



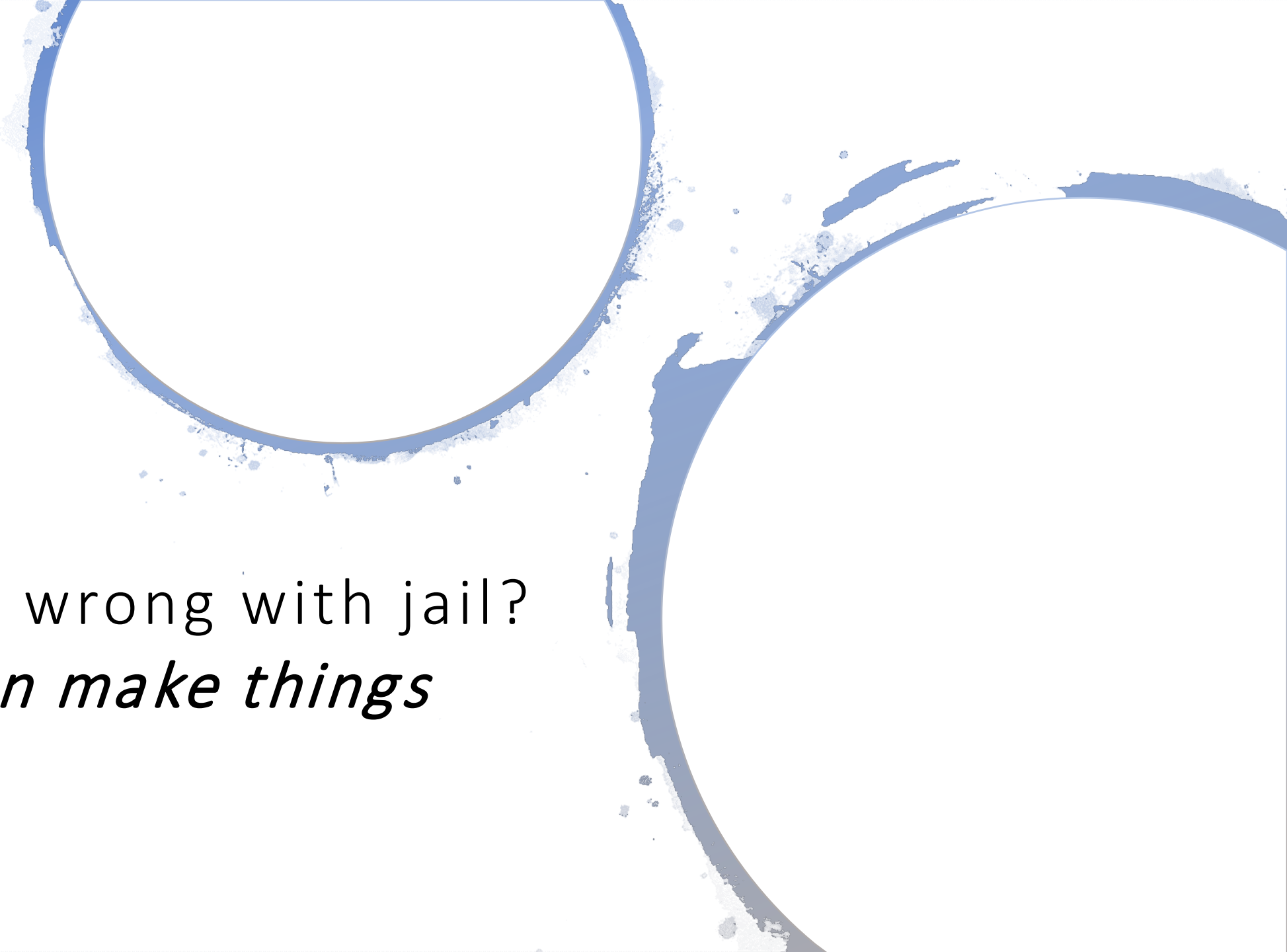
**So, we're not supposed to use jail:
What do we do instead?**

Alternatives to Incarceration

Shannon Carey, Ph.D.
Helen Harberts, M.A., J.D.

