

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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HEARING ON AMENDMENTS TO THE
INTERMEDIATE PUNISHMENT ACT

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House Judiciary Committee
Task Force on Intermediate Punishment

Dobbin House
89 Steinwehr Avenue
Gettysburg, Pennsylvania

Thursday, August 20, 1998 - 10:00 a.m.

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BEFORE:

Honorable Stephen Maitland, Majority Chairperson
Honorable Craig Dally
Honorable Don Walko

IN ATTENDANCE:

Honorable Al Masland

KEY REPORTERS

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1998-107

ALSO PRESENT:

James Mann
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- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

C O N T E N T S

	WITNESSES	PAGE
1		
2		
3	Opening Remarks	4
4	Honorable Stephen Maitland	
5	Michael A. George, District Attorney	5
6	Adams County	
7	Thomas Duran, Warden	30
8	Adams County Prison	
9	Lawrence Murray, Chief Probation Officer	40
10	Adams County Adult Probation Department	
11	Thomas L. Collins, Commissioner	68
12	Adams County	
13	Scott D. Keller, President Judge	83
14	Berks County Court of Common Pleas	
15	Lynn Cooper Breckenmaker, Ex. Dir.	103
16	Director Pennsylvania Community	
17	Providers Association	
18	Terry Davis, President	121
19	Pennsylvania County Chief Probation	
20	Officers Association,	
21	Dauphin County Probation Department	
22	Mark Bergstrom, Executive Director	149
23	PA Commission on Sentencing	
24	James Strader, Program Manager	168
25	Community Corrections Division	
	PA Commission on Crime and Delinquency	

1 CHAIRPERSON MAITLAND: Ladies and
2 gentlemen, I would like to call the meeting of
3 the House Judiciary Committee's Intermediate
4 Punishment Task Force to order. I'm the
5 Chairman of the Task Force, State Representative
6 Steve Maitland of the 91st District, which is
7 right here in Adams County. Welcome to the 91st
8 District.

9 Our purpose today is to hold an
10 informational public hearing on the County
11 Intermediate Punishment Act, Act 193 of 1990,
12 with a view to its implementation in the field,
13 and to see if there are any necessary changes to
14 it, or what recommendations the professionals in
15 the law enforcement field would recommend to us.

16 I would like to welcome the members of
17 the Task Force and the Judiciary Committee that
18 are here today. On my far right is task force
19 member Representative Don Walko from Pittsburgh
20 in Allegheny County. Seated next to him is
21 committee member Al Masland from Carlisle, a
22 judiciary committee member. To my immediate
23 right is task force member Representative Craig
24 Dally from Monroe and Northampton Counties. The
25 staff of the Judiciary Committee is represented

1 today by Jim Mann, Esquire, soon to be.

2 With that, I will turn the mic over
3 to our first witness today, the Honorable Mike
4 George, District Attorney of Adams County.

5 Mike, go ahead.

6 MR. GEORGE: Good morning, folks.
7 Representative Maitland, esteemed members of the
8 House Judiciary Committee, and the Intermediate
9 Punishment Task Force, and invited guests: I
10 wish to thank you for the opportunity to speak
11 with you this morning concerning the subject of
12 intermediate punishment.

13 As you will hear in my remarks today,
14 intermediate punishment is an indispensable part
15 of the criminal justice system in Adams County,
16 and your willingness to convene this session, I
17 hope, is an indication of your commitment to not
18 only continue to fund the program, but also to
19 look at ways to improve this essential
20 alternative.

21 Initially, I'd like to look at
22 criminal sentencing and the related correctional
23 issues from a historical perspective. Prior to
24 the passage of the County Intermediate
25 Punishment Act in 1990, sentencing alternatives

1 essentially consisted of probation or, in the
2 alternative, confinement. While probation is
3 certainly a viable sentence in many instances,
4 there are many more instances where it is simply
5 not appropriate, either because of the
6 seriousness of the offense or because of the
7 lack of flexibility available under traditional
8 probation. Probation often lacked the structure
9 necessary to ensure the safety of the general
10 public. Just as importantly, the general
11 public's conception of probation is that it
12 generally lacks or fails to acquire
13 accountability for one's actions.

14 At the other end of the spectrum, the
15 remaining sentencing alternative was that of
16 confinement. This alternative reflected the
17 politically attractive atmosphere that those who
18 commit crimes should go to jail. We are now
19 seeing the results of that approach as we deal
20 with issues concerning prison overcrowding and
21 the conception of new facilities.

22 The number of inmates at these
23 facilities is increasing, not because the number
24 of first-time offenders is increasing, but
25 rather because of our lack of ability to take

1 the first-time offender and put him back in the
2 community as a contributing member.

3 Unfortunately, despite our inability
4 to do so, the reality is that all offenders
5 housed in county prison systems will ultimately
6 return to the community. It is my view that
7 across the board, an approach of warehousing
8 offenders in county prison is frustrating our
9 ability to break their particular cycle of
10 crime.

11 Rather than address the factors which
12 caused the inmate to be incarcerated in the
13 first place, prison, for some, is having the
14 opposite effect. It puts people in a position
15 where their perceptions of acceptable behavior
16 are defined by others who are incarcerated with
17 them and potentially have a much lower level of
18 acceptable living standards.

19 While I cannot speak for other county
20 prisons, I am aware of the current situation
21 here in Adams County. On any given day, you'll
22 find people convicted of driving under the
23 influence of alcohol being housed in close
24 quarters with a person who may have committed
25 assault. You have retail theft violators being

1 housed with burglars. You have personal use
2 drug offenders roaming with those who are
3 ultimately responsible for putting drugs on the
4 street.

5 Prison can be, for some, a training
6 ground for more experienced crime. I can name
7 for you several instances where criminal
8 alliances arose not through the normal chance of
9 community interaction, but rather through
10 networks established by inmates while in prison.

11 That is not to say that confinement is
12 not a viable sentencing alternative. In fact, I
13 believe it is essential. There are, quite
14 simply, evil people in this world who need to be
15 isolated from society. They are not likely to
16 be rehabilitated, but rather are likely to
17 reoffend upon release. They are predators, and
18 they will always constitute a danger to the
19 public. They should and must be incarcerated
20 for as long as conceivably possible.

21 Prison is also required for others
22 who, because of the seriousness of their act,
23 must be punished. As a law abiding society, we
24 simply cannot and should not tolerate certain
25 acts. Society must take comfort in, and those

1 considering criminal activity must know, that
2 serious criminal acts will result in serious
3 prison time.

4 The number of the general population
5 that fits into this category, however, is small.
6 My experiences lead me to the conclusion that a
7 small percentage of all criminal acts are
8 committed by a large majority of those who come
9 through our criminal justice system.

10 On the other hand, the vast majority
11 of criminal acts are committed by a relatively
12 small percentage of those who interact with the
13 criminal system. It is the latter percentage
14 that we must continue to incarcerate and to do
15 so for long periods of time. That leaves,
16 however, a large number of offenders whom the
17 traditional criminal justice system has been
18 unable to accommodate. In my view, intermediate
19 punishment is the mechanism to fill that void.

20 In Adams County, intermediate
21 punishment has developed slowly and really did
22 not begin to reach its potential as a sentencing
23 alternative until the early part of 1996.
24 Although it has not reached its potential as a
25 sentencing alternative yet, intermediate

1 punishment is currently the primary sentence
2 imposed by Adams County Courts. Even with the
3 program, the Adams County Prison population is
4 33 percent over its maximum capacity. Without
5 the program in place, that number would easily
6 be tripled. In Adams County, intermediate
7 punishment is a necessity.

8 The program offers the ability to
9 reintroduce offenders into the community without
10 substantially jeopardizing public safety. It
11 allows those who are capable of being
12 rehabilitated the opportunity to adjust their
13 behavior. And it accomplishes all of this
14 without relying on the traditional warehousing
15 of inmates mentality. In the long run, our
16 ability to reintegrate such offenders into the
17 community will be the controlling factor in our
18 ability to clear ourselves from the excessive
19 weight of additional prison construction.

20 In my view, however, intermediate
21 punishment will only be a viable sentencing
22 alternative if we were able to require the
23 program be guided by certain principles.

24 Intermediate punishment must be credible. Those
25 involved in the program must be held

1 accountable. And the program must be properly
2 managed and funded.

3 First, the program must be credible.
4 When I speak of credibility, I speak of it in
5 two regards. There must be credibility with the
6 general public, and just as importantly, there
7 must be credibility with the offender.

8 Just yesterday in a local newspaper in
9 our area, it carried an editorial from the
10 Delaware County Times. That editorial attacked
11 the Delaware County's off-site work program
12 because of the number of walk-offs, or escapes
13 from the program. Despite the merits of that
14 particular program, it is now in jeopardy
15 because in the view of at least a percentage of
16 the general public, the program is not worth the
17 risk.

18 Intermediate punishment suffers the
19 same fate unless the program immediately and
20 effectively punishes those who violate the terms
21 of the program, those who violate the terms of
22 the opportunities given to them. The general
23 public must know that this is not an experiment
24 at their expense.

25 It is in that respect that the program

1 must be credible to the offender. It must offer
2 both a carrot and a hammer. The carrot is the
3 opportunity to stay out of prison for a
4 substantial period of time while developing
5 those skills and addressing the addictions or
6 other mental health issues which lead to the
7 criminal act.

8 The hammer must be present for those
9 who violate the conditions of the program. They
10 must be immediately and severely punished.
11 Those who are able to adjust their behavior in a
12 responsible manner must know that intermediate
13 punishment is the last break. Those who can't
14 are destined to be repeat offenders; that type
15 of person who falls into the category I spoke of
16 earlier, the type of person from whom society
17 must be protected.

18 I suggest that the Legislature look at
19 ways to send a clear message to those
20 individuals. The Intermediate Punishment
21 Program is their one and only chance to conform
22 their behavior. While such a policy will never
23 guarantee a one hundred percent success rate, it
24 will make instances of violations much rarer and
25 ultimately protect the public interest.

1 Just as punishment must be efficient
2 and severe for those who violate the conditions
3 of the program, the violator must also be
4 precluded from taking advantage of procedural
5 maneuvering to gain freedom from temporary
6 restrictions of the program.

7 Specifically, a violator must be
8 precluded from obtaining bail after violating a
9 petition of the Intermediate Punishment Program.
10 The law currently provides an individual who's
11 violating probation or parole who may be going
12 to jail are entitled to bail while pending a
13 revocation hearing. There is no constitutional
14 requirement that they must be given bail.
15 However, the opportunity is available.

16 Applying that same reasoning to the
17 Intermediate Punishment Program can result in a
18 clear injustice and ultimately a loss of
19 credibility for the program. For example, if a
20 person is on house arrest and violates the
21 conditions of that house arrest, he may, pending
22 revocation of being sent back to jail, petition
23 the court for bail. If the court is so inclined
24 to grant bail, we are left with the ironic
25 situation of a person whose freedom was

1 substantially restricted by the Intermediate
2 Punishment Program, being able to remove himself
3 from that restriction by violating the
4 conditions of that restraint. I respectfully
5 suggest that Legislature look at that issue.

6 In addition to requiring credibility
7 for the program, it is essential that the heart
8 of the program, accountability of the offender,
9 be preserved. Intermediate punishment has merit
10 because it allows creative programs aimed at
11 making the offender responsible for his actions.

12 Unlike traditional incarceration where
13 the taxpayer bears the burden of helping those
14 that break the law, or housing those that break
15 the law, intermediate punishment allows the
16 offender to give back to the community which he
17 has violated. Community service, work programs
18 aimed at improving community resources, and
19 restitution in kind to victims when appropriate
20 are all creative examples of making the offender
21 realize the harm of his act.

22 Rather than draining precious county
23 resources, intermediate punishment allows the
24 community to recoup some of its losses.
25 Currently, many of the issues surrounding such

1 creative programs are unresolved. I'm hopeful
2 that the Legislature will look at adopting
3 legislation which places county officials on
4 sound footing in developing Intermediate
5 Punishment Programs.

6 For instance, county officials need
7 direction from the Legislature on whether
8 halfway houses, community correction centers, or
9 work-release facilities are subject to the same
10 requirements which currently govern county
11 prisons. Specifically, are the counties
12 responsible for medical and related needs, or
13 are those needs the responsibility of the
14 offender? If the needs are a county
15 responsibility, can the offender waive them as a
16 requirement for participating in the program?

17 These are issues which are currently
18 being worked through at the county level and
19 which, I suggest, can be addressed through
20 legislation. I ask that the Legislature make it
21 clear that the burden for the Intermediate
22 Punishment Program not be borne by the
23 taxpayers.

24 The cost of the program should be paid
25 by the offender. Medical costs, food, and

1 personal effects and other necessities can be
2 reimbursed from wages of the offender or through
3 labor in kind provided by the offender. If the
4 offender is released back into society, the cost
5 of his necessities would be borne by him. There
6 is no reason to deviate from that principle when
7 the offender is interacting with society while
8 in intermediate punishment.

9 The ability to become self-sufficient
10 will, in the end, allow the offender to survive
11 in a legal way when he ultimately is released
12 from supervision. Further issues exist in areas
13 of county liability and workers' comp insurance.
14 And I respectfully request the Legislature look
15 at those.

16 Finally, in my view, the current
17 legislation has developed an unnecessary level
18 of bureaucratic red tape. The Intermediate
19 Punishment Act currently provides Intermediate
20 Punishment Programs to be supervised by county
21 prison boards. As it applies to smaller
22 counties, I believe it is an unnecessary
23 duplication of services.

24 Unlike housing inmates in the
25 traditional prison setting where the county's

1 role is to be that of keeper of the gate, the
2 Intermediate Punishment Act allows the program
3 where offenders are interacting with the
4 community. As such, supervision of the program
5 is not simply a matter of providing necessity,
6 but rather requires hands-on supervision which
7 may, in some instances, need to be
8 individualized.

9 In that respect, intermediate
10 punishment has similarities with traditional
11 probation and parole. These programs have
12 rightfully been managed by the Parole and
13 Probation Departments of the respective counties
14 and are directly responsible to the court.

15 Similarly, I think Intermediate
16 Punishment Programs are better off being
17 developed by those in regular contact with the
18 criminal justice system, specifically, the
19 prosecutors and the courts. County officials
20 with their ability to control the purse strings,
21 obviously have input into Intermediate
22 Punishment Program development. Likewise, the
23 decision to pursue alternative housing
24 arrangements, by necessity, requires the
25 approval of county officials.

1 In essence, programs can be developed
2 through prosecutors and the courts which deal
3 with the ever changing needs of the offenders
4 while county officials remain in the mix through
5 budget involvement. The intermediate level of
6 bureaucracy created by the act is simply
7 unnecessary. Although the three judges of Adams
8 County will not appear today, they have asked me
9 to pass on their concerns that intermediate
10 punishment should be returned to the court and
11 to the prosecutors.

12 I'm hopeful that the Legislature will
13 continue to place a high value on the funding of
14 the programs aimed at addressing the issues
15 which cause crime. Specifically, drug and
16 alcohol addictions must be treated if we are
17 ever going to break the cycle of crime. Placing
18 people in jail for six months to a year and
19 releasing them to the street with no skills and
20 no addiction support is only going to result in
21 further crime. I hope that the Legislature will
22 seriously look at the needs for drug and alcohol
23 counseling throughout the state and continue to
24 give it meaningful attention and funding.

25 In sum, the Intermediate Punishment

1 Program is an essential program and the
2 initiatives need to continue to be funded by the
3 state. Additionally, I hope that the
4 Legislature will address some of the issues
5 discussed here, and those that will be discussed
6 later by others in the criminal justice system.

7 Once again, I thank you for the
8 opportunity to speak with you today, and I am
9 now willing to address any questions that you
10 may have.

11 CHAIRPERSON MAITLAND: Thank you very
12 much for your testimony, Mr. George. Are there
13 any questions? Don.

14 REPRESENTATIVE WALKO: Yes, I have a
15 brief question. Thank you, Mr. George. Do you
16 have a drug court in Adams County?

17 MR. GEORGE: No. The funding is
18 available, and I appreciate the Legislature
19 making that funding available through PCCD. Our
20 particular county opted not to do that because
21 of the small number of people who would fit the
22 criteria to go through that program. The cost
23 didn't justify dipping into the grand for that.

24 REPRESENTATIVE WALKO: Well, in Adams
25 County now, are there any programs to deal with

1 the addiction issues, the drug addiction issues?

2 MR. GEORGE: The prison, as it
3 currently is in existence, is developing
4 programs to deal with counseling and alcohol
5 abuse. Probation also has agencies available to
6 make resources available to the offender who,
7 either through the compulsion of the probation
8 officer or through their own willingness wants
9 to get involved in those programs. So those
10 assets are available.

11 REPRESENTATIVE WALKO: Are there
12 resources available from the Pennsylvania
13 Commission on Crime and Delinquency for those
14 programs, or --

15 MR. GEORGE: I believe they are
16 available, but that may be better addressed to
17 the probation officer, Larry Murray.

18 REPRESENTATIVE WALKO: Thank you very
19 much.

20 REPRESENTATIVE MAITLAND:
21 Representative Masland.

22 REPRESENTATIVE MASLAND: Thank you,
23 Mr. Chairman. First of all, let me say as a
24 former Assistant D.A. up in Cumberland County, I
25 confer with a great deal if not all of your

1 remarks. You may have said something that I
2 didn't agree with, but I was probably reading
3 the wrong paragraph.

4 I think when you said that the reality
5 is that all these people ultimately be returned
6 to the community, that that is probably
7 something that we really need to keep foremost
8 in our minds. We're going to have to do
9 something with them, some type of treatment.

10 Drug and alcohol addictions, in my
11 experience, was that even if it wasn't a DUI
12 offense or a drug offense, a large percentage of
13 those offenses were in some fashion drug or
14 alcohol related, either because they needed the
15 money, so they burglarized the house, or that
16 they robbed somebody. What is your experience
17 here in Adams County?

18 MR. GEORGE: You often hear people say
19 that drug abuse or alcohol abuse is a victimless
20 crime, so why not let's make drugs legal, or
21 whatever that mentality is. The reality is
22 absolutely what you've indicated. I would guess
23 about 80 to 90 percent of the criminal acts in
24 this county are committed by people who are
25 probably supporting their habit and/or unable to

1 control their actions because of an addiction.

2 REPRESENTATIVE MASLAND: Sort of the
3 simple assaults, the aggravated assaults --

4 MR. GEORGE: The simple assaults, the
5 domestics at home, the thefts, the burglaries.
6 In fact, we recently had a serious shooting down
7 here which was motivated by people attempting to
8 acquire 50 bucks. I think ultimately he got \$65
9 out of the robbery to go out and buy crack.

10 REPRESENTATIVE MASLAND: Now, do you
11 have an ARD, Accelerated Rehabilitative
12 Disposition program here?

13 MR. GEORGE: Yes, we do. It is an
14 active program.

15 REPRESENTATIVE MASLAND: And that's
16 pretty much the first level for the people that
17 are really maybe the minor offenders, and the
18 second level is where the IPP --

19 MR. GEORGE: Right. Individuals who
20 are clearly nonviolent; who have committed the
21 type of crime which is not an outrageous act
22 against society; who show the potential for
23 being rehabilitated; where there is not bodily
24 injury to a victim or substantial property
25 damage, are placed on that accelerated program.

1 It allows them the opportunity to get back into
2 the community without the baggage of a criminal
3 conviction. The next level though --

4 REPRESENTATIVE MASLAND: What's the
5 similarities, though, in terms of the probation
6 type, you know a lot of times, in terms of
7 community service and things?

8 MR. GEORGE: There are similarities,
9 but our Intermediate Punishment Program is a
10 much more intensive program than the ARD
11 Program, and we view that as being necessary
12 because of the type of offender who doesn't
13 qualify for ARD, but yet, incarceration is not
14 the answer for them.

15 REPRESENTATIVE MASLAND: I was just
16 trying to make sure people understood that you
17 have that first level of ARD, and then the
18 second level of intermediate punishment, and
19 then, really, you get to the people that you do
20 have to have put away in a prison or
21 somewhere --

22 MR. GEORGE: Right. I am absolutely
23 convinced that there is a portion of the
24 population which just needs to be isolated; that
25 they're going to be repeat offenders who are

1 committing the large majority of crime, although
2 they're a small number of people.

3 The void that I'm worried about, and I
4 think that intermediate punishment has the
5 potential for addressing, is that group of
6 people who can get back into society and
7 contribute to society.

8 REPRESENTATIVE MASLAND: You said
9 reintegrate, and that's an important term. You
10 want to reintegrate those who can be
11 reintegrated. You want to rehabilitate those
12 who can be rehabilitated, but some people just
13 haven't been habilitated. How do you
14 rehabilitate them? You have to put them away.

15 The way I understand it, the main
16 things you're looking for in terms of IPP
17 programs is, some direction maybe from the
18 Legislature, some clarification, and
19 responsibilities in certain areas like
20 insurance, workers' comp; things like that, and
21 also some flexibility and supervision at that --

22 MR. GEORGE: Right. I'm looking for
23 direction from Legislature so the county can
24 enact programs and know that they're not going
25 to be looking at lawsuits or civil rights

1 violations by having people out on work
2 programs, or by not providing the essentials
3 that the prison requirements mandate currently;
4 health care, for instance. If somebody is
5 living in an independent living type setting,
6 they should also be able to manage their own
7 health care at that point and not burden the
8 taxpayers.

9 I think it is important that the
10 Legislature make its intention known that giving
11 people the opportunity to correct their behavior
12 and be coming back into the community through
13 intermediate punishment, also know that that is
14 the end of the rope. There has to be both the
15 carrot and the hammer so that we don't have
16 people violating intermediate punishment, and
17 then being immediately released back out into
18 society regardless of the violation.

19 REPRESENTATIVE MASLAND: I like your
20 statement, carrot and hammer. Most people are
21 used to carrot and stick.

22 MR. GEORGE: I understand that.

23 REPRESENTATIVE MASLAND: Carrot and
24 stick, that goes well with my kids; not carrot
25 and hammer.

1 MR. GEORGE: One of my assistants
2 quickly looked at my comments here this morning,
3 and made the same indication; but I think a
4 stick's not appropriate. If people are given
5 the chance, and we're putting society to some
6 degree at risk by putting these people,
7 integrating them with community while they
8 should be serving sentences, there should be a
9 hammer at the end of that.

10 REPRESENTATIVE MASLAND: Thank you
11 very much. Thank you, Mr. Chairman.

12 CHAIRPERSON MAITLAND: Thank you.
13 Craig questions? Representative Dally.

14 REPRESENTATIVE DALLY: Thank you, Mr.
15 Chairman. Mr. George, thank you.

16 MR. GEORGE: Yes. Thank you.

17 REPRESENTATIVE DALLY: I have one
18 question on the issue that you raised about the
19 constitutional requirement, bail. That's an
20 interesting situation that I hadn't thought of.
21 Does that happen often, where if someone
22 violates their sentencing and then --

23 MR. GEORGE: I could name numerous
24 instances in this particular county, and I can't
25 speak for other counties; obviously, where

1 people have been on restrictive phases, meaning
2 they're on house arrest, wearing ankle bracelet,
3 the whole nine yards. They violate a condition
4 of that program either through using controlled
5 substances or not returning on the window that
6 they're required to return, and being revoked
7 from the program, reincarcerated immediately by
8 the Probation or Parole Department, and
9 petitioning the court for bail and having the
10 court set bail.

11 In my mind, a result of that the
12 procedural maneuvering is that this person who
13 is under restriction for not being able to abide
14 by the law, violates those restrictions and
15 gains his freedom. Albeit, it may only be
16 temporarily, but he is gaining his freedom.

