

Sanctions and Incentives: A Review of What Works and Why

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Opening Summary

Learning to lead a drug-free life style for the chronically addicted often involves repeated relapses and related frustrations before drug-free behavior becomes ingrained. Some enter Drug Court, at best, ambivalent towards recovery and, at worst, with little or no motivation to change. While described as voluntary, participation in Drug Court at times is viewed by the offender as forced, or the only viable option. Promoting change, much less sustained prosocial, desirable behaviors amongst seriously addicted users, is a daunting task for even the most seasoned practitioner. Even highly motivated offenders find the process of change equally challenging.

Drug Courts recognize the need for sanctions and incentives, but many struggle to discover an effective method for their application. Some Drug Courts impose longer and more severe sanctions for repeated behavior, when all else fails and nothing else seems to work. The result can be a program in which the therapeutic benefits are outweighed by punitive responses.

Vigorous scientific research supports the use of contingency management strategies of rewards to encourage positive behavior and sanctions when necessary to reform behavior of drug abusers.¹ Externally applied sanctions and incentives (extrinsic motivators) have been found to increase treatment outcomes, engagement and retention. Drug Courts reward incremental success, which leads to sustained changes. They teach methods and provide tools to shed old habits and to adopt healthier lifestyles. Ultimately, sustained change must come from within when the new behaviors, in and of themselves, become the incentive (intrinsic motivators).

The challenge facing Drug Courts is to improve the offender's attitude, actions and social functioning. To do so, courts must closely monitor behavior, and respond immediately by imposing certain, swift and fair rewards or sanctions.²

This article discusses the critical factors and scientific support, which influence the use of sanctions and incentives and provide guidelines for their application.

Main Principles

Drug Courts encourage progress by applying a continuum of intermediate sanctions and rewards. Sanctions are thought to be most effective when applying the following principles:

Defining Behavioral Conditions / Specificity

Participants must be apprised at the onset of the specific behaviors that will result in specific sanctions. Behaviors must be clearly and unambiguously explained. They must also be described in writing to be effective and to avoid misinterpretation. Supplying advanced information diminishes the argument that the participant was unaware of the expectations. Wording such as “missed drug tests”, “appear at all treatment appointments” is concrete; whereas wording such as “inappropriate behavior” is not. Failing to inform participants of expected behaviors and the consequences for non-compliance can also result in the “learned helplessness” syndrome leading to aggression, withdraw and despondency.³

Clearly explain all obligations and expectations in the Participant Handbook.

Fairness

Some drug courts claim that imposing incentives and sanctions pursuant to a schedule fails to take into account the unique circumstances and other specific factors of each participant. This approach, however, suffers the risk of perceived inconsistency and bias. The lack of certainty regarding what behavior will garner what sanctions or responses may be perceived as unfair and lead to program dissatisfaction or defiance. Participants may also fail to recognize overt differences much less nuances between cases, which lead to different results. Research supports the notion that participants are influenced by what others receive and are inclined to punish others, and even act against their self interest when their perception of equity or fairness is not achieved. In contrast, they tend to be most cooperative when evenhandedness is present.⁴ Participants are more likely to respond positively where similar behaviors and situations produce consistently similar sanctions.

Courts should also be vigilant in explaining the rationale for applying different responses in similar circumstances. Research indicates that participants are more likely to comply with court orders when they believe they have treated them fairly and with respect.⁵ They must believe that the sanction is fair, that it can be

The judge should clearly articulate the reasons for imposing each sanction.

completed and that they are not being abused.⁶

The manner in which a response is delivered is also important. Motivational interviewing techniques are often successfully employed in Drug Court settings and enhance intrinsic motivation.⁷ This method uses open ended questions, points out erroneous beliefs or inconsistencies and helps others to recognize the need for change. Motivational interviewing is an effective method when imposing sanctions and may influence the participant's belief that the Drug Court and staff program are genuinely concerned about them.⁸

Participants should be given a chance to explain the situation and feel that they were heard.

Certainty

It is critical that every behavior, both positive and negative, is addressed. The judge should praise or provide other appropriate responses for any and all success and accomplishments, however small. It is equally important that every behavioral lapse is confronted. To achieve that end proper procedures must exist to ensure an accurate accounting of all behaviors.

Wrongly rewarding negative behaviors or failing to identify positive ones weakens program credibility, inhibits proper supervision as well as the opportunity to shape behavior.⁹ For example, inaccurate drug test results or drug testing procedures may afford the opportunity for submission of adulterated samples leading to erroneous results and incorrect responses by the court. Additionally, inconsistent detection of drug usage creates an intermittent schedule of consequences, which essentially diminishes the ability to shape behavior.¹⁰

Review your drug testing procedures to ensure that they are observed, monitored and reliable.

