

**BURGLARY, INTERMEDIATE PUNISHMENT  
ACT NO. 1990-201**

AN ACT Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for burglary; providing for intermediate punishment; and providing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 3502(c) of Title 18 of the Pennsylvania consolidated Statutes is amended to read:

§ 3502. Burglary

**(a) Offense defined.**—A person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with intent to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. A burglary may include any of the following circumstances:

(1) a structure adapted for overnight accommodations in which at the time of the offense any person was present;

(2) a structure adapted for overnight accommodations in which at the time of the offense no person was present;

(3) a structure not adapted for overnight accommodations in which at the time of the offense any person was present; or

(4) a structure not adapted for overnight accommodations in which at the time of the offense no person was present.

\* \* \*

(c) Grading.

(1) Except as provided in paragraph (2), burglary is a felony of the first degree.

(2) If the building, structure or portion entered is not adapted for overnight accommodation and if no individual is present at the time of entry, burglary is a felony of the second degree.

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Section 2. Title 42 is amended by adding a section to read:

§ 2154. Adoption of guidelines for intermediate punishment

The commission shall adopt guidelines to identify offenders who would be eligible and appropriate for participation in intermediate punishment programs. These guidelines shall be considered by the sentencing court in determining whether to sentence an offender pursuant to section 9763 (relating to sentence of intermediate punishment). The guidelines shall:

- (1) Use the description of "eligible offender" provided in section 9729 (relating to intermediate punishment).
- (2) Give primary consideration to protection of the public safety.

Section 3. Section 9721(a) of Title 42 is amended to read:

§ 9721. Sentencing generally

(a) General rule.-In determining the sentence to be imposed the court shall, except where a mandatory minimum sentence is otherwise provided by law, consider and select one or more of the following alternatives, and may impose them consecutively or concurrently:

- (1) An order of probation.
- (2) A determination of guilt without further penalty.
- (3) Partial confinement
- (4) Total confinement.
- (5) A fine.
- (6) Intermediate punishment

\* \* \*

Section 4. Title 42 is amended by adding sections to read:

§ 9729. Intermediate punishment

(a) General rule.-The court may, pursuant to section 9763 (relating to sentence of intermediate punishment), sentence an eligible offender to a county intermediate punishment program. The court may at any time terminate a sentence of intermediate punishment or increase or lessen the conditions of sentence pursuant to section 9773 (relating to modification or revocation of intermediate punishment sentence). The court may impose reasonable costs of participation in the program upon the offender. The court shall not have the authority to sentence an offender under this section unless the county has established an intermediate punishment program which has been approved by the Pennsylvania Commission on Crime and Delinquency.

(b) Eligibility.-For the purposes of sentencing under this section, an eligible offender shall be a person convicted of an offense who would otherwise be sentenced to a county correctional facility, who does not demonstrate present or past violent behavior and who would otherwise be sentenced to partial confinement pursuant to section 9724 (relating to partial confinement) or total confinement pursuant to section 9725 (relating to total confinement).

(c) Ineligibility.--

(1) A person convicted of any of the following offenses shall be ineligible for sentencing under this section:

18 Pa.C.S. Sec. 2502 (relating to murder).

18 Pa.C.S. Sec. 2503 (relating to voluntary manslaughter).

18 Pa.C.S. Sec. 2702(a)(1) or (2) (relating to aggravated assault).

18 Pa.C.S. Sec. 2703 (relating to assault by prisoner).  
18 Pa.C.S. Sec. 2704 (relating to assault by life prisoner).  
18 Pa.C.S. Sec. 2901 (relating to kidnapping).  
18 Pa.C.S. Sec. 3121 (relating to rape).  
18 Pa.C.S. Sec. 3122.1 (relating to statutory sexual assault).  
18 Pa.C.S. Sec. 3123 (relating to involuntary deviate sexual intercourse).  
18 Pa.C.S. Sec. 3124.1 (relating to sexual assault).  
18 Pa.C.S. Sec. 3125 (relating to aggravated indecent assault).  
18 Pa.C.S. Sec. 3126 (relating to indecent assault).  
18 Pa.C.S. Sec. 3301(a) (relating to arson and related offenses).  
18 Pa.C.S. Sec. 3701(a)(1)(i), (ii), or (iii) (relating to robbery).  
18 Pa.C.S. Sec. 3702 (relating to robbery of motor vehicle).  
18 Pa.C.S. Sec. 3923 (relating to theft by extortion).  
18 Pa.C.S. Sec. 4302 (relating to incest).  
18 Pa.C.S. Sec. 5121 (relating to escape).

(2) An offense under this subsection also includes a conviction under 18 Pa.C.S. Sec. 3502 (relating to burglary) where ~~the grading of the offense was a felony of the first degree under section 3502(c)(1).~~ at the time of the offense any person is present.

(3) A person sentenced under 18 Pa.C.S. Sec. 6314 (relating to sentencing and penalties for trafficking drugs to minors) or 7508 (relating to drug trafficking sentencing and penalties) shall be ineligible for sentencing under this section.

