



JUDICIAL COUNCIL OF CALIFORNIA

TRIBAL COURT-STATE COURT FORUM

www.courts.ca.gov/forum.htm
forum@jud.ca.gov

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TRIBAL COURT-STATE COURT FORUM

NOTICE AND AGENDA OF OPEN MEETING

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1) and (e)(1))

THIS MEETING IS BEING CONDUCTED BY ELECTRONIC MEANS

THIS MEETING IS BEING RECORDED

Date: August 8, 2019
Time: 12:15-1:15 p.m.
Public Call-in Number: 877-820-7831; Passcode; passcode 4133250 (Listen Only)

Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Members of the public seeking to make an audio recording of the meeting must submit a written request at least two business days before the meeting. Requests can be e-mailed to forum@jud.ca.gov.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

Approval of Minutes

Approve minutes of the April 11, 2019, Tribal Court-State Court Forum meeting. There was no meeting on June 13, 2019.

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(1))

This meeting will be conducted by electronic means with a listen only conference line available for the public. As such, the public may submit comments for this meeting only in writing. In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to forum@jud.ca.gov or mailed or delivered to 455 Golden Gate Avenue, San Francisco, CA 94102, attention: Ann Gilmour. Only written comments received by 12:15 p.m. on August 7, 2019 will be provided to advisory body members prior to the start of the meeting.

III. INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Info 1

Cochairs Report

- Approval of Minutes of April 11, 2019 Meeting
- Update on California State Bar Justice Gap Study
- Update on Forum appointments
- Forum in person meeting – March 19, 2020. Save the Date.

Info 2

Presentation from Christina Snider on the Governor's recent apology to California's Native American's and establishment of the Truth and Healing Council

Presenter: Ms. Christina E. Snider, Tribal Advisor of the Office of the Governor Gavin Newsom and Executive Secretary of the Native American Heritage Commission

Info 3

Presentation from Root & Rebound on their work with tribal re-entry

Presenters: Chloe Noonan, National Legal Education & Resource Coordinator & Faride Perez-Aucar, Legal Fellow, Root and Rebound

Info 4

Legislative Update

Presenter: Andi Liebenbaum, Attorney, Judicial Council of California, Governmental Affairs

Info 5

Recent and Upcoming Conferences

Presenter: Vida Castaneda, Senior Analyst, Judicial Council Center for Families, Children & the Courts

IV. ADJOURNMENT

Adjourn



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TRIBAL COURT-STATE COURT FORUM

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TRIBAL COURT-STATE COURT FORUM

MINUTES OF OPEN MEETING

April 11, 2019
12:15-1:15 p.m.

Advisory Body Members Present: *Hon. Abby Abinanti, Co-chair, Hon. Suzanne Kingsbury, Cochair, Hon. April Attebury, Hon. Patricia Guerrero, Ms. Heather Hostler, Hon. Kristina Kalka, Hon. Patricia Lenzi, Hon. Devon Lomayesva, Hon. Lester Marston, Hon. Gilbert Ochoa, Hon. Michael Sachs, Hon. Cindy Smith, Hon. John Sugiyama, Hon. Sunshine Sykes, Hon. Christine Williams, Hon. Joseph Wiseman, and Hon. Mark Vezzola*

Advisory Body Members Absent: *Hon. Erin Alexander, Hon. Richard Blake, Hon. Hilary Chittick, Hon. Gail Dekreon, Hon. Leonard Edwards (Ret.), Hon. Mark Juhas, Hon. Lawrence King, Hon. William Kockenmeister, Ms. Christina Snider, Hon. Robert Trentacosta, Hon. Juan Ulloa, and Hon. Claudette White*

Others Present: *Ms. Audrey Fancy, Ms. Vida Castaneda, Ms. Cindy Chen, Ms. Ann Gilmour, Ms. Joy Ricardo, Delia Sharpe (on phone), Donna Hershkowitz (on phone)*

OPEN MEETING

Call to Order and Roll Call

The co-chairs called the meeting to order at 12:18 p.m.

Approval of Minutes

The Forum approved the February 28, 2019 meeting minutes.

DISCUSSION AND ACTION ITEMS (ITEMS 1-5)

Info 1

CoChairs Report

Appointments to the Forum

The deadline for applying as a state court judge (for counties with a tribal court) to the Forum has now been extended to April 12, 2019. For Tribal Court Judges – solicitations went out to Tribal Leaders regarding upcoming tribal court vacancies. If your term is expiring, you have already been contacted by staff. Deadline for nominations for Tribal Court Judges is May 15, 2019.

Info 2

State Bar Justice Gap Study

Presenter: Donna S. Hershkowitz, Chief of Programs for the State Bar of California

Donna S. Hershkowitz presents on the State Bar Justice Gap Study. The study will involve a survey of various populations to get an idea of the extent of the justice gaps across the state. A copy of the [Daily Journal article](#) on the national study is included in the materials. In 2017, the Legal Service Corporation conducted a [nationwide justice gap study](#). Ms. Hershkowitz explains the focus of the 2017 national study, and the information the California State Bar hope to learn from conducting a similar study. Highlights and lessons learned from the national study are shared. Ms. Hershkowitz stated the State Bar study will involve a survey of the 97 legal services organizations funded by the State Bar. House hold panel surveys of approximately 2,800 people will be sent out as well. In developing the State Bar study, the Bar will identify the types of information deficits that might be encountered with the surveys. One such deficiency is how to best gather information from tribal communities about the justice gaps that exist. The State Bar proposes partnering with the Forum or some of its members to release the survey into tribal communities where there are tribal courts to obtain feedback on the greatest justice needs in these areas.

Action Item 1

Legislation

Presenter: Delia Sharpe, Executive Director, California Tribal Families Coalition

Discussion of AB 685 and AB 686

Ms. Sharpe gives a presentation on the two bills that CTFC is sponsoring, [AB 685](#) and [AB 686](#). The subjects of both bills are issues that are identified among the 20 recommendations in the [California ICWA Compliance Taskforce Report](#). AB 685 proposes: 1) funding for legal counsel for tribes in juvenile dependency proceedings involving tribal member children; 2) funding counsel for tribes in appellate cases; and 3) requiring ICWA training for children's counsel in cases where ICWA applies. It is anticipated that the bill will be amended to also include training for parents' counsel.

AB 686 proposes incorporating ICWA's placement requirement into the recently amended state child welfare placement guidelines known as, Resource Family Approval. Additionally, the bill seeks to ensure the following: 1) that Indian children continue to be placed according to standards of the Indian community as required by ICWA; 2) mandating telephonic appearances and also waive associated fees to promote the full tribal participation as parties in ICWA cases; and 3) clarifying that tribes are eligible for adoption homestudy funding.

Forum takes a vote and recommends that the Judicial Council support AB 685 and 686.

Info 3

Tribal Court Judges Immunity

Presenter: Judge Lester Marston

Judge Marston gives overview of Tribal Judge Immunity legislation proposal. Information about the case Judge Marston refers to are included in the agenda materials. There are no state or federal court decisions that hold that tribal court judges are entitled to judicial immunity. It is uncertain that a legislative proposal is the only answer. There may be other means to accomplish this objective. If not addressed, it could have adverse impacts on tribal courts and tribal court judges. Judge Marston poses the following questions for future consideration by the Forum: Should the Forum get involved in this issue? What are the possible solutions to the problem?

Judge Kingsbury suggests asking the JC's Legal Services Office be contacted for an analysis of this issue and assessment of the appropriateness of being handled at national or state level, as well as what the ethical implications are for the Forum involving itself in an issue that is still pending before the court of appeal. Forum will revisit issue at a future meeting.

**Info 4
RUPRO**

Presenter: Ann Gilmour, Attorney, Judicial Council Center for Families, Children & the Courts
Ms. Gilmour provides an update to the Forum on the status of RUPRO item addressing the implementation of AB 3176. This item was approved by the Forum and subsequently approved for circulation (with no changes) by the RUPRO committee on April 10, 2019. It will go out for public comment during the period of April 11-June 10th. Ms. Gilmour will circulate the Invitation to Comment to the Forum members and to the tribal listserv.

**Info 5
Recent and Upcoming Conferences**

Vida Castaneda, Senior Analyst, Judicial Council Center for Families, Children & the Courts

- Please visit www.rootandrebound.org to learn more details about webinars Root and Rebound is hosting with the Practicing Law Institute on April 22, 2019 from 10:00AM – 12:00PM on Tribal Reentry Advocacy and also another webinar on June 17, 2019 from 12:00PM – 1:00PM with the Legal Aid Association of California (LAAC)
- The Judicial Council of California will be the host site for the Pathways to Justice 2019 conference in partnership with the Legal Aid Association of California. This conference will be from Monday, June 3 to Wednesday, June 5, 2019. More information to come in the next Forum e-update newsletter.
- The 26th Annual ICWA Statewide Conference will be held this year at the Pala Casino Resort & Spa in San Diego from June 19-21, 2019. This year's theme is "ICWA at a Crossroads: Shaping the Modern Village Through Culture and Tradition". For more information contact the Office of Tribal Affairs at CDSS.
- On September 10-12, 2019 in Palm Springs, the Tribal Law and Policy Institute will be featuring the Tribal Healing to Wellness Court Enhancement Training. The Enhancement Training is a tribal-specific national training for tribal problem-solving courts introducing Wellness Court best practices and innovative strategies. Training topics will cover adult criminal, juvenile delinquency, family dependency, DWI/DUI, and veterans models. This training is free and open to all prospective attendees. Workshop proposals are due on April 30, 2019 For more information, visit www.tlpi.org.
- The California Association of Collaborative Courts will hold their Annual Conference from October 28 – 30, 2019 at the Holiday Inn in downtown Sacramento. Visit www.CA2C.org for more information about registration and workshops.
- For more information on upcoming webinars or out of state conferences, please refer to our most recent e-update newsletter or feel free to reach out to Vida Castaneda and she will be happy to assist you.

Next Forum call is June 13, 2019.

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:14 p.m.

Pending approval by the advisory body on June 13, 2019.

DRAFT



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TODAY: Governor Newsom to Meet with Tribal Leaders to Hold a Blessing Ceremony and Discuss California’s Historical Mistreatment of Native Americans

Published: Jun 18, 2019

WEST SACRAMENTO – Governor Gavin Newsom will meet today with California tribal leaders to hold a blessing ceremony at the future site of the [California Indian Heritage Center](#). The Governor will participate in a discussion about the mistreatment, violence and neglect inflicted upon California Native American Peoples throughout the state’s history.

Who: Governor Gavin Newsom, Assemblymember James Ramos and Tribal Leaders from throughout California.

When: Tuesday, June 18, 2019 at 3:00 p.m. Media should be set up by 2:45 p.m. at the latest.

Where: Marina Way, West Sacramento, CA 95605 (NOTE: This address will lead you to the entrance of the future site of the California Indian Heritage Center. Parks Staff will be positioned at the entrance to direct you to the event location. The event will take place outdoors.

This event will be streamed live at the [California Governor](#) Facebook page.

###

Recent News

Governor Newsom Issues Apology to Native Americans for State’s Historical Wrongoings, Establishes Truth and Healing Council

TODAY: Governor Newsom to Meet with Tribal Leaders to Hold a Blessing Ceremony and Discuss California’s Historical Mistreatment of Native Americans

Governor Newsom Celebrates LGBTQ Pride Month by Flying Rainbow Flag Over the State Capitol for First Time Ever

Governor Newsom Issues Proclamation Declaring Juneteenth Day of Observance

Governor Newsom Signs Animal Welfare Legislation

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Governor Newsom Issues Apology to Native Americans for State's Historical Wrongdoings, Establishes Truth and Healing Council

Published: Jun 18, 2019

Governor signs executive order formally apologizing to California's Native Americans for historical mistreatment, violence and neglect

Governor establishes Truth and Healing Council to provide Native Americans a platform to clarify the historical record and work collaboratively with the state to begin the healing process

SACRAMENTO – Governor Gavin Newsom today [issued an apology](#) through executive order on behalf of California to California Native American Peoples for the many instances of violence, mistreatment and neglect inflicted upon California Native Americans throughout the state's history. The Governor also announced the creation of a Truth and Healing Council to provide an avenue for California Native Americans to clarify the record – and provide their historical perspective – on the troubled relationship between tribes and the state. This is the first time a state has taken dual action to correct the historical record and acknowledge wrongdoing through executive order mandate and a tribally-led, consultation-informed council.

"California must reckon with our dark history," said Governor Gavin Newsom. "California Native American peoples suffered violence, discrimination and exploitation sanctioned by state government throughout its history. We can never undo the wrongs inflicted on the peoples who have lived on this land that we now call California since time immemorial, but we can work together to build bridges, tell the truth about our past and begin to heal deep wounds."

"As the first California Indian elected to the State Legislature, I applaud the executive order signed by Governor Newsom today to issue a formal apology from the state for past cruel treatment of Native Americans. This action will go a long way to start the healing process between the state and Native American communities throughout California," said Assemblymember James Ramos. "This historic acknowledgment by the Governor marks the beginning of a new relationship between the state and the more than 700,000 Native Americans who make the State of California their home."

In the early decades of California's statehood, the relationship between the state and California Native Americans was fraught with violence, exploitation, dispossession and the attempted destruction of tribal communities. In 1850, California passed a law called the "Act for the Government and Protection of Indians," which facilitated removing California Native Americans from their traditional lands, separating children and adults from their families, languages and culture, and creating a system of indentured servitude as punishment for minor crimes such as loitering.

Between 1850 and 1859, governors of California called for private and militia campaigns against Native peoples in the state. In his 1851 State of the State Address, California's first Governor declared "[t]hat a war of extermination will continue to be waged between the two races until the Indian race becomes extinct must be expected." Subsequently, the state authorized \$1.29 million in 1850's dollars to subsidize these militia campaigns.

Despite these wrongs, California Native Americans resisted, survived and carried on cultural and linguistic traditions defying all odds. Now, at the direction of Governor Newsom and working in collaboration with California tribes, the state seeks to more closely explore the historical relationship between the State of California and California Native Americans in the spirit of truth and healing through the establishment of a Truth and Healing Council. The Council will be led and convened by the Governor's Tribal Advisor and will include representatives or delegates from California Native American tribes, relevant state and local agencies and other relevant non-governmental stakeholders. The Council will report draft findings to the Governor's Tribal Advisor on an annual basis beginning January 1, 2020 and produce a final written report of findings regarding the historical relationship between the state and Native Americans on or before January 1, 2025.

