

Family Wellness Courts:

Integrating Child Welfare and Substance Abuse Treatment



Tribal Law and Policy Institute

Statement of the Problem

*How many
children in the
child welfare
system have a
parent in need of
treatment?*

- Between 60–80% of substantiated child abuse and neglect cases involve substance use by a custodial parent or guardian
- 61% of infants, 41% of older children who are in out-of-home care
- 87% of families in foster care with one parent in need; 67% with two

Addiction in Indian Country

- Cigarette Addiction 52% - highest among all other ethnic groups
 - Childhood trauma increases smoking risks
 - Daily smokers are 5 times more likely to abuse alcohol
- Alcoholism is at an all time high among Native people
- Most violent crimes committed in Indian country involve alcohol/drugs on both the part of the offender and the victim

Impacts of Addiction

- Tends to mask the roots of the problem
- Enhanced Low Self-Esteem
- Loss of sense of belonging or connection to the tribal community or group
 - Possibly stemming from historical trauma
 - Negative boarding school experience
 - Relocation
 - Assimilation

Tribal Courts

Prior to European contact, Indigenous peoples practiced various forms of meaningful dispute resolution.



1883: First modern iteration of tribal courts: “Courts of Indian Offenses” (CFR)

1934: Indian Reorganization Act: permitting tribes to organize and adopt constitutions under federal law.

Today: tribal justice systems are diverse in concept and character. At various stages of development.

Complex Jurisdictional Framework

Criminal and Civil Jurisdiction is complex; often depends on the

- Indian status of the offender/defendant
- Indian status of the victim/plaintiff
- Location of the offense/act
- The nature of the offense/act



Additional factors include

- Federal prosecutorial discretion
- Development of the Tribal Court and/or Tribal Code
- Possible state jurisdiction (e.g. PL 280)
- Joint Powers Agreements and/or Memorandums of Understanding

Tribal Healing to Wellness Courts



Healing to Wellness Courts are tribal drug courts.

Particular interest in addressing alcoholism, especially in a non-adversarial nature.

The term “Healing to Wellness Courts” was adopted to

- (1) incorporate two important Indigenous concepts - Healing and Wellness; and
- (2) promote wellness as an on-going journey.

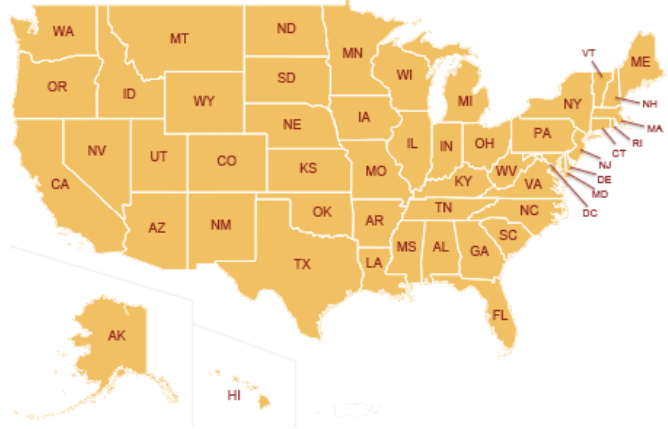
www.WellnessCourts.org

Resources & Tools Wellness Court Resources Tribal Key Components Forms & Policies Drug Court Research State Resources

Search by Tribe:

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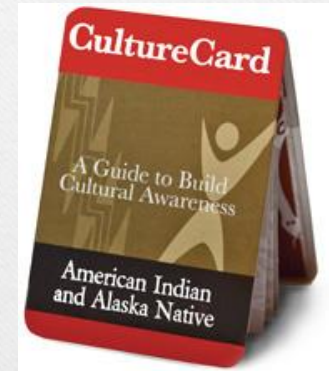
- Indian Nations
- Tribal Justice Systems
- Tribal Wellness Courts**
- Tribal-State Collaborations
- Wellness Court Collaborations



A map of the United States with state abbreviations. The map is colored in shades of orange and yellow. The states shown are: WA, MT, ND, MN, WI, MI, NY, VT, ME, OR, ID, WY, SD, IA, OH, PA, NH, MA, RI, CT, NJ, DE, MD, DC, CA, NV, UT, CO, KS, MO, IL, IN, WV, VA, NC, SC, AZ, NM, OK, AR, TN, KY, WV, VA, NC, SC, TX, LA, MS, AL, GA, FL, AK, HI.

