

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

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Hearing on Amendments to the  
Intermediate Punishment Act

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House Judiciary Task Force on  
Intermediate Punishment

Room 140, Majority Caucus Room  
Main Capitol Building  
Harrisburg, Pennsylvania

Thursday, September 10, 1998 - 1:10 p.m.

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BEFORE:

Honorable Stephen Maitland, Majority Chairperson  
Honorable Don Walko

IN ATTENDANCE:

Honorable Brett Feese  
Honorable Thomas Caltagirone  
Honorable Kathy Manderino  
Honorable Timothy Hennessey  
Honorable Frank Dermody  
Honorable Harold James  
Honorable LeAnna Washington

KEY REPORTERS

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ALSO PRESENT:

Judy Sedesse  
Majority Administrative Assistant

James Mann  
Majority Research Analyst

John Ryan, Esquire  
Minority Chief Counsel

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1                   CHAIRPERSON MAITLAND:    Good  
2                   afternoon.  Welcome to the second public hearing  
3                   of the House Judiciary Committee's Task Force on  
4                   Intermediate Punishment.  Before proceeding with  
5                   today's hearing, I'd like to recap the task  
6                   force's activities to date.

7                                On June 4th of this year the task  
8                   force toured the Tracking Systems Corporation, a  
9                   private business which provides electronic  
10                  monitoring services for over 2,000 parolees and  
11                  probationers.  On August 20th the task force  
12                  held a public hearing in Gettysburg to gain both  
13                  the local and statewide perspective of the use  
14                  of the county intermediate punishment program.  
15                  At that hearing we solicited information  
16                  relating to the program's effectiveness, as well  
17                  as recommendations for improvement.

18                               On August 31st we toured the Dauphin  
19                  County Community Corrections Center in Steelton,  
20                  a unique facility in the Commonwealth in which  
21                  offenders work at at least one job, pay room and  
22                  board, meet other financial obligations such as  
23                  restitution to the crime victim and child  
24                  support while still under an appropriate level  
25                  of county supervision.

1                   Today we convene to review the  
2                   proposed legislation which amends the  
3                   Intermediate Punishment Act, Act 193 of 1990.  
4                   As we conduct this hearing, I would encourage  
5                   the members of the task force to be mindful of  
6                   the recommendations made by the witnesses at the  
7                   August 20th hearing in Gettysburg, as the  
8                   legislation before us embodies at least some of  
9                   those recommendations.

10                   Before we begin I'd like to ask my  
11                   colleagues on the task force and on the House  
12                   Judiciary Committee to introduce themselves.  
13                   We'll start with you, Kathy.

14                   REPRESENTATIVE MANDERINO: Good  
15                   afternoon. Kathy Manderino, Philadelphia  
16                   County.

17                   REPRESENTATIVE FEESE: Brett Feese,  
18                   Lycoming County.

19                   MR. MANN: James Mann, House  
20                   Research Staff.

21                   CHAIRPERSON MAITLAND: I'm Steve  
22                   Maitland from the 91st District in Adams County.

23                   REPRESENTATIVE WALKO: Don Walko,  
24                   District 20, City of Pittsburgh, and I'm a  
25                   member of the task force.

1                   REPRESENTATIVE CALTAGIRONE: Tom  
2                   Caltagirone, Berks County.

3                   MR. RYAN: John Ryan, counsel to the  
4                   Minority Judiciary Chairman.

5                   REPRESENTATIVE DERMODY: Frank  
6                   Dermody, Allegheny County.

7                   REPRESENTATIVE HENNESSEY: Tim  
8                   Hennessey, Chester County.

9                   CHAIRPERSON MAITLAND: First on our  
10                  list of testifiers today is Gary Tennis and  
11                  Annemarie Kaiser from the Pennsylvania District  
12                  Attorneys Association. Please begin when you  
13                  are ready.

14                  MR. TENNIS: Thank you very much,  
15                  Chairman Maitland, and other members of the task  
16                  force and the Judiciary Committee for allowing  
17                  us the opportunity to testify today. My name is  
18                  Gary Tennis. I'm the legislative liaison for  
19                  the D.A.'s Association. On my left is Annemarie  
20                  Kaiser, the Executive Director for the  
21                  Pennsylvania District Attorneys Association.  
22                  She'll also provide some comments on  
23                  intermediate punishment.

24                  I'd like to address today, and my  
25                  understanding is this would also be an

1 opportunity to talk about broader issues about  
2 intermediate punishment. I'd like to address  
3 three issues. One is drug and alcohol treatment  
4 within the context of restrictive intermediate  
5 punishment. Recommended legislation,  
6 legislation that we are recommending, I believe  
7 along with the Sentencing Commission, providing  
8 judges the discretion to sentence offenders to a  
9 brief, flat sentence in combination with  
10 restrictive intermediate punishment, which is a  
11 legislation that would lead to broader use of  
12 RIP sanctions. Third, comment on the draft  
13 language that you mentioned.

14 The Pennsylvania District Attorneys  
15 Association has been over the past five years  
16 very strongly supportive of providing drug and  
17 alcohol treatment to both criminal justice  
18 offenders in general and to any individuals that  
19 need it. This commitment I think was reflected  
20 about five years ago when the Pennsylvania  
21 Sentencing Commission proposed certain rollbacks  
22 in sentences so that county jail sentences would  
23 become restrictive intermediate punishment  
24 sentences.

25 This is not something historically

1           you'd find the Pennsylvania D.A.'s Association  
2           agreeing to, but we did on the understanding or  
3           condition that anybody receiving restrictive  
4           intermediate punishment receive clinically  
5           appropriate drug and alcohol treatment.

6                     One of the questions that comes up,  
7           and it's come up many times is, why are  
8           prosecutors so committed to drug and alcohol  
9           treatment and trying to do whatever they can to  
10          get it? I'd like to just real briefly run  
11          through some of reasons why we care about it;  
12          not just the criminal justice offenders, but  
13          again for anyone in need of treatment.

14                    Sixty to 80 percent, and I believe  
15          the number is actually higher than 80 percent,  
16          of all criminal justice offenders had serious  
17          substance abuse problems. Many experts around  
18          the country say, and our new Police Commissioner  
19          of Philadelphia, John Timoney, said very often  
20          drug and addiction substance abuse is the engine  
21          that drives the crime problem both in the  
22          Commonwealth and throughout the country. Our  
23          failure to more aggressively address the drug  
24          and alcohol problems of people coming in leads  
25          to more crime, more victims of crime, more



1           prison overcrowding, and more run-away criminal  
2           justice costs.

3                       The question then becomes, well,  
4           does treatment work? Maybe all these people are  
5           addicted but can we really do anything about it?  
6           What the research shows is, if the clinically  
7           appropriate level and duration of treatment is  
8           provided, treatment is very, very effective.

9                       One study after another, from the  
10          CALDATA Study to the Rutgers Studies done by the  
11          President's Commission of Model State Drug Law  
12          shows anywhere between a two-thirds and a 70  
13          percent drop in recidivism, in criminal  
14          recidivism by those who receive clinically  
15          appropriate drug and alcohol treatment.

16                      The next question comes up, can we  
17          afford it? Maybe it's the right thing, but we  
18          just don't have money. Well, the bottom line  
19          is, truth of the matter is, we can't afford not  
20          to do it. Funding providing good drug and  
21          alcohol treatment saves state taxpayers money.  
22          It saves money in the state government budget.

23                      The best study that's been done came  
24          out in 1994 was done in California, was the  
25          largest one done on Medicaid recipients called

1 the CALDATA Study. The CALDATA Study showed  
2 very strong research that the state -- in terms  
3 of state taxpayers' dollars, forgetting all the  
4 other costs on society, it saved state  
5 taxpayers, within a year after treatment was  
6 provided, it saved seven dollars for every  
7 dollar that was expended.

8 Most of that primarily reduced  
9 criminal justice costs, but that also is money  
10 saved in terms of reduce welfare costs, health  
11 care costs of people who show up in emergency  
12 rooms with failed scleroses or other failed body  
13 organs and systems in their body as far as very  
14 expensive critical care; incredible costs and  
15 savings in reduced fetal alcohol syndrome,  
16 cracked baby syndrome.

