



**Justice Speakers Institute**  
PROMOTING JUSTICE WORLDWIDE

# Enhancing Your Recovery Court's Performance

Judge Geno Salomone (Ret.) – JSI Associate

# Fundamentals and Continuing Education

- *All Rise* – Adult Drug Court Best Practices
- Drug Court Judicial Bench Book
- Studies and Lectures
- Visit other Courts



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# Independent Evaluation of Your Program



- “ A skilled and independent evaluator examines the Drug Court’s adherence to best practices and participant outcomes no less frequently than every 5 years.”
- Avoiding “drift” and complacency

*All Rise* – Adult Drug Court Best Practice Standards, Volume II, pp 60 and 61



# Trauma and Trauma-Informed Responses

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# Trauma Informed Responses



- SAMHSA defines trauma as “an event or circumstance resulting in physical harm, emotional harm and/or threatening harm”

*SAMHSA, Sept. 2022*

- Over 90% of youth in the justice system have experienced at least one trauma...and over 55% reported being exposed to trauma six or more times.

*Behavioral Health-State Court Leadership Brief, June 2022, Trauma and Trauma Informed Responses*



# Communicate with Team Members



- Probation Officer and Therapists will most often be the team members familiar with the specifics of the participant's trauma issues.
- If needed, the other team members should be given the trauma information so that they can adjust their decisions/opinions/recommendations accordingly.
- This is especially true when it comes to advising the judge. Notes for judge's prep for status hearings should reflect warnings or areas of discussion to avoid.

# Results of Communication



Team Members who are trauma informed:

- Expect the presence of trauma
- Understand that it may affect participants feelings, behaviors and success in treatment
- Effectively engage participants and increase their likelihood for success
- Seek to change the paradigm from “What’s wrong with you” to “What’s happened to you”

*Behavioral Health State Leadership Brief-  
Trauma and Trauma informed Responses -June  
2022*

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# Courtroom Communication

JUDGE'S COMMENT	PERCEPTION OF TRAUMA SURVIVOR	TRAUMA-INFORMED APPROACH
"Your drug screen is dirty."	<i>"I'm dirty. There is something wrong with me."</i>	"Your drug screen shows the presence of drugs."
"Did you take your pills today?"	"I'm a failure. I'm a bad person. No one cares how the drugs make me feel."	"Are the medications your doctor prescribed working well for you?"
"You didn't follow the contract, you're going to jail; we're done with you. There is nothing more we can do."	"I'm hopeless. Why should I care how I behave in jail? They expect trouble anyway."	"Maybe what we've been doing isn't the best way for us to support you. I'm going to ask you not to give up on recovery. We're not going to give up on you."
"I'm sending you for a mental health evaluation."	"I must be crazy. There is something wrong with me that can't be fixed."	"I'd like to refer you to a doctor who can help us better understand how to support you."





