

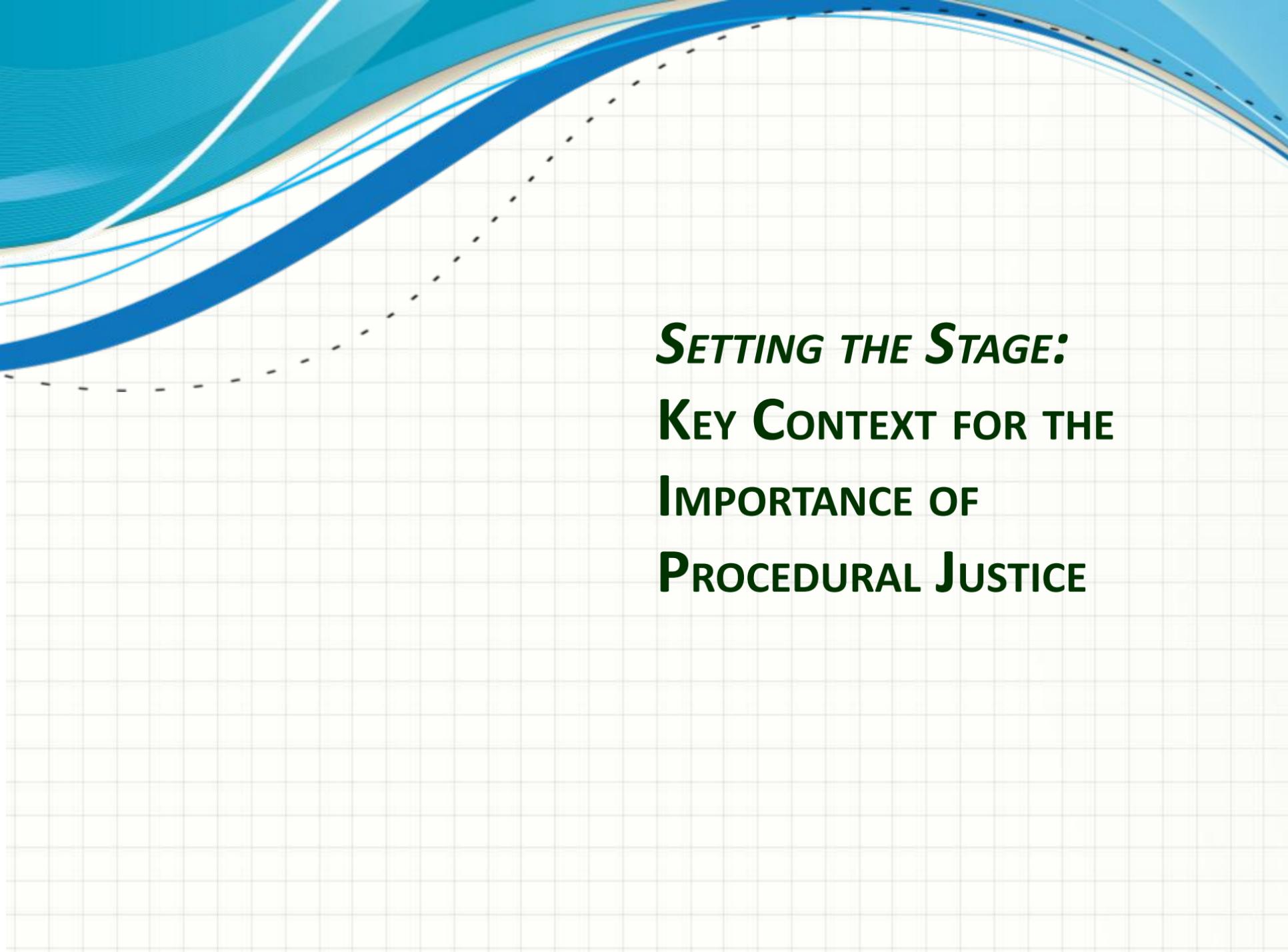


# **Procedural Justice: Key to Compliance and Positive Outcomes**

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Washington Association of  
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# A Quick Introduction: Norma Jaeger

