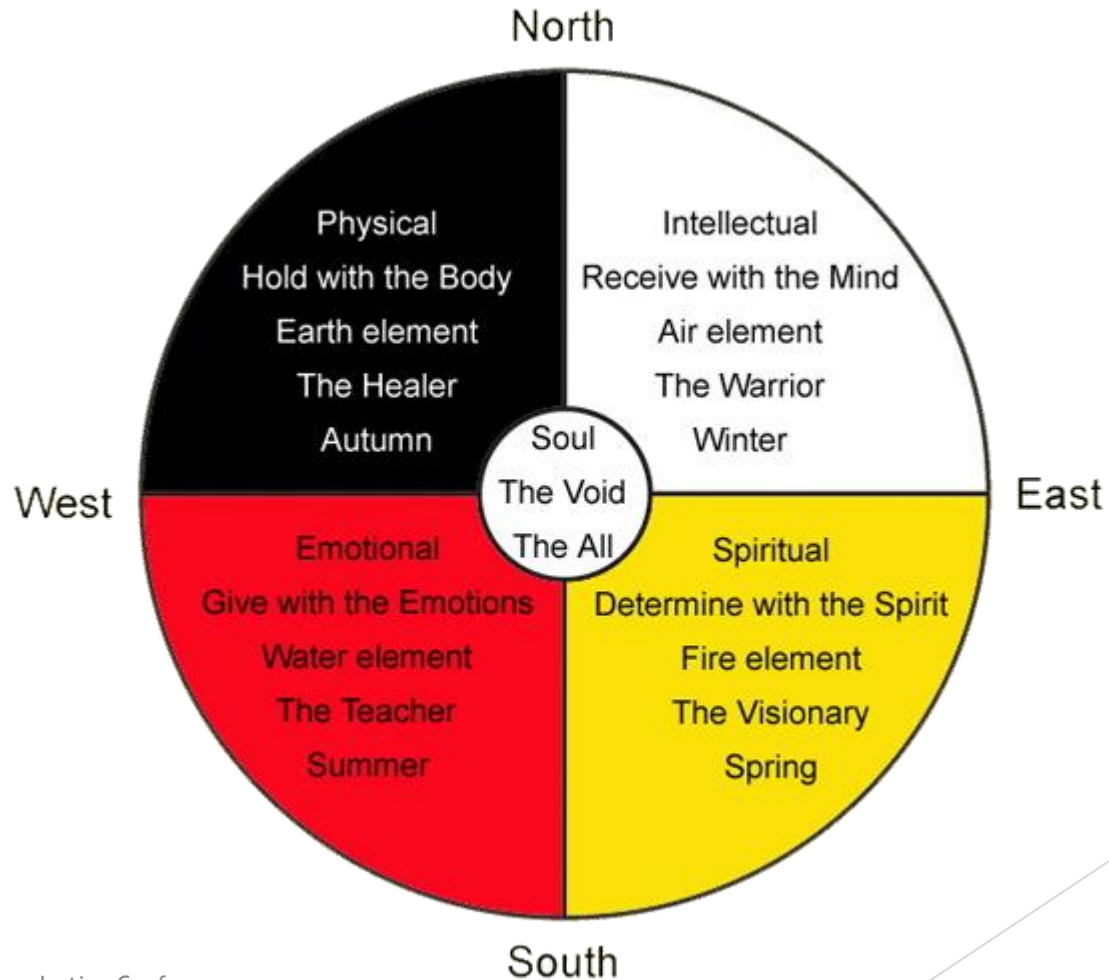


Diversionsary Courts

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

Indigenous Worldview



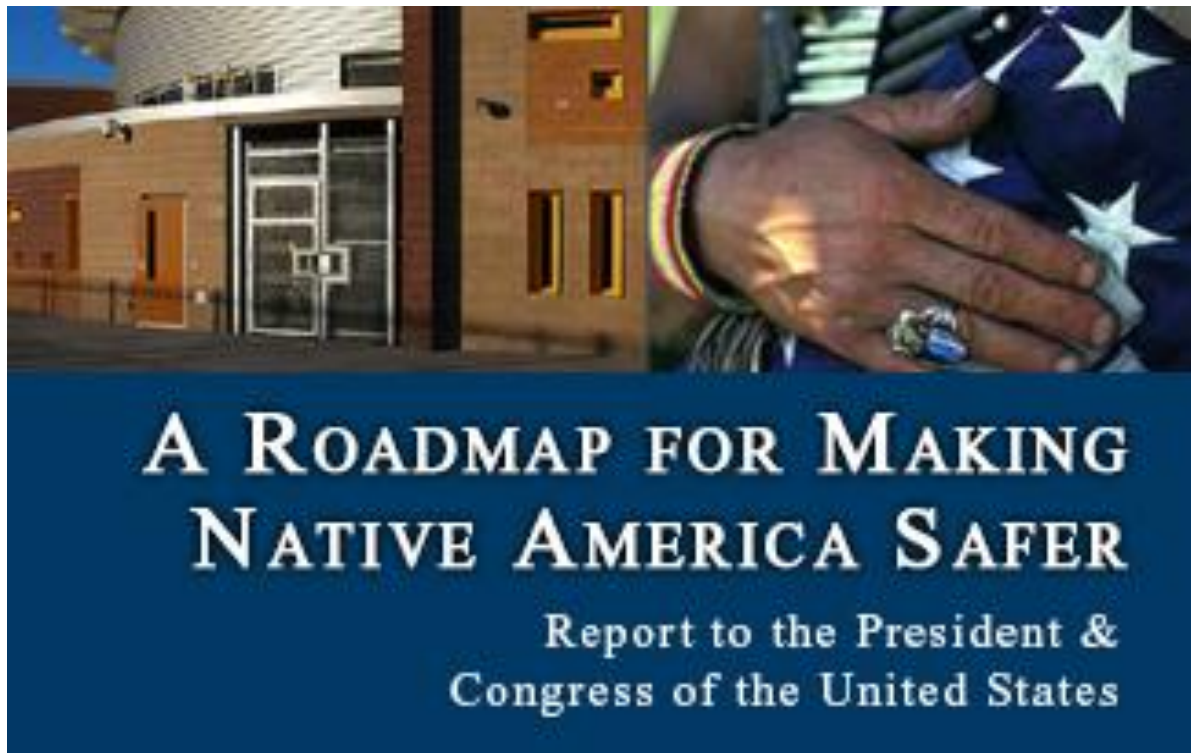
American Criminal Justice System

- ▶ 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



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

Restorative Justice: The Great Intersection

The Rise of
Native Nation
Building

The Rise of
Western
Adoption of
Restorative
Justice

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...

