

Tough on crime is not smart on crime: Evidence-based sentencing

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SENTENCING
SEMINAR SERIES
2017



Queensland Sentencing
Advisory Council
Inform. Engage. Advise.

Sentencing aspirations

- The traditional purposes of sentencing — retribution, deterrence, incapacitation, and rehabilitation — have been updated to add reduction of recidivism as a specific sentencing goal.
- The courts should employ effective, research driven, evidence based, proven initiatives that reduce recidivism and victimisation in the community.
- When the criminal justice system focuses on recidivism reduction, it calls upon good research, best practices and courtroom techniques to reach that goal.

Procedural fairness/ procedural justice

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

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.

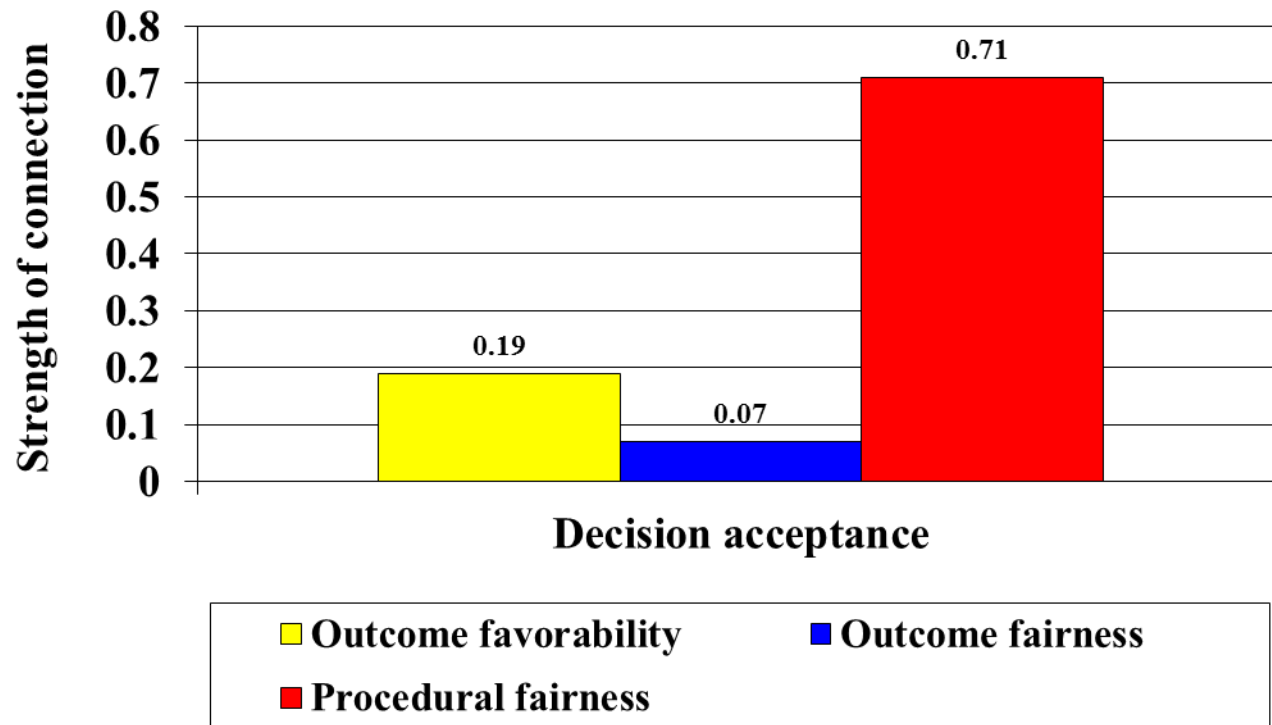
- **Respectful treatment:** individuals are treated with dignity and their rights are obviously protected.
- **Trustworthy authorities:** authorities are benevolent, caring, and sincerely trying to help the litigants—this trust is garnered by listening to individuals and by explaining or justifying decisions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

