Traditional probation supervision in Kentucky is flawed. Due in part to a lack of resources, the probation usually involves limited contact between offenders and probation officers, infrequent drug testing, and little oversight. With few exceptions, and despite the dedication of Kentucky’s officers, probation in Kentucky is also constrained to business hours. Inconveniently, probation violations are not confined to the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday. Kentucky’s current model, which produces undetected or delayed reporting of violations, poses a serious threat to public safety.

Obviously, a “one size fits all” approach to probation is not appropriate for every defendant. Low risk/low need defendants are not likely to re-offend, and need few services such as drug or alcohol counseling, mental health treatment, or educational assistance. These defendants require little supervision and may suffer negative outcomes if over-supervised. At the other end of the spectrum, high risk/high need probationers are much more likely to re-offend and present substantial challenges. These defendants often have addiction issues, serious mental or emotional health conditions, little education, lengthy criminal records, and lack any substantial employment history or prospects. This group presents the greatest challenge, and poses the greatest threat to public safety.

Until recently, however, Kentucky has not sufficiently engaged in appropriate supervision of this group except for those high risk/high need defendants in Kentucky’s drug courts. Fortunately, Kentucky now has a new tool to specifically address the perils and difficulties posed by the most problematic defendants placed on probation.

**I. Hawaii’s HOPE Probation**

Like so many other judges nationwide, Judge Steven Alm, of the First Judicial Circuit in Honolulu, Hawaii, became increasingly dissatisfied with “probation-as-usual.” He observed the never-ending cycle of inadequately supervised criminal defendants being placed on probation and racking up violations until they were revoked and sentenced to prison. Judge Alm’s frustration sparked a new approach to probation supervisioni, which ultimately became known as Hawaii’s Opportunity Probation with Enforcement (HOPE).

The basic tenet of HOPE is simple: every probation violation brings an immediate sanction. It is swift, certain, consistent, and proportionate. The usual example involves a defendant who tests positive for a controlled substance. While the public might assume that a probationer using illegal drugs is likely to be sanctioned, that is not a typical outcome with “probation-as-usual.” In those instances when a drug use violation does result in a sanction, it may take weeks or months before the sanction is imposed.

HOPE is different. Violators are immediately sanctioned and scheduled for hearings within a short period—usually two or three days. The program is successful because the rules are plain, the imposition of sanctions is immediate, and punishments are proportionate and consistent between offenders engaging in similar misbehavior. In addition, drug or other treatment programs are available to defendants.

Evaluations of HOPE indicate that Judge Alm’s approach is effective. In a randomized trial, 493 HOPE probationers were compared to a control group of regular probationers. When compared to regular probationers, the HOPE population was:

* 55% less likely to be arrested for a new crime
* 53% less likely to have their probation revoked
* 72% less likely to test positive for illegal drugs, and
* 61% less likely to miss appointments with their probation officers.

In addition, HOPE probationers were sentenced to fewer days of imprisonment than regular probationers, which represents significant financial savings.

HOPE is a success. Thousands of defendants have been placed into the program, with an average caseload of 2,000. The HOPE model has now been replicated in some form in 18 states and is being considered abroad.

**II. Kentucky’s SMART Probation**

In 2011, Kentucky’s General Assembly enacted sweeping change with House Bill 463. It substantially altered Kentucky’s existing controlled substances statutes and made many changes to sentencing policy. House Bill 463 designated certain drug crimes as “presumptive probation” offenses and some as being eligible for “deferred prosecution.” It also expanded the offenses eligible for pre-trial diversion, mandated the use of evidence-based practices at sentencing, and authorized a trial effort utilizing graduated sanctions as part of probation supervision. The latter provision led to the creation of Kentucky’s Supervision Motivation Accountability Responsibility and Treatment (SMART) program. House Bill 463 initially authorized a trial program in two jurisdictions, which has been expanded to six jurisdictions.

The basic tenets of SMART are similar to HOPE: sanctions for violations are swift, certain, consistent, and proportionate. Potential SMART defendants are referred to the program by prosecutors, defense counsel, probation officers, and most frequently, the court itself. Since the program is designed to focus supervision efforts on the high risk /high need offenders, sentencing courts utilize a validated risk assessment tool. Where the tool indicates that a defendant fits the high risk/high need category, assignment to SMART may be appropriate.