# Sanctions or Therapeutic Consequences

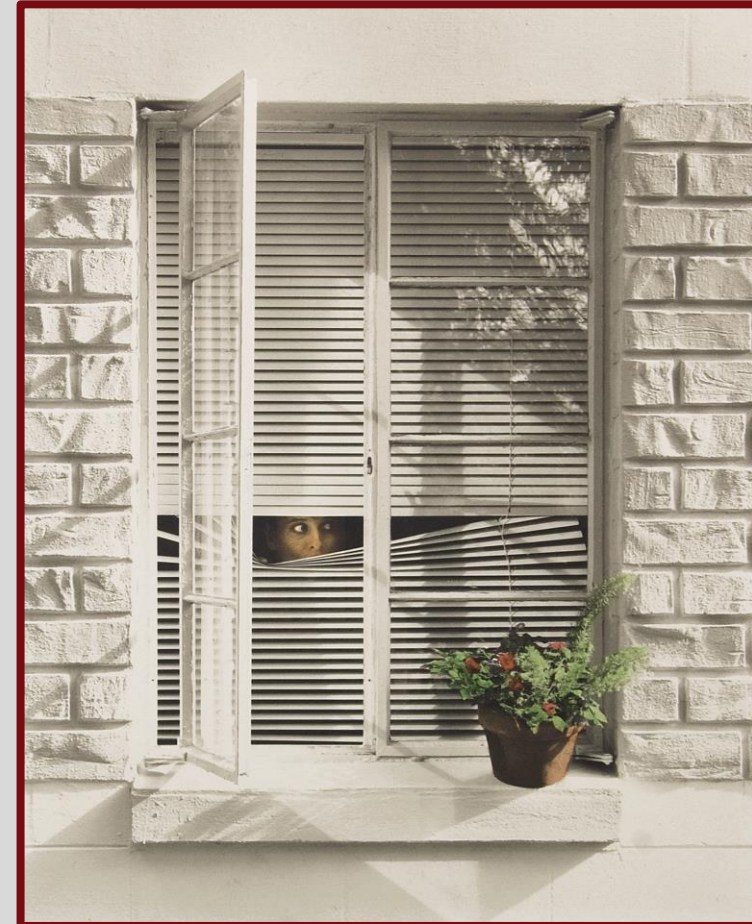


- Treatment responses should be delivered by treatment professionals - NOT the Judge or PO.
- Treatment responses are never used as a sanction, rather suggested by the treatment team to further support recovery.

# The Face of Trauma

## Received this email from a judge

- I have a young woman(early 30's) that came in on a larceny charge. She has over 50 prior convictions, and some outstanding warrants. Numerous drugs of choice. I believe she is being trafficked by her “boyfriend”. He keeps her in a hotel room near the airport. He picked her up from court yesterday and began beating her in the parking lot. We believe she has been trafficked for over a decade.
- One of our angels was able to pick her up the next day and bring the defendant back to court. The lady was covered in bruises. She has no money, or any support.
- She plead guilty to the larceny charge. Probation recommends 90 days in jail



# The Face of Trauma

**If you, as a treatment court, do not help this woman, who will?**

- Court put her on a tether and in group housing. She is now part of the program. Court obtained grants from the local Families Against Narcotics chapter for housing costs. The housing people asked another resident that is soon to graduate from treatment court, to act as a mentor.
- As of today, she is 14 weeks in recovery



# Medication Assisted Treatment

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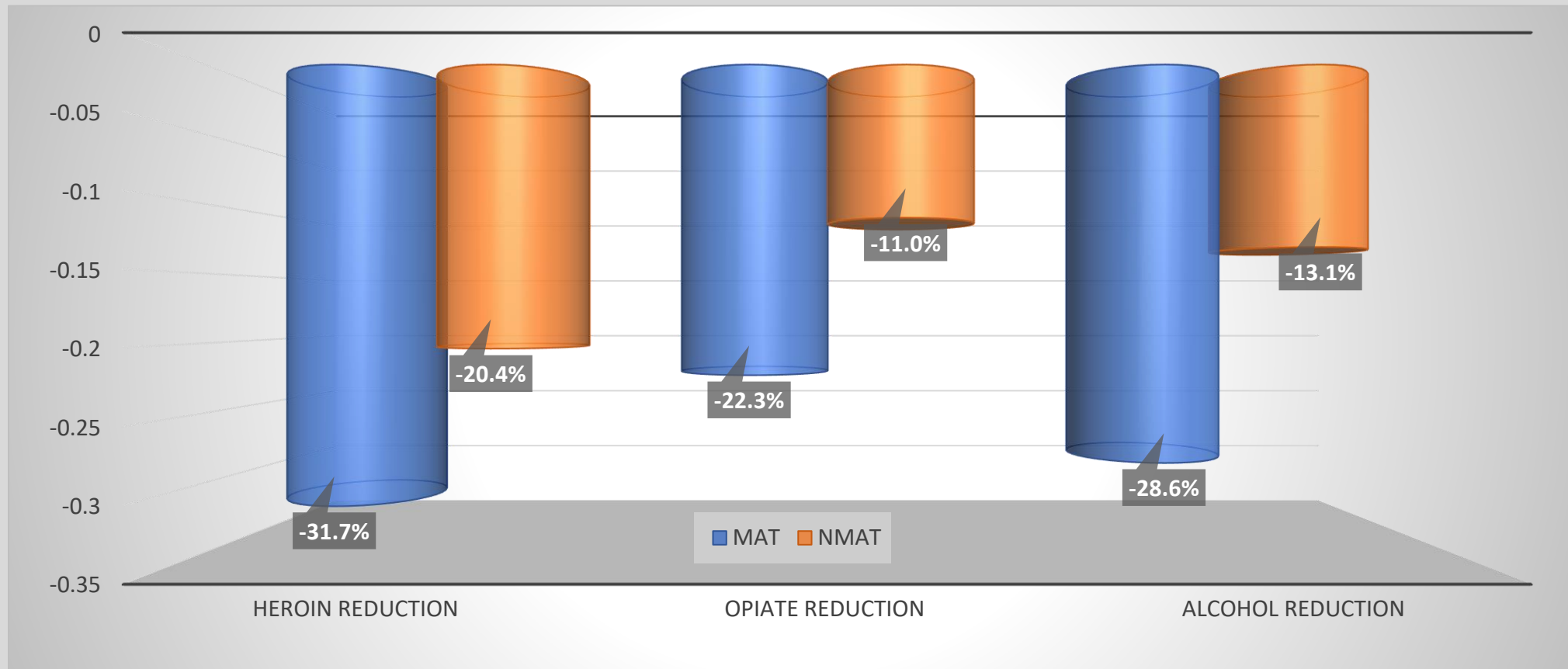