Cultural Sensitivity

- Cultural competency is a critical principals of care
- Not all tribal customs and traditions are the same
- Not all methods of seeking traditional healing are the same
- Not all Indian people will be open to participating in cultural orientated activities
- Must give careful consideration on the team's approach to cultural teaching and customs in their programs



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State 10 Key Components and the Tribal 10 Key Components

In 1997, the National Association of Drug Court Professionals (“NADCP”) developed *Defining Drug Courts: The Key Components*, a guide to prescribe the basic operational characteristics that all drug courts should share as benchmarks for performance.



However, it became apparent that the state key components may be inappropriate the tribal context.



Therefore, in 2003, the Tribal Law and Policy Institute (“TLPI”), reoriented and generalized the state key components as relevant to the tribal setting to allow for tailoring in different geographic, demographic, jurisdictional, and cultural tribal contexts.

Treatment of Alcohol/Drug Use & Trauma Among Native American's

- Wellness Court process is not a new method
 - Crime and conflict were historically addressed through customary and traditional methods
- Traditional Native people focus on community
 - Modern ways are individualized
 - Community vision is what guides Native people

Family Healing to Wellness Courts

Family Wellness Courts

- Family court docket of which selected abuse, neglect, and dependency cases are identified where parental substance abuse is a primary factor.
- Family Wellness Courts aid parents in regaining control of their lives and promote long-term stabilized recovery to enhance the possibility of family reunification within mandatory legal timeframes.

Family Wellness Courts: Two Models

- Integrated Judicial Model
 - Dependency judge *is* Tribal Wellness Court judge, with no referral or court-ordered transfer
- Parallel Judicial Model
 - Parents and guardians as participants are *referred* to Wellness Court, either
 - Pre-petition (after a formal “report of harm” to a child, but before a formal dependency petition has been filed for that child)
 - Post-admission (formal petition has been filed and an admission and agreement has been negotiated, agreed to, and approved by the judge)
 - Post-adjudication

Family Drug Court Outcomes

- **Higher** Treatment Completion Rates
- **Shorter** Time in Foster Care
- **Higher** Family Reunification Rates
- **Lower** Termination of Parental Rights
- **Fewer** New Child Welfare Petitions after Reunification
- **Lower** Criminal Justice Recidivism
- **Cost Savings** per Family

Family Healing to Wellness Court

- Handle child welfare cases where parental substance abuse is a significant factor.
- However, while goal is reunification, focus is on children
- Special Relevance for Tribes:
 - Historical trauma
 - Adults with histories of child abuse and neglect are at a high risk for developing substance abuse disorders
 - Increased likelihood of substance-abusing parents abusing their own children.

Important Practices of FDCs

7

- System of identifying families

- Timely access to assessment and treatment services

- Increased management of recovery services and compliance with treatment

- Improved family-centered services and parent-child relationships

- Increased judicial oversight

- Systematic response for participants – contingency management

- Collaborative non-adversarial approach grounded in efficient communication across service systems and court

