

ELDER PANELS

AN ALTERNATIVE TO INCARCERATION FOR TRIBAL MEMBERS

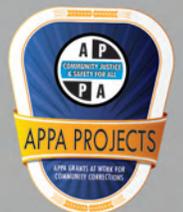
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INTRODUCTION

Many tribal communities are seeking culturally-based solutions to crime and delinquent behavior occurring in their communities. While many tribal nations are facing an increase in violent crime, a

high percentage of criminal/delinquent behavior remains tied to drug/alcohol abuse issues and is often committed by individuals who would be classified as low to medium risk. In keeping with the Risk Principle for Effective Intervention, exposing medium to low risk individuals to highly structured and intensive services can actually increase their likelihood to re-offend. Therefore, for these individuals, incarceration is not the desired response. In fact, the Tribal Justice Plan reflects the desires expressed by many tribal nations to keep their people out of correctional facilities—if they can safely be supervised in the community. In order to have the greatest impact on an individuals’ likelihood to re-offend as well as to have lifelong impact on an individuals’ personal wellness, it is important to not only identify an individuals’ needs through risk and need assessment, but to also be responsive to those identified needs when assigning them to services and interventions (referred to as responsivity). One culturally-based alternative to incarceration being utilized by some tribal communities are Elder Panels.

In order to provide an alternative to custodial sentencing which emphasizes rehabilitation rather than retribution and in recognition of the reality that penal consequences alone do not effectively deter future criminal activity, the Tribal Council hereby creates the Mashantucket Pequot Pre-trial Intervention Program (“PTI”).

In many tribal communities, elders serve their tribes as traditional healers, spiritual guiders, and council members. In a growing number of tribal communities, elders are also being asked to serve within tribal justice system to assist tribal members in making reparations to victims and/or the community as a result of criminal/delinquent behavior. Anecdotal information points to a shared belief among many tribes that their members engage in criminal/delinquent behaviors because they have lost touch with their history, cultural, and community; therefore, incorporating strategies designed to re-connect or introduce members to their cultural roots is the desired approach over more punitive measures. Historically, elders have embraced their responsibility of sharing

traditions and customs with new generations, so their involvement in the court system provides an opportunity to be reparative instead of punitive.

Mashantucket Pequot Tribal Nation

This bulletin will provide a brief overview of the various ways elders can be used within the justice system and provide guidance on important things to consider if your community is interested in developing a formal elder panel or is interested in utilizing elders informally in your community.

OVERVIEW: FORMAL AND INFORMAL ELDER INVOLVEMENT

Elders can be involved both formally and informally throughout the justice system continuum. In some communities, elders serve on formal panels designed to divert individuals from the court system or as sentencing officials in lieu of a tribal court judge. Additionally, elders can be used informally on a case-by-case basis and/or as mentors.

ELDER PANELS AS AN ALTERNATIVE SENTENCING OPTION

Diversionary Elder Panels: In this model, individuals are offered an alternative to traditional court processing and their participation is voluntary.

There are two common ways diversionary programs operate; as deferred prosecution or coercion-free.

Deferred Prosecution: In this model, there is still judicial oversight in that if the individual fails to comply with the terms/conditions as stipulated by the elder panel, they can be referred back to the tribal court to be adjudicated/sentenced. However, if the individual successfully completes the terms/conditions imposed by the elder panel, then the charges are typically removed from their record.

Coercion-free: In this model, the charges are dismissed with the understanding that the individual will comply with the elder panels' terms/conditions. However, because the charges are dismissed by the court, the risk of the case being referred back to the tribal court if the individual does not comply is removed. This model operates on an honor system.

ELDER PANEL'S AS A CONDITION OF PROBATION

Court-Ordered Involvement: The tribal court may also utilize an elder panel as a stipulated condition of probation. Oftentimes, individuals participating in alternative programs (such as drug court, teen court, etc.) feel like the requirements are more rigid than if they would have been processed through traditional court; therefore, they choose traditional court over the alternative options. Therefore, if the individual declines voluntary participation, the ability of the court to engage them in the activities of the elder panel can still occur through court-ordered conditions. The elder panel could meet with the individual and make recommendations for an individual's supervision goals and assist them with meeting those goals. For example, the elder panel may become involved with an adult probationer convicted of DUI. The elder panel may suggest this individual research his/her family tree to identify a history of drug/alcohol abuse and work with them to break the cycle.