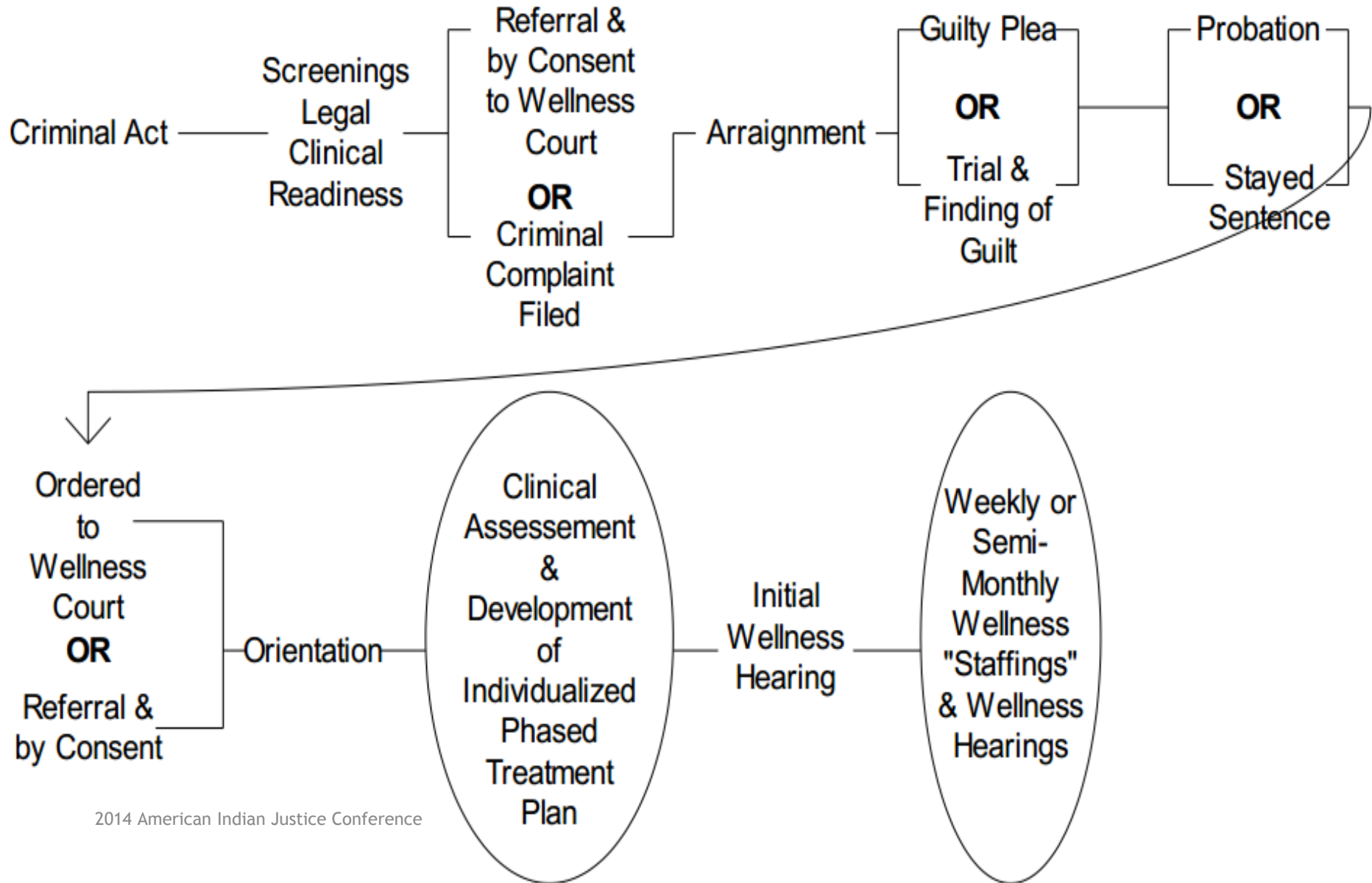
- ▶ Well-informed judges
- ▶ Supportive legal code
- ▶ Screening mechanisms
- ▶ Strong probation
- ▶ Access to services

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)





TRIBAL HEALING TO WELLNESS COURTS: THE KEY COMPONENTS



Sustained
Team,
Community, &
Nation Building

Team, Community, &
Nation Building

Enduring
Knowledge &
Experience

Entry

Keeping &
Telling Stories

Healing to Wellness
Court
Key Component
Review

Eligibility

Respectful
Communication

Healing and
Treatment

Discipline &
Encouragement

Support &
Supervision

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.
- [*Shoshone and Arapaho Rule of Court CR-103: Establishment of Adult Substance Abuse Court*](#), Aug. 31, 2001 and [*Shoshone and Arapaho Rule of Court CR-104: Establishment of Juvenile Substance Abuse Court*](#), Aug. 31, 2001.

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.

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.

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS TRIBAL COURT	WAABSHKI-MIIGWAN DRUG COURT PROGRAM CLIENT CONTRACT	CASE NUMBER
--	--	--------------------

Court Address: 7500 Odawa Circle, Harbor Springs, MI

Court Phone: (231) 242-1462

Plaintiff's Name and Address: The People of Little Traverse Bay Bands of Odawa Indians 7500 Odawa Circle Harbor Springs, MI 49740

v

Defendant's Name and Address: DOB:

Date of probation	Judge
Term of probation	Offense

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.

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.**
 - ▶ **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.
- ▶ See [SAMHSA Drug and Alcohol Use Screening Tools](#)
- ▶ Trained treatment professionals should conduct a clinical screening to determine if the individual’s needs will be met by the available treatment services.

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.

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.

