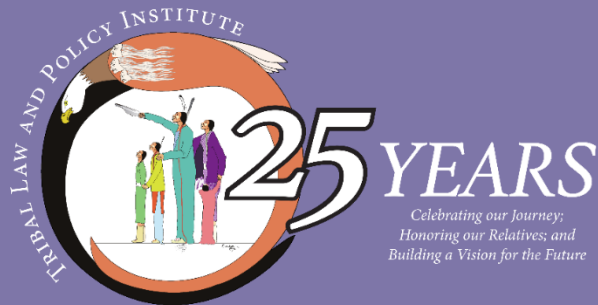


FORMALIZING HEALING TO WELLNESS COURTS IN TRIBAL LAW



January 2023



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A product of the

Tribal Law and Policy Institute

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Preface

Tribal law can be expressed in various forms, including written constitutions and code, written judicial opinions, and customary law, both written and unwritten. These various expressions of law collectively comprise the body of *tribal law*. The tribal code, a component of tribal law, is the affirmative written law of the community, often emanating from the tribe's legislative and/or executive branches. Codification is the action or process of arranging laws or rules according to a legislative system. It can include the introduction of concepts and processes, and the later amendment of existing provisions. The role of the tribal code can differ from tribe to tribe. While not all tribal agencies or functions require codification to exist and operate, codification can be a powerful signal that a tribal entity formally exists, that it represents core tribal values, and that its continued existence will be prioritized by the tribe.

Most contemporary tribal governments are organized with some degree of Western, adversarial influence, which thereby tends to inject a Western influence on the tribal law. Restorative justice is a rejection of the adversarial framework, or at least a deviation. But far more influential for tribal governments, restorative justice tends to be a reemergence and reflection of traditional tribal law. Restorative justice is an abstract concept, encompassing a variety of distinct philosophies, structures, and programs. Restorative justice generally “prefers processes that are collaborative and inclusive and outcomes that are mutually agreed upon rather than imposed.”¹ It seeks reparation or restoration, which requires identifying the cause of the harm.² Its lens extends beyond the justice-involved individual and the victim to include the community—what the community requires to heal and what obligations the community has toward that process.³ Meanwhile, traditional tribal dispute resolution tends to also center the community. How was the community harmed? What does the community require to restore balance?

The Tribal Healing to Wellness Court (“Wellness Court”) is an expression of restorative justice. It is also a practical response to community members in need and the community's need for restoration. Individuals diagnosed with substance use disorders tend to respond poorly to incarceration and the community remains out of balance. Thus, a restorative justice approach to substance use disorders incorporates not only traditional law approaches and modern restorative justice principles but is also a practical response to a needling crisis.

Because the Wellness Court is locally designed, leveraging the tools and expertise of its various members, the ultimate structure and role it serves in relation to other judicial and social programs of the tribal government can vary greatly. This in turn impacts how a tribe might conceive of solidifying the Wellness Court as permanent feature. Codification is one solidification tool. It can be a tricky balance. The modern tribal government is in many ways an assimilated, Western-stylized form of government organization. But it is also an expression of

¹ Howard Zehr, *The Little Book of Restorative Justice*, Revised and Updated, 36 (Good Books, 2015).

² *Id.* at 39–40.

³ *Id.* at 42.

tribal sovereignty, preserving the tribe as a twenty-first-century Indigenous, sovereign collective. The Wellness Court is a modern restorative justice take. But it is also reflective of traditional teachings and incorporates communal input from a diversity of wisdom holders.

Does formalizing the Wellness Court into written tribal law serve the Wellness Court? This ultimately can only be answered by the community. This publication purports that, at least in the abstract, it does. If the tribe has a written tribal code, then the Wellness Court should have a place in that code. Codification solidifies the Wellness Court within the tribe's judicial approach, it provides notice to the community and to the world that the tribe endorses the philosophies of the Wellness Court, and it ultimately influences the tribal structures around it.

Not legal advice – Note, this publication identifies common law provisions and different code drafting strategies for formalizing a Wellness Court into tribal law. However, the best code provisions for a tribe and their Wellness Court will require an in-depth, multidisciplinary examination of the tribal laws and the tribe's customs, traditions, and restorative justice goals. This publication does not purport to provide legal advice.

About This Resource

The Tribal Healing to Wellness Court (“Wellness Court”) model includes the adult-criminal, the juvenile-delinquency, and the family-civil. This publication is intended to assist Tribal Healing to Wellness Courts in codifying into written tribal law each of these models. Frequently, particularly due to its grassroots nature, the Wellness Court tends to develop organically, operating far before the formalities of written descriptions, much less formalized written tribal law, bless its existence. That’s its charm! But at some point, we wager, a Wellness Court will benefit from a formalized inauguration, which can serve to ensure the Wellness Court will continue to exist, operate, and benefit future community members long after its founding members have retired. Benefits to formalizing the Wellness Court into tribal law can include protecting the Wellness Court’s stability and authority, incentivizing other tribal agencies to collaborate with the Wellness Court, protecting the individual’s due process rights, and signaling a general tribal endorsement for restorative justice.

This resource provides a comprehensive examination of the ways in which tribes have sought to codify the various models of Wellness Courts. While written tribal laws are as diverse as tribal nations, patterns in sections of code and approaches to Wellness Court codification have emerged. Therefore, this publication walks through those common steps.

We have organized this publication based on typical sections of the code. Codification can be as simple as one sentence:

“There hereby is a Wellness Court.”

Codification can be as complex as articulating each legal moment and each responsibility of each Wellness Court member. Likely, most tribes will fall somewhere in between. The driving force will be the context of existing written tribal law. How detailed is the judicial code? What is required to codify new judicial dockets? What is necessary for cases to be transferred from one tribal docket to another? These are the questions that will drive consideration for codifying the Wellness Court.

Wellness Court Models

Adult-Criminal

The typical Wellness Court is structured to divert adults facing criminal charges or convictions. In lieu of prosecution, sentencing, or serving the sentence, a participant will have the opportunity to complete Wellness Court. Successful graduation will result in deferred prosecution or sentencing.

Juvenile-Delinquency

The Juvenile Wellness Court extends the adult-criminal model to juveniles facing delinquency prosecution. Like the adult-criminal model, Juvenile Wellness Courts will divert juveniles either pre-prosecution or presentencing.

Family-Civil

The family-civil model extends the Wellness Court philosophy to an entirely new justice system: child welfare. The Family Wellness Court integrates the requirements of Wellness Court into a child welfare reunification plan, seeking to expedite and ensure successful reunification between child and parent(s).

Like other Tribal Law and Policy Institute publications, this resource acknowledges that the diversity of tribal governments negates the existence of any *model* code. Instead, this publication seeks to explore the ways in which tribes have gone about codifying the Wellness Court. As expected, there is great diversity. We highlight this diversity for your consideration. The advantages and disadvantages of a particular approach are far too dependent on the context of a tribal community and their governmental organization. Instead, we highlight these various approaches to showcase the possibility. The examples featured here are not the complete spectrum of possibilities in how to codify a Wellness Court. They are simply examples. We eagerly anticipate learning from what your community creates.

For a more comprehensive examination of the Wellness Court model, the Tribal Law and Policy Institute's *Tribal Healing to Wellness Courts Publication Series*⁴ is highly recommended. These resources, along with others, are referenced throughout this publication and listed in the appendix.

⁴ Tribal Law and Policy Institute, Tribal Healing to Wellness Court Publication Series, <https://www.home.tlpi.org/tribal-healing-to-wellness-courts>.

Chapter 1. Wellness Courts – Historical Context

The adversarial justice system, like substance use disorders, is a colonial import, imposed on tribes regardless of how it compared to traditional justice systems. In many ways, the story of Tribal Healing to Wellness Courts (“Wellness Court”) and the collaborations they imbue are a testament to the resurgence of indigeneity. They are as diverse as the communities they serve. The following section discusses the history of Healing to Wellness Courts to contextualize their role as a component of the tribal judiciary.

The Drug Court Movement

The modern Wellness Court is linked to the formation of drug courts in state systems. The U.S. “War on Drugs” resulted in a large increase of drug-related cases in state criminal justice systems, increased drug-related convictions, and overcrowded jails and prisons.⁵ Those who were imprisoned as a result of this policy were often subject to traumatization by the prison system and, upon release, faced stigma and other barriers to reintegrating with society. Compounding the problem, those who were imprisoned were usually not afforded meaningful treatment for their substance abuse and its underlying causes—the very reason they were incarcerated in the first place.⁶ Criminal justice systems quickly became overburdened and, ultimately, it was found that incarceration was not having the desired deterrent or rehabilitative effect for which policy makers may have hoped. In response, the drug court approach was developed to process substance abuse cases in a

The term: *Healing to Wellness Court*

Early on, Native nations that were developing their own Wellness Courts preferred to avoid the term “drug court” and searched for a new term that would connect culturally to the tribal community and clearly incorporate alcohol abuse cases. Today, Tribal Healing to Wellness Courts have many names including Wellness Court, Healing Court, Treatment Court, Substance Abuse Court, Alternative Court, and many Native names that reflect the communities they serve. The Tribal Law and Policy Institute prefers the term “Tribal Healing to Wellness Court,” a nod to both the healing and wellness aspects of the approach as well as the idea that wellness is an ongoing journey. This publication will use “Healing to Wellness Court” and “Wellness Court” interchangeably.

⁵Joseph Thomas Flies-Away, Jerry Gardner, and Carrie Garrow, *Overview of Tribal Healing to Wellness Courts*, 1 (Tribal Law and Policy Institute, 2014).

⁶Ingrid A. Binswanger et al., “Return to drug use and overdose after release from prison: A qualitative study of risk and protective factors,” *Addiction Science & Clinical Practice* 7, No. 1 (2012): 3; C. J. Mumola and Jennifer C. Karberg, *Drug Use and Dependence, State and Federal Prisoners, 2004* (Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 2006).

The Wellness Court Model

A Wellness Court is a docket of cases for participants diagnosed with a substance use disorder. The “types” of Wellness Courts can vary depending on the target population and/or reasons for court involvement (triggering case). They can range from criminal to child abuse or neglect, to targeting juveniles or veterans. Multidisciplinary teams coordinate services. Participants’ needs are assessed, and a case plan is developed. The team, along with the participant, meet weekly to ensure participant engagement, and pivot as needs change. Accountability is collective and immediate. The participant progresses through phases, generally taking at least one year to complete.

way that systematically prioritized treatment—tethering treatment to judicial authority, multidisciplinary input, and personal accountability. These drug courts were successful, and what began as a grassroots initiative became a nationwide trend.⁷

Beginning as a grassroots initiative, drug courts have now spread across the United States and are in nearly 20 countries. Teams of judges, prosecutors, public defenders, treatment providers, law enforcement officials, probation officers, case managers, and a host of other community members use the coercive power of the court to promote abstinence and alter behavior. This is accomplished through a combination of intensive judicial supervision, praise for progress, sanctions for noncompliance, random drug testing, comprehensive and phased treatment, aftercare programs, and other ancillary human services.⁸

Wellness Courts

Word of the drug court movement spread to Indian country, where many tribal communities were confronting intergenerational substance use issues and severe alcoholism. As interest and research grew, tribal advocates explored how the drug court model could have a positive impact within Native nations. They also noted that the model could easily be tailored to reflect traditional tribal justice systems and reinforce tribal values related to restorative justice. The nature of the Wellness Court model reflects many consensus-based, non-adversarial, traditional Indigenous dispute-resolution systems.⁹

⁷ Arthur J. Lurigio, *The First 20 Years of Drug Treatment Courts: A Brief Description of Their History and Impact*, 72: 1 FED. PROBATION J. 2008 (“By April 2007, more than 1,000 specialized drug courts were operational in all 50 states as well as the District of Columbia, Guam, and Puerto Rico.”).

⁸ Flies-Away et al., *Overview of Tribal Healing to Wellness Courts*, 1.

⁹ Ibid.

Consequently, in 1997, the Drug Court Program Office (DCPO), Office of Justice Programs, U.S. Department of Justice¹⁰ developed a special program to assist Indian nations to plan and implement a drug court within tribal governments. DCPO charged the National Association of Drug Court Professionals (NADCP) with the task of creating a culturally sensitive training program that would meet the needs of the initial 22 Indian nations that had been awarded drug court grants through the DCPO. In August 1997, NADCP, in collaboration with DCPO and a group of individuals with tribal court and substance abuse expertise, helped design an adapted curriculum for tribal drug court training sessions. The first of a series of tribal-specific training sessions was held in Stillwater, Oklahoma, in September 1997. In August 2003, tribal-specific drug court curriculums were drafted and adapted from state and national efforts and were used for the first formal tribal drug court training sessions.¹¹

Tribal Healing to Wellness Courts are not simply tribal courts that hear cases involving alcohol- and drug-use-related issues. A Wellness Court is a special court docket collaborative with the responsibility to hear diverted cases involving individuals who struggle with substance-use-related issues. The court partners with all the service providers to create a bundle stronger than the sum of its parts. Participants must complete a program of extensive supervision and treatment. The team must gather, listen to each other, and determine how best to respond and support the participant in real time. The Wellness Court thus brings the full weight of all interveners.

In criminal cases, this can include the judge, prosecutor, defense counselor, treatment specialists, probation officers, law enforcement and correctional personnel, educational and vocational experts, community leaders, and traditional healers. In child welfare cases, the team will also include child welfare workers, those who serve families, and others who have expertise in child development. Because team members represent formerly siloed agencies, the team must develop new, and frequently innovative, information-sharing protocols. Their hierarchal chains-of-command must adapt to accommodate the consensus and community of the team.

The participant is asked to address their struggle with substance use in a nonconfrontational, but frequent, meeting forum. Participant case plans can include biweekly therapy, biweekly drug testing, weekly community service, education or vocational training, sobriety meetings, and weekly court. The structure of the court supports a higher level of accountability for participants by leveraging the coercive power of the judicial system to achieve abstinence and alter their behavior through the combination of judicial supervision, treatment, drug testing, incentives, sanctions, case management, and appropriate cultural components.

¹⁰ The Drug Court Program Office has since merged with the U.S. Department of Justice's Bureau of Justice Assistance.

¹¹ TRIBAL LAW AND POLICY INSTITUTE, [Tribal Healing to Wellness Courts: The Key Components](#) (U.S. Department of Justice, Bureau of Justice Assistance, April 2003).

Yet, the structure of the court, the representatives on the team, the components of the case plan—all of the Wellness Court is designed locally. The resulting design of a Wellness Court program reflects the unique strengths, circumstances, and capacities of each Native Nation.¹²

Tribal Healing to Wellness Courts are guided by the Tribal Ten Key Components¹³—the fundamental essentials of the drug court concept. Fashioned after the Ten Key Components initially formatted for state drug courts,¹⁴ the Tribal Healing to Wellness Court Ten Key Components were crafted to reflect tribal notions of healing and wellness, particularly the concept of a healing-to-wellness journey, and the collaborative effort involved with supporting such a journey.¹⁵ The Tribal Ten Key Components are the basic operational characteristics that all Healing to Wellness Courts should share as benchmarks for performance. They are also used by the federal Bureau of Justice Assistance in consideration of drug court grant awards. Additional information and tips for implementing the 10 Key Components can be found in the Family Treatment Court Best Practice Standards and the Tribal 10 Key Components’ Suggested Practices with NADCP’s Best Practices.¹⁶

The Healing to Wellness Court Key Components

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.

Key Component #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.

Key Component #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.

Key Component #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.

¹² Flies-Away et al., *Overview of Tribal Healing to Wellness Courts*, 2–3.

¹³ Joseph Thomas Flies-Away, Carrie Garrow, and Pat Sekaquaptewa, *Tribal Healing to Wellness Courts: The Key Components*, 2nd ed. (Tribal Law and Policy Institute, 2014) [hereinafter *The Key Components*].

¹⁴ National Association of Drug Court Professionals Drug Court Standards Committee, *Defining Drug Courts: The Key Components* (U.S. Department of Justice, Bureau of Justice Assistance, reprinted October 2004).

¹⁵ Flies-Away et al., *The Key Components*.

¹⁶ Hon. Carrie Garrow, *Tribal 10 Key Components’ Suggested Practices with NADCP’s Best Practices*.

Key Component #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 Component #6: Incentives and Sanctions

Progressive rewards (or incentives) and consequences (or sanctions) are used to encourage participant compliance with the Tribal Healing to Wellness Court requirements.

Key Component #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 Component #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 Component #9: Continuing Interdisciplinary and Community Education

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

Key Component #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.

Wellness Courts as Part of the Tribal Judiciary

Tribal courts are a service provider, serving as a forum of dispute resolution for the community. They are an expression of sovereignty, serving as the third, or even fourth branch of government, and checking the powers of the other branches. They are also an interpreter of tribal law, translating written constitutions and codes into daily life, incorporating customary law along the way. It is through tribal courts that tribal laws become contextualized.

Interestingly, most tribal courts are themselves codified within the “judicial” section of the written tribal law. These judicial code provisions serve to establish the tribal court, empower it with decision-making and interpretative powers, and dictate the structure of the court, at least its minimum standards. Because the tribal court is a check on the legislative and executive branches, the codification of the court is a precarious balance. The court should be independent enough to provide an adequate check on the other branches. It should also have sufficient structure so as to be accountable to the tribal community and responsive to its needs. The codification of a Wellness Court should therefore strike an appropriate balance.

Wellness Courts do not require codification. In fact, many Wellness Courts currently in operation do not appear in their tribal judicial code. This is likely more a result of expedience rather than an intentional avoidance of the legislative process. As a product of the restorative justice movement, many perceive of the Wellness Court as a “program” or “initiative,” rather than as a docket of the judiciary. As a program, codification is not required, or even recommended. If every program needed legislative authority, nothing would get done!

Even when the Wellness Court is structured formally as a docket of the tribal judiciary, legislative authorization still may not be required. Within many tribal judicial codes, after primary features are articulated such as the appointment of judges, the tribal court retains the authority to make its own rules and implement subsequent judicial structures like a Wellness Court. The Wellness Court operates as a component of the “tribal court” and is statutorily bound only by the minimum standards generally set for the tribal court.

Some Wellness Courts are a “court” in name only. They operate much like any other course or program an offender might be ordered to complete. Court staff are hands-off up until the point the offender is referred back to the court for having successfully or unsuccessfully complied with the requirements of the program. These Wellness Courts would likely not be served through codification. Many other Wellness Courts, however, do function as an arm of the judiciary. Members of the tribal bar serve as the judges and attorneys on the team. The Wellness Court is empowered to issue court orders and make final disposition determinations. Because the Wellness Court has such powers, the exercise of those powers has ramifications on both individuals and the tribal government. Codification becomes a stronger consideration. The following chapter discusses primary codification considerations.

Chapter 2. Considerations for Formalizing the Wellness Court into Tribal Law

Benefits of Formalizing the Wellness Court into Tribal Law

Codifying the Tribal Healing Wellness Court (“Wellness Court”) can achieve several distinct goals. “Establishing” the Wellness Court in tribal code injects some **stability** into the Wellness Court. It cements the Wellness Court as a component of the tribal judiciary. It should be considered as part of the judicial budget. It should be appropriately staffed and resourced. Its disestablishment will require an ordinance modifying the code and all the political process that includes, such as a public hearing explaining why the Wellness Court is no longer in operation.

Codification can increase and ensure the Wellness Court’s **authority**. Establishing the Wellness Court frequently begs questions for how cases can, or should, transfer into the Wellness Court. What legal consequences trigger when a case transfers from Wellness Court? What rules of procedure should the Wellness Court abide by? What rules should be modified for the Wellness Court? If successful graduation from Wellness Court can result in a deferred sentence or eligibility for expungement, does the Wellness Court need to be added to those relevant code sections as an eligible option? Ultimately, how does the Wellness Court interact with the rest of the judiciary?

Similarly, by ensuring the Wellness Court has authority to operate, a tribal law’s mandate that the Wellness Court operate can **incentivize participation** by agencies in the Wellness Court. As a collaboration between agencies, getting mutual buy-in and dedicated personnel can be a difficult and ongoing process, especially as the first generation of volunteers turn over. But codification requires that agencies include Wellness Court as part of their required duties.

Codification can introduce appropriate **limits** on the Wellness Court’s authority that ensure individual participants’ rights are protected. At the same time, the Wellness Court intentionally suspends some due process protections while sidestepping the adversarial process. Codification can provide the Wellness Court statutory cover for these process deviations, while also ensuring participants remain protected. What minimum due process protections does the Wellness Court need to provide? Frequently the rules of evidence and civil/criminal procedure are paused or reduced for the week-by-week Wellness Court hearing. Should this be codified? The rules of evidence and procedure are reintroduced for the entry and discharge hearings. Should this be codified?

Finally, codification signals a tribal endorsement of **restorative justice**. Philosophies generally do not require codification. The tribal code is only one expression of tribal law. And tribal law is only one expression of tribal values. But codification of a restorative justice model into the written tribal law is a strong signal to both community members and outsiders. It can be used an interpretative tool for the type of restorative justice principles that should inform all justice issues. It can beget the incorporation of other restorative justice models.

Disadvantages of Formalizing the Wellness Court into Tribal Law

Before rushing to legislate there are some potential costs to codifying a Wellness Courts that should also be considered. The written tribal law sets the minimum structural requirements for operation. The legislative process to enact that written law is intentionally slow, and process oriented, making modifications difficult and time-consuming. Therefore, when a Wellness Court and its minimum structural requirements are codified, they become **slow to change**. A Wellness Court may find it wants to tap into the same creative innovation it used to establish the Wellness Court to make changes to team members, target populations, or services, but cannot because the structure of the Wellness Court is written in the Code.

Some tribal code provisions are **written carelessly** or fail to account for collateral consequences. A codified list of potential incentives can serve as inspiration. But it could also be interpreted as a mandate—the court *must* offer gift cards because the code lists it. Permissive language, such as “may” and “could include,” is mistakenly conflated with mandatory language, such as “shall” and “will.” Different phrases are used to refer to the same concept. Sloppy codes can do more harm than no code.

While inserting limits on the Wellness Court’s authority into tribal law can serve as a tool to protect a participant’s due process rights, such limitations can also restrict the Wellness Court’s ability to be flexible and adaptive to the participant’s changing needs. The frequently well-intentioned inclination to preserve Western-style civil rights can lead to an injection of adversarial, process-oriented structures. In turn, the Wellness Court becomes **more adversarial**, bogged down in process and unable to provide the immediate and personalized responses the Wellness Court was intended to provide.

Writing the Wellness Court into Tribal Law Should Be Goal Oriented

The written tribal code is a creature of Western-style governance, serving as a check on the branches of government. Only the necessities should be written into tribal law. Therefore, formalizing the Wellness Court into tribal law should be goal oriented. What do we want to achieve in codifying the Wellness Court? Do we want to formalize its existence within the judiciary? Do we want to mandate that certain agencies devote a team member to the Wellness Court? Do we want to provide a mechanism for transferring cases into the Wellness Court? Do we want to provide due process protections? The goals should drive what is written into tribal law and ancillary considerations should be reserved for a different document, like the policies and procedures.

Many well-crafted codes take on a set of style preferences. If every judicial docket is codified with three distinct provisions, the Wellness Court should probably adopt a comparable statutory structure; or, it should be intentional if adopting a different structure. Words, phrases, and patterns carry heavy meaning within a code.

For these reasons, Wellness Court codes tend to be minimal. But not all. The remaining chapters will walk through different potential categories within a Wellness Court code. No one tribal code includes every category presented here. Likely, no code should. Instead, these categories are presented here as a menu of considerations. Would codifying a particular category serve to achieve your goals? Would they complement the structure of the overall tribal code?

Happy drafting!

Chapter 3. Establishing the Wellness Court

Judicial ordinances tend to have a common framework. They serve to establish the judiciary as a branch of the tribal government that is separate and designated to hear disputes and interpret tribal law. The judicial code generally establishes the dockets of the judiciary and establishes the roles and criteria of the judges.

The Tribal Healing to Wellness Court (“Wellness Court”) is most commonly structured as a branch of the judiciary, serving as a diversion from criminal prosecution, but still within a docket format leveraging the power of the court. For some tribes, the Wellness Court is conceived less as a separate docket and more as a diversion program. It is a sentencing option, comparable to community service. As such, rather than appearing in the Judicial Code, the Wellness Court is incorporated in the criminal procedure.

Even when conceived as a court a Wellness Court is a hybrid structure, functioning as a court but also as a collaborative between multiple agencies. Many of those agencies are not codified, but nevertheless still operate as components of the tribal government. Simultaneously, not all dockets of the tribal court are codified. Therefore, there may be no legal requirement to codify the Wellness Court for it to operate.

But, as explored in Chapter 2, there may nevertheless be desirable reasons to codify the Wellness Court into the tribal code. Codifying the establishment of the Wellness Court can:

- Acknowledge the Wellness Court as a viable diversion option, including for pre-prosecution, postconviction, and sentencing option, and as an eligible avenue for expungement;
- Authorize and/or mandate referrals;
- Authorize and/or mandate interagency participation;
- Authorize interjurisdictional collaboration; and
- Dictate the process by which a case can enter Wellness Court.

For many tribal codes, establishing the Wellness Court is the extent to which it is codified. The code remains silent as to structure, required members, due process limitations, and manners in which cases transfer in and out of the Wellness Court.

Consider

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 well-being of the community.

The Wellness Court Name

Wellness Courts are a part of the re-indigenizing work happening across tribal judiciaries. The Wellness Court is a framework for re-empowering consensus, community, and healing. The name of the Court, especially those that incorporate Indigenous languages, is one way to signal this work.

Eastern Band of Cherokee Indians

Chapter 7C – Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi (Cherokee Wellness Court)

Sec. 7C-2. – Definitions.

Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi. The former Cherokee Tribal Drug Court shall now be a wellness court known as Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi which is the Cherokee phrase for “where they have a change of heart.”

Hoopa Valley Tribe

Title 4A – Na:tini-x’we’ Na:xo-xi-nayi-din [*The people’s get well place*] Court Code

2. Jurisdiction of the Court.

There is hereby established for the Hoopa Valley Tribe of the Hoopa Indian Reservation a court to be known as the Hoopa Valley Tribe Juvenile Na:tini-x’we’ Na:xo-xi-nayi-din Court.

Purpose

Because the Wellness Court stands in stark contrast to the adversarial structure of the typical tribal court docket, codifying the purpose of the Wellness Court can capture the intent to shift goals, operations, and perspectives.

A “Purpose” section can be used as interpretation devise.

Eastern Band of Cherokee Indians

Chapter 7C – Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi (Cherokee Wellness Court)

Sec. 7C-1. – Purpose.

This chapter shall be interpreted and construed so as to implement a comprehensive court program that blends treatment and sanction alternatives to effectively address offender behavior, rehabilitation, and the safety of the community.

The Fort Peck Tribes expand upon their “Purpose” section, referencing key components of a Wellness Court. These include offering treatment,¹⁷ making an early referral,¹⁸ intensive supervision,¹⁹ and immediate incentives and sanctions.²⁰ Notably, subpart (e) seeks to support the participant by making *them* part of the team.

¹⁷ Tribal Key Component #4.

¹⁸ Tribal Key Component #3.

¹⁹ Tribal Key Component #5

²⁰ Tribal Key Component #6

Fort Peck Assiniboine & Sioux Tribes

Title 6 – Criminal Procedures | Chapter 10. Fort Peck Wellness Court Programs

Sec. 1001. Purpose.

This chapter shall be interpreted and construed so as to implement the following purposes and policies:

- (a) To offer treatment to both juvenile and adult offenders who have committed a crime that is directly or indirectly related to a substance abuse or addiction issue;
- (b) To identify and recommend potential Wellness Court participations to the Wellness Court Team for legal and clinical screening as soon as possible during the sentencing or dispositional stage of the court process;
- (c) To strictly monitor and supervise each participant through regular and frequent drug and alcohol testing, court appearances and program requirements;
- (d) To impose immediate sanctions and offer immediate rewards or incentives when a participant's behavior warrants such actions; and
- (e) To make the participant a part of the Wellness Court Team and to encourage and support each participant in the goal of individual wellness.

Like the Eastern Band of Cherokee Indians and the Fort Peck Tribes, the Ho Chunk Nation mandates that the entire Wellness Court Code be construed to fulfill their "Purpose" section. Ho Chunk Nation then continues, codifying their mission statement under "Policy," followed by the incorporation of additional interpretation devices, including Ho Chunk ideals, restorative justice, collaborative decision making, and the NADCP 10 key components.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter 1. General Provision and Definitions

3. Purpose. The Wellness Court Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

- a. Help Ho-Chunk Nation members break the generational cycle of abuse, addiction and enabling,
- b. Promote public safety by reducing recidivism rates of drug and alcohol offenses,
- c. Promote recovery in participants and the community, and support from the family and community, and
- d. Hold offenders accountable through the use of effective sanctions, rewards, and treatment programming.
- e. If offenders violate mutually agreed upon program, suspension of annual per capita payments may be imposed until the offender successfully completes the program.

4. Policy. The Wellness Court's mission is to address a pervasive alcohol and drug addiction ill affecting our community, alcohol and drug addiction and its associated consequences.... The Wellness Court shall adhere to Ho-Chunk ideals while focusing upon restorative justice and collaborative decision-making. The Healing to Wellness Court shall comply with the 10 key components promulgated by the National Association of Drug Treatment Court Professionals.

Beyond reducing criminal recidivism, the Hoopa Valley Tribe seeks to preserve and retain the unity of the family and the care and growth of children and includes notable family-oriented purposes.

Hoopa Valley Tribe

Title 4A – Na:tini-x’we’ Na:xo-xi-nayi-din [*The people’s get well place*] Court Code

1. Short Title, Purpose, and Definitions. B. Purpose.

The Hoopa Valley Tribe Na:tini-x’we’ Na:xo-xi-nayi-din Court Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

1. To preserve and retain the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this code;
2. To recognize that alcohol and substance abuse is a disease which is both preventable and treatable;
3. To remove from children committing juvenile offenses, the legal consequences of criminal behavior and to substitute a program of supervision, care, and rehabilitation consistent with the protection of the Hoopa Valley Tribal Community;
4. To achieve the purposes of this code in a family environment whenever possible, separating the child from the child’s parents only when necessary for the child’s welfare or in the interests of public safety; and
5. To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives.

Separate Docket

The Wellness Court is most frequently conceived as a distinct docket within the judiciary. In numerous tribal codes, Wellness Courts are referred to as “specialty courts”: a problem-solving court that aims to provide treatment instead of punishment—attempting to reduce future contacts with the criminal justice system.²¹

Fort Peck Assiniboine & Sioux Tribes

Title 6 – Criminal Procedures | Chapter 10. Fort Peck Wellness Court Programs

Sec. 1002. Definitions....The Wellness Court is a Trial Court of Special Jurisdiction with jurisdiction to hear all cases referred to it pursuant to Fort Peck Tribal Law.

Eastern Band of Cherokee Indians

Chapter 7C – Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi (Cherokee Wellness Court)

Sec. 7C-2. – Definitions.... Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi is a trial court of special jurisdiction within the provisions of [Section 7-1\(a\)](#).

Alternatively, the Shoshone Bannock Code has an open-ended policy for specialty courts, so long as the specialty court abides by the specialty court-enactment process.

Shoshone-Bannock Tribes

Title 3 – Shoshone-Bannock Tribal Court, Chapter 2. Judicial Council Code, Part IV. Tribal Judges

Sec. 3-2-21

²¹ Kelly Frailing, “[The Achievements of Specialty Courts in the United States](#),” *Scholars Strategy Network* (April 11, 2016).

(a) Specialty courts, therapy courts or other specialized or experimental courts shall not be established or operated in or by the Tribal Court without express permission from the Judicial Council, who shall, before granting or denying permission, consult with the Tribal Court administrator to determine whether sufficient funding is available, and how such a court might impact the workload of other tribal judges or court staff; and shall consider the availability of court space. Before such courts are approved, the Judicial Council shall develop a written plan for implementation and operation, which shall include:

- (1) Available funding for the operation of the specialty court;
- (2) Limits and conditions as deemed necessary;
- (3) Performance Measures:
 - a. What measures will be used to determine the success or failure of the program;
 - b. What statistics will be gathered and by whom;
- (4) Reporting; ensure that the performance measures are reported to and regularly reviewed by the Judicial Council; and
- (5) Length of time court will operate; over what period of time; and
- (6) If necessary, how the court will be brought to a close without jeopardizing the rights of that court's defendants or participants.

(b) ... Such specialty courts may include but are not limited to Drug Court, Veteran's Court, Domestic Violence Court, DUI Court, Traditional Court and others, either juvenile or adult. The Judicial Council may withdraw its permission for the operation of any specialty court at any time. In such event, care should be taken as to how the affected court should be brought to a close, and consideration should be given to defendant participants, and any promises or expectations provided to them should be negotiated or fulfilled prior to closing the subject court. All judges, court staff, and the Judicial Council must comply with all requirements and restrictions imposed by the funding source.

Jurisdiction

In establishing the Wellness Court, the parameters of the court can be set, most notably the extent of its jurisdiction. The Citizen Potawatomi Nation Code and the Fort Peck Tribes Code extend only limited Wellness Court jurisdiction. Note these frames do not accommodate potential transfers from a different jurisdiction, such as a case originating in state court.

Only deferred sentences:

Citizen Potawatomi Nation

Title 15 – Healing to Wellness Court Administration and Procedure

Section 15-1-102. Establishment of the Healing to Wellness Court.

The Citizen Potawatomi Nation Healing to Wellness Court shall be a deferred sentencing program established to divert those offenders with substance abuse problems away from the regular Court system and toward a more holistic approach, which involves a treatment-oriented perspective.

Only cases transferred from the Trial Court:

Fort Peck Assiniboine & Sioux Tribes

Title 6, Chapter 10. Fort Peck Wellness Court Programs

Section 1003. Jurisdiction.

(a) The Wellness Court shall have jurisdiction over any case that is transferred to it by the Fort Peck Tribal Court. Upon successful completion of the Wellness Court program, or at such time when a participant of the Wellness Court becomes ineligible to continue in the program as set out in the Wellness Court policies and procedures, the Wellness Court will transfer jurisdiction of each case back to the Fort Peck Tribal Court for any final disposition.

Note, the CTCLUSI Code that follows provides the Wellness Court both original jurisdiction and jurisdiction over transferred cases.

Confederated Tribes of Coos, Lower Umqua, and Siuslaw Indians

Title 2 – Rules of Procedure | Chapter 2-13: Wellness Court

2-13-3. Jurisdiction.

(a) The CTCLUSI Wellness Court shall have jurisdiction over any case in which it would have had original or exclusive jurisdiction related to the underlying offense, and any case that may be transferred to the tribal court by a court of competent jurisdiction.

The Pueblo of Pojoaque Code frames the Wellness Court’s jurisdiction within the participant’s eligibility criteria. *Note*, that because the *Wen Hey Kha Wosatsi Khuu* Court’s jurisdiction only begins subsequent to a participant’s admission, the Pueblo of Pojoaque Trial Court, as opposed to the *Wen Hey Kha Wosatsi Khuu* Court, determines admission.

Pueblo of Pojoaque

C-10 Wen Hey Kha Wosatsi Khuu (Path to Wellness) Court Jurisdiction

(a) The Pueblo of Pojoaque Path to Wellness Court may exercise jurisdiction over individuals who:

1. Meet the eligibility criteria of the Pueblo of Pojoaque Path to Wellness Court Policies and Procedures Manual; and
2. Are accepted for admission by the Path to Wellness Team.

The Hoopa Valley Tribe details the jurisdiction of their Wellness Court as it relates to juvenile cases.

Hoopa Valley Tribe

Title 4A – Na:tini-x’we’ Na:xo-xi-nayi-din [*The people’s get well place*] Court Code

2. Jurisdiction of the Court

... The court has jurisdiction over all proceedings in this code in which an Indian child resides in or domiciled on the reservation or where other persons consent to the court’s jurisdiction.

Authority of the Wellness Court

“Jurisdiction” can refer to both the scope of cases the court is authorized to hear, as detailed in the preceding text, as well as the scope of authority the court can exercise over the cases it hears, as detailed in the text that follows. The Ho Chunk Nation Code details the powers of the Wellness Court.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare | Section 15 – Healing to Wellness Court Code

Chapter II. Jurisdiction, Court Structure, Policies, Procedures, and Program Rules.

6. Jurisdiction.

b. The Wellness Court shall have the authority to issue all orders necessary to ensure the safety, well-being, and rehabilitation of individuals who come within or consent to its jurisdiction. The Wellness Court shall have the power to implement all the duties, responsibilities, and remedies set out in this Code, including the power to enforce subpoenas and orders of restriction, fines and orders of restitution, contempt, confinement and detention, and other powers as appropriate.

Like the Ho Chunk Nation Code, Muscogee (Creek) identifies the Wellness Court's powers, though notes the Court's powers are not limited to this list.

Muscogee (Creek) Nation

Title 26. Judicial Branch/Courts Vhakov Fvtcecvlke/Fvtceckv Cuko

§ 6–102. Powers and Authority of Court

The Judge of the Muscogee (Creek) Nation District Court is hereby authorized to order and/or impose sanctions and incentives for participants who enter into the Family Drug Court Program. The Court's powers and authority hereunder shall include, but are not limited to, the following:

- A. approving and enforcing treatment plans;
- B. holding participants in direct or indirect contempt of court for willful violations of the Court's orders, including Court-ordered treatment plans;
- C. imposing fines and/or costs;
- D. ordering the performance of community service;
- E. ordering participants to receive mandatory inpatient/outpatient drug or alcohol treatment or counseling;
- F. ordering random and/or periodic urinalysis testing;
- G. placement of child(ren) in the legal and/or physical custody of Children and Family Services Administration and/or other persons;
- H. authorizing increased or restricted contact with other family members or increased or restricted supervised visitation with child(ren);
- I. extending, accelerating, and/or terminating treatment plan(s) and/or ordering that non-compliant participants be discharged from the Family Drug Court program;
- J. where a participant in the program has materially and/or repetitively violated the terms of his or her Court-ordered treatment plan, ordering that the participant be placed in confinement for a period not to exceed five (5) days for each violation, but only after the Court expressly finds that the participant's violation of the plan was willful and that other sanctions or incentives are inadequate; and
- K. imposing any other condition, standard, requirement, treatment, service, training or activity which the Court deems appropriate under the facts and circumstances of the case in the exercise of the Court's sound discretion

Definitions

The Wellness Court frequently employs “new” terminology, particularly terminology that contrasts with adversarial criminal procedure and embraces a more restorative justice philosophy. The “Definitions” section is an opportunity to ensure these terms are interpreted with the appropriate meaning, as well as ensure the team and the community have access to this terminology. It is also an opportunity to self-determine this terminology, ensuring the definitions are culturally and community relevant.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter 1. General Provision and Definitions 5. Definitions.

- a. “Distal Goal” means a long term goal expected to be achieved later in the program.
- b. “Evidence-based” means treatments that integrate professional research and clinical expertise to achieve the best outcome for the individual.
- c. “Healing to Wellness Court” means a court supervised treatment program for individuals who are dependent upon any controlled substance or alcohol....
- d. “Participant” means an individual who is admitted into the Wellness Court.
- e. “Proximal Goal” means a short term goal expected to be achieved earlier in the program.

Budgets and Contracts

If tribal code requires that a judicial docket have authorization to receive or request tribal appropriations to seek external funding or to enter into contracts, the Wellness Court will require such authorization. *Note*, if such authorization is not statutorily required, codifying such authorization could suggest that other similarly situated dockets are *not* authorized to pursue grants and other external funding. This may be an example of a tempting provision that should be avoided to prevent confusion.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter VII. Records, Budget, Advisory Board

30. Budget. The Legislature shall appropriate operating funds to ensure the Wellness Court can operate fully in accordance with the 10 key components promulgated by the National Association of Drug Treatment Court Professionals.

Muscogee (Creek) Nation

Title 26. Judicial Branch/Courts Vhakv Fvtcecvlke/Fvtceckv Cuko

§ 6–107. Search for funding

The Principal Chief or his designee is authorized to seek and apply to other funding or sources for the purpose of implementing a Family Drug Court Program within the Muscogee (Creek) Nation justice system.

§ 6–108. Cooperative agreements or contracts

A. The Principal Chief, with the assistance of the Attorney General, is hereby authorized to negotiate and enter into on behalf of the Muscogee (Creek) Nation appropriate cooperative agreements with state and local governments for integrating and/or coordinating the Muscogee (Creek) Nation Family Drug Court Program with agencies of such other governments.

Advisory Board

Steering committees or advisory boards are considered a Wellness Court best practice. They provide a designated space for discussing Wellness Court design, composition, reviewing evaluations, and long-term planning. Codification ensures they exist and are staffed with the appropriate decision makers from all the necessary agencies.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter VII. Records, Budget, Advisory Board

31. Advisory Board. The Wellness Court Advisory Board should include legislative branch members (2), executive branch members (2), Wellness Court team members (3), Wellness Court graduate (1), and other community members who have an interest in the success of the Wellness Court program (5). This Board should meet on a bi-annual basis to consider and assist in the design, improvement, funding, and community education and support of the Wellness Court Program.

Chapter 4. Entry

Most Tribal Healing to Wellness Court (“Wellness Court”) participation begins with an underlying court case. A significant portion of Wellness Court code concerns how the underlying case enters the Wellness Court and what happens to the case when it exits the Wellness Court. In many ways, entry is the prime moment when the adversarial structures of the trial court intersect with the restorative justice structures of the Wellness Court. Codification provides the necessary clarity for how these differing structures will interact.

Consider

Key Component #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.

Wellness Court Jurisdiction

Entry into Wellness Court is often legally incentivized as a workaround from the underlying case. Critically, that leverage must be carefully balanced. Successful completion of Wellness Court should produce a legal benefit—for example, averted criminal prosecution. However, unsuccessful completion should flow back into the standard court procedure. Many Wellness Courts choose one option along the spectrum—deferred prosecution, post-plea, deferred sentencing, or sentencing. But some Wellness Courts provide for multiple entry points. More options include more flexibility to incentivize participation for a variety of different circumstances. But, because deferred prosecution is often perceived as a better “deal” than deferred sentencing, the perception of unequal treatment is greater.

DEFERRED PROSECUTION

Deferred prosecution is a strong legal offer—pause the prosecution to avoid the criminal consequence, including both the immediate sanction and the criminal record. Some tribal judiciaries have open-ended discretion to provide diversion, including restorative, non-incarceration options on a case-by-case basis. For example, the Puyallup Tribal Code provides for the general option of deferred prosecution. The tribe narrowly limits deferred prosecution to those who personally believe their conduct is the result of a substance or mental health issue.

