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Treatment or Jail?

West Virginia's West Central Regional Drug Court And Defense Counsel

Prepared & Presented by:

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What is a Drug Court?

A specially designed court docket, the purpose of which is to achieve a reduction in recidivism and substance abuse among non-violent substance abusing offenders & to increase the offender's likelihood of successful habilitation through early, continuous, and intense judicially supervised treatment, mandatory periodic drug testing, and use of appropriate sanctions and other habilitation services.

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Effectiveness of Drug Courts:

Research has found that participants are less likely to use drugs and commit crimes than comparison groups even ten (10) years after participation. (Anglin, 1988, on study of the California Civil Addict Program)

Drug Courts, compared to other treatment programs, provide more comprehensive supervision and monitoring, increase rates of retention in treatment, and reduce drug use and criminal behavior. (Belenko, 1999, review of 48 drug courts)

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10 Key Components of a Drug Court:

As identified by the U.S. Department of Justice:

1. Drug Courts integrate alcohol and other drug treatment services with justice system processing

2. Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights

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10 Key Components:

3. Eligible participants are identified early and promptly placed in the drug court program.
4. Drug Courts provide access to a continuum of alcohol, drug and related treatment and rehabilitation services.
5. Abstinence is monitored by frequent alcohol and other drug testing.

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10 Key Components:

6. A coordinated strategy governs drug court responses to participants' compliance.
7. Ongoing judicial interaction with each drug court participant is essential.
8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.

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10 Key Components:

9. Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.

10. Forging partnerships among drug courts, public agencies, and community based organizations generates local support and enhances drug court program effectiveness.

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Key Objectives:

Drug Court:

- To Secure Release of Non-violent Substance Abuser for Appropriate Addiction Treatment and Other Community Services
- To Stabilize Offender to Prevent Future Re-Offending Criminal Behavior Attributable to Substance Abuse (breaking the cycle of substance abuse and crime)

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OPERATION OF DRUG COURT DIVERSION PROGRAM:
An Overview from Referral to Graduation

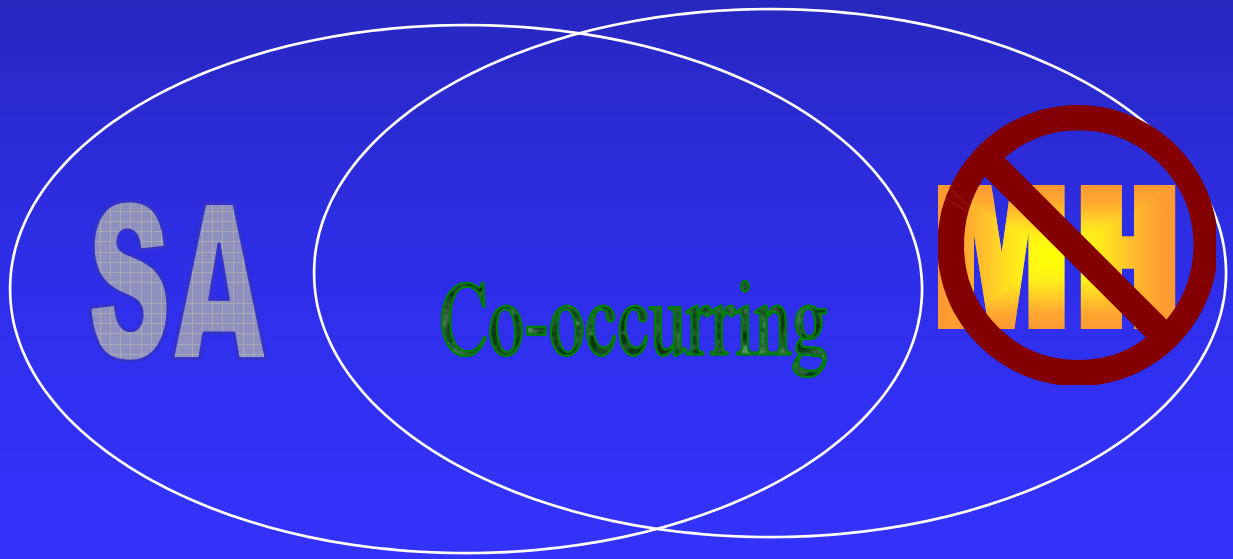
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Eligibility:

Drug Court:

Substance Abuse or Addicted Diagnosis



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Eligibility:

Drug Court:

- Non-violent (low to moderate risk only)
- Violent offenders as defined by 42 U.S.C. 3797u-2(a) are excluded
- Must have no prior conviction of a felony crime of violence involving use or attempted use of force against a person with intent to cause death or serious bodily harm

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Public Safety Given Highest Priority. Violent offenders excluded.

Involuntary Commitment Process (WV Code 27-5-2) is proper avenue for examination and treatment for individuals likely to cause serious harm to self or others, not diversion programs.

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Excluded Offenses:

Drug Court:

- Sex Crimes
- Crimes with Children as Victims by acts of commission, not omission
- Carried, possessed, or used firearm or another dangerous weapon during course of charged or convicted offense
- Use of force against the person of another occurred
- Death or serious bodily injury occurred

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Excluded Offenses:

Currently Local Drug Court Team intends to also exclude:

- Persons charged with a felony offense of delivery, possession with intent to deliver, or manufacturing a controlled substance under WV Code 60A
- Driving Under the Influence of Alcohol

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Other limitations on Eligibility:

- Offenders with pending competency evaluation/determination not eligible until evaluated competent or restored to competency
- Must be willing to cooperate with the program, including following advice of physicians and other treatment providers

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Other limitations on Eligibility:

- Targets participants are from Wood, Wirt, Ritchie, Pleasants, Jackson, or Doddridge Counties
  - Must have transportation to and from Wood County treatment and other DCT programs
- Must be an adult
- Must be able to understand and comply with program requirements
- Must be treatment available

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Eligibility Continued:

Prosecutor and Defense Counsel must have reached a plea agreement in the underlying case for offender participation

Drug Court Judge makes final determination on whether candidate is eligible for the program

No right to be in a Diversion Program

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Drug Court Judge:

Judge Jeffrey Reed

(Local Administering Judge)

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Early Initial Identification and Referral

Judges, Magistrates, Defense Counsel, Prosecutors, and Law Enforcement and Correctional Officers who have contact with Offender potential sources of identification and referral

Goal to ID by time of arraignment, but later referrals not disqualified

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Referral:

If believe Offender a candidate, refer case to the Prosecutor and the DCC/PO Kat Trippel

Referral Form:

SCA Treatment Court Form 88

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REFERRAL ≠ ACCEPTED

Offender does NOT become a Participant in the Program until ordered accepted by the Drug Court Judge

Until then offender remains in the Criminal Justice System as any other offender

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REFERRAL ≠ ACCEPTED

NO right to be a participant in program

Number of participants is limited by resources

Discretionary with Drug Court Judge if accepted into program

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REFERRAL ≠ ACCEPTED

- Acceptance into program is also geographically limited
  - Are practical limitations to supervision capabilities and ability to attend and participate in Wood County
  - Judge with Drug Court Team will use their discretion in limiting Offender participation based on geography, supervision and transportation limits

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After Referral:

The Prosecutor will:

- Verify potential participant meets legal criteria for inclusion in program

Defense Counsel will:

- Obtain signed waivers & releases from potential participant for entry into the program

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Evaluation:

After Approval of Participation by Prosecutor and Defense Counsel, and Defense Counsel obtaining Waivers and Releases for Participation, the Day Report Center will Schedule an Evaluation of the Offender

The evaluation will include at a minimum:

- SASSI-3
- Risk Assessment
- Mental Health Assessment (for co-occurring mental illness)
- Others assessment tools may be added as appropriate

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In Preparation for Acceptance into Drug Court:

DCC will:

- Schedule Offender for First Hearing
- Contact & coordinate with the Wood County Day Report Center regarding the referral
- Work with Treatment Team for creation of individualized Treatment Plan

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SUBSTANCE ABUSE (and MENTAL HEALTH if applicable) TREATMENT NEEDS



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Guilty Plea

- Drug Court will begin as a Post-Plea Program
  - Requires Plea of Guilty or an Adjudication of Guilt
- No prohibition from the state level on accepting pre-plea cases or probation violators – local decision when to include

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Drug Court Treatment Process

- Drug Court is a three phase treatment program with subsequent Continuing Care Aftercare
- Each phase takes at least four months to complete
- Entire program is, at a minimum, one year
- Most people will take more than one year to complete

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Length of Time in Program:

Drug Court:

- All participants under court supervision for at least one year
- Participants may be under court supervision for up to the maximum length of potential sentence if greater than one year, depending upon progress

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Drug Court Treatment Phases:

- 3 Phases:
  - Phase I, Stabilization
    - Detoxification, Initial Treatment Assessment, Education and other needs screening
  - Phase II, Intensive Treatment
    - Individual and/or group counseling & other therapies
  - Phase III, Reintegration
    - Re-establish employment, social reintegration, education, and housing

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Phase One

- Four Months of Participation Minimum
- Appear before Circuit Court Judge once a week
- Report to supervision minimum once a week, with daily call-in
- Receive substance abuse treatment a minimum of 3x a week
- Participate in self help groups minimum of 2x a week
- Be drug free for 60 days before eligible to move to Phase Two

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Phase Two

- Four month time span minimum
- Court appearance every other week
- Report to supervision a minimum of every other week, with daily call-in
- Receive substance abuse treatment a minimum of 2x a week
- Participate in self help groups minimum of 2x a week
- Must seek employment or participate in community service
- Participant must be drug free for 3 consecutive months days before eligible to move to Phase Three

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Phase Three

- Four Months minimum this Phase
- Participant must appear before the court a minimum of once a month
- Report to supervision a minimum of 2x a month, with daily call-in
- Receive substance abuse treatment a minimum of once a week
- Participate in self help groups minimum of 2x a week
- Must be employed if able or ongoing educational/vocational training
- Be drug free for 4 consecutive months before eligible to move to Continuing Aftercare

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Other Phase Requirements:

- Home visits
- Approved housing
- Payment of restitution and court costs
- GED/vocational training/education

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Phase Completion

- Participant must apply for completion of each phase
- Application will be reviewed by treatment team
- Treatment team will make recommendation

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Continuing Aftercare

- Participant must appear before the court a minimum of once a month
- Report to supervision a minimum of 1x a month, with daily call-in
- Receive substance abuse treatment a minimum of 2x a month
- Participate in self help groups minimum of 3x a week
- Must be employed if able or ongoing educational/vocational training

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Participant Goal:

Successful Completion of all Phases and Continuing Care of the Treatment Plan resulting in:

- Either Charge Dismissal or Sentence Reduction
- Negotiated upfront between Prosecutor and Defense Counsel/Client

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3 Factors of Successful Drug Court Treatment:

- Employ a therapeutic emphasis on assisting the offender change behavior
- Longer in duration with multiple levels of care, which gives the offender ample time to change behavior
- Use the leverage of the criminal justice system to retain the client in treatment and improve outcomes

(Taxman, 1999)

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Setting the Bar:

- SA Only
  - Relapse part of recovery
- Co-occurring MI
  - Starting at a lower bar of expectations and SA only
  - Relapse part of recovery
  - Integrated treatment essential for Co-occurring

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Preparation for Court Appearances

- Treatment team meets weekly prior to drug court
- Treatment team individually discusses each case scheduled to appear before the Court
- The treatment team recommends what action the Court should take

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Court Appearances

- Each case is called before the Court
- The Drug Court Judge evaluates each case based upon the treatment team discussions
- Judge delivers incentives/sanctions or other directives
- Only the Judge speaks for the treatment team in Court

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At 1st Hearing

- Offender accepted into program by Drug Court Judge
- Plea taken
- Filing of necessary waivers or releases
- Treatment Plan ordered

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Subsequent Hearings

- Participant Self-report on Progress
  - DCC may also report
- Modifications made to Treatment Plan as needed
- Rewards given as applicable for positive progress
- Sanctions given as appropriate

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Drug Court Graduated Sanctions:

Are not used to “punish” or as an end in themselves, but as part of a therapeutic strategy to move participants toward a sober lifestyle through a motivational system of escalating sanctions

Are supported by the threat and imposition where necessary of short periods of escalating jail time (generally 1 to 7 days, longer periods if necessary)

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Drug Court Sanctions:

Most effective when they are immediate, of increasing severity, and predictable (National Drug Court Institute)

Drug Court participants will be asked to agree in advance to the sanctions and the rules for applying the penalties

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Examples of Graduated Sanctions for Drug Court:

- Warnings & admonishment from the bench in open court
- Demotion to earlier program phases
- Increased frequency of testing and court appearances
- Confinement in the courtroom or jury box
- Increased monitoring and/or treatment intensity
- Home Confinement
- Fines
- Required community service or work programs
- Escalating periods of jail confinement
- Termination from the program and reinstatement of regular court processing

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Examples of Incentives:

- Encouragement & praise from the bench
- Ceremonies & tokens of progress, including advancement to the next treatment phase
- Reduced supervision
- Decreased frequency of court appearances
- Reduced fines or fees
- Dismissal or reduction of criminal charges
- Reduced or suspended incarceration
- Graduation

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Additional Incentives:

Applause

Moved to the front of the docket

Reduce community service hours.

Receive phase movement certificates

Gift certificates from various businesses

Overall recognition of clean time

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Termination from Program

- Can be Court initiated or Participant initiated
- Result is return to criminal court case for adjudication and sentencing

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Graduation from Program

Participant receives Graduation Certificate in ceremony before the Court at last hearing

Charges may be dismissed, sentence reduced and/or record expunged

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SUBSTANCE ABUSE AND ADDICTION:

Highlights of Significance to Defense Counsel

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Local Abuse Statistics

Approximately 20% of Wood Co. felony cases are drug related and 25% of misdemeanors are substance abuse cases

Possession of controlled substances charges increased 13% from 2004 to 2005, and 8% from 2005 to 2006, reaching 388 cases in 2006.

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What is Happening in American Criminal Justice:

11 million people pass through American jails each year.

- 46% were on probation/parole at the time of arrest
- 41% had current or prior violent offenses
- 46% were nonviolent repeat offenders
- 13% had a current or prior drug offense only.

77% of convicted jail inmates were alcohol or drug-involved at the time of their current offense.

