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Changing Family Courts to Help Heal and Build Resilient Families

Carrie E. Garrow

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Changing Family Courts to Help Heal and Build Resilient Families

*Hon. Carrie E. Garrow**

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I. INTRODUCTION

When families come into Family Courts due to child maltreatment,¹ they have reached a low point in their lives. The challenge then becomes how the court, along with numerous service providers, can work to ensure the children are safe and, except in extreme cases, the families either remain intact or are reunified. The adversarial process does not always serve families well. Indigenous culture teaches us that collaboration works to help families come together, address their problems, and restore families. My experiences in Healing to Wellness Courts as a judge and trainer have taught me families need the support of the courts, various services, and the community to heal.

Using my experience as a trainer and judge, I explore the lessons Indigenous culture can teach us about assisting families with healing. In Part II, I examine a Haudenosaunee² story, “The Star Dancers,” which reveals that parents need relatives, community, and culture to raise children, and that collaboration does work. Part III examines the crisis current children and families face as high numbers of children are removed due to substance abuse. Part IV gives a brief discussion of the various courts that will be discussed throughout this paper. Part V examines the success of

1. Child maltreatment is “behavior towards [a child] . . . which (a) is outside the norms of conduct, and (b) entails a substantial risk of causing physical or emotional harm. Behaviors included will consist of actions and omissions, ones that are intentional and ones that are unintentional.” CHILD TRENDS, CHILD MALTREATMENT: INDICATORS OF CHILD AND YOUTH WELL-BEING 8 (2016) [hereinafter CHILD MALTREATMENT: INDICATORS OF CHILD AND YOUTH WELL-BEING], https://www.childtrends.org/wp-content/uploads/2016/09/40_Child_Maltreatment.pdf (citing Katherine Kaufer Christoffel et al., *Standard Definitions for Childhood Injury Research: Excerpts of a Conference Report*, 89 PEDIATRICS 1027, 1027–34 (1992)).

2. People of the Longhouse—also known as the Iroquois. The Haudenosaunee formed the Six Nations Confederacy or Iroquois Confederacy, which originally consisted of the Mohawks, Onondagas, Oneidas, Cayugas, and Senecas. The Tuscaroras were adopted into the Confederacy at a later time. See Robert B. Porter, *Building a New Longhouse: The Case for Government Reform Within the Six Nations of the Haudenosaunee*, 46 BUFF. L. REV 805, 807–08 (1998).

Family Drug Courts in using a collaborative approach to assist families and children. Part VI advocates and calls for Family Courts to incorporate the collaborative approach used by Family Drug Courts into all dependency or child welfare cases in order to increase their success. Part VII will conclude.

II. LEARNING FROM OUR CHILDREN AND CULTURE

Haudenosaunee stories teach the importance of family, communities, culture, and the proper way to teach and care for children. "The Star Dancers" as told by Joanne Shenandoah and Douglas M. George in *Skywoman, Legends of the Iroquois*³ teaches us important lessons about caring for children, including the lesson that parents need help from relatives, the community, and their culture.

Many years prior to the arrival of colonists, the Haudenosaunee or Iroquois people were prosperous in their lands. Due to their prosperity, the people began to forget the Thanksgiving ceremonies, which had been taught to them by the Creator. The people also became jealous of one another and fought. As a result, villages split and some people even left their homes. "The children suffered most from the hurtful ways of their parents."⁴ No longer part of a strong community that worked together, the children were told not to speak to anyone who was not a part of their family or to go far from their longhouse.⁵ If the children disobeyed, parents whipped their legs and backs with willow branches.

Unhappy with their lives, seven children decided they needed to make a change. These young boys and girls had grandparents who played a critical role in their lives. Their grandparents told them about the days before this terrible time, where people were happier and "shared stories, songs, and fruits of their work."⁶ The grandparents told them how they used to sing, dance, and hold

3. JOANNE SHENANDOAH-TEKALIHWA:KHWA & DOUGLAS M. GEORGE-KANENTIO, *SKYWOMAN: LEGENDS OF THE IROQUOIS* 41 (1998).

4. *Id.* at 42.

5. A longhouse is a building common among the Haudenosaunee where many families lived together. See Robert B. Porter, *Decolonizing Indigenous Governance: Observations on Restoring Greater Faith and Legitimacy in the Government of the Seneca Nation*, 8 KAN. J.L. & PUB. POL'Y 97, 102 (1999).

6. SHENANDOAH-TEKALIHWA:KHWA & GEORGE-KANENTIO, *supra* note 3, at 43.

great feasts to honor Mother Earth. The children learned that in the past, children were “treated as blessings from the Creator and were never hurt by their parents.”⁷

The children wanted these days back, so they began to sneak away and meet secretly. Each brought some food to share. During these meetings they decided to bring back the old ways and hold their own ceremonies. They decided to hold a Thanksgiving ceremony, which meant they would have to learn many songs and sacred dances, prepare the right foods, and know the exact words of the prayer to be accepted by the Creator. It would take many weeks of practice and preparation before they were ready.

As they prepared, it became harder and harder for the children to sneak away from their homes to attend their meetings. Some of the children were caught leaving and their parents whipped them. The parents became suspicious about their children sneaking out and increased their punishments. They did not feed the children, kept them inside the longhouses, and tied them to their beds. Although such treatment was painful and distressing, the children vowed they would not stop.

One day, when they all managed to sneak away, the child named Bright Day told them about a special place beyond the sky. Skyworld was a land filled with wonderful things and magical people who loved children. It was the original home of the Haudenosaunee, and if the children could get there, they would be welcomed home by the ancestors of the first human beings.

Over the next few days, the children pondered this story. They were almost ready to hold their Thanksgiving feast. Although they had little to be thankful for, they understood it was important to believe in a better place and if this place was Skyworld, perhaps they should go there.

The night before the ceremony, their parents’ suspicions grew and they beat them harder than ever. But the children refused to talk about their Thanksgiving feast. Before dawn the children quietly snuck out of their homes, each carrying a gift to share with the others. When the children arrived, Broken Ice, their faithkeeper, spoke the Thanksgiving Prayer that he had learned from his grandfather. As he spoke the words, the children pondered and

7. *Id.*

came to a common understanding concerning what they needed to do to escape the pain in their lives. Once the prayer was finished, they gathered in a circle, joined hands, danced, and chanted in unison. "Their song was one of sadness for their families and of great longing for the Skyworld and the love of their ancestors."⁸

By this time the parents had begun searching for the children, shouting for them to come home and threatening punishment if they did not. A parent noticed rising smoke and they closed in on the children's hiding place, but the children were singing and did not hear their parents. The children sang and asked the Holder of the Heavens to bring them to Skyworld. As the children danced, they began to rise up off the ground. The children did not notice they were rising up in the air because they were looking to the sky. They continued to dance and sing, and they rose higher and higher. The children felt "the great joy of being the children of the sky."⁹

Then, their parents arrived and saw their children dancing above the trees and rising higher and higher. "The parents cried out, first in anger then despair as the children went further into the sky. They heard the words of the songs and suddenly understood the harm they had caused the children."¹⁰

One mother wept as she called for her son to return home. He turned, looked down and saw his mother kneeling on the ground with her arms raised up to him. He faltered and stopped singing. He then began to fall as the others continued upwards. As he fell, he gathered speed, rushing toward his mother, until he became a streak of light. The other young dancers disappeared into the heavens. The parents were left with their sorrow. "In their sadness they promised they would never again strike any child. Nor would they forget to be thankful to the Creator, a promise the People of the Longhouse renew whenever they see a falling star."¹¹

These young dancers brought joy to the people by returning to the ancient ceremonies, songs, and dances. On clear evenings the people gather together to see a small cluster of dancers where at one time the young dancers faded into the night.

8. *Id.* at 50.

9. *Id.* at 52.

10. *Id.*

11. *Id.* at 50.

One of the many lessons we can learn from the “The Star Dancers” is the importance of culture and teaching it to our children. They are happier, safer, and more successful when they know their culture. We also learn the importance of gratitude—not only being grateful to the Creator but also grateful for the joy that children can bring. But perhaps most importantly, “The Star Dancers” illustrates and teaches the importance of extended families and communities. Initially, the children suffered because the families severed their ties from the community when the villages split apart. They mourned this connection. It was the community that helped teach the children their culture and helped them be happy. Also critically important to these children were their grandparents. It was the grandparents who helped them maintain their connection to their culture by teaching them the songs, ceremonies, and dances. Their grandparents’ teachings brought the children joy and happiness when their parents were causing them pain. This story reminds us of the consequences of not taking care of our children—we lose them. It is a good reminder to us as parents and relatives that we all have a role in helping families care for their children so they are not lost.

But the lessons do not end there. How the children sought a solution to their pain teaches us an important lesson. The children did not reach the Skyworld alone; they needed each other’s help. They collaborated. They each brought something to share with the other members of the group. They had a common goal, to find happiness and end their sorrow. More than likely these children had a lot of differences. But this commonality, finding an end to their suffering, and a commitment to this goal, brought them together and then helped them stay together when their parents tried to break them up. Certainly as adults in positions of leadership and power, we too can find ways to come together, collaborate, and help children find solutions to their suffering that brings them into Family Courts.

III. TODAY’S CHILDREN IN FAMILY COURT

We have reached a point in our lives where many children are suffering. The statistics regarding children in general, not specifically Native children, are staggering. “In 2014, approximately 1,546

children died as the result of abuse or neglect.”¹² Substance abuse is the main cause or factor in child abuse and neglect cases.¹³ “Approximately 11% of children live with one or more parent who is dependent on alcohol or needs treatment for illicit drug abuse.”¹⁴ For children under the age of five the rate increases to 14%.¹⁵ “Substance abuse problems are especially severe among families with infants in foster care, who make up a disproportionately large percentage of first-time admissions to out-of-home care, consisting of 24 percent of first-time admissions in urban areas.”¹⁶ Infants are especially at risk. “[A]s many as 15 percent of live births were prenatally exposed to AODs [alcohol and other drugs], which yields an annual total of 585,000 infants whose life chances may be at risk due to the effects of that prenatal exposure and the accompanying family stress and instability.”¹⁷

The consequences of these high rates of alcohol and substance abuse are that parents end up involved with child welfare agencies and then Family Courts on charges of child maltreatment. It is estimated that 60%–80% of substantiated child abuse and neglect involve substance use by a custodial parent or guardian.¹⁸ And data from the Federal Adoption and Foster Care Analysis and Reporting

12. CHILD MALTREATMENT: INDICATORS OF CHILD AND YOUTH WELL-BEING, *supra* note 1, at 2; see also U.S. DEP’T OF HEALTH & HUMAN SERV., CHILD MALTREATMENT 2014 (2016), <http://acf.hhs.gov/programs/cb/resource/child-maltreatment-2014>.

13. NAT’L CTR. ON ADDICTION & SUBSTANCE ABUSE AT COLUMBIA UNIV., NO SAFE HAVEN: CHILDREN OF SUBSTANCE-ABUSING PARENTS 3 (1999), <https://www.centeronaddiction.org/addiction-research/reports/no-safe-haven-children-substance-abusing-parents>. To access the report, scroll to the end of the web page and click “Download This Report.”

14. CHILDREN & FAMILY FUTURES, NATIONAL STRATEGIC PLAN FOR FAMILY DRUG COURTS 2 (2017) [hereinafter STRATEGIC PLAN FOR FAMILY DRUG COURTS], http://www.cffutures.org/files/FDC_StrategicPlan_V1R1.pdf.

15. CHILDREN’S BUREAU, REGIONAL PARTNERSHIP GRANT (RPG) PROGRAM: FINAL SYNTHESIS AND SUMMARY REPORT 4 (2013) [hereinafter FINAL SYNTHESIS AND SUMMARY REPORT], https://ncsacw.samhsa.gov/files/Final_SSR.pdf.

16. SID GARDNER, CHILDREN & FAMILY FUTURES, STATE-LEVEL POLICY ADVOCACY FOR CHILDREN AFFECTED BY PARENTAL SUBSTANCE USE 3 (2014), <https://firstfocus.org/wp-content/uploads/2014/11/State-Level-Policy-Advocacy-for-Children-Affected-by-Parental-Substance-Use.pdf>.

