

Commonwealth of Pennsylvania



PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY

Rep. Kevin Blaum
Chairman

TESTIMONY OF JAMES THOMAS
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BEFORE THE HOUSE JUDICIARY COMMITTEE
PUBLIC HEARING ON ALTERNATIVE SENTENCING
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Mr. Chairman and Members of the House Judiciary Committee, thank you for the opportunity to testify before you on the use of alternative sentencing measures and the status of the Commonwealth's Intermediate Punishment Program. My name is James Thomas and I am the Executive Director of the Pennsylvania Commission on Crime and Delinquency (PCCD).

In December 1990, the Legislature enacted the County Intermediate Punishment Act (Act 1990-193). Intermediate Punishment is defined as a punishment option that falls within a range bounded by traditional probation and incarceration. Examples of post-adjudication sanctions that can be used as intermediate punishments include house arrest, intensive supervision, electronic monitoring, community service, drug testing, drug and alcohol treatment, and use of fines and restitution. Act 193 does not limit punishment options to those listed in the statute, and as such, counties are encouraged to develop and implement new intermediate punishment initiatives which address local problems.

With the enactment of this legislation, the PCCD has been assigned a number of responsibilities related to its implementation. These duties include the development of standards for programs and services, the administration and disbursement of funds, the review of county intermediate punishment plans, and the provision of technical assistance and training to counties. Related to these duties, the PCCD reviews intermediate punishment plans submitted by counties

sseeking funding under Act 1990-71, the Prison Facilities Improvement Act, administered by the Pennsylvania Department of Corrections. Act 71 provides up to \$200 million in state bond funds for the construction and renovation of county correctional facilities. Act 193 requires counties to develop and submit an intermediate punishment plan to PCCD in order to become eligible for Act 71 funding through the Department of Corrections. The PCCD and the Department of Corrections have worked cooperatively in establishing procedures and guidelines for counties developing intermediate punishment plans to become eligible for Act 71 funding.

Related legislation, Act 1990-201, amended Title 42, the Judicial Code, to provide judges with the authority to sentence defendants to intermediate punishment programs. Both Acts 193 and 201 mandated the Pennsylvania Commission on Sentencing (PCS) to adopt guidelines that identify offenders who are eligible and appropriate for participation in intermediate punishment. The intent is to divert the less serious non-violent offender from county jail incarceration to alternative sentencing programs. Act 201 also contains a specific provision which states that "the court shall not have the authority to sentence an offender under this section unless the county has established an intermediate punishment program which has been approved by the Pennsylvania Commission on Crime and Delinquency."

Act 201 specifically excludes any person convicted of any of the following offenses as being eligible for sentencing to an intermediate punishment program: murder; voluntary manslaughter; aggravated assault; assault by prisoner; statutory rape; involuntary deviate sexual intercourse; indecent assault; arson and related offenses; robbery; theft by extortion; escape; and burglary of the first degree. Originally, Act 201 excluded all persons convicted under the Controlled Substance, Drug, Device and Cosmetic Act as being eligible for

participation in an intermediate punishment program. This was subsequently changed via Act 1991-13 to allow persons convicted of drug offenses to be eligible for intermediate punishment (with the exception of those offenders sentenced under 18 Pa. C.S. § 7508, relating to mandatory sentencing for drug trafficking and 18 Pa. C.S. § 6314, relating to mandatory sentencing for trafficking drugs to minors).

It should be noted that Act 201 allows for defendants convicted under 75 Pa. C.S. § 3731 (relating to driving under the influence of alcohol or controlled substance) to be sentenced to intermediate punishment. However, the type of intermediate punishment for such offenders is restricted to: a residential inpatient program; a residential rehabilitative center; or house arrest or electronic surveillance combined with drug and alcohol treatment.

Over the last 20 years, the variety of sanctioning options in use around the country has expanded significantly. The forces driving this expansion have changed over time. In the 1990s, there is no question that the number one issue is the concern in the Legislature, the courts, and corrections over escalating jail and prison populations.