(www.ojp.usdoj.gov/bjs/pub/pdf1pji02.pdf)

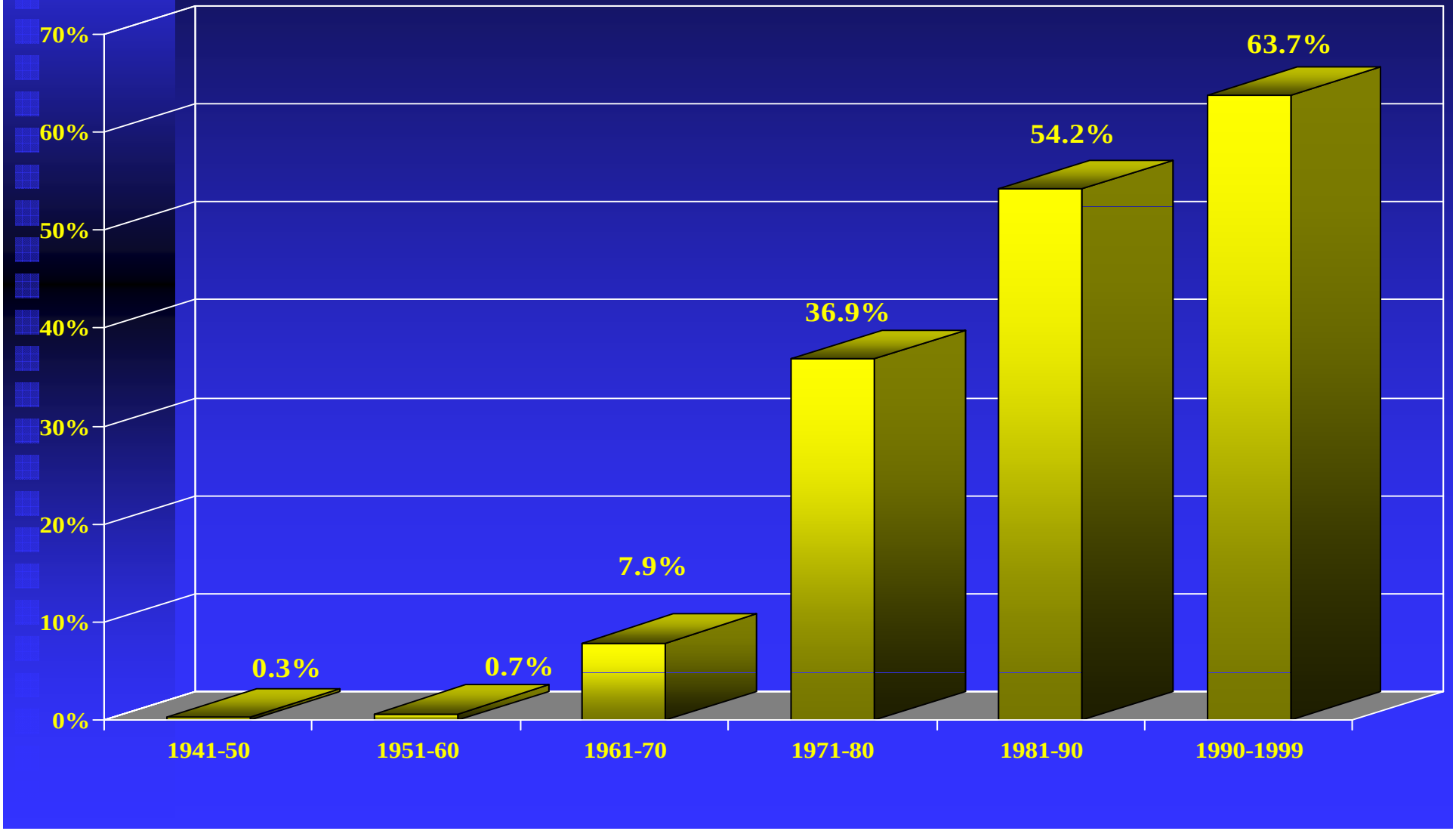
2002 data

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Drug Arrests By Decade

(FBI Crime Reports)



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- The prison population (federal, state & jails) in the US has increased over 1000% in the past 30+ years

	US	Compare WV
1970	200,000	
1980	400,000	
1984	800,000	
1995	1,600,000	2,186
2003	2,000,000	4,758
2005	2,200,000	5,312
2006	2,300,000	

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What about WV?

- Average increase of 239 inmates per year from 1994 through 1999 confined in DOC custody, and avg. increase of 305 inmates per year since 2000
- Inmate population more than doubled between 1994 and 2004 (117.9% increase in confined offenders)

(Feb. 2005, WV Correctional Population Forecast Report by CJSAC and WVDCJS)

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The Arrest/Drug Use Connection

- 2/3rds of Adult Arrestees test positive for illicit drugs at arrest
  - 66% of arrestees test positive for illegal drugs (Drug Use Forecasting Study, US Department of Justice, 1996)
- Over 1/2 of Juvenile Arrestees test positive for illicit drugs at arrest

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ADAM SITES

(percentage of arrestees testing positive for drugs)

New York City	**80%**
Detroit	**78%**
Philadelphia	**76%**
Indianapolis	**63%**
Oklahoma City	**72%**

CESARFAX-University of Maryland 2002

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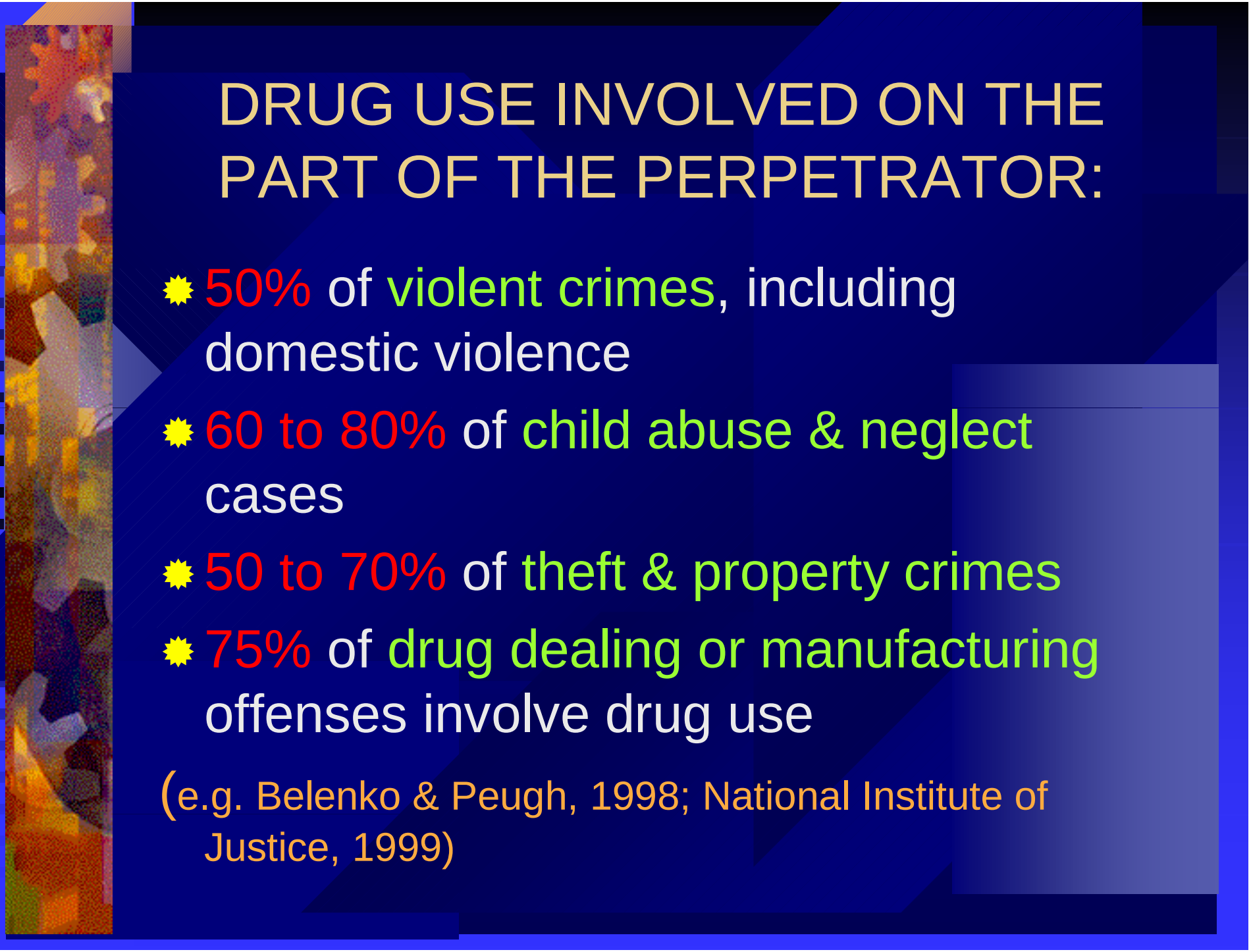
Abuse & Substance Use:

- Up to 80% of child abuse and neglect cases[4] and nearly 50% of domestic violence cases are substance-abuse related.

