



National Drug Court
Resource Center

Tribal Healing to Wellness Courts

Inaugural Survey of the Field

Kristen DeVall, Ph.D.
Christina Lanier, Ph.D.
Lindsay J. Baker, M.A.

2022



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Introduction

The consequences of substance use are exacerbated by social and environmental factors that negatively impact tribal communities such as historical trauma, pollution, limited access to educational and employment opportunities, and a lack of adequate health care (Cunningham et al., 2016). This is particularly true for those who experience an alcohol use disorder. The alcohol-related death rate among the American Indian/Alaskan Native (AI/AN) population is nearly *five times* that of all other U.S. racial groups combined (Burwell et al., 2014). Likewise, the AI/AN drug-related death rate is nearly twice as high as that of other racial/ethnic groups in the U.S. The 2014 edition of *Trends in Indian Health* (Burwell et al., 2014) reveals that substance-related death rates among the AI/AN population have remained relatively high over the last several decades, but AI/AN individuals tend to receive very few opportunities for treatment compared to other demographic groups (Chartier & Caetano, 2010).

Instead of receiving treatment for substance use disorders, AI/AN individuals may end up facing incarceration for drug/alcohol-related offenses. Data from the Bureau of Justice Statistics indicate that jails in Indian Country held about 2,870 individuals at mid-year in 2018, a 107% increase from the year 2000 (Minton, 2019). About 16% of those were in jail for public intoxication, while an additional 10% were in jail for a drug offense. To address substance use disorders in tribal communities and prevent the incarceration of those who would benefit from treatment, a number of Native American tribes have instituted Tribal Healing to Wellness Courts (THWC) as culturally appropriate treatment responses. What follows is a brief history of THWCs, a discussion of the structure, objectives, and guidelines, as well as a review of the current research on these courts, and suggestions for future research.

History of Tribal to Healing Wellness Courts

In the United States, Native American tribes oversee their own tribal courts which address civil and criminal disputes that take place on tribal land. Decisions from the Supreme Court have only affirmed the sovereign power of tribes over time, upholding the notion that “internal affairs, including internal disputes, are exclusively within jurisdiction of tribal government” and that their power does not derive from that of Congress (Wilkinson, 2015, p. 70). Tribal courts thus give Native American tribes the space to craft a “unique jurisprudence” which may align more with their tribal traditions and cultural identities. However, although tribal courts distinguish themselves from non-tribal courts in the U.S., many have adopted some of the “western” laws and procedures to participate in expanded jurisdictional agreement and authorities and better manage increasing caseloads. One example of this is the rise in legislation that has increased the severity of punishment allowed in tribal courts for substance-related offenses. Such legislation has resulted in an overrepresentation of Native Americans in the justice system, meaning that Native Americans who receive a drug or alcohol related charge are typically criminalized and end up incarcerated. However, it is well-known that adversarial approaches to those with substance use disorders, such as the use of “standard law enforcement and corrections policies” that characterize the criminal justice system, are not a substitute for treatment (Flies-Away et al., 2014, p. 1).

Recognizing the limited benefits of adversarial approaches to substance use disorders in the early 1990s and 2000s, tribal communities expressed an interest in the treatment court movement taking place during this time period. They were specifically interested in the way in which these courts could address the severe alcohol use-related problems in their communities (Flies-Away et al., 2014). As a result of tribal interests in treatment courts, the Drug Court Program Office, Office of Justice Programs, and the U.S. Department of Justice offered programs to help tribal communities plan and implement their own treatment court models within their tribal courts. From there, the National Association of Drug Court Professionals (NADCP) created a culturally sensitive training program for tribes who had received treatment court funding. These efforts culminated in the first operational THWC beginning in Fort Hall, Idaho in 1997.

For many tribal governments, the development of THWCs were viewed as a “natural progression” of tribal courts, as THWCs advance the goals of restorative justice that are central to indigenous tradition (Flies-Away et al., 2014, p. 10). However, THWCs are more than just tribal courts that handle cases involving substance use. THWCs take a therapeutic approach to healing that emphasizes holistic care while recognizing

the “unique strengths, circumstances, and capacities” of each tribal nation (2014, p. 3). Unfortunately, since their development over two decades ago, sustaining proper funding has been one of the principal challenges for THWCs. Most courts must rely on funding from U.S. government agencies as a result of limited tribal resources, meaning very few THWCs maintain full financial autonomy over themselves. A lack of funding for THWCs has resulted in few comprehensive studies of wellness courts, prompting a need for future evaluation efforts.

Tribal to Healing Wellness Court Structure, Objectives, & Guidelines

THWCs, also referred to as Wellness Courts, mirror many aspects of the original drug treatment court model. For example, depending on the court, a participant may enter the THWC at the pre-plea, post-plea, or post-sentence phase of the court process. Prior to joining the court, participants must also go through a screening process to make sure they meet eligibility criteria. Once a participant is accepted into the THWC, they are subject to months of intense supervision which includes frequent, random drug screens, regular court hearings, and frequent contact with case management teams. Participants will also participate in other personal development activities during their phased-treatment plans until they graduate from the program. If a participant does not meet program requirements, they will have their case processed through the traditional criminal justice system.

Within a THWC program, court teams help participants create “wellness” plans that include counseling requirements, life skills courses, and other activities that promote holistic wellness (Flies-Away & Garrow, 2013, p. 413). Wellness plans also incorporate participation in cultural activities to connect participants with indigenous tradition, which is what sets THWCs apart from other treatment court models. Flies-Away et al. (2014, p. 20) describe THWCs as “a modern revitalization of guiding Native principles” such as honor, respect, harmony, and rehabilitation. Thus, to restore the families and nations impacted by substance-use related crimes, THWCs make it a priority to involve members of the community, extended family members, and traditional Native people in court processes.

THWCs also utilize traditional treatment modalities in their programs which may include restorative talking circles, peacemaking ceremonies, and/or visits with a healer/medicine man. Sanctions and incentives may also be culturally specific. The kinds of culturally specific treatment modalities and incentives/sanctions offered to wellness court participants ultimately depends on the practices and traditions of individual tribes. Of course, despite how holistic and culturally sensitive wellness plans are, the many expectations and responsibilities associated with court participation make THWCs worthwhile yet challenging programs. THWCs ultimately aim to balance the “coercive power” of the criminal justice system with holistic healing efforts to help participants achieve abstinence from drugs and alcohol while simultaneously advancing the broader goals of the community (Flies-Away et al., 2014, p. 3).

Like other treatment court types, THWCs adhere to their own unique 10 Key Components that require courts to treat, rehabilitate, supervise, and monitor participants through collaborative team-based approaches that rely on the use of graduated incentives and sanctions. The 10 Key Components also address the need for individual and community healing through increased accountability measures. THWCs are thus tasked with undoing “the psychic impacts of U.S. colonialism” by connecting participants with cultural tradition as part of their healing journey which simultaneously advances “the larger project of tribal-nation building” (Aseltine & Antunes, 2021, p. 196). Below is a list of the 10 Key Components of Tribal to Healing Wellness Courts from the Tribal Law and Policy Institute (Flies-Away et al., 2014). It is important to recognize that the 10 Key Components of THWCs were “crafted to serve the needs of tribal communities and integrate basic community and nation building concepts” (Flies-Away & Garrow, 2013, p. 403).

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.

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.

Key Component #3: Screening and Eligibility. Eligible court-involved substance-abusing [*sic*] 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.

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

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.

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.

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.

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.

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

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.

Effectiveness of THWCs

Overall, there is a lack of scholarly research regarding the effectiveness of THWC programs in the United States. However, Gottlieb et al. (2005) were some of the first to conduct thorough process and outcome evaluations of four THWCs funded under the BJA's Tribal Drug Court Initiative: The Blackfeet Alternative Court (adult), the Fort Peck Community Wellness Court (juvenile), the Hualapai Wellness Court (adult and juvenile), and the Poarch Band of Creek Indians Court (adult). These four wellness courts were described as "pioneers" for future wellness courts and were thus characterized by much "trial-and-error" (2005, p. 6).

The four courts in Gottlieb et al.'s (2005) study were different in their experiences with program implementation, but each court started out with enthusiastic team members eager to reduce the prevalence of substance use disorders in their tribal communities through holistic, spiritual healing. Wellness court participants seemed to recognize the sincerity and willingness of court team members and responded favorably to this positivity. However, the courts also experienced communication issues among staff members (specifically between court staff and treatment providers), and all but one court struggled with high staff turnover rates which damaged the treatment court team environment. Staff tended to emphasize the need for a judge that acted as a "team player" that could keep the court together when the team started to lose direction (2005, p. 11).

From the perspective of participants, most adults and juveniles who entered the THWCs to escape a prison sentence did not fully understand the time commitment of the program, nor did they understand court requirements. With that, the use of sanctions and incentives was inconsistent in all four courts. Jail time in particular was also frequently used as a sanction by most of the courts and some participants spent more time in jail while in the program than they would have had they opted to serve their sentence. Fortunately, despite a limited initial understanding of what the courts required of them, participants did seem to appreciate the structure the THWCs provided through classes, counseling, court, and mandatory drug/alcohol tests. They also appreciated the spiritual elements of court and the “integration of cultural traditions” in program operations (2005, p. 10).

In their communities, the goals of the THWCs were largely unknown despite community outreach attempts from the tribal courts. This resulted in three of the four THWCs shutting down after funding from the Drug Court Program office ceased. However, although the three courts that closed could be deemed “unsuccessful,” THWC team members and participants viewed the courts as a success and emphasized that “small successes counted, too” (2005, p. 11). Three-year follow-up data from the courts revealed that across all adult treatment courts, participants had a 50% to 64% recidivism rate, while the rate for juvenile courts reached about 90%. Follow-up data also showed that graduates and non-graduates were equally likely to have post-program drug/alcohol arrests, but graduates took longer to reoffend than non-graduates. Additionally, there were no recidivism differences between men and women. Re-offenses were usually for public intoxication or disorderly conduct, two offense types that are typically treated as petty infractions outside of THWCs. However, in THWCs, these offenses are viewed as crimes requiring a court intervention. Thus, the authors suggest that recidivism in these courts may be more indicative of a relapse than “committing the same crime after treatment” (2005, p. 13). Gottlieb et al. (2005) ultimately found it difficult to make conclusions about THWC effectiveness due to a general lack of data maintained by the courts in their study.

