

# Juvenile Policy and Code Development Virtual Learning Series- Session Five

## Integrity of Tribal Juvenile Court Process as a Foundation – Adjudication Alternatives

Host: The OJJDP Tribal Youth Resource Center

Presentation Date: March 5, 2021

Time: 11am AKT/ 12pm PT/ 1pm MT/ 2pm CT/ 3pm ET



Developed and Presented By:  
Hon. Pat Sekaquaptewa

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# Tribal Youth Resource Center



As a training and technical assistance provider for the Office of Juvenile Justice and Delinquency Prevention, the Tribal Youth Resource Center as part of the Tribal Law and Policy Institute and its partner the National Native Children's Trauma Center bring an in-depth understanding and appreciation of American Indian and Alaska Native history, customs, and Indigenous justice systems.

Native youth benefit from a value held by Native peoples:  
*Our Children are Sacred.*

# Course Presenter:



Honorable Pat Sekaquaptewa  
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Justice, Hopi Appellate Court

# Session Facilitation:



Anna Clough  
Director, Lead Juvenile Healing to Wellness Courts  
OJJDP Tribal Youth Resource Center

# Tribal Youth Resource Center

## Coordinated Tribal Assistance Solicitation

- Purpose Area 8- Tribal Juvenile Healing to Wellness Courts
- Purpose Area 9- Tribal Youth Programs



# Overview of Session 5

- This session will review:
  - Tribal Juvenile Justice system development
  - Directing eligible youth toward diversion opportunities
  - Processes for rehabilitation and treatment
  - Innovation and local Tribal tenets
  - Via the Alaska Case Study



<https://www.earthtrekkers.com/ultimate-guide-monument-valley/>

# Learning Objectives for Session 5

- Series Participants will learn about how:
  1. The Model Indian Juvenile Code (2016 revision) sets out provisions for a maximal exercise of tribal sovereignty for a tribal juvenile justice system;
  2. The stated purposes of the Model Code include “programs of supervision, treatment, and rehabilitation,” and the coordination of services for children and their families, “with an emphasis on prevention, early intervention, diversion, and community-based alternatives;”
  3. The Tribal Healing to Wellness Court (TH2WCt) (drug court) model is the current best practice for therapeutically and culturally focused juvenile justice programming;
  4. Tribal Healing to Wellness Courts and programs are resource and collaboration heavy and there may be practical challenges for some tribes that seek to establish wellness court dockets as opposed to diversion only programs;
  5. There are alternatives to the establishment of wellness court dockets - these include regionalized tribal wellness courts (inter-tribal courts), joint-jurisdiction courts (joint tribal-state endeavors), and non-court tribal/community diversion only programs; and
  6. Should a tribe/community wish to pursue an alternative this will require MOAs/MOUs or other agreements, in addition to tribal code provisions.

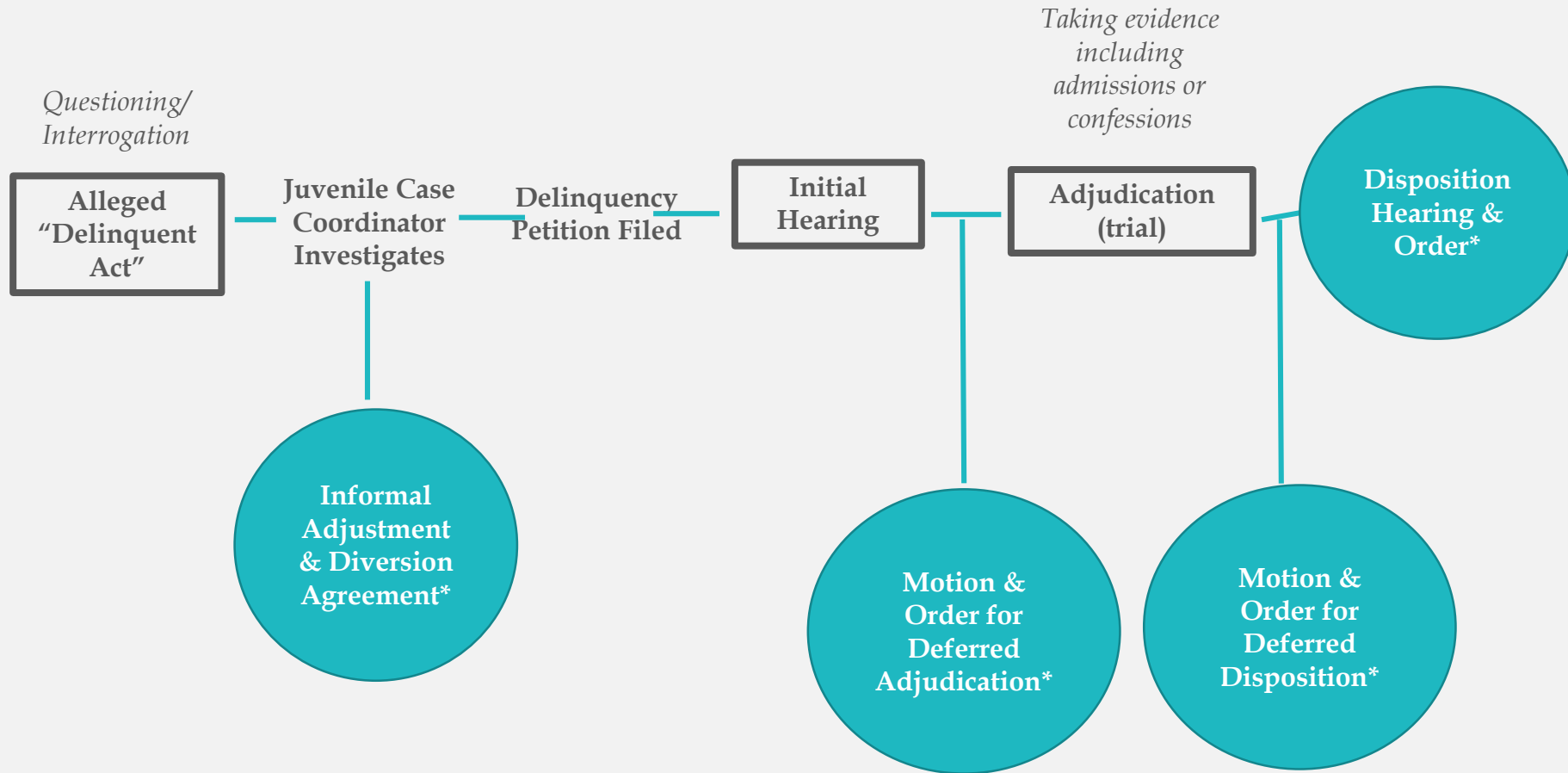


*Learning Objectives*

<https://thepeakperformancecenter.com/business/learning/business-training/learning-objectives/>



Chapters 1 (General Provisions) & 2 (Delinquency) - Delinquency Proceedings  
- Model Indian Juvenile Code (2016 Revision)



\* Points of referral, diversion, and/or order to therapeutic court docket, community-based programs, etc.

# Does your tribe/community need a Tribal Juvenile Code?

(Is your Tribal Healing to Wellness body a court or a program; do you want it to be part of the tribal court; or are there practical reasons for leaving court process with the state?)

