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Managing Drug-Involved Offenders

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Introduction

Effectively managing drug-involved offenders is an essential step to reduce crime and drug abuse. Many of the most active criminals and heaviest-using drug abusers are supervised by the criminal justice system; conversely, drug-using parolees and probationers are disproportionately responsible for both crime and drug abuse in America. Finally, since crime and drugs are at least somewhat synergistic — criminal behavior can lead to drug abuse, and visa versa — resolving the drug habits of the most chronic criminal offenders and the criminal habits of the most habitual drug abusers may be an integral element of a successful approach to either problem. Fortunately, many of these individuals are already supervised by probation or parole programs, subjecting them to additional monitoring and discipline.

Yet for decades, probation and parole programs have largely failed to wean participants off of either crime or drugs. In a nutshell, current programs have attempted to stretch insufficient resources across overwhelming numbers of parolees and probationers. Since identifying and punishing violations is a heavy drain on program resources, most supervision programs have eventually mutated into relatively lax and ineffective systems of control. Petersilia and Turner's (1991) classic experiment of Intensive Supervision Probation (ISP) revealed that in Los Angeles County, for example, probationers in the ISP condition were tested on average only once every two months (not necessarily randomly), with sanctions for positive tests being administered inconsistently.

The result catalyzes a vicious cycle. Programs are unable to discipline minor violations. Offenders perceive that they can commit minor violations without consequence, and in turn stop trying to avoid them. The resulting uptick in minor violations further inundates the resources of the supervisory program, compounding the original problem. This general pattern can consume entire supervisory systems, such that only the most egregious violations or chronic offenders merit increasingly precious enforcement resources. Moreover, court and prison resources are so over-committed that the little punishment that these programs manage to dole out comes only after such a long delay that they have lost their maximum corrective effect on the violator.

However, innovations based on the Swift and Certain testing-and-discipline paradigm (SAC) as successfully implemented in Hawaii's HOPE project can break this pattern (Hawken and Kleiman, 2009). A phenomenon called "behavioral triage" allows program resources to be allocated to the offenders whose poor behavior most requires them (Hawken 2010). The quick and efficient identification of egregious offenders — rather than the slow and conventional process of waiting until they compile an extensive list of violations — is combined with swift and consistent punishments. When punishments follow within days of the violation, they have much greater correctional effect on the offender. There is some evidence that these programs introduce predictable consequences into the lives of offenders and increase their capacities for self-control (Hawken and Kleiman, 2009).

The promise of these programs creates optimism that drug use and incarceration, among even heavily-drug involved offenders, can be reduced.

Mainland replications of the SAC model will show the local conditions that are required to successfully implement the model. These studies will also help to identify the characteristics of offenders who respond to the threat of credible sanctions alone, and those who do not. The latter might need more-intensive resources (such as the ancillary services offered by drug courts or long-term residential treatment), or may not be amenable to supervision in the community. The implementation challenges of SAC are non-trivial, but the promise is enormous. If enough departments are able to reconfigure their operations to deliver sanctions swiftly and with certainty, the effort could yield dramatic reductions in drug use and criminal activity.

The Overlapping Drug-Abusing, Criminal, and Supervised Populations

Data from ADAM II and the National Survey on Drug Use and Health (NSDUH) illustrate that individuals under criminal supervision are disproportionately likely to suffer from habits of drug abuse, and that drug abusers face similarly high risks of ending up under criminal supervision. In most big cities half or more of felony arrestees — even excluding those arrested on drug charges — have used one or more illicit drugs in the days before their arrest (National Institute of Justice, 2000). A majority of state and federal prisoners report that they were under the influence of drugs or alcohol (or both) at the time of their current offense (U.S. Department of Justice, 1999).

Chronic users dominate the consumption of illicit drugs, representing respectively 87%, 96%, and 95% of the cocaine, heroin, and methamphetamine sold

in the United States (WAUSID, 2011). This heavily skewed distribution of consumption demonstrates the heuristic principle known as “Pareto’s Law:” 80% of the volume of any activity is accounted for by 20% of the participants. The distribution of alcohol consumption, for instance, reflects the same pattern (Johnson, 1937).

A large majority of these chronic drug users pass through criminal supervision. However, the lack of a single authoritative data source tracking the criminal outcomes of drug abusers requires scientists to resort to secondary calculations. Post-arrest drug testing is limited to the few large cities selected as ADAM sites, and many of the worst drug offenders are invisible to household-based surveys such as the NSDUH.) One estimate using predecessors of those surveys — and in need of an update and further examination — estimated that about 75 percent of all more-than-weekly cocaine users had been arrested for a nondrug felony in the previous year (Kleiman et al., 2012). The implication is clear: reducing total volume of use requires reducing targeting the heaviest users, even though they constitute a small minority of total users.

Costs of Drug Abuse Among Supervised Populations

Bolstering Illicit Markets

The reverse implication is also true: a small minority of heavy users provide the bulk of profits for illicit drug dealers and organizations, thereby bolstering illicit markets. If it were possible to eliminate the drug demand of chronic users, the vast majority of illicit drug markets would grind to a halt. If half of all heavy users pass

through criminal justice supervision within the past year, eliminating their demand could shrink these markets by approximately 45%. More realistic success rates still generate radical outcomes. Even a 25% reduction in the illicit drug demand of chronic drug users passing through the criminal justice system within a single year could reduce total illicit drug demand by more than 10%.

Any reduction in demand from the supervised population is likely to overflow to other populations. Illicit economies typically require a minimum economy of scale, regardless of whether the transactions are conducted flagrantly on the streets or inconspicuously behind closed doors. It is only after achieving sufficient scale that they can efficiently match buyers with sellers, all the while evading criminal prosecution. Once this minimum scale is achieved, controlling an illicit drug market is dramatically more difficult. The supplier price of drugs drops as distributors benefit from bulk discounts and can absorb lower per unit profit margins. Moreover, as the number of buyers and sellers increase, the amount of enforcement capacity required to raise the legal risk on these groups generically increases proportionally (Kleiman, 1993).. In other words, each unit of drug sold (or acquired) makes the next unit more likely. Drug buyers enjoy strength in numbers.

Accordingly, demand reductions from supervised populations can enable more effective drug control of non-supervised populations. If total demand falls, then legal risks, costs to suppliers, and acceptable profit margins may all rise, initiating a negative feedback loop decreasing the efficiency of drug markets near the minimal economy of scale. Illicit drugs may become more expensive, and in some cases, more difficult to acquire.

Reductions in demand from supervised populations impact total drug demand with a multiplier effect. However, its magnitude is currently unknown and possibly unknowable; probably, it varies according to geography and size of existing illicit markets, among other circumstances. In either case, success in controlling chronic drug users is likely to bleed over to reducing the drug access of more moderate users.

Causing Drug-related Health Damage

Illicit drug use carries significant health costs. Nearly one million emergency room visits in the United States are associated with illicit drug misuse or abuse (SAMHSA, 2010). For many, drug use turns deadly. Nearly forty thousand people die of directly drug-induced causes in the United States each year (this excludes indirect causes such as accidents, homicides, and infectious disease) (Xu et al., 2010). Several reports have addressed some aspects of the health-related consequences of drug use disorders, revealing associations between stimulant use and cardiac arrhythmias and stroke, MDMA and kidney failure, and injection drug use with HIV and hepatitis B and C (see Khalsa et al., 2008 for a detailed review). Likewise, the risk of death among parolees during the first two weeks following release from prison is nearly 13 times greater than those of similar demographic background—with drug overdose being the leading cause (Binswanger et al., 2007). As dire as this finding is, it may be an underestimate of the problem. A study of newly released prisoners in England and Wales found that mortality rates among males were 29 times higher than the general population during the first two weeks

of release. Female offenders' mortality rates were 69 times higher (Farrell & Marsden, 2007). Moreover, needles used for injecting drugs become disease vectors for HIV [injection drug use is a strong second to sex in the transmission of HIV (CDC, 1996)].

