



**Justice Speakers Institute**  
SPEAKING, TEACHING & TRAINING - WORLDWIDE

# **Incentives, Sanctions and Treatment Adjustments**

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Probation and Community Corrections Officers' Association

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# Why don't they just change?

- Why can't people just change when it is obvious that change is needed?

## Change is hard!

- For the person with SUD addiction becomes easier than trying to change
- Fear of failure
- Distrust of “the system”

# Left or Right?



## Stage of Change

### Pre-contemplation

No intent to change

### Contemplation

Thoughts about change

### Preparation/Determination

Small behavioural changes

### Action

Modify behaviour and the environment

### Maintenance

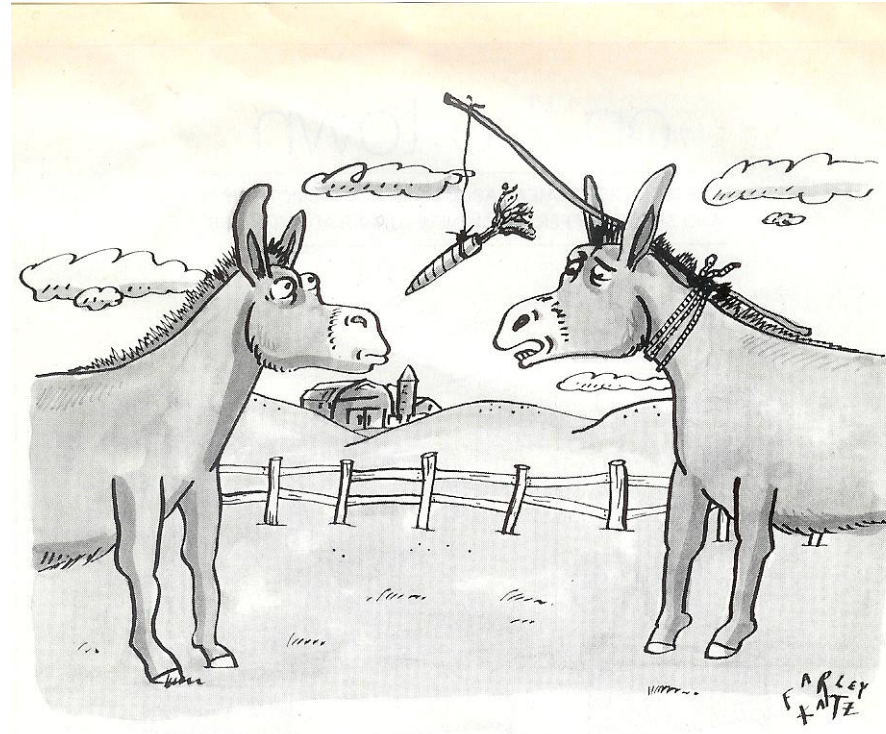
Consolidate gains and efforts

(Birgden, 2004)

<b>Stage of Change</b>	<b>Court</b>
<u><b>Precontemplation</b></u> No intent to change	<b>MI to elicit problem recognition</b>
<u><b>Contemplation</b></u> Thoughts about change	<b>MI to elicit expression of concern</b>
<u><b>Preparation/Determination</b></u> Small behavioural changes	<b>MI to elicit intention to change</b>
<u><b>Action</b></u> Modify behaviour and the environment	<b>MI to elicit optimism about change</b>
<u><b>Maintenance</b></u> Consolidate gains and efforts <b>(Birgden, 2004)</b>	<b>MI to maintain optimism about change</b>

<b>Stage of Change</b>	<b>Court</b>	<b>Clinicians</b>
<b><u>Precontemplation</u></b> No intent to change	MI to elicit problem recognition	MI to elicit problem recognition
<b><u>Contemplation</u></b> Thoughts about change	MI to elicit expression of concern	MI to elicit expression of concern
<b><u>Preparation</u></b> Small behavioural changes	MI to elicit intention to change	MI to elicit intention to change
<b><u>Action</u></b> Modify behaviour and the environment	MI to elicit optimism about change	Apply cognitive-behavioural intervention and develop a rehabilitation plan
<b><u>Maintenance</u></b> Consolidate gains and efforts (Birgden, 2004)	MI to maintain optimism about change	MI to maintain optimism about change (if required)

# Incentives and sanctions



*"It's the only way I can get myself out of bed in the morning."*

The purpose of incentives and sanctions is ...

**to keep participants engaged in treatment**



- Length of time is key: The longer a patient stays in treatment, the better they do
- Coerced patients tend to stay in treatment longer

# “Voluntary treatment”

- 60-80% of “voluntary” treatment clients drop out of treatment prematurely and few successfully graduate

University of California, Los Angeles. (2005) *Evaluation of the Substance Abuse and Crime Prevention Act, 2005 Report*. Los Angeles: UCLA Integrated Substance Abuse Programs; Marlowe (2002). Effective Strategies for intervening with drug abusing offenders. *Villanova Law Review*, 47, 98-1025

Punishment is not the goal in  
the imposition of sanctions;

