

Tribal Healing to Wellness Court Series
Overview of Tribal Healing to Wellness Courts

OVERVIEW OF TRIBAL HEALING TO WELLNESS COURTS



2nd Edition

September 2014



BJA

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A product of the

Tribal Law and Policy Institute
8235 Santa Monica Blvd., Suite 211
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TRIBAL HEALING TO WELLNESS COURT PUBLICATION SERIES

With support from the Bureau of Justice Assistance (BJA), the Tribal Law and Policy Institute (TLPI) has developed the following additional Tribal Healing to Wellness Court–specific resource publications to assist tribal governments and tribal justice systems in developing, enhancing, and sustaining Tribal Healing to Wellness Courts. These resources are available for free download on the Tribal Court Clearinghouse website (www.tlpi.org) and TLPI’s website devoted solely to Healing to Wellness Courts: www.WellnessCourts.org.

Tribal Healing to Wellness Courts: The Key Components, 2nd ed.

This publication (*initially published in 2003; updated in 2014*) provides key components and recommended practices for tribal justice systems to consider as they design, develop, and implement a Tribal Healing to Wellness Court that meets the needs of their community. This publication is organized around ten key components, adapted for tribes, which describe the basic elements of a Healing to Wellness Court. The purpose of each component is explained, followed by lessons learned, and examples of real-world applications.

Tribal Healing to Wellness Courts: The Judge’s Bench Book (update coming soon)

For every difficult and demanding journey, one must have a leader. As set forth in *Tribal Healing to Wellness Court: The Judge’s Bench Book (drafted in 2002)*, that person is the judge. This bench book is designed to provide instruction and practical tools for judges in their efforts to guide those traveling on the road to wellness. It is designed to provide general guidance for judges, examples of court procedure, and tools to assist judges in their Healing to Wellness Court role. This bench book is also useful for Wellness Court team members and community leaders who are interested in designing, creating, and implementing a Wellness Court program.

Tribal Healing to Wellness Courts: Treatment Guidelines for Adults and Juveniles (update coming soon)

This publication (*drafted in 2002*) examines guidelines that have been developed to provide tribal communities with an overview of substance abuse treatment strategies as they have been developed by drug court programs. Tribal programs might consider applying these treatment strategies along with traditional healing practices. This publication examines key issues in developing treatment, developing a Tribal Wellness Court treatment program, adapting treatment program components, identifying special considerations regarding treatment services, evaluating strategies for maintaining sobriety (relapse prevention), and looking ahead.

Tribal Healing to Wellness Courts: Program Development Guide

This publication (*drafted in 2002*) provides step-by-step recommendations for the design, development, and implementation of Tribal Healing to Wellness Court programs from a practical standpoint. It is designed to assist steering committees and planning groups as they (1) use team-based approaches; (2) gain knowledge of Healing to Wellness Court concepts; (3) incorporate the ten key components; (4) help establish policies and procedures suitable to the needs of the tribal community; (5) guide the court to integrate available resources; (6) develop interagency agreements; (7) incorporate management information systems to track participants and services; and (8) identify possible problem areas.

Perceptions of Methamphetamine Use in Three Western Tribal Communities: Implications for Child Abuse in Indian Country

This publication (*published in 2007*) explores the increasing concerns raised by the emerging methamphetamine epidemic in Indian country. Professionals from three tribal communities detail their perceptions of meth use and implications for child abuse in the communities in which they work.

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Background

The Drug Court Movement

Tribal Healing to Wellness Courts are tribal adaptations of a drug court. The drug court movement began in the late 1980s in response to the growing number of drug-related court cases and the resulting overcrowded jails and prisons. For many it became clear that the standard law enforcement and corrections policies did not have the impact on drug supply and demand that the proponents of the “War on Drugs” had hoped. The judicial practice of sentencing drug-addicted offenders to treatment as a condition of their sentence or probation fell short as well. Consequently, the drug court approach was developed to process substance abuse-related court cases. This approach departs from the regular court practice by systematically bringing treatment to the criminal justice population entering the court system. The drug court approach anchors treatment with the authority of a judge who, often with team input, holds the defendant or offender personally and publicly accountable for treatment participation and progress.

Beginning as a grassroots initiative, drug courts have now spread across the United States and are in nearly 20 countries. Teams of judges, prosecutors, public defenders, treatment providers, law enforcement officials, probation officers, case managers, and a host of other community members use the coercive power of the court to promote abstinence and alter behavior. This is accomplished through a combination of intensive judicial supervision, praise for progress, sanctions for noncompliance, random drug testing, comprehensive and

phased treatment, aftercare programs, and other ancillary human services.

Adopting Drug Courts within Indian Country

After learning of the drug court movement, American Indian and Alaska Native (AI/AN) tribal leaders and judges expressed interest in its potential benefits to their nations. They were particularly interested in how it could help address the severe alcoholism and its associated crime prevalent in Indian country, especially in a nonadversarial nature. As interest in this approach grew and was studied further, both tribal and federal advocates realized that the drug court concept could have a positive impact on Indian nations if it was modified to meet the specific needs of Indian nations.

Consequently, in 1997, the Drug Court Program Office (DCPO), Office of Justice Programs, U.S. Department of Justice¹ developed a special program to assist Indian nations to plan and implement a drug court within tribal governments. DCPO charged the National Association of Drug Court Professionals (NADCP) with the task of creating a culturally sensitive training program that would meet the needs of the initial 22 Indian nations that had been awarded drug court grants through the DCPO. In August 1997, NADCP, in collaboration with DCPO and a group of individuals with tribal court and substance abuse expertise, helped design an adapted curriculum for tribal drug court training sessions. The first of a series of tribal-specific training sessions was held in Stillwater, Oklahoma, in September 1997. These tribal drug court training sessions

¹ The Drug Court Program Office has since merged with the Bureau of Justice Assistance (BJA).

served a vital role in assisting tribal representatives from each community to adapt the drug court concept to meet the needs of their individual nations. At subsequent training sessions, representatives from tribal courts, tribal councils, law enforcement, treatment providers, tribal and community membership, and various human services organizations came together to develop an action plan for drug court development in their individual communities.

Tribal Healing to Wellness Courts

Early on in AI/AN development of their drug court programs, many preferred a term other than *drug court* be used to describe their rendition of the drug court approach. Tribal representatives felt the term needed to (1) clearly incorporate alcohol abuse cases because alcohol is the predominant substance abuse problem in Indian country, and (2) culturally connect to the tribal community to allow it to take ownership. Tribal courts have since adopted various terms meeting these criteria for their drug courts. Tribal names include Wellness Court, Healing Court, Treatment Court, Substance Abuse Court, Alternative Court, and many others in their tribal languages.

The name Tribal Healing to Wellness Court was coined by a tribal advisory group convened to develop publications specifically concerning tribal drug courts. Initially, tribal drug courts were referred to generally as Tribal Wellness Courts. However, members of the advisory group learned that some tribal drug court personnel were concerned that the term *wellness* might imply that the participants had achieved wellness instead of striving to achieve it. Ultimately, the term *Healing to*

Wellness Courts was adopted to incorporate: (1) both healing and wellness, and (2) the program's efforts to promote wellness for program participants as an ongoing journey. Nevertheless, many teams still refer to their programs as Wellness Courts, and this publication will utilize both terms interchangeably.

Since their inception in 1997, Tribal Healing to Wellness Courts have spawned a new generation of drug courts and, more importantly, a new beacon of hope for the continually devastating effects of alcohol and drug abuse in Indian country. Currently, there are estimated to be 72 operational Tribal Healing Wellness Courts throughout the country. In 2011, the Department of Justice and the Department of the Interior, in its Tribal Law and Order Act (TLOA) Report on Tribal Justice Systems, identified Tribal Healing to Wellness Courts as a model alternative to incarceration.² Tribal Healing to Wellness Courts were specifically recognized as an effective tool that permits tribal nations to employ culturally based strategies.³ These findings were reiterated in the 2013 Indian Law and Order Commission Report, which stated that "Tribes are specifically encouraged to develop and enhance drug courts, wellness courts ... and to develop data that further inform the prioritization of alternatives to incarceration."⁴

² TRIBAL LAW AND ORDER ACT (TLOA) LONG TERM PLAN TO BUILD AND ENHANCE TRIBAL JUSTICE SYSTEMS, 18, 38 (U.S. DOI & U.S. DOJ, Aug. 2011), available at www.justice.gov/tribal/docs/tloa-tsp-aug2011.pdf.

