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## How Does HOPE Work?

### Introduction

Over the 11 years since HOPE commenced, there have been several modifications to how the program operates. This chapter describes how HOPE was operating in Alm's court in Hawaii in early 2016.<sup>1</sup> In particular, it sets out the selection process and the role of probation officers. It also describes the warning hearing and consequences for non-compliance. It then explains the potential for early termination and considers the role of drug treatment. In addition, the issue of mental illness is considered.

### The Selection Process

HOPE is *not* a diversion program and, unlike many community corrections programs, does not target low-risk offenders. Instead, it focuses on high-risk offenders who would otherwise be likely to be incarcerated or perform poorly on standard probation. As the IBH explained:

HOPE Probation ideally targets higher risk, felony offenders (this is consistent with the risk principle of targeting those at higher risk of recidivating)... research has also shown that focusing on the higher-risk offenders produces greater recidivism reductions. HOPE effectively targets resources and attention on the higher-risk population (those who are most likely to commit new crimes), thereby achieving a greater ‘bang-for-the-buck’.<sup>2</sup>

Potential participants are identified by probation officers through validated risk assessment tools (e.g., the widely used Level of Service Inventory-Revised (LSI-R), a 54-item assessment tool that measures 10 criminogenic risk factors<sup>3</sup>) or because of multiple prior failures on probation (e.g., through ongoing drug use or violation of probation conditions). Hawken et al. recently noted that the program

is now integrated into a continuum of supervision. The supervision-triage structure entails conventional probation for low-risk offenders, HOPE for high-risk and for failures from conventional probation (nearly 30 percent of the felony-probation caseload on O’ahu), and Drug Court reserved for failures from HOPE. About seven percent of the HOPE caseload is triaged into Drug Court, which has now been retooled to accept more serious offenders who would previously have been deemed ineligible.<sup>4</sup>

Alm described the ‘triage’ aspect of model in the following way:

The courthouse is thought of as a hospital. Offenders are the patients... Probation-as-usual is the outpatient clinic. HOPE Probation is the hospital ward. The Drug Court, now reconstituted to target primarily high-risk offenders, is the Intensive Care Unit (ICU).<sup>5</sup>

In addition, all sex offenders in the community in Hawaii are required to be monitored in this way, with a focus on conditions such as ‘stay-away’ orders and compliance with treatment (e.g., sex offender treatment programs).<sup>6</sup> Judges can also refer offenders being sentenced for felony convictions or minor domestic violence offenses to HOPE at the time of sentencing. Hawken, Davenport and Kleiman suggested that domestic violence ‘appears to be a ripe target’<sup>7</sup> for SCF regimes; at that stage, there was a pilot project underway in Hawaii and a program in

Texas about to be launched. As will be discussed in Chap. 7, much of the interest in SCF in Australia has been in the context of its application to domestic violence.

## Probation Officers

As Alm has explained, the probation officers in Hawaii ‘are all college-trained social workers, [and] half have Master’s degrees in social work or criminal justice.’<sup>8</sup> The IBH described their role as follows:

Probation officers (regardless of whether or not they are part of HOPE Probation) are responsible for two primary supervisory functions. The *first* primary function of probation officers is to be change agents. *The probation officers use the probation process to provide direction and guidance to probationers to help them make positive changes in their lives* and thus reduce their chances of criminal recidivism. Probation officers with training in areas including effective case planning, motivational interviewing, cognitive behavioral therapy, and evidence-based practices in recidivism reduction use these skills in combination with referrals to appropriate programs – drug treatment, mental health counseling, domestic violence classes, etc. – to help probationers improve their lives, their ways of thinking, and make better choices that result in improved outcomes.<sup>9</sup>

Alm added that probation officers in Hawaii ‘focus their work with their clients on the National Institute of Corrections “Central 8.”’<sup>10</sup> This refers to the eight criminogenic risk/need factors identified by Andrews and Bonta,<sup>11</sup> namely:

1. history of antisocial behavior;
2. antisocial personality pattern;
3. antisocial cognition;
4. antisocial associates;
5. family marital circumstances;
6. school/work;
7. leisure/recreation; and
8. substance abuse.