Puyallup Tribal Codes

Title 4 Courts and Procedure | Ch. 4.04 Rules of Criminal Procedure

4.04.260 Rule 11.2 – Alternative resolutions.

(a) Deferred Prosecution, Also Called “Pretrial Diversion.” Deferred prosecution is an alternative to prosecution that diverts certain offenders who believe their charged conduct is the result of, or caused by, alcoholism, drug addiction, or mental health issues into a program of supervision

and services administered by the Puyallup Tribe Probation Department (or other Tribal programs).

Some judiciaries are limited to the diversion options that are explicitly enumerated in their tribal code. In these latter instances, it may be necessary to codify the Wellness Court as an eligible option. The Tulalip Tribal Codes specify that a condition of deferred prosecution can include Wellness Court. However, all deferred prosecutions, including Wellness Court, are barred for domestic violence or violent crime cases.

Tulalip Tribes

Chapter 2.25. Criminal Procedures | 2.25.110 Plea Procedures

2.25.110(2) Alternatives to Pleas.

(a) Deferred Prosecution Agreement. Deferred prosecutions may not be agreed to in cases of domestic violence or violent crimes.

(i) Conditions of Agreement.

(E) Participation in the Elders Panel or Wellness Court.

Rather than enumerate eligible diversion option, the Pueblo of Pojoaque notes in their Wellness Court code section that Wellness Court can be offered pre-prosecution. It is not clear if there are limits to what can be required of a pre-prosecution diversion agreement.

Pueblo of Pojoaque

C-10 *Wen Hey Kha Wosatsi Khuu* (Path to Wellness) Court Jurisdiction

(c) Pueblo of Pojoaque Path to Wellness Court participation may be ordered as:

2. A requirement of pre-prosecution diversion;

Relatedly, the CTCLUSI provides Wellness Court as option once a participant is charged.

Confederated Tribes of Coos, Lower Umqua, and Siuslaw Indians

Title 2 – Rules of Procedure | Chapter 2-13: Wellness Court

2-13-3. Jurisdiction.

(b) Referrals to the CTCLUSI Wellness Court may be made once an offender has been charged with at least one offense within the tribe's jurisdiction and/or within the jurisdiction of a transferring court in which alcohol or drugs are involved.

The Oneida Indian Nation provides detailed procedure for their diversion agreements. The diversion agreement must include a signed stipulation agreeing to the facts underlying the charges in case a criminal proceeding resumes. Notably, in Section 805, the Nation prohibits forcing a guilty plea in exchange for access to diversion.

Oneida Indian Nation

Rules of Criminal Procedures, Chapter 8: Diversion

802. Diversion Agreement Authorized; Policies and Guidelines by Nation Prosecutor;

Background Information

a. After a complaint has been filed charging a defendant with commission of a crime and prior to conviction thereof, and after the Nation Prosecutor has considered the factors listed in Section

803, if it appears to the Nation Prosecutor that diversion of the defendant would be in the interests of justice and of benefit to the defendant and the community, the Nation Prosecutor may propose a diversion agreement to the defendant. The terms of each diversion agreement shall be established by the Nation Prosecutor in accordance with section 804.

b. The Nation Prosecutor shall adopt written policies and guidelines for the implementation of a diversion program in accordance with these Rules. Such policies and guidelines shall provide for a diversion conference and other procedures in those cases where the Nation Prosecutor elects to offer diversion in lieu of further criminal proceedings on the complaint.

804. Provisions of Diversion Agreement; Waiver of Speedy Trial and Jury Trial, When; Alcohol and Drug Related Offenses; Stay of Criminal Proceedings; Filing of Agreements

c. If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of alcohol and substance abuse laws, the diversion agreement shall include a stipulation, agreed to by the defendant and the Nation Prosecutor, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the term of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

1. Perform community service specified by the agreement; and
2. Enroll in and successfully complete an alcohol and drug program or a treatment program, or both.

805. Conditioning Diversion on Plea Prohibited; Inadmissibility of Agreement

No defendant shall be required to enter any plea to a criminal charge as a condition for diversion. No statements made by the defendant or counsel in any diversion conference or in any other discussion of a proposed diversion agreement shall be admissible as evidence in criminal proceedings on crimes charged or facts alleged in the complaint.

POST-PLEA AND PRE-CONVICTION

In contrast to the Oneida Indian Nation, the Fort McDowell Yavapai Nation requires the defendant to enter a guilty plea to be eligible for access to Wellness Court. However, the Court defers *acceptance* of the plea, awaiting successful completion of the Wellness Court.

Fort McDowell Yavapai Nation

Chapter 5 – Civil and Criminal Procedure | Article III. Criminal Procedure | VIII. Wellness Court

Rule 87. – Entry of guilty plea; deferred acceptance of plea.

In any case wherein Wellness Court is offered, the defendant will be required to enter a plea of guilty to the charges. The Court will make a determination whether the plea was entered knowingly, intelligently and voluntarily and, if possible find a factual basis. However, the Court will defer acceptance and entry of the guilty plea onto the record and order the defendant to the Wellness Court program(s) for successful completion. The Court shall advise the defendant that if he or she fails to successfully complete the Wellness Court program, the Court will, upon notification and at hearing, formally accept the guilty plea and set the matter for sentencing. In addition, the Court will also advise the defendant that if he or she fails to successfully complete

the Wellness Court program, the Court could impose contempt charges and penalties in addition to the underlying charge and penalty for failure to obey a lawful order of the Court.

GUILTY PLEA/DEFERRED SENTENCING

Many Wellness Courts reserve eligibility for post-plea. This option, while less appealing for the participant than deferred prosecution, is more appealing for the prosecutor's office. It relieves the prosecutor from potentially having to try a stale case months after the criminal incident if a participant were to be unsuccessfully discharged from the Wellness Court. The Citizen Potawatomi Nation and Poarch Band of Creek Indians provide Wellness Court as an option for either those who plead guilty or those who admit liability for a civil offense.

Poarch Band of Creek Indians

Title 3 – Judicial | Chapter III – Poarch Band of Creek Indians Drug Court

Sec. 3-3-5 – Participation in Drug Court

- (a) A defendant in Tribal Court is eligible to participate in the Drug Court if:
- (10) The defendant voluntarily and knowingly enters a plea of guilty to a criminal offense or admits liability in the civil offense.

Fort Peck Assiniboine & Sioux Tribes

Title 6, Chapter 10. Fort Peck Wellness Court Programs

Section 1003. Jurisdiction.

- (a) Wellness Court referrals may be made as a part of a conditional sentence or may be made as part of a mixed or suspended sentence.

Eastern Band of Cherokee Indians

Chapter 7C – Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi (Cherokee Wellness Court)

Sec. 7C-3. - Jurisdiction and referrals.

- (a) Referrals to this Court may be made after a criminal defendant has pleaded guilty of or has been convicted of at least one crime that is directly or indirectly related to substance use or addiction.

Pueblo of Pojoaque

C-10 *Wen Hey Kha Wosatsi Khuu* (Path to Wellness) Court Jurisdiction

- (c) Pueblo of Pojoaque Path to Wellness Court participation may be ordered as:
1. Part of a suspended sentence or deferred conviction after a guilty or no contest plea in the Pueblo of Pojoaque Tribal Court.

The Pueblo of Laguna provides the process for successful and unsuccessful discharges from Wellness Court under a deferred sentence model.

Pueblo of Laguna

Appendix C – Rules of Procedure, Section 4. Pueblo of Laguna Rules of Criminal Procedure

Rule 38. Wellness Court

C. Procedure. Participation in the Wellness Court program shall be subject to the following:

1. If the defendant completes the Wellness Court program, the defendant will appear before the Pueblo Court to have any original sentence vacated and for the case to be closed with no further action; and
2. If the defendant does not complete the Wellness Court program, the defendant will be held without bond pending disposition by the Pueblo Court for the underlying criminal case.

SENTENCING OPTION

Couched more as an alternative to incarceration, Wellness Court is offered as a sentencing option. Whereas a deferred sentence retains the threat of receiving the sentence (usually incarceration), Wellness Court is instead simply the sentence. Failure to complete the Wellness Court would likely result in contempt.

Tulalip Tribes

Chapter 2.25. Criminal Procedures | 2.25.150 Judgment and sentencing.

2.25.150(2) Sentencing.... Where the Court in its discretion deems it appropriate, a form of traditional punishment may be imposed in addition to or in place of any punishment provided in this code....

- (b) Penalties and Consequences. An offender found guilty of an offense may be sentenced to one or more of the following penalties and/or consequences: ...
- (vi) Participation in an Elders Panel or Wellness Court

Yurok Tribe

Chapter 2.10 – Rules of Court

2.10.1070 Judgment and sentencing.

(b) Penalties. An offender found guilty of an offense may be sentenced to one or more of the following penalties and/or consequences.

- (6) Participation in Wellness Court.

Hoop Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

7. F. Court-Ordered Participation

If a child who is legally and clinically eligible for Na:tini-x'we' Na:xo-xi-nayi-din court is adjudicated delinquent, the juvenile court judge may order Na:tini-x'we' Na:xo-xi-nayi-din court participation as part of the child's disposition....

SOCIAL SERVICES ENTRY

While distinct from a criminal docket, Wellness Court could be offered as a disposition option from social services dockets.

Pueblo of Pojoaque

C-10 Wen Hey Kha Wosatsi Khuu (Path to Wellness) Court Jurisdiction

(c) Pueblo of Pojoaque Path to Wellness Court participation may be ordered as:

3. Part of a Pueblo of Pojoaque Social Services Case Plan;

Yurok Tribe

Chapter 12.40 Hearings

12.40.190 Disposition hearings.

(c) Findings and Orders.

(7) In addition to the placement disposition alternatives, the Court may order the child, parent/guardian/caretaker to attend any of the following if the Court determines they are related to the circumstances which cause the child to come to the attention of the court, and if they are likely to promote the best interests of the child and his or her Tribe and the reunification of the child with his or her family.

(C) Wellness court services;

TRANSFER FROM OTHER JURISDICTIONS

If needed, code may be required to authorize the Wellness Court to accept cases originating in other jurisdictions. Transfers from other sovereigns can offer a powerful incentive to participants to avoid legal consequences from other sovereigns while enjoying the services from the tribe. It can also provide an avenue for collaboration between the tribe and the other sovereign.

Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

4. D. Transfers from Other Courts. The court may accept or decline transfers from other state or tribal courts involving alleged delinquent children or alleged status offenders for participation in juvenile Na:tini-x'we' Na:xo-xi-nayi-din court and may allow transfer to other state or tribal courts of any person legally ineligible for the Court or any non-tribal member.

Note the CTCLUSI provide for both pre-plea referrals, noted in the preceding text, and post-sentence transfers from foreign jurisdictions.

Confederated Tribes of Coos, Lower Umqua, and Siuslaw Indians

Title 2 – Rules of Procedure | Chapter 2-13: Wellness Court

2-13-3. Jurisdiction.

(b) ... Referrals may also be made to the CTCLUSI Wellness Court for collaboration in post-sentencing matters of a foreign jurisdiction concerning an active matter in said jurisdiction.

Yurok Tribe

Title 12, Children's Code, Chapter 12.05 – General Provisions

"Concurrent Jurisdiction" means that this Court may assume concurrent jurisdiction with any non-Yurok court upon a specific request by YSS that sets forth a specific case plan and terms of said request. This Court may also, pursuant to a request from YSS, concurrently work with any Wellness Court requirements, and or allow the provisions of any YSS case plan to be adopted as Wellness Court requirements.

STIPULATION FOR PRESERVATION OF EVIDENCE FOR DEFERRED PROSECUTIONS

While the prosecution for the triggering case is deferred, the Tulalip Tribes and Puyallup Tribe preserve the relevance of certain pieces of evidence on the occasion that Wellness Court is unsuccessful, and the prosecution needs to proceed.

Tulalip Tribes

Chapter 2.25. Criminal Procedures | 2.25.110 Plea Procedures

2.25.110(2)(a)(ii) Contents of Agreement.

A deferred prosecution agreement ... may include stipulations concerning the admissibility of the police report, specified testimony, or dispositions if the deferred prosecution is revoked. The agreement shall be filed with the Court.

Puyallup Tribe

Title 4 Courts and Procedure | Ch. 4.04 Rules of Criminal Procedure

4.04.260 Rule 11.2 – Alternative resolutions.

(b) Deferred Prosecution Agreements.

(2) Contents of Agreement.... The agreement may include stipulations concerning the admissibility of the police report, specified testimony, or dispositions if the deferred prosecution is revoked. The agreement must be filed with the Court along with a copy of the police report, testimonies, or dispositions, if they are included as stipulations in the agreement.

(c) Deferred Prosecution Petitions

(4) Hearing on Petition for Deferred Prosecution.

(C) Before entering an order for deferred prosecution, the Court shall make specific findings that:

(i) The petitioner has stipulated to facts constituting a violation of the Criminal Code and has stipulated to the admissibility and sufficiency of the facts as contained in the written police report or the testing facility report or both;

(ii) The petitioner has stipulated to the admissibility of these facts in any hearing on the underlying violation held subsequent to revocation of the order granting deferred prosecution, and that in the hearing such stipulated facts would be used to enter a finding that the petitioner did commit the violation; ...

(iv) The petitioner's statements were made knowingly and voluntarily. Such findings must be included in the order granting deferred prosecution.

(E) If the petition is not approved or is withdrawn before approval, evidence pertaining to or resulting from the petitioner's statements in the petition or from the treatment center report is inadmissible in any trial on the alleged violations, but will be available for use after a determination that a violation was committed in determining an appropriate sanction.

Referral Points

Referral points are the various agencies, roles, and legal interactions that are authorized to trigger a diversion to Wellness Court. As noted in the preceding text, some tribes have narrow jurisdiction, such as only permitting entry for deferred sentences. Other tribes have broader jurisdiction, permitting entry at multiple different triggers. Referrals, while dependent on a Wellness Court's jurisdiction, are the agencies that can suggest Wellness Court.

The motivations for narrow or broad referral points are vast. A Wellness Court might have a broad target population. There might be only a small number of cases, so having multiple referral points is ideal to cast the widest net of eligible candidates. There might be an overwhelming number of cases, so only narrow referral points are feasible. The court may be structured that, logistically, all referrals need to go through the prosecutor. Or the Wellness Court Coordinator better serves as the focal point.

The distinction between a Wellness Court's jurisdiction and a Wellness Court's referral points can be subtle, or even nonexistent depending on how the code is structured. There also might be varying motivations for allowing or disallowing certain positions or agencies to make referrals. Consider, however, that such considerations might easily change over time. The code may not be the most efficient document to limit referral points. A tribe may instead consider legislating broad referral authority, while narrowing that authority in the policies and procedures.

Consider

Key Component #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.

PROSECUTOR

The prosecutor is a typical referral point.

Citizen Potawatomi Nation

Title 15 – Healing to Wellness Court Administration and Procedure

Section 15-1-106. Participation in Healing to Wellness Court

- (a) A defendant in Tribal Court is eligible to participate in the Healing to Wellness Court if:
 - (5) The Tribal Prosecutor recommends to the Tribal Court that the defendant be referred to the Healing To Wellness Court;

Puyallup Tribe

Title 4 Courts and Procedure | Ch. 4.04 Rules of Criminal Procedure

4.04.260 Rule 11.2 – Alternative resolutions.

- (a) ... Deferred prosecution is offered in the sole discretion of the Prosecutor.

SUPERVISION OFFICERS

Hoopa Valley limits referrals solely to probation officers.

Hoopa Valley Tribe

Title 4A – Na:tini-x’we’ Na:xo-xi-nayi-din [*The people’s get well place*] Court Code

7. A. Admission

Admission into the Na:tini-x’we’ Na:xo-xi-nayi-din court shall occur upon:

1. a recommendation from the probation officer ... Any child or eligible family or household member wishing to be admitted to Na:tini-x’we’ Na:xo-xi-nayi-din court must first make a request to the probation officer; or

DEFENSE COUNSELOR

Ho Chunk Nation empowers the defense counselor to serve as a referral point.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter III. Referral and Assessment

10. Referral Procedures.

a. Attorney Referral

- i. A prospective participant’s criminal attorney may seek to have their client admitted into the Wellness Court by fully completing an Attorney Referral Form, which shall be drafted and maintained by the Wellness Court.

SOCIAL SERVICES

Poarch Band of Creek Indians expands referrals to social services *and* state court.

Poarch Band of Creek Indians

Title 3 – Judicial | Chapter III – Poarch Band of Creek Indians Drug Court

Sec. 3-3-5 – Participation in Drug Court

- (b) Tribal Members and children of Tribal Members, who are at least eighteen years of age or older, may also participate in Drug Court if he or she is referred to Drug Court from a state Court or social service agency, including the Poarch Band of Creek Indians Family Services Department.

MULTI-TEAM MEMBER REFERRAL POINTS

Fort Peck Assiniboine & Sioux Tribes

Title 6, Chapter 10. Fort Peck Wellness Court Programs

Section 1003. Jurisdiction.

- (a) Referrals to the Wellness Court shall be made by prosecutors, public defenders, social workers and case managers who work within the Fort Peck Tribal Court system once a criminal defendant has plead guilty to or has been convicted of at least one criminal charge where alcohol or drugs is at issue.

Note that the Pueblo of Pojoaque not only provides for multiple team member-referral points in (b)(2) but also provides for interjurisdiction referrals in (b)(1).

Pueblo of Pojoaque

C-10 *Wen Hey Kha Wosatsi Khuu* (Path to Wellness) Court Jurisdiction

(b) Individuals may be referred to the Path to Wellness Court by:

1. The Pueblo of Pojoaque Tribal Court or another court;
2. Social Services, Tribal Police, or other Pueblo of Pojoaque Agency; or
3. Self-referral.

SELF-REFERRAL

Self-referrals are an innovative flip on the adversarial model, providing participants an opportunity to access services and the accountability of those services without having to commit a crime first.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter III. Referral and Assessment

10. Referral Procedures

b. Self-Referral

- i. A prospective participant may seek admittance into the Wellness Court by fully completing a Self Referral Form, which shall be drafted and maintained by the Wellness Court.

Penobscot Nation

Rules of Court, VII. Healing to Wellness Court Program

Rule 50. Admission to Program

C) Admission Procedure in Civil Cases

- 1) A person who is a party in a civil case before the Tribal Court in which it is alleged that the use or abuse of alcohol or other substances is an issue in the dispute, and who is willing to participate in the HTWC program in an effort to resolve the dispute and the underlying substance abuse issues, may voluntarily apply for admission to the HTWC;
- 2) A person suffering the negative effects of use or abuse of alcohol and other substances and who believes that he or she may benefit from participation in the HTWC may voluntarily apply for admission to the HTWC program;

Pueblo of Pojoaque underscores the accountability portion, extend the court's jurisdiction and authority once someone self-refers.

Pueblo of Pojoaque

C-10 *Wen Hey Kha Wosatsi Khuu* (Path to Wellness) Court Jurisdiction

(c) Pueblo of Pojoaque Path to Wellness Court participation may be ordered as:

4. A requirement after self-referral.

Eligibility

Not all criminal violations will necessarily trigger entry into Wellness Court. Depending on the goals and capacity of the Wellness Court, eligibility criteria can be used to control the flow of participants. Codification of this criteria should be minimal. The code should provide notice while also preserving flexibility to the Wellness Court to adapt with changing needs.

Consider

Key Component #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.

Confederated Tribes of Coos, Lower Umqua, and Siuslaw Indians

Title 2 – Rules of Procedure | Chapter 2-13: Wellness Court

2-13-3. Jurisdiction.

(c) Individuals who are determined to be eligible by the CTCLUSI Wellness Court Team may enter the CTCLUSI Wellness Court.

CONNECTION TO SUBSTANCE ABUSE

Wellness Court best practices call for a legal and clinical screening to ensure the Wellness Court will have adequate legal leverage over the participant, and that the participant does in fact have a substance use disorder that would benefit from treatment in a Wellness Court setting. Therefore, codifying a connection to substance abuse as an eligibility criterion is not required because clinical screening is also occurring. However, such a provision could serve as barrier, helping to narrow the field of potential candidates. This can be helpful if there are more candidates than the court has capacity to serve. The code can serve as an objective means for ensuring the Wellness Court serves the most in need.

The Citizen Potawatomi Nation has a series of criteria, including a connection to substance abuse.

Citizen Potawatomi Nation

Title 15 – Healing to Wellness Court Administration and Procedure

Section 15-1-106. Participation in Healing to Wellness Court

(a) A defendant in Tribal Court is eligible to participate in the Healing to Wellness Court if:

- (1) The defendant is a Tribal Member, or a child of a Tribal member or a Native American;
- (2) The defendant is not a juvenile;
- (3) The defendant has a substance abuse problem;

- (4) The defendant is charged with crime or civil offense motivated by substance abuse.
 - (8) The defendant has not participated more than twice in the Healing To Wellness Court;
 - (9) The defendant's participation in the program has never been revoked; and
 - (11) A non-Indian subject to the CPN District Court's jurisdiction may voluntarily participate when there is an appropriate relationship to the Healing To Wellness Court purpose. For example Indian Child Welfare matters and Domestic Violence.
- (b) Tribal Members and children of Tribal Members, who are at least eighteen years of age or older, may also participate in the Healing To Wellness Court if he or she is referred to the Healing To Wellness Court for a state Court or social service agency, including the Citizen Potawatomi Nation Indian Child Welfare or Family Preservation Department

Hoopa Valley inverts their eligibility criteria by codifying who is not eligible.

Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

7. D. Clinical Screening for Eligibility

... The following individuals are **not eligible** to participate in the Na:tini-x'we' Na:xo-xi-nayi-din court under this code:

1. individuals and/or immediate family who do not have an alcohol and/or drug use problem; and/or
2. individuals who will not benefit from the available educational and therapeutic services and activities.

CAPABLE OF PARTICIPATING

Notably, among their eligibility criteria, the Penobscot Nation notes the candidate needs to be physically, emotionally, and mentally capable of participating.

Penobscot Nation

Rules of Court, VII. Healing to Wellness Court Program

Rule 50. Admission to Program

A) Eligibility. An individual is eligible to apply to participate in the Penobscot Nation Healing to Wellness Court Program (HTWC) if he or she meets the following criteria:

- 1) Is an enrolled Penobscot Nation tribal member;
- 2) Is not currently charged with a violent offense in the Penobscot Nation Tribal Court;
- 3) Has been clinically assessed as a substance abuser with or without a diagnosis of a co-occurring mental health issue;
- 4) Be physically, emotionally, and mentally capable of completing HTWC requirements and participating in program activities; and
- 5) Willing and able to consent to enter the HTWC program.

BACKGROUND INFORMATION

The Oneida Indian Nation does not explicitly limit entry to certain categories. But they do require extensive access to background information.

Oneida Indian Nation

Rules of Criminal Procedures, Chapter 8: Diversion

802. Diversion Agreement Authorized; Policies and Guidelines by Nation Prosecutor; Background Information.

c.... The Nation Prosecutor may require any defendant requesting diversion to provide information regarding prior criminal charges, education, work experience and training, family, residence in the community, medical history, including any psychiatric or psychological treatment or counseling, and other information relating to the diversion program.

ELIGIBILITY FACTORS

Comparable to Hoopa Valley, the Oneida Indian Nation also inverts their approach to the eligibility criteria. Rather than providing a minimum set of elements a candidate needs to meet, the Oneida Indian Nation instead provides a set of factors to which candidates can aspire. In this model, accessing Wellness Court is emphasized as a privilege.

Oneida Indian Nation

Rules of Criminal Procedures, Chapter 8: Diversion

803. Grant of Diversion; Factors to Consider

In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the Nation Prosecutor shall consider at least the following factors among all factors considered:

- a. The nature of the crime charged and the circumstances surrounding it;
- b. any special characteristics or circumstances of the defendant;
- c. whether the defendant is a first-time offender and if the defendant has previously participated in diversion.
- d. whether there is a probability that the defendant will cooperate with and benefit from diversion;
- e. whether the available diversion program is appropriate to the needs of the defendant;
- f. the impact of the diversion of the defendant upon the community;
- g. recommendations, if any, of the involved law enforcement agency;
- h. recommendations, if any, of the victim;
- i. provisions for restitution; and
- j. any mitigating circumstances.

Legal Screening/Violent Offenders

Once referred, candidates should be screened for their appropriateness for Wellness Court. This generally consists of determining whether they meet the Wellness Court's eligibility criteria. Legal screening, usually conducted by the prosecutor or probation officer, consists of determining whether a candidate has an eligible trigger case and whether they have any past legal cases that would prohibit their participation. In conducting this background investigation, the tribal court should consider whether, and to what extent, it will examine and consider cases from other jurisdictions.

A primary consideration is past violent offenses. Congressional appropriations for drug court funding, for which numerous Wellness Courts have been funded, limit program funds from serving persons who are “violent offenders,” as defined by 34 U.S.C. § 10613.

(a) In general. Except as provided in subsection (b), in this subchapter, the term “violent offender” means a person who—

(1) is charged with or convicted of an offense that is punishable by a term of imprisonment exceeding one year, during the course of which offense or conduct—

(A) the person carried, possessed, or used a firearm or dangerous weapon;

(B) there occurred the death of or serious bodily injury to any person; or

(C) there occurred the use of force against the person of another, without regard to whether any of the circumstances described in subparagraph (A) or (B) is an element of the offense or conduct of which or for which the person is charged or convicted; or

(2) has 1 or more prior convictions for a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm.

Note, this federal definition for violent offender requires that the offense be punishable “by a term of imprisonment exceeding one year.” For tribes that have not adopted 25 U.S.C. § 1302(b)’s enhanced sentencing permitting imprisonment to greater than one year but not exceed three years, no tribal crime, even otherwise violent ones, will satisfy this federal definition for a violent offense. Formalizing a limitation against the inclusion of “violent offenders” into tribal law, may therefore be overly exclusive of persons who might otherwise be eligible to participate in a federally funded drug court program under federal law. Moreover, some tribes have specifically targeted violent offenders for their Wellness Courts, noting their propensity to be both high need and high risk.

Nevertheless, because of the federal statute, many tribes have codified comparable violent offender limitations on eligibility into tribal law. In some instances, tribes have established greater limitations, to include categories like all violent crimes, crimes against children, and/or sex crimes. Like a connection to substance abuse, limiting entry to nonviolent offenses is primarily a strategy to control the flow of eligible candidates. Though for some tribes, there are other pressing safety reasons for limiting certain classes of offenses, such as sex crimes.

Consider

Key Component #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.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter 1. General Provision and Definitions

5. Definitions.

- f. “Violent Offender” means an individual who meets either of the following criteria:
- i. Is currently charged with or has been found guilty to an offense involving the death of or serious bodily injury to any individual, or the carrying, possessing, or use of a firearm or other dangerous weapon by that individual, whether or not any of these circumstances are an element of the offense, or is currently charged with or has been found guilty of criminal sexual conduct of any degree.
 - ii. Has one (1) or more prior convictions for a felony involving the use or attempted use of force against another individual with the intent to cause death or serious bodily harm.

11. Legal Screening.

- a. Legal Screening shall be completed by the tribal prosecutor and defense attorney to determine legal eligibility and to examine public safety risk.
- b. Core components of the screening process are:
 - i. Current criminal charge(s);
 - ii. Criminal history;
 - 1. Violent Offender. The Legal Screening process will include a determination if there are prior violent felonies; sex offenses; and offenses in which a firearm, deadly weapon, or dangerous instrument was used that may preclude admission;
 - iii. Circumstances of current offense such as defendant culpability and mandatory incarceration statutes;
 - iv. Outstanding warrants, additional charges in other counties, previous diversion programs, and previous treatment court participation; and
 - v. Mental health disorders.

LIMITATIONS ON VIOLENT AND PAST OFFENSES

The Pueblo of Laguna limits entry for all violent offense, including those beyond the federal prohibition.

Pueblo of Laguna

Appendix C – Rules of Procedure, Section 4. Pueblo of Laguna Rules of Criminal Procedure

Rule 38. Wellness Court

A. Eligibility. A defendant may apply via a court-approved application to participate in the Wellness Court program if the defendant has served the mandatory minimum sentence for an offense and has:

1. Been convicted of a nonviolent offense; or
2. Been referred either by a plea agreement or by a probation officer after a probation violation related to alcohol or substance abuse.

The Puyallup Tribe limits entry for both past offers of deferred prosecution, and specifically for domestic violence.

Puyallup Tribe

Title 4 Courts and Procedure | Ch. 4.04 Rules of Criminal Procedure

4.04.260 Rule 11.2 – Alternative resolutions.

To be eligible, a defendant:

- (1) Must not have been the subject of a deferred prosecution in a criminal matter before this Court within the last 48 months;
- (2) Must not currently be the subject of a deferred prosecution in a criminal matter before this Court; and
- (3) Must not have entered a plea of guilty or no contest to or been convicted of a Class A or Class B domestic violence offense in this Court in the last 12 months.

EXCEPTION FOR VIOLENT OFFENSES

The Poarch Band of Creek Indians limits entry for nonviolent offense *but* also provides a waiver process. The Court preserves the benefits of the limitation, while reserving the right to make exceptions on a case-by-case basis.

Poarch Band of Creek Indians

Title 3 – Judicial | Chapter III – Poarch Band of Creek Indians Drug Court

Sec. 3-3-5 – Participation in Drug Court

(a) A defendant in Tribal Court is eligible to participate in the Drug Court if:

- (6) The defendant is charged with a nonviolent offense; provided, however that the Tribal Court Judge may waive this requirement, if the Tribal Prosecutor believes that the defendant will likely respond to rehabilitative treatment despite the violent nature of the offense;
- (7) The defendant does not have a history of violent acts; provided, however that the Tribal Court Judge may waive this requirement, if the Tribal Prosecutor believes that the defendant will likely respond to rehabilitative treatment despite the defendant's violent past;

Clinical Assessment

In addition to a legal assessment, candidates should also be clinically assessed to ensure Wellness Court is an appropriate forum to address their needs. Codifying clinical assessment can ensure the relevant agencies fulfill their assessment obligations in a timely manner. But like other Wellness Court code provisions, too much detail can potentially limit the Wellness Court from nimbly responding to the changing needs of both candidates and service providers.

Consider

Key Component #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.

The Ho Chunk Nation codifies clinical assessment as a requirement and identifies their goals for each assessment.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter III. Referral and Assessment

12. Clinical Assessment

- a. The Clinical Assessment shall be completed by the treatment professionals on the Team to determine diagnosis, clinical eligibility, and treatment planning.
- c. The Clinical Assessment shall consist of validated standardized assessment instruments and methods.
- d. The treatment professionals will review any special needs or circumstances of the individual that may potentially affect the individual's ability to receive substance abuse treatment and follow the court's orders.
- g. The Wellness Court Coordinator will be immediately notified of the Clinical Assessment determination.
- i. The Wellness Court Coordinator shall prepare copies of eligibility documentation to be presented to the Team.

18. Assessments. The Wellness Court shall utilize periodic evaluation assessments of the participant's circumstances and progress in the program.

- a. Treatment providers shall utilize best evidence based practices in performing new assessments as needed to determine if any additional treatment services are necessary to assist the participant.
- b. Assessments shall include an evaluation of the participant's efforts towards meeting their proximal and distal goals in the program.

Hoopa Valley similarly codifies the need to perform a clinical assessment that meets clinical standards but does not cement what those standards are.

Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

10. A. Clinical Assessment & Individualized Treatment Plan

A trained professional as designated for this purpose by the Court or any health related tribal department on a list of names to be maintained by the Court shall undertake a clinical assessment using standardized assessment tools (questionnaires) for each participant. The professional shall draft an assessment report containing a recommended individualized treatment plan for each participant.

While a component of informed consent, the Ho Chunk Nation additionally provides statutory notice to candidates that additional clinical assessment may be required throughout the course of Wellness Court.

CONSENT TO ONGOING CLINICAL ASSESSMENTS

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter III. Referral and Assessment

12. Clinical Assessment

f. The prospective participant must also recognize the possibility of and agree to cooperate with any future evaluation assessments as directed by the Wellness Court.

Other Assessments

In addition to legal and clinical assessments, the Ho Chunk Nation has introduced an assessment regarding a participant's cultural competencies and their financial needs. Rather than screening for their cultural or financial eligibility, the Ho Chunk Nation uses these assessments to build a more robust service plan.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter III. Referral and Assessment

13. Admission to Program

b. Traditional Court shall make a Ho-Chunk cultural assessment in order to address cultural and/or spiritual competencies with recommendations given to the Wellness Court.

c. The Team shall perform a financial management assessment in order to educate the participant to attain financial stability upon admittance to the program.

Early Entry

Expediency is a primary distinction between the Wellness Court and typical trial court processes. Codifying the need to deviate from the procedural timelines may be of use to both the court and other agencies.

Consider

Key Component #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.

TIME MINIMUM FOR INITIATING ASSESSMENT

Hoopa Valley requires that legal screening take place within a short time frame, codifying both a hard time limit (24 hours) and a responsible team member, the probation office. Keep in mind that with such a quick time frame probation officers would need to be staffed on weekends and holidays to meet this requirement.

Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

7. B. Investigation by Probation Officer

The probation officer shall make an investigation within twenty-four (24) hours of receiving a report of delinquency or a report of a family in need of services to determine whether the interest of the juvenile and the public require further action be taken. If the investigation reveals a need for further action, the probation officer shall screen the child for legal and clinical eligibility for Na:tini-x'we' Na:xo-xi-nayi-din court admission.

In a separate part of the code, timely clinical assessment is characterized as a participant's right and as the clinician's duty. Interestingly, the framing of the time limitations for assessment on the probation officer and clinician differ, though both are obligated to provide a timely response.

Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

6.B. Right to Timely Clinical Assessment and Development of an Individualized Treatment Plan

All Na:tini-x'we' Na:xo-xi-nayi-din court participants have the right to timely clinical assessment and the development of an individualized treatment plan as outlined in ... this code.

10.B. Assessor's Duty to Timely Assess & Individualize Treatment Plan and Breach of Duty

Failure to clinically assess a participant within one (1) week of the Na:tini-x'we' Na:xo'-xi-nayi-din judge's signing of the Na:tini-x'we' Na:xo-xi-nayi-din consent decree, and to draft an assessment report containing a recommended individualized treatment plan within

24 hours of the completion of the assessment constitutes a breach of duty to the Na:tini-x'we' Na:xo-xi-nayi-din participant subjecting responsible tribal agencies to limited fines not to exceed \$500.00.

Like Hoopa Valley, Penobscot provides a time minimum for the initial screening, but extends the threshold to three days. Unlike Hoopa Valley, in which the probation officer is mandated to investigate every delinquency and family in need of services report, the Penobscot clock only starts upon the receipt of an application.

Penobscot Nation

Rules of Court, VII. Healing to Wellness Court Program.

Rule 50. Admission to Program

D) Admission Procedure in Juvenile Delinquency Cases;

(1) Informal Adjustment

f) Within three (3) business days of receiving the application, the HWTC Case Manager shall meet with the juvenile and his or her parent(s) or guardian(s), conduct an intake interview, and perform or caused to be performed assessments to determine the juvenile's status as a substance abuser and for appropriateness for the program;

g) As soon as possible after the completion of the assessments, the HTWC Case Manager shall prepare a written report for submission to the Tribal Court and the JHTWC multidisciplinary team containing: the intake information, outcome of assessments; determination of the juvenile's program eligibility and recommendation as to whether the juvenile should be admitted to the JHTWC Program;

Fort Peck codifies early entry in part by inserting the Wellness Court caseworker into the court procedure.

Fort Peck Assiniboine & Sioux Tribes

Title 6, Chapter 10. Fort Peck Wellness Court Programs.

Section 1003. Jurisdiction.

(b) Once a referral is made to the Wellness Court, the Wellness Court caseworker shall be assigned to the case to evaluate the eligibility of the individual and shall report any ineligible individuals back to the appropriate court.

TIME MINIMUM FOR HOLDING ADMISSION HEARING

Instead of putting a time limit on when the entry process needs to start, some tribes have put a time limit on when the process needs to end. The Hoopa Valley Tribe mandates the admission hearing to take place within seven days of when the consent decree, or offer for admission, was made.

Note that code also provides a remedy. If the court fails to provide a timely admission hearing, the court does not lose its jurisdiction. But instead, the untimely hearing is considered a breach of duty, entitling the participant to "limited remedies."

Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

8. D. Time Limitations on Na:tini-x'we' Na:xo-xi-nayi-din Admission Hearing

Na:tini-x'we' Na:xo-xi-nayi-din court admission hearings shall be held within seven working days of the informal adjustment conference or disposition hearing wherein the consent decree or Na:tini-x'we' Na:xo-xi-nayi-din consent decree was signed by the child and his parent, guardian, or custodian. Failure to hold the hearing within this time period does not divest the Na:tini-x'we' Na:xo-xi-nayi-din court of its subject matter jurisdiction, but may constitute a breach of the tribe's duty of care to tribal members, giving the harmed tribal member limited remedies but in no event shall any monetary compensation exceed \$500.00.

Ho Chunk Nation notes that screening should occur as early as possible, but only codifies a time limit regarding the determination of entry.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter III. Referral and Assessment

11. Legal Screening

c. Legal Screening shall occur at the earliest point after arrest with a determination of acceptance or rejection to occur within thirty (30) days from screening.

d. The Wellness Court Coordinator will be immediately notified of the Legal Screening determination.

i. If the Legal Screening results show the prospective participant is legally eligible for the program, the Wellness Court Coordinator will provide the contact information for the prospective participant to arrange for a Clinical Assessment to be conducted as the second phase of determining eligibility.

ii. If the Legal Screening results show that the prospective participant is not legally eligible for the program, the Wellness Court Coordinator will provide such documentation to the Team for reference and discussion.

12. Clinical Assessment

b. The Clinical Assessment shall occur soon after Legal Screening results are available showing legal eligibility standards have been met.

g. The Wellness Court Coordinator will be immediately notified of the Clinical Assessment determination.

The Penobscot Nation similarly codifies a time limit for determining entry.

Penobscot Nation

Rules of Court, VII. Healing to Wellness Court Program.

Rule 50. Admission to Program

D) Admission Procedure in Juvenile Delinquency Cases;

1) Informal Adjustment

h) Within seven (7) business days, the JHTWC Team shall convene either in person or by telephone or video-conference to review the juvenile's application and the Case Manager's report and, if at all possible, make a determination by consensus as to whether the juvenile should be admitted to the JHTWC Program;

- i) In the event the JHTWC team determines that the juvenile is an appropriate candidate for admission to the program, the Case Manager shall inform the Court, in writing, of the decision and the Clerk of Courts shall promptly schedule a hearing before the Tribal Court and provide notice to the juvenile, juvenile's legal counsel, and the juvenile's parent(s) or guardian(s);
- k) After the juvenile and the juvenile's parent(s) or guardian(s) sign the Petition; the case will be returned to the HTWC Case Manager for informal adjustment.

Conditions of Entry to Wellness Court

A candidate for Healing to Wellness Court must be informed of what participation means. The incentive to divert from the adversarial system can be seemingly straightforward: avoid incarceration and other punitive-type penalties. But participation is more than just avoiding incarceration. Participation can entail a medley of default requirements and tailor-made requirements. At a minimum, candidates should be informed of the type of requirements they can expect to make an informed decision about whether to participate. These typically include refraining from substances, curfews, and fees. These requirements are frequently characterized as the conditions to which a candidate must agree to participate.

The question then, is what form should this notice take? Is the tribal code customarily used to provide community notice about the details of court requirements? Would it be more consistent for the code to refer to a consent form within the Wellness Court policies and procedures? Does the community have open access to the policies and procedures? Does codifying the conditions of Wellness Court help put both the community and the service providers on notice about Wellness Court expectations and requirements? These different considerations produce different levels of detail regarding the codified types of requirements participants will be expected to complete.

Consider

Key Component #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.

The Oneida Indian Nation provides a short list of examples regarding the types of requirements a candidate might expect.

Oneida Indian Nation

Rules of Criminal Procedures, Chapter 8: Diversion

804. Provisions of Diversion Agreement; Waiver of Speedy Trial and Jury Trial; Alcohol and Drug Related Offenses; Stay of Criminal Proceedings; Filing of Agreements

a.... The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services.

The Citizen Potawatomi Nation and the Puyallup Tribe provide a more detailed list.

Citizen Potawatomi Nation

Title 15 – Healing to Wellness Court Administration and Procedure

Section 15-1-107. Conditions of Healing to Wellness Court.

(a) In any case in which a defendant is admitted into the Healing To Wellness Court, there shall be a written agreement between the defendant and the Healing To Wellness Court Team. The agreement shall include, but not be limited to, the terms of the Healing To Wellness Court.

(b) The conditions of the Healing To Wellness Court may include, but are not limited to, one or more of the following:

- (1) Participate in an education setting, including but not limited to, secondary education, postsecondary education, job training school, trade school, GED classes, or adult basic education courses;
- (2) Financially support his or her spouse, children, or both, or pay child support, spousal support, or both, including allowing such support to be withheld or garnished from the wages or salary of the defendant;
- (3) Refrain from the use of alcohol and drugs and from frequenting places where alcoholic beverages or illegal controlled substances are sold, possessed, or used;
- (4) Refrain from contact with certain persons or premises;
- (5) Obtain and maintain employment;
- (6) Attend individual, group, or family counseling;
- (7) Pay court costs, fees, fines, or both, incurred as a result of the offense charged, including allowing such costs to be withheld or garnished from the wages or salary of the defendant;
- (8) Pay costs associated with participation in the Healing To Wellness Court, including allowing such costs to be withheld or garnished from the wages or salary of the defendant;
- (9) Observe curfews or home detention or travel constraints as set out in the offender's agreement; and/or
- (10) Observe any other terms or conditions of the Healing To Wellness Court Judge or the Healing To Wellness Court Team, provided that such terms or conditions do not violate or abridge any fundamental or substantive right of any party.

Puyallup Tribe

Title 4 Courts and Procedure | Ch. 4.04 Rules of Criminal Procedure

4.04.260 Rule 11.2 – Alternative resolutions.

(b) Deferred Prosecution Agreements.

- (1) At any time before trial, a Prosecutor and counsel for the defendant, or the defendant when acting pro se, may agree to a deferred prosecution for a specified period of time based on one or more of the following conditions:

- (A) That the defendant shall not be convicted of any offense during the specified period of time;
- (B) That the defendant shall not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;
- (C) That the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, and education;
- (D) That the defendant shall make restitution in a specified manner for harm or loss caused by the offense even though the defendant is not pleading guilty to and has not been convicted of the offense giving rise to the victim's losses;
- (E) Community service; and
- (F) Any other reasonable conditions agreed upon by the parties.

(c) Deferred Prosecution Petitions. A person charged with a criminal offense in the Puyallup Tribal Court who believes their charged conduct is the result of, or caused by, alcoholism, drug addiction, or mental health issues may petition the Court to be considered for an order granting them entrance into a deferred prosecution program.

