

The Practical Application of Behavior Change in The Courtroom

Presented by: Honorable Peggy Davis, ret.

Disclosure

- This project was supported by Grant No. 2016-DC-BX-K007 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office.
- Points of views or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Objectives

- Learn how to identify appropriate responses to behaviors by considering the individual participant's needs
- Understand the nature of change in order to develop realistic expectations about the participant's ability to comply with program directives at any given point in the court
- Examine the role of motivation in the change process
- Develop strategies to help participants develop intrinsic motivation
- Understand that setbacks are normal and develop strategies to address setbacks in a manner that keeps the participant moving forward
- Identify what recovery looks like



Why?

- The goal is for the participant is:
- Recovery

What is Recovery?

- Staying sober long enough to get out of drug court?
- Managing to maintain a series of under the table jobs so the participant can pay her fees?
- Using public transportation to get places while in the program?
- Staying under the radar in regard to people, places and things?
- None of these things are sufficient to help the participant attain and maintain recovery; or even stay out of trouble long term.

A silhouette of a person crouching in a dark tunnel, looking towards a bright light at the exit.

RECOVERY

Definition:

*Recovery is a **PROCESS** of change through which individuals improve their health and wellness, live self-directed lives, and strive to reach their potential.*

Review: Change is Hard!

- **Stages of Change**

- Precontemplation
- Contemplation
- Preparation
- Action
- Maintenance

- **Principals:**

- Individual can cycle through the stages
- Relapse is not failure
- Does not indicate a loss of commitment to the process of change
- Should be used as a learning process

Review: Change is Possible

- How is change possible?
Why are drug court uniquely suited to motivate, address and support change. Justice involved individuals can achieve recovery from SUD and develop life skill necessary to become law abiding
- Work with a population that can make a difference in our communities
- High Risk High Need

Determining appropriate response. First things first

- Who?
- High Risk – High Need
- Not Dangerousness
 - Safe to remain in community



WHO?



- Three points of screening and/or assessment
 - Legal
 - Criminogenic risk/need assessment
 - Clinical assessment

1. Legal Screening

- **Eligibility Criteria**

- Charge
- Criminal history
- Public safety
- Community values
- Objective
- Memorialized in Policy & Procedure Manual, MOUs

- **Identified by:**

- Prosecutor
- Defense counsel
- Law enforcement
- Judge

2. RISK and Need Assessment

- High Risk: The likelihood that an offender will not succeed adequately on standard supervision and will continue to engage in the same behavior that got him or her into trouble in the first place.

Determination is made by looking at the individual's "criminogenic" risk factors

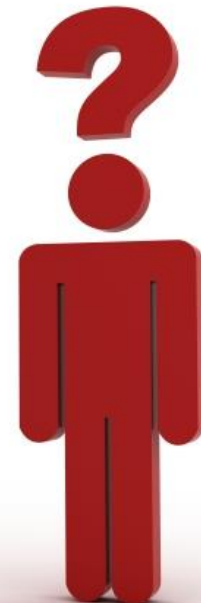
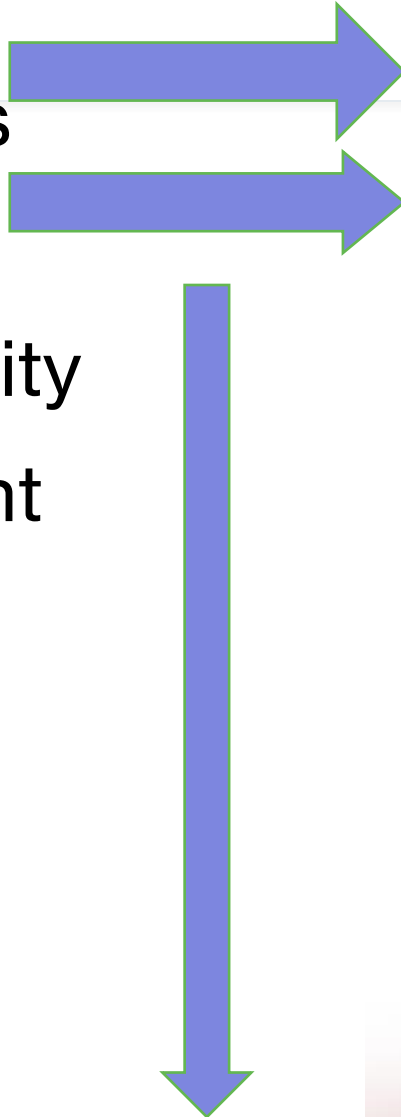
Factors associated with the risk of committing a crime

Risk Need Assessment Tools

- Criminal History
- Antisocial Attitudes
- Peer Associations
- Antisocial Personality
- School/Employment
- Living Situation
- Family/Marital
- Substance Use