Quoted from www.nadcp.org

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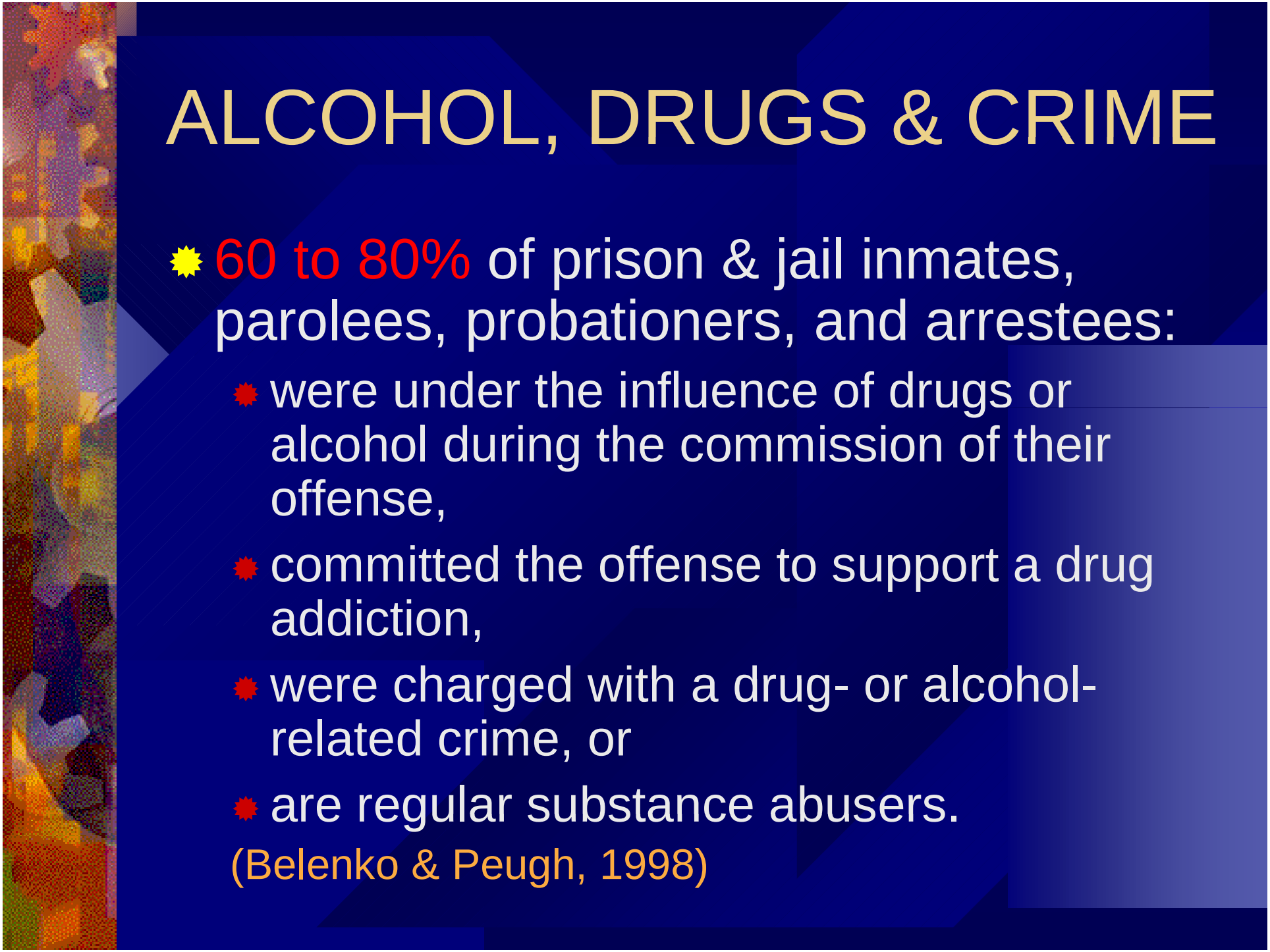
Severe Addiction and Crime

- An individual who has a severe addiction commits 63 crimes a year

(The Rebirth of Rehabilitation: Promises and Perils of Drug Courts, 2000)

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Alcohol & Crime

- Alcohol is a factor in 33% of all rapes and sexual assaults (DOJ)
- Alcohol is a factor in 67% of Domestic Violence
- Alcohol is found in offender or victim in 50% of all homicides (NIAAA)

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Driving Under the Influence

-10.9 million Americans report driving under the influence of an illicit drug in 2003

(up from 8 million in 2001)

-1 of every 130 licensed drivers was arrested for DUI in 2002

(33% repeats).

-17,015 DUI deaths in 2004

(1 every ½ Hour)

-30% lifetime chance of being in a DUI crash

-30% of U.S. 9th Graders report being in a car with a drinking driver in the past month

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What About WV?

- 41.4% of regional jail inmates admit abuse of substances
- 8.9% report receiving substance abuse treatment

(2003 statewide sampling survey of regional jail inmate needs by WVRJCFA and CRJS)

- 24.3% of inmates admitted to the DOC in 2001 were for DUI & drug offenses, compared to 25.8% in 2003

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What if we JUST put them in PRISON?

Criminal Recidivism in 6 months

29.9% of prisoners released in 1998 in 15 select states were rearrested

Criminal Recidivism in 3 Years

67% arrested for new crime

47% convicted of new crime

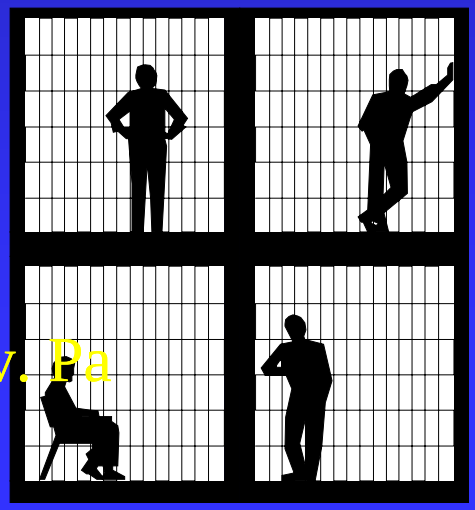
25% incarcerated for new crime

50% re-incarcerated for violations

Relapse to Substance Abuse in 3 Years

95% relapse

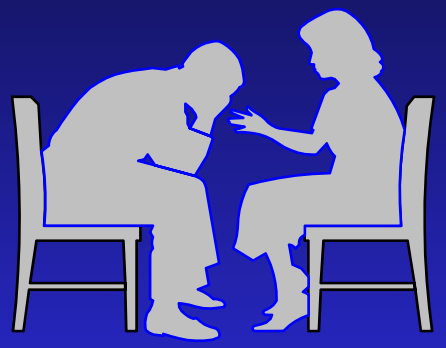
(BJS, 2002)(TRI-Univ. Pa – 2002)



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What if we JUST refer them to TREATMENT?



Attrition

- 50% to 67% don't show for intake
- 40% to 80% drop out in 3 months
- 90% drop out in 12 months

Outcomes

- 40% to 60% of clients abstinent at 1 year

(TRI, Univ. of Pa., 2003)

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What We Know About

Addiction

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WHY CAN'T PEOPLE JUST CHANGE?