17 One particular instance is that the
18 result of the intermediate punishment violation
19 after approved by the Commonwealth, resulted in
20 a sentence to the county prison. That
21 particular person appealed the hearing, revoking
22 them and resentencing them. Our court
23 determined that they're entitled to bail pending
24 that appeal.

25 So, somebody who should have been

1 immediately under restriction in my view, is out
2 on the street currently for violating the
3 restrictions which were placed upon him. And
4 again, it's only a temporary placement;
5 ultimately, they are going to be going to
6 prison. But even that small window is something
7 I think causes the public to lack faith in the
8 program.

9 REPRESENTATIVE DALLY: In that
10 instance, your position is, there is no
11 constitutional requirement then --

12 MR. GEORGE: I think the courts have
13 uniformly held that parole or probation
14 revocation, a person being revoked from parole
15 or probation is not required to have bail set,
16 although, the court may allow bail in their
17 discretion. Okay. So, I don't think the
18 Constitution prohibits the Legislature from
19 prohibiting bail in these instances.

20 REPRESENTATIVE DALLY: You raised
21 another issue on medical care. Someone who went
22 through the Intermediate Punishment Program out
23 in the community, how is that handled here in
24 Adams County? Is that person then covered? Say
25 they're gainfully employed. Obviously, they

1 would have coverage in most cases.

2 MR. GEORGE: Currently the
3 Intermediate Punishment Program -- And I know
4 the commissioners are actively looking at
5 alternatives and funding. Currently the
6 Intermediate Punishment Program, those people
7 who are on a partial confinement phase of that
8 program, not house arrest, but some jail time
9 are being housed in our prison. We don't have a
10 work-release center. We don't have the
11 correction center like Dauphin County has. And
12 because of that, the commissioners are concerned
13 in my office, and I believe the courts are
14 concerned with whether or not we have to provide
15 those people with the necessities that the law
16 requires in regard to housing inmates. And I
17 think the answer to that right now is yes, we
18 do.

19 We're hoping that the Legislature will
20 make it clear that when these people are in a
21 halfway house or in a community correction
22 center, or some type of work-release facility,
23 that that responsibility is removed from the
24 county and placed on the offender who's
25 participating in that program.

1 Now, that can be done either through
2 making it clear in the legislation, or it can be
3 done through making it acceptable to waive those
4 requirements as a condition of entering into the
5 program.

6 REPRESENTATIVE DALLY: Thank you.

7 CHAIRPERSON MAITLAND: Thank you very
8 much, Mr. George, for your testimony. I invite
9 you to stay and hear the remainder of the
10 testimony today and join us then for lunch.

11 MR. GEORGE: I appreciate your
12 invitation. Thank you.

13 CHAIRPERSON MAITLAND: Thank you.
14 Next we'll call forward Thomas Duran, the Adams
15 County Prison Warden; and with him Larry Murray,
16 the Chief Probation Officer of Adams County
17 Adult Probation.

18 MR. DURAN: Good morning.

19 CHAIRPERSON MAITLAND: Good morning.
20 Okay. Warden, begin when you're ready.

21 MR. DURAN: Thank you, Representative
22 Maitland, esteemed members of the Task Force on
23 Intermediate Punishment of the House Judiciary
24 Committee, invited guests, ladies and gentlemen:
25 It is an honor to be invited to speak to you on

1 the subject of intermediate punishment from my
2 perspective as the warden of the Adams County
3 Prison.

4 I've been doing life on the
5 installment plan for the past 17 years. I began
6 my career in Montgomery County, Maryland, as a
7 correctional officer and advancing to middle
8 management there. In 1993, about the same time
9 Adams County established their Intermediate
10 Punishment Program, I took over as warden in
11 Clinton County, Pennsylvania. They had just
12 opened a new facility to alleviate the crowded
13 conditions of their old county jail. As did
14 many counties during that period, Clinton County
15 chose to build a facility so big they'd never
16 have to build another one for another hundred
17 and fifty years, so they thought.

18 The inmate population my first day was
19 30 with a capacity to hold 120. After awhile,
20 the prison board felt comfortable in renting
21 space to other agencies that had a need for
22 beds, and we were able to generate a substantial
23 amount of revenue over the years.

24 By the time I left to take this
25 position, our daily population was, surprise,

1 120. We were still making money at the expense
2 of others, but one phenomenon that did occur
3 there was the increase of our own inmates. The
4 population of Clinton County inmates had more
5 than doubled to a daily population of 65 in just
6 four and a half years. The most significant
7 increase was in the incarceration of female
8 offenders.

9 There were times in the early years
10 when we were able to close the female housing
11 unit. This had to have made some former
12 commissioner or other elected official cringe
13 since there had been a major debate over the
14 feasibility of housing females versus the cost
15 of housing them somewhere else. In due time,
16 the same officials were probably quite smug in
17 knowing we had outgrown the female housing unit
18 and had a female population that exceeded 20,
19 many of which we were being paid to hold.

20 The point I'm driving at is that, in
21 1993, we didn't really pay much attention to
22 Intermediate Punishment Programs in Clinton
23 County. We were more concerned with making
24 offenders feel the inconvenience of
25 incarceration. For a sixth class county, our

1 facility offered a wide array of programs there.
2 We went so far as to paint a couple of housing
3 units shocking pink to make sure the inmate
4 would not want to return.

5 By the time I was leaving, though, you
6 may recall this, Mr. Strader, we were looking at
7 building a restrictive intermediate punishment
8 addition to our facility. We became more
9 involved in electronic monitoring, house arrest,
10 et cetera. The feeling was that it did not make
11 much sense holding a nonviolent, first-time
12 offender from Clinton County in our prison if an
13 alternative was available, when we could rent
14 that individual's bed to another jurisdiction
15 and help relieve the tax burden on Clinton
16 County citizens. It made good business sense to
17 me and the elected officials.

18 Here in Adams County, I'm faced with a
19 quite different facility. I walked into the
20 Adams County Prison, ACP, on December 22nd,
21 1997. I was aware that overcrowding was an
22 issue here and found about 110 inmates in ACP.
23 Eight months later, we are holding 180 and
24 expect to receive at least ten state inmates
25 this week for court. You may wonder where we're

1 putting all these people. Well, stairwells,
2 dayrooms, or wherever we can find room for a
3 cot. I've been given the green light to use the
4 gymnasium for the overflow.

5 The prison's budget has suffered in
6 many aspects; food costs, medical costs,
7 clothing, mattresses, towels, sheets, et cetera.
8 In addition, there is an increased need for
9 staff due to the increased workload. As you can
10 see, the issue of overcrowding can have a
11 significant impact on the bottom line of any
12 county's budget.

13 The Commonwealth of Pennsylvania
14 addressed the problem of overcrowding by taking
15 on a massive prison expansion project. The
16 costs were great. The Department of Corrections
17 budget topped a billion dollars this year; yet,
18 the cost is spread throughout the Commonwealth.
19 On the local level, the cost of choosing the
20 same course of action in addition to the cost of
21 incarcerating an inmate will be shared by only a
22 few.

23 Of course, I'm not the only agency
24 affected by growth. The entire criminal justice
25 system in Adams County is experiencing system

1 crowding. That is why it is critical that
2 alternatives and programs addressing the causes
3 of criminality are made available to counties
4 like us.

5 For example, on Tuesday I had an
6 inmate tell me that he was wondering if I could
7 do anything to get him out of jail. I asked him
8 what the conditions were that caused him to be
9 incarcerated. He told me he was being held on a
10 burglary charge with a hundred dollar bail, and
11 it was his first offense. Well, I told him that
12 burglary was a serious offense, and he went on
13 to tell me that he was accused of stealing eight
14 Tootsie Rolls. Well, I did check and sure
15 enough, the bail was a hundred dollars. I
16 didn't confirm the Tootsie Roll claim, but it
17 would not surprise me.

18 Another inmate that I'm holding has
19 quite a few medical problems, one of which is an
20 addiction to heroin. He came in on a methadone
21 maintenance program, and with it came many
22 special needs. His sentence is six months,
23 mandatory, for driving under suspension.

24 As I walk through the facility, I am
25 surrounded by probation and parole violators.

1 Casualties of the war on drugs are also well
2 represented at ACP. As most of you are aware,
3 these are a few of the many factors contributing
4 to our overcrowding problem as well as everybody
5 else's.

6 Another issue that most jails are
7 experiencing as they increase in youthful
8 offenders, the adult time for adult crime
9 philosophy is forcing correctional staff to
10 utilize their parenting skills in dealing with
11 an immature inmate population. Correctional
12 officers find themselves checking an inmate's
13 homework now. Sometimes I feel like a principal
14 instead of a warden. It seems to me that the
15 inmates that are incarcerated for the reasons I
16 have just mentioned, nonviolent, substance
17 abusers, technical violators, and youthful
18 offenders would be better served as would the
19 public by offering intervention and providing
20 programs for them.

21 At some point, even with the offenders
22 I'm speaking about, jail is the only way to keep
23 the public safe. However, Adams County and
24 counties like it need your support in continuing
25 to try and change the revolving door syndrome.

1 My 17 years in jail has tended to make me
2 cynical about treatment; yet, I still believe
3 that as a professional, I must be flexible, take
4 risks, and search for ways to have a positive
5 impact on all inmates so they can return to the
6 community and not come back.

7 I do not see the successes, only the
8 failures, when they return to jail. Therefore,
9 it is worth noting that the majority of our
10 inmates who are from the community will be soon
11 returning to the community and have ties to the
12 community. We have approximately 40 inmates who
13 actually go out in the community and work on the
14 work-release program. This program is a great
15 benefit to the inmate and to their families. In
16 addition, they even pay a portion of their
17 incarceration costs and all medical costs.

18 However, running an adequate secure
19 correctional facility dictates that we enforce
20 the same rules and regulations that inmates who
21 do not leave the facility must abide by. The
22 reason is the potential introduction of
23 contraband. We have to be concerned with this
24 issue since our released inmates must be housed
25 with those that are not on release programs. It

1 just makes administering the program more
2 difficult than it should be, and would be if it
3 were run out of a facility that did not require
4 a heightened awareness of security.

5 Since not every inmate has a job or
6 wants one, many fit the eligibility requirements
7 for community service release. There are many
8 nonprofit agencies that would benefit from
9 inmate labor if they were aware of its
10 availability. There's nothing more irritating
11 to me than to see a group of healthy inmates
12 doing short county sentences sitting around all
13 day playing cards and playing checkers.

14 Unfortunately, manpower is not available from
15 the security staff to allow such a program to
16 grow into one that gives something positive back
17 to the community.

18 Another challenge for me is to provide
19 services to inmates that address the causes of
20 incarceration. First of all, the facility does
21 not even have the space to conduct programs.
22 I've had many agencies and individuals offer to
23 do their part in helping to get inmates the
24 services and programs they need. Many of them
25 cannot be accommodated because of space

1 limitations. Since I operate a secure facility,
2 opportunities for funding are limited.

3 Last week I went through several large
4 filing cabinets that contain past records of
5 inmate files. I was trying to make space by
6 cleaning out old files and reducing the number
7 of cabinets. Because of time constraints, I
8 could not do a research project; but I was
9 amazed at the number of files that indicated
10 someone had been incarcerated just one time
11 because of DUI or public drunkenness, riding a
12 bicycle on the sidewalk, and so on. There were
13 other files that were inches thick and go back
14 to the '80's. It sure seemed true that a small
15 percentage of people commit most of the crimes,
16 and a large percentage commit few crimes.

17 To summarize, Adams County needs
18 intermediate punishment, and we need your
19 continued interest in addressing problems at the
20 local level, especially since they will
21 eventually impact at the state level.

22 Finally, my position as warden does
23 not allow for much latitude in population
24 control. I'm the custodian and the keeper of
25 the keys. I keep inmates until it's time for

1 them to re-enter the community. I am a
2 stakeholder because I'm forced to absorb the
3 results of social and political opinions. That
4 is why it is essential that all stakeholders;
5 courts, probation and parole, district attorney,
6 sheriff, police, public defenders,
7 commissioners, legislators, take part in the
8 decisions governing local corrections.

9 If the goal is reducing costs,
10 recidivism, and crowding, then we need to keep
11 exploring for programs that address the causes
12 of overcrowding in local jails. If we just want
13 to punish, we need to make sure we build the
14 warehouse big enough so we won't have to do it
15 again for another hundred and fifty years.

16 Again, thank you for the privilege of
17 testifying before you, and I'd be happy to
18 answer any questions or comments you may have.

19 CHAIRPERSON MAITLAND: Before we do
20 the questions, I think we'll hear the testimony
21 from Adult Probation Chief, Larry Murray.
22 Larry, if you'll pull the mic over there, and
23 fire away when you're ready.

24 MR. MURRAY: I'd like to say hello to
25 the Honorable Stephen Maitland, and welcome the

1 prestigious Intermediate Punishment Task Force
2 to Adams County.

3 I recall having a conversation with
4 Representative Maitland many months ago
5 regarding the current Intermediate Punishment
6 Programs and the impact the programs have in
7 Adams County. We also informally discussed at
8 length the need for a county community
9 corrections approach in Pennsylvania as well as
10 here in Adams County. I can only humbly
11 presume that this is the product of our
12 conversation.

13 Before I begin, I'd like to briefly
14 tell you about my background. Honorable Judge
15 John MacPhail hired me in 1976 as a probation
16 and parole officer. I was appointed Chief Adult
17 Probation Officer May 2nd, 1983. I hold a
18 Masters of Science Degree from Villanova
19 University in Human Organization Science, and a
20 Master of Arts Degree from The Pennsylvania
21 State University in Justice Administration. I
22 am currently the Vice President of the County
23 Chief Adult Probation/Parole Officers
24 Association of Pennsylvania.

25 I've been invited to present testimony

1 regarding the basic issues surrounding
2 intermediate punishment and its operation here
3 in Adams County. I will also present some of my
4 personal observations and recommendations from a
5 local perspective to the task force.

6 In 1993, with the help of the
7 Pennsylvania Commission on Crime and Delinquency
8 Grant, Adams County began its Detention
9 Diversion Initiative Program as a component of
10 the county's Intermediate Punishment Plan which
11 was formally adopted the previous year. The
12 plan included, but was not limited, to house
13 arrest, intensive supervision, urinalysis
14 screening, community service, and bail
15 supervision, and graduated probation services.
16 In 1996, this program was expanded to include
17 electronic monitoring as part of the house
18 arrest program. This, too, was a result of a
19 grant through the Pennsylvania Commission on
20 Crime and Delinquency.

21 Cost effectiveness is often the sole
22 criteria for the formation of new programs
23 adopted by county governments. So, I'll briefly
24 critique two of our Intermediate Punishment
25 Programs employing this measure.

1 Community service, which was
2 instituted originally in 1982, was included in
3 the 1992 Intermediate Punishment Plan. In Adams
4 County, it should be noted all offenders must
5 perform 40 hours of community service. In many
6 cases, this has served as an alternative to
7 traditional incarceration. The concept of
8 community service is the creation of a working
9 relationship between the offender and the Adams
10 County community agency. This, in turn, allows
11 the agency to share in the responsibility of
12 rehabilitation and the reintegration of the
13 offender back into the community. In the past
14 two and a half years, 839 offenders have
15 completed court-ordered community service having
16 completed 33,560 hours of unpaid service to our
17 community.

18 In terms of cost effectiveness, \$6 per
19 hour as a fair compensation for work performed,
20 produces \$201,360 of unpaid work given back to
21 the community over the past two and a half
22 years.

23 These hours do not replace employment,
24 but rather enhances community agency staffs,
25 otherwise, they would not be able to accomplish

1 certain tasks and projects. Certainly,
2 reconciling the community and offenders helps
3 eliminate the public's fear of crime and
4 restores the public's confidence in the criminal
5 justice system.

6 Electronic monitoring in Adams County
7 has also shown to be an effective correction's
8 tool from a cost-effective perspective. Cost
9 savings as compared to traditional incarceration
10 are tremendous. Between April 1996 and April
11 1998, there were 375 offenders placed in the
12 electronic monitoring program in lieu of 18,817
13 jail days. Using \$44 as a viable per diem rate,
14 this yields an indirect savings in jail space of
15 \$827,948 or approximately \$414,000 annually to
16 the Adams County taxpayer against the cost of
17 adult probation supervision.

18 During this same time frame,
19 approximately \$103,208 was collected in
20 electronic monitoring fees from offenders with a
21 cost of \$68,233 paid by the county for
22 electronic monitoring services. This leaves an
23 excess of \$34,894, which was deposited in the
24 general county fund against the cost of adult
25 probation.

1 Equally, if not more important, is the
2 tremendous benefit to the general county
3 population. With nearly 100 percent of the
4 electronic monitoring program participants
5 employed in full-time jobs, there is an increase
6 in tax revenue as well as a decrease in need for
7 public assistance.

8 Certainly these nonviolent offenders
9 and their families see an increase in positive
10 family dynamics through a diversion from
11 traditional incarceration. It should be noted
12 that since 1996, only one electronic monitoring
13 participant in Adams County was arrested for a
14 new offense, and only six percent of the 375
15 offenders failed to successfully complete this
16 program.

17 I agree with a recent article in the
18 journal of the American Probation and Parole
19 Association Perspectives. Even with the success
20 of electronic monitoring, it will never be more
21 than a tool. It could not and should not take
22 the place of direct supervision and contact.

23 National television broadcasts as well
24 as recent editorials and newspaper articles have
25 sensationalized apparent failures of

1 community-based electronic monitoring programs
2 and technologies. As a result, many community
3 correction's budgets and programs have suffered
4 from inaccurate reporting from uninformed
5 journalism in other states. Therefore, it is
6 essential that Pennsylvania's correction's
7 professionals and decision makers not allow what
8 is reported in the media to unfairly taint
9 public attitudes about electronic monitoring
10 programs as a whole.

11 The Adams County Court of Common
12 Pleas, as part of its sentencing options,
13 currently sentences offenders to one of five
14 phases of the Intermediate Punishment Program.

15 Phase one is partial confinement with
16 work release. Phase two is house arrest with
17 electronic monitoring. Phase three is intensive
18 supervision. Phase four is intermediate
19 supervision. And Phase five is day reporting
20 probation supervision.

21 Between January 1st of this year and
22 April 30th, 1998, 117 offenders have been
23 sentenced to intermediate punishment, saving
24 3,535 jail days to the county just in this year
25 alone. I've included a report which outlines

1 Adams County's phase program and Intermediate
2 Punishment Prison Board reports, and I'll
3 furnish this information to the committee after
4 this.

5 According to the Bureau of Justice
6 Statistics, about one in every 35 adult
7 Americans was behind bars or on probation or
8 parole at the end of last year. As 1997 drew to
9 a close, a record 5.7 million Americans were
10 parolees, probationers, or inmates in the
11 nation's jails and prisons. This report also
12 indicated that one in every 155 U.S. residents
13 are in confinement. More important, the
14 steepest increase in incarceration took place in
15 local jails.

16 Adams County is encountering serious
17 prison overcrowding issues. We are, on the
18 average, more than 50 percent overcrowded with
19 male prisoners often forced to sleep on picnic
20 tables, and female prisoners at times sleeping
21 in shower facilities.

22 More and more frequently, violent
23 offenders are housed with detention status
24 nonviolent offenders, which has impacted the
25 security of the prison. This has resulted in

1 past prison escapes and serious work release
2 violations.

3 This mix of offenders has been a
4 source of stress for prison officials as well as
5 the District Attorney's Office since
6 work-release offenders are often coerced into
7 the smuggling of contraband into the prison, as
8 well as the intimidation of witnesses outside
9 the prison.

10 Our new warden, I must comment, has
11 done a tremendous job at working through these
12 extremely hard conditions at a prison facility
13 which, in his words, could in the future invite
14 Fifth (sic) Amendment rights challenges alleging
15 cruel and unusual punishment if these conditions
16 would continue.

17 Adams County instituted an alternative
18 sentencing strategy in 1993, and this initiative
19 has substantially helped with prison inmate
20 population control, reducing it by no less than
21 30 percent. However, the prison remains to be
22 approximately 50 percent overcrowded capacity.

23 President Judge Oscar Spicer and
24 District Attorney Mike George both support the
25 notion of separating the violent offender from

1 the nonviolent offender, creating a more
2 homogenized population, allowing more efficient
3 management of troublesome prisoners. The prison
4 warden, as well as the Adams County Commissioner
5 also holds this position.

6 Oftentimes, violent offenders require
7 special needs which the Adams County Prison
8 currently does not offer. Therefore, we have to
9 look towards the future and decide where the
10 public interest would best be served.

11 Public safety is protected when people
12 with serious behavioral control problems,
13 persistent mental illness, and/or chronic drug
14 and alcohol problems are stable. According to a
15 report by the National Center on Addiction and
16 Substance Abuse, 80 percent of the adults in
17 U.S. prisons are locked up because of criminal
18 activity linked to drug and alcohol abuse.

19 There seems to be some public support
20 for correctional treatment and rehabilitative
21 programs in recent studies, at least according
22 to Applegate, Cullen, and Fisher in a recent
23 article in the Prison Journal, September of '97.
24 Results of this study were strikingly similar to
25 a 1982 Harris poll. The public feels, according

1 to the study, that the main emphasis in prisons
2 should be rehabilitation, followed by the
3 protection of society, and then punishment.
4 Eighty-eight percent of the respondents agreed
5 that rehabilitation is at least a little
6 important, and that they favored the expansion
7 of treatment opportunities and that
8 rehabilitation would reduce the likelihood of
9 recidivism.

10 A new buzzword, which has been adopted
11 by many criminal justice agencies as well as a
12 theme for the juvenile justice system, is
13 restorative justice. A recent article in
14 Alternatives to Incarceration included some
15 interesting opinions which I hold true.

16 In the United States, we traditionally
17 have a retributive model of justice which
18 focuses on offenders and their punishments,
19 incarcerates violent repeat offenders, but it
20 does not, and many people argue that it cannot
21 adequately address victim and community harm;
22 nor does it give the offenders an adequate
23 opportunity to earn back their place in society.
24 Offenders who sit in a prison cell complete
25 their punishment, but the results do little to

1 reduce citizen fear of crime, heal victims, or
2 increase citizen satisfaction with the criminal
3 justice system.

4 Research indicates that the informed
5 public wants the nonviolent offender to work to
6 repay the community rather than to sit idly in
7 jail. Restorative justice condemns the criminal
8 act, holds offenders accountable, involves the
9 participants, and encourages repentant offenders
10 to earn their way back into the good graces of
11 society. Restorative justice considers crime an
12 act against the individual and the community
13 rather than the state. Restorative justice,
14 therefore, promotes stability of the offender.

15 Assuring stability means
16 implementation of community support systems,
17 which include the provisions of treatment and
18 rehabilitation programs focusing on
19 reintegrating the nonviolent offender back into
20 the community.

21 Stability also means directing
22 programs, which serve to aid in the recovery
23 from mental illness and other co-occurring
24 conditions, especially substance abuse. This
25 can be further accomplished by providing support

1 through the community network of professional,
2 family, and local human service providers.

3 Since late 1994, sentencing procedures
4 of the Adams County Court of Common Pleas have
5 included alternatives to long term incarceration
6 and traditional probation through the use of
7 restorative sanctions such as intensive
8 probation supervision, urinalysis screening,
9 community service, and drug and alcohol
10 intervention.

11 Restrictive sanctions such as partial
12 confinement with work release, house arrest,
13 and electronic monitoring and Pre-trial
14 Diversion Programs such as bail supervision and
15 an aggressive use of educational and
16 rehabilitative services which include alcohol
17 highway safety school, victim impact panels,
18 outpatient treatment, and job search referrals
19 are all utilized.

