

COUNCIL WORK SESSION
Tuesday, March 26, 2013, 4:30 p.m.
Council Meeting Room
Casper City Hall

AGENDA

1. Natrona County Drug Court Update
2. Community Development Block Grant Annual Work Plan
3. Fees
 - Municipal Golf Course
 - Casper Recreation Center
 - Parks, Athletic Fields and Tennis Courts
4. Elkhorn Holding Pond Water Right
5. Smoking in Public Places
6. Executive Session – Personnel Matters

Natrona County Adult Drug Court

May 14

2012

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Program
Evaluation

Introduction

The purpose of this evaluation is to provide feedback to the Natrona County Adult Drug Court (NCADC) regarding the processes and outcomes of their program. The most recent evaluation was conducted in December of 2010 and January of 2011. That evaluation contained a description of program history and cumulative data collected since the inception of the program. As such, the current will focus on data from the last year as well as specific challenges

facing the NCADC team. The substantive material used in this evaluation was collected in the month of May 2012. The Program Coordinator, Clara Orr, who was also interviewed for the evaluation, provided data. Interviews were also conducted with Judge Huber, Brian Christensen, Scott Cruickshank, Dan Dudley, Roger Burns, Brad Mueller, Tina Coleman, Eric Fernelius, Birdie Blackdeer, and Jeremiah Volk. Additionally, focus groups were conducted with the majority of the program participants on May 7th and 8th, 2012.

Program Description Update

Treatment court research has evolved from the era in which scientists are attempting to determine whether these programs “work” to a new era in which researchers are working to determine which program design elements are most effective (Marlowe, 2012). And, as the body of literature continues to grow there are a few facts that are becoming increasingly evident. The first of these is that the Ten Key Components are still a reliable and valuable measure of the “right” way for programs to operate (Carey, Mackin, & Finigan, 2012). A review of the NCADC program policies, procedures and practices revealed that the program is still in compliance with Ten Key Components (NADCP, 1998). These program design elements have provided quality guidance for treatment courts for close to fifteen years and as yet have shown to be reliable guidelines.

Some of the more recent literature describes particular elements of high functioning programs that produce results that reduce recidivism and increase cost savings. These elements have been tagged “best practices” and have also proven reliable and valid over a number of research sites and projects (Carey, Mackin & Finigan, 2012). As with the program evaluation of

a year ago (Heck, 2011), the current evaluation reflects that the NCADC is operating in a manner consistent with these practices.

Very little has changed in the functionality of the NCADC since the last review with one major exception. Late last year the team decided to add a fourth level to the program. The decision to make this change was precipitated by the fact that a few clients had relapsed shortly after graduation. The Level IV facet of the program is for individuals who have completed the 12 months of the traditional NCADC program and have remaining time on probation. These individuals continue to work with NCADC staff but at a much-reduced rate. Many of the program rules are changed for Level IV participants however the client must continue to meet with program supervision staff twice a month and attend the Aftercare Group (focused upon Relapse Prevention) once a month. The major benefits to this program adjustment are that it provides continuing care for clients and allows for program regression should the client have a relapse. This new level seems to be an excellent idea and will provide an interesting research question as more clients work through this aspect of the program.

Focus Group Results

Focus groups are a useful tool for gathering first-hand information from program participants regarding their perceptions and experiences. Four focus groups were conducted on May 7th and 8th of 2012. Each of these groups was comprised of clients in varying program stages and the vast majority of program participants were questioned. Each of the focus groups was appraised of the expectations of participation and the protections they would receive. All information of a personal nature was redacted from the collected data. Focus group participants were asked a series of open-ended questions with short follow-up questions when appropriate.

Each group was asked the same series of questions. The results were collated and are presented below. Similar answers were condensed.

Is the program working for you?

- All agree the program is working.
- This is not a short program and that helps.
- People who are here actually care about us and that helps.
- I was tired of spending time in jail so I thought I would give this a try. It has really helped me.
- The program is stringent but that is good. I didn't make very good decisions on my own.
- This is the hardest program I have ever been in.
- It works but you have to give in. Most of us do give in eventually.

What Makes the Program Work?

- Accountability.
- The schedule. Makes us live on a schedule.
- We're accountable for our actions. Accountable for all our choices.
- Sanctions make you accountable.
- Support from the team is great.
- The use of 12 step programs is the best part.
- The team has its own ideas about how things should be done.
- Sometimes the team doesn't listen to us.
- Making a budget is a great thing about the program. It helps you save money. DC helped me a lot with my budget.
- The program is so stringent with your time.
- It makes you more responsible. You grow up.
- And it keeps you from procrastinating.
- The team gives you a second chance. They don't give up on you. They give you a chance to redeem and prove yourself.
- They control your life.
- The program works. It offers structure. Gives you the components necessary to be successful in all your endeavors. Gives you the tools to master the situation in life. It goes beyond drugs and addiction. It helps you in all aspects of life. People get past the drug addiction and stop worrying about relapsing.
- Consistency. There's always a spotlight on us. The supervision, too.
- Scheduling. Teaching us how to live our lives. The structure.
- The team really cares. You can tell they care. They have good intentions to help us.
- Stuff we learn in DC can be applied to our lives. It's good to be in the community and not in jail.
- It's the only program that has worked for me. Two other programs haven't worked.

- The structure really helps.
- The program gets you to examine your thinking.
- They don't give up on you.
- They give you chances to recover. They don't give up on you, and they help you figure yourself out.

What things would you like to see changed about the program?

- I think they should let us hang out with each other. We are all in recovery and we have to give up our other friends.
- Agree. Sometimes you need rides but you have no one to turn to.
- We need more community activities.
- Yeah, how about bowling or activities at the park.
- The schedule. It is hard to have your life so organized
- Tina is always driving around looking for violators.
- The homework gets monotonous. They need to mix up the IOP homework. It's always the same.
- Coming in every Wednesday. As you progress through the levels, you shouldn't have to come in as often. We need fewer probation appointments.
- I don't think we should have to go to AA meetings.
- I love the meetings, but they only allow us three per week.
- Your sponsor should take over for you, then.
- When in DC you should be able to attend as many meetings as you want, or build up to attending as many meeting as you want.
- At least five meetings. I need more than three meetings.
- They use to make people go to more. One meeting a day would be good
- Most clients: agree. One a day would be good.
- People in IOP now can't make some of the only available meetings since they put on this curfew.

Incentives and Sanctions

- We don't really get incentives
- People on Level III or who're perfect get incentives, but there's no incentives for everyone else.
- Most agree: There are no incentives. Rarely will they give out a gift card
- I'd rather have a few hours freedom as an incentive than a gift card.
- There's no incentive except not going to jail.
- Most clients agree: Not much incentives.
- They could recognize our good deeds more.
- They don't give enough incentives.
- General agreement among all clients: not many incentives, and nobody knows what it takes to earn an incentive.
- They put you in jail.

- There's no grey area with the team. They're black and white. Sometimes they cut you a break.
- The whole money thing with this program is a problem. They don't realize we don't have much money. They bust you for not doing full payment even though they know you can't pay.
- Money is an issue. All the fines are a problem.
- It's stupid to lose points.
- They could be more creative with sanctions—do something besides jail.
- Agree. Use community service more rather than jail.
- Agrees. Write a paper and read it in front of court.
- They could ask us what we'd like for incentives.

Treatment

- I like treatment a lot.
- They use the same stuff (books, videos, etc.) over and over again.
- The homework could be more creative because it is boring. They want you to admit you're always thinking wrong, but when you learn to begin to think right and positive, they always still act as though you're thinking negative.
- I love treatment. They really care about you and your recovery.
- I don't like IOP talking about relationships so much and how they tie that into addiction.
- They say not to have relationship but they put you in a small group of like-minded people but you're not supposed to form relationships?
- We develop the best support groups in our peer groups. We're honest and open. And we're not supposed to have any outside contact with that group?
- They should make it an incentive that you can hang out with other clients for a few hours.
- I agree with not having a relationship, but you should be able to have friendships.
- They could be more open-minded.
- In terms of the counseling side of things, treatment is like a grocery store. Take what you need and leave the rest.
- Love it.
- I love how personal they are. I can relate to them and they care about us. They're a second family for me.
- Counseling genuinely cares for us.

Judge Huber

- He's a lot cooler in DC than elsewhere.
- He cares about you. He doesn't give up on you.
- He's pretty cool.
- He's alright.
- He's fair. He does his job.
- Many clients agree.
- He does care.

- I like him.
- You can tell he's sincere.
- I didn't like him before I came to drug court. He will put you in your place.

Is the Drug Testing Effective?

- It is hard to get to work on time when we don't know if we have to test until 7:15 or 7:20 sometimes.
- Drug testing works man. We make new drugs and they make new tests.
- You can't get away with using in this program. I mean, some people try but they always seem to get caught in the end.
- Yeah, it works for me. I would still be using if it wasn't for the testing and going to jail.
- I used to hate it but now it is just part of life.
- It feels good to get a clean test. I can't remember more than a day or two of sobriety before.

Could you use in the program?

- Most clients: No.
- For a while, but then you'd get caught.
- Some people try but it never seems to last.
- It is too risky.

Supervision

- We like some of them.
- Yes. There should be some discretion on their part. Cops came to my work to give me a breathalyzer. They shouldn't wear uniforms.
- I agree.
- All agree.
- What are our employers and customers thinking when the cops show up to give us a test? Yet, when I did relapse, they were good to me.
- They do a good job when you're doing a good job. They don't hassle you.
- But when they tell us that we're doing a good job, they also say we could do better.
- It is hard to get ahold of them sometimes.
- I can't reach my P.O. all weekend.
- They say that if they don't answer your call the answer to your question is "no. But that isn't fair. If they are too busy it shouldn't mean you can't do the stuff you need to.

Anything Else?

We need more community events. We got to get all levels and the graduates involved. Something like a pizza night. We've got no large community events.

- Much agreement among clients

Performance Measures

The primary performance measures for adult treatment courts were established in a National Drug Court Institute publication in the spring of 2006 (Heck, 2006). These measures include *Retention, Sobriety, Recidivism, and Services*. Each of these measures was developed and prescribed based upon a litany of literature from the substance abuse and treatment court fields.

Retention

Retention is calculated using a cohort of program participants who enter the program in a specified period of time. Nationally, adult drug courts report a retention rate of approximately 67 to 71% (Huddleston et al, 2004). However, this rate varies widely from location to location. The retention rate for this report was calculated using all of the participants admitted to the NCADC during the Fiscal Year 10/11. Between July 1, 2010 and June 30, 2011 there were 45 people admitted to the program. Of these 45, there are 29 still active and six have graduated. This leads to a retention rate of 78%, well above the national averages.

Sobriety

NCADC participants were asked to report their current days of continuous sobriety. On average, participants currently in the NCADC report approximately 132.4 days of continuous sobriety. This is truly a remarkable finding considering the severity of some of the addiction problems faced by program participants. Further, the literature is unambiguous about the positive pro-social effects of clean time for addicted offenders (c.f. Satel, 1999).

Recidivism

The average daily number of participants in the NCADC for the current fiscal year is 61. And, while the actual participants change over time due to graduations, program dismissals, and new admissions, the number served seems to remain fairly constant. During the course of the last year there have been only two program participants who have been arrested. Thus, the in-program recidivism rate is 3%. The one-year post-program recidivism rate for NCADC graduates is 8.83%. These numbers were calculated using arrests resulting in new charges. This compares extremely favorably with national averages and for offenders in drug courts throughout Wyoming, for example, (39.2%) (Heck, Roussell, and Culhane, 2008) and with those who serve jail time with no probation (60-80% while on parole in the year following their jail term) (Huddleston et al, 2005). Further, it should be noted that participants entered the program with an average of 8.3 previous arrests per person.

Services

The NCADC provides a variety of services and service referrals for drug court participants. During the first level, or intensive treatment portion of the program, drug court participants receive approximately 7 to 10 hours per week of counseling and substance abuse therapy. Beyond the initial intensive period participants receive 6 to 8 hours per week of treatment. Additionally, the program provides community supervision, mental health and medical referrals, job search referrals and referrals to other resources as needed.

The NCADC also relies heavily on local twelve-step programs to provide support for substance abusing offenders as they enter recovery. All clients are required to attend twelve-step programs every week and identify a sponsor during the first ninety days of the program. The

benefits of this process include assisting participants to find a mechanism for self-help beyond the drug court term and linking clients with those who are vested in recovery.

Recommendations

Program participants reported their concern about the lack of tangible incentives given for positive, pro-social behaviors. This issue was also readily visible in court. The team is well aware of this concern and has planned to make some improvements in this area. It is recommended that any discussions relating to incentives include program participants who are quite willing to share their ideas with the team. It is further recommended that the entire team take a refresher course on sanctions and incentives. There is some wonderful new research related to the use of sanctions and incentives in community based criminal justice programming that might be useful as the team considers the sanctions and incentives applied on a regular basis. I have attached an article by Sizter that may help shed some light on the subject.

A second recommendation related to the need for rapid training of new employees or team members. All team members should be trained on the roles of each individual in the court and the methods by which the NCADC has been successful in achieving its goals in the past. An article that will be released at this year's National Drug Court Conference by Carey, Mackin, and Finigan, describes the importance of immediate training for new employees. The article will be published in the newest iteration of the *Drug Court Review*. There are local training resources available and it is suggested that the team consider a series of short training meetings for new members as soon as they begin work.

Finally, and perhaps most importantly, there is a growing concern among the team members related to the numbers of program participants who abscond. And, while this concern

is not new, there have been a few notable cases lately that have caused the team consternation. Upon review of the participants who had absconded a couple of facts became very clear. Those who absconded tended to be young males who use alcohol and marijuana as their drugs of choice. In fact, the average age of the absconders is 24.66 with only four who were over 30 years old. It is recommended that the team take some time and meet to discuss possible options for this particular group. It may be the case that there is a need to better screen this group to determine the level of need to ensure that they will be able to maximize the services provided by the program. It is also suggested that they team brainstorm a unique program for these individuals that focuses on accountability with some variations in the other aspects of the program.

Conclusion

The Natrona County Adult Drug Court is a well-run, highly functional program that has a lasting impact on program participants. The recent addition of a Level IV to the program seems to have the desired effect. Program participants, especially those who are advanced in the program, are well satisfied with the program and mature in their recovery. This fact was most impressive. The team is close while maintaining appropriate boundaries and all are truly concerned about the welfare of the program participants.

The NCADC truly is a model program. Judge Huber has maintained his passion for the participants for several years and the team is exceptional. It seems that each of the members of the team are used in a manner that maximizes their particular skills while contributing to the overall product. The NCADC should consider becoming a mentor program as the lessons they have learned over time would be extremely valuable to other new and/or struggling programs.

