Avoiding Termination:
“Have you done everything you could to avoid termination?”

Hon. Diane Bull, (Ret)
Dr. Shannon Carey, PhD.
Helen Harberts, MA, JD

Avoiding Termination in Treatment Courts: Overview

- ❑ Types of termination
- ❑ When you should terminate
- ❑ *The Checklist*
  - ❑ Why are you terminating?
  - ❑ What have you tried?

Resources:

- ❑ How to terminate within the law
- ❑ What's next?
  - ❑ What will you do when they come back?

Types of Termination (Discharge)

Let's pause to talk about language

Neutral Discharges (Administrative transfers) are not terminations

Some folks cannot manage your treatment court and need to transfer to a different caseload or court

Medical terminations- their choice.

Successful Discharge of services: AKA **completion or graduation**

This what we're talking about today

Unsuccessful discharge from entire program

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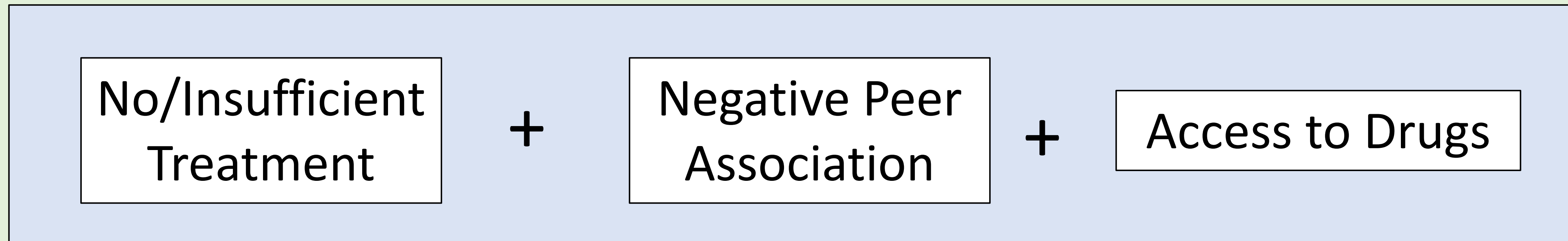
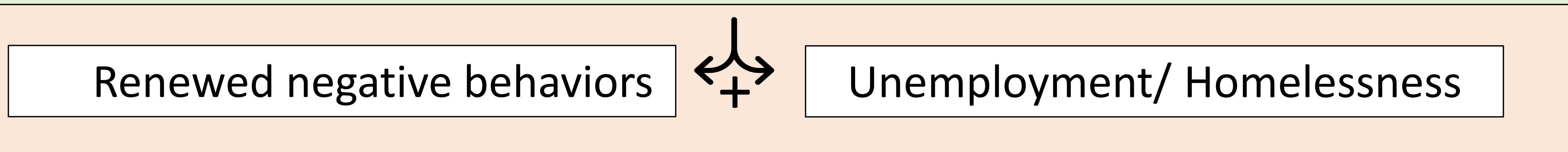
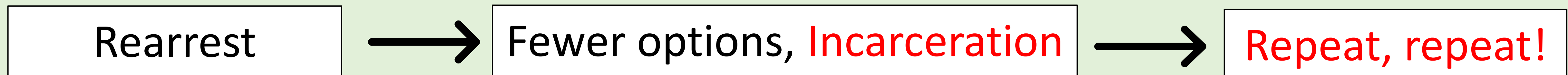
Unsuccessful Discharge Has Dire Consequences



Upon Release…





Standard IV: When *should* we "terminate" (discharge before successful completion)? Rarely!

D

1. **They pose a serious, imminent risk to public safety that we can't prevent.**
   a. Continued use is not enough
   b. They might do something illegal is not enough.
2. **They voluntarily choose to withdraw despite our best efforts to encourage them to stay and keep trying.**
   a. Do they fully understand the consequences? Have access to attorney?
3. **They are unwilling to receive treatment/services or have repeatedly refused such services.**
   a. Did we work with them, give them agency in their treatment?
   b. Did we offer sufficient services for their needs?

Other considerations?

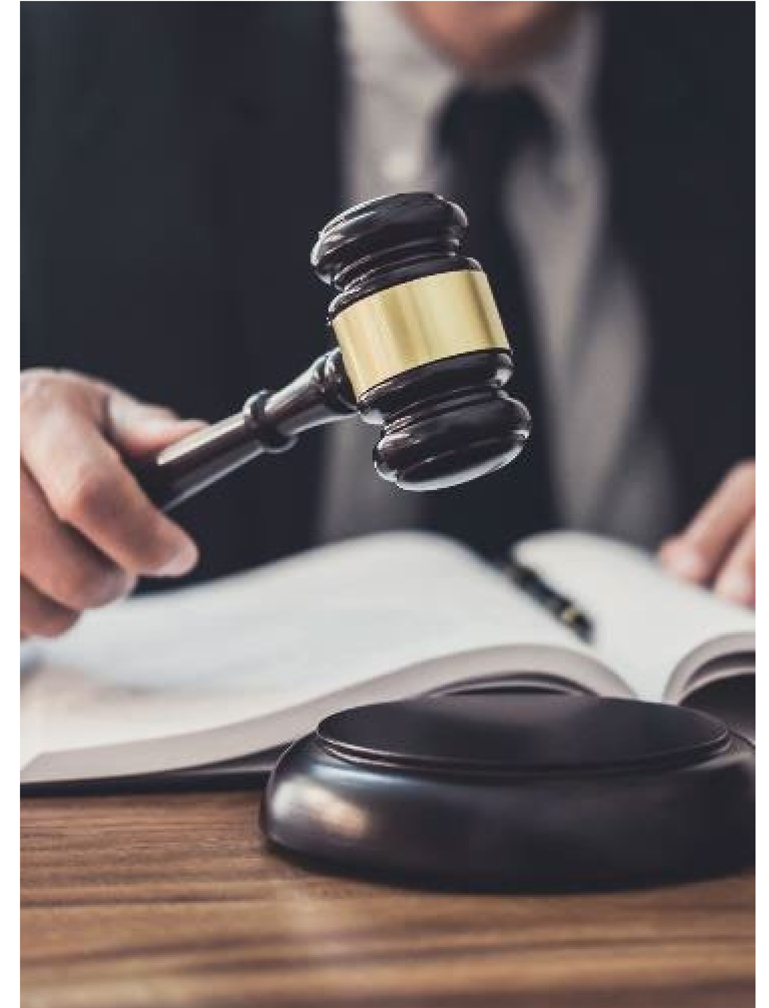
"Like surgery, termination is the first and only thing you can do, or the very last thing you do after you have tried everything else"

*When is it the **first** thing you do?*

- Actual violence, true public safety issues = termination (Esp: impaired driver courts)

- Repeated behavior that threatens the very integrity of the Court and the program = termination. (e.g., Selling drugs in group, significant fraud on the Court)

- Policy and local conditions play into decisions.
- Note: Termination is a LEGAL process, not a vote, a judicial decision after team input



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The Checklist

- ❑ What the heck is *The Checklist*?
- ❑ Why are you terminating?
  - ✓ **Direct threat to public safety?**
  - ✓ **Refusal to participate, continue?**
  - ✓ **Nothing has worked.**
  - ✓ **Are you frustrated?**

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CHECKLIST

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  - ☐ Risk and need? Trauma, MAT, mental health, physical health, etc.?
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    - ☐ Are you providing at least 4 incentives to every sanction?

Are you frustrated?

Take your time and think before you leap!

Consider these facts:

Helen, in treatment court, is driving her car, loses control and slides off the road, hitting a tree.

She is impaired by drugs and alcohol.

- ➢ How do you respond?
- ❑ Enhanced treatment, supervision, services
- ❑ Discharge, revocation, incarceration

Now consider these facts:

Helen is driving her car, loses control and slides off the road, hitting a tree. She is impaired by drugs and alcohol. Sadly, a small child was near the tree on a tricycle and was killed.

- How do you respond?
- ❑ Enhanced treatment, supervision, services
- ❑ Discharge, revocation, incarceration
- **STOP:** *is there a difference in how you feel when you consider these facts vs. the no death version?*

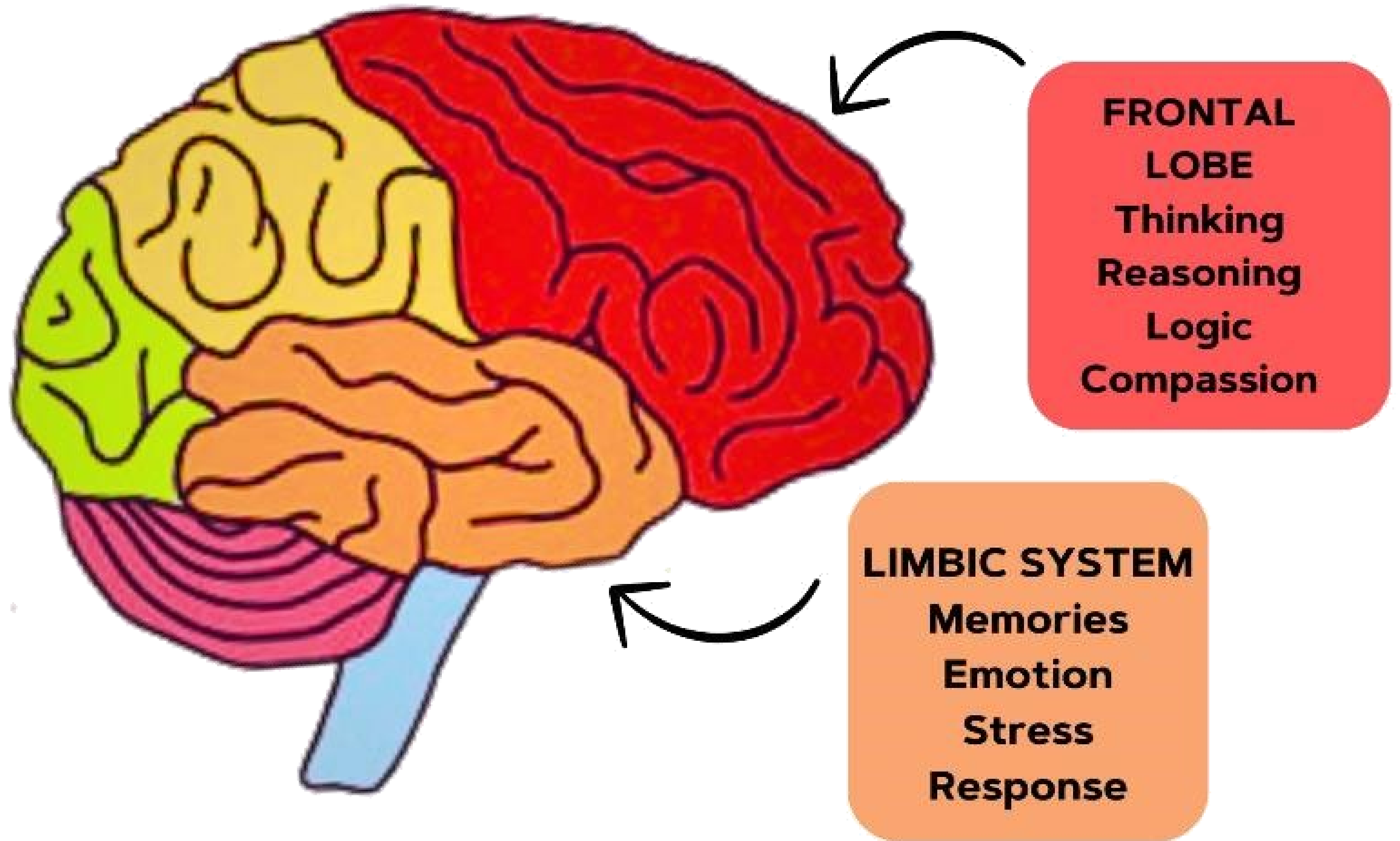
When examined on a brain scan, the answers to these questions varied.

