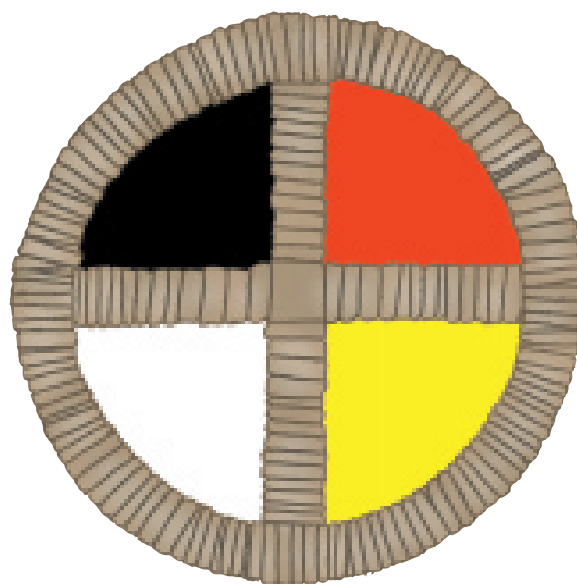




# Healing to Wellness Courts: *A Preliminary Overview of Tribal Drug Courts*

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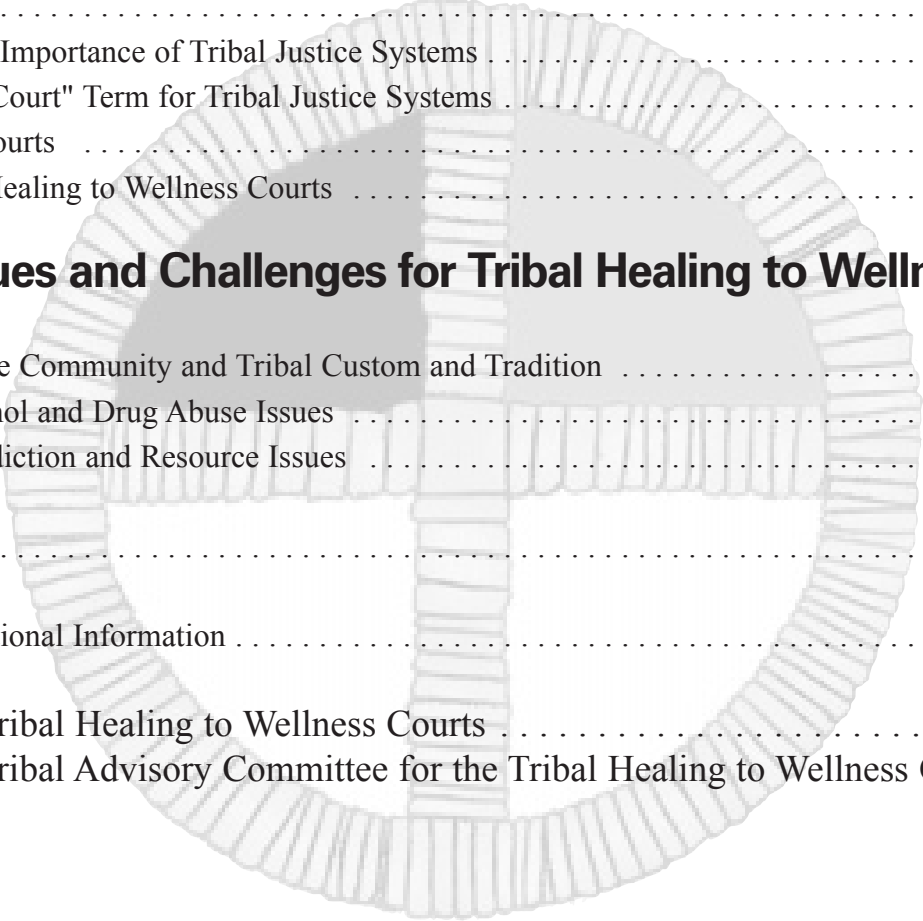
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## Background

The drug court movement began in the late 1980s in response to the growing number of drug-related court cases and the resulting overcrowded jails and prisons. The standard law enforcement and corrections policies alone were not having the impact on drug supply and demand that the proponents of the “War Against Drugs” had hoped. The drug court approach departed from the standard court approach by systematically bringing drug treatment to the criminal justice population entering the court system. In the past, courts had referred selected offenders “out” to treatment as a condition of probation. In the drug court, however, treatment is anchored in the authority of the judge who holds the defendant or offender personally and publicly accountable for treatment progress.

Beginning as a grassroots initiative, drug courts have spread across the nation. Local teams of judges, prosecutors, attorneys, treatment providers, law enforcement officials, and others are using the coercive power of the court to force abstinence and alter behavior with a combination of intensive judicial supervision, escalating sanctions, mandatory drug testing, treatment, and strong aftercare programs.

Native American and Alaska Native tribal courts expressed an interest in the drug court approach and have made significant progress in recent years. There are now at least a dozen operational tribal drug courts and at least 30 more are being planned (A listing of these tribal drug courts is provided in Appendix A). Tribal drug courts, however, face critical issues and challenges not generally encountered by state drug court systems.

The U.S. Department of Justice, Office of Justice Programs, Drug Courts Program Office (DCPO) determined early on that the drug court concept would need to be adapted significantly in order to meet the specific needs of Indian Nations. Consequently, in 1997, the DCPO developed a special program to assist Indian Nations that were federally funded to plan or implement drug courts within tribal governments. DCPO charged the National Association of Drug Court Professionals (NADCP) with the task of creating a culturally sensitive training program that would meet the needs of the initial twenty-two Indian Nations who had been awarded drug court grants through the DCPO.

