

Alternative Sentencing: Healing to Wellness Courts

Tribal Law and Policy Institute

January 31, 2014 – Tribal Judicial Institute's TLOA Enhanced
Sentencing & Prosecuting DUI Offenders in Tribal Court

Drug and Alcohol Abuse

- “Alcoholism, addiction, and alcohol and substance abuse are among the most severe public health and safety problems facing American Indian and Alaska Native individuals, families, and communities, resulting in devastating social, economic, physical, mental, and spiritual consequences.” Indian Alcohol and Substance Abuse memorandum of Agreement Between U.S. Department of Health and Human Services (CHHS), U.S. Department of the Interior (DOI), and U.S. Department of Justice (DOJ), 76 Fed. Reg. 47,597 (Aug. 5, 2011).

Why Alternatives to Incarceration?

- Increases in arrests and convictions have fueled a significant increase in the number of prison admissions for drug possession, with persons convicted of drug possession now representing roughly 15% of all commitments to state prisons, up from just 1.3% in 1983.

Don Stemen & Andres F. Rengifo, "Alternative Sentencing Policies for Drug Offenders: Evaluating the Effectiveness of Kansas Senate Bill 123, Final Report" NCJRS 238012 (March 2012).

- Problems with incarceration?

Why Alternatives to Incarceration

- The August 2011 Tribal Law and Order Act (TLOA) Long Term Plan to Build and Enhance Tribal Justice Systems (“Tribal Justice Plan”) stated that “[e]stablishing alternatives to incarceration should be the major focus” and indicated that “of the over 40 comments received during the release of the draft Plan, over 15 of the comments expressed strong support for the continuation of funding, training and technical assistance to Tribal Nations to plan, implement and enhance Healing to Wellness Courts as an alternative to incarceration.”

Tribal Law and Order Act: Long Term Plan to Build and Enhance Tribal Justice Systems, U.S. Department of Justice and U.S. Department of Interior (Aug. 2011).

Why Healing to Wellness Courts

- Finally, it highlights Tribal Healing to Wellness Courts as the very first illustration of Indian Country alternatives to incarceration “that suggest promising results”:
- *Tribal Healing to Wellness Courts*. These courts, often referred to as “Wellness Courts,” provide Tribal Nations with the opportunity to address issues caused by substance abuse and to establish offender accountability through comprehensive supervision, drug testing, treatment services, immediate sanctions and incentives, and case management.²⁴ This court model has been used with both adult and juvenile offenders.

Why Healing to Wellness Courts

- The Indian Law and Order Commission Report highlighted Healing to Wellness Courts as one of the recommended alternatives to incarceration.
- “...[C]reating and maintain fair, restorative, culturally compatible, and community healing justice institutions is primary goal of many Indian nations.” Pg. 131
- “Tribes are specifically encouraged to develop and enhance **drug courts, wellness courts**, residential treatment programs, combine substance abuse treatment-mental health care programs, electronic monitoring programs, veterans’ courts, clean and sober housing facilities, halfway houses, and other diversion and reentry options, and to develop data and further inform the prioritization of alternatives to detention.” Recommendation 5.1

Why Healing to Wellness Courts

- Specifically, the Leech Lake Band of Ojibwe Joint Jurisdiction Wellness Court was highlighted as an example of tribal alternative to detention: *"Using drug court and wellness court principles, the program provides holistic, culturally relevant services that address the sources of offenders problems rather than simply the symptoms."* Pg. 126



Alternatives for DUI

- Punishment
- Deterrent
- DUI Court –
 - Provide treatment to those who do not seek it out
 - Intervene during the “golden moment”
 - Provide intense supervision

