

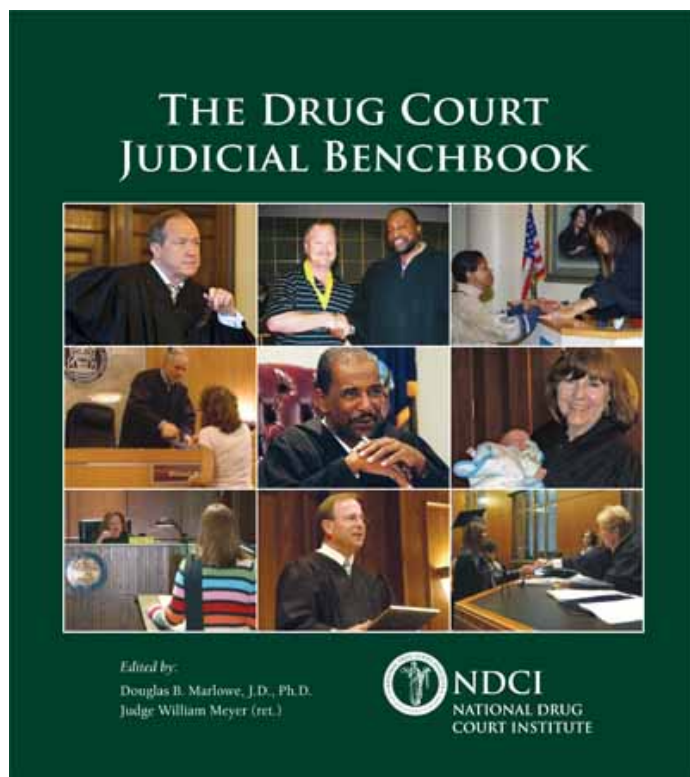


Justice Speakers Institute
SPEAKING, TEACHING & TRAINING - WORLDWIDE

“The Role of the Drug Court Judge”

Hon. Peggy Fulton Hora
Judge of the Superior Court of California (Ret.)
Brisbane Magistrates Conference
31 March 2017

Resource



- Download a pdf version at: <http://www.ndci.org/publications/more-publications/-drug-court-judicial-benchbook>

Judge Richard Posner

My analysis and the studies upon which it builds find that judges are not moral or intellectual giants (alas), prophets, oracles, mouthpieces or calculating machines. They are all-too-human workers, responding to the conditions of the labor market in which they work.”

Drug Court Judicial Skills

- Take two minutes and write down what you think are the judicial skills that a drug court judge must develop or enhance.



5 Drug Court Judicial Skills

Leadership

Communication

Educator

Community Collaborator

Institution Builder

Drug Court Judicial Skills

Leadership (Core Competencies #1, 2)

Communication

Educator

Community Collaborator

Institution Builder

Core Competency #1

Core Competency 1. Participates fully as a drug court team member, committing him- or herself to the program, mission and goals, and works as a full partner to ensure their success.

Recipe for failure



A judge who is:

Lackadaisical

Indifferent

Bored with the assignment

Thinks this is “social work”

Abandons judicial role

Hostile



Leadership

The role of a leader is to empower others, help others fix problems and serve others.

ly & Woodward (2007)

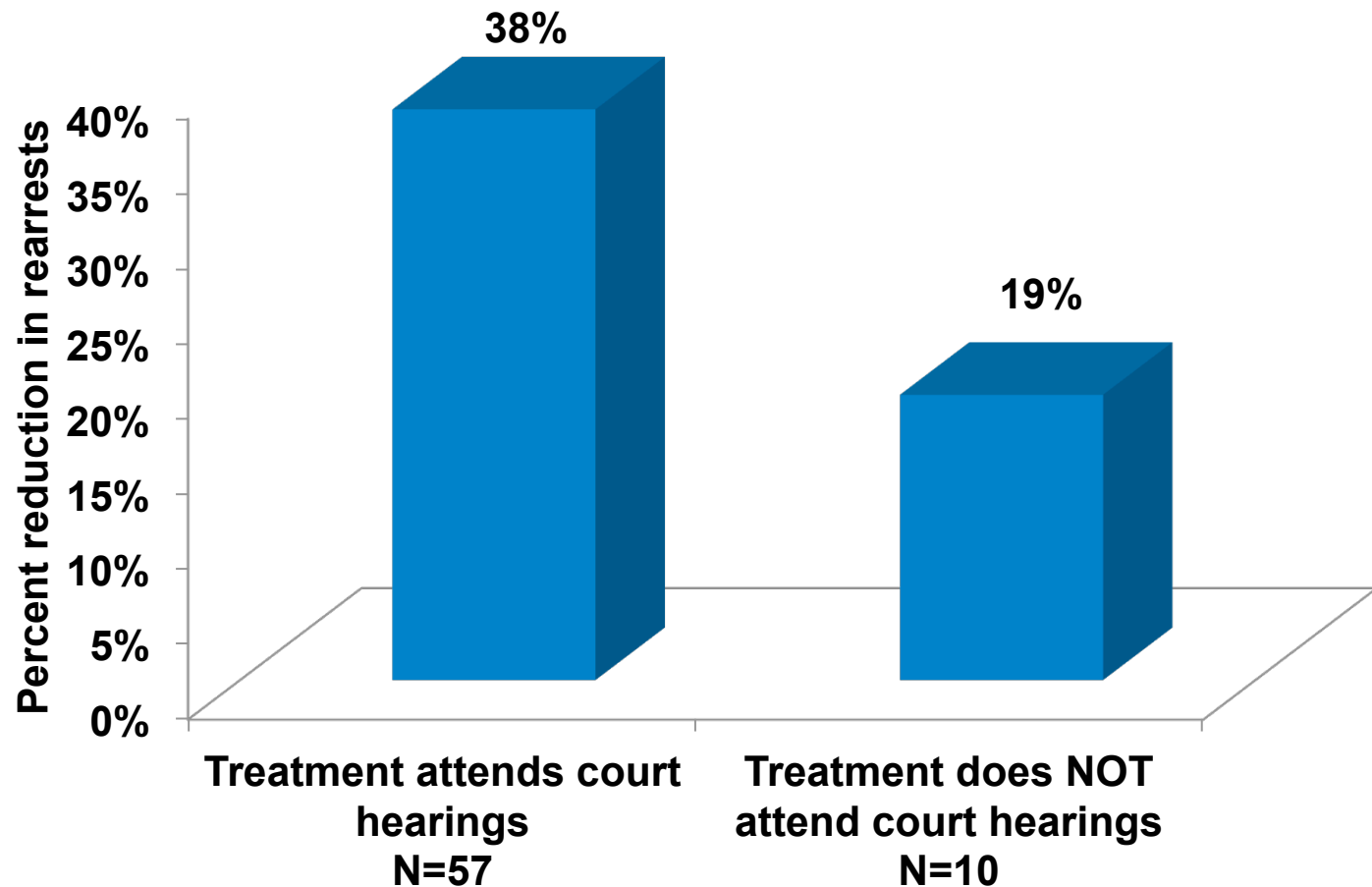
As the leader of the team, the judge is fully committed to the program, its mission and goals.

Leadership, cont.

