

**Chester County  
Swift Alternative Violation Enforcement  
Supervision  
SAVE**



**A Swift, Certain and Fair Sanctions Program**

**2015**

## HISTORY

In response to what he saw as uncertain probation violation sanctioning, Judge Steven Alm began the Hawaii Opportunity Probation with Enforcement (HOPE) model in 2004 in Hawaii's 1st Circuit Court. HOPE was one of the first successful large-scale implementations of swift-and-certain sanctions. The program was designed in response to what Judge Alm considered to be a failure of the status quo to effectively change the behavior of their substance-abusing, moderate-to-high risk probationers. Judge Alm believed that probationers viewed violation sanctions as arbitrary, independent of their own behavior, and unfair because probationers typically committed multiple violations before facing consequences. At violation hearings probation officers recommended a typically disproportionate and harsh sanction in response to the "final-straw" violation.

Instead, under the HOPE model, an offender who violates the terms of probation are immediately arrested and brought before a judge, and every supervision violation is met with a jail sanction. The length of the jail sanction is dependent upon the defendant's behavior. For example, if he or she admits to using drugs or alcohol, the least sanction is imposed. If the defendant denies use and the positive result is confirmed by an independent laboratory, or otherwise denies a later confirmed violation, the defendant is sanctioned to the most severe sanction for not being truthful and not adhering to the court order. If he or she chooses to evade sanctioning for the positive test or program violation by absconding, the most severe sanction is ordered because of avoidance of responsibility. This type of pattern of sanctioning is used for every violation. The Court works with defendants who violate numerous times as long as they are attempting to make the next best choice; they may have made a mistake by using drugs, but have a choice to deny, to abscond, or to make the best choice of admitting responsibility and accepting the consequence. However, those who abscond typically receive longer jail sentences.

Although most HOPE defendants consume drugs or alcohol prior to beginning the program, the HOPE model does not mandate formal treatment for all. Judge Alm has demonstrated that upwards of 75 percent of HOPE participants discontinue drug and alcohol use within two sanctions.

By addressing every program violation quickly, HOPE sent a consistent message about personal responsibility and accountability. The program reflected the research about deterrence that certain punishment will influence future offending behavior. It also increased the likelihood of compliance by imposing consequences that are relative to the offense and consistently applied.

A one-year independent evaluation of the HOPE model was completed in 2009. The evaluation revealed that HOPE participants were 72% less likely to use drugs, 55% less likely to be arrested for a new crime, 61% less likely to skip appointments with their supervisory officer, and 53% less likely to have their sentence revoked.<sup>1</sup> Due to the success of the HOPE model, numerous states, have adopted the principles that Judge Alm developed.

In 2015, Chester County was awarded three-year funding by the United States Department of Justice, Office of Justice Program, Bureau of Justice Assistance to implement a Swift, Certain, and Fair Sanctions Program for a maximum of 100 participants. Following the model of Hawaii's HOPE, Chester County will implement the Swift Alternative Violation Enforcement (SAVE) program to reduce the time from alleged violation to certain consequences and court action, reduce costly and ineffectual incarceration and engage offenders in behavior change immediately after an infraction is discovered.

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<sup>1</sup> McEvoy, Kevin (2012) *HOPE: A Swift and Certain Process for Probationers*. Available: <http://nij.gov/journals/269/pages/hope.aspx>. See also Hawken, A. & Kleinman, M. (2009) *Managing Drug Involved Probationers*

## **THE DIFFERENCE BETWEEN A PROBLEM-SOLVING COURT AND A SWIFT, CERTAIN AND FAIR SANCTIONS**

Problem-solving courts are voluntary programs that use a therapeutic approach to address issues, such as substance use or mental illness, that often lead people into the criminal justice system. Problem-solving courts utilize a team approach, individualized treatment, intensive judicial supervision, incentives, sanctions, drug and alcohol testing, links to ancillary services addressing educational barriers and employment needs, and other individualized services to address these issues. Participants are clearly informed of the rules; the specific behaviors that may trigger sanctions or incentives; and the types of sanctions and incentives that may be imposed. The team utilizes a wide range of sanctions and incentives that are individualized for each probationer. Sanctions may include writing assignments, community services, and brief jail stays; incentives may include verbal praise, token gifts, or reduced supervision. These programs typically provide a legal incentive—reduced jail time, a deferred judgment of guilt, dismissal of charges—to encourage participation in the program.

