

ATTACHMENT [AF 1]

This is the attachment marked “[AF 1]” referred to in the witness statement of Arie Freiberg dated 30 July 2015.

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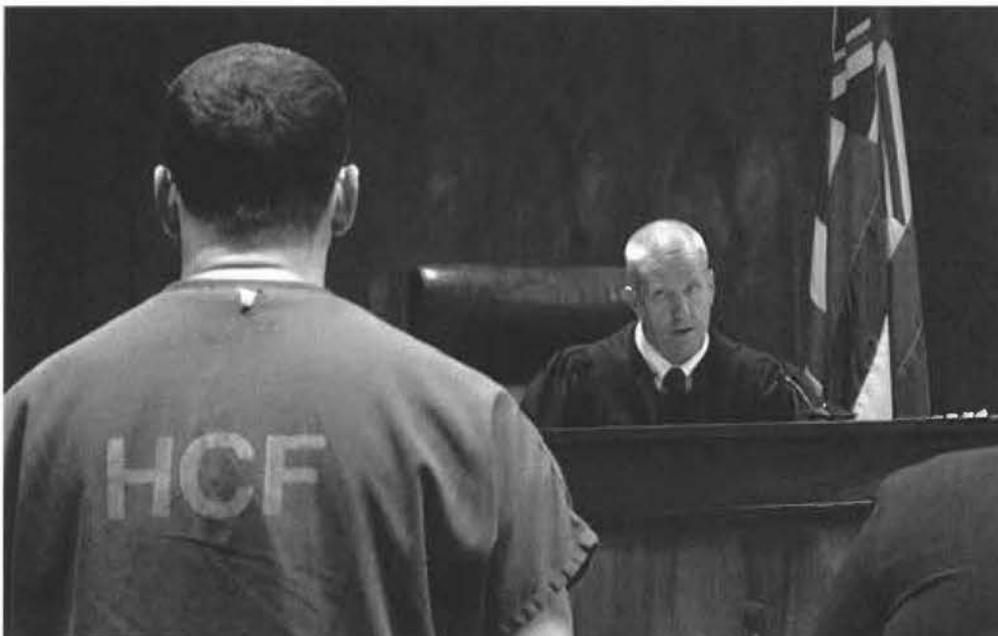
THE CONVERSATION

Swift and certain sanctions: does Australia have room for HOPE?

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Judge Steven Alm pioneered the HOPE project, the first of scores of swift and certain sanction programmes in the US. Youtube/PBS screenshot

This article is part of the [Beyond Prison](#) series, which examines better ways to reduce re-offending, following the recent [State of Imprisonment](#) series.

At a time of increasing prison numbers, could swift and certain sanction (SAC) programmes be a desirable model for Australia?

The best-known programme of this nature is Hawaii's Opportunity with Probation Enforcement (HOPE). It received an Innovation in American Government Award from Harvard University in 2013 and an Outstanding Criminal Justice Program Award from the National Criminal Justice Association in 2014.

Judge Steven Alm launched the pilot programme in 2004.

Hawaii State Judge Steven Alm explains the HOPE probation programme.

HOPE adopts a "good parenting model" and works as follows:

The judge gives a 15-20 minute "warning hearing" to a group of HOPE participants.

Offenders are told that they can count on a short jail sanction for every violation.

Offenders are given a colour code and must call a hotline every morning to hear which colour has been selected.

If their colour is chosen, they must appear at the probation office before 2pm that day for a drug test. Compliance and a negative test results in the assignment of a new colour associated with less regular testing.

If an offender fails to appear, a bench warrant is issued and served immediately.

Offenders who fail the drug test are arrested immediately and brought before a judge within 72 hours.

Offenders who are found to have violated their probation (by missing an appointment or returning a positive drug test) are immediately sentenced to a short jail stay, with sentences increasing for successive violations.

Drug treatment is provided for those who request it or who cannot stop using drugs or alcohol on their own.

Evaluations of HOPE

The National Institute of Justice (NIJ) funded a randomised-controlled trial evaluation comparing 330 high-risk drug offenders on HOPE with 163 similar offenders on standard probation. Compared with the control group, HOPE offenders were:

55% less likely to be arrested for a new crime;

53% less likely to have their probation revoked;

72% less likely to test positive for illegal drugs; and

61% less likely to miss appointments with their probation officers.

Offenders on HOPE also spent 48% fewer days in prison.

A process evaluation found that probation officers, offenders and defence lawyers were enthusiastic about the programme. However, prosecutors and court employees were less pleased, with court staff reporting increased workloads.

