

# Lessons Learned in Implementing the First Four Tribal Wellness Courts

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## **Introduction**

The following Lessons Learned are culled from the experiences of the first four tribal wellness courts: the Hualapai in Peach Springs, Arizona who had both juvenile and adult wellness courts, the Blackfeet in Browning, Montana who had an adult wellness court, the Fort Peck reservation in Poplar, Montana who had a juvenile wellness court, and the Poarch Creek in Atmore, Alabama who have an adult wellness court. These tribal wellness courts had unique experiences in planning and implementing their wellness court, but they also exhibited a similar pattern of strengths and weaknesses. Other tribes can learn from their experiences and hopefully not repeat the same mistakes if they have forewarning of pitfalls lying ahead.

Each Lesson Learned is paired with one of the ten key components from *Tribal Healing to Wellness Courts: The Key Components*.<sup>i</sup> The *Key Components* describe the basic elements that define tribal drug courts (also known as tribal healing to wellness courts or wellness courts) and are adapted from the key components for state drug courts. The *Key Components* are meant to be aspirational and not intended as a checklist, but they do address the major components of wellness courts and suggest recommended practices acknowledging they may or may not be feasible for a particular tribe. The Lessons Learned highlight challenges in implementing the recommended practices and suggest approaches to surmount the challenges.

**#1 - Develop a Strong Structure for the Wellness Court Team**

*Key Component #1: Tribal Healing to Wellness Courts bring together community healing resources with the tribal justice process, using a team approach to achieve the physical and spiritual healing of the participant and the well being of the community.*

This key component focuses on the importance of the team in the success of wellness court planning and implementation. Ideally, the wellness court team is composed of representatives from across the reservation, including tribal elders and others who embody traditional values. The team members must put aside any feelings of territoriality and collaborate as a team to integrate their respective skills and backgrounds to achieve a holistic approach to treating participants who have substance abuse problems. Regular communication among the team members is crucial as well as stability of the core team.

It bodes well for the success of a wellness court if the core planning and implementation team members remain with the program long enough to ensure the wellness court becomes institutionalized. All four wellness courts did an excellent job in forming their original team, but people in the three courts with significant turnover recognized team membership changes damaged the structural integrity of the wellness court.

***I think one of our problems is that there has been a change of hands so many times, you know, different people getting involved with the drug court. I believe only one person sitting here has been involved from Day One. - Team Member***

*Like when we would go to the different trainings, each one of the other reservations, we'd be lucky if there was one or two people from the same tribe again that we would see. You need the continuity of a group once you get a group, you need that to stay.*

*[A school representative stopped coming], I think it was last year, one of the guys that worked at the school, **he moved on to another program and it kinda got lost. They didn't really designate one person.*** - Team Member

*The communication from all the team members was good from the beginning, all the team members that were on there showed up. . . . **It's not that good this time. . . . Not all the members showed up. Usually don't show up. . . . I don't know what it is, but they don't show up regularly.*** Some of them just go from one job to another. - Team Member

*The strong point was the beginning of the program where everyone was gung-ho and willing to say "Yes, we can do it, we will work together," the team effort, it was really, really strong and it was positive and a lot of the programs participated in the team. **There was also change in those programs, and the members that are basically told to be [at the wellness court staffing meeting] weren't involved in the beginning, and I think that's where the relationship went down, . . . and sometimes they're just told, "Go, the other person can't go," and they're not really I guess introduced into it and the process.*** - Community Member

Staff turnover is a fact of life, especially in tribal communities. People change jobs and when the new person comes on board he or she may not realize the importance of attending the wellness court staffing meeting.

*[The concern I have is] accountability from the other departments I think. I think that we have good programs here in our departments, but it's just that, **it's because of more turnover also, but I think that accountability for each department needs to be emphasized by our leaders, directors.*** And communicating to each other and understanding each other's programs and how we're going to eliminate our social problems throughout our nation. - Team Member

The answer to this predicament is to develop a strong structure for the wellness court that is based on well-defined positions rather than on specific people. Written policies and procedures, such as interagency agreements that survive membership changes, are crucial to the success of a wellness court. A formal agreement between agencies, such as a Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA), that details the responsibilities of team members from various agencies ensures the continuance of the wellness court.

*The lesson learned here is that you have to keep the same staff. And if you can't, and all tribes have turnover, **have a policy and procedures of each role specific on what their role is, so a person can come in and just pick up.** - Team Member*

*And doing an MOA, it's so important, or some type of a qualified service agreement with the other agencies to say, **because people leave, people come and go, and sometimes the agency forgets to send a new rep in and I think that's important to have that and to renew it annually. Just so everybody remembers this is what it's about, always do something, a type of annual meeting at least.** - Team Member*

Perhaps it is not coincidental that the wellness court with the least turnover, the Poarch Band of Creek Indians, is the only one of the first four wellness courts to continue operating after the federal funding ended. If you consider the core team to be the judge, Drug Court program manager, police chief, prosecutor, treatment provider, and probation officer, the only team member change from 1997 (planning) to 2002 was a change in probation officer. In this case the core planning and implementation team members remained with the program long enough to ensure the concept of the wellness court became institutionalized.

***Lesson Learned #1***

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

**#2 - Use the Informed Consent Model for Wellness Court Admittance**

*Key Component #2: Participants enter the wellness court program through various referral points and legal procedures while protecting their due process rights.*

This component is primarily concerned with protecting the due process rights (procedural fair treatment guaranteed by law) of the offenders when they are being considered for, and considering, wellness court participation. Due process is a concern in wellness courts because the participant's liberty interest is at stake; detention or incarceration is one of the possible sanctions for wellness court participants. Most people agree an offender is better off participating in wellness court and receiving treatment to help his substance abuse problem than being incarcerated with no treatment. But the process that leads the offender down the path to wellness court rather than to incarceration needs to safeguard the rights the offender is entitled to under tribal law and the Indian Civil Rights Act.

When an offender is charged with a drug or alcohol offense, he has the option of either pleading guilty or having a hearing on the facts. The offender should have the opportunity to decide without pressure whether to plead guilty or contest the charges. His decision should be an informed one based on knowledge of the pros and cons of each option. Similarly, after a guilty plea or a conviction, if wellness court is truly a "choice" and not a court-ordered sentence, the defendant once again should have the opportunity to make an informed decision whether to participate in wellness court. Protection of due process rights is especially important in those tribal courts that do not provide a public defender.

Often team members were so enthusiastic about the benefits of wellness court (and secondarily working to increase the wellness court's enrollment) that it was difficult for them to

take a step back and realize offenders cannot be steered or pressured into choosing wellness court over other options. No matter how strongly team members believe wellness court is the best option for the offender, the decision whether to go to trial or choose wellness court, or go to jail or choose wellness court, is the defendant's choice to make and he should know the benefits and burdens of each choice to make an informed decision. Team members cannot substitute their judgment for the defendant's.

A criminal defense attorney from one of the tribal communities voiced his concerns about the wellness court entry process.

*People weren't even given a chance to make an informed decision, consulting an independent counsel about whether opting-in to the drug court was a good thing or not. They were brought in at arraignment and told, "Oh, you're a candidate for the drug court, this will be great for you, I'm going to recommend you for the drug court, why don't you go along with that," and that was the end of it. Before they knew it, they were in the drug court, and in trouble because they either shouldn't have been there or the rules weren't being applied correctly.*

In all four wellness courts there was a perceptual disconnect between what the wellness court team members thought they told the potential participants about the pros and cons of wellness court and what the wellness court participants thought they were told. Some team members commented the potential participants were well informed.

*Yes, they knew what they were getting into when they came here. And we sat down when he was first accepted into drug court and explained the whole thing to him. The treatment guys would explain the thing again to him. There was no doubt they understood where they were at and what was going on.*

Other team members voiced doubts the advisement procedure was always done thoroughly.

*I talk with [the potential participants] a lot, but I think some people don't talk to them a lot. **I guess it's just like anybody else, if you don't talk to them, they don't understand you, they don't know what you want out of them, they don't know what the requirements is for them to do, to be in compliance.***

*Hopefully, the way the process works, and I don't know if [the wellness court is] still doing that. **Are they still sitting down and explaining step-by-step their responsibilities as parents? I don't know if that's happening.***

*I have heard that when they do the interviews, or the introduction, some of the people, **our staff I believe, didn't really buy [the parents] into the program, they just say, "This is how it's going to be, da, da, da."** Well, when we first started, we would sit down, set a time up, bring in the parents and the child and tell them **these are the benefits of it, this is what's going to come out of it, this is how we're going to help you. But these are the downfalls, you're going to do this, you're going to be sanctioned, you're the parent, you're responsible. . . . because some of the people could get belligerent, they could get really no good at the signing and later on, "You didn't tell me that when I signed that."***

*[At first], the process was the public defender and the prosecutor would sit down with them and go over every step of the contract, now I don't know how they do that now, and I don't know if they're doing it now. **One of the reasons is we did lose the public defender, we don't have a public defender, so it's basically the prosecutor and maybe the probation officer sitting down doing the contract. I would like it to go back to the prosecutor and the public defender if we get one.** [Not having a public defender puts the prosecutor and the judge in an odd position], **the judge ends up being the advocate for the child in some cases, and he asks, "Were their rights and due process looked at before we do this?"***

Participants, including parents of teenage participants who were also bound by the wellness court rules, were vocal in stating they did not realize what the wellness court program entailed and what the wellness court expected of them.

