

Chapter 31: Tribal Healing to Wellness Courts

[31.1] Overview

Since the late 1990s tribes have established and implemented what are now known as “Tribal Healing to Wellness Courts” (a.k.a. “wellness courts”). These therapeutic court dockets are modeled on the state drug court model but modified in important ways that are tailored to each tribal community. The three primary types of tribal wellness court are targeted at (1) adult criminals who have a substance abuse problem; (2) juveniles who have a substance use or abuse problem; and (3) parents with allegations of maltreatment against them who have a substance use or abuse problem. Youth would conceivably be eligible to participate in either a juvenile wellness court and/or a family wellness court focused on young parents. Note that a number of tribal juvenile wellness courts also label their juvenile wellness court (as opposed to their parent-focused docket) as a “family wellness court.” A few tribes are also experimenting with a DUI/DWI wellness court that targets individuals who drive while drunk/drinking.

Therapeutic “dockets” or courts have a dramatically different process than the standard trial court. The job of the judge is not to find facts or truth and to apply the law to the facts such as in an adversarial process. Rather, his or her job is to work with a team of service providers to individuals and their families to ensure that they are proceeding through an individualized treatment plan. The judge holds wellness community hearings where everyone in the wellness court program is required to attend. In these community hearings the judge checks on the progress of the individual and gives out incentives or sanctions for progress or noncompliance. Participants advance through “phases” of treatment, ranging from nine to eighteen months. Typically, a successful “participant” (note that they are not called “juveniles” or “defendants”) graduates from the wellness court program and his or her original charge or petition is thereafter dismissed in the regular tribal court. Participants are held accountable throughout the wellness court, such as to be on time, to attend required appointments and activities, to undergo random alcohol and drug tests, to undertake community services, etc. The judge and the “wellness team” are simultaneous parent figures, mentors, and a support system for participants, many of whom may have never had such people in their lives.

We include a chapter on wellness dockets/courts here as a preferred diversion model for working with tribal youth who are using and/or abusing substances. Typically, “violent offenders” are ineligible for wellness court participation. This exclusion may need to be reconsidered in tribal communities with significant numbers of traumatized youth who badly need the support and access to treatment (particularly mental health screening, assessment, and treatment services), but who also

tend to be in the violent offender category. In the following text we provide statutory/MOU examples from a juvenile, family, and adult wellness court process.

[31.2] Tribal Code and MOU Examples

Muscogee (Creek) Nation of Oklahoma

CODIFICATION #26. JUDICIAL BRANCH/COURTS

Section 100. Be It Enacted By the Muscogee Nation in Council Assembled: Section 101. Findings: The National Council Finds That:

1. The Muscogee Nation currently has both a criminal code and a juvenile code governing criminal and juvenile actions arising within the jurisdictional boundaries of the Muscogee Nation.
2. Drug and/or alcohol abuse is a commonly recurring factor in a substantial number, if not the majority, of juvenile cases within the Nation's Children and Family Services Administration as well as in adult criminal cases.
3. The Nation's current programs and services designed to address family problems and conditions are often inadequate where such problems and conditions are the result, in whole or in part, of chronic drug and/or alcohol abuse.
4. There is a need to reduce the incidence of drug and alcohol abuse within the Muscogee Nation and to create and implement a program integrating alcohol and drug treatment and other rehabilitative services and resources within the Nation's judicial system.
5. With funding provided in 1996 from a grant funded in 1996 by the U.S. Department of Justice, the Nation formed a family drug court planning team whose members have been meeting since February 1997 to discuss and plan a family drug court program within the Muscogee (Creek) Nation judicial system. The members of the family drug court planning team have also participated in both national and state drug court training sessions to assist them in developing a drug court program.
6. The family drug court planning team members studied the problems of chronic alcohol and drug abuse and its effects on families and have recommended the establishment of a Family Drug Court Pilot Project as the initial substantive step in creating a program specifically designed to address the cycle of alcohol and drug abuse and the disintegration of families within Muscogee Nation caused by such abuse.

7. The Muscogee Nation was recently awarded a drug court implementation grant by the U.S. Department of Justice to assist with funding the implementation of a family drug court program within the Nation's criminal and juvenile justice system.
8. It is in the best interests of the Muscogee Nation and its Indian families to implement a Family Drug Court Pilot Project pursuant to the federal drug court grant awarded by the Department of Justice.

Section 102. Purpose:

The purpose of this Act is to provide for and establish a Family Drug Court Pilot Project within the Muscogee Nation's judicial system, to authorize the members of a family drug court implementation team to prepare policies, procedures, inter-agency departmental protocols and standards for the Family Drug Court Pilot Project, and to authorize the Administration to seek other funding sources to assist in the development of a Family Drug Court Pilot Project.