17. *Id.*

18. STRATEGIC PLAN FOR FAMILY DRUG COURTS, *supra* note 14, at 2; DOUGLAS B. MARLOWE & SHANNON M. CAREY, NAT’L ASS’N OF DRUG COURT PROF’LS, RESEARCH UPDATE ON FAMILY DRUG COURTS 1 (2012), <http://www.nadcp.org/wp-content/uploads/Research%20Update%20on%20Family%20Drug%20Courts%20-%20NADCP.pdf>.

System demonstrates that parental alcohol and other drug use is the second most frequent reason children are removed.¹⁹

The impact of alcohol or substance abuse does not stop at removal. “Continued substance abuse by a custodial parent is associated with longer out-of-home placements for dependent children and higher rates of child revictimization and terminations of parental rights.”²⁰ In addition, these children suffer through multiple placements while in foster care, remain in care longer, are less likely to be reunified with parents, and are more likely to reenter foster care after reunification.²¹ In 2012, parent, alcohol, or drug abuse was the second highest reason for termination of parental rights.²²

Even for children remaining at home, substance abuse disorders impact children. It can influence parents’ behavior and “may inhibit the parent’s capacity for consistent and sensitive parenting.”²³ Parents who abuse drugs or alcohol are more likely to be inconsistent, irritable, or explosive or inflexible in discipline; provide low supervision and involvement in the family; provide insufficient nurturance and inconsistent emotional responses to children; and be tolerant of youth substance use.²⁴ Poor parenting and a chaotic home environment puts children at an increased risk of abandonment, abuse, and neglect.²⁵ Furthermore, exposure to parental substance use may cause cognitive and neurodevelopmental deficits that can trigger behavioral, social, emotional problems in children.²⁶

Substance use is also associated with trauma, which can affect children in several different ways. Women with substance use problems have a 30%–59% rate of dual diagnosis involving post-traumatic stress disorder and substance use, “frequently stemming

19. STRATEGIC PLAN FOR FAMILY DRUG COURTS, *supra* note 14, at 2.

20. MARLOWE & CAREY, *supra* note 18, at 1.

21. Joan Marie Blakey, *We’re All in This Together: Moving Toward an Interdisciplinary Model of Practice Between Child Protection and Substance Abuse Treatment Professionals*, 8 J. PUB. CHILD WELFARE 491, 492 (2014).

22. GARDNER, *supra* note 16, at 3.

23. FINAL SYNTHESIS AND SUMMARY REPORT, *supra* note 15, at 4.

24. *Id.*

25. *Id.*

26. *Id.*

from a history of childhood physical and/or sexual assault.”²⁷ If trauma is not understood or addressed, it has a serious impact upon families such as parents failing to engage in substance use treatment services; an increase in symptoms; an increase in management problems; retraumatization; an increase in relapse; withdrawal from the service relationship; and poor treatment outcomes.²⁸ This has serious consequences for children. In comparison to children who are not exposed to a caregiver’s substance use, children who are exposed are five times more likely to experience a traumatic event and have a stress response.²⁹ “The Adverse Childhood Experience (ACE) Study indicated that living in a household with parental substance use is associated with trauma and future health and mental health problems.”³⁰ Children in households with alcohol-abusing parents are at significantly greater risk of experiencing other adversities listed in the ACE Study.³¹

Finally, children become more at risk to experience substance use disorders themselves:

Youth who have been or are in out-of-home placements show much higher rates of substance use than other youths of the same age ranges. Their higher risks for adverse effects due to maltreatment and neglect, as well as their own higher substance use, strongly argue for programs that seek to prevent problems for youth aging out of child welfare, delinquency, and other systems from becoming problems experienced by young adults.³²

The statistics involving Native children are even more concerning. American Indian and Alaska Native children reported a rate of maltreatment of 13.4 per thousand in 2014, whereas white children had a rate of 8.4 per thousand.³³ Two percent of children placed in out-of-home care are American Indian/Alaska Native

27. *Id.* at 5.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. GARDNER, *supra* note 16, at 9.

33. CHILD MALTREATMENT: INDICATORS OF CHILD AND YOUTH WELL-BEING, *supra* note 1, at 4–5.

(AI/AN) children, although they are only 1% of the population.³⁴ “Even more disturbing is that 1% of AI/AN families in the U.S. are investigated for child maltreatment, which results in 3% of AI/AN children subsequently being placed into out-of-home care[.]”³⁵ The numbers at the state level are even more disproportionate: in Alaska, 50.9% of the children in out-of-home-care are AI/AN while representing only 20% of the population.³⁶ In Minnesota, 12% of the children in out-of-home-care are AI/AN while representing only 2% of the population.³⁷

Substance abuse also plays a role in these cases. Research has found that although the caregivers of white children were slightly more likely to have drug and alcohol abuse problems, AI/AN children “were almost two times more likely to be removed from their families because of caregiver alcohol abuse and almost seven times more likely to be removed because of caregiver drug abuse.”³⁸ Mental health is also a predictive factor in removal, but research has not shown a statistically significant difference between the mental health of white caregivers and AI/AN caregivers. In summary, “when urban AI/AN and White families receiving child welfare services were compared, there were no statistically significant differences in regard to caregiver problems related to mental health, alcohol and drug abuse. Yet those variables among AI/AN caregivers became predictors for AI/AN children to be removed from their homes.”³⁹

Much like the children in “The Star Dancers,” modern children are currently suffering from the actions of their parents. And not just from alcohol and substance use; children are removed from their families for many other reasons such as violence, mental health issues, and neglect due to poverty. Some actions of parents must lead to termination of parental rights. But the majority of these families can be healed and restored. This is a difficult path, which requires many of the traits taught by the children in “The Star Dancers.” Joining together, or collaboration, is the key.

34. Vernon B. Carter, *Factors Predicting Placement of Urban American Indian/Alaskan Natives into Out-of-Home Care*, 32 CHILD. & YOUTH SERVS. REV. 657, 657 (2010).

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* at 661.

39. *Id.*

Commitment to a common cause—healing families—brings the team members together and helps them when the task seems daunting. Fortunately, Family Courts have models to follow. Some of the key models are Family Drug Courts and Healing to Wellness Courts.

IV. OVERVIEW OF COURT SYSTEMS

Prior to discussing how to use Healing to Wellness and Drug Court concepts in Family Courts, it is important to have a basic understanding of the different types of courts. Below is a short overview of Family Courts, Drug Courts, and Healing to Wellness Courts.

Family Courts include dockets for numerous types of cases: marriage, divorce, child custody, child support, and parents charged with child neglect or abuse, commonly referred to as child welfare cases. The focus of this article is on child welfare cases. Thus when referring to Family Courts, I am referring to Family Courts' child welfare dockets. Family Courts originated at the turn of the twentieth century, and historically, private citizens could file petitions alleging a child was neglected.⁴⁰ Unlike criminal courts, the purpose of the Family Court was rehabilitative.⁴¹ “[F]amily courts were premised on the idea that intra-family problems are not primarily legal in nature, but are instead manifestations of psycho-logical, medical, and social problems, and best addressed by a multidisciplinary, therapeutic approach.”⁴² However, by the late 1970s, charging decisions were increasingly vested in prosecutors due to numerous legislative and administrative child welfare reforms.⁴³

Family Courts vary across the states in terms of organization and administration.⁴⁴ But their common features are the use of social workers as well as medical and mental health professionals

40. Josh Gupta-Kagan, *Rethinking Family-Court Prosecutors: Elected and Agency Prosecutors and Prosecutorial Discretion in Juvenile Delinquency and Child Protection Cases*, 85 U. CHI. L. REV. 743, 761 (2018).

41. *Id.* at 762.

42. Elizabeth L. MacDowell, *Reimagining Access to Justice in the Poor People's Courts*, 22 GEO. J. POVERTY L. & POL'Y 473, 485 (2015).

43. Gupta-Kagan, *supra* note 40, at 760–75.

44. MacDowell, *supra* note 42, at 487.

to provide evaluations and services to families and efforts to resolve disputes outside of litigation.⁴⁵ Generally, the case begins when a state files a petition alleging a child is neglected in the care of the parents.⁴⁶ If there is a request to remove the child or the child has been removed due to an emergency, the state must establish probable cause to remove the child or continue the emergency removal. Subsequently, an adjudicatory hearing is held after the probable cause hearing where the state must prove the child is a minor, abused, or neglected in the parents' care. Upon a finding that the child is dependent, abused, or neglected, social services enters into a case plan with the parents and the end goal is reunification. "Common elements of case plans are substance abuse treatment, mental health treatment, employment, obtaining housing, parenting classes and domestic violence counseling. Parents are required to attend multiple appointments at various agencies on different days, which, for some parents, may be difficult."⁴⁷ Parents are either reunited or their parental rights are terminated and the child is placed for adoption.

Drug Courts started in the 1980s as jurisdictions began to reexamine the relationship between criminal justice systems and treatment services in order to respond to the growing drug-related cases and overcrowding of jails and prisons.⁴⁸ The adversarial justice system was ineffective at addressing substance abuse and often contributed to the problem. First, traditional defense counsel functions and court procedures reinforced the defendant's denial of a substance abuse problem. Second, defendants were not assessed for substance abuse disorders until months after arrest. Third, there were few immediate consequences for continued substance abuse. And fourth, when referrals to treatment were made they

45. *Id.*

46. See e.g., Felice Glennon Kerr, *Family Court: Protecting the Rights of Indigent Parents* 21 DEL. LAW. 24, 24 (2013) (providing an overview of Delaware's process).

47. *Id.* at 24–25.

48. BUREAU OF JUSTICE ASSISTANCE & NAT'L ASS'N OF DRUG COURT PROF'LS, *DEFINING DRUG COURTS: THE KEY COMPONENTS* 6 (1997) [hereinafter *DEFINING DRUG COURTS*], https://www.ndci.org/wp-content/uploads/Key_Components.pdf; see TRIBAL LAW & POLICY INST. & BUREAU OF JUSTICE ASSISTANCE, *TRIBAL HEALING TO WELLNESS COURTS: THE KEY COMPONENTS* 1 (2d ed. 2014) [hereinafter *TRIBAL HEALING TO WELLNESS COURTS*], <http://www.wellnesscourts.org/files/Tribal%20Healing%20to%20Wellness%20Courts%20The%20Key%20Components.pdf>.

occurred months or years after the offense and there was no inducement to complete the program.⁴⁹ Responding to this ineffectiveness, treatment-oriented Drug Courts began to form based on the realization that treatment providers and criminal justice system practitioners had a common goal: curtailing substance abuse and related criminal activity.⁵⁰ These courts grew out of the community-based, team-oriented approaches previously used by pretrial, probation, and parole agencies, in addition to treatment-based partnerships and community policing programs.⁵¹

Drug Courts are based on the Drug Court Key Components, which are used as benchmarks for performance.⁵² Drug Courts provide offenders with a choice: participate in treatment and, in exchange for successful completion, the court may dismiss the charges, reduce or set aside a sentence, offer a lesser penalty, or a combination of these alternatives.⁵³ But the offenders are not simply referred to treatment. Drug Courts use a team approach that focuses on sobriety and accountability.⁵⁴ Best practices require a team to consist of at least a judge, a team coordinator, prosecutor, defense counsel, probation, law enforcement, and members from the substance abuse agency.⁵⁵ The judge is the team leader and “takes on the role of trying to keep participants engaged in treatment.”⁵⁶ As a result of the judge’s role, service providers “focus on developing a therapeutic relationship . . . [and] keep the court informed of each participant’s progress so that rewards and sanctions can be provided.”⁵⁷

Drug Courts use a phased program that focuses on recovery. The team works together and has clear and identifiable rules while

49. DEFINING DRUG COURTS, *supra* note 48, at 6.

50. *Id.*

51. *Id.*

52. JEFF TAUBER & C. WEST HUDDLESTON, DEVELOPMENT AND IMPLEMENTATION OF DRUG COURT SYSTEMS 6 (1999).

53. DEFINING DRUG COURTS, *supra* note 48, at 9.

54. *Id.*

55. See 2 NAT’L ASS’N OF DRUG COURT PROF’LS, ADULT DRUG COURT BEST PRACTICE STANDARDS 38 (2015).

56. DEFINING DRUG COURTS, *supra* note 48, at 9.

57. *Id.*

participants receive needed substance abuse treatment⁵⁸ and services provided for their other identified needs.⁵⁹ The team uses sanctions and incentives to monitor the participants and encourage progress on the path of recovery and teach accountability.⁶⁰ Participants have frequent court appearances and drug tests.⁶¹

Drug Courts have been the focus of various research and quantitative and qualitative evaluations. A comprehensive review of the research found that

[d]rug courts have been more successful than other forms of community supervision in closely supervising drug offenders in the community, placing and retaining drug offenders in treatment programs, providing treatment and related services to offenders who have not received such services in the past, generating actual and practical cost savings, and substantially reducing drug use and recidivism while offenders are in the program.⁶²

The benefits of Drug Courts include collaboration that eliminates the fragmentation found in the traditional manner the criminal justice system deals with drug-using offenders.⁶³ Other benefits are the meaningful impact judges have on participants and a more comprehensive approach to deal with different kinds of crime that do not deal exclusively with drug offenses.⁶⁴ Drug Courts have also “been proven to reduce recidivism and prevent relapse, which in turn reduces jail overcrowding.”⁶⁵

As Drug Courts expanded, AI/AN tribal leaders and judges expressed an interest in how these types of courts could assist Indian Nations with addressing high rates of alcoholism and associated crimes in Indian Country.⁶⁶ In the late 1990s, a series of training sessions were held where tribal leaders developed action

58. 1 NAT'L ASS'N OF DRUG COURT PROF'LS, ADULT DRUG COURT BEST PRACTICE STANDARDS 38 (2013).

