

Wellness Court Code Development

Operations

Entry &
Discharge

Code
Considerations

Lauren van Schilfgaarde

Director, Tribal Legal Development Clinic
UCLA School of Law

Code Considerations

Structure of the Wellness Court

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

Structure of the Tribe

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

Benefits

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

Disadvantages

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

Wellness Court Code Development



Code
Considerations

Entry &
Discharge

Operations

Lauren van Schilfgaarde

Director, Tribal Legal Development Clinic
UCLA School of Law



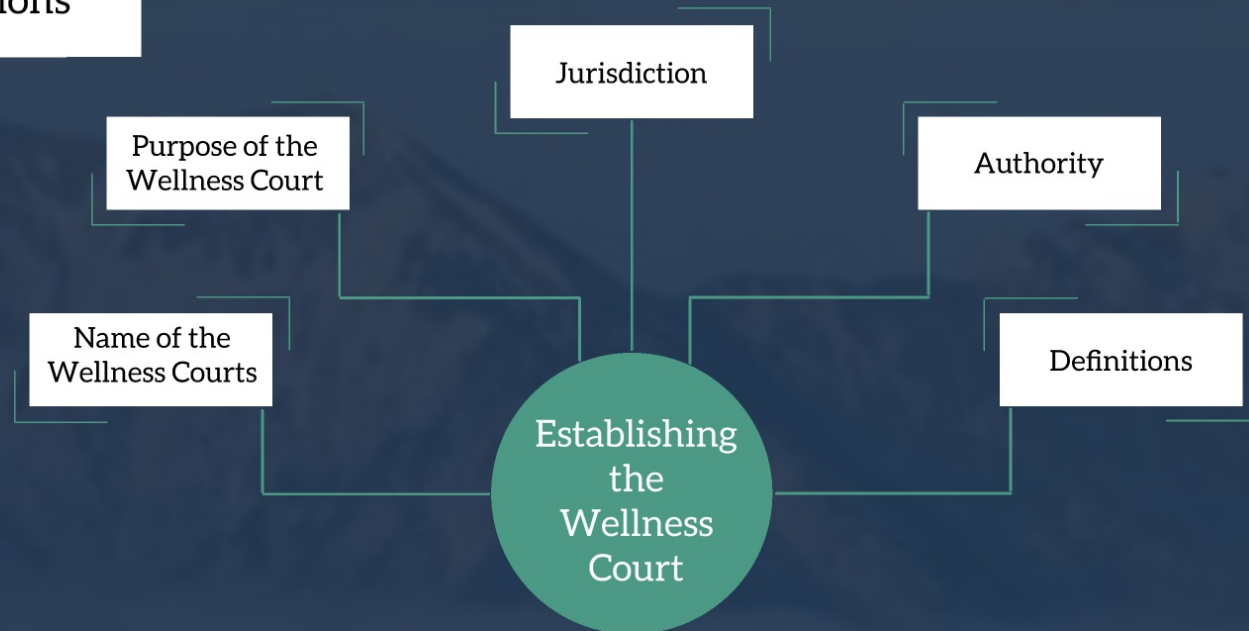
Foundations of the Wellness Court

Establishing
the Court

Entry

Discharge

Considerations



Considerations

Establishing the Wellness Court

| | | |
|-----------|--|----------------------------|
| | | Name of the Wellness Court |
| Authority | | Jurisdiction |
| Purpose | | |

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

Authority

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.

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.