NADCP, in collaboration with DCPO, identified a group of individuals with expertise concerning tribal courts and/or substance abuse in August 1997 to help design an adapted curriculum for tribal drug court training sessions. These professionals served as an informal advisory committee and as facilitators at the tribal drug court training sessions. The first of a series of tribal specific training sessions was held in Stillwater, Oklahoma in September 1997. These tribal drug court training sessions have served a vital role in explaining the drug court concept and in working with the tribal representatives from each community to adapt the drug court concept to meet the needs of their individual communities. At each session, representatives from tribal courts, law enforcement, treatment providers, tribal government, Native communities, and others come together to develop an action plan for drug court development in their individual community.



In September 1998, DCPO awarded two cooperative agreements in order to provide training and technical assistance for Indian tribes who are planning or implementing Tribal Healing to Wellness Courts. The National Association of Drug Court Professionals (NADCP) is responsible for providing training programs. The Tribal Law and Policy Institute (TLPI) is responsible for providing on-site technical assistance and the development of tribal court specific resource materials. In addition, the Drug Court Clearinghouse and Technical Assistance Project at American University compiles and disseminates operational materials developed by both tribal and state drug court programs and compiles and publishes information on state and tribal drug court activity on an on-going basis.

In December 1998, a formal Tribal Advisory Committee (TAC) was formed (A listing of the Tribal Advisory Committee members is provided in Appendix B). The purpose of the Tribal Advisory Committee is to take an active role in the development of a more comprehensive training and technical assistance program for the tribal drug courts.

Development of tribal drug courts is proving to be a complex task. Tribal drug courts face many critical issues and challenges. Many of these are unique to tribal drug courts. Others are problems which are faced by all drug courts, but often present more substantial problems for tribal drug courts.

These issues and challenges include the following:

- \* Tribal courts must address the specific cultural needs of their individual communities, including the challenge of incorporating tribal custom and tradition into the tribal drug court.
- \* The nature and high volume of alcohol abuse cases in most tribal courts present unique adaptation issues.
- \* Tribal courts face jurisdictional barriers which complicate their ability to implement an effective drug court process.
- \* Tribes seeking to establish drug court systems often face a broad range of other issues and challenges, including isolated rural locations, small community issues, lack of resources and services, and lack of funding.

The development of tribal drug courts has, therefore, required special strategies to address these and other issues that have emerged during the course of program planning and implementation. Because tribal drug courts are relatively new and evolving, they are continually adapting to meet the needs of their target populations and their communities.



## Unique Role and Importance of Tribal Justice Systems

In order to understand the critical issues and challenges facing tribal drug courts, it is critical to have a general understanding of the unique role and importance of tribal courts generally. There are approximately 300 tribal justice systems serving the more than 550 federally recognized Indian Nations. These tribal justice systems are the most important visible manifestation of tribal sovereignty.

The United States Congress has repeatedly recognized the unique role and importance of tribal justice systems - most recently when Congress enacted the Indian Tribal Justice Act of 1993 (Public Law 103-176). The Indian Tribal Justice Act included the following specific Congressional findings:

- (1) there is a government-to-government relationship between the United States and each Indian tribe;
- (2) the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government;
- (3) Congress, through statutes, treaties, and the exercise of administrative authorities, has recognized the self-determination, self-reliance, and inherent sovereignty of Indian tribes;
- (4) Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems;
- (5) tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments;
- (6) Congress and the Federal courts have repeatedly recognized tribal justice systems as the appropriate forums for the adjudication of disputes affecting personal and property rights;
- (7) traditional tribal justice practices are essential to the maintenance of the culture and identity of Indian tribes and to the goals of this Act;
- (8) tribal justice systems are inadequately funded, and the lack of adequate funding impairs their operation; and
- (9) tribal government involvement in and commitment to improving tribal justice systems is essential to the accomplishment of the goals of this Act.



## **Adapting “Drug Court” Term for Tribal Justice Systems**

As the tribal drug court programs began developing, it became apparent that a term other than “drug court” be used to describe the tribal drug court program. The term used needs to (1) clearly incorporate alcohol abuse cases since alcohol abuse is the predominant drug problem in most Native American and Alaska Native communities, and (2) allow the community to take ownership of the drug court concept.

Individual tribal courts have adopted various terms for their programs. These terms have included “Wellness Court”, “Healing Court”, “Treatment Court”, and “Alternative Court”. Initially, the tribal drug courts were referred to generally as “Tribal Wellness Courts”. Some tribal drug court personnel, however, were concerned that the term “wellness” might imply that the participants had achieved wellness instead of still striving to achieve it. Ultimately, a tribal advisory group developed the idea of calling the tribal drug courts “Healing to Wellness Courts” to (1) incorporate two important Native concepts - both Healing and Wellness and (2) promote the program’s efforts to achieve wellness for the participants.

Although the names “Healing to Wellness Courts” or “Tribal Healing to Wellness Courts” are used as the generic terms for tribal drug courts, individual courts continue to develop individual names for their programs to address the specific needs of their individual communities. In fact, tribal courts are now increasingly using words from their Native languages for their drug courts. These words often mean healing, wellness, or other appropriate Native concepts in their Native language which summarize or identify the goal for their programs. The use of a Native language name allows the community to take ownership of the drug court concept as adapted to meet the individual needs of their communities.