- Tribal Juvenile Court
  - Assertion of tribal sovereignty
  - Exercise of tribal jurisdiction
    - Over youth & families
  - Habilitation & Rehabilitation focused under the Model Juvenile Code provisions
    - Potential to transfer cases to ...
      - Tribal Healing to Wellness Court docket
      - OR
      - Tribal Healing to Wellness Diversion Program
  - Tribal Healing to Wellness Court established alongside the Tribal Juvenile Court (two separate court dockets)
  - However, still possible to find that a young person has committed a “delinquent act” and to send them to secure detention under Model Code provisions for the Tribal Juvenile Court
- Diversion Program
  - A program, not a court docket, unless it is added to the tribal court/justice system as a separate court docket
  - Usually, therapeutic
  - Often includes culture, custom, tradition, etc.
  - Can be a hybrid of western and Native cultural justice and therapeutic elements
  - Includes Tribal Healing to Wellness programs

# Nation Building AND “Self-Administration” versus “Self-Government”

Rebuilding Native Nations, Strategies for Governance & Development (2007), Edited by Miriam Jorgensen  
Chapters 3 – Remaking the Tools of Indigenous Governance, Colonial Legacies, Indigenous Solutions, by Stephen Cornell

- The exceptions to the pattern of mere self-administration ...
  - more aggressive Indian nations seized much more authority
  - they governed
  - they asserted the rights & capacities not only to manage service delivery
  - but to reshape their nations according to their own designs
  - to make & enforce laws
  - to develop & pursue long-term strategies of community development
  - to negotiate new relationships with other governments
  - to exercise meaningful jurisdiction over lands & people within their borders
- “The shift from self-administration to self-government is a fundamental aspect of nation building. At its core, it is about reclaiming governance as an Indigenous right and activity, and then developing the tools to govern well.” – Stephen Cornell



<https://indiancountrytoday.com/archive/tribal-self-determination-and-congress-7v-93MpWX06iE0822IzqpA>

Richard Nixon, seen here with tribal leaders in 1970, was a strong advocate for tribal self-determination (AP Images)

# Table 3.1 - Self-Administration versus Self-Government

Rebuilding Native Nations, Strategies for Governance & Development (2007), Edited by Miriam Jorgensen  
 Chapters 3 – Remaking the Tools of Indigenous Governance, Colonial Legacies, Indigenous Solutions, by Stephen Cornell

Self-Administration		Self-Government
	Jurisdiction	
Is largely limited to management decisions within programs		Ranges from decisions about governmental form & resource use to intergovernmental relations, civil affairs, & development strategy
	Governmental form	
Is typically shaped or imposed by outsiders, usually federal or state governments		Is designed by Native nations
	Core governmental functions	
Are to administer social programs & distribute resources, such as jobs, money, & services, to citizen		Are to establish constitutional foundations for government & self-determined development; make & enforce laws; make & implement policy decisions; provide for fair & nonpolitical dispute resolution; administer programs
	Revenue	
Is largely from other governments; efforts to increase revenue focus on lobbying for additional transfer of funds		Is from diverse sources (may include transfers); efforts to increase revenues focus on various options under Indigenous control (e.g., tribal enterprises, permits & fees, taxation)

## Table 3.1 - Self-Administration versus Self-Government (cont.)

Rebuilding Native Nations, Strategies for Governance & Development (2007), Edited by Miriam Jorgensen  
 Chapters 3 – Remaking the Tools of Indigenous Governance, Colonial Legacies, Indigenous Solutions, by Stephen Cornell

Self-Administration		Self-Government
	Accountability	
Typically goes in one direction, having largely to do with community accountability to funders (usually other governments) for how funds are used & for permission to act		Goes both ways, having to do with (1) Native nations' accountability to their own citizens for governing well, (2) their accountability to funders for how funds are spent, & (3) outside governments' accountability to Native nations for policy decisions
	Intergovernmental Relations	
Require consultation (other governments consult with Indigenous communities, then decide what to do); the assumption is that other governments know what's best for Native nations but should at least talk to them about it		Are partnerships (decisions are made jointly where joint interests are involved); the assumption is that Native nations & other governments can work together in a relationship of mutual respect to determine what is best for both

# Time for a Poll!

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# What is a Tribal Healing to Wellness Court (TH2WCt)?

- The Tribal Healing to Wellness Court (TH2WCt) Model ...
- **multiple names**
  - drug courts, therapeutic courts, tribal drug courts, & tribal healing to wellness courts
- **different sub-types**
  - adult criminal drug courts, family drug courts, juvenile drug courts, DUI drug courts, veterans' drug courts, etc.
- **participants**
  - charged with a crime or alleged to have committed a juvenile offense & are screened to have a substance use/abuse problem
  - OR
  - parent accused of child maltreatment & are screened to have a substance use/abuse problem



*Tribal Wellness Courts ...*

*~117 total*

*~71 adult wellness courts*

*~6 family wellness courts*

*~40 juvenile wellness courts*

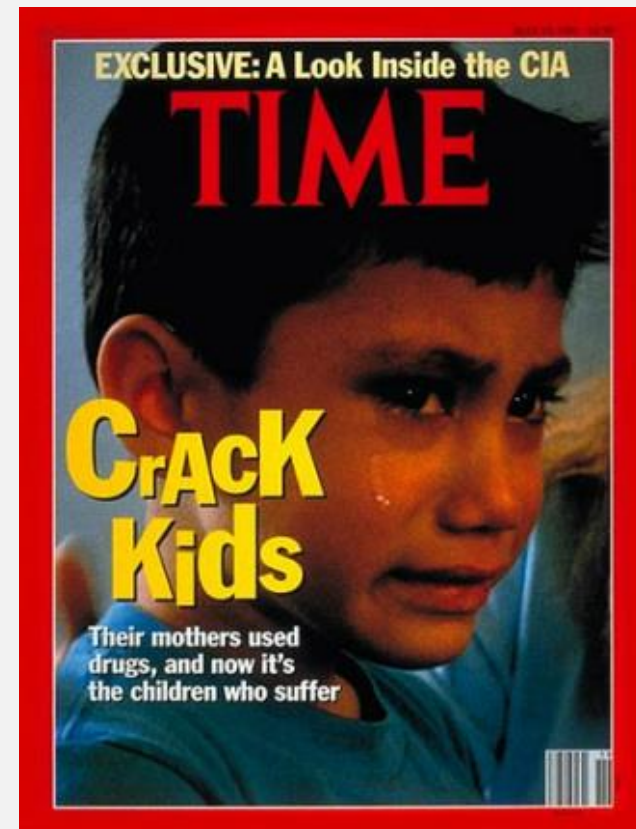


*Prairie Band Potawatomi Nation  
Peacemakers-Healing to Wellness Court Swearing In  
Ceremony  
May 29, 2013*

*MAYETTA: A swearing-in ceremony was held today  
at the Judicial Center to swear-in members of the  
Peacemakers Circle and the Healing to Wellness Court.*

# What is a Tribal Healing to Wellness Court (TH2WCt)? (cont.)

- The TH2WCt Model (cont.) ...
- TH2WCts are **heavily influenced** by the **state drug court experiment** & the National Association of Drug Court Professionals (NADCP) drug court design standards
- Late 1980s - the **states created** new **therapeutic court dockets** ...
  - initially attached to their criminal court dockets
  - to contend with the surge of drug offenders in the criminal justice system
  - during the cocaine/crack epidemic





