

CENTER
FOR
COURT
INNOVATION



HOPE Probation and the Use of Demonstration Projects
to Advance Criminal Justice Reform



BJA

Bureau of Justice Assistance
U.S. Department of Justice

<i>authors</i>	<i>year</i>	<i>about this publication</i>
Aubrey Fox Director, Special Projects Center for Court Innovation Emily Gold Senior Planner Center for Court Innovation	2011	This publication was supported by Grant No. 2009-DD-BX-K017 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the U.S. Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. Points of view or opinions in this document do not necessarily represent the official positions or policies of the U.S. Department of Justice.

SMALL EXPERIMENTS, BIG CHANGE: HOPE PROBATION AND THE USE OF DEMONSTRATION PROJECTS TO ADVANCE CRIMINAL JUSTICE REFORM

Judge Steven Alm had been on the bench in Hawaii for 3 years when he was assigned to a felony trial calendar that had a high volume of defendants on probation. “Within my first week, I could tell there was a problem,” he said. “Motions came in to revoke offenders’ probation that cited 20 or 30 violations, often after the probationer had absconded.”¹ These motions commonly recommended that the probationers should be sent to prison.

“It occurred to me that this is no way to change offender behavior,” Alm said, “so I began thinking about what would work. I thought about how I was raised and how I’m trying to raise my own son. I don’t let a dozen slip-ups go by unnoticed and then expect my son to learn a lesson with a harsh punishment on the 13th time. That doesn’t make any sense.”

Alm noticed that many of his cases involved drugs in one way or another, which created an easy opportunity to monitor offender behavior: drug testing. “The idea was that every positive drug test—which constitutes a violation of probation—would have a swift and certain consequence,” he said. Usually, this meant a short-term jail sentence.

Alm started his project in 2004, enrolling 34 probationers in what he called HOPE (or Hawaii’s Opportunity Probation with Enforcement). At first, Judge Alm’s goals may have been modest—after all, he was a single judge dealing with a small number of offenders in a remote part of the country. But, based on promising early results, the model was soon expanded in Hawaii. Mark Kleiman, a professor at the University of California–Los Angeles, wrote a book (*When Brute Force Fails: How to Have Less Crime and Less Punishment*) extolling HOPE as a prime example of how swiftness and certainty matter more than sentence severity when it comes to behavior modification.² Today, HOPE is being replicated in jurisdictions across the country, and federal funding from the U.S. Department of Justice has been set aside to evaluate the model.

As remarkable as these developments are, the HOPE program is not an isolated phenomenon. Again and again, small, local projects have led to national reform efforts within the criminal justice system. This paper seeks to mine lessons from the experience of HOPE and other similar reforms that began life as unique demonstration projects before being broadly replicated.

MAKING CHANGE

Change within the criminal justice system can happen in a variety of ways. Sometimes, change is the result of a landmark court decision—for example, the creation of Miranda warnings or *In re Gault*, which dramatically expanded the due process rights of juveniles. Sometimes, it is the result of the legislative process—for example, the Violent Crime Control Act that added thousands of police officers to the streets in the 1990s or the Second Chance Act that focused new attention on the problems of people returning from prison. Sometimes, criminal justice reform is the result of larger social change—for example, the feminist and victims' rights movements have transformed how the system looks at domestic violence. And sometimes, change comes from academia, when an influential thinker puts forth a bold new idea—for example, the “broken windows” theory advanced by George Kelling and James Q. Wilson or Herman Goldstein’s advocacy of problem-oriented policing.

But there is another approach to reforming the justice system that typically garners less media attention. And that is to start small and local, with demonstration projects that seek to field-test new solutions to discrete problems. Judge Alm’s HOPE program is just the latest example. Across the country, a range of innovative local criminal justice practitioners like Alm have been working to solve persistent problems like drug crime, gang violence, and chronic neighborhood disorder. In fact, some of the most notable criminal justice innovations of the previous generation can be traced back to a single local experiment—the first drug court in Miami, COMPSTAT in New York City, community prosecution in Portland, Oregon, the Family Justice Center in San Diego, CeaseFire in Chicago... the list goes on and on.

