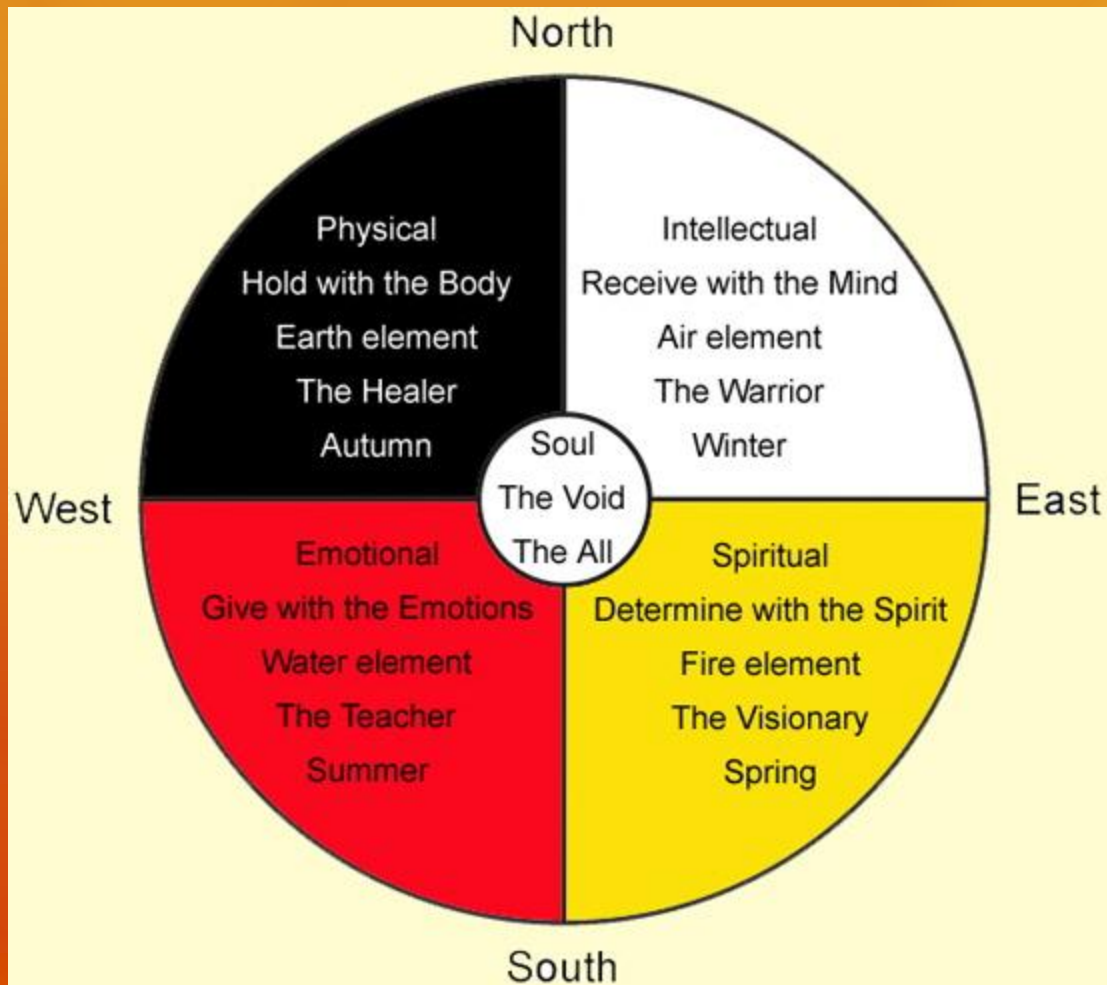


# Indigenous Justice

Justice as Healing and Healing to Wellness Courts

# Indigenous Worldview



# Contrasting Values

Native American	Non-Native
<b>Group</b> (take care of community)	<b>Self</b> (take care of self)
<b>Today</b> Is a good day!!	<b>Prepare for Tomorrow</b>
<b>Time</b> A right time/a right place	<b>Time</b> Use every minute
<b>Age</b> Knowledge/Wisdom	<b>Youth</b> Rich, young beautiful

**Native American**

**Non-Native**

**Cooperate**

**Compete**

Be

Learn to be

**Patient**

**Aggressive**

**Listen**

**Speak up**

and you'll learn

and be heard

**Give**

**Take**

and share

and save

**Native American**

**Non-Native**

**Harmony**

(Live in harmony with all things)

**Conquer**

(Nature)

**Mystery/Intuitive**

**Skeptical/Logical**

**Humility**

**Self**

(Ego)

**Spiritual Life**

Away of life

**Religion**

A part of life

# American Criminal Justice System

- The Four Objectives
  - Punishment
  - Deterrence– Special and General
  - Incapacitation
  - Rehabilitation
- Treat the *Criminal Event* as isolated, individualized event
- Event is between the sovereign and the offender
- Little to no focus on the victim

# Indigenous Justice System

- 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

# Decolonizing the Truth

Each tribe has a unique history of contact with non-Indians and the subsequent consequences of conquest.