(3) Contents of Treatment Plan. The written treatment plan must be contained in the treatment facility report filed with the petition for deferred prosecution as required in subsection (c)(2)(B) of this section. The following requirements must be contained in the written treatment plan:

- (A) Total abstinence from alcohol and all other nonprescribed mind-altering drugs;
- (B) Participation in an intensive inpatient or intensive outpatient program in a KCC or a Court approved alcohol or drug treatment program;
- (C) Participation in a minimum of two meetings per week of an alcoholism self-help recovery support group or drug self-help recovery support group or both, as determined by the treatment facility, for the duration of the treatment plan;
- (D) Participation in an alcoholism self-help recovery support group or drug self-help recovery support group or both, as determined by the treatment facility, from the date of Court approval of the treatment plan to entry into intensive treatment;
- (E) Weekly approved outpatient counseling, group or individual, for a minimum of six months following the intensive phase of treatment;
- (F) Monthly outpatient contact, group or individual, for the remainder of the deferred prosecution period;
- (G) The decision to include the use of prescribed drugs, such as disulfiram, as a condition of treatment, must be reserved to the treatment facility and the petitioner's physician;
- (H) All treatment within the purview of this section must occur within or be approved by the treatment facility or a Court approved alcoholism or drug treatment program;
- (I) Signature of the petitioner agreeing to the terms and conditions of the treatment plan;
- (J) The promise of the treatment facility to provide the Court and the parties with a statement every three months for the first year, and for two-year programs, every six months for the second year regarding: (i) the petitioner's cooperation with the treatment plan, and (ii) the petitioner's progress or failure

in treatment. These statements must be made as a declaration by the person who is personally responsible for providing the treatment;
(K) The promise of the treatment facility to immediately report to the Court and parties any noncompliance by the petitioner with the requirements of their treatment ordered under this deferred prosecution program.

Hoopa Valley notes the consequences of *not* participating, which for their juveniles can include the filing of a delinquency. In addition, because the court targets juveniles, Wellness Court participation is additionally conditioned on the written consent of a guardian.

Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

7.E. Informal Adjustment Conference

If a child is legally and clinically eligible for Na:tini-x'we' Na:xo-xi-nayi-din court participation, the probation officer may hold an informal adjustment conference prior to the filing of a petition.... At this conference, the probation officer shall explain the following to the eligible child and his parent, guardian, or custodian and may obtain their signatures on a Na:tini-x'we' Na:xo-xi-nayi-din consent decree:

1. the reasonable grounds to believe the child committed a delinquent act or that the family is a family in need of services;
2. the purpose, requirements, duration, and possible sanctions of the Na:tini-x'we' Na:xo-xi-nayi-din court program;
3. that a decision not to consent to Na:tini-x'we' Na:xo-xi-nayi-din court participation may result in the filing of a petition with a juvenile court having jurisdiction;
4. that a failure to complete the Na:tini-x'we' Na:xo-xi-nayi-din court treatment plan pursuant to the consent decree may also result in the filing of a petition with a juvenile court having jurisdiction; and
5. that admission to the Na:tini-x'we' Na:xo-xi-nayi-din court is conditioned on obtaining the signatures of a parent, guardian, or custodian, the child, or other eligible family or household member, and a vote of admission by the Na:tini-x'we' Na:xo-xi-nayi-din court team, and upon completing a formal clinical assessment.

FEES

The Ho Chunk Nation requires participants to pay fees for their participation. This code provision not only provides notice of the fees but also makes the team accountable for tracking those fees and ensure the participant receives a monthly statement.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter IV. Monitoring, Testing, and Assessments

19. Wellness Court Fees. The Wellness Court Coordinator shall maintain a record of a participant's Wellness Court fees and any payments made toward those fees. Monthly statements shall be provided to each participant.

- a. Payment of fees is a requirement for phase advancement and graduation.

b. Wellness Court fees shall be considered a Debt to the Nation pursuant to CLAIMS AGAINST PER CAPITA ORDINANCE, 2 HCC § 8.5 a(1).

Informed Consent

Most Wellness Court models require that a participant opt-in. Participation cannot be compelled. Therefore, while participation can be heavily incentivized, such as by leveraging the threat of incarceration, the participant ultimately needs the ability to decide whether they would like to participate. The act of providing consent is a procedure for entry. It should detail what steps must be taken to prove the consent is voluntary and informed. The procedure and the extent of civil rights protections the tribal court provides to candidates during the act of providing informed consent can vary. But as an entry procedure, this code provision should comport with other court docket entry procedures, and/or other tribal requirements for informed consent. In addition to considering other comparable tribal provisions, substance should ultimately outweigh formality. How can the Wellness Court best ensure candidates are protected and informed about what Wellness Court will mean without unnecessarily adding delay to the process, unintentionally dissuading good candidates, or otherwise unnecessarily injecting more adversarial process? In addition, what should be codified and what should be left to the Wellness Court policies and procedures?

Consider

Key Component #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.

The Citizen Potawatomi Nation and the Pueblo of Pojoaque simply note candidates must voluntarily agree to participate.

Citizen Potawatomi Nation

Title 15 – Healing to Wellness Court Administration and Procedure

Section 15-1-106. Participation in Healing to Wellness Court.

- (a) A defendant in Tribal Court is eligible to participate in the Healing to Wellness Court if:
- (11) The defendant voluntarily agrees to enter the Healing To Wellness Court upon proper application and is accepted by the Healing To Wellness Court Team.

Pueblo of Pojoaque

C-10 Wen Hey Kha Wosatsi Khuu (Path to Wellness) Court Jurisdiction

(d) Continuing Jurisdiction. Path to Wellness Court participants, including self-referrals, must agree to the continued jurisdiction of the Path to Wellness Court throughout the duration of the program.

Consent is multipronged. To what is the participant consenting? Firstly, while the Wellness Court is an intentional deviation from the prison system, it still has significant requirements, including weekly mandatory activities and the possibility of sanctions as detail in the conditions of Wellness Court section in the preceding text. Secondly, the Wellness Court incorporates substance use treatment, which requires the sharing of treatment information shared amongst a team of multidisciplinary team members. The participant must provide consent for this information to be shared. Thirdly, as a restorative justice deviation from the typical adversarial court structure, certain court processes and rights to those processes are suspended. The participant should be informed of those deviations.

ACCESS TO LEGAL COUNSEL

The Indian Civil Rights Act (ICRA)²² provides for the right to access defense counselors in tribal criminal proceedings. It is not clear whether a Wellness Court hearing is considered a “criminal proceeding” under ICRA. However, it is likely that the hearing to determine whether one *enters* a Wellness Court is considered a criminal proceeding, requiring access to a defense counselor. This is untested in federal courts and may have different ramifications under tribal law. Does the tribal court typically provide a defense counselor under tribal law? Will a defense counselor be part of the team? If so—will the defense counselor be designated, or can a participant incorporate a defense counselor of their choosing? If the Wellness Court team has no defense counselor, will a participant at least get the opportunity to consult with a defense counselor prior to entering Wellness Court and before their discharge from Wellness Court?

The Oneida Nation provides for the right to have a defense counselor (at the participant’s expense) at diversion conferences, which can include entry to Wellness Court.

Oneida Indian Nation

Rules of Criminal Procedures, Chapter 8: Diversion

802. Diversion Agreement Authorized; Policies and Guidelines by Nation Prosecutor;

Background Information.... c.... In all cases, the defendant shall be present and shall have the right to be represented by counsel at his own expense at the diversion conference with the Nation Prosecutor.

The Penobscot Nation similarly provides for access to a defense counselor when applying for admission to the Wellness Court.

Penobscot Nation

Rules of Court, VII. Healing to Wellness Court Program

Rule 50. Admission to Program.

(B)(2) A defendant considering applying for admission to the HTWC shall be entitled to consult with legal counsel prior to admission;

²² 25 U.S.C. § 1302(a)(6) (“No Indian tribe in exercising powers of self-government shall ... deny to any person in a criminal proceeding the right ... at his own expense to have the assistance of counsel for his defense.”).

(B)(9) At the hearing on the defendant's Petition for Admission to the HTWC Program, the presiding judge shall confirm on the record that the defendant has had the opportunity to confer with legal counsel and after doing so, knowingly and voluntarily agrees to the terms of the HTWC Program Participant Order;

The Tulalip Tribes require there either be counsel, or that the participant voluntarily waive access to counsel.

Tulalip Tribes

Chapter 2.25. Criminal Procedures | 2.25.110 Plea Procedures

2.25.110(2) Alternatives to Pleas.

(a) Deferred Prosecution Agreement. Deferred prosecutions may not be agreed to in cases of domestic violence or violent crimes.

(i) Conditions of Agreement. At any time, the Prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

The Ho Chunk Nation provides a detailed list of consultation items the defense counselor must discuss.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter III. Referral and Assessment

13. Admission to Program

e. ii. The participant will also have a time arranged to meet with the defense attorney/lay advocate to go through the Participant Handbook, have the program explained to him/her, and go through the ramifications of rule violations that may lead to a treatment response, sanction, and/or termination from the program.

1. Documentation of receipt of the Participant Handbook and meeting with the defense attorney/lay advocate shall be placed within the participant's file to be kept by the Wellness Court Coordinator.

Hoopa Valley requires the ***judge*** to bear the burden of ensuring the participant is sufficiently informed about Wellness Court.

Hoopa Valley Tribes

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

6. A. Right to be Informed of the Requirements of Participation

All Na:tini-x'we' Na:xo-xi-nayi-din court participants have the right to be informed of the requirements of Na:tini-x'we' Na:xo-xi-nayi-din court participation prior to signing the Na:tini-x'we' Na:xo-xi-nayi-din consent decree as outlined in ... this code.

8.B. Review & Signing of Decrees

The Na:tini-x'we' Na:xo-xi-nayi-din court judge shall read the contents of the Na:tini-x'we' Na:xo-xi-nayi-din consent decree to the child, his parent(s), guardian, or custodian, and other

eligible family or household member(s). The judge shall ask them questions to satisfy himself that the potential participants understand and consent to participation in the Na:tini-x'we' Na:xo-xi-nayi-din court. If the judge finds that the child or other eligible family or household member understands and consents to the terms, he shall sign the Na:tini-x'we' Na:xo-xi-nayi-din consent decree admitting the individual to the program.

The Na:tini-x'we' Na:xo-xi-nayi-din court judge shall review the contents of the Na:tini-x'we' Na:xo-xi-nayi-din consent decree signed by the juvenile court judge with the child or eligible family/household member and admit them to participate in the Na:tini-x'we' Na:xo-xi-nayi-din court.

While the Fort McDowell Yavapai Nation does not require that a defense counselor be consulted, the code does require that the defendant have the opportunity to ask questions to the coordinator or case manager.

Fort McDowell Yavapai Nation

Chapter 5 – Civil and Criminal Procedure | Article III. Criminal Procedure

VIII. Wellness Court

Rule 84. – Wellness court eligible cases.

(b) Information to Defendant. In any case referred to the Wellness Court Committee for consideration, the Court will provide information to the defendant about the Wellness Court and refer the defendant to the Wellness Court Coordinator and/or Wellness Court Case Manager to answer questions, and if appropriate, to execute a limited consent from so that the Wellness Court Committee may consider the defendant's admission to the program.

WAIVER OF RIGHT TO SPEEDY TRIAL

The ICRA provides for the right to a speedy trial in a criminal proceeding.²³ A Wellness Court, especially those structured within a deferred prosecution, could potentially infringe on this right to a speedy trial. A participant may need to explicitly acknowledge and waive this right.

Oneida Indian Nation

Rules of Criminal Procedures, Chapter 8: Diversion

804. Provisions of Diversion Agreement; Waiver of Speedy Trial and Jury Trial; Alcohol and Drug Related Offenses; Stay of Criminal Proceedings; Filing of Agreements

a.... The diversion agreement shall include specifically the waiver of all rights under Nation law to a speedy arraignment and a speedy trial....

Tulalip Tribes

Chapter 2.25. Criminal Procedures | 2.25.110 Plea Procedures

2.25.110(2)(a).

(ii) Contents of Agreement. A deferred prosecution agreement ... must state that the defendant waives the right to speedy trial for an additional 60 days past the end of the deferral period....

²³ 25 U.S.C. § 1302(a)(6) ("No Indian tribe in exercising powers of self-government shall ... deny to any person in a criminal proceeding the right to a speedy and public trial.").

The Fort McDowell Yavapai Nation “stops the clock,” but also provides an escape clause for potentially nefarious prosecutorial actions.

Fort McDowell Yavapai Nation

Chapter 5 – Civil and Criminal Procedure | Article III. Criminal Procedure

VIII. Wellness Court

Rule 86. – Tolling of time; speedy trial. When Wellness Court participation is offered for the benefit of a defendant prior to trial, time is tolled for purposes of speedy trial calculations so long as the offer for Wellness Court participation is made in good faith and is not for purposes of delay.

RIGHT TO ACCESS WELLNESS COURT AFTER DECLINING

The Fort McDowell Yavapai Nation provides statutory notice to defendants that once the offer of Wellness Court is declined, the participant may not receive another offer to enter Wellness Court.

Fort McDowell Yavapai Nation

Chapter 5 – Civil and Criminal Procedure | Article III. Criminal Procedure

VIII. Wellness Court

Rule 85. – Offer for Wellness Court is made/declined.

If the Wellness Court Committee accepts a defendant into the Wellness Court Program and the defendant declines participation or fails to accept participation within ten (10) business days of program acceptance, the Nation has sole discretion to offer Wellness Court as a diversion program at any point prior to trial.

WRITTEN NOTICE AND CONSENT DECREES

Numerous tribal codes require that voluntary, informed consent be formalized through writing.

Oneida Indian Nation

Rules of Criminal Procedures, Chapter 8: Diversion

802. Diversion Agreement Authorized; Policies and Guidelines by Nation Prosecutor;

Background Information.

c. Each defendant shall be informed in writing of the diversion program and the policies and guidelines adopted by the Nation Prosecutor...

Penobscot Nation

Rules of Court, VII. Healing to Wellness Court Program

Rule 50. Admission to Program

D) Admission Procedure in Juvenile Delinquency Cases

1) Informal Adjustment.

d) In order to be considered for admission to the program, the juvenile and his or her parent(s) or guardian(s) must complete a Petition for Admission into the JHWTC and file it with the Clerk of Courts;

The CTCLUSI note that failing to sign a written consent may result in not being able to participate.

Confederated Tribes of Coos, Lower Umqua, and Siuslaw Indians

Title 2 – Rules of Procedure

Chapter 2-13: Wellness Court

2-13-4. Rules of Evidence.

... Participants who refuse to sign consent forms permitting essential communications may be excluded from treatment or be terminated from CTCLUSI Wellness Court.

Admission Determination

Once screening has completed, the Wellness Court must determine whether the candidate will become a Wellness Court participant. Because many Wellness Courts are structured as a docket, this determination should have the requisite formalities and protections as other dockets. However, the Wellness Court is not like other dockets. For many Wellness Courts, entry is a decision to be considered by the multidisciplinary team. Their diverse expertise and opportunity to provide input positions the Wellness Court to offer unique services to individuals most in need. In addition, Wellness Courts frequently have a much smaller capacity than the community needs. Entry is selective, so not all who are eligible will be entitled to entry. The team can serve as decision makers.

Keep in mind, however, that this discretion on entry can be a slippery slope. In nontribal drug courts, the discretion to limit entry has led to racial and other class discriminations, even when unintentional. The Wellness Court must balance serving those most in need, efficiently dispensing limited resources, while ensuring that those resources are disseminated in a fair manner.

Consider

Key Component #3: Screening and Eligibility

Eligible court-involved substance-abusing parent, 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.

The Ho Chunk Nation codifies their processing of screening to determining entry by team consensus.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter III. Referral and Assessment

13. Admission to Program

- a. Clinical Assessment and/or Legal Screening results shall be presented to the Team in order for the Team to ultimately decide whether to admit an eligible applicant into the Wellness Court program.
- d. The Team shall review all relevant information before reaching consensus on whether to admit or deny a prospective participant.
- e. If the Team reaches a consensus on admission, the Wellness Court Coordinator shall provide an appointment time in which the prospective participant is to report to the Ho-Chunk Nation Wa Ehi Hoci to proceed with filling out the necessary paperwork for admission.

Hoopa Valley Tribes

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

7. A. Admission

Admission into the Na:tini-x'we' Na:xo-xi-nayi-din court shall occur upon:

- 1.... approval by Na:tini-x'we' Na:xo-xi-nayi-din court team by majority agreement

The Penobscot Nation codifies a seven-day time limit for the team to make admission determinations.

Penobscot Nation

Rules of Court, VII. Healing to Wellness Court Program

Rule 50. Admission to Program

B) Admission Procedure in Criminal Cases

- 6) As soon as possible after the completion of the assessments, the HTWC Case Manager shall prepare a written report for submission to the Tribal Court and the HTWC multidisciplinary team containing: the intake information, outcome of assessments, determination of defendant's program eligibility, and recommendation as to whether defendant should be admitted to the HTWC Program;
- 7) Within seven (7) business days, the HTWC Team shall convene either in person, or by telephone or video-conference, to review the defendant's Petition and the Case Manager's report and, if at all possible, make a determination by consensus as to whether defendant should be admitted to the HTWC Program;
- 8) In the event, the HTWC team determines that the defendant is an appropriate candidate for admission to the program, the Case Manager shall inform the Court, in writing, of the decision and the Clerk of Courts shall promptly schedule a hearing before the Tribal Court;

Admission Hearing

Once entry has been approved, a hearing will formalize the participant's exit from the adversarial docket, and into the Wellness Court. While subject to the tribal court's procedures, the admission and discharge hearings are generally considered distinct from all other Wellness Court hearings. They serve as the bridge between the dockets. Therefore, while the Wellness Court weekly hearing may abandon with most of the adversarial court formalities, the admission and discharge hearings will more closely resemble their adversarial counterparts. In part, this is because there are greater legal consequences at stake in the admission and discharge hearings.

Consider

Key Component #3: Screening and Eligibility

Eligible court-involved substance-abusing parent, 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.

The Hoopa Valley notes admission requires a judicial order, attaching all legal requirements that accompany a judicial order. Otherwise, admission hearings are incorporated into the weekly Wellness Court hearing.

Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

7.A. Admission. Admission into the Na:tini-x'we' Na:xo-xi-nayi-din court shall occur upon:

2. by the judicial order of a juvenile court judge.

8.A. Purpose and Conduct of Na:tini-x'we' Na:xo-xi-nayi-din Court Admission Hearing

The Na:tini-x'we' Na:xo-xi-nayi-din court admission hearing shall be conducted as part of the ongoing weekly Na:tini-x'we' Na:xo-xi-nayi-din court status hearings. At the beginning of each weekly Na:tini-x'we' Na:xo-xi-nayi-din court status hearing, the judge shall call newly admitted participants before him to welcome them to the Na:tini-x'we' Na:xo-xi-nayi-din court program, to review the grounds and terms of their admission, to briefly get to know the new participants, and to instruct and answer questions about treatment plan requirements and alcohol and/or drug testing.

The Penobscot Nation provides detailed admission procedures.

Penobscot Nation

Rules of Court, VII. Healing to Wellness Court Program

Rule 50. Admission to Program

B) Admission Procedure in Criminal Cases

8) In the event, the HTWC team determines that the defendant is an appropriate candidate for admission to the program, the Case Manager shall inform the Court, in writing, of the decision and the Clerk of Courts shall promptly schedule a hearing before the Tribal Court;

- 9) At the hearing on the defendant's Petition for Admission to the HTWC Program, the presiding judge shall confirm on the record that the defendant has had the opportunity to confer with legal counsel and after doing so, knowingly and voluntarily agrees to the terms of the HTWC Program Participant Order;
- 10) After the defendant signs the Petition and enters a guilty plea to the charge or charges and waives his or her right to a trial; the presiding judge shall enter a judgment of guilty and a deferred sentence of a determinate period of time and order the admission of the defendant into the HTWC program as the conditions of the deferred sentence.

The Puyallup Tribe notes admission hearings must be held in open court.

Puyallup Tribe

Title 4 Courts and Procedure | Ch. 4.04 Rules of Criminal Procedure

4.04.260 Rule 11.2 – Alternative resolutions.

(c)(4) Hearing on Petition for Deferred Prosecution.

- (A) The petition for deferred prosecution and the treatment center report must be filed with the Court and served on the Prosecutor no less than 14 days prior to the hearing on the petition.
- (B) The Court shall not grant a petition without a hearing in open Court attended personally by the petitioner.

NOTICE OF ADMISSION HEARING

As a component of the unique procedures of an admission hearing, there may be additional notice requirements. Particularly because Hoopa Valley serves juveniles, they build in additional notice for guardians and other family members.

Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

8.E. Notice of Hearing

Written notice of the Na:tini-x'we' Na:xo-xi-nayi-din court admission hearing shall be given to the child, his parent, guardian, or custodian, or other eligible family or household members as soon as the time for the hearing has been set. The notice shall contain:

1. The name of the court;
2. The title of the proceeding (Na:tini-x'we' Na:xo-xi-nayi-din Court Admission Hearing);
3. A brief statement of the delinquent act the child is alleged to have committed or why the family is in need of services; and
4. The date, time, and place of the Na:tini-x'we' Na:xo-xi-nayi-din court admission hearing.

VICTIM'S RIGHTS

The Pueblo of Laguna provides space for any victims to be heard as part of the admission hearing.

Pueblo of Laguna

Appendix C – Rules of Procedure, Section 4. Pueblo of Laguna Rules of Criminal Procedure

Rule 15. Victim's Rights

C. Right to be heard. The court must permit a victim to be reasonably heard at any public proceeding in the court concerning plea, sentencing, referral to Wellness Court, release, conditions of release, or parole involving the crime.

Rejection

Consider

Key Component #3: Screening and Eligibility

Eligible court-involved substance-abusing parent, 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.

The Hoopa Valley provides that on the occasion Wellness Court is not offered, families are entitled to a written explanation.

Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

8.C. Persons Not Admitted to Na:tini-x'we' Na:xo-xi-nayi-din Court

The Na:tini-x'we' Na:xo-xi-nayi-din court team may decline to admit any child, family or household member who has been referred to Na:tini-x'we' Na:xo-xi-nayi-din court by the probation officer as part of an informal adjustment. Children who are not admitted shall return to the juvenile court for a new informal adjustment conference to determine other options. For each child, eligible family or other eligible household member who is not admitted, the Na:tini-x'we' Na:xo-xi-nayi-din court team must issue written findings containing their reason for declining admission.

Chapter 5. Discharge

Like entry into the Tribal Healing to Wellness Court (“Wellness Court”), exiting the Wellness Court is a judicial “moment” that, depending on the entry point, can require a hearing, a transfer of the case to its originating docket, and/or closure of the casefile. Discharge can include successful discharge, or graduation; unsuccessful discharge or termination; and neutral discharge, such as if a participant moves, requires a new level of treatment that the Wellness Court cannot offer, or some other reason beyond the participant or court’s control.

Consider

Key Component #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.

Graduation

The Puyallup Tribe codifies that charges will be dismissed for the successful completion of any conditions of deferral, which includes graduating Wellness Court.

Puyallup Tribe

Title 4 Courts and Procedure | Ch. 4.04 Rules of Criminal Procedure

4.04.260 Rule 11.2 – Alternative resolutions.

(b) Deferred Prosecution Agreements.

(4) Termination of Deferred Prosecution. Whenever the Court has deferred the prosecution and after expiration of the period of deferral and after the defendant’s successful completion of any conditions of deferral, upon motion by the Court, the defendant, or the defendant’s counsel, the Court shall enter an order of dismissal of charges.

The CTCLUSI provides the transfer of the case for final disposition for graduation or a neutral discharge.

Confederated Tribes of Coos, Lower Umqua, and Siuslaw Indians

Title 2 – Rules of Procedure

Chapter 2-13: Wellness Court

2-13-3. Jurisdiction.

(a) ... Upon successful completion of the CTCLUSI Wellness Court program, or at such a time when a participant becomes ineligible to continue in the program as set out in the CTCLUSI Wellness Court Policies and Procedures, the CTCLUSI Wellness Court will notify the transferring court of the status for any final disposition.

Meanwhile, the Ho Chunk Nation provides more detail to the Wellness Court graduation procedures. Notably, the code provides for both record keeping, and that the participant should be “formally recognized and praised” including at a Tribal social event.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter VI. Court Procedure and Hearings.

28. Graduation. Upon successful completion of all four phases of the Wellness Court program, participants shall be formally recognized and praised for graduating from the Wellness Court program during the Status Hearings. The Wellness Court judge shall issue a written Order formally recognizing completion of the program to be kept as part of the Wellness Court records, but also to be used to address the criminal action(s) that brought the participant within the purview of the Wellness Court. The graduate is to be provided a formal written Certificate recognizing completion from the program to be used by the participant as he or she requires. A copy of this Certificate shall be kept as a part of the participant’s Wellness Court records. Formal recognition to be given at Tribal Social event.

The Ho Chunk Nation also codifies the requirement that the Wellness Court share information regarding discharge to other tribal agencies, as relevant.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter II. Jurisdiction, Court Structure, Policies, Procedures, and Program Rules

6. Jurisdiction.

c. Upon successful completion of the Wellness Court program, or at such a time when a participant of the Wellness Court becomes ineligible to continue in the program, the Wellness Court will provide such information to the appropriate governmental entity for its use in any final disposition as it relates to the Wellness Court participant.

The Hoopa Valley provides a similar graduation procedure, but also details the contents of the judicial order of completion.

Hoopa Valley Tribe

Title 4A – Na:tini-x’we’ Na:xo-xi-nayi-din [*The people’s get well place*] Court Code

13.A. Na:tini-x’we’ Na:xo-xi-nayi-din Court Graduation

Upon successful completion of all Na:tini-x’we’ Na:xo-xi-nayi-din consent decree and treatment plan requirements, participants will be formally recognized and praised for graduating from the Na:tini-x’we’ Na:xo-xi-nayi-din court program during the weekly Na:tini-x’we’ Na:xo-xi-nayi-din court status hearings. Formal recognition may include a graduation dinner, a certificate of graduation, meaningful traditional or other gifts, or other items or arrangements as the Na:tini-x’we’ Na:xo-xi-nayi-din team designs and undertakes.

13.B. Contents of Na:tini-x’we’ Na:xo-xi-nayi-din Court Order of Successful Completion

The order shall be titled “Order of Successful Completion of the Na:tini-x’we’ Na:xo-xi-nayi-din Court of the Hoopa Valley Tribe.” The order of completions shall set forth with specificity:

1. the name, birth date, residence, and tribal affiliation of the child;

2. the names, residences, and tribal affiliations of the child's parent(s), guardian or custodian;
3. the name, birth date, residence, and tribal affiliation of other eligible family or household members (if they are graduates of the Na:tini-x'we' Na:xo-xi-nayi-din court program);
4. the finding of legal eligibility for Na:tini-x'we' Na:xo-xi-nayi-din court participation;
5. the finding of clinical eligibility for Na:tini-x'we' Na:xo-xi-nayi-din court participation;
6. a statement that the participant has successfully completed the general requirements of the consent decree and treatment plan; and
7. signature line for the Na:tini-x'we' Na:xo-xi-nayi-din court judge.

Termination

Like an admission hearing, the legal consequences of termination from Wellness Court are greater than the typical consequences faced in a weekly Wellness Court hearing. Because the consequences are elevated, it is typical for Wellness Court codes to include more detailed provisions as to termination procedures and the hearing.

The Pueblo of Pojoaque simply notes the case will be transferred back to the Tribal Court.

Pueblo of Pojoaque

C-10 Wen Hey Kha Wosatsi Khuu (Path to Wellness) Court Jurisdiction

(a) Continuing Jurisdiction.... In the event that a participant is terminated from the Path to Wellness Court, the case will be sent to Tribal Court for adjudication.

The Ho Chunk Nation provides a list of grounds for termination, though the list includes "any other grounds the [team] deems sufficient." This provides the court cover to be flexible, while also providing notice to candidates and the community what can potentially trigger termination.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Chapter VI. Court Procedure and Hearings.

27. Termination

a. Upon presentation of appropriate grounds, a Wellness Court Team member may make a Motion to Terminate a participant.

i. Grounds for termination include:

1. Commission of a violent crime;
2. Abandonment of the Wellness Court program;
3. Evidence indicating the participant is involved with drug dealing or driving while under the influence of an intoxicant;
4. Any threatening, abusive, or violent verbal/physical behavior;
5. Hostile, threatening or disrespectful conduct towards the Court or other participants;

- 6. Any other grounds the Wellness Court deems sufficient for termination.
- b. Termination will be discussed and decided by consensus.
- c. The decision to terminate shall be put in writing.

The Hoopa Valley Tribal Code similarly provides a list of possible grounds for termination.

Hoopa Valley Tribe

Title 4A – Na:tini-x’we’ Na:xo-xi-nayi-din [*The people’s get well place*] Court Code

12.A. Hearing to Revoke Admission to Na:tini-x’we’ Na:xo-xi-nayi-din Court

The designated Na:tini-x’we’ Na:xo-xi-nayi-din hearing judge shall also preside over the Na:tini-x’we’ Na:xo-xi-nayi-din revocation hearing. The purpose of the Na:tini-x’we’ Na:xo-xi-nayi-din court revocation hearing is to determine whether a Na:tini-x’we’ Na:xo-xi-nayi-din court participant should be expelled from the Na:tini-x’we’ Na:xo-xi-nayi-din court program. Grounds for expulsion include:

1. Conviction of a violent felony in any tribal, state or federal court;
2. The filing of a formal charge for a crime of violence in state or federal court subsequent to Na:tini-x’we’ Na:xo-xi-nayi-din court admission; or
3. Failure to substantially comply with the terms of the Na:tini-x’we’ Na:xo-xi-nayi-din consent decree and/or treatment plan.

The Poarch Band of Creek Indians appears to limit termination to violations of terms or conditions of the Wellness Court. However, the code then provides a detailed procedure for initiating that termination. The prosecutor must submit a petition showing probable cause that the participant violated a term of or condition of Wellness Court justifying termination. Then, the prosecutor must prove that violation by a preponderance of the evidence. The code then provides notice requirements for before and during the termination hearing.

Poarch Band of Creek Indians

Title 3 – Judicial | Chapter III – Poarch Band of Creek Indians Drug Court

Sec. 3-3-8 – Revocation of Participation in Drug Court

(a) Upon a recommendation from the Drug Court Team that the defendant’s participation in Drug Court should be revoked, the Tribal Prosecutor shall file a petition in Drug Court showing probable cause that a defendant has violated the terms or conditions of Drug Court. The Drug Court Judge shall order a hearing on the revocation. The order must require the defendant to appear at a specified time and place for the hearing. A copy of the petition and the order setting the hearing shall be personally served by the Tribal Police or by certified mail. The Drug Court Judge may also issue an arrest warrant directing any peace officer or probation officer to arrest the defendant and bring the defendant before the Court.

(b) At the hearing, the defendant must be advised of:

- (1) The allegations of the petition;
- (2) The opportunity to appear and to present evidence on the defendant’s behalf;
- (3) The opportunity to question adverse witnesses; and
- (4) The right to be represented by a Tribal Public Defender, if the Poarch Band of Creek Indians makes such representation available, or to hire his or her own representation.

(c) A hearing is required before the defendant’s participation in Drug Court is revoked unless the defendant admits the allegations and waives the right to a hearing.

(d) At the hearing, the Tribal Prosecutor shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of Drug Court.

(e) If the Tribal Prosecutor proves that the defendant has violated the terms and conditions of Drug Court, the Drug Court Judge may:

(1) Continue the defendant's Drug Court participation without a change in terms or conditions;

(2) Continue the defendant's Drug Court participation with modified or additional terms and conditions; or

(3) Revoke the defendant's participation in Drug Court and transfer the matter to Tribal Court for the Tribal Judge to impose any sentence that could have been originally imposed. The Drug Court Judge shall state the reasons for his or her determination in the order.

(f) If the Drug Court Judge finds that the Tribal Prosecutor has not proved by a preponderance of the evidence that there has been a violation of the terms and conditions of Drug Court participation, the Drug Court Judge:

(1) Must dismiss the petition for revocation and order the immediate release of a defendant, if in custody; and

(2) May modify or add terms and conditions of Drug Court participation.

(g) If a defendant's participation in Drug Court is revoked, the matter is transferred to Tribal Court, along with a copy of the Drug Court Judge's order revoking participation in Drug Court. The Tribal Judge shall sentence the defendant and shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as credit, except that credit must be allowed for time served in a detention center.

Like Poarch Creek, the Puyallup Tribal Code provides an opportunity for the participant to defend themselves.

Puyallup Tribe

Title 4 Courts and Procedure | Ch. 4.04 Rules of Criminal Procedure

4.04.260 Rule 11.2 – Alternative resolutions.

(c)(5) Revocation of Deferred Prosecution. If a petitioner, who has been accepted for a deferred prosecution, fails or neglects to carry out and fulfill any term or condition or both of the petitioner's treatment plan or any term or condition or both of the deferred prosecution order, or violates any provision of this section, the treatment facility shall immediately report such breach to the Court, the Prosecutor, and the petitioner or petitioner's attorney or spokesperson of record, together with its recommendation. The Court upon receiving such a report shall hold a hearing to determine whether the petitioner should be removed from the deferred prosecution program. At the hearing, evidence must be taken of the petitioner's alleged failure to comply with the treatment plan and the petitioner will have the right to present evidence on their own behalf. The Court shall either order that the petitioner continue on the treatment plan or be removed from deferred prosecution. If removed from deferred prosecution, the Court shall enter judgment based on the sworn admission of facts contained in the petition and any other evidence adduced at the hearing, and the Court shall then lift the stay of the proceedings, and the prosecution will commence.

Ancillary Consequences

Particularly because the Wellness Court is a diversion from the typical adversarial process, there may be legal “leftovers” that require statutory consideration. Two primary considerations are legal incentives: the expungement of records and credit for time served. Do participants have legal access to these incentives without code authorization? Does their successful graduation from Wellness Court automatically trigger access, or is an extra provision necessary? If participants must apply to have their records expunged or have their incarceration time credited, is the process so burdensome that the process is not effective? Would codification specific to the Wellness Court be useful?

EXPUNGEMENT OF RECORDS

Tulalip Tribes

Chapter 2.25. Criminal Procedures | 2.25.110 Plea Procedures

2.25.110(2)(a)

(iv) Expungement of Records. Whenever the Court has deferred the prosecution and after expiration of the period of deferral and after the defendant’s successful completion of any conditions of deferral, upon motion by the Court, the defendant, or the defendant’s counsel, the Court shall allow the expungement of the Court records of all record of the proceedings by entering an order of dismissal of charges and expungement, inscribing each record of the proceedings with the word “Expunged” and sealing the file.

The Ho Chunk Nation offers expungement *services* for other jurisdictions specifically as an incentive for Wellness Court participation.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter IV. Monitoring, Testing, and Assessments

20. b. Incentives.

- ii. Assistance in filing a Pardon application or filing for expungement of a Wisconsin criminal record.

Credit for Time Served

A condition of Wellness Court can include the possibility of jail time as a sanction. Therefore, regardless of a successful, neutral, or unsuccessful discharge from Wellness Court, the Tulalip Tribes ensures that all participants receive credit for their time served pursuant to a sanction within Wellness Court. This is particularly relevant for unsuccessful discharges, though can also be relevant even for a successful graduation if that participant still faces other charges.

Tulalip Tribes

Chapter 2.25. Criminal Procedures | 2.25.150 Judgment and sentencing.

2.25.150(2) Sentencing.

(f) Credit for Time Served. A defendant subject to a judgment of imprisonment must be allowed credit for each day of incarceration prior to or after conviction for that offense.

Chapter 6. Team Roles and Responsibilities

Team roles and responsibilities are usually detailed in the Tribal Healing to Wellness Court (“Wellness Court”) policies and procedures. However, there may be instances in which codification is an appropriate tool for highlighting specific duties of specific team members. However, the most common code provisions merely establish the Wellness Court team and reserve details for other documents.

Consider

Key Component #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.

Team Composition

The Pueblo of Pojoaque establishes the Wellness Court team, anchoring the day-to-day activities in a collective.

Pueblo of Pojoaque

B-6 Wen Hey Kha Wosatsi Khuu (Path to Wellness) Court

(b) Composition.... The Path to Wellness Team, composed according to the Path to Wellness Policies and Procedures Manual, will assist in day-to-day operations and development of the Path to Wellness Court.

The Poarch Band of Creek Indians mandate, at a minimum, what roles must be included at the team.

Poarch Band of Creek Indians

Title 3 – Judicial | Chapter III – Poarch Band of Creek Indians Drug Court

Sec. 3-3-2 – Drug Court Composition

The Poarch Band of Creek Indians Drug Court shall be composed of one (1) Drug Court Judge and a Drug Court Team.

The code can extrapolate, noting additional minimally necessary team member roles from multiple distinct agencies. The NADCP Best Practice Standards identifies the judge, coordinator, prosecutor, defense counselor, treatment representative, supervision officer, and law

enforcement officer as the critical team members.²⁴ Codifying these roles has the benefit of mandating agencies beyond the judiciary to participate in the Wellness Court.

Note, the CTCLUSI provision still provides flexibility to add additional team members at the judge's discretion.

Confederated Tribes of Coos, Lower Umqua, and Siuslaw Indians

Title 2 – Rules of Procedure | Chapter 2-13: Wellness Court

2-13-2. Definitions.

(b) CTCLUSI Wellness Court Team. The CTCLUSI Wellness Court Team shall consist of the Wellness Court Judge, Wellness Court Case Manager, Family Services representative, the Tribal Presenting Officer, and Tribal Defense advocate. The CTCLUSI Wellness Court Team may include other members on the Team as determined by the CTCLUSI Wellness Court Judge.

The Ho Chunk Nation defines the Wellness Court team, and includes atypical team members, including a representative of the legislature, and a representative of the Traditional Court.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter II. Jurisdiction, Court Structure, Policies, Procedures, and Program Rules

7. Court Structure. The Healing to Wellness Court shall be made up of Treatment Team which shall include a Trial Court Judge, a prosecutor, a public defender/advocate, a Treatment Team coordinator, a Researcher, a law enforcement official, a representative of the Legislature, a representative of probation, a representative of substance abuse treatment providers, a vocational rehabilitation professional, a representative of Traditional Court, a representative of social services, a representative of compliance, and other members to be determined by the Judiciary and/or Treatment Team.

The Muscogee (Creek) Nation provides for nonofficial team members. This can enhance the collaborative sphere, without unduly extending decision-making power to nonessential team members.

Muscogee (Creek) Nation

Title 26. Judicial Branch/Courts Vhakov Fvtcecvlke/Fvtceckv Cuko

§ 6–104. Family Drug Court Implementation Team

A.... The Speaker of the National Council may appoint one member of the National Council to attend Implementation Team meetings in an ex-officio capacity.

²⁴ National Association of Drug Court Professionals, *Adult Drug Court Best Practice Standards, Vol. I*, Standard 8.A., p. 38 (2018).

The Judge

Tribal Key Component #7 identifies the ongoing involvement of the judge with the team and staffing, and with each participant, as essential. The judge is the leader, whose participation is critical. It therefore may be worth codifying their participation as mandatory. Additionally, numerous judicial codes have processes for the appointment of judges to dockets. The Wellness Court, as a component of the judiciary, should comport with these judicial processes.

Consider

Key Component #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.

Pueblo of Pojoaque

B-6 Wen Hey Kha Wosatsi Khuu (Path to Wellness) Court

(b) Composition. The Chief Judge of the Tribal Court or an Associate Judge appointed by Tribal Council will preside over the Path to Wellness Court....

Fort Peck Assiniboine & Sioux Tribes

Title 6, Chapter 10. Fort Peck Wellness Court Programs

Section 1002. Definitions.

Wellness Court Judge. The Wellness Court Judge shall be designated by the Chief Judge.

As the leader, the judge may have additional responsibilities to ensure the Wellness Court operates. Depending on the structure of the code, it may be relevant to detail those tasks within a judicial ordinance, as opposed to the rules of procedure.

Citizen Potawatomi Nation

Title 15 – Healing to Wellness Court Administration and Procedure

Section 15-1-105. Duties of the Healing to Wellness Court Judge

(a) The Healing to Wellness Court Judge shall have jurisdiction and shall preside over all matters referred to it by the Citizen Potawatomi Nation District Court.

(b) The Healing to Wellness Court Judge shall have the following additional duties and responsibilities.

- (1) Schedule sessions of the Healing to Wellness Court, where the Judge shall meet with each individual Healing to Wellness Court participant in Court;
- (2) Draft and promulgate rules governing the administration of the Healing to Wellness Court; provided, that such rules do not contradict any rules of procedure of the Citizen Potawatomi Nation Tribal Code, or abridge, enlarge or modify the substantive right of any party;
- (3) Meet with the Healing to Wellness Court Team as necessary;

- (4) Order punishments and incentives as necessary to further the objectives of the Healing To Wellness Court, provided that such terms or conditions do not violate or abridge any fundamental or substantive right of any party; and
- (5) Monitor the privacy and accuracy of all the Healing To Wellness Court records.

NADCP Drug Court Standard 3.B. notes that a Drug Court judge should preside for no less than two consecutive years to maintain the continuity of the program and ensure the judge is knowledgeable about Drug Court policies and procedures.²⁵ The code can specify a minimum judicial term.

Poarch Band of Creek Indians

Title 3 – Judicial | Chapter III – Poarch Band of Creek Indians Drug Court

Sec. 3-3-3 – Term of Office of Drug Court Judge

- (a) The Drug Court Judge shall hold office for a period of three (3) years, unless sooner removed pursuant to §3-1-7(a) or by reason of resignation, death, or incapacitation.
- (b) The Drug Court Judge's term of office can be reconfirmed without limitation by the Tribal Council upon expiration of each three (3) year term.

Similarly, NADCP Drug Court Standard 3.C. notes that participants should ordinarily appear before the same judge throughout their enrollment in the Drug Court.²⁶

Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

10.E. Judicial Supervision, Consistent Supervision, & Training

The same Na:tini-x'we' Na:xo-xi-nayi-din court judge shall be assigned to supervise individual participants from Na:tini-x'we' Na:xo-xi-nayi-din court admission to graduation or revocation of admission.

Tribal Key Component #9 encourages continuing interdisciplinary and community education. Judicial education, particularly an interdisciplinary one is critical. It is also possible the code otherwise speaks on judicial education, in which case, Wellness Court should also be included.

Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

10.E. Judicial Supervision, Consistent Supervision, & Training

The Na:tini-x'we' Na:xo-xi-nayi-din court judge shall obtain training with respect to all classes, groups, or other activities required by the Na:tini-x'we' Na:xo-xi-nayi-din treatment plan.

²⁵ Id. at Standard 3.B., p. 20.

²⁶ Id. at Standard 3.C., p. 20.

