

DEVELOPMENT CONSIDERATIONS FOR TRIBAL HEALING TO WELLNESS COURTS IN ALASKA



Tribal Healing to Wellness Court

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► Disclaimer

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▶ Roadmap

- The different types of Tribal Healing to Wellness Courts (HTWCs)
- Challenges that make implementing a HTWC difficult in Alaska
- Current, explored options for HTWCs in Alaska
- Proposed models and configurations for Alaska
- Sample Language for Agreements
- Lessons Learned





Different Types of HTWCs



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▶ The Different Types of Healing to Wellness Courts (HTWCs)

- Adult Healing to Wellness Courts
- Juvenile Healing to Wellness Courts
- Family Healing to Wellness Courts
- Joint Jurisdiction Healing to Wellness Courts
- Other Specific Healing to Wellness Courts (ex: Veteran HTWCs)





Challenges Implementing HTWCs in Alaska



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▶ Tribal Healing to Wellness Courts (HTWCs) in Alaska

~10 total

~3 adult wellness courts

~1 family wellness courts

~7 juvenile wellness courts



▶ Challenges – Limited Tribal Criminal Jurisdiction (limited Indian country) & Privileged State Jurisdiction

Public Law 280 of 1953 (applied to Alaska in 1958)

- Did not diminish Alaska Tribes' inherent jurisdiction (except to make State jurisdiction “concurrent”)

Alaska Native Claims Settlement Act (ANCSA) of 1971

- Did not terminate Alaska Tribes
- Did not divest Alaska Tribes of their sovereign powers (but did extinguish all but one reservation)

***Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (U.S. Supreme Court 1998)**

- ANCSA lands not “Indian country” (most tribal homelands fall within “ANCSA lands,” except Metlakatla’s Annette Island Reserve)

***John v. Baker*, 982 P.2d 738 (Alaska Supreme Court 1999)**

- Alaska Tribes have inherent, non-territorial sovereignty with respect to their members



▶ About Juvenile Healing to Wellness Courts (JHWCs) in Alaska

Tend to focus on ...

- Less serious juvenile offenders, but who are likely to have co-occurring mental health disorders, including substance use disorders

Are primarily concerned with ...

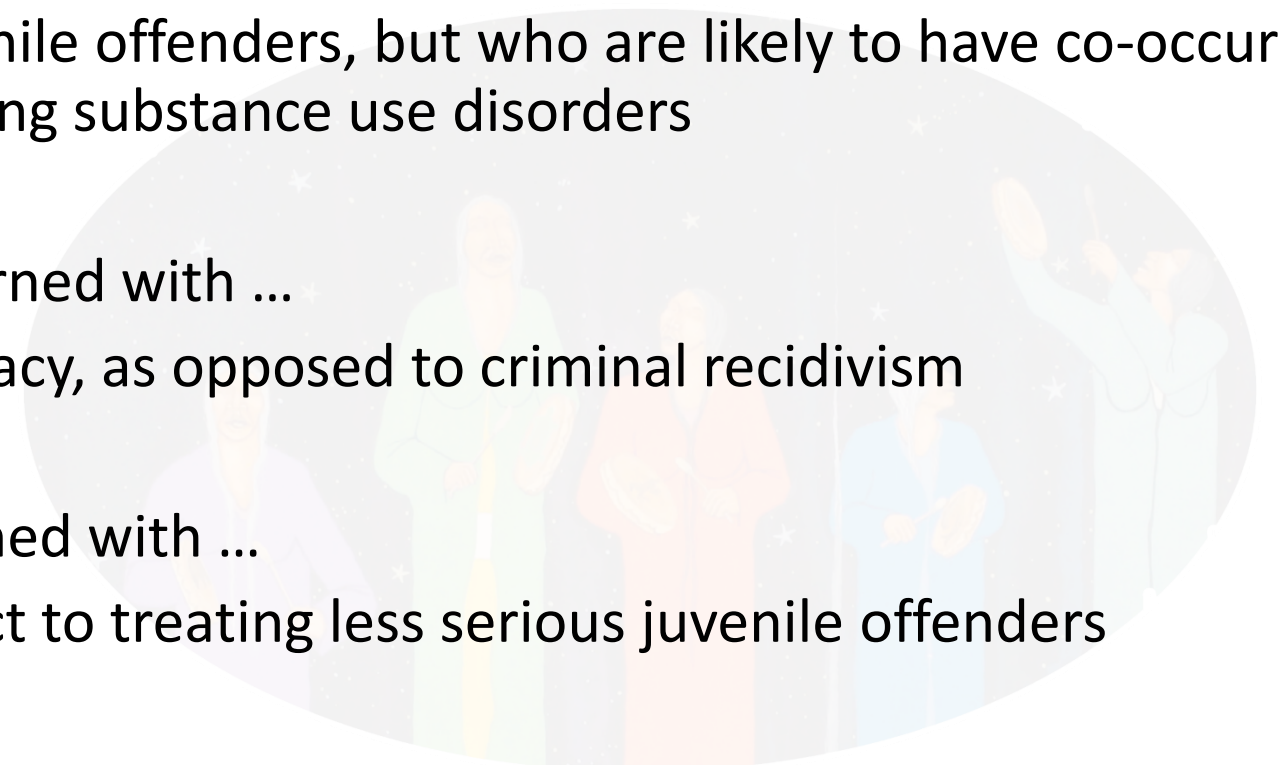
- Therapeutic efficacy, as opposed to criminal recidivism

May be less concerned with ...

- Costs with respect to treating less serious juvenile offenders

Aside from those partnering in a tribe-state joint jurisdiction drug court (or those located in or near a hub or urban center), are also more likely to want to ...