- Management of contracted substance use disorder prevention and treatment programs for 20 years in North Idaho, Portland, and Seattle including establishing and overseeing collaborative criminal justice projects, including jail-based behavioral health programs for 10 years
- Management of Offender Programs for 1 year at Idaho Department of Correction
- Statewide coordination of 70 treatment court programs in Idaho for 12 years and an additional 5 years of ongoing support to Idaho treatment courts
- Adjunct professor at Boise State University in Department of Criminal Justice for 15 years
- Ph.D. Public Policy and Administration Boise State University, 2024



***SETTING THE STAGE:***  
**KEY CONTEXT FOR THE  
IMPORTANCE OF  
PROCEDURAL JUSTICE**

# The theory behind treatment courts: Therapeutic Jurisprudence

- David Wexler and Bruce Winick in 1987 (Law Professors)
- A multidisciplinary legal theory and practice
- Examines how “substantive rules, legal procedures, and the roles of lawyers and judges produce therapeutic or antitherapeutic consequences.”
- Favors (seeks) outcomes that advance human dignity and psychological well-being.
- Began in mental health and mental disability law
- Expanded widely to criminal law, and problem-solving courts

# Therapeutic Jurisprudence offered as the *theoretical foundation* for problem-solving courts

- Judges Peggy Hora and William Schma authored a Notre Dame law review article (1999) positing *therapeutic jurisprudence* as the “missing” theoretical foundation for the growing problem-solving courts, over which both were presiding (California and Michigan) and working nationally for their legitimization.
- Their article provided a justification that this movement did in fact have a theoretical foundation to explain “why” they “worked”.
- Problem-solving courts were quickly recognized as an important example of therapeutic jurisprudence in practice.

Peggy F. Hora, William G. Schma & John T. Rosenthal, *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439 (1999).  
Available at: <https://scholarship.law.nd.edu/ndlr/vol74/iss2/4>

# **A Key Reminder of *What Works* in Criminal Justice: Risk/Need/Responsivity**

**The foundation of positive justice system outcomes**

- **Risk = Who to target = Right fit**
- **Need = What to target = Right focus,**
- **Responsivity = How to do it = Right Buy-in**

# Risk/Need/Responsivity (R/N/R)

## Calls for Prioritizing Resources

- **High Risk** = Individuals accurately assessed as at high risk for recidivism
- **High Need** = Individuals accurately assessed with multiple specific criminogenic needs (dynamic needs)

**And**

- **Responsivity** = characteristics and issues that influence engagement and responsiveness to appropriate interventions

## A Deeper Dive into Responsivity

Responsivity refers to the factors involved in both the *delivery* and the *receiving* of behavior change interventions that impact the person's response to the intervention

Includes the *interventions* and the *environment* in which the intervention takes place and the specific characteristics and needs of each *individual*

# Risk / Need / **General Responsivity**

**General responsivity:** focuses on effective programs / operations:

- **operational and structural factors:**

evidence-based practices: *cognitive-behavioral treatment, skill development, social learning approaches, motivational interviewing, and procedural justice principles*

- **environmental factors:**

the court hearing environment, court security issues, site and environment of other contacts, transportation issues, who is present at contacts, privacy, presence of distractions