- For the Addict and Alcoholic….
  "Remaining Addicted Becomes Easier than Trying to Change"
- **Physiological Dependence**
- **Emotional and Spiritual Bankruptcy**
- **Habits and Cultures**

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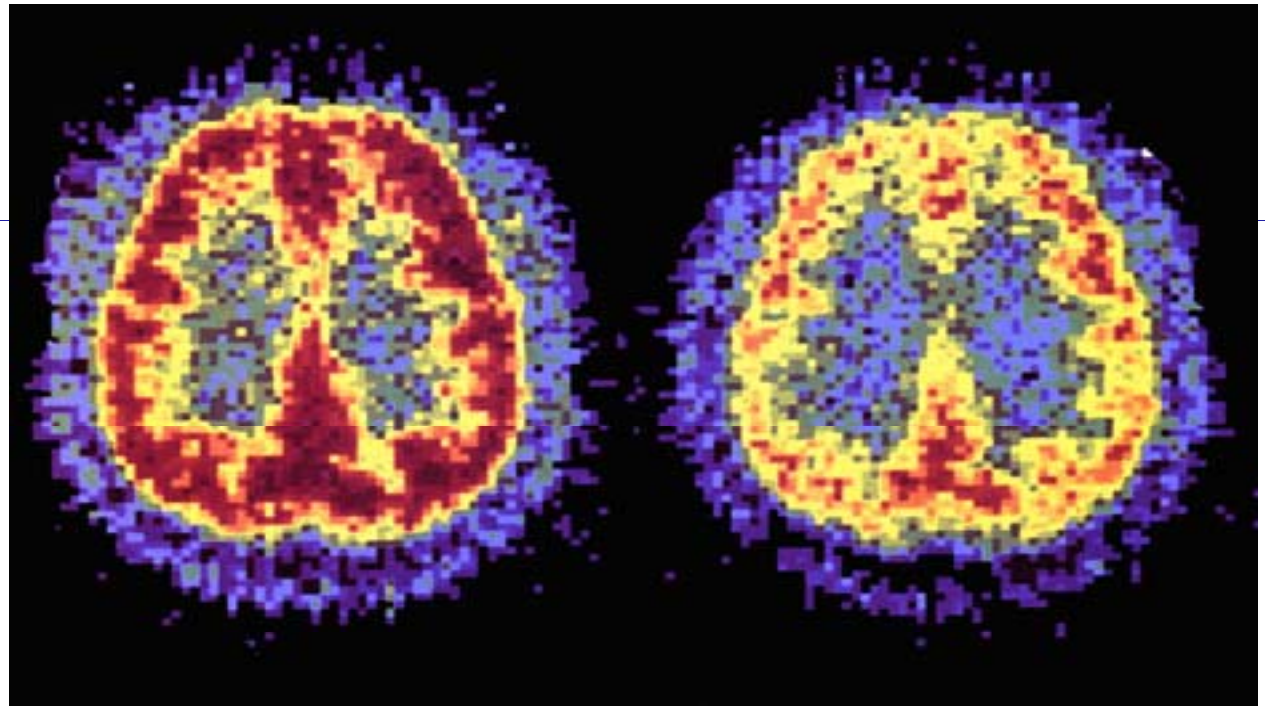
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Physiological Brain Changes Evident with Drug Use



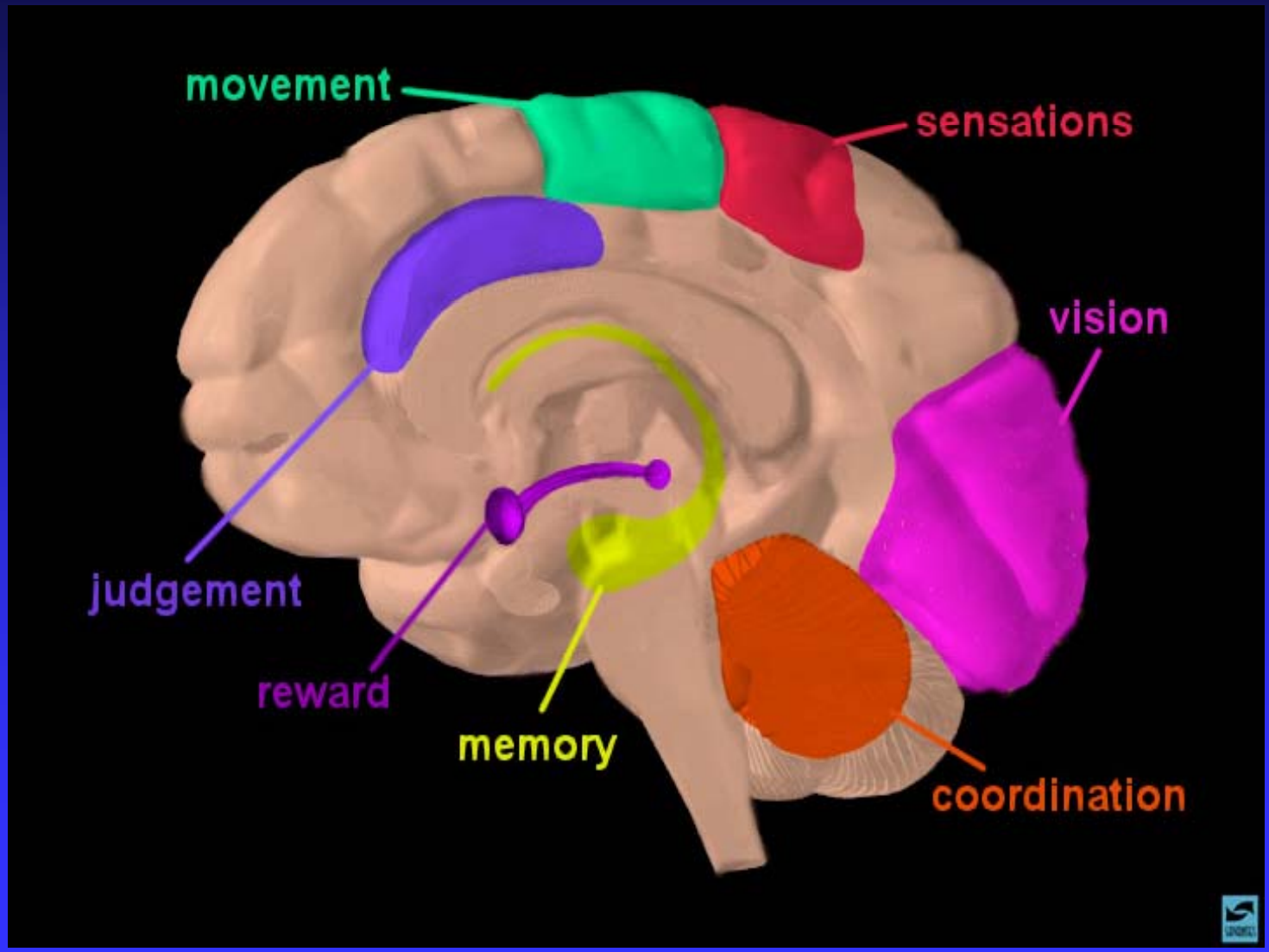
Normal Brain Scan

Brain on Drugs

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ALCOHOL AFFECTS MOST AREAS OF THE BRAIN



