8].

Critically, court sessions are concurrently held in the Tribal and district courtrooms connected by interactive videoconferencing and clients have the option of appearing in whichever courtroom is more convenient for them. Indeed, this close collaboration is evidenced by the fact the tribe's flag appears in the district courtroom – a direct result of the program.

The joint jurisdiction has infused culture into the judicial process. The process has become key to helping people reconnect and learn about their culture and tradition and restore relationships. Spiritual healers have conducted naming ceremonies, sweat lodges, and talking circles. Participants previously disconnected from the

Anishinaabe traditions are becoming involved with their culture to great success—and in the process creates healing for the participants. Indeed, the partnership between the two courts and two sovereigns – the tribe and the state – has created healing between the separate communities.

In 2009, a similar Wellness Court for individuals charged with controlled substances was established with the Itasca County District Court.

And in 2010, a related program was launched for juvenile delinquency cases, where tribal and non-Indian youths eligible for diversion are offered the opportunity to participate. The program includes traditional practices such as talking circles to serve the needs of the youth.

In 2019, a pilot family drug court for cases involving child protection issues (in either tribal or state court) was launched for tribal members and non-Indians living on the reservation. This program has been supported by a private foundation.

Outcomes

The Tribal Law and Policy Institute has reported positive outcomes such as: families being reunited, driver licenses being reinstated, participants becoming employed or continuing their education, and abusive relationships ending [9]. In addition, participants have tens of thousands of documented days of sobriety among them and a significant reduction in recidivism. In fact, while the Minnesota average for recidivism stands at 60+%, the rate of recidivism is 6.6% for the Cass County and Leech Lake Band of Ojibwe Wellness Court and 16% for the Itasca County and Leech Lake Band of Ojibwe Wellness Court [10].

In a 2014 study of the Cass County And Leech Lake Band of Ojibwe Wellness Court, researchers conducted a cost analysis and

found that, over time, the program can result in significant cost savings and a return on its investment. [11]

” *The program costs \$19,710 per participant. The benefit due to significantly reduced recidivism for program participants over the 2 years, these savings included in the cost analysis, came to \$8,946. If these cost savings are projected to 3 more years (to 5 years), they could amount to \$22,365 per participant, resulting in a cost-benefit ratio of 1:1.13. That is, for every taxpayer dollar invested in the program, there is a \$1.13 return after 5 years.* [12]

Lessons learned

In 2009, the Center for Court Innovation interviewed Judge Wahwassuck.[13] In that interview, she described where the **idea** of the wellness court originated:

” *In late 2005, Judge John Smith from the Cass County District Court and Reno Wells, who is the director of probation for Cass County, approached the chairman of Leech Lake Tribal Council to get a DWI court started. At the time Cass County was one of the most deadly counties for drunk-driving fatalities in the state. People were just coming back through that revolving door. A lot of the people who kept coming back were our tribal members. Cass County wasn't having any success addressing their underlying problems. There was a general frustration among tribal members, not only because people were coming back through the system, but because there was a feeling that the state courts weren't helping. The county was looking at starting a drug court, so Judge Smith approached the Band and said, "We're going to do this and we can't be successful unless we have your help. Will you partner with us?" This was one of those "right time, right place" sort of things, because I happened to be in the Tribal Council offices that day. It was before I took the bench; I was still a tribal attorney. As soon as the judge and the probation director left, the question was, "So*

what do they want to do to us now?" There was huge mistrust of the state system. It all gets down to that lack of understanding. I told the chairman that I thought it was a good idea because the drug court model works and it's a great way for the Leech Lake Band of Ojibwe to start having a say in what happens to tribal members' cases. Minnesota is a Public Law 280 state, and the Band has not yet enacted any criminal codes of its own, so all DWI cases are handled in the state court. Before we started our partnership, the Band had nothing to do with these cases. Basically the Band sat around on the sidelines and looked at bad results and continued to dislike the state system.

Judge Wahwassuck also shared how the **design** of the court developed:

” So we just jumped in. We didn't even have anything in writing for quite a long time, I'd say for probably the first year. We just went forward on a handshake. We did have a Tribal Council resolution in support of forming the joint court. Eventually, we developed a written joint powers agreement between the courts. That's the most amazing part of the joint jurisdiction experience—that it was just done on a handshake for a while. Well, we actually put a lot of time into trying to come up with some sort of memorandum of agreement, but we just got tangled up in the legalese. As it turned out, our joint powers agreement ended up being just seven lines. We agreed to exercise our jurisdiction jointly, on the cases where we could, toward a set of common goals.[14]

The wellness court has been **scaled** by the Tribe and Cass County and Itasca County. On that score, Judge Wahwassuck shared:

” Has this relationship that started with Cass County produced similar efforts in other counties in Minnesota? It has. In 2007, the Band was invited to join a planning team from the Itasca County Wellness Court and we were able to have a say-so in how the court was developed and its policies and procedures. Now I take the bench alongside Itasca County District Court Judge John Hawkinson every Friday. There are tribal members and non-Indians in both programs [the Leech Lake-Cass

County Wellness Court and the Leech Lake-Itasca County Wellness Court]. So it's not an agreement about allocation of jurisdiction; it's both courts exercising jurisdiction together. It's also spreading to other parts of Minnesota. There's a drug court that's getting started down in the southern part of the state and the state court plans to work with one of the Dakota tribes whose reservation is nearby. The Minnesota judicial branch has also included developing relationships with tribal courts as part of its new strategic plan. I know a lot of tribes feel very strongly that everything should be handled in their tribal court rather than working with state courts. That's something that's very important to keep in mind—that we do have the inherent authority to handle all types of cases, including criminal cases. But many of us, like the Leech Lake tribal court, were established fairly recently and need to build infrastructure and gain experience and training for our people to take over these cases at some point. This is a good intermediate step. In other places the joint model can be adapted to fit local needs. The Prairie Band Potawatomi down in Mayetta, Kansas, recently entered into a memorandum of agreement between the tribal prosecutor and the county prosecutor to keep tribal members from being prosecuted by both jurisdictions for the same offense. That's another example of overcoming mistrust. The state court did not trust the tribal court to be able to handle these cases. But the Prairie Band Potawatomi have been building their judicial system and have demonstrated their competence. Confidence in the tribal court has grown tremendously as a result, and the systems are looking at other ways to collaborate.[15]

The success of the court has brought national recognition and interest. As CCI has described:

” [T]he Leech Lake/Cass County/Itasca County Wellness Courts have won several national awards, including the Harvard Honoring Nations Award, the National Association of Drug Court Professionals Cultural Proficiency Courage Award, and the National Criminal Justice Association Outstanding Tribal Criminal Justice Award. The community

responded favorably to the Court for the most part. There were multiple community presentations to keep them informed as to what the stakeholders were trying to accomplish and the community supported the idea. There were some skeptical to believe this program could have any more success than a traditional treatment program. However, many of those skeptics have since come to graduations for participants and have stated they never thought they would see the success of these people who they have watched struggle with addiction for decades. All of the participants in this program have come into the program at a very difficult time in their lives. Their addiction had destroyed their family, relationships, employment, health, self-esteem, and freedom. One young woman stated at her graduation how although she wasn't very happy in the beginning, she has now gained employment, got her license reinstated, bought a house, reunited with her family and has gained self esteem that she never thought she would have. There have been numerous similar stories from the graduates and even some that didn't make it through the program have reached out to the team later and expressed their thanks because the program did help them on the road to finally 'getting it.'^[16]

Sources

[1] *Id.*

[2] Some of the background and history adapted from Maha Jweied, U.S. Department of Justice & U.S. Department of the Interior Report, *Expert Working Group: Native American Traditional Justice Practices* (September 2014).

[3] A fuller history of the development of this court can be found at Korey Wahwassuck, *The New Face of Justice: Joint Tribal-State Jurisdiction*, 47 Washburn L.J. 733 (2008). The Memorandum of Understanding that created the multi-jurisdictional Cass County and Leech Lake Band of Ojibwe Wellness Court can be found at <http://ccllwellnesscourt.files.wordpress.com/2010/10/memorandum-of-understanding.pdf>

[4] Aaron Arnold, Interview: Korey Wahwassuck, Associate Judge, Leech Lake Band of Ojibwe Tribal Court, Cass Lake, Minnesota, 2 Journal of Court Innovation 405 (2009).

[5] S. Department of Justice, National Institute for Justice, Program Profile: Cass County/Leech Lake Band of Ojibwe Wellness Court (Walker, MN) (2016), *citing* Zil, Charlene E., Mark S. Waller, Adrian J. Johnson, Paige M. Harrison, and Shannon M. Carey. 2014. Cass County/Leech Lake Band of Ojibwe Wellness Court Walker, MN: Process, Outcome, and Evaluation Report. Portland, Ore.: NPC Research.

[6] *Id.*

[7] Maha Jweied, U.S. Department of Justice & U.S. Department of the Interior Report, Expert Working Group: Native American Traditional Justice Practices (September 2014); see also https://wellnesscourts.org/files/Joint%20Jurisdiction%20-%20Apr_%202019.pdf

[8] See Cass County and Leech Lake Band of Ojibwe Wellness Court, General Information,