In Pennsylvania, the total number of criminal cases processed through the courts jumped from 88,844 in 1980 to 91,031 in 1990. Of these cases processed through the courts, 33,195 (37%) resulted in convictions in 1980, while 52,170 (57%) of all cases processed resulted in convictions in 1990. A further examination of court cases processed shows that 76% of the convictions in 1980 resulted in some form of correctional supervision, increasing to 95% in 1990. In terms of state or county incarceration rates for this group of convicted offenders, 10,760 (32%) were incarcerated in 1980, increasing to 32,924 (63%) in 1990.

During the same ten-year time period (1980-1990), the number of offenders sentenced to probation increased by 152%, while sentences to county jails and the Department of Corrections increased by 126% and 171% respectively.

Examining one offender population which is contributing significantly to county jail crowding, during 1991 approximately 39% of all jail admissions were for Driving Under the Influence (DUI). Since the passage of Act 289 in 1982, the number of DUI offenders entering county jails has increased dramatically. Act 289 set mandatory minimum jail terms for those convicted of driving under the influence (first offense - 48 hours; second offense - 30 days; third offense - 90 days; and subsequent offenses - one year). Between 1981 and 1991, the number of DUI offenders admitted to county jails increased from 629 to 11,480.

As reported by the National Institute of Corrections, overcrowding is not, of course, the only reason for the current interest in intermediate punishments. It is fueled as well by:

- public concern over the adequate supervision of probationers and parolees;
- the demands of victims and their communities to be made whole again following a crime;
- changing and more available technologies that are challenging our notions of what is possible;
- the continuing desire of judges to tailor sentences to the offense and the offender;
- the rising failure rates of offenders on probation and parole; and
- the combined impact of the drug crisis and the war on drugs.

The Pennsylvania Commission on Sentencing has made some changes to the sentencing guidelines in response to the severe prison and jail crowding problem and to develop an expanded set of sentencing options for the court. In making

these changes, one of the primary objectives was to identify eligible offenders for intermediate punishment programs.

The concept of intermediate punishment is designed to replace short-term incarceration for less serious, non-violent offenders so that some of the less serious offenders are diverted from the county jails to alternative sentencing programs. The intermediate punishment programs are not intended for defendants who would ordinarily be placed on probation. Only after the court considers and rejects a probationary sentence should it consider a range of alternative sentencing options, namely intermediate punishments.

Since the passage of Acts 193 and 201, the PCCD has developed and is moving towards finalization of its Intermediate Punishment Regulations. These regulations establish procedures to be followed by counties for the preparation of an intermediate punishment plan for qualification for funding under Act 71, for sentencing authority under Act 201, and for application to the Commission for available funding to develop and implement intermediate punishment programs. These regulations define words used in the statutes, establish minimum standards for various programs, establish criteria for applying for funds, and describe the responsibilities of county governments vis-a-vis intermediate punishment programs.

On July 11, 1992, the PCCD published proposed regulations in the Pennsylvania Bulletin. These regulations differ from the interim regulations published in Vol. 21 of the Pennsylvania Bulletin, page 4406, September 28, 1991. Changes in the regulations were based on comments received by interested parties after appearing in the Pennsylvania Bulletin. The revised regulations also allowed for a 30-day comment period which ended on August 17, 1992. Based on the comments and suggestions received, it is anticipated that one change will be made to the intensive supervision minimum standard. The current minimum standard

calls for a minimum combination of 20 personal and collateral contacts per offender and sets the maximum caseload per supervising officer at 30 offenders. Comments from the field suggested that these requirements were excessive and that the number of offender contacts should be reduced. It is anticipated that a revised minimum standard will be drafted by mid-September 1992 and that final regulations will be adopted by December 1992.

During the month of June 1991, PCCD and the PCS jointly sponsored three regional Intermediate Punishment Training Workshops. The purpose of the Workshops was to provide information to the counties regarding Acts 193, 201 and 71. During these Workshops, counties received training on the revised sentencing guidelines and PCCD's Intermediate Punishment Regulations and instructions for the development and submission of intermediate punishment plans. The Workshops also highlighted a number of successfully operating alternative sentencing programs within the Commonwealth.