17 Those are costs that are not only  
18 large up-front, but they're costs that stay with  
19 society for the life of these children. This is  
20 something we can't afford not to do. It's the  
21 most sound investment we could possibly come up  
22 with. If I could get a seven dollar return on  
23 every dollar that I invested, I would find a way  
24 to get the money.

25 For these reasons and because of the

1 relationship of doing effective drug and alcohol  
2 treatment for crime, the Pennsylvania District  
3 Attorneys Association applauds Governor Ridge  
4 and the General Assembly for providing  
5 \$10 million for restrictive intermediate  
6 punishment treatment along the lines we talked  
7 about before. These individuals get RIP now.  
8 Anybody who gets a sentence for that has to be  
9 assessed for their drug and alcohol problems and  
10 be sentenced to clinically appropriate care.

11 In addition, I want to thank the  
12 Pennsylvania Commission on Crime and Delinquency  
13 and Jim Strader, the PCCD staffer is doing, I  
14 think, an outstanding job, and everybody that's  
15 been involved in the RIP program has been very,  
16 very happy on how it's been administered. They  
17 certainly deserve congratulations because they  
18 are doing an excellent job on administrating the  
19 treatment grants.

20 There appear to be two unfortunate  
21 circumstances that I think you should be aware  
22 of that somewhat offset the benefits of the RIP  
23 treatment grants. One is, increasingly so, of  
24 both private and public health care dollars.  
25 Insurance dollars and Medicaid dollars are being

1 funneled into these managed care organizations,  
2 and historically, what's happened both in  
3 Pennsylvania and throughout the nation is, where  
4 drug and alcohol dollars go into managed care,  
5 the drug and alcohol -- the providing of  
6 benefits to drug and alcohol gets choked off  
7 severely. Particularly there's a systematic  
8 denial of benefits for residential treatment,  
9 and even more so there is virtually no providing  
10 of benefits for long-term residential treatment.

11 There's a national expert from  
12 Chicago, James Wrich who is an auditor of  
13 managed care organizations, and he said on  
14 average when these public drug and alcohol  
15 dollars, any of these drug and alcohol dollars  
16 are going to managed care, 40 percent go for  
17 profits and administrative costs.

18 So, there's a huge siphoning off of  
19 money. There's a denial of residential care.  
20 That is particularly a concern for those of us  
21 who care about crime because, the people who are  
22 most deteriorated; in other words, the ones who  
23 need long-term residential care to get better,  
24 are also the ones that are most likely to get  
25 involved in the criminal justice system.

1                   There's a correlation between how  
2 severely addicted you are and how likely you are  
3 to commit crime. This has a lot to do with -- a  
4 lot of concern for prosecutors. Therefore,  
5 prosecutors in this state and other states have  
6 gotten interested in the managed care issue.

7                   My information is that some of the  
8 drug and alcohol treatment funding provided by  
9 the state and the budgets that will be coming  
10 out will be recommending budget cuts for drug  
11 and alcohol treatment. The long-term  
12 residential treatment in Pennsylvania has been  
13 historically paid for by what is called Act 152  
14 dollars, and those are dollars that pay for  
15 nonhospital residential treatment. When -- for  
16 Medicaid populations.

17                   When welfare reform went through,  
18 those populations were cut dramatically so that  
19 many people who used to be eligible for Act 152  
20 funding for drug and alcohol treatment became  
21 ineligible. That was meant to be offset by a  
22 source of funding from BHSI, Behavior Health  
23 Special Initiative. Those dollars were always  
24 inadequate. They did not make up for the cuts.  
25 My information is, it's likely to be that those

1 will be cut even further.

2 On the one hand we've made gains,  
3 but it's been one step forward and two steps  
4 backward in terms of funding for drug and  
5 alcohol treatment.

6 I would urge you when you're looking  
7 at these issues, a lot of the funding for I.P.  
8 and RIP, any criminal justice can come out of  
9 PHSI dollars. There is something I think should  
10 be of interest to the task force.

11 We make four recommendations. One  
12 is, in terms of the RIP funding, that that be  
13 increased. The Sentencing Commission along with  
14 the Pennsylvania Commission on Crime and  
15 Delinquency did a very careful and well-done  
16 analysis of the entire state and determined to  
17 fully fund the RIP drug and alcohol treatment  
18 would cost \$26 million. We're very happy to  
19 have the 10 million and PCCD has wisely set up  
20 and fully funded 12 states (sic) out of the 26  
21 counties that applied for the money. In 12  
22 counties we have full funding of RIP treatment.

23 It makes sense and I would urge the  
24 task force to do what it can to push for  
25 increased funding in that and maybe raising it

1 up gradually so it gets done well. We're  
2 recommending, the Pennsylvania District  
3 Attorneys Association's position is that, that  
4 should be increased by five million every year  
5 until that treatment program is fully funded.

6 Currently, as I said, only 12 of the  
7 26 counties PCCD could fund because of the  
8 limitation of the money. There was \$16 million  
9 in treatment funds requested. They only had 10  
10 million to give out, so six million had to be  
11 turned down. That's unfortunate.

12 The level and duration of treatment  
13 should be clinically determined. One of the  
14 things that I noted, PCCD is doing a very good  
15 job of monitoring this. We got a lot of  
16 conversation about this. There's a temptation  
17 in some counties to try to set up a cookie-  
18 cutter approach.

19 In some of the counties, for  
20 example, they are trying to set up an outpatient  
21 one-size-fits-all outpatient treatment. Every  
22 individual has different levels of deterioration  
23 of their addiction. They need different levels  
24 of treatment. It should be clinically  
25 determined what they need.

1           The fact of the matter is, for most  
2 criminal justice offenders, they probably need  
3 residential and even long-term residential  
4 treatment to get better because these people  
5 aren't just addicted and still holding down a  
6 job. These are people whose lives have  
7 completely fallen apart and been shattered by  
8 drug addiction.

9           Other treatment funding should be  
10 increased as I indicated before. There seems to  
11 be an inclination, a trend unfortunately for the  
12 budgets that are coming before the General  
13 Assembly to have cuts in drug and alcohol  
14 treatment funding. What that means is, with  
15 that problem, the managed care problem, what I  
16 think we want to avoid is a situation where the  
17 only way you can get clinically appropriate drug  
18 and alcohol treatment is to commit a crime. You  
19 shouldn't have to do that. It would be much  
20 better if we could get people into treatment and  
21 get them better before they deteriorate that  
22 far.

23           The Pennsylvania D.A.'s Association,  
24 our official position is to support increases in  
25 drug and alcohol treatment funding but also for



1 noncriminal justice populations. We'd rather  
2 not have them come to us. We'd rather have them  
3 get better before they commit crimes.

4 The next issue, there is legislation  
5 that's been proposed. George Kenney has House  
6 Bill 1144 which provides for a grievance  
7 procedure. This is to address the managed care  
8 problem that I discussed. If there were an  
9 effective grievance procedure done by neutral  
10 parties, a lot of the systematic denials of  
11 benefits for residential treatment could be  
12 addressed and affected through those grievance  
13 procedures. House Bill 1144 addresses that.  
14 That's also supported by the D.A.'s Association.

15 Last session Senator Heckler put in  
16 a bill, Senate Bill 1126, that's even more  
17 comprehensive. In addition to putting in good  
18 grievance procedures, it said that the people in  
19 the managed care firm who make these decisions  
20 about whether to deny benefits or not have to  
21 actually have some qualifications in drug and  
22 alcohol. It doesn't sound like it should be  
23 controversial, but apparently it was.

24 It also says they have to use some  
25 kind of criteria. It doesn't say what, but some

1 kind of nationally-recognized criteria when  
2 making their decisions. Right now we don't know  
3 what they use or whether they use anything.  
4 Again, that shouldn't be controversial.  
5 Unfortunately, for some reason, even though the  
6 majority of the Senate was sponsoring that bill,  
7 it did not move.

8           Those are my comments on the drug  
9 and the alcohol treatment piece. That's the  
10 subject that's really a very high priority for  
11 the D.A.'s Association. I believe it's the most  
12 important area that the General Assembly can put  
13 its energy in in terms of -- If you want to  
14 reduce crime, that's the place to really focus.