## Defining Drug Courts

The drug court concept involves leveraging the coercive power of the criminal justice system to achieve abstinence and alter criminal behavior through the combination of judicial supervision, treatment, drug testing, incentives, sanctions, and case management. A drug court is a special court docket given the responsibility to handle cases involving drug-using offenders through an extensive supervision and treatment program. Drug court programs bring the full weight of all intervenors (judge, prosecutor, defense counsel, substance abuse treatment specialists, probation officer, law enforcement and correctional personnel, educational and vocational experts, community leaders and others) to bear, forcing the offender to confront their substance abuse problem.

The design and structure of drug court programs are developed at the local level, to reflect the unique strengths, circumstances and capacities of each community. Many sectors of the community are integrally involved in the planning and implementation process of a drug court system, including: criminal justice, substance abuse treatment, law enforcement, educational and vocational entities and community anti-drug organizations.

Drug courts across the country rely on the capability to provide immediate responses to participant progress or lack of progress. If a participant does not comply with program requirements (for example, the participant continues to use alcohol or drugs), sanctions are immediately applied. The most common sanctions typically include increased drug testing, increased court appearances, increased frequency of contact with the treatment provider, community service assignments, and/or short term incarceration. When a participant shows progress in becoming and maintaining sobriety, on the other hand, their accomplishment is also immediately recognized - with praise from the drug court judge and often accolades from others in the drug court program.

The following is a listing of the ten key components identified for state adult drug court programs. A complete analysis of each of these components is provided in *Drug Courts: The Key Components* (OJP Drug Courts Program Office, January 1997). A committee of officials involved in the development of tribal drug courts are currently examining these “key components” to determine which might be adapted by Tribal Healing to Wellness Courts as well as what additional components should be added.

- KEY COMPONENT #1: Drug courts integrate alcohol and other drug treatment services with justice system case processing.
- KEY COMPONENT #2: Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants’ due process rights.
- KEY COMPONENT #3: Eligible participants are identified early and promptly placed in the drug court program.
- KEY COMPONENT #4: Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.
- KEY COMPONENT #5: Abstinence is monitored by frequent alcohol and other drug testing.
- KEY COMPONENT #6: A coordinated strategy governs drug court responses to participants’ compliance.
- KEY COMPONENT #7: Ongoing judicial interaction with each drug court participant is essential.
- KEY COMPONENT #8: Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
- KEY COMPONENT #9: Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.
- KEY COMPONENT #10: Forging partnerships among drug courts, public agencies, and community based organizations generates local support and enhances drug court effectiveness.



## Defining Tribal Healing to Wellness Courts

Tribal Healing to Wellness Courts are not simply tribal courts which handle alcohol or other drug abuse cases. Instead, a Tribal Healing to Wellness Court is a tribal justice system which incorporates and adapts the drug court concept to meet the specific needs of their individual community. It provides an opportunity for a Native community to address the devastation of alcohol or other drug abuse by establishing more structure and a higher level of accountability for these cases through comprehensive supervision, drug testing, treatment services, immediate sanctions and incentives, and case management.

Some Indian Nations are establishing adult drug courts. Other Indian Nations are establishing juvenile or family drug courts. Many Indian Nations are planning to ultimately establish both adult and juvenile drug courts.

The following are a series of definitions and descriptions of Tribal Healing to Wellness Courts provided by officials who have been involved in the training and development of Tribal Healing to Wellness Courts:

*“The story goes that around the turn of the century a coalition of Hopi elders sent a young Hopi volunteer to the white man’s boarding school as a spy to discover the white man’s weaknesses and report back on how these leaders might wage war on the intruder. The young man went away for several years. He learned to read and write in English, he saw industrialized cities for the first time, and he saw many amazing modern things. When he returned home his message to his elders was that there were so many white people, and many of them were good people with good things to offer, and that the best strategy would be to pick and choose what could better the Hopi world and leave the rest behind. The elders were angry and banished the young man from the village. Over time, and amidst much controversy younger Hopis have begun to pick and choose from the offerings of the outside world to build the Hopi Nation. Despite colonization, piece by piece, generation by generation, Indian people have taken control of their futures as a people by merging the old with the new, by finding the common human threads across cultures and using what works. It has never been easy. It has always been controversial, and the outcomes are never certain. However, the Indian people who engage in these efforts are dedicated to making their communities better. They are willing to be creative, to work hard, to take risks and to keep moving forward in the face of many obstacles. This is true for Indian people that are involved in the tribal drug court movement, and slowly but surely, they are making their communities well.”*

-Pat Sekaquaptewa, Associate Director, Tribal Law and Policy Institute.





*“Our tribal leaders are currently engaged in the process of nation building as well as fulfilling their traditional roles as wayshowers. As such, our leaders face enormous responsibilities and obligations in a time when reservations are undergoing rapid cultural, social, economic, and demographic changes. Modern nation-building necessarily entails incorporation of traditional concepts, and careful consideration and importation of successful modern tools which will move tribes forward in their efforts to ensure safe, healthy, tribal communities. At Hualapai, the Jiway Gwavo, or “fight talk”, is a way of positioning the Tribe’s efforts and offensively fighting social problems - instead of simply responding to them once they manifest. At Hualapai, planning, developing, and implementing the drug court model utilizes the Jiway Gwavo by adjudicating alcohol and drug related cases in a way which requires individual, family, community accountability, and responsibility for the wellness of individual community members. By tailoring and adapting the drug court model for tribal communities, our leaders are creating governmental forms that fight for the health and safety of our people.”*