Preventing Cessation of Criminal Activity

Decreasing drug dependence can reduce criminal activity among current criminals (Sheerin et al, 2004), regardless of whether the decreases are voluntary or forced (Anglin & Hser, 1990; Anglin & Speckart, 1986; Nurco et al, 1988). (It is unclear if this effect extends to drug use rather than dependence for the same population or for reducing drug dependence among the non-criminal population; but since the drug-dependent, criminal population represents the bulk of our concern, this relatively narrow slice of the population deserves a targeted approach.)

Drug dependence obstructs an offender's ability to stop criminal activity. There is a strong negative association between criminal thinking and self-control. Spending on illicit drugs is associated with low self-control, and offenders who have low self-control as measured by self-control scales, have higher scores for criminal thinking (Packer et al., 2009). New research by a UK-based team shows that vulnerability to drug addiction may arise from pre-existing brain abnormalities that lead to self-control problems (Ersche et al., 2012), however it seems hard to believe that such problems are not aggravated by drug abuse

Clearly, the problems created by the drug habits of the criminally supervised population are severe enough to warrant our focused attention. Their status as supervised individuals entails possibilities for behavior control that potentially make those problems easier to solve, or at least mitigate. However, progress on this front has been impeded by significant difficulties in managing offender populations.

Difficulties Inherent to Behavior Control Among Supervised Populations

The high failure rates of probation and parole programs demonstrate that they've failed to serve their primary purpose: chastising and monitoring criminal activity so participants can return to their lives without having to serve terms in prison. Roughly one-third of probationers and parolees fail the terms of their supervision programs (BJS, 2012), and are returned to prison, unless they manage to abscond entirely (Glaze & Bonczar, 2009). These failure rates have hardly changed over the past two decades, despite the broad variety of local, State, and Federal initiatives undertaken over the years to improve offender outcomes (Hawken & Grunert, 2010).

Indeed, strategies founded on the traditional prevention-enforcement-treatment triad have lost effectiveness along each of their three tactical avenues.

Prevention

Many of the traits that make an individual vulnerable to drug use (quality peer groups, drug-related norms, access to drugs, and lack of self-control) have long ago been set into place before a drug user enters the criminal population. An

individual may only need to learn where and how to purchase drugs once in order to become a self-sufficient consumer. Similarly, trepidation and social taboos regarding drug use are much stronger before they've already been violated. In short, drug-involved offenders will have a difficult time reversing their momentum or changing habits in general, and particularly regarding drugs.

Even thinking decades ahead, prevention efforts face criticisms regarding the basic efficacy of their methods. Standard school and media based drug-prevention messages target the middle class kids whose parents' concerns drive the politics of anti-drug policy. There is little evidence that they are as effective on those most at risk of becoming future drug-involved offenders. (Caulkins et al, 1999). It is worth designing and testing an alternative campaign that focuses on preventing drug dealing, utilizing both messages aimed to change attitudes and policies to minimize opportunities for dealing drugs (Kleiman, 1996).

Enforcement

Though they have their opponents and are not universally successful, enforcement campaigns have certainly helped reduced drug availability. The decades-long policy of drug enforcement has clearly succeeded in making drugs more expensive and harder to obtain: illicit-market cocaine costs twenty times the price of the licit pharmaceutical product, for instance.

Nonetheless, it is not clear that increased enforcement can continue to drive prices to higher levels, or even mitigate structural factors that might drive overall price decreases. For instance, the 1980s and 1990s saw an explosion of drug law

enforcement that failed to bring about symmetrical decreases in drug availability, particularly for hard-core users and offenders. Clearly, enforcement has diminishing returns and increasing marginal harms.

Any benefits of increased enforcement come with severe and negative unintended consequences, due to the consequences of a primary goal: increasing prices. Increasing prices of illicit drugs is a double-edged sword, strategically hurting the same population that it intends to benefit. It gives rise to both winners and losers. The winners are the drug users who respond by quitting or reducing consumption, as well as the potential future users who respond by never taking up the habit in the first place. The losers are those who fail to respond at all; they merely pay more money to their drug dealer, disempowering them further, exacerbating an already-severe financial drain, and crowding out socially desirable expenses and investments.

It is those users with the heaviest levels of consumption and the most stubborn habits that are most immune from the price-increasing and availability-reducing benefits of increased enforcement, and most vulnerable to the financial, criminal, and stigmatic costs of increased enforcement. Unfortunately, this very group engages in the drug use that is the most harmful for themselves and others, and who is most likely to resort to illegal methods to obtain money to continue using in the face of an increase in price.

Treatment

Treatment programs are more benign but seriously constrained by inability to retain clients. A wide range of treatment programs have effectively reduced drug consumption and criminal activity as long as their clients actively participate in treatment programs, whether mandatory or voluntary (Leukefeld, 1994). Statistical reviews that only consider clients who complete treatment inflate programs' records of success, since those who drop out represent the population most resistant to persuasion and incapable of the discipline required for self-interested behavior.

Additionally, there is a lack of demand among those whom the programs are designed to help. Individuals dependent on drugs often deny their problem or lack the sustained will to commit themselves to treatment. In other words the saturation point for voluntary treatment programs is relatively low, and the bulk of substance abusers are out of reach of these programs' influence. This holds true regardless of improvements in affordability, effectiveness, and accessibility.

Opiate substitution marks the obvious exception. Substitution therapy, using either methadone or buprenorphine, provides addicts with a less-painful method to transition away from heroin addiction. It is not surprising that drop-out rates for substitution therapies are distinctly lower than other forms of treatment (Hawken and Anglin, 2007). Indeed, successfully lowering opioid use via methadone maintenance therapy (MMT) can precede decreases in criminal activity (Sheerin et al, 2004). The fact that only nine percent of drug treatment providers in the United States offer these substitution programs represents an important opportunity for crime reduction (SAMHSA, 2012).

The marked contrast between treatment for opiates and for non-opiates demonstrates the fallacy of discussing both under the same “treatment” umbrella. The treatments for these types of drugs are radically different in important ways, and the source of these differences is pharmacological. The effective methods of opiate substitution therapy should not be seen as a pathway to success for non-opiate treatment programs. No amount of tweaking or funding increases will allow voluntary treatment for non-opiates the same pattern of success as demonstrated by substitution therapy, pending some unforeseen breakthrough.

Mandating Drug Treatment to Supervised Populations and its Difficulties

Since enforcement has been pushed past its marginal utility, prevention is logically impossible, and treatment programs are beset by failures to retain clients, one solution emerges: mandating participation in treatment programs. The case for mandatory treatment is obvious, especially considering the significant overlap between the egregious drug-abuse and criminal populations. Since a large number of drug-involved offenders will never voluntarily seek out and stay in treatment, the possibility arises that these individuals can be induced to seek and maintain treatment if their alternative is time in jail or prison.

This logic has already produced mandatory treatment programs — such as drug treatment “diversion” programs, where non-violent drug offenders are given the option of being sentenced to drug treatment in the community in lieu of a jail sanction. Most treatment diversion programs are limited to offenders charged with drug offenses, but some have expanded eligibility to include drug-involved

offenders charged with other offenses. For the most part, these brands of mandated treatment are beset by the same three primary obstacles.

Weak Mandates

California's Proposition 36, the country's largest-ever diversion program, provides an example of a program that rarely held participants to their end of the bargain. According to Prop 36, certain drug offenders were given a choice between serving jail terms and enrolling in drug treatment; unsurprisingly, treatment was a popular alternative to incarceration. It was not as popular once participants were actually scheduled to attend sessions, however, and the law provided little authority to punish failures to attend.