- Target adolescents & families



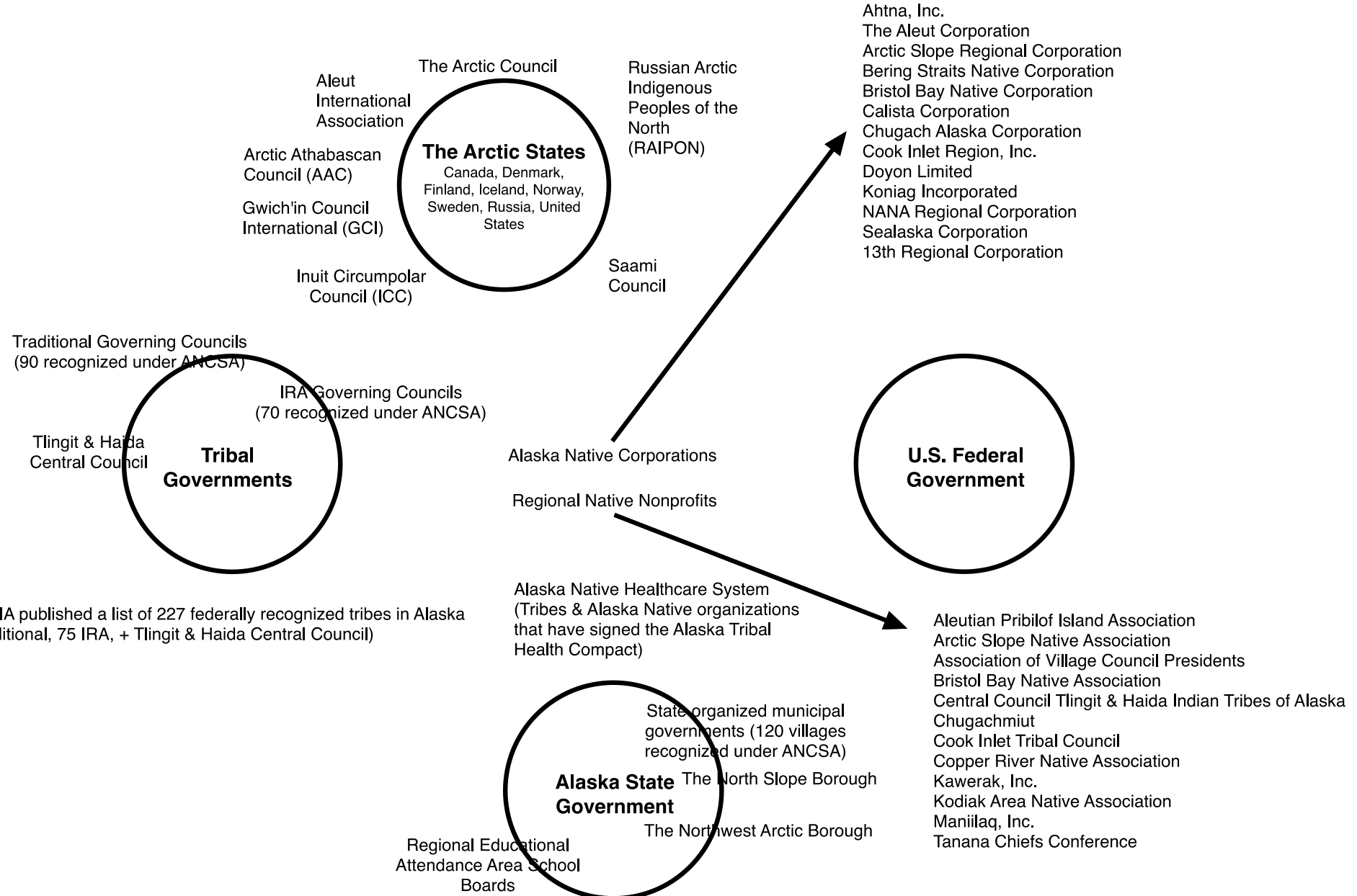
About JHWCs in Alaska (cont.)

There are various reasons for this including:

- Federal funding does not fund JHWCs that target violent offenders
- Federal & Alaska law effectively limit the exercise of tribal sovereignty & criminal jurisdiction of Alaska Tribes
- The historical “course of dealing,” PL 280, & the lack of substantial “Indian country” in Alaska, have privileged the State of Alaska’s criminal jurisdiction - the more serious Native juvenile offenders are involved in the State juvenile & criminal justice systems
- States that divert to tribal programs have requirements that select for only a few low-level offenders
- There is a great need to deal with Native adolescent & family substance use & mental health disorders in Alaska Native communities



Challenges – The Complex, Non-System of Entities in Rural Alaska



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

Challenges – The Need for Multiple MOAs/MOUs for Law Enforcement and Service Provision (e.g., A Juvenile Healing to Wellness Court (JHWC))

Roles in a JHWC Team:

- JHWC Judge(s)
- JHWC Coordinator
- JHWC Case Manager
- Treatment Representative*
- School Representative*
- Community Supervision/Monitoring Representative (a.k.a., “Probation”)**
- Law Enforcement*

**Services provided outside of the Tribe/Village that most likely require MOAs/MOUs with Schools, Regional Native Nonprofits or other Native Healthcare Nonprofits, Boroughs, and/or Cities*

***May require MOU w/Alaska Division of Juvenile Justice (AK DJJ) given State-Tribe diversion and/or if the AK DJJ is to provide supervision and monitoring services for the operations of the JHWC*



Challenges – The Need for Multiple MOAs/MOUs for Law Enforcement and Service Provision (e.g., A Juvenile Healing to Wellness Court (JHWC))