³ Ibid. at 15.

⁴ INDIAN LAW AND ORDER COMMISSION, A ROADMAP FOR MAKING NATIVE AMERICA SAFER: REPORT TO THE PRESIDENT & CONGRESS OF THE UNITED STATES 137, Recommendation 5.1 (2013), found at: www.aisc.ucla.edu/iloc/report/.

Defining Tribal Healing to Wellness Courts

Tribal Healing to Wellness Courts are not simply tribal courts that handle alcohol or drug abuse cases. A Wellness Court is a special court docket with the responsibility to handle cases involving alcohol- or drug-using offenders through an extensive supervision and treatment program. Tribal Healing to Wellness Court programs bring the full weight of all interveners (judge, prosecutor, defense counsel, treatment specialists, probation officers, law enforcement and correctional personnel, educational and vocational experts, community leaders, traditional healers, and others) to bear, forcing the offender to confront their substance abuse problem. The structure of the court supports a higher level of accountability for program participants by leveraging the coercive power of the criminal justice system to achieve abstinence and alter criminal behavior through the combination of judicial supervision, treatment, drug testing, incentives, sanctions, case management, and appropriate cultural components.

A Tribal Healing to Wellness Court epitomizes a justice system that applies the drug court concept in a manner intended to meet the needs of the community, particularly the need to address the devastation caused by alcohol, other drug abuse, and crime. The design of a Tribal Healing to Wellness Court program is developed at the local level, to reflect the unique strengths, circumstances, and capacities of each nation. Many sectors of the nation's community are integrally involved in the planning and

implementation process of a Healing to Wellness Court collaborative, which includes multiple disciplines, services, and people. They include, but are not limited to, criminal justice, substance abuse treatment providers, law enforcement, cultural programs, educational institutions, employment and vocational programs, antidrug organizations, and tribal leadership.

One distinguishing aspect of Tribal Healing to Wellness Courts, as compared to the usual criminal court, is that they are designed to respond quickly to participant program compliance, including treatment plan progress. For example, if a participant has progressed in their plan to become sober and maintain sobriety, their accomplishments are immediately recognized with praise from the Wellness Court Judge, accolades from others in the Wellness Court program, including their peers, and even an incentive to encourage continued progress. Healing to Wellness Courts have awarded gift bags, gift cards, and movie and sports tickets as incentives, as well as participation in cultural activities or more lenient program supervision. Conversely, if a participant does not comply with a program requirement (for example, the participant continues to use alcohol or drugs), a sanction is immediately applied. Common sanctions include increased drug testing, increased court appearances, increased frequency of contact with the treatment provider, community service assignments, and/or short-term incarceration. Other distinctive aspects of a Healing to Wellness Court include regular interaction with the court and judge, phased and culturally appropriate treatment, random drug testing, early

referral and entry, and emphasis upon team decision making; all described further in the 10 Key Components, mentioned below.

The first Tribal Healing to Wellness Courts were designed to serve either adult or juvenile participants. Later, Family Wellness Courts (utilizing the family court docket) became a focus given the generational impact substance abuse and crime has on tribal families. Currently, tribes have the opportunity to design a Tribal Healing to Wellness Court that accommodates their community's needs and judicial philosophies. In a 2010 Wellness Court Needs Assessment,⁵ which included 28 operational Wellness Courts, respondents stated a need to work with whole families and household residents, and identified some of the resources required to provide adequate services.

Whether an adult, juvenile, family, or any other variation of a Tribal Healing to Wellness Court, all are guided by the 10 Key Components, the fundamental essentials of the drug court concept. Fashioned after the 10 Key Components initially formatted for State Drug Courts,⁶ the Tribal Healing to Wellness Court 10 Key Components were crafted to reflect tribal notions of healing and wellness, particularly the concept of a healing to wellness journey, and the collaborative effort involved with

supporting such a journey.⁷ The Tribal Healing to Wellness Court 10 Key Components are the basic operational characteristics that all Healing to Wellness Courts should share as benchmarks for performance. They are also used by BJA in consideration of drug court grant awards. In addition, BJA and the National Institute of Justice have identified seven evidence-based program design features that effective drug courts should utilize. Beginning in 2011, BJA began evaluating drug court grant funding using these seven design features as criteria.⁸

⁵ TRIBAL LAW AND POLICY INSTITUTE, TRIBAL WELLNESS COURTS NEEDS ASSESSMENT (U.S. Department of Justice, Bureau of Justice Assistance, 2010), *available at* www.wellnesscourts.org/files/BJAReviewWellnessNeedsAssessmentAB.pdf.

⁶ NATIONAL ASSOCIATION OF DRUG COURT PROFESSIONALS DRUG COURT STANDARDS COMMITTEE, DEFINING DRUG COURTS: THE KEY COMPONENTS (U.S. Department of Justice, Bureau of Justice Assistance, reprinted Oct. 2004), *available at* www.ncjrs.gov/pdffiles1/bja/205621.pdf.

⁷ See TRIBAL LAW AND POLICY INSTITUTE, TRIBAL HEALING TO WELLNESS COURTS: THE KEY COMPONENTS, 2nd ed. (U.S. Department of Justice, Bureau of Justice Assistance, 2014), *available at* www.wellnesscourts.org/files/Tribal%20Healing%20to%20Wellness%20Courts%20The%20Key%20Components.pdf

⁸ For more information on the BJA seven design features, please see www.research2practice.org.

Key Component #1: Individual and Community Healing Focus

Tribal Healing to Wellness Court brings together alcohol and drug treatment, community healing resources, and the tribal justice process by using a team approach to achieve the physical and spiritual healing of the individual participant, and to promote Native nation building and the well-being of the community.

Key Component #2: Referral Points and Legal Process

Participants enter Tribal Healing to Wellness Court through various referral points and legal processes that promote tribal sovereignty and the participant's due (fair) process rights.

Key Component #3: Screening and Eligibility

Eligible court-involved substance-abusing parents, guardians, juveniles, and adults are identified early through legal and clinical screening for eligibility and are promptly placed into the Tribal Healing to Wellness Court.

Key Component #4: Treatment and Rehabilitation

Tribal Healing to Wellness Court provides access to holistic, structured, and phased alcohol and drug abuse treatment and rehabilitation services that incorporate culture and tradition.

Key Component #5: Intensive Supervision

Tribal Healing to Wellness Court participants are monitored through intensive supervision that includes frequent and random testing for alcohol and drug use, while participants and their families benefit from effective team-based case management.

Key Component #6: Incentives and Sanctions

Progressive rewards (or incentives) and consequences (or sanctions) are used to encourage participant compliance with the Tribal Healing to Wellness Court requirements.

Key Component #7: Judicial Interaction

Ongoing involvement of a Tribal Healing to Wellness Court judge with the Tribal Wellness Court team and staffing, and ongoing Tribal Wellness Court judge interaction with each participant are essential.