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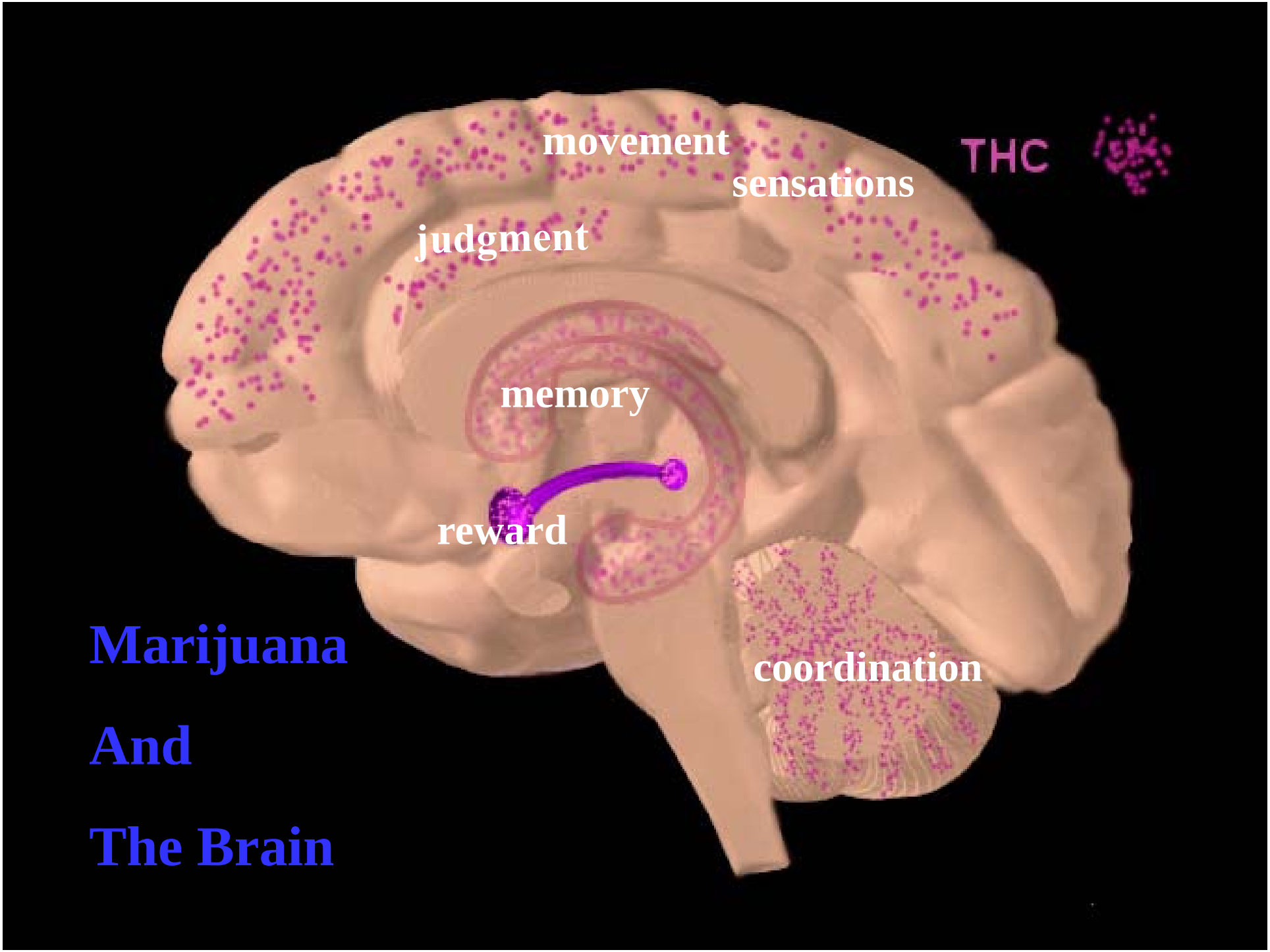
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Symptoms of Alcohol Abuse

- Drowsiness
- Aroma of alcohol
- Gait ataxia
- Irrational
- Lack of restraint
- Slurred speech
- High accident rate

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Marijuana Use

SYMPTOMS SIMILAR TO SCHIZOPHRENIA: Suspiciousness, thought disorder, blunted affect, unusual thoughts, memory and attention impairment (Souza et al at Yale June 2004)

THC **impairs anti-tumor immune response** in mice (2005 Journal of Immunology)

Higher **carcinogenic-laden tar is higher** in

Marijuana than cigarettes (2005 Journal of Immunology)

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Signs of Marijuana Abuse

- Dry mouth
- Blood shot eyes
- Altered perception of time
- Impaired recall
- Slowed motor skills
- Depersonalization
- Distorted perception
- Munchies

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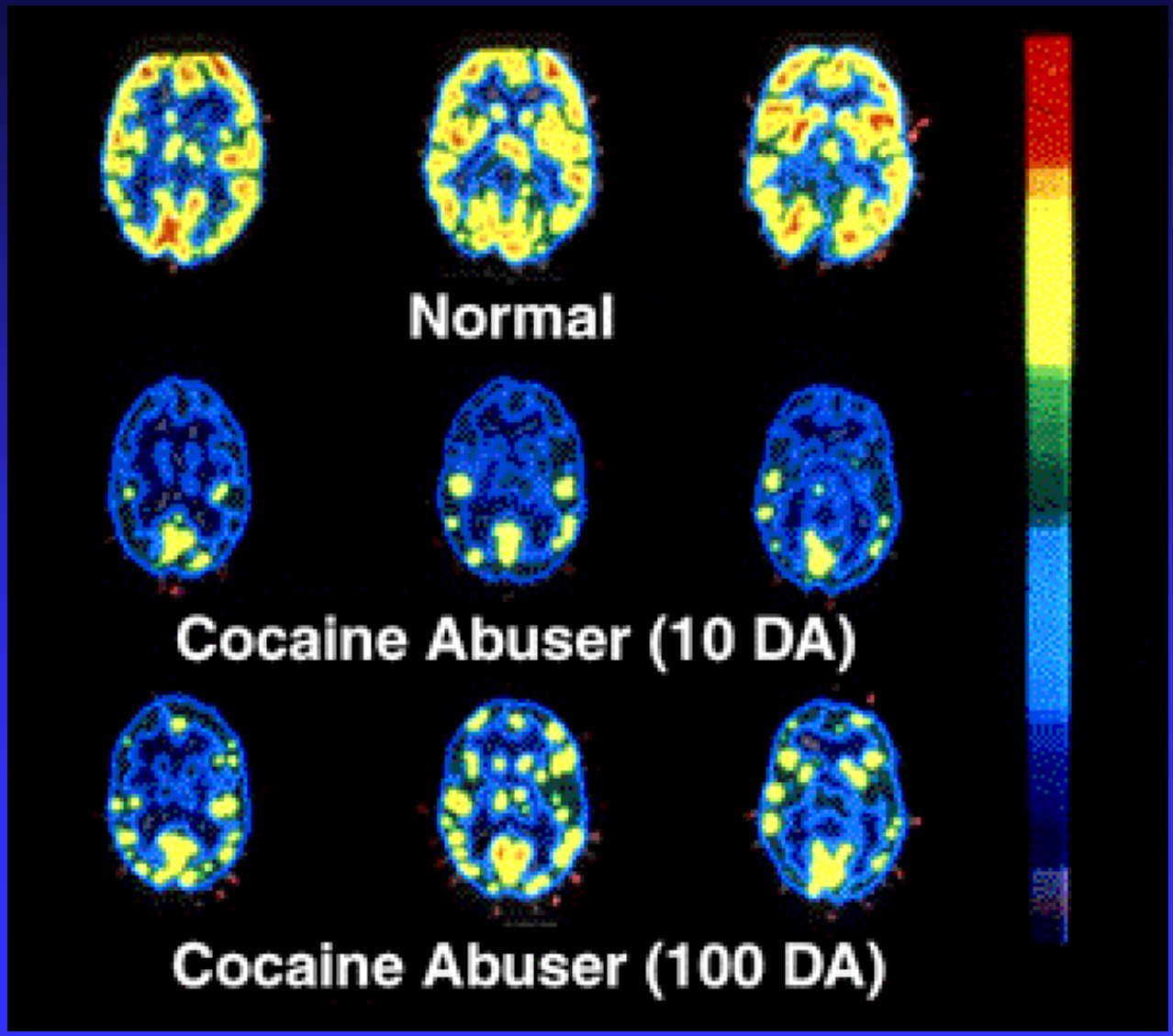
Symptoms of Cocaine Abuse

- Euphoria
- Increased energy
- Increased alertness
- Decreased appetite
- Insomnia
- Anxiety
- Irritability
- Increased sex drive

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LASTING EFFECTS OF COCAINE ABUSE



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What We Know About

Treatment

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Effectiveness of Treatment



- Treatment reduces drug use
- Treatment reduces crime
- Treatment saves money
- Treatment increases employment prospects
- Drug treatment is as successful as treatment of diabetes, asthma, and hypertension

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Research Findings

The length of time a patient spent in treatment was a reliable predictor of his or her post treatment performance.