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

Fairness is key

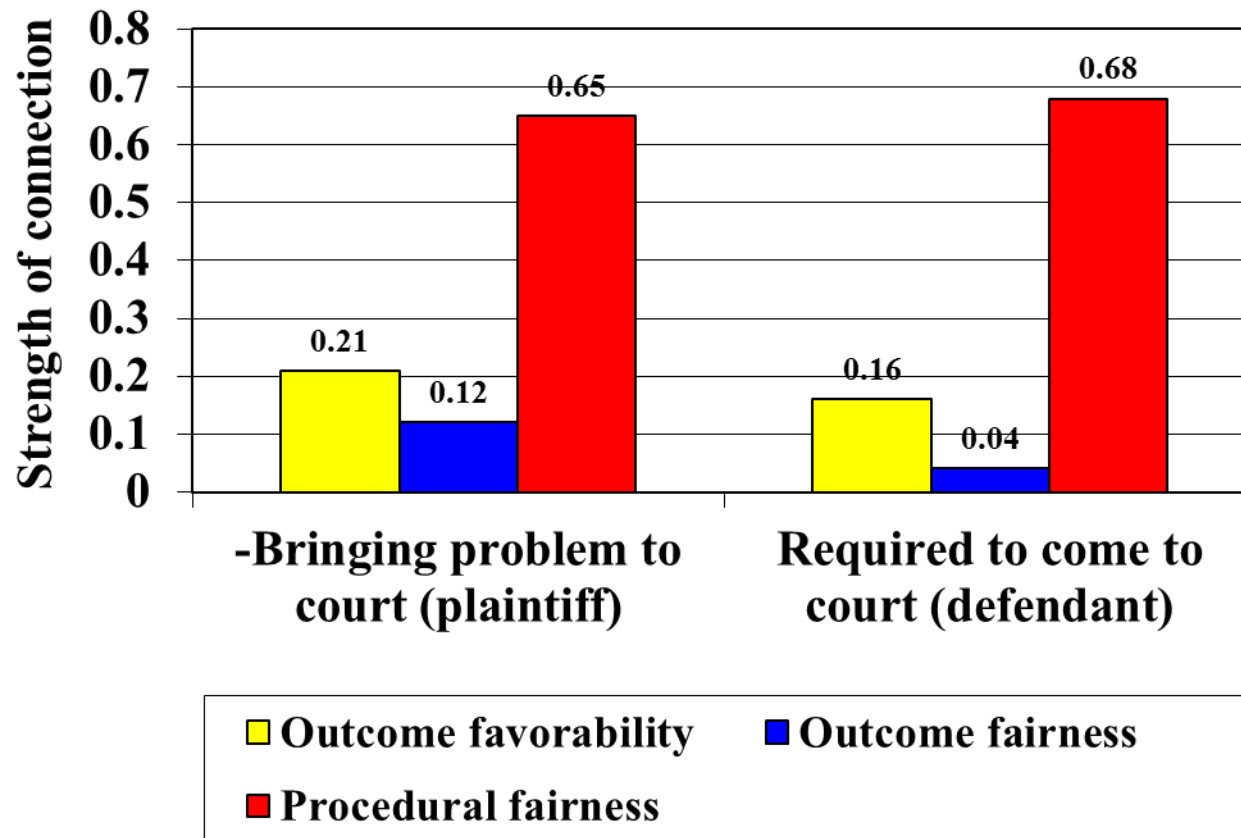
- People will accept an unfavorable ruling if they feel the process is fair.
- People who win but who do not feel they were treated fairly are unhappy with the procedure.

Why do people accept court decisions?



Tom Tyler, Procedural Fairness, COSCA 2011

Willingness to accept decisions based upon reason for being in court



Fairness



<https://www.youtube.com/watch?v=-KSryJXDpZo>

Cultural competence

- 22% of adult defendants finalised in Qld courts were Aboriginal or Torres Strait Islanders (2015–2016)
- 32% of people in custody Aboriginal or Torres Strait Islander (2016)
- Imprisonment rates per 100,000:
 - 1,625.5 Indigenous
 - 155.5 non-Indigenous
- 3.6% of Qld population is Aboriginal or Torres Strait Islander (2011 Census)

R-E-S-P-E-C-T

- 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.



Maya Angelou



“People may not remember what you say but they will always remember how you made them feel.”

