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COMMONWEALTH OF PENNSYLVANIA
THE PENNSYLVANIA COMMISSION ON SENTENCING

**HOUSE JUDICIARY COMMITTEE
TASK FORCE ON INTERMEDIATE PUNISHMENT**

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Executive Director**

Good afternoon Mr. Chairman and members of the House Judiciary Committee Task Force on Intermediate Punishment. I am Mark Bergstrom, Executive Director of the Pennsylvania Commission on Sentencing. Thank you for providing the Commission on Sentencing with this opportunity to offer testimony regarding intermediate punishment and related issues.

In reviewing the agenda for today's public hearing, I was happy to see listed a number of practitioners from county criminal justice agencies who can speak to many of the local issues such as program operations, applications and availability. I will instead focus on broader issues of eligibility and effectiveness, and will try to offer some recommendations for improvements.

Since the establishment of the Pennsylvania Commission on Sentencing in 1978, and the implementation of our first Sentencing Guidelines in 1982, the Commission has attempted to promote sentencing equity and fairness through a reduction in unwarranted disparity and by targeting recommendations based on the seriousness of current and prior conviction offenses. During the past decade, both the Commission and the General Assembly have been required to shape sentencing and correctional policies with increasing consideration of correctional resources and capacity. Legislation such as the County Intermediate Punishment Act and the State Motivational Boot Camp Act of the early 1990's represented initiatives which sought to balance competing interests of punishment, community safety and correctional resource management. In 1994, the Commission adopted comprehensive revisions to the Sentencing Guidelines that attempted in part to better integrate intermediate punishments and boot camp into sentencing recommendations. Last year, the Commission adopted further revisions to the Sentencing Guidelines to address the legislation passed during the Special Session on Crime and the 1995/96 Sessions of the General Assembly. Both the 1994 and 1997 revisions to the Sentencing Guidelines used the targeting of offender populations to

optimize the use of correctional resources and avoid net-widening, creating a framework in which restrictive intermediate punishment programs and drug treatment would be used in lieu of incarceration.

Revisions to the Sentencing Guidelines did not occur in a vacuum. Rather, they were developed over the course of a number of years through an interactive public process. Part of this process was consideration of broad policy objectives advanced by the Executive and Legislative Branches, and implementation issues raised by the Judicial Branch. As you may be aware, the Commission has representation from all three Branches. The eleven members of the Commission are selected as follows: four members from the General Assembly are appointed by the Leadership; four judges are appointed by the Chief Justice of Pennsylvania; and three persons are appointed by the Governor. The two current House members, both members of the Judiciary Committee, are Representative Brett Feese of Lycoming County and Representative Frank Dermody of Allegheny County, the present Chairman of the Commission.

One part of the guideline revision process involves public input and data. As I indicated earlier, the Commission has twice adopted major revisions to the Sentencing Guidelines since the enactment of the intermediate punishment legislation in the early 1990's. To fully implement these changes, the Commission has conducted literally hundreds of guideline training sessions, workshops and presentations and responded to thousands of telephone inquires. The comments and suggestions received through exchanges with those who use the Sentencing Guidelines every day are an important factor in developing policies and considering the practicality of implementation. Of equal importance is the impact a new or revised policy may have on correctional resources, including state prisons, county jails and community-based services. To determine this, the Commission relies on sentencing

data obtained from the nearly 70,000 guideline forms received annually from criminal court judges. One common recommendation over the years has been the expansion of the use of alternatives to incarceration such as drug and alcohol treatment, restrictive intermediate punishments and restorative sanctions.

The Commission believes that the 1997 Sentencing Guidelines provides a framework that balances the competing interests of punishment, community safety and correctional resource management. However, in order to maximize the impact of these recent changes, a number of advancements in other areas of the criminal justice system are required, including: [1] improvement of the criminal justice information system; [2] careful study of the current use of state and county correctional facilities, and in particular the standards regarding place of confinement and paroling authority; and [3] increases in the funding of intermediate punishment programs and modification of the current intermediate punishment legislation. For the purpose of today's hearing, I will limit my remarks to intermediate punishment funding and legislation. Included with my written testimony are three attachments. The first contains the 1997 Sentencing Guidelines matrix, a brief description of the sentencing alternatives available in statute to the court, and a current listing of the counties with Intermediate Punishment sentencing authority. The second attachment contains draft legislation proposing expansion of intermediate punishment eligibility, modification of the restrictions for the use of intermediate punishment for DUI offenders, and creation of a shock incarceration provision. The third attachment is a recent Superior Court panel decision in *Com. v. Arest* addressing intermediate punishment.