The training provided on the Intermediate Punishment Regulations provided detailed instructions on PCCD's three-tiered planning process, which is based on the counties' interest in participating in: 1) the Act 71 funding process for construction and renovation of local correctional facilities; 2) Act 201 sentencing authority to allow courts to use intermediate punishments; and 3) PCCD's competitive grant application process seeking federal Drug Control and System Improvement funds to develop and implement new intermediate punishment programs.

Counties interested only in Act 71 funding qualification were required to submit a basic plan addressing those points under Section 6 of Act 193. These requirements are as follows:

1. Training programs for the board and staff.
2. Public information and education programs.

3. Designation of an entity or county government office with overall responsibility for supervision of fiscal affairs of the program.
4. Use of existing community agencies and organizations whenever possible.
5. A mechanism to advise the courts of the extent and availability of services and programs provided under the plan.
6. All costs associated with the county intermediate punishment program.
7. For joint judicial districts, an agreement as to each county's responsibilities.

Counties interested in seeking sentencing authority under Act 201 to use intermediate punishments were required to identify specific programs and provide certification that these programs complied with PCCD's minimum program standards.

Counties seeking funding for intermediate punishment programs under PCCD's Drug Control and System Improvement Program were required to complete an expanded plan addressing the following points:

1. Assessment of available countywide correctional services and future needs.
2. A review of current sentencing procedures and the impact these procedures have on county correctional resources.
3. A review of current alternatives to pretrial detention and the potential these programs have for impacting on the jail population.
4. A description of all existing resources in the county which can be used as intermediate punishments or support services to offenders sentenced to intermediate punishment.

5. Formulation of policy statements targeted to the needs identified by the county and the impact these policies will have on the use of incarceration and intermediate punishments.
6. Development of goals and objectives which are aimed at effective utilization of existing and projected correctional resources.
7. Development of an evaluation strategy which measures the qualitative and quantitative performances of all programs.

For those counties seeking funding eligibility under Act 71, sentencing authority under Act 201, and funding eligibility under PCCD's DCSI Program, all three planning steps were required.

As a result of these training Workshops, PCCD received a total of 59 county intermediate punishment plans. The attachment to this testimony shows the counties which submitted plans and for what reason. Of those counties submitting plans, 59 counties requested and received approval to apply through the Department of Corrections for Act 71 funding for construction and renovation of local correctional facilities. Fifty-one counties requested and received approval to sentence eligible offenders to intermediate punishment programs which meet PCCD's minimum program standards, and 17 counties as well as one regional council of governments have received federal funds through PCCD to develop and implement intermediate punishment programs. In addition to the counties which have already received funding, ten additional counties are slated to receive financial support for new programs contingent upon approval by the supervisory board of PCCD on September 15, 1992. Only eight counties in the Commonwealth have not submitted intermediate punishment plans. These counties include: 1) Cameron; 2) Fayette; 3) Fulton; 4) Huntingdon; 5) Juniata; 6) Montour; 7) Sullivan; and 8) Union.

Counties that received funding for intermediate punishment initiatives did so as a result of the PCCD setting aside portions of its federal Drug Control and

System Improvement (DCSI) funds during federal fiscal years 1991 and 1992. Because Act 193 did not appropriate funds for county intermediate punishment programs and since counties voiced such a strong need for funding support, the Commission allocated \$2,500,000 in FFY-1991 and \$2,050,000 in FFY-1992 to provide "seed" monies for counties to begin much-needed intermediate punishment programs.

Drug Control and System Improvement funding has been offered to all counties in the Commonwealth during the past two years. The funds are available on a competitive basis and proposals must be submitted in response to published funding guidelines. Funds are available for up to three years (three 12-month project periods), and matching funds are required by the county (first year - 25%; second year - 50%; third year - 75%). During both years of intermediate punishment funding, requests by the counties exceeded the Commission's allocations by nearly \$9 million.

Based on the needs demonstrated by the counties and their interest in developing alternative sentencing programs, it is anticipated that the PCCD will allocate an additional \$1.25 million in FFY-1993 to begin new or to expand on existing intermediate punishment programs. Based on the Commission's commitment to fund these programs for three years with increasing local matching contributions, in excess of \$10 million of DCSI funds is slated for intermediate punishment initiatives over the coming years. Counties are expected to absorb the costs of these programs into their General Fund budgets by the end of the third year of PCCD funding.

