

Chapter 1: The Big Picture and Target Population

Overview

The Policy and Procedure Manual can serve not just the team members, but also tribal leadership, community members, and participants and their families. The mission introduces all stakeholders to the Healing to Wellness Court and describes why the court exists. The stated mission, together with the vision, goals, objectives, and target population define the Wellness Court, and form the foundation of the court. Future team members, modifications to the court forms, new relationships with agencies, organizations, and other sovereigns can all return to the “big picture” in order to better define their role within the Wellness Court.

Determining a Healing to Wellness Court’s mission, vision, and goals will require identifying the problems the community faces, envisioning the desired community without those problems, and articulating any overall philosophies that will guide the team in addressing those problems. Determining a Wellness Court’s objectives will require identifying the desired target population, as well as determining how those individuals will be ascertained and admitted into the court.

Relevant Key Components

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.

Strengths & Weaknesses Reported to First Four Tribal Wellness Courts: Key Component #3 ⁸		
<u>Strengths</u>	<u>Weaknesses</u>	<u>Strength or Weakness?</u>
<ul style="list-style-type: none"> • Team members know potential participants • Participants drawn from several sources (tribal court, state court, & social services) 	<ul style="list-style-type: none"> • Drug dealers accepted into WC • Alternative court used to avoid incarceration where more time spent in Wellness Court than would have been spent in jail • No assessment of readiness to change • No individualized treatment plan 	<ul style="list-style-type: none"> • Fast track to Wellness Court and chemical dependency assessment completed after program acceptance • Inclusive and court-ordered participant selection with no assessment of readiness to change

⁸ "Process and Outcome Evaluations of the Fort Peck Tribes Community Wellness Court" (December 30, 2005), available at http://wellness.kauffmaninc.com/files/NIJ_ProcessOutcomeFortPeck.pdf; "Process and Outcome Evaluations of the Blackfeet Alternative Court" (December 30, 2005), available at http://wellness.kauffmaninc.com/files/NIJ_ProcessOutcome%20Blackfeet.pdf; "Process and Outcome Evaluations of the Hualapai Wellness Court" (December 30, 2005), available at http://wellness.kauffmaninc.com/files/NIJ_ProcessOutcomeHualapai.pdf; "Process and Outcome Evaluations of the Poarch Band of Creek Indians Drug Court" (December 30, 2005), available at http://wellness.kauffmaninc.com/files/NIJ_ProcessOutcomePoarchCreek.pdf.

Section A: Mission, Vision, Goals, and Objectives

Purpose

A complete Healing to Wellness Court Policies and Procedures Manual (“P&PM”) should include a mission, vision, goals, and objectives section to provide the foundation for future evaluations of the Wellness Court. Note that none of the tribal materials reviewed had all of these sections.

The *mission statement* is a statement of the overall purpose of an organization. It describes what you do, for whom you do it, and the desired benefit. For example: “To establish and provide the services of a therapeutic alcohol and drug court for eligible adults residing within the X tribal community, who will become healthy, sober members of our tribal community.”

The *vision statement* is a picture of the preferred future, a statement that describes how the future will look if the Wellness Court achieves its ultimate aims. For example: “Our tribal community will have all healthy, sober families.”

The *stated goals* are broad, long-term aims that define accomplishment of the mission. For example: “(1) Get our Wellness Court participants to complete the Wellness Court;” “(2) Get our Wellness Court graduates to stay sober longer;” and “(3) Get our Wellness Court graduates to not re-offend or to re-offend less after graduation.”

The *stated objectives* are specific, quantifiable, realistic targets that measure the accomplishment of a goal over a specified period of time. For example: “(1) To retain 75% of Wellness Court participants within a given cohort in the Court for at least a six-month period;” “(2) To increase the average longest stretch of sobriety for Wellness Court graduates by X amount within the first three years of operations; and “(3) To decrease post-Wellness Court recidivism by X amount within the first three years of operations.”

Sample Tribal Healing to Wellness Court Wording

Eastern Band of Cherokee

“Cherokee Tribal Drug Court – Policies and Procedures Manual” (June 2009)

Mission Statement

The Mission Statement of the Cherokee Tribal Drug Court: is to protect the public safety, and reduce the criminal recidivism rate of alcohol and drug addicted offenders through an integrated approach that involves court supervision, substance abuse treatment

services, education, employment, and personal accountability, resulting in positive and long lasting life changes.

Yurok Tribal Court

“Wellness Court Program Guide” (July 2010)

Mission Statement

The mission of the Yurok Tribal Court (YTC) is to support the traditional village values of the people, and have those values inform the development of the Court as a modern institution. The Court’s role is to protect the values of the people, to support the development of those values within each member of the community, and to insure that our responsibility to protect our traditions and traditional lands are carried out.

Goals

The Yurok Wellness Court (YWC) was implemented to help redirect Yurok Tribal Members affected by drugs and/or alcohol onto a path of wellness; thereby improving family, community, and cultural involvement to promote healthy life choices and reduce criminal recidivism. The program goals are:

- Reduce alcohol, methamphetamine and other drug use among the Yurok Community*
- Apply interventions that meet the cultural and spiritual needs of Yurok Tribal Members*
- Increase referrals to culturally-relevant substance abuse treatment services*
- Expand access to concurrent jurisdiction over drug related criminal cases that involve a Yurok Tribal Member*
- To decrease the incidence of child abuse and neglect*
- To intervene with families who display risk factors*
- To reduce the likelihood of negative outcomes for children by addressing the substance abuse of parents or adult care providers and providing services to their children*

Priorities of the Yurok Tribal Court

- 1. Spiritual, mental, and physical health and wellness for our Tribal Members*
- 2. A healthy lifestyle and a fulfilling life for Yurok Tribal Members*
- 3. Participation and enjoyment of the Yurok Tribe’s culture for all Tribal Members*
- 4. Reduction of crime/and un-Yurok like behavior on the Yurok Reservation and for all Tribal Members. A healing of past trauma caused by violence done to the Yurok People and violence that is now occurring in some of our homes*
- 5. Funding and staffing of the Yurok Tribal Court to fulfill the above mentioned priorities.*

Fort McDowell Yavapai Nation

"Fort McDowell Adult Wellness Court Policies and Procedures Manual" (March 2015)

Vision Statement

The vision of the Fort McDowell Adult Wellness Court is to reduce recidivism by actively supporting Fort McDowell community members to live healthy, spiritual, sober lifestyles and to be caring positive role models for future generations.

Mission Statement

The Fort McDowell Adult Wellness Court Program is an intensive court supervised substance abuse treatment program that provides individualized therapeutic programs to strengthen individuals, families and the community by emphasizing personal responsibility and accountability and providing mental, physical, emotional and spiritual healing for community member offenders who struggle with substance abuse and addiction.

Goals and Objectives

- *Reduce criminal recidivism among chemically addicted offenders.*
- *Increase the number of offenders who remain alcohol and drug free.*
- *Increase the benefit and reduce the cost to the Nation for providing services to chemically addicted offenders*
- *Establish a systemic response to substance abuse issues among all involved agencies in Fort McDowell Yavapai Nation*

Section B: Program Description

Purpose

The “program description” within a Policies and Procedures Manual describes the purpose and structure of the Healing to Wellness Court Program to the tribal leadership, the relevant agencies, potential participants and their families, and the tribal community. The program description should designate the type of Wellness Court (adult criminal, juvenile, family, and/or DUI/DWI); describe, in lay-friendly terms, the inter-disciplinary and therapeutic nature of wellness courts; describe who is eligible for the wellness court; and generally describe how the court functions. Some tribes go one step further by contrasting how the Wellness Court is different from the quasi-adversarial tribal court and the guiding principles of the Wellness Court. See the example from the Little Traverse Bay Band of Odawa, below.

