Chapter 7

Applying Incentives and Sanctions

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I. [§7.1] INTRODUCTION

In the social and psychological sciences, few findings have been so reliably demonstrated that they may qualify as "laws" of human behavior. The principles of operant conditioning or contingency management are one such set of laws. These principles have been proven time and again across numerous settings to the degree that they are no longer the subject of legitimate scientific dispute. The basic techniques for effective implementation of operant conditioning are reviewed in the pages that follow. For more in-depth discussions of the topic, a list of recommended readings is provided at the conclusion of this chapter.

Put simply, if one's goal is to improve adaptive functioning and reduce antisocial behavior on the part of drug offenders, then it is essential to closely monitor their conduct and impose certain and immediate rewards for achievements and sanctions for infractions. Failing to punish misfeasance inevitably makes behavior worse, and failing to reward accomplishments makes those accomplishments less likely to recur. Although the proper administration of incentives and sanctions is by no means the be-all and end-all of drug court programs, it will be the rare drug court that can effect positive change without it.

II. [§7.2] RELIABLE MONITORING

The success of every intervention in a drug court depends, ultimately, on the reliable monitoring of participants' behaviors. Research indicates that the most important factor influencing the success of any behavioral intervention is certainty. Certainty is often expressed as a ratio of infractions to sanctions, or as a ratio of achievements to rewards. For example, if drug court participants are sanctioned every time they fail to attend a treatment session, then the ratio of infractions to sanctions is 1:1, and this is called a fixed ratio-1 (or FR1) schedule. If they are sanctioned for every two missed sessions, this would be an FR2 schedule, and so forth. The scientific evidence is unambiguous on this point: the smaller the ratio, the better the effects for initiating a new behavior.

Nothing spells disaster more for a drug court than failing to detect and redress negative behaviors or failing to recognize and reward positive accomplishments.

If the drug court judge does not have accurate information about whether a participant is 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. Nothing spells disaster more for a drug court than failing to detect and redress negative behaviors or failing to recognize and reward positive accomplishments. The worst case scenario is to apply the wrong consequence. For example, if a participant is wrongly applauded for doing well in the program, when in fact he or she is surreptitiously continuing to abuse drugs, the practical effect is to reward the participant's deception and

destroy any credibility the program might have had. Once credibility is lost, it is exceedingly difficult to reclaim.

Recommended procedures for monitoring participants' behaviors are discussed in other sections of this benchbook, including Chapters 5 and 6 on community supervision and drug-testing (respectively); however, a few evidence-based pointers are worth underscoring here:

- Urine drug testing should be performed no less frequently than twice per week, at least during the first phase of the program.[1] Because the detectible metabolites of most drugs of abuse stay in the system for only about forty-eight to seventy-two hours, less frequent testing leaves an unacceptable gap during which participants can abuse drugs without being detected.
- Urine drug testing should be performed on a random basis. If participants know in advance when they will be drug tested, they can adjust their usage accordingly. They can also front-load on water consumption or take other countermeasures to beat the tests. If drug testing is unannounced, participants will have less time to prepare for such countermeasures.

Best practice would be to continue monitoring substance use throughout the court process.

- Urine drug testing should be the last supervisory burden that is lifted, and ordinarily only during the last phase of the program, if at all. Drug courts typically ratchet down the intensity of treatment and supervision services as participants make progress in the program. There is always the risk that participants will relapse as those services are reduced. Therefore, urine drug testing should continue unabated in order to be certain that relapse is not occurring when other adjustments are being made to the treatment plan.
- Urine drug testing should be performed, at least occasionally, on weekends. Participants are very attentive to when they are being tested and they know when testing will not occur. Giving them a predictable 48-hour reprieve from testing invites efforts to get away with undetected drug use.
- Alcohol is one of the most common substances of abuse among drug court participants, yet many testing technologies do not do a good job of detecting alcohol consumption. Breathalyzers, for example, detect only a very small time window of recent alcohol use. Technologies should be employed that have longer detection windows, such as ethyl glucuronide (EtG), ethyl sulfate (EtS) or SCRAM (Secure Continuous Remote Alcohol Monitor) anklet devices. (These technologies are discussed in Chapter 6, "The Fundamentals of Drug Testing.")
- Most misconduct by participants occurs during off-hours, when they are not physically present at the drug court program. It is essential, therefore, for community supervision officers to observe participants in their natural social environments. This includes conducting unannounced home contacts, verifying employment and school attendance, enforcing area and place restrictions, monitoring compliance with curfews, and performing bar sweeps, where relevant.