In contrast, SAVE is not a voluntary for offenders, and there is no legal incentive offered to participate. However, the goal of the supervision is to reduce the incidence of formal probation/parole revocations, expedite the violation process and reduce lengthy violation sentences through behavioral modification. Offenders are made aware of their supervision terms as well as the consequences for violating at a warning hearing. They are given a sanctions document that describes violations, such as missing a probation appointment or a positive drug test, and what sanctions they should expect as a response. Sanctions are not individualized as they are for a problem-solving court; and incentives are not utilized. Offenders only appear before the judge at the initial warning hearing and for violations.

### **ELIGIBILITY CRITERIA**

The project is funded for an initial target population of 50, high risk, drug-abusing offenders facing technical violations with a maximum of 100 participants dependent on funding, staffing and resources available.

Eligibility criteria are:

- Risk Need Triage (RANT) and/or Wisconsin Risk-Need (WRN) score of moderate to high risk
- Drug-involvement
- Demonstrated history of noncompliance (i.e. drug use, missed appointment, reoffending)
- Highest Tier Violation applying existing Adult Probation/Parole Guideline Recommendation will be prioritized
- A minimum of one (1) year of supervision remaining on the sentence

### **SANCTIONS**

Violations are addressed with clear and defined sanctions unless good cause is shown and the length of the sanction is determined by the offender's actions following the violation (Appendix Form 2). An offender who takes responsibility will receive a shorter or lesser sanction than one who deceives or avoids responsibility. Sanctions may also include, but are not limited to, additional reporting or compliance requirements, drug and/or alcohol testing and counseling, and treatment for behavioral or mental health problems. The SAVE judge, in his/her discretion, may delay the start of a jail sanction or permit it to be served on weekends.

Offenders will be sanctioned within 72 hours after the violation is reported to the court, absent good cause for a departure from the 72-hour requirement. To expedite the process, the SAVE PO will submit the *Warrant to Commit and Detain* (Appendix Form 4) signed by the Chief Adult Probation Officer to immediately detain and commit to Chester County Prison SAVE participants who appear in the department and have violated the supervision. The detainer shall not exceed 72 hours unless detention involves a holiday weekend. Upon detention, the SAVE PO will immediately request a Sanction Hearing before the SAVE Judge.

If participants are employed and/or engaged in an accredited educational or vocational program at the time of a violation, a sanction may be deferred for the first violation only. Employment and educational programs must be verified by APO for the sanction to be deferred

A bench warrant will be issued by the SAVE Judge for participants who fail to appear for drug testing and/or appointments with the SAVE PO, and after removal from the SAVE. The Chester County Sheriff's Office Fugitive Apprehension Unit will expedite warrant service for offenders who fail to report as directed or abscond. An offender who fails to voluntarily surrender himself/herself to the SAVE PO within 48 hours of the issuance of the warrant shall be considered an absconder. Any participant who has absconded three (3) times or who remains in absconder status for 1 month will face revocation of SAVE supervision upon apprehension and the case may be returned to the Gagnon/Morrissey process.

## **TREATMENT**

Chester County is fortunate to have access to a full range of treatment services through the County's Department of Human Services. Although court ordered treatment is not normally a condition of the supervision an offender may participate on their own.

Programs will follow federal confidentiality laws regarding treatment information. Confidentiality is addressed by two federal statutes, the Health Insurance Portability and Accountability Act (HIPAA) and 42 Code of Federal Regulations (CFR) Part 2.

Offenders must sign the *Consent to Release Confidential Information* (Appendix Form 5) if ordered to substance use or mental health treatment.