Recent News

Governor Newsom Issues Apology to Native Americans for State's Historical Wrongdoings, Establishes Truth and Healing Council

TODAY: Governor Newsom to Meet with Tribal Leaders to Hold a Blessing Ceremony and Discuss California's Historical Mistreatment of Native Americans

Governor Newsom Celebrates LGBTQ Pride Month by Flying Rainbow Flag Over the State Capitol for First Time Ever

Governor Newsom Issues Proclamation Declaring Juneteenth Day of Observance

Governor Newsom Signs Animal Welfare Legislation

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The State of California and California Native Americans have never jointly or formally examined or documented their relationship for the express purpose of acknowledging and accounting for historical wrongs committed by the State of California against California Native Americans – and the state has never formally apologized for these atrocious actions.

A copy of the Governor's executive order can be found [here](#).

###

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EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-15-19

WHEREAS, in the early decades of California's statehood, the relationship between the State of California and California Native Americans was fraught with violence, exploitation, dispossession and the attempted destruction of tribal communities, as summed up by California's first Governor, Peter Burnett, in his 1851 address to the Legislature: "[t]hat a war of extermination will continue to be waged between the two races until the Indian race becomes extinct must be expected"; and

WHEREAS, the State of California's laws and policies discriminating against Native Americans and denying the existence of tribal government powers persisted well into the twentieth century; and

WHEREAS, despite these wrongs, California Native Americans resisted, survived and carried on cultural and linguistic traditions defying all odds; and

WHEREAS, the State of California and California Native Americans have never jointly formally examined or documented their relationship for the express purpose of acknowledging and accounting for historical wrongs committed by the State of California toward California Native Americans; and

WHEREAS, the State of California has never formally apologized for historical wrongs tolerated, encouraged, subsidized and committed by State actors against California Native Americans; and

WHEREAS, the State of California seeks to more closely explore the historical relationship between the State of California and California Native Americans in the spirit of truth and healing through the establishment of a Truth and Healing Council; and

WHEREAS, the State of California intends that the work of the Truth and Healing Council be done respectfully and in collaboration and consultation with California Native American tribes pursuant to this Executive Order and Executive Order B-10-11.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, do hereby issue the following order to become effective immediately.

IT IS HEREBY ORDERED THAT:

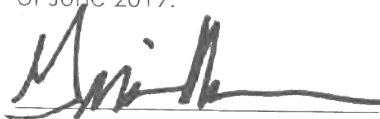
1. The State of California hereby:
 - a. recognizes that the State historically sanctioned over a century of depredations and prejudicial policies against California Native Americans;
 - b. commends and honors California Native Americans for persisting, carrying on cultural and linguistic traditions, and stewarding and protecting this land that we now share;
 - c. apologizes on behalf of the citizens of the State of California to all California Native Americans for the many instances of violence, maltreatment and neglect California inflicted on tribes; and

- d. reaffirms and incorporates by reference the principles outlined in [Executive Order B-10-11](#), which requires the Governor's Tribal Advisor and the Administration to engage in government-to-government consultation with California Native American tribes regarding policies that may affect tribal communities.
2. The Governor's Tribal Advisor shall establish the Truth and Healing Council to bear witness to, record, examine existing documentation of, and receive California Native American narratives regarding the historical relationship between the State of California and California Native Americans in order to clarify the historical record of this relationship in the spirit of truth and healing. The Truth and Healing Council shall be led and convened by the Governor's Tribal Advisor and shall include representatives or delegates from California Native American tribes, and may include relevant state and local agencies, as well other relevant non-governmental stakeholders.
 3. The Truth and Healing Council shall consult with California Native American tribes to shape the overarching focus and develop the work of the Council and shall endeavor to accurately represent the diversity of experience of California Native Americans within the State of California.
 4. The Truth and Healing Council shall: (i) report draft findings to the Governor's Tribal Advisor on an annual basis beginning January 1, 2020 and (ii) produce a final written report of findings regarding the historical relationship between the State of California and California Native Americans on or before January 1, 2025.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order shall be filed with the Office of the Secretary of State and that widespread publicity and notice shall be given to this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 18th day of June 2019.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

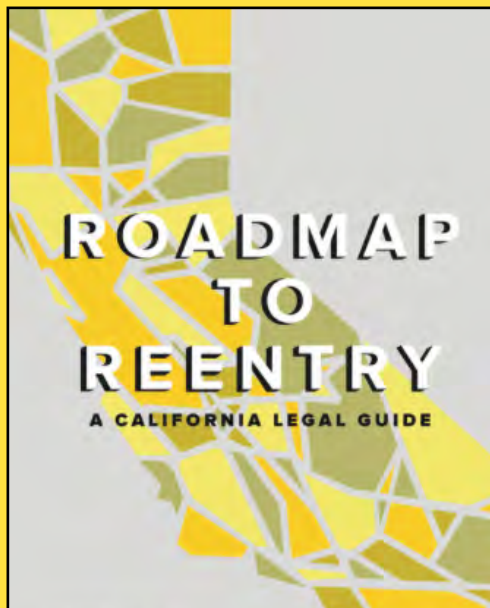


About Root & Rebound

Root & Rebound is a national nonprofit dedicated to restoring and protecting rights, dignity, and opportunities for people directly impacted by the criminal justice system. Our mission is to transfer power and information from the policy and legal communities to the people most impacted by our criminal justice system through public education, direct legal services, and policy advocacy, so that the law serves, rather than harms, low-income communities and communities of color in the U.S.

EDUCATE

Through the development of self-help legal guides and toolkits, and in-person and online trainings, we work to expand the legal knowledge of directly impacted people, their family members & loved ones, service providers, government agencies & others – so that people in reentry and those who support them are prepared to navigate hurdles to employment, housing, financial stability, family reunification, successful supervision, and education.



Learn more about Root & Rebound's library of legal resources for systems impacted people & those who support them at www.rootandrebond.org!

ADVOCATE

Along with educational resources & trainings, we provide legal advice and direct support to people working through barriers related to their record or prior system involvement.

We operate a statewide **Reentry Legal Hotline** every Friday from 9:00 a.m. to 5:00 p.m. that is open to *anyone in California* with legal questions about the rights of people records. Call the hotline any Friday at **510-279-4662**. (Note: We accept collect calls from currently incarcerated people.)

We also run **community legal clinics** across the state of California, with attorneys on the ground in L.A., Fresno, the Bay Area, and mobile clinics with our tribal partners.

If you or a loved one needs assistance and cannot call or go online, please write to us at: **Root & Rebound, 1730 Franklin Street, Suite 300, Oakland, CA 94612.**

REFORM

Our **policy & systems reform work** encourages federal, state, and local governments and agencies to create smarter reentry policies that promote the well-being of individuals and their communities. We communicate our learnings on the ground to local and state governments and advocacy groups.

CONTACT US

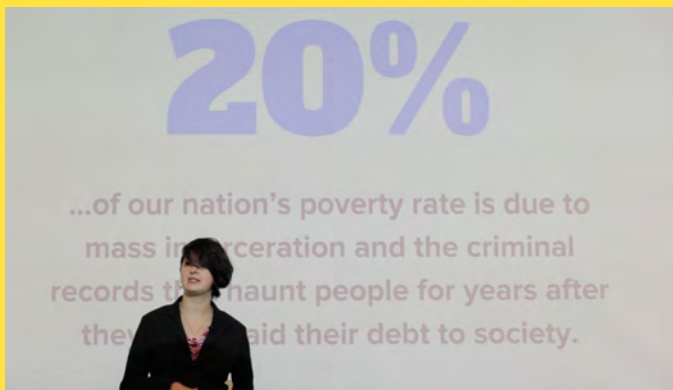
1730 Franklin Street, Suite 300, Oakland, CA 94612
Email: info@rootandrebond.org | Website: www.rootandrebond.org | Phone: (510) 279-4662



Connect with Root & Rebound

R&R TRAININGS & PARTNERSHIPS

- ***In-Person Training:***
Please contact us for up-to-date pricing structures tailored to your organization or community. Email us at roadmap@rootandrebound.org.
- ***Online Training Hub:***
Attend a “*Roadmap to Reentry*” training with the click of a button! Visit www.reentrytraininghub.org.



R&R KNOW-YOUR-RIGHTS RESOURCES

Reentry Planning Toolkits

- There are three versions of the toolkit:
 - For People in Reentry & People with Records: FREE (donations welcome)
 - For Family Members & Loved Ones: FREE (donations welcome)
 - For Service Providers Working With People in Reentry: \$10 per paper copy
- Electronic Access: Free PDF available at www.rootandrebound.org/reentry-planning-toolkit

“Roadmap to Reentry” Legal Guide

- For currently incarcerated person: \$20 each
- For anyone on the outside: \$45 each
- Bulk discounts available.
- Electronic Access: Free PDF available at www.rootandrebound.org/roadmap-to-reentry-guide
- **New!** Searchable site with all the content of the guide at roadmap.rootandrebound.org

“My Education, My Freedom” Toolkit

- FREE for people with records who are actively pursuing their education or currently enrolled in school.
- All others: \$10 each
- Electronic Access: Free PDF available at www.rootandrebound.org/education-toolkit

CA Employers’ Fair Chance Hiring Toolkit

- \$10 each
- Bulk discounts available.
- Electronic Access: Free PDF available at www.rootandrebound.org/ca-fair-chance-toolkit

Discounts & Scholarships for our trainings & materials are available on a case-by-case basis, primarily for organizations with small annual budgets. For more information, please contact Katherine Katcher, Executive Director, at kkatcher@rootandrebound.org

Tribal Reentry Advocacy

Best Practices for Reentry Legal
Advocacy in Rural Tribal Communities

Presenters

Judge Abby Abinanti

Chief Justice Yurok Tribal Court

Klamath, California

Laura Woods

Paralegal and Mediator Yurok Tribal Court

Klamath, California

Katherine Katcher

Founder and Executive Director, Root & Rebound

Oakland, California

Eva Delair

Associate Director of Northern California Programs & Policy Reform Root & Rebound

Oakland, California

Faride Perez-Aucar

Legal Fellow

Root & Rebound Oakland, California

Agenda

What You Will Learn:

- How to establish culturally responsive, holistic legal clinics in tribal communities;
- How to address logistical challenges in setting up rural clinics;
- Recommendations for maintaining communication with clients;
- The historical and present-day policies that have disenfranchised tribal communities in rural America;
- The role of tribal courts in criminal justice and their relationship to reentry;
- How attorneys can supplement existing community resources through partnership and scaled services;
and
- How attorneys can develop collaborative, culturally appropriate relationships to improve reentry services in rural Tribal communities.

Root & Rebound's Mission

Root & Rebound's mission is to transfer power and information from the policy and legal communities to the people most impacted by our criminal justice system through public education, direct legal services, and policy advocacy, so that the law serves, rather than harms, low-income communities and communities of color in the United States.



Root & Rebound's Model

- **EDUCATION:** Self-help resources due to lack of lawyers for poor communities, trainings to share legal knowledge and tools between lawyers & impacted people
- **ADVOCACY:** Community-based and mobile legal clinics, direct services and court representation, Reentry Legal Hotline—the only in the U.S.
- **REFORM:** Impact litigation & legislation to restore the rights of people impacted by the justice system, work alongside systems-impacted people to change laws & policies

Introduction→ Why do this Work?

*Native American people face disproportionately high rates of incarceration, criminalization and poverty across the United States. In response to these challenges, the **Yurok Tribal Court** has partnered with **Root & Rebound**, a reentry legal advocacy center, to establish free mobile legal clinics in tribal community settings.*

The Criminalization of Native Communities

Native Americans are incarcerated at a rate **38% higher than the national average**, according to the Bureau of Justice Statistics.

Native American youths are **30% more likely** than whites to be referred to juvenile court than have charges dropped, according to National Council on Crime and Delinquency.

Native Americans are **more likely to be killed by police than any other racial group**, according to the Center on Juvenile and Criminal Justice.

Native American men are incarcerated at four times the rate of white men; Native American women are incarcerated at **six times the rate of white women**, according to a report compiled by the Lakota People's Law Project.

Access-to-Justice Barriers in Many Native Communities

- **Socioeconomic conditions**
- **High rates of policing and the Prison Industrial Complex**
 - Drug conviction rates are extremely high
 - Criminalization of religious practices
 - High rates of alcoholism and drug abuse, high rates of DUI convictions
- **Lack of adequate resources**
 - Rural communities and unrecognized tribes
 - Lack of healthcare that exacerbates PTSD symptoms
- **Low educational attainment**
- **Highest rate of recidivism out of any racial group**

Barriers in Reentry that Contribute to Recidivism

- **Little access to social services and legal resources**
 - Lack of mental health services
 - Lack of legal clinics
- **Destroyed family structure and sense of community**
 - Custody case difficulty within the foster care system
- **Lack of educational opportunities upon reentry**
 - People denied financial aid due to some drug offenses
- **Lack of housing opportunity and section 8 housing (depending on county)**

Rural Service Void

- **54%** of Native Americans live in rural areas
- According to a 2017 study, low-income people living in rural communities received inadequate or no professional legal help for **86%** of their civil legal problems.
- **3 out of 4** low-income, rural households have experienced *at least one* civil legal problem in the past year, and nearly **1 in 4 low-income, rural households have experienced 6 or more civil legal problems** in similar time frames.

What is a federally recognized tribe?

A federally recognized tribe is an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States.

This designation comes with specific powers and responsibilities. All federally-recognized tribes are eligible for certain federal benefits, as well as funding and services from the U.S. Bureau of Indian Affairs. Most federally recognized tribes got their status through treaties, acts of Congress, administrative actions (e.g., presidential executive orders), or federal court decisions.

Some rural, tribal communities have existing programs for tribal members with incomplete or underdeveloped procedures in place to address the needs of those with criminal records.

What is the relationship between tribes and the U.S. and state governments?

Federally-recognized tribes have **tribal sovereignty**, meaning they have *the right to govern themselves*. The U.S. government treats tribal governments as a separate government. Individual states have no authority over tribal governments, and federally-recognized tribes can regulate activities on their land independently of state control. However, states can have a government-to-government relationship with federally-recognized tribes and often collaborate with states.

Establishment of Yurok Justice Court

- The Court was established in 1978 to regulate Indian fishing on the Klamath River.
- Since 1996, the tribe has enacted ordinances and codes that govern their reservation, residents, tribal members, tribal lands, ancestral territory and those who do business with the tribe or on the reservation.
- The Yurok Tribal Court has been developed as an effective tribal justice system encompassing both traditional principles as well as contemporary jurisprudence for the Yurok People.