**HEALING TO
WELLNESS COURT
KEY COMPONENTS**

Sustained Community &
Nation Building

Community &
Nation Building

Entry

Eligibility

Healing &
Treatment

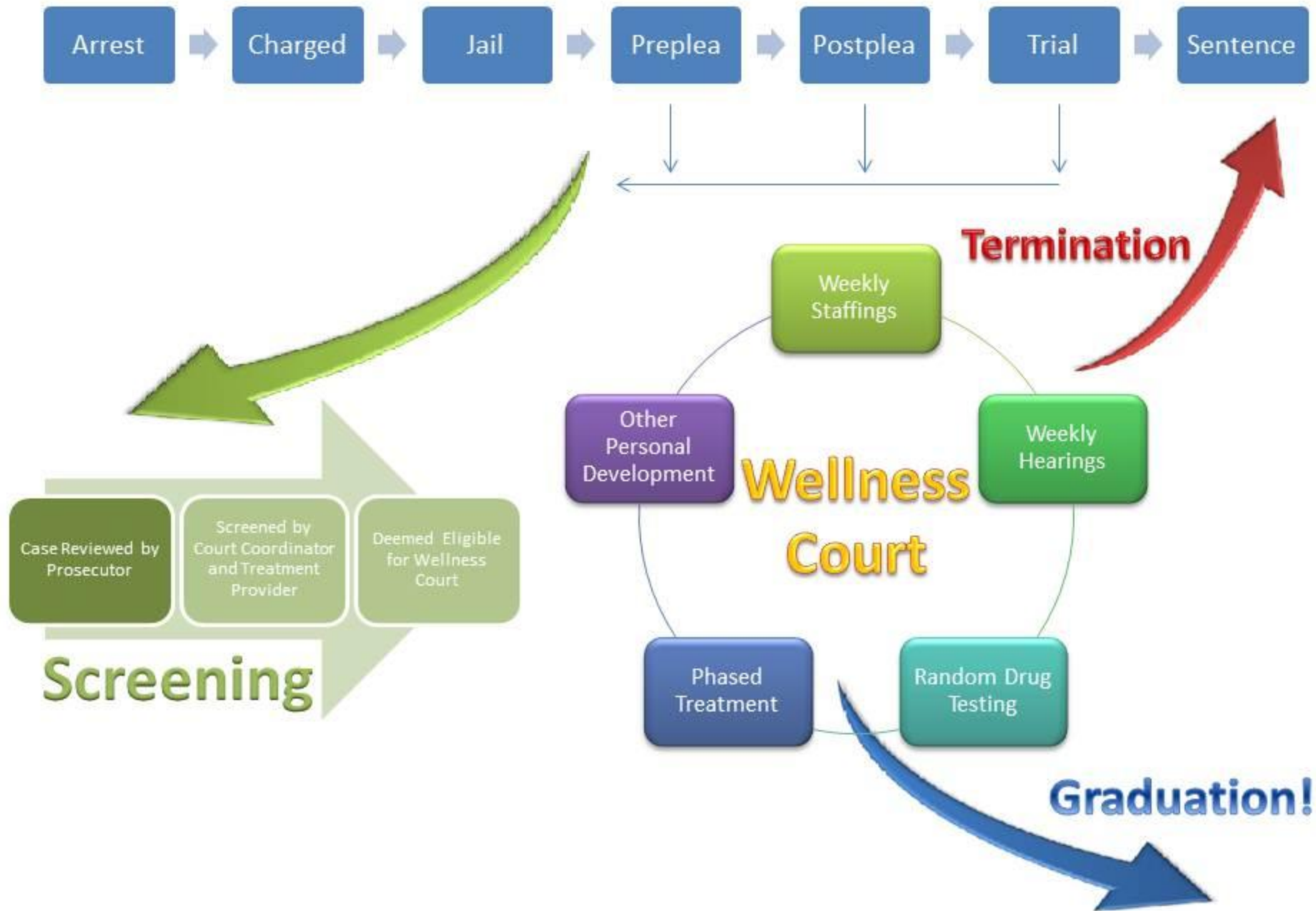
Support &
Supervision

Discipline &
Encouragement

Respectful
Communication

Keeping &
Telling Stories

Enduring Knowledge &
Experience



Special Considerations for DUI

- Prevalence of alcohol abuse
 - Generational use
- Alcohol testing, alcohol detoxification
- Fetal Alcohol Syndrome and Fetal Alcohol Effects
- Not all DUI offenders are addicted to alcohol
- Transportation concerns

Other Considerations for Tribal Healing to Wellness Courts

- Native Nation Building
- Legal Barriers
 - Violent Offender Prohibition – for federally funded Wellness Courts
 - *But see* the Sisseton Wahpeton Oyate Adult Wellness Court
 - Indian Civil Rights Act limitation on sentencing
 - *But see* TLOA and VAWA
 - Lack of criminal jurisdiction over non-Indians
 - PL 280

Federal Funding for Tribal Healing to Wellness Courts

- Department of Justice, Bureau of Justice Assistance
 - Adult Drug Court Discretionary Grant Program
 - Implementation
 - Enhancement
 - Coordinated Tribal Assistance Solicitation, Purpose Area 3
- SAMHSA Adult Tribal Healing to Wellness Court

Funding Announcements

There are three major federal sources of funding for Tribal Healing to Wellness Courts:

- [BJA's Drug Court Discretionary Grant Program](#)

- [FY 2014 BJA Drug Court Discretionary Grant RFP is available here](#)

FY 2014 RFP was released on January 15, 2014. Applications are due **March 18, 2014**.

