

*DEVELOPING YOUR
TRIBAL LAWS TO
SUPPORT YOUR
HEALING TO
WELLNESS COURT*

*Carrie E. Garrow, Chief Judge
Saint Regis Mohawk Tribal Court*

Today's Goal



- Think about laws that are needed and changes you need to make that will strengthen and sustain your Healing to Wellness Court
- Leave with a plan/thought process to make change

Why do we need laws?

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- Sustainability
- Directs how Healing to Wellness Court interacts within the judiciary
- Protects people's rights



Why We Need Laws

- It binds the government to engaging in an act
- Creates commitment inside and outside your Nation
- Enactment process educates Council and community

- What kinds of laws can do this?
 - Philosophical statement
 - Laws creating a HWC
 - Referral sections in your criminal code/family code/juvenile code
 - A HWC code



Laws Increase Sustainability

- How are cases referred?
- How does the Court interact with other agencies in other branches of government?
Can the Court interact with these agencies?
- Who supervises the HWC and the HWC Coordinator or HWC Court Clerk? Who manages the grant/funding?
- What kinds of laws can do this?



*Directs HWC Interactions within the
Judiciary*

- Right to confidentiality
- Right to a trial
- Freedom from unreasonable search and seizure
- How work together as a team to promote participants' right to a healthy life



*Protects Participants' Rights &
Promotes Right to a Healthy Life*

*THE VARIOUS TYPES
OF LAWS THAT IMPACT
HWC*



type of laws do you have the supports your Healing to Wellness Co

Polices and procedures

Tribal Constitution


Tribal Code - for example your
criminal code, judiciary code

Other

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Laws that Directly Impact HWC

- General law granting court authority to create a HWC
 - Section referring to restorative justice
 - Specific section creating the HWC
 - Specific law creating HWC – ‘there shall be a HWC’
 - General Tribal Council Resolution
 - Specific Healing to Wellness Code
 - Should it be detailed?
 - Laws impacting entry
 - Minimum offense
 - Violent offense that screen people out
 - Deferred sentencing
- 

*Sample
Wellness
Court Code
Provisions –
Muscogee
(Creek)*

- **Muscogee (Creek) Nation of Oklahoma
Chapter 6. Family Drug Court Program**
- **§6 – 101. Establishment of a program**
There is hereby established a Family Drug Court Program within the Muscogee (Creek) Nation’s judicial system.
- **§6 – 102. Powers and authority of Court**
The judge of the Muscogee (Creek) Nation District Court is hereby authorized to order and/or impose sanctions and incentives for participants who enter into the Family Drug Court Program. The Court’s powers and authority hereunder shall include, but are not limited to the following...
- **§6 – 103. Rules and procedures**
The District Court may, in its discretion, adopt written rules and procedures for the conduct of hearings and proceedings within the Family Drug Court program and the administration of cases therein, provided that copies shall be public documents...

*Sample
Wellness
Court Code
Provisions –
Muscogee
(Creek)*

- **Muscogee (Creek) Nation of Oklahoma**
Chapter 6. Family Drug Court Program
- **§6 – 104. Family Drug Court Implementation Team**
A. There is hereby established the Family Drug Court Implementation Team, which shall consist of at least (1) representative from the following agencies or departments of Muscogee (Creek) Nation) ...
- **§6 – 108. Cooperative agreements or contracts**
A. The Principal Chief... is hereby authorized to negotiate and enter into on behalf of the Muscogee (Creek) Nation appropriate cooperative agreements with state and local governments for integrating and/or coordinating the Muscogee (Creek) Nation Family Drug Court Program with agencies of such other governments. ...

*Sample
Wellness
Court Code
Provisions –
Eastern
Band of
Cherokee*


- **Sec/ 7C-6. - Cherokee Tribal Drug Court procedures**
 - (a) Establishment of policies and procedures.
...
 - (3) In order for the policies and procedures to be amended or modified, there shall be present at the Cherokee Tribal Drug Court Team meeting the judge and at least four other members of the Cherokee Tribal Drug Court Team.
 - (b) Sessions
 - (1) All Cherokee Tribal Drug Court sessions shall be closed to the public except for invited guests as allowed by HIPAA regulations. ...
- **Sex Offender Prohibition**

People categorized as “Sexual Offenders” are not eligible to participate in Cherokee Tribal Drug Court. ...


