



**NDCI**  
NATIONAL DRUG  
COURT INSTITUTE

# Sentencing Options and Pre-Sentence Risk Need Assessments in Treatment Court

---

**Criminal Justice Reform – Treatment Court  
Research and Knowledge**

©NDCI, January 2023

The following presentation may not be copied in whole or in part without the written permission of the author of the National Drug Court Institute. Written permission will generally be given upon request.  
Photos by Fred R. Conrad: Reprinted with permission.

# Disclosure

**This project was supported by Grant No. 2019-DC-BX-K012 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office.**

**Points of views or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.**

# Objectives

- 1. Identify principles of criminal justice reform**
- 2. Determine how criminal justice reform principles and treatment court best practices relate to each other**
- 3. Learn how to apply these principles to justice involved individuals in your jurisdiction**
- 4. Develop Sentencing options**
  1. Use of pre-sentence risk need assessments
  2. Identify conditions of release and/or conditions of probation that are evidence-based

Where are we going  
with this?

---

**If you are thinking,  
this sounds a lot like  
treatment court;  
Congratulations!  
You are Ahead of the  
Game.**



**NDCI**  
NATIONAL DRUG  
COURT INSTITUTE



# NADCP

## Leading Reform

“Treatment courts introduced humanity in a system that has relied on inhumane tactics for far too long, thereby changing our national perspective on what it means to serve justice. The principles of treatment courts have given rise to other incarceration alternatives, diversion programs, and sentencing reforms. In this way, they are the foundation of the current justice system reform movement in the reform movement in the US.”

# Principle of Criminal Justice Reform

---

## Evidence-Based Sentencing

# Evidence-Based Sentencing

---

- **Identify individuals that may be safely managed in the community**
- **Develop release/sentencing conditions that are based on RNR (risk, need, responsivity)**
  - Individualized
  - Assessment driven
- **Respond to violations with evidence-based practices**

**Resource: Evidenced Based Sentencing, Center for Sentencing Initiatives, National Center for State Courts, 2023.**

# Actions

---

- **Assessment**
- **Information**
- **Conditions of Community Release**
- **Evidence-Based Interventions**
- **Responding to Violations**
- **Resource: Evidence Based Sentencing, Center for Sentencing Initiatives, National Center for State Courts, 2023.**



# Assessments

## Dangerousness/Violence

## Risk and Need

- Responsivity

## Clinical

- SUD
- Mental Health
- Physical

# Dangerousness/Violence

---

Probability of committing a new offense;

---

Measured by:

---

History of violence;

---

Psychopathy;

---

PTSD and SUD;

---

Source:

SAMHSA'S GAINS CENTER, THE MOST CAREFULLY STUDIED, YET LESS UNDERSTOOD, TERMS IN THE CRIMINAL JUSTICE LEXICON: RISK, NEED, AND RESPONSIVITY, Douglas B. Marlowe, JD. PhD. National Association of Drug Court Professionals.

# Criminogenic Risk (Static = Unchangeable)

---

Probability of criminal recidivism

---

Measured by:

---

Early onset of delinquency or substance use;

---

Prior Treatment failures;

---

Prior criminal convictions or incarceration;

# Criminogenic Risk Factors

## Dynamic = Changeable

---

- **Antisocial personality pattern**
- **Prosocial criminal attitudes**
- **Social supports for crime**
- **Substance abuse**
- **Poor family/Marital relationships**
- **School/Work failures**
- **Lack of prosocial recreational activities**

## Selecting and Using Risk and Need Assessments

Step 7 Series: Risk and Need Assessments  
Step 7 Series: Risk and Need Assessments

### Risk Assessment: An Overview for Drug Courts

The purpose of this document is to provide Drug Court staff with a concise and current overview of important issues relating to offender risk assessment and to provide a list of recommended contemporary risk instruments. Numerous risk scales are currently used in the United States (see Desmarais & Singh, 2015) to assess static risk factors and criminogenic needs (dynamic risk factors) that are related to the client's propensity for criminal behavior, of which substance abuse is but one. Almost all of these are applied to predict risk post-adjudication.

Consequently, we set out to identify three risk scales best suited for use by Drug Courts. To do so, we used widely criteria widely accepted in the research literature on risk assessment (see Overview of Risk Assessment Instruments). Those that met all of the criteria are described under Recommended Risk Instruments, and those that met only some of the criteria are described under Promising Risk Instruments. These sections are preceded by a general discussion of the issues pertaining to risk assessment, as well as best practices for selecting an instrument to suit a particular Drug Court's needs and capacity.