Key Component #8: Monitoring and Evaluation

Process measurement, performance measurement, and evaluation are tools used to monitor and evaluate the achievement of program goals, identify needed improvements to the Tribal Healing to Wellness Court and to the tribal court process, determine participant progress, and provide information

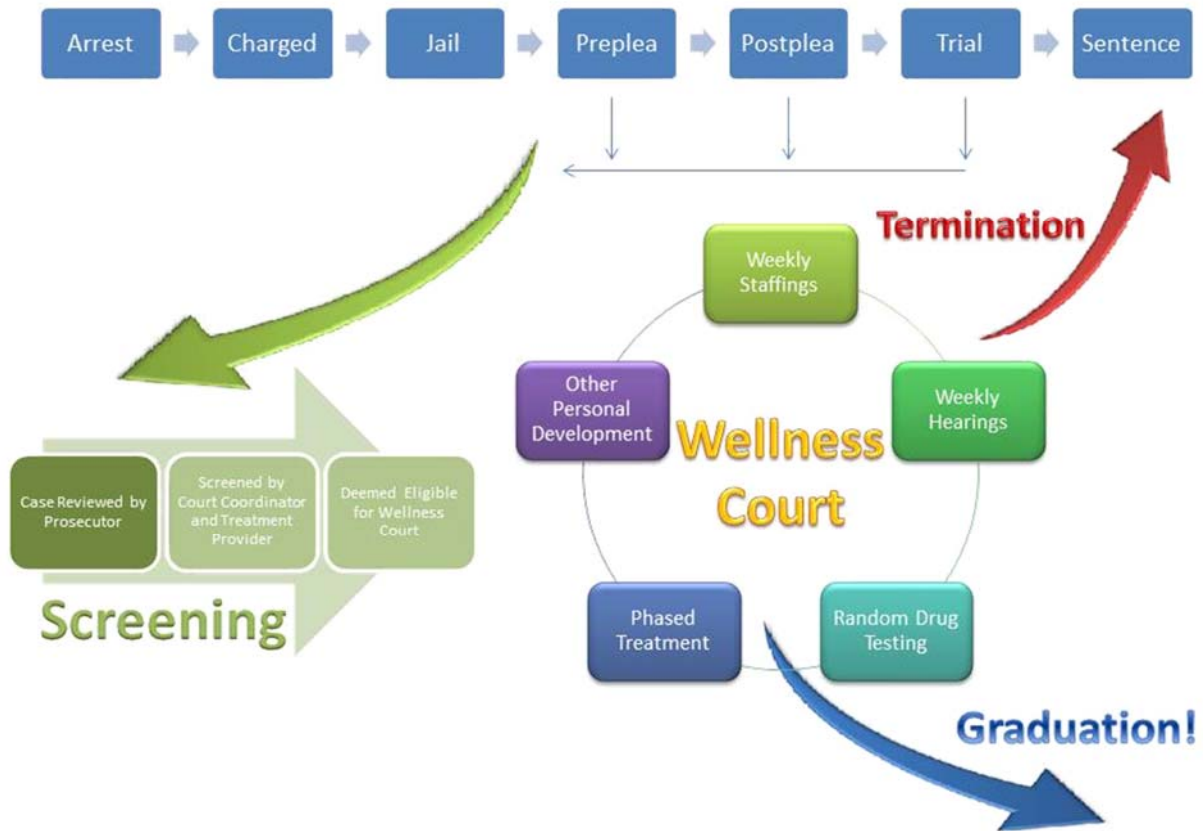
to governing bodies, interested community groups, and funding sources.

Key Component #9: Continuing Interdisciplinary and Community Education

Continuing interdisciplinary and community education promote effective Tribal Healing to Wellness Court planning, implementation, and operation.

Key Component #10: Team Interaction

The development and maintenance of ongoing commitments, communication, coordination, and cooperation among Tribal Healing to Wellness Court team members, service providers and payers, the community and relevant organizations, including the use of formal written procedures and agreements, are critical for Tribal Wellness Court success.



This diagram depicts a typical adult criminal Wellness Court process, in which a participant enters Wellness Court either pre-plea, post-plea, or after trial.

The following are descriptions of Tribal Healing to Wellness Courts provided by individuals who have been involved in the development of Tribal Healing to Wellness Courts and the training and technical assistance provided to developing Tribal Wellness Courts:

The Waabshki-Miigwan (White Feather) program is “a collaborative partnership among the community, service providers, court and adults who face substance abuse challenges in order to restore holistic balance using Odawa values and teachings as envisioned by our ancestors in order to ignite the healing and rehabilitation of non-violent addicted offenders.”

—Mission of the Waabshki-Miigwan Program of the Little Traverse Bay Bands of Odawa Indians

“The tactic that this team/council/war party takes is to act as a legal and culturally sanctioned authority that meets the patient/client/tribal member where he or she is at in relation to his or her abusive relationship with mood and behavior altering chemicals. It is understood that the relative has come before the Drug Court Council because it has been determined that the individual will continue to abuse without some sort of holistic intervention. The ‘Drug Court’ basically uses the circle of helpers in assisting the chemically abusing relative to consider a path of health rather than a path of self-destruction.”

—Wilbur Woodis, Management Analyst, Indian Health Services Headquarters West

“A Drug Court is an opportunity. . . . It is an opportunity for offenders, the courts, support services, and the community, to develop a coordinated and responsive partnership for addressing drug related crime.”

—Michelle Chino, Director of Research and Development, American Indian Development Center

“Our tribal ceremonies and rituals require planning, communication, collaboration, commitment, and clearly defined roles and responsibilities from everyone involved in order to realize a successful outcome. This is also true in the planning, implementation and enhancement of Tribal Healing to Wellness Courts. The concept of a multidisciplinary approach is not foreign to the history of most tribal people. In fact, we should naturally expect to support and help. It is with this in mind that we should offer our Native people who are on a troubled path the experience of healing to wellness through the stability and strength of a Tribal Healing to Wellness Court team.”

—Donna Humetewa, Consultant, Tribal Law and Policy Institute

“A Drug Court or a Wellness Court is a system for bringing together the court, service providers and the community to address alcohol and other drug related offenses in a coordinated manner which provides intensive treatment and supervision for offenders. In many ways, it involves using a child protection team type of approach for alcohol and drug related offenses. The drug court concept is a flexible approach, which can be adapted to incorporate tribal customs/traditions and to meet the needs of an individual Indian community.”

—Jerry Gardner, Executive Director, Tribal Law and Policy Institute

The Unique Role and Importance of Tribal Justice Systems and Tribal Courts

In order to fully appreciate the challenges and opportunities that Tribal Healing to Wellness Courts face, it is helpful to understand the unique role and importance of the more than 300 tribal justice systems in the United States. Tribal courts and justice systems are critical components of the tribal government. They are empowered to resolve conflict and controversy. In the absence of judicial institutions, unresolved disputes and disagreements would interfere with the safety and well-being of the tribal community and efforts toward nation building.

Prior to European settlement in the Americas, Native people practiced various forms of meaningful and productive conflict and dispute resolution. Tribal member participation in debate of issues and in defense of the alleged was not just allowed, but was expected (such as due process). Unfortunately, these tribal methods were unfamiliar to the settlers and were often discounted and even discouraged.⁹ The first

⁹ In 1883, a Lakota named Crow Dog killed another Lakota, Spotted Tail. The Lakota, utilizing traditional methods of resolving disputes, required Crow Dog to provide restitution to Spotted Tail's family. The federal territorial courts, equating Spotted Tail's restitution order as tantamount to no punishment at all, attempted to prosecute Crow Dog for murder. Ultimately, the U.S. Supreme Court held that the federal government lacked criminal jurisdiction over the crime. *Ex Parte Crow Dog*, 109 U.S. 556 (1883). The federal government responded twofold. First, Congress enacted the Major Crimes Act, effectively stripping tribes of criminal jurisdiction over their

modern iterations of tribal courts were Courts of Indian Offenses, or Courts of Federal Regulations (CFR Courts). CFR Courts were established by the Department of the Interior in 1883 in part to handle less serious criminal actions and resolve disputes among tribal members. However, many of the judges were non-Indian Bureau of Indian Affairs (BIA) superintendents with express objectives of assimilating Native people into Western society and abolishing "barbarous" practices, such as dances.¹⁰

Not until 1934, with the enactment of the Indian Reorganization Act,¹¹ were Indian tribes allowed to exercise their inherent sovereignty to establish their own justice codes and operate court systems enforcing those laws.¹² The Act authorized tribes to organize and adopt constitutions. However, most of the tribally enacted constitutions were templates, requiring Secretary of the Interior approval for many tribal government actions. Nevertheless, despite its flaws, the Act is considered a success in providing a framework for and first steps toward expanding tribal self-government. Some Indian tribes chose not to organize under the act, and some still operate CFR

own people for certain "major offenses" 18 U.S.C. § 1153. Second, the Department of the Interior established on-reservation court systems known as Courts of Indian Offenses. B. J. Jones, "Role of Indian Tribal Courts in the Justice System," Center on Child Abuse and Neglect (March 2000), 3.