Sample Tribal Wellness Court Wording

Cass County—Leech Lake Band of Ojibwe

“Wellness Court Procedure Manual Ninth Judicial District” (July 2014)

Structure/Model

The Wellness Court is a post-sentencing DWI court admitting gross misdemeanor and felony driving impaired offenders.

Pascua Yaqui

“Drug Court Treatment” (no date)

Overview

The Pascua Yaqui Drug Court is a diversion program that offers a treatment as an alternative to criminal prosecution and jail. Drug Court was adapted to the unique legal and treatment environment identified in the Yaqui community to address the intertwined problems of dependence/abuse of alcohol and other drugs and crime. Adult men and women cited or arrested for non-violent crimes and who have an existing alcohol or other drug use problem may be processed immediately into Drug Court.

The U.S. Department of Justice partially funds Drug Court. This model of legal case processing combined with a treatment requirement as an alternative to incarceration has proven to be a success across the country. The partnership that has been formed is a practical approach given that the court system deals with the same individuals that often find themselves in treatment programs.

The Pascua Yaqui Drug Court Team performs a key function in the program. Team members such as the Judge, prosecutor, public defender, treatment providers and others from various tribal departments meet weekly to oversee the functioning of Drug Court and monitor the defendant's treatment progress. Central to the team is the Drug Court Judge who closely supervises the treatment progress and meets weekly with each participant during the Drug Court Hearings. The partnership established among team members strengthens the efforts to deal with alcohol and other drug abuse and its related criminal activity.

Navajo Nation

"The Navajo Nation D.A.N.A. (Dine Adil Nidliigo A'nal neeh) Program Shiprock District Courts Drug Court Manual" (August 2000)

D.A.N.A. Program Design

The D.A.N.A. program will adapt mainstream drug court concepts into a unique form of Navajo Drug Court. Adults and juveniles who have alcohol and drug problems who are charged with non-violent offenses not involving weapons will be eligible for referral into the D.A.N.A. program. Referrals may occur at any stage of complaint processing. Upon referral, the prospective client will be program screened for eligibility by the program officer and when admitted, the client will be referred to a clinical treatment provider for clinical screening and assessment.

Following the clinical screening and assessment, a peacemaking session will be arranged for the client and his/her family or support group. During the peacemaking session, a treatment plan will be developed. The D.A.N.A. Program Officer, the Peacemaker, and a representative from the treatment provider will serve as resource persons during the peacemaking session. The treatment plan will be developed by the client and his family or support group. The client must understand that the D.A.N.A. program is a privilege and not a criminal procedural right. He/She must pledge to complete the treatment plan. The treatment plan shall include a recovery plan which will be provided by the clinical screening and assessment agency. The treatment plan may be accepted as an order of the Court. It will be implemented under the supervision of the D.A.N.A. Program Officer with case review by the Judge throughout the course of the plan. The treatment plan will include drug/alcohol testing, participation in traditional and western rehabilitation methods, and incentives and non-compliance remedies which will be primarily non-adversarial.

Little Traverse Bay Band of Odawa*“Waabshki-Miigwan Court Manual” (January 2011)***Healing to Wellness Court Models vs. Criminal Law Due Process Courts**

The establishment of drug courts provides a groundbreaking approach that permits the judicial system, treatment providers, and other service providers to join forces. Together they supervise support, and treat nonviolent offenders through a series of incentives, sanctions, mandatory drug testing, and effective aftercare programs.

The Waabshki-Miigwan Drug Court Program (WMDCP) is an Odawa Healing to Wellness court program that has evolved from these initial drug court concepts. WMDCP system is not like the general Due Process Court system. Rather, it is developed around the specific cultural patterns of the Little Traverse Bay Bands of Odawa Indians (LTBB). It was developed by Odawa for Odawa. WMDCP is a non-adversarial program that focuses on healing and instilling hope. The LTBB culture is embedded in all areas of the program including the court setting, the treatment plan, the incentives and sanctions, and even the team approach. It is a program that creates hope by laying out a clear program of recovery while providing the client with the needed accountability. Listed below are some clear differences between Due Process Courts and the WMDCP.

Due Process Court	WMDCP
<i>1. Event oriented, i.e., did a certain crime happen as alleged: Historically, this is the jurisprudential link between the criminal courts and the community.</i>	<i>1. Process oriented, i.e., does the offender have a drug/alcohol addiction and can treatment benefit the offender? This type of process is considered in far more limited types of criminal charges.</i>
<i>2. Offense-specific</i>	<i>2. Behavior-specific</i>
<i>3. The determination of guilt and imposition of sentence is essentially the end of the criminal law process.</i>	<i>3. The determination of addiction and referral to drug court is essentially the beginning of the process.</i>
<i>4. The process is identical for all equally accused persons. Quite often, punishment is mandated to be identical as well. The offender’s family is rarely considered in this process.</i>	<i>4. The offender is central to the process and quite often the treatment is individualized. The offender’s family and community are viewed as an ingredient in the overall treatment decisions.</i>
<i>5. Judicial interaction exists only with the representatives of the parties.</i>	<i>5. Court team interaction exists directly with the offender.</i>
<i>6. Responsibility equals atonement</i>	<i>6. Responsibility equals behavioral</i>

<p><i>and punishment. The relationship of the offender to the community is one where, as a result of the adjudication of guilt, the offender is removed from or placed in a condition that protects or shield [sic] the community from the offender.</i></p>	<p><i>changes leading to restoration of holistic health. The offender is viewed as a part of the community. As the offender will generally be treated while an outpatient in the community, behavioral change is designed to reduce conflict by reducing addictive behavior.</i></p>
<p><i>7. When there is post adjudication monitoring, it is generally designed to uncover violations and therefore done primarily for enforcement of probation terms.</i></p>	<p><i>7. There is always extensive post adjudication monitoring. It is always designed to reinforce treatment.</i></p>
<p><i>8. The judge is neutral agent among various competitors.</i></p>	<p><i>8. The judge is an active participant in a partnership between the offender, the treatment providers, and the court.</i></p>
<p><i>v9. The legal history supporting this system is approximately 400 years old; change is difficult.</i></p>	<p><i>9. The legal history that supports this system is 10 years old; change is relatively easy.</i></p>

Underlying Program Principles

While developing the WMDCP we have used many already established and proven recovery principles. The LTBB culture served as our main guide. The Seven Grandfather Teachings, Medicine Wheel Teachings and the White Feather Story are the foundation of WMDCP.

We used the Ten Key Components of Wellness Courts as a guide when organizing the overall structure of our court program. We examined many examples of how other Tribal Drug courts utilized these guidelines and in many cases were able to adopt their ideas into our program.

WMDCP has utilized the Twelve Step as a guide in developing the treatment portion of the program. These programs are established and successful in treating drug and alcohol addiction. Alcoholics Anonymous (AA) and The Red Road to Wellbriety make up the core of our treatment curriculum. Many natives have used these principles to get clean and sober

“Time and again our Elders have said that the 12 Steps of AA are just the same as the principles that our ancestors lived by, with only one change. When we place the 12 Steps in a circle then they come into alignment with the circle teachings that we know from many of our tribal ways. When we think of them in a circle and use them a little differently, then the words will be more familiar to us.”

– The Red Road to Wellbriety

The WMDCP program, obviously, would not exist without the help of all of these components and many others. We hope to honor the Creator and all the people who developed the ideas incorporated into our Drug Court Program by using them in a good way. Furthermore, we

invite any other court entities to use the WMDCP or any of its components that might be helpful to your people.