In addition to Gottlieb et al.’s (2005) study of THWCs, Zil et al. (2014) conducted a process and outcome evaluation of Cass County/Leech Lake Band of Ojibwe Wellness Court (CCDWI). In contrast to the court types examined by Gottlieb et al. (2005), the CCDWI specifically targets individuals charged more than once with DWI who voluntarily agree to participate in the program. Based on the evaluation, the CCDWI “demonstrates good practices within each of the 10 Key Components” specific to THWCs and DWI courts (2014, p. 1). For example, the court’s use of team approaches to treatment was evident, as was the high quality of interaction between the judge and court participants during their hearings. The court also implemented culturally specific programming for participants. In addition to examining the integration of the 10 Key Components into the daily processes of the THWC, the evaluation team made comparisons between the outcomes of CCDWI participants and individuals who experienced traditional court processes. They found that regardless of whether CCDWI participants successfully completed the program, the CCDWI group experienced fewer rearrests than the comparison group during the follow-up period. Specifically, the CCDWI participants had 33% fewer arrests than the comparison group 2 years after entering the program. Time to rearrest was also longer for the CCDWI group, who typically faced rearrest at an average of 22 months following program entry as opposed to the comparison group’s average of 18 months.

The cost evaluation that accompanies Zil et al.’s (2014) evaluation of the CCDWI court is also encouraging. In comparison to traditional justice system handlings of individuals charged with a DWI, the CCDWI program had a cost savings of almost \$9,000 per participants over a two-year period. In the long-term, the court is expected to experience a 113% return on investment, representing a 1:1.13 cost-benefit ratio (2014). The evaluation team thus concluded that “the program should continue” in its efforts to serve the high-risk/high-need DWI population in their area given the positive impact the court has on recidivism rates for participants and the overall return on investments (Zil et al., 2014, p. 72). While the CCDWI court and the four tribal courts evaluated by Gottlieb et al. (2005) are not necessarily comparable, both studies indicate the potential for THWCs to elicit reductions in recidivism among participants and create potential financial savings for taxpayers.

Enhancing Practitioner Knowledge and Capacity

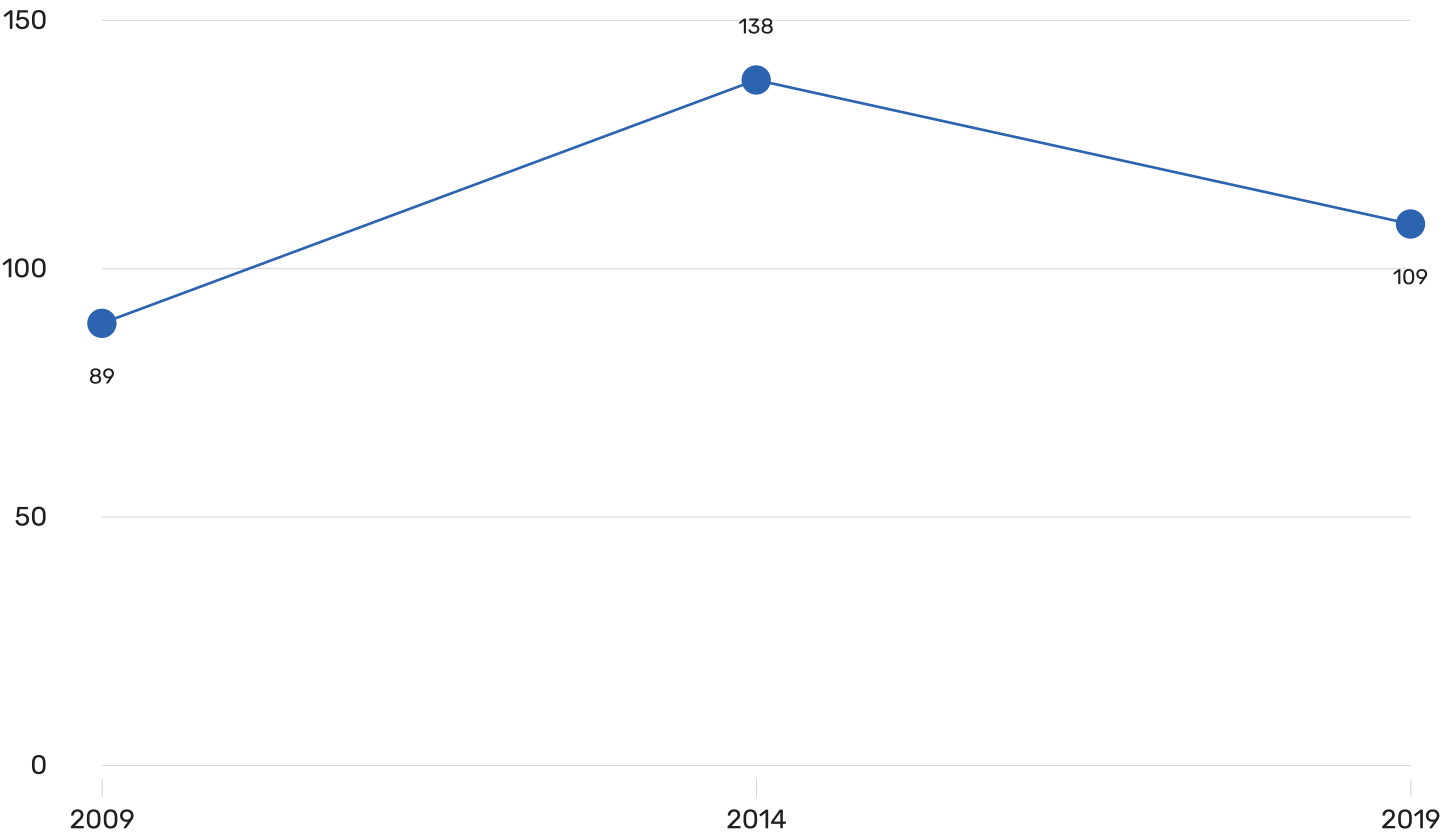
While the evaluations from Gottlieb et al. (2005) and Zil et al. (2014) provide some evidence that THWCs reduce recidivism among participants and result in cost savings, there is still a lot to learn about THWCs. For example, Gottlieb et al. (2005) noticed a difference in post-program re-offense rates between adult court participants and juvenile participants. More knowledge is needed related to measures of motivation to understand why success rates might differ between participants, particularly adult participants and juvenile participants. Additional process and outcome evaluations are also necessary to understand the impact THWCs have on both short- and long-term recidivism rates among participants.

In addition, data-driven examinations of the internal processes of THWCs are needed. This could result in the development of core standards of care, the use of cultural tradition in day-to-day processes, and the ability to examine whether programs are operating with fidelity to the model, including the 10 Key Components (Aseltine & Antunes, 2021). Additional studies of THWCs may enhance the understanding of barriers experienced by these courts and educate surrounding communities regarding the goals of the programs.

Growth of THWCs

As of December 31, 2020, 109 THWCs were operational within tribal communities across the United States. A total of 105 tribal nations were responsible for operating these programs. An additional eight THWCs were in the planning stage. This represents a 21% reduction in the number of operational courts over the previous five years (Figure 1), but an increase from 2009 figures. The extant literature on THWCs has asserted that the exact number of operational programs over time has varied and has been challenging to accurately capture. Therefore, the reduction in programs between 2014 and 2019 should be interpreted with caution. States with the highest number of THWCs include: New Mexico (n=13), Washington (n=12), and California (n=11). These data are similar to what was reported in 2014 and published in the last *Painting the Current Picture (PCP)* monograph (Marlowe et al. 2016).

Figure 1: Number of Operational THWCs (2009–2019)



An overview of THWCs by type of population served is displayed in Table 1. One quarter (25.7%) of all THWCs serve juveniles, 22.9% serve adults, 4.6% serve families, and 15.6% serve the general population. Additionally, 10.9% of programs serve multiple populations. One-fifth (20.2%) of the courts did not specify the target population served.

Table 1: THWC Populations Served

THWC Population	Number of Programs (n)	Percent of Programs (%)
<i>Adult</i>		
Adult	24	22.0
Veterans	1	0.9
<i>Juvenile</i>		
Juvenile	28	25.7
<i>Family</i>		
Family	5	4.6
<i>Combined</i>		
Adult & Family	2	1.8
Adult & Juvenile	6	5.5
Juvenile & Family	2	1.8
Adult, Juvenile & Family	2	1.8
<i>Other</i>		
General (THWC)	17	15.6
Unlisted	22	20.2