It bears repeating that naiveté is inconsistent with competent professional practice and effective behavior modification. To borrow a phrase from former President Ronald Reagan: "trust but verify."

III. [§7.3] UNEARNED LENIENCY

Some drug court professionals may feel ambivalent about administering punishment. They may view their role as providing treatment and not policing misconduct. Although such sentiments may be appropriate for certain team members, such as defense counsel or clinicians, it is not appropriate for the drug court team as a whole. A critical function of any drug court is to closely monitor offenders and hold them meaningfully accountable for their behavior. The public at-large is a legitimate consumer of drug court services and has a right to expect drug courts to fulfill their obligations to public safety and to the integrity of our legal system.

This has important implications for the practice of giving participants second chances. Assume, for example, that a participant delivers a drug-positive urine specimen, but the judge elects not to administer a sanction because the judge was in a good mood that day. This would have the practical effect of increasing the ratio of infractions to sanctions. For example, it might shift the participant from an FR1 schedule to an FR2 schedule. This would be likely to reduce the efficacy of the program, no matter how well intentioned it might have been.

Consider a different example, however, in which the participant used drugs, but then felt guilty about it, spontaneously acknowledged the drug use to his or her counselor, and sought further treatment to avoid a continued relapse. In this example, it would be appropriate to withhold the sanction as an incentive for the client being truthful and seeking treatment on his or her own volition. In behavioral terms, this would be an example of what is called *negative reinforcement*, in which a sanction is withheld as an incentive for honesty and help-seeking behavior. The point here is that second chances can be appropriate, but only when they have been earned. Mistakes happen, and participants need to learn how to deal with the aftermath of their mistakes. If a participant behaves in a responsible manner following a relapse, then that responsible behavior may be seen as canceling out the impending sanction for drug use. This should not be misconstrued; participants cannot continue to use drugs again and again, knowing that as long as they are honest afterwards they will avoid a sanction. This would be something that would primarily happen in the early stages of treatment.

Sanctions for drug use might be suspended to reward honesty and help-seeking behavior.

This process can at times be applied prospectively as well. For example, a sanction might be imposed for an infraction, such as failing to attend a counseling session, but then held in abeyance pending subsequent corrective action. If the participant attends, say, the next five counseling sessions in a row, the sanction might be formally withdrawn.

However, failure to attend the next five sessions would elicit two sanctions—one for the original absence and another for the new one. In essence, the participant is offered an opportunity for "double or nothing."

In short, when a sanction is withheld to reward corrective efforts, it is in the best interests of the participant and is an example of effective behavior modification. When, however, it is withheld because it makes the professional feel more personally comfortable, it is not effective behavior modification and is apt to make the participant worse off in the long run.

IV. [§7.4] SCHEDULE OF STATUS HEARINGS

After certainty, the second most important element of effective behavior modification is immediacy, sometimes referred to as *celerity*. 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. One explanation for this precipitous decline in efficacy is that there is interference from new behaviors. Assume, for example, that a participant uses drugs on Monday, but then is abstinent and compliant with treatment for the remainder of the week. If that same individual is sanctioned on Friday for the instance of drug use that occurred on Monday, it should be evident that the desirable behaviors transpiring on Tuesday through Thursday are actually closer in time to the sanction than the drug use. This explains why the effects of sanctions decline precipitously. New behaviors occur more recently in time, and behavior modification works, in part, by proximity in time. In this example, the practical effects of the sanction could be, paradoxically, to punish the good behaviors that occurred most recently.

This finding has important implications for establishing an effective schedule of status hearings in drug courts. Most drug courts apply incentives and sanctions during court hearings, after the team has had an opportunity to review the case in a staffing and agree upon a suitable consequence. The ultimate decision about what consequence to impose is determined by the judge, but is based upon a consideration of the relevant evidence and expertise contributed by the various team members. The longer the time interval between staffings and between status hearings, the longer the delay will be between participants' accomplishments and the imposition of rewards, and between their infractions and the imposition of sanctions.

Initially, Drug court participants should appear for court sessions at least every two weeks.