Static = Risk

Dynamic = Need



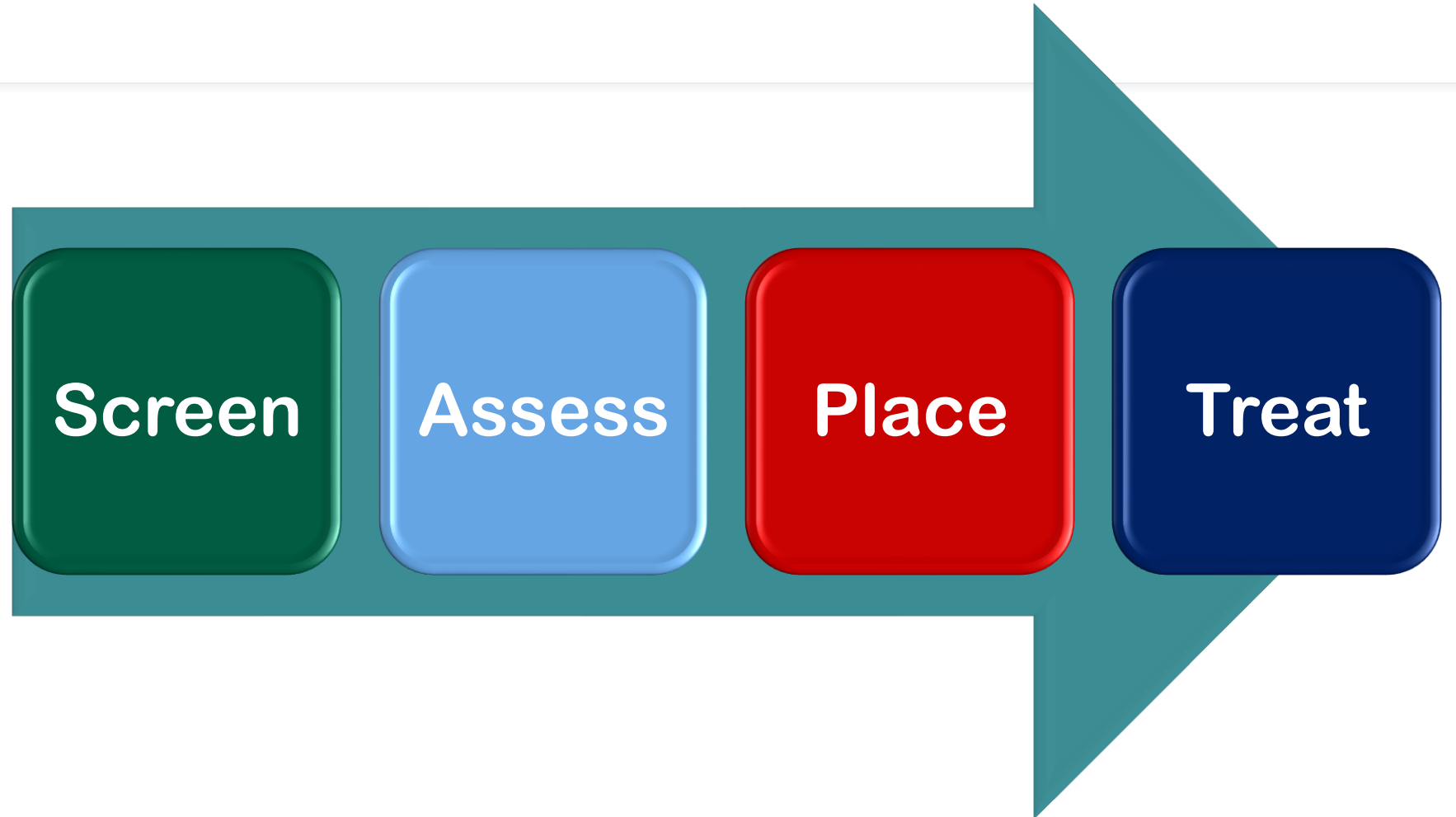
Addressing Risk Factors

Dynamic Risk Factor (Central 8)	Need/Case management/Services
History of antisocial behavior (Criminal History)	Build and practice positive/healthy behaviors by addressing the dynamic risk/needs below
Antisocial personality pattern (Check trauma history)	Learn problem solving skills, practice anger management
Antisocial cognition	Develop more pro-social thinking
Antisocial associates	Reduce association with criminal others (learn refusal skills)/increase association with positive peers
Family and/or marital discord	Reduce conflict, build positive relationships
Poor school and/or work performance	Work on good employee/study/performance skills
Poor living situation	Find appropriate housing
Substance abuse	Reduce use through integrated treatment

Responsivity = NonCriminogenic needs

- Not related to criminal behavior
- Must be addressed before interventions for criminogenic needs can be effective
 - Self esteem
 - Medical Needs
 - Food
- Tailor the intervention to the learning style, motivation, culture, demographics and abilities of the participant

2. Clinical assessment



DSM-V

A ***substance use disorder*** is defined by having two or more symptoms in the past year resulting in distress or impairment.

The diagnosis is made separately for each substance.