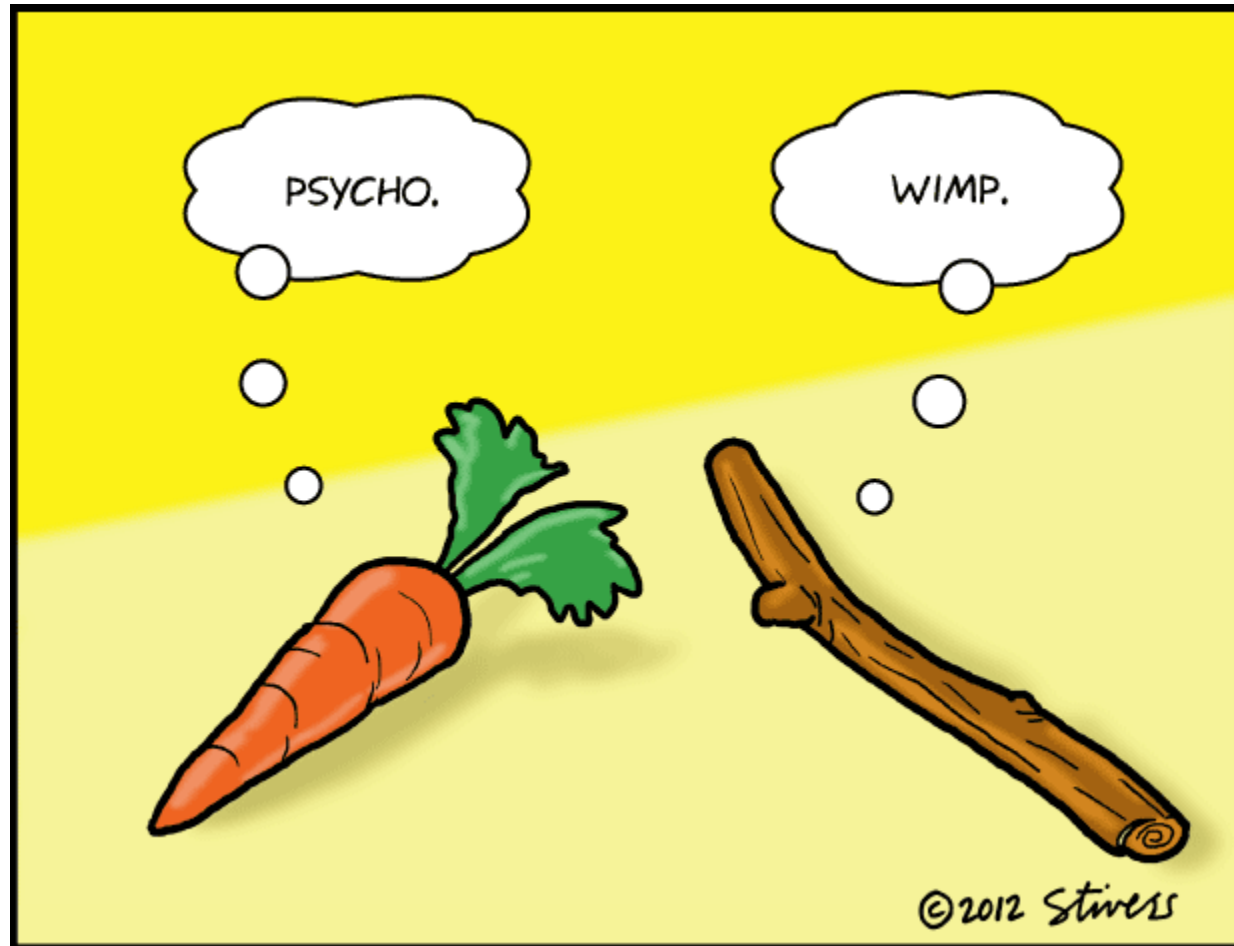
**Changing behavior is**

# Key Attributes of Sanctions

- Certainty of a (maybe not a specific) sanction
- Swifttness of the sanction
- Severity of sanction appropriate to behavior leading up to it
- Perceived fairness of the sanction – “everyone” gets something similar / maybe not exactly the same

## Key Attributes, cont.

- Balanced with provision of “rewards” or incentives
- Issued by respected authority figure
- Perceived fairness of the sanction – “everyone” gets something similar / maybe not exactly the same
- Balanced with provision of “rewards” or incentives
- Issued by respected authority figure



NADCP



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# NADCP Principle 5

- **Principle 5**
- **Closely monitor higher risk offenders for: substance use, criminal activity and treatment attendance.**
- **Conduct frequent status reviews by a judge.**



## **NADCP Principle 5, cont.**

- **Provide the judge with the authority to impose meaningful and substantial rewards and sanctions.**
- **Conduct status reviews for higher risk offenders at least bi-weekly or monthly otherwise little effect on criminal activity or substance abuse.**

# Principle 7

- **Sanctions and rewards tend to be least effective at the lowest and highest end.**
- **Lowest end: repetitive warnings or a mere “slap on the wrist” = habituation.**
- **Highest end: unduly harsh incarcerative sentences = counterproductive reactions of resentment/despondency and interferes with adaptive functioning.**

## NADCP Principle 7, cont.

- **Intermediate range is the most effective:**  
utilize a wide and creative range of intermediate responses that can be ratcheted up or down in intensity in response to successive infractions or achievements.
- **Programs need to be legally empowered and resourced to sanction and reward.**
- **Sanctions and rewards need to be meaningful and salient for their participants.**

# Get it “just right”



## Principle 8

- **Jail sanctions can improve outcomes if:**
  - **they are imposed quickly after an infraction,**
  - **are brief in duration,**
  - **do not interfere with the treatment process,**
  - **are imposed after lesser sanctions have failed to improve conduct.**
- **Treatment interventions should continue uninterrupted while participants are detained.**