Sentencing with an eye to behavioural change

Four steps for imposing incentives and sanctions

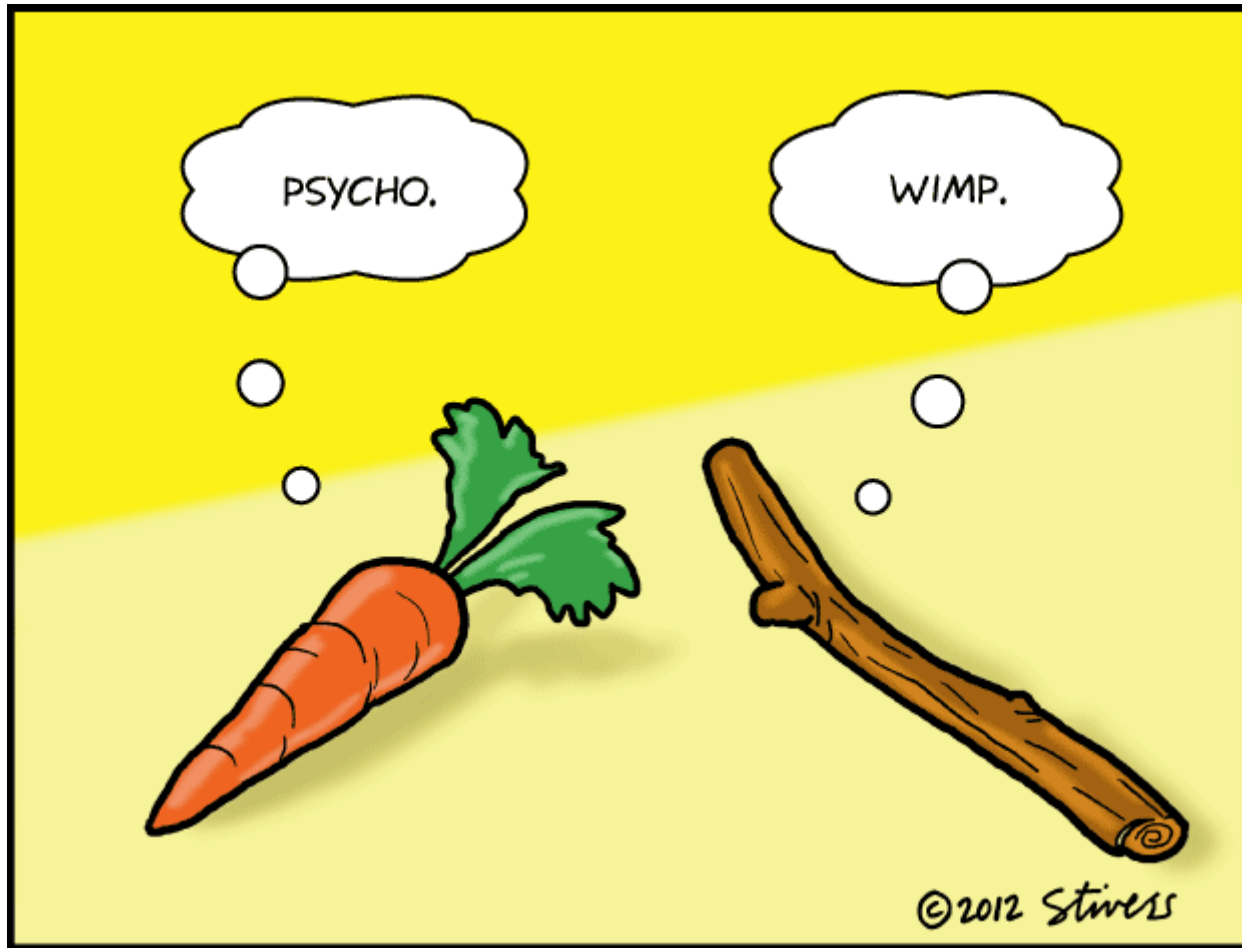
1. **Certain:** respond to all defined rule-breaking and positive behaviours
2. **Swift:** apply the sanction or reward as soon as possible after behaviour has occurred
3. **Predictable:** sanctions and rewards need to be real and consistently applied to all participants.
4. **Proportionate:** sanctions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

Taxman, Shephardson, & Byrne, 2004

The carrot and the stick

- Balance positive reinforcement with punishment to reduce undesired behaviours and replace them with desired prosocial behaviours.
- Develop a wide and creative range of intermediate-magnitude rewards and sanctions that can be ratcheted upward or downward in response to participants' behaviours.
- Avoid overreliance on sanctions that are low or high in magnitude.

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



Fishing for tangible rewards

- Stretch program resources by incentivising 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, Supra.

Fishbowl studies – rated effective



Adding a “fish bowl” increased success four times for stimulant abusers attaining 12 weeks of continuous abstinence.

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.

Sanctions for therapeutic consequences

- For substance-dependent participants, administer treatment-oriented consequences for substance use early in the program. For example, increased counselling sessions, a more intensive level of care, adding medications.
- Once substance-dependent participants have engaged in treatment and achieved initial sustained interval of sobriety, begin apply escalating sanctions for substance use.

Sanctions or therapeutic consequences

- For non-addicted substance abusers, begin applying escalating sanctions for substance use during the initial phase of the program.
- Hold status hearings separately for substance-dependent participants vs. substance abusers to avoid potential perceptions of unfairness.
- Rely on the clinical expertise of duly trained treatment professionals when ordering changes to the treatment regimen.

