

**CITIZEN POTAWATOMI NATION
HEALING TO WELLNESS COURT ADMINISTRATION AND
PROCEDURE
TITLE 15**

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CHAPTER ONE
CITIZEN POTAWATOMI NATION HEALING TO WELLNESS
COURT ADMINISTRATION AND PROCEDURE

SECTION 15-1-101 CITATION

This Act, codified at Section 15-1-101 through 15-1-109 herein, may be cited as “The Citizen Potawatomi Nation Healing to Wellness Court Act of 2014”.

Enacted by Ordinance #15-02 by Citizen Potawatomi Legislature on February 26, 2015.

SECTION 15-1-102 ESTABLISHMENT OF THE HEALING TO WELLNESS COURT

The Citizen Potawatomi Nation Healing to Wellness Court shall be a deferred sentencing program established to divert those offenders with substance abuse problems away from the regular Court system and toward a more holistic approach, which involves a treatment-oriented perspective.

Enacted by Ordinance #15-02 by Citizen Potawatomi Legislature on February 26, 2015.

SECTION 15-1-103 ADMINISTRATIVE AUTHORITY OF THE HEALING TO WELLNESS COURT

Nothing in this Act shall be construed to limit the authority of the tribal court system to exercise administrative control over the procedures to be followed in the Healing to Wellness Court to the extent its actions are not inconsistent with the provisions of this Act.

Enacted by Ordinance #15-02 by Citizen Potawatomi Legislature on February 26, 2015.

SECTION 15-1-104 HEALING TO WELLNESS COURT COMPOSITION

The Citizen Potawatomi Nation Healing to Wellness Court shall be composed of one (1) Healing to Wellness Court Judge and a Healing to Wellness Court Team.

Enacted by Ordinance #15-02 by Citizen Potawatomi Legislature on February 26, 2015.

SECTION 15-1-105 DUTIES OF THE HEALING TO WELLNESS COURT JUDGE

- (a) The Healing to Wellness Court Judge shall have jurisdiction and shall preside over all matters referred to it by the Citizen Potawatomi Nation District Court.
- (b) The Healing to Wellness Court Judge shall have the following additional duties and responsibilities.
 - (1) Schedule sessions of the Healing to Wellness Court, where the Judge shall meet with each individual Healing to Wellness Court participant in Court;
 - (2) Draft and promulgate rules governing the administration of the Healing to Wellness Court; provided, that such rules do not contradict any rules of procedure of the Citizen Potawatomi Nation Tribal Code, or abridge, enlarge or modify the substantive right of any party;
 - (3) Meet with the Healing to Wellness Court Team as necessary;
 - (4) Order punishments and incentives as necessary to further the objectives of the Healing To Wellness Court, provided that such terms or conditions do not violate or abridge any fundamental or substantive right of any party; and
 - (5) Monitor the privacy and accuracy of all the Healing To Wellness Court records.

Enacted by Ordinance #15-02 by Citizen Potawatomi Legislature on February 26, 2015.

SECTION 15-1-106 PARTICIPATION IN HEALING TO WELLNESS COURT

- (a) A defendant in Tribal Court is eligible to participate in the Healing to Wellness Court if:
 - (1) The defendant is a Tribal Member, or a child of a Tribal member or a Native American;
 - (2) The defendant is not a juvenile;
 - (3) The defendant has a substance abuse problem;
 - (4) The defendant is charged with crime or civil offense motivated by substance abuse.
 - (5) The Tribal Prosecutor recommends to the Tribal Court that the defendant be referred to the Healing To Wellness Court;
 - (6) The defendant is charged with a nonviolent offense; provided, however that the

Citizen Potawatomi Nation District Court Judge may waive this requirement, if the Tribal Prosecutor believes that the defendant will likely respond to rehabilitative treatment despite the violent nature of the offense;

- (7) The defendant does not have a history of violent acts; provided, however that the Citizen Potawatomi Nation District Court Judge may waive this requirement, if the Tribal Prosecutor believes that the defendant will likely respond to rehabilitative treatment despite the defendant's violent past;
 - (8) The defendant has not participated more than twice in the Healing To Wellness Court;
 - (9) The defendant's participation in the program has never been revoked; and
 - (10) The defendant voluntarily and knowingly enters a plea of guilty to a criminal offense or admits liability in a civil offense.
 - (11) The defendant voluntarily agrees to enter the Healing To Wellness Court upon proper application and is accepted by the Healing To Wellness Court Team.
 - (12) A non-Indian subject to the CPN District Court's jurisdiction may voluntarily participate when there is an appropriate relationship to the Healing To Wellness Court purpose. For example Indian Child Welfare matters and Domestic Violence.
- (b) Tribal Members and children of Tribal Members, who are at least eighteen years of age or older, may also participate in the Healing To Wellness Court if he or she is referred to the Healing To Wellness Court for a state Court or social service agency, including the Citizen Potawatomi Nation Indian Child Welfare or Family Preservation Department.

Enacted by Ordinance #15-02 by Citizen Potawatomi Legislature on February 26, 2015.