## **NADCP Principle 8, cont.**

- **Participants should be welcomed back immediately into treatment upon release.**
- **Brief prison sanctions differ fundamentally from final incarcerative sentences, which are longer and do not maintain an ongoing treatment plan.**

# Principle 9

- **Individuals with long histories of addiction, mental illness or criminality have typically been exposed to repeated punishment over long periods of time.**
- **They have often have habituated to the threat of sanctions or have reached a ceiling effect in which further escalation of punishment may be impractical.**
- **However, punishment may still be necessary to use restrictive consequences for misconduct in the interests of community protection.**

## **NADCP Principle 9, cont.**

- **But, still need positive reinforcement for good behaviour to produce long-term behavioral improvement.**
- **So, expending resources on positive incentives is most justified for those who are least likely to respond to punishment and least accustomed to being rewarded for good behaviour (drug court participants!)**





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# Rules for Sanctions

- 1.Certain**- respond to all defined rule-breaking and positive behaviours.
- 2.Swift**- apply the sanction or reward as soon as possible after behavior has occurred.
- 3.Predictable**- sanctions and rewards need to be real and consistently applied to all participants.
- 4.Proportionate**- sanctions and rewards need to be fair and proportionate to the seriousness of the behaviour.

•(Taxman, Shephardson, & Byrne, 2004)

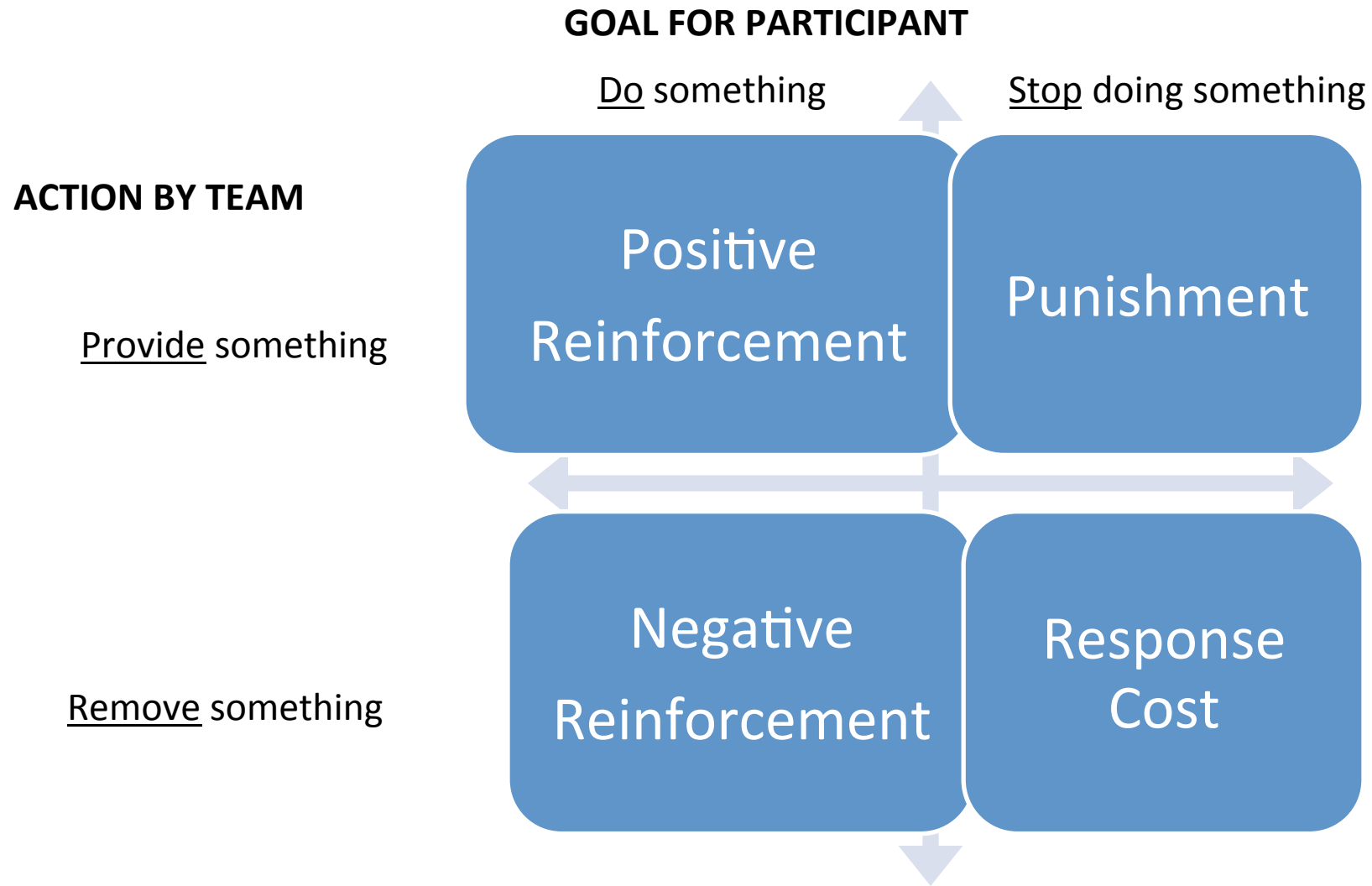
# Court's responses to participant behavior:

**Incentives**

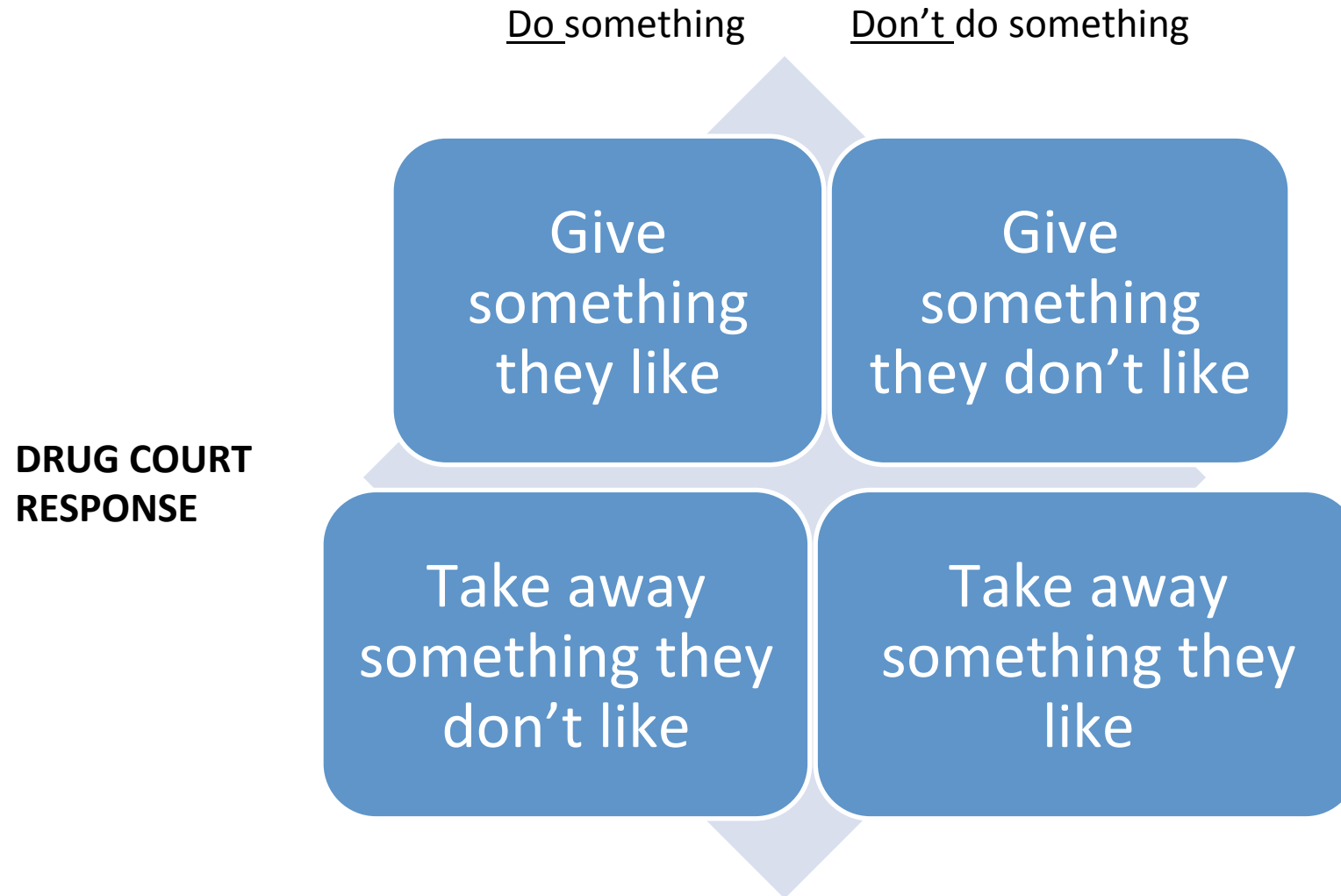
**Sanctions**

**Treatment Adjustments**

# Behavior Modification 101



# TARGET BEHAVIOR



# Types of Sanctions

## Punishment

“Any consequences of a specific behavior that reduces the likelihood that the behavior will be repeated, or repeated at the same rate, in the future” (Marlowe, 1999).

## Negative Reinforcement

“The removal of an earned sanction contingent on a target behavior, which has the effect of increasing that behavior” (Marlowe, 1999).

Negative Reinforcement differs fundamentally from punishment in that negative reinforcement focuses on **increasing desirable behavior** rather than on decreasing undesirable behavior.

Pre-trial or pre-sentencing diversionary programs exemplifies negative reinforcement, and not punishment.