# Medication Assisted Treatment

- A national survey of Drug Courts in 2018, found that 44% of respondents did not offer any of these medications.
- Over 40% had blanket bans against the use of Methadone and/or Buprenorphine.
- Methadone, Buprenorphine/Suboxone, Naltrexone/Vivitrol( which is used for both AUD and SUD)



# Outcomes From The MAT Pilot Program For Adults With Opioid Use Disorders In Rural Colorado



# Relapse Risks upon Release from Custody – Jail Sanctions



- People with OUD will quickly lose tolerance while incarcerated;
- Vulnerable to relapse (craving) and overdose (low tolerance/powerful opioids);
- Study shows 11x mortality risk in first two weeks after release; and,
- If person cannot get their medication in jail there is a substantial risk for overdose when release.

# MAT Lowers risk of relapse, death, and recidivism

- One study of English correctional facilities found that treatment with buprenorphine or methadone was associated with an 80/85% reduction in post release deaths—Smith v Aroostook, 376 F.Supp3rd 146,150 (2019)
- In a study with the Rhode Island correctional system, participants receiving methadone were more than twice as likely than forced withdrawal participants to return to a methadone clinic upon release. The Lancet, Rich et al, Volume 386, Issue 9991, July 2015
- Meta-studies showing that engaging in MAT while incarcerated means more continuing post release—that continuation is associated with reduced recidivism. Effectiveness of MAT in prisons and jails, Journal of Substance Abuse Treatment, Moore et al, Volume 99, April 2019



# What Laws are Violated by a Blanket Prohibition Of MAT?



- 8<sup>th</sup> amendment-cruel and unusual punishment
- American with Disabilities Act
- Rehabilitation Act

# ADA Claims

- The ADA prohibits discrimination by state and local governments.
- To prevail on a claim for discrimination, an individual must prove that he or she:
  - Has a “disability”;
  - Is “otherwise qualified” to participate in or receive the public entities benefits including services, programs, or activities; and
  - Was either excluded from participation in, or denied the benefits, or was otherwise discriminated against because of disability.
- By a public entity

# Defining Disability

- § 35.108 Definition of “disability.”
  - (a)(1) Disability means, with respect to an individual:
    - (i) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
    - (ii) A record of such an impairment; or
    - (iii) Being regarded as having such an impairment as described in paragraph (f) of this section.
- ADA Regulations, Part 35.
  - Sec. 35.108 Definition of Disability (b) (1) (2) Physical or mental impairment includes, .....drug addiction, and alcoholism.

# Case involving Probation United States v. Unified Judicial System of Pennsylvania, No. 2:22-cv-00709-MSG (E.D. Pa.)

- DOJ sued the entire Pennsylvania Court System. One reason was that one county issued an order :
  - “requiring all individuals under the court’s supervision to be “completely clean” of any “opiate based treatment medication regardless of whether or not these drugs are prescribed,” within 30 days of being sentenced.
  - This included individuals sentenced to the court’s Accelerated Rehabilitative Disposition, Probation, Parole, Intermediate Punishment, and Drug Court programs.
  - The only individuals exempted from the court’s prohibition of use of OUD medication were pregnant probationers during their pregnancy.”
- See Complaint at paragraph 15