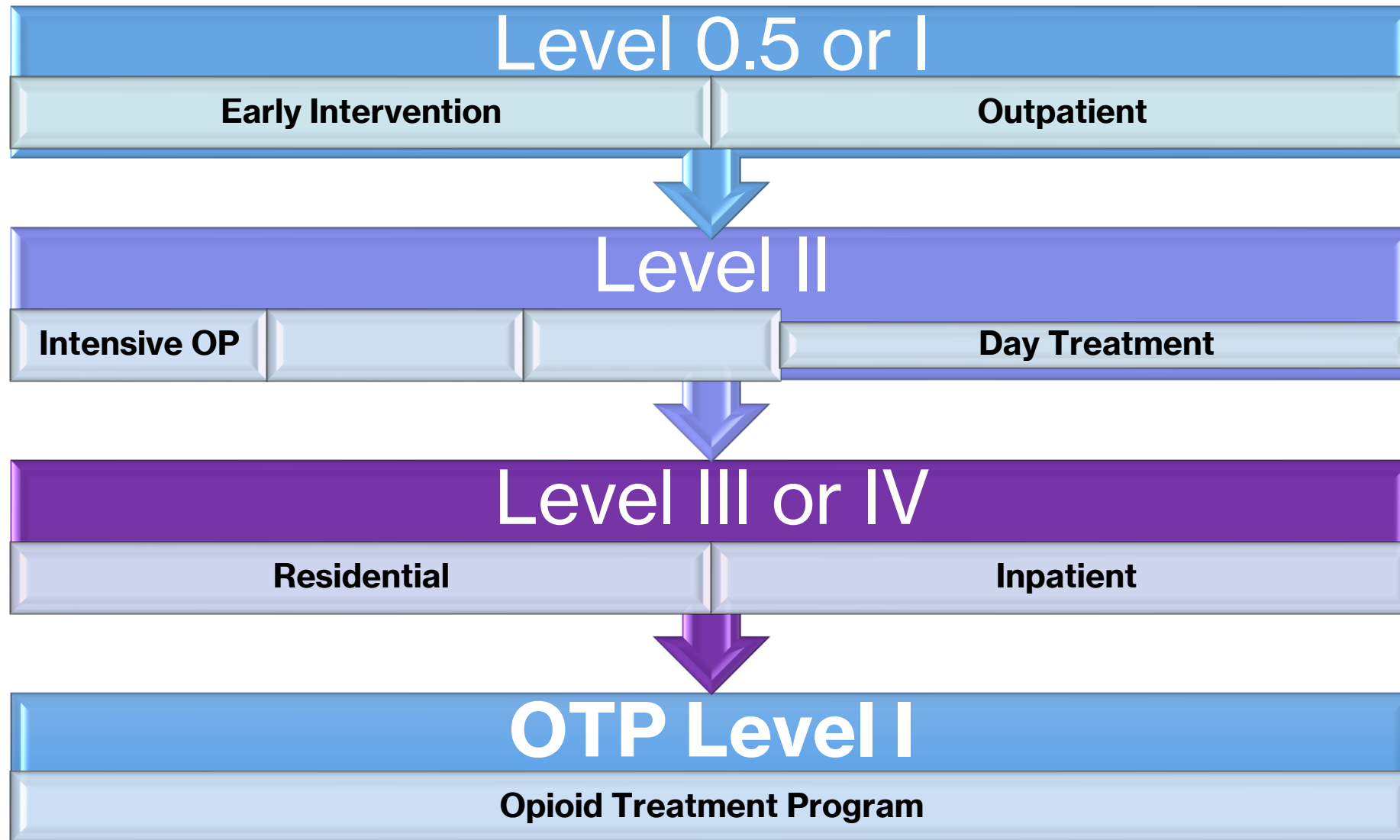
Severity is rated by the number of symptoms present:

2–3 = mild

4–5 = moderate

6+ = severe

ASAM CONTINUUM OF CARE



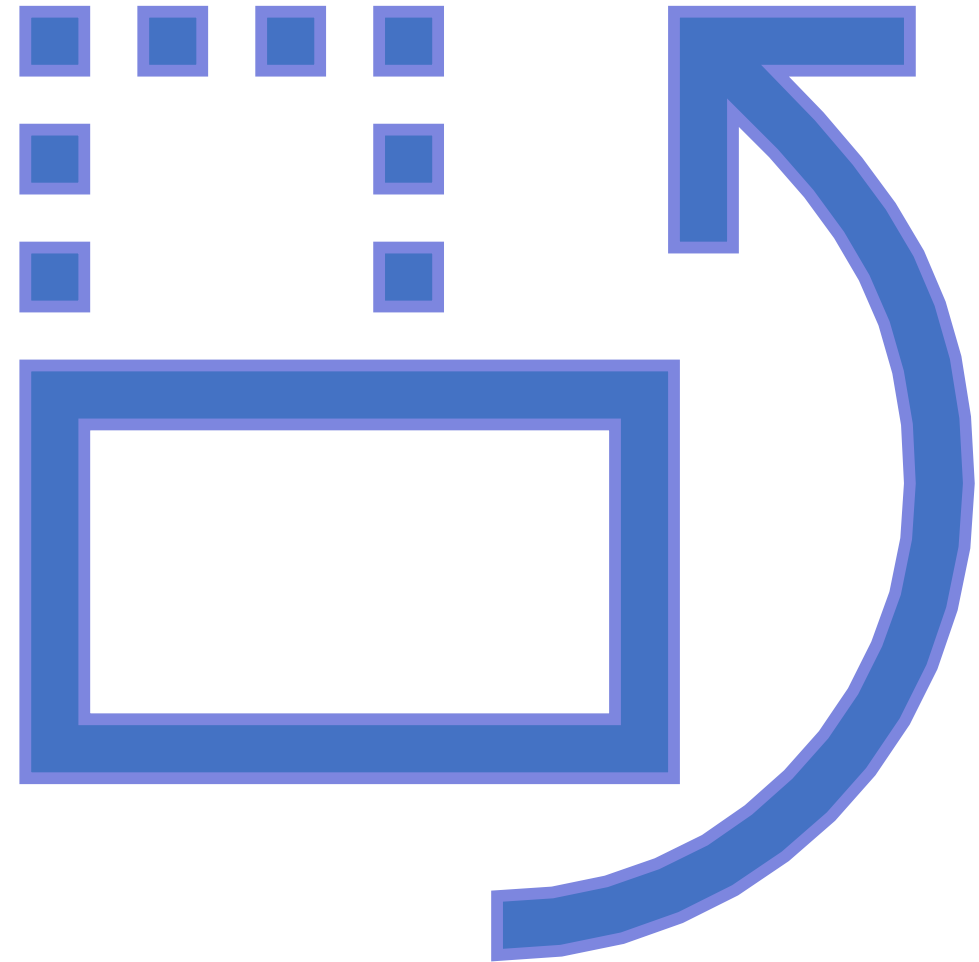
Review – Who?

