

# Putting the Wellness Court into Code

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Operations

Entry &  
Discharge

Code  
Considerations

Lauren van Schilfgaarde

Assistant Professor  
UCLA School of Law

# Code Considerations

## Structure of the Wellness Court

- Docket of the Judiciary
- Condition of Probation
- Diversion Program

## Benefits

- Stability
- (Limits on ) Authority
- Codifies Restorative Justice

## Structure of the Tribe

- Role of the Code
- Separation of powers
- Structure of other tribal agencies

## Disadvantages

- Unreflective of Tribal norms
- Slow to change
- Can be more adversarial

FORMALIZING HEALING TO WELLNESS COURTS IN TRIBAL LAW

## FORMALIZING HEALING TO WELLNESS COURTS IN TRIBAL LAW



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Main Office: 8229 Santa Monica Blvd., Suite 201 - West Hollywood, CA 90046  
P: 323.650.5467 - F: 888.233.7383

Tribal Healing to Wellness Courts: [www.WellnessCourts.org](http://www.WellnessCourts.org)  
Tribal Law and Policy Institute: [www.Home.TLPL.org](http://www.Home.TLPL.org)  
Tribal Court Clearinghouse: [www.TLPL.org](http://www.TLPL.org)

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# Foundations of the Wellness Court

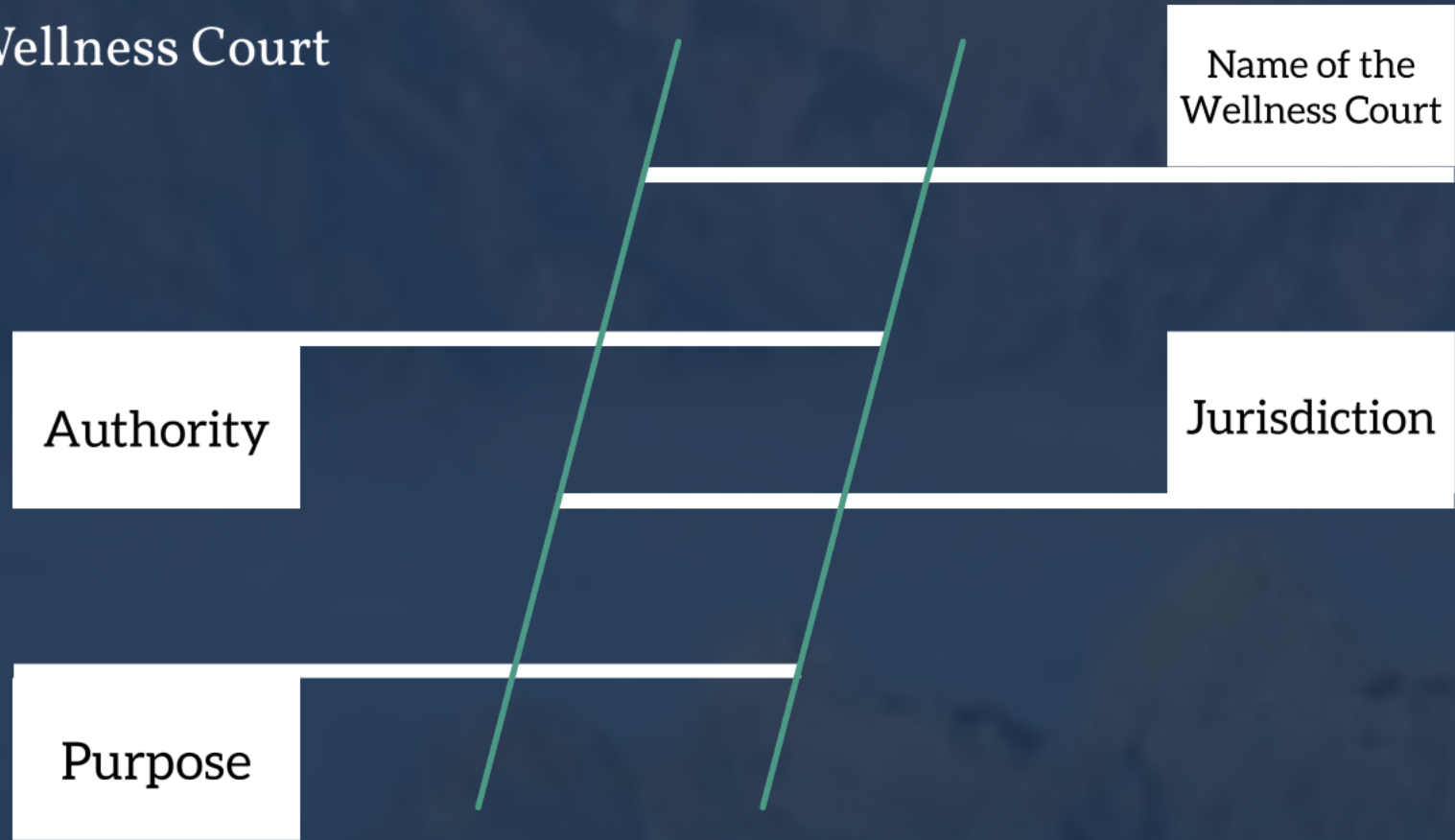
Establishing  
the Court

Entry

Discharge

# Considerations

Establishing the Wellness Court



# Establish

There is hereby established for the Tribe a court to be known as the Healing to Wellness Court.