Credibility and trust take a long time to develop and moments to destroy. A robust monitoring and drug-testing system is critical and should be soundly installed in the Drug Court. Consistency will also yield the benefit of demonstrating program fairness, vigilance and will avoid the exploitation of program weakness.

Second Chances

Second chances may diminish the impact of sanctions because they decrease the certainty of their application and essentially give participants permission to use drugs without consequences. A more effective alternative is the concept of Negative Reinforcement which removes the sanction contingent upon performance of a target action or desirable behavior. Second chances are earned through concrete actions reflecting demonstrable attainment of treatment goals.¹¹ It differs fundamentally from punishment in that negative reinforcement focuses on increasing desirable conduct rather than on decreasing undesirable behavior. An example would be reducing the

frequency of status hearings because of strides made in treatment or negative drug screens.

Immediacy / Celerity

Sanctions that are imposed as soon as possible after the infraction occurs have the greatest influence on transforming behavior. Research indicates that the effects of sanctions begin to diminish within hours or days after an infraction has occurred especially for those who return to the same troubled environments, routines or habits. Additionally, new behaviors which occur before the original violation is sanctioned might lead to the unfortunate association of positive behavior with the sanction.¹²

Discounting occurs when the risk of a future consequence has minimal or no effect on current behavior. The promise of future rewards for performance of specific behaviors is simply not considered as important as future punishment and diminishes in power five times greater than future sanctions (punishers).¹³

Positive reinforcement from a judicial authority figure is a powerful motivator particularly for individuals who have had limited success or praise in their lives. However, the time between court appearances may diminish their effectiveness. To compensate for gaps in time between court hearings, team involvement in contingency management should be considered throughout the Drug Court system.¹⁴

Ultimately, rewards or punishments do not have to be substantial, but they must be delivered immediately and affect the status quo to achieve the greatest impact.¹⁵

Severity / Magnitude

Reaching the severe level of addiction and dysfunction of the typical drug court population takes many years and it is unrealistic to expect that achieving sobriety and other program goals will happen with alacrity. It is imperative to impose the appropriate behavioral requirements at the appropriate time to shape conduct. Likewise, effective Drug Courts concurrently enforce the right level of sanction at the right time. Sanction severity should be determined based on what is realistically achievable at the time of its imposition.

In the beginning phases of the program and treatment when the court is trying to impress behavioral consistency and accountability, proximal or short term goals are stressed i.e., attendance at treatment, timely appearance at court hearings. These objectives lay the foundation for achieving longer term goals. They are easily attainable and within the participants' immediate capabilities; therefore, more severe sanctions should be imposed for these failures. Conversely, distal or long term behaviors are more difficult to accomplish. They are not stressed in the early stages of program involvement and should receive lower level sanctions. Examples of distal behavior might be remaining drug free and obtaining employment. However, it would

be unrealistic to demand drug-free behavior at the onset before the individual has significantly engaged in treatment and lacks the skills to comply. Imposing severe sanctions at that time will not alter conduct, will lead to frustration, a feeling of helplessness and may have the unintended effect of causing them to abandon their efforts.¹⁶

Conversely, at the beginning stages lower level incentives should be awarded for displaying proximal behaviors, as the participant already has the ability to comply. The reverse applies to achievement of distal behaviors where higher level incentives should be awarded. Verbal acknowledgment would be an appropriate response for the proximal goal of appearing for court. A more significant incentive such as reduction in supervision appearances would be appropriate for coaching a child's sports team or negative drug tests. The ratio shifts between proximal and distal goals, along with the court's responses as progress is made through the program and the phases.

Graduated System

A coordinated system of consistently applied graduated responses to both constructive and destructive behavior is quite effective in shaping performance. Specifically, incentives to acknowledge accomplishments encourage continuation of constructive behavior. Even small rewards for the completion of weekly goals recognize the value of incremental progress.¹⁷ A continuum of sanctions which rise in concentration as infractions increase discourages negative behavior.

Imposing the harshest punishment at the beginning of the program, does not leave room for more potent subsequent responses if necessary. If the punishment is too light, the participant may habituate to its effects, which will have little or no effect on behavior. Conversely, overtime, a steady diet of negative consequence can lead to anger, perceived inability to achieve, and rejection of the therapeutic process.

Develop a list of therapeutic responses and programmatic sanctions.

