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Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii's HOPE

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Executive Summary

In spite of many local, state, and federal initiatives to improve offender outcomes, rates of successful completion of probation and parole have remained stable at unsatisfactory levels: roughly one-third for parole, roughly three-fifths for felony probation. Drug-diversion programs have not greatly improved on those statistics. The robustness of high failure rates suggests a need for a different approach to offender management, especially for the drug-involved offenders who constitute a substantial share of both the repeat-offender population and the population of chronic heavy abusers of illicit drugs.

One cause of probation failure is that probation officers lack adequate capacity to detect violations of the rules or to provide quick and consistent responses even when a violation is detected. Low detection rates, and low rates of sanctions even for detected violations, undermine the efficacy of probation as a sanction, its capacity to bring about beneficial behavior change, and its standing as a meaningful alternative to incarceration. Where violation rates are high, the limited capacity of probation officers to report violations and of courts to process those reports reduces the risk, from the probationer's viewpoint, that any given violation will draw an actual sanction. High violation rates therefore tend to be self-reinforcing.

For example, despite rules requiring abstinence from illicit drug use, it is often the case that probation practices effectively allow hard-drug-abusing criminals to continue using drugs with impunity, which in most cases means continuing to commit other crimes. Drug testing of probationers tends to be too infrequent, test results come back too slowly, and sanctions are too rare and too delayed. When sanctions are imposed, they tend to be too severe (months, or occasionally years, in prison), thus contributing to the "revolving door" problem.

HOPE (Hawaii Opportunity Probation with Enforcement) is a community-supervision strategy for substance-abusing probationers. HOPE began as a pilot program in October 2004 and has expanded to more than 1500 participants, about one out of six felony probationers on Oahu.

HOPE relies on a mandate that probationers abstain from illicit drugs. That mandate, announced at a formal "warning hearing," is then backed by close monitoring, with swift and certain sanctions for every infraction. Unlike most diversion programs and drug courts, HOPE does not impose drug treatment on every participant, but only on those who repeatedly test positive for drug use and are mandated to treatment. As

a consequence, when HOPE does mandate treatment it is able to mandate high-intensity treatment. By contrast, most diversion programs rely heavily on weekly outpatient counseling programs. The HOPE process economizes not only on treatment resources but also on court time; probationers appear before a judge only when a violation is detected.

At first blush, this approach might seem less “scientific” than the typical practice of drug-diversion programs and drug courts, which assess each participant’s need for treatment as measured by various diagnostic and predictive instruments and assign an individual treatment plan on that basis. But the best predictor of any behavior, including drug use, is observation of the behavior itself. The diagnostic criteria for substance abuse and dependency disorders focus on continued use despite adverse consequences. By imposing quick and certain consequences, and then observing which participants continue to use, HOPE can zero in on those least able to control their own drug-taking.

This process of “behavioral triage” offers three major advantages over the more conventional model of universal assessment and treatment:

- Its targeted use of treatment allows it to handle a very large number of clients with limited treatment resources while at the same time delivering intensive treatment to those who prove to need it.
- By putting a smaller drain on treatment capacity, it avoids a situation in which mandated-treatment clients crowd out voluntary-treatment clients.
- Since the treatment mandate follows repeated failures, each of which had aversive consequences, the process helps break through denial: An offender who has spent three brief spells in jail for dirty drug tests may find it hard to keep telling himself that he is in control of his drug-taking.

Once a HOPE client is mandated to treatment, his success in abstaining from illicit drug use—not merely his compliance with the order to appear for treatment—is a necessary condition for his avoiding a prison term. That positions the treatment provider as the client’s ally in his effort to stay out of jail.

The HOPE process is as simple to describe as it is difficult to implement. Its elements are:

- A clear set of rules.
- An initial warning in open court, in which the judge impresses on each probationer the importance of compliance and the certainty of consequences for noncompliance, as part of a speech emphasizing personal responsibility and the hope of all involved that the probationer succeed.
- Monitoring of probationers' compliance with probation terms, and in particular randomized drug testing, with the randomization implemented through a call-in "hot line."
- A guaranteed sanction—typically a few days in jail—for each probationer's first violation, escalating with subsequent violations. (The results suggest that varying the severity of the first sanction has no impact on overall compliance)
- Prompt hearings (most are held within 72 hours) after violations.
- Compulsory drug treatment only for those who repeatedly fail, as opposed to universal assessment and treatment.
- Capacity to find and arrest those who fail to appear voluntarily for testing or for hearings.

Procedurally, HOPE uses what is called a "motion to modify" probation, as opposed to the more familiar "motion to revoke." A modification typically involves a single and very recent violation of the rules, as opposed to a revocation, which often involves a long string of infractions stretching months into the past. As a result, the probation officer's report is a two-page, fill-in-the-blanks form, faxed to the judge's chambers, as opposed to elaborate probation revocation reports consisting of several pages of prose. That makes it possible for probation officers to carry out their commitment to report every infraction, an impossible task when reporting an infraction involves several hours' work.

Because a modification motion involves fewer and more recent facts than a revocation motion, and because the resulting penalties are lighter, the courtroom proceeding is typically swift, averaging less than seven minutes. Even counting the "warning hearing" given to each new HOPE probationer – which takes longer, but is typically done in a group rather than individually) the average HOPE probationer consumes only 20 courtroom minutes per year, allowing an offender-to-judge ratio many times that achievable in a drug court.

The HOPE model fits what is known about the behavior of persistent offenders. Crime attracts reckless and impulsive people, for whom deferred and low-probability threats of severe punishment are less effective than immediate and high-probability threats of mild punishment. Delivering relatively modest sanctions swiftly and consistently is thus more effective and less cruel than sporadically lowering the boom.

