



Decide your time: Testing deterrence theory's certainty and celerity effects on substance-using probationers

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ABSTRACT

Background: Bolstered by the initial effectiveness of programs such as Hawaii's Project HOPE, the resurgence in practical applications of deterrence theory has focused on certainty and swiftness of punishment. Following this theoretical trend, Delaware's Decide Your Time (DYT) program was designed to manage high risk substance-using probationers by focusing on the certainty of detection through frequent drug tests and graduated but not severe sanctions.

Objective: This paper, stemming from a larger process evaluation of DYT, reports on the theoretical development and implementation issues involved in instituting such a program in a large, urban probation department.

Methods: Data for the current effort consisted of notes taken at DYT management and staff meetings, interviews with key informants, and observational fieldwork.

Results: The evaluation demonstrated that judicial practices, client eligibility, logistics, and cooperation with secure facilities all posed noteworthy issues for program implementation. Perhaps just as important is the willingness of the program managers to listen to front line officers and make necessary changes to ensure the program's effectiveness and efficiency.

Conclusion: This study suggests that the design of similar programs should carefully consider the local legal structure and the policies and practices of the corrections institutions, treatment providers, and probation department.

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Introduction

In 2008, over two million individuals were incarcerated in U.S. prisons or jails. While this figure grabs headlines, at the same time, over five million people were under community corrections supervision (Minton & Sabol, 2009; West & Sabol, 2009; Glaze & Bonczar, 2009). Of those individuals under community corrections supervision, probationers comprised the vast majority of cases (84%) as compared to parolees (16%) (Glaze & Bonczar, 2009). An increasing number of probationers are serving sentences for drug crimes – 33% in 2008, up from 24% in 2000 (Glaze & Bonczar, 2009). While successful exits from probation are actually increasing nationwide, in 2008, 17% of probationers were incarcerated during their probation term. Almost twice that number either abscond (4%), are transferred or discharged to a warrant or detainer (2%), or are discharged in some other unsatisfactory way (10%). In all, 37% of probationers in 2008 failed to successfully complete their probation (Glaze & Bonczar, 2009). What's more, many of those who do complete probation do so having experienced positive urine tests while under supervision, indicating

they are still using illicit substances. To the extent that substance use is related to criminal behavior, continued drug use while on probation almost certainly means that these individuals will commit crimes in the future. What remains unclear is whether probation can serve as an effective deterrent to crime and drug use. This article first examines the concept of deterrence specifically as it relates to community corrections, then we review a selection of programs that have focused on certain aspects of deterrence theory in order to keep probationers crime and drug free. Lastly, we discuss a program being implemented in Delaware that is based on the deterrence principle of certainty, and identify some difficulties in implementing such programs in large urban probation departments.

Deterrence revisited

Deterrence, based on rational choice, is among the oldest approaches to explaining (rational choice) and combating (through deterrence) criminal behavior. The principles of deterrence date to *Beccaria, 1764* with the publication of Cesare Beccaria's *On Crimes and Punishments*. Beccaria acknowledged the growing belief at the time, that persons had free will, and used this as a starting point for his approach to legal theory. He also was among the first to suggest that governments should not only punish crime, but they should also

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endeavor to prevent it. Growing on this line of thought, Jeremy Bentham would first formalize a theory of deterrence in Bentham (1789), suggesting that as the certainty, severity and swiftness of punishment increases, crime should decrease. It should be noted that Bentham was responding in part to the increased use of the death penalty in England at the time and was largely arguing that penalties should be reduced. This point seems to have been lost in many modern interpretations of deterrence as policy makers seek to increase the severity of punishment.

