

The Message from Hawaii: HOPE for Probation

by Angela Hawken, Ph.D.

This project was supported by Award No. 2007-IJ-CX-0033 awarded by the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice and the Smith Richardson Foundation. The opinions, findings, and conclusions or recommendations expressed in this publication are those of the author and do not necessarily reflect those of the author and do not necessarily reflect those of the Department of Justice or the Smith Richardson Foundation.





PROBATIONERS ARE BETTER ABLE TO MAKE GOOD DECISIONS

when they face foreseeable known consequences for the decisions that they make (Gendreau, 1996). The innovative probation-enforcement approach called HOPE (Hawaii's Opportunity Probation with Enforcement) relies on a regimen of regular, random drug testing tied to swift and certain—but relatively mild—sanctions to motivate probationer compliance. By contrast with diversion programs and drug courts, HOPE does not mandate treatment except for the minority of probationers who repeatedly run afoul of the rules.

In Honolulu, HOPE has improved probationer compliance with probation terms, drastically reducing both positive drug tests and missed appointments. HOPE probationers were less likely than other, similar offenders to be arrested for new crimes or to be incarcerated. HOPE is more expensive than probation-as-usual, but the additional cost is more than paid for in reduced incarceration. This net cost saving, combined with economical use of scarce drug-treatment resources, means that resource constraints do not present a barrier to the expansion of HOPE-style programs throughout the community corrections system.

BACKGROUND

Over the past two decades, inflation-adjusted expenditure on corrections has more than doubled (Hawken & Grunert, 2010). Growing concern over the growth in corrections spending has forced policy makers to review less expensive alternatives to incarceration for drug offenders, reinforcing the importance of community supervision. According to the Bureau of Justice Statistics, 5.1 million American adults were being supervised on probation or parole at the end of 2008. One third of probationers and over one half of parolees fail the terms of their community supervision; they are either reincarcerated or abscond (Glaze & Bonczar, 2009).

The past two decades have seen a dramatic shift in the way in which drug offenders are managed. A large number of states have implemented intermediate-sanctions programs and treatment-diversion programs, which provide drug offenders with the option of receiving treatment in the community rather than serving jail or prison time.

Perhaps the most frustrating statistic, however, is the fact that the rates of successful completion of either probation or parole have remained historically stable in spite of the myriad local, State, and Federal initiatives undertaken to improve offender outcomes (Hawken & Grunert, 2010). Even the most successful programs rarely improve success rates by more than ten percentage points. The robustness of high failure rates highlights the need to develop an offender management approach that goes beyond the status quo, particularly with regard to drug-involved offenders.

High rates of noncompliance with probation conditions undermine the efficacy of probation as a sanction. Despite rules requiring desistance from drug use, routine probation practices effectively allow continued drug use (largely) without consequence, which in most cases means continuing to commit other crimes (Farabee & Hawken, 2009). Drug testing of probationers tends to be too infrequent, test results come back too slowly and sanctions are too rare, to produce behavior change. And yet when sanctions are made, they tend to be too severe (months, or occasionally years, in prison), which defeats the rationale for probation as a less costly penalty than incarceration.

Hawaii's HOPE program provides evidence that re-engineering the probation-enforcement process can yield positive results in terms of compliance with all types of probation conditions, including desistance from drug use, among even heavily drug-involved methamphetamine users (Hawken & Kleiman, 2009). These findings show that dramatic reductions in rates of noncompliance can be achieved primarily through credible threats of low-intensity sanctions rather than the necessarily less-credible threat of revocations.

The Probation Crisis

Enforcing conditions of probation is an important challenge for the criminal-justice system. Probation supervision is intended to provide an alternative to incarceration: In lieu of a prison term, an offender promises to comply with a set of conditions and an officer is assigned to monitor enforcement, with authority to report violations to the court for possible sanctions. This avoids the cost of incarceration (and the damage it can inflict on the offender's chances of successfully integrating into law-abiding society) and promises rehabilitative benefits from requiring the offender to learn to keep his or her behavior within legal limits in a community

setting. Yet high caseloads, a sanctions process that puts large demands on the time of probation officers and judges, the scarcity of jail and prison beds and the low priority many police agencies give to the service of bench warrants for probation absconders makes it difficult to actually enforce the terms of probation and rates of noncompliance are accordingly high. When probationers are ordered to appear for drug tests, approximately one in three either fails to appear or tests "dirty" on any given occasion. (Kleiman *et. al* 2003). In California only one in four offenders who took the treatment-instead-of-prison bargain offered by Proposition 36 actually completed treatment, a typical result for drug-diversion programs (Urada and Evans, 2008).

What is HOPE?

HOPE is a strategic new approach for managing probationers. The HOPE intervention starts with a formal warning, delivered by a judge or hearings officer in open court, that *any* violation of probation conditions will not be tolerated: Each violation will result in an immediate, brief jail stay. Each probationer with substance abuse issues is assigned a color code at the warning hearing. The probationer is required to call the HOPE hotline each weekday morning. Those probationers whose color is selected must appear at the probation office before 2 pm that day for a drug test. During their first two months in HOPE, probationers are randomly tested at least once a week (good behavior through compliance and negative drug tests is rewarded with an assignment of a new color associated with less-regular testing). A failure to appear for testing leads to the immediate issuance of a bench warrant, which the Honolulu Police Department serves. Probationers who test positive for drug use or fail to appear for probation appointments are brought before the judge. When a violation is detected, the probation officer completes a "Motion to Modify Probation" form and faxes this form to the judge (a Motion to Modify form was designed to be much simpler than a Motion to Revoke Probation and can be completed very quickly). The hearing on the Motion to Modify is held promptly (most are held within 72 hours), with the probationer confined in the interim.¹ A probationer found to have violated the terms of probation is immediately sentenced to a short jail stay (typically several days servable on the weekend if employed, but increasing with continued non-compliance), with credit given for time served. The probationer resumes participation in HOPE and reports to his or her probation officer on the day of release. Unlike a

probation revocation, a modification order does not sever the probation relationship. A probationer may request a treatment referral at any time; but probationers with multiple violations are *mandated* to intensive substance-abuse-treatment services (typically residential care). The court continues to supervise the probationer throughout the treatment experience and consistently sanctions noncompliance (positive drug tests and no-shows for treatment or probation appointments).