Hold team-building meetings and focus on program structure with the team

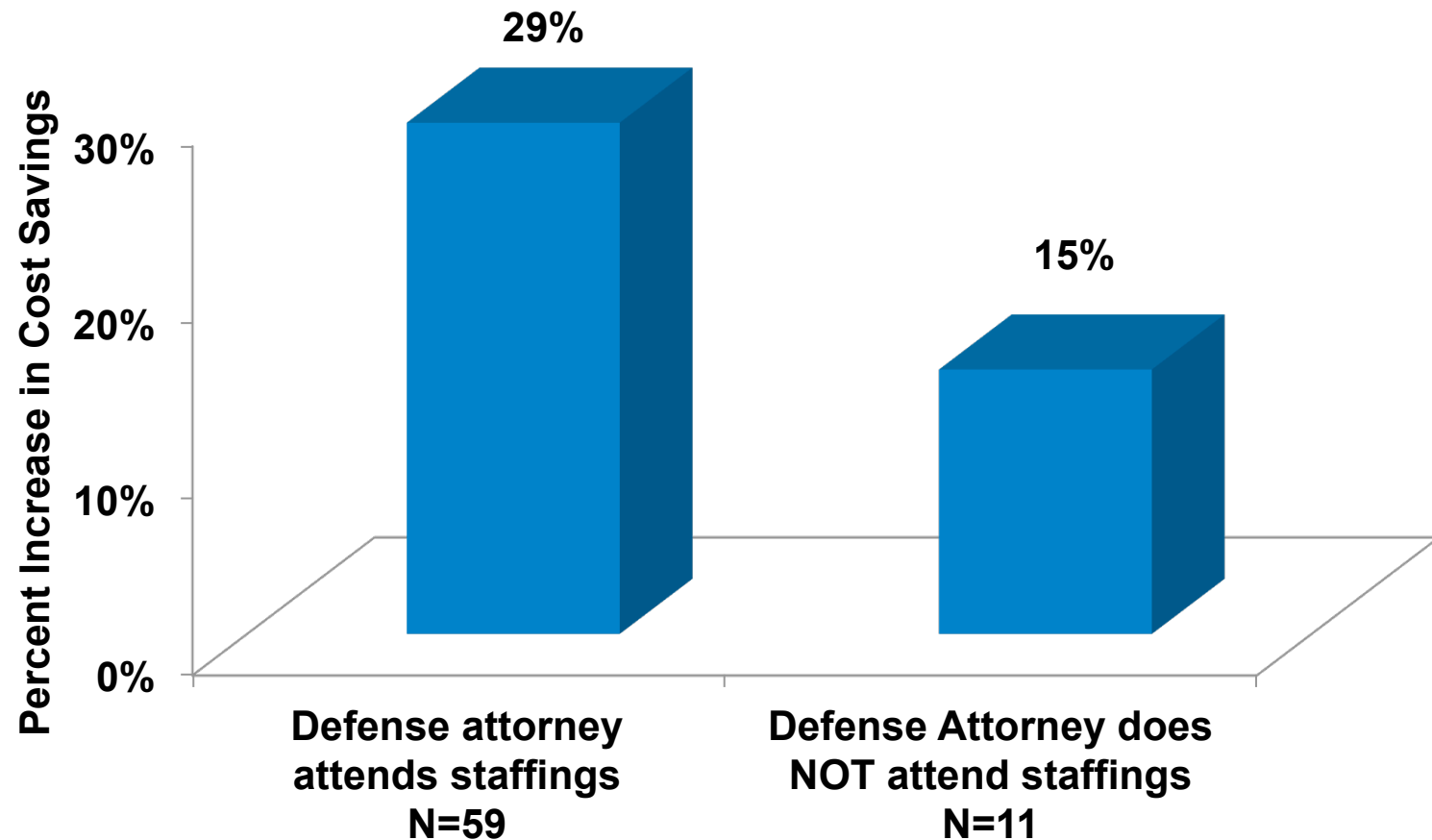
Expect all team members to participate in staffing.

Drug Courts Where a **Treatment Representative** Attends Court Hearings had 100% reductions in recidivism



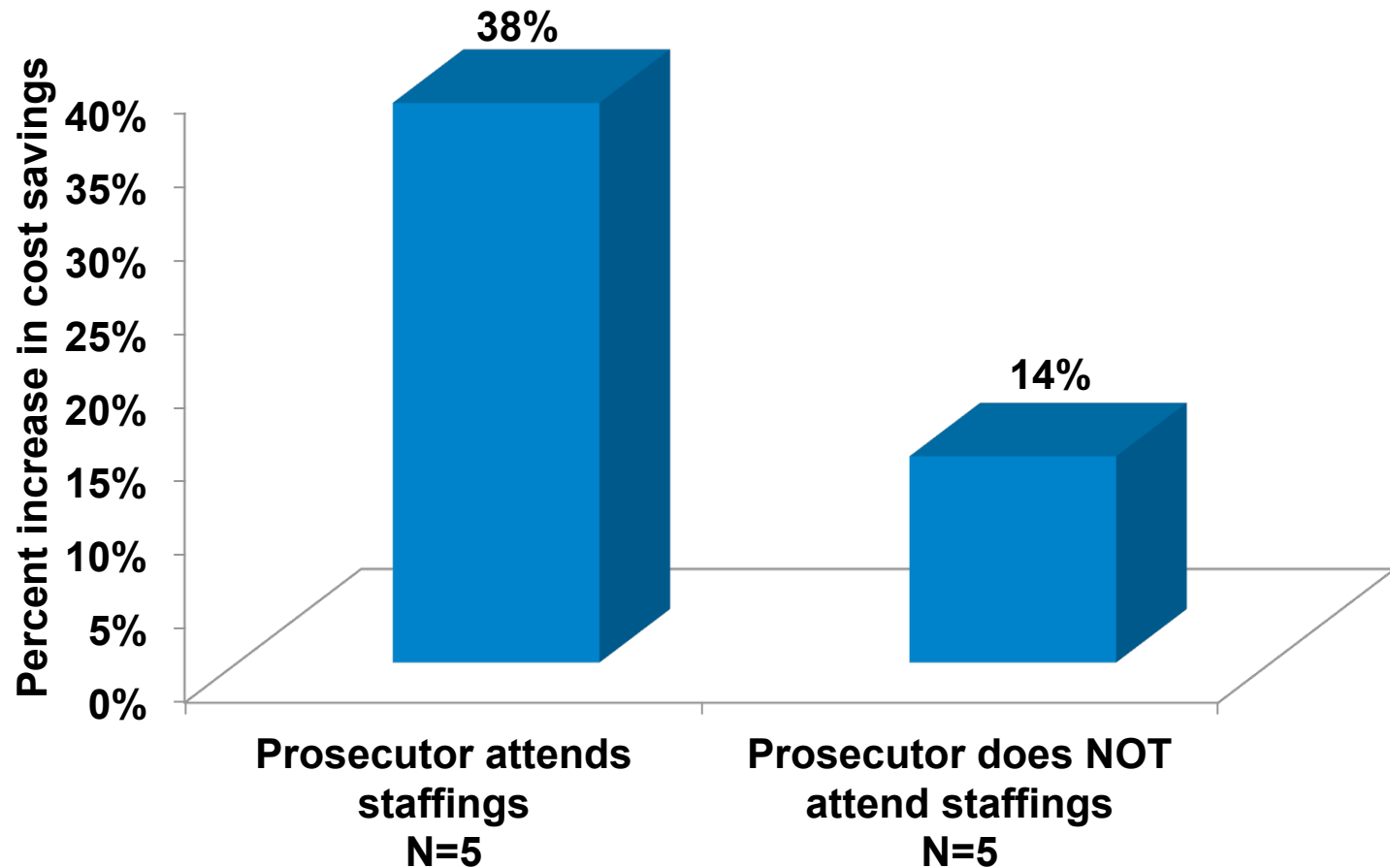
Note 1: Difference is significant at $p < .10$

Drug Courts Where the **Defense Attorney** Attends Drug Court Team Meetings (Staffings) had a 93% Increase in Cost Savings