20 But more is needed if our goal is to
21 reintegrate the nonviolent offender from the
22 prison back to the community. The Justice
23 Department's Bureau of Justice Statistics stated
24 in its annual report that the number of
25 prisoners increased nationally by more than

1 96,000, or nearly five percent, from July 1st,
2 1996, to June 30th, 1997.

3 This is exasperated by the fact that,
4 according to the National Center on Addiction
5 and Substance Abuse statistics, of the
6 approximate 1.7 million persons incarcerated,
7 1.4 million adult men and women were
8 incarcerated for behavior influenced by alcohol
9 or narcotics.

10 When I began my career as a probation
11 officer in 1976, there were less than 300 total
12 cases which included juveniles. As of June
13 1998, there are 1,653 cases under supervision by
14 the Adams County Adult Probation Office. This
15 is an average of 118 cases per officer; this
16 does not include juvenile offenders.

17 This would appear to indicate that
18 county probation departments and county jails
19 are retaining many more violent offenders who
20 are awaiting trial or who have not been
21 sentenced to a state facility, but otherwise
22 pose a risk to society.

23 In Adams County, a separate facility
24 to house nonviolent inmates who are generally
25 eligible for work release would go far in

1 resolving security issues at the current
2 facility. We are also in need of a new prison
3 which could house the violent offenders.

4 As with any new initiative, there are
5 questions regarding the potential additional
6 cost of new services. Conventional wisdom
7 suggests that it is less expensive to provide
8 community correction services than to
9 continually build new prison facilities.

10 Intermediate punishment funds, in my
11 opinion, should be directed toward assisting
12 counties by adding probation staff, helping to
13 alleviate overpopulated and understaffed
14 probation caseloads. Monies should be earmarked
15 to help counties in their attempts to construct
16 and operate separate community correction
17 centers, which would allow the segregation of
18 violence-prone inmates from more manageable
19 nonviolent prisoners.

20 Defendants on work release or in other
21 treatment programs in intermediate punishment
22 could be moved from the prison to less secure
23 and less expensive centers. Prisons would
24 remain for violent offenders and the protection
25 of society.

1 Recognizing in Adams County that the
2 pre-trial population is a significant factor in
3 prison crowding, additional resources should be
4 devoted to pretrial services, which currently
5 operates on a bare thread budget by most adult
6 probation departments.

7 Pre-release programs are imperative to
8 the success or failure of the inmate. Future
9 needs must address -- Excuse me. However,
10 manpower shortages and overloaded caseloads
11 prevent program regularity. Future needs must
12 address these serious manpower shortages in
13 Adult Probation. My last page apparently is
14 missing.

15 There's always been a link between
16 drugs, alcohol, joblessness, and crime; yet we
17 seem powerless or unmotivated to treat the
18 inmate while incarcerated.

19 Properly staffed state-operated
20 pre-release and community correction programs
21 geared toward state offenders have demonstrated
22 that local diversion programs to some extent
23 work. They decrease recidivism rates. They
24 preserve public safety. And they provide
25 quality treatment and rehabilitative services.

1 In my opinion, it is time to apply what has been
2 learned on the state level to the county
3 criminal justice system. Thank you.

4 CHAIRPERSON MAITLAND: Mr. Murray,
5 thank you. Thanks to both gentlemen for your
6 testimony, and now I'd ask the panel if they
7 have any questions of either gentlemen.
8 Representative Walko.

9 REPRESENTATIVE WALKO: Thank you, Mr.
10 Chairman. Mr. Duran, I was just wondering --
11 Thank you for your testimony. You have been
12 surrounded by probation and parole violators.
13 Are many of those violations technical in
14 nature, and could something be done as far as
15 some alternative punishment for technical
16 violators? And do you feel as a warden that
17 they should be put back in jail if it's a --
18 they made a mistake, failed to give a new
19 address, or the like?

20 MR. DURAN: Well, he'd probably know
21 better than I, but I believe, generally, it's
22 technical violations of that nature. The more
23 serious offenders that relapse are probably
24 those who have been using substances, and
25 that's, I guess why they're there. But, I think

1 that when it comes to keeping them in a secure
2 facility then, since they're already out there,
3 will be going back out there, that's where your
4 community corrections facilities would be able to
5 better address why they violated to begin with.
6 That's why I also say that eventually people
7 don't get their programs, and that's why we have
8 jails.

9 MR. MURRAY: In most cases in Adams
10 County, we really feel we go the extra line for
11 all the offenders. Technical violators are not
12 traditionally just put in on their first
13 technical offense, unless they present a clear
14 and present danger to themselves, a clear and
15 present danger to society, or that they are a
16 threat to abscond from the jurisdiction of the
17 court. In all three of those, we would take
18 that person into custody for any reason.

19 But, under most circumstances, we
20 employ a graduated series of violations. We
21 give a verbal warning to the defendants, going
22 on to a written warning, going on to an informal
23 case review hearing, graduating to a gagnon
24 hearing if it does not involve intermediate
25 punishment, and eventually to a court hearing

1 which is a gagnon II hearing for most probation
2 and parole violators.

3 So, at every juncture, we feel we've
4 given the defendant an opportunity which he
5 signs off and agrees to. So, in most cases,
6 unless you have a defendant who's creating an
7 atmosphere of violence and/or potential
8 violence, or continued drug use or continued
9 drug money making, we would take that defendant
10 off the street. But in most cases, they're
11 technical violators and we're not. So, we're
12 not just haphazardly putting people in jail. We
13 feel that the person needs a sanction and he
14 needs to be removed from the street at that
15 time.

16 REPRESENTATIVE WALKO: And Mr. Duran,
17 you have referred a number of times to the
18 causes of indigence, the causes of crime, I
19 believe, and what causes overcrowding. I was
20 just wondering if you had any thoughts -- I know
21 you'd probably interact a lot with prisoners,
22 and you get to know them, and you know their
23 background. Do you have any suggestions in that
24 area?

25 MR. DURAN: Well, that was addressed

1 as well. A lot of that reverts back -- The
2 jails would be empty if it wasn't for drugs and
3 alcohol, I believe. I've been seeing it for a
4 long time as he has, I'm sure. And
5 education -- A lot of it is how you're brought
6 up; in what social setting. But, that doesn't
7 mean, you know, if everything's perfect,
8 something still wouldn't happen. I just think
9 those are the issues we've identified as causing
10 people to break laws. So I think we're
11 obligated to try and break this cycle.

12 REPRESENTATIVE WALKO: Mr. Murray, you
13 had talked about community service and the value
14 of that. What is the mechanism that's used to
15 implement community service programs in Adams
16 County?

17 MR. MURRAY: Well, we're probably a
18 little more unique in our approach; meaning
19 that, as I stated before, we had already adopted
20 a community service program before the invention
21 of intermediate punishment. Our judges had
22 taken the position that every offender must
23 complete 40 hours of unpaid community service
24 back to the community regardless. The exception
25 to that would be, the defendant who presents

1 some physical problem that he could not -- or it
2 would create an undue hardship on the
3 defendant's family.

4 So, you know, at first approach that's
5 what makes it a little different than it's not
6 always used to divert somebody from the county
7 prison. It's part of every probation sentence.
8 It's part of every ARD sentence. It's part of
9 every parole and every intermediate punishment
10 sentence.

11 REPRESENTATIVE WALKO: I was wondering
12 if there's any community structure to that
13 effort. For example, in Vermont, I believe in
14 Minnesota they might be moving toward -- In
15 Vermont they already have reparative boards,
16 which involve community members actually
17 supervising the activities of nonviolent
18 offenders who are sort of sentenced to programs
19 that will be overseen by the reparative boards.
20 You've got the House Judiciary Committee that
21 has a task force on that very subject, but I was
22 wondering if there is any community structure to
23 your efforts?

24 MR. MURRAY: Well, if I'm
25 understanding what you mean by community

1 structures, in Adams County we are certainly
2 integrating the offender into the community
3 through our local nonprofit organizations. They
4 are overseen by the local nonprofit
5 organizations. The work that is constructed is
6 supervised by the community agencies in that
7 area.

8 REPRESENTATIVE WALKO: So, you have
9 sort of a de facto reparative board concept
10 that's being implemented.

11 MR. MURRAY: Yes, sir.

12 REPRESENTATIVE WALKO: I was just
13 wondering, finally, do you see these programs as
14 fostering improved payment of restitution to
15 victims? Do you see that improving with these
16 sort of restorative justice-oriented programs?

17 MR. MURRAY: Well, I think that if
18 nothing else in the case of community service,
19 it is introducing offenders to the job world
20 where they may never have been introduced
21 before, or never had the desire to be in before.
22 Some of these volunteer community work sites
23 have resulted in jobs for them. So, certainly,
24 you know, in turn, that's a domino effect that
25 the victim is, in turn, repaid and the defendant

1 is becoming more productive in his societal
2 duties.

3 REPRESENTATIVE WALKO: Thank you very
4 much. Thank you, Mr. Chairman.

5 CHAIRPERSON MAITLAND: Representative
6 Masland.

7 REPRESENTATIVE MASLAND: Thank you,
8 Mr. Chairman. First of all, Mr. Duran and Mr.
9 Murray, based on the statistics you gave us, Mr.
10 Murray, on the per diem rate, it would appear
11 that the cost, approximately, of housing an
12 inmate in Adams County Prison for a year is a
13 little over \$16,000. Is that accurate, or is it
14 a little bit higher?

15 MR. MURRAY: I guess when you look at
16 a per diem rate, I guess that almost changes,
17 because for every warden that's been out there
18 I've had a different per diem rate and --

19 REPRESENTATIVE MASLAND: It's pretty
20 safe to say that it doesn't go down.

21 MR. MURRAY: It doesn't go down.

22 REPRESENTATIVE MASLAND: I know that
23 the cost of housing an inmate in a state
24 institution is probably closer to thirty
25 thousand now. It had been twenty-five, but that

1 certainly is close. Would you say, Mr. Duran,
2 that the largest percentage of your budget goes
3 towards staffing and personnel costs? Is that
4 fair?

5 MR. DURAN: Yes, two-thirds.

6 REPRESENTATIVE MASLAND: You can put
7 the prisoners in the gym, but you still need to
8 have somebody to watch them; maybe even more
9 people to watch them if they're just in the gym.

10 MR. DURAN: That's what happens, yeah.

11 REPRESENTATIVE MASLAND: You both
12 talked about something, actually, that Mr.
13 George had talked about too; and that is the
14 problem of mixing inmates, a DUI offender with a
15 burglary offender, et cetera. I've often
16 thought about that.

17 This is something I think we need to
18 consider at the state level, too, especially for
19 those inmates that get the state sentences for
20 DUI offenses, the homicide by vehicle or the
21 third or fourth offense where they had that
22 mandatory one-year minimum. And sometimes,
23 maybe in Adams County, I know in Cumberland
24 County and other places, sometimes the judges
25 are hesitant to house them in the state prison,

1 and they allow them to serve their time in the
2 county. Has that happened?

3 MR. DURAN: Yes, sir.

4 REPRESENTATIVE MASLAND: Because they
5 don't think those people should be next to the
6 murderers and rapists, which makes sense.

7 What I think we need to consider, I'll
8 just bounce this off you, some type of regional
9 facilities for DUI offenders where maybe some of
10 the county offenders can be housed, but also
11 some of these state-type offenses that should
12 not be thrown in with the mix of everybody else.
13 Maybe we need facilities like that for drug and
14 alcohol. There might be some other, certainly
15 sex offenders, we might have some type of
16 specialty or regional approach. What are your
17 thoughts on that?

18 MR. MURRAY: Well, it's quite evident
19 that what's happening now is not working. We're
20 creating an atmosphere which is fostering
21 further criminality. Karl Menninger's aspects
22 of prison many, many years ago hold true today.
23 There's still dens of iniquity, cesspools of
24 crime, and, you know, it's a learning experience
25 that I don't think anyone should have to be put

1 through. But as the warden pointed out, and the
2 District Attorney pointed out, there are bad
3 guys out there and there are violent people that
4 need to be removed from society.

5 Our question, and I believe that we're
6 posing in a panel today, is do we want to mix
7 those people with the people that have some
8 redeemable qualities that can be helped; and
9 should they be served, side by side in a cell
10 with that violent offender that's come through
11 the juvenile system, and then come into the
12 juvenile probation system, and then come into
13 the adult system, and eventually made it to the
14 state system. Should they be housed together?
15 This isn't working, so any alternative would
16 certainly be helpful.

17 REPRESENTATIVE MASLAND: Well, it
18 strikes me that when some of the smaller
19 counties as you said, like, when Clinton County
20 had 15 people, why, obviously, you're not going
21 to break it down into, well, this is our one
22 cell for T-ball offenders. But as you get
23 larger and larger, you can do that to a certain
24 extent within the county prison, but there are
25 limits to that. You really can't segregate

1 people that easily.

2 Even if you were to build a new
3 facility, that might be outdated in a few years,
4 and may be something that we need to take a
5 regional approach and consider a facility that's
6 designed to house those people that otherwise it
7 would seem that the county judges are hesitant
8 to send off to a state prison. Because, as you
9 said, you mentioned that you were irritated to
10 see people as you walk down the hall seeing
11 prisoners playing checkers because there's
12 nothing for them to do.

13 I've walked down the halls or down the
14 cell block in Graterford Prison not long after
15 it was locked down because of problems last
16 year, and that wasn't irritating; that was
17 unnerving to walk by those folks when they were
18 just playing checkers. And I don't know if they
19 were really playing checkers, or just an excuse
20 to have them move something around. I walked a
21 little bit more briskly than -- And we only had
22 a couple guards walking with us, so I wasn't
23 quite as comfortable as I might have been.
24 Thank you for your input.

25 MR. DURAN: Thank you.

1 CHAIRPERSON MAITLAND: Representative
2 Dally.

3 REPRESENTATIVE DALLY: Mr. Murray, you
4 mentioned in your conclusions about gearing a
5 local program toward a state-operated -- You
6 mentioned state-operated prereleasing Community
7 Corrections Program. When you used the term,
8 local diversion programs work, what do you mean
9 by local diversion?

10 MR. MURRAY: Well, I believe that, for
11 instance, the Community Corrections Center
12 that's state run in Harrisburg, you know,
13 involves local diversion of some outside
14 services. So, these people undergo security
15 employment outside. They're going to get drug
16 and alcohol treatment outside. So, it's
17 community treatment.

18 In Adams County, I mean there are
19 state offenders from all over that are being
20 treated in Dauphin County. What we're saying is
21 that on county-by-county basis, let's have Adams
22 County treat our own. It's our problem. You
23 know, they're going to be reintegrated back here
24 anyway. They're going to come back. Let's take
25 control of our offenders while we have them here

1 and try to give them every opportunity to
2 reintegrate back in.

3 CHAIRPERSON MAITLAND: Gentlemen,
4 thank you very much for your testimony. I
5 invite you to stay for the remainder of the day.
6 Again, thank you.

7 I'd like to call up our Adams County
8 Commissioner, Thomas Collins. Commissioner
9 Collins serves on the Adams County Prison Board.

10 COMMISSIONER COLLINS: Would I have
11 the opportunity to -- I see one of my fellow
12 commissioners is here. Would I have the
13 opportunity to have him come up as well?

14 CHAIRPERSON MAITLAND: Yes.
15 Commissioner Stokes, would you like to join
16 Commissioner Collins? Okay. Please begin.

17 COMMISSIONER COLLINS: Thank you.
18 Good morning. Representative Maitland and
19 distinguished members of the House Judiciary
20 Committee Task Force on Intermediate Punishment,
21 and other invited guests and interested
22 citizens: Good morning.

23 And on behalf of my fellow
24 commissioners from Adams County, I welcome you
25 to Adams County. I appreciate the opportunity

1 to bring to you the county commissioner
2 perspective on the successes and shortcomings of
3 the Intermediate Punishment Program.

4 You have already heard from several of
5 my colleagues from Adams County who are very
6 familiar with the program. They've also given
7 rise to some very alarming statistics for our
8 county. When Warden Tom Duran assumed his
9 position with Adams County in December 1997, we
10 had an average daily prison population of 110
11 individuals. This week our total will hit 190.
12 This is an increase of 74 percent in just eight
13 months. Projected to next January, we could be
14 struggling with a population approaching 230
15 persons. A truly staggering number for a
16 facility designed to hold 100 prisoners.

17 I shudder to think where we would be
18 without the Intermediate Punishment Program.
19 House arrest, community service, electronic
20 monitoring have all served to stem the rising
21 prison population. But we are now faced with
22 the inevitability of constructing a new prison.
23 From a financial standpoint, county prisons are
24 a huge drain for local taxpayers.

25 County commissioners and wardens

1 struggle to be as innovative as possible to keep
2 operating costs under control. There is just so
3 far that counties can go to accomplish this act.

4 A number of counties are exploring the
5 possibility of opening community correction
6 centers, an operation that would provide housing
7 for those persons placed in the
8 work-release program. It would allow for the
9 physical separation by facility of inmates that
10 participate in work release, away from those
11 whose crimes prevent their participation, thus
12 eliminating the potential introduction of
13 contraband into a secure facility.

14 Any assistance that can come from the
15 state to the counties for the development,
16 financing, and implementation of such
17 alternatives to regular incarceration will be
18 enthusiastically received by county
19 commissioners across the Commonwealth.

20 The state's participation in such a
21 program would also go a long way toward helping
22 counties with their costs for housing
23 state-sentenced prisoners serving their
24 sentences in county facilities. I encourage the
25 members of this task force to strongly recommend

1 to their colleagues on the Judiciary Committee
2 that this become an avenue worth pursuing.

3 As all our secure facilities continue
4 to see staggering growth patterns, it appears
5 that continued pressure will be brought to bear
6 upon all of us to bring forth plans and programs
7 capable of solving this dilemma. Intermediate
8 punishment plays a very important part of that
9 equation.

10 I truly believe the state's investment
11 in county community correction facilities will
12 pay back considerable dividends. Give the
13 counties the authority and the funds to build
14 such facilities, and every dollar will return to
15 you many times over. These facilities are
16 considerably less expensive to build and to
17 operate. And those within the program pay a
18 considerable portion of the operating costs of
19 such a facility, the bottom line will be much
20 more controllable.

21 I'd like to thank you for the
22 opportunity to give you my perspectives, and
23 I'll be very happy to answer any questions you
24 might have.

25 One thing when I was listening to

1 Representative Masland, one comment that he made
2 I thought was a great idea. The regional
3 centers for state-sentenced prisoners, I think
4 that has a lot of possibilities. I certainly
5 have always -- And I've been a county
6 commissioner except for a five-year hiatus in
7 1991 for 16 years.

8 I've been involved with prison for
9 almost all those 16 years, and I've always
10 cringed at the idea of sending someone to prison
11 for a very demeaning and small crime, and
12 placing them next to that prisoner who's been in
13 there for 24 or 30 months; or he's a
14 swinging-door prisoner who's been out and
15 assault, back in the prison. We're doing
16 nothing to help those people. We need to
17 separate them from the people that need to do
18 the hard time. And I see these facilities as
19 means of doing that, both on a county and a
20 state level.

21 CHAIRPERSON MAITLAND: Mr. Stokes, do
22 you have anything to add to the testimony?

23 COMMISSIONER STOKES: Well, I'd like
24 to thank Commissioner Collins for taking the
25 leadership on this issue for our Board, and

1 providing this testimony. I strongly concur
2 with his testimony. This approach, this
3 intermediate punishment and community
4 corrections facility approach, is I think our
5 last, best hope to control the costs with regard
6 to the penal responsibilities that counties
7 have.

8 If we can re-educate and reform people
9 before they become serious hardened criminals,
10 obviously then, we are performing a very
11 valuable service for you in taking these people
12 out of the system and preventing them from
13 committing the types of crimes that will cause
14 them to end up in state facilities.

15 So, the point that Commissioner
16 Collins made about segregating populations and
17 keeping the people who are guilty of nonviolent
18 petty crimes out of our county prisons and in
19 the community corrections facility where they
20 have a chance to put their lives in order with a
21 certain amount of supervision is, I think, a
22 tremendous part of the overall potential for
23 this program, quite apart from our ability to
24 save very substantial costs.

25 So, I thank Commissioner Collins. I

1 support his testimony very strongly, and I thank
2 you all for undertaking this inquiry and meeting
3 here in Adams County.

4 CHAIRPERSON MAITLAND: Thank you,
5 Commissioner Stokes.

6 Before I open this to the panel for
7 questions, I have two questions for Commissioner
8 Collins.

9 First, District Attorney Mike George
10 commented that he felt the supervision of
11 Intermediate Punishment Programs should be
12 removed from the prison boards and returned to
13 the court and to the adult probation system. As
14 Chairman of the Prison Board, what are your
15 feelings on that?

16 COMMISSIONER COLLINS: I certainly
17 would not disagree with that. I think that's
18 where it belongs. I think that if Probation and
19 Parole is able to -- They're going to be dealing
20 with these people almost on a daily basis, and I
21 think it provides an opportunity, therefore, to
22 work directly with them, provide education
23 programs, provide rehabilitation programs; it
24 makes sense to me.

25 CHAIRPERSON MAITLAND: And my second

1 point or question is, for the authority for
2 counties to build and operate community
3 correction centers, work release centers,
4 halfway houses, do you feel that authority is
5 lacking in the law or that you are in a gray
6 area as you proceed without something specific
7 being in the law?

8 COMMISSIONER COLLINS: I think we feel
9 that we're, perhaps, in a gray area. I think
10 we'd like to have that delineated for sure, that
11 we know that we can do that type of program.
12 And once we have that knowledge, then we think
13 we can be successful with that.

14 CHAIRPERSON MAITLAND: Okay. Thank
15 you. I'll ask my colleagues if they have any
16 questions. Representative Walko.

17 REPRESENTATIVE WALKO: Just one brief
18 one. Thank you, Commissioner. It's great to be
19 here in Adams County. I come from the City of
20 Pittsburgh, and we know you have a great rep
21 there, and we also appreciate when our people
22 come to visit your wonderful county and the
23 great hospitality you always extend.

24 COMMISSIONER COLLINS: We appreciate
25 your thoughts, and tell you that we just

1 returned from your city where we had our
2 convention this year right across from Point
3 Park, and the Regatta was in town. We
4 thoroughly enjoyed our visit to Pittsburgh.

5 REPRESENTATIVE WALKO: Great. Thank
6 you very much.

7 COMMISSIONER COLLINS: It's a great
8 city.

9 REPRESENTATIVE WALKO: Well, I was
10 just wondering, are you definitely building a
11 new prison here in Adams County?

12 COMMISSIONER COLLINS: Yes, sir, we
13 are.

14 REPRESENTATIVE WALKO: And how are you
15 going to fund that?

16 COMMISSIONER COLLINS: Well, I'm
17 looking around the room, and I see a few of us
18 that are going to help fund it: Representative
19 Maitland, myself. The bottom line is, counties
20 foot the bill for prisons, expansions, growth.
21 We certainly are not looking forward to it, but
22 we have no choice. We have a very old facility,
23 originally built in the 1940's; expanded in 1980
24 to handle 32 work-release prisoners. We
25 currently have about two and a half times that

1 many in that portion of the facility. We're a
2 prison never built to house females. We've had
3 as many as 28 females in that system at one
4 time.

5 I shudder, as Prison Board Chairman,
6 to think if we ever have a juvenile create a
7 violent, violent crime that forces us to
8 incarcerate he or she in our prison facility,
9 what we would do? What arrangements would we
10 have to make?

11 So, we are definitely going to build a
12 new facility. We are looking at the option of
13 two separate facilities, a prison and some type
14 of community corrections facility. We think
15 that's the only answer.