- Decisions on the first scenario: frontal lobe
- Decisions on the second: limbic region.

DON'T DO THIS with discharge. ***Take your time and consider everything first.***

What Part of the Brain Do You Use in Staffing When Things Go REALLY Wrong?

- Our folks lie, manipulate, push our buttons, frustrate, anger, and scare us!
- We are only human!
- The prefrontal cortex operates slowly and is **logical and precise**.
- The limbic system works fast and is dominated by **emotion and impulse**. We remember past actions and "err on the side of caution."
- Do you **sanction** when you should be using **services**?



The Checklist

- **WHAT assessments and screens did we do?**
- Did we tick off the big-ticket items? SUD, MAT, Co-morbid mental health, physical health, housing, trauma, criminal thinking, recovery planning and practice? Anything else?
- Did we miss any? Are there others we should consider?
- WHEN were they last done?

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    - ☐ Are you providing at least 4 incentives to every sanction?

What screens and assessment should you do?

Screen and then do follow up assessments if indicated by screen for:

Risk: The likelihood of rearrest or failing on probation

Central 8

1. History of anti-social behavior
2. Antisocial Attitudes
3. Peer Associations
4. Antisocial Personality
5. School/Employment
6. Substance Abuse
7. Living Situation
8. Family/Marital

Need: SUD or MHD or both (Clinical)

Follow ASAM criteria (6 Dimensions)

1. Acute intoxication or withdrawal
2. Biomedical conditions
3. Emotional, behavioral or cognitive conditions
4. Readiness to change
5. Relapse, continued use potential
6. Recovery/living environment

*Resources for validated screens and assessments are provided at the end

Responsivity: Supports and Barriers to Engagement

- MAT
- Pain
- Trauma
- Transportation
- Cognitive or physical challenges (hearing, sight)
- Basic human needs: Food, housing

The Checklist

- ❑ Did we address everything that the assessment said? (Did we provide services according to the specific needs revealed in the assessments?)
- ❑ What was the expected dosage of treatment and interventions per assessments, and did we get to that dosage? Why? Why not?
- ❑ Have you addressed trauma?
- ❑ Have you addressed pain?
- ❑ Have you addressed basic human needs (food, shelter, medical care)?

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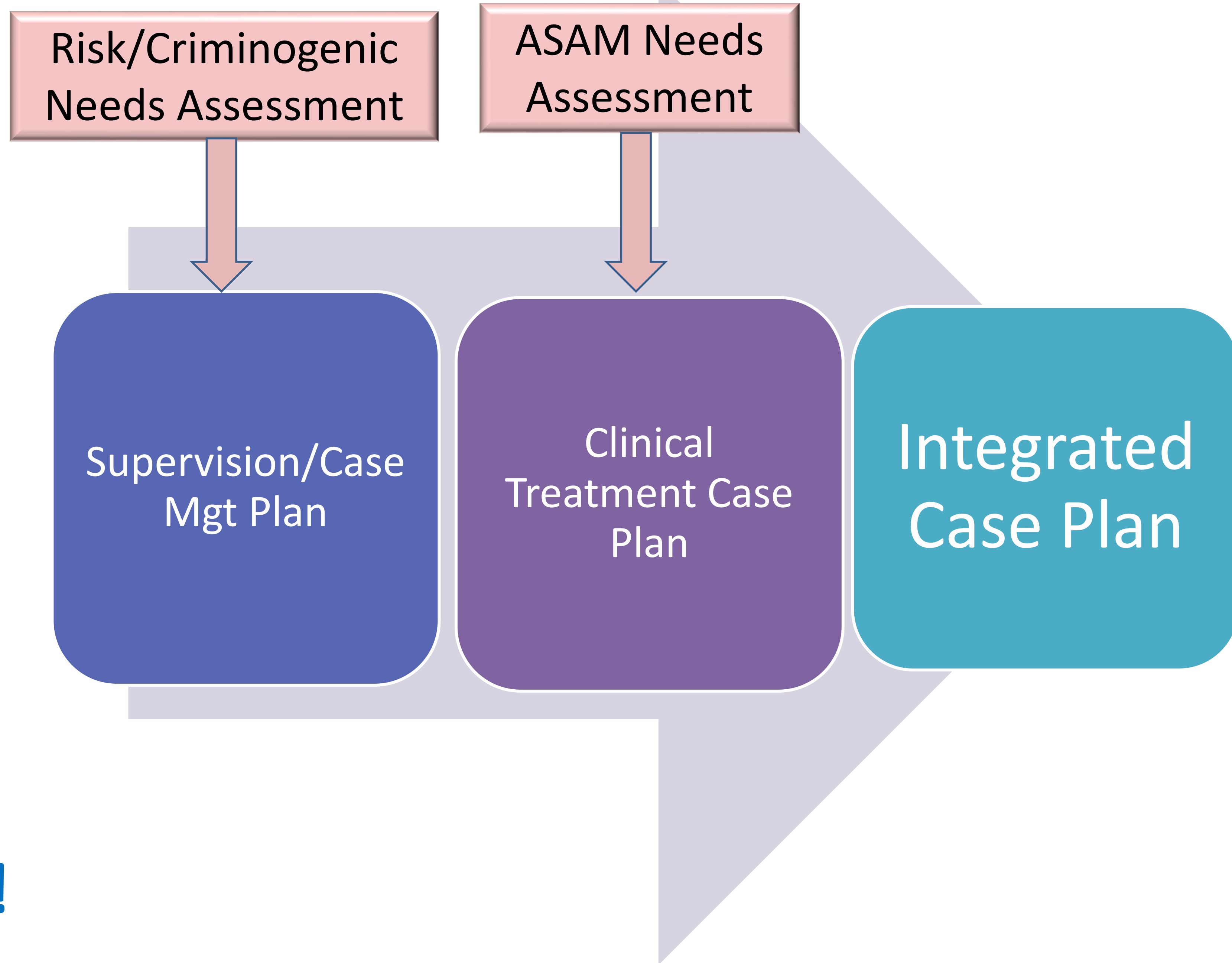
Assessment Should Lead to Action!

USE ASSESSMENT RESULTS TO CREATE THE CLINICAL CASE PLAN AND THE SUPERVISION CASE PLAN

THEN COLLABORATE TO CREATE AN INTEGRATED CASE PLAN FOR THE PARTICIPANT

SHARE WITH THE TEAM!!



Addressing Risk Factors (Need)

Dynamic Risk Factor (Central 8)	Need/Action	Service Examples
History of antisocial behavior (Criminal History)	Build and practice positive/healthy behaviors	By intervening in the 7 below
Antisocial personality pattern (Check trauma history)	Learn problem solving skills, practice anger management	CBT (Seeking Safety)
Antisocial cognition	Develop more pro-social thinking	MRT, Thinking for Change
Antisocial associates	Reduce association with criminal others (learn refusal skills)/increase time with pos peers	Peer Mentors, sober community activities
Family and/or marital discord	Reduce conflict, build positive relationships	Family therapy
Poor school and/or work performance	Work on good employee/study/performance skills	Job skills training, GED, community college
Lack of engagement in leisure activities (prosocial activities)	Connect participants with peer support and prosocial activities in the community	Sober community support groups, faith community
Substance abuse	Reduce use through integrated treatment	SUD treatment, education