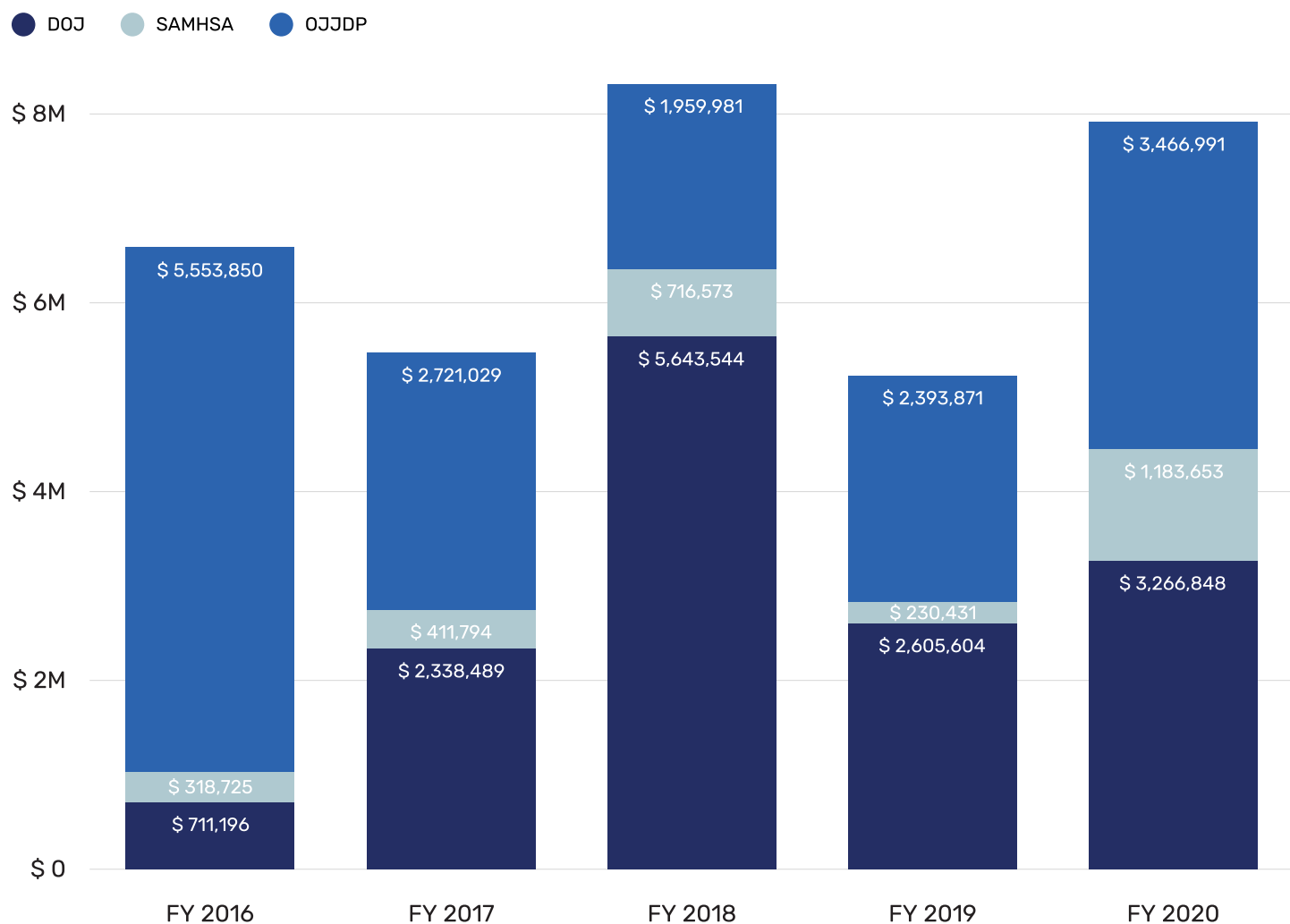
BJA, SAMHSA, & OJJDP THWC Grant Awards

As discussed earlier in this report, the largest pool of funding available to THWCs comes from three federal agencies: the Bureau of Justice Assistance (BJA), the Substance Abuse & Mental Health Administration (SAMHSA), and the Office of Juvenile Justice and Delinquency Prevention (OJJDP). These funds are awarded to tribal nations through an annual, competitive grant process. As can be seen in Table 2 and Figure 2, between 2016 and 2020, just over \$33.5 million was awarded to support the implementation and enhancement of THWCs. Annual award amounts have varied during that time from just over \$5 million (in 2019) to an all-time high of over \$8 million (in 2018). Most recently from 2019 to 2020, there was a 51.4% increase in awards to tribal nations.

Table 2: THWCs Federal Grant Award Funding by Agency FY2016–2020

	Bureau of Justice Assistance (BJA)	Substance Abuse & Mental Health Administration (SAMHSA)	Office of Juvenile Justice & Delinquency Prevention (OJJDP)	FY Grant Award Total (in millions)	% Increase Across FYs
2016	\$ 711,196	\$ 318,725	\$ 5,553,850	\$ 6,583,771	—
2017	\$ 2,338,489	\$ 411,794	\$ 2,721,029	\$ 5,471,312	-16.9%
2018	\$ 5,643,544	\$ 716,573	\$ 1,959,981	\$ 8,320,098	52.1%
2019	\$ 2,605,604	\$ 230,431	\$ 2,393,871	\$ 5,229,906	-37.1%
2020	\$ 3,266,848	\$ 1,183,653	\$ 3,466,991	\$ 7,917,492	51.4%
Agency Total	\$ 14,565,681	\$ 2,861,176	\$ 16,095,722	\$ 33,522,579	

Figure 2: THWC Federal Grant Award Funding by Agency FY2016–2020



The total number of federal awards made to tribal nations to support THWCs from 2016 to 2020 is displayed in Figure 3. Over the past five years, the number of awards has varied from year-to-year with a low of 15 awards in 2017 to a high of 27 in 2018. It should be noted that the number of awards made to tribal nations is contingent upon the number of grant applications submitted to these funding agencies.

Figure 3: Number of THWC Federal Grant Awards by Agency FY2016–2020

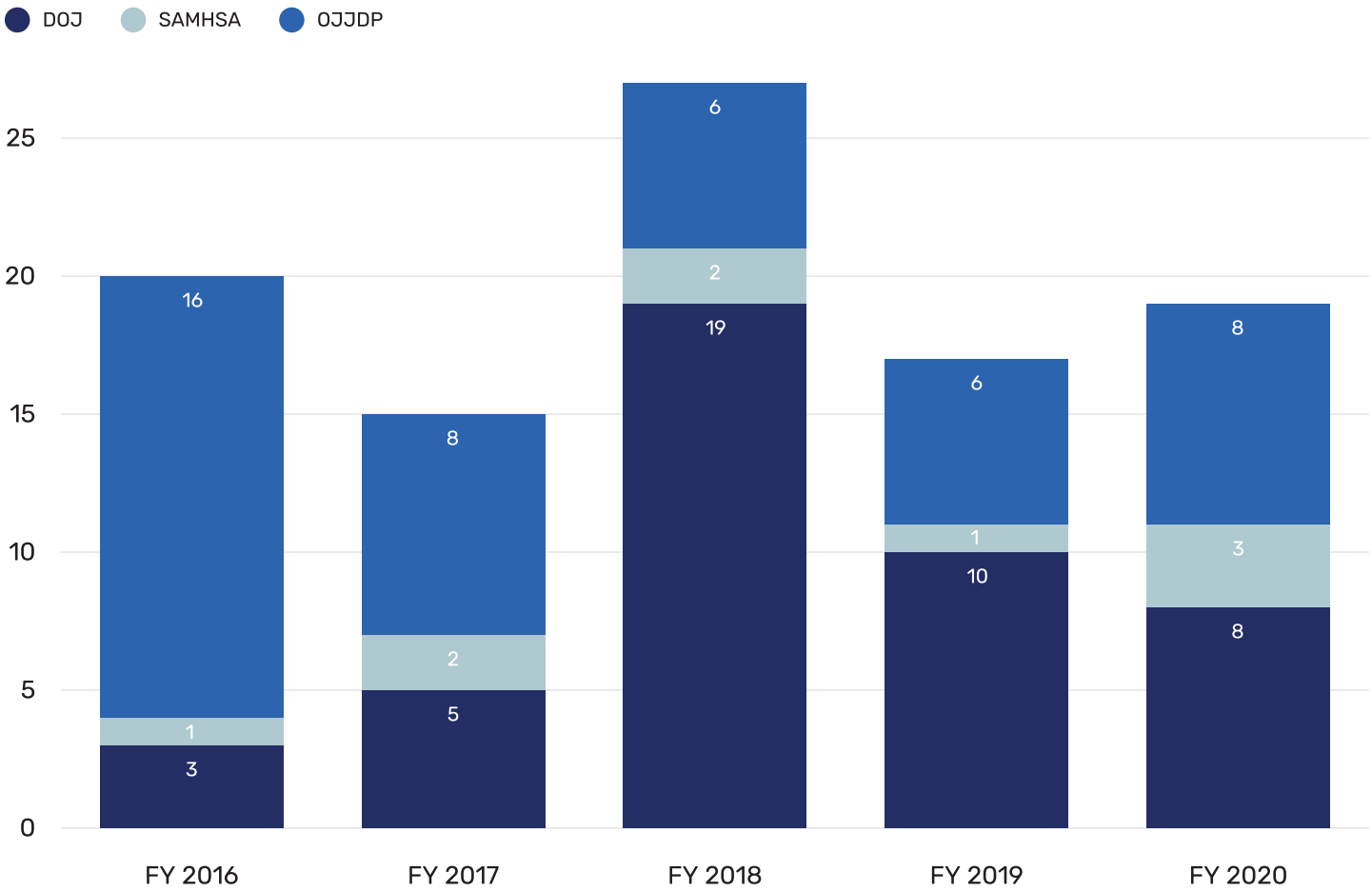
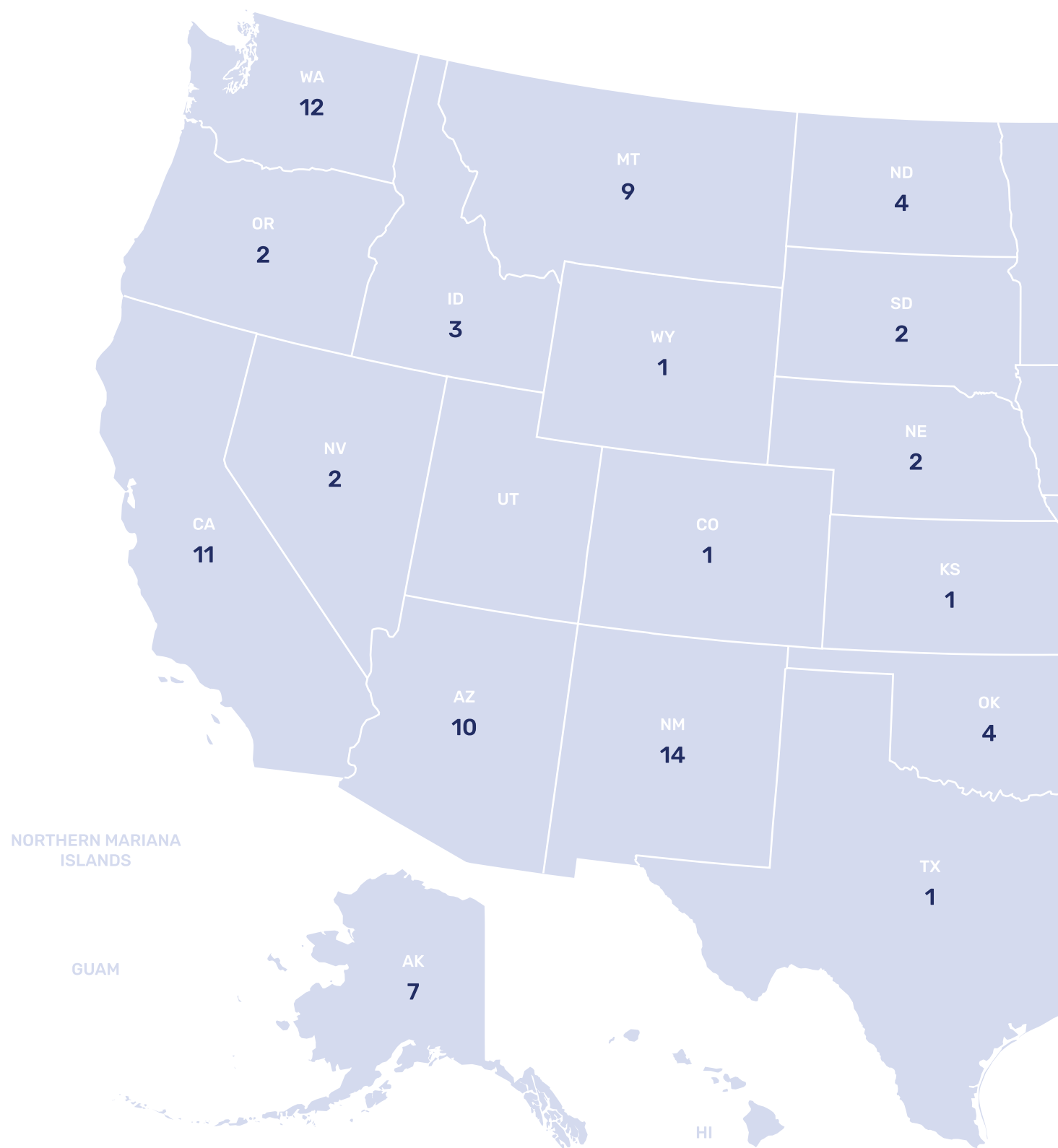
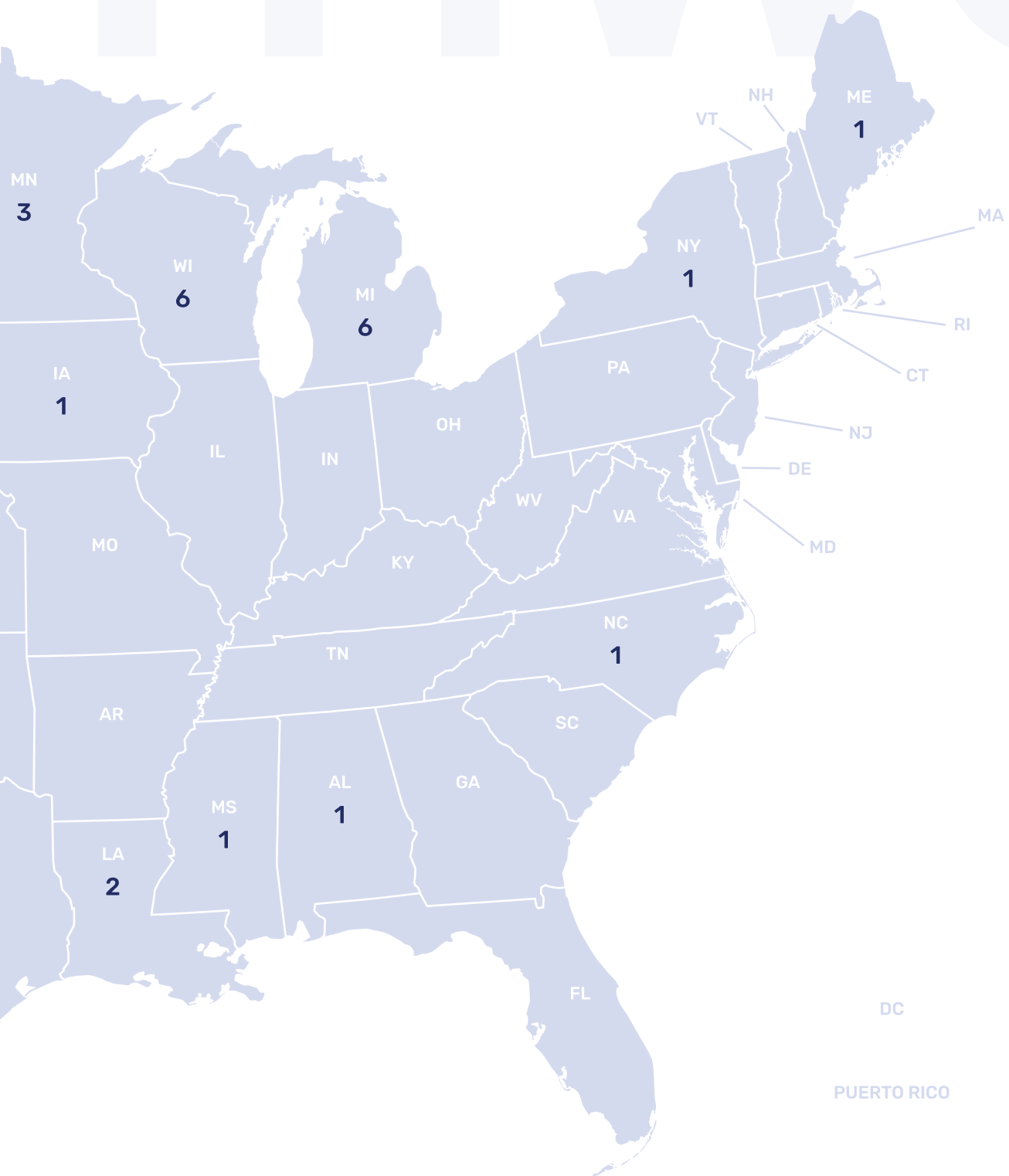