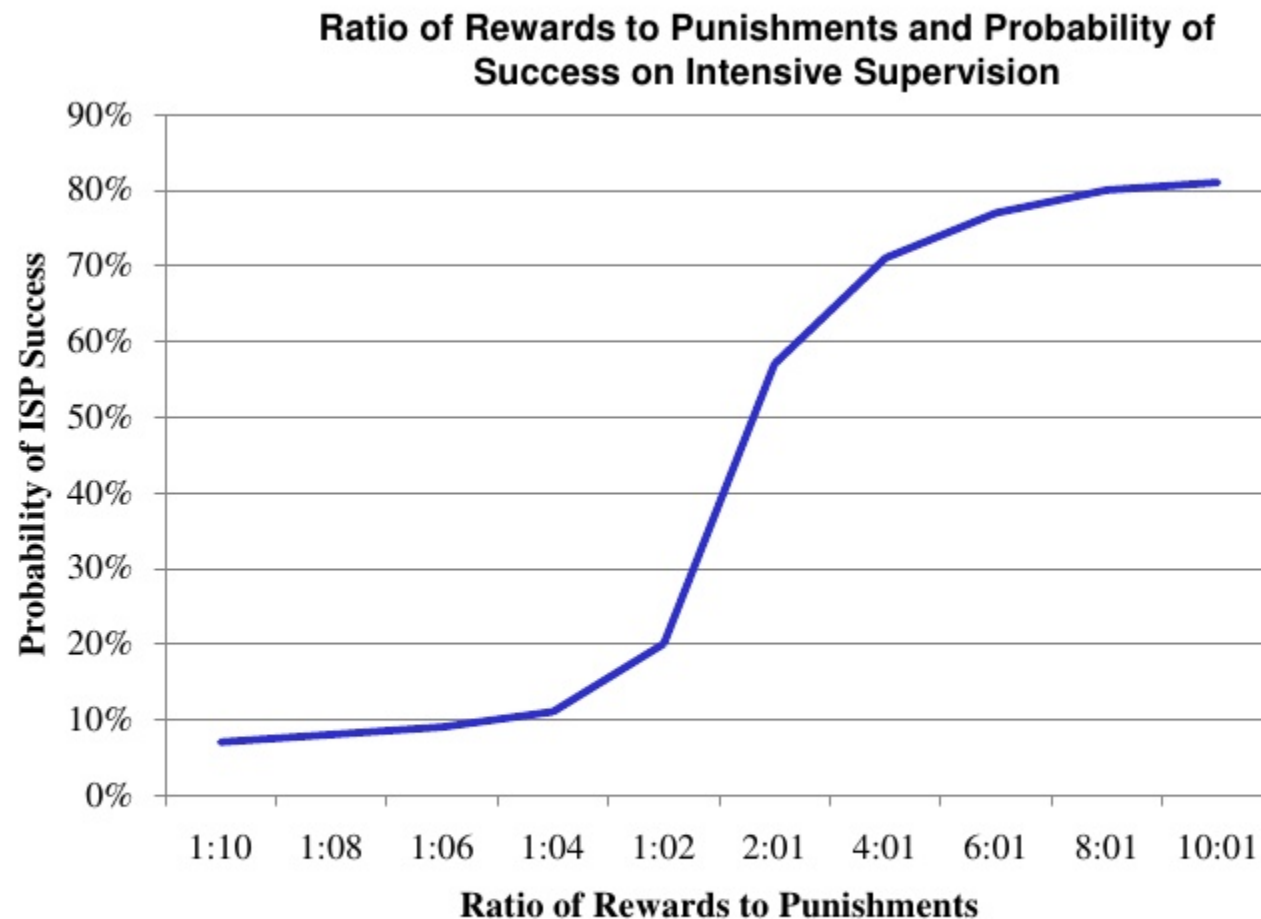
# Incentives Promote Abstinence

- Addiction changes the brain in ways that make individuals more responsive to short-term rewards and less able to forego them in the interest of longer term benefits
- Incentives weaken over time but can show benefits for 1-2 years

Volkow, Nora D., M.D., "Incentives Promote Abstinence," NIDA Notes 23:3 (2011)



# Incentives 4:1 over Sanctions



Widahl, E. J., Garland, B. Culhane, S. E., and McCarty, W.P. (2011). Utilizing Behavioral Interventions to Improve Supervision Outcomes in Community-Based Corrections. *Criminal Justice and Behavior*, 38 (4).

# Fun Theory



Stockholm, Sweden installed “piano stairs.” 66% more chose stairs over escalator.  
[www.JusticeSpeakersInstitute.com](http://www.JusticeSpeakersInstitute.com)

Although drug courts recognize that individuals may relapse, AOD use is never condoned, and there is always a response to both compliance and non-compliance.

**Relapse is part of addiction,  
not recovery**

PASS

# Program Termination

- Threat to public or staff safety
- Virtually never appropriate for continued use
- Written in policy and procedure manuals
- **Drug Courts make failure and expulsion from the program difficult for the participant to achieve**

# The Carrot Is Mightier Than the Stick

- Those in reinforcement contingency stayed longer in treatment than those in punishment-based programs
- Effects of punishment are transitory- **change ends when punishment ends**
- Punishment most effective when used with positive reinforcement

(Higgins & Silverman, 1999)

# The Mighty Carrot



"I understand the concept, sir, but I think I'd do better if it were a donut"

# Incentives

- A positive consequence that is the direct result of, and is a reward for, the offender's positive behavior.
- Reward prosocial productive activities that are *incompatible with crime and drug use*.

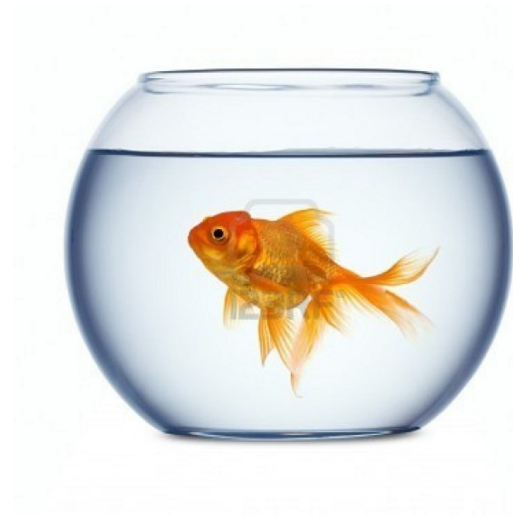


# Fishing for Tangible Rewards

- Stretch program resources by incentivizing participants with opportunities to draw rewards from a fishbowl. Most of the rewards may be of low or no dollar value, but a few should be highly desirable to participants.