JHWC Role	Entity	Services to be negotiated
Treatment Representative	Regional Native Nonprofit Borough or City and/or In rare cases, the Tribe	<ul style="list-style-type: none"> •provide expertise to the team on treatment issues that arise in “staffing” (pre-status hearing meetings with the team) •recommend and provide input on the therapeutic appropriateness of incentives and sanctions •assess treatment needs •seek treatment-related services •report on youth progress in treatment •provide guidance on the refinement of JHWC phases and practices •provide feedback and input on the trauma-informed approach of JHWC practices and programs •recommend program activities that are therapeutically appropriate •ensure that treatment services are developmentally and culturally appropriate and gender specific •recommend treatment modalities that are evidence-based (become familiar with evidence-based treatment modalities that have been culturally adapted) •cross-train justice staff on treatment terminology, ethics and practice



Challenges – The Need for Multiple MOAs/MOUs for Law Enforcement and Service Provision (e.g., A Juvenile Healing to Wellness Court (JHWC))

JHWC Role	Entity	Services to be negotiated
School Representative	Regional Educational Attendance Area (REAA) School Board or City or Borough Schools/School Districts	<ul style="list-style-type: none"> •provide training for school personnel: teachers, school counselors, school principal(s), district administrator – overview of JHWC, their role in the program, benefits of school involvement •establish lines of communication between school(s) and the JHWC (including a process for getting regular reports on grades and attendance) •participate in staffings (pre-status hearing meetings) and hearings as available •promote partnerships between schools and the JHWC •seek school resources for youth and program services and activities •interpret education reports from schools and provide recommendations for strengthening each youth’s education/vocation plan •advocate for individual youth (e.g., to help get IEPs, assignment to a guidance counselor, tutoring services) •assist in developing a waiver for release of confidential school information •advocate for school policy that promotes retention of participants in education programs •train JHWC Team about education and school issues



Challenges – The Need for Multiple MOAs/MOUs for Law Enforcement and Service Provision (e.g., A Juvenile Healing to Wellness Court (JHWC))

JHWC Role	Entity	Services to be negotiated
Community Supervision Representative (a.k.a., Probation)	City, Borough, and/or Tribe/Tribal Court	<ul style="list-style-type: none"> •make home, school and office visits •conduct curfew checks •report observations to the team •refer youth and families to services •monitor referral compliance and progress •conduct periodic random alcohol and drug tests •manage referral process •serve as liaison between JHWC team, the JHWC court and the probation staff •educate probation staff about the JHWC

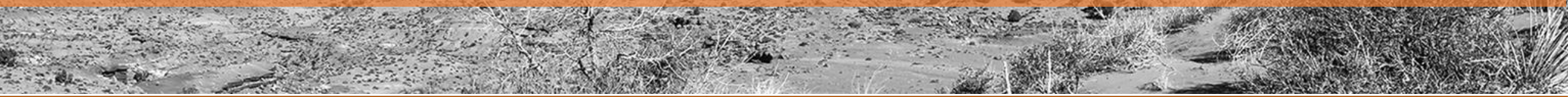


Challenges – The Need for Multiple MOAs/MOUs for Law Enforcement and Service Provision (e.g., A Juvenile Healing to Wellness Court (JHWC))

JHWC Role	Entity	Services to be negotiated
<p>Law Enforcement</p>	<p>Village Public Safety Officers (VPSOs) (State/Regional Native Nonprofits & under direction of Alaska State Troopers)</p> <p>Tribal Police Officers (Tribe) (MOST TRIBES DO NOT HAVE THESE)</p> <p>Or</p> <p>City or Borough Police Officers</p>	<ul style="list-style-type: none"> •first responders •report or divert youth to Tribal Court and/or to the JHWC



Current Explored Options to HTWCs in AK



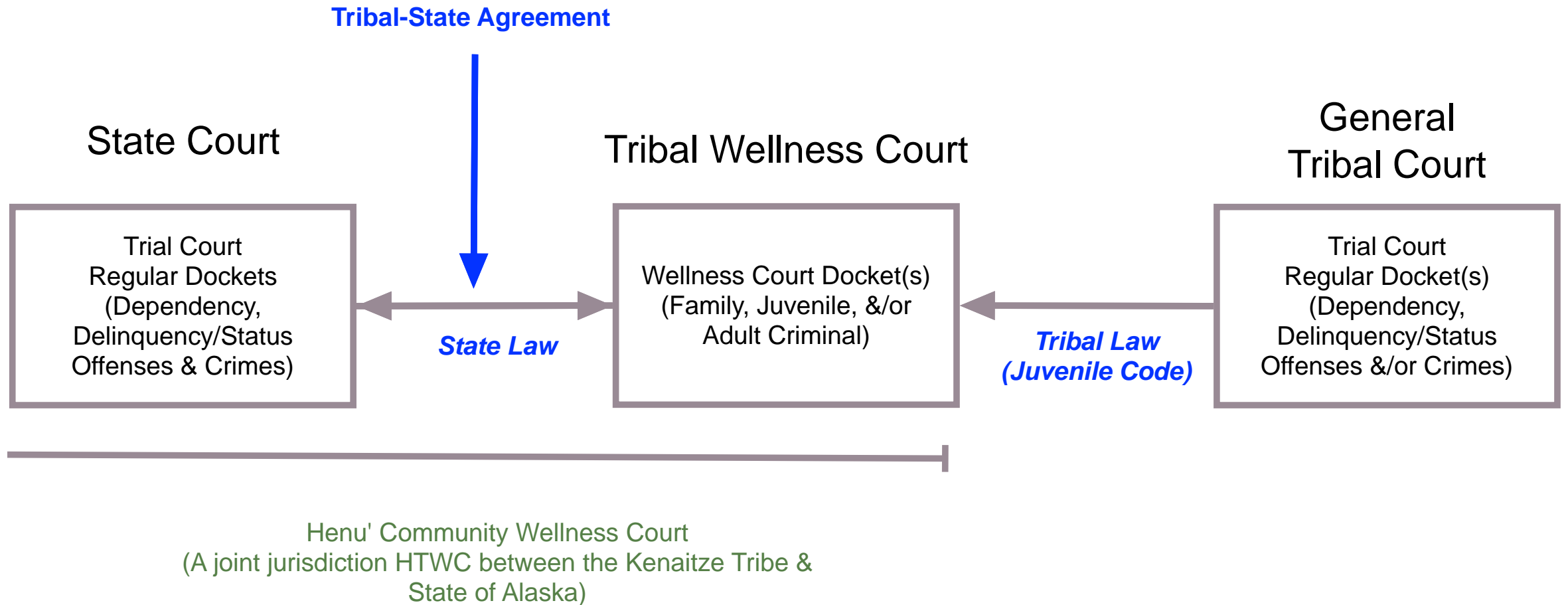
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▶ State Diversion and Tribal Courts in Alaska