Without the threat of discipline, program compliance suffered. Fewer than one-third of those mandated to Prop 36's treatment completed it (Longshore, Hawken, et al., 2006), and one quarter never even appeared for treatment.¹ Even 80 percent of treatment providers — hardly known for favoring a punitive approach — supported a change in the program to allow the use of short jail stays (Hawken & Poe, 2008).

It is not enough to intend to be tough on participants. Planned sanctions can fall through the cracks of a bureaucratic apparatus overwhelmed with offenders. Overworked probation officers are often too busy to file the paperwork leading to a revocation hearing; even when they prioritize the task, judges are often resistant to

¹ Urada, et al. Evaluation of Proposition 36: The Substance Abuse and Crime Prevention Act of 2000. Available at <http://www.uclaisap.org/prop36/documents/2008%20Final%20Report.pdf>

put someone behind bars for months or years for a violation as mild as a dirty drug test.

Identifying violations in the first place is just as important and can be just as difficult. Drug violations will often go undetected, especially when drug tests are scheduled publicly and in advance. Whether an offender plans his drug use around scheduled tests or just gets lucky to not be tested the night after a binge, he learns the same message: “unbreakable” program rules are in fact somewhat voluntary in practice. In most cases, probation programs that allow continued drug use without consequence see their participants continuing to commit other crimes (Farabee & Hawken, 2009).

Low Quality and Mis-matched Treatment

The casualties of treatment-diversion programs include even compliant offenders — those who faithfully attend program sessions and refrain from violating their terms. In treatment-diversion programs, the sheer number of offenders who take a treatment referral — either through a desire to kick their drug habit, to avoid a harsher sentence behind bars, or a mixture of both, and with varying degrees of drug involvement and dependency — creates massive inflows to the drug treatment system. Meanwhile, the treatment centers receiving the patients are typically underfunded and overwhelmed. There is only so much staff time and so many beds in residence to go around, and treatment centers on a fixed budget react by watering down their services: requiring fewer days in treatments, reducing the intensity of programs, or mandating outpatient treatment to patients whose habits

require residential treatment.

As a result, the patients with the worst drug habits — those who need the most supervision and most desperately require treatment — often fail to receive it. This is how programs such as Prop 36, which was designed to provide drug treatment to those in need, can counter-intuitively weaken our drug treatment systems. Because of the in-flow of patients referred by Prop 36 to treatment, many offenders with serious habits — methamphetamine or otherwise — received outpatient treatment. Probationers with serious drug-use problems were less likely to receive residential treatment after Prop 36 was implemented (Hawken, 2008). This has important consequences; probationers with addiction warranting intensive treatment completed the program twice as often when assigned to residential placement, compared to lower-intensity outpatient programs (Hawken, 2008). Yet in California, only 12 percent of clients admitted to care as a result of Prop 36 received a residential placement. Moreover, less than one in eight Prop 36 clients with opiate problems received substitution therapy (Hawken and Anglin, 2007). The ultimate result is a failure to help those who need it most, a less cost-effective treatment system, a waste of time for those who were referred to treatment who did not need it, and the release of potentially dangerous drug abusers onto the streets (Hawken & Anglin, 2007).

Drug courts, which also mandate drug treatment but under judicial supervision, have demonstrated better outcomes than standard treatment diversion programs. Drug courts are specialized courts that provide offenders with drug-possession charges the option between entering treatment and receiving straight

jail time. The judge, prosecutor, public defender, probation officer, social-service providers, and treatment providers work together to provide comprehensive supervision and offer ancillary services that are not offered as a part of a standard treatment-diversion program. Participants then appear regularly before the court, where their drug tests and behavior are reviewed and either sanctioned or rewarded accordingly. Praise from the judge may pass as a positive incentive.

Indeed, the drug court movement has been very successful in managing offenders in the community (Belenko, 2001). There are now over 2,000 such (drug) courts across the country, serving about 70,000 clients nationwide (Huddleston, Marlowe & Casebolt, 2008).

Despite their differences, drug courts and treatment diversion programs are limited by what they share in common. Participation is voluntary (defendants can, and some do, choose routine sentencing instead) and restricted to defendants whom the court and the prosecution are prepared not to incarcerate if the defendants will just clean up their acts. By their nature as “alternatives to incarceration,” they cannot apply to those whose crimes have been especially severe. That excludes most violent crimes, and the federal law providing funding for drug courts specifies that defendants admitted to drug-court treatment have no prior violent offenses either. This feature has dual disadvantages. Foremost, it limits the potential breadth of the program. For instance, very few of those entering state prison in 2004 or jail in 2002 would have been eligible for drug diversion through state drug courts (Pollack, Reuter et al., 2011). Additionally, many of the most troublesome offenders, whose

drug consumption it would be most valuable to influence, are excluded from the beginning.

In the past few years, a number of drug court judges have recognized that there are better returns to focusing their efforts on higher-risk offenders and sought to address this challenge. Increasingly, we are seeing drug courts supervising higher-risk subjects, who five years ago would have been deemed ineligible for supervision under a drug court. However, there is still the critical limiting factor of resource costs.

Excessive Reliance on Justice Personnel

Even if drug courts were seen as the best available option, expanding their coverage from 70,000 clients to the more than two million drug-involved offenders (Huddleston et al., 2005) entails a thirty-fold expansion, which would require more judges than the nation could possibly provide. Since the participants require constant and intense supervision by a judge, of the typical drug court caseload is limited to 75 clients, moving the entire population of drug-involved offenders into drug courts would require every judge in the country to staff a drug court, leaving no judges left over for criminal cases. So even though drug courts and diversion programs, with all their weaknesses, can outperform incarceration in managing so many non-violent drug-abusing offenders, they seem unlikely to substantially reduce the drug abuse or non-drug crime created by drug-involved offenders, because of limitations on their scale.

Mandating Abstinence, Rather Than Treatment

Unfortunately coerced drug treatment has been hamstrung by misapplication. If the treatment “alternative” is presented as a choice with jail or prison as the other option, drug abusers quite rationally choose not to go to jail or prison they do not in fact “choose” to undergo treatment. So long as this false choice is presented, a critical opportunity and elegant solution has been missed — mandate abstinence. Order the individual to stay drug free, and allow those who truly do choose it to seek treatment. Such abstinence-mandate programs have been examined in the relevant research literature and demonstrated some successful experimental and small-scale interventions.

Development and Previous Implementations

Mandated abstinence — the idea that drug rehabilitation can be brought out solely through consistent and appropriate sanctions, and with little behavioral counseling or pharmacological therapy — dates back to the heroin epidemic in the midst of the 1970s. The combination of swathes of Vietnam veterans returning home with a new kind of drug habit and skyrocketing rates of crime brought the pressure for a solution to heroin abuse to a peak.

In 1971 the nation’s first drug czar, Jerome Jaffe, suggested requiring a clean urine test for heroin to all returning soldiers as a condition for release at home. Informally called “Operation Golden Flow,” the effort succeeded in reducing the inflows of heroin-addicted veterans, even though it could not stop the epidemic entirely.

In 1977, then-NIDA director Bob DuPont adapted that strategy for probationers and parolees, rather than veterans, announcing “Operation Tripwire.” Tripwire would require clean urine tests and physicals of all parolees and probationers, regardless of drug and criminal history, as a condition for release from criminal justice supervision. At the bare minimum, all participants were required to undergo one or two, unannounced urine tests; those identified as having a history of drug abuse would begin instead with monthly screening. One failed drug test would transfer a participant to weekly urine tests, a second would mandate treatment, and further violations led to swiftly-assigned three-to-six month stints of incarceration; even after release from prison, a participant would be released only with intensive supervision and regular unannounced tests. In this manner, DuPont designed the sanctions and levels of scrutiny to escalate for participants whose habits would require greater discipline to break.

