

# Developing and Delivering Incentives and Sanctions

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Traditionally, responses by the criminal justice system to offender behavior exact retribution for what the offender has done and/or punish the offender with the hope that the behavior will not be repeated. Research demonstrates this approach has been totally inadequate to stem drug abuse and related crime in the United States.<sup>1</sup> Deterrence theory posits that the decision to commit a criminal act is influenced by the perception that the certainty, severity and celerity (swiftness) of the consequences.<sup>2</sup> Conventional criminal case processing relies heavily on severity<sup>3</sup> of the consequences and ignores the importance of certainty and swiftness. Drug courts utilize scientifically accepted behavioral modification tools of certainty, swiftness and graduated severity coupled with incentives to permanently change offender behavior. This chapter assists the drug court team in developing the necessary responses to shape offender behavior and identifies the skills for delivering effective responses.

## The Drug Court Difference

Although counterintuitive, individuals coerced into substance abuse treatment do better than individuals who voluntarily enter into treatment. Two major findings derive from combined studies of 70,000 substance abusers since 1967:

1. The length of time a person spends in treatment is a reliable predictor of post treatment performance; and

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<sup>1</sup> See for example: Drug Strategies et al, Drugs and Crime Across America: Police Chiefs Speak Out. (Dec. 2004) available at: [http://www.drugstrategies.org/Police\\_Poll.pdf](http://www.drugstrategies.org/Police_Poll.pdf) ; Marlowe D. B., “*Effective strategies for intervening with drug abusing offenders*”, Villanova Law Review, 47:989-1025 (2002)

<sup>2</sup> Harrell, A. & Roman, J. “Reducing Drug Use and Crime Among Offenders: The impact of graduated sanctions.” Journal of Drug Issues (Vol. 31(1) pp. 207-232) (2001).

<sup>3</sup> Such reliance on severity is particularly misplaced in light of research findings questioning the efficacy of perceived severity in deterring future behavior. See Ibid at 210; Brennan, P. and Mednick, S. “Learning Theory Approach to Deterrence of Criminal Recidivism” (Vol. 103), Journal of Abnormal Psychology (pp. 430-440 1994)

2. Patients who are coerced into treatment stay longer and, thus, have better results<sup>4</sup>

Through the informed use of incentives and sanctions, drug courts keep offenders engaged in treatment, thus, increasing the probability of successful treatment outcomes. In fact, 70% of all offenders in the 200 drug courts surveyed were still engaged in active treatment after one year.<sup>5</sup> On the other hand, 80-90% of those individuals engaged in voluntary treatment, fail to complete a full year of treatment.<sup>6</sup>

### **The Importance of Incentives**

The motivational tools of the drug court are sanctions and incentives. A sanction or punishment is defined as any response that decreases the likelihood that the participant will engage in undesirable behavior in the future. Positive reinforcement (an incentive) and negative reinforcement (a sanction) are both designed to increase desired behavior. Positive reinforcement increases a desired behavior by rewarding that behavior—for instance, a drug court participant tests negative for drug use and the Judge praises the participant and the audience claps for the participant's abstinence. Negative reinforcement also increases desired participant behavior by removing an aversive stimulus—for instance the dismissal of charges when an individual completes the drug court program or the reduction of required random urinalysis when a participant test negative for three consecutive months.<sup>7</sup>

Behavior does not change through the use of punishment alone. Behavioral research repeatedly demonstrates that longer lasting behavioral change is attained through

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<sup>4</sup> Satel, S., M.D., Drug Treatment: the Case for Coercion, American Enterprise Institute (Washington D.C. 1999), pp. 16-19. The one caveat is that treatment of 90 days or less has no impact on drug use at all.

<sup>5</sup> Meyer W. & Ritter W. "Drug Courts Work", Federal Sentencing Reporter, (Summer 2002) Cooper, C.A., Bartlett, S.R., M.A. Shaw, and Yang, K.K. "Drug Courts: 1997 overview of operational characteristics and implementation issues. (Vol. 1) (Washington D.C., American University, 1997). Such findings are confirmed by the General Accounting Office which found retention rates in drug courts averaging 71% see note #23.

