



SAN FRANCISCO COLLABORATIVE COURTS

To: Collaborative Courts Advisory Committee

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Subject: Collaborative Court Tools—A Summary of Research on Judicial Status Hearings, Sanctions & Incentives

EXECUTIVE SUMMARY

- In several studies of misdemeanor drug court clients, those with a history of drug treatment or diagnosed with anti-social personality disorder performed better when assigned to more frequent judicial status hearings.
 - Sanctions are most effective when they distinguish between short- and long-term goals, and are predictable, delivered immediately, appropriate in their severity and intent, and administered in a fair manner.
 - Incentive programs should target clearly defined behaviors, provide an escalating schedule of rewards that are valued by participants, focus on participants who need to improve, and deliver rewards immediately.
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INTRODUCTION

This memo summarizes research on status hearings, and sanctions and incentives in drug courts. All of San Francisco's collaborative courts are based on the Ten Key Components of Drug Court. This research paper provides useful suggestions for improved practice across programs.

It is important to note that the generalizability of these findings may be limited not only by the focus on drug courts, but also by the populations studied. Much of the research presented here has been conducted in misdemeanor drug courts among defendants less criminally and chemically involved than those served in San Francisco's adult collaborative programs. For example, in the studies of status hearings cited below, the clients were predominantly young and employed marijuana users. This differs greatly from San Francisco's felony drug court clients, who are more often middle-aged, unemployed, and daily users of cocaine, heroin or methamphetamine.

I. JUDICIAL STATUS HEARINGS

The **judicial status hearing** is one of the defining characteristics of the collaborative court. Frequency of hearings is variable based on stage of program participation, participant compliance, and other criteria. In San Francisco Drug Court, clients start the program with weekly status hearings and move toward bi-weekly and less frequent hearings as they demonstrate progress. Participants may be required to attend hearings anywhere from multiple times per week to once every four to six weeks.

Douglas Marlowe, J.D., Ph.D. and a team of researchers have studied the role of status hearings in drug courts. In particular, Marlowe examined the effect of the frequency of status hearings on the outcomes of

“low” and “high risk” offenders. High risk offenders were defined as those diagnosed with anti-social personality disorder or those with a drug treatment history.

These studies are based on the **Risk Principle**, which asserts that intensive interventions like drug courts are more effective for high-risk offenders with greater levels of criminal and substance involvement. Conversely, such intensive interventions are not effective for low-risk offenders, who are less entrenched in criminal activities, and whose behavior may be changed through less expensive programs. Marlowe’s research provides evidence for this principle.

Risks and Needs

Criminogenic risk factors are individual characteristics, generally demographic or historical, that statistically predict criminal behavior (Taxman, 2006). **Criminogenic needs** are psycho-social factors that when addressed may reduce risk (Taxman, 2006). While risk factors, defined by an offender’s past, cannot be changed, associated needs are dynamic and can either increase or decrease an offender’s propensity for crime (Gendreau et al., 1996). For example, someone with a long history of cocaine dependency is statistically more likely to engage in criminal behavior (risk), but their addiction (need) can be addressed through treatment, thereby reducing the likelihood of recidivism.

The following characteristics of **drug offenders** reliably predict failure in correctional programs: younger age; male gender; early onset of delinquent activity/substance abuse; prior felony convictions; coexisting antisocial personality disorder or psychopathy; previous drug treatment failure; history of violence (Marlowe et al., 2008).

The “**Central Eight**” risk factors have been shown to predict recidivism among **all individuals under community corrections supervision** (including those with serious mental illness): history of criminal behavior; antisocial personality pattern; pro-criminal attitudes; antisocial associates; poor use of recreation/leisure time; substance use; familial and/or marital discord; poor school/work performance (Prims & Draper, 2009; Skeem, 2009).

Status Hearing Research Findings

More frequent judicial status hearings in and of themselves are not associated with positive outcomes for misdemeanor drug court clients (Marlowe et al., 2003). However, research has demonstrated that status hearing frequency and risk level are related.

For high risk misdemeanor drug court clients randomly assigned to a hearing schedule, more frequent (bi-weekly) status hearings were associated with improved program outcomes, such as increased abstinence and higher graduation rates (Festinger et al., 2002). Furthermore, when high risk misdemeanor drug court clients were “prospectively matched,” that is, matched at program entry based on their assessed risk level, to a more frequent (bi-weekly) hearing schedule, they exhibited higher rates of counseling attendance than high risk clients assigned to a standard 4 to 6 week schedule (Marlowe et al., 2006).

Low risk misdemeanor drug court clients randomly assigned to bi-weekly status hearings experienced worse outcomes than those assigned to an as-needed hearing schedule (Festinger et al., 2002). Regardless of whether low risk misdemeanor drug court clients were “prospectively matched” to an as-needed schedule or randomly assigned to a standard 4 to 6 week schedule, they exhibited roughly the same outcomes (Marlowe et al., 2006).

The apparent benefits of more frequent status hearings for high risk clients did not extend past program discharge. At 6 and 12 months post-program, there were no differences between clients randomly assigned to

either bi-weekly or as-needed hearing schedules, regardless of risk level, in terms of substance use and criminal behavior (Marlowe et al., 2005).