Build Capacity and Offer Culturally Responsive Treatment

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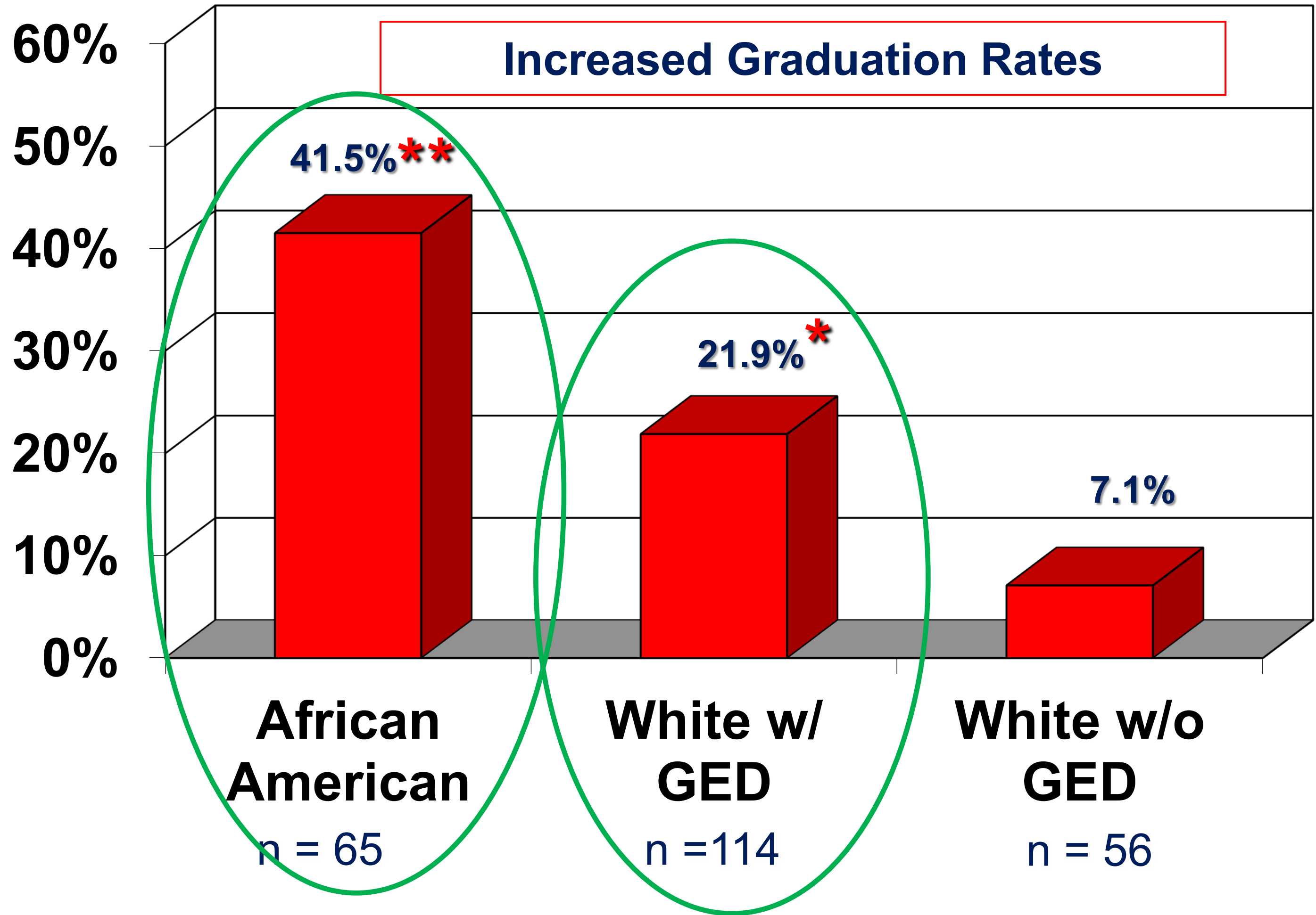
Treatment designed for young black men (HEAT)

Have you checked your data? Who is more likely to graduate and who is not?

Race? Gender? LGBTQI?



Vito & Tewksbury (1998)

Replicated: Beckerman & Fontana 2001; Marlowe et al., 2018

#1 - Courts that offered family counseling had 5 times less disparity in graduation rates

What practices were related to lower disparities in graduation rates?

COURT DOES NOT OFFER FAMILY/DOMESTIC RELATIONS COUNSELING N=16	20%
COURT OFFERS FAMILY/DOMESTIC RELATIONS COUNSELING N=110	4%

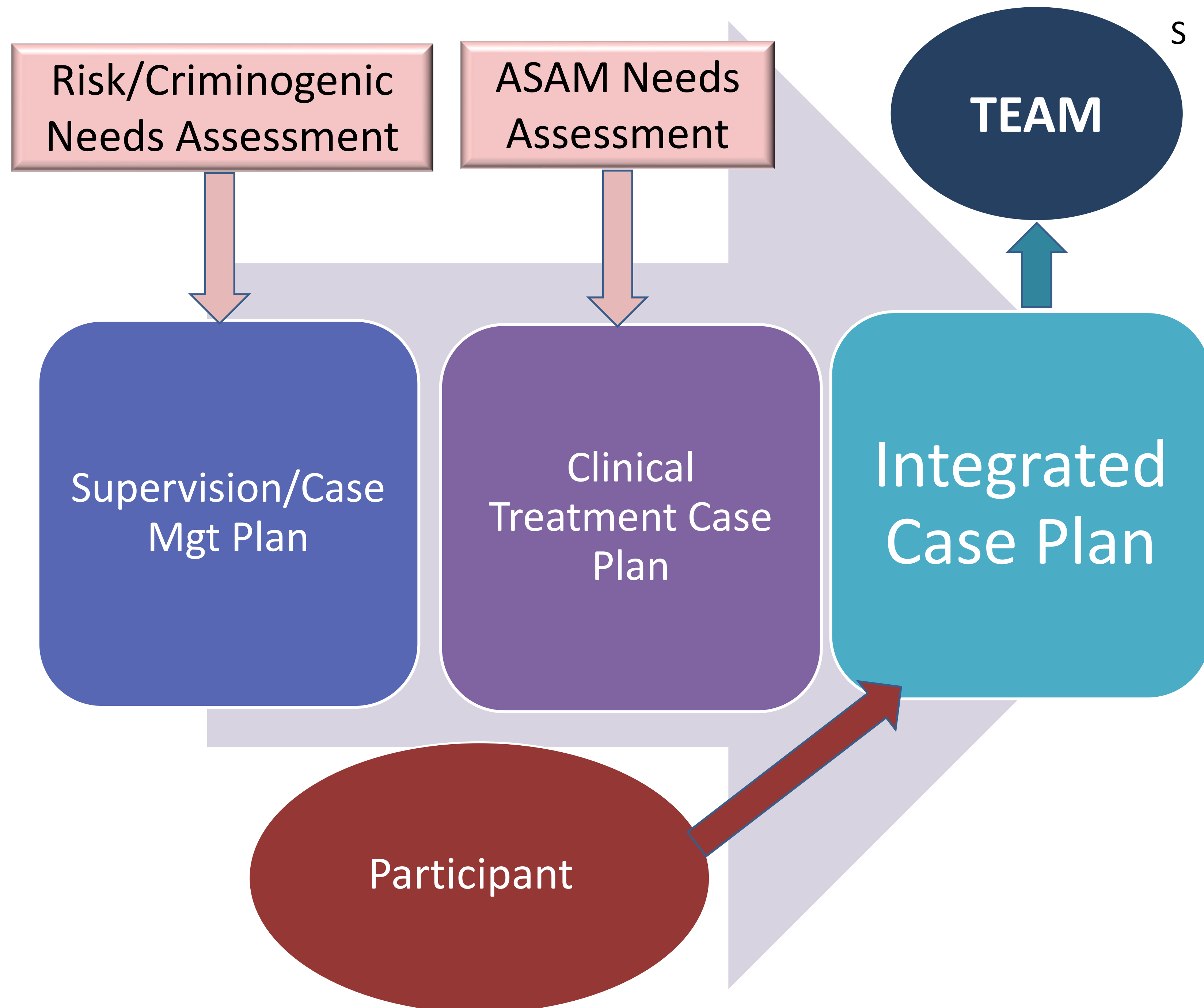
(Ho, Carey, and Malsch, 2018)

Use Assessment Results to Create the Supervision Case plan and the Clinical Case Plan

INCLUDE PARTICIPANT IN PLANNING

- Buy-in
- Understanding

SHARE THE PLAN WITH THE TEAM!!



The Checklist

- ❑ What has been done to address recovery capital?

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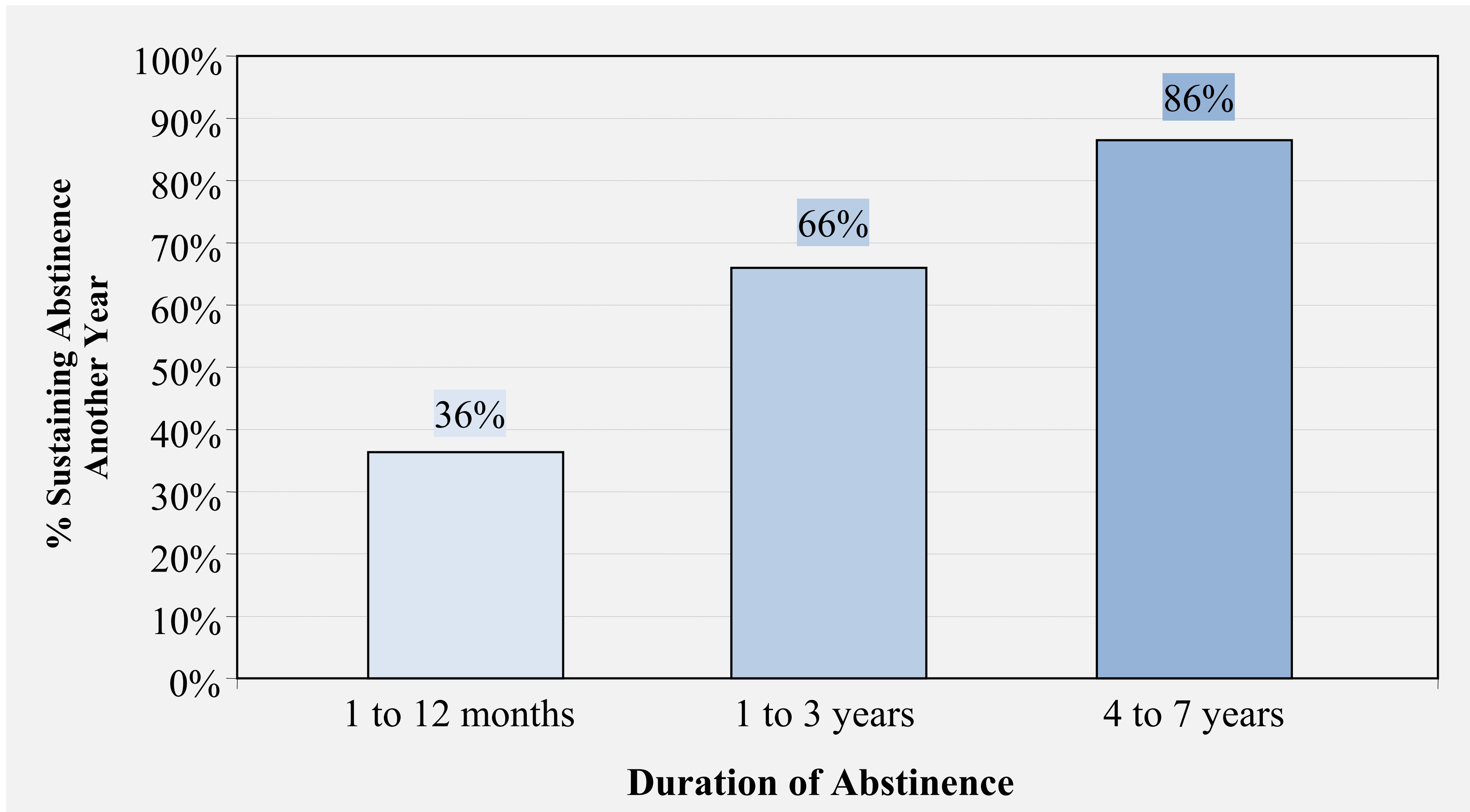
A sober reminder: Our folks are in EARLY recovery for years and will be at risk of recurrence for a long time.