*Make sure that the participants understand what they are getting into, that they're well aware of the consequences if they don't follow the rules, going over everything in the contract thoroughly to make sure what they can and cannot do. . . . **If I would have known that by confessing [to alcohol use] I would have gone to jail, I wouldn't have gone into the program.***

*I thought this was going to be a program where we get counselors and all that, people who work with you and your kid, I didn't realize we were going to be in the courts all the time, having sanctions, . . . they told us [only one parent had to come, we could switch off]. If we ain't both there now, it's jail. **[I had no idea they could put you in jail when I signed the form.]** I thought it was a program, it said "wellness court", I thought it was, it would be like 90-day [treatment], I thought it was just going to be like aftercare, like going to treatment, that type of thing. **Boy, they fooled me.***

*[I probably wouldn't make the same decision to participate knowing what I know now], other participants have asked me about it, and I say "It's up to you, it's your decision, but I wouldn't do it." **They ask me why and I say, "It's going to take up a lot of your free time, and you're going to have to do this and that." Oh, it sounds easy, then they get on there, and they're like me, they just don't want to do it. I said, "I told you."***

***[I'm not happy with my decision to participate] because I was not informed.***

***I didn't even read [the contract] or had a chance to or was told to read it, I just signed it.***

Many participants chose wellness court to get out of, or avoid, incarceration. Wellness court as a “Get out of Jail Free Card” muddies the informed consent waters. Often all the defendant hears at the wellness court overview is the immediate benefit—if he chooses wellness court he does not have to go to jail today. The potential participant is not paying attention to the explanation of the time commitment and the program requirements (for example, curfew) and not hearing that one consequence of noncompliance is incarceration, possibly more time than imposed for the original charge.

*In the beginning it was like **Let’s Make a Deal, go to wellness and charges will be dropped. Easy I thought, easy I thought.** It seemed easy first week, then second week got stressful. My goal was to finish and graduate asap. **But it didn’t work that way.***

*They had a contract that they asked us to sign, **but they didn’t explain it to us very well, so to us it was just like forcing us, if we don’t do this, “we’ll throw you in jail,” so we signed it just to keep out of jail and now we’re just, everything.** There was just a bunch of people there, and they took us, both my husband and I, and they told us that if we comply with the program and [our son] complies, they’ll wipe [the son’s] record clean. So, we were forced to do this.*

*I picked Drug Court, I thought, this might be something, **as long as it keeps me out of jail, I’ll do it,** that’s pretty much what it was for me to start off with. . . . It’s like a hole, once you fall in it, you can’t get out and I’m slowly seeing the top.*

Wellness courts could improve the transfer of information to participants and their understanding of the program by using the informed consent model for medical treatment. The offender should be advised as to the nature and purpose of the wellness court, the sanctions imposed when the rules are not followed, what rights the offender will give up, and in the true spirit of informed consent, what legal and treatment alternatives are available if the wellness

court option is not chosen. An offender considering Wellness Court, especially if the court considers him to be “volunteering”, should have legal counsel to help him make his decision. Ideally, the best person to do this is a private criminal defense attorney not connected with the wellness court. The public defender is the next best person to do this if the offender cannot afford private counsel. Unfortunately not all tribal courts have public defenders and the advisement role is filled by a wellness team member, often the probation officer. If wellness court is explained to the defendant by a team member, the procedure needs to be formalized and present both the benefits and burdens of wellness court. Handing the potential participant the wellness court manual and expecting him to read and understand it is not facilitating informed consent. Similarly, obtaining the offender’s signature on a wellness court participant contract is not proof of informed consent. Not all potential participants are able to read, especially if the wellness court manual and contract are written at a relatively high level of reading comprehension. In addition, there is the problem inherent in all wellness courts, the offender’s mental state may be clouded by drugs or alcohol at the time he or she consents to wellness court participation.

The informed consent procedure can be strengthened in several ways. The participant manual and contract should be rewritten at a sixth grade level, the recommendation for consent forms where the reading level of the target audience is low. There are inexpensive software programs that analyze a document’s level of reading comprehension and suggest areas to simplify. Another suggestion to facilitate understanding is for the team member to read the contract in small sections to the participant and the participant paraphrases aloud what the contract states, section by section, and then initials each section. One of the public defenders explained the contract signing process as he conducted it.

*Actually, the ones that I placed in there, I read the whole contract to them, I made them initial off on every paragraph of it, I didn't make them, I just told them before you initial this, you need to tell me what did I just read you? I want you to tell me back what I just told you. **If they didn't understand it, then they weren't going to tell me what I told them and so we would go in and break it down sentence by sentence and I would explain each part of that paragraph to them and then I would ask them to repeat it back to me, what did I just tell you?***

The program requirements should be reviewed periodically, perhaps at phase advancement, to address the capacity to consent when under the influence of drugs or alcohol and because participants forget what they were told at intake. Specific training on due process issues for team members is necessary. Team member education on due process is especially vital for tribal wellness courts because few of the team members are law trained.

#### ***Lesson Learned #2***

- ***Use an “informed consent” approach with potential participants to ensure their due process rights are protected. In this approach, all benefits, risks, and alternatives of the wellness court are communicated clearly to the offender.***
- ***Review the wellness court rules regularly with the participant while in the program.***

### **#3 - Assess Readiness for Change in Potential Participants**

*Key Component #3: Eligible substance abuse offenders are identified early through legal and clinical screening for eligibility and are promptly placed in the Tribal Healing to Wellness Program.*

The wellness courts as a rule were more inclusive than exclusive in determining participant eligibility in an effort to make the wellness court available to as many people as possible. In an ideal situation with unlimited funds, resources, and time it is good practice to have a very inclusive policy and hope “*something will sink in*” even if the participant does not successfully complete the program.

*They’ve never exercised the termination [option] and I’ve talked to judge about it, but she doesn’t want to give up hope. That’s where we’re at, the community taking care of our own because nobody else out there is going to do it. **So, the judge, I know she’s a strong believer in not giving up, no matter what.*** - Team Member

However, the majority of tribal wellness courts do not have unlimited resources and should screen out participants who are not good candidates for intervention. All the wellness courts conducted legal and clinical eligibility screening, but did not appear to assess motivation for treatment as one of the criteria for eligibility. The wellness court team members were more focused on whether the participant NEEDED help rather than if the participant WANTED help with his substance abuse problem.

*[They didn’t say detention or wellness court], they just picked us out because he was always in-and-out of trouble, in-and-out of court all the time, like every week, and they just, **I think they just pick out the ones who really need the help**, that’s how we got in [the wellness court].* - Parent of Terminated Participant

The result is a wellness court with some participants who are not committed to changing their negative behaviors and their lives. Yet, the team members and graduates recognized the participant's motivation to change his negative behaviors affected a participant's wellness court success.

*A lot of people with two sessions are able to turn around, and we can send [others] to the most expensive [treatment] places in the world **and if they don't want to change, they'll never change. They won't change for a long time. But if they really want to change, we can talk to them, two, three sessions and they can go on from there and get away from that stuff.*** - Team Member

*I just wanted to say that it does really work and help **if only the participant works together.** I myself was just trying to do positive, to make it work for my little family. . . . But I guess the worst ones don't really care and can do their thing, but it's more to a person's own choice. **Until something really bad happens and changes their life and turns them around, life-threatening illness or something.*** - Graduate

*It's really up to the person too you know, **if they're ready to accept it,** if they're ready to sit down and admit they have problems. I think that's basically one big step for a person to take, if they're going to accept their problems and acknowledge they're either drug addicts or alcoholics. I would think you know, it's really up to the person, **if they're ready for it, you can't force a person to go into this wellness program and admit what they are and expect them to get better, it's really up to them.*** - Team Member

*I think [counseling] probably helped, I'd like to believe it helped. Only she [the participant] can tell you. Because like I said, I've seen these changes in her and maybe it took such a terrible tragic [event], **it usually does take some sort of tragedy to take a person to change their life,** maybe that's what it was, I don't know.* - Team Member

*I think the first group we had go through was probably more affected than the later groups and I think it had to do that they were a different demographic as well. For the*

*most part, they were older, many of them had families. **I think they had a lot more vested in their recovery**, whereas the group now is relatively young, they were still in the party mood.* - Team Member

*First offense, somebody get high, that doesn't make them an addict or an alcoholic, **but there are stages or whatever and a lot of these young ones are just not ready for [wellness court]**.* - Team Member

*I haven't really seen any changes in people who went through the program. **It all depends on if the person is ready for sobriety, then they had that choice.*** – Team Member

Psychological research on “readiness for change”, distilled in the trans-theoretical model of behavioral change,<sup>ii</sup> has shown people have to be mentally ready to change their negative health behavior, such as smoking or substance abuse, before a health intervention program will work. A wellness court can predict the probability of a potential participant’s success in the program by assessing motivation to succeed and readiness for change. The core of the readiness for change assessment is determining what “state of change” the potential participant is currently in—Precontemplation (unawareness of problem), Contemplation (awareness of problem), Preparation (reached a decision point), Action (actively changing behaviors), or Maintenance (practices ongoing preventive behaviors). Wellness courts will have the most success with participants already in the Preparation or Action stages although those in the Contemplation stage may find the structure of wellness court the impetus they need to move to the Preparation stage.