THE YUROK TRIBE

Yurok Justice Court Model

“ The tribal courts both incorporate traditional values and hold up an example to the nation about the possibilities of alternative dispute resolution. [They] have much to offer to the tribal communities, and much to teach the other court systems operating in the United States. ”

— The Honorable Sandra Day O’Connor, former Supreme Court Justice

Yurok Tribal Court & Its Service to the Community

The Yurok Tribal Court, is a holistic tribal court in Klamath, California that emphasizes Yurok values of healing and redemption through assumption of responsibility rather than the traditional U.S. criminal justice system values of retribution, incapacitation, and deterrence.

The Court's role is to protect the values of the people, to support the development of those values within each member of the community, and to ensure that their responsibility to protect their traditions and traditional lands is carried out.

Building the Tribal Reentry Advocacy Partnership

Launched in 2016, the pilot project began with the Yurok Tribal Court and Root & Rebound. Katherine Katcher and Abby Abinanti met at a panel discussion about supporting women of color in reentry. There, the two discussed their work, visions and priorities as social justice advocates. Judge Abby later joined Root & Rebound's nonprofit Board of Directors, and together the two organizations secured a multi-year grant to support the development of the Tribal Reentry Advocacy Project.



“It was Katherine Katcher’s vision of justice which inspired a collaboration in which [I] would provide the need and Root & Rebound would provide services.”

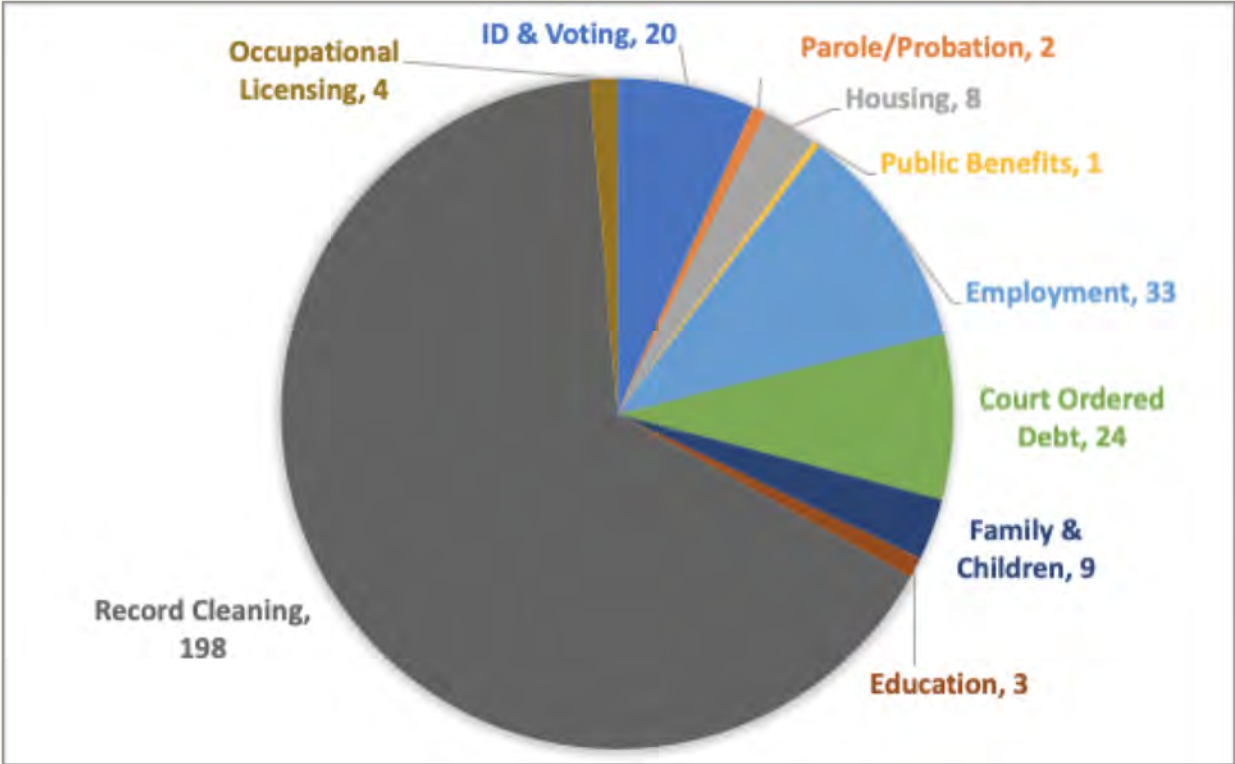
- Judge Abby Abinanti

“The partnership was built on trust and mutual respect, with the needs of the Yurok community front and center, dictating the shape and form of our legal advocacy and support.”

- Katherine Katcher

Root & Rebound's Impact

202
clients served
as of
Dec. 31, 2018



Root & Rebound's Impact

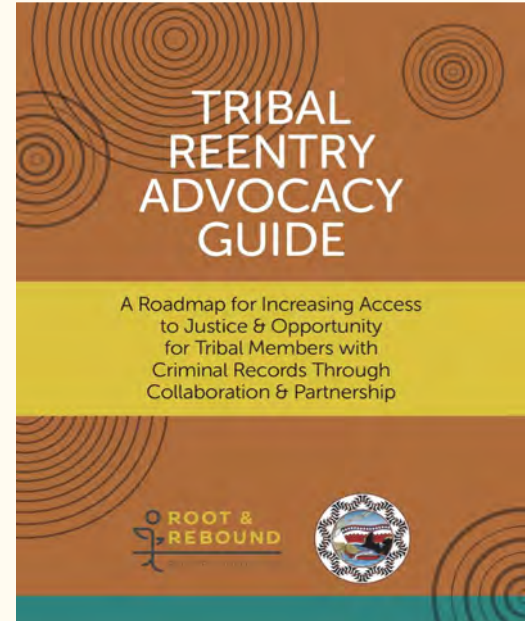
Client Spotlight :

Bill lives in Klamath CA and had a felony drug charge from 15 years ago. When R&R traveled to Klamath, Bill met with us and found out he had a good shot at getting his record cleaned. After R&R started the process on his behalf, he was soon asked to appear in court. Bill said that when he went before the judge, he felt proud presenting his best self. Bill's record cleaning was approved.

“I didn't dream as big as I dream now because a lot of options were not available to me. That's a big thing. Now, I could petition for school, get a degree. Might be a lawyer, might be a nurse—now don't know what I want to do ‘when I grow up!’ The world is my oyster.”

Purpose of Tribal Reentry Advocacy Guide

By sharing our learnings and best practices for providing reentry legal clinics and advocacy support in rural, tribal communities, this Guide is meant to be a starting point for legal practitioners, tribes, philanthropists, and community-based organizations to expand or begin partnerships that increase access to justice in rural, indigenous communities across the U.S.



Tribal Clinics - Logistics & Set Up

Finding a Clinic Location

Clinics should be located in central areas that are accessible through public transportation. At times, social service agencies are able to provide bus passes for free, which can facilitate client access to clinics.

Having clinics in locations near other health, public benefits, and social services facilities can also be of benefit for individuals who have limited means of transportation and use clinics as a way to complete multiple errands.

To avoid the resurgence of trauma, clinics should be held in locations which will attempt to avoid triggers associated with system involvement.



Tribal Clinics - Outreach & Communications

Outreach is a critical part of organizing a rural tribal clinic.

Outreach should be done along with trusted partners who may be able to provide familiar and trusted spaces to hold clinics and any additional resources.

Because community partners are such an important aspect of this Project, they should always be given credit for their contributions.

If multiple clinics will be taking place in different but nearby locations, one flyer with all the clinic locations and contact information can facilitate the transfer of information.

Tribal Clinics - Outreach & Communications

Targeted Outreach

Acquiring a significant turnout can be difficult to accomplish when there is a history of harmful legal policies and lawmaking which has led to a general distrust of legal service providers.

Additional outreach can also be done through local newspaper listings, tribal newsletters, local radio, tribal courts, transitional housing, large local employers and other social service agencies.

Who are our clients?

- On average, around 73% of attendees at our legal clinics in tribal and rural communities report having at least one dependent.
- On average, around 84% of attendees at our legal clinics (overall) report that they have not gotten legal support on their issue in the past.
- On average, 75% of clinic (overall) attendees that indicated that their record was impacting their employment opportunities reported that they felt the help they received at the clinic would positively impact their employment opportunities.
- On average, around 23% of attendees at our legal clinics in tribal and rural communities report having a disability.



Tribal Clinics - Scheduling Appointments

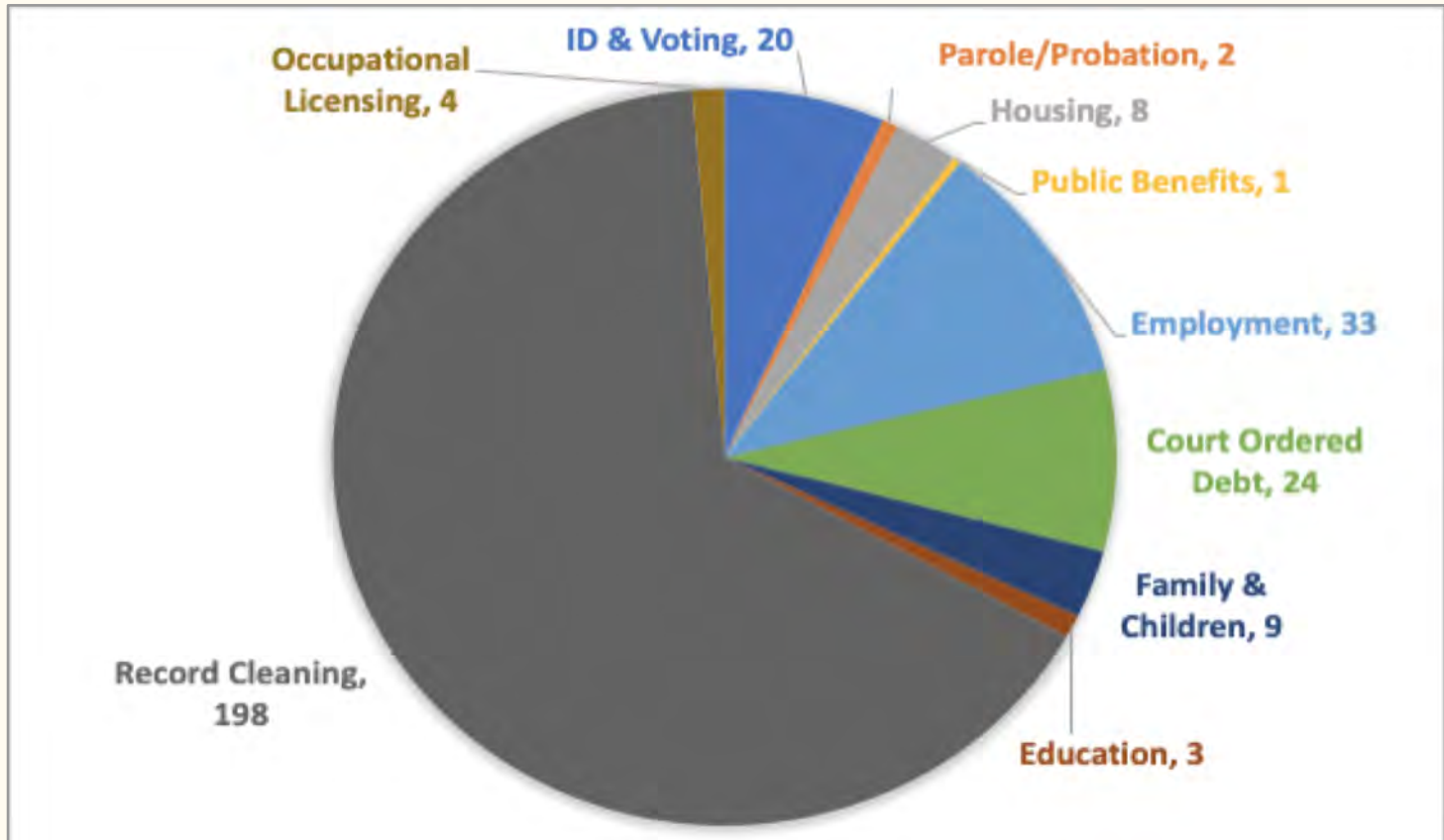
- By allowing clients to call in and schedule appointments before the clinic, many of their issues can be researched and/or prepared for in advance of the clinic date, as early as 5-7 weeks before the clinic.
- When appointments are scheduled, clients can also be prepared and asked to bring materials and other supporting documents (i.e. support letters for declarations, court ordered course completion, RAP sheets etc.) as well as what they will do at the clinic.
- Although scheduling appointments can be important, there should also be a consideration as to whether walk-ins will be allowed. Root & Rebound allows for walk-ins until the very end of the clinic.
- Many times, clinics are organized as one-time events and client relationships end the day of the clinic. Root & Rebound has a model in place with the goal of providing follow up as needed and within 4 weeks of meeting with the client.

Advocacy Work

What are some common issues we see?

- **Drug Convictions and Criminalization of Native Cultural Practices**
 - The Bureau of Justice reports that American Indians have the highest number of DUI arrests at a rate of 479 per 100,000 people, compared to 332 per 100,000 people for all races. In recent years the opioid crisis has severely impacted tribal communities.
- **Domestic Violence and Sexual Violence**
 - In the U.S., violence against indigenous women has reached unprecedented levels on tribal lands and in Alaska Native villages. More than 4 in 5 American Indian and Alaska Native women have experienced violence and 1 in 2 Native women have experienced sexual violence.
- **Gun Rights**
 - Many people in rural areas make use of firearms for subsistence and recreational hunting, so firearm use tends to be a fixture in rural, tribal communities. Many tribes also use firearms as part of ceremonial and cultural practices. (SEE MEMORANDUM)

Common Issues



Common Issues and How to Address:

RECORD CLEANING:

- How to get a RAP sheet
 - Applying for DOJ Fee Waiver
 - Where to get Live Scan Fingerprinting
- Explaining different types of Background Checks
- Filing Paperwork at the Court
- Coaching for court hearing

Common Issues and How to Address:

EMPLOYMENT

- Occupational Licensing Questions
- DSS Exemptions
- Fair Chance Hiring → Know Your Rights
- What can an Employer see on my record?

Common Issues and How to Address:

ID/VOTING: DRIVER'S LICENSE REINSTATEMENT

- Call Mandatory Actions Unit
- Connect clients with affordable classes
- Provide next steps for reinstatement (paying fees, scheduling DUI classes etc.)

