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Procedural Justice/ Fairness

Judge Peggy Hora (Ret.)

Mr. David Wallace

Judge Brian MacKenzie (Ret.)

Justice Speakers Institute LLC



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AS A RESULT OF THIS SESSION YOU WILL BE ABLE TO:

- List the four key principles of procedural fairness
- Explain how the judge is the key to procedural fairness in your court
- Recognize relationship between therapeutic jurisprudence and procedural fairness



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MAYA ANGELOU:

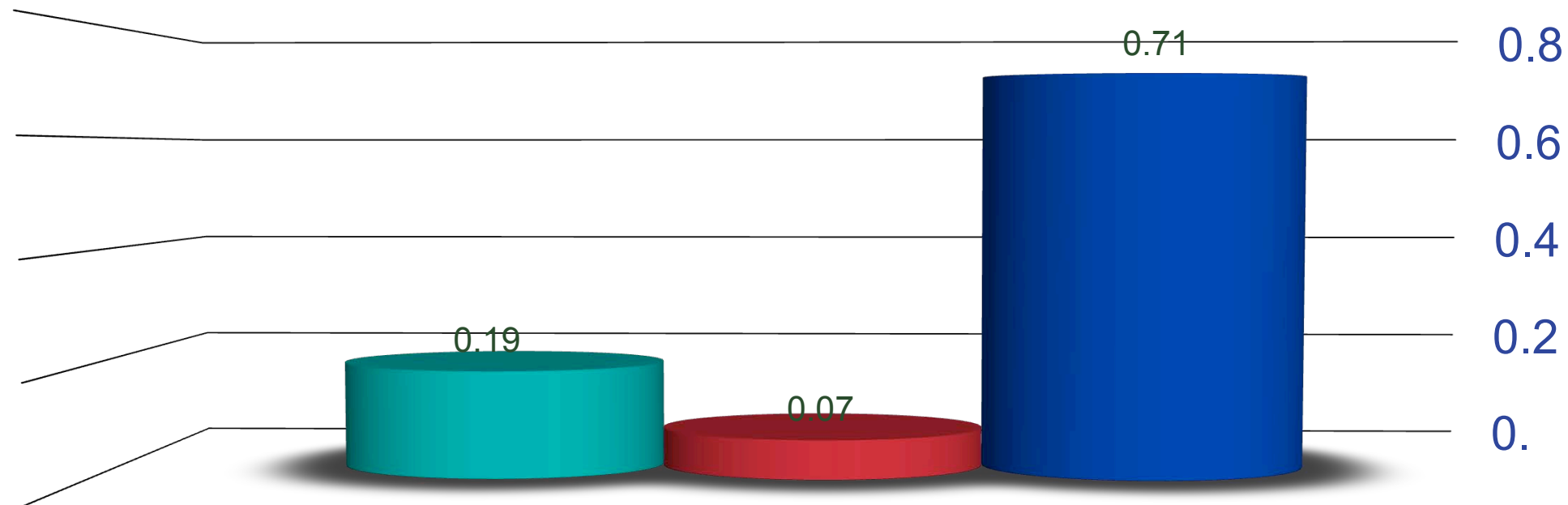


"I've learned that people will forget what you said,
people will forget what you did, but people will
never forget how you made them feel."



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PROCEDURAL FAIRNESS



- Outcome favorability
- Outcome fairness
- Procedural fairness

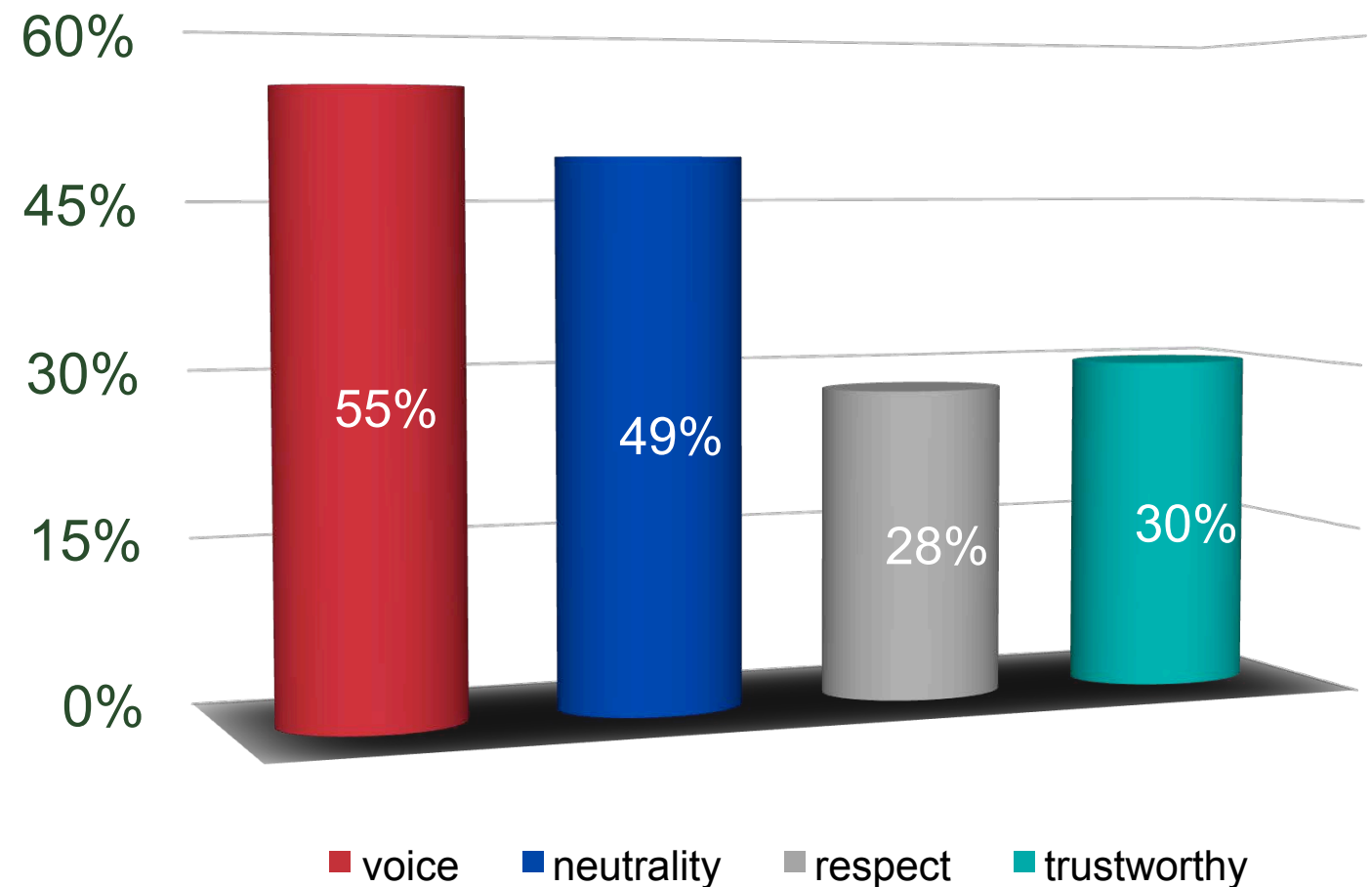
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THE PRINCIPLES OF PROCEDURAL FAIRNESS

1. *Voice*
2. *Neutrality*
3. *Respectful
Treatment*
4. *Trustworthy
Authorities*