(4) A person subject to a sentence the calculation of which included a deadly weapon enhancement as defined pursuant to the sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing or any offense for which possession of a deadly weapon is an element of the statutory definition of the crime shall be ineligible for sentencing under this section.

#### §9755. Sentence of partial confinement

(a) General rule.-In imposing a sentence involving partial confinement the court shall specify at the time of sentencing the length of the term during which the defendant is to be partially confined, which term may not exceed the maximum term for which he could be totally confined, and whether the confinement shall commence in a correctional or other appropriate institution.

(b) Minimum sentence.-The court shall impose a minimum sentence of partial confinement which shall not exceed one-half of the maximum sentence imposed.

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**(h) Prohibition of parole with an intermediate punishment sentence.-The court may impose a sentence to imprisonment without the right to parole under this subsection only when:**

**(1) sentence is imposed pursuant to section 9763 (relating to sentence of intermediate punishment) in which case the sentence shall specify the number of days of partial confinement to be served; and**

**(2) the maximum sentence of partial confinement imposed on one or more indictments to run consecutively or concurrently total 90 days or less.**

**§9756. Sentence of total confinement**

**(a) General rule.-In imposing a sentence of total confinement the court shall at the time of sentencing specify any maximum period up to the limit authorized by law and whether the sentence shall commence in a correctional or other appropriate institution.**

**(b) Minimum sentence.-The court shall impose a minimum sentence of confinement which shall not exceed one-half of the maximum sentence imposed.**

**(c) Prohibition of parole for summary offenses.-~~Except in the case of murder of the first degree,~~ The court may impose a sentence to imprisonment without the right to parole under this subsection only when:**

**(1) a summary offense is charged.**

**(2) sentence is imposed for nonpayment of fines or costs, or both, in which case the sentence shall specify the number of days to be served; and**

**(3) the maximum term or terms of imprisonment imposed on one or more indictments to run consecutively or concurrently total less than 30 days.**

**(d) Prohibition of parole with intermediate punishment sentences. The court may impose a sentence to imprisonment without the right to parole under this subsection only when:**

**(1) sentence is imposed pursuant to section 9763 (relating to sentence of intermediate punishment) in which case the sentence shall specify the number of days of total confinement also to be served; and**

**(2) the maximum sentence of total confinement imposed on one or more indictments to run consecutively or concurrently total 90 days or less.**

**§ 9763. Sentence of intermediate punishment**

**(a) General rule.**-In imposing a sentence of intermediate punishment, the court shall specify at the time of sentencing the length of the term for which the defendant is to be in an intermediate punishment program or a combination of intermediate punishment programs. The term may not exceed the maximum term for which the defendant could be confined and the program to which the defendant is sentenced. The court may order a defendant to serve a portion of the sentence under section 9755 (relating to sentence of partial confinement) or 9756 (relating to sentence of total confinement) and to serve a portion in an intermediate punishment program or a combination of intermediate punishment programs.

**(b) Conditions generally.**-The court may attach any of the following conditions upon the defendant as it deems necessary:

- (1) To meet family responsibilities.
- (2) To be devoted to a specific occupation or employment.
- (3) To participate in a public or nonprofit community service program.
- (4) To undergo individual or family counseling.
- (5) To undergo available medical or psychiatric treatment or to enter and remain in a specified institution, when required for that purpose.
- (6) To attend educational or vocational training programs.
- (7) To attend or reside in a rehabilitative facility or other intermediate punishment program.
- (8) To refrain from frequenting unlawful or disreputable places or consorting with disreputable persons.
- (9) To not possess a firearm or other dangerous weapon unless granted written permission.
- (10) To make restitution of the fruits of the crime or to make reparations, in an affordable amount, for the loss or damage caused by the crime.
- (11) To be subject to intensive supervision while remaining within the jurisdiction of the court and to notify the court or designated person of any change in address or employment.
- (12) To report as directed to the court or the designated person and to permit the designated person to visit the defendant's home.
- (13) To pay a fine.
- (14) To participate in drug or alcohol screening and treatment programs, including outpatient and inpatient programs.
- (15) To do other things reasonably related to rehabilitation.
- (16) To remain within the premises of the defendant's residence during the hours designated by the court.
- (17) To be subject to electronic monitoring.

**(c) Restriction.**--A defendant convicted under 75 Pa.C.S. §1543(b) (relating to driving while operating privilege is suspended or revoked) or §3731(e) (relating to driving under the influence of alcohol or a controlled substance) may only be sentenced to intermediate punishment:

**(1) In a residential inpatient program or in a residential rehabilitative center; or**

**(2) By house arrest or and electronic surveillance combined with drug and alcohol treatment; or**

**(3) In a partial confinement work release program.**

(d) Sentence following violation of condition.-The sentence to be imposed in the event of the violation of a condition under subsection (b) shall not be imposed prior to a finding on the record that a violation has occurred.

**§ 9773. Modification or revocation of intermediate punishment sentence**

(a) General rule.-The court may at any time terminate a sentence of intermediate punishment or increase or decrease the conditions of a sentence pursuant to section 9763 (relating to sentence of intermediate punishment).