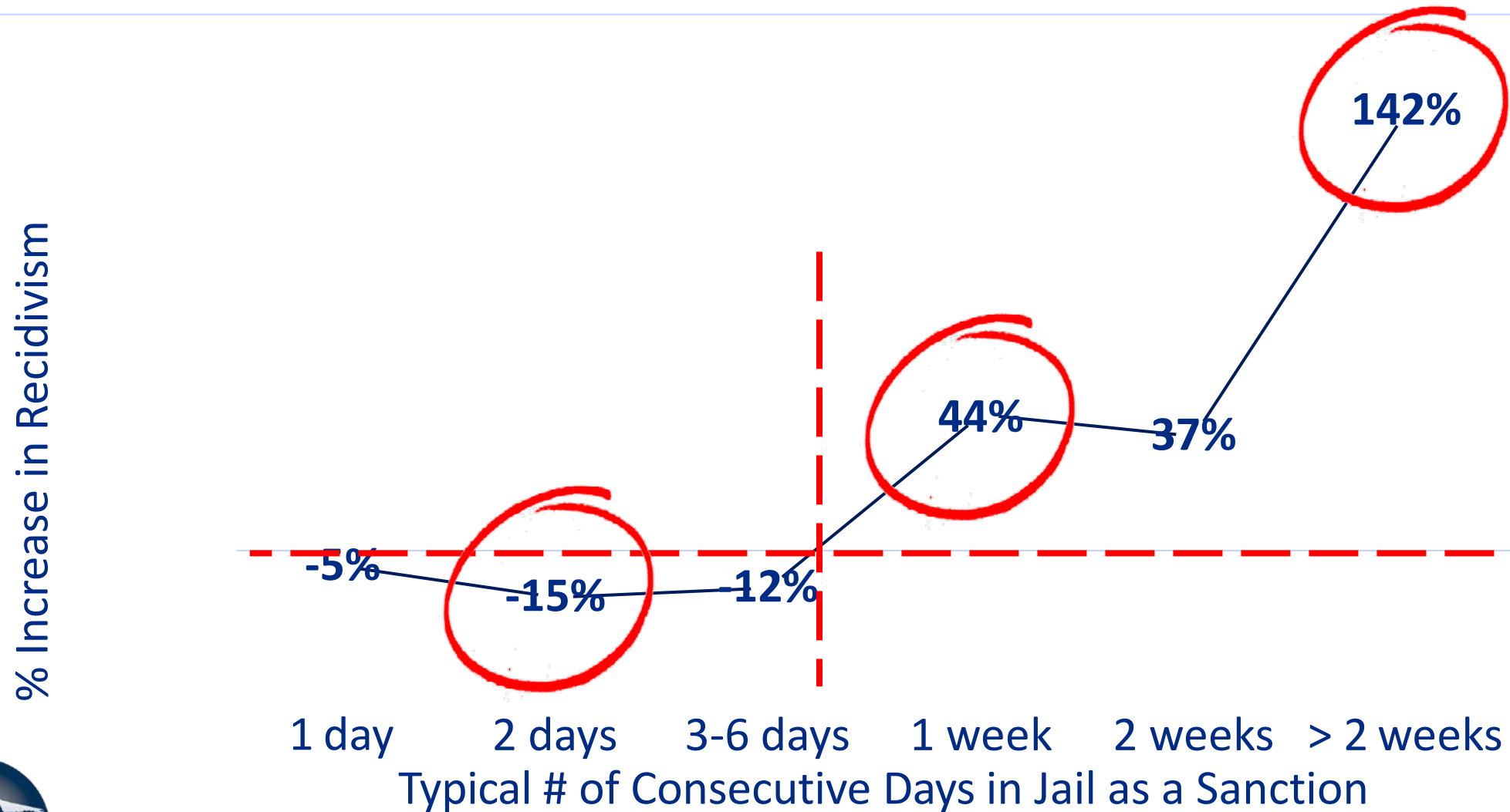
Why do we use jail?

- Punishment
- To change participant behavior
- To stop a behavior we don't want them to do
- To get participants to take the court seriously (teach them a lesson)
- Public safety

An abstract graphic consisting of two large, overlapping circles drawn with a thick, textured blue line. The circles are positioned in the upper half of the frame, with the left circle partially overlapping the right one. The background is white.

So, what's wrong with jail?
*Well, it can make things
worse!*

Treatment Courts that typically use jail longer than 6 days have higher recidivism



*Not the best public safety choice in the long run

What lessons will they learn?

- ❑ Chaos, violence, injury
- ❑ Life disruption – people can lose
 - housing
 - job
 - kids
 - relationships
 - insurance (have to reapply for Medicaid)
- ❑ Drugs can be easily procured in the jail, information on contacts to get better, cheaper drugs (Do you test when they're in jail?)
- ❑ New “friends” - They are spending time with the people you are telling them to avoid!
- ❑ Learned helplessness/Trauma

Video: Kyle is a young man who was a drug dealer – across state lines. So, a federal offense. Started using when he was 13 and had a good customer base by the time he was 19. Decided to get out of the business and moved to Portland. Started martial arts training. FBI caught up with him a year later when his “ring” told on him.

So, what can we do instead?

What is different about jail than other options?

What does using jail get you? (What does it do for your participants?)

- It is almost universally seen as a negative experience - it is a clear, unambiguous punishment
- You have physical control over the participant (so you can physically stop them from doing whatever they were doing and they are not doing inappropriate behaviors in public)
- It takes away two of the three most prized possessions:

Time
Freedom
(third is money)

Alternative punishments

Number one sanction is judicial disapproval

- Pick up participant and bring them to court/treatment/probation
- Hours in holding cell
- 8-12 hour jail day(s) – not overnight
- Sit in court and watch (treatment court, traffic court, general criminal court/sentencing calendar)
- House arrest
- Curfew
- Unpleasant Community Service

Alternative punishments

- Examples of Unpleasant community service
 - Day at the dump
 - Cleaning the jail
 - Cleaning the courtroom
 - Picking up trash on the highway in orange vests
 - Things you choose – (they get no choice)

What if...


- You're afraid they will overdose?
- You're holding them for a treatment bed?
- They're homeless and have nowhere to go?

Overdose risk:

- ❖ Any state of forced abstinence via incarceration or mandatory hospitalization (inpatient) is the main driver of OD risk
- ❖ Compared to the rest of the adult population, the opioid-related overdose death rate is 120 times higher for persons released from prisons and jails.
- ❖ In the first two weeks after being released from prison, former inmates were 40 times more likely to die of an opioid overdose than someone in the general population.

Overdose risk:

- ❖ A full year after release, overdose death rates remained 10-18 times higher among formerly incarcerated individuals
- ❖ Patients who “successfully” completed inpatient detoxification were more likely than other patients to have died within a year.
- ❖ Inmates frequently overdose IN THE JAIL or they can die from withdrawal in the jail



Google Overdose in Jail....

