

# **Drug Courts and Developing/Expanding Access to Tribal Drug Courts to help address Drug Abuse in Native Communities**

## **Background**

Drug courts began in 1989 in Miami-Dade County Florida in response to frustration with recidivism of repeat offenders for drug related charges. Justice professionals developed a new system to address drug offenses, based upon a team model, designed to effect lasting change in the lifestyle and behavior of participants.

In 1997, the U.S Department of Justice's Bureau of Justice Assistance released the publication, *Defining Drug Courts: The Key Components*, which served as a framework for the development of drug courts. In this same year, the DOJ Drug Court Program Office developed a program to assist Indian Nations in developing tribal drug courts.

In February of 2000, the U.S Department of Justice's Office of Justice Programs provided funding to support the development of Promising Practices and Strategies to Reduce Alcohol and Substance Abuse among American Indians and Alaska Natives.

The 1934 Indian Reorganization Act was recognized the right of tribes to exercise their sovereignty and establish their own justice codes and court systems to enforce tribal law. Consistent with this, and in response to the need to adapt Drug Courts to the needs of tribal communities, in 2003 the U.S. Department of Justice's Office of Justice Programs funded the development of *Tribal Healing to Wellness Courts: The Key Components*. The Second Edition was released in 2014. This document serves as a guide to tribes for developing and implementing Tribal Drug Courts, known as Tribal Wellness Courts.

According to the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ), by the fall of 2012, there were over 2,400 Drug Courts in the U.S., with 73 listed as Tribal Wellness Courts.

According to the NIJ, Drug Courts are designed to provide a comprehensive justice model to:

- Assess offenders for appropriateness of Drug Court versus traditional court.
- Facilitate interaction between offenders and the judicial system through a specific Drug Court program.
- Monitor and supervise Drug Court participants.
- Provide graduated sanctions and incentives to Drug Court program participants.
- Connect Drug Court participants with Treatment Services.

Drug Courts are predicated upon a non-adversarial and multidisciplinary team based approach. They bring together varied professionals as judges, prosecutors, defense attorneys, probation officers, law enforcement personnel, substance abuse treatment specialists, social workers, families, community leaders, educational and employment counselors to encourage offenders to confront their problem with abusing substances. They also endeavor to connect participants with opportunities to access treatment, education, vocational training, and other support to make the necessary lifestyle and direction changes to break the cycle of use, violation, and adjudication. Foundational to this process is a *wellness concept* that seeks to restore offenders to wellness with respect to themselves, their personal relationships, and their communities. In order to be successfully implemented and supported, tribes must be willing to implement the necessary institutional and legal reforms, as well as build the necessary capacity to provide mental health as well as alcohol and drug treatment services.

A Drug Court program's success lies in its ability to provide accountability for alcohol or drug offenders and their families in a judicially supervised and coordinated team based treatment program that involves multiple disciplines, a high degree of offender involvement, judge issued incentives and sanctions, case management, and support.

Many tribal drug courts have adopted names that emphasize the wellness concept, such as Wellness Court, Healing Court, amongst others. No matter what the name, the important principle is that Tribal Healing to Wellness Courts promote healing and wellness of the individual, family, and community, as well as emphasizing the program model of promoting wellness as a journey for individuals.

Whatever the ultimate iteration of the Healing to Wellness Court, they can all be founded on the following key components that have been culturally adapted from the state drug court models, to provide "best practices" to the establishment and maintenance of effective Healing to Wellness Courts. The direct application of each key component may be adapted to best fit the respect Native Nation's culture, traditions, and vision. Universal to all is the belief that Healing to Wellness Courts can put tribal drug offenders, their families, and Tribal Communities on a road to healing and wellness from the binds of substance abuse and addiction, without the unnecessary use of incarceration as would be part of a deterrent model.

Indian Health Service, Tribal, and Urban facilities can partner with Tribes to develop Healing to Wellness Courts, or, develop linkages to existing Courts, to facilitate access to services that will facilitate the success of program participants in achieving wellness, while working to increase access to programs that promote freedom from alcohol and substance abuse in the communities in which they serve. This guide provides some basics about how Healing to Wellness Courts operate, as well as links to resources for I/T/U facilities to learn more about Healing to Wellness Courts and how to partner with them.

