

Process and Outcome Evaluations in Four Tribal Wellness Courts

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Statement of Purpose. This is an evaluation of the first four tribal wellness courts (TWC) funded under the Tribal Drug Court Initiative. The goals were: to conduct culturally sensitive evaluations by seeking input from the tribes; to use a mixed methodology where qualitative perspectives from interviews provide context to quantitative results; to provide implementation information by describing program development, comparing the actual with the planned implementation, and evaluating the courts' effectiveness in meeting their goals; and to provide the evaluated TWCs, and TWCs in general, feedback and suggestions to improve policy and practice by documenting successful and less successful program areas and lessons learned. Research Subjects. The TWCs were the adult Blackfeet Alternative Court (N = 40) and juvenile Fort Peck Community Wellness Court (N = 50) (Montana), the adult and juvenile Hualapai Wellness Court (N = 105) (Arizona), and the adult Poarch Band of Creek Indians Drug Court (N = 30) (Alabama). Informed consent was obtained from interviewees. Methods. In 2002, we conducted 100+ interviews with TWC stakeholders and reviewed 220+ case files for information on the participants' progress. Post-program arrest information was collected in 2004. Data Analysis. The key components in "Tribal Healing to Wellness Courts" were used to categorize interview comments about implementation. We analyzed case file and recidivism data for statistical patterns. Results. Each TWC began strong with a committed team enthused with the TWC concept. Trial-and-error occurred in implementation because they were pioneer TWCs. In general, common issues are decreased participation over time by non-court team members, poor communication with treatment providers, uninformed (in regard to program commitment) participants at contract signing, inconsistent sanction application, and non-intensive monitoring and

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supervision. Each TWC exhibited many strengths and has success stories. However, graduates are as likely to re-offend as non-graduates and participants as a whole show a relatively high 3-year recidivism rate (ranging from 50-64% in the adult courts and over 90% in the juvenile courts). We found evidence of a “wellness court effect” in adults but not in juveniles. Graduates took longer to re-offend than non-graduates and participants had fewer post-program than pre-program charges (3-year time period). Three of the four TWCs ceased operation when federal funding ended. Conclusions. Success can be documented by a “slowing down” of alcohol and drug use in adults. Primary reasons for lack of institutionalization include high staff turnover (especially judges) and lack of buy-in from the community and tribal council.

Goals and Objectives

This document reports process and outcome evaluations for the first four tribal wellness courts funded under the U.S. Department of Justice, Office of Justice Program's Tribal Drug Court Initiative. The first goal of the evaluations was to develop and conduct culturally sensitive assessments to ensure the research plan was not insensitive to local customs and values. This was done by having tribal members review the questionnaire content and assist in selecting the interviewees. Tribal representatives also reviewed the draft final report for their wellness court evaluation and provided comments. The second goal was to use a mixed-method design, where qualitative perspectives provide context to quantitative results. This goal was achieved by collecting interview data through open-ended, semi-structured interviews with stakeholders. The quotes from stakeholders are used liberally in the evaluations so as to have the wellness court team, participants, family members, and community members tell the story of the implementation and outcome of their wellness court in their own words in addition to the statistical information. The third goal was to provide the courts with descriptive data related to the implementation of the wellness court concept by describing the tribal wellness court; documenting the history of program development and describing the planning and implementation, comparing its actual implementation with the planned implementation, and evaluating the court's effectiveness in meeting its operational and administrative goals. The fourth goal was to provide the specific court, and tribal wellness courts in general, with feedback and suggestions to assist tribal efforts in improvement of the policy and practice of wellness courts by documenting successful and less successful program areas, lessons learned in implementation, and providing suggestions for

improvement. All the goals and objectives of the evaluation have been achieved and are detailed below.

The Tribes

The four tribal drug courts, or tribal wellness courts to use the preferred appellation, are the Blackfeet Alternative Court, the Fort Peck Community Wellness Court, the Hualapai Wellness Court, and the Poarch Band of Creek Indians Drug Court. These were the first four tribal courts funded by the Tribal Drug Court Initiative and they were the pioneers of the tribal wellness court movement; they learned how to implement a tribal wellness court by trial-and-error and broke ground for those that came after.

