

18th Annual National Association of Drug Court Professionals Training Conference

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Legal & Policy Issues Impacting Wellness Courts

Presenters:

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Tribal Law and Policy Institute

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Introductions & Expectations

Who Are We? Why Are We Here?

Us & TLPI (tlpi.org)

Presentation Overview

Tribal Law and Policy Institute

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Presentation Perspectives, Presumptions & Points

Community & Nation Building [Exercise in/of Sovereignty]

Judicial Development > Conflict Resolution > Substance Stirred

Issues vs. Policies

Actual or Potential

Sorting Sovereign Exercise

Known Cases/Controversies [from State Courts]

VOLUME TWO: DECISION SUMMARIES BY ISSUE (AU)

- ▣ Americans with Disabilities Act (ADA)
- ▣ Authority to Create Drug Court Program
- ▣ **Constitutionality of Drug Court Program**
- ▣ Authority of Drug Court Commissioner
- ▣ **Authority of Drug Court Judge to Dismiss Case**
 - Navajo Nation
- ▣ Authority of Trial Judge to Modify Order of Drug Court Judge
- ▣ Confidentiality

U.S. Constitutional Issues

▣ First Amendment

- Issues Relating to AA/NA Participation
- Issues Relating to Claim of Free Speech While in Drug Court

▣ Fourth Amendment: Searches of Participants' Homes/Vehicles

▣ Fifth Amendment (and Fourteenth Amendments where applicable)

- **Due Process**
- Double Jeopardy

▣ Sixth Amendment

- Right to Trial/Right to Effective Counsel
- Right to Confront Witnesses
- Right to Speedy Trial

▣ Fourteenth Amendment: (Equal Protection)

▣ Drug Court Eligibility/Entry

▣ Drug Court Participation Conditions/Requirements

- **Avoiding People or Places of Disreputable Character/Associated with Drug Use - (Tribal Casinos)**
- Imposition of Sanctions/Incentives
- Prohibition of Use of Alcohol
- Vehicle Forfeiture

▣ Drug Court Plea Agreement

- Effect on Sentencing
- Effect on Charge
- Legality if Defendant Does Not Fully Disclose Factors that Would Make Him/Her Ineligible for Program
- Right to Rescind Drug Court Plea Agreement if Not Accepted into Drug Court
- Enforceability of Agreement: Other Requirements

Drug Court Proceedings

Effect of Drug Court Participation on Sentencing

Effect of Failure to Appear in Drug Court on Statute of Limitations

Effect of Juvenile Drug Court Participation on Driver's License Status

Effect of Drug Court Participation on Attorneys License

Effect of Waivers to Enter Drug Court Program

Ethics

Ex Parte Communications

Judges' Involvement with Nonprofit Organizations

Use of Campaign Funds for Drug Court Program

Legal Fees

Other

Expungement

Family Drug Courts

Immigration Issues

Immunity/Liability of Drug Court Officials

Judicial System and Other Program Resources

Jurisdictional Issues

Juvenile Drug Courts

Miscellaneous Administrative Issues

Public Housing

Requirements for Parental Participation (In Juvenile Drug Court Cases)

Sentencing [see also "Effect of drug Court Participation on Sentencing"]

Statutory Interpretation

Termination from Drug Court: [Including Nature of Hearing/ Requirements]

Termination of Parental Rights/Finding of Neglect

Transfer of Cases Within Court - Docket to Docket

Transfer of Cases to Other Jurisdictions

Treatment-Related Issues

Violent Offender- Definition

Withdrawal from Drug Court Participation

Blackfeet Cases (Tribe v. Rutherford & Tribe v. Sharp)

Facts of Cases

Issues

- ❖ Due Process & Civil Rights
- ❖ Applicable Tribal & Federal Law
- ❖ Writ of Habeas Corpus
- ❖ Policies & Procedures v. Law
- ❖ Detention & Bond in Wellness Court
&
- ❖ Notice & Consent