Since probation officer time, court time, police officer time and jail space are all scarce, the feasibility of running HOPE at a large scale depends on low violation rates. The key operating assumption—amply borne out by the evaluation results—was that the program's demonstrated capacity and will for follow-through on threatened sanctions would lead to low violation rates (Kleiman, 1993; Kleiman & Kilmer, 2009; Hawken & Kleiman, 2009). Reliability in sanctioning was achieved by starting small and growing the program sufficiently slowly so that the demand for sanctions never outstripped the supply. The program has grown from 34 probationers to more than 1,500 without adding courtrooms, judges, court clerks, probation officers, police officers or jail cells; the additional resources voted by the legislature went almost entirely toward additional drug testing² and treatment capacity. But that growth took place over a period of years, not weeks.

THE ORIGINS OF HOPE

In 2004, Judge Steven Alm of Hawaii's First Circuit created HOPE as an experimental probation-modification program, starting with three dozen offenders. None of the basic principles of the HOPE project are new (Kleiman, 1997), yet Honolulu is the first large jurisdiction to make it work with a large percentage of its probation population. While local conditions were in some ways favorable to the project, the key to success seems to have been public-sector entrepreneurship and solid delivery. The fragmented nature of the criminal-justice process creates many opportunities for failures of public management; good ideas, even proven ideas, are more common than good execution. Thus the HOPE story has potential lessons not only for other attempts to enforce the conditions of community corrections but for many different kinds of innovations in crime control.

Although the ideas behind HOPE have been around for years, HOPE did not start with an idea. Rather, it started with a problem: a self-reinforcing pattern of high violation

key elements of HOPE

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

- 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 evaluation results suggest that greater severity on the first offense has no impact on overall compliance)
- A clear set of rules.
- An initial warning in open court at 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.
- Prompt hearings (most are held within 72 hours) after violations.
- Compulsory drug treatment 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.



The central idea of HOPE

is the commonsensical one

that certainty and swiftness

count for more than severity

in determining the deterrent

efficacy of a threatened

punishment. This reflects findings

in the psychological literature on

behavior modification.

rates and low sanction rates on probation, especially with respect to drug use. To Judge Alm, this problem appeared in the form of probation-revocation motions offered by the probation department against probationers with multiple violations over periods of months and sometimes years. This led him to ask the key question: If the probationer's latest violation is his tenth (not an uncommon number), what happened the first nine times?

The answer he got from probation officers illustrated the nature of the social trap the system was caught in. Because violation rates were high (of probationers with scheduled monthly meetings with a probation officer, which included drug tests, roughly half tested positive for one or more illicit drugs and another 14 percent simply failed to appear at all) no probation officer had the time to write up every violation, and no judge would have had the time to hear all those cases had they been filed. That made it seem reasonable for probation officers to set priorities, giving multiple warnings and asking for revocation only once a probationer's file fairly bristled with violations.

But that seemingly sensible approach had a perversely self-reinforcing consequence: Since the most likely result of a violation was a mere warning, there was little incentive for probationers to comply. They had no reason to believe a probation officer's "final warning," any more than they believed the previous warnings that had led to no action. The deferred, low-probability threat of a drastic sanction—probation revocation—was not an effective deterrent (Kleiman, 2009). As a result, violation rates remained high.

The central idea of HOPE is the commonsensical one that certainty and swiftness count for more than severity in determining the deterrent efficacy of a threatened punishment. This reflects findings in the psychological literature on behavior modification.

The basic tenets of the HOPE program designed by Judge Alm—the use of clearly articulated sanctions applied in a manner that is certain, swift, consistent and parsimonious have a strong theoretical basis and are well supported by research. That swiftness and certainty outperform severity in the management of offending is a concept that dates back to Beccaria (1764). A *clearly defined behavioral contract* enhances perceptions of the certainty of punishment, which deters future violations (Grasmick & Bryjak, 1980; Paternoster, 1989; Nichols & Ross, 1990; Taxman, 1999). Probationers are better able to make good decisions when they face *foreseeable, known consequences* for the decisions that they make (Gendreau, 1996). Responding *swiftly* to violations improves the perception that the sanctioning process is fair (Rhine, 1993), and the immediacy, or celerity, of a sanction

is vital for shaping behavior (Farabee, 2005). The *consistent* application of a behavioral contract improves compliance (Paternoster et al., 1997), and *parsimonious* use of punishment enhances the legitimacy of the sanction package and reduces the potential negative impacts of tougher sentences, such as long prison stays (Tonry, 1996).

Thus Judge Alm's innovations were supported both by research evidence and by Alm's solid understanding of operations of the criminal justice system. The central operating problem was how to turn that idea into a reality in the face of scarce resources and distributed decision-making.

THE ENTREPRENEURIAL PROCESS KEY TO HOPE'S SUCCESS

Some policy entrepreneurs treat the process of consulting with other actors whose cooperation is needed as a formality, a process of appearing to listen in order to obtain buy-in. That was not the approach taken by Judge Alm. He treated objections as reflecting real constraints and explored how to economize. Indeed, what now seems to be the most effective element of the HOPE process and its one genuine innovation—the warning hearing—was first suggested to the judge by the public defender.

The clear set of consequences presented under HOPE (elaborated during the warning hearing) helps probationers to develop a sense of self-control and responsibility for their own actions. By shifting the locus of control in reality from the probation officer and the judge to the probationer, HOPE helps the probationer shift his perception of the locus of control. And the judge's speech at the HOPE warning hearing emphasizes the importance of the probationer taking charge of his own life and accepting accountability for his own actions. The warning hearing also explicitly identifies the probationer as a morally responsible agent—an adult—rather than the helpless subject of decisions by others in an unpredictable criminal-justice system.

The warning hearing also creates a perception of fairness on the part of the probationer. Because the consequences are clearly laid out in advance, there is no sense that the sanctions, when administered, are arbitrary or the result of animus. The strong assertion by the judge of goodwill toward the probationer and of the desire of everyone in the process that the probationer succeed, may also be important.

Judge Alm set out to reorganize the system so that the violations would be met with a sanction *quickly*. Many of the central innovations in the HOPE process involved reducing the workload demands of imposing a sanction, such as fill-in-the-blanks violation-reporting forms and HOPE hearings that were intended to be quick. Court records were studied as part of the HOPE evaluation. The average Motion-to-Modify (MTM) hearing was only seven minutes and the average warning hearing, these are usually conducted as mass hearings, requires only three and a half minutes of court time per offender.