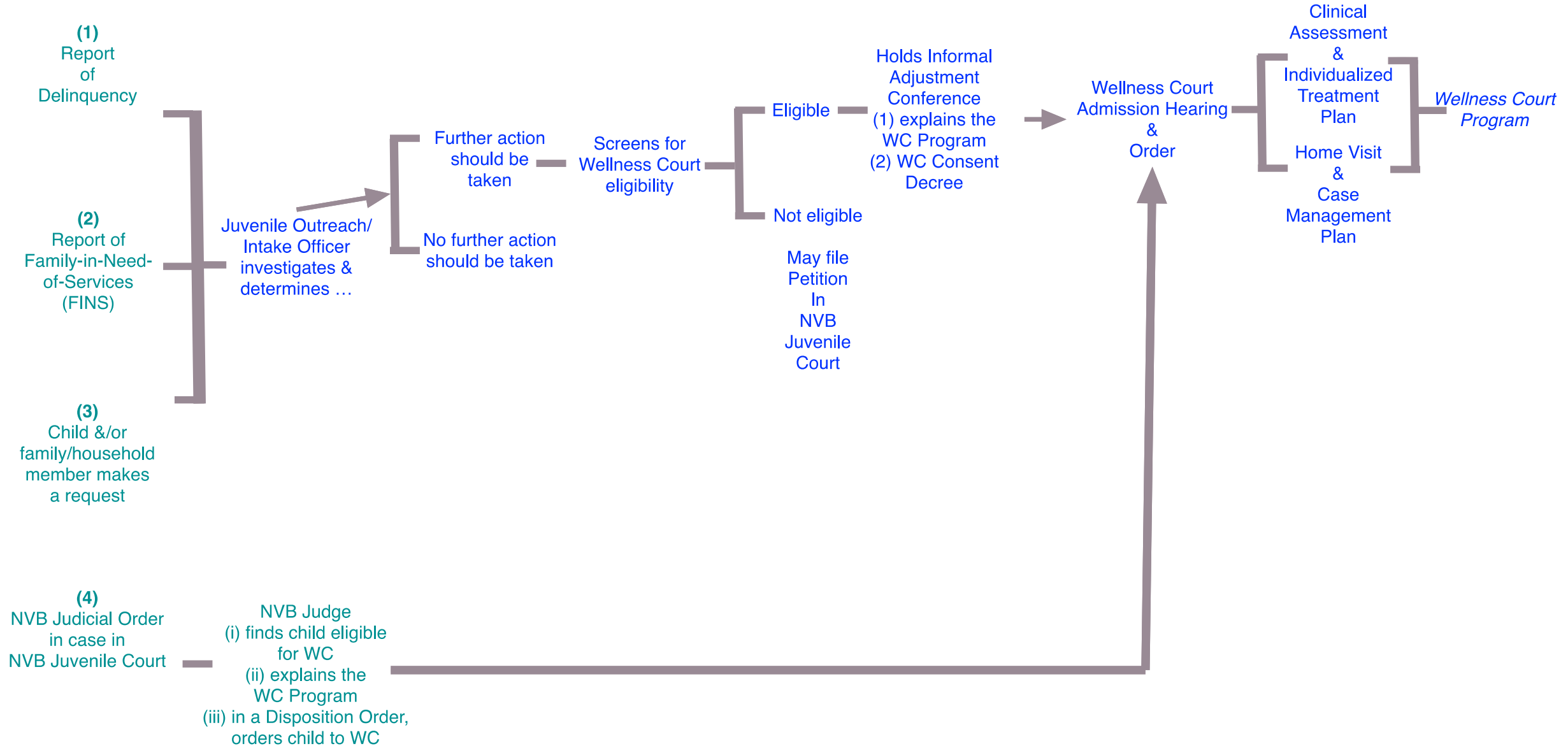
- Alaska uses diversion mechanisms to move state court involved Native persons from various parts of the state system to Native communities and tribal systems. AK tribal courts seek to use this for their HTWCs, as well.
- There are provisions/rules that underlie the arrangements set out in their State-Tribe agreements (MOUs and MOAs), as well as “civil diversion agreements” with a few tribes where the Alaska State Troopers, Village Public Safety Officers (VPSOs), and/or other law enforcement officers refer persons, pre-state charge, directly to tribal courts for what is effectively “civil sentencing” (civil remedies).
- Our publication includes historic and contemporary arrangements supporting State-Tribe diversions that could support HTWCs (though, some arguably may require amendment/revision).