However, major elements have included

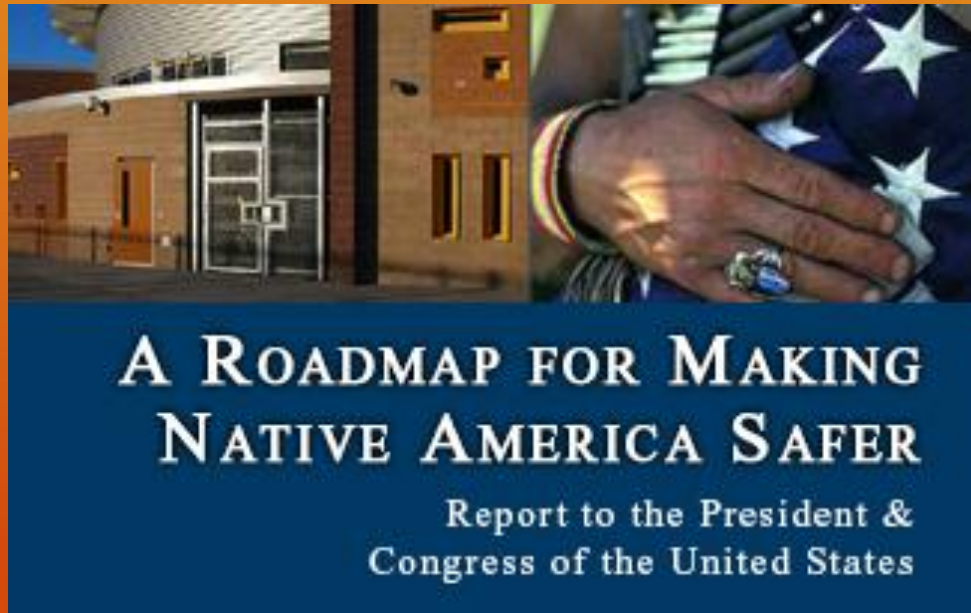
- Brutality and epidemic disease
- Loss of land and resources
- Cultural warfare
- Generational Trauma



Tom, Torlino, Navajo  
Carlisle Indian School



# Indian Law and Order Commission Report



# Law Enforcement Personnel Serving Native Communities in Alaska

	<b>Duties</b>	<b>Training</b>	<b>Location</b>	<b>Funded Force (2011-12)</b>	<b>Gun?</b>
State Troopers	Enforce all criminal laws Investigate crimes Assist other LE agencies Transport offenders Provide court security	15 weeks Accredited	Urban and rural posts across the state	373	Yes
Village Public Safety Officers	Search and rescue Fire protection Emergency medical assistance Crime prevention Basic law enforcement	10 weeks	Rural villages	101	No
Village Police Officers and Tribal Police Officers	Basic law enforcement	2 weeks	Rural villages and tribes	104	Yes

At least 75 communities lack any law enforcement presence at all.

