

COMMISSION ON ALTERNATIVE TO INCARCERATION

Chairman Carlisle and members of the Commission, I am Brad Cruff, Southeast Judicial District Judge chambered in Wahpeton, North Dakota. Prior to becoming a District Judge I was a State's Attorney and Assistant State's Attorney in Valley City. Parole and probation in their current forms work well for most defendants. But, shortly after assuming the role of prosecutor I quickly learned how a number of those defendants that are very familiar with the criminal justice system game the system to see how much they can get away with and still avoid having their probation revoked. Intermediate measures of house arrest, community service, day reporting and so forth are ineffective for these people. I became disheartened with what is essentially a system of the probation officers documenting various and repeated violations of the defendant's probation until the probation officer felt he or she had cataloged a sufficient number of violations that were also serious enough in nature to warrant filing a petition to revoke the defendant's probation. If the court then revokes the defendant's probation and resents him, the amended sentences often result in the defendant being sent to the State Penitentiary. When defendants go to the State Penitentiary they lose their job if they have one and often leave behind a family. Child support accrues and the hurdles they have to face upon release are even higher. The process may very well start all over again upon their release a second time or more if they commit additional serious offenses while on release.

As I previously stated, parole and probation works well for many defendants as I have signed numerous petitions to terminate probation early in my capacity as a prosecutor and as a judge. My frustration with how the probation system is working, or not working for these difficult probationers, caused me to research possible alternatives. In doing so I came across the HOPE probation program. HOPE stands for Hawaii's Opportunity Probation with Enforcement. The emphasis is on enforcement.

The HOPE program has some similarities to the current 24/7 program in use throughout North Dakota in that it imposes an immediate sanction for each and every violation. This is a significant difference from the status quo of documenting and petitioning to revoke.

Program participants may or may not be in treatment. If they are in treatment or subject to random drug or alcohol testing for other reasons, they are assigned a color and are required to call in to a recording every day Monday through Friday 8 a.m. to 3 p.m. If the participant is assigned the color orange and the recording states, "Today's color is orange," the participant has two hours to report for drug testing. If he or she fails to report in time a warrant is issued. If they report and test positive they are immediately taken into custody.

Additionally, if a participant fails to show up for an appointment with his/her parole or probation officer or violates any other condition of their probation, no matter how insignificant, a warrant is issued.

Those persons taken into custody immediately or by warrant must see the judge within twenty-four to forty-eight hours. Sanctions for violations usually range from two to seven days in jail. Jail time can be served on weekends or holidays or with work release to accommodate those probationers that are employed. Jail time is served locally. The goals of the HOPE program are to keep probationers employed, supporting their families and out of the state penitentiary, while holding them accountable for each and every violation of their parole or probation with swift and certain consequences.

HOPE has proven to be a very successful program in Hawaii and elsewhere. It has been replicated in many states and the entire State of Washington has adopted the HOPE probation model.

I have personally spoken with Judge Steven Alm, the creator of the HOPE program and I have also received copies of his bench book and other forms.

I approached Director Bertsch several years ago in an attempt to get a HOPE pilot program off the ground. Unfortunately, HOPE is a judge driven program and at that time we were unable to find a willing judge. I am now that judge.

Director Bertsch has indicated that she will be requesting authority from the 2015 legislature to allow probation officers to place 48 hour holds on defendants. Director Bertsch will also be asking for funding of one additional full time probation officer to facilitate the HOPE pilot program. I sincerely ask that you support both of these requests.

Finally, current North Dakota law is an impediment to the HOPE program as it was designed. The North Dakota Supreme Court's interpretation of N.D.C.C. § 12.1-32-06.1 and the court's holdings in State v. Perales, 2012 ND 158, that probation is terminated with each probation revocation; and State v. Stavig, 2006 ND 63, that the court is only limited to two impositions of probation, severely limits implementation of the HOPE probation program, even if the 48 hour hold is approved and used. As I previously stated, each and every violation while in the HOPE program results in a revocation and a swift and certain sanction. That is not possible under N.D.C.C. § 12.1-32-06.1. The 48 hour hold will be a useful tool but in essence it is a work around. The 48 hour hold also limits HOPE in that neither the court nor the probation officer can 'up the ante' more than the 48 hours as should be done under the hope program when warranted.

It is my hope that the North Dakota State's Attorneys Association or some other entity will submit amendments of N.D.C.C. § 12.1-32-06.1 to this committee and the 2015 legislature that does not terminate probation with revocation, allows for an unlimited number of times probation can be imposed, or both. Such amendments will allow for a full and unfettered HOPE probation pilot program. If such amendments come before this committee or the legislature I ask that you support and recommend there passage.

Respectfully submitted,

Brad Cruff