¹⁰ Jones, "Role of Indian Tribal Courts in the Justice System," 4; Clara Niiska, "'Indian Courts': A Brief History," *Native American Press/Ojibwe News*, June 15, 2001, available at www.maquah.net/clara/Press-ON/01-06-15-courts.html.

¹¹ Indian Reorganization Act of 1934, also known as the Wheeler-Howard Act, 25 U.S.C.A. § 461, et seq.

¹² Jones, "Role of Indian Tribal Courts in the Justice System," 4.

Courts, some of which remain in existence today.¹³

Today, tribal justice systems are diverse in concept and character and are at various stages of development. While some are quite elaborate, others are just beginning to develop a “modern” judicial system within the context, conditions, and circumstances of their individual nations. Some tribes prefer the adversarial process, while others have determined that traditional dispute resolution is more appropriate.¹⁴ Many courts apply large bodies of written or positive law and others apply custom and tradition to address controversy and settle disputes.

At all stages of development and for every type of judicial procedure, tribal justice systems require resources, support, and provisions similar to their state court counterparts. The success of tribal courts is essential to not only dispute resolution, but also to the promotion of tribal sovereignty and self-government.¹⁵ *Effective* tribal

courts support economic growth, empower the legislative and executive branches, promote peace and community health, and advance tribal sovereignty.¹⁶ Judge Korey Wahwassuck, of the collaborative Leech Lake and Cass County Wellness Court, notes that “for many Indians, sovereignty and self-governance mean the ability to operate a justice system that takes into account the goals and traditions of tribal societies, without direct regard for Anglo-American ideals.”¹⁷

¹³ William C. Canby Jr., *American Indian Law in a Nut Shell*, 5th ed. (St. Paul, MN: West Publishing, 2009), 26.

¹⁴ “On many reservations, Indian tribal courts use methods such as ‘Peacemaking,’ or ‘Sentencing Circles,’ or other methods of dispute resolution that more closely resemble the ways disputes were settled among Native people” prior to European contact. Jones, “Role of Indian Tribal Courts in the Justice System,” 5.

¹⁵ The U.S. Congress now recognizes the importance of tribal justice systems, articulated in 1993 in the Indian Tribal Justice Act, 25 U.S.C. § 3601, et seq. Specifically, Congress found

(1) there is a government-to-government relationship between the United States and each Indian tribe;

(2) the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government;

(3) Congress, through statutes, treaties, and the exercise of administrative authorities, has recognized the self-determination, self-reliance, and inherent sovereignty of Indian tribes;

(4) Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems;

(5) tribal justice systems are an essential part of tribal government and serve as important forums for ensuring public health and safety and the political integrity of tribal governments;

(6) Congress and the Federal courts have repeatedly recognized tribal justice systems as the appropriate personal and property rights;

(7) traditional tribal justice practices are essential to the maintenance of the culture and identity of Indian tribes and to the goals of this chapter;

(8) tribal justice systems are inadequately funded, and the lack of adequate funding impairs their operation;

(9) tribal government involvement in and commitment to improving tribal justice systems is essential to the accomplishment of the goals of this [act]. 25 U.S.C. § 3601.

¹⁶ Joseph Thomas Flies-Away, Carrie Garrow, and Miriam Jorgenson, “Native Nation Courts: Key Players in Nation Rebuilding,” in *Rebuilding Native Nations: Strategies for Governance and Development*, ed. Miriam Jorgenson (Tucson: University of Arizona Press, 2007), 115.

¹⁷ Korey Wahwassuck, “The New Face of Justice: Joint Tribal-State Jurisdiction,” 47 *Washburn L. J.* (2008): 733, 734, quoting Daniel Twetten, “Public Law 280 and the Indian Gaming Regulatory Act: Could Two Wrongs Ever Be Made into a Right?,” 90 *Crim L. & Criminology* (2000): 1317, 1335.

Tribal Healing to Wellness Courts are a natural progression for tribal courts. As a greater understanding of indigenous cultures and experiences have allowed for the recognition of and respect for tribal courts, traditional tribal conflict resolution has also gained wider recognition. Alternative dispute resolution has slowly gained traction within the United States as incarceration has proven less and less effective.¹⁸ Drug court popularity stems from its roots as an alternative to imprisoning drug and alcohol offenders. However, Native judicial systems have always tended “to focus more on restorative justice (the renewal of damaged personal and community relationships) and reparative justice (when offenders make things right for themselves and those affected by their behavior).”¹⁹ Today, Tribal Healing to Wellness Courts utilize a nonadversarial approach, integrating traditional concepts of healing and community involvement toward healing, rather than punishing, their addicted tribal members.

¹⁸ “[L]ate twentieth century America is turning to alternative punishments because imprisonment has lost its ability to deter and rehabilitate.” Douglas B. Marlowe and William G. Meyer, eds., *The Drug Court Judicial Benchbook* (Alexandria, VA: National Drug Court Institute, 2011), 11, available at www.ndci.org/publications/more-publications/-drug-court-judicial-benchbook (quoting Dan Kahan, “What Do Alternative Punishments Mean?,” 63 *U. Chi. L. Rev.* (1996), 631;

¹⁹ Flies-Away, et al., “Native Nation Courts,” 121.

Challenges and Opportunities for Tribal Healing to Wellness Courts

Planning, implementing, and operating a Tribal Healing to Wellness Court is a multifaceted development process. From the outset, Tribal Healing to Wellness Courts will confront a wide variety of complicated issues. While some issues are unique to tribal courts and tribal governments, others are encountered by all developing drug courts. More difficult issues, such as jurisdiction, will require collaboration among parties beyond the drug court team. Yet whether simple or difficult, the team must analyze each challenge thoroughly and take each challenge as a chance to refine and improve how substance-related crime is adjudicated.

Common challenges involved with Tribal Healing to Wellness Court development include:

- * Adapting the drug court concept to include alcohol dependency and abuse treatment services due to the high volume of alcohol abuse in Indian country;
- * Designing an effective drug court process within unique jurisdictional factors; and
- * Ensuring sustainability in the face of unsecure funding, high Wellness Court Team turnover rates, and limited available human resources.

Common opportunities involved with Tribal Healing to Wellness Court development include:

- * Addressing the specific cultural needs of their individual nations, including the opportunity to incorporate tribal customs and traditions into the Tribal Healing to Wellness Court programming;
- * Engaging in judicial innovation by stemming away from the adversarial process; and
- * Providing alternatives to incarceration.

Challenges for Tribal Healing to Wellness Courts

Healing and Treatment

Prevalence of Alcohol Abuse

The arrest rate among Native Americans for alcohol-related offenses is more than double that found among other races.²⁰ In violent crimes committed against American Indians, 48 percent of the offenders were under the influence of alcohol.²¹ American Indians die from alcoholism at more than four times the rate for the U.S. population.²² Alcohol abuse is undeniably the predominant crisis in most Native American and Alaska Native nations. Moreover, alcohol has historically had a devastating presence, compounding issues of abuse within communities. Although many state drug courts address alcohol abuse, it is not their primary focus. Handling alcohol abuse cases through a Tribal Healing to Wellness Court approach requires the program to adopt different strategies, such as creative approaches to alcohol testing and the need to address medical concerns related to alcohol detoxification. With adaptation, the drug court concept presents an effective mechanism for Native American and Alaska Native nations to address the devastation caused by alcohol abuse.

²⁰ Steven Perry, *A BJS Statistical Profile, 1992–2002: American Indians and Crime* (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, NCJ 203097, 2004), vii. (“Liquor law violation arrest rates were about 143 per 100,000 for all races and 405 per 100,000 American Indians.”)

²¹ *Ibid.* at 10.