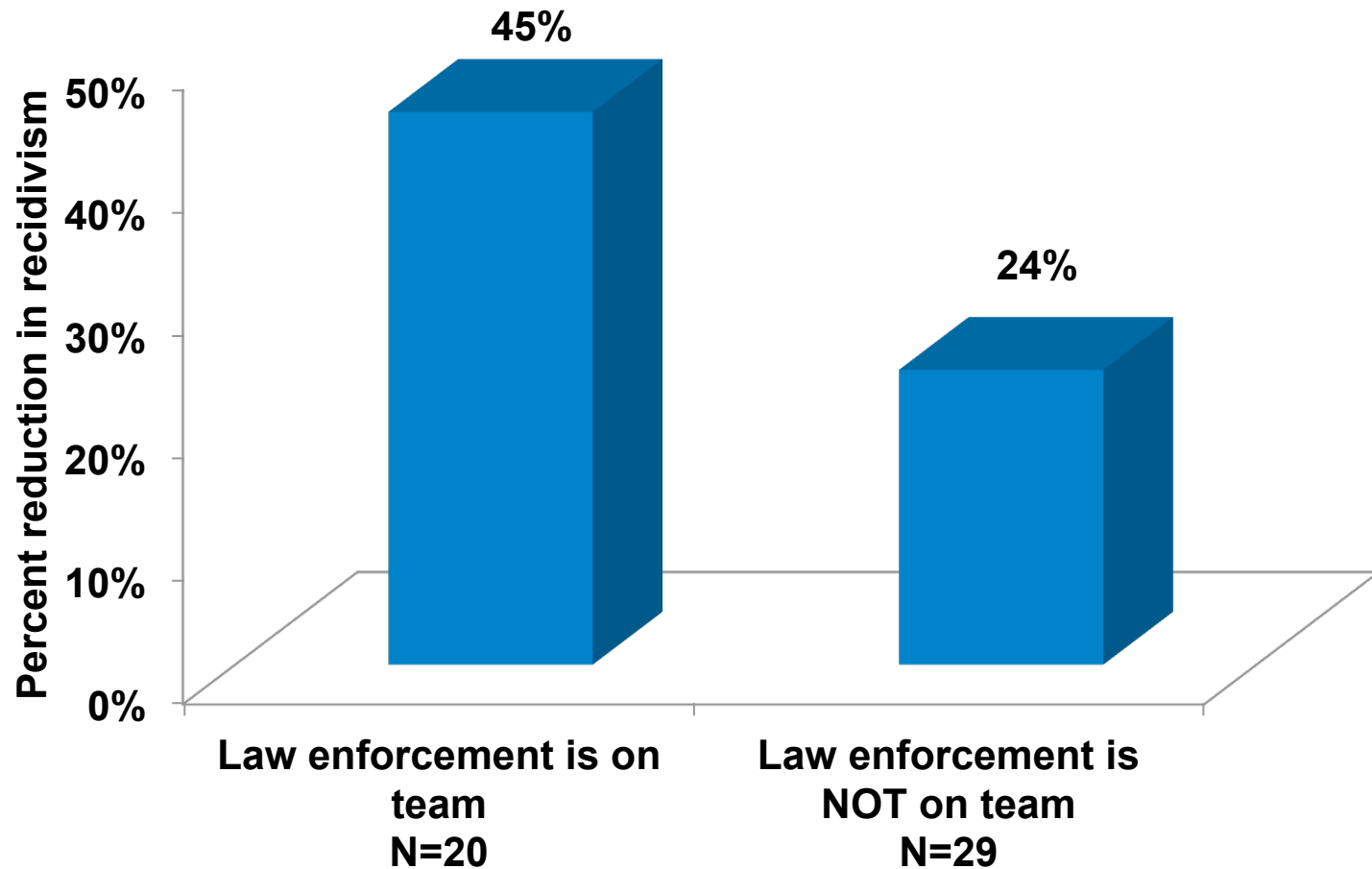
Note 1: Difference is significant at $p < .05$

Drug Courts Where the **Prosecutor** Attends Staffings had a 171% Increase in Cost Savings



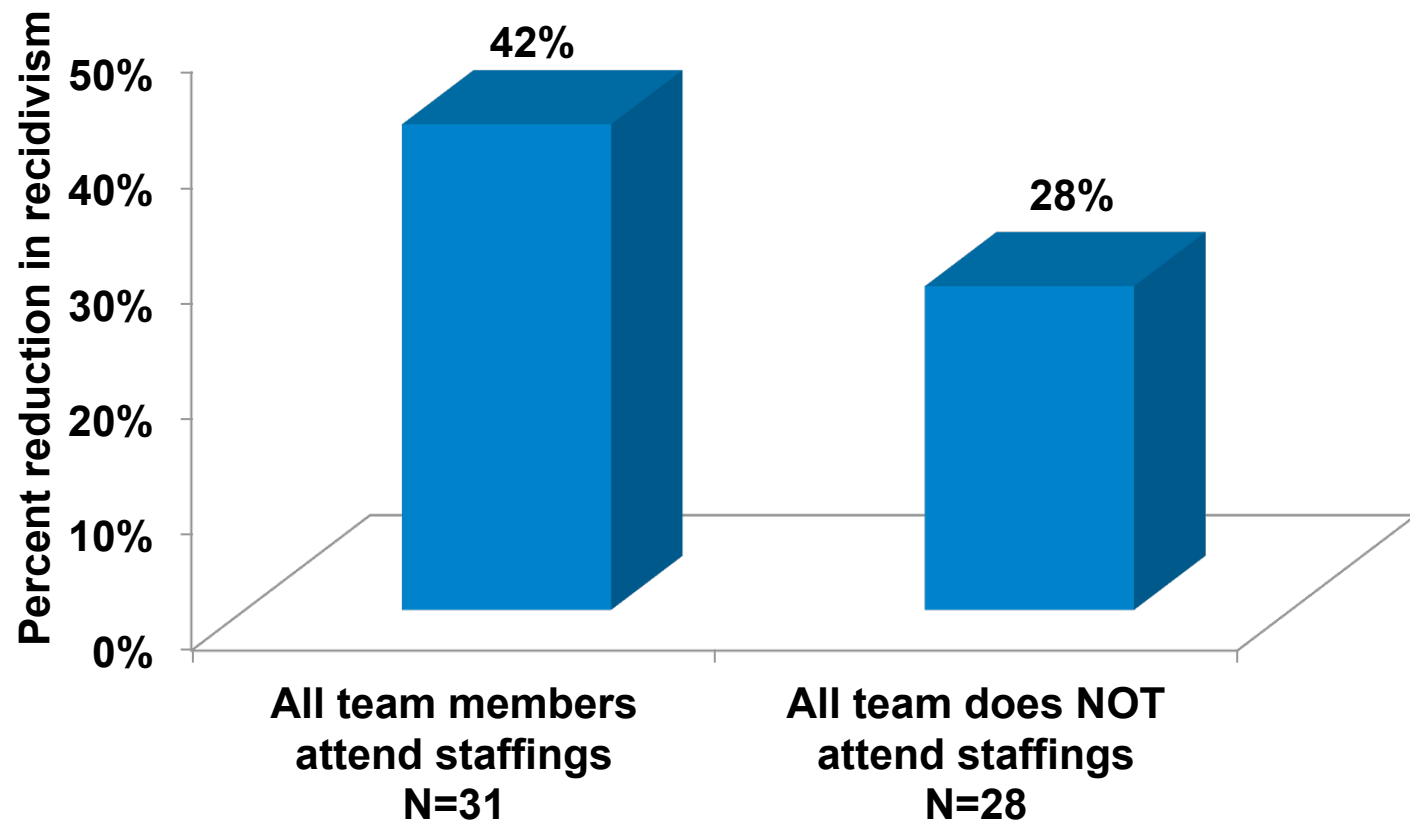
Note: Difference is significant at $p < .05$

Drug Courts where **Law Enforcement** is a member of the drug court team had 88% reductions in recidivism



Note 1: Difference is significant at $p < .05$

Drug Courts where all team members attended staffings had 50% greater reductions in recidivism



Note 1: Difference is significant at $p < .05$

Note 2: "Team Members" = Judge, Both Attorneys, Treatment Provider, Coordinator, Probation

Drug Court Judicial Skills

Leadership

Communication (Core Competency #2, 3)

Educator

Community Collaborator

Institution Builder

Communication



Core Competency #2

Core Competency 2. As part of the drug court team, in appropriate non-court settings (i.e., staffing), the judge advocates for effective incentives and sanctions for program compliance or lack thereof.