II. SANCTIONS

The administration of **sanctions** in drug court settings may reduce substance use and criminal behavior. However, if sanctions are administered improperly, particularly when participants view them as unfair or unpredictable, they can undermine participant progress and programmatic objectives. Positive reinforcements, or incentives, may be more effective in the long run (Marlowe, 2008).

Only one experimental study to date has documented the effectiveness of sanctions in drug courts. A study of Washington DC's Superior Court Drug Intervention Program (SCDIP) showed that participants in the SCDIP graduated sanctions program were more likely than the standard drug court docket comparison group to test clean in the month before sentencing, and they were significantly less likely to be arrested in the year following the program (Harrell & Roman, 2001).

Preliminary findings from a recent pilot study of a small sample of misdemeanor drug court participants found that a **standardized process** of responses to noncompliance and treatment failure, based on an "adaptive algorithm," was more effective than the use of individualized judgments (Marlowe et al., 2008).

Sanctions: Recommended Practices

(Marlowe, 2008; Marlowe & Wong, 2008)

- **Specificity:** Specific behaviors and responses to these behaviors should be clearly articulated to clients, and "memorialized in a written manual," so there is no ambiguity about the sanction process (Marlowe, 2008, p. 109).
- **Certainty:** Clients should be carefully monitored, and willful noncompliance should be documented, reported, and responded to with certainty.
- **Immediacy:** Sanctions should be imposed as soon as possible, including responses by case managers and probation officers when appropriate. The longer the delay between behavior and response, the less effective the sanction.
- **Moderation:** An escalating schedule of moderate sanctions, appropriate to the level of noncompliance, is more effective than a fixed response, and more effective than sanctions at the lowest and highest magnitudes. Sanctions should only be administered in response to willful noncompliance. Relapse and other failures in treatment progress should not be punished, but rather addressed through treatment plan modification. Treatment should never be used as a sanction.
- **Proximal vs. Distal Goals:** "Most drug courts employ a phase structure that is intended to shape behavior by separating proximal [short-term] from distal [long-term] behavioral goals (Marlowe & Wong, 2008). Early phases should focus on short-term goals that clients can control (attendance at case management or court) and that create the foundation for achieving long-term goals. Long-term goals are the ultimate focus of drug courts, including abstinence and gainful employment, but clients must first get stabilized and engaged in treatment in order to accomplish these goals in the future. During the first phase of drug court, sanctions and incentives should focus on proximal goals. For example, the judge administers a higher magnitude sanction for failing to attend a treatment session (a proximal goal) and a lower magnitude sanction for a dirty UA (a distal goal). During later phases, as clients are more capable of remaining drug free and engaging in pro-social activities, the focus would shift to distal goals, and the judge would administer a higher magnitude sanction for failing to maintain abstinence, etc.

- **Fairness:** If clients perceive sanctions as unfair, they may be more likely to disobey and sabotage their treatment progress. Clients are more likely to obey willingly when they are treated fairly and with respect

San Francisco's oldest collaborative court, Drug Court, has the most well-established sanctions program. Based on the input of the Drug Court team, the judge imposes sanctions on an individualized basis. Sanctions, while not systematically administered, are intended to be graduated and may include essay assignments, additional NA/AA meetings, increased frequency of status hearings, community service, and in more serious instances, jail time. A recent qualitative review of San Francisco Drug Court's sanctions program recommended that San Francisco pursue a more standardized policy, including written guidelines for participants, while maintaining its commitment to individualized responses based on client characteristics.

III. INCENTIVES

In drug treatment settings, **incentives** are rewards, either tangible or intangible, that positively reinforce desired behaviors associated with the recovery process. Incentives "bring the benefits of abstinence forward in time," for people who have yet to internalize these benefits on their own (Stitzer, 2008, p. 99). Incentives have been shown to effectively increase abstinence, improve attendance, and motivate treatment adherence in substance abuse treatment programs (Stitzer, 2008). To date, there has been no experimental research on the effects of judicially administered incentives in any collaborative court setting.

Many collaborative courts, in San Francisco and elsewhere, use incentives with the goals of improving compliance with court orders, treatment adherence, and medication compliance. Incentives in San Francisco include applause, priority on the hearing calendar ("honor roll"), a "fishbowl" lottery of candy and \$5 to \$25 gift certificates, and invitations to apply for larger grants in support of long-term stability.

Recommendations for Drug Courts

(Stitzer, 2008)

- **Target behaviors**—behaviors that the drug court team seeks to improve— should be clearly defined. Target behaviors should be those that can be observed and tracked by drug court staff, such as counseling attendance and substance use (through the use of drug testing).
- More **valuable rewards** are more effective than less valuable rewards. Because value is determined by the recipient, drug courts should ask participants what they would like.
- A schedule of **escalating rewards**, in which the value or number of rewards "increases systematically with successively longer periods of good performance and resets to an original low value if the client slips up," is most effective (Stitzer, 2008, p. 101).
- Judicial praise should be delivered routinely and frequently.
- Incentives should be delivered **immediately** in the setting where the behavior occurs. The longer the delay between behavior and response, the less effective the incentive. Incentives should be delivered across settings (i.e. drug treatment, probation and case management settings).
- Rewarding participants who are doing well, and have already internalized the benefits of behavioral change, may be less effective than focusing on participants who need further improvement.

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