Alm recently added that an individual's risk factors are determined by the LSI-R. Probation officers consider the 'Central 8' and 'use a weighted system to identify the top three needs and then use case planning for those three areas.'<sup>12</sup> Alm gave the following as an example of how probation officers in Hawaii work with someone on HOPE who has returned a positive drug test: 'there would be a conversation such as, "Let's do a thinking report to see how your friend offering drugs to you resulted in your present situation and then examine how this serves you over time."<sup>13</sup>

The probation officers' second role is monitoring compliance with probation conditions, including whether HOPE probationers are attending drug testing on time, returning positive tests and so on. Their advice is generally influential in determining whether it is appropriate to revoke probation, either because of good performance (i.e., early termination) or poor compliance (instead requiring the probationer to serve 'the open term,' i.e., their prison sentence). The IBH also clarified that:

In any HOPE strategy, milder sanctions (i.e., shorter jail stays) should be recommended by probation officers to reward HOPE offenders who accept personal responsibility for their offense .... Recommendations may also include an assessment for substance abuse treatment or placement in clean and sober housing in cases where probationers repeatedly test positive for recent substance use, an assessment for a mental health evaluation, or participation in domestic violence batterer classes.<sup>14</sup>

Interestingly, Satel and Lilienfeld<sup>15</sup> claimed, following discussions with Alm, that some HOPE personnel initially objected to the idea of incentives, on the basis that addicts could not be held accountable for their behavior. The issue of incentives is discussed in more detail later.

As discussed further in Chap. 6, critics of HOPE are concerned that the model reduces probation officers to compliance officers. However, the IBH suggested that:

a benefit of HOPE is that the probation officer is no longer the 'bad guy' who decides to revoke the offender's probation. The HOPE strategy

requires an arrest every time and it is not a personal decision on the part of the probation officer...both the probation officer and the probationer knows that it is the offender's behavior that drives the outcome and any arrest, and not the individual decision-making of the probation officer. This leads to less projection of blame by the offender onto the probation officer.<sup>16</sup>

At the end of the IBH document are open letters to various stakeholders in the HOPE process. Cheryl Inouye, whom Alm credits with helping to establish HOPE, was the Section Administrator of the Integrated Community Sanctions Section, where HOPE was first piloted. In her open letter to probation officers, she reaffirmed Hawaii's commitment to 'the Eight Evidence-Based Principles for Recidivism Reduction.' The RNR strategy is part of this approach.<sup>17</sup> Inouye noted that probation officers might also be involved in 'motivational interviewing, cognitive behavioral therapy (CBT), case planning that targets criminogenic needs etc.,' and explained that it was in this context that HOPE was developed. Inouye stated: 'It was a simple model based on operant conditioning, but the underlying focus was one of accountability in a caring context: of offenders, of offenders to their victims, of the system, and of the Judiciary to the public.'<sup>18</sup> She went on to discuss how the model 'met the risk principle' and how probation officers were concerned about damaging their therapeutic relationship with their clients. However, she stated that probation officers 'immediately witnessed positive changes in the offenders' attitude and behavior'<sup>19</sup> and that there had been increased officer morale, as officers 'are more empowered' and 'become more influential as change agents because they can help their clients cut through their denial, and help them see the merits of change (moving from having external motivators to being intrinsically motivated).'<sup>20</sup>

These points were reinforced in discussions with probation officers during my visit. For example, I was told by a probation officer that the probation officers appreciate that 'when they go to court, everyone knows what the plan is.' In examining the stages of change model,<sup>21</sup> I was told that HOPE is most helpful at the 'pre-contemplation' (denial) stage, but also speeds up the transition from contemplation

(ambivalence) to determination (admission), whereas probationers would previously have around 50 violations in this phase. I was also told that probation officers talk in detail to probationers about the HOPE program and explain that ‘we want you to be surrounded by people who can support you in this.’