Like in years past, grants are available for Implementation (\$350,000 for 36 months) and Enhancement (\$200,000 for 24 months).

- [Coordinated Tribal Assistance Solicitation \(CTAS\)](#)

- [Coordinated Tribal Assistance Solicitations for FY 2014 are available here](#)

[DOJ Webinar: CTAS General Overview](#), aired on January 27, 2014.

The Department of Justice has opened their solicitations December 17, 2013, inviting applications for federal funding “to improve public safety and victim services in Tribal communities.” Applications are due **March 24, 2014**.

Like last year, there are nine purpose areas.

1. Public Safety and Community Policing -- \$27 million/~50 awards available
2. Comprehensive Tribal Justice Systems Strategic Planning -- \$1.5 million/~8-12 awards available
3. Justice Systems, and Alcohol and Substance Abuse Program and Indian Alcohol and Substance Abuse Prevention Program -- \$16.8 million/~20-30 awards available (This purpose area specifically cites “[healing to wellness courts](#)” among the tribal justice systems this grant is aimed towards developing, enhancing, and continuing.)
4. Corrections and Correctional Alternatives -- \$7.5 million/~2-4 awards available
5. OVW – Violence Against Women Tribal Governments Program -- \$32 million/~60 awards available
6. Victims of Crime (OVC—Children’s Justice Act Partnerships for Indian Communities) -- \$2.7 million/~6 awards available
7. Victims of Crime (OVC—Comprehensive Tribal Victim Assistance Program) -- \$3.6 million/~8 awards available
8. Juvenile Justice -- < \$1 million/~2-3 awards available (This purpose area specially cites “to establish drug court programs” and “to establish and maintain restorative justice programs” among its goals and objectives.)
9. Tribal Youth Program -- \$5 million/~10-12 awards available

- [Substance Abuse and Mental Health Services Administration \(SAMHSA\) Center for Substance Abuse Treatment \(CSAT\)](#)

- [Grants to Expand Substance Abuse Treatment Capacity in Adult Tribal Healing to Wellness Courts and Juvenile Drug Courts \(Short Title: SAMHSA Treatment Drug Courts\)](#)

Due Date: March 17, 2014

[Complete RFA Announcement \(PDF\)](#)

- [SM-14-003: Planning and Developing Infrastructure to Improve the Mental Health and Wellness of Children, Youth and Families in American Indian/Alaska Natives \(AI/AN\) Communities \(Short Title: Circles of Care IV\)](#)

Due Date: March 7, 2014

[Pre-Application Webinar, aired January 23, 2014](#)

Adult Drug Court Best Practice Standards – Target Population

- Eligibility and exclusion criteria are predicated on empirical evidence. Candidates are evaluated for admission using evidence-based assessment tools and procedures.
- High-Risk and High Need and/or alternative tracks
- Criminal History Disqualifications
- Clinical Disqualifications

PRAIRIE BAND POTTAWATOMIE HEALING TO WELLNESS COURT

Historically Disadvantaged Groups and Cultural Sensitivity

- Equivalent ...
 - Access
 - Retention
 - Treatment
 - SAMHSA's National Registry of Evidence-Based Programs and Practices
 - Incentives and Sanctions
- Keep in mind
 - Race and ethnicity
 - Gender
 - Sexual Orientation
 - Physical or Mental Disability
 - Religion
 - Socioeconomic Status

Roles and Responsibilities of the Judge

- The Judge
 - Stays abreast of current law and research on best practices
 - Participates regularly in team meetings
 - Interacts frequently and respectfully with participants
 - Gives due consideration to the input of other team members.
- Importance of Three Minutes
- Judge as Encourager -- respectful, fair, attentive, enthusiastic, consistent, and caring
- Judge as Decision-Maker

Incentives, Sanction, and Therapeutic Adjustments

- Consequences for participants' behavior are predictable, fair, consistent, and administered in accordance with evidence-based principles of effective behavior modification.
- Advance Notice
- Opportunity to Be Heard
- Equivalent Consequences
- Progressive Sanctions and Incentivizing Productivity
 - Consistency coupled with reasonable discretion
- Therapeutic Adjustments

Substance Abuse Treatment

- Participants receive substance abuse treatment based on a standardized assessment of their treatment needs.
- Substance abuse is not provided to reward desired behaviors, or punish infractions.
- Treatment Team Representation
- Evidence-Based Treatments
- Peer Support Groups
- Continuing Care