### Advantages, Limits, and Usage of Risk Assessment Approaches in Contemporary Practice

Though the emphasis of this document is on the advantages of using risk assessment approaches, we designed to identify important limitations of a

particular measure (e.g., instrument over a specified period of time (e.g., within three years) for an individual offender or client. National scale have been demonstrated to be more reliable and more accurate than clinical judgment alone (see, e.g., Fugère et al., 2008; Smith, Lee, & Brown, 1998; Wilson, Healy, & Goggin, 2008; Wells, 1998).

# Assessment Tools – Determine Risk and Need

- Validated
- To the group for which it is used
- Standardized
- Training
- Review to ensure assessors are consistent and objective
- Reassessment

# Assessment Tools

### Selecting and Using Risk and Need Assessments

Step 7 (Risk and Need Assessments)  
Step 8 (Treatment and Services) of the Drug Court Model

#### Risk Assessment: An Overview for Drug Courts

The purpose of this document is to provide Drug Court staff with a concise and current overview of important issues relating to offender risk assessment and to provide a list of recommended contemporary risk instruments. Numerous risk scales are currently used in the United States (see Desmarais & Singh, 2015) to assess static risk factors and criminogenic needs (dynamic risk factors) that are related to the client's propensity for criminal behavior, of which substance abuse is but one. Almost all of these are applied to predict risk post-adjudication.

Consequently, we set out to identify those risk scales best suited for use by Drug Courts. To do so, we used widely accepted criteria in the research literature on risk assessment (see Overview of Risk Assessment Instruments). Those that met all of the criteria are described under Recommended Risk Instruments, and those that met only some of the criteria are described under Promising Risk Instruments. These sections are preceded by a general discussion of the issues pertaining to risk assessment, as well as best practices for selecting an instrument to suit a particular Drug Court's needs and capacity.

#### Advantages, Limits, and Usage of Risk Assessment Approaches in Contemporary Practice

Though the emphasis of this fact sheet is on the selection of risk assessment approaches, we designed to identify important limitations of a

particular measure (e.g., instrument) over a specified period of time (e.g., within three years) for an individual offender or class. National scales have been demonstrated to be more reliable and more accurate than official judgments (see, e.g., Fugère et al., 2008; Singh, Lee, & Desmarais, 2008; Wells, 2006; Wells, 2008).

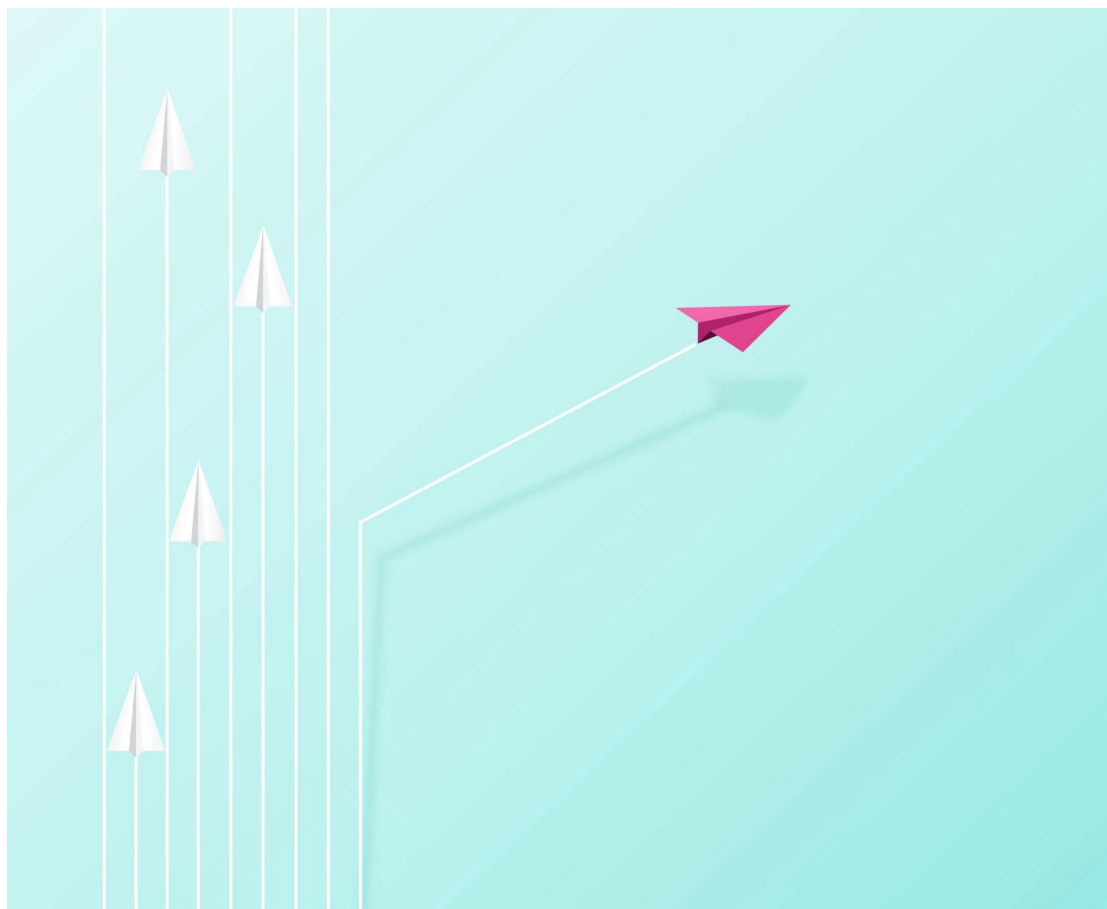
- **COMPAS**
- **LS/CMI (LSI-R)**
- **PCRA**
- **ORAS-PAT**
- **ORAS-CST**
  