Initially, probation officers and their managers were resistant to what became the HOPE initiative. Facing high caseloads and high violation rates, they saw a process of reporting every violation to the court as completely infeasible. They estimated that it required about four hours of work to prepare a revocation motion. That meant that preparing a report on each of a dozen violations per week would require about 50 work-hours per probation officer per week, leaving less than zero time for actually meeting with probationers, let alone performing all their other professional tasks. And that analysis did not even count the hours a probation officer could expect to spend in court during a revocation hearing.

Many policy entrepreneurs would have treated this objection as an instance of “work avoidance” or “resistance to change.” Judge Alm, after some discussion back and forth, recognized it as a perfectly valid problem, and, in consultation with the probation officers and their managers, set about designing a way around the problem.

They decided to work on both ends of the problem: the number of reports and the time required to prepare each one. To limit the number of reports, not every probationer was put on HOPE supervision when the program first began. Instead, together the probation officers identified criteria for selecting probationers on their caseloads whose violation records up to that point were sufficiently long that the probationer faced a likely threat of revocation. As the program was untested, Judge Alm decided to start small. The initial group consisted of 34 felony probationers – selected for their recalcitrance – from among several hundred subject to Judge Alm’s jurisdiction. In the selection process, probation officers were asked to identify those probationers whose violations were so numerous that one more violation would justify a revocation motion.

To reduce the time required to prepare a report, Judge Alm proposed to treat each new violation as a reason to modify rather than revoke probation: to incarcerate the probationer for a matter of days rather than sending him to prison to complete the remainder of a multi-year term. The same approach was adopted by the other judges who oversaw HOPE caseloads when the program was expanded. Unlike a revocation, the relatively mild sanction attendant on a probation modification could be justified by a single incident rather than a long string of violations. Consequently, there was no need for the probation officer to prepare an elaborate report documenting multiple lapses over a period of months.

Indeed, the amount of information required turned out to be very small: the probationer's name and the details about the latest violation, the nature of the violation (missed appointment, missed drug test, positive drug test), and, if the violation was a positive test, the drug for which the probationer tested positive. All of that could be made to fit on a two-page form with check-boxes and blanks to be filled in. Once the form was filled out and signed, the probation officer would fax it to the judge's chambers. The probation officer's presence would not even be required at the subsequent hearing, since the defense rarely contests the simple and easily verifiable facts involved. Those two changes transformed the impact of HOPE on probation officer workloads.

HOPE OUTCOMES COMPARED WITH PROBATION-AS-USUAL

From the outset the program showed impressive improvements in probationer compliance. With support from the Hawaii legislature, the program was expanded. The NIJ-funded evaluation of HOPE compared HOPE probationers to a matched group of comparison probationers who were supervised under probation-as-usual.

During the first three months following baseline, the probationers assigned to HOPE had a striking improvement in their drug-testing outcomes, with their rate of positive drug tests falling by 83 percent (a decrease from 53 percent to 9 percent). By contrast the rate of positive drug test for comparison probationers *increased* over this period. By six month follow-up, the rate of positive drug testing for HOPE probationers had fallen 93 percent from baseline.

Outcomes for missed probation appointments showed a similar pattern. During the first three months following baseline, the probationers assigned to HOPE had a dramatic improvement in their appointment attendance. Missed appointments fell by 71 percent (from 14 percent to four percent). By six month follow-up HOPE probationers, on average, were missing only one percent of their appointments. By contrast, probationers assigned to the comparison group had an *increase* in their missed appointments and three months, and no significant improvement by six month follow-up.

An important finding from a cost perspective was the large differences in revocation rates and incarceration across the study groups. Compared to probationers under Judge Alm's control assigned to HOPE, the comparison group (otherwise similar probationers assigned to other judges and therefore not put on HOPE) were more than three times as likely to have their probation status revoked (31 percent vs. nine percent). HOPE probationers averaged approximately the same number of days in jail, serving more but shorter terms. But HOPE probationers were sentenced to about one-third as many days in prison on revocations or new convictions, an average of 303 days for comparison probationers compared with 112 days for HOPE probationers.³

The impressive findings of the HOPE evaluation were later confirmed when a true randomized controlled trial of HOPE, funded by the Smith Richardson Foundation, was implemented in a general probation unit in Honolulu. The second evaluation confirms that the HOPE findings were not due to an "operator effect." The HOPE findings have been shown to be robust across probation offices, across probation officers and across judges.

As a result of the impressive improvements in probationer compliance and reductions in incarceration, the Hawaii legislature supported an expansion of the HOPE program. By early 2009, more than 1,500 probationers had been placed on HOPE.⁴

PERSPECTIVES OF THE STAKEHOLDERS

Stakeholder interviews and surveys generated surprising findings. Probationers assigned to HOPE gave high praise to the program. Fewer than ten percent of the HOPE probationers reported a negative perception of the program.

Even those who were surveyed while incarcerated under HOPE gave positive reviews of the program, only 12 percent reported negative perceptions. The most disgruntled group among the HOPE probationers was the subset who had been mandated to treatment due to non-compliance, but even among this group only 14 percent reported a negative perception of HOPE. In open-ended interviews, HOPE probationers consistently identified the process as fair — As one put it, “strict, friendly, and fair.” This was true even among those interviewed while spending time in jail as a result of a HOPE sanction. To an open-ended question asking for “any additional comments or ideas for improvement,” one probationer in jail responded “Keep up the good work!” Another said, “I’m trying to make my first mistake my last,” and a third added, “Don’t give up on us! It’s a matter of time before it will sink in.” In that group of incarcerated HOPE subjects, when asked to agree or disagree with the statement, “HOPE rules are too strict,” the “disagrees” outnumbered the “agrees” by 3:2. Almost 90 percent agreed that HOPE was helpful in reducing drug use and improved their lives in other ways (e.g., family relationships). The biggest complaint from the group in jail was the perceived unfairness that resulted from judge-to-judge variation in sanctions severity, which they discovered by comparing notes. Some of those who had been sanctioned more heavily were quick to attribute the difference to some form of bias (ethnic or otherwise), when in fact the variation in sentencing observed in the HOPE evaluation was more at the judge level than at the offender level. That response, combined with the finding that a judge’s success rates were independent of severity of sentences imposed, provides a very strong argument for making sanctions more-formulaic and moderate. Indeed, in our surveys, lack of uniformity in sanctioning was the primary complaint about the HOPE process from every group: probationers, probation officers, assistant district attorneys, assistant public defenders and even the judges themselves.