# Defenses Rejected by the Courts



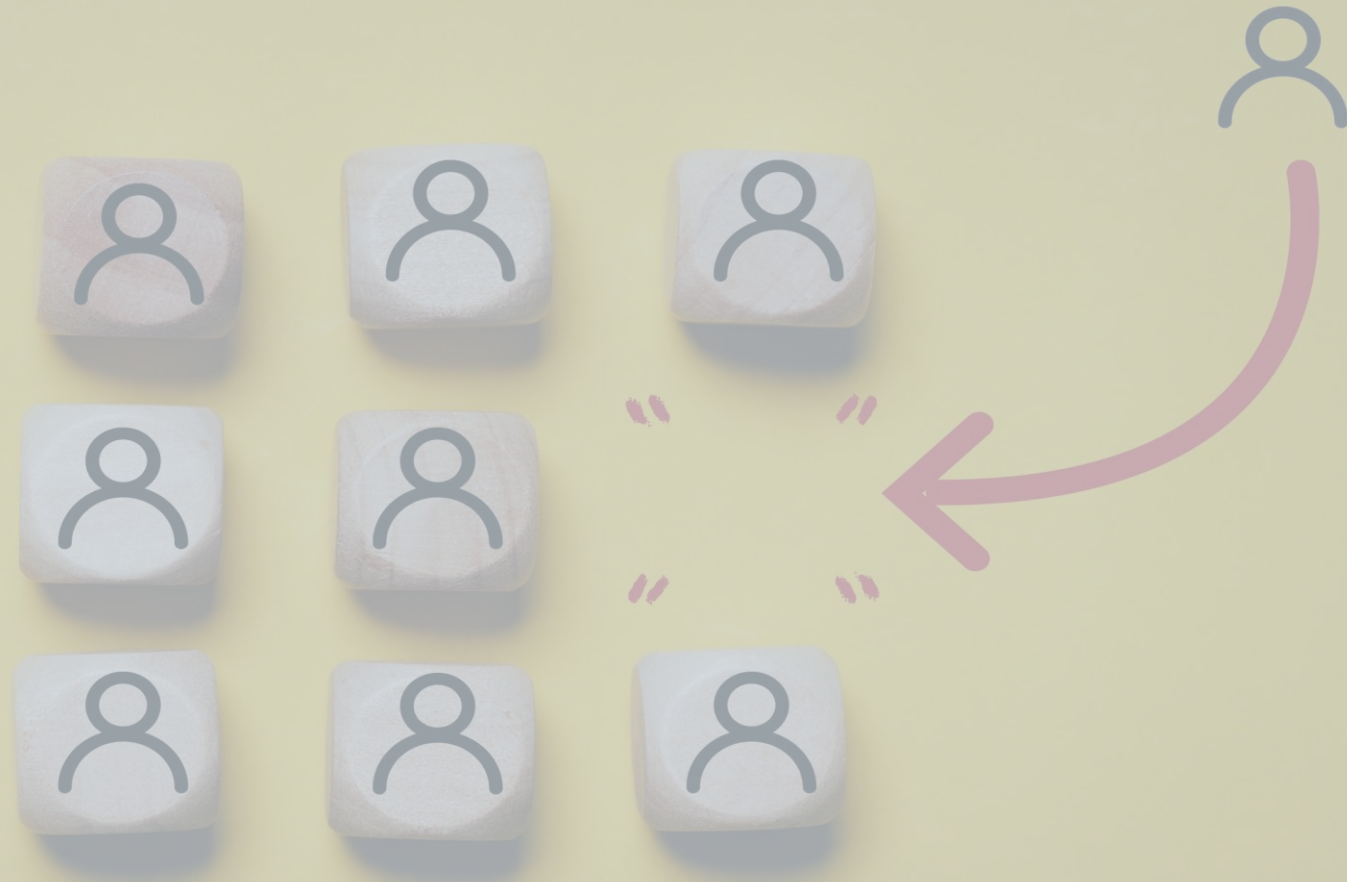
- Total ban
- Providing Vivitrol only
- Only allowing for pregnant women
- Diversion
- Banning Probationers and/or Parolees

# When Can You Deny MAT



- The person is not receiving the medication as part of a treatment for a diagnosed substance use disorder.
- A licensed practitioner, with the appropriate training and knowledge, has not examined the person and issued an authorized prescription
- The person fails to comply with other valid requirements of the program—therapy, testing, etc.
- The medication is being abused or diverted

# Eligibility For Your Court



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# Capacity



- Don't go small
- Sell your program
- Are you putting up subjective barriers---Defendant has a “bad attitude”, “is not ready”, or defendant takes medications or medical marijuana.
- Early terminations



# Termination



- Terminate only when participants are an immediate public safety risk, unwilling or unable to engage in treatment, or are too impaired to benefit from available treatments.
- All others should receive a treatment adjustment and/or escalating sanctions