## The Warning Hearing

Nagin recently observed that ‘little is known about how individuals form perceptions of the sanctions regimes they confront.’<sup>22</sup> In HOPE, these perceptions are developed in large part through the warning hearing, which the judge gives in open court on probationers’ first day in the program and which ‘functions as an “induction ceremony.”’<sup>23</sup> Duriez, Cullen and Manchak have conceded that HOPE ‘starts with a positive message to probationers,’<sup>24</sup> while Lattimore et al. described the warning hearing as ‘one of the unique features of HOPE, where the program goals and expectations are clearly laid out for the probationers.’<sup>25</sup> Hawken et al. described the warning hearing as a form of behavioral contract and cited research indicating that clearly defined behavioral contracts enhance perceptions of the certainty of punishments, which deters future violations.<sup>26</sup> In this context, it is important to note that a recent study of 86 drug courts found that courts that imposed more certain sanctions based on a formal and clearly communicated schedule of incentives and sanctions were more effective at reducing reoffending than those that did not take this approach.<sup>27</sup>

The typical script for a warning hearing is set out in Appendix A. There is also a video segment available online.<sup>28</sup> My observations of warning hearings in January 2016 are discussed in Chap. 3. In the warning hearing, Alm includes statements such as ‘I hope you do succeed on probation. So does your lawyer, your probation officer, and your family. I think you can succeed on probation’; ‘[i]f you confront your problems and learn to change your thinking and your behavior, you will be able to follow the rules of probation and be able to remain free in society’; and ‘I wish you luck and success on probation.’ Alm has

stressed the importance of the warning hearing in the defendants' success, adding that:

I have had many defendants later tell me that that was the first time that anyone told them that they wanted them to be successful. It also helps to set a positive tone for the warning hearing, which is after all their first day in HOPE Probation, and the start of my relationship with each defendant.<sup>29</sup>

Warning hearings are conducted in groups of up to 10–12 and most last less than 10 minutes.<sup>30</sup> Alm has advised that providing the warning in groups 'makes efficient use of court time. Second, it sends the message to all of the probationers that they are being treated just like their fellow probationers. They are not being singled out and can expect to get consistent treatment in the future.'<sup>31</sup>

The judge explains that he cannot control what the probationer will do, but can control his own actions, and that probationers can accordingly count on a sanction for *every* violation. Expectations for the program are made clear, with the judge explaining the four sanctions currently in operation, namely cell-block sanction, two business days in custody, 15 days in custody and (at least) 30 days in custody (discussed further below).

Participants are told to see their probation officer after the warning hearing, at which point they will be given a color code (e.g., red). As the judge then explains, probationers must call a dedicated telephone hotline every weekday morning to hear which color has been randomly selected for that day. If it is their color, they must appear at the probation office before 1.00 p.m. that day for a drug test.

As discussed further in Chap. 4, Hawken and Kleiman's<sup>32</sup> evaluation found that probationers assigned to participate in HOPE who did not attend the warning hearing were disproportionately likely to be unsuccessful on the program and to have their probation revoked. Alm has recently clarified that, as a result of these findings, he 'started to give at least 30 days in jail for the probationers who skipped the Warning Hearing.'<sup>33</sup>

## Drug-Testing Regime

In their first two months on HOPE, probationers are randomly tested at least once a week. Good behavior, as assessed by positive engagement with the probation officer and negative drug tests, is rewarded with less-frequent testing, through the assignment of a new color, for example, blue might mean high-, white = medium- and red = low-frequency testing (the color regime is actually more complex than this, as was explained to me during my visit).

I was told by a probation officer during my visit that about half of HOPE participants have substance issues. Participants without any indication of current substance use (e.g., sex offenders) would generally be classified as low-testing frequency from the outset.<sup>34</sup> According to Kleiman,<sup>35</sup> after a year, most probationers have been moved to the low-monitoring group, making the cost of supervision only slightly higher than probation-as-usual (PAU).

I had an opportunity to visit the drug-testing area, which is located on the ground floor of the courthouse. Depending on the time of day, someone who tests clean can be in and out of the court precinct in 10–15 minutes. There is always a female officer on shift to supervise the drug tests of female probationers.

## Consequences for Non-Compliance

As noted above, a key feature of this model is that the consequences for non-compliance are laid out clearly in advance. The following forms of conduct are treated as a violation:

- admitting to drug or alcohol use;
- testing positive to drug use; and/or
- missing a drug test or appointment with a probation officer.