There have been many excellent reviews of deterrence approaches, pointing out both the theory's strengths and weaknesses (Nagin, 1998; Vold, Bernard, & Snipes, 1998; Wright, 2010); thus, a lengthy review is not required here. Two issues, however, concern the use of deterrence within a probation setting. The first is the mounting evidence that the certainty principle is the most important in preventing crime. Paternoster and others have demonstrated that enhanced perceptions of certain, not severe, punishment are likely to deter future criminality (Grasmack & Bryjak, 1980; Paternoster, 1987, 1989; Taxman, 1999). Unfortunately, certainty is the most difficult aspect of punishment to increase. Increasing the severity of punishment usually involves changing a law and perhaps building more prisons – actions American lawmakers have not hesitated to do. Adding to the swiftness is also difficult, because due process requirements insuring that punishments are properly meted out requires time. Swiftness is relatively understudied however, and it is somewhat unclear how important it is. Adding to the certainty of punishment means increasing the likelihood that people are caught for crimes they have committed, and this is a difficult proposition. Mark Kleiman (1988), and David Kennedy (1998) have suggested, and to some degree demonstrated, that targeted enforcement against specific offenses in specifically targeted areas can have an impact on crime. It remains unclear how such approaches can be widely applied.

Once a person is convicted and sentenced, it becomes easier to monitor their behavior; indeed, that is generally the main component of probationary sentences. Once people are targeted through legally defined sentences to be more closely monitored, it may be possible to increase the certainty of detecting some actions, such as drug use through urinalysis, or individuals' whereabouts through the use of global positioning systems (e.g. for sex offenders who are often limited in where they can go).

Deterrence in modern community corrections

Over the last two decades, U.S. courts have attempted various approaches to reduce drug use and criminal activity among convicted offenders, focusing primarily on early identification and intervention among people under community supervision. Standard probation revocations for substance use typically occur after numerous positive urine tests that resulted in warnings, followed by a motion to revoke probation. More recent approaches have focused on providing some form of increased punishment (severity) earlier in the probationary period, rather than waiting for an accumulation of problems that requires probation violation. Many states have launched intensive supervision or graduated sanction programs intended to address the standard approaches to offender noncompliance. Graduated sanctions are structured, incremental responses to noncompliant behavior of probationers while they are under supervision which are designed to give the probation officer the ability to respond earlier to noncompliant acts through a series of actions (e.g. community service, one or more days in jail, increased drug testing, or a curfew) (Taxman, Soule, & Gelb, 1999). The graduated sanctioning process utilizes incremental steps meant to limit an offender's freedom, serving as a means to deter noncompliance. While the sanction an offender receives is dependent upon factors such as the type and number of prior violations committed, it must provide a proportionate response meant to deter resistant and noncompliant behavior prior to reaching

the level of violating the persons' probation. Early evaluations of intensive supervision programs found that programs that simply increased monitoring and added sanctions tended to violate people at a higher rate: the more intensive the supervision, the more illicit behavior was discovered, leading to increased revocations (Petersilia & Turner, 1993; Taxman, 2000, 2002).

More recent evaluations of community supervision programs utilizing a graduated sanctions approach have demonstrated that these approaches can result in improved compliance with probationary conditions. While these conditions are not consistent across all state and local jurisdictions, many programs have incorporated random drug testing as a means of surveillance to monitor compliance with mandatory drug treatment (Harrell & Kleiman, 2000). Some have suggested that a combination of testing and sanctions, otherwise known as "coerced abstinence," could hold important advantages over the more often utilized approach of coerced treatment (Kleiman, 1988). Testing and sanction programs are much cheaper than treatment, and using them as a first-stage response avoids running into the capacity limitations of the treatment system (Kleiman et al., 2003). Within coerced abstinence programs, the focus is removed from the severity of potential sanctions for continued drug use, and instead focuses on the certainty and celerity of the consequences of use as the primary mechanism for changing offender behavior (Harrell & Roman, 2001). Boyum and Kleiman (1995) argue that it is not necessary to imprison drug-involved offenders to reduce their drug use. Instead, the threat of (re)incarceration for continued drug use, as monitored through random drug testing, may be adequate to deter offenders from continued use. Moreover, the use of random drug testing coupled with substance abuse treatment may be an even more effective approach (Caputo, 2004; Petersilia, 1999).

