

BOCSAR

Offender rehabilitation: Science and morals in community protection

Astrid Birgden, Director

Compulsory Drug Treatment Correctional Centre

NSW Dept of Corrective Services

Psychology & Public Policy

In legal policy development:

- ▶ Law is policy analysis without theory

Therefore

- ▶ Law is policy analysis without data.

(Saks, 1989)

Psychology & Public Policy

If forensic psychologists as experts do not attempt to influence and shape this policy development, it can result in inappropriate policy formulation with such policies forcing forensic psychologists to participate in the legal system in ways for which they are not well trained or suited... (Krauss & Sales, 2003, p. 557)

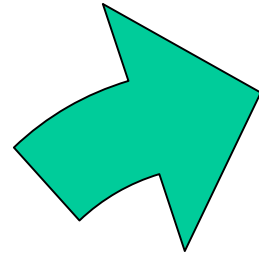
For example- controlling & monitoring, rather than supporting, offenders.



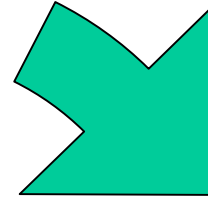
Community Protection

SENTENCING

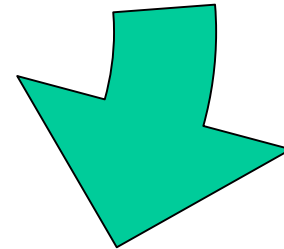
Community Protection



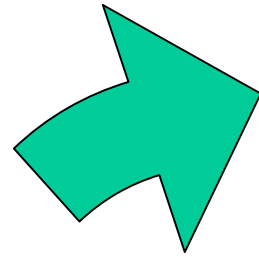
SENTENCING



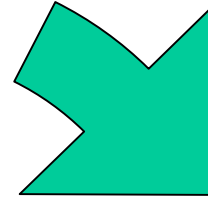
**REDUCE
REOFFENDING**



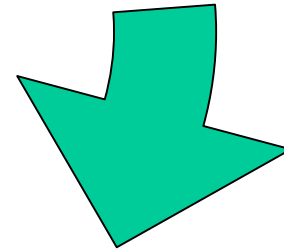