Source: Dennis, Foss & Scott (2007)

Recovery Capital

Personal Capital

Divided into both physical and human capital

Human capital includes:

- Values
- Knowledge
- Skills, resilience
- Self-esteem
- Risk management

Financial includes:

- Transportation
- Shelter, food, etc.
- Access to insurance

Community and Cultural Capital

- Full continuum of treatment resources
- Accessibility of resources that are diverse
- Local recovery efforts and supports
- Culturally prescribed and supported pathways of recovery
- Recovery norms are valued in the community

Social Capital

Relationships

- Family
- Friends
- Supportive social relationships that are centered around recovery
- Relational connections

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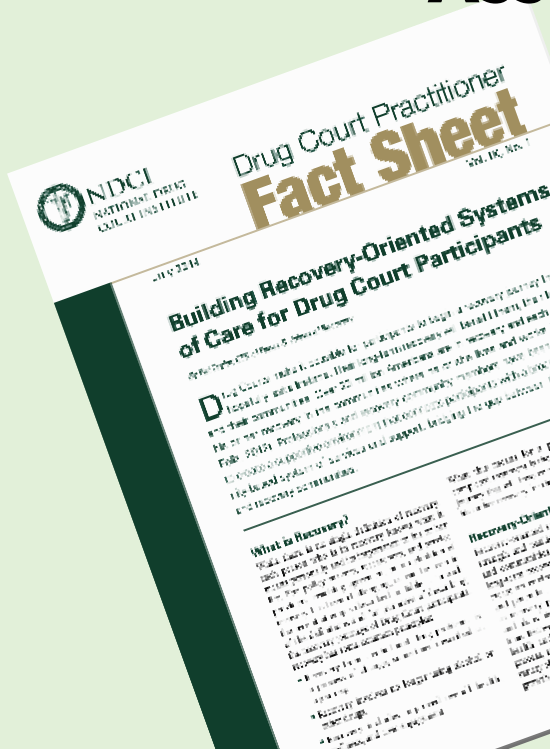
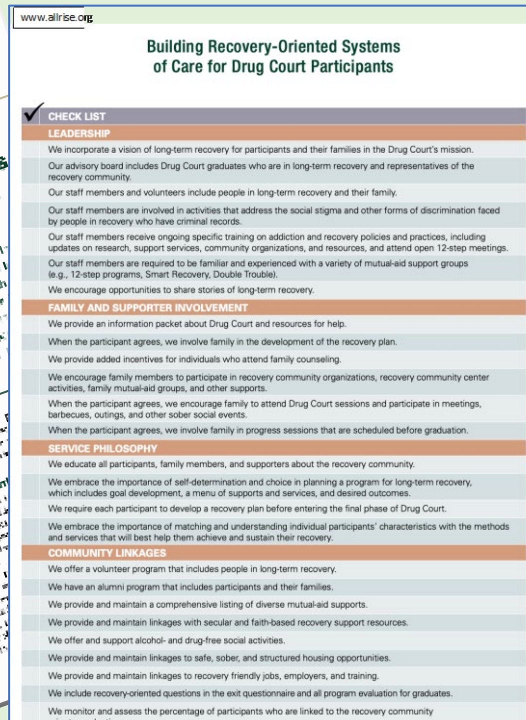
Awesome Handouts from All Rise

Recovery Capital Program Assessment





www.allrise.org

Building Recovery-Oriented Systems of Care for Drug Court Participants

CHECK LIST

LEADERSHIP

We incorporate a vision of long-term recovery for participants and their families in the Drug Court's mission.

Our advisory board includes Drug Court graduates who are in long-term recovery and representatives of the recovery community.

Our staff members and volunteers include people in long-term recovery and their family.

Our staff members are involved in activities that address the social stigma and other forms of discrimination faced by people in recovery who have criminal records.

Our staff members receive ongoing specific training on addiction and recovery policies and practices, including updates on research, support services, community organizations, and resources, and attend open 12-step meetings.

Our staff members are required to be familiar and experienced with a variety of mutual-aid support groups (e.g., 12-step programs, Smart Recovery, Double Trouble).

We encourage opportunities to share stories of long-term recovery.

FAMILY AND SUPPORTER INVOLVEMENT

We provide an information packet about Drug Court and resources for help.

When the participant agrees, we involve family in the development of the recovery plan.

We provide added incentives for individuals who attend family counseling.

We encourage family members to participate in recovery community organizations, recovery community center activities, family mutual-aid groups, and other supports.

When the participant agrees, we encourage family to attend Drug Court sessions and participate in meetings, barbecues, outings, and other sober social events.

When the participant agrees, we involve family in progress sessions that are scheduled before graduation.

SERVICE PHILOSOPHY

We educate all participants, family members, and supporters about the recovery community.

We embrace the importance of self-determination and choice in planning a program for long-term recovery, which includes goal development, a menu of supports and services, and desired outcomes.

We require each participant to develop a recovery plan before entering the final phase of Drug Court.

We embrace the importance of matching and understanding individual participants' characteristics with the methods and services that will best help them achieve and sustain their recovery.

COMMUNITY LINKAGES

We offer a volunteer program that includes people in long-term recovery.

We have an alumni program that includes participants and their families.

We provide and maintain a comprehensive listing of diverse mutual-aid supports.

We provide and maintain linkages with secular and faith-based recovery support resources.

We offer and support alcohol- and drug-free social activities.

We provide and maintain linkages to safe, sober, and structured housing opportunities.

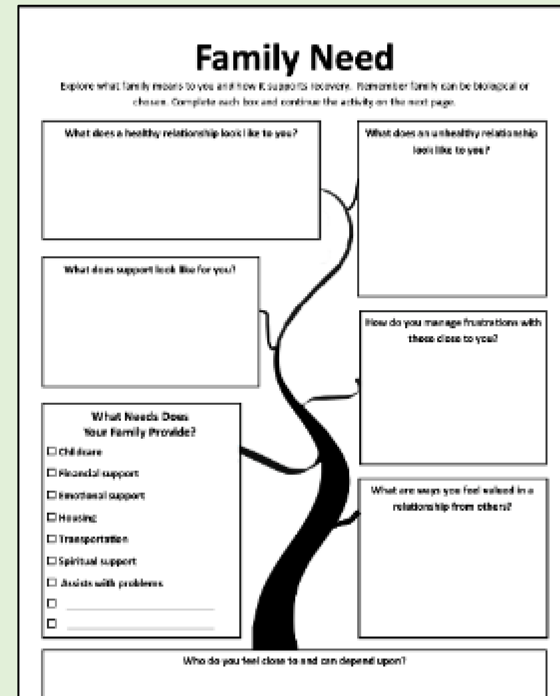
We provide and maintain linkages to recovery friendly jobs, employers, and training.

We include recovery-oriented questions in the exit questionnaire and all program evaluation for graduates.

We monitor and assess the percentage of participants who are linked to the recovery community

https://allrise.org/wp-content/uploads/2022/07/Recovery-Oriented-Systems-of-Care.pdf

12 Recovery Capital Worksheets



https://allrise.org/wp-content/uploads/2023/05/Recovery-Capital-Worksheets.pdf

The Checklist

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Retention Starts With Engagement

Engagement starts with human connection, respect.

A ***therapeutic alliance*** is the mutual agreement between the participant and staff to work together on tasks related to the patient's well-being.