Prosecutors and Defense Counselors

Generally, the prosecutor and defense counselor are considered critical team members.²⁷ However, the following Fort Peck provision prioritizes the non-adversarial nature of the Wellness Court over the attorneys' presence.

Fort Peck Assiniboine & Sioux Tribes

Title 6, Chapter 10. Fort Peck Wellness Court Programs

Section 1005. Wellness Court procedures.

(b) Hearing.

(2) The Wellness Court is strictly a non-adversarial forum and there shall be no prosecuting or defense attorneys/lay counselors allowed to participate in any court proceedings.

Treatment

The treatment provider is on par with the judge. Their presence is what makes the Wellness Court a notable contrast from the adversarial system. But especially because the treatment provider is often not a court staff member, codifying their participation can be a useful tool to unify multiple tribal agencies under one Wellness Court umbrella.

Consider

Key Component #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.

Muscogee (Creek) Nation

Title 26. Judicial Branch/Courts Vhkv Fvtcecvlke/Fvtceckv Cuko

§ 6–106. Muscogee (Creek) Nation Behavioral Health responsibilities

Muscogee (Creek) Nation Behavioral Health shall be the primary service provider for alcohol and drug abuse assessments, testing, counseling, and treatment services to be provided under the individual treatment plans, provided that Muscogee (Creek) Nation Behavioral Health shall coordinate its services with other agencies participating in the program in accordance with the interagency protocols and standards adopted pursuant to subsection B of Title 26, § 6–104

²⁷ Id. at Standard 8.A., p. 38.

Coordinator

The coordinator is a critical role within the Wellness Court, but it is also a new position. Codifying their roles can both hold the coordinator accountable, while also alerting other agencies that the coordinator is statutorily mandated to accomplish tasks that will require their accommodation.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter III. Referral and Assessment

12. Clinical Assessment

g. The Wellness Court Coordinator will be immediately notified of the Clinical Assessment determination.

- i. The Wellness Court Coordinator shall prepare copies of eligibility documentation to be presented to the Team.

22. Compliance Reports

a. The Wellness Court Coordinator is responsible for completing bi-weekly compliance reports to be distributed to the Wellness Court for the purpose of staffing.

b. The compliance reports will at a minimum provide:

- i. an overview of a participant's compliance with their treatment plan,
- ii. compliance with the program rules as laid out within the Participant Handbook,
- iii. their period of sobriety,
- iv. any additional services that may be necessary to assist the participant,
- v. their start date,
- vi. the total number of weeks they have been in the program,
- vii. the phase that they are in and week in such phase, taking into consideration and noting any advancement or freeze,
- viii. outstanding Wellness Court fees owed, and
- ix. a complete and detailed list of all sanctions since the start of their program.

Like a Wellness Court Coordinator, the Muscogee (Creek) Nation introduces a new position, the Children and Family Services Administrator. Codification holds this position accountable, while also alerting other agencies of their expected collaboration.

Muscogee (Creek) Nation

Title 26. Judicial Branch/Courts Vhakov Fvtcecvlke/Fvtceckv Cuko

§ 6–105. Children and Family Services Administration responsibilities

The CFSA shall be primarily responsible for managing and coordinating services and activities under the individual treatment plans, provided that in drafting and formulating individual treatment plans, CFSA shall consult with other agencies participating in the program in accordance with the interagency protocols and standards adopted pursuant to subsection B of Title 26, § 6–104.

Chapter 7. Wellness Court Procedures

Establishing the Policies and Procedures

Depending on the structure of the tribal judiciary, a docket may require statutory authorization to establish its own rules, policies, and procedures. Because the Tribal Healing to Wellness Court (“Wellness Court”) is a unique structure that may be considered a docket, or a hybrid, codification may also be prudent. Further, depending on how the Wellness Court divvies provisions between the code and the policies, codification may provide additional cover to ensure that provisions within the policies and procedures carry enough weight to bind the participant and the agency partners on the Wellness Court team.

The Eastern Band of Cherokee treat their Wellness Court policies and procedures like other tribal court rules, requiring approval by the Chief Justice.

Eastern Band of Cherokee Indians

Chapter 7C – Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi (Cherokee Wellness Court)

Sec. 7C-6. - Establishment of policies and procedures.

Policies and procedures for the Cherokee Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi Court shall be established by the Cherokee Tribal Court and published under the authority of the Chief Justice.

The CTCLUSI Wellness Court can establish their policies and procedures, but the Tribal Council must review and approve them.

Confederated Tribes of Coos, Lower Umqua, and Siuslaw Indians

Title 2 – Rules of Procedure

Chapter 2-13: Wellness Court

2-13-5. CTCLUSI Wellness Court Procedures.

(a) Initial Policies and Procedures for the CTCLUSI Wellness Court shall be established by the CTCLUSI Wellness Court Team and submitted to the CTCLUSI Tribal Council for review and approval.

(b) Thereafter, the CTCLUSI Wellness Court Team may amend and modify the policies and procedures as necessary to improve the HTW Court and its processes. Any such amendments or modifications shall be by a majority vote at a CTCLUSI Wellness Court Team meeting with each member eligible to carry one vote. Notice of the meeting to amend and/or modify the Policies and Procedures must be given to each member of the CTCLUSI Wellness Court Team at least seven days prior to the meeting.

(c) In order for the Policies and Procedures to be amended or modified, the CTCULSI Wellness Court Judge and a least three other members of the CTCLUSI Wellness Court Team must be present at the meeting.

Similarly, the Ho Chunk Nation Supreme Court must approve the Wellness Court policies and procedures, including on an annual basis.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter II. Jurisdiction, Court Structure, Policies, Procedures, and Program Rules

8. Policies and Procedures. The Wellness Court shall promulgate and follow Policies and Procedures in administering the Wellness Court. Policies and Procedures are subject to change, and changes shall be adequately and timely published to the Team, public, and participants. Upon reviewing the Policies and Procedures and considering any recommended changes, the Ho-Chunk Nation Supreme Court shall approve the Policies and Procedures on an annual basis or prior to the annual review when deemed necessary by the Supreme Court.

9. Participant Handbook. The Wellness Court shall promulgate and distribute Participant Handbooks to the participants of the Wellness Court Program. The Participant Handbook shall set forth the rules of the program and obligations of the participant in a clear manner. Handbooks shall be distributed, and the defense attorney/lay advocate shall go through the handbook with each participant, as soon as the participant is admitted to the Wellness Court and obtain written acknowledgment of participants understanding of the rules of the Wellness Court.... Upon reviewing the Participant Handbook and considering any recommended changes, the Ho-Chunk Nation Supreme Court shall approve the Participant Handbook on an annual basis or prior to the annual review when deemed necessary by the Supreme Court.

While the Citizen Potawatomi Nation provides the Wellness Court the ability to make its own policies and procedures, the tribal court system retains “administrative control,” which effectively looks like a veto power.

Citizen Potawatomi Nation

Title 15 – Healing to Wellness Court Administration and Procedure

Section 15-1-103. Administrative Authority of the Healing to Wellness Court

Nothing in this Act shall be construed to limit the authority of the tribal court system to exercise administrative control over the procedures to be followed in the Healing to Wellness Court to the extent its actions are not inconsistent with the provisions of this Act.

The Fort Peck Tribal Code authorizes the team to create and modify the policies and procedures. Though the code does state the process by which the team must follow to enact modifications.

Fort Peck Assiniboine & Sioux Tribes

Title 6 – Criminal Procedures | Chapter 10. Fort Peck Wellness Court Programs

Section 1005. Wellness Court procedures.

(a) Establishment of policies and procedures.

(1) Policies and procedures for the Wellness Court shall be established by the Fort Peck Tribal Wellness Court Team.

(2) Thereafter, the Wellness Court Team shall amend and modify the policies and procedures as necessary to improve the Wellness Court process. Any such amendments or modifications shall be by a majority vote at a Wellness Court Team Meeting and only after notice of the meeting is given each member of the Wellness Court Team at least 10 days prior to the meeting.

(3) In order for the policies and procedures to be amended or modified, there shall be present at the Wellness Court Team meeting the judge and at least four other members of the Wellness Court Team.

(b) Hearings.

(3) The Wellness Court Judge shall make all relevant findings relevant to each participant's case pursuant to the policies and procedures adopted by the Wellness Court Team.

(4) Wellness Court hearings shall proceed pursuant to the policies and procedures adopted by the Wellness Court Team.

The Muscogee (Creek) Nation Wellness Court also has more autonomy to develop their policies and procedures, required only to consult with their respective agencies.

Muscogee (Creek) Nation

Title 26. Judicial Branch/Courts Vhakv Fvtcecvlke/Fvtceckv Cuko

§ 6–103. Rules and procedures

The District Court may, in its discretion, adopt written rules and procedures for the conduct of hearings and proceedings within the Family Drug Court Program and the administration of cases therein, provided that copies of such rules and procedures shall be public documents and made available to all persons participating in the Family Drug Court Program and, upon request to any citizen or attorneys admitted to the Muscogee (Creek) Nation Bar Association.

§ 6–104. Family Drug Court Implementation Team

B. The Family Drug Court Implementation Team is hereby authorized to develop policies, procedures, and inter-agency/departmental protocols and standards for use in the operation of the Family Drug Court Program, as well as standardized forms and other documents to be used in the program. In developing the foregoing, the Team shall consult with their respective agencies, the judicial branch, attorneys who provide indigent defense services, and other outside agencies

Similarly, the Pueblo of Pojoaque Wellness Court has full authority to establish their own policies and procedures, though the code provides topics that must be included.

Pueblo of Pojoaque

B-6 Wen Hey Kha Wosatsi Khuu (Path to Wellness) Court

(d) Policies and Procedures. The Path to Wellness Team shall promulgate policies and procedures to address the issues of confidentiality, treatment, sanctions, community involvement, and all other necessary components of Healing to Wellness Courts. The Path to Wellness Court will adhere to all rules and guidelines of the Path to Wellness Policies and Procedures Manual.

Treatment Plan

The incorporation of substance abuse is one of the most unique and critical components of the Wellness Court. Because it requires the full participation of a nonjudicial agency, it is common for tribes to codify the creation of a treatment plan as a minimal expectation.

Consider

Key Component #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.

The Ho Chunk Nation details the types of services that must be made available, and the expectation that team members will not just assist participants in accessing those services, but they will make “concrete arrangements,” a high standard.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter IV. Monitoring, Testing, and Assessments

21. Services. The Wellness Court, through adequate funding from the Legislature, shall ensure that substance abuse treatment services, relapse prevention services, mental health treatment referrals and/or services, education, vocational opportunities are appropriate and available.

23. Formal Staffing.... The Team should also make concrete arrangements to assist participants in areas of need.

The Hoopa Valley Tribe describes access to treatment services as a “right” of the participant. The code details the minimum expectation for contents of the treatment plan, while also establishing the expected menu of available services. This provides notice to community members about the types of services they can expect, while also putting pressure on service providers to ensure these services are and remain available.

Hoopa Valley Tribe

Title 4A – Na:tini-x’we’ Na:xo-xi-nayi-din [*The people’s get well place*] Court Code

6. C. Right to Access Services Under Treatment Plan

Every Na:tini-x’we’ Na:xo-xi-nayi-din court participant has the right to access the services outlined in his/her individual treatment plans prepared under Section 10B of this Code and any other services and treatment the participant is willing and able to complete without cost to the Tribe.

10.C. Contents of Treatment Plan

Each Na:tini-x’we’ Na:xo-xi-nayi-din treatment plan shall contain a combination of educational and therapeutic activities including any combination of the following, based upon recommendations derived from the results of the clinical assessment, provided that every treatment plan, at minimum, shall include numbers 1, 2, 3, and 5 below:

1. classes on the effects of alcohol and drug use on the mind, body, and spirit (alcohol and drug education);
2. individual and/or family counseling;
3. facilitated group meetings with the goal of teaching participants how they currently make decisions and how to make healthy decisions in the future (cognitive behavioral therapy);
4. other classes and groups that focus on specific topics;

5. individual counseling to plan how the participant will identify what triggers the urge to use alcohol and/or drugs, and to develop an individualized relapse plan to deal with such urges (relapse prevention);
6. support groups (such as Alcoholics Anonymous and Alateen)
7. elder or peer mentoring;
8. hunting, fishing, and/or culture camps;
9. other traditional activities that the tribe may require; and
10. other activities as the Na:tini-x'we' Na:xo-xi-nayi-din court team may from time to time approve.

Case Management

Case management is a “soft” service with vague guidelines for what courts or participants should expect from case management. Yet, it is also a core component of the Wellness Court. Codifying the minimum expectations of case management can solidify expectations and help cement case management as a core court service.

Consider

Key Component #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.

Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

6.D. Right to Case Management Services

All Na:tini-x'we' Na:xo-xi-nayi-din court participants have the right to case management services to ensure that they are able to meet the requirements of their individual treatment plans as outlined in section 10C of this Code.

10.D. Case Management

The social worker shall make a home visit with the child, his parent(s), guardian, or custodian, and other eligible family or household member(s) each month, beginning with the child's admission into the Na:tini-x'we' Na:xo-xi-nayi-din court, to assist the household in identifying the need for, and obtaining financial, medical, vocational, and/or other vital services and assistance.

Supervision

Some Wellness Courts structure supervision as an extension of a participant's probation requirements. Some Wellness Court task supervision responsibilities to a dedicated Wellness Court staff member. Codifying the minimum expectations of supervision can both provide

notice to candidates, and allow the court, probation, and law enforcement to formally structure how they will ensure supervision is provided within the Wellness Court.

Consider

Key Component #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.

The Tulalip Tribes mandate that supervision will be provided by the probation officer.

Tulalip Tribes

Chapter 2.25. Criminal Procedures

2.25.110 Plea Procedures

(2)(a)(iii) Violations of Agreement. ... The conditions of the agreement shall be monitored by the Tulalip Tribal Probation Officer.

The Ho Chunk Nation establishes an expectation that supervision will include GPS and SCRAM units.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter IV. Monitoring, Testing, and Assessments

15. Monitoring. The Wellness Court shall provide a participant with consistent, continual, and close monitoring.

- a. Monitoring may include, but is not limited to, the use of a Global Positioning System (GPS) and Secure Continuous Remote Alcohol Monitor (SCRAM) units.
- b. Any loss or damage to the GPS and/or SCRAM units shall be the financial responsibility of the program participants.

Drug Testing

While the details of Wellness Court requirements and treatment plans are generally reserved for the policies and procedures, drug testing can be a unique exception. NADCP best practices note drug testing is a critical component, but only if conducted frequently and randomly. This is true for all participants.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter IV. Monitoring, Testing, and Assessments

17. Testing. The Wellness Court shall ensure periodic and random testing for the presence of any controlled substance or alcohol in a participant’s blood, urine, or breath, using the best available, accepted, and scientifically valid methods.

The Hoopa Valley Tribe provides for drug testing to occur at least once a week. The code also provides notice to candidates about the drug testing expectations.

Hoopa Valley Tribe

Title 4A – Na:tini-x’we’ Na:xo-xi-nayi-din [*The people’s get well place*] Court Code

11.C. Weekly Random Alcohol and/or Drug Testing

All individuals admitted to participate in the Na:tini-x’we’ Na:xo-xi-nayi-din court program shall be randomly alcohol and/or drug tested on a weekly basis. The results of such testing shall be reported to the judge at the weekly case staffing conferences.

11.D. Weekly Pre-Hearing and/or For Cause Drug Testing

All individuals admitted to participate in the Na:tini-x’we’ Na:xo-xi-nayi-din program may be alcohol and/or drug tested for good cause at anytime, including prior to status hearings, during the Na:tini-x’we’ Na:xo-xi-nayi-din court program. The probation officer has good cause to undertake such testing when he observes signs or behavior or detects odors that would lead a reasonable person to believe that a person is possessing or using alcohol and/or drugs.

Records

On the one hand, the Wellness Court is a diversion from the adversarial process and so the concerns for maintaining an evidentiary record intended to aid in the prosecution of a defendant are minimized. On the other hand, the Wellness Court is a hybrid collaboration of multiple agencies that likely do *not* have a universal data collection system. Moreover, while the Wellness Court is not striving to prosecute, it is striving to aid in the treatment and healing of the participant. Therefore, Wellness Courts often seek a reliable, detailed information-gathering process that not only centralizes information, but also processes it quickly. Candidly, this is an extremely difficult goal toward which all courts are constantly refining.

A major barrier to effective information-gathering is conflicting agency security restrictions and protocols, or at least the perceptions that these protocols conflict. Codification can be an extremely useful tool to convince agencies that not only are they permitted to share information with the Wellness Court but also they are required to do so.

Consider

Key Component #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.

The Yurok Tribe provides a succinct requirement for regard reports.

Yurok Tribe

Chapter 2.10 – Rules of Court

2.10.340 Wellness Court Reports.

All wellness service provider reports shall be made in writing and filed whenever possible seven calendar days (five court days) prior to the scheduled court hearing date. Where the original court date is scheduled in less than seven days, the service provider may file a motion to request an extension. The Court may independent of this rule establish a report submission schedule for any action. Papers filed with a service provider report are made a part of the record.

The Ho Chunk Nation provides for extensive record collection, including tracking all those referred to the court, each participant and their progress, and systemwide services. The code even requires a two-year evaluation.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter III. Referral and Assessment

13. Admission to Program.

e.ii.1. Documentation of receipt of the Participant Handbook and meeting with the defense attorney/lay advocate shall be placed within the participant’s file to be kept by the Wellness Court Coordinator.

14. Records of Denials. The Wellness Court shall retain all copies of information pertaining to denials for data and research purposes.

Chapter VII. Records, Budget, Advisory Board

29. Collection and Maintenance of Records.

a. The Wellness Court shall collect data on each individual applicant, participant, and entire program.

i. The Wellness Court shall maintain files on each individual applicant or referral who is denied or refused admission to the program, including the reasons for the denial or rejection, the criminal history of the applicant, the preadmission legal screening and clinical assessment, and other demographic information as deemed beneficial by the Ho-Chunk Nation Judiciary.

ii. The Wellness Court shall maintain files on each participant in the program for review and evaluation as well as treatment. The information collected for evaluation purposes

must include a minimum standard data set as deemed appropriate through evidence based practices, and at a minimum contain:

1. Location and contact information for each individual participant, both upon admission and termination/graduation of the program for follow-up reviews, and third party contact information;
2. Significant transition point dates, including dates of referral, admission, new court orders, violations, jail/confinement, changes in services or treatments provided, phase advancements, periods of phase freeze, discharge for graduation or termination, any provision of after-care, and after-program recidivism;
3. The individual's precipitating offenses and significant factual information, source of referral, and all treatment court evaluations and assessments;
4. Treatments provided, including intensity of care or dosage, and their outcomes;
5. Other services or opportunities provided to the individual and resulting use by the individual, such as education or employment and participation of and outcome for that individual;
6. Reasons for termination or graduation from the program.

iii. The Wellness Court shall conduct a two year, follow-up contacts with and reviews of participants for key outcome indicators, such as drug use, recidivism, and employment yearly. These follow-up contacts and reviews of former participants are not extensions of the court's jurisdiction over the individuals.

The Hoopa Valley Tribe similar provides for extensive record collection.

Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [The people's get well place] Court Code

13.A. Na:tini-x'we' Na:xo-xi-nayi-din Court Graduation

... Upon graduation the Na:tini-x'we' Na:xo-xi-nayi-din court judge shall issue a written Na:tini-x'we' Na:xo-xi-nayi-din court completion order that shall be formally filed in the juvenile court files. This will also be filed in the Na:tini-x'we' Na:xo-xi-nayi-din court.

14. Na:tini-x'we' Na:xo-xi-nayi-din Court Records

The Na:tini-x'we' Na:xo-xi-nayi-din court coordinator shall establish and maintain both a paper filing system and a computer database to track information for all participants of the Na:tini-x'we' Na:xo-xi-nayi-din court (before, during and after participation). This information will be used to monitor program effectiveness, to make improvements to the program, and to demonstrate program innovations or success, and to acquire further funding. The forms and computer database shall be designed to collect and report on the following information:

1. Name, age, birth date, sex, tribe, grade in school, and the name of the school of the participant;
2. Whether the participant is living with parents, has children, or is employed before and during Na:tini-x'we' Na:xo-xi-nayi-din court participant and names of the participant's parent(s), guardian, or custodian, or other eligible family or household member and extended family as available or appropriate;
3. The specific delinquent act or family in need provision underlying Na:tini-x'we' Na:xo-xi-nayi-din court admission;
4. The criteria met for legal and clinical eligibility (list the specific clinical screening tool used);

5. Dates of all court hearings and orders and types of orders;
6. Dates of admission, date of physical, health issues upon admission;
7. Documented incidents in school, absence rate, grades, etc.;
8. The specific treatment plan requirements for each participant (classes, counseling, groups, support groups, mentoring, outdoor programs, etc.);
9. The specific beginning dates for each phase of treatment and phase graduation dates;
10. Changes in grades, grade level, school incidents, and absence and dropout dates;
11. Date of expulsion from the Na:tini-x'we' Na:xo-xi-nayi-din court program;
12. Date of re-admission to the Na:tini-x'we' Na:xo-xi-nayi-din court program;
13. Date of each alcohol and/or drug test and results;
14. Dates of new reports of delinquent act;
15. Dates of arrest;
16. Dates of changes in employment;
17. Number of babies born to participants alcohol and drug free;
18. Dates of required status hearings and appearances by participants and their parent(s), guardian, or custodian, or other eligible family or household members;
19. Date and type of sanction issued and for what act of omission;
20. Date and type of incentive awarded and for what act or omission;
21. Attendance record for each treatment plan requirement (classes, counseling, groups, support groups, mentoring, outdoor programs, etc.);
22. Date and type of post-participation report of juvenile act or family in need provision;
23. Date and type of act of post-participation detentions or arrests;
24. Dates of post-participation truancy;
25. Dates and types of post-participation alcohol and drug counseling or other treatment; and
26. Post-participation employment and income level.

Chapter 8. Wellness Court Hearing

The Tribal Healing to Wellness Court (“Wellness Court”) hearing is a unique departure from the typical procedure-heavy adversarial system. Depending on the structure of the tribal judiciary and the Wellness Court within it, it may be necessary to codify permission for the Wellness Court hearing to deviate from typical court procedure.

Consider

Key Component #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.

Purpose

The code can be a useful place to declare the goals, aspirations, and visions for the Wellness Court, while the particulars are reserved for the policies and procedures. Codifying the purpose provides a useful backbone to measure whether the actions of the Wellness Court meet the codified goals, including as they pertain to the hearing. At least one consistent feature of the Wellness Court is its frequency. A Wellness Court is free to do with the time what it likes—so long as it meets regularly.

Note the Ho Chunk Nation codifies that the Wellness Court is “strictly a non-adversarial forum” and that hearings will take place at least every two weeks.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter VI. Court Procedure and Hearings

26. Status Hearings.

- a. The purpose of Status Hearings is to judicially monitor whether the participants are attending their required treatment sessions and activities, to review their weekly random alcohol and/or drug test results, and to formally reward or sanction participants for progress, non-compliance, or relapse in moving through their treatment plan.
- b. The Status Hearings shall include discussion between the Court and the participant in regard to the progress or lack thereof being made by the participant on his or her treatment program....
- d. The Wellness Court is strictly a non-adversarial forum.

Status Hearings shall be held at a minimum of every two weeks.

The Hoopa Valley Tribe codifies weekly hearings. The tribe aspires for the hearings to provide judicial guidance.

Hoopa Valley Tribe

Title 4A – Na:tini-x’we’ Na:xo-xi-nayi-din [*The people’s get well place*] Court Code

10.E. Judicial Supervision, Consistent Supervision, & Training

The Na:tini-x'we' Na:xo-xi-nayi-din court judge shall hold ... weekly Na:tini-x'we' Na:xo-xi-nayi-din court status hearings to supervise each participant's attendance and progress in required treatment plan counseling and/or activities under section [clinical assessment and individualized treatment plan].

11.B. Weekly Na:tini-x'we' Na:xo-xi-nayi-din Court Status Hearing

... The general purpose of the weekly Na:tini-x'we' Na:xo-xi-nayi-din court status hearing is to provide participants with judicial guidance with judicial guidance and mentoring to build an ongoing relationship with participants and guide them through the healing process. Specifically, the purpose is to judicially monitor whether the participants are attending their required treatment sessions and activities, to review their weekly random alcohol and/or drug test results, and to formally reward or punish participants for progress, non-compliance, or relapse ... moving through their treatment plan.

Participants Shall Appear

Like other dockets, attending the weekly Wellness Court hearing is mandatory. It may be useful to place this provision amongst other “conditions” of Wellness Court participation.

Pueblo of Pojoaque

B-6 Wen Hey Kha Wosatsi Khuu (Path to Wellness) Court

(c) Court Sessions. Participants in the Path to Wellness Court will appear regularly before the Judge throughout the duration of their participation.

Rules of Evidence

Besides frequency, the Wellness Court hearing is most notable for its departure from the typical court rules. The specifics of the Wellness Court hearing structure, attendees, information dashboards, and other particulars may be reserved for the policies and procedures. But it may be necessary to codify permission for the Wellness Court to deviate from otherwise mandated court procedure, including the rules of evidence.

The Fort Peck Tribes now the Wellness Court is *not* a court of record.

Fort Peck Assiniboine & Sioux Tribes

Title 6 – Criminal Procedure | Chapter 10. Fort Peck Wellness Court Programs

Section 1004. Rules of evidence.

The Wellness Court shall not be a court of record. Any information obtained, used or disclosed by a member of the Wellness Court Team, including the participant is under the jurisdiction of the Wellness Court shall not be used as evidence against the participant in any other proceeding in the Fort Peck Tribal Court or any other court in any other jurisdiction. All Wellness Court records are privileged and confidential and shall not be disclosed except to the members of the Wellness Court Team. The Rules of Evidence adopted by the Fort Peck Tribes shall not apply in any Wellness Court proceedings.

Similarly, the Eastern Band of Cherokee note the rules of evidence do not apply in Wellness Court.

Eastern Band of Cherokee Indians

Chapter 7C – Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi (Cherokee Wellness Court)

Sec. 7C-5. - Rules of evidence.

The Rules of Evidence adopted by the Eastern Band of Cherokee Indians shall not apply in any proceedings in this Court. This Court shall not be a court of record. All information obtained from or disclosed by a participant under the jurisdiction of Cherokee Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi Court is privileged and confidential information. A judge may order disclosure as allowed by federal, tribal and state law.

The Citizen Potawatomi Nation goes further to provide confidentiality and privilege protection to Wellness Court hearings.

Citizen Potawatomi Nation

Title 15 – Healing to Wellness Court Administration and Procedure

Section 15-1-108. Healing to Wellness Court Records and Communications

The Healing to Wellness Court records are confidential and shall not be admissible in subsequent proceedings, civil or criminal. Communications between the Healing To Wellness Court Treatment Provider and the defendants shall be privileged unless a court of competent jurisdiction determines there is a compelling public interest that the communications be submitted to the court for an in camera review.

The CTCLUSI simply note the rules of evidence will not be strictly enforced, though they still apply. Wellness Court is not a court of record, and information is privileged and confidential.

Confederated Tribes of Coos, Lower Umqua, and Siuslaw Indians

Title 2 – Rules of Procedure

Chapter 2-13: Wellness Court

2-13-4. Rules of Evidence.

The Rules of Evidence adopted by the CTCLUSI shall not be strictly applied in CTCLUSI Wellness Court proceedings. The CTCLUSI Wellness Court shall not be a court of record. All information obtained from or disclosed by a participant under the jurisdiction of CTCLUSI Wellness Court is both privileged and confidential information.... Additionally, a judge may order disclosure as allowed by federal, tribal and state law.

The Ho Chunk Nation provides detailed and specific confidentiality protections, including for assessments and e-mails.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter II. Jurisdiction, Court Structure, Policies, Procedures, and Program Rules

6. Jurisdiction.

- a.i. The Wellness Court shall exercise independent discretion in its monitoring of assigned cases.

Chapter III. Referral and Assessment

12. Clinical Assessment

e. The Clinical Assessment shall remain confidential, will not be open to inspection by the public at the Ho-Chunk Nation Wa Ehi Hoci, is not discoverable under the DISCOVERY ACT, 2 HCC § 3, and shall not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use.

Chapter V. Wellness Court Staffing

24. Informal Staffing

c. E-mails shall remain confidential.

Chapter VI. Court Procedure and Hearings

25. Rules of Evidence. Any information obtained, used or disclosed by a member of the Wellness Court Team, regarding the treatment methods employed by the Wellness Court team, while the participant is under the jurisdiction of the Wellness Court shall not be used as evidence against the participant in any other proceeding in the Ho-Chunk Nation Court system or any other court in any other jurisdiction. All Wellness Court records are privileged and confidential and shall not be disclosed except to the members of the Wellness Court Team. The Rules of Evidence adopted by the Ho-Chunk Nation Judiciary shall not apply in any Wellness Court proceedings.

Hoopa Valley and Puyallup specifically couch their confidentiality as it pertains to admissibility within other court dockets.

Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

3. Na:tini-x'we' Na:xo-xi-nayi-din Court Procedure

B. Use in Other Proceedings. No material, action or other evidence presented before the court or in any activities pursuant to this court shall be deemed admissible as evidence against the child in any proceeding in another court, including the tribal court except as may be necessary for Constitutional Double Jeopardy proceedings.

Puyallup Tribe

Title 4 Courts and Procedure | Ch. 4.04 Rules of Criminal Procedure

4.04.260 Rule 11.2 – Alternative resolutions.

(c) Deferred Prosecution Petitions....

If the petition is not approved or is withdrawn before approval, evidence pertaining to or resulting from the petition is inadmissible in any proceeding or trial.

The Ho Chunk Nation appears to recognize the nature of substance abuse as a disease, and specifically provides for instance in which a participant lies to the court. Such failure of candor will not be held against them.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter III. Referral and Assessment

14. Records of Denials.... Information pertaining to denials shall not be made transferable to any entity other than the grant provider/funder.

Open (or Closed) to the Public

The Wellness Court hearing is frequently treated as an extension of group therapy. Trust and candor are prized. Therefore, unlike other court hearings, the Wellness Court hearings can sometimes be closed to the public to foster this trust amongst participants and the team.

Fort Peck Assiniboine & Sioux Tribes

Title 6, Chapter 10. Fort Peck Wellness Court Programs

Section 1005. Wellness Court procedures.

(b) Hearings.

- (1) All Wellness Court hearings shall be closed to the public. Only participants and members of the Wellness Court Team shall be present during the court hearings. An individual participant may request that other participants be barred from the courtroom during a court hearing and the judge shall honor the request.

Confederated Tribes of Coos, Lower Umqua, and Siuslaw Indians

Title 2 – Rules of Procedure

Chapter 2-13: Wellness Court

2-13-6. CTCLUSI Wellness Court Sessions.

- (a) All CTCLUSI Wellness Court sessions shall be closed to the public except for invited guests who have duly executed confidentiality agreements, and subject to the restrictions set forth by HPAA, and/or other federal, state, or CTCLUSI law, and the discretion of the CTCLUSI Wellness Court Judge.

The Ho Chunk Nation provides that while the hearings will be open to the public, the staffings will be closed.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter III. Referral and Assessment

23. Formal Staffing.

- b. All Wellness Court staffings will be closed to the public and are confidential.
 - i. Only members of the Wellness Court Team shall be present during the staffings.
 1. If an individual outside of the Wellness Court Team is necessary to adequately staff a case, then that individual will complete a confidentiality agreement and be advised that any information they hear is to be strictly confidential.
 - ii. At times participants may be called into a staffing, or request to appear on their own, as in the case of phase advancement. A participant will be present only for the part of the staffing addressing that participant, and then will be excluded from the rest of the meeting.

26. Status Hearings.

- c. All Wellness Court hearings shall be open to the public.

Team Member Presence

A Wellness Court hearing needs more than just the judge. Particularly for non-judiciary team members, regular court attendance can be foreign and unnerving. Mandated attendance in the code can ease these hesitations.

Fort Peck Assiniboine & Sioux Tribes

Title 6, Chapter 10. Fort Peck Wellness Court Programs

Section 1005. Wellness Court procedures.

(b) Hearings.

(3) Wellness Court hearings shall require a quorum of the Wellness Court Team in order to proceed. A quorum of the Wellness Court Team shall be defined as the judge, the case manager or court coordinator, the treatment specialist and at least one other member of the Wellness Court Team as may be described in the policies and procedures adopted by the Wellness Court Team.

Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

8.A. Purpose and Conduct of Na:tini-x'we' Na:xo-xi-nayi-din Court Admission Hearing

The Na:tini-x'we' Na:xo-xi-nayi-din court coordinator, probation officer, and the alcohol and drug counselor shall attend the Na:tini-x'we' Na:xo-xi-nayi-din court admission hearing.

11.B. Weekly Na:tini-x'we' Na:xo-xi-nayi-din Court Status Hearing

The Na:tini-x'we' Na:xo-xi-nayi-din court team shall attend the Na:tini-x'we' Na:xo-xi-nayi-din status hearings.

Staffing

While not a component of the Wellness Court hearing, the staffing meeting prior to the hearing comprises the necessary preparation for a successful hearing.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter V. Wellness Court Staffing

23. Formal Staffing

a. The purpose of the Wellness Court staffings is to update the Team on the progress and needs of each participant in his/her treatment plan, to report the results of weekly random alcohol and/or drug testing, and to discuss possible sanctions and incentives for non-compliance, tampered with or failed tests, but also to reward progress.

Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

10.E. Judicial Supervision, Consistent Supervision, & Training

The Na:tini-x'we' Na:xo-xi-nayi-din court judge shall hold weekly pre-hearing staffing conferences with the Na:tini-x'we' Na:xo-xi-nayi-din court team ...

11.A. Weekly Staffing Conference

Weekly staffing conferences shall be held on the same day prior to weekly Na:tini-x'we' Na:xo-xi-nayi-din court status hearings. The Na:tini-x'we' Na:xo-xi-nayi-din court team shall attend the weekly status conferences. The purposes of the Na:tini-x'we' Na:xo-xi-nayi-din staffing conference is to update the judge on the progress and needs of each participant in his treatment plan, to report the results of weekly random alcohol and/or drug testing and to discuss possible incentives and sanctions for non-compliance, tampered with or failed tests, and also to reward progress. These sanctions and incentives shall be applied by the judge in the status hearing later that same day. The team shall also make concrete arrangements to assist the participants in areas of identified need.

In addition to staffing, the Ho Chunk Nation authorizes the Wellness Court team to act by e-mail.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter V. Wellness Court Staffing

24. Informal Staffing

- a. At times decisions need to be made quickly. As such, Wellness Court members are permitted to make decisions via e-mail provided all members are part of the e-mail feed.
- b. Decisions made by e-mail shall be made through discussion and by consensus.

Chapter 9. Sanctions

Immediate sanctions have proven to be effective responses to substance use lapses. They serve as a check on participant behavior, and offered within a treatment framework, can effectively correct a participant's behavior and ensure they do not veer too far from a healing path. However, sanctions can include restraints on liberty. So, code provisions may be required to authorize and restrain their use. The Tribal Healing to Wellness Court ("Wellness Court") needs to be authorized to issue sanctions in an immediate manner, diverting from the typical court process. But the Wellness Court also requires restraint on their sanction authority to ensure the Wellness Court does not dip into a dark web of penalties with no civil rights.

Consider

Key Component #5: Incentives and Sanctions

Progressive rewards (or incentives) and consequences (or sanctions) are used to encourage participant compliance with the Tribal Healing to Wellness Court requirements.

The Fort Peck Tribes provides notice that sanctions are a possibility within Wellness Court.

Fort Peck Assiniboine & Sioux Tribes

Title 6, Chapter 10. Fort Peck Wellness Court Programs

Section 1005. Wellness Court procedures.

(3) Sanctions. If a participant is not compliant with the requirements of the Wellness Court, sanctions against the non-compliant individual may be issued by the Wellness Court Judge. Sanctions include but are not limited to incarceration, community service work and an increase in requirements issued by the Wellness Court Team.

The Ho Chunk Nation provides a list of the type of sanctions a participant might expect. While this is not a direct limit on the Wellness Court, it does provide guidance as to the bounds of what the judiciary might tolerate.

Ho-Chunk Nation

Title 4 – Children, Family and Elder Welfare

Section 15 – Healing to Wellness Court Code, Chapter IV. Monitoring, Testing, and Assessments

20. Sanctions and Incentives.

a. Sanctions. The Wellness Court shall implement and utilize a system of appropriate, graduated, and immediate sanctions for non-compliance.

- i. Sanctions include, but are not limited to, incarceration, phase freeze, and an increase in requirements issued by the Wellness Court Team.
- ii. Therapeutic Sanctions. If a participant is not compliant with his/her treatment plan, the Team may utilize therapeutic sanctions to assist with getting the participant back on track with his/her treatment plan, which may include, but is not limited to thinking reports and increased counseling sessions and self-help meetings.

iii. The types of sanctions used shall take into consideration the distal and proximal goals set for each participant.

b. Incentives. The Wellness Court shall implement and utilize a system of appropriate, graduated, and immediate incentives for compliance.

i. Incentives include, but are not limited to, gift cards, public praise, and early phase advancement....

iii. Personal finance assistance, employment assistance and education of Probation and Parole duties.

The Hoopa Valley Tribe provides an exclusive list of incentives and sanctions. This imposes limitations on the Wellness Court, ensuring they do not impose any unnecessarily restrictive sanction. However, it also limits the ability of the Wellness Court to be creative.

Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

10.F. Na:tini-x'we' Na:xo-xi-nayi-din Court Incentives

The Na:tini-x'we' Na:xo-xi-nayi-din court judge shall consistently apply any of the following rewards (incentives) for progress:

1. verbal praise;
2. graduating a participant to a new treatment level;
3. requiring attendance at fewer Na:tini-x'we' Na:xo-xi-nayi-din court status hearings;
4. requiring less alcohol and/or drug testing;
5. gifts;
6. traditional recognition or gifts for achieving; and
7. any other rewards approved by the Na:tini-x'we' Na:xo-xi-nayi-din court team.

10.G. Na:tini-x'we' Na:xo-xi-nayi-din Court Sanctions

The Na:tini-x'we' Na:xo-xi-nayi-din court judge shall consistently apply any of the following sanctions for non-compliance or failed or tampered with alcohol and/or drug tests:

1. verbal reprimands;
2. sending a participant back to an earlier treatment level;

Requiring attendance at more frequent Na:tini-x'we' Na:xo-xi-nayi-din court status hearings;

4. requiring more frequent alcohol and/or drug testing;
5. specific tasks that cause the participant to reflect or learn (such as apology letters, journals, or research papers);
6. community service activities;
7. traditional punishments or activities; and
8. any other sanctions approved by the Na:tini-x'we' Na:xo-xi-nayi-din court team.

Conclusion

The tribal code and other variations of written tribal law are only portions of the overall tribal law governing a tribe. Increasingly, however, the tribal code articulates the foundation and structure of the tribal government, providing transparency and accountability to tribal members and outside entities about what powers and obligations constitutes varying tribal agencies. While the Tribal Healing to Wellness Court (“Wellness Court”) may operate as rebuttal to the adversarial system, it is also a component of the tribal government. It thereby owes and is owed a formal setting within the tribal government, including all the rights, privileges, and obligations to which other tribal governing structures are afforded. Formalizing the Wellness Court within the tribal code, or “codifying,” is therefore an important ceremonial and functional gesture.

As examined in these chapters, the extent to which the ceremony and function of the Wellness Court are codified can vary greatly. Depending on the existing structure of a tribal code, the Wellness Court may require empowerment from the code before it can perform any operations. For other tribal codes, the Wellness Court is free to operate up until the code states otherwise. The code can incorporate the Wellness Court as a formal docket of the judiciary. It can establish the Wellness Court as a subsidiary or stand-alone diversion program. The code can broadly or narrowly define the authority of the tribal court to divert persons to the Wellness Court. The code can empower the Wellness Court to remedy legal violations or inform child reunifications. Other tribal agencies can be empowered, and even mandated, to participate on the Wellness Court team. The code can approve Wellness Court policies and procedures or dictate the form of certain processes. The code can formally endorse the Wellness Court’s alternative-to-adversarial approach.

Ultimately, the appropriate code provisions for formalizing the Wellness Court into a tribal code will require:

- (1) clear goals for codifying the Wellness Court;
- (2) an assessment of how the tribal code is structured and how the Wellness Court should be incorporated into that structure; and
- (3) broad discussions about the benefits and disadvantages for codifying each provision.

Like the Wellness Court, codification tends to thrive with input and endorsement from a diverse swath of disciplines and community members.

Appendix A. List of Referenced Tribal Codes

This publication features short excerpts from select tribal codes that have codified a Tribal Healing to Wellness Court. Critically, codes function as a unit. It is therefore recommended that a code excerpt be viewed within the context the chapter and title in which it is featured to best ascertain the intended meaning and impact of that code provision. This appendix features a list of the tribal codes featured in this publication. Appendix B features the Wellness Court codes in their entirety to better provide context.

Citizen Potawatomi Nation

Title 15 – Healing to Wellness Court Administration and Procedure

Confederated Tribes of Coos, Lower Umqua, and Siuslaw Indians

Title 2 – Rules of Procedure | Chapter 2-13: Wellness Court

Eastern Band of Cherokee Indians

Chapter 7C – Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi (Cherokee Wellness Court)

Fort McDowell Yavapai Nation

Chapter 5 – Civil and Criminal Procedure | Article III. Criminal Procedure | VIII. Wellness Court

Fort Peck Assiniboine & Sioux Tribes

Title 6, Chapter 10. Fort Peck Wellness Court Programs

Ho Chunk Nation

Title 4 – Children, Family and Elder Welfare | Section 15 – Healing to Wellness Court Code

Title 4 – Children, Family and Elder Welfare | Section 16 – Family Wellness Court Code

Hoopa Valley Tribal Code

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [The people's get well place] Court Code

Muscogee (Creek) Nation

Title 26. Judicial Branch/Courts Vhakv Fvtcecvlke/Fvtceckv Cuko

Oneida Indian Nation

Rules of Criminal Procedures, Chapter 8: Diversion

Penobscot Nation Judicial System

Rules of Court, VII. Healing to Wellness Court Program

Poarch Band of Creek Indians

Title 3 – Judicial | Chapter III – Poarch Band of Creek Indians Drug Court

Pueblo of Laguna

Appendix C – Rules of Procedure, Section 4. Pueblo of Laguna Rules of Criminal Procedure

Pueblo of Pojoaque Law and Order Code

B-6 Wen Hey Kha Wosatsi Khuu (Path to Wellness) Court; C-10 Wen Hey Kha Wosatsi Khuu (Path to Wellness) Court Jurisdiction

Puyallup Tribal Codes

Title 4 Courts and Procedure | Ch. 4.04 Rules of Criminal Procedure | Rule 11.2 – Alternative resolutions.

