

## Front-End Alternatives to Incarceration for Drug Offenders

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Probation and parole supervision are intended to serve as 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 or Parole Board 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 live lawfully in his or her home community. 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 make it difficult to actually enforce the terms of probation, and rates of noncompliance are accordingly high. 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 quite severe (months, or occasionally years, in prison), which defeats the rationale for probation as a less costly penalty than incarceration. In some jurisdictions, parole revocation for technical violations (mostly dirty drug tests) are a major source of prison entry.

Over the past two decades, inflation-adjusted expenditure on corrections has more than doubled (Hawken & Grunert, 2010). 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. There has been 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. A frustrating statistic, however, is 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). Disappointing results from treatment diversion programs, such as California's Proposition 36 (the nation's largest diversion program), demonstrate the longstanding problem of compliance in the field of offender treatment: One quarter of the offenders who accepted the Proposition 36 bargain never appeared for treatment, and of those who did enter treatment, only about one third completed it. Compliance under

Proposition 36 is so poor that support among treatment providers for a change in the program to allow the use of short jail stays (to motivate treatment compliance) has grown to 80.1%.<sup>1</sup>

Hawaii's Opportunity Probation with Enforcement (HOPE) 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). And it achieves these results at a relatively low cost.

### *What is HOPE?*

HOPE is a new strategic 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.<sup>2</sup> 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). The HOPE model does not represent a movement against treating drug offenders. Instead, it proposes using treatment resources more strategically, by providing higher-quality, longer-term care to those whose behavior has indicated they are in greatest need of intensive services.

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<sup>1</sup> See Hawken and Poe (2008). Data are from the 2007 UCLA Provider Survey. The providers (n=87) constitute a representative sample of California treatment providers who serve Proposition 36 clients.

<sup>2</sup> 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.

### *HOPE Evaluation Findings*

HOPE has been subjected to two evaluations, including a randomized controlled trial of high-risk primarily methamphetamine-using probationers. These evaluations were conducted with support from the National Institute of Justice and the Smith Richardson Foundation. Evaluation findings from both studies show that HOPE probationers have lower drug use, and fewer no-shows for probation appointments, new arrests, probation revocations, and days incarcerated, compared with probationers assigned to probation-as-usual.

In the Integrated Community Sanctions Unit (Honolulu's intensive supervision high-risk probation unit), the rate of positive drug testing by fell 93 percent for HOPE probationers during the first six months (from 53 percent to 4 percent), compared with 14 percent for comparison probationers (from 22 percent to 19 percent). Only 40 percent of HOPE probationers had any post-warning violation within the first year; of those who had one violation, only half had a second violation; of those with two violations, only half (10 percent of the total) a third or subsequent violation. Thus HOPE identified a small minority of probationers who did not desist from drug use under sanctions pressure alone. I refer to this as the "behavioral triage" function of HOPE—the program identifies those most in need of treatment by documenting their actual conduct rather than relying on self-report assessments (see Hawken, 2010). Similarly, we found large significant reductions in no-shows for probation appointments for probationers assigned to HOPE, but no meaningful improvement for the offenders in the comparison group.

A subsequent study was conducted in a general probation unit using random assignment and an intent-to-treat design (i.e., all offenders assigned to the HOPE condition were included in the HOPE group, even if they failed to appear for their warning hearing to formally enter the program). This distinction had important implications for our study, as 30 percent of the offenders who had their probation revoked and were sentenced to an open term under HOPE had never appeared for a warning hearing. The results of the randomized controlled trial (RCT) are summarized in Table 1. There were large reductions in missed appointments, positive drug tests, recidivism, revocation and incarceration days.