Figure 4: Number of Tribal Healing to Wellness Courts in the U.S. and Territories (2020)



THWC



DC
PUERTO RICO

THWC Survey Methodology and Results

Given the dearth of research regarding Tribal Healing to Wellness Courts (THWC), the NDCRC, in partnership with the Tribal Law and Policy Institute (TLPI), conducted a survey of THWCs to better understand how these courts are structured, how they operate, the outcomes produced (e.g., graduation rate), challenges experienced, resources needed, etc. Moreover, the survey was intended to provide data regarding the number of individuals participating in these programs nationally and identify and monitor trends within the field. In contrast to the *Painting the Current Picture* survey (PCP), the THWC survey captures detailed information regarding specific characteristics of these programs. Thus, the questions asked varied greatly from the PCP. While providing a national picture of THWCs was the overall goal of the survey, due to low response rates, what follows is a “snapshot” of these types of courts.

Survey Methodology

The THWC survey was disseminated by the NDCRC to THWC contacts via email on February 10, 2021 using a fillable PDF. Respondents were asked to complete the survey by April 7, 2021. However, due to several challenges such as the COVID-19 pandemic and outdated program contact information, the submission deadline was modified with a final deadline of October 1, 2021. Prior to beginning this survey project, the survey instrument was submitted to the Office of Management and Budget (OMB) for approval. In addition, the University of North Carolina Wilmington (UNCW) Institutional Review Board reviewed the project protocol and survey instrument to ensure compliance with human subjects’ protection. Approval was granted by both external entities. Between June 2020 and September 2021, NDCRC, in collaboration with TLPI, developed an updated list of all operational THWCs (n=117). The survey was disseminated through email to 114 THWCs for which contact information was available. The survey was provided in two formats: a fillable PDF document and an online web survey. During this time period, NDCRC and TLPI staff promoted the survey through webinars, emails, and conference announcements.

Survey respondents were asked to complete a survey for each type of THWC program that was operational between January 1, 2020–December 31, 2020. The survey was organized into 8 blocks, which are outlined below:

Block 1: Court Information

Block one asked respondents to provide information about their tribal court and the type(s) of THWC programs operating within their tribal community (e.g., adult, DUI/DWI, family/dependency, juvenile/delinquency, veterans, or other). Questions were also asked regarding joint jurisdiction, the year of implementation of the court, the types of cases over which the court has jurisdiction (e.g., civil, criminal misdemeanor, criminal felony, or other), and sources of funding.

Block 2: Team Members

Respondents were asked a series of questions regarding the composition of their THWC team by role and gender. They were also asked to indicate the number of team members within each role who were Native American/Alaskan Native. Questions were also asked regarding the frequency of staffings and court review sessions.

Block 3: Program Data

In block 3, respondents were queried about the maximum number of participants that could be enrolled at one time (e.g., capacity), as well as the total number of active, successful, unsuccessful, and still enrolled participants for the study period (January 1, 2020–December 31, 2020). Respondents were also asked to report these data by gender. The average time to graduation was also reported.

Block 4: Program Phases, Eligibility, and Program Services

Block 4 focused on the structure of the program including phases, eligibility requirements, dispositional models, risk/need levels and tools, and areas related to treatment. More specifically, respondents were asked to provide information regarding the structure of their court, which included whether the program

operated using phases or tracks, the minimum and maximum length of the program (in months), and the dispositional model(s) used. Questions also focused on eligibility requirements, graduation benefits, risk/need level served, and the instruments used for criminogenic risk/need and clinical assessments. In addition, respondents were asked to describe the program’s utilization of MAT, implementation of trauma-informed services, and treatment providers. One question asked respondents to provide a list of traditional practices utilized within their THWC.

Block 5: Drug/Alcohol Monitoring

Respondents reported if drug/alcohol testing was used and whether the testing was random and observed. In addition, respondents were asked to report the top three drugs of use among THWC participants.

Block 6: Incentives and Sanctions

Respondents were asked to provide a list of the incentives and sanctions used in their THWC program and whether a written schedule of incentives and sanctions existed.

Block 7: Program Evaluation and Training

Respondents were asked to report on the criteria for successful completion of the program. In addition, respondents were asked to provide their program’s definition of recidivism and their experience with program evaluation in the last three years. Questions regarding cultural competency training, training on reducing gender disparities, and the current training needs of the THWC were also included.

Block 8: Overall Summary of your THWC

Respondents were asked to describe program obstacles, program successes, use of best practices, and if funding was a challenge/barrier for their program.

Sample and Data Analysis

As noted above, 109 THWC programs were operational in 2020. The total number of completed surveys received was 16, a response rate of 14.7%. It should be noted that two of the programs were not operational in 2020 but did provide data regarding the structure and operation of their programs. These data are included in the analysis below.

THWC Program Structure

Table 3 provides an overview of the type of tribal court structure within which each THWC program operates. The majority of THWC respondents (68.8%) reported operating within a contemporary tribal court.¹ The hybrid tribal court model was reported by 18.8% and the traditional court was indicated by 12.5% of respondents.

Table 3: Structure of Tribal Court

Court Type	% (n)
Traditional Court (example: tribal officials preside over cases)	12.5 (2)
Contemporary Court (example: Law trained Judge, Prosecutor, Public Defender or a Court Advocate)	68.8 (11)
Hybrid (example: combination of law trained individuals and tribal officials)	18.8 (3)

1 See Appendix A for definitions of each of the court type in Table 3.

Within the context of tribal courts, joint jurisdiction is “...when the tribal court and state/federal court judges convene to exercise their respective authority simultaneously...” (Fahey et al., 2018, p. 2). Respondents were asked if their THWC operated within a joint jurisdiction tribal court. As shown in Table 4, one-quarter of respondents indicated that their court operated under joint jurisdiction. These courts also reported that their court utilized formal transfers (e.g., operate under a formal agreement). However, the majority (62.5%) of programs do not operate under joint jurisdiction.

Table 4: Joint Jurisdiction and THWCs (n=16)

Joint Jurisdiction	% (n)
Yes	
Formal Transfers	25.0 (4)
Informal Transfers	0.0 (0)
No	62.5 (10)
Don't Know	12.5 (2)

As displayed in Table 5, three-quarters (75.0%) of courts operated an adult program, while 12.5% reported operating a family/dependency court. Only 6.3% of respondents operated a juvenile/delinquency or veterans program. In addition, among the THWCs that were operational in 2020 (n=14), the average number of years in operation was 9.8, with a median of 8 years and a range of 1 year to 23 years. All respondents indicated that their program operated with a phase model with participants progressing through each phase after they complete a set of requirements. Programs also reported the minimum (n=16) and maximum length (n=10) of their program. The average minimum number of months was 12.3, with a median of 12 months and a range of 0 – 24 months. The average maximum number of months was 27.2 months with a median of 24.0 months and a range of 18 – 48 months.