²² Congressional Findings in the Indian Alcohol and Substance Abuse Prevention and Treatment of 1986, 25 U.S.C. § 2401(4) (1986).

Fetal Alcohol Syndrome and Fetal Alcohol Effects

In many Indian nations, there are a significant number of drug court participants with fetal alcohol syndrome (FAS) or fetal alcohol effects (FAE), presenting unique issues within the Tribal Healing to Wellness Court setting. A June 1999 survey of operational Tribal Healing to Wellness Courts indicated that one-third of participants suffer from FAS or FAE. Participants suffering from FAS or FAE may not fully understand the consequences of their actions. These participants may have added difficulties addressing their substance abuse problem and conforming to program expectations and requirements. Simultaneously, diagnosing FAS and FAE can be elusive. FAS/FAE behavior can be mistaken simply for laziness or lack of cooperation. Consequently, the court and program staff must be provided with training concerning FAS and FAE and develop an appropriate treatment strategy to force abstinence and alter the behavior of FAS and FAE participants.²³

Treating Abuse of Other Drugs, including Prescription Drugs, Methamphetamine, and Inhalant Abuse

Most Native nations must deal with the abuse of drugs beyond alcohol. Illegal substance cases are usually more serious in Native nations that are located near major urban centers and/or international borders where there is significant smuggling. In some of these nations, the drug issues mirror those that the state drug courts

²³ The National Indian Justice Center provides a multitude of resources on fetal alcohol syndrome and fetal alcohol effect that are specifically geared toward tribal justice systems, including fact sheets, curriculums, and online training courses. See www.nijc.org/fas/.

confront. Other nations may be specifically targeted by drug dealers as vulnerable due to their isolation. Across the country, Indian nations are reporting more cases involving prescription drug, methamphetamine, and inhalant abuse, and a significant increase in associated crime. For example, in 2010 Congress found that “Indian tribes have faced significant increases in instances of domestic violence, burglary, assault, and child abuse as a direct result of increased methamphetamine use on Indian reservations.”²⁴

There are both national and tribal education campaigns to combat the misinformation concerning the danger of these drugs. Like the particularized issues accompanying alcoholism, Tribal Healing to Wellness Court teams must be provided training concerning the effects of the specific drug(s) that are most prominent in the community. Teams must develop appropriate and creative strategies for screening, testing, and treatment, as well as educating the community of the critical and specific issues of drug-induced behavior. Regardless of the drug, however, or perhaps even more so in the case of highly addictive drugs, it is the accountability, encouragement, and engagement of Healing to Wellness Courts that provides the most effective opportunity for sobriety.

High Juvenile Population, Lack of Juvenile Detention Facilities

Many American Indian and Alaska Native nations have high juvenile populations. According to the 2010 Census, 42 percent of the American Indian population is under the

²⁴ Congressional Findings in the Tribal Law and Order Act of 2010, 25 U.S.C. § 2801(a)(5)(A)(6).

age of 25.²⁵ As a result, many tribes are establishing Juvenile Healing to Wellness Courts.²⁶ Juvenile Wellness Courts have been successful at establishing innovative programs to address the specific needs of juvenile participants as an alternative to detention. This is especially important because many tribes do not have access to either a tribal, state, or BIA detention facility. Tribes are otherwise forced to expend funds to contract for bed spaces in locations that can be more than five hours away. BIA facilities can be more than seven hours away. Moreover, even if a nation has funding to pay for space in local, state, or county facilities, it may not provide the level of programming the tribe desires for its juvenile tribal members (e.g., substance abuse treatment, education, or vocation and/or employment training).

Medical Marijuana and Other Doctor-Prescribed Drugs

Medical marijuana initiatives have been passed by various states. These laws allow for the use of cannabis as a form of medically supervised treatment. Developing and operational Tribal Healing to Wellness Courts will need to review tribal law and policy in this and related areas to determine how their state’s medical marijuana tolerance affects current or potential participants. Requisite policies and program rules must be drafted and adopted.

Similarly, participants may be prescribed pain medication during the Tribal Healing to

²⁵ U.S. Census Bureau, *2010 Census*, Tables PCT3 and PCT4 (2010).

²⁶ See *for example*, the Apsaalooke Juvenile Healing to Wellness Court on the Crow Reservation, the Gila River Juvenile Healing to Wellness Court of the Gila River Indian Community, or the Cherokee Juvenile Healing to Wellness Court of the Cherokee Nation.

Wellness Court program through a multitude of avenues, including injury, surgical operation, or dental operation. Prescription pain medication can be addictive and/or enable other drug use. However, it may be inappropriate to deny a participant access to doctor-prescribed relief. The Tribal Healing Wellness Court team will have to cautiously approach each individual case, as well as draft overall policies concerning prescription medication, which might include increased drug testing, supervised ingestion, and increased check-ins with the Tribal Healing to Wellness Court team.²⁷

²⁷ For the NADCP's take on marijuana use, including medical marijuana, see Douglas B. Marlowe, "The Facts on Marijuana," National Association of Drug Court Professionals Need to Know, December 2010, available at http://www.nadcp.org/sites/default/files/nadcp/Facts%20on%20Marijuana%20-%20NADCP_0.pdf.

Legal Issues

Violent Offender Prohibition

Tribal Healing to Wellness Courts that are funded by a Department of Justice (DOJ) grant program may not use those funds to serve “violent offender” participants.²⁸ For most programs, this means that “violent offenders” are not permitted within the program. Additionally, Tribal Healing to Wellness Courts have found that many defendants that are charged with what may be construed as violent offenses, are often associated with domestic violence as well as alcohol and substance abuse. However, domestic violence advocates have identified situations in which the drug court process may not be appropriate for the victim. If a tribe receives DOJ funding, then the Tribal Healing to Wellness Courts, along with DOJ technical assistance providers, must develop strategies to identify ways to work within the violent offender restriction. Some tribal prosecutors, for example, find creative charging configurations to allow Tribal Healing to Wellness Court participation.²⁹

²⁸ 42 U.S.C. § 3797u-2. *Violent offender* is defined as a person who—(1) is charged with or convicted of an offense that is punishable by a term of imprisonment exceeding one year, during the course of which offence or conduct—

(A) the person carried, possessed, or used a firearm or dangerous weapon;

(B) there occurred the death of or serious bodily injury to any person; or

(C) there occurred the use of force against the person of another . . . ; or
(2) has 1 or more prior convictions for a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm.

²⁹ Because *violent offense* is defined as a crime punishable by an imprisonment term *exceeding one*

Lack of Criminal Jurisdiction over Non-Indians

Federal law currently states that tribal courts do not have criminal jurisdiction over non-Indians,³⁰ except for the crimes of domestic violence, dating violence, and the violation of protection orders committed by certain non-Indian offenders against Indian victims.³¹ These laws greatly limit the ability of tribal justice systems to address criminal offenses involving alcohol or substance abuse committed by non-Indians living on Indian reservations, including non-Indian family members. Many Indian nations, however, have developed alternative methods of handling these cases, including the use of civil court processing, civil forfeiture, banishment, and Memoranda of Understanding with federal and state criminal justice systems. If a Tribal Healing to Wellness Court desires to serve non-Indians, the team will need to determine

year, and because tribal courts are limited to sentencing defendants to imprisonment of *less* than one year (see note 31), it is plausible that no tribal court conviction can ever be classified as a “violent offense.” However, this issue has not yet been litigated. Furthermore, if a tribe were to adopt the enhanced sentencing authority authorized by the TLOA (see Legal Issue No. 3: Tribal Law and Order Act of 2010), any conviction for a crime of violence in which imprisonment exceeding one year is possible would most likely be classified as a “violent offense.”
³⁰ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

³¹ Violence Against Women Reauthorization Act (hereafter referred to as VAWA) of 2013, Pub. L. No. 113-4, 127 Stat. 54 (March 7, 2013). *Note:* Applications of VAWA’s “special domestic violence criminal jurisdiction” require the tribal court to provide certain due process protections, including those required for enhanced sentencing in the TLOA (see Legal Issue No. 3), and that the jurisdiction applies only to non-Indian defendants who have certain ties to the Indian community. See www.tribal-institute.org/lists/vawa_2013.htm.

how to exercise jurisdiction, as well as modify other aspects of the program such as treatment services, the utilization of detention, and the integration of custom and tradition for non-Indian participants.