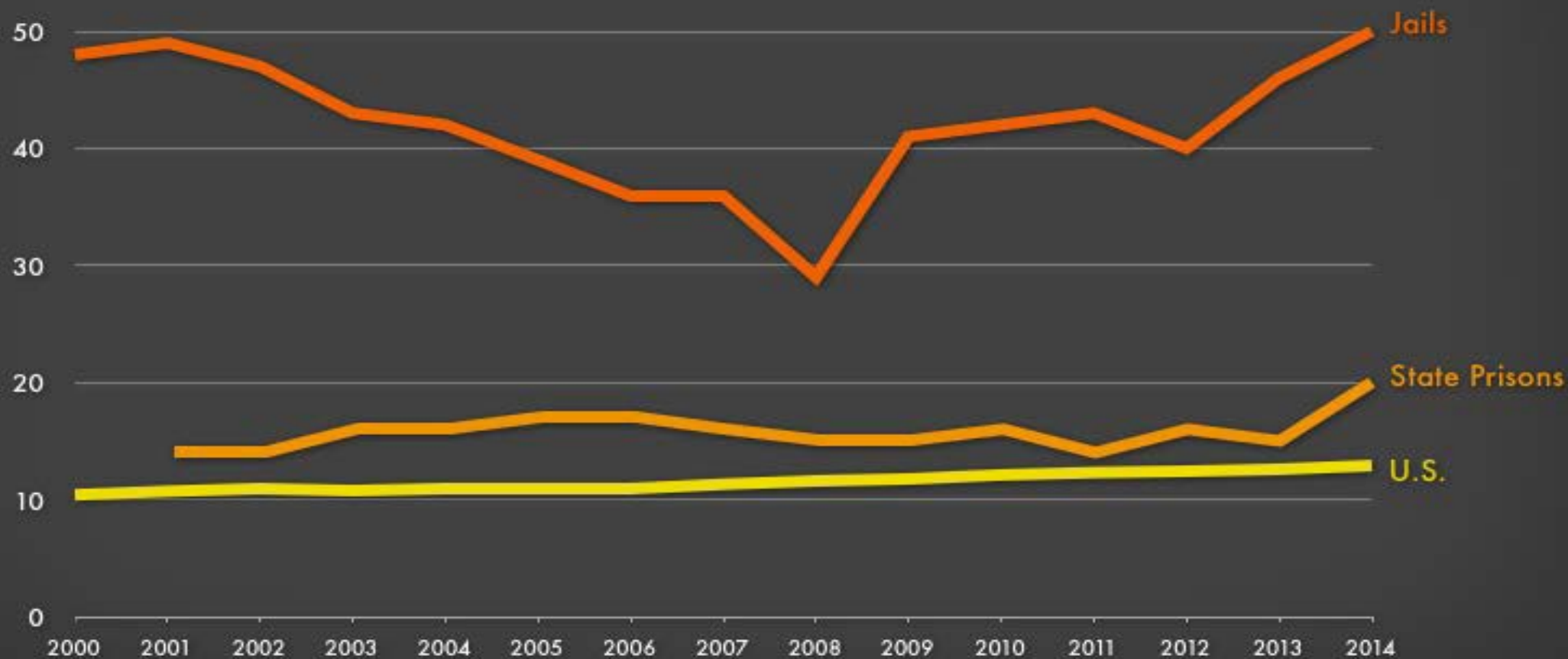
But our jail sanctions are just for a few days

Just a few days in jail can result in harm for people with severe substance use disorder, serious mental health disorders, or other medical needs.

- 41% of jail deaths occur within the first week of a person's jail stay
- 26% of jail suicides occur within just three days of entry

JAIL SUICIDE RATES: OUT OF STEP WITH THE NATION (AND U.S. PRISONS)

(Number of people per 100,000 in jail, in prison, and in the country who commit suicide per year)



Many jails will not provide inmates with prescribed medication for mental health or substance use disorders

Inmates frequently miss appointments for MH, substance use, medical care

- Some facilities that will transport them to appointments often “fail to produce” the inmate
- Some facilities have in-house treatment and inmates still miss appointments due to lack of an escort, or appointment times not being communicated to the inmate*

This is not to shame the jails. Jails have a lot of competing interests and it can be difficult to track every detail of individual needs

*There is little available evidence that in-house treatment works

Other (non-lethal) impacts

- Learned helplessness
- Loss of hope
- Depression
- Trauma
- Numb

Participant - “It’s great to meet us where we are, but you also gotta meet us *where we wanna be*”

Harsh sanctions like jail reinforce the feeling that once an ‘addict/criminal’ always an addict/criminal.

It’s a drug court’s role to hold people accountable, but it should also be helping them truly believe that they’re don’t belong in jail anymore.

But some of our participants tell us that jail works!

- “I didn’t realize you were serious until you put me in jail”
- Who are these participants? (Risk and need levels)
- Check your targeting
- How long did you put them in?
- Is this about you or them?
- Sometimes our participants can be infuriating and it makes you feel better

**Jail is least effective for high risk/high need*

Sometimes you use jail
because you're afraid that
someone will die

Legal Considerations

There is no question that
you do have the power to
use jail – the question is
should you?

Due Process and Preventive Detention

- You have a participant who uses heroin and other opioids.
- This person has overdosed repeatedly.
- This person has acknowledged she can't stop using.
- No home.
- No family.
- No residential treatment bed available.
- If released from courtroom, she will use and overdose and die.
- Place her in detention until bed is available. Save her life.

NO - don't do it!

- Treatment courts cannot jail participants because they need inpatient treatment, and a bed is not available without basic due process protection.
- Preventive detention is unconstitutional.
- “Nor shall any state deprive any person of life, liberty, or property without due process of law.” U.S. Constitution, Amendment XIV
- The 6th Amendment guarantees the right to a speedy and public trial and arrested persons cannot be detained for extended time without a trial.

NO - don't do it!