# Jurisdiction

The Wellness Court is a Trial Court of Special Jurisdiction with jurisdiction to hear all cases referred to it pursuant to Tribal Law.

The Wellness Court may exercise jurisdiction over individuals who:

1. Meet the eligibility criteria of the Wellness Court Policies and Procedures Manual; and
2. Are accepted for admission by the Wellness Team.


# Diversion Program

The Healing to Wellness Court shall be a deferred sentencing program established to divert those offenders with substance abuse problems away from the regular Court system and toward a more holistic approach, which involves a treatment-oriented perspective.

# Authority

The Wellness Court shall have the authority to issue all orders necessary to ensure the safety, well-being, and rehabilitation of individuals who come within or consent to its jurisdiction. The Wellness Court shall have the power to implement all the duties, responsibilities, and remedies set out in this Code, including the power to enforce subpoenas and orders of restriction, fines and orders of restitution, contempt, confinement and detention, and other powers as appropriate.





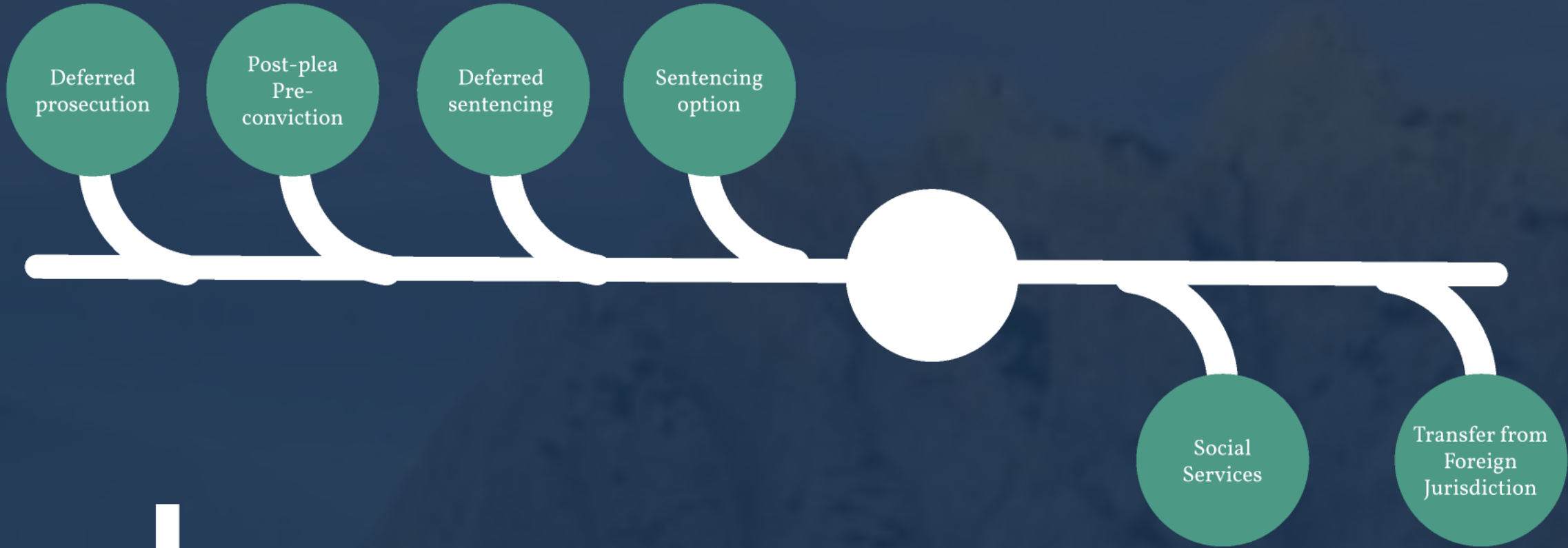
# Foundations of the Wellness Court

Establishing  
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Entry

Discharge

## Criminal



Entry

# Entry

## Pueblo of Pojoaque

### **C-10 *Wen Hey Kha Wosatsi Kahu* (Path to Wellness) Court Jurisdiction**

(c) Pueblo of Pojoaque Path to Wellness Court participation may be ordered as:

2. A requirement of pre-prosecution diversion;

## Confederated Tribes of Coos, Lower Umqua, and Siuslaw Indians

Title 2 – Rules of Procedure | Chapter 2-13: Wellness Court

### **2-13-3. Jurisdiction.**

(b) Referrals to the CTCLUSI Wellness Court may be made once an offender has been charged with at least one offense within the tribe's jurisdiction and/or within the jurisdiction of a transferring court in which alcohol or drugs are involved.

## Fort Peck Assiniboine & Sioux Tribes

Title 6, Chapter 10. Fort Peck Wellness Court Programs

### **Section 1003. Jurisdiction.**

(a) Wellness Court referrals may be made as a part of a conditional sentence or may be made as part of a mixed or suspended sentence.

## Yurok Tribe

Chapter 12.40 Hearings

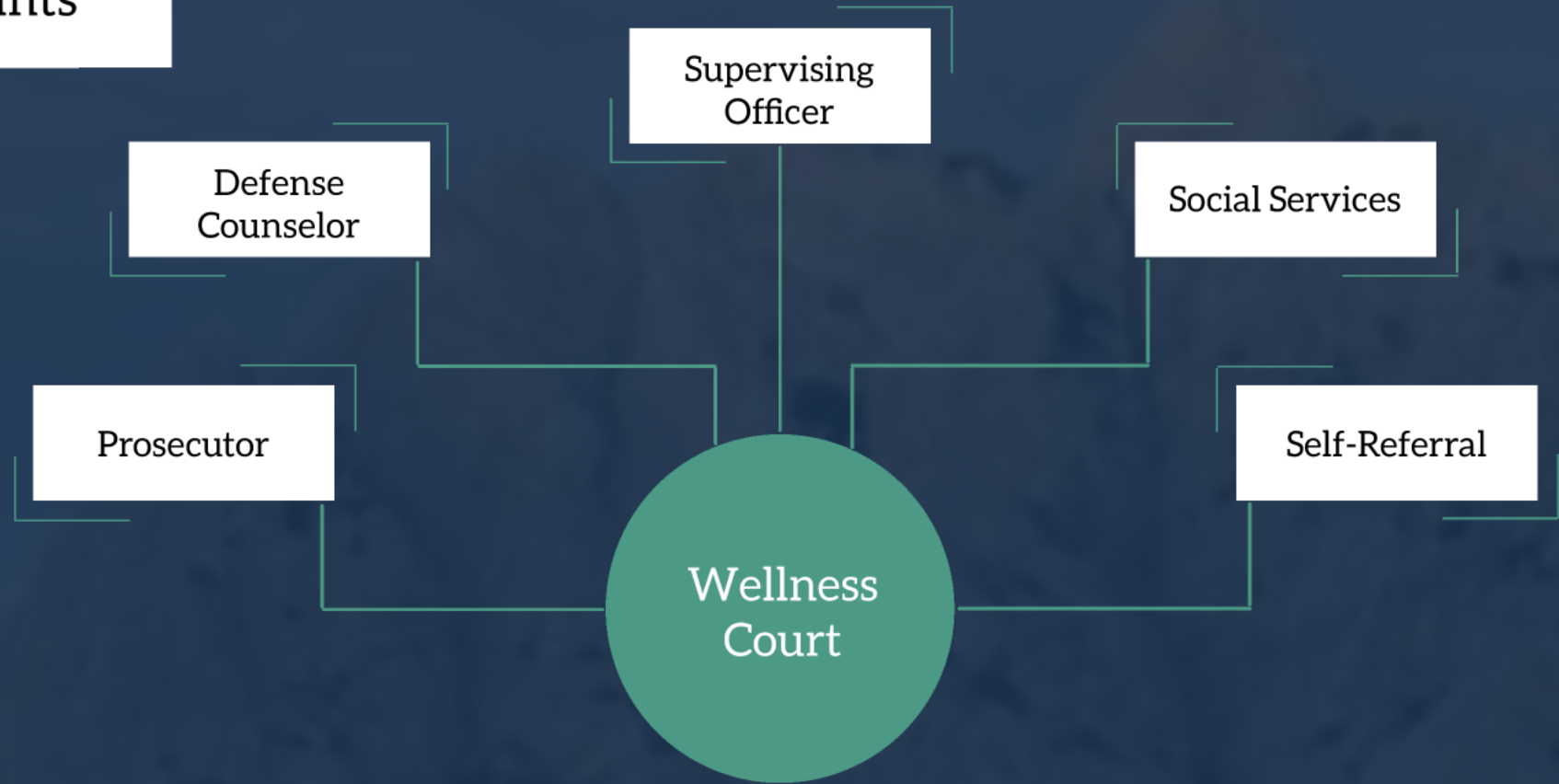
### **12.40.190 Disposition hearings.**

(c) *Findings and Orders.*

(7) In addition to the placement disposition alternatives, the Court may order the child, parent/guardian/caretaker to attend any of the following if the Court determines they are related to the circumstances which cause the child to come to the attention of the court, and if they are likely to promote the best interests of the child and his or her Tribe and the reunification of the child with his or her family.

- (C) Wellness court services;

# Referral Points



# Eligibility

Widen/Narrow the Scope

Criminal history

Connection to substance abuse

Funders' limitations

Process for Determining Eligibility

Legal screening

Clinical screening

Time limitations

# Eligibility

## Hoopa Valley Tribe

Title 4A – Na:tini-x'we' Na:xo-xi-nayi-din [*The people's get well place*] Court Code

### **7. D. Clinical Screening for Eligibility**

... The following individuals are **not eligible** to participate in the Na:tini-x'we' Na:xo-xi-nayi-din court under this code:

1. individuals and/or immediate family who do not have an alcohol and/or drug use problem; and/or
2. individuals who will not benefit from the available educational and therapeutic services and activities.

## Due Process Considerations



Waiver of right to speedy trial

Stipulations to preserve evidence for deferred prosecutions

Access to Counsel within Wellness Court?

## Conditions of Entry

Restraint on substance use and alcohol, mandatory drug testing

Restraint on liberty, such as curfew, restrictions on living arrangements, required attendance to programs, court, and treatment

Waiver of HIPAA confidentiality

### Tulalip Tribes

Chapter 2.25. Criminal Procedures | 2.25.110 Plea Procedures

#### **2.25.110(2)(a)(ii) Contents of Agreement.**

A deferred prosecution agreement ... may include stipulations concerning the admissibility of the police report, specified testimony, or dispositions if the deferred prosecution is revoked. The agreement shall be filed with the Court.

### Oneida Indian Nation

Rules of Criminal Procedures, Chapter 8: Diversion