59. 2 NAT'L ASS'N OF DRUG COURT PROF'LS, *supra* note 55, at 5.

60. 1 NAT'L ASS'N OF DRUG COURT PROF'LS, *supra* note 58, at 28.

61. 2 NAT'L ASS'N OF DRUG COURT PROF'LS, *supra* note 55, at 26.

62. TAUBER & HUDDLESTON, *supra* note 52, at 5.

63. *Id.* at 9.

64. *Id.*

65. *Id.*

66. TRIBAL HEALING TO WELLNESS COURTS, *supra* note 48, at viii.

plans for Drug Court development within their Indian Nations.⁶⁷ The tribal advisory group that convened to develop publications for tribal Drug Courts developed the name “Tribal Healing to Wellness Courts to foster the purposes of these courts to promote healing and wellness, and to indicate that healing and wellness is an ongoing journey.”⁶⁸ In 2011, the Department of Justice and the Department of the Interior, in its Tribal Law and Order Act (TLOA) Report on Tribal Justice Systems, identified Tribal Healing to Wellness Courts as a model alternative to incarceration. Tribal Healing to Wellness Courts were specifically recognized as an effective tool that permits tribal nations to employ culturally based strategies. These findings were reiterated in the 2013 Indian Law and Order Commission Report, which stated that “Tribes are specifically encouraged to develop and enhance drug courts, wellness courts, . . . and to develop data that further inform the prioritization of alternatives to incarceration.”⁶⁹

Similar to Drug Courts, a Healing to Wellness Court handles a special docket of cases involving alcohol or substance abuse offenders through an extensive supervision and treatment program.⁷⁰ Healing to Wellness Courts differ from Drug Courts in that they are based on the Tribal Healing to Wellness Key Components⁷¹ and use culturally appropriate treatment and incorporate other cultural components that tribal leaders deem appropriate.⁷² Healing to Wellness Courts use a team that uses sanctions and incentives, a phased program, and drug testing to assist participants with addressing alcohol and substance abuse.⁷³

V. HELPING FAMILIES WITH RECOVERY — FAMILY DRUG COURTS IN ACTION

Treatment is critical to help these families, whether Native or non-Native. “Parents who complete substance abuse treatment are

67. *Id.* at viii–ix.

68. *Id.* at ix.

69. INDIAN LAW & ORDER COMM’N, A ROADMAP FOR MAKING NATIVE AMERICA SAFER, at ch. 5, p. 137, recommendation 5.1 (2013), <http://www.aisc.ucla.edu/iloc/report>.

70. TRIBAL HEALING TO WELLNESS COURTS, *supra* note 48, at viii.

71. *Id.* at 1.

72. *Id.* at 3.

73. *Id.* at iv–v.

significantly more likely to be reunified with their children, and their children spend considerably fewer days in out-of-home foster care."⁷⁴ However, treatment alone does not guarantee success, as "more than 60% of parents in dependency cases do not comply adequately with substance abuse treatment conditions and more than 80% fail to complete treatment."⁷⁵

In Family Courts, treatment is often ordered by the judge or required by a child welfare worker, but it is more successful when partnered with support for and with the families. One successful approach to assist these families is Family Drug Courts, sometimes referred to as Family Treatment Courts, or Tribal Nations' Healing to Wellness Courts. Family Drug Courts, in the state court systems, are based on the Key Components.⁷⁶ Healing to Wellness Courts are based on the Tribal Key Components.⁷⁷ In place of an adversarial approach, Family Drug Courts and Healing to Wellness Courts use a collaborative team approach, as discussed above.⁷⁸ Participants are placed in the Drug or Healing to Wellness Court in a timely manner and journey through a phased program that focuses on recovery. The team works together and uses case management to build on the families' strengths. The team also uses sanctions and incentives to monitor the participants and encourage progress on the path of recovery and teach accountability. Participants have frequent court appearances, drug tests, and regular check-ins with the coordinator and case managers. Since they began, Family Drug Courts (sometimes referred to as FDCs) have "helped child welfare agencies meet their core safety and permanency outcomes for children by helping parents gain access to substance use disorder treatment, achieve recovery, and reunify with their children in a timely manner."⁷⁹

There are approximately 370 Family Drug Courts across the country, not including Healing to Wellness Courts, that focus on

74. MARLOWE & CAREY, *supra* note 18, at 1 (citation omitted).

75. *Id.* (citation omitted).

76. *See* DEFINING DRUG COURTS, *supra* note 48, at iii; *see also* TRIBAL HEALING TO WELLNESS COURTS, *supra* note 48, at iv.

77. TRIBAL HEALING TO WELLNESS COURTS, *supra* note 48.

78. *See supra* Part IV.

79. STRATEGIC PLAN FOR FAMILY DRUG COURTS, *supra* note 14, at 5 (2017).

families.⁸⁰ Research on Family Drug Courts reveals significantly better outcomes as compared to the traditional family unification services.⁸¹ “A recent review of the research literature concluded that FDC is among the most effective programs for improving substance abuse treatment initiation and completion in child welfare populations.”⁸² The findings revealed that participants in FDC were more likely to complete substance abuse treatment in all but one of the evaluations.⁸³ “In most instances, treatment completion rates were 20 to 30 percentage points higher for the FDC participants than for the comparison participants.”⁸⁴ FDC participants were also “significantly more likely to enroll in substance abuse treatment, entered treatment sooner, and remained in treatment longer than the comparison parents in most of the evaluations.”⁸⁵ Family reunification rates were higher in all but one of the evaluations and children of participants spent significantly less time in out-of-home placements.⁸⁶ Finally, two evaluations tracked criminal arrests and reported substantially lower arrest rates for participants.⁸⁷ One study also showed less recurrence of “substantiated allegations of child maltreatment.”⁸⁸

Family Drug Courts are also better for parents who are high risk and high need or those seriously addicted to drugs or alcohol.⁸⁹ A national study of Family Drug Courts involving four sites found similar results.

[F]ew participant characteristics predicted better outcomes, suggesting the programs tended to be equally effective for a wide range of participants. In fact, marginally better outcomes . . . were reported for mothers with co-occurring mental health problems

80. *Id.* at 2.

81. MARLOWE & CAREY, *supra* note 18, at 2; *see also* WEST HUDDLESTON & DOUGLAS B. MARLOWE, BUREAU OF JUSTICE ASSISTANCE & NAT’L DRUG COURT INST., PAINTING THE CURRENT PICTURE: A NATIONAL REPORT ON DRUG COURTS AND OTHER PROBLEM-SOLVING COURT PROGRAMS IN THE UNITED STATES (2011).

82. MARLOWE & CAREY, *supra* note 18, at 2 (citation omitted).

83. *Id.*

84. *Id.*

85. *Id.* at 2–3.

86. *Id.* at 3.

87. *Id.*

88. *Id.*

89. *Id.* at 5.

and other demographic risk factors, such as being unemployed or having less than a high school education. Other studies similarly found that parents with extensive criminal histories, inadequate housing, and a greater risk for domestic violence were more likely to complete FDC than those without these risk factors.⁹⁰

Not only do FDCs increase the rates of success, they also result in cost savings. "One analysis suggested that the cost savings from as few as one-third of parents recovering from their substance use disorders would more than pay for the costs of treating all parents in the child welfare system with substance abuse problems."⁹¹

This approach also assists with meeting the time requirements of the Adoption and Safe Families Act (ASFA).⁹² ASFA requires states to file for termination of parental rights when a child has been in foster care for fifteen of the most recent twenty-two months, unless there is an allowable circumstance for not terminating.⁹³ If parents are placed in Family Drug Courts in a timely manner, the team helps families and the court with meeting the required deadlines to achieve permanency. FDCs assist courts in meeting ASFA timelines by facilitating efficient case processing and providing a wider range of treatment services.⁹⁴

Judge Leonard Edwards, a retired Superior Court Judge from Santa Clara County, California, who spent numerous years working with FDCs,⁹⁵ explains his viewpoint as to why Family Drug Courts are successful with helping families deal with substance use disorders:

FDCs have been successful in fostering rehabilitation for parents trying to reunify with their children. Numerous studies have demonstrated that parents who participate in FDCs reunify with their children more frequently as compared to the traditional

90. *Id.* at 5-6.

91. See GARDNER, *supra* note 16, at 4.

92. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115; 42 U.S.C. § 675(5)(E) (2012) (promoting the adoption of children in foster care).

93. 42 U.S.C. § 675(5)(E).

94. MARLOWE & CAREY, *supra* note 18, at 2.

95. Retired, Judge Edwards served as a Superior Court Judge in Santa Clara County, California, for twenty-six years and then for six years as Judge-in-Residence at the Center for Families, Children & the Courts, a division of the Judicial Council of California. *About Judge Edwards*, JUVENILE JUDGE'S CORNER, <http://judgeleonardedwards.com/aboutjudgeedwards.html> (last visited Jan. 26, 2019).

family reunification process, their children spend less time in foster care, and returns to the dependency court are lower. Moreover, since their creation [sic] FDCs have become more sophisticated and efficient with the development of a wider range of needed family-centered treatment services, mentor parent programs, developmental services for children, infants' courts, and similar innovations. Participation in FDCs also has significantly reduced costs to the child welfare system.⁹⁶

The question remains why Family Treatment Courts are more successful than a Family Court ordering treatment. Much of the success is due to the use of a collaborative team approach. In fact, the lack of collaboration between substance abuse professionals and child welfare professionals "was identified as a possible reason for poor outcomes for children of parents with histories of addiction."⁹⁷ Family Drug Courts use a collaborative team approach that brings in professional substance use treatment providers who work with all team members, including child welfare agencies. Judge Edwards notes:

[T]he FDC process and its professional and service provider partners have become sophisticated about substance abuse recovery. Bringing substance use disorder experts to the dependency court is an acknowledgment that a majority of these cases involve substance abuse and that social workers have neither the training nor expertise to develop effective reunification plans involving substance abuse recovery.⁹⁸

Additionally, the team not only uses a collaborative approach but supports the participant and uses a problem-solving approach. Judge Edwards notes:

FDCs are problem-solving courts. One of the first questions I would ask a client at the review hearings was "what can this court do to help you today?" The client would discuss issues regarding housing, education, domestic violence, medical assistance, driver's licenses, and the list goes on. The Team would then work

96. LEONARD EDWARDS, FAMILY DRUG COURTS: A BEST PRACTICE THAT WORKS 1-2, http://www.judgeleonardedwards.com/docs/FDC_Best_Practice.pdf (last visited Jan. 26, 2019) (citations omitted).

