

TESTIMONY
Judge Steven S. Alm, Circuit Court Judge
First Judicial Circuit, State of Hawaii
Committee on the Judiciary | Subcommittee on Crime, Terrorism, and Homeland Security
May 11, 2010

Good afternoon, Mr. Chairman and Members of the Committee:

I am Judge Steven Alm, and I am thrilled to be able to testify here today about Hawaii's Opportunity Probation with Enforcement, or HOPE Probation.

Over the past several years, I've worked with dedicated public servants and private-sector service providers to develop HOPE probation. I'm proud to report that, when compared with identical probationers under typical supervision, HOPE probationers are less than half as likely to be arrested for a new crime, use drugs, skip appointments with their supervisory officer or treatment provider or be sent back to prison. My message today is that this is *not* a miracle – any probation department in the country can do this with the right leadership, strong management, appropriate resources, technical assistance and rigorous performance tracking.

By way of background, I am a state felony trial judge in Honolulu, Hawai'i. For the last several years, I have had a typical caseload of felonies: burglary, sex assaults, murder, drugs, thefts, etc.

Hawai'i has 12,000 offenders on felony probation or deferral, and Oahu, where my courtroom is located, has about 8,200. We also have about 4,200 men and women in State prison.

From my first week on this court calendar in June of 2004, I could tell that the current probation system was broken. Probation officers had caseloads of up to 180, and the dynamic was that offenders would repeatedly break the rules of supervision – by using drugs, skipping probation appointments and failing treatment – because there were no real consequences. After

the offender racked up 20, 30 or more violations, the probation officer would feel they had a “good” case for bringing a Motion for Revocation of Probation. The probation officer would spend hours working on the affidavit and motion, and a warrant for the offender’s arrest would be prepared and he or she would eventually be arrested and typically ten weeks later be brought into my court for a Motion to Revoke Probation. The probation officer would typically deem the offender “not amenable to probation” and almost invariably recommend I sentence the offender to the underlying 5, 10 or 20 years in prison.

I saw this dynamic in June of 2004, and I thought to myself, “this is a crazy way to operate. A crazy way to try to change anybody’s behavior.”

I thought to myself, “What did I do as a parent when my child misbehaved?” I would repeat the rules and warn him that if it happened again, I would give him a specific consequence right away. And he learned to connect the bad behavior with the consequence, and the bad behavior stopped.

I thought if we could reorganize this creaky old probation system to be swift, certain and proportionate for each and every violation, we could more effectively supervise probationers.

And HOPE probation was born. I brought together the different players in the criminal justice system and all agreed to work smarter and harder to make this happen. Just as with my child, we agreed to establish clear rules, do a better job of supervision, respond to misbehavior swiftly and certainly, and track the results to see if it was working. Here’s how it worked:

First, we identified the highest-risk probationers. A recent evaluation found that barely a third of HOPE probationers were sentenced on a drug charge. The majority of our clients have a history of property or violent offenses; they average 17 prior arrests; and nearly half were assessed as high risk to reoffend on a validated risk instrument. HOPE is about doing probation

right, and that means focusing our resources on the most risky, not squandering them on folks who will behave regardless of the intervention.

Second, the public defender pointed out that the rules were the same but since we were actually going to be enforcing them for the first time, asked if we could **warn** the offenders about the new HOPE procedures. I thought that made good sense, both from a due process and practical point of view.

Next, we had to do a better job of monitoring behavior so that violations would be predictably detected. Probation established a call-in hotline, which probationers call EVERY WEEK DAY MORNING and which randomly requires them to appear for a drug test THAT DAY between 7:45 a.m. and 2:00 p.m.. This means that there is no safe window for drug use and the probationers know it: one said to me, “Judge Alm – I don’t even smoke ice anymore because the thought of getting drug tested in the morning ruins the high.”

Fourth, the probation officers agreed to act immediately to arrest the offender each and every time the probation terms were violated. A positive drug test would mean the offender gets arrested on the spot, taken to jail and brought to my courtroom two business days later. A missed probation appointment or failure at drug treatment would lead to the issuance of a bench warrant for the offender’s arrest and a hearing soon after he or she was taken into custody.