16 REPRESENTATIVE WALKO: Thank you.
17 Thank you, Mr. Chairman.

18 CHAIRPERSON MAITLAND: Representative
19 Masland.

20 REPRESENTATIVE MASLAND: Just a couple
21 brief questions. Thank you, Mr. Collins and Mr.
22 Stokes.

23 On the community corrections center
24 question in terms of funding for that, at
25 PCCD--and I'm the Commissioner there--we fund a

1 whole lot of mostly seed programs. We fund a
2 whole lot different programs. I'm not sure
3 whether anything under the drug control system
4 improves because of that. I'm not sure what we
5 do. I'll kind of look it over to the PCCD folks
6 who are going to be up here later on, and Jim,
7 if you who can answer all these questions about
8 that. There may be something there, and if
9 there isn't, maybe that's where we can look, if
10 not from general fund revenues in the state,
11 because it does make sense to give some
12 assistance.

13 And that's really where I was coming
14 from with the regional centers. I don't think
15 we can expect every county to have such highly
16 refined county prisons that they can deal with
17 all the different problems appropriately. You
18 want to deal with them wisely. Maybe we need
19 some regional facilities. So, I'll ask Mr.
20 Strader from PCCD to look into those issues.
21 Thank you again, Mr. Collins.

22 COMMISSIONER COLLINS: I would say in
23 response to you that, I think that's a great
24 idea. I think I speak for a lot of county
25 commissioners statewide who would be very, very

1 willing to work with this committee and the
2 Legislature to see that things like that took
3 place.

4 We struggle on a day-to-day basis to
5 fund our prisons along with the rest of the
6 criminal justice system in our counties. And as
7 these costs continue, they escalate not only for
8 us, but you at the state level see it, and I
9 think any way that we can take a nick out of
10 that cost and not only reduce cost, but I think
11 it's a win-win situation. I think you actually
12 succeed in saving some of these souls, and
13 that's what we're in the prison business for,
14 rehabilitation. At least at the county level,
15 that's my thinking of why we have prisons. So,
16 if we could do that on a regional basis, I think
17 you'll get the cooperation from the county
18 commissioners to do that.

19 REPRESENTATIVE MASLAND: You don't
20 want to see folks graduate from the county to
21 the state, which unfortunately does happen.

22 COMMISSIONER COLLINS: It certainly
23 does.

24 REPRESENTATIVE MASLAND: I'll be happy
25 to work with the county commissioners, and I see

1 Diane Bozak sitting back there. If there is
2 something we can do on the line of reaching
3 facilities, I'd be happy to work with you.

4 COMMISSIONER COLLINS: Thank you. I
5 appreciate that.

6 REPRESENTATIVE MASLAND: Let me
7 apologize now, Mr. Chairman, I'm going to have
8 to leave before the rest of the witnesses are
9 here. I'm from the beautiful City of Carlisle.
10 You'll want to visit that, too. I put a little
11 plug in there. But, I will make sure I read all
12 the testimony. Thank you, everybody.

13 CHAIRPERSON MAITLAND: Thank you.
14 Representative Dally.

15 REPRESENTATIVE DALLY: Thank you, Mr.
16 Collins, Mr. Stokes. I'm happy to be here in
17 Adams County. I'm from Lehigh Valley,
18 Northampton County, outside a little town
19 Nazareth.

20 You mentioned about these community
21 facilities. What are the feelings of
22 commissioners in larger counties? I know in the
23 Lehigh Valley, both Lehigh and Northampton
24 counties already operate their own work-release
25 facility, opposite of us being economists is a

1 scale that are recognized after you get to a
2 certain level. So, I'm wondering through state
3 funding afforded these regional facilities, what
4 happens to those counties that already have the
5 facilities established?

6 COMMISSIONER COLLINS: That's an
7 interesting question, and I don't know if I can
8 answer it at this time. But it's a diplomatic
9 way of getting out of it.

10 REPRESENTATIVE DALLY: Very well.
11 That's fair. Thanks.

12 CHAIRPERSON MAITLAND: Just one last
13 question for me, Commissioners. I know you
14 didn't bring your county's books with you today,
15 but what is the county budget; and what is the
16 prison budget in comparative terms, roughly?

17 COMMISSIONER COLLINS: Probably the
18 comparative -- probably around two million for
19 the county prison operating budget. We're
20 probably going to probably be 13 to 20 percent
21 over budget this year, simply because of the
22 spike in the number of people imprisoned. It
23 translates directly into staff and food costs
24 and so forth. That's two million out of
25 approximately a sixteen million dollar general

1 fund budget, so, you know, you're looking at an
2 eighth of the cost of county government just to
3 operate the prison.

4 CHAIRPERSON MAITLAND: That's 12
5 percent or so.

6 COMMISSIONER COLLINS: Yes.

7 CHAIRPERSON MAITLAND: And is there
8 any ballpark figures of what it would cost to
9 build a new facility?

10 COMMISSIONER COLLINS: We're not
11 really to that point. We have an engineering
12 firm giving us some options. They're going to
13 be coming back in October with some approximate
14 costs. I'm guessing it's probably going to be
15 in the six to eight million dollar range for
16 both facilities.

17 COMMISSIONER STOKES: But one thing to
18 note, the community corrections facility affords
19 us some potential for cost savings on the
20 building, the accouterments, the entire physical
21 plan. To build a "prison prison" is, as you can
22 well imagine, a very expensive undertaking. The
23 community corrections facility does offer a
24 potential savings on the capital.

25 COMMISSIONER COLLINS: You know, the

1 irony of this, back when we had 110 prisoners in
2 the prison eight months ago, and we said we need
3 to look at a new prison, now we're 190 in just
4 eight months. That's a scary jump. And when
5 you start saying to the engineering firm, look
6 at a prison for 250 population, all of a sudden,
7 250 isn't that far off. That is just downright
8 scary.

9 The county commissioners would have to
10 pay the funding. So, if we can find
11 alternatives that are less costly, and I think
12 more positive results will be coming from them,
13 then it's a win-win for all of us.

14 CHAIRPERSON MAITLAND: Thank you,
15 gentlemen.

16 COMMISSIONER COLLINS: Thank you very
17 much.

18 CHAIRPERSON MAITLAND: I invite you to
19 stay the remainder of the day and for lunch.

20 COMMISSIONER COLLINS: Thank you.

21 CHAIRPERSON MAITLAND: I'd like to
22 call up the Honorable Scott D. Keller, President
23 Judge of the Berks County Court of Common Pleas.
24 Judge Keller, thank you for attending today and
25 please proceed with your testimony.

1 HONORABLE KELLER: Thank you, members
2 of the House Judiciary Committee Task Force on
3 Intermediate Punishment. It is indeed a
4 pleasure for me to testify today.

5 Before I begin with my prepared
6 remarks, just a little bit about my background.
7 I've been President Judge since January of this
8 year. I've been Sitting Judge for over nine
9 years, most of which I've been either a member
10 of the Criminal Division, or Chairman of the
11 Criminal Division, so that I have exclusively
12 dealt with criminal cases in our county. So,
13 this is an area that I think I'm fairly familiar
14 with.

15 Through the grants from PCCD and other
16 special projects, Berks County has been very
17 much involved in the Intermediate Punishment
18 Programs, either those that are statutorily
19 required, or that we began on our own for a
20 number of years.

21 My prepared remarks really address the
22 non-DUI offender. We have programs for the DUI
23 offender, and we utilize inpatient
24 hospitalization as a vehicle where we save jail
25 days at the county prison, and they are

1 substantial.

2 However, I think probably your focus
3 now is to see how the more recent efforts at
4 utilizing intermediate punishment in a non-DUI
5 setting to see if that's having any impact on
6 our jail population, and also the possibility of
7 impacting the state population. So that, the
8 numbers that I will be talking about may appear
9 to be relatively small, I think you should
10 remember we are dealing with those offenders who
11 abide by statutory definition, would ordinarily
12 have been sentenced to either BCP or to a state
13 correctional facility.

14 So that, please do not take the
15 paucity of the numbers we are dealing with as an
16 indication that we are not happy with the
17 programs, or don't think that they aren't having
18 some impact. I think you must remember the
19 population we're dealing with.

20 Since 1995, Berks County has been
21 implementing the Intermediate Punishment Act in
22 a very formalized fashion. We have obtained
23 grants from the Pennsylvania Commission on Crime
24 and Delinquency to fund positions that have
25 included an Intermediate Punishment Director,

1 Assistant District Attorney, Public Defender
2 representative, a Prison Society Case Manager,
3 Adult Probation Officer and a TASC Case Manager.

4 For this process to begin, it usually
5 begins with a defense counsel who identifies a
6 possible IPP candidate. We have developed a
7 special Intermediate Punishment Application
8 which must be submitted before consideration by
9 the IPP Committee. The committee is made up of
10 the individuals I've just mentioned. They meet
11 on a bi-weekly basis, and they review the
12 application.

13 The Assistant District Attorney checks
14 the defendant's criminal history and contacts
15 the police and victim, if any, regarding an IPP
16 recommendation. The defendant submits to a TASC
17 evaluation for D/A treatment and the probation
18 officer performs a home assessment for
19 electronic monitoring, if that is one of the
20 options that is being considered.

21 CHAIRPERSON MAITLAND: Your Honor,
22 what is TASC?

23 HONORABLE KELLER: Treatment
24 Alternatives to Street Crime. It's our -- the
25 folks who do all the evaluations for D/A

1 problems.

2 CHAIRPERSON MAITLAND: Thank you.

3 HONORABLE KELLER: I'm sure every
4 county has one, but they call it something
5 different.

6 Once all the information is obtained
7 on a defendant, the committee makes a
8 recommendation as a group. As a trial judge, I
9 am only cognizant of this activity by virtue of
10 requests for continuances from the defendant
11 for -- in order for them to complete the IPP
12 process.

13 We had hoped that we would be able to
14 identify that offender a bit earlier in the
15 process, but reality being as it is, we get the
16 application a little bit later than we had
17 hoped, but it does take some time.

18 If the defendant is approved by the
19 committee, he or she then pleads guilty with the
20 recommendation of IP sentence. I am not aware
21 of any case where any of our local trial judges
22 have refused to place a person on IP after a
23 committee recommendation.

24 Conversely, rarely is someone
25 sentenced to IP if the committee rejects the

1 recommendation. This process does take some
2 time, but allows for a thorough analysis of
3 treatment needs and as a practical matter will
4 provide the offender with an opportunity to
5 detox if there is substance abuse problem.

6 In the calendar year 1997, there were
7 199 IP applications for 156 offenders filed.
8 There were 62 offenders sentenced directly to IP
9 from prison. Sentencing options including
10 patient treatment, electronic monitoring,
11 halfway house placements, intensive supervision,
12 and community service.

13 During that period, 17 offenders
14 successfully completed the IP program and 17
15 were terminated; however, only one was
16 terminated for a new arrest. For those
17 offenders who were complying with the program in
18 1997, 3,030 jail days were estimated saved.

19 In the first six months of 1998, we
20 have had 15 successfully complete their IP
21 program with only eight unsuccessful. Estimated
22 saved jail days 3,690. Within the last several
23 months, we have seen an increase in IP
24 applications. However, we have found the most
25 often cited reasons for nonconsideration by the

1 court of an IP sentence to be: Number one being
2 ineligible underlying offense, because, as you
3 know, there are certain offenses that cannot be
4 considered for IP. There is also ineligibility
5 due to prior or present violent behavior, and
6 occasionally, reason for nonconsideration was
7 the unwillingness of the defendant to agree to
8 all the conditions.

9 Once faced with prospects of doing
10 inpatient treatment, halfway house, urine
11 surveillance, community service, they say, I'd
12 rather do my time. And I think you'll find that
13 that is also present across the Commonwealth.
14 There's a certain segment of offenders who
15 really don't want to have to go through what we
16 put them through.

17 Although we are still in the infant
18 stages of IP, I am pleased with the results so
19 far, especially the success rate in the first
20 six months of this year.

21 In speaking with the IP Director, it
22 appears the greatest debate concerning
23 eligibility revolves around the term present or
24 past violent behavior. I'll digress a little
25 bit.

1 Sometimes we have individuals with
2 indirect criminal contempt due to prior
3 situations, a domestic situation. It may not
4 necessarily involve violence, but it ends up in
5 a conviction. This has been interpreted by our
6 D.A. as being an indication of violent behavior
7 and would make that person ineligible.

8 So, when you have in that statute the
9 definition, prior or present violent behavior,
10 it's a nebulous term, which I think that if
11 you're looking for any changes in your
12 legislation, you may want to look at that,
13 either identify specific prior offenses, or I've
14 actually considered eliminating that because it
15 is so subject to some subjective analysis. And
16 when you asked for the testimony, it's from the
17 trial judge's perspective. Allow us then to
18 decide whether or not when we look at the entire
19 record of this individual whether or not
20 whatever occurred in the past is something that
21 would preclude that person from being place in
22 IP.

23 But, once you identify a specific
24 ineligibility factor such as that, it's
25 difficult then, you can't expand beyond that.

1 So that is a major problem. I'm not exactly --
2 And I guess I can address, again, I don't
3 necessarily think you should toy with the list
4 of ineligible offenses. I look at them and I
5 don't really know that I would suggest that you
6 remove any of those --

7 Although there could be an argument,
8 and I'm sure some trial judges would make that
9 argument that, once again, let us determine in
10 your first instance have those statutorily
11 excludable items that you are not allowing to us
12 to make that ultimate decision which we would
13 hope that you would have the trust that you
14 would allow us to do.

15 On Monday I sentenced a man to 11 and
16 a half months to 23 months at Berks County
17 Prison. The offense was an accident involving
18 death or personal injury. It was a hit-and-run
19 accident. The other driver was slightly
20 injured, but because of the defendant's
21 prior, basically, criminal behavior associated
22 with drugs and drug abuse, he was on a prior
23 record score that put the standard range at 11
24 and a half months. So that, most of our local
25 trial judges, myself included, are a standard

1 range sentencers.

2 We think the guidelines are fairly
3 reflective of a person's background and we do
4 follow those. This individual was not allowed
5 to be considered for IP, even though he did
6 apply, because he had a prior robbery
7 adjudication as a juvenile. He's currently 28
8 at the time. So that, he was ineligible for
9 that, for the IP.

10 I sentenced him to 11 and a half to
11 23. I can't recall what exactly his time served
12 was at that point in time, but I most likely
13 would have gotten him out of the prison setting
14 a lot earlier into treatment if we had been
15 allowed to consider him for IP.

16 Also, conversely, then I also the same
17 day sentenced a person to IP for three years
18 with a charge of delivery of heroin. It was a
19 small amount. Again, he was facing a standard
20 range of 15 to 21 months which would have been a
21 state correctional facility sentence as far as
22 I'm concerned; most likely, from any of our
23 judges in the county.

24 I put him on three years IP. He was
25 also -- I think the conditions were a number of

1 months of inpatient treatment to be followed by
2 halfway house, to be followed by community
3 service and intensive supervision; all the
4 litany of treatment programs that would apply
5 there.

6 So that, we have an individual in that
7 instance who is not in anybody's prison. He's
8 not in the state correctional facility because
9 IP was available to us. And my theory and my
10 philosophy is, give these people options. Give
11 them the opportunity to avail themselves of the
12 treatment needs or the treatment services that
13 can be provided.

14 I tell them it's a hammer over their
15 head. I say, if you don't take this
16 opportunity, I will resentence you, and I do.
17 If it happens, I do; and I sentence them to
18 significantly probably more than the standard
19 range for a state correction facility because I
20 gave them that initial opportunity.

21 So from a trial judge's perspective, I
22 have been a proponent of maximizing our
23 sentencing alternatives, especially when dealing
24 with the substance abuse defendant. As I said,
25 we have significantly used our second and third

1 time DUI offender programs to alleviate prison
2 population in our local jail.

3 We trial judges are acutely aware of
4 the exploding societal problem caused by drug
5 abuse. The ripple effect in terms of retail
6 thefts and other property crimes committed by
7 the addict is seen daily in our courtrooms.

8 The most effective way to deal with
9 the addict criminal is to fashion a sentence
10 most likely to effect long-term behavior. A
11 period of detox usually provided by
12 incarceration in lieu of bail, followed by a
13 variety of treatment components and supervision
14 gives the addict a chance to obtain the tools
15 necessary to break the addiction.

16 I look at the intermediate punishment
17 as a significant step toward attempting to deal
18 with an offender that has been through the
19 system before and who ordinarily, like my first
20 example, will do significant jail time prior to
21 receiving treatment.

22 Again, I'm not talking about the first
23 offender who has ARD available to him. That
24 does maybe -- If that's not available, he does
25 regular probation. I'm really talking about

1 that offender who's been or has some prior
2 criminal behavior that is really looking at
3 significant jail time, and that's why the
4 numbers may seem small. Those are the real
5 target population.

6 I would recommend that the Legislature
7 consider loosening the eligibility standards,
8 especially as they relate to the past violent
9 behavior. A trial judge can always decide the
10 offender is not a good candidate for IP.
11 However, by expanding the available offender
12 pool, you do not eliminate consideration in the
13 first instance.

14 Those are my prepared remarks. I'm
15 certainly open to questions.

16 CHAIRPERSON MAITLAND: I'll ask the
17 panel members if they have any questions.
18 Representative Walko.

19 REPRESENTATIVE WALKO: Thank you, Mr.
20 Chairman. Thank you, Your Honor, for your
21 insight. I was just wondering, practically
22 speaking, in the Intermediate Punishment
23 Program, is that, in essence, a suspended
24 sentence; or is it a probation? What are the
25 mechanics of that?

1 HONORABLE KELLER: Well, when we
2 sentence directly from BCP, the superior
3 confinement, the person has been
4 incarcerated in lieu of bail anywhere from,
5 because the process does take some time, maybe a
6 month to three months. The sentence then is a
7 three-year intermediate punishment sentence,
8 which is a form of probation.

9 We don't send a person anywhere but
10 directly from -- Normally, there's an inpatient
11 treatment component directly from prison to the
12 inpatient provider. Anytime during that
13 three-year period if they fail to complete the
14 conditions or if there's a new offense, then
15 they are brought back in front of me for
16 violations of their IPP. And if I find that
17 they're in violation, then I just resentence
18 them. So it's a form of -- It's not a suspended
19 sentence because they really don't know what the
20 sentence would be.

21 REPRESENTATIVE WALKO: I'm wondering
22 if the drug court--I don't know if you're
23 familiar with the drug court that's being
24 implemented in Philadelphia--if that uses that
25 kind of mechanism, or what are the differences?

1 HONORABLE KELLER: We just came back
2 from our trial judges' meeting in July in
3 Hershey, and we were presented with a
4 Philadelphia model, Chester County model, and
5 Pittsburgh's model. I've been under some
6 pressure in Berks County to establish a separate
7 drug court.

8 And my thinking has been, we spent a
9 lot of time and effort putting together this --
10 our Intermediate Punishment Program. We have
11 staff. We have a procedure, and the only
12 component that we don't have is a judge sitting
13 there and seeing a person come back every two
14 weeks or so to report on how they're doing.

15 That is something that they have in
16 the drug court. I know in Pittsburgh -- We had
17 a judge from Pittsburgh telling us about --
18 Their program is very similar to ours because
19 it's made up of all IPP-sentenced people who
20 have already pled guilty, and they are
21 undergoing a sentence.

22 In Philadelphia they hold open their
23 guilty pleas, and they don't -- It's more like
24 the suspended situation. For as long as they
25 comply, then there's no record that is implied;

1 and actually, they'll get dismissed of the
2 charges, which does not happen here. So there
3 are some different types of approaches to the
4 drug court across the Commonwealth.

5 REPRESENTATIVE WALKO: Do you think
6 your defendants or the art of being subjected to
7 adequate treatment programs or being -- Are they
8 able to participate in adequate treatment
9 programs during the sentencing period -- drug
10 treatment?

11 HONORABLE KELLER: Right. The
12 inpatient facilities we use, and we -- Our
13 people call around the state and even across the
14 country. We sent some people out to Arizona to
15 find the -- one, places that have available
16 beds; and two, that fit the problems that a
17 particular offender may have.

18 I'm quite pleased with services that
19 we've been reportedly getting with regard to our
20 offenders.

21 MR. WALKO: Thank you, Your Honor.

22 CHAIRPERSON MAITLAND: Representative
23 Dally.

24 REPRESENTATIVE DALLY: Thank you, Mr.
25 Chairman. Good morning, Your Honor.

1 HONORABLE KELLER: Good morning.

2 REPRESENTATIVE DALLY: Two things: In
3 your testimony you recommend the loosening of
4 eligibility standards especially as it relates
5 to past violent behavior. And I looked at the
6 statute, and basically that's what it says, does
7 not demonstrate present or past pattern of
8 violent behavior. Do you have any suggestions
9 in terms of wideners that we'd use to loosen
10 that?

11 HONORABLE KELLER: Well, either you do
12 what you did here for the underlying offense,
13 which is -- If the underlying offense that the
14 person is in front of you for is any of the
15 specific offenses listed, then the person is
16 eligible; because then, rather than using the
17 broader subjective language of present or past
18 violent behavior identify those offenses.

19 If you wanted to -- Say someone who
20 had a prior robbery offense in their background,
21 then they would not be eligible; or you could
22 just eliminate that entirely, which I think
23 probably trial judges would be happy to hear you
24 do.

25 But it does -- I just want you to be

1 alert to the fact that it does create some
2 murkiness as far as eligibility is concerned
3 when you reach those types of terms.

4 REPRESENTATIVE DALLY: That's helpful.
5 Thank you. The other question I had -- Earlier
6 today we heard from a district attorney from
7 Adams County, and his recommendation was that
8 the courts or those in regular contact with the
9 criminal justice system, specifically the
10 prosecutors and the courts, should be involved
11 in developing these IPP programs -- actually, ip
12 programs. What's your opinion?

13 HONORABLE KELLER: As a practical
14 matter, that's what we've done. In Berks
15 County, we established the, as we were required
16 by statute, the larger committee. It doesn't
17 meet very often. We have a policy group that is
18 spun off of that, and that involves the key
19 players in the criminal justice system. We are
20 the ones, then, that really put these things
21 together and set up subcommittees to work on
22 special projects like this. It's a much more
23 workable type of arrangement.

24 REPRESENTATIVE DALLY: Thank you.

25 CHAIRPERSON MAITLAND: Your Honor, I

1 have a couple questions, and to follow-up on
2 Representative Dally's last thing, then, you
3 believe that it would be beneficial if the law
4 took out the oversight of IP programs from
5 prison boards and put them back in the hands of
6 the court and probation offices.

7 HONORABLE KELLER: I think so.

8 CHAIRPERSON MAITLAND: Okay. Now, my
9 next question is, district Attorney George said
10 that people who violate intermediate punishment
11 can be rewarded when they are brought up for
12 violation, because they can get bail and then be
13 free on bail during an appeal hearing; and that,
14 he sees as a reward for their noncompliance with
15 the terms of the intermediate punishment. Do
16 you see that problem with your county? Has that
17 come up?

18 HONORABLE KELLER: We haven't been
19 doing it that way. If I get a report of a
20 violation that is significant enough -- And we
21 do as I listened to the testimony of the
22 probation officer from Adams County, we have a
23 graduated form of steps of dealing with someone
24 who may be involved in a technical violation as
25 opposed to a new offense. But, I'll issue a

1 bench warrant to be immediately incarcerated, so
2 I hope we're doing the right thing.