However, political controversies prevented Operation Tripwire from ever getting a chance to test its effectiveness. Some criticized the program as a threat to civil liberties. Others attacked the program for using criminal-justice methods to treat what was viewed as a health problem. Others still doubted that heroin use led to criminal activity. Instead, the program was rebooted abortively as a scaled-back research study titled “Paroled Addicts in a Treatment for Heroin.”

Instead, Project Sentry of Lansing, Michigan, is the oldest example of a true testing-and-sanction program. Originally designed in the 1970's as a supervision tool for released, county jail inmates in forced treatment, the Project Sentry drug testing program has grown to become Michigan’s largest, single point-of-service testing clinic. Participants are tested three times weekly, and tests return clean nearly 90% of the time.

The next innovation in mandated abstinence programs was the Washington, DC Drug Court experiment, started in 1993. The experiment randomly assigned drug felony defendants into three dockets: a conventional docket involving twice-weekly drug tests and judicial monitoring; a treatment docket intended to transition defendants away from criminal lifestyles, offering community resources and programs to increase self-esteem and relevant skills; and a sanctions docket intending to directly incentivize abstinence from drugs, by way of swift and certain sanctions for failed drug tests and referrals to treatment as a last resort.

Although both experimental dockets succeeded in reducing drug use during pretrial release, the sanctions docket also reduced arrests within one year of release and in a more cost-effective manner, resulting in savings of about \$2 for every \$1 in program costs (Harrell, Cavanagh, and Roman, 2000). A key element of the sanction docket's cost-effectiveness relied on limiting treatment referrals only to defendants who demonstrated they were unable to abstain from drug use on their own, based on repeated failures of the twice-weekly drug tests.

In 1997, Maryland implemented a program called "Break The Cycle" (BTC) intending to target offenders on probation or parole with a "drug condition" and subject them to a testing-and-sanctions regime roughly similar to that used in the D.C. Drug Court's sanctions docket. Compared to the population offenders without drug conditions, the offenders subjected to the strict sanctions regime reported lower likelihood for future drug arrests. A cost-benefit analysis of BTC showed returns between \$2.30 and \$5.70 for each dollar invested.

Nonetheless, BTC implementations often failed to provide frequent testing or swift punishment, particularly in early stages — some jurisdictions succeeded in testing only five percent of the offender population with a month turnaround each, and early on program revocations followed identified violations by an average of 146 days (Taxman, Reedy, Moline, Ormand, and Yancey, 2003). Moreover, BTC was often implemented inconsistently across counties, both in terms of identification of "drug conditions" and application of sanctions. One avenue for inconsistent implementation was the requirement that, in order for an offender to be identified as having a "drug condition," a supervising officer had to place a recommendation to

the court. (This stands in marked contrast to the D.C. Drug Court experiment, which utilized initial drug tests to identify drug conditions.) Another avenue for inconsistent implementation was the breadth of options given to judges, who utilized discretion in determining the frequency of testing and severity of sanctions applied to the offenders. Evaluations suggest that counties utilizing more frequent drug testing and imposing more sanctions per supervised offender produced greater reductions in arrests for drug and non-drug offenses (Harrell et al., 2003).

In 1993, Oregon implemented “structured sanctions,” introducing a grid prescribing appropriate sanctions based on the offender’s risk level, crime of conviction, and seriousness of the violation (National Institute of Corrections, 2006). (The prescriptions also left room for officers to issue substance abuse and mental health treatment, employment assistance, and anger management classes.) In order to hasten and enforce consistency in the disciplinary process, Oregon delegated disciplinary authority away from formal judicial processes and toward community supervision agencies. The program initially targeted felony probation, but was later expanded to parole and post-prison supervision, and finally extended to misdemeanor probation (Salvo, 2001).

Although the program was implemented inconsistently, similar to Maryland’s BTC program, the “structured sanctions” regime produced more swift and certain punishments: time between violation behavior and response was reduced by 38 days; offenders were 23% more likely to have violations detected and acted on. As a result, probation offenders experienced about 50% lower felony convictions rate and were less likely to be convicted for new offenses. Drug use declined as

dramatically as 56% in counties where implementation most closely resembled the planned sanctions complete with frequent drug testing and repeated short jail stays (Baird et al, 1995).

Hawaii's HOPE program, which started in 2004, was the first successful large-scale implementation of swift-and-certain sanctions. HOPE was designed by Judge Steven Alm, in response to what he considered to be a failure of the status quo to effectively change the behavior of their primarily methamphetamine-using probationers.

Compared to its predecessors, the HOPE program dramatically improved the swiftness and certainty of sanctions: regular random drug tests (six times a month during the first few months of the program) removed any "safe window" for undetected drug use. Sanctions, when delivered, were meted out within days of the detected violation, and jail terms were as brief as three days.

The program relied on streamlined judicial processes and careful coordination among all the agencies involved (courts, probation, law enforcement, and treatment providers). The program minimized delays within the court system, expediting the reporting of dirty tests, the scheduling of court hearings, and the issuance of bench warrants to absconders. Cooperation with law enforcement agencies ensured that bench warrants were prioritized (whereas probation warrants are typically considered "low priority").

Another of HOPE's innovations was the "warning hearing," designed to ensure proper messaging, including creating perceptions of fairness and a clear and credible threat of sanctions. Upon a probationer's enrollment in the HOPE program,

each receives a formal warning in open court to put him on notice that his violations will be punished. The warning explains to the participant the basics of the testing and sanctions structure, that the program is designed for the participant's path to success, and that his success is entirely within his own control. In this fashion, the warning demonstrated the program's capacity and commitment to follow-through on threatened sanctions. Theory and evaluations suggest that this initial warning is key to minimizing initial violation rates, which could otherwise potentially flood the court's resources, since probation officer time, court time, police officer time and jail space are all scarce resources (Kleiman, 1993; Kleiman & Kilmer, 2009; Hawken & Kleiman, 2009).

HOPE reserved treatment mandates for participants who consistently failed or missed drug tests, a la Operation Tripwire. This screening mechanism, in combination with overall low violation rates ensured by the program's demonstrated ability to identify and sanction violations, successfully minimized the number of participants referred to treatment. Consequently, the program can afford to use intensive treatment services, including long-term residential treatment, rather than relying primarily on outpatient drug-free counseling as most diversion programs do for most of their clients. This result might be called "behavioral triage" (Hawken, 2010).

Although HOPE's reliance on judicial processes draws comparisons to a drug court, it is different in important ways. Under drug courts, the judge is central to the supervision process (even for offenders who are fully compliant with the terms of probation), and probationers are required to appear regularly before the judge for

status reports. By contrast, under HOPE, probationers appear before the judge only if they violate. HOPE and drug courts also differ with respect to the role of drug treatment. All drug court participants are required to undergo drug treatment, whereas HOPE probationers are only mandated to treatment after they demonstrate they are unable to desist from drug use on their own (three positive drug tests typically triggers a treatment referral, but probationers may request and will receive a treatment referral at any time).

The outcomes of Hawaii’s HOPE program have shown that close monitoring of probation conditions — coupled with swift and certain responses to detected violations — improve compliance with terms of probation, including desistance from drug use, even for probationers with long histories of drug, primarily methamphetamine. About half of the HOPE probationers never tested positive after their initial warning hearing (and didn’t require a sanction), and about a quarter of the caseload tested positive only one time (Hawken and Kleiman, 2009). Overall, the rate of missed and “dirty” drug tests dropped by over 80% (Hawken and Kleiman, 2009).

