

What a novel probation program in Hawaii might teach other states.

ANGELA HAWKEN AND MARK KLEIMAN | *April 10, 2007* | web only

Probation would be a great alternative to incarceration -- if anyone knew how to get probationers to comply with probation rules. Now there's reason for hope. A novel program in Hawaii is demonstrating that it is possible to re-invent community supervision in a way that helps probationers toe the line, cuts recidivism, and curbs their flow to over-crowded jails and prisons. By closely monitoring probationer behavior and rapidly punishing violations with relatively mild sanctions -- typically a few days in jail -- the program provides much-needed structure to offenders whose lives are often in disarray. The program is aptly titled H.O.P.E. (Hawaii's Opportunity Probation with Enforcement).

The logic behind H.O.P.E. is appealing. The system takes into account what we know about criminals: 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 a relatively mild sanction swiftly and consistently is both more effective and less cruel than sporadically lowering the boom. As James Q. Wilson has remarked, no sane parent would try to control a child's misbehavior by imposing tiny risks of horrible punishments months in the future.

The formula H.O.P.E. follows for controlling hard-drug use in the criminally-active population is fairly simple:

- Weekly randomized testing (or twice-weekly scheduled testing), to eliminate any "safe window" for undetected drug use.
- Fixed sanctions on a set schedule: As little as two days in jail is adequate, so long as enforcement is reliable, with sentence length increasing gradually for successive violations.
- A formal warning to the probationer in open court, putting him on notice that violations have consequences.
- As short a time as possible between violations and sanctions. (For offenders with paycheck jobs, the first sanction could be deferred to the following weekend.)
- Quick service of bench warrants on those who abscond.
- Treatment services for those who prove unable to comply on their own.

So far, H.O.P.E.'s performance seems to match the promise. A group of methamphetamine-using probationers with records of poor compliance were put on the H.O.P.E. drug-testing-and-sanctions program and given a formal warning by a judge. Half of them began conforming right after the warning and never needed to be sanctioned. Overall, the rate of missed and "dirty" drug tests went down by more than 80 percent. Hawaii's legislature has appropriated funds to expand that pilot program to 1,000 of the 7,200 felony probationers on Oahu.* Mainland states will be looking to H.O.P.E. as a model of how to fix our broken probation system.

There's much to be fixed. Across the country, despite rules requiring abstinence, routine probation practices allow hard-drug-abusing criminals to continue using drugs with impunity, which in most cases means continuing to commit other crimes. The current system fails because drug testing of probationers is too infrequent, because test results come back too slowly, because sanctions are too rare, too delayed, and too severe (months, or occasionally years, in prison).

Probationers who fail to attend or complete drug treatment -- even as part of diversion programs when they have agreed to treatment instead of incarceration -- are rarely punished for it because overworked probation officers don't have the time to do the paperwork leading to a revocation hearing. (And because judges don't really want to put someone behind bars for months merely for a dirty drug test.) Even for those who abscond from supervision entirely, the risk of arrest is small. The judge may issue a bench warrant, ordering the police or the sheriff's department to arrest the defaulter and bring him before the court, but police and sheriffs rarely give those warrants high priority. And judges, facing crowded jails, are as likely as not to sentence arrested probation absconders to ... more probation.

As a result, half to three-quarters of diversion program participants never start treatment or quit before finishing it. This has been the experience in California, the national leader in treatment diversion. The state's diversion program (Proposition 36) was passed by popular vote, and implemented in 2001. Now it's in trouble. Although savings from reduced incarceration costs have been substantial,

the probationers' low rates of compliance with terms of probation have led the governor to insist on either changing the program or cutting its already-inadequate budget. But the program's sponsors are fighting in court to prevent making its nominal requirement for drug treatment real by providing for sanctions.