Enacting a Tribal Juvenile Code Provides a Second Way to Intake Participants into Your HTWC



Example: The Native Village of Barrow Wellness and Juvenile Codes



Example: Native Village of Barrow (NVB) Juvenile Code	Specific Delinquent Acts	Family in Need of Services
Acts Harming People or Animals	Reckless Endangerment Throwing or Shooting at People or Animals Cruelty to Animals Possession or Use of Weapons	(a) a family whose child ... is truant from school, or
Acts Against the Public Order	Disorderly Conduct Dangerous or Reckless Driving Excessive Noise Gambling	(b) a family wherein there is allegedly a breakdown of the parent-child relationship based on ... <ul style="list-style-type: none"> • refusal of the parent(s)/guardian to permit a child to live with them • the child's refusal to live with his parent(s)/ guardian • physical altercations between the child and another family member, or • disobedient and incorrigible behavior on the part of the child; and
Acts Against Property	Firestarting Vandalism Tampering with Vehicles Throwing or Shooting at Property Trespass Theft Depositing Sharp Objects Release of Dogs	(c) in either of the foregoing situations:
Alcohol and Controlled Substances	Possession, Consumption or Being Under the Influence of Controlled Substances Possession of Alcohol with Intent to Sell Possession or Use of Inhalants Carrying or Transportation of Controlled Substances Manufacture, Sale, or Distribution of Controlled Substances Possession of Drug Paraphernalia	(c)(1) the conduct complained of presents a clear and substantial danger to the child's life or health and the intervention of the juvenile court is essential to provide the treatment, rehabilitation or services needed by the child or his family; or
	*delinquent acts or FINS factors that could lead to Wellness Court eligibility, when also screened to be clinically eligible	(c)(2) the child or his family are in need of treatment, rehabilitation or services not presently being received and the intervention of the juvenile court is essential to provide this treatment, rehabilitation or services.

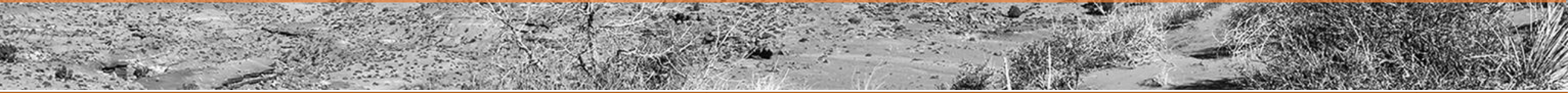
▶ Tribal Courts in Alaska and the Growing Native Preference for Circle Process

- Because tribes understand that the underlying issues of addiction is trauma, tribal courts in Alaska often turn to community/restorative justice and Peacemaking and Circles.
- While Circles are arguably hybrids or adaptations (they are not the equivalent of the old traditions), ideally Circles are created and designed by Native communities and serve as vessels for the given Native community's values and ways.
- While Circle process may not replace the basic functions of a tribal court including a wellness court (e.g., replacing the role of a judge or the HTWC team itself), it may be incorporated into the phase requirements of a HTWC and to assist the participant in meeting his or her treatment plan and phase requirements.