If probationers are required to undertake substance abuse treatment, failure to participate satisfactorily will also be treated as a violation. Sex



and domestic violence offenders are also required to satisfactorily participate in treatment and are not to have contact with their victims.

Where a violation is alleged (e.g., the probationer has returned a positive urine test), the probation officer completes a 'Motion to Modify Probation' form and transmits this to the judge. The hearing on the Motion to Modify is held promptly, while the probationer is confined. If she/he is found to have violated the terms of probation, she/he is immediately given a short jail stay, with credit given for time served (while awaiting the hearing).<sup>36</sup>

During the court hearing, the judge asks probationers whether they waive their right to test the evidence. Alternatively, probationers have the legal right to contest the motion alleging a breach. In such circumstances, witnesses (e.g., a drug tester or probation officer) is called and cross-examined and the judge determines whether the prosecution had made out its case. However, in nearly every case (including every case I observed during my visit in January 2016), probationers acknowledge they have violated the terms and conditions of their probation. According to Alm, there were only around 30 contested hearings between HOPE's inception and 2015. This is perhaps unsurprising, given that there is clear evidence of their misconduct (e.g., a positive drug test). As Weisberg has noted, HOPE 'is legally and financially very efficient: virtually no procedure.'<sup>37</sup>

It should be noted, however, that the Victorian Sentencing Advisory Council<sup>38</sup> in Australia has identified several issues with the sanctions-before-hearing aspect, i.e., where probationers are taken into custody days before appearing before a judicial officer for their violation hearing. In particular, the Council questioned whether non-judicial officers should be permitted to detain an offender in custody without judicial approval, the lack of transparency about this decision, and whether serving a sanction prior to judicial hearing conflicts with the presumption of innocence. In addition, it was hypothesized that it would be theoretically possible for offenders to spend more time in custody awaiting the violation hearing than the sanction eventually imposed by the court. The Council also suggested that the low number of contested hearings may be in part because there is less incentive to challenge the allegation if the time in custody has already been served.

These are important questions of principle, but the process in Hawaii does not appear to have caused significant concern in practice. According to the IBH,

[i]n the thousands of other hearings, the probationers have taken responsibility for their behavior, admitting to the violation of probation and proceeding to sentencing. This has been true even if the probationers will be sent to prison. They know that at that point they have had multiple chances and that it was their own behavior and choices that led to that result.<sup>39</sup>

When he first introduced HOPE, Alm adopted a model of escalating sanctions (e.g., if a probationer returned multiple positive drug tests, she/he would receive a more severe sanction on the third occasion than the first occasion). It should be noted that this was the form of sanctions model adopted in the DFE sites (discussed in Chap. 5). Alm subsequently moved to a model where the same sanctions apply for a particular form of behavior (e.g., missed appointment), regardless of the number of times it has occurred. Alm recently commented on this aspect of the program in the following way:

the same behavior will result in the same sanction, although repeated violations may lead to other interventions like a referral for an assessment or a higher level of treatment. It may seem counterintuitive, but if you use graduated sanctions, it may also have two unintended results. First, it may increase the amount of absconding. If a probationer knows he or she will get an extended jail sanction for testing positive for drugs again, he or she may just decide to run away. Second, when the jail sanctions increase, it may lead to faster revocations and prison. Going up the ladder can lead to the top of the ladder fairly quickly. This type of strategy also makes the assumption that the offender's continued use of drugs is a result of a lack of motivation (and that a jail sanction will 'fix' that) and does not consider that it may, instead, be a function of not knowing how to stop the drug use (having the desire to change but not the ability). Sanctioning without interventions in this scenario will have no rehabilitative value, and graduated sanctions will ultimately lead to prison.<sup>40</sup>

The current model is thought to encourage personal responsibility, with a 'sharp distinction between sanctions administered for immediately

acknowledging responsibility for a violation such as producing a positive drug test and admitting to drug use on the one hand, and, on the other hand, absconding.<sup>41</sup> According to Hawken et al., '[t]he governing principle of HOPE is that sanctions are delivered swiftly, with certainty, and that the sanction "dose" should be proportionate to the underlying misstep.'<sup>42</sup> They observed that this accords with research indicating that swiftness and certainty are more important than severity, as well as reducing criminal justice costs.