This bulletin was developed as a result of a Request for Information received by the Center for Court Innovation (CCI) from a tribal jurisdiction seeking information on how tribal jurisdictions incorporate elders into their justice systems. CCI reached out to APPA for assistance gathering this information and the response was so overwhelming we decided to compile the information into resources for the field. CCI developed a larger publication, *Traditional Justice: Elder Panels in Tribal Justice Systems*, while APPA designed this bulletin as a supplement to that document to provide practical guidance on developing/enhancing the use of elders in tribal justice systems through formal and/or formal involvement.

This would be a supervision goal that could be built into the supervision plan with the probation officer, but the elders would be responsible for seeing it through with the probationer while the probation officer focused on other areas.

In this scenario, the individual would have three tiers of oversight: the elders on the panel, the probation officer, and the tribal court judge. This could be an attractive option for courts to utilize in working with adults who committed non-violent crimes because they are still convicted and the offense(s) remain on the permanent record; they are still under the care and control of probation and the tribal court, and they still receive the benefits of receiving guidance and influence from the members on the elders panel. The idea of an adult being assigned to a mentor is often met with resistance; however, being exposed to the elders on the panel through the guise of a court-ordered condition to comply with their terms/conditions may be more palatable for the adults. Additionally, non-compliance with the terms/conditions of the elder panel can be addressed through court-imposed sanctions, if appropriate.

ELDER PANELS AS SENTENCING AGENTS

In some communities, elders on the panel are vested by tribal law to impose sentence in lieu of a tribal court judge. In this capacity, the members of the panel may conduct hearings to determine appropriate dispositions or resolutions. This may be beneficial in communities where a non-tribal judge sits on the bench and situations arise when being held accountable by tribal members is warranted, when a judge needs to recuse him/herself from imposing sentence for whatever reason, and/or when a less punitive approach is deemed appropriate. The tribal law gives the sentencing elder panel the same authority to impose similar conditions as a tribal court judge, such as community service, treatment, mandatory drug/alcohol screens, etc. as well as more atypical conditions such as behaving with respect, researching their family tree, etc.



UTILIZATION OF ELDERS AS MENTORS

Another meaningful way to involve elders in the tribal justice system is to assign them as mentors. Mentoring allows elders to share their knowledge and experience with individuals who may have lost their connection to the tribe. The use of mentors for juveniles is a respected practice of exposing youths to positive role models who form a bond over special interests, hobbies, or activities. Mentoring relationships provide youth with an adult they can feel safe with and learn how to be a respectable, law-abiding member of their community. In tribal communities, elders serving as mentors to both youth and adults can re-connect them with the things that are important to their tribe, including language, history, customs, and traditions.

The involvement of elders as mentors can operate through a formalized mentoring program, where elders are identified, trained, and may receive a stipend for their participation. However, elders can also assist the court, in lieu of a formalized mentoring program, on a case-by-case basis. Many communities forgo the use of elders as mentors because they do not have a “mentoring program” on their menu of options. However, just as family members can provide support for court-involved youth/adults, elders can as well.

UTILIZATION OF ELDERS AS TEACHERS

In the absence of a formal program, elders can still play an important role in the tribal justice system. They can be a resource for non-native professionals in the justice system (judge, prosecutor, probation, treatment) on cultural norms and traditional practices that the individual will want to be aware of for purposes of working with the native members involved in the system. Further, elders can educate non-native justice professionals on cultural ceremonies that are available for treatment or healing such as sweat lodges, smudges, or healing circles. This can be extremely beneficial when working with federal/state/local counterparts who are working with tribal members involved in their systems. Many non-tribal justice professionals are not aware of the culturally-based interventions that can be incorporated into their work with tribal members. Finally, elders can play an important role in mediating situations between the defendant/victim or situations that may be occurring at home within the family. In many situations, tribal families may be resistant to court intervention, but will be less opposed to an elder working with the family to resolve issues.