However, a readiness for change is not something a participant can “will” for himself, internal and external factors influencing the individual lead to the state of being ready for

change. Some comments from team members reflect the realization a participant has to be at the right stage to benefit from wellness court, but seem to imply to be at the right stage is a choice the participant can easily make.

*Keep in mind the drug court is there if they want to work the program, **but if they don't want to**, there's nothing you can do to make the program successful for them. It's a personal investment they've got to make and no matter how hard the drug court team works, **if the participant's not willing to buy into it, then it's not going to work.***

*If there's a way we can improve, **hey, we realize that a lot of this improvement is in the hands of the participants.***

*We're on the verge right now [of terminating someone due to noncompliance], solely because of his dependency. **His problem is that he doesn't want to get rid of his dependency, he doesn't want to do anything, ... you lean backwards, it's all you can do, we're trying to help you, but if you don't want to help yourself, I don't think we can really do anything.***

*I guess I can relate to some of it, **I can understand what [the participants are] going through and no wonder why they use drugs and alcohol to be free, to not hurt anymore, and because of the struggles that they have gone through in their life, and I can understand that.** I sit and I talk with them, and let them know you can do something about it, or what will happen if you continue using alcohol, you'll wind up like the street people, or the winos down here or the tree (street) people in Wolf Point. . . . **And then I talk to them in regards to that and let them know that you can do something, you do have choices in your life, it's your choice what you want to do.***

*[Success in wellness court] depends on the clients themselves, if they want to change their life, I think that makes a lot of difference. . . . **If they realize that there's a problem, they admit there's a problem here, "Yeah, we do need some help."** Some of them are in total denial, they could be in the program for a year, a year and a half, and*

*they're still denying, they don't want to work on those issues. They don't think there's an issue or they don't want to admit that there is.*

*When it reaches this point after a few months and they haven't gone through a change in six months, then it's time to turn them loose. Do something with them. Either take them out of the drug court or lock them up. That was my attitude. **If they don't want to do it, send them to jail . . . .** There's some of them, I was yelling about, get rid of them. They don't care, send them to jail. If they don't want to do it, send them to jail. **They got a choice. Do it or go to jail.***

Statements from motivated participants illustrate how factors both intrinsic to the individual and extrinsic influence their readiness for change.

***I wanted to get help, to try to get some treatment so I could try and stop drinking, help myself.***

*Well, the reason why I chose the Wellness Court was I knew I had a problem, and I wanted to kinda be honest with myself, . . . I decided to do it because it would kinda benefit me in a way, which it did, because I never really knew what alcohol does, I've seen, I know it kills our people and it's a problem here, but I wanted to understand more about it **and that's one of the reasons why I came into this program because I wanted to learn more about alcohol even though I was consuming it.** I wanted to get more information out of it, what the withdraw symptoms were, waking up with a hangover, you know, going through withdraw, **I wanted to understand more about it, what it really does.***

*I'm being honest with you with what I told you, I could do jail time, **but I was getting tired of my life.***

***I just got tired of being hung over all the time.***

*I learned that [smoking marijuana] is not something that I want to do, it takes away from me, **and it takes away from what I can do with my child.** I have a 6-year old, he watched the cops bust us, he watched the cops put handcuffs on me, he watched them put me in a police car and drive away with me. **So, that was an eye opener for me. They say to do it for yourself, you gotta want to do it, but I did it for my kid because I learned I could spend more quality time with him and not be high and pay attention to him.***

*Way before [participating in wellness court] I already got to the point where I made the decision to stop my drinking and that's where I was, [wellness court] was easy for me. I've been sober for 4 years. **It was quite a few reasons for me, it was mostly for my health** and I got sick and just by looking at me they thought it was cirrhosis and they didn't find out what was wrong with me and I got pretty sick, and I turned all yellow, and I was in-and-out of the hospital and it really scared me, **so I thought of my two little children so I wanted to see them go through Head Start and I wanted to be a positive role model for them to watch and learn that drinking is not the way** and they both graduated [Head Start], and I was just proud that I had done it sober with them. That was the main reasons for me.*

*[I thought this was the time to do it] **because of my child, she was about 4 or 5 at the time.** As parents, me and my husband thought we needed something to help us realize, you know, to get our lives together, we didn't want to go to prison, and things like that. ... but if I would have been doing a long-term jail time, [social services] would have probably stepped in and figured out who's going to take custody of her while I'm gone . . . [I'm happy I did wellness court] **because I've seen what I could have lost. I've seen what can happen. That's scary.***

Wellness court screening and assessment should address an individual's motivation and readiness for treatment. Assessment tools measuring readiness to change in alcohol or drug abuse based on the trans-theoretical model, such as SOCRATES (Stages of Change Readiness and Treatment Eagerness Scale), have been used successfully in state drug courts. The

SOCRATES assessment tool, containing both a Personal Drinking Questionnaire and a Personal Drug Use Questionnaire, is in the public domain and available for use without special permission and at no cost. Each questionnaire contains 19 statements for the potential participant to indicate how much he agrees or disagrees with the statement, such as, “There are times when I wonder if I drink too much.” One team member voiced her opinion that an assessment tool (such as SOCRATES) would be helpful in wellness court.

*But the parents strongly involved in alcohol and drugs don't seem like they're willing to change at this point, it would be hard to get them involved. [Some] parents are drinking now, and it looks like if we helped them, they'd be willing to quit, they'd be good and there's a way, **if there was an evaluation system we could use to figure them out, we'd need to do that.** - Team Member*

### ***Lesson Learned #3***

- ***Choose participants who are motivated and ready to change their substance abuse behavior to maximize scarce resources and increase wellness court success.***

***Participants who enter wellness court only to avoid incarceration may or may not “get with the program” and work to change their behavior.***

- ***Have a clear termination policy to weed out participants who are not working the program after a reasonable time if an inclusive admittance policy is used.***

#### **#4 - Integrate Culture, not Religion, into the Wellness Court**

*Key Component #4: Tribal Healing to Wellness Programs provide access to holistic, structured and phased, substance abuse treatment and rehabilitation services that incorporate culture and tradition.*

This key component specifies the type of treatment to be administered in the tribal wellness court—holistic, structured, phased, and incorporating the culture and tradition of the tribe. This is a tall order, yet the wellness courts need to achieve this level of treatment because treatment is a crucial component in a treatment-based wellness court. A principle of tribal wellness court philosophy is the integration of the traditional ways of healing to help fill the spiritual void the participant is now filling with drugs and alcohol. A wellness court that does not provide holistic, structured, phased treatment that incorporates the culture and tradition of the tribe is a court with a drug offense docket, not a true wellness court.

All four tribal wellness courts are in communities where many members do not practice the traditional ways. Although the team members recognized the importance of integrating the traditional culture into the wellness court, they also recognized the lack of traditional knowledge and cultural resources in the community.

*Hualapais have lost a lot of culture, I mean, we don't have any more medicine people, so it's not like Navajo, where you can send them to medicine people, or Hopi, they're right there and everything.*

*To really distill it down, I think it's an issue of identity, our Indian people, particularly the acculturated tribes, we're Indian people in a non-Indian world. **Most of them have never been taught any tradition, they know nothing about how Indian people think.***

Each wellness court had to make an immense effort to bring a cultural component to their wellness court and had little guidance in how to do that from the DCPO trainings they received.

*A couple of the [training] sessions we went to, we're talking very abstractly about healing communities which I agree should be part of the training process, **but they never told us how we were going to do that.*** - Team Member

***[Integrating culture has] been a pretty difficult issue.*** - Team Member

All four courts did integrate cultural traditions into the wellness court through a cultural education component. The cultural traditions included prayers, sage burning, sweats, talking circles, fasting, preparing for the Sun Dance, learning tribal history, and learning how to build a canoe or tan a deerskin. Both team members and participants recognized the value of the participants learning about the traditional ways.