The use of these programs within drug courts has demonstrated overall reductions in rates of substance use. In Oregon, short periods of incarceration as a response to positive drug tests resulted in overall reductions in positive drug tests among probationers (Center for Substance Abuse Research, 1994). Legislative expansion ensued, giving probation officers the authority to use short periods of incarceration as a sanction for a failed or missed drug test. Similar results were found in the experimental Washington D.C. Superior Court Drug Intervention Program (SCDIP). Drug-involved participants were first identified through initial drug testing in an attempt to devote limited resources to a high-risk subset of offenders. Identified drug users assigned to a graduated sanctions program with drug testing and judicial monitoring were significantly less likely to use drugs prior to sentencing, in the year after sentencing, and were less likely to be arrested than those assigned to a standard docket of drug testing or judicial monitoring only (Harrell & Roman, 2001). Results also showed more lasting effects and lower rates of substance use for offenders who experienced the graduated sanctions program in conjunction with voluntary participation in community-based drug treatment programs such as Narcotics and Alcoholics Anonymous. Since defendants knew they could avoid negative sanctions by not using drugs and because the sanctioning rules were clearly explained and accepted in advance, defendants reported a feeling of control and fairness during the process.

The success of some graduated sanctions models suggest that under a deterrence framework focused on certainty and swiftness, rather than severity, individuals will choose to comply with rules based upon the costs and benefits associated with a particular behavior (Boyum & Kleiman, 1995). Drug use, for instance, would be expected to be influenced by an anticipated sanction resulting from a positive drug test. Criminal justice experts have continually argued that it is crucial for rules to be consistently applied and well understood by defendants for behavior modification to occur (Inciardi, Martin, Butzin, Hooper, & Harrison, 1997). The available evidence suggests that sanctions for a positive urine test can range from a formal warning to a return to custody, likely depending on the number of positive tests, the type of

drug, and other offender behavior (Kilmer, 2008). A case study of three county-level probation departments in California found that positive tests and failures to appear were so common that they were often ignored (Kleiman et al., 2003). Similar findings in Arizona indicated that formal sanctions were not applied until probationers had tested positive for drugs at least four or five times (Deschenes, Turner, & Greenwood, 1995). For a graduated sanctions program to be successful, offenders must be aware of and clearly understand the rules governing the incentives and consequences of the program prior to participation (Caputo, 2004).

From graduated sanctions to HOPE

Recent state and federal initiatives, including the National Institute of Justice's Breaking the Cycle (BTC) and Hawaii's Opportunity Probation with Enforcement (HOPE) program, have employed graduated sanctions and coerced abstinence practices to direct offender behavior. These programs have strong conceptual roots in the deterrence framework, calling for swift and certain responses to offender violations that increase in severity, rather than relying on severity from the beginning. Providing support for the graduated sanctions model, results indicate significant reductions in drug use and criminal activity for the BTC participants when compared to similar defendants arrested in the year prior to BTC (Harrell, Mitchell, Merrill, & Marlowe, 2002). Likewise, preliminary results from the HOPE program in Hawaii suggest that swift and certain sanctions that are graduated in severity can considerably reduce both positive drug tests and probation violations (Hawken & Kleiman, 2009; Hawken & Mark, 2007).

HOPE modified existing community supervision by closely monitoring probationer behavior and quickly punishing violations with initially mild sanctions. The HOPE project relies on court mandates that are enforced by swift and certain sanctions which prohibit offenders from further using illicit drugs. A critical component then becomes its careful use of punishment which, according to Hawken and Kleiman (2009), safeguards against the destructive tendencies of harsher sanctions while enhancing the fairness of applied sanctions. In essence, HOPE emphasizes accountability and responsibility while setting in place swift and certain penalties for punishing violations (Hawken & Kleiman, 2009).