# Are the Goals of the Tribal Healing to Wellness Courts the same as those of state drug courts?

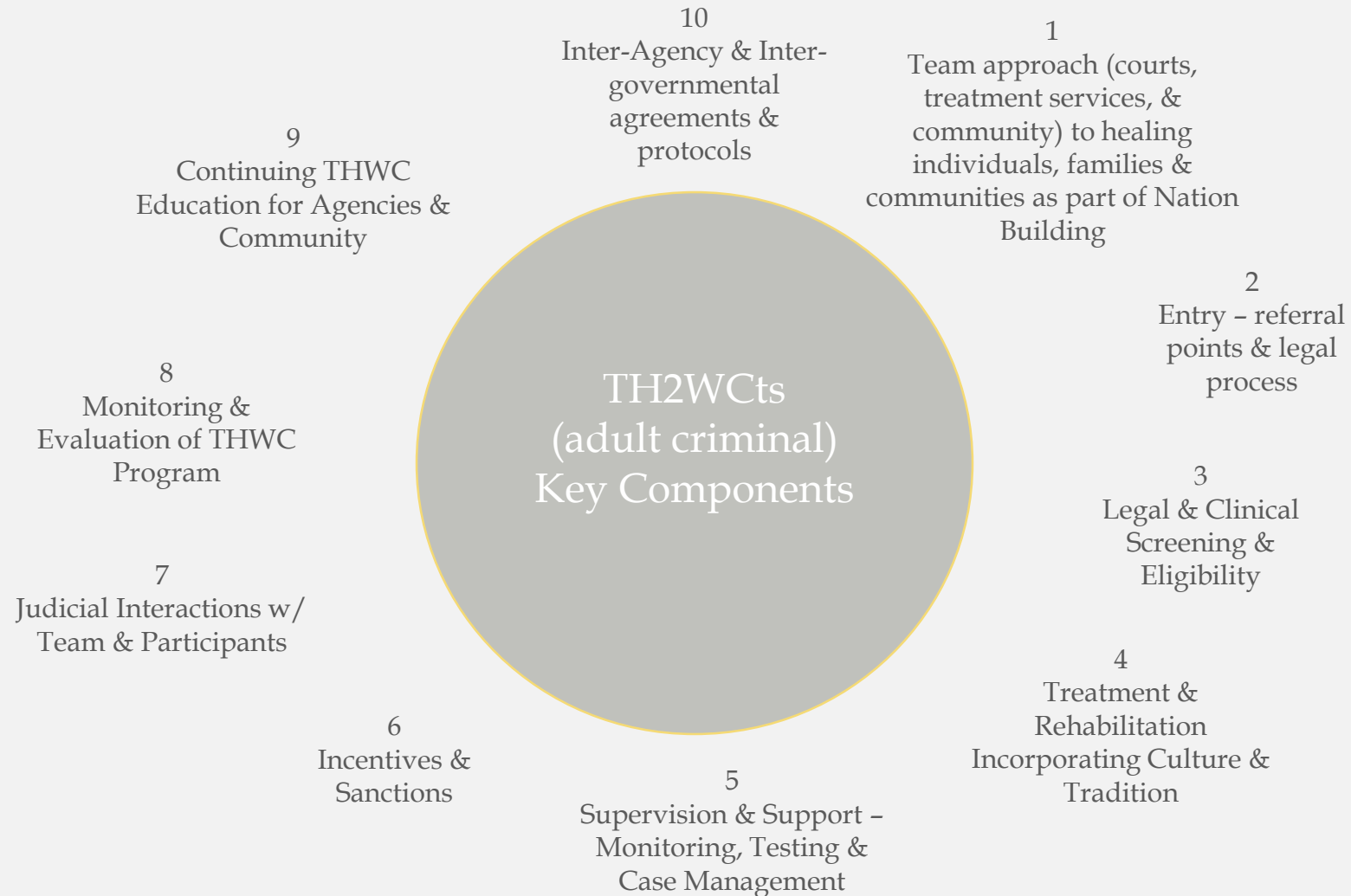
## Goals of state drug courts:

- To reduce the use of drugs and/or alcohol
- To reduce related criminal activity
- To increase the cost effectiveness of the justice system

## Goals of Tribal Healing to Wellness Courts?

- To reduce the use of alcohol and/or drugs
- To strengthen families and keep them together
- To reduce related status offenses, delinquency and criminal activity
- To provide some pro-social activities and interventions for Native youth
- To provide some (substance/behavioral) treatment for Native youth
- To provide some programs with hybrid cultural and western (treatment & justice) elements for Native youth and families
- To fund and develop/enhance tribal courts and justice systems

Today, the Key Components of the Tribal Healing to Wellness Courts are similar to, but modified from the state drug courts



# Compare:

1  
Engage all stakeholders in creating an interdisciplinary, coordinated, & systematic approach to working with youth & their families

16  
Establish a **confidentiality policy & procedures** that guard the privacy of youth while allowing the drug court team to access key information

2  
Using a **non-adversarial approach**, prosecution & defense counsel promote public safety while protecting participants due process rights

15  
Respond to compliance & non-compliance w/**incentives & sanctions** that are designed to reinforce or modify the behavior of youth & families

3  
**Define a target population & eligibility criteria** that are aligned with program goals & objectives

14  
Design **drug testing** to be frequent, random, & observed; & document testing policies & procedures in writing

4  
Schedule **frequent judicial reviews** & be sensitive to the effect that court proceedings can have on youth & their families

13  
**Coordinate with the school system** to ensure that each participant enrolls

5  
Establish a **system for program monitoring & evaluation** to maintain quality of service, assess program impact, & contribute knowledge to the field

12  
Recognize & **engage the family as a valued partner** in all components of the program

6  
**Build Partnerships** with community organizations to expand the range of opportunities available to youth & their families

11  
Maintain a **focus on the strengths of youth & their families** during program planning & in every interaction between the court & those it serves

7  
**Tailor interventions** to the complex & varied needs of youth & their families

10  
Create **policies & procedures** that are **responsive to cultural differences & train personnel** to be culturally competent

8  
**Tailor treatments** to the developmental needs of adolescents

9  
**Design treatment** to address the unique needs of each gender

## 16 Strategies to Improve Juvenile Drug Courts

# Time for a Poll!

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# What is the Process for Referral, Screening, & Comprehensive Assessment in a Juvenile Drug Court?

Referral	Screening	Assessment
<p><b>Description of Target Population ...</b></p> <ul style="list-style-type: none"> <li>• Determine who can refer these potential participants</li> <li>• Establish a procedure for referrals</li> <li>• Develop a plan to educate referral sources about your TH2WCt &amp; the procedures</li> </ul>	<p><b>Legal ...</b> -eligible?</p> <ul style="list-style-type: none"> <li>• History of involvement w/JJ system</li> <li>• Offending</li> <li>• Current offenses</li> <li>• Requirements under tribal &amp; state law</li> <li>• Requirements under funder (federal law)</li> </ul> <p><b>Clinical ...</b> -a good candidate?</p> <ul style="list-style-type: none"> <li>• Substance use history &amp; patterns</li> <li>• Mental health &amp; traumatic stress status</li> <li>• Educational/literacy level</li> <li>• Red flags for additional assessment &amp; evaluation</li> </ul> <p><b>Social ...</b></p> <ul style="list-style-type: none"> <li>• Youth &amp; family's willingness &amp; motivation to participate</li> <li>• Information about youth's relationships w/family &amp; peers</li> </ul>	<p><i>"A more comprehensive &amp; individualized examination of problems &amp; needs identified in screening, including type &amp; extent of mental health &amp; substance abuse disorders &amp; extent of traumatic stress."</i></p> <ul style="list-style-type: none"> <li>• Conducted by professionals</li> <li>• In-depth</li> <li>• Strengths-based</li> <li>• Bio-psycho-social assessment</li> <li>• Use evidence-based instruments</li> <li>• Use evidence-based interview techniques that are: <ul style="list-style-type: none"> <li>➔trauma-informed</li> <li>➔culturally-sensitive</li> <li>➔appropriate for adolescents</li> </ul> </li> </ul>