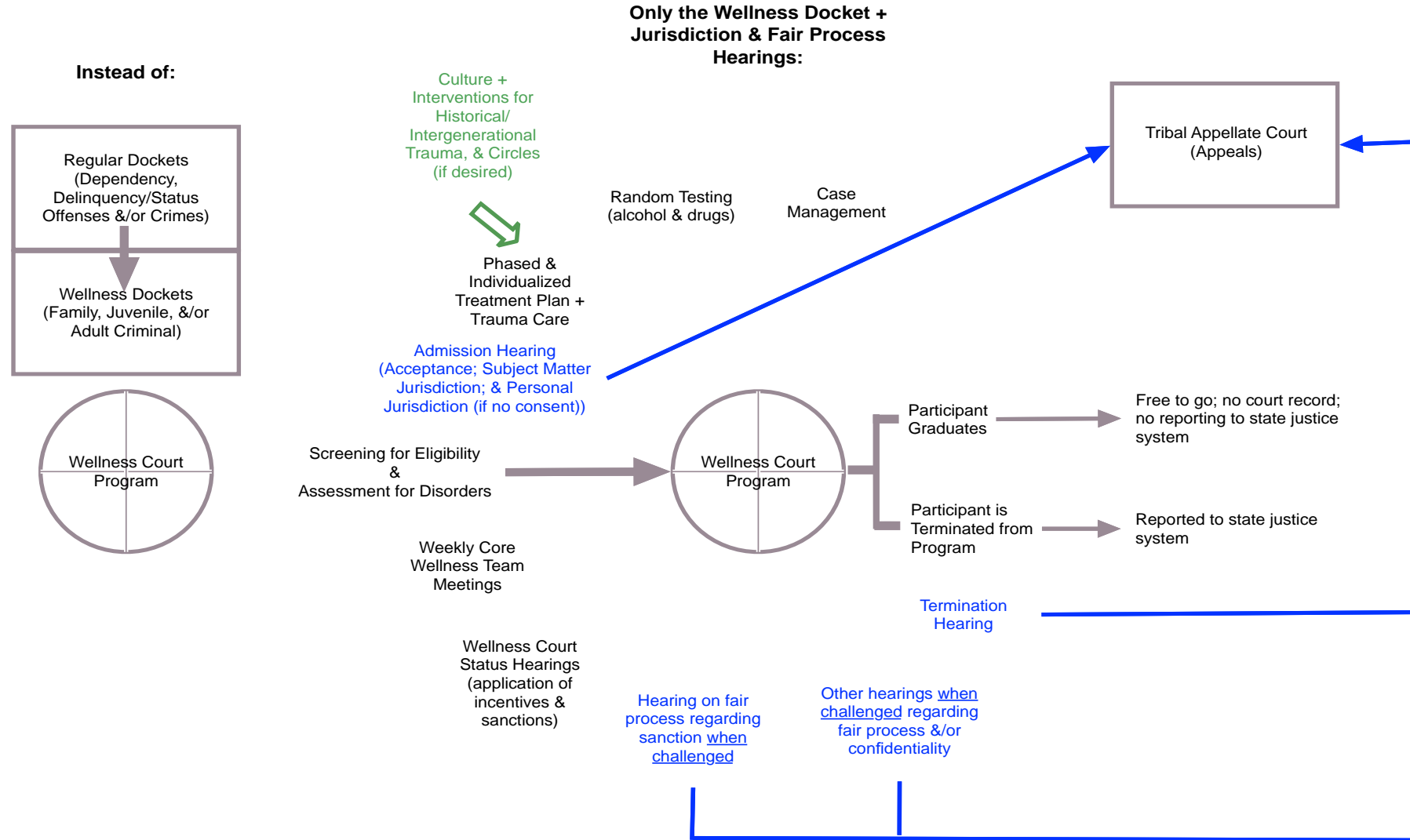


Proposed HTWC Models in Alaska



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Model 2: The Integrated Stand-Alone (Intratribal) Court Model with Jurisdiction & Fairness Hearings

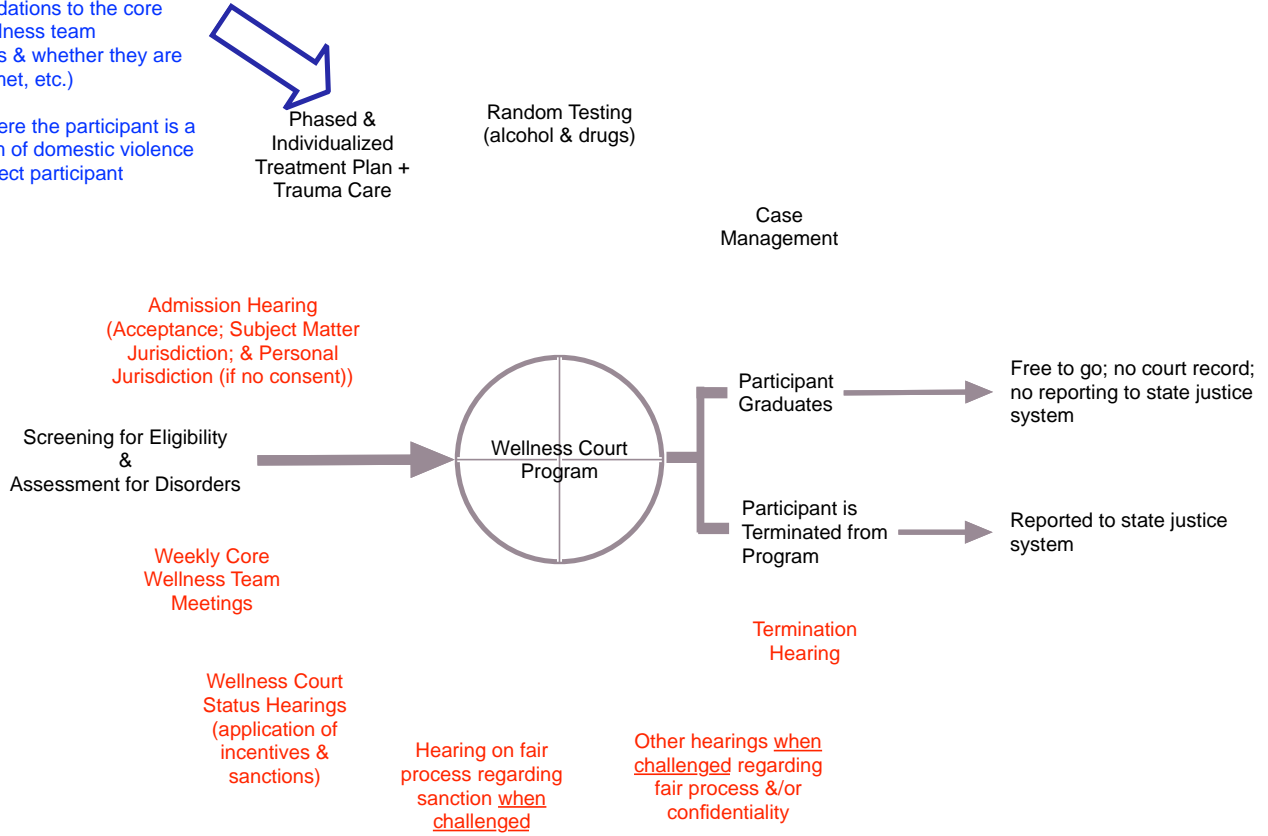


Model 3: Stand-alone Court w/ Circle Process

Circle Process will fit here as one of the Wellness Phase requirements (accountability, repairing or building relationships, reparations, community service, culture, & recommendations to the core wellness team re: obligations & whether they are met, etc.)