Tribal Reentry Advocacy Work

What are we screening for? How are we screening?

Holistic Intakes

Attorneys should be trained as “generalists” with a broad knowledge base on reentry legal issues and an understanding of specific issues and barriers unique to tribal and rural communities.

Attorneys should be trained to conduct holistic assessments, screening for issues affecting all areas of life and prioritizing next steps based on available remedies and client goals.

Client Follow-Up

Be flexible and responsive.

- The key is to be flexible and responsive to the needs and criticisms of the community.
- Legal needs, issues, and circumstances may vary from place to place -- flexibility is needed to be able to serve people effectively and holistically.
- Client communication may be sporadic in rural communities which means that working with clients can at times require corresponding via mail and other delayed means.
- Practitioners may be spending time after a clinic to do logistical work for a client and generally taking on administrative burdens. It is important to be patient, flexible and responsive to partners and clients alike.

Client Follow-Up

Clear and consistent communication is key.

- Clear, consistent, and open communication is key if an organization hopes to be credible, trustworthy and create longstanding relationships with rural, tribal communities.
- It is important to communicate often with partners and clients, especially during follow up.
- When appropriate and with client permission, consider taking the names and numbers of friends and family who can help connect you to the client in the future.
- If there is a plan for future clinics, it is also a good idea to communicate the date with clinic attendees. If an exact date has not been identified, an estimated date may still help inform next steps for clients.

From R&R: How to be Better Advocates!

Maintain core values!

Here are some of the core values that guided our team:

- Promotion of Self-Reliance, Self-Determination and Cultural Autonomy in Tribal Communities
- Humility and Respect for Leaders and Strengths of Tribal Communities
- Intrinsic Human Dignity for All People
- Democratization of Law and Policy to Serve Low-Income Communities and Communities of Color
- Equal Access to Justice
- Uplifting the Values and Culture of the Tribes
- Sensitivity to Historical and Intergenerational Trauma Resulting from Unjust Conduct

From YTC: Tips for Other Tribal Communities

1. Network with local community colleges and universities.
2. Introduce yourselves and your programs to schools, non-profits, legal service providers---*reach out and create some partnerships.*
3. Invite law students to come and observe court hearings i.e tours of Yurok Country, etc.
4. Have legal service providers come to the reservation and have an open legal advice clinic (i.e., a once-a-month clinic)

What advocates should keep in mind when approaching tribal communities for partnership

- Come (in person) and talk to the tribe's Office of Tribal Attorneys; Tribal Court Staff, Administrators and Judges;
- Whether you can offer re-entry, criminal record cleanup or general legal assistance, the main things to keep in mind are:
 - 1) It takes time to create trust within the community, be patient. You may have no attendance or low attendance at first, but don't give up – it takes time;
 - 2) Be consistent, the tribal community will see what you offer over and over again and it will be eventually accepted as a good thing; work closely with the court to schedule the best times and locations; if possible offer child care, food & snacks.

Thank you! **Contact Root & Rebound →**

Location: **1730 Franklin St., Suite 300, Oakland, CA 94612**

Phone #: **(510) 279-4662**

Email: Faride Perez → fperez@rootandrebound.org

Download the Tribal Reentry Advocacy Guide:
www.rootandrebound.org/tribal-justice

To: Practicing Law Institute

From: Root & Rebound

Date: March 20, 2019

Re: Reinstating Gun Rights for Native Americans Using Record Cleaning Remedies

MEMORANDUM

I. Introduction / Purpose:

As part of the Tribal Reentry Advocacy Project, Root & Rebound (R&R) maintains a database which includes common issues that arise during mobile clinics. To better address the concerns of the communities we are supporting, services are modified to address issues which are most relevant to those we are serving. Through this work we have found that questions about rights, restrictions and access to guns for those with previous convictions are common for rural tribal communities. In particular, this memorandum focuses on the reinstatement of gun rights for Native Americans, to support with cultural practices.

II. Why are gun rights important in Native American Communities?

Root & Rebound's mission is to transfer power and information from the policy and legal communities to the people most impacted by our criminal justice system through public education, direct legal services, and policy advocacy, so that the law serves, rather than harms, low income communities and communities of color in the United States.¹ We envision a world where people impacted by mass criminalization have full restoration of their rights, so that they can move forward with hope, dignity, and opportunity. Root & Rebound's work in rural tribal communities has given us the opportunity to learn how gun rights affect the livelihood and dignity for many Native American people.

In rural tribal communities, questions concerning reinstatement of gun rights are common. Many people in rural areas make use of firearms for sustenance, ceremony and recreational hunting. As part of these practices, firearm use tends to be generational and often serves as a bonding experience for families. Many tribes also use firearms as part of ceremonial and cultural practices. For many folks in tribal communities, it also represents access to full citizenship.

¹ <http://www.rootandrebound.org/mission-and-vision>

The definition of citizenship has been modified over the years. Citizenship, or lack thereof, was often used to limit the right to vote, own land or possess firearms. The definition of citizenship was often defined in terms of race, gender and culture. For example, in the early 1900s, many gun rights--either in terms of ownership or militia service--were tied to citizenship, and the definition of citizenship limited by race, often excluding Native Americans, African Americans and nonwhite immigrants.² Today, there are still many questions around what these limitations are and who may or may not qualify for the full restoration of citizenship. For many who live with conviction histories, rights remain limited in many areas of life. Access to gun rights in particular, have the racial and cultural components which becomes an important factor in the fight against unfair criminal justice policies.

III. Under what circumstances does one lose their right to possess a firearm?

Currently, in California, there is a lifetime ban for owning or acquiring a firearm for individuals with a felony conviction.³ Some misdemeanor offenses also impose a 10-year firearm ban.⁴ There is also a provision which bans use of firearms for those who are addicted to any narcotic drug.⁵ Certain juvenile adjudications will also impose a ban on firearm use until the individual reaches the age of 30.⁶ Record cleaning remedies may help address some of these issues, but for many, there is currently no remedy to reinstate this right.⁷

IV. How does one reinstate gun rights using record cleaning remedies?

Availability of record cleaning (“expungement”) remedies will always depend on the convictions that are on an individual's record. When the reinstatement of gun rights are an important goal for a client and they have a qualifying felony, a 17(b) (“wobbler” reduction) should be applied. Qualifying felonies are those which could have been charged as misdemeanors but were instead charged as felonies. As of January 1, 2015, misdemeanors are defined as carrying a potential sentence of 364 days.⁸ However, this

² [ARTICLE: Indians and Guns, 100 Geo. L.J. 1675, 1701](#)

³ CAL. PENAL CODE § 29800

⁴ *Id.*

⁵ *Id.*

⁶ CAL. PENAL CODE §29820(2)(b)

⁷ 18 U.S.C. 921-930. Under federal law, most domestic violence convictions trigger a lifetime firearms ban, regardless of what state you were convicted in. Most people convicted of a crime of domestic violence in California will never be able to own a gun legally anywhere in the United States. In addition, sealing juvenile convictions may not eliminate firearm restrictions. In re Joshua R. (2016) 7 Cal.App.5th 864

⁸ CAL. PENAL CODE §18.5

definition only applies to misdemeanor offenses prospectively from the date of enactment, not retroactively.⁹ To qualify under 17(b) you must also have been sentenced to probation.

If one's conviction is reduced to a misdemeanor that does not carry the 10-year ban, the firearm ban will be automatically lifted. If a conviction is reduced to a misdemeanor that carries a 10-year ban, the prohibition will be lifted after the 10-year period.¹⁰

Once it is determined that someone will qualify for a 17(b) reduction, the conviction may be dismissed pursuant to Penal Code 1203.4. Penal Code 1203.4 will only apply if the client was sentenced to probation. Some benefits to using the 17(b) reduction process is that in addition to gun rights, many other barriers are also removed, including, some bars to professional licensing, some access to public benefits, and the right to serve on a jury.¹¹ However, it is important to note that approval for 17(b) is always discretionary. A 1203.4 motion however, can be mandatory or discretionary. This depends on whether there were any violations on probation.

If a client does not qualify for a 17(b) motion, they may still have the opportunity to reinstate their gun rights through a governor's pardon. A governor's pardon is an honor that may be granted to people who have demonstrated exemplary behavior following their conviction.¹² Obtaining a pardon is a distinct achievement based upon proof of a productive and law-abiding life following conviction.¹³ Historically, governors have granted very few pardons.¹⁴ Clients must weigh the difficulty of the process with their own interests and values.

IV. Issues with Reinstatement

Through our interactions with client's, we have found some instances in which the 17(b) motion was *not* helpful for the purpose of reinstating gun rights. The following includes some examples of when this has occurred.

⁹

https://www.ilrc.org/sites/default/files/resources/advisory_for_pds_about_18.5_felony_to_misdemeanor_reductions.pdf

¹⁰ *People v. Gilbreth*, 156 Cal. App. 4th 53, 57 (2007) (a reduction of a felony offense to a misdemeanor precludes its use as a predicate offense under the felon-in-possession statutes).

¹¹ CAL. CIV. PROC. CODE § 203(a)(5).

¹² <https://www.gov.ca.gov/wp-content/uploads/2017/07/How-To-Apply-for-a-Pardon-10.24.18.pdf>

¹³ *Id.*

¹⁴ *Id.*

A. Judges Erroneously Granting 17(b) Motions

An issue that has recently been brought to R&R's attention is the erroneous granting of 17(b) motion. These cases involve convictions which were once straight felonies but have been redesignated under Prop 47 and Penal Code 1170.18 to misdemeanors.

Many 17(b) applicants had their petitions approved for dismissal, but upon submitting their application for firearms use through the Department of Justice (DOJ), Bureau of Firearms, their application was denied. Here, the DOJ continues under the assumption that the conviction remains a felony and applications continue to be denied.¹⁵ At this time, there has been no legal contest to this assumption. If this denial occurs, folks may still have the option of applying of a governor's pardon.

B. Advocates Mistakenly Applying Proposition 47

Proposition 47 is another record cleaning remedy often used by advocates. On November 4, 2014, California voters passed Proposition 47, a law that changed certain low-level crimes from potential felonies to misdemeanors.¹⁶ However, Penal Code 1170.18(k) explicitly states that gun rights are not restored as a result of a Prop 47 reduction.¹⁷ When the restoration of gun rights are important, and there is the option of applying for Proposition 47 and 17(b), 17(b) must be applied. Prop 47 does not restore gun rights.

C. Recommendations for Certificates of Rehabilitation

Certificates of Rehabilitation is an option for folks who are interested in record cleaning remedies but do not qualify for any of the traditional record cleaning remedies. However, Certificates of Rehabilitation do not affect gun rights. Certificates of Rehabilitation also are not available for misdemeanors.¹⁸ Nevertheless, a COR application is also an automatic pardon petition. If a pardon is granted, there is some opportunity to reinstate gun rights.

¹⁵ The DOJ bases their denial on People v. Mauch which states that the court “does not furnish grounds for the trial court's purported reduction through 17(b). People v. Mauch, 163 Cal. App. 4th 669, 675, 77 Cal. Rptr. 3d 751, 755, 2008 Cal. App. LEXIS 822, *6

¹⁶ <https://myprop47.org/about/>

¹⁷ CAL. PENAL CODE §1170.18(k)

¹⁸ People v. Moreno (2014) 231 Cal.App.4th 934.

CONCLUSION

It is important to keep in mind that there are various reasons why an individual may want to reinstate their gun rights. When doing record cleaning work, it is important to ask why someone is interested in cleaning their record and solve for issues in a holistic manner. It is equally important to speak with client's about their preferences and share all options available to them.

Any questions can be directed to Faride Perez-Aucar, Legal Fellow, Root & Rebound, fperez@rootandrebound.org.

TRIBAL REENTRY ADVOCACY GUIDE

A Roadmap for Increasing Access
to Justice & Opportunity
for Tribal Members with
Criminal Records Through
Collaboration & Partnership



AUTHORS AND CONTRIBUTORS

Root & Rebound: Root & Rebound (R&R) is a national reentry advocacy organization that addresses racial, economic, and social inequities within the criminal justice system and the reentry process by restoring and protecting rights, dignity, and opportunities for systems-impacted people. Our mission is to transfer power and information from the policy and legal communities to the people most impacted by our criminal justice system through public education, direct legal services, and policy advocacy, so that the law serves, rather than harms, low-income communities and communities of color in the U.S.

Our Team: Thomas Alexander, Briana Barnes, Amber Dean, Eva DeLair, Omar El-Qoulaq, Felicia Espinosa, Sam Epstein, Carmen Garcia, Lupita Garcia, Jon Grobman, Nicole Jeong, Katherine Katcher, Cassandra Little, Chloe Noonan, Ana Pano, Faride Perez-Aucar (lead author), Cal Smith, K.C. Taylor, Sonja Tonnesen, Deric Washington

Yurok Tribal Court: The Yurok Tribal Court, directed by Chief Justice Abby Abinanti, is a holistic tribal court in Klamath, California that emphasizes Yurok values of healing and redemption through assumption of responsibility rather than the traditional U.S. criminal justice system values of retribution, incapacitation, and deterrence. This Court has a model which works much differently from that of traditional U.S. systems. For the Yurok Tribal Court, tribal values should drive the development of practices. This is done by supporting the traditional values of the people and having those values inform the development of the Court as a modern institution. The Court's role is to protect the values of the people, to support the development of those values within each member of the community, and to ensure that their responsibility to protect their traditions and traditional lands is carried out.

About Abby Abinanti, Chief Justice, Yurok Tribe: Judge Abby is an enrolled member of the Yurok Tribe and has been Chief Justice of the Tribe since 2008. She served as a San Francisco Superior Court Commissioner for approximately 20 years, assigned primarily to Dependency and Delinquency. Abby was the first California native to be a member of the State Bar and to be appointed to a state judicial position. She is newly appointed by Tani G. Cantil-Sakauye, Chief Justice of the California Supreme Court, to the co-chair of the Tribal Court-State Court Forum. Abby is a graduate of the University of New Mexico School of Law.

ACKNOWLEDGEMENTS

This Guide would not have been possible without the following contributors: Chief Justice Abby Abinanti, Yurok Tribal Court; Faride Perez-Aucar, Root & Rebound; Emma Marsano, Volunteer Researcher; our tribal partners at the Yurok, Hoopa, Tolowa Dee-Ni' Nation, Yuki Trails, Cahto, Round Valley, Hopland, Pomo and Karuk Tribes, as well as the Sonoma Indian Health Center, Northern California Intertribal Council, and the Consolidated Tribal Health Project. Thank you for your support and partnership!