Tribal Law and Order Act of 2010

In 2010, Congress passed the Tribal Law and Order Act (TLOA).³² Among other provisions, the Act expanded the sentencing limitations on tribal governments imposed by the Indian Civil Rights Act,³³ from one year imprisonment and a \$5,000 fine to three years imprisonment and a \$15,000 fine. However, in order to utilize the enhanced sentencing authority, tribes must provide certain defendant due process protections, including a licensed defense counsel for indigent defendants and a law-trained and licensed judge.³⁴ The former one-year sentencing limitation significantly limited the coercive power of tribal courts to compel participation in a Tribal Healing to Wellness Court program that lasted longer than one year. The extended limitation will provide a greater incentive to participate in Tribal Healing to Wellness Court. However, the Act creates other resource issues for tribal courts, such as detention and human

³² TLOA of 2010, 25 U.S.C. § 2801, et seq. (2010).

³³ The Indian Civil Rights Act of 1968, 25 U.S.C. § 1301-03 (limits tribes from imposing any penalty or punishment greater than imprisonment for a term of [1] one year and a fine of \$5,000, 25 U.S.C. §1302(7)). See www.tribal-institute.org/lists/icra.htm.

³⁴ TLOA, § 234(c). Additionally, the tribe must make its tribal code publicly available and record the criminal proceeding. These due protections are also required if a tribe intends to utilize VAWA's special domestic violence criminal jurisdiction. *Note:* a tribe is not required to either utilize TLOA's enhanced sentencing, nor VAWA's special domestic violence criminal jurisdiction.

capital.

State Criminal Jurisdiction

Public Law 83-280³⁵ transferred federal jurisdiction to certain states for many criminal and civil actions on Indian reservations. In other comparable acts Congress similarly transferred jurisdiction in other states such as Kansas³⁶ and New York,³⁷ as well as for particular tribes.³⁸ As a practical matter, these statutes inhibited the development of tribal criminal justice systems on many reservations. Consequently, many Indian nations are forced to process criminal offenses involving alcohol and drug abuse as civil offenses and/or to collaborate with states to transfer individuals into tribal court. Additionally, these tribes are generally in need of more developed tribal criminal justice system infrastructure.

Collaboration with State Courts and State Agencies

Although it varies from tribal nation to tribal nation, Tribal Healing to Wellness Courts must address a historically strained relationship with nearby state courts and state agencies. Some Tribal Healing to Wellness Courts, however, have successfully begun the collaborative process on Wellness Court issues. For example, some Tribal Healing to Wellness Courts

³⁵ Public Law 280 (codified as 18 U.S.C. § 1162, 28 U.S.C. § 1360, and 25 U.S.C. §§ 1321-1326) (1953). The Act allowed any state to "opt in," but mandated a transfer of federal law enforcement authority in California, Minnesota (except the Red Lake Nation), Nebraska, Oregon (except the Warm Springs Reservation), Wisconsin (except the Menominee Indian Reservation), and Alaska.

³⁶ 18 U.S.C. § 3243 (1948).

³⁷ 25 U.S.C. § 232 (1948).

³⁸ Mashantucket Pequot, 25 U.S.C. § 1751, et. seq. (1983).

have established cross-deputization agreements and transfer protocol with neighboring state jurisdictions.

Alternatively, at least one Tribal Healing to Wellness Court has partnered with two of its neighboring counties to form joint jurisdiction tribal-state drug courts.³⁹ Law enforcement is greatly enhanced and defendants are less likely to fall through any gaps due to collaborative efforts such as these. Tribes, however, must be careful to not become a state actor while working cooperatively with its neighbor state.

Tribal Members Charged with Off-Reservation Crime, Delinquency, or Neglect

In many nations, especially those with a limited land base and/or concurrent state criminal jurisdiction, tribal members are often charged with criminal offenses, juvenile delinquency, and neglect involving alcohol or drug abuse in off-reservation state court systems. However, tribes have successfully negotiated agreements with state courts to allow transfer of cases to their Wellness Courts, or for the court to assume supervisory jurisdiction over the defendant in order to monitor treatment and other requirements. While some of these agreements are verbal, the best practice is to adopt specific written

³⁹ See for example, the Leech Lake and Cass County Wellness Court, available at www.ccllwellnesscourt.wordpress.com, and the Leech Lake and Itasca County Wellness Court, available at www.co.itasca.mn.us/Home/Departments/Attorneys/Pages/Criminal-Prosecution.aspx. See also, "Cass/Itasca County/Leech Lake Tribal Wellness Court Honored by National Association of Drug Court Professionals," Minnesota Judicial Branch website (January 27, 2011), available at www.mncourts.gov/?page=NewsItemDisplay&item=53210.

agreements that outline the details of the transfer to tribal jurisdiction. Additionally, Tribal Healing to Wellness Courts must create new judicial procedures and statutes to accommodate for transfer of cases to their court system. Transfer may take the form of a wholesale transfer or it may only be transferring a supervisory responsibility to the tribe. The tribe then must create a mechanism to assert supervisory jurisdiction over cases, how they are processed, and how they are transferred back to the original jurisdiction upon completion.

Alcohol Prohibition in Indian Country

Alcohol abuse issues take on an added dimension in those Native American and Alaska Native nations that are "dry" (the sale of alcohol and often mere possession is prohibited). In these nations, alcohol issues are more closely analogous to other drug issues in which mere possession is illegal along with alcohol dealing or bootlegging. Programs in these nations must develop strategies for how they will work with the various potential crimes involved. For instance, a possession of alcohol for sale charge is different from a possession of alcohol by consumption and public intoxication, which may indicate alcohol abuse. Thus a screening mechanism will be required to ensure mere "dealers" do not compromise the treatment of other participants. Furthermore, program staff working on completely dry reservations may be required to abstain from alcohol use altogether.

Sustainability

Lack of Funding for Tribal Justice Systems

When Congress enacted the Indian Tribal Justice Act in 1993,⁴⁰ it found that tribal justice systems are inadequately funded and that the lack of adequate funding impairs their operation. The Act promised \$58 million in additional funding annually for tribal justice systems, but 21 years later, Congress has yet to appropriate any funds under the Act. Tribal justice systems currently receive less BIA funding than they received in 1993 (approximately \$14 million annually for 300 tribal justice systems). The BJA Drug Court Discretionary Grant Program provides funding for Indian nations that are implementing or enhancing Tribal Healing to Wellness Courts.⁴¹ However, only one tribe was funded under the program in Fiscal Year 2012. Three tribes were funded under the program in Fiscal Year 2013.⁴² BJA, along with several other agencies within the Department of Justice, additionally offers Tribal Healing to Wellness Court funding under the Coordinated Tribal Assistance Solicitation (CTAS) program,⁴³ under which six tribes were funded in Fiscal Year 2012.⁴⁴ Similar to the Indian Tribal Justice Act, the TLOA of

⁴⁰ Indian Tribal Justice Act, 25 U.S.C. § 3601, et seq.

⁴¹ BJA Drug Court Discretionary Program, available at www.bja.gov/ProgramDetails.aspx?Program_ID=58.

⁴² BJA Fiscal Year 2013 and 2013 grant awards, available at <https://www.bja.gov/funding.aspx#3>.

⁴³ Department of Justice Coordinated Tribal Assistance Solicitation (hereafter referred to as CTAS), available at www.justice.gov/tribal/open-sol.html. Funding for Healing to Wellness Courts is provided primarily through CTAS Purpose Area 3, Justice Systems and Alcohol and Substance Abuse.

⁴⁴ Department of Justice Coordinated Tribal Assistance Solicitation—FY 2012 Combined Award List, available at www.justice.gov/tribal/docs/ctas-award-list-2012.pdf.

2010 authorizes tribal court and detention funding; however funding has yet to actually be appropriated.