(b) Revocation.-The court may revoke a sentence of intermediate punishment upon proof of a violation of specific conditions of the sentence. Upon revocation, the sentencing alternatives available to the court shall be the same as the alternatives available at the time of initial sentencing. Consideration shall be given to the time served in the intermediate punishment program.

(c) Hearing required.-A court shall not revoke or increase the conditions of a sentence of intermediate punishment without a hearing at which the court shall consider the record of the initial sentencing proceeding as well as the conduct of the defendant while serving a sentence of intermediate punishment. A hearing is not required to decrease the conditions of the sentence.

**Section 5. This act shall take effect ~~July 1, 1991~~ immediately.**

**COUNTY INTERMEDIATE PUNISHMENT ACT**  
**ACT NO. 1990-193**

AN ACT Providing for county intermediate punishment programs: and conferring powers and duties on the Pennsylvania Commission on Crime and Delinquency and the Pennsylvania Commission on Sentencing.

*The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:*

Section 1. Short title

This act shall be known and may be cited as the County Intermediate Punishment Act.

Section 2. Definitions 2

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Board" A county prison board, in counties of the first and second class, the Criminal Justice Coordinating Commission or its successor agency.

"Commission." The Pennsylvania Commission on Crime and Delinquency.

"County intermediate punishment plan." A document which describes a proposed intermediate punishment program.

"County intermediate punishment program." A residential or nonresidential program provided in a community for eligible offenders.

"Court." **The trial judge exercising sentencing jurisdiction over an eligible offender under this act. Trial judge may include a district justice if use of intermediate punishment programs by the minor judiciary is approved by the court of common pleas via administrative order or local rule.**

"Eligible offender." A person convicted of an offense who would otherwise be sentenced to a county correctional facility, who does not demonstrate a present or past pattern of violent behavior and who would otherwise be sentenced to partial confinement pursuant to 42 Pa.C.S. §9724 (relating to partial confinement) or total confinement pursuant to 42 Pa.C.S. §9725 (relating to total confinement). The term does not include any offender convicted of murder, voluntary manslaughter, rape, statutory rape sexual assault, aggravated assault as provided in 18 Pa.C.S. §2702(a)(1) or (2), robbery as provided in 18

Pa.C.S. §3701(a)(1)(i), (ii) or (iii), burglary of the first degree as provided in 18 Pa.C.S. §3502 (relating to burglary) where at the time of the offense any person is present, involuntary deviate sexual intercourse, arson as provided in 18 Pa.C.S. §3301(a), extortion accompanied by threats of violence, assault by prisoner, assault by life prisoner, kidnapping, aggravated indecent assault, sexual assault, indecent assault, robbery of motor vehicle, incest, or escape, or a violation of 18 Pa.C.S. §6314 (relating to sentencing and penalties for trafficking drugs to minors) or 18 Pa.C.S. §7508 (relating to drug trafficking sentencing and penalties) or subject to a sentence the calculation of which included a deadly weapon enhancement as defined pursuant to the sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing or any offense for which possession of a deadly weapon is an element of the statutory definition of the crime.

"Nonprofit agency." A not-for-profit human service organization which provides treatment, guidance, counseling, training or rehabilitation services to individuals, families or groups.

### Section 3. Purpose

County intermediate punishment programs shall be developed, implemented and operated for the following purposes:

- (1) To protect society and promote efficiency and economy in the delivery of corrections services.
- (2) To promote accountability of offenders to their local community.
- (3) To fill gaps in local correctional systems and address local needs through expansion of punishment and services available to the court.
- (4) To provide opportunities for offenders who demonstrate special needs to receive services which enhance their ability to become contributing members of the community.

### Section 4. County intermediate punishment programs.

(a) Description.- County intermediate punishment program options include all of the following:

- ~~(1) Noncustodial programs which involve close supervision, but not housing, of the offender in a facility, including, but not limited to:~~
- ~~(i) Intensive probation supervision;~~
  - ~~(ii) Victim restitution or mediation;~~



- ~~(iii) Alcohol or drug outpatient treatment.~~
- ~~(iv) House arrest and electronic monitoring.~~
- ~~(v) Psychiatric counseling~~
- ~~(vi) Community service~~
  
- ~~(2) Residential inpatient drug and alcohol programs based on objective assessments that an offender is dependent on alcohol or drugs or a residential rehabilitative center.~~
  
- ~~(3) Individualized services which evaluate and treat offenders, including psychological and medical services, education, vocational training, drug and alcohol screening and counseling, individual and family counseling and transportation subsidies.~~
  
- ~~(4) Partial confinement programs, such as work release, work camps and halfway facilities.~~

**(1) Restrictive intermediate punishments providing for the strict supervision of the offender including programs that either:**

- (i) house the offender full or part time; or**
- (ii) significantly restrict the offender's movement and monitor the offender's compliance with the program(s); or**
- (iii) involve a combination of programs that meet the standards set forth under clauses (i) and (ii).**

**(2) Restorative sanctions providing for nonconfinement sentencing options that:**

- (i) are the least restrictive in terms of constraint of offender's liberties;**
- (ii) do not involve the housing of the offender either full or part time; and**
- (iii) focus on restoring the victim to pre-offense status.**

**(b) Eligibility.-**

(1) No person other than the eligible offender shall be sentenced to a county intermediate program.