Initial positive evidence suggests that, "HOPE might represent a transformation in probation supervision" (Hawken & Kleiman, 2009: 6). Utilizing weekly randomized drug testing and sanctions that increase gradually for successive violations, HOPE probationers reduced their positive urine tests more than 80% after the first three months and an additional 50% thereafter, resulting in a greater than 90% decrease in positive urine tests (Hawken & Kleiman, 2009). In contrast, the violation rates for the non-HOPE sample continued to worsen, with 37% eventually having their probation revoked, compared with fewer than 5% of the HOPE group (Hawken & Kleiman, 2008). Additionally, results illustrate a noteworthy decrease in missed appointments with more than a 66% reduction in the first three months and an additional 75% afterward, resulting in a greater than 90% decrease (Hawken & Kleiman, 2009). Finally, while HOPE probationers who were violated were incarcerated on average the same number of days, they were arrested half as often as those on regular probation (Hawken & Kleiman, 2009).

It is important to note that HOPE was a judge-focused program. Judge Steven Alm provided the sentences, informed persons they were being placed in the program and explained what would happen to them if behavioral guidelines were not met. Because HOPE utilized one judge in one office it is difficult to determine the generalizability of the model. The recent National Drug Court Evaluation found that attitudes towards the judge were important and varied across sites (Roman, Yahner, & Zweig, 2010). In order to better understand the generalizability of the HOPE model, the National Institute of Justice sought a replication and funded an evaluation of the Decide Your Time

program being developed by the Delaware Department of Probation and Parole.

From HOPE to decide your time

Analytic approach

What follows is a description of how the program works, as well as discussion of some of the hurdles faced in starting the program. The Center for Drug and Alcohol Studies at the University of Delaware is conducting a randomized trial and process evaluation of Decide Your Time in order to assess the program's effectiveness, as well as investigating the facilitators and barriers involved in implementing such a program. The information below comes from data collected as part of the process evaluation being conducted as part of the project. Data consisted of minutes and notes taken by the research team at Decide Your Time management and staff meetings, interviews with key informants, and ethnographic notes taken by research staff.

Probation in Delaware

The State of Delaware maintains a blended sentencing system with five levels of criminal justice control. Level one is non-reporting probation, level two is standard probation, level three is intensive probation, level four is community corrections (i.e., using locked community facilities), and level five is secure corrections. Levels one through three are the responsibility of the Probation and Parole Division, but the Bureau of Community Corrections also utilizes level four community corrections centers for probation violators.

The Probation and Parole division employs a classification system that includes the use of the LSI-R in order to identify risk of recidivism and offender's needs. By law, the LSI-R is used to move persons up and down supervision levels (e.g. from standard level 2 to intensive level 3). Probation and Parole has contracts with numerous community-based substance abuse treatments for individuals under probation supervision. The Department thus has the ability to increase and decrease supervision within defined limits, and can refer people to treatment as needed.

The Decide Your Time program was first implemented at the Hare's Corner probation office in New Castle County Delaware, located just south of the city of Wilmington. The office employs 56 officers and has an average daily caseload of 2,250. A large proportion of offenders at Hare's Corner have substance abuse issues, and the office relies heavily on urine tests for a substantial proportion of its probationers. In 2008 the office conducted a total 3,773 urine tests, of which 36% (1,359) were positive, and 50% (1,871) were negative. The remainder were a combination of diluted (4%), refused (1%), no result entered (6%) and other (3%).

As the name indicates, the Decide Your Time program is designed to place responsibility for how time is spent on probation in the hands of the probationer. Developed from a combined model of deterrence and empowerment, the program informs eligible probationers of what exactly will be required of them, what will happen to them when they fail to meet requirements (increased sanctions), and how to reduce their level of monitoring once they violate and trigger increased sanctions (reduce sanctions and garner rewards). The program thus provides a model deterrent approach in which certainty and speed, rather than severity, are the key elements. It also empowers the probationer by clearly informing him or her of how the program operates, thus allowing them to "Decide Your Time."

Intake

The program focuses on persons who test positive for drugs while in probation at either supervision level two or three. Each new probationer completes an intake that is partially dependent on the

judge's order. Most require an assessment for substance abuse treatment and urinalyses. A substantial number of probationers fail a urine test at some point in their probationary sentence, and these persons are referred to the program.