#### **802. Diversion Agreement Authorized; Polices and Guidelines by Nation Prosecutor;**

**Background Information....** c.... In all cases, the defendant shall be present and shall have the right to be represented by counsel at his own expense at the diversion conference with the Nation Prosecutor.

### Oneida Indian Nation

Rules of Criminal Procedures, Chapter 8: Diversion

#### **804. Provisions of Diversion Agreement; Waiver of Speedy Trial and Jury Trial; Alcohol and Drug Related Offenses; Stay of Criminal Proceedings; Filing of Agreements**

a.... The diversion agreement shall include specifically the waiver of all rights under Nation law to a speedy arraignment and a speedy trial....

### Fort McDowell Yavapai Nation

Chapter 5 – Civil and Criminal Procedure | Article III. Criminal Procedure  
VIII. Wellness Court

#### **Rule 85. – Offer for Wellness Court is made/declined.**

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

### Citizen Potawatomi Nation

Title 15 – Healing to Wellness Court Administration and Procedure


#### **Section 15-1-107. Conditions of Healing to Wellness Court.**

(a) In any case in which a defendant is admitted into the Healing To Wellness Court, there shall be a written agreement between the defendant and the Healing To Wellness Court Team. The agreement shall include, but not be limited to, the terms of the Healing To Wellness Court.

(b) The conditions of the Healing To Wellness Court may include, but are not limited to, one or more of the following:

- (1) Participate in an education setting, including but not limited to, secondary education, postsecondary education, job training school, trade school, GED classes, or adult basic education courses;
- (2) Financially support his or her spouse, children, or both, or pay child support, spousal support, or both, including allowing such support to be withheld or garnished from the wages or salary of the defendant;
- (3) Refrain from the use of alcohol and drugs and from frequenting places where alcoholic beverages or illegal controlled substances are sold, possessed, or used;
- (4) Refrain from contact with certain persons or premises;
- (5) Obtain and maintain employment;
- (6) Attend individual, group, or family counseling;
- (7) Pay court costs, fees, fines, or both, incurred as a result of the offense charged, including allowing such costs to be withheld or garnished from the wages or salary of the defendant;
- (8) Pay costs associated with participation in the Healing To Wellness Court, including allowing such costs to be withheld or garnished from the wages or salary of the defendant;
- (9) Observe curfews or home detention or travel constraints as set out in the offender's agreement; and/or
- (10) Observe any other terms or conditions of the Healing To Wellness Court Judge or the Healing To Wellness Court Team, provided that such terms or conditions do not violate or abridge any fundamental or substantive right of any party.





