Tribal Healing to Wellness Court Series

Treatment Guidelines, 2nd Edition

TRIBAL HEALING TO WELLNESS COURTS: TREATMENT GUIDELINES, 2ND EDITION

November 2017

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A product of the

Tribal Law and Policy Institute
8235 Santa Monica Blvd., Suite 211
West Hollywood, CA 90046

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This project was supported by Grant No. 2016-DC-BX-K006, awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of Office of Justice Programs, which also includes Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the SMART Office, and the Office for Victims of Crime. Points of view or opinions in this document are those of the authors and do not necessarily reflect the views of the U.S. Department of Justice.

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Tribal Healing to Wellness Court Publication Series

With support from the Bureau of Justice Assistance (BJA), the Tribal Law and Policy Institute (TLPI) has developed the following additional Tribal Healing to Wellness Court–specific resource publications to assist tribal governments and tribal justice systems in developing, enhancing, and sustaining Tribal Healing to Wellness Courts. These resources are available for free download at home.tlpi.org, the Tribal Court Clearinghouse website (www.tlpi.org), and TLPI's website devoted solely to Healing to Wellness Courts: www.WellnessCourts.org.

Tribal Healing to Wellness Courts: The Key Components, 2nd ed. **(2014)**
This publication (*initially published in 2003; updated in 2014*) provides key components and recommended practices for tribal justice systems to consider as they design, develop, and implement a Tribal Healing to Wellness Court that meets the needs of their community. Organized around ten key components adapted for tribes, this publication describes the basic elements of a Healing to Wellness Court. The purpose of each component is explained, followed by lessons learned, and examples of real-world applications.

Overview of Tribal Healing to Wellness Courts **(2014)**
This publication (*initially published in 1999; second edition in 2002; third edition in 2014)* provides an overview of Tribal Healing to Wellness Courts. This overview discusses the history of the drug court movement and the adaptation of the drug court model for tribal justice systems. It provides an overview of some of the critical issues and challenges faced by Tribal Healing to Wellness Courts, including incorporating tribal custom and tradition, addressing the high volume of alcohol abuse cases, and addressing jurisdictional and resource limitations.

Tribal Healing to Wellness Courts: The Judicial Bench Book **(2016)**
The role of the Healing to Wellness Court differs dramatically from the adversarial trial court judge, both in mechanics and in philosophy. In Wellness Court, the judge serves as the captain or the coach of the team, focused on healing and collaboration. This publication orients and serves the Wellness Court judge while on the bench. The first section provides examples of key component performance in relation to component principles. The second section overviews key Wellness Court processes and procedures. Both sections include Bench Cards intended to serve as tools that package relevant information in an abbreviated format.

Tribal Healing to Wellness Court: The Policies and Procedures Guide **(2015)**
The policies and procedures manual is the quintessential tool for the Healing to Wellness Court, documenting the structure and spirit of the court. This publication provides an overview of the key considerations for what should be included in the manual, including team roles and responsibilities, phase systems, alcohol and drug testing, and statutory provisions. Rather than detailing one "model" manual, this publication provides excerpts from more than fifteen operational manuals to preview the level of legal and cultural diversity that is possible within a Healing to Wellness Court.

***Tribal Healing to Wellness Courts: Program Development Guide* (2002)**
This publication provides step-by-step recommendations for the design, development, and implementation of Tribal Healing to Wellness Court programs from a practical standpoint. It is designed to assist steering committees and planning groups as they (1) use team-based approaches; (2) gain knowledge of Healing to Wellness Court concepts; (3) incorporate the ten key components; (4) help establish policies and procedures suitable to the needs of the tribal community; (5) guide the court to integrate available resources; (6) develop interagency agreements; (7) incorporate management information systems to track participants and services; and (8) identify possible problem areas.

***Perceptions of Methamphetamine Use in Three Western Tribal Communities: Implications for Child Abuse in Indian Country* (2007)**
This publication explores the increasing concerns raised by the emerging methamphetamine epidemic in Indian country. Professionals from three tribal communities detail their perceptions of meth use and implications for child abuse in the communities in which they work.

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I. Preface

A Tribal Healing to Wellness Court is not simply a tribal court that handles alcohol or other drug abuse cases. It is rather, a component of the tribal justice system that incorporates and adapts the Wellness Court concept to meet the specific substance abuse needs of each tribal community. Standard treatment, without the collaboration of the Wellness Court, has not worked well for high-risk/high-need participants. Prosecutors have not been able to "jail" into recovery. Probation officers have not been able to "drug test" into recovery. Judges have not been able to "lecture" into recovery. Treatment providers have not been able to "guide" into recovery alone. The Wellness Court provides an opportunity for each Native community to address the devastation of alcohol or other drug abuse by removing these silos, establishing more structure and a higher level of accountability for offenders through ongoing judicial supervision, a system of comprehensive drug testing, treatment services, immediate incentives and sanctions, team-based case management, and community support. Importantly, a Wellness Court shifts the model from adversarial and case based to healing, collaborative, and person based.

Healing to Wellness Courts face several unique issues and challenges not generally encountered by state drug court systems. These issues have included the need for culturally responsive screenings, assessments, and treatments. Consequently, the development of Healing to Wellness Courts has required special strategies that have emerged during program planning, implementation, and operation. Wellness Courts are continually adapting to meet the needs of their target populations and communities. They are not static programs but, rather, continually fine-tuning policies, procedures, practices, and services to better achieve their mission.

Healing to Wellness Courts, in effect, contribute to the ongoing community and nation-building process of indigenous tribal governments. As each Native Nation can only be as strong and steadfast as its citizens and families, Healing to Wellness Courts help to set misguided individuals back on track, on to a healing to wellness journey. Each tribal community and nation must define and describe the nature of this healing journey. Its direction and pathway must be guided by each Indian nation's culture, tradition, common practices, and vision.

Jerry Gardner, JD
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II. Introduction

Tribal peoples have long considered disputes to be a symptom of spiritual as well as physical illness, and have well understood the intimate connection between dispute resolution and the need for physical and spiritual healing. Traditional dispute-resolution authorities and traditional healers have consistently worked together to seek to address the underlying causes of disputes and develop physical, spiritual, and social remedies to heal these wounds and to right the relationships of the individuals involved. Their goal has been to heal both the immediate ailments leading to the disputes and the underlying relationships of the disputing parties, so that members of families, clans, bands, and villages could live together in healthy, productive ways.

With the development of "modern" tribal court systems during the past century, designed primarily within Western models, the dispute-resolution process in tribal communities has been administered primarily by law enforcement and justice system officials. This process has become separated from the provision of healing services offered by public, mental and behavioral health, and social service agencies. On the surface, this separation of function may ease the complex modern problems that confront tribal court officials. However, holistically, this separation of function has made it very difficult to provide the physical and spiritual healing that is fundamental to tribal tradition.

For persons committing offenses resulting from their abuse of alcohol and/or other drugs, the capacity of the tribal court system to bring about this physical and spiritual healing is critical. Many tribes have therefore begun the process of annexing to their Western model tribal court systems a range of "treatment" services that combines traditional healing with Western treatment concepts. These "Healing to Wellness Courts"[1] are an outgrowth of the developing drug court programs that have developed in many state courts.

Just as tribal communities have recognized the importance of healing in addressing alcohol and other drug problems of the community, so, too, have state courts incorporated healing practices in the development of drug court programs. During the past two decades, state court judges have developed drug court dockets that integrate substance abuse treatment and complementary services with the processing of drug-related offenses resulting from defendants' substance abuse.[2] The drug court program, which generally lasts a year or longer, is characterized by:

1) Identifying eligible defendants immediately upon arrest;
2) Referring them to immediate treatment services;
3) Monitoring their use of alcohol and other drugs through frequent (weekly or more

[1] *See* Joseph Flies-Away, Carrie Garrow, and Pat Sekaquaptewa, *Tribal Healing to Wellness Courts: The Key Components*, 2nd ed. (Tribal Law and Policy Institute, 2014).

[2] For more about drug court best practices, *see Drug Court Best Practice Standards, Volumes I and II* (National Association of Drug Court Professionals, 2013–14).

often), random drug tests;
4) Supervising their progress in treatment through frequent (often weekly) appearances before the drug court judge; and
5) Providing recovery support services after leaving the drug court program.[3]

Drug courts rely primarily on treatment services provided in an intensive outpatient setting, with access to limited residential treatment and withdrawal management, as needed.[4] The goal of drug courts is to reduce criminal activity by promoting the recovery of the participants.[5] Therefore, drug court programs develop a range of strategies and services and a system of sanctions and incentives to support the recovery process as well as address relapse situations that may occur.

In addition to substantially reducing recidivism among alcohol- and drug-abusing defendants, the drug court experience in state courts has yielded effective strategies for substance abuse treatment that were not previously recognized. These have included:

1) The potential effectiveness of intensive outpatient services for individuals suffering from substance abuse—especially chronic users with high risk/high need;
2) The critical role played by frequent, random drug testing in providing immediate, objective information regarding the degree and extent to which participants use alcohol and other drugs while in the program and are therefore complying with program requirements;
3) The importance of complementary services to address needs that participants may likely have tied into their drug usage (e.g., housing, jobs, education) and that must be resolved to promote their long-term recovery; and
4) The significant role in which persons in authority (e.g., the drug court judge, elders, community leaders) can play in recognizing and promoting participants' recovery efforts.

The drug court experience has also highlighted the physiological and biological aspects of addiction and the recognition that substance abuse is a complex, chronic illness that requires treatment; it is not simply a moral failing that the abuser can remedy themself.

Healing to Wellness Courts reflect the application of Western-style drug court approaches to traditional Native dispute resolution and healing processes. Since 1995, tribal nations have implemented more than 120 Healing to Wellness Courts. While some of these programs focus on adult offenders, many focus on juveniles or families or a combination of adults and juveniles. The development of these tribal justice/healing programs is a complex undertaking, requiring

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[3] Id.

[4] Jeffrey N. Kushner, Roger H. Peters, and Caroline S. Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* 4 (Bureau of Justice Assistance Drug Court Technical Assistance Project, American University, April 2014).

[5] SAMHSA's working definition of recovery: "A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential." "SAMHSA's Working Definition of Recovery: 10 Guiding Principles of Recovery," Substance Abuse and Mental Health Services Administration, PEP12-RECDEF (2012).

the efforts of tribal leaders, justice, substance abuse treatment, public health and social services professionals, and many others working together.

This guideline has been developed to provide tribal communities with an overview of Western substance abuse treatment strategies that have been developed by state drug court programs over the past several years and that tribal programs might consider adapting, along with traditional healing practices. This guideline draws upon state drug court standards and best practices, and the experiences of hundreds of state adult and juvenile drug court programs, operating in various environments and serving a wide range of individuals addicted to alcohol and/or other drugs.

The term *substance abuse* is used to refer to both substance abuse and substance dependence. The term refers to any excessive use of addictive substances, including alcohol as well as other substances of abuse. The term generally refers to all varieties of substance use disorder.[6]

[6] *Diagnostic and Statistical Manual of Mental Disorders*, fifth edition (DSM-5; American Psychiatric Association, 2013).

A. Healing to Wellness Courts: An Overview

Healing to Wellness Courts are special dockets established within the general tribal court criminal or civil process to handle cases involving individuals who have committed offenses resulting from their abuse of alcohol or other substances. Triggering offenses could include possession or other nonviolent offenses that have historically tended to be associated with the use of alcohol or other drugs.[7] Alternatively, in a Family Wellness Court setting, a triggering event may be the removal of children from the home due to a substance abuse issue. Generally, individuals participating in Healing to Wellness Court programs have long histories of substance abuse and resulting offenses. These participants are generally high risk, high need, meaning that the risk of severe health issues and criminality are high, and the need for supervision and treatment are also high. Even those Healing to Wellness Court programs that focus on juveniles find that the adolescent participants have been using alcohol or other chemical substances for a substantial period prior to entering the program.

Healing to Wellness Court dockets differ from the tribal court process in the following ways:

- Participants are required to participate in a multi-phased and individually tailored substance abuse treatment program, often requiring a year or more to complete, rather than simply have their cases disposed of with a sentence of incarceration or referral to probation.
- The judge, elders, or other community leaders provide ongoing supervision of the participant while he or she is involved in the Healing to Wellness Court and treatment program, openly praising the participant for progressing as well as promptly imposing sanctions (e.g., several days in jail, a curfew requirement) in instances of noncompliance.
- Additional services are provided to the participant to address other needs (e.g., housing, education, job) he or she may need to fully recover and rejoin the community.
- Successful completion of the program generally results in some benefit to the participant in terms of the disposition of their charge or case (e.g., dismissal of the charge, reduction in probation period).

[7] E.g., alcohol-abusing juveniles may frequently be charged with disorderly conduct but, because the charge is related to their alcohol use, would be considered an eligible charge to be targeted by the Healing to Wellness Court.

The Tribal 10 Key Components

The Tribal 10 Key Components are ten basic operational characteristics that all Tribal Healing to Wellness Courts should share as benchmarks for performance. See *Tribal Healing to Wellness Courts: The Key Components*[8] for an in-depth guide to the components.

The Tribal 10 Key Components are not intended to be autonomous checklist items, but rather are core elements of a Healing to Wellness Court that, when implemented properly, will frequently interrelate.

Key Component #1: Individual and Community Healing Focus
Tribal Healing to Wellness Court brings together alcohol and drug treatment, community healing resources, and the tribal justice process by using a team approach to achieve the physical and spiritual healing of the individual participant, and to promote Native Nation building and the well-being of the community.

Key Component #2: Referral Points and Legal Process
Participants enter Tribal Healing to Wellness Court through various referral points and legal processes that promote tribal sovereignty and the participant's due (fair) process rights.

Key Component #3: Screening and Eligibility
Eligible court-involved substance-abusing parents, guardians, juveniles, and adults are identified early through legal and clinical screening for eligibility and are promptly placed into the Tribal Healing to Wellness Court.

Key Component #4: Treatment and Rehabilitation
Tribal Healing to Wellness Court provides access to holistic, structured, and phased alcohol and drug abuse treatment and rehabilitation services that incorporate culture and tradition.

Key Component #5: Intensive Supervision
Tribal Healing to Wellness Court participants are monitored through intensive supervision that includes frequent and random testing for alcohol and drug use, while participants and their families benefit from effective team-based case management.

Key Component #6: Incentives and Sanctions
Progressive rewards (or incentives) and consequences (or sanctions) are used to encourage participant compliance with the Tribal Healing to Wellness Court requirements.

Key Component #7: Judicial Interaction
Ongoing involvement of a Tribal Healing to Wellness Court judge with the Tribal

[8] Flies-Away, Garrow, and Sekaquaptewa, *Tribal Healing to Wellness Courts: The Key Components*.

Wellness Court team and staffing, and ongoing Tribal Wellness Court judge interaction with each participant are essential.

Key Component #8: Monitoring and Evaluation
Process measurement, performance measurement, and evaluation are tools used to monitor and evaluate the achievement of program goals, identify needed improvements to the Tribal Healing to Wellness Court and to the tribal court process, determine participant progress, and provide information to governing bodies, interested community groups, and funding sources.

Key Component #9: Continuing Interdisciplinary and Community Education
Continuing interdisciplinary and community education promotes effective Tribal Healing to Wellness Court planning, implementation, and operation.

Key Component #10: Team Interaction
The development and maintenance of ongoing commitments, communication, coordination, and cooperation among Tribal Healing to Wellness Court team members, service providers and payers, the community and relevant organizations, including the use of formal written procedures and agreements, are critical for Tribal Wellness Court success.

B. The Healing to Wellness Court: Principal Program Elements

Healing to Wellness Courts are special dockets within the overall tribal court case process. Special procedures need to be instituted to identify eligible participants as soon as possible after their arrest or triggering event, and develop an appropriate plan for their treatment and other services. The following is a brief overview of the program elements that need to be incorporated in a Wellness Court program. These elements and their application to treatment services are discussed in greater detail in the section "Developing a Wellness Court Treatment Program."

Eligibility Criteria

Prior to instituting a Wellness Court, leaders of the local justice system, social services, treatment services, and the community need to work together to define the eligibility criteria for the program. Eligibility criteria generally relate to (1) legal eligibility (e.g., nature of the current charge or dependency case, prior criminal history of the defendant), and (2) clinical eligibility (e.g., nature of alcohol and substance abuse treatment needed). For an individual to be eligible, they must fit both the legal and clinical criteria for admission.

Healing to Wellness Courts target a particular population because it's that high-risk high-need population that will most benefit from the structured supervision and support of the program.[9] High-risk, high-need participants are those with a high criminogenic risk of reoffending and a high prognostic threat, or need, in regard to the disease of addiction.[10] Low-risk and low-need offenders tend to perform just as well in less intensive programs, such as standard probation or pretrial diversion. These findings suggest that, when possible, Wellness Courts should attempt to target more serious types of drug offenders who can be safely managed in the community.[11]

There are numerous other reasons for why tribes have chosen not to admit every person in need of alcohol or other drug treatment to the Wellness Court. For example, the individual may require longer-term residential treatment not available through the Wellness Court, which is primarily based on out-patient treatment. There may be public safety considerations for individuals that have been violent or are deemed to be a danger in the community. The individual may also have an outstanding warrant from a state court that may make it unlikely that he or she is currently "available" to participate in the Wellness Court program. Or, a candidate could potentially be a drug abuser and not a true addict. Therefore, tribes use an objective eligibility and exclusion criteria, which is specified in writing, communicated to all referral points, and applied objectively.[12]

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[9] *Drug Court Best Practice Standards, Volume I* at 5. Douglas B. Marlowe and Hon. William G. Meyer (Ret.), eds., *The Drug Court Judicial Bench Book* (National Drug Court Institute, 2011), 32.

[10] *Criminogenic* refers to factors associated with the likelihood of the individual to relapse and reoffend. Kushner, Peters, and Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* at 5.

[11] Marlowe and Meyer, eds., *The Drug Court Judicial Bench Book* at 32.

[12] *Drug Court Best Practice Standards, Volume I* at 5.

Legal Screening

Tribal courts use a variety of procedures to identify potentially eligible Healing to Wellness Court participants. The following are four common approaches:

1) A designated justice or treatment professional identifies an alcohol- or substance-abusing individual with pending criminal charges. A petition is then filled out requesting the judge to admit the individual to the Wellness Court before charges are formally filed. If the individual enters the Wellness Court program and successfully completes treatment, charges are not filed.
2) The prosecutor files charges in criminal court with prosecution then deferred if the individual agrees to enter and complete the Wellness Court program.
3) The prosecutor files formal charges, with the defendant entering a plea agreement in which he or she admits the offense; the prosecutor then requests the court to defer, or, in the alternative, stay entry of the plea to permit the individual an opportunity to complete the Wellness Court. If they successfully complete the program the charges may be dismissed.
4) A participant is referred from a neighboring municipal or county jurisdiction, in which their sentence is stayed dependent upon completion of Wellness Court or Wellness Court is a part of their probation.

Tribes that receive federal dollars may be subject to limitations regarding the inclusion of violent offenders and where aggravated circumstances are present in child welfare cases.

Clinical Screening and Assessment

Once an individual is deemed eligible for the Healing to Wellness Court from a legal perspective, the individual will be clinically screened and then assessed using a validated eligibility assessment tool to determine the nature of their treatment needs. This assessment will determine what substances he or she is using; the severity of their substance abuse problems; whether the individual also has mental health needs; and whether the individual requires immediate medical, dental, or other attention.

Once an individual's treatment needs are determined, treatment processionals will design an individualized treatment plan for the individual to follow for the duration of the Wellness Court program—usually twelve to eighteen months in length. The plan also identifies the nature and extent of treatment and other services that need to be provided.

Treatment

Treatment services should be provided as soon as possible following the individual's arrest or triggering referral event—within a few days, if possible. Wellness Court treatment services are primarily out-patient, but short-term residential detox or other services may be needed from time to time to stabilize an individual or to respond to relapse.

Many Wellness Courts and state drug court programs use a multi-phased treatment approach, beginning with very frequent contacts (four to five or more weekly) and gradually decreasing as the individual progresses through the treatment program. Treatment providers provide a continuum of evidence-based interventions in which each of the treatment phases has clearly defined requirements and milestones that the individual must meet before progressing to a subsequent phase. Substance abuse treatment is not provided to reward desired behaviors, punish infractions, or serve other non-clinically indicated goals.[13]

Complementary Support Services

The drug court experience has highlighted the importance of augmenting substance abuse treatment services with a range of complementary support services to address other needs the participant may present. These services may include public health services to address medical needs; housing; education; vocational training; parenting training; anger management; criminal thinking interventions; overdose prevention and reversal; and other services that will promote the individual's recovery and rehabilitation over the long term.

Family Involvement

Family involvement in the Healing to Wellness Court program of services is critical because the substance abuse of one family member invariably affects all family members. Similarly, recovery and well-being occurs in the context of families. Education and support groups for family members of participants—as well as specific counseling assistance to aid them in constructively supporting the family member's participation in the Wellness Court program—are important components of most Wellness Court programs.

Case Management

Case management (e.g., oversight of the treatment and other services provided to each Wellness Court participant, with referrals to service providers, as necessary throughout the period of program participation) is a critical, yet often neglected component of the Healing to Wellness Court. The case manager maintains ongoing contact with the participant to identify the participant's current needs, as well as needs that may arise during program participation. The case manager also monitors the participant's progress in treatment; arranges for ancillary

[13] Ibid. at 38.

support services as needed; and serves as a central point of contact for coordinating and monitoring the services provided to each participant and their progress in the Wellness Court. Importantly, case management is conducted by both a designated case manager and the Wellness Court team through every status hearing.

Drug Testing

Frequent and random testing of each participant for alcohol and other drug use is a cornerstone of the Healing to Wellness Court program. Participants are generally tested through the analysis of breath and urine on a weekly basis, with more frequent testing occurring during the initial phases of participation. "Drug and alcohol testing provides an accurate, timely, and comprehensive assessment of unauthorized substance use throughout participants' enrollment in the Drug Court."[14] But, while drug testing is an important tool, almost any drug test can be compromised and there are many substances that will not show up in drug tests. A participant that is missing meetings, not making office visits, or missing community service, is potentially also indicative of using or relapsing and simply not getting caught. Treatment program components are just as important as a passed or failed drug test.

Prehearing Staffing

To ensure that the judge has current, accurate information about each participant who appears at the status hearing, the judge meets with the Healing to Wellness Court team prior to each hearing. At that time, updated information on the progress of each participant is provided and any special issues that need to be addressed at the hearing are discussed. Compliance with program requirements, even minimal compliance for participants in the early phases, is acknowledged with an incentive. If an individual has not been complying with the Wellness Court program requirements, the team will frequently make a recommendation to the judge regarding a proposed sanction or other response. The judge, however, makes the ultimate decision regarding the action to be taken.