Table 5: Program Type

Program Type	% (n)
Adult	75.0 (12)
Family/Dependency	12.5 (2)
Juvenile/Delinquency	6.3 (1)
Veterans	6.3 (1)

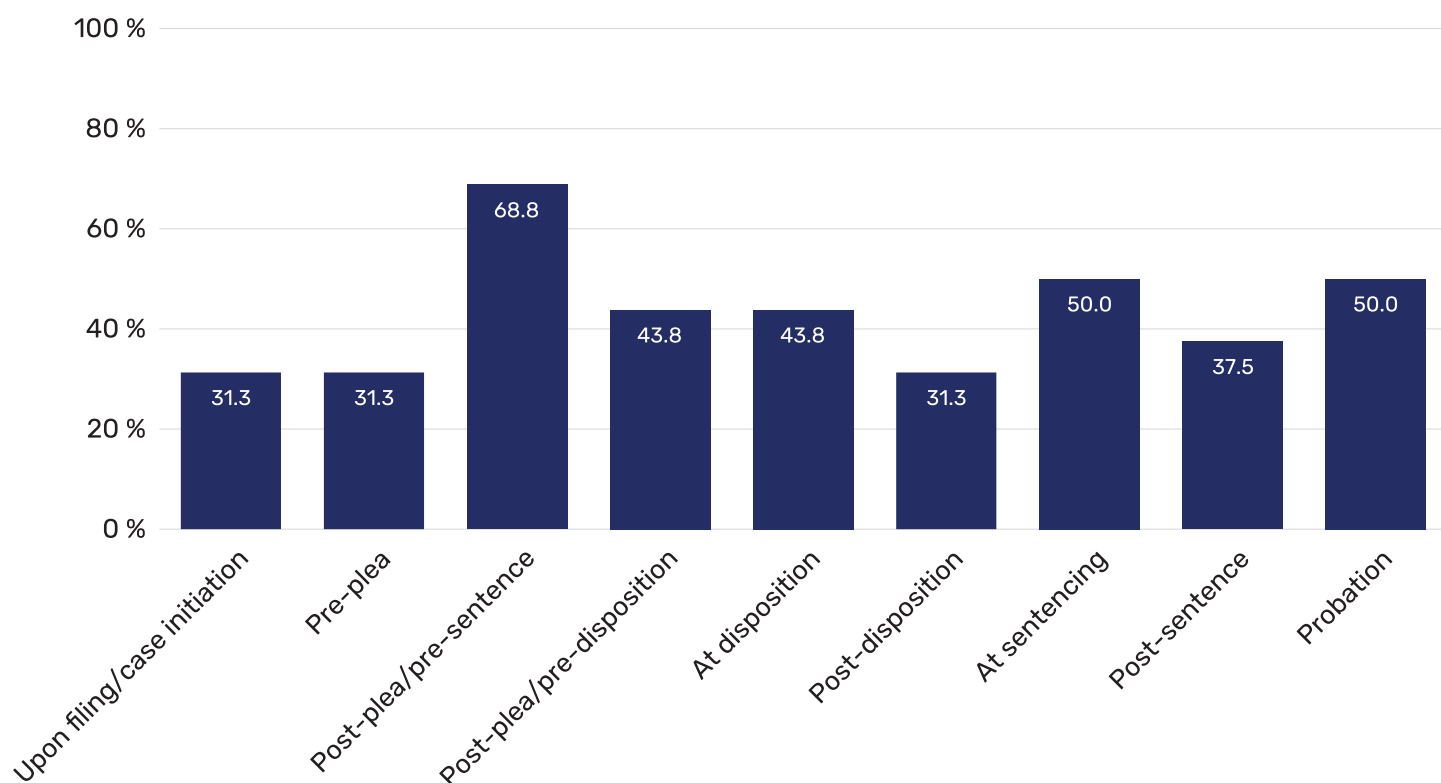
Respondents were asked to provide the classification of eligible offenses for entry into their THWC program. Table 6 provides a breakdown of the data provided. A quarter of the programs only accepted civil cases such as child welfare, juvenile delinquency, and general civil. Only misdemeanors were accepted by 18.8% and only felony cases by 6.3%. The remaining programs accepted more than one type of offense.

Table 6: Eligible Offense Classifications among THWC Programs (2020) (n=16)

Offense Classifications	% (n)
Civil only (e.g., child welfare, juvenile delinquency, & general civil)	25.0 (4)
Misdemeanor only	18.8 (3)
Felony only	6.3 (1)
Civil & Misdemeanor	25.0 (4)
Misdemeanor & Felony	18.8 (3)
Civil, Misdemeanor, & Felony	6.3 (1)

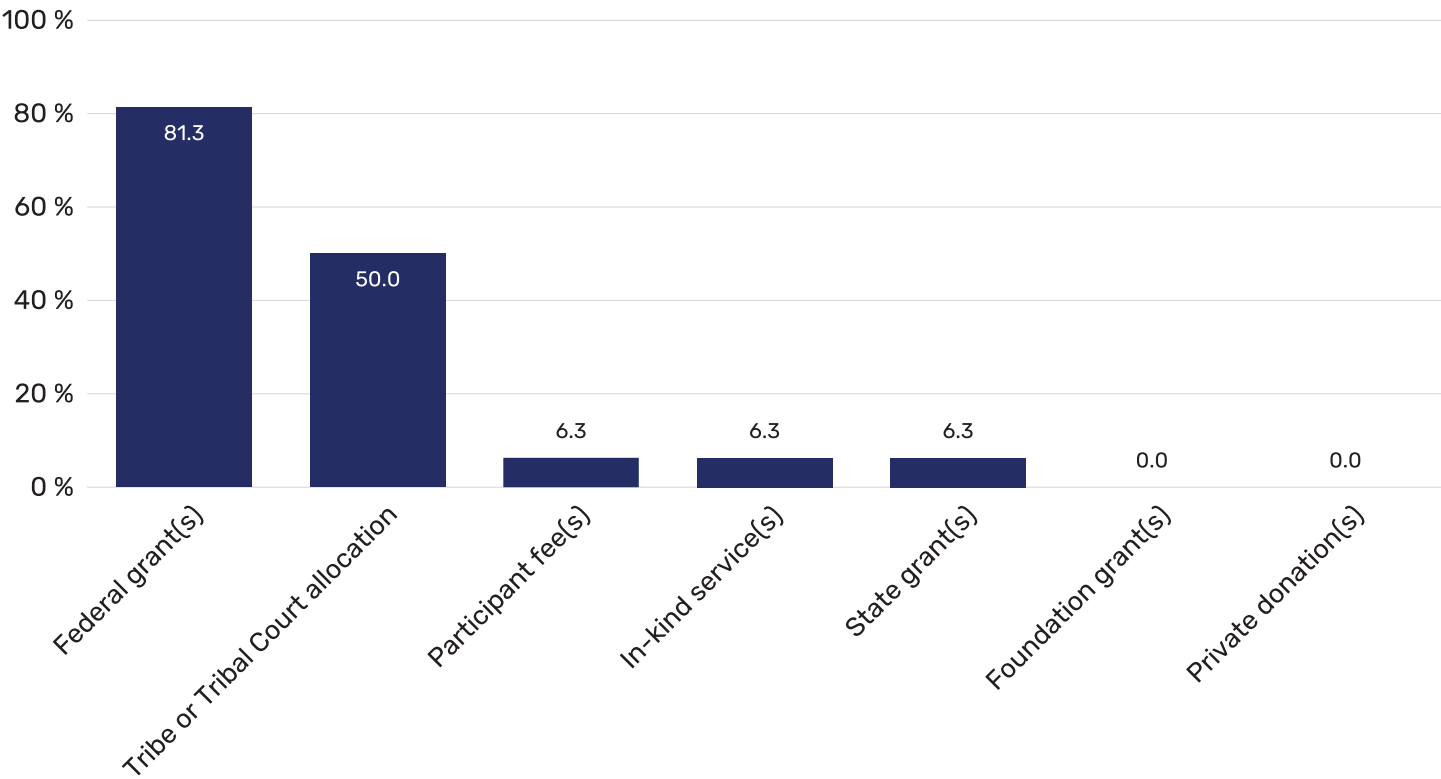
The dispositional models (e.g., the point of entry into the program) utilized by the responding THWCs are presented in Figure 5. It is important to note that 10 of the 16 THWC programs reported more than one dispositional model, thus the data are not mutually exclusive. The majority of courts (68.8%) reported using the post-plea/pre-sentence. Half of the respondents used a model wherein participants entered the program at sentencing or through probation. Other models such as pre-plea and post-disposition were utilized by 31.3% of courts.

Figure 5: Dispositional Models among THWCs (2020) (n=16)



Respondents reported their THWC's funding source(s), as well as any barriers related to funding. Federal grants were reported by over 80% of the respondents as a funding source, while 50% of respondents indicated that funds were provided by the tribe or as part of the tribal court allocation. It should be noted that nine of sixteen courts indicated more than one source of funding. When asked if funding was a barrier to the operation of their THWC, 62.5% (n=10) indicated that it was indeed a barrier. When asked to describe the reason(s) that funding was a barrier, respondents noted such issues as restrictions on allowable expenses for grants, the need for supplemental funding, not being recognized by Tribe and thus, not receiving money for support, and the lack of funds to fill the gaps for services such as assessment tools and paid staff.

Figure 6: Funding Sources Among THWCs (2020) (n=16)



The composition of the THWC team was provided by all respondents and Table 7 presents the total number of courts with at least one person in the team role.² Not surprisingly, all courts indicated that a judge was a part of the team. Among the 16 courts, 14 reported having a coordinator, 11 had at least one case manager, and 8 reported having a program director. Representatives from the legal field such as defense attorneys/ public defenders and prosecutors/presenting officers were represented within 12 and 11 teams, respectively. Mental health providers and substance use disorder treatment providers were members of 12 THWC teams, while a child welfare representative was on 6. Probation officers were reported to be present on 10 teams and law enforcement representatives were indicated as members on 9 teams. Five THWC teams reported that at least one member was a traditional/tribal healer and 7 included a tribal leader/elder. Additional team members included: a representative from vocational rehabilitation, peer recovery coach, cultural liaison/ advisor/consultant, pharmacist, bailiff, education director, and a college representative.