***See out there, the sweat lodge across the road. And some of the participants were also talking to the elders and getting their ancestry tree together, and that was at their suggestion, that's what they wanted to do, even some of the teenagers.*** - Team Member

*One thing that I think is very important and that's cultural education. When students know who they are, their indigenous relationship to their ancestors, they have no need for alcohol and drugs. It's not part of our ancestry, it's not part of our culture. **When they know their Muskogee roots, Muskogee values, their connection to the ancestors, there is no need for drugs and alcohol.*** - Team Member

*[I like] going to the sweat lodge and learning traditional ways, songs and prayers, going to social gatherings that have to do with spirituality or direction or guidance. **Probably the spiritual part [of the program] was most useful to me, the spiritual strength that I gained with this program, it's the most important part of the program that kinda kept me going you know.** Even though I'd get tired, physically and emotionally, but spirit was still strong to say "okay," even though if I failed to go to a meeting or if I failed to*

*do what I was supposed to, I'd go ahead and say, "I'm still here, alive, I can do it again, go another day." That's how I went on. - Adult Graduate*

*We carried [a log symbolizing the return of the children to the Tribes] way past Poplar. . . Yeah, we had fun when we camped, **it was fun putting up those teepees cause that's something that we learned, putting up those teepees and take them down. . . . Yeah [I liked the traditional activities], . . . it was pretty educational for me. I always wanted to know how to put up a teepee, take it down, and then they taught us how to carve things in wood, and taught me how to canoe, and we had to do that, and fish.** - Juvenile Participant*

The graduation ceremonies were another place where traditional aspects of the tribal culture could be incorporated into the wellness court's activities.

*When somebody is graduated, we really like to celebrate that, we do it in a ceremony type of program. **They'll sing a traditional song for them. We'll have a good prayer, the traditional leader will do a ceremony, like, smoke their pipe, or drum. . . . We have a big dinner, food is probably universal among all cultures, you know, as a celebration.** - Team Member*

*We had some council members, they were Society members, and what I mean by Society is in the early times in the Blackfeet they had different groups within the Tribe, and **they would come and sing an Honor Song and we always had them come in and sing if the graduate wanted it. . . . We always left it up to them, we didn't want to push something they didn't want, especially because maybe they didn't want people to know they were in [wellness court], or something. . . . Most of them chose it, and [the Society members] would sing an Honor Song and then we would give [the graduate] a blanket. . . . It was a big deal. . . . [An Honor Song is] in our native tongue, and it's **a song honoring them for achieving something that is positive and good in their life.** . . . So, there is a big pride for that, it's a little of bringing back the cultural into this program. - Team Member***

One community member voiced the opinion that having the traditional teachings available was important even if the participant practiced another religion.

*I would recommend that they have some tradition, like the sweats be a part of it, not mandatory that they participate in it, but have it there available for them. But I do think they need to. **If they're a practicing Catholic or they're into their religion, that's fine too and I think they could also work with the Church,** but I really think that Indians need to be [brought back to their culture], they've kinda fallen away from their tradition.*

But, several wellness courts learned there is a fine line between integrating culture and integrating religion into the wellness court. One wellness court hired a cultural educator who was a member of the Native American Church and there were issues with the Native American Church's use of peyote. The court quickly realized he was not the appropriate person for the position.

*And so we kinda terminated our relationship with him because of it. I mean, drug court and all. . . . **We actually promote spirituality, but there's a line we have to draw, especially with the controversy about the Native American Church anyway.** - Team Member*

In a religiously diverse community where traditional spiritual practices may be seen as conflicting with mainstream religions, some participants balked at doing cultural activities with a religious aspect, such as learning how to build a sweat lodge. One cultural educator dealt with the situation by emphasizing the person did not have to participate in the sweat lodge ceremony, but they still had to learn about the ceremony.

*We built a sweat lodge. . . . Well, there's a ceremony before you can even go get the rock, and how you get the rocks, there's a ceremony for every little aspect to it and that's what I teach these guys. . . . Weekends you know, we required all clients, **no matter what their religion was, to attend sweat lodge which was every Sunday.** And if they weren't into*

***it—the native religion, if they were Catholic, Christian, whatever, they still had to be there because it was cultural education, to learn all the aspects of that ceremony, how it's put together, how you do things there, but they don't have to come inside the sweat lodge, but they had to be there. . . . [Some stayed outside], some were reluctant, they were strong Christians, but it's cultural education. When you go in the sweat lodge, it's religion.***

Another wellness court struggled with how to keep religious practices and traditional cultural practices separate and asked the participants whether they wanted to participate in sweat lodge ceremonies. The court recognized the difficulty of institutionalizing a traditional cultural practice that also had religious aspects.

*I said to him, "You know your uncle does sweats, I want to send you over there," and I asked this kid, "Would it bother you, or would you object, if I put in the [court] order that you are to do sweats with [your uncle]" and he said no. . . . Again, a lot of this was how do you institutionalize all that and **I didn't know how to do that actually legitimately with culture within the government, it's just available.** - Team Member*

Religion is part of culture so it is important to either emphasize the non-religious aspects of the traditional ways when integrating tradition into treatment, or give participants the choice to participate or not participate in activities that conflict with their religious beliefs.

#### ***Lesson Learned #4***

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

### **#5 - Monitor During Times When Illegal Acts are Likely to Occur**

*Key Component #5: Participants are monitored through intensive supervision that includes frequent and random testing for alcohol and other substances.*

Monitoring in a wellness court should include a weekly sign-in by the participant, curfew checks, and frequent and random testing for alcohol and drugs. Drug testing plays an integral role in the wellness court because it provides a reliable method for measuring the participant's progress toward sobriety. Ideally a wellness court program has a probation officer of each gender whose full-time responsibility is monitoring the wellness court participants. Scarce tribal resources do not usually allow this and there is usually only one probation officer for wellness court.

If a wellness court only has access to one or two probation officers, they must focus their monitoring of the participants during nights and weekends when the participants are more likely to be abusing drugs and alcohol. Monitoring should include not only curfew checks, but also surprise alcohol and drug testing. Being a probation officer is not a 9 to 5 job, there must be some flexibility in a probation officer's workday (for example, coming in at noon, having a day off during the week) to compensate for the after-hours work.

*[Monitoring was] home visits, I did nights and weekends random drug testing. You know how monitoring weekends and nights is, **going to the bars, cruising the streets, going to parties and peeing in seeing who was all there. . . . My job description said 24/7. That freed me up and gave me some flextime if I had to go and unwind.** - Probation Officer*

*If I'm working an evening shift, I have gone to a bar to see if anyone was hanging out there. Another officer has done it too. **We may go by [a participant's] house to see if they're home if they have a curfew. We'll knock on the door if we don't see a car.** – Probation Officer*

A probation officer that primarily works a 9 to 5 day waiting for wellness court participants to check in is not providing intensive supervision. Participants who are not regularly monitored outside the normal workday cannot be considered to be “intensively monitored”. All the four wellness courts at some point had a probation officer that did not practice intensive monitoring.

*Well, one thing [I would change about the wellness court], house visits, just a surprise house visit. . . . **Yes, definitely [more house visits].** They said up and down we’re going to pay you a visit, and never did, not once. - Participant*

***No, [the probation officer doesn’t come to your home], we have to come down and check in with them.** - Juvenile Participant*

In one court the probation officer had in the past worked after hours and on weekends and had the use of a government vehicle, but the tribal executive board stopped the practice.

*She used to [work Friday or Saturday nights]. When she first started, she and one of the other female probation officers would patrol for 4 hours and they were usually on once a month. . . . They got comp time for that. But now, I don’t understand really what it is, **it’s come down from the in-house attorney that they’re not allowed to do that anymore, something to do with the liability issue or whatever.** - Team Member*

*Also, if she worked late, she wouldn’t be paid overtime, she’d get comp time, she’d hardly been able to use it. The other thing I would like to have seen, **I brought it up once, is have [the probation officer] work different hours, like come to work at noon and start from there.** - Team Member*

Courts used various strategies to fill in the gaps when a probation officer was not on duty. One strategy was having members of the community report illegal behavior.

*This probation officer, they won't do [home visits]. They'll sit in here, they'll have somebody out here, individual or individuals, more than one for the community, people in the community. . . . Individuals come in here and tell the probation officer, "Oh we saw so-and-so out there, he was doing this, he was doing that." **Okay, that's hearsay, but they'll take it to court and they'll throw the participant in jail. . . . Just on hearsay [and they didn't see it for themselves].** - Adult Participant*

In one community a participant stated the court enlisted the Law and Order Committee to monitor wellness court participants.

*I didn't like that people were being watched. . . . The community watched you. **They had their own members out there, the team, I felt like your personal rights were being violated by being stalked by the program.** . . . They were the [wellness court's] Law and Order Committee people, they must have been hired through the [wellness court] because I've had people come up to me and tell me, "We had to drive by your house once a week to make sure you weren't drinking." . . . [The probation officer] he'd come once in a while, but they had people out there watching us, that we didn't know they were watching us. . . . **They drove by my house—8 hours. They had police officers drive by our house.** . . . Then I learned the other lady that lived down the street was on the Law and Order Committee and would do random drive bys to see if there were people in the house drinking or people outside drinking. - Participant*

One juvenile wellness court had family members report when they suspected a juvenile was involved in substance abuse.

***I thought my son would be monitored more closely. . . . I think they said they'd do home visits, and all the weeks we've been in here, they came to my house twice. . . .** When I suspected he was using or drinking, I was supposed to call an officer, and that would have been all up to him. - Parent*

Courts also used law enforcement to monitor participants when the probation officer was not on duty. In one court, tribal law enforcement had an updated list of participants who were in the wellness court. However, they were not really monitoring the participants as much as identifying them as wellness court participants when trouble broke out. Law enforcement personnel who are not wellness court team members usually are not invested in the wellness court and do not think monitoring and supervising wellness court participants is part of their job.