Taken from:  
The National Council of Juvenile & Family Court Judges:  
"Starting a Juvenile Drug Court, A Planning Guide" (2014),  
available at:  
<https://www.arcourts.gov/sites/default/files/Juvenile%20Drug%20Court%20-%20Planning%20Guide.pdf>

What does “treatment and rehabilitation” look like in a juvenile drug court?

a.k.a., “phased treatment plans”

<b>Phase 1</b> <b>Getting Ready</b> (readiness, stabilization, preparation, orientation)	<b>Phase 2</b> <b>Getting Involved</b> (engagement, performing)	<b>Phase 3</b> <b>Making Changes</b> (reflection, enrichment, development, sustaining change)	<b>Phase 4</b> <b>Transitioning</b> (return to community, aftercare, continuing care)
<ul style="list-style-type: none"> <li>• High level of structure, supervision, &amp; accountability</li> <li>• Focus on compliance: showing up for appointments &amp; school, reduction of disciplinary problems</li> <li>• Frequent drug testing</li> <li>• Getting youth ready to participate, “more sober”</li> <li>• Learning more about their needs</li> <li>• Establish a service plan including treatment &amp; education</li> <li>• Build trust with youth &amp; families through frequent contact</li> <li>• Explore what the H2WCt can do for the family</li> </ul>	<ul style="list-style-type: none"> <li>• Implement individual behavior contracts</li> <li>• Focus more on youth &amp; family participation/engagement – moving beyond compliance (e.g., family support group)</li> <li>• Begin skill development</li> <li>• Introduce a limited number of activities</li> <li>• Treatment becomes more intensive</li> <li>• School/education – expect completed assignments &amp; improved grades</li> <li>• Begin community service &amp; restitution payments</li> <li>• Introduce Journaling</li> </ul>	<ul style="list-style-type: none"> <li>• Expand development activities – employment, volunteering, job training</li> <li>• Enrich community connections – participation in clubs, sports, youth groups</li> <li>• Decrease court appearances</li> <li>• Shift accountability to the family (e.g., give them more say in determining incentives &amp; restrictions)</li> <li>• Expect completion of reparation &amp; community give-back obligations</li> <li>• Give specific journaling assignments</li> </ul>	<ul style="list-style-type: none"> <li>• Limited contact w/court</li> <li>• Participation in support group</li> <li>• Engagement in school &amp; work full time</li> <li>• Taking on roles of responsibility at home &amp; in the community</li> <li>• Giving back</li> <li>• Youth taking on new roles in program (e.g., orienting new participants along with staff, peer support group leadership, joining youth advisory board)</li> <li>• Parents may take on new roles (e.g., orienting new families along with staff, parent support group leadership, joining family<sup>22</sup> advisory board)</li> </ul>

Taken from:  
 The National Council of Juvenile & Family Court Judges:  
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 (2014), available at:  
<https://www.arcourts.gov/sites/default/files/Juvenile%20Drug%20Court%20-%20Planning%20Guide.pdf>

How do youth move through the phases in a juvenile drug court “phased treatment plan”?

a.k.a., “phase movement”

**Phase 1**

**Getting Ready**

(readiness, stabilization, preparation, orientation)

**Phase Movement**

- ~Substance-free for 120 days
- # of Sessions of Specialized Programs (e.g., anger management classes)
- Identify Levels of Treatment Progress (may be unique to each youth/family)
- # of Court Appearances
- Types of Progress in Family Relationships: reported compliance, communication, & taking increased responsibility with family
- Phase movement essay or justification written by youth or autobiographical story

**Phase 2**

**Getting Involved**

(engagement, performing)

**Phase Movement**

- Increasingly longer periods of abstinence
- Community Service
- # of Sessions of Specialized Programs (e.g., anger management classes)
- Identify Levels of Treatment Progress (may be unique to each youth/family)
- # of Court Appearances
- Relationships: reported compliance, communication, & taking increased responsibility with family
- # or % of restitution or reparations by end phase
- Youth/Family participation in aftercare planning
- Phase movement essay or justification written by youth or autobiographical story

**Phase 3**

**Making Changes**

(reflection, enrichment, development, sustaining change)

**Phase Movement**

- Increasingly longer periods of abstinence
- Community Service
- # of Sessions of Specialized Programs (e.g., anger management classes)
- Identify Levels of Treatment Progress (may be unique to each youth/family)
- # of Court Appearances
- Relationships: reported compliance, communication, & taking increased responsibility with family
- # or % of restitution or reparations by end phase
- Youth/Family participation in aftercare planning
- Phase movement essay or justification written by youth or autobiographical story

**Phase 4**

**Transitioning**

(return to community, aftercare, continuing care)

**Phase Movement**

- Substance-free for 120 days
- Community Service
- # of Sessions of Specialized Programs (e.g., anger management classes)
- Identify Levels of Treatment Progress (may be unique to each youth/family)
- # of Court Appearances
- Relationships: reported compliance, communication, & taking increased responsibility with family
- # or % of restitution or reparations by end phase
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<https://www.arcourts.gov/sites/default/files/Juvenile%20Drug%20Court%20-%20Planning%20Guide.pdf>

# The “Reality Check” for Tribes Considering Developing TH2WCts & Defining the Youth Target Population/Eligibility ...

Which youth could be best served by the TH2WCt ...

- Age
- Court Status
- Gender
- Severity of alcohol/ drug-use problem (experimentation through addiction)
- History of substance-abuse treatment (from no prior treatment to extensive treatment)
- Previous involvement in juvenile justice system (1<sup>st</sup> offense, or more offenses)
- Other

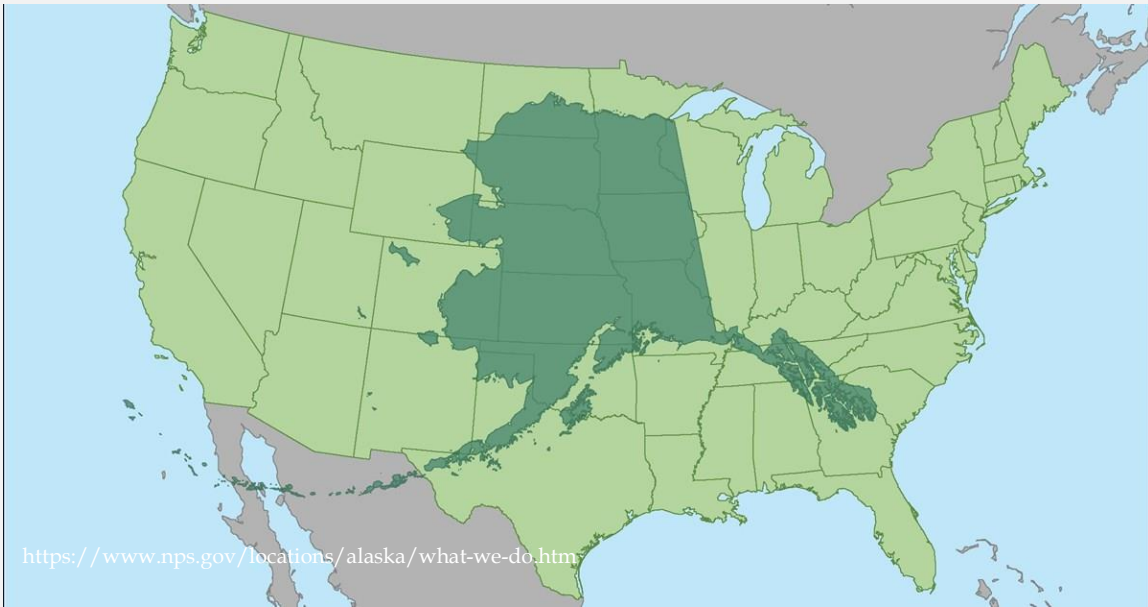
## Reality check

- Do we have treatment providers who can work with the youth we’ve included in our target population?
- Are there enough treatment slots available?
- Do we have community resources to provide services & programs for this population?
- List “qualifiers” & “disqualifiers”



