



## HOPE for the Criminal Justice System

America spends more money to incarcerate more people than any other country in the world. There are currently about 2.3 million people in local, state, and federal incarceration and about 4.3 million adults on probation in the United States. As a judge and former prosecutor, I know that some offenders are violent and dangerous and need to be in prison to protect public safety. Many other offenders, however, do not belong in prison and can be safely supervised in the community. It has been said, and rightly so, that judges should send to prison people we are afraid of, or who will not stop stealing, not people who have made us mad.

How can we protect public safety and reduce the prison population? One way is by fixing the probation and parole systems, particularly for those with drug and alcohol issues. Typically, probation violations — positive drug tests, missed appointments, refusals to attend or complete treatment — are met with a scolding by the probation officer (PO) and perhaps a vague threat of future action by the court, but no real consequences. If the court eventually becomes involved, the offender may be sent to prison for years. This is akin to parents ignoring their child's misbehavior and then disowning or kicking the child out of the house the following year. It

is a crazy way to operate, but it is the status quo across the country.

### A New Approach

In fall 2004, the Hawaii Judiciary tried a new approach called HOPE (Hawaii's Opportunity Probation with Enforcement) Probation.<sup>1</sup> We changed the system to provide for swift and certain, but proportionate, consequences for probation violations — and it works.

The program targeted the highest-risk offenders on probation: those with the worst drug problems (usually methamphetamine), sex offenders, and domestic violence offenders. With the sex offenders, the goal was to reduce the likelihood of their recidivating. The offenders in the other two groups are most likely to fail at probation and go to prison. By focusing on them, the program obtained the biggest bang per probation dollar.

Felony offenders start in HOPE with a Warning/Notification hearing in front of a judge. Present are the probationer, his counsel, the prosecutor, and the probation officer. Expectations are made clear. Probationers are told that everybody in the courtroom wants them to succeed on probation. Because they are on probation and not in prison, they are making a deal with the court that they will follow the conditions of probation. Any proven violation will result in a swift and certain jail term; the first violation typically results in a few days to a week in jail. I emphasize that all of the probationers are adults and responsible for their own actions. I respect that and realize that I cannot control them. However, I can control what I will do if they violate. And that will be to send them to jail. In trying to create a cul-

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ture of responsibility and accountability, I tell the offenders that if they make a mistake and deal with it by turning themselves in rather than waiting for law enforcement to arrest them, I will take that into account at any sanctions hearing. And I do.

Unlike regular probation, in which probationers know in advance when they will be tested for drugs, HOPE probationers with substance abuse issues are told to call a drug-test hotline every weekday morning. Some, at random, will have to report to the courthouse that day to be tested. If they test positive, they are arrested on the spot, taken to jail, and brought before the judge two business days later. At the start, probationers are randomly tested at least once a week, sometimes two days in a row, six times a month. They may also be tested when they see their PO. Successful results reward the offender with less-frequent testing.

Failure to appear for a test, a probation appointment, or treatment leads to the immediate issuance of an arrest warrant served by law enforcement. Upon arrest, a court hearing is scheduled a few days later. As part of HOPE, law enforcement has stepped up by putting resources into swifter warrant service. The U.S. Marshals Fugitive Task Force started helping from the beginning on Oct. 1, 2004. At the end of 2005, I approached the police for extra help in serving probation warrants. At the time, the Chief of the Honolulu Police Department said, "So we have these thousands of offenders on probation and they are committing a lot of the crime. If we put more resources up front into serving warrants for probation violations, then maybe, down the road, we won't have to investigate the burglary or the car theft?" I told him that was *exactly* what we were hoping would happen. My background as a local prosecutor and later as the U.S. Attorney for Hawaii probably helped to convince the Marshal and the Chief that this was an effort worth supporting. Effective warrant service, particularly at the start, is critical for HOPE to maintain credibility with the offenders.

Reworking the system to allow for swift and certain, but proportionate, punishments was not easy. It took a willingness by all of the players in the criminal justice system to operate differently and work faster. Due process is still provided, but virtually all hearings are not contested, with no witness testimony needed. Why? I believe it is partly because the probationers know they are

facing days or weeks in jail rather than years in prison, and partly because the hearing concerns a single violation (of recent occurrence) that is fresh in everyone's mind.