Status Hearings

Drug courts and Healing to Wellness Courts are most easily distinguished from their adversarial counterparts by the hearing. Frequent court status hearings, generally every week but at least every two weeks during the first phase,[15] review each participant's progress—or lack thereof—in the treatment program. The status hearing provides an opportunity for the judge to monitor the participant's compliance with program conditions, give recognition to their efforts to recover, and impose immediate sanctions for noncompliance. The status hearings are not designed to be adversarial fact-finding proceedings. Rather they are mechanisms by which the court can hold participants (as well as service providers) accountable during the participant's

[14] *Drug Court Best Practice Standards, Volume II* at 26.
[15] *Drug Court Best Practice Standards, Volume I* at 21.

healing process. At a status hearing, participants have the opportunity to tell the judge about any problems, progress they are making, and/or situations that may have triggered relapse. The judge then speaks with each participant about their concerns and current situation. The judge also makes a special effort to reward positive steps the individual has taken and if necessary to address noncompliance with sanctions. Judges who spend three or more minutes with the participant during status hearings have greater programmatic outcome savings than those courts where judges spent less time.[16] Generally, Wellness Court program officials formally agree that admissions made by a participant during the status hearing will not be used for subsequent prosecution. This agreement is meant to encourage candor in the judge-participant exchange.

Incentives and Sanctions

Immediacy and consistency of response to a participant's progress, (e.g., "incentives") as well as noncompliance (e.g., "sanctions"), is a key component of the Healing to Wellness Court program. Thoughtful and consistent application of incentives and sanctions is critical for effective behavior modification. Participants should receive advanced notice for all possible incentives and sanctions, and should be provided an opportunity to be heard prior to the imposition of a sanction. While in the adversarial process response to a defendant's relapse, might be cause for imposition of a suspended period of incarceration. However, a typical response to relapse in the Wellness Court might be detention for several days and then resumption of program participation. More frequent drug testing and court appearances might also be required. Typical incentives for progress—for example, thirty consecutive negative drug tests—in the Wellness Court might be praise from the judge and less frequent required court appearances. In the adversarial system, such a period of abstinence would not be recognized.

Incentives and sanctions should be progressive, and relate to the participant's distal and proximal goals. Distal goals are long-term goals that are not easily attained. Proximal goals are short-term achievable goals. When a participant completes a distal goal, they should receive a high magnitude reward. When a participant does not complete a distal goal, the sanction should be of a low magnitude. For example, in Phase I complete sobriety is a distal goal. If a participant uses drugs or alcohol, then the sanction should be low magnitude. However, if they stay sober (complete a distal goal) the praise and reward should be high magnitude. Alternatively, in Phase I attending meetings are a proximal goal. Failure to attend, or attending inconsistently, should be a higher magnitude.[17]

[16] Shannon M. Carey, Michael W. Finigan, and Kimberly Pukstas, *Exploring the Key Components of Drug Courts: A Comparative Study of Eighteen Adult Drug Courts on Practices, Outcomes and Costs* (NPC Research, 2008), 9.
[17] *See* Kushner, Peters, and Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* at 37.

Data Collection and Reporting

An important function of the Healing to Wellness Court is maintaining each participant's current and comprehensive information, including their treatment history; alcohol and drug test results; special services provided; demographic information; education; job history, and so forth. This information is also the foundation for evaluating the program and determining what types of services are effective, as well as determining what aspects of program operations need to be improved.

C. The Healing to Wellness Court Team

Unlike the adversarial process in which the prosecutor, defense counsel, probation officer, and treatment provider, work independently and from their own agency perspective, the Healing to Wellness Court process relies on these professionals coming together as a "team." Their shared goal is the recovery of each participant and the long-term wellness of the participants, their families, the community, and the tribe. Wellness Court team members should meet on a regular basis to review program operations; develop and/or fine-tune policies and procedures, as appropriate; and review problems that individual participants may have.

At a minimum, the Wellness Court team should include:

- Tribal judge (or panel of judges)
- Prosecutor (presenting officer)
- Defense counselor (advocate)
- Alcohol/substance abuse counselor
- Coordinator
- Case manager
- Probation officer
- Law enforcement representative
- Child welfare representative (if applicable)

In addition, the team may also include:

- Traditional healers
- Tribal elders
- Other community leader
- Housing
- Mental health provider
- School/vocational training representative
- Youth workers

The following is a brief description of core team members' role in the Healing to Wellness Court. For more on team member roles, see *The Core Competencies Guide*.[18]

Tribal Judge

The tribal judge is the central figure of the team, using their leadership role to develop and guide the court.[19] The judge is concerned with upholding the law, promoting public safety and

[18] National Drug Court Institute, *The Core Competencies Guide: Adult DCPI Trainings*.

[19] For more on the role of the Healing to Wellness Court Judge, *see* Joseph Flies-Away, *Tribal Healing to Wellness Courts: The Judicial Bench Book* (Tribal Law and Policy Institute, 2016). *Also see* Marlowe and Meyer, eds., *The Drug*

community protection, as well as promoting sobriety and protecting the due process rights of the Wellness Court participants. The judge is knowledgeable of addiction and pharmacology, and of gender, age, and cultural issues that may impact the participant's success. The judge may impose sentences of incarceration, probation, and/or community service; impose sanctions and/or incentives; and provide overall direction to the participants in their recovery process. The judge fosters a collaborative spirit, encouraging the contribution of each member of the team. However, the judge is the final decision maker regarding participants' entry, progression, graduation, and/or termination from the program.

Wellness Court Coordinator

The Wellness Court coordinator looks to the "big picture," coordinating the efforts of the court, the treatment provider(s), and other members of the team. The coordinator serves as a liaison with other agencies and community organizations. Frequently, the coordinator is responsible for documenting program activities and accomplishments, supervising data collection for program evaluation, managing budgetary concerns of the Wellness Court, and submitting grant applications for program funding.

Case Manager

Where the coordinator is big picture, the case manager directly assists participants with the details.[20] The case manager ensures that a participant obtains all the services necessary for their recovery. In addition to substance abuse treatment services, these may include educational, vocational, housing, parenting, medical, and other services. The case manager also monitors the participant's progress in treatment. They notify the team of any issues that may warrant a change in the treatment plan and discusses issues that the treatment provider may not have noted. Not all programs have the resources to fund this position. When there is no funding available, the functions of the case manager are shared among team members.

Prosecutor

Prosecutors are charged with representing the public-safety interests of the tribe and community. The prosecutor serves as the "gate keeper," identifying potential participants based on their triggering charge or conviction and prior criminal histories. Prosecutors participate in team staffings and hearings, and advocate for incentives and/or sanctions for participants. Once a participant graduates or is terminated, the prosecutor initiates the necessary legal repercussions.

Court Judicial Bench Book; and Kushner, Peters, and Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services*.

[20] For more on the role of case manager in drug court, *see* Randy Monchick, Anna Scheyett, and Jane Pfeifer, *Drug Court Case Management: Role, Function, and Utility* (NDCI Monograph Series 7, 2006).

Defense Counselor

The defense counselor advises their client of their legal rights and the relative merits of entering the Healing to Wellness Court program versus disposing of the case through the adversarial tribal court process.[21] The defense counselor ensures that participants understand the program's requirements and legal consequences for noncompliance. The defense counselor ensures that participants' due process rights are maintained throughout the period of program participation, and advocates for fair and equal treatment of a participant. But like other team members, the defense counselor participates in staffings and hearings and promotes a sense of a unified team presence.

Treatment Provider

Treatment providers are the therapeutic experts on the team. Because they have close and ongoing contact with the participants, they are an integral part of the team functioning. They generally have numerous roles, including providing:

- A range of substance abuse treatment services, such as counseling, educational classes, group therapy, support groups, and so forth for participants;
- Ongoing reports of progress and/or issues that participants and their families may be experiencing;
- Insight into the recovery process and suggested strategies for the Wellness Court team to use to help participants progress in the program; and
- Assessments to identify co-occurring disorders.

The treatment provider team member educates the other team members regarding substance abuse/addiction, relapse, and family dynamics affected by alcohol and other drug abuse.

The treatment provider's role changes significantly in a Wellness Court regarding the provision of information. The treatment provider must share information—some of which may be considered confidential[22]—to the other team members regarding the participant's progress deemed necessary for the team to constructively assist the participant. Participants therefore must execute limited waivers of confidentiality to permit the treatment provider to disclose this information.

[21] For more on the role of defense counsel in drug court, *see* Hon. Karen Freeman-Wilson, Ronald Sullivan, and Susan P. Weinstein, *Critical Issues for Defense Attorneys in (State) Drug Court* (NDCI Monograph Series 4, 2003).
[22] *See* the following section, "Adapting State Drug Court Treatment Components: Medication-Assisted Treatment" and 42 USC § 290dd-2, and the regulations implementing these laws at 42 Code of Federal Regulations (CFR), Part 2.

Community Supervision

The community supervision officer, generally the probation officer, ensures that participants comply with program requirements, including attending treatment sessions, appearing for drug tests, and carrying out other program requirements. The probation officer monitors the participants inside and outside of the Wellness Court setting, including conducting drug tests and home and job visits. The probation officer provides reports to the judge and other team members on participants' activities while in the program.

> **Note:**
> For further information, *see Tribal Healing to Wellness Courts: The Key Components* and *Tribal Healing to Wellness Courts: The Judicial Bench Book*, both available at www.WellnessCourts.org.

III. Key Issues in Developing Treatment

Substance use disorders, including severe substance use disorders, commonly called addictions, are now understood to be chronic illnesses characterized by clinically significant impairments in health, social function, and voluntary control over substance use.[23] American Indians and Alaska Natives had the highest rates of any other demographic group for meeting the diagnostic criteria for a substance use disorder in the last year for alcohol, and the second highest rates for illicit drugs.[24]

A. Understanding Why People Use Alcohol and Other Drugs

Common Factors Relating to Use

Most people begin to use alcohol and other drugs simply to feel better. It may be to avoid dealing with a difficult problem or situation. It may be to simply experience a sense of excitement. Some individuals may also use alcohol or other drugs as a form of recreation, to rebel, and/or as medication to avoid dealing with painful feelings.

An individual's vulnerability to use can be increased based on risk factors, such as easy access to inexpensive substances, low parental monitoring, a family history of substance use or mental disorders, high levels of family conflict or violence, low involvement in school, a history of abuse and neglect, and a history of substance use during adolescence.[25]

Substance users may exhibit poor behavior, moodiness, impulsiveness, and frequently take potentially harmful risks. They can like themselves one day and hate themselves the next. They generally do not think that their use of alcohol and/or other chemical substances may lead to anything other than feeling better at the time.

A significant body of research illustrates the physiological and other biological effects that long-term substance use can have on an individual's cognitive functioning. The research also addresses an individual's ability to address events that regularly occur in their life daily. See section C: "The Pharmacology of Addiction."

[23] U.S. Department of Health and Human Services (HHS), Office of the Surgeon General, *Facing Addiction in America: The Surgeon General's Report on Alcohol, Drugs, and Health*, 2-1 (HHS, November 2016).
[24] Ibid. at 1-11, *citing* the 2015 National Survey on Drug Use and Health (NSDUH).
[25] Id. at 1-15, citing A. L. Stone, L. G. Becker, A. M. Huber, and R. F. Catalano, "Review of Risk and Protective Factors of Substance Use and Problem Use in Emerging Adulthood," 37(7) Addictive Behaviors (2012), 747–75.

Reasons Why People Use Alcohol and Other Drugs

	AS RECREATION	
Mind	**Body**	**Spirit**
Loosen one up	Speed one up	Experiment
Have fun	Slow one down	Find a place
Increase awareness	Heighten senses	Try to transcend one's self
	AS REBELLION	
Mind	**Body**	**Spirit**
Seek false sense of superiority	Feel invincible	Stop feeling misunderstood
Denial	Take aggressive actions	Respond to feeling "me against the world"
Seek sense of entitlement	Take physical risks	Respond to sense no one can be trusted
	AS MEDICATION	
Mind	**Body**	**Spirit**
Anxiety	Relieve tension	Reduce sense of isolation
Fear of failure	Relieve stress	Reduce sense of lack of meaning
Shame	Relieve sense of awkwardness	Avoid sadness

Abuse versus Addiction

The terms *substance abuse* and *addiction* are often used together and interchangeably. However, there are significant differences between the two. The American Society of Addiction Medicine (ASAM) defines addiction as

> [A] primary, chronic disease of brain reward, motivation, memory and related circuitry. Dysfunction in these circuits leads to characteristic biological, psychological, social and spiritual manifestations. This is reflected in an individual pathologically pursuing reward and/or relief by substance use and other behaviors.
>
> Addiction is characterized by inability to consistently abstain, impairment in behavioral control, craving, diminished recognition of significant problems with one's behaviors and interpersonal relationships, and a dysfunctional emotional response. Like other chronic diseases, addiction often involves cycles of relapse and remission. Without treatment or engagement in recovery activities, addiction is progressive and can result in disability or premature death.[26]

[26] American Society of Addiction Medicine, Definition of Addiction (April 2011).

The ASAM notes that while some believe the difference between addiction and abuse is the "quantity or frequency of alcohol/drug use," a "characteristic aspect of addiction is the qualitative way in which the individual responds to such exposures," such as the "preoccupation with, obsession with and/or pursuit of rewards (e.g., alcohol and other drug use) despite the accumulation of adverse consequences."[27]

Abusers and addicts can display similar symptoms. Relationships are negatively affected; work or school performance is negatively affected; substance use leads to legal, financial, or law enforcement problems; and substance use leads to reckless behavior. However, where the abuser's substance use can be detrimental, it is also sporadic. Abusers can remain sober for significant lengths of time and can appear to maintain control over their lives.

The addict's substance use, by contrast, is more compulsory. For the addict, substance use leads to tolerance (the individual needs to use more substances to get the desired affect); they are unable to stop using once they start (one is too much and 1,000 is not enough); and they regularly exceed their self-imposed limits (I'll only have one hit). The addiction process generally involves a three-stage cycle: binge/intoxication, withdrawal/negative affect, and preoccupation/anticipation.[28] The addict is driven by cravings, and will experience physical and psychological withdrawal symptoms. Binging, craving, compulsion, and withdrawal all are indicators of addiction. Addicted participants may lack control and become frustrated if they are sanctioned too severely. Abusing participants who are not strictly sanctioned may attempt to manipulate the system.

If possible, Healing to Wellness Courts should not mix abuser participants and addict participants. Many individuals in need of treatment start out as an abuser (even if only for a very short time) and then potentially lapse into addicts. Combining abusers and addicts in the Wellness Court program may cause the addicts to use more, or for the abusers to lapse into an addict level. Consider separating addicts and abusers into separate tracks. See "Adapting State Drug Court Treatment Components: The Treatment Plan."

The Opioid Crisis

Presently, the entire nation is gripped with a new wave in substance use disorders, known colloquially as the opioid crisis. Overprescription of powerful opioid pain relievers beginning in the 1990s led to a rapid escalation of use and misuse of these substances by a broad demographic of men and women across the country.[29] This has led to a resurgence of heroin use, as some users transitioned to using this cheaper opioid. As a result, the number of people

[27] Id.
[28] HHS, Surgeon General's Report at 2-2.
[29] Ibid. at 1-14, *citing* A. Kolodny, D. T. Courtwright, C. S. Hwang, P. Kreiner, J. L. Eadie, T. W. Clark, and G. C. Alexander, "The Prescription Opioid and Heroin Crisis: A Public Health Approach to An Epidemic of Addiction," 36 *Annual Review of Public Health* (2015), 559–74.

dying from opioid overdoses has soared—increasing nearly four-fold between 1999 and 2014.[30] Opioid analgesic pain relievers are now the most prescribed class of medications in the United States, with more than 289 million prescriptions written each year.[31] The increase in prescriptions of opioid pain relievers has been accompanied by dramatic increases in misuse and by a more than 200 percent increase in the number of emergency department visits from 2005 to 2011.[32] Heroin overdoses were more than five times higher in 2014 (10,574) then ten years before in 2004 (1,878). Drug overdose deaths also occur due to the illicit manufacturing and distribution of synthetic opioids, such as fentanyl, and the illegal diversion of prescription opioids. Illicit fentanyl, for example, is often combined with heroin or counterfeit prescription drugs or sold as heroin, and may be contributing to recent increases in drug overdose deaths.[33]

Drug Culture

For most participants, the drug subculture will likely affect their substance use and can affect their recovery. A drug culture has its own history pertaining to drug use, shared values, beliefs, customs, and traditions, and it has its own rituals and behaviors that evolve over time. Drug cultures tend to differ based on the substance used, geographic area, socioeconomic status, and can change over time.[34] They serve as both an initiating force as well as a sustaining force for substance use and abuse. A typical drug cultures is the drinking culture that can develop among heavy drinkers at a bar or college fraternity, which encourage new people to use, supports high levels of continued or binge use, reinforces denial, and develops rituals and customary behaviors surrounding drinking.[35] Shared substance use strengthen communal bonds between users.

Most people seek some social affiliation, and drug cultures offer that sense of connection and acceptance. Drug cultures appear more accepting of marginalized adolescents and young adults, appearing more tolerable of traits like sensation seeking and poor impulse control.[36] Individuals who are curious about substance use, particularly young people, are more likely to become involved in a drug culture that encourages excessive use and experimentation with

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[30] Id., *citing* N. D. Volkow, *America's Addiction to Opioids: Heroin and Prescription Drug Abuse* (Senate Caucus on International Narcotics Control: National Institute on Drug Abuse, 2014).

[31] Id., *citing* B. Levy, L. Paulozzi, K. A. Mack, and C. M. Jones, "Trends in Opioid Analgesic–Prescribing Rates by Specialty, US, 2007–2012," 49(3) *American Journal of Preventive Medicine* (2015), 409–13; and N. D. Volkow, T. A. McLellan, J. H. Cotto, M. Karithanom, and S. R. B. Weiss, "Characteristics of Opioid Prescriptions in 2009," 305(13) *JAMA* (2011), 1299–1301.

[32] Id., *citing* E. H. Crane, *The CBHSQ Report: Emergency Department Visits Involving Narcotic Pain Relievers* (Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, 2013).

[33] Id., *citing* R. A. Rudd, N. Aleshire, J. E. Zibbel, and R. M. Gladden, "Increases in Drug and Opioid Overdose Deaths—United States, 2000–2014," 64(50) *MMWR* (2016), 1378–82, and Drug Enforcement Administration, *DEA Report: Counterfeit Pills Fueling U.S. Fentanyl and Opioid Crisis: Problems Resulting from Abuse of Opioid Drugs Continue to Crow* (2016).

[34] "A Treatment Improvement Protocol (TIP): Improving Cultural Competence: TIP 59," Substance Abuse and Mental Health Services Administration, 14-4849 HHS Pub. No. (SMA) 2014, 162.

[35] Ibid. at 164.

[36] Ibid. at 169.

other, often stronger, substances.

Counselors need both an understanding of current drug cultures to help prevent infiltration of related behaviors and attitudes into the treatment group, and the ability to help participants understand how such drug cultures support use and pose relapse risks.[37] Talking to participants about their relationships, daily activities and habits relating to substance use, values, and views of other people and the world can allow providers to develop a good sense of the meanings of drug cultures for that participant. The people, places, things, thoughts, and attitudes related to drug and/or alcohol use act as triggers to resume substance use. Treatment providers need to help participants weaken and eventually eliminate their connections to drug culture, ultimately by finding alternatives and reframing elements once associated with drug culture with a culture of recovery.

Youth and Adolescents

Some of the most alarming factors relating to alcohol and other drug use are the early age at which substance use frequently begins and the current prevalence of substance use among youth and adolescents. Adolescence is a critical "at-risk period" for substance use and addiction By the twelfth grade, about half of adolescents have used an illicit drug at least once.[38] American Indian and Alaska Native youth have higher rates of substance abuse problems than any other ethnic group.[39] Regardless of whether such use begins as youthful experimentation, rebellion, or other reasons, the extent and persistence of adolescent alcohol and other drug use is a serious concern, with female use being especially problematic.[40]

When treating youth for substance use disorders, it is important to consider the adolescent development processes. Youth experience the storm of adolescence at a time in which they are caught between dreaming of childhood and awakening into adulthood. Youth caught in this in-between stage often feel out of balance with themselves, their families, their community, the world, and the universe. It is a time when great changes are occurring in their bodies, minds, and spirits. They are experiencing physical growth, increased sexual feelings, as well as spiritual energies. They may display poor behavior and disrespect toward themselves and others. They may appear to be bold, impulsive, and often take harmful risks. They may feel very powerful and, at the same time, weak, powerless, and useless. This is a time when they are attempting to

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[37] Ibid. at 162.

[38] Lloyd D. Johnston, Patrick M. O'Malley, et al., *Monitoring the Future: National Survey Results on Drug Use: 2015 Overview: Key Findings on Adolescent Drug Use* (University of Michigan Institute for Social Research, 2016), 9.

[39] Attorney General's Advisory Committee on American Indian and Alaska Native Children Exposed to Violence: *Ending Violence So Children Can Thrive* (Office of Juvenile Justice and Delinquency Prevention, 2014), 38, citing Dolores Subia BigFoot et al., "Trauma Exposure in American Indian/Alaska Native Children" (Indian Country Child Trauma Center, 2008), 1–4.

[40] *See* Adolescent Substance Abuse: A Public Health Priority: An Evidence-Based, Comprehensive, and Integrative Approach (Physician Leadership on National Drug Policy, Brown University, 2002); and *The Formative Years: Pathways to Substance Abuse among Girls and Young Women Ages 8 to 22* (National Center on Addiction and Substance Abuse, Columbia University, 2003).

understand who they are, their strengths and weaknesses, and how they fit into the world around them. This is a time in which, while they may appear to reject structure, they need close supervision and direction. Consequently, adolescents use substances for reasons vastly different from those of adults.

While traditional Native American cultures prepare youth for their place as adults, Western culture has developed no special ceremony or other preparation for the transition of youth to adulthood. Adults in Western culture, rather, often envy their youth. Many Native youth are caught between these cultures. This is the time when they need to learn to master the skills they will need as adults. They need to contribute to their family, community, and tribe. Feelings of alienation and rejection of authority can cause youth to look outside these traditional cultural institutions and instead seek acceptance in a drug subculture.[41] This is a time when, although they are thinking only from minute to minute, their actions can positively or negatively have a long-term effect on their lives.