# Time for a Poll!

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Alaska is 1/5 of the size of the contiguous United States, or 2.5 times the state of Texas. NPS Map

# The Alaska Tribes Case Study

Considerations & Challenges in Designing Tribal Healing to  
Wellness Courts & Programs in Alaska  
& Implications for Tribal Juvenile Codes

# Challenges facing Tribes in Alaska in developing Tribal Healing to Wellness Courts (TH2WCts)

1. Alaska Tribal Courts and village programs are underfunded, thus underdeveloped
2. State Courts & Juvenile Justice Systems take the lead with insufficient resources
3. State Law Enforcement takes the lead with insufficient resources
4. Recent state recognition of tribal sovereignty and jurisdiction (state recognizes only tribal jurisdiction over its members)
5. Confusion over tribal territorial jurisdiction because of the Alaska Native Claims Settlement Act (ANCSA) (little to no “Indian country”)
6. Confusion over the civil versus criminal nature of tribal juvenile proceedings
7. Regionalization of service provision (available in far away hub locations, but not consistently available in the villages)
8. Regionalization of law enforcement (inconsistent enforcement of public safety in the villages)
9. Geography & weather (many “off the road system” villages)
10. Lack of sufficient funding for tribes & Native nonprofits (service & law enforcement providers)



Indianz.com

ProPublica: Alaska Native village loses only public safety officer

Friday, November 1, 2019

After the Last Cop Killed Himself, All the Criminals Have to Do Is Hide Days before his death in 2005, Simeon Askoak told officials how an Alaskan rural policing program was broken. His village hasn't had another permanent cop since.

# Indian Law & Order Commission (ILOC) Recommendations Re Alaska Tribes

- Congress created **the Indian Law & Order Commission (ILOC)** in 2010 to:
- investigate, assess & report back to the president & Congress
- re **criminal justice systems serving Native American and Alaska Native communities**
- The ILOC reported back to the President & Congress in 2013 ...
- dedicating an entire chapter to Alaska & the tribes in Alaska , Chapter 2 - “Reforming Justice for Alaska Natives: The Time is Now”



# ILOC Recommendations Re Alaska Tribes (cont.)

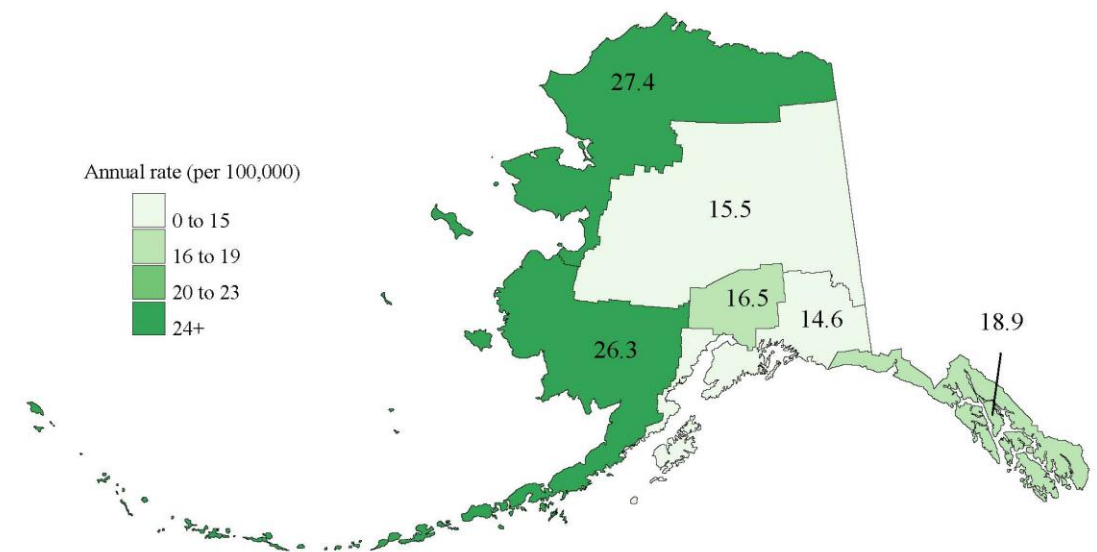
- **The ILOC found:**
- there were **229 federally recognized tribes in Alaska** with **78 operating tribal courts** - with more in development
- however, funding constraints & “narrow jurisdiction” limited the tribes’ /tribal courts’ efforts
- most tribal courts tended only to handle child welfare cases, customary adoptions, public drunkenness, disorderly conduct, & minor juvenile offenses
- **The ILOC recommended:**
- **federal law changes** (to the Alaska Native Claims Settlement Act (ANCSA) & the Indian country statute) to declare that village fee lands are “Indian country”
- & to allow tribes to acquire & take lands into trust to increase their territorial jurisdiction
- with attendant increases in federal, state, & ANC **resources** to tribes
- to tackle their tribal law enforcement & justice system development & operations
- that **Congress should affirm ...**
  - “the inherent criminal jurisdiction of Alaska Native tribal governments within the external boundaries of their villages, & over their tribal members”



<https://www.aisc.ucla.edu/iloc/images/white-house-3.jpg>

- The **“drug of choice” in Alaska** is **alcohol**
  - whether we are speaking about Alaskans in general or Alaska Natives
  - Alaskans have high alcohol consumption & binge drinking rates, for both men & women, & youth
  - In rural Alaska, given the restrictions on alcohol via local option laws, there is bootlegging & frequent use of alcohol substitutes, such as ‘homebrew, denatured alcohol, & inhalants
  - For many, alcohol abuse has its origins in physical &/or sexual abuse
  - With alcohol comes motor vehicle accidents, DWI, depression, Fetal Alcohol Spectrum disorders (FASD), liver disease, cirrhosis, unintentional injuries, domestic violence, child abuse, assault, rape, suicide, homicide & death
- Those who use/abuse alcohol are **also** likely to use **marijuana** &/or **cocaine**
- There has also been a dramatic **increase in trafficking of methamphetamine**, & **to a lesser degree heroin**