<sup>6</sup> Meyer, et al, ibid at 183

<sup>7</sup> The definitions of sanctions and incentives are taken from: Marlowe, D. & Kirby, K. "Effective Use of Sanctions in Drug Courts: Lessons from the Behavioral Research," Nat. Drug Court Institute Review (Vol. II, Issue 1, 1999).

the use of reinforcement contingencies when compared with punishment contingencies.<sup>8</sup> Punishment often engenders behavioral suppression, fear, anger, as well as escape and avoidance responses.<sup>9</sup> The effects of punishment are transitory—with the punished behavior returning when the punishment contingency is removed.<sup>10</sup> Punishment teaches what not to do while reinforcement contingencies teach what to do. Punishment is most effective when coupled with other behavior modification techniques, such as positive reinforcement.<sup>11</sup> Thus, if a drug court participant has a positive drug test, the participant should be sanctioned for the positive test but praised for the fact that (s) he is attending treatment regularly.

Old adages such as “you get more with honey than you do with vinegar” and “the carrot is mightier than the stick” have lasting vitality because they are true. The drug court team should not underestimate the power of incentives whether a simple “good job”<sup>12</sup> or a reduction in probation appearances for compliant behavior. In the final analysis, it is the incentives that are most likely to procure the enduring behavior changes in drug court participants.

### **What and When—Proximal and Distal Behaviors**

When a participant first enters the drug court program, what are target behaviors the team is trying to shape in this offender and what are the court requirements imposed to achieve those changes? You might initially think that the participant should: (a) regularly come to court, (b) frequently and randomly test for drug use, (c) recurrently

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<sup>8</sup>Higgins, S. T., & Silverman, K.. Motivating Behavior Change Among Illicit-Drug Abusers. Washington, D.C.: American Psychological Association, p. 330 (1999).

<sup>9</sup> Ibid at 330.

<sup>10</sup> Ibid at 330

<sup>11</sup> Marlowe, D. B., & Kirby, K. C.. “Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research.” National Drug Court Institute Review, II (1), 11-xxix (1999) .

<sup>12</sup> Incentives need not be something tangible—praise, when done immediately and continuously for achieving target behavior can be very effective. Lindquist, Christine, et. al., Sanctions and Rewards in Drug Court Programs: Implementation, Perceived Efficacy and Decision Making” 36(1), Journal of Drug Issues 119-144 (2006) (Drug Court participants say that praise is the most desirable reward, while probationers prefer early termination); Deci, E. L., Koestner, R., & Ryan, R. M. (1999). “A Meta-analytic Review of Experiments Examining the Effects of Extrinsic Rewards on Intrinsic Motivation.” , Psychological Bulletin, 125 (6), 627-668.

attend treatment sessions, (d) see a case manager and/or probation officer, (e) not use drugs and alcohol, (f) attend 12 step meetings, (g) get a sponsor, (h) change friends and residence, if they are not part of a sober lifestyle, (I) get a GED, if not a graduate, (j) do community service, (k) pay fees and costs, (l) have a full time job or attend school on a full time basis and above all—have a good attitude. Realistically, what is the capacity of the new drug court participant to accomplish these tasks? Aren't there certain behaviors that have to be changed first (proximal behaviors) before the participant is capable of changing others (distal behaviors)? Think of psychiatrist Richard Dryfuss describing to patient Bill Murray the need to take “baby steps” to overcome his neurosis in the movie “What about Bob?” The team should prioritize the behaviors they want to primarily shape in each phase of their program and design their incentive/sanction algorithm to reflect these different priorities. Non-compliance with emphasized behaviors would result in greater consequences for the drug court participant than non compliance with target behaviors that have less importance in that phase. For example, if the team thought showing up for treatment and honesty were the most important target behaviors in the first 30 days of the participant's enrollment in the drug court program, the response for not showing up to treatment or for lying might be harsher than for having a positive drug test. That is not to say that there is no response for the positive drug test. Although we may anticipate that an offender/addict will test positive for drug use, there should always be a consequence for drug use. Drug courts never condone drug use. While addiction may be a disease of relapse<sup>13</sup>---relapse is not part of recovery.