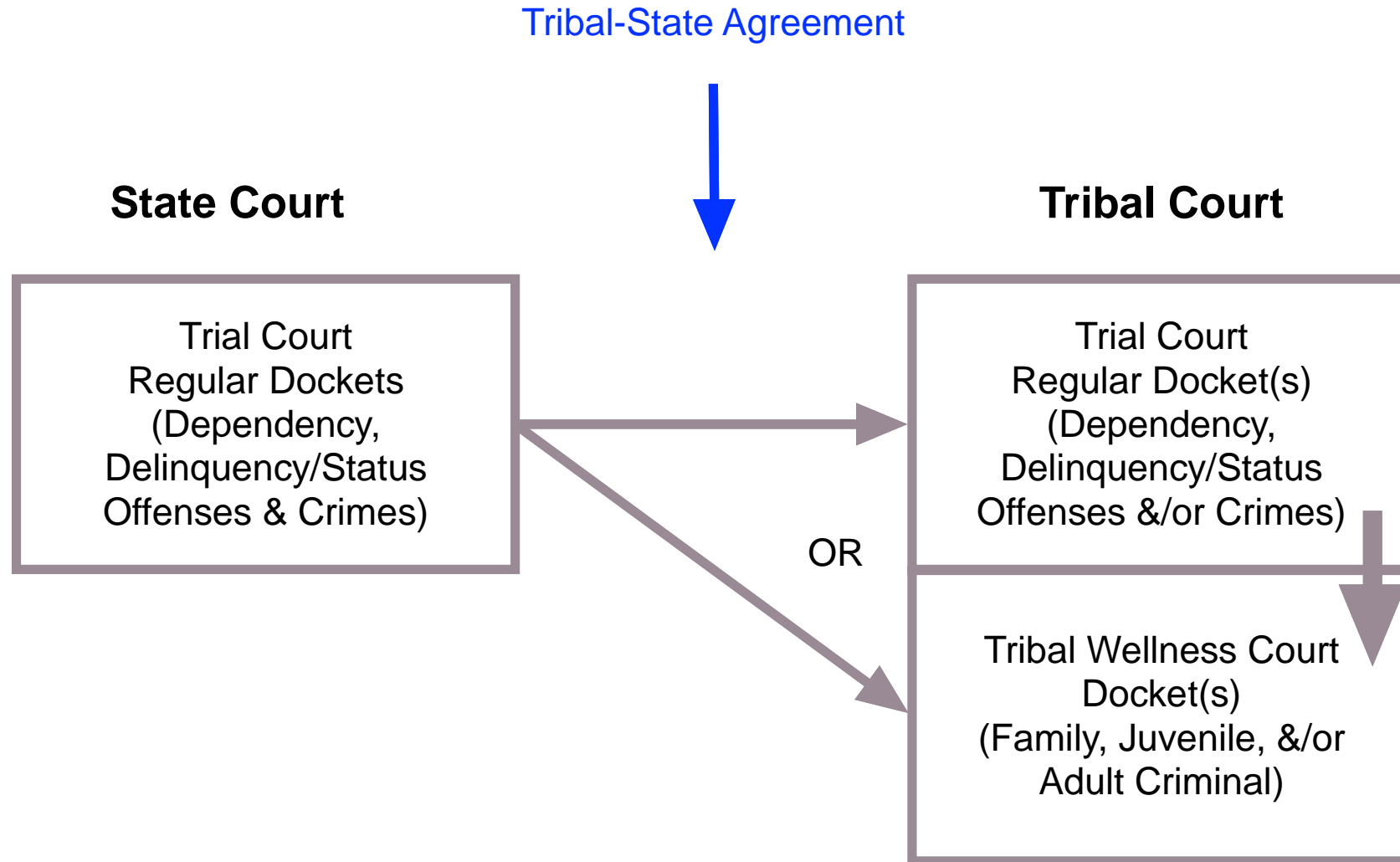
Do not use where the participant is a probable victim of domestic violence to protect participant

How Circle Process Fits
(cannot substitute for Wellness Judge(s), Core Wellness Team, or hearing process)



Circle Process cannot be a substitute for Wellness Judge(s)/Core Wellness Team functions due to fair process requirements under state/federal laws (comity & full faith & credit); & confidentiality requirements under federal laws. This has to do with the open nature of the circle to anyone; their potential access to confidential information; and potential bias in decision-making where a circle member is related to the participant (or there is some other conflict)

Model 4: State Transfer to Tribal Court/HTWC



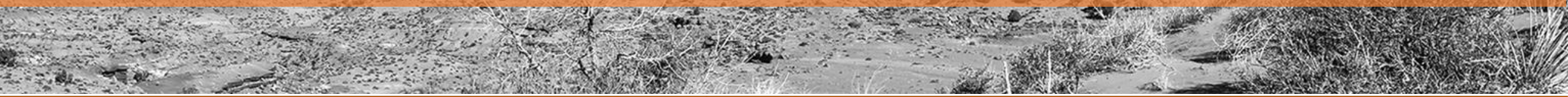
► Models 5 and 6 (read more in publication)

- Model 5: Two Models for an Intertribal Wellness Court
 - There are two approaches for establishing an Intertribal Wellness Court in AK.
 - In one approach, each tribe retains its own tribal court with the adversarial dockets (children's, juvenile, and/or criminal).
 - In the second approach, the tribes organize one central intertribal court including both the adversarial and the wellness dockets. All eligible persons and their cases would start in the intertribal court. However, each tribe would still retain its own tribal court for other types of cases (non-wellness court cases).
- Model 6: Tribal-State Joint Jurisdiction Wellness Court (Wellness Docket Only)
 - This type of wellness court requires a tribe-state agreement.