Marlowe, Supra.

Proximal vs Distal goals

- Distinguish between proximal behaviours that participants are already capable of performing and distal behaviours that they are not yet capable of performing.
- Begin by assigning higher-magnitude sanctions and lower-magnitude rewards to easy proximal behaviours, and assigning lower-magnitude sanctions and higher-magnitude rewards to difficult distal behaviours

Proximal vs Distal

- Identify which distal behaviours have become proximal as participants advance to each successive phase in the program. Increase the magnitude of sanctions and reduce the magnitude of rewards for those behaviours accordingly.
- Review in open court the process of phase advancement and the changing expectations that ensue whenever a participant advances to a new phase.

Marlowe, Supra.

Drink/drug driving (DUI)

What works?

- Admin per se (administrative license revocation) deters the general driving population (but not the alcoholic)
- Sobriety checkpoints act as a general deterrence
- -0- tolerance for those under 21 years
- Adequate tracking system for court and DMV of DUI drivers and probation requirements.

What works?



Vehicle sanctions like:

- license plate confiscation, ignition interlock devices
- vehicle impoundment
- vehicle forfeiture
- vehicle immobilisation (“tyre lock”)

What works?

- DUI checkpoints are “cost effective”
- In a city of 100,000, using 156 checkpoints a year could reduce alcohol-related crashes by 15 per cent, preventing one death and 60 non-fatal injuries
- Cost per checkpoint @ \$1 million and saves \$7.9 million.

“Sobriety Checkpoints Effective”, study says *New York Times*, Sept. 1, 1998



What works?

- Alcohol policies such as controls on alcohol outlet density
- Alcohol excise taxes
- Enforcement by ABC
- Open container laws.



Sweedler, Barry M., "Reducing DUI: Keeping Us on Track," *Prevention Pipeline* July/August 2000

What works?

Alcohol advertising bans and sponsorship restrictions.



What works?

- Liability for the seller (a recent TN case found the seller of gasoline liable for the damage done by a DUI driver; a Kansas bar owner was sentenced to four years in prison after a drinking contestant's death from alcohol poisoning BAC .43. SC Supreme Court says adults liable if they intentionally serve alcohol to underage youth who died in DUI)
- Brief interventions in emergency department after alcohol-related crash
- “Alcohol free” workplaces

What works?

- “Last Drink Initiative”
- NJ asks those arrested for DUI, “Where did you have your last drink”?
- Answers sent to ABC
- Similar laws in Texas and Boulder CO

Hampson, Rick, “N.J. Sharpens liquor-law policing,” *USA Today* (11/28/07)

What works?

- About one half of DUI arrests originate in licensed establishments subject to public regulation
- Server education can be quite helpful
- Ride service program incentives
- Carding everyone under the age of 30.



What works?

- A “no alcohol” clause for every alcohol or other drug-related offence
- No bars or liquor stores
- Require abstinence while in alcohol program.

A no alcohol clause is appropriate for any drug case. “[I]t is clear that alcohol use may lead to future criminality where the defendant has a history of substance abuse.” *People v. Beal* (1997) 60 Cal.App.4th 84, 87. *People v. Smith* (1983) 145 Cal.App.3d 1032 held a no bars/liquor stores clause was appropriate in a case involving possession of PCP. “Given the nexus between drug use and alcohol consumption,...[such a clause] is reasonably related to the crime...and future criminality.”

What works?

- Community corrections should check participants with breathalyser
- Encourage home checks, liver panels, garbage reviews
- DUI Courts are very effective in reducing recidivism.

S.C.R.A.M.

Secure Continuous Remote Alcohol Monitor



Predictors of recovery

- Tx experience
- Education
- Partner's alcohol use disorder status
- Amount of AA participation
- Non-smoking
- Partner's social support network
- Severity of drinking was **NOT** a predictor.

McAweeney, MJ, et al., "Individual and partner predictors of recovery from alcohol-use disorder over a nine-year interval: Findings from a community sample of alcoholic married men," *Journal of Studies on Alcohol* 66:220-228, 2005

Medically assisted treatment for alcohol

- Disulfiram (Antabuse®) [new promise for cocaine addiction when combined with buprenorphine]
- Naltrexone Hydrochloride (ReVia®) or Nalmefene (Revex®) [antagonists that reduce craving and blunt the high if alcohol taken; efficacy may have genetic component]
- Acamprosate Calcium (Campral®) [better for liver disease patients] “Strengthens the will to say no”
- Fluoxetine (Prozac®) [among the 50 new trials on alcoholism] <http://clinicaltrials.gov>

What doesn't work?