Fortunately, research provides clear indications about when to schedule status hearings. Outcomes in drug courts appear to be optimized when participants appear in court no less frequently than every two weeks, at least during the first three to six months of the program.[2,3,4,5] Requiring participants to appear in court at least every two weeks permits the team to respond to their accomplishments and infractions in a reasonably short interval of time, which is necessary to modify their behavior effectively.

This is not to suggest that holding status hearings on a weekly basis is harmful or undesirable. Rather, there is no clear indication from the research that the additional expense and inconvenience of weekly hearings (for both the participants and staff) is warranted based upon the relative differences in outcomes. It also remains unclear whether this finding applies equally to populations other than adult drug offenders, such as mentally ill offenders or juvenile delinquents. More research is needed to determine how frequently status hearings should be scheduled for other populations. The best advice that can be offered at this juncture is that biweekly status hearings appear to be a reasonable and evidence-based schedule to follow in a drug court program.

There is no clear indication yet from the research evidence about when it is appropriate to ratchet down the frequency of status hearings. Most drug courts reduce the schedule of court hearings as participants move through the various phases of the program. If advancement through the phases is based upon objective evidence of progress in treatment (which it should always be), and if participants continue to be reliably tested for substance abuse and other relevant behaviors, then it appears suitable to gradually reduce the frequency of court hearings over time. More research is needed to determine how quickly those adjustments can and should be made.

V. [§7.5] MAGNITUDE OF REWARDS AND SANCTIONS

There is a common misconception that rewards and sanctions are most effective at high magnitudes. In fact, evidence reveals that rewards can be quite effective at low to moderate magnitudes. For example, positive outcomes have been achieved with low-magnitude rewards, such as verbal praise, diplomas, certificates of progress, transportation passes, and gift cards to local stores or restaurants.

Punitive sanctions tend to be the least effective at the lowest and highest magnitudes, and most effective within the moderate range. Sanctions that are too weak in magnitude can precipitate what is called *habituation*, in which the individual becomes accustomed to being sanctioned. The problem with habituation is not only that low-magnitude sanctions may fall below an effective threshold—of greater concern, they can make it less likely for higher-magnitude sanctions to work in the future because they can raise the participant's tolerance for being sanctioned. This may account for the "been-there, done-that" attitude that many drug offenders exhibit in response to threats of punishment. Over time, they may become desensitized to repeated threats of inconsequential sanctions; therefore, they may be apt to push the limits to the point of no return (e.g., to the point of imprisonment, overdose, or death).

Moderate magnitude responses can be quite effective at producing behavioral change.

At the other extreme, sanctions that are too high in magnitude can lead to *ceiling effects*, in which further escalation of punishment is impracticable. Once a participant has been

incarcerated, for example, the drug court may have used up its list of sanctions. At this point, future efforts to improve that offender's behavior could be futile. High-magnitude sanctions are also apt to precipitate a host of negative side effects. Individuals who are exposed to high-magnitude sanctions will often do everything in their power to avoid the sanctions, such as absconding from the program, lying, or tainting their urine specimens. As a result, staff members spend much of their time attempting to overcome participants' deceptions rather than conducting therapy. In addition, participants who receive severe sanctions may become depressed, angry, or despondent, which can interfere with their therapeutic alliance with staff members.

For these reasons, successful drug courts craft a wide and creative range of intermediate-magnitude rewards and sanctions, which can be ratcheted upward or downward in response to participants' behaviors. For example, participants may receive writing assignments, fines, community service, or brief intervals of jail detention for failing to comply with treatment. Conversely, they may receive verbal praise, token gifts, or reduced supervisory obligations for complying with treatment. The sanctions and rewards are administered on an escalating or graduated gradient, in which the magnitude increases progressively in response to each successive infraction or accomplishment in the program. This can enable a drug court to navigate between habituation and ceiling effects by altering the magnitude of punishment in response to successive infractions. It also permits the criminal justice system to offer a substantially richer and more effective range of rewards than is ordinarily available to offender populations.

The success of any drug court will depend largely on its ability to apply a meaningful range of intermediate rewards and sanctions. Just like the story of "Goldilocks and the Three Bears", those programs that are too lenient will be apt to elicit habituation and make outcomes stagnant; whereas those that are too harsh will be apt to elicit resentment, avoidance, and ceiling effects. Those programs that are "just right" will tend toward the best results.