The Blackfeet Alternative Court based in Browning, Montana operated between January 1998 and September 2000. It was an adult wellness court and had 40 active participants of which 18 had graduated when the program abruptly ended. The Fort Peck Sioux and Assiniboine Tribes' Community Wellness Court in Poplar, Montana began in February 1998 and ended in September 2003. There were 54 juvenile participants; of the first 50 graduates, 15 or 30 percent graduated. The Hualapai Wellness Court in Peach Springs, Arizona had both an adult and juvenile component. It accepted its first participant in March 1999 and graduated its last participant in October 2003. There were 66 adult (83 percent graduation rate) and 39 juvenile (64 percent graduation rate) participants. The Poarch Band of Creek Indians began their adult wellness court in July 1998 and it was still operating as of December 2005. As of April 2004, they had admitted 30 participants, 16 (64 percent) graduated and five participants were still in the program.

Methodology

The project team consisted of the principal investigator who is an anthropologist and attorney, and four team members who specialize in public health, anthropology, and state and tribal law. Team members made introductory site visits to the four tribes in spring 2002 to obtain permission and familiarize the tribes with the evaluation's goals. Data collection site visits of 1 to 1½ weeks were made in summer 2002 by the principal investigator and one other team member. At this time the project team reviewed and extracted case file information on participant and program characteristics, conducted semi-structured interviews with wellness court stakeholders, and observed wellness court staffing meetings and status hearings. Informed consent was obtained from interviewees who included wellness court staff, past and present participants, treatment providers, cultural educators, family members, and community members familiar with the wellness court.¹ Over 100 semi-structured interviews were conducted, most on a one-to-one basis and some in groups, and over 220 case files were reviewed. Post-program arrest data were collected in winter 2004 in week-long site visits to the four wellness courts.

The ten key components in “Tribal Healing to Wellness Courts”ⁱ were used to categorize the interview comments into the ten program implementation categories. Additionally any comments on wellness court outcome were categorized based on the impact to the participant, family, or community. The qualitative information was analyzed for themes relating to strengths and weaknesses in program implementation. The participant and program characteristics, along with the post-program arrest data, were used to construct four quantitative databases, one for each wellness court. The

¹ The project was reviewed and approved by the Institutional Review Board of the University of Colorado-Denver in 2002 before the inception of the data collection phase.

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quantitative data were statistically analyzed both to describe the participants and the program and to infer patterns and relationships and better understand the recidivism rates.

The biggest challenge in conducting the process evaluations was beginning the data collection phase in summer 2002, several years after the inception of the wellness courts in 1998 and 1999, and almost two years after the ending of the Blackfeet Alternative Court in 2000. This late start could not be avoided because funding was not available for the evaluations until Fiscal Year 2002. Thus, the process evaluations are very much retrospective studies and suffer from the usual problems of retrospective studies—people’s faulty memories, missing documents, and difficulty in locating key players and former participants for interviews. The project team exerted a great deal of effort to interview former team members and succeeded in most cases, but former participants were harder to locate.

Another major challenge in collecting data for both the process and outcome evaluations was the incomplete information in the case files and missing case files. For example, demographic information on the participants—education level, marital status, employment, and level of acculturation were rarely present in the case files. Nor were wellness court parameters, such as when a drug test was given and the result, routinely documented in the case file in all courts. Thus the incomplete information was not used in any analyses because of sampling concerns. This challenge was exacerbated by the lack of automated case information. The result is not all the planned quantitative analyses (for example, measures of the number of prior alcohol or drug arrests, number of drug tests given, the number of negative/positive drug tests, the number and type of sanctions imposed, and the number of fines imposed and collected) could be done, nor

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could the measures be analyzed in relation to outcome (i.e., recidivism). Also, more rigorous research designs, for example, a case-control design or a pre-test/post-test design, to analyze outcome could not be used. The content of the final report emphasizes much of the information able to be collected was qualitative, rather than quantitative, in nature.

Findings

The four tribal courts had very different experiences in implementing their wellness courts, yet there were similarities across courts. All the wellness courts had an excellent start with committed and caring teams that were enthused by the national trainings. Team members realized a treatment-based wellness court could be the answer to the alcohol and drug abuse in their community. They all appreciated the holistic approach to combating substance abuse and the spiritual component of wellness court. All but one of the teams had a great deal of member turnover that hurt the wellness court team dynamic as new team members came on board who did not have the same commitment to wellness court as the original team. In addition, all the wellness courts had communication issues between the team and the treatment providers due to the intrinsic differences in the confidentiality of patient records versus court records.

In all four courts some participants seemed surprised by the huge time commitment required by the wellness court. Many participants focused on entering wellness court to avoid incarceration and did not fully comprehend the wellness court requirements. This issue was exacerbated when there was no public defender or the public defender did not advise the participant of his options before entering wellness court. Added to this issue was incarceration was often too readily used as a sanction in

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three of the four courts and participants could serve more time while in wellness court than if they had served their original sentence.

