HO-CHUNK NATION CODE (HCC)
TITLE 4 – CHILDREN, FAMILY AND ELDER WELFARE
SECTION 15 – HEALING TO WELLNESS COURT CODE

ENACTED BY LEGISLATURE: November 18, 2014

CITE AS: HCC 4 § 15

This Code, 4 HCC § 15, Healing to Wellness Court Code as enacted by the Ho-Chunk Nation Legislature Resolution 11-18-14C.

CHAPTER I
GENERAL PROVISIONS AND DEFINITIONS

1. **Authority**

   a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution ("Constitution") grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

   b. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.

   c. Article V, Section 2(i) of the Constitution grants the Legislature the power to negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals.

   d. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

   e. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

   f. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.

g. Article VII, Section 4 of the Constitution grants the Judiciary the power to interpret and apply the Constitution and laws of the Ho-Chunk Nation.

i. Article VII, Section 7(b) of the Constitution grants the Supreme Court the power to establish written rules for the Judiciary, provided such rules are consistent with the laws of the Ho-Chunk Nation.

2. **General**. The Ho-Chunk Nation Healing to Wellness Court ("Wellness Court") is an evidence-based treatment program that offers alcohol and/or drug addicted participants an alternative to extended incarceration and the standard probation model. The Wellness Court works cooperatively with treatment agencies and other rehabilitation services to engage a participant in a holistic treatment program that will provide the participant with the tools and support necessary to get into recovery, stay in recovery and lead a productive, alcohol-drug free, lawful, healthy lifestyle.

3. **Purpose**. The Wellness Court Code shall be liberally interpreted and construed to fulfill the following expressed purposes:

   a. Help Ho-Chunk Nation members break the generational cycle of abuse, addiction and enabling,

   b. Promote public safety by reducing recidivism rates of drug and alcohol offenses,

   c. Promote recovery in participants and the community, and support from the family and community, and

   d. Hold offenders accountable through the use of effective sanctions, rewards, and treatment programming.

   e. If offenders violate mutually agreed upon program, suspension of annual per capita payments may be imposed until the offender successfully completes the program.

4. **Policy**. The Wellness Court's mission is to address a pervasive alcohol and drug addiction ill affecting our community, alcohol and drug addiction and its associated consequences. The Wellness Court will act in partnership with available tribal and non-tribal agencies and service providers to achieve the following goals: 1)break the cycle of addiction; 2)promote public safety by reducing recidivism rates of drug and alcohol offenses; 3) promote recovery in participants and in the community; 4) restore traditional values and language; 5) create support systems and programs to foster recovery (sobriety), employment, education, and communal, familial, and individual health and well-being; 6) hold offenders accountable; and 7) maintain relationships and resources to continually assist program participants. The Wellness Court shall adhere to Ho-Chunk ideals while focusing upon restorative justice and collaborative decision-making. The Healing to Wellness Court shall comply with the 10 key components promulgated by the National Association of Drug Treatment Court Professionals more fully described in the Section 5.c.

5. **Definitions**.

a. "Distal Goal" means a long term goal expected to be achieved later in the program.

b. "Evidence-based" means treatments that integrate professional research and clinical expertise to achieve the best outcome for the individual.

c. "Healing to Wellness Court" means a court supervised treatment program for individuals who are dependent upon any controlled substance or alcohol. The Healing to Wellness Court shall comply with the 10 key components promulgated by the National Association of Drug Treatment Court Professionals, which include all of the following characteristics:

i. Integration of alcohol and other drug treatment services with justice system case processing.

ii. Use of a non-adversarial approach by prosecution and defense that promotes public safety while protecting any participant's due process rights.

iii. Identification of eligible participants early with prompt placement in the program.

iv. Access to a continuum of alcohol, drug, and other related treatment and rehabilitation services.

v. Monitoring of participants effectively by frequent alcohol and other drug testing to ensure abstinence from drugs or alcohol.

vi. Use of a coordinated strategy with a regimen of graduated sanctions and rewards to govern the court's responses to participants' compliance.

vii. Ongoing close judicial interaction with each participant and supervision of progress for each participant.

viii. Monitoring and evaluation of the achievement of program goals and the program's effectiveness.

ix. Continued interdisciplinary education in order to promote effective Healing to Wellness Court planning, implementation, and operation.

x. The forging of partnerships among other Drug Treatment Courts, public agencies, and community-based organizations to generate local support.

d. "Participant" means an individual who is admitted into the Wellness Court.

e. "Proximal Goal" means a short term goal expected to be achieved earlier in the program.

f. "Violent Offender" means an individual who meets either of the following criteria:

i. Is currently charged with or has been found guilty to an offense involving the death of or serious bodily injury to any individual, or the carrying, possessing, or use of a firearm or other dangerous weapon by that individual, whether or not any of these circumstances are an element of the offense, or is currently charged with or has been found guilty of criminal sexual conduct of any degree.

ii. Has one (1) or more prior convictions for a felony involving the use or attempted use of force against another individual with the intent to cause death or serious bodily harm.