HUMAN CONNECTION LEADS TO ENGAGEMENT AND BEHAVIOR CHANGE

- Research recognizes the importance of belonging and human connection as a basic human need and as something necessary for success
- Maslow's hierarchy of needs puts human connection as just after basic human requirements for survival)

We are neurologically wired for connection

In brain imaging studies **Perceived Social Isolation** was associated with changes in connectivity between and within different portions of the brain associated with:

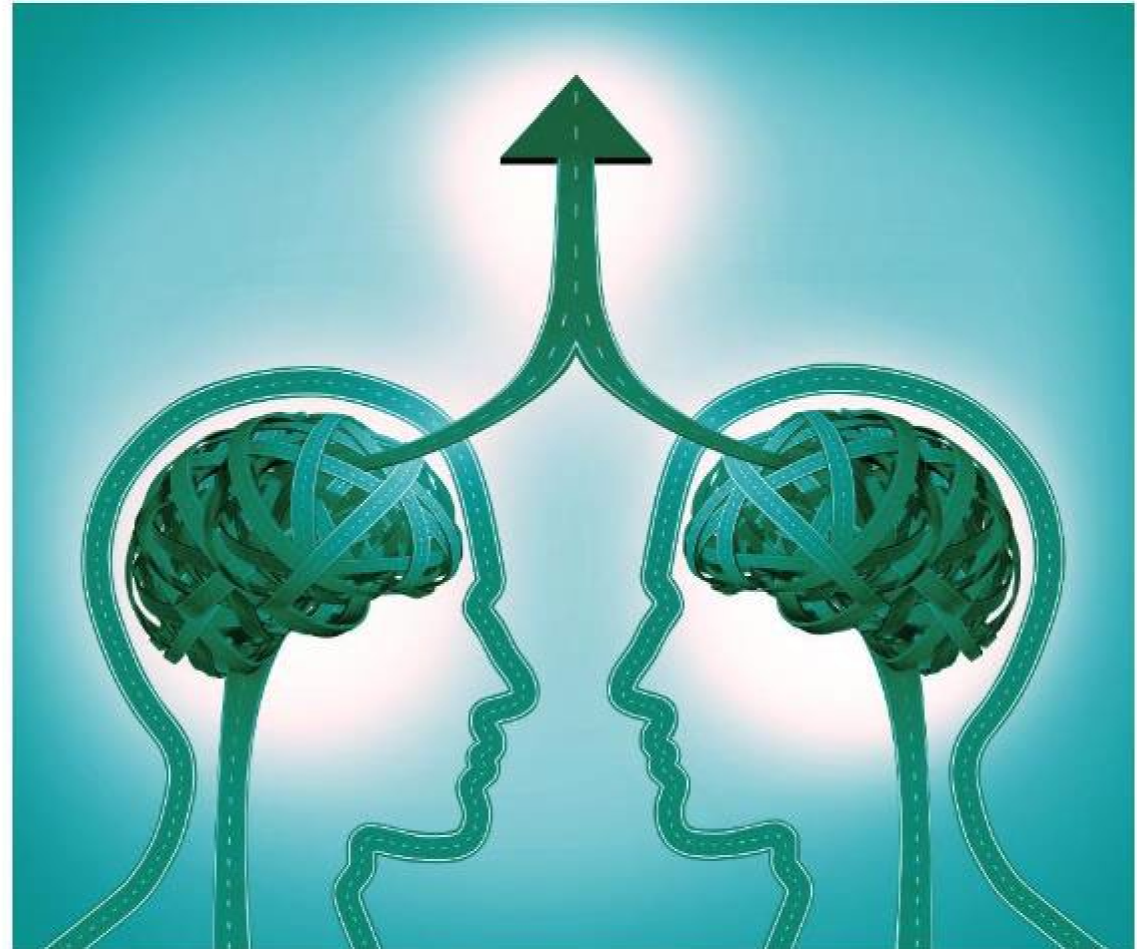
- Diminished **executive function**
- Decreased ability to **sustain attention** which impacts **working memory, executive control** and **maintaining task sets**
- Hypervigilance to **social threat** and diminished **impulse control**

Layden et al., 2016

Who on the treatment court team can use a therapeutic alliance approach?

- Treatment provider
- Case Manager
- Supervision Officer
- Peer mentors
- Program Coordinator
- Judge
- Defense Attorney
- Prosecutor
- Law Enforcement

➢ **ALL OF US!**



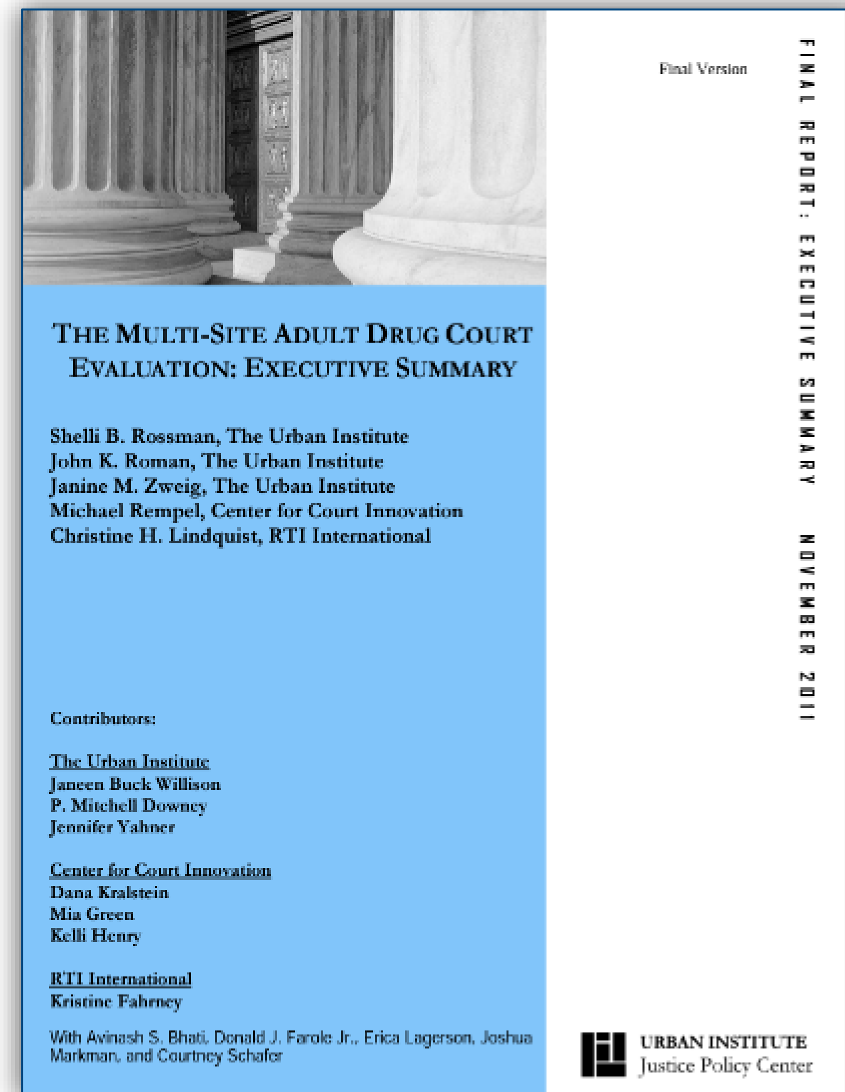
How We Create a Working Alliance

- **For ALL team roles:** Communicate we will be **working together** with participants– helping them help themselves.
- Express empathy and a willingness to listen.
- Show **we understand** participants' experiences and perspectives.
- Help the participant **address barriers** & **solve urgent problems** immediately.
- **Forge a relationship based on trust. Instill hope.**

NATIONAL TREATMENT COURT STUDY ("MADCE")

- **The relationship with the judge**
  - Positive attitudes towards judge = better outcomes
  - Judge with more positive demeanor = better outcomes
  - Traditional sanctions (i.e., jail) were not associated with participant outcomes
  - Higher levels of judicial supervision = fewer crimes & fewer days of drug use reported

- The relationship between the judge and participants matters for improving outcomes – be positive and find something you genuinely like about each participant!



Rossman, Roman, Zwig, Rempel, & Lindquist, 2011

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WHAT THE JUDGE BRINGS

The "magic" that makes treatment court work!

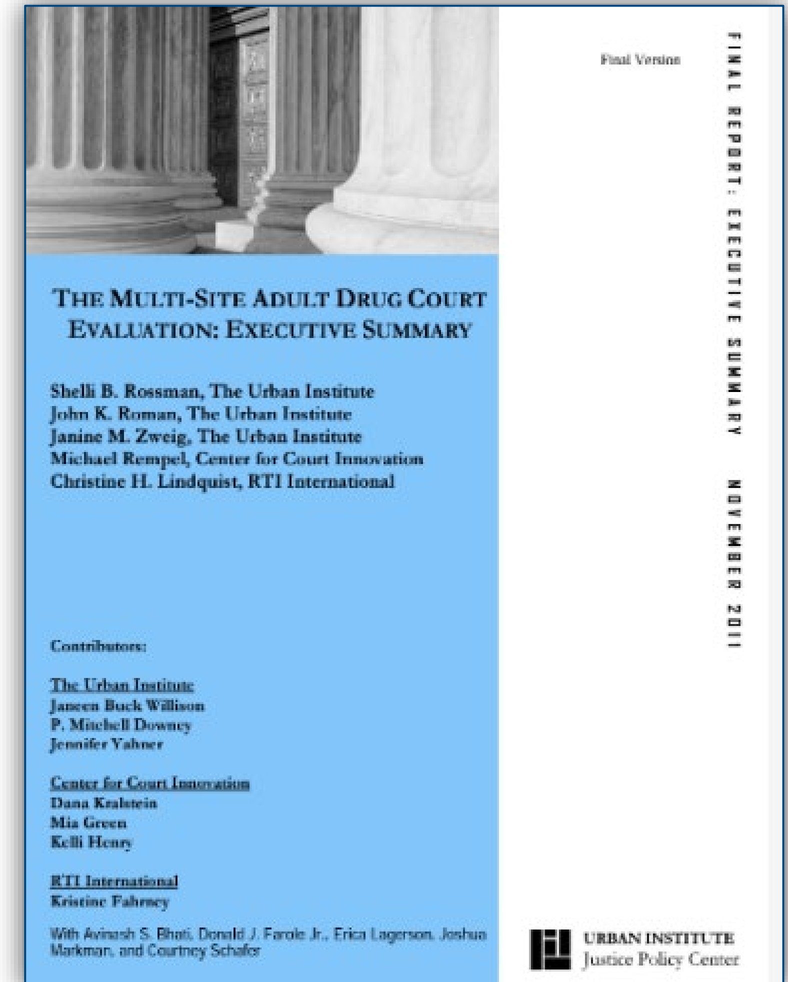
What we say and how we say it matters:

Studies show better outcomes when:

- Judge exhibits a more positive demeanor
- Remember the 7-38-55 rule!
- Positive participant attitudes towards judge
- Judge spends 3-7 minutes with each one

Higher levels of judicial supervision =
fewer crimes & fewer days of drug use reported

Be positive and find something you **genuinely like** about each participant! **Did we look for the good?**



Rossman, Roman, Zwig, Rempel, & Lindquist, 2011

The Checklist

- ❑ Have you responded appropriately to the participant's behavior?
- ❑ Are you getting all the information you need about the participant and their behavior to respond effectively?
- ❑ Have you utilized all five response options?
  - ❑ Incentives
  - ❑ Sanctions
  - ❑ Monitoring Adjustment
  - ❑ Treatment Adjustment
  - ❑ Learning Assignment

RESPONSES TO BEHAVIOR - EXAMPLES

Incentives

Incentives provide confirmation that people are moving in the right direction (associating a good feeling with certain behaviors)

*What is your ration of **incentives** to sanctions? *Note: You can provide multiple incentives for a single positive behavior or during a single court session. For example, if someone was on time for all appointments since the last court session you can provide verbal praise, applause, a fist bump and a token or gift card.*

- Judicial praise-most powerful
- Team acknowledgment
- Hold the person up as a positive example.
- Invite peer approval (applause and cheers)
- All Star Board(s)
- High fives, fist bumps, two thumbs up, team salutes in Courtroom
- Applause
- Standing Ovation, do "the Wave."