TRIBAL PARTNERS

- Yurok Tribe
- Hoopa Tribe
- Tolowa Dee-Ni' Nation
- Yuki Trails Tribe
- Cahto Tribe
- Round Valley Tribe
- Hopland Tribe
- Pomo Tribe
- Karuk Tribe
- Sonoma Indian Health Center
- Northern California Intertribal Council
- Consolidated Tribal Health Project



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INTRODUCTION

PURPOSE OF GUIDE

Root & Rebound and the Yurok Tribal Court have developed a partnership to increase access to legal advocacy, justice and opportunity for systems-impacted tribal members in Northern California over the past two years. We believe it is critical to share our learnings, so these partnerships and accompanying reentry advocacy work can grow and replicate nationally.

By sharing our learnings and best practices for providing reentry legal clinics and advocacy support in rural, tribal communities, this Guide is meant to be a starting point for legal practitioners, tribes, philanthropists, and community-based organizations to expand or begin partnerships that increase access to justice in rural, indigenous communities across the U.S. It presents historical context, challenges to tribal reentry justice, and best practices gleaned through partnership in an effort to encourage collaborations in rural, tribal communities. By piloting this Project together as a legal aid organization and a tribal community and court, we hope our learnings can help others hone the program to the needs of Native people and develop best practices that can scale to the other 565 officially recognized tribes in the U.S. and more.

Each community is its own and knows what is best for itself. In that regard, true partnership begins with a culturally affirming, responsive approach, not a one-size-fits-all model. While this Guide will point at best practices, we believe it is critical to do the groundwork by directly engaging in conversation with and listening to tribes. In so doing we will be putting the voices of impacted tribal members front and center in designing and leading the work. The goal of such a partnership is not to replace tribal resources but instead, replenish communities with partnerships and investments in advocacy, with the hope that outside assistance will eventually not be needed.

INTENDED AUDIENCES

We hope to reach the following audiences with this Guide:

- *Legal Aid Organizations*
To provide simple, concrete steps to utilize this model, and for use as a “how to” manual for reaching underserved tribal and rural communities in individual states.
- *Tribal Members, Governments, Courts, and Staff*
To provide a model for tribal government, courts, and staff showing how they can collaborate with outside legal aid organizations to increase access to justice for tribal members with records.
- *Groups Committed to Civil Rights, Criminal Justice System Reform, and Racial/Economic Justice*
To provide context and critical considerations about the impact of the criminal justice system on indigenous rural community members, and to inform policy reform efforts intended to assist individuals with prior system involvement in attaining equal access to justice and record-cleaning remedies.
- *Private and Public Funders: Philanthropists, Government, and Foundations*
To encourage private and public funders interested in supporting underserved communities and criminal justice reform to invest in tribal justice projects across the country and within their states.

ABOUT THE TRIBAL REENTRY ADVOCACY PROJECT

The **Tribal Reentry Justice Project** is a collaboration between the Yurok Tribal Court and Root & Rebound and has since expanded into several more tribal communities in Northern California. As a collaborative project, one of our primary goals is to fill a gap in legal advocacy for Native people impacted by the criminal justice system and who are returning to their communities from prison and jail. Launched in 2016, the pilot project began with the **Yurok Tribal Court**, which oversees legal matters for California's largest surviving Native tribe comprised of 6,500 members, and **Root & Rebound**, an organization that works through education, advocacy, and reform strategies to protect and restore the rights of people directly impacted by the criminal justice system. They may include people in reentry, those with arrest and conviction records, formerly incarcerated individuals, and impacted family members and loved ones. The Project brings legal clinics, trainings, direct services, know-your-rights resources and information to underserved tribal communities to break down barriers for Native people who are systems-impacted. It is intended to improve access to employment and opportunity, and support families and communities as they heal from crime and incarceration.

Since its launch, the Project has grown and reached many additional tribes in the Northern California and Southern Oregon regions. Tribal partners now include the Yurok, Hoopa, Tolowa Dee-Ni' Nation, Yuki Trails, Cahto, Round Valley, Hopland, Pomo and Karuk Tribes, Sonoma Indian Health Center, Northern California Intertribal Council, and the Consolidated Tribal Health Project.



PROJECT GOALS & INTENDED OUTCOMES

The following are recommended goals and outcomes which helps us keep the Project's overall purpose in mind:

Restoration of Rights

By protecting and restoring the rights of Native peoples, they can have access to more agency and freedom to empower themselves and their communities, who are too often ignored or erased by criminal justice reform efforts. Attaining legal rights can increase self-reliance and self-determination in tribal communities. People with criminal records face over 48,000 legal barriers. Specifically, people with criminal records face a myriad of collateral consequences in categories such as record-cleaning, education, family and children, court-ordered debt, employment, public benefits, housing, parole and probation, ID and voting, immigration, and tribal issues.

Public Education

Through legal trainings and workshops and by creating and disseminating know-your-rights materials, Native people with prior justice system involvement can gain legal knowledge and skills to better advocate for themselves and their communities. Not knowing one's rights or not knowing the steps to access them is a key barrier to justice, especially in low-income and rural communities.

Tribal and Rural Access to Justice

By providing mobile legal clinics and remote (long-distance) legal services and follow up support, Native people can access lawyers and legal resources from within their own communities.

Racial Justice

The failure of U.S. politics and criminal justice reform efforts to include Native people and tribes has perpetuated economic and political disenfranchisement. A goal of this Project is to elevate Native voices, experiences, wishes and needs, as well as push the criminal justice reform movement with legal and policy communities to be more inclusive.

Collaboration and Organization

Through a collaborative model that unites tribal agencies with legal services providers, this approach to reentry advocacy can be replicated and scaled in other parts of the state and country. Native service providers and directly impacted Native people have shaped the design and approach of this work, with a goal to pilot creative solutions that could meet the nationwide demand for reentry support in tribal communities.

CORE VALUES OF THE TRIBAL REENTRY ADVOCACY PROJECT

The following project and organizational values have guided our collaboration and supported the positive outcomes of our work:

- Promotion of Self-Reliance, Self-Determination and Cultural Autonomy in Tribal Communities
- Humility and Respect for Leaders and Strengths of Tribal Communities
- Intrinsic Human Dignity for All People
- Democratization of Law and Policy to Serve Low-Income Communities and Communities of Color
- Equal Access to Justice
- Uplifting the Values and Culture of the Tribes
- Sensitivity to Historical and Intergenerational Trauma Resulting from Unjust Conduct

By beginning this work with purpose, intention and well-thought-out organization goals, projects can be built without risking loss of priorities and focus.

CONTEXT & NEED: WHY THIS WORK IS CRITICAL

Due to the traumatic history that exists between the United States' legal systems and tribal nations, legal practitioners (especially non-Native organizations) should be aware of unique cultural dynamics in beginning this work. Learning the context of why this work is needed is a starting point, as is an understanding that tribal partners are the leaders of this work and should be supported in establishing services that are particular to their own community.

While this section outlines historical and intergenerational traumas and common barriers to justice in rural, tribal communities, it does not replace the groundwork necessary to building a true partnership between a tribal community and a legal services provider. We hope this information is just a first step in understanding the history of the criminal justice system and other unjust actors in tribal communities, and the importance of legal advocates and criminal justice reform efforts to proactively engage with tribes, putting the voices of impacted Native people front and center in advocacy work.

HISTORICAL AND INTERGENERATIONAL BARRIERS TO JUSTICE

It is impossible to understand how the criminal justice system impacts Native people and communities without an awareness of the historic use of the U.S. legal system to criminalize indigenous peoples' cultures and very existence, and Native people's history of resisting genocide. We strongly encourage further reading on these topics.¹ This Guide will focus more specifically on common legal barriers that Native people living in rural, tribal communities face today after involvement with the criminal justice system. This Guide outlines factors that organizations partnering with tribes and tribal courts should consider to successfully support tribes in combating an unjust "justice" system.

The Impact of Mass Criminalization on Native People and Communities

The U.S. criminal justice system disproportionately impacts Native Americans, yet research focusing on Native American people in the criminal justice system is difficult to come across and policy reform efforts are very limited. The research that does exist shows that Native Americans are more likely to be killed by police than any other group² and are incarcerated at over 2 times the rate of white people.³ Native women are incarcerated at *six times* the rate of white women.⁴ In county and local jails nationwide, the overall rate of incarceration is increasing: between 1999 and 2014, the number of Native Americans incarcerated increased by nearly 90%.⁵

These disparities are especially severe in states with large Native American populations and communities. According to the Bureau of Justice Statistics, jails in the Midwest and the West—where Native American populations are higher—have the most starkly disproportionate incarceration rates⁶ and account for about 80% of Native people who are in jails.⁷

California, which has the highest population of Native people in the U.S.,⁸ has the fifth-highest number of Native people in jails.⁹ The Bureau of Justice reports that in 2011, about 8 in 10 adult Native Americans confined in jail had been previously incarcerated in jail, prison, or another correctional facility, which was higher than the rate for all other racial groups.¹⁰ Once incarcerated, many Native Americans experience injustices such as the unlawful denial of religious freedom and the right to engage in cultural practices.¹¹

Rural Service Void

Around 54% of Native Americans live in rural areas,¹² and as this Guide will explore, Americans living in rural areas face greater barriers to accessing legal services. According to a 2017 study, low-income people living in rural communities received inadequate or no professional legal help for 86% of their civil legal problems.¹³ This is deeply troubling when 3 in 4 low-income rural households have experienced at least one civil legal problem in the past year, and nearly 1 in 4 low-income, rural households have experienced 6 or more civil legal problems in similar time frames.¹⁴ In combination with the difficulty in accessing legal services, tribal community members face widespread discrimination and additional barriers, which are exacerbated by rural geographies. For example, residents living on Yurok Tribe reservations have an average poverty rate of 80%,¹⁵ and despite the lower crime rates reported in rural areas across the country,¹⁶ the pretrial populations of rural jails have increased at twice the rate of the national pretrial jail population.¹⁷ In part, this increase is the result of systemic service gaps in rural communities, including the "remote location of courts, scarce public defender services, and few diversion and pretrial services programs."¹⁸ Given the already high levels of Native incarceration, Native people in rural areas are at an even higher risk of system involvement and typically lack access to needed legal advocacy services.¹⁹

Incomplete Sovereignty

Tribes are considered "domestic dependent nations" under U.S. federal law, which means tribes should have inherent jurisdiction over their territories and communities. In practice, however, the federal government has the power to restrict and even abolish tribal jurisdiction and, in many cases, self-government. The tension between the idea of inherent tribal sovereignty and the ability of the federal government to modify the scope of that sovereignty, results in the creation of legal barriers that predate the formation of the United States.

Today, there are 566 federally recognized tribes in the U.S.,²⁰ yet many more tribes are either state-recognized or not formally recognized at all. In California, the state with the greatest number of people with Native American heritage, there are 109 federally recognized tribes and 78 petitioning for recognition.²¹ This is due to federal and state governments' shifting recognition policies through the years and the federal government's power to claim the right to "recognize" inherently sovereign nations. Unrecognized tribes are excluded from attaining certain rights, government grants, services, and other cultural, psychological, and sovereignty-related benefits. Throughout history, every U.S. administration has supported or threatened tribal sovereignty to a different degree, recognizing more tribes or terminating (de-recognizing) tribes as a result.

A lack of sovereignty becomes a barrier when communities are struggling to develop programs and resources for those who are most vulnerable. A lack of tribal recognition limits funding and derecognizes tribal government law and practice. This can ultimately erase many rights from Native people and prevents the self-determination needed to thrive. This erasure is especially burdensome for Native people living with convictions, who already face the stigmas and the removal of rights associated with conviction histories.

CLIENT SPOTLIGHT

At a legal clinic with the Sonoma Indian Health Center, Root & Rebound helped a client successfully lift a hold on his driver's license due to unpaid child support debt. After he had his driver's license restored, he was able to increase his working hours, now able to drive to work and no longer facing transportation barriers living in a rural area with almost no public transit.

In addition, states do not have authority over tribal governments unless expressly authorized by Congress.²² However, in 1953, Congress enacted Public Law 83-280 to grant certain states criminal jurisdiction over Native Americans on reservations.²³ This further complicates tribal communities' dealings with the criminal justice system, for it creates simultaneous jurisdiction under the purview of federal, state and tribal law. Essentially, a conviction can be classified under 3 systems at once, with federal and state governments usually given much more authority to dictate the lives and rights of tribal members, impacting their livelihoods and autonomy. And as mentioned, traditional U.S. courts do not have sufficient importance attached to cultural dynamics and considerations. All in all, the generational struggle for sovereignty has very real implications for the everyday function of tribal member's lives. The complications that come with varying jurisdictions and at times, the ignorance of the role of culture and traditions, can have very real consequences that must be noted when conducting this work.

Education & Colonialism

There are great disparities between the participation of non-Native communities in dominant institutions of the U.S. educational system and that of Native American communities. In 2016, 87% of Americans over 25 years old graduated from high school or completed their GEDs, and 30.3% had completed a bachelor's degree.²⁴ In the same year, 31.6% percent of Native people had high school diplomas or GEDs, while only 9.6% had bachelor's degrees.²⁵

These disparities must be understood in the context of Native American peoples' experiences with the American educational system. For hundreds of years, the U.S. government has used education as a tool to try to forcibly assimilate Native people into white-dominant, "mainstream" American culture; to erase indigenous cultures and languages; and to erode tribal sovereignty. From the 1870s through the 1970s, the federal government had a policy of removing Native children from their home communities and placing them in "Indian boarding schools," most of which were chronically underfunded, fed children poorly, and made use of corporal punishment, contributing to intergenerational cycles of trauma and violence in Native communities.²⁶ The federal government threatened tribes who resisted this system with violence or the denial of necessary resources, including food supplies. Non-Native "teachers" at these "schools" abused children for speaking their Native languages, a policy that led to the total or partial loss of many indigenous languages and other cultural practices.²⁷ The institution of boarding schools led to generations of trauma and loss in Native communities.