## **Pertinent Standards**

*Tribal Healing to Wellness Courts: The Key Components.*

*Tribal Law and Policy Institute, Second Edition, May 2014, sponsored by a grant from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance.*

### **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.

The Key Components can be further grouped into seven program design features that the Bureau of Justice Assistance and National Institute of Justice have identified as important program elements. The presence of these elements have served to prioritize programs for consideration of Department of Justice grant funding for Tribal Healing and Wellness Courts.

- **Screening and Assessment (Components 2 and 3):** Program eligibility should be consistent with a targeted population and available program resources. Eligibility assessments should be conducted using validated instruments. Screening should identify risk for relapse and recidivism, nature of the treatment, and other rehabilitation needs. Assessments should be modified over time as participant needs change.
- **Target Population (Components 2 and 3):** Program resources should target offenders with high risk of criminal offense as well as high need for substance abuse treatment.
- **Procedural and Distributive Justice (Component 6):** Program should establish and clearly define a system of graduated sanctions and incentives that occur in response to offender behavior. Sanctions and incentives should aim to be consistent, fair, and equitable.
- **Judicial Interaction (Component 7):** Judges should serve as the program leader, and, actively engage participants through hearings and meetings as needed to support the success of the program and the offender.
- **Monitoring (Component 5 and 8):** Participants should be subjected to ongoing monitoring during the program to include drug testing and supervision. Results of

monitoring should be readily communicated to the drug court team for evaluation and response as indicated.

- **Treatment and Other Services (Component 4):** Programs should target and accommodate the range of needs that program participants may require to facilitate success, such as access to mental health and substance abuse treatment, job skills development, educational planning and assistance, as well as family support.
- **Relapse Prevention, Aftercare, and Community Integration (Component 4):** Programs should provide culturally adapted programming that supports relapse prevention, community integration, and aftercare/continuing care services. This involves developing and maintaining linkages with health/mental health/substance abuse service providers, and community service organizations.

## **Examples of Programs**

### *Cass County/Leech Lake Band of Ojibwe Wellness Court (CCLLBOWC)-Minnesota*

“The mission of the CCLLBOWC is to enhance public safety by providing hope and opportunities for appropriate treatment with accountability thereby improving the quality of life within families and the community.”

The CCLLBOWC is a multijurisdictional court available to offenders who drink and drive. It utilizes a multidisciplinary approach to connect eligible offenders with treatment, monitoring, and drug testing to assist them in becoming free of a lifestyle of alcohol abuse and actively engaged in employment or educational opportunities as productive members of their communities. It has been in operation since 2006 and serves the people of Cass County Minnesota and the Leech Lake Nation. It has been the recipient of national recognition including the Honoring Nations Award from Harvard University.

### **The following are the programs goals and objectives according to the October 2013 revision of the Wellness Court Procedure Manual:**

#### *Goal 1: Reduce costs associated with chemical use and criminal behavior.*

- Objective 1: Reduce criminal justice costs associated with gross misdemeanor level participants.
- Objective 2: Reduce criminal justice costs associated with felony level participants.

#### *Goal 2: Reduce criminal behavior and recidivism*

- Objective 1: 70% of participants will graduate from the program within 3 years of their start date.

- Objective 2: 70% of participants will have 90 consecutive days of sobriety by the end of their first year in the program.
- Objective 3: 90% of participants will not experience a driving impaired violation within one year after graduation.

*Goal 3: Enhance public safety*

- Objective 1: 70% of participants will successfully complete treatment (inpatient, outpatient, aftercare/continuing care) within 9 months of entering the Wellness Court.
- Objective 2: 90% of participants who have violations will receive sanctions within one week.
- Objective 3: Participants will have lower recidivism rate than non-participants in the historical control group, 1 year after release from the Wellness Court or custody.

*Goal 4: Enhance the well-being of participants*

- Objective 1: As appropriate, participants without a high school diploma will be enrolled and actively pursuing their GED within 8 months of entering the Wellness Court.
- Objective 2: As appropriate, participants will further their education by utilizing vocational/avocational services.
- Objective 3: 90% of Wellness Court participants will be actively employed or actively enrolled in an education program within 12 months of entering the Wellness Court.
- Objective 4: Wellness Court participants will actively go through the process of having their driving privileges reinstated.