Appropriate consequences are also dictated by the person's risk to public safety, as determined by an appropriate assessment such as the LSI-R and their need for treatment, as determined by objective diagnostic criteria, such as contained in the Diagnostic and Statistical Manual IV-third revision.<sup>14</sup> For the drug court participant who is merely an abuser, abstinence from drug use is a proximal goal. Hence, drug usage should draw a

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<sup>13</sup> Leshner, A., “Addiction is a Brain Disease” , *Issues in Science and Technology Online*, (Spring, 2001) <http://alcoholism.about.com/gi/dynamic/offsite.htm?zi=1/XJ&sdn=alcoholism&zu=http%3A%2F%2Fwww.drugabuse.gov>

<sup>14</sup> DeMatteo, D.S., Marlowe, D.B., and Festinger, D.S., “Secondary Prevention Services for Clients Who are Low Risk in Drug Court: A Conceptual Model”, *Crime & Delinquency*, Vol. 52, No. 1, pp. 114-134 (Jan. 2006)

high magnitude response. On the other hand, abstinence is a distal goal for the addict because treatment support is often necessary before change will occur for that target behavior. Thus, for the addict, treatment is a proximal behavior and a high magnitude sanction is warranted for treatment non-compliance. Although abstinence may be a distal goal for the addict, there is always a consequence for use.

### **Developing Incentives and Sanctions and the Response Algorithm**

A good starting place for collecting ideas incentives and sanctions is the 1,000 + drug courts around the country. Visit a jurisdiction near you and see what they use. Additionally, the National Drug Court Institute has assembled a list of various incentives and sanctions being used in drug courts and will provide these to you upon request. Because drug court is an ever evolving system, team members should talk to drug court graduates and participants for feedback on responses that motivated their behavior and suggestions for additional sanctions and incentives that participants believe would be effective. Oftentimes a team feels stymied because of lack of funds to purchase incentives such as tickets to movies or sporting events. While such rewards expand the available incentive choices, they are not required. In most jurisdictions such rewards are donated. A few public speeches to service groups about drug court coupled with some poignant success stories usually draw multiple requests of: “What can we do?” Of course, the Judge must be cognizant of the Canons of Judicial Ethics and prohibitions against soliciting donations.<sup>15</sup>

Utilizing the local and national resources, the team will have little trouble in assembling and periodically adding to an array of responses to participant behavior. The more difficult task will be developing the range of consequences for any given behavior. While it may be tempting to inform participants that for any given infraction, they can receive the most lenient sanction to termination from the program and jail, such a practice does not comport with good behavioral management techniques. Failure to specify particular behaviors that are targeted and the consequences for non-compliance can result in a behavior syndrome known as “learned helplessness where a drug court participant

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<sup>15</sup> For assistance in this area the Judge may want to refer to the National Drug Court Institute’s publication “Ethical Considerations for Judges and Attorneys in Drug Court” (NDCI Spring 2001) available at <http://www.ndci.org/publications/ethicalconsiderations.pdf>

can become aggressive, withdrawn and/or despondent.”<sup>16</sup> The team should develop the range of responses for any given behavior. A singular response to a missed drug test is not advisable because it fails to account for other progress (or lack thereof) the individual has made and how long the person has been in the program. The key is flexible certainty. The certainty that a response will be forthcoming united with the flexibility to address the particular needs of the individual. The National Drug Court Institute has a tool, “Building Consensus on Sanctions and Incentive Guidelines in Drug Court” which can guide the team through the discussion and formulation of the response algorithm.

### **Delivering Responses Effectively**

Recognizing and applying the following ten principals will enhance the probability of meaningful behavior change.

#### **I. RESPONSES ARE IN THE EYES OF THE BEAVER**

Contrary to expectations, incarceration is not necessarily viewed by offenders as the harshest punishment. One study observed that depending upon the alternative sanction offered, including probation, a fine or a halfway house, 6 to 24% of offenders would choose a year in jail over the alternative.<sup>17</sup> Other research indicates that punishment has minimal impact on addicts that don’t have a lot to loose and, therefore, use of reinforcement contingencies with this

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<sup>16</sup> Marlowe, D. B., & Kirby, K. C.. “Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research.” *National Drug Court Institute Review*, II (1), 11-xxix (1999) A handbook detailing the program and the range of responses should be given to and reviewed with each participant upon program entry.. Furthermore, participant expectations can be clarified by having new program entrants observe drug court proceedings, before they are called for their own progress review.