While this funding commitment is sizeable, it presents a major problem for the majority of Pennsylvania's counties to build these program costs into their General Fund budgets over a three-year period. Counties continue to express a concern for the need for alternative sentencing programs supported with a state subsidy similar to the county probation subsidy administered by the Pennsylvania

Board of Probation and Parole. Counties believe that a state subsidy for intermediate punishments should exist given the recent changes in the sentencing guidelines which reduce the upper limit of the standard range from 12 months to 1 1/2 months for certain offenses. This change will result in diverting some of the less serious offenders from state prisons to county jails. Based on this anticipated population shift from the state system to the county system, many believe the state subsidy concept is justified.

Programs funded under PCCD's FFY-1991 DCSI allocation are currently in their first year of operation. The majority of these programs began in January 1992 and will be seeking second-year continuation funding at the Commission's December 1992 meeting. PCCD staff are currently preparing to conduct on-site monitoring visits to all of these counties to assess progress towards meeting stated objectives. Additionally, staff will be paying particular attention to the degree in which intermediate punishment is being used as a direct sentencing alternative by the courts.

In addition to the responsibilities associated with the development of intermediate punishment regulations, the review of county plans and the administration of federal funds to support alternative sentencing projects, the PCCD has been very active in promoting the concept of intermediate punishment throughout Pennsylvania. The PCCD has worked closely with the Pennsylvania Commission on Sentencing, the Pennsylvania State Association of County Commissioners, and the Department of Corrections to provide counties with a clear understanding of the new legislation and related regulations. PCCD has developed minimum program standards for a large number of intermediate punishment programs to ensure that programs throughout the Commonwealth meet established criteria.

The PCCD will continue to aggressively promote intermediate punishment programs throughout the coming years. In addition to its funding role, PCCD will

also continue to keep statewide training as a priority. This training will consist of additional regional workshops and specialized training in areas such as electronic monitoring and drug testing.

The provision of technical assistance will also be a priority and the ground work is currently being laid to establish a network of county intermediate punishment specialists. This network will consist of consultants who are selected based upon their expertise in specific areas of intermediate punishment and then assigned to counties submitting requests for technical assistance.

Relative to the area of technical assistance, the PCCD is working cooperatively with the Pennsylvania Commission on Sentencing, with assistance from the National Institute of Corrections (NIC), to conduct an intensive three-day working seminar which will be attend by 12 counties sending teams of six individuals consisting of: 1) the intermediate punishment coordinator; 2) the chief adult probation officer; 3) the warden; 4) the district attorney; 5) a Court of Common Pleas judge; 6) the county commissioners; 7) the public defender; and 8) the human services director. The purpose of the Workshop, to be held on September 21-23, 1992, is to provide county policymakers with the tools necessary to conduct assessments of their local corrections system and to develop a range of intermediate punishments as part of their overall county strategy. A total of 23 counties expressed interest in this Workshop, so it is anticipated that a follow-up session will be conducted for counties not participating on September 21-23.

One important objective of the Workshop will be that of sending the counties back to their respective jurisdictions with the basic framework for developing a corrections strategy. It is anticipated that many of these counties will need follow-up technical assistance to further develop their strategies as well as develop and implement specific intermediate punishment programs.

To respond to this need, the PCCD has negotiated agreements with the National Institute of Corrections and the Edna McConnell Clark Foundation to provide assistance in identifying and securing individual consultants who can provide necessary services to the counties. In addition to this technical assistance resource, PCCD is currently identifying individuals throughout the Commonwealth who have experience and knowledge in specialized areas of intermediate punishment. Through a Memorandum of Understanding with the Pennsylvania Department of Community Affairs, a mechanism now exists for PCCD to arrange short-term technical assistance through these county practitioners and to pay for such services out of federal DCSI funds.

In addition to the training and technical assistance plans, PCCD will establish an Intermediate Punishment Clearinghouse to provide all counties with a single point of contact from which to obtain resource information on the development and implementation of intermediate punishment programs. Reference materials, models of well-established programs, studies and surveys are just a few of the examples of the material that will be available from such sources as: 1) the National Institute of Justice; 2) the National Institute of Corrections; and 3) the National Criminal Justice Reference Service.