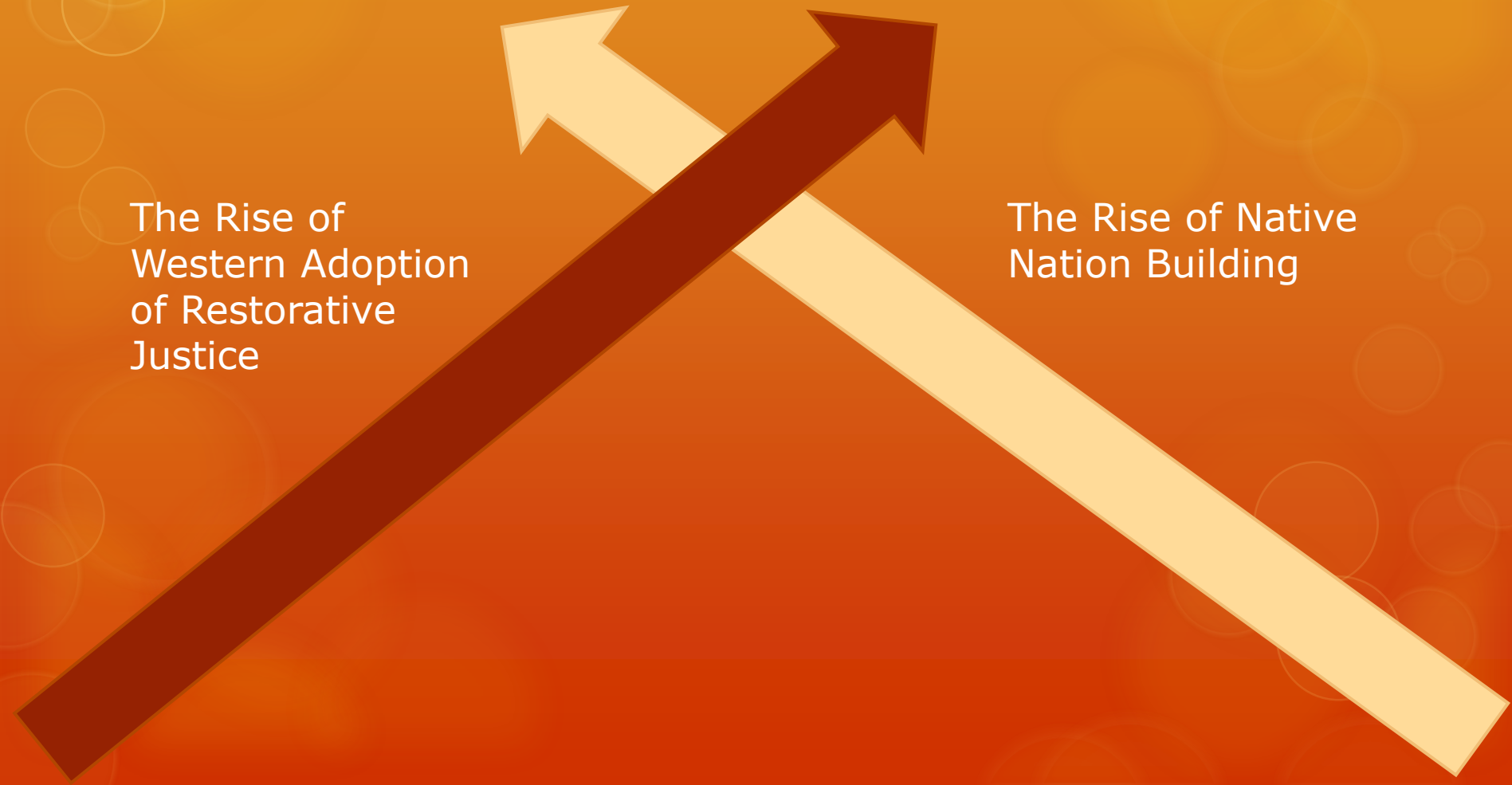
# Native Alaskans and the Sobering Reality

- The rate of sexual violence victimization among Alaska Native women was at least 7x the non-Native rate
- Alaska Natives were 2.5x more likely to die by homicide than “White” Alaskans
- Alaska Natives’ representation in the Alaska prison and jail population is twice their representation in the general population.
  - Nearly 20% of Alaska Natives under Alaska State supervision are house out of State, most in New York.
- Suicide rate of Alaska Natives is 4x U.S. general population
- In 2011, 60% of the children removed from their homes in Alaska were Alaska Native children
- 95% of crimes committed in rural Alaska can be attributed to alcohol

# Restorative Justice: The Great Intersection

The Rise of  
Western Adoption  
of Restorative  
Justice

The Rise of Native  
Nation Building



# Therapeutic Courts

- Western roots in community and problem-oriented policing
  - Attempted to shift focus from individual offenses to identifying and addressing patterns of crime, ameliorating the underlying conditions that fuel crime, and engaging the community as an active partner.
- These new experiments shared an emphasis on *data analysis, community engagement, crime prevention, and problem solving*.
- Law enforcement officers, prosecutors, judges, and probation officers need to try to reduce recidivism, improve public confidence in justice, and prevent crime down the road.