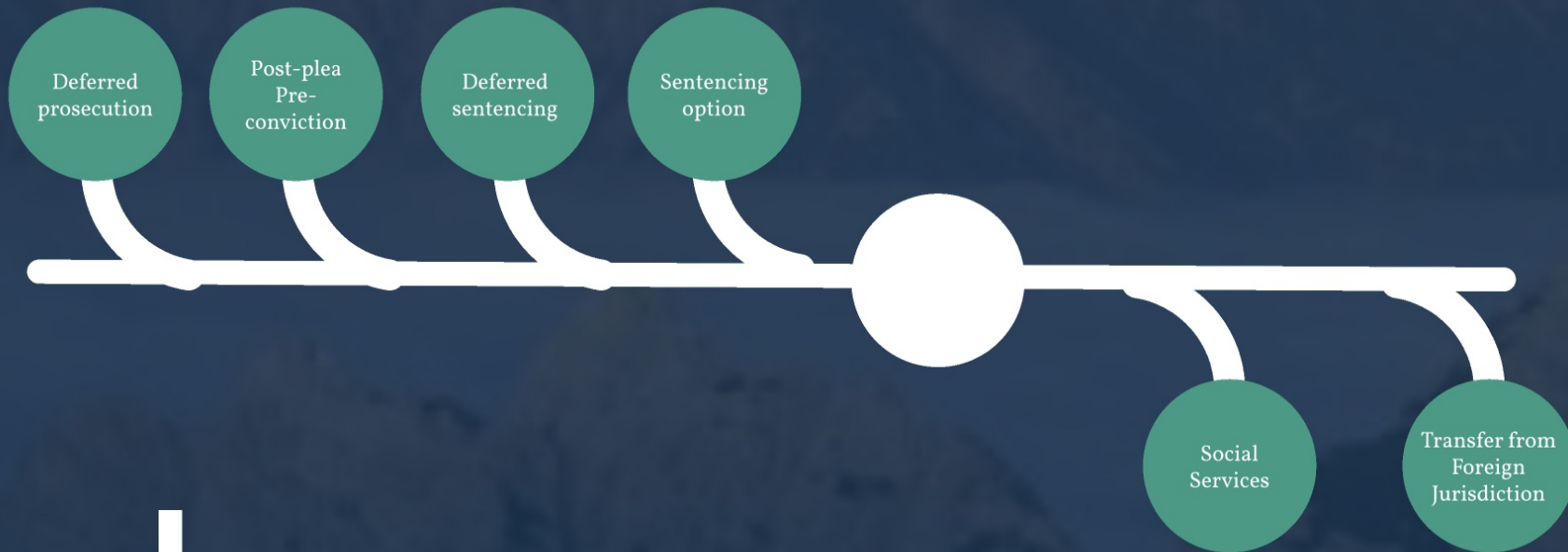
Foundations of the Wellness Court

Establishing
the Court

Entry

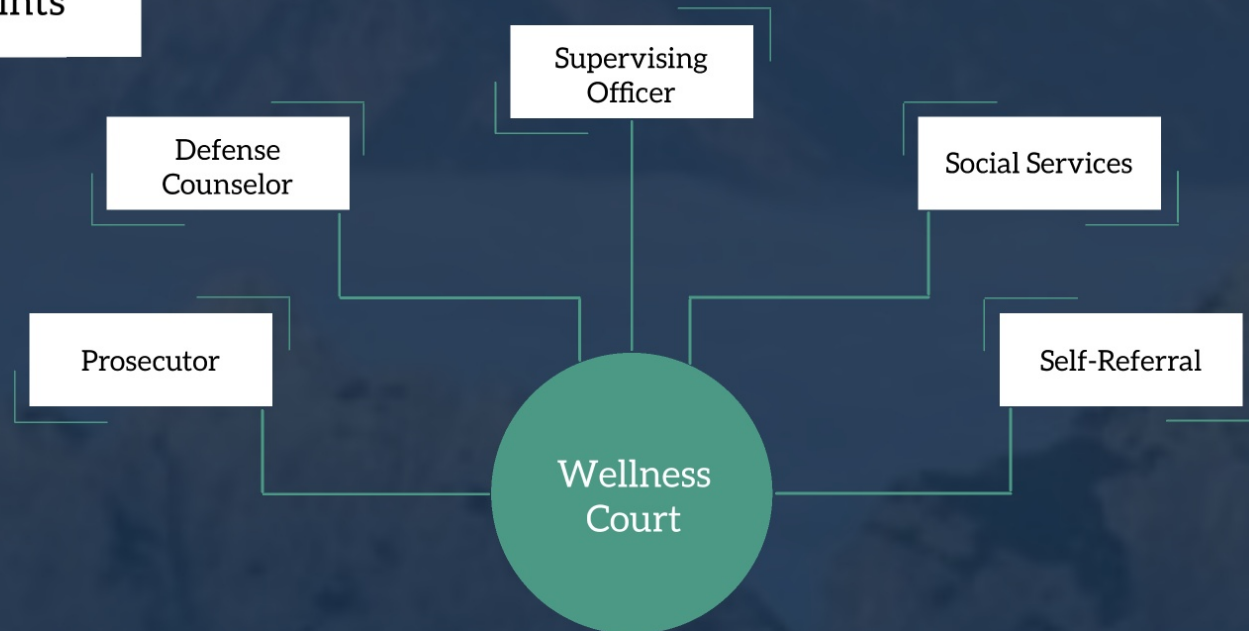
Discharge

Criminal



| Entry

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

Due Process Considerations



Conditions of Entry

Waiver of right to speedy trial

Restraint on substance use and alcohol, mandatory drug testing

Stipulations to preserve evidence for deferred prosecutions

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

Access to Counsel within Wellness Court?

Waiver of HIPAA confidentiality



Foundations of the Wellness Court

Establishing
the Court

Entry

Discharge

Discharge Process



```
graph TD; A[Discharge Process] --> B[Successful Graduation]; A --> C[Neutral Discharge]; A --> D[Termination];
```

Successful Graduation

Neutral Discharge

Termination



Foundations of the Wellness Court

Establishing
the Court

Entry

Discharge

Wellness Court Code Development

Code
Considerations

Entry &
Discharge

Operations

Lauren van Schilfgaarde

Director, Tribal Legal Development Clinic
UCLA School of Law

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

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

Team Roles &
Responsibilities

Wellness
Court
Procedures

Wellness
Court Hearing

Incentives and
Sanctions

Wellness Court Code Development



Operations

Entry &
Discharge

Code
Considerations

Lauren van Schilfgaarde

Director, Tribal Legal Development Clinic
UCLA School of Law