As adolescents move away from their childhood, they sometimes feel separated from their families. Physiologically, they mourn these losses and turn elsewhere for social connection. Thus, in its early stages, adolescent substance abuse generally occurs in a social context.[42] Alcohol and other drug use can progress to providing relief from the pain of adolescent growth and development and the mourning they experience over the loss of their childhood. Adolescents frequently feel out of balance with themselves and others. Consequently, they may invent their own "rites of passage" to feel secure on their journey, sometimes turning to alcohol or other drugs in the process. Adolescents may also rebel by experimenting with alcohol or other drugs to begin to create their own identities.[43] For more on treating adolescents with substance use disorders, see *Juvenile Drug Courts: Strategies in Practice*.[44]

Diagnosing Fetal Alcohol Syndrome Disorders

Fetal alcohol syndrome disorders (FASD) are developmental conditions affecting the brain of a child whose mother used alcohol or other drugs during her pregnancy that crossed with the placenta. FASD are particularly prevalent and drastically higher among Native populations when compared to other cultural groups.[45] Professionals working with Wellness Court programs should be alert to the possibility of FASD in participants, whose mothers may have used alcohol or other drugs during their pregnancy, as well as in their children. Prompt accurate diagnosis of FASD conditions is therefore extremely important so that (1) treatment and other services can be structured to meet the needs of FASD participants; and (2) appropriate services, including medications, can be provided to their children and/or other family members, as necessary. In

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[41] TIP 59 at 169.
[42] *Juvenile Drug Courts: Strategies in Practice* (National Council of Juvenile and Family Court Judges, Bureau of Justice Assistance, 2003) 32.
[43] Id.
[44] Id.
[45] "Fetal Alcohol Spectrum Disorders among Native Americans," U.S. Dept. of Health and Human Services, Substance Abuse and Mental Health Services Administration, DHHS Pub. No. (SMA) 06-4245 (2007).

addition, educational segments on FASD should be incorporated in all adult and juvenile treatment programs. For more information on preventing, identifying, and treating FASD, see "TIP 58: Addressing Fetal Alcohol Spectrum Disorders."[46]

[46] "A Treatment Improvement Protocol (TIP): Addressing Fetal Alcohol Spectrum Disorders (FASD): TIP 58," Substance Abuse and Mental Health Services Administration, HHS Pub. No. (SMA) 13-4803 (2014).

B. The Stages of Use, Abuse, and Dependency Overview

The following is a brief and generic overview of the stages that most alcohol and drug-dependent individuals pass through.

Initial Stage: Experimental Use

- Casual use of readily available substances, such as cigarettes or beer; may also include casual use of marijuana and/or inhalants;
- Individual enjoys the escape and mood swings resulting;
- Substances are used in a controlled manner (e.g., individual has control over when substances are being used and the quantity of substances used);
- Life activities are not affected by the use; and
- Individual can/may decide to stop using altogether or become a regular user.

Regular Use

- Individual uses more frequently, though still appears to have control over when he or she is using and how much is being used;
- Some changes in the individual's attitude toward the role of alcohol and/or other drugs in their life;
- Increasing tensions in individual's relationship with their family;
- Changes in individual's day-to-day behavior become noticeable; and
- Other areas of individual's life activity begin to be effected, including work; legal or family responsibilities; or changes in friends.

Abuse

- Increased use of alcohol and/or other drugs;
- Experiments with new types of alcohol and/or other drugs;
- Individual's thoughts turn to being high/drunk when sober;
- Increasing problems with their family; police and other community entities may become involved;
- May think about quitting the use of alcohol and/or other drugs but doesn't; and
- Increased sense of guilt and shame about using alcohol and/or other drugs.

Dependency

- Uncontrollable thoughts about using alcohol and/or other drugs;
- Feels that being high or intoxicated is their normal state, for example, feels need for alcohol and/or other drugs to function "normally";
- Being sober no longer feels normal;
- Denies that he or she is out of control in terms of alcohol and/or other drug use; and
- Experiences trouble in all or most life areas: family, employment, education, legal system, spiritual state.

Common Signs of Alcohol or Other Drug Abuse

- Changes attitude toward family; can be hostile or angry toward partner and children; sometimes can be physically abusive
- Becomes isolated from family; individual is not emotionally present in the home and/or spends more time out of the home
- Withdraws from family responsibilities; becomes irritable; lies; sneaks around; doesn't talk about activities; may steal from family members
- Hides alcohol/drugs or related items and denies that they belong to they are when confronted
- Changes eating or sleeping habits; eats more or eats less; stays up late; wants to sleep all day
- Changes mood quickly
- Lacks energy
- Has red eyes or large pupils
- Looks in poor health; seems to be sick more often
- Refuses to be part of the religious or spiritual activities of the family/tribe; appears hostile or doesn't want to talk about spiritual beliefs
- Changes friends; does not introduce new friends to family members
- Demonstrates lack of interest in common/traditional activities such as work, sports, or involvement in traditional life activities

Special Issues Relating to Adolescent Alcohol or Other Drug Use

Increasing attention is being given to the prevalence and serious long-term consequences of adolescent alcohol and other substance use.[47] Substance abuse among teens is a "national problem in need of national attention."[48] The younger an individual is at the onset of substance use, the greater the likelihood that a substance use disorder will develop and continue into adulthood. The majority of adults with current substance use disorders started using before age eighteen. Nearly 13 percent of those with a substance use disorder began using marijuana by the time they were fourteen.[49]

Adolescents use tobacco, alcohol, and other drugs for many reasons—to feel good, seek new experiences, combat a sense of low self-esteem, respond to perceived peer pressure, or escape from a difficult home/living situation. Recent research has also pointed to common reasons

[47] For more on adolescents and drug courts, *see* *Juvenile Drug Treatment Court Guidelines*, Office of Juvenile Justice and Delinquency Prevention, U.S. Dept. of Justice (NCJ 250368, December 2016); Betty Gurnell, Meg Holmberg, and Susan Yeres, *Starting a Juvenile Drug Court: A Planning Guide* (National Council of Juvenile and Family Court Judges, Office of Juvenile Justice and Delinquency Prevention, 2014).
[48] *Principles of Adolescent Substance Use Disorder Treatment: A Research-Based Guide* (National Institute on Drug Abuse, National Institute of Health, 2014).
[49] Id. at 5.

girls and young women use substances—which are often different from those of young boys—and the more serious consequences that often result for them.[50] Adolescent girls with substance use disorders may be more likely to also have mood disorders such as depression or to have experienced physical or sexual abuse. Bouts are more likely to also have conduct, behavioral, and learning problems.[51]

A teenage brain is still developing. The prefrontal cortex is responsible for assessing situations, making sound decisions, and controlling emotions and impulses. Teenagers are highly motivated to pursue pleasurable rewards and avoid pain, but their judgment and decision-making skills are limited. This affects their ability to weigh risks accurately and make sound decisions.[52] Most teens do not escalate from experimenting with drugs to developing an addiction or substance use disorder. Various factors including inherited genetic dispositions and adverse experiences in early life make trying drugs and developing a substance use disorder more likely. Exposure to stress and trauma in childhood primes the brain to be sensitive; greatly increasing the likelihood of subsequent drug abuse.[53]

Each youth should be carefully screened and assessed. This is critical to identifying the underlying issues in the youth's life that need to be addressed to effectively treat their substance usage and provide constructive redirection for their life. While many adolescents will not be at the "dependency" level of use when first screened, they will likely present a range of needs—mental health, educational, emotional, and others. These needs must be addressed to prevent them from reaching a state of dependency. Similarly, their treatment plan should include meaningful tools for sobriety and recovery over the long term.

The following are the six principal areas of an adolescent's life that are affected by alcohol and/or other drug use:

Behavior

Changes in a youth's behavior will likely occur when the youth is using a substance for the first time. An adolescent might experience a change in their peer group, carelessness with grooming, decline in academic performance, missing class, loss of interest in favorite activities, changes in eating or sleeping habits, and deteriorating relationships with family and friends. These changes may be noted by a parent, teacher, or others in the community.

Physical Well-Being

Any substance that is introduced into the body will have an effect on the body. For example, alcohol systematically begins to destroy the body's organs over time. When the body gets to the stage of needing alcohol to function "normally," the individual has

[50] *The Formative Year: Pathways to Substance Abuse among Girls and Young Women Ages 8 to 22*.
[51] *Principles of Adolescent Substance Use Disorder Treatment: A Research-Based Guide*, 18–19.
[52] Id. at 3–4.
[53] Id. at 5.

reached a dependency stage. This progression can occur rapidly in adolescents—sometimes as quickly as within five months.

Feelings

Adolescents' feelings are moody at best, even without taking drugs. Drug use, however, results in even greater intensity of feelings: They laugh more, cry more, are sadder, feel more hopeless, or more angry than normal.

Thinking

Substance use by an adolescent affects their cognitive processes, frequently resulting in more bad decisions regarding right and wrong, and increasing efforts—conscious or unconscious—by the youth to test the rules of the family and the tribe.

Social Environment

Adolescents using substances almost invariably choose to be with people who are using the substances they use. Consequently, they come to think that all people are using alcohol and/or other drugs because substance users are the people with whom they are associating.

Spiritual Sense

People who abuse alcohol, tobacco, and/or other drugs think only of themselves and their own feelings. They became very self-centered and uncaring about others. The individual's spirituality is the first area he or she relinquishes when he or she begins to abuse alcohol or use other drugs, and the last that returns when he or she recovers.

Special issues relating to the treatment and recovery of adolescent alcohol or other drug users are further discussed in the next section "The Pharmacology of Addiction."

C. The Pharmacology of Addiction

The use of alcohol and other drugs effects the brain long after the physical effects of the drug wear off. The cognitive effects that alcohol and other chemical use (e.g., marijuana, cocaine, methamphetamine, opiates, inhalants, "designer drugs") result in fundamental changes in the way an individual responds to common situations. The cognitive effects may also contribute to their propensity to relapse long after drug use has discontinued. Many individuals can voluntarily stop using alcohol and other drugs in the early stages of use. However, the chemical changes that take place in the brain and neuro-chemical system of an individual who has become dependent on alcohol, or other drugs, make it very difficult to voluntarily stop using these substances without carefully designed treatment services.

The neuro-chemical changes in the brain that result from alcohol and other drug abuse are most immediately manifested in the individual's capability to process information and to make decisions (e.g., their cognitive capacity). They cannot simply "just say no," even when faced with immediate and very negative consequences of their continued use. In addition to the standard array of substance abuse counseling, educational classes, and support groups, such as Alcoholics Anonymous, effective substance abuse treatment should also include cognitive behavioral treatment modalities that focus on improving the individual's decision-making skills. It takes approximately one year to rewire these neuro-chemical changes that have occurred in the brain. Often the addict will have bouts of depression as the dopamine/serotonin receptors in the brain try to function normally without the additional chemicals. This can lead to individuals being misdiagnosed with mental health issues such as bipolar, borderline personality, anxiety, and depression.

Recent research has also found tobacco use to influence alcohol consumption. The two drugs—tobacco and alcohol—used together appear to interact in a way that may intensify the effect of each these drugs if used alone.[54] This finding is particularly important for Native Americans who have the highest prevalence of nonceremonial use of tobacco.[55]

In addition to pharmacological issues relating to alcohol and other drug use, an individual's genetic makeup may also play a role in their propensity to alcohol and other substance abuse. Recent research has shown that individuals may be more or less likely to experience alcohol and other drug abuse problems based on their genetic history. Some researchers have estimated an individual's genetic history to account for up to 60 percent of an individual's risk category for developing abuse of various categories of drugs.[56]

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[54] S. B. Gulliver, D. J. Rohsenow, S. M. Colby, A. N. Dey, D. B. Abrams, R. S. Niaura, and P. M. Monti, "Interrelationship of Smoking and Alcohol Dependence," 56(2) Journal of Studies on Alcohol (1995), 202–6.
[55] *American Indians/Alaska Natives and Tobacco Use* (Centers for Disease Control and Prevention, March 1, 2017).
[56] "Drugs, Brains, and Behavior: The Science of Addiction," National Institute of Health, NIH Pub. No. 14-5605 (2007, updated 2014), 8.

IV. Developing a Wellness Court Treatment Program

A. Importance of a Holistic Approach

The Healing to Wellness Court is holistic in focus, providing a wide range of treatment and other services necessary to support the individual's recovery over the long term. The Wellness Court program's services must go beyond achieving the individual's sobriety; it must provide them with the tools to be able to function and contribute meaningfully within the community and for their family. The goals of the Wellness Court must (1) address an individual's immediate substance abuse treatment needs; (2) address any mental health needs; (3) provide the opportunity for holistic physical and spiritual healing, as well as recovery of both the individual and their family; and (4) address environmental needs.

The Wellness Court must therefore provide a range of alcohol and other substance abuse treatment services individualized for each participant. The Wellness Court should also provide an array of other supportive services to address participant needs including education, vocational training, housing assistance, job placement, parenting, anger management, and other assistance as needed. Finally, the Wellness Court should the participant's family, and any additional services the family might need, including children's services.

The underlying philosophy of the Wellness Court treatment and other ancillary services should be to:

Consider… NADCP Standard VI. Complementary Treatment and Social Services[57]

Participants receive complementary treatment and social services for conditions that co-occur with substance abuse and are likely to interfere with their compliance in Drug Court, increase criminal recidivism, or diminish treatment gains.

- Treat the participant and their family with respect;
- Help the participant to be honest with themselves and others;
- Help the participant learn to trust;
- Help the participant take responsibility and accountability for their actions;
- Create culturally appropriate experiences for the participant that will help them draw meaning from them which they can apply to life situations;
- Assist participants in discovering and assuming meaningful roles in their tribes and community; and
- Help participants to assist each other in achieving wellness.

[57] *Drug Court Best Practice Standards, Volume II* at 5.

B. Using Tribal Healing Practices as the Foundation

Strengthening cultural identity can be a positive action for the participant.[58] Traditional healing practices provide the foundation for Wellness Court programs. Culturally responsive behavioral health counseling results in greater counselor credibility, better client satisfaction, more client self-disclosure, and greater willingness among clients to continue with counseling.[59] Consideration of culture is important in all activities and at every treatment phase: outreach, initial contact, screening, assessment, placement, treatment, continuing care and recovery services, research, and education.[60]

These can be augmented, as appropriate, with Western drug court treatment approaches, as will be discussed further in the following sections of this guideline. Any adaptation of Western drug court treatment approaches should be specifically tailored to the Native communities and participants involved. The resulting Healing to Wellness Court will then combine current science-based approaches to treatment developed in the Western-style drug court programs with accepted established traditional practices.

The philosophy that underlies Native healing practices is rooted in several Native concepts, including the following:

- Recognition that healing is an ongoing process that occurs within the individual;
- Experts may test, ask questions, and perform other diagnostic functions but the healing process must occur within the individual;
- We can heal ourselves;
- Prayer plays a critical role—as a source of strength and support—in the healing process;
- It is important to be able to tell one's story, to overcome denial;
- It is important for one to take responsibility for one's actions;
- One's sense of communal solidarity plays a significant role in healing—it is therefore very important for the individual to reconnect with the community;
- Respect for each other is crucial; individuals must both listen to others and be heard;
- One's sense of feeling connected with the community is very important; and
- Healing is an ongoing process that occurs one day at a time.

Adapting Western drug court treatment approaches to the Wellness Court therefore requires considering how these approaches best function in a Wellness Court setting. Individual counseling, for example, might be most appropriately provided or supplemented in certain situations by an elder. Group counseling might best occur in a talking circle; support groups might take place in the sweat lodge. Participants and their families should also be encouraged to participate in ongoing traditional activities—ceremonies, initiations, and other tribal practices. Native healing practices that might be integrated with Western drug court treatment

[58] TIP 59 at 173.
[59] Id. at 2.
[60] Id. at 4.

approaches could include:

- Use ceremony to promote spiritual healing;
- Include clan relatives, elders, medicine men, and others as healers, mentors, and advisors to participants;
- Discuss the historical use and impact of alcohol and drugs on Native communities;
- Include participation in ceremonial preparations as part of the Wellness Court activities;
- Encourage ceremonial participation;
- Use meaningful symbols of healing, such as the medicine wheel, an eagle feather, and/or other tribal objects as part of Wellness Court activities;
- Include prayer, dance, and song in Wellness Court;
- Provide opportunities for participants to reconnect with the natural world through hunting, gathering, ranching, farming, equestrian, and other activities and ceremonies related to subsistence;
- Use nature walks to discuss the interconnectedness of life. Thoughts should be of appreciation of the nature around you. Experience your environment. During this walk, find objects that you want to put in your medicine bag;
- Incorporate tribal cleansing rituals, such as smudging with sage, as part of the Wellness Court hearings; and
- Incorporate drumming in Wellness Courts, and/or encourage participants to learn drumming or singing as a satisfaction of Wellness Court requirements.

The following can be posted in the Treatment Group Room or recited after or before groups start, for example.

Indian Ten Commandments
Treat the earth and all that dwell thereon with respect
Remain close to the Great Spirit
Show great respect for your fellow beings
Work together for the benefit of all mankind
Give assistance and kindness wherever it is needed
Do what you know to be right
Look after the wellbeing of mind and body
Dedicate a share of your efforts to the greater good
Be truthful and honest at all times
Take full responsibility for all your actions

A Prayer
May it be beautiful before
me.
May it be beautiful behind
me.
May it be beautiful all

around me.
In beauty
It is finished;
In beauty
It is finished.
—Traditional Dine (Navajo chant)

A Prayer
Oh Great Spirit, Whose voice I hear in the wind, Whose breath gives me life to the world, Hear Me! I come to You as one of Your many children. I am small and weak. I need Your strength and wisdom. May I walk in beauty. Make my eyes behold the red and the purple sunset. Make my hands respect the things that You have made, and my ears sharp to hear Your voice. Make me wise so that I may know the things that You have taught your children—the lessons that You have hidden in every leaf and rock. Make me strong, not to be superior to my brothers, but to be able to fight my greatest enemy: myself. Make me ever ready to come to You with straight eyes, so that when life fades as the faded sunset my spirit will come to You without shame.
—John Yellow Lark

Consider *The Red Road to Wellbriety in the Native American Way*, a sobriety, recovery, and wellness book for Native Americans, following the teachings of the Native American Medicine Wheel and 12-step tradition.

C. Special Issues Relating to Adult versus Juvenile Wellness Courts

Treating juveniles who are using alcohol or other drugs requires a significantly different approach than treating adults. In addition to the numerous adolescent developmental changes, juvenile substance users present special challenges to the treatment provider particularly in the following areas:

Abuse versus Addiction

For most juveniles, their level of substance use has not reached the stage of dependency/addiction. The use of alcohol or other drugs has not become the prime focus of their daily life for a sustained period, although it may still be playing a significant role at the time of the Healing to Wellness Court's intervention. Therefore, the treatment approach for juveniles will need to differ from the approach used for adults by providing:

- A focus on developing alternative activities and interests that enhance the youth's self-concept and capacity to live drug free; and
- Less focus on treatment issues relating to addictive behavior and more education.

Less Awareness of Negative Consequences

Most adults who have been abusing alcohol or other drugs, have already been led down a path of substantial loss. Such negative consequences may include losses relating to their jobs, family relationships, physical health, spiritual well-being, and status in the community. They may likely have moved away from their traditions, values, and spirituality, and have made alcohol or other drugs a priority in their lives.

However, youth likely have not yet had the time to experience such loss instigated by their alcohol or drug use. Further, their ability to conceptualize and appreciate such consequences is developmentally limited. Instead, they are at a stage in their lives when they are beginning to think about separating from their family. Substance use experimentation is often linked to that process of growing and separation. The treatment approach for juveniles will therefore need to:

- Focus more on helping them develop positive identities; and
- Focus less on a fear of "hitting bottom."

Less Appreciation for the Long Term

In general, adults think long term and develop goals for their lives. Youths have a more minute-to-minute orientation. The program services and system of sanctions and rewards developed for youth in the Wellness Court must consider their focus on the immediate. Consider that two to three months "feels" significantly longer for an adolescent than an adult.

Fewer Prior Contacts with the Justice System

By the time adults have become dependent on substances, it is likely they have had a significant number of contacts with the justice system. Thus, their opportunities for "more chances" are low, and the threat of legal consequences carries greater weight. Adolescents have had fewer opportunities to encounter the justice system. The tribe may be willing to provide the youth with alternative sentences, rather than jail time, to reduce the negative impact on their future. But, the benefits of these diversions will be more difficult to communicate and incentivize the adolescent.

Greater Need for Peer Acceptance

Both adults and youth function well in groups. As adults mature they can function independently, learn to value their own judgment, and resist the pressure of a crowd. Adolescents, however, disproportionately crave acceptance by their peers and desperately need to be part of a group. If there is a breakdown of family relationships, adolescents may be open to gang affiliation or other negative influences. While negative peer pressure can be detrimental to recovery, positive peer influences can be equally beneficial.

Physical Health and Well-Being

Adults who have long histories of substance use are likely to suffer permanent physical affects from their addiction. They may have developed diabetes, stomach ulcers, liver problems, or other physical conditions. It is likely that their brain chemistry has changed. These changes affect an individual's cognitive capacities and decision making, which will require long-term treatment. However, most youth have not yet begun to experience physical effects of alcohol or other drug use. They likely recover quickly from hangover or withdrawal symptoms, fueling a construed appreciation for the consequences of their substance use.

Impact of Adolescent "Rebellion" Regarding Traditions, Values, and Spirituality

Adults with substance use disorders have often moved away from their traditions, values, and spirituality and need to develop ways to return to them. Youth, however, may have not yet developed such ties to their traditions, values, and spirituality. Adolescence is a period in which many youths may be questioning their identity, including traditions. While many adolescents may have begun to develop an appreciation of the tribal ceremonies and traditions, which form the basis of their culture, they may be still developing their values and sense of spirituality. Some youth may have already taken part in ceremonies; while others may not yet have participated in these traditions. Some youth may come from turbulent family environments, in which such values and traditions were never introduced.

As an adolescent's substance use increases they may be making unconscious decisions about what traditions they want to maintain and what traditions they want to leave. Their natural rebellion can therefore be fueled by the added effects of alcohol or other drugs at a pivotal point in their development, resulting in irreversible losses if not constructively addressed.

Mental Health

Adults who have used alcohol or other drugs for several years may suffer from depression or other mental health conditions. They may also be using alcohol or other drugs as a medication for mental health conditions. In these situations, the adult's mental health condition must be treated along with the substance addiction.[61]

Youth, by contrast, may not appear as frequently to present a mental health condition in addition to their alcohol or other drug use—particularly if they have not been using drugs for a significant period. However, careful and ongoing screening for co-occurring mental health conditions is critical. This is especially true as the youth begins their recovery process and the presence of a mental health condition may be more apparent.[62]

Dealing with Sexual Abuse

Many individuals, both adults and juveniles, involved in drug treatment have been sexually abused. Adolescents who have been sexually abused may present special needs that must be addressed within the Wellness Court treatment program. The abuse an adolescent has suffered effects the way they think, feels, and acts. There is a great confusion regarding what constitutes a "normal" response from a victim of sexual abuse and how a victim feels about them self. Some victims may be depressed and experience thoughts of suicide. Many feel degraded and of minimal worth. Many young people who have been abused use alcohol or other drugs for "self-

[61] Individuals suffering from both mental health conditions and substance addiction are considered to be "dually diagnosed," and having a co-occurring mental health condition along with their substance addiction.
[62] *See*, e.g., *Adolescent Substance Abuse: A Public Health Priority* (Physician Leadership on National Drug Policy, 2002) and *The Formative Year: Pathways to Substance Abuse among Girls and Young Women Ages 8 to 22*.

medication" to avoid dealing with the trauma they have experienced.