- **RANT (Screening Tool)**

# Arkansas Assessment Tools

---

- **Parole Risk Assessment Tool (PRAT)**
- **Arkansas Offender Risk Needs Assessment (ARORA).**
- **The Board of probation and parole created both instruments. It implemented ARORA in 2014 as an eventual replacement for PRAT.**

# Additional Tools



- **Pre-trial Release**
- **DWI/DUI**
  - CARS
  - DWI RANT
- **Sex Offender**
- **Domestic Assault**
  - ODARA
- **Violence Risk Appraisal Guide – Revised**
  - VRAG-R



# Responsivity Needs (Interfere)

---

**Clinical Syndromes, impairments, or social service needs that do not cause crime but can interfere with rehabilitation**

**Measured by:**

**Being unhoused**

**Serious or persistent mental illness**

**Drug or alcohol cravings/withdrawal**

**PTSD**

**TBI**

# Responsivity

<b>Client Responsivity Factors</b>	
<b>General Population</b>	<b>Factors more common in offenders</b>
Anxiety	Poor social skills
Self-esteem	Inadequate problem-solving skills
Depression	Concrete-oriented thinking
Mental illness	Poor verbal skills
Age	
Gender	
Race/ethnicity	

# CLINICAL ASSESSMENT

---

What treatment is  
needed?

What dosage of  
treatment?

# Assessment Information

---

**Access to assessment information is necessary if the court is to make effective decisions regarding the conditions of community placement.**

# Evidence-Based Interventions

- **National Institute of Justice, Crime Solutions**
- <https://crimesolutions.ojp.gov/topics/corrections-reentry?ID=2>
- **National Drug Court Institute**
- <https://www.ndci.org/>
- **SAMSHA, Evidence-Based Practices Resource Center**
- <https://www.samhsa.gov/resource-search/ebp>

# Identify Recovery Capital

“Recovery capital refers to the internal and external resources that can be drawn upon to initiate and sustain recovery from substance use disorder.”

<https://www.ndci.org/resource/recovery-capital/>



# Responding to Violations

---

- **Are the interventions adequate to address identified risk factors?**
- **Are there unaddressed barriers that prohibit engagement?**
- **Do you need to order additional assessments?**
- **Are there public safety concerns?**

# The Science of Behavior Change Applies Here



**There should be a range of responses based on the individual's abilities.**



# Punishment Alone Does Not Support Change

- Undesirable behaviors often return after the punishment is withdrawn.
- There is a risk of the Defendant experiencing tolerance or a ceiling effect.
- Running out of motivational options.

# Research

## Behavior Responses

Certainty

Reliable  
Detection

Associated  
to Behavior

Immediacy

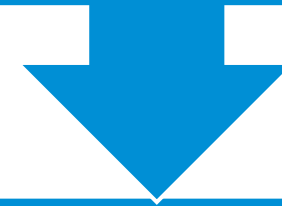


Adult Drug Court Best Practice Standards, Vol. I, IV.  
Incentives, Sanctions, and Therapeutic Adjustments,  
NADCP (2015).