## Looking at the Numbers

Is HOPE working? Pepperdine University professor Dr. Angela Hawken, the chief investigator, obtained a National Institute of Justice and a Smith Richardson Foundation grant for the HOPE research. She conducted a randomized controlled study of felony probationers in Honolulu. Her study included 330 offenders in the HOPE study group and 167 in the control group. The average age of the probationers was mid-30s. The HOPE study group averaged 17 prior arrests while the control group had 16.4 prior arrests, with both groups sharing a mixture of drug, property, and violent crime histories.

The results of Dr. Hawken's study were outstanding.<sup>2</sup> In the one-year observation period (October 2007-October 2008), the probationers in the HOPE study group were:

- ❖ 55% less likely to be arrested for new crimes (21% vs. 47%);
- ❖ 72% less likely to use drugs (13% vs. 46%);
- ❖ 61% less likely to skip appointments with their probation officers (9% vs. 23%); and
- ❖ 53% less likely to have their probation revoked (7% vs. 15%).

As a result, Dr. Hawken's study found that the HOPE probationers served or were sentenced to an average of 48 percent fewer days of incarceration than the control group.

## How to Begin HOPE?

When commencing a program like ours, it is critically important to start small and work the bugs out of the system before increasing the number of offenders in the program. HOPE began with 34 offenders on Oct. 1, 2004. The program has since expanded and currently numbers more than 1,500 offenders, including more than 1,350 felony probationers (the remainder being domestic violence misdemeanants). By the end of 2010, we anticipate an expansion to include 2,500-3,000 of Honolulu's 8,200 felony probationers.

The decades-long war on crime has not produced any discernable decline in drug abuse and related offenses. Warehousing inmates with increasingly longer terms and imprisonment does not address the problem and may, in fact, exacerbate it. The increase in state and federal mandatory sentencing has similarly not produced the anticipated reduction in recidivism. Notwithstanding the political appeal of increasing punishments and expanding mandatory sentencing, the only positive approach to reducing recidivism rests in supporting diversionary programs. HOPE Probation has produced a significant decline in the number of probationers returning to prison. It provides a necessary incentive with early and immediate intervention. Finally, HOPE Probation provides the safety net many, if not most, defendants need to successfully follow their conditions of release and not become just another statistic.

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## Behavioral Triage

There are a number of interesting things about drug-using offenders in HOPE. They can be usually divided into three groups. The first group is comprised of people who, when they join the program, request treatment to help them stop using drugs or realize they need treatment after a couple of positive tests followed by short stints in jail. After undergoing assessment tests and determining the level of current drug usage, those offenders obtain treatment. Members of the second group may have gone to treatment at some point in the past, but are still using drugs. With the swift and certain sanctions that HOPE provides, many of these offenders are able to use what they have learned and can stop using drugs without further treatment. A third group of drug users is able to stop using drugs without going to treatment at all. They demonstrate their ability to stop using drugs by appearing for, and testing clean at, repeated random drug tests. This includes a number of heavy users who have been using drugs for years.

Dr. Hawken refers to HOPE's approach as behavioral triage. The offenders' drug tests will usually determine whether or not they need to go to treat-

ment at all. The drug-testing component is also a good way to check whether the offender is being honest with his PO and on self-reporting assessment tests regarding drug usage. This behavioral triage approach allows for quality intensive outpatient or residential treatment for all HOPE offenders who end up going to treatment. It also means that HOPE is not sending to treatment offenders who do not need to be there. The treatment providers appreciate HOPE for exactly this reason. They also endorse HOPE's emphasis on personal responsibility. We all recognize that treatment works. But it works even better when offenders are taking responsibility for their actions and know that they will be arrested for walking out of, or not attending, treatment.