VI. [§7.6] THE "FISHBOWL" PROCEDURE

Many drug courts are stretched for resources and may not have much money available to purchase concrete rewards. One economical way to deal with this limitation is to use what is sometimes referred to as the *fishbowl procedure*. Participants earn opportunities to draw from a fishbowl or other lottery-like container as a reward for various accomplishments in the program, such as attending treatment sessions and providing drug-negative urine specimens. Most of the draws might earn only a written declaration of success in the program (e.g., a certificate of accomplishment for the week signed by the judge). Others might elicit small prizes of roughly $5 to $15 value (e.g., transportation passes or gift certificates to

An effective and inexpensive reward system allows everyone who has done well to participate in a lottery for prizes.

fast food restaurants). Finally, a small proportion of the draws might elicit larger prizes, such as DVDs or a portable CD player.

Research indicates that the fishbowl procedure can bring about comparable, or even better, outcomes than providing participants with rewards for every achievement.[6, 7] The excitement of possibly winning a higher-magnitude reward appears to compensate for the reduced chances of actual success. This can enable drug courts to offer effective positive reinforcement for their clients at a reduced cost to the program. It also introduces some entertainment value into the process. Importantly, concerns that such a procedure might trigger gambling behavior on the part of some participants are not warranted and have been disproven in research studies.[8] In addition, concerns that participants might exchange their rewards for drugs or other inappropriate acquisitions have also proven unwarranted.[9, 10, 11] To the contrary, providing concrete rewards is associated with reductions in drug use, higher success rates, and greater satisfaction with the drug court program.

VII. [§7.7] FAIRNESS

Certainty, immediacy, and magnitude relate to how rewards and sanctions are actually imposed. However, *perceptions* of rewards and sanctions are also very important. One issue relates to the concept of procedural justice. Evidence from cognitive psychology reveals that individuals are more likely to perceive a decision as being correct and appropriate if they believe that fair procedures were employed in reaching that decision.[12, 13] In fact, the perceived fairness of the procedures exerts a greater influence over participants' reactions than does the outcome of the decision. Specifically, participants will be most likely to accept an adverse judgment if they feel they (1) had a fair opportunity to voice their side of the story, (2) were treated in an equivalent manner to similar people in similar circumstances, and (3) were accorded respect and dignity throughout the process.[14] When any one of these factors is absent, behavior not only fails to improve, but may get worse, and participants may sabotage their own treatment goals.[15]

Rewards and sanctions must be perceived as fair to be effective.

This does not mean that participants should necessarily get what they want. The important point is that they should be given a fair chance to explain their side of the story, and they should be offered a clear-headed explanation about how and why a particular decision was reached. If staff members have difficulty articulating a defensible rationale for why a participant is being treated a given way, then perhaps the team should rethink its response. Most importantly, it is never appropriate to be condescending or discourteous. Even the most severe sanctions, such as jail detention or termination, should be delivered in a dispassionate and even-handed manner, with no suggestion that the judge or other staff members enjoy meting out punishment. It should be clear that the sanction is intended to address the participant's misconduct, and is not being imposed because the participant is a bad person or intrinsically deserves to be punished.

Research indicates that drug courts tend to have better outcomes when they clearly specify their policies regarding incentives and sanctions in a written program handbook or manual.[16] Prior to entering the program, participants should be clearly informed in writing about the program's rules; the specific behaviors that may trigger sanctions or rewards; the types of sanctions and rewards that can be imposed; the criteria for graduation or termination from the program; and the consequences that may ensue from graduation and termination. Prior to waiving their legal rights, this material in the handbook should be verbally reviewed by defense counsel with the participants and should perhaps also be the subject of a formal colloquy between the judge and each participant. Such procedures help to ensure that participants understand the rights they are giving up and the risks they are assuming by entering the program. This will serve to increase participants' perceptions of fairness and predictability in the program, which will make them more likely to accept negative sanctions should they need to be imposed.

VIII. [§7.8] SPECIFICITY

Ambiguity undermines the effects of sanctions and rewards. If participants do not have clear advance notice about the specific behaviors that may trigger sanctions or rewards, and the types of sanctions and rewards that may be imposed, they will be apt to view the imposition of sanctions and rewards as unfair. This will be unlikely to improve their behavior and may actually make their behavior worse.