Many HOPE clients found the daily call-in and the prospect of testing as aids to their recovery. In a sample of 167 HOPE probationers surveyed anonymously in the community (as opposed to those in jail or in treatment) 96 percent answered “Yes” to the question “Does the regular random drug testing help you avoid drug use?” One said, “It keeps you in line because of zero tolerance. It’s the drug or jail.”

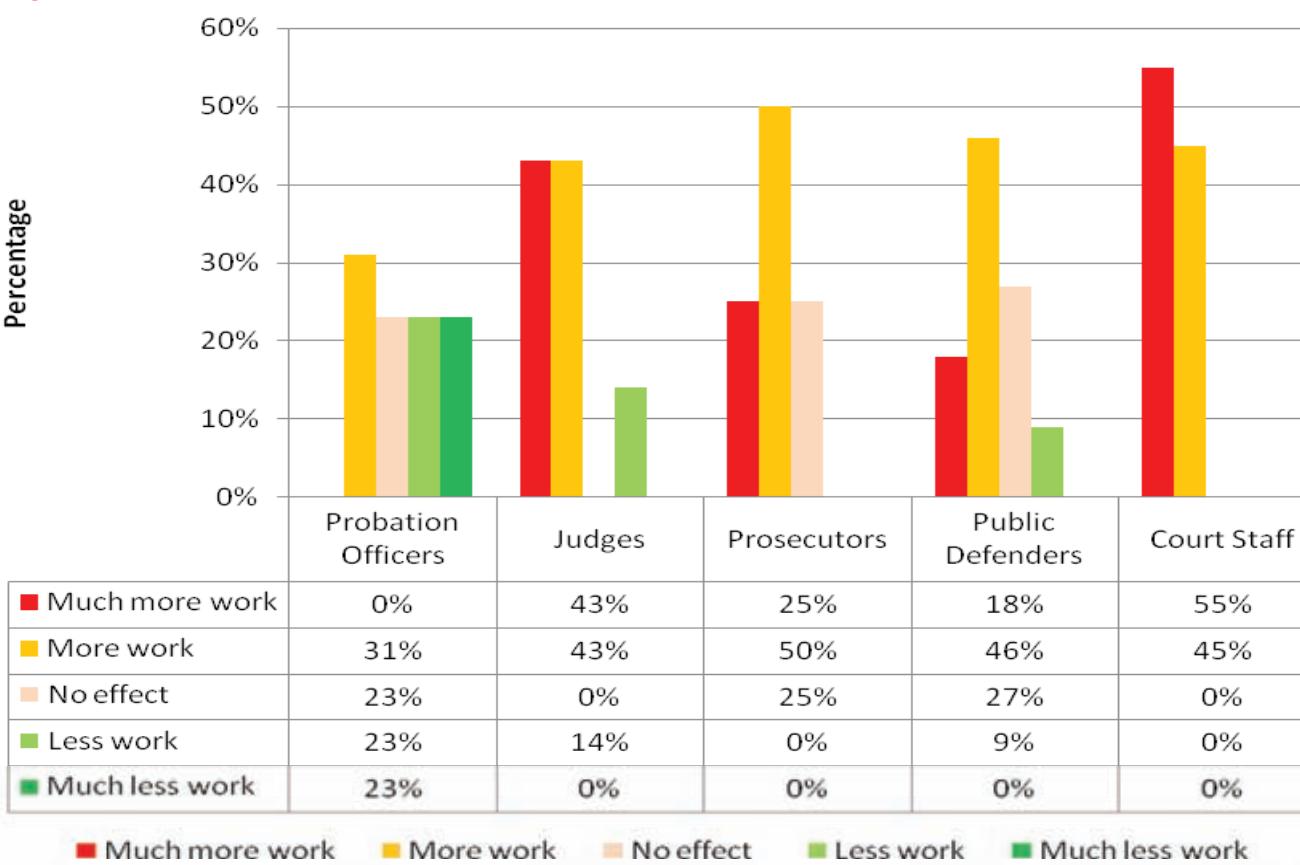
This appreciation of the value of daily call-in occasionally leads to otherwise hard-to-understand choices by clients. HOPE provides few positive incentives for success, as opposed to negative consequences of failure. One of the few rewards following a period of perfect compliance is a change in color code corresponding to a reduction in testing frequency: From the initial frequency of at least six times per month, a long-compliant HOPE client can work his way down to once per month. Some probationers, when told by their probation officers that their testing frequency is being stepped down as a reward request that it *not* be stepped down, because they fear that less-frequent testing will increase their risk of going back to drug use.

Once they had tried the new system—however reluctantly to start with—the probation officers almost universally became converts, as they watched their violation rates drop and experienced the satisfaction of wielding in practice the power they have in law: to be able to enforce their rules with a convincing threat of judicial sanction for any violation.

Judges are typically at least as concerned about maintaining discretion as are probation officers, especially in light of the tendency of legislatures to control their use of that discretion. When the HOPE program expanded from Judge Alm’s courtroom alone to cover the other eight felony judges on Oahu, some of the other judges were openly discontented with the change, even in the face of support for the program from the Chief Justice. Nothing compelled those other judges to comply with the HOPE guidelines, and there was no attempt to create a formula for sanctions, but all of them went along with the principle that some confinement sanction would be automatic for each violation.

One judge stood out from his peers in the severity of the sanctions he assigned, especially for a first violation. When preliminary results of this study were shared with the judges, showing that additional severity did not seem to produce lower violation rates, a process of consultation among the judges led to a reduction in the variation of sanction term and a reduction in the overall average sanction length.

