



WellnessCourts.org
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LEGAL CHALLENGES IN TRIBAL HEALING TO WELLNESS COURTS

Wisconsin Association of
Treatment Court Professionals

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▶ DISCLAIMER

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▶ TRIBAL HEALING TO WELLNESS COURT TEAM

The Tribal Law & Policy Institute's (TLPI) Healing to Wellness Court Team consists of members of federally recognized Tribes with expertise in Tribal court management, legal practice in Indian country, development, implementation, and enhancement of healing to wellness courts; substance misuse counseling, family services, and mental health services



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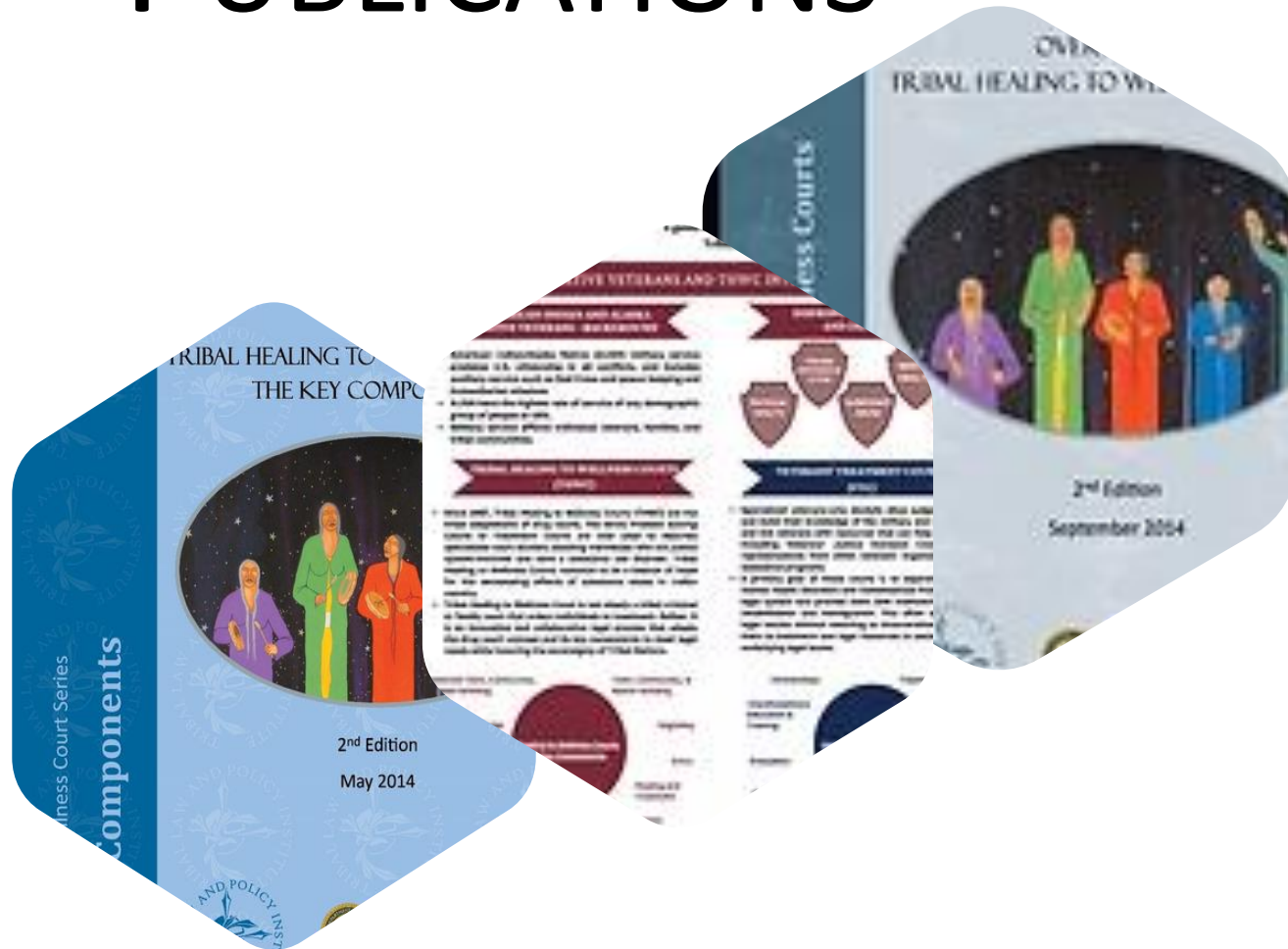
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▶ TRIBAL LAW AND POLICY INSTITUTE PUBLICATIONS



