

9

Commonwealth of Pennsylvania



PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY

Thomas W. Corbett, Jr., Esq.
Chairman

James Thomas
Executive Director

TESTIMONY OF JAMES STRADER
PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY
BEFORE THE HOUSE JUDICIARY COMMITTEE'S TASK FORCE ON
INTERMEDIATE PUNISHMENT
THURSDAY, AUGUST 20, 1998

Good morning, Mr. Chairman and members of the Task Force. My name is James Strader and I am Chief of the Community Corrections Division of the Pennsylvania Commission on Crime and Delinquency (PCCD). Thank you for the opportunity to provide testimony to you today on the issue of intermediate punishment.

Before providing you with some of our ideas and recommendations on the subject of intermediate punishment, I would like to highlight the general responsibilities of PCCD. Additionally, I will describe our activities relative to the provision of assistance to the counties in the operation of their correctional systems, including local intermediate punishment planning and program development.

The PCCD was created by statute and serves as an administrative commission within the Governor's Executive Offices. The agency serves as a catalyst for the prevention and reduction of crime and delinquency within the Commonwealth. We are dedicated to service, and, as such, assist the criminal and juvenile justice systems in functioning effectively and productively. The agency supports local efforts to improve the apprehension and prosecution of those involved in illegal activities and promotes the use of automated data technology to enhance the operational

effectiveness of the criminal and juvenile justice systems. We work to improve the criminal and juvenile justice systems by examining problems, proposing solutions, and monitoring and evaluating the impact of new or enhanced strategies. The agency administers both state and federal funds for the purpose of providing financial support to program initiatives consistent with the Commission's mission and related goals and objectives.

PCCD houses two gubernatorially-created committees: the Victims' Services Advisory Committee and the Juvenile Advisory Committee. In addition, the Chairman has established four substantive committees of the Commission: Evaluation, Law Enforcement, Local Corrections, and Technology and Automation. This committee structure facilitates a multi-year strategic planning process for all state and federal grant funds under the Commission's purview and assures close collaboration with state, local and private practitioners and experts. The Commission is insistent upon making funding decisions focused by research and evaluation with measurable outcomes.

Turning our attention to the specific area of county corrections, PCCD is heavily involved in providing technical assistance and funding for the purpose of assisting local units of government in the development and implementation of needed programs. Although PCCD has a long history in this area, the agency's efforts were enhanced with the passage of Act 193 of 1990, known as the "County Intermediate Punishment Act." At the same time that Act 193 was passed, companion legislation (Act 201 of 1990) was also enacted amending Title 42 and providing a mechanism for judges to sentence to "intermediate punishment." This legislation provides the court of common pleas with a sentencing option that falls between standard probation supervision and incarceration. The legislation provides a mechanism for counties to

develop intermediate punishment plans and to receive authority from PCCD to sentence eligible offenders to specific intermediate punishment programs. Although no state funding was appropriated when the legislation was passed in 1990, the General Assembly began appropriating funds in the amount of \$5.3 million in Fiscal Year 1994-95. The funding level for this program has been sustained in subsequent fiscal years with \$5.3 million in state funds appropriated to PCCD in Fiscal Year 1998-99.

In an effort to provide fiscal support for the implementation of county intermediate punishment programs established pursuant to Act 193, the Commission allocated a portion of its FFY's 1991, 1992, and 1993 Drug Control and System Improvement (DCSI) funds to provide "seed" monies for counties to begin new programs. Additional DCSI funding was made available to counties beyond FFY 1993 to continue these new local intermediate punishment projects, and facilitate the assumption of these costs into local budgets after three years of federal funding support. Based on the Commission's commitment to fund these programs for three years with increasing local matching contributions, in excess of \$12 million of DCSI funds was awarded to the counties.

Section 5 of Act 193 of 1990 states that in order for counties "to qualify for funding under this act, a (prison) board must develop a county intermediate punishment program plan" to be submitted to PCCD. The intermediate punishment board consists of the president judge of the court of common pleas or his designee, the district attorney, the sheriff, the controller and the county commissioners."

Related to the Intermediate Punishment Act, PCCD supports Senate Bill 636 which would amend Act 193 of 1990 by modifying the definition of court to include district justices if approved by the court of common pleas. The definition of “eligible offender” would be revised to clarify that the act only applies to offenders who would otherwise be serving county sentences (24 months or less) and who do not demonstrate a past or present pattern of violent behavior. Language would be added to include as eligible those offenders convicted of driving with a suspended license. Additionally, the county prison board would be required to consult with county human services providers and criminal justice agencies in the development of the Intermediate Punishment Plan and the list of required elements for the plan would be streamlined.

Based on statutory requirements, PCCD has promulgated regulations which require counties to develop and update their intermediate punishment plans on an annual basis. Further, counties must request sentencing authority for specific programs per Act 201 of 1990. Act 201 contains a specific provision which states that “the court shall not have the authority to sentence an offender under this section unless the county has established an intermediate punishment program approved by the Pennsylvania Commission on Crime and Delinquency.” Both the intermediate punishment plan and request for sentencing authority must be signed and approved by the president of the county prison board or intermediate punishment board and the chairperson of the county commissioners. This action, along with a properly executed grant application, makes the county eligible to receive state funding for its intermediate punishment initiatives.