Tom Tyler, Procedural Fairness, COSCA 2011



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PRINCIPLE 1: VOICE

- ❖ The ability to be an active participant in the process
- ❖ The ability to express viewpoints / facts / opinions
- ❖ Being heard
- ❖ Active listening

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IMPACT OF VOICE



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PRINCIPLE 2: NEUTRALITY

- Consistently applied legal principles
- Unbiased decision making
- Transparency and honesty about how decisions are made

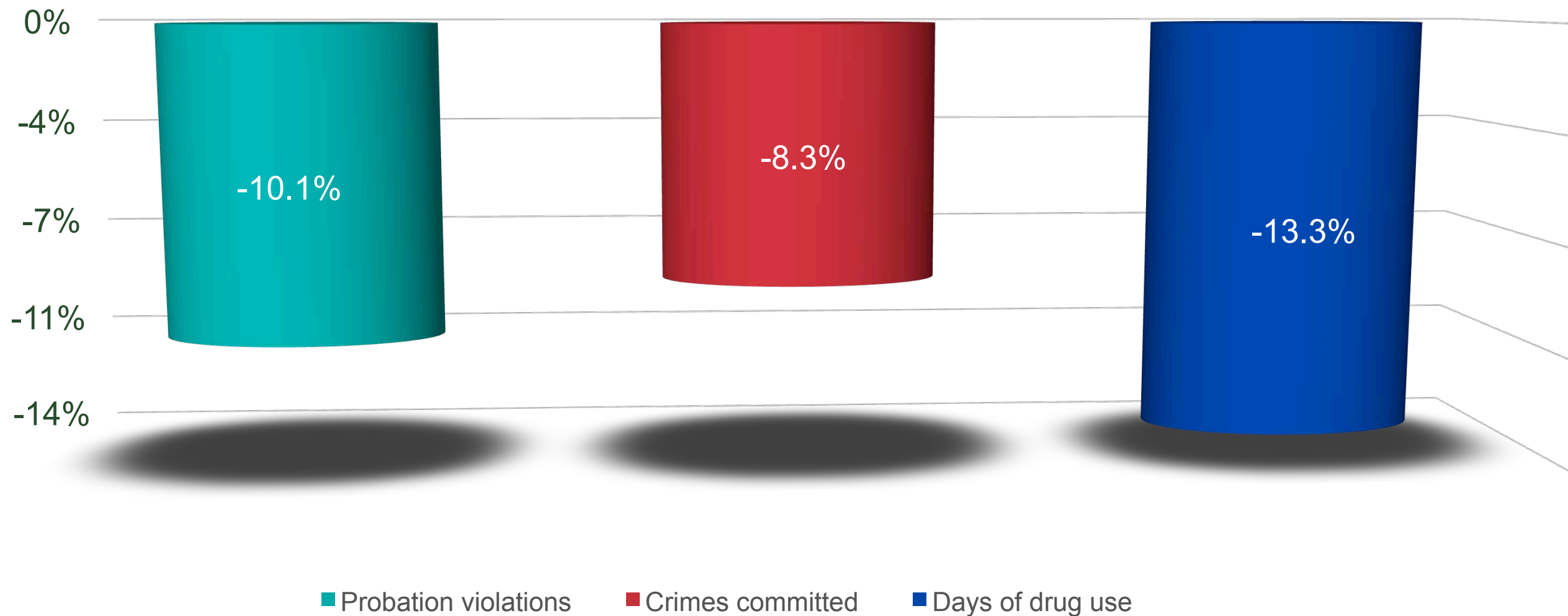
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IMPACT OF NEUTRALITY



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PRINCIPLE 3: RESPECTFUL TREATMENT

- Treated with dignity
- Rights are visibly and clearly protected
- Interactions are appropriate

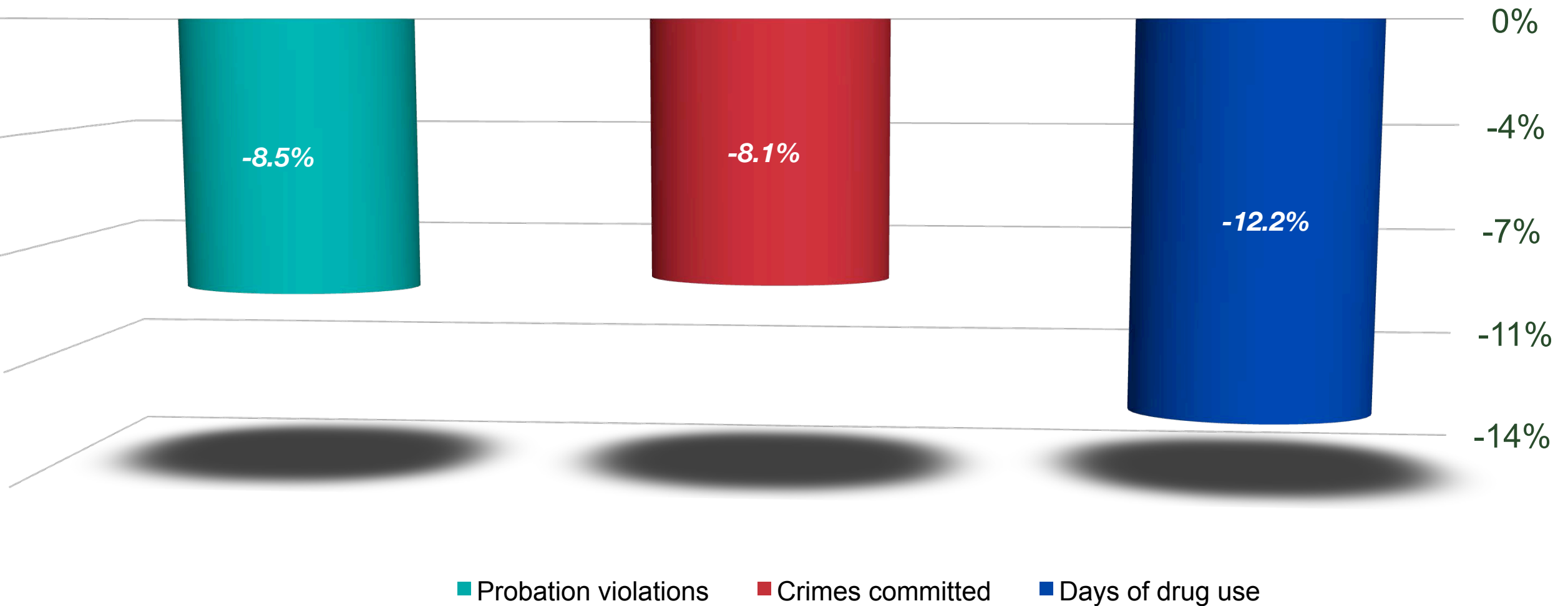
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THE IMPACT OF RESPECT



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PRINCIPLE 4: TRUSTWORTHY AUTHORITIES

- ❖ Listening and explaining decisions
- ❖ Sincere in the desire to help individuals
- ❖ Caring