Marlowe, Douglas B., Behavior Modification 101 for Drug Courts: Making the Most of Incentives and Sanctions, NDCI (2012)

# The fishbowl study



**Adding a “fish bowl” increased success 4xs for stimulant abusers attaining 12 weeks of continuous abstinence. Cost is \$200 per participant.**

Petry, N. M., Martin, B., Cooney, J. L., & Kranzler, H. R. (2000). “Give Them Prizes and They Will Come: Contingency Management for Treatment of Alcohol Dependence,” *Journal of Consulting and Clinical Psychology*, 68 (2), 250-257. Petry, N. M. (2001). “Contingent reinforcement for compliance with goal-related activities in HIV-positive substance abusers.” *The Behavior Analyst Today*, 2 (2), 78-85.

# The Plum You Pick is Sweeter

Jeffrey Cockburn, Anne G.E. Collins, Michael J. Frank. **A Reinforcement Learning Mechanism Responsible for the Valuation of Free Choice.** *Neuron*, 2014; DOI: [10.1016/j.neuron.2014.06.035](https://doi.org/10.1016/j.neuron.2014.06.035)



- Many people value rewards they choose themselves more than rewards they merely receive
- This is true even when the rewards are actually equivalent.
- A new study provides evidence that this long-observed quirk of behavior is a byproduct of how the brain reinforces learning from reward.

# How to deliver responses

- Fairness is Key
- Empathetic communication can improve participant satisfaction
- Use Motivational Interviewing or Motivational Interactions strategies

(Andreoni, et al, 2001; Hubble, Duncan, & Miller, 1999)

# Drug Court Participant:

- “It’s a learning experience for me. You just learn what to do. When you see somebody doin’ right and they get patted on the back, you think, ‘I want to be like that next time I come.’ Or when you see someone get the cuffs slapped on them, you thinking like, ‘Oh, I ain’t going to do that. I don’t want to be that person’.”

# Procedural Fairness/Justice

- Posits that the **manner** in which justice is done is just as important as the outcome
- “...bridges the gap that exists between familiarity and unfamiliarity and the differences between each person....”
- [www.Proceduralfairness.org](http://www.Proceduralfairness.org)
- Burke, Kevin and Steve Leban, “Procedural Fairness: A Key Ingredient in Public Satisfaction,” *Court Review* American Judges Association (2007)

# Procedural Fairness

- **Voice:** the ability to participate in the case by expressing their viewpoint;
- **Neutrality:** consistently applied legal principles, unbiased decision makers, and a “transparency” about how decisions are made;

# Procedural Fairness, cont.

- **Respectful treatment:** individuals are treated with dignity and their rights are obviously protected;
- **Trustworthy authorities:** authorities are benevolent, caring, and sincerely trying to help the litigants—this trust is garnered by listening to individuals and by explaining or justifying decisions that address the litigants' needs.

Tom Tyler, "Why People Obey the Law" 22 (2006)



# Fairness is Key

- People will accept an unfavorable ruling if they feel the process is fair.
- People who win but who do not feel they were treated fairly are unhappy with the procedure

# There are two very different types of Behavior Change

- **Imposed Behavior Change**
  - ✓ Making you do something that you do not want to do (work, prison, losses, divorce, sanctions)
  - ✓ The primary reason for that change is extrinsic not intrinsic
- **Chosen Behavior Change**
  - ✓ Intentional and intrinsically motivated
  - ✓ Taking ownership of the change and integrating it into your lifestyle

DiClemente, "Reducing Recidivism and Promoting Sustained Change, " 2011

# An Evidence-Based Approach

## 1. Procedural Fairness

- Due process = participation, dignity & trust = greater compliance with the law = case management review meetings (legal aid lawyers + Judge).

## 2. Motivational Interactions

- Techniques for all staff to increase the likelihood that participants will enter, continue, and comply with active change strategies (matched to treatment readiness).

# Evidence-Based Approach, cont.

## 3. Contingency Contracting

**Increased motivation to change using a systematic method of consequences (*rewards* + sanctions).**

**That is, carrots and logical consequences, not punishment.**

- Proactive trouble shooting
- Judge directly address progress
- Open courtroom
- All observed consequences
- Genuine, caring, consistent, and firm



Carrie J. Petrucci, "Respect as a Component in the Judge-Defendant Interaction in a Specialized Domestic Violence Court that Utilizes Therapeutic Jurisprudence." CRIMINAL LAW BULLETIN 38:2 (2002)

- Active listening
- Rogerian approach (warmth, empathy, and genuineness)
- Shared respect



# Danny

- In program 9 weeks
- He once was clean for 2 weeks.
- In staffing, you find out he had a positive test this week.
- Your program requires a participant disclose use before testing. Danny didn't.



# What do you say to Danny?

- Is abstinence a proximal or distal goal?
- Is there a different response to the “dirty” test and the failure to disclose?
- What sanctions are available and how do you choose?



