

Opportunities and Barriers in Probation Reform: A Case Study of Drug Testing and Sanctions

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Drug use by California's 600,000 probationers is a mainstay of the markets for cocaine, heroin, and methamphetamine. Heavy drug use also contributes to reoffending. (About 40% of new crimes leading to state prison terms are committed by probationers.)

Continued illicit drug use is a violation of the conditions of probation. Unlike most forms of misconduct, it leaves a chemical trace that can be detected reliably by relatively inexpensive tests. A form of conduct that is so important and so observable ought to be a focus of probation-supervision efforts. Probationers, like other people, respond more powerfully to swift and consistent sanctions than to sporadic and delayed ones.

There is considerable theory and evidence supporting the idea that a properly focused program of frequent drug testing and swift, consistent, but not severe, sanctions for violations, along with formal drug treatment for those who need it or want it, could substantially shrink the volume of drug use and the recidivism rate among probationers, and reduce the aggregate amount of time drug-using offenders spend behind bars.

Coerced Abstinence

The combination of testing and sanctions, sometimes called "coerced abstinence," has important

advantages over the currently more fashionable approach of coerced treatment. Testing-and-sanctions programs are much cheaper than treatment, and using them as the first-tier response avoids running into the capacity limitations of the treatment system.

They also open treatment slots for those, including nonoffenders, who want help for their drug problems rather than having help forced upon them. An offender who seeks treatment under the pressure of a testing-and-sanctions regime will be more strongly motivated to benefit from it than one who attends only under compulsion.

Coerced abstinence avoids the problem of managing treatment compliance. A large proportion of those assigned to coerced treatment under drug-diversion programs (including Proposition 36) either never show up for treatment or drop out. In addition, most diversion programs—drug courts being a notable exception—fail to enforce the bargain by which treatment was offered as an alternative to prison.

Coerced abstinence also avoids the problem of imposing drug treatment on offenders who do not meet the clinical criteria defining drug abuse or dependence. In some diversion programs, as many as 40% of clients are in that category.



There is strong reason, then, to think that a consistent program of testing and sanctions for illicit drug use should be a centerpiece of probation supervision for drug-involved offenders.

Case-Study Results

In three case studies of California probation departments before the advent of Proposition 36—in Los Angeles, San Diego, and Santa Cruz counties—we found that none had a satisfactory program to address the problem of illicit drug use among its clients.

San Diego and Los Angeles have fairly elaborate testing programs, but neither tests more than a small proportion of its drug-using clients. Santa Cruz's program is broader, but less systematic. In all three counties, of those ordered to report for testing on any given day, three in ten or more either fail to appear at all or are found to have been using one or more illicit drugs.

These high rates of noncompliance are both a result and one of the causes of inconsistencies and delays in the sanctions process. Violations are so common that sanctioning every one of them would strain the resources of the probation departments as well as the courts. Yet the policy of ignoring many of the positive test results and, even more, ignoring the failures to appear for testing, results in a loss of credibility for the testing program among those subject to it.

Frequent testing is essential to reducing the rate of drug consumption. Once-a-week testing produces about a 35% chance of detecting any given incident of drug use; twice a week pushes that figure above 80%. By contrast, a probationer tested once a month—a far more typical pattern in the three departments studied—has less than one chance in ten of being detected for any given incident of use.

The clear policy implications of this finding are that the probation departments in question need to tighten their monitoring and sanctioning of probationers' drug use, and that resources spent on these tasks would have benefits to the public well in excess of their costs. This is probably true of other departments as well; there is no reason to think that the three departments we examined were less effective than average.

Conceptually, the problem is simple; the hard part is the implementation. As always, resources are a

constraint; probation departments, like other public agencies, cannot make bricks without straw.

California is now getting the probation supervision it pays for, at the rate of less than \$3 per probationer per day, compared to more than \$60 per day for state prison inmates. Drug testing itself is cheap—between \$5 and \$10 per test. But probation officers, and computer support so they can get their work done, cost money.

So does the capacity to administer sanctions. Carried out swiftly and consistently, sanctions—"day reporting" (under which probationers are required to remain at a probation facility for the duration of the working day for some number of days, but sleep at home), "halfway-back houses" or "probation-violations centers" (essentially forms of incarceration, but specialized to hold probation violators for short terms and not demanding high security), and "community service" (unpaid labor)—can be effective reminders to probationers that the conditions of their release must be adhered to or consequences will follow.

California, like most states, is woefully short of the means of punishing probation violations other than sending the offenders to expensive and crowded jails or prisons, and underfunded probation departments lack the means to create more capacity for punishments short of incarceration.

Day reporting requires day-reporting centers and workers to staff them. Halfway-back houses, too, must be built and staffed, on a 24/7 basis. Community-service requirements are mere suggestions unless someone in the probation department monitors whether probationers show up as required and actually do the work.