- Meets eligibility criteria
- Risk
- Need
- Responsivity
- Clinical
- Case plans must address all of the participant's needs





How?





Responses to behavior

- Four levels of response:
 - Sanction
 - Incentive
 - Therapeutic adjustment
 - Supervision adjustment

Foundational Principle

- **Consequences for participants' behavior are predictable, fair, consistent, and administered in accordance with evidence – based principles of effective behavior modification.**



Responses

Incentives

Sanctions

Therapeutic
Adjustments

Supervision
Adjustments

INCENTIVES

Positive reinforcement

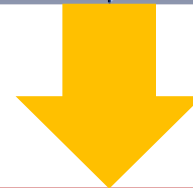
Negative reinforcement



SANCTIONS

Punishment

Response cost



SUPERVISION & THERAPEUTIC ADJUSTMENTS

Enhancements

Reductions



ESSENTIAL ELEMENTS

Certainty

Reliable detection

Associated with behavior

Immediacy



Review

- What is the purpose of punishment? (sanctions)
- To change behavior



PROGRESSIVE SANCTIONS

- ✓ Treatment courts have a range of sanctions of varying magnitudes that may be administered in response to infractions.
- ✓ 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.
- ✓ **Best Practices Standards Vol. I**

EXPECTATIONS



PROXIMAL

**Attend
Admit
Attempt**

DISTAL

**Abstain
Accept
Adhere**

INFRACTION RESPONSE MAGNITUDE



PROXIMAL

**Intermediate- and
high-magnitude
sanctions**

DISTAL

**Treatment responses
or low-magnitude
sanctions**

MAGNITUDE: STAYING CENTERED



Utilize Wide Array of Intermediate-Magnitude Sanctions

EFFECTIVENESS

Habituation
Effects



Effective
Zone



Ceiling
Effects



LOW

MODERATE

High

MAGNITUDE OF SANCTION

What about jail?

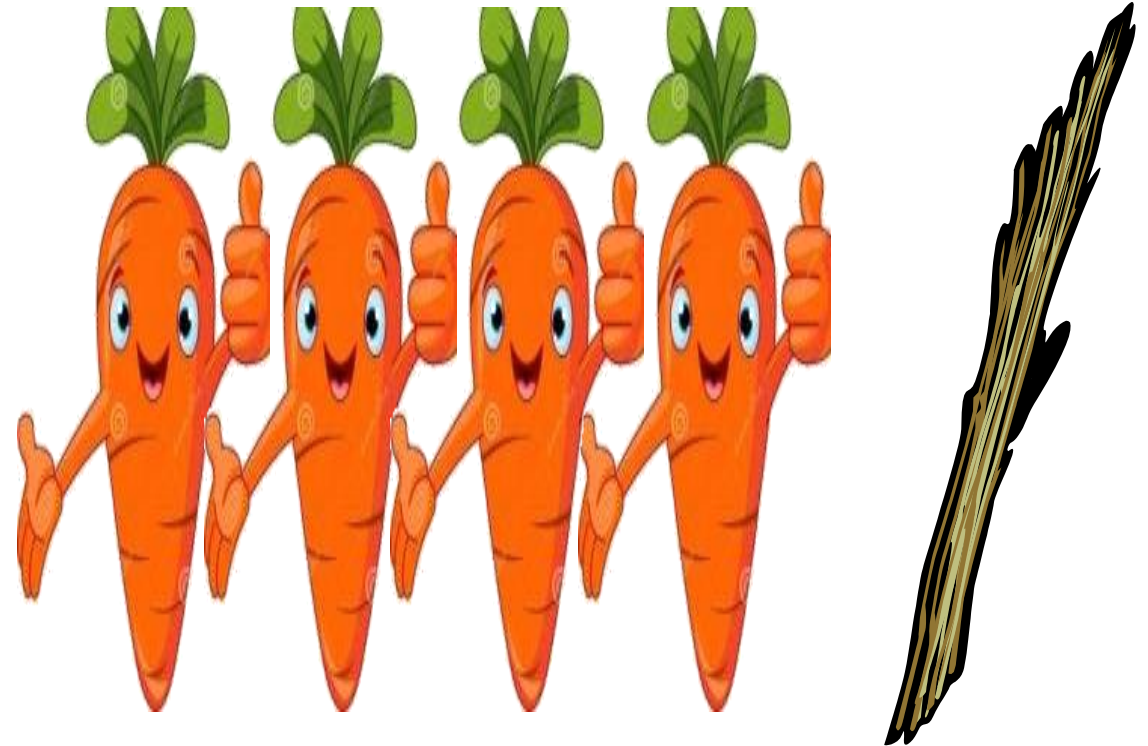
- Jail can make people worse
- Renew association with old peers
- Reinforce “I can’t do this”
- Research indicates that more than six days
 - Increases recidivism
- Jail is not a level of care
- Legal prohibitions against prospective custody
- Collateral consequences
- Consider: Can the individual be safely managed in the community?