# Principles of Problem-Solving Courts

- Enhanced information
- Community Engagement
- Collaboration
- Individualized Justice
- Accountability
- Outcomes

# Drug Courts

- 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 in a collaborative effort to enforce compliance with court orders.
- Drug courts also use a system of graduated rewards and sanctions to help substance abusers attain—and maintain—a drug-free life.
- Today, thanks to growing evidence that drug courts have reduced substance abuse and recidivism, there are over 2,300 drug courts in all 50 states.

# 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”), with the funding and support of the U.S. Department of Justice, Bureau of Justice Assistance (“BJA”) 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.

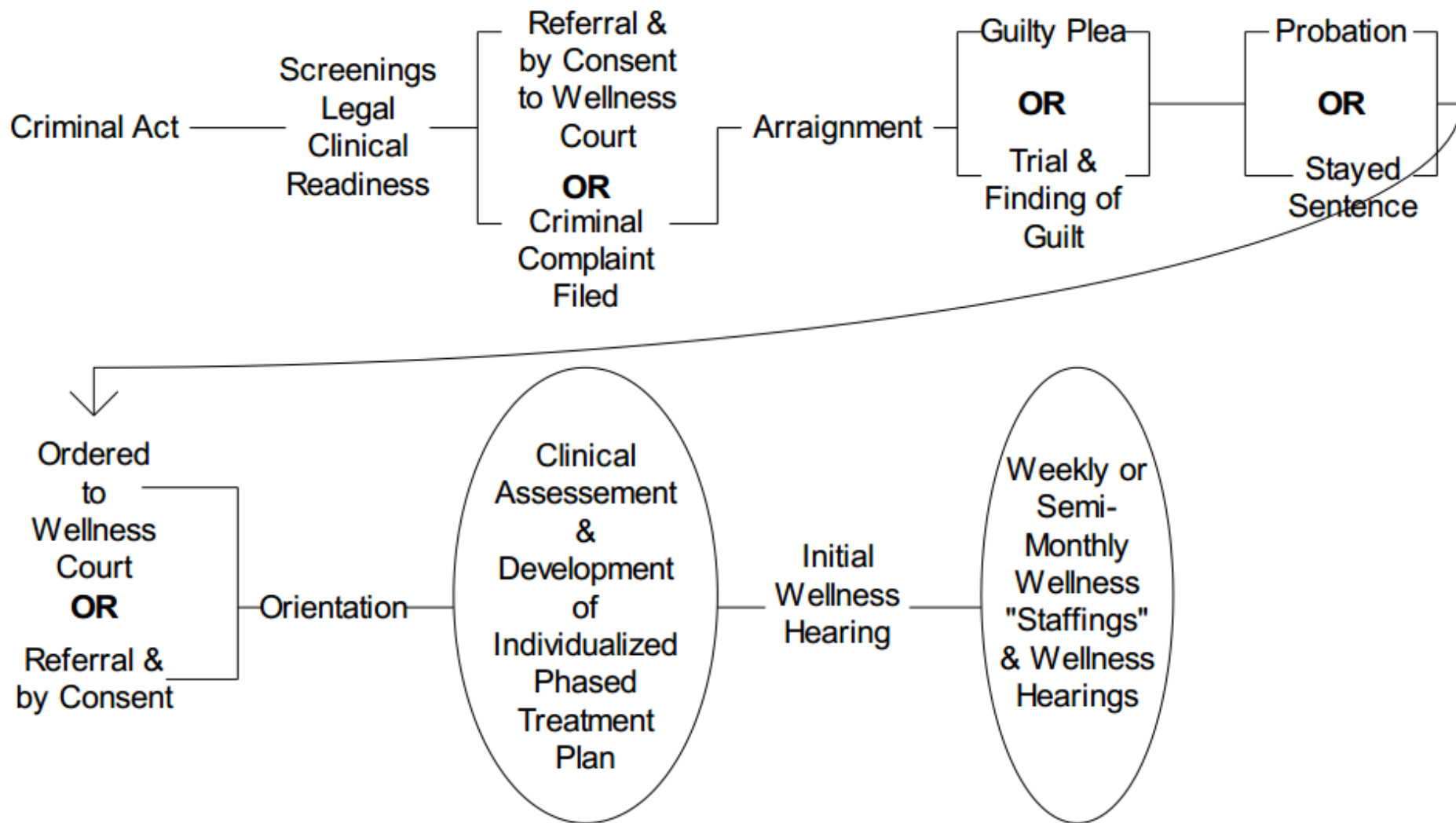


# Healing to Wellness Courts

The Process

# Tribal Wellness Court Process

(Adult Wellness Court)