SECTION 15-1-107 CONDITIONS OF HEALING TO WELLNESS COURT

- (a) In any case in which a defendant is admitted into the Healing To Wellness Court, there shall be a written agreement between the defendant and the Healing To Wellness Court Team. The agreement shall include, but not be limited to, the terms of the Healing To Wellness Court.
- (b) The conditions of the Healing To Wellness Court may include, but are not limited to, one or more of the following:
 - (1) Participate in an education setting, including but not limited to, secondary education, postsecondary education, job training school, trade school, GED classes,

or adult basic education courses;

- (2) Financially support his or her spouse, children, or both, or pay child support, spousal support, or both, including allowing such support to be withheld or garnished from the wages or salary of the defendant;
- (3) Refrain from the use of alcohol and drugs and from frequenting places where alcoholic beverages or illegal controlled substances are sold, possessed, or used;
- (4) Refrain from contact with certain persons or premises;
- (5) Obtain and maintain employment;
- (6) Attend individual, group, or family counseling;
- (7) Pay court costs, fees, fines, or both, incurred as a result of the offense charged, including allowing such costs to be withheld or garnished from the wages or salary of the defendant;
- (8) Pay costs associated with participation in the Healing To Wellness Court, including allowing such costs to be withheld or garnished from the wages or salary of the defendant;
- (9) Observe curfews or home detention or travel constraints as set out in the offender's agreement; and/or
- (10) Observe any other terms or conditions of the Healing To Wellness Court Judge or the Healing To Wellness Court Team, provided that such terms or conditions do not violate or abridge any fundamental or substantive right of any party.

Enacted by Ordinance #15-02 by Citizen Potawatomi Legislature on February 26, 2015.

**SECTION 15-1-108 HEALING TO WELLNESS COURT RECORDS
AND COMMUNICATIONS**

The Healing To Wellness Court records are confidential and shall not be admissible in subsequent proceedings, civil or criminal. Communications between the Healing To Wellness Court Treatment Provider and the defendants shall be privileged unless a court of competent jurisdiction determines there is a compelling public interest that the communications be submitted to the court for an in camera review.

Enacted by Ordinance #15-02 by Citizen Potawatomi Legislature on February 26, 2015.

SECTION 15-1-109

REVOCAION OF PARTICIPATION IN THE HEALING TO WELLNESS COURT

- (a) Upon the recommendation from the Healing To Wellness Court Team that the defendant's participation in the Healing To Wellness Court should be revoked, the Tribal Prosecutor shall file a petition in the Healing To Wellness Court showing probable cause that a defendant has violated the terms or conditions of the Healing To Wellness Court. The Healing To Wellness Court Judge shall order a hearing on the revocation. The order must require the defendant to appear at a specified time and place for the hearing. A copy of the petition and the order setting the hearing shall be personally served by the Tribal Police or by certified mail. The Healing To Wellness Court Judge may also issue an arrest warrant directing any peace officer or probation officer to arrest the defendant and bring the defendant before the Court.
- (b) At the hearing, the defendant must be advised of:
 - (1) The allegations of the petition;
 - (2) The opportunity to appear and to present evidence on the defendant's behalf;
 - (3) The opportunity to question adverse witnesses; and
 - (4) The right to be represented by legal counsel.
- (c) A hearing is required before the defendant's participation in the Healing To Wellness Court is revoked unless the defendant admits the allegations and waives the right to a hearing.
- (d) At the hearing, the Tribal Prosecutor shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the Healing To Wellness Court.
- (e) If the Tribal Prosecutor proves that the defendant has violated the terms and conditions of the Healing To Wellness Court, the Healing To Wellness Court Judge may;
 - (1) Continue the defendant's Healing To Wellness Court participation without a change in terms or conditions;
 - (2) Continue the defendant's Healing To Wellness Court participation with modified or additional terms and conditions; or
 - (3) Revoke the defendant's participation in the Healing To Wellness Court and transfer the matter back to the Citizen Potawatomi Nation District Court where the Judge may impose any sentence that could have been originally imposed. The Healing To Wellness Court Judge shall state the reasons for his or her determination in the order.

- (f) If the Healing To Wellness Court Judge finds that the Tribal Prosecutor has not proved by a preponderance of the evidence that there has been a violation of the terms and conditions of the Healing To Wellness Court participation, the Healing To Wellness Court Judge:
 - (1) Must dismiss the petition for revocation and order the immediate release of a defendant, if in custody; and
 - (2) May modify or add terms and conditions of the Healing To Wellness Court participation.
- (g) If a defendant's participation in the Healing To Wellness Court is revoked, the matter is transferred to the Citizen Potawatomi Nation District Court, along with a copy of the Healing To Wellness Court Judge's order revoking participation in the Healing To Wellness Court. The Citizen Potawatomi Nation District Court Judge shall sentence the defendant and shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as credit, except that credit must be allowed for time served in a detention center.

Enacted by Ordinance #15-02 by Citizen Potawatomi Legislature on February 26, 2015.