Under the 1994 Sentencing Guidelines, the Commission acted on a mandate from the General Assembly to identify offenders who would be eligible and appropriate for participation in county

intermediate punishment programs. To achieve this end, the Commission targeted two categories: property offenders and drug offenders. These categories were chosen because the offenders were generally considered non-violent and would provide the greatest return on an investment in intermediate punishments: property offenders could be supervised at a lower cost with expectations of a higher level of collections in restitution and supervision fees; drug offenders could be required to participate in a licensed treatment program of sufficient duration and intensity as to significantly reduce long term recidivism. After some delay, the Commonwealth provided \$5.3 million to support county intermediate punishment programs. A distribution formula, based on projected diversions from state prison and utilization of intermediate punishment programs among participating counties, was included in the appropriation. The bulk of this funding has been used by counties to support house arrest/electronic monitoring and drug treatment programs for DUI offenders, the only programs permitted under the statute to be used in lieu incarceration to satisfy the mandatory minimum sentence. The appropriation has remained unchanged in subsequent years.

The Commission's assessment of the impact of the 1994 Sentencing Guideline changes supported earlier impact predictions: targeted inmates previously sentenced to state prison are receiving county sentences, and targeted inmates previously sentenced to county jails are receiving intermediate punishment and probation sentences. However, the full utilization of intermediate punishments has been frustrated by a number of factors, perhaps most significant an insufficient level of state funding. For this reason, the Commission in 1995 coordinated a study which addressed the treatment and supervision needs of non-violent offenders. This project brought together representatives of state and county criminal justice and treatment agencies, the District Attorneys Association, the County Commissioners Association, the General Assembly and the Governor's

Policy and Budget offices. The report issued by this group projected a need state-wide of \$26.5 million for first year funding to provide comprehensive treatment and supervision in lieu of incarceration for approximately 2,000 offenders. In FY 1997-98, the Commonwealth budget provided \$10 million for implementation of this type of treatment-based intermediate punishment program, and Commission staff served on an interagency team lead by the Pennsylvania Commission on Crime & Delinquency [PCCD] which recommended counties to receive funding. This team will soon be meeting to discuss second year funding.

Under the 1997 revisions to the Sentencing Guidelines, the Commission increased the number of offenders targeted for participation in county intermediate punishment to include those offenders who are recommended for a sentence which could be served in a county facility. By expanding intermediate punishment into this level of the guidelines, the Commission created a mechanism by which a new pool of both "state" and "county" offenders are recommended for restrictive intermediate punishments in lieu of incarceration. In the counties receiving funding, the \$10 million appropriation for comprehensive drug treatment makes intermediate punishment a viable alternative to incarceration for both of these populations. The Commission believes that this proposal will impact on incarceration in two ways: in the short-term, it will reduce the number of offenders who would otherwise be admitted to state and county facilities; and in the long-term, it will reduce the level of future admissions due to reduced recidivism. The Commission encourages the General Assembly to fund intermediate punishments consistent with the need expressed by counties.

One area of continuing criticism regarding intermediate punishments is the enabling legislation. The County Intermediate Punishment Act of 1990 provided a framework for the expansion of sentencing options such as drug and alcohol treatment, house arrest, electronic

monitoring, restitution and community services, to mention just a few. It also provided a reasonable, structured and necessary alternative to mandatory incarceration for those convicted of DUI.

However, some restrictions in that Act have frustrated many of those who attempt to use it. For this reason, the Commission strongly supports legislation that, among other things, eliminates or modifies the list of ineligible offenses. The irony of the current statute is that an offender convicted of any of the ineligible offenses is eligible for probation, but not for intermediate punishment. The Commission also supports changes that would permit the court to use "shock" incarceration, a practice of combining a flat period of incarceration with a consecutive period of intermediate punishment. The specific suggestions regarding changes in the existing County Intermediate Punishment Act are found in the draft legislation attachment.

For several years, Senator Greenleaf has introduced legislation that addresses a number of the concerns I have raised. His most recent effort, introduced last year, is SB636/PN668. While I would suggest a few changes in the definition of eligible offender found in the bill, it represents a substantial improvement over the existing statute and I encourage the House Judiciary Committee to move on it if and when it passes the Senate. I would also like to bring to your attention a recent decision by a Superior Court panel that undermines the intermediate punishment legislation. In *Com. v. Arest*, a copy of which is attached, the panel held that the court could sentence an offender to intermediate punishment outside of the procedures outlined in 42 Pa.C.S. §9729. The Philadelphia District Attorney's Office has applied for En Banc Reargument. If not reversed, this decision would seemingly allow a court to place any person on intermediate punishment and make the program standards unenforceable. I encourage the Committee to monitor this case and provide a legislative remedy if necessary.

As I indicated at the beginning of my presentation this morning, since its establishment in 1978 the Commission on Sentencing has attempted to promote a fairer, more effective and more cost efficient system of justice through the Sentencing Guidelines. This hearing today provides an another opportunity to discuss changes which could substantially improve the availability and utilization of county intermediate punishment programs. Thank you for inviting me to participate in this discussion.