(2) The Pennsylvania Commission on Sentencing shall employ the definition of "eligible offender" under section 2 to further identify offenders who would be appropriate for participation in county intermediate punishment programs. In developing the guidelines, the commission shall give primary consideration to protection of the public safety.

**(3) Any person receiving a penalty imposed pursuant to 75 Pa.C.S. §3731(e) (relating to driving under the influence of alcohol or a controlled substance) or 75 Pa.C.S. §1543(b) (relating to driving while operating privilege is suspended or revoked; certain offenses) may only be sentenced to intermediate punishment program in:**

**(i) a residential inpatient program or a residential rehabilitative center; or**

**(ii) House arrest or and electronic surveillance combined with drug and alcohol treatment; or**

**(iii) in a partial confinement work release program.**

#### Section 5 Boards

(a) Duty of board.- To qualify for funding under this act, a board must develop a county intermediate punishment program plan to be submitted to the commission.

(b) Joint judicial districts.- Where two counties comprise a joint judicial district, the counties may jointly submit a plan, which shall require the concurrence of a majority of members from the boards of each county. The president judge of the judicial district shall chair the meetings of both boards for actions necessary pursuant to this act.

(c) Counties with no board.- If a county of the sixth, seventh or eighth class does not have a prison board, the county shall establish an intermediate punishment board for the purpose of complying with the requirements of this act. The intermediate punishment board shall consist of the president judge of the court of common pleas or his designee, the district attorney, the sheriff, the controller and the county commissioners.

(d) Powers and duties.- A board has the following powers and duties:

(1) To assess available countywide correctional services and future needs.

(2) To work with the county office of probation and parole in developing the county intermediate punishment plan.

(3) To adopt a county intermediate punishment plan, including program policies for administration.

(4) To make recommendations to the board of county commissioners, or chief executive officers in counties of the first class, on contracts with private providers or nonprofit agencies for the provision of intermediate punishment programs.

- (5) To monitor the effectiveness of county correctional services and identify needed modifications.
- (6) To make recommendations to the board of county commissioners, or chief executive officer in counties of the first class, regarding the purchase, lease or transfer of lands, buildings and equipment necessary to carry out the intermediate punishment plan.
- (7) To designate the appropriate county office to maintain a case record for each individual admitted to a county intermediate punishment program within the county.
- (8) To make an annual report on the program to the governing body of the county, the Pennsylvania Commission on Sentencing and the commission.
- (9) To develop the county intermediate punishment plan under section 6.

**(e) Advice to board.--When developing the county intermediate punishment plan, the board shall consult with county criminal justice and related human service providers, as well as the public.**

**(1) At a minimum, the following shall be consulted for the purpose of developing the plan:**

- (i) Court of common pleas.**
- (ii) Board of county commissioners.**
- (iii) Intermediate Punishment Office.**
- (iv) Adult Probation and Parole Office.**
- (v) County jail.**
- (vi) District attorney.**
- (vii) Public defender or defense bar.**
- (viii) Single county authority.**
- (ix) Mental Health/Mental Retardation Office.**
- (x) Citizen input.**
- (xi) Victim input.**

**(2) The board may elect one of the following methods to solicit plan input from providers and the public, and shall develop a process by which relevant information is gathered and documented and incorporated into the Intermediate Punishment Plan:**

**(i) Expand the membership of the board, for purposes of developing the county intermediate punishment plan, to include those listed in paragraph (1).**

**(ii) Appoint an Intermediate Punishment Advisory Committee to include those listed in paragraph (1) to undertake any duties assigned by the board.**

**(iii) Develop an alternate process approved by the Pennsylvania Commission on Crime and Delinquency and involving those listed in paragraph (1).**

Section 6. County intermediate punishment plan

**(a) Requirement.- The board may develop a plan for the implementation and operation of intermediate programs in the county. The plan shall provide for all of the following:**

~~(1) Training programs for the board and staff.~~

~~(2) Public information and education programs.~~

~~(3) Designation of an entity or county government office with overall responsibility for supervision of fiscal affairs of the program.~~

~~(4) Use of existing community agencies and organizations whenever possible.~~

~~(5) A mechanism to advise the courts of the extent and availability of services and programs provided under the plan.~~

~~(6) All costs associated with the county intermediate punishment program.~~

~~(7) For joint judicial districts, an agreement as to each county's responsibilities.~~

**(1) An assessment of available countywide correctional services and future needs.**

**(2) A review of current sentencing procedures and the impact these procedures have on county correctional resources.**

**(3) A review of current alternatives to pretrial detention and the potential these programs have for affecting the jail population.**

**(4) A description of the existing resources in the county which can be used as intermediate punishments or services to offenders sentenced to intermediate punishment.**

**(5) The formation of policy statements targeted to the needs identified by the county and the impact these policies will have on the use of confinement and intermediate punishment.**

**(6) The development of goals and objectives which are aimed at effective utilization of existing and projected correctional resources.**

**(7) The development of an evaluation strategy which measures the qualitative and quantitative performances of all programs.**

(b) Technical assistance.-The commission shall provide technical assistance to develop community corrections plans.