- The 8th Amendment allows for reasonable bail and prohibits cruel and unusual punishment
 - Prohibits the federal government and states from inflicting punishment that is out of proportion to the crime. Having a mental health disorder, such as a substance use disorder is not a crime, and denying liberty to people because of their illness may be considered out of proportion to their crime of showing the symptoms of their illness.
- The Americans with Disabilities Act - prohibits discrimination based on disability.
 - Anyone known to have a history of mental disorders can be considered disabled. Necessary and appropriate modification and adjustments must be made to avoid imposing a disproportionate or undue burden.

Save yourself, your team and your license!

- In addition to violating the rights of a participant, you can also bring sanctions upon yourself.
- A Mississippi Judge removed from office for
 - Jailing a participant for 24 days for unspecified violations.
 - Keeping participants in treatment court indefinitely, some over 4 years.
 - Refusing to conduct jail sanction hearings.

Holding for a treatment bed...

- If they did not want to go to residential on their own, unless treatment bed is in locked facility, they can, and will, walk away (We'll try it your way)
- Like all others who need residential treatment, they have been managing in the community so far. Wrap them with services and increase monitoring.

KNOW YOUR JAIL

Overdose risk...

- Provide participants with Naloxone
- Train participants and their families and friends how to use Naloxone
 - <https://www.drugabuse.gov/publications/drugfacts/naloxone>
 - <https://www.getnaloxonenow.org/#getnaloxone>
- Evaluate for all forms of MAT and provide if appropriate (e.g., meds for opioids, meds for depression, etc.)

Overdose risk...

- Build capacity for MAT and other services in the community
- Consider: Have been managing in the community so far. Talk to them about their plan to stay safe. Work with them to connect with friends or family
- Consider: Will they be safer in the jail? Is there MAT in the jail? If so, is there a connection for a warm handoff in the community?

KNOW YOUR JAIL

Actions for Overdose Risk...

Pre-Crisis: What you can do

- ✚ Coordinators, treatment providers and probation officers need to collaborate on locating available services in the community so that when a client needs those services the probation officer can assist with a warm handoff for clients to those services.
 - Warm hand-off example: contact the Star Program and establish a contact person prior to referring a client. (Just telling, or emailing, a client a statewide resource book is not helpful.)
- ✚ Identify local treatment programs who have weekend services or open their doors for clients to go, have a meal and hang out.
- ✚ Work with each client on an individualized “emergency kit” or “toolbox” that they can use when struggling. Talk about and add items as client moves through drug court.

Actions for Overdose Risk...

Pre-Crisis: What you can do

- ✚ Implement activities to engage your participants and teach skills from the beginning (e.g., engage clients in case planning and have them provide input on goals), make sure the client has Narcan and knows how to use it in your first meeting.
- ✚ Probation should utilize tools from core correctional practices at first difficulty e.g., missed appointment, positive drug test.
- ✚ Ensure that an MAT provider attends staffings.
- ✚ Give family, friends, and clients information on Narcan training and how to get a free Narcan kit mailed to their residents.
- ✚ Probation officers ask if family, friends, or client attended training and has Narcan at home.



Actions for Overdose Risk...

Crisis/Emergencies: What you can do

- Work with your treatment provider(s) for a plan that does not include jail.
- Probation officers can set up call-in schedules to assist a client through the weekend such as call PO at 10:00a, 2:00p, 6:00p and 10:00p.
- Ensure client has Narcan
- Ensure client has a contact and help number for a local community support option — e.g., Star Program (Center for family services) or Rutgers Recovery Support (a university student led support program).
- Remind clients about which local providers are available for weekend support.

Homelessness: Incarceration as “protection”

Jail is not housing for
the homeless. The
US Constitution is
clear about that.

Nor is it a level of
care. Period.

Housing

- Have they managed in the community so far?
- Are there homeless shelters in the community? Are there food banks or other food options in the community?
- Work on building capacity for housing, shelter, food in the community
- Is it life threatening for them to remain without shelter (danger from others, weather, medical health issues, starvation)? Will they be safer in the jail?

*Watch the law

KNOW YOUR JAIL

What if they are just behaving badly?

- Not showing up
- Refusing to engage in treatment
- Skipping drug tests
- Testing positive
- Etc.