Shoshone-Bannock Tribes

Title 3 – Shoshone-Bannock Tribal Court, Chapter 2. Judicial Council Code, Part IV. Tribal Judges

Tulalip Tribal Codes

Chapter 2.25. Criminal Procedures | 2.25.110 Plea Procedures

Yurok Tribal Code

Chapter 2.10 – Rules of Court

Appendix B. Referenced Tribal Codes

This publication features excerpts of tribal code that exemplify a strategy for formalizing a component of the Tribal Healing to Wellness Court (“Wellness Court”) into tribal law. This appendix features the cited tribal codes regarding Wellness Courts in their entirety. Please note that tribal codes are dynamic. Tribes are frequently engaging in the legislative process to enact, amend, and rescind tribal laws. Therefore, the featured tribal provisions of this appendix may no longer reflect the current tribal laws of these tribal nations. Nevertheless, we feature these code provisions as they appeared in the Summer of 2021 as a useful snapshot of Wellness Court code provisions from which to draw inspiration.

Citizen Potawatomi Nation

Healing to Wellness Court Administration and Procedure Title 15 | Chapter 1

Section 15-1-101 Citation

This Act, codified at Section 15-1-101 through 15-1- 109 herein, may be cited as “The Citizen Potawatomi Nation Healing to Wellness Court Act of 2014.”

Section 15-1-102 Establishment of the Healing to Wellness Court

The Citizen Potawatomi Nation Healing to Wellness Court shall be a deferred sentencing program established to divert those offenders with substance abuse problems away from the regular Court system and toward a more holistic approach, which involves a treatment-oriented perspective.

Section 15-1-103 Administrative Authority of the Healing to Wellness Court

Nothing in this Act shall be construed to limit the authority of the tribal court system to exercise administrative control over the procedures to be followed in the Healing to Wellness Court to the extent its actions are not inconsistent with the provisions of this Act.

Section 15-1-104 Healing to Wellness Court Composition

The Citizen Potawatomi Nation Healing to Wellness Court shall be composed of one (1) Healing to Wellness Court Judge and a Healing to Wellness Court Team.

Section 15-1-105 Duties of The Healing To Wellness Court Judge

- (A) The Healing to Wellness Court Judge shall have jurisdiction and shall preside over all matters referred to it by the Citizen Potawatomi Nation District Court.
- (B) The Healing to Wellness Court Judge shall have the following additional duties and responsibilities.
 - (1) Schedule sessions of the Healing to Wellness Court, where the Judge shall meet with each individual Healing to Wellness Court participant in Court;

- (2) Draft and promulgate rules governing the administration of the Healing to Wellness Court; provided, that such rules do not contradict any rules of procedure of the Citizen Potawatomi Nation Tribal Code, or abridge, enlarge or modify the substantive right of any party;
- (3) Meet with the Healing to Wellness Court Team as necessary;
- (4) Order punishments and incentives as necessary to further the objectives of the Healing To Wellness Court, provided that such terms or conditions do not violate or abridge any fundamental or substantive right of any party; and
- (5) Monitor the privacy and accuracy of all the Healing To Wellness Court records.

Section 15-1-106 Participation in Healing To Wellness Court

- (A) A defendant in Tribal Court is eligible to participate in the Healing to Wellness Court if:
- (1) The defendant is a Tribal Member, or a child of a Tribal member or a Native American;
 - (2) The defendant is not a juvenile;
 - (3) The defendant has a substance abuse problem;
 - (4) The defendant is charged with crime or civil offense motivated by substance abuse.
 - (5) The Tribal Prosecutor recommends to the Tribal Court that the defendant be referred to the Healing To Wellness Court;
 - (6) The defendant is charged with a nonviolent offense; provided, however that the Citizen Potawatomi Nation District Court Judge may waive this requirement, if the Tribal Prosecutor believes that the defendant will likely respond to rehabilitative treatment despite the violent nature of the offense;
 - (7) The defendant does not have a history of violent acts; provided, however that the Citizen Potawatomi Nation District Court Judge may waive this requirement, if the Tribal Prosecutor believes that the defendant will likely respond to rehabilitative treatment despite the defendant's violent past;
 - (8) The defendant has not participated more than twice in the Healing To Wellness Court;
 - (9) The defendant's participation in the program has never been revoked; and
 - (10) The defendant voluntarily and knowingly enters a plea of guilty to a criminal offense or admits liability in a civil offense.
 - (11) The defendant voluntarily agrees to enter the Healing To Wellness Court upon proper application and is accepted by the Healing To Wellness Court Team.
 - (12) A non-Indian subject to the CPN District Court's jurisdiction may voluntarily participate when there is an appropriate relationship to the Healing To Wellness Court purpose. For example Indian Child Welfare matters and Domestic Violence.
- (B) Tribal Members and children of Tribal Members, who are at least eighteen years of age or older, may also participate in the Healing To Wellness Court if he or she is referred to the Healing To Wellness Court for a state Court or social service agency, including the Citizen Potawatomi Nation Indian Child Welfare or Family Preservation Department.

Section 15-1-107 Conditions of Healing To Wellness Court

- (A) In any case in which a defendant is admitted into the Healing To Wellness Court, there shall be a written agreement between the defendant and the Healing To Wellness Court Team. The agreement shall include, but not be limited to, the terms of the Healing To Wellness Court.
- (B) The conditions of the Healing To Wellness Court may include, but are not limited to, one or more of the following:
- (1) Participate in an education setting, including but not limited to, secondary education, postsecondary education, job training school, trade school, GED classes, or adult basic education courses;
 - (2) Financially support his or her spouse, children, or both, or pay child support, spousal support, or both, including allowing such support to be withheld or garnished from the wages or salary of the defendant;
 - (3) Refrain from the use of alcohol and drugs and from frequenting places where alcoholic beverages or illegal controlled substances are sold, possessed, or used;
 - (4) Refrain from contact with certain persons or premises;
 - (5) Obtain and maintain employment;
 - (6) Attend individual, group, or family counseling;
 - (7) Pay court costs, fees, fines, or both, incurred as a result of the offense charged, including allowing such costs to be withheld or garnished from the wages or salary of the defendant;
 - (8) Pay costs associated with participation in the Healing To Wellness Court, including allowing such costs to be withheld or garnished from the wages or salary of the defendant;
 - (9) Observe curfews or home detention or travel constraints as set out in the offender's agreement; and/or
 - (10) Observe any other terms or conditions of the Healing To Wellness Court Judge or the Healing To Wellness Court Team, provided that such terms or conditions do not violate or abridge any fundamental or substantive right of any party.

Section 15-1-108 Healing To Wellness Court Records And Communications

The Healing To Wellness Court records are confidential and shall not be admissible in subsequent proceedings, civil or criminal. Communications between the Healing To Wellness Court Treatment Provider and the defendants shall be privileged unless a court of competent jurisdiction determines there is a compelling public interest that the communications be submitted to the court for an in camera review.

Section 15-1-109 Revocation Of Participation In The Healing To Wellness Court

- (A) Upon the recommendation from the Healing To Wellness Court Team that the defendant's participation in the Healing To Wellness Court should be revoked, the Tribal Prosecutor shall file a petition in the Healing To Wellness Court showing probable cause that a defendant has violated the terms or conditions of the Healing To Wellness Court. The Healing To Wellness Court Judge shall order a hearing on the revocation. The order

must require the defendant to appear at a specified time and place for the hearing. A copy of the petition and the order setting the hearing shall be personally served by the Tribal Police or by certified mail. The Healing To Wellness Court Judge may also issue an arrest warrant directing any peace officer or probation officer to arrest the defendant and bring the defendant before the Court.

- (B) At the hearing, the defendant must be advised of:
 - (1) The allegations of the petition;
 - (2) The opportunity to appear and to present evidence on the defendant's behalf;
 - (3) The opportunity to question adverse witnesses; and
 - (4) The right to be represented by legal counsel.
- (C) A hearing is required before the defendant's participation in the Healing To Wellness Court is revoked unless the defendant admits the allegations and waives the right to a hearing.
- (D) At the hearing, the Tribal Prosecutor shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the Healing To Wellness Court.
- (E) If the Tribal Prosecutor proves that the defendant has violated the terms and conditions of the Healing To Wellness Court, the Healing To Wellness Court Judge may;
 - (1) Continue the defendant's Healing To Wellness Court participation without a change in terms or conditions;
 - (2) Continue the defendant's Healing To Wellness Court participation with modified or additional terms and conditions; or
 - (3) Revoke the defendant's participation in the Healing To Wellness Court and transfer the matter back to the Citizen Potawatomi Nation District Court where the Judge may impose any sentence that could have been originally imposed. The Healing To Wellness Court Judge shall state the reasons for his or her determination in the order.
- (F) If the Healing To Wellness Court Judge finds that the Tribal Prosecutor has not proved by a preponderance of the evidence that there has been a violation of the terms and conditions of the Healing To Wellness Court participation, the Healing To Wellness Court Judge:
 - (1) Must dismiss the petition for revocation and order the immediate release of a defendant, if in custody; and
 - (2) May modify or add terms and conditions of the Healing To Wellness Court participation.
- (G) If a defendant's participation in the Healing To Wellness Court is revoked, the matter is transferred to the Citizen Potawatomi Nation District Court, along with a copy of the Healing To Wellness Court Judge's order revoking participation in the Healing To Wellness Court. The Citizen Potawatomi Nation District Court Judge shall sentence the defendant and shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as credit, except that credit must be allowed for time served in a detention center.

Title 2 – Rules of Procedure | Chapter 2-13: Wellness Court

2-13-1 Authority and Purpose

The purpose of this Ordinance is to establish procedures and implement the following purposes and policies for CTCLUSI Wellness Court. This ordinance is adopted to protect the health, safety, and wellness of tribal members by utilizing Tribal Court to divert offenders with substance abuse issues away from the mainstream Court systems and procedures and toward a more holistic approach to substance abuse treatment, and

- (a) To offer treatment to both juvenile and adult offenders who have committed an offense that is directly, or indirectly, related to a substance abuse or addiction issue;
- (b) To identify and recommend potential participants to the CTCLUSI Wellness Court Team for legal and clinical screening as soon as possible;
- (c) To strictly monitor and supervise each participant through regular and frequent drug and alcohol testing, court appearances and program requirements;
- (d) To impose immediate sanctions and offer immediate rewards or incentives when a participant's behavior warrants such actions; and,
- (e) To make the participant a valued intricate part of the CTCLUSI Wellness Court Team and to encourage and support each participant in the goal of individual wellness and sobriety.

2-13-2 Definitions

- (a) *CTCLUSI Wellness Court*. The CTCLUSI Wellness Court is a court of special jurisdiction within the provisions of CTCLUSI Tribal Code Section 1-1-21, with jurisdiction to hear all cases referred to it pursuant to CTCLUSI tribal code.
- (b) *CTCLUSI Wellness Court Team*. The CTCLUSI Wellness Court Team shall consist of the Wellness Court Judge, Wellness Court Case Manager, Family Services representative, the Tribal Presenting Officer, and Tribal Defense advocate. The CTCLUSI Wellness Court Team may include other members on the Team as determined by the CTCLUSI Wellness Court Judge.

2-13-3 Jurisdiction

- (a) The CTCLUSI Wellness Court shall have jurisdiction over any case in which it would have had original or exclusive jurisdiction related to the underlying offense, and any case that may be transferred to the tribal court by a court of competent jurisdiction. Upon successful completion of the CTCLUSI Wellness Court program, or at such a time when a participant becomes ineligible to continue in the program as set out in the CTCLUSI Wellness Court Policies and Procedures, the CTCLUSI Wellness Court will notify the transferring court of the status for any final disposition. All sanctions imposed by the CTCLUSI Wellness Court must be completed before any final case disposition.
- (b) Referrals to the CTCLUSI Wellness Court may be made once an offender has been charged with at least one offense within the tribe's jurisdiction and/or within the jurisdiction of a transferring court in which alcohol or drugs are involved. Referrals may

also be made to the CTCLUSI Wellness Court for collaboration in post-sentencing matters of a foreign jurisdiction concerning an active matter in said jurisdiction.

- (c) Once a referral is received by the CTCLUSI Wellness Court, the participant shall be assigned to the CTCLUSI Wellness Court Case Manager who shall begin the eligibility process as set out in the Policy and Procedures Manual. Individuals who are determined to be eligible by the CTCLUSI Wellness Court Team may enter the CTCLUSI Wellness Court.

2-13-4 Rules of Evidence

The Rules of Evidence adopted by the CTCLUSI shall not be strictly applied in CTCLUSI Wellness Court proceedings. The CTCLUSI Wellness Court shall not be a court of record. All information obtained from or disclosed by a participant under the jurisdiction of CTCLUSI Wellness Court is both privileged and confidential information. However, confidential information may be disclosed after the participant signs an appropriate consent form(s), even if such information is protected by Federal confidentiality regulations. The regulations also permit disclosure without a participant's consent in several situations, including medical emergencies, program evaluations and communications among program staff. Participants who refuse to sign consent forms permitting essential communications may be excluded from treatment or be terminated from CTCLUSI Wellness Court. Additionally, a judge may order disclosure as allowed by federal, tribal and state law.

2-13-5 CTCLUSI Wellness Court Procedures

- (a) Initial Policies and Procedures for the CTCLUSI Wellness Court shall be established by the CTCLUSI Wellness Court Team and submitted to the CTCLUSI Tribal Council for review and approval.
- (b) Thereafter, the CTCLUSI Wellness Court Team may amend and modify the policies and procedures as necessary to improve the HTW Court and its processes. Any such amendments or modifications shall be by a majority vote at a CTCLUSI Wellness Court Team meeting with each member eligible to carry one vote. Notice of the meeting to amend and/or modify the Policies and Procedures must be given to each member of the CTCLUSI Wellness Court Team at least seven days prior to the meeting.
- (c) In order for the Policies and Procedures to be amended or modified, the CTCLUSI Wellness Court Judge and at least three other members of the CTCLUSI Wellness Court Team must be present at the meeting.

2-13-6 CTCLUSI Wellness Court Sessions

- (a) All CTCLUSI Wellness Court sessions shall be closed to the public except for invited guests who have duly executed confidentiality agreements, and subject to the restrictions set forth by HPAA, and/or other federal, state, or CTCLUSI law, and the discretion of the CTCLUSI Wellness Court Judge.
- (b) The CTCLUSI Wellness Court judge shall make all findings of facts relevant to each participant's case pursuant to the Policies and Procedures adopted by the CTCLUSI Wellness Court Team.

- (c) CTCLUSI Wellness Court sessions shall proceed pursuant to the policies and procedures adopted by the CTCLUSI Wellness Court Team.

2-13-7 CTCLUSI Wellness Court Sanctions

If a participant is not compliant with the requirements of the CTCLUSI Wellness Court, sanctions against the non-compliant individual may be issued by the CTCLUSI Wellness Court Judge. Sanctions include but are not limited to community service work, a change in substance abuse program or facility, and an increase in requirements issued by the CTCLUSI Wellness Court Judge. If a participant remains non-compliant with the requirements of the CTCLUSI Wellness Court, he/she may be terminated from the program and any stay of an underlying matter in any court of competent jurisdiction may be revoked.

Eastern Band of Cherokee Indians

Chapter 7C – Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi (Cherokee Wellness Court)

Sec. 7C-1. - Purpose.

This chapter shall be interpreted and construed so as to implement a comprehensive court program that blends treatment and sanction alternatives to effectively address offender behavior, rehabilitation, and the safety of the community.

Sec. 7C-2. - Definitions.

Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi. The former Cherokee Tribal Drug Court shall now be a wellness court known as Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi which is the Cherokee phrase for "where they have a change of heart." Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi is a trial court of special jurisdiction within the provisions of Section 7-1(a).

Sec. 7C-3. - Jurisdiction and referrals.

- (a) This Court shall have jurisdiction over any case that is transferred by the Cherokee Court.
- (b) Referrals to this Court may be made after a criminal defendant has pleaded guilty of or has been convicted of at least one crime that is directly or indirectly related to substance use or addiction.

Sec. 7C-4. - Reserved.

Sec. 7C-5. - Rules of evidence.

The Rules of Evidence adopted by the Eastern Band of Cherokee Indians shall not apply in any proceedings in this Court. This Court shall not be a court of record. All information obtained from or disclosed by a participant under the jurisdiction of Cherokee Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi Court is privileged and confidential information. A judge may order disclosure as allowed by federal, tribal and state law.

Sec. 7C-6. - Establishment of policies and procedures.

Policies and procedures for the Cherokee Tsu-Na-Da-Ne-Tsi-Yv-Sdi-Yi Court shall be established by the Cherokee Tribal Court and published under the authority of the Chief Justice.

Fort McDowell Yavapai Nation

Chapter 5 – Civil and Criminal Procedure | Article III. Criminal Procedure | VIII. Wellness Court

Rule 84. - Wellness Court eligible cases.

- (a) Referral. In any case wherein the facts of the case and the defendant meet the legal criteria for Wellness Court participation as outlined in the Wellness Court Program, the Nation may refer such case and defendant to the Wellness Court Committee for consideration in accordance with Wellness Court Policies and Procedures.
- (b) Information to Defendant. In any case referred to the Wellness Court Committee for consideration, the Court will provide information to the defendant about the Wellness Court and refer the defendant to the Wellness Court Coordinator and/or Wellness Court Case Manager to answer questions, and if appropriate, to execute a limited consent from so that the Wellness Court Committee may consider the defendant's admission to the program.

Rule 85. - Offer for Wellness Court is made/declined.

If the Wellness Court Committee accepts a defendant into the Wellness Court Program and the defendant declines participation or fails to accept participation within ten (10) business days of program acceptance, the Nation has sole discretion to offer Wellness Court as a diversion program at any point prior to trial.

Rule 86. - Tolling of time; speedy trial.

When Wellness Court participation is offered for the benefit of a defendant prior to trial, time is tolled for purposes of speedy trial calculations so long as the offer for Wellness Court participation is made in good faith and is not for purposes of delay.

Rule 87. - Entry of guilty plea; deferred acceptance of plea.

In any case wherein Wellness Court is offered, the defendant will be required to enter a plea of guilty to the charges. The Court will make a determination whether the plea was entered knowingly, intelligently and voluntarily and, if possible find a factual basis. However, the Court will defer acceptance and entry of the guilty plea onto the record and order the defendant to the Wellness Court program(s) for successful completion. The Court shall advise the defendant that if he or she fails to successfully complete the Wellness Court program, the Court will, upon notification and at hearing, formally accept the guilty plea and set the matter for sentencing. In addition, the Court will also advise the defendant that if he or she fails to successfully complete the Wellness Court program, the Court could impose contempt charges and penalties in addition to the underlying charge and penalty for failure to obey a lawful order of the Court.

Title 6, Chapter 10. Fort Peck Wellness Court Programs

Sec. 1001. Purpose.

This chapter shall be interpreted and construed so as to implement the following purposes and policies:

- (a) To offer treatment to both juvenile and adult offenders who have committed a crime that is directly or indirectly related to a substance abuse or addiction issue;
- (b) To identify and recommend potential Wellness Court participants to the Wellness Court Team for legal and clinical screening as soon as possible during the sentencing or dispositional stage of the court process;
- (c) To strictly monitor and supervise each participant through regular and frequent drug and alcohol testing, court appearances and program requirements;
- (d) To impose immediate sanctions and offer immediate rewards or incentives when a participant's behavior warrants such actions; and
- (e) To make the participant a part of the Wellness Court Team and to encourage and support each participant in the goal of individual wellness.

Sec. 1002. Definitions.

Wellness Court. The Wellness Court means the entire Wellness Court programs. The Wellness Court includes the Family Healing to Wellness Court and the DUI Court (Driving Under the Influence). Every section in this Chapter applies equally to the Family Healing to Wellness Court and the DUI Court. The Wellness Court is a Trial Court of Special Jurisdiction with jurisdiction to hear all cases referred to it pursuant to Fort Peck Tribal Law.

Wellness Court Judge. The Wellness Court Judge shall be designated by the Chief Judge.

Sec. 1003. Jurisdiction.

- (a) The Wellness Court shall have jurisdiction over any case that is transferred to it by the Fort Peck Tribal Court. Upon successful completion of the Wellness Court program, or at such time when a participant of the Wellness Court becomes ineligible to continue in the program as set out in the Wellness Court policies and procedures, the Wellness Court will transfer jurisdiction of each case back to the Fort Peck Tribal Court for any final disposition.
- (b) Referrals to the Wellness Court shall be made by prosecutors, public defenders, social workers and case managers who work within the Fort Peck Tribal Court system once a criminal defendant has plead guilty to or has been convicted of at least one criminal charge where alcohol or drugs is at issue. Wellness Court referrals may be made as a part of conditional sentence or may be made as part of a mixed or suspended sentence.
- (c) Once a referral is made to the Wellness Court, the Wellness Court caseworker shall be assigned to the case to evaluate the eligibility of the individual and shall report any ineligible individuals back to the appropriate court.

Sec. 1004. Rules of evidence.

The Wellness Court shall not be a court of record. Any information obtained, used or disclosed by a member of the Wellness Court Team, including the participant, while the participant is under the jurisdiction of the Wellness Court shall not be used as evidence against the participant in any other proceeding in the Fort Peck Tribal Court or any other court in any other jurisdiction. All Wellness Court records are privileged and confidential and shall not be disclosed except to the members of the Wellness Court Team. The Rules of Evidence adopted by the Fort Peck Tribes shall not apply in any Wellness Court proceedings.

Sec. 1005. Wellness Court procedures.**(a) Establishment of policies and procedures**

- (1) Policies and procedures for the Wellness Court shall be established by the Fort Peck Tribal Wellness Court Planning Team.
- (2) Thereafter, the Wellness Court Team shall amend and modify the policies and procedures as necessary to improve the Wellness Court process. Any such amendments or modifications shall be by a majority vote at a Wellness Court Team Meeting and only after notice of the meeting is given [to] each member of the Wellness Court Team at least 10 days prior to the meeting.
- (3) In order for the policies and procedures to be amended or modified, there shall be present at the Wellness Court Team meeting the judge and at least four other members of the Wellness Court Team.

(b) Hearings.

- (1) All Wellness Court hearings shall be closed to the public. Only participants and members of the Wellness Court Team shall be present during the court hearings. An individual participant may request that other participants be barred from the courtroom during a court hearing and the judge shall honor the request.
- (2) The Wellness Court is strictly a non-adversarial forum and there shall be no prosecuting or defense attorneys/lay counselors allowed to participate in any court proceedings.
- (3) The Wellness Court Judge shall make all findings relevant to each participant's case pursuant to the policies and procedures adopted by the Wellness Court Team.
- (4) Wellness Court hearings shall proceed pursuant to the policies and procedures adopted by the Wellness Court Team.
- (5) Wellness Court hearings shall require a quorum of the Wellness Court Team in order to proceed. A quorum of the Wellness Court Team shall be defined as the judge, the case manager or court coordinator, the treatment specialist and at least one other member of the Wellness Court Team as may be described in the policies and procedures adopted by the Wellness Court Team.

- (c) Sanctions. If a participant is not compliant with the requirements of the Wellness Court, sanctions against the non-compliant individual may be issued by the Wellness Court Judge. Sanctions include but are not limited to incarceration, community service work and an increase in requirements issued by the Wellness Court Team.

CHAPTER I

GENERAL PROVISIONS AND DEFINITIONS

1. Authority

- a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution (“Constitution”) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.
- b. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.
- c. Article V, Section 2(i) of the Constitution grants the Legislature the power to negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals.
- d. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.
- e. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.
- f. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.
- g. Article VII, Section 4 of the Constitution grants the Judiciary the power to interpret and apply the Constitution and laws of the Ho-Chunk Nation.
 - i. Article VII, Section 7(b) of the Constitution grants the Supreme Court the power to establish written rules for the Judiciary, provided such rules are consistent with the laws of the Ho-Chunk Nation.

2. **General.** The Ho-Chunk Nation Healing to Wellness Court (“Wellness Court”) is an evidence-based treatment program that offers alcohol and/or drug addicted participants an alternative to extended incarceration and the standard probation model. The Wellness Court works cooperatively with treatment agencies and other rehabilitation services to engage a participant in a holistic treatment program that will provide the participant with the tools and support necessary to get into recovery, stay in recovery and lead a productive, alcohol-drug free, lawful, healthy lifestyle.

3. **Purpose.** The Wellness Court Code shall be liberally interpreted and construed to fulfill the following expressed purposes:
 - a. Help Ho-Chunk Nation members break the generational cycle of abuse, addiction and enabling,

- b. Promote public safety by reducing recidivism rates of drug and alcohol offenses,
 - c. Promote recovery in participants and the community, and support from the family and community, and
 - d. Hold offenders accountable through the use of effective sanctions, rewards, and treatment programming.
 - e. If offenders violate mutually agreed upon program, suspension of annual per capita payments may be imposed until the offender successfully completes the program.
4. **Policy.** The Wellness Court’s mission is to address a pervasive alcohol and drug addiction ill affecting our community, alcohol and drug addiction and its associated consequences. The Wellness Court will act in partnership with available tribal and non-tribal agencies and service providers to achieve the following goals: 1) break the cycle of addiction; 2) promote public safety by reducing recidivism rates of drug and alcohol offenses; 3) promote recovery in participants and in the community; 4) restore traditional values and language; 5) create support systems and programs to foster recovery (sobriety), employment, education, and communal, familial, and individual health and well-being; 6) hold offenders accountable; and 7) maintain relationships and resources to continually assist program participants. The Wellness Court shall adhere to Ho-Chunk ideals while focusing upon restorative justice and collaborative decision-making. The Healing to Wellness Court shall comply with the 10 key components promulgated by the National Association of Drug Treatment Court Professionals more fully described in the Section 5.c.

5. Definitions.

- a. “Distal Goal” means a long term goal expected to be achieved later in the program.
- b. “Evidence-based” means treatments that integrate professional research and clinical expertise to achieve the best outcome for the individual.
- c. “Healing to Wellness Court” means a court supervised treatment program for individuals who are dependent upon any controlled substance or alcohol. The Healing to Wellness Court shall comply with the 10 key components promulgated by the National Association of Drug Treatment Court Professionals, which include all of the following characteristics:
 - i. Integration of alcohol and other drug treatment services with justice system case processing.
 - ii. Use of a non-adversarial approach by prosecution and defense that promotes public safety while protecting any participant’s due process rights.
 - iii. Identification of eligible participants early with prompt placement in the program.
 - iv. Access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.

- v. Monitoring of participants effectively by frequent alcohol and other drug testing to ensure abstinence from drugs or alcohol.
- vi. Use of a coordinated strategy with a regimen of graduated sanctions and rewards to govern the court's responses to participants' compliance.
- vii. Ongoing close judicial interaction with each participant and supervision of progress for each participant.
- viii. Monitoring and evaluation of the achievement of program goals and the program's effectiveness.
- ix. Continued interdisciplinary education in order to promote effective Healing to Wellness Court planning, implementation, and operation.
- x. The forging of partnerships among other Drug Treatment Courts, public agencies, and community-based organizations to generate local support.
- d. "Participant" means an individual who is admitted into the Wellness Court.
- e. "Proximal Goal" means a short term goal expected to be achieved earlier in the program.
- f. "Violent Offender" means an individual who meets either of the following criteria:
 - i. Is currently charged with or has been found guilty to an offense involving the death of or serious bodily injury to any individual, or the carrying, possessing, or use of a firearm or other dangerous weapon by that individual, whether or not any of these circumstances are an element of the offense, or is currently charged with or has been found guilty of criminal sexual conduct of any degree.
 - ii. Has one (1) or more prior convictions for a felony involving the use or attempted use of force against another individual with the intent to cause death or serious bodily harm.

CHAPTER II

JURISDICTION, COURT STRUCTURE, POLICIES, PROCEDURES, AND PROGRAM RULES

6. Jurisdiction.

- a. The Wellness Court is hereby established by the Legislature as a court of special jurisdiction to meet the purposes set out above. The Wellness Court will exercise its authority as a court of special jurisdiction pursuant to rules established by the Supreme Court in accordance with Article VII, Section 7(b) of the Constitution and in Accordance with the legislative purposes set out above.
 - i. The Wellness Court shall exercise independent discretion in its monitoring of assigned cases.
- b. The Wellness Court shall have the authority to issue all orders necessary to ensure the safety, well-being, and rehabilitation of individuals who come within or consent to its jurisdiction. The Wellness Court shall have the power to implement all the duties, responsibilities, and remedies set out in this Code, including the power to enforce subpoenas and orders of restriction, fines and orders of restitution, contempt, confinement and detention, and other powers as appropriate.
- c. Upon successful completion of the Wellness Court program, or at such a time when a participant of the Wellness Court becomes ineligible to continue in the program, the

Wellness Court will provide such information to the appropriate governmental entity for its use in any final disposition as it relates to the Wellness Court participant.

7. Court Structure.

- a. The Healing to Wellness Court shall be made up of Treatment Team which shall include a Trial Court Judge, a prosecutor, a public defender/advocate, a Treatment Team coordinator, a Researcher, a law enforcement official, a representative of the Legislature, a representative of probation, a representative of substance abuse treatment providers, a vocational rehabilitation professional, a representative of Traditional Court, a representative of social services, a representative of compliance, and other members to be determined by the Judiciary and/or Treatment Team.

8. Policies and Procedures. The Wellness Court shall promulgate and follow Policies and Procedures in administering the Wellness Court. Policies and Procedures are subject to change, and changes shall be adequately and timely published to the Team, public, and participants. Upon reviewing the Policies and Procedures and considering any recommended changes, the Ho-Chunk Nation Supreme Court shall approve the Policies and Procedures on an annual basis or prior to the annual review when deemed necessary by the Supreme Court.

9. Participant Handbook. The Wellness Court shall promulgate and distribute Participant Handbooks to the participants of the Wellness Court Program. The Participant Handbook shall set forth the rules of the program and obligations of the participant in a clear manner. Handbooks shall be distributed, and the defense attorney/lay advocate shall go through the handbook with each participant, as soon as the participant is admitted to the Wellness Court and obtain written acknowledgment of participants understanding of the rules of the Wellness Court. Failure to abide by the program rules may result in sanctions, therapeutic sanctions, termination from the program and/or prosecution to the fullest extent available under the law. Upon reviewing the Participant Handbook and considering any recommended changes, the Ho-Chunk Nation Supreme Court shall approve the Participant Handbook on an annual basis or prior to the annual review when deemed necessary by the Supreme Court.

CHAPTER III

REFERRAL AND ASSESSMENT

10. Referral Procedures

- a. Attorney Referral
 - i. A prospective participant's criminal attorney may seek to have their client admitted into the Wellness Court by fully completing an Attorney Referral Form, which shall be drafted and maintained by the Wellness Court.
 - ii. The Attorney Referral Form shall then be submitted to the Wellness Court Coordinator located at the Ho-Chunk Nation Wa Ehi Hoci (Judiciary Building).
- b. Self-Referral

- i. A prospective participant may seek admittance into the Wellness Court by fully completing a Self Referral Form, which shall be drafted and maintained by the Wellness Court.
- ii. The Self Referral Form shall then be submitted to the Wellness Court Coordinator located at the Ho-Chunk Nation Wa Ehi Hoci.

11. Legal Screening

- a. Legal Screening shall be completed by the tribal prosecutor and defense attorney to determine legal eligibility and to examine public safety risk.
- b. Core components of the screening process are:
 - i. Current criminal charge(s);
 - ii. Criminal history;
 - 1. Violent Offender. The Legal Screening process will include a determination if there are prior violent felonies; sex offenses; and offenses in which a firearm, deadly weapon, or dangerous instrument was used that may preclude admission;
 - iii. Circumstances of current offense such as defendant culpability and mandatory incarceration statutes;
 - iv. Outstanding warrants, additional charges in other counties, previous diversion programs, and previous treatment court participation; and
 - v. Mental health disorders.
- c. Legal Screening shall occur at the earliest point after arrest with a determination of acceptance or rejection to occur within thirty (30) days from screening.
- d. The Wellness Court Coordinator will be immediately notified of the Legal Screening determination.
 - i. If the Legal Screening results show the prospective participant is legally eligible for the program, the Wellness Court Coordinator will provide the contact information for the prospective participant to arrange for a Clinical Assessment to be conducted as the second phase of determining eligibility.
 - ii. If the Legal Screening results show that the prospective participant is not legally eligible for the program, the Wellness Court Coordinator will provide such documentation to the Team for reference and discussion.

12. Clinical Assessment

- a. The Clinical Assessment shall be completed by the treatment professionals on the Team to determine diagnosis, clinical eligibility, and treatment planning.
- b. The Clinical Assessment shall occur soon after Legal Screening results are available showing legal eligibility standards have been met.
- c. The Clinical Assessment shall consist of validated standardized assessment instruments and methods.
- d. The treatment professionals will review any special needs or circumstances of the individual that may potentially affect the individual's ability to receive substance abuse treatment and follow the court's orders.

- e. The Clinical Assessment shall remain confidential, will not be open to inspection by the public at the Ho-Chunk Nation Wa Ehi Hoci, is not discoverable under the DISCOVERY ACT, 2 HCC § 3, and shall not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use.
- f. The prospective participant must also recognize the possibility of and agree to cooperate with any future evaluation assessments as directed by the Wellness Court.
- g. The Wellness Court Coordinator will be immediately notified of the Clinical Assessment determination.
 - i. The Wellness Court Coordinator shall prepare copies of eligibility documentation to be presented to the Team.

13. Admission to Program

- a. Clinical Assessment and/or Legal Screening results shall be presented to the Team in order for the Team to ultimately decide whether to admit an eligible applicant into the Wellness Court program.
- b. Traditional Court shall make a Ho-Chunk cultural assessment in order to address cultural and/or spiritual competencies with recommendations given to the Wellness Court.
- c. The Team shall perform a financial management assessment in order to educate the participant to attain financial stability upon admittance to the program.
- d. The Team shall review all relevant information before reaching consensus on whether to admit or deny a prospective participant.
- e. The Wellness Court Coordinator shall notify the prospective participant's attorney and participant to let them know the Team's decision.
 - i. If the Team reaches a consensus on admission, the Wellness Court Coordinator shall provide an appointment time in which the prospective participant is to report to the Ho-Chunk Nation Wa Ehi Hoci to proceed with filling out the necessary paperwork for admission.
 - ii. The participant will also have a time arranged to meet with the defense attorney/lay advocate to go through the Participant Handbook, have the program explained to him/her, and go through the ramifications of rule violations that may lead to a treatment response, sanction, and/or termination from the program.
 - 1. Documentation of receipt of the Participant Handbook and meeting with the defense attorney/lay advocate shall be placed within the participant's file to be kept by the Wellness Court Coordinator.

12. Records of Denials. The Wellness Court Coordinator shall retain all copies of information pertaining to denials for data and research purposes. Information pertaining to denials shall not be made transferable to any entity other than the grant provider/funder.

CHAPTER IV

MONITORING, TESTING, AND ASSESSMENTS

15. **Monitoring.** The Wellness Court shall provide a participant with consistent, continual, and close monitoring.

- a. Monitoring may include, but is not limited to, the use of a Global Positioning System (GPS) and Secure Continuous Remote Alcohol Monitor (SCRAM) units.
- b. Any loss or damage to the GPS and/or SCRAM units shall be the financial responsibility of the program participants.

16. **Interaction.** The Wellness Court shall ensure appropriate amounts of interaction among the court, treatment providers, probation, appropriate friends and/or family members and the participant.

17. **Testing.** The Wellness Court shall ensure periodic and random testing for the presence of any controlled substance or alcohol in a participant's blood, urine, or breath, using the best available, accepted, and scientifically valid methods.

18. **Assessments.** The Wellness Court shall utilize periodic evaluation assessments of the participant's circumstances and progress in the program.

- a. Treatment providers shall utilize best evidence based practices in performing new assessments as needed to determine if any additional treatment services are necessary to assist the participant.
- b. Assessments shall include an evaluation of the participant's efforts towards meeting their proximal and distal goals in the program.

19. **Wellness Court Fees.** The Wellness Court Coordinator shall maintain a record of a participant's Wellness Court fees and any payments made toward those fees. Monthly statements shall be provided to each participant.

- a. Payment of fees is a requirement for phase advancement and graduation.
- b. Wellness Court fees shall be considered a Debt to the Nation pursuant to CLAIMS AGAINST PER CAPITA ORDINANCE, 2 HCC § 8.5 a(1).

20. **Sanctions and Incentives.**

- a. **Sanctions.** The Wellness Court shall implement and utilize a system of appropriate, graduated, and immediate sanctions for non-compliance.
 - i. Sanctions include, but are not limited to, incarceration, phase freeze, and an increase in requirements issued by the Wellness Court Team.
 - ii. **Therapeutic Sanctions.** If a participant is not compliant with his/her treatment plan, the Team may utilize therapeutic sanctions to assist with getting the participant back on track with his/her treatment plan, which may include, but is not limited to thinking reports and increased counseling sessions and self-help meetings.

- iii. The types of sanctions used shall take into consideration the distal and proximal goals set for each participant.
- b. Incentives. The Wellness Court shall implement and utilize a system of appropriate, graduated, and immediate incentives for compliance.
 - i. Incentives include, but are not limited to, gift cards, public praise, and early phase advancement.
 - ii. Assistance in filing a Pardon application or filing for expungement of a Wisconsin criminal record.
 - iii. Personal finance assistance, employment assistance and education of Probation and Parole duties.

21. Services. The Wellness Court, through adequate funding from the Legislature, shall ensure that substance abuse treatment services, relapse prevention services, mental health treatment referrals and/or services, education, vocational opportunities are appropriate and available.

CHAPTER V

WELLNESS COURT STAFFING

22. Compliance Reports

- a. The Wellness Court Coordinator is responsible for completing bi-weekly compliance reports to be distributed to the Wellness Court for the purpose of staffing.
- b. The compliance reports will at a minimum provide:
 - i. an overview of a participant's compliance with their treatment plan,
 - ii. compliance with the program rules as laid out within the Participant Handbook,
 - iii. their period of sobriety,
 - iv. any additional services that may be necessary to assist the participant,
 - v. their start date,
 - vi. the total number of weeks they have been in the program,
 - vii. the phase that they are in and week in such phase, taking into consideration and noting any advancement or freeze,
 - viii. outstanding Wellness Court fees owed, and
 - ix. a complete and detailed list of all sanctions since the start of their program.

23. Formal Staffing

- a. The purpose of the Wellness Court staffings is to update the Team on the progress and needs of each participant in his/her treatment plan, to report the results of weekly random alcohol and/or drug testing, and to discuss possible sanctions and incentives for non-compliance, tampered with or failed tests, but also to reward progress. The sanctions and incentives shall be applied by the judge in the Status Hearing. The Team should also make concrete arrangements to assist participants in areas of need.
- b. All Wellness Court staffings will be closed to the public and are confidential.
 - i. Only members of the Wellness Court Team shall be present during the staffings.
 - 1. If an individual outside of the Wellness Court Team is necessary to adequately staff a case, then that individual will complete a

confidentiality agreement and be advised that any information they hear is to be strictly confidential.

- ii. At times participants may be called into a staffing, or request to appear on their own, as in the case of phase advancement. A participant will be present only for the part of the staffing addressing that participant, and then will be excluded from the rest of the meeting.
- c. Wellness Court decisions shall be made through discussion and by consensus.

24. Informal Staffing

- a. At times decisions need to be made quickly. As such, Wellness Court members are permitted to make decisions via e-mail provided all members are part of the e-mail feed.
- b. Decisions made by e-mail shall be made through discussion and by consensus.
- c. E-mails shall remain confidential.

CHAPTER VI

COURT PROCEDURE AND HEARINGS

25. Rules of Evidence. Any information obtained, used or disclosed by a member of the Wellness Court Team, regarding the treatment methods employed by the Wellness Court team, while the participant is under the jurisdiction of the Wellness Court shall not be used as evidence against the participant in any other proceeding in the Ho-Chunk Nation Court system or any other court in any other jurisdiction. All Wellness Court records are privileged and confidential and shall not be disclosed except to the members of the Wellness Court Team. The Rules of Evidence adopted by the Ho-Chunk Nation Judiciary shall not apply in any Wellness Court proceedings.

26. Status Hearings

- a. The purpose of Status Hearings is to judicially monitor whether the participants are attending their required treatment sessions and activities, to review their weekly random alcohol and/or drug test results, and to formally reward or sanction participants for progress, non-compliance, or relapse in moving through their treatment plan.
- b. The Status Hearings shall include discussion between the Court and the participant in regard to the progress or lack thereof being made by the participant on his or her treatment program.
- c. All Wellness Court hearings shall be open to the public.
- d. The Wellness Court is strictly a non-adversarial forum.
- e. Status Hearings shall be held at a minimum of every two weeks.
- f. The Wellness Court Judge shall make all findings relevant to each participant's case pursuant to the policies and procedures adopted by the Wellness Court Team.

27. Termination

- a. Upon presentation of appropriate grounds, a Wellness Court Team member may make a Motion to Terminate a participant.

- i. Grounds for termination include:
 - 1. Commission of a violent crime;
 - 2. Abandonment of the Wellness Court program;
 - 3. Evidence indicating the participant is involved with drug dealing or driving while under the influence of an intoxicant;
 - 4. Any threatening, abusive, or violent verbal/physical behavior;
 - 5. Hostile, threatening or disrespectful conduct towards the Court or other participants;
 - 6. Any other grounds the Wellness Court deems sufficient for termination.
- b. Termination will be discussed and decided by consensus.
- c. The decision to terminate shall be put in writing.

28. Graduation. Upon successful completion of all four phases of the Wellness Court program, participants shall be formally recognized and praised for graduating from the Wellness Court program during the Status Hearings. The Wellness Court judge shall issue a written Order formally recognizing completion of the program to be kept as part of the Wellness Court records, but also to be used to address the criminal action(s) that brought the participant within the purview of the Wellness Court. The graduate is to be provided a formal written Certificate recognizing completion from the program to be used by the participant as he or she requires. A copy of this Certificate shall be kept as a part of the participant's Wellness Court records. Formal recognition to be given at Tribal Social event.