**Healing to Wellness  
Court  
Quick Key  
Component Review**

Sustained  
Team,  
Community, &  
Nation  
Building

Team, Community,  
& Nation Building

Enduring  
Knowledge  
&  
Experience

Entry

Keeping &  
Telling Stories

Eligibility

Respectful  
Communication

Healing and  
Treatment

Discipline &  
Encouragement

Support &  
Supervision

# 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.**

- For tribal people, there is an important interconnection among internal nation-building activities, the physical and spiritual well-being of their people, and the future of the tribal government and its citizens as a people.

# Key #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 #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 #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.**

# 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.**



# Key #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 #9: Continuing Interdisciplinary and Community Education

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

# Key #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.**

# Types of Healing to Wellness Courts

Adult, Juvenile, Family

# Target Population

- **Bureau of Justice Assistance (BJA) Seven Program Design Features**
- ***Target Population*** (Key Components #2 and #3)  
Program resources should be prioritized for offenders who demonstrate both high criminogenic risk and high substance abuse treatment need. Applicants should aim to serve offenders whose characteristics and risk factors directly relate to a high probability of offending, and who are frequent drug users diagnosed for drug dependence. Also applicants should target offenders who are subject to (or eligible for) legal sanctions that may provide greater leverage in program compliance.

# Juveniles in the Justice System

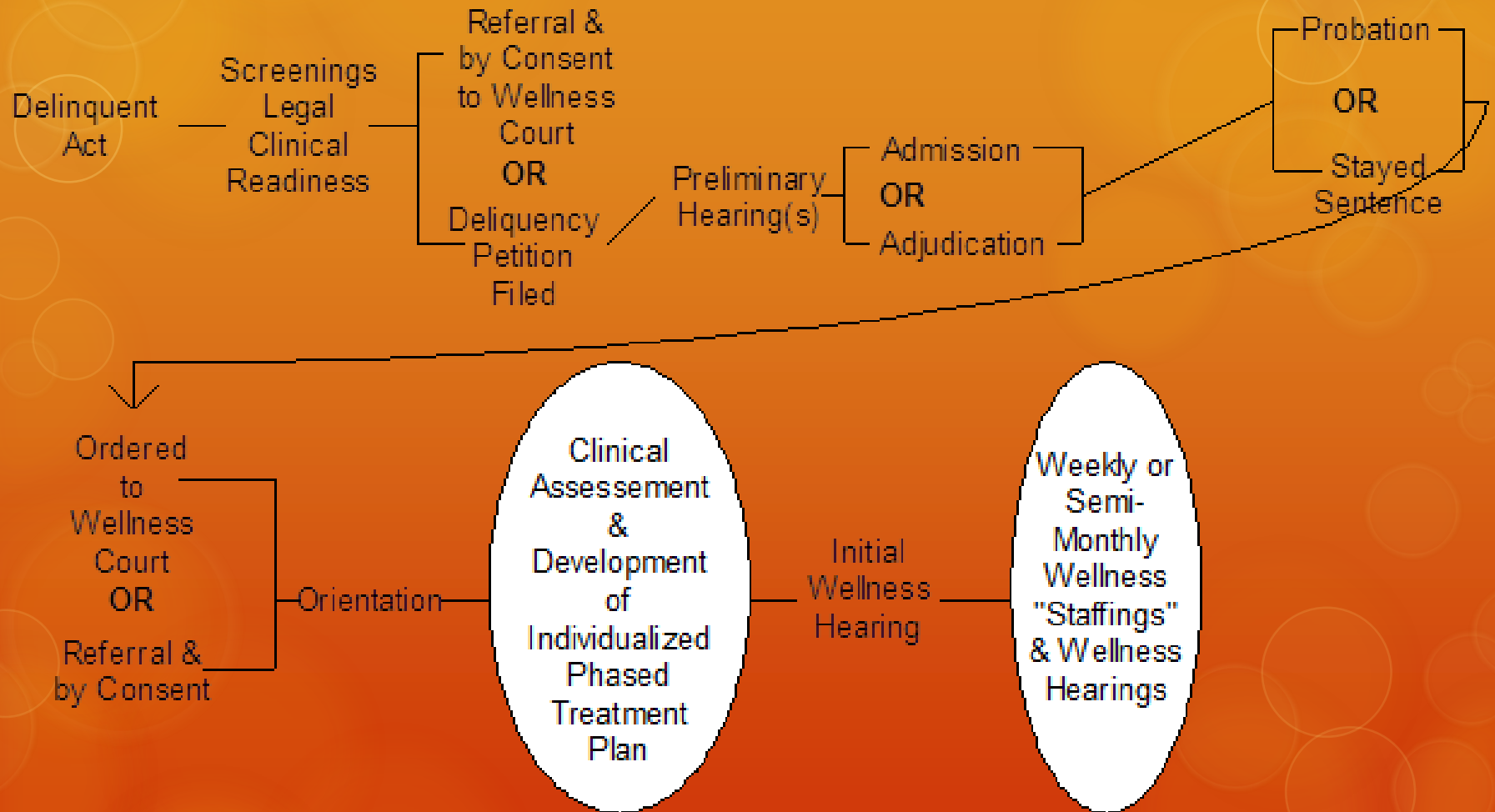
- Juvenile Delinquent – a young person who commits an act that would be a crime if he/she was an adult
- Status Offense – an act that only a young person can get in trouble for—curfew violation, truancy, running away, smoking cigarettes
  - Most runaways don't go far and don't stay away long. However, almost all runaways are running *from* something, not *to* something.
- Identifiable drug and/or alcohol issues