Custom and Tradition

- Wellness Court can help to restore harmony and balance to the individuals, the families, and the nations that have been devastated by alcohol and drug abuse.
 - Adopting a Traditional Name
 - Waabshki-Miigwan – “White Feather” – LTTBB
 - Hihim Hekth A’lga – “Children on a Good Path” – Gila River
 - Menipaniw – “There is a Good Road” – Menominee
 - Elder Team Members
 - Traditional Healing Processes and Treatment Modalities
 - Traditional or Community-Based Sanctions and Incentives
 - Including Extended Family and Community
 - Traditional or Spiritual Component

Research into Practice – Summary Checklist

- (1) Are participants placed in treatment immediately following eligibility screening?
- (2) Does the drug court program use standardized screening instruments that have been validated for use with offenders?
- (3) Does the drug court program use a standardized psychosocial assessment instrument that has been validated for use with offenders?
- (4) Does the program assess all participants for mental disorders and history of trauma/PTSD?
- (5) Does the program provide a risk assessment for all participants?
 - If yes, are drug court participants assessed to be at “high risk”?

Summary Checklist Continued

- (6) Is the duration of substance abuse treatment at least 6 months and no more than 18 months?
- (7) Does the drug court treatment include the following elements of cognitive-behavioral and social learning models?
 - Cognitive restructuring
 - “Criminal thinking”
 - Problem-solving
 - Self-control/self-management strategies
 - Skill-building

Summary Checklist Continued

- (8) Does the drug court program focus on the following criminogenic needs, in addition to substance abuse?
 - Antisocial attitudes/personality
 - Antisocial peers
 - Family/marital problems
 - Education
 - Employment
 - Prosocial leisure activities
- (9) Does the drug court program use any of the following evidence-based treatment interventions?
 - Contingency management
 - Medication-assisted treatment
 - Motivational enhancement therapy (*see* Native American Motivational Interviewing)
 - Relapse prevention

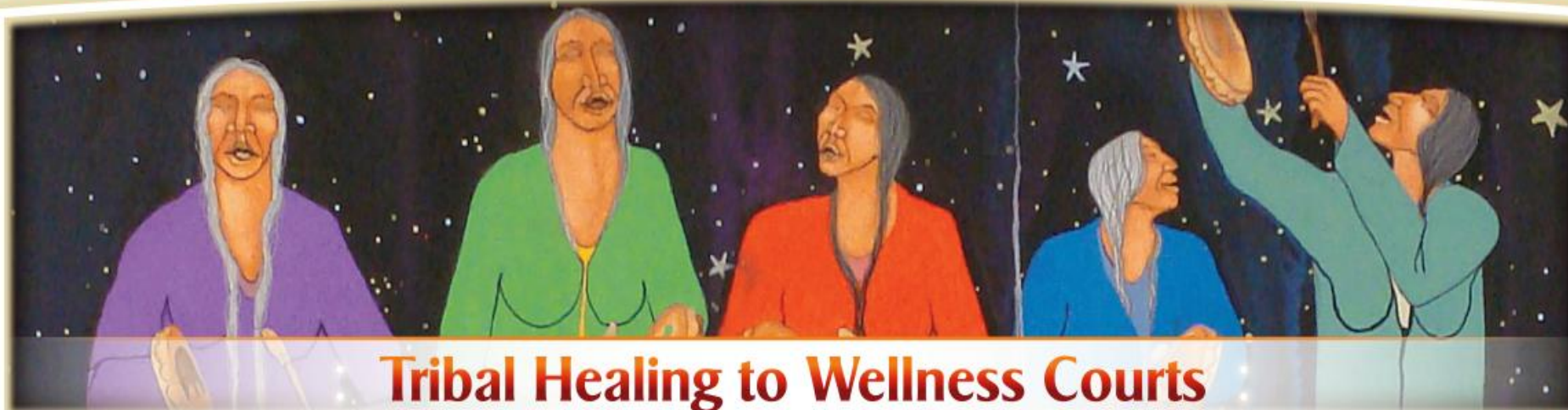
Summary Checklist Continued

- (10) Are specialized treatment approaches used to address the following?
 - Co-occurring mental disorders
 - History of trauma/PTSD
 - Gender-specific issues
 - Juveniles/young adults
- (11) Are manualized curricula used to guide drug court treatment?
- (12) Is there a focus on outpatient treatment, with residential treatment reserved for those who have experienced multiple relapses or who are at risk for harm to self or others?
- (13) Are there aftercare services in place?

Tribal Law and Policy Institute Resources

www.WellnessCourts.org

- Tribal Healing to Wellness Court Publications
 - Tribal 10 Key Components
 - Overview
 - Judicial Bench Book
 - Program Development
- Webinars and Prior Trainings
- Training Calendar



Tribal Healing to Wellness Courts

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Welcome

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