According to the defenders of Proposition 36 in its current version, the **disease model** of addiction somehow holds that sanctions won't work -- even though the research on **contingency management** shows it to be an unusually effective treatment approach. The people who treat drug abusers don't agree with the Prop. 36 purists: Over half of the treatment providers in the UCLA Treatment Services Impact Survey said that sanctions would be a useful tool to aid treatment compliance.

H.O.P.E. has all of these elements, and it works. By substituting low-sanctions probation "modification" for probation revocation, Hawaii has greatly reduced the paperwork burden on probation officers and the time it takes to get to court. (A modification hearing now typically happens within two days of the violation.) And once the program establishes the credibility of its monitoring and sanctions process, the number of violations drops quickly, reducing the workload on probation officers and judges alike.

Compared to drug courts and most drug-diversion programs like Proposition 36, H.O.P.E. economizes on scarce drug-treatment resources by not mandating treatment for those who are able to refrain from drug use on their own under the threat of sanctions. H.O.P.E. turns out to work equally well at reducing other sorts of probation violations among probationers without drug problems.

Similar programs have worked elsewhere, as long as the sanctions were actually delivered; where the sanctions weren't delivered, they failed. There is little doubt that criminally active drug abusers will cut back their drug use drastically if they are convinced that using today means going to jail tomorrow. Project Sentry in Lansing, Michigan has been working smoothly for a quarter of a century; in an experiment in the District of Columbia Drug Court, the testing-and-sanctions track outperformed the mandatory-treatment track.

Actually delivering consistent sanctions poses a massive public-management challenge. The crucial problem is getting all of the elements of the system -- judges, their staffs, probation officers, police, corrections officials, and treatment providers -- to work together.

Judges fiercely guard their independence; Maryland's Break the Cycle program collapsed because judges refused to impose sanctions. Probation officers and court clerks don't welcome the additional workload generated at first, when every missed or "dirty" drug test leads to a hearing. Police and sheriffs need to be persuaded not to just stick bench warrants in the bottom drawer and wait for an absconder to be re-arrested for some new charge. Jails face fixed costs of receiving a prisoner and releasing him, so jailers don't like large numbers of short-stay inmates.

Most of these are transient start-up costs; once probationers adapt to the new rules, everyone's workload decreases. In Hawaii, resistance to the program proved transitory in the face of success. But getting over the initial hump requires leadership, especially since most of the spending is at the county level (probation) or the local level (police and sheriffs) while the big savings accrue to the state in the form of reduced incarceration.

The benefits of mounting a H.O.P.E.-style program on a mass scale would greatly outweigh the costs. H.O.P.E. costs about \$2,500 per probationer, including the costs of treatment, compared with about \$1,000 for routine probation supervision. About half of America's four million probationers are believed to have illicit drug habits. If a H.O.P.E.-style program were implemented nationally, it would cost about \$3 billion per year on top of current probation costs -- about six percent of the current cost of the "war on drugs."

Most or all of that cost would come back as criminal-justice savings, in the form of reduced incarceration for probationers and reduced drug law enforcement costs due to shrinking drug markets, as many of the dealers' most reliable customers stop buying (probationers account for about a third of the market). That doesn't count the benefits to those spared criminal victimization, to probationers' families, and to the probationers themselves.

Due to the persistence of Congressman Adam Schiff of California, the new authorization for the Office of National Drug Control Policy passed last year authorizes \$15 million for grants to the states to run testing-and-sanctions programs. Our understanding of the effectiveness of these programs will improve as the number of testing-and-sanctions sites increase.

In Hawaii, it took the creativity, persistence, and persuasiveness of a visionary judge, Steven Alm, to make the cross-agency coordination effort work. Alm had advantages that wouldn't be available elsewhere: not only his own energy and connections (he served as a local prosecutor and as the United States Attorney before going on the bench) but also Hawaii's deeply collegial and

collaborative public-management culture, an extension of the state's broader *aloha*-and-*mahalo* traditions. It remains to be seen to what extent other jurisdictions, with different cultures and different institutional arrangements, can follow suit. But the only certain path to failure is not to try.

**This text was edited from the original.*

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