Importantly, repeatedly returning positive drug tests and/or failing to complete drug treatment does not result in the probationer being terminated from the HOPE program or being sentenced to prison for the entire sentence (which may be 10 or even 20 years long). This is discussed further below.

The following sanctions regime was in operation in 2016. It should be noted that the sanctions imposed as a consequence for non-compliance are served at the O'ahu Community Correction Center (a local jail), while longer sentences (in circumstances where probation is revoked) are served in the Hawala Correctional Facility or on the mainland (often Arizona).

## Cell-Block Sanctions

Where a probationer is late for or misses an appointment with their probation officer, or is late for a drug test, the probation officer will attempt to contact them. If she/he attends later that day or the next day and tests negative, she/he is ordered to report to the court and the matter is set down for as soon as possible. At the court hearing, the probationer will receive a *cell-block sanction*. This means that the probationer is required to sit in a cell at the court from the time their matter is heard until 3 p.m. that day. If it is inconvenient to stay until 3 p.m. that day, due to work, family or other commitments, the judge will allow the probationer to make arrangements to attend another day. The court provides sandwiches, and/or probationers can bring their own food.

Hawken et al. described the following as an example of this sanction: 'a probationer who has had no violations for a year and is employed full-time misses an office visit appointment, calls his P[robation]

O[fficer] before he is contacted, and comes in the next morning and tests negative.<sup>43</sup> They went on to note:

These sanctions reinforce the HOPE principles that *every* violation is sanctioned and that sanctions are to be proportional to the violation, while not needlessly disrupting the lives of well-performing probationers and saving the jail the burden of processing inmates.<sup>44</sup>

## 2-Day Sanctions

If a probationer tests positive for drugs and admits to using drugs, she/he will be immediately arrested and taken into custody. The matter will be listed for court *two business days* later, at which point the judge will give credit for time served and the probationer will be released back into the community. The same approach is taken where the probationer misses an appointment with their probation officer or drug test, but attends promptly, tests positive and admits use.

It should be noted that the HOPE court only sits from Tuesday to Friday. As a result, probationers who test positive on Thursday or Friday will be held in custody until the following Tuesday (i.e., five or four days, respectively, rather than two calendar days for those who test positive on a Monday, Tuesday or Wednesday). This is made clear in the warning hearing.

## 15-Day Sanctions

The next sanction applies where a probationer returns a positive drug test, but denies use. Their urine sample is then sealed and sent off for further analysis, and a court date is set for 10 days later. If the test returns negative, the court hearing is canceled. The judge, drug testers and probation officers I spoke to acknowledged that there are some cases where initial false positive results occur; it therefore seems prudent to have this option for probationers who might be genuinely (and legitimately) bemused by a positive result, rather than it being construed as evidence of their denial.

However, if the analysis confirms the initial positive result, the probationer is arrested and required to serve 15 days in custody. This increased sanction is seen as important to cut through denial about ongoing drug use. The same approach is adopted where a probationer misses an appointment or test and does not see their probation officer for several days, or where she/he fails to provide a sample within 30 minutes of attending for a urine test. In such circumstances, it is assumed that probationers who delay attending or delivering a sample do so in the hope that any drugs might clear out of their system.

### 30-Day Sanctions

Finally, if a probationer misses a probation appointment, the probation officer will make several attempts to contact them and an emergency contact (all probationers are required to provide the contact details of a contact person upon commencement of the program). After approximately five days, the probation officer will seek a warrant for the probationer's arrest. Once arrested, the probationer will be required to serve 30 days in custody, although there is scope to make this longer for subsequent instances of absconding.

Another circumstance in which a 30-day sanction is deemed appropriate is where the probationer is detected trying to tamper with the sample (e.g., by substituting someone else's urine). This sharp escalation in the severity of the response is designed to encourage probationers 'to be honest about their behaviors, including, in particular, substance use behaviors.'<sup>45</sup>

As set out above, sanctions of *at least* 30 days are also imposed on probationers who do not attend the warning hearing.