CHAPTER VII

RECORDS, BUDGET, ADVISORY BOARD

29. Collection and Maintenance of Records.

- a. The Wellness Court shall collect data on each individual applicant, participant, and entire program.
 - i. The Wellness Court shall maintain files on each individual applicant or referral who is denied or refused admission to the program, including the reasons for the denial or rejection, the criminal history of the applicant, the preadmission legal screening and clinical assessment, and other demographic information as deemed beneficial by the Ho-Chunk Nation Judiciary.
 - ii. The Wellness Court shall maintain files on each participant in the program for review and evaluation as well as treatment. The information collected for evaluation purposes must include a minimum standard data set as deemed appropriate through evidence based practices, and at a minimum contain:
 - 1. Location and contact information for each individual participant, both upon admission and termination/graduation of the program for follow-up reviews, and third party contact information;
 - 2. Significant transition point dates, including dates of referral, admission, new court orders, violations, jail/confinement, changes in services or treatments provided, phase advancements, periods of phase

- freeze, discharge for graduation or termination, any provision of after-care, and after-program recidivism;
- 3. The individual's precipitating offenses and significant factual information, source of referral, and all treatment court evaluations and assessments;
- 4. Treatments provided, including intensity of care or dosage, and their outcomes;
- 5. Other services or opportunities provided to the individual and resulting use by the individual, such as education or employment and participation of and outcome for that individual;
- 6. Reasons for termination or graduation from the program.
- iii. The Wellness Court shall conduct a two year, follow-up contacts with and reviews of participants for key outcome indicators, such as drug use, recidivism, and employment yearly. These follow-up contacts and reviews of former participants are not extensions of the court's jurisdiction over the individuals.

30. **Budget.** The Legislature shall appropriate operating funds to ensure the Wellness Court can operate fully in accordance with the 10 key components promulgated by the National Association of Drug Treatment Court Professionals. Supra. Section 5b.

31. **Advisory Board.** The Wellness Court Advisory Board should include legislative branch members (2), executive branch members (2), Wellness Court team members (3), Wellness Court graduate (1), and other community members who have an interest in the success of the Wellness Court program (5). This Board should meet on a bi-annual basis to consider and assist in the design, improvement, funding, and community education and support of the Wellness Court Program.

32. **Severability.** If any part or parts, or application of any part of this Code is held invalid, such holding shall not affect the validity of the remaining parts of this Code.

Ho-Chunk Nation Family Wellness Court Code

Title 4 – Children, Family and Elder Welfare | Section 16 – Family Wellness Court Code

CHAPTER I

GENERAL PROVISIONS AND DEFINITIONS

1. Authority

- a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution ("Constitution") grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.
- b. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.

- c. Article V, Section 2(i) of the Constitution grants the Legislature the power to negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals.
- d. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.
- e. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.
- f. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.
- g. Article VII, Section 4 of the Constitution grants the Judiciary the power to interpret and apply the Constitution and laws of the Ho-Chunk Nation.
- h. Article VII, Section 7(b) of the Constitution grants the Supreme Court the power to establish written rules for the Judiciary, provided such rules are consistent with the laws of the Ho-Chunk Nation.

2. General. The Ho-Chunk Nation Family Wellness Court is an evidence-based treatment program that offers drug and/or alcohol addicted participants, and their families, with appropriate access to therapeutic wellness diagnostics and programming to address primary and/or cooccurring disorders, while striving to prevent out of home placement and actively supporting healthy spiritual and sober lifestyles.

3. Purpose. The Family Wellness Court Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

- a. Help Ho-Chunk Nation members break the generational cycle of abuse, addiction and enabling;
- b. Provide intensive services and more frequent court intervention to assist with reunifying Ho-Chunk Nation families and/or preventing the breakup of such families.
- c. Promote positive behavioral health and wellness for participants, their families, and the community;
- d. Reduce recidivism rates of drug and alcohol offenses to keep families together;
- e. Promote recovery in participants and the community, and support from the family and community; and
- f. Hold participants accountable through the use of effective sanctions, rewards, and treatment programming.

4. Policy. The Family Wellness Court is a comprehensive program designed to break the cycle of substance abuse by providing timely, family-centered treatment and supportive services to families with the ultimate goal of improving family safety, well-being, and permanence for children. The Family Wellness Court strives to prevent the out-of-home placement of Ho-Chunk children resulting from abuse and neglect related to drug and/or alcohol addiction, and to actively support community members by encouraging healthy, spiritual, and sober lifestyles that will result in positive role models for future generations to achieve such goals. The Family

Wellness Court shall adhere to Ho-Chunk ideals while focusing upon restorative justice and collaborative decision making.

5. Definitions.

- a. “Distal Goal” means a long term goal expected to be achieved later in the program, for example sobriety.
- b. “Evidence-based treatments” means treatments that integrate professional research and clinical expertise to achieve the best outcome for the individual.
- c. “Family Wellness Court” means a court supervised treatment program for individuals and their families who are dependent on any controlled substance or alcohol and their families. The Family Wellness Court shall comply with the ten (10) key components promulgated by the National Association of Drug Court Professionals, which include all of the following characteristics:
 - (1) Integration of alcohol and other drug treatment services with justice system case processing.
 - (2) Use of a non-adversarial approach by prosecution and defense that promotes public safety while protecting any participant’s due process rights.
 - (3) Identification of eligible participants early with prompt placement in the program.
 - (4) Access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
 - (5) Monitoring of participants effectively by frequent alcohol and other drug testing to ensure abstinence from drugs or alcohol.
 - (6) Use of a coordinated strategy with a regimen of graduated sanctions and rewards to govern the court’s responses to participants’ compliance.
 - (7) Ongoing close judicial interaction with each participant and supervision of progress for each participant.
 - (8) Monitoring and evaluation of the achievement of program goals and the program’s effectiveness.
 - (9) Continued interdisciplinary education in order to promote effective Family Wellness Court planning, implementation, and operation.
 - (10) The forging of partnerships among other Drug Treatment Courts, public agencies, and community-based organizations to generate local support.
- d. “Participant” means an individual who is admitted into the Family Wellness Court.
- e. “Participant Family” means the immediate family of the participant; however it is the intent of this legislation to also include those persons living within an extended family household. Additionally, where parental custody of minors is shared, the intent is to broadly encompass all of those members of the separate households.
- f. “Proximal Goal” means a short term goal expected to be achieved to move forward in the recovery program, for example attending weekly support meetings.
- g. “Violent Offender” means an individual who meets either of the following criteria:
 - (1) Is currently charged with or has been found guilty of an offense involving:
 - (a) The death of or serious bodily injury to any individual; or

- (b) The carrying, possessing, or use of a firearm or other dangerous weapon by that individual, whether or not any of these circumstances are an element of the offense; or
 - (c) Criminal sexual conduct of any degree.
- (2) Has one (1) or more prior convictions for a felony involving the use or attempted use of force against another individual with the intent to cause death or serious bodily harm.

CHAPTER II

JURISDICTION, COURT STRUCTURE, POLICIES, PROCEDURES, AND PROGRAM RULES

6. Jurisdiction.

- a. The Family Wellness Court is hereby established by the Legislature as a court of special jurisdiction to meet the purposes set out above. The Family Wellness Court will exercise its authority as a court of special jurisdiction pursuant to rules established by the Supreme Court in accordance with Article VII, Section 7(b) of the Constitution and in Accordance with the legislative purposes set out above.
- b. The Family Wellness Court will operate parallel to the Trial Court.
 - (1) The Family Wellness Court shall exercise independent discretion in its monitoring of assigned cases.
 - (2) The Family Wellness Court Judge shall preside over the Family Wellness Court case, where the focus will be on the participant's treatment, so as to ultimately facilitate reunification.
 - (3) The Trial Court Judge shall preside over the Child in Need of Protection and Services (hereinafter CHIPS) action, where the focus will be on the protection, services, well-being, and permanency for the children.
 - (4) The Family Wellness Court may provide limited progress updates to the Trial Court, subject to appropriate releases of information.
- c. The Family Wellness Court shall have the authority to issue all orders necessary to ensure the safety, well-being, and rehabilitation of participants, and their families who come within, or consent to its jurisdiction. The Family Wellness Court shall have the power to implement all the duties, responsibilities, and remedies set out in this Code, including the power to enforce subpoenas, orders of restriction, fines and orders of restitution, contempt, and other powers as appropriate.
- d. Upon successful completion of the Family Wellness Court program, or at such a time when a participant of the Family Wellness Court becomes ineligible to continue in the program, the Family Wellness Court will provide such information to Children and Family Services (hereinafter CFS) to determine the appropriate final disposition of CHIPS action.

7. Structure of the Family Wellness Court Team.

- a. The Family Wellness Court team shall be made up of a treatment team which shall include a Judge, a Department of Justice ("DOJ") attorney, a defense attorney, a Case Coordinator, a Case Manager, Behavioral Health provider(s), a vocational rehabilitation

professional, a representative of Traditional Court, a representative of the Clan Mothers, a representative of Children and Family Services (hereinafter CFS), and other members to be determined by the treatment team, if needed to assist with the individualized customization of a participant's treatment plan. The Family Wellness Court shall comply with the ten (10) key components promulgated by the National Association of Drug Court Professionals more fully described in Section 5.c.

- b. Ho-Chunk Nation Law Enforcement shall assist with drug testing, background checks, compliance checks, and home visits when needed.

- (1) The Family Wellness team may need to enter agreements with local law enforcement as needed.

- c. The Compliance Division shall assist with drug testing and background checks.
- d. The Department of Health shall be called upon to assist with ensuring medical services are available as needed.

8. Policies and Procedures. The Family Wellness Court shall promulgate and follow Policies and Procedures in administering the Family Wellness Court. Policies and Procedures are subject to change, and changes shall be adequately and timely published to the DOJ, public, and participants. Subject to its constitutional authority to create judicial rules, the Ho-Chunk Supreme Court will have the authority to address the Policies and Procedures.

9. Participant Handbook. The Family Wellness Court shall promulgate and distribute Participant Handbooks to the participants of the Family Wellness Court Program. The Participant Handbook shall set forth the rules of the program and obligations of the participant in a clear, age appropriate manner. Handbooks shall be distributed and the defense attorney shall go through the handbook with each participant, as soon as the participant is admitted to the Family Wellness Court and obtain written acknowledgment of participants understanding of the rules of the Family Wellness Court. Failure to abide by the program rules may result in sanctions, therapeutic responses, termination from the program, and/or guardianship may be ordered in the CHIPS case to provide permanency for the children.

CHAPTER III

REFERRAL AND ASSESSMENT

10. Referral Procedures.

- a. A referral may be made by anyone, provided the prospective participant is willing to have the referral made, and is willing to agree to voluntary participation in the court program.
- b. A referral form shall be kept by the Family Wellness Court Coordinator.
- c. Once a completed referral form is received, the Family Wellness Court Coordinator will begin to forward the information to the necessary team members to initiate the appropriate screenings.

11. Child and Family Services Screening.

- a. Children and Family Services (CFS) will receive referrals regarding prospective participants for the Family Wellness Court who have child protection cases in the county system.
- b. CFS will staff the county case to determine if they have the resources and staffing capabilities to transfer the case from the county system to the Ho-Chunk Nation Trial Court.
 - (1) If the determination is no, this information will be forwarded to the Family Wellness Court Coordinator.
 - (2) If the determination is yes, this information will be forwarded to both the Family Wellness Coordinator and the DOJ to begin the process for case transfer.

12. Legal Screening.

- a. All applicants and their volunteering family members will undergo screening by the DOJ to determine legal eligibility and to examine public safety risk.
 - (1) The screening should be completed within two (2) weeks of the referral being completed.
- b. Core components of the screening process are:
 - (1) Current child in need of protection and services allegations;
 - (a) At a minimum, ground (I): “[a] child whose parent(s), guardian(s), or legal custodian(s) neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical or mental health of the child” will need to be present. HOCAK NATION CHILDREN AND FAMILY ACT, 4 HCC § 3.20a(1)(I).
 - (2) Current criminal charge(s), in any jurisdiction tribal/state/federal (if any);
 - (a) Circumstances of current offense, such as participant culpability and mandatory incarceration statutes;
 - (b) Violent Offenders Precluded from Participation. The Legal Screening process will include a determination if there are current pending violent felony charges; sex offenses; and offenses in which a firearm, deadly weapon, or dangerous instrument was used that may preclude admission;
 - (3) Criminal history;
 - (a) Violent Offenders Precluded from Participation. The Legal Screening process will include a determination if there are prior violent felonies; sex offenses; and offenses in which a firearm, deadly weapon, or dangerous instrument was used that may preclude admission; and
 - (4) Other Relevant Information;
 - (a) The Legal Screen process will include looking to see if the potential participant has any outstanding warrants, additional charges in other counties, been a participant in a diversion program, or been a participant in a treatment court program.

- c. Legal Screening shall occur at the earliest point after a child in need of protection and services intake is received. If no legal disqualifiers exist and the DOJ believes grounds exist to warrant a Child in Need of Protection and Services Petition to be filed, the participants will be referred to the Family Wellness Court Coordinator.
- d. The Family Wellness Court Coordinator will be immediately notified of the Legal Screening determination.
 - (1) If the Legal Screening results show the prospective participant is legally eligible for the program, the Family Wellness Court Coordinator will provide the contact information for the prospective participant to arrange for a Clinical Assessment to be conducted as the second phase of determining eligibility.
 - (2) If the Legal Screening results show that the prospective participant is not legally eligible for the program, the Family Wellness Court Coordinator will provide such documentation to the treatment team for reference and discussion.

13. Clinical Assessment.

- a. The Clinical Assessment shall be completed by the treatment professionals on the treatment team to determine diagnosis, clinical eligibility, and treatment planning.
 - (1) The assessment should be completed within two (2) weeks of the referral being completed.
- b. The Clinical Assessment shall occur soon after Legal Screening results are available, thereby showing legal eligibility standards have been met.
- c. The Clinical Assessment shall consist of validated standardized assessment instruments and methods.
 - (1) The assessment will include but is not limited to: age and physical condition of the child(ren); family employment; educational background and literacy level; community and family relations; prior and current drug and alcohol use; behavioral health and medical treatment history; demonstrable motivation of the family; and other mitigating or aggravating factors.
- d. The treatment professionals will review any special needs or circumstances of the individual that may potentially affect the individual's ability to receive substance abuse treatment and follow the court's orders.
- e. The Clinical Assessment shall remain confidential, will not be open to inspection by the public at the Ho-Chunk Nation Wa Ehi Hoci, is not discoverable under the DISCOVERY ACT, 2 HCC § 3, and shall not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use.
- f. The prospective participant must also recognize the possibility of, and agree to cooperate with, any future evaluation assessments, as directed by the Family Wellness Court.
- g. The Family Wellness Court Coordinator will be immediately notified of the Clinical Assessment determination.
- h. The Family Wellness Court Coordinator shall prepare copies of eligibility documentation to be presented to the treatment team.

14. Cultural Assessment.

- a. The Traditional Court shall make a Ho-Chunk cultural assessment in order to address cultural and/or spiritual competencies with recommendations given to the Family Wellness Court.

15. Admission to Program.

- a. Assessment and Screening results shall be presented to the treatment team in order for the treatment team to ultimately recommend whether to admit an eligible applicant into the Family Wellness Court program.
- b. The treatment team shall review all relevant information before reaching a consensus on whether to admit or deny a prospective participant.
- c. Judges will make a decision based on evidence and recommendation of treatment team.
- d. The Family Wellness Court Coordinator shall notify the prospective participant's attorney, if any and the applicant to let them know the treatment team's decision.
- e. Documentation of receipt of the Participant Handbook and any meetings with the parents' attorney and DOJ, shall be placed within the participant's file to be kept by the Family Wellness Court Coordinator.

16. Records of Denials of Admission to the Voluntary Treatment Program. The Family Wellness Court Coordinator shall retain all copies of information pertaining to denials for data and research purposes. Information pertaining to denials shall not be made transferable to any entity other than the grant provider/funder, or pursuant to the Order of the Court of competent jurisdiction.

CHAPTER IV

MONITORING, TESTING, AND ASSESSMENTS

17. Monitoring. The Family Wellness Court shall provide a participant with consistent, continual, and close monitoring.

- a. Monitoring may include, but is not limited to, the use of a Global Positioning System (GPS) and Secure Continuous Remote Alcohol Monitor (SCRAM) units.
- b. Any loss or damage to the GPS and/or SCRAM units shall be the financial responsibility of the program participants.

18. Interaction. The Family Wellness Court shall ensure appropriate amounts of interaction among the court, treatment providers, probation, appropriate friends and/or family members and the participant.

19. Testing Compliance. The Family Wellness Court shall ensure periodic and random testing of the participant for the presence of any controlled substance or alcohol in the participant's blood, urine, or breath, using the best available, accepted, and scientifically valid methods.

20. Assessments. The Family Wellness Court shall utilize periodic evaluation assessments of the participant's circumstances and progress in the program.

- a. Treatment providers shall utilize best evidence-based practices in performing new assessments as needed to determine if any additional treatment services are necessary to assist the participant.
- b. Assessments shall include an evaluation of the participant's efforts towards meeting their proximal and distal goals in the program.

21. Responses to Behaviors. It shall be the responsibility of the presiding Judicial Officer or Judge, to apply appropriate sanctions and to appropriately incentivize the participant based on the evidence and recommendation of the treatment team.

- a. Sanctions. The Family Wellness Court shall implement and utilize a system of appropriate, graduated, and immediate sanctions for non-compliance.
 - (1) Sanctions include, but are not limited to, increased phase requirements, a phase freeze, community service, and ultimately termination from the program.
 - (2) Therapeutic Responses. If a participant is not compliant with his/her treatment plan, the treatment team may utilize therapeutic responses to assist with getting the participant back on track with his/her treatment plan, which may include, but is not limited to thinking reports and increased counseling sessions and self-help meetings.
 - (3) The types of sanctions/responses used shall take into consideration the distal and proximal goals set for each participant.
- b. Incentives. The Family Wellness Court shall implement and utilize a system of appropriate, graduated, and immediate incentives for compliance.
 - (1) Incentives may include, but are not limited to, certificates of achievement, applause, verbal encouragement, household items, credit for program fees, gift cards, public praise, and early phase advancement.
 - (a) Early Phase Advancement may only be given as an incentive at the discretion of the presiding Judicial Officer/Judge based upon evidence of preparedness to move to the next level.

22. Services. The Family Wellness Court, through adequate funding from the Legislature, shall ensure that substance abuse treatment services, relapse prevention services, mental health treatment referrals, parenting education classes, in-home parenting support and training programs, supervised visitation services, and/or other general services, education, vocational opportunities are appropriate and available.

CHAPTER V

FAMILY WELLNESS COURT STAFFING

23. Compliance Reports.

- a. The Family Wellness Court Coordinator is responsible for coordinating all bi-weekly compliance reports to be distributed to the Family Wellness Court for the purpose of staffing. It shall be the responsibility of the treatment team members to provide updates to the Coordinator for these reports, but also to provide electronic email

updates in the interim to ensure swift action regarding both desired and undesired behaviors.

- b. The compliance reports will at a minimum provide:
 - (1) An overview of a participant's compliance with their treatment plan;
 - (2) Compliance with the program rules as laid out within the Participant Handbook;
 - (3) Their period of sobriety;
 - (4) Any additional services and supports that may be necessary to assist the participant;
 - (5) Their start date;
 - (6) The total number of weeks they have been in the program;
 - (7) The phase that they are in and week in such phase, taking into consideration and noting any advancement or freeze;
 - (8) A complete and detailed list of all sanctions since the start of their program; and
 - (9) Updates on the child(ren) and family interaction/visitation.

24. Formal Staffing.

- a. The purpose of the Family Wellness Court staffings is to update the treatment team on the program compliance and needs of each participant in his/her treatment plan, to report the results of weekly random alcohol and/or drug testing, and to discuss possible sanctions and incentives for non-compliance, tampered with, or failed tests, while also rewarding progress. The sanctions and incentives shall be applied by the Judge in the Status Hearing. The treatment team shall also make concrete arrangements to assist participants in areas of need.
- b. All Family Wellness Court staffings will be closed to the public and are confidential.
 - (1) Only members of the Family Wellness Court treatment team shall be present during the staffings.
 - (2) If an individual outside of the Family Wellness Court treatment team is necessary to adequately staff a case, then that individual will complete a confidentiality agreement and be advised that any information they hear is to be strictly confidential.
 - (3) At times participants may be called into a staffing, or request to appear on their own, as in the case of phase advancement. A participant will be present only for the part of the staffing addressing that participant, and then will be excluded from the rest of the meeting.
- c. Family Wellness Court decisions shall be made through discussion and by consensus.
- d. Provision for allowing observation by others shall be at the discretion of the Judge, with appropriate releases and waivers.

25. Informal Staffing.

- a. At times best practices demand decisions be made quickly. As such, Family Wellness Court members are permitted to make recommendations via the most expedient means available; including email. Treatment team members should be cognizant of ex parte communication, so if communications include the Judge—then all team members should be part of those e-mail feeds.

- b. Recommendation(s) to the Judge made by e-mail shall be supported through discussion and by consensus.
- c. E-mails shall remain confidential and shall include the following confidentiality disclosure statement in the signature area:

NOTICE OF PROHIBITION AGAINST RE-DISCLOSURE: This e-mail may accompany a disclosure of information concerning a client in alcohol/drug abuse treatment, made to you with the consent of such client. This information has been disclosed to you from records whose confidentiality is protected by federal law. Federal Regulations (42 CFR, Part 2) prohibits you from making any further disclosure of it without specific written consent from the person to whom it pertains, or as otherwise permitted by such regulations. Specific written consent has been given if you and the entity to receive the disclosure are identified in a valid Release of Information. A general authorization for the release of medical or other information is not sufficient for this purpose. The information is intended only for the sole use of the recipient named in this e-mail. If you are not the intended recipient, you are hereby notified that the dissemination, distribution, or copying is strictly prohibited. If you have received this e-mail in error, please contact the sender at the address or phone number noted above and delete all copies of it from your system.

CHAPTER VI

COURT PROCEDURE AND HEARINGS

26. Rules of Evidence. Any information obtained, used, or disclosed by a member of the Family Wellness Court team, regarding the treatment methods employed by the Family Wellness Court treatment team, while the participant is under the jurisdiction of the Family Wellness Court shall not be used as evidence against the participant in any other proceeding in the Ho-Chunk Nation Court system or any other court in any other jurisdiction. All Family Wellness Court records are privileged and confidential and shall not be disclosed except to the members of the Family Wellness Court team. A limited progress report will be provided to the Trial Court in the CHIPS case pursuant to valid authorizations for release of information from the Participant. The Rules of Evidence adopted by the Ho-Chunk Nation Judiciary shall not apply in any Family Wellness Court proceedings.

27. Status Hearings.

- a. The purpose of Status Hearings is to judicially monitor whether the participants are compliant or non-compliant in attending their required treatment sessions and activities, to review their weekly random alcohol and/or drug test results, and to formally reward or sanction participants for progress, non-compliance, or relapse in moving through their treatment plan.
- b. The Status Hearings will consist of attendance by the Family Wellness Court team, the Judge, and all of the participants together.

- (1) Individual participants may come before the Court from time to time, including for the purpose of requesting phase advancement. The decisions made during these will be communicated during a Status Hearing.
- c. The Status Hearings shall include discussion between the Court and the participant in regard to the progress or lack thereof being made by the participant on his or her Wellness Court/Individualized Treatment Plan.
- d. Due to the nature of Family Wellness Court hearings, they shall be closed to the general public. Family members and individual support system members may be in attendance during the portion of the hearing that addresses the participant they are there for—provided they complete confidentiality agreements, which shall be strictly enforced.
- e. The Family Wellness Court is a non-adversarial forum.
- f. Status Hearings shall be held at a minimum of every two weeks—and depending on individual needs—may be more frequent.
- g. The Family Wellness Court Judge shall make all findings relevant to each participant's case pursuant to the policies and procedures adopted by the Family Wellness Court team.

28. Termination/Expulsion.

- a. Upon presentation of appropriate grounds, any Family Wellness Court Team member may request that the treatment team consider termination of a participant.
 - (1) Grounds for termination include but are not limited to:
 - (a) Commission of a violent crime;
 - (b) Continuing failure of the participant's treatment or Family Wellness Court requirements after being provided notice of the non-compliance;
 - (c) Evidence indicating the participant is involved with drug dealing, or driving while under the influence of an intoxicant;
 - (d) Any threatening, abusive, or violent verbal/physical behavior;
 - (e) Hostile, threatening or disrespectful conduct towards the Court, the treatment team or other participants; or
- b. Termination will be discussed and a recommendation shall be made to the Judge by consensus.
- c. If the recommendation is the participant should be terminated, the Court shall provide notice and hold a Termination Hearing in order to provide the participant an opportunity to be heard on the matter.
- d. Any decision to terminate shall be put in writing and provided to the participant. A copy of the Order shall be kept as part of the participant's Family Wellness Court records.
- e. While participation in the Family Wellness Court is voluntary, the program is intended to promote successful reunification of families. As such, termination from the program may be indicative of whether reunification is possible within the CHIPS case, but does not necessarily mean reunification will not be possible in the CHIPS case.

29. Graduation.

- a. Upon successful completion of all five (5) phases of the Family Wellness Court program, participants shall be formally recognized and praised for graduating from the Family Wellness Court program during the Status Hearings.
- b. The Family Wellness Court Judge shall issue a written Order formally recognizing completion of the program to be kept as part of the Family Wellness Court records.
 - (1) A copy may be provided to the Trial Court addressing the CHIPS matter, pursuant to valid releases of information.
- c. The graduate is to be provided a formal written Certificate recognizing completion from the program to be used by the participant as he or she requires. A copy of this Certificate shall be kept as a part of the participant's Family Wellness Court records.

CHAPTER VII

RECORDS, BUDGET, ADVISORY BOARD

30. Collection and Maintenance of Records.

- a. The Family Wellness Court shall collect data on each individual applicant, participant, and entire program.
 - (1) The Family Wellness Court shall maintain files on each individual applicant, or referral, who is denied or refused admission to the program, including the reasons for the denial or rejection, the criminal history of the applicant, the preadmission legal screening and clinical assessment, and other demographic information as deemed beneficial by the Ho-Chunk Nation Judiciary.
 - (2) The Family Wellness Court shall maintain files on each participant in the program for review and evaluation as well as treatment. The information collected for evaluation purposes must include a minimum standard data set as deemed appropriate through evidence based practices, and at a minimum contain:
 - (a) Location and contact information for each individual participant, both upon admission and termination/graduation of the program for follow-up reviews, and third party contact information;
 - (b) Significant transition-point-dates, including dates of referral, admission, new court orders, violations, jail/confinement, changes in services or treatments provided, phase advancements, periods of phase freeze, discharge for graduation or termination, any provision of after-care, and after-program recidivism;
 - (c) The facts that led to the filing of the Child in Need of Protection and Services Petition, and other pertinent factual information, sources of referral, and all treatment court evaluations and assessments;
 - (d) Treatments provided, including intensity of care or dosage, and their outcomes;
 - (e) Other services or opportunities provided to the individual and resulting use by the individual, such as education or employment and participation of and outcome for that individual;

- (f) Whether the family reunified, and recidivism rates (criminal and child protection actions);
- (g) Reasons for termination or graduation from the program.
- (h) The Family Wellness Court shall conduct a two year, follow-up contact with and review of participants for key outcome indicators, such as drug use, recidivism, employment, and family intactness. These follow-up contacts and reviews of former participants are not extensions of the court's jurisdiction over the individuals.

31. Budget. The Legislature shall appropriate operating funds to ensure the Family Wellness Court can operate fully in accordance with the mandates of this Code and with the ten 10-key components promulgated by the National Association of Drug Court Professionals. Supra. Section 5c.

32. Advisory Committee.

- a. Consists of Community Advisors and Administrators who have the authority to engage in FWC planning and operations, which may include:
 - (1) HCN Traditional Court Representatives
 - (2) HCN CFS: Clan Mothers, CPS, Juvenile Justice, ICW, CST
 - (3) HCN Youth Services
 - (4) HCN Community Supportive Services
 - (5) HCN DOJ: Department of Justice Attorney, Compliance, Law Enforcement, Attorney General, Attorney for Child and Family Services
 - (6) HCN Health: Behavioral Health: AODA and Exec. Director or designee
 - (7) HCN Judiciary: Judge, Law Clerk, Clerk of Court
 - (8) HCN Education
 - (9) HCN Domestic Violence
 - (10) HCN Legislature
 - (11) Others as needed
- b. The Advisory Committee shall assist with policy development and guide the court as it goes from planning to implementation
- c. The Advisory Committee shall provide ongoing and regular review of policy and procedures
- d. Meets on an annual basis to review Policies and Procedures; provide guidance to court.

33. Orders. All decisions issued by the Family Wellness Court shall be final and there shall be no right to appeal under this program, as this program is voluntary. Any appellate rights will be available under the applicable Juvenile action in the Nation's courts.

34. Severability. If any part or parts, or application of any part of this Code is held invalid, such holding shall not affect the validity of the remaining parts of this Code.

Hoopa Valley Tribal Code

Title 4A – Na:tini-x’we’ Na:xo-xi-nayi-din [The people’s get well place] Court Code

1. SHORT TITLE, PURPOSE, AND DEFINITIONS

A. Short Title

This title shall be known as the “Hoopa Valley Na:tini-x’we’ Na:xo-xi-nayi-din Court Code.”

B. Purpose.

The Hoopa Valley Tribe Na:tini-x’we’ Na:xo-xi-nayi-din Court Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

1. To preserve and retain the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this code;
2. To recognize that alcohol and substance abuse is a disease which is both preventable and treatable;
3. To remove from children committing juvenile offenses, the legal consequences of criminal behavior and to substitute a program of supervision, care, and rehabilitation consistent with the protection of the Hoopa Valley Tribal Community;
4. To achieve the purposes of this code in a family environment whenever possible, separating the child from the child’s parents only when necessary for the child’s welfare or in the interests of public safety; and
5. To provide a continuum of services for children and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives.

C. Definitions

The definitions for this code are the same as the definitions used in section 1C of the Hoopa Valley Tribe E:sdo’ Na:Na: Xi:nay Code.

2. JURISDICTION OF THE COURT

There is hereby established for the Hoopa Valley Tribe of the Hoopa Indian Reservation a court to be known as the Hoopa Valley Tribe Juvenile Na:tini-x’we’ Na:xo-xi-nayi-din Court. The court has jurisdiction over all proceedings in this code in which an Indian child resides in or domiciled on the reservation or where other persons consent to the court’s jurisdiction.

The Na:tini-x’we’ Na:xo-xi-nayi-din court shall have the authority to issue all orders necessary to insure the safety, well-being, and rehabilitation of individuals who come within or consent to its jurisdiction. The court shall have the power to implement all the duties, responsibilities, and remedies set out in this Code, including the power to enforce subpoenas and orders of restriction, fines and orders of restitution, contempt, confinement and detention, and other powers as appropriate.

3. NA:TINI-X'WE' NA:XO-XI-NAYI-DIN COURT PROCEDURE

A. Non-Criminal Proceedings. No proceeding or hearing upon the status of any child in the jurisdiction of the court shall be deemed criminal or be deemed a conviction or adjudication of any crime or disqualify him from any tribal personnel system or military service application, election or appointment or from holding tribal office.

B. Use in Other Proceedings. No material, action or other evidence presented before the court or in any activities pursuant to this court shall be deemed admissible as evidence against the child in any proceeding in another court, including the tribal court except as may be necessary for Constitutional Double Jeopardy proceedings.

C. Rules of Procedure. The procedures in the court shall be governed by the Hoopa Valley Tribe Na:tini-x'we' Na:xo-xi-nayi-din Court Policy and Procedures Manual.

4. RELATIONS WITH OTHER AGENCIES

A. Cooperation and Grants. The court is authorized to cooperate fully with any federal, state, tribal, public or private agency in order to participate in any diversion, rehabilitation or training program and to receive grants-in-aid to carry out the purposes of this code.

B. Social Services. The court shall utilize such social services as may be furnished by any tribal, federal, or state agency provided that it is economically administered without unnecessary duplication and expense.

C. Contracts. The court may negotiate contracts with tribal, federal or state agencies and/or departments on behalf of the tribal council for the substance, mental health, or other treatment of children and eligible household members who have entered informal adjustment agreements, consent decrees, Na:tini-x'we' Na:xo-xi-nayi-din consent decrees, or who have been adjudicated delinquent by the juvenile court.

D. Transfers from Other Courts. The court may accept or decline transfers from other state or tribal courts involving alleged delinquent children or alleged status offenders for participation in juvenile Na:tini-x'we' Na:xo-xi-nayi-din court and may allow transfer to other state or tribal courts of any person legally ineligible for the Court or any non-tribal member.

5. NA:TINI-X'WE' NA:XO-XI-NAYI-DIN COURT PERSONNEL

"Personnel" under this code are the personnel described in section 8 of the Hoopa Valley Tribe E:sdo' Na:Na Xi:nay Code.

6. RIGHTS OF PARTIES IN NA:TINI-X'WE' NA:XO'-XI-NAYI-DIN COURT

A. Right to be Informed of the Requirements of Participation. All Na:tini-x'we' Na:xo-xi-nayi-din court participants have the right to be informed of the requirements of Na:tini-x'we' Na:xo-xi-nayi-din court participation prior to signing the Na:tini-x'we' Na:xo-xi-nayi-din consent decree as outlined in sections 7E, 7F, 8B, and 9 this code.

B. Right to Timely Clinical Assessment and Development of an Individualized Treatment Plan.

All Na:tini-x'we' Na:xo-xi-nayi-din court participants have the right to timely clinical assessment and the development of an individualized treatment plan as outlined in section 10A of this code.

C. Right to Access Services Under Treatment Plan. Every Na:tini-x'we' Na:xo-xi-nayi-din court participant has the right to access the services outlined in his/her individual treatment plans prepared under Section 10B of this Code and any other services and treatment the participant is willing and able to complete without cost to the Tribe.

D. Right to Case Management Services

All Na:tini-x'we' Na:xo-xi-nayi-din court participants have the right to case management services to ensure that they are able to meet the requirements of their individual treatment plans as outlined in section 10C of this Code.

7. INITIATION OF PROCEEDINGS

A. Admission. Admission into the Na:tini-x'we' Na:xo-xi-nayi-din court shall occur upon:

1. a recommendation from the probation officer and approval by Na:tini-x'we' Na:xo-xi-nayi-din court team by majority agreement. Any child or eligible family or household member wishing to be admitted to Na:tini-x'we' Na:xo-xi-nayi-din court must first make a request to the probation officer; or
2. by the judicial order of a juvenile court judge.

B. Investigation by Probation Officer. The probation officer shall make an investigation within twenty-four (24) hours of receiving a report of delinquency or a report of a family in need of services to determine whether the interest of the juvenile and the public require further action be taken. If the investigation reveals a need for further action, the probation officer shall screen the child for legal and clinical eligibility for Na:tini-x'we' Na:xo-xi-nayi-din court admission.

C. Legal Screening for Eligibility. Following an investigation, and given a reasonable belief that a child has committed a delinquent act, or that the child's family is a family in need of services, the probation officer shall legally screen the individual for Na:tini-x'we' Na:xo-xi-nayi-din court eligibility. The following individuals for so long as the Na:tini-x'we' Na:xo-xi-nayi-din Court receives Federal grant funding are not eligible to participate in the Na:tini-x'we' Na:xo-xi-nayi-din Court under this Code:

1. individuals who have been convicted of a violent felony where in committing the offense the person carried, used or possessed a firearm or dangerous weapon and/or there occurred death, serious bodily injury or use including attempted use of force against the person of another;
2. individuals who have pending felony charges in tribal, state, or federal court, where facts supporting the charged offense establish the person carried used or possessed a firearm or dangerous weapon and/or there occurred death, serious bodily injury or use including attempted use of force against the person of another;

3. individuals who are over the age of 18 at the time the eligibility screening is concluded, excluding otherwise eligible family members or otherwise eligible household members of a current Na:tini-x'we' Na:xo-xi-nayi-din court participants.

D. Clinical Screening for Eligibility. Following an investigation, and given a reasonable belief that a child has committed a delinquent act, or that the child's family in need of services, and provided that the individual is legally eligible under section 7C. above, the probation officer shall clinically screen the individual for Na:tini-x'we' Na:xo-xi-nayi-din court eligibility using a standard alcohol and/or drug screening tool. The following individuals are **not eligible** to participate in the Na:tini-x'we' Na:xo-xi-nayi-din court under this code:

1. individuals and/or immediate family who do not have an alcohol and/or drug use problem; and/or
2. individuals who will not benefit from the available educational and therapeutic services and activities.

E. Informal Adjustment Conference. If a child is legally and clinically eligible for Na:tini-x'we' Na:xo-xi-nayi-din court participation, the probation officer may hold an informal adjustment conference prior to the filing of a petition.... At this conference, the probation officer shall explain the following to the eligible child and his parent, guardian, or custodian and may obtain their signatures on a Na:tini-x'we' Na:xo-xi-nayi-din consent decree:

1. the reasonable grounds to believe the child committed a delinquent act or that the family is a family in need of services;
2. the purpose, requirements, duration, and possible sanctions of the Na:tini-x'we' Na:xo-xi-nayi-din court program;
3. that a decision not to consent to Na:tini-x'we' Na:xo-xi-nayi-din court participation may result in the filing of a petition with a juvenile court having jurisdiction;
4. that a failure to complete the Na:tini-x'we' Na:xo-xi-nayi-din court treatment plan pursuant to the consent decree may also result in the filing of a petition with a juvenile court having jurisdiction; and
5. that admission to the Na:tini-x'we' Na:xo-xi-nayi-din court is conditioned on obtaining the signatures of a parent, guardian, or custodian, the child, or other eligible family or household member, and a vote of admission by the Na:tini-x'we' Na:xo-xi-nayi-din court team, and upon completing a formal clinical assessment.

F. Court-Ordered Participation. If a child who is legally and clinically eligible for Na:tini-x'we' Na:xo-xi-nayi-din court is adjudicated delinquent, the juvenile court judge may order Na:tini-x'we' Na:xo-xi-nayi-din court participation as part of the child's disposition pursuant to Section 16E of the juvenile code. During the juvenile court disposition hearing, the judge shall explain the following to the eligible child and his parent(s), guardian, or custodian, enter into a Na:tini-x'we' Na:xo-xi-nayi-din consent decree with these parties to enter the Na:tini-x'we' Na:xo-xi-nayi-din court, and order that a clinical assessment be made:

1. the finding that the child committed a delinquent act;
2. the purpose, requirements, duration, and possible sanctions of the Na:tini-x'we' Na:xo-xi-nayi-din court program;

3. that a decision not to consent to Na:tini-x'we' Na:xo-xi-nayi-din court participation may result in an alternative juvenile court disposition;
4. that a failure to complete the Na:tini-x'we' Na:xo-xi-nayi-din treatment plan pursuant to the consent decree may result in an alternative juvenile court disposition; and
5. that admission to Na:tini-x'we' Na:xo-xi-nayi-din court is conditioned on obtaining the signatures of a parent, guardian, or custodian, and the child, or other eligible family or household member, and the juvenile court judge on the Na:tini-x'we' Na:xo-xi-nayi-din consent decree, and upon the completion of a formal clinical assessment.

8. INITIAL NA:TINI-X'WE' NA:XO-XI-NAYI-DIN COURT HEARING

8.A. Purpose and Conduct of Na:tini-x'we' Na:xo-xi-nayi-din Court Admission Hearing. The Na:tini-x'we' Na:xo-xi-nayi-din court judge shall preside over the Na:tini-x'we' Na:xo-xi-nayi-din court admission hearing. The Na:tini-x'we' Na:xo-xi-nayi-din court coordinator, probation officer, and the alcohol and drug counselor shall attend the Na:tini-x'we' Na:xo-xi-nayi-din admission hearing.

The Na:tini-x'we' Na:xo-xi-nayi-din court admission hearing shall be conducted as part of the ongoing weekly Na:tini-x'we' Na:xo-xi-nayi-din court status hearings. At the beginning of each weekly Na:tini-x'we' Na:xo-xi-nayi-din court status hearing, the judge shall call newly admitted participants before him to welcome them to the Na:tini-x'we' Na:xo-xi-nayi-din court program, to review the grounds and terms of their admission, to briefly get to know the new participants, and to instruct and answer questions about treatment plan requirements and alcohol and/or drug testing.

B. Review & Signing of Decrees. The Na:tini-x'we' Na:xo-xi-nayi-din court judge shall read the contents of the Na:tini-x'we' Na:xo-xi-nayi-din consent decree to the child, his parent(s), guardian, or custodian, and other eligible family or household member(s). The judge shall ask them questions to satisfy himself that the potential participants understand and consent to participation in the Na:tini-x'we' Na:xo-xi-nayi-din court. If the judge finds that the child or other eligible family or household member understands and consents to the terms, he shall sign the Na:tini-x'we' Na:xo-xi-nayi-din consent decree admitting the individual to the program.

The Na:tini-x'we' Na:xo-xi-nayi-din court judge shall review the contents of the Na:tini-x'we' Na:xo-xi-nayi-din consent decree signed by the juvenile court judge with the child or eligible family/household member and admit them to participate in the Na:tini-x'we' Na:xo-xi-nayi-din court.

C. Persons Not Admitted to Na:tini-x'we' Na:xo-xi-nayi-din Court. The Na:tini-x'we' Na:xo-xi-nayi-din court team may decline to admit any child, family or household member who has been referred to Na:tini-x'we' Na:xo-xi-nayi-din court by the probation officer as part of an informal adjustment. Children who are not admitted shall return to the juvenile court for a new informal adjustment conference to determine other options. For each child, eligible family or other eligible household member who is not admitted, the Na:tini-x'we' Na:xo-xi-nayi-din court team must issue written findings containing their reason for declining admission.

D. Time Limitations on Na:tini-x'we' Na:xo-xi-nayi-din Admission Hearing. Na:tini-x'we' Na:xo-xi-nayi-din court admission hearings shall be held within seven working days of the informal adjustment conference or disposition hearing wherein the consent decree or Na:tini-x'we' Na:xo-xi-nayi-din consent decree was signed by the child and his parent, guardian, or custodian. Failure to hold the hearing within this time period does not divest the Na:tini-x'we' Na:xo-xi-nayi-din court of its subject matter jurisdiction but may constitute a breach of the tribe's duty of care to tribal members, giving the harmed tribal member limited remedies but in no event shall any monetary compensation exceed \$500.00.

E. Notice of Hearing. Written notice of the Na:tini-x'we' Na:xo-xi-nayi-din court admission hearing shall be given to the child, his parent, guardian, or custodian, or other eligible family or household members as soon as the time for the hearing has been set. The notice shall contain:

1. The name of the court;
2. The title of the proceeding (Na:tini-x'we' Na:xo-xi-nayi-din Court Admission Hearing);
3. A brief statement of the delinquent act the child is alleged to have committed or why the family is in need of services; and
4. The date, time, and place of the Na:tini-x'we' Na:xo-xi-nayi-din court admission hearing.

F. Drafting, Filing, and Contents of Na:tini-x'we' Na:xo-xi-nayi-din Consent Decree

The probation officer shall draft a consent decree or Na:tini-x'we' Na:xo-xi-nayi-din consent decree for each recommended or court ordered participant and file copies of the decree with the juvenile court and Na:tini-x'we' Na:xo-xi-nayi-din court. The consent decrees shall set forth with specificity the information and agreements contained in section 8G of this Code.