Community Protection



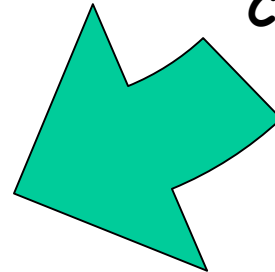
SENTENCING



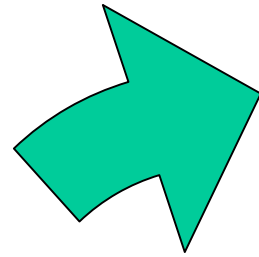
**REDUCE
REOFFENDING**



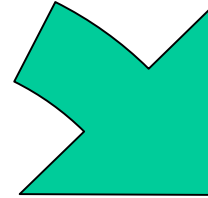
**BEHAVIOUR
CHANGE**



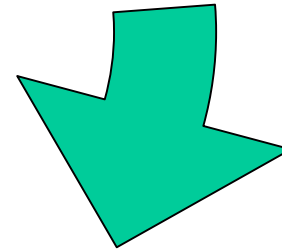
Community Protection



SENTENCING

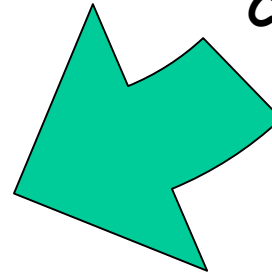


REDUCE
REOFFENDING

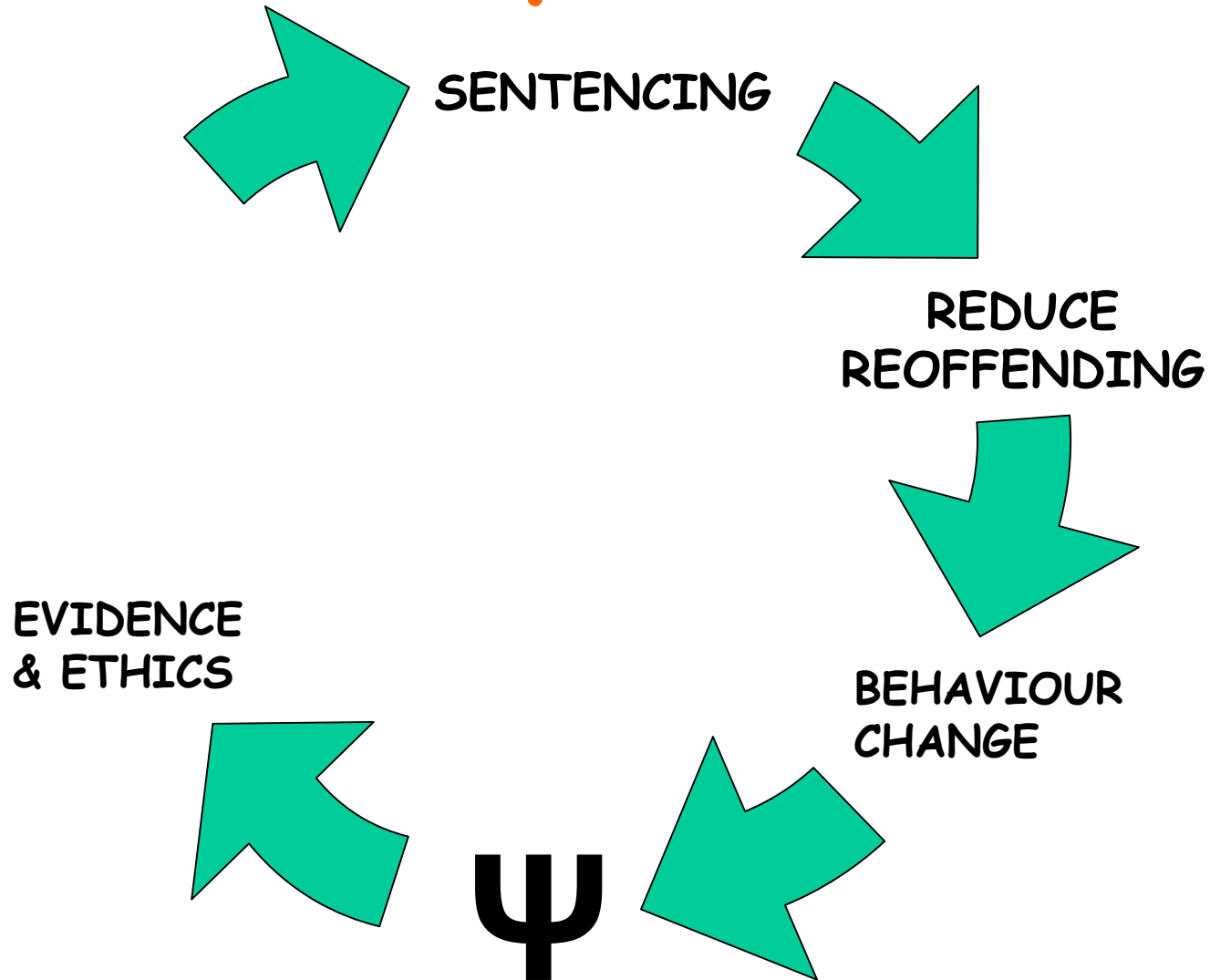


BEHAVIOUR
CHANGE

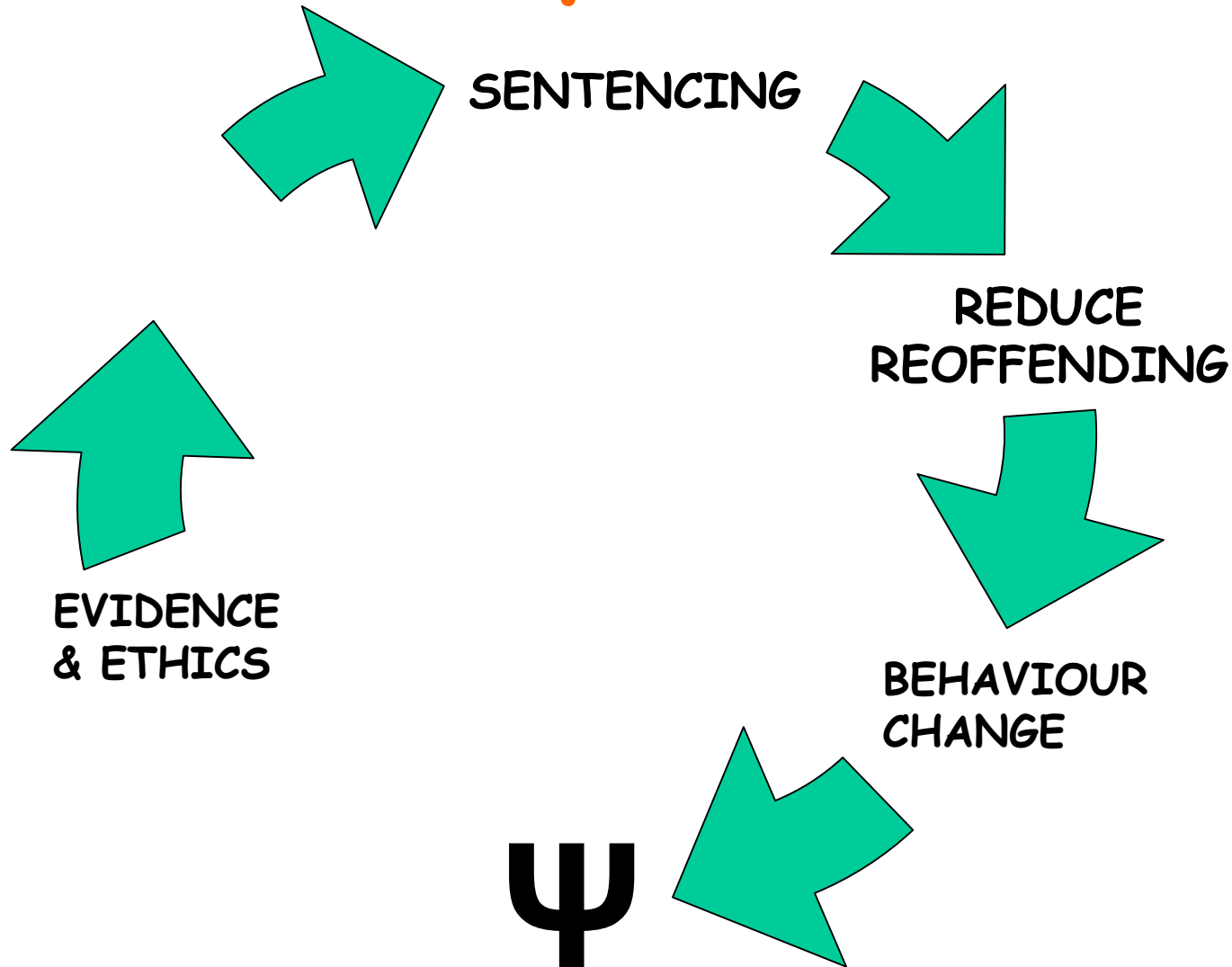
Ψ



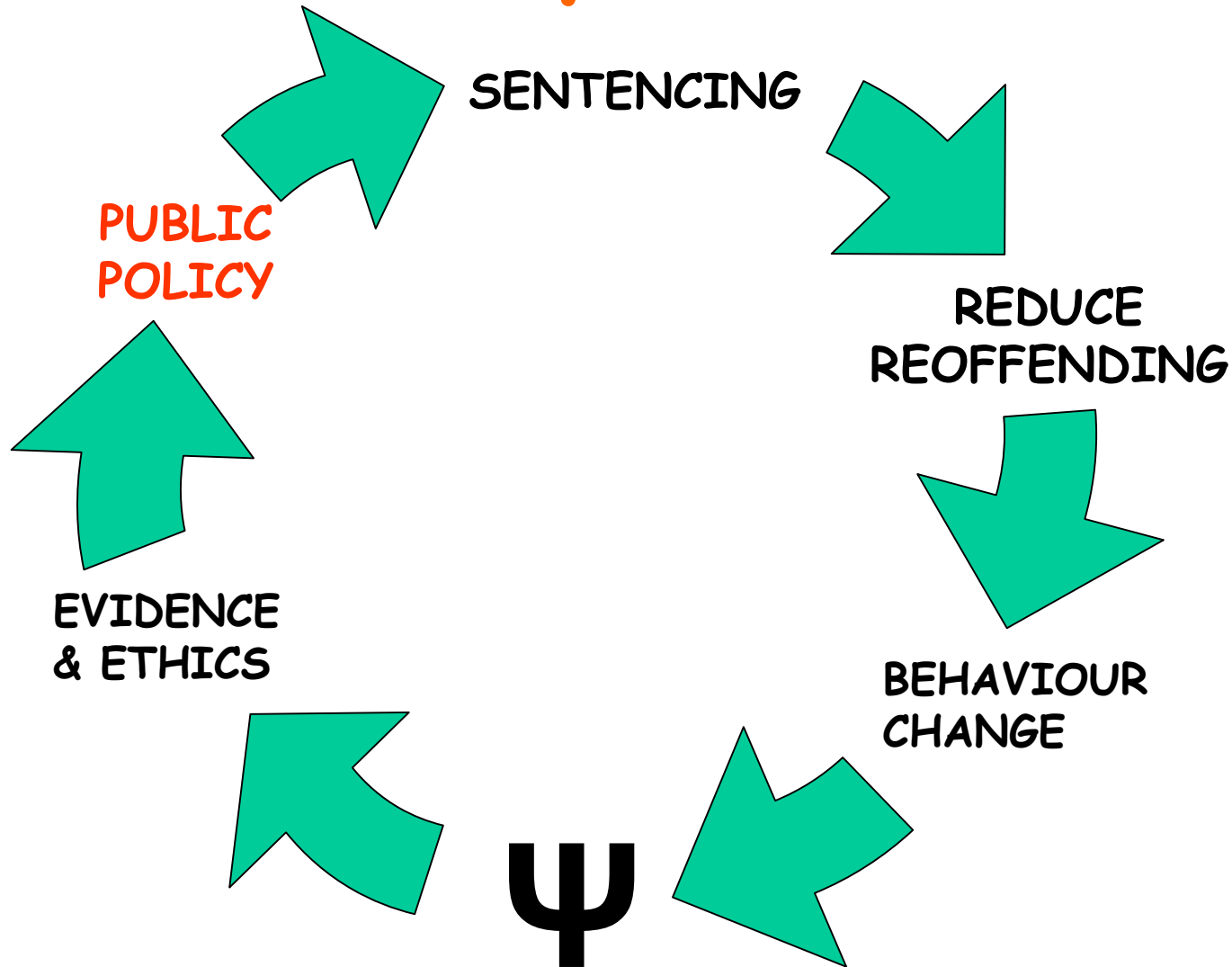
Community Protection



Community Protection



Community Protection



**What is going on with
contemporary
public policy
and
'serious offenders'
at the moment?**

PENAL WELFARISM

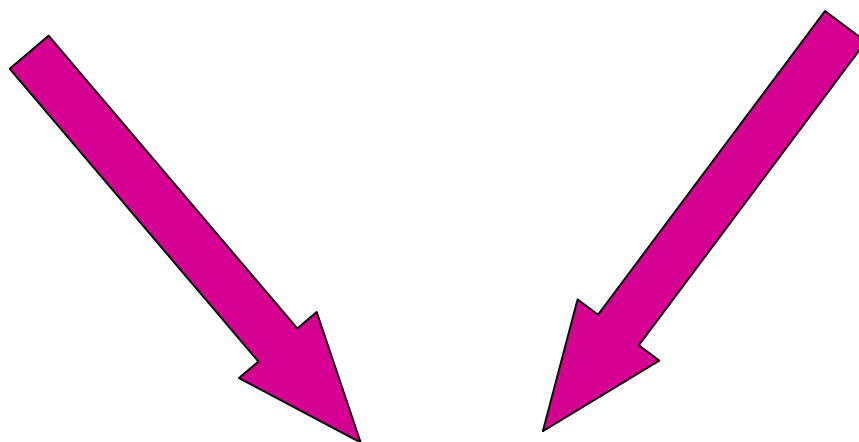
(1890s to the 1970s)

Crime Control

Due Process

(Offender Control)

(Offender Care)



Rehabilitative Ideal

Garland (2001)

Minister Holding (Victoria)

The Act is “unashamedly tough”

(Media Release, 3/10/06)

“ ... this government has introduced the toughest regime in Victoria's history for dealing with sex offenders, particularly child-sex offenders”

(Hansard, 13/6/06).