The PCCD is committed to the development of a full range of intermediate punishment programs in Pennsylvania. However, these programs must be based on sound planning and the development of countywide corrections strategies which examine all possible options within the policy framework established by local decision-makers.

We will continue to maintain an open dialogue with the counties and will keep all parties up to date with information concerning training seminars, implementation of new services, available grants funds, and other important information. It is our hope that counties will provide feedback to us on their

needs, suggestions, concerns and successes as well as keep us informed of what is happening in the area of intermediate punishment at the local level, where the real impact of Acts 193 and 201 should be felt.

COUNTY INTERMEDIATE PUNISHMENT PLAN STATUS

<u>COUNTIES</u>	<u>ACT 201</u>	<u>ACT 71</u>	<u>DCSI FUNDING/IPP PROGRAMS</u>
	Sentencing Authority	Funding Qualification	(X = Funds awarded in December 1991) (0 = Funds to be awarded September 15, 1992)
01 ADAMS	X	X	
02 ALLEGHENY	X	X	X
03 ARMSTRONG	X	X	0
04 BEAVER	X	X	X
05 BEDFORD	X	X	
06 BERKS	X	X	0
07 BLAIR	X	X	
08 BRADFORD	X	X	0
09 BUCKS	X	X	0
10 BUTLER	X	X	X
11 CAMBRIA	X	X	
12 CAMERON			
13 CARBON	X	X	X
14 CENTRE	X	X	
15 CHESTER	X	X	X
16 CLARION	X	X	
17 CLEARFIELD	X	X	
18 CLINTON		X	
19 COLUMBIA	X	X	X
20 CRAWFORD	X	X	0
21 CUMBERLAND	X	X	X
22 DAUPHIN	X	X	X

<u>COUNTIES</u>	<u>ACT 201</u> Sentencing Authority	<u>ACT 71</u> Funding Qualification	<u>DCSI FUNDING/IPP PROGRAMS</u> (X = Funds awarded in December 1991) (0 = Funds to be awarded September 15, 1992)
23 DELAWARE	X	X	0
24 ELK		X	
25 ERIE	X	X	X
26 FAYETTE			
27 FOREST	X	X	
28 FRANKLIN	X	X	X
29 FULTON			
30 GREENE	X	X	
31 HUNTINGDON			
32 INDIANA	X	X	X
33 JEFFERSON	X	X	X
34 JUNIATA			
35 LACKAWANNA	X	X	
36 LANCASTER	X	X	X
37 LAWRENCE		X	
38 LEBANON	X	X	
39 LEHIGH	X	X	0
40 LUZERNE	X	X	X
41 LYCOMING	X	X	
42 MCKEAN		X	
43 MERCER	X	X	
44 MIFFLIN		X	

<u>COUNTIES</u>	<u>ACT 201</u> Sentencing Authority	<u>ACT 71</u> Funding Qualification	<u>DCSI FUNDING/IPP PROGRAMS</u> (X = Funds awarded in December 1991) (0 = Funds to be awarded September 15, 1992)
45 MONROE		X	
46 MONTGOMERY	X	X	
47 MONTOUR			
48 NORTHAMPTON	X	X	
49 NORTHUMBERLAND	X	X	
50 PERRY		X	
51 PHILADELPHIA	X	X	X
52 PIKE	X	X	0
53 POTTER	X	X	0
54 SCHUYLKILL	X	X	
55 SNYDER	X	X	
56 SOMERSET	X	X	
57 SULLIVAN			
58 SUSQUEHANNA	X	X	
59 TIOGA		X	
60 UNION			
61 VENANGO	X	X	
62 WARREN	X	X	
63 WASHINGTON	X	X	X
64 WAYNE	X	X	
65 WESTMORELAND	X	X	0

<u>COUNTIES</u>	<u>ACT 201</u> Sentencing Authority	<u>ACT 71</u> Funding Qualification	<u>DCSI FUNDING/IPP PROGRAMS</u> (X = Funds awarded in December 1991) (0 = Funds <u>to be awarded</u> September 15, 1992)
66 WYOMING	X	X	
67 YORK	X	X	X
TOTAL:	51	59	27