Reimagining the Practice & Culture of Compliance in Problem Solving Courts

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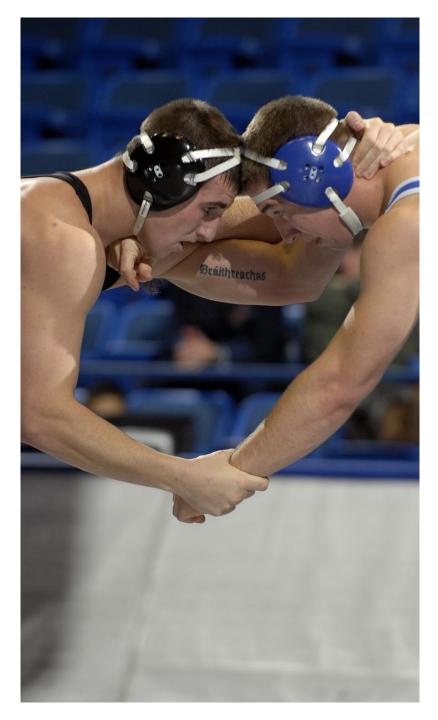


Problem-Solving Courts
Statewide Conference
South Dakota RISE23:
November 8, 2023





- I have never ever been to South Dakota
- I have been a guest of the criminal legal system











What I hope to communicate today

The potential of the problem-solving court model is much greater than we have yet to realize. Taking this next step is going to require a sea change in organization culture...



Considering Potential Causes and Correlates of Criminal Behavior

Influential Theories: Causes & Correlates of Crime

Classical School	Positivist School
Crime is a choice	Crime is not simply a choice
Presence of free will	Environmental influences are most salient
People know the difference between right/wrong	People vary in understanding of right/wrong
Individuals are rational actors	There are limits to rationality
Weigh costs and benefits	Unrealistic for certain types of crimes
Deterrence as a justification for punishment	Rehabilitation as a justification for punishment

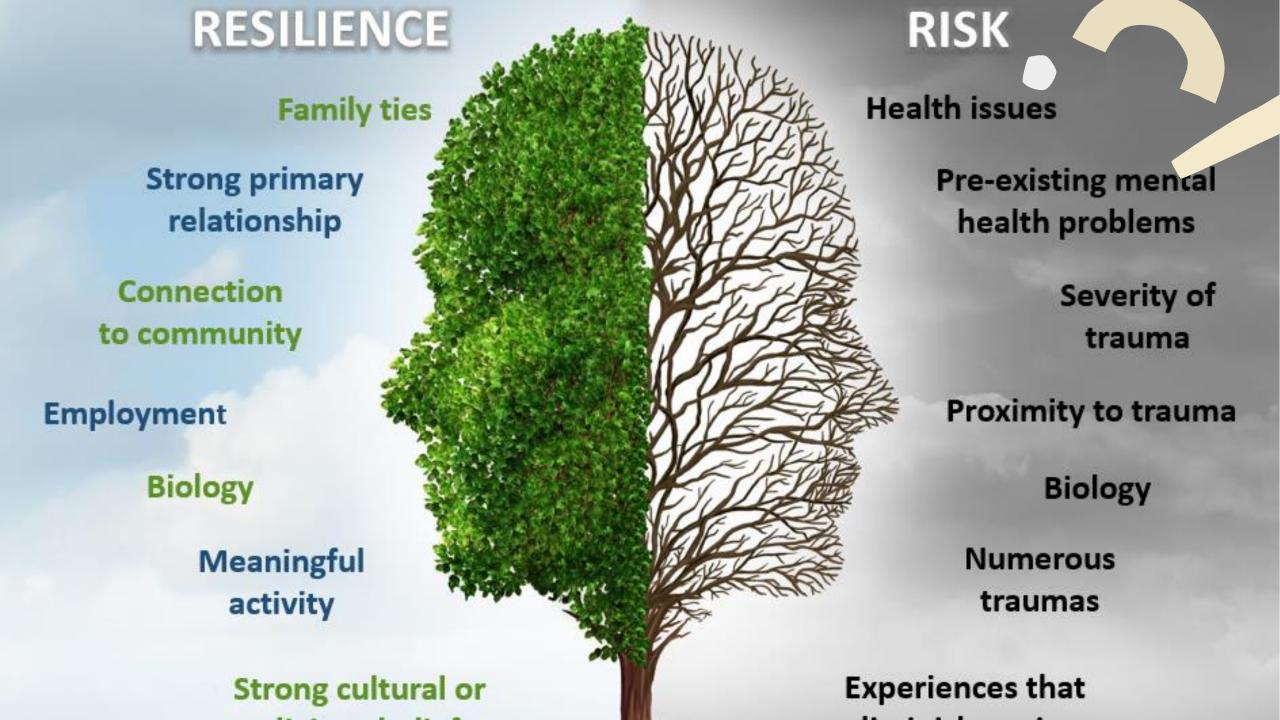
- Neither school of thought alone can explain criminal behavior:
 - One should consider the cognitive processes emphasized by the classical school.
 - One must not forget the role of environmental factors emphasized in positivism.

Social Determinants of Health



Examples of SDOH that may contribute to legal system involvement:

- Safe housing, transportation, and neighborhoods
- Racism, discrimination, violence
- Education, jobs, income
- Access to nutritious foods and physical activity opportunities
- Polluted air and water
- Language and literacy skills





Trauma

the *Diagnostic and Statistical Manual of Mental Disorders* (DSM- 5) describes trauma as "exposure to actual or threatened death, serious injury, or sexual violence," experienced either directly or indirectly in specific circumstances, and occurring just once or repeatedly.

- Trauma happens unexpectedly
- The individual is unprepared
- The individual cannot stop it from occurring

Trauma is the psychological response to events when they:

 are experienced as physically / emotionally harmful or threatening and 2) have lasting adverse effects on the individual's functioning and physical, social, emotional, or spiritual well-being.