- Severity of punishment: Increasing jail sanctions is not nearly as important as the certainty and swiftness of punishment
- Some studies found that people given more punitive sentences had **worse** subsequent safety records
- Knowing you're unlikely to be caught.

Ross, H., Laurence, Ph.D., "Confronting Drunk Driving," 2:1 *The Prevention Researcher*, Spring 1995



Recent developments in impaired driving

24/7 sobriety

- As a condition of release from custody, accused must report to local police station twice a day to blow into a breathalyser
- If alcohol is detected, they are put in custody immediately for their breach
- Evaluations showed program reduced both repeat DUI and domestic violence arrests at the county level
- Incidents of drunken driving in SD have declined by 12 per cent and incidents of domestic violence have declined by nine per cent.

RAND (2015)

HOPE probation

- Felony substance abusing probationers
- No discretion for Community Corrections. All breaches must result in arrest and service of a two-day sentence
- Four years probation with early termination possible after two years
- No set schedule with judge
- Referral to treatment only after repeated failures or self-request.

HOPE evaluation

- Probationers assigned to HOPE had large reductions in positive drug tests and missed appointments
- Significantly less likely to be arrested during follow-up at three months, six months, and 12 months
- Averaged approximately the same number of days in jail for probation violations, serving more but shorter terms. They spent about one-third as many days in prison on revocations or new convictions.

Angela Hawken, Ph.D. and Mark Kleiman, Ph.D., Managing Drug Involved Probationers with Swift and Sanctions: Evaluating Hawaii's HOPE, National Institute of Justice (2009)



Ignition interlock devices

- Interlocks are as effective with first time DUI offenders as they are with repeat offenders
- When monitored properly, they reduce incidents of impaired driving
- But if no treatment is attached to sentence of a high risk/high need offender, incidents bounce right back again.

Meta-analysis of 15 studies

- The installation of ignition interlocks was associated consistently with large reductions in re-arrest rates for alcohol-impaired driving
- Following removal of interlocks, re-arrest rates reverted to levels similar to those for comparison groups
- The potential for interlock programs to reduce alcohol-related crashes is currently limited by the small proportion of offenders who participate in the programs and the lack of a persistent beneficial effect once the interlock is removed.

Elder, Voas, Beirness, Shults, Sleet, Nichols and Compton, "Effectiveness of Ignition Interlocks for Preventing Alcohol-Impaired Driving and Alcohol-Related Crashes: A Community Guide Systematic Review" Am J Prev Med 2011;40(3):362–376



Drug Treatment Courts

Drug Treatment Court promises

- Save money
- Reduce recidivism
- Save lives.



Judge Robert Russell, Buffalo NY

Drug treatment courts in Australia



Judge Roger Dive,
Parramatta Drug Court, NSW

First Drug Treatment Court in NSW in 1999

Review of drug and other specialist courts in Qld

- Drug Court Act 2000, repealed in 2013
- Five drug court locations
- Drug courts saved \$6 million according to Queensland Law Society
- The review ensures that options for the reinstated Drug Court are evidence-based and cost-effective, and reflect best practice around addressing drug-related offending.
- The review is developing options and models for reform

Cost of prison in Qld

- It costs Queensland taxpayers \$109,782.60 a year — or \$301.60 each day — to keep a prisoner "on the inside", according to the Productivity Commission.
- 1/3 (39.3%) Australian prisoners are re-arrested and return to prison within two years.

Partnerships in DTCs

- Probation
- Parole
- Police on the street
- Jail personnel
- Drug Court team (judge, attorneys, treatment, coordinator, mental health specialist, housing specialist, etc.)

Cost analyses

Citation	No. Drug Courts	<u>Avg.</u> Benefit Per \$1 Invested	<u>Avg.</u> Cost Saving Per Client
Loman (2004)	1 (St. Louis)	\$2.80 to \$6.32	\$2,615 to \$7,707
Finigan et al. (2007)	1 (Portland, OR)	\$2.63	\$11,000
Carey et al. (2006)	9 (California)	\$3.50	\$6,744 to \$12,218
<u>Barnoski & Aos</u> (2003)	5 (Washington St.)	\$1.74	\$2,888
Aos et al. (2006)	National Data	N/A	\$4,767
Bhati et al. (2008)	National Data	\$2.21	N/A

Cost benefit of Drug Court



NY:
\$254 million saved



**WA: Saved \$6,779
per drug court client**



CA: \$43 million saved



**TX: \$9.43 savings
for every \$1 spent**



**OR: \$10 savings
for every \$1 spent**

Saves money

- Another economic analysis in California concluded that drug courts cost an average of about \$3,000 per client, but save an average of \$11,000 per client over the long term.