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Evidence-Based Sentencing for Drug Offenders: An Analysis of Prognostic Risks and Criminogenic Needs

*Douglas B. Marlowe**

INTRODUCTION

Substance abusers are disproportionately represented in the criminal justice system. Approximately eighty percent of offenders in the U.S. meet a broad definition of substance involvement and between one-half and two-thirds satisfy official diagnostic criteria for substance abuse or dependence. In a national sample of U.S. booking facilities, positive urine drug screens were obtained from approximately sixty-five percent of the arrestees in most jurisdictions.³ The positive urine results were not merely attributable to drug offenders, but rather were obtained from the majority of arrestees for most categories of crimes, including violent crimes,⁴ theft and property crimes.

Substance abuse is associated with a several-fold increase in the likelihood of continued criminal offending. Fortunately, providing substance abuse treatment can cut recidivism rates substantially;⁷ however, drug offenders are notorious for failing to comply with conditions to attend substance abuse treatment.⁸ Left to their own devices without intensive supervision, approximately twenty-five percent of offenders referred to substance abuse treatment fail to enroll,⁹ and of those who do arrive for treatment, approximately half drop out before receiving a minimally sufficient dosage¹⁰ of three months of services.

A major goal, therefore, of effective correctional programming, is to ensure that drug offenders comply with their treatment and supervisory conditions.¹² A range of sentencing dispositions has been created to identify drug problems among offenders, refer them to treatment, and hold them accountable for showing up and paying attention to the clinical interventions.¹³

The challenge is to select from among this array of options the best disposition for each offender that will optimize outcomes at the least cost to taxpayers and with the least threat to public safety. This article begins by describing the sentencing options that are available in most states for drug-involved offenders, and the benefits and burdens associated with each. A model of evidence-based sentencing is presented that attempts to match drug offenders to dispositions that optimally balance impacts on cost, public safety, and the welfare of the offender.

Implementing this model in practice requires an assessment of each offender's risk of dangerousness, prognosis for success in standard treatment, and clinical needs. A typology is presented of four sub-groups of drug offenders characterized by distinct risk-and-need profiles. Specific recommendations are offered for the clinical and supervisory interventions that should be included in sentencing orders for each offender subtype.

I. DISPOSITIONS FOR DRUG OFFENDERS

A continuum of correctional dispositions is available in virtually all U.S. jurisdictions for intervening with drug-involved offenders (see Figure 1). Programs at one end of this continuum emphasize public health or rehabilitation objectives using less restrictive means, whereas those at the other end emphasize public safety objectives applying restrictive conditions.¹⁴ Programs in the center strive to integrate elements of both public health and public safety approaches by combining criminal justice supervision with mandatory community-based treatment. The dispositions may go by various names and may have different eligibility criteria across jurisdictions; however, the general contours of the programs are comparable in most states.

A. Pre-Trial Diversion or Administrative Probation

Offenders who have been charged with relatively minor summary or misdemeanor crimes may have the opportunity to avoid a criminal record by remaining arrest-free for a specified period of time, satisfying minimal reporting obligations, and completing applicable treatment requirements. Upon satisfaction of the conditions, the charges are dropped, and the record may be expunged. Unfortunately, inadequate compliance with treatment is a major problem in diversion and probation programs. As noted previously, substantial proportions of drug offenders fail to enter substance abuse treatment or drop out prematurely before making therapeutic gains. As a result, these low-intensity dispositions tend to be most effective for less severe offenders who are already predisposed to comply with their conditions and desist from re-offending.¹⁸ Poor compliance among the remainder of drug offenders has necessitated the development of more stringent diversion programs that administer meaningful consequences for failure to follow through with treatment conditions.

B. Probation Without Verdict

Most jurisdictions have statutory provisions offering certain drug offenders an opportunity for diversion “with teeth.” This model may go by various names but has been generically referred to as probation without verdict.¹⁹ The offender is typically required to plead guilty or no contest (*nolo contendere*) to the charge(s) and the plea is held in abeyance while the offender completes a term of probation with conditions for treatment and supervision.²⁰ Satisfaction of the conditions leads to the plea being vacated and perhaps to the opportunity for record expungement.²¹ Importantly, because the offender has already pled guilty to the charge(s), failure to complete treatment can lead to immediate sentencing and disposition.²²

This arrangement offers additional coercive leverage to keep offenders engaged in treatment and compliant with their supervisory conditions.

A 2000 ballot initiative in California, entitled *Proposition 36*, applied a probation-without-verdict model to a large segment of drug possession offenders.²³

Pursuant to this law, nonviolent drug-possession offenders who did not have a history of a serious exclusionary offense were entitled to *three* probation-without-verdict opportunities before their probation could be revoked and they could be sentenced to incarceration, unless the State could prove the offender was a danger to public safety or non-amenable to treatment.²⁴ Successful completion of treatment and probation led to the plea being vacated and the opportunity for record expungement.²⁵

The results of this drug policy experiment could be characterized as mixed at best. Evidence suggests Proposition 36 might have benefited a substantial minority of drug possession offenders (approximately 25% of the population) who had relatively less severe criminal backgrounds; however, it was associated with poor treatment compliance and higher re-arrest rates for the remainder of the participants.²⁶ Regardless, the results yielded some of the best available data on the effects of probation-without-verdict dispositions and offered much-needed guidance on how to select the optimal target population for this approach.

C. Drug Courts

Drug courts are special criminal court dockets that combine mandatory drug abuse treatment and case management services with intensive judicial supervision, regularly scheduled status hearings in court, random weekly urine drug testing, escalating sanctions for infractions, and escalating rewards for accomplishments.²⁸ Typically, defendants must plead guilty or stipulate to the facts in the criminal complaint as a condition of participation in drug court. Pre-adjudication drug courts often include a diversion component similar to probation without verdict, in which graduates can have the charge(s) dropped and the record expunged.²⁹ Post-adjudication drug courts enable graduates to avoid a sentence of incarceration, shorten the term of probation, or consolidate multiple probation sentences.

Substantial research indicates that drug courts significantly reduce crime and drug abuse,³⁰ and the effects have been shown to last several years.³¹

Unfortunately, drug courts serve only about one half of the currently eligible population and only about 5% of all offenders with substance abuse problems.³²

Evidence suggests drug courts elicit the greatest effects for high-risk and high-needs drug offenders characterized by relatively more severe criminal and substance abuse backgrounds.³³ It is important, therefore, to make drug courts more widely available to seriously drug-dependent and criminally involved offenders who can be safely managed in the community. This should include increasing the number and capacity of existing drug courts, as well as widening the eligibility criteria to admit certain offenders charged with non-drug crimes if those crimes were primarily fueled by an addiction.

D. Intermediate Punishment

Intermediate punishment refers to a range of community-based sentences that may be imposed in lieu of incarceration.³⁵ Examples include military-style boot camps,

intensive supervised probation (ISP), correctional halfway houses, day-reporting centers, home detention, and electronic monitoring. The aim of these programs is to safeguard public safety while at the same time containing correctional costs and avoiding the debilitating effects of institutional incarceration.

The statutory authorization for intermediate punishment often includes conditions for offenders to attend substance abuse treatment, and receive other needed services. In practice, unfortunately, the primary emphasis has tended to be on monitoring offenders, detecting infractions, and responding to violations – and many of the programs have provided relatively minimal clinical services.³⁸ When, however, these programs have incorporated substantial treatment components, they have produced average crime reductions of approximately 10% to 20%.

E. Incarceration

Incarceration in county jail or state prison is authorized by statute and recommended by sentencing guidelines in some jurisdictions for many drug-related offenses, including possession, possession with the intent to distribute (PWID), sales, and manufacturing. The recommended range for the term of incarceration is typically predicated on offense-based factors, including the amount and type of drug that was involved, the offender's prior offense history, and whether the crime involved distribution or manufacturing as opposed to simple possession. There may also be opportunities for a downward departure or upward departure outside of the recommended range, based upon enumerated offender-based mitigating circumstances or offense-based aggravating circumstances.

Incarceration has demonstrable *incapacitation* effects, in that inmates are prevented from committing further criminal acts in the community while they are detained. However, it has minimal *specific deterrence* effects – meaning it does not reduce inmates' engagement in crime or drug abuse after their release. The average effect of incarceration on crime following release from prison is approximately zero. Equally discouraging, 70% to 85% of drug-abusing inmates return to drug use within 1 year of release from prison and 95% return to drug use within 3 years.

In short, whatever gains are achieved during the period of incarceration, either for the offenders or for society at-large, are rapidly and decisively lost soon after release.

II. EVIDENCE-BASED SENTENCING

Each of the dispositions described above is associated with specific benefits and burdens that are often in direct tension with one another. For example, as one moves from left to right on the continuum in Figure 1, the costs of the interventions increase precipitously, with the greatest costs associated with incarceration. On the other hand, short-term risks to public safety decline substantially from left to right, at least while the offenders are under the supervision of the programs. To make matters more complicated, the effects on the psychosocial functioning of the

offenders follow a “curvilinear” pattern, in which the best outcomes are elicited by programs in the middle of the continuum, and the worst outcomes by those at either extreme. In fact, evidence suggests there may be *iatrogenic effects* from programs at both extremes, in which drug use and crime actually worsen as a function of greater exposure to the interventions.

The difficult task facing policymakers and practitioners is to select from among this continuum of options, the most effective and cost-efficient dispositions for use with the large population of drug-involved offenders coming before the courts and into the criminal justice system each year. Unfortunately, what this has often meant historically is the over-application of any one disposition for a large segment of the drug-offender population.

For example, the *War on Drugs* of the 1980s imposed mandatory minimum sentences and longer prison terms for various types of drug crimes, including many drug possession offenses.⁵² This strategy appears to have contributed to a plateau or possible reduction in then-rising crime and violence rates and this impact cannot be ignored from a public-safety perspective. Unfortunately, the War on Drugs paid insufficient attention to countervailing considerations of cost and the psychosocial impact of incarceration on individuals, their families, and their communities. The result was skyrocketing correctional budgets, population caps imposed on some state prisons by the federal courts in response to severe overcrowding, and devastation for over-burdened minority and lower income communities.⁵⁶ On the other side of the continuum, Proposition 36 in California⁵⁷ emphasized a one-size-fits-all approach intended to be diametrically opposed to the War on Drugs. Pursuant to this initiative, the lion’s share of drug-possession offenders were diverted into treatment in lieu of incarceration, and the courts were effectively disabled from responding to noncompliance with appreciably more than an extension of probation and relatively toothless demands for more treatment. The results were predictably lackluster.⁵⁸ Roughly one quarter of the offenders never arrived for a treatment session,⁵⁹ 50% of those who did arrive for treatment dropped out in less than 3 months,⁶⁰ and only one quarter completed treatment.⁶¹

Worse still, criminal recidivism actually increased. Evidence-based sentencing seeks to avoid this over-application of any one disposition for all or most drug offenders. Emphasis is placed, instead, on selecting dispositions that can optimally balance the “three jealous and conflicting masters” of cost, public safety, and the psychosocial impacts on offenders. The goal is to choose the disposition in each case that presents the least objectionable risk of recidivism, the greatest likelihood of improving the welfare of the offender, and can do so at the least cost to taxpayers. It is recognized, of course, that other considerations must and do influence sentencing decisions. For example, judges impose sentences, in part, to vindicate victims’ rights, express the community’s outrage at egregious conduct, or deter other people from committing similar offenses in the future. Although un-

questionably legitimate, these factors are not included in the calculus of evidence-based sentencing because they do not lend themselves readily to empirical validation. There is no practical way, for example, to measure the influence of a sentence on community values, and efforts to gauge general deterrence have been largely unsuccessful.⁶³ When, however, it is decided that value-laden factors such as these should trump empirical considerations of effectiveness, safety and cost, this should be explicitly stated in the sentencing order. A rationale should be articulated for imposing a more severe or less severe sentence than the evidence suggests would be necessary to improve outcomes.

III. ASSESSMENT OF RISKS AND NEEDS

Selecting evidence-based dispositions for drug offenders requires attention to three basic factors: (1) risk of dangerousness, (2) prognostic risks and (3) criminogenic needs. Armed with knowledge about where an offender stands on these three dimensions, it is possible to predict the type of disposition that is most likely to be effective and cost-efficient for that individual.

Arguably, the first obligation of the criminal justice system is to protect citizens from violent or predatory offenders. It would not be acceptable, for example, to reduce correctional costs at the expense of exposing the public to harm. Restrictive dispositions such as incarceration or intermediate punishment may be required for some portion of a violent offender's sentence.⁶⁶ However, because most offenders, including violent offenders, are eventually released back into the community,⁶⁷ it is essential to tailor the "back end" of the sentence so as to include step-down provisions for continuing supervision and treatment upon release. For example, a period of incarceration might be followed by transfer to a correctional halfway house and subsequently to parole supervision.⁶⁸ As a general rule, it is often a mistake to sentence serious offenders to the maximum period of incarceration, because once they have "max'ed out" on their sentence there may be no continuing authority to monitor and control their conduct after they have returned to the community.⁶⁹

B. Prognostic Risks

Prognostic risks, sometimes called criminogenic risks, refer to characteristics of offenders that predict poorer outcomes in standard rehabilitation programs. Importantly, in this context the term "risk" does *not* refer to a risk for violence or dangerousness, but rather to a risk of failing to respond to standard interventions, and thus for continuing to engage in the same level of drug abuse and crime as in the past. This distinction is crucial because some corrections departments or probation agencies may screen high-risk offenders out of more intensive programs because they perceive them as being a threat to others or somehow less worthy of the services. On the contrary, research reveals the higher the prognostic risk, the more intensive the services should be.⁷¹

Among drug offenders, the most reliable and robust prognostic risk factors include a

younger age, male gender, early onset of substance abuse or delinquency, prior felony convictions, previously unsuccessful attempts at treatment or rehabilitation, a co-existing diagnosis of antisocial personality disorder (APD), and a preponderance of antisocial peers or affiliations. Typically, individuals with these high-risk factors must be closely supervised and held accountable for their actions in order to succeed in treatment and desist from substance abuse and crime.

C. Criminogenic Needs

Criminogenic needs refer to clinical disorders or functional impairments that, if ameliorated, substantially reduce the likelihood of continued engagement in crime.⁷³ Although offenders typically present with a myriad of needs,⁷⁴ not all of them are criminogenic. Some needs, such as low self-esteem, may be the result of living a non-productive lifestyle rather than the cause of it.⁷⁵

Perhaps the most criminogenic of the needs factors is substance dependence or addiction. This refers to a compulsive urge to use drugs or alcohol that reflects neurological or neurochemical damage to the brain from repeated exposure to these toxic substances.⁷⁶ The prototypical symptoms of addiction are: (1) intense cravings to use the substance, (2) uncomfortable or painful withdrawal symptoms when levels of the substance decline in the bloodstream and (3) uncontrolled binges triggered by any ingestion of the substance.⁷⁷

If all three of these symptoms are absent, then the correct assessment is substance abuse or misuse.⁷⁸ Alcohol or drug use is under voluntary control in such cases and the level of clinical need is substantially lower. As will be discussed, such individuals require very different treatment and supervision strategies than are necessary for offenders suffering from the brain damage of addiction.