# Juvenile Healing to Wellness Courts

- 80-20 Conundrum: 80% of youth are one-time offenders
  - E.g. *The Sisseton-Wahpeton Oyate* experience
- Screen for mental health, substance abuse, and suicide at earliest point of entry
- Most recent research on best outcomes:
  - Family involvement in court and treatment
  - Evidence-based practices
  - Judicial supervision
  - Avoid detention as much as possible
  - Help youth break from delinquent peers

# Tribal Wellness Court Process

(Juvenile Wellness Court)





# Goals of Juvenile Healing to Wellness Court

- Provide *immediate* intervention, treatment and structure through ongoing, active monitoring by judge.
- Improve juveniles with skills that will aid in living productive substance-free and crime-free lives.
- Strengthen families of drug-involved youth by improving their capability to provide structure and guidance to their children.
- Promote accountability of both juvenile offenders *and* those who provide services to them.

# Family Drug Courts

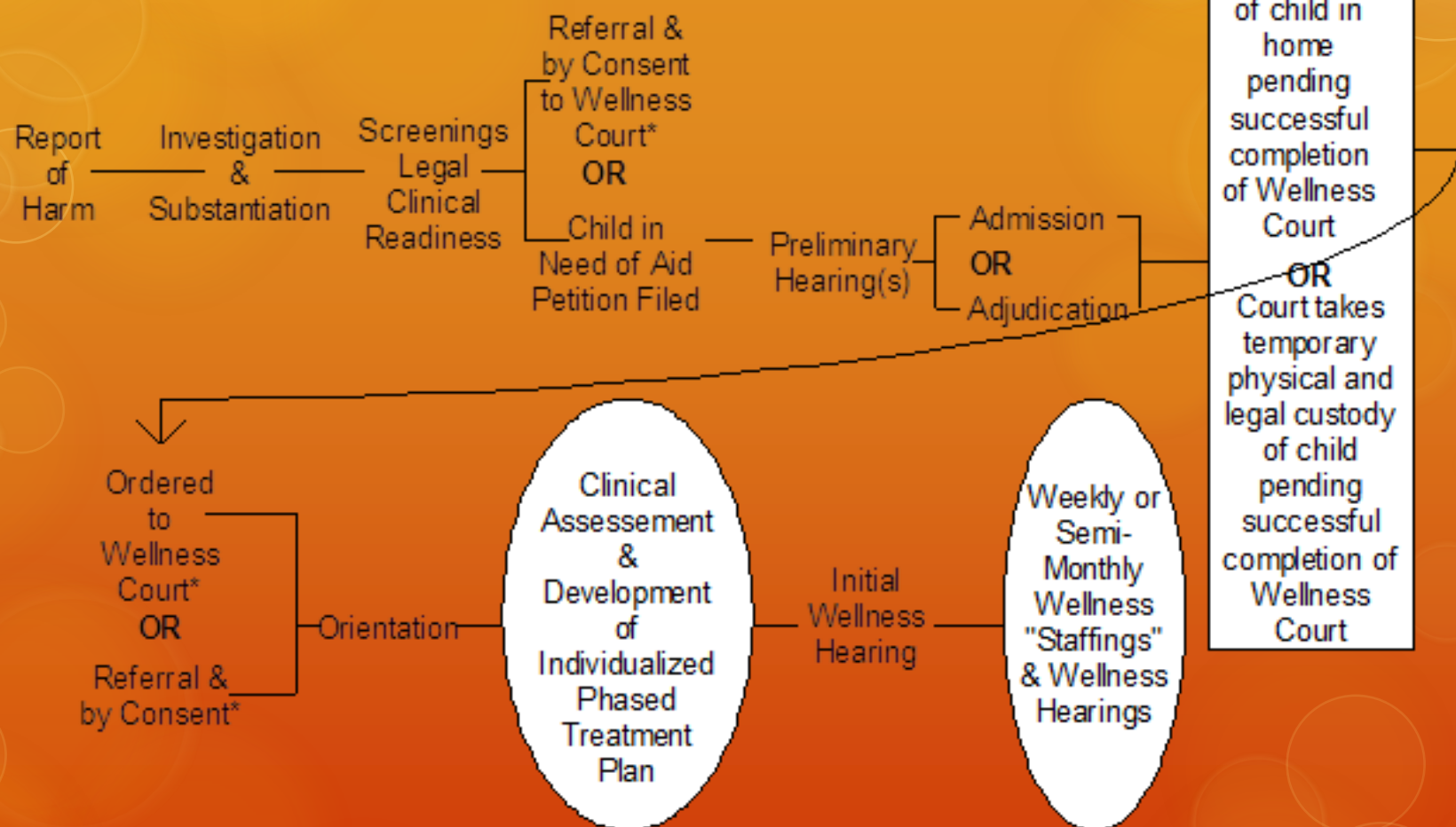
Family dependency treatment court is a juvenile or family court docket of which selected abuse, neglect, and dependency cases are identified where parental substance abuse is a primary factor.