15           The next area is to recommend  
16 legislation that was worked and is co-drafted  
17 with the help of the Sentencing Commission and  
18 is attached as Attachment A. That is to provide  
19 for flat, brief sentences, giving the judge more  
20 flexibility to develop where they can give a  
21 flat, brief sentence and combine it with  
22 restrictive intermediate punishment.

23           In many counties the judges have  
24 what's called a Level 3 or Level 4 offense.  
25 That's the seriousness of the offense and the

1 offense gravity score. The judges feel that  
2 they'd like to give the person RIP and they know  
3 the person should get some drug and alcohol  
4 treatment, but the sentence just looks too  
5 serious for many judges to give RIP until they  
6 are in a position where they have to forego RIP  
7 altogether.

8 Therefore, what we're recommending--  
9 I just heard yesterday that our public  
10 defender's office supports it. I don't know of  
11 any group that would be opposed to this. I  
12 think it's pretty noncontroversial--is to give  
13 the judge the flexibility of giving up to a  
14 90-day flat sentence and then follow that up  
15 with RIP.

16 Under the current system the judge  
17 can't give jail, and RIP, because the jail has a  
18 minimum and a maximum and the RIP would have to  
19 come after the parole period expired, which  
20 would be going from a less restrictive  
21 supervision setting to a more restrictive  
22 supervision setting, which isn't the way the  
23 criminal justice system works.

24 This legislation I would urge --  
25 would suggest is very noncontroversial. It's a

1 good way to give judges additional flexibility.  
2 It will lead to greater use of restrictive  
3 intermediate punishment around the state. I  
4 would urge the legislature to try to get this  
5 enacted before sine die.

6 The comments on the draft language  
7 before the task force, it is my understanding  
8 that's fairly reflective of what's also in  
9 Senate Bill 636 over in the other house. We  
10 don't have an official D.A.'s Association  
11 position on it. What I'd like to do is just  
12 provide my comments on it; give you some sense  
13 of where I think -- at least on one of the areas  
14 I'll comment on, where I think the D.A.'s  
15 Association will come down when they take a  
16 position. Then the Executive Director of our  
17 association, Annemarie Kaiser, will provide  
18 additional comments.

19 One of the first things that I  
20 noticed in the language is, on the definition of  
21 eligible offender there's a removal and  
22 exclusion. The current intermediate punishment  
23 statute excludes people convicted of following  
24 offenses. It says, anybody convicted of these  
25 offenses cannot get intermediate punishment.

1           Those offenses are: murder, voluntary  
2           manslaughter, rape, statutory rape, aggravated  
3           assault, robbery, first-degree burglary,  
4           involuntary deviate sexual intercourse, arson,  
5           extortion, assault by a prisoner, assault by a  
6           life prisoner, kidnapping, aggravated indecent  
7           assault, and mandatory drug trafficking  
8           sentences. Those are all very serious offenses,  
9           but those are bracketed out of the exclusion  
10          under Senate Bill 636 so that people convicted  
11          of those offenses would become eligible for  
12          intermediate punishment.

13                   I'm confident that the D.A.'s  
14          Association would vigorously oppose that. I  
15          don't know think there would be many people -- I  
16          don't know why that's in there. Anybody  
17          convicted of offenses that serious are really  
18          not appropriate for intermediate punishment.

19                   Intermediate punishment is meant to  
20          get people who are committing less serious  
21          crime. We try to do something useful with them  
22          so that we can get them off of a life of crime.  
23          People committing murder and rape, and  
24          aggravated assault and robbery are not the type  
25          of people that I think were ever envisioned by

1 the General Assembly when it first enacted the  
2 intermediate punishment statute. I'm sure we  
3 would be opposed to that.

4 There's a provision in there that is  
5 meant to ameliorate that. It says, it would  
6 have to be an alternative or the person  
7 otherwise would have been sentenced to a maximum  
8 of less than two years. That doesn't really  
9 help because it doesn't say the statutory  
10 maximum is less than two. It's what the judge  
11 would do.

12 Under the way this is drafted, if  
13 the judge wanted to give a rapist, for example,  
14 intermediate punishment, the judge would just  
15 have to say, I was going to sentence you to 11  
16 and a half to 23 months. Because that's under  
17 two years, the maximum period, I'm going to give  
18 you intermediate punishment. I don't think  
19 that's fair to society. It's posing an undue  
20 risk to society and public safety. That  
21 certainly is a slap on the face to the victim of  
22 the crime. So, we would be opposed to that.

23 As far as some of the additional  
24 provisions in there, I'll turn it over to our  
25 Executive Director Annemarie Kaiser. Thank you.

1 MS. KAISER: Good afternoon,  
2 Chairman Maitland, and members of the House  
3 Judiciary Task Force on Intermediate Punishment.  
4 As Mr. Tennis indicated, my name is Annemarie  
5 Kaiser, and I currently serve as the Executive  
6 Director of the Pennsylvania District Attorneys  
7 Association. As Mr. Tennis indicated, my  
8 comments do not necessarily reflect the official  
9 position of the Pennsylvania District Attorneys  
10 Association.

11 I should also note at this point  
12 that I agree with the comments that Mr. Tennis  
13 has made thus far. Since he has given you such  
14 a comprehensive overview of intermediate  
15 punishment, I'll restrict my comments and make  
16 them brief today.

17 First, I would like to note that I  
18 would concur with Mr. Tennis's conclusion that  
19 judges should be permitted to dispense brief  
20 jail sentences in conjunction with RIP  
21 treatment. This will enable the court to use  
22 both options instead of choosing to either  
23 incarcerate the defendant or mandate treatment.

24 I would also concur with Mr.  
25 Tennis's remarks regarding eligible offenders.

1           Although prosecutors would clearly like to  
2           encourage offenders to rectify their substance  
3           abuse problems, there are certain offenses which  
4           are so egregious and violent that intermediate  
5           punishment is not the proper punishment. It  
6           would be quite devastating to a victim of a  
7           sexual assault crime to discover that the  
8           offender has been ordered to receive treatment  
9           without further sanctions. Although it is  
10          likely that most judges would not utilize this  
11          option in such cases, I think that violent  
12          criminals should be on notice that their actions  
13          will result in nothing less than incarceration.

14                   Furthermore, it is also likely that  
15          such violent offenders are not first-time  
16          offenders, but have an extensive criminal  
17          history. Thus, it is likely that they  
18          previously have had opportunities in the past to  
19          rectify their problem. Intermediate punishment  
20          is a way to deter individuals who commit such  
21          minor offenses from going to the path of  
22          becoming a career criminal.

23                   Expanding funding will also ensure  
24          that the programs that are available are quality  
25          programs which will have a long-term effect on



1 the offender. This additional funding will also  
2 assist counties who are taking the necessary  
3 measures to set up programs designed to reduce  
4 the level of criminal activity in their  
5 community instead of merely expanding the jail  
6 population.

7 Lastly, I would comment on the  
8 proposed language in Senate Bill 636 with  
9 respect to permitting district justices the  
10 opportunity to sentence to intermediate  
11 punishment. Again, this is not the official  
12 position of the Pennsylvania District Attorneys  
13 Association. However, it is my understanding  
14 after speaking with some district attorneys that  
15 this practice already occurs in many district  
16 justice offices. Thus, the language would  
17 validate a practice which is already occurring.

18 Also, given the fact that district  
19 justices often handle offenders when they first  
20 come into the system, the persons who committed  
21 minor offenses, this is the ideal place for  
22 intermediate punishment. However, I do agree,  
23 as is listed in the bill, that it's appropriate  
24 to leave the matter to the discretion of the  
25 county via local rule or administrative order.

1                   Thank you for the opportunity to  
2 address the task force on these matters.

3                   CHAIRPERSON MAITLAND: Thank you,  
4 Mr. Tennis and Ms. Kaiser. Any members have any  
5 questions? Kathy.

6                   REPRESENTATIVE MANDERINO: Thank  
7 you, Mr. Chairman. I have only heard this  
8 anecdotically. I'm looking for either  
9 verification or more information.

10                  Mr. Tennis, when you talked about  
11 insurers not providing drug and alcohol  
12 treatment or what's happening with the drug and  
13 alcohol dollars, it reminded me that I have  
14 heard a couple of times recently instances  
15 where, and I'm assuming it's happening more with  
16 private payers, private insurers as compared to  
17 the Department of Public Welfare, although I'm  
18 not sure of that for sure.