*-Judge Joseph Flies-Away, Hualapai Tribal Court.*

*“For the Northern Paiute tribes whose traditional dispute resolution systems were destroyed in the late 1800’s and early 1900’s, I think the Drug Court grants project provided my tribe and others with the funding necessary to return, as nearly as possible, to a traditional way of resolving matters which come before their courts. Before non-law trained Indian Agents created what they believed were mirror images of state court systems in the late 1800’s in Nevada, called Court of Indian Offenses, Northern Paiute medicine men resolved not only the disputes at hand, but treated all individuals affected by the dispute. Those Indian Agents, in writing the Commissioner of Indian Affairs, repeatedly said that our medicine men were much more than mere “Indian doctors”, that they were “judges of civil and political disputes of the tribe and family disturbances.” How splendid it is that mainstream society now not only embraces the concept of mediation, but the federal government now provides Drug Court funding to tribes to re-establish, in a general sort of way, the traditional means our medicine men used to resolve disputes and re-established harmony in our communities.”*

*-Judge Ronald Eagleye Johnny, Chief Judge, Duckwater Shoshone Tribal Court.*

*“A Drug Court is a council of responsible professional elders and their warriors of both genders coming together in harmony to do battle against both a visible and an invisible enemy - “the disease of alcohol and drug abuse and dependence”. The tactic that this team/council/war party takes is to act as a legal and culturally sanctioned authority that meets the patient/client/tribal member where he/she*



*is at in relation to his/her abusive relationship with mood and behavior altering chemicals. It is understood that the relative has come before the Drug Court Council because it has been determined that the individual will continue to abuse without some sort of holistic intervention. The “Drug Court” basically uses the circle of helpers in assisting the chemically abusing/dependent relative to consider a path of health rather than a path of self-destruction.”*

-Wilbur Woodis, Management Analyst, Indian Health Services Headquarters West

*“A Drug Court is an opportunity ... It is an opportunity for offenders, the courts, support services, and the community, to develop a coordinated and responsive partnership for addressing drug related crime.”*

-Michelle Chino, Director of Research and Development, American Indian Development Center

*“Drug Court is a partnership between all the professionals in a community who deal with drug/alcohol offenders, judges, law enforcement, prosecutors, defense attorneys, probation officers, treatment providers, etc. This team is developed by bringing together community resources, structured to meet the needs of the individual community, strengthened by communication and cooperation of the team members and maintained by a common goal. It gives a community the opportunity to address the devastation of drug/alcohol abuse by providing drug/alcohol offenders with a much needed structure and higher level of accountability through education, treatment, case management, and supervision. This is accomplished with a judge or other official who monitors participants’ progress and imposes appropriate sanctions and incentives.”*

Janna Cooper Walker, Program Manager - National Association of Drug Court Profe

*“A Drug Court or a Wellness Court - is a system for bringing together the court, service providers and the community to address alcohol and other drug related offenses in a coordinated manner which provides intensive treatment and supervision for offenders. In many ways, it involves using a child protection team type of approach for alcohol and drug related offenses. The drug court concept is a flexible approach, which can be adapted to incorporate tribal customs/traditions and to meet the needs of an individual Indian community.”*

Jerry Gardner, Executive Director, Tribal Law and Policy Institute (TLPI) and Administrator, National American Indian Court Judges Association (NAICJA).



## **The Role of the Native Community and Tribal Custom and Tradition**

For Tribal Healing to Wellness Courts to succeed, the program must be designed to meet the specific cultural needs of the individual Native community to be served. This process requires the involvement of the Native community. It also usually involves the incorporation of tribal custom and tradition into the Tribal Healing to Wellness Court development and implementation process. The process varies substantially from community to community depending upon many factors such as individual historical issues, the land base and economy of each community, whether the community primarily consists of one tribe or is a confederated reservation involving more than one tribe, the specific customs and traditions of the individual tribe or tribes in the community, and the type of available resources.

It is important to note that the drug court approach is a flexible concept generally consistent with traditional Native justice concepts and methods. The Tribal Healing to Wellness Courts return to a more traditional method of justice for Indian people by (1) creating an environment that focuses on the problems underlying the criminal act rather than the act itself and (2) stressing family, extended family, and community involvement in the healing process. In traditional Native societies, accountability to the community was a responsibility that was kept in balance through cultural norms and values. The Tribal Healing to Wellness Courts are a modern revitalization of guiding Native principles of justice - truth, honor, respect, harmony, balance, healing, wellness, apology or contrition, restitution, rehabilitation, and an holistic approach. The Tribal Healing to Wellness Court concept can be adapted by Native communities to restore harmony and balance to the individuals, the families, and the communities which have been devastated by alcohol and drug abuse.