Section 103. Family Drug Court Pilot Project: Court Authority and Rules: Family Drug Court Implementation Team:

- A. There is hereby established a Family Drug Court Pilot Project within the Muscogee Nation's judicial system.
- B. 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 Pilot Project program. The Court's powers and authority hereunder shall include, but are not limited to, the following:
 - (1) approving and enforcing treatment plans;
 - (2) holding participants in direct or indirect contempt of court for willful violations of the Court's orders, including Court-ordered treatment plans;
 - (3) imposing fines and/or costs;
 - (4) ordering the performance of community service;
 - (5) ordering participants to receive mandatory inpatient/outpatient drug or alcohol treatment or counseling;
 - (6) ordering random and/or periodic urinalysis testing;

- (7) placement of children in the legal and/or physical custody of Children and Family Services Administration and/or other persons;
- (8) authorizing increased or restricted contact with other family members or increased or restricted supervised visitation with children);
- (9) extending, accelerating, and/or terminating treatment plan(s) and/or ordering that non-compliant participants be discharged from the Family Drug Court program;
- (10) 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 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
- (11) 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.

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.

- C. There is hereby established the Family Drug Court Implementation Team, which shall consist of at least one representative from each of the following agencies or departments of Muscogee Nation: Office of the Attorney General, Children and Family Services Administration (hereinafter CFSA), Muscogee 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.
- D. 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 Pilot Project, 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.

- E. 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 D of this Section.
- F. Muscogee 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 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 D of this Section.
- G. 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.

Section 104. Cooperative Agreements:

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 Pilot Project with agencies of such other governments.

Section 105. Expiration:

The Family Drug Court Pilot Project shall expire twenty-four months after the date on which this ordinance is enacted, after which date no additional cases shall be taken into the Family Drug Court Pilot Project program without further legislation creating a permanent Family Drug Court or extending the Pilot Project authorized herein; provided, that any cases in the program still pending at the end of said 24-month period shall continue to be administered to completion in accordance with this ordinance.

CODIFICATION *27. JUDICIAL PROCEDURES—AN ORDINANCE OF THE MUSCOGEE (CREEK) NATION AMENDING NCA 98-77 TO ESTABLISH A PERMANENT FAMILY DRUG COURT PROGRAM

Section 100. Be It Enacted By the Muscogee (Creek) Nation in Council Assembled:

Section 101. Findings: The National Council Finds That:

- A. On August 29, 1998, the National Council adopted NCA 98-77 that established a Family Drug Court Pilot Project, created a Family Drug Court Implementation Team, and authorized the adoption and implementation of Family Drug Court Rules, policies, and procedures.
- B. Section 105 of NCA 98-77 created an expiration date for the Family Drug Court Pilot Project which was to occur twenty-four months after the date on which said ordinance was enacted.
- C. In June 1999, the Family Drug Court Pilot Project began accepting participants and providing a specialized court docket in which to provide treatment, supervision, case management, and accountability for Family Drug Court participants.
- D. The Family Drug Court Implementation Team has executed a Memorandum of Understanding between the respective agencies involved, drafted policies and procedures to govern the Family Drug Court Program, and developed standardized forms and orders to be used by said Program. The Family Drug Court Implementation Team meets regularly and is encouraged by the operation of the Family Drug Court Program and the level of cooperation between the participating agencies.
- E. There is a need to continue the operation of the Family Drug Court Program beyond the expiration date of the Family Drug Court Pilot Project and to enhance the resources and services provided to Family Drug Court participants and their families.
- F. It is in the best interests of the Muscogee (Creek) Nation and its Indian families to establish a permanent Family Drug Court Program and to pursue funding sources to assist in the continuation of the Family Drug Court Program.

Section 102. Purpose:

The purpose of this Act is to provide for and establish a permanent Family Drug Court Program within the Muscogee (Creek) Nation's judicial system by repealing the expiration date of the Family Drug Court Pilot Project program, by amending NCA 96-77 to rename the "Family Drug Court Pilot" program as the "Family Drug Court Program" and to otherwise carry out the authorities, functions, and responsibilities of said Program pursuant to NCA 98-77.

(Sections Omitted)

Section 104. Amendment:

Section 104 of NCA 98-77 which is titled "Cooperative Agreements" shall be amended by adding the following language to the end of the existing Section 104:

“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 mere comprehensive treatment and sanctions services for the Family Drug Court Program.”

The Cherokee Code of the Eastern Band of the Cherokee Nation

Chapter 7C CHEROKEE TRIBAL DRUG COURT

Sec. 7C-1. 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 Cherokee Tribal Drug Court participants to the Cherokee Tribal Drug 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 valued intricate part of the Cherokee Tribal Drug Court and to encourage and support each participant in the goal of individual wellness and sobriety.

Sec. 7C-2. Definitions.

- (a) **Cherokee Tribal Drug Court.** The Cherokee Tribal Drug Court is a trial court of special jurisdiction within the provisions of Section 7-1(a), with jurisdiction to hear all cases referred to it pursuant to Cherokee law.
- (b) **Cherokee Tribal Drug Court Judge.** The Cherokee Tribal Drug Court Judge shall be appointed upon nomination by the Principal Chief, and confirmation by the Tribal Council for a term of four years. The Cherokee Tribal Drug Court Judge shall be an attorney licensed by the North Carolina State Bar and shall be subject to the other requirements of Section 7-8. In the case of a vacancy, the Chief Justice of the Cherokee Court may name a temporary replacement for a period not to exceed 120 days. The

Cherokee Tribal Drug Court Judge is an Associate Judge of the Trial Courts of Special Jurisdiction pursuant to Section 7-1(b).