(c) Review and approval.- The plan shall be submitted to the commission for review and approval in the format designated by the commission. The commission shall complete its review within 90 days of submission. Failure to disapprove or recommend amendment within 90 days shall constitute approval.

(d) Formal submission.- The plan and any proposed changes thereto shall be submitted on an annual basis.

## Section 7. Commission

(a) Powers and duties.- The commission shall have the following powers and duties:

(1) Subject to the provisions of subsection (b), to adopt rules and regulations pursuant to this act regarding:

(i) The submission, review and approval of county intermediate punishment plans.

(ii) Standards for the development, operation and evaluation of programs and services. In promulgating regulations under this subparagraph, the commission shall consider comments submitted by the counties.

(iii) The administration and disbursement of funds under this act.

(2) To provide training and technical assistance to boards and program staff.

(3) To ensure that all programs are in compliance with applicable Federal, State and local law.

(4) To monitor county intermediate punishment programs to determine their impact on offenders.

(5) To remit funds as provided for under section 8.

**(b) Interim regulations.- Pending adoption and publication of final rules and regulations, the commission shall have the power and authority to suspend existing regulations and to promulgate, adopt, publish and use interim regulations for the implementation of this act for a period of one year immediately following the effective date of the remainder of this act or until the effective date of final rules and regulations, whichever first occurs. Notwithstanding any other provision of law to the contrary, the interim regulations proposed under the authority of this section shall be subject to review by the general counsel and the Attorney General in the manner provided for the review of proposed rules and regulations pursuant to the act of October 15, 1980 (P.L. 950, No. 164), known as the Commonwealth Attorneys Act, and shall not be subject to review pursuant to the act of June 15, 1982 (P.L. 633, No. 181), known as the Regulatory Review Act.**

#### Section 8. Funding and audits

**(a) Eligibility.- Subject to the availability of funding, counties submitting with approved plans to the commission shall be eligible for direct funding of 50% to 80% of the total cost of the program as determined by the commission to support the cost of intermediate punishment programs. This act shall not prohibit the use of Federal funds.**

**(b) Audit.- Annual reports and all financial records shall be subject to annual audit by the Auditor General.**

**~~(c) Funding.- Funding under this act shall be reviewed on an annual basis. Funding shall be granted on the basis of local need, the quality of the county intermediate punishment program, consideration of whether the plan is consistent with the goals of this act, the extent of the county served and funding availability. Funding shall be made in a manner to provide the equal geographic development of county intermediate punishment programs. In addition, the commission shall consider the following criteria pertaining to the jurisdiction in question:~~**

~~(1) Number of nonviolent commitments to the county correctional facilities.~~

- ~~(2) Population and existing conditions at the county correctional institution.~~
- ~~(3) Population of the county and percentage of population between 18 and 29 years of age.~~
- ~~(4) Sufficient local service capability to support the community corrections programs.~~
- ~~(5) Demonstrated involvement and support of the judiciary, criminal justice and correctional officials and local government.~~

Section 9. Prohibitions

(a) General rule.- Recipients may not use funds granted under this act to supplant existing funds from the State or local government for existing correctional programs or for the construction, renovation or operation of a State, county or municipal incarceration facility ~~except as provided by section 714 of the act of July 1, 1990 (P.L. 315, No. 71), known as the Prison Facilities Improvement Act.~~

(b) Administrative costs.- Administrative costs connected with the expenditure of county intermediate punishment funds under this act may not exceed a percentage amount established by the commission.

Section 10. Continued eligibility

(a) Evaluation.- In order to remain eligible for continued grant funding, a county must comply with commission standards and regulations and participate in an evaluation to determine program effectiveness. The form of the evaluation will be determined by the commission.

(b) Suspension of funding.- If the commission determines that there are reasonable grounds to believe that a county is not complying with its plan or minimum standards, the commission shall give 30 days' written notice to the board. If the commission finds noncompliance, it shall require the board to provide a written agreement as to how and when the specific deficiencies identified will be corrected. If no agreement is submitted to the commission within the time limit or if the deficiencies are not corrected within 45 days after an agreement has been approved by the commission, the commission may suspend part or all of the funding until compliance is achieved.