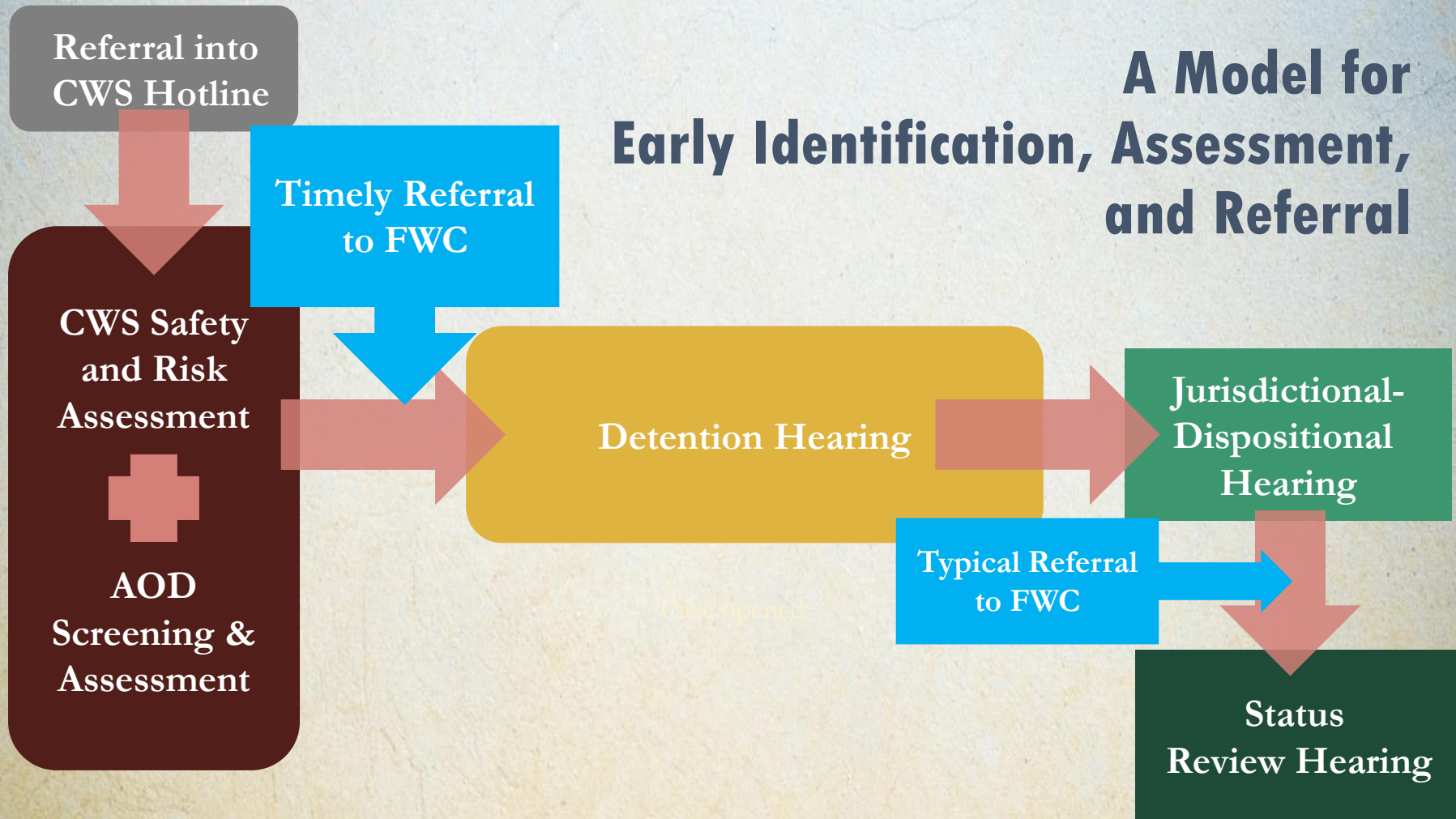
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System of identifying families: Barriers and Challenges

- Target population unclear
- Restrictive and/or subjective eligibility criteria
- Screening and identification conducted late
- Lack of utilization of standardized screening protocols
- Referral process with weak hand-offs, lack of tracking

A Model for Early Identification, Assessment, and Referral

Early Identification, Assessment, and Referral



2

Timely access to assessment and treatment services

- How is the individual referred for assessment?
- On an average, how long does it take to go from referral to assessment?
- Who conducts the assessment and what tools are used?
- What additional information from child welfare and other partners would be helpful in understanding the needs of the parent, child, and family?
- How is information communicated to the parent? To the child welfare staff? To the courts? Are the appropriate consents in place and consistently signed?
- What happens if the parent doesn't show for assessment?
- What are the next steps if treatment is indicated? If treatment is not indicated?
- If the persons/systems/agencies conducting the assessments are not the same as the ones providing treatment, is there a warm hand-off?