Lack of Staff, Resources, and Jail Facilities

Lack of funding also results in a substantial lack of staff and resources. Many tribal justice systems have no access to jail facilities, and/or have to pay state jails at a daily rate to confine tribal offenders. Consequently, Healing to Wellness Courts must often rely on creative strategies, such as community pressure and sanctions, to encourage offenders to enroll in the program and to sanction noncompliance. The Wellness Court approach, however, does provide a mechanism for making the most of limited resources available in the community. Through a realignment of resources in a more coordinated manner with more communication and accountability between agencies, Tribal Healing to Wellness Courts can maximize their available, albeit limited resources.

Rural and Small Community Issues

Many Tribal Healing to Wellness Courts are in small communities situated in isolated rural locations. Generally, these courts must address issues similar to other small and rural drug courts, including lack of accessible resources and other increased barriers to coordination and collaboration. Strategies to address these issues are generally similar to those of other small and rural drug courts, including resource sharing, multiple roles for program staff, and policies aimed to minimize politicking.⁴⁵

⁴⁵ For example see American University, “Developing Effective Drug Court Treatment Programs in Rural Areas” (BJA Drug Court TA/Clearinghouse Project, September 2012), available at www1.spa.american.edu/justice/documents/4142.pdf.

Opportunities for Healing to Wellness Courts

The Tribal Healing to Wellness Court planning and implementation process varies substantially from nation to nation. It depends on many factors such as individual historical issues, the land base, and the economy of each nation. For a Tribal Healing to Wellness Court to become fully institutionalized, it must be designed to meet the specific needs of each nation it serves and involve the entire community in its development. The final character and personality of a Healing to Wellness Court depends on whether the nation consists of one tribe or more; the specific customs and traditions of the individual tribe or tribes in the community; and the extent and quality of the available healing resources. Consequently, the Healing to Wellness Court development process provides a tribe the opportunity to create a unique and innovative judicial process that incorporates tribal custom and tradition and promotes rehabilitation and healing as alternatives to incarceration.

Custom and Tradition

The Healing to Wellness Court approach is a generally flexible concept and allows for creativity in development and design. It is consistent with traditional Native justice concepts and methods. The Tribal Healing to Wellness Courts mirror a traditional method of justice for Indian people by (1) creating an environment that focuses on the problems underlying the criminal act rather than the act; (2) stressing family, extended family, and community involvement in the healing process; and (3) offering a team approach to direct and guide the healing to wellness journey with the participant.

In traditional Native societies, accountability to the community was a responsibility that was kept in balance through cultural norms and values. Tribal Healing to Wellness Courts are a modern revitalization of guiding Native principles of justice, truth, honor, respect, harmony, balance, healing, wellness, apology or contrition, restitution, rehabilitation, and a holistic approach. The Tribal Healing to Wellness Court concept can be adapted by nations to help restore harmony and balance to the individuals, the families, and the nations that have been devastated by alcohol and drug abuse and associated crime.

Adopting a Traditional Name

Though the names Tribal Healing to Wellness Courts and Wellness Courts are used as the generic terms for tribal drug courts, Indian nations often employ their Native language to help connect to and identify with their individual cultures. The use of the tribal language helps a tribe or Alaskan village take ownership of its court

because a tribal name helps to personify the culture of their community. Names often translate to healing, wellness, or other appropriate Native concepts that identify the mission and goals of their program. For example, the Little Traverse Bay Bands of Odawa Indians has named its tribal drug court the Waabshki-Miigwan Program, which translates to “White Feather.”⁴⁶ The White Feather refers to the White Feather Story, in which a dirty and mangled feather is cleaned, and thereby transformed back into its original beauty, much like Tribal Healing to Wellness Court participants are transformed back into community members through the cleansing process of treatment. The Gila River Indian Community named their Juvenile Drug Court the Sap Hihim Hekth A’lga, which translates to “children on a good path.” The Menominee Nation named their Wellness Court the Menipaniw, which translates to “there is a good road.” The use of a Native language name encourages the community to take ownership of its Healing to Wellness Court.

Involving Traditional People, Elders, and Cultural Resource Practitioners in the Planning and Development Process

Tribal Healing to Wellness Court programs can involve tribal elders, healers, medicine men, and people with traditional knowledge in all aspects of planning and implementation. Their participation ensures that traditional values are respected, that they are included appropriately in the Tribal Healing to Wellness Court program, and that the community has a sense of ownership over the Tribal Healing to

⁴⁶ See www.ltbbodawa-nsn.gov/Tribal%20Court/DrugCourt/DCIndex.html.

Wellness program.

Traditional Healing Processes and Treatment Modalities

Tribal Healing to Wellness Courts can incorporate a wide range of traditional healing practices into the treatment component of their program. Traditional healing practices have proven particularly effective in addressing Native alcohol and substance abuse problems. Involvement in traditional, cultural heritage and/or community activities has also proven effective in providing a productive focus in the lives of Native people who have been devastated by alcohol and substance abuse. These traditional healing practices, often part of the treatment components, may include healing ceremonies, talking circles, peacemaking, sweats, visits with a healer or medicine man, sun dances, vision quests, or the creation of an ancestor tree. Traditional healing practices, ceremonies, and cultural activities vary substantially from tribe to tribe, and depend upon the customs, traditions, and practices of the individual Native community.

Traditional or Community-Based Sanctions

Many Tribal Healing to Wellness Courts incorporate community-based or traditional sanctions into their drug court programs. Some of these sanctions include community service for elders, performing the least liked duties at community gatherings or ceremonies, and appearances before traditional forums.⁴⁷

Traditional or Community-Based Incentives

Tribal Healing to Wellness Courts may incorporate community-based or traditional

incentives into their Wellness Court programs. Most of these incentives include prominent participation in community and cultural activities, community recognition of a participant's success in the program, and a blanket ceremony in which a special blanket, such as a Pendleton, is bestowed upon a program graduate or other deserving participant to recognize their accomplishment or contribution.

Involving Extended Family and Community

Tribal Healing to Wellness Courts attempt to involve the participant's family, extended family, and the community in all aspects of the program, including in deciding whether to enter the program, in healing practices and ceremonies, in cultural activities, in achieving graduation, and in aftercare.

Traditional or Spiritual Component

Spirituality, or sense of connection, is central to Native life and values. A critical component therefore of a Healing to Wellness Court is to incorporate traditional or spiritual components in all aspects of the program. For example, a Wellness Court might include an invocation and ceremony at status hearings and in treatment groups.

⁴⁷ See Judicial Innovation, No. 2: Traditional Dispute-Resolution Mechanisms.

Judicial Innovation

Establishing a Broad-Based Community Development Process

Tribal Healing to Wellness Courts require a broad-based community development process—including not just the court and treatment providers, but also tribal leadership, tribal departments and programs, schools, community agencies/resources, and community representatives—in order to ensure the wide community support needed to succeed. Moreover, inclusion of various community organizations and service providers will ensure Wellness Court participants receive the needed services to address the issues underlying their addictions. Strategies for ensuring this support include writing editorials to the community newsletter, inviting the community to graduation or other positive gatherings, hosting community fundraisers, and making regular appearances and/or presenting updates to the tribal council.

Traditional Dispute-Resolution Mechanisms

Tribal Healing to Wellness Court programs incorporate traditional dispute-resolution mechanisms. These dispute-resolution mechanisms include peacemaking, family conferencing, elder panels, appearances before traditional or religious leaders, and other traditional or community-based dispute-resolution mechanisms. Some tribes have been considering using the traditional dispute-resolution mechanisms, such as the Tribal Healing to Wellness Court, but this has presented problems in that most of these traditional mechanisms function in more of a mediation role without the full coercive judicial authority

required under the drug court approach. Other tribes are examining the possibility of using a traditional community leader or a panel of elders. This approach is based on a view that drug court participants may be more likely to change their behavior to avoid failure in front of a more traditional or community-based forum rather than a judge.