### Early Termination

One aspect of HOPE which was not initially a feature of the program is the possibility of probation being terminated early due to good behavior. This was introduced in 2010; according to Hawken et al., this is an

important extension which serves as a mechanism to incentivize and reward compliance, while probation officers have indicated that ‘probationers are motivated by the prospect of early termination and discuss it with them.’<sup>46</sup> Early termination also reduces probation officers’ case-loads, so they can focus on other clients who need more support.

As the judge now explains in the warning hearing, probation in Hawaii usually runs for four years. However, if a probationer can go for two years without any violations (other than cell-block sanctions, are overlooked for this purpose), then she/he can apply to have their probation terminated. It should be noted, however, that this option is not available to sex offenders after only two years, as their treatment generally lasts longer.

Between April 2010 and April 2014, there were 84 early terminations.<sup>47</sup> By 2015, over 100 HOPE probationers had been granted early termination of their probation and not a single one had been arrested since.<sup>48</sup> However, it is conceded that the follow-up period for the more recent early terminations has not been very long. Early termination is discussed in more detail in Chap. 3.

## Drug Treatment

In HOPE, drug treatment is provided for those who request it or who cannot stop using drugs or alcohol on their own. In practice, HOPE participants who request treatment will be referred to treatment, while those with two or more violations in quick succession are mandated to intensive treatment services, generally on a residential basis.<sup>49</sup> It should be noted that once a probationer is mandated into treatment (as opposed to attending voluntarily), failure to attend or complete treatment is treated as a violation.

According to Alm, the drug treatment programs in Honolulu ‘are very supportive of HOPE [because] they now ... can more appropriately make use of their precious treatment spots. They also report that HOPE probationers are more likely to persevere in treatment when compared with those on probation as usual.’<sup>50</sup> As a testament to this, the *State of the Art of HOPE Probation* document included a letter of

support from Alan Johnson, the President and CEO of one of Hawaii's drug treatment facilities, Hina Mauka. Johnson stated in his open letter, addressed to 'Treatment Colleagues', *inter alia*,

The substance abuse treatment programs in Hawaii serve to support HOPE Probation. Not every offender in HOPE needs treatment. Many do very well without it. But for those who need it, mandated treatment is very effective. ...HOPE makes treatment work for this population that needs it most...

We have found that HOPE probationers are more likely to stay engaged in treatment compared with offenders on probation-as-usual because they know there will be a swift consequence of a jail sanction for a failure to attend or complete treatment.

Our counselors report that their clients in HOPE are more responsible than other offenders. The reality of immediate consequences helps to motivate the HOPE offenders to work harder, be more engaged in treatment, and be more accountable for their behaviors...

...it is all done in a supportive, caring environment. The HOPE probationers appreciate being treated like adults, with clearly defined expectations and certain consequences for violations. They know the HOPE judge cares about them...

...we all know that treatment works. But treatment works even better when the clients are in HOPE....

...We have found HOPE Probation to be a powerful way to both make better use of our treatment resources and to increase treatment success.<sup>51</sup>

As will be discussed further in Chap. 6, one of the principal criticisms of HOPE is that it is perceived to be focused only deterrence, not rehabilitation and treatment. However, Hawken et al. noted recently that '[t]reatment features prominently within HOPE (75% of the money appropriated for HOPE is directed to drug-treatment services).'<sup>52</sup> In the 'essential elements' of HOPE, discussed further in Chap. 7, the IBH stated that 'HOPE probation officers should ideally be skilled in substance use relapse prevention, cognitive behavioral therapy, and motivational interviewing.'<sup>53</sup> The IBH has also made it clear that '[a] continuum

of drug treatment services is essential to HOPE,<sup>54</sup> including drug education classes, one-on-one counseling, outpatient, intensive outpatient and residential treatment. As noted by the IBH, Judge Alm developed a good understanding of the various treatment programs available (something I witnessed firsthand during my visit in January 2016, as discussed further in Chap. 3). It was also suggested that this ‘helps to support the probation officers and their choice of specific programs...[and] reduces the likelihood of the offender misleading the judge in court’.<sup>55</sup>