There are many reasons why the past generation has been a golden age of criminal justice demonstration projects in the United States. Indeed, the very structure of American government tends to encourage local innovation. In contrast to some other countries where criminal justice policy is set at a national level, in the United States, criminal justice is, by and large, a state and local concern. Additionally, pilot projects are typically easier to implement (and cheaper to fund) than legislative change or groundbreaking legal cases, which take years to cobble together. A recent emphasis among both public and private funders on documenting results has also helped to encourage demonstration projects: it is often easier to measure the impact of a pilot program than it is more broad-scale reform.

Criminal justice demonstration projects can take a variety of different forms. The lead actor can vary from project to project: experiments can be initiated by police, prosecutors, probation, judges, parole, pre-trial agencies, community groups, corrections departments, and others. Some deal with hundreds of participants; others, just a handful. And the underlying problem to be addressed can be anything from minor youth offending to serious domestic violence cases.

For all of this diversity, almost all demonstration projects face similar conceptual and operational challenges. What follows is an attempt to highlight a handful of lessons from reform efforts that have gone from isolated, short-term pilot projects to broad, national replication. The story is told through the prism of the HOPE program, which is currently being replicated in multiple locations with the support of the Bureau of Justice Assistance and the National Institute of Justice.

Identify Specific Problems

A successful demonstration project will be guided by a clear picture of what specific problem it aims to tackle. Typically, this begins with anecdote (the experience of ground-level practitioners) and is buttressed by hard data.

When police in High Point, North Carolina set out to address drugs and violence in the community, they were driven by the complaints of local residents and the observations of street cops. But to devise a solution, they needed to drill down further. “Both law enforcement and the community needed to be convinced that this was not about drugs,” said David Kennedy, a professor at John Jay College who consulted with local officials.³ “This was about a certain form of drug market that... tak[es] over public space, attract[s] drive-through buyers and prostitutes, and shoot[s] the place up.” Narrowing in on these ‘overt markets’ was a far easier task than trying to eradicate the use of all drugs. Using crime mapping and information from field contacts and police reports, the project’s planners were able to pinpoint hot spots in the city, and from there, identify the handful of drug dealers responsible for the majority of the crime in the target community.

DRUG MARKET INITIATIVE

The Drug Market Initiative, launched in High Point, North Carolina in 2004, united law enforcement and community partners to address the local drug trade. The model is built around a “call-in” session during which community and agency participants communicate to repeat offenders that they will face the full weight of the law upon their next offense. Participants also deliver a message of support, offering social service referrals in an effort to change offender behavior.

According to a 2010 study by Michigan State University, the initiative has shown significant reductions in violent and drug-related crime. The model has been replicated in over 25 jurisdictions around the country, with training and technical assistance provided by the Bureau of Justice Assistance in partnership with Michigan State University, David Kennedy of John Jay College, and American University.

Start Small

According to UCLA professor Mark Kleiman, one of the smartest things that Judge Alm did in Hawaii was to start small. Kleiman’s advice to demonstration projects is simple: “Be patient. Don’t start with thousands of probationers. Judge Alm started with 34 and then scaled up from there.”⁴

Alm knew that to start with a larger caseload risked overwhelming the system’s ability to deliver a swift and certain sanction for every single violation of probation. Even with just 34 participants, HOPE placed new

demands on the U.S. Marshals Service, which was tasked with handling the uptick in arrest warrants, and court staff, which needed to keep up with an expedited hearing calendar.

Starting small allows planners to manage operations closely. “I knew that the research said to target the higher-risk offenders,” said Judge Alm. Thus, the initial group of HOPE participants included two subgroups that Alm wanted to watch particularly closely—sex offenders and offenders with long drug use and criminal histories. Working with populations like these always carries some risk. By closely monitoring early operations, a demonstration project can help instill confidence among key constituencies—funders, high-ranking government officials, the media, and the general public—and lay the groundwork for future expansion. This is precisely what happened in Hawaii: only after showing signs of success with the initial group of 34 did Alm and his team increase the caseload and expand beyond a single courtroom.