“Whether or not these policies are popular in the community, that is not the test. In fact, if we went on community popularity we'd either never release them from prison or we'd impose even more draconian sentences on them — in fact we'd probably impose the death penalty. That's how a lot of people feel”.

(on ABC Radio, Taylore, 1/7/06)

**So, what happened to
public policy on the
way from
penal-welfarism
to offender control?**

Reason 1: Penal-Welfarism Critique

1. "Justice is in jeopardy"

Rehabilitation undermines fundamental values- moral autonomy, individual rights, liberal democratic values & due process.

"collapse of faith in correctionalism"

(Garland, 2001).

Penal-Welfarism Critique cont

1. Justice in jeopardy cont

- ▶ *Report of the Working Party of the American Friends Service Committee in 1971, A Struggle for Justice.*

Criticism

1. Can't empirically match sentencing to rehabilitation.
2. Punishes minority groups.
3. Paternalistic and hypocritical.
4. Naïve faith that punishment can reduce crime.
5. Can't diagnose, treat, and evaluate offending behavior.
6. Willingness to impose "treatment" on unconsenting offenders
7. False claim that the rehabilitative ideal is neutral
8. Against involuntary treatment in prison and supports individual dignity and freedom of expression

(Garland, 2001; Boldt, 1998).

Penal-Welfarism Critique cont

2. "Nothing Works"

Rehabilitation will always fail, offenders cannot be reformed, correctional change cannot occur, and rehabilitation efforts are futile and wasteful. (Garland, 2001).

Martinson held the view "...that education at its best, or that psychotherapy at its best, cannot overcome, or even appreciably reduce, the powerful tendency for offenders to continue in criminal behavior" (Martinson, 1974, p. 49 cited in McGuire & Priestley, 1995).

Reason 2: Moral Panic

1. Concern- awareness that offenders will have a negative impact on the community.
2. Hostility- a clear division between "them" and "us".
3. Consensus- widespread acceptance that offenders pose a real community threat with "moral entrepreneurs" (and the media) becoming vocal and offenders "folk devils" appearing weak and disorganized.
4. Disproportionality- the action taken is disproportionate to the actual threat posed by offenders.
5. Volatility- moral panics can disappear as quickly as they arise.

Ben-Yehuda & Goode (1994)

UN World Drug Report 2009

Unintended effects of drug control =
“a limited but growing chorus among
politicians, the press and even in
public opinion saying: *drug control is
not working*” (p. 1).

The public debate consists of sweeping
generalisations and simplistic solutions.

► Need to look at *different means* of
community protection

Reason 3:

Lack of Expert/Practitioner Input

Evidence-based input into public policy should guard against populist policy-making but with...

“New managerialism”:

- More directive politicians.
- Experts with less influence than accountants/managers.
- Community opinion is the key reference point.

(Garland, 2001)

Lack of Expert Input cont

“although it is unlikely that politicians will stop seeking electoral popularity by tapping into the community's insecurities about crime, it is irresponsible to base sentencing policy on penal philosophies that are fundamentally flawed and empirically unsound”

(Richardson & Freiberg, 2004, p. 101) and

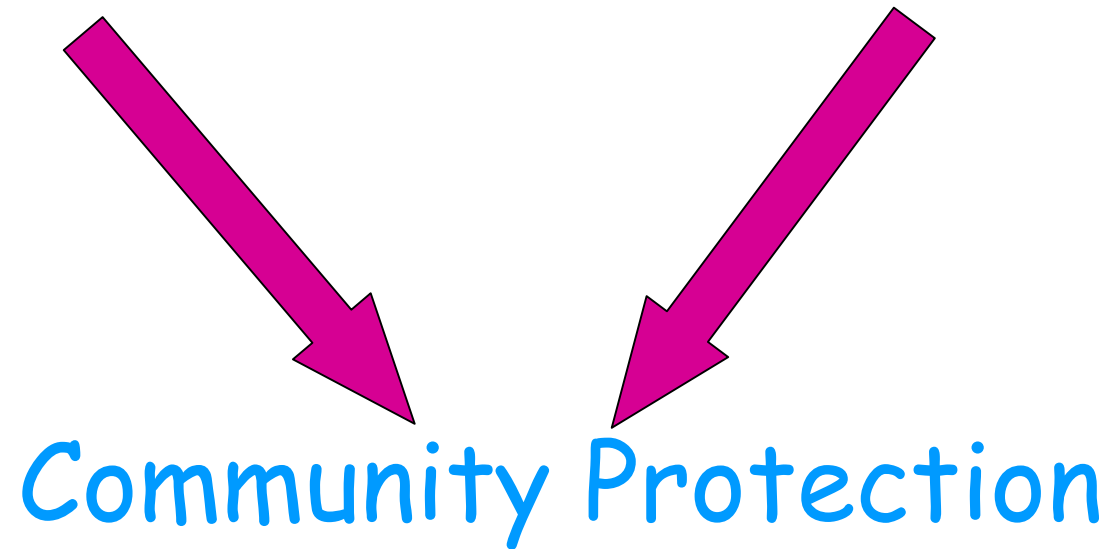
“ ... some of these newly minted public safety measures overtarget by a wide margin. Many are too expensive or ineffective” (LaFond, 2005, p. 232).

(e.g., Megan's Law)

PUBLIC POLICY

Evidence

Ethics



Sentencing Principles

1. Retribution & denunciation

▶ Punishment

2. Incapacitation & deterrence

▶ Community rights.

3. Restitution, reparation & rehabilitation

▶ Community rights & offender rights balance

(Ashworth, 2006; Birgden, 2008)

**Community
Protection**

```
graph TD; A[Community Protection] --> B[Incapacitation/Deterrence]; A --> C[Punishment]; A --> D[Rehabilitation];
```

**Incapacitation/
Deterrence**

Punishment

Rehabilitation

Meta Analyses

Meta-analysis combines the results of several studies to develop a common measure of 'effect size' (the strength of the r'ship between 2 variables).

The resulting overall averages are usually considered more powerful estimates than individual studies.

Meta-analysis builds theory and informs policy direction.

(Leschied, 2001).

Punishment

Seriousness of the
offence receives a
response by the
state proportional
to the harm caused

(Ashworth, 2006)

Punishment

Corrections = sentenced *as* punishment, not *for* punishment.

Punishment is occasionally effective + repeatedly ineffective:

- Not inevitable.
- Not immediate.
- Not severe.
- Does not support alternative behaviours.
- Not necessarily comprehensible.
- Can even worsen behaviour.

► Punishment as a sentencing principle is incompatible with reducing re-offending.

(McGuire & Priestley, 1995; Motiuk, 2001; Robinson & Darley, 2004; Sanson et al., 1995)

Incapacitation

Offenders are incapable of offending again for a set period of time, under the rationale of community protection and crime prevention

(Ashworth, 2006)

Incapacitation

Corrections = reinvented as a means to restrain, not rehabilitate, offenders.

- 7 meta analyses- not one showed +ve effect from imprisonment compared to shorter sentences and community supervision (Lispey & Cullen, 2007)
- Not one single controlled outcome study has found a large or consistent effect in varying penalties (Gendreau, 1995).
- 50+ studies of more than 300,000 offenders concluded there was no evidence of longer prison sentences reducing re-offending rates (Gendreau et al, 1999 cited Motiuk, 2001) and may even worsen low risk offenders.
- ▶ Incapacitation is inefficient & ineffective for reducing re-offending.

Deterrence

Future levels of offending being reduced by fear of the consequences, instilled in both the individual offender and the general community.

(Ashworth, 2006)

Deterrence Cont

Specific deterrence

- 9 studies found modest effects of 2-8% when supervision vs no supervision or intensive supervision vs regular supervision (Lipsey & Cullen, 2007).
- 20 studies- boot camps/intensive supervision/e-monitoring = no impact on re-offending (Gendreau, Goggin, Cullen, & Andrews, 2000 cited in Brown, 2001).
- 74 studies- boot camps, e-monitoring, intensive supervision, restorative justice for low risk offenders = no impact on re-offending (Aos, Miller, & Drake, 2006).