- (c) **Tribal Drug Court Team.** The Drug Court Team shall consist of the Drug Court Judge, Case Coordinator, Case Manager and Treatment Specialist. The Drug Court Team may also include other members as set forth in the Policies and Procedures.

Sec. 7C-3. Jurisdiction.

- (a) The Cherokee Tribal Drug Court shall have jurisdiction over any case that is transferred by the Cherokee Court. Upon successful completion of the Cherokee Tribal Drug Court program, or at such a time when a participant of the Cherokee Drug Court becomes ineligible to continue in the program as set out in the Cherokee Tribal Drug Court policies and procedures, the Cherokee Tribal Drug Court will transfer jurisdiction of each case back to the Cherokee Court for any final disposition. All sanctions imposed by the Cherokee Tribal Drug Court, including terms of incarceration, must be completed before the participant returns to Cherokee Trial Court.
- (b) Referrals to the Cherokee Tribal Drug Court may be made by the Cherokee Court once a criminal defendant has pled guilty of or has been convicted of at least one criminal charge where alcohol or drugs are involved. Cherokee Tribal Drug Court referrals may be made as a part of a conditional sentence or may be made as part of a split or suspended sentence.
- (c) Once a referral is made to the Cherokee Tribal Drug Court, the participant shall be assigned to a caseworker who shall begin the eligibility process as set out in the Policy and Procedures Manual. The Cherokee Drug Court Judge shall order any ineligible individuals back to the Cherokee Trial Court for final disposition of the defendant's case(s) pursuant to the Policies and Procedures Manual. Individuals who are determined to be eligible by the Cherokee Drug Court Team may enter the Cherokee Tribal Drug Court.

Sec. 7C-5. Rules of Evidence.

The Rules of Evidence adopted by the Eastern Band of Cherokee Indians shall not apply in any Cherokee Tribal Drug Court proceedings. The Cherokee Tribal Drug Court shall not be a court of record. All information obtained from or disclosed by a participant under the jurisdiction of Cherokee Tribal Drug Court is privileged and confidential information. However, confidential information may always be disclosed after the participant has signed a proper consent form, even if it 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. Offenders who refuse to sign consent forms permitting essential communications can

be excluded from treatment or be terminated from Cherokee Tribal Drug Court. Additionally, a judge may order disclosure as allowed by federal, tribal, and state law.

Sec. 7C-6. Cherokee Tribal Drug Court procedures.

(a) Establishment of policies and procedures.

- (1) Policies and procedures for the Cherokee Tribal Drug Court shall be established by the Cherokee Tribal Drug Court Team.
- (2) Thereafter, the Cherokee Tribal Drug Court Team shall amend and modify the policies and procedures as necessary to improve the Cherokee Tribal Drug Court process. Any such amendments or modifications shall be by a majority vote at a Cherokee Tribal Drug Court Team meeting with each member eligible to carry one vote and notice of the meeting must be given to each member of the Cherokee Tribal Drug Court Team at least seven days prior to the meeting.
- (3) In order for the policies and procedures to be amended or modified, there shall be present at the Cherokee Tribal Drug Court Team meeting the judge and at least four other members of the Cherokee Tribal Drug Court Team.

(b) Sessions.

- (1) All Cherokee Tribal Drug Court sessions shall be closed to the public except for invited guests as allowed by HIPAA (Health Insurance Portability and Accountability Act) regulations.
- (2) The Cherokee Tribal Drug Court is strictly a non-adversarial forum and there shall be no prosecuting or defense attorneys allowed to participate in any court proceedings.
- (3) The Cherokee Tribal Drug Court Judge shall make all findings of facts relevant to each participant's case pursuant to the policies and procedures adopted by the Cherokee Tribal Drug Court Team.
- (4) Cherokee Tribal Drug Court sessions shall proceed pursuant to the policies and procedures adopted by the Cherokee Tribal Drug Court Team.
- (5) Cherokee Tribal Drug Court sessions shall require a Judge, Case Manager, Case Coordinator, and one of the following team members: community elder, treatment specialist or law enforcement officer of the Cherokee Tribal Drug Court Team in order to proceed.

- (c) Sanctions.** If a participant is not compliant with the requirements of the Cherokee Tribal Drug Court, sanctions against the non-compliant individual may be issued by the

Cherokee Tribal Drug Court Judge. Sanctions include but are not limited to incarceration, community service work and increase in requirements issued by the Cherokee Tribal Drug Court Team.

- (d) **Treatment.** At any time the Drug Court deems it appropriate, the Team can require a participant to enter a Substance Abuse Intensive Outpatient Program or to an inpatient facility.

Cass County/Leech Lake Band of Ojibwe Wellness Court

MEMORANDUM OF UNDERSTANDING

AGREEMENT between the Cass County Sheriff, Walker Police Department, Leech Lake Tribal Police Department, Minnesota State Patrol, Cass County Attorney, Walker City Attorney, Ninth Judicial District Public Defender, Cass County Health, Human and Veterans Services, Pine Manors Treatment Center, Ninth Judicial District Administration, Cass County District Court Judge, Leech Lake Tribal Council, and Leech Lake Tribal Court.