# 5 Steps to Deliver the response

1. Explain the decision and the factors considered by the team
2. Review severity of the participant's substance dependence and risk to self/others
3. Note the behavior being responded to
4. How the behavior is important to their recovery
5. Why the particular sanction and magnitude were selected



## Jennifer

- ▶ Current participant in DTC for seven months
- ▶ Spotty attendance at tx
- ▶ Tested positive off and on throughout program
- ▶ Partied on the w/e
- ▶ Tested positive for cocaine
- ▶ Swears it was a false positive caused by dental work

# Novocaine, Lidocaine, Xylocaine



# COCAINE



# What do you say to Jennifer?

- Is abstinence a proximal or distal goal?
- Is there a different response to the “dirty” test and the failure to disclose?
- What sanctions are available and how do you choose?

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# Brian



- ▶ Long rap sheet
- ▶ Petty, non-violent crimes
- ▶ Substance dependence + MH issues
- ▶ In program 2 months; 3 stints in jail
- ▶ Unstable living situation
- ▶ Failing to go to tx

# What do you say to Brian?

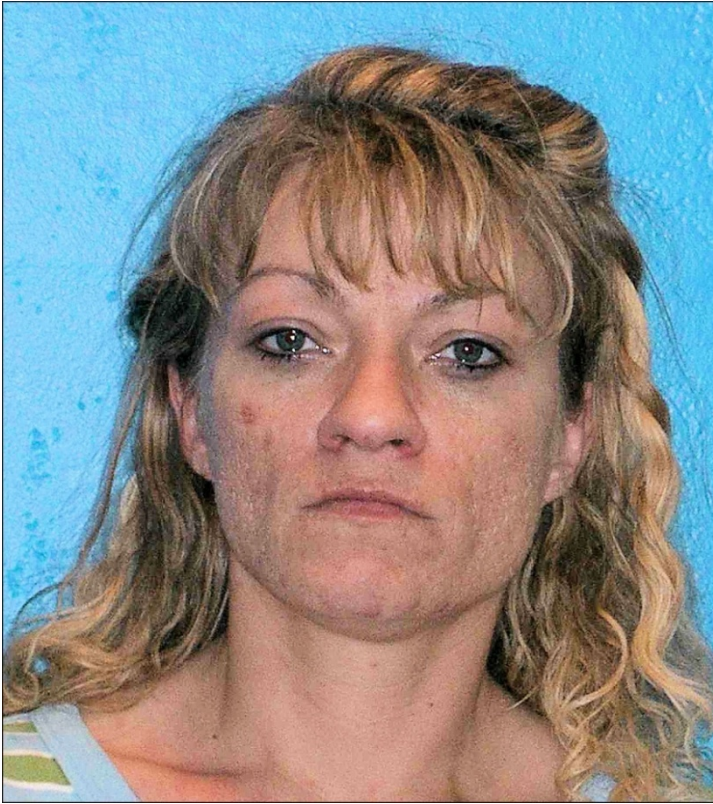
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# Rhonda



- Repeated “dirty” tests for 5 months
- Insists there’s nothing wrong with her
- Misses lots of treatment because she oversleeps
- Lives with a using partner
- PD insists she wants to do the program

# What do you say to Rhonda?

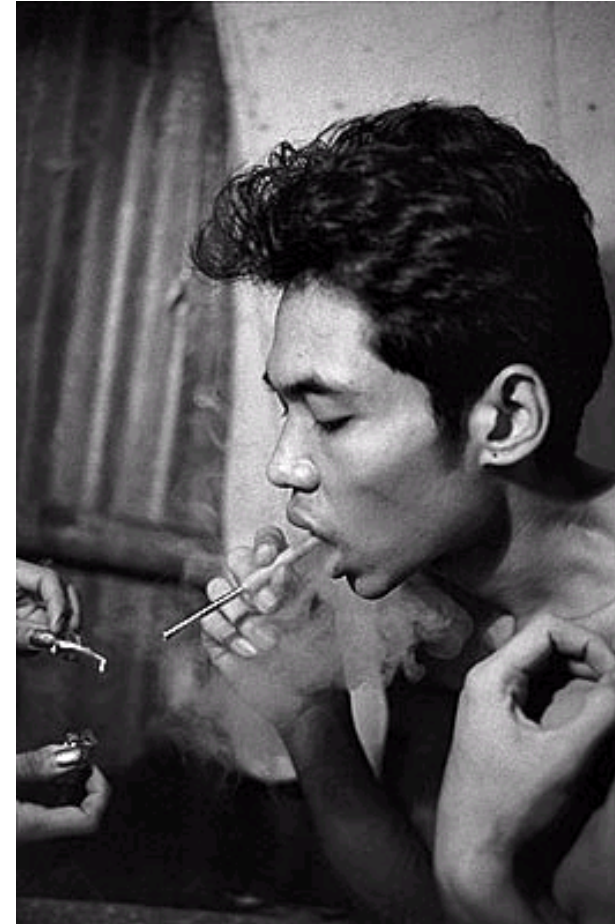
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# Darwin

- One year in DTC
- Clean tests for 4 months
- Girlfriend just got out of jail
- Disclosed he used prior to test
- Begs you not to send him to jail because he'll lose his housing



# What do you say to Darwin?

- Is abstinence a proximal or distal goal?
- Is there a different response to the “dirty” test and the failure to disclose?
- What sanctions are available and how do you choose?