PHASE ONE	PHASE TWO
A) Phase One - Week-to-Week Workbook	B) Phase Two - Week-to-Week Workbook
Week 1 - Where am I? Where will I go? Week 2 - What to Expect from Us? What We Expect... Week 3 - Those Around Us Week 4 - How will We Start the Fire? Week 5 - Step One, Part One Week 6 - Step One, Part Two Week 7 - Step One, Part Three Week 8 - Presentation on Step One Accomplishment	Week 9 - Step Two Part One Week 10 - Step Two Part Two Week 11 - Step Two Part Three Week 12 - Presentation on Step 2 Accomplishment Week 13 - Step Three Part One Week 14 - Step Three Part Two Week 15 - Step Three Part Three Week 16 - Take Step Three Week 17 - Sponsorship, pt. 1 Week 18 - Sponsorship, pt. 2
B) Phase One - Week-to-Week Planner	(B) Phase Two - Week-to-Week Planner
Probation Reporting 1X/week Status hearings 4X/month Daily PBT's, drug test 2X/week minimum 1 Hour of physical activity/week Individual counseling 2X/week Self-help meetings 4X/week Daily morning prayer and meditation	Probation Reporting 1X/week Status hearings 4X/month Daily PBT's, drug test 2X/week minimum 1 Hour of physical activity/week Individual counseling 1X/week Self-help meetings 3X/week Daily morning prayer and meditation
C) Follow ALL Program Rules and Regualtions	C) Follow ALL Program Rules and Regualtions
PHASE THREE	PHASE FOUR
A) Phase Three - Week-to-Week Workbook	A) Phase Four - Week-to-Week Workbook
Week 19 - Setting Life Goals Week 20 - Know Where You Come From Week 21 - Family Tree Presentation Week 22 - Step Four, Part One Week 23 - Step Four, Part Two Week 24 - Step Four, Part Three Week 25 - Step Four, Part Four Week 26 - Step Five Week 27 - Step Six Week 28 - Step Seven Week 29 - What is Relapse Prevention? Week 30 - Relapse Prevention Presentation	Week 31 - Step Eight, Part One Week 32 - Step Eight, Part Two Week 33 - Step Nine, Part One Week 34 - Step Nine, Part Two Week 35 - Step Nine, Part Three Week 36 - Personal Makeover Week 37 - Understanding Your Shape Week 38 - Building Your Resume Week 39 - Interview for Your Dream Job Week 40 - Step Ten Week 41 - Step Eleven Week 42 - Aftercare, Part One Week 43 - Aftercare, Part Two Week 44 - Your First Lead
B) Phase Three - Week-to-Week Planner	(B) Phase Four - Week-to-Week Planner
Probation Reporting as needed Status hearings 2X/month Random PBT's, drug test 1X/week minimum 1 Hour of physical activity/week Individual counseling as needed Self-help meetings 3X/week Daily morning prayer and meditation	Probation reporting as needed Status hearings 2X/month Random PBT's, random drug test 1 Hour of physical activity/week Individual counseling as needed Self-help meetings 2X/week Daily morning prayer and meditation
C) Follow ALL Program Rules and Regualtions	C) Follow ALL Program Rules and Regualtions

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.

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.

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.

Key #9: Continuing Interdisciplinary and Community Education

- ▶ **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.

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.**

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

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

**Healing
to
Wellness
Court**

DEFENSE

STATE COURTS/AGENCIES

MENTAL HEALTH

SOCIAL SERVICES

TRANSPORTATION

TRIBAL COURT/JUDICIARY

PROSECUTORS

HOSPITALS AND CLINICS

HOUSING SUPPORTS

ALCOHOL AND OTHER DRUG TX

PROBATION

SERVICE ORGANIZATIONS

FOOD PANTRYS

LAW ENFORCEMENT

ELDERS

EMPLOYMENT RESOURCES/VOC
REHAB

SCHOOLS

COMMUNITY HEALERS/MEDICINE
(WO)MEN/FAITH COMMUNITY

EMERGENCY SHELTER

2014 American Indian Justice Conference

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).