Time to Treatment Matters

**Child Welfare –
timetable for
reunification**

Conflicting Timetables

**Treatment and
recovery – ongoing
process that may
take longer**

Early engagement in treatment is crucial. Strategies to improve timely access include:

- Screening and identification
- Service linkage and matching to parent need
- Warm hand-off to assessment

Reunification Timetables

- Consider...not all Tribal Social Services operate under the ASFA Timelines
 - Must file termination of parental rights when a child has been in foster care for 15 of the last 22 months
 - Must have permanency hearing no later than 12 months after the child has entered foster care
- Title IV-E – Yes
- Title IV-B – No



Missed opportunities

“Here’s a referral, let me know when you get into treatment.”

“They’ll get into treatment if they really want it.”

“Don’t work harder than the client.”

“Call me Tuesday.”

3

Increased management of recovery services and compliance with treatment

Recovery is a process of change through which individuals improve their health and wellness, live self-directed lives, and strive to reach their full potential.

SAMHSA's Working Definition

Recovery is not treatment!

Access to evidence-based substance use disorder treatment and recovery support services are important building blocks to recovery.

Rethinking Treatment Readiness



Rethinking “rock bottom”

Addiction as an elevator



“Raising the bottom”

Family Wellness Court focuses on engagement

4

Improved family-centered services and parent-child relationships

Recognizes that addiction is **a family disease** and that recovery and well-being occurs **in the context of families**

Parent Recovery

Focusing on parent's recovery and parenting are essential for reunification and stabilizing families



Child Well-Being

Focusing on safety and permanency are essential for child well-being

Focusing Only on Parent's Recovery Without Addressing Needs of Children

Can threaten parents' ability to achieve and sustain recovery, and establish a healthy relationship with their children, thus risking:

- Occurrence/Recurrence of maltreatment
- Entry/Re-entry into child welfare system and out-of-home care
- Relapse and sustained sobriety
- Additional substance exposed infants
- Additional exposure to trauma for child/family
- Prolonged and recurring impact on child well-being

Strategies and Techniques to Integrate Family into Court and Treatment Process

- Find opportunities for team members to have conversations with members of families
- Implement an evidence-based practice that includes parent-child time as the required parenting component
- Review records and assessments with family members
- Observations/Home visits
- Family Functioning Instruments: open ended questions, strengths-based

5

Increased judicial oversight

- Engage directly with parents vs. through attorneys
- Create collaborative and respectful environments
- Convene team members and parents together vs. reinforcing adversarial nature of relationship
- Rely on empathy and support (vs. sanctions and threats) to motivate



6

Systematic response for participants – contingency management

- Have a range of responses for any given behavior, and should be consistent for individuals similarly situated (phase, length of sobriety time).
- develop Avoid singular responses, which fail to account for other progress.
- Aim for “flexible certainty” – the certainty that a response will be forthcoming united with flexibility to address the specific needs of the individual.
- Timing is everything; delay is the enemy; how can you as a team work on this issue?