Deterrence Cont

General deterrence

Does criminal law with its substantive rules overseeing criminal liability and punishment deter? (Robinson & Darley, 2004):

- ▶ “Given available behavioural science data, the shorter answer is: generally, no” (p. 2).
- ▶ “...we are profoundly sceptical that the formulation of criminal law rules or even sentencing policies and practices can have the deterrent effect that common wisdom assumes it has” (p. 20)
- ▶ “it is that working assumption that we find so disturbing and dangerous” (p. 2).

Cost Effectiveness

(e.g., for every \$1 allocated to imprisonment, X dollars in tangible criminal justice savings are made).

- First time cost analysis of 108 correctional treatment outcome studies (average cost savings-taxpayer & victim- across programs using meta-analysis).
- ▶ On average, every dollar spent on human service oriented intervention (N=88) saved **US\$5.00** while punishment oriented interventions- boot camps & intensive supervision (N=20) saved **US50c-US75c**.

(Aos, Phipps, Barnoski, & Lieb, 1999 cited in Brown, 2001)

Cost Effectiveness cont

Example: Megan's Law = Community Notification Law.

Assumption = citizens will take protective measures against sex offenders; "Exactly what action is expected is not clear, but it is hoped that, armed with this critical information, citizens will work on their own or in concert with government to make their neighborhoods safer" (Beck, Clinger, Ramsey and Travis, 2004, p. 142). ("Folk Devils")

▶ Megan's Law had no effect on (Zgoba, Witt, Dalessandro, & Veysey, 2008):

- Re-offending
- Time served
- Reducing number of victims.

Startup costs = US\$555,565 and exponentially increasing (\$3.9m by 2007)

▶ **Cost not justifiable**

“Maureen Kanka defends Megan's Law” (The Star- Ledger, 6/2/09)

“The purpose of the law was to provide an awareness to parents...Five million people have gone to the state website. It's doing what it was supposed to do...we never said it would stop them from reoffending or wandering to another town”.

[Megan's Law is applied across 50 US states]

But what is the ethical cost?

Offender Rehabilitation Effect Size

Comparative effects sizes for selected interventions

Intervention	Target	Effect size
Aspirin	<i>Risk of myocardial infarction</i>	0.034
Chemotherapy	<i>Breast cancer</i>	0.08 - 0.11
Bypass surgery	<i>Coronary heart disease</i>	0.15
AZT	<i>HIV/AIDS</i>	0.23
Psychological therapy	<i>Mental health problems</i>	0.32
Treatment of offenders	<i>Recidivism: overall</i>	0.10
	<i>Recidivism: appropriate service</i>	0.29

**Community
Protection**



```
graph TD; A[Community Protection] --- B[Offender Rehabilitation];
```

Offender Rehabilitation

Offender Rehabilitation

Identify causes for offending and reduce re-offending by changing thoughts, feelings, and behaviors

(Ashworth, 2006)

Offender Rehabilitation

- Comprehensive review of meta-analyses of correctional treatment (Lösel, 1995):
 - mean effect of all studies is approx 0.10 (10% difference treatment vs control groups).
 - small effect sizes can be effective in practice (even a 5% reduction in high risk offenders can be cost-effective).
- ▶ Overall +ve effect (although results have not been fully clarified since Martinson)

Offender Rehabilitation cont

291 rigorous evaluations across US and other English-speaking countries over 35 yrs (statistically significant reduction in comparison to treatment-as-usual groups):

- 25 studies = general and specific CBT programs reduced re-offending (8.2%)
- 30 studies = modest reduction through:
 - employment training in the community (4.8%)
 - basic adult education in prison (5.1%)
 - correctional industries in prison (7.8%)
 - vocational education in prison N=3 (12.6%).
- 17 studies required further research:
 - case management for drug-related offenders in the community (zero)
 - regular supervision vs no parole supervision (zero)
 - works release programs (5.6%)

(Aos, Miller, & Drake, 2006).

Offender Rehabilitation cont

Summary of virtually all meta-analyses to date (Lipsey & Cullen, 2007):

1. Mean effect sizes showed 20% to 40% reductions in re-offending.
2. No study produced less than 10% reduction.
3. No effect size for sanctions and supervision was greater than the lowest effect size for rehabilitation.
4. Largest average effect based on better developed theories and research regarding behavior change (e.g., multi-systemic therapy, cognitive-behavioral therapy, and sexual offender treatment).

(Lipsey & Cullen, 2007; McGuire & Priestley, 1995).

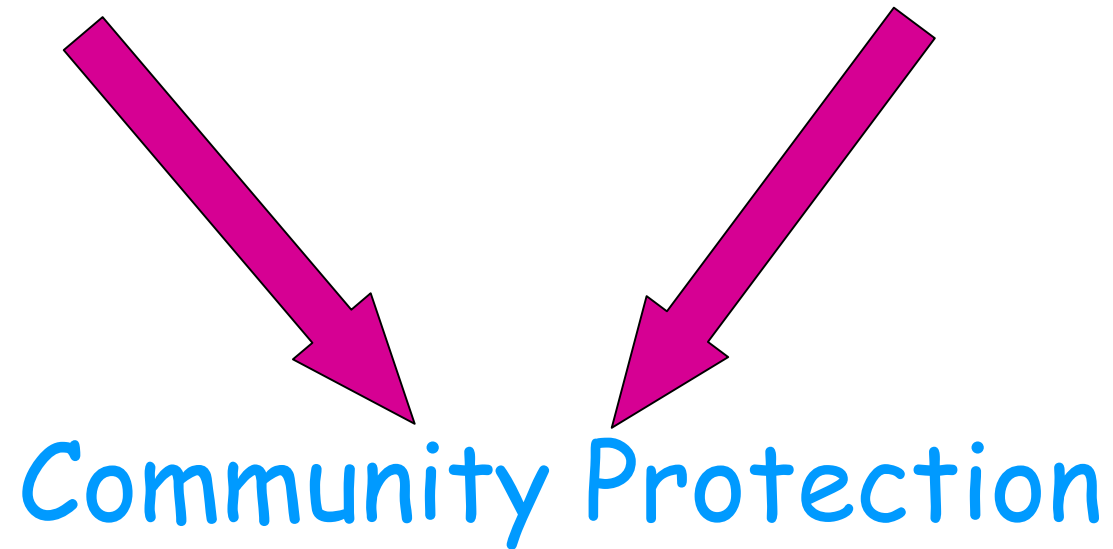
Guidelines for effective programs

- Sound theoretical base
- Risk assessment and allocation
- Focus on dynamic risk factors
- Responsive to individual learning styles
- Structured, directive approach
- Community-based setting
- Use of cognitive-behavioural methods
- Monitoring of program integrity

PUBLIC POLICY

Evidence

Ethics



Ψ Ethical Practice

1. **Autonomy-** freedom from external constraints & informed decisions.
2. **Non-Malificence-** do no harm.
3. **Benificence** = the primary goal of treatment is the client.
4. **Justice-** the client is treated fairly, equitably, and in accordance with rights.

Forensic Settings

1. Due process protections.
2. Punishment proportionate to the seriousness of offence.
3. Minimise curtailment of freedom.

But, what is
"offender
rehabilitation"
exactly?

Purpose of Offender Rehabilitation

Standard Guidelines for Corrections in Australia (2004)

“To **assist** the rehabilitation of offenders through the adoption of productive, law-abiding lives in the community” (p. 2) **and**

Provide “...opportunities to address their offending behavior and **actively encouraged** to access evidence-based intervention programs, education, vocational education and work opportunities” (p. 12)

COMMUNITY PROTECTION
Offender Rehabilitation

COMMUNITY RIGHTS
Manage Risk
Justice Principles
= *Risk-Need Model*

COMMUNITY PROTECTION
Offender Rehabilitation

COMMUNITY RIGHTS
Manage Risk
Justice Principles
= *Risk-Need Model*

OFFENDER RIGHTS
Meet Needs
Therapeutic Principles
= *Good Lives Model*

COMMUNITY PROTECTION
Offender Rehabilitation

RISK-NEED MODEL
Manage Risk
Justice Principles
Community Rights

GOOD LIVES MODEL
Meet Needs
Therapeutic Principles
Offender Rights

THERAPEUTIC JURISPRUDENCE
Justice Principles + Therapeutic Principles
Offender Rights + Community Rights

What are “offender rights”?