# Research

---

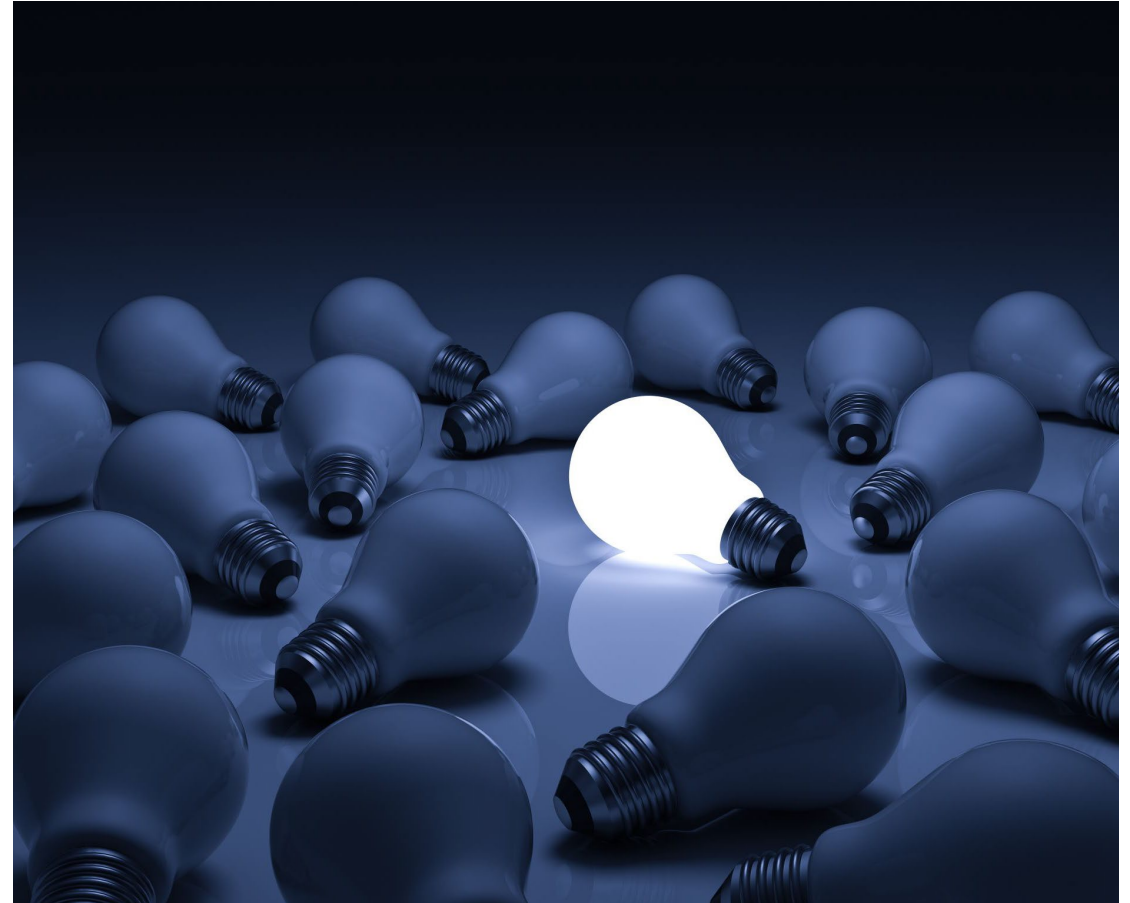
Positive reinforcement is effective at changing behavior.



Adult Drug Court Therapeutic Adjustments Best Practice Standards, Vol. I, IV. Incentives, Sanctions, and Therapeutic Adjustments, NADCP (2015).