# Risk / Need / Specific **Responsivity**

**Specific Responsivity** focuses on individual characteristics, issues, and specific needs

Trauma, including ACEs

Personality characteristics

Mental health diagnoses

Traumatic Brain Injury

Learning styles

Literacy

Poverty

Medication

Relationships (intimate partner violence)

parenting issues

Medical issues

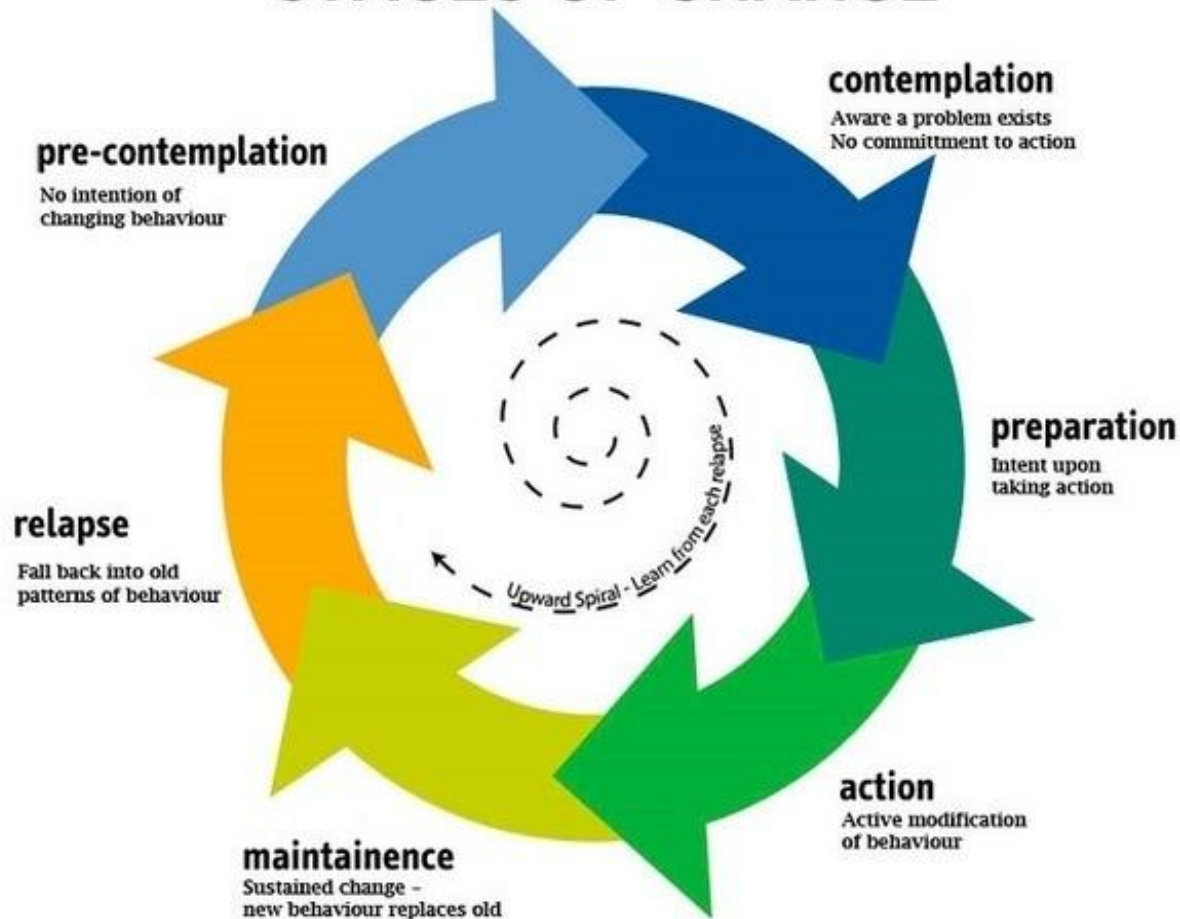
Housing

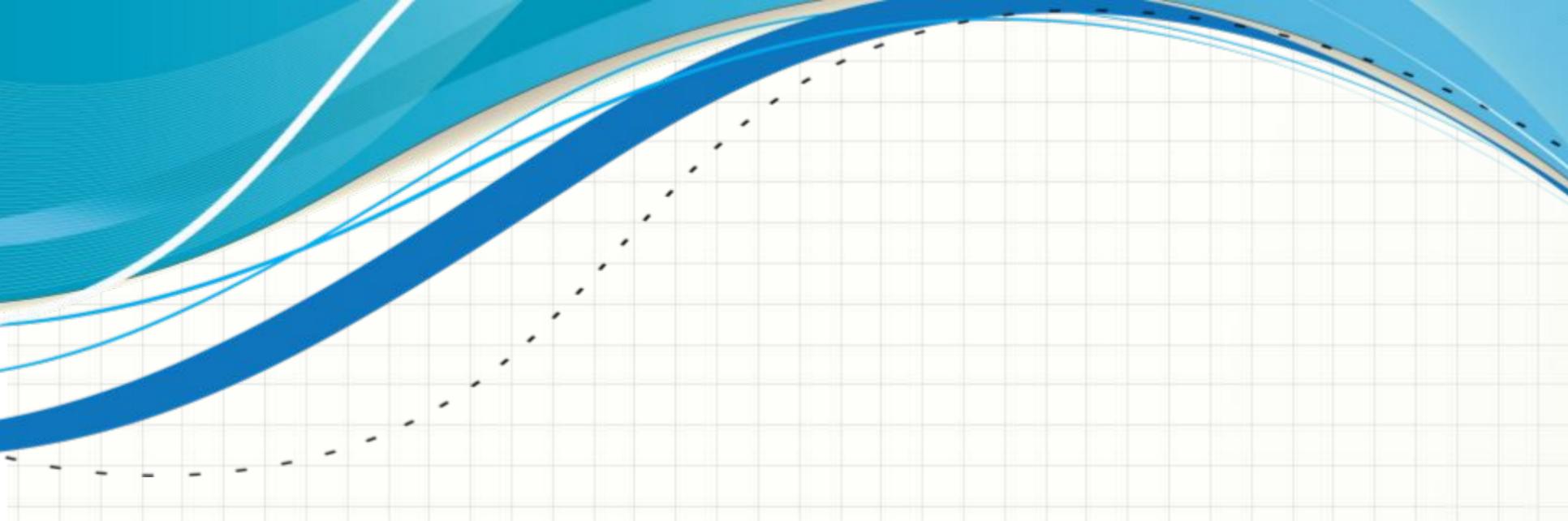
Motivation

# A few words about motivation and its relationship to responsivity

- Understand motivation and role of ambivalence
- Recognize that motivation is a *state* not a *trait*
- Motivation is not an appropriate screening factor for acceptance
- Remember *Stages of Change* (fluctuating)
- Motivation can be nurtured by selected interventions and approaches
- Motivation can also be diminished by certain interventions and approaches

# STAGES OF CHANGE





***GETTING DOWN TO IT***  
**PROCEDURAL JUSTICE**

# Procedural Justice

- Is a strong evidence-based way of looking directly at **general responsiveness**
- Has substantial overlap with trauma-informed operations (many common principles)
- Benefits all participants
- *Will* result in greater engagement
- *Will* improve acceptance of and compliance with requirements and recommendations
- *Will* impact motivation and cooperation
- *Will* impact a therapeutic alliance or supervision relationship
- Impacts not only the immediate individual but the observers (word gets around)

# Five Key Elements of Procedural Justice

- **Transparency / Understanding**
- **Respectful Treatment / Dignity)**
- **Voice**
- **Neutral Decisions**
- **Trust (caring, helpfulness, and fairness)**

See pages 10 – 13 Commentary to the Adult Treatment Court Best Practice Standards, under judicial demeanor, for details on implementing procedural fairness principles

# Five Key Elements of Procedural Justice

## Transparency / Understanding

## Respectful Treatment

## Voice

## Neutral Decisions

## Trust(worthiness)

- Clarity of expectations, consistency of application, repetition of rules, explaining decisions, especially when they deviate from usual practices
- Treating participants with dignity, respecting appropriate privacy, knowing them, remembering details
- Allowing participants to tell their side of the story, express their needs, sharing successes and challenges
- Decisions are based on all the facts, including participant's voice in giving explanations
- Showing care and concern, decisions in best interest of participant, encouraging and offering hope, sharing expectations of success, operating fairly