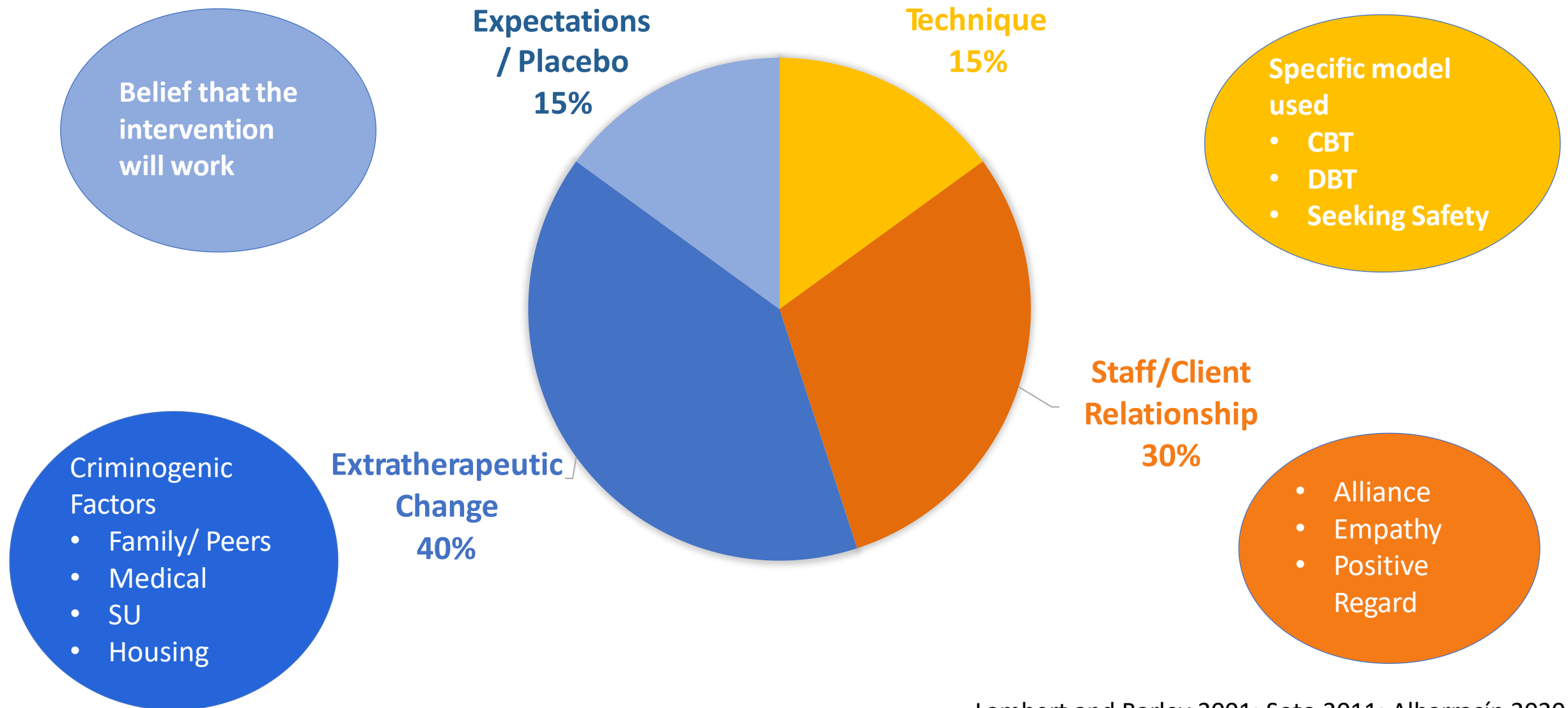
Sometimes we use jail because we don't have anything else readily available on our menu

Part of the reason for this training is to help you develop your menu

What works better than jail?

THE EFFECTIVE USE OF BEHAVIOR MODIFICATION TOOLS,
INDIVIDUALIZED CASE MANAGEMENT AND TREATMENT

What leads to behavior change?





David Best

**Biggest predictor
of change is a
change in
identity**

“An ounce of prevention is worth a pound of cure”

Use your available tools to prevent the need for jail

- Learn who your participants are and meet them where they're at
 - Do integrated case planning – include the participants in making the plan
 - Address medical issues – particularly pain
 - Monitoring: Ensure reliable detection of behavior and respond consistently
 - Use Therapeutic (Teaching) Responses and Incentives!
-

Know your participants

- Criminogenic needs
- SUD/MH diagnosis and needs
- Responsivity needs/
Biopsychosocial (Barriers to
engagement)

RISK DOMAINS/
CRIMINOGENIC
NEEDS

Criminogenic Needs

1. Criminal History
2. Peer Association
3. Criminal Attitudes And Behavior
4. Anti-social patterns/Personality
5. Education/Employment/Financial
6. Family And Social Support
7. Leisure Activities/Living Sit.
8. Substance Use

Clinical Needs – Example ASAM Criteria

AT A GLANCE: THE SIX DIMENSIONS OF MULTIDIMENSIONAL ASSESSMENT

1

DIMENSION 1

Acute Intoxication and/or Withdrawal Potential

Exploring an individual's past and current experiences of substance use and withdrawal

2

DIMENSION 2

Biomedical Conditions and Complications

Exploring an individual's health history and current physical condition

3



DIMENSION 3

Emotional, Behavioral or Cognitive Conditions and Complications

Exploring an individual's thoughts, emotions and mental health issues

Clinical Needs – Example ASAM Criteria

AT A GLANCE: THE SIX DIMENSIONS OF MULTIDIMENSIONAL ASSESSMENT

| | | |
|--|--------------------|---|
|  | DIMENSION 4 | Readiness to Change Exploring an individual's readiness and interest in changing |
|  | DIMENSION 5 | Relapse, Continued Use or Continued Problem Potential Exploring an individual's unique relationship with relapse or continued use or problems |
|  | DIMENSION 6 | Recovery/Living Environment Exploring an individual's recovery or living situation and the surrounding people, places, and things |