Vague terms such as "irresponsible behavior" and "immaturity" are open to differing interpretations and should be scrupulously avoided. Infractions and achievements should be clearly defined in objectively measurable behavioral terms, such as drug-positive urine specimens or unexcused absences from counseling sessions. Criteria for phase advancement and graduation should similarly be clearly stated, such as a specified number of drug-negative urine specimens or a specified attendance rate at counseling sessions. As noted previously, these criteria should be memorialized in a written manual or handbook, carefully discussed with participants prior to entry, and periodically reviewed with participants over time.

IX. [§7.9] PROXIMAL vs. DISTAL GOALS

Distal goals are the desired behavior that may take time to achieve.

When it comes to modifying habitual or ingrained behaviors, it is essential to draw a distinction between proximal and distal behavioral goals. This process is referred to as shaping. Proximal goals are behaviors that (1) participants are already capable of engaging in, and (2) are necessary for long-term objectives to be achieved. Examples might include attendance at counseling sessions, attendance at court hearings, or delivery of urine specimens. Distal goals are the behaviors that are ultimately

desired, but may take participants some time to accomplish. Examples might include gainful employment or improved parenting skills.

As will be discussed in greater depth below, the shaping process has important implications for responding to positive urine drug screens from individuals who are substance abusers as opposed to those who are compulsively addicted to alcohol or other drugs. Abstinence, on one hand, is relatively easier to achieve (and thus is a proximal goal) for individuals whose drug use is under voluntary control and has not progressed very far in severity. On the other hand, abstinence is a distal goal for individuals who are seriously addicted to alcohol or other drugs. Thus, as will be discussed, sanction and incentive schedules may need to be different for addicted individuals as opposed to substance abusers.

Although it is always appropriate to administer a sanction for every infraction, the magnitude or severity of the sanction should be higher for proximal behaviors and lower for distal behaviors. If a participant receives low-magnitude sanctions for failing to fulfill easy obligations, this will almost certainly lead to habituation. However, if a participant receives high-magnitude sanctions for failing to satisfy difficult demands that are beyond his or her capabilities, this will almost certainly lead to depression, hostility, or a disruption of the therapeutic relationship.

Telling the truth is always a proximal goal. Sobriety or total abstinence may be a distal goal.

Thus, for example, a participant who fails to show up for counseling sessions or delivers tampered urine specimens might receive a substantial sanction, such as community service or a brief period of jail detention. On the other hand, if that same participant failed to find a job or to enroll in an educational program during the early phases of the program, he or she might receive a lesser consequence, such as a verbal reminder or writing assignment. As will be discussed, distal goals eventually become proximal goals as participants make progress in the program. At some point in time, finding a job or enrolling in an educational program will become a proximal goal, and the participant should receive higher-magnitude consequences for failing to fulfill these obligations as well.

The converse applies to rewards. Low-magnitude rewards should generally be administered for proximal behaviors, and high-magnitude rewards for distal behaviors. For example, participants might receive verbal praise and encouragement for attending counseling sessions, but might receive more substantial rewards, such as reduced supervision requirements, for engaging in prosocial behaviors like returning to school. Again, distal behaviors will eventually become proximal behaviors over time. At some point in time, verbal praise might become a sufficient response to attendance at school.

Of course, some behaviors that represent an immediate threat to public safety or to program integrity, such as the commission of a new crime, driving while impaired (DWI), or dealing drugs to other clients, are necessarily conceptualized as proximal because they cannot be permitted to continue. Offenders who fail to refrain from these behaviors

might be considered to be poor candidates for drug court or may need to be confined and treated in a correctional halfway house, residential facility, or prison or jail setting.

X. [§7.10] PHASE ADVANCEMENT

Phase advancement recognizes that distal goals have become proximal.

Defining proximal and distal goals has important implications for designing the phase structure of a drug court program. The primary purpose of phase advancement is to let participants know that what was previously considered to be a distal goal has now become a proximal goal. For example, phase one in many drug courts focuses on stabilization of the client and induction into treatment. The emphasis might be placed on completing clinical assessments, establishing a routine of attending treatment sessions in a timely manner, abiding by a home curfew, and obtaining a self-help group sponsor. Participants might 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, he or she might then be advanced to phase two, in which other goals such as employment or education would 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 consequence. A distal goal becomes a proximal goal over subsequent phases of the program, and the consequences for failing to achieve that goal increase accordingly.