***We have a couple of law enforcement officers that just don't feel like it's their place to check on them.** No matter how much you tell them, "Yes, you need to," they just don't seem to understand it.* - Team Member

***The police department is supposed to monitor them, but they don't.** . . . They don't drive by the house or do a drop-in testing.* - Team Member

The one exception where a law enforcement officer is effective in stepping into the wellness court monitoring role is when the officer is a member of the wellness court team and is well versed in the wellness court philosophy.

A more effective strategy is to have the probation officer monitor during the crucial hours for optimum supervision. When the probation officer is out in the community after hours doing curfew checks and surprise drug testing, a different attitude develops among the participants.

*I know the monitoring was great, [the probation officer] was integral to that. The monitoring process was great, **they went out there in the field**, we had cases, we had people who were trying to get around the system, were able to get around the system. **People finally realized that this court meant business and we're here to help you, we're not here to put you away.*** - Team Member

***They don't usually know I'm coming. . . . On a home visit I just go in, I ask them how they're doing, if they have any problems, look around the home environment. Just a visit, nothing professional, just a friendly-type basis. - Probation Officer***

***[The probation officers] cruise around, check up on things. - Juvenile Participant***

*She would come at different times, on the weekends it could be 12:00, 1:00, and knock on the door and want to see [the participant], not just that the car was in the driveway. . . . [The participant] hasn't been going out. He has curfews. They all have a 10:00 curfew even on Saturdays unless they've got something going on to participate in. . . . **The [probation officer] that we've had here recently, it could be every night, or every other night, she was very strict.** - Mother of Participant*

Those who believe being a probation officer in a tribal wellness court is a 9 to 5 desk job are mistaken. One team member summarized the job well.

*If you're a probation officer, I think you need to be a counselor also, there's a different door you have to walk through if you're going to be an alcohol and drug counselor. You've got to be a surrogate parent, you also have to be an authoritative figure, very different aspect to being a probation officer and if you're a good probation officer, especially in a juvenile setting, you can turn around someone, you've just got to have that motivation. You just have got to be willing to do that. And a lot of times, it's tough to do. **It takes a lot of your emotional life and physical life and a lot of your time.***

#### ***Lesson Learned #5***

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

## **#6 - Reward Positive Behaviors**

*Key Component #6: Progressive consequences (or sanctions) and rewards (or incentives) are used to encourage participant compliance with program requirements.*

The focus of this key component is to emphasize the journey toward wellness is marked by advances and setbacks that need to be rewarded or sanctioned. The psychology underlying a wellness court program is positive behaviors, such as attending required meetings and clean drug tests, are rewarded with incentives and negative behaviors, such as missing meetings or dirty drug tests, are addressed by sanctions. As the four wellness courts evolved, it appeared that although the courts rewarded the participants for positive behaviors, there was an emphasis on using nontherapeutic sanctions for negative behaviors rather than rewarding positive behaviors. Based on the carrot and stick philosophy, rewarding compliant behaviors with incentives is perhaps a better strategy to change substance-abusing behavior than fining or incarcerating participants for noncompliant behavior.

All four wellness court provided tangible and nontangible incentives. These incentives included praise and applause for compliant participants, certificates of recognition or parties at phase advancement, early phase advancement, being able to skip an AA meeting or group meeting, gift certificates, participation at special events such as a cultural history conference, and gifts at Christmas and graduation.

*[I think the strong point of the Wellness Courts is] . . . **when a participant comes in and the participant is doing good and we all clap for that participant, that's something new to them, they don't get that at home or in the community and I believe that's one of them, encouragement.** - Team Member*

*We did swimming passes which is part of the healing, we did get some tickets for local places to eat, bowling passes, we gave awards out for different things, you know, a pat on the back, Pizza Hut gift certificates, we took them out to lunches, we gave them juice and cake sometimes here, different things like that.* - Team Member

*Certificates, phase movement, promotions in the phases, gift certificates to restaurants, movies, rentals to movies, phone cards, t-shirts, ice chests, mugs, caps, anything that we can give away.* - Team Member

*The phases are all 6 weeks, I have moved individuals up in 4 weeks in a phase from Phase I, II, III. . . . **Four weeks, if they're doing good, if they're doing all their requirements, they come in, sign-in, I move them up.*** - Team Member

All four wellness courts marked graduation, the ultimate incentive, by a ceremony that usually included a reception where food was served and the graduate received gifts from the wellness court. Often community members and the graduate's family and friends were invited and team members and others who support the graduate spoke in recognition of his or her achievement. Honor songs were sung in recognition of the graduate's victory over substance abuse.

***What a surprise I made, I got a blanket and a diploma. . . . Yeah, I've used my little diploma, or whatever it is, for work, you know. I completed this.*** - Participant

*Graduation was really nice, **all their friends and relatives were there.*** - Adult Graduate

*[The graduation ceremony] is good, **they get their awards and recognition that they passed certain levels,** . . .* - Relative of Participant

*Some of the things that we did, like giving Pendleton blankets for graduation, those were really well received and that's what most of our funds we took in went for.* - Team Member

The participants appreciated the incentives whether it was a certificate for advancing a phase or a Pendleton blanket at graduation. Even small rewards for incremental successes, such as clapping for a week of compliance, were valuable in increasing the participant's feeling of self-worth and achievement and gave the participant positive reinforcement.

*The praising seems to build him up a little.* - Parent

*She's very proud of moving up to her Stage II and I think they have some kind of little deal they're going to give them in the next couple of weeks, some kind of little certificate, she's asked me to come with her.* - Parent of Graduate

*Yeah, there was good incentives, they rewarded you, they'd give you certificates, they'd give you blankets, it was good. [My favorite incentive was] a award for being good, made me feel like a little kid again, made me feel special because I did try hard and it was hard for me and when I went there and they gave me an award and it made me feel really good. It was an award for being clean and moving up a phase.* - Participant

*They gave incentives as prizes, for people who were straight week-to-week, they gave them prizes. So it wasn't all the court, there was some fun in it.* - Parent

*[What surprised me about wellness court was] those incentives, you get presents if you're good.* - Graduated Participant

*[My favorite incentives] were the gift certificates. . . . Even if it was just a t-shirt, or a \$5 gift certificate, it showed that the court, the people that were running these programs were human. They encouraged us.* - Adult Graduate

***[I liked] going on trips. . . . There was this one that we went to, the ones who graduated and the ones in compliance, they took us to the Coyote game in Phoenix, we went to the mall. We came back like 12, 1 o'clock in the morning. - Juvenile Graduate***

Team members and participants recognized the power of rewarding positive behavior and thought the provision of incentives could be improved. Also, outside implementation evaluations recommended more incentives that are immediate and fun should be added.

***Our incentives needed to be more. We needed to give them more. . . . I think we needed to be more resourceful on that. - Team Member***

***We clap for them, we give them incentive type rewards, probably don't do a good enough job with that. If we have a weakness, we may not give them enough incentive rewards for doing good. It's probably partially financial and probably partially lack of planning on our part. I think we need to do a little bit better job with that, that's something we talk about as we go along, giving them more rewards. - Team Member***

***The only problem I ever saw with the steps (program phases) and still kinda have a problem with it to this day. We've talked about fine-tuning this, as you progress up to Phase IV and Phase III. I think there really has to be a swing towards more encouragement. . . . I really think if they make it to Phase IV, I think there needs to be a lot more freedom and encouragement. More incentives, less sanctions. I think we'd really be safe to start kicking in the incentives about the third or fourth phase. - Team Member***

***There's another part that's supposed to happen. If you did well, you're supposed to get positive reinforcement. - Participant***

***[A change I would make is] like gift certificates, and I'd really like to see more of the team acknowledging the positives and good stuff that the participants have been doing***

***like trying their best. They're not doing it enough right now [but they did in the beginning].*** - Adult Graduate

Although not all incentives require funding, team members from one wellness court commented they had limited funds for incentives because the implementation grant did not provide for them. Courts addressed this in different ways—some were able to purchase incentives with tribal court funds, especially with money that came in from wellness court fines, and some had success in soliciting donations from local businesses for gift certificates. As time went on some of the wellness courts became more creative in awarding incentives. One innovative approach was a drawing to distribute incentives such as an ice cream certificate or carnival tickets. Eventually the drawing was held every week and all those who were compliant that week had a chance to win something.

*It depends, every week if you're good, they'll give you a certain amount of tickets, then they get the other half and they put it in this bucket, and mix it around, and then at the end of the month, **they'll pull the tickets and there will be all those gifts.** You get to pick which ones you want.* - Female Graduate

Given the situation of limited funds, incentives that reward the participant for doing well but do not cost the wellness court any money are the ideal situation. One team member suggested a “point system” approach to spur participants through the program.

