Have you done everything you could to avoid termination?

Dr. Shannon Carey, PhD.

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Avoiding Termination in Treatment Courts: Overview

- ❑ Types of termination
- ❑ The Checklist
  - ❑ Why are you terminating?
  - ❑ What have you tried?
- ❑ How to terminate within the law (*Addendum slides provided)
- ❑ What's next?
  - ❑ What will you do when they come back?

Types of Termination

Administrative transfers are not terminations

- Some folks cannot manage your treatment court and need to transfer to a different caseload or court
- Medical terminations- their choice.

Successful termination of services: AKA **completion or graduation**

This what we're talking about today

Unsuccessful termination from entire program

The Checklist

- ❑ Why are you terminating?
  - ✓**Direct threat to public safety?**
  - ✓**Are you frustrated?**

When to Terminate?

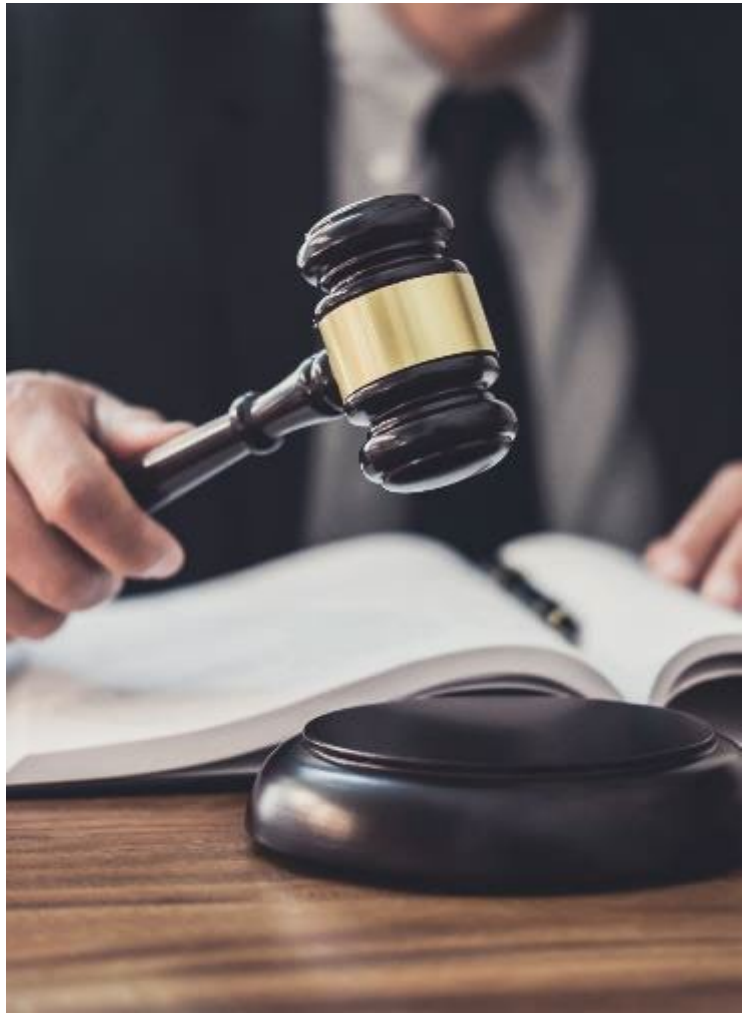
- Not a vote, a judicial decision after team input

Like surgery, termination is the first and only thing you can do, or the very last thing you do after you have tried everything else.

When is it the first thing you do?

- Actual violence, true public safety issues = termination (Esp: impaired driver courts)
- Repeated behavior that threatens the very integrity of the Court and the program = termination. (e.g., Selling drugs in group, significant fraud on the Court)

- Policy and local conditions play into decisions.



Are you frustrated?

Take your time and think before you leap!

Consider these facts:

Helen is driving her car, loses control and slides off the road, hitting a tree.

She is impaired by drugs and alcohol.

- Should she be punished?

Now consider these facts:

- Helen is driving her car, loses control and slides off the road, hitting a tree. She is impaired by drugs and alcohol. Sadly, a small child was near the tree on a tricycle and was killed.
- Should Helen be punished?

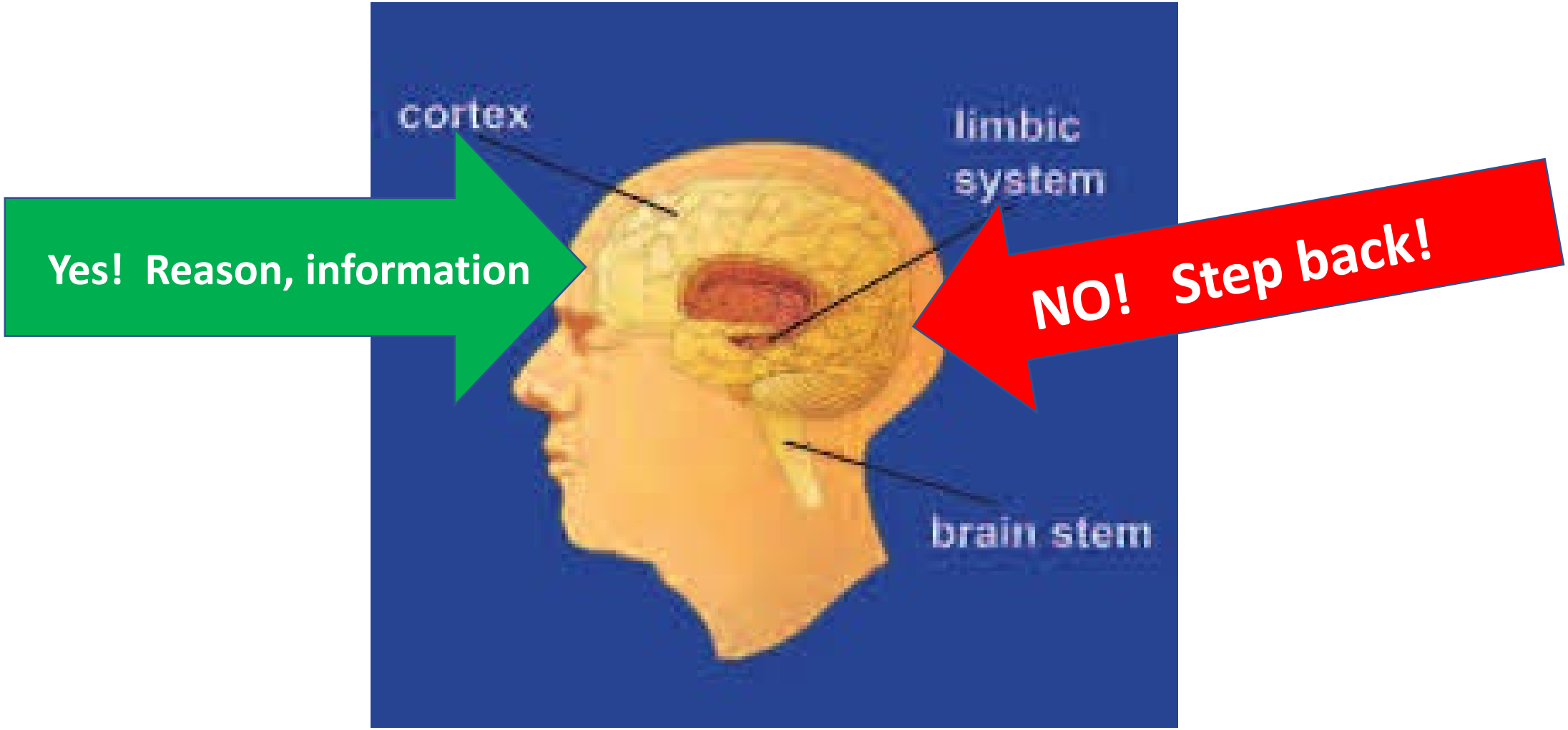
➢**STOP:** *is there a difference in how you feel when you consider these facts vs. the no death version?*

When examined on a brain scan, the answers to these questions varied.

- Decisions on the first scenario: frontal lobe
- Decisions on the second: limbic region.

DON'T DO THIS with termination. ***Take your time and consider everything first.***

Decisions with the correct region!



Team members are human, too!

It can be difficult to stay calm in the storm that is their lives.