3 CHAIRPERSON MAITLAND: So, you
4 wouldn't grant a bail hearing? They wouldn't be
5 offered the opportunity for bail?

6 HONORABLE KELLER: Oh, sure. They'd
7 be offered the opportunity, but if I'm satisfied
8 that the individual has messed up significantly
9 on his IP, he wouldn't be getting bail.

10 CHAIRPERSON MAITLAND: And one last
11 question. The county commissioner talked about
12 the need to be an enumerated statute for halfway
13 houses, community correction centers, and
14 work-release centers. Do you see that need that
15 we enumerate in the law, in the IP law?

16 HONORABLE KELLER: I think yes. Our
17 warden has come to the policy group and has
18 indicated that he wants to explore the
19 possibility of setting up a community
20 corrections facility in the city.

21 Our prison is 18 miles from our
22 courthouse and from the City of Reading, much
23 along the lines of an adapted program for the
24 state, the community corrections facility in
25 Reading for our local offenders. But we're all

1 sort of unsure of where that would come from,
2 who would -- So, I think yes, that would be a
3 very good idea to include that within your
4 legislation as a means to alleviate the jail
5 problem.

6 CHAIRPERSON MAITLAND: Okay. Thank
7 you, Your Honor. We will now adjourn for lunch
8 and be back here at one o'clock.

9 (A lunch recess was taken)

10 CHAIRPERSON MAITLAND: Ladies and
11 gentlemen, we'll reconvene this public hearing
12 Task Force on Intermediate Punishment. And I'll
13 reintroduce our panel. The three members of the
14 task force are Stephen Maitland of the 91st
15 district here in Adams County. This is
16 Representative Craig Dally from Monroe and
17 Northampton County, and Representative Don Walko
18 from Allegheny County.

19 Our first testifier this afternoon is
20 Lynn Cooper Breckenmaker, the Executive Director
21 of the Pennsylvania Community Providers
22 Association. Lynn, please begin when you're
23 ready.

24 MS. BRECKENMAKER: Good afternoon, Mr.
25 Chairman, and committee members. Thank you very

1 much for the opportunity to speak to you today
2 about intermediate punishment.

3 First of all, I want to clarify that I
4 have this wonderful executive director back in
5 the office that really deserves me to correct
6 that I am the policy specialist and that's my
7 fault. I'm sorry that that communication
8 problem happened. I'm a policy specialist for
9 the Pennsylvania Community Providers
10 Association.

11 Our association represents over 240
12 community agencies across the Commonwealth. Our
13 mission is to promote quality community services
14 for people with mental illness, mental
15 retardation, and drug and alcohol problems. The
16 Providers Association strongly supports the
17 Intermediate Punishment Program, and that's
18 pretty much why I'm here today.

19 When I heard that there was going to
20 be a hearing, I wanted very much to take the
21 opportunity to be on record, have our
22 association on record as supporting the
23 Intermediate Punishment Program. And to go one
24 step further, we actually would like very much
25 to see the Legislature increase support via

1 increased funding for the program.

2 We are all, I think in this room and
3 certainly this panel, clearly aware of the
4 problems of drug and alcohol in the prisons and
5 the jails in the State of Pennsylvania. In
6 fact, we've been -- Our association has a very
7 strong and active forensic subcommittee, and
8 we've been working very closely with the
9 Department of Corrections and many of the county
10 correction system organizations to try to
11 address some of the issues that relate to drug
12 and alcohol and mental health.

13 Recently, a lot of the folks that
14 we've been working with, with D&A Jim Tice, who
15 works at the Department of Corrections and
16 oversees some of those programs have just been
17 providing some training for our members and
18 shared studies about the problem that exists.
19 And I'm sure you've heard the numbers. The most
20 recent was 90 percent of folks that were in the
21 systems had some sort of -- some degree of drug
22 and alcohol problem.

23 I also don't need to tell you that the
24 Commonwealth is spending massive amounts of
25 money to support the state prisons and the

1 prison systems in this state. We had seen one
2 study recently that actually talked about
3 between '81 and '95 the Department of
4 Corrections budget had increased 663 percent,
5 which is phenomenal. And the biggest problem
6 that we see, one of the bigger problems is that
7 that trend is not diminishing.

8 Our association would like to see the
9 Commonwealth spending more time and more money
10 getting to the root of the problem. And one of
11 those problems is drug and alcohol addition.

12 Another major reason that I'm here is
13 to tell you that treatment works. It works. I
14 recently visited a friend. His name is Ken. I
15 visited him in Dauphin County Prison. Ken is
16 not a criminal. He is an alcoholic. I think
17 that what we're trying to get across is that,
18 it's not that we don't need to address the
19 criminal nature of the situation -- And we
20 support and understand the need for public
21 security and supervision needs; however, what
22 Ken needs is treatment.

23 And if we're talking about costs, if
24 we're talking about reducing recidivism, we've
25 got to talk about treatment. The community

1 providers stand ready to do our part. We
2 believe that appropriate treatment can reduce
3 recidivism, and basically, therefore, save money
4 and protect our communities. I mean, the goal
5 here is to protect our communities. And in many
6 instances, when treatment is not provided, we're
7 not doing our job.

8 If we're just incarcerating someone
9 who has an addiction problem and then putting
10 them right back out on the streets, we're
11 failing as it relates to public safety. We will
12 not solve the problem of the crime until we get
13 to the root of it.

14 Statistics show that a significant
15 percentage of persons in our jails and prisons
16 not only have substance abuse problems, but are
17 incarcerated because of alcohol and drug-related
18 offenses.

19 And again, what we understand -- We're
20 not trying to say that all these folks are just
21 a bunch of really nice men and women that just
22 need drug and alcohol treatment. We know it's
23 not that simple, and nobody is trying to paint
24 that picture.

25 What we're saying is that, although we

1 understand that we need to address the
2 supervision of people who commit crime, but
3 we've got to provide both supervision and
4 treatment. And the Intermediate Punishment
5 Program has demonstrated that fact.

6 Intermediate Punishment Program is the
7 example of accomplishing that goal providing the
8 supervision and the treatment and, ultimately,
9 reducing the recidivism and reducing the cost.

10 With all the changes in welfare
11 reform, I don't know how much you've had an
12 opportunity to learn about what's happening, but
13 the changes have actually made it much more
14 difficult for low-income people to get
15 treatment, to actually access treatment in this
16 state. Adding the criminal justice factor to it
17 makes it even that much more difficult. The
18 Intermediate Punishment Program has basically
19 been the bridge to allow people that don't have
20 income to basically pay for their own services
21 to get the service that they need.

22 We strongly encourage Legislature to
23 continue your wise decision, is what we wrote
24 here, to support intermediate punishment and to
25 increase funding in the future; so that, we can

1 reduce the skyrocketing cost.

2 And I just -- If you have any
3 questions for the Providers Association, we'd be
4 glad to attempt to answer them now or later. As
5 I said to you, we have a very active forensic
6 subcommittee that has actually linked up with
7 many of the organizations across the state in
8 terms of criminal justice, and we have made some
9 very, very important headways, I think.

10 And the timing couldn't be better for
11 what you're doing right now. I think that folks
12 are aware, much more aware of the problem and
13 ready to address it. And I just want to add one
14 other little thing, and that is that, the
15 Pennsylvania Commission on Crime and
16 Delinquency, I know the feedback that I hear
17 from our members--as I said we have about 250
18 members across the state--have been incredibly
19 impressed with the job that Jim Strader and his
20 staff are doing at PCCD. And it's not an easy
21 job when there's incredibly limited dollars; but
22 the perception is that the PCCD is committed to
23 excellence and is also very fair and that's not
24 always easy to accomplish.

25 CHAIRPERSON MAITLAND: Thank you very

1 much for your testimony.

2 MS. BRECKENMAKER: Thank you again.

3 CHAIRPERSON MAITLAND: I'll ask my
4 colleagues if they have any questions.
5 Representative Walko.

6 REPRESENTATIVE WALKO: Yes, Mr.
7 Chairman. Thank you, Mrs. Breckenmaker. I was
8 just wondering, would you give me some examples
9 of members of your association? I am curious
10 about that, and I represent parts of the City of
11 Pittsburgh. And if you have any examples from
12 out West there, I'd appreciate it.

13 MS. BRECKENMAKER: I have lots of
14 examples from out West. In fact, it's my boss,
15 Ray Webb, who is our Executive Director actually
16 lives in Pittsburgh and actually spends half of
17 his life in Pittsburgh and half of his life in
18 Harrisburg. So, the bottom line is, we have a
19 very strong -- You can relate to that.

20 REPRESENTATIVE WALKO: Yes.

21 MS. BRECKENMAKER: We have a very
22 strong membership base given my boss's roots
23 there. We represent mental health, drug and
24 alcohol, and MR providers, some of which
25 provide all three -- For instance, your typical

1 community mental health center, and they often
2 provide all three services; but we also
3 represent some freestanding drug and alcohol
4 providers, and a number of hospitals.

5 For instance, in your part of the
6 world, St. Francis is a member of our
7 association. We represent St. Francis. We
8 represent Turtle Creek Behavioral Health. We
9 also represent Monyough Community Services.
10 There's many others in the Pittsburgh area, as I
11 said. Braddock Medical Center is a member of
12 our association.

13 REPRESENTATIVE WALKO: Thank you. I
14 was wondering what is the interactive nature, or
15 how do you interact with the justice system? Do
16 you interact when the D.A. is trying to decide
17 how to charge somebody, or when the court's
18 determining the sentencing, or alternative
19 sentencing? Do you have a formal mechanism to
20 interact with the justice system?

21 MS. BRECKENMAKER: It's a great
22 question, and the answer is that, it varies from
23 county to county and that probably doesn't
24 surprise you. But, in each county the systems
25 may be set up, or are set up a little bit

1 differently.

2 Some of our providers -- Some of our
3 members have very close relationships with the
4 criminal justice system within their community;
5 very close systems with the county. Some of
6 them even have very close systems with the state
7 corrections.

8 For instance -- And we're talking the
9 full continuum that needs to be addressed. And
10 on that full continuum; meaning, from the
11 preventive piece, because some of our members,
12 some of our providers serve clients that are not
13 in the criminal justice system right now, but
14 their counselors know they're headed there. I
15 mean, they've already had several warnings. We
16 know that if we don't get these folks the
17 appropriate help they need, so there's the
18 prevention end, all the way to services while
19 the person is incarcerated. The halfway house
20 services for folks that are going to be
21 transitioning back into the community. What I'm
22 trying to tell you is that, in each stage of
23 that continuum, our members may be involved.

24 Some of our members go into the prison
25 systems and do drug and alcohol treatment. Some

1 of our providers have contracts with folks to do
2 that transitional piece. Some of the really
3 neat programs that are going on in the state
4 with the drug courts, for instance, our members
5 are very closely locked into that system so that
6 they can be referrals for the drug courts.

7 It covers the whole gamut. But, the
8 problem is, it rarely covers the full continuum.
9 And it rarely -- Obviously, given the funding
10 crisis that exists, there's rarely enough funds
11 to serve all of the folks that need treatment.
12 And the other part of it is, not every county is
13 up to speed with this. We have some counties
14 that are far ahead of others and some are not
15 quite as receptive to treatment.

16 REPRESENTATIVE WALKO: I believe that
17 the District Attorney's Association
18 representative at our hearing in Harrisburg said
19 that one dollar invested in treatment saves
20 seven on the other end, seven dollars. Is that
21 a statistic that's familiar to you?

22 MS. BRECKENMAKER: It's familiar now,
23 and I'm going to call Gary Tennis and find
24 out --

25 REPRESENTATIVE WALKO: That's who said

1 it.

2 MS. BRECKENMAKER: I'm not surprised.
3 And find out where I can get it from, so I can
4 start quoting it everywhere I go.

5 REPRESENTATIVE WALKO: They were based
6 on studies done in California and in Indiana.
7 But, I was also curious about -- We are,
8 according to Chairman Maitland, we will be going
9 to Pittsburgh to look at the new drug court
10 there. I was fortunate to have been in the
11 Camden, New Jersey drug court as a member of the
12 Democratic Policy Committee.

13 We went and I witnessed the lunch that
14 the judge held where 23 community service
15 providers actually participated and discussed in
16 a two-hour session the status of approximately
17 45 people who were in the drug treatment
18 program.

19 Does that kind of interaction occur
20 with the court or with the D.A. or in
21 Pennsylvania either in the new drug court
22 programs, or in any other programs?

23 MS. BRECKENMAKER: Absolutely it's
24 happening. I can tell you -- I was just telling
25 Representative Maitland before we started that I

1 had the opportunity to sit in the drug court in
2 Philadelphia, and those providers are very
3 closely tied to that initiative. And I do hope
4 that you have an opportunity to get to the
5 Pittsburgh drug court. It's an exciting
6 experience and to see -- Again, it goes
7 beyond --

8 I've been sort of accused of being a
9 bleeding heart kind of person, and I'm not
10 embarrassed about that; but I know that it's got
11 to be much more. There's more to it than just
12 the need to help this individual. It's looking
13 at the broader picture in terms of saving the
14 Commonwealth money; in terms of protecting
15 communities; in terms of reducing recidivism.
16 And that's what these drug courts are
17 accomplishing. It's phenomenal.

18 REPRESENTATIVE WALKO: I also would
19 add that they give people who have served their
20 time the tools and mechanisms that they can use
21 to pay victim restitutions too.

22 MS. BRECKENMAKER: Absolutely.

23 REPRESENTATIVE WALKO: Thank you, Mr.
24 Chairman.

25 CHAIRPERSON MAITLAND: Representative

1 Dally.

2 REPRESENTATIVE DALLY: Just a
3 follow-up on Representative Walko's question.
4 On your organization in Lehigh Valley, what
5 would be some representative members there?

6 MS. BRECKENMAKER: Oh, wow. Scranton
7 Counseling, for instance.

8 REPRESENTATIVE DALLY: Bethlehem,
9 Lehigh Valley.

10 MS. BRECKENMAKER: Let me see. Oh,
11 gosh, there are lots and lots; and I'm blocking
12 on them right now. I will get you a list right
13 away. I'm sorry. And my Bethlehem Lehigh
14 Valley members are never going to forgive me. I
15 will get you a list of those.

16 REPRESENTATIVE DALLY: Thank you for
17 your testimony.

18 CHAIRPERSON MAITLAND: Okay. I
19 noticed in the act it says that County
20 Intermediate Punishment Program options includes
21 alcohol and drug outpatient treatment,
22 individualized services, including psychological
23 and medical services, and so on.

24 What's the accountability of the
25 offender to the program, so if you have a drug

1 problem and you're sentenced to some kind of
2 specialized counseling in drug abuse treatment
3 program, and the offender isn't adhering
4 strictly or maybe even drops out of the program,
5 what's your responsibilities then under the
6 Intermediate Punishment Law? Do you have to
7 report them back to the court for alternative
8 sentencing, or how does that work?

9 MS. BRECKENMAKER: Do you know what,
10 Representative Maitland? I am probably not the
11 best person to answer that question. I
12 think -- My guess is that Jim Strader could
13 probably answer that for you in terms of exactly
14 how violations of the probation are handled. I
15 do know that it has been a major shift for
16 providers to -- And the burden isn't just on
17 corrections in terms of understanding treatment
18 needs. There's also a burden on providers to
19 understand the correction needs.

20 So one of the exciting things about
21 what's happening here is that, these two
22 entities are getting together, and they're both
23 learning one another's needs. And what you just
24 described does happen. And it's got to be
25 better clearly understood by the provider what

1 their role is if and when that person violates.

2 But, I think Jim might be a better person to
3 answer exactly.

4 MR. MANN: I just had a quick
5 question. It has to do with -- Do you represent
6 both mental health providers and drug and
7 alcohol providers?

8 MS. BRECKENMAKER: Yes, sir.

9 MR. MANN: It's my understanding that
10 in most instances a mental health provider won't
11 accept a patient who has a drug problem or an
12 alcohol dependency problem; where, on the flip
13 side, drug and alcohol providers won't generally
14 accept an individual who is under the care --
15 under a mental health problem, if say they're on
16 drug for anti-schizophrenia or something along
17 those lines. Is the providers' community trying
18 to create a two-tiered system or more
19 accessibility to both the mental health
20 component and a drug and alcohol component?

21 I've run into some instances where
22 individuals can't get into one because of the
23 other problem, can't get into the other one
24 because of the first problem, and it's kind of
25 hard to marry the two up. I just wondered, is

1 the community making more of an effort to marry
2 the two components up and kind of work together?

3 MS. BRECKENMAKER: That is another
4 great question, and the answer is yes. The
5 community is definitely working to integrate the
6 services of mental health and drug and alcohol.
7 The statistics today are overwhelming that the
8 number of folks that are what we refer to as
9 dually diagnosed. They are diagnosed with a
10 mental health problem and a drug and alcohol
11 problem. One of those two problems may be
12 primary, but there's often a secondary problem
13 that needs to be addressed.

14 In fact, when you're talking about the
15 criminal justice system, a person with mental
16 illness is not considered any more dangerous or
17 violent than anyone else. However, you add
18 alcohol to that equation or drugs to that
19 equation and you've got a much more serious
20 problem. The statistics are very clear on that.

21 And what we're trying to do basically
22 is address in our organization, separate from
23 the criminal justice system, is address the
24 whole issue of the dually diagnosed.

25 There are lots of things happening on

1 that level. There's a statewide consortium that
2 I'm proud to be a part of called The Mental
3 Illness Substance Abuse Consortium. That's been
4 organized by the Office of Mental Health and
5 Substance Abuse Services and the Bureau of the
6 Drug and Alcohol Program; statewide Group D&A
7 Mental Health sitting at the table talking about
8 what we can do to better integrate the services.

9 A big part of the problem, not that
10 I'm trying to point fingers, but, you know, is
11 at the funding sources. For instance, Medical
12 Assistance doesn't want to pay for a mental
13 health service and a D&A service on the same
14 day. We're working on those problems to help
15 them understand the issues and make some
16 changes. The answer's yes.

17 CHAIRPERSON MAITLAND: Well, thank you
18 very much for your testimony.

19 MS. BRECKENMAKER: Thank you very
20 much.

21 CHAIRPERSON MAITLAND: I invite you to
22 stay for the rest of the program.

23 MS. BRECKENMAKER: I definitely will.
24 Thank you.

25 CHAIRPERSON MAITLAND: Next one we'll

1 invite up Mr. Terry Davis, the President of the
2 Pennsylvania County Chief Probation Officers
3 Association. Mr. Davis, welcome. Okay. Please
4 begin.

5 MR. DAVIS: Good afternoon. My name's
6 Terry L. Davis. I am the Director of the Adult
7 Probation and Parole Department for Dauphin
8 County, and I presently serve as the President
9 of the Chief Adult Probation and Parole
10 Association of Pennsylvania.

11 On behalf of our membership of the
12 association, I want to thank you for the
13 opportunity to present testimony to the
14 Intermediate Punishment Task Force.

15 I want to start by saying I'm in full
16 support of the intermediate punishment
17 sentencing option that is available to the
18 court. Our association members have accepted
19 and developed the necessary programs that have
20 made the options available to the local
21 community within the Commonwealth.

22 County Adult Probation and Parole is
23 truly the real testing and proving ground for
24 the Intermediate Punishment Program. Due to
25 this option that was made available to the

1 court, we have really become more than a
2 Probation and Parole Department. We are the
3 community corrections experts in the
4 Commonwealth. We have fully supported this
5 concept and, in fact, encouraged the court to
6 utilize intermediate punishment.

7 I have to go back to the early
8 development of intermediate punishment, when
9 Commissioner Joseph Lehman, Bureau of
10 Corrections, presented the concept to us in
11 State College. It was described to us as a
12 means to reduce prison overcrowding.

13 When Joe offered counties a portion of
14 his state prison budget to participate, I knew
15 immediately that the goal was not to reduce jail
16 population, but to reduce SCI population. The
17 carrot was, cash to the counties who would
18 utilize the program.

19 Along with the intermediate punishment
20 sanctions came Act 71, which provided \$200
21 million to counties to add on to our prisons. I
22 asked myself why? Upon reading and
23 understanding the act, it made sense.
24 Commissioner Lehman could give up \$3 million out
25 of his budget if less prisoners were sent to

1 SCI.

2 If counties build another 1,000 or so
3 beds onto their institution, the probability
4 that the state would see less offenders
5 sentenced to the institution. This all sounds
6 logical. In fact, it was a pretty good idea
7 from the state's point of view.

8 My court and many of the other courts
9 would prefer to have the offenders under the
10 supervision of the local agencies as compared to
11 the state agencies. By providing this money,
12 what really happened is the counties now have
13 added beds in the county prisons, which will
14 forever be a burden to the local taxpayer.

15 This is equally true for County Adult
16 Probation and Parole Departments that have added
17 additional staff. We have created programs that
18 help the offenders with community supervision
19 needs upon their returning back to our
20 neighborhoods. This has not all been a bad
21 thing for us, because we now have been able to
22 expand somewhat; but now the counties are paying
23 the costs.

24 I would like to present a brief
25 overview of County Adult Probation and Parole,

1 its role in the Commonwealth's criminal justice
2 system, and our relationship with the
3 intermediate punishment sentencing scheme which
4 began in 1993.

5 There are approximately 240,000
6 criminal offenders under some form of state
7 correctional supervision in Pennsylvania. This
8 does not include the federal offenders, who we
9 know also live out there.

10 Of that number, 165,000, or 70
11 percent, are under the direct supervision of
12 County Adult Probation and Parole Departments.
13 For comparison, the Pennsylvania Department of
14 Corrections houses approximately 35,000
15 offenders; county jails about 20,000; and the
16 Pennsylvania Board of Probation and Parole
17 supervises the remaining 20,000 offenders.

18 I must also take the opportunity to
19 discuss the serious issue of underfunding of the
20 County Adult Probation systems over the past 15
21 years.

22 As you know, the General Assembly
23 created the improvement of the Adult Probation
24 Services Program in 1965. The program is
25 commonly known as the Grant-in-Aide Subsidy

1 within the Pennsylvania Board of Probation and
2 Parole's budget.

3 This incentive program established a
4 financial promise to the counties that calls for
5 a reimbursement of 80 percent of officers'
6 salaries who meet specific education and
7 training requirements.

8 The clear intent was to
9 professionalize the county adult probation
10 community. I think we can all agree that the
11 quality and quantity of probation services
12 drastically increased over the past 33 years.

13 You have and will continue to hear
14 from my colleagues and me state that if you
15 expect probation to continue as the Keystone of
16 the criminal justice system, and for us to even
17 think we can maintain a level of public safety
18 that the taxpayers, the professionals, and
19 politicians demand, we must not be overlooked
20 anymore in the budget process by the
21 Commonwealth.

22 The Grant-in-Aide funding in the
23 current fiscal year budget is \$17.5 million.
24 This is \$13.7 million short of the funds
25 required to fund county adult probation to the

1 required 80 percent level. The reimbursement
2 rate for this year is only 46 percent. As the
3 Governor and the General Assembly strive for a
4 safer Pennsylvania, it is imperative that you
5 provide us with the necessary funds to carry out
6 our responsibilities.

7 As President of the County Chief Adult
8 Probation and Parole Officers, I feel that we
9 have opened up a gate for the Trojan Horse in
10 the intermediate punishment village. When this
11 was presented to us, we eagerly opened the gate
12 for this sentencing option with the promise of
13 funding support in the future.

14 This has caused us to do more involved
15 pre-sentence investigation that has to include
16 all the IP options. We have to organize and
17 operate programs that require specialized
18 equipment and staffing, and we're doing more for
19 less. I know this is a popular budget
20 statement, but the empty promises since 1965 has
21 caused a serious budget issue for county
22 commissioners who are being forced to fund
23 programs that the courts are demanding.