Waabshki-Miigwan Programming – Curriculum Summary

The Waabshki-Miigwan Drug Court Program (WMDCP) Curriculum is a forty-four week program which utilizes Odawa values and teachings to encourage the adoption of a healthy balanced lifestyle as envisioned by our ancestors, and to eliminate harmful behaviors that have caused negative consequences for our clients. WMDCP has four phases, the learning level (8 weeks), the accepting level (10 weeks), the willing level (12 weeks), and the succeeding level (14 weeks). WMDCP Clients works closely with the WMDCP Team to ensure that maximum potential is achieved.

This ten month, 4 phase program, is a compilation of 44 weekly responsibilities. We encourage our clients to focus on one week and even one day at a time. Each week's assignments must be completed successfully before moving on to the following week.

*WMDCP assignments and tasks are balanced between spiritual, emotional, physical, and mental wellness activities. **Spiritual health** activities include self-help meetings, daily prayer and meditation, and Twelve Step Work in either AA or the White Bison Medicine Wheel Teachings. **Emotional health** activities include assigned WMDCP cultural and wellness activities laid out in the WMDCP Workbook. These activities include various engaging tasks designed to instill Odawa culture as well as challenge the drug court client. **Physical health** activities include weekly physical exercise to be chosen by the client and negative random/scheduled drug and alcohol screens. **Mental health** activities are laid out in periodic therapy sessions with a substance abuse counselor on staff. Clients must simultaneously complete these weekly spiritual, emotional, physical, and mental health activities in order to advance to the next week's assignments. Failure to complete all assigned tasks can halt the client's progress and extend the length of time until successful completion of the WMDCP.*

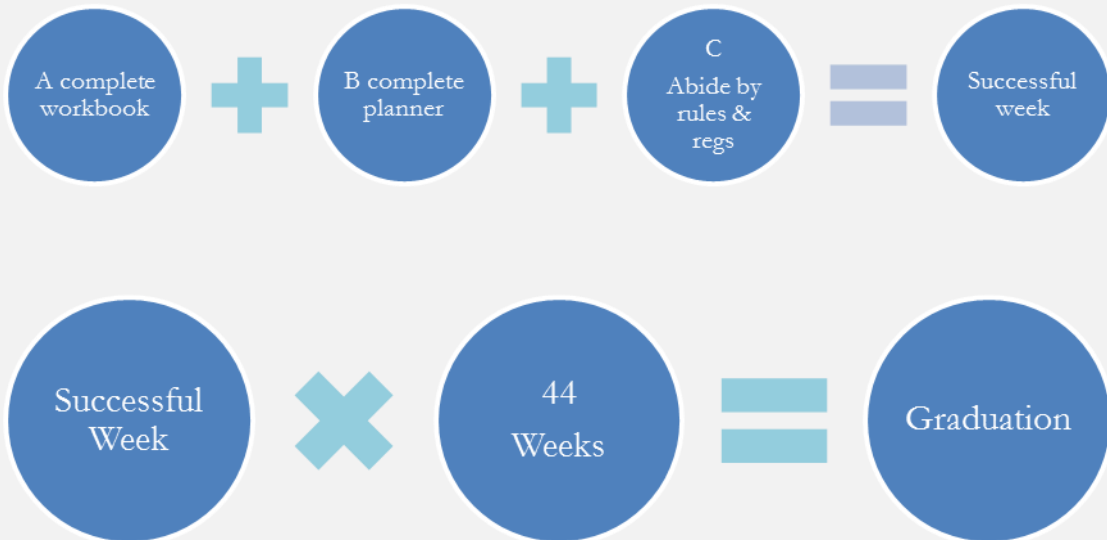
The WMDCP is laid out in a way that is easily understood by the drug court program client. Upon acceptance into the program each client will receive a week-by-week planner, a week-by-week workbook, access to the drug court website (which includes all the materials necessary to successfully complete every assigned task), and, finally, the helpful support of the entire WMDCP team.

Every WMDCP client must essentially complete only three things:

- a. *Completion of all the projects and assignments laid out in the WMDCP week-by-week workbook;* A
- b. *Attendance at all assigned counseling, probation, court, and self-help meetings assigned in the WMDCP week-by-week planner; and* A
- c. *Compliance with all the WMDCP rules and regulations with an emphasis on maintaining sobriety and clean time.* C

When a client successfully accomplishes A, B, and C simultaneously then they advance to the

next weeks curriculum. 44 successful weeks will result in graduation from the WMDCP and a fresh start on life.



The LTBB Adult Drug Court Coordinator, the LTBB Adult Probation Officer, and the assigned therapists work collaboratively to monitor and supervise each client. In addition, clients are required to appear at regular scheduled WMDCP hearings to report on progress and drawbacks to completion of program tasks and assignments. The WMDCP team members conduct weekly meetings to discuss the status of each client and make appropriate adjustments in the client’s treatment plan, as needed.

Upon successful completion of the WMDCP, it is expected that our clients will acquire the following:

- a. *foundational knowledge of recovery principles;* A
- b. *new appreciation of the benefits of living a crime free lifestyle;* A
- c. *n ability to logically and efficiently overcome life obstacles;* A
- d. *better understanding of the Odawa culture;* A
- e. *etter overall health; and, most importantly,* B
- f. *ope for their future* B

Section C: Court to Wellness Program Process

Purpose

The section describes the process by which an adult criminal defendant, a juvenile, or a parent or guardian in the dependency court moves through the tribal court process and is diverted into the Healing to Wellness Court. What kinds of charges or grounds make an individual eligible for Wellness Court participation?

If an adult wellness court, are cases diverted from the criminal court to wellness court “pre-charge” (by referral), “post-plea,” or “post-conviction”? Are cases diverted from another sovereign, such as a neighboring county or municipality?

If a juvenile wellness court, are cases diverted from the juvenile/children’s court to wellness court “pre-petition” (by referral), “post-admission,” or “post-adjudication”?

If a family wellness court, does it use a “parallel” judicial model (cases are diverted from the dependency court to the wellness court, and there are two different judges for each court) or an “integrated” judicial model (the dependency’s court judge functions simultaneously as the wellness court judge. The case remains within the dependency court, but the court uses wellness court process)? If using a parallel judicial model, are cases diverted from the dependency court to the wellness court “pre-petition” (by referral), “post-admission,” or “post-adjudication”?

What papers are filed within the tribal court (petitions/motions)? What types of referral forms or applications are used? What types of plea agreements, admissions, and/or probation agreements are entered into for Wellness Court purposes? What kinds of sentencing/detention or removal/supervision orders are used? Are any of these orders stayed with conditions? What are the conditions?

Sample Tribal Wellness Court Wording

Little Traverse Bay Band of Odawa

"Waabshki-Miigwan Court Manual" (January 2011)

Entry Process

Entry in the Waabshki-Miigwan program may be initiated through:

- a. *A binding plea agreement in a criminal case. The participant’s Defense Counsel and the Tribal Prosecutor must agree to a sentence to Drug Court. No Drug Court*

participant will be received into Drug Court as part of an original sentence over the objection of the Tribal Prosecutor. Once a binding plea agreement with a Drug Court sentence has been reached, the participant will be assessed for Drug Court eligibility. Criteria-eligible participants will be admitted to the Drug Court under the direction of the presiding Judge of the Drug Court. If the participant is determined to be ineligible for Drug Court enrollment, the case will be returned to the referring Judge for a non-Drug Court alternative disposition.