Family dependency treatment 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 Drug Courts: Two Models

- Integrated Judicial Model
  - Dependency judge *is* Tribal Healing to Wellness Court judge, with no referral or court-ordered transfer
- Parallel Judicial Model
  - Parents and guardians as participants are *referred* to Tribal Healing 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)
    - Pos-adjudication

## 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)

# 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.

# Veterans Courts

- Currently, over 20,000 American Indian/Alaska Natives in the armed forces
- Veterans are returning from conflict with higher levels of PTSD, traumatic brain injury, and other mental health issues (depression, suicide).
- Veterans Court:
  - Hybrid drug and mental health court
  - Role of Veterans Administration
  - Veteran judicial outreach officers
  - Military culture

# Sanctions and Incentives

# The Challenge

- Legal People
  - Reward offenders for what they are legally required to do!
  - Treatment and avoiding charges are reward and incentive
- Treatment providers
  - Not comfortable with “punishing” clients
  - Supposed to be safe, non-judgmental environment



# The Result

- Heavy reliance on incentives and sanctions
- Improper balance
- Risk: Habituation
- Risk: Ceiling Effect

# The Ideal

- Rewards to increase desirable behavior
- Sanctions to decrease undesired behavior
- Used together – produce better outcomes
- Rule of Thumb: equal opportunity to earn a reward or incur a sanction
- If one can be punished for not doing something (missing treatment) they should also be able to attend a reward for compliance

# Behavior Modification Factors

- Certainty and consistency – certain and consistent application of incentives and sanctions leads to more effective court
- Supervision – to apply incentives and sanctions consistently – monitoring behavior is crucial

# Risk Principle

- Intensive Drug Court programs produce greatest benefits for offenders with anti-social backgrounds and are resistant to treatment
- Require more concentrated and sustained intervention
- Consideration of risk is necessary
  - Drug Court offers small benefits at a high cost for low risk offenders
  - Risk of learned anti-social behaviors from high-risk offenders

# Risk Comparison

## High-Risk

- Likelihood that an offender will not success on standard supervision; and
- Continue to engage in same behaviors that led to trouble
- Not risk of violence or dangerousness

## Low-Risk

- Predisposed to modify behavior with minimal legal intervention

# Criminogenic Need

- Clinical disorders or impairments that, if treated reduce likelihood of continued criminal activity
- Examples
  - Substance dependence (addiction)
  - Major psychiatric disorders
  - Brain injury
  - Lack of basic employment/living skills