❖ History

The Tribal Law & Policy Institute (TLPI) has an extensive history developing publications, including resources centered around the Tribal 10 Key Components, judicial leadership, intergovernmental collaboration, policies and procedures, and overviews of Tribal Healing to Wellness Courts

❖ Usage

TLPI provides its resources free online and consistently uses the publications during trainings and conferences - grantees also reference the resources when planning and implementing their healing to wellness courts

❖ Future

TLPI is in the process of substantial updates to the Tribal Ten Key Components



► PRESENTERS

❖ Jacob Metoxen

Tribal Healing to Wellness Court Legal Specialist

❖ Nick Layland

Prosecutor

Ho-Chunk Nation



▶ LEARNING OBJECTIVES

1. Learn legal principles at the heart of Tribal Healing to Wellness Courts, including jurisdictional limitations and constitutional protections
2. Explore different ways Tribal Healing to Wellness Courts are protecting the court and clients from constitutional violations
3. Learn ways Tribal Healing to Wellness Courts are including language in Tribal Codes and Policies and Procedures to help make client experiences optimal



▶ TRIBES IN WISCONSIN

- ❖ 11 Total Tribes
- ❖ Justice Systems



<https://dpi.wi.gov/amind/tribalnationswi>



▶ TRIBAL MEMBERS IN THE CRIMINAL JUSTICE SYSTEM

- ❖ American Indians and Alaska Natives incarcerated in Indian country jails
 - 2,340 total, including:
 - 270 for drug offenses
 - 110 for DWI/DUI
 - 480 for Mental health/civil commitment hold

Tribal Crime Data Collection Activities, 2025. Found at: <https://bjs.ojp.gov/document/tcdca25.pdf>

QuickFacts Native American Sentenced Individuals. Found at: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Native_Americans_FY24.pdf.



▶ TRIBAL MEMBERS IN THE CRIMINAL JUSTICE SYSTEM

- ❖ American Indians and Alaska Natives and federal facilities
 - 1,727 total federal convictions
 - 2.8% of all federally sentenced individuals
 - The top five districts for Native Americans:
 - District of South Dakota (321)
 - District of Arizona (213)
 - Eastern District of Oklahoma (199)
 - Northern District of Oklahoma (180)
 - District of Montana (128)

Tribal Crime Data Collection Activities, 2025. Found at: <https://bjs.ojp.gov/document/tcdca25.pdf>

QuickFacts Native American Sentenced Individuals. Found at: https://www.uscourts.gov/sites/default/files/pdf/research-and-publications/quick-facts/Native_Americans_FY24.pdf.