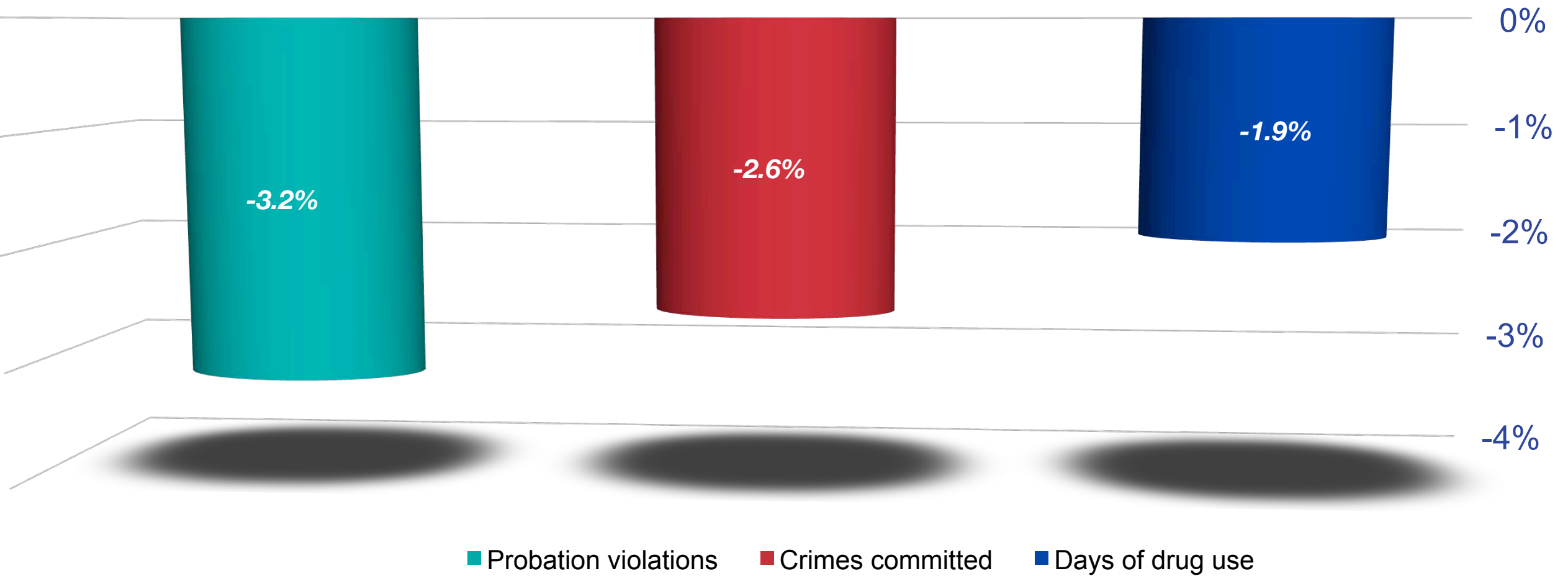
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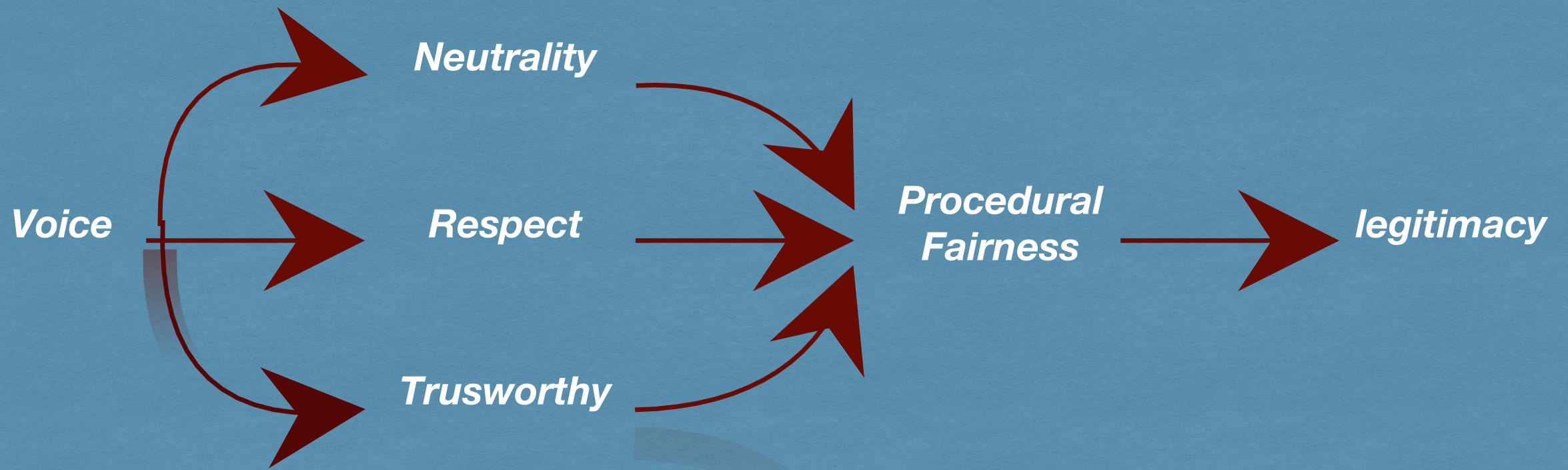
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THE IMPACT OF TRUST



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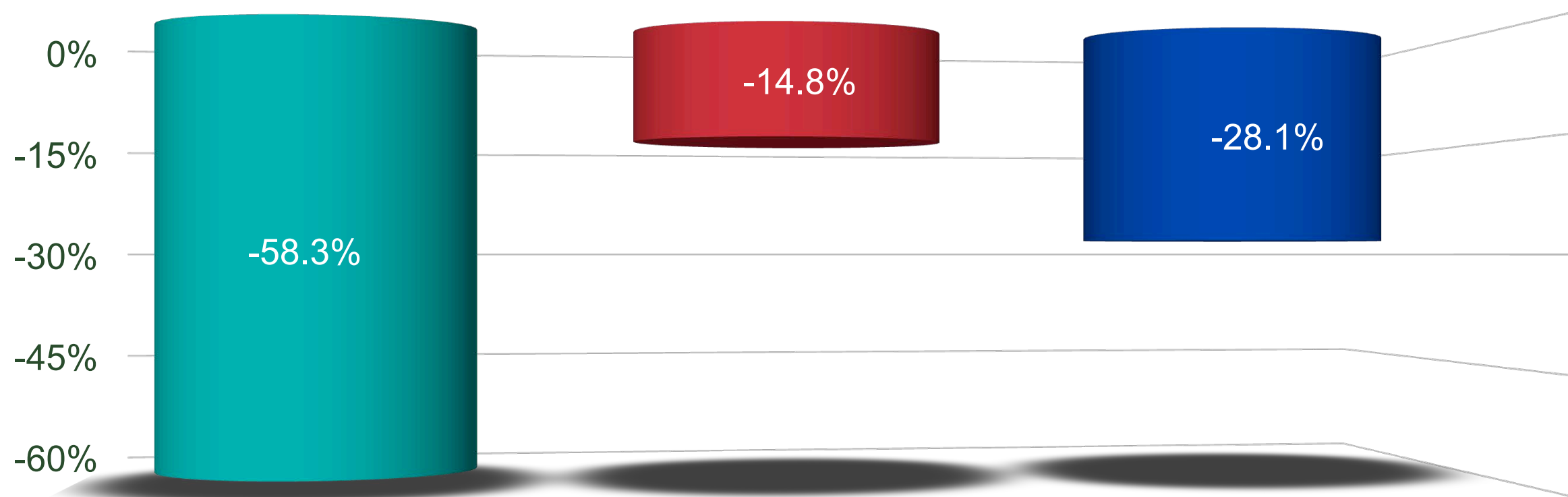


Perspective and procedural justice: Attorney and litigant evaluations of court procedures



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THE IMPACT OF PROCEDURAL JUSTICE



■ Probation violations ■ Crimes committed ■ Days of drug use

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THE JUDGE IS THE KEY

“The mechanism by which...courts reduce substance use and crime is through participants’ attitudes toward the judge. When participants have more positive attitudes toward the judge, they have better outcomes. This is true across all subgroups of participants when examining demographics, drug use history, criminality, and mental health.”