Serious psychiatric disorders commonly co-occur with substance abuse or dependence⁷⁹ and can interfere with an offender's ability to attend treatment or abide by supervisory conditions. Among drug offenders, the most prevalent co-occurring psychiatric disorders include major depression, bipolar disorder, psychotic disorders, organic brain syndromes, and post-traumatic stress disorder (PTSD).⁸⁰

Individuals with these conditions will often require medication management, structured living assistance or other specialized services to function adequately and desist from criminal activity.

Finally, many offenders do not have stable living arrangements, are functionally illiterate, or lack basic job skills or daily living skills.⁸¹ For example, they may not know how to dress properly for work, take care of a home, use public transportation, or arrive at appointments on time. Failing to address these serious deficiencies in adaptive functioning leaves the individual vulnerable to continued failures and continued involvement in antisocial activities. On the other hand, effectively addressing these deficiencies is associated with improved functioning and the avoidance of crime.

IV. MATCHING DISPOSITIONS BY RISKS AND NEEDS

Risk of dangerousness is primarily relevant to the “in or out decision” in terms of whether an offender can be safely managed in the community. As was noted earlier, even if a decision is reached to incarcerate an offender for some period of time, it remains important to tailor the back end of the sentence so as to allow for continued supervision and treatment after release. Therefore, the following considerations should apply with equal force to the post-release conditions.

Prognostic risks and criminogenic needs indicate what treatment and supervisory conditions should be included in the sentencing order. Conceptually, these two factors may be crossed in a 2-by-2 matrix, yielding four quadrants that have direct implications for selecting optimal correctional dispositions and behavioral care plans for drug offenders (see Figure 2).

The essential point to bear in mind is that interventions which are well suited to offenders in one quadrant may be a waste of resources or even contraindicated for those in another quadrant. Therefore, routinely imposing a particular disposition on a large proportion of drug offenders may serve one group of those offenders well, but is likely to be off the mark or damaging for three other subtypes of offenders. This could explain why one-size-fits-all sentencing policies, such as the War on Drugs and Proposition 36, have generally been so ineffective.

Recommendations for Drug Offenders

Prognostic Risks HighLow

- **Status calendar • Intensive treatment • Compliance is proximal • Restrictive consequences • Positive reinforcement • Agonist medication**
- **Noncompliance calendar • Intensive treatment • Treatment is proximal • Positive reinforcement • Agonist medication**
- **Status calendar • Pro-social rehabilitation • Abstinence & compliance are proximal • Restrictive consequences • Antagonist medication**
- **Noncompliance calendar • Prevention services • Abstinence is proximal**

High

Criminogenic Needs

Low

A. High Risk / High Need (HR/HN) Offenders

An offender in the upper left quadrant is high on both prognostic risks and criminogenic needs. This individual suffers from drug or alcohol dependence, severe mental illness and/or deficiencies in adaptive functioning. In addition, he or she has a poor prognosis for success in standard treatment or rehabilitation, because of such negative risk factors as an early onset of delinquency or substance abuse, antisocial personality traits, previous failures in rehabilitation, or a preponderance of antisocial peers.

An example of someone fitting this profile might be a 13 year-old boy who begins to hang out with the wrong crowd and starts using cigarettes, beer and marijuana. By

the age of 15, he moves on to harder drugs and is stealing pharmaceuticals from his mother's medicine cabinet. By the time he is 16, he is chronically truant from school, committing petty thefts in the neighborhood, and selling drugs to other children at school. Now, he has been arrested on a new drug charge at the age of 23 years and he is compulsively addicted to cocaine. It would be naïve to expect that providing drug treatment alone, or punishment alone, would be remotely sufficient to help this individual. There is no effective way to punish away his addiction or to treat away his chronically antisocial lifestyle. He will require a combination of intensive supervision, substantial consequences for misbehavior, and intensive treatment to address his compulsive addiction. Any one of these interventions alone will fail.

1. Status Calendar

Research indicates that HR/HN drug offenders should be supervised on a status calendar.⁸⁵ This means they should be required to appear regularly before a criminal justice professional (typically a judge or probation officer) who has the power and authority to administer meaningful consequences for their performance in treatment and on community supervision.⁸⁶ Because of their high level of dysfunction and incorrigibility, they should be kept on a short tether with little wriggle room for committing new infractions or failing to meet their obligations. Figuratively speaking, if they are given enough rope, they will surely hang themselves.

2. Intensive Treatment

HR/HN individuals also require intensive substance abuse treatment and relevant adjunctive services. As was noted earlier, addiction reflects a form of brain damage⁸⁹ and can not, therefore, be expected to respond to the mere threat of punishment. Addicts are notorious for continuing to abuse drugs or alcohol despite experiencing severe and persistent negative consequences. If they were going to respond to punishment alone, they would have done so by now. Formal treatment is required to ameliorate their cravings and withdrawal symptoms, provide them with concrete skills to resist drugs and alcohol, and teach them effective coping strategies to deal with life's stressors and challenges.

3. Compliance is Proximal

There is a body of scientific principles or "laws" governing effective behavioral change.⁹¹ One of these principles, called *shaping*, requires a distinction to be drawn between proximal (or short term) goals and distal (or long term) goals.⁹²

Proximal goals are behaviors that clients are already capable of engaging in, and that are necessary for long-term improvement to occur. Examples might include attendance at counseling sessions or delivery of urine specimens. Distal goals are the behaviors that are ultimately desired, but may take some time to accomplish. Examples might include drug abstinence, gainful employment or improved parenting.

Although it is appropriate to administer a sanction for every infraction, the magnitude or severity of the sanction should be higher for proximal behaviors and lower for distal behaviors.⁹³ If an offender receives low-level sanctions for failing to fulfill easy obligations, this can lead to what is called *habituation*, in which the offender becomes accustomed to being punished.⁹⁴ Not only will this fail to improve behavior, it can make behavior worse because it can raise the offender's tolerance to withstand punishment. This could account for the "been there, done that" attitude that many offenders exhibit in response to threats of punishment.

Over time, they have become inured to inconsequential threats of punishment. This can lead them to push the limits to the point of no return—for example, to the point of incarceration, overdose, or drug-related death.

On the other hand, if an offender receives high-magnitude sanctions for failing to meet difficult demands that are beyond his or her capabilities, this can lead to a host of negative reactions, including depression, hostility, and a disruption of the therapeutic relationship.⁹⁶ It can also lead to what is called a *ceiling effect*, in which further escalation of punishment is impracticable.⁹⁷ Once an offender has been incarcerated, for example, the authorities have used up their armamentarium of sanctions; and, what's worse, the offender *knows* they have exhausted their options. At this point, future efforts to improve that individual's behavior will be extremely challenging.

It is essential to recognize that for individuals who are dependent on drugs or alcohol, abstinence should be considered a *distal* goal.⁹⁸ Substance use is compulsive for these individuals and they should be expected to require time and effort to achieve abstinence. Imposing high-magnitude sanctions for drug use early in treatment would be likely to lead to a ceiling effect and early failure from the program. This could have the paradoxical result of making the most seriously addicted individuals ill-fated for success in corrections-based treatment.

For addicted offenders, high-magnitude sanctions should, instead, be reserved for failing to comply with basic supervision requirements, such as failing to show up for counseling sessions, failing to appear at status hearings, or submitting tampered urine specimens.⁹⁹ Thus, for example, a HR/HN offender might receive a verbal reprimand or more treatment for providing drug-positive urine samples, but might receive community service or jail detention for skipping out on treatment or absconding from supervision.¹⁰⁰ Providing different magnitudes of consequences for proximal vs. distal behaviors makes it possible to steer between habituation and ceiling effects and achieve greater success.

4. Restrictive Consequences

If HR/HN offenders fail to comply with basic conditions of supervision, it may become necessary to impose restrictive consequences on them, such as home detention, day-reporting to a community correctional center, or jail detention. Importantly, however, the restrictive consequences are not necessarily intended to

improve the offender's behavior, but rather to protect the public. Many HR/HN offenders have long ago habituated to or reached a ceiling effect on punishment, and can be expected to persist at engaging in substance abuse despite severe negative repercussions.¹⁰¹ For them, long-term improvement requires more than sanctions. It requires the use of positive reinforcement to cultivate pro-social behaviors that can compete naturally against substance abuse and crime.

5. Positive Reinforcement

A major limitation of punishment is that the effects tend to be fleeting, especially for HR/HN offenders. Once punishment is lifted, bad habits often return abruptly unless new behaviors have emerged to take their place.¹⁰² Thus, a HR/HN individual who is released from supervision should be expected to resume substance abuse precipitously unless he or she has found a new job, developed hobbies, cultivated healthy social relationships, or engaged in other pro-social activities that are inconsistent with drug abuse and crime. This requires criminal justice professionals not only to punish crime and drug use, but also to reward productive activities that are incompatible with crime and drug abuse.¹⁰⁴ Unfortunately, this practice runs counter to many professionals' inclinations. HR/HN offenders are characteristically irresponsible and provocative, making them, perhaps, the least desirable population to whom to offer rewards. One's natural inclination is to want to weed these individuals out of positive reinforcement programs and marshal scarce rewards for the less severe and less antagonistic offenders. However, this inclination is inconsistent with effective treatment. HR/HN offenders tend to be least responsive to punishment and most responsive to rewards; therefore, denying them access to rewards and focusing on punishment is precisely the wrong strategy.

The best approach is to put feelings aside and offer them rewards for engaging in good behaviors that portend better long-term adjustment.

Addiction medications are grossly underutilized in the criminal justice system. Evidence supporting the effectiveness of several of these medications is incontrovertible and there is no empirical justification for denying them to addicted offenders. One class of addiction medications, called *agonists*, stimulates the central nervous system (CNS) in the same manner as illegal drugs.¹⁰⁸ For example, methadone is itself an opiate that works similarly to illicit opiates, such as heroin. However, because the effects of methadone are considerably longer, more gradual, and less intense than those of heroin,¹⁰⁹ an addicted individual can continue to function safely and effectively on this medication while performing daily chores and routines. A newer medication, called buprenorphine, has what are called *partial agonist* properties because it does not stimulate the CNS to the same degree.¹¹⁰

For offenders who are addicted to opiates, agonist medications can control or eliminate cravings and withdrawal symptoms, and at sufficient dosages make it difficult or impossible for the offender to become intoxicated by ingesting illicit opiates.¹¹¹ There is a substantial body of research spanning several decades

demonstrating that the appropriate and medically supervised administration of methadone can significantly reduce crime, drug abuse and health-risk behaviors, and contributes to better adaptive functioning, among opiate addicted individuals.¹¹² Comparable evidence is amassing in favor of buprenorphine.

Recent studies prove these positive effects hold just as well for addicted criminal offenders.¹¹⁴ The criminal justice system should make agonist medications readily available for opiate addicted offenders under appropriate medical supervision.

7. Suited Disposition

Of all the community-based dispositions for drug offenders (see Figure 1), drug courts come closest to offering the full range of evidence-based services that are typically required for HR/HN drug offenders.¹¹⁵ These judicially monitored programs supervise drug offenders on a status calendar, require adherence to a mandatory regimen of substance abuse treatment and needed adjunctive services, administer sanctions and restrictive consequences for noncompliance, and provide positive reinforcement for productive achievements.¹¹⁶ Although attitudes concerning the use of agonist medications may vary across drug court programs, the drug court field explicitly endorses the use of evidence-based medications, including methadone and buprenorphine.¹¹⁷

B. Low Risk / High Need (LR/HN) Offenders

An individual in the upper right quadrant is low on prognostic risks, but high on criminogenic needs. Such an individual suffers from drug or alcohol dependence, severe mental illness or poor adaptive skills, but does not have negative risk factors that would predict a poor response to standard treatment. An example might be a woman with a long history of heroin addiction who commits crimes solely to support her drug habit, such as petty thefts, prostitution and low-level dealing or bartering. But for her addiction, this criminal activity would not have occurred. For such a woman, it might make perfect sense to provide treatment in lieu of a criminal justice disposition. So long as she is receiving the treatment she needs, the criminal justice system does not need to expend substantial resources on her. Indeed, requiring her to spend time with the man in the above example could expose her to antisocial influences and perhaps predation.¹¹⁸

1. Noncompliance Calendar

Individuals with this profile generally do not require supervision on a status calendar. Research reveals they can perform just as well, or even better, on a noncompliance calendar.¹¹⁹ Rather than spending substantial time in court or at probation appointments, they should focus their energies on treatment. However, if they stop going to treatment, they should be brought immediately before a judge or other official to receive a swift and substantial consequence. Allowing them to continue to fail and use drugs would be a betrayal both to them and to the community at-large.

2. Intensive Treatment

Because these individuals are high need, they require intensive substance abuse treatment and indicated adjunctive services.¹²⁰ As was discussed previously, treatment should focus on such issues as ameliorating cravings and withdrawal symptoms, teaching concrete skills for resisting drugs and alcohol, and developing more effective and less self-destructive coping strategies.

3. Treatment is Proximal

Treatment attendance is the proximal behavior for LR/HN offenders. Failing to attend treatment should trigger a noncompliance hearing and elicit a substantial negative consequence to avoid habituation and ensure future compliance. On the other hand, because these individuals are dependent on drugs or alcohol, abstinence should be considered a distal goal. For the first several weeks or months, treatment-oriented consequences rather than punitive sanctions should be imposed for positive drug tests.¹²² For example, they might be required to attend more frequent counseling sessions or transferred to a more intensive modality of care, such as residential treatment or recovery housing, in response to evidence of continued substance abuse.

4. Positive Reinforcement

As was discussed previously, addicted individuals are notorious for continuing to abuse drugs or alcohol in the face of persistent and severe negative repercussions. They have typically reached a ceiling effect on or habituated to punishment, and the threat of sanctions no longer exerts substantial control over their behavior. This requires criminal justice professionals to reward productive activities that can compete effectively against crime and drug abuse.¹²⁴ In the absence of such rewarding activities, they may be expected to return rapidly to substance abuse and associated crime soon after they are released from supervision.

5. Agonist Medications

Finally, agonist medications such as methadone and buprenorphine are also indicated for LR/HN offenders who are addicted to illicit opiates.¹²⁵ Medically supervised administration of these medications can control cravings and withdrawal symptoms, make it difficult for the offender to become intoxicated on opiates, and reduce serious health-risk behaviors, such as needle sharing and unprotected sex.¹²⁶ There is no empirical justification for denying these evidence-based treatments to individuals suffering from what is a chronic and potentially life-threatening illness.