Certificates noting specific achievements

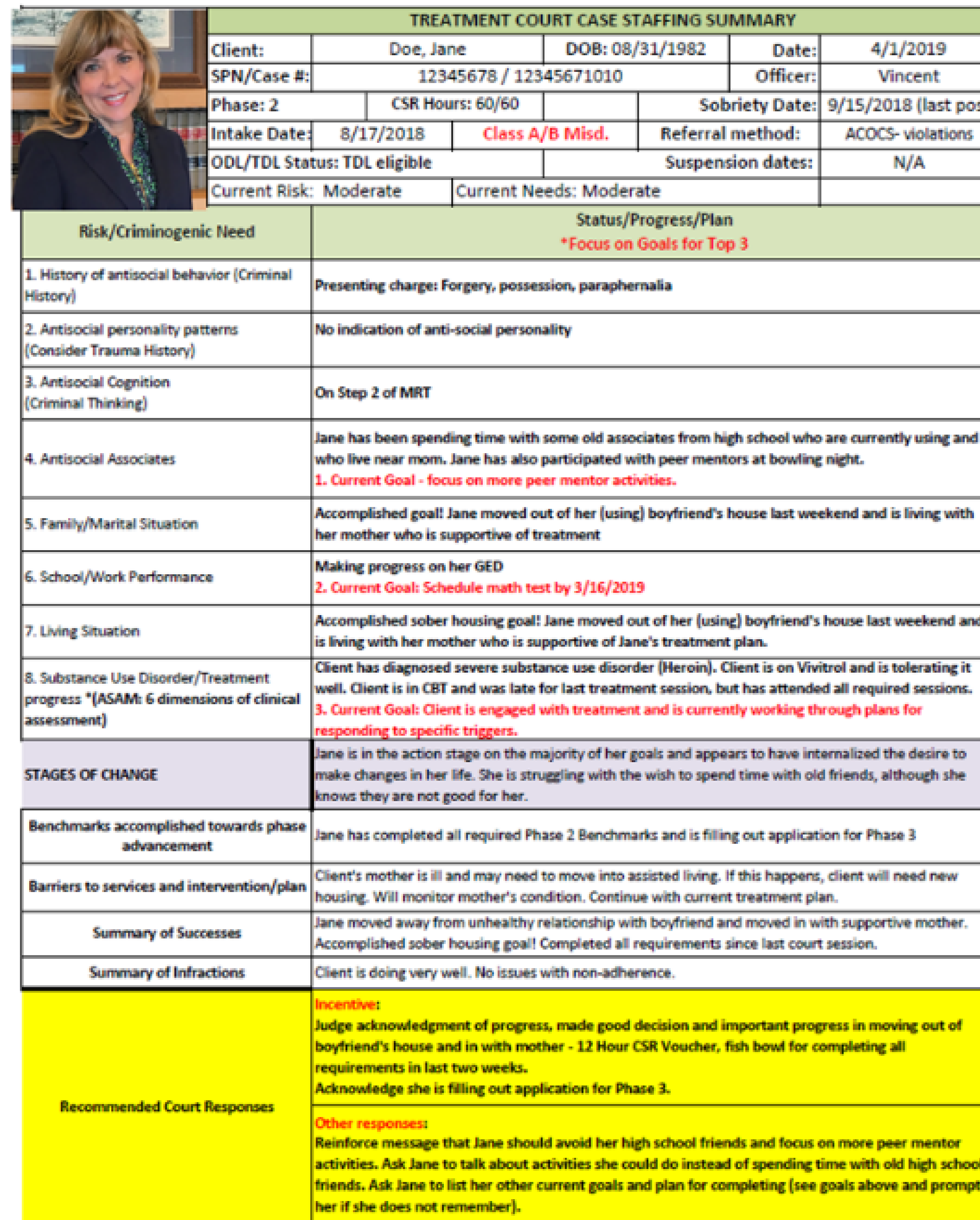
- Attendance (#1- proximal goal-show up)
- On time awards
- Honesty
- Honesty when it's hard
- Probation certificates
- Treatment Certificates
- Team Certificates
- Court Certificates
- Promotions to phase up in Court
- Separate phase up for treatment accomplishment
- Got a "paycheck job".
- Got a raise!
- Got a GED or is enrolled in college or trade school
- Participation, and completion certificates! MRT, Seeking Safety, Parenting, Anger Management, nutrition, cooking skills, financial management.
- Positive peer activities
- Leading meetings, attendance at recovery events
- Stopped smoking, starting a walking group of folks in recovery.
- Helping others, including fellow participants
- First 48, 72, 96 hours negative tests with perfect attendance...etc.

- Tokens (decision dollars, coins, chips) with exchanges Treatment Court Store, or choice of incentives
- Fishbowl, spinning wheel
- Removal of negative things like fines, dismissal of "junk charges", removal of community service hours.
- One-time, 1-hour extension of curfew

Do you have all the information you need to respond effectively?

Link to STAFFING FORM:

https://ln5.sync.com/dl/f7d0d7840/2yuj26tv-j32uh6sy-4mgpgnvx-3azhsdtj



TREATMENT COURT CASE STAFFING SUMMARY

Client: Doe, Jane	DOB: 08/31/1982	Date:	4/1/2019
SPN/Case #: 12345678 / 12345671010		Officer:	Vincent
Phase: 2	CSR Hours: 60/60	Sobriety Date:	9/15/2018 (last pos)
Intake Date: 8/17/2018	Class A/B Misd.	Referral method:	ACOCS- violations
ODL/TDL Status: TDL eligible		Suspension dates:	N/A
Current Risk: Moderate	Current Needs: Moderate		

Risk/Criminogenic Need	Status/Progress/Plan *Focus on Goals for Top 3
1. History of antisocial behavior (Criminal History)	Presenting charge: Forgery, possession, paraphernalia
2. Antisocial personality patterns (Consider Trauma History)	No indication of anti-social personality
3. Antisocial Cognition (Criminal Thinking)	On Step 2 of MRT
4. Antisocial Associates	Jane has been spending time with some old associates from high school who are currently using and who live near mom. Jane has also participated with peer mentors at bowling night. 1. Current Goal - focus on more peer mentor activities.
5. Family/Marital Situation	Accomplished goal! Jane moved out of her (using) boyfriend's house last weekend and is living with her mother who is supportive of treatment
6. School/Work Performance	Making progress on her GED 2. Current Goal: Schedule math test by 3/16/2019
7. Living Situation	Accomplished sober housing goal! Jane moved out of her (using) boyfriend's house last weekend and is living with her mother who is supportive of Jane's treatment plan.
8. Substance Use Disorder/Treatment progress *(ASAM: 6 dimensions of clinical assessment)	Client has diagnosed severe substance use disorder (Heroin). Client is on Vivitrol and is tolerating it well. Client is in CBT and was late for last treatment session, but has attended all required sessions. 3. Current Goal: Client is engaged with treatment and is currently working through plans for responding to specific triggers.
STAGES OF CHANGE	Jane is in the action stage on the majority of her goals and appears to have internalized the desire to make changes in her life. She is struggling with the wish to spend time with old friends, although she knows they are not good for her.
Benchmarks accomplished towards phase advancement	Jane has completed all required Phase 2 Benchmarks and is filling out application for Phase 3
Barriers to services and intervention/plan	Client's mother is ill and may need to move into assisted living. If this happens, client will need new housing. Will monitor mother's condition. Continue with current treatment plan.
Summary of Successes	Jane moved away from unhealthy relationship with boyfriend and moved in with supportive mother. Accomplished sober housing goal! Completed all requirements since last court session.
Summary of Infractions	Client is doing very well. No issues with non-adherence.
Recommended Court Responses	Incentive: Judge acknowledgment of progress, made good decision and important progress in moving out of boyfriend's house and in with mother - 12 Hour CSR Voucher, fish bowl for completing all requirements in last two weeks. Acknowledge she is filling out application for Phase 3. Other responses: Reinforce message that Jane should avoid her high school friends and focus on more peer mentor activities. Ask Jane to talk about activities she could do instead of spending time with old high school friends. Ask Jane to list her other current goals and plan for completing (see goals above and prompt her if she does not remember).