Impact on Children and Families

- Accountability is focused on parents
- Court must consider impact of a response on children and family as a unit
- Visitation should be determined solely on basis of child's safety and best interest (vs. parent sanction or reward)

*Consider
Milestones*

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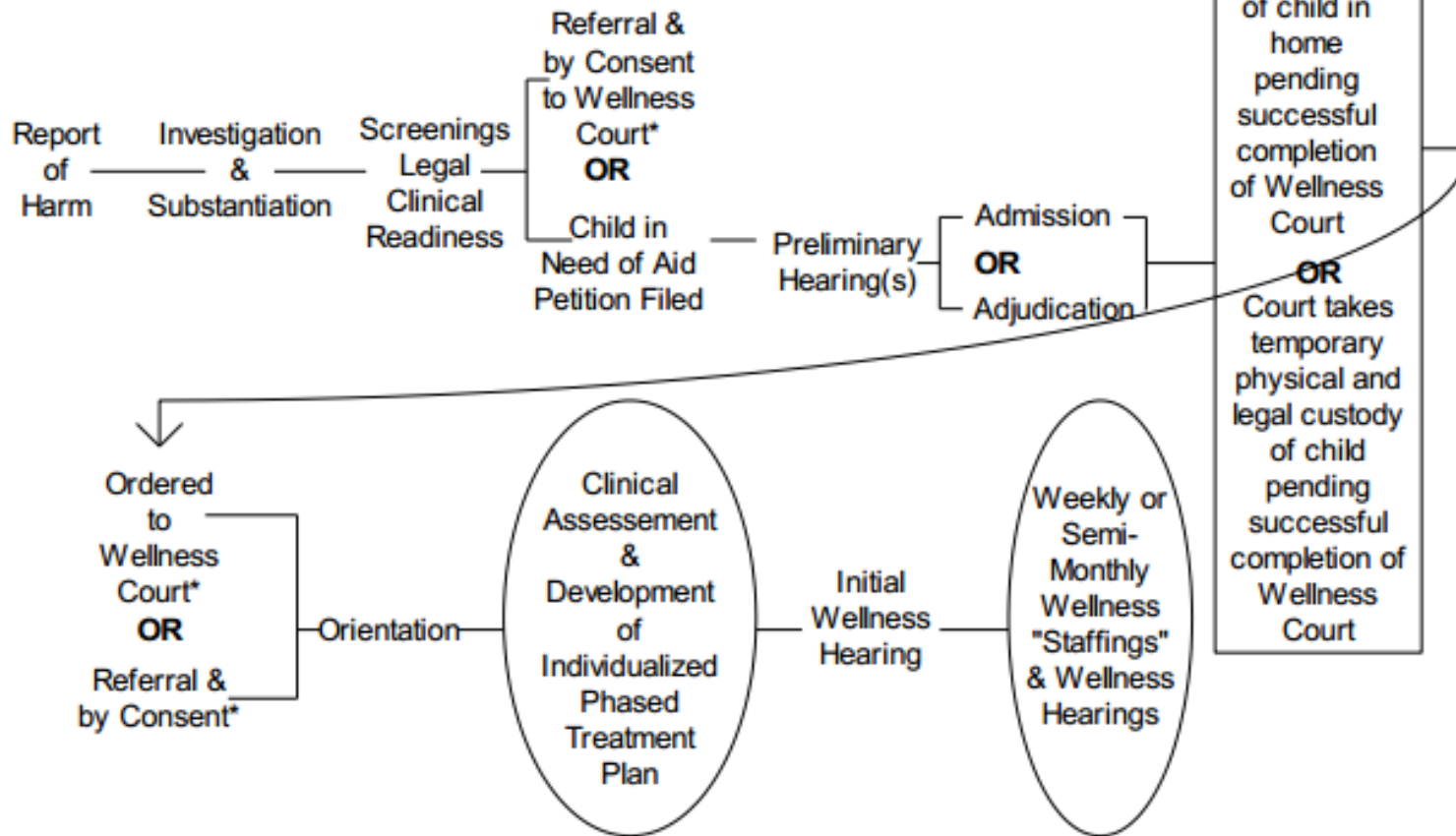
Collaborative non-adversarial approach grounded in *efficient communication* across service systems and court

- What's Needed:
 - Stronger Relationships
 - Increased communication
 - Enhanced information sharing
- How to get there?
 - Trust
 - Leadership
 - Training

Healing to Wellness Courts

The Process

Tribal Wellness Court Process (Family Wellness Court)