6. Suited Disposition

Evidence suggests LR/HN offenders can perform adequately in probation-without-verdict dispositions.¹²⁷ The emphasis in these programs is on retaining offenders in substance abuse treatment while keeping them away from the more savvy and antisocial high-risk offenders. Failure to go to treatment, however, can trigger a

noncompliance hearing and the imposition of sanctions to get them back on track.¹²⁸ Because the offenders are required to plead guilty and a criminal sentence is held over their heads, the court and probation department have the authority to apply meaningful consequences for noncompliance in treatment.

C. High Risk / Low Need (HR/LN) Offenders

Individuals in the lower left quadrant have substantial prognostic risks, but are low on criminogenic needs. These individuals do not suffer from drug or alcohol dependence, severe mental illness or deficient adaptive skills. On the other hand, they do have negative risk factors for failure in traditional correctional rehabilitation programs, such as antisocial character traits, prior failures on supervision, or deviant peer affiliations. Unfortunately, many of these individuals wind up in treatment-oriented dispositions on the happenstance that they were arrested for a drug crime or self-reported a substance abuse problem. This can waste scarce treatment resources and disrupt the treatment programs for the offenders who do require the services.

1. Status Calendar

Because these individuals are at risk for failing to comply with supervision conditions, they should be supervised on a status calendar. They should be required to appear regularly before a criminal justice official with the power to administer meaningful consequences for violations or for failing to follow through on their obligations.

2. Pro-Social Rehabilitation

HR/LN individuals do not require standard clinical services. They do not have an addiction or mental illness in need of treatment. On the other hand, this does not mean they do not require any services. Offenders in this quadrant may be poorly socialized or may have antisocial attitudes or cognitions that require remediation.¹³¹ Certain types of behavioral and cognitive-behavioral interventions have been shown to reduce recidivism in this population. Effective programs generally focus on altering the offenders' distorted perceptions, encouraging them to think before they act and consider the consequences of their actions, and build a sense of empathy for others. In addition, vocational preparation, job training, and educational programming may be required for many of these individuals to prevent them from re-turning to criminal activity.

3. Abstinence and Compliance are Proximal

For these offenders, abstinence is a proximal goal. Drug and alcohol use are under their voluntary control and should not be permitted to continue. These individuals may accept low-level sanctions as a mere "cost of doing business" for being able to continue using drugs. Therefore, higher magnitude sanctions should be administered at the outset to rapidly squelch substance abuse. Importantly, several studies of what are called *coerced abstinence* programs have demonstrated that

administering escalating sanctions, including brief intervals of jail detention, for drug-positive urine samples can significantly reduce crime and drug abuse in this group.¹³⁵ Higher-magnitude sanctions should also be administered if these individuals fail to comply with other basic supervision requirements, such as failing to arrive for their probation appointments.

4. Restrictive Consequences

If HR/LN offenders fail to comply with basic supervision conditions, including failing to abstain from drugs or alcohol, it may become necessary to impose restrictive consequences to protect public safety. They cannot be permitted to continue to act in a dangerous or irresponsible manner in the community. If the offender does not pose an immediate threat of violence or physical injury, the restrictive consequences do not necessarily need to involve jail or prison, but might include home detention, day-reporting to a community correctional center, electronic monitoring, or phone-monitored curfew.

5. Antagonist Medications

Antagonist medications work very differently from agonist medications, in that they do not stimulate the CNS in the same manner as illicit drugs. Rather, they block the effects of illicit drugs while providing no intoxication of their own.¹³⁶ For example, a drug called naltrexone binds to opiate receptors in the brain and prevents opiates from getting through to those nerve cells.¹³⁷ As a result, the individual can not get high on opiates. At the same time, naltrexone is non-addictive, non-intoxicating, and has minimal side effects.¹³⁸ Although naltrexone has been approved for the treatment of opiate and alcohol addiction for decades, it is infrequently used in clinical practice because addicts rarely comply with the regimen.¹³⁹ Naltrexone does little to reduce addicts' cravings and withdrawal symptoms and does not treat the underlying causes of addiction; therefore, it tends to be resisted by patients.

Importantly, however, offenders who are not addicted to alcohol or opiates might be excellent candidates for naltrexone.

It provides a full blockade against opiates and a partial blockade against alcohol yet does not get offenders intoxicated or cause addiction. Non-addicted offenders who are substance abusers or misusers could be safely blockaded on this drug, leaving minimal concerns that untreated symptoms of addiction are being neglected.¹⁴¹

6. Suited Disposition

HR/LN offenders do not belong in treatment-oriented dispositions because they do not have an addiction, mental illness or other impairment requiring clinical services.¹⁴² On the other hand, they do require close monitoring, substantial sanctions for continued substance abuse or other infractions, and psychosocial rehabilitation aimed at improving their educational and job skills and altering antisocial attitudes and attachments.

These services can typically be administered in standard community correctional

programs, such as halfway houses, intensive supervised probation, and day-reporting centers. Serious consideration should be given, however, to buttressing the curricula in these programs with closer monitoring on a judicial status calendar, a coerced abstinence regimen that administers escalating sanctions for drug-positive urine specimens,¹⁴³ and antagonist medications when indicated and medically prescribed.

D. Low Risk / Low Need (LR/LN) Offenders

Finally, offenders in the lower right quadrant are low on both prognostic risks and criminogenic needs. These individuals are typically naïve to both the criminal justice system and the substance abuse treatment system. They do not suffer from addiction or other impairments and do not have negative risk factors that would portend failure in standard interventions. It is typically unnecessary to expend substantial resources on this group because they have a low probability of recidivism. The best course of action is to use the current arrest episode as a “teachable moment” to alter their trajectory of substance abuse and divert them out of the criminal justice system.

1. Noncompliance Calendar

LR/LN offenders can usually be supervised on a noncompliance calendar.¹⁴⁴ It is generally not desirable to have them spend substantial time in court or at probation appointments because this will require them to interact with the more severe offenders. In addition, because they tend to be relatively higher functioning individuals, LR/LN offenders are more likely to be gainfully employed, in school, or taking care of a home. Requiring them to attend frequent court hearings or probation appointments could interfere with their ability to meet these daily responsibilities.¹⁴⁵ Of course, in the event they do begin to exhibit substance use or criminal activity, they should be brought in quickly for a noncompliance hearing and, if necessary, transferred to a status calendar.

2. Prevention Services

Individuals in this quadrant generally do not require standard treatment services. They do not have an addiction or mental illness, and thus there are no symptoms to treat. On the other hand, they have begun to engage in a risky behavior (illicit substance abuse) that could lead them into serious trouble in the future. Individuals who are engaged in risky activities, but have not yet developed a clinical disorder, are best suited to what is called a *secondary prevention* or *early intervention* approach.¹⁴⁶ Rather than treating formal symptoms, prevention programs teach participants about the potential dangers of substance abuse and the serious legal and medical complications that could ensue.¹⁴⁷ Once offenders are already addicted to drugs or alcohol, there is no point in teaching them about the dangers. They are aware of what can happen, because it has happened. On the other hand, education can be very useful beforehand when matters have not yet reached this serious point.

Importantly, prevention services should be administered in an individual format or in separately stratified groups, so as to keep these individuals away from the offenders in the other quadrants.¹⁴⁸ Mixing offenders with different risk-levels together in groups can lead to iatrogenic effects, in which the low-risk individuals begin to engage in higher levels of substance abuse and crime.¹⁴⁹

3. Abstinence is Proximal

For these individuals, abstinence is the proximal goal.¹⁵⁰ Drug and alcohol use are under their voluntary control and should not be permitted to continue. Given that substance abuse is the primary, if not sole, presenting problem for these individuals, it would be appropriate to focus the case plan primarily on squelching this particular behavior.

Because LR/LN offenders typically pose minimal risks to public safety, it is rarely necessary to impose restrictive conditions on them in response to noncompliance. Paradoxically, however, a threat of serious sanctions, including detention, may be most effective for this particular group of offenders. Because they have not been repeatedly exposed to punishment in the past, they are unlikely to have hit a ceiling effect on or habituated to sanctions. They are apt to remain fearful of incarceration or of receiving a criminal record, and will be predisposed to apply themselves heartily to avoid such negative consequences. In other words, as counterintuitive as it might seem, punishment tends to work best for less severe offender populations and these individuals generally do not require positive rewards to succeed. Criminal justice professionals can rely primarily on the threat of punishment to keep LR/LN offenders in line, and reserve positive rewards for the more severe offenders in the other quadrants.

4. Suited Disposition

Pre-trial diversion or administrative probation is best suited for LR/LN offenders.¹⁵¹ Because they have a low likelihood of re-offending, it is not a wise investment of resources to target these individuals for intensive services. The longer they are involved in the criminal justice system, the greater is the likelihood that they will adopt antisocial attitudes, develop antisocial relationships, or perhaps be preyed upon.

CONCLUSION

Evidence suggests there are at least four subtypes of drug-involved offenders characterized by different profiles of prognostic risks and criminogenic needs. Dispositions that are well suited to one of these subtypes may be a waste of resources or injurious to the others, or may pose an unacceptable risk to public safety. Evidence-based sentencing seeks to incorporate these empirical findings into the sentencing process. In addition to (not instead of) considering other important

value-laden issues – such as victims’ sentiments – judges, defense counsel and prosecutors are encouraged to include data on effectiveness and cost- effectiveness in their calculus of decision-making when advocating for or rendering sentencing dispositions.

Ideally, risk-and-need profiles should be explicitly referenced in sentencing guidelines or statutes as permissible or mandatory factors to be considered in sentencing. Virginia, for example, amended its sentencing guidelines to recommend (not require) non-incarcerative sentences for nonviolent drug and theft offenders who scored in the lowest quartile (lowest 25th percentile) on a risk assessment tool. This represents a noteworthy first step towards incorporating risk assessment—and perhaps one day, needs assessment—into criminal sentencing.

Importantly, the intent here is not to limit judicial discretion, but rather to extend it to encompass a wider range of relevant considerations. There are three general approaches to accomplishing this, representing various degrees of intrusiveness into judicial discretion, but never supplanting it. At the least intrusive level, risk and needs data could be permissive factors that judges may consider when selecting sentences from within the recommended range or departing downward or upward from that range. A slightly more intrusive approach would be to require sentencing judges to take these factors into consideration; however, the factors would not be dispositive or entitled to any particular weight. A judge would remain free to impose a sentence in seemingly direct conflict with the empirical evidence.

Finally, the most intrusive approach would be to erect a rebuttable presumption in favor of imposing an evidence-based disposition, and would require judges to state on the record why they chose to depart from the empirical data. This would not necessarily create a reviewable issue for appeal. The standard for appeal could be quite restrictive, such as an abuse of discretion or clearly erroneous finding. However, requiring the rationale to be articulated on the record would help to shape how sentencing arguments are framed in court proceedings. It could also provide a basis for President Judges or the public to evaluate sentencing judges’ performance. It would be possible, for example, to know whether a particular judge has a penchant for imposing more costly or less effective dispositions. Pennsylvania has experimented with making sentencing information available to the public, and the results have been largely favorable. This process led to better quality research being conducted on the sentencing information, as well as better informed input from policymakers and the public.

Regardless of what model is incorporated into sentencing statutes or guidelines, it is difficult to argue against at least considering empirical information on effectiveness and cost effectiveness, when rendering criminal dispositions. Failing to heed this information has led to an unquestionable crisis for the criminal justice system in this country. Our correctional system is overloaded, state budgets are buckling

under huge expenditures, minorities and the poor have been disproportionately injured, and yet recidivism remains at historic highs. We can and must do better.

MOTIVATIONAL INCENTIVES IN DRUG COURTS

Maxine L. Stitzer, Ph.D.

Johns Hopkins Medicine

INTRODUCTION

Positive reinforcement methods have recently received a great deal of attention because of their ability to promote sustained behavior change while emphasizing a more supportive and celebratory approach to treatment and other interventions with substance abusers. Further, positive reinforcement approaches have received a considerable amount of empirical support. The empirical support is reviewed below, followed by recommendations on how positive reinforcement can be integrated into drug courts with the potential to further boost effectiveness of the court programs.

NARRATIVE Positive Reinforcement in Drug Abuse Treatment

The principle of positive reinforcement has been effectively incorporated in drug abuse treatment in order to counter the ever-present lure of potent drug reinforcers that underlies relapse.

Frequently, the benefits of abstinence, such as better health and a more productive life style, appear abstract and distant to the drug abuser, with an unclear and difficult pathway interposed to achieve these benefits. The point of motivational incentive programs is to bring the benefits of abstinence forward in time by providing tangible and immediate rewards. The original intervention that provided competing reinforcers during drug abuse treatment was developed by Steve Higgins and consisted of a voucher system in which points could be earned each time a drug (cocaine) negative urine was submitted. The points had monetary value and could be used to purchase retail goods (e.g. clothing, sports equipment) and services (e.g. rent or bill payments) with clinic staff making the purchases. This system was very effective (Lussier, Heil, Mongeon, Badger, & Higgins, 2006; Stitzer & Petry, 2006), but also costly and labor intensive. A variation on the theme was developed by Nancy Petry, who used the principle of intermittent reinforcement to lower costs. In Petry's prize-based or "Fishbowl" system, patients could draw a slip from a bowl each time they submitted a drug-free urine, with the chance of winning prizes that were kept and displayed on-site. However, the likelihood of drawing a winning slip, particularly one of substantial value, was relatively low, thus reducing and controlling cost.

Both voucher and prize-based reinforcement systems targeting drug abstinence have been repeatedly shown to be efficacious interventions in controlled research studies conducted in drug treatment programs. These procedures have promoted sustained abstinence with stimulant abusers enrolled in psychosocial counseling programs, stimulant abusers enrolled in methadone maintenance treatment and with treatment-seeking abusers of a variety of other drugs including opiates and marijuana (Lussier et al., 2006; Stitzer & Petry, 2006). Recently, the effectiveness of low-cost, prize-based motivational incentives has been demonstrated in two large multi-site clinical trials conducted within the National Drug Abuse Treatment Clinical Trials Network. One study showed that ongoing stimulant use could be suppressed among methadone maintenance patients offered the chance to win up to \$400 worth of prizes for submitting drug-free urines during a 3-month intervention (Peirce et al., 2006). A second study showed significant improvement in treatment retention and longer durations of abstinence among stimulant abusers

enrolled in psychosocial counseling programs who had the opportunity to participate in the same prize-based abstinence incentive program (Petry et al., 2005).

Although much of the work on positive incentives has focused on reinforcing abstinence from drugs, it is abundantly clear that this same approach can be used to improve other discrete and observable target behaviors that are important for recovery. Thus, for example, several studies have shown improved attendance at treatment sessions when incentives are available for that behavior (e. g. Sigmon & Stitzer, 2005), while other studies have explored the utility of incentives for motivating adherence to treatment goals (e.g. Petry et al., 2006).