Each time a participant is advanced to a higher phase in the program, the drug court team should take that opportunity to underscore for all of the participants what was required for the advancement to occur, and what new challenges now await the individual. Ideally, the judge should repeatedly review the process of phase advancement in open court and explain to all participants the implications of moving from one phase to another. This way, there will be no surprises when participants find that the program's expectations for their behavior have increased and the consequences for their misbehavior have been enhanced accordingly.

XI. [§7.11] SUBSTANCE ABUSE vs. DEPENDENCE

It is unwarranted to assume that merely because an individual has been arrested for a drug-related offense, he or she must be an addict or in denial about being an addict. In fact, research indicates that approximately thirty to forty percent of drug court participants do not have a serious addiction problem.[17]

There are three prototypical symptoms for determining whether an individual is addicted to or dependent on alcohol or other drugs:

- Any introduction of the substance into the bloodstream precipitates a binge pattern. For example, the individual intends to have just one beer, but drinking that beer triggers a several-hour bender.
- The individual experiences intense cravings or compulsions for the substance, which are extremely difficult to resist and which steadily build in intensity during prolonged intervals of abstinence.
- The individual suffers severely uncomfortable or debilitating withdrawal symptoms when levels of the substance decline in the bloodstream.

Further discussion of the diagnostic criteria for substance abuse and dependence may be found in Chapter 4, "Addiction and Treatment Services."

As was noted previously, for participants who are exhibiting one or more of these hallmark features of dependence, abstinence should generally be considered a distal goal. Substance use is compulsive for such individuals and they may be expected to require time and effort in order to achieve abstinence. If a drug court team were to impose high-magnitude sanctions on these individuals for drug use early in treatment, the odds are high that the team would hit a ceiling effect quite soon, and the participant could fail out of the program. This would have the paradoxical effect of making the most drug-dependent individuals ill-fated for success in drug court programs. Instead, high-magnitude sanctions should be reserved during the early phases of the program for proximal, treatment-related behaviors, such as attending counseling sessions, appearing at status hearings, and submitting urine specimens. Positive urine screens should still be met with certain and swift sanctions; however, the magnitude of those sanctions should be relatively low, thus permitting ample opportunities for the team to ratchet up the magnitude of the sanctions over time.

For substance abusers, sobriety is a proximal goal, and they should receive relatively high magnitude sanctions for drug use. This is not necessarily true for those who are substance dependent.

By contrast, for participants who are not addicted to alcohol or other drugs, abstinence should be considered a proximal goal. Because substance use is not compulsive for these individuals, they are capable of stopping their usage relatively quickly. Applying low-magnitude sanctions for substance use would essentially allow them to continue their use with minimal consequences. This could lead to habituation effects, which would make outcomes worse. Instead, higher-magnitude sanctions should be applied for drug use from the outset, so as to put a rapid end to this misbehavior.

It should be evident from the foregoing discussion that sanction and incentive schedules and phase structures should ordinarily be different for participants who are substance abusers as opposed to those who are dependent or addicted. For example, substance abusers might be required to initiate abstinence during phase one of the program, and

might receive relatively high-magnitude sanctions for drug use in phase one, whereas such a requirement could be unrealistic for those who are compulsively addicted to alcohol or other drugs. For addicted individuals, the emphasis during phase one might, instead, be on learning to follow a structured routine, attending treatment sessions on time, completing applicable clinical assessments, and obtaining a self-help group sponsor. It might be more realistic to reserve a major emphasis on the initiation of abstinence for addicted individuals until phase two of the program. After an addicted participant has developed a productive routine and begun to engage meaningfully in treatment, then abstinence might become a proximal goal, and higher-magnitude sanctions would ensue for drug use.

This practice could require some drug courts to develop separately stratified tracks or dockets for participants who are drug-dependent as opposed to those who are abusers. Separate tracks could help to avoid perceptions of unfairness when some participants are treated more leniently than others for what appears on the surface to be the same behavior (i.e., drug use). Of course, for rural drug courts or those with low censuses, separate tracks might not be practical. Staff members in those programs will need to be able explain to participants why they are being treated differently from other clients based upon their clinical needs. Having a prepared script on hand to provide this explanation could help to reduce perceptions of unfairness.