Incentives & Sanctions

After input from the whole team, the judge should decide on incentives, sanctions and treatment responses.

The judge must stay abreast of research on motivational interviewing and behavioral change literature.

The judge delivers a coordinated response to participants in the courtroom.

Motivating Behavior Change

1.

2.

3.

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
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

National Drug Court Institute, Incentives and Sanctions: Rethinking Court Responses to Client Behavior

Practice with a partner

Danny has been in drug court 3 months. He has gone as long as 3 weeks without a positive test. In staffing, you find out he had a positive test. Your court requires a participant disclose use before testing. Danny didn't. The team recommends he write an essay. How do you deliver the consequence to Danny?

What do you say to Danny?

Is Danny's abstinence a proximal or distal goal?

Is there a different response to the "dirty" test and the lying?

What sanctions are available and how do you choose?

Judge is most important factor



Judge Trina Thompson, Presiding Judge, Juvenile Court, Alameda County, CA

- 80% of participants say they wouldn't have stayed in drug court if they did not appear before a judge

Drug Court Clearinghouse, American U.

- Interaction and delivery of response has most impact

“Weighing” the Trial Court Performance Standards



Trial Court Performance Standards

Standard 3.5 Responsibility for Enforcement: The Trial Court takes appropriate responsibility for the enforcement of its orders.

Standard 4.5 Response to Change: The Trial Court anticipates new conditions and emergent events and adjusts its operations as necessary.

4.5 Commentary

Effective trial courts are responsive to emergent public issues such as drug abuse, child and spousal abuse, AIDS, drunken driving, child support enforcement, crime and public safety, consumer rights, gender bias, and the more efficient use of fewer resources.

A trial court that moves deliberately in response to emergent issues is a stabilizing force in society and acts consistently with its role of maintaining the rule of law.

Procedural Fairness

Voice: Gives participants the ability to participate in the case by expressing their viewpoint

Neutrality: Consistently applied legal principles, unbiased decision makers, and a “transparency” about how the decisions are made

Procedural Fairness, cont.

Respectful treatment: Individuals are treated with dignity and their rights are plainly 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 each litigant's needs.

John Burke & Steve Leban, Procedural Fairness: A Key Ingredient in Public Satisfaction, 44 Ct. Rev. 4, 6 (2007)

Expeditious, Fair and Reliable Court Function

TCPS 5.2 Commentary

The public has trust and confidence that basic trial court functions are conducted expeditiously and fairly and that court decisions have integrity

Perceived Unfairness

No only impacts the individual on the receiving end

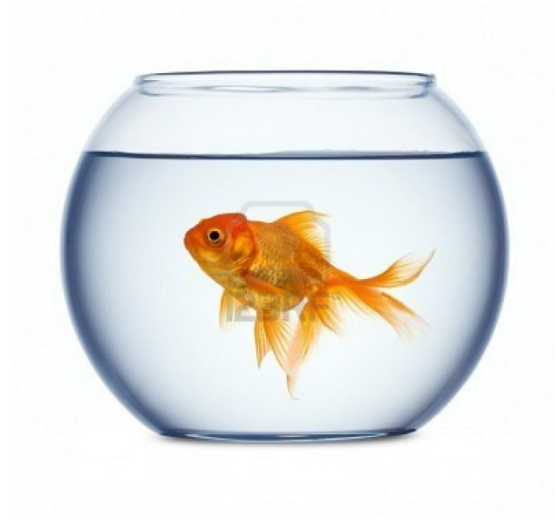
But also impacts the other participants

People will sabotage a process they perceive as unfair even if it harms them

Core Competency #3

Core Competency 3. Is knowledgeable of addiction, alcoholism, and pharmacology generally and applies that knowledge to respond to compliance in a therapeutically appropriate manner.