Now, I knew that traditionally law enforcement hasn’t always given warrant service the highest priority. In my prior life, I was the United States Attorney for Hawai`i. I had a number of conversations about HOPE Probation with the federal authorities. So, for the fifth element of HOPE, the United States Marshal agreed to have his Fugitive Task Force serve the HOPE bench warrants for my courtroom and Hawaii’s High Intensity Drug Trafficking Area, or HIDTA, agreed to pay any task force overtime.

Sixth, all this work would be for naught if we couldn't process the sanction quickly. Accordingly, the prosecutor and the defense agreed to be ready for more frequent hearings, typically in two days' time. The jail was briefed and agreed to look at their intake procedures as they were warned we were starting small but that they could expect some repeat 'customers.' And new probation forms were designed to reduce paperwork.

On October 1, 2004, we had a HOPE warning/notification hearing for 34 offenders in my courtroom. Also present were the prosecution, the defense and the probation officers. I told the assembled probationers that everyone in the courtroom wanted them to succeed on probation. But, as they were not in prison and were on probation, they were making a deal with me that they would follow the rules of probation. That from then on, any violation of the terms of probation would lead to jail. I said that as adults, they controlled their own behavior. I could only control what I would do if they violated. That it was all about personal responsibility and I hoped they made good choices in the future. I also answered any questions they had about the HOPE procedures.

Given the track record of non-compliance (e.g., 40% positive drug test rate, and 15% missed appointment rate), we braced for a large number of violations. We had three the first week and two the second. The anticipated flood of violations and hearings never occurred. And, the longer offenders are in HOPE Probation, the more compliant they generally become. If they have problems with compliance, we find out immediately and address them.

HOPE Probation has grown from those 34 offenders to more than 1,500 probationers today, including over 1,350 of the 8,200 felons on probation on Oahu.

The Honolulu Police Department has stepped up over the years and now serves 90% of the warrants on an expedited basis. The Federal Fugitive Task Force still serves the remainder.

From the start, we intentionally targeted those most likely to fail on probation and/or those we are most concerned about. Research shows you get the best bang for your probation buck that way. Those targeted include those convicted of crimes of violence and those with substance abuse problems.

Dr. Angela Hawken from Pepperdine University – with support from the National Institute of Justice – conducted a top-of-the-line randomized control trial study of 500 probationers: 2/3 placed in HOPE, 1/3 in the control group of probation-as-usual. She discovered HOPE probationers were 72% less likely to test positive for drugs, and 68% less likely to miss an appointment with their probation officer. HOPE probationers were 55% less likely to be arrested for a new crime and 53% less likely to have their probation revoked. Overall, HOPE probationers were sentenced to or served 48% fewer days of incarceration than those in probation-as-usual. The cost-saving implications of this latter finding are enormous.

Dr. Hawken testified before the Hawai`i Legislature's House Finance Committee in March, 2010, and said that each HOPE probationer was currently saving Hawai`i taxpayers between \$4,000 - \$8,000 per year in incarceration costs.

A HOPE-inspired effort started in Nevada in January of 2010, and Oregon started theirs in March. Virginia, Alaska and Arizona are getting organized. I am getting calls and emails from all across the country. I have even been to Sweden to talk about HOPE.

HOPE is that rarest of strategies in the criminal justice system. A true win-win proposition. HOPE reduces crime and victimization; it helps offenders and their families by keeping them employed and out of prison; and it saves the taxpayers substantial amounts of money.

I believe that with HOPE, we have found a way to more effectively protect public safety and at the same time, reduce the prison population.

The problem isn't that we're ignorant of what works to reduce crime and our reliance on incarceration. The problem is that innovation spreads too slowly; that probation agencies are overburdened; and that the incentives of individual agencies are poorly aligned with the public safety objectives of the state. HR 4055 aims to resolve those problems through a competitive grant program that will support HOPE pilots through technical assistance, seed funding and rigorous evaluation. The demand from state and local jurisdictions is strong, and well-implemented HOPE pilots would pave the way for a revolution in probation.

Thank you for the chance to address you.