19                  But, where people are being denied  
20 payment or coverage for treatment, if the reason  
21 they're getting into treatment is the result of  
22 a criminal justice intervention. So, if,  
23 instead of somebody waking up today and saying,  
24 gosh, I have an alcohol problem. I better go  
25 get treatment. If the reason they are saying,

1 gosh, I have an alcohol problem, I better go get  
2 treatment is because a judge ordered it as a  
3 part of a sentence or as a part of an ARD, or a  
4 drunken driving offense, or something like that,  
5 that they are being denied coverage. My  
6 question is twofold.

7 One, are you hearing those stories?  
8 If so, can you educate us a little bit more?  
9 Two, if that is in fact happening, where people  
10 who have private insurance are being denied  
11 coverage, then where are they -- Are they then  
12 competing for Act 152 public funds in order to  
13 get this coverage? Can you help us in that  
14 regard?

15 MR. TENNIS: I sure can. My  
16 understanding, and I've heard it repeatedly  
17 around the state that that is the case. Even if  
18 the person is genuinely addicted and has been  
19 clinically assessed by professionals that they  
20 need this treatment, whether it's alcohol or  
21 drugs, or whatever it might be, and they have  
22 paid their premiums for the insurance; or even  
23 in the Medicaid context the taxpayers have paid  
24 the premiums for the people to get this  
25 treatment and it's being handled by -- it's

1 being contracted out to a managed care  
2 organization to handle; that if the reason the  
3 person is getting it is because they got in  
4 trouble with the law, that they be --  
5 systematically that's grounds for denial of  
6 care.

7 That's not anything that the law --  
8 The law requires that that coverage be provided.  
9 So in addition to being bad policy, I think in  
10 my own opinion, it looks to me like it violates  
11 the current statute which requires certain  
12 levels of drug and alcohol treatment coverage.  
13 It doesn't say anything about how it happened,  
14 how your addiction is detected or how it  
15 happened to come to your attention. It's very  
16 common for people with substance abuse problems  
17 to come to their attention because of getting in  
18 trouble with the law. DUI is the best example.  
19 It makes no sense at all, but my understanding  
20 is that is the case.

21 What happens is, basically, cost  
22 shifting occurs. Even though they pay these  
23 premiums and it's supposed to be covered, the  
24 company won't pay. Either they don't get the  
25 treatment at all, in which case they might go to

1 jail; or if they get treatment, which is the  
2 best and we hope they do, then we the taxpayers  
3 pay for that.

4 If it's public dollars that are  
5 being handled by a managed care organization and  
6 they deny care on that basis and then they still  
7 get treatment, that means they get shifted over  
8 to another public funding stream. It means we  
9 the taxpayers get to pay twice for one episode  
10 of treatment. We pay double. Either way it's a  
11 bad deal for us. That cost shifting does occur,  
12 and I do hear consistently that's the case.  
13 That could be remedied statutorily.

14 REPRESENTATIVE MANDERINO: Thank  
15 you. Thank you, Mr. Chairman.

16 CHAIRPERSON MAITLAND: I have a  
17 question for Mr. Tennis. You said in your  
18 testimony that the clinical determination of the  
19 level of duration of treatment should be -- that  
20 the level of duration of treatment should be  
21 clinically determined.

22 Does the Intermediate Punishment Act  
23 provide for that or do we need to go further  
24 with that?

25 MR. TENNIS: The act does not

1 provide the sentencing guidelines, and the  
2 comments for the sentencing guidelines do  
3 provide for that. I'm not sure -- legislation  
4 wouldn't hurt. I believe at least working with  
5 the current individuals that are working with  
6 this for the Pennsylvania Commission on Crime  
7 and Delinquency, I think they have an  
8 understanding that that should be the case and  
9 they have a commitment for doing that.

10 I don't think legislation is  
11 essential, but I think that's good policy.  
12 Staff changes; administrations change. I think  
13 it makes very good sense for the legislature to  
14 make a statement saying, we don't want the  
15 cookie-cutter approach. We know that doesn't  
16 work.

17 You can't take someone who needs  
18 residential and get them better on two weeks of  
19 outpatient. You don't want to take someone who  
20 needs a month's outpatient and put them in for  
21 six-month residential. It's a waste of money.  
22 You want it clinically determined.

23 I think it would be useful to do  
24 that in the legislation. I would certainly be  
25 delighted to offer my services in helping to

1 draft language.

2 CHAIRPERSON MAITLAND: For Ms.  
3 Kaiser, certainly I understand your objection to  
4 removing those enumerated offenses from being  
5 ineligible for intermediate punishment, but the  
6 act provides that a person who does not  
7 demonstrate a present or past pattern of violent  
8 behavior would be eligible for intermediate  
9 punishment.

10 We had at the hearing in Gettysburg  
11 a Berks County judge testify that you may have  
12 had a young person, usually a male, in their  
13 late teens and he committed armed robbery or  
14 aggravated assault, or some kind of simple  
15 assault that would constitute a past pattern of  
16 violent behavior. And then some decades later  
17 maybe they run into trouble with drinking and  
18 driving or something. They would appear to be  
19 ideal candidates for intermediate punishment at  
20 that stage in their life, but because of this  
21 past pattern of violent behavior --

22 I guess what I'm getting at is, do  
23 you think there's a way that we can maybe  
24 redefine what constitutes a past or present  
25 pattern of violent behavior or maybe have the

1 D.A. of the county sign off on individual cases  
2 for eligibility for I.P.? I'll just throw that  
3 out.

4 MS. KAISER: When I looked at the  
5 crimes, and I remember from when I was a deputy  
6 district attorney in Dauphin County, reviewing  
7 the crimes that were ineligible, in my eyes  
8 those are violent crimes. I think if you just  
9 have a definition that says that you have a  
10 violent history, that's subjective. It would be  
11 up to the person looking at it. A judge can sit  
12 there and say, I don't consider that to be  
13 violent. How do you tell the victim of a sexual  
14 assault that this person is only getting  
15 intermediate punishment?

16 I understand what you're saying that  
17 sometimes there are those cases where it may be  
18 warranted to give I.P. But I think if you  
19 change the statute from the way it is, it could  
20 be subjective to much abuse.

21 MR. TENNIS: I think it's something  
22 that would really depend on the specific  
23 incident. You cited a pretty compelling  
24 incident. It would be something that I think we  
25 would certainly be interested in sitting down



1 and looking at specific approaches and see if  
2 there's something that can be worked out.

3 Again, I think the devil is in the  
4 details. It would really depend of what crimes  
5 you are looking at, how much period of time, and  
6 all that.

7 MS. KAISER: I think, perhaps, it  
8 could be rectified if there was some language  
9 different than just merely saying the person was  
10 going to be sentenced to a period less than 24  
11 months. I think that is not sufficient.  
12 However, as Mr. Tennis said, if there was  
13 something additional, that perhaps could be a  
14 solution to the problem.

15 CHAIRPERSON MAITLAND:  
16 Representative Walko.

17 REPRESENTATIVE WALKO: Thank you,  
18 Mr. Chairman. I'm a little confused about the  
19 residential, meaning restrictive intermediate  
20 punishment program as it applies to people who  
21 are deemed to be addicted and needing treatment,  
22 put into a program and then the treatment that  
23 was arranged for them is denied. I'm a little  
24 confused.

25 MR. TENNIS: The coverage --

1                   REPRESENTATIVE WALKO: It's a  
2                   totally new concept. I didn't understand that  
3                   that was happening.

4                   MR. TENNIS: There's several ways.  
5                   If you get arrested for a crime, there's several  
6                   ways you could end up in drug and alcohol  
7                   treatment. One of the things that could happen  
8                   is a judge could say -- it could be less than a  
9                   RIP level. It could be what's called Level 1 or  
10                  Level 2. The judge could look at you and think,  
11                  I think we have someone with an alcohol problem;  
12                  or a drug and alcohol violation and say, yeah,  
13                  I'll give you treatment. The judge could give  
14                  you probation. He says, I'm going to give you  
15                  two years' probation and the condition of that  
16                  is that you receive clinically appropriate drug  
17                  and alcohol treatment.