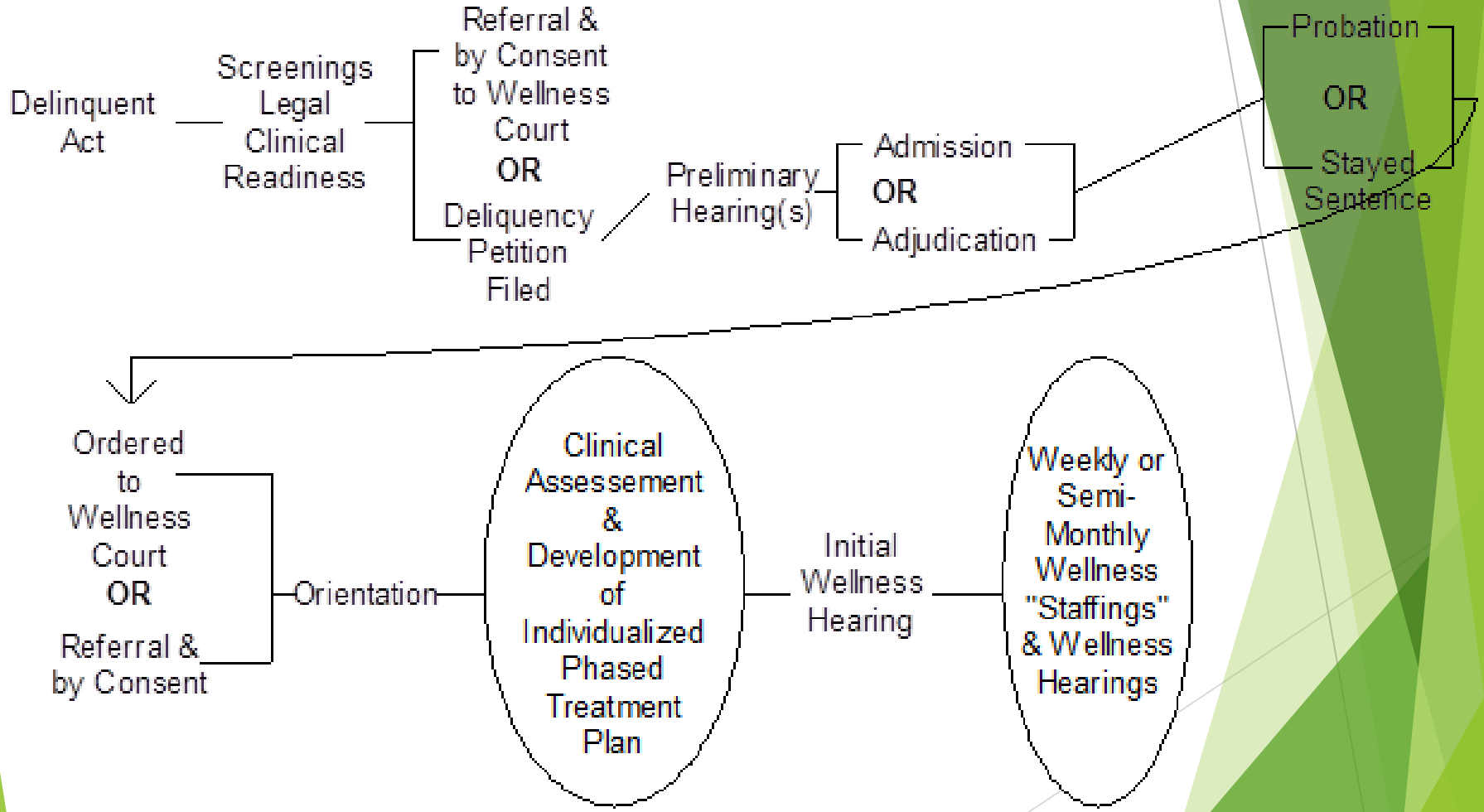
Other Available Technical Assistance

- 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:

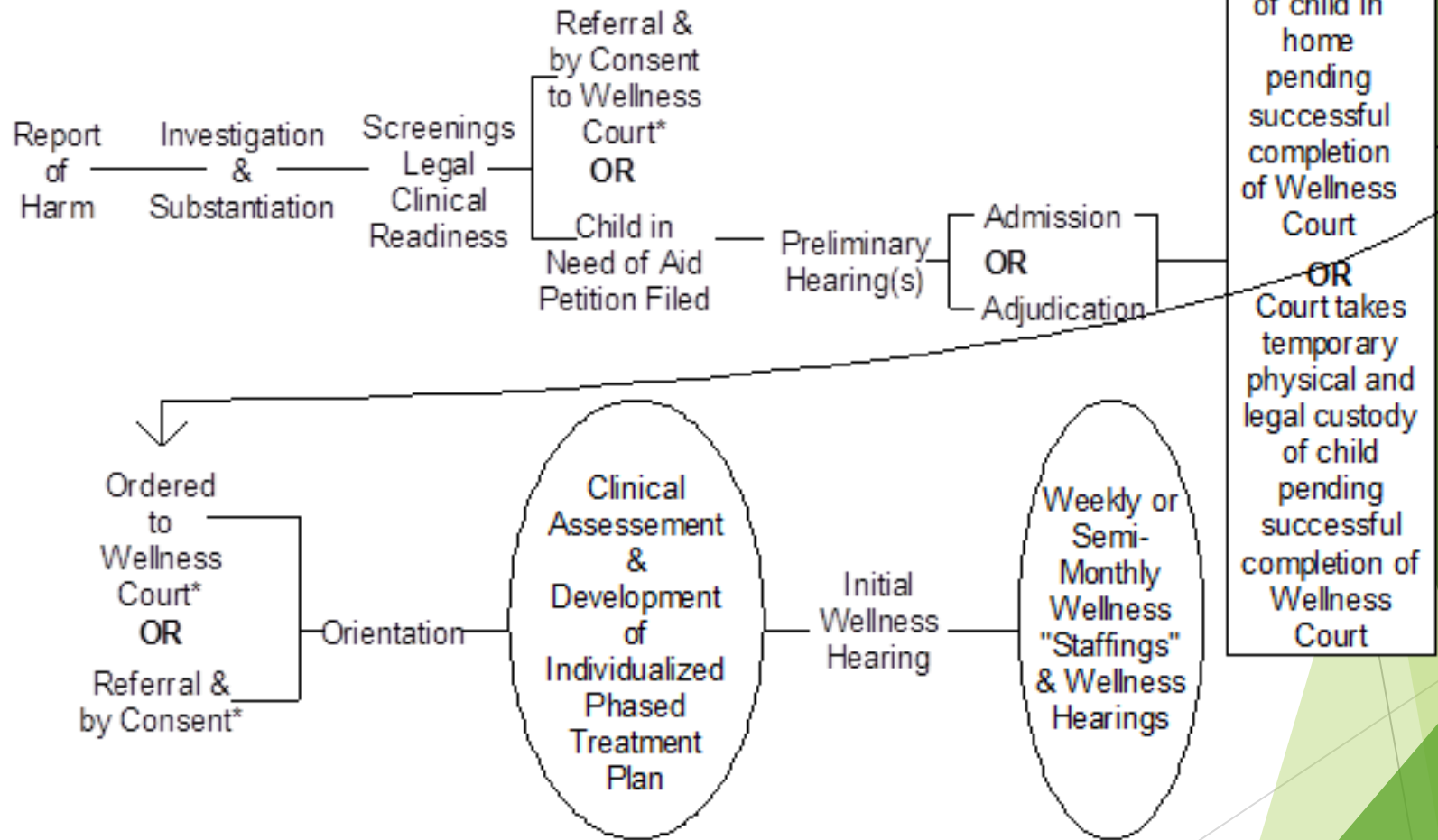
2014 American Indian Justice Conference
Carolyn Hardin
Senior Director
571-384-1864
chardin@ndci.org

Tribal Wellness Court Process

(Juvenile Wellness Court)



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)

WellnessCourts.org

Email | Print | RSS

Search Website




Tribal Healing to Wellness Courts

Home | About Us | Services | Drug Court Partners | Federal Funding Agencies

Release of New Publication: The Tribal Key Components, 2nd ed.

The Tribal Law and Policy is pleased to announce the release of our BJA approved 2nd edition of the Tribal 10 Key Components [More](#)



Request Technical Assistance

Funding Announcements

News and Announcements

Drug Court T/TA Calendar

Prior Event Resources


Resources & Tools

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

Search by Tribe:

Search Tribes

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




THWC Enhancement Training

- ▶ September 8-10, 2014
- ▶ Albuquerque, NM



Washington Team Building Training

- ▶ July 9, 2014
- ▶ Lower Elwha Heritage Center



Lauren van Schilfgaarde
Tribal Law Specialist
Tribal Law and Policy Institute
lauren@tlpi.org