Today, tribal schools run by the federal government on or near reservations are among the lowest-performing schools in the country.²⁸ Native students in other parts of the public school system also face significant barriers to success. This is tied to the fact that 31% of Native students attended high-poverty public schools.²⁹ Structural racism adversely affects Native students across the board. The low rates of education—and the reasons behind them—have wide-ranging implications, which are important for outside organizations to understand and consider. Rates of incarceration are correlated to the lack of educational resources, insufficient school funding, zero tolerance policies, pressure to push out low-performing students to boost test scores, and the presence of police in schools, all of which contribute to the "School to Prison Pipeline."³⁰

To further complicate the issue of education, there are varied attitudes toward government-established education in Native communities. Many tribes focus on education and encourage students to attend college to set themselves up for success; there are also strong movements among youth communities to attain higher education and uplift their communities. That said, there remains antipathy among some regarding American "education" as a general goal, given tribes' history with the U.S. education system, which has historically misrepresented the tribes' histories, and ongoing experiences of racism and discrimination. Altogether, these factors continue to inform and are important to understand the distinctive needs of Native communities.

ONGOING BARRIERS TO RURAL, TRIBAL JUSTICE & LEGAL SERVICES

In setting up the **Tribal Reentry Advocacy Project**, Root & Rebound and the Yurok Tribe have developed strategies to work around some of the ongoing barriers that rural, tribal communities impacted by the criminal justice system face in accessing legal services. The challenges and barriers discussed here are many of our learnings to date, but are not exhaustive, as our partnership is continuously learning, growing and evolving. Every community is unique, so it will be important to learn about the challenges and barriers from community members' perspectives, and not assume the barriers outlined here will exist everywhere. For legal practitioners looking to replicate this Project, it is critical to speak with tribe members, elders and leaders about the most critical "justice gaps" in their community: *What does the criminal justice system and reentry landscape look like for your community? What are the political and other influences that will impact legal advocacy work for systems-impacted tribal members? What are the major barriers and challenges that tribal members with criminal records are facing?*

The barriers covered below range from logistical barriers to systemic and structural legal challenges. We hope these considerations will contribute to a larger conversation to support rural, tribal communities, legal practitioners, advocates and funders to identify and strategize how to mitigate and eliminate ongoing barriers to accessing justice and legal services.

Scarcity of Resources for Rural Tribes

The lack of resources many tribes face relates to rural geography and U.S. settler colonialism. Today, Native Americans have the highest level of poverty of any racial or ethnic group, double the national average in 2014,³¹ and over five times that national average on reservations.³² The lack of economic opportunity on many reservations is a driving factor behind this high level of poverty and can be traced to the federal government's power to draw the boundaries of reservations throughout the 19th and 20th centuries.³³ The poverty that persists today in rural, tribal communities has a number of implications for collaborations between tribes and outside organizations, some of which are outlined below:

- **Transportation**

There is typically limited access to transportation in rural areas. Residents in rural communities often navigate between unreliable public transportation and an inability to pay for their own form of transportation. In rural areas, driving is often necessary to work, live, and get around. For many people with system involvement, the consequence of having a suspended driver's license can be devastating to their livelihood, and many people feel they have no choice but to drive on a suspended license to survive, putting their rights and freedom at risk. The remoteness of many tribal communities can also make it difficult for clients, volunteers, and other participants to attend events, like training, legal clinics, and other mobile services.

- **Access to Technology**

Limited and spotty access to technology, Internet, and cell phone service can make it challenging for clients to get legal support—e.g., requesting, accessing and sending their legal records, communicating with legal professionals, etc. In rural communities, basic record access is a major concern and often a place where practitioners can facilitate services. For event outreach, this can also be a challenge since modern forms of advertising through social media and email are limited.

- **Lack of Basic Resources**

Some rural, tribal communities lack basic necessities, including electricity, running water, healthcare, and food. It is important to consider the implications of the scarcity of such resources for clients' lives. For instance, some communities are in food deserts, and only have access to food at gas stations, via subsistence hunting, or other limited means.³⁴

The scarcity of resources in combination with a lack of economic support compounds the need for services providers in rural, tribal communities. When legal issues arise, Native children are often at the center of this struggle, often finding themselves tangled in the U.S legal system without legal representation for themselves and their families.

U.S. Legal System and Its Impact on Native Families & Children

The U.S. legal system has had an unjust impact on Native families and children, including a long history of government-sponsored boarding schools, which forcibly removed Native children from their families and home communities. Tribal communities continue to fight against the removal of children by Child Protective Services, a government agency that removes Native children from their families and communities and place them with non-Native families at highly disproportionate rates.³⁵ The **Indian Child Welfare Act (ICWA)** is a law that passed in 1978, in response to political pressure after research findings showed that 25–35% of *all Native children* had been removed by state child welfare and adoption agencies, and placed in foster care outside of their family and community.³⁶ The ICWA attempted to alleviate this issue by including provisions which prioritized Native children’s best interests by promoting the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children and placement of such children in homes which will reflect the unique values of Indian culture. Even with ICWA in place, Native children are still disproportionately placed in the foster care system today.³⁷

In leading reentry legal clinics for rural, tribal communities over the past two years, Root & Rebound has supported clients who face systematic marginalization within the foster system, including the following:

- *Dismissal of Child-rearing Practices*

Notwithstanding the passage of ICWA, many family courts and judges still default to thinking a nuclear family setting with biological parents as primary caregivers is the ideal situation for a child. Indigenous cultures that prioritize the role of extended family in raising children do not align with these imposed western values and can make custody cases difficult from the outset. In rural, tribal communities, there is a relatively high rate of having multiple generations of family members living under the same roof. But CPS policies hold that a child cannot be placed in a home where any resident has been convicted of a non-exemptible offense, which can make it difficult for parents or family members to retain custody of their children or live with family members who have prior system involvement.³⁸

- *Dismissal of Cultural Practices*

Courts imposing federal and state policies on tribal citizens do not center or prioritize the role of tribes’ cultural practices in childcare. For example, one Root & Rebound client had been charged with child endangerment for having her young daughter in the car without a car seat. The woman was not using a car seat because her tribe’s custom is to keep children in a particular kind of basket until the age of nine months. Here, and in many other situations, custom was not deemed a legitimate excuse by the court. As in this mother’s case, the court’s lack of understanding of cultural practices led to automatic criminalization, which can lead to system involvement, a criminal record and its associated consequences, including the loss of parental rights.



- *Insensitivity to Prevalence of Domestic Violence*

Domestic violence is prevalent in tribal communities. In the context of custody, there are certain CPS policies which state that children cannot be placed in a home where any resident has been convicted of a “non-exemptible” offense. In practice, this means that a parent who still lives with a partner who has been violent toward them or towards a previous partner might lose custody of their own child, based on the presence in their home of a person convicted of a non-exemptible crime, and not based on their own wrongdoing. There is also no consideration for any mitigating factors (such as time elapsed since conviction and successful completion of recovery programs, including those addressing domestic violence) in determining the appropriateness of the child’s living situation.

Conviction-Related Issues

Members of rural, tribal communities also run into issues with the criminal justice system based on prior convictions. Certain types of convictions are prevalent, based on behavioral and systemic trends in rural areas generally and tribal communities specifically. Knowing how these trends impact a specific community is an important element of preparing for a clinic or other form of tribal-legal partnership.

- *Drug Convictions and Criminalization of Native Cultural Practices*

There is a long history of substance use in Native American communities, which is related to histories of trauma. Awareness of this history and familiarity with trauma-informed approaches to rehabilitation and recovery are crucial for successful collaborations.³⁹ The Bureau of Justice reports that American Indians have the highest number of DUI arrests at a rate of 479 per 100,000 people, compared to 332 per 100,000 people for all races.⁴⁰ In recent years the opioid crisis has severely impacted tribal communities.⁴¹ This crisis was created in part by the infusion of these drugs via the only health care provider readily available, Indian Health Services.

Another less common issue is the cultivation of peyote, which is a part of many Native ceremonial practices and is criminalized in the U.S. Cultivation of peyote appears on the California Child Protective Services’ list of offenses which is against the law in the home and exemptible⁴² only after five years have elapsed. Even if qualified as an exemptible offense, the exemption process is an arduous process which poses additional challenges.

- *Domestic Violence and Sexual Violence*

In the U.S., violence against indigenous women has reached unprecedented levels on tribal lands and in Alaska Native villages.⁴³ More than 4 in 5 American Indian and Alaska Native women have experienced violence and 1 in 2 Native women have experienced sexual violence.⁴⁴ Given the multiple risks present in Native communities, the prevalence of posttraumatic stress disorder (PTSD) is substantially higher among Native persons in the general community. It is likely that higher rates of exposure to traumatic events coupled with the overarching cultural, historical, and intergenerational traumas make this population more vulnerable to PTSD. This is an additional component to consider when servicing tribal communities.

- *Gun Rights*

Because firearm use is common for hunting and for people’s livelihood, questions about gun rights, particularly for those who have been involved with the criminal justice system, are often an area of interest. Many people in rural areas make use of firearms for subsistence and recreational hunting, so firearm use tends to be a fixture in rural, tribal communities. Many tribes also use firearms as part of ceremonial and cultural practices.

The central point to be made, based on the challenges outlined above, is that collaborations between rural, tribal communities and outside organizations present a unique set of challenges not present when working with urban populations. For a collaboration to succeed, the priority must be to promote a community's self-determined goals. As such, it is imperative not to impose a predetermined value system on a community in the course of a collaboration. Typically, the dominant culture in which most Americans participate has systematically erased the histories, cultures, and values of Native peoples, and the challenges facing tribal communities today. So it is particularly important for outside organizations to focus on being receptive and responsive to a community's stated goals and needs; to become educated on the historical and present context of the challenges facing a community; to be aware of the outside organization's culture, value system, and potential blind spots; to identify assumptions that outside organization members might make about tribal communities; and to suspend those assumptions and judgments.

Despite these challenges, the success of our collaboration has motivated Root & Rebound, in partnership with the Yurok Tribe, to externalize the model that we have developed over the course of the two-year collaboration. Strong collaborations between tribes and external organizations can have a powerful impact on legal access in rural, tribal communities. This kind of collaboration is especially important given that funders have tended to ignore the unique needs of rural, tribal communities, a problem exacerbated by the misconception that most Native people live in urban areas. In the next sections, we will provide details on the methodology of our collaboration, including recommendations and strategies that we have employed to address the challenges outlined above. The hope is that future collaborators can build on what we have learned and continue to build this work throughout the U.S.



BEST PRACTICES FOR REENTRY LEGAL ADVOCACY IN TRIBAL COMMUNITIES— A ROADMAP FOR REPLICATION IN YOUR STATE

This section discusses in more depth the collaborative approach to developing the Tribal Reentry Advocacy Project, along with best practices and tips for organizing rural tribal clinics and trainings for justice-involved people. For collaborations, we encourage legal services practitioners to take creative and holistic approaches to sharing legal resources, knowledge, and power.

BEST PRACTICES IN PARTNERSHIP & COLLABORATION

This Project began when Root & Rebound's Executive Director, Katherine Katcher, and the Yurok Tribal Court Chief Justice, Abby Abinanti, met at a panel discussion about supporting women of color in reentry. There, the two discussed their work, visions and priorities as social justice advocates. Judge Abby later joined Root & Rebound's nonprofit Board of Directors, and together the two organizations secured a multi-year grant to support the development of the **Tribal Reentry Advocacy Project**. In Judge Abby's words, "It was Katherine Katcher's vision of justice which inspired a collaboration in which [I] would provide the need and Root & Rebound would provide services." Katherine describes "how the partnership was built on trust and mutual respect, with the needs of the Yurok community front and center, dictating the shape and form of our legal advocacy and support."

Thus, the Project was built upon personal relationships and mutual goals to expand access to legal advocacy for people impacted by the justice system and reduce the "justice gap" in tribal communities. By coming together as leaders to share their vision and pursue resources that would make it possible, the collaboration has been a truly mutual effort, resulting in dozens of mobile legal clinics and trainings on reentry issues in rural, tribal communities across Northern California. Katherine mentions that "a door was opened for us to make an impact in a community that has long been neglected/overlooked, and we understood that, as outsiders to that community, it was on US to learn how to approach, support, serve, and advocate for that community, new to us [...] but all was done in the spirit of humility, and knowing that the skills we brought to the table as attorneys were powerful, but needed to be shared, adjusted, and molded to fit the needs of this community."

Additionally, Root & Rebound and the Yurok Tribal Court shared a vision of a different justice system, one that values strengthening people and communities holistically. Specifically, Root & Rebound has a three-part model—Education, Advocacy, and Reform—focused on restoring and protecting the rights of systems-impacted people. This aligns well with Judge Abby's mission to strengthen a holistic tribal justice system, based on the values of healing and redemption through assumption of responsibility.

ROOT & REBOUND'S MODEL

- **EDUCATION** Self-help resources due to lack of lawyers for poor communities, trainings to share knowledge skills between lawyers & impacted people
- **ADVOCACY** Community-based and mobile legal clinics, direct services and court representation, Reentry Legal Hotline—the only in the U.S.
- **REFORM** Impact litigation & legislation to restore the rights of people impacted by the justice system, work alongside systems-impacted people to change laws & policies

In addition to having aligned leadership and missions, it was critical to partner with local tribal service providers, tribal government agencies, and other rural community partners in bringing the **Tribal Reentry Advocacy Project** to life. Some of the key ways our teams did this was by:

- *Working with Rural Courts*

Rural courts have varied levels of receptivity to working with advocacy organizations. Hours for courts in rural communities are varied and at times unpredictable. As in most other locations, court documents and processes can vary which can add additional challenges, especially when communication is difficult.

- *Relationships to Tribal Courts*

Tribal justice systems are regarded differently by state and federal government and by tribe members themselves, on a tribe by tribe basis. It is important for partnering organizations to understand the extent of tribes' justice systems, and tribes' relationships with surrounding courts, to understand the specific needs of community members.

- *Varied Reentry Services & Policies*

The policies of rural courts and agencies are more varied than in other areas. Often, these institutions offer few or no reentry legal services. So attorneys should be vigilant in ensuring that clients' rights and remedies are respected and implemented by local authorities. For example, it might be necessary to recognize that fees are being assessed to someone who qualified for a fee waiver, or that a rural court is refusing to accept state-approved forms and contact the court on a client's behalf.

- *Connecting with Local Tribal Services & Programs*

Some rural, tribal communities have existing programs for tribal members with incomplete or underdeveloped procedures in place to address the needs of those with criminal records. It is important to understand what policies and procedures are in place in order to advise clients accurately.



PRACTICAL TIPS FOR DEVELOPING LEGAL CLINICS AND TRAININGS TO SUPPORT TRIBAL MEMBERS WITH PAST JUSTICE SYSTEM INVOLVEMENT

The Tribal Reentry Advocacy Project focuses on two main types of events: legal clinics and legal trainings. This section provides an overview of key goals, outcomes, and steps for both components of the Project.