97. Blakey, *supra* note 21, at 492.

98. EDWARDS, *supra* note 96, at 2.

with the client to move forward, to rebuild his or her life. This type of enhanced case management and parent/child/family support is crucial to the success of FDCs.⁹⁹

Drug Court teams understand that the participants have already experienced numerous failures and provide a supportive team, including the judge, that works together to help the participant be successful.¹⁰⁰ “[T]he FDC does not stop at substance abuse recovery, but deals with problems facing the client as they arise and uses the Team to work with the parent to solve those problems. The Team, with judicial oversight, holds itself and partnering agencies accountable.”¹⁰¹

“The Star Dancers” used teamwork, centered on a common goal, to find solutions to their family deterioration. Family Drug Courts work on the same principle, coming together in a common goal to restore and heal families. Although the children in “The Star Dancers” were eventually lost to their families, their actions benefited countless children and families. The research on FDCs has demonstrated that it is possible for this type of teamwork to occur and be successful in places where collaborative approaches are not the norm: courts. Each child suffering from maltreatment depends on the success of his or her parents and the Drug Court team. As discussed below, the Family Drug Court model can be replicated in Family Courts to help children and their families be healed and become resilient.

VI. INCORPORATING FAMILY DRUG COURT CONCEPTS INTO FAMILY COURT

Below I review each of the Key Components from the Healing to Wellness Courts and Drug Court Key Components, discussing how each can be incorporated into Family Courts. I provide these Key Components to assist tribal courts and state courts in implementing these practices. Following the Key Components are important practices for the implementation of the Key Components into Family Courts. I conclude each section with some of my experience with each Component.

99. *Id.* at 3.

100. *Id.* at 2.

101. *Id.*

A. Building a Team

[Tribal Healing to Wellness] Key Component #1: Individual and Community Healing Focus. Tribal Healing to Wellness Court brings together alcohol and drug treatment, community healing resources, and the tribal justice process by using a team approach to achieve the physical and spiritual healing of the individual participant and to promote Native nation building and the well-being of the community.¹⁰²

[Drug Court] Key Component #1: Drug courts integrate alcohol and other drug treatment services with justice system case processing.¹⁰³

In Healing to Wellness Court trainings, we often refer to the first Key Component as “coming together.” The judge gathers the necessary or critical team players, and together they develop a team and a process to serve families. Research demonstrates that the critical team members in adult Drug Courts include the judge, prosecutor, defense attorney, probation officer, law enforcement, treatment representative, and a coordinator.¹⁰⁴ Family Drug Courts include child welfare services. The team meets weekly for staffings and reviews the progress of each of the participants, determines appropriate actions to improve outcomes, and prepares for status hearings in court.¹⁰⁵ Team members also attend court hearings, which are held after the staffings¹⁰⁶

This Key Component, focused on team building, is critical to the success of Healing to Wellness and Drug Courts. Therefore, to incorporate a team approach into Family Courts, courts need to focus on using an interdisciplinary collaborative approach. Judges play a central role in building the team and leading the collaborative approach and need to be aware of common conflicts and challenges that collaboration presents. Each of these are discussed below.

Collaborative partnerships across child welfare and substance abuse treatment agencies, courts, and other community service systems are essential to child development and parental recovery.¹⁰⁷

102. TRIBAL HEALING TO WELLNESS COURTS, *supra* note 48, at iv (emphasis added).

103. DEFINING DRUG COURTS, *supra* note 48, at 1 (emphasis added).

104. 2 NAT'L ASS'N OF DRUG COURT PROF'LS, *supra* note 55, at 38–41.

105. *Id.* at 38.

106. *Id.* at 39.

107. STRATEGIC PLAN FOR FAMILY DRUG COURTS, *supra* note 14, at 4.

First, a collaborative approach is necessary and needed as “substance use disorders are one of several co-occurring conditions that affect most families in the child welfare system, particularly when child removal is warranted.”¹⁰⁸ Second, collaboration is also important because the child welfare system needs to “supplement its overall resources with financial support from outside its control to meet families’ needs. Child and family serving agencies require both public agency and community supports to fulfill their mission.”¹⁰⁹ Third, even when a family is in Family Court for reasons other than violence or neglect due to alcohol or substance use, it is rare that there is only one cause of the abuse or neglect, as experienced practitioners know.

With a team approach that includes various service providers, the child welfare agency does not bear the burden of identifying the needs and determining appropriate services or treatment. Child Protective Services (CPS) worker training on substance abuse is insufficient. The CPS worker training

on how to identify substance use as a child maltreatment factor is often two hours or less. Also, it does not always address the growing problem of prescription opioid use, the importance of MAT [Medication-Assisted Treatment], or the need for collaborative practice with MAT and other SUD [substance use disorder] treatment providers.¹¹⁰

Thus, they are not equipped or trained to help families dealing with substance abuse. This may also be the case for training on mental health and violence in the family. Child welfare agencies are often general practitioners, struggling to meet the many needs of families and referring the families out for services.

But collaboration between treatment and CPS agencies is not enough—an interdisciplinary team using a collaborative approach is needed.¹¹¹ Courts, especially judges, using a formalized team

108. CHILDREN & FAMILY FUTURES, THE COLLABORATIVE PRACTICE MODEL FOR FAMILY RECOVERY, SAFETY AND STABILITY 1 (2011) [hereinafter COLLABORATIVE PRACTICE MODEL].

109. *Id.*

110. DOUGLAS B. MARLOWE ET AL., INCREASING ACCESS TO MEDICATION-ASSISTED TREATMENT FOR OPIOID ADDICTION IN DRUG COURTS AND CORRECTIONAL FACILITIES AND WORKING EFFECTIVELY WITH FAMILY COURTS AND CHILD PROTECTIVE SERVICES 27 (2016).

111. Blakey, *supra* note 21, at 492.

structure need to be involved in the interdisciplinary collaboration. An interdisciplinary practice is needed because

the ways in which these systems [substance abuse and child welfare], organizations and professionals have approached practice (i.e., collaboration) with families who are simultaneously involved with both the child protection and substance abuse treatment systems has not improved client outcomes, particularly in terms of reunification. Interdisciplinary practice with established formalized structures and processes has been found to produce better results.¹¹²

It is insufficient for two agencies simply to each share information. Rather, an interdisciplinary collaboration approach focuses not just on sharing information but also on organizational and policy changes that impact how the court and various agencies work together. This type of “approach is vital to the success of children and families involved with the child protection system resulting from substance abuse.”¹¹³ If an interdisciplinary model or the team approach works with families dealing with substance abuse, which are often the most challenged families, it will increase the success of families dealing with other problems that result in maltreatment charges.

The first step judges can take is developing a team from the necessary attorneys, advocates, and service providers.

Establishing an internal, formal structure of the team is the first task when creating a new interdisciplinary team. Internal, formal structures made up of both child protection and substance abuse treatment professionals create and establish a shared mission; mutually beneficial goals; protocols for decision making and communication; deciding who will formally lead; expected roles and responsibilities of team members; establishing desired client outcomes; consistently monitoring progress toward outcomes; building trust among professionals, organizations, and systems; and mechanisms that will be used to communicate and permit interactive dialogue with one another. To create this kind of change, a new culture and form of practice between child

112. *Id.* (internal citations omitted).

113. *Id.* (internal citations omitted).

protection and substance abuse treatment professionals has to be created.¹¹⁴

To collaborate successfully, the judge needs to lead the team in developing a shared vision.¹¹⁵ A shared vision must be based on complementary views of team members' role and work—"providing a safe, drug-free environment for children."¹¹⁶ This shared vision allows professionals from different systems to see how their systems and roles interconnect.¹¹⁷

Developing a shared vision and mission statement is also one of the recommendations for developing a Family Drug Court¹¹⁸ and has been identified as an element of collaborative practice.¹¹⁹ The team mission should include the underlying values and principles of collaboration.¹²⁰ The process of developing a common vision develops an effective relationship between team members and also a consensus on the values that brings them together as a team.¹²¹

Team members develop a good working relationship by agreeing on the values that are the basis for their collaboration. For example, substance abuse, child welfare, mental health services partners may agree with the court they all value healthy families and that by working together they can better help families. By identifying their values, the partners develop a mission statement that specifies their goals, which are based on their values and principles of collaboration.

The mission statement focuses on client-specific outcomes of "innovative collaborative approaches and the systems changes that are necessary to sustain that impact."¹²² The statement should include agreed-upon principles with ethical content to ensure that

114. *Id.*

115. *Id.* at 501.

116. *Id.*

117. *Id.*

118. CHILDREN & FAMILY FUTURES, GUIDANCE TO STATES: RECOMMENDATIONS FOR DEVELOPING FAMILY DRUG COURT GUIDELINES 8 (2015) [hereinafter GUIDANCE TO STATES].

119. Children and Family Futures defines a collaborative practice as the use of ten identified system linkages or elements they identified by two more systems, agencies, or providers to improve child and family outcomes. COLLABORATIVE PRACTICE MODEL, *supra* note 108, at 1-3.

120. *Id.* at 2.

121. *Id.* at 5.

122. *Id.* at 5.

the family's outcomes are more important than a partner's activities.¹²³ In other words, the mere fact that activities are conducted is less important than the family's progress and success.

The team should not shy away from differences when creating a mission statement. Developing a more specific mission statement is an "opportunity to identify differences in values and perspectives."¹²⁴ Identifying differences is important from the outset, so every partner understands each other and knows that simply by working together these differences will not fade. Rather, identifying the differences can build a consensus that each group has certain similar values, while maintaining other different values that are necessary to service their population. This process can also build understanding across agencies and of the various populations the partners serve.

Identifying common goals is important because child welfare agencies and treatment agencies often have conflicting goals. Child welfare worker goals are focused on moving forward to terminating parental rights and finding permanent homes, whereas treatment professionals' goals are focused on helping mothers regain custody of their children.¹²⁵ This clash of goals can undermine their efforts.¹²⁶ As a result of different and conflicting goals, child welfare and treatment professionals may take opposing sides.¹²⁷ Child protection workers have a tendency to side with the children against the parent, while treatment counselors focus on protecting women from child protection.¹²⁸ Taking sides is "a natural extension of the professionals' job in that they took the side of the client in which they spent the most time, had the most familiarity, and/or believed needed the most protecting."¹²⁹

Many judges, including myself, may cringe at the thought of the valuable time that may get eaten up in the process of developing a vision and mission statement. But the exercise of doing so helps team members to understand each other better and develop

123. *Id.*

124. *Id.* at 6.

125. Blakey, *supra* note 21, at 496.

126. *Id.* at 504.

127. *Id.*

128. *Id.* at 505.

129. *Id.*

common goals to which they can continually return. "The attention given to establishing collaborative values and establishing a joint mission can determine whether the resulting practice model can serve as a tool for increasing accountability in improving the lives of children and families or is simply a list of disconnected, abstract principles."¹³⁰ Moreover, research has demonstrated that "teams with a shared vision generate better outcomes generally when they develop an agreed upon set of practices."¹³¹ Thus, it is worth the time and effort by teams to develop a common vision and mission.

The mission statement lays the foundation for a unified team. But an interdisciplinary collaborative approach also requires team members to work at becoming a unified team.¹³² This includes supporting "role/decisions of the other agency/professional and at times us[ing] parents' involvement with the other system to increase their motivation and compliance."¹³³ Failure to present as a unified team can cause the participants to attempt to manipulate, divide, and weaken the team in order to obtain less strict compliance.