~~Section 11. Application of act to certain grants~~

~~(a) Limitations. No grant shall be awarded to any county under section 714 of the act of July 1, 1990 (P.L. 315, No. 71), known as the Prison Facilities Improvement Act, until the applicant county shall have submitted an intermediate punishment plan under this act.~~

~~(b) Matching funds. Any county expended or committed for the development of an intermediate punishment plan and for the operation of intermediate punishment programs pursuant to this act shall also qualify for local matching funds for purposes of section 714 of the Prison Facilities Improvement Act.~~

~~Section 12~~ 11. Use of Federal funds

~~Nothing in this act shall prohibit the use of Federal funds for the funding of community intermediate punishment programs. The General Assembly directs the commission to examine the availability of Federal funds for the implementation of this act.~~

~~Section 13~~ 11. Nonapplication of certain provisions

The provisions of the act of July 12, 1972 (P.L. 762, No. 180), referred to as the Intergovernmental Cooperation Law, shall not apply to counties which jointly submit a plan under the provisions of this act.

~~Section 14~~ 12. Construction of the act.

Nothing in this act shall create an enforceable right in any person to participate in an intermediate punishment program in lieu of incarceration. Nothing in this act shall require any county to appropriate funds for the implementation of an intermediate punishment program except as may be necessary to qualify for funds under this act ~~or under the act of July 1, 1990 (P.L. 315, No. 71), known as the Prison Facilities Improvement Act.~~

~~Section 15~~ 13. Effective date

This act shall take effect immediately.



**PA COMMISSION ON SENTENCING  
SUGGESTED DRAFT LEGISLATION [1-15-98]**

***Title 42: Intermediate Punishment [Ineligible Offender]***

**§9729. Intermediate punishment**

**(c) Ineligibility.--**

(1) A person convicted of any of the following offenses shall be ineligible for sentencing under this section:

- 18 Pa.C.S. Sec. 2502 (relating to murder).
- 18 Pa.C.S. Sec. 2503 (relating to voluntary manslaughter).
- 18 Pa.C.S. Sec. 2702(a)(1) or (2) (relating to aggravated assault).
- 18 Pa.C.S. Sec. 2703 (relating to assault by prisoner).
- 18 Pa.C.S. Sec. 2704 (relating to assault by life prisoner).
- 18 Pa.C.S. Sec. 2901 (relating to kidnapping).
- 18 Pa.C.S. Sec. 3121 (relating to rape).
- 18 Pa.C.S. Sec. 3122.1 (relating to statutory sexual assault).
- 18 Pa.C.S. Sec. 3123 (relating to involuntary deviate sexual intercourse).
- 18 Pa.C.S. Sec. 3124.1 (relating to sexual assault).
- 18 Pa.C.S. Sec. 3125 (relating to aggravated indecent assault).
- 18 Pa.C.S. Sec. 3126 (relating to indecent assault).
- 18 Pa.C.S. Sec. 3301(a) (relating to arson and related offenses).
- 18 Pa.C.S. Sec. 3701(a)(1)(i), (ii), or (iii) (relating to robbery).
- 18 Pa.C.S. Sec. 3702 (relating to robbery of motor vehicle).**
- 18 Pa.C.S. Sec. 3923 (relating to theft by extortion).
- 18 Pa.C.S. Sec. 4302 (relating to incest).
- 18 Pa.C.S. Sec. 5121 (relating to escape).

(2) An offense under this subsection also includes a conviction under 18 Pa.C.S. Sec. 3502 (relating to burglary) where ~~the grading of the offense was a felony of the first degree under section 3502(c)(1).~~ **at the time of the offense any person is present.**

(3) A person sentenced under 18 Pa.C.S. Sec. 6314 (relating to sentencing and penalties for trafficking drugs to minors) or 7508 (relating to drug trafficking sentencing and penalties) shall be ineligible for sentencing under this section.

**(4) A person subject to a sentence the calculation of which included a deadly weapon enhancement as defined pursuant to the sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing or any offense for which possession of a deadly weapon is an element of the statutory definition of the crime shall be ineligible for sentencing under this section.**

**Title 42: Intermediate Punishment [Ineligible Offender]**

**§9763. Sentence of intermediate punishment.**

\* \* \*

(c) Restriction.--A defendant convicted under 75 Pa.C.S. §1543(b) (relating to driving while operating privilege is suspended or revoked) or §3731(e) (relating to driving under the influence of alcohol or a controlled substance) may only be sentenced to intermediate punishment:

(1) In a residential inpatient program or in a residential rehabilitative center; ~~or~~

(2) By house arrest ~~or~~ and electronic surveillance combined with drug and alcohol treatment;  
~~or~~

(3) In a partial confinement work release program.

**Title 42: Prohibition of Parole [Shock Incarceration]**

**§9755. Sentence of partial confinement**

(a) General rule.-In imposing a sentence involving partial confinement the court shall specify at the time of sentencing the length of the term during which the defendant is to be partially confined, which term may not exceed the maximum term for which he could be totally confined, and whether the confinement shall commence in a correctional or other appropriate institution.

(b) Minimum sentence.-The court shall impose a minimum sentence of partial confinement which shall not exceed one-half of the maximum sentence imposed.