*All Rise* – Adult Drug Court Best Practices

Vol I, p. 33

# Disqualifying Factors



- Statutory disqualifications – i.e., certain crimes
- Serious mental health issues
- Age Restrictions
- Not a resident
- Physical Health
- Public Safety

# Individualization

- The US Supreme Court has held that individualized sentencing is required in death penalty cases and juvenile life without parole sentences. William W. Berry, Individualized Sentencing, 76 Wash. & Lee Law Review 13 (2019)
- State laws and constitutions generally allow it in other cases, including treatment court sentencings
- Trauma, need for MAT, testing, etc. are individualized considerations

# Risk, Need, Responsivity

- High Risk---offender will not respond to standard supervision and will likely recidivate
- High Needs---clinical disorders or functional impairments, that if treated, reduce the likelihood of recidivism
- Criminogenic Needs include Antisocial personality, antisocial associations, substance abuse, education, family, employment
- The principle of Specific Responsivity—what are you doing to address the distinct needs of the individual

# Responsivity Issues



- Developmental Disability
- Homelessness
- Poverty
- Transportation
- Literacy
- Language
- Willingness to change
- Mental Health



# Motivational Interviewing

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# Motivational Interviewing



Michael D. Clark, MSW

*Center for Strength-Based Strategies*

- Participants have probably already heard, several times every piece of advice you will offer on how to improve their lives and comply with court orders.
- We need to motivate behavioral change-not simply order it.

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# Motivational Interviewing



*True Patience*

- Empathy
- Understanding Ambivalence
- Attentiveness
- Patience

# OARS

- OARS is one part of motivational interviewing. It's "engaging skills".
- O is open ended questions—How and What, not When or Did you?
- A is affirmations--- Highlight the strengths and efforts of the participant—improvements happen in small steps, recognize them
- R is Reflections—Clarifies what is being said by the participant
- S is Summary—very specific reflection. Participant hears what you believe has been agreed upon. Demonstrates that you have been listening, not just talking.



# OARS – Motivational Interviewing

OARS is one part of motivational interviewing. It's “engaging skills”

## Open ended questions

- How and What, not When or Did you?

## Affirmations

- Highlight the strengths and efforts of the participant—improvements happen in small steps, recognize them

## Reflections

- Clarifies what is being said by the participant

## Summary

- Very specific reflection. Participant hears what you believe has been agreed upon. Demonstrates that you have been listening, not just talking.



# Sanctions and Incentives



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# Incentives and Sanctions Resources



- Behavior Modification 101 for Drug Courts: Making the Most of Incentives and Sanctions – Douglas Marlow, JD, PhD
- Studies and Lectures with Shannon M. Carey, PhD NPC Research, Portland, OR
- *All Rise* – Adult Drug Court Best Practices
- *Treatment Court Institute* - Judicial Bench Book
- *All Rise* – Incentives and Sanctions samples

# Sanctions Protocol



- ☐ Apply best practices based on the individual participants circumstances.
- ☐ There is no, "If A occurs, then B is the punishment."
  - Sanctions should never be a box you are checking off.
- ☐ Never use a “3 strikes and out” policy or similar measures



# Distal vs Proximal Goals



- For goals that are especially difficult for participants to accomplish (i.e., distal goals), sanctions increase gradually and progressively in magnitude.
- For goals that are somewhat easier to achieve (i.e., proximal goals), higher magnitude sanctions may be administered after only a few infractions.