The fishbowl study



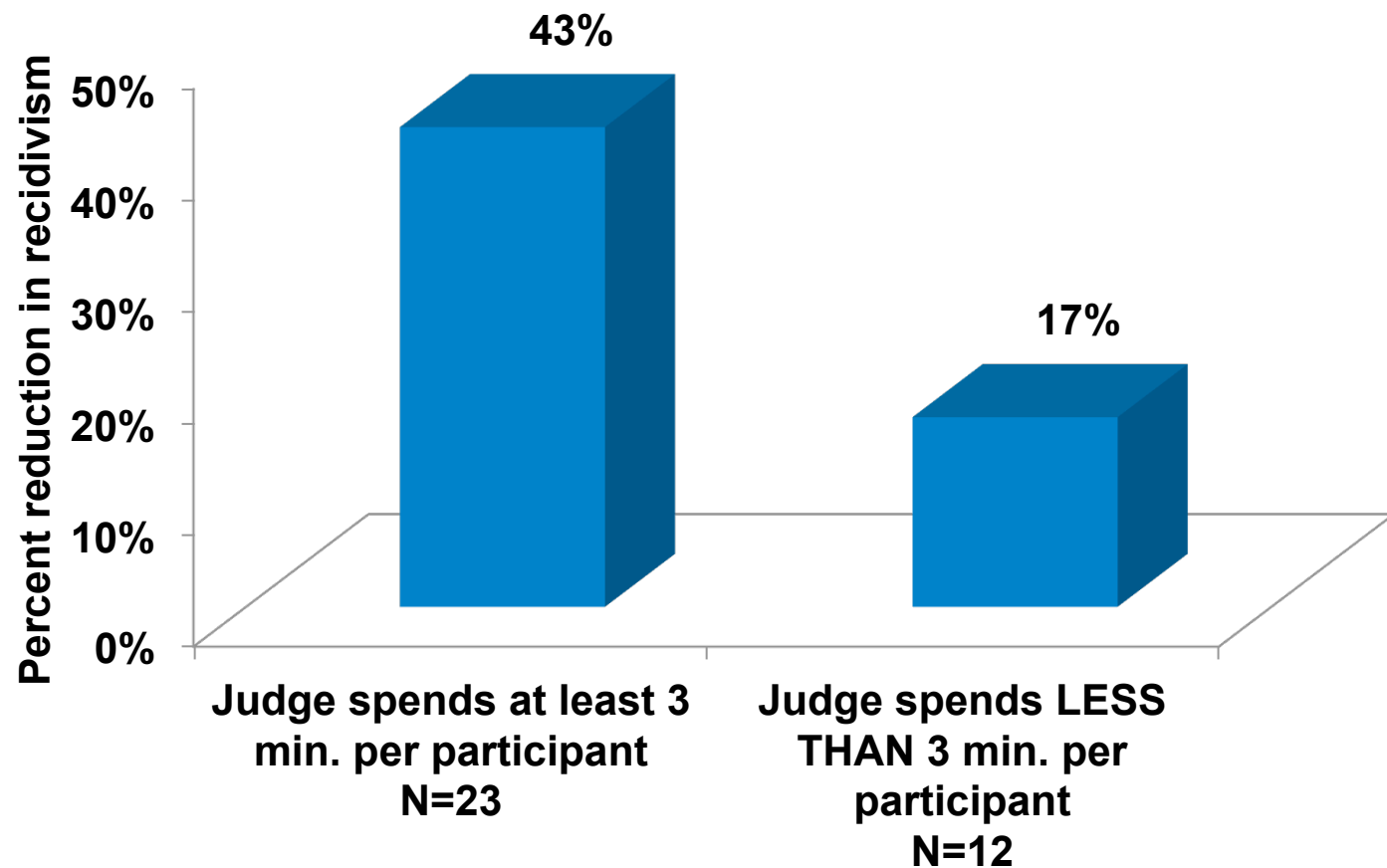
Time spent with participant



3 minutes is
optimal

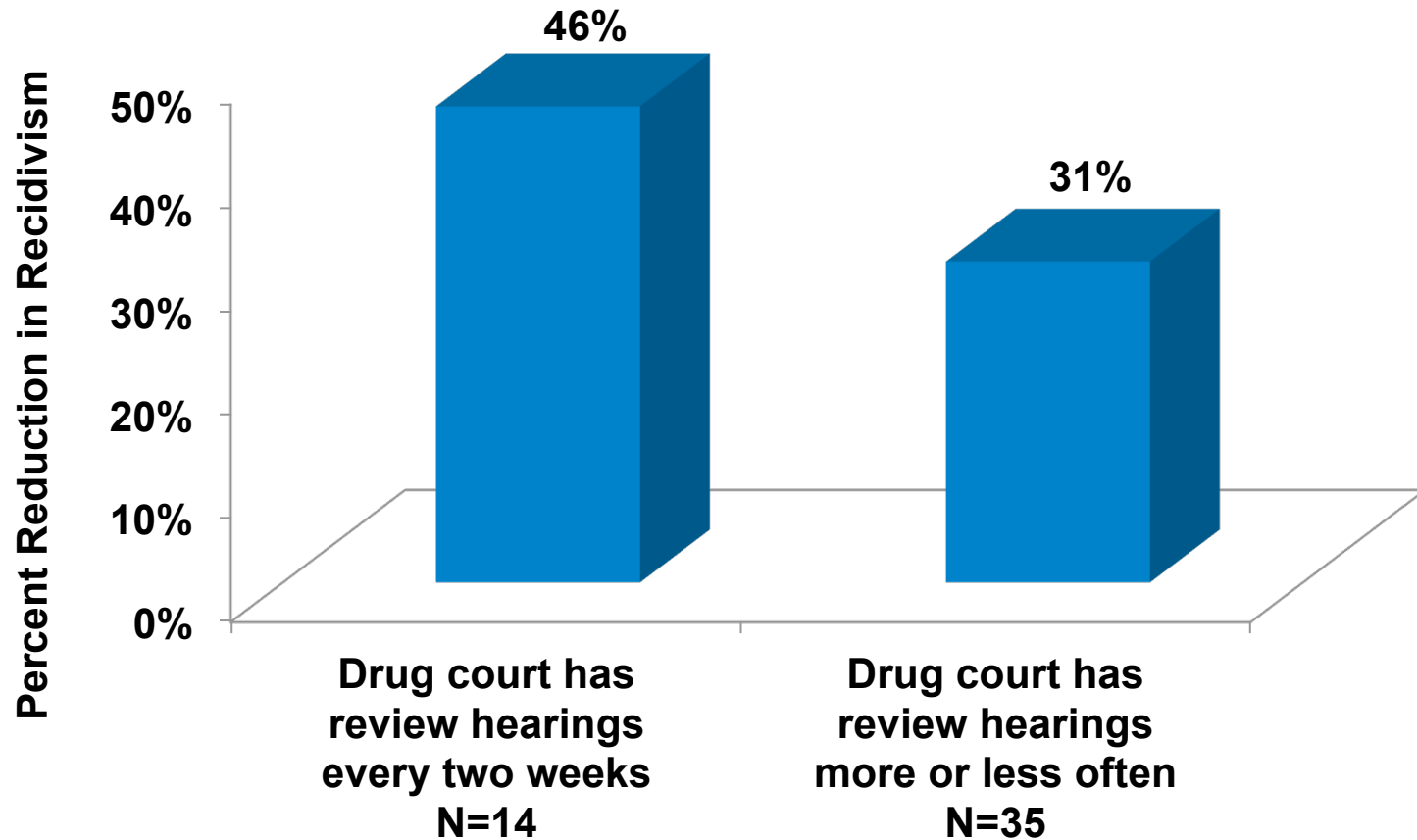
Drug Courts Where the Judge Spends an Average of 3 Minutes or Greater per Participant During Court Hearings had

153% reductions in recidivism



Note 1: Difference is significant at $p < .05$

Drug Courts That Held Status Hearings Every 2 Weeks During Phase 1 Had 50% Greater Reductions in Recidivism



Note: Difference is significant at $p < .1$

Drug Court Judicial Skills

Leadership

Communication

Educator (Core Competencies #3, 4, 8, 9)

Community Collaborator

Institution Builder

Drug Court Key Component #9

Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.

Continuing education institutionalizes the drug court and moves it beyond its initial identification with the key staff who may have founded the program and nurtured its development.

Team Continuing Education

Participate in regular cross-training with the treatment team

Employ evidence-based practices and focus on strengths-based approaches

Be facile with the Nat'l Registry of Evidence-Based Programs and Practices nrepp.samsha.gov

Continuing Education, cont.

Tune in On Tuesdays - live and recorded webinar series through NDCI

Explore Nat'l Drug Court Resource Center ndcrc.org

"Ask the Experts" ndci.org

Teach at a law school, state judicial events, NADCP annual conference, NDCI trainings

Core Competency #4

Core Competency 4. Is knowledgeable of gender, age, and cultural issues that may impact the offender's success.



Cultural Skills for the Judiciary

Value others

Self- awareness of own values

Comfortable with differences

Sensitive to self

Self-awareness of own bias

Awareness of Self: Knowledge

Own Heritage

Beliefs about biases, limits, differences

Knowledge of one's impact

Awareness of Others: Knowledge

Specific knowledge

Understand differences

Understand influences

Understand power and privilege

Know participants' subculture

Awareness of Others: Skills

Familiarity with research

Active involvement

Awareness of Others: Attitudes and Beliefs

Belief that a negative impact may exist

Ability to contrast

Awareness of stereotypes

Interventions: Knowledge

Cultural conflict

Institutional barriers

Potential bias

Characteristics and resources

Discriminatory practices

Interventions: Skills

Communication, verbal and non-verbal

Institutional Intervention

Alliances

Consultation

- Cultural limitation of tools
- Applying context
- Working to eliminate bias
- Educating and informing

Interventions: Attitudes and Beliefs

Respect for differences

Respect for practices

Respect for other languages

Value of multiculturalism

Cultural competency

Emphasize its importance to the team

Be familiar with your population

Engage in training

Check entry statistics, retention rates, and graduation rates for any anomalies based on cultural issues

Drug Court Judicial Skills

Leadership

Communication

Educator

Community Collaborator (Core Competencies #5, 6)

Institution Builder

Core Competency #5

Core Competency 5. Initiates the planning process by bringing together the necessary agencies and stakeholders to evaluate the current court processes and procedures and thereafter collaborates to coordinate innovative solutions.

Core Competency #6

Core Competency 6. Becomes a program advocate by utilizing this or her community leadership role to create interest in and develop support for the program.

Continuing contact with the community

Continue to be in contact with the agencies you worked with when setting up the court

Develop and maintain resources

Improve interagency linkages

Continuing contact, cont.