# Implementing Procedural Justice

## Transparency / Understanding:

- Have clear rules and expectations, provided in written form, regularly repeated, and consistently applied
- Understand and relate expectations to *proximal and distal goals*
- Explain rationale for decisions including the understood facts the decision is based upon
- Explain decisions, especially if an action is going to be different than that taken for another participant
- Probe for understanding of a directive or sanction (ask/elicit their voice)
- Remember, observers are learning too

# Implementing Procedural Justice

## Respectful Treatment / Dignity:

- **“The judge treated me like a human being, not just a criminal”.**
- Adhere to procedures, including starting and ending contacts at scheduled times
- Ask how people prefer to be addressed - names and pronunciation (it matters)
- Use active listening and remember prior conversations
- Maintain eye contact and other engaged body language
- Avoid unrelated multitasking during interactions
- Maintain consistent volume and careful tone of voice especially when annoyed or frustrated (no name calling, yes, it has happened)
- Be aware of your non-verbals, especially display of anger – may trigger trauma response and loss of executive function
- End contact with positive note – supportive and optimistic

# Implementing Procedural Justice

## Voice:

- hearing from participants / eliciting their voice
- open-ended questions
- opportunity to hear “their side of the story”
- seeking feedback on current services / requirements
- demonstrating hearing them
- incorporating their goals in their service plan
- asking how services and supervision is going
- asking what challenges they are facing
- asking what help they need

# Implementing Procedural Justice

## **Neutrality:**

- Base decisions on all facts, including participant explanations
- Review the “understood” facts and invite added information from participant to reach the decision
- Use active listening
- Address any new information brought up
- Recognize and understand your biases (check in with your team) and work to make decisions without bias
- Maintain “curiosity” as an antidote to bias

# Implementing Procedural Justice

## Trust: (trustworthy, caring, helpful, fair

- Be predictable
- Clearly adhere to policies and be consistent in fair way
- Demonstrate caring for success of the participants and understanding of the challenges but optimistic
- Offer real assistance, know and engage community resources widely
- Understand that trust takes time (*“trust arrives on foot but leaves on horseback”*)
- Understand that trust is a particularly difficulty for trauma survivors (trauma is a betrayal of trust by an expected trustworthy person or institution))
- The assessment of fairness comes early and lasts, unless a serious breach of fairness occurs (think about phase 1)
- Make positive statements, recognize and acknowledge efforts and express optimism about ultimate success. Make this the last thing discussed – people remember that which is stated last.

# Overlap with Trauma Informed Practice in Treatment Court

- Trauma impacts relationships /trust and control issues
- Trauma masquerades as non-compliance, resistance, or withdrawal
- Trauma impacts engagement and outcomes
- Trauma is an expectation not an exception
- Trauma-responsiveness lives both in the *system* and in the helping *relationship*

# Procedural Justice is Trauma-Responsive

## Procedural Justice Principles

- **Respectful Treatment ( Dignity)**
- **Voice**
- **Transparency / Understanding**
- **Neutral Decisions**
- **Trust (caring, helpfulness, and fairness)**

## Trauma Principles

- **Safety**
- **Empowerment, Voice & Choice**
- **Transparency / Understanding**
- **Collaboration and Mutuality**
- **Trustworthiness**
- **Peer Support**
- **Cultural, Historical and Gender Issues**

# Best Practice Standards, 2<sup>nd</sup> Edition, July 2025

- Judicial leadership of a multidisciplinary team and one-on one communication between the judge and participants in court are among the defining features of a treatment court (Pg.6).
- Not surprisingly, therefore, a good deal of research has focused on the impact of the judge in treatment courts . . .(Pg.6)

# Best Practice Standards, 2<sup>nd</sup> Edition, July 2025

- . . . results confirm that how well judges fulfill their roles and responsibilities in treatment courts has an outsized influence on program effectiveness (Pg.6).
- Perfunctory interactions are insufficient to ensure procedural fairness, develop an effective working alliance with participants, and enhance their engagement in treatment.