*Sample
Wellness
Court Code
Provisions –
Fort
McDowell
Yavapai
Nation*

- **Rule 84. Wellness Court eligible cases**
 - (a) Referral. ...
 - (b) Information to Defendant ...
- **Rule 85. Offer for Wellness Court is made/declined ...**
- **Rule 86. Tolling of time; speedy trial ...**
- **Rule 87. Entry of guilty plea; deferred acceptance of plea ...**

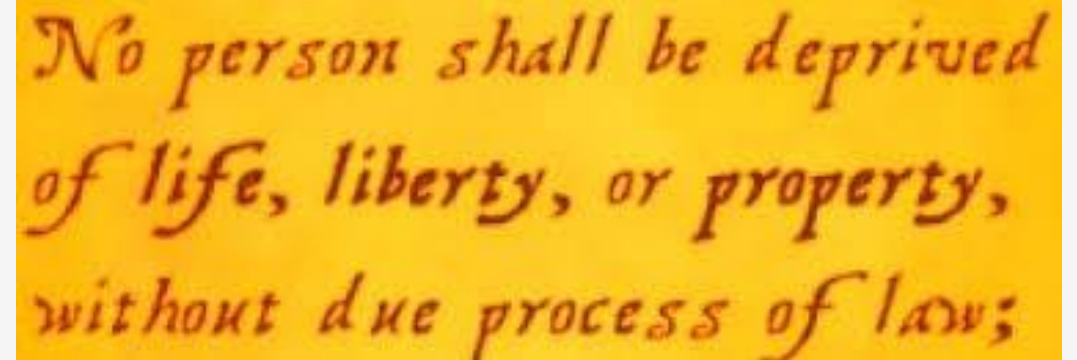
*Laws
that
Indirectly
Impact
HWC*

- Expungement
 - Can the HWC expunge a criminal conviction upon successful completion?
 - Family/Juvenile laws
 - Can transfer a family/juvenile case
 - Does the HWC have the ability to modify visitation?
 - Judicial ethics
 - Ex parte communications
 - New judge for sentencing terminated participants
- 

Laws that Indirectly Impact HWC

- Probation laws
 - Is there a maximum number of positive drug tests before probation revocation allowed?
 - Dry Reservations
 - Are arrests/jail mandated for all positive tests – even those done by treatment providers?
 - Non-drug crimes
 - Laws that dictate what must happen when a participant picks up a non-drug offense?
- 

- Process for entry into HWC and waiver of rights
 - Criminal case
 - Family/dependency case
- Legal consequences of graduation/termination
- Communication across agencies/branches of government
- Where do I document waiver of defendant's rights?



*No person shall be deprived
of life, liberty, or property,
without due process of law;*

Due Process Concerns




*WHERE DO WE
START?*




- Constitutions – foundation and framework - basic rights and
 - Adopted by the people
 - Laws enacted by TCRs – fill in your framework
 - Criminal/juvenile/family code
 - Healing to Wellness Code
 - Adopted by Tribal Council
 - Policies and Procedures
 - The nuts and bolts of Healing to Wellness
 - How Team functions
 - How participant moves through HWC
 - Adopted by Court or Tribal Council
-




Steps when we get home

- Review Constitution
 - What applies?
 - Is there anything that might prohibit HWC?
 - Review your tribal laws
 - What applies?
 - What supports your HWC or detracts from it?
 - What is missing?
 - Is there anything that might prohibit HWC from functioning in the best possible way?
 - Does it make your HWC more sustainable?
 - Review policies and procedures
 - If your team doesn't go home from the training, will the new team know what to do from your policies and procedures?
-
- 



you feeling about your tribal laws? What are you going to do when
home?



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