Application of Positive Reinforcement in Drug Court Systems

The principles of positive reinforcement can readily be translated for use within the drug court system in order to promote desired behavior of clients while at the same time fostering a more positive and celebratory atmosphere within the system. It should be noted at the outset that little research has been conducted to date that specifically tests the effectiveness of adding positive incentives delivered in the courtroom at status hearings. Further, the research that has been conducted suggests that it may be difficult to see a benefit when positive incentives are added in a context where powerful sanctions are concurrently operating. Nevertheless, preliminary data from one study has suggested that courtroom-based incentives may improve outcome particularly for individuals with a more extensive criminal history (Marlowe et al., 2005).

Three things would be needed to implement a positive reinforcement intervention: 1) definition of the behavior(s) to be targeted, 2) identification of effective reinforcers to employ, and 3) development of an implementation plan that ensures immediate, reliable, and consistent application of the intervention.

Selecting Target Behaviors

The ideal target behavior is one that can be readily observed and tracked and that needs improvement (i.e., participants may have trouble with adherence to this behavior).

Possibilities include any of the typical drug court requirements: keeping regular status hearing dates in front of the judge, probation officer, case manager and treatment provider, giving urines on demand, attending self-help meetings and remaining abstinent. The key principle in selecting target behaviors is that they represent an outcome that needs to be improved. If participants are all reliably performing the desired behavior, then it is an ineffective use of resources to offer incentives. Thus because participant characteristics will differ in every jurisdiction, it would be very useful to have data on performance of prior participants in the particular drug court involved before selecting target behaviors. It is likely, for example, that drug abstinence will be a critical and appropriate target behavior in most courts, while the need to deliver incentives for keeping appointments may vary across treatment, probation, case management, and courtroom settings.

Selecting Reinforcers to Use

Reinforcers selected will depend on resources available within the particular jurisdiction. The principle is that more is better. That is, research has shown that more valuable (higher magnitude) rewards are more effective for promoting sustained behavior change than less valuable rewards (Lussier et al., 2006). This is why tangible prizes or vouchers may be more powerful than verbal praise and social support alone. Tangible prizes (e.g. entertainment or transportation passes) can also be a way to help support lifestyle changes of clients. While high

magnitude rewards are best, low cost rewards may nevertheless be effective incentives, particularly for individuals in poor economic circumstances. Thus, small prizes such as cups, hats, and t-shirts may be used effectively in drug courts.

It is important to remember that in general, the reinforcing value of any item is not intrinsic to the item, but depends on views of the recipient. Thus, it is always a good idea to ask the clients what they would like to work for. Alternatively, gift vouchers to local retail stores provide a way to take this variability into account since they can be traded in for individually selected desirable items. Giving cash is generally not a good idea since it can too easily be used to purchase unhealthy substances including alcohol, cigarettes, and illicit drugs.

Escalating schedules

Research has shown that use of an escalating reinforcement schedule is the most effective way to promote sustained behavior change (Stitzer & Petry, 2006). In an escalating schedule, either the cash value of vouchers or the number of prize draws awarded increases systematically with successively longer periods of good performance and resets to an original low value if the client slips up (e.g. misses a scheduled appointment or provides a drug positive urine). Thus, it is important to consider the use of escalating schedules of reinforcement in designing a positive incentive program.

Implementation Plan: Where and When Should Incentives Be Delivered?

Drug court is a multifaceted intervention built on cooperation between the judge, the probation officer, the prosecutor, the defense, the treatment provider, and the case manager, with each participant serving a unique and important role. Ideally, positive incentive interventions would be offered throughout the system by multiple members of the team, with due consideration given to what behaviors should be targeted for reinforcement in each setting.

Incentives in the Courtroom: Praise from the Judge

The drug court judge is a powerful authority figure whose words and decisions play a central role in each client's progress and outcome. It is important for judges to use positive reinforcement when interacting with clients. Failures of compliance or appearance of unwanted behaviors can and should be met with appropriate sanctions. However, it is incumbent upon the judge to also

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deliver praise for any successes and accomplishments, however small these may be. Judges should make sure that documentation of client progress includes positive as well as negative behaviors so that they can make an appropriate response. Praise should be delivered routinely at every hearing, not just at certain transition or graduation points. Verbal praise is a powerful intervention, especially for disenfranchised individuals who may have experienced little success or praise in their lives. Further, by delivering praise in the status hearings, judges will act as a model for other members of the team, each of which should also be looking for opportunities to deliver praise in their own interactions with clients.

Incentives in the Courtroom: Tangible Awards and Prizes

Some judges have started to offer prize drawings in the courtroom as a way to acknowledge positive behaviors of participants. While the research currently is inconclusive as to whether this can impact outcomes in the context of powerful sanctions that judges impose for undesired behavior, it has been noted that the infusion of positive incentives can change the atmosphere in

the courtroom to one that is more celebratory and uplifting.

Community Model

Tangible Awards and Prizes in Maricopa County

Dear Drug Court Participant:

The Drug Court Team is pleased to inform you that we will be starting a new incentive program in court. Each time you come to court you will have an opportunity to participate, if you have met the requirements. When you come to court, you will be able to make draws for prizes based on your recent attendance and urine sample results. Specifically, regular attendance and drug negative samples will be rewarded. There are three categories of incentives: small, medium and large. All draws will result in a win!!! Below is a list of the types of incentives that will be available. There may be times that a certain gift card is not available, so please have a second choice in mind.

SMALL (\$10 value): Coldstone Creamery, Dairy Queen, Dunkin Donuts, Jack-in-the-Box, McDonalds, Starbucks, and Subway.

MEDIUM (\$50.00 value): AMC Theatres, Harkins, Pizza Hut, Home Depot, Bath & Body Works, Old Navy, Sears, Kohl's, Cracker Barrel, Foot Locker, Best Buy, and Barnes and Noble.

LARGE (\$200.00 value): The winner of a large gets some input on this prize. What do you need and/or want? Examples: tires, oil changes, haircuts, clothes, shoes. This prize will not be awarded in court and will require a little extra time to allow for your specific need and time to get the incentive. Sobriety and treatment attendance are an important part of this program. We want to acknowledge your hard work and encourage you to keep it up. These behaviors will ultimately lead to the best incentive of all- GRADUATION!

Incentives in Drug Treatment, Probation, and Case Management Settings

In an ideal world, positive incentives would be infused throughout the drug court system. This is because effectiveness is likely to be maximized if incentives are delivered immediately for desired behavior in the setting where the behavior occurs, rather than delivered occasionally in the courtroom after long periods of good performance has been observed. Success of the drug court participant will depend on regular reporting to a treatment program, probation officer, and possibly a case manager as well. It will also depend on consistent delivery of drug negative urines that may be collected in any of these settings. Status hearings in front of the judge are less frequent and no direct observation of drug use occurs in this setting. As previously discussed, most of the evidence for efficacy of incentive interventions comes from the drug treatment setting, where frequent reporting and frequent urinalysis testing is usually required. Thus, in the ideal situation, positive incentives in the form of vouchers or prize drawings would occur both in the treatment program and at each meeting with the probation officer or case manager, with attendance and drug negative urines as the most likely targets for these interventions (See Chapter 8 for a more detailed discussion of opportunities to deliver positive incentives in these settings).

Other Implementation Considerations

In developing an implementation plan, a balance must be struck between feasibility and known principles of effectiveness. For example, an escalating system of prize draws is known to be more effective for sustained behavior change, but it is also more difficult to implement. Staff responsibilities always need to be clear. In a voucher system, for example, someone must keep client accounts up-to-date, while in a system that involves dispensing prizes, someone must keep prize stocks refreshed and varied so that they remain attractive to clients. As with any multifaceted system, everyone who has contact with the client should be aware of the contingencies and the client's progress to avoid misunderstanding or manipulation.

Finally, it is important, if possible, to build in evaluation to learn what works and what aspects of the program need further refinement. For example, process evaluation could be used to learn whether clients value the prizes being offered and whether interventions are being implemented with good consistency, while outcome evaluations may be useful to learn which behaviors are more or less resistant to change with incentives.

In summary, positive incentive approaches have proven efficacy and effectiveness for promoting sustained behavior change in drug abuse populations. The principles of positive reinforcement interventions are clear and methods can be tailored for application in drug court programs with the potential to enhance outcomes. However, consideration will need to be given as to where, when, and for what the incentives should be offered in order to optimize their effectiveness in the drug court system.

RECOMMENDATIONS

1. *Positive reinforcement should be incorporated into all levels of the drug court program.*

2. *Reports to the judge should highlight success and accomplishments of participants.*

3. *The judge should deliver praise for accomplishments at all status hearings.*

4. *In courts with more resources, tangible incentives (vouchers, gift cards, or prizes) should be incorporated into the system at drug treatment, probation, case management and courtroom levels to reinforce regular attendance and drug abstinence in each of these settings.*

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March 20, 2013

MEMO TO: John C. Patterson, City Manager

FROM: Liz Becher, Community Development Director
Kristin Edwards, Community Development Technician

SUBJECT: Proposed Uses of Program Year 2013/2014 Community Development Block Grant Funds

Summary:

As a recipient of entitlement Community Development Block Grant (CDBG) funds from the U.S. Department of Housing and Urban Development (HUD), the City wishes to solicit community opinion in its submission of an Annual Action Plan outlining its proposed use of CDBG funds. After taking into account community input, the Housing and Community Development Division will prepare and publish a draft of the Annual Action Plan to be available for a 30-day comment period. Based on an estimated 20% decrease in funding, the City projects that it will receive approximately \$207,600 for Program Year 2013/14. A summary of the proposed projects follows:

- Ridership tickets for the Casper Area Transportation Coalition (CATC) to provide tokens to low income individuals on The Bus and CATC;
- Emergency Repairs for low income Casper homeowners;
- Housing Rehabilitation Assistance Program, which along with youth volunteers, provides materials and expertise in assisting low / moderate income Casper homeowners with repairs;
- City Core Redevelopment in the Old Yellowstone District and downtown: qualifying activities include Economic Revitalization-Revolving Loans, Commercial Façade Matching Grants, Matching Tap Fee Grants, and Demolitions to reduce slum and blight;
- Program administrator expenses.

The projects must meet one of three national objectives of the CDBG program: benefiting the low income population of Casper, addressing slum and blight, and/or urgent need. To ensure the public hearing is meaningful to the citizens, law requires that it be held in the presence of the Mayor and City Council members. The public hearing will be followed by a draft of the Program Year 2013/14 Annual Action Plan and a 30 day comment period. Review and final approval will be concurrent with City of Casper budget approval.

March 11, 2013

MEMO TO: John C. Patterson, City Manager

FROM: Doug Follick, Leisure Services Director
Alan Kieper, Special Facilities Superintendent
Joe Fernau, Golf Course Supervisor

SUBJECT: 2013 Municipal Golf Course Fees

Recommendation:

That Council, by resolution, approve fee increases for the Casper Municipal Golf Course, effective April 17, 2013.

Summary:

An annual staff review of golf budget incomes/expenses, discussions with Casper Municipal Golf Course Men's/Women's Leagues, along with a review of similar golf course operations; indicates the need for certain fee changes. Decreasing income and increased costs associated with capital equipment, fuel, debt payment, and utilities necessitate the proposed fee increases. Using current Wyoming and surrounding area golf course fee comparisons and trends, the proposed fee changes remain in line with Casper and surrounding courses.

Excluding trail fees (private carts previously allowed on the course for a seasonal fee), there were **no golf fee increases from 1995-2000**. In **2001** green fees were increased from \$10 to \$12 for 9 holes, \$15 to \$18 for 18 holes; and cart rental fees increased from \$9 to \$10 for 9 holes, and \$16 to \$20 for 18 holes. **2002 and 2003 there were no fee increases**. In **2004** season passes increased from \$600 to \$700 for a Family, \$300 to \$350 for a Single, \$150 to \$175 for a Junior, and a \$250 half season pass was initiated; 9 hole green fees increase from \$12 to \$15, 18 hole green fees increase from \$18 to \$20, 9 hole cart rental increase from \$10 to \$12, and 18 hole cart fees increased from \$20 to \$22. **2005 there were no fee increases**.

In **2006** 18 hole green fees were increase from \$20 to \$23, 9 hole cart rental increased from \$12 to \$14, and 18 hole cart rental increase from \$22 to \$24. In **2007** the Family season pass was eliminated, the Single increased from \$350 to \$400, the Youth increased from \$175 to \$200, the Half Season from \$250 to \$285; and a Child season pass was initiated at \$100. In **2008** all passes were increased (Single \$400 to \$425, Junior \$200 to \$212, Child \$100 to \$106, and Half Season \$285 to \$300); and all green fee and cart rental fees increased (9 hole green fee from \$15 to \$16, 18 hole green fee from \$23 to \$24, 9 hole cart rental \$14 to \$16, and 18 hole cart rental \$24 to \$26. **2009 there were no fee increases**.

In **2010** a Single season pass went from \$400 to \$450, Youth from \$212 to \$225, Child from \$106 to \$115, and Half Season from \$300 to \$315; and 18 hole green/cart fees

increased from \$24 to \$25, and \$26 to \$28 respectively. In **2011** only season passes were increased, excluding the pre March 1st \$50 per category discount (Single increase from \$450 to \$500, Junior from \$225 to \$250, Child from \$115 to \$125, and Half Season from \$315 to \$325).

To summarize, over the past 12 years (2000 to 2011): 4 years there were **no fee increases**, 3 years there were increases in all categories, 2 years only green/cart fees were increased, 2 years only season passes were increased, and 1 year (2000) was the base comparison year. The current golf course fee proposal **eliminates** the March 31st **pre-season \$50 pass purchase discount**, increases 9 hole green fees by \$2 (\$16 to \$18), increases 18 hole green fees by \$4 (\$26 to \$30), and **implements a greens fee weekend** fee differentials of \$2. The following fee proposals changes are noted in the column comparisons below.

<u>Fee Category</u>	<u>Current Fees</u>	<u>Proposed Fees</u>
Season Passes:		
Adult (19 years of age & older)	\$450 (before 03-01-12) \$500 (as of 03-01-12)	Eliminated \$500
Half-Season (after July 1 st)	\$325	\$325 no change
Youth (13-18 yrs. – was Junior)	\$225 (before 03-01-12) \$250 (as of 03-01-12)	Eliminated \$250
Child (12 yrs. and under – new)	\$115 (before 03-01-12) \$125 (as of 03-01-12)	Eliminated \$125
Greens Fees:		
9 Holes (weekdays/weekend)	\$16	\$18 weekday (+\$2) \$20 weekend (+\$4)
18 Holes (weekdays/weekend)	\$26	\$30 weekday (+\$4) \$32 weekend (+\$6)
9 Holes (Youth Special)	\$10	\$10 no change
18 Holes (Youth Special)	\$15	\$15 no change
Cart Rental		
9 Holes of Play	\$16	\$16 no change
18 Holes of Play	\$28	\$28 no change
Golf Cart Trail Fees:		
2001 Season & Beyond	\$300/season	\$300/season

As an industry standard in Wyoming and other parts of the country, staff is recommending implementation of the weekday/weekend pricing differential for green fees. With similar 9 and 18 hole rounds of play this could generate additional revenue for the golf course in FY14. Additionally, without the pre-season pass discount, additional fees could be generated with similar season pass purchases, for the 2013 golf season.

