



IN SHORT

TOWARD CRIMINAL JUSTICE SOLUTIONS

JUL 08

NCJ 222758

HOPE in Hawaii: Swift and Sure Changes in Probation

THE ISSUE

A few years ago, the probation system in Hawaii was like many probation systems. Too many convicted felons routinely failed to show up for appointments with their probation officers. Many probationers declined to take mandatory drug tests or took them and failed. Probation officers had a hard time getting others in the criminal justice system to take their concerns seriously. Even the worst offenders among those on probation would have to commit many infractions before the police, probation officers and courts would take action.

HOW IT WORKS

In 2004, a judge decided to take a new approach. Circuit Judge Steve Alm convinced the police and sheriff, local jail officials, probation officers, drug treatment professionals, prosecutors and defense counsel to collaborate on a "swift and sure punishment" program known as Hawaii's Opportunity Probation with Enforcement (HOPE).

The judge took a group of high-risk probationers, gave them "warning hearings" and told them that while the rules of probation were not changing, the old rules would now be strictly enforced.

The judge also emphasized that everyone in the system hoped they would succeed on probation, but that for them to remain on probation, they would have to follow the rules.

Those who violated the conditions of probation would be arrested. Probationers who failed a morning drug test would be arrested immediately, appear in court within hours and have the terms of their

supervision modified to include a short stay in jail. To promote ongoing employment, probationers would serve their jail time on a weekend, at least initially.

The court also assured those who needed drug treatment, mental health therapy or other social services that they would get the treatment they needed and were expected to attend and complete the program.

The pool of probationers in the pilot program were "troubled" probationers who had been failing under a "business-as-usual" system. They included people who had been convicted of offenses including sex crimes, domestic violence and other drug-involved felonies.

Perhaps the biggest changes Judge Alm made, in addition to the "warning hearings," were new drug testing procedures and the handling of probation violations. Probationers had previously received notice of drug tests as much as a month ahead of time. Today, HOPE participants must call a hotline every weekday to learn if they must report for a drug test that day.

In the past, a probationer might have eluded appointments with a probation officer, failed to take a drug test or failed to attend or complete treatment numerous times before facing possible revocation of probation and imprisonment for years. Today, probationers in the HOPE program face the prospect of being jailed almost immediately for violating probation terms. Jail terms are usually only a few days, but sentence length increases for successive violations.

Advisory Commission on Admin. of Justice
Exhibit I pg 1 of 6 Date: 10-20-08
Submitted by: C. Stieber

EARLY SUCCESS

According to Judge Alm, “the traditional paradigm—that if you keep violating, you might get sent to prison next year for 5 or 10 years—was not really working. The new paradigm is that if you test positive this week, you will go to jail this week.”

The Hawaii legislature took notice of the success of the pilot program. They gave the court system more funding to expand the program so HOPE could handle a greater number of troubled cases.

Researchers, also intrigued with the early successes, started a rigorous analysis of the numbers. Researchers from the University of California at Los Angeles and Pepperdine University are collaborating with the Research and Statistics Branch of the Hawaii Office of the Attorney General. They are conducting a thorough outcome analysis of HOPE participants in the Specialized Probation Unit, a randomized controlled trial in the General Probation Unit, a process evaluation of HOPE implementation and a full-cost assessment of the fiscal impact of the program.

A few of the preliminary findings:

- 1 A group of methamphetamine-using probationers with records of poor compliance were put on the HOPE drug-testing-and-swift-sanctions program and given a formal warning by the judge. Overall the rate of missed and “dirty” drug tests went down by more than 80 percent.¹
- 2 For 685 probationers who were in the program for at least 3 months, the missed appointment rate fell from 13.3 percent to 2.6 percent and “dirty” drug tests fell from 49.3 percent to 6.5 percent.²
- 3 The success Judge Alm has had supervising offenders does not appear to be unique to him. When the nine other felony judges began supervising HOPE cases, their success was similar to Judge Alm’s.³

The research study’s final report is expected in December 2008.