*But I think I would like to look at something like that point system [used in the Spokane tribal drug court], where people get through faster and it also gives them, **Indians are competitive people, they like to gamble, and, you know, compete.** So, I think it would give them more incentive [to complete the program].* - Team Member

***Lesson Learned #6***

- ***Reward compliant behavior with incentives rather than emphasizing punishing noncompliant behavior with sanctions.***
- ***Be judicious in levying nontherapeutic sanctions such as incarceration that are antithetical to the holistic healing philosophy underlying wellness courts.***

**#7 - Choose a Wellness Court Judge Who Can Be Both a Leader and a Team Player**

*Key Component #7: Ongoing judicial interaction with each participant and judicial involvement in team staffing is essential.*

This key component acknowledges the leadership role the judge plays in the wellness court and how integral the judge is to the success of the wellness court. An effective wellness court judge is able to be both leader and team player. The judge's responsibilities in the wellness court include learning about substance abuse and treatment options, participating in the legal screening of potential participants, setting the tone of the wellness court at the participant's initial appearance, attending the weekly case staffing to prepare for the status hearing, and presiding over frequent status hearings to establish and reinforce the wellness court's policies. Although the wellness court team weighs in on whether to impose a sanction or award an incentive, the meting out of sanctions and incentives is done by the judge at the status hearing.

Ideally, a wellness court allows all members to have input into decisions regarding participants because each team member brings a different perspective. The judge needs to be able to take all these perspectives into account and make a final decision. Not every judge is able to do this easily; some find it difficult to relinquish the traditional role of the sole arbiter. Team members from two wellness courts commented on three judges who exemplified how a wellness court judge should act.

*He listened, I was impressed that the judge sat and really listened to the cases, took everything into consideration and **took the recommendations of the group, the group as a whole, pretty much took the recommendations of the group as a whole.***

*[In a wellness court judge you look for] a team player more than anything else, because if you have a judge that is a team player then you've got everybody else as a team player. **That's what we really had from the start. . . . In my opinion, your drug court can only***

*succeed depending on your judge, if you have a good judge, then it's going to succeed, but you have to have a team player for a judge, and [in] the first two [judges] we did have [a team player]. [Everyone had one vote] at the start with the original first two judges.*

*The judge is going to make the final decision as to what we're going to do with somebody; we all have input what we're going to do with somebody, especially if somebody gets into trouble. **But we'll talk about it; he'll ask what the consensus is.** He generally goes along with what the group says because he knows that all he has to go by is what we tell him. One of us may hear something so he relies on that.*

*Well, sometimes the judge does have a different opinion than the rest of the team, but he generally goes with our opinion. **There's been a few times he's had to make a hard decision and a couple of us kind of spoke out a little contrary to what he said, but I could understand. Ultimately, I respect his decision.***

Two wellness courts also had experiences with judges that were not perceived as team players in the sense of wellness court decision making. Decisions about the participants were no longer made by the team, or if they were made by the team, the judge would make another decision in the courtroom at the weekly status hearing. The result was a loss of team morale and damage to the wellness court. One team's experience is documented below.

***She just didn't quite grasp the concept of it and I just don't believe it sat well with her, the team concept, she liked to have the final say.** We would recommend something in staffing and she would get up there and say, "**Well the staff said,**" she was never really a team player.*

***Her thing was everything had to be her way or the highway.***

*[The third judge] ah, had a God complex. . . . **Well, there was voting, but whenever we went into court, it would change.** Like if we voted to sanction you by the rules with a \$100 fine, or whatever, with both [the first judge] and [the second judge], that was fine if we all agreed to it in the conference, that's what happened. But when [the third judge] got there, **she basically, if she didn't agree with that which she'd argue in the staffing, but when we got into court she'd do whatever she thought was right.***

*[The first judge had left . . . and then we had another judge that was working well, and then all of a sudden we have a third judge **that wants to take care of it and she wanted to run it like a regular court and the people were telling her "You can't do this, this is a [wellness court] where we meet and we all agree, and we do this, this, and this" . . . and we do things differently and [the third judge] didn't want to buy into it. . . . And here we are with our western law now, and at the same time trying to integrate our culture and cultural stuff into this to make something for the people that will work, and then she comes in and says "You don't do it like that" and she wanted control.***

*[The decision should be] as a team, that just shouldn't be the judge's decision and that's where it went to after [the first judge] left, it just went to the judge's decision and no one else had any say in it and **that was kinda the downfall. When it quits becoming a team, you don't have a drug court.** That's my opinion. [The third judge] took it over and **it became a one-man show, it stopped being a team. If you stop being a team in a drug court, you're going to lose it. It cannot be just one person running the show, and that's what happened with it. Everyone was excluded. . . . What ended up happening, they would go and meet with her and she'd say "I already took care of it."** So it became just one person running it.*

Another wellness court experienced tension between one of the wellness court judges and the rest of the team because the judge was not regularly attending staffing meetings. Many team members thought the judge was being too lenient with the participants and their families and not being a team player by changing decisions made in staffing on the bench.

*Well, with this particular judge, **I know the majority of the team feels we're being undermined by him.** . . . And it's frustrating; we're all frustrated with that situation. . . . He's not [a team player]. . . . Sometimes, he will change his order on the bench, he has done it to us before. - Team Member*

In this case, the judge thought he was being a team player while guarding the participants' due process and civil rights and working with the families to defuse their anger at the wellness court. The judge felt especially pressured to look out for the participant's rights because there was no public defender in this wellness court.

*When we don't have a public defender, a lot of that responsibility, especially in court, lays on me, **I have to make sure that their rights are being upheld, there's no one jumping up, I have to bring it up myself, and it's tough on me sometimes.** And there are times when [the participants] have legitimate excuses where they couldn't make certain meetings or couldn't be at certain places, but we don't know that in the screening (staffing meeting). I'd like to get that found out before we get to the screening. . . . We just can't sanction somebody or throw them in jail without them two elements [due process and civil rights] being addressed.*

The participants appreciated the judge's style.

*Sometimes when we'd get up to that stand, we'd just be shaking, just hoping we won't get in trouble. Did we do something? Cause the judge would just sit there and look at you just serious. **He was a good judge, he was excellent, he was excellent with kids.** First it was [another judge who] wasn't good at all, [that judge] just went down too hard on people, when they first got in trouble, especially when they'd try to explain to them, [the judge would] just said, "I don't want no lip from you." **[This judge] lets you talk when you're not swearing, he'll give you a chance.** - Graduated Participant*

Whether the judge was in the right or the team was in the right in how the wellness court should be run, the judge was not behaving as an integral member of the wellness team. A

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wellness court without a judge as an integral member of the team is no longer espousing wellness court values. The judge's behavior alienated him from the rest of the team. The result was a splintered and ineffective team. When a wellness court is no longer working as a team, something (for example, wellness court training, facilitation, a new judge) must be done to prevent the demise of the wellness court.

***Lesson Learned #7***

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

**#8 - Collect Automated Wellness Court Information Systematically from Day One**

*Key Component #8: Monitoring and evaluation measure the achievement of program goals and gauge effectiveness to meet three purposes: providing information to improve the Healing to Wellness process; overseeing participant progress; and preparing evaluative information for interested community groups and funding sources.*

Program monitoring and evaluation activities are components often overlooked in the bustle of implementing a new program, yet these activities are crucial for wellness court success. Monitoring during the course of the wellness court provides feedback as to what practices work and what practices do not work and allows for timely adjustments and modifications to be made. A process evaluation, comparing what was planned to what was actually done, in the early stages of the wellness court is another way to fix what might not be working and reflect on what works and what does not. An outcome evaluation that measures the “success” of the wellness court provides information to the court and to outside funding agencies as to whether the goals of the wellness court are being achieved.

The core of monitoring and evaluation is good record keeping that gathers information to be compared against specific and measurable goals, starting on the first day of wellness court operation. The record keeping needs to be based in both a court case file for each participant and an automated database for the court as a whole. The framework of the wellness court’s database should be constructed before the wellness court accepts its first participant to ensure reliable baseline information is gathered. Retrospectively gathering information from case files at a later point in time is time consuming and can lead to inaccurate data collection. Ideally, the record

keeping system is automated, integrates the legal and treatment information, and generates a variety of reports.

Accurate and complete court record keeping is important for two reasons. One, because the court record documents the procedures (that is, due process) that occurred during the life of the case. Was there a status hearing? What was the outcome? Was a drug test performed? What was the result? What was the subsequent sanction? Two, the court record is important because it provides information for evaluation. What was the charge that brought the individual into wellness court? How many positive drug tests were there? How many sanctions were imposed? Did the person complete the program? If not, why not? In one court it appeared from reviewing the case files that participants had skipped a phase, but a team member ascribed it to bad record keeping.

*You can't skip a phase and I think it's bad record keeping is what it is. It's really bad record keeping. Those records are a mess, really, when you really think about it, they are a mess. They don't tell you the whole story, there's too many gaps in it. Hopefully, if you come back 5 years from now, it will be a little bit different, more consistent with [the central intake officer] and [the probation officer] working on it. - Team Member*

All four wellness courts maintained their record of court actions on the participant in typical court file format—documents arranged chronologically within the folder. One way the wellness courts attempted to organize their paper case files was by developing a participant summary form that could be used at the staffing meeting and status hearing to take the repetition out of weekly reporting. In one court the template form was developed in Microsoft Word and could be easily updated each week and the new summary form printed out and placed in the participant's case file. This accumulation of weekly reports along with other information such as weekly attendance reports from AA meetings, drug test results, and assessments leads to a very

thick file for participants over the course of a year. There were attempts to streamline the case files. One court kept their files in two parts—the main body of the file that may be in two or more paper files and a “summary” file containing the latest information on the participant.