\* \* \*

**(h) Prohibition of parole with an intermediate punishment sentence.-The court may impose a sentence to imprisonment without the right to parole under this subsection only when:**

**(1) sentence is imposed pursuant to section 9763 (relating to sentence of intermediate punishment) in which case the sentence shall specify the number of days of partial confinement to be served; and**

**(2) the maximum sentence of partial confinement imposed on one or more indictments to run consecutively or concurrently total 90 days or less.**

**Title 42:        *Prohibition of Parole [Shock Incarceration]***

**§9756. Sentence of total confinement**

(a) General rule.-In imposing a sentence of total confinement the court shall at the time of sentencing specify any maximum period up to the limit authorized by law and whether the sentence shall commence in a correctional or other appropriate institution.

(b) Minimum sentence.-The court shall impose a minimum sentence of confinement which shall not exceed one-half of the maximum sentence imposed.

(c) Prohibition of parole **for summary offenses**. ~~Except in the case of murder of the first degree, the~~ The court may impose a sentence to imprisonment without the right to parole **under this subsection** only when:

(1) a summary offense is charged.

(2) sentence is imposed for nonpayment of fines or costs, or both, in which case the sentence shall specify the number of days to be served; and

(3) the maximum term or terms of imprisonment imposed on one or more indictments to run consecutively or concurrently total less than 30 days.

**(d) Prohibition of parole with intermediate punishment sentences. The court may impose a sentence to imprisonment without the right to parole under this subsection only when:**

**(1) sentence is imposed pursuant to section 9763 (relating to sentence of intermediate punishment) in which case the sentence shall specify the number of days of total confinement also to be served; and**

**(2) the maximum sentence of total confinement imposed on one or more indictments to run consecutively or concurrently total 90 days or less.**

# PA COMMISSION ON SENTENCING

## SUGGESTED DRAFT LEGISLATION [5-14-97]

### *Title 18: Codifying Commission's subcategorization of Burglary*

#### **§ 3502. Burglary.**

**(a) Offense defined.**--A person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with intent to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. A burglary may include any of the following circumstances:

(1) a structure adapted for overnight accommodations in which at the time of the offense any person was present;

(2) a structure adapted for overnight accommodations in which at the time of the offense no person was present;

(3) a structure not adapted for overnight accommodations in which at the time of the offense any person was present; or

(4) a structure not adapted for overnight accommodations in which at the time of the offense no person was present.

**(b) Defense.**--It is a defense to prosecution for burglary that the building or structure was abandoned.

**(c) Grading.**--

(1) Except as provided in paragraph (2), burglary is a felony of the first degree.

(2) If the building, structure or portion entered is not adapted for overnight accommodation and if no individual is present at the time of entry, burglary is a felony of the second degree.

**(d) Multiple convictions.**--A person may not be convicted both for burglary and for the offense which it was his intent to commit after the burglarious entry or for an attempt to commit that offense, unless the additional offense constitutes a felony of the first or second degree.

During the September 10, 1998 public hearing, the House Judiciary Committee's Task Force on Intermediate Punishment will consider legislation substantially similar to Senate Bill 636, Printer's Number 668. The draft legislation amends various sections of the act of December 19, 1990 (P.L. 799, No. 193), known as the County Intermediate Punishment Act as follows:

#### I. DEFINITIONS:

The term "court" has been amended to include district justice courts if the use of intermediate punishment programs by the minor judiciary is approved by the court of common pleas. The term "eligible offender" has been amended to clarify that the Intermediate Punishment Act applies to offenders who would otherwise be serving a maximum term of imprisonment of less than 24 months and who does not "demonstrate a past or present pattern of violent behavior."

#### II. PROGRAMS:

The section relating to County Intermediate Punishment Programs has been amended to provide for restrictive intermediate punishment programs which provide for the strict supervision of the offender and, in combination with the restrictive intermediate punishment programs, restorative sanctions that focus on restoring the victims of the crime to their pre-offense status. Further, this legislation broadens offender eligibility for work release, work camps and halfway facilities to include offenses under 75 Pa.C.S. § 1543(b) (relating to driving while operating privilege is suspended or revoked) or § 3731 (relating to driving under the influence of alcohol or a controlled substance).

#### III. BOARD:

Under this legislation the County Intermediate Punishment Board shall consult with the various county criminal justice and related human service providers and the public when developing the county intermediate punishment plan. The bill enumerates the agencies which must be consulted and gives the Board three alternatives for effectively soliciting such input. The Board may expand its membership; appoint an advisory committee; or develop an alternate process approved by the Pennsylvania Commission on Crime and Delinquency (PCCD).

#### IV. INTERMEDIATE PUNISHMENT PLAN:

The existing language relating to the development, implementation and operation of IP programs has been replaced to provide for an assessment of available countywide correctional services and future needs; current sentencing procedures and resource impact; alternatives to pretrial detention; existing resources in the county which can be used for intermediate punishment; formulation of policy statements targeted to the needs identified by the county;

AN ACT

Amending the act of December 19, 1990 (P.L.799, No.193), entitled "An act providing for county intermediate punishment programs; and conferring powers and duties on the Pennsylvania Commission on Crime and Delinquency and the Pennsylvania Commission on Sentencing," changing definitions; further providing for county intermediate punishment programs; providing for advice to county prison boards; further providing for county intermediate punishment plans and for regulations of the Pennsylvania Commission on Crime and Delinquency; and further providing for use of funds, for application of the act to certain grants and for construction of the act.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 2 and 4 of the act of December 19, 1990 (P.L.799, No.193), known as the County Intermediate Punishment Act, are amended to read:

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Board." A county prison board, in counties of the first and second class, the Criminal Justice Coordinating Commission or its successor agency.