Alcohol-induced Mortality Rate  
by Region of Residence, 2009 - 2013

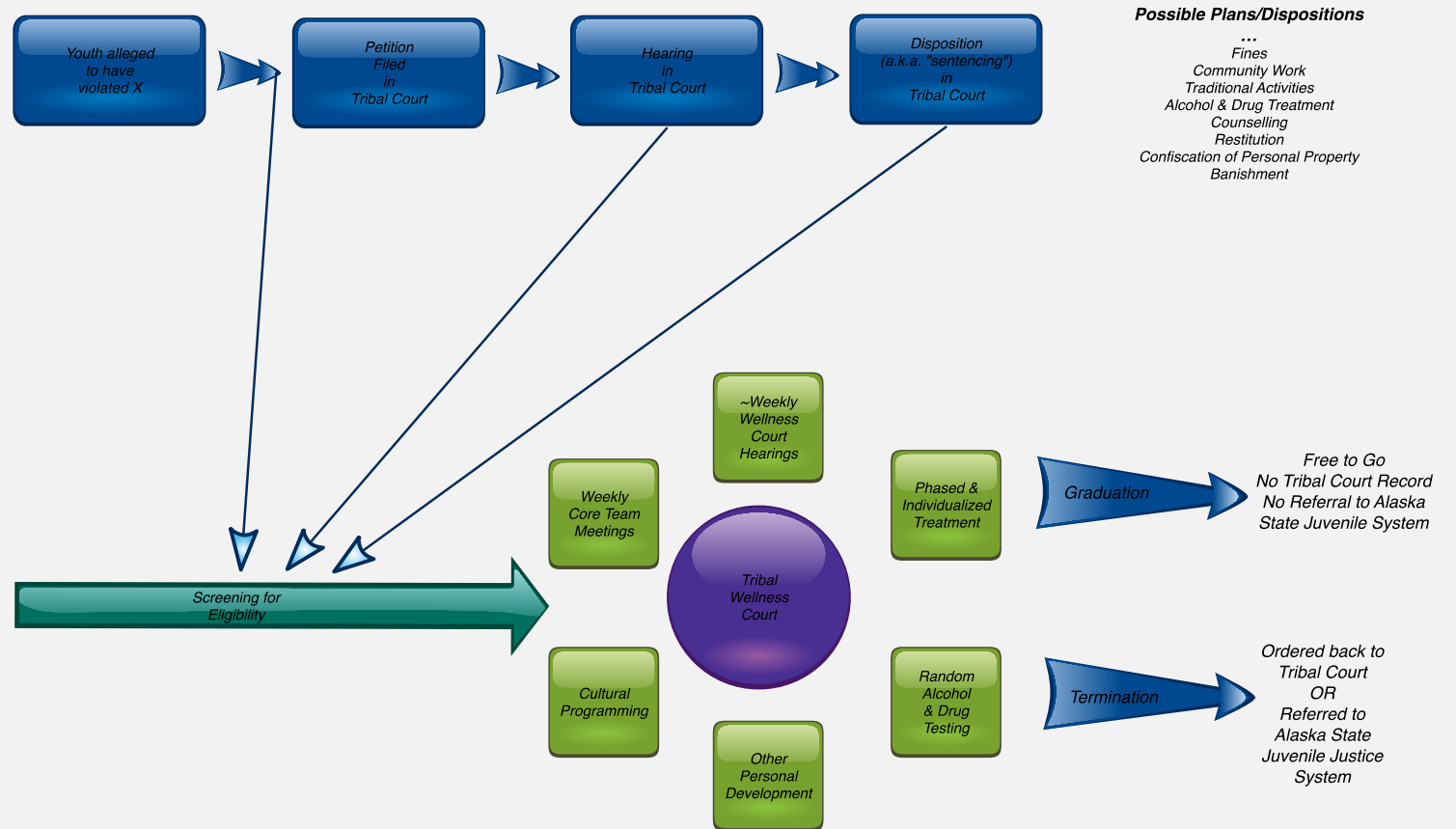


Source: Alaska Bureau of Vital Statistics. Last updated on 05/28/2015.

[http://ibis.dhss.alaska.gov/indicator/complete\\_profile/AlcInducedDth.html](http://ibis.dhss.alaska.gov/indicator/complete_profile/AlcInducedDth.html)

# Tribal Healing to Wellness Court Model Applied to Alaska Tribes

- The TH2WCt model applied to Alaska Tribes ...
- Assumes that tribes in Alaska had/have developed tribal court systems and laws (a juvenile code) of a certain type
- The **new TH2WCt court dockets** would operate differently from the typical tribal criminal or juvenile court dockets
  - their **purpose** was **treatment** instead of exclusively punishment
  - & their **method** was **positive encouragement & intensive supervision** by a multidisciplinary judge-led team
    - Frequent team meetings
    - Frequent group hearings w/ application of sanctions & incentives
    - frequent, random drug & alcohol testing
  - mandated participation in **intensive phased treatment plans** over months to a year or more
  - **graduation or termination from program**



# Time for a Poll!

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- The Alaska Court system and the Kenaitze Indian Tribe (KIT), based in Kenai, Alaska partnered to create "a new experimental court" in 2015
- Alaska Supreme Court Justice Dana Fabe said:
  - a state judge (Kenai Superior Court Judge Anna Moran) and a tribal judge (Chief Judge Kim Sweet of the Kenaitze Tribe)
  - will sit side by side and hear cases
  - in the therapeutic substance abuse court on the Kenai Peninsula starting March of 2016
- "a joint jurisdictional project"
- both civil and criminal matters
- The Kenaitze Indian Tribe subsequently applied for and received a grant to develop a Juvenile Tribal Healing to Wellness Court
- KIT's youth diversion programs had existed more than six years
- Program partners include members of the Kenai Peninsula Diversion Team, including ...
  - State of Alaska Division of Juvenile Justice-Kenai Probation Office
  - Kenai Peninsula Youth Facility
  - Kenai Peninsula Youth Court



Proposed Kenaitze Indian Tribe Juvenile Wellness Court

#### Goals ...

- Reduce underage drinking
- Reduce rate of alcohol use among tribal families
- Establish tribal court laws & process for pre-conviction diversion (no criminal record & routing towards treatment/recovery)
- Add opportunities for peer support\*
- Add opportunities for recovery activities\*
- Alcohol Recovery Camp for youth & families\*

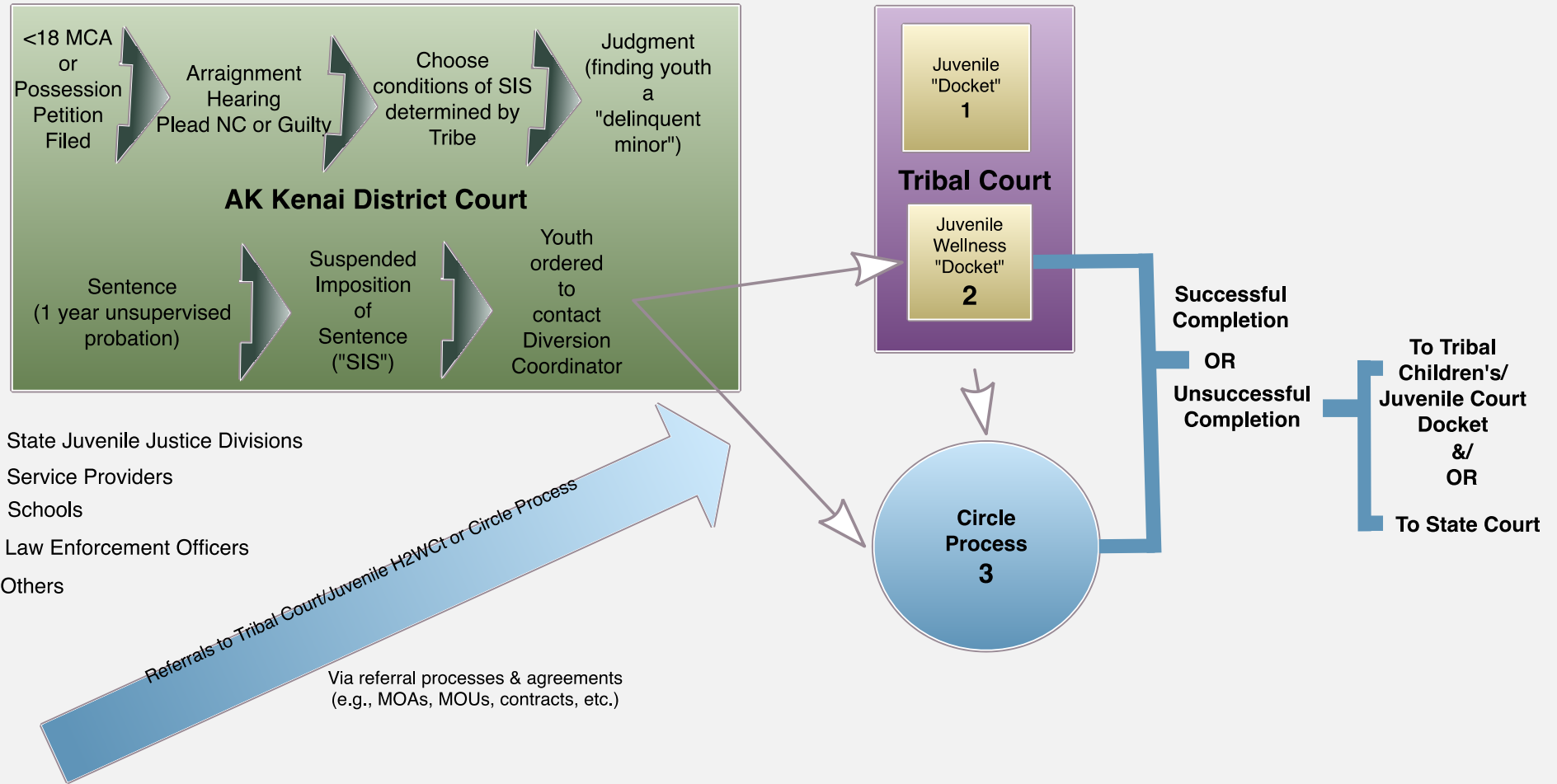
\*In addition to Tribal Circle activities

