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Behavior Modification 101 for Drug Courts: Making the Most of Incentives and Sanctions

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Drug Courts improve outcomes for drug-abusing offenders by combining evidence-based substance abuse treatment with strict behavioral accountability. Participants are carefully monitored for substance use and related behaviors and receive escalating incentives for accomplishments and sanctions for infractions. The nearly unanimous perception of both participants and staff members is that the positive effects of Drug Courts are largely attributable to the application of these behavioral contingencies (Lindquist, Krebs, & Lattimore, 2006; Goldkamp, White, & Robinson, 2002; Farole & Cissner, 2007; Harrell & Roman, 2001).

Scientific research over several decades reveals the most effective ways to administer behavior modification programs. Drug Courts that learn these lessons of science reap benefits several times over through better outcomes and greater cost-effectiveness (Rossman & Zweig, 2012). Those that follow nonscientific beliefs or fall back on old habits are not very effective and waste precious resources. Every Drug Court team should stay abreast of the research on effective behavior modification and periodically review court policies and procedures to ensure they are consistent with science-based practices.

The Carrot and the Stick

Some criminal justice professionals may resist the notion of rewarding offenders for doing what they are already legally required to do. These professionals may believe that treatment should be its own reward or that avoiding a criminal charge should be incentive enough. Other professionals may feel ambivalent about administering

punishment to their clients. They may view their role as providing treatment and rehabilitation, not policing misconduct.

Such sentiments can lead some Drug Court teams to rely too heavily on either incentives or sanctions rather than providing a proper balance of each. Rewards and sanctions serve different, but complementary, functions. Rewards are used to increase desirable behaviors, such as going to work



or school, whereas sanctions are used to reduce undesired behaviors, such as engaging in crime or drug abuse. When used together, they can have synergistic effects that produce better outcomes than applying either technique alone (Marlowe & Kirby, 1999).

Although some sources recommend that rewards should outnumber sanctions by a 4:1 ratio (Gendreau, 1996; Wodahl et al., 2011), this suggestion is based on after-the-fact clinical observations or correlations rather than on controlled scientific studies. In the absence of definitive guidance, a rule of thumb is to have at least equivalent amounts of positive reinforcement and punishment available for participants. If participants may be punished for missing a counseling session, then they should also be able to earn a reward for attending a counseling session. In this way, participants have a roughly equal opportunity to earn a reward or to incur a sanction. Arranging contingencies in this manner enables Drug Courts to reduce undesirable behaviors while simultaneously replacing them with desirable prosocial behaviors.

The Carrot and the Stick

Practice Pointer

Balance positive reinforcement with punishment to reduce undesired behaviors and replace them with desired prosocial behaviors.

Trust but Verify

The most influential factor in behavior modification is certainty. The more consistently participants receive rewards for accomplishments and sanctions for infractions, the more effective the program will be. Therefore, the success of every Drug Court will depend, ultimately, on the reliable monitoring of participants' behaviors. If the team does not have accurate information about whether

participants are being compliant or noncompliant in the program, there is no possible way to apply incentives or sanctions correctly or to adjust treatment and supervision services accordingly.

Research reveals the most effective and cost-efficient Drug Courts perform urine drug testing no less frequently than twice per week on a truly random basis for at least the first several months of the program (Carey, Finigan, & Pukstas, 2008; Carey, Mackin, & Finigan, 2012; McIntire, Lessenger, & Roper, 2007). This includes conducting drug testing on weekends and holidays when drug and alcohol use are most likely to occur. Outcomes also appear to be better for Drug Courts that use monitoring technologies that extend the time window for detection, such as sweat patches, anklet devices, and EtG or EtS testing (Cary, 2011; Flango & Cheesman, 2009).

Generally speaking, drug testing should be among the last supervisory burdens lifted and ordinarily during the last phase of the program. Because Drug Courts typically ratchet down the intensity of treatment and supervision services as participants make progress in the program, relapse is always a risk as those services are reduced. Therefore, drug testing should continue unabated in order to be certain that relapse is not occurring during other adjustments to the program regimen.