24 This places us, County Chiefs, in a
25 position where we have to fight for funding, and

1 we are being told that they really do not want
2 to continue supporting programs that are forced
3 upon them.

4 When the intermediate punishment
5 funding became available, many of us applied for
6 the support so that we could effectively operate
7 these programs. Three years later we find out
8 that all the staff that we've added to do these
9 programs are not eligible for Grant-in-Aide
10 support.

11 So, when we ask for new positions to
12 supervise these new offenders, the county
13 commissioners are not really supportive, and our
14 caseloads have seen drastic increases that in
15 some cases within the state we are not able to
16 get the support to adequately staff these
17 caseloads. Therefore, we are placed once again
18 in a position that creates tension within the
19 county system.

20 I was not here in 1965 when the state
21 subsidy began, but I have been with the county
22 since 1972. I've seen the problems that have
23 come about because we've opened up the gate for
24 the Trojan Horse, and the promise was not
25 fulfilled until 1985. This was the only year in

1 the 33-year history that counties received the
2 proper funding.

3 How many times can I go to the
4 commissioners and tell them that I can get state
5 assistance for projects that the state has
6 passed down to us? We, the professionals, want
7 to support programs that will, in fact, protect
8 the community, provide means to rehabilitate the
9 offender; but the commissioners are not going to
10 continue to open the village gate, and I can't
11 blame them.

12 We at least need to add the staff that
13 has been hired due to the intermediate
14 punishment funding to the Grant-in-Aide and
15 receive at least that portion of funding.

16 When the state parole added its 100
17 new agents, they were hired, and funded to
18 provide the necessary protection to the
19 community from offenders released from the state
20 correctional institutions. When the counties
21 added their 100 or so new officers to supervise
22 offenders that normally would go to state
23 prisons, what we got was an empty horse.

24 Funding is critical, and to reinforce
25 where we are coming from, I also want to present

1 an overview of county intermediate punishment
2 from a county perspective.

3 Seventy-three percent of the county IP
4 coordinators, which is 49 out of the 67
5 counties, are chief adult probation officers.
6 In all counties except Mercer and Venango
7 Counties, which do not have an Adult Probation
8 Department, and Bucks County where IP
9 supervision is provided by the jail personnel,
10 County Adult Probation and Parole provides the
11 direct correctional supervision to IP offender.

12 It is important to note that IP is an
13 additional responsibility for Adult Probation
14 Departments. As you know, the intent of
15 intermediate punishment is to make available to
16 the court another sentencing option for
17 offenders who would otherwise receive jail or
18 prison sentences.

19 Intermediate punishment has little
20 impact on traditional probation caseloads. That
21 is not to say they have not reduced the number
22 of offenders placed on probation. The overall
23 effect of IP has been an increase in the
24 responsibilities and the offender population
25 under the control of county departments.

1 I have attached a packet of
2 information that gives you a more detailed
3 summary of the services we provide. That would
4 be this packet that you all should have
5 received.

6 We have gathered some data from the
7 Pennsylvania Commission on Sentencing that
8 demonstrates the impact of intermediate
9 punishment on our agencies. Specifically, I am
10 using 1994 data to 1996 data comparing
11 sanctions.

12 In 1994, the sentencing guidelines
13 were revised with the intent of defining
14 intermediate punishment eligible offenders.
15 Just looking at total theft categories;
16 misdemeanor theft, felony retail thefts, et
17 cetera, we can examine the overall impact on the
18 entire criminal justice system.

19 In 1994, the following sentencing
20 breakdown represents the type of sentences
21 received for theft category offenders: 12
22 percent or 1,526 received prison sentences at
23 the state prison; 40 percent, which is 5,066
24 received county jail sentences; two percent,
25 which is 198, got IP sentences; and 46 percent,

1 or 5,719, received probation sentences.

2 In '96 the breakdown had changed to
3 the following: Seven percent went to state
4 prisons, which is 1,110; 34 percent, which is
5 5,832, received county jail sentences; four
6 percent, 758 received IP sentences; and 55
7 percent, 9,329 received probation sentences.

8 The data clearly demonstrates that a shift in
9 responsibility has occurred. More offenders are
10 receiving their sanctions in the county setting,
11 either jail with county parole, intermediate
12 punishment or county probation. Obviously, the
13 most dramatic increase was in the county adult
14 system.

15 Unfortunately, the funds necessary to
16 provide supervision and control have not
17 followed this shift in population. I presented
18 earlier the funding crisis in County Adult
19 Probation and Parole. A similar crisis exists
20 in the intermediate punishment funding.

21 In the 1993-94 fiscal year, the
22 General Assembly appropriated \$5.3 million for
23 IP funding. Since that time, the figure has not
24 increased even though the number of IP sentenced
25 offenders has increased and the cost of the

1 programs go up.

2 In the 1997-98 fiscal year budget, of
3 \$10 million was earmarked for IP eligible
4 offenders in need of drug and alcohol treatment.
5 While we all agree that it is a worthwhile
6 endeavor, we do not agree with the restrictions
7 on the use of these funds. Regulations state
8 that no more than 10 percent, or \$1 million, of
9 these funds can be used for criminal justice
10 supervision. The offenders targeted for
11 treatment are high-risk offenders who otherwise
12 would be receiving state prison sentences. They
13 are now receiving non-jail sanctions and, in our
14 opinion, need intensive supervision while under
15 county probation supervision.

16 I do not want to give you the
17 impression that we do not support the use of
18 intermediate punishment sanctions. On the
19 contrary, County Adult Probation and Parole
20 wholeheartedly endorses the continued and
21 expanded use of intermediate punishment. We are
22 the criminal justice professionals best
23 positioned to carry out the intent of this
24 sentencing option.

25 In my county, Dauphin, I assumed the

1 total control over the prison work-release
2 program because I feel I am better suited to
3 supervise an offender who is released into the
4 community, even if it's partial release, than
5 the prison officials. I am sure you are aware
6 that the committee will visit my center at the
7 end of this month, and I know you will find a
8 criminal justice facility that exceeds the
9 original intent of the intermediate punishment
10 legislation.

11 I am looking forward to providing you
12 with this visit and to explain in more detail
13 the cost effectiveness of the program to the
14 local taxpayer. Intermediate punishment funding
15 has also assisted my court with the funding of
16 electronic monitoring program, the intensive
17 drug supervision program, and our community
18 service program.

19 So, it cannot be said that we have not
20 been appreciative; but what our courts want our
21 commissioners must fund. That is the dilemma
22 that we are faced with every time we approach
23 the commissioners for available support for
24 improving our court system. This, of course, is
25 statewide from Philadelphia to Allegheny and

1 everywhere in between.

2 The Chief Adult Probation and Parole
3 Officers Association fully supports the new
4 legislation on being tough on criminal
5 offenders, and we support the funding issues
6 like supervision fees that help support some of
7 our efforts; but we need to be seriously
8 considered at budget time, because we are the
9 major player in the whole system. This is clear
10 just based on the number of offenders that we
11 deal with every day.

12 In closing, I want to thank the
13 committee for scheduling these hearings, and we
14 urge you to expand them to examine the entire
15 county-based community corrections system, the
16 County Adult Probation and Parole, and the
17 Intermediate Punishment Programs.

18 As I stated earlier, County Adult
19 Probation is poised to continue providing high
20 quality community corrections supervision while
21 maintaining public safety throughout the
22 Commonwealth. However, to carry out these
23 responsibilities, we must receive the necessary
24 resources.

25 On behalf of the association

1 membership, thank you for the opportunity to
2 testify, and I am available to answer any
3 questions.

4 CHAIRPERSON MAITLAND: Thank you, Mr.
5 Davis. Don, do you have any questions?

6 REPRESENTATIVE WALKO: Yes. Thank
7 you, Mr. Davis. You had mentioned that the
8 Grant-in-Aide funding level was to be 80
9 percent; is that correct?

10 MR. DAVIS: That's correct.

11 REPRESENTATIVE WALKO: Was that in a
12 budget, or was that in a law?

13 MR. DAVIS: That was 1965 when the
14 Grant-in-Aide Subsidy was presented and approved
15 and the counties adopted it, went pretty much
16 wholeheartedly in support of getting --
17 improving probation services.

18 In 1985, which was the last time I was
19 president of the association, '84, '85, we
20 approached the legislators and actually received
21 an 80 percent Grant-in-Aide. The next year it
22 was 77 percent. The next year it was 70
23 percent. The next year -- And now we're down to
24 46 percent. It's important to note it's only 46
25 percent of the probation officers that were not

1 included, that were the ones that are hired in
2 the IP programs, aren't included in the
3 Grant-in-Aide.

4 All the probation officers I've hired
5 since IP came out aren't eligible for
6 Grant-in-Aide funding. So my county, which went
7 from 40 or 50 probation officers to 75 probation
8 officers, are not receiving Grant-in-Aide for
9 all those people we added.

10 REPRESENTATIVE WALKO: So the
11 Grant-in-Aide, the 80 percent level was
12 established by legislation?

13 MR. DAVIS: Yes.

14 REPRESENTATIVE WALKO: So, in effect,
15 we are violating the act, or is it simply by the
16 recategorization of it?

17 MR. DAVIS: I think the way that the
18 Legislature has defined this now is that they
19 take a Grant-in-Aide package which is 46
20 percent, and they take some of the supervision
21 fee package and they incorporate that into
22 two -- a whole package, and say that they're
23 somewhere in the 80 percent bracket.

24 REPRESENTATIVE WALKO: That's
25 something.

1 MR. DAVIS: Yeah, well.

2 REPRESENTATIVE WALKO: I didn't say
3 that.

4 MR. DAVIS: I know you didn't. I know
5 you didn't. Nor did I say that you were in
6 violation either.

7 REPRESENTATIVE WALKO: That's not the
8 only thing we're in violation of. But anyway, I
9 didn't mean to bring that issue up. So, all in
10 all, the funding level would be adequate if you
11 added 13.7 million to the Grant-in-Aide program.
12 Is that accurate?

13 MR. DAVIS: Yes, sir.

14 REPRESENTATIVE WALKO: Okay. Thank
15 you.

16 CHAIRPERSON MAITLAND: Okay. I have a
17 couple questions. Earlier today, our District
18 Attorney and our Adult Chief Probation Officer
19 testified that they were having a problem with
20 the Intermediate Punishment Program offenders
21 violating the terms of the program, and then
22 being, I guess, picked up for that; and applying
23 for bail or at least a bail hearing, which I
24 suppose it could be denied. Then they appeal
25 it, and they're actually out on bail. So, they

1 are kind of flaunting the system. Is that
2 something that you see that occurs around the
3 state?

4 MR. DAVIS: Well, Dauphin County is
5 not -- that doesn't occur. We service the
6 offender who violates intermediate punishment
7 with a notice of alleged violations and a quick
8 detainer and a trip to the Dauphin County
9 Prison.

10 Now, because of the work-release
11 center that I also run, if the person is
12 employed and has a technical violation, and if
13 there is room, I can move them directly into the
14 work-release center for violation. We give no
15 bail hearing. And I don't know that there is
16 anywhere in the act that says that they have to
17 get a bail hearing. There are some county
18 probation departments that gives bail
19 availability to offenders on both probation and
20 parole.

21 If they do that as a total package for
22 dealing with offenders, they would probably
23 include intermediate punishment. In Dauphin
24 County we don't do that. If you violate the
25 conditions of our court-ordered sanctions,

1 whether it's probation, parole, or intermediate
2 punishment, we take swift action to take you out
3 of the community and secure you in a setting
4 that will be best suited for the defendant as
5 well as the community.

6 CHAIRPERSON MAITLAND: It also came up
7 earlier today that the authority for supervision
8 of the Intermediate Punishment Program should be
9 moved from the prison board to basically the
10 courts and the probation office. Is that how
11 it's done in Dauphin County, or would you concur
12 with that recommendation?

13 MR. DAVIS: Well, the Intermediate
14 Punishment Board, which in our county we've
15 listed everybody that possibly could have some
16 input into the system which is drug and alcohol,
17 mental health, all these people, they really
18 have very little impact into how a judge
19 sentences; and in reality, our county is that,
20 my department and the judges pretty much lay out
21 the program.

22 If there's a drug and alcohol issue,
23 we contact drug and alcohol to get the defendant
24 into that program. If it's a mental health
25 issue, we contact them prior to getting them

1 into court or immediately upon placement in the
2 program.

3 I have several of my judges who love
4 intermediate punishment. I don't think -- I
5 mean, I did a lot of work, and some of the
6 people sitting to my left will tell you, I did a
7 lot of major campaigning with my judges to the
8 point that I recommended that if I were a judge,
9 I would never use another term unless I would of
10 sent them to the state prison, because with
11 intermediate punishment, it gives the judge so
12 many more options at failure on the defendant's
13 part to take action as compared to a county jail
14 sentence.

15 With our work-release program that we
16 have running which is very intense and getting
17 larger -- We're building another 250 beds onto
18 the program. It's so successful that in the
19 middle of next year, all sentenced prisoners
20 will come directly to my program rather than
21 even -- They won't go to prison. They'll be
22 eligible for work release and do community work,
23 and I have some other things in mind for them
24 when they come there if they are unemployed.
25 But it really gives our judges a great

1 opportunity to utilize it.

2 I don't know that our
3 commissioners -- The only thing they're
4 concerned about is the funding issues; and we
5 take all those issues to the county
6 commissioners. The drug and alcohol people are
7 overwhelmed with the amount of work that we get.
8 Based on the testimony before, 90 percent, it's
9 probably somewhere easily between 70 and 90
10 percent of all offenders have a drug and alcohol
11 issue, so there's plenty of work for them. And
12 we would give them plenty of resources.

13 Mental health is a big issue.
14 Dual-diagnosed clients is a major issue in our
15 county. Getting people to take them is hard.
16 As soon as we see someone's got a mental health
17 issue and a drug and alcohol issue, we start
18 banging our head against the wall trying to find
19 placements. A very difficult task for the
20 reasons you've brought up when you asked the
21 question.

22 I think it should be the courts. They
23 should be the one who make the decisions on the
24 intermediate punishment. However, I do
25 understand -- And being the representative of

1 the County Commissioners Association as
2 President, I understand where the county
3 commissioners are coming from. They need to
4 have some input. And in our county we make sure
5 they do.

6 CHAIRPERSON MAITLAND: A lot of times
7 we looked at programs like IPP to reduce the
8 recidivism rate, and yet recidivism is such a
9 slippery concept to grasp. Do you think that we
10 need to define recidivism and put some kind of
11 legal definition so that we are all talking
12 about the same thing when we talk about
13 recidivism?

14 MR. DAVIS: Sure. Because I'm a
15 hundred percent successful with every person
16 that comes into the system that wants to
17 succeed, and I'm a hundred percent successful at
18 putting all the other ones back in the Dauphin
19 County Prison or send them to the state prison.

20 If they don't want it, they won't be
21 successful. It puts the pressure on the system
22 to say we can rehabilitate. We can stop you
23 from committing offenses. It doesn't put that
24 pressure on the defendant who's really the one
25 making the decision of whether they like us or

1 not. If they keep committing crimes, they are
2 telling me they must like me I guess. I don't
3 know. I treat them too well, maybe.

4 But, we have people that do, in fact,
5 keep coming back in the system at no fault of
6 the system. It's the defendant has no concern
7 about what happens to him I guess, and I don't
8 like to use the term, recidivism.

9 When I present programs, I don't say
10 my program has a 90 percent or a 10 percent
11 recidivism rate because I'm really -- The
12 success or failure of these programs is really
13 based on who gets into the program.

14 If you want to take electronic
15 monitoring, for instance, some counties take
16 people that are no risk and put into the
17 program. I mean, if they put you on electronic
18 monitoring, you would stay home. I would stay
19 home. I put all my high-risk people under
20 guard, because they're the ones I need to make
21 stay home; not the low-risk offender. If he
22 went out, who would care? He's not going to
23 probably commit another crime anyhow.

24 I'm not looking for a success of my
25 electronic monitoring program. I'm looking to

1 protect the community from some guy or some lady
2 who shouldn't be allowed out of his residence
3 after a certain period of time. So, my success
4 rate for my electronic monitoring program is
5 very low, but I'm putting the criminals that
6 need to be locked up, that there's no room in
7 the jails for, lock them in their houses so that
8 I can do some form of protecting the community.

9 Personally, I'm not overly concerned
10 what the definition of it is, because either
11 way, and many people -- It's kind of like an
12 accountant can take numbers and make them say
13 something, so can recidivism rate numbers say a
14 lot of different things.

15 CHAIRPERSON MAITLAND: Judge Keller
16 testified that he thought it might be a good
17 idea to expand the eligibility for offenders of
18 IPP by, perhaps, eliminating or enumerating
19 offenses for, quote, prior or present violent
20 behavior, unquote, as listed in the act.

21 MR. DAVIS: I personally think that
22 every -- If I were a judge, I'd want to use
23 intermediate punishment on the first time, every
24 time I saw a guy for the first time on every
25 case; because it gives the judge that option to

1 say when the defendant's standing before a judge
2 to be able to say, you're telling me you want to
3 make a change. Let me make you prove that
4 you'll make the change. I'm going to give you
5 this sentence called intermediate punishment,
6 which will allow you to demonstrate to me that
7 you don't want to come back before me. However,
8 if you don't, I can hold this sentence over your
9 head, and I can rethink the whole process down
10 the road; and you will regret ever standing in
11 front of me telling me that you're going to
12 change.

13 If I were a judge, I would want to use
14 it on every case. I have campaigned, and
15 Colleen, who's sitting over here will tell you,
16 I have openly campaigned statewide that
17 intermediate punishment is something if I were a
18 judge, I would use every time. Now, our judges
19 stretch a little bit.

20 In fact, we're involved in this pizza
21 bandit program where Judge Clark has nicknamed
22 it such, where its youthful offenders who have
23 serious, major serious criminal behavior;
24 robberies, and the D.A.'s office and I are
25 working to get these kids to stop because we

1 could send them to the state prison. They all
2 deserve to go to the state prison based on the
3 offense. But, are we going to throw away the
4 keys and say, go away to the state prison for
5 the rest of your life? They're 18, 16,
6 17-year-old kids.

7 We've been somewhat successful with
8 some of them, and some of them are going to go
9 back. But the ones that we've saved and kept
10 out of the state system has been worthwhile to
11 use the IP concept by putting them in the
12 work-release program.

13 I take them to school every day. I
14 make sure they do their homework. I make sure
15 that they have, you know, their tests are -- I
16 go to the school and tell the teacher, do not
17 let this young man fall asleep in your class.
18 Do not let him have an attitude in your class,
19 because he's going to deal with Terry Davis if
20 he does. He's here to learn.

21 The taxpayers are paying for him to
22 learn. And they're paying for him to stay out
23 of the state prison. So, if he doesn't want to
24 be a good student, just call me up. I'll send
25 him to the state prison and let him do his time.

1 It's very effective.

2 And I personally think that Judge
3 Clark has done an excellent job of using the
4 concept of intermediate punishment maneuvering
5 to allow this to work, and I think we saved the
6 state prison a whole lot of bad young kids who
7 would just go there and be worse and have no
8 potential for ever being a good member of our
9 community. And we paroled at least four of them
10 here at the end of summer here -- beginning of
11 the summer, and they're all doing very well.

12 REPRESENTATIVE WALKO: I have a
13 follow-up question, Mr. Chairman. Thank you.

14 I'm just trying -- Is there something
15 specific that we need to do to the act that
16 created intermediate punishment options so that
17 the funding would approach 80 percent again? Is
18 there a legislative action required? In other
19 words, redefinition of what Grant-in-Aide
20 funding is applicable to?

21 MR. DAVIS: I'm not sure that the
22 Intermediate Punishment Act would need to be
23 changed to do that. I think it's the State
24 Parole Board's budget. There's a line item in
25 there called Grant-in-Aide Subsidy, and we

1 addressed the Legislature early this year. In
2 fact, our vote from you was 196 to 2 I believe
3 to increase us by 9.7.

4 However, the Senate and the Governor's
5 office felt differently about it, and we got a
6 half a million dollars added to our overall
7 budget, which I'll tell you half a million
8 dollars wasn't even a drop in the bucket for
9 what we were short.

10 REPRESENTATIVE WALKO: So, in other
11 words, Mr. Davis, it's simply a budgetary issue;
12 not anything -- changes to the law.

13 MR. DAVIS: Yes.

14 REPRESENTATIVE WALKO: Thank you.

15 MR. DAVIS: Thank you.

16 CHAIRPERSON MAITLAND: Thank you, Mr.
17 Davis. I look forward to coming up and seeing
18 your operation in Dauphin County.

19 MR. DAVIS: Yes. September 1st, I
20 believe is the date, the 31st of August. We're
21 looking forward to having you. I think you'll
22 be impressed with the concept because it's
23 different than everybody else's. Thank you.

24 CHAIRPERSON MAITLAND: Next we'll ask
25 Mark Bergstrom from the Pennsylvania Commission

1 on Sentencing to come forward. Okay. You may
2 begin when you're ready.

3 MR. BERGSTROM: Okay. Good afternoon,
4 Mr. Chairman, and Representative Walko. It's a
5 pleasure to be here today. I realize it is the
6 afternoon. You had a morning of hearings, and
7 so I'm going to try to dispense with my written
8 remarks and just try to comment on some of the
9 statements made earlier today and try to explain
10 some of the handouts that I have attached to my
11 written comments.

12 To do that, I'd ask you to look at
13 attachment number 1. You'll find in attachment
14 number 1 there is a sentencing matrix as the
15 cover to it. Let me just make sure you are on
16 the same page.

17 Throughout the testimony this morning,
18 a number of people have talked about the
19 Commission on Sentencing or the sentencing
20 guidelines targeting certain offenders for
21 intermediate punishments. On the matrix that's
22 provided at the front of attachment number 1,
23 you'll find two gray-shaded areas. That is a
24 mechanism that the commission uses to target
25 offenders who would otherwise be serving

1 sentences in county jails and making them
2 eligible for intermediate punishments.

3 So, we're basically saying to the
4 court, these are individuals that we are
5 primarily recommending for incarceration,
6 incarceration that could be served in a county
7 facility. And we are identifying these people
8 as potential candidates for intermediate
9 punishments.

10 In fact, when I'm talking about
11 intermediate punishments today, I'm generally
12 talking about what we term restrictive
13 intermediate punishments. Those kind of
14 intermediate punishments that house an offender
15 full or part time; things like house arrest and
16 electronic monitoring, inpatient treatment,
17 partial confinement like work release.

18 So, the matrix, at least, gives you
19 sort of a sense of the commission's attempt to
20 globally target offenders for intermediate
21 punishment. Behind that then, you'll find there
22 are two or three sheets, the heading of which is
23 Summary of Sentencing Alternatives.

24 The reason I've provided this is that,
25 in the intermediate punishment legislation that

1 passed in the early '90's the General Assembly,
2 in fact, created a new sentencing alternative.
3 We traditionally had things like fines and
4 restitution and probation and partial or total
5 confinement. In 1990 and '91, the General
6 Assembly created this thing called intermediate
7 punishment. And if you look on the second page
8 of those sentencing alternatives, you'll find
9 what I find to be sort of an interesting
10 comparison of an order of probation versus
11 intermediate punishment.

12 I think a lot of times when we talked
13 about these various programs like house arrest
14 or even drug treatment, we talk about a lot of
15 these things having been in place for a long
16 period of time. Intermediate punishment might
17 have provided a mechanism for funding them or
18 expanding probation services, but a lot of these
19 things were already in place.