Sanctions

The Decide Your Time program utilizes an increased schedule of urinalysis that can rise as high as twice a week, thereby insuring detection of most drugs. Participants are informed in advance that positive tests will result in increased sanctions, and that continued compliance will result in movement to a lower (reduced) level of supervision. They are given a brochure which outlines the schedule of urine tests, and the consequences if they fail a test. The implications of regular drug testing are explained to them, including the detection window for various drugs. That is, they are told that marijuana will likely be detected within a week, opiate and cocaine use is detected up to 72 hours, and that continued use will result in detection. The advance knowledge of certain testing coupled with knowing that swift and increasingly severe sanctions will be imposed provides participants with a meaningful threat and incentive to deter them from drug use.

As Fig. 1 demonstrates, eligible participants are informed that they have been selected for Decide Your Time, and are given a two-week "Start-up Phase," during which they are required to develop a sobriety plan. This gives them a chance to think about how to maintain abstinence and seek help if they desire. Participants then begin the program at Phase One, with a monitoring level of one random urine test per week, for 90 days. Those providing negative urine tests for 90 days successfully complete the program and are transferred from intensive supervision to a lower level of monitoring. Those not eligible for transfer to standard level 2 probation due to sentence restrictions or LSI-R recommendation are maintained on an intensive caseload, but their curfew, reporting and urine testing frequency is reduced. The lowered supervision levels are designed to provide an incentive for persons to comply.

Failure in any phase results in movement to the next phase. That is, a positive urine test while in Phase One results in movement to Phase Two, and an immediate four-day period of incarceration in a probation violation center. Movement out of Phase One also increases drug monitoring to two regularly scheduled urine tests per week. Finally, movement out of Phase One requires participants to attend regular Saturday group treatment sessions. Failure in Phase Two results in movement to Phase Three, which adds a 6 p.m. curfew to the Phase Two Sanctions, an additional failed urine test results in movement to Phase Four which is a five-day period of incarceration followed by movement back to Phase Three. Success in Phase Two or Three results in movement back to Phase One. Phase One is always 90 days. At each phase, participants will be explicitly informed of what is going to happen to them in terms of monitoring and what will happen to them if they are unable to comply.

Part of the Program's strength is based on all offenders receiving the same schedule of urine tests based on their measured performance in passing or failing the tests, and all receive the same sanctions at the same points. The program is designed to last up to six months, and offenders can move from more to less intensive surveillance and vice-versa. Key to the program is the knowledge of sanctions and testing schedules. The probationer knows in advance exactly what is expected and what will happen when non-compliance occurs. This program of clear requirements and sanctions that informs the offender up front of what happens at each step truly allows the individual to decide how to do their time on probation.

Treatment

In addition to sanctions, two types of treatment are available in Decide Your Time –life skills and cognitive behavioral programming. Offenders reaching Phase 2 are sent to the "Decide Your Time Life Skills Program." The Life Skills Program is based on skill-building and is administered in a group format and covers fourteen different topics. Topics include relapse prevention, self-esteem, family issues, recovery

