Diversionary Courts

Providing Sentencing Alternatives to Tribal Courts: Tribal Healing to Wellness Courts
Indigenous Worldview

North
- Physical
- Hold with the Body
- Earth element
- The Healer
- Autumn

South
- Emotional
- Give with the Emotions
- Water element
- The Teacher
- Summer

West
- Soul
- The Void
- The All

East
- Intellectual
- Receive with the Mind
- Air element
- The Warrior
- Winter

- Spiritual
- Determine with the Spirit
- Fire element
- The Visionary
- Spring
American Criminal Justice System

- The Four Objectives
  - Punishment/Retribution
  - Deterrence- Special and General
  - Incapacitation
  - Rehabilitation (Restitution?)

- Treat the *Criminal Event* as isolated occurrence

- Event is between the sovereign and the offender
  - Little focus on the victim
Indigenous Justice Systems

- Law is about retaining, teaching, and maintaining good relationships
- Criminal activity has caused an imbalance
- Reconciliation is a process, requiring
  - Recognition
  - Remorse
  - Restitution
  - Repatriation (compensation)
  - Reciprocity
- All four elements of the person are involved: the spiritual, emotional, physical, and mental
Indian Law and Order
Commission Report

A Roadmap for Making
Native America Safer
Report to the President &
Congress of the United States
ILOC Report: AI/AN in Detention

- Disproportionately severe sentences
- Federal sentencing guidelines systematically with longer sentences compared to the same crime committed under State jurisdiction.
- Distance of detention facility from Native community
- Deplorable detention conditions, including lack of culturally relevant services
ILOC Report: Alternatives to Incarceration

- Participants reoffend at rates at least 10-20 percent lower than non-participants
- Participants more likely to experience positive life outcomes
- Provides traditional/cultural correctness
- Better suited to address the fundamental causes of crime and violence, including colonial domination and dispossession

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Restorative Justice: The Great Intersection

The Rise of Native Nation Building

The Rise of Western Adoption of Restorative Justice

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Therapeutic Courts

- Western roots in community and problem-oriented policing
- Shared an emphasis on
  - data analysis,
  - community engagement,
  - crime prevention, and
  - problem solving.
ILOC Report: Successful Diversionary Courts Require...

- Well-informed judges
- Supportive legal code
- Screening mechanisms
- Strong probation
- Access to services
Drug Courts

- Seek to halt the revolving door of addiction and arrest by linking addicted offenders to drug treatment and rigorous judicial monitoring
- They bring together judges, prosecutors, defense attorneys, treatment providers and court staff
- Use a system of graduated rewards and sanctions
- Over 2,300 drug courts in all 50 states
Tribal Wellness Court Process
(Adult Wellness Court)

Criminal Act

Screenings
Legal
Clinical
Readiness

Referral & by Consent to Wellness Court

Referral & Criminal Complaint Filed

Arraignment

Guilty Plea

OR

Trial & Finding of Guilt

Probation

OR

Stayed Sentence

Ordered to Wellness Court

OR

Referral & by Consent

Orientation

Clinical Assessment & Development of Individualized Phased Treatment Plan

Initial Wellness Hearing

Weekly or Semi-Monthly Wellness "Staffings" & Wellness Hearings

2014 American Indian Justice Conference
TRIBAL HEALING TO WELLNESS COURTS: THE KEY COMPONENTS

2014 American Indian Justice Conference
Healing to Wellness Court Toolkit

Ten Key Components

NIJ Gottlieb Study

TLPI T/TA
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.
NIJ Wellness Court Study: Key Component #1

- Planning should be carried out by a broad-based group, including people who represent all parts of the tribal justice system, the local treatment programs, tribal leaders, knowledge holders and elders, and others.

- Detail team member responsibilities in written policies and procedures based on roles, not individuals.

- Methods of shared decision making and conflict resolution within the team should be established.
Forms, Policies & Procedures and Other Operational Materials

Resources

- PowerPoint: 2013 NADCP Annual Training: *Developing and Revising the Policies and Procedures Manual for Tribal Healing to Wellness Courts*
  The Power Point overviews the major topics that should be covered in every Healing to Wellness Court Policy and Procedure Manual, as well as major considerations to consider when drafting and revising this essential document.