# 5 Steps to Deliver the response

1. Explain the decision and the factors considered by the team
2. Review severity of the participant's substance dependence and risk to self/others
3. Note the behavior being responded to
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5. Why the particular sanction and magnitude were selected

# Marisol

- Heroin user for 15 years
- Doesn't want "liquid handcuffs"
- Doesn't stay clean for more than 5 days
- Engaged in tx
- Makes all appointments
- Engaging personality





# What do you say to Marisol?

- Is abstinence a proximal or distal goal?
- Is there a different response to the “dirty” test and the failure to disclose?
- What sanctions are available and how do you choose?

# 5 Steps to Deliver the response

1. Explain the decision and the factors considered by the team
2. Review severity of the participant's substance dependence and risk to self/others
3. Note the behavior being responded to
4. How the behavior is important to their recovery
5. Why the particular sanction and magnitude were selected

# Brittany



- 9 months in DTC
- 3 months clean
- Boyfriend arrested for DV
- She was drunk

# What do you say to Brittany?

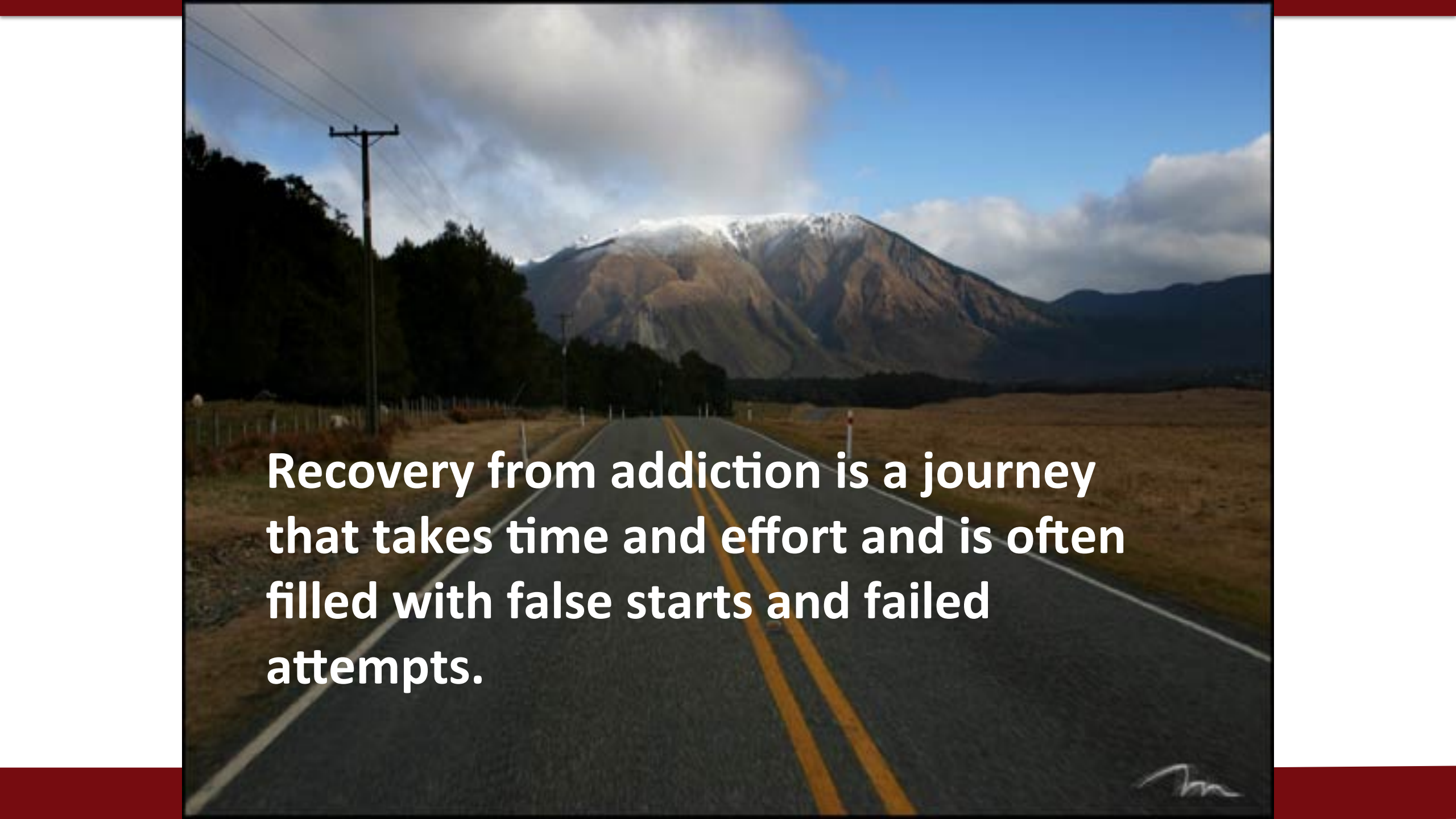
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# Incentives & Sanctions Summary

- **Certainty and immediacy is more important than magnitude**
- **Consistency, advance notice, and fairness are paramount**
- **Higher magnitude sanctions and lower magnitude rewards for proximal (easy) behaviors**
- **Lower magnitude sanctions and higher magnitude rewards for distal (difficult) behaviors**
- **Predictable and attainable goals**
- **Expect more over time**



**Recovery from addiction is a journey that takes time and effort and is often filled with false starts and failed attempts.**



Marvin Udall (Jack Nicholson) to Carol Connelly (Helen Hunt) in  
"As Good As It Gets":  
"You make me want to be a better man."



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