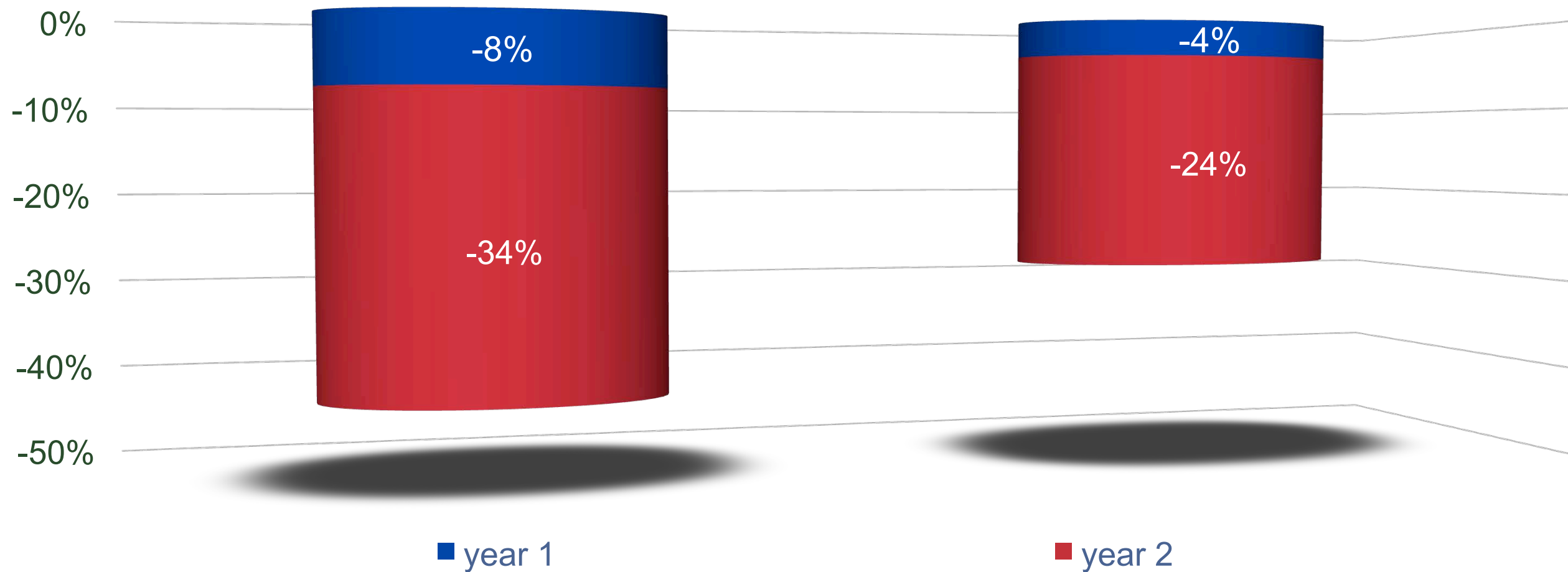
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DOES BEING FAIR REQUIRE CERTAIN PERSONALITY OR CAN ANY COMMITTED JUDGE DO IT?



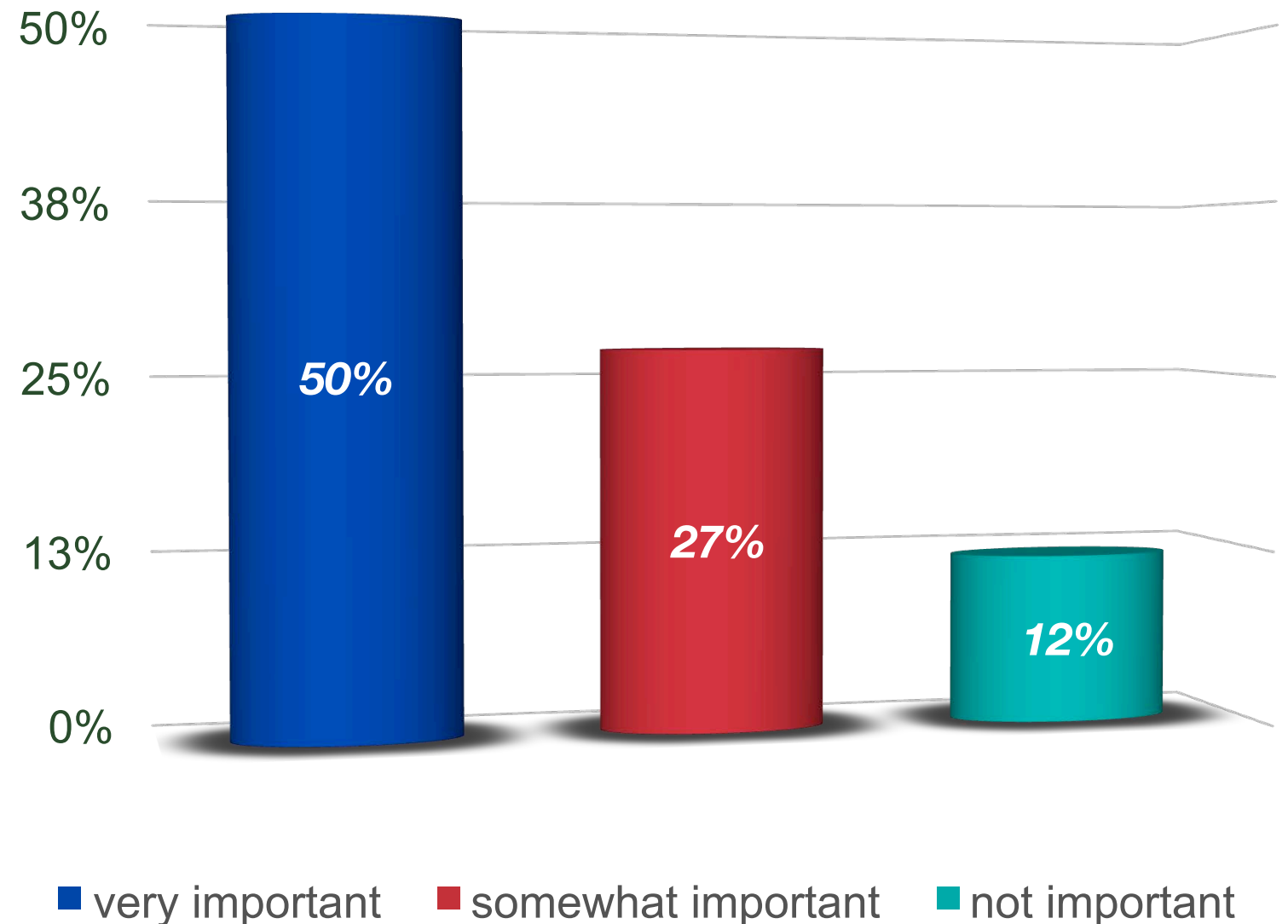
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THE JUDGE AND VOICE

“The personalized experience of appearing before and speaking to a judge in court appears to have a powerful effect”