**Referrals into the program occur as follows:**

1. Offenders are screened for eligibility at arraignment/Rule 5 hearing and referred to Cass County/Leech Lake Wellness Court Coordinator (WCC).
2. Letter is sent to out of custody offenders instructing them to report to the Wellness Court Probation Officer (WCPO) for Initial Wellness Court (WC) interview. If incarcerated, then the initial interview will take place at the detaining facility.
3. The Wellness Court Program (WCP) and handbook is fully explained to prospective candidates by the WCPO. Ability to pay/coverage determinations are made to see how treatment will be paid for.
4. Offender indicates a willingness to participate in the WCP. WCPO notifies the Chemical Assessor (CA) so that an assessment can be scheduled. Once the assessment is completed, the CA provides the WC with the completed assessment. Wellness Court Coordinator (WCC) or WCPO provides all correspondence including the WC interview to

the County Attorney. This is reviewed by the Cass County Attorney for recommendation to the WC.

5. If appropriate for WC, they are placed on the next WC docket. WCPO prepares case packets to the WCC and the WC Judges (WCJ).
6. All offenders referred to the WC must have a pre-sentence investigation completed for a final determination as to the appropriateness of WC program admission.
7. WCJ introduces the offender to the Wellness Court and signs the appropriate orders and contracts.
8. Probation Officers (PO) can also contact the WCPO or WCC and refer them to the WC. WCC screens for eligibility and then sends them through the regular referral process.

**Eligibility- Convicted of Minnesota Impaired Driving Code (gross misdemeanor or felony) or violators of probation for the same.**

1. Resident of Cass County and/or live on Leech Lake Tribal Land and remain residents of the aforementioned while participating in the WC program.
2. Must have a Chemical Dependency Assessment of being chemically dependent.
3. Must be physically and mentally able to participate in the program.
4. Must be willing to sign a treatment contract and undergo treatment which includes regular urine drug screening (UDS) and counseling (individual or group).
5. Must be able to attend treatment at scheduled times.
6. Must be willing to seek employment or education programs and fully participate in one or both or may complete community services in accordance with the participant's phase of participation.
7. Must be willing to accept any sanctions levied by WCJ for failing to meet WC program requirements.

Wellness Court Expectations:

- Honesty
- Taking ownership
- Showing up and journaling

Program requirements:

- Sign consent for release of information.
- Sign contract.
- Complete all three phases of the program.
- Random drug testing throughout the program
  - Varied frequency-More frequent in the early phases

- Diluted test results are considered to be positive
- Refrain from use of narcotic drugs-Only use narcotic drugs that are prescribed by a physician and after notifying Wellness Court Agent.
- Respond to agent messages within allotted time frame.
- Attend all treatment sessions.
- Provide a written weekly schedule.
- Journaling
  - Type of meeting
  - Date, time and signature of leader
  - Topic of meeting and how it will help the client maintain sobriety
  - One page per entry
  - Note community service work hours
  - Additional journals will be provided when full
  - Replacement journals cost \$10.00
- Regular Wellness Court Hearings (failure to appear will result in warrant for arrest).
- Case review sessions prior to Wellness Court Hearings.
- Sanctions
  - Verbal or written reprimands and warnings from judges
  - Verbal or written apologies to judges and Wellness Court Team members
  - Additional Community service or educational requirements
  - Additional drug testing, court hearings, or support meetings
  - Move back a phase
  - Jail/Dismissal

Program Phases:

- Phase I: Treatment Phase (3 month minimum time frame)
  - Maintain 60 days of continuous sobriety.
  - Complete all treatment recommendations.
  - Obtain at least one sponsor.
  - Attend all Wellness Court hearings.
  - Submit to random chemical testing 2-4 times per week.
  - Call into the color testing system daily as directed.
  - Obtain employment, enroll in school, or perform community service for at least 20 hours per week. This is verified by the probation officer.
  - Submit petition for phase change and relapse prevention plan for consideration.
  - Ensure all Wellness Court fees are paid and current.
- Phase II: Transition Phase (Minimum time in phase is 6 months)
  - Achieve 90 days of continuous sobriety.