18                  In the DUI situation you may be  
19                  employed and your employer would likely have  
20                  health insurance, and the health insurance in  
21                  the State of Pennsylvania is required to cover  
22                  up to either 30 or 60 days of residential drug  
23                  and alcohol treatment and a certain number of  
24                  days of outpatient. Your insurance company  
25                  under those circumstances--and it may be in

1 every instance; if it's not it's virtually every  
2 instance--will not pay for your drug and alcohol  
3 treatment because, the reason the problem  
4 surfaced was because you were arrested. That's  
5 what's denied. That's just what they do. I  
6 think it's wrong. I think it's probably in  
7 violation of the law in my opinion. That's what  
8 they do. There's really no good reason for it.

9 The only way it would be right is if  
10 they said, we're going to put you in drug and  
11 alcohol treatment whether you need it or not.  
12 It's really doing as if it was a jail sentence.  
13 Then they can say, this isn't really treatment.  
14 This is being used as a sentence.

15 But, when the level of duration of  
16 treatment is clinically determined, there's no  
17 sound policy reason for denying it. The only  
18 thing is the incentive is there because the more  
19 that the insurer or HMO denies treatment, the  
20 more money they make. That's the only reason I  
21 can come up with that I can think of.

22 REPRESENTATIVE WALKO: Two other  
23 brief questions. What percentage, if you could  
24 give me a ballpark, of all these in these kinds  
25 of programs, all these offenders in these kinds

1 of programs are being denied treatment by the  
2 managed care organizations? Can you come up  
3 with some kind of a ballpark estimate?

4 MR. TENNIS: I'd like to get back to  
5 you. I wish Deb Beck were here. She might be  
6 able to give you a better answer.

7 In terms of what's clinically -- If  
8 someone needs long-term residential care, I  
9 would say it's heading up towards a hundred  
10 percent in terms of residential care, and I'm  
11 shooting from the hip, but I think I can back  
12 this up and get you some more figures. It would  
13 probably be more than half.

14 I don't know how good of numbers  
15 they put together. I know when talking to  
16 programs, people running the programs, anybody  
17 involved in this area, they tell you, they will  
18 approve outpatient, some level of outpatient;  
19 not too much of that even. Residential is gone  
20 pretty much, and long-term residential just  
21 ain't going to happen.

22 REPRESENTATIVE WALKO: Just one  
23 final question regarding this occurrence. Does  
24 it happen in programs like the drug treatment  
25 courts, the new one in Pittsburgh, the one in

1 Philadelphia and I believe one in Chester? Are  
2 they experiencing this kind of problem or is  
3 that a different situation?

4 MR. TENNIS: It applies. It's a  
5 great question. There are funding sources in  
6 those programs to pay for some treatment, but  
7 always, almost every instance the demand for  
8 treatment outpaces the level of funding. So,  
9 any offender who comes in, if you have a guy who  
10 is arrested for DUI and they have a private  
11 insurer, if you can get that offender to use  
12 their own insurance that someone has paid the  
13 premiums for to cover this stuff, then that's  
14 going to free up more dollars for people who are  
15 indigent.

16 Anytime it has an impact on whether  
17 or not it's resulting, there are so many factors  
18 and so many variables and funding streams, it  
19 gets really complex, but the bottom line is, any  
20 time you have somebody that has an obligation,  
21 private entity that has an obligation to pay for  
22 this and they don't, one way or the other that's  
23 going to shift cost over to the public and  
24 there's going to be fewer public dollars for  
25 those who are uninsured.

1                   REPRESENTATIVE WALKO: Thank you  
2 very much. Thank you, Mr. Chairman.

3                   CHAIRPERSON MAITLAND: Any other  
4 questions?

5                   (No response)

6                   CHAIRPERSON MAITLAND: If not, I  
7 thank you very much for your testimony. We  
8 greatly appreciate it.

9                   MR. TENNIS: Thank you very much.

10                  CHAIRPERSON MAITLAND: I'd ask the  
11 Honorable Harry Forbes, the Commissioner from  
12 Pike County, and Diane Bosak, who is legislation  
13 liaison to come forward. Good afternoon.  
14 Please feel free to begin.

15                  MR. FORBES: Good afternoon,  
16 distinguished members of the Task Force on  
17 Intermediate Punishment of the House Judiciary  
18 Committee. I'm Commissioner Harry Forbes of  
19 Pike County. As Chair of the Courts and  
20 Corrections Committee I'm pleased to be here  
21 today to present comments on behalf of the  
22 County Commissioners Association of  
23 Pennsylvania.

24                  In presenting comments with regard  
25 to the issue of intermediate punishment and

1 specifically Senate Bill 636, I will focus on  
2 some generalities but will not delve greatly  
3 into the counties' use of intermediate  
4 punishment, as was presented in previous  
5 testimony before this task force.

6 Before I begin, I'd like to take a  
7 moment to provide a bit of background on the  
8 involvement of CCAP in promoting intermediate  
9 punishment. The association has been the  
10 recipient of a grant from the Pennsylvania  
11 Commission on Crime and Delinquency for several  
12 years now. As part of this grant we oversee the  
13 production of a newsletter known as the  
14 Intermediate Punishment News, but soon to be  
15 produced under the new name of Community  
16 Corrections. The newsletter is published  
17 quarterly and is distributed to members of the  
18 legislature, judges, counties, and many other  
19 interested parties.

20 In addition, the grant affords us an  
21 opportunity to offer technical assistance and  
22 training. Much of the training provided to date  
23 has centered around media relations in an effort  
24 to use the media to gain public support for the  
25 concept of intermediate punishment.

1                   The association's Courts and  
2                   Corrections Committee has also been very active  
3                   in this issue. Over the years the committee  
4                   members have monitored the impact of I.P. on  
5                   counties and have offered insight and  
6                   recommendations for changes.

7                   Counties surely realize the benefits  
8                   intermediate punishment programs offer,  
9                   particularly in reducing jail population, but we  
10                  just as certainly understand the fiscal bottom  
11                  line.

12                  Let me begin by stating that the  
13                  County Commissioners Association supports  
14                  intermediate punishment as an alternative  
15                  sentencing mechanism for persons convicted of  
16                  nonviolent crimes, contingent upon the continued  
17                  and permanent funding by the Commonwealth, and  
18                  I'd like to address that point, for the costs  
19                  associated with implementation, operation and  
20                  capital expenditures in these programs.

21                  The association has been pleased  
22                  with the commitment of \$10 million for the past  
23                  two years for drug and alcohol treatment costs  
24                  associated with intermediate punishment  
25                  programs. Unfortunately, many counties are in



1           need of additional funding to support the basics  
2           of these programs as well. It goes without  
3           saying, that properly managed and adequately  
4           funded programs are more effective than those  
5           that are not, which was testified to just a few  
6           minutes ago on alcohol and drugs.

7                         Counties are quick to point out that  
8           the use of I.P. has rapidly grown over the  
9           years, as has the entire correctional system  
10          experienced dramatic increases. The initial  
11          premise behind I.P., that of providing an  
12          alternative to incarceration, has not been  
13          without a widening of the net. Although this is  
14          difficult to quantify, many counties have  
15          believed that some offenders have been caught in  
16          the I.P. sentence trap who would otherwise  
17          likely not have received a sentence of  
18          incarceration. Indeed, according to the  
19          national research, net widening has occurred in  
20          the states offering these types of intermediate  
21          punishment sanctions.

22                         But we are not here to specifically  
23          discuss the funding issue. In the years since  
24          the initial implementation of the I.P. statute,  
25          counties generally have experienced success and

1 overall satisfaction with these programs. That  
2 is not to say that statutory changes are not  
3 necessary.

4 The County Commissioners Association  
5 believes that legislation such as Senate Bill  
6 636 is a viable starting point. Over the past  
7 several years, CCAP has worked with the  
8 Sentencing Commission and the Commission on  
9 Crime and Delinquency to address areas of the  
10 current law in which change should be  
11 considered. Much of this is contained in Senate  
12 Bill 636. The legislation includes provisions  
13 which will expand the eligible offenders,  
14 address restorative sanctions, redefine the  
15 county I.P. plan and planning process, and  
16 revise the funding formula.