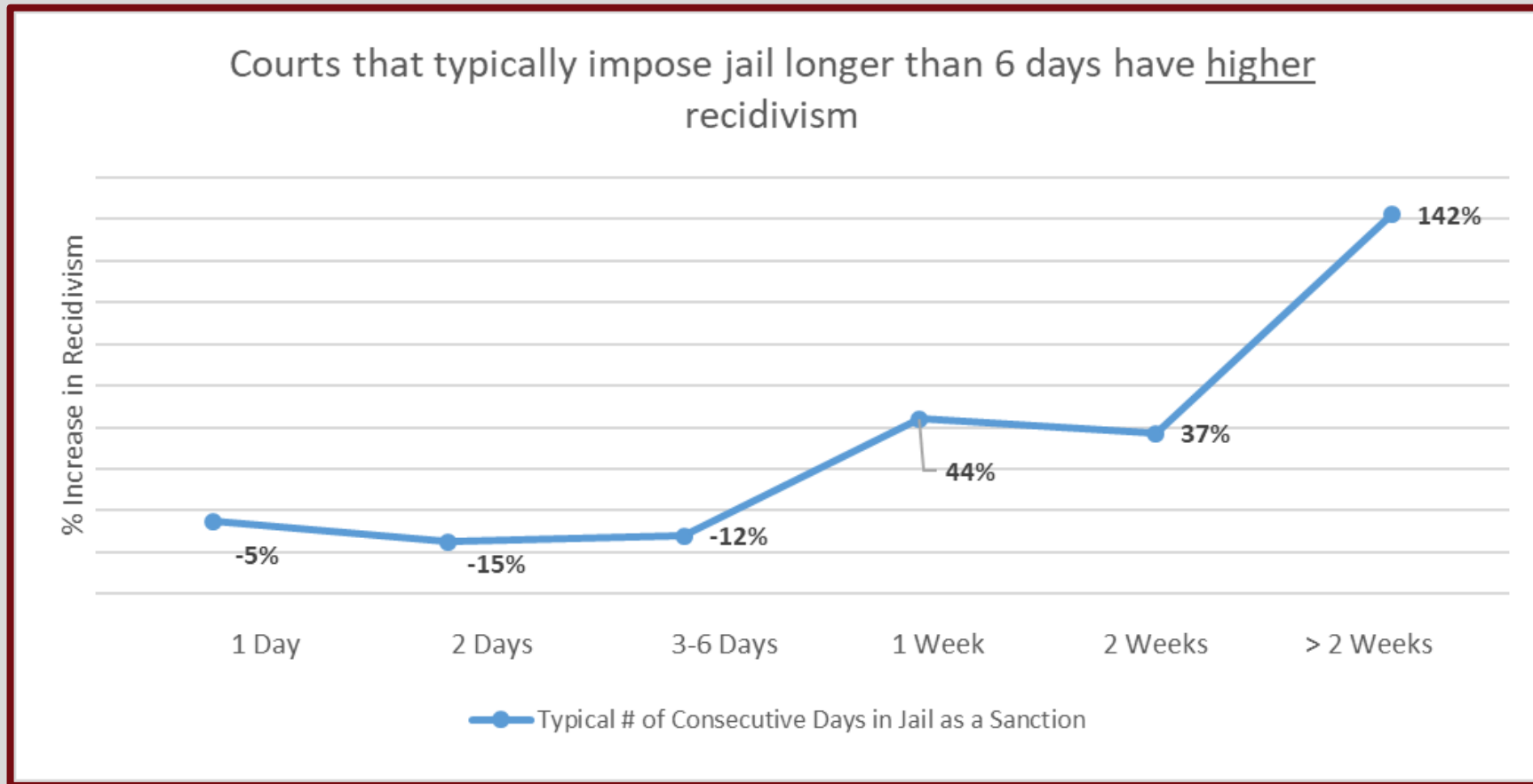
# Jail Sanctions



- ☐ Are imposed judiciously and sparingly.
- ☐ Are used only after numerous lesser sanctions have been attempted and failed, unless an immediate risk to public safety exists.
- ☐ Are definite in duration and typically last no more than 3 to 5 days.
- ☐ Participants are allowed to serve jail time at convenient times. (Weekends or around work schedules.)



