

Leveraging the Criminal Justice System to Reduce Alcohol- and Drug-Related Crime: A Review of Three Promising and Innovative Model Programs

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THE UNITED STATES HAS BOTH the highest incarceration rate and the highest prison population in the world;¹ while comprised of only 5% of the world's total population, it holds 25% of the world's imprisoned population.² Currently, more than two million people in this country are incarcerated, and the number of people on probation or parole totals more than five million.³ Federal surveys show that approximately 75% of offenders under local, state and/or federal supervision are involved with alcohol or drugs⁴ and that over 50% of them were "under the influence" at the time of their most recent offense.⁵ Additionally, the estimated number of adult arrests for drug abuse violations has been increasing since 1970, with more than 1.6 million arrests made in 2006.⁶

The dramatic rise in the U.S. rate of incarceration over the past two decades from about 150 per 100,000 population where it had been for half a century to the current figure of about 700 per 100,000 is associated with a dramatic—and continuing—drop in the rate of serious crime.⁷ However, the crime reduction produced by incarceration comes at great cost. In the current tight budgeted environment, prison costs—both financial and human—are a major target for reduction. The goal for the future of the criminal justice system is to find cost-effective ways to extend the decline in crime while cutting the rate of incarceration. Achieving that goal will require a smarter criminal justice system.

Probation and parole agencies have the responsibility of tracking offenders under supervision in the community and the opportunity to reduce new crimes. Offenders released on probation and parole typically are not permitted to consume alcohol or illegal drugs or misuse prescription drugs as a condition of staying out of incarceration and in the community. However, typical community-based corrections, including drug-diversion programs, do not regularly monitor offenders for alcohol or drug use in part because they lack the resources to do so and in part because of a concern that doing so would increase rates of incarceration. Consequently, too many offenders continue their pattern of substance misuse and crime until re-arrested and imprisoned for new offenses. When alcohol or other drug use is detected, the consequences are often unpredictable, long delayed, and disproportionate to the offense and violation. When offenders test positive, most often there are no or minimal sanctions, but after a string of such violations a probationer may be sent to prison to serve long, possibly even draconian sentences. The high rates of recidivism and prolonged incarceration that result from this cycle can be overcome with the new approaches taken by a new model of community supervision that not only reduces drug and alcohol use but also reduces new crimes and—somewhat paradoxically—also reduces rates of incarceration.

The foundations of South Dakota's 24/7 Sobriety Project, Hawaii's Opportunity Probation with

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Enforcement, and Driving Under the Influence Courts are all based on the idea that the most effective way to reduce substance misuse and crime among offenders is to lay out clear expectations for alcohol- and drug-free behavior, provide opportunities for treatment and then to back up expectations with monitoring linked to swift and certain, but relatively mild punishments.⁸ These programs leverage the criminal justice system to reduce substance misuse and recidivism among offenders in the community. They offer the nation an opportunity to substantially enhance public safety and improve public health simultaneously. There is good evidence that these programs—all using similar strategies that enforce the alcohol- and drug-free standard with random testing linked to meaningful consequences—reduce crime and reduce incarceration among criminal offenders in the community.

SOUTH DAKOTA'S 24/7 SOBRIETY PROJECT

As attorney general of South Dakota, Judge Larry Long started the 24/7 Sobriety Project to reduce the state's extraordinarily high rates of alcohol-related crime by targeting the DUI offense. The state provides all DUI offenders with treatment in a separate parallel program. Current Attorney General Marty Jackely is working with the National Partnership on Alcohol Misuse and Crime to evaluate an expansion of this program that would incorporate a formal contingency management system into the program.

The 24/7 Sobriety Project focuses on high-risk repeat DUI offenders; with rare exception all participants have been arrested at least one prior time for DUI, with 48% having three or more DUI offenses.⁹ Unlike traditional approaches to DUI offenders that focus on separating the drinking from the driving through license restrictions, 24/7 Sobriety focuses on the root of the problem—substance abuse. All participants in 24/7 Sobriety are prohibited from consuming alcohol and/or illegal drugs while under the supervision of the program.

Because alcohol is metabolized quickly by the body, participants must submit to either twice-daily alcohol testing, typically done at the local sheriff's office, or continuous transdermal alcohol monitoring. Participants who live distances from testing sites making it impossible for them to appear twice a day, so must wear transdermal ankle monitoring bracelets which track any alcohol use. Offenders are subject to random urinalysis testing or must wear sweat patches to monitor drug use. This combination of testing methods ensures effective monitoring of participant alcohol and drug use.

Any alcohol or drug use results in an immediate, short-term jail stay. In addition, bench warrants are issued for any participant who does not report for testing. These clear expectations of program compliance and alcohol and drug-free behavior enforced by immediate sanctions have produced excellent results.