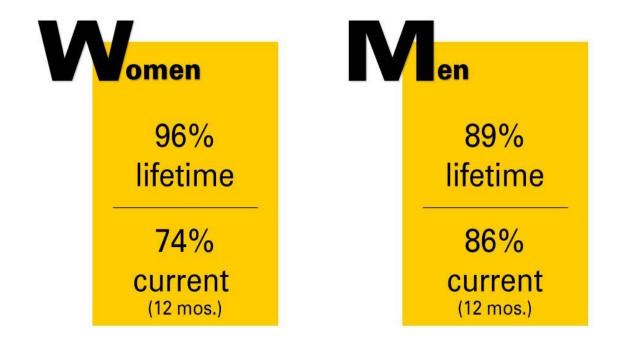
https://www.ncsc.org/data/assets/pdffile/ 0021/14493/mhf4-trauma-mar2020.pdf

Trauma in the Criminal Legal System



Trauma rates are very high

Jail Diversion Study



Studies consistently estimate prevalence at 80% or greater

Trauma in the Criminal Legal System

- Many youth and adults have histories of trauma that can contribute to the events leading to their arrival in the criminal legal system
- These traumas also shape their perceptions and behavior once they come into contact with the legal system (law enforcement, courts, institutions).
- Although most people who experience a traumatic circumstance do not go on to develop posttraumatic stress disorder (PTSD), research increasingly reports long-term consequences from exposure to traumatic events.
 - The more trauma one experiences, the greater the long-term consequences



YET....

Our entire legal system is built almost entirely upon the belief that deterrence works!!!





Newsflash!!!!

Deterrence does NOT work!!!

Why doesn't deterrence work?

General
Deterrence:
Certainty,
celerity, and
severity?

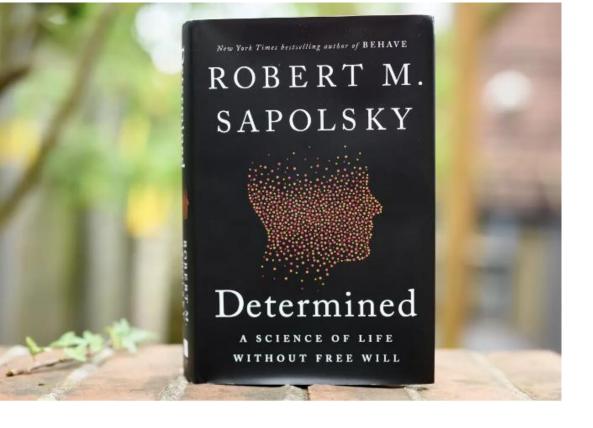
- The certainty of being caught is a vastly more powerful deterrent than the severity of the punishment should you get caught.
- Even if caught, the certainty, celerity and severity of punishment is highly variable.

Specific
Deterrence:
Scared
straight?

- High recidivism consistently documented.
- Stiffer penalties (especially longer prison terms) shown to be criminogenic.

How rational are we really?

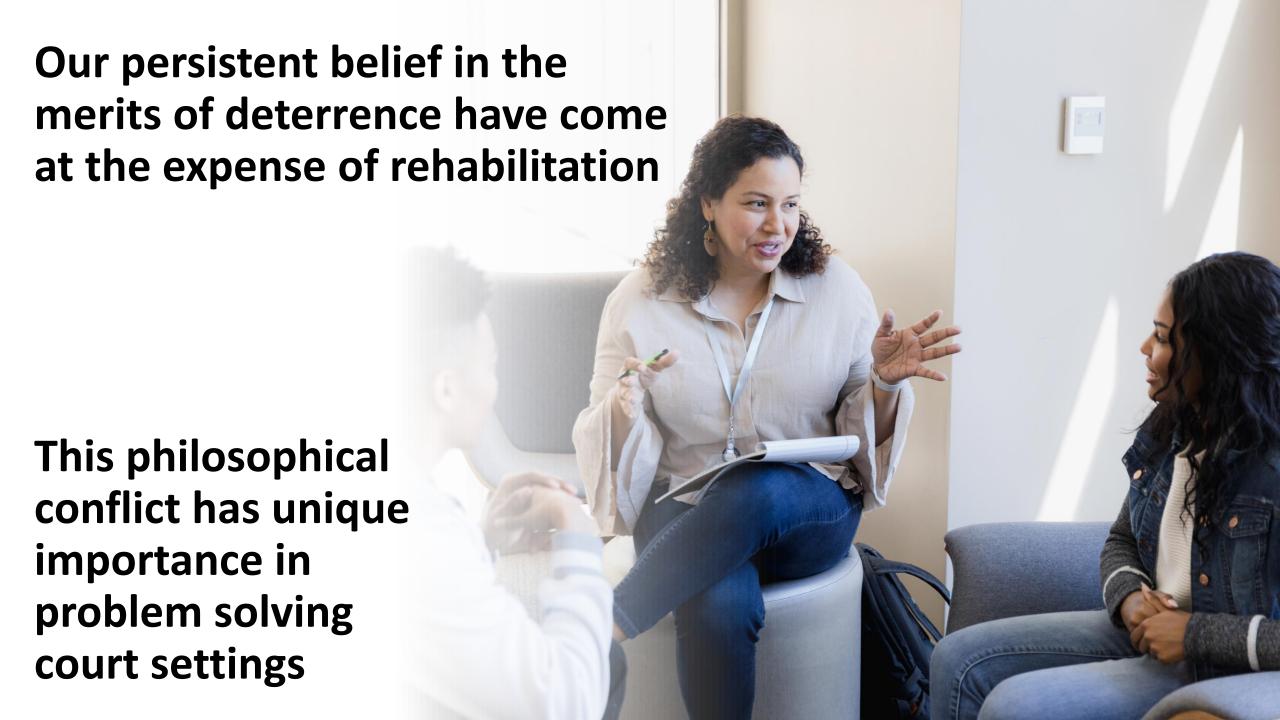
- Would most of us know the penalty?
- Is there a stake in conformity?
- What are the external influences?
- Might the benefit outweigh the cost?



After studying humans and other primates for 40 years, Stanford neurobiologist Robert Sapolsky has concluded that many factors beyond our control influence our choices and behaviors, leaving free will to be negligible in any context

Sapolsky has reached the conclusion that virtually *all* human behavior is as far beyond our conscious control as the convulsions of a seizure, the division of cells or the beating of our hearts.

This means accepting that a man who shoots into a crowd has no more control over his fate than the victims who happen to be in the wrong place at the wrong time. It means treating drunk drivers who barrel into pedestrians just like drivers who suffer a sudden heart attack and veer out of their lane.



The Problem Solving Court Model

1. Correctional treatment mandated by the legal system is aimed at reducing recidivism

Substance use disorders are quite common among individuals who are involved in the legal system. Thus, integrating substance use treatment services with legal system case processing can help promote recovery and thereby reduce reoffending.