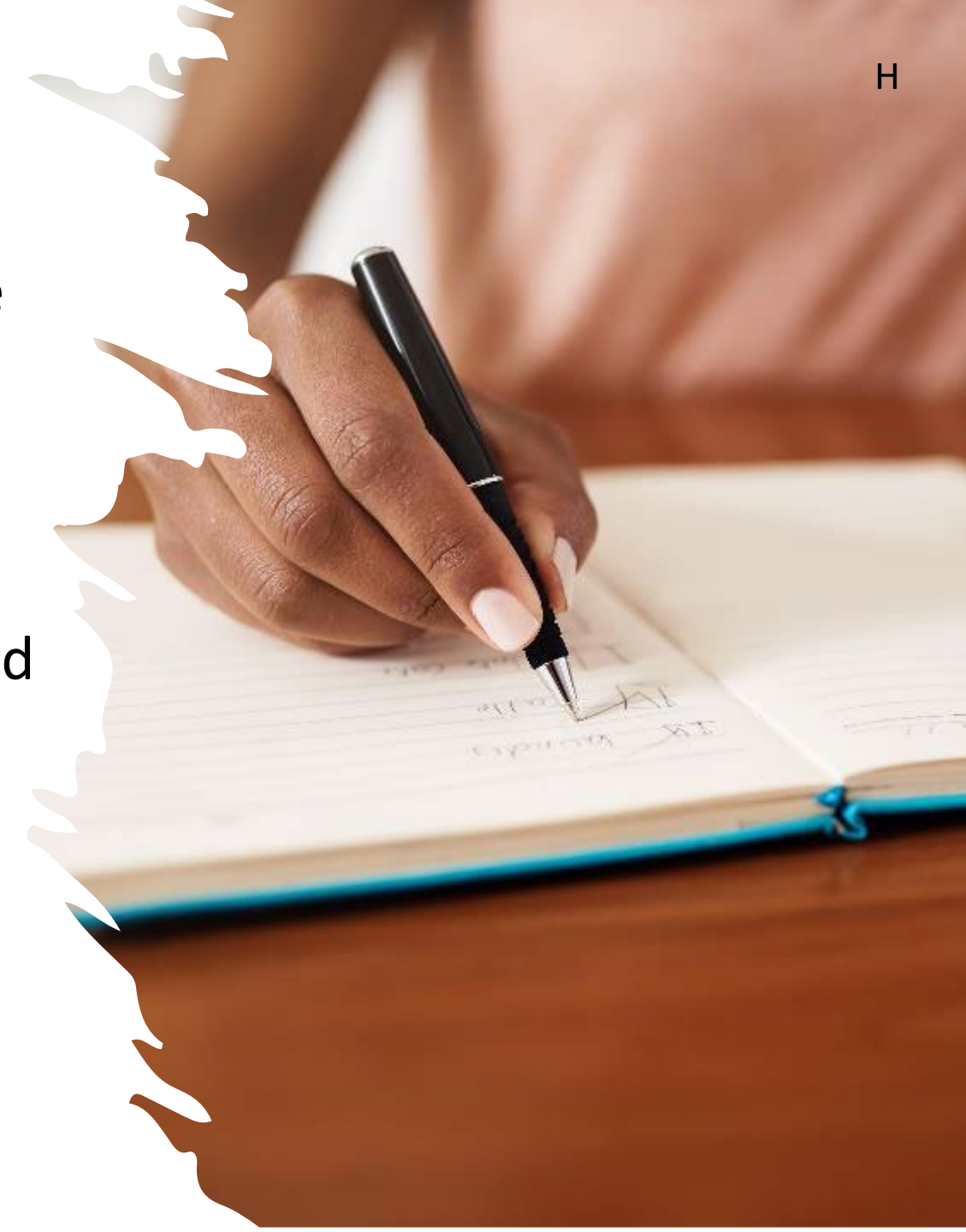
They frustrate us!

- ✓They anger us.
- ✓They break our hearts
- ✓They do dangerous things.
- ✓They go backward, not forward.
- ✓They manipulate, deceive and lie.
- ✓They die….and scare us for future decisions.

➢ **Before you terminate: <u>THINK</u> carefully with that frontal lobe.**

The Checklist

- ❑ WHAT assessments and screens did we do?
- ❑ Did we tick off the big-ticket items? SUD, MAT, Co-morbid mental health, physical health, housing, trauma, criminal thinking, recovery planning and practice? Anything else?
- ❑ Did we miss any? Are there others we should consider?
- ❑ WHEN were they last done?



What screens and assessment should you do?

Screen and then do follow up assessments if indicated by screen for:

Risk: The likelihood of rearrest or failing on probation

Central 8

1. History of anti-social behavior
2. Antisocial Attitudes
3. Peer Associations
4. Antisocial Personality
5. School/Employment
6. Substance Abuse
7. Living Situation
8. Family/Marital

Need: SUD or MHD or both (Clinical)

Follow ASAM criteria (6 Dimensions)

1. Acute intoxication or withdrawal
2. Biomedical conditions
3. Emotional, behavioral or cognitive conditions
4. Readiness to change
5. Relapse, continued use potential
6. Recovery/living environment

*Resources for validated screens and assessments are provided at the end

RESPONSIVITY: SUPPORTS AND BARRIERS TO ENGAGEMENT

- MAT
- Pain
- Trauma
- Transportation
- Cognitive or physical challenges (hearing, sight)
- Basic human needs: Food, housing

The Checklist

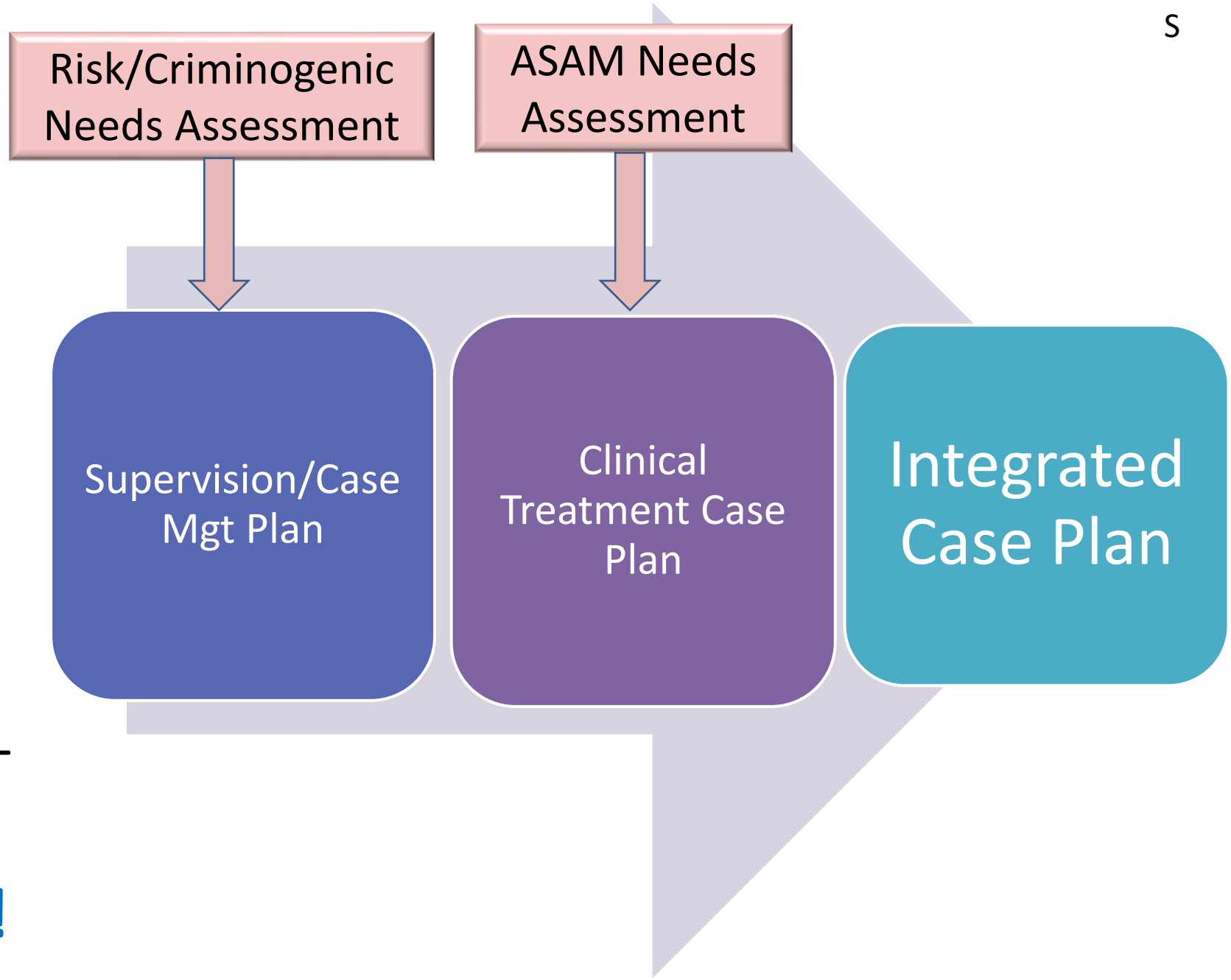
- ❑ Did we address everything that the assessment said? (Did we provide services according to the specific needs revealed in the assessments?)
- ❑ What was the expected dosage of treatment and interventions per assessments, and did we get to that dosage? Why? Why not?
- ❑ Have you addressed trauma
- ❑ Have you addressed pain
- ❑ Have you addressed basic human needs (food, shelter, medical care)

Assessment Should Lead to Action!