**Tribal Healing to Wellness Courts are addressing community and traditional issues in all aspects of development and implementation. Among the specific methods being utilized are the following:**

- 1. Involving Traditional People in the Planning and Development Process.** Many Tribal Healing to Wellness Court programs are involving tribal elders, medicine men, and people with traditional knowledge in all aspects of planning and development in order to ensure that traditional values are respected and included in all aspects of the Tribal Healing to Wellness Court program.
- 2. Establishing a Broad Based Community Development Process.** Tribal Healing to Wellness Court programs are establishing a broad based community development process - including not just the court and treatment providers, but also tribal council, schools, community agencies, community resources, and community representatives - in order to ensure that the program builds the community support needed to succeed.
- 3. Adopting a Traditional Name.** Many Tribal Healing to Wellness Courts are using words in their Native language to name their drug court program, often involving tribal elders in the identification of an appropriate term. The use of a Native language name allows the community to take ownership of the drug court concept as adapted to meet the needs of their individual communities.
- 4. Traditional Healing Processes and Treatment Modalities.** Tribal Healing to Wellness Courts are incorporating a wide range of traditional treatment components into their treatment programs. Traditional healing practices have proven particularly effective in addressing Native alcohol and substance abuse problems. Involvement in traditional, cultural heritage and/or community activities has also proven effective in providing a productive focus in the lives of Native people who have been devastated



by alcohol and substance abuse. These traditional treatment components may include traditional healing ceremonies, talking circles, peacemaking, sweats, sweat lodge, visits with a medicine man, sun dance, and vision quest. The specific traditional healing practices, traditional ceremonies, and cultural activities vary substantially from tribe to tribe depending upon the traditional practices of the individual Native community.

5. **Traditional or Community Based Sanctions.** Tribal Healing to Wellness Courts are incorporating community based or traditional sanctions into their drug court programs. Some of these community based or traditional sanctions include community service requirements, spending time with elders or storytellers, and required appearances before traditional forums.
6. **Traditional or Community Based Incentives.** Tribal Healing to Wellness Courts are incorporating community based or traditional incentives into their drug court programs. Most of these community based or traditional incentives include involvement in community and cultural activities and community recognition of participant success in the program (for example, one program is planning to award Pendelton blankets to program graduates in a community ceremony) .
7. **Involving Extended Family and Community.** Many Tribal Healing to Wellness Courts are attempting to involve the participant’s family, extended family, and the community in all aspects of the program, including the decision to enter the program, the healing practices and ceremonies, the cultural activities, graduation, and aftercare.
8. **Traditional Dispute Resolution Mechanisms.** Many Tribal Healing to Wellness Court programs are incorporating traditional dispute resolution mechanisms. These dispute resolution mechanisms include peacemaking, family conferences, elders panels, appearances before traditional or religious leaders, and other traditional or community based dispute resolution mechanisms. Usually, the traditional dispute resolution mechanism is utilized as a program treatment component. Some tribes have been considering using the traditional dispute resolution mechanisms as the Tribal Healing to Wellness Court itself, but this has presented problems in that most of these traditional mechanisms function in more of a mediation role without the full coercive judicial authority required under the drug court approach. Other tribes are examining the possibility of using a traditional community leader or a panel of elders - This approach is based on a view that drug court participants may be more likely to conform their behavior to avoid failure in front of a more traditional or community based forum.
9. **Traditional or Spiritual Component.** Tribal Healing to Wellness Courts are incorporating traditional or spiritual components in all aspects of their programs. Many programs, for example, are including invocations at all drug court hearings and group treatment components. Spirituality is central to Native life and a critical component of the healing to wellness process.



## Addressing Alcohol and Drug Issues

Tribal Healing to Wellness Courts must face a number of specific alcohol and drug issues which are often more complex and intractable than the issues faced by state drug courts. **Some of the most important alcohol and drug issues Tribal Healing to Wellness Courts must address include:**

- 1. Prevalence of Alcohol Abuse.** The arrest rate among Native Americans for alcohol related offenses was more than double that found among other races as reported by the Bureau of Justice Statistics in its publication *American Indians and Crime*. That study also found that 55% of all Native American victims of violent crimes reported that the offender committed the offense while drinking. As a result, Native Americans have the highest incarceration rate. Alcohol and/or substance abuse is involved in more than 90% of the criminal cases in most tribal courts. Alcohol abuse is the predominant problem in most Native American and Alaska Native communities. Although many of the current state drug courts address alcohol abuse, it is not the primary focus of most state drug courts. Handling alcohol abuse cases through a drug court approach requires the program to adopt different strategies such as creative approaches to alcohol testing programs and the need to address medical concerns related to alcohol detoxification. The drug court concept, however, presents a potentially effective mechanism for Native American and Alaska Native communities to address the devastating problem of alcohol abuse.
- 2. Dealing with Alcohol Prohibition.** Alcohol abuse issues in Native communities have an added dimension in many Native American and Alaska Native communities which are “dry” (the sale of alcohol and often mere possession is prohibited). In these communities, alcohol issues are more closely analogous to other drug issues where mere possession is illegal along with alcohol dealing or bootlegging. Programs in these communities must develop strategies for determining the difference between mere possession of alcohol and alcohol abuse which requires drug court processing. Furthermore, program staff on completely dry reservations are required to abstain from all alcohol use.
- 3. Fetal Alcohol Syndrome (FAS) Fetal Alcohol Effects (FAE).** In many communities, the significant number of drug court participants with fetal alcohol syndrome (FAS) or fetal alcohol effects (FAE) is an issue which must be addressed. A June 1999 survey of operational tribal drug courts indicated that fully one third of tribal drug court participants suffer from FAS or FAE. Drug court participants suffering from FAS or FAE may not fully understand and comprehend the consequences of their actions. These participants may have added difficulties dealing with their substance abuse problem and conforming to the program expectations and requirements. Consequently, the court and program staff must be provided with training concerning FAS and FAE and develop an appropriate treatment strategy to force abstinence and alter the behavior of FAS and FAE participants.
- 4. Dealing with Abuse of Other Drugs.** Most Native communities must deal with abuse of other drugs beyond alcohol. These problems are usually more serious in Native communities which are near major urban centers and/or near the borders with Mexico where smuggling problems are greater. In these communities, the issues related to specific drugs are more similar to those issues which the state drug courts must confront.
- 5. Inhalant Abuse.** There is at least one additional drug abuse issue which presents special challenges for many Native communities. Many Native communities have substantial problems with toxic inhalants. In these communities, the program must develop appropriate and creative strategies for screening, testing, treatment, and dealing with critical issues such as the risk of permanent brain damage.