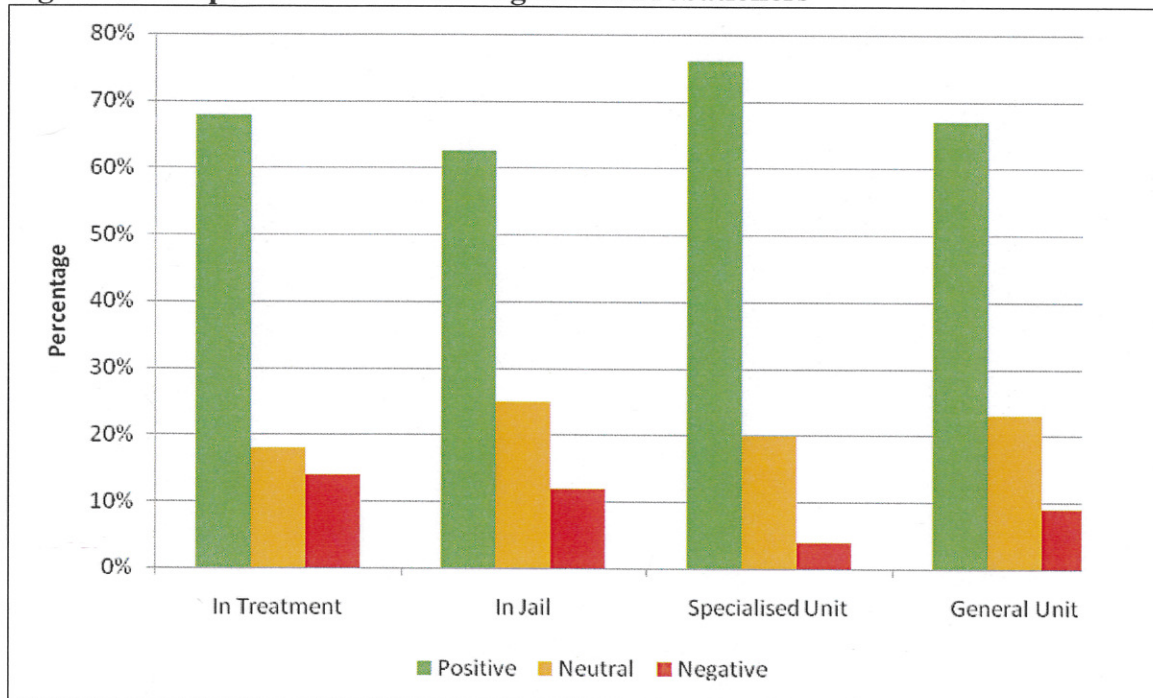
**Table 1. Summary of RCT Findings**

<b>Outcome</b>	<b>HOPE</b>	<b>Control</b>
No-shows for probation appointments (average of appointments per probationer)	9%	23%
Positive urine tests (average of tests per probationer)	13%	46%
New arrest rate (probationers rearrested)	21%	47%
Revocation rate (probationers revoked)	7%*	15%
Incarceration (days sentenced)	138 days	267 days

\*Thirty percent of the HOPE probationers who had their probation revoked had never appeared for their HOPE warning hearings. The revocation rate among those who appeared for a warning hearing was 5 percent.

Outcomes were robust across judges and across probation officers (similar outcomes regardless of their perceptions of the program). Our evaluation included surveys of key staff involved with implementing HOPE, and the HOPE probationers themselves. We found positive general perceptions of HOPE, with the highest levels of satisfaction reported by judges and probation officers. Four groups of probationers were surveyed (see Figure 1): in jail; in treatment; in community under supervision of the Specialized Unit; and in community under supervision of the General Probation Unit. Across supervision conditions, probationers reported positive general perceptions of HOPE.

**Figure 1 Perceptions of HOPE among HOPE Probationers**



Note: Data are from the 2009 HOPE Probationer Surveys. Four groups of probationers were surveyed. A total of n=211 probationers were surveyed. In Treatment (n=28); In Jail (n=16); In community supervised by Specialized Probation Unit (n=50); In community supervised by General Probation Unit (n=117)

### **Cost**

The feasibility of HOPE as an alternative to existing methods of community supervision, will depend in part on whether it adds to, or rather subtracts from, the total costs of operating the criminal justice and treatment system. We are not yet able to assign a final value to the cost savings under HOPE, but can speak to the direction of the change compared with probation as usual. Savings from prison days avoided dominate the HOPE savings and more than offset the increase in supervision and treatment expenditures associated with the program. For Adult Client Services (high risk, but lower risk than offenders in ICS) we estimated a savings in incarceration costs of \$4,140 per offender assigned to HOPE. For Integrated Community Sanctions (the higher-risk probationers) we estimated a savings in incarceration costs of \$6,157 per offender assigned to HOPE. These estimates are based on the conservative assumption that offenders sent to prison serve 50% of their term.