The parties to this Agreement endorse the mission and goals of the Cass County Wellness Court (wellness court) so that participants may eliminate future criminal behavior and improve the quality of their lives. The parties recognize that for the wellness court mission to be successful, cooperation and collaboration must occur within a network of agencies.

The parties to this Agreement support the following mission statement:

The purpose of the Cass County Leech Lake Band of Ojibwe Wellness Court is to reduce the number of repeat substance dependent and DWI offenders by using a team approach in the court system. Upon acceptance, candidates will be provided the opportunity to participate in individual treatment programs designed to promote accountability, self-sufficiency and to enhance public safety. Compliance will be accomplished by using an established system of court ordered sanctions/ incentives as well as community and family support systems.

The parties agree that there are ten principles under which the respective agencies will work cooperatively. They are:

1. The wellness court integrates alcohol and other drug treatment services with criminal justice system processing.
2. The wellness court uses a non-adversarial approach, prosecution and defense counsel to promote public safety while protecting participants' due process rights.
3. Eligible participants are identified early and referred to the wellness court.

4. The wellness court provides access to a continuum of alcohol, drug and other related treatment and rehabilitation services.
5. Frequent alcohol and other drug testing monitors abstinence.
6. A coordinated strategy governs the wellness court responses to the participant's compliance.
7. There is ongoing judicial interaction with each wellness court participant.
8. A monitoring and evaluation plan measures the achievement of program goals and gauges effectiveness.
9. Continuing interdisciplinary education promotes effective substance abuse court planning, implementation, and operations.
10. Forging partnerships among wellness courts, public agencies, and community-based organizations, generate local support and enhance the wellness court's effectiveness.

INDIVIDUAL AGENCY RESPONSIBILITIES AND STAFF COMMITMENTS

Wellness Court Judge

1. The judge will assume the primary role to motivate and monitor the participants of the wellness court program.
2. The judge will ensure a cooperative atmosphere for attorneys, case managers, probation, law enforcement, and treatment providers to stay focused on the task of providing substance abusers with treatment opportunities.
3. The judge will provide the necessary reinforcers when deemed appropriate while maintaining the integrity of the court.
4. The judge will participate as an active member of the staffing team and chairs the Steering Committee.
5. The judge will provide training to new or replacement judges.
6. The judge will act as a mediator to develop resources and improve interagency linkages.
7. The judge will act as a spokesperson to educate the community and peers about the wellness court program.

Wellness Court Coordinator

1. The coordinator will be assigned to the wellness court program for the term of this Agreement, as funding permits, and will participate as an active member of the staffing team and the Steering Committee.
2. The coordinator will provide oversight to the wellness court program.
3. The coordinator will organize events and meetings, compile supporting materials to disseminate to stakeholders and providers of services to maintain linkages, develop marketing strategies, create a press package and act as a media contact person.
4. The coordinator will continuously monitor and evaluate the progress of the wellness court program participants.
5. The coordinator will seek funding sources; respond to grant solicitations; implement and monitor grant funds and provide fiscal, narrative, and statistical information as required by the funding source to ensure the ongoing operation of the program.
6. The coordinator will provide or seek continuing training for the wellness court team.
7. The coordinator will provide an annual report setting forth the incidence of recidivism among wellness court graduates.
8. The coordinator will provide leadership and direction to ensure compliance with the National Standards set forth by the National Association of Wellness Court Professionals.
9. The coordinator will create court calendars; prepare reports for staffings and assure timely dissemination of compliance information; perform case flow coordination; expedite processes of notification, service placement, rescheduling, and preparation of warrants; collect fees; and monitor compliance.
10. The coordinator will provide training to new or replacement coordinator.
11. The coordinator will negotiate and monitor treatment and ancillary service contracts; conduct site visits; review progress reports and assist in audits and certification monitoring; create and monitor standards for urine collection and compliance reporting; ensure gender, age, and culturally specific treatment services.
12. The coordinator will create and maintain a data collection system to monitor client compliance, identify trends, and provide a basis for evaluation.

County/City Attorney

1. The county/city attorney will be assigned to the wellness court program for the term of this Agreement, as funding permits, and will participate as an active member of the staffing team and the Steering Committee.
2. The county/city attorney will assist in identifying non-violent defendants arrested for specified drug- or alcohol-related offenses.
3. The county/city attorney may dismiss charges on drug-related offenses only after the participants have successfully completed the wellness court program.
4. The county/city attorney agrees that a positive drug test or open court admission of drug possession or use alone will not result in the filing of additional charges based on that admission.
5. The county/city attorney makes decisions regarding the participant's continued enrollment in the program based on performance in treatment and in the program rather than on legal aspects of the case, barring additional criminal behavior.
6. The county/city attorney will participate as a team member, operating in a non-adversarial manner during court, to promote a sense of a unified team presence.
7. The county/city attorney, during staffings, will advocate for effective sanctions and incentives for program compliance or lack thereof.
8. The county/city attorney will contribute to the team's efforts in community education and local resource acquisition.
9. The county/city attorney will contribute to the education of peers, colleagues, and judiciary in the efficacy of wellness courts.
10. The county/city attorney will provide training to new or replacement prosecutor.