Drug Courts that include law enforcement or community corrections officers on their teams also tend to have better outcomes (Carey et al., 2008, 2012; Harberts, 2007, 2011). Addicted offenders are generally not at risk for using drugs or committing crimes while they are in court, at a probation office, or in a treatment program. The risks they face are in their natural social environments, where they are confronted with drugs, drug-using associates, and the stresses of their daily lives. A Drug Court must extend its influence into the natural settings in which its participants live and function. This may include conducting random home visits, verifying employment and school attendance, enforcing area and person restrictions, monitoring curfew compliance, or performing bar sweeps.

BEHAVIOR MODIFICATION 101 FOR DRUG COURTS: MAKING THE MOST OF INCENTIVES AND SANCTIONS

Trust but Verify

Practice Pointers

- *Conduct urine or saliva drug testing no less frequently than twice per week for at least the first several months of the program.*
- *Conduct urine or saliva testing on a truly random basis, including on weekends and holidays.*
- *Do not substantially reduce the frequency of drug testing until participants are in the last phases of the program and have begun to engage in their continuing-care plans.*
- *If frequent drug testing is not feasible, employ continuous detection technologies, such as sweat patches or anklet monitoring devices, or use tests that have longer time windows for detection, such as EtG or EtS.*
- *For technologies that have short detection windows, such as breathalyzers (BALs), randomly administer the tests in the field, for example during unannounced home visits.*
- *Have community supervision officers periodically and randomly observe participants in their natural social environments.*

Timing is Everything

The unfortunate reality is that the effects of rewards and sanctions begin to decline within only a few hours or days after a participant has engaged in a target behavior. This has important implications for scheduling status hearings in a Drug Court. The longer the time interval between status hearings, the longer the delay is likely to be before sanctions or rewards are imposed.

Drug Courts have substantially better outcomes when participants are required to appear in court no less than every two weeks for at least the first several months of the

program (Carey et al., 2008; Carey, Mackin, & Finigan, 2012; Festinger et al. 2002; Jones, 2011; Marlowe et al., 2006, 2007).¹ This allows the team to respond relatively quickly to achievements and infractions, thereby producing better outcomes in a shorter period of time. If the next status hearing after an infraction is not scheduled for several weeks, noncompliant participants should be brought in sooner for a court hearing to reduce the delay interval before a consequence can be imposed (Carey, Mackin, & Finigan, 2012).

Research has not yet clearly established the ideal point to ratchet down the frequency of status hearings. However, evidence suggests status hearings should be held approximately monthly until participants are in the last phase of the program and have begun to engage in their continuing-care plans (Carey, Finigan, & Pukstas, 2008).

Timing is Everything

Practice Pointers

- *Schedule status hearings no less frequently than twice per month until participants have initiated abstinence and are regularly attending treatment.*
- *Ensure noncompliant participants are brought in for a court hearing within a reasonable period of time after a serious infraction has occurred.*
- *Continue status hearings on an approximately monthly basis until participants have engaged in their continuing-care plans.*

Staying Centered

A common misconception persists among many professionals that rewards and sanctions are most effective at high magnitudes. In fact, rewards can be effective at low to moderate magnitudes. For example, positive outcomes have been reported using verbal praise, certificates of recognition, transportation passes, and gift cards (Stitzer, 2008).

¹ This assumes the Drug Court is treating the appropriate target population of high-risk and addicted offenders.



Sanctions tend to be least effective at the lowest and highest magnitudes and most effective within the intermediate range. Sanctions that are too weak can precipitate *habituation*, in which the individual becomes accustomed, and thus less responsive, to punishment. Sanctions that are too harsh can lead to resentment, avoidance reactions, and *ceiling effects*, in which the team runs out of sanctions before treatment has had a chance to take effect.

The success of any Drug Court will depend largely on its ability to craft a creative range of intermediate-magnitude incentives and sanctions that can be ratcheted upward or downward in response to participants' behaviors.² Drug Courts that are too lenient will be apt to make outcomes stagnant, and those that are too harsh will be apt to elicit negative reactions and ceiling effects. Programs that respond to participants' behaviors in a thoughtful and balanced manner will achieve the best results.