Alternative to Incarceration

Alternative to Detention

Detention facilities are often limited for many tribal nations. Probation then is often ordered for the defendants as an alternative to incarceration. Tribal probation departments, however, are subsequently overburdened and do not have the resources to thoroughly monitor all probationers. Tribal Healing to Wellness Court provides a convenient and effective alternative to treat underlying alcohol and substance abuse issues, while also providing the necessary supervision that is otherwise unavailable. However, this approach can quickly use up Tribal Healing to Wellness Court resources, especially as some participants may require increased supervision. Screening procedures should aim to ensure that participants are prepared for alcohol and/or drug treatment, and that the Healing to Wellness Court is not simply a substitute for an

otherwise unavailable resource.

Detention Space for Serious Offenders

The lack of access to detention facilities requires that spaces be reserved for serious offenders or offenders that are sentenced to long-term incarceration. Healing to Wellness Courts' supervision expectation and phased treatment programs provide greater chances of rehabilitation for substance-driven offenders, thus leaving valuable jail space for more serious offenders.

Juvenile Offenders

Juvenile Healing to Wellness Courts can create programs designed to treat, teach, and nurture minors who have committed delinquent acts and/or status offenses related to alcohol and drugs. Healing to Wellness Courts can prevent young offenders from spending any more time than is necessary in a violent juvenile population where they may be negatively influenced.

Conclusion

Tribal Healing to Wellness Courts offer a unique opportunity for tribes to address the devastating effects of alcohol and drug abuse within their communities; engage in nation and community building; integrate their tribal customs and traditions; and most importantly, reintegrate tribal members back into the community. The nonadversarial drug court approach makes

Tribal Healing to Wellness Court ripe for use in Native nations, and adaptation to the unique needs of each community. However, its success is fundamentally connected to the commitment of team members and buy-in from not just legal and treatment agencies, but the tribal community as a whole.

Appendix A: Tribal Healing to Wellness Courts

Tribal Healing to Wellness Courts				
As of May 2013				
	Tribe	Type of Court	CITY	STATE
1	Aleut Community of St. Paul Island	DWI	St. Paul	AK
2	Chehalis Tribe	Juvenile	Oakville	WA
3	Cherokee Nation	Juvenile	Tahlequah	OK
4	Cheyenne and Arapahoe Tribes		Concho	OK
5	Chippewa Cree Tribe of the Rocky Boy Reservation	Juvenile & Family	Box Elder	MT
6	Citizen Potawatomi Nation	Adult	Shawnee	OK
7	Coeur d'Alene Tribe	Adult (<i>Planning</i>)	Plummer	ID
8	Colorado River Indian Tribes	<i>Planning</i>	Parker	AZ
9	Confederated Tribes and Bands of Yakama Nation		Toppenish	WA
10	Crow Tribe	Apsaalooke Juvenile Wellness Court	Crow Agency	MT
11	Eastern Band of Cherokee Indians	Adult & Juvenile	Cherokee	NC
12	Fallon Paiute Shoshone Tribe	Adult	Fallon	NV
13	Eastern Shoshone and Northern Arapaho Tribes of the Wind River Reservation		Fort Washakie	WY
14	Fort McDowell Yavapai Nation	Adult & Juvenile	Fort McDowell	AZ
15	Fort Peck Assiniboine & Sioux Tribes	DUI and Family	Poplar	MT
16	Gila River Indian Community	Juvenile	Sacaton	AZ
17	Grand Traverse Band of Ottawa and Chippewa Indians		Peshawbestown	MI
18	Ho-Chunk Nation	Adult	Black River Falls	WI
19	Hoopa Valley Healing to Wellness Court		Hoopa	CA
20	Hopi Tribe	Juvenile	Keams Canyon	AZ
21	Kaibab Band of Paiute Indians	Adult	Fredonia	AZ
22	Karuk Tribe	Juvenile	Yreka	CA
23	Keweenaw Bay Indian Community	Adult	Baraga	MI
24	Kickapoo Tribe in Kansas	Adult	Horton	KS
25	La Jolla Healing to Wellness Court	<i>Planning</i>	Pauma Valley	CA
26	Little Traverse Bay Bands of Odawa Indians	Adult & Juvenile	Harbor Springs	MI
27	Leech Lake Band of Ojibwe Indians	DWI, Adult	Cass Lake	MN
28	Lower Brule Sioux Tribe	Adult	Lower Brule	SD
29	Lower Elwah Klallam Tribe	Adult	Port Angeles	WA
30	Lummi Nation	Adult	Bellingham	WA
31	Makah Tribe	Adult	Neah Bay	WA

32	Menominee Indian Tribe	Adult	Keshena	WI
33	Mescalero Apache Tribe	Adult	Mescalero	NM
34	Mississippi Band of Choctaw Indians	Adult and Juvenile	Choctaw	MS
35	Native Village of Barrow	Juvenile	Barrow	AK
36	Native Village of Scammon Bay	Adult, Family, and Juvenile	Scammon Bay	AK
37	Omaha Tribe of Nebraska	DWI	Macy	NE
38	Pascua Yaqui Tribe	Adult	Tucson	AZ
39	Penobscot Indian Nation	Adult and Juvenile	Indian Island	ME
40	Poarch Band of Creek Indians	Adult	Atmore	AL
41	Prairie Band of Potawatomi Nation	Adult	Mayetta	KS
42	Pueblo of Acoma	Adult	Acoma	NM
43	Pueblo of Laguna	Adult	Laguna	NM
44	Pueblo of Sandia	Adult, Juvenile & Family	Bernalillo	NM
45	Pueblo of Zia	Adult, Juvenile	Zia Pueblo	NM
46	Pueblo of Zuni		Zuni	NM
47	Quinault Indian Nation		Quinault	WA
48	Reno-Sparks Indian Colony	Adult, DWI	Reno	NV
49	Rosebud Sioux Tribe of the Sicanqu Oyate	Juvenile & Family	Rosebud	SD
50	Sac & Fox Tribe of the Mississippi in Iowa	Adult & Family	Tama	IA
51	Saint Regis Mohawk Tribe	DWI	Akwesasne	NY
52	Salt River Pima-Maricopa Indian Community	Juvenile	Scottsdale	AZ
53	San Carlos Apache – Ndeh Nation	Adult-DWI	San Carlos	AZ
54	Sault Ste. Marie Adult Healing to Wellness Court	Adult	Sault Ste. Marie	MI
55	Scammon Bay Traditional Council			
56	Shoshone Indians and Northern Arapaho Tribe	Adult & Juvenile	Fort Washakie	WY
57	Sisseton-Wahpeton Oyate of the Lake Traverse Reservation	Adult, DWI	Agency Village	SD
58	Snoqualmie Tribe	Juvenile & Family	Snoqualmie	WA
59	Southern Ute Indian Tribe	Adult & Juvenile	Ignacio	CO
60	Spirit Lake Tribe	Adult, Juvenile, Family DWI	Fort Totten	ND
61	Suquamish Tribe	Family	Suquamish	WA
62	Swinomish Indian Tribal Community	Juvenile	La Conner	WA
63	Three Affiliated Tribes: Mandan, Hidatsa & Arikara Nation	Family Fort Berthold Healing to Wellness Court Program	New Town	ND
64	Tonto Apache Tribe		Payson	AZ
65	Turtle Mountain Band of Chippewa Indians	Adult	Belcourt	ND

66	White Earth Nation	Juvenile & Family	White Earth	MN
67	Winnebago Tribe of Nebraska	Juvenile	Winnebago	NE
68	White Mountain Apache		Whiteriver	AZ
69	Yavapai-Apache Nation	Adult, Juvenile & Family	Camp Verde	AZ
70	Yomba Shoshone Tribe	Adult, Juvenile, Family	Austin	NV
71	Ysleta Del Sur Pueblo	Juvenile	El Paso	TX
72	Yurok Tribe	Adult	Klamath	CA

Appendix B: Consortium of Technical Assistance Providers

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For additional Healing to Wellness Court information,
visit the Wellness Court website:

www.WellnessCourts.org



“Providing resources and technical assistance for Tribal Healing to Wellness Courts”