Public Defender

1. The public defender will be assigned to the wellness court program for the term of this Agreement, as funding permits, and will participate as an active member of the staffing team and the Steering Committee.
2. The public defender will assist in identifying non-violent defendants arrested for specified drug- or alcohol-related offenses.
3. The public defender will advise the defendant as to the nature and purpose of the wellness court, the rules governing participation, the consequences of abiding or failing to

abide by the rules and how participating or not participating in wellness court will affect his/her interests.

4. The public defender will explain all of the rights that the defendant will temporarily or permanently relinquish.
5. The public defender will explain that because criminal prosecution for admitting to alcohol or other drug use in open court will not be invoked, the defendant is encouraged to be truthful with the judge, the case manager, and the treatment staff, and inform the participant that he or she will be expected to speak directly to the judge, not through an attorney.
6. The public defender will participate as a team member, operating in a non-adversarial manner during court, to promote a sense of a unified team presence.
7. The public defender, during staffings, will advocate for effective sanctions and incentives for program compliance or lack thereof.
8. The public defender will contribute to the team's efforts in community education and local resource acquisition.
9. The public defender will contribute to the education of peers, colleagues, and judiciary in the efficacy of wellness courts.
10. The public defender will train a new or replacement public defender.

Treatment Provider

1. The treatment provider will participate fully as a team member and will work as a partner to ensure their success.
2. The treatment provider will ensure that the participant receives the highest level of care available, at a reasonable cost, by all contracted and ancillary service providers.
3. The treatment provider will ensure that the participants are evaluated in a timely and competent process and that placement and transportation are effectuated in an expedited manner.
4. The treatment provider will provide progress reports to the team prior to staffings so that the team will have sufficient and timely information to implement sanctions and incentive systems.

5. The treatment provider will advocate for effective sanctions and incentives during staffings.
6. The treatment provider will provide training to the team on assessment basis of substance abuse, the impact of treatment on the offender and the potential for relapse.
7. The treatment provider will contribute to the team's efforts in community education and local resource acquisition.
8. The treatment provider will contribute to the education of peers, colleagues, and judiciary in the efficacy of wellness courts.

Probation Officer

1. One probation officer will be assigned to provide field supervision of wellness court participants for the term of this Agreement, as funding permits, and will participate as an active member of the staffing team.
2. The probation officer will provide coordinated and comprehensive supervision and case management so as to minimize participant manipulation and splitting of program staff.
3. The probation officer will monitor accountability of social activities and home environment of the participant.
4. The probation officer will develop effective measures for drug testing and supervision compliance reporting that provide the team with sufficient and timely information to implement sanctions and incentive systems.
5. The probation officer will participate in bi-weekly case reviews with the judge, treatment provider, and wellness court staffing team.
6. The probation officer will coordinate the utilization of community-based services such as health and mental health services, victims' services, housing, entitlements, transportation, education, vocational training, job skills training, and placement to provide a strong foundation for recovery.
7. The probation officer will provide on-site progress reports to the judge.
8. The probation officer will provide frequent, observed drug testing on a random basis.
9. The probation officer will participate as an active member of the Steering Committee.
10. The probation officer will contribute to the team's efforts in community education and local resource acquisition.

11. The probation officer will contribute to the education of peers, colleagues, and judiciary in the efficacy of wellness courts.

Cass County Sheriff's Department

1. An officer from the sheriff's department will be assigned to the wellness court program for the term of this Agreement, as funding permits, and will participate as an active member of the Steering Committee.
2. The sheriff's department will provide information of participant appropriateness from law enforcement sources to the team, and make recommendations to the team.
3. The sheriff's department will provide access to in-custody treatment services for those returning to custody as a sanction.
4. The sheriff's department will facilitate the swift delivery of bench warrants for participants who have absconded from the program, and release them into treatment on the judge's orders.
5. The sheriff's department will provide a monitoring function to the team by going on joint home visits, reporting on a participant's activities in the community, and supervising participation in community service.
6. The sheriff's department will provide assistance, information, and support to participants in the community encouraging them to succeed in the program.

Police Departments

1. The police department serves as a liaison between the Steering Committee and the community and provides information to the Steering Committee on community issues related to drug or alcohol abuse.
2. The police department provides feedback on potential candidates for the wellness court program.
3. The police department will provide a monitoring function to the team by going on joint home visits, reporting on a participant's activities in the community, and supervising participation in community service.
4. The police department will provide assistance, information, and support to participants in the community encouraging them to succeed in the program.

5. A representative from the police department will participate as an active member of the Steering Committee.

Minnesota State Patrol

1. The state patrol will serve as a liaison between the Steering Committee and the community and provide information to the Steering Committee on community issues related to drug or alcohol abuse.
2. The state patrol will provide feedback on potential candidates for the wellness court program.
3. The state patrol will provide a monitoring function to the team by reporting on a participant's activities in the community.
4. The state patrol will provide assistance, information, and support to participants in the community encouraging them to succeed in the program.
5. A representative from the state patrol will participate as an active member of the Steering Committee.