*I think [the court administrator] has done a great job in simplifying. **I open that [summary] file, and know what’s going on.*** - Team Member

***We’ve eliminated a lot of the paperwork.** If you look at some of the folders, I think you’ll see it. I think a paper trail is good, **but the format has to be simple, direct, informative.** You don’t want to be flipping through here when you have a 60-, 80-page folder on each side. When you have a six-leaf and you have 40 sheets on each side, you’ll looking at a big file, I don’t think you need that, as long as it’s informative, what you need. . . . I’m trying to do the quarterly report on all our participants, phases, so that we’d have a graph. We could get a general idea by looking at quarters. That’s where we want to be.*  
- Team Member

Although it is easier to extract information for monitoring and evaluation from a well-organized case file with nicely printed summary sheets than a disorganized case file; weekly summary sheets in Word are not a wellness court database. When the case file information is not available in an automated database or case management system, a database must be retrospectively created by the evaluator by extracting information points one-by-one, for example, counting the number of sanctions or the number of days spent in each phase. This information is then entered into a database that allows for quantitative analysis of the wellness court information, for example, are participants who receive community service rather than fines more likely to graduate within a year?

A more efficient way of record keeping is for the court clerk maintaining the file to enter the weekly participant information, for example, received a \$10 fine and attended two AA

meetings, directly into a wellness court database. Then information is contained in the database and can be accessed by the clerk via reports. The court clerk can run a weekly report for the staffing rather than typing out a weekly report in Word and the aggregated information on all participants can be accessed via reports for internal and external evaluations. An up-to-date wellness court database allows the wellness court itself to conduct internal evaluations and monitor the participants and the court as they go along. Additional benefits of case file automation are providing a backup of the information should something happen to the paper case file (one wellness court had 18 case files, one-third of their records, destroyed in a fire in a court building and that information was lost forever) and allowing the court side and the treatment side of wellness court to share information more easily.

One wellness court thought they did not have a need to computerize the case files because they were a court with a small volume of cases.

*If we were computerized, it would be even better, but we don't have the caseload to make it necessary.* - Team Member

However, even in a small court, the volume of information that accumulates over the course of a year or more on one participant and the benefit that accrues with automation does justify the computerization of the case files. An off-the-shelf database program, such as Microsoft Access or Excel, would serve the purpose and allow for monitoring and evaluation activities. Ideally, all wellness courts should have a relational database using a software program such as Microsoft Access. Less ideally, information can be collected on the participant in a spreadsheet format using the Excel software program. Both these programs are bundled with Word in the Microsoft Office Professional software package available on most wellness court's computers. In addition, the Drug Court Clearinghouse at American University provides

guidance on what variables, or participant characteristics, should be included in the database. The information collected should include the demographic characteristics of the participant, job training, education and employment information, criminal history information, and treatment information (such as SASSI results). Weekly information on incentives and sanctions received, phase advancement, meetings attended, drug testing given and results, and new charges should also be included.

One court recognized not only the importance of an automated case management system for the wellness court records, but also an integrated justice system for juveniles, bringing together all the information on one person in one place, would be ideal.

*An integrated justice system is one of our goals. **We sort of have an integrated criminal justice information system in the makings here, but getting all the agencies to be consistent and feed their data into it takes time. Eventually it will, we've taken some giant strides here in the past ten years.** - Team Member*

Of course, whether the court record keeping is automated or not, information must be systematically and completely recorded. Complicating the case file information extraction issue in these evaluations was a great deal of missing and inconsistently recorded information in the case files of three of the four courts that made the retrospective creation of a database difficult.

***We weren't able to conduct much of a quantitative evaluation because there was so much data missing from the wellness court files, especially in the early stages of the program.** - Outside Evaluator*

One primary example of missing information was the lack of dates for phase advancement for many of the participants. Another example was some case files have many notations on when drug tests were done and what the results were and others have fewer notations. To the evaluation team, it was not clear if the files with fewer notations were complete or not. A third

example was case files that clearly have a time gap in the recording of information. It was not clear if there was missing information, or whether the participant temporarily left the wellness court. A fourth example was the recording of sanctions and incentives, when there was no information, it was not clear if that meant there were no sanctions or incentives or there were, but they were not recorded. Information on treatment was also sketchy. In one wellness court it was difficult to evaluate the program for process since not only were there gaps in the record, but for 18 of the 50 participants studied (more than one-third) the case file was destroyed in a courthouse fire.

In addition, when the evaluation team returned in the summer of 2004 to one court to collect information on recidivism, all the information and court files of former juvenile participants no longer existed because they were shredded earlier in the year for confidentiality reasons. A more practical approach to the expungement of the juvenile records is to have an automated database of the information and anonymize the database by deleting name and birth date, but keep the rest of the information. This way confidentiality of the juvenile records is protected, yet evaluation activities can occur.

#### ***Lesson Learned #8***

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

### **#9 - Develop a Written Curriculum for Wellness Court Staff**

*Key Component #9: Continuing interdisciplinary education promotes effective wellness court planning, implementation, and operation.*

The focus of this key component is the interdisciplinary education underlying the success of the wellness court team; the court players need to learn about the treatment process and the treatment players need to learn about the court process. All key personnel have to have at least the minimum required education and experience to perform their wellness court responsibilities and benefit from cross-training and continuing education. Interdisciplinary education may include DOJ trainings specifically designed for tribal wellness courts or more general conferences such as the annual NADCP conference. A written education syllabus and curriculum describing the court's program should be developed for personnel who come on board after the initial flurry of training to share the values, goals, and operating procedures of the wellness court.

Training funds were included in the planning grants and representatives from all four wellness courts attended two or more of the drug court planning workshops sponsored by the Office of Justice Programs in 1997 and 1998 in Stillwater, Oklahoma, Lexington, Kentucky, and Albuquerque, New Mexico or the 1998 NADCP annual meeting in Washington, D.C. that featured a tribal training track. Each court sent a relatively large group to these first trainings, future wellness court team members as well as other stakeholders from law enforcement and tribal council.

*We had three trainings, actually two, and then a third in D.C. Eleven of us went to the one in Oklahoma City, our first one, our planning grant, along with 25 other tribes, and our second one, they're mandatory, was in Louisville, Kentucky. **We had taken law***

***enforcement with us and council to the first one. That's why there was eleven of us.*** - Team Member

Sending a large group proved beneficial because it allowed the team members to bond over their enthusiasm for the wellness court concept and helped coalesce the diverse backgrounds of the members into one vision of what the wellness court should be. The attendance of other community members, such as tribal council members, was also beneficial because they were able to learn about the wellness court concept and promote it in the community.

***We had two or three councilmen that went with us. You need their participation because they're the ones who are going to say "We're going to allow [the wellness court] or not." Then it has to be done by resolution, you have to have a code passed, if they're not familiar with it, they're not going to pass it. I thought it worked out good that we had these councilmen interested.*** - Team Member

The three wellness courts that had significant turnover in their early years had difficulty in training new team members who came on board after the original training because they did not have the funds to send the new members to the trainings that they had received.

***No, [there wasn't somewhere to send new team members for basic drug court training] because you needed to have money to send them. [The current prosecutor] wasn't our first prosecutor, she was our second, so she sat in on a lot of [staffing meetings and status hearings] and learned what the concept is. [The current public defender] wasn't our first public defender, he was our second, so, we had new people coming in, but we were still working and still close-knit where we could train them, and they knew what they were doing, they kinda sat in. . . . So we did have a somewhat small training for them so they would know what they're doing. . . . [They did go to outside training] the second year.*** - Team Member

*It's brand new, I've never been educated to the Wellness Court myself, I've just picked up their manuals [from the original trainings] and taken a look of how the system is designed as well as attending some other staffing and convocations just to see how things ran. - Replacement Team Member*

In two courts, only one of the people who attended the original training was still involved with the wellness court 4 years later. The team members who came on board later did not receive basic drug court training and team members agreed it hurt the institutionalization of these wellness courts.

*[A concern I have is] just that **there's too many different people coming in, team members**, it's not anybody's fault, it's just that they find a new job, they leave, nobody else is appointed in that position right away, **so we've got a lot of newcomers coming in so it's like we have to sit down and explain what wellness is, that would be my other concern.***

*I think one of our problems is that there has been a change of hands so many times, you know, different people getting involved with the drug court. **I believe only one person sitting here has been involved from Day One.***

*We had a problem in the beginning, most of the people who had the drug court training, moved on to different things, and different people started coming in and moving in, **and the concept itself started fading away.***

*Our downfall to me is that we really don't sit down with [the new team members] and explain to them what the wellness is, they just come and sit down and they don't really know what the wellness is. **So, that's what we need to do, let them know what the wellness court is about so they have more understanding and just don't just come to staffing and convocation and don't really know what it is.***

*I'd get all the treatment together, the service providers all together. Again, try to reinforce what it's all about to them. **Their fellow employees don't really know what wellness court is all about, especially the police officers. Tell them when staffing and convocation is, they need to be re-educated, it would benefit the whole community.***

One wellness court had difficulties with one of its judicial replacements that later turned out to be a factor in the wellness court's early demise.