## Addressing Jurisdiction and Resource Issues

Tribal Healing to Wellness Courts must face a number of jurisdiction and resource issues which are often more complex and intractable than the issues faced by state drug courts. **The following are some of the most critical jurisdiction and resource issues:**

- 1. Lack of Criminal Jurisdiction over Non-Indians.** The United States Supreme Court has ruled that tribal courts do not have criminal jurisdiction over non-Indians (*Oliphant v. Suquamish Tribe*, 435 U.S. 313, 1978). This ruling greatly limits the ability of tribal justice systems to address criminal offenses involving alcohol or substance abuse which are committed by non-Indians living on Indian reservations, including non-Indian family members. Many Indian Nations, however, have developed alternative methods of handling these cases, including the use of civil court processing, civil forfeiture, and exclusion. Tribal Healing to Wellness Courts must also use these alternative methods in order to handle alcohol and drug abuse cases involving non-Indians.
- 2. Public Law 280.** Public Law 83-280 provided concurrent state jurisdiction over many criminal and civil actions on Indian reservations in selected states (that is, both state and tribal court may have jurisdiction). As a practical matter, it has also inhibited the development of tribal criminal justice systems on many reservations in Public Law 280 states. Consequently, many Indian Nations in Public Law 280 states face additional jurisdictional problems, including the necessity of processing criminal offenses involving alcohol and drug abuse as civil offenses and the risk that the offender may be subject to proceedings in both tribal and state court. These Public Law 280 issues can be addressed through strategies such as the development and enhancement of tribal criminal justice systems and improved coordination and cooperation between tribal and state court systems.
- 3. Sentencing Limitation in the Indian Civil Rights Act.** The Indian Civil Rights Act limits tribal court sentencing authority to “in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year or a fine of \$5,000 or both” (25 U.S.C. 1302(7)). This sentencing limitation significantly limits the coercive power of tribal courts, especially when it comes to requiring drug court participants to complete a phased treatment program which may last more than one year. (Note: The more serious criminal charges are generally handled in the federal court system.) Tribal Healing to Wellness Courts have been developing creative procedures such as suspended imposition of sentences, consecutive sentencing, and the reliance upon community pressures to ensure participant completion of the treatment program.
- 4. Historically Strained Relationship with State Courts and State Agencies.** Although it varies from reservation to reservation, many Tribal Healing to Wellness Courts have to address an historically strained relationship with nearby state courts and state agencies. Some of the Tribal Healing to Wellness Courts have already had success, however, in working together with state entities on drug court issues. For example, tribal drug courts have already successfully established cross deputization agreements with nearby state jurisdictions. There is even one community in which the tribal and state drug courts are being developed together in a closely coordinated manner.



- 5. Tribal Members Charged with Off-Reservation Crimes.** In many communities, especially those with a limited land base, tribal members are often charged with criminal offenses involving alcohol or drug abuse in off-reservation state court systems. Some Tribal Healing to Wellness Courts, however, have already had success in reaching agreements with the state courts which allow the Tribal Healing to Wellness Courts to handle these cases.
- 6. Lack of Funding for Tribal Justice Systems.** When Congress enacted the Indian Tribal Justice Act in 1993 (Public Law 103-176), it included specific findings that “tribal justice systems are inadequately funded, and that the lack of adequate funding impairs their operation”. The Act promised \$58 million in additional funding annually for tribal justice systems, but Congress has yet to appropriate funds under the Act. In fact, tribal justice systems currently receive less Bureau of Indian Affairs funding than they received in 1993 (approximately \$14 million annually for 300 tribal justice systems). The Drug Courts Program Office implementation grants, however, are providing significantly increased funding for Indian Nations who are implementing Tribal Healing to Wellness programs.
- 7. Lack of Staff, Resources, and often Jail Facilities.** This lack of funding also results in a substantial lack of staff and resources. Many tribal justice systems also have no access to jail facilities, or have to pay state jails at a daily rate to confine tribal offenders. Consequently, Tribal Healing to Wellness Courts must often rely on creative strategies, such as community pressure and sanctions, to encourage offenders to enroll in the program and to sanction non-compliance. The drug court approach, however, does provide a mechanism for making the most of the limited resources available in a community since it involves the realignment of resources in a more coordinated manner with more communication and accountability between agencies.
- 8. High Juvenile Population.** Many American Indian and Alaska Native communities have high juvenile populations, often more than 50% of the reservation population is under the age of 18. As a result, many Tribal Healing to Wellness Courts are choosing to establish juvenile drug courts first. These juvenile Tribal Healing to Wellness Courts are already having significant success in establishing innovative programs to address the specific needs of tribal juvenile participants.
- 9. Addressing Rural and Small Community Issues.** Most Tribal Healing to Wellness Courts are in small communities situated in isolated rural locations. Generally, these courts must address issues similar to other small and rural drug courts concerning lack of accessible resources and other increased barriers to coordination and collaboration. Strategies to address these issues are generally similar to those of other small and rural drug courts, including resource sharing and multiple roles for program staff.
- 10. Violent Offender Prohibition Problems.** Many of the jurisdiction and resource issues identified above work together to present uniquely difficult problems for Tribal Healing to Wellness Courts in complying with the prohibition on handling violent offenders with federal drug court funds. Many Tribal Healing to Wellness Courts find that most defendants with alcohol and substance abuse problems come to the court’s attention as the result of a violent act, especially domestic violence. Furthermore, tribal courts do not have the coercive authority of a state court system where many of the participants may be facing long jail terms if they fail to comply with the drug court program requirements. The Drug Courts Program Office, the National Association of Drug Court Professionals, and the Tribal Law and Policy Institute are working with other federal agencies to develop possible strategies to address these issues.