1. Legal Rights

Prescribed by particular laws.

2. Social Rights

Guaranteed by a social institution (e.g., a prison)

3. Moral Rights

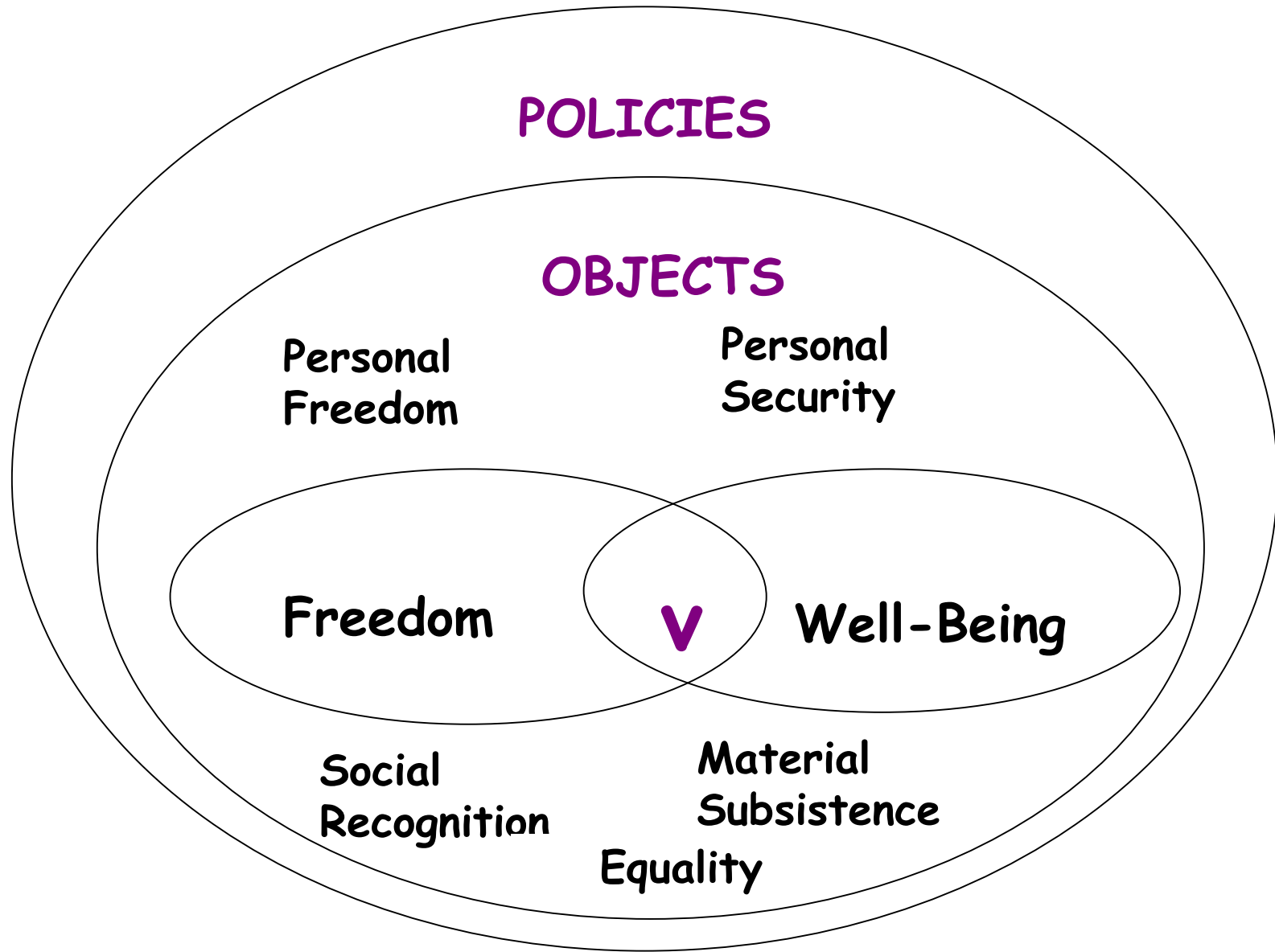
Based on a moral theory or principle

Ward & Birgden (2007)

Human Rights Policies

- Humane treatment when deprived of liberty
- Right to liberty & security
- Recognition & equality before the law
- No retrospective criminal laws
- Protection from torture, inhuman, or degrading treatment
- Rights in criminal proceedings
- Fair hearings
- Freedom of movement
- Right not to be tried or punished twice
- Privacy & reputation

Charter of Human Rights & Responsibilities Act
2006 (Vic)

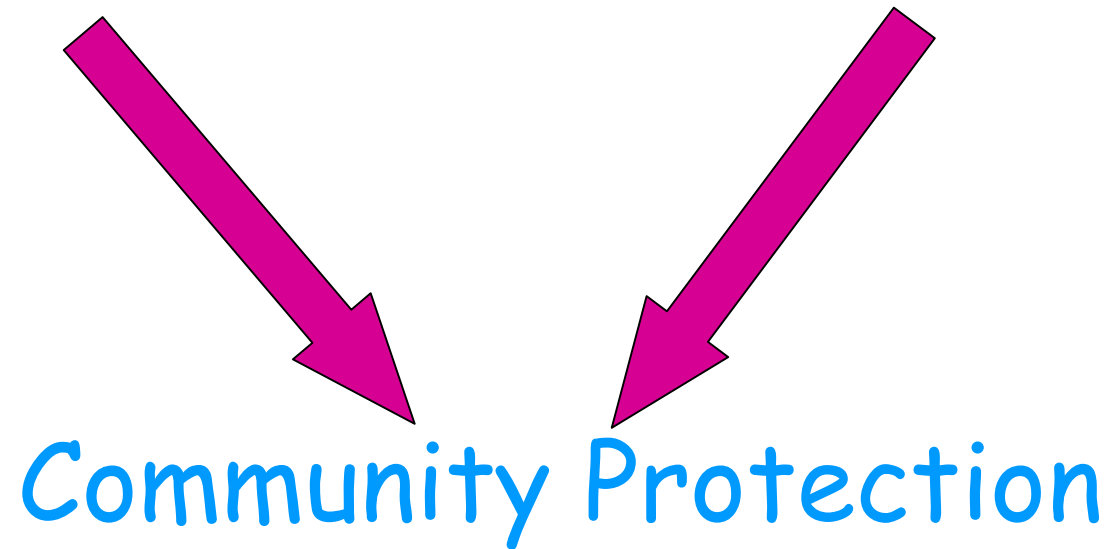


Ward & Birgden (2007)

PUBLIC POLICY

Evidence

Ethics



ENHANCED COMMUNITY PROTECTION
Offender Rehabilitation
Human Rights = Values Stance

MANAGE RISK
Community Rights
Justice Principles
Risk-Need Model

MEET NEEDS
Offender Rights
Therapeutic Principles
Good Lives Model

MANAGE RISK + MEET NEEDS
Community Rights + Offender Rights
Justice Principles + Therapeutic Principles
Therapeutic Jurisprudence

Offender Autonomy

The Will

and the

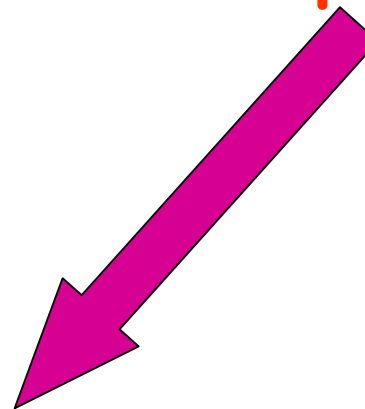
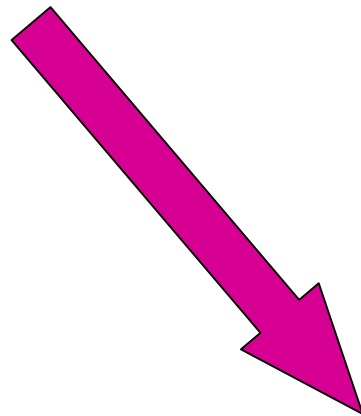
The Way