CHAPTER II
JURISDICTION, COURT STRUCTURE, POLICIES, PROCEDURES, AND PROGRAM RULES

6. **Jurisdiction.**

a. The Wellness Court is hereby established by the Legislature as a court of special jurisdiction to meet the purposes set out above. The Wellness Court will exercise its authority as a court of special jurisdiction pursuant to rules established by the Supreme Court in accordance with Article VII, Section 7(b) of the Constitution and in Accordance with the legislative purposes set out above.

i. The Wellness Court shall exercise independent discretion in its monitoring of assigned cases.

b. The Wellness Court shall have the authority to issue all orders necessary to ensure the safety, well-being, and rehabilitation of individuals who come within or consent to its jurisdiction. The Wellness Court shall have the power to implement all the duties, responsibilities, and remedies set out in this Code, including the power to enforce subpoenas and orders of restriction, fines and orders of restitution, contempt, confinement and detention, and other powers as appropriate.

c. Upon successful completion of the Wellness Court program, or at such a time when a participant of the Wellness Court becomes ineligible to continue in the program, the Wellness Court will provide such information to the appropriate governmental entity for its use in any final disposition as it relates to the Wellness Court participant.

7. **Court Structure**.

    a. The Healing to Wellness Court shall be made up of Treatment Team which shall include a Trial Court Judge, a prosecutor, a public defender/advocate, a Treatment Team coordinator, a Researcher, a law enforcement official, a representative of the Legislature, a representative of probation, a representative of substance abuse treatment providers, a vocational rehabilitation professional, a representative of Traditional Court, a representative of social services, a representative of compliance, and other members to be determined by the Judiciary and/or Treatment Team.

8. **Policies and Procedures**. The Wellness Court shall promulgate and follow Policies and Procedures in administering the Wellness Court. Policies and Procedures are subject to change, and changes shall be adequately and timely published to the Team, public, and participants. Upon reviewing the Policies and Procedures and considering any recommended changes, the Ho-Chunk Nation Supreme Court shall approve the Policies and Procedures on an annual basis or prior to the annual review when deemed necessary by the Supreme Court.

9. **Participant Handbook**. The Wellness Court shall promulgate and distribute Participant Handbooks to the participants of the Wellness Court Program. The Participant Handbook shall set forth the rules of the program and obligations of the participant in a clear manner. Handbooks shall be distributed, and the defense attorney/lay advocate shall go through the handbook with each participant, as soon as the participant is admitted to the Wellness Court and obtain written acknowledgment of participants understanding of the rules of the Wellness Court. Failure to abide by the program rules may result in sanctions, therapeutic sanctions, termination from the program and /or prosecution to the fullest extent available under the law. Upon reviewing the Participant Handbook and considering any recommended changes, the Ho-Chunk Nation Supreme Court shall approve the Participant Handbook on an annual basis or prior to the annual review when deemed necessary by the Supreme Court.

CHAPTER III
REFERRAL AND ASSESSMENT

10. **Referral Procedures**

    a. Attorney Referral

        i. A prospective participant's criminal attorney may seek to have their client admitted into the Wellness Court by fully completing an Attorney Referral Form, which shall be drafted and maintained by the Wellness Court.

        ii. The Attorney Referral Form shall then be submitted to the Wellness Court Coordinator located at the Ho-Chunk Nation Wa Ehi Hoci (Judiciary Building).

b. Self-Referral

i. A prospective participant may seek admittance into the Wellness Court by fully completing a Self Referral Form, which shall be drafted and maintained by the Wellness Court.
ii. The Self Referral Form shall then be submitted to the Wellness Court Coordinator located at the Ho-Chunk Nation Wa Ehi Hoci.