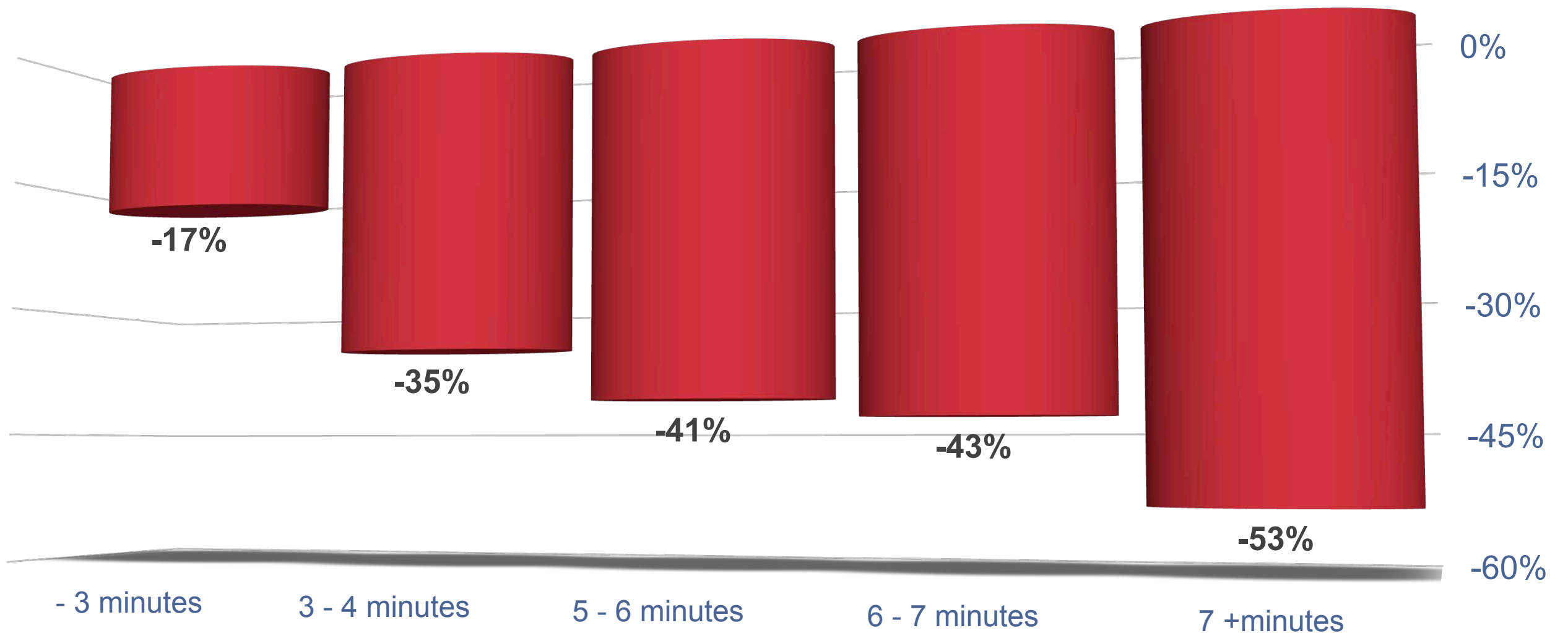


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TIME SPENT WITH PARTICIPANT REDUCTION IN RECIDIVISM



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THE NEUTRAL JUDGE

“[T]aking steps to promote a fair court experience, and having a judge who can serve as an effective symbol of the court’s commitment to ...neutrality...can improve concrete offender outcomes.”

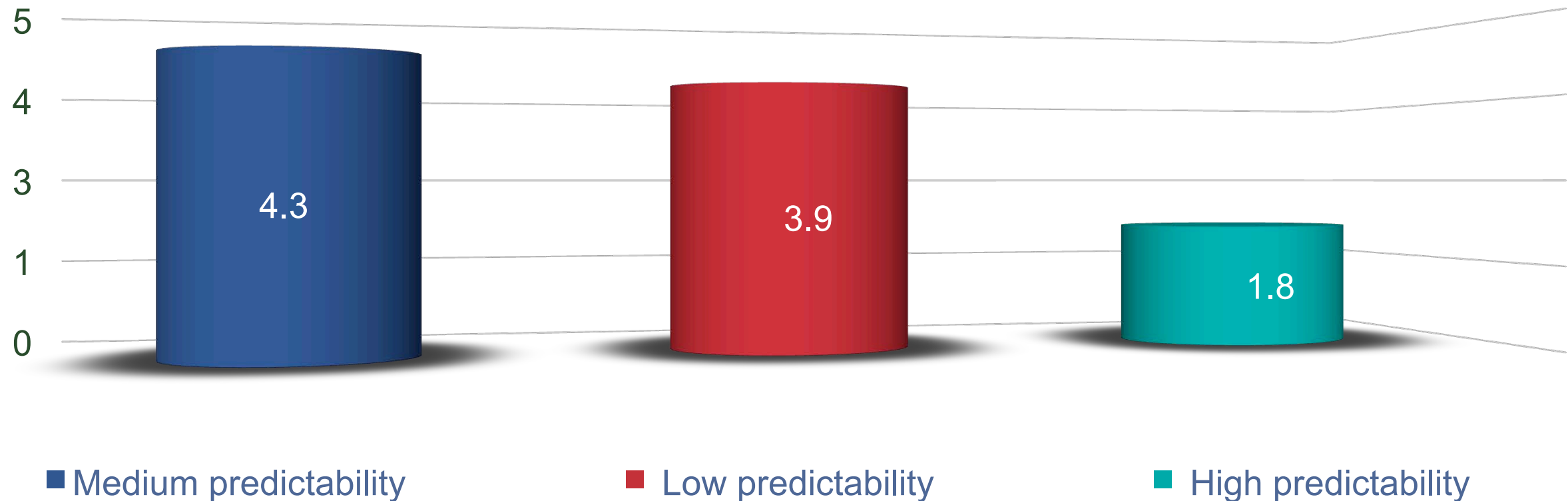
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PREDICTABILITY OF SANCTIONS AVERAGE NUMBER OF CRIMES PREVENTED PER MONTH