(decision-making

(decision-making

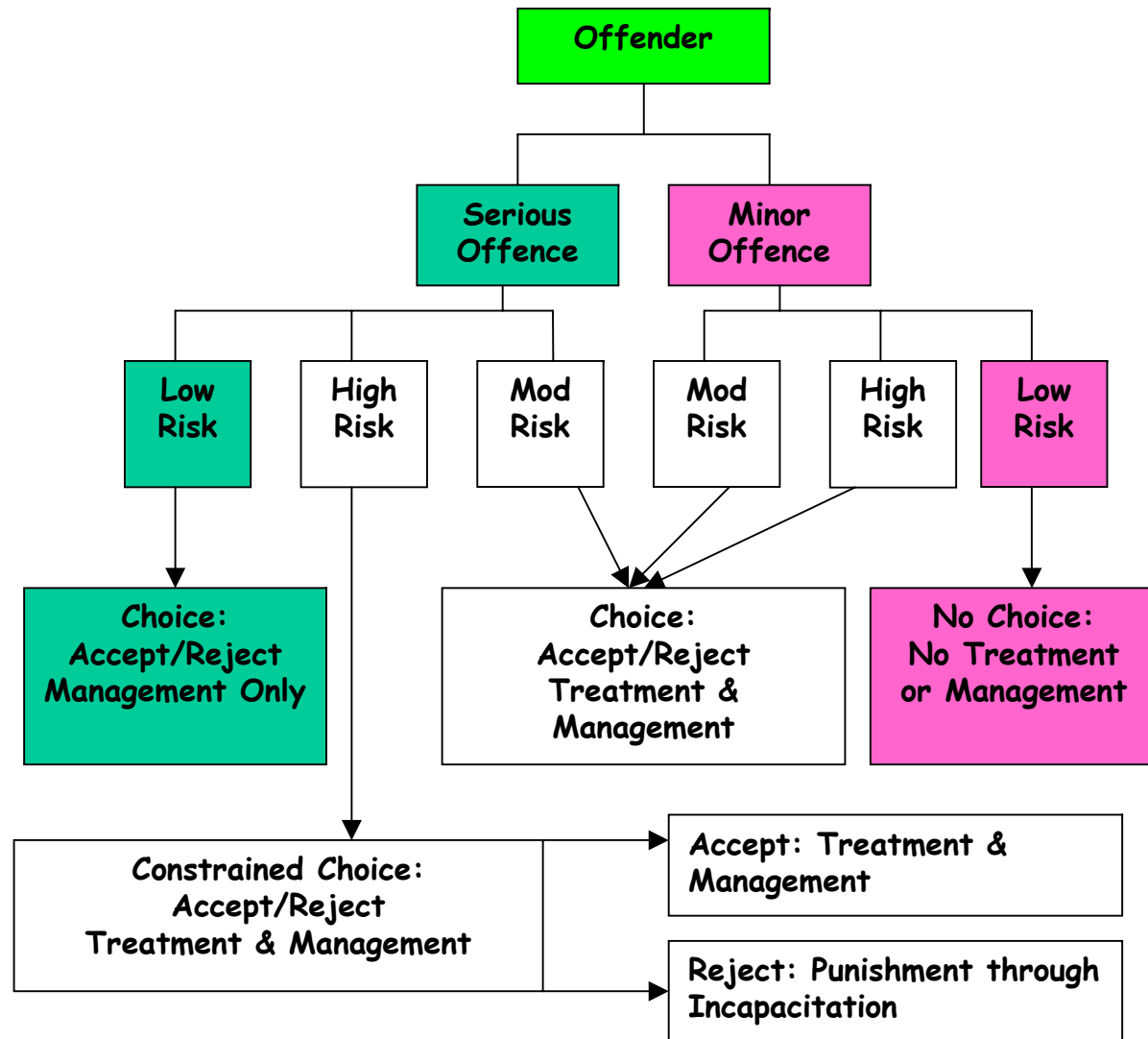
volition)

capacity)