Both Acts 193 and 201 mandated the Pennsylvania Commission on Sentencing (PCS) to adopt guidelines that identify offenders who are eligible and appropriate for participation in

intermediate punishment. The intent is to divert the less serious non-violent offender from incarceration to alternative sentencing programs.

Act 201 specifically excludes persons convicted of certain offenses from being eligible for sentencing to an intermediate punishment program. These offenders include: murder; voluntary manslaughter; aggravated assault; assault by prisoner; statutory rape; involuntary deviate sexual intercourse; indecent assault; arson and related offenses; robbery; theft by extortion; escape; and burglary of the first degree. Originally, Act 201 also excluded all persons convicted under the Controlled Substance, Drug, Device and Cosmetic Act as being eligible for participation in an intermediate punishment program. This was subsequently changed via Act 1991-13 to allow persons convicted of drug offenses to be eligible for intermediate punishment (with the exception of those offenders sentenced under 18 Pa. C.S. § 7508, relating to mandatory sentencing for drug trafficking and 18 Pa. C.S. § 6314, relating to mandatory sentencing for trafficking drugs to minors).

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

Currently, 61 counties are participating in the statewide Intermediate Punishment Program and, as such, have sentencing authority and approved grants to provide services to eligible offenders. Only six counties in the Commonwealth are not participating in the Intermediate Punishment Program. These counties include: Huntingdon, Juniata, McKean, Mifflin, Montour, and Perry.

As we have worked with the counties in this very important area, it has become apparent that certain areas must be paid close attention to in the development of alternative sentencing/intermediate punishment initiatives. These important areas include the following:

- **Policy Team/IP Board Oversight**

As counties begin and continue in the development and implementation of needed intermediate punishment strategies, it is critical that their plans have the support of an oversight body which includes the major participants involved with offender processing. The counties which have experienced the most successes within their intermediate punishment programs have active intermediate punishment policy boards. Through their regular meetings, team members develop a common frame of reference and arrive at a shared understanding of goals, objectives, and outcomes of sentencing strategies. The shared goals, values and judgements of the policy team are key to a successful intermediate punishment program. These policy teams serve as a unique forum for the president judge, the county commissioners, the district attorney, the court administrator, the chief probation officer, the warden, the chairman of the prison board, the director of drug and alcohol programs and other interested parties to exchange ideas and develop an overall strategy for the county.

- **Targeting Appropriate Offenders**

In writing the sentencing guidelines, the Pennsylvania Commission on Sentencing strives to provide a benchmark for the judges of Pennsylvania. The sentencing guidelines provide sanctions proportionate to the severity of the crime and the severity of the offender's prior record convictions. The sentencing guidelines specifically identify those offenders who are eligible for an alternative sentence such as intermediate punishment.

We believe that targeting of offenders for intermediate punishment within individual counties is important. One essential part of PCCD's Intermediate Punishment planning requirements is for counties to identify offender groups which will be targeted for alternative sentencing. The policy team/intermediate punishment board must go through a process of examining past sentencing practices and identifying certain offender populations where alternative sentencing may be the preferred choice. For example, a county which has historically incarcerated all DUI offenders may decide to develop an intermediate punishment sentence linked with drug and alcohol treatment for appropriate offenders. The decision to target this group of offenders may be based on an interest in reducing the county jail population and making a serious attempt to improve offender outcomes through community-based drug and alcohol treatment.

- **Developing a Continuum of Sanctions**

With the assistance of PCCD, many counties have developed and implemented a variety of intermediate punishments in an effort to broaden their continuum of sanctions. Programs such as half-way houses, day reporting centers, intensive supervision, house arrest/electronic monitoring, residential drug and alcohol treatment and numerous other options provide the sentencing judge with a variety of programs which are different in their level of restrictiveness and their approaches to treating the needs of individual offenders. The advantage of having access to a continuum of sanctions is being able to step-up or step-down the level of supervision and treatment based on the behavior of the individual offender. The continuum model has been extremely effective in dealing with populations such as technical parole violators who may be in jeopardy of reincarceration.

At the state level, the Pennsylvania Department of Corrections and the Pennsylvania Board of Probation and Parole have joined forces and recently implemented two half-way back options for state technical parole violators. These initiatives, known as Substance Abuse Violators Effort (SAVE) and the Residential Substance Abuse Treatment (RSAT) Program, target technical parole violators at the state level who continue to experience problems with drug use while under community supervision. In lieu of recommitment to a state correctional facility, eligible offenders are placed in a residential drug treatment program and, upon successful completion, are moved back out to community supervision with appropriate drug and alcohol treatment aftercare. Both of these programs are designed to reduce the number of recommitments to state correctional facilities as well as increase the number of offenders who successfully reintegrate into the community.