Services for sexually abused youth should include assistance to:

- Understand that the abuse is not their fault;
- Work through feelings of anger, sadness, hopelessness, and shame;
- Deal with issues of healthy sexuality, morality, and interpersonal relationships;
- Develop self-esteem through healthy and sober activities; and
- Report the abuse in accordance with the laws of the locale.

If the sexual abuse has been perpetrated by a parent or family member(s), additional effort should focus on establishing boundaries and support for the victim within the family.

V. Adapting State Drug Court Treatment Components

The following are common components of treatment programs developed by state drug court programs.

A. Evidence-Based Practices Applicable to Drug Courts

Evidenced-based treatment practices in drug courts focus on intervention that blend "clinical expertise with the best available external clinical evidence from systematic research."[63] However, unfortunately little-to-no systemic research has been conducted in Indian country. Nevertheless, drug court evidence-based practices can provide helpful insights of what might be useful in your Healing to Wellness Court. For more information, see Quality Improvement for Drug Courts: Evidence-Based Practices.[64]

Evidence-Based Practices **Application to Drug Court Practices[65]**
• *Drug courts should immediately place participants in drug court treatment and avoid delays of more than several days between admissions screening and engagement in treatment services.* • *Universal and standardized screening instruments should be used to examine mental disorders, history of trauma and posttraumatic stress disorder (PTSD), and substance use disorders, recognizing the high rates of these disorders in drug courts. Screening for criminal risk should also be conducted to identify suitable drug court candidates and to triage participants to different levels of treatment and supervision.* • *Drug courts should have access to both outpatient and residential treatment, but should provide a dominant focus on intensive outpatient treatment.* • *Intensive drug court treatment services should be provided for six to twelve months.* • *Treatment in drug courts should include evidence-based interventions such as motivational enhancement therapy, contingency management, medication-assisted treatment, and relapse prevention. Manualized curricula should be used to guide the implementation of these interventions.* • *Drug court treatment should be based on principles of evidence-based offender treatment models such as risk-need-responsivity, cognitive-behavioral treatment, and social learning.* • *Specialized services should be provided to meet the needs of persons with co-occurring*

[63] D. L. Sackett, W. M. Rosenberg, J. A. Gray, R. B. Haynes, and W. S. Richardson, "Evidence-Based Medicine: What It Is and What It Isn't," 312 British Medical Journal (1996), 71–2.
[64] Carolyn Hardin and Jeffrey N. Kushner, eds., *Quality Improvement for Drug Courts: Evidence-Based Practices* (National Drug Court Institute, Monograph Series 9, 2008).
[65] Kushner, Peters, and Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* at 13.

mental disorders, history of trauma and PTSD, poor educational and vocational skills, and literacy problems.

- *In addition to providing addiction treatment services, drug court treatment should focus on other major "criminogenic needs" such as criminal thinking, antisocial behaviors, and antisocial peers; family/marital problems; education; employment; and prosocial leisure activities. Drug courts should avoid treatment interventions that address noncriminogenic needs (e.g., boot camp disciplinary programs, self-esteem, values clarification).*
- *Drug courts that engage participants in postgraduation treatment and other recovery and ancillary services can expect better outcomes.*
- *Drug court programs should adopt procedures to routinely ensure that evidence-based treatment practices are used and that emerging research findings are regularly applied, with modifications in program services and operations instituted, as needed*.

B. Screening for Eligibility

There are two levels of screening necessary to determine whether an individual is eligible for an adult or juvenile Wellness Court: legal screening and clinical screening.

Legal Screening

In developing a Healing to Wellness Court each tribe must define who will be admitted. This includes determining what types of offenses are acceptable. It also includes setting parameters regarding the offender's background. There are many factors that should be considered in determining the criteria for legal eligibility for the program—nature of eligible, gaps in services which the Wellness Court can fill, limiting federal requirements, and overall capacity of the court. Whatever eligibility criteria are agreed upon, it is important that they be clearly identified in writing, publicized, and objectively applied. Ideally, legal screening and referrals should reflect more of an automated process and less of a discretionary case-by-case call.[66]

Clinical Screening

The primary purpose of clinical screening is to determine whether a participant who is legally eligible for the Wellness Court is also clinically suitable. This includes whether the individual has a substance use disorder, the severity of that disorder, whether there is a co-occurring mental disorder, the individual's criminogenic[67] needs and risks, and the level and intensity of treatment services the individual will need.[68]

Clinical screening should occur as quickly after identification of potential candidates as possible. This could be after legal eligibility is determined; after a diversion agreement, plea agreement, or conviction; or even immediately after arrest. Clinical screening is usually conducted by a licensed substance abuse counselor. It involves obtaining basic background information from the participant and their family regarding alcohol and other drug use, family situation, education, and employment. Preliminary information regarding any special physical or mental needs should also be sought. Many standard instruments have been developed and tested for substance abuse screenings.[69]

Clinical screening also includes screens for criminogenic risk: those characteristics of offenders that generally predict poorer outcomes in standard rehabilitation programs, such as early onset

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[66] For more on legal screening, s*ee* Pat Sekaquaptewa and Lauren van Schilfgaarde, *Tribal Healing to Wellness Courts: The Policies and Procedures Guide* (Tribal Law and Policy Institute, 2015), chs. 1 and 2; and Flies-Away, *Tribal Healing to Wellness Courts*, chs. 1 and 2.

[67] *Criminogenic* refers to factors associated with the likelihood of the individual to relapse and reoffend (recidivate).

[68] Kushner, Peters, and Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* at 5.

[69] *See* "Validated Risk and Need Assessment Tools," *Drug Court Best Practice Standards, Volume I* (National Association of Drug Court Professionals, 2013), 55.

of substance abuse or delinquency, prior felony convictions, previously unsuccessful attempts at treatment, a coexisting diagnosis of antisocial personality disorder, and a preponderance of antisocial peers or affiliations (e.g., gang affiliations).[70] While probation departments and other criminal justice agencies frequently use risk-assessment tools, in a drug court setting the risk-assessment screening tools should focus primarily on the risk of continuing drug use.

Participants should be screened at the earliest possible point. A risk assessment should be conducted to identify appropriate candidates for admission (i.e., those who are at moderate to high risk of continuing drug use, and those who present high levels of "criminogenic needs" such as substance use disorders, lack of employment/employable skills, etc.).

NOTE:
Screening provides an initial opportunity to engage the individual in the Wellness Court. While individuals may frequently appear disinterested, or not "motivated" in participating, the screener, if skilled, will recognize the need to make the individual feel comfortable. Consider that the individual may be experiencing trauma from the arrest and resulting court processes. Begin the development of a relationship of trust and respect.

[70] Marlowe and Meyer, eds., *The Drug Court Judicial Bench Book* at 32, citing Douglas B. Marlow, "Judicial Supervision of Drug-Abusing Offenders," *Journal of Psychoactive Drugs, SARC Suppl.* 3 (2006), 32.

C. Clinical Assessment

The purpose of the clinical assessment is to compile information for the treatment team to determine the appropriate treatment plan for an individual. The treatment plan should include a combination and frequency of counseling, educational classes, group therapy, support groups, and other activities and services that promote the individual's recovery. The assessment interview (longer than the screening interview) is an opportunity to compile information relating to the individual's family history; substance abuse history; and "readiness" for treatment (and special strategies that may be needed to promote their "readiness"). It also allows the interviewer to gain information of other aspects of the individual's physical, mental, and personal situation. The assessment also provides an opportunity to identify the individual's strengths that can be drawn upon during their recovery process. These strengths may include special talents and/or aspirations or goals and individuals to whom they turn for guidance and support.

Compiling Bio-Psycho Social History

The general clinical assessment should include compiling the individual's biopsychosocial history information. The biopsychosocial history information gathered should be used to determine the individual's physical, mental, and psychological situation, social status, and functioning within their family and environment. The biopsychosocial interview should answer the following questions:

- What is the nature and extent of the participant's alcohol and/or other drug problem?
- What is the participant's family situation and their relationship with their family?
- What are the individual's short-term goals? Long-term goals? In other words, what does the participant want for them self?
- What are the participant's strengths? Weaknesses?
- What recommendations regarding treatment needs should be made to the wellness court team?

The American Society of Addiction Medicine has identified the following six "dimensions" that an assessment should address:

> **Dimension 1:** Acute Intoxication and/or Withdrawal Potential
> Exploring an individual's past and current experiences of substance use and withdrawal.
>
> **Dimension 2:** Biomedical Conditions and Complications
> Exploring an individuals' health history and current physical condition
>
> **Dimension 3:** Emotional, Behavioral, or Cognitive Conditions and Complications
> Exploring an individual's thoughts, emotions, and mental health issues

Dimension 4: Readiness to Change
Exploring an individual's readiness and interest in changing

Dimension 5: Relapse, Continued Use, or Continued Problem Potential
Exploring an individual's unique relationship with relapse or continued use or problems

Dimension 6: Recovery/Living Environment
Exploring an individual's recovery or living situation, and the surrounding people, places, and things[71]

The screening and assessment process should pay particular attention to the presence of mental disorders and history of trauma and PTSD, given the high rates of these disorders among offenders.[72]

Special care must be taken when the assessor is not from the participant's tribal community. The assessor should honor and respect the value of storytelling and/or gauging the tempo of silence that may occur. The assessor should allow the individual and their family members to describe how they do or do not fit into the community and to discuss other issues that they deem important. Several standard assessment instruments can be reviewed for their applicability to Native populations.[73]

Assessment is an ongoing process. Assessments must be conducted to develop the initial treatment plan. But they can and should be repeated to periodically reflect the participant's progress or lack thereof in treatment, as well as new issues that may emerge during Wellness Court.

Standardized Assessment Tools

There are a variety of specially designed assessment tools that provide an indicator of the nature and extent of a participant's need for treatment services. Standardized assessment instruments, used by skilled and experienced professionals, can provide credibility and a sound basis for developing appropriate treatment plans. Standardized assessment instruments can also provide an objective point of reference for the Wellness Court team to measure information relating to the participant's attitude, level of resistance, level of honesty, and other factors deemed relevant for assessing participant progress in treatment.

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[71] American Society of Addiction Medicine, ASAM Criteria, "What Is the ASAM Criteria?," http://www.asam.org/quality-practice/guidelines-and-consensus-documents/the-asam-criteria/about (accessed May 30, 2017).
[72] Kushner, Peters, and Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* at 7.
[73] *See* "Validated Risk and Need Assessment Tools," *Drug Court Best Practice Standards, Volume I* at 55.

> **NOTE:**
> Because several assessment instruments are scientifically validated tools, any alteration in the questions included may jeopardize the validity of the instrument. The assessor should therefore take great care to administer the instrument in its totality and to not modify by adding or eliminating questions.

The following are some of the most frequently used assessment instruments that have been used effectively with adult drug court participants:

Psychosocial and Addiction Severity Assessment Instruments:

- Addiction Severity Instrument
- Global Appraisal of Individual Needs (quick or initial)
- Texas Christian University Institute for Behavioral Research (brief intake interview or comprehensive interview)

Risk Assessment Instruments:

- Risk and Needs Triage (RANT)
- Level of Service Inventor-Revised (LSI-R)
- Ohio Risk Assessment System

The Substance Abuse and Mental Health Services Administration (SAMHSA) has excellent resources on screening and assessment, including:

- *Screening and Assessment of Co-Occurring Disorders in the Justice System*,[74] and
- *TIP 31: Screening and Assessing Adolescents for Substance Use Disorders*.[75]

Each treatment provider should also be trained to administer the instruments. The treatment provider should be sure they are using appropriate instruments for their participants. The treatment providers should consider the cultural bias that may exist in some of these instruments. When administering these assessments, it is important for the administrator to be certain that the participant understands the intent of the questions and the purpose of the assessment. The administrator needs to elicit responses that are as truthful and complete as possible.

[74] Substance Abuse and Mental Health Services Administration, "Screening and Assessment of Co-Occurring Disorders in the Justice System," HHS Publication No. (SMA)-15-4930 (2015).
[75] Substance Abuse and Mental Health Services Administration, "TIP 31: Screening and Assessing Adolescents for Substance Use Disorders," HHS Publication No. (SMA)-99-3282 (1999).

Screening for Fetal Alcohol Syndrome Disorders

Persons with FASD can exhibit pronounced physical symptoms, including small birth weight, small head circumference; epicanthal folds; small, widely spaced eyes; flat midface; short, upturned nose; smooth, wide philtrum; thin upper lip; and underdeveloped jaw. However, there are many individuals with less severe manifestations of FASD and whose condition is therefore not immediately apparent from their physical features. Nevertheless, they may still manifest the developmental deficiencies characteristic of FASD and require special programming to succeed in the treatment program.

Persons who are diagnosed with FASD will frequently present special needs that include the need:

- For more structured support and closer supervision during treatment.

  Persons with FASD should have a daily routine with simple, step-by-step instructions. They should have clear rules regarding required activities and conduct. They should have consistent schedules.

- To have realistic program expectations that are within their ability to achieve.

  Although appearing intellectually normal, persons with FASD may have cognitive impairments that interfere with their ability to be self-sufficient. For example, they are likely to exercise poor judgment, lack impulse control, have memory deficits, and be immature in social skills. Share the rules early and often.

- To provide services, as needed, to other family members who may likely have similar conditions—particularly the individual's birth mother.

  Awareness of the existence of FASD among family members can minimize the likelihood of setting unrealistic expectations for family members and the participant.

- To modify the approach to counseling services, with greater opportunities for individual counseling.

  One-on-one work activities are generally more effective than group sessions with persons diagnosed with FASD. Although 12-step programs can be potentially beneficial for individuals with FASD, they may need sponsors who can provide special assistance. This may include assistance in translating abstract concepts into simple, concrete steps, and providing daily contact for support, feedback, and monitoring their progress. Consider multiple approaches to learning.

It is important for team members to be educated about FASD. This will ensure that individuals

with FASD will receive an appropriate treatment program. Individuals with FASD will need constant reminders about rules, appointments, program requirements, and medications. Visual cues are very helpful. Lights and noise, however, can be very distracting.

The goal of independence for a person with FASD will likely not be independent living but, rather a situation in which he or she has the continual support, intense supervision, and an acceptable living arrangement in a highly structured environment.

For more information on preventing, identifying, and treating FASD, *see TIP 58: Addressing Fetal Alcohol Spectrum Disorders*.[76]

[76] "A Treatment Improvement Protocol (TIP): Addressing Fetal Alcohol Spectrum Disorders (FASD): TIP 58," Substance Abuse and Menth Health Services Administration, HHS Pub. No. (SMA) 13-4803 (2014).

D. Intake and Treatment Planning

The information obtained from the clinical screening and assessment provides the foundation for development of the treatment plan. The treatment plan should be tailored and individualized to meet each participant's needs. It should also be updated regularly as the individual progresses through the Healing to Wellness Court. The following elements are used in developing a treatment plan.

Intake

Intake is the process for accepting an individual into the treatment program and completing requisite administrative tasks relevant to their participation. At intake, the treatment and monitoring/check-in schedule is arranged with the participant and initial goals for treatment are established. The issues to address at intake include:

- Explain the Wellness Court team members roles to the participant;
- Clarify schedule requirements and program rules/sanctions/incentives with the participant;
- Provide the participant with team members' contact information and clarify questions they may have; and
- Offer examples of other participants who are further along in the treatment program or who have successfully completed it.

Identifying Level of Care

Once a substance use disorder is diagnosed, a level of care must be determined. The ASAM criteria for determining level of care encompasses a continuum of five broad levels of care.[77] The *ASAM Criteria* takes note of issues presented by "transitional age youth"—roughly considered to be the seventeen to twenty-six age groups.

[77] Kushner, Peters, and Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* at 8, citing American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 5th ed. (American Psychiatric Association, 2013).

ASAM Criteria for Determining Level of Care		
ASAM Criteria Levels of Care	**Level**	**Description of ASAM Levels of Care**
Early Intervention	0.5	Assessment and education for at-risk individuals who do not meet diagnostic criteria for a substance-related disorder
Outpatient Services	1	Less than 9 hours of service/week (adults); less than 6 hours/week (adolescents) to treat multidimensional instability
Intensive Outpatient (IOP)	2.1	9 or more hours of service/week (adults); 6 or more hours/week (adolescents) to treat multidimensional instability
Partial Hospitalization (PHP)	2.5	20 or more hours of service/week for multidimensional instability not requiring 24-hour care
Clinically Managed Low-Intensity Residential	3.1	24-hour structure with available trained personnel; at least 5 hours of clinical service/week (e.g., halfway house)
Clinically Managed Population-Specific High-Intensity Residential	3.3 (Adults only) Not designed for adolescents	24-hour care with trained counselors to stabilize multidimensional imminent danger. Less intense milieu and group treatment for those with cognitive or other impairments unable to use full active milieu or therapeutic community.
Clinically Managed High-Intensity Residential	3.5	24-hour care with trained counselors to stabilize multidimensional imminent danger and prepare for outpatient treatment. Able to tolerate and use full active milieu or therapeutic community.
Medically Monitored Intensive Inpatient	3.7	24-hour nursing care with physician available for significant problems in Dimensions 1, 2, or 3; 16 hours/day counselor availability
Medically Managed Intensive Inpatient	4	24-hour nursing care and daily physician care for severe, unstable problems in Dimensions 1, 2 or 3. Counseling available to engage patient in treatment
Opioid Treatment Program (OTP) (Level 1)	OTP	Daily or several times weekly opioid medication and counseling available to maintain multidimensional stability for those with severe opioid use disorder

Identifying Criminogenic Risk

Criminogenic risk refers to factors found to be associated with the increased likelihood that an individual will continue to be involved in the criminal justice system if these factors are not addressed:

- Antisocial attitudes;
- Antisocial friends and peers;
- Antisocial personality patterns;
- Substance abuse;

- Family and/or marital problems;
- Lack of education;
- Poor employment history; and
- Lack of prosocial leisure activities.

Individuals involved in the criminal justice systems present a relatively high frequency of substance use, mental, and other health disorders. When these disorders are undetected, these individuals are likely to repeatedly cycle through the criminal justice system. When each participant is adequately screened and assessed, their individualized treatment plan can target the criminogenic needs he or she may need.[78]

Treatment Planning

Following intake, the next step is to develop a meaningful plan for treatment. The goal of this process is to create an individualized written treatment plan that is based on the assessment of the participant's needs, strengths, and weaknesses. Some plans may require a focus on specific needs exhibited by the participant, such as depression, anxiety, or anger management. Each special focus area—in addition to the basic focus on substance abuse/dependency treatment—is incorporated into the treatment plan, developed jointly by the substance abuse treatment professional and the individual.

Issues addressed in a typical individualized treatment plan might include the following:

- Frequency of services to be provided (e.g., number of counseling sessions/activities per week).
- Modalities of services to be provided (e.g., type of therapy/activities, such as individual, group, family, sweat lodge).
- Duration of services (e.g., length of sessions/activities).
- Objectives of services (e.g., tasks and/or assignments to be completed each week).
- Time frames for services and assignments.
- Content of the sessions planned.

The treatment plan should be shared with the Wellness Court team. Updates to the plan should indicate any new developments that may affect the initial treatment plan; a narrative of the progress to date; additional interventions that may be recommended; additional challenges that may need to be addressed; and updated goals, objectives, and time frames.[79]

[78] Kushner, Peters, and Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* at 9.
[79] Id.

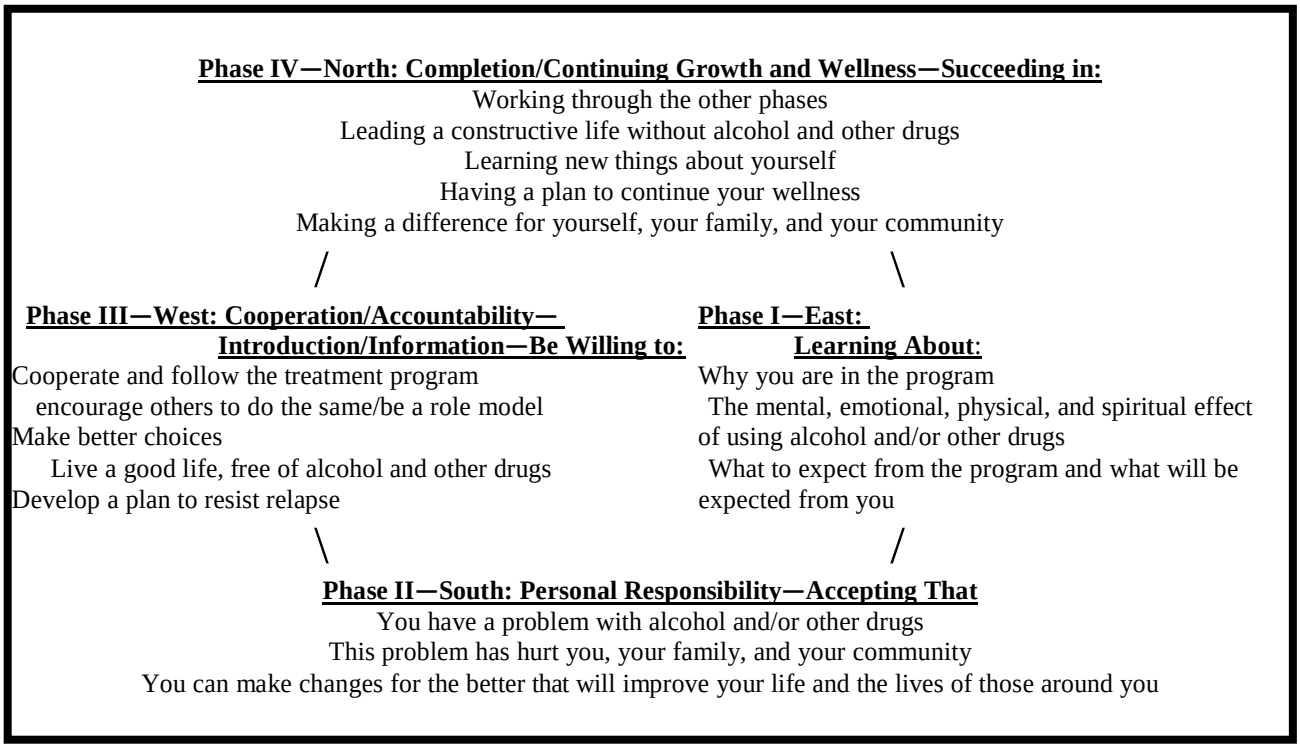
E. Phased Treatment Plan Framework

Treatment plans in most Healing to Wellness Courts follow a multi-phased approach (generally three to five phases). Each phase has specifically articulated goals, requirements, and milestones for the individual to achieve to progress to the next phase. Most programs match their treatment services and schedule to the goals, requirements, and milestones of each phase.