USE ASSESSMENT RESULTS TO CREATE THE CLINICAL CASE PLAN AND THE SUPERVISION CASE PLAN

THEN COMBINE PLANS FOR AN INTEGRATED CASE PLAN FOR THE PARTICIPANT

SHARE WITH THE TEAM!!



Addressing Risk Factors (Need)

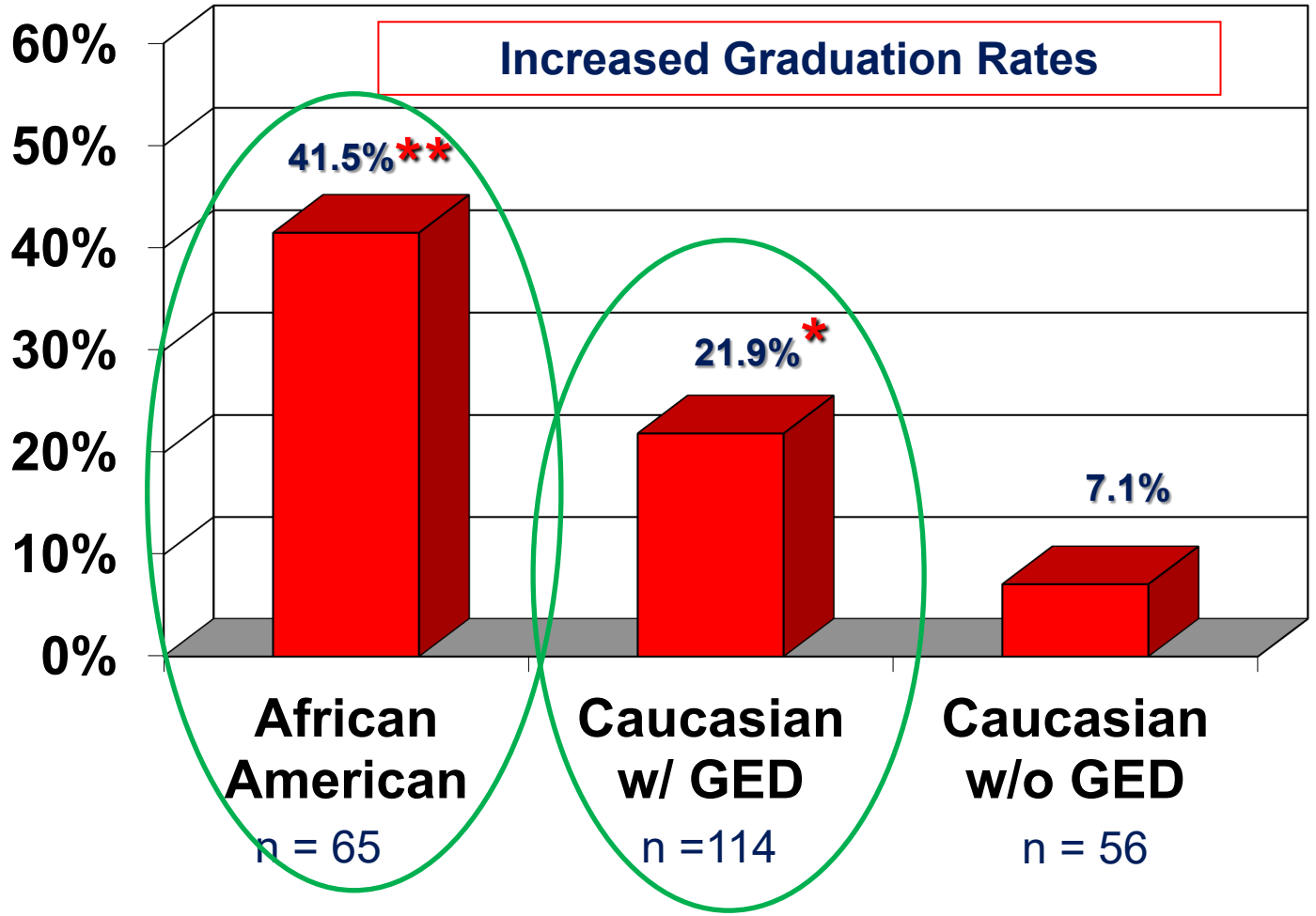
Dynamic Risk Factor (Central 8)	Need/Action	Service Examples
History of antisocial behavior (Criminal History)	Build and practice positive/healthy behaviors	By intervening in the 7 below
Antisocial personality pattern (Check trauma history)	Learn problem solving skills, practice anger management	CBT (Seeking Safety)
Antisocial cognition	Develop more pro-social thinking	MRT, Thinking for Change
Antisocial associates	Reduce association with criminal others (learn refusal skills)/increase time with pos peers	Peer Mentors, sober community activities
Family and/or marital discord	Reduce conflict, build positive relationships	Family therapy
Poor school and/or work performance	Work on good employee/study/performance skills	Job skills training, GED, community college
Lack of engagement in leisure activities (prosocial activities)	Connect participants with peer support and prosocial activities in the community	Sober community support groups, faith community
Substance abuse	Reduce use through integrated treatment	SUD treatment, education

Build Capacity and Offer Culturally Responsive Treatment

Treatment designed for young black men (HEAT)

Have you checked your data? Who is more likely to graduate and who is not?

Race? Gender? LGBTQI?



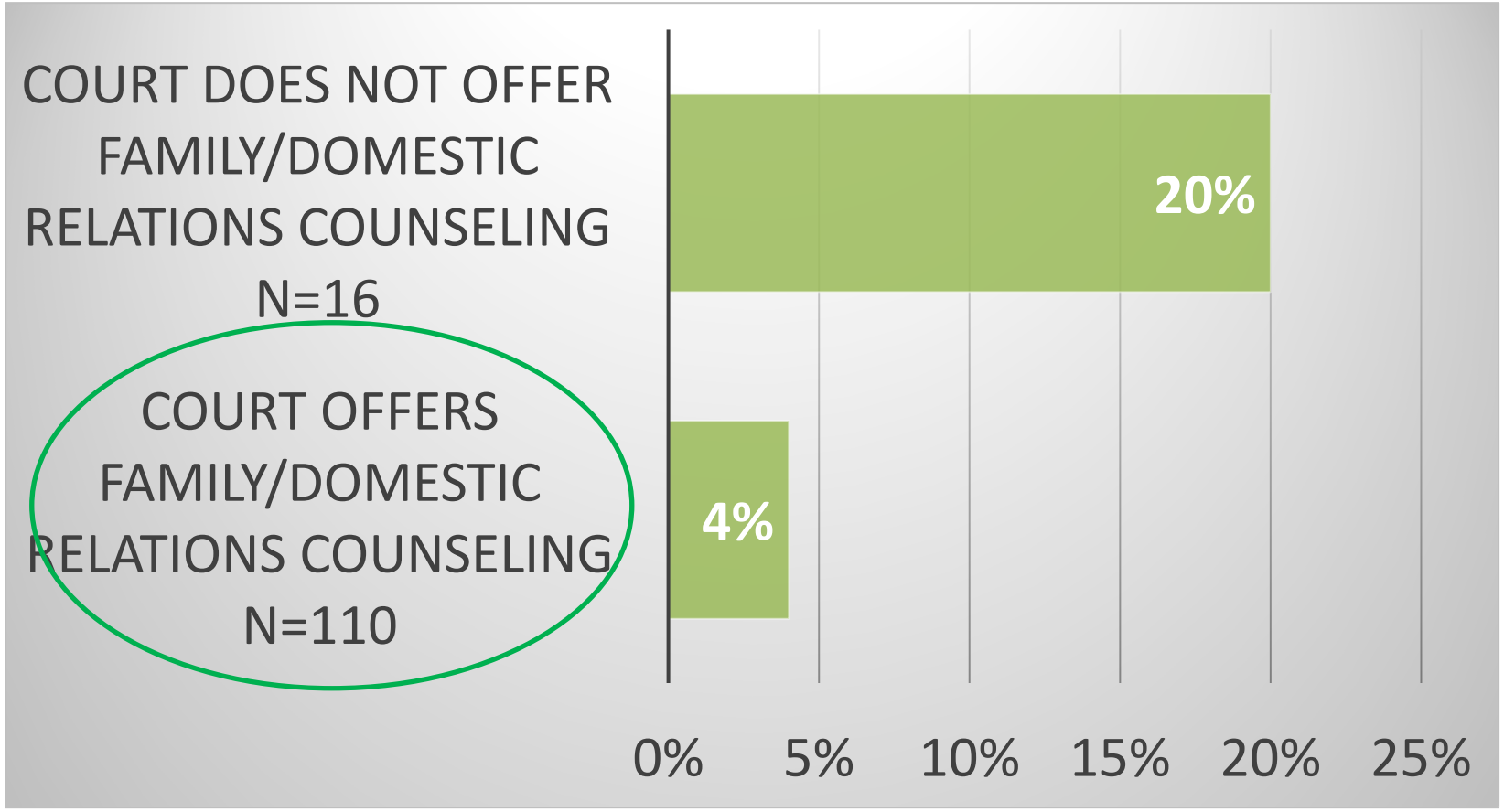
Vito & Tewksbury (1998)