#### Target Population ...

- Native Youth Under 21
- Alcohol Related Crimes on Kenai Peninsula
- Minor Consuming Alcohol
- Theft\*
- Property Damage\*\

\*When under the influence of alcohol

## Idealized Kenaitze/State-Tribal Justice System Process & Flow



## Debates About Tribal Courts & Tribal Healing to Wellness Courts in Alaska: The Drug Courts model as a western colonial imposition

- **Some Native & Non-Native Critics argue ...**
- That the drug court model is, at best, a **federally incentivized western model**
- &, at worst, a **western colonial imposition**
  - (there is a particular disdain for western adversarial court process & western substance abuse & behavioral health treatment approaches)
- The **only appropriate approach** is an Alaska Native community, **culturally-driven approach**
  - which often translates into prevention vs. intervention in the western system (Culture Camps)
  - OR
  - Circle process



<https://www.tananachiefs.org/culture-and-wellness-camps/>

# Debates About Tribal Courts & Tribal Healing to Wellness Courts in Alaska: Hybrid models are a good thing

- Tribal advocates argue ...
- Hybrid (syncretic) models are ok
- TH2WCts, particularly the adult & juvenile courts, provide tribally controlled interventions that would not otherwise be available
  - these Native adults & youth would otherwise already be in the state criminal or juvenile justice systems
- The tribes and their TH2WCt teams plan, design & implement their conception of what the TH2WCt should be and do
- Federally funding provides tribes with the opportunity to design something tailored to tribal laws, culture and values, something local, and something under tribal control
- While the National Association for Drug Court Professional's (NADCP) training and TA exposes tribes to the latest tested state approaches & processes (& teach fidelity to their model), tribes ultimately decide how to design & implement their TH2WCts locally



## Syncretism

noun *syn·cre·tism* \ 'sɪŋ-kre-tɪzəm, 'sɪn-\

1: the combination of different forms of belief or practice

2: the fusion of two or more originally different inflectional forms

<http://www.merriam-webster.com/dictionary/syncretism>

*Cultural syncretism is when an aspect of two or more distinct cultures blend together to create a new custom, idea, practice, or philosophy.*

<http://study.com/academy/lesson/what-is-cultural-syncretism-definition-examples-quiz.html>

# Debates About Tribal Courts & Tribal Healing to Wellness Courts in Alaska: Do Alaska Tribes have the necessary tribal court infrastructure & do they want it?

- [State & NADCP] Drug Court proponents might argue ...

1. Alaska tribes lack fully elaborated tribal court systems

- with tribal laws establishing tribal criminal, family, & juvenile court dockets, much less a therapeutic docket

2. Circle process may be a part of, but cannot be a substitute for an entire tribal court and/or drug court system

- circle process is a type of diversion that is not a court or a drug court & it does different things to achieve different results



*Representatives from the region's tribes gathered at the Nome Mini Convention Center for Kawerak's 2019 Tribal Justice Summit. (Photo by Emily Hofstaedter/KNOM)*

*But what exactly is a tribal court? There isn't one singular model, as Tribal Justice Program Director for the Association of Village Council Presidents Rick Garcia explained.*

*"Tribal courts are really our courts," Garcia said. "They are courts in our community that seek to provide restorative justice to our tribal members."*

*And, he says, that can look completely different from community to community.*

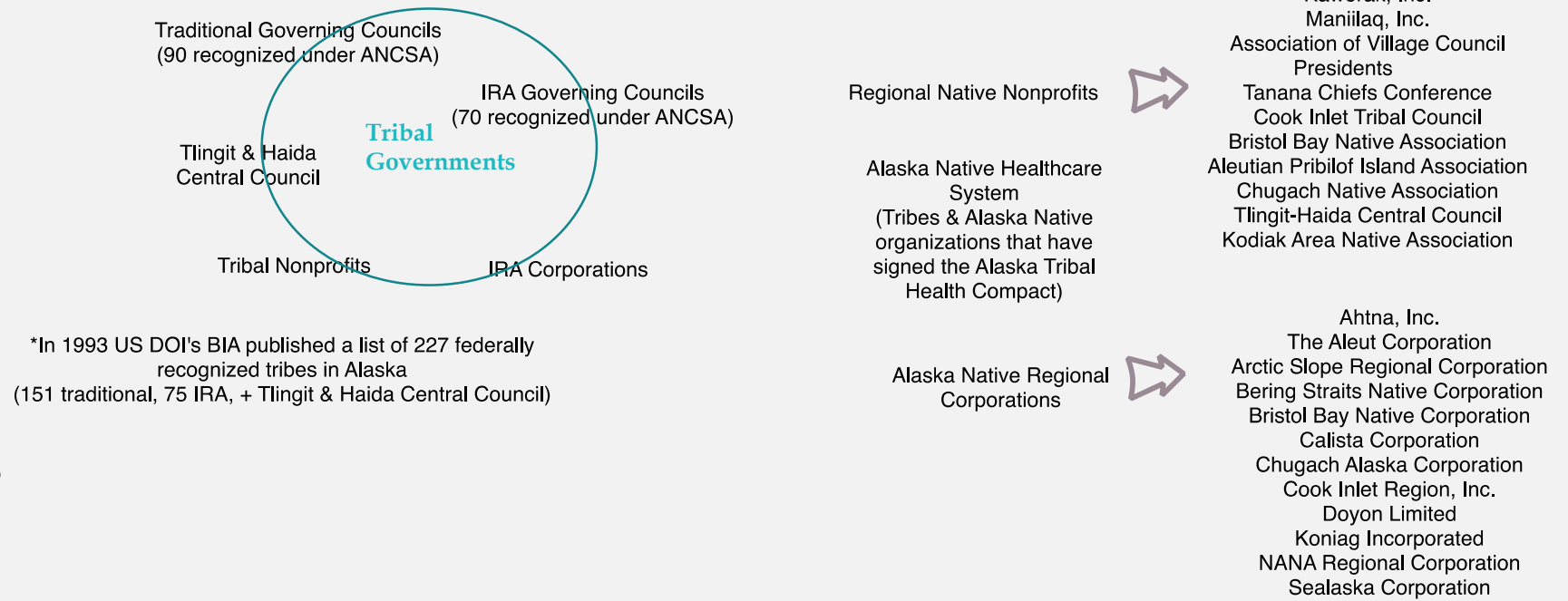
# Debates About Tribal Courts & Tribal Healing to Wellness Courts in Alaska: Do Alaska tribes have the necessary local treatment services?