Texas SWIFT

In 2004, when Judge Alm was designing and implementing HOPE in Hawaii, Leighton Iles a probation chief in Fort Bend, Texas, was independently designing and implementing a probation model, with features remarkably similar to HOPE. The program was implemented initially as “Sanctions Court” but the name was later changed to SWIFT (**S**upervision **w**ith **I**ntensive **E**nforcement). HOPE and SWIFT

were launched within months of each other. SWIFT has somewhat more transparency in sanctioning than HOPE (on entering SWIFT, probationers are given a document that details the sanctioning scheme; an offender who violates knows how much time he is facing as a consequence). SWIFT has a slightly more elaborate drug-use monitoring protocol than HOPE. Both programs rely on regular random drug tests using instant test cups, but SWIFT supplements these tests with hair assays (taken every other month), to ensure that no drug use goes undetected. Unlike HOPE, under SWIFT, the cost of random drug testing (including hair testing) is borne by the probationer and improves the likelihood that some will fall behind on their probation and court fee payments. The evaluation of SWIFT showed that the most common cause for a violation under SWIFT was for failure to pay court fees (Snell, 2007). Further study is needed to explore the monetary burden the additional testing places on SWIFT probationers, *and* the resulting cost of violating for non-payment.

Another important difference between HOPE and SWIFT is how sanctions are applied. While HOPE relies exclusively on jail sanctions, SWIFT uses progressive sanctions (including a court admonishment, community service hours, increased reporting requirements, additional fines, and jail time). SWIFT makes greater use of positive incentives than HOPE. The only positive incentive given under HOPE in response to demonstrated compliance is reduced office contacts and reduced frequency of drug testing. SWIFT has an expanded set of positive incentives for good behavior, which include fee reductions, reductions in community supervision hours, and in some cases, early termination from probation.

The evaluation of SWIFT showed outcomes similar to those found for the evaluation of HOPE. Compared to a matched comparison group, subjects in SWIFT were significantly less likely to violate the terms of their probation, were half as likely to be revoked, and were half as likely to be convicted for new crimes (Snell, 2007).

Leighton Iles later moved to Tarrant County, which includes Fort Worth, and has started a SWIFT court there. Early indications point to successful implementation there and the program is being expanded.

Alaska's PACE

In 2010, Alaska implemented the PACE program, a deliberate attempt to replicate Hawaii's HOPE model in a different environment. Engineered in consultation with HOPE members, the PACE program carried forth HOPE's core features: warning hearings, frequent drug tests, a streamlined judicial process, and swift and certain sanctions for probationers who failed their random drug tests.

Preliminary results released in June 2011 closely resemble HOPE's level of success. Failed drug test rates dropped from 25 percent during the three months prior to enrollment to 9 percent in the three months following. In the same period of comparison, the portion of participants with any failed or missed tests dropped from 68 percent to only 20 percent. On the other hand, petitions to revoke probations increased by 67% during this period; however, this comes as an expected result, considering that violations of the terms of probation were much more likely to be both detected and acted upon (Carns and Martin, 2011). If the

PACE program continues to follow HOPE's trajectory, petitions to revoke terms of probation will become increasingly rare as the program continues to demonstrate the credibility of its threatened sanctions.

Washington State WISP

In February 2011, Washington State launched the Washington Intensive Supervision Program (WISP), a small experimental pilot seeking test whether SAC principles could be applied to higher-risk offenders. WISP's participants have longer and more serious criminal histories than did HOPE, partly since WISP targets parolees whereas HOPE served probationers. Moreover, its population draws from Seattle's more diverse range of drug abuse, including heroin; HOPE's Honolulu-based population mostly abused methamphetamines. A key difference between a parolee version of HOPE such as WISP and the traditional HOPE model is that parolees appear before a hearings officer, rather than a judge, for warnings hearings (these were called "orientation hearings" under WISP) and violation hearings, and there is no public defender or prosecutor present at hearings. Aside from this difference, the two programs are similar in character. A process evaluation of WISP suggests that the program has been implemented in keeping with HOPE's standards: swift, certain, and modest sanctions (Hawken and Kleiman, 2011).

The evaluation of WISP confirmed the "behavioral triage" observed under HOPE. The subjects triaged themselves into those who were able to desist from drug use without formal treatment, and those who could not. As in Hawaii, WISP was associated with a significant reduction in drug use, with WISP parolees two-thirds

less likely to test positive for drug tests (Hawken, 2013). Early reported success of WISP resulted in sweeping action at the state level.

In April 2012, Senate Bill 6204 was passed with overwhelming support. The legislation required that the swift-and-certain principles underlying WISP be implemented statewide. It also allowed for “reinvestment funds” (savings expected from reduced incarceration are reinvested into evidence-based services). The passage of SB 6204 makes Washington State the first in the nation to implement swift-and-certain on a statewide basis and they now operate the largest program in the country (approximately 17,000 offenders supervised out of 113 field offices were oriented into the swift and certain program over a period of only three months). This unprecedented scale makes Washington State arguably the most consequential swift-and-certain site in the country, as the state will have to navigate implementation challenges that no other jurisdiction has had to confront.

DFE sites

In 2011, BJA selected four additional sites to implement a strict replication of HOPE using randomized controlled trials: Clackamas County, Ore.; Essex County, Mass.; Saline County, Ark.; and Tarrant County, Texas. This project is referred to as the HOPE Demonstration Field Experiment (DFE). Angela Hawken and her team at Pepperdine University are leading the implementation effort and are monitoring fidelity to the HOPE model (supported by BJA), and the evaluation is being performed by RTI and Penn State (supported by NIJ). The DFE is the largest and most-comprehensive evaluation of HOPE to date. The experiment will run through

2014, and will provide extensive data on HOPE outcomes compared with control subjects, the resource implications of HOPE compared with routine probation, as well as lessons learned about challenges with maintaining fidelity to the model.

Sobriety 24/7

In 2005, South Dakota initiated the Sobriety 24/7 program in reaction to the country's highest rates of drunken driving and roadside fatalities. Requiring total alcohol and drug abstinence from participants, Sobriety 24/7 has demonstrated that frequent drug tests and immediate punishments can generate periods of sobriety even from chronic alcoholics. Many program participants are multiple DUI offenders, and referred to the program either as a condition of bond, suspended sentence, or parole.

Since alcohol clears from the system hours after consumption, verifying abstinence requires more frequent tests: either twice-daily with urinalysis or breathalyzers, or continuously via ankle bracelets. Despite the program's severe requirements, most participants manage to complete without a single violation, although rates depend on the method of monitoring. Of participants subject to breathalyzers, two-thirds never violated, and only 7 percent violated more than twice; compliance rates from transdermal monitoring are even higher, with nearly eighty percent of participants practicing full abstinence (Loudenberg et al, 2011).

The program identifies and punishes violations with extreme celerity. In the case of breath and urine testing, participants are required to appear at their local law enforcement office at 7 a.m. and 7 p.m. Any participants testing positive are

immediately taken into custody and brought to court; missed tests result in the immediate issuance of a warrant. First violations typically result in one night in jail.

Reported effects are strongest among chronic DUI offenders. Two-time DUI offenders enrolled in twice-daily breathalyzer tests for any period of time were nearly half as likely to commit a third DUI within one, two, or three years, as compared to a control population. Longer periods of participation appear to strengthen the program's effects, such that stints less than 30 days appear to have only limited impacts on the incidence of future DUIs, and that stints of 90 days tend to report lower rates of re-offending than 30 day stints (Loudenberg, 2011).

Sobriety 24/7 is so widely implemented in some South Dakota counties that the program has led to measurable effects at the county level. A recent RAND study concluded that introductions of the program led to a 12% reduction in DUI arrests and a 9% reduction in incidences of domestic violence (Kilmer et al, 2013). Further studies on the program are needed, particularly those exploring how well it's success can transfer outside of South Dakota.

Logic and Principles of Mandated Abstinence Programs

The mechanisms and logic of mandated abstinence programs are basic aspects of behavior modification strategies for any population, but certain characteristics unique to offender populations renders them absolutely essential. The population of offenders eligible for supervision self-selects for high temporal discount rates, poor impulse control, and strongly external loci of control. More than the non-offender population, they prefer immediate gratification and believe that

they have lost control of their lives to external forces. The core principles of mandated abstinence programs react to these traits in ways that might be excessive for the non-offender population.