Replicated: Beckerman & Fontana 2001; Marlowe et al., 2018

#1 - Courts that offered family counseling had 5 times less disparity in graduation rates

Study measured disparities in graduation rates in 142 treatment courts

What practices were related to lower disparities in graduation rates?



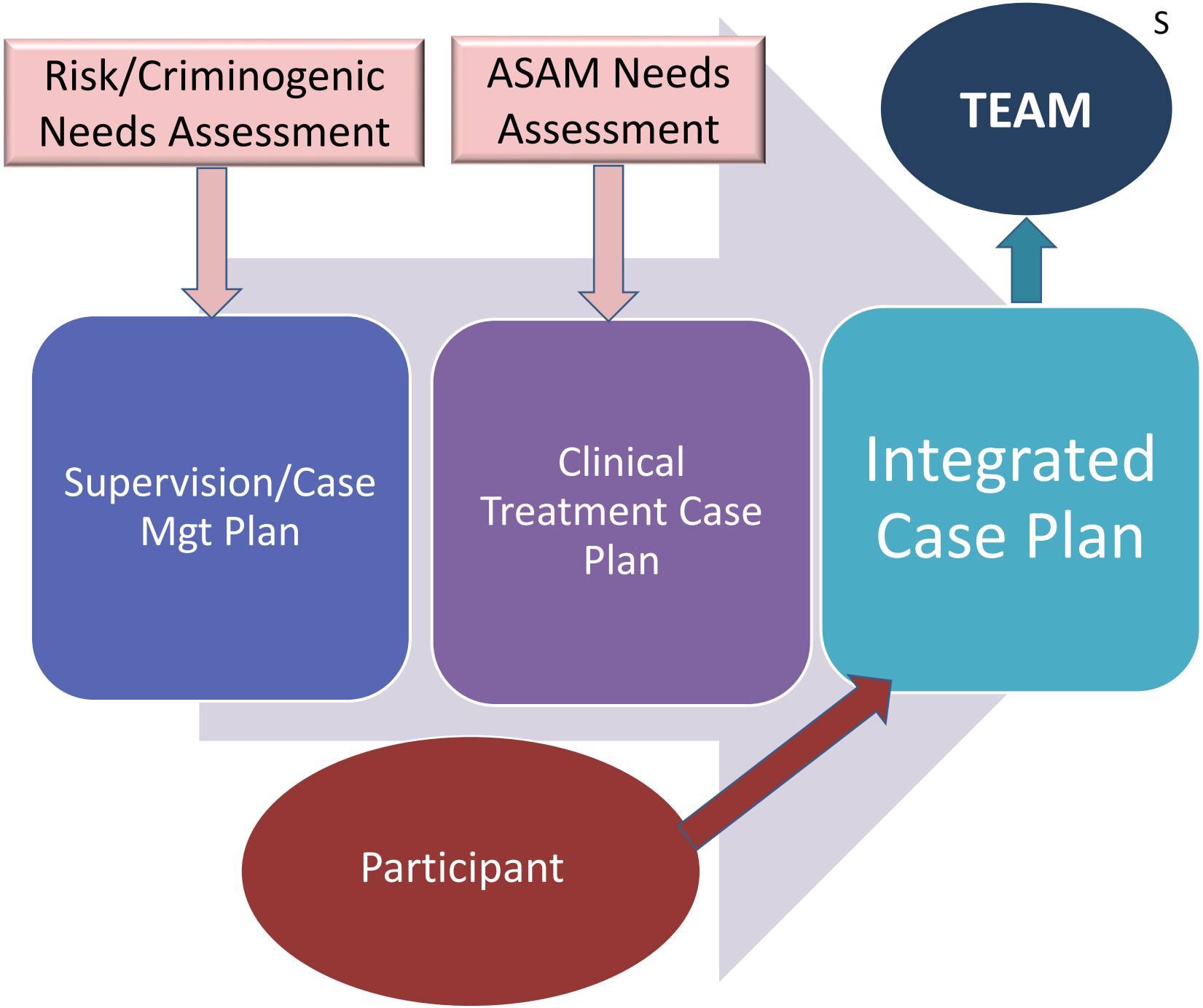
(Ho, Carey, and Malsch, 2018)

Use Assessment Results to Create the Supervision Case plan and the Clinical Case Plan

INCLUDE PARTICIPANT IN PLANNING

- Buy-in
- Understanding

SHARE THE PLAN WITH THE TEAM!!



The Checklist

- What has been done to address recovery capital?

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Recovery Capital

Personal Capital

Divided into both physical and human capital

Human capital includes:

- Values
- Knowledge
- Skills
- Self-esteem
- Risk management

Financial includes:

- Transportation
- Shelter
- Access to insurance

Community and Cultural Capital

- Full continuum of treatment resources
- Accessibility of resources that are diverse
- Local recovery efforts and supports
- Culturally prescribed and supported pathways of recovery
- Recovery norms are valued in the community

Social Capital

Relationships

- Family
- Friends
- Supportive social relationships that are centered around recovery
- Relational connections

The Checklist

- ❑ Has the team worked to develop rapport with participants based on showing respect, empathy, alliance and positive regard?

Retention starts with Engagement

Engagement starts with human connection

HUMAN CONNECTION LEADS TO ENGAGEMENT AND BEHAVIOR CHANGE

- Research recognizes the importance of belonging and human connection as a basic human need and as something necessary for success
- Maslow's hierarchy of needs puts human connection as just after basic human requirements for survival)

We are neurologically wired for connection

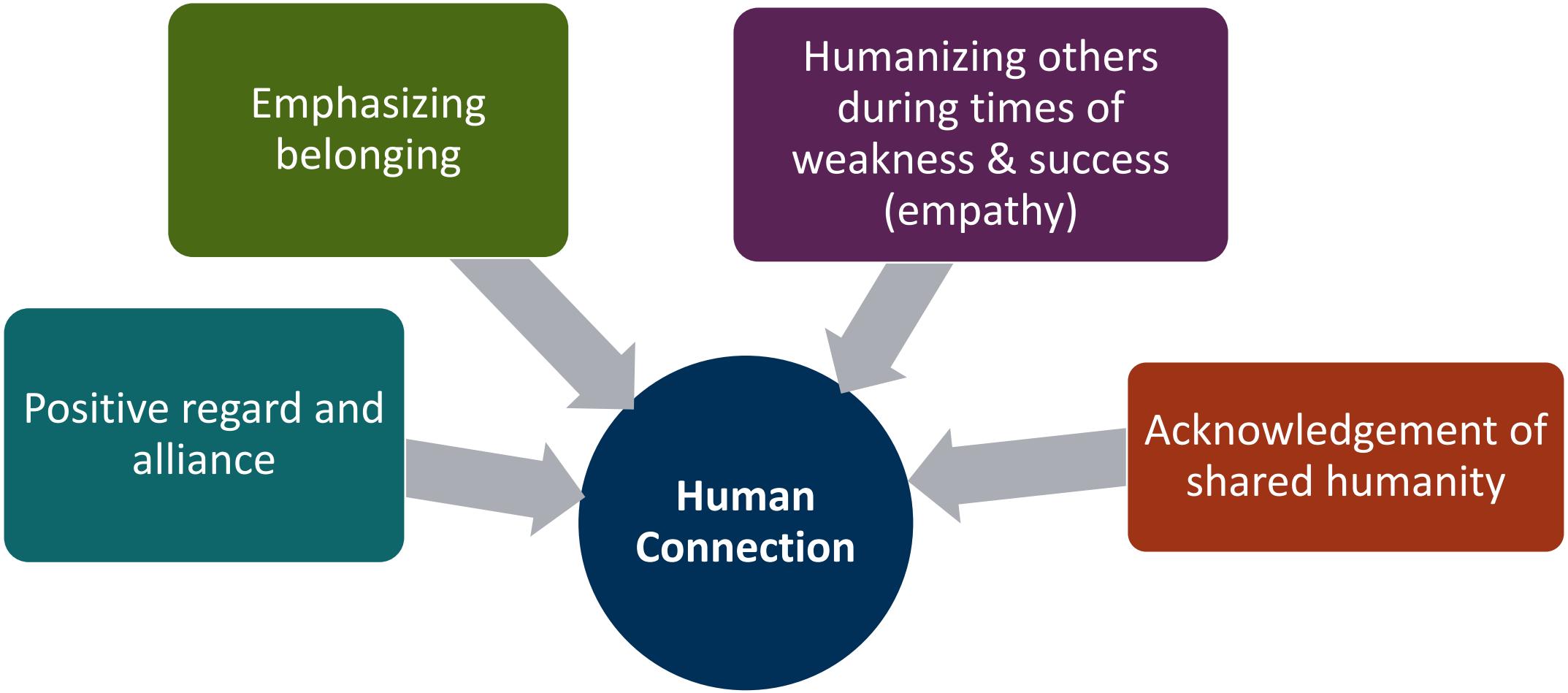
In brain imaging studies **Perceived Social Isolation** was associated with changes in connectivity between and within different portions of the brain associated with:

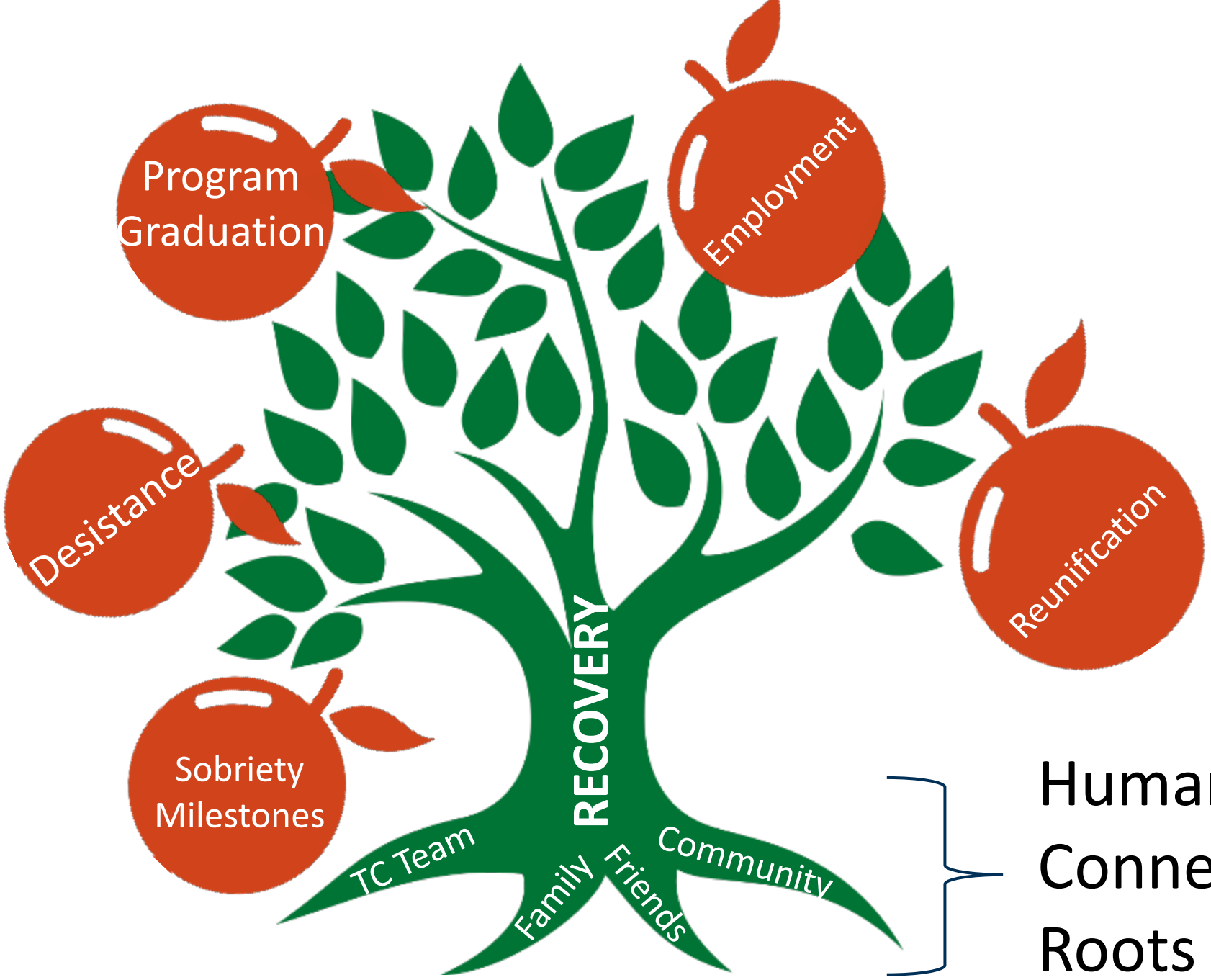
- Diminished **executive function**
- Decreased ability to **sustain attention** which impacts **working memory, executive control** and **maintaining task sets**
- Hypervigilance to **social threat** and diminished **impulse control**

Layden et al., 2016

HUMAN CONNECTION & BEHAVIOR CHANGE

- Human connection drives behavior change through:



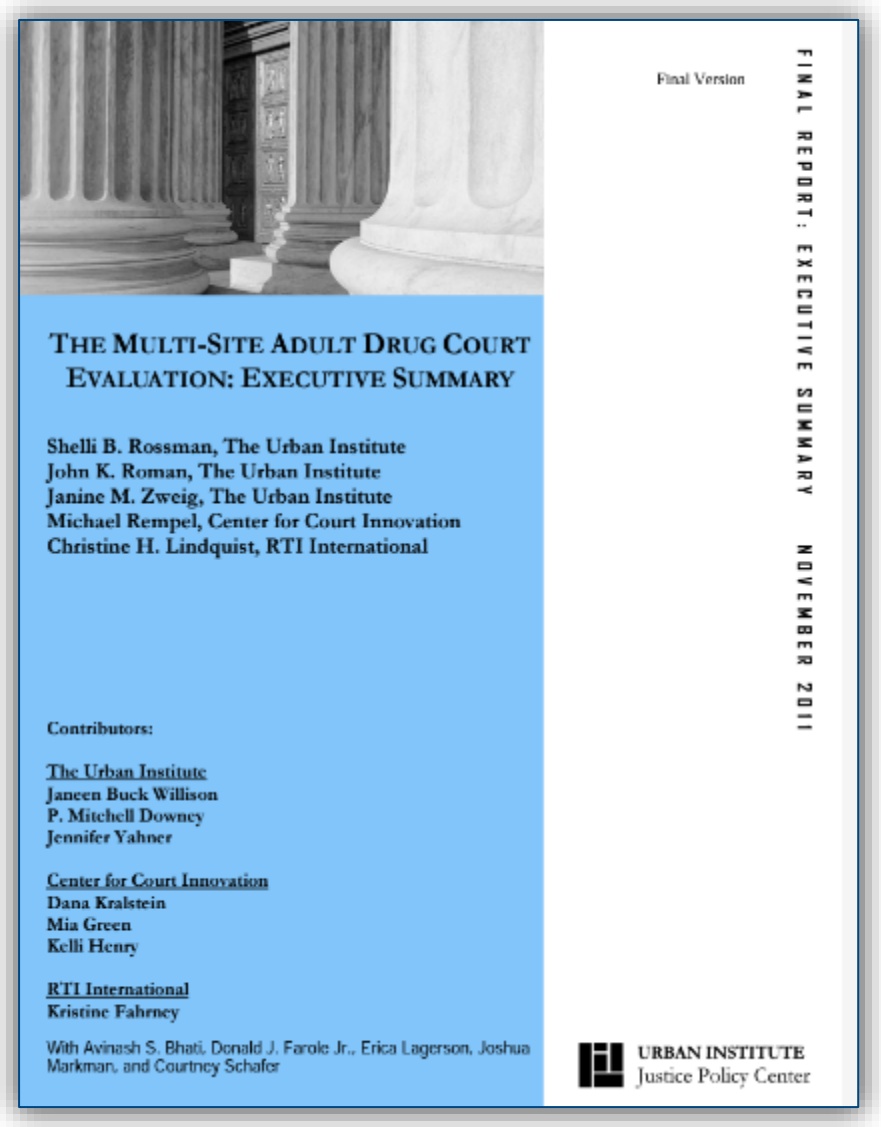


Human Connection: The Roots of Recovery

NATIONAL TREATMENT COURT STUDY ("MADCE")

- **The relationship with the judge**
  - Positive attitudes towards judge = better outcomes
  - Judge with more positive demeanor = better outcomes
  - Traditional sanctions (i.e., jail) were not associated with participant outcomes
  - Higher levels of judicial supervision = fewer crimes & fewer days of drug use reported

- The relationship between the judge and participants matters for improving outcomes – be positive and find something you genuinely like about each participant!