Staying Centered

Practice Pointers

- *Develop a wide and creative range of intermediate-magnitude rewards and sanctions that can be ratcheted upward or downward in response to participants' behaviors.*
- *Avoid overreliance on sanctions that are low or high in magnitude.*

Fishing for Tangible Resources

Many Drug Courts are stretched thin for resources to purchase tangible rewards. One economical and effective way to deal with this issue is to use the *fishbowl procedure*. Participants earn opportunities to draw prizes from a fishbowl (or other lottery container) for their accomplishments, such as

attending treatment sessions and providing drug-negative urine specimens. Most of the draws earn only a written declaration of success, such as a certificate of accomplishment for the week signed by the judge. Others earn small prizes of roughly \$5 to \$10 in value, and a small percentage earns larger prizes, such as DVDs, tickets to sporting events, or clothing for work or school.

Research indicates the fishbowl procedure can produce comparable or better outcomes at a lower cost than programs that reward participants for every achievement (Petry et al., 2005; Sigmon & Stitzer, 2005). The possibility of winning a substantial reward appears to compensate for the reduced chances of actual success, and the lottery process adds entertainment value as well. Contrary to some concerns, there is no evidence that fishbowl procedures trigger gambling behaviors (Petry et al., 2006) or that participants exchange their rewards for drugs or other inappropriate acquisitions (Festinger et al., 2008; Festinger & Dugosh, 2012; Roll et al., 2005).

The use of tangible incentives may be particularly impactful for high-risk, antisocial offenders who would ordinarily have the poorest outcomes in correctional rehabilitation programs (Marlowe et al., 1997, 2008; Messina, Farabee, & Rawson, 2003). Because many of these individuals have habituated to punishment and are not accustomed to receiving positive reinforcement, tangible rewards may exert substantially greater control over their behavior than threats of punishment.

Fishing for Tangible Resources

Practice Pointer

Stretch program resources by incentivizing participants with opportunities to draw rewards from a fishbowl. Most of the rewards may be of low or no dollar value, but a few should be highly desirable to participants.

² The National Drug Court Institute (NDCI) maintains a list of incentives and sanctions that are being used by hundreds of Drug Courts around the country. The list is available at <http://www.ndcrc.org/content/list-incentives-and-sanctions>.

BEHAVIOR MODIFICATION 101 FOR DRUG COURTS: MAKING THE MOST OF INCENTIVES AND SANCTIONS

Do Due Process

Participants are most likely to react favorably to receiving sanctions or not receiving rewards if they believe fair procedures were followed in making the decision. The best outcomes are achieved when participants are given a reasonable opportunity to explain their side of the dispute, are treated in an equivalent manner to similar people in similar circumstances, and are accorded respect and dignity throughout the process (Burke & Leben, 2007). This does not imply that participants should necessarily get the outcome they desire. They should be given a fair chance to explain their side of the story and a clear-headed rationale for how and why a particular decision was reached.

Most importantly, being condescending or discourteous is never appropriate. Even the most severe sanctions should be delivered dispassionately with no suggestion that the judge or other team members take pleasure from meting out punishment. Numerous studies have reported better outcomes for Drug Courts in which the judges were rated as being respectful, fair, consistent, and supportive in their interactions with participants (Farole & Cissner, 2007; Senjo & Leip, 2001; Zweig et al., 2012).

Drug Courts also tend to have better outcomes when they clearly specify their policies and procedures regarding incentives and sanctions in a written program handbook or manual (Carey et al., 2008, 2012). Staff members and participants should be clearly informed in advance about the specific behaviors that may trigger sanctions or rewards; the types of sanctions and rewards that may be imposed; the criteria for phase advancement, graduation, and termination; and the consequences that may ensue from graduation and termination. However, rigidly applying a set template of sanctions and rewards may undermine participant progress or buy-in. Outcomes are better when the team reserves a reasonable degree of discretion and flexibility to modify its responses based on extenuating circumstances encountered in individual cases (Zweig et al., 2012).

Do Due Process

Practice Pointers

- *Allow participants a reasonable chance to explain their side of any dispute, administer equivalent consequences for equivalent behaviors, and accord all participants respect and dignity throughout the process.*
- *Specify policies and procedures concerning incentives and sanctions in a written program handbook or manual, and ensure that all staff members and participants are familiarized with the procedures.*

Sanctions or Therapeutic Consequences?