Swift and Certain Punishments

The idea that swiftness and certainty outperform severity in the management of offending that dates back to Beccaria (1764), and recent research has vindicated his original insight. Responding swiftly to violations improves the sanctioning process's image of fairness (Rhine, 1993), and the immediacy of a sanction is vital for shaping behavior (Farabee, 2005). The consistency and predictability of punishments constructs foreseeable, known consequences for individual behavior, which allows probationers to make better decisions (Gendreau, 1996). Moreover, swift and certain punishments are *cheaper* than severe punishments. Long stints of incarceration are much more expensive than even the most intensive supervision programs, and insofar as it is a more effective deterrent, lower quantities of it are required. Clearly-defined behavioral contracts have demonstrated this effect and enhance perceptions of the certainty of punishment (Grasmack & Bryjak, 1980; Paternoster, 1989; Nichols & Ross, 1990; Taxman, 1999).

Procedural Justice

Swift and certain punishments cultivate the feeling of fairness. When rules are visibly- and consistently-applied, violations of these rules are taken with less personal offense to the offender. Indeed, *the consistent application of a behavioral*

contract improves compliance (Paternoster et al., 1997). HOPE's warning hearing element is designed to ensure that the rules of supervision are widely understood as soon as they come into effect, so that all offenders may feel they've had the opportunity to adjust to the new rules of the game. An additional element of creative procedural justice is to dole out less severe sanctions. Sparing punishment strengthens the legitimacy of the sanction regime and reduces the large negative impacts of harsher sanctions, such as long prison stays, which can disrupt employment and other non-criminal routines (Tonry, 1996).

Locus of Control

Logically, those who take responsibility for their own actions are more prepared to improve their behavior. However, taking responsibility presumes an individual's belief that he can control the events in his own life, rather than being an object of chance and the whims of others. Individuals with this belief are known by psychologists as having an "internal locus of control," and are regularly rated as having higher levels of "self efficacy," another predictor of success.

Although further studies are required to demonstrate the precise psychological mechanisms that facilitate the success of mandated abstinence programs, the results so far suggest that these programs encourage individuals to internalize their loci of control take greater responsibility for their actions. The programs seek to actively combat most offenders' long-held beliefs in their own futility by clearly demarcating their new conditions of supervision and emphasizing their opportunity to start anew. Swift, certain, parsimonious, and perceptibly-fair

sanctions all encourage and empower the offender to shift his locus of control from external to internal forces, as does the warning hearing.

Behavioral Triage

Insofar as the previous three principles are effectively absorbed by the program, and the bulk of offenders are effectively deterred from violations, the most recalcitrant clients will self-identify themselves according to an elegant phenomena, which might be called “behavioral triage” (Hawken, 2010).

Not all offenders have the same level of dependency on drugs, nor equivalent aptitudes for self-control and recovery. Reliably, SAC’s constant threat of a negative consequence tied to drug use will prove sufficient to motivate behavioral change for a vast majority of offenders (many with long histories of drug use), for whom the certainty of a brief stint behind bars is sufficiently unpleasant to motivate abstinence in the present moment. By contrast, a small minority (less than 20%) will continue to test positive, even when faced with a known and credible threat of a sanction. These offenders, by definition, will readily identify themselves by repeatedly missing or failing drug tests.. Those for whom the swift-and-certain component of the HOPE program is insufficient to dissuade drug use are mandated intensive drug treatment.

It is an added virtue of the HOPE program that treatment is reserved for those who need it most (although treatment referrals are universally available upon request). This allows the limited resources of treatment programs to be put to the best use and avoids the flooding effect demonstrated by Prop 36, in which those

with severe addiction problems were regularly referred to outpatient therapy, where their prospects for recovery were half what they could be under inpatient programs.

There is an additional important advantage of this approach that may be of therapeutic value. Since treatment is only mandated after repeated failures, an offender can hardly deny his addiction. When drug-taking consistently sends him to weekend stints in jail, upon reflection he will find it much more difficult to avoid the unpleasant conclusion that he cannot control his own behavior. Once placed in treatment, the client's goals are automatically aligned with the treatment provider's: both want him to stop using. Since abstinence is a necessary condition of his release, merely enduring treatment is an insufficient goal even for the most reluctant clients. There is no reward for attending treatment if he cannot maintain sobriety. Thus behavioral triage ensures that only the most needy enter treatment, that they receive targeted and quality care, and that their psychological incentives are optimized for their recovery.

Elements of Successful Mandated Abstinence Programs

Programs have repeatedly demonstrated the challenge to effective probation and parole systems is to change the behavior of the supervising agencies; if bureaucratic transformation is accomplished, the clients will reliably follow. Across the country, supervision programs settle for zero tolerance *de jure* and zero consequences *de facto*. Drug use often goes undetected, since testing is too infrequent and scheduled publicly in advance. It often goes unreported, since

overworked probation officers and courts only have the time and resources to file and schedule revocation hearings for the most egregious offenders. It often goes unpunished, since judges are averse to sentencing months-long stints behind bars for mild (albeit chronic) infractions. Moreover, when offenders demonstrate sufficiently flagrant violations and courts make their punishment a top priority, these mechanisms act slowly and with extreme delay. By the time a sanction is levied, the offender's temporal window of impressionability has long closed. In marked contrast, the best way to train offenders is to apply basic principles of good parenting. Individuals are most likely to comply when: they know the rules; they perceive the rules, and the system that enforces them, as fair; they believe that violations are likely to be detected; and they believe that detected violations will have unpleasant, but proportionate, consequences.

Clear Warnings

The warning hearing delivers a single important message: no matter how many times participants previously violated terms of their probation without consequence, they were now only one violation away from jail time. If it is delivered credibly, a warning can modify participant's behavior without ever having to dole out the threatened punishment, representing efficient savings in punishment. In addition, formally introducing participants to the new rules may help convince them that the rules are there to stay, and will still be enforced as time passes.

Transparent Fairness and Goodwill

The “warning hearing” is also essential to foster goodwill and hasten offenders’ adaptation to the new, unfamiliar rules of a swift-and-certain sanctions regime. Warning hearing begin with a clear message to the probationer: “everyone in this courtroom wants you to succeed.” The rules of SAC are then clearly elaborated. Probationers are also instructed that if they responded well to a violation (for example, if they admit to drug use, or if they turn themselves in after a missed appointment), they would benefit from their good decisions (which demonstrate taking responsibility for their actions) by receiving a lesser sanction. The results in Hawaii were dramatic. Fewer than ten percent of probationers reported a negative perception of the program; even among those currently incarcerated on HOPE violations, only 14% reported negative perceptions (Hawken, 2010).

Specific Sanctions for Specific Behaviors

Consistency in sanctioning is important for establishing the reputation of a program as “fair.” During the original HOPE evaluation in Hawaii, the perceived unfairness resulting from judge-to-judge variation in the severity of sanctions was the biggest complaint from HOPE participants from every group (probationers, probation officers, assistant district attorneys, assistant public defenders and judges) (Hawken, 2010). Worse still, participants who had been put behind bars after receiving the more severe sanctions were quick to attribute the judge with ethnic bias, a tendency that could potentially disrupt the program’s other efforts to create an impression of fairness and goodwill. Moreover, judge’s success rates in

modifying their participants' behavior was independent of the severity of their sanctions, suggesting that allowing judges to exercise flexibility and discretion in assigning sentences has greater downsides than upsides. SAC jurisdictions are encouraged to apply consistent sanctions to ensure that similar violations receive similar consequences. In some jurisdictions, this has meant the adoption of a sanctions grid or sanctions guideline. Sanctions grids are not permitted in all jurisdictions. In this case, judges are usually able to reach an informal agreement regarding appropriate sanctioning through open communication about the sanctions they are delivering.