11. **Legal Screening**

a. Legal Screening shall be completed by the tribal prosecutor and defense attorney to determine legal eligibility and to examine public safety risk.

b. Core components of the screening process are:

i. Current criminal charge(s);

ii. Criminal history;

1. Violent Offender. The Legal Screening process will include a determination if there are prior violent felonies; sex offenses; and offenses in which a firearm, deadly weapon, or dangerous instrument was used that may preclude admission;

iii. Circumstances of current offense such as defendant culpability and mandatory incarceration statutes;

iv. Outstanding warrants, additional charges in other counties, previous diversion programs, and previous treatment court participation; and

v. Mental health disorders.

c. Legal Screening shall occur at the earliest point after arrest with a determination of acceptance or rejection to occur within thirty (30) days from screening.

d. The Wellness Court Coordinator will be immediately notified of the Legal Screening determination.

i. If the Legal Screening results show the prospective participant is legally eligible for the program, the Wellness Court Coordinator will provide the contact information for the prospective participant to arrange for a Clinical Assessment to be conducted as the second phase of determining eligibility.

ii. If the Legal Screening results show that the prospective participant is not legally eligible for the program, the Wellness Court Coordinator will provide such documentation to the Team for reference and discussion.

12. **Clinical Assessment**

a. The Clinical Assessment shall be completed by the treatment professionals on the Team to determine diagnosis, clinical eligibility, and treatment planning.

b. The Clinical Assessment shall occur soon after Legal Screening results are available showing legal eligibility standards have been met.

c. The Clinical Assessment shall consist of validated standardized assessment instruments and methods.

d. The treatment professionals will review any special needs or circumstances of the individual that may potentially affect the individual's ability to receive substance abuse treatment and follow the court's orders.

e. The Clinical Assessment shall remain confidential, will not be open to inspection by the public at the Ho-Chunk Nation Wa Ehi Hoci, is not discoverable under the DISCOVERY ACT, 2 HCC § 3, and shall not be used in a criminal prosecution, unless it reveals criminal acts other than, or inconsistent with, personal drug use.

f. The prospective participant must also recognize the possibility of and agree to cooperate with any future evaluation assessments as directed by the Wellness Court.

g. The Wellness Court Coordinator will be immediately notified of the Clinical Assessment determination.

i. The Wellness Court Coordinator shall prepare copies of eligibility documentation to be presented to the Team.

13. **Admission to Program**

a. Clinical Assessment and/or Legal Screening results shall be presented to the Team in order for the Team to ultimately decide whether to admit an eligible applicant into the Wellness Court program.

b. Traditional Court shall make a Ho-Chunk cultural assessment in order to address cultural and/or spiritual competencies with recommendations given to the Wellness Court.

c. The Team shall perform a financial management assessment in order to educate the participant to attain financial stability upon admittance to the program.

d. The Team shall review all relevant information before reaching consensus on whether to admit or deny a prospective participant.

e. The Wellness Court Coordinator shall notify the prospective participant's attorney and participant to let them know the Team's decision.

i. If the Team reaches a consensus on admission, the Wellness Court Coordinator shall provide an appointment time in which the prospective participant is to report to the Ho-Chunk Nation Wa Ehi Hoci to proceed with filling out the necessary paperwork for admission.

ii. The participant will also have a time arranged to meet with the defense attorney/lay advocate to go through the Participant Handbook, have the program explained to him/her, and go through the ramifications of rule violations that may lead to a treatment response, sanction, and/or termination from the program.

1. Documentation of receipt of the Participant Handbook and meeting with the defense attorney/lay advocate shall be placed within the participant's file to be kept by the Wellness Court Coordinator.

14. **Records of Denials**. The Wellness Court Coordinator shall retain all copies of information pertaining to denials for data and research purposes. Information pertaining to denials shall not be made transferable to any entity other than the grant provider/funder.

CHAPTER IV
MONITORING, TESTING, AND ASSESSMENTS

15. **Monitoring**. The Wellness Court shall provide a participant with consistent, continual, and close monitoring.

a. Monitoring may include, but is not limited to, the use of a Global Positioning System (GPS) and Secure Continuous Remote Alcohol Monitor (SCRAM) units.

b. Any loss or damage to the GPS and/or SCRAM units shall be the financial responsibility of the program participants.

16. **Interaction**. The Wellness Court shall ensure appropriate amounts of interaction among the court, treatment providers, probation, appropriate friends and/or family members and the participant.

17. **Testing**. The Wellness Court shall ensure periodic and random testing for the presence of any controlled substance or alcohol in a participant's blood, urine, or breath, using the best available, accepted, and scientifically valid methods.