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Treatment Court Tools That Motivate Behavior Change

SERVICE ADJUSTMENTS

TREATMENT ADJUSTMENTS address underlying causes, treat behavior due to disease, teach new skills **(HELP)**

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SUPERVISION provides crucial information about client behavior and progress, holds clients accountable **(HELP)**

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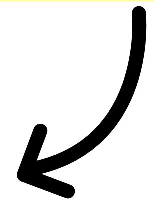
LEARNING ASSIGNMENTS/ "TEACHING RESPONSES" helps client understand the need to change and how to do it **(HELP)**



INCENTIVES increase engagement, reinforce prosocial behavior and development of new skills

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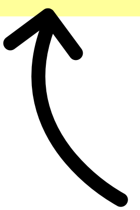
SANCTIONS stop undesired behavior (in the short term)



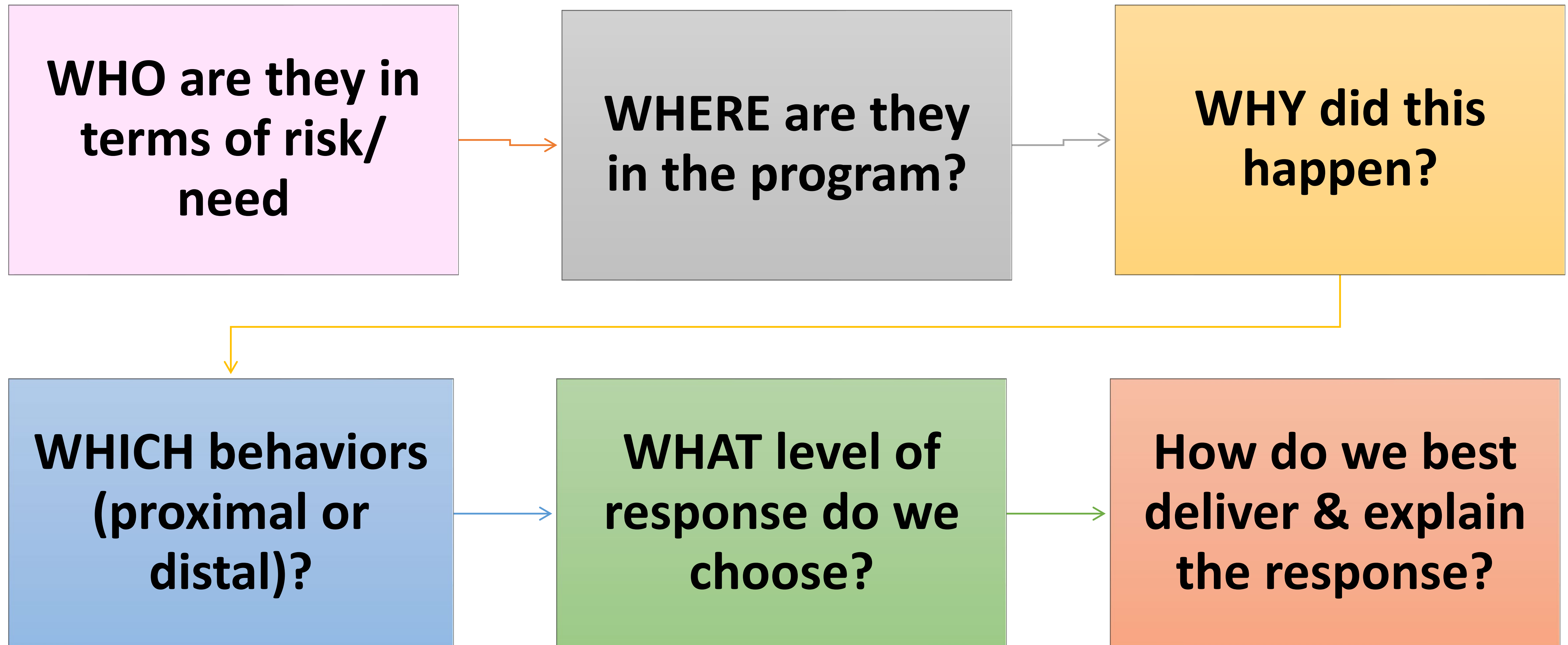
We use these tools in unison!

Contingency Management Works[D]

- A highly effective strategy that **rewards positive behaviors** and imposes **consequences for inappropriate behaviors**.
- **Significantly improves outcomes:**
  - **Longer periods of treatment retention**
  - **Longer periods of abstinence**
- Emphasis on **seeing** & **REWARD**ing progress
- Based on decades of research, successfully applied to HR/HN treatment court populations

➢ **But…only works if we understand proximal & distal behavioral goals. And more!**

We Must Not Respond Until We Know…



Helen Harberts Staffing Guide (2001)

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Service Adjustments: Learning Assignments/ Teaching Responses

Used to help participants reflect, learn from their behavior and to teach new skills.

- ❑ Have you considered what **skills** the participant lacks that they need to learn?
- ❑ Have you responded to participants in a way that provided a **learning experience** for the participant and others in the courtroom?
- ❑ Did we ask, “What did you learn from this?”?

Service Adjustments: Supervision/ Monitoring

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Used to gather information about participant behavior, provide support and promote accountability

- ❑ When was the last **home visit** and check on the **recovery environment**? What is the participants **family situation**?
- ❑ Have we created an **integrated case plan** that addresses assessed needs and does not include requirements for services the participant does not need
- ❑ Have you **asked** participant what would help?

Sanctions

Used to respond to a failure to meet **PROXIMAL** behavioral goals.
They send the message that the participant is moving in the wrong direction.
Stop!

- ❑ First, **confirm with treatment** the behavioral goal is still proximal and they are clinically stable! **Recovery is not linear.**
- ❑ Are you starting with a **low-level** sanctions and only increasing severity if the same poor behavior persists?
- ❑ Are you saving jail for behavior that is dangerous to others or compromises the integrity of the program? (When sanctioning to jail are you using less than **5** consecutive days?)
- ❑ Have you confirmed that the sanctions you are choosing are **actually reducing** participant poor behavior?

Incentives

Used to confirm for the participant that they are moving in the right direction–

"Repeat! Do that great thing again!"

- ❑ Did you incentivize the **small steps**?
- ❑ **Did you consistently reward ALL positive behavior appropriately until managed (and then intermittently)**
- ❑ Are you providing more attention in response to **positive** movement rather than extended attention on poor behavior?
- ❑ Are you providing 10:1 or *at least* **4** incentives to every **1** sanction?

Let's Play "What Would You Do?" (WWYD)

What should the team do to avoid unsuccessful discharge?

Tina

- Tina is on probation and if she is discharged without completing the program, she’s going to prison for 5 years
- She is returning to the treatment court after time away due to incarceration related to other cases
- She is involved in multiple cases as a witness, a victim and for her own charges
- Her most recent charges are petty theft with multiple priors (multiple incidents of shoplifting and various probation violations)
- Tina has been a victim of domestic violence and has has had to testify against her batterer
- She has been released into sectional sober housing **(“8 X 8”)** and is coming back into the program

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Describe any concerns you have about Tina's ability to be successful?

ⓘ Start presenting to display the poll results on this slide.

Tina

- Last week, Tina's PO searched her bedroom at the 8X8 and found a bottle of cooking oil and a plate with cooking oil in it.
- The PO also found knives and a pair of pliers covered in cooking oil, which the PO believes Tina was using to try to remove her bracelet.
- GPS reported to Tina's PO that they had received a tamper alarm, and when Tina came into GPS, the found the bracelet had gouges and a broken clasp and was covered with oil
- Tina has denied strongly that she was trying to get the bracelet off and the PO and peer mentor both said Tina texted them "novels" of excuses and explanations and could not get her to stop talking
- Treatment said they did not have a recent assessment
- The prosecutor let the team know that an incident had occurred in the grocery store parking lot and they were going to charge her with dealing

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If the team is calling for termination, what would want to know more about?

ⓘ Start presenting to display the poll results on this slide.

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What would you suggest as an alternative if the majority of the team is calling for termination?

ⓘ Start presenting to display the poll results on this slide.

Quick Summary:
DID you check off the "big ticket items"?

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✓**Screens and Assessments**

- ❑SUD
- ❑Mental health disorders
- ❑Trauma
- ❑MAT
- ❑Physical health barriers and chronic pain
- ❑Housing and basic needs
- ❑Criminal thinking
- ❑Family therapy
- ❑Developmental challenges, learning differences

✓**Matching services to needs** (integrated case planning)

✓**Recovery capital** (planning and PRACTICE)

✓**Building relationships** (with the team and prosocial peers)

✓**Using ALL tools to respond to behavior**

- ❑ Treatment Responses
- ❑ Monitoring Responses
- ❑ Learning Assignments
- ❑ Incentives (REPEAT!)
- ❑ Sanctions (STOP!)

KEEP TRYING!

Do & Don’t List:

- DO be patient. Don’t hurry. These folks are VERY debilitated.
- DO use the correct yardstick. These people are not you…or your team.
- Don’t punish, shame, or over-react to the disease(s).
- DO remember to look for the good (the baby steps) and reward it, even if other things went wrong.
- DO maximize kindness, and patience.
- Don’t fall for the “self sabotage” trick.
- Don’t give up.

Instead:

- ❑Use our checklist, our list of responses, and guide for termination discussions!
- ❑They are free for you to download and use!
- ✓Be patient, encourage every crumb of success and don’t focus on the errors.
- ✓BABY steps mean everything.

Have You Done Everything You Could to Avoid Termination?

Termination is like surgery - it should be the ONLY thing you can do, or the absolute LAST thing you do.