2 It should be noted that definitions for each role were not provided as part of the survey instrument.

Table 7: Total Number of Individuals in a Team Member Role across THWCs (n=16)

Team Member Role	# of THWCs with at least one person in role
Program director(s)	8
Case Manager	11
Coordinator(s)	14
Defense attorney/public defender(s)/defense advocate(s)	12
Prosecutor(s)/presenting officer(s)	11
Judge(s)	16
Probation officer(s)	10
Law enforcement official(s)	9
Mental health provider(s)	12
Substance use disorder treatment provider(s)	12
Housing agency representative(s)	6
Child welfare representative(s)	10
Traditional/tribal healer(s)	5
Tribal leader(s)/elder(s)	7
Other:	7

Respondents were asked to report the frequency with which they hold THWC team staffings and THWC court review sessions. Among the 15 courts providing a response, the overwhelming majority (86.7%) reported meeting weekly for staffings, while 6.7% reported meeting every other week and the same percentage reported meeting less than once a month. Court review sessions were held weekly among 73.3% of the courts, 13.3 % held court every other week, and 6.7% held court monthly or less than monthly.

THWC Participant Characteristics

Survey respondents provided data for participants enrolled in their programs from January 1, 2020 – December 31, 2020. Table 8 provides the total number of active participants, as well as the breakdown by gender and disposition status. Among the 14 THWC programs, a total of 118 individuals were active during 2020. Females comprised 44.1% of active participants and males made up 56.9%. Looking at disposition status, the graduation rate among all active participants in 2020 was 47.6%. When examining graduation rates by gender, analyses reveal a discrepancy. More specifically, the graduation rate for males (53.1%) is significantly higher than the graduation rate for females (41.9%).

Table 8: Total Number of THWC Participants by Gender and Disposition Status (2020) (n=14)

		Total Active	Total Successful	Total Unsuccessful	Graduation Rate	Total Still Enrolled as of 12/31/20
<i>All Participants</i>		118	30	33	47.6%	56
<i>Gender</i>						
	Female	44.1% (52)	43.3% (13)	54.5% (18)	41.9%	37.5% (21)
	Male	56.9% (66)	56.7% (17)	45.5% (15)	53.1%	62.5% (350)

Respondents also reported the participant capacity of their programs. The average number of participants enrolled in THWCs at one time was found to be 16.9 individuals with a median of 17.5. The range of participant capacity was 5 – 30 participants at one time.

Respondents were asked to report the top three drugs of use among participants in 2020 (Figure 7). Among the 14 THWC programs that were operational in 2020, alcohol was the most frequently reported drug of use with 92.9% of respondents indicating as such. Methamphetamine was reported as a one of the top 3 drugs of use by 71.4% of THWCs, followed by marijuana at 57.1%. When examining the combined percentages by drug classification, 57.2% of respondents reported heroin/opioids and 78.5% reported stimulants (e.g., cocaine/crack and methamphetamine).

Figure 7: Top Drugs of Use among THWC Participants (n=14)

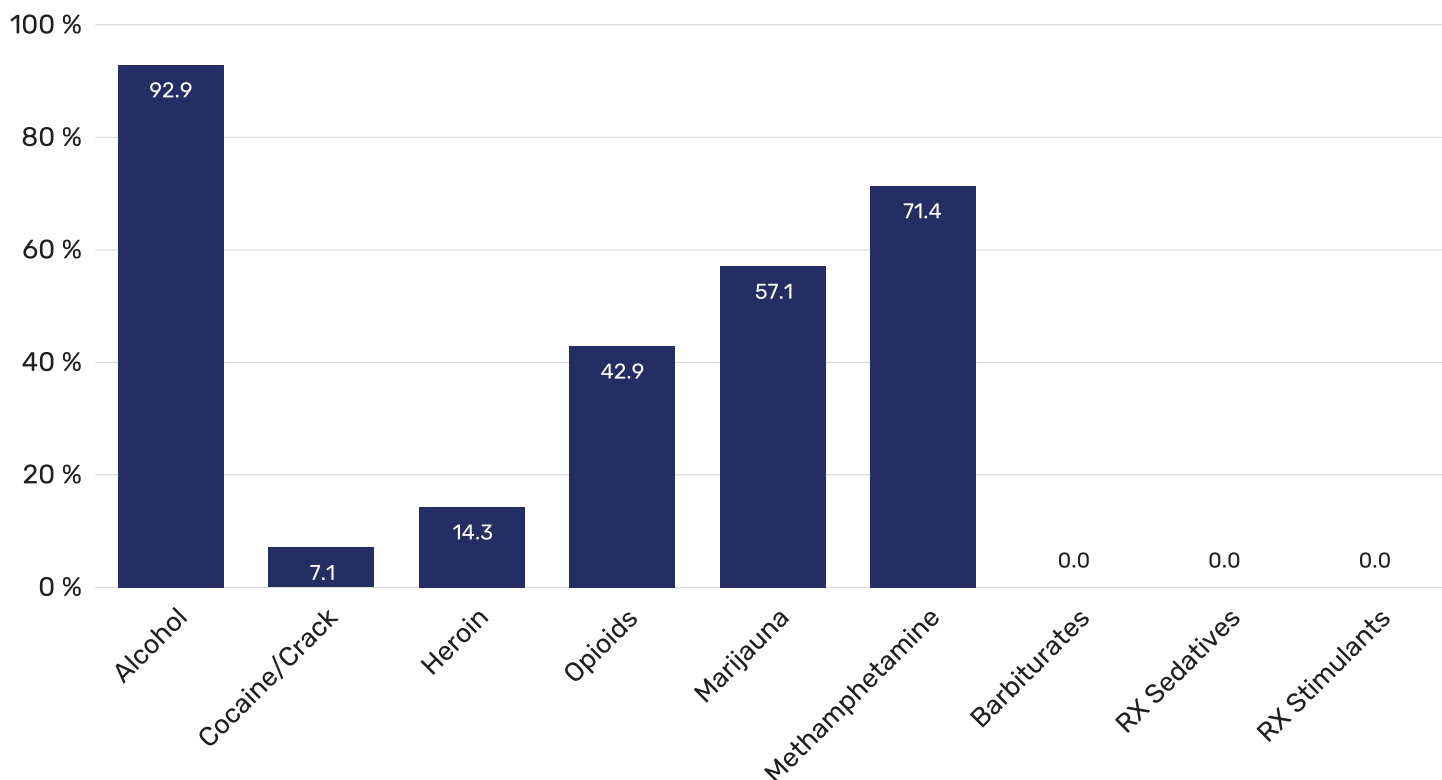


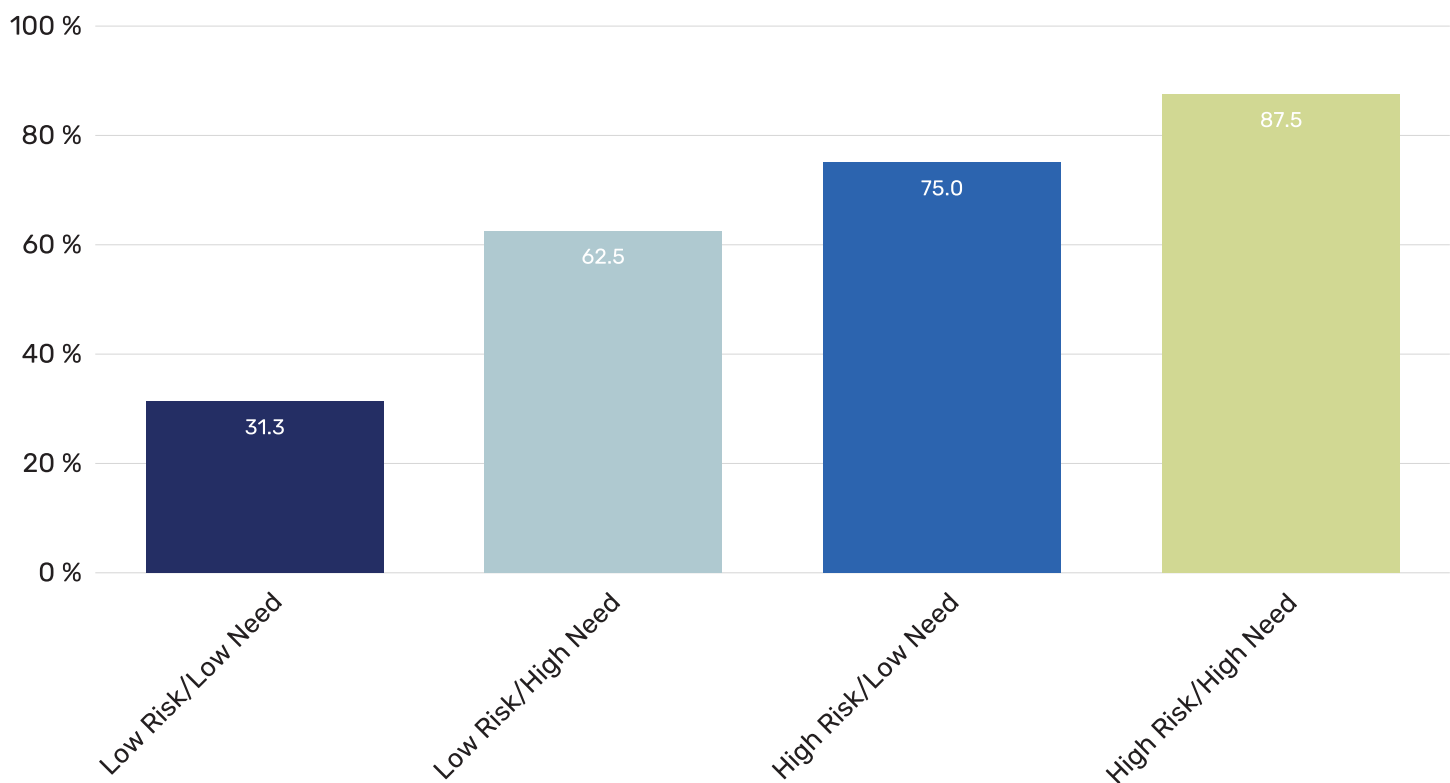
Table 9 presents the requirements that were most often reported by respondents (n=15). Thirteen of the fifteen (86.7%) programs reported that THWC participants must be a tribal member or a family member of a tribal member. A substance use diagnosis is a requirement for 73.3% of the programs, while 53.3% of programs indicated that participants must be charged with an alcohol/drug-related offense or have a substance use disorder underlying the current offense in order to be eligible. Slightly less than half (46.7%) require a non-violent charge and/or a non-violent criminal history. Less common eligibility criteria include: the capability/competency to participate in the program (26.7%) and substance use underlying an open dependency case (20.0%).