For more information:

<http://www.courts.state.hi.us - SpecialProjects/HOPE>

¹ Angela Hawken and Mark Kleiman, “What a Novel Probation Program in Hawaii Might Teach Other States,” *The American Prospect*, April 10, 2007.

² Research and Statistics Branch of the Hawaii Office of the Attorney General, unpublished report.

³ Research and Statistics Branch of the Hawaii Office of the Attorney General, unpublished report.



THE WALL STREET JOURNAL.

Scared Straight...by Probation

By MARK SCHOOF

July 24, 2008; Page A11

See brief WSJ accompanying video.

Jobert Sumibcay, father of a toddler, was in jail only for the weekend, but it was bitter. "Father's Day, missing Father's Day," he lamented.

The 21-year-old admitted car thief and methamphetamine addict, usually free on probation, added: "It's actually real good that I come to prison" because it "wakes you up: Why are you doing this? You could be out there instead of being in here."

That is the message an innovative Hawaiian probation program aims to send. Started about four years ago by a former U.S. attorney who is now a judge, the program has the potential to transform the nation's broken probation system, some crime experts believe. Known as HOPE, for Hawaii's Opportunity Probation with Enforcement, the strategy has sharply reduced probation violations among participating criminals. Preliminary evidence from law enforcement suggests it can also reduce repeat crimes.

The key: "flash incarceration" that sends offenders to jail for short but immediate sentences for violating virtually any probation condition. Those who follow the rules are rewarded with looser supervision.

The U.S. has the world's highest rate of incarceration, according to a study of 214 countries by King's College London. But even larger numbers are on probation: 4.2 million at the end of 2006, according to the Department of Justice, 1.8 million more than were locked up in all correctional facilities across the country. As many as half of probationers go on to break the law again, exemplifying how poor the system is at rehabilitation.

One reason: the criminal justice system has increasingly tilted toward "tough on crime" severity, such as "three strikes and you're out," giving short shrift to what has been known about changing human behavior since at least the Enlightenment. That's when philosopher Cesare Beccaria, whose ideas influenced Thomas Jefferson and John Adams, wrote in a seminal 1764 treatise, "Crimes are more effectually prevented by the certainty than the severity of punishment." Beccaria also postulated that the swifter the punishment, the likelier offenders would be to associate them with their crimes.



Jobert Sumibcay

There are caveats. Some prosecutors fear that a special, strictly monitored probation may tempt judges to place people in it who should actually be behind bars. (Probation is community supervision in lieu of prison; parole is for prisoners released early. Criminals deemed violent are usually ineligible for any probation, including HOPE.) Two men selected for HOPE allegedly committed murder before they were formally enrolled in the program. Such cases, said Honolulu prosecuting attorney Peter Carlisle, could spark a political backlash.

"The million-dollar question," Mr. Carlisle added, is whether HOPE reduces the rate of new crimes committed by probationers. "Intuitively I would believe that it does," he said, "but you've got to show me." Final data on that question are expected by year end.

Others wonder whether the program, which requires efficient coordination among multiple agencies, can be replicated in larger bureaucracies. Prof. David Kennedy of New York's John Jay College of Criminal Justice counters, "This is not rocket science, this is training-a-puppy stuff."

Nationally, more than half of men arrested test positive for drugs when they are apprehended, according to Justice Department research. But one of HOPE's standout successes, reducing drug use, embroils it in a debate: whether jail, however brief, is appropriate for addicts who relapse into drug use. Some drug-policy reformers argue that incarceration perpetuates the paradigm of addiction as a crime rather than a disease. HOPE proponents counter that flash incarceration spares offenders longer prison terms by helping them get off drugs, obey probation and refrain from committing new crimes.

Prof. Kennedy said the research conducted so far on HOPE shows that even tough, drug-using felons "can be very effectively reached by a very common-sense structure of clear expectations, clear, predictable consequences, and real help and support."