Sample Documents

Sample Wellness Court Code
*(See also, Tribal Drug Court/Healing to Wellness Court Operational Materials, American University, (June 2001), below)*

- Cherokee Nation - [Resolution: Authorizing the Submission of a Grant to Establish Service to the Healing to Wellness Court](#) - Feb. 2007. This resolution, finding that drug courts have high rates of success, authorizes the Wellness Court coordinator to apply for a Tribal Youth Program Grant from the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention.
- [Eastern Cherokee Wellness Court Code](#) - Jan. 2009
  This Wellness Court code details the purposes and policies of the court, the requirements of the judge, the minimum number of team members, eligibility and entry into the Wellness Court, a lift on the rule of evidence for Wellness Court proceedings, and basic parameters of the proceedings.
- [Spokane Wellness Court Code](#)
  This Wellness Court code sets out the eligibility and entry requirements for Wellness Courts participants as deferred prosecution. The code states the due process protections that must be provided to the participant, the treatment requirements, including the need for a written treatment plan, the docket procedure upon the granting of deferred prosecution, and other procedural rules, including the procedure upon breach of the treatment plan.
- [Hoopa Valley NA:tini-x’we’ NA:xo’-xi-nayi-din Wellness Court Code](#) - Oct. 2002
  This Wellness Court code sets out the purposes of the court, its jurisdiction; the court procedure; including the admissibility of Wellness Court evidence in other proceedings; relations of the court with other tribal agencies; participants’ due process; eligibility and entry, including legal and clinical screening; rules of Wellness Court hearings; a sample consent decree; rules for the treatment plan; the court’s weekly procedure; rules for successfully completion; and court record rules.
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.
NIJ Wellness Court Study:
Key Component #2

- The team should determine early what charges, offenses, or negative conduct will be appropriate for Wellness Court participation.

- Use an “informed consent” approach to ensure participants are aware of all the benefits, risks, and alternatives to Tribal Wellness Court.

- The team should comply with all tribal and federal regulations governing privacy and confidentiality.
This agreement made and entered into this , between the Little Traverse Bay Bands of Odawa Indians (LTBB), and the defendant upon the advice and consent of his/her counsel.

It appearing that the offenses in this case are such that the public safety does not demand or require that the said defendant suffer the penalties of law imposed upon him/her at this time.

**THEREFORE:** In consideration of the diversion to the Waabshki-Miigwan Drug Court Program (WMDCP), it is hereby admitted and agreed by the said defendant and counsel as follows:

1. I admit that there is probable cause for the offenses charged by the complaining witness in the complaints and/or citations on file herein and hereby admit committing the acts in violation of the Tribal Law charged in the complaints(s) or citations (s). I hereby waive my rights, including the right to confront witnesses on these charges, to have a trial by jury, my right against self-incrimination, and my right to an appeal.
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.

- Legal Screening
- Clinical Screening
NIJ Wellness Court Study:
Key Component #3

- Have a clear termination policy in order to “weed out” participants who are merely avoiding incarceration, rather than working to change their behavior.

- Team members should be designated and trained to legally screen cases.

- Trained treatment professionals should conduct a clinical screening to determine if the individual’s needs will be met by the available treatment services.

- See SAMHSA Drug and Alcohol Use Screening Tools
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.
NIJ Wellness Court Study: Key Component #4

- Team members should learn about addiction and the leading approaches in treating addiction.

- Treatment plans should be tailored to the individual participant’s needs, in which the participant takes an active role.

- Integrate cultural tradition into treatment, but do not require participants to do activities that can be seen as religious, rather than cultural.
<table>
<thead>
<tr>
<th><strong>PHASE ONE</strong></th>
<th><strong>PHASE TWO</strong></th>
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</thead>
<tbody>
<tr>
<td><strong>A) Phase One - Week-to-Week Workbook</strong></td>
<td><strong>B) Phase Two - Week-to-Week Workbook</strong></td>
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<tr>
<td>Week 1 - Where am I? Where will I go?</td>
<td>Week 9 - Step Two Part One</td>
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<td>Week 2 - What to Expect from Us? What We Expect...</td>
<td>Week 10 - Step Two Part Two</td>
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<td>Week 3 - Those Around Us</td>
<td>Week 11 - Step Two Part Three</td>
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<td>Week 4 - How will We Start the Fire?</td>
<td>Week 12 - Presentation on Step 2 Accomplishment</td>
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<td>Week 5 - Step One, Part One</td>
<td>Week 13 - Step Three Part One</td>
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<td>Week 6 - Step One, Part Two</td>
<td>Week 14 - Step Three Part Two</td>
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<td>Week 7 - Step One, Part Three</td>
<td>Week 15 - Step Three Part Three</td>
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<td>Week 8 - Presentation on Step One Accomplishment</td>
<td>Week 16 - Take Step Three</td>
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<tr>
<td><strong>B) Phase One - Week-to-Week Planner</strong></td>
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<td><strong>PHASE FOUR</strong></td>
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<td><strong>A) Phase Three - Week-to-Week Workbook</strong></td>
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<td>Week 19 - Setting Life Goals</td>
<td>Week 31 - Step Eight, Part One</td>
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<td>Week 20 - Know Where You Come From</td>
<td>Week 32 - Step Eight, Part Two</td>
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<td>Week 21 - Family Tree Presentation</td>
<td>Week 33 - Step Nine, Part One</td>
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<td>Week 22 - Step Four, Part One</td>
<td>Week 34 - Step Nine, Part Two</td>
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<tr>
<td>Week 23 - Step Four, Part Two</td>
<td>Week 35 - Step Nine, Part Three</td>
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<td>Week 24 - Step Four, Part Three</td>
<td>Week 36 - Personal Makeover</td>
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<tr>
<td>Week 25 - Step Four, Part Four</td>
<td>Week 37 - Understanding Your Shape</td>
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<td>Week 26 - Step Five</td>
<td>Week 38 - Building Your Resume</td>
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<td>Week 27 - Step Six</td>
<td>Week 39 - Interview for Your Dream Job</td>
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<td>Week 28 - Step Seven</td>
<td>Week 40 - Step Ten</td>
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<td>Week 29 - What is Relapse Prevention?</td>
<td>Week 41 - Step Eleven</td>
</tr>
<tr>
<td>Week 30 - Relapse Prevention Presentation</td>
<td>Week 42 - Aftercare, Part One</td>
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Key #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.
NIJ Wellness Court Study: Key Component #5