## Conclusion

The Justice Programs Office at American University reports that approximately 140,000 drug-using offenders have participated in drug court programs since their inception in 1989. In 1997, the Government Accounting Office (GAO) reported that 71% of all offenders entering drug courts since 1989 have either successfully completed their drug court program or are at the present time actively participating in the program. The Columbia University Center on Addiction and Substance Abuse (CASA, 1998) has concluded a definitive study of drug court research, evaluations, and literature, finding that drug courts provide the most comprehensive and effective control of the drug-using offenders' criminality and drug usage while under the court's jurisdiction.

Alcohol and/or substance abuse is involved in more than 90% of the criminal cases in most tribal courts. These cases have always been very difficult to handle. Often, the same people appear before the tribal court over and over again, and the court has very limited options and resources to effectively address these cases. Because the standard court process does not generally subject either the adult or juvenile substance abuser to intervention measures that provide the sanctions and services necessary to change their behavior, most of these people repeatedly cycle through the system.

The drug court concept, however, has proven effective in addressing these difficult drug and alcohol cases. The drug court approach is a flexible concept which is consistent with traditional Native justice concepts and methods. Moreover, it can readily be adapted to meet the specific needs of individual Native communities.

Tribal courts have only recently adapted and implemented the drug court concept, but the Tribal Healing to Wellness Courts are already achieving positive results. The dozen operation Tribal Healing to Wellness Courts are reporting successful results consistent with the state drug court findings. American University's OJP Drug Court Clearinghouse and Technical Assistant June 1999 which found that at least 259 individuals have already been enrolled in tribal drug court programs and at least 23 have already graduated from these programs (see attached survey for more findings).

In June 1999, the Drug Courts Program Office (DCPO) and the National Association of Drug Court Professionals (NADCP) identified three Tribal Mentor Court sites as follows (each of these tribal mentor courts is described in more detail in NADCP's publication *Tribal Mentor Courts*):

- \* Blackfeet Tribal Alternative Court (Browning, Montana)
- \* Poarch Creek Indians Drug Court Program (Atmore, Alabama)
- \* Fort Peck Community Wellness Program (Poplar, Montana)

With adequate support and assistance, the drug court concept is already proving to be an effective tool for addressing criminal justice issues in Indian Country.





## Where Do I Find More Information?

Marilyn M. Roberts, Director

Lori Sherrod, Program Officer

Dionne Johnson, Program Officer

### **Drug Courts Program Office (DCPO)**

Office of Justice Programs

U. S. Department of Justice

810 Seventh Street N.W.

Washington D. C. 20531

Telephone: 202/616-5001

Fax: 202/514-6452

Website - <http://www.ojp.usdoj.gov/dcpo>

Jerry Gardner, Executive Director

Pat Sekaquaptewa, Associate Director

### **Tribal Law and Policy Institute (TLPI)**

8235 Santa Monica Blvd., Suite 211

West Hollywood, CA 90046

Telephone: 323/650-5467

Fax: 323/650-8149

Website - <http://www.tribal-institute.org>

Janna Cooper Walker, Program Manager

### **National Association of Drug Court Professionals (NADCP)**

901 N. Pitt Street, Suite 370

Alexandria, Virginia 22314

Telephone: 703/706-0576

Fax: 703/706-0577

Website - <http://drugcourt.org>

Caroline S. Cooper, Director

### **OJP Drug Court Clearinghouse & Technical Assistance Project**

American University, Brandywine 660

4400 Massachusetts Avenue, N.W.

Washington, D.C. 20016-8159

Telephone: 202/885-2875

Fax: 202/885-2885

Website - <http://www.american.edu/justice>

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## Appendix A: Tribal Healing to Wellness Courts

<b>Total Native American Jurisdictions:</b>	<b>45</b>
<b>Total Operational Tribal Drug Courts:</b>	<b>13</b>

### Alabama

1. Poarch Band of Creek Indians, Atmore - 97 Planning, 98 Implementation\* (Mentor Court)

### Alaska

1. Chevak Traditional Council, Chevak - 97 Implementation
2. Organized Village of Kwethluk, Kwethluk - 97 Implementation
3. Native Village of Napaskiak, Napaskiak - 99 Planning

### Arizona

1. Salt River Pima-Maricopa Indian Community, Scottsdale - 95 Planning, 99 Implementation
2. Hualapai Tribe, Peach Springs - 97 Planning, 99 Implementation\*
3. Gila River Indian Community, Sacaton - 97 Planning
4. Pascua Yaqui Tribe, Tucson - 97 Implementation, 99 Continuation\*
5. Yavapai-Apache Nation, Camp Verde - 98 Planning
6. Navajo Nation, Window Rock - 98 Implementation
7. Havasupai Tribe, Supai - 99 Planning
8. Kaibab-Paiute Tribe, Pipe Springs