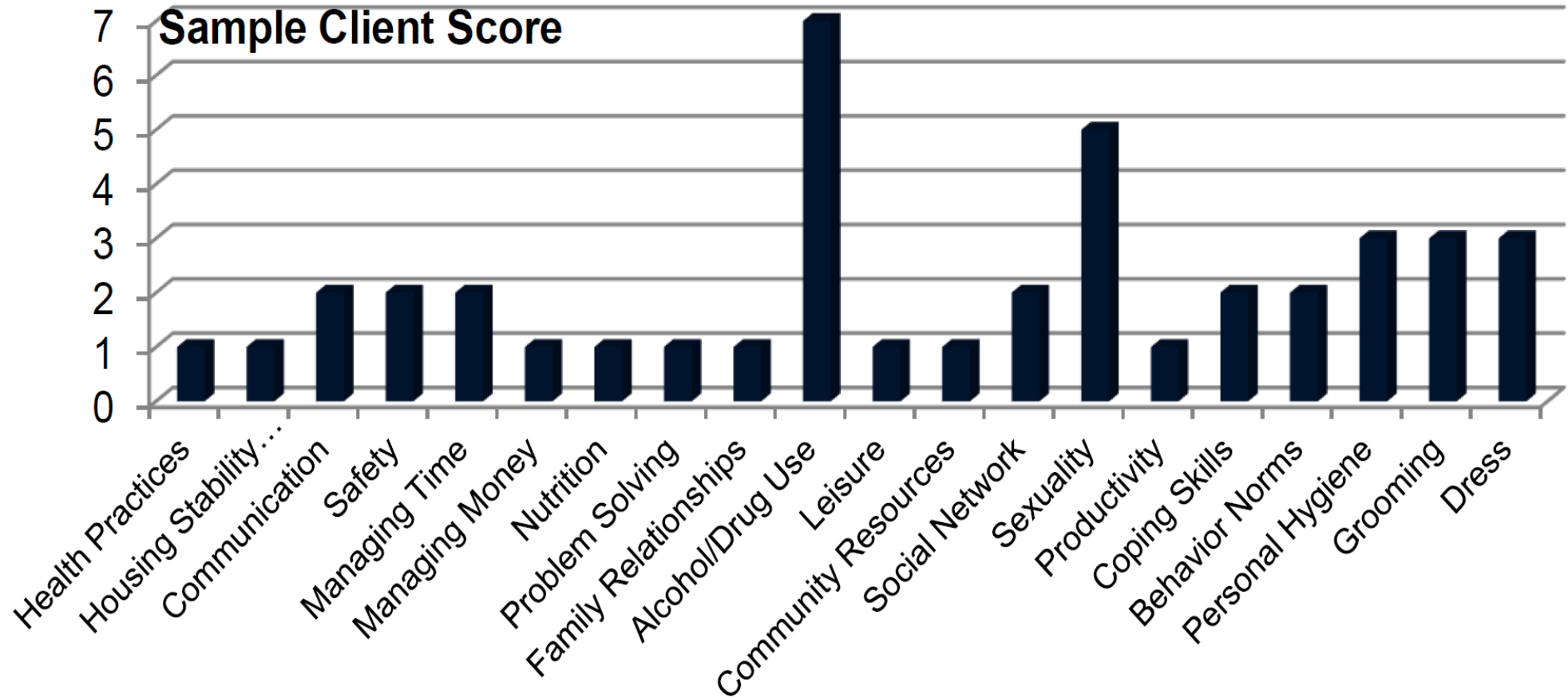
Identify Barriers to Engagement

The DLA assesses their current behavior in 20 activities of daily living:

EXAMPLE: DAILY
LIVING
ASSESSMENT
(DLA-20)

- ☐ Health status and practices
- ☐ Household stability
- ☐ Communication
- ☐ Safety
- ☐ Managing time
- ☐ Nutrition
- ☐ Relationships
- ☐ Alcohol and drug use
- ☐ Sexual health and behavior
- ☐ Personal care and hygiene

EXAMPLE: DAILY LIVING ASSESSMENT (DLA-20)



Create Integrated Individualized case plans

Develop a case plan with the participant's full input including:

- Match the participants abilities and step up over time (might need to start small)
- Word the goals that address their criminogenic needs so they make sense to the participant
- Identify how working on each relevant risk factor will help achieve their personal long-term goals (not just yours)
- Help brainstorm and have input on the action steps
- Identify the barriers and obstacles to the action steps
- Identify incentives for working on the actions steps and achieving the goal

WHEN PARTICIPANTS FEEL THEY HAVE A CHOICE, THEY ARE MORE LIKELY TO FOLLOW THE PLAN

If participant is not meeting goals or complying with treatment court requirements – REVISE THE CASE PLAN



Address physical/ medical issues

- Assess for medication assisted treatment (MAT)
- Work with medical and treatment community
 - ✓ Prescribers
 - ✓ Treatment Providers
 - ✓ Know what's available in your community and state
 - ✓ Education for the team – take NDCI's online MAT course

Address physical/ medical issues

- Conduct a medical assessment (health issues)
 - Our participants are ill with a disease that often leads to other physical and mental ailments, and to behavior issues
 - Include history of medication use
- Assess for pain!
 - Get them into pain management
 - Meditation, yoga, physical therapy, acupuncture

(Mindfulness-Oriented Recovery Enhancement resulted in reduced pain and cravings) - <https://drericgarland.com/m-o-r-e/>

Consistent Responses: Use a Response Matrix

Positive Behavior

Incentive Matrix: "What do we want the participant to learn from this?"

Step 1. Identify the **Behavior**

| Proximal (Expect Sooner) | Moderate | Distal (Expect Later) |
|--|--|--|
| <ul style="list-style-type: none"> Attendance at treatment Attendance at other appointments Home for home visits Report to UA Timeliness Payment | <ul style="list-style-type: none"> Honesty Testing Negative Participating in Prosocial Activities Employment Progress toward Tx Goals Progress in Tx | <ul style="list-style-type: none"> Complete Tx LOC Extended Abstinence/Neg. Tests Treatment Goals Completed Phase Goals Completed Program Goals Completed |

Step 2. Determine the **Response Level**

| | | Proximal (Expect Sooner) | Moderate | Distal (Expect later) |
|--|---------|--------------------------|----------|-----------------------|
| <div>Distal</div> <div>↓</div> <div>Prox</div> | Phase 1 | Small | Medium | Large |
| | Phase 2 | Small | Medium | Large |
| | Phase 3 | | Small | Large |
| | Phase 4 | | Small | Large |
| | Phase 5 | | Small | Medium |

Step 3. Choose the **Responses** (Paired with Judicial Approval/Verbal Praise)

3a. Therapeutic Response

| | Phase 1 | Phase 2 | Phase 3 | Phases 4 and 5 |
|--------------------|---|--|---|---|
| Single Event | <ul style="list-style-type: none"> Behavior Chain Cost/Benefit Analysis | <ul style="list-style-type: none"> Behavior Chain Cost/Benefit Analysis | <ul style="list-style-type: none"> Behavior Chain | <ul style="list-style-type: none"> Behavior Chain |
| Continued Progress | | <ul style="list-style-type: none"> Change in LOC (FTC) Increased visitation with child | <ul style="list-style-type: none"> Aftercare Fqcy Re-evaluate Pharmacological Interventions | <ul style="list-style-type: none"> Aftercare Fqcy Re-evaluate Pharmacological Interventions |

