

H.O.P.E. for Reform

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

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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 a€ 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.