Ninth Judicial District Wellness Court Coordinator/Evaluator

1. The district wellness court coordinator will assist in providing oversight to the wellness court program.
2. The district wellness court coordinator will assist the wellness court team with monitoring the progress of the program.
3. The district wellness court coordinator will assist in developing a data collection system that will collect relevant information critical to the program's survival, such as immediately detecting noncompliance of a participant or to observe developmental trends.
4. The district wellness court coordinator will develop evaluation policies and procedures, and manage the evaluation process of the wellness court.
5. The district wellness court coordinator will assist in: seeking funding sources; responding to grant solicitations; implementing and monitoring grant funds; and providing fiscal, narrative and statistical information as required by a funding source to ensure ongoing operation of the program.

6. The district wellness court coordinator will assist in providing or seeking ongoing training of the wellness court team.

In creating this partnership and uniting around a single goal of addressing an underlying problem affecting our community, we are pledged to enhance communication between the courts, law enforcement, and treatment programs. Through this linkage of services, we expect greater participation and effectiveness in addressing drug offenders involved in the criminal justice system.

Agreement Modifications

Any individual agency wishing to amend/modify this Agreement will notify the Steering Committee of the issue(s). The Steering Committee will address the issue(s) for purposes of modifying/amending the Agreement. The issue will be decided by consensus (if possible) or by simple majority, if not.

[31.3] Tribal Code Commentary

Wellness Court Establishment and Funding—The Muscogee Creek Nation in its judicial ordinances 26 and 27 establishes a “Family Drug Court” to combat its juvenile and adult drug and order and/or impose sanctions and incentives for participants in the drug court program. These powers include but are not limited to:

- approving and enforcing treatment plans;
- holding participants in direct or indirect contempt of court for willful violations of the court’s orders, including court-ordered treatment plans;
- imposing fines and/or costs;
- ordering the performance of community service;
- ordering participants to receive mandatory inpatient/outpatient drug or alcohol treatment or counseling;
- ordering random and/or periodic urinalysis testing;
- placement of children in the legal and/or physical custody of CFSA and/or other persons;
- authorizing increased or restricted contact with other family members or increased or restricted supervised visitation with children;
- extending, accelerating, and/or terminating treatment plan(s) and/or ordering that noncompliant participants be discharged from the Family Drug Court program;

- ordering that the participant be placed in confinement for a period not to exceed five 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
- imposing any other condition, standard, requirement, treatment, service, training, or activity that the court deems appropriate under the facts and circumstances of the case in the exercise of the court's sound discretion.

Section 103 also establishes the "Family Drug Court Implementation Team." It designates the Muscogee Nation Behavioral Health as the primary service provider for alcohol and drug abuse assessments, testing, counseling, and treatment services. It also authorizes the "Principal Chief" or his designee to apply to other funding sources for the purposes of implementing the drug court program. Finally, Section 104 authorizes the Principal Chief to negotiate and enter into cooperative agreements with state and local governments to support drug court operations.

Wellness Court Jurisdiction and Process—The Eastern Band of Cherokee through Chapter 7C of its "Code of Ordinances" sets out its jurisdiction, rules of evidence, and tribal drug court procedures in order 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." Section 7C-1. In Section 7C-3, the Eastern Band of Cherokee defines the jurisdiction of the Cherokee Tribal Drug Court as "over any case that is transferred by the Cherokee Court." And that "upon successful completion . . . , or at such a time when a participant . . . becomes eligible to continue in the program . . . , the Cherokee Tribal Drug Court will transfer jurisdiction of each case back to the Cherokee Court for any final dispositions." Transfers may be made once a criminal defendant pleads guilty, or once he has been convicted of a crime, or as part of a conditional, split, or suspended sentence.

Under Section 7C-5, the Eastern Band of Cherokee prohibits the application of the Rules of Evidence to Cherokee Tribal Drug Court proceedings. Further it mandates that the drug court shall not be a court of record. It also mandates that "all information obtained from or disclosed by a participant . . . is privileged and confidential." However, "confidential information may always be disclosed after the participant has signed . . . a consent form."

Finally, Section 7C-6 authorizes the Cherokee Tribal Drug Court Team to develop the policies and procedures for the Cherokee Tribal Drug Court. We note that the majority of tribal wellness courts forgo enacting statutory/code provisions governing the process of their wellness courts and opt instead to follow the state approach of empowering the team to develop "policies and procedures."

Other notable provisions include the requirement that the sessions be closed to the public, that the drug court be a "strictly non-adversarial forum," and that the judge "shall make all findings of facts relevant to each participant's case pursuant to the policies and procedures."