18. **Assessments**. The Wellness Court shall utilize periodic evaluation assessments of the participant's circumstances and progress in the program.

    a. Treatment providers shall utilize best evidence based practices in performing new assessments as needed to determine if any additional treatment services are necessary to assist the participant.

    b. Assessments shall include an evaluation of the participant's efforts towards meeting their proximal and distal goals in the program.

19. **Wellness Court Fees**. The Wellness Court Coordinator shall maintain a record of a participant's Wellness Court fees and any payments made toward those fees. Monthly statements shall be provided to each participant.

    a. Payment of fees is a requirement for phase advancement and graduation.

    b. Wellness Court fees shall be considered a Debt to the Nation pursuant to CLAIMS AGAINST PER CAPITA ORDINANCE, 2 HCC § 8.5 a(1).

20. **Sanctions and Incentives**.

    a. Sanctions. The Wellness Court shall implement and utilize a system of appropriate, graduated, and immediate sanctions for non-compliance.

        i. Sanctions include, but are not limited to, incarceration, phase freeze, and an increase in requirements issued by the Wellness Court Team.

        ii. Therapeutic Sanctions. If a participant is not compliant with his/her treatment plan, the Team may utilize therapeutic sanctions to assist with getting the participant back on track with his/her treatment plan, which may include, but is not limited to thinking reports and increased counseling sessions and self-help meetings.

        iii. The types of sanctions used shall take into consideration the distal and proximal goals set for each participant.

    b. Incentives. The Wellness Court shall implement and utilize a system of appropriate, graduated, and immediate incentives for compliance.

        i. Incentives include, but are not limited to, gift cards, public praise, and early phase advancement.

        ii. Assistance in filing a Pardon application or filing for expungement of a Wisconsin criminal record.

iii. Personal finance assistance, employment assistance and education of Probation and Parole duties.

21. **Services**. The Wellness Court, through adequate funding from the Legislature, shall ensure that substance abuse treatment services, relapse prevention services, mental health treatment referrals and/or services, education, vocational opportunities are appropriate and available.

CHAPTER V
WELLNESS COURT STAFFING

22. **Compliance Reports**

a. The Wellness Court Coordinator is responsible for completing bi-weekly compliance reports to be distributed to the Wellness Court for the purpose of staffing.

b. The compliance reports will at a minimum provide:

i. an overview of a participant's compliance with their treatment plan,

ii. compliance with the program rules as laid out within the Participant Handbook,

iii. their period of sobriety,

iv. any additional services that may be necessary to assist the participant,

v. their start date,

vi. the total number of weeks they have been in the program,

vii. the phase that they are in and week in such phase, taking into consideration and noting any advancement or freeze,

viii. outstanding Wellness Court fees owed, and

ix. a complete and detailed list of all sanctions since the start of their program.

23. **Formal Staffing**

a. The purpose of the Wellness Court staffings is to update the Team on the progress and needs of each participant in his/her treatment plan, to report the results of weekly random alcohol and/or drug testing, and to discuss possible sanctions and incentives for non-compliance, tampered with or failed tests, but also to reward progress. The sanctions and incentives shall be applied by the judge in the Status

Hearing. The Team should also make concrete arrangements to assist participants in areas of need.

b. All Wellness Court staffings will be closed to the public and are confidential.

   i. Only members of the Wellness Court Team shall be present during the staffings.

      1. If an individual outside of the Wellness Court Team is necessary to adequately staff a case, then that individual will complete a confidentiality agreement and be advised that any information they hear is to be strictly confidential.

   ii. At times participants may be called into a staffing, or request to appear on their own, as in the case of phase advancement. A participant will be present only for the part of the staffing addressing that participant, and then will be excluded from the rest of the meeting.

c. Wellness Court decisions shall be made through discussion and by consensus.

24. **Informal Staffing**

a. At times decisions need to be made quickly. As such, Wellness Court members are permitted to make decisions via e-mail provided all members are part of the e-mail feed.

b. Decisions made by e-mail shall be made through discussion and by consensus.

c. E-mails shall remain confidential.

CHAPTER VI
COURT PROCEDURE AND HEARINGS

25. **Rules of Evidence.** Any information obtained, used or disclosed by a member of the Wellness Court Team, regarding the treatment methods employed by the Wellness Court team, while the participant is under the jurisdiction of the Wellness Court shall not be used as evidence against the participant in any other proceeding in the Ho-Chunk Nation Court system or any other court in any other jurisdiction. All Wellness Court records are privileged and confidential and shall not be disclosed except to the members of the Wellness Court Team. The Rules of Evidence adopted by the Ho-Chunk Nation Judiciary shall not apply in any Wellness Court proceedings.