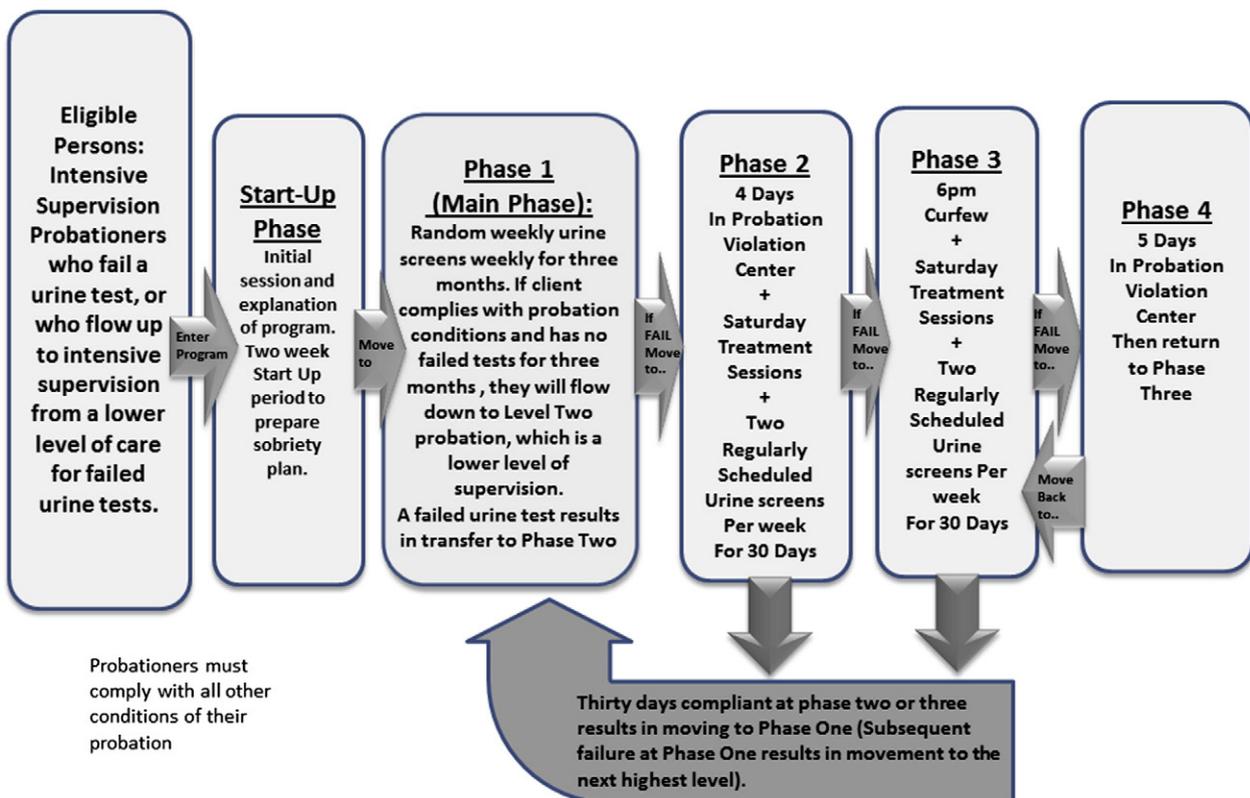


Fig. 1. Decide Your Time Program Flow Chart.

lifestyle, recreation/leisure, work skills, scheduling and other topics. The treatment sessions are run by the DYT probation officers, who focus the classes specifically on how to successfully complete the Decide Your Time program by addressing strategies for avoiding drug use. The Life Skills Program does not follow a strictly progressive format, and the non-cohort structure means a person can join any week and can remain for as many sessions as required. The program is designed to last a half day, and offenders can repeat it as often as necessary. At any point in the program offenders can be referred to the community-based treatment provider for a cognitive behavioral regimen that can either involve regular weekly outpatient sessions or, if deemed necessary by the intake counselor, residential treatment.

The overall program of sanctions and incentives is designed to motivate people to change their behavior. For those who may be motivated but have trouble changing their behavior, the treatment sessions are designed to provide useful tools. DYT officers are trained to use failed tests as an inducement to encourage people to seek treatment. The program thus triages high risk probationers. Those who do not require services succeed in the program and are moved out, leaving room and resources for those needing more intensive services. By basing movement on behavior (as opposed to a risk assessment), the person subjected to the program has more control over their own probation. The program was fielded as a pilot in the spring of 2010, was modified over the summer and launched in October 2010. The section below details some early lessons learned in attempting a swift and certain punishment model for substance-using probationers.

Taking decide your time to the field

In this last section, we outline a series of problems the DYT team encountered as the program was implemented. They are presented in a Problem/Solution/Lesson format and are intended as a guide for those who might attempt to create a system of swift and certain sanctions in community corrections.