## ***HOPE for All?***

Our findings show that not all probationers succeed on HOPE. We found that a minority of probationers did not respond to the credible threat of sanctions and accumulated three or more violations. These probationers have identified themselves as either a. not amenable to supervision in the community or b. better suited to more regular judicial monitoring such as that provided by a drug court. As such, HOPE should be part of a continuum of supervision options available. There are currently 1,800 probationers under HOPE supervision in Honolulu. A total of 30 (approximately 2 percent) of these offenders have been transferred to the Honolulu Drug Court.

## ***Implications of HOPE***

Since most heavy illicit drug users move in and out of criminal-justice supervision, success in reducing their drug use via HOPE-style probation supervision could drastically shrink both the drug markets and the fiscal and human costs of drug law enforcement. There is no doubt that what has been achieved with HOPE in Hawaii is impressive. But it remains to be seen whether the HOPE effects will generalize to other jurisdictions. Programs such as HOPE require that judges, probation officers, police, corrections officials, and treatment providers cooperate towards a common goal. An important feature of the Hawaii experience was the role of the judge who created the program. Judge Steven Alm is a strong leader who motivated and coordinated the implementation of the program. If such leadership is lacking, the expected potential of a HOPE program may not be realized. A number of states are now considering implementing HOPE models and much will be learned as the number of jurisdictions and evaluations increase. Our evaluation in Hawaii leaves us cautiously optimistic but, as with any effective intervention, fidelity of implementation is critical. If the Hawaii findings hold in other jurisdictions, HOPE-like principles might make “community corrections” once again a credible alternative to incarceration, reducing the need to continue the trend of rising incarceration.

## **RECOMMENDATIONS**

There are a number of ways the Federal government can help improve the state of offender management. A good place to start would be promoting small-scale experiments of alternative management approaches. Those that show promise can be scaled up, and those that don't show accompanying reductions in recidivism and incarceration can be cut. The Federal government can also help to improve the quality of the evidence base by devising standards for what can be counted as an evidence-based program. Below are a number of recommendations for how the Federal government can help improve the status quo.

### ***Recommendation 1: Encourage HOPE Replication Studies on the Mainland***

HOPE has demonstrated that even strongly drug-involved probationers can and will modify their behavior substantially in the face of high-probability sanctions. HOPE has been shown to significantly reduce incarceration overall by deterring drug use and other crimes. The challenge now lies in reorganizing the criminal justice system to deliver on credible threats. 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. Two replication studies are underway on the mainland but more are needed to determine whether Hawaii's HOPE experience is generalizable. Start-up grants, as provided for in the Schiff-Poe bill, could provide an important catalyst.

***Recommendation 2: Support Experiments to Find the Essential Elements of HOPE***

We don't yet know which elements of HOPE are necessary to bring about behavior change. If HOPE is shown to generalize to the mainland, a series of experiments will be needed to identify the essential elements of the program. The HOPE model relies on the credible threat of punishment. As punishment is (a) unpleasant for the person at whom it is directed and (b) expensive to mete out, an ideal strategy would deliver the smallest possible sanction necessary to bring about the desired behavior change. HOPE shows that even a few days in jail (if delivered swiftly and with certainty) is sufficient to motivate desistance from drug use for the large majority of offenders, and results in a large net reduction in incarceration for program participants. Whether non-incarcerating sanctions (delivered consistently) would be sufficiently motivating to lead to similar improvements in outcomes as observed under HOPE, while avoiding the harms of incarceration, is an important question open for empirical inquiry. Nor do we know whether extensions to the HOPE model would improve outcomes further (for example, adding GPS monitoring where appropriate, or using a program such as 24/7 for those with conditions to desist from alcohol use). The Federal government should support these types of experiments.

***Recommendation 3: Experiment with HOPE-style Programs for All Groups of Offenders for Whom HOPE Represents a Safe Alternative to Incarceration***

Hawaii's experiment with HOPE shows that a sizable percentage of those incarcerated might be successfully managed in the community: HOPE was able to dramatically improve the behavior of not only offenders with drug charges, but also of other offenders who were drug-involved while committing their offenses. People who keep stealing, or keep hurting others, are better suited to incarceration, but there are many other categories of offenders who are currently excluded from diversion programs and drug court programs that have the potential to do well under HOPE (HOPE's Domestic Violence Offender Program and Sex Offender Program have both shown impressive outcomes, though neither has been subjected to an experimental test). Taxpayers would benefit from extraordinary savings if we were able to identify the classes of offenders who are suited to HOPE supervision, and divert these offenders from jail or prison.