Carey et al., *supra*, at p. 351

Saves money

- The Multnomah County Drug Court was found to cost less than business as usual for drug offenders, because probationers typically have multiple failed treatment experiences that are very expensive but elicit few gains.
- Factoring in cost-offsets from reduced arrests resulted in net savings of \$6,744 per participant and \$12,218 when victimization was also accounted for.

Finigan et al.

Cost benefits of Drug Court

- Avoided criminal justice costs
- Avoided victim costs
- Employability
- Fewer drug-exposed infants
- Reduced cost of care for abused children.

Retention in treatment

- Only 1:10 make it in voluntary treatment
- “Drug Courts exceed these abysmal projections”...
- “This represents a six-fold increase in treatment retention over most previous efforts.”

Marlowe, Dematteo, & Festinger, 2003

Program completion is key

“The body of literature on recidivism is now strong enough to conclude that completing a drug court program reduces the likelihood of further involvement in the criminal justice system.”

Vera: Fluellen & Trone, 2000

“To put it bluntly, we know that drug courts outperform virtually all other strategies that have been attempted for drug-involved offenders.”

Marlowe, DeMatteo, Festinger (2003)

Recidivism

Citation	Institution	Number of Drug Courts	Crime Reduced on Average
Wilson et al. (2006)	Campbell Collaborative	55	14% to 26%
Latimer et al. (2006)	Canada Dept. of Justice	66	14%
Shaffer (2006)	University of Nevada	76	9%
Lowenkamp et al. (2005)	University of Cincinnati	22	8%
Aos et al. (2006)	Washington State Inst. for Public Policy	57	8%

Crime impact

- In some evaluations the effects on crime were as high as 35 percentage points. Importantly, the effects were greatest for “high-risk” offenders who had more severe criminal histories and drug problems.
- This suggests that drug courts may be best suited for the more incorrigible and drug-addicted offenders who cannot be safely or effectively managed in the community on standard probation.

Marlowe, D. B. (2006). Judicial supervision of drug-abusing offenders. *Journal of Psychoactive Drugs*, SARC Supplement 3, 323-331.

Re-arrest effect without graduation

- A study of nine adult drug courts in California reported that re-arrest rates over a four-year period were 29% for drug court clients (and only 17% for drug court *graduates*) as compared to 41% for similar drug offenders who did not participate in drug court.

Carey, S. M., Finigan, M., Crumpton, D., & Waller, M. (2006). California drug courts: Outcomes, costs and promising practices: An overview of phase II in a statewide study. *Journal of Psychoactive Drugs, SARC Supplement 3*, 345-356.

Crime impact

- A long-term evaluation of the Multnomah County (Portland, OR) Drug Court found that crime was reduced by 30% over five years and effects on crime were still detectable **an astounding 14 years from the time of arrest.**

Finigan, M., Carey, S. M., & Cox, A. (2007, April). *The impact of a mature drug court over 10 years of operation: Recidivism and costs*. Portland, OR: NPC Research, Inc.

Re-arrest

- Another study of four adult drug courts in Suffolk County, MA, found that drug court participants were 13% less likely to be re-arrested, 34% less likely to be re-convicted and 24% less likely to be re-incarcerated than probationers who had been carefully matched to the drug court participants using sophisticated “propensity score” analyses.

Rhodes, W., Kling, R., & Shively, M. (2006). *Suffolk County Court Evaluation*. Cambridge, MA: Abt Associates.

GAO report

GAO

United States Government Accountability Office
Report to Congressional Committees

February 2005

ADULT DRUG COURTS

Evidence Indicates
Recidivism
Reductions and Mixed
Results for Other
Outcomes

- In 2005, GAO reviewed 23 evaluations of adult drug courts that confirmed that drug courts significantly reduce crime.



GAO-05-219

S. Government Accountability Office. (2005). *Adult drug courts: Evidence indicates recidivism reductions and mixed results for other outcomes* [No. GAO-05-219]. Washington, DC



Community Corrections

Unsupervised time

- 87 per cent of participant's time is unsupervised
- Risks are in their natural environment
- Public safety = avoiding high-risk locations, high-risk behaviours.



Strategies to consider

- Behaviour is tied to people, places and things
- Those are what need to change
- How can we make this population see the connection between needed behaviour change and the choices of people, places and things?