Wellness Court Cooperative Agreements—The Cass County/Leech Lake Band of Ojibwe Wellness Court MOU is an agreement between state, county, city, and tribal law enforcement; the county attorney; public defender; health, human, and veterans services; treatment center; state and county judges and administration; and the Leech Lake Tribal Council and Tribal Court. The parties agree to support a common mission of “reduc[ing] the number of repeat substance dependent and DWI offenders by using a team approach.” The agreement spells out the respective duties of the Wellness Court Judge, the Wellness Court Coordinator, the County/City Attorney, the Public Defender, the Treatment Provider, the Probation Officer, the County Sheriff’s Department, the Police Departments, the State Patrol, and the Wellness Court Coordinator/Evaluator in pursuit of the common mission to implement the tribal wellness court.

Interagency and intergovernmental agreements are crucial to effective wellness court operations for purposes of intake, treatment, monitoring, etc.

[31.4] Exercises

The following exercises are meant to guide you in developing the healing to wellness court related sections of the tribal juvenile code and/or the tribal wellness code.

- If you currently have a tribal healing to wellness (drug) court, find and examine any code provisions referencing your wellness court. Do you need or want code provisions supporting your wellness court (wellness court establishment, funding, changes to tribal court process to divert cases, modify disposition alternatives, and authorize tribal judges to make special orders, e.g., random alcohol and drug testing)?
 - Adult criminal wellness courts handle alcohol and/or drug abusing adults who are alleged to have committed a crime
 - Family wellness courts handle alcohol and/or drug abusing parents who are alleged to have maltreated their children (e.g., child abuse or neglect)
 - Juvenile wellness courts handle alcohol and/or drug using/abusing youth who are alleged to have committed a status offense or juvenile offense (note that some tribal juvenile wellness courts call them “family wellness courts”)
- If you are interested in developing a juvenile wellness court, list the answers to the following (obtain actual data where possible) . . .
 - What are your youth’s “substances of choice”?
 - What kinds of mental health problems do your youth tend to have?
 - What kinds of family problems do your youth tend to have?

- What kinds of youth misconduct are common in your community?
- Who would you want to be eligible for your juvenile wellness court?
- Make a list of entities that you would need to provide services to youth and their families and with whom you would need to enter into MOAs, MOUs, or contracts with.

Read and Discuss

Take a hard look: What kinds of substance use/abuse, mental health, and family problems do our families have?

The hard lives—and high suicide rate—of Native American children on reservations

By [Sari Horwitz](#), the [Washington Post](#), March 9, 2014

SACATON, ARIZ. The tamarisk tree down the dirt road from Tyler Owens’s house is the one where the teenage girl who lived across the road hanged herself. Don’t climb it, don’t touch it, admonished Owens’s grandmother when Tyler, now 18, was younger.

There are other taboo markers around the Gila River Indian reservation—eight young people committed suicide here over the course of a single year.

“We’re not really open to conversation about suicide,” Owens said. “It’s kind of like a private matter, a sensitive topic. If a suicide happens, you’re there for the family. Then after that, it’s kind of just, like, left alone.”

But the silence that has shrouded suicide in Indian country is being pierced by growing alarm at the sheer number of young Native Americans taking their own lives—more than three times the national average, and up to 10 times on some reservations.

A toxic collection of pathologies—poverty, unemployment, domestic violence, sexual assault, alcoholism and drug addiction—has seeped into the lives of young people among the nation’s 566 tribes. Reversing their crushing hopelessness, Indian experts say, is one of the biggest challenges for these communities.

“The circumstances are absolutely dire for Indian children,” said Theresa M. Pouley, the chief judge of the Tulalip Tribal Court in Washington state and a member of the Indian Law and Order Commission.

Pouley fluently recites statistics in a weary refrain: “One-quarter of Indian children live in poverty, versus 13 percent in the United States. They graduate high school at a rate 17 percent lower than the national average. Their substance-abuse rates are higher. They’re twice as likely as any other race to die before the age of 24. They have a 2.3 percent higher rate of exposure to trauma. They have two

times the rate of abuse and neglect. Their experience with post-traumatic stress disorder rivals the rates of returning veterans from Afghanistan.”

In one of the broadest studies of its kind, the Justice Department recently created a national task force to examine the violence and its impact on American Indian and Alaska Native children, part of an effort to reduce the number of Native American youth in the criminal justice system. The level of suicide has startled some task force officials, who consider the epidemic another outcome of what they see as pervasive despair.

Last month, the task force held a hearing on the reservation of the Salt River Pima-Maricopa Indian Community in Scottsdale. During their visit, Associate Attorney General Tony West, the third-highest-ranking Justice Department official, and task force members drove to Sacaton, about 30 miles south of Phoenix, and met with Owens and 14 other teenagers.

“How many of you know a young person who has taken their life?” the task force’s co-chairman asked. All 15 raised their hands.

“That floored me,” West said.

A “trail of broken promises”

There is an image that Byron Dorgan, co-chairman of the task force and a former senator from North Dakota, can’t get out of his head. On the Spirit Lake Nation in North Dakota years ago, a 14-year-old girl named Avis Little Wind hanged herself after lying in bed in a fetal position for 90 days. Her death followed the suicides of her father and sister.

“She lay in bed for all that time, and nobody, not even her school, missed her,” said Dorgan, a Democrat who chaired the Senate Committee on Indian Affairs. “Eventually she got out of bed and killed herself. Avis Little Wind died of suicide because mental-health treatment wasn’t available on that reservation.”