17 If I may, let me address more  
18 specifically a few of these points. In terms of  
19 the expansion of eligibility, counties are not  
20 interested in allowing violent offenders to  
21 receive I.P. sentences. However, we also want  
22 to be sure that the right kind of offenders are  
23 targeted, thereby, easing the growing jail  
24 population, but without jeopardizing the  
25 integrity of I.P.

1           In this respect, judges armed with  
2           adequate information concerning the offender  
3           should, perhaps, be given more discretion in  
4           deciding when to sentence offenders to I.P.,  
5           realizing as well that the sentencing guidelines  
6           play an important role.

7           Another important revision to  
8           current statute lies in the area of county I.P.  
9           plans. We are comfortable with the language  
10          contained in Senate Bill 636, in that, these new  
11          components for the plan will be more beneficial  
12          to the counties. The current law does not  
13          adequately reflect the types of elements  
14          counties should be considering in the  
15          development of the I.P. plans, although these  
16          were sufficient at the time the law was enacted  
17          because we had no experience in this regard.

18          Specifically, the language we like  
19          will make counties assess the correctional  
20          needs, review sentencing procedures and the  
21          impact of these on correctional resources,  
22          formulate policy targeting the needs of the  
23          counties, develop goals and objectives, and  
24          review alternatives to pretrial detention.

25          This type of focus for county I.P.

1 plans will help counties more carefully review  
2 what is happening within their own counties and  
3 understand more clearly if they are  
4 appropriately allocating resources. This  
5 information is likely to be more helpful to PCCD  
6 as well as they are the entity responsible for  
7 approving the I.P. plans.

8 Counties see a need as well for  
9 shock incarceration under the intermediate  
10 punishment provisions. With so many repeat  
11 offenders already in the system, this may be a  
12 way to help deter an offender from committing  
13 another or a more serious crime.

14 As I have stated, the county  
15 commissioners believe Senate Bill 636 is a  
16 starting point, and we strongly encourage the  
17 General Assembly to take action on the  
18 legislation this session. The changes provided  
19 in this legislation can serve to resolve areas  
20 of uncertainty and reinforce the role of  
21 intermediate punishment as an alternative to  
22 incarceration.

23 CCAP would like to offer our  
24 assistance to the task force in developing  
25 legislation to address the intermediate

1 punishment needs of the counties and to ensure  
2 the best use of the system.

3 Before concluding, if I may touch on  
4 a few related items, there has been much talk  
5 about the restorative sanctions and reparative  
6 boards other states have utilized. We might  
7 also recommend the committee look at Oklahoma's  
8 state-county partnership efforts. Oklahoma's  
9 Community Sentencing Act may provide additional  
10 areas in which to focus revisions to the  
11 Pennsylvania statute. CCAP also encourages the  
12 task force and the Judiciary Committee to look  
13 at the effectiveness of drug courts.

14 This concludes my remarks. Thank  
15 you for the opportunity to present these  
16 comments, and I would be glad to respond to any  
17 questions.

18 CHAIRPERSON MAITLAND: We have a  
19 couple questions for you, Commissioner.

20 MR. MANN: This is really just one  
21 quick question, Mr. Chairman. Thank you. Mr.  
22 Forbes, you might be able to answer this. As  
23 the last testifiers presented, this legislation  
24 might broaden the category of offenders that are  
25 eligible for I.P. Under the definition of

1 eligible, it takes out those violent offenders,  
2 rape, aggravated indecent assault, et cetera.

3 To bring you closer to the top of  
4 the definition, my question relates to the added  
5 language of maximum period of confinement of  
6 less than 24 months. Under current Pennsylvania  
7 statute there are three different types of  
8 sentences that a judge can hand out. Those  
9 sentences in which an offender is sentenced to  
10 less than 24 months as a maximum sentence and  
11 those offenders go to the county correctional  
12 facilities; those offenders who are sentenced to  
13 a maximum term of imprisonment of more than  
14 five, and those who go to state facilities.

15 Now, the folks that fall between the  
16 two years and the five years can go to either a  
17 county facility or can go to a state facility at  
18 the discretion of the court.

19 My question would be, if the court  
20 decides to exercise that discretion and place  
21 them into a county facility, does not this  
22 language exempt them from intermediate  
23 punishment if they get, say, a sentence of one  
24 and a half to three? Their maximum term is over  
25 the 24 months; therefore, they're excluded?

1 MS. BOSAK: Yes, that would be our  
2 assessment. Obviously, we're not -- That's a  
3 whole other issue, the state offenders and the  
4 county correctional facilities, another issue  
5 we'd like to address at some point. Obviously,  
6 we're not interested in growing these programs  
7 to the point where they exceed what financial  
8 capacity we have. But, we also are interested  
9 in going back and reviewing the eligibility  
10 because we think there may be cases where there  
11 are those individuals that should be eligible  
12 for I.P. that currently are not.

13 Now, as I think Commissioner Forbes  
14 pointed out in the testimony, we're not  
15 interested in violent offenders being eligible,  
16 but we are interested in going back and looking  
17 at that. I think, perhaps, maybe not that  
18 particular instance from the Berks County judge  
19 at the Gettysburg hearing but maybe something  
20 similar to that. There are some cases it really  
21 ought to be considered.

22 MR. MANN: Thank you.

23 CHAIRPERSON MAITLAND: Commissioner,  
24 I have just kind of a general question about  
25 Pike County experience. If I understand

1           correctly, Pike County is one of the fastest  
2           growing counties in the state; is it not?

3                   MR. FORBES:   Correct.

4                   CHAIRPERSON MAITLAND:   Adams, my  
5           county, is I think fourth.   How old is your  
6           county prison, and do you see a need for a  
7           building program there in the near future?

8                   MR. FORBES:   I hope not.   No, in all  
9           seriousness, we just completed a new 240-bed  
10          facility.   We are currently -- It was open in  
11          December of '95; started out with an average  
12          prison population of around 30 to 31.   We  
13          currently hit a high this month of 91.   We're  
14          growing at a rate of alarming state.   With that  
15          we utilize a lot of programs that come under  
16          intermediate punishment.   If we did not, the  
17          whole entire facility would be full.   We would  
18          currently be building another facility.

19                   I just made a trip down here to  
20          Dauphin County with my President Judge, county  
21          sheriff and chief probation officer to look at  
22          some of the stuff that's going on down her under  
23          Terry Davis's facility and also the juvenile  
24          facilities down here.   We are looking at other  
25          alternatives to putting men to full



1 incarceration, and also planning for the future.

2 CHAIRPERSON MAITLAND: Adams County  
3 is looking at building a new county prison and  
4 also considering some kind of community  
5 corrections facility that's not as secure as the  
6 county prison. Do you operate your work release  
7 and other programs out of your county prison?

8 MR. FORBES: Currently, yes. That's  
9 a big security problem for us because you bring  
10 them in and out and with this thing where people  
11 have to come in and out of the facility. The  
12 idea of keeping them at their jobs and working  
13 and keeping what we were talking here just  
14 earlier, health benefits in place to provide  
15 some of the drug and alcohol treatment through  
16 private insurance, we've got to keep them  
17 working. We look at all that as we're looking  
18 at these other programs currently in our  
19 facility.

20 CHAIRPERSON MAITLAND: Finally the  
21 Adult Probation Office, how is their staffing  
22 level and the caseloads? Are they as bad as the  
23 rest of the state appear to be?

24 MR. FORBES: They're high right now.  
25 Our staffing is high. We have a lot of turnover

1           within our probation. As a matter of fact, we  
2           went back and revisited and brought their  
3           salaries up drastically to stop turnover and try  
4           to address some of the concerns of siphoning  
5           people off and to make sure we have the correct  
6           probation people out in the field to deal with  
7           some of the issues.

8                       CHAIRPERSON MAITLAND: Through CCAP  
9           and your association with the other counties,  
10          the problems at Pike, Adams and York, and some  
11          of the growing counties, are they the same as  
12          the more stable counties of the state that are  
13          relatively stable in population or maybe even  
14          losing population?

15                      MR. FORBES: I cannot talk for urban  
16          areas but some of the sublet-laxed (phonetic)  
17          counties up and around our area are still having  
18          the same type of problems. It's just a growing  
19          problem in today's society.