Figure 1. HOPE and Workload



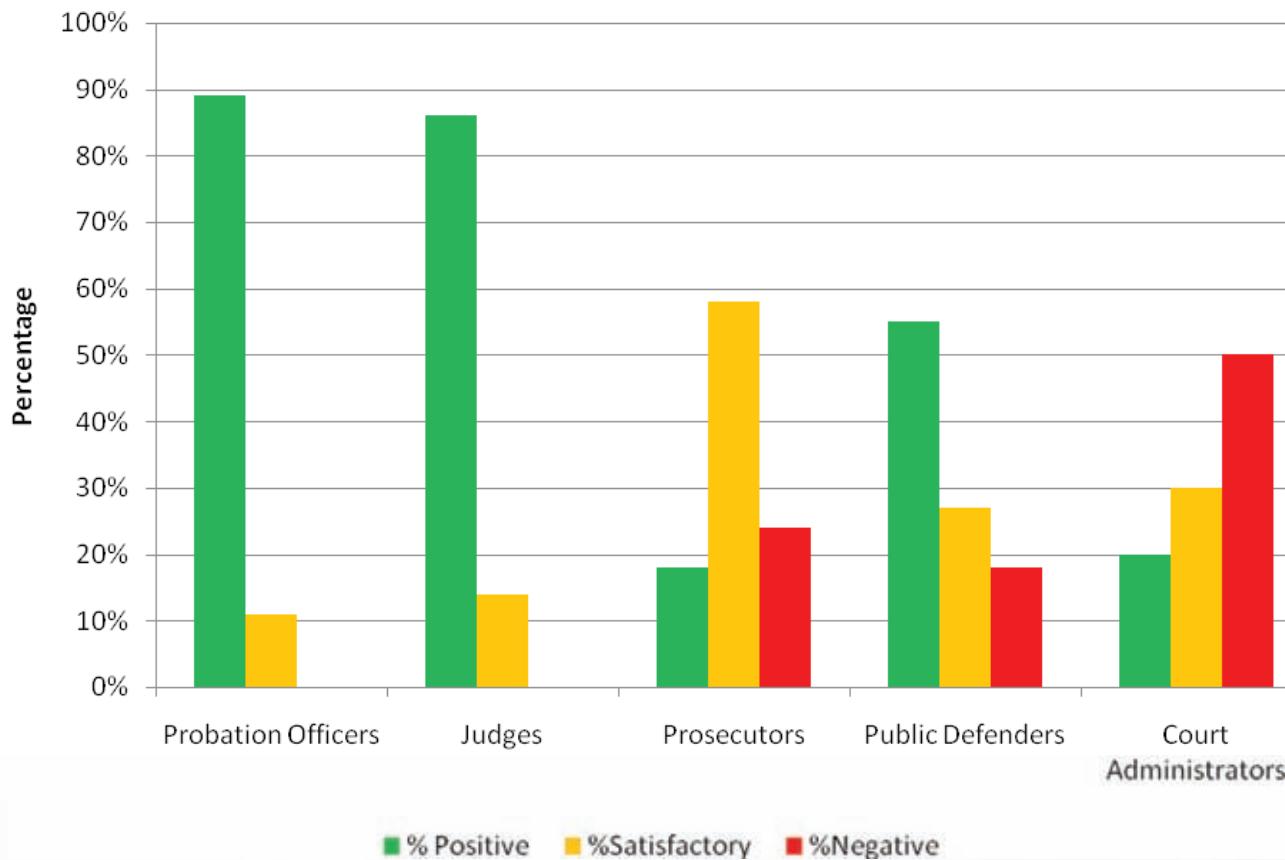
Note: data are from the key stakeholder surveys. Sample sizes are: Prosecutors ($n = 12$), Public Defenders ($n = 11$), Judges ($n = 7$), Probation Officers in the Integrated Community Sanctions Unit ($n = 20$), and Court Staff ($n = 11$).

A program such as HOPE, which ensures that probationers are tested regularly and sanctioned consistently and swiftly for violations, will necessarily have workload implications. Across the stakeholder groups surveyed for the HOPE evaluation, HOPE was regarded as adding to their workload (see Figure 1). For court employees, 100 percent regarded HOPE as resulting in “more work” or “much more work”. Probation officers in the Integrated Community Sanctions (ICS) unit, regarded HOPE as having the least impact on their workload; 31 percent regarding HOPE as adding more work and 46 percent regarding HOPE as requiring less work. This may be due to increased familiarity with the program. Probation officers in the ICS unit have been managing HOPE caseloads since HOPE was first piloted in 2004. In an earlier survey question, these probation officers commented that HOPE was more work when it was first implemented, but requires less work now that they have more experience with the program.

As part of the HOPE evaluation, stakeholder groups were surveyed about their general perceptions of HOPE (see Figure 2). Only a small minority reported negative perceptions of HOPE. Probation officers were the most favorable, with nearly 90 percent expressing support for HOPE, followed by judges with 85 percent. Court employees had the most-negative general perceptions of HOPE at 50 percent. This may be due to increased workload and the limited interaction they have with probationers, i.e., they carry the burden of an increased workload without the accompanying benefits of directly observing improvements in probationer behavior.

Just under a quarter of the assistant district attorneys had a generally negative perception of HOPE. The chief concern expressed by assistant district attorneys about HOPE is that some judges are, in their view, now putting on probation offenders who otherwise would have been sent to prison, at some cost in public safety. Some assistant district attorneys

Figure 2. General Perceptions of HOPE



Note: data are from the key stakeholder surveys. Sample sizes are: Prosecutors (n=12), Public Defenders (n=11), Judges (n=7), Probation Officers in the Integrated Community Sanctions Unit (n=20), and Court Employees (n=11). Data reflect responses to the question "What is your general perception of HOPE probation"?

would like to impose an exclusion criterion preventing anyone with a recent prior conviction for any violent crime from being put on HOPE; though under the Hawaiian sentencing system those defendants would still be eligible for regular, less intensive probation. A further program improvement recommended by assistant district attorneys was to establish a dedicated HOPE court to improve consistency of sanctioning. Shortly after these surveys were completed, the Hawaiian Judiciary authorized a dedicated HOPE court.

For judges, probation officers, probationers and assistant public defenders, HOPE has palpable benefits, in the form of higher compliance rates for the judges and probation officers and fewer days in jail for the probationers, which also pleases their defenders. But HOPE's benefits are less evident to assistant district attorneys and to court employees. In addition to their concern that HOPE may lead to probation sentences for defendants they would prefer to see in prison, the assistant

district attorneys see the sanctions hearings as added workload. Although those hearings consume an average of only seven minutes of court time each, they require additional time for out-of-court preparation (despite the largely ornamental role of the lawyers in what is largely a judge-driven hearing). And those demands on time arrive both urgently and unpredictably. That HOPE prevents, as a statistical matter, a large number of much-more-demanding revocation hearings, as well as trials incident to new arrests, is not something assistant district attorneys directly encounter.