Alternatives to custody in jail

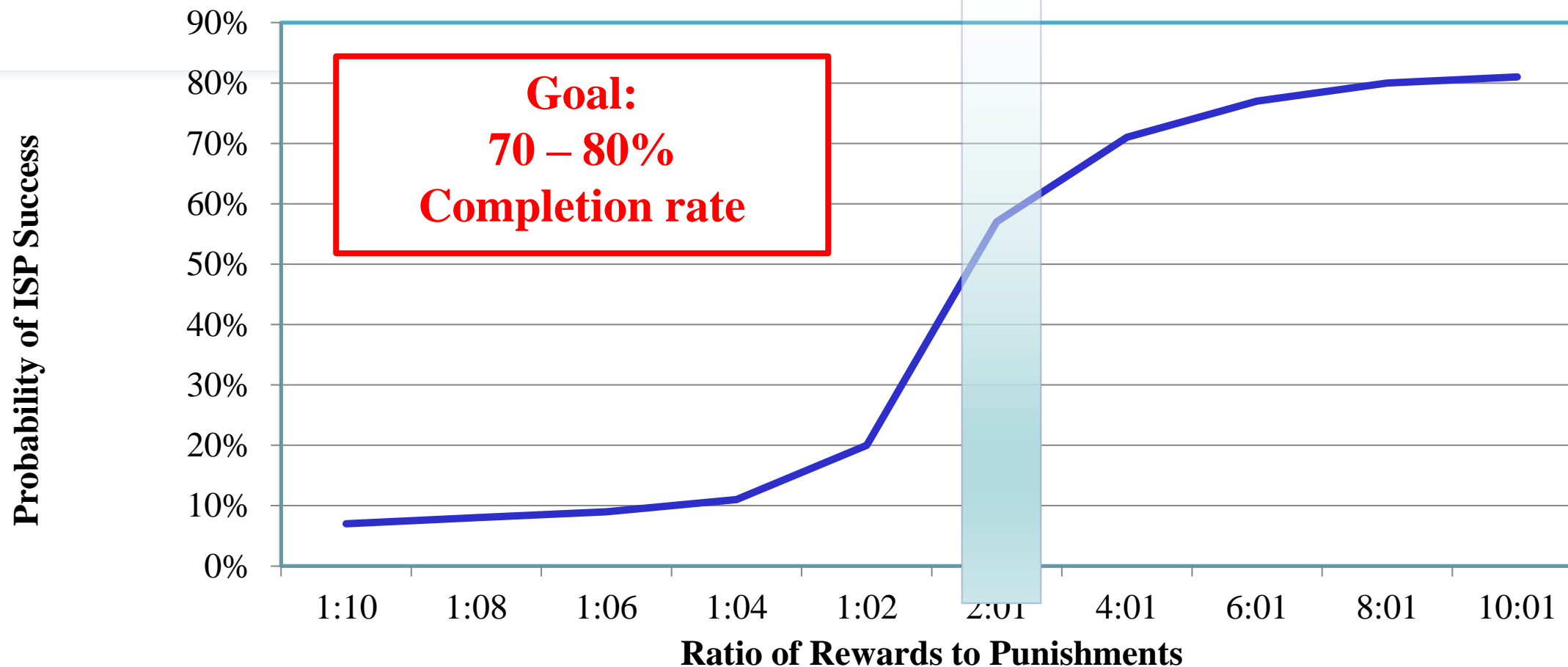
- Increase supervision
- House arrest/GPS
- Increased home visits
- Increase court hearings
- Curfew
- Community service
- Court watch
- Thought papers

INCENTIVES

- **Reinforcers should far outnumber punishers.**
- **How many incentives is enough?**



Rate of Success: Ratio of Rewards to Punishments



Nonmonetary Incentives?

- The best incentives are **“natural”**: paycheck from a job, diploma, regaining custody, repairing relationships, feeling better, etc.
- **Natural reinforcers**: help clients maintain long term recovery
- Our responses keep clients engaged until natural reinforcers kick in.
- Intrinsic motivation

**YOU'RE DOING
GREAT!
YOU EARNED A
"LEAVE COURT
EARLY" PASS!**

**Congrats!
You have
earned a
Report by**



**SKIP TO
THE HEAD
OF THE
LINE!
GO **FIRST**
AT YOUR
NEXT UA**

**YOU'RE #1 !
GO 1ST AT COURT
REVIEW !**

**You've got it made
in the shade!!
Subtract 8 HOURS of
community service.**



Therapeutic Adjustments

THERAPEUTIC ADJUSTMENTS

- ✓ Recommended and delivered by treatment professionals.
- ✓ For the individual with a substance use disorder, respond with adjustments to treatment requirements and sometimes with lower-magnitude sanctions in response to unauthorized substance use in the early phases of the program.
- ✓ Sanction participants who willfully fail to comply with treatment attendance and participation requirements.
- ✓ Do not give augmented sentences or otherwise punish participants who have to be discharged because adequate treatment is not available and accessible to them.
- ✓ Best Practices Standards Vol. I

Therapeutic Adjustments

Clinical assessment level of SUD/MH care

Enhance alliance with treatment and case manager/supervision

Work with participant to discuss what treatment they will follow through with

Work with participant on integrated case plan

Spend more time with peer support (peer mentor, peer specialist)

Therapeutic Adjustments

Conduct a medical assessment

- Include history of medication use

Assess for medication assisted treatment (MAT)

- Work with medical and treatment community
- Prescribers
- Treatment Providers
- Know what's available in your community and state

Pain management

- Meditation, yoga, physical therapy, acupuncture

Supervision Adjustments



Supervision adjustments

- When responding to behaviors, it is a good idea to also consider whether supervision requirements should change or remain the same.
 - Supervision may decrease some expectations as the participant progresses through the phase structure
 - Supervision may increase if the participant is struggling with relapse or old behaviors



Purpose of this approach is to?