# Best Practice Standards, 2<sup>nd</sup> Edition, July 2025

## Roles and Responsibilities of the Judge

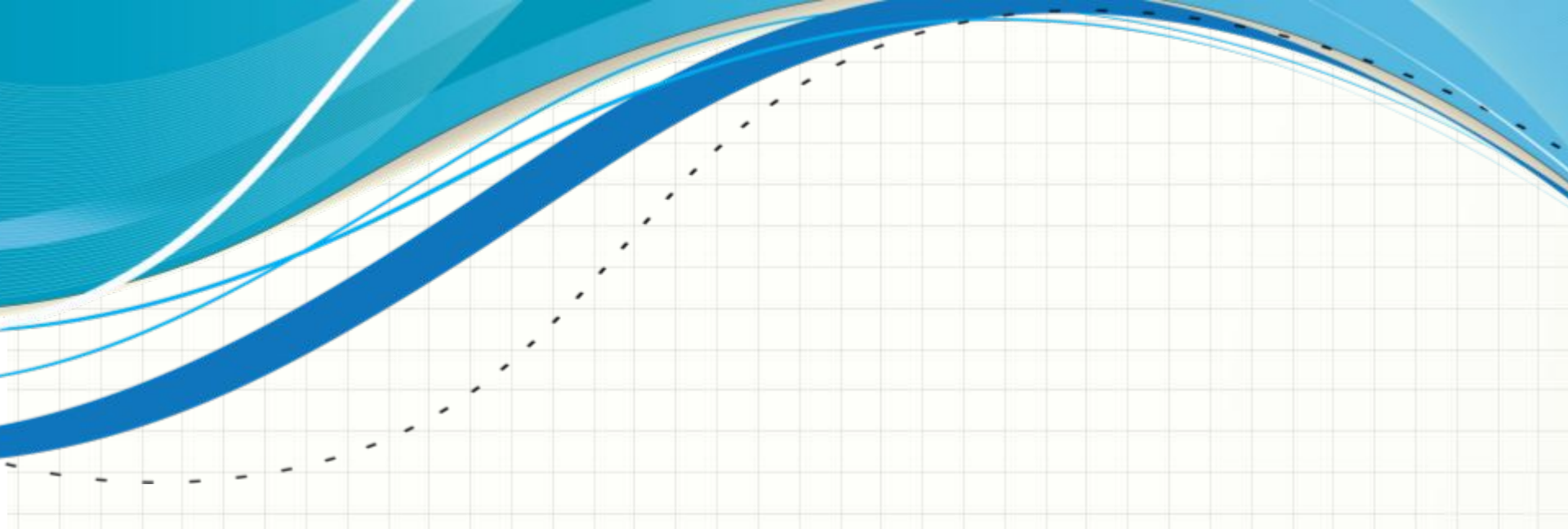
- The judge develops a collaborative working alliance with participants to support their recovery . . . (Pg.4)
- During status hearings, the judge interacts with participants in a procedurally fair and respectful manner, develops a collaborative working alliance with each participant . . . (Pg.5)

# Best Practice Standards, 2<sup>nd</sup> Edition, July 2025

- Judges must ensure procedural fairness, a working alliance with participants, and accountability for participant behaviors to achieve effective results for high-risk and high-need persons (Marlowe, 2018, 2022).
- The judge makes these decisions after carefully considering input from other treatment court team members and discussing the matter with the participant and their legal representative in court (P5).
- (Status Hearings) Critical elements for success have been demonstrated to include (1) interacting with participants in a respectful and procedurally fair manner, (2) creating a collaborative working relationship between the participant and judge