Rossman, Roman, Zwig, Rempel, & Lindquist, 2011

The Checklist

- ❑ Have you responded appropriately to the participant's behavior?
- ❑ Are you getting all the information you need about the participant and their behavior to respond effectively?
- ❑ Have you utilized all four response options?
  - ❑ Incentives
  - ❑ Sanctions
  - ❑ Monitoring
  - ❑ Teaching

Do you have all the information you need to respond effectively?

H

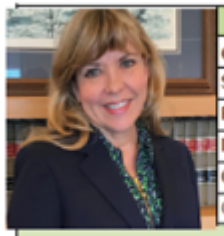
How We Decide

- Responses to behavior
- Changes in treatment
- Changes in supervision

Do you have all the information you need to respond effectively?

STAFFING FORM

https://npcresearch.com/resources/materials/avoiding-termination-from-treatment-courts/



TREATMENT COURT CASE STAFFING SUMMARY

Client:	Doe, Jane		DOB: 08/31/1982	Date:	4/1/2019
SPN/Case #:	12345678 / 12345671010			Officer:	Vincent
Phase: 2	CSR Hours: 60/60			Sobriety Date:	9/15/2018 (last pos)
Intake Date:	8/17/2018	Class A/B Misd.		Referral method:	ACOCS- violations
ODL/TDL Status: TDL eligible				Suspension dates:	N/A
Current Risk: Moderate		Current Needs: Moderate			

Risk/Criminogenic Need	Status/Progress/Plan *Focus on Goals for Top 3
1. History of antisocial behavior (Criminal History)	Presenting charge: Forgery, possession, paraphernalia
2. Antisocial personality patterns (Consider Trauma History)	No indication of anti-social personality
3. Antisocial Cognition (Criminal Thinking)	On Step 2 of MRT
4. Antisocial Associates	Jane has been spending time with some old associates from high school who are currently using and who live near mom. Jane has also participated with peer mentors at bowling night. 1. Current Goal - focus on more peer mentor activities.
5. Family/Marital Situation	Accomplished goal! Jane moved out of her (using) boyfriend's house last weekend and is living with her mother who is supportive of treatment
6. School/Work Performance	Making progress on her GED 2. Current Goal: Schedule math test by 3/16/2019
7. Living Situation	Accomplished sober housing goal! Jane moved out of her (using) boyfriend's house last weekend and is living with her mother who is supportive of Jane's treatment plan.
8. Substance Use Disorder/Treatment progress *(ASAM: 6 dimensions of clinical assessment)	Client has diagnosed severe substance use disorder (Heroin). Client is on Vivitrol and is tolerating it well. Client is in CBT and was late for last treatment session, but has attended all required sessions. 3. Current Goal: Client is engaged with treatment and is currently working through plans for responding to specific triggers.
STAGES OF CHANGE	Jane is in the action stage on the majority of her goals and appears to have internalized the desire to make changes in her life. She is struggling with the wish to spend time with old friends, although she knows they are not good for her.
Benchmarks accomplished towards phase advancement	Jane has completed all required Phase 2 Benchmarks and is filling out application for Phase 3
Barriers to services and intervention/plan	Client's mother is ill and may need to move into assisted living. If this happens, client will need new housing. Will monitor mother's condition. Continue with current treatment plan.
Summary of Successes	Jane moved away from unhealthy relationship with boyfriend and moved in with supportive mother. Accomplished sober housing goal! Completed all requirements since last court session.
Summary of Infractions	Client is doing very well. No issues with non-adherence.
Recommended Court Responses	Incentive: Judge acknowledgment of progress, made good decision and important progress in moving out of boyfriend's house and in with mother - 12 Hour CSR Voucher, fish bowl for completing all requirements in last two weeks. Acknowledge she is filling out application for Phase 3.
	Other responses: Reinforce message that Jane should avoid her high school friends and focus on more peer mentor activities. Ask Jane to talk about activities she could do instead of spending time with old high school friends. Ask Jane to list her other current goals and plan for completing (see goals above and prompt her if she does not remember).

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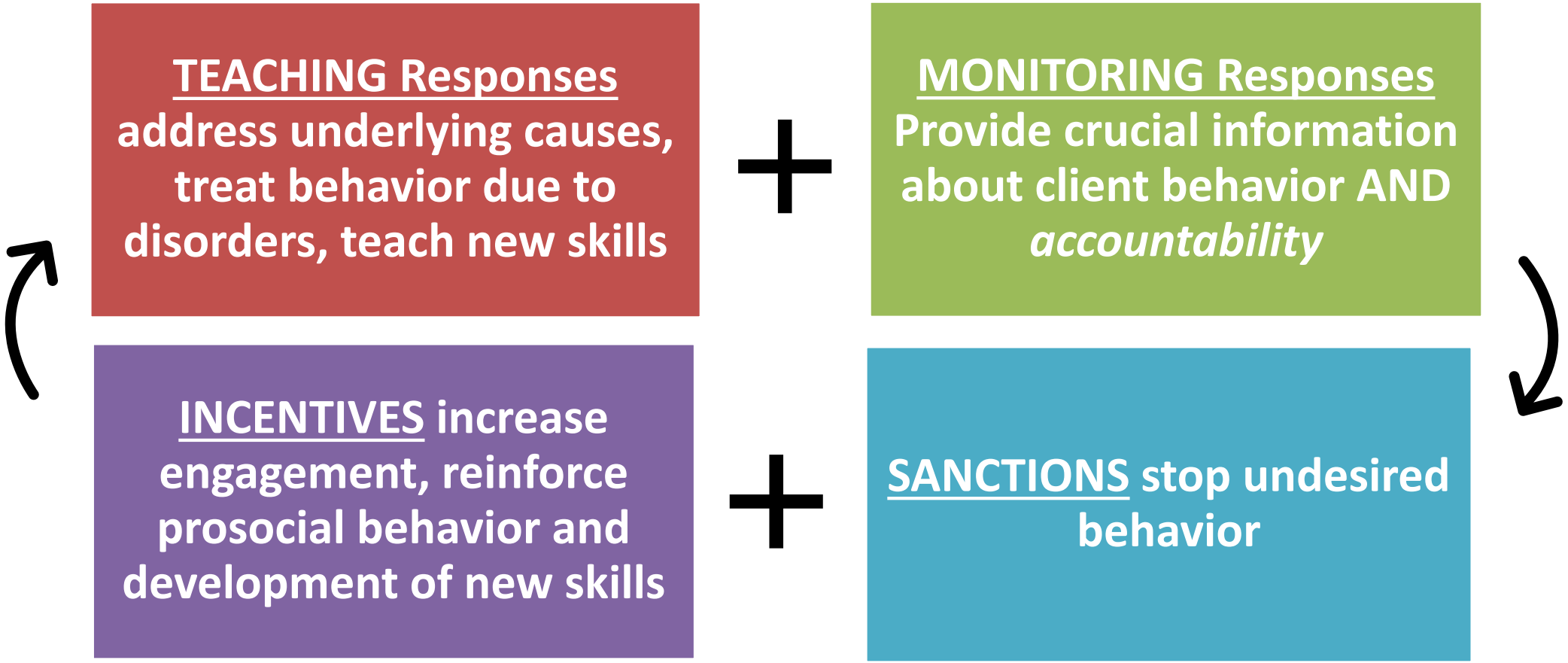
Responses to Behavior: Four Tools that Motivate Behavior Change – and Work!



We use these tools in unison!

Teaching Responses

Used to help participants reflect, learn from their behavior and to teach new skills

- ❑ Have you considered what skills the participant lacks that they need to learn?
- ❑ Have you responded to participants in a way that provided a learning experience for the participant and others in the courtroom?
- ❑ Have you consistently checked for participants' understanding?
- ❑ Have you explained therapeutic adjustments (changes in level and type of care)?