- Provide all foundational elements so that the participant has the tools to change his or her life



**Let's be
realistic about
what we are
going to see
and what
success looks
like**



MOTIVATION

- RELATED TO THE THEORY OF STAGES OF CHANGE
- MOTIVATION IS DYNAMIC
- LONGITUDINAL RESEARCH:
 - AN INDIVIDUAL'S LEVEL OF MOTIVATION IS A STRONG PREDICTOR OF WHETHER THE INDIVIDUAL'S SUBSTANCE USE WILL CHANGE OR REMAIN THE SAME


MOTIVATIONAL APPROACHES TO TREATMENT

- BENEFICIAL TO POPULATIONS WITH A LOW MOTIVATION FOR CHANGE
- COGNITIVE-BEHAVIORAL EMPHASIS
 - DO NOT DISMISS UNMOTIVATED INDIVIDUALS
 - “CLINICIANS” DEVELOP SKILLS TO ENHANCE MOTIVATION

- MOTIVATION-ENHANCING TECHNIQUES:
 - INCREASE PARTICIPATION
 - INCREASE POSITIVE OUTCOMES
 - REDUCTIONS IN CONSUMPTION
 - HIGHER ABSTINENCE RATES
 - BETTER SOCIAL ADJUSTMENT
 - SUCCESSFUL REFERRALS TO TREATMENT



STRATEGIES TO MOTIVATE CHANGE

- FOCUS ON STRENGTHS RATHER THAN WEAKNESSES
 - RESPECT AUTONOMY AND DECISIONS
 - INDIVIDUALIZED
 - DO NOT DEPERSONALIZE THROUGH THE USE OF LABELS “ADDICT” “CRIMINAL”
 - DEVELOP A THERAPUTIC
 - ACCEPT INTERIM, INCREMENTAL, TEMPORARY STEPS TOWARD ULTIMATE GOALS
 - INTEGRATE SUD TREATMENT WITH OTHER DISCIPLINES
- 

Strategies to motivate change

- ADDRESS AMBIVALENCE ABOUT CHANGE
 - AMBIVALENCE IS NORMAL AND IS AN OBSTACLE TO RECOVERY
 - Can be resolved by working with individual's motivations and values
 - Empathic, supportive, yet directive style allows change to occur



Principles of motivational interviewing

- Express empathy through reflective listening
- Respect and acceptance of the individual and her feelings
- Supportive and knowledgeable
- Complement rather than tell
- Persuade, understanding that change is up to the individual
- Support throughout the process of recovery
- Develop discrepancy between individual's goals and values and current behavior
- Avoid argument and confrontation



Strategies Motivational interviewing

- Open ended questions
- Reflective listening
- Summarize
- Affirm
- Elicit self-motivational statement
- Roll with Resistance

Open-ended questions

- Closed: How many children do you have?
 - Open: tell me about your family?
 - Closed: When did you have your last drink?
 - Open: Tell me about the last time you had a drink?
- Encourages client to talk and engage.
 - Allows you to obtain information about where the client is in regard to change.

A 3D rendering of a red puzzle piece standing out among a sea of white puzzle pieces. The red piece is in the center-right of the frame, slightly elevated and casting a shadow. The white pieces are arranged in a grid-like pattern around it, with some pieces missing, creating a sense of a larger puzzle being solved. The lighting is soft, highlighting the glossy texture of the pieces.

**Motivation will
help move the
participant
through the
change process.**

TRANSTHEORETICAL STAGES-OF-CHANGE MODEL



CHANGE IS A BACK AND FORTH CYCLE



RECURRENCE IS THE RULE, NOT EXCEPTION



AFTER WHICH INDIVIDUAL WILL USUALLY REVERT TO AN EARLIER CHANGE STAGE



RECURRENCE IS NOT FAILURE AND DOES MEAN THE INDIVIDUAL HAS ABANDONED A COMMITMENT TO CHANGE



RECURRENCE IS AN EVENT THAT CAN OCCUR AT ANY POINT ALONG THE CYCLE OF RECOVERY

- EMERGED FROM 18 PSYCHOLOGICAL AND BEHAVIORAL THEORIES ABOUT HOW CHANGE OCCURS INCLUDING THE BIOPSYCHOSOCIAL FRAMEWORK FOR UNDERSTANDING SUDS.

STAGES-OF-CHANGE

- FIVE Stages

- PRECOMTEMPLATION

“No” “Leave Me Alone.”

- CONTEMPLATION

“What is in it for me?”

- PREPARATION

“Maybe I can do this. How?”

- ACTION

“I am going to try. Help me?”

- MAINTENANCE

“I want to stay here.”

- Cycle

“I relapsed, but I am getting back on track.”



Precontemplation


Early contemplation

Not concerned about substance use or changing behavior

Angry: “I caught a case!”