Use Data

Data helps demonstration projects track their own progress and demonstrate to others the value of the model. But recognizing that busy public agencies don’t always have the capacity for rigorous evaluation, many successful demonstration projects partner with academics to provide this service.

In Hawaii, both positive drug tests and missed appointments were tracked for all HOPE participants. One year in, this data showed an 80 percent decrease in positive drug tests among HOPE participants. These early numbers were enough to draw the attention of Mark Kleiman. Kleiman and researcher Angela Hawken conducted a randomized controlled evaluation of HOPE that provided additional evidence of the model’s value: participants were 55 percent less likely to be rearrested for a new crime and 53 percent less likely to have their probation revoked than a comparison group.

At the start of the HOPE experiment, Judge Alm’s influence was enough to get the project off the ground. But as persuasive as Alm can be, his advocacy alone could not guarantee expansion and replication of the model—to accomplish these things, it is necessary to have hard data.

COMPSTAT

COMPSTAT (short for Computerized Statistics) is a policing strategy developed by the New York City Police Department in 1994. COMPSTAT was conceived just weeks into William Bratton’s term as chief as a means of helping local precinct commanders adapt to emerging crime problems.

Statistics in seven major crime categories were tracked on a citywide and precinct basis. “The price of being a commander was to do something about the crime in your area,” said NYPD Sergeant Gene Whyte, a member of Bratton’s core COMPSTAT team. (Silverman, Eli. (1999) *NYPD Battles Crime: Innovative Strategies in Policing*. Northeastern). Through regular COMPSTAT meetings, top brass in the department grilled precinct commanders on the data and their precinct’s response.

The system has been credited with improving police accountability and reducing local crime. Since its introduction in New York, dozens of cities, both in the United States and abroad, have adapted the COMPSTAT model.

Be Flexible

Part of a successful experimentation process is making adjustments along the way.

In the early days of planning HOPE, Alm and his partners heard concerns from defense attorneys: how will increased jail time help their drug-addicted clients? Also, standard operating practice in the courts had been that defendants only received a negative consequence after several violations. It would be unfair to change the enforcement rules without giving the probationers a heads up. The solution was holding warning hearings. All HOPE participants were brought into court and put on notice about the new protocols. With the addition of the warning hearing, the program would be able to test whether offenders—knowing of the swift and certain consequence that would result—would modify their behavior accordingly. Remarkably, according to Kleiman, “for about half of the participants, the warning alone did the trick.”

The High Point Drug Market Initiative, too, required some modification as it got off the ground. At the heart of the model was a communications strategy that required law enforcement and credible community representatives to jointly deliver a tough-love message to repeat offenders: either accept the community’s help in turning your life around or face a lengthy prison sentence for criminal charges that have already been developed against you.

COMMUNITY PROSECUTION

Community prosecution aims to apply a problem-solving approach to local crime and quality-of-life issues in a particular community, hoping to improve public trust in justice along the way. The first community prosecution program was developed by Multnomah County (OR) District Attorney Michael Schrunk in 1990.

The model sprung from Schrunk’s interest in tackling the high crime rates and low confidence in the justice system within a particular neighborhood in Portland. His solution was to open a branch office in that neighborhood, assigning a specific prosecutor to handle all of its cases. The project was called the Neighborhood DA Unit and seemed to have its pay-offs. Within a few months, local residents reported an increasing confidence in the district attorney’s office and interest in working with the office to combat local crime.

The principles of community prosecution have since spread around the country, according to a 2001 survey published by the National District Attorneys Association. National technical assistance providers like the Association of Prosecuting Attorneys have supported these efforts. (<http://www.apainc.org/>)

However, it soon became clear that there was significant distrust between law enforcement and the community. “When you talk to the community about drugs... at best, they have written the police off,” said David Kennedy. “They say, ‘Police have not done us any good. We call, we plead, [and yet] we still have drug dealers on the corner.’”⁵ On the flip side, many police officers perceived the community to be complacent, refusing to stand up against what’s going on, and therefore contributing to the problem.