Some assistant district attorneys complain about the mildness of HOPE sanctions, not reflecting that the outcome under routine probation would not be a more severe sanction but no referral to court and therefore no sanction whatsoever. Three-quarters of assistant district attorneys think that HOPE means more work for them (including one-quarter who say "much more work"). And some express frustration at having

to appear and wait around for hearings in which they have only a modest role to play. This raises the question whether the presence of a assistant district attorneys should be required at a sanctions hearing. By law, the probationer is entitled to representation, but it is not obvious that a prosecutor is actually needed.

Court employees, too, see little in the way of benefit. All they see is the addition of hearings that arrive unpredictably and need to be scheduled quickly. All court employees that we surveyed regarded HOPE as increasing their workload, with a majority saying that the increase had been a large one. Again, whether HOPE is a net addition to court-employees' workload is an open question: The warning hearings (now mostly done *en masse* rather than individually) and sanctions hearings to some extent replace revocation hearings. But from the perspective of court employees, the burdens are obvious and the benefits hidden. Enthusiastic judges have little problem communicating that enthusiasm to their clerks, secretaries and court officers, but less enthusiastic judges may experience less support in running their HOPE caseloads. Like the problem of lack of uniformity, the problem of imperfect compliance by court staffs has been eliminated by concentrating all HOPE cases in a single courtroom.

Probation officers from the Integrated Community Sanctions group in the probation department report that the additional workload burden eased off after the first year; now none of them reports that the program is "much more work" and about half report that it is less work — about evenly split between "less" and "much less". Some of the workload issues reported here may be, in whole or part, transition effects that will fade away over time.

Probation officers have the most interaction with HOPE probationers. The adoption of HOPE meant that probation officers would lose a substantial amount of discretion in managing their clients. Sanctions for non-compliance would be delivered with certainty, rather than at the discretion of the probation officer, as is the case with probation-as-usual. We expected probation officers to be disappointed at this loss of discretion. We were surprised that only a minority of the probation officers, 30 percent thought that jail sanctions should be imposed at the discretion of the probation officer, rather than on a zero-tolerance basis. The majority, 55 percent was neutral on the issue of probation-officer discretion, and 15 percent preferred the removal of discretion.

Figure 3 summarizes how probationers viewed their effectiveness under HOPE. The vast majority, 95 percent regarded themselves as more effective at managing their caseloads under HOPE and five percent were neutral, but none thought HOPE had made them less effective. This corresponds with probation officers' views on how their HOPE caseload has performed since being placed on HOPE. All of the probation officers, 100 percent responded that their HOPE cases had shown an overall improvement since being placed on HOPE.

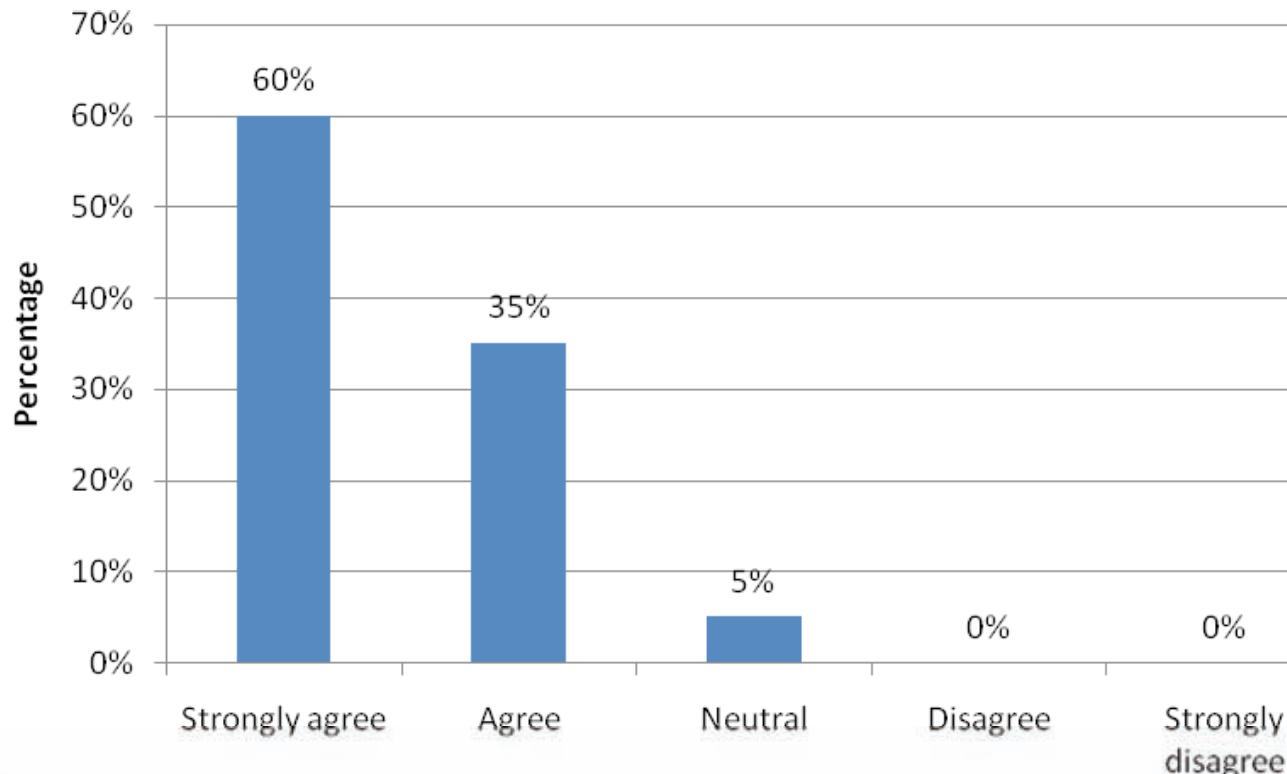
HOW HOPE IS UNIQUE

The drug-testing-and-sanctions component of HOPE has been proposed before, and has been implemented in various places, with degrees of success seemingly correlated with the fidelity of implementation. (Harrell and Roman, 2001; Kleiman, 2001). But there are very few examples of true testing-and-sanctions programs in routine operation: the longest-established being Project Sentry in Lansing, MI.

The HOPE approach is focused directly on reducing drug use and missed appointments rather than on drug treatment: That is, the focus is on outcome rather than on process. Not all drug abusers are addicts. HOPE probationers are not formally assessed with respect to their drug-treatment needs (aside from standard assessments that are conducted as part of routine probation). In fact, after being clearly warned of the consequences for non-compliance, many HOPE probationers are able to abstain from drug use under the strict monitoring and sanctions HOPE provides, without going to treatment at all. Treatment is thus reserved for those who request it and for those who repeatedly fail to comply under monitoring and the threat of sanctions. A HOPE probationer who has a third or fourth missed or "dirty" drug test may be mandated into residential treatment as an alternative to probation revocation.