Sample Language for AK HTWC Agreements



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Existing Intergovernmental & Other Agreements – Sample Language Must Be Modified to Work with JHWCs

- A Rule 11 Plan
 - A specific Tribe in Alaska can get involved in a specific state court case involving one of its members using a Rule 11 Plan between the Tribe and the State court judge
- An MOU with the Alaska Division of Juvenile Justice (AK DJJ)
 - This is a Memorandum of Understanding (MOU) between the Tribe and the Alaska Department of Health and Social Services, Division of Juvenile Justice (AK DJJ)
 - This works either as pre-state court diversion or as part of a probation revocation process
- The Model Civil Diversion Agreement
 - This is a Civil Diversion Agreement (CDA) between the Tribe and the Alaska State Attorney General
 - It authorizes law enforcement officers to notify tribes/tribal courts under the agreement of members who are facing charges, before they are filed in State court, to be handled by the Tribe



Example: Henu' Community Wellness Court Signatories (Kenaitze Tribe)

- The MOA between the Kenaitze Tribe & various & multiple State and municipal entities establishing the Joint Jurisdiction Henu' Community Wellness Court (HCWC)
- Diverts eligible individuals (including non-Natives within the service area) to the HCWC as participants in the HCWC program
- Tribe-side signatories include:
 - Kenaitze Tribal Court, Chief Judge
 - Kenaitze Tribe, Dena'ina Wellness Center Behavioral Health
- State/Municipal signatories include:
 - Alaska Court System, Administrative Director
 - Alaska Department of Law, Criminal Division, Director
 - Alaska Department of Administration, Public Defender Agency, Director
 - Alaska Department of Administration, Office of Public Advocacy, Director
 - Alaska Department of Health & Social Services, Division of Behavioral Health, Director
 - Alaska Department of Corrections, Commissioner
 - Alaska Department of Public Safety, Alaska State Troopers, Commissioner
 - Kenai Police Department, Chief



▶ Lessons Learned

1. Smaller Tribes off the road system in Alaska, are likely to want to plan and implement Juvenile/Family Wellness Courts (but they and others may choose Adult Criminal Wellness Courts)
2. Tribes should enact a Tribal Juvenile/Children's Code if they want to have control over the type and number of Native persons in their Wellness Court (if they rely only on State-Tribe diversions, the number of participants may be very small, and the participants will be pre-selected by the State)
3. Tribes planning their Wellness Court, should recognize that they will need to include and educate their respective Native regional nonprofit organization, Native healthcare entity, and/or State municipalities and departments (e.g., cities or boroughs) that house treatment, the schools, and law enforcement services – THESE ARE NOT THE TRIBES AND WILL REQUIRE MOAs/MOUs
4. Tribes very likely will enter into inter-governmental and other agreements to support their Wellness Court Advisory Bodies, Teams and operations – our publication provides sample language to facilitate these negotiations, specifically for Tribal Healing to Wellness Courts (HTWCs)



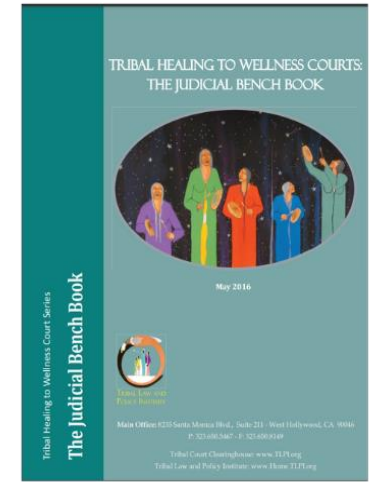
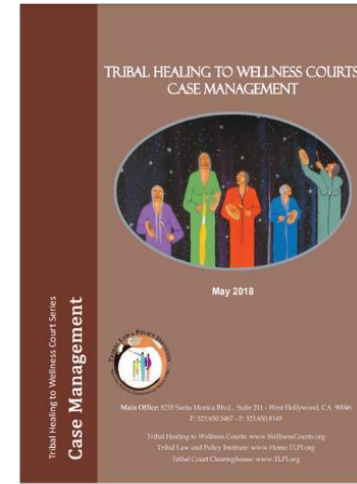
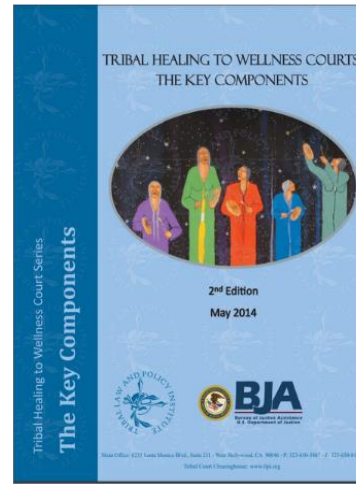
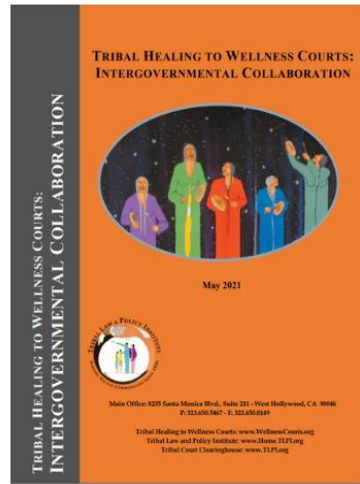
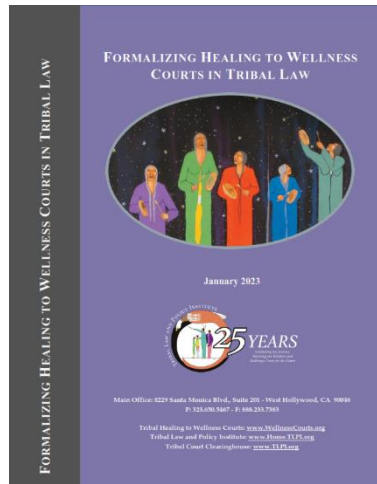
▶ READ THIS PUBLICATION!

Development Consideration for Tribal Healing to Wellness Courts in Alaska by Pat Sekaquaptewa & Grace Carson

Other Tribal Law & Policy Institute Resources: TRIBAL HEALING TO WELLNESS COURTS SERIES

Resource materials for you to reference can be found at:

<https://www.home.tlpi.org/tribal-healing-to-wellness-courts>





QUESTIONS?

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