This phased approach allows each participant to proceed systematically through the program with clinical support and guidance. In the beginning phase, participants will generally experience biological, emotional, and spiritual difficulties as their mind and bodies withdraw from the chemicals on which they have depended. As each phase is completed, participants become more responsible and are better able to take responsibility for their recovery. Therefore, the frequency of court appearances, treatment contacts, drug testing, and other program requirements generally decreases as the individual progresses in the program.

The phased treatment plan might be visualized as a circle—a wellness wheel—within which the treatment phases operate. Each phase of treatment can be considered to correspond to one of four directions, with each direction representing a step toward healing and wellness.

Four Phases/Directions of Treatment Wellness Wheel



During each phase, participants are required to be tested for alcohol and other drug use frequently and randomly; appear at regular court status hearings (usually weekly or biweekly at first); and engage in other court-ordered activities to support their successful completion of each phase of the treatment circle.

A program's "initial phase" of treatment, for example, may focus on stabilizing the participant; gathering information regarding participants' use of alcohol and/or other drugs; developing an understanding as to why they are in the Wellness Court; and obtaining a basic education on the effect of alcohol and other drugs.

The corresponding treatment services could focus on activities that help the participant achieve the following:

NADCP Drug Court Standards: Frequency of Drug Tests and Status Hearings

VII. A. "…Urine testing is performed at least twice per week until participants are in the last phase of the program and preparing for graduation."

III. E. "Participants appear before the judge for status hearings no less frequently than every two weeks during the first phase of the program. ... Status hearings are schedule no less frequently than every four weeks until participants are in the last phase of the program."

- Develop a thorough and accurate history of their use of alcohol and/or other substances;
- Develop a visual representation of their role in the family; and
- Develop an understanding of their available choices and decisions, which led to involvement in the Wellness Court.

The first phase of Wellness Court should focus primarily on resolving conditions that are likely to interfere with retention or compliance in treatment, also known as "responsivity needs." This may include meeting participants' basic housing needs, stabilizing mental health symptoms, and addressing symptoms of addiction such as cravings or withdrawal.[80]

Requirements to progress to Phase II may include a specific period of abstinence (e.g., negative drug tests) and compliance with all program requirements.

NADCP Drug Court Standard: Phase Promotion
IV. I. "Phase promotion is predicated on the achievement of realistic and defined behavioral objectives, such as completing a treatment regimen or remaining drug-abstinent for a specific period of time. … Treatment is reduced only if it is determined clinically that a reduction in treatment is unlikely to precipitate a relapse to substance use."

[80] *See* *Drug Court Best Practice Standards, Volume II* at 9: Commentary to Standard VI. B.: "Complementary Treatment and Social Services: Sequence and Timing of Services."

The goals of Phase II may focus on the participants' demonstration that they have accepted their own problems. It could also focus on the participants' acceptance of responsibility for the harm their alcohol or other drug use has caused for themselves and others.

In support of these goals, the treatment plan could include tasks such as:

- Set one-year goals;
- Develop a support network, including attending 12-step meetings and/or other support groups; and
- Practice role-playing situations in which the individual practices resistance to the use alcohol or other drugs or effectively dealing with other at-risk situations (e.g., refusal skills).

Phase requirements, support, and accountability of the Wellness Court should focus on resolving the needs that increase the likelihood of criminal recidivism and substance abuse, also known as "criminogenic needs." This could include requiring sustained abstinence from drugs and alcohol, addressing dysfunctional and antisocial thoughts, and addressing antisocial peers and family conflicts.[81]

Treatment in Phase III could focus on participants' developing long-term strategies for abstinence and recovery. Activities may include:

- Develop a relapse prevention plan;
- Develop five-to-ten-year life goals; and
- Address educational and/or vocational gaps.

These remaining needs, such as vocational and educational assistance, parent training, and daily living skills, are critical for maintaining treatment gains. However, at least in nontribal drug courts, treating these needs too early in the drug court can result in worse outcomes. Alternatively, ignoring these needs can result in losing some of the long-term benefits of treatment.[82]

A final phase of the program may focus on preparing participants for completing the program. This includes reconnecting participants with the community and developing external support systems. It also includes participants putting into practice what they have learned in the treatment program. Supporting activities might include:

- Attend support groups/activities weekly;
- Serve as guest speakers at Phase I groups to share their knowledge and insights; and
- Develop and present aftercare (long-term relapse prevention) plans to the group and their family.

[81] Id.
[82] Id.

Progression from each phase should also require a specified period of abstinence (e.g., negative alcohol and other drug tests) and compliance with relevant program requirements and assignments. Creating an incentive board that shows the participants' progress through each phase is a useful tool for phase movement. This can also provide opportunities to score how a participant is utilizing the phase before phase movement. For example, if a participant had the opportunity to earn ten incentives while following the treatment program and only earned three incentives, then that would mean that 70 percent of the time the participant was not following the treatment program. Perhaps the team would want to discuss holding this participant back from phase movement.

The following charts provide examples of phased treatment programs. For more examples, see *Tribal Healing to Wellness Courts: The Policies and Procedures Guide*.[83]

[83] Pat Sekaquaptewa and Lauren van Schilfgaarde, *Tribal Healing to Wellness Courts: The Policies and Procedures Guide* (Tribal Law and Policy Institute, 2015).

Example: Adult Phases of Treatment

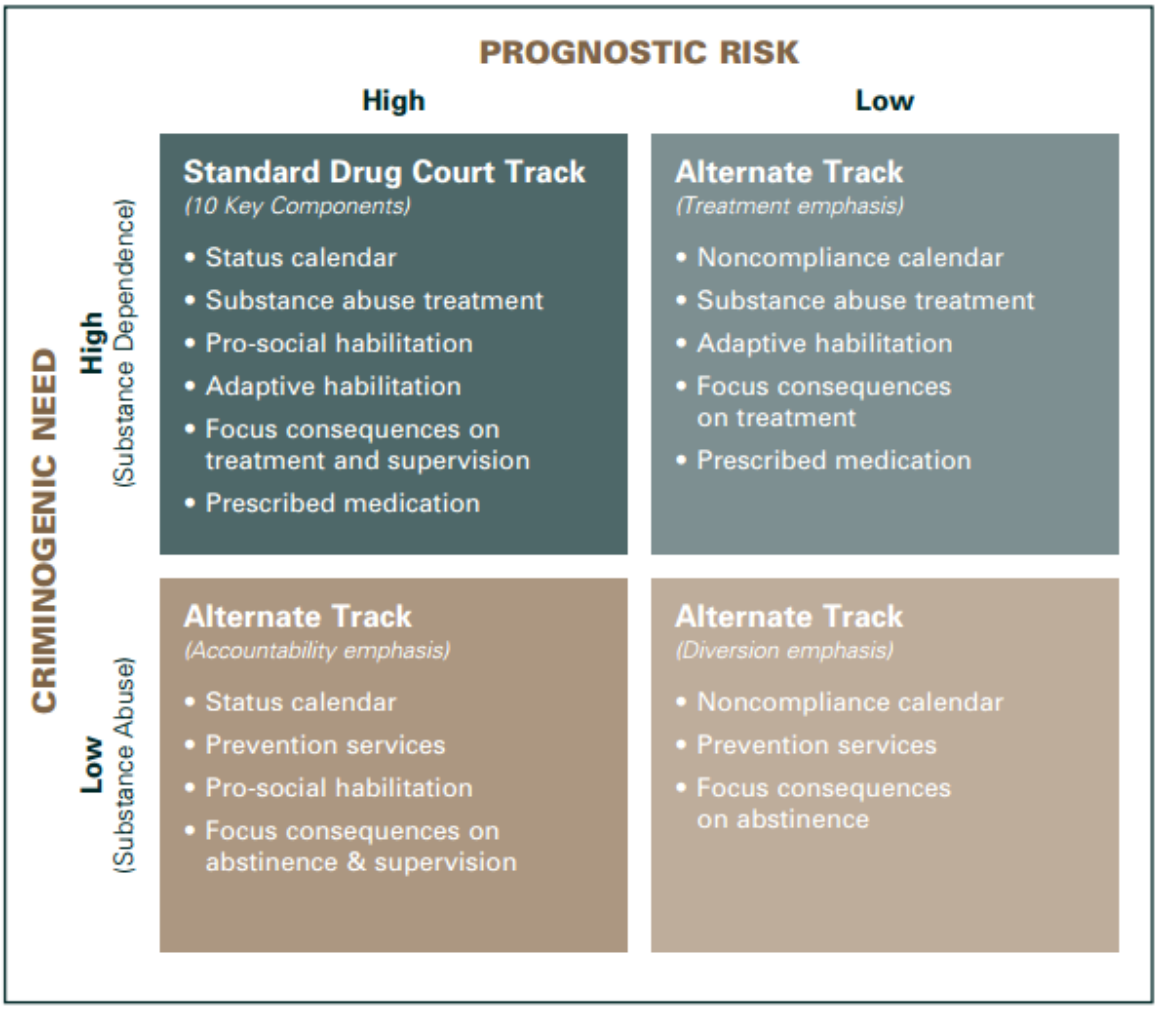
PHASE I	PHASE II	PHASE III	PHASE IV
Learning Level (detoxification and beginning treatment)	**Accepting Level** (stabilization and treatment)	**Willing Level** (Maintenance and Treatment)	**Succeeding Level** (aftercare)
Phase Graduation Requirements:			
Clean tests Meeting attendance Payment of all court costs and fines	Clean tests Meeting attendance Payment of all court costs and fines Team recommendation	Clean tests Meeting attendance Payment of all court costs and fines Team recommendation	Completion of treatment plan Clean tests Development of a relapse plan Payment of all court costs and fines
8 weeks	**16 weeks**	**16 weeks**	**10–14 weeks**
Screening Assessment Intake Orientation			
Individual Counseling (as needed)	**Individual Counseling** (as needed)	**Individual Counseling** (as needed)	**Individual Counseling** (as needed)
Group Counseling (3–4X/week) Educational Cognitive behavioral Other	**Group Counseling** (1X/week) Educational Other methodologies	**Group Counseling** (1X/week) Educational Other methodologies	**Group Counseling** (1X/week) Maintenance Other methodologies
Alcohol/Drug Testing 3X/week	**Alcohol/Drug Testing** 2X/week	**Alcohol/Drug Testing** 2X/month	**Alcohol/Drug Testing** 2X/month
Case Management and Supervision **Status Hearings** (1X/week)	**Case Management and Supervision** **Status Hearings** (2X/month) **Self-Help Meetings** (2X/week)	**Case Management and Supervision** **Status Hearings** (1X/month) **Self-Help Meetings** (1X/week)	**Case Management and Supervision** **Status Hearings** (1X/month) **Self-Help Meetings** (2X/monthly)
			Develop and Implement Aftercare Plan
			GRADUATION

Example: Juvenile Drug Court Phases of Treatment

PHASE I	PHASE II	PHASE III	PHASE IV
Introduction Information	**Personal Responsibility**	**Cooperating and Accountability**	**Completion—Continuing Growth**
Learning about: • Why you are in the program • Mental, emotional, physical, and spiritual effects of using drugs and alcohol • What to expect • The choices you make and their consequences	**Accepting that:** • You have a problem with drugs and/or alcohol • This problem has hurt you, your family, and your community • You can make changes for the better, which will improve your life and the lives of those around you • You can heal	**Be willing to:** • Cooperate and follow the treatment program, attaining goals, and achieving success • Encourage others to do the same, be a role model • Make better choices • Live in balance, a good life, free of alcohol and drugs • Develop a plan to confront relapse	**Succeeding in:** • Working through the other phases • Having a positive life without drugs and alcohol • Learning new things about yourself
8 weeks	**8 weeks**	**8 weeks**	**8—12 weeks**
Screening **Assessment** **Intake/Orientation**			
Individual Counseling/ Family Counseling (alternate every two weeks)	**Individual Counseling/ Family Counseling** (alternate every two weeks)	**Individual Counseling/ Family Counseling** (alternate every two weeks)	**Individual Counseling/ Family Counseling** (alternate every two weeks)
Group Counseling (weekly) Process Recovery Cognitive Behavioral	**Group Counseling** (weekly) Process Recovery Cognitive Behavioral	**Group Counseling** (weekly) Process Recovery Cognitive Behavioral	**Group Counseling** (weekly) Process Recovery Cognitive Behavioral
Multifamily Group (every two weeks)	**Multifamily Group** (every two weeks)	**Multifamily Group** (every two weeks)	**Multifamily Group** (every two weeks)
Relapse Prevention	**Relapse Prevention**	**Initial Relapse Prevention Plan**	**Relapse Prevention Plan**
Adventure Program	**Adventure Program**	**Adventure Program**	**Adventure Program**
		AA, NA, A1-Anoon	**AA, NA, A1-Anon**
			Develop and Implement Aftercare Plan
			GRADUATION

Separate Tracks

When serving individuals with different risks and needs, consider separating participants into separate tracks. No one intervention is appropriately suited for all drug-involved offenders. Conceptually, clinical need and criminogenic risk may be crossed in a two-by-two matrix yielding four quadrants, ranging from high risk/high need to low risk/low need. To be most effective and cost-efficient, treatment and supervision services should be specifically tailored to the risk/need profile of the offender. Further, providing too much treatment or too much supervision is not merely a potential waste of resources, it can increase crime or substance abuse by exposing individuals to more seriously impaired or antisocial peers, or by interfering with their prosocial activities.[84] The following figure summarizes possible alternative treatment and supervisory regimens that might be administered in a Wellness Court serving different types of participants, developed by the National Drug Court Institute.[85]



[84] Douglas Marlowe, JD, PhD, "Alternative Tracks in Adult Drug Court: Matching Your Program to the Needs of Your Clients," Drug Court Practitioner Fact Sheet, National Drug Court Institute (2012).
[85] Id.

F. The Treatment Plan: Basic Components

The treatment plan is designed to provide the individual with insight, understanding, and empowerment so that they can begin to make choices that are beneficial to them and their community. Treatment should provide the individual with an opportunity to:

- Succeed in changing their perception of their place and goals in the world;
- Practice healthy, life-affirming choices;
- Evaluate their role as troublemaker versus peacemaker; and
- Build a bridge back into the community.

The following are basic components of the treatment plan.

Individualized Services

Counseling

Counseling entails providing constructive guidance to the individual regarding how they deal with common life situations. It also provides guidance as to how they deal with problems in their past that have never fully been resolved. Similarly, counseling deals with the individual's self-concept. Counseling entails an ongoing process that requires trust, patience, and respect. Counseling also allows a platform for assessment of potential co-occurring disorders.

Individual Therapy

Individual therapy provides an opportunity for an individual to reflect, without distraction, on their progress, setbacks, attitude, and behaviors. Participants can openly explore their motivations and plans for moving from reflection to action. In an individual therapy session, the treatment provider acts as an objective "voice of reason" to guide and challenge the individual in their thought processes. Essential elements of individual therapy include:

- Providing a safe place for the individual to tell their story;
- Assisting the individual in translating ideas and goals into action;
- Helping the individual candidly assess their progress or lack of progress; and
- Assessing for co-occurring disorders.

Participants should meet with a treatment provider or clinical case manager for at least one session per week during the first phase of the Wellness Court. The frequency of individual sessions may be reduced subsequently if doing so would be unlikely to precipitate a behavioral setback or relapse.[86]

[86] *Drug Court Best Practice Standards, Volume I* at 39.

Group Processes

When a participant begins to contribute to the group, it helps the participant to heal. The group is the place where the individual is asked to practice peace, tolerance, and professionalism; hold themselves and others accountable; and "feel" other persons' feelings. The group provides an opportunity for the participants to develop a community. By helping each other regain balance and create positive roles, the participants can establish a sense of value for themselves.

Participants should be screened for their suitability for group interventions, and group membership should be guided by evidence-based selection criteria including participants' gender, trauma histories, and co-occurring psychiatric symptoms (detailed more in the following text). Treatment groups should ordinarily have no more than twelve participants and at least two leaders or facilitators.[87]

Participants should be carefully guided to establish group norms and standards of behavior. Members need to be able to share in the group and voice their opinions freely, while understanding what limits apply. Group therapy serves an important function in treatment, particularly in the following areas:

- Providing a place of trust and connection for program participants;
- Providing participants with a place where they can learn new social skills;
- Helping individuals identify addictive patterns in themselves and others;
- Providing a place for "reality" testing;
- Fostering positive decision making;
- Providing the individual with a setting to support the development of their self-confidence and decrease their sense of guilt and shame; and
- An opportunity to promote acceptance of the individual by peers, which is far more powerful than acceptance by the therapist alone.

Examples of common types of group processes used in substance abuse treatment programs include the following.

Process Groups

Process groups provide participants with an opportunity to learn to talk with, trust, and respect one another. Participants are frequently challenged to "be real" in their sharing of feelings and feedback to others. In process groups, they can practice and strengthen their emotional and interpersonal skills, which they will need to use outside of the group in their day-to-day activities. Important themes that are stressed in process groups include:

- Learning about recovery;
- Practicing honesty and accountability;

[87] Id.

- Understanding the individual's relationship with alcohol and other drugs;
- Talking about feelings of anger, shame, and cravings;
- Listening to others;
- Working together with others to heal; and
- Completing assignments and program requirements.

Cognitive Behavioral Groups

Cognitive behavior groups provide participants with an opportunity to focus on their decision-making processes, their choices, and the consequences of these choices. The content of the groups' discussions follows lesson plans developed for group sessions, homework assignments, and counselor and peer feedback. Cognitive behavioral treatment has been shown to help develop a range of drug coping skills, and more generalized skills related to self-management and self-control.

Among the topics addressed in cognitive behavior groups are:

- Examining one's beliefs and attitudes;
- Examining how one relates to others; and
- Developing ways to approach decisions that result in making choices that reflect responsibility, positive goals, and considering the needs of others.

Educational Groups

Educational groups focus on teaching participants and their families about the pharmacological aspects of addiction. This includes biological risk factors and harmful effects that substance abuse can have on an individual's physical and mental health. These topics are often taught from the "disease" model of addiction. The content of educational groups may include:

- The biological effects of using chemical substances;
- The impact of substance use on an individual's emotions, self-concept, and relationships with others; and
- Basic concepts that provide groundwork for individuals to be accountable and responsible for their future choices.

Support Groups

Participants will not always be involved in the Wellness Court. It is vital, therefore, that they continue to participate in support groups. The support groups can assist them in continuing to use the tools and resources they have developed in the Wellness Court. Examples of valuable networks that many individuals in recovery utilize in an ongoing basis include:

- 12-step meetings (AA, AL-ANON, NA);
- Religious support groups;
- Talking circles and/or sweat lodges; and
- Involvement in traditional activities of the tribe.

Ideally participants should become involved in these support groups while still involved with the Wellness Court. This will establish a sound foundation for continuing with the support group by the time they graduate. Keep in mind, however, that because support groups such AA and NA are based on "monotheistic principles," and are thus religiously affiliated, some participants may not connect. As much as feasible, alternative support groups should be offered.[88]

Services for Families

Family Therapy

Because an individual's addiction will invariably affect their family relationships and the members of their family in different ways, family therapy is an important component of treatment. Family therapy sessions provide family members with the opportunity to reflect, reconnect, and reconfirm their respect for one another. The treatment provider can act as a guide in these sessions to help each member rebuild relationships with the others. Among the issues commonly addressed in family therapy sessions include:

- The nature of the family's history of alcohol or other drug use;
- The nature of any violence that has occurred in the family in conjunction with alcohol or other drug use;
- The nature of any contacts with the criminal justice system that have resulted from alcohol or other drug use; and
- A wide range of emotions and behavior that may result from (or unwittingly promote) alcohol or other drug use, including denial, enabling, and ways of communicating.

> **NOTE:**
> Great care should be exercised in considering family therapy sessions in situations involving domestic violence. In such situations, it is strongly suggested that the program establish a partnership with a domestic violence agency to develop policies and services for these cases.

[88] Consider these nonbinding state and federal decisions regarding the referral of peer support groups in drug court: *Kerr v. Farrey*, 95 F.3d 472, 479-80 (7th Cir. 1996) (holding that the prison violated the Establishment Clause by requiring attendance at Narcotics Anonymous meetings which used "God" in its treatment approach); *O'Connor v. California*, 855 F. Supp. 303, 308 (C.D. Cal. 1994) (finding that the Establishment Clause was not violated because the DUI probationer had several choices of programs, including self-help programs that are not premised on monotheistic deity); *Americans United v. Prison Fellowship*, 509 F.3d 406, 406 (8th Cir. 2007) (holding that a state supported noncoercive, nonrewarding faith-based program violated the Establishment Clause of the U.S. Constitution because an alternative was not available).

Serving Chemically Dependent Families

An individual's alcohol or other drug abuse can be symptomatic of use by other family members and can often be intergenerational. When other family members are also using alcohol and/or other drugs, then the individual does not receive the family support system necessary for social and basic life needs. The individual is also likely dealing with many additional complex issues stemming from their childhood and family relationships. The issues may be difficult to fully resolve in the limited period of a Wellness Court program. Therefore, efforts should focus on assisting family members to address the most immediate manifestations of family substance dependency, including:

- Tendencies to deny or minimize the problem;
- Chaotic or unpredictable relationships;
- Tendencies to blame one another for family problems;
- Inconsistent rules and roles within the family;
- "Fight" or "flight" response to conflict; and
- The tendency to hide true feelings to survive.

Education on the effects of alcohol and other drug use on families can provide a major first step in the healing process.

Adult Children of Alcoholics

Alcoholism is a chronic, progressive disease. Many people involved with Wellness Court—either as parents of participants or participants—have been raised in a home with at least one alcoholic parent. A child who lives with one or both parents who are alcoholics requires learning specific survival skills, which often result in inhibited communication skills. Many adult children of alcoholics minimize the effects of their upbringing. They are also more likely to have problems with substance abuse. Some of the characteristics of adult children of alcoholics that should be addressed in treatment are:

- Feelings of shame and fearfulness;
- Feelings of not being in control;
- Difficulty trusting others;
- Being either overly responsible or not being responsible at all;
- Having difficulty expressing sadness and/or anger;
- Having difficulty in relating with others;
- Denying the difficulty of growing up in an alcoholic home; and
- Using alcohol and other drugs to deal with the ups and downs of life.

Family Violence

Family violence is a frequent factor in families in which one of the members is using alcohol or other drugs. Thresholds of anger and impulse control are lowered during intoxication. Family violence is frequently practiced by both adolescents and adults against other family members and has serious effects for all involved. As a result of family violence, individuals may present

certain behavior and emotions, including:

- Feelings of fear and anger;
- Depression and sense of being "unlovable";
- Feelings of shame and incompetence;
- Suicidal or homicidal thoughts; and
- Lack of patience and quickness to anger.