To address this distrust, organizers orchestrated a series of dialogues between the groups. “We found that when we discussed race in the context of a core community issue—drug markets—we could make progress because everyone agreed on the basics,” said Kennedy.⁶ “The community, the police, even the dealers wanted to be safe. Everyone wanted the most dangerous people stopped and help for those who would take it,” he said. These dialogues were an unanticipated but essential mid-course correction that helped pave the way for more effective collaboration going forward.

DRUG COURT

The first drug court was launched in Dade County, Florida in 1989. In the late 1980s, Dade County had become inundated by crack cocaine, clogging the county’s courts and jails and seriously undermining public safety. Judges tinkered with sentences to relieve some of the burden on local jails, but traditional sanctions didn’t address the root of the issue: drug addiction.

Circuit Court Judge Herbert Klein, with the support and approval of the Florida Supreme Court, set out to design a more effective response. He solicited collaboration from key stakeholders, including the state attorney, public defender, and local treatment providers, forming a coalition that ultimately became the “drug court team.” Despite their distinct roles and responsibilities in the process, the team shared a common goal: moving addicts toward sobriety in an effort to reduce criminal behavior.

A substantial body of research has documented that drug courts reduce drug use and recidivism among participants, as well as increase treatment retention rates—a key indicator of long-term sobriety. As of today, there are more than 2,500 drug courts in operation, with hundreds more in the planning phases. Federal funding has helped drive this growth, as has the National Association of Drug Court Professionals. (<http://www.nadcp.org/>)

Sustain Success

Perhaps the most difficult challenge faced by demonstration projects is how to sustain the model after the initial enthusiasm (and start-up funding) has died down.

Successful innovators have learned that in order to protect their innovations, they must turn their attention from simply running their project to helping the idea grow and thrive. This means taking on a set of new tasks—everything from training other jurisdictions on how to implement the model to assembling a grassroots political lobbying force (as in the case of the National Association of Drug Court Professionals, which works on Capitol Hill to support the replication of drug courts). Many demonstration projects have evolved into national intermediary organizations, creating an institutional infrastructure to support replication.

The Chicago Project for Violence Prevention—the team responsible for developing CeaseFire Chicago—offers a good example. CeaseFire is an anti-gun violence model that targets community residents at the greatest risk of being a shooter or a shooting victim, using on-the-spot mediation, case management, and community outreach and education to reduce gun violence. The Chicago Project for Violence Prevention has undergone a

dramatic transition in recent years to respond to the increasing demand for its technical assistance services. “Our staffing structure used to be a handful of ground-level staff and managers, typically no more than five people,” said Candice Kane, chief operating officer.⁷ But with dozens of replication sites in varying stages around the country, the team has turned its attention to training and support. “Almost all of our staff have been repositioned into training and administration, and we’ve hired additional researchers and writers to support a growing demand for assistance,” she said. Technical assistance providers like the Chicago Project for Violence Prevention provide invaluable infrastructure for fledgling projects, helping speed up pilots’ learning curves by sharing lessons from past experiences.

This institutional infrastructure created by successful demonstration projects is the final, and arguably most important, contribution these projects have made to the criminal justice field. A number of national organizations—the Vera Institute for Justice, the Center for Crime Prevention and Control at John Jay College of Criminal Justice, and the Chicago Project for Violence Prevention (to name just a few)—have their roots in pilot projects.

THE BRONX DEFENDERS

The Bronx Defenders is a neighborhood-based public defender office in New York City. Robin Steinberg, a career public defender, founded The Bronx Defenders in the late 1990s after helping found a similar organization in Harlem. The Bronx Defenders aims to embody the principle of “holistic defense,” using a team of attorneys, social workers, and community workers to address both the causes and consequences of crime that their clients face. Today, less than a third of the organization’s attorneys have criminal caseloads only; most represent clients in a range of legal settings, including housing, immigration, and family law.