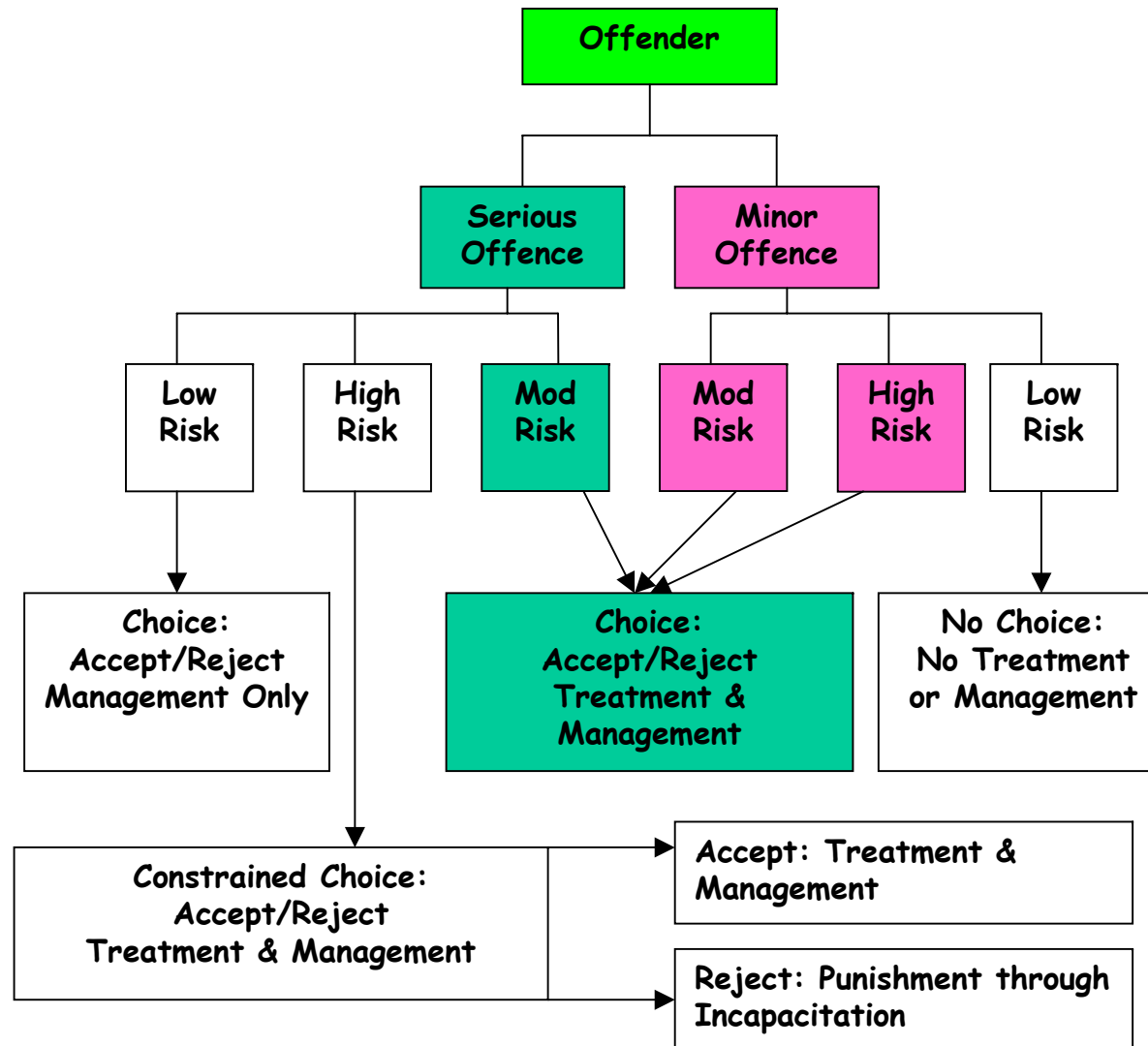


Behaviour Change

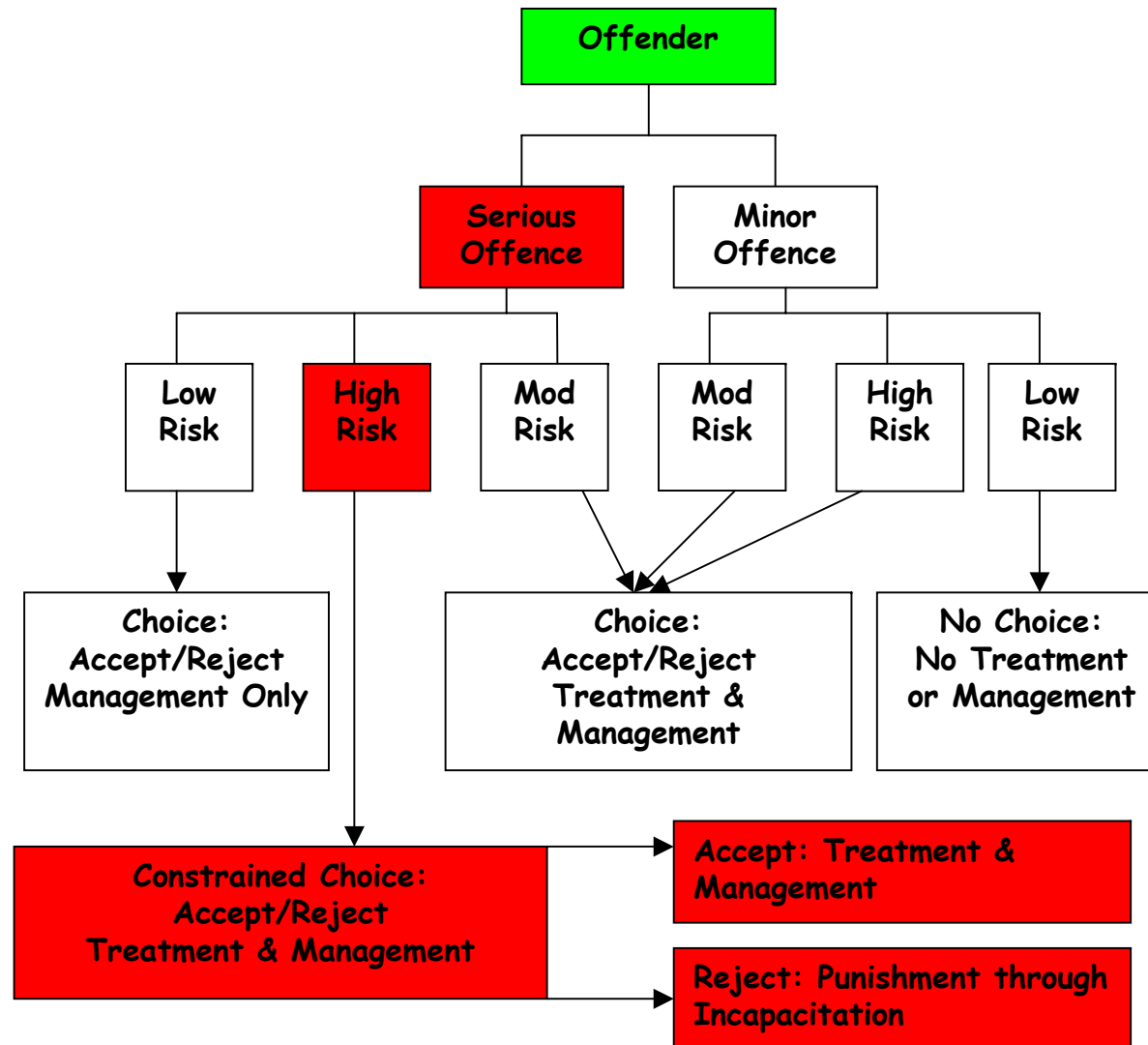
Offender:Community Balance



Offender:Community Balance



Offender:Community Balance



**SO, HOW DO YOU
APPLY SCIENCE & ETHICS
TO OFFENDER
REHABILITATION?**

....Case Example

Offender as....

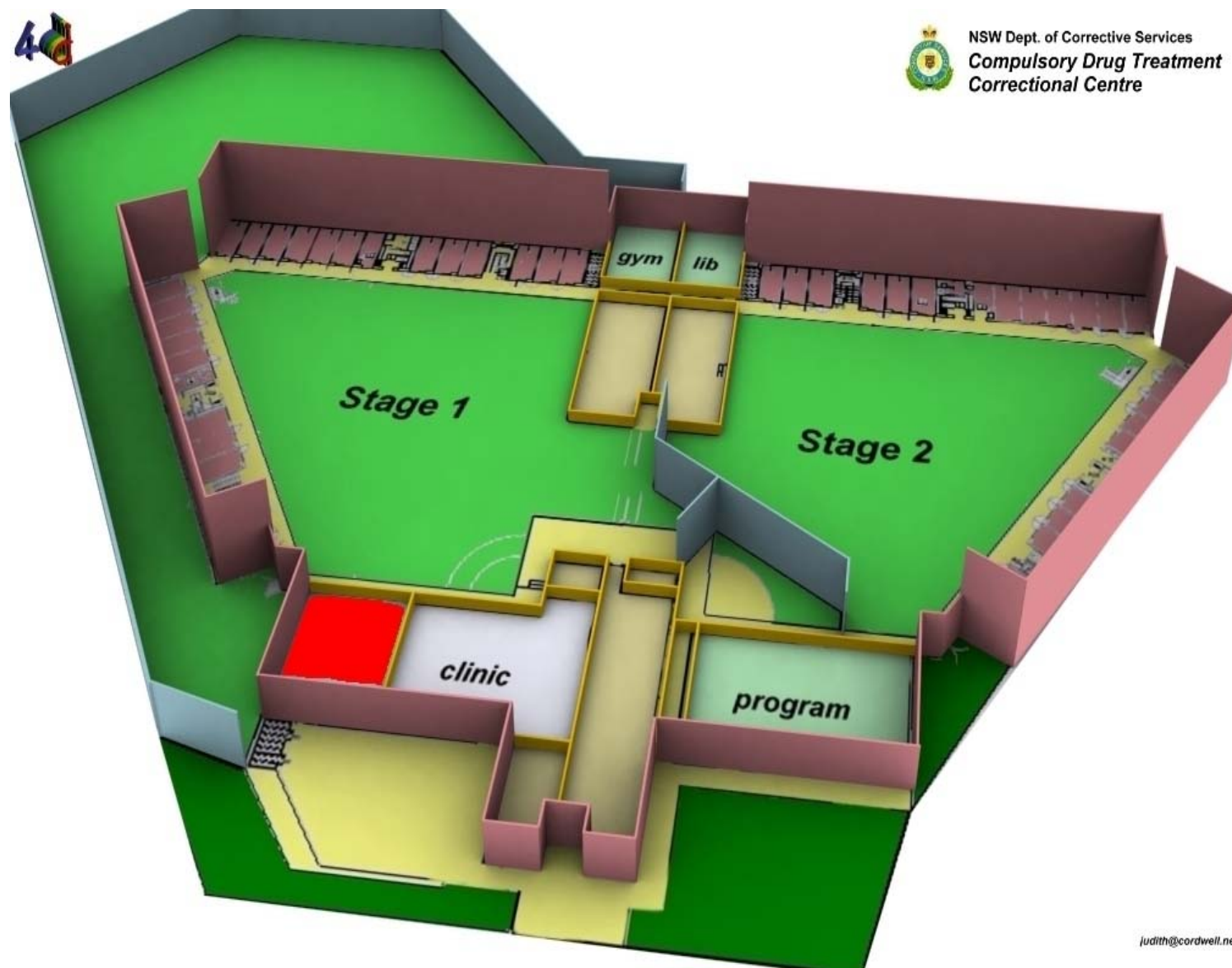
Rights-Violator



Rights-Holder



NSW Dept. of Corrective Services
**Compulsory Drug Treatment
Correctional Centre**



Compulsory Drug Treatment Correctional Centre Act (2004)

4 Objectives

1. Provide a comprehensive program of compulsory treatment & rehabilitation under judicial supervision.
2. Treat drug dependency, eliminate drug use while in the program, and reduce likelihood of relapse on release.
3. Prevent and reduce crime in relation to drug dependency.
4. Promote reintegration into the community.