The Leisure Services Advisory Board has recommended approval for the golf course fee increases.

A resolution is attached for Council's consideration.

RESOLUTION NO. _____

A RESOLUTION RESCINDING RESOLUTION NO. 11-326 AND ESTABLISHING FEES FOR USE OF THE CASPER MUNICIPAL GOLF COURSE.

WHEREAS, the Casper City Council has established a policy that individuals, groups, or organizations who desire the use of various recreational facilities shall bear a portion of the cost of servicing, maintenance, improving these facilities; and,

WHEREAS, it is necessary to review the fees and use of the facilities on a regular basis, and revise said fees and use as necessary, in order to facilitate the foregoing policy.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF CASPER, WYOMING: That the following fees, charges, and use are hereby established for the Municipal Golf Course, effective April 1, 2013:

1. Memberships:*
 - A. Adult (19 years of age and older) \$500 per year
 - B. Youth (13-18 years of age) \$250 per year
 - C. Child (12 years of age and under) \$125 per year
 - D. Half-Season (on sale after July 1st) \$325 per season

2. Greens Fees:
 - A. 9 Holes \$18.00 (weekdays)
\$20.00 (weekends)
 - B. 9 Holes (Youth Special)** \$10.00 (weekdays & weekends)
 - C. 18 Holes \$30.00 (weekdays)
\$32.00 (weekends)
 - D. 18 Holes (Youth Special)** \$15.00 (weekdays & weekends)

3. Golf Cart Rental:
 - A. 9 Holes \$16.00 (weekdays & weekends)
 - B. 18 Holes \$28.00 (weekdays & weekends)

4. Golf Cart Trail Fees:***
 - A. 2001 Season & Beyond \$300 annual user fee

5. Special Rates:
 - A. The Leisure Services Director, or authorized designate, may authorize reductions in fees for special promotions, unique situations, or emergencies; if such reductions are in the best interest of the City of Casper.

* Membership (or season pass) fees, are based on chronological age of participants, and not on the definition of a family unit.

** Promotional green fee to encourage development of a future generation of golfers.

*** An Annual Trail Fee is charged for privately-owned golf carts operated on the Casper Municipal Golf Course. Only for current existing carts and owners, who are “grandfathered,” no new private owners or carts are allowed.

BE IT FURTHER RESOLVED: That Resolution No. 11-326 is hereby rescinded.

PASSED, APPROVED, AND ADOPTED this ____ day of _____, 2013.

ATTEST:

CITY OF CASPER, WYOMING
A Municipal Corporation

V. H. McDonald
City Clerk

Kenyne Schlager
Mayor

March 14, 2013

MEMO TO: John C. Patterson, City Manager

FROM: Doug Follick, Leisure Services Director
Carolyn Griffith, Recreation Superintendent
Jennifer Haines, Recreation Supervisor

SUBJECT: Casper Recreation Center Fees

Recommendation:

That Council, by resolution, rescind Resolution No. 12-28 and establish fees for use of the Casper Recreation Center.

Summary:

Staff is recommending fee changes to Recreation Center Fitness Class punch passes and drop-in rates. The proposed changes are being made to reduce expenses, while assessing appropriate fees associated with services provided.

	<u>Current Fee</u>	<u>Proposed Fee</u>
1. Recreation Daily Fitness Class Fee		
A. Drop-In Registration	\$5.00/day	\$6.00/day
B. Punch Pass (minimum 10 punches)	\$4.50/punch	\$5.50/punch

A resolution has been prepared Council's consideration.

RESOLUTION NO. _____

A RESOLUTION RESCINDING RESOLUTION NO. 12-28,
AND ESTABLISHING FEES FOR THE USE OF THE CASPER
RECREATION CENTER.

WHEREAS, the Casper City Council has established a policy that individuals, groups, or organizations who desire the use of various recreational facilities shall bear a portion of the costs of servicing, maintaining, and improving these facilities; and,

WHEREAS, it is necessary to review these fees, and revise if necessary, on a regular basis.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF CASPER, WYOMING: That the following fees are hereby established for the use of the Casper Recreation Center, effective April 25, 2013.

1. Recreation Center Pass (Good for either 12 or 6 months from date of purchase)

- A. Adult (Ages 19 and Over) - \$80.00/Year, \$55.00/6 Month Pass
- B. Youth (Ages 13-18) - \$60.00/Year, \$40.00/6 Month Pass
- C. Child (Ages 5-12) - \$45.00/Year, \$30.00/6 Month Pass
- D. Group/Corporate Discount - For legally recognized businesses or organizations:

- * Group - 20 or more passes purchased at one time. 15% Discount
- * Corporate - 20 or more passes committed to in advance. 15% Discount
(Employees must produce proof of employment)

There will be a \$5.00 replacement fee for any Recreation Pass which is lost, but still valid.

A Recreation Pass is required for access to the following areas:

- Racquetball Courts
- Gymnasium
- Weight Room
- Game Room
- Equipment Check-Out
- Locker Rooms
- Fitness Room
- Indoor Park

2. Daily Admission - \$3.50, only required if participant does not have a current Recreation Pass. A paid Daily Admission permits access to the same areas as a Recreation Pass. Children under 5 years free (maximum of 2 children per adult) when accompanied by a paid admission. Punch pass with minimum purchase of 10 admissions - \$3.00 per punch.
3. Racquetball and Wallyball Court – The racquetball and wallyball court may be reserved for up to one and one half hours at a time. Pass holders may request a court reservation up to 7 days in advance. Non pass holders may reserve the court up to 24 hours in advance.
4. Room Rentals

Basic Fees

A. Meeting Room	\$20.00 per hour (maximum of \$135.00 per day)
B. Craft Room & Game Room	\$15.00 per hour (maximum of \$85.00 per day)
C. Activity Room (kitchen included)	
Half	\$20.00 per hour (maximum of \$135.00 per day)
Entire	\$30.00 per hour (maximum of \$185.00 per day)
Drop-in Use (only at designated times)	\$3.50 per individual <u>or</u> Recreation Pass (2 hours maximum)
D. Gymnasium	
Half	\$40.00 per hour (maximum of \$275.00 per day)
Entire	\$60.00 per hour (maximum of \$375.00 per day)
E. Refundable Damage Deposit (could be increased depending upon size of group and potential impact on facility)	

Gymnasium	\$200.00 minimum
Activity Room	\$75.00 minimum
All Other Rooms	\$50.00 minimum
F. Personnel Fee	\$12.50 per hour per staff member required if rental occurs when the center is not normally open, or if additional staff is required for set-up.
G. Facility – After Hours	\$100 per hour, plus \$12.50 per hour for each staff member required after two.
H. Activity Room – After Hours	\$175.00 per 3 hours, plus \$12.50 per hour for each After Hours Reception Rental staff member required after two. (Alcohol Permit Required) (\$750.00 Damage Deposit Required)
I. A \$5.00 administrative fee will be assessed for revisions to already processed permits.	

Exceptions

- A. Commercial Activities:
 1. Personal Trainers - 10% of gross revenues. Personal trainers must sign a hold harmless and indemnification form provided by the City of Casper.
 2. Room Rental - \$10.00/day in addition to rental fee.
- B. City of Casper activities - fee waived.
- C. Groups providing resources, financial or in-kind, to the City of Casper – fees waived or negotiated.

5. Towel Rental - \$1.00 per towel for non-pass holders; one towel per visit is included for participants with a current Recreation Pass or Casper Family Aquatic Center Pass. Requests for additional towels will be granted for \$1.00 per towel. Pass holders may purchase an Additional Towel Punch Pass for \$.50 per towel (minimum of 10 punches must be purchased).

6. Equipment Rental

Recreation Bag (Outdoor Game Equipment)	
* Rental Fee	\$15.00/bag (3 days)
* Refundable Damage Deposit	\$75.00/bag

7. Lockers - \$.25 per use, or annual rental fee: \$50.00 full size; \$40.00 half size.

8. Classes - Registration fees will be established for classes to recover the direct costs of the instructor and any supplies needed, plus 35% of the direct costs for administrative overhead for any participant with a current Recreation Pass at the time of registration. An additional \$12.00 will be added to the class fee for those participants without a Recreation Pass at the time of registration.

9. Daily Fitness Class Fee - \$6.00 drop-in registration for any fitness class offered (includes Recreation Pass privileges for that day). Punch Pass with minimum purchase of 10 classes - \$5.50/punch.

10. Programs - Registration fees will be established for City sponsored leagues, tournaments, and special events taking place at the Casper Recreation Center to recover the direct costs associated with such activity, plus the following:
 - A. \$20.00 per hour for rental of the entire gymnasium for youth leagues, youth tournaments and Community Recreation Foundation or youth special events.
 - B. \$30.00 per hour for rental of the entire gymnasium for adult leagues, adult tournaments and adult special events.
 - C. \$7.00 per player for all league participants.
 - D. \$12.50 per team for all teams participating in a tournament.

11. Special Rates - The Leisure Services Director or authorized designate may authorize reductions in fees for special promotions, unique situations or emergencies, if such reductions would be in the best interests of the City of Casper.

BE IF FURTHER RESOLVED: That Resolution No. 12-28 is hereby rescinded.

PASSED, APPROVED, AND ADOPTED this ____ day of _____, 2013.

ATTEST:

CITY OF CASPER, WYOMING
A Municipal Corporation

V. H. McDonald
City Clerk

Kenyne Schlager
Mayor

March 14, 2013

MEMO TO: John C. Patterson, City Manager

FROM: Doug Follick, Leisure Services Director
Carolyn Griffith, Recreation Superintendent

SUBJECT: Parks and Athletic Fields Fees

Recommendation:

That Council, by resolution, rescind Resolution No. 08-31, and establish fees for the use of the parks, athletic fields, and tennis courts.

Summary:

Over the past few years, significant repairs have been made to the North Casper Clubhouse, including replacement of the roof, tile flooring, tables, chairs and appliances, and repainting of the facility. The rental fee in the past was \$40 per day, and a \$75 refundable damage deposit was charged. The change to \$50 per day and \$125 refundable damage deposit is needed to encourage proper use of the facility while keeping fees affordable.

Under the youth baseball league fees section, the exemption of player fees for youth participating in league play at West 13th and Sycamore Streets baseball fields was removed in order to comply with expectations defined within the existing agreement between the City and Casper Youth Baseball.

The Leisure Services Advisory Board approved these changes at its March 14, 2013, meeting. A resolution is prepared for Council's consideration.

RESOLUTION NO. _____

A RESOLUTION RESCINDING RESOLUTION NO. 08-31 AND ESTABLISHING FEES FOR THE USE OF PARKS, ATHLETIC FIELDS, AND TENNIS COURTS.

WHEREAS, the Casper City Council has established a policy that individuals, groups, or organizations who desire the use of various recreational facilities shall bear a substantial portion of the costs of servicing, maintaining, and improving these facilities; and,

WHEREAS, it is necessary to review these fees on a regular basis, and revise, if necessary.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF CASPER, WYOMING: That the following fees are hereby established for the use of parks, athletic fields, and tennis courts, effective April 4, 2013.

STANDARD FEE STRUCTURE FOR PARK RESERVATIONS

These basic park fees guarantee exclusive use of the defined park area providing written permit is approved and appropriate fees paid in full at least seven (7) days prior to the requested date(s). Permits are available at the Casper Recreation Center, Monday – Friday, 8:00 a.m. – 5:00 p.m. (except 12:00-1:00 p.m.). Group must have possession of the permit during the usage. Parks may generally be reserved between the hours of 7:00 a.m. and 10:00 p.m. (irrigation schedules at some parks begin at 9:00 p.m. and end at 8:00 a.m.).

NUMBER OF PEOPLE	BASIC FEE*/DAY	BEER CONSUMPTION PERMIT FEE/DAY	REFUNDABLE DAMAGE DEPOSIT**
UP TO 50	\$25.00	\$25.00	\$50.00
51 TO 100	\$50.00	\$50.00	\$100.00
101 TO 200	\$100.00	\$50.00	\$150.00
201 TO 300	\$200.00	\$50.00	\$200.00
301 TO 400	\$300.00	\$50.00	\$250.00
401 TO 500	\$400.00	\$50.00	\$300.00
501 TO 1,000	\$500.00	\$50.00	\$400.00
OVER 1,000	\$600.00	\$50.00	\$600.00
UNKNOWN – OPEN TO PUBLIC***	TBA	\$50.00	\$200.00 TO \$1,000.00

* Basic fee includes exclusive use of the defined park area, and additional expenses incurred by the Parks Division which result from a group usage, such as turf maintenance, trash removal and portable restrooms. Groups of over 500 people will be referred to a contractor for trash removal and portable restroom services.

- ** Deposit amounts are minimum requirements, and may be increased after consultation with the Parks Division and the Casper Police Department.
- *** When the size of the group is unknown prior to the event, the amount of deposit to be determined after consultation with the Parks Division and the Casper Police Department. Basic fee will be collected prior to refunding the damage deposit, based upon number of people who actually attended the event.

Exceptions

1. City-Sponsored and Supported Events – no charge.
2. School District Special Events – no charge.
3. Casper College Special Events – no charge.
4. Veterans' Park (for official Veterans' ceremonies) – no charge.
5. Special events that directly benefit a charitable cause - \$25.00/day for park reservation, and the appropriate refundable damage deposit.
6. Commercial Activities - \$25.00/day per vendor, in addition to standard fee structure for events which are open to the public.
7. A \$5.00 administrative fee will be assessed for revisions to already processed permits.

North Casper Clubhouse

1. Rental Fee - \$50.00/day.
2. Refundable Damage Deposit - \$125.00.

Washington Park Shallenberger Bandshell

1. Rental Fee - \$25.00/day, in addition to the normal park fee.
2. Refundable Damage Deposit - \$75.00, in addition to the normal park deposit.
3. Fee for Moving Risers - \$175.00 (fee for staff to move the risers and then put them back after a usage).

Park Reservation Policies

Approval of Permits:

1. All permits will be initiated by the Recreation Division, and copies will be sent to the Parks Division and the Casper Police Department.
2. Private functions involving up to 200 people will be approved by the Recreation Division.
3. Private functions involving more than 200 people, functions which are open to the public, and functions which involve amplified music, will be approved by both the Recreation Division and the Casper Police Department.