XII. [§7.12] NONCOMPLIANCE VS. NONRESPONSIVENESS

Related to the distinction between proximal and distal goals is the distinction between noncompliance and nonresponsiveness. Drug court participants are jointly supervised by the criminal justice system and the substance abuse treatment system, which can lead to apparent (though not actual) role conflicts between different team members. Criminal justice professionals are primarily charged with protecting public safety and are empowered to respond to misconduct with enhanced supervision or punitive sanctions. Treatment professionals, by contrast, are primarily charged with improving the health and functioning of their clients and may intensify a client's treatment plan in furtherance of these goals. It is not always immediately apparent whether a punitive sanction or a change to the treatment plan is called for in a given instance. Distinguishing between noncompliance and nonresponsiveness addresses this issue squarely.

Increased treatment should not be used as a sanction.

If, for example, a participant fails to show up for counseling sessions or to deliver urine specimens when directed to do so, he or she is arguably engaged in willful noncompliance, assuming that the absences were unexcused and avoidable. Under such circumstances, it would be appropriate to apply a punitive sanction or to increase the participant's supervision requirements. On the other hand, if the participant was attending all of his

or her required sessions but was not responding to the clinical interventions, the fault might lie not with the participant but with the treatment plan. Rather than apply a punitive sanction, it would be preferable to alter the treatment plan. For example, the participant might require intensive clinical case management services to address a co-occurring psychiatric problem. In other words, noncompliance refers to a failure to engage in treatment, whereas nonresponsiveness refers to a failure to benefit from the treatment that is being offered. The former is willful (and proximal) and the latter is non-willful (and distal). Thus, the former should result in a sanction, and the latter should result in an alteration of the treatment plan. Recent research suggests that making this important distinction when applying consequences has the potential to significantly improve outcomes in drug court programs.[18, 19]

Distinguishing between noncompliance and nonresponsiveness addresses an important problem that is commonly encountered in drug courts. Some judges or probation officers may suggest increasing treatment requirements as a consequence of misconduct in the program. However, as noted in Chapter 4, "Addiction and Treatment Services," this practice not only risks wasting scarce treatment slots, it may give the inadvertent message to participants that treatment is aversive and thus something to be avoided. It is only appropriate for a judge or criminal justice professional to order a change to the treatment plan or level of care in response to noncompliance when it is clinically indicated after reassessment by a treatment professional. If, however, a participant is being compliant in treatment, but is not getting better, then it is certainly appropriate for the court to order a clinical reevaluation of the case by treatment professionals and to solicit recommendations from the treatment professionals about the best course to pursue. Under such circumstances, the judge would be relying upon expert advice in ordering a change to treatment, rather than practicing a clinical specialty without a license or adequate training or expertise.

XIII. [§7.13] THE CARROT VS. THE STICK

There is a serious concern that some drug courts may place an inordinate emphasis on squelching undesired behaviors to the detriment of reinforcing desired behaviors. Although drug courts can be quite effective at reducing crime and drug use while participants are under the supervision of the judge, these effects should not be expected to endure unless the participants receive alternative rewards and sanctions in their natural social environments that help to maintain the effects over time. For instance, participants who find a job, develop hobbies, or improve their family relationships will be more likely to be continuously rewarded for prosocial behaviors (e.g., with praise, social prestige, or wages) and punished for drug-related behaviors (e.g., by being ostracized from peers or fired from a job). By contrast, participants who simply return to their previous habits and routines will most likely find themselves back in an environment that rewards drug use at the expense of prosocial attainments. The community reinforcement approach (CRA)[20] is one counseling strategy that seeks to capitalize on natural systems of rewards and sanctions in clients' social environments to compete with the drug-using lifestyle.

To maintain treatment effects over time, it is essential that drug courts not merely punish crime and drug use, but also reward productive activities that are incompatible with crime and drug use. A critical task facing drug court practitioners is to use more positive reinforcement in their work and to select behavioral goals for their clients that can take the place of drug use and crime.