Indian youth suicide cannot be looked at in a historical vacuum, Dorgan said. The agony on reservations is directly tied to a “trail of broken promises to American Indians,” he said, noting treaties dating back to the 19th century that guaranteed but largely didn’t deliver health care, education and housing.

When he retired after 30 years in Congress, Dorgan founded the Center for Native American Youth at the Aspen Institute to focus on problems facing young Indians, especially the high suicide rates.

“The children bear the brunt of the misery,” Dorgan said, adding that tribal leaders are working hard to overcome the challenges. “But there is no sense of urgency by our country to do anything about it.”

At the first hearing of the Justice Department task force, in Bismarck, N.D., in December, Sarah Kastelic, deputy director of the National Indian Child Welfare Association, used a phrase that comes up repeatedly in deliberations among experts: “historical trauma.”

Youth suicide was once virtually unheard of in Indian tribes. A system of child protection, sustained by tribal child-rearing practices and beliefs, flourished among Native Americans, and everyone in a community was responsible for the safeguarding of young people, Kastelic said.

“Child maltreatment was rarely a problem,” said Kastelic, a member of the native village of Ouzinkie in Alaska, “because of these traditional beliefs and a natural safety net.”

But these child-rearing practices were often lost as the federal government sought to assimilate native people and placed children—often against their parents’ wishes—in “boarding schools” that were designed to immerse Indian children in Euro-American culture.

In many cases, the schools, mostly located off reservations, were centers of widespread sexual, emotional and physical abuse. The transplantation of native children continued into the 1970s; there were 60,000 children in such schools in 1973 as the system was being wound down. They are the parents and grandparents of today’s teenagers.

Michelle Rivard-Parks, a University of North Dakota law professor who has spent 10 years working in Indian country as a prosecutor and tribal lawyer, said that the “aftermath of attempts to assimilate American and Alaska Natives remains ever present . . . and is visible in higher-than-average rates of suicide.”

The Justice Department task force is gathering data and will not offer its final recommendations to Attorney General Eric H. Holder Jr. on ways to mitigate violence and suicide until this fall. For now, West, Dorgan and other members are listening to tribal leaders and experts at hearings on reservations around the country.

“We know that the road to involvement in the juvenile justice system is often paved by experiences of victimization and trauma,” West said. “We have a lot of work to do. There are too many young people in Indian country who don’t see a future for themselves, who have lost all hope.”

The testimony West is hearing is sometimes bitter, and witnesses often come forward with great reluctance.

“It’s tough coming forward when you’re a victim,” said Deborah Parker, 43, the vice chair of the Tulalip Tribes in Washington state. “You have to relive what happened. . . . A reservation is like a small town, and you can face a backlash.”

Parker didn’t talk about her sexual abuse as a child until two years ago, when she publicly told of being repeatedly raped when she “was the size of a couch cushion.”

Indian child-welfare experts say that the staggering number of rapes and sexual assaults of Native American women have had devastating effects on mothers and their children.

“A majority of our girls have struggled with sexual and domestic violence—not once but repeatedly,” said Parker, who has started a program to help young female survivors and try to prevent suicide. “One of my girls, Sophia, was murdered on my reservation by her partner. Another one of our young girls took her life.”

Stories of violence and abuse

Owens recalls how she used to climb the tamarisk tree with her cousin to look for the nests of mourning doves and pigeons—until the suicide of the 16-year-old girl. The next year, the girl’s distraught father hanged himself in the same tree.

“He was devastated and he was drinking, and he hung himself too,” Owens said.

She and a good friend, Richard Stone, recently talked about their broken families and their own histories with violence. When Owens was younger, her uncle physically abused her until her mother got a restraining order. Stone, 17, was beaten by his alcoholic mother.

“My mother hit me with anything she could find,” Stone said. “A TV antenna, a belt, the wooden end of a shovel.”

Social workers finally removed him and his brothers and sister from their home, and he was placed in a group home and then a foster home.

Both Owens and Stone dream about leaving “the rez.” Owens hopes to get an internship in Washington and have a career as a politician; Stone wants to someday be a counselor or a psychiatrist.

Owens sometimes rides her bike out into the alfalfa and cotton fields near Sacaton, the tiny town named after the coarse grasses that once grew on the Sonoran Desert land belonging to the Akimel O’Odham and Pee Posh tribes. She and her friends sing a peaceful, healing song she learned from the elders about a bluebird who flies west at night, blessing the sun and bringing on the moon and stars.

One recent evening, as the sun dipped below the Sierra Estrella mountains, the two made their way to Owens’s backyard. They climbed onto her trampoline and began jumping in the moonlight, giggling like teenagers anywhere in America.

But later this month on the reservation, they will take on an adult task. Owens, Stone and a group of other teenagers here will begin a two-day course on suicide prevention. A hospital intervention trainer will engage them in role-playing and teach them how to spot the danger signs.

“In Indian country, youths need to have somebody there for them,” Owens said. “I wish I had been that somebody for the girl in the tamarisk tree.”

*Taken from *The Washington Post*, March 9, 2014.