Monitoring Responses

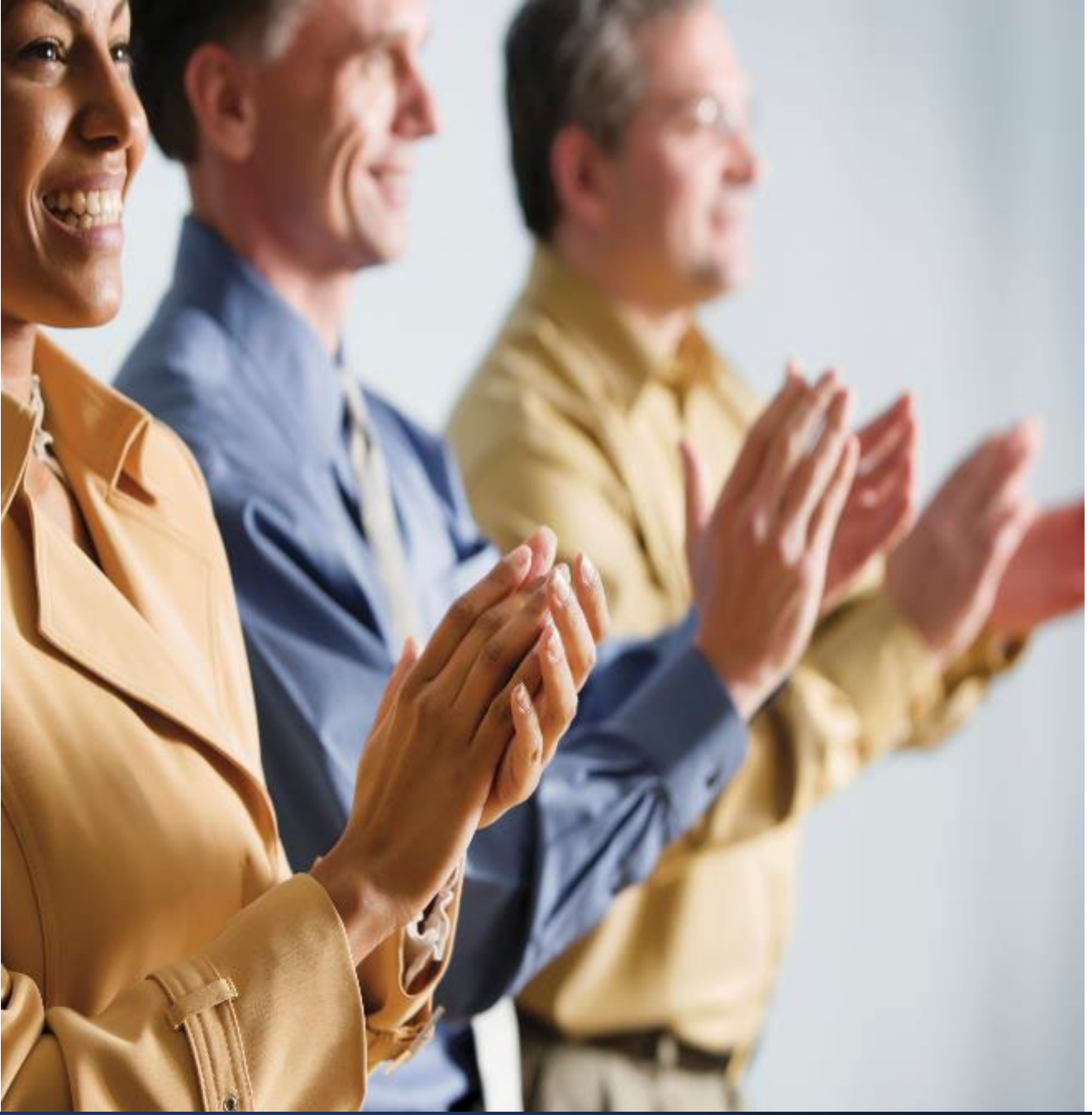
Used to gather information about participant behavior, provide support and promote accountability

- ❑ When was the last home visit and check on the recovery environment? What is the participants family situation?
- ❑ Have we created an integrated case plan that addresses assessed needs and does not include requirements for services the participant does not need
- ❑ Have you asked participant what would help?

Sanctions

Used to send the message that the participant is moving in the wrong direction

- ❑ Are you starting with a low level sanctions and only increasing severity if the same poor behavior persists?
- ❑ Are you saving jail for behavior that is dangerous to others or compromises the integrity of the program? (When sanctioning to jail are you using less than 5 consecutive days?)
- ❑ Have you confirmed that the sanctions you are choosing are actually reducing participant poor behavior?



Incentives

Used to confirm for the participant that they are moving in the right direction

- ❑ Have your incentivized the small steps?
- ❑ Are you providing more attention in response to positive movement rather than extended attention on poor behavior?
- ❑ Are you providing at least 4 incentives to every sanction?

CREATIVE INCENTIVES THAT PROMOTE CONNECTION AND ENGAGEMENT

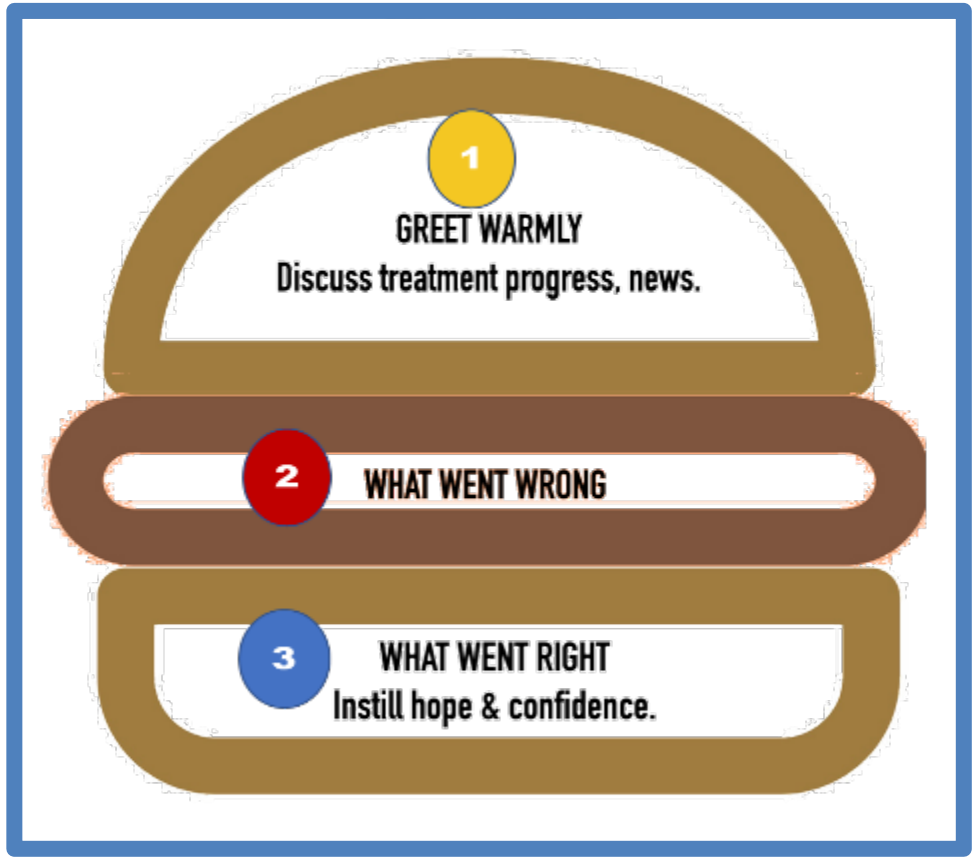
- Short encouragement videos from the judge and team members
- Conversations in court (virtual or in-person) about goals, strengths, successes and actions participants can take to become successful
- Letters from the team
- Quick encouraging text messages from team members
- Certificates

YOU'RE #1!
GO 1ST AT COURT REVIEW!

You've got it made in the shade!!
Subtract 8 HOURS of community service

Receiving Both an Incentive and a Sanction? Yes!

- We never miss an opportunity to reinforce positive behavior – even if other things went wrong
- We will carefully explain WHAT behaviors we are responding to
- What do we want the participant to learn? Is our response the best way to teach it?



We avoid confusion by being SPECIFIC and helping clients see how change helps THEM achieve THEIR goals!

Quick Summary:
DID you check off the “big ticket items”?

- ✓Screens and Assessments
  - ✓SUD
  - ✓Mental health disorders
  - ✓Trauma
  - ✓MAT
  - ✓Physical health barriers and chronic pain
  - ✓Housing and basic needs
  - ✓Criminal thinking
  - ✓Family therapy
  - ✓Developmental challenges, learning differences
- ✓Matching services to needs (integrated case planning)
- ✓Recovery capital (planning and PRACTICE)
- ✓Building relationships (with the team and prosocial peers)
- ✓Using all four tools to respond to behavior (in unison)
  - ✓Teaching Responses
  - ✓Monitoring Responses
  - ✓Incentives
  - ✓Sanctions

Scenario

What should the team do to avoid termination?