Table 9: Summary of Participant Eligibility Requirements among THWCs (n=15)

Eligibility Requirement	% (n)
Alcohol/drug related offense or underlying current offense	53.3 (8)
Substance use diagnosis	73.3 (11)
Must be a Tribal member or family member	86.7 (13)
Non-violent present or criminal history	46.7 (7)
Capable/competency to participate	26.7 (4)
Dependency case related to substance use	20.0 (3)

Respondents were asked to indicate the level of participants' criminogenic risk and need that are served by their programs. It is important to note that 11 of the 16 programs serve more than one category of risk/need. As presented in Figure 8, 87.5% of programs serve a target population that consists of high risk/high need individuals. In addition, 75.0% serve high risk/low need and 62.5% serve low risk/high need. The lowest percentage of respondents (37.5%) reported serving low risk/low need participants.

Figure 8: Eligible Criminogenic Risk/Need Levels for THWC (n=16)



THWC Program Services

All 16 THWCs represented in this project conducted drug/alcohol testing and 14 reported using more than one method. Table 10 provides the percentage of programs utilizing various types of drug/alcohol testing methods. Urinalysis was used by 100% of the courts and 62.5% reported using breathalyzers. Half of respondents used saliva as testing method, 31.3% used sweat (such as SCRAM), and 6.3% used hair samples to test for drugs/alcohol. One respondent (6.3%) also reported using blood testing.

Table 10: Distribution of Drug/Alcohol Tests by Method for THWCs (n=16)

Drug/Alcohol Testing Methods	% (n)
Breathalyzer	62.5 (10)
Hair Analysis	6.3 (1)
Saliva	50.0 (8)
Sweat (such as SCRAM)	31.3 (5)
Urinalysis	100.0 (16)

Respondents were also asked if the drug/alcohol testing was observed and/or random, as outlined in the *Tribal Healing to Wellness Courts: The Key Components (2014)*. With regard to observation, 87.5% of respondents indicated that tests were observed, while 6.3% reported tests were not observed, or the respondent did not know. The same percentage of respondents (87.5%) reported that drug/alcohol tests were conducted at random and 12.5% indicated that the tests were not conducted randomly.

Medication for addiction treatment (MAT) was reported to be available to participants in 75.0% of THWCs, while 18.8% of courts do not have this treatment modality available and one respondent did not know if it was available (see Table 11). Among those who do offer MAT, 11 of the 12 (91.6%) offer more than one type. Buprenorphine, Suboxone, and Vivitrol are each offered by 81.8% of the THWCs. In addition, 72.5% of THWCs offering MAT utilize Naltrexone and 36.4% offer methadone.

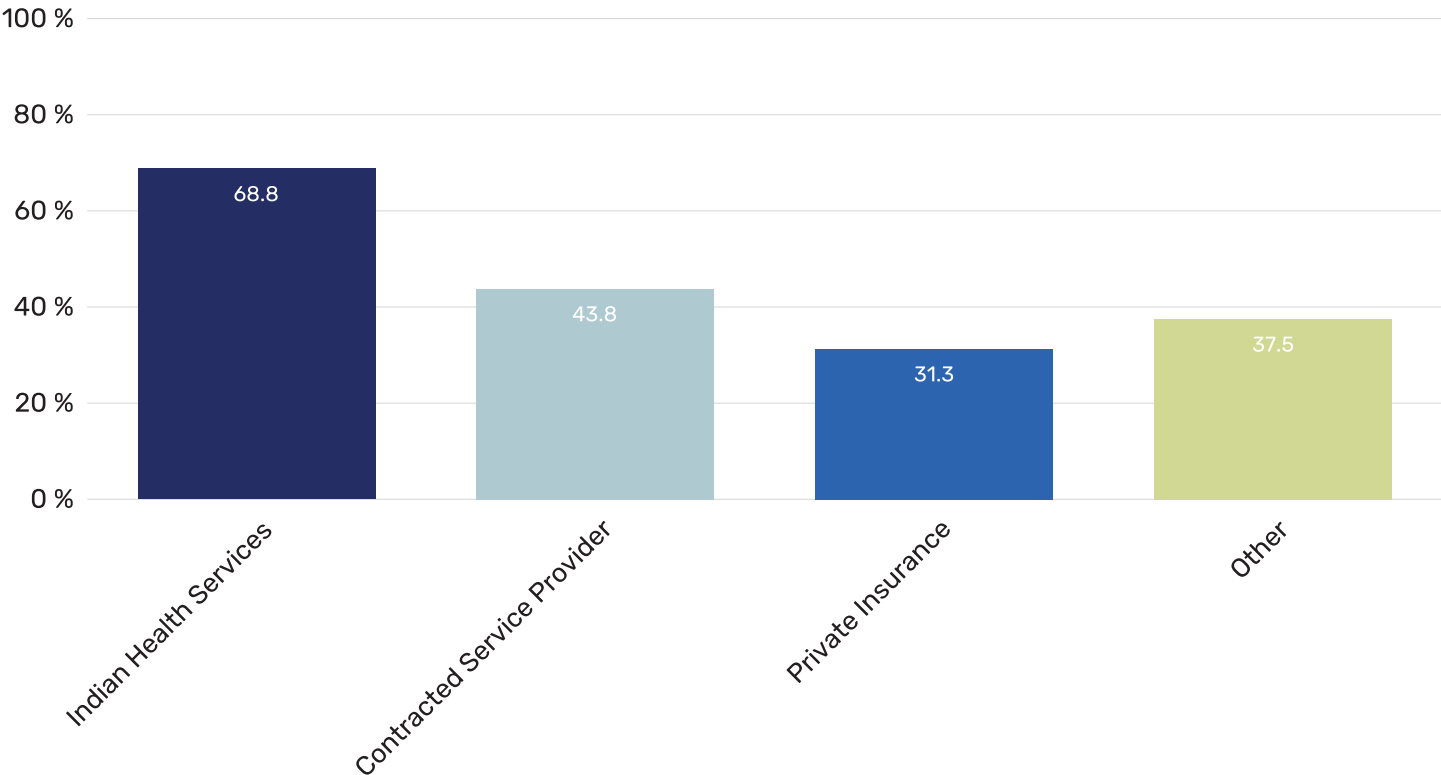
Table 11: Availability and Type of Medication for Addiction Treatment (MAT) among THWCs (n=16)

MAT Availability and Medications	% (n)
Yes	75.0 (12)
Methadone	36.4 (4)
Naltrexone	72.7 (8)
Buprenorphine	81.8 (9)
Suboxone	81.8 (9)
Vivitrol	81.8 (9)
No	18.8 (3)
Don't Know	6.3 (1)

Respondents were also asked if their programs encountered any challenges with MAT. Partnering with providers external to the Tribal community was identified by multiple respondents. Additional challenges included: limited options within the community, the lack of MAT providers and addiction specialists, the stigma associated with MAT, and the lack of buy-in from law enforcement.

Respondents were asked to identify the agency(ies) that provide treatment for their participants. All courts indicated utilizing at least one treatment provider and 9 programs utilized more than one provider. Indian Health Services was used by 68.8% of the respondents and 43.8% reported using a contracted service provider. Private insurance was utilized by 31.3% of respondents and 37.5% listed a “other” as a treatment provider. More than two-thirds (68.8%) of respondents reported their THWCs included trauma-informed services while 12.5% indicating these types of services were not utilized. The remaining 18.8% of respondents were not able to answer the question.

Figure 9: Treatment Providers Utilized by THWCs (n=16)



Incentives, Sanctions, and Program Completion

Respondents were asked to provide a list of the sanctions and incentives utilized by their THWC (n=15). Table 12 provides a list of the sanctions provided with the number of programs indicating use of the sanction, while Table 13 provides the same information for incentives. The vast majority (86.7%) of programs reported using written essays and/or letters as a sanction for noncompliance. A similar percentage of programs utilized community service and/or increased drug/alcohol testing. Jail time was used by 53.3% of the programs, while increased court appearances, reporting, and/or supervision was a sanction employed by 46.7% of THWCs. Other sanctions such as a verbal/written apology, house arrest, and/or some form of electronic surveillance were used by 33.3% of the programs. Other sanctions reported (not included in the table) were monetary fines, volunteering, and termination. In addition, when respondents were asked if they had a written schedule of sanctions, 31.3% reported having a schedule, 56.5% reported that they did not have a written schedule, and 12.5% were not able to answer the question.

Table 12: Sanctions Employed by THWC Programs (n=15)

Sanction	% (n)
Written essays/letters	86.7 (13)
Community service	60.0 (9)
Increased testing	60.0 (9)
Jail time	53.3 (8)
Increased court appearances/reporting/supervision	46.7 (7)
Repeat phase/extend time	46.7 (7)
Apology (verbal/written)	33.3 (5)
House arrest	33.3 (5)
Form of electronic surveillance (Electronic monitoring/tether/Soberlink)	33.3 (5)
Earlier curfew	26.7 (4)
Increased meetings*	40.0 (6)
Increased treatment*	40.0 (6)

*Recovery support group meetings and treatment attendance should not be used as a sanction, but rather a therapeutic adjustment. However, some treatment court programs do not make clear this distinction.

Table 13 provides the reported incentives used by the THWC programs. Items such as gifts, gift cards, etc. were used by 100.0% of the programs. The use of praise, both verbal and written, and applause was used as an incentive in 93.3% of the programs. Some programs (46.7%) increased participants' opportunities for outings and family activities. Additional incentives reported were adjusting curfews (33.3%), phase promotions (26.7%), and decreased community service hours (20.0%). Other incentives (not reported in table) were medicine/root, traditional art/craft supplies, and developing individualized incentives. When asked if they had a written schedule of incentives, 31.3% of respondents reported having an incentives schedule, 56.3% reported they did not, and 12.5% of respondents were not able to answer the question.

Table 13: Incentives Employed by THWC Programs (n=15)

Incentives	% (n)
Gifts/gift cards/fishbowl	100.0 (15)
Praise (verbal/written); applause	93.3 (14)
Increase outings/family activities	46.7 (7)
Adjusted curfew	33.3 (5)
Phase promotion	26.7 (4)
Decreased community service hours	20.0 (3)
Decreased drug/alcohol testing	13.3 (2)
Decreased court appearances	13.3 (2)
Decreased supervision or meetings	13.3 (2)

Successful completion of treatment courts, in general, provides some sort of benefit to the participants. Respondents were asked to provide the benefits that are available to participants who successfully

completed their THWC program (see Figure 10). Eleven of the sixteen programs reported more than one benefit; thus, the categories are not mutually exclusive. A benefit among 56.3% of the programs is that participants may have their cases dismissed. Additionally, 50.0% of the programs indicated that participants may have their sentences suspended. Just over one-third (37.5%) of programs reported that reunification between the participant and their minor children may occur upon successful completion of the program. Additional benefits reported were case expungement (31.3%), fines reduced or eliminated (25.0%), having their case sealed (6.3%), and expedited settlement or placement (6.3%).