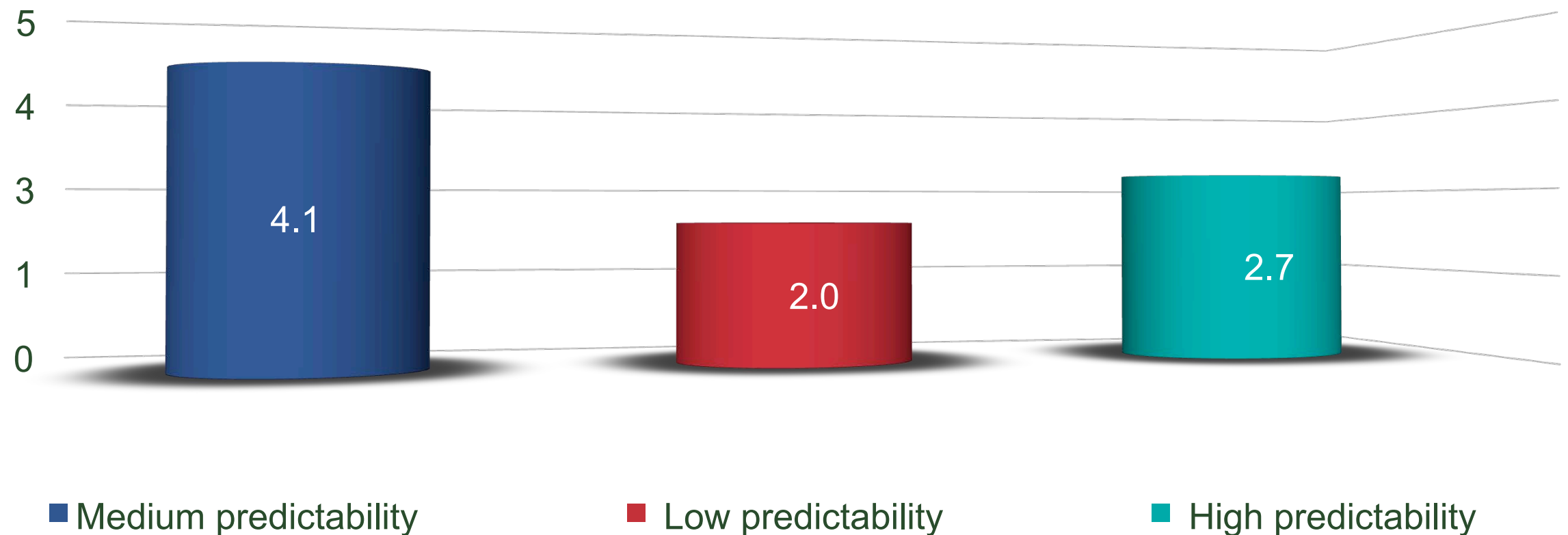


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PREDICTABILITY OF SANCTIONS AVERAGE NUMBER OF DAYS COURTS PREVENTED SUBSTANCE USE

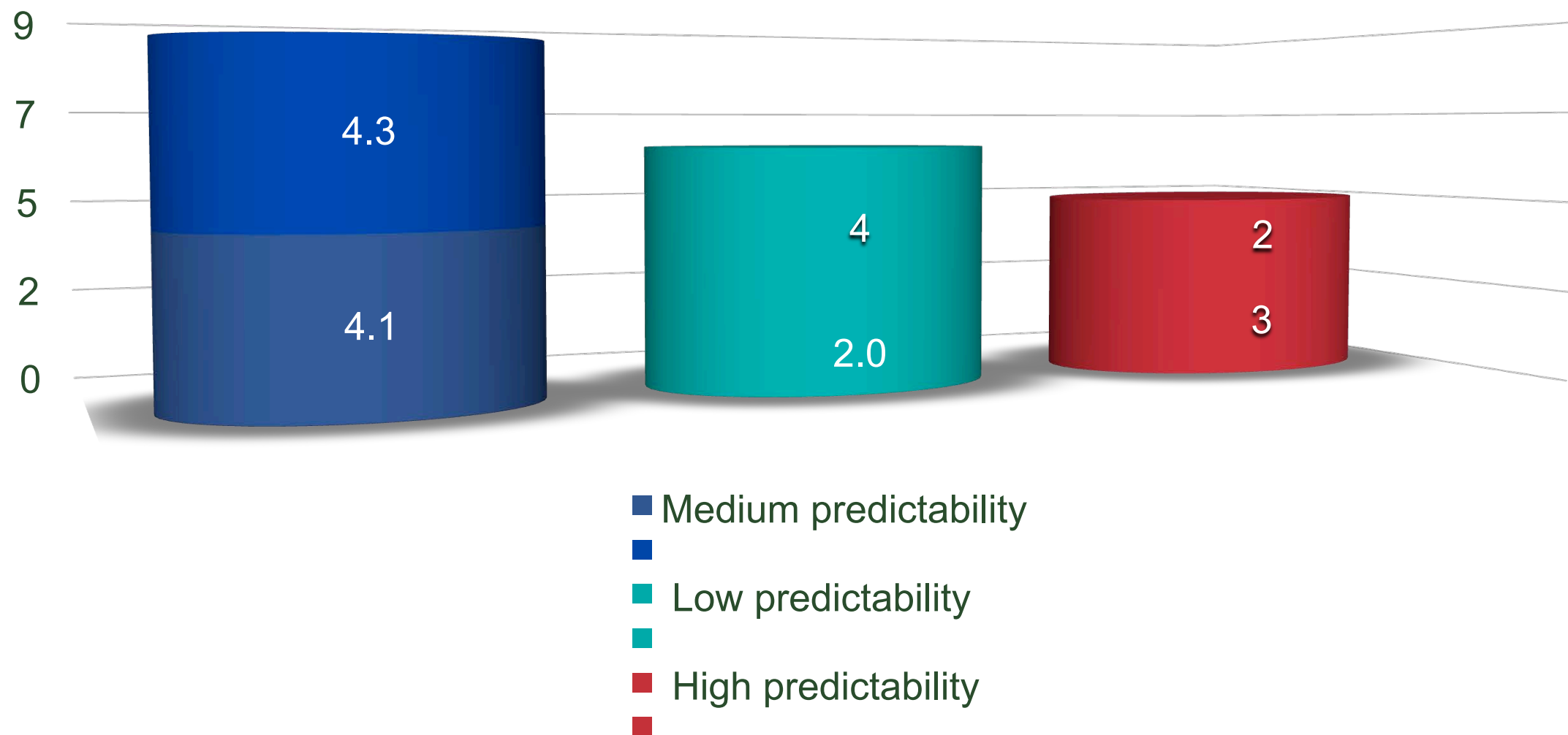


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WHAT DO YOU NOTICE?



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THE RESPECTFUL JUDGE

“Programs with judges that treated clients fairly and respectfully were shown to achieve better success than programs without such judges.”

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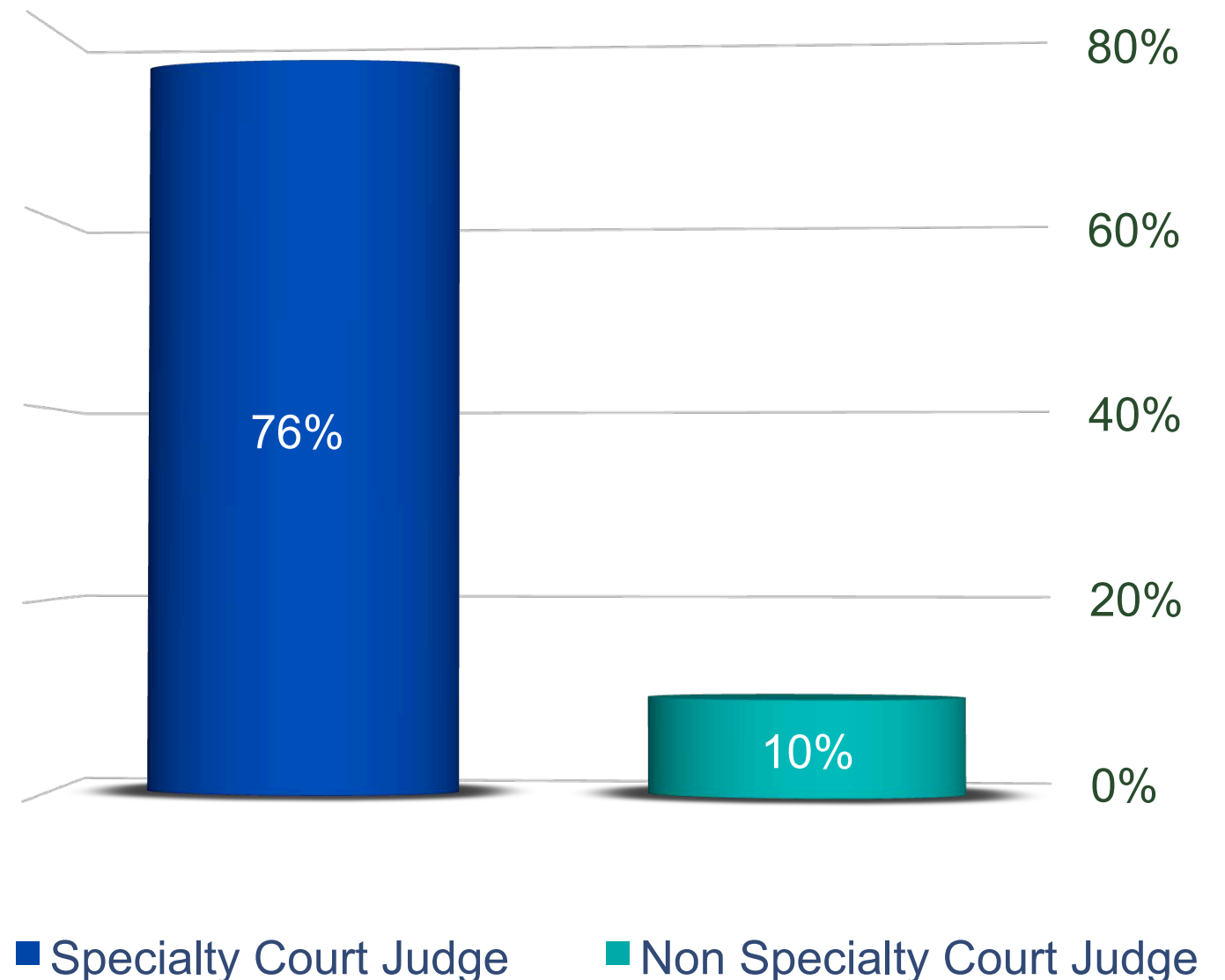
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POSITIVE JUDICIAL INTERACTIONS