Pre-function Meetings:

1. If a function involves the need to drive vehicles on a park or the need to drive stakes into the ground, the applicant must meet with the Parks Division for specific direction on where vehicles and stakes will be allowed. Failure to do so will result in the group forfeiting at least 50% of the damage deposit.

2. Applicants may be required to meet with the Parks Division and/or the Casper Police Department, if a function has the potential for noise problems, parking problems, damage to the park, or disorderly conduct.

Insurance Certificates:

1. Private functions involving more than 200 people, and functions which are open to the public, require a certificate of insurance for established organizations and businesses that carry liability insurance.
2. The certificate must list the City as an additional insured and be in the amount of \$250,000 per occurrence or \$500,000 aggregate.

**STANDARD FEE STRUCTURE
FOR ATHLETIC FIELDS – ORGANIZED LEAGUE USE**

Adult Softball Leagues

- | | | | |
|----|----|----------------------------|--------------------|
| 1. | A. | Summer Season – Team Fee | |
| | | *Competitive Teams | \$160.00 per team |
| | | (play twice per week) | |
| | | *Recreational Teams | \$80.00 per team |
| | | (play once per week) | |
| | B. | Summer Season – Player Fee | \$10.00 per player |
| 2. | A. | Fall Season – Team Fee | \$75.00 per team |
| | B. | Fall Season – Player Fee | \$10.00 per player |

Note: Adult Softball League fees will be applied as follows:

*70% towards field preparation and maintenance services provided by the Parks Division.

*30% towards league administration services provided by the Recreation Division.

Youth Softball Leagues

Maintenance Fee	\$5.00 per player per season
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Softball and Baseball Tournaments

For weekend invitational, district, or state tournaments:

1. Tournament Deposit (refundable): \$500.00
To insure that tournament organizer is committed to the tournament, and that fields and equipment are left in good condition.
2. Mandatory Fees

A.	Initial Field Preparation Fee	\$55.00 per field per day
B.	Maintenance Fee	\$60.00 per complex per day
	(trash removal and portable restrooms)	
3. Optional Fees

A.	Additional Field Preparations	\$55.00 per preparation per field
B.	Lights	\$7.00 per hour per field

4. Rentals:
 - A. Striper \$10.00
 - B. Quick Coupler and Hose \$5.00
 - C. Marble Dust \$7.00 per bag
 - D. Diamond Dry \$20.00 per bag
5. Food Service Permit \$25.00 per complex
 Authorization to sell food service items during the tournament, providing that sales tax, Health Department, and other appropriate requirements are met.
6. Beer Consumption Permit \$50.00 per complex
7. Exceptions:
 - a. City-Sponsored Tournaments \$25.00 per field preparation per day
 \$10.00 per team for administrative services
 (only mandatory fees)
 - b. Non-Profit Tournaments (proceeds benefit a charitable cause) \$25.00 per field preparation per day
 Complex Usage Fee \$60.00 per complex per day
 - c. The \$500.00 tournament deposit is due at least 30 days prior to an event requesting services related to the use of athletic fields over Memorial Day and Labor Day weekends. Cancellation of the event for any reason other than inclement weather or related unplayable field conditions will result in forfeiture of the Tournament Deposit fee.

Softball Field Reservations

1. Reservation Fee \$10.00 (maximum of two hours)
2. Lights Fee \$7.00 per hour (maximum of two hours)

Soccer Leagues

Maintenance Fee – North Casper Soccer Complex \$8.00 per player per season
 (minimum of \$8,000.00 per year)
 (maximum of \$24,000.00 per year)

Soccer Tournaments

Maintenance Fee* – North Casper Soccer Complex \$500.00 per day
 *Includes portable restroom services and trash removal

North Casper Soccer Complex Events

Maintenance Fee \$50.00 per day – for up to 250 people
 \$500.00 per day – for over 250 people

Adult Football League

Maintenance Fee \$5.00 per player per season

Youth Football League

Maintenance Fee \$5.00 per player per season

Youth Baseball League

Maintenance Fee

- | | | |
|----|------------------------|------------------------------|
| 1. | Casper Youth Baseball | \$2.50 per player per season |
| 2. | Casper Legion Baseball | \$5.00 per player per season |

STANDARD FEE STRUCTURE FOR TENNIS COURTS

1. Court reservations for individuals, leagues, or tournaments - \$2.00 per hour per court.
2. Court reservations for the School District or for Casper College – no charge; however, City-sponsored classes or tournaments have first priority.

Additional fees:

The City may require deposits or fees in addition to those listed above, if unusual circumstances require additional direct expenses not herein provided. Example: Police security personnel.

Special rates:

The Leisure Services Director or authorized designee may authorize reductions in fees for special promotions, unique situations or emergencies, if such reductions would be in the best interests of the City of Casper.

BE IT FURTHER RESOLVED: That Resolution No. 08-31 is hereby rescinded.

PASSED, APPROVED, AND ADOPTED this ____ day of _____, 2013.

ATTEST:

CITY OF CASPER, WYOMING
A Municipal Corporation

V. H. McDonald
City Clerk

Kenye Schlager
Mayor

March 19, 2013

MEMO TO: John C Patterson, City Manager
FROM: William C Luben, City Attorney
SUBJECT: Abandonment of Water Right in East 2nd Street.

Recommendation:

This is for Council's consideration and direction. No recommendation is being made at this time.

Summary:

Currently, T Cross Ranch is requesting that the City relinquish an irrigation water right which the City holds in a portion of East 2nd Street. This irrigation right is held in the Elkhorn Reservoir which is adjacent to East 2nd Street, and equates to approximately .73 acre – feet of water stored in the Elkhorn Reservoir. When the property was first platted, this irrigation right, through an oversight by the then owner of property, was not excepted from the dedication of the property to the City for East 2nd Street, and as such, the City holds this irrigation right within the right-of-way for this street.

T Cross Ranch is requesting that the City join in a Petition for Voluntary Abandonment of this water right before the State Board of Control so that they can re-consolidate this irrigation right.

Staff desires to bring this matter to the attention of Council for direction on moving forward with abandoning this water right.

March 19, 2013

MEMO TO: Her Honor, The Mayor, and Members of Council

FROM: William C. Luben, City Attorney

SUBJECT: Smoking Ordinance Amendments.

Attached is a draft of an ordinance amending Chapter 8.16 of the Casper Municipal Code, pertaining to smoking in public places. It has been presented as the full chapter of the code, and the changes are highlighted in “yellow” for quick reference. I believe these changes reflect Council’s direction from the last work session.

When Council makes a final determination as to the changes desired, the ordinance will be redrafted to its final format.

If you have questions or concerns, please let me know.

Attachment

ORDINANCE NO. _____

AN ORDINANCE AMENDING CERTAIN SECTIONS OF
CHAPTER 8.16 OF THE CASPER MUNICIPAL CODE,
PERTAINING TO SMOKING IN PUBLIC PLACES.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF
THE CITY OF CASPER, WYOMING:

Section 1:

That Chapter 8.16, Smoking in Public Places, of Title 8, Health and Safety, of the Casper is amended as follows:

Chapter 8.16
SMOKING IN PUBLIC PLACES

8.16.010 Findings.

A. The governing body of the City of Casper, Wyoming, hereby finds that:

1. Numerous peer reviewed studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. At special risk are children, elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.
2. Health hazards induced by breathing secondhand smoke include lung cancer, heart disease, respiratory infection, and decreased respiratory function, including broncho-constriction and broncho-spasm.
3. Nonsmokers who are exposed to secondhand smoke at home or work increase their heart disease risk by twenty-five (25) to thirty (30) percent and their lung cancer risk by twenty (20) to thirty (30) percent.

B. Accordingly, the Governing Body finds and declares that the purposes of the ordinance codified in this chapter are:

1. To protect the public health, safety, and welfare by prohibiting smoking in public places and places of employment as hereinafter set forth; and,
2. To guarantee the right of nonsmokers to breathe smoke-free air in the places delineated herein, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke.

8.16.020 Definitions.

As used in this chapter, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

“Business” means any legal entity including, but not limited to, sole proprietorship, partnership, joint venture, corporation or other business entity whether formed for profit-making or non-profit purposes, including retail or wholesale establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional or non-professional services are delivered.

“Convention Center or Facility” means an enclosed area that is designed to hold a convention, trade show, meeting, or seminar where individuals and groups gather to promote and share common interests.

“Employee” means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.

“Employer” means a person, business, partnership, association, corporation, trust, non-profit entity, or a municipal corporation that employs the services of one or more individual persons.

“Enclosed Area” means all space between a floor and ceiling or roof that is enclosed on **at least three (3) ALL** sides by solid walls or windows which extend from the floor to the ceiling or roof, exclusive of doorways.

“Fire Chief” means the Chief of the Casper Fire-EMS Department.

“Fire Department” means the City of Casper Fire-EMS Department.

“Health Care Facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions including, but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists with these professions. This definition shall include all waiting rooms, hallways, private rooms, semi-private rooms, and wards with health care facilities.

“Outdoor Patio” means an outdoor area, open to the air at all times, that is either:

1. Enclosed by a roof or other overhead covering and not more than two walls or other side coverings; or
2. Has no roof or other overhead covering at all regardless of the number of walls or other side coverings.

“Performance Hall” means any area or facility that is primarily used for the exhibition of any motion picture, stage, drama, lecture, musical recital or other similar performances including, but not limited to, concert halls and theaters.

“Place of Employment” means an area under the control of an employer which is intended for occupancy by employees during the course of employment including, but not limited to, work areas, restrooms, conference rooms, meeting rooms, classrooms, waiting areas, offices, stairways, hallways, and employee cafeterias and lounges. A private residence is not a “place of employment” unless it is used as a licensed child care, licensed adult day care, health care or pre-school facility, or any other aforementioned business.

“Private Club” means those organizations or entities defined as a “club” in Wyoming Statutes § 12-1-101(a)(iii), which are not open to the public, and/or a business, organization, or entity in which a membership or the payment of dues or admission fees are required for participation in the activities thereof.

“Public Place~~S~~” means an enclosed area to which the public is invited or in which the public is permitted including, but not limited to, banks, and other financial institutions, publicly funded or owned buildings, school and college buildings, public conveyances, recreational facilities, lounges, taverns and bars, private, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail or wholesale food production and marketing establishments including grocery stores, supermarket and stores where food items are sold for on-premises or off-premises consumption, service establishments, retail or wholesale stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a “public place” unless it is used as a licensed child care, licensed adult day care, health care or pre-school facility.

“Public Transportation” means, but is not limited to, any enclosed mode of public transportation; including a train, passenger bus, school bus or other vehicle used to transport pupils, and ~~taxi~~; or a vehicle that is owned by, or operated by a business and is open to the public, including tour vehicles, passenger buses or vans regularly used to transport customers. Notwithstanding the foregoing, a private vehicle not open to the public or not used for the transportation of the public during the times of use, including a private passenger vehicle,

a private charter or rental of a limousine, bus or van, shall not be considered public transportation. TAXICABS ARE EXCLUDED FROM THIS DEFINITION AND ARE NOT CONSIDERED TO BE “PUBLIC TRANSPORTATION” FOR THE PURPOSES OF THIS CHAPTER.

“Restaurant” means an eating establishment including, but not limited to, coffee shops, cafeterias, and public and private school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises and served elsewhere. The term “restaurant” shall include a bar area within the restaurant.

“Retail or Wholesale Stores” mean establishments engaged in the sale of goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods. A retail or wholesale sales establishment is usually a place of business and is engaged in activity to attract the general public to make purchases.

“Service Establishments” means establishments in which professional or non-professional services are rendered to a person whether or not a sale of goods or merchandise takes place. Examples would include, but not be limited to establishments rendering plumbing, electrical, mechanical, medical, legal, architectural or other such services.

“Shopping Mall” means an enclosed public walkway or hall area that serves to connect retail sale or professional service establishments.

“Smoke” or “Smoking” means the inhaling, exhaling, burning or carrying of any lighted tobacco product, weed, plant, nicotine, or other combustible product in a smoking instrument or the placement of smoking instruments containing a lighted tobacco product, weed, plant, nicotine, or other combustible product in an ashtray or other receptacle and allowing smoke or vapor to diffuse into the air. This definition does not include the burning of incense.

“Tobacco Shop” means a business that is dedicated to or predominantly for the sale of tobacco products and accessories for such products, in which the sale of other products or services is incidental.

“Smoking Instrument” means any cigar, cigarette, or a pipe, hookah, water pipe or other device used for the smoking of tobacco.

“Sports Arena” means sports pavilions, stadiums, gymnasiums, health spas, swimming pools, roller and ice rinks, bowling alleys, the Casper Events Center, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

“Tavern~~S~~, Lounge~~S~~ or Bar~~S~~” means any establishment **OR AREA THEREOF** open to the public whose primary source of revenue is from the sale of alcoholic beverages for consumption by guests ~~on the premises~~ **WHERE PERSONS UNDER THE AGE OF TWENTY-ONE (21) YEARS OF AGE ARE NOT PERMITTED TO ENTER BY LAW, -in which the serving of food is only incidental to the consumption of such beverages,** including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

“City-Owned Youth Athletic Facilities” includes, but is not limited to, facilities where youth soccer, baseball, skateboarding and any other youth activities take place, whether the facility is enclosed or not.

“Youth” means any person who has not attained 18 years of age.

8.16.030 Application of chapter to city-owned facilities and vehicles.

All enclosed areas, including buildings and vehicles owned, leased or operated by the City of Casper, shall be subject to the provisions of this chapter.