Tina

- Tina is on probation and if she is terminated, she's going to prison 5 years
- She is involved in multiple cases as a witness, a victim and for committing her own crimes
- There is a current case for dealing and other most recent charges are petty theft with multiple priors (multiple incidents of shoplifting and various probation violations)
- Tina has been a victim of domestic violence and has has had to testify against her batterer
- She has been released in sectional housing and is coming back into the program

Video: Probation shares information about vegetable oil and Tina tampering and lying

What did you learn from probation?

What did probation do well?

What more do you want to know?

Video: Recovery mentor and treatment provide additional information

What did you learn from the mentor and treatment?

What did they do well?

What more do you want to know?

Video:
The attorneys and judge chime in

What did you learn from the attorneys and the judge?

What did they provide that was helpful?

What more do you want to know?

S/H/D

Video:
Judge and Tina in Court
“Now’s My Turn”

Do & Don't List:

- DO be patient. Don't hurry. These folks are VERY debilitated.
- DO use the correct yardstick. These people are not you…or your team.
- Don't punish, shame, or over-react to the disease(s).
- DO remember to look for the good (the baby steps) and reward it, even if other things went wrong.
- DO maximize kindness, and patience.
- Don't fall for the "self sabotage" trick.
- Don't give up.

Instead:

- Use our checklist, our list of responses, and guide for termination discussions!
- They are free for you to download and use!

Be patient, encourage every crumb of success and don’t focus on the errors. BABY steps mean everything.

Termination:

- Really resist throwing folks out.
- Consider the alternative for the person if you terminate (will public safety be better protected?)
- Do it when there is no real choice.
- Do it if you must - but leave the door open and with hope.

Legal standards and considerations

Due process applies. Do not commit malpractice!

Follow the law

- Recusal? The law and ethics control.
- Get a good record of termination procedure and reasons.
- Leave them with a message of hope
- Plan for their return.
  - Consider legal tools for re-entry, if they exist.
- Re-Admission policy review. They will be back.

Termination: the process under law

- Due process is required for termination proceedings.
- Termination typically results in revocation. Revocation typically results in incarceration.
- Incarceration increases the likelihood of recidivism.
- Err on the side MORE due process, not less.
- ***PROSPECTIVE WAIVERS OF RIGHTS IN THIS AREA ARE INVALID!***

The seminal cases:

- ***Morrissey v. Brewer***, 408 U.S. 471 (1972)
  Parolees get due process
- ***Gagnon v Scarpelli,*** 411 US 778 (1973)
  Probationers get due process

- Procedural protections are due under the 5th and 14th Amendments when the defendant will potentially suffer a loss to a recognized liberty or property right.
- If due process applies, the question remains what process is due. Less than a fully jury trial, different burden of proof.
- All 50 states provide counsel by statute

Minimal Due Process? What's that mean?

- ✓Written notice of the alleged violations
- ✓Disclosure of the evidence against them
- ✓Opportunity to be heard in person and to present evidence (including subpoena power)
- ✓Right to confront and cross-examine adverse witnesses (unless good cause shown for not allowing confrontation)
- ✓ A 'neutral and detached' hearing
- ✓Written statement by factfinder(s) as to the evidence relied on and the reasons for the decision.

The question: What process is due?

Neal v. State, 2016 Ark. 287 (Ark. Sup. Ct. 6/30/16) (Citing *Laplaca* and *St aley, infra* , Ark. Sup. Ct. holds: "[T]he right to minimum due process before a defendant can be expelled from a drug-court program is so fundamental that it cannot be waived by the defendant in advance of the allegations prompting the removal from the program.")

Gross v. State of Maine, Superior Court case # CR-11-4805 (2/26/13)

(drug court procedures relating to termination *violative of due process and, therefore, unconstitutional. Drug Court* participant entitled to: notice of the termination allegations and the evidence against him, right to call and x-examine witnesses, a hearing at which he is present, a neutral magistrate, written factual findings and the right to counsel. *Here, the drug court team discussed the termination decision during the termination hearing, without defendant's presence or that of his counsel. That procedure coupled by the fact the Superior Court felt that the drug court judge should have recused, resulted in a finding of constitutional infirmity. Moreover, the* appellate court ruled the defendant did not, and arguably could not, prospectively waive his rights, *citing LaPlaca and Staley.*

But he waived his rights! NOPE!

Hendrick v. Knoebel, (SD Indiana 5/10/2017) *("Though we need not rule on Defendants' argument concerning the waiver provision in the DTC Agreement, we note our serious doubts as to its enforceability under Indiana contract law, given the conspicuous lack of parity between the parties, the absence of specificity in the provision's language, the fact that it purports to absolve the DTC's employees of liability for intentionally tortious conduct, and the fact that the DTC Program is an entity of the local government performing a public service. Moreover, because the provision implicates federal common law by purporting to waive federal statutory and constitutional rights, the likelihood of its enforceability is increasingly remote*. Federal courts are rightly skeptical, albeit not uniformly dismissive, of claims that a plaintiff has waived his constitutional rights or has released a defendant from liability for violating them. We "indulge every reasonable presumption against waiver of fundamental constitutional rights," *Johnson v. Zerbst, 304 U.S. 458, 464 (1938); Bayo v. Napolitano, 593 F.3d 495, 503 (7th Cir. 2010), and we acquiesce in a waiver only if it has been "knowing, intelligent, and voluntary." Schriro v. Landrigan, 550 U.S. 465, 484 (2007). The lack of specific language in the agreement before us, in conjunction with its prospectivity, not only falls short of eliciting "an intentional relinquishment or abandonment of a known right or privilege," Patterson v. Illinois, 487 U.S. 285, 292-93 (1988), but also* encourages DTC staffers to violate the DTC participants' constitutional rights, knowing they are acting with impunity. *Enforcing such an agreement is inconsistent with the public interest given its potential for abuse and cancellation of the participants' primary means of vindication.")

Questions, Training, TA?

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Screening and Assessment Resources

Common Validated Risk/Criminogenic Need Tools

- Level of Service/Case Management Inventory (LS/CMI)

https://www.mhs.com/MHS-Publicsafety?prodname=ls-cmi

- Ohio Risk Assessment System (ORAS)
  https://cech.uc.edu/centers/ucci/services/trainings/offender_assessment/orastrainingoverview.html

- Risk and Need Triage (RANT)

  https://www.tresearch.org/products/courts/order-rant

See the Adult Drug Court Best Practice Standards: Standard I Appendix A

https://www.nadcp.org/standards/

Substance Use Screens

- Alcohol Use Disorders Identification Test (AUDIT), 5th ed.

https://www.drugabuse.gov/sites/default/files/files/AUDIT.pdf

- Substance Abuse Subtle Screening Inventory (SASSI), 4th ed.

Ordering information at https://www.mhs.com/MHS-Assessment?prodname=sasi

- Global Appraisal of Individual Needs – Short Screener (GAIN-SS)

https://www.integration.samhsa.gov/clinical-practice/Global_Assessment_of_Individual_Needs_Short_Screen_-GAIN-SS-.pdf

Substance Use Assessments

- Addiction Severity Index, 5th Edition (ASI)

http://adai.washington.edu/instruments/pdf/Addiction_Severity_Index_Baseline_Followup_4.pdf

- Global Appraisal of Individual Needs (GAIN)

http://wits.idaho.gov/Portals/73/Documents/substanceUse/GAIN-I%20Full%205.6.2.pdf

PTSD Assessments

- Adverse Childhood Experiences questionnaire http://www.ncjfcj.org/sites/default/files/Finding%20Your%20ACE%20Score.pdf

- Life Events Checklist 5 https://www.ptsd.va.gov/professional/assessment/documents/LEC-5_Standard_Self-report.pdf

- PTSD Checklist 5 https://www.ptsd.va.gov/professional/assessment/adult-sr/ptsd-checklist.asp

Other Clinical Assessments

- Beck Depression Inventory II (BDI II)

https://www.pearsonassessments.com/store/usassessments/en/Store/Professional-Assessments/Personality-%26-Biopsychosocial/Beck-Depression-Inventory-II/p/100000159.html

- Insomnia Severity Index (ISI)

https://www.ons.org/sites/default/files/InsomniaSeverityIndex_ISI.pdf

- Brief Pain Inventory (BPI)

http://www.npcrc.org/files/news/briefpain_short.pdf