# Jail Sanction and Recidivism



Shannon Carey, Ph.D.- NPC Research

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# Speedy Hearing

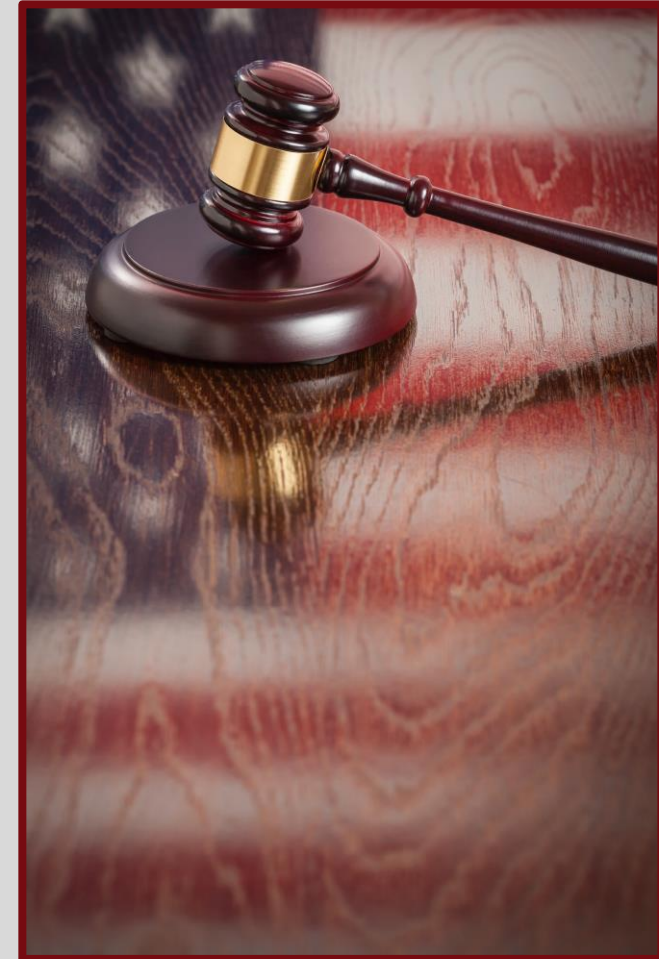
- Example: What TO do!
  - Have participant seen in court as soon as possible.
  - Don't wait for the next status hearing.
    - Used to be accepted practice.
- Research tells us to have maximum impact on modifying behavior, we must act with speed.
- Delays may occur.
  - Participant wants a hearing with representation and there is evidence that takes time to get (lab results, testimony, etc.).



# Sanction Hearing

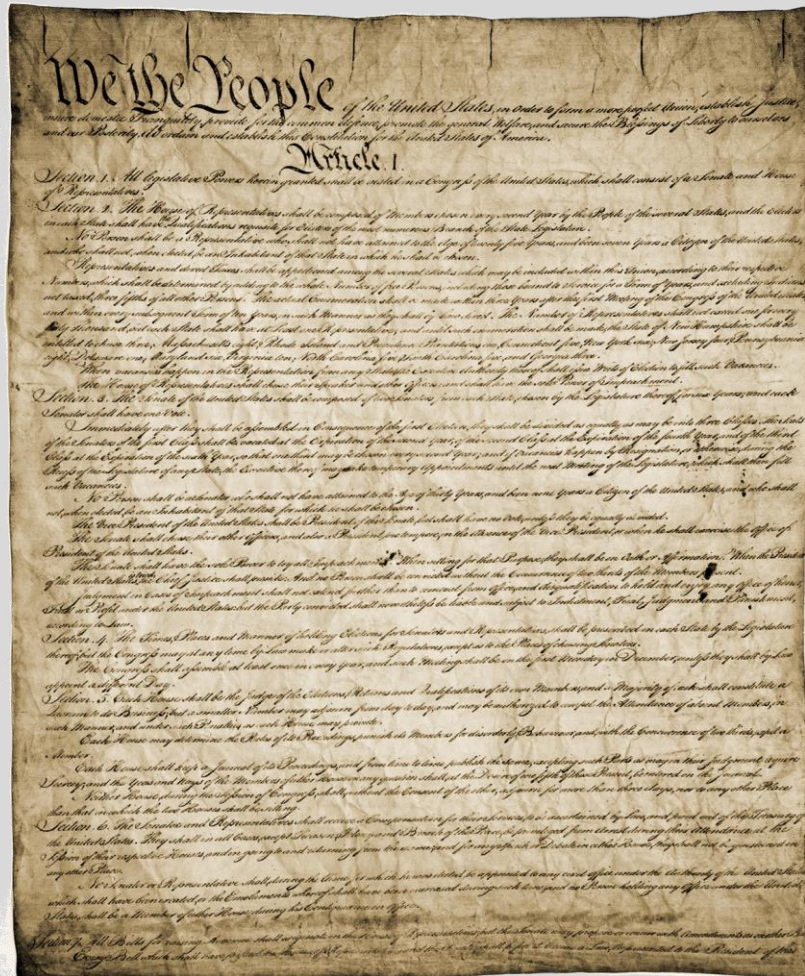
## Participant Due Process Rights

- Written notice of the claimed violations.
- Right to a Hearing and to be heard.
- Right to disclosure of evidence against him or her.
- Right to cross-exam and confront witnesses
- Standard of proof: Preponderance of the evidence.
- Right to a record of the proceedings
- Right to a 'neutral and detached' hearing body.
- Right to an attorney, and if indigent, a court-appointed attorney (if waived, must re-advised at each subsequent proceeding)
- Right to a Procedure: Factual determination that Participant is Guilty of violating probation and determination of whether the violation warrants revocation.