LEGAL CLINICS

Legal clinics are organized with the goal of removing legal barriers for community members while also informing them of their individual rights. Clinics address local needs and make services easily accessible and free of charge. In addition, these clinics are intended to be holistic. The following section includes practical considerations in establishing clinics.

Finding a Clinic Location

Clinic locations can have a significant impact on client turnout. If possible, clinics should be located in central areas that are accessible through public transportation. At times, social service agencies are able to provide bus passes for free, which can facilitate client access to clinics. In general, travel can be difficult due to unreliable bus lines and limited funds for gas. Having clinics in locations near other health, public benefits, and social services facilities can also be of benefit for individuals who have limited means of transportation and use clinics as a way to complete multiple errands.

To avoid the resurgence of trauma, clinics should be held in locations which will attempt to avoid triggers associated with system involvement. For example, early in the Project, a clinic was once held inside of a courtroom. A client at this clinic mentioned she was uncomfortable staying long because she was reminded of instances in her life where a court room brought negative experiences. Because tribal communities are also highly policed, individuals are sometimes not willing to attend clinics located in areas with high police presence. Here, it is also of benefit to have developed partnerships with the community, so they can identify ideal clinic locations. Availability of internet access and telephone services is also important, as this can affect immediate access to relief (some issues can be resolved on site with a quick phone call, i.e.— a client thought the reason her license was suspended for 6 years was because she owed thousands of dollars in fees but in fact, after a simple phone call to the Department of Motor Vehicles, fees were only \$55).

Targeted Outreach

Outreach is a critical part of organizing a rural tribal clinic. Acquiring a significant turnout can be difficult to accomplish when there is a history of harmful legal policies and lawmaking which has led to a general distrust of legal service providers. Outreach should be done along with trusted partners who may be able to provide familiar and trusted spaces to hold clinics and any additional resources. Because community partners are such an important aspect of this Project, they should always be given credit for their contributions. An example of this is through flyers, which should include partner information and logos.

For a better turnout, there should also be clear communication on the availability of holistic services (this of course is reliant on the type of clinic that will be organized). For example, instead of having a flyer advertise “Record Cleaning” which limits expectancy to one service, advertising “Reentry Clinic” can promote a wider range of services. It can also help to include a list of services with examples of the types of aid that will be provided. If multiple clinics will be taking place in different but nearby locations, one flyer with all the clinic locations and contact information can facilitate the transfer of more information with the option to choose which clinic they would like to attend. Additional outreach can also be done through local newspaper listings, tribal newsletters, local radio, tribal courts, transitional housing, large local employers and other social service agencies.

Scheduling Appointments

Establishing clinics with a holistic approach means that legal topics can vary widely. By allowing clients to call in and schedule appointments before the clinic, many of these issues can be researched and/or prepared for in advance of the clinic date. For this reason, it is important to begin scheduling appointments in advance, as early as 5-7 weeks before the clinic, so that research can be done effectively. When appointments are scheduled, clients can also be prepared and asked to bring materials and other supporting documents (i.e. support letters for declarations, court ordered course completion, RAP sheets etc.) as well as what they will do at the clinic (i.e. sign documents, fill out declarations). Although scheduling appointments can be important, there should also be a consideration as to whether walk-ins will be allowed. Because these can sometimes fill an immense need in the community, Root & Rebound allows for walk-ins until the very end of the clinic. Many times, clinics are organized as one-time events and client relationships end the day of the clinic. Root & Rebound has a model in place with the goal of providing follow up as needed and within 4 weeks of meeting with the client. Because the issue may be resolved at the clinic, there is no requirement for this. When organizing a clinic, appointments should be scheduled with an eye on organizational capacity but with consideration that many times there are no shows.

Holistic Collaborative Services

For a more holistic clinic, a good strategy is to contact local legal aid organizations and fill in gaps with other services. For example, one organization who specializes in record cleaning can offer expungement services followed by a more holistic intake (including family, employment, driver's license issues etc.) completed by you and your organization. Having an intake which will ask an array of questions can be necessary in order to unearth this information from clients. If budgets allow, transporting volunteers in cars or busses can be an easy way to get volunteer attorneys and law students to participate in clinics. Partners often provide their own services, so it is also important to communicate with them about what they may be able to offer before and after the clinic.

Court Logistics and Specifics

As in any clinic, it is important to know the specific rules of local courts. At times, there may also be a number of courts with multiple jurisdictions to consider, which makes having a good relationship with local courts important. By communicating clearly, sharing documents promptly, providing information relevant to individual cases, and collaborating on record-cleaning procedures, we were able to establish a positive relationship with rural courts in the areas in which we operated. It is particularly important for outside organizations traveling to an area to be consistent and efficient in communicating with courts, to demonstrate the ability to save time for all involved and take as much of the logistical burden as possible off of the courts themselves. It is also important to acknowledge and understand any pre-existing relationships with tribal governments, community members and state courts.

Preparing and Maintaining Documents

Before arriving at the clinic, each client who has scheduled an appointment should have a folder with documents prepared. Court documents specific to clinic locations should be printed beforehand, so that they may be signed and completed on site. Having a mobile printer (with double-sided printing and scanning) can also help with maintaining documents for record keeping and future reference. One staff member should be assigned to record keeping and every other staff member should have a checklist for forms to complete with clients (i.e. waivers, limited scope agreements, follow-up steps etc.). For follow-up and future clinics, having relevant documents on file can facilitate future assistance.

Clinic Connectivity

Internet and phone service are very useful if available. In setting up for the clinic, make sure to find the nearest source of internet and phone service before beginning to see clients. It is also important to know specific court hours, which can be sporadic or shortened in rural areas. Knowing court hours in advance can inform which client appointments to prioritize, since this contact may be critical for completing paperwork.

Wait Times

While waiting for an appointment, a staff member can explain other resources available to the client before talking to an attorney. For example, Root & Rebound creates toolkits for individuals who are system-impacted that focus on various reentry issues. These materials can be disseminated before speaking with an attorney who may or may not be able to resolve their legal issue at the clinic. Ideally, community responsive materials, such as Root & Rebound's Reentry Guide chapter on tribal law, should also be available for distribution. The tribal chapter is printed before clinics to share and ensure responsiveness to unique needs in the community. This allows for individuals to leave the clinic with a resource that they can share with others, regardless of any additional services they may receive. Likewise, making sure that there is enough space to allow for confidential communications can sometimes be difficult when location options are especially limited. When speaking with partners, ask about the location and figure out a way to have enough space to ensure confidential communications. This can be particularly important in small communities where information travels fast and clients are concerned that their personal matters will be shared. If possible, also have snacks, beverages and childcare services for clients.

Post Clinic Follow-Up Support and Communication

As discussed in the first section about resources scarcity and technology barriers, communication can sometimes be difficult in rural communities. Phone numbers are often changed or disconnected, internet service may be difficult to access, and addresses are often changed and sometimes none existent. It is important to ask clients the best way to communicate with them before communication lines become blurred. Whether there are trusted community members, family members, friends or other trusted individual informational sources, having additional contacts can be very important in maintaining communication. Follow-up should be completed within 4-6 weeks of the initial clinic. Although some clients will have more advanced issues than others, it is important to communicate and update them about their case. At Root & Rebound, cases can always be reopened and often, more issues can arise. Follow-up should involve an openness and willingness to continue support if needed.

Mobile, holistic legal clinics are at the center of this Project, helping people with prior justice system involvement who live in rural, tribal communities address the immediate needs, legal issues and barriers they are facing because of their record.

CLIENT SPOTLIGHT

At a legal clinic with the Round Valley Tribe in Covelo, California, Root & Rebound drafted legal pleadings for a tribal member asking the local court to end her probation early, which would allow her to advance her employment options. The court granted the request to end her probation early based on her strong showing of rehabilitation and accomplishments in the community, and Root & Rebound is continuing to support her in dismissing the underlying convictions so she can move up in her career!

TRAININGS

Trainings have been another important component to this collaboration. The goal of training sessions is to support and reinforce self-reliance and self-determination in rural, tribal communities. Trainings are an important way of democratizing knowledge while also transferring power and investment to under-resourced communities. The following are practical tips and considerations for setting up trainings in rural, tribal communities:

Advanced Planning and Logistics

Know the audience that you will be training and what their needs are. It is essential to reach out to partners beforehand, to determine the highest needs in the community. If there are specific legal barriers which are common in the area, significant time should be devoted during trainings for these. On occasion, the knowledge base for particular legal issues can be developed further. In these cases, more advanced courses or a series of trainings may be necessary. If certain equipment is needed for trainings (i.e. projector, screen, video, audio etc.), make sure to call ahead to determine whether this is available. Internet service may also be sporadic, so it is always important to have a presentation that is not reliant on internet access.

Targeted Outreach

Contact local service providers including: social workers, case workers, local reentry organizations, legal service providers, tribal courts, employers, law enforcement supervision and any other relevant entities to offer trainings on relevant legal subjects. Many times, rights are not asserted simply because they are not known as legal rights. Reaching out to an array of organizations can help circulate critical information about rights and resources throughout the community. Trainings can also be dedicated to the community. Trainings can be open and involve topics which have become a common question in the community. These trainings can even take place during clinics with the intention to communicate information about common or recurring issues to a larger number of people while simultaneously allocating time for one on one consultations if questions remain.

Prepare Materials

Include learning objectives and agenda at the beginning of the presentation and allow some time for participant modifications. Sometimes moving learning objectives with the most interest to the beginning of a long training can reinforce retention of the subject. Prepare visuals, such as PowerPoint, to support learning. However, keep in mind that internet access may be limited, so downloading to a computer beforehand is a good idea. Print hard copies of important resources to share, as well as a list of web links for those who do have internet access. Root & Rebound prepares a number of toolkits which cater to different audiences, which are always shared and sometimes used during trainings. Having toolkits, handbooks, and brochures to share can be a great visual for learning as well as a resource to keep and share.

“FAIR CHANCE HIRING” EDUCATION

Root & Rebound provides trainings on “fair chance hiring” to unlock opportunities for people with records and ensure employers are following the law. As part of our advocacy for tribal members, Root & Rebound has trained tribal employers including the Yurok Tribe Gaming Commission on the quickly evolving federal, state and local fair chance hiring and “Ban the Box” laws and the benefits of hiring system-impacted people. Educating local employers on fair chance hiring laws and best practices ensures compliance with applicable laws, while also providing information about the many rewards of hiring people with records.

Follow-Up Communications

Keep in touch with individuals after training sessions and figure out ways to support them in the future. Initial trainings can be a step towards a series of trainings. Offer distinct topics and continue to educate and support with ongoing changes in the law.

Collecting Data & Tracking Impact

If the goal is to create long-standing change, which would make this type of work obsolete, it is important to survey and track the assets and needs of rural, tribal communities. This allows for a compilation of information that can be used internally, to create more specialized services and clinics but also as systemic research. This information can help inform policy recommendations for local, statewide and national work. Root & Rebound maintains a database for common issues as well as surveys which can be used to calculate client satisfaction. An additional part of the work is to continue to ensure that the work is valuable and done properly. Surveys should be included either at clinics or once follow up is completed to ensure this information is tracked.

While clinics focus on providing one-on-one support to people, the reentry legal trainings complement and expand upon individual client support by sharing learnings and know-your-rights information at a larger scale and offering continued professional development for local service providers seeking to better serve people with records and abide by the law. By providing consistent trainings on relevant issues, this knowledge can continuously grow and develop.

CLIENT SPOTLIGHT

Bill is a Root & Rebound client who had a felony drug charge from 15 years ago, one he never knew he could clear from his record. Living in rural Klamath, CA he was cut off from legal aid that he might have found in a more urban area. **Bill's record narrowed possibilities in his life, and he felt there was so much he would never be able to do because of his past mistakes.** When R&R traveled to Klamath, Bill met with us and found out he had a good shot at getting his record cleaned. After R&R started the process on his behalf, he was soon asked to appear in court. Bill said that when he went before the judge, he felt proud presenting his best self, talking to the judge on his own terms. Bill's record cleaning was approved, and for the first time he felt that he could build a future he wanted for himself and his children.

“I didn't dream as big as I dream now because a lot of options were not available to me. That's a big thing. Now, I could petition for school, get a degree. Might be a lawyer, might be a nurse—now I don't know what I want to do 'when I grow up!' The world is my oyster.”

SUMMARY OF RECOMMENDATIONS

Over the past two years of providing reentry advocacy clinics and trainings in partnership with rural, tribal communities, Root & Rebound ran into some challenges. This section provides a summary of developed work-arounds and relevant insights that ameliorate learning curves for other organizations hoping to build on our work. In this section, we recount important considerations in light of the prominent barriers to justice faced by rural, tribal communities and suggest ways to prepare for these challenges. These recommendations are drawn from two years of work with the Yurok and other California tribes. Every step of this process is documented and surveyed. Outcomes are collected to keep this work sustainable and constantly improving.

Though this section lays out recommendations, it is impossible to give universal instructions for building partnerships and programs with tribes. Every tribe's situation is distinct, and it is important to recognize and challenge colonial perspectives which reduce diverse Native people to a single category. In partnering with tribes, it is essential to work on a case-by-case basis, responding to the specific needs, culture, and existing legal infrastructures of a given community. Outside organizations should start by learning from existing advocacy programs and legal systems within tribes, to uplift and support a community's ongoing work. There must be careful thought given to the needs of Native communities in any social justice work, because social justice work can never be divorced from the experiences of Native American people. Native Americans have a profound history of injustice which, in one form or another, continues to the present. For this reason, social justice work should center Native people as part of any advocacy effort that works to resolve existing societal inequalities. The following text highlights suggestions based off of Root & Rebound's experiences for those who hope to engage in partnerships between tribes and outside organizations.



PRIORITIZE RELATIONSHIP-BUILDING

Having Judge Abby on the Root & Rebound Board and as a lead on the Project was crucial to our ability to respond to the needs of the Yurok Tribal citizens. To support the foundation of this Project, we work with collaborators such as the Yurok, Hoopa, Tolowa Dee-Ni' Nation, Yuki Trails, Cahto, Round Valley, Hopland, Pomo and Karuk Tribes, Sonoma Indian Health Center, Northern California Intertribal Council, the Consolidated Tribal Health Project, and Tribal TANF offices, to build professional and informal relationships. Strong relationships are crucial to creating responsive partnerships and to promote knowledge sharing in the community. Partnerships work best when there is a pre-existing relationship, with a history of collaboration and where trust has already been built. Successful partnerships will seek to encourage self-determination for individuals and communities together.