Issue: Fairness

- ▣ Defendant's Perception is Reality
 - "Court is unfair" - threat to judicial system
 - What is Fairness?
 - Procedural Fairness - procedures and treatment
 - Distributive Fairness - case outcome
 - Procedural fairness produces fair outcomes
 - If participant feels the decision was arrived in a fair manner - more willing to accept a negative outcome

Judges

- ▣ Defendant's perception of judge \cong fairness of the court
 - Study: Federal appellate judges review of police-citizen encounters
 - ▣ Judges trained – focus on legal issues to provide fair outcomes
 - ▣ Public – focus is on procedure (how one is treated)

Perception Factors

- ▣ Their voice was heard
 - Substantive interaction
- ▣ Decision makers were neutral and trustworthy
 - Transparency of decisions; caring
- ▣ Quality of Communication
 - Respectful
 - Rights were protected

What about Judicial Responsibility and Ethics?

- ▣ Due Process is Procedural Fairness! ... sorta ...
 - Due Process to the Judge:
 - ▣ Notice
 - ▣ Opportunity to respond
 - Due Process to Public:
 - ▣ Procedure; Procedure followed
 - ▣ Treated with respect
 - ▣ Tell his/her side of the story
 - ▣ Decision explained

Ex Parte Communications

- ▣ Staffing ex parte communication – violating due process?
 - Who participates in staffing?
 - When is the final decision made? Does the participant have the right to tell his/her side of the story
 - Is your Healing to Wellness Court a “Program” or “docket”?
 - What do your procedures say?
 - Is participation a “right” or “privilege”?

Options

- ▣ Written waiver
- ▣ Staffing provides recommendations; final decision is made after participant has had opportunity to respond
- ▣ Allow defense counsel opportunity to meet with client before court and advocate in court
- ▣ Modify Rules of Judicial Conduct - Judge may consider “ex parte” communication if authorized by law ... serving in wellness court

Hypothetical

- ▣ Adult Healing to Wellness Court
- ▣ Referral process
 - Criminal pre-plea
 - Criminal post-plea
 - HUD clients
 - County drug court pre-plea
- ▣ Team
 - Tribal court judge
 - Wellness court project director
 - Probation officer
 - Lay defense advocate
 - Prosecutor
 - Treatment provider
 - Cultural advisor

The Referral Process

Key Component #2: Participants enter the wellness program through various referral points and legal procedures while protecting their due process rights.

ISSUES

- ▣ Non criminal referrals
 - Be clear in forms about due process and sanctions
- ▣ Transferring criminal cases – pre plea and post plea
 - What penal process is the person subject to?
 - What type of jurisdiction is the Tribal Healing to Wellness Court exercising?

Eligibility and Requirements

Key Component #3: Eligible substance abuse offenders are identified early through legal and clinical screening and promptly placed in the Tribal Healing to Wellness program.

Key Component #4: Tribal Healing to Wellness programs provide access to structured and phased substance abuse treatment and rehabilitation services that incorporate culture and tradition.

Eligibility and Requirements ISSUES

- ▣ Medication Assisted Treatment
 - Legality of denying medication assisted treatment
 - Developing a holistic approach
 - ▣ Community wide response
 - ▣ Team response

Judicial Leadership

Key Component #7 - Ongoing judicial interaction with each participant and judicial involvement in team staffing is essential.

ISSUES

- ▣ Court vs. Program - who is in charge?
 - The difference between state and tribal drug courts
 - ▣ States discussion focuses on docket vs. court
 - Tribal HWCs
 - ▣ Executive powers vs. judicial powers
 - ▣ Program vs. a court docket
 - ▣ *Questions & Discussion*

Tribal Law and Policy Institute (TLPI) Tribal Wellness Court Resources

Tribal Law and Policy Institute is a Native American owned and operated non-profit corporation organized to design and deliver education, research, training, and technical assistance programs which promote the enhancement of justice in Indian country and the health, well-being, and culture of Native peoples.

Tribal Court Clearinghouse

www.tlpi.org

For More Information . . .

TLPI believes in providing resources free of charge, or at minimal cost, whenever possible.

Visit www.tlpi.org

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