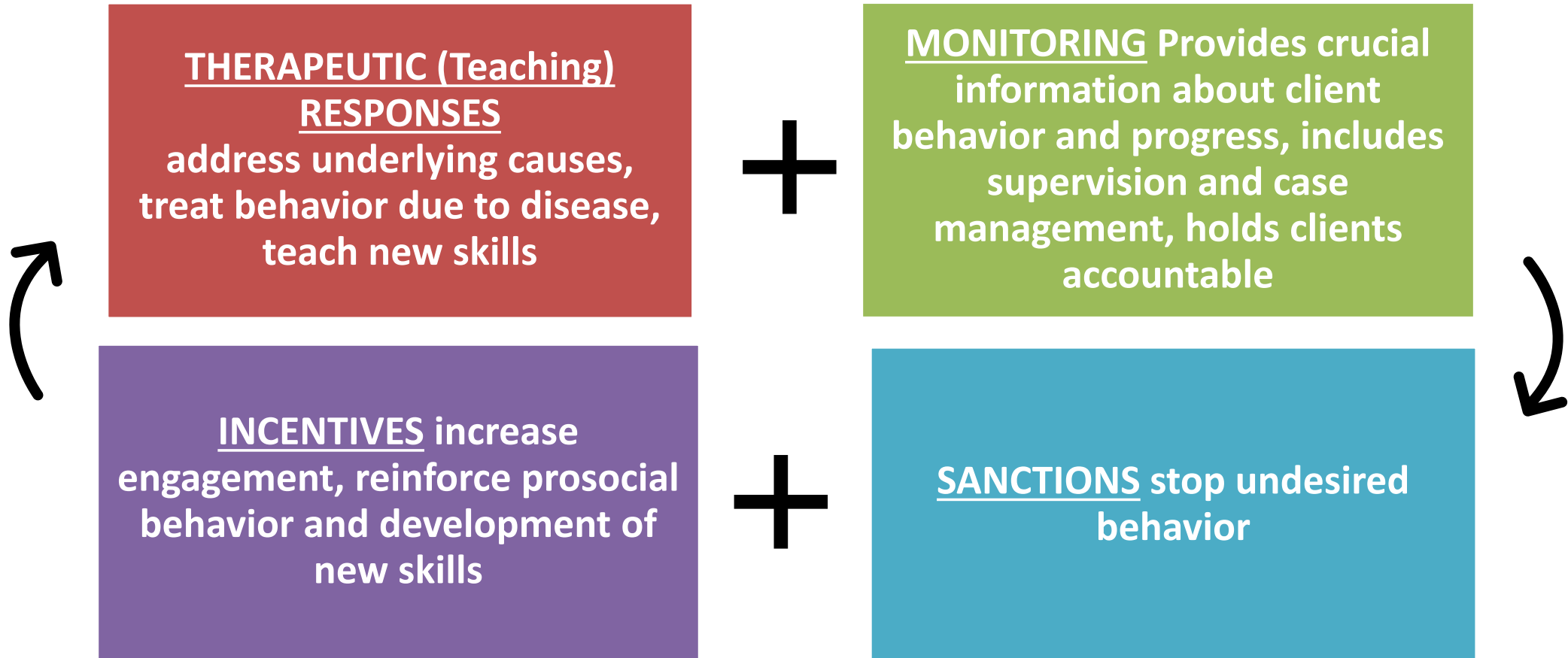
3b. Supervision Responses

| Phase 1 | Phase 2 | Phase 3 | Phases 4 and 5 |
|---|--|---|--|
| <ul style="list-style-type: none"> Change in Curfew Status | <ul style="list-style-type: none"> Reduced Contacts Reduction in Home Visits | <ul style="list-style-type: none"> Reduced Contacts Reduce Home Visits Reduce in External Monitoring Devices | <ul style="list-style-type: none"> Reduced Contacts Decreased Drug Testing |

3c. Incentive Response

| Small | Medium | Large |
|--|--|--|
| <ul style="list-style-type: none"> Judicial approval (always) Fish Bowl Decision Dollars Example for other participants in court Handshake Candy ≤ 1 day reduction of curfew On the A Team | <p>Any small and/or:</p> <ul style="list-style-type: none"> ≤ 3 day reduction of curfew Choice of Gift Certificate Supervisor Praise Written Praise Positive Peer Board Certificate Reduction in CS hours Reduction in program fees | <p>Any small, medium or:</p> <ul style="list-style-type: none"> Framed Certificate Travel Pass Larger Gift Certificate Position as Mentor to New Participants |

Treatment Court Tools That Motivate Behavior Change– and Work!



We Use These Tools in Unison.

Reliable Detection of Behavior and Consistent Response (Certainty)

Detection allows the gathering of information needed by judge and team to determine appropriate response (Speeding ex.)

Consistent response helps client learn faster and develop trust in the process – use a response matrix

Form 1040 Department of the Treasury—Internal Revenue Service **2002** (99) IRS Use Only—Do not write or staple in this space.

For the year Jan. 1-Dec. 31, 2002, or other tax year beginning , 2002, ending , 2002. OMB No. 1545-0074

Label (See instructions on page 21.) Use the IRS label. Otherwise, please print or type.

Important! You must enter your SSN(s) above.

Filing Status Check only one box.

Exemptions If more than five dependents, see page 22.

