

The background is a textured, painterly illustration. In the foreground, a large, close-up profile of a man's head is shown, looking to the right. The man has dark hair and a prominent nose. Above this head, a smaller, darker figure of a man is depicted, holding a long, thin stick or staff horizontally. The entire scene is set against a light, textured background that resembles a wall or a canvas.

BY JUDGE STEPHEN C. COOPER

THE CARROT AND THE STICK



HOW EFFECTIVE SANCTIONS AND INCENTIVES SUCCEED IN OVERCOMING ADDICTION

What is the purpose of the criminal justice system? If you believe it is only to punish offenders, then this issue of the *Michigan Bar Journal* may be quite upsetting. If, however, you believe it includes trying to change antisocial behavior patterns, then you'll be interested to read about the successes that have been seen across Michigan. Do not get the idea that defendants in drug courts are getting "off the hook." Instead consider how many refuse to go to drug court and choose jail instead because they could not tolerate the pressure of daily tasks (including daily alcohol and drug testing, intensive therapy, 12-step program attendance, constant meetings with probation officers, home visits by the authorities to make unannounced tests or searches, job monitoring, mandatory educational programs, and many more requirements). Just like the fable about getting the stubborn donkey to move, it takes both the enticement of the carrot and the prodding of the stick to fully do the job.

FAST FACTS:

- ✿ VOLUNTARY TREATMENT HAS DEMONSTRATED A FAILURE TO KEEP PARTICIPANTS, YET THOSE WHO ARE COERCED TO ATTEND BY DRUG COURTS FIND GREATER SUCCESS.
- ✿ TRADITIONAL CRIMINAL SENTENCES CAN DECREASE CRIMINAL BEHAVIOR FOR THOSE EMPLOYED, BUT THEY MAY ACTUALLY INCREASE CRIMINAL BEHAVIOR AMONG THE UNEMPLOYED.
- ✿ POSITIVE REINFORCEMENT IS MORE EFFECTIVE THAN NEGATIVE.

CHANGE WILL ONLY COME WHEN THE PERSON BEGINS TO FEEL OWNERSHIP AND PRIDE AND INTRINSIC REWARDS FROM THEIR NEW BEHAVIOR.

THE PROBLEM

We all know that alcohol and other drugs cause substantial and very expensive harm to our country, its families, employers, and economy, but few seem to know what to do about it.

Studies report that 80 percent of jail and prison inmates in this country have one or more of these factors in common: arrested for alcohol or other drug related offenses, regular use and past history of drug or alcohol treatment, the crime was used to support a drug habit, or the person was under the influence of alcohol or another drug at the time of the crime. We are repeatedly told that alcohol and other drugs are at the root of most violent crimes including theft, child abuse, and domestic violence. So what is America's response? We lock up addicts in very expensive jails and prisons.

IS JAIL THE SOLUTION?

Jails and prisons don't cure addictions or change behaviors.

Within three years of release from jail, the studies show that almost 70 percent are arrested for another crime, almost 50 percent have already had their new case completed and are already convicted, and 95 percent have relapsed back into their addictive behavior.

IS TREATMENT THE SOLUTION?

There has been a nationwide effort by a small group of activists to promote the concept that criminalizing and locking up addicts does not work. Their alternative is the progressive legalization of drugs. This began with the passage of Proposition 36 in California a few years ago and almost resulted in a ballot proposal to make drastic amendments to the Michigan Constitution this past year. Their alternative suggestion is voluntary treatment or a civil commitment to

treatment. Regretfully, however, half of those referred never attend even the intake interview, most of those in voluntary treatment just quit, and researchers find a substantial relapse rate within just one year of the few who make it through. Treatment can work, but only for those who hang in for the long haul—voluntary treatment has demonstrated a failure to keep participants, yet those who are coerced to attend by drug courts find greater success.

IS PROBATION OR DIVERSION THE SOLUTION?

Traditional probation is spectacularly ineffective. Most probation has the probation officer, in effect, saying to an addict, "stop your addictive behavior instantly and see me next month, and, by the way, if you are caught ever using the alcohol or drugs to which you are addicted, we will terminate the probation and put you in jail." Addictive urges do not occur at convenient one-month intervals. Diversion, work release, and traditional probation can be very effective with very low-risk offenders who are not physically addicted as yet and have a stake in the community they want to protect.

HOW DO DRUG COURTS SUCCEED?