- [State & NADCP] Drug Court proponents might argue (cont.) ...

## 3. Alaska tribes do not house or control their treatment (substance abuse & behavioral health assessment and treatment services) entities locally

- these are resourced & controlled by distant third-parties – the regional Native nonprofits
- the assumption is that fidelity to the NADCP drug court model is not possible as drug court participants at the village level will not be able to access day-to-day required elements of their phased treatment plans

**The Complex Non-System of Entities in Rural Alaska**  
(term coined by David Case & David Voluck, in Alaska Natives & American Laws, 3rd Edition (2012), graphic by Pat Sekaquaptewa)



\*In 1993 US DOI's BIA published a list of 227 federally recognized tribes in Alaska (151 traditional, 75 IRA, + Tlingit & Haida Central Council)

Debates About Tribal Courts & Tribal Healing to Wellness Courts in Alaska:  
Do Alaska tribes have the necessary monitoring and law enforcement services?

- [State & NADCP] Drug Court proponents might argue ...

4. Alaska tribes do not house or control their law-enforcement entities locally

- these are resourced & controlled by distant third-parties – the regional Native nonprofits & the Alaska State Troopers via the Village Public Safety Officer (VPSO) program
- the assumption is that fidelity to the NADCP drug court model is not possible as law enforcement will not be present to participate in the intensive monitoring of participants
  - whether via alcohol & drug testing or just policing

5. Perhaps only state-tribal joint jurisdiction drug courts would work in many parts of Alaska



*Aniak Village Public Safety Officer James Kvamme. (Bill Roth / Alaska Dispatch News)*

*Anchorage Daily News  
As Alaska struggles to fill VPSO ranks, the officers remain unarmed for now  
pencil Author: Lisa Demer clock Updated: December 2, 2017  
calendar Published February 11, 2017*

## Debates About Tribal Courts & Tribal Healing to Wellness Courts in Alaska: This is the Tribe's decision; they are diverse; they need support in system development & capacity building

- **TH2WCt advocates might reply ...**
- **Many Alaska tribes have been, and are now, actively developing their court systems & laws**
  - which have previously & purposely been externally suppressed & under-resourced
  - in violation of both U.S. federal Indian law principles, the trust responsibility & in violation of Alaska Native Indigenous peoples' rights under the UNDRIP
  - They need to be supported in their system development and capacity building efforts
- While **circle process** has & is being used successfully by a number of tribes
  - for the purposes for which circle process is designed in Alaska
  - **it should not be the only possibility, and it could be integrated into a TH2WCt**
  - **each tribe is sovereign, with the prerogative to experiment with hybrid models, to innovate, &/or to integrate circle process, as part of the whole system**
  - also, there is a concern that circle process is convenient for state entities
  - as they may consider it as a mere diversion program from a state court
  - as opposed to recognition & collaboration with the exercise of concurrent tribal court jurisdiction



*Presiding Judge Debra O'Gara discusses tribal justice in the Juneau courtroom of the Central Council of Tlingit and Haida Indian Tribes of Alaska. (Photo by Ed Schoenfeld/CoastAlaska News)*

*KTOO Public Media  
Southeast tribal court builds on its experience  
By Ed Schoenfeld, CoastAlaska News  
March 31, 2017*



Debates About Tribal Courts & Tribal Healing to Wellness Courts in Alaska:  
Alaska tribes need funding & resources; & they may choose to regionalize or to work with the state

- **TH2WCt advocates might reply ...**
- **Alaska tribes** have the authority for, but **need assistance with, the direct resources for the development & operation of ...**
  - local tribal treatment programs
  - local tribal monitoring law enforcement entities
- Given **issues of practicality**- geography, the state budget crisis, & differential federal funding of tribes in Alaska vs tribes in the lower 48
  - both the **tribal-state joint-jurisdiction drug court model**
  - & the **inter-tribal drug court model**
  - **are worth exploring**
- However, the **state must respect & support concurrent tribal regulatory & adjudicatory jurisdiction**
  - **& seek to collaborate** at the margins



*Kenaitze Indian Tribe's Executive Council, Executive Director, representatives of the Alaska state court system, and the states executive branch pose following the ceremony.*

KENAITZE INDIAN TRIBE, ALASKA COURT SYSTEM ANNOUNCE  
JOINT-JURISDICTION PROJECT  
OCTOBER 21, 2016  
*Henu' Community Wellness Court to serve residents across central Kenai Peninsula*

*The Kenaitze Indian Tribe has officially entered a historic government-to-government partnership with the Alaska Court System, signing an agreement to create a joint-jurisdiction state-tribal therapeutic court that will serve people across the central Kenai Peninsula later this year.*

# Time for a Poll!

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# Lessons Learned

1. The Model Indian Juvenile Code (2016 Revision) sets out the provisions for a maximal exercise of tribal sovereignty over a tribal juvenile justice system;
2. The stated purposes of the Model Code include “programs of supervision, treatment, and rehabilitation,” and the coordination of services for children and their families, “with an emphasis on prevention, early intervention, diversion, and community-based alternatives;”
3. The Tribal Healing to Wellness Court (drug court) model is the current best practice for therapeutically and culturally focused juvenile justice programming;

# Lessons Learned (cont.)

4. However, Tribal Healing to Wellness Courts and programs are resource and collaboration heavy and there may be practical challenges for some tribes that seek to establish wellness court dockets as opposed to diversion only programs – key considerations in whether to plan for a tribal wellness court docket versus an alternative include:
  - Do you wish to develop your tribal court system to include a juvenile court with a full set of key positions and juvenile laws, including a wellness court docket?
  - Do you wish to incorporate a hybrid therapeutic approach (western substance abuse/use & behavioral health treatment & traditional/cultural approaches)?
  - Does your community have regular access to substance abuse/use & behavioral health services (or will you be able to seek funding and provision for these services)?
  - Does your community have regular access to monitoring, testing, and law enforcement services (or will you be able to seek funding and provision for these services)?
  - OR is it necessary to rely on the state for one or more of the above (juvenile court process, treatment services, probation and law enforcement services, etc.)?
5. Alternatives to the establishment of wellness court dockets include: regionalized tribal wellness courts (inter-tribal courts), joint-jurisdiction courts (joint tribal-state endeavors), and non-court tribal/community diversion only programs; and
6. Should a tribe/community wish to pursue an alternative this will require MOAs/MOUs or other agreements, in addition to tribal code provisions.

# Resources

- Tribal Youth Resource Center:  
[www.TribalYouth.org](http://www.TribalYouth.org)
- Tribal Law and Policy Institute:  
[www.home.TLPI.org](http://www.home.TLPI.org)



# Thank you

# Thank you for your presence today.

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