The Problem Solving Court Model

2. Legal mandates provide external (extrinsic) motivation for clients to change

The criminal legal system has the unique ability to influence a person shortly after a significant triggering event such as arrest, and thus persuade or compel that person to enter and remain in treatment under threat of sanctions to be imposed should the participant fail to complete treatment



The Problem Solving Court Model

3. Although evaluations have produced positive results regarding the impact of mandated treatment (particularly in problem-solving courts), there is also ample evidence to suggest that mandated treatment isn't optimal.

This can often depend on the amount of legal leverage present and specific circumstances of the client. Mandated participants often struggle to recognize or understand the underlying issues that may have led to their legal involvement, including substance use. As such, at the time of their arrest and referral to court, they often aren't of the mindset that they need treatment or intervention.

Mandated Treatment: Key Limitations to Consider

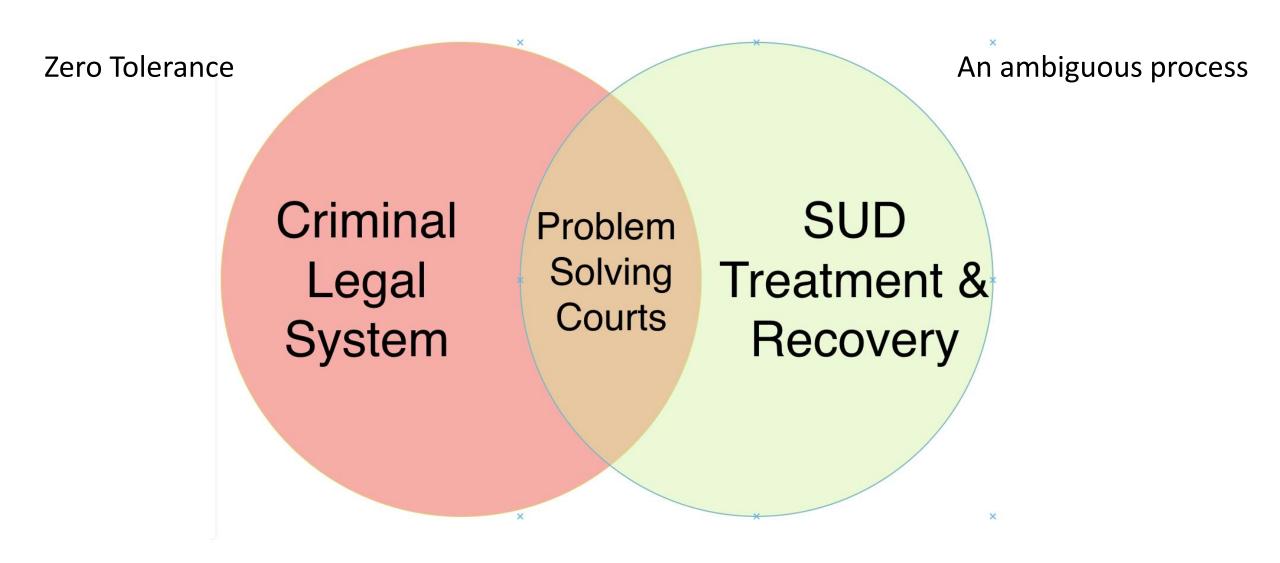
Strength of evidence focuses on retention as the outcome

of the quality of the therapeutic relationship in Mandated Tx

Feelings of coercion can increase experiences of stigma and devaluation

Hachtel H, Vogel T, Huber CG. Mandated Treatment and Its Impact on Therapeutic Process and Outcome Factors. Front Psychiatry. 2019 Apr 12;10:219. doi: 10.3389/fpsyt.2019.00219. PMID: 31031658; PMCID: PMC6474319.

Culture clash inherent to the problem court solving model...



Recovery Definition

The Substance Abuse and Mental Health Services Administration defines recovery as:

A process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential

Recovery Principles

Self-Direction

Individuals determine their own path of recovery with autonomy, independence, and control of their resources.

Individualized and Person-Centered

There are multiple pathways to recovery based on an individual's unique strengths as well as his or her needs, preferences, experiences, and cultural background.

Empowerment

Consumers have the authority to participate in all decisions that will affect their lives, and they are educated and supported in this process.

Holistic

Recovery encompasses an individual's whole life, including mind, body, spirit, and community. Recovery embraces all aspects of life, including housing, social networks, employment, education, mental health and health care treatment, and family supports.

Non-Linear

Recovery is not a step-by step process but one based on continual growth, occasional setbacks, and learning from experience.

Recovery Principles, Cont'd

Strengths-Based

Recovery focuses on valuing and building on the multiple capacities, resiliencies, talents, coping abilities, and inherent worth of individuals. The process of recovery moves forward through interaction with others in supportive, trust-based relationships.

Peer Support

Mutual support plays an invaluable role in recovery. Consumers encourage and engage others in recovery and provide each other with a sense of belonging.

Respect

Eliminating discrimination and stigma are crucial in achieving recovery. Self-acceptance and regaining belief in oneself are particularly vital.

Responsibility

Consumers have a personal responsibility for their own self-care and journeys of recovery.
Consumers identify coping strategies and healing processes to promote wellness.

Hope

Hope is the catalyst of the recovery process and provides the essential and motivating message of a positive future. Peers, families, friends, providers, and others can foster hope.

Examining the Process of Change



First things first....

Identify a change that you are *considering*, something you are *thinking about* changing in your life, but have not definitely decided. It could be something you feel two ways about. It might be a change that would be "good for you," that you "should" make for some reason but have been putting off.

What would motivate you to make this change?