- b. A referral for participants charged with Violation of Probation. The Tribal Probation Officer, the Tribal Court, Defense Counsel, or the Prosecuting Attorney may refer participants to the Drug Court on probation violation (PV) cases any time prior to sentencing on the PV. As in the case for binding plea agreements in a criminal case, participants referred to the Drug Court will be assessed by the Waabshki-Miigwan Program Coordinator for eligibility as a condition of their acceptance into the Drug Court. If accepted, the PV will be permanently transferred to the presiding Judge assigned to the Drug Court.*

Eastern Band of Cherokee

"Cherokee Tribal Drug Court - Policies and Procedures Manual" (June 2009)

Agreement of Participation

The Agreement of Participation outlines the basic rules of the program and sanctions that may be imposed by the Cherokee Tribal Drug Court Judge for failure to abide by the conditions of Cherokee Tribal Drug Court. The form is read to each participant to ensure understanding of the requirements and possible sanctions. Each Participant must sign the form prior to admission.

Drug Screens

Drug tests are a major component of the Cherokee Tribal Drug Court program to determine drug abuse patterns and to monitor participant progress. Drug tests will be conducted on a frequent and random basis or as directed by the Cherokee Tribal Drug Court Team.

The tests are used to discern drug use and for treatment purposes. The tests need not follow the official rules of chain of custody. The results of the tests are not admissible in court except for Cherokee Tribal Drug Court purposes.

A drug test referral form is used to assist the Cherokee Indian Hospital in providing the appropriate service. The referral form is given to all prospective participants for the initial screening. Drug tests can be administered by the Cherokee Police Department or certified/authorized court team member for random testing, and when a participant advances, or is demoted.

Types of Tribal Drug Court Referrals

A defendant meeting the eligibility requirements may enter the Cherokee Tribal Drug Court Program in (3) three ways from the Cherokee Criminal Trial Court.

- A. T**
he Defendant may plead guilty to at least one of the criminal charges pending and have prayer for judgment continued entered on the condition the defendant enter and graduate from the Cherokee Tribal Drug Court;*
- B. T**
he Defendant can be convicted of any number of offenses and on the defendant's motion or the criminal court's motion, prayer for judgment continued (PJC) is entered in all cases on condition the defendant enter and graduate from the Cherokee Tribal Drug Court.*
- C. *The Defendant can be convicted of any number of offenses* and as part of a split or suspended sentence, the defendant is required to enter and graduate from the Cherokee Tribal Drug Court.***

****At least one charge must involve drugs and/or alcohol, but the use of alcohol or drugs does not have to be an element of the crime.***

Ordinance No. 49 (2005)

Original wording "Wellness Court"

Chapter 7C- 3: Cherokee Tribal Drug Court Jurisdiction (Ordinance No. 609)

1. *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 Tribal 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 the Cherokee Trial Court.*
2. *Referrals to the Cherokee Tribal Drug Court may be made by the Cherokee Court once a criminal defendant has plead guilty to, 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 the conditional sentence or may be made as part of a split or suspended sentence.*
3. *Once a referral is made to the Cherokee Tribal Drug Court, the participant shall be assigned to a case worker who shall begin the eligibility process set out in the Policy and Procedures Manual. The Cherokee Drug Court Judge shall order any ineligible individuals back to the Cherokee Trial Court Judge for final disposition of*

the defendant's cases(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.

B. Evaluations: Once an adult has been referred to the Cherokee Tribal Drug Court by a Criminal Court Trial Judge, that person must be evaluated to determine his or her eligibility.

Eligibility Criteria

- 1. Participant has pled guilty or been convicted of a criminal offense.*
- 2. Participant is a non-violent offender and a non-sex crime offender.*
- 3. Participant's charge involves alcohol and/or drugs or the participant has an underlying drug or alcohol use problem.*
- 4. Participant has a substance abuse history.*
- 5. Participant is not a serious risk to the community.*
- 6. Participant has no chronic mental health diagnosis.*
- 7. Participant is an enrolled member of the Eastern Band of Cherokee Indians, or of other Federally Recognized tribes*
- 8. Participant must agree to participate and abide by the Policies and Procedures of the Cherokee Tribal Drug Court.*

Judges of the Cherokee Criminal Trial Court will screen cases for potential eligibility. The Tribal Drug Court Team will determine whether or not a referral by the Criminal Trial Court will be accepted into the Tribal Drug Court Program.

Fort McDowell Yavapai Nation

"Fort McDowell Adult Wellness Court Policies and Procedures Manual" (March 2015)

Referral, Screening and Entry Process

Step 1: Identification of the Participant

A) Prosecutor's Office

When the Prosecutor's Office receives a report or citation involving an alcohol or controlled substance matter, the charging attorney shall review the case and the criminal history of the adult and determine whether it meets the minimum eligibility requirements for participation in the Adult Wellness Court Program. If it is determined that the applicant is eligible for Adult Wellness Court Program participation, the charging attorney shall file a complaint with "Wellness Court Eligible" noted under the title with the court clerk or otherwise notify the court. As to the citations, the prosecutor's office shall notify the Court that these cases may be Adult Wellness Court eligible.

B) The Court

At the time a summons is issued in the matter, a copy of the summons and court date is provided to the Wellness Court Coordinator to initiate consultation on the program. If the adult

appears before the Court pursuant to his or her arrest, or pursuant to a citation, the Court shall direct the Defendant to the Wellness Court Office to provide consultation on the Wellness Court Program.

At the arraignment, the Court shall notify the Defendant that he or she may be eligible to participate in the Adult Wellness Court Program. The Court may grant the Defendant a reasonable period of time, but no later than the first pre-trial hearing to provide the Prosecutor's Office with a signed Limited Consent Form for the purpose of pursuing admission in the Wellness Court Program. The Court may further explain the program or refer the Defendant to the Wellness Court Coordinator or Case Manager for further details of the program.

Upon signing of the Limited Consent Form the participant will be directed to immediately contact, in person, the Wellness Court Coordinator/Tribal Court Case Manager. A copy of the Limited Consent Form shall be immediately provided to the Wellness Court Coordinator or the Tribal Court Case Manager.

Step 2: Acceptance in Program

C) Tribal Court Case Manager/Wellness Court Coordinator

Pre-Adjudication Process: Upon receipt of the Limited Consent Form with the charging documents, criminal history, and police reports from the Prosecutor's Office, the Tribal Court Case Manager/Coordinator will verify enrollment, education, job history, and schedule the clinical screening. The Defendant shall contact the Tribal Court Case Manager/Coordinator and acknowledge receipt of the date, time, and location of the clinical screening. The Case Manager/Coordinator will submit the required information or documentation to the committee at the next regular weekly staffing meeting.

If the Defendant is to remain in custody the Wellness Court Coordinator or Case Manager will coordinate with the Police Department, Wassaja Family Services and Prosecutor's Office the time and location for the assessment to be conducted on the date of the Defendant's next court appearance.

Post-Adjudication Process: The Adult Wellness Court Post-Adjudication Program requirements and the probation supervision conditions, the Tribal Court Case Manager/Coordinator will arrange for the participant to complete the intake process, sign the release of information, program rules, participant agreement and shall schedule the matter to be reviewed by the Wellness Court Committee at the next regular weekly meeting.

The Wellness Court Committee shall review all reports and intake documentation and information as to the Defendant's eligibility to participate in an Adult Wellness Court Program.

For statistical purposes, the Tribal Court Case Manager and/or the Wellness Court Coordinator shall keep a file of all cases presented to the Wellness Court Committee for participation consideration and shall indicate whether or not the adult was admitted into the program and, if not, then why not.

The Tribal Court Case Manager or the Wellness Court Coordinator will send a notification letter to the Defendant, prosecutor and the defense attorney; this may include an e-mail notification to the defense attorney.