With the support of federal funding, The Bronx Defenders recently launched the Center for Holistic Defense in an effort to provide resources and training to public defender offices nationwide. (<http://www.holisticdefense.org/>)

CONCLUSION

Demonstration projects are not without their critics. A common line of criticism is that these projects have a limited impact. And initially, this is true. Most pilots start small by design. Indeed, a limited scope is part of the appeal of demonstration projects, which are typically trying to test unproven ideas. Designed as experiments, some demonstration projects may end up having no impact at all. It is almost always better to discover this early, in a pilot setting, before a massive, system-wide investment has been made.

A related critique is that demonstration projects are expensive. Again, there are legitimate reasons for this criticism. Many demonstration projects do require an up-front investment in time, staffing, and physical plant. As a result, they often are more expensive than “business as usual” within a given government agency. For example, a drug court typically requires additional resources—case managers, drug testing equipment, contracts with drug treatment providers—above and beyond what would be spent on drug cases typically.

Yet on balance, it seems clear that investments in demonstration projects have been an enormous net positive for the criminal justice system. By their very nature, demonstration projects must pass a difficult test, proving that their benefits (e.g., reduced system costs, crime reductions, or improved public satisfaction) are enough to merit the investment of public and private dollars. And taken together, these projects—which often started as the “little hobbies”⁸ of individual judges, police officers, and prosecutors—have left a remarkable legacy, injecting fresh blood and new thinking into the field as well as inspiring the creation of a number of lasting criminal justice reforms.

NOTES

1. Alm, Steven. (2011). Telephone interview.
2. Kleiman, Mark. (2009). *When Brute Force Fails: How to Have Less Crime and Less Punishment*. Princeton University Press.
3. Kennedy, David. (2008). “Drugs, Race and Common Ground: Reflections on the High Point Intervention.” Available at <http://www.nij.gov/journals/262/high-point-intervention.htm>.
4. Kleiman, Mark. (2010). Telephone interview.
5. Kennedy, David. (2010). “The Story Behind the Drug Market Initiative.” Center for Court Innovation. Available at <http://courtinnovation.org/research/david-kennedy-story-behind-drug-market-initiative-part-i-podcast>.
6. Kennedy, David. (2008). “Drugs, Race and Common Ground: Reflections on the High Point Intervention.” Available at <http://www.nij.gov/journals/262/high-point-intervention.htm>.
7. Kane, Candice. (2010). Telephone interview.
8. Berman, Greg, ed. (2000). “What Is a Traditional Judge Anyway?: Problem Solving in the State Courts.” *Judicature*, Sept-Oct 2000: 78-85.

Center for Court Innovation

The winner of the Peter F. Drucker Award for Non-profit Innovation, the Center for Court Innovation is a unique public-private partnership that promotes new thinking about how the justice system can solve difficult problems like addiction, quality-of-life crime, domestic violence, and child neglect. The Center functions as the New York State court system's independent research and development arm, creating demonstration projects that test new approaches to problems that have resisted conventional solutions. The Center's demonstration projects include the nation's first community court (Midtown Community Court), as well as drug courts, domestic violence courts, youth courts, mental health courts, reentry courts and others.

Beyond New York, the Center disseminates the lessons learned from its experiments in New York, helping court reformers around the world test new solutions to local problems. The Center contributes to the international conversation about justice through original research, books, monographs, and roundtable conversations that bring together leading academics and practitioners. The Center also provides hands-on technical assistance, advising innovators about program design, technology and performance measures.

For more information, call 646-386-3100 or e-mail info@courtinnovation.org.

CENTER
FOR
COURT
INNOVATION

Center for Court Innovation

520 Eighth Avenue, 18th Floor
New York, New York 10018
646 386 3100 Fax 212 397 0985
www.courtinnovation.org



BJA
Bureau of Justice Assistance
U.S. Department of Justice

U.S. Bureau of Justice Assistance

Office of Justice Programs
Bureau of Justice Assistance
810 Seventh Street N.W.
Washington, D.C. 20531
202 616 6500 Fax 202 305 1367
www.ojp.usdoj.gov/BJA