- **Addressing Drug and Alcohol Treatment Issues**

In 1994, the Pennsylvania Commission on Sentencing (PCS) established a broad-based committee to identify offenders appropriate for treatment in lieu of incarceration, to develop a treatment model that made sense to both prosecutors and treatment professionals, and to estimate the costs associated with such a project for FY 1995-96. In determining the statewide need to implement such a treatment model, ten representative counties from across the Commonwealth were studied and surveyed. Based on historical data and the projected number of eligible offenders that counties were willing to target for a treatment-based restrictive intermediate punishment, PCCD believes that funding for these programs should be continued and, to the extent possible, increased. Your assistance in securing additional appropriations would be greatly appreciated. We would be glad to work with you to estimate the additional funding need.

In Fiscal Year 1997-98, a major step was taken to address drug and alcohol treatment services for offenders with related needs when Governor Ridge proposed and the General Assembly appropriated \$10 million in new state funds to PCCD for the purpose of supporting drug and alcohol treatment services linked with restrictive intermediate punishment sentencing for non-violent offenders. This new program funding was awarded to 12 counties on a competitive basis and these counties are now in the process of implementing comprehensive assessment, evaluation, treatment, supervision and drug testing of offenders sentenced at the county level who have a documented drug/alcohol problem. The new funding is providing counties with the needed resources to develop a full range of treatment options for eligible offenders sentenced under Levels 3 or 4 of the recently revised Commonwealth Sentencing Guidelines. Counties participating in this program are providing true alternative sentences for non-violent offenders with substance abuse problems. In all cases, these offenders would normally receive a sentence of incarceration as called for under the Sentencing Guidelines. However, where the clinical assessment documents a drug/alcohol dependency, the sentencing judge may order the offender to a restrictive intermediate punishment linked with drug and alcohol treatment. For example, an offender may be ordered to participate in a residential drug treatment program, followed by a period of house arrest and electronic monitoring combined with intensive outpatient treatment, followed by a period of intensive probation supervision and appropriate outpatient treatment. A number of national research and evaluation efforts have demonstrated positive offender outcomes where criminal justice sanctions, substance abuse treatment, and drug testing are linked together. Although we are in the early stages of this program in Pennsylvania, we expect that our experiences will be similar to other states and locales who have implemented similar efforts.

PCCD is currently working with the Pennsylvania State University in implementing an evaluation design to measure the impact of this program. Standardized data and information is being collected by all participating counties and submitted to PCCD for the purpose of measuring impacts on the local criminal justice system and offender outcomes as well. Although the evaluation effort will measure impacts in a number of areas, the focal points will include:

- effectiveness in diverting offenders from incarceration;
- success rate with offender's substance abuse treatment; and
- success rate in reducing offender's reinvolvement with criminal activity.

The FY 1998-99 state budget includes a \$10 million appropriation to PCCD which will be used to continue those efforts begun in the 12 counties during FY 1997-98. Although this funding is critically important for the continuation of the existing 12 counties, PCCD strongly recommends that state-level funding for treatment-based restrictive intermediate punishments for non-violent, substance-addicted offenders should be strengthened and expanded, where appropriate, commensurate with the additional demand for these services at the county level. Based on our assessment of county interest in IPP, PCCD believes at least 20 additional counties would apply if additional funds were appropriated, including 14 sites which could not be funded under the FY 1997-98 appropriation due to a funding shortfall.

● **Evaluating Program Impact**

It is critically important that sufficient attention is paid to evaluating the outcomes of intermediate punishment efforts. In order to develop an effective evaluation plan, reasonable expectations must be developed as well as goals and objectives for each alternative sentencing component. For example, the primary objective of one intermediate punishment program may be

holding offenders accountable and ensuring appropriate levels of victim restitution, while another program's primary objective may be reducing local jail crowding by providing a sentence which includes house arrest with intensive drug treatment.

These new programs must be evaluated to determine their overall effectiveness and to ensure careful planning and forethought during the program development stage. All intermediate punishment programs must be sensitive to the issue of public safety and efforts should be made to measure program effectiveness in this area.

Given the enormous interest in intermediate punishment and the large number of available sentencing options, the importance of having evaluation information on hand is extremely important as various jurisdictions consider the use of such alternatives.

A recent evaluation effort by Mercyhurst College, on the Erie County Intermediate Punishment Plan, was conducted to determine whether the county's Intermediate Punishment Program was (1) successful; (2) cost effective; and (3) replicable.

Using 1995 data, the study indicates that 335 offenders received an alternative sentence in lieu of incarceration. Findings from the study indicate that 92% of the offenders placed under intensive supervision successfully completed the conditions of their intermediate punishment sentence. For those offenders sentenced to electronic monitoring, 95% successfully completed this component of their intermediate punishment sentence.

Further, those 335 offenders were able to:

- serve less prison time;
- alleviate prison crowding by not occupying bed space;
- receive credible community sanctions;

- successfully complete the conditions of supervision; and
- participate in alternative sanctions, saving Erie County substantial dollars.

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

We will continue to maintain an open dialogue with the counties and relevant state agencies and keep all parties up to date with information concerning training, technical assistance, implementation of new services, available grant funds, and other important information. We will also continue in our efforts to evaluate the impacts of intermediate punishment programs to provide needed information for future decision making.

Thank you again for the opportunity to testify before you today.