DESIGNING AN ELDER PANEL PROGRAM

The information presented in this bulletin provides some ideas for how elders can have an impact on individuals involved in the tribal justice system. Individual tribal communities utilize elders in creative and innovative ways and know best what works for their communities.

For communities not currently involving elders in their tribal justice system, this next section will provide tips on some important things to consider before embarking on involving elders either formally or informally in working with court-involved youth/adults.

The first step to implementing any new program/activity is Program Design and Implementation. Sounds scary—but it does not have to be. Here are some things to consider.

Willingness. Before you embark on involving elders in the justice system, you need to first explore whether you have elders capable and willing to serve in either an informal or formal capacity. Some may be willing to serve as an occasional mentor but not willing to serve in the more formal capacity of a sentencing authority. Their willingness to be engaged and active will help determine what type of elder involvement you begin planning for.

What is the need? It is important to take a comprehensive look at the resources in your community and identify what needs they are filling (or not filling) and then see where there are holes or gaps. Take a look at what crimes/behaviors individuals in your community are engaged in. Some questions that may guide your assessment may include: Do you have a lot of juveniles getting off track that need re-direction? Do you have adults that are battling with drugs/alcohol that need guidance? What issues do you have in your community that are either not currently being met or require another layer of service?

What type of program do we need to meet the need? Based upon what you learn more about the willingness of elders to participate and what the need of the community is, you will need to decide what format will work best (e.g., diversionary, sentencing, mentoring). It will be important to also think about, at this stage, what impact you want to make on the people you are serving. Once you have settled on a program, then you will need to move forward with Program Design.

How will your program work? How your program works will depend on the type of elder panel you decide to implement. The key is to develop a roadmap of how the program will work from recruiting elders, to recruiting participants, to everyday activities, to aftercare. It will be important to develop policies and procedures for how your program will work before implementation takes place. Although not an exhaustive list, the following questions provide a guide for some of the issues that you should consider when implementing an elder panel program.



ELDERS

- What role, if any, will elders play in the development of the program?
- How will you identify/recruit elders?
- Will they be volunteers or will you pay them a stipend, and if so, how will the amount be determined?
- What are their primary responsibilities in the program? For example, it will be important to lay out how much a commitment this may/could be for them such as how often will they meet with the individual(s) they will work with, will they have to report back to the probation officer/court on how the individual is doing, will they be able to administer incentives/sanctions or change the parameters or their work with the individual without judicial approval, etc.
- Will each elder serve/volunteer for a specific period of time or can they serve/volunteer indefinitely?
- What, if any, training will elders have to receive in order to serve/volunteer?
- Under what circumstances will an elder be asked not to participate in the program (e.g. they have a personal relationship with the individual, they have a negative view of the offense/behavior of the individual they would be working with that could impact the process, etc.).
- What will their duties/responsibilities be in relation to serving/volunteering? This will depend on the type of program you choose to implement but could include how many times per week/per month they meet with the individual and for how long, will they report back to the court/probation officer on progress, etc.
- In what ways can you recognize or show appreciation to the elders who participate in the elder panel program?

PARTICIPANTS

- What are the eligibility/exclusionary criteria for potential participants?
- How will you recruit or accept referrals into the program?
- Will it only be open to tribal members or will you also work with local courts to accept non-tribal members who commit crime within your borders?

OTHER CONSIDERATIONS

- What is the goal of your elder panel program?
- What will be the role, if any, of the victim? How will you ensure their involvement is respectful of their rights and desires yet provide for meaningful inclusion in the process and address the repair of the victim/offender relationship and the community/offender relationship?
- How will the program maintain confidentiality? For example, will the proceedings be open or closed? How will you protect the records of the participants/elders in the program?
- What legal agreements need to be in place? For example, written commitments by justice players such as tribal leaders, prosecutors, tribal judges, defense counsel and other parties will be essential, participant and elder agreements, participants and elders rights & responsibilities, etc.