The HOPE population did not consist primarily of people with low-severity problems. The average number of arrests before program entry was fourteen, and the distribution of Addiction Severity Index (ASI) scores – a standard measure of treatment need – indicated a high-problem population. About two-thirds of the participants were methamphetamine abusers. Strikingly, high-ASI participants did just as well as those with apparently less severe drug problems, and were no more likely to wind up behind bars.

The stated goals of HOPE are reductions in drug use, new crimes, and incarceration. It achieves those goals, as demonstrated both in an initial pilot program among high-risk probationers and in a randomized controlled trial among general-population probationers. Strikingly, the multi-judge randomized controlled trial achieved results closely comparable to results of the pilot program, conducted by the judge who acted as the policy entrepreneur. Within that trial there was no detectable “operator effect”: results were highly similar across groups of probationers assigned to different judges. Thus the program’s operational success does not seem to depend on individual charisma.

The frequent probation violators assigned to the HOPE pilot project had very large reductions in positive drug tests (down more than 80% over the first three months and down an additional 50% from that low level thereafter) and missed appointments (down more than 2/3 for the first three months and an additional 75% thereafter) compared to their own behavior before they were placed under HOPE supervision. Compared to otherwise similar offenders on routine probation, they were arrested less than half as often. They averaged approximately the same number of days in jail for probation violations, serving more but shorter terms. They spent about one-third as many days in prison on revocations and new convictions.

A probationer newly assigned to HOPE faces drug testing that is not only much more frequent than he would have encountered on routine probation (six times a month vs. once a month) but also random rather than pre-scheduled. In addition, under HOPE, but not under routine probation, every detected violation leads to a hearing and a sanction. As a result, a new HOPE probationer is more likely to wind up in court, and

in jail, than an otherwise similar probationer not assigned to HOPE. But that effect proves transient; because HOPE reduces violation rates so substantially, after the initial month or two a HOPE probationer actually requires less effort to supervise than an ordinary probationer.

In the pilot project, more than half of HOPE probationers never violated the rules by missing a test or testing positive over the course of their first year on the program. Of 48% who violated at least once, about one-third did not violate a second time. Of those who violated at least twice (32% of the total) one-third did not violate a third time. Of the 22% who violated at least three times, one-third did not violate a fourth time. Mandated treatment was imposed only on that high-violation group: about 15% of the total. Those treatment mandates were either to residential programs or intensive outpatient programs with multiple scheduled meetings per week.

Thus HOPE reduced drug use, crime, and incarceration. The savings to the government, from reduced incarceration of more than \$6000 per participant per year, paid several times over for the cost of the program: about \$1400 per participant per year, over and above the cost of routine probation, with most of that additional expenditure going to treatment.

HOPE requires close coordination across a number of different groups of public employees, from different agencies and even different branches of government, and from contractor personnel. There must be capacity to administer drug tests that provide instant results, and additional capacity to run confirmation tests if a probationer whose test comes back positive denies use. Probation officers must report violations consistently. Court staff must schedule hearings, and judges hold those hearings, promptly, which means that prosecutors and defense counsel need to be available on very short notice. Judges must be willing to impose sanctions consistently. There must be personnel with arrest powers (in this case, deputy sheriffs) available to take probationers detected in violation to jail, and jail has to be able to hold them. There must also be personnel with arrest powers (in this case a mix of local police and federal Marshal Service agents) ready to pursue those who fail to appear for testing. And there needs to be treatment capacity for those assigned to it.

That coordination of organizations and tasks was achieved on Oahu; a similar program less skillfully implemented would not be expected to have equally good results. The finding that other judges had outcomes comparable to those achieved by the founding judge means that the program's effects on probationers do not depend on individual charisma. But the results reported here provide no assurance that another jurisdiction attempting to replicate hope would be able to achieve

comparable levels of program fidelity. Moreover, Hawaii's probation officers are especially well-trained; all are MSW's, and all have been trained to perform motivational interviewing and cognitive-behavioral therapy. Whether such a program could work without such well-trained personnel is an open question.

Because the ability of the program to sanction consistently depends on the fact that most participants have low violation rates, and since those low violation rates are achieved only after a transition period, a HOPE-style program needs to start small and expand slowly. On Oahu, the program started with 35 probationers; that number grew to 1500 over a period of four years. As a result, sanctions were delivered swiftly and with certainty; there was initial variation across judges in the sanction "dose," (defined as the length of the jail sentence) but that variation diminished after the judges learned that more severe sanctions were no more effective in reducing drug use.

When HOPE was first proposed, probation officers were, for the most part, highly skeptical, but their attitudes changed as they watched their clients come into compliance. staff Once the program had "shaken down," probation officers, judges, defense lawyers, and – strikingly – the probationers themselves reported high levels of satisfaction.

Some prosecutors remain dissatisfied with what they see as excessive lenity. Among the public employees interviewed, members of judges' staff were least satisfied, complaining about increased workloads. These workloads should diminish over time as violation rates fall, so the attitudes of court staff might be expected to become more positive after the program had spent some time at a steady-state size, but that improvement, if it comes at all, remains in the future.

At least some probationers appreciate being treated as responsible adults rather than as helpless victims of their substance abuse disorders, and like the predictability of the sanctions process which, in effect, puts them in control of the outcomes they face as opposed to making their fate depend on the judgment or whim of a probation officer or judge. In the early days of the program, when it was restricted to probationers under the jurisdiction of Judge Steven Alm, one probationer interviewed in jail while serving a short sanction for a positive drug test told an interviewer, "Judge Alm, he's tough, but he's fair. You know where you stand."