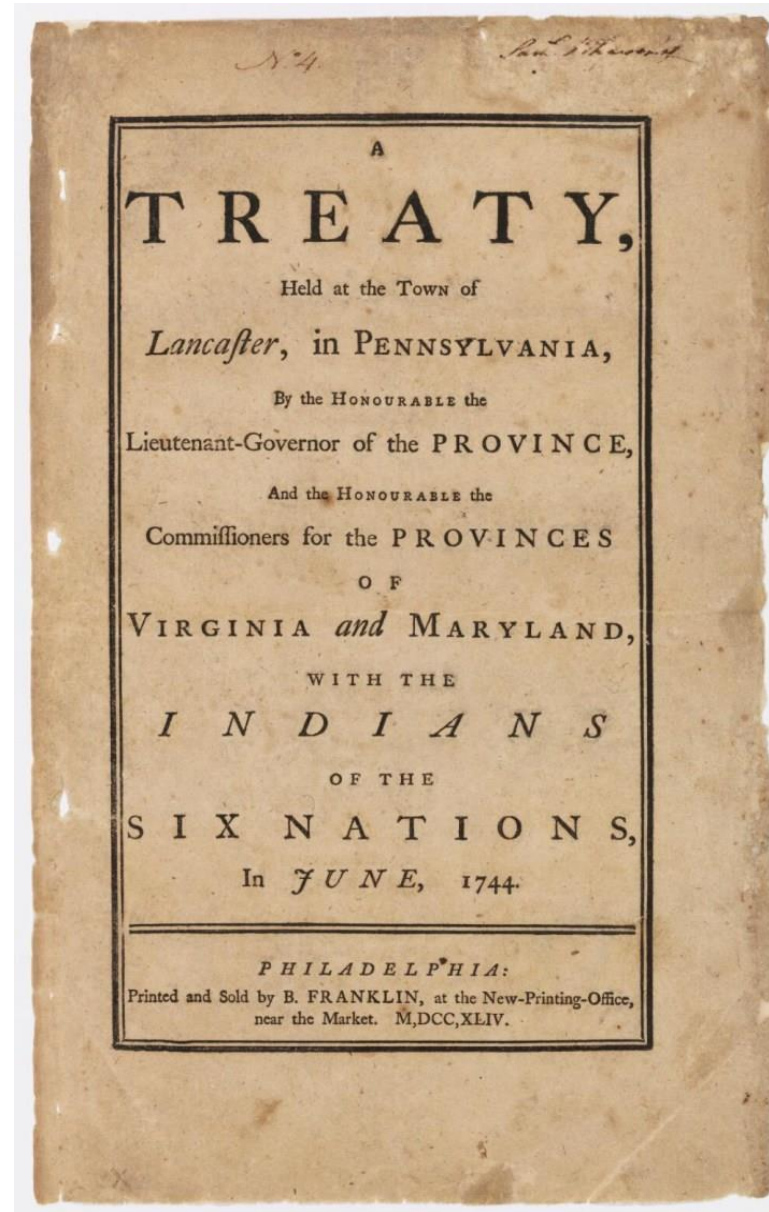


▶ TRIBAL JURISDICTION

- ❖ Treaties between the U.S. and Tribes
- ❖ Executive Order Reservations
- ❖ Legislation pertaining to jurisdiction
- ❖ Relevant case law



▶ TREATY EXAMPLE



<https://digitreaties.org/>



▶ EXECUTIVE ORDER EXAMPLE



OFFICE OF THE GOVERNOR

EXECUTIVE ORDER #277

Relating to Tribal Treaty Rights and the Protection of Wild Rice

WHEREAS, the state of Wisconsin reaffirms that the 11 federally recognized Native Nations of Wisconsin are sovereign nations and their sovereignty is recognized by federal law and protected by federal treaties;

WHEREAS, treaties, rulings from the Supreme Court of the United States, as well as federal and state laws, have established a unique legal relationship between states and Native Nations;

WHEREAS, Executive Order #18 charged cabinet agencies with developing policies and practices aimed at improving the intergovernmental relationships between the state of Wisconsin and Native Nations located within the state;

WHEREAS, in addition to constitutional and statutory obligations to respect Tribal sovereignty, ongoing and comprehensive education on Treaty Rights is vital in recognizing and respecting Native Nations, their inherent rights, and the rights of Indigenous people;

WHEREAS, Indigenous communities are the original stewards of the land, air, and water resources of the state, and their ancestral knowledge is deeply valuable in efforts to promote environmental and ecological resilience across Wisconsin communities;

WHEREAS, it is critical that the Native Nations of Wisconsin and the Wisconsin Department of Natural Resources work collaboratively to preserve and enhance the vast and valuable natural resources of the state;

WHEREAS, wild rice, or manoomin, is a culturally significant and important food source to the Native Nations of Wisconsin, serving as a central feature in Tribal agricultural practices, as well as community and faith-based traditions;

WHEREAS, habitat requirements for wild rice are fairly specific, and changing ecological conditions are putting Tribes' ability to grow, cultivate, and harvest on ceded Tribal lands and waters at risk;