Share efficacy of the drug court with local civic organizations, other members of the judiciary, the legal community, and the community-at-large*

Seek opportunities to illuminate media sources about the drug court*

Be the spokesperson for the court

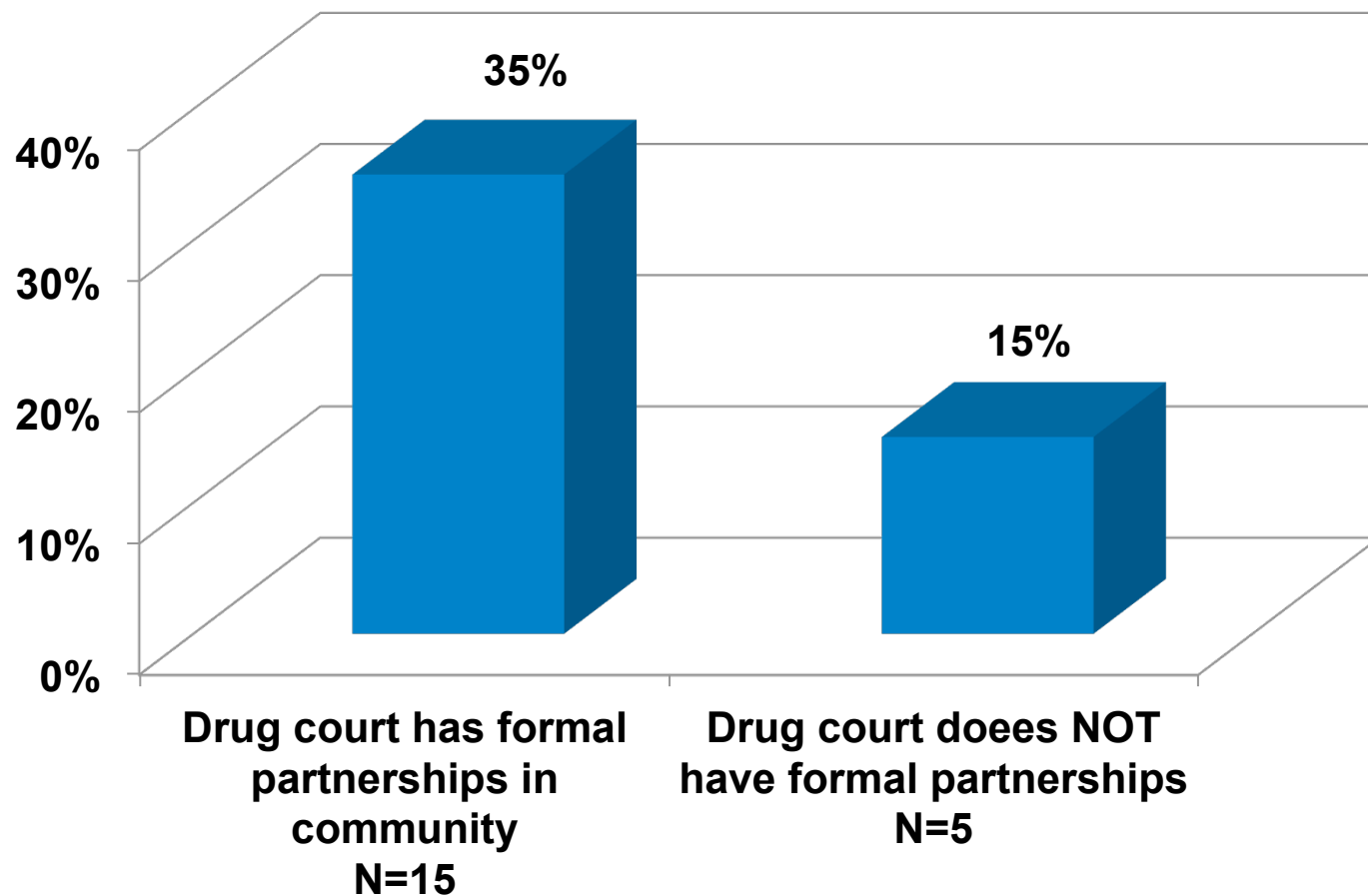
These may raise ethical issues in some states. Seek opinions before acting.

Community education



- Service clubs (Rotary, Elks, Lions, etc.)
- Community events
- Schools
- Local TV or radio
- Guest columns
- Other?

Drug Courts That Had Formal Partnerships with Community Organizations Had 133% Greater Cost Savings