Treatment services for participants exposed to family violence, whether they are adults or juveniles, should include:

- Referring individuals to domestic violence advocates for support;
- Developing a safety plan for the individual and the family;
- Help individuals recognize that they are not the cause of the violence problem;
- Provide participants with opportunities to discuss fears and feelings they may have resulting from the violence; and
- Strengthening an individual's self-esteem and sense of being valued. It is important that individuals who have been in family violence situations are *not* mandated to go to counseling with their abuser.

Multifamily Groups

Multifamily groups, particularly important in close communities, provide families of alcohol and other drug users with an opportunity to explore common issues and solutions. They confront issues relating to their family member's alcohol or other drug use. Multifamily groups often address their concerns though specially designed assignments and role plays. Multifamily groups should share their experiences and emotions. Their goal is to understand that they can serve their families by teaching and learning to create health and balance in their lives. Among the issues that multifamily groups commonly address are:

- Learning about addiction;
- Learning what to expect from recovery and the recovery process; and
- Understanding common problems that can result from alcohol and/or other drug use.[89]

Special Family Services for Juvenile Wellness Courts

Unlike adult Wellness Court participants, juvenile participants usually still live at home and need the support of their family to succeed. Youth cannot easily leave a difficult living environment and "start over," as adult participants may be able to do. In addition, "family," may extend beyond biological parents, including siblings, aunts and uncles, grandparents, teachers, and close family friends. Whoever is recognized as being the "family" for a juvenile, they should be involved in the youth's treatment program. Identifying who constitutes the youth's family should be a principal task during the screening and assessment process.

[89] *Drug Court Best Practice Standards, Volume II* at 7.

Often when a juvenile begins to get into trouble as a result of their alcohol or other drug use, the parents may deny the problem or believe that it will not reoccur. One or both parents may be enabling the child to continue their alcohol or other drug use by not being truthful about the child's negative behavior. They are often afraid to confront their child. Sometimes parents may not want to address the alcohol or drug use problems of their child because of their own addictions.

Other Support Services

A wide range of other support services will frequently need to be provided to individuals in alcohol and/or other substance abuse treatment programs. The participants will often require assistance for basic life needs and skills that they have either lost or never acquired. Many will have medical and/or dental problems. Participants often need vocational training or job placement assistance. Many will need to learn basic life skills—such as time and money management, parenting, and anger management.

These conditions are likely to interfere with the participants' response to substance abuse treatment, increase their criminal behaviors, and diminish their long-term treatment gains. However, when addressing these conditions, consider the participant's progress in Wellness Court, and their current capacity to receive those services. Generally, in the first phase, participants should receive services designed primarily to address *responsivity* needs such as deficient housing, mental health symptoms, and substance-related cravings and withdrawal. In the interim phases, participants should receive services designed to address their criminal behaviors such as criminal-thinking patterns, delinquent peers, and family conflict. In the later phases, participants should receive services designed to maintain treatment gains such as vocation or education training and counseling.[90]

Identifying the range of other support services that Wellness Court participants need is an ongoing process, with some needs emerging only after the individual has become sober and has begun their recovery process.

Housing

Housing is generally the primary barrier for most Wellness Court participants. Within tribal communities, sufficient and sober housing can be especially difficult to locate. As much as feasible, the Wellness Court team should help participants find safe and sober housing with prosocial and drug-free relatives, friends, or other suitable persons. Participants should not be excluded from participants in Wellness Court because they lack a stable place of residence.[91]

[90] Id. at 6.
[91] Id.

Anger Management

Many adults and juveniles who have alcohol or other drug use problems also have problems controlling their anger. These problems are generally displayed by aggressive action, verbal outbursts, violence, and/or destruction of property. The individuals frequently overreact to real or perceived criticism. Rather than exploring their feelings, they hold them in and react with various manifestations of rage. Many individuals use substances initially to medicate their anger but, once intoxicated, act with increased aggression.

Treatment programming should aim to assist individuals with controlling their anger and, through understanding it, develop constructive ways to cope. Among treatment goals that address the area of anger management are those that assist the individual:

- Develop a lifestyle free of alcohol and other drug use;
- Understand the relationship between angry feelings and their underlying causes;
- Accept responsibility for their actions and behavior; and
- Learn stress management, and skills relating to constructive communication and problem solving.

Parenting Skills

Parenting skills are an important component of both adult and juvenile Wellness Courts. Whether the adult participant has children in the home, or the juvenile participant is struggling to develop a positive relationship with their parent, the development of effective parenting skills plays a major role in helping individuals assume their appropriate role within the family and acquire the behavioral tools necessary for family healing and wellness. Mandatory parenting classes, when possible, are essential to the effectiveness of both adult and juvenile Wellness Courts. The goal of these classes should be to better equip parents with the tools and support necessary to be positive role models and parents for their children.

Parenting classes should focus on helping parents:

- Understand what is happening with their child developmentally;
- Understand underlying needs of their child that may be manifesting themselves in negative behavior, including alcohol or other drug use;
- Encourage shared discussion and support from other parents experiencing similar problems; and
- Learn what they can do to help change their own behaviors and that of their child.

Parenting classes should have a special curriculum designed to address:

- Recognizing physical symptoms of alcohol or other drug use;
- Mental health issues related to alcohol or other drug use;
- Counteracting potential negative responses to alcohol and other drug use by children

(e.g., enabling, denial);
- Culturally responsive parenting techniques;
- Strategies for constructively addressing children's alcohol or other drug use (if appropriate);
- Techniques for building trust and candor between parent and child; and
- Utilizing community resources that can be of assistance.

Experiential, Wilderness, and Adventure-Based Programming

Program components that focus on experiential, wilderness, or adventure-based activities play an important role in promoting the healing of the mind, body, emotions, and spirit. These can be either an individual or group experience in the natural world. Adventure-based activities that are part of the treatment process are designed to teach problem solving through self-reliance, working with others to solve problems, and, especially, drawing on inner strengths. An important component of adventure-based activities is the "processing" of the experience through discussions among instructors and participants. The processing focuses upon discussing what happened, important lessons learned, and how these lessons can be applied in common life situations. Among the goals of adventure-based programming are:

- Developing self-confidence
("*I can do it; I count and can make a difference; I can make choices that help me, my family, and my community*");

- Developing skills that promote responsibility and social functioning (*respect for others; trust; appreciation of natural consequences; and exercising judgment*); and

- Participating in activities that serve the group/community
(*helping participants get beyond sense of self; developing concern and empathy for others; and putting into action positive attitudes and skills developed in group and individual counseling*).

While adventure-based programming is an important component of any alcohol or other drug treatment program, it plays a particularly significant role in juvenile treatment programming. Increasing the ratio of experiential activities to other treatment services is an issue many juvenile drug court programs in state courts are now addressing.

Case Management

Case management services provide the referral, monitoring, and coordination function for the treatment program. Case management services should also provide guidance to participants to develop skills to address these needs for themselves. Because treatment in the Wellness Court context is holistic, the case manager should draw upon a range of disciplines and service providers. This is critical to ensure that the participant is progressing and that the range of individual needs they may have—both those identified at time of program entry and those that arise during the program—are met. Participants should meet individually with a clinical case manager or comparable treatment professional at least weekly during the first phase. The clinical case manager assesses whether the participant requires complementary treatment or social services, provides or refers participants for indicated services, and keeps the Wellness Court team appraised of the participants' progress.[92]

Some Wellness Courts hire a specifically designated case manager. Others—particularly programs with fewer numbers of participants—assign the case management function to team members.

Regardless of the program's structure for providing case management, the services required should include referral and oversight of:

- Treatment services;
- Educational services;
- Vocational training and/or job placement;
- Medical or dental services;
- Transportation needs; and
- Services to address basic life—housing (and sober living), utilities, and money management.

[92] Id.

G. Confidentiality and Communication

The effectiveness of Healing to Wellness Court is in part due to the removal of professional silos. Treatment providers and the court come together in a multidisciplinary team to openly communicate for the benefit of the participant. However, these open lines of communication are against the norm, and can sometimes be difficult to achieve. For the treatment provider, open communication can be jeopardized out of concerns for the therapeutic relationship and the participant's confidentiality.

Balancing the Therapeutic Relationship and the Wellness Court Team

Treatment providers in Wellness Courts must walk a fine line, both ethically and professionally. A treatment provider is tasked with consistently trying to build a therapeutic rapport with participants who have a difficult time trusting, especially persons in positions of authority. Most substance abuse clients have histories of traumatic events—such as sexual molestation, attachment disorder, abuse, and a lack of a stable environment or capable guardians—that occur before adulthood.[93] Participants who have experienced these types of traumas struggle to trust and disclose their traumatic events to others. A treatment provider must work hard to establish a therapeutic relationship with the participant based on empathy, respect, and trust.

Yet the treatment provider must also share with the Wellness Court team the participant's progress. The Wellness Court team needs to know whether the participant is attending and participating in treatment, their current prognosis, and information necessary to give the participant's current behavior context. This sharing can appear to threaten the therapeutic relationship. However, the team does not need the therapeutic details. Instead, the treatment provider must use their professional discretion to share what the team needs to know while maintaining the trust and respect of their therapeutic relationship with the participant. The treatment provider's relationships with both the participant and with the team are necessary to best assist the participant on their journey to sobriety.

> *For example:*
>
> Mary has been sexually molested by her grandfather since the age of eight. Mary has not used drugs for ninety days and has just entered the second phase of Healing to Wellness Court. Mary confides with her therapist, Jackie, that her grandfather just passed away, and she is having conflicting feelings of relief, anger, and grief. The day of the funeral, Mary uses her drug of choice, heroin, and tests dirty the next morning, when the Wellness Court coordinator gives her urinalyses. The

[93] "Making the Connection: Trauma and Substance Abuse," The National Child Traumatic Stress Network (2008). For more on trauma, *see* the section "Special Considerations for Treatment Services: Trauma-Informed Services."

Wellness Court team discusses her case and decides on a very strict sanction. Mary signed a release of information for Jackie when she entered her Wellness Court contract that allows Jackie to communicate information to the team. Jackie immediately speaks up and informs the team that Jackie has a traumatic history that was recently agitated. Her use is more likely to cope from a traumatic event than a conscious choice to disregard the Healing to Wellness Court rules.

In efforts to protect the therapeutic relationship, some teams have suffered from a reluctant or unwilling treatment provider team member. Some treatment providers will only discuss the participant with other treatment providers or supervisors. This resistance can lead to triangulation and division between the treatment providers, the other Wellness Court team members, and ultimately the participant.

No single person on the team can specialize in dealing with the wide range of participant issues. Instead, Wellness Court team members must communicate with one another. Treatment providers must be willing to communicate and collaborate with the team to realize better outcomes for participants.[94]

Confidentiality

Wellness Court team members need to exchange information about a participant's substance abuse treatment to determine the best treatment option for a participant.[95] Yet, numerous laws govern the restriction of a patient's medical information, including regarding their substance abuse treatment. Concern for violating these laws has often prevented treatment providers from meaningfully participating on a team. However, Wellness Courts are designed to encourage both the sharing of information across disciplines and to respect existing confidentiality laws. This is primarily achieved by having the participant consent to having their treatment information shared among Wellness Court team members.

In addition to state and tribal confidentiality laws, Wellness Courts are generally governed by federal law under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)[96] and the federal confidentiality regulations, 42 C.F.R. Part 2.

[94] Celinda Franco, *Drug Courts: Background, Effectiveness, and Policy Issues for Congress*, Congressional Research Service (2010), 2. Douglas B. Marlowe, *Research Update on Adult Drug Courts* (National Association of Drug Court Professionals, 2010), 3.
[95] *See* Rebecca Holland, *Practical Guide for Applying Federal Confidentiality Laws to Drug Court Operations* (Drug Court Clearinghouse and Technical Assistance Project, American University, 2000).
[96] Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936.

Health Insurance Portability and Accountability Act

HIPAA's privacy rule protects against the disclosure of health-care information that identifies an individual. Generally, covered entities should take reasonable steps to limit the use or disclosure of information to the minimum necessary to accomplish the intended purpose of the disclosure. HIPAA applies to a broad portion of the health-care industry, including health-care providers who transmit health information electronically.[97] While HIPAA-covered entities generally do not include the courts, court personnel, correctional facilities, or law enforcement, Wellness Courts are recommended to nevertheless comply with the spirit of HIPAA, as often the treatment team members will be covered.[98]

42 C.F.R. Part 2

42 C.F.R. Part 2 applies to drug and alcohol programs and activities, and is a stricter degree of confidentiality than HIPAA. It prohibits the disclosure of information that identifies a participant as an alcohol or drug patient, or information that discloses that a person is receiving, has received, or has applied to receive substance abuse treatment services.[99] Drug-testing results alone are not protected, unless used for diagnosis, treatment, or referral for treatment.[100]

42 C.F.R. Part 2's covered programs are quite broad, and include any program that (1) "holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment, referral for treatment or prevention" and (2) is federally assisted.[101] "Referral for treatment" includes a court employee who conducts a screening or assessment. Participation in drug court has been considered a covered program.[102] Similarly, "federal assistance" is also quite broad, and includes any direct or indirect funding and assistance, including if a program receives tax exempt status.[103]

Consent Forms

The primary exception to the federal confidentiality laws is for the individual to provide consent. It is vital that upon entering Wellness Court, all participants sign a consent form to permit treatment information to be discussed in staffing. One consent form can comply with both 42 C.F.R. Part 2 and HIPAA. A valid consent requires (1) the advisement and (2) the actual consent. Sample consent forms and court orders are provided in the following text.

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[97] 45 C.F.R. § 160.102(a).
[98] Marlowe and Meyer, eds., *The Drug Court Judicial Bench Book* at 183–4.
[99] 42 C.F.R. §§2.12-2.13.
[100] Legal Action Center, *Confidentiality and Communication, A Guide to the Federal Drug and Alcohol Confidentiality Law and HIPAA* (2006), 129.
[101] 42 C.F.R. §2.11, §2.12(b).
[102] Jeffrey Tauber et al., *Federal Confidentiality Laws and How They Affect Drug Court Practitioners* (National Drug Court Institute, 1999), 19.
[103] Marlowe and Meyer, eds., *The Drug Court Judicial Bench Book* at 185.

The advisement must contain the following notices:[104]

1. A header with the following statement: "This notice describes how medical and drug and alcohol related information about you may be used and disclosed and how you can get access to this information. Please review it carefully."
2. A citation to both HIPAA and the confidentiality law and regulations.
3. A description, including at least one example, of the types of uses and disclosures that the program is permitted to make for treatment, payment, and health-care operations (include only those permitted under 42 CFR Part 2).
4. A description, including at least one example, of each of the other purposes for which the program is permitted or required to disclose protected health information without the individual's consent (this should include only those permitted under 42 CFR Part 2, including a warning that information can be released if the patient commits or threatens to commit a crime on program premises or against program personnel) and that the program must report suspected child abuse or neglect.
5. A statement that other uses and disclosures will be made only with the individual's written consent and that the individual may revoke this consent.
6. A statement of the individual's rights and a description of how the individual may exercise their rights.
7. A statement that the program is required by law to maintain the privacy of the participant and to provide individuals with notice of its legal duties and privacy practices.
8. A statement that the program is required to abide by the terms of the notice.
9. A statement that the program reserves the right to change the terms of the notice, and a description of how the program will provide individuals with a revised notice.
10. A statement that (1) a violation of 42 CFR Part 2 is a reportable crime and (2) under HIPAA, individuals may complain to the program and to the Department of Health and Human Services (HHS) if they believe their privacy rights have been violated, together with (3) a description of how the complaint may be filed.
11. The name, title, and telephone number of a contact for further information.
12. The date on which the notice became effective.

The Wellness Court coordinator or case manager should go over the advisement with the participant and answer any questions before the participant signs the consent form to enter the Wellness Court. Consider reading the form aloud.

The consent form requires ten elements:[105]

1. The name or general designation of the program(s) making the disclosure.
2. The name of the individual or organization that will receive the disclosure. This should include each Wellness Court team member.
3. The name of the participant who is the subject of the disclosure.
4. The purpose or need for the disclosure.

[104] Excepted from Legal Action Center at 94–5; 45 C.F.R. § 164.520(b); 42 C.F.R. § 2.22(b).
[105] 42 C.F.R. § 2.31(a); 45 C.F.R. § 164.508(c); Legal Action Center at 27.

5. A description of how much and what kind of information will be disclosed.
6. A statement that the patient has the right to revoke the consent in writing and the exceptions to the right to revoke or, if the exceptions are included in the program's notice, a reference to the notice.
7. A statement that the program has the ability to condition treatment, payment, enrollment, or eligibility of benefits on the patient agreeing to sign the consent, by stating either (1) that the program may not condition these services on the patient signing the consent, or (2) the consequences for the patient refusing to sign the consent.
8. The date, event, or condition upon which the consent expires if not previously revoked.
9. The signature of the participant (and/or other authorized person).
10. The date on which the consent is signed.

Note that while under number 6, the participant has the right to revoke their consent to sharing their medical information with the Wellness Court team, number 7 provides notice that the revocation of their consent will have consequences, such as their termination from the Wellness Court. While HIPAA prohibits requiring a signature of consent as a condition of treatment,[106] the judge can require consent to release of information as condition of Wellness Court participation.

Finally, the treatment provider should remind the participant of the consent and release of information before starting services. Even with a release of information, the treatment provider and the team should only release the minimum amount of information necessary to carry out the purpose of the disclosure.

For more on confidentiality, see:

- "Confidentiality and Communication," in Jeffrey Kushner, Roger H. Peters, and Caroline S. Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* (Bureau of Justice Assistance Drug Court Technical Assistance Project, American University, April 2014), 37–8.
- "Confidentiality," in Douglas B. Marlowe and Hon. William G. Meyer, *The Drug Court Judicial Bench Book* (National Drug Court Institute, 2011), 181–94.

[106] 45 C.F.R. §164.508(b)(4).

H. Medication-Assisted Treatment

The U.S. Food and Drug Administration (FDA) has approved a variety of medications as safe and effective for the treatment of alcohol and opioid-use disorders.[107] The use of medications has been shown to reduce opioid use and drinking for drug court participants. However, the medication must be an adjunct to treatment at the recommendation of an attending physician and under specified protocols.

Medication-assisted treatment (MAT) was developed by addiction specialists and the medical community in response to the overwhelming number of opioid-addicted individuals. MAT is the use of counseling and behavioral therapies along with medications for substance abuse treatment. The net effect is to allow participants to curtail their use of alcohol or opioids and to more effectively engage in other evidence-based treatments. In 2013, according to SAMHSA, there were 6.5 million nonmedical users of prescription-type drugs, including 4.5 million nonmedical users of prescription pain relievers.[108] Treating substance abuse disorders with a combination of medication and therapy has yielded the most successful results.[109]

Further, several federal streams of drug court and Wellness Court funding require that funded courts at least *not deny access* of participants to appropriate MAT under the care and prescription of a physician, including specifically methadone.[110]

Federal Protocols

All Wellness Court considering utilizing a MAT should reference 42 Code of Federal Regulations 8.12—Federal Opioid Treatment Standards, which describes an acceptable peer-reviewed, evidence-based program.[111] One potential issue with nonregulated MAT is prematurely allowing clients to take their medication home, where it can more easily be abused. When a MAT is following the federal regulations, a client should be receiving their medication at the hospital, only be allowed to take the medication home on days that the hospital/clinic is closed for business, and only be given daily, single doses. Furthermore, federal regulation states that some clients may take home their doses unsupervised, but only if they can pass the following criteria:

1) Absence of recent abuse of drugs (opioid or nonnarcotic), including alcohol;

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[107] Kushner, Peters, and Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* at 16.

[108] Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, *The NSDUH Report: Substance Use and Mental Health Estimates from the 2013 National Survey on Drug Use and Health: Overview of Findings* (2014).

[109] J. S. Potter, E. N. Marino, M. P. Hillhouse, S. Nielsen, K. Wiest, C. P. Canamar, J. A. Martin, A. Ang, R. Baker, A. J. Saxon, and W. Ling, "Buprenorphine/Naloxone and Methadone Maintenance Treatment Outcomes for Opioid Analgesic, Heroin, and Combined Users: Findings from Starting Treatment with Agonist Replacement Therapies (START)," 74(4) J. Stud Alcohol Drugs (2013), 605–13.

[110] E.g., *see* U.S. Department of Justice, Bureau of Justice Assistance, Adult Drug Court Discretionary Grant Program FY 2017 Competitive Grant Announcement (February 28, 2017).

[111] Code of Federal Regulations, 42 CFR § 8.12—Federal Opioid Treatment Standards.

2) Regular clinic attendance;
3) Absence of serious behavioral problems at the clinic;
4) Absence of known recent criminal activity, for example, drug dealing;
5) Stabile home environment and social relationships;
6) Sufficient time in comprehensive maintenance treatment;
7) Assurance that take-home medication can be safely stored within the patient's home; and
8) Rehabilitative benefits the patient derives from decreasing the frequency of clinic attendance outweighs the potential risks of diversion.

Section 3 of 42 CFR 8.12 states:

1) During the first 90 days of treatment, the take-home supply (beyond that of paragraph (i)(1) of this section) is limited to a single dose each week, and the patient shall ingest all other doses under appropriate supervision as provided for under the regulations in this subpart.
2) In the second 90 days of treatment, the take-home supply (beyond that of paragraph (i)(1) of this section) is two doses per week.
3) In the third 90 days of treatment, the take-home supply (beyond that of paragraph (i)(1) of this section) is three doses per week.
4) In the remaining months of the first year, a patient may be given a maximum 6-day supply of take-home medication.
5) After 1 year of continuous treatment, a patient may be given a maximum 2-week supply of take-home medication.
6) After 2 years of continuous treatment, a patient may be given a maximum one-month supply of take-home medication, but must make monthly visits.

According to the criteria, in the first 180 days the patient should only have a take-home maximum of three doses a week. When an evidence-based MAT program partners with a Wellness Court, the participant's MAT progress can be monitored in conjunction with a service provider.

MAT, when following the evidence-based and federally recognized protocols, has taken great strides in reducing opioid addiction and returning patients to an improved and healthier life free of drugs. Research and consensus among the FDA, World Health Organization, National Association of Drug Court Professionals, and SAMHSA support the use of pharmacologic treatments for an opioid abuse. In fact, Wellness Courts and health-care provider teams are ideally situated to administer these treatment medications to help their participants/patients be successful; especially with those participants who have been unwilling or unable to access successful treatment through convention means.[112]

[112] "Medication-Assisted Treatment for Opioid Addiction in Opioid Treatment Programs: TIP 43," Substance Abuse and Menth Health Services Administration, 12-4214 HHS Pub. No. (SMA) (2005).