Avoiding trouble

- Curfews (7-7-7)
- Location restrictions
- Fraternising restrictions
- Monitoring supervision technologies
 - a) Ignition Interlock
 - b) Alcohol detection devices
 - c) GPS monitors (offender + victim)

Public safety

- Community supervision officers monitor for alcohol use, other drug use, and other behaviours that could pose a risk to the community
- Monitor compliance with laws. For example, new arrests
- Expedited warrant service
- Curfew and restriction monitoring.

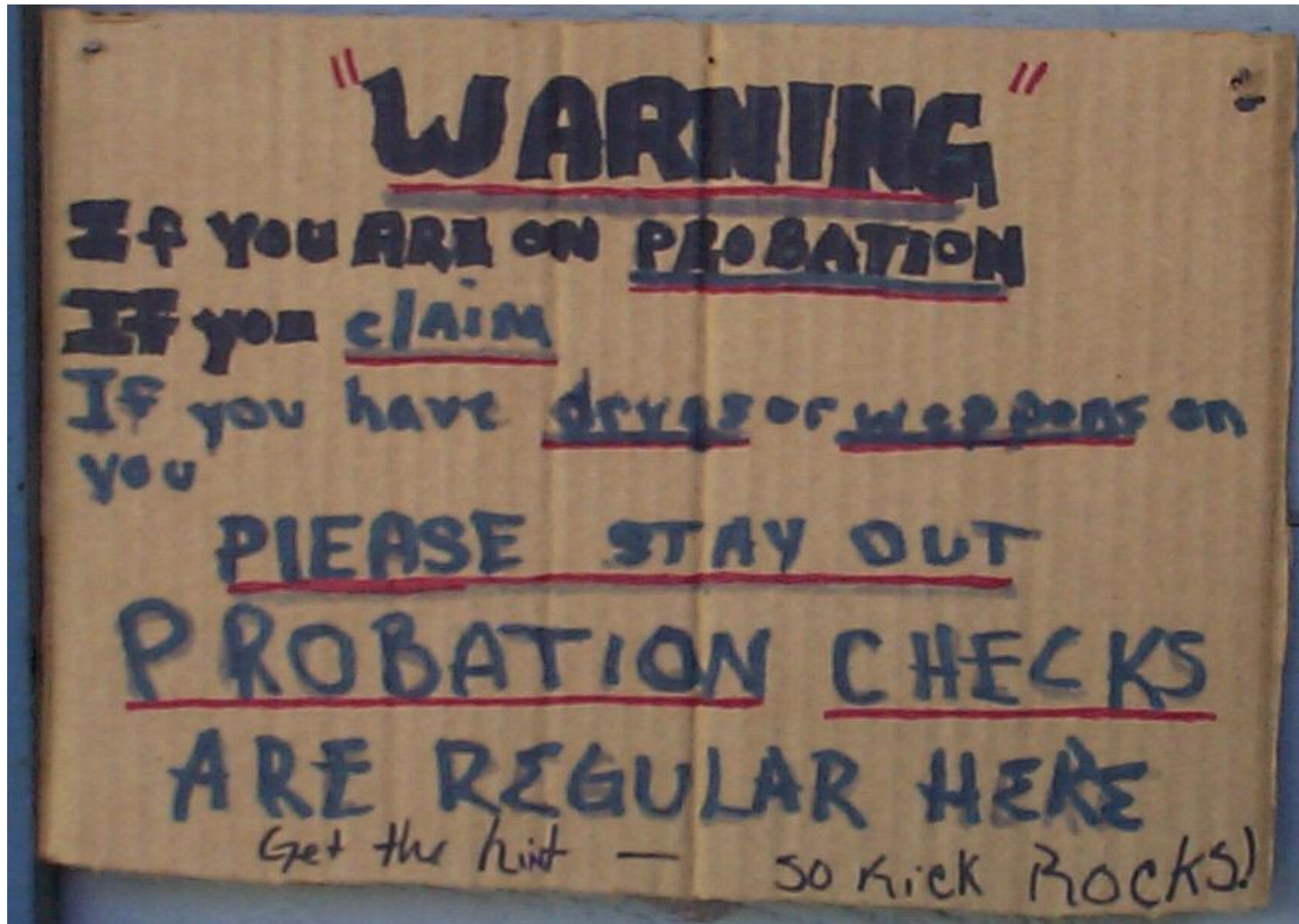
Probationer's home



Get out of the office

- Drug treatment court outcomes are improved when community corrections is involved
- Catch them doing something right
- Community supervision provides the “eyes and ears” of drug treatment courts.