Step 3: Acceptance in Program

D) The Prosecutor's Office

If the Wellness Court Committee determines that a potential participant is eligible and appropriate for participation in an Adult Wellness Court Program, the Prosecutor's office may

prepare a Wellness Court Plea Agreement – This document shall include all terms of the plea and sentence agreements of the parties and shall be signed by the participant, his or her legal representative, if any, and the prosecuting attorney.

The Wellness Court Coordinator/Case Manager will ensure that the Participant Agreement and Consent to Release Confidential Information are signed by the participant.

E) The Court

At the next scheduled Adult Wellness Court hearing, the Program Coordinator will submit the participant's Wellness Court Program Phase I requirements, to include the adult treatment requirements, house arrest or supervision conditions, and any other requirements that the Wellness Court Committee has determined as appropriate for the benefit of the participant and necessary to address the adult's substance abuse behavior and to enhance his or her ability to successfully complete the Adult Wellness Court Program.

Cass County Leech Lake Band of Ojibwe

"Wellness Court Procedure Manual Ninth Judicial District" (July 2014)

Referrals – Admission Process for New Violations

Offenders are screened for eligibility at arraignment/Rule 5 hearing (first appearance) by the prosecutors and referred to the Cass County/Leech Lake Wellness Court Coordinator for further review.

Contact is established with out-of-custody offenders instructing them to report to the Cass County probation department for an initial Wellness Court interview. If offenders are still incarcerated, Probation will conduct the initial interview at their detaining facility.

The Wellness Court program and handbook is explained fully to prospective candidates by the Wellness Court Probation Officer. Personal data from each offender is documented on Wellness Court investigation forms, residence and work plans are discussed, as well as their ability and desire to participate in drug treatment. Income information including insurance and Medicaid coverage information is reviewed to determine if the offender is able to pay for treatment or if public assistance is needed.

If the offender indicates a willingness to participate in the Wellness Court Program, the Wellness Court Probation Officer notifies the Chemical Assessor so an assessment can be scheduled. The Chemical Assessor provides the Wellness Court with a copy of the completed assessment which includes the diagnosis and recommendations. The Coordinator or Probation Officer sends correspondence to the County Attorney's Office advising of eligibility or non-eligibility and if eligible probation requests pre-sentence investigation to be completed.

If the offender is considered appropriate for Wellness Court, he or she will be ordered to Wellness Court as a condition of probation, or a condition of release if sentencing has not yet occurred, and is placed on the next Wellness Court docket. The Judge introduces the defendant to Wellness Court, and signs appropriate orders and contracts.

All Wellness Court participants will have a pre-sentence investigation completed and the final recommendation either for or against Wellness Court admission will be made.

See attached Flow Chart Page 19

Referral – Admission Process for Probation Violations

The assigned probation officer will contact the Wellness Court Agent and/or Coordinator when one of their probation clients has a target violation and appears to be a good candidate for Wellness Court. The Wellness Court Coordinator will then screen the offender to determine eligibility. The Wellness Court Coordinator will then process this referral as a regular referral.

Section D: Target Population and Eligibility Criteria

Purpose

This section describes the characteristics of an eligible participant and his or her situation. At a minimum, *Key Component #3 Screening & Eligibility* requires that the target population be limited to “eligible, court-involved, substance abusing parents, guardians, juveniles, and adults” who are “identified through legal and clinical screening.”

For legal eligibility, tribes tend to target individuals of a specified age, charged with specific alcohol- and/or drug-related tribal offenses that fall within the jurisdiction of their tribal courts. Note that although most of the sample Tribal Wellness Court wording below requires that the underlying offense be related to alcohol and/or drugs (such as by explicitly identifying eligible offenses), the Eastern Band of Cherokee only requires that the underlying crime be non-violent. Compare to the Little Traverse Bay Band of Odawa, which requires that drugs and/or alcohol be an underlying factor of the crime, but provides a broad and open-ended list of possibilities.

Additional requirements include clinical eligibility for individuals who have been determined as having a history of alcohol and/or drug use, and/or that have been assessed to be chemically dependent. Some Tribal Wellness Court programs additionally require a mental capacity to actively participate in the program and willingness and consent to participate in treatment and to comply with the program requirements.

Sample Tribal Wellness Court Wording

Little Traverse Bay Band of Odawa

"Waabshki-Miigwan Court Manual" (January 2011)

Target Population

Waabshki-Miigwan will target non-violent participants charged with drug/alcohol related offenses who are a member of a federally recognized Indian Tribe and fall within the jurisdiction of the Little Traverse Bay Bands Tribal Court.

Admission Guidelines

Eligibility includes targeted populations that meet each of the following criteria:

- a. Are a member of a federally recognized Indian Tribe or a LTBB Community Member;*
- b. Committed a non-violent crime;*

- c. *Offense was drug or alcohol related, or drug or alcohol is the underlying factor; such as:*
- *Supplying quantities of prohibited drugs;*
 - *Possession and/or use of prohibited drugs;*
 - *Breaking and Entering/Home Invasion;*
 - *Vandalism;*
 - *Trespass;*
 - *Theft;*
 - *Disorderly Conduct;*
 - *DUI;*
 - *Dangerous or reckless driving; and*
 - *Any other offense where drugs or alcohol is the primary underlying factor*
- d. *History of drug or alcohol use;*
- e. *Ability to comprehend and comply with Waabshki-Miigwan requirements; and*
- f. *Fall within the jurisdiction of the LTBB Tribal Court*

Exceptions to rules regarding jurisdiction concerning potential clients without criminal charges can be made by team vote if a candidate voluntarily admits himself/herself to the Waabshki-Miigwan Program.

Cass County Leech Lake Band of Ojibwe

"Wellness Court Procedure Manual Ninth Judicial District" (July 2014)

Target Population

The target population for the Wellness Court will be offenders:

- *convicted of any Minnesota Impaired Driving Code--MSA §169A*
- *repeated probation violations for above-noted offenses*

Eligibility Criteria

The guidelines which the Wellness Court uses to identify and enter offenders into the program are as follows:

- *must be a resident of Cass County, and/or live on Leech Lake Tribal land; and remain a resident of Cass County, and/or live on Leech Lake Tribal land, while participating in Wellness Court.*
- *If the case file is from another County, the County must be part of the 9th Judicial District.*
- *must have a chemical dependency assessment diagnosis of a Substance Abuse Disorder, in accordance with the current DSM-5.*
- *must be physically and mentally able to actively participate in the program.*

- *ust be willing to sign a treatment contract to undergo drug treatment, which includes regular urine screens, group, individual counseling, or other recommended treatment. Every participant must sign designated releases of confidentiality.*
- *ust be able to make arrangements to attend treatment at the scheduled time.*
- *ust be an adult.*
- *ust be willing to actively seek employment and/or enroll in an educational program and fully participate.*
- *f unemployed complete community service work to be determined by phase the participant is currently in.*
- *ust be willing to accept sanctions of the Wellness Court Judges which may include incarceration, community service, increased reporting to Court and/or probation officer, and increased attendance at community support meetings, such as AA or NA.*

Eastern Band of Cherokee

"Cherokee Tribal Drug Court - Policies and Procedures Manual" (June 2009)

Eligibility Criteria

1. *Participant has pled guilty or been convicted of a criminal offense.*
2. *Participant is a non-violent offender and a non-sex crime offender.*
3. *Participant's charge involves alcohol and/or drugs or the participant has an underlying drug or alcohol use problem.*
4. *Participant has a substance abuse history.*
5. *Participant is not a serious risk to the community.*
6. *Participant has no chronic mental health diagnosis.*
7. *Participant is an enrolled member of the Eastern Band of Cherokee Indians, or of other Federally Recognized tribes*
8. *Participant must agree to participate and abide by the Policies and Procedures of the Cherokee Tribal Drug Court.*

Judges of the Cherokee Criminal Trial Court will screen cases for potential eligibility. The Tribal Drug Court Team will determine whether or not a referral by the Criminal Trial Court will be accepted into the Tribal Drug Court Program.