26. **Status Hearings**

a. The purpose of Status Hearings is to judicially monitor whether the participants are attending their required treatment sessions and activities, to review their weekly random alcohol and/or drug test results, and to formally reward or sanction

participants for progress, non-compliance, or relapse in moving through their treatment plan.

b. The Status Hearings shall include discussion between the Court and the participant in regard to the progress or lack thereof being made by the participant on his or her treatment program.

c. All Wellness Court hearings shall be open to the public.

d. The Wellness Court is strictly a non-adversarial forum.

e. Status Hearings shall be held at a minimum of every two weeks.

f. The Wellness Court Judge shall make all findings relevant to each participant's case pursuant to the policies and procedures adopted by the Wellness Court Team.

27. **Termination**

a. Upon presentation of appropriate grounds, a Wellness Court Team member may make a Motion to Terminate a participant.

i. Grounds for termination include:

1. Commission of a violent crime;

2. Abandonment of the Wellness Court program;

3. Evidence indicating the participant is involved with drug dealing or driving while under the influence of an intoxicant;

4. Any threatening, abusive, or violent verbal/physical behavior;

5. Hostile, threatening or disrespectful conduct towards the Court or other participants;

6. Any other grounds the Wellness Court deems sufficient for termination.

b. Termination will be discussed and decided by consensus.

c. The decision to terminate shall be put in writing.

28. **Graduation**. Upon successful completion of all four phases of the Wellness Court program, participants shall be formally recognized and praised for graduating from the Wellness Court program during the Status Hearings. The Wellness Court judge shall issue a written Order formally recognizing completion of the program to be kept as part of the

Wellness Court records, but also to be used to address the criminal action(s) that brought the participant within the purview of the Wellness Court. The graduate is to be provided a formal written Certificate recognizing completion from the program to be used by the participant as he or she requires. A copy of this Certificate shall be kept as a part of the participant's Wellness Court records. Formal recognition to be given at Tribal Social event.

CHAPTER VII
RECORDS, BUDGET, ADVISORY BOARD

29. **Collection and Maintenance of Records.**

a. The Wellness Court shall collect data on each individual applicant, participant, and entire program.

i. The Wellness Court shall maintain files on each individual applicant or referral who is denied or refused admission to the program, including the reasons for the denial or rejection, the criminal history of the applicant, the preadmission legal screening and clinical assessment, and other demographic information as deemed beneficial by the Ho-Chunk Nation Judiciary.

ii. The Wellness Court shall maintain files on each participant in the program for review and evaluation as well as treatment. The information collected for evaluation purposes must include a minimum standard data set as deemed appropriate through evidence based practices, and at a minimum contain:

1. Location and contact information for each individual participant, both upon admission and termination/graduation of the program for follow-up reviews, and third party contact information;

2. Significant transition point dates, including dates of referral, admission, new court orders, violations, jail/confinement, changes in services or treatments provided, phase advancements, periods of phase freeze, discharge for graduation or termination, any provision of after-care, and after-program recidivism;

3. The individual's precipitating offenses and significant factual information, source of referral, and all treatment court evaluations and assessments;

4. Treatments provided, including intensity of care or dosage, and their outcomes;

5. Other services or opportunities provided to the individual and resulting use by the individual, such as education or employment and participation of and outcome for that individual;

6. Reasons for termination or graduation from the program.

iii. The Wellness Court shall conduct a two year, follow-up contacts with and reviews of participants for key outcome indicators, such as drug use, recidivism, and employment yearly. These follow-up contacts and reviews of former participants are not extensions of the court's jurisdiction over the individuals.

30. **Budget**. The Legislature shall appropriate operating funds to ensure the Wellness Court can operate fully in accordance with the 10 key components promulgated by the National Association of Drug Treatment Court Professionals. Supra. Section 5b.

31. **Advisory Board**. The Wellness Court Advisory Board should include legislative branch members (2), executive branch members (2), Wellness Court team members (3), Wellness Court graduate (1), and other community members who have an interest in the success of the Wellness Court program (5). This Board should meet on a bi-annual basis to consider and assist in the design, improvement, funding, and community education and support of the Wellness Court Program.

32. **Severability**. If any part or parts, or application of any part of this Code is held invalid, such holding shall not affect the validity of the remaining parts of this Code.

Legislative History:

06/18/13 Legislature places the Healing to Wellness Court Code out for 45 Day Public Comment by Resolution 06-18-13G.

11/18/14 Legislature adopts the Healing to Wellness Court Code by Resolution 11-18-14C.