Unity is created through "a team-based culture in which there is no longer 'us' versus 'them' but, instead, a model in which systems and professionals alike are invested in and responsible for addressing the needs of children and families who are simultaneously involved with the child protection and substance abuse treatment systems."¹³⁴

Research supports the need for a collaborative approach. Successful collaboration

helps to ensure that parents are not overwhelmed by the multiple demands and requirements of their case plans. In addition, collaboration indirectly supports parents by improving the ability of providers to work together on the parents' behalf. This collaborative process includes such functions as providing a bigger resource base from which to offer needed services, helping providers to better monitor case progress, providing additional services and supports when parents are struggling, improving the coordination and timing of services, and holding providers

130. *Id.*

131. GUIDANCE TO STATES, *supra* note 118, at 9.

132. Blakey, *supra* note 21, at 501.

133. *Id.*

134. *Id.* at 508.

accountable to each other. Successful collaboration has also been found to influence case outcomes by improving the ability of key stakeholders to make good decisions because of the availability of timely, comprehensive, and accurate information.¹³⁵

This success can happen in Family Courts by using this type of collaborative supervision and collaborative case management. The Children's Bureau Regional Partnership Grant Program found that many of the successful results by the grantees centered around partnership and collaboration. Critical results of using this type of approach are that the majority of children at risk of removal remained in their parent's custody, those in out-of-home placement achieved a timely reunification, and after returning home, very few children re-entered foster care.¹³⁶ Results involving the parents include that they achieved timely access to substance abuse treatment, stayed in treatment, and reported reduced substance use and gains in employment.¹³⁷ Parents also received essential clinical and support services, including continuing care, transportation, parenting training, mental health services, and housing assistance, all of which promoted and sustained their recovery and facilitated reunification.¹³⁸ The use of recovery coaches and FDCs resulted in significantly better treatment engagement, retention, and completion.¹³⁹ One lesson learned from collaboration was that treating the family was far more effective than treating the child or parent.¹⁴⁰ There is not one provider or service system that can address a family's multiple needs, and the grantees increased the number of partners and worked together to provide a more coordinated and comprehensive service.¹⁴¹

As judges build and strengthen their collaborative Family Court teams, it is important to be aware of factors that hinder collaboration and develop strategies to address them. One of these

135. U.S. DEP'T OF HEALTH & HUM. SERVS., SUBSTANCE ABUSE SPECIALISTS IN CHILD WELFARE AGENCIES AND DEPENDENCY COURTS—CONSIDERATIONS FOR PROGRAM DESIGNERS AND EVALUATORS 1 (2010).

136. FINAL SYNTHESIS AND SUMMARY REPORT, *supra* note 15, at 53.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.* at 38.

141. *See id.* at 53.

is a negative perception of collaboration, which has been “identified as a significant barrier that has impeded interagency collaboration.”¹⁴² Philosophical differences between agencies can also hinder collaboration.¹⁴³ Philosophical differences are centered on a difference in perspective on substance use. Child protection professionals who tend to view addiction as a choice are more likely to want abstinence and are less tolerant and understanding of addiction.¹⁴⁴ Treatment professionals view substance use disorder as a disease, knowing that abstinence is the ultimate goal, while relapse is expected due to the chronic nature of the disease.¹⁴⁵

Another factor is that agencies often possess differing definitions of who is the client. Child welfare professionals generally view the child as their main client and focus on the child’s safety and permanency.¹⁴⁶ Treatment professionals often view the parent as their main client, with the goal of addressing addiction and developing skills to remain abstinent.¹⁴⁷

Competing legal mandates also hinder collaboration.¹⁴⁸ As noted earlier, ASFA timelines are a major barrier to collaboration.¹⁴⁹ ASFA limits the time parents have to meet reunification requirements, but treatment professionals “believe that timelines should not dictate how they support their clients through the recovery process.”¹⁵⁰ The timelines reinforce some treatment counselors’ beliefs that “child protection just wants to take children away from their parents, which further limits their desire to collaborate.”¹⁵¹

Collaborative teamwork will never succeed without supportive and effective leadership. This critical leadership is often provided by judges and administrative leaders.¹⁵² To foster and maintain interdisciplinary collaboration, individual leaders must demonstrate their commitment with positive action, including changing

142. Blakey, *supra* note 21, at 494.

143. *Id.*

144. *Id.* at 484.

145. *Id.* at 494.

146. *Id.* at 494–95.

147. *Id.*

148. *Id.* at 495.

149. *Id.*

150. *Id.* (citation omitted).

151. *Id.* at 496 (citation omitted).

152. *See id.*

policies to support team work and collaboration or signing memorandums of understanding between agencies that support and foster collaboration.

Finally, collaboration will not work without critical information sharing.¹⁵³ One study of treatment professionals and child protection case workers concluded that ineffective information sharing inhibited collaboration.

The treatment professionals believed that there was limited information sharing and involvement on the part of the child protection caseworkers by not sharing service plans and not continuing to be involved with the women once they entered treatment. The child protection caseworkers believed that there was limited information sharing and involvement on the part of the substance abuse treatment professionals by not providing a detailed assessment of women's parenting, particularly when there were concerns.¹⁵⁴

Although cloistering of information and involvement helps manage high caseloads and might protect mothers in danger of losing their children, such cloistering is "often misunderstood and misinterpreted, which contributed to an adversarial relationship between child protection and substance abuse treatment professionals."¹⁵⁵

Limited information sharing and involvement can be combatted by effective communication. A successful team determines the what, how, and when of communication and information sharing. To communicate effectively, "partners must identify the content, methods, roles, and responsibilities in cross-system communication protocols."¹⁵⁶

Confidentiality requirements pose one burden to interagency communication. However, such requirements may be preserved by consent waivers, policies, and strict adherence to the policies. Each agency will have confidentiality rules they must abide by. Consent waivers from families participating in Family Courts are critical to good teamwork. With the consent in hand, the team is ready to share information. Policies detailing the content and timeliness of information sharing are critical to team success. Some team

153. *Id.* at 505.

154. *Id.*

155. *Id.* at 507.

156. COLLABORATIVE PRACTICE MODEL, *supra* note 108, at 15.

members might resist sharing, but policies outlining confidentiality and protection of information will often provide reassurance and ensure willing cooperation. Team members will be additionally reassured when strict adherence to those policies is then observed.

Our Healing to Wellness Team at the Saint Regis Mohawk Tribal Court is truly interdisciplinary. To meet the needs of our community, the team has representatives from numerous tribal programs, including the abuse agency (handling inpatient and outpatient care), Social Services, mental health services, and the Tribe's vocational program. As the Saint Regis Mohawk Tribe's Territory intersects Canada, the team includes representatives from tribal programs run by the tribal government on the Canadian portion of the Territory. To facilitate the federal government's concurrent criminal jurisdiction, an Assistant United States Attorney often attends. Lastly, when time allows, the team is joined by a pediatric nurse from the Indian Health Services Clinic to explain medical needs.

Our common values and goals are identified as we have worked on our policies and procedures. Our coordinator brings us together at various times to review and rethink our policies. Any differences in agency philosophies are respected and heard. When we gather to discuss the participants' progress, often referred to as a "staffing," I try to make sure everyone's opinion is heard. This ensures that various differences are shared and discussed. We then work to be unified when I present a decision to participants. I inform participants that decisions are a team decision. Team members are also given an opportunity to share their thoughts with participants during hearings. Information sharing is facilitated by our coordinator. She obtains participants' consent to share information and then gathers information for each participant and provides the team with a report. Other team members provide reports from their agencies at the weekly staffing.

The interdisciplinary collaborative practice should not be limited to families dealing with alcohol or substance abuse. We are in the process of using this process to work with families whose children face high absentee rates in school. As a judge, I have worked with necessary partners, including local schools, county juvenile probation officers, and the Tribe's Division of Social Services. As with our Healing to Wellness Court, working together

as a collaborative team equips me with better knowledge, which leads to better decisions. Together we work better and our families benefit.

B. A Nonadversarial Approach

[Tribal Healing to Wellness] Key Component #2: Referral Points and Legal Process. *Participants enter Tribal Healing to Wellness Court through various referral points and legal processes that promote tribal sovereignty and the participant's due (fair) process rights.*¹⁵⁷

[Drug Court] Key Component #2: *Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.*¹⁵⁸

The purpose of the second Key Component is to assist a person or family in entering a Healing to Wellness or Drug Court quickly, while still protecting their due process rights. In doing so, the members of the team, particularly prosecution and defense counsel, set aside their adversarial roles, but they do not

relinquish their professional roles or responsibilities. . . . In other words, the term *nonadversarial* does not have the same meaning as *nonadvocacy*. The principal distinction in Drug Courts is that advocacy occurs primarily in staffings as opposed to court hearings, reserving the greater share of court time for intervening with participants rather than arbitrating uncontested facts or legal issues.¹⁵⁹

Typically, the prosecutor screens a person to determine if there are legal reasons the person should not be in Healing to Wellness or Drug Court, such as being charged with a crime that makes him or her ineligible. The defense counsel is charged with explaining the option of Healing to Wellness or Drug Court to the offender and rights the offender will be giving up, such as a right to a speedy trial, entering a guilty plea or admission, and being subject to random drug tests. Part of the entry process includes a clinical

157. TRIBAL HEALING TO WELLNESS COURTS, *supra* note 48, at iv (emphasis added).

158. DEFINING DRUG COURTS, *supra* note 48, at 3 (emphasis added).

159. 2 NAT'L ASS'N OF DRUG COURT PROF'LS, *supra* note 55, at 44 (internal citations omitted).

screening to determine whether the person has a substance abuse disorder.

In Family Court, there is less of a focus on entry because a set event typically occurs—the filing of a petition. There is no legal or clinical screening to determine if a person is eligible. However, as noted above, this Component also focuses on the fact that Healing to Wellness and Drug Courts are nonadversarial, while protecting the participant’s rights, which requires team members to step outside of their traditional roles and focus on the healing of the individual. Healing of families must be the focus of Family Courts. The adversarial process creates winners and losers. When a family is not healed and remains apart, there are no winners. An adversarial system “may not provide best results in some cases because it accentuates differences and amplifies conflict.”¹⁶⁰ A collaborative team approach, which focuses on healing and not winners and losers, brings the needed services together, provides effective case management, helps keep parents in treatment longer, and assists with cost savings.

What does this nonadversarial process look like? Team members set aside their adversarial roles and work together. Participants waive some of their adversarial trial rights as a condition to entering Drug Court.¹⁶¹ Team members, including the judge, meet once a week in a staffing to review the progress of each family and determine what needs are not being met. “[C]onsistent attendance by all team members at . . . [staffings] . . . is associated with significantly better outcomes.”¹⁶² The team meetings foster communication and sharing of information. Communication is consistently rated as one of the most important factors for success in Drug Courts, by participants and team members.¹⁶³ Continuous communication between team members “ensures participants receive consistent messages, reduces unwarranted burdens on participants, and prevents participants from falling through the

160. NAT’L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, BUILDING A BETTER COLLABORATION: FACILITATING CHANGE IN THE COURT AND CHILD WELFARE SYSTEM 13 (2004) [hereinafter FACILITATING CHANGE IN THE COURT AND CHILD WELFARE SYSTEM].

161. 2 NAT’L ASS’N OF DRUG COURT PROF’LS, *supra* note 55, at 41.

162. *Id.* at 46.

163. *Id.* at 42.

cracks or eluding responsibility for their actions by providing different information selectively to different team members.”¹⁶⁴ The judge then “considers the perspectives of all team members before making decisions that affect participants’ welfare or liberty interests and explains the rationale for such decisions to team members and participants.”¹⁶⁵ By encouraging government workers to step out of their adversarial roles and use their expertise as a cohesive team, the judge is able to make better decisions and help the family work toward reunification.

The team also attends each court hearing and shares information or recommendations as needed.¹⁶⁶ Consistent attendance by team members at these hearings results in significantly better outcomes for the participants.¹⁶⁷ Team members play an important role at the hearings by reporting on participants’ progress, filling in any missing information to the judge, offering praise and encouragement to the participants, and offering recommendations for sanctions.¹⁶⁸

In a Family Court setting, the team will be able to provide similar information and expertise to the judge at the staffings and hearings. Critical information – including parents’ interaction with children, attendance and progress at required counseling and classes, updates on children’s mental and physical health, and children’s educational concerns – will be shared in a group setting, where team members can problem-solve to address issues. This information should be shared in team meeting at least biweekly. Biweekly appearances are recommended as biweekly appearances in FDCs result in better progress by the participants.¹⁶⁹ This approach will likely increase the chances of parents being successful in Family Court.