# MOTIVATION

- AN INDIVIDUAL'S LEVEL OF MOTIVATION IS A STRONG PREDICTOR OF WHETHER THE INDIVIDUAL'S SUBSTANCE USE WILL CHANGE OR REMAIN THE SAME





# Practical Application

---

## Determining Response to Identified Risk and Need



**NDCI**  
NATIONAL DRUG  
COURT INSTITUTE



# Order of Responses is Important

---

- 1. Responsivity Needs: Interfere with Rehabilitation;**
- 2. Criminogenic Needs: Cause or Exacerbate;**
- 3. Maintenance Needs: Degrade Rehabilitation Gains;**
- 4. Restorative Needs: Restitution, Volunteerism;**
- 5. Humanitarian Needs: Cause Distress;**
- 6. Case Plan must be ongoing;**

# Criminogenic Risk Factors

## Dynamic = Changeable

---

- **Antisocial personality pattern**
- **Prosocial criminal attitudes**
- **Social supports for crime**
- **Substance abuse**
- **Poor family/Marital relationships**
- **School/Work failures**
- **Lack of prosocial recreational activities**

# Antisocial Personality Patterns

---

- **Cognitive Behavioral Therapy**
- **Anger Management**
- **Problem Solving Skills**
- **Address Trauma**



# Social Support for Crime

---

- **Reduce association with individuals involved in criminal thinking, attitudes and activities**
- **Increase association with positive peer support and activities**
- **Teach refusal skills**

# Substance Abuse

---

- **Substance abuse treatment**
- **Co-occurring disorders**
  - Level of care based on clinical assessment
  - Evidence-based manualized curriculum
  - Delivered according to manual
  - Clinician trained to deliver curriculum

# Poor family/Marital Relationships

---

- **Family counseling**
- **Anger Management**
- **Reduce conflict**
- **Teach positive relationship skills**

# Work/School Failures

---

- **Identify barriers and/or limitations**
  - Mental health
  - Cognitive functioning
  - Basic life skills
  - Address antisocial patterns
- **Build vocational skills**
- **Access educational services as appropriate**

# Lack of Prosocial Activities

---

- **Conditions of probation can enhance**
  - Community service – Volunteerism
  - Encourage creative endeavors
- **Build on the individual's strengths, values and social support**
- **Identify healthy supports that the individual will voluntarily continue once the court orders end**

# Do not forget to consider responsivity issues

---

- **Safe living environment**
- **Transportation**
- **Adequate food**
- **Mental health**
- **Cognitive abilities**

# Order Interventions and Services According to Identified Risk and Need

- **Resist ordering conditions of release or probation because that is what has always been done**
- **To much supervision and/or treatment and can make people worse**
- **To little can allow people to continue in unproductive harmful patterns**

# Statutorily Mandated Sentencing Conditions

---

- **Society has legitimate expectations of the criminal justice system**
- **Judges must follow the law**
- **Consider the practical implications of mandated sentences when determining other conditions of probation**
- **Adjust expectations**



# Examples

**Prison based treatment**

---

**Mandatory shock time**

**Community service**

**Treatment assessments**

**Education classes**

**Specific conditions related to charge**

**No contact provisions**

**Victim's Rights**



# Punishment

---

- Undesirable behaviors often return after the punishment is withdrawn.
- There is a risk of the Defendant experiencing tolerance or a ceiling effect.
- Running out of motivational options.

Adult Drug Court Best Practice Standards, Vol. I, IV.  
Incentives, Sanctions, and Therapeutic Adjustments, NADCP  
(2015).



# Give Them What They Need

---

- **What would you order for the individual who has antisocial cognitions and patterns of behavior?**
- **Does not have a diagnosed substance use disorder.**
- **Criminal thinking curriculum –  
Restrictions on association – Life skills –  
Prosocial habilitation – Family counseling  
etc.**

# Give Them What They Need

---

- **What about the individual whose only risk factor is a poor work history.**
- **The clinical diagnosis is severe substance use disorder, alcohol.**
- **Substance use treatment – mental health services as needed – Medication Assisted Treatment – Vocational training**



# Give Them What They Need

---

- **Same as above, but the charge is DWI 3<sup>rd</sup> offense.**
- **The assessment is not DWI specific. It identifies poor work history and severe substance use disorder, alcohol.**
- **Statute mandates 120 days of prison-based treatment with possibility of release. If, released the probationer must complete 400 hours of community service.**

# Responding to Violations?

---

- **What issues is the probationer likely to be facing?**
- **Responsivity?**
- **What assessments?**
- **Continued treatment?**
- **Sober support?**
- **Additional monitoring?**
- **What are your expectations about compliance for this individual?**

**Criminal justice reform and treatment courts are based on individualized interventions related to identified risks and needs. Behavior change is encouraged and supported by research-based responses to behavior. Successful change comes from the individual's strengths, values and social support.**





# NADCP

National Association of  
Drug Court Professionals

## QUESTIONS?