There are a number of factors that successful drug courts have in common. **The defendant will:**

- **Participate in treatment in the community.**
- **Work on modifying their daily behavior** in their own home, employment, and within their own family situation where, ultimately, they will have to continue the new behavior.
- **Participate in constant testing.** Addiction does not take time off for holidays or weekends. Some early unsuccessful attempts included week-day-only breathalysers but not on weekends or

holidays when it was inconvenient or expensive to do testing. Courts have learned that daily testing for alcohol is necessary, that tests for other drugs can be randomized (depending on the drugs and the test mechanism) and testing must be done for more than just the original addiction as addicts will commonly change their drug of choice.

- **Be continuously monitored by a judge and other team members.** Most participants begin by reporting every week to a probation officer or other case worker to review successes and failures of assigned tasks that week that may include attending individual therapy, group sessions, educational programs, 12-step recovery programs, seeking or maintaining employment, and chemical or breath testing.
- **Will see the judge every two weeks** or so to provide immediate, consistent, and certain consequences for both negative and positive behavior.
- **Be rewarded** by avoiding a conviction and criminal record or by avoiding incarceration or payment of money. In states other than Michigan, judges are granted the power to allow a restricted license to successful drug court participants who have lost their licenses. That one reward, alone, keeps many participants in compliance.

WHAT MAKES EFFECTIVE SANCTIONS AND INCENTIVES?

BEHAVIOR MODIFICATION REWARDS ARE MORE POWERFUL THAN PUNISHMENTS.

This is a very difficult concept to accept in the traditional puritanical criminal-justice system in the United States where we impose sentences for those convicted of bad acts and allow good behavior to be its own reward. Drug court judges and support teams report all over the country that a large number of the drug court defendants cannot remember anyone ever saying anything positive to them. They were always being chastised or punished, but never praised. The first person in authority to reward them was the drug court judge who pointed out something

positive that the defendant had done. That acknowledgment would often be coupled with other encouraging rewards as simple as smiles, handshakes, and applause. These acts became the basis for a successful recovery. The defendant expects the punishments but is shocked by having good behavior rewarded.

REALITY IS IN THE EYES OF THE BEHAVER.

What we may think is a perfect sanction or incentive may not be received that way. Remember, Br'er Rabbit thought a briar patch was a great place to be thrown. Take the child who is punished by being sent to their room—a room where every item of electronic amusement known to humanity awaits them.

Similarly, some defendants don't mind jail or work release—it gets them away from unpleasant family situations and provides meals and a bed. Others look upon having been in jail as a badge of honor and report to their friends how they survived. Some see jail as easier to do than fines, therapy, daily testing, or other intrusive requirements. The casual observer might think that three or four weeks of jail might be worse than three or four days, but those housed in jail for weeks are often put in the nicer, newer part of the

jail, and those detained for a few days are jammed in together in mass holding cells.

Payment of a fine might be an enormous sanction to a middle income person who would struggle to find the money. The same sanction may have no real effect on a wealthy person who can easily pay, or a poor person who would be frustrated by having no chance whatsoever of paying.

Another question is: what does the person have to lose? Traditional criminal sentences can decrease criminal behavior for those employed, but they may actually increase criminal behavior among the unemployed.

GRADUATED SANCTIONS AND INCENTIVES WORK BEST.

It is not uncommon for addicts who successfully complete drug courts to suffer several relapses along the way. If the ultimate punishments of being removed from drug court, convicted, and sentenced to the maximum were imposed early on, obviously, they have no further chance to improve. Reinforcers, both positive and negative, are built in at every stage and for every behavior. The graduated approach not only has the inherent benefit of appearing "fair," but it also demonstrates that the judge and the team are serious about the success or failure of the participant at every opportunity.

RESPONSES MUST PROVIDE IMMEDIATE, CONSISTENT, AND CERTAIN CONSEQUENCES FOR BOTH NEGATIVE AND POSITIVE BEHAVIOR.

Anyone who has tried to train a pet knows how important that is. If your pet messes up when you are not at home and the sanction comes hours later when you get home, the pet doesn't connect the punishment with the behavior but rather with you and your coming home. If the pet obeys a command, but your praise is not automatic, that reinforcement is lost. Police dogs don't search for drugs, people, or contraband just for self-satisfaction, they are immediately given their reward of praise and a toy.

This truth has recently been confirmed by scientists studying human brains. All rewards, even verbal praise, seem to register as part of the dopamine reward system within the brain.

Just a chance of a reward is a reinforcer by itself. Test subjects who had a negative test result "won" the opportunity to draw from a fish bowl for prizes, which ranged from nothing at all to nominal prizes (a dollar, a pencil, etc.) up to a TV. Eighty-four percent of that group completed treatment compared to 22 percent who did not get the fishbowl drawing reinforcement.