While in jail, Kenneth Costa, a 44-year-old convicted drug felon who said he started using methamphetamine more than 25 years ago, heard about HOPE from fellow inmates, some of whom described it as a "last chance" and told him it "keeps you on track. My fiancée was pregnant. I was sick and tired of being sick and tired." He said the program provides the "structure" to help his treatment succeed. He said he has been drug-free for 14 months.

HOPE is the brainchild of Judge Steven Alm, an energetic 55-year-old former U.S. attorney for Hawaii who drives a black Corvette. He was assigned to criminal court in 2004 and immediately faced a slew of motions to revoke probation. In every case, he recalls, the defendant had "pages of violations stretching back months or even years" yet had suffered virtually no consequences for any of them.

That is the reality across the U.S., Prof. Kennedy said. Probation, administered by a patchwork of state and local systems and often starved for resources, "basically teaches people to ignore"

probation officers' warnings, he said, until violations accumulate to a tipping point. Then, offenders face dire -- and expensive -- consequences: in Hawaii, as much as 20 years in prison.

To Judge Alm, this system seemed as absurd as parents failing to respond to a child's persistent misbehavior and then suddenly kicking him or her out of the house. His idea: Instead of one severe sanction after many violations, mete out relatively minor but "swift and certain" sanctions for every violation.

The judge holds a "warning hearing" to explain the HOPE rules. Under regular probation, for example, offenders are usually drug-tested only when they meet with their probation officer, giving them time to wash out the drugs. In HOPE, probationers with a drug problem must call in every weekday morning to see if they are scheduled for a random drug test that day.

Virtually every violation results in immediate arrest, a hearing within 72 hours and almost certain jail time, varying from a few days for a first violation to a few months for subsequent ones. Participants who accumulate several violations risk having probation revoked and being sent to prison for years.

"I thought it would be counterproductive," recalled probation officer Sheri Shimbakuku. "How will I help them if they're in jail?" But she says HOPE probationers seemed much more receptive to help: "Boy, it was just different seeing their reaction to being in jail."

Flash incarceration has been used around the U.S. by specialized courts established to adjudicate drug cases, with demonstrated success. But the Hawaii program is one of the first to test the approach among a broader group of probationers. In a randomized, controlled trial of more than 500 probationers, researchers from Pepperdine University and the University of California at Los Angeles found HOPE probationers were less than half as likely as controls to miss probation-officer appointments or test dirty for drugs, even though the controls knew in advance when they would be tested and HOPE participants didn't. These preliminary findings are being announced Thursday, and full results are expected by year end.

Hawaii's state legislature allocated \$1.2 million last year for the program, almost two-thirds of which went toward drug treatment slots. But not everyone in HOPE gets treatment. Not all users are addicts; some users can stop without treatment. Those who are truly addicted triage themselves into treatment by repeatedly testing dirty. The program now has more than 1,200 participants, out of Oahu's total population, excluding domestic violence offenders, of about 7,650 felony probationers.

Its emphasis on sanctions led some to dub it "yank and spank." But in court, Judge Alm seems less the law-and-order hard-liner than the basketball coach he once was, giving his probationers pep talks. Because Mr. Sumibcay, the father of the toddler, has a job as an airport porter, Judge Alm said he could serve his six-day sentence over two weekends so he wouldn't miss work. Mr. Sumibcay said he was grateful for the choice.

Early Intervention

A probation program called HOPE, which disciplines people for small violations, is showing success over traditional programs

Study results, after three months

HOPE participants

Traditional probationers

Portion testing positive for drugs

HOPE participants 11%

26

Missing meetings with probation officers

HOPE participants 5%

12

Sources: Pepperdine University, University of California at Los Angeles (HOPE study), Justice Department (states)

Probationers per 100,000 adults, 2006*

0 1,000 2,000 4,000 6,000