<sup>17</sup> Wood, P. B., & Grasmick, H. G. (1995). “Inmates Rank the Severity of Ten Alternative Sanctions Compared to Prison.” Oklahoma Department of Corrections; [www.doc.state.ok.us/DOCS/OCJRC/OCJRC95/950725j.htm](http://www.doc.state.ok.us/DOCS/OCJRC/OCJRC95/950725j.htm) See also Petersilla, J. and Deschanes, E., “What Punishes? Inmates Rank the Security of Prison v. Intermediate Sanctions?” *Federal Probation*, Vol. 58, No. 1 (March 1994).

population increases abstinence.<sup>18</sup> Significantly, people obey laws that they believe are being enforced fairly.<sup>19</sup> Thus, the drug court team must ensure that the response chosen will be of significance to the participant but also be perceived as being fair.<sup>20</sup>

The best illustration of imposing behavior-oriented consequences is responding to participants who have co-occurring disorders or who are adolescents. Both populations require different motivational approaches, if behavior shaping is to be effective. For co-occurring offenders, the drug court judge must have greater in depth knowledge of the participant, particularly around their medication regimen and mental health treatment.<sup>21</sup> The court must remain flexible because this population often lacks stable housing and transportation. Use of jail as a sanction can often lead to homelessness or medication interruption, if the facility does not have the capacity to dispense psycho-pharmaceuticals. Behavior shaping is greatly enhanced through the use of positive reinforcement. Because these participants will require more time to complete the program and the court will utilize dissimilar consequences for compliant and non-compliant behavior than the responses employed to motivate the typical drug court participant, a separate track is advised.

- Working with adolescents presents its own unique set of challenges. As one expert observed: “Scientists know very little about the determinants of motivational variables to promote positive change in juveniles and adolescents”<sup>22</sup> Although the reasons drug use parallel those identified for adults, to wit recreational (to have fun); social conformity; mood enhancement; and coping with

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<sup>18</sup> Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association; particularly Chapter 17, Crowley, T., “Clinical Implications and Future Directions,” pp. 345-351.

<sup>19</sup> Sherman, L. W. (1993). “Defiance, Deterrence, and Irrelevance: A Theory of the Criminal Justice Sanction.” *Journal of Research in Crime and Delinquency*, 30 (4), 445-473.

<sup>20</sup> When the court responds differently to participants, who facially appear to be similarly situated, the court must articulate why it is treating these individuals differently. Failure to do so will raise the specter of unfairness.

<sup>21</sup> This information on co-occurring drug court participants is taken from Peters and Osher, *Co-Occurring Disorders and Specialty Courts*, SAMHSA (July 2003)

<sup>22</sup> Monti, Colby & O’Leary, *Adolescents, Alcohol and Substance Abuse* (Gilford Press 2001)

stress<sup>23</sup>, the responses to abuse must: be goal oriented, focus on building self-efficacy, exhibit candor and be delivered in a non-confrontational manner.<sup>24</sup> Because adolescents equate fairness with equality the judge must articulate why the chosen response is fair to that participant although the behavior seems similar to others who received a different response.<sup>25</sup> Oftentimes, the court must work with the adolescent's family because of the participant's residence and the need to provide a healthy sober support system. Although your court may not be a juvenile drug court, the above suggestions apply to large numbers of your drug court participants because research suggests that developmentally, 18-21 year olds are still adolescents.<sup>26</sup>

## **II. SANCTIONS SHOULD NOT BE PAINFUL, HUMILIATING OR INJURIOUS**

As previously observed, the severity of the response has little deterrent effect on future behavior. When the response is perceived as unfair, humiliating or punishes the individual instead of the act, the participant may become defiant or dropout from the program.<sup>27</sup>

## **III. RESPONSES MUST BE OF SUFFICIENT INTENSITY**

Punishment must be of sufficient intensity to motivate the change in behavior. If the punishment is of not sufficient consequence, the behavior is not motivated to

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<sup>23</sup> Petraitis, Flay & Miller, *Reviewing theories of adolescent substance abuse*, Psychological Bulletin, 117, 67-68 (1995)

<sup>24</sup> See footnote 20

<sup>25</sup> Dept. of Justice, Bureau of Justice Assistance, Juvenile Drug Courts: Strategies and Practice (2003)

<sup>26</sup> Geidd, Jay. Interview with PBS Frontline, *Inside the Teen Brain*, online at [www.pbs.org/wgbh/pages/frontline/shows/teenbrain/](http://www.pbs.org/wgbh/pages/frontline/shows/teenbrain/)

<sup>27</sup> Sherman, L. W. (1993). "Defiance, Deterrence, and Irrelevance: A Theory of the Criminal Justice Sanction." *Journal of Research in Crime and Delinquency*, 30 (4), 445-473.