Positive reinforcement is more effective than negative. After trying every punishment that came to mind, I remember how my wife struggled for days to find something positive to say to one of our sons who was in one of those teenage funks. Innovation and creativity prevailed and she finally told him how impressed she was that he was swearing less at his brother. Something clicked. As if miraculously, there followed a whole stream of other behaviors worthy of real praise.

Procedures must be in place to assure that positive and negative changes in behavior do not go unnoticed. If, for example, urine screens are not done by someone who watches the hand washing and urination and removal of garments, the participants will figure out how to cheat the system and that makes the responses intermittent, false, and ineffective.

In preparing for this article, I heard of some courts who have no schedule of sanctions and incentives. This ad hoc approach destroys efforts to be consistent and fair. In

be-hav-ior mod-i-fi-ca-tion [bi háyvyer mòddefi kásh'n]

noun

a therapeutic approach, employing various techniques of reward and punishment, emphasizing the application of the principles of learning to substitute desirable responses and behavior patterns for undesirable ones. The focus is on changing the subject's observable behavior, rather than on conflicts and unconscious processes presumed to underlie his maladaptive behavior. This is accomplished through systematic manipulation of the environmental and behavioral variables related to the specific behavior to be modified.

Changing the environment and using reinforcers (or their absence) to control the behavior of others. Practitioners set up the environment to prompt a behavior, then reward the desired behavior and/or punish undesired behavior in that specific situation.

Syn: Behavior Therapy



ONE STUDY SHOWED THAT WHEN A JUDGE USED POSITIVE STATEMENTS TO REINFORCE BEHAVIOR, THE NUMBER OF POSITIVE URINE TESTS WERE LOWER THAN WHEN THERE WERE EITHER NEGATIVE OR NEUTRAL STATEMENTS.

fact, it is important that explanations be clearly made about the different considerations that mandate different results in cases that may appear to the participants to be similar.

POSITIVE MENTAL ATTITUDE

People suffering from addictions have tried and failed so many times before. What's going to make this next effort successful? Judges, attorneys, probation officers, police, and treatment providers play a crucial part in the success. One study showed that when a judge used positive statements to reinforce behavior, the number of positive urine tests were lower than when there were either negative or neutral statements.

People are also affected by the enthusiasm with which the program is presented. A recent study demonstrated that psychiatrists who communicated their enthusiasm about a treatment had a 67 percent higher rate of success from their patients.

One Michigan attorney recently told me about a very successful program in the Detroit schools that was abandoned decades ago because people felt that learning should be its own reward and students should not be bribed to do what is right. This program granted students a "scamolian" for reading, doing homework, tutoring others, and various other behaviors. These scamolians could be spent in buying little goodies. The students' participation, learning, and test results increased—until the pressure caused the program to be cancelled. On a similar note, Mary Kay Ash created an international make-up company as she discovered that more cosmetics were sold to try to win a Mary Kay Pink Cadillac than were ever sold just for a paycheck. Achieving, for the simple internal satisfaction of succeeding, doesn't work for everyone, and especially not for those whose lives are controlled by an addiction.

Externally applied sanctions and incentives will never make for permanent change.

Rather, change will only come when the person begins to feel ownership and pride and intrinsic rewards from their new behavior. The benefit of the drug court is that it coerces the defendant into taking the many tiny daily steps needed to shed old acquaintances, habits, and patterns. At the same time, the defendant obtains confidence and awareness of his or her own ability to restructure daily life and succeed at abstinence. Through medical intervention, counseling, education, direction, and constant intrusive monitoring, the participant is forced to continuously account for his or her actions and decisions. At least weekly, the participant receives immediate, consistent, and appropriate responses to behaviors and choices.

It doesn't work for everyone; many will still be locked up in jail. But for some, Michigan's drug courts have been able to provide a whole new life, giving them the tools to share their triumph over addiction with family members, ending a life of crime, and assisting them in beginning a productive, responsible life. ♦



Judge Stephen Cooper is vice president of the Michigan Association of Drug Court Professionals and was elected to the board of the American Judges Association. He is past president of the Michigan District Judges Association

and has won national awards for public educational programs including 12 years as the founder and director of the LAWFAIR, children's programs, and drug educational programs. He was named Honoree-of-the-Year by the Women's Bar Association, is a former city councilman, was the recipient of the Martin Luther King, Jr. Award and Governor's Award for Volunteerism. He is a father and husband living in Southfield, where he has served as a judge for 16 years and as a trial attorney for 18 years before being elected judge.