G. Contents of Na:tini-x'we' Na:xo-xi-nayi-din Consent Decree

The decree shall be titled "[Na:tini-x'we' Na:xo-xi-nayi-din] Consent Decree Between _____ (name of child and parent, guardian, or custodian) and the Hoopa Valley Tribe Juvenile Na:tini-x'we' Na:xo-xi-nayi-din Court." The decree shall set forth with specificity:

1. the name, birth date, residence, and tribal affiliation of the child;
2. the names, residences, and tribal affiliations of the child's parent(s), guardian or custodian;
3. the name, birth date, residence, and tribal affiliation of other eligible family members or eligible household members (if they are consenting to participate in the Na:tini-x'we' Na:xo-xi-nayi-din court);
4. the alleged "delinquent act" committed or the factual allegations that the family is a "family in need" or dispositional order ordering the child to Na:tini-x'we' Na:xo-xi-nayi-din court;
5. in the case of voluntary participation, a stipulation by the child, his parent, guardian, or custodian or other eligible family or household member, that he committed the delinquent act or that the facts giving rise to a finding of a family in need are true;
6. a finding of legal eligibility for Na:tini-x'we' Na:xo-xi-nayi-din court participation;
7. a finding of clinical eligibility for Na:tini-x'we' Na:xo-xi-nayi-din court participation;

8. the general requirements of Na:tini-x'we' Na:xo-xi-nayi-din court (including alcohol and/or drug testing), duration, and possible sanctions of Na:tini-x'we' Na:xo-xi-nayi-din court participation;
9. a limited waiver of confidential information for Na:tini-x'we' Na:xo-xi-nayi-din court purposes; and
10. signature lines for the probation officer, child or other participant, the child's parent, guardian, or custodian, and the juvenile or Na:tini-x'we' Na:xo-xi-nayi-din court admission judge.

9. SAMPLE NA:TINI-X'WE' NA:XO-XI-NAYI-DIN CONSENT DECREE

IN THE HOOPA VALLEY TRIBE JUVENILE NA:TINI-X'WE' NA:XO-XI-NAYI-DIN COURT

THE HOOPA VALLEY TRIBE)	No.
)	
-VS-)	NA:TINI-X'WE' NA:XO-XI-NAYI-DIN
)	CONSENT DECREE
)	
<i>Participant name</i>)	
)	

This agreement was made and entered into this ___th day of ___, ___, between the juvenile outreach intake officer, and the juvenile and the parent/guardian/custodian and Hon. Na:tini-x'we' Na:xo-xi-nayi-din court chief judge.

It is hereby agreed by juvenile and his parent, guardian, or custodian as follows:

I. The Na:tini-x'we' Na:xo-xi-nayi-din court Has Subject Matter Jurisdiction

1. The name, birth date, residence, and tribal affiliation of the child;
2. The names, residences, and tribal affiliations of the child's parent(s), guardian, or custodian;
3. The name, birth date, residence, and tribal affiliation of other eligible family or household members (if they are consenting to participate in the Na:tini-x'we' Na:xo-xi-nayi-din court).
4. The delinquent act alleged, the factual allegations that the family is in need of services, or the disposition order giving the Na:tini-x'we' Na:xo-xi-nayi-din court its subject matter jurisdiction;
5. A finding of legal eligibility for Na:tini-x'we' Na:xo-xi-nayi-din court participation;
6. A finding of clinical eligibility for Na:tini-x'we' Na:xo-xi-nayi-din court participation.

II. Participant Agreement

7. I will not commit a delinquent act or violate any tribal, state, or federal law;
8. I will not possess or drink any alcoholic beverages or possess or use illegal drugs;
9. I will maintain contact with the juvenile outreach/intake officer, alcohol and drug counselor, and family advocate as needed and will present any problems or concerns as soon as possible;
10. I will attend classes, counseling, groups and other require activities that will assist me in preparing for an alcohol and drug free lifestyle;
11. I will be responsible for my actions;

12. I will appear in the in the Hoopa Valley Tribe Na:tini-x'we' Na:xo-xi-nayi-din court as directed and will pay court fees for each court session;
13. I will submit to alcohol and/or drug tests as required by the juvenile outreach/intake officer, and I understand that I may be sanctioned for noncompliance, tampering, or positive tests;
14. I understand that this agreement is in effect from this date until I complete the Na:tini-x'we' Na:xo-xi-nayi-din court program; and
15. I understand that if I fail to abide by this agreement the juvenile outreach/intake officer may be required to file a petition with the juvenile court and/or the juvenile court may order alternative dispositions or refer me to the proper state authorities for further action.

III. Parent, Guardian, or Custodian Agreement

16. I recognize that alcohol and/or drug abuse is a family problem, and I will educate myself on its impact on children and families;
17. I recognize that if I use alcohol and/or drugs, my use can seriously harm my children;
18. I will provide appropriate role models that do not condone alcohol and/or drug use;
19. I will learn to recognize the signs of drug and alcohol use in children and will respond with appropriate sanctions;
20. I will provide a substance free home environment that will promote recovery;
21. I will establish and enforce behavioral ground rules;
22. I will convey a sense of care, support, respect and love; and
23. I will be actively involved in the development of the child's treatment plan, family treatment and counseling, and other required activities.

IV. Limited Waiver of Confidentiality for Na:tini-x'we' Na:xo-xi-nayi-din Court Purposes

I, participant name, hereby consent to communication with Na:tini-x'we' Na:xo-xi-nayi-din court judges, juvenile outreach/intake officer, alcohol and drug counselor, family advocate, and juvenile court personnel.

The purpose of and need for this disclosure is to inform the court and other above-named parties of my eligibility and/or acceptability for substance abuse treatment services and my treatment attendance, prognosis, compliance, and progress in accordance with the Na:tini-x'we' Na:xo-xi-nayi-din court monitoring criteria.

Disclosure of this confidential information may be made only as necessary for and pertinent to hearings and/or reports concerning cited delinquent act or cited provisions for family in need finding and case file number.

I understand that this consent will remain in effect and cannot be revoked by me until there has been a formal and effective termination of my involvement with the Na:tini-x'we' Na:xo-xi-nayi-din court for the case named above, such as the discontinuation of all court supervision upon my successful completion of the Na:tini-x'we' Na:xo-xi-nayi-din court requirements or upon revocation of admission for violating the terms of my Na:tini-x'we' Na:xo-xi-nayi-din court involvement.

I understand that any disclosure made is bound by Part 2 of Title 42 of the Code of Federal Regulations, which governs the confidentiality of substance abuse patient (or client) records, and that recipients of this information may re-disclose it only in connection with other official duties.

_____	_____
Date	Signature of Court Team Participant
_____	_____
Date	Signature of Participant
_____	_____
Date	Signature of Parent, Guardian or Custodian
_____	_____
Date	Signature of Na:tini-x'we' Na:xo-xi-nayi-din Chief Judge

10. NA:TINI-X'WE' NA:XO-XI-NAYI-DIN TREATMENT PLAN

A. Clinical Assessment & Individualized Treatment Plan. A trained professional as designated for this purpose by the Court or any health related tribal department on a list of names to be maintained by the Court shall undertake a clinical assessment using standardized assessment tools (questionnaires) for each participant. The professional shall draft an assessment report containing a recommended individualized treatment plan for each participant.

B. Assessor's Duty to Timely Assess & Individualize Treatment Plan and Breach of Duty.

Failure to clinically assess a participant within one (1) week of the Na:tini-x'we' Na:xo'-xi-nayi-din judge's signing of the Na:tini-x'we' Na:xo-xi-nayi-din consent decree, and to draft an assessment report containing a recommended individualized treatment plan within 24 hours of the completion of the assessment constitutes a breach of duty to the Na:tini-x'we' Na:xo-xi-nayi-din participant subjecting responsible tribal agencies to limited fines not to exceed \$500.00.

C. Contents of Treatment Plan. Each Na:tini-x'we' Na:xo-xi-nayi-din treatment plan shall contain a combination of educational and therapeutic activities including any combination of the following, based upon recommendations derived from the results of the clinical assessment, provided that every treatment plan, at minimum, shall include numbers 1, 2, 3, and 5 below:

1. classes on the effects of alcohol and drug use on the mind, body, and spirit (alcohol and drug education);
2. individual and/or family counseling;
3. facilitated group meetings with the goal of teaching participants how they currently make decisions and how to make healthy decisions in the future (cognitive behavioral therapy);
4. other classes and groups that focus on specific topics;

5. individual counseling to plan how the participant will identify what triggers the urge to use alcohol and/or drugs, and to develop an individualized relapse plan to deal with such urges (relapse prevention);
6. support groups (such as Alcoholics Anonymous and Alateen)
7. elder or peer mentoring;
8. hunting, fishing, and/or culture camps;
9. other traditional activities that the tribe may require; and
10. other activities as the Na:tini-x'we' Na:xo-xi-nayi-din court team may from time to time approve.

D. Case Management. The social worker shall make a home visit with the child, his parent(s), guardian, or custodian, and other eligible family or household member(s) each month, beginning with the child's admission into the Na:tini-x'we' Na:xo-xi-nayi-din court, to assist the household in identifying the need for, and obtaining financial, medical, vocational, and/or other vital services and assistance.

E. Judicial Supervision, Consistent Supervision, & Training

The Na:tini-x'we' Na:xo-xi-nayi-din court judge shall hold weekly pre-hearing staffing conferences with the Na:tini-x'we' Na:xo-xi-nayi-din court team, followed by weekly Na:tini-x'we' Na:xo-xi-nayi-din court status hearings to supervise each participant's attendance and progress in required treatment plan counseling and/or activities under section 10A. The same Na:tini-x'we' Na:xo-xi-nayi-din court judge shall be assigned to supervise individual participants from Na:tini-x'we' Na:xo-xi-nayi-din court admission to graduation or revocation of admission. The Na:tini-x'we' Na:xo-xi-nayi-din court judge shall obtain training with respect to all classes, groups, or other activities required by the Na:tini-x'we' Na:xo-xi-nayi-din treatment plan.

F. Na:tini-x'we' Na:xo-xi-nayi-din Court Incentives. The Na:tini-x'we' Na:xo-xi-nayi-din court judge shall consistently apply any of the following rewards (incentives) for progress:

1. verbal praise;
2. graduating a participant to a new treatment level;
3. requiring attendance at fewer Na:tini-x'we' Na:xo-xi-nayi-din court status hearings;
4. requiring less alcohol and/or drug testing;
5. gifts;
6. traditional recognition or gifts for achieving; and
7. any other rewards approved by the Na:tini-x'we' Na:xo-xi-nayi-din court team.

G. Na:tini-x'we' Na:xo-xi-nayi-din Court Sanctions. The Na:tini-x'we' Na:xo-xi-nayi-din court judge shall consistently apply any of the following sanctions for non-compliance or failed or tampered with alcohol and/or drug tests:

1. verbal reprimands;
2. sending a participant back to an earlier treatment level;
- Requiring attendance at more frequent Na:tini-x'we' Na:xo-xi-nayi-din court status hearings;
4. requiring more frequent alcohol and/or drug testing;

5. specific tasks that cause the participant to reflect or learn (such as apology letters, journals, or research papers);
6. community service activities;
7. traditional punishments or activities; and
8. any other sanctions approved by the Na:tini-x'we' Na:xo-xi-nayi-din court team.

11. NA:TINI-X'WE' NA:XO-XI-NAYI-DIN COURT WEEKLY PROCEDURE

A. Weekly Staffing Conference. Weekly staffing conferences shall be held on the same day prior to weekly Na:tini-x'we' Na:xo-xi-nayi-din court status hearings. The Na:tini-x'we' Na:xo-xi-nayi-din court team shall attend the weekly status conferences. The purposes of the Na:tini-x'we' Na:xo-xi-nayi-din staffing conference is to update the judge on the progress and needs of each participant in his treatment plan, to report the results of weekly random alcohol and/or drug testing and to discuss possible incentives and sanctions for non-compliance, tampered with or failed tests, and also to reward progress. These sanctions and incentives shall be applied by the judge in the status hearing later that same day. The team shall also make concrete arrangements to assist the participants in areas of identified need.

B. Weekly Na:tini-x'we' Na:xo-xi-nayi-din Court Status Hearing. The appointed Na:tini-x'we' Na:xo-xi-nayi-din judge shall preside over the weekly Na:tini-x'we' Na:xo-xi-nayi-din status hearing. The Na:tini-x'we' Na:xo-xi-nayi-din court team shall attend the Na:tini-x'we' Na:xo-xi-nayi-din status hearings. The general purpose of the weekly Na:tini-x'we' Na:xo-xi-nayi-din court status hearing is to provide participants with judicial guidance with judicial guidance and mentoring to build an ongoing relationship with participants and guide them through the healing process. Specifically, the purpose is to judicially monitor whether the participants are attending their required treatment sessions and activities, to review their weekly random alcohol and/or drug test results, and to formally reward or punish participants for progress, non-compliance, or relapse n moving through their treatment plan.

C. Weekly Random Alcohol and/or Drug Testing. All individuals admitted to participate in the Na:tini-x'we' Na:xo-xi-nayi-din court program shall be randomly alcohol and/or drug tested on a weekly basis. The results of such testing shall be reported to the judge at the weekly case staffing conferences.

D. Weekly Pre-Hearing and/or For Cause Drug Testing. All individuals admitted to participate in the Na:tini-x'we' Na:xo-xi-nayi-din program may be alcohol and/or drug tested for good cause at anytime, including prior to status hearings, during the Na:tini-x'we' Na:xo-xi-nayi-din court program. The probation officer has good cause to undertake such testing when he observes signs or behavior or detects odors that would lead a reasonable person to believe that a person is possessing or using alcohol and/or drugs.

12. REVOCATION OF ADMISSION TO NA:TINI-X'WE' NA:XO-XI-NAYI-DIN COURT

A. Hearing to Revoke Admission to Na:tini-x'we' Na:xo-xi-nayi-din Court. The designated Na:tini-x'we' Na:xo-xi-nayi-din hearing judge shall also preside over the Na:tini-x'we' Na:xo-xi-

nayi-din revocation hearing. The purpose of the Na:tini-x'we' Na:xo-xi-nayi-din court revocation hearing is to determine whether a Na:tini-x'we' Na:xo-xi-nayi-din court participant should be expelled from the Na:tini-x'we' Na:xo-xi-nayi-din court program. Grounds for expulsion include:

1. Conviction of a violent felony in any tribal, state or federal court;
2. The filing of a formal charge for a crime of violence in state or federal court subsequent to Na:tini-x'we' Na:xo-xi-nayi-din court admission; or
3. Failure to substantially comply with the terms of the Na:tini-x'we' Na:xo-xi-nayi-din consent decree and/or treatment plan.

B. Notice of Hearings. Notice of all Na:tini-x'we' Na:xo-xi-nayi-din court hearings shall be given to the child, the child's parent, guardian or custodian, their counsel, and any other person the court deems necessary for the hearing at least five (5) days prior to the hearing in accordance with sections 8D and 8E of this code.

C. Consent of the Summons. The summons shall contain the name of the court, the title of the proceedings, and the date, time, and place of the hearing. The summons shall also advise the parties of their applicable rights under Chapter 6 of this Code. A copy of the petition shall be attached to the summons.

D. Service of the Summons. The summons shall be served upon the parties at least five (5) days prior to the hearing. The summons shall be delivered personally by a law enforcement official or appointee of the court. If the summons cannot be delivered personally, the court may deliver it by registered mail. If the summons cannot be delivered by registered mail, service may be by publication. A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

13. SUCCESSFUL COMPLETION OF NA:TINI-X'WE' NA:XO-XI-NAYI-DIN COURT PROGRAM

A. Na:tini-x'we' Na:xo-xi-nayi-din Court Graduation. Upon successful completion of all Na:tini-x'we' Na:xo-xi-nayi-din consent decree and treatment plan requirements, participants will be formally recognized and praised for graduating from the Na:tini-x'we' Na:xo-xi-nayi-din court program during the weekly Na:tini-x'we' Na:xo-xi-nayi-din court status hearings. Formal recognition may include a graduation dinner, a certificate of graduation, meaningful traditional or other gifts, or other items or arrangements as the Na:tini-x'we' Na:xo-xi-nayi-din team designs and undertakes. Upon graduation the Na:tini-x'we' Na:xo-xi-nayi-din court judge shall issue a written Na:tini-x'we' Na:xo-xi-nayi-din court completion order that shall be formally filed in the juvenile court files. This will also be filed in the Na:tini-x'we' Na:xo-xi-nayi-din court.

B. Contents of Na:tini-x'we' Na:xo-xi-nayi-din Court Order of Successful Completion. The order shall be titled "Order of Successful Completion of the Na:tini-x'we' Na:xo-xi-nayi-din Court of the Hoopa Valley Tribe." The order of completions shall set forth with specificity:

1. the name, birth date, residence, and tribal affiliation of the child;
2. the names, residences, and tribal affiliations of the child's parent(s), guardian or custodian;
3. the name, birth date, residence, and tribal affiliation of other eligible family or household members (if they are graduates of the Na:tini-x'we' Na:xo-xi-nayi-din court program);

4. the finding of legal eligibility for Na:tini-x'we' Na:xo-xi-nayi-din court participation;
5. the finding of clinical eligibility for Na:tini-x'we' Na:xo-xi-nayi-din court participation;
6. a statement that the participant has successfully completed the general requirements of the consent decree and treatment plan; and
7. signature line for the Na:tini-x'we' Na:xo-xi-nayi-din court judge.

14. NA:TINI-X'WE' NA:XO-XI-NAYI-DIN COURT RECORDS. The Na:tini-x'we' Na:xo-xi-nayi-din court coordinator shall establish and maintain both a paper filing system and a computer database to track information for all participants of the Na:tini-x'we' Na:xo-xi-nayi-din court (before, during and after participation). This information will be used to monitor program effectiveness, to make improvements to the program, and to demonstrate program innovations or success, and to acquire further funding. The forms and computer database shall be designed to collect and report on the following information:

1. Name, age, birth date, sex, tribe, grade in school, and the name of the school of the participant;
2. Whether the participant is living with parents, has children, or is employed before and during Na:tini-x'we' Na:xo-xi-nayi-din court participant and names of the participant's parent(s), guardian, or custodian, or other eligible family or household member and extended family as available or appropriate;
3. The specific delinquent act or family in need provision underlying Na:tini-x'we' Na:xo-xi-nayi-din court admission;
4. The criteria met for legal and clinical eligibility (list the specific clinical screening tool used);
5. Dates of all court hearings and orders and types of orders;
6. Dates of admission, date of physical, health issues upon admission;
7. Documented incidents in school, absence rate, grades, etc.;
8. The specific treatment plan requirements for each participant (classes, counseling, groups, support groups, mentoring, outdoor programs, etc.);
9. The specific beginning dates for each phase of treatment and phase graduation dates;
10. Changes in grades, grade level, school incidents, and absence and dropout dates;
11. Date of expulsion from the Na:tini-x'we' Na:xo-xi-nayi-din court program;
12. Date of re-admission to the Na:tini-x'we' Na:xo-xi-nayi-din court program;
13. Date of each alcohol and/or drug test and results;
14. Dates of new reports of delinquent act;
15. Dates of arrest;
16. Dates of changes in employment;
17. Number of babies born to participants alcohol and drug free;
18. Dates of required status hearings and appearances by participants and their parent(s), guardian, or custodian, or other eligible family or household members;
19. Date and type of sanction issued and for what act of omission;
20. Date and type of incentive awarded and for what act or omission;
21. Attendance record for each treatment plan requirement (classes, counseling, groups, support groups, mentoring, outdoor programs, etc.);
22. Date and type of post-participation report of juvenile act or family in need provision;
23. Date and type of act of post-participation detentions or arrests;

24. Dates of post-participation truancy;
25. Dates and types of post-participation alcohol and drug counseling or other treatment; and
26. Post-participation employment and income level.

15. BI-ANNUAL NA:TINI-X'WE' NA:XO-XI-NAYI-DIN COURT REVIEW. Beginning with Na:tini-x'we' Na:xo-xi-nayi-din court operations, a bi-annual review shall be conducted by the juvenile court advisory board to review and improve court operations. The advisory board will consist of three persons appointed by the tribal council for this purpose. The court coordinator shall generate a report (based on the information collected by Na:tini-x'we' Na:xo-xi-nayi-din court forms and maintained in the Na:tini-x'we' Na:xo-xi-nayi-din court database) on current and past participants for review by the advisory board.

Muscogee (Creek) Nation

Title 26. Judicial Branch/Courts Vhakv Fvtcecvlke/Fvtceckv Cuko, Title 26

§ 6-101. Establishment of program. There is hereby established a Family Drug Court Program within the Muscogee (Creek) Nation's judicial system.

§ 6-102. Powers and authority of Court. The Judge of the Muscogee (Creek) Nation District Court is hereby authorized to order and/or impose sanctions and incentives for participants who enter into the Family Drug Court Program. The Court's powers and authority hereunder shall include, but are not limited to, the following:

- A. approving and enforcing treatment plans;
- B. holding participants in direct or indirect contempt of court for willful violations of the Court's orders, including Court-ordered treatment plans;
- C. imposing fines and/or costs;
- D. ordering the performance of community service;
- E. ordering participants to receive mandatory inpatient/outpatient drug or alcohol treatment or counseling;
- F. ordering random and/or periodic urinalysis testing;
- G. placement of child(ren) in the legal and/or physical custody of Children and Family Services Administration and/or other persons;
- H. authorizing increased or restricted contact with other family members or increased or restricted supervised visitation with child(ren);
- I. extending, accelerating, and/or terminating treatment plan(s) and/or ordering that non-compliant participants be discharged from the Family Drug Court program;
- J. where a participant in the program has materially and/or repetitively violated the terms of his or her Court-ordered treatment plan, ordering that the participant be placed in confinement for a period not to exceed five (5) days for each violation, but only after the Court expressly finds that the participant's violation of the plan was willful and that other sanctions or incentives are inadequate; and
- K. imposing any other condition, standard, requirement, treatment, service, training or activity which the Court deems appropriate under the facts and circumstances of the case in the exercise of the Court's sound discretion.

§ 6–103. Rules and procedures. The District Court may, in its discretion, adopt written rules and procedures for the conduct of hearings and proceedings within the Family Drug Court Program and the administration of cases therein, provided that copies of such rules and procedures shall be public documents and made available to all persons participating in the Family Drug Court Program and, upon request to any citizen or attorneys admitted to the Muscogee (Creek) Nation Bar Association.

§ 6–104. Family Drug Court Implementation Team

A. There is hereby established the Family Drug Court Implementation Team, which shall consist of at least one (1) representative from each of the following agencies or departments of Muscogee (Creek) Nation: Office of the Attorney General, Children and Family Services Administration (hereinafter “CFSA”), Muscogee (Creek) Nation Behavioral Health and/or Employee Health Department, Lighthorse Police, and such other person or persons as may be designated by the Principal Chief. The Speaker of the National Council may appoint one member of the National Council to attend Implementation Team meetings in an ex-officio capacity.

B. The Family Drug Court Implementation Team is hereby authorized to develop policies, procedures, and inter-agency/departmental protocols and standards for use in the operation of the Family Drug Court Program, as well as standardized forms and other documents to be used in the program. In developing the foregoing, the Team shall consult with their respective agencies, the judicial branch, attorneys who provide indigent defense services, and other outside agencies.

§ 6–105. Children and Family Services Administration responsibilities. The CFSA shall be primarily responsible for managing and coordinating services and activities under the individual treatment plans, provided that in drafting and formulating individual treatment plans, CFSA shall consult with other agencies participating in the program in accordance with the inter-agency protocols and standards adopted pursuant to subsection B of Title 26, § 6–104.

§ 6–106. Muscogee (Creek) Nation Behavioral Health responsibilities. Muscogee (Creek) Nation Behavioral Health shall be the primary service provider for alcohol and drug abuse assessments, testing, counseling, and treatment services to be provided under the individual treatment plans, provided that Muscogee (Creek) Nation Behavioral Health shall coordinate its services with other agencies participating in the program in accordance with the inter-agency protocols and standards adopted pursuant to subsection B of Title 26, § 6–104. [

§ 6–107. Search for funding. The Principal Chief or his designee is authorized to seek and apply to other funding or sources for the purpose of implementing a Family Drug Court Program within the Muscogee (Creek) Nation justice system.

§ 6–108. Cooperative agreements or contracts.

A. The Principal Chief, with the assistance of the Attorney General, is hereby authorized to negotiate and enter into on behalf of the Muscogee (Creek) Nation appropriate cooperative agreements with state and local governments for integrating and/or coordinating the Muscogee (Creek) Nation Family Drug Court Program with agencies of such other governments.

B. In addition, the Principal Chief, with the assistance of the Attorney General, is hereby authorized to negotiate and enter into on behalf of the Muscogee (Creek) Nation appropriate cooperative agreements/contracts with substance abuse treatment facilities, local jails and/or detention facilities, and other agencies in order to provide more comprehensive treatment and sanctions services for the Family Drug Court Program.

§ 6–109. Severability The provisions of this chapter shall be considered severable such that if any provision shall be held invalid by a court of competent jurisdiction, all other provisions shall continue to be valid and given full force and effect.

Oneida Indian Nation

Rules of Criminal Procedures, Chapter 8: Diversion

CHAPTER 8 DIVERSION

801. DEFINITIONS

Rule 801 DEFINITIONS

1. “Nation Prosecutor” means the prosecutor for the Oneida Indian Nation.
2. “Complaint” means the criminal complaint charging the defendant with an offense.
3. “Diversion” means referral of a defendant in a criminal case to a supervised performance program prior to adjudication.
4. “Diversion agreement” means the specification of formal terms and conditions which a defendant must fulfill in order to have the charges against him or her dismissed.

802. DIVERSION AGREEMENT AUTHORIZED; POLICIES AND GUIDELINES BY NATION PROSECUTOR; BACKGROUND INFORMATION

Rule 802 DIVERSION AGREEMENT GUIDELINES BY NATION INFORMATION AUTHORIZED; PROSECUTOR; POLICIES AND BACKGROUND

a. After a complaint has been filed charging a defendant with commission of a crime and prior to conviction thereof, and after the Nation Prosecutor has considered the factors listed in Section 803, if it appears to the Nation Prosecutor that diversion of the defendant would be in the interests of justice and of benefit to the defendant and the community, the Nation Prosecutor may propose a diversion agreement to the defendant. The terms of each diversion agreement shall be established by the Nation Prosecutor in accordance with section 804.

b. The Nation Prosecutor shall adopt written policies and guidelines for the implementation of a diversion program in accordance with these Rules. Such policies and guidelines shall provide for

a diversion conference and other procedures in those cases where the Nation Prosecutor elects to offer diversion in lieu of further criminal proceedings on the complaint.

c. Each defendant shall be informed in writing of the diversion program and the policies and guidelines adopted by the Nation Prosecutor. The Nation Prosecutor may require any defendant requesting diversion to provide information regarding prior criminal charges, education, work experience and training, family, residence in the community, medical history, including any psychiatric or psychological treatment or counseling, and other information relating to the diversion program. In all cases, the defendant shall be present and shall have the right to be represented by counsel at his own expense at the diversion conference with the Nation Prosecutor.

803. GRANT OF DIVERSION; FACTORS TO CONSIDER

Rule 803 GRANT OF DIVERSION; FACTORS TO CONSIDER

In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the Nation Prosecutor shall consider at least the following factors among all factors considered:

- a. The nature of the crime charged and the circumstances surrounding it;
- b. any special characteristics or circumstances of the defendant;
- c. whether the defendant is a first-time offender and if the defendant has previously participated in diversion.
- d. whether there is a probability that the defendant will cooperate with and benefit from diversion;
- e. whether the available diversion program is appropriate to the needs of the defendant;
- f. the impact of the diversion of the defendant upon the community;
- g. recommendations, if any, of the involved law enforcement agency;
- h. recommendations, if any, of the victim;
- i. provisions for restitution; and
- j. any mitigating circumstances.

804. PROVISIONS OF DIVERSION AGREEMENT; WAIVER OF SPEEDY TRIAL AND JURY TRIAL, WHEN; ALCOHOL AND DRUG RELATED OFFENSES; STAY OF CRIMINAL PROCEEDINGS; FILING OF AGREEMENTS

Rule 804 PROVISIONS OF DIVERSION AGREEMENT; WAIVER OF SPEEDY TRIAL AND JURY TRIAL, WHEN; ALCOHOL AND DRUG RELATED OFFENSES; STAY OF CRIMINAL PROCEEDINGS; FILING OF AGREEMENTS

a. A diversion agreement shall provide that if the defendant fulfills the obligations of the program described therein, as determined by the Nation Prosecutor, the Nation Prosecutor shall act to have the criminal charges against the defendant dismissed with prejudice. The diversion agreement shall include specifically the waiver of all rights under Nation law to a speedy arraignment and a speedy trial. The diversion agreement may include, but is not limited to, provisions concerning payment of restitution, including court costs and diversion costs, residence in a specified facility, maintenance of gainful employment, and participation in

programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services.

b. The diversion agreement shall state: (1) The defendant's full name; (2) the defendant's full name at the time the complaint was filed, if different from the defendant's current name; (3) the defendant's sex, race and date of birth; (4) the crime with which the defendant is charged; (5) and, the date the complaint was filed.

c. If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of alcohol and substance abuse laws, the diversion agreement shall include a stipulation, agreed to by the defendant and the Nation Prosecutor, of the facts upon which the charge is based and a provision that if the defendant fails to fulfill the term of the specific diversion agreement and the criminal proceedings on the complaint are resumed, the proceedings, including any proceedings on appeal, shall be conducted on the record of the stipulation of facts relating to the complaint. In addition, the agreement shall include a requirement that the defendant:

1. Perform community service specified by the agreement; and
2. Enroll in and successfully complete an alcohol and drug program or a treatment program, or both.

d. If a diversion agreement is entered into in lieu of further criminal proceedings on a complaint alleging a violation of driving under the influence, the diversion agreement may restrict the defendant's driving privileges, in addition to any suspension and to driving only under the following circumstances: (1) In going to or returning from the person's place of employment or schooling; (2) in the course of the person's employment; (3) during a medical emergency; (4) in going to and returning from probation or parole meetings, drug or alcohol counseling or any place the person is required to go to attend an alcohol and drug safety action program; (5) at such times of the day as may be specified by the diversion agreement; and (6) to such places as may be specified by the diversion agreement.

Restrictions imposed pursuant to this subsection shall be for a period of not less than 90 days nor more than one year, as specified by the diversion agreement.

805. CONDITIONING DIVERSION ON PLEA PROHIBITED; INADMISSIBILITY OF AGREEMENT

Rule 805 CONDITIONING DIVERSION ON PLEA PROHIBITED; INADMISSIBILITY OF AGREEMENT
No defendant shall be required to enter any plea to a criminal charge as a condition for diversion. No statements made by the defendant or counsel in any diversion conference or in any other discussion of a proposed diversion agreement shall be admissible as evidence in criminal proceedings on crimes charged or facts alleged in the complaint.

806. FAILURE TO FULFILL DIVERSION AGREEMENT; SATISFACTORY FULFILLMENT; RECORDS

Rule 806 FAILURE TO FULFILL DIVERSION AGREEMENT; SATISFACTORY FULFILLMENT; RECORDS

a. If the Nation Prosecutor finds at the termination of the diversion period or any time prior thereto that the defendant has failed to fulfill the terms of the specific diversion agreement, the Nation Prosecutor shall inform the court of such finding and the court, after finding that the

defendant has failed to fulfill the terms of the specific diversion agreement at a hearing thereon, shall resume the criminal proceedings on the complaint.

b. If the defendant has fulfilled the terms of the diversion agreement, the court shall dismiss with prejudice the criminal charges filed against the defendant.

807. TERM OF DIVERSION

Rule 807 TERM OF DIVERSION

An agreement for diversion shall not exceed one (1) year.

Penobscot Nation Judicial System

Rules of Court, VII. Healing to Wellness Court Program

VII. HEALING TO WELLNESS COURT PROGRAM RULE

RULE 50. ADMISSION TO PROGRAM

A) Eligibility. An individual is eligible to apply to participate in the Penobscot Nation Healing to Wellness Court Program (HTWC) if he or she meets the following criteria:

- 1) Is an enrolled Penobscot Nation tribal member;
- 2) Is not currently charged with a violent offense in the Penobscot Nation Tribal Court;
- 3) Has been clinically assessed as a substance abuser with or without a diagnosis of a co-occurring mental health issue;
- 4) Be physically, emotionally, and mentally capable of completing HTWC requirements and participating in program activities; and
- 5) Willing and able to consent to enter the HTWC program.

B) Admission Procedure in Criminal Cases

- 1) A defendant who is charged with an offense that involves either the illegal possession, use, or abuse of alcohol or other substances, or which involves behavior stemming from such possession, use, or abuse will be advised by the presiding judge of the availability of HTWC at arraignment;
- 2) A defendant considering applying for admission to the HTWC shall be entitled to consult with legal counsel prior to admission;
- 3) In order to be considered for admission to the program, the defendant must complete a Petition for Admission into the HWTC and file it with the Clerk of Courts;
- 4) Upon receipt of such Petition for Admission, the Clerk of Courts shall forward a copy of the Petition to the HWTC Case Manager;
- 5) Within three (3) business days of receiving the Petition, the HWTC Case Manager shall meet with the defendant, conduct an intake interview, and perform or cause to be performed assessments to determine the defendant's status as a substance abuser and for appropriateness for the program;
- 6) As soon as possible after the completion of the assessments, the HTWC Case Manager shall prepare a written report for submission to the Tribal Court and the HTWC multidisciplinary

team containing: the intake information, outcome of assessments; determination of defendant's program eligibility, and recommendation as to whether defendant should be admitted to the HTWC Program;

7) Within seven (7) business days, the HTWC Team shall convene either in person, or by telephone or video-conference, to review the defendant's Petition and the Case Manager's report and, if at all possible, make a determination by consensus as to whether defendant should be admitted to the HTWC Program;

8) In the event, the HTWC team determines that the defendant is an appropriate candidate for admission to the program, the Case Manager shall inform the Court, in writing, of the decision and the Clerk of Courts shall promptly schedule a hearing before the Tribal Court;

9) At the hearing on the defendant's Petition for Admission to the HTWC Program, the presiding judge shall confirm on the record that the defendant has had the opportunity to confer with legal counsel and after doing so, knowingly and voluntarily agrees to the terms of the HTWC Program Participant Order;

10) After the defendant signs the Petition and enters a guilty plea to the charge or charges and waives his or her right to a trial; the presiding judge shall enter a judgment of guilty and a deferred sentence of a determinate period of time and order the admission of the defendant into the HTWC program as the conditions of the deferred sentence.

C) Admission Procedure in Civil Cases

1) A person who is a party in a civil case before the Tribal Court in which it is alleged that the use or abuse of alcohol or other substances is an issue in the dispute, and who is willing to participate in the HTWC program in an effort to resolve the dispute and the underlying substance abuse issues, may voluntarily apply for admission to the HTWC;

2) A person suffering the negative effects of use or abuse of alcohol and other substances and who believes that he or she may benefit from participation in the HTWC may voluntarily apply for admission to the HTWC program;

3) A person considering voluntarily applying for admission to the HTWC shall be entitled to consult with legal counsel prior to admission;

4) In order to be considered for admission to the program, the individual must complete a Petition for Admission into the HWTC and file it with the Clerk of Courts;

5) Upon receipt of such Petition for Admission, the Clerk of Courts shall forward a copy of the Petition to the HWTC Case Manager;

6) Within three (3) business days of receiving the Petition, the HWTC Case Manager shall meet with the applicant, conduct an intake interview, and perform or arrange to be performed assessments to determine the applicant's status as a substance abuser and for appropriateness for the program;

7) As soon as possible after the completion of the assessments, the HTWC Case Manager shall prepare a written report for submission to the Tribal Court and the HTWC multidisciplinary team containing: the intake information, outcome of assessments; determination of applicant's program eligibility and a preliminary recommendation as to whether the applicant should be admitted to the HTWC Program;

8) Within seven (7) business days, the HTWC Team shall convene either in person, or by telephone or video-conference, to review the voluntary application and the Case Manager's

report and, if at all possible, make a determination by consensus as to whether applicant should be admitted to the HTWC Program;

9) In the event, the HTWC team determines that the applicant is an appropriate candidate for admission to the program, the Case Manager shall inform the Court, in writing, of the decision and the Clerk of Courts shall promptly schedule a hearing before the Tribal Court and provide notice to all parties;

10) At the hearing on the Petition for Admission to the HTWC Program, the presiding judge shall confirm on the record that the applicant has had the opportunity to confer with legal counsel and after doing so, knowingly and voluntarily agrees to the terms of the HTWC Program Participant Order;

11) The Court shall inquire of the opposing party(ies), if any, as to whether there is an objection to the admission of the applicant into the HTWC and the entry of a stay of the proceedings;

12) After the defendant signs the Petition, the presiding judge shall enter an order admitting the applicant into the HTWC program;

13) Where the applicant is a party in a pending civil matter, the Court shall enter a stay of the case pending the applicant's successful graduation from the program and such other orders as deemed necessary to protect the rights and interests of the parties;

14) Upon motion by a party in a civil case, or on its own motion, the Court may convene a status conference or hearing during the pendency of the stay.

D) Admission Procedure in Juvenile Delinquency Cases

1) Informal Adjustment

a) A juvenile who is charged with an offense that involves either the illegal possession, use, or abuse of alcohol or other substances, or which involves behavior stemming from such possession, use, or abuse will be referred to the HTWC Case Manager for a determination as to whether the case is appropriate for an informal adjustment;

b) At the initial meeting of the juvenile and the juvenile's parents or guardians, the HTWC Case Manager, shall advise the juvenile of the availability of the Penobscot Nation Juvenile Healing to Wellness Court (JHTWC) program and, if it is a matter appropriate to be treated as an informal adjustment, of the possibility that the matter can be handled as an informal adjustment on the condition that the juvenile successfully complete the JHTWC program;

c) A juvenile considering applying for admission to the JHTWC shall be entitled to consult with legal counsel prior to admission;

d) In order to be considered for admission to the program, the juvenile and his or her parent(s) or guardian(s) must complete a Petition for Admission into the JHTWC and file it with the Clerk of Courts;

e) Upon receipt of such Petition for Admission, the Clerk of Courts shall forward a copy of the Petition to the HTWC Case Manager;

f) Within three (3) business days of receiving the application, the HTWC Case Manager shall meet with the juvenile and his or her parent(s) or guardian(s), conduct an intake interview, and perform or caused to be performed assessments to determine the juvenile's status as a substance abuser and for appropriateness for the program;

- g) As soon as possible after the completion of the assessments, the HTWC Case Manager shall prepare a written report for submission to the Tribal Court and the JHTWC multidisciplinary team containing: the intake information, outcome of assessments; determination of the juvenile's program eligibility and recommendation as to whether the juvenile should be admitted to the JHTWC Program;
- h) Within seven (7) business days, the JHTWC Team shall convene either in person or by telephone or video-conference to review the juvenile's application and the Case Manager's report and, if at all possible, make a determination by consensus as to whether the juvenile should be admitted to the JHTWC Program;
- i) In the event the JHTWC team determines that the juvenile is an appropriate candidate for admission to the program, the Case Manager shall inform the Court, in writing, of the decision and the Clerk of Courts shall promptly schedule a hearing before the Tribal Court and provide notice to the juvenile, juvenile's legal counsel, and the juvenile's parent(s) or guardian(s);
- j) At the hearing on the juvenile's Petition for Admission to the JHTWC Program, the presiding judge shall confirm on the record that the juvenile has had the opportunity to confer with legal counsel and after doing so, knowingly and voluntarily agrees to the terms of the JHTWC Program Participant Order and shall inquire of the juvenile's parent(s) or guardian(s) and certify their consent for their child to participate in the program;
- k) After the juvenile and the juvenile's parent(s) or guardian(s) sign the Petition; the case will be returned to the HTWC Case Manager for informal adjustment.

2) Formal Adjudication and Disposition

- a) A juvenile who is charged with an offense that involves either the illegal possession, use, or abuse of alcohol or other substances, or which involves behavior stemming from such possession, use, or abuse will be referred to the HTWC Case Manager for a determination as to whether a formal juvenile delinquency petition should be filed with the Tribal Court;
- b) At the initial meeting of the juvenile, the juvenile's parents or guardians, the HTWC Case Manager, shall advise the juvenile of the availability of the Penobscot Nation Juvenile Healing to Wellness Court (JHTWC) program and, of the possibility that a deferred disposition of matter may be entered by the Court on the condition that the juvenile successfully completes the program;
- c) The juvenile may petition for admission to the JHTWC in accordance with the procedures set forth in Section 4(a)(i-ix) herein.
- d) At the hearing on the juvenile's Petition for Admission to the JHTWC Program, the presiding judge shall confirm on the record that the juvenile has had the opportunity to confer with legal counsel and after doing so, knowingly and voluntarily agrees to the terms of the JHTWC Program Participant Agreement and shall inquire of the juvenile's parent(s) or guardian(s) and certify their consent for their child to participate in the program;
- e) After the juvenile and the juvenile's parent(s) or guardian(s) sign the agreement; and enters an admission to the charge or charges and waives his or her right to an

adjudicatory hearing; the presiding judge shall enter an Order of Admission and a deferred disposition of a determinate period of time and order the admission of the defendant into the JHTWC program as conditions of the deferred disposition.

Poarch Band of Creek Indians

Title 3 – Judicial | Chapter III – Poarch Band of Creek Indians Drug Court

Sec. 3-3-1 - Establishment of Drug Court. The Poarch Band of Creek Indians Drug Court shall be a deferred sentencing program established to divert those nonviolent offenders with substance abuse problems away from the regular Court system and toward a more holistic approach, which involves a treatment-oriented perspective.

Sec. 3-3-2 - Drug Court Composition. The Poarch Band of Creek Indians Drug Court shall be composed of one (1) Drug Court Judge and a Drug Court Team.

Sec. 3-3-3 - Term of Office of Drug Court Judge

- (a) The Drug Court Judge shall hold office for a period of three (3) years, unless sooner removed pursuant to §3-1-7(a) or by reason of resignation, death, or incapacitation.
- (b) The Drug Court Judge's term of office can be reconfirmed without limitation by the Tribal Council upon expiration of each three (3) year term.