# Best Practice Standards, 2<sup>nd</sup> Edition, July 2025

These findings are consistent with a broader body of research on procedural fairness or procedural justice. Numerous studies have found that defendants and other litigants were more likely to have successful outcomes and favorable attitudes toward the court system when (1) they were treated with respect and dignity by the judge (respect principle), (2) they were given a chance to express their views openly without fear of negative repercussions (voice principle), (3) the judge considered their viewpoints when resolving factual disputes or imposing legal consequences (neutrality principle), and (4) they believed the judge's motivations were benevolent and intended to help them improve their situation (trustworthiness principle; Burke & Leben, 2007; Frazer, 2006; Stutts & Cohen, 2023; Tyler, 2007). T



## **SOME ADDITIONAL THOUGHTS**

# Social Learning – Observational Learning

Procedural justice is critical to a relationship leading to behavior change in the individual and . . .

- Social learning theory is the core of the Psychology of Criminal Behavior (the basis of RNR) (Bonta and Andrews)
- Social learning theory demonstrates that individuals learn through observation. (That is why your modeling of prosocial behavior is critical)
- Observation of the practices of procedural justice impact those you work with on a vicarious observational basis. (How you operate is a topic of conversation)
- Procedural justice practices establish a judgment of fairness and do so early in the relationship

# Procedural Justice – Tom R. Tyler

- In 2023, Tom R. Tyler was awarded the Stockholm Prize\* in Criminology for his procedural justice work and making contributions to understanding and working to improve legitimacy and community trust in policing and the courts

\* Equivalent to a Nobel Prize and highest honor awarded in the field of criminology

# Recent Idaho Research Study (That Dissertation)

- Qualitative study of adult drug courts.
- Interviews with 10 Idaho judges and 20 Idaho participants, and direct observations in three drug courts.
- Positive use of procedural justice was clearly in operation.
- **The only area of identified needed improvement was in the area of transparency/understanding among participants in some courts prior to entering and with continued reinforcement of rules in early phase.**
- **The unanticipated finding illuminated the “emotional toll” on judges from their drug court work, that accompanied their emotional rewards of the work.**
- That finding, which has not been previously significantly explored has led to my launching a post-doctoral study to further examine this toll, the stresses involved and potential individual and systemic approaches to mitigating this stress.

# Some Idaho specific findings on procedural justice

- “The judge treated me like a human being, not just a criminal”.
- Including ways of having “fun” together was reported as a positive, prosocial group identification (softball team)
- “They” really care about us (both judge and team)
- The judge usually comes to the hearing with a decision in mind, (from staffing or other team members) but offers an opportunity for participant voice and sometimes changes the decision or postpones the decision to obtain further information.
- The judge was viewed as not liking to give sanctions but still taking responsible action when required.
- The judge valued and rewarded honesty (and was good at knowing “a line” when it was given.
- The judge is fair. The program is fair. You get back what you give.

# Additional Idaho findings:

- The judge remembers from one court session to the next what you were going to do, or what was happening with you.
- The judge gives many second chances.
- “Drug court is my best day and my worst day” (Judge 1)
- Presiding over the drug court can be “exhausting”.
- Contacts with other judges is helpful.
- Graduations are a “big deal” to everybody (judge and participants)
- Judges’ family members are impacted by the drug court work

# Additional Idaho findings:

- Participants helping other participants was suggested by participants, but could be used more.
- After COVID, participants were no longer prohibited from connections outside of the hearings.
- COVID facilitated the use of Zoom and it has continued to provide beneficial communication options.
- There was indication of underutilization of medication for opioid use disorder
- Developing an opportunity for feedback from participants seems likely to be both encouraging (since it was, in this study, a lot of good news) and to be useful.
- *The only somewhat negative finding was that some participants (in some, but not all, courts reviewed) were not well-informed about the drug court and its requirements prior to entry. Further, there was not always sufficient reinforcement about rules prior to noncompliance and resulting sanction.*

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# Thank you

Remember:

This work you do matters  
a lot!

And

*Good self-care is essential* 😊