Follow-through on Threats

Programs must earn a reputation for following through with their threat Programs can only demonstrate the credibility of their threats by close monitoring, referring detected violations to court, and doling out the prescribed sentence. A poor follow-through may negate an effective warning hearing, which is meant to be an introduction to consistent sentencing and not a substitute.

Unknowns

There are many unknowns surrounding SAC; fortunately most of these are researchable and a few are being addressed at current SAC research sites.

Questions Surrounding SAC and Drug Treatment

Any SAC subject will be given drug treatment if they request it, but requests for treatment are rare. Even so, an important unknown is whether the model might be improved by identifying a “treatment-first” group. If ongoing studies of SAC generate good predictors of SAC failure (individuals who test positive three or more times), these might be used to identify probationers who are good candidates for an early treatment intervention. These probationers would be spared the discomfort of first experiencing three sanctions before receiving a treatment mandate.

HOPE uses three positive drug tests as an indicator of treatment need, and the third positive triggers the referral to treatment. There is no magic underlying the number three; there should be an empirical basis for determining the number of positive drug tests (combined with missed appointments, as unexcused absences are usually considered equivalent to a positive test) that lead to mandated treatment.

Questions Surrounding SAC and Sanctions

There is some variation across SAC-style programs with respect to sanctions delivered, but we know very little about how varying the sanction response might impact outcomes. In some jurisdictions (for example, Washington’s Swift and Certain, the New York City CLIMB project just getting underway), the first sanction is non-custodial: either home confinement or a curfew, either of which can be monitored electronically. For some offenders, a curfew may be as aversive as a short jail stay. There is anecdotal evidence from Washington that for many parolees, the non-custodial sanction was sufficient to capture their attention, and they never

progressed to a second strike. (The second violation is sanctionable with a jail stay). When a non-custodial sanction is used, any violation of that sanction itself must result in speedy jail time.

There is also great speculation as to whether sanctions should escalate in response to repeat offenses. Under the traditional HOPE model, jail stays are modest, but escalate with each new violation. By contrast, Washington's Swift and Certain provides a non-incarcerating sanction for a first violation, and a three day sentence for each of the next five low-level violations.

We have no evidence yet whether escalation improves compliance; we know from the HOPE trial that the intensity of the first sanction has no effect over a fairly wide range, with two days being as effective as six weeks. If a steady sanctions level works as well as escalation, then escalation should be avoided: to save costs, to economize on scarce jail space, to reduce the temptation among officials to let a violation slide, and to reduce the impact of the sanction on the offender's ability to re-integrate (e.g., the risk of losing a job).

On the other hand, in most programs the modal number of violations per offender is either zero or one. That reduces the cost saving from avoiding escalation. Some offenders report that their reflection, while serving first sanction, that things would only get worse from there increased their commitment to returning to the straight and narrow. It is possible — though the evidence is not in — that the sanctions-minimizing approach would be a mild first sanction, demonstrating the capacity and willingness of the system to deliver on its threats, potentiated by an escalation pattern with substantial deterrent power.

Learning about the consequences of different sanctioning patterns used with varying populations is among the highest-priority remaining research tasks in the field of smart community corrections.

Questions Surrounding the Scope of SAC

There is some controversy surrounding the appropriate scope of SAC. Some argue in favor of net-widening and make the case that extending SAC to lower-level violators (for example, extending SAC to misdemeanor caseloads) would curtail misbehavior earlier in the offender's criminal career, with potentially substantial reductions in the social costs that might otherwise be anticipated if this behavior is left unchecked. Others argue that, because SAC is more costly than routine probation, it should be targeted only at the highest risk offenders, who are most at risk of facing a revocation and being returned to prison.

HOPE has demonstrated that many offenders who might otherwise have been considered unamenable to community supervision, can be managed successfully with SAC-style supervision. This begs the question of whether SAC might be extended to current inmates, for example, those sentenced on drug possession charges, or even low-level sales, where the sales were used primarily to support a drug habit.

Pretrial

The first application of SAC principles in the criminal justice system was the drug-testing program for arrestees on pretrial release instituted by the District of

Columbia Pretrial Services Agency (now a part of the Court Services and Offender Supervision Agency) in the 1980s. It was found that a testing program reduced both failure-to-appear and pre-trial rearrest (Carver, 1993).

Moreover, the testing regimen quickly divided arrestees drug-positive at arrest into a small high-risk group marked by refusal to appear for testing and a larger compliant group marked by appearance and "clean tests," where the compliant group had no more risk of rearrest or failure-to-appear than arrestees drug-negative at arrest. Thus even if the incentive-management features of the program are of limited value, its capacity for behavioral triage might have important implications.

If those results could be replicated nationwide, that would allow increased pretrial release (thus relieving jail crowding and reducing the extent to which those who have never been, and may never be, convicted of a crime are nevertheless confined for long periods) while improving public safety. As with post-conviction drug monitoring, the implementation problems can be substantial.

Managing Other Behaviors

There is also the possibility that SAC could be applied beyond the realm of drug-involved offenders. In Hawaii, HOPE has worked with sex offenders as well as domestic violence perpetrators. In both these cases, the conditions of supervision focused on the behaviors of concern: enforcing "stay-away" orders or keeping to necessary treatment regimes.

Domestic violence appears to be a ripe target for further application of swift and certain regimes, although only two programs have made domestic violence its primary target. There is a dedicated HOPE domestic violence unit in Hawaii and Texas is about to launch the first mainland domestic violence unit, which is modeled after HOPE. Already, Sobriety 24/7 has been measured to decrease county-wide domestic violence by nearly ten percent (Kilmer et al, 2013), merely as a side-effect of reductions in alcohol consumption.

Combination with Electronic Monitoring

The clear opportunity for SAC is integrating the more effective sanctioning regime with the great potential of the new technology of electronic monitoring via GPS tamper-proof anklets. If you can know where someone is, you can tell him where to be, and not to be: enforce a curfew or home confinement, require him to avoid places where he used to commit crimes (drug-dealing street-corners, residences of victims of domestic violence), and ensure attendance at required services (e.g., anger management classes) without relying on reports from service providers. If position-tracking information is routinely matched with crime scenes, wearing a GPS monitor might have substantial benefits in specific deterrence. Position monitoring might also help with the problem of finding jobs for ex-offenders and keeping them in those jobs. If regular and on-time appearance for work were made an enforceable condition of probation or parole, and if potential employers of ex-offenders knew that, jobs for those under community supervision might become more plentiful and of longer duration. Since employment is one of the

best predictors of desistance from crime, this might be an important innovation. However, it still awaits its first practical test. It would also enable the use of curfews to punish offenders for violating other conditions of release, potentially reducing the use of jail as a sanction.

The challenge is to ensure that position violations are monitored. Many probation departments do not have the resources to support position monitoring for non-sex offender caseloads. One option is to reserve position monitoring for subjects who present a flight risk, or to use position monitoring as part of a sanctions package for offenders who have absconded or failed an initial test. To be an effective deterrent, this strategy would need to be announced during warning hearings.

Position monitoring in general remains a highly promising but largely untested technology. Logically, it ought to be far more effective when combined with swift-and-certain sanctioning than when used alone, but that logical inference needs empirical verification before it can become the basis of sound policy-making

Operational Threats and Fixes

A number of issues are known to create difficulties in implementing mandated abstinence programs. As the number of SAC sites expands, new challenges are being raised. Although each particular problem and solution occurs differently in each program, there are a number of common implementation challenges.

Coordination

While describing the components of a SAC program is relatively simple, the implementation and process issues involved when launching a similar program are not — especially when it is launched at a large scale. Implementing swift-and-certain responses to violations requires substantial reorganizing of current community-supervision practices and presents many challenges. The SAC model entails the coordinated and independent efforts of judges, community-corrections officers, law enforcement, correctional facilities, and drug-treatment providers. The standard operating procedure for handling offenders will likely vary from jurisdiction to jurisdiction, making an “exact” duplication of the swift-and-certain model across jurisdictions unlikely. But while the model might need to be tailored to each jurisdiction, it is essential that any jurisdiction implementing a SAC model mirrors the model’s essential features. First and foremost, the model can succeed only with a coordinated effort by all parties.