Sec. 3-3-4 - Duties of Drug Court Judge

- (a) The Drug Court Judge shall preside over all matters referred to it by the Tribal Court.
- (b) The Drug Court Judge shall have the following additional duties and responsibilities:
 - (1) Schedule sessions of the Drug Court, where the Judge shall meet with each individual Drug Court participant;
 - (2) Draft and promulgate rules governing the administration of Drug Court; provided, that such rules do not contradict any rules of procedure enacted by the Tribal Council or Tribal Supreme Court or abridge, enlarge, or modify the substantive right of any party;
 - (3) Meet with the Drug Court Team as necessary;
 - (4) Order punishments and incentives as necessary to further the objectives of the Drug Court, provided that such terms or conditions do not violate or abridge any fundamental or substantive right of any party; and
 - (5) Monitor the privacy and accuracy of all Drug Court records and recommends to the Tribal Judge, upon the participant's completion of the program, that a participant's record be expunged.

Sec. 3-3-5 - Participation in Drug Court

- (a) A defendant in Tribal Court is eligible to participate in the Drug Court if:
 - (1) The defendant is a Tribal Member or a child of a Tribal Member;
 - (2) The defendant is not a juvenile;
 - (3) The defendant has a substance abuse problem;
 - (4) The defendant is charged with crime or civil offense motivated by substance abuse;

- (5) The Tribal Prosecutor recommends to the Tribal Court that the defendant be referred to Drug Court;
 - (6) The defendant is charged with a nonviolent offense; provided, however that the Tribal Court Judge may waive this requirement, if the Tribal Prosecutor believes that the defendant will likely respond to rehabilitative treatment despite the violent nature of the offense;
 - (7) The defendant does not have a history of violent acts; provided, however that the Tribal Court Judge may waive this requirement, if the Tribal Prosecutor believes that the defendant will likely respond to rehabilitative treatment despite the defendant's violent past;
 - (8) The defendant has not participated more than twice in Drug Court;
 - (9) The defendant's participation in the program has never been revoked; and
 - (10) The defendant voluntarily and knowingly enters a plea of guilty to a criminal offense or admits liability in the civil offense.
- (b) Tribal Members and children of Tribal Members, who are at least eighteen years of age or older, may also participate in Drug Court if he or she is referred to Drug Court from a state Court or social service agency, including the Poarch Band of Creek Indians Family Services Department.

Sec. 3-3-6 - Conditions of Drug Court

- (a) In any case in which a defendant is admitted into Drug Court, there shall be a written agreement between the defendant and the Drug Court Team. The agreement shall include, but not be limited to, the terms of Drug Court.
- (b) The conditions of Drug Court may include, but are not limited to, one or more of the following:
- (1) Participate in an education setting, including but not limited to, secondary education, postsecondary education, job training school, trade school, GED classes, or adult basic education courses;
 - (2) Financially support his or her spouse, children, or both, or pay child support, spousal support, or both, including allowing such support to be withheld or garnished from the wages or salary of the defendant;
 - (3) Refrain from the use of alcohol and drugs and from frequenting places where alcoholic beverages or illegal controlled substances are sold, possessed, or used;
 - (4) Refrain from contact with certain persons or premises;
 - (5) Obtain and maintain employment;
 - (6) Attend individual, group, or family counseling;
 - (7) Pay court costs, fees, fines, or both, incurred as a result of the offense charged, including allowing such costs to be withheld or garnished from the wages or salary of the defendant;
 - (8) Pay costs associated with participation in Drug Court, including allowing such costs to be withheld or garnished from the wages or salary of the defendant;
 - (9) Observe curfews or home detention or travel constraints as set out in the offender's agreement; and/or

(10) Observe any other terms or conditions of the Drug Court Judge or Drug Court Team, provided that such terms or conditions do not violate or abridge any fundamental or substantive right of any party.

Sec. 3-3-7 - Drug Court Records and Communications. Drug Court records are confidential and shall not be admissible in subsequent proceedings, civil or criminal. Communications between the Drug Court Treatment Provider and the defendants shall be privileged unless a court of competent jurisdiction determines there is a compelling public interest that the communications be submitted to the court for an in camera review.

Sec. 3-3-8 - Revocation of Participation in Drug Court

(a) Upon a recommendation from the Drug Court Team that the defendant's participation in Drug Court should be revoked, the Tribal Prosecutor shall file a petition in Drug Court showing probable cause that a defendant has violated the terms or conditions of Drug Court. The Drug Court Judge shall order a hearing on the revocation. The order must require the defendant to appear at a specified time and place for the hearing. A copy of the petition and the order setting the hearing shall be personally served by the Tribal Police or by certified mail. The Drug Court Judge may also issue an arrest warrant directing any peace officer or probation officer to arrest the defendant and bring the defendant before the Court.

(b) At the hearing, the defendant must be advised of:

- (1) The allegations of the petition;
- (2) The opportunity to appear and to present evidence on the defendant's behalf;
- (3) The opportunity to question adverse witnesses; and
- (4) The right to be represented by a Tribal Public Defender, if the Poarch Band of Creek Indians makes such representation available, or to hire his or her own representation.

(c) A hearing is required before the defendant's participation in Drug Court is revoked unless the defendant admits the allegations and waives the right to a hearing.

(d) At the hearing, the Tribal Prosecutor shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of Drug Court.

(e) If the Tribal Prosecutor proves that the defendant has violated the terms and conditions of Drug Court, the Drug Court Judge may:

- (1) Continue the defendant's Drug Court participation without a change in terms or conditions;
- (2) Continue the defendant's Drug Court participation with modified or additional terms and conditions; or
- (3) Revoke the defendant's participation in Drug Court and transfer the matter to Tribal Court for the Tribal Judge to impose any sentence that could have been originally

imposed. The Drug Court Judge shall state the reasons for his or her determination in the order.

(f) If the Drug Court Judge finds that the Tribal Prosecutor has not proved by a preponderance of the evidence that there has been a violation of the terms and conditions of Drug Court participation, the Drug Court Judge:

- (1) Must dismiss the petition for revocation and order the immediate release of a defendant, if in custody; and
- (2) May modify or add terms and conditions of Drug Court participation.

(g) If a defendant's participation in Drug Court is revoked, the matter is transferred to Tribal Court, along with a copy of the Drug Court Judge's order revoking participation in Drug Court. The Tribal Judge shall sentence the defendant and shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as credit, except that credit must be allowed for time served in a detention center.

Pueblo of Laguna

Appendix C – Rules of Procedure, Section 4. Pueblo of Laguna Rules of Criminal Procedure

Rule 15. Victim's Rights

A. *Notice.* The court must use its best efforts to give any victims reasonable, accurate, and timely notice of information regarding any public court proceeding involving the crime, as well as regarding any release, parole, or escape.

B. *Attendance.* The court must not exclude a victim from a public court proceeding involving the crime, unless the court determines that the victim's testimony may be materially altered if the victim heard other testimony at that proceeding. In determining whether to exclude a victim, the court must make every effort to permit the fullest attendance possible by the victim and must consider reasonable alternatives to exclusion. The reasons for any exclusion must be stated on the record.

C. *Right to be heard.* The court must permit a victim to be reasonably heard at any public proceeding in the court concerning plea, sentencing, referral to Wellness Court, release, conditions of release, or parole involving the crime.

D. *Enforcement.* A victim's rights may be asserted by the victim, the victim's lawful representative, or the plaintiff. The court must promptly decide any motion asserting a victim's rights.

E. *Limit.* A failure to afford a victim any right in this rule is not grounds for a new trial.

Rule 38. Wellness Court

A. *Eligibility.* A defendant may apply via a court-approved application to participate in the Wellness Court program if the defendant has served the mandatory minimum sentence for an offense and has:

1. Been convicted of a nonviolent offense; or
2. Been referred either by a plea agreement or by a probation officer after a probation violation related to alcohol or substance abuse.

B. *Transfer.* If the defendant is accepted into the Wellness Court, the case before the Pueblo Court and any sentence by the Pueblo Court shall be held in abeyance pending Wellness Court proceedings.

C. *Procedure.* Participation in the Wellness Court program shall be subject to the following:

1. If the defendant completes the Wellness Court program, the defendant will appear before the Pueblo Court to have any original sentence vacated and for the case to be closed with no further action; and
2. If the defendant does not complete the Wellness Court program, the defendant will be held without bond pending disposition by the Pueblo Court for the underlying criminal case.

Pueblo of Pojoaque Law and Order Code

B-6 Wen Hey Kha Wosatsi Khuu (Path to Wellness) Court; C-10 Wen Hey Kha Wosatsi Khuu (Path to Wellness) Court Jurisdiction

B-6 Wen Hey Kha Wosatsi Khuu (Path to Wellness) Court

(a) The *Wen Hey Kha Wosatsi Khuu* (Path to Wellness) Court is established as a trial court of special jurisdiction with authority to hear all cases referred to it pursuant to the laws of the Pueblo of Pojoaque.

(b) Composition. The Chief Judge of the Tribal Court or an Associate Judge appointed by Tribal Council will preside over the Path to Wellness Court. The Path to Wellness Team, composed according to the Path to Wellness Policies and Procedures Manual, will assist in day-to-day operations and development of the Path to Wellness Court.

(c) Court Sessions. Participants in the Path to Wellness Court will appear regularly before the Judge throughout the duration of their participation.

(d) Policies and Procedures. The Path to Wellness Team shall promulgate policies and procedures to address the issues of confidentiality, treatment, sanctions, community involvement, and all other necessary components of Healing to Wellness Courts. The Path to Wellness Court will adhere to all rules and guidelines of the Path to Wellness Policies and Procedures Manual.

B-7 (*) *Wen Hey Kha Wosatsi Khuu* (Youth Path to Wellness) Court**

(a) The (***) *Wen Hey Kha Wosatsi Khuu* (Youth Path to Wellness) Court is established as a trial court of special jurisdiction with authority to hear all cases referred to it pursuant to the laws of the Pueblo of Pojoaque.

(b) Composition. The Chief Judge of the Tribal Court or an Associate Judge appointed by Tribal Council will preside over the Youth Path to Wellness Court. The Youth Path to Wellness Team, composed according to the Youth Path to Wellness Policies and Procedures Manual, will assist in day-to-day operations and development of the Youth Path to Wellness Court.

(c) Court Sessions. Participants in the Youth Path to Wellness Court will appear regularly before the Judge throughout the duration of their participation.

(d) Policies and Procedures. The Youth Path to Wellness Team shall promulgate policies and procedures to address the issues of confidentiality, treatment, incentives and sanctions, community involvement, and all other necessary components of evidence-based Juvenile Healing to Wellness Courts. The Youth Path to Wellness Court will adhere to all rules and guidelines of the Youth Path to Wellness Policies and Procedures Manual.

C-10 *Wen Hey Kha Wosatsi Khuu* (Path to Wellness) Court Jurisdiction

(a) The Pueblo of Pojoaque Path to Wellness Court may exercise jurisdiction over individuals who:

1. Meet the eligibility criteria of the Pueblo of Pojoaque Path to Wellness Court Policies and Procedures Manual; and
2. Are accepted for admission by the Path to Wellness Team.

(b) Individuals may be referred to the Path to Wellness Court by:

1. The Pueblo of Pojoaque Tribal Court or another court;
2. Social Services, Tribal Police, or other Pueblo of Pojoaque Agency; or
3. Self-referral.

(c) Pueblo of Pojoaque Path to Wellness Court participation may be ordered as:

1. Part of a suspended sentence or deferred conviction after a guilty or no contest plea in the Pueblo of Pojoaque Tribal Court;
2. A requirement of pre-prosecution diversion;
3. Part of a Pueblo of Pojoaque Social Services Case Plan; or
4. A requirement after self-referral.

(d) Continuing Jurisdiction. Path to Wellness Court participants, including self-referrals, must agree to the continued jurisdiction of the Path to Wellness Court throughout the duration of the program. In the event that a participant is terminated from the Path to Wellness Court, the case will be sent to Tribal Court for adjudication.

C-11 (*) *Wen Hey Kha Wosatsi Khuu* (Youth Path to Wellness) Court Jurisdiction**

(a) The Pueblo of Pojoaque Youth Path to Wellness Court may exercise jurisdiction over individuals who:

1. Meet the eligibility criteria of the Pueblo of Pojoaque Youth Path to Wellness Court Policies and Procedures Manual; and
2. Are accepted for admission by the Youth Path to Wellness Team.

(b) Individuals may be referred to the Youth Path to Wellness Court by:

1. The Pueblo of Pojoaque Tribal Court or another court;
2. Family and Children's Services, Tribal Police, Education, or other Pueblo of Pojoaque Agency; or
3. Self-referral or referred by a parent or legal guardian, as detailed in the Youth Path to Wellness Policies and Procedures Manual. An unemancipated juvenile must have permission of a parent or legal guardian to self-refer to the Youth Path to Wellness.

(c) Pueblo of Pojoaque Youth Path to Wellness Court participation may be ordered as:

1. If the participant is 18-20 years old:
 - A. Part of a suspended sentence or deferred conviction after a guilty or no contest plea in the Pueblo of Pojoaque Tribal Court;
 - B. A requirement of pre-prosecution diversion;
 - C. Part of a Pueblo of Pojoaque Family and Children's Services Case Plan; or
 - D. A requirement after self-referral.
2. If the participant is under the age of 18:
 - A. Part of a suspended sentence or deferred juvenile finding after a plea of responsible in a juvenile delinquency matter in the Pueblo of Pojoaque Children's Court;
 - B. A requirement of pre-prosecution diversion;
 - C. Part of a Pueblo of Pojoaque Family and Children's Services Case Plan; or
 - D. A requirement after self- or parental-referral.

(d) Continuing Jurisdiction. Youth Path to Well ness Court participants, including self-referrals, must agree to the continued jurisdiction of the Youth Path to Wellness Court throughout the duration of the program. In the event that a participant is terminated from the Youth Path to Wellness Court, the case will be sent to Tribal Court for proper adjudication.

Puyallup Tribal Codes

Title 4 Courts and Procedure | Ch. 4.04 Rules of Criminal Procedure | Rule 11.2 – Alternative resolutions.

4.04.260 Rule 11.2 – Alternative resolutions.

(a) Deferred Prosecution, Also Called “Pretrial Diversion.” Deferred prosecution is an alternative to prosecution that diverts certain offenders who believe their charged conduct is

the result of, or caused by, alcoholism, drug addiction, or mental health issues into a program of supervision and services administered by the Puyallup Tribe Probation Department (or other Tribal programs).

Deferred prosecution is offered in the sole discretion of the Prosecutor.

To be eligible, a defendant:

- (1) Must not have been the subject of a deferred prosecution in a criminal matter before this Court within the last 48 months;
- (2) Must not currently be the subject of a deferred prosecution in a criminal matter before this Court; and
- (3) Must not have entered a plea of guilty or no contest to or been convicted of a Class A or Class B domestic violence offense in this Court in the last 12 months.

(b) Deferred Prosecution Agreements.

(1) At any time before trial, a Prosecutor and counsel for the defendant, or the defendant when acting pro se, may agree to a deferred prosecution for a specified period of time based on one or more of the following conditions:

- (A) That the defendant shall not be convicted of any offense during the specified period of time;
- (B) That the defendant shall not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;
- (C) That the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, and education;
- (D) That the defendant shall make restitution in a specified manner for harm or loss caused by the offense even though the defendant is not pleading guilty to and has not been convicted of the offense giving rise to the victim's losses;
- (E) Community service; and
- (F) Any other reasonable conditions agreed upon by the parties.

(2) Contents of Agreement. All deferred prosecution agreements are subject to approval by the Court. The agreement must be in writing, must be signed by both parties, and must state that once the Court approves the agreement, a stay will go into effect until the agreement is terminated by date or violation of the terms of the agreement which results in the stay of proceedings being lifted; the agreement must also state that the defendant's right to speedy trial will be stayed. The agreement may include stipulations concerning the admissibility of the police report, specified testimony, or dispositions if the deferred prosecution is revoked. The agreement must be filed with the Court along with a copy of the police report, testimonies, or dispositions, if they are included as stipulations in the agreement.

(3) Violations of Agreement. The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms. As an alternative to lifting the stay of proceedings, sanctions may be imposed for a violation of the agreement without revoking the agreement in its entirety, with the consent of the

defendant. If the defendant does not consent to sanctions, the stay of proceedings will be lifted and the prosecution resumed. The conditions of the agreement must be monitored by the Probation Department, the Court, or any other department named by the Court in the agreement. The agreement must state which department will be responsible for monitoring the agreement.

(4) Termination of Deferred Prosecution. Whenever the Court has deferred the prosecution and after expiration of the period of deferral and after the defendant's successful completion of any conditions of deferral, upon motion by the Court, the defendant, or the defendant's counsel, the Court shall enter an order of dismissal of charges.

(c) Deferred Prosecution Petitions. A person charged with a criminal offense in the Puyallup Tribal Court who believes their charged conduct is the result of, or caused by, alcoholism, drug addiction, or mental health issues may petition the Court to be considered for an order granting them entrance into a deferred prosecution program.

(1) Limitation. Any person who has been the subject of a deferred prosecution in a criminal matter pending before this Court within the last 48 months or who has entered a plea of guilty or no contest to or been convicted of a Class A or Class B domestic violence offense in this Court in the last 12 months shall not be entitled to petition for a deferred prosecution.

(2) Contents and Support of Petition. The petition for deferred prosecution:

(A) Must contain the petitioner's sworn admission to specifically articulated facts constituting a violation of the Criminal Code, stipulation to the admissibility and sufficiency of the facts contained in the written police report or testing facility report or both, acknowledgment that the Court will not accept a petition for deferred prosecution from a person who sincerely believes that they are innocent of the alleged violation of the Criminal Code or sincerely believes that they do not, in fact, suffer from a problem with drugs or alcohol or both, and the written acknowledgement of the petitioner that they suffer from a problem with alcohol, drugs, or mental health; the admissions and acknowledgments will be automatically admissible in Court in proceedings to grant or revoke the deferred prosecution, but shall not be admissible in any other proceeding unless the deferred prosecution is revoked;

(B) Must be supported by a treatment facility report indicating either "SP-1" (significant problem requiring a one-year treatment program) or "SP-2" (significant problem requiring a two-year treatment program) and proposing a corresponding treatment program; the treatment facility report must be filed with the petition for deferred prosecution and served on the Prosecutor;

(C) Must contain the signed agreement of the petitioner, stating their obligation to comply with all the requirements of the treatment program proposed by the treatment facility report if the deferred prosecution is granted; and

(D) Must contain the specific written acknowledgment of the petitioner that if the deferred prosecution is revoked, the petitioner's admission to facts under subsection (c)(2)(A) of this section will be automatically admissible and sufficient to support a finding that the petitioner committed a violation of the Criminal Code, and the Court will enter judgment to that effect.

If the petition is not approved or is withdrawn before approval, evidence pertaining to or resulting from the petition is inadmissible in any proceeding or trial.

(3) Contents of Treatment Plan. The written treatment plan must be contained in the treatment facility report filed with the petition for deferred prosecution as required in subsection (c)(2)(B) of this section. The following requirements must be contained in the written treatment plan:

- (A) Total abstinence from alcohol and all other nonprescribed mind-altering drugs;
- (B) Participation in an intensive inpatient or intensive outpatient program in a KCC or a Court approved alcohol or drug treatment program;
- (C) Participation in a minimum of two meetings per week of an alcoholism self-help recovery support group or drug self-help recovery support group or both, as determined by the treatment facility, for the duration of the treatment plan;
- (D) Participation in an alcoholism self-help recovery support group or drug self-help recovery support group or both, as determined by the treatment facility, from the date of Court approval of the treatment plan to entry into intensive treatment;
- (E) Weekly approved outpatient counseling, group or individual, for a minimum of six months following the intensive phase of treatment;
- (F) Monthly outpatient contact, group or individual, for the remainder of the deferred prosecution period;
- (G) The decision to include the use of prescribed drugs, such as disulfiram, as a condition of treatment, must be reserved to the treatment facility and the petitioner's physician;
- (H) All treatment within the purview of this section must occur within or be approved by the treatment facility or a Court approved alcoholism or drug treatment program;
- (I) Signature of the petitioner agreeing to the terms and conditions of the treatment plan;
- (J) The promise of the treatment facility to provide the Court and the parties with a statement every three months for the first year, and for two-year programs, every six months for the second year regarding: (i) the petitioner's cooperation with the treatment plan, and (ii) the petitioner's progress or failure in treatment. These statements must be made as a declaration by the person who is personally responsible for providing the treatment;

(K) The promise of the treatment facility to immediately report to the Court and parties any noncompliance by the petitioner with the requirements of their treatment ordered under this deferred prosecution program.

(4) Hearing on Petition for Deferred Prosecution.

(A) The petition for deferred prosecution and the treatment center report must be filed with the Court and served on the Prosecutor no less than 14 days prior to the hearing on the petition.

(B) The Court shall not grant a petition without a hearing in open Court attended personally by the petitioner.

(C) Before entering an order for deferred prosecution, the Court shall make specific findings that:

(i) The petitioner has stipulated to facts constituting a violation of the Criminal Code and has stipulated to the admissibility and sufficiency of the facts as contained in the written police report or the testing facility report or both;

(ii) The petitioner has stipulated to the admissibility of these facts in any hearing on the underlying violation held subsequent to revocation of the order granting deferred prosecution, and that in the hearing such stipulated facts would be used to enter a finding that the petitioner did commit the violation;

(iii) The petitioner has acknowledged and waived the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to cross-examine, the right to present evidence in their defense, and the right to a jury trial; and

(iv) The petitioner's statements were made knowingly and voluntarily.

Such findings must be included in the order granting deferred prosecution.

(D) If the Court approves the treatment plan and the petitioner agrees to comply with its terms and conditions and agrees to pay the cost, if any, of the treatment, the Court shall make an entrance upon the person's Court docket showing that the person has been accepted for deferred prosecution. A copy of the treatment plan must be attached to the docket, which must then be removed from the regular Court dockets and filed in a special Court deferred prosecution file.

(E) If the petition is not approved or is withdrawn before approval, evidence pertaining to or resulting from the petitioner's statements in the petition or from the treatment center report is inadmissible in any trial on the alleged violations, but will be available for use after a determination that a violation was committed in determining an appropriate sanction.

(F) An order granting deferred prosecution must require compliance with the program proposed by the treatment center report for the specified period (one year or two years) during the term of the deferred prosecution.

(5) Revocation of Deferred Prosecution. If a petitioner, who has been accepted for a deferred prosecution, fails or neglects to carry out and fulfill any term or condition or both of the petitioner's treatment plan or any term or condition or both of the deferred prosecution order, or violates any provision of this section, the treatment facility shall immediately report such breach to the Court, the Prosecutor, and the petitioner or petitioner's attorney or spokesperson of record, together with its recommendation. The Court upon receiving such a report shall hold a hearing to determine whether the petitioner should be removed from the deferred prosecution program. At the hearing, evidence must be taken of the petitioner's alleged failure to comply with the treatment plan and the petitioner will have the right to present evidence on their own behalf. The Court shall either order that the petitioner continue on the treatment plan or be removed from deferred prosecution. If removed from deferred prosecution, the Court shall enter judgment based on the sworn admission of facts contained in the petition and any other evidence adduced at the hearing, and the Court shall then lift the stay of the proceedings, and the prosecution will commence.

(6) Order on Successful Completion of Deferred Prosecution. A hearing must be held after the conclusion of the one-year or two-year program. At least 14 days' notice must be given before the hearing, and it may be noted by either party and scheduled by the Court Clerk. At the conclusion of the hearing, if it appears to the Court that the petitioner satisfactorily complied with the order of deferred prosecution and the treatment plan, the Court shall then dismiss with prejudice the allegations on which the offense was based.

(d) Deferred Judgment. Also called "deferred adjudication," may occur when a defendant has entered a plea of guilty or no contest. At the discretion of the Judge, the Court will not enter the defendant's guilty or no contest plea, and instead must require the defendant to satisfy conditions of the deferred judgment, which must be the same or similar to the conditions set forth in subsections (b)(1)(A) through (F) of this section. When the defendant successfully completes all conditions, the Court shall dismiss the charges against the defendant and the defendant is released from further obligation. If the defendant does not successfully complete all conditions of the deferred judgment, the Court shall enter judgment and sentence.

Shoshone-Bannock Tribes

Title 3 – Shoshone-Bannock Tribal Court, Chapter 2. Judicial Council Code, Part IV. Tribal Judges

Sec. 3-2-21. – Tribal Specialty Courts.

(a) Specialty courts, therapy courts or other specialized or experimental courts shall not be established or operated in or by the Tribal Court without express permission from the Judicial Council, who shall, before granting or denying permission, consult with the Tribal Court administrator to determine whether sufficient funding is available, and how such a court might impact the workload of other tribal judges or court staff; and shall consider the availability of

court space. Before such courts are approved, the Judicial Council shall develop a written plan for implementation and operation, which shall include:

- (1) Available funding for the operation of the specialty court;
- (2) Limits and conditions as deemed necessary;
- (3) Performance Measures:
 - a. What measures will be used to determine the success or failure of the program;
 - b. What statistics will be gathered and by whom;
- (4) Reporting; ensure that the performance measures are reported to and regularly reviewed by the Judicial Council; and
- (5) Length of time court will operate; over what period of time; and
- (6) If necessary, how the court will be brought to a close without jeopardizing the rights of that court's defendants or participants.

(b) The Judicial Council shall consult with the Chief Judge and they shall jointly agree which judge will be assigned to preside over the specialty court. Such specialty courts may include but are not limited to Drug Court, Veteran's Court, Domestic Violence Court, DUI Court, Traditional Court and others, either juvenile or adult. The Judicial Council may withdraw its permission for the operation of any specialty court at any time. In such event, care should be taken as to how the affected court should be brought to a close, and consideration should be given to defendant participants, and any promises or expectations provided to them should be negotiated or fulfilled prior to closing the subject court. All judges, court staff, and the Judicial Council must comply with all requirements and restrictions imposed by the funding source.

Tulalip Tribes

Chapter 2.25. Criminal Procedures | 2.25.110 Plea Procedures

2.25.110 Plea procedures.

(1) Pleas.

(a) Not Guilty. A plea of not guilty puts in issue every element of the charged offense, and the case shall proceed according to the case management schedule. A defendant pleading not guilty must inform the Judge at the time of arraignment if a jury trial is requested.

(b) Guilty. A plea of guilty may be accepted by a Judge only after due consideration of the views of the parties and interest of the Tribes in the effective administration of justice. The Court may not accept a plea of guilty without first determining:

- (i) That the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The Court shall also inquire as to whether the defendant's willingness to plead guilty results from prior discussions between the Prosecutor and the defendant or the defendant's attorney;
- (ii) That the defendant understands the following: (A) the nature of the charge for which the plea is offered, any mandatory minimum penalty, the maximum

penalty, and, when applicable, that the Court may require the defendant to make restitution to the victim, and (B) the defendant will be giving up his or her right to a trial and right to remain silent;

(iii) That if the defendant pleads guilty in fulfillment of a plea agreement, the Court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted;

(iv) That, in charges for which imprisonment is a possible penalty, there is a factual basis for the plea; and

(v) If a defendant voluntarily enters a plea of guilty, the Judge may impose a sentence at that time or, on the Court's own motion or the request of either party, schedule a sentencing hearing in order to allow sufficient time for the involved parties to obtain any information deemed necessary for the imposition of a just sentence.

(c) No Contest. A no contest plea differs from a plea of guilty only in that the defendant need not make an admission of guilt but accepts an entry of conviction.

(d) Guilty or No Contest Reserving Right to Appeal. With the approval of the Court and the consent of the Prosecutor, a defendant may enter a plea of guilty or no contest, reserving the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant must be allowed to withdraw the plea.

(2) Alternatives to Pleas.

(a) Deferred Prosecution Agreement. Deferred prosecutions may not be agreed to in cases of domestic violence or violent crimes.

(i) Conditions for Agreement. At any time, the Prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(A) That the defendant may not commit any offense;

(B) That the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(C) That the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(D) That the defendant shall make restitution in a specified manner for harm or loss caused by the offense, or any other reasonable conditions, including voluntary exclusion from the Reservation; and

(E) Participation in the Elders Panel or Wellness Court.

(ii) Contents of Agreement. A deferred prosecution agreement is subject to approval by the Tribal Court. The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for an additional 60 days past the end of the deferral period. The agreement may include stipulations concerning the admissibility of the police report, specified testimony, or dispositions if the deferred prosecution is revoked. The agreement shall be filed with the Court.

(iii) Violations of Agreement. The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms. Sanctions can be imposed for violation of the agreement, without revoking the agreement in its entirety. The conditions of the agreement shall be monitored by the Tulalip Tribal Probation Officer.

(iv) Expungement of Records. Whenever the Court has deferred the prosecution and after expiration of the period of deferral and after the defendant's successful completion of any conditions of deferral, upon motion by the Court, the defendant, or the defendant's counsel, the Court shall allow the expungement of the Court records of all record of the proceedings by entering an order of dismissal of charges and expungement, inscribing each record of the proceedings with the word "Expunged" and sealing the file.

(b) Stipulated Order of Continuance. In certain circumstances, a stipulated order of continuance may be available.

(3) Plea Negotiations and Recommendations. A Prosecutor and counsel for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the Prosecutor will do one of the following:

(a) Move for dismissal of other charges; or

(b) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding on the Court; or

(c) Reduce the charges.

A plea bargain agreement may be entered into anytime prior to a verdict or finding of guilt by Judge or jury. If a plea agreement has been reached by the parties, the Court shall, on the record, require a disclosure of the agreement in open Court at the time the plea is offered.

2.25.150 Judgment and sentencing.

(1) Judgment. The verdict of the jury or the judgment shall be rendered in open Court.

(2) Sentencing. Sentences shall be pronounced within a reasonable time. Sentencing shall be imposed on all offenses pursuant to Tribal law. To the extent that any foreign provisions

incorporated into Tribal law provide a penalty that conflicts with Tribal sentencing law, Tribal sentencing law will control. Unless the Court otherwise orders, all sentences stemming from offenses occurring in the same transaction or course of conduct are presumed to run concurrently and not consecutively. Where the Court in its discretion deems it appropriate, a form of traditional punishment may be imposed in addition to or in place of any punishment provided in this code.

(a) Considerations. Considerations in sentencing include:

- (i) The crime committed;
- (ii) The prospects of rehabilitation of the offender;
- (iii) The circumstances under which the crime was committed;
- (iv) The criminal history of the offender;
- (v) The safety of the community, victim, or the offender;
- (vi) Statements of the victim;
- (vii) Alternatives to imprisonment of the offender;
- (viii) The ability of the defendant to pay a fine; and
- (ix) Any other consideration the Court deems relevant.

(b) Penalties and Consequences. An offender found guilty of an offense may be sentenced to one or more of the following penalties and/or consequences:

- (i) Imprisonment for a period of time not to exceed the maximum permitted for the offense;
- (ii) A fine in an amount not to exceed the maximum permitted for the offense;
- (iii) Community service;
- (iv) Any diagnostic, therapeutic, or rehabilitative measures, treatments, or services deemed appropriate;
- (v) Restitution to a victim of an offense for which the offender was convicted;
- (vi) Participation in an Elders Panel or Wellness Court;
- (vii) Suspension of all or part of the sentence for a reasonable time, not to exceed three years, under such terms imposed by the Court;
- (viii) Deferred imposition of sentence with reasonable restrictions and conditions monitored by the Tribal Probation Officer, and with the following characteristics (does not apply to the Class F offenses):
 - (A) The record of the offense, based on criminal history, shall be expunged upon satisfactory performance by the offender of the restrictions and conditions of deferral for a period not to exceed one year for Class A, B, C, and D offenses, and three years for a Class E offense; and
 - (B) Upon a finding of violation of a restriction or condition of deferral, an appropriate sanction may be ordered, including imposition of sentence;
- (ix) Prohibiting the offender from owning or carrying a dangerous weapon;
- (x) Restricting the offender's freedom of movement;
- (xi) Restricting the offender's freedom of association;
- (xii) Requiring the offender, if employed, to remain employed and, if unemployed, to actively seek employment;

- (xiii) Subjecting the offender to search of their residence, vehicle, and person;
and
- (xiv) Any requirement or limitation intended to improve the mental or physical health or marketable skills of the offender.

(c) Pre-Sentence Report. The Court may order or consider any pre-sentence reports offered by the parties. The offender and the offender's counsel shall be afforded an opportunity to examine any pre-sentence report and to cross-examine the preparer of such report on the basis for any sentencing recommendations contained in the report.

(d) Imposition of Sentence. No sentence shall be imposed until:

- (i) The prosecution and defense have had an opportunity to present evidence, witnesses, and an argument regarding the appropriateness of a sentencing option; and
- (ii) The Judge has given the defendant an opportunity to inform the Court of any extenuating or mitigating circumstances which should be considered by the Court in imposing penalties.

(e) Incarceration. If the offender is sentenced to imprisonment, the offender shall be discharged from custody after satisfactorily fulfilling the conditions of the imposed sentence or upon earlier order of the Court.

(f) Credit for Time Served. A defendant subject to a judgment of imprisonment must be allowed credit for each day of incarceration prior to or after conviction for that offense. This does not include time served pursuant to a violation of a release order. No credit shall be allowed for time served on other charges and/or for other jurisdictions unless specifically provided by the Court.

(i) Credit Pursuant to Modification. If a defendant has served any of the defendant's sentence under a commitment based upon a judgment that is subsequently declared invalid or that is modified during the term of imprisonment, the time served must be credited against any subsequent sentence received upon a new commitment for the same criminal act or acts. This does not include time served pursuant to a violation of a release order.

(ii) Application of Credit Toward Fines. Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of the offense must be allowed a credit for each day of incarceration prior to conviction, except that the amount allowed or credited may not exceed the amount of the fine. The daily rate of credit for incarceration is \$50.00 per day, unless otherwise set by the Board of Directors. This does not include time served pursuant to a violation of a release order.

(g) Probation. After conviction by plea or verdict of guilty, the Court may, upon application or its own motion, summarily grant or deny probation. The Court may set a

subsequent hearing to consider the matter of probation and the conditions of such probation.

(h) Restitution. When restitution is ordered, the Court shall specify the amount, method of payment, and payment schedule imposed. Before restitution may be ordered, the defendant shall receive notice of the amount and terms requested and shall be entitled to a hearing upon his or her timely request.

(i) Civil Actions. The fact that restitution was ordered is not admissible as evidence in a civil action. The Court trying the civil action shall determine the amount of any reduction due to payment of restitution by an offender under this section. However, in the event that criminal and civil actions against an offender arising from the same transaction or events are heard in courts of different jurisdictions, one of which is the Tribal Court, the Tribal Court shall adjust offender's payments within its jurisdictional control for restitution or otherwise to assure that an injured party does not recover twice for the same harm. Restitution for time lost by the Tribes may be imposed and will be calculated by the Judge at the time of the order of restitution.

(i) Payment of Fines and Restitution. All monies collected as the result of a fine or restitution imposed by the Court shall be paid to the Court. Upon receiving the monies:

- (i) A receipt shall be issued to the paying person;
- (ii) The account of the offender shall be credited, noting whether the fine is paid in full or what balance, if any, remains due; and
- (iii) For fines, the monies shall be transferred to the General Fund of the Tribes, unless otherwise specifically directed by a provision of this code; for restitution, the monies shall be transferred to the person to whom restitution is to be paid.

(j) Failure to Pay. If a defendant sentenced to pay a fine or restitution fails to make payment as ordered, the Probation Officer or the Prosecutor may move that the offender show cause why sanctions should not be imposed for failure to pay.

(i) Show Cause Hearing. Notice of a show cause hearing shall be served on the offender personally or by first class mail at the address provided by the offender at least five days prior to the date set for hearing. Notice shall also be served on the victim if the show cause was issued for failure to pay restitution. Unless the offender shows that the nonpayment was not attributable to an intentional refusal to obey a Tribal Court order or the offender's failure to make a good faith effort to make the ordered payments, the Court may impose sanctions, including incarceration. If the Court determines that the offender's nonpayment was not attributable to an intentional refusal, the Court may modify the original sentence, judgment, or order, allowing the offender additional time to pay the fine or restitution or reducing the amount owed.

(k) Dismissal and Expungement after Deferred Sentencing. Whenever the Court has deferred the imposition of sentence, and after expiration of the period of deferral and

the defendant's successful completion of any conditions of deferral, upon motion by the Court, the defendant, or the defendant's counsel, the Court shall allow the defendant to withdraw his or her plea of guilty or strike the verdict or judgment expunging the Court records of all record of the proceedings by entering an order of dismissal of charges and expungement, inscribing each record of the proceedings with the word "Expunged" and sealing the file.

(3) Fixing and Collection of Costs. Upon conviction or judgment of any offense, costs will be assessed to the defendant as established by the Court. In an exceptional case, the Court may waive costs. Such costs shall be payable to the Court Clerk, and may include: witness fees; cost of service of Court papers; and any other costs sustained by the Court in connection with the matter. [Res. 2012-445 § 10; Ord. 49 § 5.15, 1-8-2010 (Res. 2010-10)].

Yurok Tribe

Chapter 2.10 – Rules of Court | Title 12 - Children's Code

2.10.340 Wellness Courts Reports

All wellness service provider reports shall be made in writing and filed whenever possible seven calendar days (five court days) prior to the scheduled court hearing date. Where the original court date is scheduled in less than seven days, the service provider may file a motion to request an extension. The Court may independent of this rule establish a report submission schedule for any action. Papers filed with a service provider report are made a part of the record.

2.10.1070 Judgment and Sentencing

The verdict of the jury or the judgment shall be rendered in open Court.

Sentences shall be pronounced within a reasonable time. Sentencing shall be imposed on all offenses pursuant to Yurok Tribal law. Unless the Court otherwise orders, all sentences stemming from offenses occurring in the same transaction or course of conduct are presumed to run concurrently and not consecutively. Where the Court in its discretion deems it appropriate, a form of traditional punishment may be imposed in addition to or in place of any punishment provided in this code.

(a) Considerations. Considerations in sentencing include:

- (1) The crime committed;
- (2) The prospects of rehabilitation of the offender;
- (3) The circumstances under which the crime was committed;
- (4) The criminal history of the offender;
- (5) The safety of the community, victim, or the offender;
- (6) Statements of the victim;
- (7) Alternatives to imprisonment of the offender;
- (8) The ability of the defendant to pay a fine; and
- (9) Any other consideration the Court deems relevant.

(b) Penalties. An offender found guilty of an offense may be sentenced to one or more of the following penalties and/or consequences:

- (1) Imprisonment for a period of time not to exceed the maximum permitted for the offense;
- (2) A fine in an amount not to exceed the maximum permitted for the offense;
- (3) Community service;
- (4) Any diagnostic, therapeutic, or rehabilitative measures, treatments, or services deemed appropriate;
- (5) Restitution to a victim of an offense for which the offender was convicted;
- (6) Participation in Wellness Court;
- (7) Any other culturally appropriate service or remedy.

(c) Payment of Fines and Restitution. All monies collected as the result of a fine or restitution imposed by the Court shall be paid to the Court. Upon receiving the monies:

- (1) A receipt shall be issued to the paying person;
- (2) The account of the offender shall be credited, noting whether the fine is paid in full or what balance, if any, remains due; and
- (3) For fines, the monies shall be transferred to the Yurok Court, unless otherwise specifically directed by a provision of this code; for restitution, the monies shall be transferred via check to the person to whom restitution is to be paid. [Ord. 63, adopted, 12/6/2019.]

12.40.190 Disposition hearings.

(a) *Timing.* The Tribal Court shall hear evidence regarding the proper disposition best serving the interests of the child and his or her Tribe. The disposition hearing may be held in conjunction with the jurisdiction hearing if that is in the best interest of the child and the parties.

(b) *Evidence.* The evidence shall include, but not necessarily be limited to, the social study and other reports, and such other oral and documentary facts as the parties may present.

(c) *Findings and Orders.*

(1) The Tribal Court shall determine:

- (A) The appropriate disposition of the case and long-term plan for the child;
- (B) Whether the proposed case plan reasonably addresses the problems and needs of the child and the parents, including whether or not the placement recommendation of the case plan is appropriate.

(2) The Court may find that out-of-home placement is not needed to protect the child, but may continue court intervention and supervision due to unresolved problems in the home.

(3) The Court may find that the child shall remain out of the home. The grounds for continued removal are those found in YTC [12.40.040](#). Any finding that the child shall remain out of the home shall be made by clear and convincing evidence. Should the Court find that the child shall remain out of the home, the Court must also find that:

- (A) Continuance in the home is contrary to the child's welfare;
- (B) Temporary placement and care of the child is vested with YSS department; and
- (C) Active efforts have been made to prevent removal of the child, or to return the child after the emergency removal, but said efforts have not been successful.

- (D) The court shall project a likely date by which the child may be returned to and safely maintained in the home or placed for adoption, legal guardianship, placed with a fit and willing relative, or in another planned permanent living arrangement and if the child is over 16 years of age, in another planned living arrangement,
- (4) The Court may find that out-of-home placement is necessary, but with the performance of specified actions by the parent/guardian/caretaker, the child may be returned absent good cause to the contrary. The order of the Court shall specify actions, and the time frames for such actions, that the parent/ guardian/caretaker must accomplish before the child is returned. The order shall also specify the responsibilities of any support agency or personnel to be involved. The Tribal Court may order a trial home visit. The Court order must explicitly delineate the length and other parameters of the home visit.
- (5) The Court may find that out-of-home placement continues to be necessary and further that the child shall not be returned to the home, absent further order of the Court. The Court shall specify what steps the parent/guardian/caretaker shall take to demonstrate their abilities to care for their child, and specify what factors the court will consider at a subsequent hearing to determine whether or not the child should be returned home.
- (6) When the child is 16 years of age or older and in a planned permanent living arrangement other than return home, adoption, legal guardianship, or placement with a fit and willing relative, the Court shall do all of the following:
- (A) Ask the child about his or her desired permanency outcome.
 - (B) Make a judicial determination explaining why, as of the hearing date, another planned permanent living arrangement is the best permanency plan for the child.
 - (C) State for the record the compelling reason or reasons why it continues not to be in the best interest of the child to return home, be placed for adoption, be placed with a legal guardian, or be placed with a fit and willing relative.
- (7) In addition to the placement disposition alternatives, the Court may order the child, parent/guardian/caretaker to attend any of the following if the Court determines they are related to the circumstances which cause the child to come to the attention of the court, and if they are likely to promote the best interests of the child and his or her Tribe and the reunification of the child with his or her family.
- (A) Parenting education classes;
 - (B) Alcohol or substance abuse treatment;
 - (C) Wellness court services;
 - (D) Anger abatement classes;
 - (E) Counseling for victims or perpetrators of domestic violence; or
 - (F) Any other services that the Court determines may be useful in aiding family reunification.
- (8) The Court may continue the disposition hearing on its own motion or on the motion of any interested party, for a reasonable period to receive reports or for good cause. If

the hearing is continued, the court shall make an appropriate order for care of the child during the continuance.

(9) In scheduling investigations and hearings, the court shall give priority to proceedings concerning children who have been removed from their homes before an order of disposition has been made.