WHEREAS, centuries ago, manoomin was abundant across the Great Lakes Region and parts of North America, but research suggests that wild rice available for Tribal harvest off reservation has continued to see a steady decline in the Great Lakes Region, a trend that is projected to continue due to anthropogenic climate change, specifically increased early-summer precipitation and warmer winters;

WHEREAS, the *LCO v. Voigt* Decision, made by the U.S. Court of Appeals for the 7th Circuit in 1983, upheld the rights of the Ojibwe Nations of Wisconsin to hunt, fish, and gather in the ceded territory, and preserving Native Nation's long-established practice of wild rice stewardship in these fixed territories is critical to honoring this agreement;

WHEREAS, the Voigt Intertribal Task Force was created to manage the hunting, fishing, and gathering rights affirmed by the *LCO v. Voigt* Decision and committees comprised of Tribal and state representatives work collaboratively to provide a framework for co-management of resources;

Source: https://docs.legis.wisconsin.gov/code/executive_orders/2019_tony_evers/2025-277.pdf





LEGISLATION EXAMPLE

Public Law 93-197

AN ACT

December 22, 1973
[H. R. 10717]

To repeal the Act terminating Federal supervision over the property and members of the Menominee Indian Tribe of Wisconsin; to reinstitute the Menominee Indian Tribe of Wisconsin as a federally recognized sovereign Indian tribe; and to restore to the Menominee Tribe of Wisconsin those Federal services furnished to American Indians because of their status as American Indians; and for other purposes.

Menominee
Restoration Act.

Definitions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Menominee Restoration Act".

SEC. 2. For the purposes of this Act—

(1) The term "tribe" means the Menominee Indian Tribe of Wisconsin.

(2) The term "Secretary" means the Secretary of the Interior.

(3) The term "Menominee Restoration Committee" means that committee of nine Menominee Indians who shall be elected pursuant to subsections 4(a) and 4(b) of this Act.

Menominee
Indian Tribe,
Wis., Federal
recognition.

SEC. 3. (a) Notwithstanding the provisions of the Act of June 17, 1954 (68 Stat. 250; 25 U.S.C. 891-902), as amended, or any other law, Federal recognition is hereby extended to the Menominee Indian Tribe of Wisconsin and the provisions of the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461 et seq.), as amended, are made applicable to it.

Repeal; rein-
statement of tribal
rights and privi-
leges.

(b) The Act of June 17, 1954 (68 Stat. 250; 25 U.S.C. 891-902), as amended, is hereby repealed and there are hereby reinstated all rights and privileges of the tribe or its members under Federal treaty, statute, or otherwise which may have been diminished or lost pursuant to such Act.

(c) Nothing contained in this Act shall diminish any rights or privileges enjoyed by the tribe or its members now or prior to June 17, 1954, under Federal treaty, statute, or otherwise, which are not inconsistent with the provisions of this Act.

(d) Except as specifically provided in this Act, nothing contained in this Act shall alter any property rights or obligations, any con-

Source: <https://www.congress.gov/93/statute/STATUTE-87/STATUTE-87-Pg770.pdf>



▶ CASE LAW EXAMPLE

"As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed. Here, where the preference is reasonable and rationally designed to further Indian self-government, we cannot say that Congress' classification violates due process."

Morton v. Mancari, 417 U.S. 535 (1974)



▶ WHAT IS DUE PROCESS?

- ❖ U.S. Constitution
- ❖ State Constitution
- ❖ Tribal Constitution
- ❖ Indian Civil Rights Act



▶ LEGAL CONSIDERATIONS



Source: Corrections1.com



▶ PROTECTING DUE PROCESS

- ❖ Participant waivers
- ❖ Confidentiality agreements
- ❖ The appeals process
- ❖ Participant handbooks
- ❖ Relevant statutory language



▶ ONEIDA NATION STATUTORY LANGUAGE EXCERPT

808.5. Healing to Wellness Court Procedures

808.5-1. *Establishment of Policies and Procedures.* The Court shall establish policies and procedures governing the operation and implementation of the Healing to Wellness Court program. The policies and procedures of the Healing to Wellness Court program shall not affect substantive rights and shall not conflict with existing law or rules enacted or approved by the Oneida Business Committee or Oneida General Tribal Council unless otherwise provided for within this law.