Fort McDowell Yavapai Nation

"Fort McDowell Adult Wellness Court Policies and Procedures Manual" (March 2015)

Eligibility Criteria

- *18 Years of age or older*
- *Member of the Fort McDowell Yavapai Nation or is Native American residing within the Nation. (“Native American” means enrolled, eligible for enrollment or descendant of an enrolled tribal member in a federally recognized Indian tribe; “residing” means established residence for a minimum period of 6 months and intent to permanently reside within the Nation.)*
- *Assessed as “High Risk, High Need.” (Based upon validated legal and clinical assessments, determined to be alcohol or drug dependent and at substantial risk of reoffending or failing to complete a less intensive disposition.)*
- *Tribally charged under the jurisdiction of Fort McDowell Yavapai Nation with an alcohol or drug related crime or a non-alcohol or drug related offense if there is evidence that alcohol or drug use was an underlying factor in the crime. Wellness Court will consider eligible transfers from the State court.*
- *Tribally charged under the jurisdiction of the Fort McDowell Yavapai Nation with violating a term of probation if the violation involves alcohol or drugs or if there is evidence that alcohol or drug use was an underlying factor in the violation.*

Section E: Violent Offender, Sexual Offender, and Aggravated Circumstances Prohibitions

Purpose

This section describes who is ineligible to be admitted into the Healing to Wellness Court. Certain sources of federal funding require that the Healing to Wellness Court Program “target population” exclude violent offenders and/or persons determined to have caused “aggravated circumstances” in child abuse or neglect cases. A tribe that supports its tribal court and/or social services systems with these sources of funding will want to narrow the defined target population to protect this funding.⁹ Other tribes also choose to exclude sexual offenders (as defined under tribal and/or federal law) from their target populations.

Applicable Federal Law Re: Violent Offenders in Tribal Adult Criminal and Juvenile Healing to Wellness Courts

Tribes that receive federal dollars, such as from the Bureau of Justice Assistance, may be subject to limitations regarding the inclusion of violent offenders in the Healing to Wellness Court. The definition of “violent offender” is provided below. Note, however, that the term is defined by whether the crime is punishable by an imprisonment term *exceeding* one year. Tribes that have not adopted the enhanced sentencing authority of the Tribal Law and Order Act,¹⁰ are limited by federal law to sentencing defendants to imprisonment terms of *no more than one year*.¹¹ Therefore, it is possible that such a tribal court conviction, even for a violent offense, would not fall under the federal definition for “violent offender.” Nevertheless, federal funding grantees should consult their grant managers to ensure compliance with their funding limitations.

United States Code, Title 42, Chapter 46, Subchapter XVI, § 3797u–2
42 U.S.C. § 3797u–2 - Definition

(a) In general

Except as provided in subsection (b) of this section, 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*

⁹ A Healing to Wellness Court may, at its own discretion, choose to provide services to otherwise excluded offenders if using non-federal funding to provide those services.

¹⁰ Tribal Law and Order Act of 2010, 25 U.S.C. § 2801 et seq.

¹¹ Indian Civil Rights Act of 1986 (ICRA), 25 U.S.C. §§ 1301-1303.

(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.

(b) Definition for purposes of juvenile drug courts

For purposes of juvenile drug courts, the term “violent offender” means a juvenile who has been convicted of, or adjudicated delinquent for, a felony-level offense that—

- (1) has as an element, the use, attempted use, or threatened use of physical force against the person or property of another, or the possession or use of a firearm; or
- (2) by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Applicable Federal Law Re: Sex Offenders in Tribal Adult Criminal and Juvenile Healing to Wellness Courts

United States Code, Title 42, Chapter 151, Subchapter I, Part A, § 16911
42 USC § 16911 - Relevant definitions, including Amie Zyla expansion of sex offender definition and expanded inclusion of child predators

In this subchapter the following definitions apply:

(1) Sex offender

The term “sex offender” means an individual who was convicted of a sex offense.

(2) Tier I sex offender

The term “tier I sex offender” means a sex offender other than a tier II or tier III sex offender.

(3) Tier II sex offender

The term “tier II sex offender” means a sex offender other than a tier III sex offender whose offense is punishable by imprisonment for more than 1 year and—

(A) is comparable to or more severe than the following offenses, when committed against a minor, or an attempt or conspiracy to commit such an offense against a minor:

- (i) sex trafficking (as described in section 1591 of title 18);
- (ii) coercion and enticement (as described in section 2422 (b) of title 18);
- (iii) transportation with intent to engage in criminal sexual activity (as described in section 2423 (a) of title 18);
- (iv) abusive sexual contact (as described in section 2244 of title 18);

(B) involves—

- (i) use of a minor in a sexual performance;
- (ii) solicitation of a minor to practice prostitution; or
- (iii) production or distribution of child pornography; or

(C) occurs after the offender becomes a tier I sex offender.

(4) Tier III sex offender

The term “tier III sex offender” means a sex offender whose offense is punishable by imprisonment for more than 1 year and—

(A) is comparable to or more severe than the following offenses, or an attempt or conspiracy to commit such an offense:

(i) aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18); or

(ii) abusive sexual contact (as described in section 2244 of title 18) against a minor who has not attained the age of 13 years;

(B) involves kidnapping of a minor (unless committed by a parent or guardian); or

(C) occurs after the offender becomes a tier II sex offender.

(5) Amie Zyla expansion of sex offense definition

(A) Generally

Except as limited by subparagraph (B) or (C), the term “sex offense” means—

(i) a criminal offense that has an element involving a sexual act or sexual contact with another;

(ii) a criminal offense that is a specified offense against a minor;

(iii) a Federal offense (including an offense prosecuted under section 1152 or 1153 of title 18) under section 1591, or chapter 109 section 1591, or chapter 109A, 110 (other than section 2257, 2257A, or 2258), or 117, of title 18;

(iv) a military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105–119 (10 U.S.C. 951 note); or

(v) an attempt or conspiracy to commit an offense described in clauses (i) through (iv).

(B) Foreign convictions

A foreign conviction is not a sex offense for the purposes of this subchapter if it was not obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established under section 16912 of this title.

(C) Offenses involving consensual sexual conduct

An offense involving consensual sexual conduct is not a sex offense for the purposes of this subchapter if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.

(6) Criminal offense

The term “criminal offense” means a State, local, tribal, foreign, or military offense (to the extent specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105–119 (10 U.S.C. 951 note)) or other criminal offense.

(7) Expansion of definition of “specified offense against a minor” to include all offenses by child predators

The term “specified offense against a minor” means an offense against a minor that involves any of the following:

- (A) An offense (unless committed by a parent or guardian) involving kidnapping.
- (B) An offense (unless committed by a parent or guardian) involving false imprisonment.
- (C) Solicitation to engage in sexual conduct.
- (D) Use in a sexual performance.
- (E) Solicitation to practice prostitution.
- (F) Video voyeurism as described in section 1801 of title 18.
- (G) Possession, production, or distribution of child pornography.
- (H) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct.
- (I) Any conduct that by its nature is a sex offense against a minor.

(8) Convicted as including certain juvenile adjudications

The term “convicted” or a variant thereof, used with respect to a sex offense, includes adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of title 18), or was an attempt or conspiracy to commit such an offense.

(9) Sex offender registry

The term “sex offender registry” means a registry of sex offenders, and a notification program, maintained by a jurisdiction.