- How will you collect data to determine program success? What will be the measure of program success?
- Who will be responsible for program implementation & oversight? Will this require a new position or the addition of duties to an existing position?
- What will the duties/responsibilities of the new/existing personnel be?
- What will the costs be (administrative, stipends, participation in programs, incentives, etc.)? Is there funding available for program implementation and sustainment? Where will that money come from (federal, state, local, private grants, tribal revenue, existing monies, etc.)?
- What role, if any, will parents and/or families play in the elder panel program?

There may be some additional things you will need to consider based upon the type of elder panel program you decide to implement.

DIVERSIONARY

- What is the target population for the program? Youth aged 8-17? Adults 18 and older?
- What are the eligibility/exclusionary criteria, or who will you aim to accept and definitely not accept into the program? Be as specific as you can based upon the type of program you are embarking on. For example, you probably would not want a violent offender participating in a diversionary program. There are also special circumstances when you may choose to accept someone into a program that falls in the exclusionary criteria, but those could be dealt with on a case-by-case basis.
- How many elders will serve on a panel? Will there be a lead elder on the panel or will it be a quorum?
- What will the measure of success be?
- What type of training will be provided to the Elders participating in your program?

SENTENCING

- How many elders will serve on a panel? Will there be a lead elder on the panel or will it be a quorum?
- What will the authority of the elder(s) be? Will the authority come from the tribal court or through tribal code?
- What records/documents/information will the elders be privy to in order to make their decisions? Will they be able to talk with witnesses, family members, victims, etc. in order to make appropriate determinations?
- What are the possible conditions/interventions the elders will be permitted to order (menu of options) or will the elders have free will to make their own decisions?
- Will the individual have the choice to be sentenced by an elder rather than a judge or will they have no choice in who decides their sentence/disposition?

- Will the elders have the right to administer administrative responses for compliance/non-compliance? For example, if the individual is meeting the requirements and is making progress, can the elder reduce the number of times per week/month they check in with them? Or, if an individual is not making progress, can the elder impose a sanction without returning to the tribal judge?
- What will be used to measure success or identify completion of the sentence/disposition?
- Can an elder violate an individual or administer revocation or can they only submit such a request to the judge?
- What type of training will be provided to the Elders participating in your program?

MENTORING:

- How will elders/mentors be matched?
- What information will elders be provided prior to begin work with each individual?
- Will there be a limit to the number of individuals each elder can work with at a time?
- Will elders receive mentor training? If so, how much and who will deliver the training? How often will they receive additional training?
- How long should an individual be involved in the program?
- What will be used to measure success of the intervention?



- Are there consequences for not meeting the requirements? If so, what are the consequences? You will want to make sure they are graduated according to what the infraction is. For example, if they fail to show up to a meeting with the elder, is that cause for removal from the program versus having a new charge filed against them.
- How often will the youth meet with the elder and for how long each time?
- What activities can the elder/youth participate in together?
- How often will the elder report to probation/court on progress/set-backs? Will these be verbal reports or written reports?
- What types of support will you have in place for elder mentors?
- What type of training will be provided to the Elders participating in your program?

Thinking through these questions may require the development of a coordination team or just the creative ingenuity of a few interested individuals. Starting small with the use of elders informally with a select number of justice-involved individuals could progress to the development of a more formalized program down the road. However you begin, it is important to have a solid foundation prior to involving defendants/probationers.

CONCLUSION

Elders play many roles among their family and tribal members. They are the conduits of information for future generations about their family and tribal history, stories, culture, and traditions. This role can be expanded through a formal program or informal involvement to assist justice-involved tribal members in finding the path back to law-abiding behavior. If elder panels seem like an alternative that would work for your tribe, use the information in this bulletin to guide your planning process for utilizing elders formally and/or informally in your tribal justice system.

RESOURCES

- For examples of policies and procedures and templates of forms, please contact Kim Cobb at kcobb@csg.org.
- Many tribes who responded to our Request for Information indicated they would be willing to talk with other tribal jurisdictions about their Elder Programs. If you are interested in speaking directly with another tribal jurisdiction, please contact Kim Cobb at kcobb@csg.org.
- For resources regarding training and technical assistance and funding opportunities, please visit the The United States Department of Justice Tribal Justice & Safety Webpage at <http://www.justice.gov/tribal/>

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