8.16.040 Prohibition of smoking in public places.

A. Smoking shall be prohibited in all enclosed areas of public places within the City of Casper including, but not limited to, the enclosed areas of the following places:

1. Galleries, libraries and museums;
2. Areas available to and customarily used by the general public in businesses and for-profit or non-profit entities patronized by the public including, but not limited to, professional offices, banks, laundromats, hotels and motels;
3. Bingo and/or pull tab gaming premises;
4. Convention centers or facilities;
5. Elevators;
- ~~6. Taverns, lounges or bars;~~
- ~~7. Health care facilities;~~
- ~~6.8.~~ Licensed child care, adult day care and pre-school facilities;
- ~~7.9.~~ Lobbies, hallways and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;

- 8.10. Performance halls;
- 9.11. Election polling places;
- 10.12. Restaurants, **AND RESTAURANTS HOLDING A BAR GRILL LIQUOR LICENSE.**
- 11.13. Restrooms, lobbies, reception areas, hallways, and other common-use areas;
- 12.14. Retail or wholesale stores;
- 13.15. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or governing body of the City of Casper, to the extent the place is subject to the jurisdiction of the City of Casper;
- 14.16. **THE PUBLIC AREAS OF** service establishments **OR WORK AREAS;**
- 15.17. Shopping malls;
- 16.18. Sports arenas and convention halls, including bowling facilities;
- 17.19. Public transportation vehicles;
- 18.20. Publicly funded or owned buildings;
- 19.21. All City of Casper buildings and facilities, and vehicles leased, owned, or operated by the City; and,
- 20.22. Schools and college buildings.
- 21.23. Private clubs **WHEN HOLDING EVENTS OPEN TO THE GENERAL PUBLIC.**

B. Smoking shall be prohibited in or on all City-owned youth athletic facilities.

8.16.050 Prohibition of smoking in places of employment, **SERVICE ESTABLISHMENTS, AND HEALTH CARE FACILITIES.**

A. Smoking shall be prohibited in all enclosed areas within places of employment **OR SERVICE ESTABLISHMENTS, WITH THE EXCEPTION THAT SMOKING SHALL BE PERMITTED IN WORK AREAS THAT ARE SEPERATED FROM AREAS OPEN TO THE GENERAL PUBLIC BY WALLS, DOORS, AND/OR WINDOWS THAT PREVENT THE MIGRATION OF TABACCO SMOKE FROM THE WORK AREA(S)**

~~TO THE AREAS OPEN TO THE GENERAL PUBLIC. including, but not limited to, work areas, restrooms, conference rooms, meeting rooms, classrooms, waiting areas, offices, stairways, hallways, and employee cafeterias and lounges.~~

B. SMOKING SHALL BE PROHIBITED IN HEALTH CARE FACILITIES WITH THE EXCEPTION THAT SMOKING SHALL BE PERMITTED IN ANY SUCH FACILITY IN A SEPARATE ROOM OR AREA SEPARATED FROM AREAS OPEN TO THE GENERAL PUBLIC AND/OR NON-SMOKING RESIDENTS OR PATIENTS BY WALLS, DOORS, AND/OR WINDOWS THAT PREVENT THE MIGRATION OF TOBACCO SMOKE FROM THE SMOKING AREA TO THE AREAS OPEN TO THE GENERAL PUBLIC, AND /OR NON-SMOKING RESIDENTS OR PATIENTS.

C.B. All employers subject to this chapter shall communicate the provisions of this Chapter to all existing employees within thirty (30) days following the effective date of the ordinance codified in this chapter and to all prospective employees on their application for employment.

8.16.060 Distance to be observed from all entryways where smoking is prohibited.

In order to prevent secondhand smoke from entering a public place or place of employment where smoking is prohibited, every person who is smoking shall smoke a distance of at least ten (10) feet from all public entranceways, passageways, operable windows or ventilation systems of any enclosed area where smoking is prohibited.

8.16.070 Declaration of establishment as nonsmoking.

Notwithstanding any other provision of this chapter, an owner, operator, manager, or other person in control of an establishment, facility or outdoor area may declare that entire establishment, facility or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 8.16.100 of this chapter is posted, and such place shall be subject to the provisions of this Chapter.

8.16.080 Where smoking is not regulated.

A. Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of Sections 8.16.040 and 8.16.050 of this chapter:

1. Private residences, except when used as a licensed child care, licensed adult day care, pre-school or health care facilities;
2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms;

3. Outdoor places of employment, except those places covered by the provisions of Section 8.16.060 of this chapter;
4. Private offices, provided that the private office is not open to public, the public is not invited, and the office is not intended for occupancy by employees during the course of their employment;
5. Outside Patios. Provided however, the opening of any sliding or folding windows or doors or other windows or doors from any part of the border to an outdoor patio shall be closed to prevent the migration of smoke into the enclosed area. If sliding or folding windows or doors or other windows or doors do not prevent the migration of smoke into the enclosed area, the outdoor patio shall be considered an extension of the enclosed area and subject to the prohibitions of this chapter;
6. Private or business vehicles, except those used for public transportation or owned, leased, or operated by the City of Casper which shall be subject to the provisions of this chapter;
7. The outside areas of public and private golf courses;
8. The enclosed area of a Tobacco Shop. Provided however, no one under the age of majority may enter or be employed in a tobacco shop;

9. TAVERNS, LOUNGES, OR BARS; AND,

10. **PRIVATE CLUBS, EXCEPT WHEN HOLDING EVENTS OPEN TO THE GENERAL PUBLIC.**

8.16.090 Smoking prohibited – Other restrictions applicable.

Smoking shall not be permitted, and smoking areas shall not be designated, in those areas where smoking is prohibited by the fire chief, state statute, ordinances or regulations of the City or other applicable laws. Nothing in this chapter shall be interpreted so as to permit smoking where it is otherwise restricted by law.

8.16.100 Posting of signs.

“No Smoking” signs or the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this chapter, by the owner, operator, manager or other person in control of that place.

AREAS WHERE SMOKING IS PERMITTED UNDER THIS CHAPTER SHALL BE CLEARLY AND CONSPICUOUSLY POSTED WITH A SIGN STATING "SMOKING PERMITTED IN THIS AREA, ENTER AT YOUR OWN RISK" BY THE OWNER, OPERATOR, MANAGER OR OTHER PERSON IN CONTROL OF THAT PLACE.

8.16.110 Violation – penalty, and enforcement.

- A. Violation of this chapter is unlawful, and a person who violates the provisions of this chapter is guilty of a misdemeanor, punishable pursuant to the penalty provisions of Chapter 1.28 of the Casper Municipal Code.
- B. A person who owns, manages, operates or otherwise controls a public place or place of employment and who knowingly fails to comply with the provisions of this chapter after receiving oral or written notice from the City shall be guilty of a misdemeanor as set forth in paragraph A of this section.
- C. Each separate violation of this chapter shall be considered a separate and distinct violation.
- D. Any Casper Police Department law enforcement officer shall be authorized to enforce the provisions of this chapter.
- E. If a Casper police officer has probable cause to believe that a violation of this chapter has been committed by a person, he/she may issue the person a citation pursuant to Section 7-2-103 of the Wyoming Statutes.
- F. Failure of the owner, manager, operator or employee of a business or establishment to orally inform a person who smokes in an area where smoking is prohibited by the provisions of this chapter shall not constitute a defense for a violation of this chapter.

8.16.120 Other applicable laws.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted.

Section 3:

The effective date of this ordinance shall be September 1, 2012, in the event a referendum petition contesting this ordinance is found not to be valid by the City Clerk; or the effective date of this ordinance shall be December 1, 2012, in the event a referendum petition contesting this ordinance is found to be valid by the City Clerk.

PASSED on 1st reading the _____ day of _____, 2013.

PASSED on 2nd reading the _____ day of _____, 2013.

PASSED, APPROVED, AND ADOPTED on 3rd and final reading the ____ day
of_____, 2013.

APPROVED AS TO FORM:

ATTEST:

CITY OF CASPER, WYOMING
A Municipal Corporation

V. H. McDonald
City Clerk

Kenyne Schlager
Mayor



475 S. Spruce St
Casper, WY 82601
Phone: 307-235-9340
Fax: 307-237-2036
www.casperhealth.com

Monday, March 11, 2013

The Honorable Kenyne Schlager
Mayor, City of Casper
Casper City Hall
200 North David Street
Casper, WY 82601

Dear Mayor Schlager:

Anna Edwards, of “SmokeFree Natrona County”, forwarded to me Councilman Hopkins’ recommendations for amendments to the current Smoking Ban Ordinance. I reiterate that the Casper-Natrona County Board of Health adopted a Resolution strongly urging all elected bodies to enact legislation to limit exposure to second-hand tobacco smoke. As such, the Health Department would oppose a Repeal and Referendum. I agree with Councilman Powell that the issue received intense scrutiny by the previous Council, and failed to garner sufficient signatures for a Referendum; the issues currently in contention simply do not justify re-opening debate, nor the expense of an election.

However, after reviewing Councilman Hopkins’ suggestions, I believe that some judicious amendments may make sense, particularly in the area of bringing more consistency to the Ordinance. I have listed my Comments on his suggestions below:

- Lines 81; 105; (I am not sure what the effect of the proposed plural/singular would be ?)
- Line 91: “*Eliminate the words, “...and taxi...”*”: I agree that there should be no distinction between allowing smoking in “Limousines”, but prohibiting it in “Taxis”. I believe I understand that “Limousines” were exempted because of the “Party” nature of many such rentals. However, these are both Livery Services for hire and should be treated the same, either prohibiting smoking or allowing it in both. For the Record, the Health Department would not oppose allowing smoking in Taxis. This MIGHT already fall within line 204-205, which exempts “...business vehicles...” However, that may create a conflict with Line 71, in that the Limo or Taxi is a “Place of Employment”, and may thus expose the driver to passengers’ secondhand tobacco smoke. A second problem could arise if passengers object to a smoking driver. You may wish to obtain a Legal Opinion on this from the City Attorney.

RECOMMENDATION:

The Health Department would prefer to see smoking prohibited equally in both Limousines and Taxis, but would not actively oppose allowing smoking equally in both types of vehicles.

- Line 144: “Eliminate listed item #6 Taverns, Lounges, and bars...” I realize that the bulk of complaints about the Ordinance’s economic effects have come from “...taverns, lounges, and bars...” and that this proposal seeks to mollify those complaints. However, doing so will re-open the argument about where the bar ends and the restaurant begins, whether an establishment serving both alcohol and food is a bar or a restaurant, and may invite the self-declaration of establishments as “Private Clubs” exempted under Lines 77-80, and 164.

RECOMMENDATION: The Health Department prefers to see smoking prohibited in “Taverns, Lounges, and Bars...”

- Line 145: “Eliminate listed item #7, Health Care Facilities”. As with the issue of Taverns/Bars/etc., above, I realize that this is an attempt to satisfy a small but vocal protest that residents in some long-term care facilities must now go outside to smoke. In addition to the central issue of protecting non-smokers from exposure to secondhand smoke, allowing smoking in a HealthCare setting also raises a potential Safety Hazard, involving Oxygen supplies or similar flammability issues. However, since the Ordinance is predicated on the purposes of the ordinance are “...to protect the public health, safety, and welfare...and...to guarantee the right of nonsmokers to breathe smoke-free air...and...that ...smoke-free air shall have priority over the desire to smoke...” exempting HealthCare facilities appears to be in opposition to that statement. Some persons have suggested designation of a “Smoking Room” as a solution; But this raises the issue of facility employees being exposed to smoke as they perform assigned duties bringing residents into and out of the designated room. I believe that this small minority can be accommodated by the relatively simple construction of a partially enclosed outdoor patio as defined in Lines 63-67.

RECOMMENDATION: The Health Department prefers to see smoking prohibited in HealthCare Facilities.

- Line 164 : Add “...*Private Clubs WHEN HOLDING EVENTS OPEN TO THE GENERAL PUBLIC.*” Again, this is likely intended to satisfy the complaints of a small vocal group wishing to accommodate the wishes of their membership. As such, it would seem that allowing smoking in Private Clubs would not cause a problem. But this again raises the potential issue of an employee being unwillingly exposed when those Private Clubs are NOT holding events open to the public, as well as inviting self-declaration of public establishments as “Private Clubs” as mentioned in Line 144, above.

RECOMMENDATION: The Health Department would not oppose allowing smoking in Private Clubs.

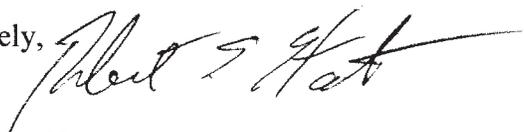
- Line 157: Modify to read “...*Service establishment non-public spaces...*” I do not understand the purpose of this suggestion, unless it would be to allow smoking in areas of establishments not normally open to the public, such as supply rooms. However, that once again raises the issue of non-smoking employees being unwillingly exposed.

RECOMMENDATION: The Health Department prefers that this change not take place.

- Line 168-169: “Eliminate the words ‘...but not limited to work areas...’ I do not understand the rationale’ for suggesting this. “...but not limited to...” is a common practice in drafting laws and regulations, and allows for application of the statute or rule to areas that are legitimate subjects, but might not have been anticipated *at the time of enactment*. Including “...not limited to...” prevents “Loopholes”. “Work areas” seem to be the central part of “...places of employment...” and I see no reason for their exclusion. RECOMMENDATION: The Health Department prefers to see this language left intact.

Thank you for your consideration of these comments. If you have questions, please feel free to call me directly.

Sincerely,



Robert E. Harrington, MS, RS, DAAS
Department Director
Casper-Natrona County Health Department
475 South Spruce Street
Casper, WY 82601

Phone: 307-235-9340, ext. 722 (Office)
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March 18, 2013

The Honorable Kenyne Schlager
Mayor, City of Casper
Casper City Hall
200 North David Street
Casper, WY 82601

Dear Madam Mayor:

On March 12-13, 2013, the Casper-Natrona County Board of Health discussed the recent Council proposals to Repeal or Amend the City Ordinance banning smoking in Public Places.

The Ordinance is an important step to protect citizens from the dangers of second-hand tobacco smoke; The Board of Health, and the Health Department are firmly opposed to any attempt to weaken the Ordinance, either by Amendment or Repeal.

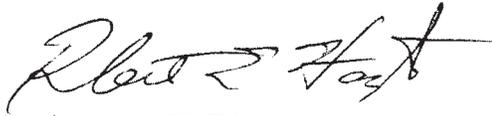
The individual amendments cater to the complaints of a very small group of business operators, while failing to protect those businesses' *employees*; this was clearly the intent of the Ordinance. In addition to that failure, the proposed amendments raise new problems, *to wit*:

- Exempting Limousines OR Taxis ignores that fact that these are PUBLIC conveyances, often used by customers who have no other choices available. Those customers deserve protection
- Exempting Bars, Taverns and Lounges creates a new problem, defining where the Exempted "Bar" ends and the Prohibited "Restaurant" begins.
- Exempting "Private Clubs" invites deceptive self-definition by the operators
- Exempting "Non-Public Areas" invites self-definition and fails to protect employees in those areas,
- Removing the words "...but not limited to, work areas..." removes necessary flexibility in application of the Ordinance. This is common language in drafting laws and regulations.
- Exempting HealthCare Facilities defies the central tenet of the Ordinance, to protect PUBLIC HEALTH
- All of the amendments represent a slippery slope, as more minority interests seek to have their particular concerns exempted.

Repealing the Ordinance in anticipation of yet another failed Referendum denies the extensive and intensive study and public discussion that created the Ordinance. Opponents failed in their earlier attempts to gain sufficient petition signatures to require an election; the City should not spend the money required to operate an election for an issue that has already been studied, discussed and decided.

The Casper-Natrona County Board of Health reiterates its position in our March, 2011 Resolution urging elected bodies to enact legislation to protect the Public from second-hand tobacco smoke in Public Places. When this issue again comes before a Public Meeting of Council, I would appreciate the opportunity to state that position on the record.

Sincerely,



Robert E. Harrington, MS, RS, DAAS
Department Director

Cc: Board of Health

J. Patterson, City Manager

C. Powell, Council Liaison to the Board.