change or becomes habituated to the punishment.<sup>28</sup> Graduated sanctions and graduated rewards have been shown to have greater impact on behavior change than fixed responses.<sup>29</sup>

#### **IV. RESPONSES SHOULD BE DELIVERED FOR EVERY TARGET BEHAVIOR.**

The drug court should respond to every target behavior. Research demonstrates that those offenders who received sanctions on a continuous schedule evidenced a significantly lower arrest rate than those offenders who received intermittent sanctions.<sup>30</sup> A response can even be the opportunity to participate in getting a reward. In one study, participants who had clean urine tests were given an opportunity to draw paper slips from a fishbowl. Prizes indicated on the slips ranged from nothing to a dollar to a TV set. Results showed group drawing for reward was more likely to complete treatment (84% vs. 22%) and significantly more likely to be abstinent.<sup>31</sup>

There is one caveat to responses for every target behavior. Once the target behavior is ingrained, positive reinforcement should be delivered on an intermittent basis to maintain the shaped behavior.<sup>32</sup> In drug court, this actually works quite in practice. Initially, we see the participant frequently to deliver responses for client compliance---and we say good job for making your meeting this week and testing negative for drug use—you get a kudo and a star. As the

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<sup>28</sup> Azrin, N. and Holz, W. "Punishment" in Honig W. (ed). Operant Behavior: Areas of Recidivism and Application. (Meredith Publishing 1966) pp. 381-447.

<sup>29</sup> Harrell, A., & Roman, J. (2001). "Reducing Drug Use and Crime Among Offenders: The impact of Graduated Sanctions." *Journal of Drug Issues*, 31 (1), 207-232. Roll, J., Higgins, S. and Badger, G. "An Experimental Comparison of Three Different Schedules of Reinforcement of Drug Abstinence Using Cigarette Smoking as an Exemplar." *Journal of Applied Behavioral Analysis*, Vol. 29, p. 495-504 No. 4 (Winter 1996).

<sup>30</sup> Brennan, P. and Mednick, S. "Learning Theory Approach to Deterrence of Criminal Recidivism" (Vol. 103), *Journal of Abnormal Psychology* (pp. 430-440 1994)

<sup>31</sup> Petry, N. M., Martin, B., Cooney, J. L., & Kranzler, H. R. (2000). "Give Them Prizes and They Will Come: Contingency Management for Treatment of Alcohol Dependence." *Journal of Consulting and Clinical Psychology*, 68 (2), 250-257.

<sup>32</sup> Skinner, B.F., Science and Human Behavior, Macmillian (1953) pp 68-90; Sundel et. al., Behavior Change in the Human Services, Sage Publications (2005) p.171.

participant continues to be compliant, we lengthen the review interval and are reinforcing the participant for attending 6 treatment sessions and 8 negative tests.

## **V. UNDESIRABLE BEHAVIOR MUST BE RELIABLY DETECTED**

If our goal is to respond to every target behavior, abstinence must be reliably detected. Failure to reliably detect drug use in effect puts a person on an intermittent schedule of rewards and sanctions which is ineffectual in changing behavior.<sup>33</sup> Random and frequent scheduling of urine testing that is both quantitative can make detection relatively foolproof. If you use non-instrumented tests, like the cups or strips for urine testing, confirmatory tests like the GC/MS should be performed, if the participant denies use.

## **VI. RESPONSES SHOULD BE DELIVERED IMMEDIATELY**

The behavioral research consistently finds that reinforcement and punishment is much more efficacious when performed immediately.<sup>34</sup> This behavioral research is now being confirmed through PET scans of the brain. The effects of reinforcement appear to be exerted in the brain areas that are part of the dopamine reward system. The neuroscientists conclude, “Rewards and punishments received soon after an action are more important than rewards and punishments received later.”<sup>35</sup> Immediacy is somewhat of a fluid concept in drug court practice. Some courts will know and be able to see a participant within 24 hours of a positive drug screen, for others it might be 10 days. What is important is the concept ---the more immediate the response to

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<sup>33</sup> Marlowe, D. B., & Kirby, K. C... “Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research.” *National Drug Court Institute Review*, II (1), 11-xxix (1999)

<sup>34</sup> Griffith, J. D., Rowan-Szal, G. A., Roark, R. R., & Simpson, D. D. (2000). “Contingency Management in Outpatient Methadone Treatment: A Meta-analysis.” *Drug and Alcohol Dependence*, 58, 55-66. Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-drug Abusers*, Washington, D.C.: American Psychological Association, pp. 334. Burdon, W., et al. “Drug Courts and Contingency Management.” *Journal of Drug Issues*, 31(i), pp. 73-90 (2001).