20 What I think the legislation tries to
21 do is make a distinction between when probation
22 should be used and when intermediate punishment
23 should be used. Why was it necessary to create
24 this thing called intermediate punishment? And
25 you'll see that in this chart. I just outlined

1 some of the information regarding purposes of
2 probation, limitations, et cetera. And the same
3 for intermediate punishment.

4 The bottom line is, that at least in
5 statute, an order of probation used by a court
6 is for generally a nonviolent, oftentimes
7 first-time offender. A person where there is
8 not a high risk that the person will reoffend in
9 a sense that the court could, in fact, place
10 that person in the community with not a lot of
11 risk to the community.

12 The real purpose of probation, at
13 least in statute, is to collect restitution, to
14 hold the offender accountable, et cetera. And
15 if you move on to intermediate punishment, in
16 statute, the purpose of intermediate punishment
17 is to identify people who would otherwise be in
18 a jail and create a very structured alternative
19 in the community for them.

20 So, intermediate punishment as a
21 starting point in this statute is targeted for a
22 much more serious offender, not one that would
23 be in the state system necessarily; but an
24 offender that the court would initially be
25 considering for incarceration and then decide

1 to bring out to the community.

2 It's because of that distinction that
3 I think the General Assembly wisely in the early
4 '90's created what sometimes is an onerous kind
5 of mechanism for approving intermediate
6 punishment sentencing authority and having
7 standards in place for the programs.

8 For instance, if someone is placed on
9 house arrest as part of an intermediate
10 punishment sentence, there is a limitation in
11 place regarding the caseload size and other
12 things like that. There's a requirement for
13 drug testing. There's other things built into
14 the statute.

15 The Commission on Crime and
16 Delinquency, which will testify after me, will
17 tell you that they can withdraw sentencing
18 authority from counties if they don't meet those
19 standards. They can withdraw fundings from
20 those counties if they don't meet those
21 standards.

22 So, there's really a fairly intricate
23 system in place to make sure that counties are
24 abiding by those programs. That if you're going
25 to put a high-risk offender in the community,

1 you have the appropriate programs in place to
2 monitor those offenders. Same with drug
3 treatment; they have to be licensed facilities.
4 They have to address the dependency issues that
5 the offender has. So there's quite a
6 distinction, at least in statute, between how IP
7 is used and how prohibition is used.

8 The other issue that I wanted to
9 address, and this is in respect to some of the
10 questions raised this morning, I guess, and that
11 is a comparison between probation or
12 intermediate punishment and incarceration;
13 because there's a big difference in first, how
14 individuals are ordered into these programs.
15 But I guess more importantly, what happens if
16 someone violates?

17 If someone is on probation or
18 intermediate punishment, the commission has
19 always recommended this should be a flat
20 sentence. As Judge Keller said this morning, a
21 three-year period of intermediate punishment or
22 three-year period of probation. The reason for
23 that is that, the judge can order any number of
24 programs and conditions during that period of
25 time, and the defendant is required to abide by

1 those.

2 If the Defendant fails to comply with
3 those conditions, the person can be violated
4 from that order of probation or intermediate
5 punishment order. What happens upon a violation
6 is, the person goes back before the court, and
7 the court starts all over again. The court does
8 not have to -- is not bound by the original
9 sentence.

10 So, Judge Keller this morning, if
11 someone violated an IP order, has the person
12 back before him just as if the person was there
13 for the first time. That's why the judge was
14 saying he could at that point just give a state
15 sentence.

16 That differs significantly from an
17 incarceration sentence where first a person is
18 given both a min and a max and there is -- There
19 are all kinds of rules that apply to the min and
20 the max as to who's going to supervise parole.
21 Is it the state or the county? And where the
22 person can serve that sentence.

23 But, once the judge states that
24 sentence, that's locked in. If a person
25 violates, the judge has to work within that

1 original framework for dealing with the
2 violation.

3 So, there are some very distinct
4 differences both between the purposes for these
5 programs and these sentencing alternatives; the
6 means you get into them; and then what happens
7 if you violate?

8 So, I just point out those differences
9 because I know there was discussion about how to
10 deal with violators and also some of the issues
11 regarding bail. I think it's important to think
12 of the statutory framework as you think about
13 those kind of issues.

14 Let's see what else I have in this
15 little first handout. The final attachment, in
16 about the smallest font possible, so I hope you
17 can read it, is just a listing of the sentencing
18 authority held by counties in the Commonwealth
19 at the present time; October 1st, '97 through
20 September 30th of '98. You'll find a listing of
21 counties -- there's a handful of counties that
22 do not have sentencing authority through the
23 Commission on Crime and Delinquency. The rest
24 that do, there is an indication of specific
25 programs they have authority to run and operate

1 in their program.

2 This links to the planning requirement
3 that you heard about this morning. The county
4 prison board taking on sort of a planning role,
5 and I know there were a lot of questions about
6 whether it's necessary or proper for the prison
7 board to do that, or if it would be better
8 vested in the court.

9 I think PCCD could probably speak
10 better to that whole issue, but one thing that I
11 know the Commission on Sentencing has had an
12 interest in from the very start is, that there
13 be coordination at the county level for all of
14 these programs and also target the alternatives
15 to incarceration.

16 I think the concern, at least
17 initially when this legislation came about
18 outside of just creating another board for
19 operating the county, was the concern that there
20 might be some net widening; that programs that
21 were developed under an intermediate punishment
22 order would be used for people who were
23 otherwise going to get probation anyhow, rather
24 than targeting people who are actually otherwise
25 being incarcerated.

1 So, the intent, at least initially,
2 was to try to make sure we target people who
3 would otherwise be in a county jail and develop
4 community-based alternatives for those and to
5 really facilitate coordination with all the
6 stakeholders in the county.

7 So, whether that has to happen through
8 the prison board or can happen under the courts,
9 as Judge Keller and others have said, you find
10 ways of dealing with them in each and every
11 county. I just point out that the purpose was
12 to really facilitate coordination and really
13 target alternatives to incarceration rather than
14 net widening. That's the first attachment.

15 The second attachment is somewhat of a
16 wish list of draft legislation. I point out for
17 the past -- Well, since the legislation -- IP
18 legislation occurred in the early '90's, I think
19 Senator Greenleaf has been trying to tinker with
20 the legislation ever since. So it seems every
21 session there is another Greenleaf bill where he
22 tries to, I think, put forward some appropriate
23 modifications to the IP legislation, and at
24 least to date that's always failed. It's passed
25 the Senate and hasn't made it to the House or --

1 CHAIRPERSON MAITLAND: I can tell you
2 that this task force will have a hearing on the
3 Greenleaf IP bill on September 10th.

4 MR. BERGSTROM: Great. I'll just
5 point out if it's Senate Bill 636, which I
6 believe is at least one of his bills that's been
7 moving through the Senate, I would point out or
8 at least provide you with this listing of some
9 other suggestions you might consider. And these
10 would be amendments to what the Senator is
11 offering perhaps.

12 The first is addressing Judge Keller's
13 issue of eligibility or ineligible offenses.
14 I've been meeting over the last several years
15 with criminal justice agencies, the D.A.'s
16 Association, and others trying to see if there
17 is any way to sort of loosen the listing of
18 ineligible offenses.

19 The irony is that anyone convicted of
20 any of these offenses listed here is eligible
21 for probation, but they are not eligible for IP.
22 It seems somewhat ironic that the more onerous
23 type of conditions you have available in the
24 community, you're barring some of the people
25 that probably would benefit most from those.

1 So, while I don't think there's going
2 to be the support to eliminate a list of
3 ineligible offenses, what we've done here and in
4 conjunction with Gary Tennis and others is to
5 really try to fine-tune a little bit. Maybe
6 aggravated assault as a whole is -- or most
7 aggravated assaults would not be appropriate for
8 IP, but there might be some minor ones or
9 attempts too that might be worth at least
10 looking at to give judges some flexibility. The
11 same with some of these other offenses listed.
12 So, I'd just leave that for your review.

13 Moving on then, the second page of the
14 draft legislation talks about a special
15 provision in the IP statute that allows
16 defendants convicted of DUI to satisfy the
17 mandatory minimum with certain Intermediate
18 Punishment Programs.

19 Presently, there are three types of
20 programs that are permitted to be used in lieu
21 of the mandatory; house arrest with electronic
22 monitoring and drug treatment, residential
23 rehabilitation center, or residential inpatient
24 program. So, those three programs may be used
25 to satisfy the mandatory minimum.

1 The first thing I would suggest is
2 that, perhaps, that be expanded to include
3 partial confinement, work release. Work release
4 as a partial confinement sentencing alternative
5 is eligible, but under the IP statute there's
6 not a special provision for the use of work
7 release.

8 It's a very technical kind of issue
9 where, but because as I said before, there's
10 different rules regarding confinement and
11 violations of confinement versus IP. It seems
12 to me that it might be helpful to explicitly
13 permit work release as an IP to satisfy the DUI
14 mandatory. And if there's a need to discuss
15 that further, I certainly can.

16 The other suggestion that I have
17 regarding this section of statute is that, it be
18 expanded beyond DUI to include driving under
19 suspension, DUI related. There's a 90-day
20 mandatory minimum summary offense if someone
21 who had previously been convicted of DUI and
22 lost their license is found driving, not
23 impaired, but just driving. And it seems to me
24 that at least the feedback we received from
25 counties is, that might be an appropriate type

1 of offender to target for IP.

2 The final thing that I have listed
3 then and, Mr. Chairman, this might be sort of a
4 deja vu, but this is regarding partial -- shock
5 incarceration. And I remember a year or two ago
6 you held a hearing I believe on partially
7 concurrent, partially consecutive sentences.
8 And I believe Judge Spicer or others might have
9 said that, you know, it would be very helpful to
10 have sort of a period of incarceration and then
11 follow it by probation and other things like
12 that and not have the min/max as a problem
13 getting in the way.

14 And what we have, at least, provided
15 here under both partial confinement and total
16 confinement is some language that would allow
17 the court to impose a flat period of
18 incarceration prior to a period of intermediate
19 punishment. So, for instance, a judge could
20 give someone 30 days of incarceration to be
21 followed consecutively by, you know, a two-year
22 period of intermediate punishment.

23 So the judge would have the option of
24 using a shock incarceration prior to IP; sort of
25 a step down. So, that is the legislative

1 packet.

2 And then the final issue I put before
3 you, the final attachment, is a recent panel
4 decision from the Superior Court that deals with
5 intermediate punishment. This is -- First it's
6 only a panel decision, so we don't know what's
7 going to happen beyond this.

8 The Philadelphia District Attorney's
9 Office has petitioned for an en banc rehearing
10 of this case before the full Superior Court.
11 But what this decision basically has said is
12 that, a court can sidestep all of the standards
13 in place for intermediate punishment and
14 basically just sentence someone to IP under
15 Section 9721 of the Judicial Code.

16 So the court would not have to
17 consider eligibility standards; would not have
18 to consider, you know, program standards
19 whatever else. The court could simply sentence
20 someone to IP and avoid the section of the
21 statute, which I believe is Section 9729, which
22 outlines all the specific provisions of IP.

23 So, it's sort of a troubling decision
24 by the panel if it, in fact, holds up, because
25 it does really reduce, I think, anything that

1 PCCD or the Sentencing Commission could do to
2 try to make sure that appropriate types of
3 offenders are put in the program and appropriate
4 types of programs are in place.

5 So, I'd encourage the committee to, at
6 least, monitor that; and if there's a need for
7 any type of legislative action, to take that
8 action.

9 I've taken a lot of your time, so I
10 just wanted to make sure I covered those key
11 issues. Certainly, I'm available for any
12 questions or further discussion on these
13 matters. Thank you.

14 CHAIRPERSON MAITLAND: Thank you.

15 MR. BERGSTROM: You're welcome.

16 CHAIRPERSON MAITLAND: Representative
17 Walko.

18 REPRESENTATIVE WALKO: Thank you, Mr.
19 Chairman. Thank you, Mr. Bergstrom.

20 I was wondering Judge Keller had
21 recommended getting rid of the present or past
22 violent behavioral requirement or condition and
23 getting that out of there as a restriction.
24 What do you feel about that?

25 MR. BERGSTROM: Well, I think

1 there's -- I guess there's two different issues
2 that he raises. One is that broad statement
3 about past or present violent behavior, and I
4 know that some judges and some D.A.'s take
5 comfort in the fact that that does sort of pick
6 up issues that you otherwise wouldn't list in
7 the statute.

8 I think the judge did mention PFA's or
9 violations of PFA's where there might be a very
10 violent person that has never been convicted of
11 a violent offense. And we would hope that, you
12 know, whoever's involved in the system; the
13 D.A., the judge, and others would be aware of
14 that, and just based on that, would not make
15 that person available for IP. So, I guess there
16 are some benefits to having that language in
17 there.

18 I understand what the judge is saying
19 that sometimes it's then used to really
20 disqualify a lot of people. So, I just -- I
21 guess I understand the need for it. I'm not
22 sure I would go as far as to say remove it.

23 One other issue related to that, in
24 the last year or two by the Superior Court that
25 basically said that that listing of ineligible

1 offenses also applies to any prior convictions
2 for those offenses; and in that case, I believe
3 the case was a person who had prior robberies or
4 a prior robbery in Florida 20 years ago made
5 that person ineligible for IP.

6 So, if there was going to be a
7 clarification under that section, the
8 clarification might be regarding not applying to
9 prior offenses or at least, you know, taking
10 into account what -- some kind of time frame
11 used. So, I guess I just -- I think those are
12 key issues.

13 I'm very supportive of loosening up
14 the eligibility. So as Judge Keller said, you
15 have a larger pool of offenders to look at; but
16 I also understand there's interest in not
17 getting violent people out in the community on
18 this program.

19 REPRESENTATIVE WALKO: Thank you very
20 much.

21 CHAIRPERSON MAITLAND: Okay. I would
22 like to return to my question of recidivism, how
23 do you measure it, and what's the overall
24 assessment of the intermediate punishment
25 sentencing option?

1 MR. BERGSTROM: Well, I guess there's
2 two or three different ways to do it. One is,
3 do they complete the program? And then if they
4 do, in fact, complete the program, how do they
5 compare to people that were either on probation
6 or were incarcerated? And I think when we try
7 to do any kind of studies or encourage others to
8 do research, those are sort of the factors we
9 look at.

10 Jim Strader is going to follow me, and
11 I know that the PCCD is in the process of having
12 some research done on the drug and alcohol
13 funding, so he might have a better sense of
14 that. But generally, we do the evaluation of
15 boot camp, and we do look at some of those same
16 issues of a match sample of people that go
17 through standard state prison and those that go
18 through the boot camp and then we try to see if
19 they have been convicted of another offense.

20 Just one other technical area that I
21 know Commissioner Horne might raise under this
22 discussion and that is, is recidivism considered
23 a -- Is a new arrest considered recidivism, or
24 is a new conviction considered recidivism?
25 Clearly, you might have someone arrested for an

1 offense that they're not subsequently convicted
2 of. So, there's factors like that you have to
3 take into account when thinking about how you
4 want to measure recidivism. But, I guess the
5 bottom line is, is the person reoffending after
6 a certain period of time?

7 REPRESENTATIVE WALKO: Thank you for
8 your testimony.

9 MR. BERGSTROM: Thank you.

10 CHAIRPERSON MAITLAND: Thank you.
11 Appreciate your testimony today. We'll move on
12 to Mr. James Strader, the Program Manager of the
13 Community Corrections Division of the PCCD. By
14 now we're all very eager to hear your testimony.

15 MR. STRADER: Can you put me first
16 next time?

17 CHAIRPERSON MAITLAND: Certainly.

18 MR. STRADER: First I would like to
19 thank the task force for the opportunity to
20 provide testimony today, and I would also like
21 to commend the task force for you taking the
22 time to hear the comments and I think it's
23 appropriate that you have the county speak
24 first. I know we rely a lot, and I do
25 personally a lot, on the counties in terms of

1 what their viewpoints are and what their
2 concerns are. And I think a lot of good issues
3 were brought up here today. And I think it was
4 a very good investment of time.

5 What I'd like to do is, the testimony
6 that we've prepared is 12 pages in length and if
7 you'll indulge me, I'd just like to read three
8 pages because I think there's a chronology
9 there, and I don't want to miss any of those
10 points. And then what I'd like to do is to
11 focus and just talk to you about a couple of
12 issues that we think are important.

13 So, on page 2, I'd like to start there
14 and basically pick up toward the bottom of the
15 page where it says, Regarding the area of county
16 corrections, PCCD is heavily involved in
17 providing technical assistance and funding for
18 the purpose of assisting local units of
19 government in the development and implementation
20 of needed programs.

21 Although PCCD has a long history in
22 this area, the agency's efforts were enhanced
23 with the passage of Act 193 of 1990, known as
24 the County Intermediate Punishment Act. At the
25 same time that Act 193 was passed, companion

1 legislation, Act 201 of 1990 was also enacted
2 amending Title 42 and providing a mechanism for
3 judges to sentence to intermediate punishment.

4 This legislation provides the Court of
5 Common Pleas with a sentencing option that falls
6 between standard probation supervision and
7 incarceration. The legislation provides a
8 mechanism for counties to develop Intermediate
9 Punishment Plans and to receive sentencing
10 authority from PCCD to sentence eligible
11 offenders to specific IP programs.

12 Although no state funding was
13 appropriated when the legislation was passed in
14 1990, the General Assembly began appropriating
15 funds in the amount of 5.3 million in fiscal
16 year 1994-95. The funding level for this
17 program has been sustained in subsequent fiscal
18 years with \$5.3 million in state funds
19 appropriated to PCCD in fiscal year '98, '99.

20 In an effort to provide fiscal support
21 for the implementation of the county IP program
22 pursuant to Act 193, PCCD allocated a portion of
23 its federal funds in '91, '92, and '93 under
24 what's known as our Drug Control and System
25 Improvement Program. These are federal funds

1 that PCCD administers for general criminal
2 justice system improvement in the Commonwealth.

3 And the commission took approximately
4 \$2 million in each of those years and began to
5 use those funds to start new IP programs
6 consistent with Act 193 in those years. So,
7 when you look at the total amount of money that
8 was allocated in those three years, and the fact
9 that we continued those programs for three years
10 with increasing amounts of local match, PCCD
11 committed approximately \$12 million to get IP
12 started in the absence of state funds in the
13 early years.

14 Section 5 of Act 193 of 1990 states
15 that in order for counties to qualify for
16 funding under the act, a prison board, and this
17 point has been discussed today, must develop a
18 county Intermediate Punishment Program plan to
19 be submitted to PCCD.

20 The IP Board consists of the President
21 Judge of the Court of Common Pleas or his
22 designee, the District Attorney, the Sheriff,
23 the Controller, and the County Commissioner.
24 Related to the IP Act, PCCD supports Senate Bill
25 636, which would amend Act 193 by modifying the

1 definition of court to include district justices
2 if approved by the Court of Common Pleas.

3 Also the definition of eligible
4 offender could be revised to apply to a broader
5 group of offenders. Language would also be
6 added to include as eligible those offenders
7 convicted of driving under suspension, DUI
8 related. And additionally, the prison board
9 would be required to consult with county human
10 service agencies and criminal justice agencies
11 in the development of the IP plan.

12 A footnote here, and it came to me as
13 I was listening to the prior individuals
14 testify is that I think the Legislature did a
15 very good thing when the Act 71 was passed, the
16 \$200 million bond issue, where there was a
17 requirement that for counties to apply and
18 receive any of that money for construction and
19 renovation, that they first had to develop an
20 Intermediate Punishment Plan and have it
21 reviewed and approved by PCCD.

22 So, essentially, what the Legislature
23 did was required counties to look at
24 alternatives before they could apply to the
25 Department of Corrections for construction and

1 renovation funds, and I think that was a very
2 important linkage. And that's really what gave
3 impetus to the whole development of the IP
4 plans.

5 Based on statutory requirements, PCCD
6 has promulgated regulations which require
7 counties to develop and update their IP plans on
8 an annual basis. Further, counties must request
9 sentencing authority for specific programs per
10 Act 201.

11 Act 201 contains a specific provision
12 that states that the court shall not have the
13 authority to sentence an offender under this
14 section unless the county has established and
15 Intermediate Punishment Program approved by
16 PCCD. The IP plan and sentencing authority must
17 be signed and approved by the president of the
18 county prison board or IP board and the
19 chairperson of the county commissioners. This
20 action, along with the properly executed grant
21 application, makes the county eligible for state
22 funding for its intermediate punishment
23 initiatives.

24 Both Acts 193 and 201 mandated the
25 Pennsylvania Commission on Sentencing to adopt

1 guidelines that identify offenders who are
2 eligible for appropriate IP. Mr. Bergstrom just
3 provided some testimony in that area. Act 201
4 specifically excludes persons convicted of
5 certain offenses, and we've discussed what those
6 offenses are.

7 So, I think the important thing here
8 is that we've had an active interest on the part
9 of the counties to participate in intermediate
10 punishment, and currently 61 counties are, in
11 fact, participating in this program. Only six
12 counties in the Commonwealth are not
13 participating. These counties include
14 Huntingdon, Juniata, McKean, Mifflin, Montour,
15 and Perry.

16 The balance of my testimony really
17 focuses on a couple of important issues that I'd
18 like to address with you today. And I think all
19 of these issues have been touched on by
20 previous individuals who have testified.

21 First of all, I think one of the
22 things that has been very successful with
23 respect to intermediate punishment has been the
24 work of the policy boards in the counties as
25 they work on intermediate punishment strategies.

1 One of the things that PCCD did early
2 on in conjunction with the Pennsylvania
3 Commission on Sentencing was encouraged a very
4 strong planning process at the county level
5 involving as many primary actors within the
6 county as possible to develop these programs.

7 And I think there are a number of good
8 examples in the state right now including Berks
9 County, Cumberland, Erie, Delaware, who have
10 active policy boards who meet frequently; have
11 the important individuals on with respect to how
12 criminal justice gets done in the county; to
13 discuss the very strategies that they want to
14 use for different target populations within the
15 county; and how they're going to incorporate
16 intermediate punishment within their total
17 sentencing structure in the county.

18 And what we've seen is that the
19 counties who actively involve these policy
20 boards really are in most cases ahead of the
21 curve on the IP program. So, we strongly
22 encourage the continuation of these IP policy
23 boards, and we really believe in a nutshell that
24 if these processes are in place that the correct
25 programs in these counties will come out of that

1 process. So we really focus a lot on process
2 and on these policy teams.

3 The second issue we want to highlight
4 before you today is that it's important to
5 target appropriate offenders, and that was
6 discussed in some of the prior testimony as
7 well. That begins really, I think, with the
8 guidelines which are approved and put out by the
9 Pennsylvania Commission on Sentencing.

10 As we work with the counties, we also
11 encourage the counties to get involved in
12 targeting their own group of offenders, because
13 what Adams County may want to do in their
14 jurisdiction could be completely different to
15 what Allegheny or Philadelphia or Cambria County
16 wants to do, so we highly encourage the policy
17 teams to get involved in a dialogue of looking
18 at their offender populations, looking at their
19 past sentencing practices, and determining where
20 they can get support within the county to use
21 this thing called intermediate punishment for
22 certain offenders, and we think that's very
23 important, this issue of targeting.

24 Another issue that we believe is
25 important, and Representative Masland who was

1 here earlier addressed this issue -- And, by the
2 way, I'd like to recognize the fact that
3 Representative Masland is a member of the
4 Pennsylvania Commission on Crime and
5 Delinquency.

6 He, I think, asked a question maybe to
7 the District Attorney or someone who followed
8 closely thereafter about a continuum on
9 sanctions, and talked about how ARD fit into
10 intermediate punishment and probation and
11 incarceration. And I really believe that the
12 beauty of intermediate punishment is that if
13 it's incorporated into the total process in the
14 county, it cannot only be used as a direct
15 sentencing option for county judges, but the
16 program options themselves can be used as what
17 we would call halfway back options for certain
18 things like parole violators or technical parole
19 violators.