Your values support it

You think it will be worth it

You think it is important

You think that you can do it

You are ready to change

You believe that you must do it

You have a good plan in place

The prosoutweigh the cons

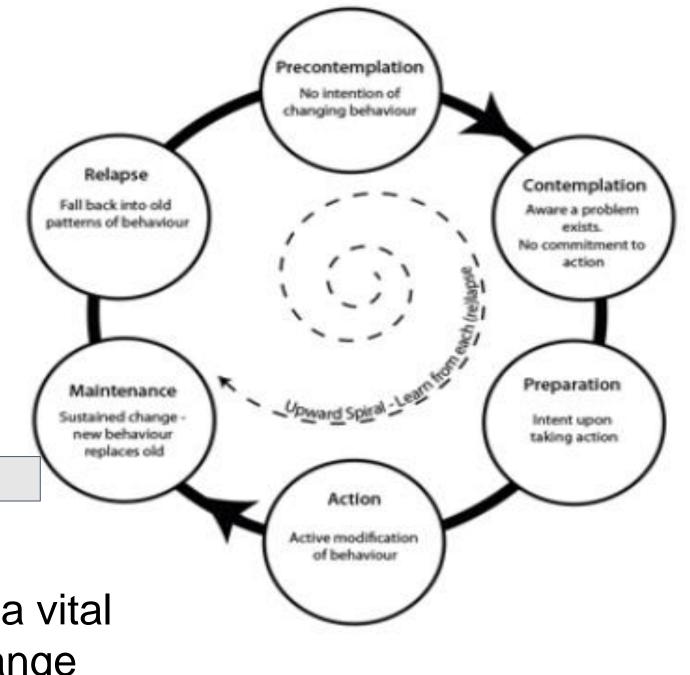
You have adequate support

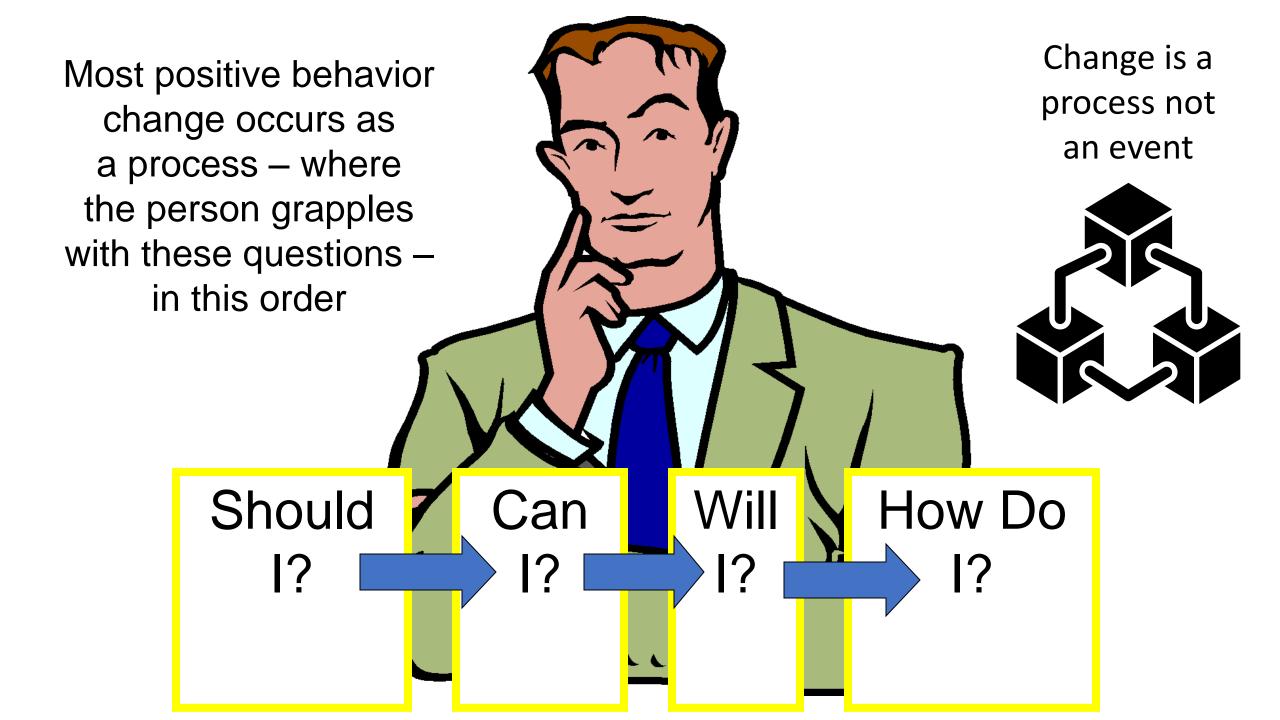
The Stages of Change

- Prochaska & Diclemente (1977)
- With regard to unhealthy behaviors, all individuals are in one of these stages of change at any given time
- Many progress through the stages
- Determining the stage of change can help guide intervention

Termination

Readiness for change is a vital mediator of behavioral change





What does the research tell us about readiness for change & motivation among individuals newly entering drug court?