*[The second judge] was able to step right in, he knew the concept, he was in most of our staffings because he was doing his work in here, that was his desk and he'd be doing stuff and he'd listen. **On the other hand, [the third judge], she was my way or no way, and she just didn't concentrate and absorb what we were doing.*** - Team Member

Besides saving some training funds if possible for new staff who come on board after the original round of training, a wellness court can mitigate some of the difficulties that emerge with replacement team members by having a training manual or educational syllabus that emphasizes the philosophy and procedures and practical matters of wellness courts. This information should include a description of the development of the wellness court, and its goal, requirements, and responsibilities of the team members and tribal agencies.

In addition, the *Key Components* recommend a wellness court develop an education syllabus and curriculum that can be used for cross-training purposes. This could be a series of loose-leaf folders containing articles on different topics. For example, one set that goes into detail on the nature of alcohol and drug abuse, its treatment and terminology, and knowledge about the dynamics of abstinence and techniques for preventing relapse would be for the team members from the court arena. Another set could contain articles on the basic legal requirements of the program and an overview of the local criminal justice system's policies, procedures, and terminology for the team members from treatment. Also recommended to be included are drug

testing standards and procedures and wellness court confidentiality requirements. In addition, the cultural educator could prepare a reading list of articles on cultural topics. This information can be used as a resource for new team members to familiarize themselves with the wellness court and be one more brick in institutionalizing the wellness court.

***Lesson Learned #9***

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

### **#10 - Emphasize Early Outreach within the Community**

*Key Component #10: The development of ongoing communication, coordination, and cooperation among team members, the community, and relevant organizations are critical for program success.*

The heart of this key component is a wellness court cannot be isolated from the rest of the tribal community, but needs to build coalitions with other tribal departments and community agencies to enhance public trust and confidence and ensure program success. An additional benefit is the increased exposure of the wellness court allows the court to tap resources within the community such as identifying elders who are interested in mentoring participants. The *Key Components* recommend the formation of a steering committee made up of community members to show support for the wellness court in the community. The steering committee needs to be formed even before the wellness court receives the grant award to garner community buy-in from the very beginning and foster community ownership of the wellness court. For the wellness court to become institutionalized in the community, the wellness court cannot be something the court is doing alone; it must be something the tribal community is doing.

Community support is very important for a tribal wellness court and before people can support something they need to know the wellness court exists and what it does. Wellness courts cannot become part of the community if many in the community do not know about the program or what it does. A crucial step in garnering community support is to include more of the community in the buy-in process early in program development so they too become invested in the program's success.

*Make sure you get everybody to buy-in. Make sure you get all the agencies. I think because we were so unsure of what we were actually supposed to be doing, **we didn't get all the key players at the beginning and the thing is I think if you have your key players***

***in place before you even implement, when you're starting in on the policy making, everybody has some ownership there.*** - Team Member

*People who are on board from the beginning actually are better contributors rather than someone you bring in at the last minute. **They need to have a little ownership of the process, the buy-in. If they have ownership, it's actually more successful.** But if you have the planner sitting in this little corner, writing the grant with no input, didn't have anybody involved, didn't have that commitment, you're really setting yourself up for failure.* - Tribal Administrator

Looking back it appears at least one wellness court did not emphasize community outreach enough, even to other justice system stakeholders such as law enforcement.

*We didn't really do very much community awareness. I think we could have done more community awareness things, but we didn't. . . . **I'd suggest [to courts thinking about setting up a wellness court] that they do more community, what would you call it, promotion or something. And involve the key people in their trainings, maybe the council members and if they have an appeals court, bring one of them. Just involve as many people as possible so that everybody knows what the program is about.*** - Team Member

***We kind of started out quiet in the thing and didn't make a whole lot of publicity on it and maybe we should have, I don't know. That's one I don't have any idea whether we should have been a lot more pro-media than we were.*** - Team Member

*I think once [the community] knew what we were doing, I think they perceived it as being a very positive thing. **But the one thing you would definitely want to do is do a little more PR (public relations) than we did.*** - Team Member

***People knew what we were doing. I think we could have been more involved in the school system, giving some prevention education to youth. We could have been more involved in the media.*** - Team Member

Two other wellness courts did make efforts to increase community awareness, but the greater community did not respond. The wellness courts offered informational community meetings and community dinners, invited council members to graduation ceremonies, put announcements of wellness court activities in the tribal and town newspapers, and had luncheons for Drug Awareness Month. But there was still the thought the community did not know of their existence, or if they did, the community did not understand what the wellness court really was or were automatically against anything the tribal court did.

***We have tried; it is real hard, real hard, to get community awareness around here. Our team, the tribal court administrator especially, she has put on community awareness dinners, different support things, we've had luncheons and you have a handful of the same people show up. I don't know how to get out to the community. I don't know how to make them aware. You can tell them as much as you want by word of mouth, but it doesn't always work. And there is so many people who are automatically against the court system, whether it's tribal, drug court, whatever. They just think the court system is out there to do you harm, to ruin your life.*** - Team Member

***I totally expected the community to be more aware. It's like you get on the bandwagon and you expect everyone to be as fired up as you are. I'm real surprised the community has turned a deaf ear.*** - Team Member

***There would probably be a lot of people out there who would say, "What is the wellness court?" but I think there should be at least some people there who know about it, we tried to, we do a lot of PR (public relations).*** - Team Member

*Getting the community involved was a tough thing, you know. We had gone out to the various little communities, we would take food, soup, fry bread, whatever we could to feed them. **We went out to Brockton, it was supposed to start like 6:30 or something, we stayed there until like 8:30 and nobody showed up.** We sent out flyers, it was to give people an overview of the wellness court. It was tough to get people involved, it's hard to get people involved, to get involved with our youth.* - Team Member

*Not everybody's familiar with this court, even over at the police station, I was supposed to go twice a day [to sign in with the probation officer], the cops didn't even know wellness court, **it's like something that's being kept secret.*** - Parent

Two of the wellness courts held back from publicizing news of the successes of the court because of concerns over participant confidentiality.

*I think you're probably going to hear that from participants, some of them are going to say, "I didn't care if people knew I was in there," **others are going to say, "I don't want anyone to know that, I'm trying to clean up"** and this kind of thing.* - Team Member

*And that's a catch-22 because yeah, you're proud of your people who actually have done well in the program, **but I don't think any of them want to volunteer to be the poster child for a recovering addict.** So, I mean, it's like you've done a good thing, you've got some good people involved, but you're bordering on the line of breaching someone's personal information to say, "Hey, we've successfully had this happen." It would actually come down to that person wanting to share the information. **And some people honestly are really ashamed of their past behavior, so you don't actually—quote—get the advertising.** . . . We do put their [graduation testimonial] in the newspaper. What I meant by poster child is, are they willing to speak to a class of high schoolers, "Hey, I had a past drug and alcohol problem, it led me to this and this and this." - Team Member*

But another wellness court thought it was important to herald the participant's success in the local newspaper.

*When we have a graduation, we have the newspaper come and do a story on it, “this kid has done so well,” we’ve never had any objections from parents, “I don’t want no one to know my kid graduated from drug court.” We’ve never had that. But with every graduation, we’ve done something.* - Team Member

*They put the wellness court graduates in the paper. . . . Why not? They’re proud of it, it’s an achievement.* - Community Member

Most of the wellness courts got off to an excellent start by casting a wide net when forming their planning committee (one had 20 to 30 community members including representatives from tribal court, tribal administration, tribal council, law enforcement, the health department, social services, schools, and elders at each planning meeting), but as the wellness court developed, it became more insular and none continued with a community-wide steering committee. One way to improve the community’s interest in the wellness court is for the wellness court to have the planning committee evolve into a community-wide steering committee to increase buy-in from other agencies. The purpose of the steering committee is not to duplicate the work of the wellness court team in assisting the participants in their journey to wellness, but to provide guidance and direction to the wellness court program.

*Let’s see, I would ask that there be programs that get involved, like IHS, mental health, social workers to be involved in this program, not just the ones that are involved now. Schools, I think elders, more people from Spotted Bull Treatment Center. **I think once you establish that and have everybody involved and working as a team, instead of “stay out of my turf” sort of thing, I think the community would understand what the program is all about and the upper people, like the tribal executive board, the directors and stuff, would understand what we’re trying to do, to assist, basically I guess, families.*** - Community Member

***Lesson Learned #10***

- ***Emphasize early outreach within the community to both take advantage of tribal resources and to increase buy-in by community members. All four wellness courts would have benefited from having wider community support.***
- ***Ensure wellness court institutionalization by making the wellness court something owned by the community as a whole, and not the tribal court alone.***

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<sup>i</sup> The *Key Components* were prepared by the Tribal Law and Policy Institute (TLPI) with the collaboration and consultation of the Tribal Advisory Committee (TAC) for Tribal Healing to Wellness Courts.

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