20                      MS. BOSAK: If I could comment,  
21          Lawrence County a couple years ago went through  
22          construction of a new facility. While they have  
23          been stable in population, their population  
24          growth in terms of the prison has been  
25          tremendous, and they've already pretty much

1 outgrown this new facility, which I thought was  
2 140 beds, but I'm not quite sure of the exact  
3 number. They're already past that and now  
4 they're looking at other options. A lot of the  
5 counties are experiencing the same problems.

6 CHAIRPERSON MAITLAND: Thank you  
7 very much. Are there any other questions?  
8 Representative Hennessey.

9 REPRESENTATIVE HENNESSEY: Thank  
10 you. Mr. Forbes, what percentage of today's  
11 defendants are being treated in Pike County  
12 through the intermediate punishment option?  
13 What would you see the highest point being?

14 MR. FORBES: Percentage-wise, I'm  
15 not sure that I can give you a percentage. We  
16 utilize it quite a bit, I can tell you that,  
17 from just looking at the amount of sheriff's  
18 deputies that we have on the road that maintain  
19 SWAT programs where we have our prisoners go out  
20 and do community service in either the county  
21 facility, municipal facilities or do projects of  
22 picking up the litter and things of that nature.  
23 We are constantly having overtime and  
24 utilization of additional deputies to maintain  
25 that.

1           Our court sentences a lot of people  
2           to various programs of this nature, and yet,  
3           still we have tripled inside of two years with  
4           incarceration on one end; yet, a lot of them  
5           being out sentenced to the lesser crimes or  
6           lesser amount of time in the facility and more  
7           community service work. We're still rising at  
8           an alarming rate. Our space currently in a  
9           brand-new facility, we're up to a little less  
10          than a half full. I can't give you the  
11          percentage at this time but I can get it for  
12          you.

13                    REPRESENTATIVE HENNESSEY: Thank  
14          you. Thanks, Mr. Chairman.

15                    CHAIRPERSON MAITLAND: Thank you  
16          very much, Mr. Forbes, and Ms. Bosak.

17                    I'll call Mark Bergstrom, the  
18          Executive Director of the Pennsylvania  
19          Commission on Sentencing.

20                    MR. BERGSTROM: Good afternoon, Mr.  
21          Chairman, members of the House Judiciary  
22          Committee: I am Mark Bergstrom, the Executive  
23          Director of the Pennsylvania Commission on  
24          Sentencing. Thanks for inviting me back for a  
25          second task force hearing on intermediate

1 punishment.

2 I'd to take a moment to recognize  
3 two of our commission members that are on the  
4 panel. First, Representative Brett Feese and  
5 Representative Frank Dermody who is actually  
6 Chairman of the Sentencing Commission. I'll try  
7 to do a good job today, my bosses.

8 During the August hearing in  
9 Gettysburg, I discussed the commission's efforts  
10 since the early 1990's to explain the difference  
11 between probation, intermediate punishments and  
12 parole, especially as related to sentencing and  
13 violation procedures; to incrementally  
14 incorporate intermediate punishments into the  
15 sentencing guidelines, which the commission did  
16 in 1991, 1994, and again in 1997; to  
17 differentiate between restrictive programs, such  
18 as house arrest and inpatient treatment, and  
19 restorative sanctions such as community service  
20 and outpatient treatment; and to identify  
21 sections of the existing statute that limit  
22 broader utilization of intermediate punishments.

23 Other issues discussed during that  
24 hearing included the need for comprehensive  
25 planning at the county level, appropriate

1 targeting of offenders for program  
2 participation, adequate funding of community  
3 corrections programs and staff, and  
4 administrative structures such as drug courts,  
5 regional facilities, and other things that could  
6 improve or expand the implementation of certain  
7 programs.

8 As I mentioned during that  
9 testimony, the County Intermediate Punishment  
10 Act of 1990 provided a framework for the  
11 expansion of sentencing options such as drug and  
12 alcohol treatment, house arrest, electronic  
13 monitoring, restitution and community service,  
14 just to name a few. It also provided a  
15 reasonable, structured and necessary alternative  
16 to mandatory incarceration for those convicted  
17 of DUI. However, some restrictions in that act  
18 have frustrated many of those who attempt to use  
19 it.

20 For this reason, the commission  
21 strongly supports legislation that, among other  
22 things, eliminates or modifies the list of  
23 ineligible offenses. The irony of the current  
24 statute is that an offender convicted of any of  
25 the ineligible offenses is eligible for

1           probation, but not for intermediate punishment.

2                   The commission also supports changes  
3           that would permit the court to use shock  
4           incarceration, a practice of combining a flat  
5           period of incarceration with a consecutive  
6           period of intermediate punishment.

7                   I have included in the packet a  
8           number of attachments, including draft  
9           amendments to Act 193 of 1990; draft amendments  
10          to Act 201 of 1990, both county intermediate  
11          punishment legislation; suggested draft  
12          legislation regarding ineligible offender and  
13          shock incarceration--I believe that was included  
14          in my August testimony--and suggested draft  
15          legislation regarding the codification of  
16          subsections of burglary. I'll come back to  
17          discuss these.

18                   Many of these recommendations flow  
19          from ongoing discussions the commission has had  
20          since 1993 with representatives of the District  
21          Attorneys Association, the County Commissioners  
22          Association, the County Chief Adult Probation  
23          and Parole Officers Association, the  
24          Pennsylvania Commission on Crime and  
25          Delinquency, and the Pennsylvania Department of

1 Health's Bureau of Drug and Alcohol Programs.  
2 Many of these suggestions have been incorporated  
3 in Senator Greenleaf's bill, Senate Bill 636.

4 I would like to just make one point  
5 regarding that bill. In some of the earlier  
6 drafting of that bill the commission, in fact,  
7 agreed with the change in the place of  
8 confinement language that would shift from the  
9 county place of confinement to the less than  
10 24-month standard. Since that recommendation  
11 went to Senator Greenleaf's office, the  
12 commission has changed the guidelines. It  
13 updated the guidelines last year. In fact, we  
14 would prefer to have the existing language left  
15 as it is. If there was to be a change to Senate  
16 Bill 636, it would be to remove that amendment  
17 and retain the existing language regarding  
18 count (phonetic) sentences.

19 In my brief remarks today, I'm just  
20 going to try to identify those sections of the  
21 enabling legislation, both Act 193 and Act 201,  
22 that could be affected by some of the  
23 recommendations I put forward.

24 It might be actually easier to refer  
25 to the handouts that I have prepared. The first



1 one is sort of a mock-up of Act 193. It at  
2 least places in bold -- under emphasis any of  
3 the sections that would be changed. These, as I  
4 said, are very similar to Senate Bill 636.

5 Let me start with, under Act 193,  
6 the definition section. I noted that committee  
7 staff has identified a couple of these areas for  
8 discussion. The first I'd suggest or point out  
9 is the definition of court. I think others  
10 before me have explained that many district  
11 justices are encouraged to use intermediate  
12 punishment as part of the criminal justice  
13 process in several counties.

14 We think it would be helpful to  
15 clarify the district justices may do that, but  
16 we also realize there are a lot of district  
17 justices in Pennsylvania. We think the Common  
18 Pleas Court should at least determine whether at  
19 the local level those district justices do have  
20 the authority to use the programs and what type  
21 of procedures or standards are in place.

22 The second area as far as definition  
23 is eligible offenders. I heard the discussion  
24 of the District Attorneys Association, and I  
25 agree generally with what the District Attorneys

1 Association's, I believe, position is, which is,  
2 violent offenders should not be placed under  
3 intermediate punishment. I think we all agree  
4 to that.

5 I guess the question is, how do you  
6 get to that point? How do you identify violent  
7 offenders and exclude them from participation in  
8 these programs?

9 One of the concerns the commission  
10 has had for a number of years with the  
11 intermediate punishment legislation is that the  
12 list hasn't kept track of the activities of the  
13 General Assembly. If you look at the draft that  
14 I've included on page 2 of the draft for changes  
15 to Act 193, you will find at the top a number of  
16 offenses that are underlined. These are new  
17 offenses, or legislation that was changed in  
18 some way and was not included in the original  
19 legislation.