*This flow chart illustrates a "parallel" judicial model as opposed to an "integrated" judicial model (in the state systems an integrated model - where the same dependency court judge is also the Wellness Court judge - is recommended as more effective)

Sustained Team,
Community, &
Nation Building

Team, Community, &
Nation Building

Enduring
Knowledge &
Experience

Entry

Healing to Wellness
Court
Quick Key Component
Review

Eligibility

Keeping & Telling
Stories

Healing and
Treatment

Respectful
Communication

Support &
Supervision

Discipline &
Encouragement

Planning Considerations



Designing the Healing to Wellness Court

- NADCP's Checklist:
 - Develop the Mission Statement
 - Define the Goals and Objectives
 - Identify the Target Population
 - Design Eligibility and Disqualification Criteria
 - Determine Court Model
 - Design Entry Process
 - Establish the Phase System
 - Develop the Treatment Protocol

Designing the Healing to Wellness Court Cont.

- Identify Community Resources
- Develop Supervision Protocol
- Develop Drug Testing Protocol
- Develop Court Responses Protocol
- Develop Communication Protocol
- Develop a Monitoring and Evaluation Protocol
- Identify and Develop Waivers
- Develop Operational Practices

COMMUNITY RESOURCE MAPPING

DEFENSE

STATE COURTS/AGENCIES

MENTAL HEALTH

SOCIAL SERVICES

TRANSPORTATION

TRIBAL COURT/JUDICIARY

PROSECUTORS

HOSPITALS AND CLINICS

HOUSING SUPPORTS

ALCOHOL AND OTHER DRUG TX

PROBATION

**Healing
to
Wellness
Court**

SERVICE ORGANIZATIONS

FOOD PANTRYS

LAW ENFORCEMENT

ELDERS

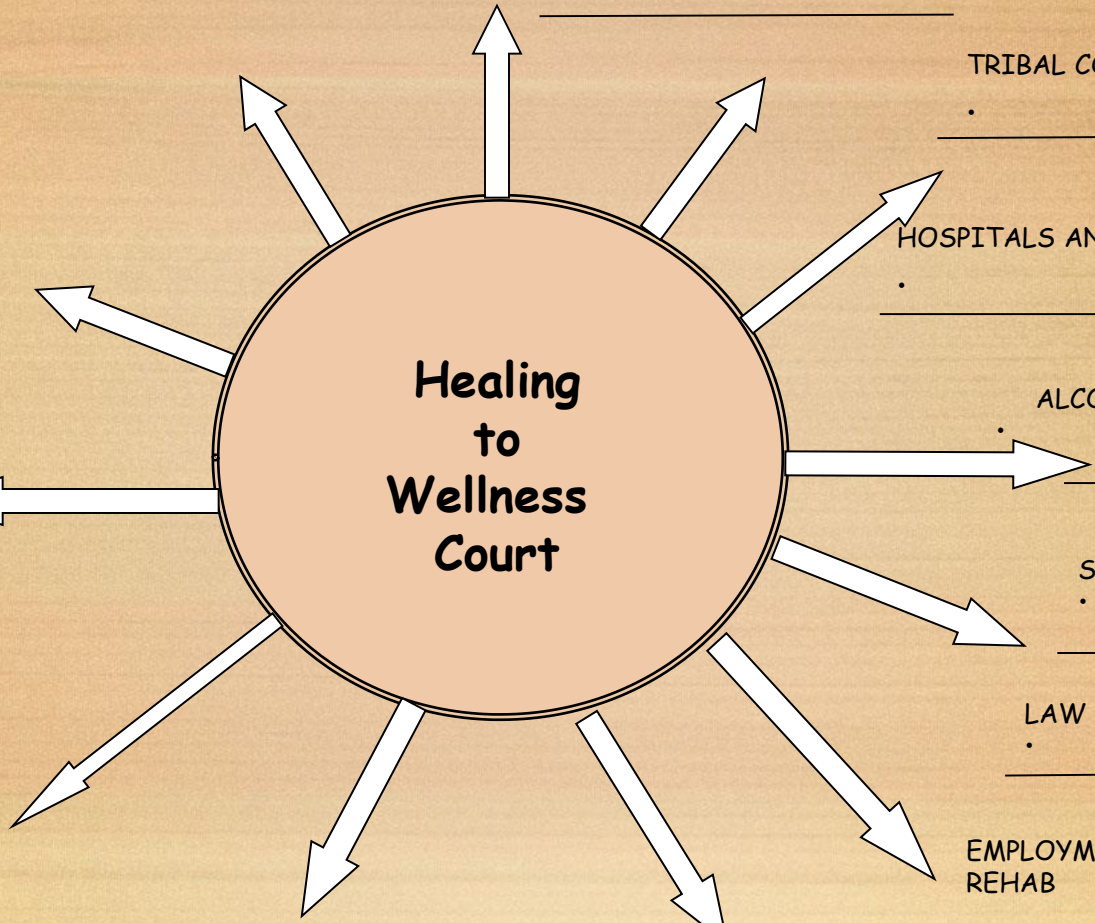
EMPLOYMENT RESOURCES/VOC
REHAB

SCHOOLS

COMMUNITY HEALERS/MEDICINE
(WO)MEN/FAITH COMMUNITY

EMERGENCY SHELTER

CHILD CARE PROVIDERS



Planning a Wellness Court

Publications

Tribal-Specific

- [Tribal Healing to Wellness Courts: Program Development Guide](#), Tribal Law and Policy Institute (2002).
- [Healing to Wellness Courts: A Preliminary Overview of Tribal Drug Courts](#) Tribal Law and Policy Institute (2002) (2013 update coming soon).
- [Tribal Healing to Wellness Courts: The Key Components](#) Tribal Law and Policy Institute (2003) (2013 update coming soon).

State-Specific