BE FLEXIBLE AND BE RESPONSIVE

Many challenges will arise when establishing a new project with an entirely new group of people. Often, individual partners who facilitate collaborations will also shape the nature of that collaboration. The key is to be flexible and responsive to the needs and criticisms of the community with which you are partnering. Being flexible with client needs will also be required, as issues may vary from place to place. Likewise, client communication may be sporadic in rural communities which means that working with clients can at times require corresponding via mail and other delayed means. Practitioners may be spending time after a clinic to do logistical work for a client and generally taking on administrative burdens. It is important to be patient, flexible and responsive to partners and clients alike.

CLEAR AND CONSISTENT COMMUNICATION IS KEY

Clear, consistent, and open communication is key if an organization hopes to be credible, trustworthy and create longstanding relationships with rural, tribal communities. As mentioned, communication can be difficult in rural areas for many reasons. It is important to communicate often with partners and clients, especially during follow up. When appropriate and with client permission, consider taking the names and numbers of friends and family who can help connect you to the client in the future. If there is a plan for future clinics, it is also a good idea to communicate the date with clinic attendees. If an exact date has not been identified, an estimated date may still help inform next steps for clients.

CONFIDENTIALITY REQUIRES GREATER MEASURES IN RURAL AND TRIBAL COMMUNITIES

Confidential communication can be an issue when clinics are organized in small areas in the community, so attempt to have distinct spaces for client meetings to ensure confidentiality. Ask permission before using social service providers, family, friends, or other community partners to follow-up with clients post-clinic.

OFFER PUBLIC EDUCATION AND TRAININGS ALONG WITH CLINICS—AND “TRAIN THE TRAINER”

Utilize a 'Train the Trainer' model to strengthen the knowledge base within the community, with the goal to transfer information that empowers the whole community. Transfer valuable skills to those who lead justice and service work in their communities. Root & Rebound found success with training partner organizations in record cleaning. For example, the Yurok Tribal Court is in the process of becoming a certified Live Scan provider, so that community access to services is not dependent upon an outside agency like R&R, and so that this service is better integrated into the tribe's justice system.

All staff members of the tribe can and should be encouraged to learn criminal justice barriers, fair chance hiring, and legal rights. This includes court staff, educators, employers, school administrators, local law enforcement (tribal and non-tribal), elders, and counselors. This can be done through workshops which take place during clinics or are organized separately. Identify tribal staff who are the most passionate about these issues and connect to people on the ground to organize these trainings.

CONSIDER MOBILE CLINICS WITH HOLISTIC SERVICES

Attorneys should be trained as “generalists” with a broad knowledge base on reentry legal issues and an understanding of specific issues and barriers unique to tribal and rural communities. Attorneys trained to conduct holistic assessments will screen for issues affecting all areas of life and prioritize based on available remedies and client goals. In holistic practice, cultural autonomy should be encouraged by allowing individuals to tell their own stories as told by themselves. Issues should be addressed in ways which are most relevant and sensitive to their given situation.

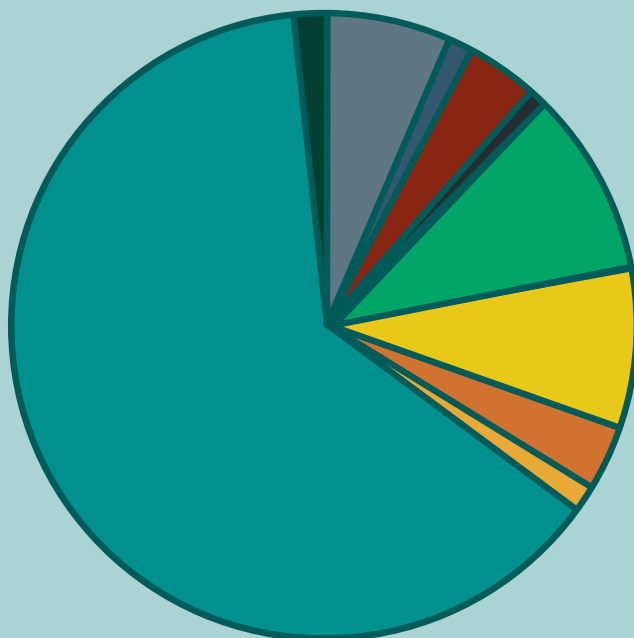
TAKE THE TIME TO ACQUIRE KNOWLEDGE AND AWARENESS OF TRIBES’ UNIQUE HISTORIES & GOALS

In recognition of the pattern of trauma described in an earlier section, it is also important to take a trauma-informed approach to offering legal services. This includes educating oneself on history and training on sensitivity and responsiveness to the ongoing forms of violence that tribal communities face.

Tribes are not monolithic. There are currently 566 federally recognized tribes, and each has a distinct relationship with the federal government; with the other courts in their state and region; with surrounding tribes, communities, and institutions; and between the tribal government and tribal members. It is always important to be aware of intertribal dynamics and not assume that nearby tribes’ leaders will be willing or able to collaborate on a project. If collaboration is warranted, knowing the history, context and need of the community is a critical step.

Tribal citizens are generally citizens of two nations, plus at least one state. They are often marginalized so that their rights are unknown to them or at least unrealized as they do not have the assistance to actually realize them, i.e., through clean slate petitions. In addition to current issues, having historical context can really inform the type of help that is needed in tribal communities. Keep informed on developing work and research. Learning from partners and community members should be ongoing.

PRACTICE AREAS



NUMBER OF CLIENTS

- ID & Voting: 20
- Parole/Probation: 2
- Housing: 8
- Public Benefits: 1
- Employment: 33
- Court Ordered Debt: 24
- Family & Children: 9
- Education: 3
- Record Cleaning: 198
- Occupational Licensing: 4

IMPLEMENT STRATEGIES THAT IMPROVE RURAL ACCESS TO REENTRY LEGAL SERVICES

Root & Rebound travels more and more to remote locations where resources are scarce. Access to transportation, internet and phone should inform the choice of location for events, to ensure maximum accessibility and relief. For an outside organization traveling to provide services in a rural area, it is important to plan for the time and travel costs associated with doing so. Budget for the time and cost of driving to rural areas to provide services. Arrange for transportation for all staff who will provide services. Advertisements can be done by reaching out to local social service providers, courts, and any relevant location which may be able to share the events information. By bringing Live Scan electronic fingerprinting technology, paying the Live Scan service fee, and working to waive DOJ fees for clients prior to clinics, it becomes possible to eliminate the main logistical and monetary barriers people face in accessing and cleaning their criminal records. This makes it possible and easy for clients to clean their records, alleviating other legal hurdles as a result. When working with rural courts, plan in advance and establish a positive working relationship with superior courts. This can be mutually beneficial to advocacy organizations and to the courts themselves. To establish such a relationship, it is important to be consistent and efficient in communicating with courts, to provide full and accurate information, and even to develop positive interpersonal relationships. Rural work can be challenging but is not impossible to do. The need will always exist and planning properly can mitigate many issues that are associated with establishing these types of clinics.

POLICY RECOMMENDATIONS

While legal clinics and trainings are at the center of this Guide, there should be significant thought put into ways other work can benefit communities served. Root & Rebound spends significant time taking the information learned from clinics, trainings, partners and the community to inform policy reform. This involves pursuing systems reform in rural California and working to make the state justice system more culturally responsive. This should be a goal for all practitioners as a means to continuously work towards larger systemic change, resulting in a statewide and national movement. Statewide and national initiatives are not the only ways to do this; there are also local ordinance and institutional policies which may better address the issues presented. For example, Root & Rebound collects information from individuals through surveys. During this process, acquiring occupational licensing became an apparent issue for those with criminal records. Root & Rebound is active in occupational licensing reform and participates in various policy reform collectives which enable them to share and develop policy initiatives. An added benefit to policy reform is the effect of changing discourse regarding people with convictions and the promotion of change in the narrative of incarceration and Native people.

CLIENT SPOTLIGHT

“In one instance when a Yurok Tribe member died in prison, Root & Rebound was able to assist us in having his body brought home for burial, which was tremendously important for his family and culturally significant.”

—Judge Abby, Chief Justice of the Yurok Tribal Court

CONCLUSION

This Guide is meant to inform and support practitioners in establishing legal clinics for rural, tribal communities. There is a high need for resources and legal support and this Guide is written as a path to facilitate and address this need. Through the initial collaboration between Root & Rebound and the Yurok Tribal Court, many peoples' lives have been affected by the establishment of this Project. In the words of Judge Abby, "The clinics have been able to assist [and] prepare applications for clean slate petitions for the formerly incarcerated enabling them to apply for benefits, seek educational opportunities and employment. They continue to act as a resource to our team as we grapple with the issues facing the formerly incarcerated, from staying child support obligations to enrolling children in their tribes to secure the child's rights." It is the combination of holistic practice and collaboration with tribal partners which make this Project a success. Although this Project exemplifies the needs in rural, tribal communities, it also shows the resilience of a community that has been consistently disenfranchised. The hope is that this work will eventually not be needed and that this Guide is improved by the experiences of other practitioners and partners to collaborate and continue this work.

"I'm no longer feeling stuck."

—a client after Root & Rebound helped clear her record



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MEMORANDUM

Date

August 2, 2019

To

Tribal Court-State Court Forum

From

Andi Liebenbaum
Attorney, Governmental Affairs

Subject

Legislation of interest:

- SB 685 (Reyes)
- SB 686 (Waldron)

Action Requested

Provide feedback to Governmental Affairs on procedural and implementation issues; recommend positions where appropriate

Deadline

August 8, 2019

Contact

Andi Liebenbaum, Governmental Affairs
916-323-3121
andi.liebenbaum@jud.ca.gov

Governmental Affairs staff would benefit from input from members of the Tribal Court-State Court Forum (Forum) on the following bills. Input should include procedural implications, policy considerations if warranted and within purview, and, where appropriate, budgetary/fiscal issues. The Forum may wish to recommend that the Judicial Council/PCLC take a position on a bill or may direct staff to gather additional information.

[AB 685](#) (Reyes) as introduced

This bill is now a two-year bill. Its next hearing will be in spring 2020.

This bill would require the State Bar of California to administer grants to qualified legal services projects and qualified support centers for the purpose of providing legal services to Indian tribes in child welfare matters under the federal Indian Child Welfare Act of 1978. The bill would prohibit the grants from being awarded until an appropriation of not less than \$1,000,000 to the State Bar of California in the annual Budget Act is expressly identified for those purposes. This bill would require the adoption of training requirements that

include instruction on the federal Indian Child Welfare Act of 1978 and cultural competency and sensitivity relating to, and best practices for, providing adequate care to Indian children in out-of-home care. This bill would require the court of appeal to appoint separate counsel for a child's Indian tribe, at the request of the tribe, in any appellate proceeding involving an Indian child.

NOTE: The author's office, in conjunction with bill sponsor the California Tribal Families Coalition, began exploring the possibility of naming the Judicial Council, rather than the State Bar of California, as the administrator of the capacity building grants that would be available pursuant to the bill. Staff from the JCC's Center for Families and Children in the Courts were part of those discussions, and identified the opportunities, limitations, and possible next steps for ongoing discussions. Also, in a presentation of the bill to the Appellate Advisory Committee, Advisory Committee members shared concerns about the provision in the bill that would require appointment of separate counsel for a tribe at the request of a tribe in ICWA cases on appeal. Specific issues raised included the following: (1) Why is separate counsel needed for cases in which the tribe is not a party? (2) Why should separate counsel be appointed when the issues on appeal are procedural such as notice or service of process (where counsel's participation would have little to no impact or value at great expense) as opposed to substantive issues of sovereignty and proper care of a presumed Indian child? (3) Why should counsel be appointed for tribes that do not have financial need for appointed counsel (appellate appointed counsel is almost exclusively based on a party's inability to afford independent counsel)? (4) Taking into consideration the limited appellate court resources for such appointments, why should the courts of appeal bear this financial burden?

[AB 686](#) (Waldron) as amended July 9, 2019

This bill is in Senate Appropriations and will be reviewed when the Legislature returns from summer recess.

This bill would require the Judicial Council to establish a rule of court that would authorize the use of telephonic or other remote access by an Indian child's tribe in proceedings where ICWA applies. The bill would prohibit the charging of a fee for the telephonic or remote access. This bill would require, when the tribe does not exercise its right to approve a home for a specific child, the county and foster family agency to apply prevailing social and cultural standards of the Indian community when approving a resource family for that child. The bill would require the State Department of Social Services to issue all-county letters or similar instruction to provide guidance regarding consistent implementation of this provision. The bill would also clarify that tribal home approvals that comply with specific requirements are not subject to resource family approval requirements. By requiring counties to provide a higher level of service when approving resource families, this bill would impose a state-mandated local program. 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 no reimbursement is required by this act for a specified reason.

NOTE: The Judicial Council of California officially supports AB 686.

The Legislature is six weeks away from having to send all bills to the Governor. During this time, dozens of bills are likely to be made two-year bills, and many others will be substantially amended. During the last two weeks in August, only the Appropriations Committees of the Assembly and Senate will meet, and September 13 is the last day that the Legislature can pass bills and submit them to the Governor for his signature.

To find and review lists of the bills being monitored, please follow this link: [Court-Related Legislation - OGA](#), and choose a topic in the “Active Legislation” drop-down menu. Reminder that the categories have been slightly changed from previous years.

[Andi Liebenbaum](#) for additional information. ###

Judicial Council–Sponsored Legislation Calendar

Month	Judicial Council
January – February	<ul style="list-style-type: none">• Advisory committees, in consultation with Governmental Affairs staff, develop proposals for council–sponsored legislation.
March – May	<ul style="list-style-type: none">• Advisory committee, in consultation with Governmental Affairs staff, circulates draft proposals for council–sponsored legislation to interested and affected parties.
June	<ul style="list-style-type: none">• Deadline for public comment on proposed council–sponsored legislation.
June – August	<ul style="list-style-type: none">• Advisory committee consults with Governmental Affairs staff regarding responses to comments and further development of proposals for council–sponsored legislation.
August	<ul style="list-style-type: none">• Deadline for advisory committee and Governmental Affairs staff to jointly submit finalized draft proposals for council–sponsored legislation to the Policy Coordination and Liaison Committee (PCLC).
September	<ul style="list-style-type: none">• PCLC makes recommendations for council action on council–sponsored legislative proposals for upcoming legislative year.
November	<ul style="list-style-type: none">• Judicial Council acts on PCLC recommendations for council–sponsored legislation for upcoming legislative year.