Our Healing to Wellness Court is unique because the participants come to us on county probation and completion of Healing to Wellness Court is generally a term of their probation. In our Family Drug Court, participants’ dependency cases are in the

164. *Id.*

165. *Id.* at 38–39 (cross-reference omitted).

166. *Id.* at 39.

167. *Id.* at 46.

168. *Id.*

169. *Id.*

county Family Court. Thus, entry by referral often comes from outside courts. However, our Tribe's Division of Social Services will also refer parents to our Family Treatment Court.

Once the case is in our Courts, the process is very different from the participants' experience in the other courts. At staffings, team members assist me by highlighting or suggesting what I should ask each participant. At each hearing, participants are asked to discuss their week, including attendance at counseling, group sessions, and anything else of concern to the team. If the participant has made mistakes, we look for honesty and acknowledgement of the mistake and then work with the participant to identify tools or needed assistance so the mistake is not repeated.

C. Eligibility

[Tribal Healing to Wellness] Key Component #3: Screening and Eligibility. *Eligible court-involved, substance-abusing parents, guardians, juveniles, and adults are identified early through legal and clinical screening for eligibility and are promptly placed into the Tribal Healing to Wellness Court.*¹⁷⁰

[Drug Court] Key Component #3: *Eligible participants are identified early and promptly placed in the Drug Court program.*¹⁷¹

The focus of this key component is to identify a person early through a legal and clinical screening. Healing to Wellness and Drug Court participants are screened to see if they have committed certain crimes, such as a violent offense, that will make them ineligible and to determine whether they have a substance abuse disorder.

It is important to understand the difference between screening and assessment. Screening refers to the tools and procedures used to determine risk or probability that a person has a condition or disorder.¹⁷² Assessment involves "collecting information that allow [sic] staff members to determine whether a person's condition meets diagnostic criteria for a given disorder and to identify appropriate responses if the assessment results are positive."¹⁷³

170. TRIBAL HEALING TO WELLNESS COURTS, *supra* note 48, at iv (emphasis added).

171. DEFINING DRUG COURTS, *supra* note 48, at 5 (emphasis added).

172. COLLABORATIVE PRACTICE MODEL, *supra* note 108, at 7.

173. *Id.*

In Family Court, that type of screening does not occur, as obviously it is a petition that brings them into court. But the principle remains the same; when a family comes in contact with child welfare agencies and the court, they should be screened or assessed early and quickly placed in needed services. This requires that child welfare agencies or health care systems, which are typically the first agencies to see the families, are trained and use appropriate screening tools to identify substance use disorders, mental health issues, or the cause of the abuse or neglect of the child.¹⁷⁴ Children and families in the child welfare system must be screened for the effects of substance abuse, past and present victimization, and trauma in order to determine risk and safety.¹⁷⁵ As screening and assessment may be the families' initial encounter with many service agencies, the process must be trauma-informed and focus on hope, not punishment. "A key component of screening and assessment is helping family members find the hope they need to take part in this opportunity to change their lives and successfully care for their children."¹⁷⁶

The consequences and costs associated with not identifying these problems at the earliest opportunity include "missed appointments, crowded court dockets, public health and safety risks, compromised parenting for other children in the home, greater out-of-home placement rates, greater fatalities, higher risk of recidivism in both CPS and criminal justice involvement, multigenerational impact related to children who end up with development delays, and other compromised child well-being conditions or foster care or adoption plans."¹⁷⁷ Moreover, if courts do not identify and treat women of childbearing age, particularly pregnant women, medical costs for the mother and substance-exposed infants increase.¹⁷⁸

Screening and assessments are generally insufficient on their own. Collaboration or sharing the results among team members results in earlier identification of issues faced by the family. Failure to identify problems, such as substance abuse, leads to more trauma to the children and difficulty in meeting the ASFA's timelines. A

174. GUIDANCE TO STATES, *supra* note 118, at 34.

175. COLLABORATIVE PRACTICE MODEL, *supra* note 108, at 7.

176. *Id.*

177. MARLOWE ET AL., *supra* note 110, at 26-27.

178. *Id.*

study conducted by the State of Nebraska discovered that 56% of child welfare cases “had substance use identified as a problem in the case record and determined that many of these substance use problems were not identified until late in the progression of the case, after much time and many resources were unproductively expended.”¹⁷⁹

Collaboration across partners provides critical, timely access to screening and assessment results, which are needed for each partner to make various decisions.¹⁸⁰ A collaborative practice draws on the strengths of the partners; thus it is the team not the tool that underlies effective screening and assessment.¹⁸¹ But that collaboration will not occur, and thus ineffective screening and assessment will occur, if effective communication is not the norm. That communication must occur at all levels—the front lines, management, and administrative levels of the agencies.¹⁸²

This Key Component has been a struggle for our team. As our participants are mostly referred from other courts, we often do not receive them as quickly as we would like. When we receive participants who have been in the child welfare system for a long time, they are often bitter and it is very hard to help them. This is a critical lesson for courts: the longer parents stay in the Family Court system without receiving the necessary support, the harder it is for them to be successful. They feel defeated and that no one has recognized their attempts at addressing identified problems. Quicker assessments, which are coordinated among team members, will result in quicker provision of services and more successes.

Once we receive a referral, our coordinator interviews the prospective participant and has him or her sign a consent to share information. Our team meets weekly and reviews any prospective participants. Because the consent to share information was obtained at the first interview, the team is able to share information and review prospective participants quickly. The team then decides whether to accept the prospective participant. We also allow the prospective participant to observe the court hearings prior to signing our contract. This generally takes about two weeks.

179. *Id.* at 26.

180. COLLABORATIVE PRACTICE MODEL, *supra* note 108, at 7.

181. *Id.*

182. *Id.*

D. Phased Treatment

[Tribal Healing to Wellness] Key Component #4: Treatment and Rehabilitation. Tribal Healing to Wellness Court provides access to holistic, structured, and phased alcohol and drug abuse treatment and rehabilitation services that incorporate culture and tradition.¹⁸³

[Drug Court] Key Component #4: Drug Courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.¹⁸⁴

Key Component #4 addresses the importance of a phased approach and continuum of services. A phased approach entails generally three to five phases, with specific requirements for each phase. Generally, the requirements of court appearances, drug testing, and check-ins with the coordinator decrease as the participant moves through the phases. The phases provide a continuum of care, which consists of providing various levels of needed treatment, including detox, residential, and outpatient care.¹⁸⁵ The phase structure must be clearly defined as participants have better outcomes when they understand the requirements for each phase.¹⁸⁶

Treatment is a critical part of each phase. Outcomes are better when evidence-based treatment is provided.¹⁸⁷ Thus, a treatment representative is a critical member of the team. Her participation on the team, throughout the phases, reduces criminal recidivism because her presence ensures information about the participant's progress is shared in a timely manner and treatment-related issues are taken under consideration as the team makes decisions.¹⁸⁸

Family Courts will benefit from a phased approach and a continuum of services. Child agencies are required to engage in reasonable efforts before the termination of parental rights, which includes providing appropriate services. If an Indian child is involved in state court, agencies are required to engage in active

183. TRIBAL HEALING TO WELLNESS COURTS, *supra* note 48, at iv (emphasis added).

184. DEFINING DRUG COURTS, *supra* note 48, at 7 (emphasis added).

185. *Id.* at 38.

186. 1 NAT'L ASS'N OF DRUG COURT PROF'LS, *supra* note 58, at 32.

187. *Id.* at 43.

188. *Id.* at 42.

efforts before the termination of parental rights.¹⁸⁹ These efforts include the provision of services, such as mental health, substance abuse, parenting classes, anger management or vocational services.¹⁹⁰ Once the problems faced by the family are identified, it is imperative the family have early access to an evidence-based assessment to fully identify what services are needed. Following this, the family must have access to the necessary treatment services.¹⁹¹ These services must be provided in a timely manner, given the time restraints of ASFA, especially because individuals and children affected by trauma “often require treatment for longer periods than many agencies can provide alone.”¹⁹²

The provision of services should not just focus on the parents. Critical services include family-centered services and services that promote parent-child relationships.¹⁹³ Assessment of children’s needs and the appropriate services are also critical.¹⁹⁴ Children of parents with substance use disorders are at higher risk of “poor developmental outcomes and developing their own substance use disorder. Understanding the type of exposure that the child experienced is critical to meet the child’s safety, prevention, intervention, or treatment needs.”¹⁹⁵ Services must target the full spectrum of the development stages.¹⁹⁶ Collaborative partners should ensure the children receive the following: comprehensive assessment and care coordination; medical care and services; mental health and trauma services; therapeutic child care; substance abuse education and prevention; and developmental services.¹⁹⁷ Collaboration is critical for families to be successful, as no one agency can or does provide these necessary services.

This is why collaboration, which brings together various resources, is necessary. “The Star Dancers” reminded us that the

189. Indian Child Welfare Act, 25 U.S.C. §§ 1901–1963 (2012).

190. See U.S. DEP’T OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, ACTIVE EFFORTS: FINAL RULE: INDIAN CHILD CUSTODY PROCEEDINGS, <https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/ois/pdf/idc2-041405.pdf>.

191. GUIDANCE TO STATES, *supra* note 118, at 22.

192. COLLABORATIVE PRACTICE MODEL, *supra* note 108, at 2.

193. See GUIDANCE TO STATES, *supra* note 118, at 26–27.

194. COLLABORATIVE PRACTICE MODEL, *supra* note 108, at 9.

195. *Id.* at 11 (internal footnote omitted).

196. *Id.*

197. *Id.*

grandparents' assistance was not enough and that families need various forms of help; thus collaboration was needed. Research and experience demonstrate that courts must address both the parent and the child, which requires a collaborative, interdisciplinary approach. Specifically, research and experience have demonstrated that the parenting role of both men and women with substance use disorders cannot be separated from treatment.¹⁹⁸ Effective treatment integrates parenting into the treatment curriculum.¹⁹⁹ Attachment-based treatment practices for parents and children, in residential and outpatient programs, have had positive outcomes for women and their children.²⁰⁰ Additionally, family-focused treatment improves treatment retention, parenting attitudes, and psychosocial functioning.²⁰¹ Research has also demonstrated that parents do better in treatment when their children are with them.²⁰² Interventions that focus on parents and children affected by substance use disorders save out-of-home costs.²⁰³ Without collaboration, the families will not receive the various forms of treatment needed.

Judge Edwards noted that the success of the Family Drug Courts was their ability to link with other services to address the numerous challenges their families face, and this needs to be the focus of Family Courts and their teams. This is critical to successful collaboration in all dependency cases. Families dealing with substance use disorders are often also in need of housing, educational, and vocational services. A critical component of case management is to assess these needs and determine when the parent is ready.²⁰⁴ A successful approach for team members is to move away from simply informing a participant to seek services from a specific agency, to a process that is "authentically connected." This is

198. CHILDREN & FAMILY FUTURES & NAT'L DRUG COURT INST., *TRANSITIONING TO A FAMILY CENTERED APPROACH: BEST PRACTICES AND LESSONS LEARNED FROM THREE ADULT DRUG COURTS 4* (2017).

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. See *DEFINING DRUG COURTS*, *supra* note 48, at 8-9.

an integrated network in which agencies function as equal partners with each other and with families. The purpose of an authentically connected partnership is to identify and address the complex interplay of needs that are common in families with substance use disorders in the child welfare system. Whereas a traditional referral is unidirectional (i.e., the agency refers the family member to an outside agency for services), an authentically connected referral network is multidirectional and incorporates the ideals of collaborative relationships, accountability, cultural competence, client-centered services, and holistic assessment.²⁰⁵

The engagement and retention efforts also include various efforts to streamline the system to help families receive timely treatment and support their progress in treatment. This includes partners understanding the various referral, engagement, and retention processes for treatment.²⁰⁶ If the process is not ensuring timely treatment, then the partners must work to change and measure the cross-system processes.²⁰⁷ Partners should also recruit and train staff who specialize in outreach to help families become involved in the needed services. Additionally, they should use motivational approaches and monitor recovery and aftercare.²⁰⁸ The partners can also jointly monitor the families' progress through case management, counseling, testing, and family support programs.²⁰⁹

In the context of Family Court, the typical services are not the only resources important to families. Visitation is a critical component to each family's success.²¹⁰ Visiting every two weeks for one hour is not sufficient and is not how one maintains a parent-child bond.²¹¹ Increasing visitation to three or four days a week demonstrates a shift in perception from removing children from parents involved in substance use toward reunification.²¹²

We are very fortunate that we have many services available to our Tribe and our team and can provide a continuum of services

205. COLLABORATIVE PRACTICE MODEL, *supra* note 108, at 21.

206. *Id.* at 9.