Not motivated

Unless the client develops intrinsic motivation, change will not last

- Expressed through:
 - Arguing
 - Interrupting
 - Denying
 - Ignoring
- 

Precontemplation Response Goal

- Create doubt that substance abuse is harmless
- Create understanding that substance abuse is having, or will have significant negative results
- Goal: invest in change by considering the consequences of continuing old behaviors



Contemplation

- Ambivalent
 - Seesaw between wanting to change and the status quo
- Intrinsic to Extrinsic Motivation
 - Engage in cost benefit analysis
 - “What’s in it for me”

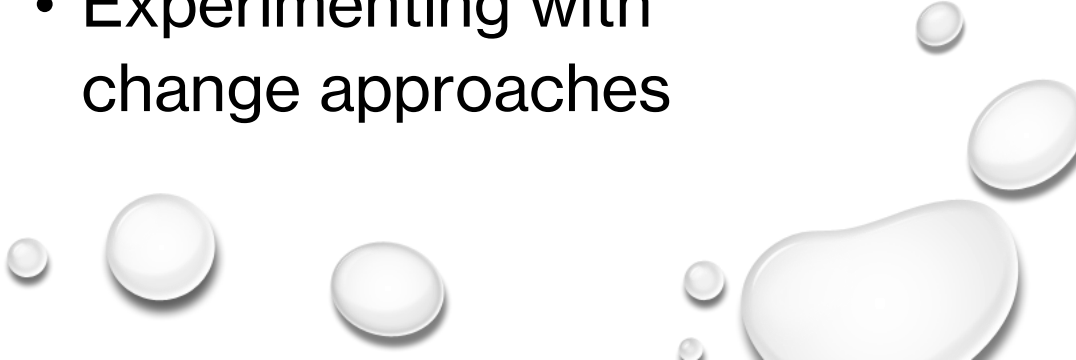


Contemplation response goal

- Discover intrinsic motivators to move to acting
- Show curiosity about individual
- Discuss changing other behaviors
- Reframe negative statements
- Decisional balancing strategies by emphasizing
- Goal: Resolve ambivalence by moving toward change
- Building Extrinsic Motivation



Preparation

- Knows change is necessary
 - Getting ready to act
 - Evidenced by:
 - Decreased resistance
 - Less focus on problems
 - resolve
 - Self-motivational statements
 - Interested in change process
 - Talk about life after change
 - Experimenting with change approaches
- 

Preparation response goal

- Focus on:
 - Goals and strategies for change
 - Help set goals in manageable portions and sequence goals
 - Explore treatment options and community resources
 - Help address life problems
 - Have individual publicly announce their change plans



Action

- Begins to carry out strategies
- Engages in treatment
- Learns to identify potential high risk situations and develop coping strategies
- Prosocial sober activities
- However, there may be ongoing ambivalence toward change

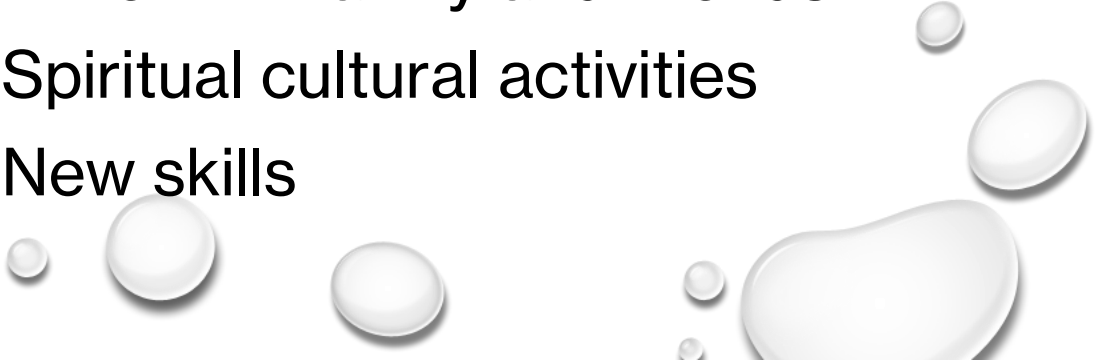


Action: Response Goal

- Reinforce recovery
- Support a realistic view of change through small steps
- Acknowledge difficulties
- Reframe difficulties as learning experiences
- Maintain contact



Maintenance

- Development of new skills to maintain and support recovery and a healthy lifestyle.
 - If relapse occurs, the individual seeks help to recover quickly and reenter the change process
 - Sober Support/activities come from individual's own ideas
 - Volunteer work
 - Self-help groups
 - education, exercise, nutrition
 - Time with family and friends
 - Spiritual cultural activities
 - New skills
- 