Precontemplation stage

40 %

Contemplation stage

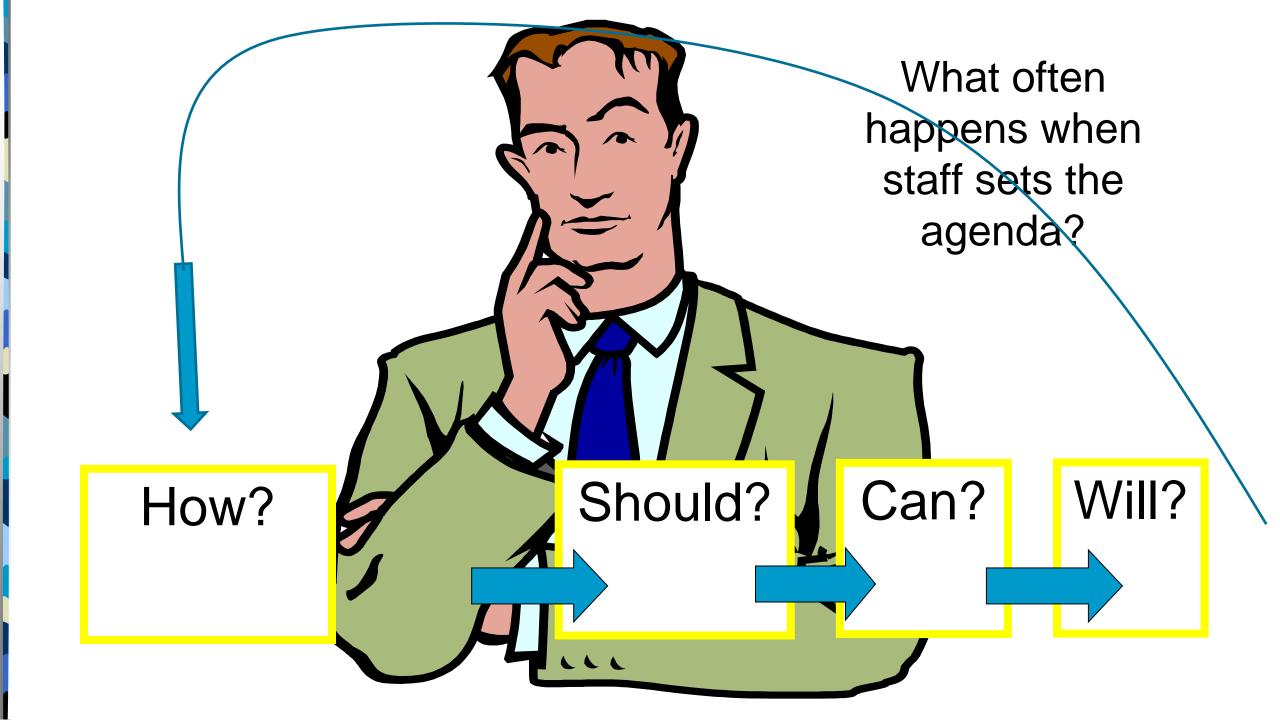
40 %

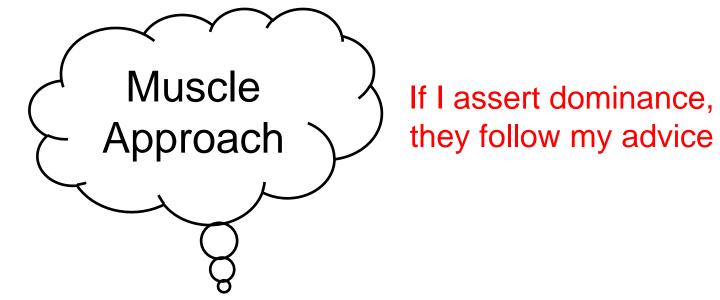
Preparation / Action stage

20 %

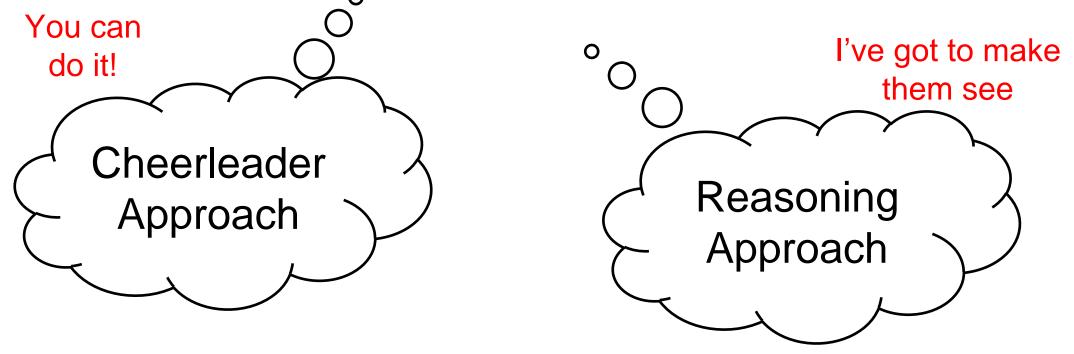
Bottom Line:

We must meet participants "where they are at"





How Can I Get People To Change?



Coercion Vs. EMPOWERMENT



OR



The 'Stages of Change' model describes readiness to change as a dynamic process, in which the pros and cons of changing generates <u>ambivalence</u>.



Ambivalence Defined



"Uncertainty or fluctuation, especially when caused by inability to make a choice or by a simultaneous desire to say or do two opposite or conflicting things."

http://dictionary.reference.com/browse/ambivalence

Being of two minds about something

Ambivalence is...

Common

Normal and necessary

Human experience

Part of the change process

Without Ambivalence There is **NO** Change!



Ambivalence is NOT Resistance!!!!

- Ambivalence about behavior change does not imply a character flaw or "resistance"
- And talking about NOT wanting to change is NOT resistance – it is the expression of the side of the ambivalence that wants to remain in the status quo
- Not wanting to change could be attributed to a number of considerations

If you see your clients through the lens of ambivalence instead of resistance...

- You'll be less inclined to "blame" your clients
- You'll be more patient and less frustrated with your clients
- You'll feel it easier to feel empathy toward your clients
- You'll be less stressed out about your clients
- You may experience and reflect HOPE for your clients

ALL CHANGE IS SELF CHANGE

Key Assumptions:

- The participant is the real agent of change
- They know themselves better than you do

Our Role:

- Be curious
- Listen for: their thoughts, values, emotions, experiences and how they see the world around them
- Avoid teaching, telling or giving advice without permission
- Empower the participant to take center stage

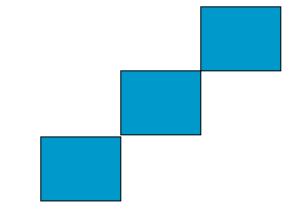
This is all to say that....

- The reasons for change already exist within your clients.
- They are the experts on themselves!
- Our job is to draw it out of them.
- We help them process and evaluate their own issues and possible reasons for change, while providing guidance that empowers them to reach their goals.



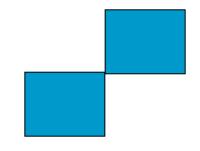
Behavior Change & Growth

We don't need a partnership for compliance – but it is a requirement to assist behavior change



Obedience / Compliance / Stability

2 levels of success



Acting Out / Unstable or Illegal Behavior

SHORT TERM COMPLIANCE



BEHAVIORAL CHANGE

LONG TERM

Evidence-based and Promising Strategies

A Roadmap for Organizational Change

A Recommended Focus

Risks Needs Responsivity (RNR)

- Identifies criminogenic risk
- Prioritizes high risk individuals
- Informs service provision

Trauma Informed Care / Trauma

- Recognize trauma
- Understand trauma
- Empathize via your actions

Motivational Interviewing

- Promotes culture change
- Enhances client engagement
- Improves staff satisfaction

Cognitive Behavioral Therapy

- Thinking 4 Change
- Moral Reconation Therapy
- Changes thinking patterns

Understand, Prioritize and Collaborate around the Recovery Process

Risks Needs Responsivity (RNR) Assessment

- The RNR model (Andrews, Bonta & Hoge, 1990) is perhaps most influential model for the assessment and treatment of offenders (Blanchette & Brown, 2006; Ward et al., 2007).
 - the *risk principle* asserts that criminal behavior can be reliably predicted and as such the level of service should be matched to the offender's risk to re-offend (it also asserts that treatment resources should be focused on higher risk offenders)
 - the *need principle* highlights the **importance of addressing various criminogenic needs** (including antisocial cognition) in the design and delivery of treatment; and
 - the *responsivity principle* describes how the treatment should be provided (i.e. tailored to the learning style, motivation, abilities and strengths of the individual)

Validated RNR Assessment Tools

- Instruments typically consist of a series of items used to collect data on offender behaviors and attitudes that research indicates are related to risk of recidivism.
- Individuals classified as being at a high, moderate, or low risk of recidivism.
- Assessment instruments are comprised of static and dynamic risk factors.
 - Static risk factors do not change (e.g., age at first arrest or gender)
 - Dynamic risk factors can be changed (education level, or employment status)
- Research indicates most commonly used risk and needs assessment instruments can, with a moderate level of accuracy, predict who is at risk for recidivism.