<sup>35</sup> Dayan, P., & Abbott, L. F. (2001). *Theoretical Neuroscience: Computational a Mathematical Modeling of Neural Systems*. Cambridge, MA: MIT Press.

the behavior, the greater probability that the response will shape future behavior.

## **VII. RESPONSES MUST BE PREDICTABLE AND CONTROLLABLE**

As noted earlier, perceived certainty does have a deterrent effect on future behavior. Obviously, this perception is based not only on what does occur but what the participant expects will occur. To be effective contingency management protocols “require clear articulation of behaviors that further treatment plan goals,”<sup>36</sup> Thus, the use of a participant handbook is critical during the orientation phase of the program. Of course, it should be translated in jurisdictions where a significant number of the participants who use English as a second language. Because of the low literacy rates of addicts, an in-depth review of the handbook with the participant would be wise. The use of courtroom as classroom is an experiential process for new entrants and graphically teaches programmatic expectations. Some courts use contracts with the participants to inform them of program requirements and consequences. For participants that are not doing well, a re-review of the participant handbook may be helpful.

## **VIII. RESPONSES MAY HAVE UNINTENTIONAL SIDE EFFECTS**

Punishments that are too excessive or used inappropriately may cause unanticipated side effects like learned helplessness, as well as fear, anxiety escape and avoidance.<sup>37</sup> Even the application of positive reinforcements can have negative unexpected consequences – the addition of bonus payments to an escalating pay schedule actually reduced weeks of cocaine abstinence.<sup>38</sup>

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<sup>36</sup> Burdon, W., *et al.* “Drug Courts and Contingency Management.” *Journal of Drug Issues*, 31(i), pp. 73-90 (2001).

<sup>37</sup> Marlowe, D. B., & Kirby, K. C... “Effective Use of Sanctions in Drug Courts: Lessons from Behavioral Research.” *National Drug Court Institute Review*, II (1), 11-xxix (1999): See also note 8.

<sup>38</sup> Higgins, S. T., & Silverman, K. (1999). Motivating Behavior Change Among Illicit-Drug Abusers. Washington, D.C.: American Psychological Association; page 335.

Frequency of contacts between the judge and drug court participant can actually have a negative impact on successful program completion. However, this does not apply to ASPD participants and those participants with multiple past treatment failures. Low risk participants, who not have historically significant substance abuse problems, do not do as well with more frequent court contact.<sup>39</sup>

## **IX. BEHAVIOR DOES NOT CHANGE BY PUNISHMENT ALONE**

The introductory portion of this chapter emphasized the importance of incentives. The research bears this out. Controlled comparisons of reinforcement and punishment demonstrate that clients in positive and negative reinforcement contingency stayed longer in substance abuse treatment, while those in the punishment contingency did not.<sup>40</sup> Simply put, appropriately chosen and imposed incentives are going to result superior behavior shaping and longer lasting change.

## **X. THE METHOD OF DELIVERY OF THE RESPONSE IS AS IMPORTANT AS THE RESPONSE ITSELF**

If the participant feels that the process is unfair either to him or to others, the participant will be defiant.<sup>41</sup> Communication styles between the participant and therapist,

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<sup>39</sup> Marlowe, D. B., Festinger, D. S., Lee, P. A., Schepise, M. M., Hazzard, J. E. R., Merrill, J. C., Mulvaney, F. D., & McLellan, A. T. (2003). Are judicial status hearings a key component of drug court? During-treatment data from a randomized trial. *Criminal Justice & Behavior*, 30, 141-162.; Marlowe, D. B., Festinger, D. S., & Lee, P. A. (2004). The judge is a key component of drug court. *Drug Court Review*, 4, 1-34.; Festinger, D. S., Marlowe, D. B., Lee, P. A., Kirby, K. C., Bovasso, G., & McLellan, A. T. (2002). Status hearings in drug court: When more is less and less is more. *Drug and Alcohol Dependence*, 68, 151-157.

<sup>40</sup> Higgins, S. T., & Silverman, K. (1999). *Motivating Behavior Change Among Illicit-Drug Abusers*. Washington, D.C.: American Psychological Association; page 330.