- [Taking Aim: How to Develop and/or Redefine Your Target Drug Court Population](#), Elizabeth Costello and Robyn Johnson, OJP Drug Court Clearinghouse and Technical Assistance Project (2002).
- [Development and Implementation of Drug Court Systems](#), Judge Jeff Tauber, National Drug Court Institute, Monograph Series 2 (1999).

Sample Materials

- Fort Peck Community Wellness Court - [Program Description](#), [Implementation Plan](#)

Other Resources

Tribal-Specific

- [Tribal Healing to Wellness Court Planning Process Checklist](#), National Association of Drug Court Professionals (NADCP)

State-Specific

- [Adult Drug Court Planning Process Checklist](#), National Association of Drug Court Professionals (NADCP)
- [Developing and Implementing a Drug Treatment Court in Michigan](#), Michigan Supreme Court and State Court Administrative Office (2012).

Other Available Technical Assistance

- National Drug Court Institute's [Tribal Healing to Wellness Court Planning Initiative](#)
 - For further information regarding the THWCPI application process and training program, please contact:
Carolyn Hardin
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571-384-1864
chardin@ndci.org

Court Collaboration

Diversion courts

Recognition of tribal court judgments

Family law

Truancy and other juvenile matters

Indian Child Welfare Act (ICWA) cases

Motor vehicle licensing

Child support enforcement

Enforcement of protection orders

Recognition of customary marriages

Probation and reentry support

Registration and management of sex offenders



Opportunities for Collaboration in Wellness Court

- Transfer Agreement for eligible participants
- Provision of drug testing and other oversight services
- Sharing of database information
- Consultation for particular subject matter (e.g. cultural activity or treatment)
- Consultation for particular participants
- Joint team members (probation, behavioral health, treatment)
- Communication between Coordinators
- Observation of each other's hearings

Resources

- [Tribal Healing to Wellness Courts: The Key Components](#)
- [Guidance to States: Recommendations for Developing Family Drug Court Guidelines](#)
- [Tribal Legal Code Resource: Civil Dependency and Related Laws](#)



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