Other SAC programmes

In 2012, the NIJ and Bureau of Justice Assistance (BJA) selected four sites across the US to replicate HOPE. They engaged an independent research agency to conduct process, outcome and cost-assessment evaluations, using randomised controlled trials. This research

is expected to be finalised this year. The NIJ has also funded research to examine the long-term impact of HOPE.

A programme based on HOPE in Alaska found that participants reduced their drug use (positive tests fell from 25% to 9%). South Dakota's 24/7 Sobriety Project developed independently of HOPE, with over 17,000 participants between 2005 and 2010. An evaluation found that it led to a 12% reduction in repeat arrests for drink driving and a 9% reduction in arrests for domestic violence.

Beau Kilmer, co-director of the RAND Drug Policy Research Centre, discusses the 24/7 Sobriety Project.

Currently, 160 SAC programmes are running in 21 states across the US. Since 2012, all offenders in Washington State subject to supervision in the community (about 15,000 people) are monitored under a SAC model.

In the UK, the Conservative government announced its intention to introduce "Fast Sanctions and Testing" (FAST) as part of its election policy.

In Australia, former Victorian Labor attorney-general Rob Hulls recently called for "flash incarceration" of domestic violence perpetrators who breach their orders.

According to Judge Alm:

HOPE is one of those rare criminal justice strategies which has few natural enemies. Prosecutors and conservatives tend to like its accountability and potential to save money. Defence counsel and liberals tend to appreciate how HOPE helps defendants to succeed on probation and avoid going to prison.

Criticisms of HOPE

In spite of their promise, programmes of this nature raise a number of concerns.

One evaluation suggests that the benefits last only as long as the testing and sanctions. Therefore, such programmes may not lead to lasting behavioural change.

Professor Michael Tonry has described these programmes as "pernicious", saying that they:

... do little except offer legal threats of what will happen if conditions are violated rather than attempt to address the circumstances in the offender's life that brought him or her into court.

However, Judge Alm has clarified that HOPE has included treatment and evidence-based principles from its inception, as these are standard components of probation in Hawaii:

HOPE helped to create the environment ... where the [probation officers] could more effectively work with the offenders on their other risk factors.

Would HOPE work in Australia?

There are questions about the extent to which a programme developed overseas could be adopted successfully here. The American and Australian criminal justice systems have significant differences. In particular, the model eschews judicial discretion and the instinctive synthesis that underpins our sentencing framework.

One Australian sentencing expert has also identified the issue of availability of prison beds and the due process implications of subjecting an offender to incarceration without a court order. In spite of this, she concluded that "trailing a 24/7 type of programme ... is also worth serious consideration".

The implications for Indigenous offenders would need to be considered carefully to ensure this model would not further exacerbate their over-representation in our prisons. However, Don Weatherburn has expressed cautious support for HOPE in his book on pathways out of Indigenous imprisonment.

A former White House Drug Chief to presidents Nixon and Ford, Robert DuPont, has gone so far as to describe HOPE as "revolutionary", as it:

... provides a new paradigm for successfully managing offenders and is fully scaleable to the entire criminal justice system.

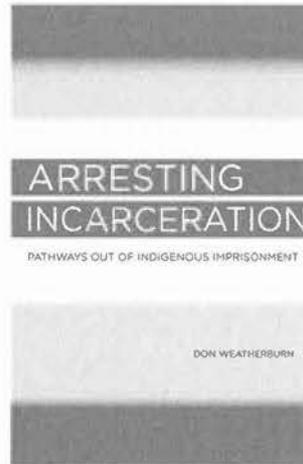
If a HOPE-style project were to be developed in Australia, a balance would need to be struck between adherence to the core tenets of the model and ensuring the programme is appropriate for the Australian justice system and informed by consultation with relevant stakeholders.

In addition, funding would need to be allocated to ensure all aspects of the programme run effectively (for example, additional resources for court staff). It is also critical that any pilot programme be independently evaluated to ensure it is meeting its objectives.

The Australian prison population has grown to unprecedented numbers. Research indicates that two-thirds of police detainees test positive to at least one drug, not including alcohol. Furthermore, nearly half of all police detainees attribute their offending to drugs and/or alcohol.

Meaningful crime prevention requires an ongoing focus on such issues as drug and mental health treatment, housing, education and employment. SAC programmes are clearly not a panacea, but it may be time for Australia to see if they can be part of the solution.

You can read other articles in the *Beyond Prison* series [here](#).



In *Arresting Incarceration*, Don Weatherburn sees the HOPE model as one possible way of reducing sky-high rates of Indigenous imprisonment.

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