“The judge’s interactions with defendants are crucial in shaping perceptions. Even within the traditional court, defendants who were more satisfied with the judge were more satisfied with the court’s overall fairness.”



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THE TRUSTWORTHY JUDGE

“Most clients indicated that the judge was
trustworthy.... (T)he judge was believed by the
majority to be influential in terms of their
progress.”

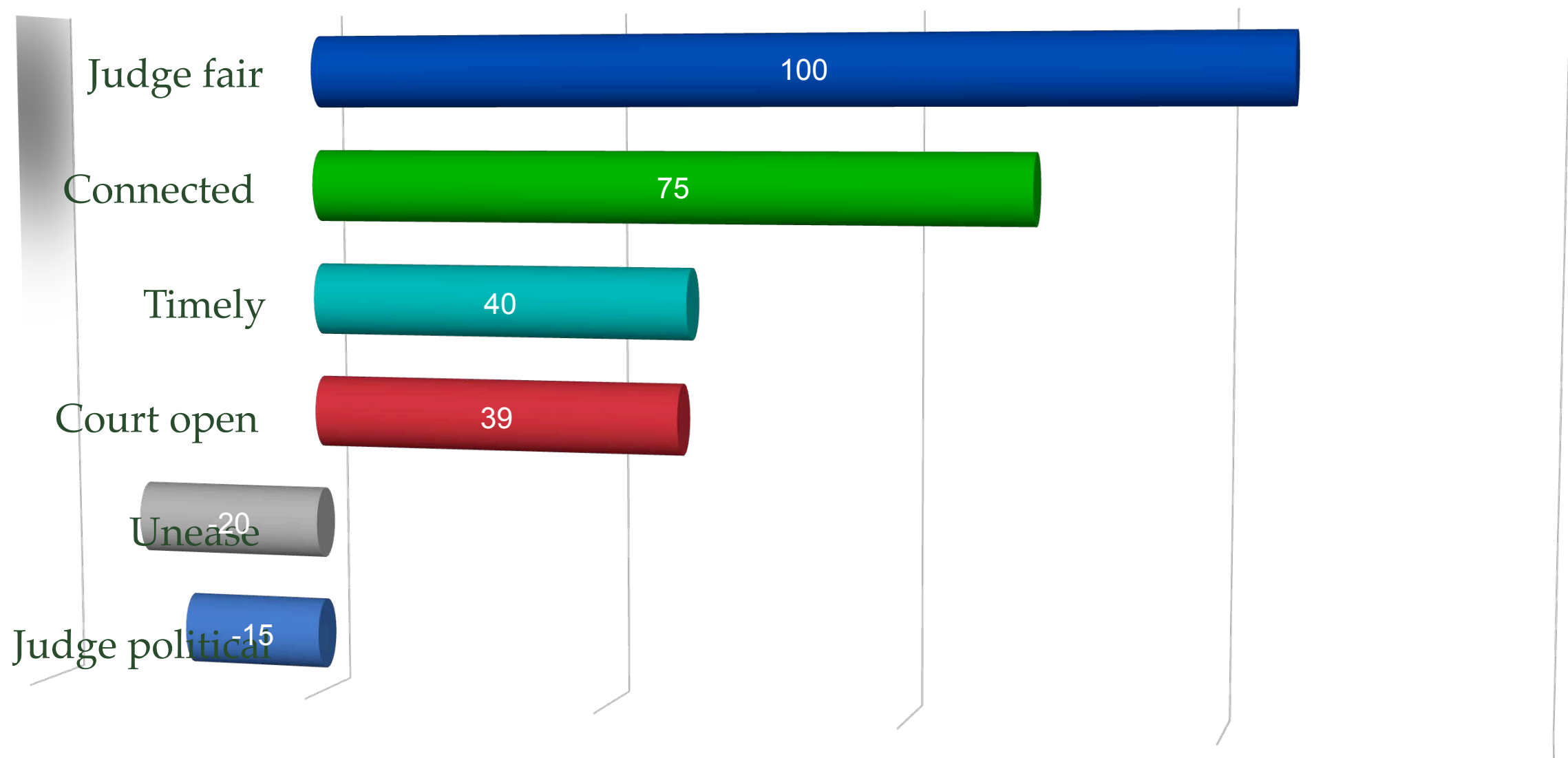
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CALIFORNIA STUDY



Trust and Confidence in the California Courts 2005



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THE PROCEDURALLY JUST JUDGE

“The most striking finding in this research is the power of the judge, and judicial interactions with the offenders, to promote desistance”

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INTERSECTION OF THERAPEUTIC JURISPRUDENCE AND PROCEDURAL FAIRNESS/JUSTICE

“The safe thing to do is to sit on the bench and administer justice. The risky thing to do is to balance mercy with justice, compassion with rules.”

Judge Juanita Stedman

Judge
Sonia
Sotomayor,
a judge
with
“empathy”
and “heart”





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PROBLEM-SOLVING COURTS (CCJ)

- ❖ ...focus on the underlying medical / social issues and chronic behaviors of court users who have recurring contacts with the justice system
- ❖ ...apply promising practices and evidence-based interventions from the behavioral sciences to effectuate change
- ❖ ...seek innovative solutions to complex social issues, e.g., (substance abuse, homelessness, mental health, violence)



P-S PRINCIPLES AND METHODS

1. Reduce recidivism in criminal cases
2. Reunite families
3. Save incarceration and other costs of social services, e.g., foster care
4. Have great public support
5. High participant satisfaction
6. High judicial satisfaction



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COMPREHENSIVE LAW MOVEMENT

- ❖ Seeks to maximize emotional, psychological and relational wellbeing of those involved with legal matters
- ❖ Focuses beyond strict legal rights, responsibilities, duties, obligations and entitlements

Daicoff, Susan, "Law as a Healing Profession: The 'Comprehensive Law Movement',"
6 Pepperdine Dispute Resolution Law Journal 1 (2006)

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BJA'S DEFINITION

- ❖ Focus on Outcomes. Problem-solving courts are designed to provide positive case outcomes for victims, society and the offender (e.g., reducing recidivism or creating safer communities).
- ❖ System Change. Problem-solving courts promote reform in how the government responds to problems such as drug addiction and mental illness.