207. *See id.*

208. *Id.*

209. *Id.*

210. FINAL SYNTHESIS AND SUMMARY REPORT, *supra* note 15, at 12.

211. *Id.*

212. *Id.*

within our four phases. We are the only Tribe east of the Mississippi to have an inpatient facility, the Partridge House, on our Territory. Frequently, participants will graduate from Partridge House and immediately begin working with our Healing to Wellness Team. This helps ease the transition back into the community and their family, as our coordinator and case manager can give them the support they need, and frequent drug tests and court appearances help them resist triggers to begin using again. After they graduate from Partridge House, they begin aftercare with our Alcohol and Chemical Dependency Program. Participants also come to us while finishing the outpatient program at our Alcohol and Chemical Dependency Program. Infrequently, we have participants who are using nontribal treatment programs, but we find this challenging as the sharing of information is more difficult because these programs are not team members.

To graduate from Healing to Wellness Court or Family Treatment Court, participants complete four phases. Each phase is at least ninety days. After ninety days have passed, participants may apply to move into the next phase once they have had a series of negative drug tests; consistently attended their counseling sessions, group sessions, and three Alcohol or Narcotics Anonymous meetings a week; and completed ten hours of community service. Participants must apply to move to the next phase by writing thoughtful answers to questions about their recovery. With each subsequent phase, the frequency of drug tests and court appearances are reduced. It is this phased process that helps our participants learn to live in recovery as we slowly remove the required court appearances and drug tests that have helped them stay sober, while simultaneously helping them continue to build their support system in the community.

E. Support and Supervision

[Tribal Healing to Wellness] Key Component #5: Intensive Supervision. *Tribal Healing to Wellness Court participants are monitored through intensive supervision that includes frequent and*

*random testing for alcohol and drug use, while participants and their families benefit from effective team-based case management.*²¹³

[Drug Court] Key Component #5: *Abstinence is monitored by frequent alcohol and other drug testing.*²¹⁴

This Key Component focuses on monitoring participants with intensive supervision, such as check-ins with the coordinator, case manager, or probation office; random home visits; and drug testing. This holds participants accountable and ensures the timely provision of services. The provision of services is also monitored as team members report at staffings whether participants have been attending required counseling, group sessions, meetings, and classes and whether they are engaged in the services. Critically, this monitoring is done through team-based case management. Without a collaborative team approach to monitoring and case management, participants and families can quickly fail to complete the necessary program or treatment that will help them successfully reunite with children. Sending parents and/or children off to treatment is not enough—increased case management of the services and compliance is necessary.²¹⁵ Without proper case management, the family struggles through the services on their own. They also do not have any assistance with finding employment, housing, or improving their parenting skills.

Collaborative supervision assists with the “[l]ow motivation, denial, and resistance [that] are common characteristics of persons with a substance use disorder.”²¹⁶ Individuals need at least ninety days in treatment “to significantly reduce or stop their drug use and . . . the best outcomes occur with longer durations of treatment.”²¹⁷ Through collaborative efforts, partners share the responsibility of helping families engage throughout this process. “The primary purpose of engagement activities is to improve access to and retention in substance abuse treatment and other community services for families in the child welfare system.”²¹⁸ These efforts need to be made in a timely manner, as timeliness is

213. TRIBAL HEALING TO WELLNESS COURTS, *supra* note 4948, at 40 (emphasis added).

214. DEFINING DRUG COURTS, *supra* note 48, at 11 (emphasis added).

215. See GUIDANCE TO STATES, *supra* note 118, at 25-30.

216. COLLABORATIVE PRACTICE MODEL, *supra* note 108, at 9.

217. *Id.*

218. *Id.*

critical for families involved in the child welfare system. As discussed above, ASFA requires reunification or an alternative permanent plan within twelve months of removal. If treatment is not timely, or partners do not work with the parent to encourage engagement and retention in treatment, these timelines will not be met and the children will suffer the consequences. Courts should take this into account if they are imposing jail time for violations of court orders in dependency cases.

Drug testing must be frequent and random to ensure that substance and alcohol use is detected quickly and reliably.²¹⁹ Urine testing should be conducted at least twice a week until “participants are in the last phase of the program and preparing for graduation.”²²⁰ Random tests includes testing on week nights and weekends, which can be difficult for some programs but ensures that monitoring is consistent.²²¹ The test should monitor for all unauthorized substances, and periodically specimens should be tested for a broader range of substances.²²²

This component will truly change how Family Courts work, as frequent monitoring will foster success. Our Family Drug Court participants come to court once a week and check in with our case manager or coordinator once a day during Phase One, which is at least ninety days. It’s not a check-in to just say hello. Our case manager is following up on what appointments were kept, which ones were missed, how visits with children went, how the participant is feeling, including how the participant is dealing with a particular challenge, such as finding a new place to live. In addition, the participants are generally seen by the case manager three times a week for drug testing. Testing is done randomly and for a wide range of substances—possibly even more if the case manager is conducting a home check or providing a ride. In addition, the case manager is checking in with the social services case worker. And, during our team meetings, reports will be made by our treatment representative, along with other team members who may have information on the participant. All of this information is managed by the coordinator, who keeps track of the

219. 2 NAT’L ASS’N OF DRUG COURT PROF’LS, *supra* note 55, at 26.

220. *Id.*

221. *Id.*

222. *Id.* at 27.

information and updates the team during the week, if necessary, and at meetings. This supervision quickly holds our participants accountable for their actions. With this supervision, including drug tests, we ascertain problems more quickly, such as a need for an increase in treatment, or a mental health assessment, rather than waiting until the participant has a crisis.

F. Discipline and Encouragement

[Tribal Healing to Wellness] Key Component #6: Incentives and Sanctions. *Progressive rewards (or incentives) and consequences (or sanctions) are used to encourage participant compliance with the Tribal Healing to Wellness Court requirements.*²²³

[Drug Court] Key Component #6: *A coordinated strategy governs drug court responses to participants' compliance.*²²⁴

The focus of Key Component #6 is to help participants reach the ultimate goal of abstinence, while also understanding that relapses will occur, as it is the nature of addiction.²²⁵ Teams use a variety of incentives to reward positive behavior and progress toward maintaining abstinence. Therapeutic sanctions are used to reprimand any negative behavior, such as missing appointments, being late to court, or positive drug tests. If a participant has continuous negative behaviors, the team may recommend a new assessment.

This approach is an important aspect of Family Drug Courts.²²⁶ Positive behavior and progress can be rewarded, while negative behavior, such as failing to show up for visits or missing appointments with a case worker, are sanctioned. However, the sanction should involve participant learning. Sanctions should also be progressive. For goals that are difficult to obtain – such as obtaining employment – the sanctions increase in seriousness over successive infractions.²²⁷ For goals that are relatively easy to accomplish – such as attending required treatment, counseling, or parenting sessions or being truthful – more severe sanctions may be given after only a

223. TRIBAL HEALING TO WELLNESS COURTS, *supra* note 48, at 50 (emphasis added).

224. DEFINING DRUG COURTS, *supra* note 48, at 13 (emphasis added).

225. Andrew Cassady, *Can the Risk of Relapse, in an Addiction Context, Constitute a Current Disability for Purposes of Long-Term Disability Plans?*, 82 U. CIN. L. REV. 927, 935 (2014)

226. 1 NAT'L ASS'N OF DRUG COURT PROF'LS, *supra* note 58, at 26.

227. *Id.* at 27.

few infractions.²²⁸ However, sanctions are not given if participants are compliant with treatment but not responding, as this requires a reassessment.²²⁹ Research has found that the most effective sanctions are in the intermediate range, as weak sanctions can cause habituation and severe sanctions can lead to ceiling effects, meaning the program runs out of sanctions before treatment has had a chance to take effect.²³⁰ How sanctions and incentives are used need to be in written policies and procedures, and provided to participants as well as team members.²³¹ Participants should be given an opportunity to be heard when they are facing a sanction, and sanctions should be delivered in a professional demeanor by the judge.²³²

Incentives will help Family Court participants as well. Research has demonstrated that participants have better outcomes when Drug Courts “focus as much on incentivizing productive behaviors as they do on reducing undesirable behaviors.”²³³ When parents appear in court only every six months, it’s impossible for courts to have a real impact on reducing negative behavior and increasing positive behavior. More frequent appearances allow the courts to truly witness progress and understand through team input what is causing the negative behaviors. More frequent appearances also allow the courts to more readily reward positive behavior and more quickly address negative behavior.

Our team uses a variety of sanctions and incentives, which can be easily used by Family Courts. For example, as a sanction our team often uses essays because they require the participant to think about his actions that caused the sanction. We have also held participants back from moving onto the next phase or imposed additional community service hours. To reward positive behavior, when participants have a good week and complete all their weekly requirements, we allow them to draw out of a box filled with goodies, including toiletries and snacks. When we began using the box, we did not know how significant an impact it would have. But

228. *Id.*

229. *Id.*

230. *Id.* at 30.

231. *Id.* at 26.

232. *Id.* at 26–27.

233. *Id.* at 31.

we quickly found that participants loved drawing out of the box. We also use simple incentives, such as the judge complimenting the participant or team members congratulating participants for their progress. My experience is the incentives have a better and longer impact than the sanctions. Many of our participants have been unsuccessful for years, and as we reward their progress they begin to see that they can be successful, accomplish goals, and change the trajectory of their lives.

Since our participants initially come to court weekly, and then monthly during the final phase, we can respond quickly with sanctions and incentives. Whereas our participants only go to County Family Court once every six weeks for their dependency cases. We've found that this length of time has a negative impact on the participants. If the Family Court judge has received a negative report regarding any issue, generally the behavior has been addressed by case workers or our team. But despite the lapse of time and the correction of the behavior, the Family Court still sanctions the participants. When participants are sanctioned in an untimely manner and have worked to correct the behavior, the sanction tends to set participants back and make them feel like their work is pointless. Whereas with our frequent appearances and coordinated supervision, we are able to respond quickly and act accordingly to help participants quickly realize the problem behavior and be held accountable. Thus, using a Drug Court approach in Family Courts will help participants because any sanctions or incentives will happen in a timely manner.

G. The Judge's Role

[Tribal Healing to Wellness] Key Component #7: Judicial Interaction. *Ongoing involvement of a Tribal Healing to Wellness Court judge with the Tribal Wellness Court team and staffing, and ongoing Tribal Wellness Court judge interaction with each participant are essential.*²³⁴

[Drug Court] Key Component #7: *Ongoing judicial interaction with each drug court participant is essential.*²³⁵

234. TRIBAL HEALING TO WELLNESS COURTS, *supra* note 48, at 58 (emphasis added).

235. DEFINING DRUG COURTS, *supra* note 48, at 15 (emphasis added).

This is the only Key Component focused on one team member and has its own section with NADCP's Best Practices, which gives us an indication of its importance. It's interesting to note that the Tribal Key Component includes the judge's interaction with the team, which is also found by the research to be critical, but the Drug Court Key Component is silent on this aspect of interaction. Nonetheless, at Tribal Healing to Wellness trainings, we continually focus on the importance of the judge leading his or her team and participating in staffings. The research has demonstrated that participants have more success when judges participate in staffings.²³⁶ The judge leads the team, which meets at least biweekly, in staffings where the progress of the participant is reviewed. The judge then interacts directly with the participants in court hearings. "In a study of nearly seventy adult Drug Courts, outcomes were significantly better when the judges spent an average of at least three minutes, and as much as seven minutes, interacting with the participants during court sessions."²³⁷

This approach can be used whether the parent is dealing with substance or alcohol use, mental health issues, or simply bad parenting. Services are overseen by the judge, which provides increased oversight instead of a check-in at six months, which is often too late.²³⁸ The judge plays a critical role by having more frequent hearings to monitor the progress of the families and works with a team to determine whether changes need to be made in the provision of services or what obstacles are hindering the parents from reaching their goals. The judge plays the role of an encourager but also ensures accountability. The judge focuses on the strengths of the parents and families and encourages them to use those strengths to continue to work on their addiction or other issues. Judge Edwards noted that even when a participant was not in his Family Drug Court, using more court oversight was important to the participant's success.