- Testing should be frequent, undertaken multiple times per week during the early phases of treatment, and with reduced frequency thereafter.

- The scope of testing should be sufficiently broad in order to detect the participant’s primary drug of choice as well as other potential drugs.

- Tribal Wellness Courts should develop a coordinated strategy for responding to positive, missed, and fraudulent tests.
Key #6: Sanctions and Incentives

Progressive rewards (or incentives) and consequences (or sanctions) are used to encourage participant compliance with the Tribal Healing to Wellness Court requirements.
NIJ Wellness Court Study: Key Component #6

- Monitoring and support of participants should occur during regular business hours and in the evening and weekends.

- The Tribal Wellness Court’s policy regarding compliance should be explained verbally and provided in writing to participants.

- Consistent and equitable distribution of sanctions and incentives require close supervision of participants and transparent documentation of the reward and sanction system used.

- If detention is to be utilized as a sanction, a clear policy should be reviewed with participants and consistently followed.
Key #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.
NIJ Wellness Court Study:
Key Component #7

- Tribal Wellness Courts require judges to step beyond their role of sole decision maker and into a position that promotes a partnership perspective, at times more captain than coach, and at other times, vice versa.

- The judge uses court appearances to educate the participant as to the benefits of program compliance and consequences of noncompliance.

- The judge plays an active role in the treatment process, including frequently reviewing participant treatment progress as well as the status provided by the treatment providers and staff.
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.
NIJ Wellness Court Study: Key Component #8

- Specific and measurable goals that define the parameters of data collection and management should be established early.

- If feasible, a qualified independent evaluator should be given responsibility for conducting a process and performance evaluation design and for preparing interim and final reports.

- The success of Tribal Wellness Court graduates and those individuals within a comparison group should be examined in order to determine the long-term performance of the Tribal Wellness Court.
Continuing interdisciplinary and community education promote effective Tribal Healing to Wellness Court planning, implementation, and operation.
NIJ Wellness Court Study: Key Component #9

- Tribal Wellness Court team members need to understand each other’s roles to be effective, and ongoing cross-training is encouraged.

- Judges and court personnel typically need to learn about the nature of alcohol and drug problems, as well as theories and practices supporting specific treatment approaches.

- Treatment providers typically need to become familiar with criminal justice accountability issues, court operations, and legal theory and practice, particularly due process.
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.
NIJ Wellness Court Study: Key Component #10

- Form a steering committee comprised of Tribal Wellness Court agencies and community partners that provide healing resources and define roles and responsibilities in writing.

- Provide opportunities for community involvement including the holding of informational meetings, community forums, and other outreach.

- Use tribal and local media for community education, for program announcements, and to recruit funds and resources.
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

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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
Healing to Wellness Court

COMMUNITY RESOURCE MAPPING

- MENTAL HEALTH
- TRANSPORTATION
- HOUSING SUPPORTS
- PROBATION
- FOOD PANTRYS
- ELDERS
- SCHOOLS
- COMMUNITY HEALERS/MEDICINE (WO)MEN/FAITH COMMUNITY
- CHILD CARE PROVIDERS
- STATE COURTS/AGENCIES
- TRIBAL COURT/JUDICIARY
- HOSPITALS AND CLINICS
- SERVICE ORGANIZATIONS
- LAW ENFORCEMENT
- PROSECUTORS
- EMPLOYMENT RESOURCES/VOC REHAB
- EMERGENCY SHELTER
- 2014 American Indian Justice Conference
Planning a Wellness Court

Publications

Tribal-Specific


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).

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 THWCP1 application process and training program, please contact:
    - Carolyn Hardin
    - Senior Director
    - 571-384-1864
    - chardin@ndci.org
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).
THWC Enhancement Training

- September 8-10, 2014
- Albuquerque, NM
Washington Team Building Training

- July 9, 2014
- Lower Elwha Heritage Center
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