Results of the 24/7 Sobriety Project include:¹⁰

- 99% of twice-daily tested participants arrive on time to testing sites and test negative for alcohol
- 78% of participants monitored by bracelet are compliant and test negative
- 98% of urinalyses are negative
- 92% of sweat patch tests are negative

Contrary to initial concerns that 24/7 Sobriety participants would fail drug tests and flood local jails, 24/7 Sobriety has significantly helped these high-risk DUI offenders remain sober for the duration of their participation (an average of about 111 days). Preliminary data suggests that 24/7 Sobriety participants recidivate at approximately half or less the rate of regular DUI probationers.¹¹ Additionally, recent state-level trends are promising. Since 2005, the number of 24/7 Sobriety participants has continued to steadily increase while the number of alcohol-related motor vehicle fatalities in South Dakota has decreased more than 50%.¹²

Although the 24/7 Sobriety Project was started with state funding, the probation portion of the program now is self-sustaining, paid for by participants.¹³ With 56 counties in South Dakota participating in this successful innovative program, several other states are considering implementing similar programs to reduce DUI recidivism. Of particular note, North Dakota Attorney General Wayne Stenehjem commenced a pilot program in his state in 2007 and expanded it statewide with the legislature's support in 2009.

The 24/7 Sobriety Project breaks the mold of the historic license suspension policies that seek to stop drunk driving by preventing all driving or separating drinking from driving. License restrictions, while useful, are difficult to enforce and do not change behavior in the long-term because they do not address the root cause of the problem: substance misuse. Use of interlock devices on offenders' automobiles can be evaded by offenders who claim to have no cars and by using other cars that do not have interlock devices on them. Offenders in 24/7 Sobriety programs can obtain or maintain employment and support themselves and their families because they can continue driving, while close monitoring discourages alcohol consumption. This paradigm shift not only reduces pathological drinking of repeat DUI but all drinking of offenders while reducing

DUI recidivism and decreasing the number of jail and prison stays.

DRIVING UNDER THE INFLUENCE (DUI) AND DRUG COURTS

DUI courts are based on the well-established drug court model, which now numbers over 2,000 in the United States.¹⁴ DUI and drug courts continue to grow after the great success drug courts have demonstrated with both adults and adolescents. Though many drug courts and DUI courts take advantage of continuous transdermal alcohol monitoring or ethyl glucuronide (EtG) testing, most rely on random testing for alcohol and drugs. All drug and DUI courts provide extensive treatment opportunities supported by graduated sanctions and rewards. Participants are closely supervised and given guidance and support by judges to comply with the programs. These courts tend to be significantly less punitive than other courts.

DUI and drug courts offer alternatives to serving jail time for offenders who suffer from alcohol or drug problems. They provide a combination of case management, mandatory counseling, and alcohol and drug testing to individuals who plead guilty to a DUI or drug-related offense.

Repeat DUI offenders clearly are not in control of their drinking. The same is true for many repeat drug offenders, including those who drive after using illegal drugs. DUI and drug courts can identify these potential participants and through mandated treatment, ensure that these offenders receive help.

In a study of drug courts by the U.S. Government Accountability Office,¹⁵ drug court participants were less likely to be rearrested or reconvicted than comparison groups, showing a lower rate of recidivism. While initial costs of providing services to drug court participants were higher than costs for the comparison group, drug court programs proved to be cost-effective in the long-term. Studies of well-run DUI Courts have shown similar outcomes. For example, a study of three Michigan DUI courts found that drug court participants recidivated 65% less often than probationers in comparison groups.¹⁶ Several national organizations and associations recognize the courts' success and have passed resolutions formally endorsing them. These groups include the Governors Highway Safety Association, the Highway Safety Committee of the International Association of Chiefs of Police, the National Sheriffs Association, the National District Attorneys Association, and Mothers Against Drunk Driving. The major limitation of the drug court model for the DUI offense is that it is difficult to scale the drug courts to the

enormity of the DUI problem. For this reason, some suggest limiting DUI courts to those offenders who fail at lower cost programs like 24/7 Sobriety.

HAWAII'S OPPORTUNITY PROBATION WITH ENFORCEMENT

Judge Steven S. Alm of the First Circuit Court of Hawaii brought HOPE Probation to life in Honolulu where it has flourished. Probationers who are drug-involved or committed crimes involving domestic violence or sexual abuse enter HOPE Probation through a warning hearing. HOPE participants are randomly and frequently tested for alcohol and drug use. Within 72 hours of a suspected violation, probationers attend a hearing. After the violation is confirmed, the offender immediately serves a short-term jail stay. Upon release, the probationer returns to the HOPE program. Offenders serving regular probation, unlike HOPE participants, are not randomly drug tested, but rather attend scheduled appointments with their probation officer and are given scheduled tests. When offenders violate probation, the probation officer must decide whether to recommend revoking probation or encouraging the offender to comply. Often these probationers are warned or otherwise lightly sanctioned rather than incarcerated.