Both treatment and monitoring gave structure to the participants' lives. Having to attend weekly classes, counseling, and court, and pass drug tests imparted a sense of accountability to the participants. As they became more responsible for their own actions, they and those around them noticed an increase in their self-esteem. Participants also appreciated the integration of cultural traditions into the treatment program. In all four communities many people no longer practice the traditional ways and the cultural program showed the participants the spiritual aspects of life that helped them on their wellness journey.

The participants appreciated the wellness court probation officers for the most part and thought the probation officers and the rest of the wellness court team members were sincerely trying to help them. Some of the wellness courts had difficulty in maintaining intensive supervision and monitoring of the participants because of a shortage of probation officers and the relatively expensive cost of the drug testing supplies. Coupled with this issue were the participant complaints of hearsay evidence on noncompliant behavior being allowed because of the impossibility of the probation officer monitoring 24/7.

All four wellness courts had trouble with complaints from participants about inconsistent application of sanctions and incentives. This problem could be traced to a lack of graduated sanctions and incentives tied to specific behaviors. Incentives were a challenge for several courts that focused too much on sanctioning negative behavior rather than rewarding positive behavior. A particular problem was using incarceration, a

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nontherapeutic sanction, too readily rather than thinking of other, more therapeutic alternatives.

The importance of the wellness court judge as the one who pulls all the disparate parts together was emphasized when some courts lost direction because the original judge left and other judges who did not practice wellness court principles were substituted. A successful wellness court judge needs to be a team player, yet also be the leader of the wellness court.

All four courts would have benefited by having automated, that is, computerized wellness court records. A case file, even if complete, is not a database that allows for regular and rigorous internal and external reviews and evaluations.

Even after several years of operation the purpose and goals of the four wellness courts were not well known to their communities at large even though several wellness courts made attempts at community outreach. Only one of the four wellness courts continued operating after federal funding from the Drug Court Program Office ended. The federal funding was intended as seed money to help in planning and implementing a wellness court with the ultimate goal of the Tribe continuing funding once the court was operational. If institutionalization of the wellness court is seen as the ultimate measure of success, three of the wellness courts were not successful.

But participants, family, team members, and community members in all four courts thought their wellness court was a success. The courts emphasized small successes counted too and all courts could point to several people who really turned their life around after participating in wellness court. In fact, people's subjective opinions of how well the wellness court succeeded were more optimistic than the statistical

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recidivism data. In all four wellness courts, team members and community members underestimated the rate of recidivism.

Recidivism, or post-program arrests for alcohol or drug-related offenses for a 3-year period following wellness court participation ranged from 50 to 64 percent in the three adult courts and over 90 percent in the two juvenile courts. In general, recidivism statistics show:

- graduates are as likely as non-graduates to have a post-program alcohol or drug arrest,
- men are as likely as women to have a post-program alcohol or drug arrest, but
- adult graduates take longer to re-offend than non-graduates,
- adult participants have fewer post-program alcohol and drug arrests than pre-program arrests for the same length of time, and
- the majority of adult post-program arrests are for Public Intoxication or Disorderly Conduct.

Summary of the Four Wellness Courts' Characteristics

TRIBE	ADULT/ JUVENILE	# ENROLLED	# & % GRADUATED*	3-YEAR ALCOHOL/DRUG RECIDIVISM	GRADUATES SLOWER TO RE-OFFEND?	TIME OF OPERATION
Blackfeet	Adult	40	18/34 53%	18/28 64%	Yes	1/98-9/00
Fort Peck	Juvenile	50	15/50 30%	17/18** 94%	No	2/98-9/03
Hualapai	Adult & Juvenile	66 39	55/66 83% 25/39 64%	13/22 59% 11/12 92%	Yes-Adult No-Juvenile	3/99-10/03
Poarch Creek	Adult	30	16/25 64%	4/8 50%	Yes	7/98- present

* Based on the number of participants who exited the program (graduated or terminated).

** May include Disorderly Conduct not related to Public Intoxication arrests.

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The 3-year recidivism rates from these four tribal wellness courts cannot be compared to recidivism rates from state drug courts because most states have “decriminalized” the charges that appear most frequently (Public Intoxication, Disorderly Conduct) as post-program arrests in tribal wellness courts. For example, the crime of public drunkenness has been abolished in most states in response to a mandate from the President’s Commission of Law Enforcement and Administration of Justice in 1967 reflecting judicial recognition that alcoholism is a disease. Now, charges such as Public Intoxication and Disorderly Conduct, if they exist at all in the state statutes, are treated as infractions such as littering and jaywalking; offenders are issued a citation, a court hearing is not usually required, the penalty is a small fine, and the offense does not appear on the individual’s criminal record. However, Public Intoxication and Disorderly Conduct are considered crimes in tribal court—79 percent of post-program arrests in the adult Hualapai Drug Court were for Public Intoxication, 67 percent of (first-time) post-program arrests in the Blackfeet Alternative Court were for Public Intoxication or Disorderly Conduct, and the majority of the post-program arrests in the Fort Peck Community Wellness Court were for Disorderly Conduct. These numbers emphasize the point that recidivism in wellness courts is perhaps better thought of as relapse from a disease, rather than committing the same crime after treatment or rehabilitation.