(10) Jurisdiction

The term “jurisdiction” means any of the following:

- (A) A State.
- (B) The District of Columbia.
- (C) The Commonwealth of Puerto Rico.
- (D) Guam.
- (E) American Samoa.
- (F) The Northern Mariana Islands.
- (G) The United States Virgin Islands.
- (H) To the extent provided and subject to the requirements of section 16927 of this title, a federally recognized Indian tribe.

(11) Student

The term “student” means an individual who enrolls in or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institution of higher education.

(12) Employee

The term “employee” includes an individual who is self-employed or works for any other entity, whether compensated or not.

(13) Resides

The term “resides” means, with respect to an individual, the location of the individual’s home or other place where the individual habitually lives.

(14) Minor

The term “minor” means an individual who has not attained the age of 18 years.

Applicable Federal Law Re: Family (Child Abuse and Neglect) Healing to Wellness Courts

The Adoption and Safe Families Act (“ASFA”)¹² provides that in extreme circumstances (given “aggravated circumstances”), reasonable efforts—either to preserve or reunify a family—would be unreasonable. ASFA applies to all state child welfare systems, as well as to any tribes that operate their own Title IV-E Foster Care and Adoption Assistance program,¹³ or receive direct funding under Title IV-B.¹⁴ These provisions have significant implications for Tribal Healing to Wellness Courts that seek to treat alcohol- and/or drug-abusing parents or guardians while they are seeking reunification with their children.

ASFA affects when a tribe may not provide a family with reunification services and when a tribe must expedite a termination of parental rights (where the child has been in foster care for 15 of the most recent 22 months and where aggravated circumstances are present). These time limits can significantly impact the treatment window. As the law reads, those parents determined to have caused “aggravated circumstances” (see definitions below—but the most troubling is where the parental rights of the parent to a sibling have been terminated involuntarily) are likely to have their parental rights terminated and are thus not good candidates for Healing to Wellness Court where their motivation for participation is legal reunification with their children.

With the passage of ASFA, Congress provided that “reasonable efforts” to preserve or reunify children with their families are not required if a court of competent

¹² Relevant provision of the Adoption and Safe Families Act, 42 U.S.C. § 671(15)(A), (D)(i-ii), § 675(5)(E).

¹³ The Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96-727. Public Law 96-272 created Title IV-E, which provides funds for states and tribes to provide foster care, transitional independent living programs for children, guardianship assistance, and adoption assistance for children with special needs. Tribes can access funding through tribal-state agreements. Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. 110-351).

¹⁴ 42 U.S.C. 628. Title IV-B of the Social Security Act, provides for two child welfare grant groups (Title IV-B Subparts 1 and 2) for states and tribes. For more information on the application of ASFA to tribes, including how ASFA integrates with the Indian Child Welfare Act, see David Simmons and Jack Trope, *P.L.15-89 Adoption and Safe Families Act of 1997: Issues for Tribes and States Serving Indian Children*, National Indian Child Welfare Association, Ind., National Resource Center for Organizational Improvement (Nov. 1999).

jurisdiction has determined that the parent has subjected the child to “aggravated circumstances.” ASFA delegates to the states (not tribes) the authority to define “aggravated circumstances.”¹⁵ However, Congress specified that the definitions of “aggravated circumstances” might include “abandonment, torture, chronic abuse, and sexual abuse.” ASFA also defines specific cases in which reasonable efforts to preserve or reunify children with their families are not required.

*United States Code, Title 42, Chapter 7, Subchapter IV, Part E, § 671
42 USC § 671 – State plan for foster care and adoption assistance*

(15) provides that—

...(D) reasonable efforts of the type described in subparagraph (B) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that—

(i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

(ii) the parent has—

(I) committed murder (which would have been an offense under section 1111 (a) of title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(II) committed voluntary manslaughter (which would have been an offense under section 1112 (a) of title 18, if the offense had occurred in the special maritime or territorial jurisdiction of the United States) of another child of the parent;

(III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

(IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

(iii) the parental rights of the parent to a sibling have been terminated involuntarily;

In any case where the ASFA is to be applied, whether for funding purposes or where the tribe agrees with the policy objectives and means of the ASFA, the tribal code should provide for a preliminary hearing on the question of whether aggravated circumstances exist and whether ASFA’s requirements are triggered. Where aggravated circumstances are found to exist, the ASFA has the following requirements:

¹⁵ “When entering into a title IV-E agreement with a State, the tribe must adhere to the list of aggravated circumstances defined in State law. The statute at section 471 (a)(15)(D)(i) specifically requires that the aggravated circumstances in which reasonable efforts are not required be defined in State law.” Child Welfare Policy Manual, §9.4(5) Tribes/Indian Tribal Organizations, Title IV-E Agreements (citing to the Social Security Act and its regulations, § 471(a)(15)(D); 42 U.S.C. §671; 45 C.F.R. 1356.21(b)(3)).

(1) The tribal law cannot require, but may permit, the tribal social services department to undertake reasonable efforts to preserve or reunify children with their families;

(2) The tribal law must require the tribe (via its presenting officer, prosecutor, Attorney General, or other designated official) to file a petition to terminate the parental rights of the child's parents where:

(a) The child has been in foster care for 15 of the most recent 22 months;

(b) The parent has committed murder of another child of the parent; the parent committed voluntary manslaughter of another child of the parent; the parent aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter upon a child of the parent; or the parent committed a felony assault upon the child or another child of the parent that results in "serious bodily injury;" or

(c) The child has been adjudged abandoned by a court of competent jurisdiction.

(3) The tribal law may provide exceptions to the requirement to file a petition to terminate parental rights where:

(a) The child is being cared for by a relative;

(b) The tribal social services department (or other designated agency/officer) has documented a compelling reason so that filing a petition to terminate would not serve the child's best interests; or

(c) The situation requires that the non-offending parent be provided reasonable efforts to reunify and those efforts have not been provided.

Sample Tribal Wellness Court Wording

Little Traverse Bay Band of Odawa

"Waabshki-Miigwan Court Manual" (January 2011)

Violent Participant Prohibition

The Waabshki-Miigwan program receives federal funding and must comply with the Violent Participant requirement. Due to congressional mandate, federally funded Wellness Courts cannot accept cases involving a violent participant, described as a person who either:

(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.

Eligibility is also determined by a screening process that is defined and described in the program admission guidelines. Those individuals who screen as eligible for the program must be accepted by the team. They may be referred by law enforcement, the Tribal Prosecutor, probation office, court staff, judge, foreign court, or a combination of these agencies, and may require a vote by the Healing to Wellness Court team.

Eastern Band of Cherokee

"Cherokee Tribal Drug Court - Policies and Procedures Manual" (June 2009)

Violent Offender Prohibition

To help ensure the safety of all participants and the drug court team, violent offenders are not eligible to participate in Cherokee Tribal Drug Court. The definition of a violent offender is set out in 42 U.S.C. 3797u-2:

(a) In general

Except as provided in subsection (b) of this section, in this sub chapter, the term "violent offender" means a person who-

- (1) is charged with or convicted of a offense, 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.

(b) Definition for purposes of juvenile drug courts

For purposes of juvenile drug courts, the term "violent offender" means a juvenile who has been convicted of, or adjudicated delinquent for, an offense that-

- (1) has as an element, the use, attempted use, or threatened use of physical force against the person or property of another, or the possession or use of a firearm; or

- (2) by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Sexual Offender Prohibition

People categorized as "Sexual Offenders" are not eligible to participate in Cherokee Tribal Drug Court. For the purpose of determining Cherokee Tribal Drug Court eligibility, a sexual offender is a person who has been convicted of, or is currently charged with a "reportable offense" as defined by Cherokee Code Section 14-50.2(4).