808.5-2. Healing to Wellness Court Team meetings and hearings shall proceed pursuant to the policies and procedures adopted by the Court.



▶ MONITORING AND EVALUATION

- ❖ Initial Due Process Planning
 - ❖ Intakes to determine suitability
 - ❖ Assessments to gather information
 - ❖ Phase adjustments



▶ MONITORING AND EVALUATION

- ❖ Process
 - ❖ Determining data collection
 - ❖ Staffing procedures
 - ❖ Consistent decision-making



▶ MONITORING AND EVALUATION

- ❖ Decisions Concerning Performance
 - ❖ Consensus amongst team
 - ❖ Majority votes
 - ❖ Transparency for decisions
 - ❖ Disclosing information to participants



▶ WHAT LEADS TO A TERMINATION?

- ❖ Termination procedures codified
- ❖ Termination policies and procedures
- ❖ Termination in handbook to provide notice



▶ ONEIDA NATION POLICIES AND PROCEDURES EXCERPT

5. If the OHWC Staffing Team decides by consensus to recommend discharge for the participant, the OHWC Judge will notify the participant of the recommendation to discharge at the status hearing immediately following the Staffing Team meeting when the recommendation was made.
 - a. When a final recommendation of discharge is made, the OHWC Coordinator/Case Manager will provide written notice to the participant immediately following or during the status hearing which will include:
 - i. Notice of violations.
 - ii. Right to a Discharge Hearing before a judge that is not the OHWC Judge.
 - iii. Rules of evidence do not apply.
 - iv. Right to obtain legal counsel.
 - v. The burden of the OHWC Team to show discharge is appropriate by a preponderance of the evidence.
 - vi. Date when a Discharge Hearing will be held.
6. A mandatory Discharge Hearing will be scheduled within 14 calendar days after the participant receives notice of the OHWC Staffing Team's final recommendation to



▶ TERMINATION CONSIDERATIONS

- ❖ Due process for participants
- ❖ Confidentiality amongst the team
- ❖ Role of attorneys in contesting/appealing



▶ SECOND CHANCES

- ❖ Length of termination
- ❖ Nature of termination
- ❖ Investigations for second chances
- ❖ Behavior modifications can make a difference



▶ WOOD COUNTY RE-REFERRAL PROCESS EXCERPT

Re-referral to Wood County Adult Treatment Court

It has become necessary to adopt a policy regarding second or subsequent participation in drug court by a former graduate or by one who has been terminated previously.

According to our mission statement, the drug treatment court has two goals:

1. “to bridge the gap between treatment and the criminal justice system helping drug offenders break the cycle of drug use...”
2. “to optimize the opportunity for sobriety for offenders...”

The team recognizes that participation in the program offers an opportunity to avoid traditional criminal prosecution by demonstrating the ability to live a clean, sober and productive life.

The team recognizes that participation in or graduation from the program does not guarantee a lifetime of sobriety.

The team understands that relapse and re-arrest can be expected to occur with some graduates.

The team is concerned that drug court does not become a safe haven for consistent repeat offenders who have not lived up to the goals of their participation.

The team believes that its’ mission describes a program of inclusion rather than exclusion, that is, to find reasons to allow participation rather than to seek ways to bar participation.

THEREFORE as a matter of policy, there shall be no automatic bar to reentry in the program for any former participant, whether terminated or graduated, not shall there be any limit on the number of times a person may reapply. However, each applicant will be closely scrutinized before readmission and as needed, the program may vary in intensity or length, tailored to the individual.

Adopted by majority/unanimous vote and included as an addendum to the policy manual.



▶ IN CLOSING....

- ❖ Due Process Considerations
 - ❖ Constitution
 - ❖ Statutory Language
 - ❖ Policies and Procedures





QUESTIONS?

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