## Mental Illness

According to Klingele, ‘HOPE does not accommodate the mentally ill.’<sup>56</sup> However, the IBH has asserted that the program facilitates participants’ referral to mental health treatment and improves their compliance because they understand HOPE’s ‘clear and fair rules.’<sup>57</sup> Unfortunately, there is no further detail as to how the referral process occurs. However, the IBH suggested that this model ‘works well for offenders with serious mental illness because it is not based on the offenders agreeing that they have an illness and need treatment but instead insists on compliance with treatment as a condition of their release.’<sup>58</sup> According to the IBH,

While some mental health professionals are initially troubled by the coercion or the ‘punishment’ appearance of HOPE Probation, most see the value of HOPE in the management of the seriously mentally ill because it reduces probation violations which often lead to prolonged incarceration and because HOPE Probation promotes more successful participation in the community.<sup>59</sup>

Alm has stated that defense lawyers involved with HOPE also believe it is very effective with their clients in this context. It should be noted, by contrast, that some defense lawyers in the DFE sites perceived that HOPE conflicted with their professional duty to represent their clients’ best interests.<sup>60</sup> This aspect of HOPE has received little scholarly attention to date and is worthy of further research.



## Conclusion

Kleiman has described HOPE as ‘mandated desistance.’<sup>61</sup> Although the ‘elevator pitch’ for HOPE makes it seem simple, this chapter has presented a detailed guide to how it works to ensure clarity around its operation. In particular, the current model of sanctions for non-compliance (cell-block, 2, 15 and 30 days) has changed since the model was introduced and evaluated by Hawken and Kleiman in 2009. The introduction of the possibility of early termination as a reward for compliance was also added after the program had been in operation for several years.

The role of the probation officer and drug treatment are also considered in this chapter. Importantly, probation officers in Hawaii work with probationers (whether on HOPE or standard probation) as so-called change agents, applying practices supported by the evidence, such as RNR, motivational interviewing and CBT; their role also includes monitoring compliance, but this is not the sole or even primary focus of their work with probationers. Under HOPE, drug treatment is available to anyone who asks for it and is mandated for probationers who repeatedly fail their random drug tests. The chapter concluded with some tentative comments on the suitability of HOPE for people with mental illness, although this issue requires further exploration.

## Notes

1. S. Alm (2016), ‘HOPE Probation: Fair sanctions, evidence-based principles, and therapeutic alliances,’ *Criminology and Public Policy*, 15: 1195–1214; IBH (2015), *State of the Art of HOPE Probation*.
2. IBH, *ibid.*, 2.
3. S. Alm (2015a), ‘HOPE Probation and the new drug court: A powerful combination,’ *Minnesota Law Review*, 99: 1665–1696.
4. A. Hawken et al. (2016), *HOPE II: A follow-up to Hawaii’s HOPE evaluation*, NIJ, 10–11.
5. S. Alm (2013), ‘A new continuum for court supervision,’ *Oregon Law Review*, 91: 1181–1190, 1182.
6. M. Kleiman (2011), ‘Justice reinvestment in community supervision,’ *Criminology and Public Policy*, 10: 651–659. See also Alm, n 1.