# Assessment is Critical

- Common deficiency: assessment of the clinical diagnosis
- Use brief screening instrument to determine abuse or dependence
  - Wide net
  - Identify a number of false positives
- Individuals who are substance USERS are grouped with those who are substance DEPENDENT

# Marlowe's Risk/Need Matrix

High

Low

High  
(Substance  
Dependent)

Standard Drug Court

Status calendar  
Substance abuse treatment  
Pro-social habilitation  
Adaptive habilitation  
Focus consequences on  
treatment & supervision  
Medication

Treatment Emphasis

Noncompliance calendar  
Substance abuse treatment  
Adaptive habilitation  
Focus consequences on  
treatment  
Medication

Low  
(Substance  
Abuse)

Accountability Emphasis

Status calendar  
Prevention services  
Pro-social habilitation  
Focus consequences on  
abstinence and supervision

Diversion Emphasis

Noncompliance calendar  
Prevention services  
Focus consequences on  
abstinence



# Supervision

- Drug Testing
  - Minimum 2x per week
  - Nights, weekends and holidays
  - Random
  - Last supervisory burden to be reduced or lifted
- Law Enforcement and Community Corrections Officer Supervision leads to better outcomes
  - Witnessing participants in their natural environments

# Timing of Incentives and Sanctions

- Window of opportunity begins to close within a few hours or days of behavior
- Longer interval between behavior and imposition of incentive or sanction reduces effectiveness
- Magnitude of incentive or sanction is critical
  - Avoid coddling
  - Avoid the “I have a hammer so everything looks like a nail” syndrome
- Not just looking for negative behavior – catch a participant doing something right

# The Startling Truth

- Sanctions and incentives are not the most effective at high magnitudes
- Incentives at low to moderate magnitudes are effective
- Sanctions that are in the intermediate range are the most effective
  - Weak sanctions = Habituation = stagnant outcomes
  - Harsh sanctions = Ceiling Effect = resentment and avoidance
- Do not limit your ability to ratchet sanctions up or down as necessary

# Sanctions

- Due Process and Procedural Fairness
- Sanctions will be received better
  - Fair procedures were followed
  - Participant given reasonable opportunity to explain
  - Treated like similar people in similar circumstances
  - Treated with respect and dignity
  - Clear explanation for how and why a decision was reached

# Incentives

- Small or Non-Tangible
- Tangible
  - Fishbowl Procedure
    - Comparable or better outcomes than rewarding every positive behavior
    - Possibility of winning an award compensates for the reduced chances of success
    - Entertainment
    - No evidence of gambling trigger
- Impactful for HR/HN – habituated to punishment and not used to receiving positive reinforcement

# Responding to a Positive Drug Test

- Jimmy is in the first phase of your Wellness Court. He has 10 days of sobriety. During a recent field visit by probation, Jimmy tested positive for amphetamines. This information was brought before the Wellness Court Team for consideration.
- Do you recommend a punitive sanction or an adjustment to his treatment plan?

# It Depends!

## Substance Dependent

- Substance dependent require time and effort to achieve sobriety
  - High magnitude sanction = ceiling effect
  - Run out of options
- Response to early use may result in enhanced treatment. Substance use later in treatment may result in increased sanctions

## Substance Abuse

- Use is voluntary and under their control
- Increased treatment may not be logical
- Escalating sanctions may permit them to continue to use until sanction reaches threshold of attention
- Apply higher magnitude sanction

# Assessments Matter

- Substance dependent users and substance abusers should receive different consequences for use early in treatment
- Separate them into different groups to avoid perceptions of unfairness
- Changes in treatment plans should be recommended by a trained clinician



# Possible Sanctions and Incentives

- [www.ndcrc.org](http://www.ndcrc.org)
- 12 pages of low, moderate and high incentives and sanctions
- Lists from other jurisdictions

# Screening

## Key #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.**

- Ordinarily, individuals are brought to the court's attention through law enforcement. However, Tribal Wellness Court participants may enter the process by referral from different agencies such as social services, housing departments, and schools.

# 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.

# Key #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.**
  - Prompt action, taken after traumatic events, uses the crisis period to stress the consequences of the substance-abusing behavior as well as the potential benefits of participating in Tribal Wellness Court.
  - **Legal Screening:** potential participants are identified as legally eligible to participate in Tribal Wellness Court.
  - **Clinical Screening:** potential participants are identified as suitable to participate in terms of participant need and available treatment services, and are primed for a successful treatment outcome from a clinical perspective.

# 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.