The assessment tool, however, is only one of the factors the court utilizes in determining whether SMART is an appropriate supervision strategy. Pre-sentencing conduct, conduct wile previously on traditional probation, or the severity of the allegations are also taken into account, and may indicate that SMART is appropriate.

Defendants identified as candidates for SMART attend an on the record “warning meeting” with the court and the probation officer. The conditions and benefits of SMART are explained, with emphasis on certain themes, including acceptance of responsibility, candor, the importance of regular reporting, and the concept of graduated sanctions.

The initial reporting schedule for SMART defendants is rigorous. Defendants can initially expect to report between 2–3 times weekly, including nights and weekends. The frequent reporting and drug testing schedule is specifically tailored to the criminogenic needs of the riskiest defendants. The uncertainty of the reporting schedule, coupled with the absolute certainty of frequent drug tests and verification of the other probation requirements, improves the efficacy of the HOPE/SMART model when compared to the traditional 9:00 a.m. to 5:00 p.m. “probation-as-usual” model. As defendants progress in the program, which includes learning from their mistakes and accepting responsibility, supervision is periodically decreased. At that juncture, return to the regular probation caseload or early termination of probation is considered.

Sanctions occur immediately and for every violation. Offenders who are candid with their supervising officer receive lesser sanctions than those attempting to deceive their officer. A first time illegal drug use might merit a two day jail sanction if the offender is truthful, but as much as 4-6 days in jail if the offender denies drug use and then tests positive, or only discloses some of the illegal substances used. Timely reporting is also encouraged. If an offender has some violation to disclose, it is far preferable to report than simply fail to appear when directed. A probationer who fails to report receives more severe sanctions.

SMART is not an unending program. Certain types of misconduct, if established following a due process hearing, are incompatible with continuation in the program. The commission of new felony offenses, absconding, tampering with drug screens, and failing to progress in the program are all grounds for termination.

**III. The Efficacy of SMART**

The success of the HOPE model can transfer to Kentucky and provide an effective alternative to “probation-as-usual” for the most risky probationers. Following the first official year of SMART, Morehead State University Professor Lisa Shannon, Ph.D., conducted a program evaluation, including an outcomes evaluation that compared the performance of 307 SMART defendants with 300 “probation-as-usual” defendants. The SMART probationers were *higher risk* than the comparison group and thus could be expected to perform worse while on probation.

Contrary to that expectation, SMART probationers achieved significantly better results than their lower-risk counterparts. Though the SMART probationers were tested at a much higher frequency than the control group, SMART probationers presented positive drug tests at a much lower rate (11.6% compared to 29%).

SMART probationers also had a lower frequency of other probation violations (1.2% versus 2.3%), and the total number of SMART probationers who violated some condition of their probation was far less than the lower risk “probation-as-normal” comparison group (21.2% versus 29.7%). Similarly, the lower-risk comparison group was over three times as likely to be arrested for new offenses compared to SMART probationers (33.0% versus 10.6%), and were over twice as likely to violate their probation by not paying their fees and restitution (8.7% versus 3.5%).

Not surprisingly given the underlying concept of swift, certain, and sure consequence for every violation, SMART probationers were incarcerated for probation violations at a higher rate than the comparison group (15.1% versus 9.3%), but they spent far less total time incarcerated (32.5 days versus 118.1 days). This reflects SMART’s emphasis on the swift imposition of graduated sanctions. It also translates into dollars saved by state corrections and county jails.

**IV. The Future of SMART**

Any expansion of the HOPE/SMART model should continue to emphasize certain themes:

* Given the downfalls of over-supervision, the current SMART probation model should only be used to target high risk/high need defendants;
* Admission to SMART must be preceded by a warning meeting which emphasizes the program requirements, goals, sanctions, and rewards;
* Reporting schedules and drug testing should be progressive but unexpected;
* Sanctions should be imposed swiftly, but in a graduated and consistent fashion;
* Warrants for defendants who fail to appear should be issued and executed swiftly; and
* Due process hearings following a violation of probation should occur swiftly.

Kentucky’s SMART probation provides a model for all levels of probation supervision – speedy, proportionate, predictable, and just.