A common point of contention in many Drug Courts is whether participants should receive punitive sanctions for positive drug tests or whether their treatment plans should be adjusted. The answer depends on whether their usage is compulsive. Individuals who are dependent on or addicted to drugs or alcohol (substance dependent individuals) should be expected to require time and effort to achieve sustained sobriety. If a Drug Court imposes high-magnitude sanctions for substance use early in treatment, odds are the team will run out of sanctions before treatment has had a chance to take effect, and the participant might fail out of the program. This practice could paradoxically make the most substance-dependent individuals, who need treatment the most, more prone to failure in Drug Courts.

For this reason, Drug Courts typically administer a gradually escalating sequence of consequences for substance use. The earliest consequences often involve enhancing treatment services, whereas later consequences may include punitive sanctions of increasing severity. Once a participant has received a reasonable dose of treatment and has begun to stabilize, then it becomes appropriate for the team to raise its expectations and apply punitive consequences for drug or alcohol use.



Evidence suggests, however, that not all participants in Drug Courts may be substance dependent. Some participants may be abusing these substances but do not meet diagnostic criteria for dependence (DeMatteo et al., 2009). These individuals (substance abusers) may experience repeated adverse consequences of substance use, such as multiple criminal arrests or car accidents, but their usage is largely under voluntary control. For them, increasing treatment would not be a logical consequence for substance use because they may not require such services. Moreover, applying gradually escalating sanctions could have the unintended effect of permitting them to continue abusing substances for some period of time until the sanctions reached a sufficient threshold of severity to gain their attention. For them, the preferable course of action would be to apply higher-magnitude sanctions for substance use early in the program, so as to put a rapid end to this voluntary misconduct.

Because substance-dependent individuals and substance abusers should ordinarily receive different consequences for substance use early in treatment, separating them into different status hearings is advisable. Doing so helps to avoid perceptions of unfairness if some participants receive lenient therapeutic consequences while others receive punitive sanctions for comparable infractions.

Under no circumstance should a nonclinically trained judge or probation officer make the decision to increase the intensity of treatment as a punishment for noncompliance or reduce the intensity of treatment as a reward for compliance. Recommendations to change the treatment plan should be made by duly trained clinicians, and the judge should act on the basis of those expert recommendations in ordering the conditions of treatment.

Sanctions or Therapeutic Consequences?

Practice Pointers

- *For substance-dependent participants, administer treatment-oriented consequences for substance use early in the program, such as increasing the required number of counseling sessions, transferring the individual to a more intensive level of care, or evaluating the participant for possible medication.*
- *Once substance-dependent participants have engaged in treatment and achieved an initial sustained interval of sobriety, begin applying escalating sanctions for substance use.*
- *For nonaddicted substance abusers, begin applying escalating sanctions for substance use during the initial phase of the program.*
- *Hold status hearings separately for substance-dependent participants vs. substance abusers to avoid potential perceptions of unfairness.*
- *Rely on the clinical expertise of duly trained treatment professionals when ordering changes to the treatment regimen.*

BEHAVIOR MODIFICATION 101 FOR DRUG COURTS: MAKING THE MOST OF INCENTIVES AND SANCTIONS

First Things First

Distinguishing between proximal and distal behavioral goals is essential to modifying habitual behaviors. *Proximal* goals are behaviors that participants are already capable of performing and are necessary for long-term objectives to be achieved. Examples might include attendance at counseling sessions and delivery of urine specimens. *Distal* goals are the behaviors that are ultimately desired, but will take some time for participants to accomplish. Examples might include gainful employment or effective parenting.

A Drug Court should generally sanction high if a participant fails to meet proximal expectations and sanction low if a participant fails to meet distal expectations. If a participant receives low-magnitude sanctions for failing to fulfill easy obligations, this will almost certainly lead to habituation. If a participant receives severe sanctions for failing to meet difficult demands, this will almost certainly lead to hostility, ceiling effects, or a sense of learned helplessness. For example, a participant who fails to show up for counseling sessions or who delivers tampered urine specimens should ordinarily receive a substantial punitive sanction, such as home curfew, community service, or a brief period of detention. However, if that same participant failed to find a job or enroll in an educational program during the early phases of the program, he or she should receive a lesser consequence, such as a verbal reminder or essay assignment. This process, called *shaping*, permits Drug Courts to navigate between habituation and ceiling effects and thus achieve effective outcomes.