# Foundations of the Wellness Court

Establishing  
the Court

Entry

Discharge

# Discharge Process



Successful Graduation

Neutral Discharge

Termination

### Confederated Tribes of Coos, Lower Umqua, and Siuslaw Indians

Title 2 – Rules of Procedure

Chapter 2-13: Wellness Court

#### **2-13-3. Jurisdiction.**

(a) ... Upon successful completion of the CTCLUSI Wellness Court program, or at such a time when a participant becomes ineligible to continue in the program as set out in the CTCLUSI Wellness Court Policies and Procedures, the CTCLUSI Wellness Court will notify the transferring court of the status for any final disposition.

### Pueblo of Pojoaque

**C-10 *Wen Hey Kha Wosatsi Khuu* (Path to Wellness) Court Jurisdiction**

**(a) Continuing Jurisdiction....** In the event that a participant is terminated from the Path to Wellness Court, the case will be sent to Tribal Court for adjudication.


## **EXPUNGEMENT OF RECORDS**

### Tulalip Tribes

Chapter 2.25. Criminal Procedures | 2.25.110 Plea Procedures

#### **2.25.110(2)(a)**

**(iv) Expungement of Records.** Whenever the Court has deferred the prosecution and after expiration of the period of deferral and after the defendant's successful completion of any conditions of deferral, upon motion by the Court, the defendant, or the defendant's counsel, the Court shall allow the expungement of the Court records of all record of the proceedings by entering an order of dismissal of charges and expungement, inscribing each record of the proceedings with the word "Expunged" and sealing the file.



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# Wellness Court Operations

Team Roles &  
Responsibilities

Wellness  
Court  
Procedures

Wellness  
Court Hearing

Incentives and  
Sanctions

# Team Roles and Responsibilities

#1

Team Composition

#2

Responsibilities of each team member, particularly the Judge

#3

Establishment of the Wellness Court coordinator

Poarch Band of Creek Indians

Title 3 – Judicial | Chapter III – Poarch Band of Creek Indians Drug Court

**Sec. 3-3-2 – Drug Court Composition**

The Poarch Band of Creek Indians Drug Court shall be composed of one (1) Drug Court Judge and a Drug Court Team.

Confederated Tribes of Coos, Lower Umqua, and Siuslaw Indians

Title 2 – Rules of Procedure | Chapter 2-13: Wellness Court

**2-13-2. Definitions.**

**(b) CTCLUSI Wellness Court Team.** The CTCLUSI Wellness Court Team shall consist of the Wellness Court Judge, Wellness Court Case Manager, Family Services representative, the Tribal Presenting Officer, and Tribal Defense advocate. The CTCLUSI Wellness Court Team may include other members on the Team as determined by the CTCLUSI Wellness Court Judge.



# Wellness Court Operations

Team Roles &  
Responsibilities

Wellness  
Court  
Procedures

Wellness  
Court Hearing

Incentives and  
Sanctions

# Wellness Court Procedures

Establish the  
Policies and  
Procedures

Treatment Plan

Case  
Management

Supervision

Records

Drug Testing

# Wellness Court Operations

Team Roles &  
Responsibilities

Wellness  
Court  
Procedures

Wellness  
Court Hearing

Incentives and  
Sanctions

# Do these hearings differ from other court proceedings?

- Modified Rules of Evidence
  - Not a court of record
  - Confidentiality or privilege protections
- Mandatory participant and/or team member attendance
- Informal procedures
- Open or closed to the public
  
- Staffing
  - Establish and exempt from ex parte requirements

# Wellness Court Operations

Team Roles &  
Responsibilities

Wellness  
Court  
Procedures

Wellness  
Court Hearing

Incentives and  
Sanctions

# Incentives and Sanctions

- Notice that they could be ordered
  - A "such as" list
  - An exclusive list
- Deviation from sentencing guidelines
- Procedure (or lack thereof) for incarceration as a sanction

# Wellness Court Operations

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Lauren van Schilfgaarde

Assistant Professor  
UCLA School of Law



# Thank you!

Lauren van Schilfgaarde  
Assistant Professor  
UCLA School of Law  
[vanSchilfgaarde@law.ucla.edu](mailto:vanSchilfgaarde@law.ucla.edu)

Please scan the QR code with your phone or  
click the evaluation link in the chat box.  
Thank you!

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