7. A. Hawken, S. Davenport and M. Kleiman (2014), *Managing drug-involved offenders*, NIJ, 44.
8. Alm, n 1, 1197. See also Alm, n 3.
9. IBH, n 1, 5. Emphasis added.
10. Alm, n 3, 1695. Alm recently clarified: 'I have realized that I misspoke when referring to the National Institute of Corrections here. (While our POs are using the NIC's strategy as referenced in #4 below as their overall strategy, the Central 8 come from Andrews and Bonta and are identified by the LSI-R)': S. Alm, email communication to L. Bartels, March 15, 2017.
11. D. Andrews and J. Bonta (2010), *The psychology of criminal conduct*, 5th ed, LexisNexis Group.
12. Alm, email communication, n 10.
13. Alm, n 1, 1205.
14. IBH, n 1, 21–22.
15. S. Satel and L. Lilienfeld (2013), *Brainwashed: The seductive appeal of mindless neuroscience*, Basic Books.
16. IBH, n 1, 9. See also Alm, n 1.
17. Alm, email communication, n 10.
18. IBH, n 1, 68.
19. Ibid., 69.
20. Ibid., 70. See also Alm, n 3.
21. See J. Prochaska and C. DiClemente (1986), 'Toward a comprehensive model of change' in W. Miller and N. Heather (eds.), *Addictive behaviors: Processes of change*, Plenum Press.
22. D. Nagin (2013b), 'Deterrence in the twenty-first century: A review of the evidence,' *Crime and Justice*, 42: 199–263, 205.
23. IBH, n 1, 4.
24. S. Duriez, F. Cullen and S. Manchak (2014), 'Is Project HOPE creating a false sense of hope? A case study in correctional popularity,' *Federal Probation*, 78: 57–70, 59.
25. P. Lattimore et al. (2016a), 'Outcome findings from the HOPE Demonstration Field Experiment: Is swift, certain, and fair an effective supervision strategy?', *Criminology and Public Policy*, 15: 1103–1141, 1119. See also Kleiman, n 6.
26. Hawken et al., n 4. For discussion, see also Centre for Justice Innovation (2016), *Problem-solving courts: An evidence review*.
27. A. Cissner et al. (2013), *A statewide-wide evaluation of New York's adult drug courts: Identifying which policies work best*, Center for Court Innovation.

28. Vimeo (2011), *HOPE Probation hearings*, available at <https://vimeo.com/24091601>.
29. S. Alm, cited in L. Bartels (2015c), 'Swift and certain sanctions: Is it time for Australia to bring some HOPE into the criminal justice system?', *Criminal Law Journal*, 39: 53–66, 54.
30. A. Hawken and M. Kleiman (2009), *Managing drug involved probationers with swift and certain sanctions: Evaluating Hawaii's HOPE*, NIJ.
31. Alm, cited in Bartels, n 29, 54.
32. Hawken and Kleiman, n 30.
33. Alm, n 10.
34. See IBH, n 1.
35. Kleiman, n 6.
36. See Hawken et al., n 4.
37. D. Weisberg (2014), 'Meanings and measures of recidivism,' *Southern California Law Review*, 87: 785–804, 793.
38. Victorian Sentencing Advisory Council (2017), *Swift, certain and fair approaches to sentencing family violence offenders: Discussion paper*.
39. IBH, n 1, 14.
40. Alm, n 1, 1207.
41. IBH, n 1, 22.
42. Hawken et al., n 4, 21.
43. Ibid., 43.
44. Ibid.
45. Ibid., 48.
46. Ibid., 57.
47. A. Hawken (2016), 'All implementation is local', *Criminology and Public Policy*, 15: 1229–1239.
48. IBH, n 1.
49. Ibid.
50. Alm, cited in Bartels, n 29, 55.
51. Johnson, cited in IBH, n 1, 74.
52. Hawken et al., n 4, 17.
53. IBH, n 1, 23.
54. Ibid.
55. Ibid., 24.
56. C. Klingele (2015), 'What are we hoping for? Defining purpose in deterrence-based correctional programs,' *Minnesota Law Review*, 99: 1631–1662, 1654.
57. IBH, n 1, 64.

58. Ibid.
59. Ibid.
60. See G. Zajac et al. (2015), 'All implementation is local: Initial findings from the process evaluation of the Honest Opportunity Probation with Enforcement,' *Federal Probation*, 79: 31–36. See also W. Gowensmith et al. (2016), 'New frontiers for conditional release: Applying lessons learned from other offenders with mental illness,' *Behavioral Sciences and the Law*, 34: 407–422.
61. M. Kleiman (2009), *When brute force fails: How to have less crime and less punishment*, Princeton University Press. For discussion, see also M. Kleiman, B. Kilmer and A. Hawken (2017), 'Desistance mandates compared with treatment mandates in criminal justice populations,' *Addiction*, 112: 748–750.

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2017, XIX, 219 p., Hardcover

ISBN: 978-3-319-58444-7