20 So, if you have a good program in
21 place, a drug and alcohol program that provides
22 close supervision and other aspects of it, that
23 program can be used as a direct sentencing
24 alternative for judges, but it can also be used
25 as a halfway back option for someone who may be

1 continuing to use drugs, that may not be
2 involved in other overt criminal activities.

3 There are some good examples of some
4 things that are happening at the state level in
5 this area that I thought you should be aware of.
6 Both the Department of Corrections and the
7 Board of Probation and Parole have joined forces
8 to create some new programs. The two new
9 programs that come to my mind are RSAT,
10 Residential Substance Abuse Treatment; and the
11 other is called SAVE, Substance Abuse Violators
12 Effort.

13 Both of these efforts are focused on
14 technical parole violators at the state level
15 with drug and alcohol problems, and both of
16 these models allow for placement in a secure
17 residential treatment program in lieu of
18 recommitment and to do all the back time on it
19 on a technical parole violation.

20 I think both the Department of
21 Corrections and the Board of Probation and
22 Parole would indicate that they are holding a
23 high promise for these new initiatives. And I
24 really think that's an example of the kind of
25 thing that I'm talking about that these programs

1 can serve more than just as a direct sentencing
2 alternative.

3 Another issue that we believe is very
4 important, and I think almost all the
5 individuals prior today testified to, is the
6 linkage between or the connection between drugs
7 and crime. The General Assembly appropriated
8 \$10 million last fiscal year for drug and
9 alcohol treatment linked with intermediate
10 punishment.

11 And again, in fiscal year '98, '99
12 that \$10 million is again appropriated to PCCD.
13 We work very closely, again, with the sentencing
14 commission and the Bureau of Drug and Alcohol
15 programs in the Department of Health to create a
16 very comprehensive drug program for -- And we
17 wanted to maximize the efforts here. So, we
18 announced this program competitively, and we
19 eventually awarded the funds in 12 counties.

20 One of the counties you talked about
21 today is Allegheny County and the drug court in
22 Allegheny County. That is one of the programs
23 that we're funding under this \$10 million
24 initiative, and I had the opportunity to sit
25 through the drug court proceedings in Allegheny

1 County and was very impressed with the work that
2 they're doing.

3 I think an important point that I
4 wanted to bring out to you, though, is someone
5 on the panel asked the question earlier today
6 about drug courts; and I was very happy with the
7 response that Judge Keller gave, because he
8 really pinpointed about the differences in the
9 drug courts that operate in the different
10 counties.

11 For instance, in Philadelphia County,
12 it really represents a true diversion based on
13 the fact that if a person successfully completes
14 the program, the case can be dismissed. In
15 Allegheny County, it's a different situation
16 where the person receives an intermediate
17 punishment sentence with a drug and alcohol
18 treatment condition, they continue to come back
19 before the judge to report to the judge on their
20 progress and treatment, but that is an official
21 sentence. So, it's a very important
22 distinction, and I'm glad Judge Keller drew that
23 out.

24 I think the thing that's very
25 important here is that we really strongly --

1 PCCD strongly supports the use of drug and
2 alcohol treatment linked with intermediate
3 punishment; and we would encourage that this
4 area be expanded to the extent possible.

5 Last year when we floated the request
6 for proposals, we had 26 counties apply
7 requesting 16 million. That was in the first
8 year. We were able to award the \$10 million to
9 12 counties.

10 I think it's important to note that
11 during the first year there's been a lot of
12 developmental issues that have been addressed by
13 these counties. For your information, on
14 September 2nd and 3rd, we will be pulling those
15 12 counties together for two days in State
16 College to share their experiences. I've had an
17 opportunity to visit all 12 counties and have
18 come away very impressed with the work that's
19 being done. I think because of the intricacies
20 and some of the differences between county
21 operations, it was very good to get those
22 counties together for two days.

23 The other very important part of this
24 is that, we are working with Penn State
25 University to evaluate the impact of this. The

1 first year their attention was really paid on
2 issues relative to implementation. During the
3 second year, we're really going to be kicking
4 the evaluation effort into measuring offender
5 outcomes relative to continued drug use and
6 reinvolvement with crime.

7 Some of the issues that you've raised,
8 Representative, on recidivism. So, the drug and
9 alcohol issue we believe is very important, and
10 we believe that -- I, just sitting here this
11 morning, when we looked back to prior to fiscal
12 year '94 '95, as of today, there is 15 million
13 more dollars in intermediate punishment and
14 related activities than there was prior to '94,
15 '95, and I think that's commendable that that is
16 being done in this state.

17 The last issue that we think is very
18 important, and I kind of touched on it with
19 respect to my comments on Penn State, is that we
20 believe, and this has been brought up by our
21 commission, that we really need to be doing a
22 better job on evaluating outcomes of programs.

23 We spend a sizable amount of money
24 starting new programs, whether it's in drug and
25 alcohol or intermediate punishment or whatever

1 the program is, we're involved in a lot of
2 initiatives. And I know that our commission is
3 very much interested in doing more in the way of
4 evaluations.

5 We are to report that back, so our
6 commission can make intelligent decisions about
7 where to spend federal and state money in these
8 areas. I reference a recent evaluation in the
9 testimony that was conducted by Mercyhurst
10 College. I'm not going to read it, but these
11 are the types of things that we think are very
12 important to measure offender outcomes with
13 respect to drug use, crime, and the issue of
14 recidivism.

15 So, I'm going to stop there. But, I
16 would again like to thank the task force for the
17 opportunity to testify. I believe that where
18 we're at today in the area of intermediate
19 punishment -- We've been involved in this
20 business for eight years. Sometimes when I
21 think back on that, it's like, where did those
22 eight years go? But, I think the progress that
23 we've seen statewide with this program has
24 been -- the successes of these programs have
25 been increasing dramatically.

1 I think one of the most positive
2 things about this is that I see the concept
3 beginning to catch on at the state level. We're
4 starting to see some real interest in looking at
5 alternatives for state offenders, and I've been
6 involved in a number of those initiatives with
7 the Board of Probation and Parole and the
8 Department of Corrections. So again, thank you
9 for the opportunity to talk to you.

10 CHAIRPERSON MAITLAND: Thank you for
11 your testimony, Mr. Strader. Representative
12 Walko, do you have any questions?

13 REPRESENTATIVE WALKO: Thank you, Mr.
14 Strader. Yes, Mr. Chairman.

15 The Western Penitentiary is in my
16 legislative district in Pittsburgh, and one of
17 the things that the jail guards and a number of
18 other prison officials brought up was the fact
19 that they're being subjected to overcrowding
20 partly because of the technical parole
21 violators.

22 I was just wondering; when you refer
23 to the two programs, and that they are being
24 implemented by the Department of Corrections,
25 and I wondered if you could elaborate on the

1 status of those programs and the funding, if
2 any, because I'm very pleased to hear that.

3 MR. STRADER: Yes. The one I'm most
4 familiar with is the RSAT Program, which is
5 Residential Substance Abuse Treatment. The
6 Pennsylvania Commission on Crime and Delinquency
7 is responsible for applying for the funding
8 directly from the federal government, and that
9 is part of my responsibility. The money comes
10 into the state directly from the federal
11 government. We have made the funding available
12 at the state level too, in fact, develop these
13 alternatives for individuals who are involved in
14 drug use.

15 It's interesting that Pennsylvania, we
16 understand, is the only state who targeted
17 technical parole violators, which really
18 surprises me given the fact that that does
19 represent such a large problem with prison
20 populations, not only in Pennsylvania, but
21 across the country.

22 And the federal government is very
23 interested in looking at our experience because
24 we did target specifically parole violators.
25 Other states are simply providing therapeutic

1 communities and other types of programs for
2 individuals who are a part of their general
3 population. So, the funding has been active
4 for -- We've received three years of funding in
5 the state to do these programs. The two initial
6 programs were started at Huntingdon and
7 Graterford.

8 I was at the Graterford program on
9 Monday, toured the program. And basically, what
10 it involves is six months back in an SCI with
11 drug and alcohol treatment; a very comprehensive
12 program, released to a community corrections
13 center for six months with treatment, and were
14 just beginning to put together the intensive
15 parole supervision which would include aftercare
16 for that population.

17 So, individuals would come back and do
18 secured treatment for 12 months; six months in
19 an SCI, six months in a community corrections
20 center run by the Department of Corrections; and
21 then be reparaoled with treatment. That's
22 operating in two SCIs now.

23 The Department of Corrections is
24 planning on expanding that to five additional
25 sites because we have increased funds to do it.

1 I don't have those sites committed to memory,
2 but there is an expansion plan that has not yet
3 taken place.

4 REPRESENTATIVE WALKO: And with regard
5 to the drug court issue, you mentioned the two
6 options; intermediate punishment versus
7 nonsentencing if a program is completed as they
8 do in Philadelphia. Which of those -- And there
9 might be other models, but which of those would
10 you prefer or do you recommend, or what are some
11 of the arguments for and against the different
12 approaches?

13 MR. STRADER: Well, first of all, I'd
14 like to preface my remarks by stating that PCCD
15 has taken an active role in providing funding
16 for local corrections initiatives. One of the
17 programs that we provided some seed funding for
18 a few years ago was the area of drug courts.

19 I've been in the grants business for
20 quite a long time, and it's the first time that
21 I could remember where the number of requests
22 did not come up to the amount of money we had
23 available. So, I think the Commonwealth of
24 Pennsylvania has been a little bit -- I don't
25 know if I want to use the word reluctant or

1 apprehensive about the concept of drug
2 courts, but we have seen in the past year or so
3 a number of counties who are beginning to look
4 at the feasibility of implementing drug courts
5 in their jurisdiction.

6 I don't think I'm prepared to give you
7 an opinion on which is the preferred model. I
8 think the preferred model would be the one that
9 comes out of these policy teams that I talked
10 about earlier. In Allegheny County, they made a
11 conscious decision that they want to link it to
12 a formal IP sentence, and they want that person
13 back before them on a regular basis.

14 Philadelphia has made a conscious decision that
15 they want to offer the true drug court model and
16 try that approach.

17 The other part of this is, I think
18 we're still in an experimental stage. So I
19 would really support, and I'm not trying to
20 sidestep your question. I really would support
21 the implementation of different models. And I
22 really think that's part of PCCD's role; to look
23 at different models and then to evaluate the
24 impacts of those models in different
25 jurisdictions.

1 REPRESENTATIVE WALKO: So, we have
2 basically four programs in Pennsylvania now?

3 MR. STRADER: There is Allegheny and
4 Philadelphia. Chester County is operating a
5 drug court I know of. They received direct
6 federal funds. Lycoming County had applied for
7 planning funds. I don't know if they've reached
8 the implementation stage. And there are one or
9 two other counties that don't come to my mind
10 immediately.

11 REPRESENTATIVE WALKO: Thank you very
12 much, Mr. Strader.

13 CHAIRPERSON MAITLAND: When District
14 Attorney Mike George was testifying, you were
15 here and you heard his discussion about the
16 problem with bail.

17 MR. STRADER: Correct.

18 CHAIRPERSON MAITLAND: Is that a
19 problem that you see around the state, or is
20 that maybe just unique to procedures here in
21 Adams County?

22 MR. STRADER: I don't know that it's
23 unique to Adams County, but myself and my staff
24 do make it a point to get to every county
25 program at least once a year. We feel that

1 that's part of our responsibility to monitor
2 these programs. In my experience, that is not a
3 typical situation.

4 The one that was described by Mr.
5 Davis to me is more the common practice that if
6 there is a violation on an intermediate
7 punishment case, that that is taken very
8 seriously. I'm not saying that the other
9 situation isn't taken seriously, but that it's
10 handled very quickly and that, in fact, the
11 individual in most cases is detained in a secure
12 facility until such time that he can be brought
13 back before the judge for resentencing.

14 CHAIRPERSON MAITLAND: Okay. Next we
15 had the testimony that halfway houses, community
16 corrections centers, work-release centers, and
17 so on should be enumerated in the Intermediate
18 Punishment Act, and that their requirements
19 versus prisons as far as medical care provided
20 to defendants should be defined. Do you see
21 that as something that ought to be addressed in
22 the IP Act?

23 MR. STRADER: I guess my personal
24 opinion is that I don't see that that needs to
25 occur. I don't see that it's going to hurt. I

1 think the IP Act is worded in such a way that it
2 gives counties a great deal of flexibility in
3 creating programs.

4 In fact, in our regulations we include
5 all the IP programs that we could think of and
6 have developed minimum standards for each of
7 those programs. But, our regulations also state
8 that if a county wants to request sentencing
9 authority for something other than we have in
10 our regulations, they need to give us a
11 description of the program or review that
12 program, and if we think it meets our general
13 standards of what we would expect for an IP
14 program, we would, in fact, give them sentencing
15 authority for that program.

16 So, if a county X wants to create
17 something like a community corrections center or
18 something else that's not covered in our
19 regulations, they certainly would have the
20 ability to do that.

21 CHAIRPERSON MAITLAND: I know a lot of
22 times counties and municipal governments
23 hesitate to go out there and what they are
24 trying to do is specifically permitted by law,
25 and that is the case here.

1 MR. STRADER: Right. Your issue on
2 medical things, I think one of the major
3 strengths of intermediate punishment that we've
4 heard locally, is that as individuals are put on
5 intermediate punishment, they are able to access
6 medical assistance costs for treatment and
7 things like, if they are employed, if they'll be
8 able to keep their employment, they're obviously
9 able to access private insurance for such things
10 as treatment and counseling.

11 If they're incarcerated, it becomes a
12 burden on the part of the county financially to
13 take care of that, so that as we work with the
14 counties, the counties have come to a
15 realization that this is a very important aspect
16 of IP, and it does have financial implications.

17 CHAIRPERSON MAITLAND: Representative
18 Walko and I and others went to Vermont and saw
19 their model of community reparative boards. Are
20 you familiar with what they're doing?

21 MR. STRADER: I have read about them.
22 I have not seen them in operation.

23 CHAIRPERSON MAITLAND: Does PCCD
24 recognize or foresee a role, perhaps, for this
25 kind of citizen panels overseeing what amounts

1 to an Intermediate Punishment Program in a
2 community like Vermont has done?

3 MR. STRADER: I think we would,
4 because I think the spirit of that program fits
5 in within the general framework of the
6 intermediate punishment. Basically, we're
7 talking about offender accountability, which is
8 related to the program that you visited.
9 Restoration, restitution, all those issues are
10 incorporated into the concept of intermediate
11 punishment, so although we don't call it that in
12 Pennsylvania, I believe the general concept fits
13 in very nicely with IP.

14 CHAIRPERSON MAITLAND: And it's been
15 commented a couple of times that IP is a harsher
16 punishment really than straight probation.
17 Would it make any kind of sense to abolish
18 probation the way that we come to know it and
19 replace it with basically an IP model, something
20 that becomes less and less restrictive, perhaps,
21 as a substitute for parole even?

22 MR. STRADER: Personally, this is my
23 personal opinion, I think there is a place for
24 probation, but I think there's also a place for
25 intermediate punishment. And I think one of the

1 things that is very important that was addressed
2 is that, we do have minimum standards for
3 intermediate punishment. And so we were very
4 concerned when we implemented this program back
5 in 1990, that the programs that individual
6 offenders would participate in as part of an IP
7 would be at a much higher level than their
8 requirements would be under probation.

9 I think that given the sentencing
10 tiers that the Sentencing Commission uses and
11 has probation supervision built into that, that
12 becomes a very important part of the entire
13 sentencing continuum, and that IP is very
14 important as well as general probation.

15 And the beauty about that, again, is
16 that a person can be on intermediate punishment
17 initially and be stepped down to standard
18 probation, which would not have near the level
19 of supervision and eye-to-eye contact that the
20 person would have under a restrictive
21 intermediate punishment sentence. So I see the
22 need to have both probation and intermediate
23 punishment.

24 MR. MANN: I wondered if Mr. Strader
25 couldn't tell us -- I'm looking at the sheet

1 that Mr. Bergstrom from the Sentencing
2 Commission gave us, and from the guidelines, the
3 rules that we pulled down off of PCCD's web
4 site, by the way, it's all available right
5 there.

6 Your guidelines, and there were like
7 14 different Intermediate Punishment programs,
8 the listing here shows 16 to include other, not
9 knowing what those are. It seems that the drug
10 and alcohol treatment, community service, drug
11 testing, electronic monitoring are among the
12 most utilized within the counties.

13 I wondered if you couldn't tell me, is
14 that pretty much the way it is? I mean, are the
15 counties using most of their IP money for drug
16 and alcohol treatment programs?

17 MR. STRADER: Well, I can say that
18 this fits in with a question that was asked
19 previously. I forget which one of you asked the
20 question about evaluation, but when our last
21 evaluation was done on county intermediate
22 punishment activities, one of the findings was,
23 and I forget the figure, but a sizable number of
24 driving under the influence cases, second and
25 third DUI offenders were being put in this

1 program as an alternative to incarceration.

2 And so, your question about electronic
3 monitoring drug and alcohol treatment, I would
4 say that that's accurate because the largest
5 percentage of cases put in this program the
6 first few years have been second and third time
7 DUI offenders, where the judge elects to put
8 this person into electronic monitoring house
9 arrest, combined with a formal drug and alcohol
10 treatment condition. So, yes, electronic
11 monitoring, drug and alcohol treatment are two
12 of the big ones. What were the other ones you
13 mentioned?

14 MR. MANN: Drug testings.

15 MR. STRADER: Drug testing, yes,
16 linked with the whole treatment concept, yes.

17 MR. MANN: To give you an example, I
18 think Dauphin County is approved for ten
19 different types of community intermediate
20 punishment within their Intermediate Punishment
21 Plan.

22 MR. STRADER: Right.

23 MR. MANN: If I understand this
24 correctly, they don't necessarily use all of
25 these different --

1 MR. STRADER: They're not required to,
2 and I think the best term that I ever heard on
3 intermediate punishment from the judicial
4 standpoint is that it's a sentencing tool. The
5 judge has the option of using it. It's not
6 required. So, as one DUI offender comes before
7 him, that person may get the mandatory jail
8 term. Another DUI offender, for whatever the
9 circumstances are and the particulars on the
10 case, could get the IP sentence.

11 MR. WALKO: I have one follow-up
12 question, Mr. Strader.

13 Do you agree with Mr. Davis when he
14 said that there's \$13.7 million shortfall in
15 Grant-in-Aide funding? Do you agree or is that
16 the case?

17 MR. STRADER: I know that we have been
18 very actively involved with the chiefs, and I
19 think previously the comment was made that--I
20 think in his testimony--that the chief probation
21 officers have taken an active role with IP, and
22 that is correct.

23 The chiefs have also made the point to
24 us over the years, because we are a funding
25 agency that's part of our responsibility, that

1 there is a shortfall in terms of the amount of
2 money that they should be getting for county
3 general probation operations.

4 That was a point that came up when the
5 IP Act was passed, and we were very careful to
6 make sure that that money was used for things
7 other than general probation, even though the
8 Chief Probation Officers Association was making
9 a point that there is a shortfall in funding for
10 general probation supervision.

11 From what I know about the situation,
12 the percentage of reimbursement to the counties
13 in terms of state funds for general probation
14 supervision has gone down over the last few
15 years. I can't comment on those percentages,
16 whether they're accurate or not.

17 REPRESENTATIVE WALKO: This is sort of
18 not a -- It's maybe a stream of consciousness
19 kind of question, but I read the latest report
20 from the Department of Corrections that we were
21 in -- According to the report our prisons
22 were -- our state correctional institutions were
23 at 154 percent of capacity.

24 Now, is that a statistical aberration
25 or manipulation, or is that true; or how real is

1 that? Is Western Penitentiary, for example, I
2 think follows right in. They have so many
3 cells, and they have -- they were at 154 percent
4 of capacity. Is that a real overcapacity
5 problem, or is it --

6 MR. STRADER: My judgment is that it's
7 an overcapacity problem, but I think the issue
8 is very similar to the questions you raised on
9 recidivism. How do you measure it? And that
10 is, I think there needs to be established a
11 definition of what capacity is and what
12 overcrowding is.

13 So, again, I don't want to comment on
14 the exact, the specific numbers; but I really
15 think it's a definition. We need to establish
16 what -- common definitions; and what is crowding
17 and what is capacity?

18 REPRESENTATIVE WALKO: Right. But I
19 can't say that in the report--it's a rather
20 simple two-page report we get once a
21 month--that it clearly states that we are at a
22 154 percent capacity. If I was to relay that to
23 the public, then that clearly indicates we are
24 overcrowded.

25 MR. STRADER: I'll tell you what I'd

1 be glad to do is, next week--I will not be in
2 the office tomorrow--but next week I would be
3 happy to work with our policy analysis office.
4 They work with those figures regularly. In
5 fact, we have a population projection committee
6 in our agency and respond to that so you know
7 exactly what that means. I'll be happy to make
8 sure that you get a response to that.

9 REPRESENTATIVE WALKO: I think it
10 would certainly be helpful as we go into the
11 next year budget cycle, and the Appropriation
12 Committee has hearings that we go in armed with
13 that type of information to encourage increases
14 in funding for these kinds of programs; IP in
15 general, and drug courts, and other endeavors
16 that would tend to help us ease overcrowding, et
17 cetera. Thank you.

18 MR. STRADER: You bet.

19 CHAIRPERSON MAITLAND: I have one last
20 question too. I believe you heard
21 Representative Masland talk about some separate
22 facilities, perhaps, regional facilities for
23 specific types of offenders to keep them out of,
24 perhaps, a harsher mix of the prison population.
25 Do you have any thoughts on that?

1 MR. STRADER: The concept is good.

2 CHAIRPERSON MAITLAND: Thank you,
3 Warden.

4 MR. STRADER: Also getting counties to
5 agree. I mean, my experience on this has been
6 as you get counties together to agree on general
7 concept, they'll say, yeah, we agree that we
8 should do this. And, in fact, I think reference
9 was made earlier by the Warden of Adams County
10 that I was involved in a meeting with Clinton
11 County. When he was up there, they were talking
12 about a regional program.

13 We support regional programs where we
14 can address a number of offenders in a
15 particular region and where a number of counties
16 can participate. But my experience with that
17 has been that when it comes to signing the
18 dotted line in terms of the exact operations of
19 the program, the inner governmental and inner
20 county agreements, that that becomes very
21 cumbersome. But, I think the concept is
22 excellent.

23 I don't know if there's any way to
24 streamline or make it more easy for counties to
25 cooperate in these initiatives, but I think the

1 whole concept of regionalization holds a lot of
2 promise in this area of intermediate punishment,
3 yes.

4 CHAIRPERSON MAITLAND: Thank you very
5 much.

6 MR. STRADER: Thank you.

7 CHAIRPERSON MAITLAND: I'd like to
8 thank my colleagues and staff for their hard
9 work on these hearings and with that, we'll
10 adjourn.

11 (At or about 3:53 the hearing
12 adjourned)

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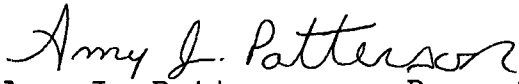
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C E R T I F I C A T E

1
2 I, Amy Patterson, Reporter, Notary
3 Public, duly commissioned and qualified in and
4 for the County of York, Commonwealth of
5 Pennsylvania, hereby certify that the foregoing
6 is a true and accurate transcript of my
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17 Amy J. Patterson - Reporter
18 Notary Public

19 My commission expires
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