Note: Difference is significant as a trend at $p < .15$

Participate in evaluations

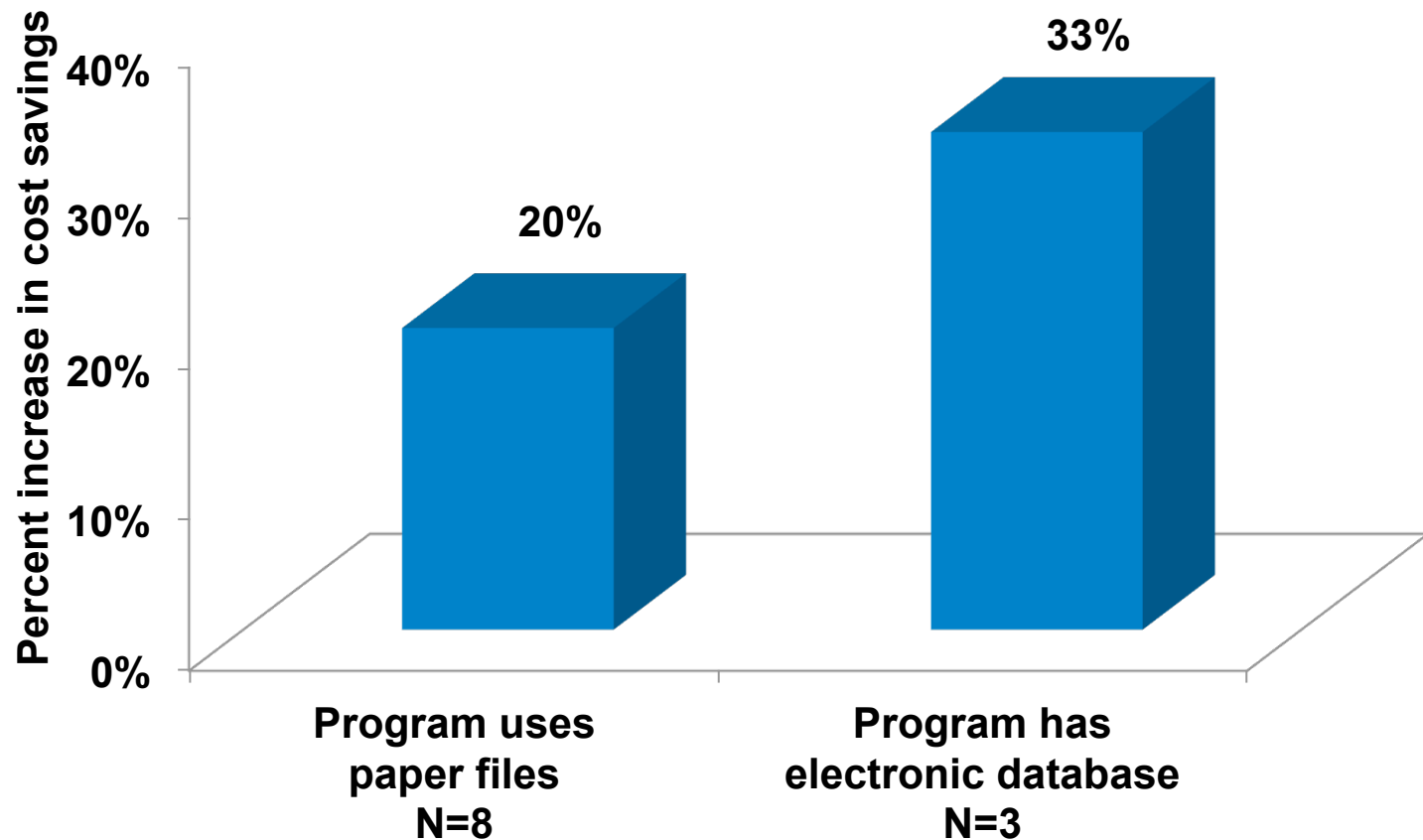
Assist in data collection

Ask evaluator to identify relevant data and disseminate it to the team

Review process evaluations, ensure reference to original goal and objectives

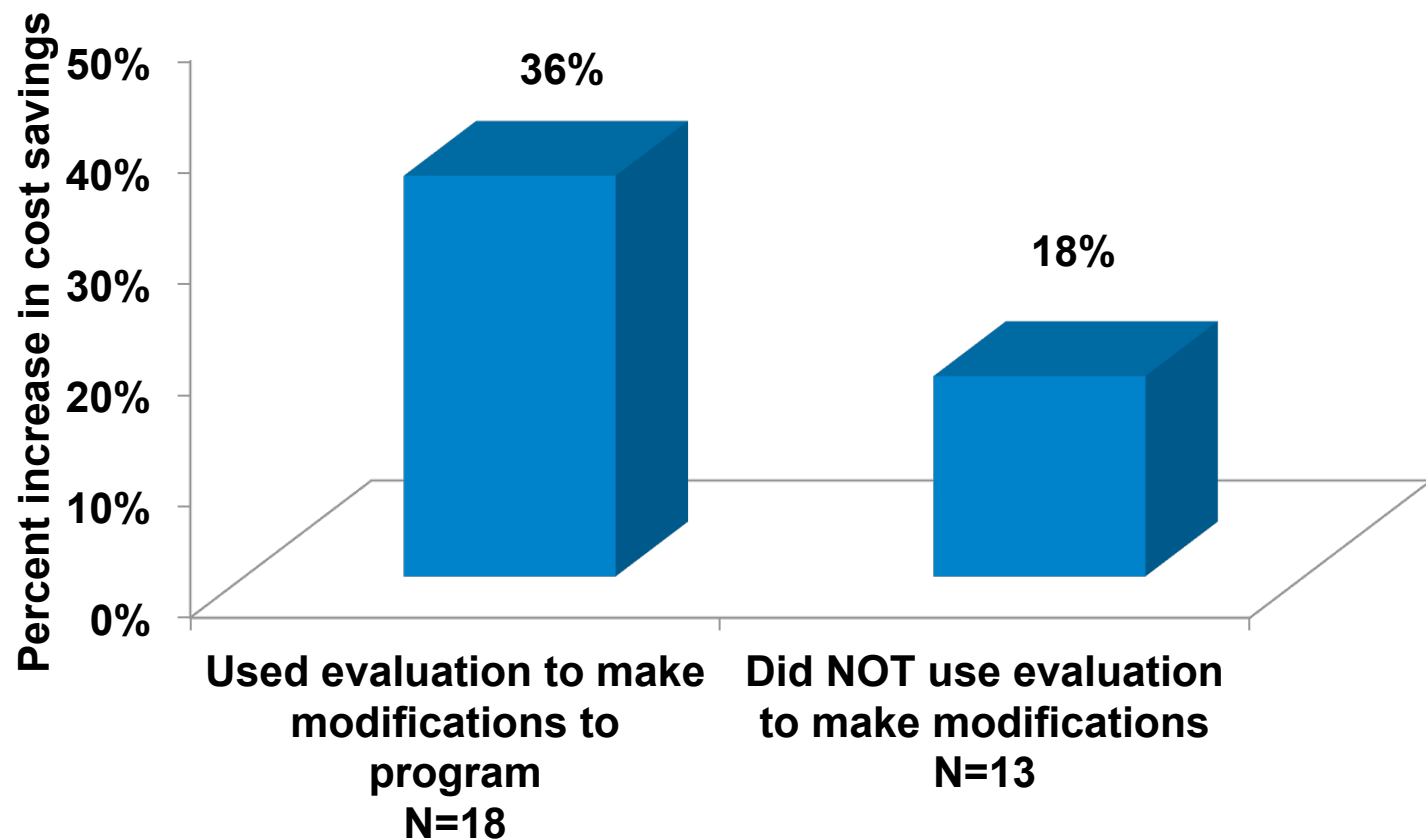
Review outcome evaluations, share positive information and address negative information

Drug Courts That Used Paper Files Rather Than Electronic Databases Had 65% LESS Savings



Note: Difference is significant at $p < .05$

Drug Courts Where The Results Of Program Evaluations Have Led to Modifications In Drug Court Operations had a 100% Increase in Cost Savings



Note 1: Difference is significant at $p < .05$

Drug Court Judicial Skills

Leadership

Communication

Educator

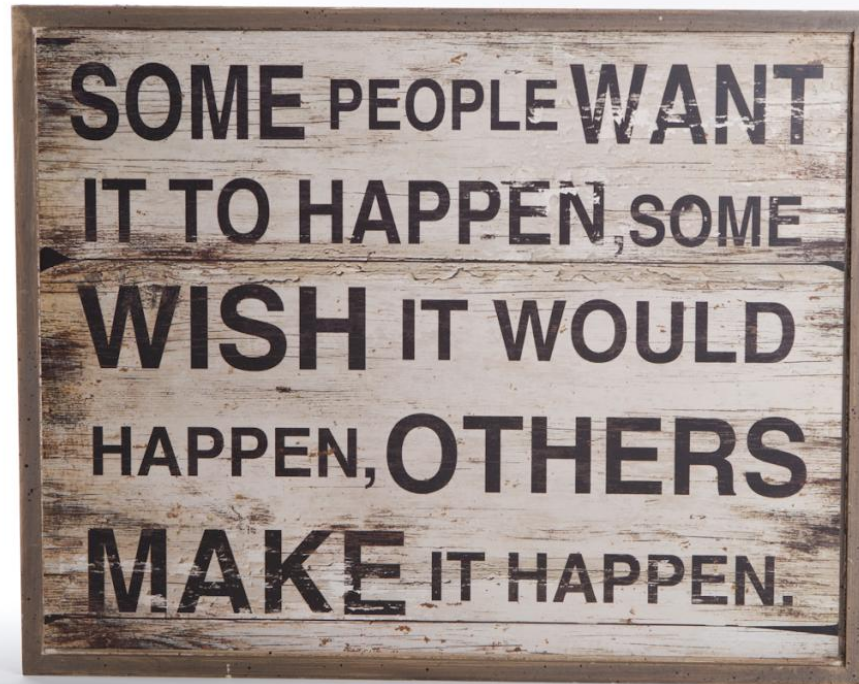
Community Collaborator

Institution Builder (Core Competency #7)

Core Competency #7

Core Competency 7. Effectively leads the team to develop all the protocols and procedures of the program.

Write it down!