I was also able to bring that parent back to court for frequent interim reviews in an effort to monitor progress and give the

236. 1 NAT'L ASS'N OF DRUG COURT PROF'LS, *supra* note 58, at 22.

237. *Id.* at 23.

238. GUIDANCE TO STATES, *supra* note 118, at 22, 26.

parent encouragement. The intensity of court oversight has proven effective in these cases. No longer are there six-month reviews when the parent has done little or nothing on the case plan and comes to court to discover his or her parental rights are significantly at risk.²³⁹

It is also important for the judge to lead using a problem-solving approach with the team. The National Council for Juvenile and Family Court Judges (NCJFCJ) has called for a more problem-solving, restorative approach and highlighted the core assumptions. These core underlying assumptions of problem-solving are consistent with NCJFCJ's Key Principles of Permanency, the Resource Guidelines, and the spirit of ASFA.²⁴⁰ First, judges must be active participants in the problem-solving process.²⁴¹ This is done by staffing the cases with the team, focusing on the issues presented by the team, and then leading the team in developing a plan with the participant to address the problem. The judge is also critical in his or her interaction with participants in court, reviewing their successes and challenges, encouraging the parents, holding them accountable, and rewarding their successes. The second underlying assumption is that "[c]ourts can, and should, play a role in solving the underlying problem."²⁴² The alternative is the judge and court play the traditional role, leading to a review every six months, which in many cases is too long. The third assumption is that outcomes matter, not just process and how things were previously done.²⁴³ Fourth, "[t]he courts' coercive power can change people's behavior,"²⁴⁴ which we learned through the use of sanctions and incentives. The final assumption of problem-solving is that courts cannot carry out problem-solving alone; collaboration is a key ingredient to successful problem-solving.²⁴⁵ Thus, the judge cannot be successful alone but needs the support of a team.

Our participants know that Healing to Wellness Court and Family Treatment Court are different from their past court

239. EDWARDS, *supra* note 96, at 3.

240. FACILITATING CHANGE IN THE COURT AND CHILD WELFARE SYSTEM, *supra* note 160, at 13.

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

experience. I spend time asking the participants about their week, what they learned at various appointments, time spent with children or other family members, and any challenges they are facing. I've found that this helps me to understand the participants more. I'm cautious about giving advice, as I mostly leave that to their counselors. But I often remind them of their value to our community. I ask open-ended questions, as I am looking for real answers, not just yes or no answers. If I know a participant has made a mistake, I will ask generally about what happened to give him or her an opportunity to take responsibility. As for the team, the success of our participants is due to our team. I make sure I know any of their concerns and value their very different perspectives. I make sure to elicit everyone's view point. Often, we come to a unanimous decision, though sometimes it is a compromise. But either way, we go into court as a unified team, ready to support the team's decision. I handle several other dockets, which do not benefit from a team of experts, but often I could utilize the team approach in these dockets.

H. Monitoring and Evaluation

[Tribal Healing to Wellness] Key Component #8: Monitoring and Evaluation. *Process measurement, performance measurement, and evaluation are tools used to monitor and evaluate the achievement of program goals, identify needed improvements to the Tribal Healing to Wellness Court and to the tribal court process, determine participant progress, and provide information to governing bodies, interested community groups, and funding sources.*²⁴⁶

[Drug Court] Key Component #8: Monitoring and evaluation *measure the achievement of program goals and gauge effectiveness.*²⁴⁷

Component #8 focuses on the importance of evaluation to measure effectiveness and is applicable to teams in Family Court. Evaluation is an important component in successful collaboration because measuring one's outcomes that were determined together holds the team jointly accountable. In developing their shared outcomes, partners need to think and discuss for the family member various measurement methods that are not simply whether the

246. TRIBAL HEALING TO WELLNESS COURTS, *supra* note 48, at 64 (emphasis added).

247. DEFINING DRUG COURTS, *supra* note 48, at 17 (emphasis added).

family has received services. “Shared performance indicators or benchmarks will allow the partners to measure the partners’ *joint* impact on their systems, and to determine how much a single project may be affecting outcomes across an entire system”²⁴⁸ Of course, once outcomes are established, partners must work together to hold themselves accountable and monitor their outcomes.²⁴⁹ This is done through various forms of evaluation. Regardless of the type of evaluation, the feedback must be incorporated or the evaluation is a wasted process.

Evaluation is rarely a team’s favorite activity, especially when we all have demanding jobs that require our attention elsewhere. But our team tries to make time to assess our progress. Our coordinator collects and monitors our statistics. In fact, we started our Family Treatment Court after the coordinator noted that a participant in our Healing to Wellness Court had an adult child who also became a participant. Now with our Family Treatment Court, the coordinator has noted that all of our participants have had parents who dealt with substance use disorders. All this helps the team help the participant but also determine other ways to serve our community. We also monitor our graduation rate and periodically review our policies and procedures. Each of these forms of evaluating and monitoring our performance is critical to our success.

I. Continuing Education

[Tribal Healing to Wellness] Key Component #9: Continuing Interdisciplinary and Community Education. *Continuing interdisciplinary and community education promote[s] effective Tribal Healing to Wellness Court planning, implementation, and operation.*²⁵⁰

[Drug Court] Key Component #9: Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.²⁵¹

Whether a Family Drug Court or a Family Court team, continuing interdisciplinary education is necessary. Bringing a

248. COLLABORATIVE PRACTICE MODEL, *supra* note 108, at 23.

249. *Id.*

250. TRIBAL HEALING TO WELLNESS COURTS, *supra* note 48, at 70 (emphasis added).

251. DEFINING DRUG COURTS, *supra* note 48, at 21 (emphasis added).

group of people together and using a collaborative process is not the end. Team members change, and all team members need continual training. Obviously, the focus of Drug Court interdisciplinary training is dealing with participants who are struggling with alcohol and substance use disorders. The focus of training for teams in Family Courts will be broader and include more than addiction, but interdisciplinary training is still necessary. Team members need to know how other team members and agencies function. This knowledge helps individuals function better as team members, as they understand a little bit more about their teammates' perspectives and requirements in their jobs. This helps prevent conflict and builds understanding about each agency's capacity. It's also important for team members to be trained on the court process, so they understand where the participants are in the court process. The goal of cross-training programs should be for the partners to understand how substance use, mental disorders, and other issues affect child safety and the family.²⁵² Teams should not assume that individual staff members received this knowledge during school or their individual agency training programs. Many of these service providers also have high turnover rates; as such, it is important to continually train staff.

However, training by itself, without policy changes to reinforce the content of the training, simply gives front-line staff more skills and, possibly, different attitudes. Without incentives or supervision to use what they have learned, front-line staff members revert to their previous single-system approaches without tapping the expertise available through the collaborative.²⁵³

Policy changes must be supported and maintained with continual training for staff to maintain and strengthen the changes.²⁵⁴

Our team continually attends regional and national trainings. Funding for travel is always a challenge, but I've made it a priority for our Court. Our team benefits from learning about the most current research and practices. It is also important for us to cross-train and understand other team member roles. As a team, we take time to understand how each agency works. I often will ask team

252. COLLABORATIVE PRACTICE MODEL, *supra* note 108, at 19.

253. *Id.*

254. *Id.*

members to share how a process works in their agency. More importantly, it helps us understand the various roles and requirements of different disciplines. Also important is that we take time to do team-building activities. Sometimes it's simply a meal together while we're at a conference, but it's important because it helps us get to know one another and create shared memories and develop friendships.

J. Team Interaction

[Tribal Healing to Wellness] Key Component #10: Team Interaction. *The development and maintenance of ongoing commitments, communication, coordination, and cooperation among Tribal Healing to Wellness Court team members, service providers and payers, the community and relevant organizations, including the use of formal written procedures and agreements, are critical for Tribal Wellness Court success.*²⁵⁵

[Drug Court] Key Component #10: Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.²⁵⁶

The focus of this component is that a successful collaborative approach does not stop with the team. Heads of agencies need to be committed to the process. And the community, including the government, needs to be committed to the process. This will be no different in a Family Court that uses a collaborative process. Successful collaboration does not stop within the team and the immediate services provided to families. Successful collaboration also works with the community to support families. Support services extend beyond treatment services. Examples of these types of services are (1) "[r]ecovery management and recovery community services such as self-help, recreational activities, and drop-in supportive centers"; (2) "[m]utual aid and peer supports"; (3) "[f]amily strengthening through neighborhood-based parenting supports"; (4) child care, which can include temporary respite care; and (5) "[f]aith-based organization support."²⁵⁷ For Tribal Family Courts, this also includes the various cultural organizations/

255. TRIBAL HEALING TO WELLNESS COURTS, *supra* note 48, at 74 (emphasis added).

256. DEFINING DRUG COURTS, *supra* note 48, at 23 (emphasis added).

257. COLLABORATIVE PRACTICE MODEL, *supra* note 108, at 13.

systems in place in the community that support families and teach parenting and family relations. The goal of these types of services is to assist parents in reengaging with family members, friends, and community members.²⁵⁸ This strengthens support for the parent to assist him or her with recovery and avoid possible relapse.

Part of this component is also ensuring that the court and team's governance structure is in place to promote and ensure commitment and sustainability. Two critical steps are a Memorandum of Understanding (MOU) and an Oversight Committee. MOUs from each agency participating on the team ensure commitment. Agency directors and staff often change, and an MOU ensures continued participation on the team, despite these turnovers. The court and team should also consider using an oversight team, in addition to the team that is involved in the field and meetings for weekly or biweekly staffings. An oversight or advisory team consists of the judge and leaders from each of the involved agencies. The oversight team ensures commitments from agencies and oversees policy issues as to how the team operates, while the team consisting of those working with the families focuses on helping families be successful.

Our Healing to Wellness Court and Family Treatment Court would not exist but for the support of the community. The town and county courts outside our Territory collaborate with us and support us by referring participants. By doing so, the courts acknowledge that participants in our courts actually improve their chances of success on probation or being reunited with their children. Our coordinator ensures the community knows about us by participating in annual Wellness Days, other community events, and presentations for various programs. We have support of our Tribal Council in the form of a Tribal Council Resolution. And currently one of the Chiefs on our Tribal Council is a former Healing to Wellness Court team member.

VII. CONCLUSION

The story "The Star Dancers" reminds us of the importance of community, culture, and collaboration in building resilient families. Drug Courts and Healing to Wellness Courts incorporate

258. *Id.*

community, culture, and collaboration as they work toward helping families battling alcohol and substance abuse disorders to live healthy lifestyles and become resilient families. As demonstrated by the discussion on building a team, collaboration is the key. Judge Edwards noted that in his Drug Court, he was unable to predict by observation who would be successful in his Family Drug Court.²⁵⁹ Although we can screen and assess to determine whether a person is eligible, there is not a test to determine success. But no child is less important than any other. Each child deserves a chance to have his or her family become successful and healthy and learn how to address the problems the parents battle. The current process found in Family Court orders a family to attend certain times of counseling or classes and to check-in with the court six months later. During those six months, the parents struggle to attempt to accomplish those tasks, while trying to work and parent, often doing it while they've had a child removed. Judge Edwards notes,

Failure can result in a loss of parental rights. With cookie-cutter services, no engagement strategies, and minimal support, it is no wonder that many parents fail to reunify with their children. . . . If we are interested in giving parents a fair opportunity to reunify with their children, FDC should be a part of the dependency court process.²⁶⁰

We need to move the Family Court process away from this cookie-cutter approach and toward the interdisciplinary approach used by Drug and Healing to Wellness Courts. Child abuse services and courts alone are not equipped to help families. They need a team of experts, collaborating together, using the resources of their culture and community. Together, they can strengthen and build resilient families.

259. EDWARDS, *supra* note 96, at 3.

260. *Id.*