Ethical Rehabilitation

Assessment

Determines the function of offending

▶ not only risk of re-offending.

Treatment

Determines interventions that will *support* behaviour change

▶ meeting *all* treatment needs.

Management

Determines supervision and monitoring required to *maintain* behaviour change

▶ managing treatment readiness.

(Ward, Gannon & Birgden, 2007; Birgden, 2008)

ASSESSMENT

Rights-Violator

- Conduct risk assessments but note that it is a social/political/policy decision, not an empirical one.
- Make sure tools are normed on offender populations (often forensic psychiatric patients).
- Carefully consider human rights implications in applying intrusive technologies (e.g., urine testing, e-monitoring, monitored phone calls).

Rights-Holder

- Provide comprehensive psychological assessment of the *individual*.
- Apply assessment tools that determine “the will and the way” and inform a treatment plan to support the core values of freedom and well-being.

CDTCC Assessment (Risk Factors + Human Needs)

- Substance use
- Physical and mental health needs
- Emotional & psychological needs
- Thinking & feeling patterns
- Family, peer & social supports
- Accommodation needs
- Employment & education needs
- Criminal thinking & behaviour
- Treatment readiness

TREATMENT

Rights-Violator

- Ensure that the offender recognizes that with rights come responsibilities.
- Provide simultaneous access to offending behaviour programs as well as well-being services (same quality as the community).

Rights-Holder

- Avoid discrimination (e.g. not excluded from programs) and protection from bullying (inc. from staff).
- Respect autonomy in assisting an informed decision to participate (medication etc).
- Provide a humanistic, strength-based approach (a therapeutic alliance or 'helping hand').

CDTCC Treatment- Stages 1, 2 & 3

Manage Risk	Meet Needs
<ul style="list-style-type: none">• Gradual methadone withdrawal (not rapid detox)• Drug & alcohol testing (abstinence model)• No-contact visits (Sge 1)• Monitor phone calls• E-monitoring• Cell and person searches (+ dogs)• Approved family, peer & mentor contact <p>= Case Formulation</p>	<ul style="list-style-type: none">• Group readiness & psychoeducational programs.• Intensive D&A + offending therapy program• NA/AA/Spiritual support• Health & mental health• Education & work readiness followed by employment/education in the community• Social and leisure programs



MANAGEMENT

Rights-Violator

- Ensure that interagency community-based support & surveillance is in place.

Rights-Holder

- Due process considerations- case management meetings include their 'story' and encourage external scrutiny.
- Rewards-based programs with increased *supported* community access.
- *Ideally* informed decision-making to accept/reject programs (unless serious/high risk).

An Evidence-Based Approach

1. Due Process

Due process = participation, dignity & trust = greater compliance with the law = case management review meetings (legal aid lawyers + Judge).

2. Motivational Interactions

Techniques for all staff to increase the likelihood that participants will enter, continue, and comply with active change strategies (matched to treatment readiness).

3. Contingency Contracting

Increased motivation to change using a systematic method of consequences (*rewards* + sanctions). That is, carrots and logical consequences, not punishment.

An Ethical Approach

A normative approach

Uses a values base to balance offender needs and community needs (managing risk *of the offender for the community* and meeting needs *with the offender for the offender*).

A humanistic approach

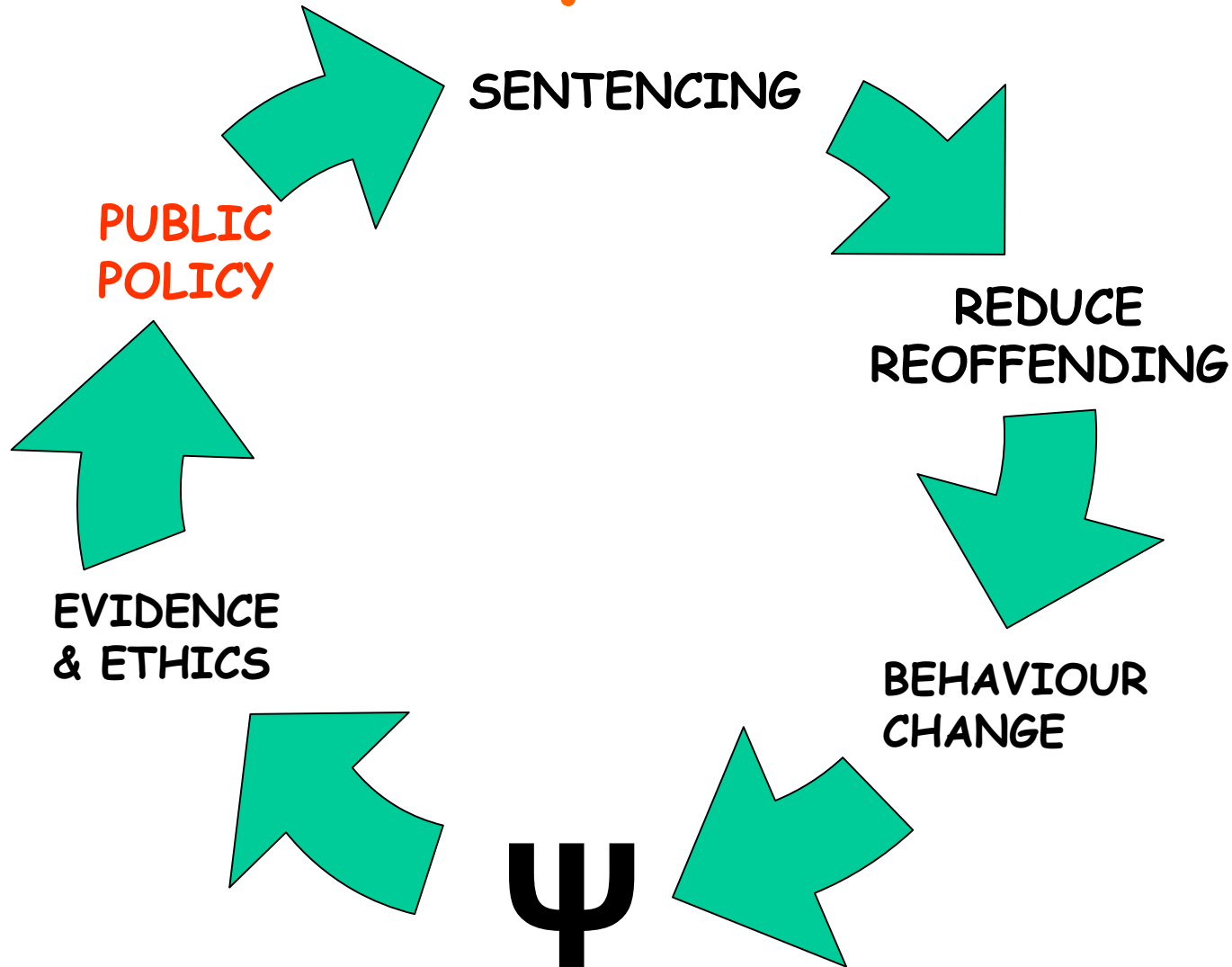
Forges a therapeutic alliance based on an ethic of care and a concern for offender + community well-being.

An interdisciplinary approach

Collaborates with other disciplines and agencies (no "turf wars").

(Birgden, 2008)

Community Protection



Conclusion

Moral panic and populist approaches have no place in community protection.

Theory, social science evidence and ethical practice do.

The best argument for observing human rights standards is not merely that they are required by international or domestic law but that they actually work better than any known alternative- for offenders, for correctional staff, and for society at large. Compliance with human rights obligations increases, though it does not guarantee, the odds of releasing a more responsible citizen. In essence, a prison environment respectful of human rights is conducive to positive change, whereas an environment of abuse, disrespect, and discrimination has the opposite effect: Treating prisoners with humanity actually enhances public safety. Moreover, through respecting the human rights of prisoners, society conveys a strong message that everyone, regardless of their circumstance, race, social status, gender, religion, and so on, is to be treated with inherent respect and dignity. (Zinger, 2006, p. 127)

For More Info

If you would like more written info re the Compulsory Drug Treatment Program, or access to other references, contact:

Astrid.Birgden@dcs.nsw.gov.au

Or

astrid99@hotmail.com