***Recommendation 4: Continuum of Supervision Models***

HOPE is a lower-cost alternative to other supervision strategies that have yielded similar outcomes. 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 mandatory treatment and ongoing supervision from a judge, with offenders appearing before the judge for regularly scheduled updates. The drug court movement has been very successful. 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. A court dedicated to HOPE could manage multiple thousands of probationers (the dedicated HOPE court in Honolulu currently oversees 1,800 probationers and is anticipated to oversee 3,000 HOPE probationers with *one* judge when operating at scale), compared to typical drug court caseloads of 50-100 probationers.

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. Probationers who fail on HOPE could then be transferred to a drug court program with closer judicial supervision. The HOPE court in Honolulu has transferred 30 probationers to their drug court. The cost savings of having HOPE courts work along-side drug courts to deliver a continuum of supervision would be substantial. HOPE would be the lower-cost front-end program, with drug courts (and the more resource-intensive ancillary services they offer) reserved for those who do not perform well under HOPE.

#### ***Recommendation 5: Encourage Strong Research Designs for Program Evaluations***

The move towards evidence-based practices has one serious limitation: the quality of the evidence base. It is important to ask: What qualifies as “evidence” and who gets to produce it? Many programs are expanded and replicated on the basis of very weak evidence.<sup>3</sup> A recent study shows that the effect-size of offender programs is *negatively* related to study quality (the more rigorous the study is, the less likely it is to show an effect on recidivism). The “who” matters also. Several studies have found that evaluations authored by program developers report much larger effect sizes than those authored by independent researchers. Over half of the criminal justice programs designated as “evidence-based” programs on the National Registry of Evidence Based Programs, include the program developer as evaluator. The consequence is that we continue to spend large sums of money on ineffective programs (programs that do no good, and in certain circumstances actually do harm). It also means that many jurisdictions become complacent about searching for alternative programs that really do work.

We desperately need to start figuring out what does work in offender management. If we required that publicly funded offender programs be evaluated and show improved outcomes using strong research designs (experimental designs where feasible), we would likely halve the number of programs designated as “promising” or “evidence-based.” Not only would this relieve taxpayers of the burden of supporting ineffective programs, it would also help researchers identify more promising directions for future intervention research.

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<sup>3</sup> See Wright, Zhang, and Farabee (2010).

### ***Recommendation 6: Encourage Independent Evaluations***

Most state agencies contract with independent research organizations to evaluate programs that were developed and implemented by the agency. The evaluators then report evaluation findings directly to this agency. The agency is then directly involved in the design and implementation of the evaluation, and takes the lead in determining how (and if) these findings will be disseminated. Negative evaluation findings may meet agency resistance: reports may be delayed or suppressed, and the evaluator might face the risk of losing subsequent evaluation contracts. This arrangement is the equivalent of asking an employee to evaluate his own boss. It creates a quiet complicity between the agency and the evaluator, in that both now share the same goal of avoiding bad news and, if need be, protecting the source agency from criticism. It is not surprising that, nationwide, program evaluations conducted under state agency contracts have significantly higher effect sizes than the more objective research studies funded by federal agencies like the National Institutes of Health (Farabee, 2005). As a result, a large number of costly programs lumber along unchecked, and unimproved.

This conflict could easily be resolved by requiring all state agencies to submit their requests for evaluations to a truly neutral state agency such as (in California) the Bureau of State Audits (BSA), or another similar agency that has the expertise to work with the evaluated agencies and the eventually selected evaluator (Farabee, 2005). This coordinating agency would issue the requests for proposals, review the proposals, and select the contractor based on technical merit. The evaluator would report directly to this coordinating agency, which would distribute the findings. Creating distance between the agency and the evaluator would moderate the effect of any agency egos involved in demonstrating that whatever they are doing works, and neither they nor their staff would be able to pressure evaluators as they would not control the evaluation funds.



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