Reworking the probation system has certainly been a challenge. Change can be good, but people resist change. Success requires cooperation, collaboration, and a willingness to try something new. In Hawaii, the state asked its public employees (probation officers, court staff, judges, sheriffs, police, marshals, corrections, prosecutors, defense counsel, etc.) to work smarter and harder, and they have risen to the occasion. At the first organizational meeting in summer 2004, everyone recognized that the probation system was not working for many offenders, and every-

In this time of fiscal austerity, we need innovative programs that directly address an individual's pathway to crime. HOPE Probation offers great promise in this regard. It saves judicial costs since there is only a hearing when a client fails or violates a rule. Incarceration is unsustainable at \$50,000 a year in Hawaii. We need to embrace alternatives that will lower costs across the criminal justice system, promote community safety, and build strong and vibrant communities. The first evaluation of HOPE is impressive, with 55 percent of HOPE probationers less likely to be arrested, 72 percent less likely to use drugs, 65 percent less likely to miss appointments, and 53 percent less likely to have their probation revoked. We look forward to data about the persistent effect of HOPE after participants leave the program.

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one was willing to try a new approach. I asked the prosecutor supervisor to design a new fill-in-the-blanks Motion to Modify (rather than Revoke) Probation. The Public Defender asked if I could warn offenders at the start that the rules of probation were going to be the same, but that we were actually going to be enforcing them for the first time. I thought that was fair and made a lot of sense.

HOPE's success has not been isolated to my courtroom. In 2006, HOPE was expanded to all 10 felony courtrooms in Honolulu. In addition, HOPE has been expanded to different types of offenders (domestic violence felons and misdemeanants in addition to sex offenders and other felons with drug problems). Different judges have realized the same success with those different types of offenders — even with offenders who have been incarcerated before. At the start I was told that HOPE would not work with offenders who had been in prison or served extensive jail time because they “can do the time standing on their heads.” My response: “Yes, many people can *do* time when they have to. But human nature being what it is, they don't want to do it *today*.” This has turned out to be true. It is the immediacy, the disruptive nature of HOPE, which makes it so effective.

HOPE also works because the offenders themselves perceive it to be fair and even-handed. The offenders in HOPE are warned at the start not to use drugs, miss appointments, or violate other probation conditions. They are warned that if they do those things, they will be swiftly punished. And they are punished, but proportionately, with days or weeks in jail rather than years in prison, at least at the start.

In the current probation-as-usual system, probation officers have virtually total discretion as to whether to “violate” an offender or not. That usually results in few sanctions, at least right away. When sanctions are eventually imposed, however, the result can be seen by the offender as unfair and arbitrary. Some probationers state that “the PO was mad at me” or view the PO as “racially biased.” HOPE removes that arbitrariness. The PO loses that discretion. A positive drug test results in an immediate arrest. Failure to appear for a drug test or a probation appointment, or failure to complete treatment, results in an immediate arrest warrant and service by dedicated law enforcement personnel. This is the procedure every time, without exception. If the probationer admits the violation or it is proven, the sanction imposed is proportionate to the

violation. If the probationers turn themselves in, that counts in their favor.

After some initial misgivings, probation officers and the Honolulu *defense bar* have become strong HOPE supporters. The probation officers appreciate that HOPE clients are more likely to appear for, and be sober at, their appointments. This allows the probation officers to use their training, experience, and skill to actually engage with the offenders and help them succeed on probation. Similarly, public defenders and private defense bar have found that HOPE helps their clients. It is better for the probationer to be held accountable and receive one or more short, but immediate, sanctions than to have probation violations virtually ignored and then, years later, receive a sentence of five, 10, or even 20 years in prison.

## A Way to Win

The United States needs to fix its broken probation and parole systems and by doing so, help to reduce its prison population. The reduced victimization will be a win for society, and the reduced prison time will be a win for the offenders and their families. Avoiding expensive incarceration costs will be a win for taxpayers.

By trying something new, we can reduce recidivism (revocations of probation and arrests for new crimes) by more than 50 percent across the country. Is there any good reason not to try?

## Notes

1. Learn more about HOPE at [hopeprobation.org](http://hopeprobation.org).
2. The results of the study are available at <http://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>. ■

## About the Author

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