Refusal skills



Offender's perspective

- External reasons work when refusal skills are still fragile
- Must find a way to respectfully refuse
- Must be definite about refusing.

Get out

- Field services and searches must be performed in professional and respectful manner*
- Model pro-social behaviour

*PACCOA Code of Ethics



Get out

- Identify and intervene in risky behaviours
- Correct errors before they become serious
- Protect children.

Unhappy surprises found during home visits and searches



Prepare for surprises



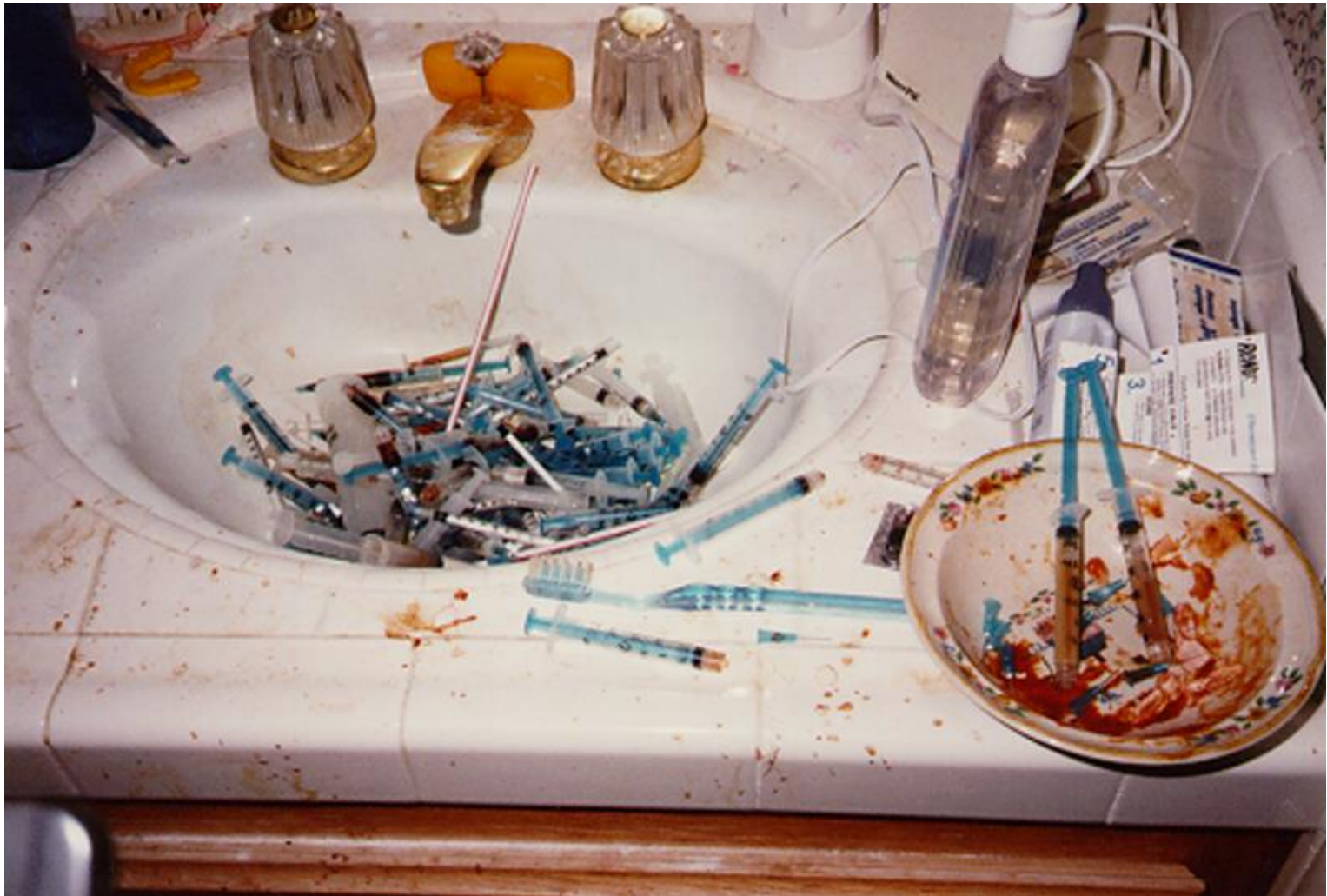
How is the house functioning? Not too bad?



Not too good



The value of a home visit





Resources

- National Institute of Justice, Crime Solutions
<https://www.crimesolutions.gov/>

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