## **PROGRAMMING**

SAVE participants will also be referred to other programming, which includes:

- *Thinking for a Change* (T4C, National Institute of Corrections) a Cognitive Behavioral Intervention
- *Moving On, A Program for At-Risk Women* (Orbis Partners) A Cognitive Behavioral Intervention

## **SAVE SUPERVISION ELEMENTS**

### **THE TEAM**

The following members are involved in the SAVE supervision in varying degrees:

- The President Judge of the Court of Common Pleas of Chester County and the SAVE Judge
- District Attorney
- Public Defender
- Adult Probation, Parole and Pretrial Services
- Sheriff/police
- Jail administrators
- Treatment providers

### **REFERRAL PROCESS AND ELIGIBILITY SCREENING**

Referrals can be submitted to the SAVE Coordinator or assigned Probation Officer who will complete a screening to determine eligibility. The Coordinator will review violation petitions and Gagnon I Hearing lists to identify eligible candidates based on their risk assessment scores and either the number of current violations or their history on probation and violation guideline recommendation.

If an individual is eligible, the eligibility determination is submitted to the team and the individual is scheduled for an initial warning hearing. Those sentenced to SAVE through revocation or by having conditions amended by a judge must receive a warning hearing to inform them of the supervision rules, sanctions, and expectations (Appendix Form 6).

### **ADMISSION WARNING HEARING**

During the initial warning hearing the judge must inform the SAVE probationer/parolee of the requirements and of the sanctions and remedies that may apply to violations. The offender is given a written copy of the sanctions and remedies that he/she may face if a violation occurs.

### **INTAKE**

The SAVE probation officer (SAVE PO) will meet with the offender to coordinate orientation, review expectations, schedule probation contacts and place the offender in the department's random drug testing program and allow for any questions. The offender will be provided with forms including information regarding the supervision, list of potential sanctions, participation requirements, a drug/alcohol testing agreement, and any other pertinent documents, such as a consent to release treatment information (if applicable). A list of SAVE Participation Requirements is available in Appendix Form 6. A drug testing requirements document is available in Appendix Form 8. An alcohol testing notice is available in Appendix Form 9.

## **SUPERVISION**

The SAVE PO will have weekly contact with the SAVE probationer/parolee. The SAVE PO will make collateral contacts with all agencies involved in the offender's case to monitor compliance with conditions and programming.

Data on offender participation will be tracked by the SAVE Coordinator and SAVE PO in the Court View system. This information will be used for evaluation purposes.

## **DRUG TESTING**

Frequent, random, and observed drug and alcohol testing will occur as a component of SAVE. Staff will test for a variety of drugs. Randomized drug testing will be administered using the Adult Probation's drug testing hotline. The offender will call the drug testing hotline seven nights per week to find out if his/her color has been called for testing. Random testing will occur at a minimum of six times per month at the start of the supervision and will be gradually reduced for offenders who consistently report for testing and have negative results. Testing hours will be extended for employed offenders and will include Saturday and Sunday testing. Laboratory confirmation is available for contested drug test results and an offender taken into custody will be released pending the results.

## **SUPERVISION LENGTH AND COMPLETION**

The SAVE supervision length will be the length of the remaining probation/parole sentence up to the statutory maximum. For participants who remain violation free for a period of two (2) years, the SAVE Judge may grant early termination of supervision. The maximum length of participation in the SAVE supervision is three (3) years.

The following criteria will normally result in removal from SAVE:

- Criminal arrest or conviction while under SAVE supervision
- Absconding for more than 48 hours on three (3) occasions
- Absconder status for thirty (30) days.
- A second attempt at providing a tampered/fake urine.
- Disrespectful or violent behavior towards any person associated with SAVE, including any Correctional Officer or inmate at Chester County Prison while serving a sanction.
- Five (5) sanctions within six (6) months or ten (10) sanctions within the term of supervision.
  - A sanction is defined as a court appearance with sanctions imposed regardless of the number of infractions addressed.