(Pamela M Casey, Roger K. Warren, and Jennifer K. Elek, 2011. Using Offender Risk and Needs Assessment Information at Sentencing: Guidance for Courts from a National Working Group, Appendix A, National Center for State Courts, Williamsburg, VA)

Research also indicates that of the most commonly used risk and needs
assessments, no one instrument is superior to any other when it comes to
predictive validity. That is, all of the nine tools predicted recidivism at abovechance levels, with medium effect sizes, and no one tool predicted recidivism
significantly better than any other. In sum, all did well, but none came first.

(Sources: Mary Ann Campbell, Sheila French, and Paul Gendreau, "The Prediction of Violence in Adult Offenders; A Meta-Analytic Comparison of Instruments and Methods of Assessment," Criminal Justice and Behavior, vol. 36, no. 6, June 2009, pp. 567-590; Min Yang, Stephen C.P. Wong, and Jeremy Coid, "The Efficacy of Violence Prediction: A Meta-Analytic Comparison of Nine Risk Assessment Tools," Psychological Bulletin, vol. 136, no. 5, 2010, pp. 740-767)

Nine (9) Tools Predicting Violence at Above-Chance Levels Psychopathy Checklist Revised (PCL-R)

Psychopathy Checklist Screening Version (PCL:SV)

Historical, Clinical and Risk Management Scales (HCR-20),

Violence Risk Appraisal Guide (VRAG),

Offender Group Reconviction Scale (OGRS),

Risk Matrix Sexual and Violence Scales (RM2000V)

Level of Service Inventory (LSI/LSI-R)

General Statistical Information for Recidivism (GSIR)

Violence Risk Scale (VRS)

Min Yang, Stephen C.P. Wong, and Jeremy Coid, "The Efficacy of Violence Prediction: A Meta-Analytic Comparison of Nine Risk Assessment Tools," Psychological Bulletin, vol. 136, no. 5, 2010, pp. 740-767)

"Fourth Generation" RNR Assessment Tools

- Integrate case management: focus on responsivity considerations that may affect how practitioners select appropriate interventions for their clients.
- In other words, they identify the crime-producing needs that should be targeted for change <u>and</u> produce results that can be fully integrated into case plans used to manage what services offenders receive and gauge progress
- Examples of these integrated assessment tools include:
 - Level of Service/Case Management Inventory (LS/CMI)
 - Correctional Offender Management Profiling for Alternative Sanctions (COMPAS)
 - Ohio Risk Assessment System (ORAS)
 - Offender Screening Tool (OST)
 - Static Risk and Offender Needs Guide (STRONG)

https://www.ncsc.org/__data/assets/pdf_file/0014/27140/ran-appendix-a.pdf

Trauma Informed Care

Trauma Informed Care acknowledges the need to understand an individual's life experiences in order to deliver effective care and has the incredible potential to improve patient engagement, treatment adherence, health outcomes, as well as provider and staff wellness



Trauma-specific services in the form of evidence-based clinical interventions (e.g., seeking safety, Eye Movement Desensitation and Reprocessing [EMDR], trauma recovery empowerment model).

Five (5) Guiding Principles of Trauma Informed Care

Safety



Choice



Collaboration



Trustworthiness



Empowerment



Ensuring physical and emotional safety

Individual has choice and control

Definitions

Making decisions with the individual and sharing power

Task clarity, consistency, and Interpersonal Boundaries

Prioritizing empowerment and skill building

Common areas are welcoming and privacy is respected

Individuals are provided a clear and appropriate message about their rights and responsibilities

Principles in Practice

Individuals are provided a significant role in planning and evaluating services

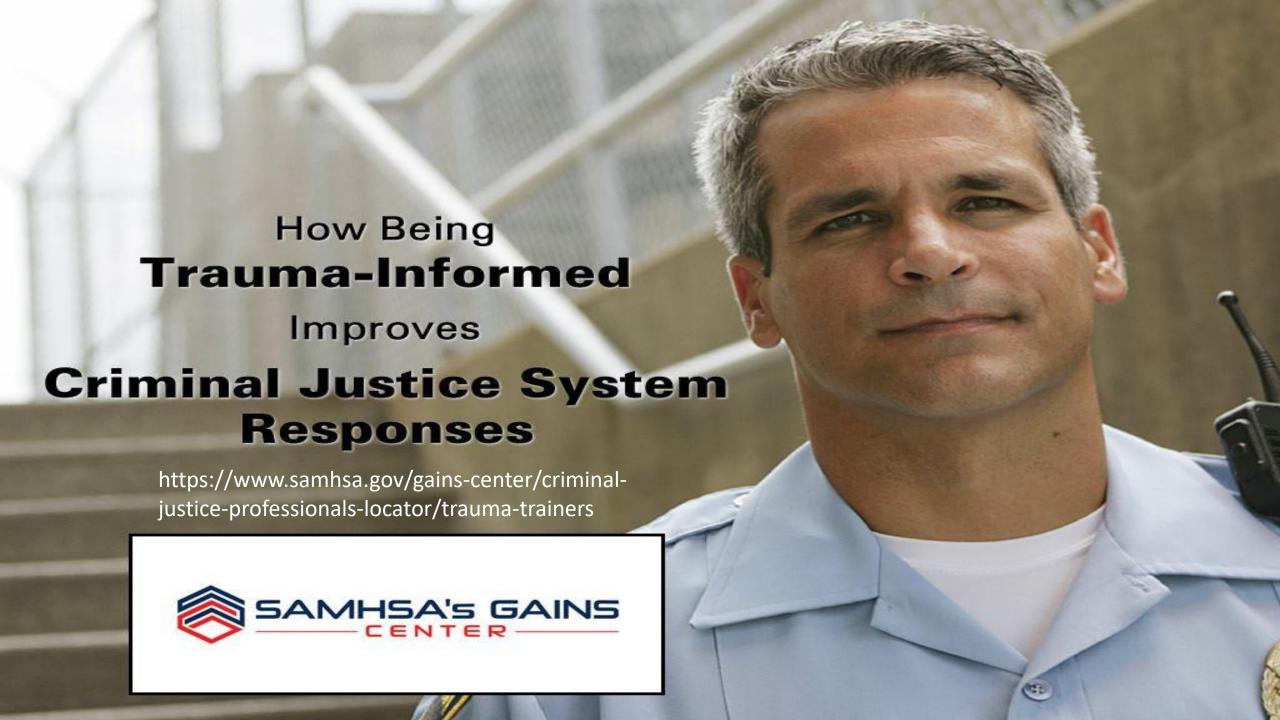
Respectful and professional boundaries are maintained