Conclusions

A “wellness court” effect can be seen in the three adult courts, but not in the two juvenile courts. Adults, especially graduates, have slowed down their substance-abusing behaviors. This wellness court effect is documented by both people’s opinions and recidivism statistics. Why does the wellness court model have more impact on adults

than juveniles? One answer may lie in the findings of the trans-theoretical model for behavioral change.ⁱⁱ This model predicts behavioral change only occurs when the participant is ready to change. There is evidence adults had more reason to change their substance abuse behavior than the teen-agers in juvenile court. In all four wellness courts, adult participants spoke of wanting to change because of their children. In some cases, parents had lost custody of the children to social services because of their substance abuse. No similar powerful stimulus was operating in the juveniles. If anything, an opposite effect, a sense of hopelessness about the future seemed to be present. Juvenile wellness courts need to offer the juveniles more than treatment; they need to offer education, job training, and a focus on a positive future.

Lessons Learnedⁱⁱⁱ

Develop a strong structure for your wellness court by building the wellness court team based on roles, not on individuals, to avoid the disintegration of the team due to staff turnover. Detail the responsibilities of team members from various agencies in written policies and procedures, such as memoranda of understanding, to ensure the team's structural integrity.

Use an "informed consent" approach with potential participants to ensure their due process rights are protected. In this approach, all benefits, risks, and alternatives of the wellness court are communicated clearly to the offender. Additionally, the wellness court rules should be reviewed regularly with the participant while in the program.

Choose participants who are motivated and ready to change their substance abuse behavior to maximize scarce resources and increase wellness court success. Participants who enter wellness court only to avoid incarceration may or may not "get with the

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program” and work to change their behavior. If an inclusive admittance policy is used, have a clear termination policy to weed out participants who are not working the program after a reasonable time.

Integrate cultural tradition into treatment, but do not require participants to do activities that can be perceived as religious rather than cultural because many tribes are religiously diverse. Emphasize culture—how to build a sweat lodge, not religion—participating in a sweat lodge ceremony, to avoid conflict with individual religious beliefs.

Monitor participants using team member probation officers during the hours when illegal acts are most likely to occur. Probation officers need to be out in the community monitoring their clients and conducting alcohol and drug tests frequently and at unexpected times.

Reward compliant behavior with incentives rather than punishing noncompliant behavior with sanctions. In addition, be judicious in levying nontherapeutic sanctions such as incarceration that are antithetical to the holistic healing philosophy underlying wellness courts.

Choose a judge for wellness court who understands and practices the wellness court philosophy. The judge makes or breaks the wellness court; not every judge can relinquish the traditional role of sole arbiter and be a team player.

Begin a systematic and automated data collection on Day One of the wellness court to allow for rigorous internal and external evaluations. Do not wait until the wellness court is underway and retrospectively collect the information.

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Develop a written curriculum for wellness court staff—a wellness court handbook that includes educational information on substance abuse, the wellness court philosophy, and specific information on the policies and procedures of your court. This curriculum can be used to educate new members and help to institutionalize the wellness court even as staff turnover occurs.

Emphasize early outreach with the community to both take advantage of tribal resources and to increase buy-in by community members. All four wellness courts could have benefited from having a wider community representation, such as tribal elders or council members, on their team. The wellness court must be something owned by the community, not only the tribal court, to ensure wellness court institutionalization.

ⁱ Tribal Law and Policy Institute (2003). *Tribal Healing to Wellness Courts: The Key Components*. (BJA Publication No. 188154). Washington, DC, U.S. Department of Justice.

ⁱⁱ DiClemente, C.C. & Prochaska, J.O. (1982). Self-change and therapy change of smoking behavior: a comparison of processes of change in cessation and maintenance. *Addictive Behavior*. 7, 133-142.

ⁱⁱⁱ These Lessons Learned are presented in more detail in the last section of this report—Lessons Learned in Implementing the First Four Tribal Wellness Courts.

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