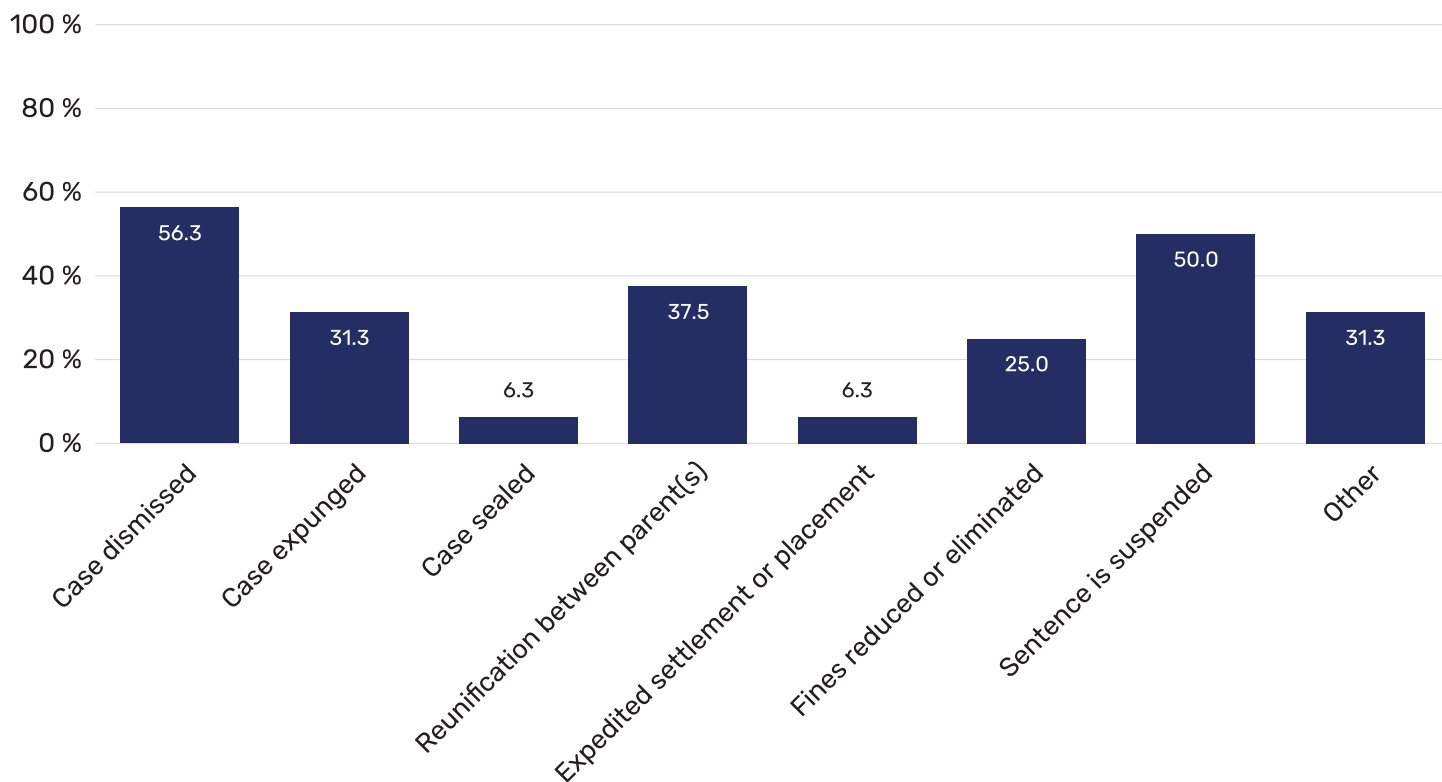


Figure 10: Benefits to Successful Completion of THWC Program (n=16)

A unique feature of THWCs is the integration of traditional practices into the court program. Respondents were asked to provide the traditional practices utilized in their THWC program. While the responses varied by court, some similarities were identified. For example, eight of the thirteen courts who answered this question indicated that some form of sweat lodge is a part of their program. In addition, dancing, singing, drumming, bead making, and basket making were also listed by about half of the courts. A prevalent practice was some form of language classes or language ceremony. Other practices mentioned were talking circles, powwows, traditional medicine practices, attending a traditional lodge, and participating in traditional meals and holidays. Interestingly, two THWCs indicated that cultural activities were a requirement of court participation.

Discussion & Conclusions

Tribal Healing to Wellness Courts (THWCs) provide a unique opportunity for Native Americans involved with the criminal, juvenile, or child welfare systems to have their substance use and other needs met within a culturally-relevant environment. This inaugural study sought to understand the intricacies of how these programs are structured and how they operate. Additionally, data were gathered to better understand the characteristics of the individuals served by these programs. The response rate to the survey was exceptionally low (14.7%) and thus the results are not generalizable to all THWCs. However, the data do provide a snapshot of program and participant characteristics in 2020. It is estimated that 109 THWC programs were operational in 2020. While this represents a reduction in the number of THWC programs between 2014-2020, these data should be interpreted with caution given that no entity is charged with maintaining an updated master list of THWC programs. Thus, it is recommended that a systematic process for gathering the number of THWCs by population (e.g., adult, juvenile, family, veterans, etc.) served be developed in collaboration with tribal justice systems and leaders. Next, this process could be implemented annually to generate a list of operational programs. These data could also be used to populate an online map of THWCs by Native land and by state.

Similar to the findings of the *PCP*, federal appropriations for THWCs increased substantially between 2014-2020. Funding for THWCs is available from the Bureau of Justice Assistance, Office of Juvenile Justice & Delinquency Prevention, and the Substance Abuse & Mental Health Services Administration through an annual competitive grant process. The vast majority of respondents indicated that federal grants were a primary source of funding for their programs. The observed increase in available federal THWC funding will potentially facilitate the continuation of existing programs and/or the implementation of new programs in the future.

When examining the characteristics of individuals served by the THWCs represented in this survey, 44.1% were reported to be female. It should be noted that among treatment courts reported in the *PCP* survey, females made up one-third (33.3%) of participants. This finding suggests that females may have greater access to THWCs than do females accessing other types of treatment courts. However, survey respondents reported 44.1% of females exiting the THWC in 2020 did so successfully. This is compared to a graduation rate of 58.5% among females with a disposition in the *PCP*.

Also noteworthy is the reported drug of use distribution among THWC participants in 2020. Given the exceptionally high rate of alcohol-related deaths in Indian Country (520% greater than all other racial/ethnic groups), it is not surprising that alcohol was the substance of use reported by 92.9% of respondents. Methamphetamine was reported by more than two-thirds (71.4%) of respondents, and more than half of respondents reported heroin/opioids (57.2%) and marijuana (57.1%). It is important to note that when examining methamphetamine use rates across regions of the United States, the highest rates are clustered in the West and Midwest (NIDA, 2019). Moreover, according to the *2018 National Survey of Drug Use & Health*, 14% of American Indian/Alaskan Native respondents 18 years and older reported any lifetime methamphetamine use (SAMHSA, 2019). This is compared to 7.4% among Whites and 1.2% among Black/African Americans. Thus, these data underscore the importance of developing clinical treatment continuums within THWCs to ensure appropriate treatment matching.

As noted by researchers, additional research with and evaluation of THWCs is much needed (Aseltine & Antunes, 2021). The extant literature on these programs is scant and thus we know very little about who these programs serve, how they operate, and what outcomes they produce. Future iterations of this survey can provide answers to these questions, as well as educate the THWC field. Additionally, an examination of THWCs by court type would be fruitful to identify how these various program types are both similar to and unique from each other.

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Appendices

Appendix A: Definitions of Tribal Courts

(Source: Tribal Law and Policy Institute)

Traditional Court

Traditional Tribal Courts follow the tribe's own laws, customs and traditions that allow conflicts to be settled by Tribal leaders or, in some cases, lay judges. These courts incorporate some modern judicial practices to handle criminal, civil, traffic, and juvenile matters, but the process is similar to community forums where the tribal official or representative acts as facilitator and participates in the resolution process along with the offender [*sic*] and victim and their families using customary laws, sanctions, and practices.

These Tribal Courts are exceedingly rare due to the assimilation practices of the Federal government to push aside traditional adjudication practices in favor of the American Model but these courts still exist in tribal communities that have retained an indigenous government structure such as the Southwest Pueblos. However, even some Pueblo courts have adopted the hybrid tribal court model.

Contemporary Court

Contemporary Tribal Courts have judges presiding over cases and applying the tribe's written constitution, codes, and treaties, and have law-trained judges, prosecutors and defense attorneys working in the tribal justice system. These courts follow the lead set by American jurisprudence. Most often, but not always, these courts appear within those tribal governments that have been organized under the Indian Reorganization Act which required many Tribal Nations to adopt a written constitution. Under these systems, there are distinct separation of powers, and mirror-image adoption of American legal process and jurisprudence. Generally, these courts refer to federal and state court decisions in order to formulate and justify the development of their own jurisprudence.

Hybrid Court

Hybrid Tribal Courts combine the two approaches—Tradition and Contemporary—to handle specific cases but are based on the American legal model. These courts handle criminal, civil, traffic, domestic relations, and juvenile matters. Written codes, rules, procedures, and guidelines are used and judges, both lay and law-trained, preside over the cases. However, unlike the contemporary model, the hybrid tribal court keeps a clear separation between the two court models by diverting cases based upon subject matter to the different courts. This can be played out in various forms that illustrate the many ways Tribes exercise their sovereignty and jurisdiction over their lands and tribal members. For example, tribal enrollment matters are handled by tribal leadership, while child custody is decided by a tribal court judge.

- In several Pueblo communities, land disputes are handled by family and community forums, but like traditional courts, noncompliance by offenders [*sic*] may result in more punitive sanctions such as arrest and confinement. There are courts of record, and appellate systems are in place.
- Justices from the Navajo Nation make regular and methodical references to tribal traditions and customs using the tribe's codified Navajo Fundamental Law in rendering their decisions. The Navajo Nation has what appears to be an American model court, but the jurisprudence relies heavily on Navajo tradition and custom. Many domestic relation types of cases are referred to the Peacemaker Court, which incorporates Navajo religion into the problem-solving processes guided by Peacemakers who are trained, community members well-versed in Navajo custom and tradition. The restorative justice model has been making a resurgence in Tribal justice systems with many tribes across Indian Country adopting the practice in ways that align with their own custom and traditions.

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