Providing an atmosphere that allows individuals to feel validated and affirmed with each and every contact at the agency



The Five Principles of Trauma-Informed Care Infographic Transcript (81 KB)

Chart by the Institute on Trauma and Trauma-Informed Care (2015)

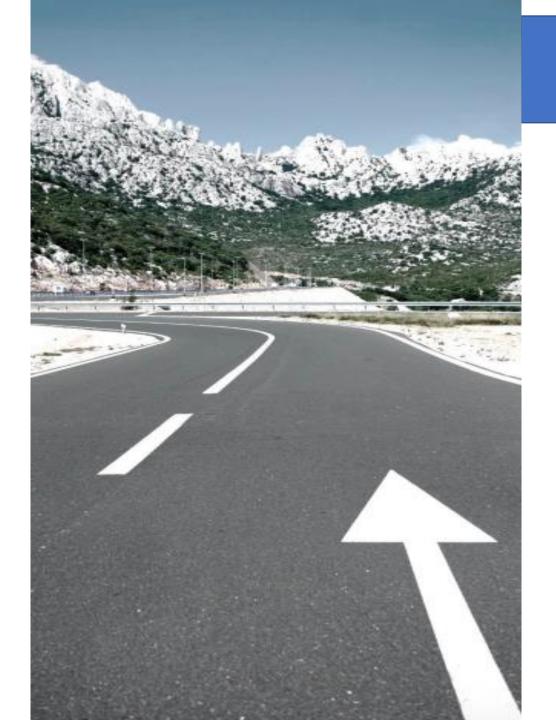


Motivational Interviewing (MI)

"MI is a collaborative conversation style for strengthening a person's own motivation and commitment to change, by exploring and resolving ambivalence."

WHY should I USE Motivational Interviewing?

- MI is an Evidence-Based Practice. It WORKS!!!
- MI works well in connection with other well established theoretical models (e.g., cognitive behavioral therapy)!
- MI improves quality of work life for those who employ it!
- Enhancing intrinsic motivation, which is the intent of MI, is a key guiding principle for risk and recidivism reduction

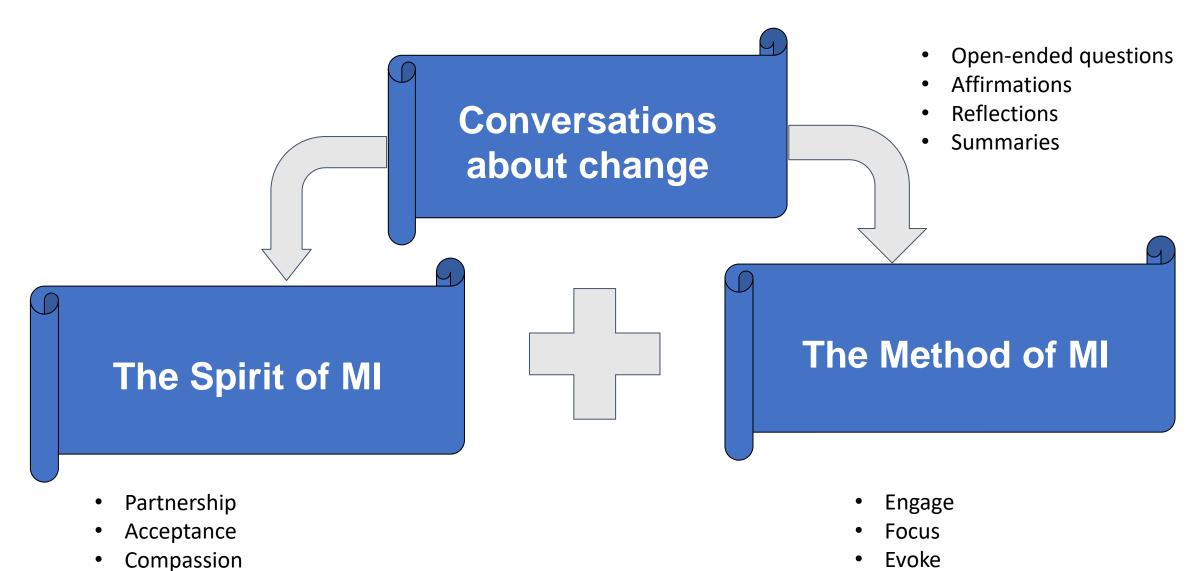


Strategic Goals of MI

- Resolve ambivalence
- Avoid eliciting or strengthening resistance
- Enhance motivation and commitment for change
- Help participant progress through stages of change

HOW do I do Motivational interviewing?

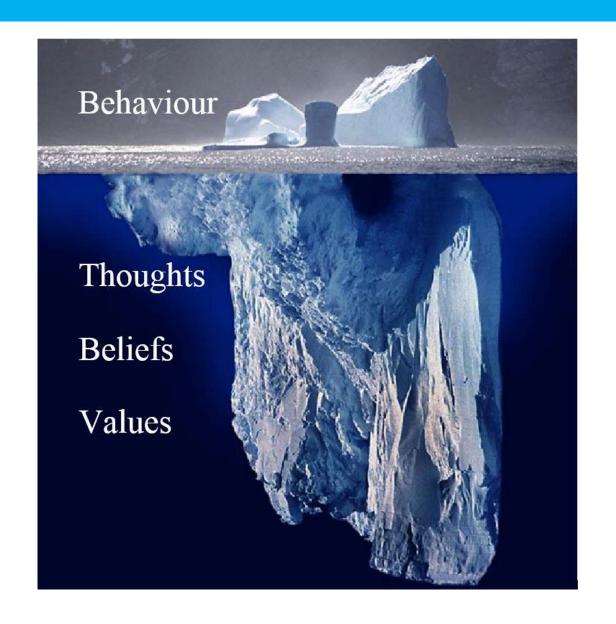
Evocation



Plan

Cognitive Behavioral Therapy (CBT)

- Thoughts affect behavior, and "abnormality" comes from faulty cognitions about others, self, world.
- How we interpret a situation determines how we feel, how we react.
- Goal is to change patterns of thinking that are behind people's interpretations and therefore change the way they feel.