Written policies and procedures are critical

Policy and procedure manual

Participant handbook

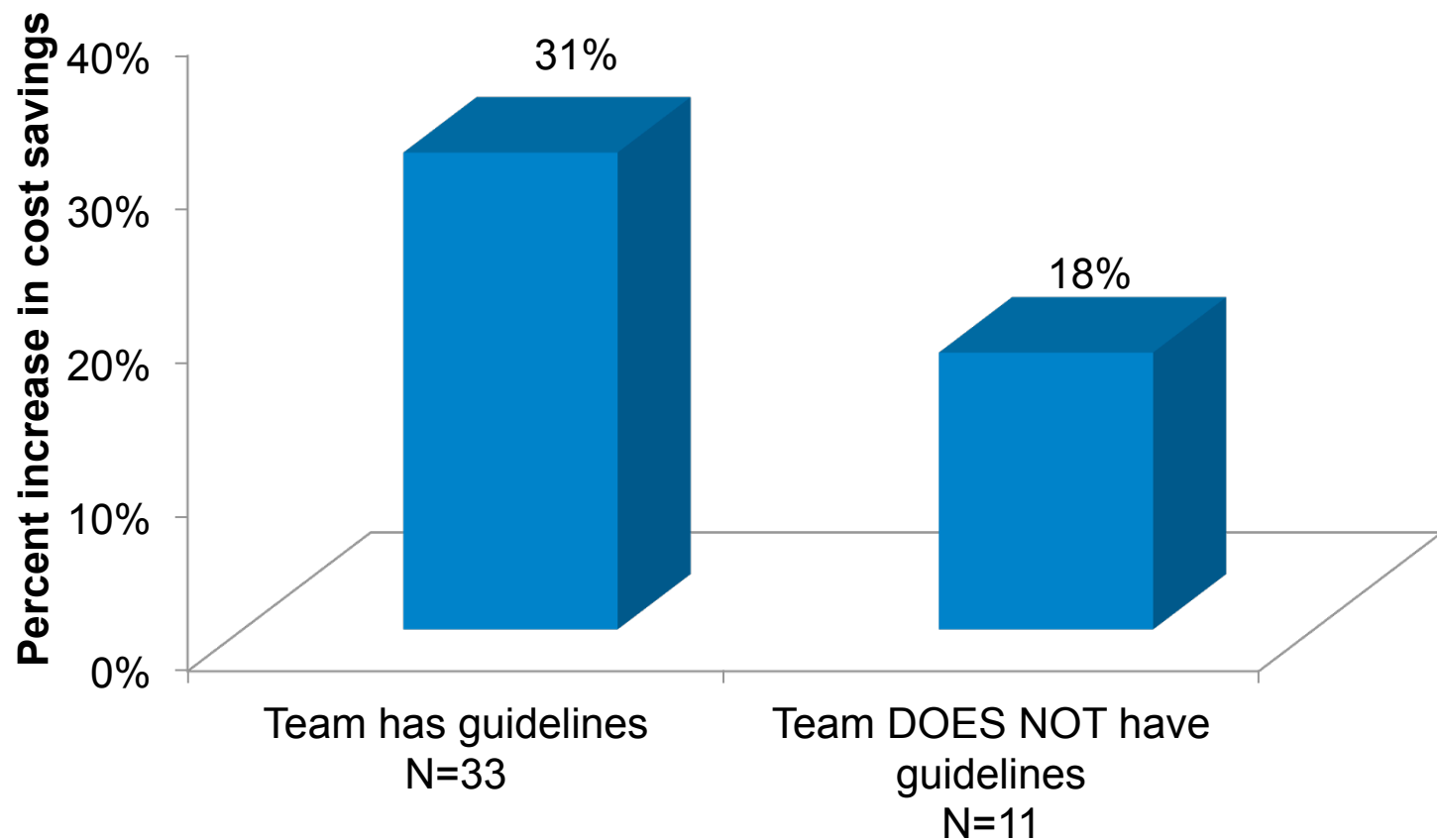
Client contract

Releases and orders (models in benchbook)

Incentives and Sanctions List

Rules for phase movement

Drug Courts Where Team Members are Given a Copy of Written Guidelines For Sanctions And Rewards Had a 72% Increase in Cost Savings



Note 1: Difference is significant at $p < .15$ (Trend)

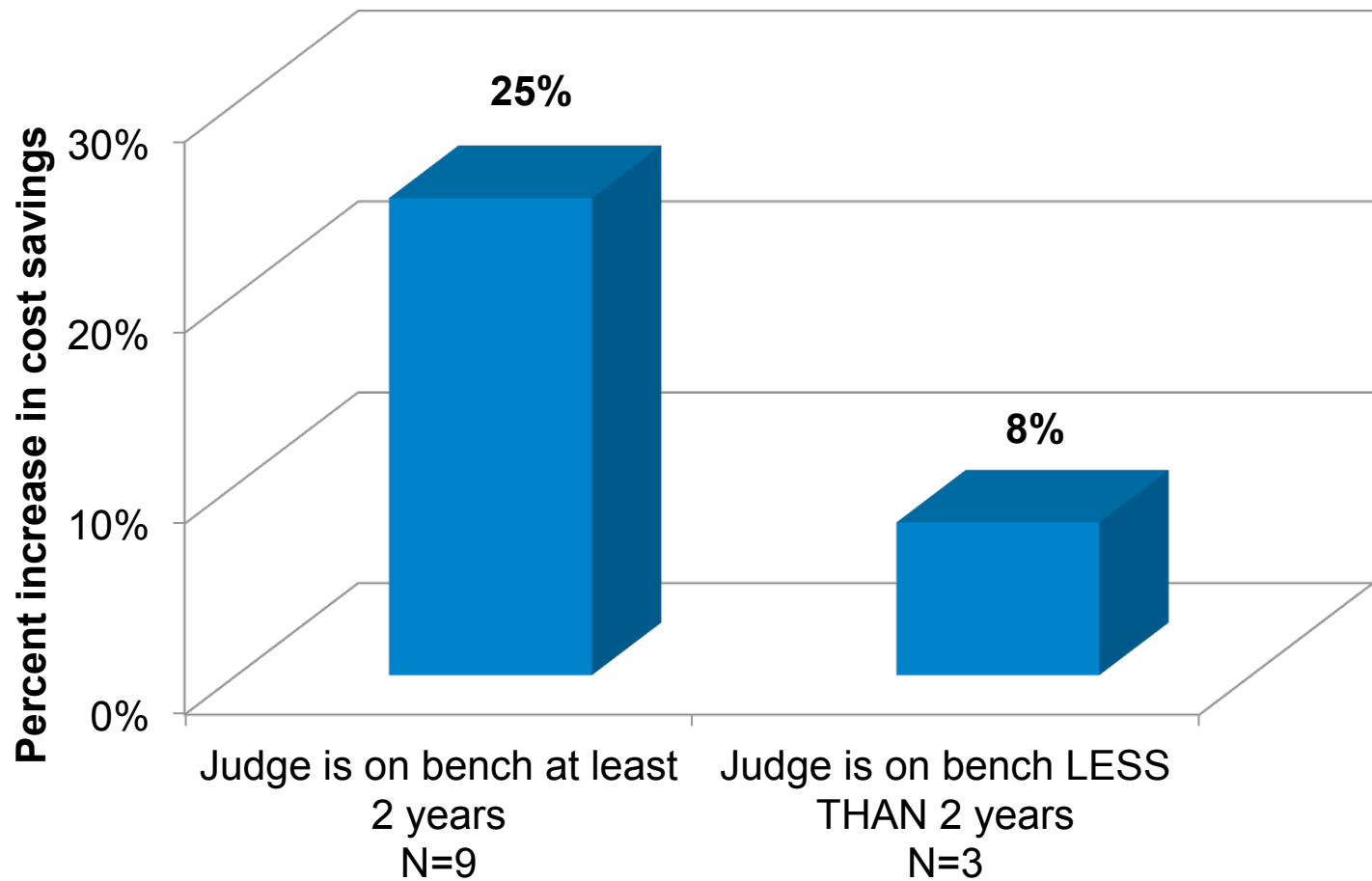
Maintain an institutional memory as assignments change

Maintain contact with former drug court judges

Have a succession plan (after you stay at least two years)

Create a legacy

Drug Courts That Have Judges Stay Longer Than Two Years Had 3 Times Greater Cost Savings



Note: Difference is significant at $p < .05$

Core Competency #8

Core Competency 8. Is aware of the impact that substance abuse has on the court system, the lives of offenders, their families and the community at-large.



Core Competency #9

Core Competency 9. Contributes to education of peers, colleagues, and judiciary about the efficacy of drug courts.



Being a drug court judge...

will be the best assignment of your life.