Hon. Diane Bull, JD - Helen Harberts, MA, JD - Shannon Carey, PhD

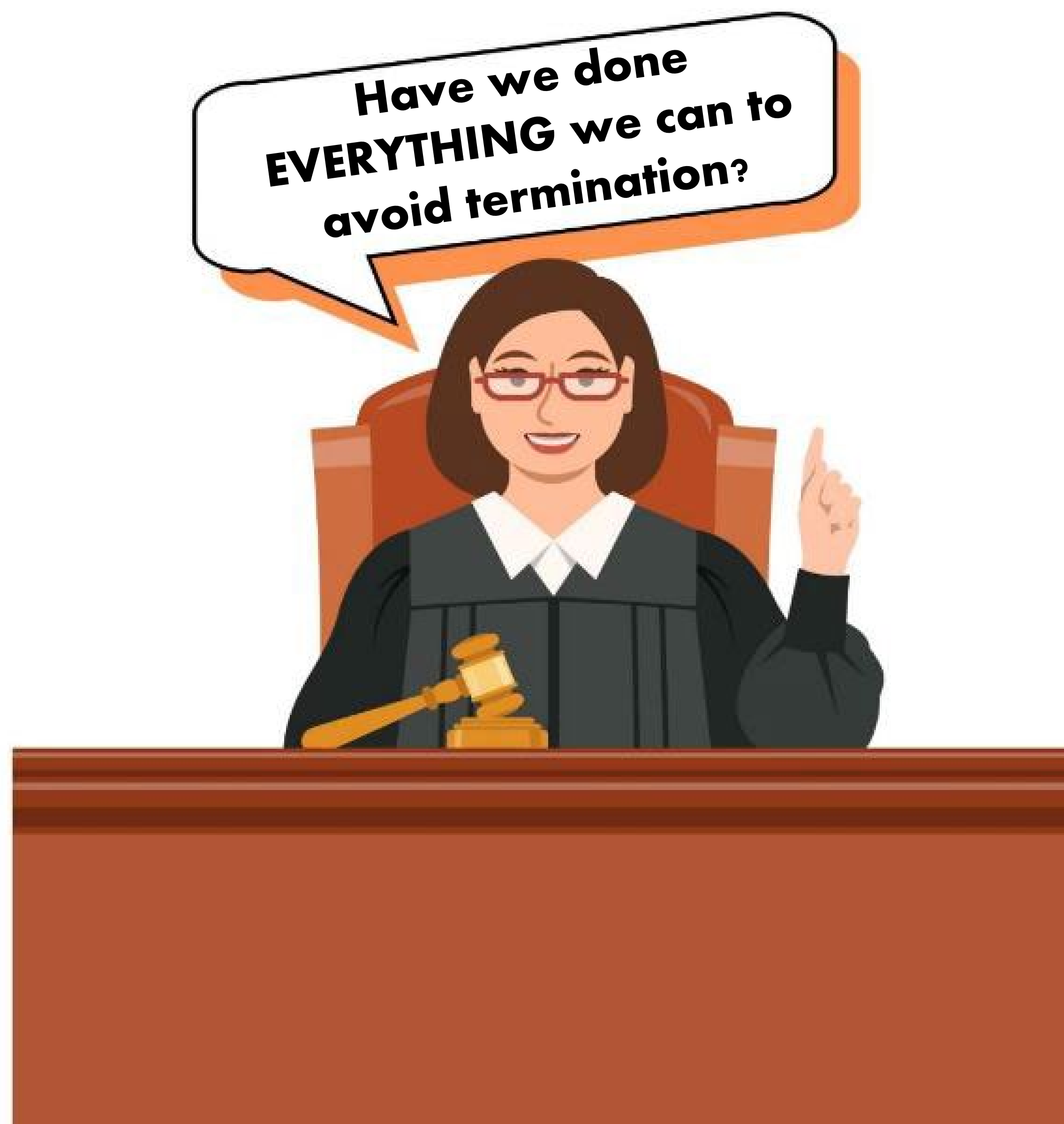
CHECKLIST

Questions to ask yourself before termination.

- ☐ WHAT assessments and screens did we do?
  - ☐ Risk and need? Trauma, MAT, mental health, physical health, etc.?
- ☐ Did we miss any? Are there others we should consider?
- ☐ WHEN were they last done?
- ☐ Did we address everything that the assessment said? (Did we provide services according to the specific needs revealed in the assessments?)
- ☐ What has been done to address recovery capital?
- ☐ When was the last home visit and check on the recovery environment?
- ☐ What was the expected dosage of treatment and interventions per assessments, and did we get to that dosage? Why? Why not?
- ☐ Did we tick off the big-ticket items? SUD, MAT, Co-morbid mental health, physical health, housing, trauma, criminal thinking, recovery planning and practice? Anything else?
- ☐ Has the team worked to develop rapport with participants based on showing respect, empathy, alliance and positive regard?
- ☐ Why are you terminating? Direct threat to public safety (not to self)? Are you frustrated?
- ☐ Have you responded appropriately to the participant’s behavior?
  - ☐ Incentives – used to confirm for the participant that they are moving in the right direction.
    - ☐ Have your incentivized the small steps?
    - ☐ Are you providing more attention in response to positive movement rather than extended attention on poor behavior?
    - ☐ Are you providing at least 4 incentives to every sanction?

Termination:

- Be patient. Try everything!
- Really resist throwing folks out.
- Consider the alternative for the person if you terminate (will public safety be better protected?)
- Do it when there is no real choice.
- Do it if you must - but leave the door open and with hope.



Questions, Training, TA?

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Legal standards and considerations

Due process applies. Do not commit malpractice!

Follow the law

- Recusal? The law and ethics control.
- Get a good record of termination procedure and reasons.
- Leave them with a message of hope
- Plan for their return.
  - Consider legal tools for re-entry, if they exist.
- Re-admission policy review. They will be back.

Termination: The Process Under Law

- Due process is required for termination proceedings.
- Termination typically results in revocation. Revocation typically results in incarceration.
- Incarceration increases the likelihood of recidivism.
- Err on the side MORE due process, not less.

Termination Hearing **Required.**

- Participant **cannot be required to waive the right to a termination hearing** as a condition of entering the program.
- Burden of proof is on the State, preponderance of the evidence
- Hearsay admissible but must not be the sole evidence!
- Majority view: **termination from drug court is akin to probation revocation and that the same DP protections apply per *Gagnon v. Scarpelli*.**

Gagnon Standard of Due Process

Probationers are entitled to these minimum due process protections before probation can be revoked:

- ✓Written notice of the alleged violations
- ✓Disclosure of evidence against them
- ✓Opportunity to appear in person and present evidence
- ✓Right to confront and cross-examine adverse witnesses
- ✓A “neutral and detached” magistrate or hearing body
- ✓A written statement by the decision-maker explaining the evidence relied on and the reasons for revoking probation.

WWYD: Recusal Refusal

- At the judge's urging, prosecutor filed a motion to terminate Kip. At the initial hearing, Kip said, "This judge clearly doesn't like me. Can I have a new one for the termination hearing and revocation proceeding? Judge says "nope".

- **Is that okay?**

Depends on where you live. Most states: judge's discretion

- Do treatment court judges know too much to be "fair and neutral"?

State laws and local rules vary. Absent specific direction, err on the side of offering the participant a voluntary recusal.

TCI Recommended Practice: Grant a participant's request for recusal.

The question: What process is due?

<u>Neal v. State, 2016 Ark. 287 (Ark. Sup. Ct. 6/30/16)</u> (Citing *Laplaca* and *St aley, infra* , Ark. Sup. Ct. holds: "[T]he right to minimum due process before a defendant can be expelled from a drug-court program is so fundamental that it cannot be waived by the defendant in advance of the allegations prompting the removal from the program.")

Gross v. State of Maine, Superior Court case # CR-11-4805 (2/26/13*)*

(drug court procedures relating to termination *violative of due process and, therefore, unconstitutional. Drug Court* participant entitled to: notice of the termination allegations and the evidence against him, right to call and x-examine witnesses, a hearing at which he is present, a neutral magistrate, written factual findings and the right to counsel. *Here, the drug court team discussed the termination decision during the termination hearing, without defendant's presence or that of his counsel. That procedure coupled by the fact the Superior Court felt that the drug court judge should have recused, resulted in a finding of constitutional infirmity. Moreover, the* appellate court ruled the defendant did not, and arguably could not, prospectively waive his rights, *citing LaPlaca and Staley.*

But he waived his rights! NOPE!

Hendrick v. Knoebel, (SD Indiana 5/10/2017) *("Though we need not rule on Defendants' argument concerning the waiver provision in the DTC Agreement, we note our serious doubts as to its enforceability under Indiana contract law, given the conspicuous lack of parity between the parties, the absence of specificity in the provision's language, the fact that it purports to absolve the DTC's employees of liability for intentionally tortious conduct, and the fact that the DTC Program is an entity of the local government performing a public service. Moreover, because the provision implicates federal common law by purporting to waive federal statutory and constitutional rights, the likelihood of its enforceability is increasingly remote*. Federal courts are rightly skeptical, albeit not uniformly dismissive, of claims that a plaintiff has waived his constitutional rights or has released a defendant from liability for violating them. We "indulge every reasonable presumption against waiver of fundamental constitutional rights," *Johnson v. Zerbst, 304 U.S. 458, 464 (1938); Bayo v. Napolitano, 593 F.3d 495, 503 (7th Cir. 2010), and we acquiesce in a waiver only if it has been "knowing, intelligent, and voluntary." Schriro v. Landrigan, 550 U.S. 465, 484 (2007). The lack of specific language in the agreement before us, in conjunction with its prospectivity, not only falls short of eliciting "an intentional relinquishment or abandonment of a known right or privilege," Patterson v. Illinois, 487 U.S. 285, 292-93 (1988), but als*o encourages DTC staffers to violate the DTC participants' constitutional rights, knowing they are acting with impunity. *Enforcing such an agreement is inconsistent with the public interest given its potential for abuse and cancellation of the participants' primary means of vindication.")*

Screening and Assessment Resources

Substance Use Screens

- Alcohol Use Disorders Identification Test (AUDIT), 5th ed.

https://www.drugabuse.gov/sites/default/files/files/AUDIT.pdf

- Substance Abuse Subtle Screening Inventory (SASSI), 4th ed.

Ordering information at https://www.mhs.com/MHS-Assessment?prodname=sasi

- Global Appraisal of Individual Needs – Short Screener (GAIN-SS)

https://www.integration.samhsa.gov/clinical-practice/Global_Assessment_of_Individual_Needs_Short_Screen_-GAIN-SS-.pdf

Substance Use Assessments

- Addiction Severity Index, 5th Edition (ASI)

http://adai.washington.edu/instruments/pdf/Addiction_Severity_Index_Baseline_Followup_4.pdf

- Global Appraisal of Individual Needs (GAIN)

http://wits.idaho.gov/Portals/73/Documents/substanceUse/GAIN-I%20Full%205.6.2.pdf

PTSD Assessments

- Adverse Childhood Experiences questionnaire http://www.ncjfcj.org/sites/default/files/Finding%20Your%20ACE%20Score.pdf

- Life Events Checklist 5 https://www.ptsd.va.gov/professional/assessment/documents/LEC-5_Standard_Self-report.pdf

- PTSD Checklist 5 https://www.ptsd.va.gov/professional/assessment/adult-sr/ptsd-checklist.asp

Other Clinical Assessments

- Beck Depression Inventory II (BDI II)

https://www.pearsonassessments.com/store/usassessments/en/Store/Professional-Assessments/Personality-%26-Biopsychosocial/Beck-Depression-Inventory-II/p/100000159.html

- Insomnia Severity Index (ISI)

https://www.ons.org/sites/default/files/InsomniaSeverityIndex_ISI.pdf

- Brief Pain Inventory (BPI)

http://www.npcrc.org/files/news/briefpain_short.pdf