<sup>41</sup> Andreoni, J., Harbaugh, W., & Vesterlund, L. (2001)., "The Carrot or the Stick?: Rewards, Punishments and Cooperation.", Unpublished paper, National Science Foundation Grant. Sherman, L. W. (1993). "Defiance, Deterrence, and Irrelevance: A Theory of the Criminal Justice Sanction." *Journal of Research in Crime and Delinquency*, 30 (4), 445-473.

participant and judge and participant and team members can actually influence cooperation. For instance, the parent training, confrontational and teaching oriented therapeutic approaches tended to result in non-compliant responses whereas when support and facilitation were used compliant behaviors resulted.<sup>42</sup> Similarly, Research involving substance abuse (alcohol) using the two styles of confrontational vs. client centered (motivational interviewing - MI) approach resulted in reduced alcohol use in MI group and less resistance to change.<sup>43</sup> Thus, it is preferential for the court to ask open ended questions of the participant about why he relapsed and what the abuser would do differently instead of simply confronting the participant about the drug use before the consequence is imposed. Additionally, the court should give positive reinforcement for behaviors that are compliant.<sup>44</sup>

The use of the above science based principles will produce better outcomes for your drug court because the team will be more adept in shaping participant behavior.

## **Treatment Responses**

Just as the judge is final determiner, of the consequences to be imposed for participant behavior, the treatment provider must be the final arbiter of treatment decisions. As response alternatives are discussed in staffing, so should treatment alternatives. However the final decision should be made by the one ultimately responsible-- treatment by the treatment provider and consequences by the judge.

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<sup>42</sup> Patterson, G. A., & Forgatch, M. S. (1985). "Therapist Behavior as a Determinant for Client Noncompliance: a Paradox for the Behavior Modifier." *Journal of Consulting and Clinical Psychology*, 53, 846-851.

<sup>43</sup> Lawendowski, A. L. (1998)., "Motivational Interviewing with Adolescents Presenting for Outpatient Substance Abuse Treatment." Unpublished doctoral dissertation, University of New Mexico. "Dissertation Abstracts International," 59-03B, 1357;. Miller, W. R., Benefield, R. G., & Tonigan, S. (1993)., "Enhancing Motivation in Problem Drinking: A Controlled Comparison of Two Therapist Styles." *Journal of Consulting and Clinical Psychology*, 61, 455-461.

<sup>44</sup> In a recent study, when drug court judge uses positive reinforcement with a participant, the number of positive urine tests is lower than when neutral or critical comments are employed. Scott Senjo & Leslie Leip, *Testing Therapeutic Jurisprudence Theory: An Empirical Assessment of the Drug Court Process*, 3 WESTERN CRIMINOLOGY REVIEW 1-21 (2001) also available at <http://wcr.sonoma.edu/v3n1/senjo.html>

## One Final Word-Termination

Your drug court participants will try your patience, frustrate you, manipulate you and, yes, even lie to you.<sup>45</sup> Nonetheless, the drug court should make program termination almost impossible to achieve. If there is one thing that we know about treatment, it is: the longer we keep someone in treatment, the greater the probability of a successful outcome. Drug Courts keep abusers in treatment. Therefore, it is only when the participant's conduct threatens public safety or undermines program integrity that we should terminate someone from the drug court program.

## Critical Questions

1. What are the proximal and distal behaviors you are trying to shape? Have you prioritized your target behaviors depending upon the participant's risk and need over the time period of your program in the phases you have established?
2. Do you know the population you serve—have you assessed for risk and need? Are the responses for addicts of a different magnitude than for abusers considering the proximal and distal target behavior goals for that individual?
3. Have you used available local and national resources to expand your range of consequences? Does your list of responses reflect the importance of incentives?

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<sup>45</sup> They will also surprise you, respect you, and bring joy to your heart. You will find your drug court work to be the most rewarding experience you have encountered in the criminal justice system. You are saving lives. See Hora, P and Chase, A, "*The Implications of Therapeutic Jurisprudence for Judicial Satisfaction*", Court Review, Volume 37, Issue 1, (Spring 2000)

4. Has the team sat down and memorialized the range of responses for compliant and non-compliant behavior? Will NDCI's Building Consensus tool help?
5. Are you using the ten science based principles in your responses?
6. Are treatment decisions being made by treatment providers?
7. What are your grounds for termination?