- Make progress on individual case plan.
- Complete relapse prevention or aftercare program.
- Make progress towards driver's license reinstatement.
- Attend all Wellness Court hearings.
- Submit to random chemical testing 1-2 times per week.
- Continue to work with sponsor.
- Attend community support meetings.
- Attend group sessions.
- Attend victim impact panel or DWI class.
- Work/school totaling 40 hours per week.
- If unemployed/not in school, complete approved community service participation at least 30 hours per week.
- Have approved Community Service Project.
- Maintain up to date Wellness Court fees.
- Submit petition for phase change and relapse prevention plan.
- Phase III: Living Well (Minimum time is 6 months for misdemeanors and 12 months for felonies)
  - 180 days of continuous sobriety.
  - Submit to random chemical testing 1 time per week
  - Attend community support meetings 2 times per week.
  - Attend Wellness Court hearings every 4 weeks.
  - Pay all fees.
  - Maintenance of case plan.
  - If unemployed/not in school, complete approved community service participation at least 30 hours per week.
  - Complete and document 32 hours of an approved community service project.
  - Submit petition to graduate.

Graduation Criteria:

- Submit a written application for graduation that shows understanding of personal problems with addiction, criminal behavior, and relapse prevention.
- Continuous sobriety maintained for at least 180 consecutive days prior to graduation as demonstrated by no positive drug tests.
- Gainfully and consistently engaged in work/schooling except in exceptional cases approved by the team.
- Make all court/treatment appearances.
- Reach goals of case plan.
- Stable living arrangement with clean and sober relationships.

- Definitive continuing care plan that includes community support meetings, mental health care, outpatient counseling or group attendance.
- Completion of community service project.
- Fulfill all court obligations.
- Pay all program fees.

### **Implementation Considerations for Indian Health Service/Tribal/Urban Programs**

1. Become aware of local, regional, and tribal wellness courts in your facilities area.
2. Utilize your Medication Safety/Controlled Substance Utilization or equivalent interdisciplinary committee to become aware of wellness courts in your region, and educate clinicians and front line patient care staff of the availability of the Wellness Court as a means to access treatment and services for patients identified as at risk or in need of such services.
3. Develop connections/contacts with stakeholders of the Wellness Court (program manager or coordinator) to foster awareness of treatment services at your facility, and, provide expertise and support to the operation of the Wellness Court and program participants.
4. Be cognizant of Wellness Court entry and eligibility criteria. Not all programs take all patients who struggle with all types of substance abuse.
5. Know what substances are abused in your community and discuss ways/means internally that your facility could partner with law enforcement to develop or expand the availability of Wellness Court Programs to include other substance abuse issues beyond alcohol.
6. Be cognizant of restrictions on sharing protected health information with law enforcement. Have discussions within your facilities interdisciplinary committee regarding what types of information can be shared and under what circumstances. Seek guidance from Area/Regional consultants and HHS Office of General Counsel contacts.

### **Key Measures for Evaluating the Impact of Your Facility's linkages with Tribal Healing and Wellness Courts:**

- Number of interventions made by staff to at risk patients promoting access to Tribal Drug Court programs.
- Number of participants in Tribal Drug Court programs who receive Mental Health or Substance Abuse Services at the facility.
- Number of participants who complete Tribal Drug Court programs who relapse and return to Drug Court or Criminal court for Alcohol or Drug related offenses.

## **References/Resources for more information:**

1. National Association of Drug Court Professionals ([www.nacdpo.org](http://www.nacdpo.org))
2. Tribal Law and Policy Institute. Tribal Healing to Wellness Courts, The Key Components, Supported by a Grant from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance. Second Edition, 2014.  
<http://www.wellnesscourts.org/files/Tribal%20Healing%20to%20Wellness%20Courts%20The%20Key%20Components.pdf>
3. U.S. Department of Justice, Office of Justice Programs, National Institute of Justice
  - <http://www.nij.gov/topics/courts/drug-courts/Pages/welcome.aspx>
4. July 27, 2011 Cass/Itasca County/Leech Lake Tribal Wellness Court Honored by National Association of Drug Court Professionals.  
<http://www.mncourts.gov/?page=NewsItemDisplay&item=53210>
  - Cass County Minnesota/Leech Lake Band of Ojibwe Wellness Court Procedure Manual. Ninth Judicial District. Policy and Procedure Manual, October 31, 2013 revision.