Beyond a ninety-day threshold, treatment outcomes improved in a direct relationship to the length of time spent in treatment, with one year generally found to be the minimum effective duration of treatment.

Coerced patients tended to stay longer.

This, despite the finding that most of the legally coerced addicts had more crime and gang involvement, more drug use, and worse employment records than their non-coerced counterparts.

Drug Abuse Reporting Project **(DARP)**/Treatment Outcome Prospective Study **(TOPS)** /Drug Abuse Treatment Outcome Study **(DATOS)**/ National Treatment Improvement Evaluation Study **(NTIES)**

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Coercion in the Criminal Justice System

A 1990 report from the Institute of Medicine summarized that “contrary to earlier fears among clinicians, criminal justice pressure does not threaten treatment effectiveness, and it probably improves outcomes.

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Why Do Drug Courts Work?

- CORE STRUCTURE:
  - "The severity and certainty of criminal justice sanctions are related inversely to the likelihood of criminal recidivism" (Marlowe & Kirby, 1999)
  - Absent this swift application of incentives and sanctions, drug courts lose their coercive power and therefore their effectiveness.

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ASAM Placement Criteria

Levels of Care Criteria	Outpatient	Intensive Outpatient	Inpatient	Intensive Inpatient
Withdrawal	No risk	Minimal	Some risk	Severe risk
Medical Complications	No risk	Manageable	Medical monitoring required	24-hr acute med. Care required
Psych/Behav Complications	No risk	Mild Severity	Moderate	24-hr psych & addiction Tx required
Readiness for Change	Cooperative	Cooperative but needs structure	High resist, needs 24-hr motivating	
Relapse Potential	Maintains Abstinence	More symptoms needs close monitoring	Unable to control in outpt. Care	
Recovery Environment	Supportive	Less supportive, cope w/ struct.	Logistical incapacity for outpt.	

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Twelve Step Programs

- Can be required in Drug Court if do not violate Establishment Clause of First Amendment
  - Participants given choice of secular or non-faith-based programs
    - Warner vs. Orange County Department of Probation, 173 F. 3d 120 (2nd Cir. 1999); Kerr v. Farrey, 95 F.3d 472 (7th Cir. 1996)

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REPRESENTING THE DEFENDANT IN DRUG COURT

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2,147 Drug Courts in operation as of December 31, 2007

- 1174 Adult Drug Courts
  - Of which 286 are Hybrid DWI/Drug Courts
- 455 Juvenile Drug Courts
- 301 Family Drug Courts
- 72 Tribal Drug Courts
- 110 Designated DWI Courts
- 6 Campus Drug Courts
- 24 Reentry Drug Courts
- 5 Federal District Drug Courts

New York & Kentucky have statewide drug courts!

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Why Proliferation of Drug Courts?

- "To put it bluntly, we know that drug courts outperform virtually all other strategies that have been used with drug-involved offenders." (Treatment Research Institute at the University of Pennsylvania)

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Drug Courts Work…

- U.S. Government Accountability Office (GAO) concluded:

"adult drug court programs substantially reduce crime by lowering re-arrest and conviction rates among drug court graduates well after program completion"

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Drug Court Clearinghouse at American University and the Government Accounting Office (GAO)

Over 350,000 clients have been admitted to U.S. drug court programs since 1989 with a 67-71% retention rate.

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The National Center on Addiction and Substance Abuse (CASA) at Columbia University conducted a meta-analysis and critical review of drug court research and evaluations (Belenko 1998, 1999), finding:

drug courts provide the most comprehensive and effective control of drug-using offenders' criminality and drug usage while under the court's supervision.

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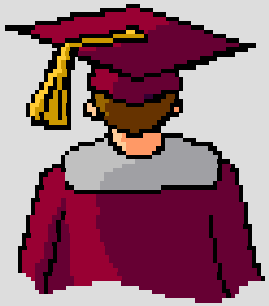
NIJ National Recidivism Data

100 Largest Drug Courts

2000 Graduates Randomly Selected

1 Year Post Graduation: 16.4%

2 Years Post Graduation: 27.5%



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How are they working in WV?

	Retention Rate	Re-Arrest Rate During DCT	Re-Arrest Rate Post Graduation
NP	86.6%	7.0%	3.7% (27 grads)
SR	63.8%	15.5%	0% (20 grads)
WC	84.2%	0%	0% (1 grad)

All values as of June 30, 2008.

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COMPARE:

Treatment Only	Criminal Recidivism	Drug Courts Nationally	WV Drug Courts
50% never show for intake; 90% drop out by 12 months	29.9% re-arrested within 6 months; 67% re-arrest rate for drug offenses	16.4% re-arrested within 3 years (meta-analysis by NIJ)	0 to 3.7% post graduation re-arrest rate (48 grads)

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Critical Issues for Defense Attorneys in Drug Court

- Role Change
  - Shift from conventional adversarial
    - Zealously asserting position to neutral arbiter
    - To
    - Teamwork in therapeutic model
  - Client's Stated Interest vs. Best Interests

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Roles in DCT:

- Zealous advocacy does not require hostility or antagonism
- "Team player" reflects shared goal of prosecutor and defense counsel of reducing or preventing defendant's further engagement in CJ system by addressing addiction to alcohol or drugs, BUT prosecutor & defense counsel maintain distinct roles w/in the Team:
  - Prosecutor protects public safety
  - Defense attorney protects protects due process rights while encouraging full participation

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Struggling Role of Defense Counsel

- Conflicting Desires of Treatment Team vs. Desires of Client (ex. Punitive sanctions)
- Universally Shared Goal:
  - Defendant's recovery from addiction & increased public safety
  - Judge does what is needed to promote the shared goal
- Balance between informal practices and protecting client from punishments that remain

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Protective Function of Defense Attorney:

- Not diminished in DCT, although primary exercise of this function may shift to staffing conferences, where counsel may question alleged violations & proposed sanctions w/out impairing participant's recovery
- Zealous representation does NOT require challenging of every sanction for violations
  - It is appropriate that such sanctions:
    - Serve the defendant's underlying interest in recovery
    - Are consistent w/ sanctions imposed on other defendants for similar violations
    - Reflect the previously determined schedule of sanctions

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Defense Counsel Role

- Begins BEFORE client chooses Drug Court
  - Provide info on benefits of Drug Court
    - Potential leniency
    - Significant assistance in overcoming addiction
  - Provide info on potential costs of Drug Court
    - Possible more time under court supervision
    - Treatment team “knows best” to reach main goal of overcoming addiction

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Client under a Disability…

- When alcohol for drug ingestion has temporarily disabled a client, the client is legally incapable of executing waivers or participating in judicial proceedings
  - Postpone consultation
  - Seek medical treatment for client if severe

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Advising Client on Confidentiality Waivers

- Relevant medical treatment information distributed to treatment team: includes prosecutor
  - Disclosure not permitted if were to secure treatment without court supervision

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Confidentiality of Drug Court Information

- Protected information under 42 C.F.R. § 2.12(a)(2) (2002) may not be used to substantiate criminal charges against a participant or to further a criminal investigation against the participant
- Prohibited disclosure of identity, diagnosis, prognosis, or treatment of any patient under 42 U.S.C. § 290dd-2 (2002)

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Will Guilty Plea Be Required?