Medications for Opioid Disorders

There are three FDA-approved medications for the treatment of opioid disorder: two agonists (buprenorphine and methadone) and one antagonist (naltrexone). Agonists bind to the opioid receptors in the brain. Methadone and buprenorphine satisfy opioid craving and symptoms of withdrawal, while also blocking the euphoric effects of other self-administered opioids. Antagonists block the opioid receptors, preventing a patient from feeling any euphoric effects of self-administered opioids.

Methadone

Methadone is a synthetic opioid medication that is used as a pain reliever, and together with counseling and other psychosocial services, it is used to treat individuals addicted to heroin and certain prescription drugs. Methadone, like buprenorphine, satisfies opioid craving, while blocking the euphoric effects of other self-administered opioids, thus causing the patient to sharply reduce their illicit opioid use. The evidence for the effectiveness of methadone treatment in reducing opioid use comes from numerous studies, and has been proven effective persons under criminal justice supervision.[113] Methadone is especially effective for high-level heroin users.

Buprenorphine

Buprenorphine is an opioid partial agonist. This means that, although buprenorphine is an opioid and the addict can feel high, its maximal effects are less than those of heroin and methadone. At low doses, buprenorphine produces sufficient effects to enable opioid-addicted individuals to stop using other opioids without experiencing withdrawal symptoms.
There are two forms of buprenorphine. Suboxone® contains buprenorphine plus another medication called naloxone. The naloxone is added to prevent abuse—it brings on withdrawal in people who abuse buprenorphine. Subutex® contains only buprenorphine and has the potential for abuse. Because of the potential for abuse, a Wellness Court should have a strong relationship with the treatment provider.[114] Suboxone is most effective for lower-level heroin abusers. Buprenorphine has been proven effective in suppressing opioid use.

Naltrexone

Naltrexone is an opioid antagonist, approved for relapse prevention. Unlike the opioid agonists mentioned previously, naltrexone provides no opioid effects of its own. Naltrexone comes in a tablet form (Revia®) and an extended-release injection (Vivitrol®), which is supplied as an injection to be administered every twenty-eight to thirty days. Patients must go through complete detoxification before beginning naltrexone. It should be noted that many patients

[113] Kushner, Peters, and Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* at 17.

[114] TIP 43.

state that naltrexone helps curb their cravings for opioids for the first twenty to twenty-five days. After twenty to twenty-five days the positive effects begin to wear off and cravings for opioids can increase. Patients also state that experiencing their cravings again cause them to second-guess the benefits of receiving the next monthly shot. It is highly recommended that the Wellness Court treatment provider, therapist, and or coordinator/case manager keep track of these calendar milestones and be prepared to intervene.

Medications for Alcohol Use Disorders

There are three FDA-approved medications for the treatment of alcohol use disorders: naltrexone (both oral and extended-release forms), disulfiram (Antabuse), and acamprosate (Campral).

Naltrexone

Naltrexone, described previously, was originally approved for treating alcoholism, appears to reduce alcohol use by blunting the euphoric effects of drinking. Meta-analyses have found that oral naltrexone is more likely than a placebo to reduce drinking, reduce the likelihood of relapse to heavy drinking, and reduce the rates of relapse.[115]

Disulfiram

Disulfiram (Antabuse) inhibits the metabolism of alcohol in the liver, leading to the buildup of acetaldehyde, which can cause nausea, vomiting, facial flushing, dizziness, and shortness of breath. This unpleasant reaction will cause persons to stop drinking (or to stop taking Antabuse). Those taking disulfiram must be abstinent from alcohol for at least twenty-four hours prior to starting the medication and must be advised not to drink for several days even after they stop taking the medication. Clinical research indicates that disulfiram can be effective in reducing drinking when taken under supervision.[116]

Acamprosate

Acamprosate (Campral) may exert its effects through reducing the hyperactivity of a neurotransmitter system (glutaminergic system) that occurs during protracted withdrawal from alcohol, thereby reducing withdrawal symptoms such as insomnia and anxiety. This medication is taken orally three times per day. Most randomized trials have found that acamprosate increases the likelihood of maintaining abstinence compared to a placebo.[117]

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[115] Kushner, Peters, and Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* at 18.
[116] Id.
[117] Id.

I. Drug Testing

A key component of Healing to Wellness Court, and one of the innovations they have introduced to the substance abuse treatment field, is the use of frequent, random testing for alcohol and other drug use by participants. Drug testing provides an objective and ongoing gauge of the degree to which the participant is—or is not—abstaining from the use of alcohol and other drugs. The tests can reinforce participants' efforts to stay clean and succeed in treatment. The tests provide both Wellness Court team members and participants with an immediate and objective indication of whether the participant is using. Wellness Court candidates need to know that alcohol and other drug testing is a key component of the Wellness Court. They should know that their test results will be shared with the team and will form the foundation to determine their progression through the treatment program.

Alcohol and other drug testing for Wellness Court participants plays a different role than testing for the purpose of prosecution. Drug testing in a Wellness Court environment is conducted for monitoring an individual's progress (or lack thereof) in treatment; it is not designed to convict them of drug use or to be used for other evidentiary purposes.

Consequently, the drug testing process in a Wellness Court does not require the level of scientific sophistication that would be required if the test results were to be used for prosecution. In many programs, drug testing is conducted by probation staff or other lay persons working with the program, using "point of contact" supplies (e.g., test strips or similar materials) that provide a fairly reliable reading as to whether the individual has used alcohol or other drugs. In the event the individual wishes to challenge the result, the substance can be retested using specially calibrated instruments that conform to scientific standards. Nevertheless, these initial drug tests, at least when conducted by an automated analyzer, have been recognized by courts as sufficiently accurate for probation revocation.

When developing Wellness Court testing policies and procedures, consider:

- What drugs will be tested?
- Who will conduct the testing?
- What testing materials will be used and what is their accuracy?
- How will contested test results be addressed?
- How frequently will testing be done? (at least two times a week in Phase I)
- How will a random approach to testing be implemented?
- What procedures will be developed to assure chain of custody for all drug-testing samples?
- What procedures will be instituted to reduce the likelihood of tampering with samples?
- What type of training will the team and others involved with the drug court need regarding drug-testing policies and practices?

Drug testing utilizes "cutoffs" for determining if a test result is "positive" or "negative." These cutoffs have been administratively established, usually for workplace drug testing. They are intended to comport with test technology capabilities, allow for identification of recent drug use, and minimize "false positives." However, it may be possible for Wellness Courts to set their own cutoffs.

Initial screenings are generally conducted by *immunoassays*, which can be performed by automated analyzers (both at a laboratory and onsite) and by visually read devices (cups/dipsticks), such as urine specimens. *Mass spectrometry* laboratory-based methods are generally used to confirm contested drug test results. For example, an initial immunoassay may detect an opiate, while a mass spectrometry confirmation will detect specific opiate(s) and their concentration.

Urine is the specimen most widely used and least costly for drug testing. Sweat patches can be used for continuous 24/7 monitoring. Hair and hair follicle testing have long been used. Hair drug testing provides the longest window of detection for prior drug use. Oral fluid (saliva) testing is currently developing. Testing for alcohol (ethanol) is generally conducted by either onsite breath alcohol test devices and ethanol-detecting ankle bracelets.

In developing drug-testing procedures, it is important that specimens for each gender are collected by persons of the same gender. Similarly, procedures for juveniles should be instituted to respect their sense of privacy.

NADCP Drug Court Standard: VII. Drug and Alcohol Testing

A. Frequent Testing: Drug and alcohol testing is performed frequently enough to ensure substance use is detected quickly and reliably. Urine testing is performed at least twice per week until participants are in the last phase of the program and preparing for graduation. Tests that measure substance use over extended periods of time, such as ankle monitors, are applied for at least ninety consecutive days followed by urine or other intermittent testing methods. Tests that have short detection windows, such as breathalyzers or oral fluid tests, are administered when recent substance use is suspected or when substance use is more likely to occur, such as during weekends or holidays.

B. Random Testing: The schedule of drug and alcohol testing is random and unpredictable. The probability of being tested on weekends and holidays is the same as on other days. Participants are required to deliver a test specimen as soon as practicable after being notified that a test has been scheduled. Urine specimens are delivered no more than eight hours after being notified that a urine test has been scheduled. For tests with short detection windows, such as oral fluid tests, specimens are delivered no more than four hours after being notified that a test was scheduled.

NADCP Drug Court Standard: VII. Drug and Alcohol Testing

C. Duration of Testing: Drug and alcohol testing continues uninterrupted to determine whether relapse occurs as other treatment and supervision services are adjusted.

D. Breadth of Testing: Test specimens are examined for all unauthorized substances of abuse that are suspected to be used by Drug Court participants. Randomly selected specimens are tested periodically for a broader range of substances to detect new substances of abuse that might be emerging in the Drug Court population.

E. Witnessed Collection: Collection of test specimens is witnessed directly by a staff person who has been trained to prevent tampering and substitution of fraudulent specimens. Barring exigent circumstances, participants are not permitted to undergo independent drug or alcohol testing in lieu of being tested by trained personnel assigned to or authorized by the Drug Court.

F. Valid Specimens: Test specimens are examined routinely for evidence of dilution and adulteration.

G. Accurate and Reliable Testing Procedures: The Drug Court uses scientifically valid and reliable testing procedures and establishes a chain of custody for each specimen. If a participant denies substance use in response to a positive screening test, a portion of the same specimen is subjected to confirmatory analysis using an instrumented test, such as gas chromatography/mass spectrometry (GC/MS) or liquid chromatography/mass spectrometry (LC/MS). Barring staff expertise in toxicology, pharmacology, or a related discipline, drug or metabolite concentrations falling below industry- or manufacturer-recommended cutoff levels are not interpreted as evidence of new substance use or changes in participants' substance use patterns.

H. Rapid Results: Test results, including the results of confirmation testing, are available to the Drug Court within forty-eight hours of sample collection.

I. Participant Contract: Upon entering the Drug Court, participants receive a clear and comprehensive explanation of their rights and responsibilities related to drug and alcohol testing. This information is described in a participant contract or handbook and reviewed periodically with participants to ensure they remain cognizant of their obligations.

For further information regarding drug testing for drug court participants, see "Drug Testing in a Drug Court Environment: Common Issues to Address."[118]

[118] Jerome J. Robinson and James W. Jones, *Drug Testing in a Drug Court Environment: Common Issues to Address* (OJP Drug Court Clearinghouse and Technical Assistance Project, American University, 2000).

J. Incentives and Sanctions

Like drug testing, a key component of Wellness Courts is the prompt application of incentives to recognize progress and graduated sanctions for noncompliance. Wellness Court incentives and sanctions must be designed to promote behavioral change in the participant by reinforcing positive conduct and discouraging—rather than punishing—negative and noncompliant behavior. Examining addiction as disease is recognizing that relapse, while not condoned, may occur during the recovery process. Sanctions should be short term, increasing in severity in proportion to the frequency of noncompliant behavior, with the overall goal of helping the individual to sustain their abstinence and recovery. The goal of incentives and sanctions is to have participants reconnect with themselves, their families, and their communities.

The basic framework for incentives and sanctions needs to be clearly communicated to all participants from the start of the program. The incentives and sanctions must have meaning to the participants, the team, and the community. Care must be taken to distinguish between situations in which an individual is making an effort in treatment but still using alcohol or other drugs, and situations in which the individual is making no effort at all. The former situation may warrant a reassessment of the participant's treatment plan rather than simply imposing a sanction.

Incentives and sanctions should be applied as soon as possible after the behavior at issue to have maximum effect on behavioral change. The principal characteristics of an effective program of incentives and sanctions in a Wellness Court are that they:

- Must be swift;
- Must support positive behavioral change (e.g., not be punitive);
- Must fit the behavior;
- Must be focused on respect for the individual;
- Must be applied consistently; and
- Must be used prudently; overuse can result in losing their effect.

Each Wellness Court must develop a range of incentives and sanctions that can be tailored to the individual situations of the participants. Many programs develop graduated sanctions, usually consisting of a range of sanctions that can be applied to varying levels of noncompliance, with the ultimate determination made by the judge. Whatever system of sanctions and incentives is adopted, it should be clearly established, understood, and applied by all team members and participants.

Examples of Sanctions and Incentives Used in Drug Court Programs

Sanctions	Incentives
Increased frequency of alcohol/drug testing	Positive acknowledgment of progress in court
House arrest for a short time period (e.g., one week) until the next hearing	Decrease in frequency of drug/alcohol testing
Writing assignment on topic that will educate the participant (e.g., physical effects of alcohol)	Progression to more advanced treatment phase
Detention for a short time period (e.g., two to three days) to get the individual's attention	Positive consideration for special events (e.g., ceremonial performances; family vacation)
Community service (e.g., painting buildings in the community)	Special tokens (e.g., gift certificates) contributed by other community members
Return to earlier phase of treatment	

NADCP Drug Court Standard: IV. Incentives, Sanctions, and Therapeutic Adjustments

A. Advance Notice: Policies and procedures concerning the administration of incentives, sanctions, and therapeutic adjustments are specified in writing and communicated in advance to Drug Court participants and team members. The policies and procedures provide a clear indication of which behaviors may elicit an incentive, sanction, or therapeutic adjustment; the range of consequences that may be imposed for those behaviors; the criteria for phase advancement, graduation, and termination from the program; and the legal and collateral consequences that may ensue from graduation and termination. The Drug Court team reserves a reasonable degree of discretion to modify a presumptive consequence in light of the circumstances presented in each case.

B. Opportunity to Be Heard: Participants are given an opportunity to explain their perspectives concerning factual controversies and the imposition of incentives, sanctions, and therapeutic adjustments. If a participant has difficulty expressing them self because of such factors as a language barrier, nervousness, or cognitive limitation, the judge permits the participant's attorney or legal representative to assist in providing such explanations. Participants receive a clear justification for why a particular consequence is or is not being imposed.

C. Equivalent Consequences: Participants receive consequences that are equivalent to those received by other participants in the same phase of the program who are engaged in comparable conduct. Unless it is necessary to protect the individual from harm, participants receive consequences without regard to their gender, race, ethnicity, nationality, socioeconomic status, or sexual orientation.

NADCP Drug Court Standard: IV. Incentives, Sanctions, and Therapeutic Adjustments

D. Professional Demeanor: Sanctions are delivered without expressing anger or ridicule. Participants are not shamed or subjected to foul or abusive language.

E. Progressive Sanctions: The Drug Court has a range of sanctions of varying magnitudes that may be administered in response to infractions in the program. For goals that are difficult for participants to accomplish, such as abstaining from substance use or obtaining employment, the sanctions increase progressively in magnitude over successive infractions. For goals that are relatively easy for participants to accomplish, such as being truthful or attending counseling sessions, higher magnitude sanctions may be administered after only a few infractions.

F. Licit Addictive or Intoxicating Substances: Consequences are imposed for the nonmedically indicated use of intoxicating or addictive substances, including alcohol, cannabis (marijuana), and prescription medications, regardless of the licit or illicit status of the substance. The Drug Court team relies on expert medical input to determine whether a prescription for an addictive or intoxicating medication is medically indicated and whether nonaddictive, nonintoxicating, and medically safe alternative treatments are available.

G. Therapeutic Adjustments: Participants do not receive punitive sanctions if they are otherwise compliant with their treatment and supervision requirements but are not responding to the treatment interventions. Under such circumstances, the appropriate course of action may be to reassess the individual and adjust the treatment plan accordingly. Adjustments to treatment plans are based on the recommendations of duly trained treatment professionals.

H. Incentivizing Productivity: The Drug Court places as much emphasis on incentivizing productive behaviors as it does on reducing crime, substance abuse, and other infractions. Criteria for phase advancement and graduation include objective evidence that participants are engaged in productive activities such as employment, education, or attendance in peer support groups.

I. Phase Promotion: Phase promotion is predicated on the achievement of realistic and defined behavioral objectives, such as completing a treatment regimen or remaining drug-abstinent for a specified period of time. As participants advance through the phases of the program, sanctions for infractions may increase in magnitude, rewards for achievements may decrease, and supervision services may be reduced. Treatment is reduced only if it is determined clinically that a reduction in treatment is unlikely to precipitate a relapse to substance use. The frequency of drug and alcohol testing is not reduced until after other treatment and supervisory services have been reduced and relapse has not occurred. If a participant must be returned temporarily to the preceding phase of the program because of a relapse or related setback, the team develops a remedial plan together with the participant to prepare for a successful phase transition.

NADCP Drug Court Standard: IV. Incentives, Sanctions, and Therapeutic Adjustments

J. Jail Sanctions: Jail sanctions are imposed judiciously and sparingly. Unless a participant poses an immediate risk to public safety, jail sanctions are administered after less severe consequences have been ineffective at deterring infractions. Jail sanctions are definite in duration and typically last no more than three to five days. Participants are given access to counsel and a fair hearing if a jail sanction might be imposed because a significant liberty interest is at stake.

K. Termination: Participants may be terminated from the Drug Court if they no longer can be managed safely in the community or if they fail repeatedly to comply with treatment or supervision requirements. Participants are not terminated from the Drug Court for continued substance use if they are otherwise compliant with their treatment and supervision conditions, unless they are nonamenable to the treatments that are reasonably available in their community. If a participant is terminated from the Drug Court because adequate treatment is not available, the participant does not receive an augmented sentence or disposition for failing to complete the program.

L. Consequences of Graduation and Termination: Graduates of the Drug Court avoid a criminal record, avoid incarceration, or receive a substantially reduced sentence or disposition as an incentive for completing the program. Participants who are terminated from the Drug Court receive a sentence or disposition for the underlying offense that brought them into the Drug Court. Participants are informed in advance of the circumstances under which they may receive an augmented sentence for failing to complete the Drug Court program.

For more on incentives and sanctions, see Behavior Modification 101 for Drug Courts: Making the Most of Incentives and Sanctions,[119] and The Drug Court Judicial Bench Book: Chapter 7: "Applying Incentives and Sanctions."[120]

[119] Douglas B. Marlowe, *Behavior Modification 101 for Drug Courts: Making the Most of Incentives and Sanctions* (National Drug Court Institute Drug Court Practitioner Fact Sheet, 2012).
[120] Marlowe and Meyer, eds., *The Drug Court Judicial Bench Book*.

VI. Special Considerations for Treatment Services

A. Engaging the Family

Family involvement with substance use is a significant risk factor due to additional exposure to the drug lifestyle, as well as early learning of the values and behaviors.[121] Conversely, an individual's alcohol and/or other drug use invariably has a multitude of effects on their family members. Therefore, it is important to engage the family in the treatment process for both the sake of the participant and their family. For youth, this can be especially true. One study found that the more often caregivers attended status hearings, the less often the youth were late or absent from school, missed treatment sessions, or received sanctions for behavioral infractions.[122]

Families may come to the court ashamed and fearful of the participant. They may also be fearful of the court process. Consider that a participant's family may extend beyond the Western nuclear family. Special effort should be made to:

- Involve family members in the treatment and support process;
- Address issues they are dealing with relating to the individual's substance use;
- Assist them with identifying actions they may be taking that, unintentionally, may support the individual's alcohol or substance use (e.g., "enabling behaviors"); and
- Assist them in developing skills to support the treatment effort and the individual's recovery in the long term.

Engagement strategies can vary from systemic, in-depth efforts, to brief encounters. Some strategies include:

- Verbal praise and encouragement;
- Information material about the Wellness Court;
- Family substance use treatment or referral;
- Mental health treatment or referral for families;
- Education about substance use;
- Incentives for families (e.g., gift cards or movie passes);
- Translation services;
- Sanctions for lack of engagement;
- Parent/caregiver support groups;
- Transportation for families; and
- "Parent partners" or other program navigators/liaisons.[123]

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[121] TIP 59 at 169.

[122] Brett Harris, Karli Keator, Nicole Vincent-Roller, and Brooke Keefer, *Engage, Involve, Empower: Family Engagement in Juvenile Drug Treatment Courts* (National Council of Juvenile and Family Court Judges and National Center for Mental Health and Juvenile Justice, 2017), 3.

[123] Id. at 8.

B. Gender-Specific Services

Mixed gender groups for addiction treatment for the most part have generally not been as successful as gender-specific groups. Gender-specific groups have seen better outcomes, for both males and females.[124]

Men's and women's responses to substance use and addiction treatment differ. Males may have similar issues and can benefit significantly from special male-only programming segments. Stereotypes push men to restrict their emotional responsiveness, and to be more competitive, aggressive, and self-reliant.[125] Men-specific groups enable discussions masculinity, discussing emotions generally, sex and sexuality, anger, relationships, and parenting.

Similarly, women-specific groups may enable discussion around trauma and abuse, loss of children, parenting, pregnancy-related issues, relationships, and/or involvement in sex work. Women have higher rates of treatment completion and better outcomes when they are treated in (1) women-only programs, including women counselors; (2) residential programs that have live-in accommodations for children; and (3) outpatient programs that provide child care, parenting services, transportation, and other comprehensive services.[126]

Gender-specific programming can play a significant role in assisting participants to develop positive role concepts in various life situations. It can also assist with parenting, constructively displaying emotion (including shame, anger, embarrassment, etc.), self-confidence, and exercising authority. Experience has shown that these issues are best addressed in gender-specific environments.

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[124] Kushner, Peters, and Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* at 30, citing Substance Abuse Mental Health Services Administration, "Addressing the Specific Behavioral Health Needs of Men, Treatment Improvement Protocol (TIP) Series 56," HHS Publication No. (SMA) 13-4736 (2012), 1.

[125] Kushner, Peters, and Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* at 32.

[126] Id. at 31, citing C. E. Grella, "From Generic to Gender-Responsive Treatment: Changes in Social Policies, Treatment Services, and Outcomes of Women in Substance Abuse Treatment," Journal of Psychoactive Drugs, SARC Supplement 5 (2008), 327–43.

C. Cultural Competency

One of the most significant predictors of positive outcomes for racial and ethnic minority participants in substance abuse treatment is culturally sensitive attitudes on the part of the treatment staff.[127] We know this to be doubly true for Native participants regardless of whether they were raised traditionally, live on tribal land, know their tribal language, or come from a fully assimilated urban environment.

The need for culturally proficient services spans all areas of Wellness Court. The Association for Multi-Cultural Counseling and Development has developed and adopted standards of cultural proficiency applicable to treatment services,[128] focusing on the following competencies:

- Awareness of counselors of their own assumptions, values, and biases and their ability not to impose these on their clients;
- Understanding the worldview of the client whose cultural background maybe different from the counselor's; and
- Developing appropriate strategies and techniques for dealing with clients from a wide range of cultural backgrounds.

Although specifically designed for treatment professionals, these competencies need to be shared by the entire Wellness Court team and incorporated in all elements of the Wellness Court program—initial screening and assessment, incentives and sanctions, and program support services. Wellness Courts should make available a wide range of culturally specific services that are age, gender, and language appropriate. As feasible, curriculum and training material should incorporate culturally appropriate content that is meaningful to the participants.