Moving from a supervision-as-usual model to a swift-and-certain model necessarily involves new policies and procedures. These procedures include regular random drug testing, immediate arrests, and an expedited bench-warrant process. In addition, jurisdictions must focus on those conditions of community supervision that are a high priority for enforcement, and must determine the sanctions that will be meted out for noncompliance with these conditions. Inability, reluctance, or refusal of *any* of the key players to consistently enforce the new model undermines its credibility and can lead probationers and parolees to perceive the program as unfair or lax. This is a fast path to failure. Any jurisdiction adopting

a SAC model will need to work to ensure good communication among all parties and develop systems to speedily detect any deviations from desired practices and procedures. This requires good leadership, especially during the first six months of the program as violation rates, and accompanying workloads, are highest during the early phase of implementation when probationers are still adapting to the new rules.

Successful implementation of SAC necessitates the full cooperation (and enthusiasm for the model) of three essential partners: the designated SAC judge, the probation department overseeing the SAC caseload, and law enforcement. In jurisdictions where public defenders and prosecutors will be present, having their support is essential also — failure to secure their support has the potential to bring SAC court proceedings to a grinding halt.

Slippage

SAC requires everyone in the system to work harder and faster. As just explained, maintaining fidelity to the model, *as described*, is essential. Program fidelity should improve during the early stages of implementation, as all of the key partners become more familiar with their roles, but after a period of time, this trend might reverse. SAC sites will need to ensure constant monitoring of SAC processes, to avoid back-sliding.

Time budgeting

Any jurisdiction considering implementing a SAC program will need to find new approaches to managing their operations that minimize the burden on the probation officers and the courts. Delivering swift and certain sanctions requires more of probation officers than routine probation. As a result, sites will need to look for ways to mitigate workload so that SAC procedures fit within probation officer's time budgets. SAC sites have developed new routines to reduce the paperwork burden, especially for probation officers. Many documents that were formerly long-form were converted into simple fill-in-the blank forms. Because of the pace with which SAC delivers sanctions, each violation procedure typically involves on only a single, recent violation, and the key data elements needed to document the violation can be recorded in minutes using short forms or pull-down menus.

SAC sites have also worked to ensure that the dedicated SAC court is not overwhelmed. For example, some sites have reduced the burden on the court by issuing warning hearings en-masse. Delivering warning hearings to groups of up to ten probationers appears to work well, and they have the added advantage of demonstrating to probationers that they are not being singled out, the rules that apply them are the same as the rules being applied to all other probationers in the program. Violation hearings also tend to be brief. Because of the consistency of sanctions delivered under SAC, public defenders and prosecutors know what to expect, very few objections are made, and the hearings move quickly as a result.

Speed

Most probation and parole agencies now use instant drug tests, but some still rely on an external laboratory to analyze urine samples and report detected levels. This can lead to significant reporting delays (a week between specimen collection and confirmed lab results is not uncommon). Instant detection of drug use is essential to the goal of delivering swift sanctions in response to violations under SAC-style models. Fortunately, with quantity discounts most agencies will find instant tests are priced competitively compared with lab tests. Disputed drug tests should, however, be sent to a laboratory for confirmation (jurisdictions vary in how they manage the offender while waiting for a lab confirmation).

Swift-and-certain-sanctions programs, when implemented correctly, have demonstrated substantial capacity to reduce reoffending, revocation, and incarceration across a range of offender types and criminal-justice settings. The implementation challenges are likewise substantial. Overcoming those challenges holds out the hope of better protecting public safety, reducing incarceration, and turning around the lives of people caught in the cycle of drug abuse, offending, and imprisonment. But the desirability of successful implementation is no guarantee of its feasibility, which depends on local institutional arrangements, agency management capacity, and political will.

What Would a National System Look Like?

Properly implemented, swift-and-certain-sanctions approaches hold out the prospect of reducing crime while also reducing incarceration. They can also outperform many drug-treatment modalities in producing sustained abstinence.

Implementation problems, however, can prove crippling; a program that makes threats but delivers on them only sporadically could easily under-perform probation-as-usual.

Compared to the costs of incarceration, the costs of even very tight community supervision are almost certainly modest. But those costs — especially the costs of enhanced monitoring, drug treatment, and of law enforcement operations to bring in absconders — have yet to be comprehensively measured. Likewise, the benefits observed in the Honolulu Randomized Controlled Trial are extraordinarily large, but the feasibility of achieving comparable results in other institutional settings needs to be determined on a case-by-case basis. The sustainability of the model is also brought into question if there are slippages from initial fidelity. Program fidelity will need to be monitored vigilantly to ensure that sanctions continue to be delivered swiftly and with certainty when an exciting new program degenerates into one more organizational routine. Tools are now being developed to help program administrators monitor the many moving parts required to deliver SAC well.

So the case for transforming the entire community-corrections system to embody the principles of swift and certain sanctioning remains theoretically strong but empirically unproven. In principle, however, SAC-style programs are economical, and therefore scalable, by contrast with more service-intensive approaches such as drug courts.

Unlike drug courts, SAC programs spend little time and resources managing compliant clients. A SAC probationer who has been “clean” for 6 months is tested

only once per month, and his contact with the system is limited to a daily phone call to the drug test “hot line” to see whether that is the day he must report for testing in addition to a routine monthly visit with a probation officer. This process makes the program's success feed on itself, in a reversal of the “social trap” of sporadic monitoring and sanctioning. After a year, most SAC probationers have worked their way into the low-monitoring group, which makes the cost of supervising them only slightly higher than the cost of ordinary probation supervision.

Therefore, once such a program is running, its scale has no natural limit. If the implementation and sustainability challenges can be met, SAC-style monitoring and sanctioning, in which the intensity of monitoring varies with the characteristics of the client and is reduced after periods of sustained compliance, could be the future of community supervision: pre-trial, post-conviction, and for juvenile offenders.

There remains the question of how to phase in swiftness and certainty. The long history of bluffing within the criminal justice system increases the difficulty of all sanctions-based programs by creating the need to establish sanctions credibility as a first step. One approach to meeting that need was exemplified in Hawaii, where the program was “shaken down,” and the credibility of its sanctions threats established, with an initial group of 35 offenders, which was slowly expanded to its current size of more than 2000 probationers. That meant that newly added subjects could learn from the experience of others, rather than each having to find out the hard way that the judge meant what he said about delivering a sanction every time. Phasing-in also meant spreading out the initial workload surge created by relatively

high initial violation rates, thus avoiding having the system “swamped” with more violations than it could practicably sanction and losing its credibility as a result of unmet commitments.

However, what appeared at first blush to be an imprudently rapid program expansion in Washington State now seems to have worked quite well. This further illustrates the need for caution in generalizing across circumstances. That a program has succeeded in one place is no guarantee that a similar program will work elsewhere; by the same token, what had seemed to be an essential design feature may prove unnecessary in a different setting.

Almost no one doubts that, in dealing with offender populations, the swift and certain application of relatively mild sanctions works better than the random and delayed application of severe sanctions. Nor is there much doubt that reducing the consumption of expensive illicit drugs among those whose criminality is linked to their drug abuse, or reducing the consumption of alcohol among drunk drivers and drunken assailants, can reduce re-offending and thus incarceration. The remaining problems are those of institutional design and implementation. The benefits of successful community corrections — and the costs of mass incarceration — justify substantial and sustained efforts to overcome those problems, but there is as yet no convincing proof that the problems can be sufficiently overcome everywhere to make SAC-style sanctioning a universal standard.

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