- Participation may require formal admission of guilt
  - May result in waiver of legal defenses if later unsuccessful in the program

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Negotiating the DCT Contract

Trying to negotiate:

- Treatment with best chance for client to overcome addiction
- Confidentiality of information provided to Drug Court
- Immunity for information provided
- Most favorable results for client upon completion of treatment
- Credit for time served in sanctions

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Discretion of Prosecutor

Prosecutors possess wide discretion to make charging decisions and offer plea bargains

These decisions cannot be on impermissible factors:

- Race or disability

Proving claims challenging

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Ensuring Genuine Voluntary Choice for Client

- Forms (especially waivers) should be read to client
- Translator for non-English speaking client
- Give examples with explanations (ex.: What sanctions will be imposed? What is maximum penalty if fails in the program?)
- Understand the client's circumstances and objectives

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All clients should be briefed on:

- The significance of disclosures in DCT proceedings
  - Ex: admissions to serious crimes
- Insist clients be truthful in all statements to the court
- Truthfulness does not imply unrestrained confessions

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After Your Client Enters the Program:

- The goals of defense representation expand to include the participant's successful completion of the DCT program
- If you will not be attending all proceedings in DCT:
  - 1. Make sure have a consensual arrangement with client reflecting this (informed, written consent)
  - 2. Arrange to receive advance notice whenever the court contemplates sanctioning client

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After Your Client Enters the Program:

Advocate for client in Staffings

Courtroom is non-adversarial

Judge and client speak directly

Potential for miscommunication

Client failing in program

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Tailoring Treatment to Client Needs

- Client properly assessed?
- Advocating for all treatment needs
  - Mental health needs?
  - Medical needs?
  - Dental needs?
  - Cognitive needs (mental retardation)?

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Compliance Issues

- Assist client in addressing
  - Investigate
  - Provide client with framework for explanation
- Sanctions realistic & appropriate?
  - Robinson v. State of California, 370 U.S. 660, 666 (1962): State may impose a program of compulsory treatment for addiction and penal sanctions might be imposed for failure to comply with established compulsory treatment procedures.

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Concerns with Team Approach

- Confidences and Secrets
  - CAREFUL: Revealing information privileged and confidential in traditional criminal court context cannot be "required" of defense counsel as a team member
- Client perception

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What type of client appropriate for Drug Court?

- Treatment Research Institute at the University of Pennsylvania, Philadelphia
- Douglas Marlowe, J.D., Ph.D studies
- Based upon High/Low Risk Factors and High/Low Needs
  - Drug Courts particularly beneficial for HR/HN client

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DEFINING HIGH CRIMINOGENIC RISK FACTORS

- Under age 25
- Violent crime involvement/criminal onset prior to age 16
- Drug use prior to age 14
- Co-morbid DX of APD or psychopathy
- Previous failed drug treatment
- Previous failed criminal diversion
- 1st degree relatives with drug abuse problems or criminal histories
- Criminal associations

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DEFINING HIGH NEEDS

- Drug Dependence or Addiction
  - Binge Pattern –or- Cravings & Compulsions –or- Withdrawal Symptoms
  - This is NOT the just Drug Abuse or Misuse
- Collateral Needs: (Lower magnitude consequences for drug use until stabilized; must stabilize client first!)
  - Dual DX
  - Chronic Medical Condition (ex: HIV, diabetes)
  - Homelessness
  - Chronic Unemployment

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HIGH RISK factors

Status Hearings bi-weekly needed.

Restrictive Sanctions/Consequences (home curfew, ankle bracelets, etc.)

HIGH NEEDS

Regimen compliance is proximal.

Abstinence is distal goal

Intensive Treatment

Positive Reinforcement required (NEED REWARDS).

LOW RISK factors

As needed Non-compliance Hearings.

HIGH NEEDS

Regimen compliance is proximal

Abstinence is distal goal

Intensive Treatment

Positive Reinforcement required.

HIGH RISK factors

Status Hearings bi-weekly needed

Restrictive Sanctions/Consequences

LOW NEEDS

Abstinence is proximal goal

LOW RISK factors

As needed Status Hearings.

LOW NEEDS

Abstinence is proximal goal

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HIGH RISK HIGH NEEDS Focus on: Accountability + Treatment	LOW RISK HIGH NEEDS Focus on: Treatment
HIGH RISK LOW NEEDS Focus on: Accountability	LOW RISK LOW NEEDS Focus on: Prevention Approach (scare & divert out of CJ system)

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HIGH RISK HIGH NEEDS *Can't punish away the addiction *Use sanctions only to protect the public. Get control of behavior by LOTS of high magnitude positive reinforcement	LOW RISK HIGH NEEDS *Have to get to court quickly if non-compliant *Use positive reinforcement to get control of behavior
HIGH RISK LOW NEEDS *Don't boil the frog *Habituation occurs if don't have high magnitude consequences for low non-distal behaviors (under voluntary control)	LOW RISK LOW NEEDS *Will raise risk if use same high magnitude consequences as HR clients

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ETHICAL CONSIDERATIONS IN REPRESENTING THE DEFENDANT IN DRUG COURT

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Rule 1.1 Competence

- Competence to represent client and advise on merits of case vs. option of entering DCT requires:
  - Be familiar w/ DCT program
    - Know:
      - Eligibility requirements
      - Sanctions & incentives
      - Circumstances leading to termination
      - Waivers
      - Restrictions placed on use of DCT info
  - Be familiar w/ charges, sentencing exposure, suppression issues, & legal defenses

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Rule 1.4 Communication

- Continuing duty to communicate
- Requires attorneys to give client sufficient information & impart info in manner to ensure genuine choice
  - Bilingual translator
  - Forms read to client
  - Clear explanations & specific examples
    - Ex: Sanctions imposed for relapse, how client will be tested for drugs, what happens if client "water loads", etc.

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Rule 1.2 Scope of Representation

- Receipt of competent advice + client rendered decision = attorney abides by client decision
- May strongly urge client to enter or not enter DCT, so long as the final decision is the client's
  - Encouragement to enter must be predicated on counsel's judgment about client's best interests in the matter at hand, not general support for DCT

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Rule 1.2 Scope of Representation

- Stay apprised of client's goals & objectives throughout client's DCT involvement
  - To extent lawyer is not or cannot be present, the DCT institutional defense attorney should be asked to convey the substance of the hearing or staffing to the lawyer

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Rule 1.6 Confidentiality & Rule 3.3 Candor toward the tribunal

- Rule 3.3 prohibits the lawyer from deceiving the court or "assisting" a client to do so, but does not require full disclosure by the lawyer of all information about the client.
  - Ex: client informs lawyer of relapse & used, but use has not been detected…neither lawyer or client is obligated to disclose this fact
  - BUT when client lies under oath, Rule 3.3 imposes a duty of candor that supersedes duty of confidentiality

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Rule 1.7 Conflict of Interest

- As long as clients are not defendants in the same criminal case, a lawyer may represent multiple participants in the same drug court program
- If defendants have conflicting interests to charges pending in the same criminal case, they should have separate counsel advising them on entry to drug court
  - If the charges are resolved by entry into DCT (Ex: the program is post plea), the same attorney may represent both with informed consent

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Rule 1.7 Conflict of Interest

- Although unlikely, it is possible for client's interest to become adverse in DCT…
  - Look for situations where advancing interests of one will harm another
    - Ex: one participant accuses another of selling drugs

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