

Chapter 12: Statutory Provisions

Overview

Statutory provisions may be implicated by any or all of the ten Key Components of Tribal Healing to Wellness Courts.

Purpose

Tribal laws establish, authorize, fund, and regulate tribal programs. Secondarily, the process of adopting a tribal law puts tribal leaders on notice of tribal programming and requires them to officially declare support for or against such programming. Tribal Healing to Wellness Court participants and their families have a right to know what laws govern their Wellness Court participation.

Sample Tribal Wellness Court Wording

Muscogee (Creek) Nation of Oklahoma

CHAPTER 6. FAMILY DRUG COURT PROGRAM (last verified April 3, 2015)

Historical and Statutory Notes

NCA 00-32, § 101, provides:

“Findings: The National Council finds that:

“A. On August 29, 1998, the National Council adopted 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-fourth 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.”

NCA 98–77, § 101, provides:

“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.”

§ 6—101. Establishment of program

There is hereby established a Family Drug Court Program within the Muscogee (Creek) Nation's judicial system.

§ 6—102. Powers and authority of Court

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

A. approving and enforcing treatment plans;

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

§ 6—103. Rules and procedures

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

§ 6—104. Family Drug Court Implementation Team

- A. *There is hereby established the Family Drug Court Implementation Team, which shall consist of at least one (1) representative from each of the following agencies or departments of Muscogee (Creek) Nation: Office of the Attorney General, Children and Family Services Administration (hereinafter CFSA"), Muscogee Nation Behavioral Health and/or Employee Health Department, Lighthorse Police, and such other person or persons as may be designated by the Principal Chief. The Speaker of the National Council may appoint one member of the National Council to attend Implementation Team meetings in an ex-officio capacity.*
- B. *The Family Drug Court Implementation Team is hereby authorized to develop policies, procedures, and inter-agency/departmental protocols and standards for use in the operation of the Family Drug Court Program, as well as standardized forms and other documents to be used in the program. In developing the foregoing, the Team shall consult with their respective agencies, the judicial*

branch, attorneys who provide indigent defense services, and other outside agencies.

§ 6–105. Children and Family Services Administration responsibilities

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

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

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

§ 6–107. Search for funding

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

§ 6–108. Cooperative agreements or contracts

- A. *The Principal Chief, with the assistance of the Attorney General, is hereby authorized to negotiate and enter into on behalf of the Muscogee (Creek) Nation appropriate cooperative agreements with state and local governments for integrating and/or coordinating the Muscogee (Creek) Nation Family Drug Court Program with agencies of such other governments.*
- B. *In addition, the Principal Chief, with the assistance of the Attorney General, is hereby authorized to negotiate and enter into on behalf of the Muscogee (Creek) Nation appropriate cooperative agreements/contracts with substance abuse treatment facilities, local jails and/or detention facilities, and other agencies in order to provide more comprehensive treatment and sanctions services for the Family Drug Court Program.*

§ 6–109. Severability

The provisions of this chapter shall be considered severable such that if any provision shall be held invalid by a court of competent jurisdiction, all other provisions shall continue to be valid and given full force and effect.

Eastern Band of Cherokee

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 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.

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.*

Fort McDowell Yavapai Nation**Law and Order Code of the Fort McDowell Yavapai Community, Arizona****VIII. WELLNESS COURT.****Rule 84. Wellness Court eligible cases.**

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

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

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

Rule 86. Tolling of time; speedy trial.

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

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

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