



# BUILDING A PEACEMAKING PROGRAM

## 01. SHOULD THE TRIBE DEVELOP A TRADITIONAL JUSTICE PROGRAM?

Developing and implementing a traditional justice program is a long and difficult process. A tribe should consider its interest in and reasons for undertaking such a project. Prior to beginning, they should ask themselves if traditional justice is right for the tribe and if the community is interested in traditional justice.

## 02. CAN THE TRIBE IMPLEMENT A TRADITIONAL JUSTICE PROGRAM?

Does the tribe's constitution, code, or other laws specifically permit or prohibit a traditional justice program? There may be nothing in the tribe's sources of authority that specifically mentions a traditional justice program. In that case, these sources of authority may mention approaching justice according to custom or tradition. If there is nothing in the tribe's sources of authority that specifically permits, prohibits, or otherwise mentions justice through customary practices, the tribe will need to follow its proper procedures for program inception. This may mean tribal code or other laws need to be drafted or altered, or that tribal legislative procedures need to be followed.

## 03. WHO WILL BE THE CIRCLE KEEPERS?

Circle keepers are the informal leaders of the traditional justice process. Circle keepers help facilitate open dialogue and participation while helping ensure the process adheres to stated procedures, safeguards, and customs. A tribe should consider who is eligible to become a Circle Keeper. Must Circle Keepers be members of the tribe? Can the Circle Keepers be members of other tribes or even non-tribal members? What qualities should Circle Keepers have (age requirements, criminal history, ties to the community, occupation, etc.)?

## 04. WHAT ARE THE QUALIFICATIONS OF CIRCLE KEEPERS?

The tribe will need to decide what qualifications its Circle Keepers should have. The tribe should consider what type of training to give Circle Keepers, how many hours of training they should have, and how often additional or maintenance training should occur. Tribes should also consider what kind and how much specific tribal cultural training is necessary for Circle Keepers. Finally, a tribe should consider whether one needs to be "certified" to be a Circle Keeper and what the process for "certification" entails.

## 05. HOW WILL DISPUTES COME TO THE TRADITIONAL JUSTICE PROGRAM?

A tribe should consider how disputes will get to the traditional justice program. Disputes can come to the traditional justice program through a referral from the court or via direct request of the disputant(s). The tribe may prefer a hybrid system in which both court referred and direct request disputes are heard in the traditional justice program.

A tribe should also consider the venue in which traditional justice circles will be heard. Will the circle be held in a court or elsewhere? What are the potential effects of the setting on the circle and the participants? Will a court setting or non-court setting be more beneficial to the goals of traditional justice?

## 06. WHAT KINDS OF DISPUTES/ CASES WILL BE HEARD?

A tribe may decide to hear disputes on one or more subject matters. Tribes developing traditional justice programs from scratch often choose family or juvenile cases at first. Cases involving elders, tribal businesses and tribal employees, healing to wellness, and general criminal cases are also frequently chosen.

Domestic violence cases are a source of significant debate in traditional justice, so a tribe should use heightened scrutiny when deciding whether or not a traditional justice program is proper for domestic violence cases.

## 07. DESIGN OF THE CIRCLE PROCESS

A tribe should give significant thought to the design of the process of a traditional justice circle. A tribe should consider who will be permitted in a circle. For example, some tribes forbid lawyers from participating in the circle. On the other hand, some participants may be required, such as social workers in child welfare circles. Traditional justice offers the opportunity to expand the universe of community involvement in a dispute. A tribe should consider involving extended family, respected tribal elders, support agents, and others to take advantage of the process's potential.

## 08. VALUES, CUSTOM, AND TRADITION

The most critical pieces of any traditional justice program are the values, customs, and traditions of the tribe itself. Designing a traditional justice program is an opportunity to create a process that serves the unique needs of the tribe in a manner that is uniquely rooted in the tribe's history and ancestry. There should be significant time, thought, and research put into the historical values, customs, and traditions of the tribe while also acknowledging the ways in which those values, customs, and traditions may have evolved with the tribe over time. Success of participants in the process and of the process overall is diminished without the unique values and customs of the tribe anchoring the process.

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