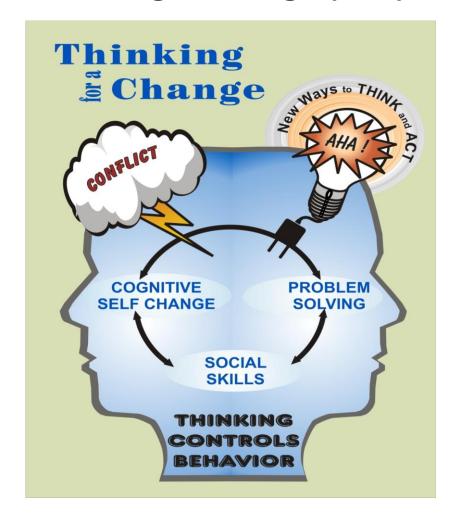
Why Cognitive Behavioral Therapy (CBT)?

- Cognitive behavioral approaches are more structured and directive.
- Cognitive behavioral approaches consistently appear to be the most effective treatment therapy for people with substance use disorders.
- Programs that include the cognitive component are more than twice as effective as programs that do not.

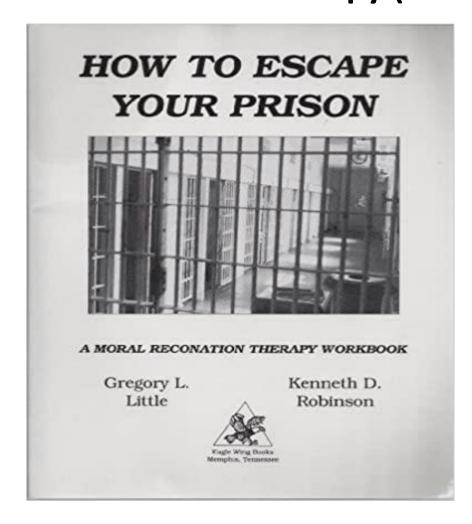


CBT for Individuals in the Criminal Legal System

Thinking 4 Change (T4C)



Moral Reconation Therapy (MRT)



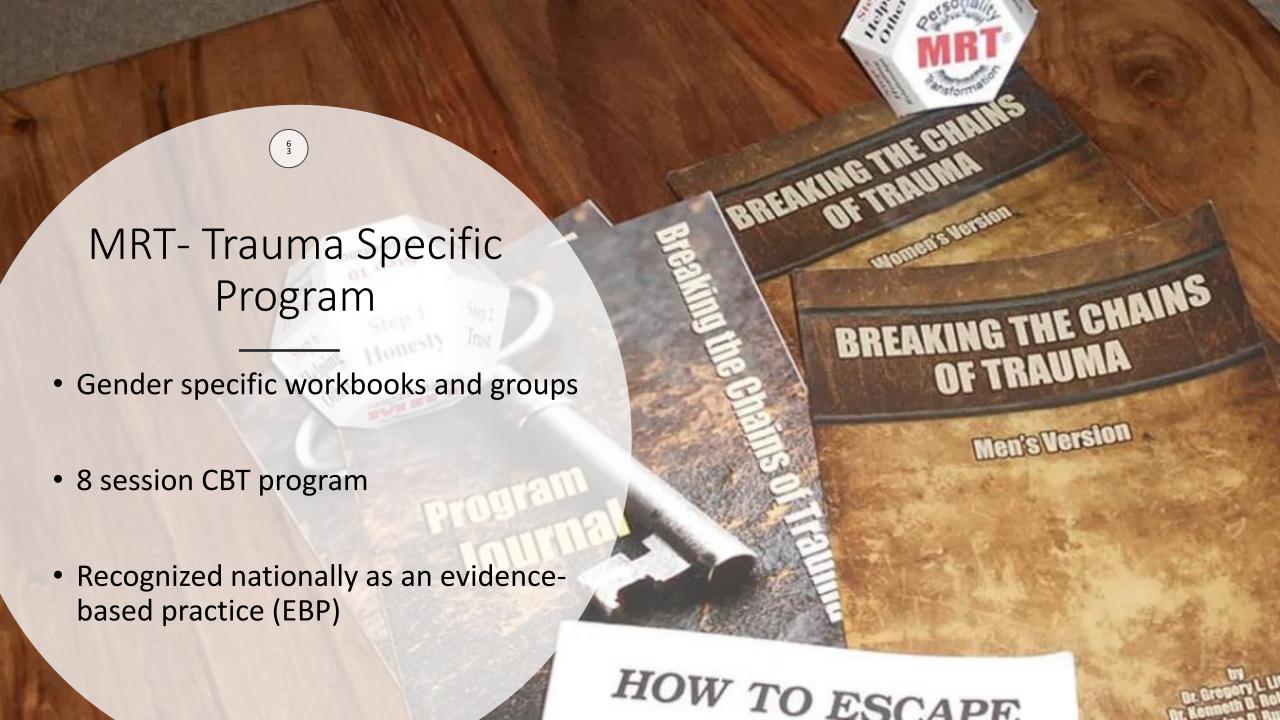


Duration and Frequency of T4C

- Duration = 10 weeks
- Frequency = 2-3 times per week
- Length = 1-2 hours per session
- Homework assignments after each session

T4C consists of 25 lessons. Not all lessons can be completed in one session, so a typical delivery cycle may take 30 sessions.







Effectively integrating treatment into criminal legal system case processing requires a culture that is thoroughly responsive to realities of the recovery process

something has to give with regard to traditional supervision practices

Final Word



Abstinence-based approaches are rapidly falling out of focus & favor

consider the merits of a harm reduction perspective as an alternative paradigm



Ask yourself, why is it that you want your participants to succeed?

why does it frustrate you when they don't succeed? does the process in place seem to be working?