"What Are Problem-Solving Courts?" Center for Program Evaluation and Performance Measurement, Bureau of Justice Assistance
http://www.ojp.usdoj.gov/BJA/evaluation/psi_courts/

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- ❖ Judicial Involvement. Judges take a more hands-on approach to addressing problems and changing behaviors of defendants.
- ❖ Collaboration. Problem-solving courts work with external parties to achieve certain goals



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- ❖ Non-traditional Roles. These courts and their personnel take on roles or processes not common in traditional courts. For example, some problem-solving courts are less adversarial than traditional criminal justice processing.



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- ❖ Screening and Assessment. Use of screening and assessment tools to identify appropriate individuals for the court is common.



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INTERNATIONAL PERSPECTIVE ON PROBLEM-SOLVING COURTS

Australia

England

Canada

Scotland

Ireland

New Zealand

Cayman Islands

Belgium

Netherlands

Georgia

Macedonia

Brazil

Argentina

Ecuador

Samoa

Bermuda

Jamaica

Mauritius

Wales

Northern Ireland

Guam

N. Marianas

Guam

Mexico

Surinam

Israel

Norway

Bahamas

Indonesia

Costa Rica

Vietnam

China



THERAPEUTIC JURISPRUDENCE

- ❖ Can we reduce the anti-therapeutic consequences
- ❖ Enhance the therapeutic ones
- ❖ Without subordinating due process and other justice values?



Slobogin, Christopher, "Therapeutic Jurisprudence: Five Dilemmas to Ponder,"
1 Psychology Public Policy and the Law 193 (1995)



CENTER FOR COURT INNOVATION 2001

- ❖ Case outcomes – for victims, offenders and society. Reduced recidivism, reduced stays in foster care, increased sobriety and healthier communities
- ❖ System change – reengineer government systems, reform agenda
- ❖ Judicial Monitoring – use judicial authority to change behavior
- ❖ Collaboration – within and without government
- ❖ Non-traditional roles – including non-adversarial

Berman, Greg and John Feinblatt, "Problem-Solving Courts: A Brief Primer," *Law & Policy* Vol. 23, No. 2 (2001)



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CCI SIX PRINCIPLES

1. Case outcomes
2. Judicial monitoring
- 3. Informed decision-making**
4. Collaboration
5. Non-Traditional roles
6. System change

“Six Shared Principles that Distinguish Problem-Solving Court from the Conventional Approach to Case Processing and Case Outcomes in State Courts,” http://www.problem-solvingcourts.org/ps_char.html



SHARED PRINCIPLES OF COLLABORATIVE COURTS (CA)

- ❖ Problem-solving focus
- ❖ Proactive judicial role
- ❖ Less adversarial, team approach
- ❖ Integration of tx and social services
- ❖ Enhanced access to information
- ❖ Ongoing judicial supervision
- ❖ Use of **sanctions and incentives**



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Direct interaction between litigants and judge

Community outreach

Adapted from "Components of Collaborative Justice Courts," Judicial Council of California, Administrative Office of the Courts,

<http://www.courtinfo.ca.gov/programs/collab/background.htm>

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PROBLEM-SOLVING JUSTICE WITHOUT SPECIALIZED COURTS

- ❖ Adopt a problem-solving orientation
- ❖ Engage in interaction with defendants and other litigants
- ❖ Conduct ongoing supervision of treatment cases
- ❖ Going “to scale” requires support and commitment of justice system and social service partners

Farole, Donald J., Jr., Nora K. Puffett, and Michael Rempel, “Towards a New Model of Judicial Innovation: Problem-Solving Justice Without Specialized Courts,” *Documenting Results: Research on Problem-Solving Justice*, Center for Court Innovation, New York, NY (2007)



EFFECTIVE JUDGING FOR BUSY JUDGES

- ❖ Nat'l Judicial College & Bureau of Justice Assistance (2006)
 - ❖ www.judges.org



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ELEMENTS EFFECTIVE JUDGING

1. Judicial interaction with case participants
2. Team approach with judge as leader
3. Strategic use of sanctions / incentives
4. Partnership with public agencies / CBOs to facilitate the delivery of services



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ELEMENTS EFFECTIVE JUDGING, CONT.

5. Providing screening / assessment / tx and rehab
6. Frequent monitoring is critical to timely response
7. Ongoing education of judges, staff and community



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TJ IN CRIMINAL LAW EDUCATION

- ❖ Availability of social services resources
 - ❖ Welcoming legal landscape
 - ❖ Theory-inspired practices

Wexler, David B., "Therapeutic Jurisprudence Review: A Tripartite Framework for Incorporating Therapeutic Jurisprudence in Criminal Law Education, Research, and Practice,"

75 Florida Coastal Law Review 95 (Summer 2005)

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CORE PRINCIPLES (COLLABORATIVE PROBLEM SOLVING FOR CJ)

1. Establishing the Policy Team and the Process
2. Keeping focus on outcomes
3. Building an understanding of system
4. **Moving from understanding to change**

McGarry, Peggy and Becki Ney, "Getting it Right: Collaborative Problem Solving for Criminal Justice," U.S. Dept. of Justice, Nat'l
Institute of Corrections (June 2006)

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CORE PRINCIPLES, CONT.

- ❖ 5. Set specific rewards and sanctions
- ❖ 6. Encourage family and community participation
- ❖ 7. Treat the individual with **dignity/respect**
- ❖ 8. Schedule regular review hearings (judicial supervision)

McGarry, Peggy and Becki Ney, "Getting it Right: Collaborative Problem Solving for Criminal Justice," U.S. Dept. of Justice, Nat'l Institute of Corrections (June 2006)



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CCJ/COSCA

- ❖ 50:0 Chief Justices voted to support “Problem-Solving Courts”
- ❖ Will develop Best Practices
- ❖ Recognizes collaboration and interdisciplinary training



Resolution 22, adopted Aug. 3, 2000, Reaffirmed, July 29, 2004, Support for MH Courts, Feb. 21, 2006



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CCJ RESOLUTION ON MH COURTS

- ❖ Urged state supreme court chief justices to "take a leadership role to address the impact of mental illness on the court system through a collaborative effort involving stakeholders from all three branches of government."
- ❖ JLI is coordinated by the Council of State Governments (CSG) Criminal Justice/Mental Health Consensus Project and the GAINS/TAPA Center for Jail Diversion.



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YOU CAN'T GO HOME AGAIN

“I have found working on solutions as part of the sentencing process both rewarding and, more importantly, successful, and very influential on the way I engage in any sentencing work in the ordinary criminal courts.”

Hon. Roger Dive, Parmentta Drug Court,
New South Wales, Australia



“You make me want to be a better
[wo]man.”

Marvin Udall (Jack Nicholson) to Carol Connelly
(Helen Hunt) in “As Good As It Gets”



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THANK YOU

Mr. David Wallace
Judge Brian MacKenzie (Ret.)
Judge Peggy Hora (Ret.)

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