Problem: Monitoring and scheduling

When the program was introduced, two scheduled urine tests per week were required in the first phase. Persons placed in the program during the pilot period failed immediately, because they were unable to halt their drug use instantaneously. This was compounded by imposing the schedule of sanctions too quickly. At two urine tests per week, a person could move from no sanctions to the most severe sanction in two weeks, which is exactly what happened.

The DYT officer team determined that it was unrealistic to tell people they had to quit using drugs on the spot. As a solution, a Startup Phase was developed. This phase requires people to develop a sobriety plan. They are informed they will be tested in two weeks and that they have to quit in about a week to pass that test. Probationers meet with the officer in the intervening week to discuss their plan and reinforce the fact that they will be tested the following week. People are tested at the end of the Startup Phase and if the test is negative placed into Phase One. A positive test results in a four-day lock up and movement to Phase Two (see above).

The lesson from this initial experience in the program is not to impose a sanctions system that requires people to quit using drugs immediately or without a plan. It is too early in the current evaluation to determine whether providing a startup period and requiring a plan is effective, but the pilot phase of DYT certainly showed that not providing one leads to program failure.

Problem: Transportation/ jail acceptance

Using short term incarceration as a sanction requires placing people in custody. Most substance-using offenders have short time horizons (Gottfredson & Hirschi, 1990), and many do not fully

comprehend or appreciate that they may be incarcerated sometime in the future for something, but none want to go to jail *today*. In order for sanctions to be swift, the person needs to be incarcerated as soon as possible; in the case of DYT, this means the day they get a positive test result. This requires officer time, transportation, communication with the correctional institutions and coordination of all of the above.

Delaware maintains two locations where people on probation can be taken for short-term incarcerations. These violation centers can accommodate persons from a few days to much longer (e.g. three or six month) stays. The men's center is located approximately one hour by car from the probation office, and the woman's center is two and a half hours from the office where the program is being implemented. When the program first fielded during the pilot phase, officers were spending considerable time transporting people to jail. Women presented the greatest challenge because not only does incarcerating them require a five-hour round trip, a female officer must accompany a female probationer, and the Decide Your Time team only consisted of two female officers.

The Department of Corrections, however, runs transportation vans for court hearings up and down the state each day. The solution DYT staff implemented was to arrange a scheduling agreement in which DYT violators could be transported in the van pool if there was space available, a usual situation. This solution required communication and collaboration across agencies to coordinate resources, and required ongoing attention by both the transportation team and the DYT officers. The lesson learned is to anticipate logistical hurdles and be prepared to utilize all available resources, including those of partner organizations.

Problem: Legal constraints and program exclusions

As noted above, Project HOPE was implemented at the judicial level. DYT is being implemented as part of standard probation operations and focuses on those most likely to fail (people already testing positive for drugs). As well as limiting the program to cases already likely to fail, this limits the sanction options available. Under Delaware law, a probationer can be detained up to five consecutive days and up to ten in a calendar year without going back to court. Beyond that, a motion to revoke is required and the case goes back to the judge. Revocation thus introduces a process which can which can take weeks, defeating the program's swift sanction element. The initial program contained one- and two-day incarceration sanctions, but this proved unworkable for a number of reasons. First, all persons admitted to a violation center are required to receive a medical checkup. The two-day sanction would have required a health check up in the evening when there is no staff available. Additionally, DYT officers felt a two-day lock up was too short. A violator would essentially arrive late in the day the first day and be released before breakfast the next (all releases are done first thing in the morning), so a two-day lock up ended up being less than 20 hours. A three-day incarceration was considered, but this would have required releases on Sundays, which the violation centers are not staffed to accommodate. Thus the four-day incarceration was agreed upon, which also provided enough time to conduct appropriate health screenings.

The result is that DYT utilizes a four- (Phase Two) and five-day (Phase Four) incarceration sanction. Structuring the program this way leaves a small number of positive urine tests (5) prior to program failure. The legal maximum of ten incarceration days prior to invoking judicial revocation proceedings limits the ability of the team to utilize more severe sanctions (e.g. ten- or fifteen-day sanctions) without involving judges.