Only a minority of HOPE probationers, 10 percent failed three or more drug tests within the first year of being in the program. This group has clearly signaled a need for intensive treatment services. Thus HOPE substitutes the probationer's actions under the threat of sanction for clinical assessment in allocating treatment resources. Probationers are referred to treatment only if they continue to test positive or if they ask for treatment. Because only a small fraction of HOPE clients faces a treatment mandate, the program can afford to use intensive long-term residential treatment, rather than relying primarily on outpatient drug-free counseling as most diversion programs

Figure 3. Probation Officer Perspectives on Their Effectiveness as a Probation Officer Under HOPE



Note: Data are from the ICS Probation Officer Survey (n=20). Data reflect responses to the question "My work as a probation officer is more effective under the HOPE policies and procedures."

and drug courts do for most of their clients. This result might be called "behavioral triage" (see Hawken, 2010). Compared to a universal assess-and-treat model, behavioral triage has several major advantages.

- Its economical 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, which themselves had aversive consequences, it 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 jail term. That positions the treatment provider as the client's ally in the effort to retain his freedom.

Indeed Hawaiian treatment providers are among the staunchest supporters of the program⁵.

HOPE is not a drug court, although it shares many features of a drug court approach. Drug courts vary in how they manage their caseloads, in the ancillary services they offer and in the testing and sanctions schedules they apply. What they all have in common is the provision of ongoing supervision from a judge, with offenders appearing before the judge for regularly scheduled updates. The drug court movement has been very successful. Many evaluations demonstrate the success of this approach to managing

offenders in the community (Belenko, 2001) and there are now over 2,000 such courts across the country (Huddleston, Marlowe & Casebolt, 2008). Although the number of drug courts has increased dramatically and now serve about 70,000 clients nationwide (Huddleston, Marlowe & Casebolt, 2008), there are many more candidate offenders for drug court supervision than the number of available slots (California alone convicts over 70,000 offenders a year on non-violent drug charges). A key difference between HOPE and drug courts is the role of the judge. Under HOPE, probationers appear before a judge or hearings officer only if they have violated. This has important implications for caseloads and cost. Due to the intensive nature of the judge supervision in drug courts, there is a serious constraint on the caseloads these judges can manage. Under HOPE, probationers only appear before a judge as needed (in response to violations). A court dedicated to HOPE could manage multiple thousands of probationers (the dedicated HOPE court in Honolulu is anticipated to oversee 3,000 HOPE probationers), compared to typical drug court caseloads of 50-75 probationers. The voluminous drug court literature (reviewed in Belenko, 2001) reflects the value of active judicial supervision in dealing with drug-involved probationers, but HOPE is innovative in economizing on treatment resources by not mandating formal treatment for every drug-involved offender. Rather, HOPE relies on regular random drug testing results and probationer requests for treatment referrals to indicate treatment need. This approach economizes on treatment resources as probationers who are able to remain drug free on their own are not required to enter a drug treatment program, allowing for more-intensive service provision for those who do need help.

HOPE FOR ALL?

HOPE is receiving increasing attention by national media and policy makers because of the impressive outcomes observed. But although HOPE has been evaluated with strong research designs, many questions remain. Delivering HOPE-style sanctions in a swift-and-certain manner requires cooperation and a willingness to change work practices. Whether this structural shift can be accomplished in other jurisdictions remains an open question. Replication studies of HOPE are currently underway on the mainland and will determine whether Hawaii's HOPE experience is generalizable. These studies will also help to identify the essential elements of the HOPE model, including factors such as probation officer training. Our evaluation was unable to identify the crucial elements needed to produce the HOPE result, i.e., whether

regular random drug testing on its own would have produced the HOPE effect or whether the combination of testing and sanctions is necessary. Future studies that use an alternative experimental design that manipulates the HOPE punishment schedule would be needed to address this question. Probation officers in Hawaii have received training in cognitive behavioral therapy and Motivational Interviewing, and it is unclear whether jurisdictions without similar training would produce the same results. A further limitation of our evaluation of HOPE was the limited follow-up period. Probationers were studied only while they were under community supervision. We do not know whether the effects of HOPE (e.g., reduced drug use and new arrests) continue after probationers complete their probation terms under HOPE. What happens to HOPE probationers once they complete probation, in particular, their long-term drug use and criminality is an important remaining question. The mainland replication tests of this model are extremely important. They will determine whether HOPE merits designation as an evidence-based practice and, therefore, whether the expansion of this approach is justified.

HOPE represents an important new model for probation operations and has important implications for probation management, for correctional decision-making more generally, and for drug abuse control policy. The NIJ- and Smith Richardson-funded evaluations of HOPE are cause for optimism. These evaluations have demonstrated that even strongly drug-involved probationers can and will modify their behavior substantially in the face of high-probability sanctions. The challenge now lies in reorganizing the criminal justice system to deliver on credible threats.»

REFERENCES

- Beccaria, C.B. (1764) *An Essay on Crimes and Punishments*. 2nd American edition. Translated from the Italian by Anonymous. Philadelphia: Philip H. Nicklin, 1819.
- Belenko, S.R. (2001). *Research on drug courts: A critical review 2001 update*. The National Center on Addiction and Substance Abuse, Columbia University.
- Durose, M.A. & P. A. Langan (2002) State Court Sentencing of Convicted Felons, 2002. Washington, DC: Bureau of Justice Statistics
- Farabee, D. (2005) *Rethinking Rehabilitation: Why can't we reform our Criminals?* Washington, DC: American Enterprise Institute.
- Farabee, D. & A. Hawken. (2009). Methamphetamine and Crime. In J.M. Roll, R. Rawson, W. Ling, & S. Shoptaw (Eds.), *Methamphetamine addiction: From basic science to treatment* (pp. 157–171). New York: Guilford Press.
- Gendreau, P. (1996) "Offender Rehabilitation: What We Know and What Needs to be Done", *Criminal Justice and Behavior* 144-161.