1. Cherokee Code, Section 14-50.2(4) Reportable offense means conviction of, adjudicated or committed for a violation, solicitation, conspiracy, or attempt to commit a violation of the following:

- a. Cherokee Code: Section 14-20.1 (taking indecent liberties with children) Section 14-20.2 (aggravated sexual abuse); Section 14-20.3 (sexual abuse); Section 14-20.4 (Sexual abuse of minor or ward); Section 14-30.5 (child abuse in the first degree); Section 14-80.2 (Incest); 14-80.4 (Indecent exposure);
- b. Any offense against a minor prohibited by North Carolina Statutes, all sexually violent offenses prohibited by North Carolina Statutes, including NCGS. 14-27.3 (Second degree rape); NCGS 14-27.4 (First degree sexual offense); NCGS 14-27.5 (Second degree sexual rape); NCGS 14-27.6 (Attempted rape or sexual offense); NCGS 14-27.7 (Intercourse or sexual offense with certain victims); NCGS 14-17.8 (Incest between near relatives); NCGS 14-190.6 (Employing or permitting minor to assist in offenses against public morality or decency); NCGS 14-190.16 (First degree sexual exploitation of a minor); NCGS 14-190.17 (second degree sexual exploitation of a minor); NCGS 14-190.17A (Third degree sexual exploitation of a minor); NCGS 14-190.28 (Promoting prostitution of a minor); NCGS 14-190.19 (Participating in prostitution of a minor); NCGS 14-202.1 (Taking indecent liberties with children);
- c. 18 U.S.C. 2241 (Aggravated Sexual Abuse); 18 U.S.C. 2242 (Sexual Abuse); 18 U.S.C. 2243 (Sexual Abuse of a Minor or Ward); 18 U.S.C. 2251 (Sexual Exploitation of Children); 18 U.S.C. 2252 (Certain Activities Relating to Material Involving Sexual Exploitation of Minors); 18 U.S.C. 2252A (Certain activities Relating to Material Constituting or Containing Child Pornography); 18 U.S.C. 2260 (Production of Sexually Explicit Depictions of a Minor for Importation into the United States);
- d. A reportable offense shall also include all convictions or adjudications or commitments for the above offenses by any tribal, federal, or state jurisdiction which if committed on the Cherokee Reservation or within the State of North Carolina, would have been a sex offense as defined by Chapter 14 of the Eastern Band of Cherokee Code or the North Carolina General Statutes or the United States Code as described above;
- e. All delinquency findings or adjudications of minors for offense listed in subsections (4) a-d above, in any jurisdiction shall also be a reportable offense;
- f. Individuals who have been released from a mental health facility or from a prison's mental health facility for treatment for any mental disorder, mental illness, mental disease, defect, or have been found not guilty or not responsible by reason of mental disease or defect for any offenses enumerated in subsections (4) a-d of this section. In the event that such individual is deemed legally incompetent, it shall be the responsibility of the guardian to register the individual as required by this article.
- g. Reportable offenses must have occurred any time after March 7, 1991.

The phrase "reportable offense" shall include any future amendments in The Cherokee Code of Section 14-50.2 (4) a through g.

2. A sexual offender is also any person who meets the qualifications as set out in Cherokee Code, Section 14-50.2(6) defining "Sexually Violent Person" or who is

required to register as a Sexual Offender under Article X (Sexual Offender Registration Program) of Chapter 14 of The Cherokee Code as now written or as later amended.

3. A sexual offender is also any person who has been convicted of a sexual offense, as commonly defined, which is a crime under the United States Code or the statutes, codes, or ordinances of any state or Native American Tribe recognized by the United States as presently defined or as defined by later amendments.

Cass County Leech Lake Band of Ojibwe

"Wellness Court Procedure Manual Ninth Judicial District" (July 2014)

Disqualifications

The guidelines that the Wellness Court uses to identify that an offender is ineligible for the program are as follows:

- *o predatory offenses and or past convictions/adjudications for a predatory offense as outlined in MSA §243.166 and MSA §243.167.*
- *Not be a "violent offender" as defined in 28 C.F.R. 93.3(d) as follows:*
Violent offender means a person who either—
 - *Is currently charged with or convicted of an offense during the course of which:*
 - *The person carried, possessed, or used a firearm or other dangerous weapon; or*
 - *There occurred the use of force against the person of another; or*
 - *There occurred the death of, or serious bodily injury to, any person; without regard to whether proof of any of the elements described herein is required to convict; or*
 - *Has previously been convicted of 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.*
- *The offender has a violent criminal history as defined in 28 C.F.R. 93.3(d).*

609.185	Murder in the First
609.19	Murder in the Second
609.196	Murder in the Third
609.20	Manslaughter in the First
609.205	Manslaughter in the Second
609.21 subd.	Criminal Vehicular Homicide
1a(a)	
609.21 subd.	Criminal Vehicular Operation (Great Bodily Harm)
1a(b)	
609.211-	Assault First – Fourth
609.2231	
609.224	If a felony level assault
609.2243	Felony Domestic Abuse
609.228	Great Bodily Harm caused by distribution of drugs
609.229	Crime committed for the benefit of a

N

	gang
609.245	Aggravated Robbery
609.25	Kidnapping
609.2661-	Murder, manslaughter, assault and
609.268	injury/death of unborn child
609.342-	Criminal sex, all degrees
609.3451	
609.498	Witness Tampering
609.561	Arson in the First
609.582	Burglary in the First, subd. 1(a)
609.66	Dangerous Weapons (firearms)
a.	Machine guns and short-barreled shotguns
609.668	Explosive or incendiary devise without injury to others
609.712	Real and simulated weapons of mass destruction
a.	Crimes committed in furtherance of terrorism
609.713	Terroristic Threats
609.855	Crimes involving transit; shooting at transit vehicle

- *The offender declines program participation.*
- *The offender is a juvenile.*
- *The offender fails to report for interview, contract signing and/or initial court date.*
- *The offender shows a lack of desire for change.*
- *The offender wants to transfer supervision out of Cass County.*
- *The offender is required to pay a large amount of restitution.*
- *The offender has serious mental health and/or medical problems.*
- *The chemical assessment and/or mental health assessment indicates the offender is not appropriate for Wellness Court.*
- *The offender is not a resident of Cass County, and/or does not live on Leech Lake Tribal land*
- *Must not be registered as a gang member or affiliated with a gang.*
- *Must not be identified by law enforcement as a dealer of drugs.*
- *Must not have been an integral part of a drug distribution or manufacturing network.*
- *Must not have any outstanding warrants. Once existing warrant has been satisfied, will be eligible to be rescreened.*

Relevant Sample Forms

Pascua Yaqui Drug Court Treatment Card is to be given by Police Officer to a potential participant at the time of their citation or arrest to inform them of the existence of the Healing to Wellness Court. The Police Officer should indicate on the card for what the individual is being cited or arrested, and whether the crime is nonviolent and drug-related.

**PASCUA YAQUI
DRUG
COURT
TREATMENT
(PYDCT)**

**A
CITATION/ARREST
FOR:**

**NONVIOLENT
+ DRUG-RELATED
OFFENSE
= REFERRAL TO
PYDCT**

**FOLLOW THESE STEPS TO FIND OUT
ABOUT DRUG COURT AND IF YOU ARE
ELIGIBLE:**

1. CALL THE PASCUA YAQUI TRIBE'S PROSECUTOR'S OFFICE # 883-5191.
2. IF YOU ARE ELIGIBLE FOR DRUG COURT YOU WILL BE REFERRED FOR A SUBSTANCE ABUSE SCREENING. CALL THE PYDCT PROGRAM COORDINATOR AT 883-6036.