"Being an Indian" often involves validations beyond a racial/ethnic identity. There are political, social, and cultural statuses to being Native. Helping a participant navigate their identify can implicate complex social, family, and legal hurdles.

For those who are new to working with Native participants, the SAMHSA Culture Care for American Indians and Alaska Natives is a useful starting place.[129] The short brochure covers regional difference, cultural customs, spirituality, communication styles, and the roles of veterans and elders in many Native communities. For those new to working with tribal governments, the White House Office of Personnel Management has developed a useful online learning portal, "Working Effectively with Tribal Governments," intended to familiarize federal employees with tribal issues and concerns.[130] While intended for federal employees, it offers a

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[127] *Drug Court Best Practice Standards, Volume I* at 15.

[128] D. Sue, R. Arredondo, and J. R. McDavis, "Multicultural Counseling: A Call to the Profession," 70 Journal of Counseling and Development (1992), 477–86.

[129] Substance Abuse and Mental Health Services Administration, "American Indian and Alaska Native Culture Card: A Guide to Build Cultural Awareness," SMA08-4354 (2009).

[130] "Working Effectively with Tribal Governments," Emerging Solutions, Office of Personnel Management (2013),

useful and concise history of federal Indian law policy and the unique legal relationship the federal government has with federally recognized tribes. It can be useful for team members news to Indian country. Both resources are available for free.

available at tribalgov.golearnportal.org.

D. Culturally-Based Treatment

For many Natives, their own substance use, and perhaps generations of substance use, has resulted and perpetuated a detachment from tribal traditions. Some Wellness Courts report participants that are hostile to cultural activities. Yet, Wellness Courts report success in using culture to help engage and reengage participants, regardless of their initial cultural affiliation.

Hiring qualified treatment providers of the same ethnic background may increase access and initiation into treatment. Treatment providers should emphasize strength-based Native American concepts such as cultural sovereignty, Native language, religion, spirituality, and other culturally-based practices. If the treatment provider is not of the same ethnic background, they should be genuinely willing to learn about the Native culture—making no assumptions based on their own background. The treatment provider should identify and resolve sociocultural issues that may affect participants' acceptance of the treatment provider, treatment goal maintenance, and final treatment outcomes.

Special attention should be paid to the specific traumas among Native Americans. Discuss the loss of cultural identity that has occurred for many tribal cultures and whether this continues to impact the participants' lives.

Participants' culture creates a pattern of beliefs and behaviors that shape their view of the world and their role in society, and becomes a guide for their thoughts and actions. History shows that the sudden onset of substances into Native communities may have contributed to the loss of ethnic traditions and cultural identity. Many elders believe that these losses of culture and tradition continue to cause of substance abuse among Native Americans.

Treatment providers must help participants:

- Regain a practical ethnic identity;
- Gain a healthy social network committed to the participants' recovery;
- Make a religious, spiritual, or moral recommitment to themselves and their community;
- Reengage in recreational/volunteer or vocational activities; and
- Gain a social role in the community.

Participants who don't make a cultural recovery can be at risk of relapse.[131]

Tribes have incorporated culture and tradition into their Wellness Court through a multitude of means ranging from:

- Using a talking stick in group sessions;
- White Bison groups;
- Maintaining a cultural advisor on staff;
- Smudging;

[131] Patrick About and Duane M. Chase, "Culture and Substance Abuse: Impact of Culture Affects Approach to Treatment," *Psychiatric Times* (January 1, 2008).

- Giving traditional gift at transition ceremony;
- Integrating community service requirements with traditional activities;
- Including tribal identity, historical trauma, and tribal healing customs in counseling groups;
- Fatherhood/Motherhood is Sacred;
- Medicine Wheel Groups;
- Integrating Wellness Court requirements with Peacemaking Program;
- Using Native language in programming;
- Involving elders;
- Participating in sweats;
- Requiring participants to trace their genealogy;
- Requiring cultural classes or traditional/cultural event attendance;
- Prayer;
- Holding court in a healing circle;
- Crafts, such as making ribbon shirts, beading, and so forth;
- Use of drum/drum ceremony;
- Representing each phase by a traditional medicine or clan; and
- Naming the court with a tribal or traditional name.

As true with all cultures, it is important to note that tribal cultures are not interchangeable. What may be appropriate for one tribe may be irrelevant or inappropriate for the next. Some "pan-Indian" curriculums and resources have proven incredibly useful for tribes, while others have been easily adapted to be specific for a particular culture. Still—it will be up to each tribe to determine what is appropriate for their community and participants.

E. Treating Co-Occurring Mental Health Disorders

A disproportionately high number of criminally justice involved persons have co-occurring mental and substance use disorders.[132] Native Americans have a higher rate of co-occurring disorders than any other population in the United States.[133] Native Americans experience higher levels of psychological distress compared to the general population.

Substance abuse treatment providers should attempt to treat these issues separately or in chronological order; both these issues need to be assessed and treated simultaneously. If the mental health disorder—which generally underlies the substance use disorder—is not treated, it is likely that the participant will relapse. If the substance use is not treated, mental health treatment can be ineffective. Such integrated treatment models have been proven more effective than "parallel" or "serial" models.[134]

Participants should be assessed for major depression, bipolar disorder (manic depression), PTSD, and other major anxiety disorders. Participants with serious psychiatric problems may not be appropriate for Wellness Court and its orientation to outpatient services. However, individuals with co-occurring mental health disorders who can function in the outpatient setting of the Wellness Court framework may successfully participate. It may be necessary, however, to develop special programming for persons who are dually diagnosed. The programming can address special issues and can be geared—in terms of both session length and content—to the participant's capacity to focus and process the information of each session. The Wellness Court should additionally modify its expectations related to abstinence, adherence to other Wellness Court requirements, and the use of incentives and sanctions.

Effective psychosocial interventions include cognitive-behavioral treatment, behavioral skills training, group counseling, family interventions, motivational interventions, contingency management, relapse prevention, and psychotropic medication.[135] Peer mentors, support groups, and case managers have proven especially effective.

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[132] Kushner, Peters, and Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* at 22.
[133] K. Duckworth, J. Freedman, and R. Drake, "NAMI: National Alliance on Mental Illness" (2013) *available at* http://www.nami.org/.
[134] Id. *Also see Drug Court Best Practice Standards, Volume II* at 6 ("Participants suffering from mental illness receive mental health services beginning in the first phase and continuing as needed throughout their enrollment. Mental illness and addiction are treated concurrently using an evidence-based curriculum.").
[135] Id.

F. Trauma-Informed Services

Treatment providers have a much better sense now for how traumatic experiences impact a participant and their ability to cope. Trauma is generally defined as the result from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual's functioning and mental, physical, social, emotional, or spiritual well-being.[136] Persons who have experienced trauma may react seemingly irrationally. It is critical for the Wellness Court to learn about common trauma-victim responses, and modify the Wellness Court to be more "trauma-informed" to these participants. This is even more critical as it is likely most, if not all, Wellness Court participants experienced some form of trauma in the past. Most substance abuse clients have histories of traumatic events—such as sexual molestation, attachment disorder, abuse, and a lack of a stable environment or capable guardians—that occur before adulthood.[137] SAMHSA has produced a helpful guide concerning trauma-informed judicial practices.[138]

The severity and duration of the effects of trauma vary. Symptoms generally fall into three categories:

- Reliving the ordeal through thoughts and memories of the trauma. These may include flashbacks, hallucinations, and nightmares;
- Avoiding certain people, places, thoughts, or situations that may remind them of the trauma, which can lead to feelings of detachment and isolation from family and friends, as well as a loss of interest in activities that the person once enjoyed; and
- Increased arousal, including excessive emotions; problems relating to others, feeling or showing affection; difficulty falling or staying asleep; irritability; outbursts of anger; difficulty concentrating; and being "jumpy" or easily startled. A trauma victim may also suffer physical symptoms, such as increased blood pressure and heart rate, rapid breathing, muscle tension, nausea, and diarrhea.[139]

Failure to detect a trauma history can impede treatment progress. Participants should be assessed using a validated instrument for trauma history, trauma-related symptoms, and PTSD.[140] Participants with PTSD should receive an evidence-based intervention that teaches them how to manage distress without resorting to substance abuse or other avoidance behaviors, desensitizes them gradually to symptoms of panic and anxiety, and encourages them

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[136] "About NCTIC," National Center for Trauma-Informed Care and Alternatives to Seclusion and Restraint, Substance Abuse and Mental Health Services Administration, at https://www.samhsa.gov/nctic/about (accessed January 4, 2017).
[137] "Making the Connection: Trauma and Substance Abuse," The National Child Traumatic Stress Network (2008).
[138] Substance Abuse and Mental Health Services Administration (SAMHSA), *Essential Components of Trauma-Informed Judicial Practice: What Every Judge Needs to Know About Trauma*, SAMHSA's National Center on Trauma-Informed Care and SAMHSA's National GAINS Center for Behavioral Health and Justice (2013).
[139] Kushner, Peters, and Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* at 24.
[140] For a wide range of trauma/PTSD screening and assessment tools, *see* ibid. at 25–6.

to engage in productive actions that reduce the risk of retraumatization.

Participants with PTSD or severe trauma-related symptoms should be evaluated for their suitability for group interventions and be treated on an individual basis or in small groups when necessary to manage panic, dissociation, or severe anxiety. Female participants should receive trauma-related services in gender-specific groups. All Wellness Court team members, including court personnel and other criminal justice professionals, should receive formal training on delivering trauma-informed services.[141]

Intergenerational Trauma

Trauma not only effects the individual who directly experiences it, but also the generations that follow. Dr. Maria Yellow Horse Brave Heart describe historical/intergenerational trauma as the "cumulative emotional and psychological wounding across generations, including the lifespan, which emanates from massive group trauma."[142]

Historical trauma can be experienced by anyone living in a community subjected to a community-threatening event. The resulting trauma is often transmitted from one generation to the next in a patter often referred to as historical, community, or intergenerational trauma. Communities can collectively react to trauma in ways similar to an individual's response. Making sense of the trauma experience and telling the story of what happened, using the language and framework of the community, is an important step toward healing.[143]

[141] *Drug Court Best Practice Standards, Volume II* at 6–7.
[142] Dr. Maria Yellow Horse Brave Heart, PhD, Josephine Chase, et al., *Historical Trauma among Indigenous Peoples of the Americas: Concepts, Research, and Clinical Considerations*, 4 *Journal of Psychoactive Drugs* (2011), 43.
[143] Substance Abuse and Mental Health Services Administration (SAMHSA), *Concept of Trauma and Guidance for a Trauma-Informed Approach*, SAMHSA's Trauma and Justice Strategic Initiative (2014), 17.

VII. Aftercare

Alcohol and drug addiction is a chronic disease characterized by relapse.[144] More than 60 percent of people treated for a substance use disorder experience relapse within the first year after they are discharged from treatment, and a person can remain at increased risk of relapse for many years.[145] Substance use treatment and drug courts used to emphasize a model of acute care, in which treatment was linked to crisis and focused on abstinence and graduation. With a better understanding of recovery, which includes relapse, Wellness Courts should look beyond graduation. Wellness Courts should help participants build a network of recovery support, including recovery activities and connection to treatment services when necessary.

Only one in five individuals who have completed treatment attend aftercare.[146] Continued engagement with treatment after Wellness Court can have numerous benefits, including providing continued monitoring and accountability, reinforcing other recovery-based activities like self-help meetings, alumni groups, and recovery coaches, and more efficiently facilitating reentry to treatment when relapse occurs.[147]

The last phase of Wellness Court should focus on the participant taking control of their own recovery and developing and carrying out their individualized aftercare plan.

A. Aftercare Plans

Long-term recovery requires not just abstinence but also making changes in many aspects of one's life. Further, aftercare plans, like the Wellness Court treatment plan, should be individualized to the participant. A long-term recovery management plan, or aftercare plan, should include many life areas, such as:

- Identification of relapse triggers.
  Strategies for avoiding alcohol and other drug use, including strategies for identifying relapse triggers and how to avoid them.

- Building a recovery support system.
  Linking to alcohol and drug counseling, recovery coaches, community support groups such as Alcoholics Anonymous, Narcotics Anonymous, or Adult Children of Alcoholics,

[144] The distinction between a lapse and a relapse is often on of degree. A lapse is generally considered to be a single slip from sobriety; a relapse is generally indicative of a significant deviation from a treatment/recovery program.
[145] HHS, Surgeon General's Report at 2-2.
[146] Kushner, Peters, and Cooper, *A Technical Assistance Guide for Drug Court Judges on Drug Court Treatment Services* at 15, *citing* M. D. Godley, S. H. Godley, M. L. Dennis, R. Funk, and L. L. Passetti, "Preliminary Outcomes from the Assertive Continuing Care Experiment for Adolescents Discharged from Residential Treatment," 1 *Journal of Subst. Abuse Treatment* (2002), 21–32.
[147] Id.

and involvement of the participant's family.

- Activities contributing to the participant's physical health.
  Adopting proper eating and nutritional habits; physical exercise; scheduling physical and dental examinations as needed, and so forth.

- Developing recreation/leisure activities that do not involve alcohol or other drug use.
  Engaging in recreational and social activities that do not involve substance use and learning to have fun in a sober way.

- Building positive relationships.
  Developing positive relationships with one's family; forming new relationships with sober people; making amends to those who have been hurt by one's actions; and building positive relationships with one's community and tribe.

- Performing activities related to work/education.
  Planning and achieving work or school related goals; looking at ways to contribute to community needs through community service, mentoring, and so forth.

- Developing strategies to promote psychological health.
  Learning to cope with stress in a positive way; learning to know one's strengths and accepting one's weaknesses; learning to cope with thinking patterns that lead to high-risk situations.

- Developing one's spirituality.
  Maintaining a relationship with one's spiritual self; maintaining a connection to the physical world and universe; maintaining a relationship with one's higher power; practicing spiritual, religious, or traditional beliefs.

- Use of continuing care.
  - Telephone continuing care usually involves a structured fifteen-to-thirty-minute session (weekly and then graduated to monthly)
  - Recovery management check-ups usually involve interviewing participants every three months.

For more on aftercare, see Research into Practice's "Aftercare, Relapse Prevention and Continuing Care: Applying Researching Findings to Practice."[148]

[148] Caroline S. Cooper, "Aftercare, Relapse Prevention and Continuing Care: Applying Research Findings to Practice," *Translating Drug Court Research into Practice* (2013).

B. Alumni Groups

Alumni groups have developed in many state drug court programs and tribal Wellness Court programs. In some instances, alumni programs were developed at the initiation of the court; in other situations, alumni activities developed at the initiation of the alumni. Many programs involve participants in alumni functions as soon as they enter the Wellness Court. The various roles that alumni groups are playing include:

- Conducting community service activities (e.g., providing meals at holiday times for persons in need);
- Conducting fund-raisers for the Wellness Court or other charitable activities;
- Serving as mentors to Wellness Court participants;
- Providing aftercare and emergency self-help resources to program participants and alumni; and
- Advocating Wellness Court program needs with local community officials.

C. Relapse Prevention

Recognizing that substance addiction is a chronic and relapsing condition, each individual Wellness Court treatment plan must develop a relapse-prevention plan early in the program. Aftercare plans should include helping the participant identify situations that have the potential for triggering relapse and on developing strategies to prevent relapse from occurring.
Through the treatment process the individual must come to:

- Recognize the issues, situations, and circumstances that make them vulnerable to drug and/or alcohol use;
- Develop a range of "tools" and other resources to deal with these situations effectively; and
- Recognize the signs of relapse.

Signs of relapse are most evident in one's behavior, attitude, feelings, and thoughts.

Signs of Relapse

Behavior:

Increased episodes of arguing for no reason;

Forgetting to follow rules, appointments; and

Increased symptoms of stress (e.g., loss of work productivity; overeating; anxiety; nervousness; irritability; sleeplessness).

Attitude:

Not caring about sobriety;

Not caring about what happens; and

Becoming negative about life.

Feelings:

Increased moodiness or depression;

Strong feelings of anger;

Increased feelings of boredom; and

Urges, cravings, and temptations.

Thoughts:

Thinking that alcohol and other drugs are a reward for not using;

Thinking that one can use and control one's use; and

Thinking that one is cured from alcohol or other drug abuse.

The following situations are commonly considered to be high risk for persons in recovery in terms of potential relapse:

- Situations of social pressure to use alcohol or other drugs;
- Problems in relationships with other people;
- Getting promoted, achieving success, family events or other situations warranting celebrations;
- Difficulty solving problems;
- Lack of hobby or leisure time interests; and
- Physical pain or health problems.

VIII. Looking Ahead

An effective Healing to Wellness Court will be continually evolving. Each day will bring new lessons and new insights regarding program policies, procedures, and services. In addition, new research will emerge regarding special strategies that prove effective and services that may be useful. Ongoing program evaluation will also yield important findings as to what works, what does not, and how well program goals are being achieved. Program staff should keep abreast of developments in both Wellness Court and drug court fields, as well as alcohol and substance abuse treatment generally. Ongoing training of team members and others involved with the Wellness Court is critical, particularly as staff turnover occurs. Training should focus on both substantive issues relating to Wellness Court services (e.g., pharmacology, adolescent development, trauma), team functioning, and cross-training of team members and others involved in the program.

Change is healthy and inevitable. The Wellness Court, while functioning within an established framework, can never remain static. It must continually evolve to reflect lessons learned and insights gained. This guideline has been designed to provide a foundation for this process.

Appendix I: Glossary

addiction: A primary, chronic disease of brain reward, motivation, memory, and related circuitry. Dysfunction in these circuits leads to characteristic biological, psychological, social, and spiritual manifestations. This is reflected in an individual pathologically pursuing reward and/or relief by substance use and other behaviors.

aftercare: Classes, counseling, groups, and/or activities that focus on assisting participants after they complete the Healing to Wellness Court Program, including facing challenges of reconnecting to the community and the development of external support systems.

assessment (or clinical assessment): A process completed by treatment staff to determine the participant's level of chemical dependence and need for treatment services, including the identification of the specific types, sequence, and intensity of treatment services needed (note that this process is generally completed after legal and clinical screenings).

case management: Services that focus on securing, coordinating, and monitoring the appropriate treatment interventions and related services (medical and dental services, job search and training skills, housing, heating, electricity, transportation, etc.) needed to treat each participant successfully.

case staffings: Meetings of Wellness Court team members, usually held just prior to Wellness Court hearings, in which information about the participant's drug-testing results, attendance, and participation in required treatment and other required activities, and other information relevant to the individual's progress in treatment is shared with the Wellness Court team. Recommendations regarding services that the participant needs are also made to the judge during this time.

charging document: The legal form used by the prosecution to begin the criminal process against an offender.

clinical screening: Determination of whether the prospective participant has a substance use disorder that can be addressed by available treatment services and if there are other problems, such as a mental health disorders, that should also be addressed.

confidentiality: Privacy of information; in the substance abuse treatment context, confidentiality relates to federal and frequently state provisions regarding requirements prohibiting or limiting disclosure of information regarding an individual's enrollment in a substance abuse treatment program.

co-occurring disorders: Other difficulties both medical (such as fetal alcohol or mental illness problems) and nonmedical (such as educational or family problems) that need to be addressed by the Wellness Court.

criminogenic risk: Factors associated with the likelihood of the individual to relapse and reoffend.

detoxification: A process of discontinuing drug and alcohol use that leads to reduction and elimination of drugs and alcohol from the participant's body. Detoxification may need to be medically supervised depending upon the type of drug being discontinued and the physiological effects of the detoxification process.

dual diagnosis: A clinical assessment that the participant suffers from both substance addiction and a mental condition.

due process: The required process of law as set forth in the federal Bill of Rights, the Indian Civil Rights Act, and/or applicable tribal or state law—generally providing that an individual is entitled to have notice and an opportunity to be heard (e.g., an opportunity to present their case in a legal dispute) and that no law or government procedure should be arbitrary or unfair.

incentives: Rewards used within the Wellness Court to promote and recognize compliance and healing.

information system: The mechanisms by which a program gathers, uses, and reports information about its participants and activities. The system may be computerized (automated) or manual.

interagency agreements: Written documents that detail the agreements and relationships developed by the organizations or agencies involved in the Wellness Court and their commitments to the program.

legal screening: Determination of whether the prospective participant meets the eligibility criteria for the Wellness Court related to criminal history, type, and severity of offense and other criteria as defined by the team during initial planning.

memorandum of agreement: Written document between units of government that reflect the interests of the organizations and their commitments to the program.

outcome evaluation: Gathering information to determine a program's success in meeting its goals. An outcome evaluation may look at a program's impact on the individual and on the community.

outpatient treatment: A program or set of services for assisting a participant with their healing from drug or alcohol abuse that does not use hospitalization or confinement to a facility.

participant: Term used for adults or juveniles who are referred to and are accepted into a

Healing to Wellness Court.

phased treatment plan: The plan developed for each Wellness Court participant that entails completing specified tasks and achieving specified milestones at various levels of program activity. Most adult Wellness Courts, for example, are designed in three to five phases, requiring twelve or more months to complete.

process evaluation: The development of information that describes and analyzes how a program is operating, whether it is operating as envisioned, and whether any operational problems have developed.

recovery: A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.

relapse: A resumption of alcohol or other drug use after a period of not using the substance(s).

releases of information: Written consent forms permitting information to be transferred from one place to another concerning the person signing the release form. A release may be used to provide permission to gather information about health, treatment participation, criminal history, and other aspects of the participant's history or situation.

sanctions: Responses to an individuals' noncompliance with program conditions to promote the individual's behavioral change and eventual compliance and healing.

status/review hearing: Review hearings conducted by the Wellness Court to assess the progress (or lack thereof) of each Wellness Court participant.

substance abuse/substance use disorder: Substance abuse, also known as a substance use disorder, should be distinguished from "experimental use," "regular use," and "dependency." Substance abuse is observed as the use of increased amounts of the substance, the trying of other types of drugs or alcohol, thoughts of being drunk or high when sober, more time spent thinking about, obtaining, and using the substance, problems with family and police, thoughts about quitting that are not followed up, and increased guilt about using the substance.

violent offender: Drug court federal funding prohibits the use of these funds for a "violent offender." The statutes defines "violent offender" as a person who either (1) is charged with or convicted of an offense, during the course of which offense or conduct the person carried, possessed, or used a firearm or dangerous weapon; there occurred the death of, or serious bodily injury to any person; or there occurred the use of force against the person of another, without regard to whether any of the circumstances previously described is an element of the offense or conduct of which or for which the person is charged or convicted; or (2) has one or more prior convictions for a felony crime of violence involving the use or attempted use of force against a person with the intent to cause death or serious bodily harm (42 U.S.C. § 3796ii et seq.).

Appendix II: Resource Materials for Healing to Wellness Courts

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