The whole intermediate-sanctions process will collapse of its own weight unless those who fail to appear for sanctions are aggressively sought out for arrest, which means that probation departments will require the cooperation of police or sheriffs' departments. Current budgets simply do not provide for anything approaching adequate levels of any of these resources.

But simply adding more resources to the current probation system will not do the job. In none of the departments we studied did the managers identify adding sanctions capacity as a high priority. If

more money were added to their budgets, in all probability little or none of it would be used for that purpose.

Moreover, adding sanctions capacity creates value only if it is used; using it would require either creating administrative procedures within the departments or persuading judges that imposing sanctions short of jail is the right way to treat most “technical” probation violations.

We found not merely a shortage of resources, but a shortage of expectations. None of the three departments we studied has established as an immediate, high-priority organizational goal the enforcement of consistent compliance with the rules governing probationers, and in particular the rules against continuing to use illicit drugs. None, for example, calculates total noncompliance rates as a managerial tool or holds individual probation officers or their supervisors accountable for reducing noncompliance rates.

Even within existing resource limits, consistent monitoring and sanctioning could be applied to some small minority of the caseload if the organizational culture supported it. But that was not what we saw.

Predictable Sanctioning

Drug-testing an offender twice a week leaves almost no opportunity for undetected drug use. Combining that with consistent, even if not severe, sanctions for every failure to appear and every instance of detected drug use should be adequate to lower the rate of noncompliance among whatever part of the caseload could be made subject to that system. Falling noncompliance rates, in turn, would shrink the resources required to process violations, which are the bulk of the costs involved.

Establishing credibility for a drug-testing program, even for a small number of probationers, and then expanding the number of people assigned to that program as noncompliance rates fell, almost certainly would be a better use of resources than are expended now.

Predictable sanctioning requires consistency by both probation departments and the courts. There is a tension between the desire of probation officers and judges to apply what they think of as “clinical judgment” about what each probationer needs, and the

advantages to be obtained when probationers know that each violation has its assigned sanction—and therefore what happens to them depends on their own behavior rather than on the whims of others.

The first step toward swift sanctioning is quick-turnaround test results. All three counties still send specimens to contract laboratories, which builds in days of delay before obtaining test results. Alternatively, they could purchase any of the commercially available on-the-spot testing kits, consisting of specimen cups or “dip sticks” with built-in reagents, which cut that delay from days to seconds. Those products are now competitively priced with contract testing.

Swift sanctioning also depends on the courts’ willingness to act promptly on reported violations, or to support a process of administrative discipline to be handled by the probation departments, which could impose sanctions not including jail time. The latter option, in turn, would depend on creating the capacity to administer such sanctions—day reporting, community service, specialized low-security confinement facilities for probation (and perhaps parole) violations. This capacity is now largely absent.

A major barrier to consistency is the (quite rational) distinction made between cannabis and other drugs. Cannabis, with its long chemical “detection window” and widespread use, tends to make up a large proportion of positive test results. Yet its links to recidivism and to violent drug dealing are far weaker than is the case for the harder drugs, and probationers are a much smaller factor in demand for marijuana than they are in the other drug markets.

In a world where the problem is not detecting more violations but handling the violations already detected, a strong case can be made for following the lead of Los Angeles County and simply not testing for cannabis at all, except in special circumstances.

One likely side-effect of tightening supervision in this way would be increasing the rate at which probationers abscond from supervision. Currently, when a probationer simply “drops out” of supervision, a bench warrant is issued and filed, to be activated the next time that person is arrested. In contrast, an effective supervision process would devote police or sheriff’s department resources to tracking down absconders.



Recommendations

1. Add the resources and create the processes needed to create an effective program of frequent drug testing and consistent sanctioning for drug-using offenders on probation. This recommendation would entail:
 - ▶ Probation staffing
 - ▶ Computer support
 - ▶ Sanctioning by formula
 - ▶ Swift, consistent judicial processing or authority for administrative sanctions
 - ▶ Creating sanctions capacity other than jail (community service, day reporting, specialized low-security confinement facilities)
 - ▶ Warrant-service capacity
2. Concentrate existing resources as needed to create a credible program, even if only for a small part of the caseload, rather than spreading resources so thinly as to lose credibility.
3. Economize on the time of deputy probation officers in administering drug tests, entering data, and writing reports by having other, lower-salaried, employees perform these tasks.
4. Automate the process of reporting drug-test violations to the court.
5. Commit to imposing some nontrivial sanction (community-service hours, day reporting, or very brief confinement) for every failure to appear or instance of detected drug use.
6. Create data systems that enable probation supervisors to verify that tests are ordered as planned and that violations are handled according to policy.
7. Reduce turnaround time for test results by converting from contract laboratories to on-the-spot testing.
8. Consider dropping cannabis from the list of drugs for which probationers are routinely tested.

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