- Glaze, L. E. & T. P Bonczar. (2009). *Probation and parole in the United States, 2008*. Washington, DC: Bureau of Justice Statistics.
- Grasmick, H. G. & G. J. Bryjak. (1980). "The Deterrent Effect of Perceived Severity of Punishment." *Social Forces*, 59:471-91.
- The Harrell, A., & J. Roman. (2001). Reducing drug use and crime among offenders: The impact of graduated sanctions. *Journal of Drug Issues*, 31, 207-231.
- Harrell, A. & B. Smith. (1996). *Evaluation of the District of Columbia Superior Court Drug Intervention Program: Focus Group Interviews*. Report to the National Institute of Justice.
- Hawken, A. (2010) "Behavioral Triage: A New Model for Identifying and Treating Substance-Abusing Offenders," *Journal of Drug Policy Analysis*: Vol. 3 : Iss. 1, Article 1.
- Hawken, A. & J. Grunert. (2010) "Treatment for all means real treatment for few." *Offender Programs Report*. 13(6): 81-96.
- Hawken, A., & M. Kleiman. (2009). Managing drug-involved probationers with swift and certain sanctions: Evaluating Hawaii's HOPE. Evaluation Report. NCJ 229023. National Institute of Justice. Washington.
- Higgins, S.T.; A.J. Budney; W.K. Bickel, F. Foerg; R. Donham & G.J Badger. (1994) "Incentives improve outcome in outpatient behavioral treatment of cocaine dependence." *Archives of General Psychiatry* .51:568-576, 1994.
- Higgins, S.T., D.D. Delaney, A.J Budney, W.K Bickel, J.R Hughes, F. Foerg & J.W. Fenwick. (1991) "A behavioral approach to achieving initial cocaine abstinence." *American Journal of Psychiatry* .148(9):1218-1224, 1991.
- Higgins, S.T.; A.J Budney, W.K. Bickel, J.R. Hughes, F. Foerg & G. Badger. (1993) "Achieving cocaine abstinence with a behavioral approach" *American Journal of Psychiatry*. 150(5):763-769.
- Huddleston C.W., D. B. Marlowe & R. Casebolt. (2008). Painting the current picture: A national report card on drug courts and other problem solving court programs in the United States [Vol. II, No. 1]. Alexandria, VA: National Drug Court Institute.
- Kaestner, R. (2000). "A note on the effect of minimum drinking age laws on youth alcohol consumption." *Contemporary Economic Policy*, 18, 315-325.
- Kelly, P. & D. Stemen (2005) "Probation Reform: Is Zero Tolerance a Viable Option?" New York: Vera Institute of Justice.
- Kleiman, M. (1993). "Enforcement swamping: A positive-feedback mechanism in rates of illicit activity," *Mathematical and Computer Modelling* 17:2 (65-75).
- Kleiman, M. (1997), "Coerced Abstinence: A Neopaternalist Drug Policy Initiative," in Lawrence M. Mead (ed.) *The New Paternalism*. Washington, D.C.: Brookings Institution Press.
- Kleiman, M. (2001). "Controlling drug use and crime among drug-involved offenders: Testing, sanctions, and treatment." In Heymann, P.H., & W. N. Brownsberger, (Eds.) *Drug Addiction and Drug Policy*. Cambridge: Harvard University Press.
- Kleiman, M. (2009). *When Brute Force Fails: How to Have Less Crime and Less Punishment*. Princeton: Princeton University Press.
- Kleiman, M., T.H. Tran, P. Fishbein, M. Magula, W. Allen, and G. Lacy (2003). *Opportunities and Barriers in Probation Reform: A Case Study in Drug Testing and Sanctions*. Oakland, CA: California Policy Research Center.
- Kleiman M. & B. Kilmer (2009), "The Dynamics of Deterrence", *Proceedings of the National Academy of Sciences* 106: 34 (14230-14235).
- Nichols, J. & H. L. Ross. (1990). "Effectiveness of Legal Sanctions in Dealing with Drinking Drivers." *Alcohol, Drugs, and Driving* 6(2):33-60.
- Paternoster, R. (1989). "Decisions to Participate in and Desist From Four Types of Common Delinquency: Deterrence and the Rational Choice Perspective." *Law and Society Review*, 23(1):7-40.
- Paternoster, R., R. Brame, R. Bachman, & L. W. Sherman. (1997). "Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault." *Law and Society Review* 31:163-204.
- Petersilia, J. (2002) "Community Corrections," in J. Q. Wilson and J. Petersilia, eds., *Crime*. San Francisco: ICS Press.
- Reinventing Probation Council (1999) "Broken Windows" Probation: The Next Step in Fighting Crime," New York: Manhattan Institute, 1999.
- Rhine, E. E. (1993). *Reclaiming Offender Accountability: Intermediate Sanctions for Probation and Parole Violators*. Laurel, MD.: American Correctional Association.
- Taxman, F. (1999) "Graduated Sanctions: Stepping into Accountable Systems and Offenders", *Prison Journal*, 79(2): 182-205.
- Tonry, M. (1996) *Sentencing Matters*. New York: Oxford University Press.
- Urada, D., & E. Evans. (2008) *Treatment*. In: Evaluation of the Substance Abuse and Crime Prevention Act 2008 Report. 33-55.
- Wilson, J.Q. (1997) "Making Justice Swifter." *City Journal* 7(4).

ENDNOTES

1 If a positive drug test result is disputed, the probationer is released pending confirmation testing, and given a court date for one week later. These probationers are warned that their jail sanction will be enhanced if positive drug use is confirmed.

2 Two social service aides were hired under HOPE to remove the burden of drug testing from the probation officers.

3 Note jail-days here are actual days served. Prison-days are the average number of days to which probationers are sentenced. Due to early release, the actual number of prison days served would be less than the number of days sentenced. If we assume that actual prison-days are 50 percent of assigned prison-days (consistent with the opinions of officials we consulted), HOPE probationers would average about 75 days each behind bars while the comparison group would average 175 days, a reduction of more than 50 percent

4 HOPE probationers include drug-involved probationers, domestic-violence probationers, and sex offenders. The research reported here is limited to drug-involved probationers assigned to HOPE who are not being supervised for domestic violence or sex offenses. Proposals are under review for formal evaluations of the non-drug probation units.

5 Hawaii treatment providers have cooperated in submitting strong letters of support to the Legislature to encourage expansion of the HOPE program.

Angela Hawken, Ph.D. is an Assistant Professor of Public Policy at Pepperdine University in Malibu, California.