The inability of DYT officers to utilize more days of incarceration as a sanction presents a difficult problem. On the one hand, judicial restraint is a necessary and desirable requirement prior to invoking incarceration, even on probationers. On the other hand, it may be that short periods of incarceration are a useful tool when utilized as part of

a program like DYT. Because the program is focused on swift and certain sanctions, the solution of involving judges for short-term sanctions is not appropriate. Delaware already operates drug courts in which probationers are monitored by judges, and DYT is seen as an additional avenue for dealing with substance-using persons within the probation framework. Thus, agencies need to determine whether including judges is reasonable for the program, or whether a drug court model might provide a better alternative for the target population. The lesson learned is to insure the program's sanctions are tailored to the case flow of the particular agency and design the sanctions to fit within that framework.

Another legal issue that arose during the pilot phase was the large number of individuals that had to be excluded from DYT because of other conditions of their probation. Many persons on intensive supervision (the focus of DYT), have judicially mandated restrictions that prevent them from participating in the program. "Zero tolerance" cases provided one of the biggest hurdles. The probationers assigned to zero tolerance were originally barred from the program because allowing a zero tolerance case more than one positive urine test was against the terms of the zero tolerance restriction. Upon closer examination, the actual practice was that most individuals with zero tolerance restrictions were allowed multiple positive urine tests, at which point the individual was referred back to the judge, who generally placed the person back on probation. Thus, the judge's use of zero tolerance restrictions was equivalent to the type of practice that threatens but doesn't sanction that scholars (e.g. Kleiman, 1988) claim make deterrence ineffective.

The first solution considered was to refer the cases back to the judge and recommend the program as a sanction. This process can take four to six weeks however, which would have delayed changing an individual's status in the program (e.g. from Phase Two to Phase Three) for over a month, again defeating the swift and certain focus of the program. The DYT team then began placing zero tolerance cases into the program and simply notifying the judges that it had been done. By filing a notice back to the judge, he or she is kept informed, but the DYT program is able to function and maintain the swift and certain aspect of the program. This approach appears to be functioning as no judge has yet refused the placement of a 'zero tolerance' probationer into DYT.

The lessons concerning judicial restraint underscore the importance of understanding the theoretical underpinnings of the program's intentions, in this case utilizing swift and certain sanctions to deter drug use. The program must then be tailored to the constraints of the local legal apparatus in such a way that the theoretical premise is not undermined. Additionally, appropriate screening should be conducted, and potential clients should be closely examined to identify potential judicial exclusions. Lastly, the judicial restrictions themselves (i.e., "zero tolerance" policies) should be examined to determine whether they truly bar groups of individuals from the program. Approaches will vary based on local legal and policy considerations, but the Delaware example demonstrates that accommodations can be made.

Conclusion

Delaware's Decide Your Time program was scheduled to be implemented in early 2010. As noted above, the program met several hurdles and was ultimately redesigned. Because the program is novel and not a replication, fidelity was not an issue and, as each change was considered, every effort was made to ensure changes would not detract from the theoretical underpinnings of swift and certain sanctions coupled with treatment. By late fall the program was in place and the outcome evaluation had begun in earnest. Preliminary results should be available in early 2012.

Probation programs focused on swift and certain but not severe sanctions have demonstrated possibilities when a judge is involved, as

demonstrated by Hawaii's Project HOPE and some drug court models. It is unclear as yet whether they are efficacious as part of standard probationary practice in large urban probation departments without direct judicial input. What is clear from our initial process evaluation is that programs must be carefully designed considering the local legal structure and the policies and practices of the corrections institutions, treatment providers, and probation department. More important perhaps is the willingness of the program managers to listen to front line officers and be willing to make changes in order for the program to smoothly function in its intended fashion.

With over five million people on probation in the United States, and state budgets requiring every dollar be wisely spent, program models that encourage compliant behavior and identify those needing treatment, but also provide a mechanism for those not needing treatment to exit the system will be vital. Behavioral based triage models like Decide Your Time have the potential to reduce resources on low-risk individuals leaving resources for those truly in need.

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