As was discussed earlier, sanctions have been associated with a host of negative side effects that can make outcomes worse, rather than better. For example, sanctions have been associated with avoidance responses, learned helplessness, anger, despondency, and ceiling effects. Positive reinforcement has also been associated with negative side effects; however, those side effects tend to be considerably less problematic than those of punishment. For example, some participants may become complacent or feel entitled if they come to expect something for nothing. That is, if participants are continuously rewarded for mediocre or substandard performance, this will not only fail to improve their performance, but can lead them to feel resentful or despondent if expectations for acceptable performance are subsequently increased. This problem can be easily avoided by increasing one's expectations for participants over time. As participants move through the various phases of the program, the requirements for the program should steadily increase (i.e., distal goals should become proximal goals). If expectations for appropriate behavior are continuously heightened, there should be little concern that participants' conduct will become stagnant.

Reward productive activities that are incompatible with crime and drug use.

There is also some suggestion from the research literature that artificial, extrinsic rewards can undermine clients' intrinsic motivation for change.[21] Importantly, however, these findings relate to detrimental effects on individuals who were already intrinsically motivated. Intrinsic motivation is often conspicuously absent among drug abusers and criminal offenders. If participants are not motivated to begin with, then it is difficult to envision how their motivation could be interfered with. For unmotivated individuals, it is not only acceptable to use extrinsic rewards to get them started on a course towards abstinence, but it may be minimally necessary to do so.[22] After they have experienced a sustained interval of sobriety, then participants will begin to experience the natural rewards that come with abstinence. For example, they will start feeling physically and emotionally healthier, may regain the respect of family members or friends, and may become gainfully employable. Then, and perhaps only then, will they begin to develop the intrinsic motivation that is necessary to maintain abstinence over the long run.

Perhaps the most enduring objection to rewards is one of equity. Citizens are not ordinarily given tangible incentives for abstaining from drugs and crime. Therefore, it may seem inequitable to reward some people for doing what is minimally expected of others—particularly when those being rewarded may be seen as the less desirable elements of society, such as drug addicts and criminal offenders. Because this objection is based upon sentiment and is not related to the actual effects of the intervention, it cannot be empirically disputed. It is an unavoidable policy objection that can make it

High-risk, antisocial drug abusers respond very well to positive reinforcement programs.

difficult for drug court professionals to conduct their work most effectively. The best recourse is to explain to stakeholders why positive reinforcement is so necessary to achieve long-term gains among drug offenders, and why it may be among the most effective and cost-effective strategies to employ with these individuals. Perhaps data can answer some of the objections that are often raised against the use of positive rewards with offenders.

In fact, numerous studies have found that high-risk, antisocial drug abusers tended to respond exceptionally well to positive reinforcement programs.[23, 24, 25] Many of these individuals are reinforcement-starved, meaning they rarely received praise or positive incentives for good behaviors in their past, including during their childhoods when incentives are especially influential. Because they may have been denied positive reinforcement during many of their formative years, they may crave positive attention to a degree beyond that of most adults. Although they may make every effort to act as if they do not care about rewards, their actions often suggest otherwise. Some studies in drug courts suggest that the more severe an offender's criminal background, the more responsive he or she may be to earning rewards for good behaviors.[26]

XIV. [§7.14] CONCLUSION

At its core, the criminal justice system is a contingency management intervention designed to reduce crime and rehabilitate offenders. Traditionally, however, rewards and sanctions have rarely been applied in a systematic manner that could produce meaningful or lasting effects. Dissatisfied with this state of affairs, a group of criminal court judges set aside special dockets to provide closer supervision and greater accountability for drug-abusing offenders. Wittingly or unwittingly, these judges devised programs highly consonant with scientific principles of operant conditioning. Specifically, they:

- Introduced greater certainty, celerity, and fairness into the process of imposing criminal justice sanctions;
- Crafted a range of intermediate-magnitude incentives and sanctions that could be ratcheted upward or downward in response to offenders' conduct;
- Developed a phased program structure that separates proximal from distal goals, and thus helps to shape behavior most effectively;
- Introduced more positive reinforcement and therapeutic goals into the business of the courts.

As a result, outcomes from drug courts have substantially exceeded those typically achieved by other programs for drug-involved offender populations. Drug courts are certainly far from perfect and more research is needed to fine-tune the behavioral components of these programs. Clearly, however, drug courts represent the best behavior modification intervention, to date, that has been applied on a systemic scale for drug-involved offenders.

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