Income Attach Forms W-2 and W-2G here. Also attach Form(s) 1099-R if tax was withheld. If you did not get a W-2, see page 23. Enclose, but do not attach, any payment. Also, please use Form 1040-V.

Adjusted Gross Income

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see page 76. Cat. No. 11320B Form **1040** (2002)

Monitoring

Reliable Detection

- Urine drug testing at least twice per week
- Random testing (equal chance of testing 7 days a week)
- Continuous detection methods (patches, bracelet)
- Electronic monitoring
- Home visits (Extend supervision into natural social environment - work, home, school, street, cell phones)
- Include law enforcement on the team
- Case manager, supervision, treatment

Increase Monitoring

- **Increase supervision**
 - House arrest/GPS
 - Increase supervision appointments
 - Increased home visits
 - Increase court hearings
 - Curfew
- **Other options (Therapeutic - Focus on Learning)**
 - Community service
 - Attend/watch court
 - Thought papers

* May need to develop new resources for some alternatives

Therapeutic (Teaching) Responses

Respond to behaviors due to illness

Teach new skills

Develop understanding

Teaching Responses are designed to help participants understand the need to change, how to change, and to learn new behaviors

Therapeutic responses in the courtroom are **NOT THERAPY** – Therapy (treatment) is only provided by a licensed treatment provider

An old buddy that I hadn't seen in a long time showed up at my house. We started talking about old times. One thing led to another and we ended up going to the club. We saw some people we knew. Though I planned not to use, I drank 3 or 4 bourbons and we ended up smoking weed in the car later.

I missed the good times we used to have. I planned to just drink a Coke at the club, but I didn't want my friend to think I was an asshole. I've been good for so long, I thought I deserved a break. I didn't think I would get caught because I'd just been called in to test that day.

At first, I felt like, "I got this." Then, I felt pressured, embarrassed, a little pissed and trapped. This was a bad idea but there was no way out of the situation now, so I just went with it. I thought, "Why not?"

I could've suggested we do something that didn't involve using or made up a story why I couldn't go out. Or I could've just told him I'm on probation.

It was good to be with my buddy again, remembering the good times and feeling "normal" again. We ran into some people we knew. It was fun to be at the club.

I had over 90 days of sobriety. I've never been sober that long. I blew it. I risked jail, even termination. Now I'm getting a sanction and must restart my sober time

Re-Evaluate and Adjust treatment

- Review 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
- Engage with peer support (peer mentor, peer specialist)

May need to develop new resources for some alternatives

Focus on Incentives

Number one incentive is
acknowledgment from the
judge

Incentives

- Promote engagement in the program and in treatment
“I’m glad you’re here”
- Demonstrate positive regard
- Connect appropriate behaviors to positive feelings

STAFFING CONSIDERATIONS

- **WHO** are they (risk, need, responsivity)?
- **WHERE** are they in the program
(what tools have they been given)?
- **WHY** did this happen (circumstances)?
- **WHICH** behaviors are we responding to?
 - Proximal or distal?
- **WHAT** is the response choice?
(treatment or monitoring adjustment? Incentive? Sanction?)
- **HOW** do we deliver and explain response?

Questions to ask when Considering Jail

1. What behavior do you want to stop?
2. Is the behavior dangerous to others? Or does it impact the safety or integrity of the court?
3. What is the intended impact of jail on the participant? With what you know about this participant, will jail have the intended impact? (Consider: What does your assessment say about risk and needs.)

Questions to ask when Considering Jail

4. What will the impact of jail be on their prosocial obligations (employer, family, etc.) and health?
5. What behavior do you want the participant to do instead? Can you incentivize that? Would a therapeutic/teaching response help?
6. If you do use jail, can you be creative to reduce the negative impacts?
 - Avoid overnight
 - Avoid general population
 - Use holding cell

KNOW YOUR JAIL!

What to Do While Awaiting Treatment Beds



Q.

When inpatient treatment is recommended for a client, but no space will be available for weeks, what do we do? Do we put them in jail to keep them safe, or do we allow them to continue to be in the community using, where they are possibly a danger to others and themselves?

A.

Programs around the country struggle with this question. The problem is not enough facility bed space to get clients into the level of care they need. Too often programs will house people in jail as they wait for a bed date, for periods ranging anywhere from a couple of weeks to months. When we house clients in jail, they start giving up and sometimes will deteriorate. Jail is also the easy route for many programs as a place where the client is "kept safe" for the community. *Adult Drug Court Best Practice Standards Volume I* discusses the principle of choosing the least restrictive environment that meets the needs or level of care of the client.

There is also a section on the use of jail to achieve sobriety or to safely house the client, indicating that this is not a best practice. There are ways to keep the client in the community while he or she is waiting for an inpatient treatment bed. These are usually highly structured, with daily check-ins, perhaps with an organization that provides day treatment. The goal is to get the client involved in recovery-based activities for which he or she can show up and get into a routine. This approach also provides a structure for the client to be engaged in the community. The following are some recommendations for keeping clients in the community during this waiting period:

- Daily check-ins with probation
- Daily check-ins at treatment
- Weekly treatment court appearances
- Weekly one-on-one treatment counselor appointments (at a minimum)
- Weekly check-ins with a judge in a different court docket (place them on the docket)
- Increased home visits
- Weekly engagement with recovery support groups (this is ideal if there is an alumni group)
- Working with a peer support specialist (check-in)
- Electronic monitoring, if that is an option

Resources:



NDCI - What to do while awaiting treatment beds

<https://www.ndci.org/wp-content/uploads/2019/11/43374->

[NADCP-FAQ-What-to-Do-While-Awaiting-Treatment-Beds-1.pdf](https://www.ndci.org/wp-content/uploads/2019/11/43374-NADCP-FAQ-What-to-Do-While-Awaiting-Treatment-Beds-1.pdf)

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