Finding the proper balance and reinforcer for each person, within a range, and adjusting the magnitude of response will improve success. Punishment is most effective when used with positive reinforcement.¹⁸

Individuality

The program must consider what sanctions will resonate to the individual. Not everyone will respond the same to sanctions. For some participants, a lengthy jail stay is not particularly a deterrent as it may afford an escape from a difficult environment, provides food, shelter and clothing, or is considered a right of passage. The same person may react differently for shorter jail stays, which has the effect of schedule disruption and provides insufficient time to become accustomed to surroundings or to create a network. Criminality may increase upon the imposition of sanctions for unemployed offenders, where the converse may be true for employed participants, as does the threat of sanctions for older individuals.¹⁹ Similarly, offenders who have more to lose are more motivated by sanctions or their threat; whereas the opposite is true for those with little to lose.²⁰

Interview participants to determine what rewards would be most effective.

Sanctions must be designed so that the offender believes them to be less onerous than prison and that they can be completed. Sanctions should not communicate that the team is merely being punitive, abusive or trying to return the participant to prison.²¹ "Not all punishments are painful, and not all painful events are punishing".²²

Therapeutic Responses vs. Punitive Sanctions

Drug Courts recognize that drug usage is a chronic disease and that relapse is to be expected. Participants who abide by program rules, but who continue to struggle should not receive punitive sanctions. In the alternative, the program should look first to programmatic failures by considering undiagnosed mental health issues, housing concerns, reevaluating the treatment plan and increasing the level of care, if appropriate.

Adherence to program rules, not abstinence is the focus in the first phase; however, every behavior including drug usage must be addressed. Nevertheless, punitive sanctions for program noncompliance such as failing to attend treatment should be handled differently than therapeutic responses for failing to make sufficient progress in treatment.

Treatment should be a desired activity, and care should be taken not to couch augmentation in treatment as a sanction or to communicate a negative or untoward impression regarding its value. The sanction process should be seen as an opportunity to adjust treatment to limit subsequent relapse, rather than the first step on the path to an eventual termination of drug court participation and a likely sentence to custody.²³

Motivational Incentives

People tend to respond more favorably to positive than negative reinforcement and research supports that a tangible reinforcement system is an effective intervention to promote drug abstinence²⁴ and treatment retention²⁵. Additionally, rewarding prosocial activities improves clinical outcomes; i.e., completion of tasks such as participation in vocational activities, attending sessions, making phone contacts and attendance in counseling groups.²⁶ Developing and encouraging opportunities to engage in healthy behavioral alternatives in the environment; i.e., recreation, employment, and hobbies improves the likelihood of remaining abstinent and program outcomes.

Select Effective Reinforcers

Every positive behavior must be addressed and in this regard, more is better. As with sanctions, not all incentives will resonate or motivate every receiver. What works in some courts and for some participants may not work for others. To enhance effectiveness, incentives need to be matched with the receiver. For example, candy would be wasteful for a diabetic participant and wealthier or employed participants may find very inexpensive trinkets ineffective.

Ensure that the delivery of incentives is immediate, consistent, predictable and effectively chosen for the particular population.

Develop an Implementation / Accountability Plan

A plan that incorporates immediate, reliable, and consistent application of the intervention is critical to success. Failing to recognize achievements as well as confronting poor conduct weakens program credibility. At each status hearing the court should praise for even the smallest accomplishment and reward any productive activity. Science has identified that rewards activate the brain's dopamine reward system²⁷ and significantly increases intrinsic motivation.²⁸ Additionally, consistent and continuous delivery of rewards will extend the positive effects of treatment over time.

Care should be taken to avoid over indulgence. Likewise, individuals may do the least possible to receive the reward without truly committing to the new behavior. They may also become upset when the rewards decrease. Ultimately, the goal is to transform external rewards into intrinsic motivators so that positive behavior becomes the reward in itself.

Best Practices

- Delineate expectations and consequences verbally and in writing
- Choose attainable goals at the appropriate time
- Respond to every target action, both positive and negative
- Deliver responses immediately
- Impose responses at the appropriate level

- Impose responses consistently, but explain deviations
- Apply therapeutic responses differently than punitive sanctions
- Target responses to the population/individual
- Punish in combination with positive reinforcement to improve success
- Ensure reliable and frequent drug-testing procedures
- Strive for fairness

Conclusion

Consistency, speed and magnitude of a response to each behavior can effect participant motivation and willingness to change. Behaviors and their consequences must be clearly described and differences in their application in similar situations must be explained and distinguished. Perceived fairness plays an important role in offender improvement. In the end, changing long engrained, addictive behavior is possible through a well conceived and modulated application of behavior modification techniques endorsed and practiced by the Drug Court team.

Endnotes

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