Maintenance: Response Goal

- **Support recovery and a healthy lifestyle**



© Can Stock Photo - csp5053454

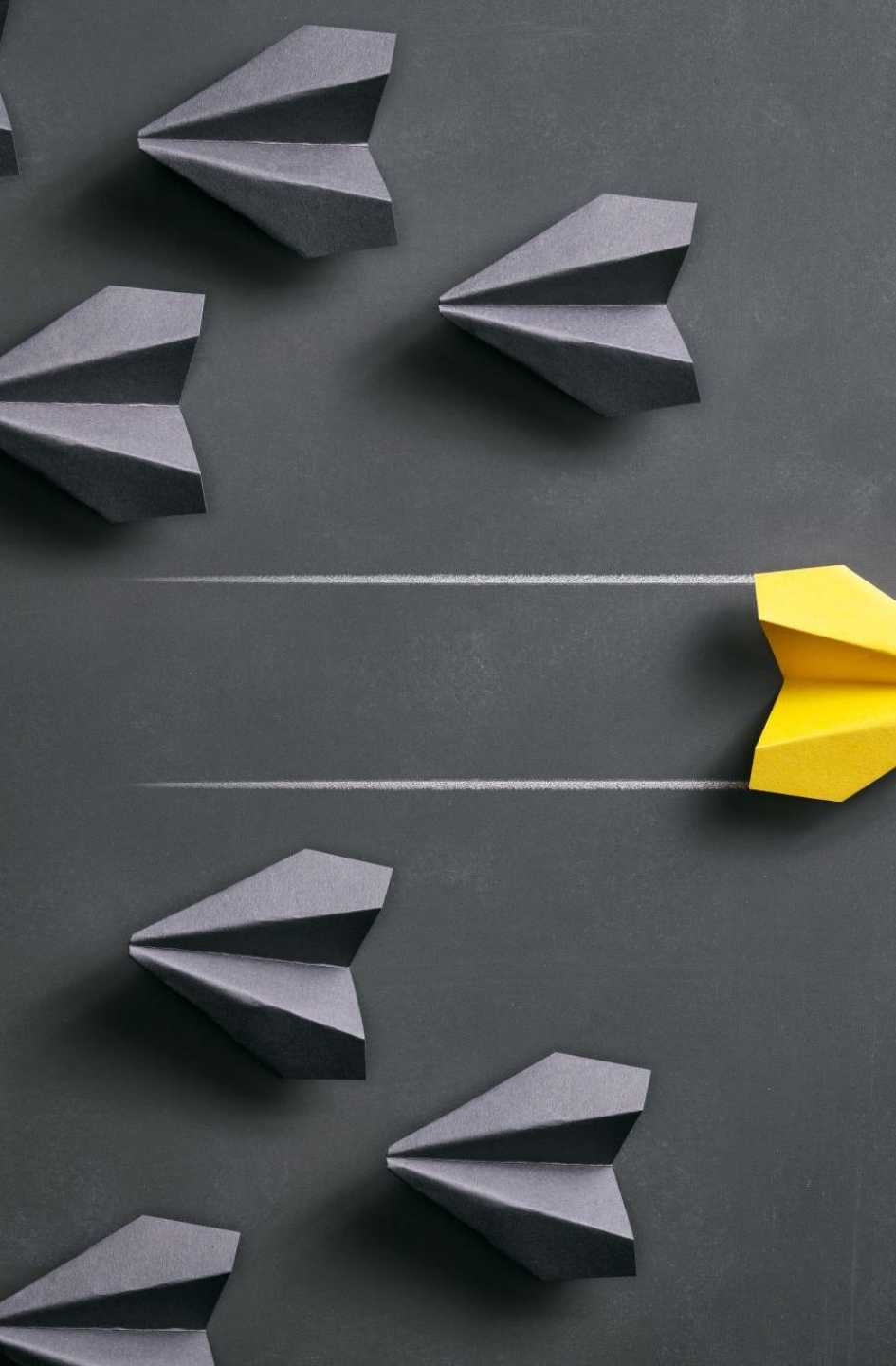
MOTIVATION

- RELATED TO THE THEORY OF STAGES OF CHANGE
- MOTIVATION IS DYNAMIC
- LONGITUDINAL RESEARCH:
 - AN INDIVIDUAL'S LEVEL OF MOTIVATION IS A STRONG PREDICTOR OF WHETHER THE INDIVIDUAL'S SUBSTANCE USE WILL CHANGE OR REMAIN THE SAME

Review!

- Change process
 - Will not occur overnight
 - Gradual with some setbacks
 - Setbacks and difficulties are reframed as learning experiences, not failure
- Linda C. Sobell, Consensus Panel Member, SAMSHA, TIP 35





Motivation is Key!

- In other words:
- The treatment court experience is a journey from extrinsic motivation to intrinsic motivation.
- We can help the participant accomplish these goals by applying science-based responses to the participant's behaviors.

Questions and Discussion





Bonus Material

Motivational Interviewing For Judicial Officers

- Rehabilitation is the paramount purpose of sentencing for most people.
- Motivated Defendant's are more likely to change.
- Judges can begin and support the process by adopting motivational interviewing methods.
- Judge Bailin, Twentieth Judicial District, Boulder, Colorado, National Center for State Courts, Adapted from William Miller and Stephen Rollnick, Motivational Interviewing, Second Edition, 2002 The Guilford Press.

Additional suggestions for Judges

- Resist the righting reflex
 - Telling people what to do results in their making arguments against you and strengthens negative behavior
- Understand and explore the person's own motivations
 - Motivation occurs when there is a discrepancy between the current behavior and desired goals;
 - Not where the Judge thinks the defendant should be based on the judge's goals and values.
 - Help the Defendant find and articulate her own reasons for change

Additional Suggestions for Judges

- Listen with Empathy
 - Not the same as agreeing with the defendant or approving of their behavior
 - Conveying to the Defendant that you understood what she is saying in order to increase her understanding of the situation
- Empower the Defendant
 - Helping the client believe that he can be successful at making a change. (self-efficacy)
 - A Predictor of outcome is the Judge's optimism and expectations about the ability and likelihood to change