Research demonstrates HOPE's potential. In an initial pilot study of HOPE, nearly half of the participants stopped using drugs immediately after participating in the formal warning hearing; more than half of the remainder stopped using drugs after a single experience of the jail sanction. A more recent evaluation of the hope program with a specialized unit of high-risk drug-involved probationers not supervised for domestic violence or sex offenses has yielded even more impressive results.¹⁷

At baseline, the HOPE participants had a significantly higher average number of positive drug tests (53%) than a comparison group of probationers (22%). However, at the three-month follow up, HOPE participants had fewer positives than the comparison group (9% vs. 33%). At the six-month follow up, the disparity between the HOPE participants and the comparison probationers was even greater (4% vs. 19%). At 12 months, 61% of all HOPE participants had zero positive drug tests; 20% had only one positive, 9% had two positives, and 10% had three or more.

The number of missed appointments followed a similar pattern for both HOPE and comparison groups. Of HOPE participants, 14% missed appointments at baseline, decreasing to 4% at three-month follow up and 1% at six-month follow up. Of the comparison group, 9% had missed appointments at baseline, 11% at three-month follow up

and 8% and six-month follow up. Overall, 70% of HOPE probationers never missed an appointment in 12 months.

Finally, the percentage of probation revocations was significantly lower for HOPE probationers (9%) than for the comparison group (31%). These results demonstrate the key differences in the structure of HOPE probation that support probationers and hold them accountable without long-term jail stays and decreased costs.

Unlike other probation programs which mandate treatment for their participants, HOPE only provides treatment to offenders who request it and to those who demonstrate a need for it through persistent relapses in drug use despite implemented graduated sanctions. There are two direct benefits to limiting mandated substance abuse treatment. First, it cuts down on the expensive costs of treatment, saving the program and state money. Second, not all drug-using offenders require treatment to stop their pattern of drug use; many simply need a reason not to use. Rather than spending treatment dollars on every offender, HOPE ensures that those who need it the most receive it.

HOPE is now operating on a large scale in Honolulu, with over 1,200 clients representing more than one-seventh of all felony probationers. The challenge today is to test the model to other jurisdictions in the United States and to include parole and bail populations along with probationers. HOPE has already gained bipartisan support, with new legislation proposing funding for national demonstration programs under the title Honest Opportunity Probation with Enforcement Initiative Act of 2009, recently referred to Congress's Subcommittee on Crime, Terrorism and Homeland Security.¹⁸

FUTURE MANAGEMENT OF OFFENDERS IN THE CRIMINAL JUSTICE SYSTEM

Improving results within the criminal justice system starts with shifting the paradigm to one that sets clear expectations including no use of alcohol or drugs of abuse for offenders in the community and that helps them achieve this goal. These strict and closely monitored standards are also applied to keeping scheduled probation appointments and to participation in treatment when that is one of the conditions of release or supervision.

The 24/7 Sobriety Project, DUI/drug courts and HOPE models hold the promise of significantly reducing the demand for illegal drugs, crime, and prison populations across the United States. As representatives of the Institute for Behavior and Health, Inc. and the National Partnership on Alcohol Misuse and Crime, we support future development throughout the country of programs that manage

alcohol- and drug-using offenders through close monitoring, swift, certain and graduated sanctions, as well as access to substance use treatment.

A central feature of this new strategy in all three of these innovative programs is sufficiently frequent random or continuous testing to prevent any significant use of alcohol or other drugs of abuse linked to swift and certain consequences, especially brief incarceration, for violations. These programs include substance abuse and well as treatment when appropriate. This new strategy is strikingly different from the usual practices in community corrections today where alcohol and drug testing is relatively infrequent and often scheduled so the offenders know when they will be tested. Even more distinctive is the imposition of incarceration for every single violation of the conditions of release to the community. Typically today the consequences of violations of parole and probation are unpredictable, often long-delayed and then severe. In this new model they are swift and certain, but not draconian.

Combining rigorous monitoring with treatment offers the best opportunity for long-term change in drug and alcohol-using behaviors among these high-risk populations. The standards set by these three program models are applicable to all stages within the criminal justice system when offenders are in the community from pre-trial through parole and probation. They can be branded and promoted as high-visibility, high impact improvements to the nation's current efforts to reduce alcohol misuse, illegal drug use and crime. Contrary to the expectations of many in the criminal justice field, these efforts have been shown to significantly reduce incarceration, a major goal of the criminal justice system today.

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⁸ Ibid.

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