### Idaho

1. Shoshone Bannock Tribes, Fort Hall - 97 Implementation\*

### Maine

1. Passamaquoddy Tribe, Indian Township - 97 Implementation
2. Penobscot Nation, Old Town - 98 Planning

### Michigan

1. Sault Saint Marie, Sault Saint Marie - 98 Planning

### Montana

1. Blackfeet Tribe, Browning - 97 Planning, 98 Implementation\* (Mentor Court)
2. Fort Belknap Community Council, Harlem - 97 Implementation\*
3. Fort Peck Assiniboine & Sioux Tribal Court, Popular - 97 Implementation, 99 Continuation\* (Mentor Court)
4. Northern Cheyenne Tribe, Cheyenne - 98 Planning

### Nebraska

1. Omaha Tribe of Nebraska, Marcy - 98 Planning

### Nevada

1. Duckwater Shoshone Tribe, Duckwater - 99 Planning\*
2. Pyramid Lake Paiute Tribe, Nixon - 99 Planning



#### New Mexico

1. Pueblo of Taos, Taos - 98 Implementation
2. Mescalero-Apache Tribe, Mescalero - 98 Planning
3. San Juan Pueblo Tribe, San Juan - 98 Planning

#### North Carolina

1. Eastern Band of Cherokee, Cherokee - 97 Planning, 98 Implementation\*

#### North Dakota

1. Turtle Mountain Band of the Chippewa - 97 Planning, 98 Planning, 98 Implementation\*
2. Spirit Lake Sioux Tribe, Spirit Lake - 98 Planning

#### Oklahoma

1. Muscogee (Creek) Nation, Okmulgee - 95 Planning, 98 Implementation
2. Iowa Tribe of Oklahoma, Perkins - 98 Planning
3. Citizen Band Potawatomi Tribe, Shawnee - 99 Planning

#### Oregon

1. Confederated Tribes of the Umatilla Indian Reservation, Pendleton - Planning 97

#### South Dakota

1. Flandreau Santee Sioux Tribe, Flandreau - 97 Planning, 99 Implementation
2. Lower Brule Sioux Tribe, Lower Brule - 97 Planning
3. Oglala Sioux Tribal Public Safety, Pine Ridge - 97 Planning
4. Sisseton Wahpeton Sioux Tribal Court, Agency Village - 97 Implementation\*
5. Yankton Sioux Tribal Court, Wagner - 97 Implementation
6. Rosebud Sioux Tribe, Rosebud - 98 Planning

#### Texas

1. Ysleta Del Sur Pueblo, El Paso - 99 Planning

#### Washington

1. Makah Tribal Council, Neah Bay - 97 Planning, 98 Implementation\*
2. Spokane Tribe of Washington - 99 Implementation\*
3. Yakama Nation, Toppenish - 99 Planning

#### Wisconsin

1. Stockbridge-Munsee Tribe, Bowler - 98 Planning
2. Menominee Indian Tribe of Wisconsin, Keshena - 98 Planning

\* Indicates Operational Drug Court



## **Appendix B: Tribal Advisory Committee (TAC) for Tribal Healing to Wellness Courts**

Donna Arch, Court Counselor, Eastern Band of Cherokee Indians	North Carolina
Caroline Cooper, Director, Drug Court Clearinghouse, American University	Washington, D.C.
Brenda C. Desmond, Special Master, Missoula County Judicial District	Montana
James Edwards, Caseworker/Consultant, Cook County Social Casework Department	Illinois
Reba Elders, Treatment Specialist, Eastern Band of Cherokee Indians	North Carolina
Hon. Joseph Flies-Away, Associate Judge, Hualapai Tribal Court	Arizona
Herman (Chico) Gallegos, Defense Attorney, Las Cruces Juvenile Drug Court	New Mexico
Jerry Gardner, Executive Director, Tribal Law and Policy Institute	California
Hon. Ronald E. Johnny, Chief Judge, Duckwater Shoshone Tribal Court	Nevada
Dionne Johnson, Program Manager, Drug Courts Program Office	Washington, D.C.
Hon. B.J. Jones, Chief Judge, Sisseton-Wahpeton Tribal Court	North Dakota
Kimberly Martus, Tribal Justice Consultant, Chevak Tribal Drug Court	Alaska
Ada Pecos Melton, President, American Indian Development Associates	New Mexico
Edward Reina, Chief of Polic, Reno-Sparks Indian Community	Nevada
Marilyn Roberts, Director, Drug Courts Program Office	Washington, D.C.
Dr. Kenneth Robinson, President, Correctional Counseling, Inc.	Tennessee
Pat Sekaquaptewa, Associate Director, Tribal Law and Policy Institute	California
Lori Sherrod, Program Manager, Drug Courts Program Office	Washington, D.C.
Hon. Don Sollars, Tribal Judge Emeritus	Montana
Susan Spotted Bear, Program Director, Blackfeet Tribal Alternative Court	Montana
Hon. Irene Toledo, District Judge, Navajo District Court	New Mexico
Edward Vance, Tribal Court Prosecutor	Arizona
Rita Weeks, Court Administrator, Fort Peck Tribal Court	Montana
Wayne Weston, Treatment Specialist, Cangleska	South Dakota
Donna White, Court Administrator, Poarch Creek Tribal Court	Alabama
Hon. Earnest White, Judge, Poarch Creek Tribal Court	Alabama
L Winnemucca, Substance Abuse Counselor, 16th Judicial Circuit Court	Florida
Wilbur Woodis, Data Manager/Counselor, Indian Health Service	New Mexico.