The converse rule of thumb applies to rewards. Lower-magnitude rewards should be administered for easy, proximal behaviors, and higher-magnitude rewards should be administered for difficult, distal behaviors. For example, participants might receive verbal praise and encouragement for attending counseling sessions, but might receive reduced supervision requirements for finding a job or returning to school.

The earlier discussion concerning participants who are substance dependent vs. substance abusers is highly relevant here. For participants who are dependent on drugs or alcohol, abstinence is a distal goal; therefore, positive

drug tests should ordinarily receive low-magnitude, therapeutic consequences during the early phases of treatment. For substance abusers, however, abstinence is an easier-to-accomplish proximal goal, and they therefore should receive higher-magnitude punitive sanctions for drug use from the outset.

First Things First

Practice Pointers

- *Distinguish between proximal behaviors that participants are already capable of performing and distal behaviors that they are not yet capable of performing.*
- *Begin by assigning higher-magnitude sanctions and lower-magnitude rewards to easy proximal behaviors, and assigning lower-magnitude sanctions and higher-magnitude rewards to difficult distal behaviors.*

Phase Advancement

Distal goals eventually become proximal goals as participants make progress in the program. For example, after achieving a stable period of sobriety, finding a job or enrolling in an educational program becomes easier to accomplish. Therefore, participants should begin to receive higher-magnitude sanctions over time for failing to fulfill such obligations and should receive lower-magnitude rewards for accomplishing them.

The primary purpose of phase advancement in a Drug Court is to inform participants that what was previously a distal goal has now become a proximal goal. For example, phase one in many Drug Courts focuses on stabilization of the participant and induction into treatment. The emphasis might be placed on completing clinical assessments, establishing a daily routine, abiding by a home curfew, and obtaining a self-help group sponsor. Participants would ordinarily not, however, be required (or even encouraged) to find a job or return to school



at this early stage in their recovery. Once a participant has become stabilized and developed a proper routine, however, he or she would then be advanced to phase two in which other goals, such as employment or education, may become more salient. Thus, failing to attend job training during phase one might receive no consequence or only a minimal consequence, whereas failing to attend job training during phase two or three might elicit a more substantial sanction.

Each time a participant is advanced to a higher phase in the program, the team should take the opportunity to remind all participants about what was required for the phase advancement to occur and what new challenges await the individual. The judge should review the process of phase advancement in court and explain to all participants the implications of moving from one phase to another. In this way, participants will not be surprised when program expectations of them and the consequences for misbehaviors increase accordingly.

Phase Advancement

Practice Pointers

- *Identify which distal behaviors have become proximal as participants advance to each successive phase in the program. Increase the magnitude of sanctions and reduce the magnitude of rewards for those behaviors accordingly.*
- *Review in open court the process of phase advancement and the changing expectations that ensue whenever a participant advances to a new phase.*

Conclusion

At its core, the criminal justice system is a behavior modification program designed to reduce crime and rehabilitate offenders. Historically, unfortunately, rewards and sanctions were rarely applied in a systematic manner that could produce meaningful or lasting effects. Dissatisfied with this unacceptable state of affairs, a group of criminal court judges set aside special dockets to provide closer supervision and greater accountability for substance-dependent and substance-abusing offenders. Wittingly or unwittingly, these judges devised programs that are highly consonant with the scientific principles of contingency management or operant conditioning.

Research now confirms that the effectiveness and cost-effectiveness of any Drug Court will depend largely on its ability to apply these behavioral techniques correctly and efficiently. Drug Courts that ignore the lessons of science are not very effective and waste precious resources and opportunities. Drug Court teams should periodically consult the latest findings on behavior modification and attend training and technical assistance activities to ensure they are making the most of their limited resources and leveraging the best outcomes for their participants and their communities.

BEHAVIOR MODIFICATION 101 FOR DRUG COURTS: MAKING THE MOST OF INCENTIVES AND SANCTIONS

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