"Commission." The Pennsylvania Commission on Crime and Delinquency.

"County intermediate punishment plan." A document which describes a proposed intermediate punishment program.

"County intermediate punishment program." A residential or nonresidential program provided in a community for eligible offenders.

"Court." The trial judge exercising sentencing jurisdiction over an eligible offender under this act. Trial judge may

- (ii) Victim restitution or mediation.
- (iii) Alcohol or drug outpatient treatment.
- (iv) House arrest and electronic monitoring.
- (v) Psychiatric counseling.
- (vi) Community service.

(2) Residential inpatient drug and alcohol programs based on objective assessments that an offender is dependent on alcohol or drugs or a residential rehabilitative center.

(3) Individualized services which evaluate and treat offenders, including psychological and medical services, education, vocational training, drug and alcohol screening and counseling, individual and family counseling and transportation subsidies.

(4) Partial confinement programs, such as work release, work camps and halfway facilities.]

(1) Restrictive intermediate punishments providing for the strict supervision of the offender including programs that either:

(i) house the offender full or part time;

(ii) significantly restrict the offender's movement and monitor the offender's compliance with the program;

or

(iii) involve a combination of programs that meet the standards set forth under clauses (i) and (ii).

(2) When utilized in combination with restrictive intermediate punishments, restorative sanctions providing for nonconfinement sentencing options that:

(i) are the least restrictive in terms of the constraint of the offender's liberties;



county criminal justice and related human service providers, as well as the public.

(1) At a minimum, the following shall be consulted for the purpose of developing the plan:

- (i) Court of common pleas.
- (ii) Board of county commissioners.
- (iii) Intermediate Punishment Office.
- (iv) Adult Probation and Parole Office.
- (v) County jail.
- (vi) District attorney.
- (vii) Public defender or defense bar.
- (viii) Single county authority.
- (ix) Mental Health/Mental Retardation Office.
- (x) Citizen input.
- (xi) Victim input.

(2) The board may elect one of the following methods to solicit plan input from providers and the public:

(i) Expand the membership of the board, for purposes of developing the county intermediate punishment plan, to include those listed in paragraph (1).

(ii) Appoint an Intermediate Punishment Advisory Committee to include those listed in paragraph (1) to undertake any duties assigned by the board.

(iii) Develop an alternate process approved by the Pennsylvania Commission on Crime and Delinquency and involving those listed in paragraph (1).

Section 3. Sections 6(a), 7(b), 8 and 9(a) of the act are amended to read:

Section 6. County intermediate punishment plan.

will have on the use of confinement and intermediate punishment.

(6) The development of goals and objectives which are aimed at effective utilization of existing and projected correctional resources.

(7) The development of an evaluation strategy which measures the qualitative and quantitative performances of all programs.

\* \* \*

Section 7. Commission.

\* \* \*

(b) Interim regulations.--Pending adoption and publication of final rules and regulations, the commission shall have the power and authority to suspend existing regulations and to promulgate, adopt, publish and use interim regulations for the implementation of this act for a period of one year immediately following the effective date of the remainder of this act or until the effective date of final rules and regulations, whichever first occurs. Notwithstanding any other provision of law to the contrary, the interim regulations proposed under the authority of this section shall be subject to review by the general counsel and the Attorney General in the manner provided for the review of proposed rules and regulations pursuant to the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, and shall not be subject to review pursuant to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

Section 8. Funding and audits.

(a) Eligibility.--Subject to the availability of funding, counties [submitting] with approved plans [to the commission]

construction, renovation or operation of a State, county or municipal incarceration facility [except as provided by section 714 of the act of July 1, 1990 (P.L.315, No.71), known as the Prison Facilities Improvement Act].

\* \* \*

Section 4. Sections 11 and 12 of the act are repealed.

Section 5. Sections 13, 14 and 15 of the act are amended to read:

Section [13] 11. Nonapplication of certain provisions.

The provisions of the act of July 12, 1972 (P.L.762, No.180), referred to as the Intergovernmental Cooperation Law, shall not apply to counties which jointly submit a plan under the provisions of this act.

Section [14] 12. Construction of act.

Nothing in this act shall create an enforceable right in any person to participate in an intermediate punishment program in lieu of incarceration. Nothing in this act shall require any county to appropriate funds for the implementation of an intermediate punishment program except as may be necessary to qualify for funds under this act [or under the act of July 1, 1990 (P.L.315, No.71), known as the Prison Facilities Improvement Act].

Section [15] 13. Effective date.

This act shall take effect immediately.

Section 6. This act shall take effect immediately.