# Due Process



When you seek to modify participant behavior, lead by example. (The 3 P's- Judge Kaye Tertzag (Dec.)

- Prompt
- Prepared
- Polite



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# Language Matters

## SAY THIS

- \*Person with a substance use disorder
- \*Drug use/misuse
- \*Person living in recovery
- \*Person arrested for a drug violation
- \*Reoccurrence / set back
- \*Maintained recovery

## NOT THAT

- \*Addict, junkie, druggie
- \*Drug abuse
- \*Ex-addict, clean
- \*Drug offender
- \*Relapse
- \*Stayed clean



# Incentives-A Few Examples

Length of Time in Program Considered

## Low- Moderate Magnitude Incentives

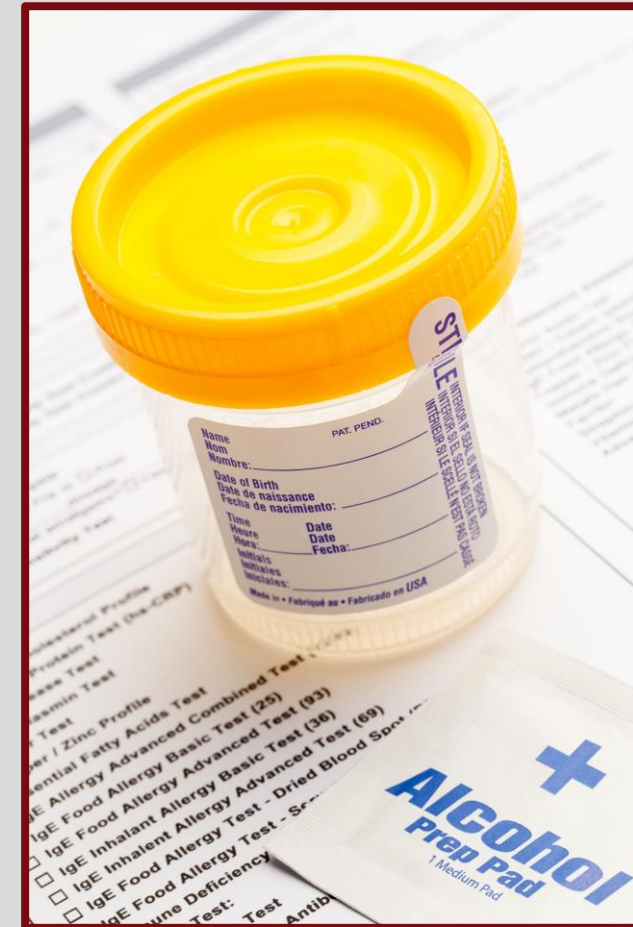
- Judicial/Verbal Praise
- Applause For Clean Time during Status Reviews.
- Sobriety Tokens
- Reduced 12 Step Attendance
- Extend Curfew
- Recognize Family and Friends present
- Reduced Reporting Requirements
- Fishbowl Drawing

## High Magnitude Incentive

- Phase Advancement
- Personalized gift cards
- Sobriety Court License Waiting Period
  - 60-90 Days Based on compliance
- Travel
  - Testing Conditions in Place
  - Phone check-ins may be required
- Reduced Drug or Alcohol Testing
- Waiver of fees

# Drug Testing Reduction

- Last incentive used near completion of program.
- Never less than 2x per week.
- Only objective tool to determine if a participant is sober.
- Participants may look well, speak well, and otherwise appear compliant. Drug tests prove wellness.



# No Budget Incentives

- You don't need gift cards.
- Some effective incentives are free:
  - Provide a leave court early pass
  - Skip to the head of the line – go first at next UA testing
  - Go 1st at Court Review
  - Subtract X number hours of community service
  - Allow appearances via Zoom



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# No Budget Incentives

- The best, most long-lasting incentives are “natural”: a paycheck, diploma, regaining custody of children, repairing relationships, feeling better, etc.
- Natural Incentives are the by-product of good treatment, and will help participants long after probation ends.
- Our positive responses keep clients engaged until the natural incentives kick-in.
- *Shannon Carey, Ph.D.- NPC Research*



# Thank You

Judge Geno Salomone (Ret)

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