20 Under the present statute, a person  
21 that's convicted of sexual assault, indecent  
22 assault, robbery of a motor vehicle, and some of  
23 the other offenses are, in effect, eligible for  
24 intermediate punishment. Clearly, they are not  
25 appropriate.

1           I guess the question is, how do you  
2           make sure that inappropriate people don't get  
3           placed on intermediate punishment? I think  
4           there are concerns about having a long list of  
5           inappropriate offenses because every time  
6           there's a new offense you might miss it. If  
7           they're not on the list, they're passively  
8           eligible.

9           The other thing that I'd point out  
10          in addition to that, is that, sometimes when you  
11          list an offense, every aspect of that offense is  
12          covered under the statute. That person is  
13          excluded. For instance, anyone convicted of a  
14          felony 1 burglary is excluded from intermediate  
15          punishment. When we look at our sentencing  
16          data, there's a pretty sizable portion of people  
17          getting probation. You are allowing those  
18          people to be placed on probation, or be  
19          incarcerated, but not allowing drug treatment or  
20          other intermediate punishment for those  
21          offenders.

22          It might be a situation where  
23          someone was just conspiring to commit that  
24          offense or there might be some other strange  
25          circumstances. That's the only reason I just

1 raise the point that, to the degree that the  
2 judge might be able to make a determination on  
3 the seriousness or dangerousness of an offender,  
4 that might be a more appropriate method.

5 My sense, though, in discussing this  
6 over the last several years is that there's not  
7 a lot of support for getting rid of a list  
8 ineligible offenders. What I provided in the  
9 handout is a listing of offenses that I think  
10 covers -- it narrows some offenses, but then it  
11 covers some of the new offenses as deeming them  
12 ineligible for intermediate punishment. Let me  
13 move on with my comments.

14 That covers the definition section  
15 of Act 193.

16 Moving on to Section 4, and this  
17 deals with the intermediate punishment programs,  
18 the commission through sentencing guidelines  
19 created two categories of intermediate  
20 punishments, restrictive intermediate punishment  
21 programs and restorative sanctions, and did that  
22 to facilitate the incorporation of these  
23 programs into the sentencing guidelines.

24 The commission would recommend that  
25 the same language used in the guidelines would

1           be used in the statutes, so there would be  
2           consistency between the guidelines and statute  
3           as to what is a specific type of intermediate  
4           punishment program.

5                       Under Subsection B of that same  
6           section, the existing legislation provides for  
7           the use of certain intermediate punishment  
8           programs to satisfy the mandatory minimum  
9           sentence for DUI. The commission has two  
10          recommendations related to that. One is one  
11          that I have seen in the staff notes. That is to  
12          expand the types of offenses that could be  
13          covered by intermediate punishment, the type of  
14          mandatories be covered to include driving under  
15          suspension DUI related.

16                      Presently, the only mandatory that  
17          can be satisfied with the I.P. is DUI. There's  
18          certain programs that can be used for that.  
19          What I'm suggesting is, that be expanded to  
20          driving under the influence DUI related, which  
21          is a 90-day mandatory minimum, summary offense.  
22          It would seem only appropriate that offense  
23          should also -- people convicted of that offense  
24          should also be able to serve that in-house  
25          arrest or drug treatment with certain

1 incarceration.

2 The final thing that I can offer as  
3 far as that section of the statute is that, the  
4 types of programs, the types of intermediate  
5 punishment programs that could be used for DUI  
6 or driving under the suspension DUI related  
7 would also include partial confinement of work  
8 release programs as an intermediate punishment  
9 program. I think those are the key  
10 recommendations regarding that section of Act  
11 193.

12 Sections 5, 6 and 7, I've offered  
13 some recommendations just to make the statute  
14 consistent with existing regulations.

15 Section 8, the funding, I think you  
16 know that the current level of state  
17 appropriation for intermediate punishment has  
18 two pots of money. There's \$5.3 million  
19 available to support intermediate punishment  
20 programs. That's distributed by formula, and  
21 there's \$10 million available to drug and  
22 alcohol treatment as an intermediate punishment.  
23 That's distributed through a competitive bid  
24 process. There are presently 12 counties that  
25 share that 10 million dollar appropriation for

1 D and A treatment.

2 The commission I believe supports an  
3 increase in the 5.3 million dollar appropriation  
4 to enhance county programs and recommends that  
5 the funding formula be linked to some type of  
6 performance, perhaps based on intermediate  
7 punishment sentencing data. Right now the  
8 formula is rather rigid and doesn't necessarily  
9 take into account the sentencing that's taking  
10 place out in the counties. We think there  
11 should be a link between performance, the use of  
12 intermediate punishment and the funding that  
13 counties receive for that.

14 On the D and A area I think we've  
15 had a really good first year of D and A funding.  
16 Clearly, the money that's there at this point is  
17 probably appropriate for those counties, but if  
18 there's an interest in moving beyond the 12  
19 counties I think there has to be a consideration  
20 for more funding for D and A treatment. I  
21 thought Mr. Tennis and others covered that area  
22 pretty clearly. Those are the basic  
23 recommendations the commission has regarding Act  
24 193.

25 The next attachment is Act 201

1 amendments. I guess one of the things we sort  
2 of snuck into this is an amendment or a  
3 suggestion of an amendment to the burglary  
4 statute. I'll try to explain why this is there.

5 The first reason is that back in  
6 1990 when Act 201 was passed and the sentencing  
7 provisions for intermediate punishment was  
8 provided, there was also an amendment to  
9 burglary that created a felony 2 category of  
10 burglary. The General Assembly used some  
11 subcategories the commission had for burglary  
12 and used the lowest subcategory, burglary of a  
13 place not adapted for overnight accommodations,  
14 no person present, and said we're going to look  
15 at that type of burglary and call that a felony  
16 2. All other burglaries would be a felony 1.

17 Since that time the General Assembly  
18 has sort of come back to the commission and  
19 looked at another subcategorization that we have  
20 for burglary, our top type of burglary, which is  
21 burglary of a house, person present. And they  
22 said that type of burglary is going to fall  
23 under three strikes. The commission has also  
24 looked at that as a violent offense.

25 So, we have another type of



1           subcategorized burglary there that's a fairly  
2           violent offense or has a potential for violence.  
3           And I guess the unfortunate thing is, the  
4           statute itself does not subcategorize it.  
5           There's sort of a reliance on the sentencing  
6           guidelines to provide the subcategorization of  
7           that offense.

8                         What the commission is recommending  
9           is that the General Assembly consider going into  
10          the statute and actually creating four  
11          subcategories in the burglary statute. The  
12          reason for that is, at the time of trial, of  
13          course, there's a higher burden of proof to  
14          prove facts of a case than there is at  
15          sentencing. The problem is, if you are only  
16          defining an offense at the sentencing stage,  
17          it's going to be very difficult to either apply  
18          three strikes or to apply the guidelines as  
19          effectively with information that's now based on  
20          conviction but rather on the sentence. I throw  
21          in the burglary recommendation because it sort  
22          of fits into the Act 201 amendments.

23                        Let me move on then. The other  
24          amendment to Act 201 basically parallel the 193  
25          amendment. What this basically does is provide

1 the same set of rules in Title 42 of Purdon's  
2 that would be provided in Title 61. I think  
3 most of those are covered there.

4 The final thing I wanted to say in  
5 closing is that, first, I'd like to thank the  
6 committee again for the opportunity to offer  
7 some suggestions regarding intermediate  
8 punishment legislation.

9 I'd like to take this opportunity to  
10 invite members of the task force to attend the  
11 next Sentencing Commission meeting which is  
12 scheduled for October 27 and 28 in Philadelphia.  
13 At that time the commission will be discussing  
14 some of the issues related to increasing the use  
15 of intermediate punishment in the sentencing  
16 guidelines. It might be of particular interest  
17 because of the area that changed dealt with drug  
18 and alcohol treatment.

19 We haven't finalized the agenda yet,  
20 but there will be presentation regarding drug  
21 and alcohol treatment as an intermediate  
22 punishment, and potentially some presentations  
23 regarding some of the drug court models we have  
24 in the state.

25 I will ask commission staff to send

1           some information to all of the members of the  
2           task force, and any of you that are interested,  
3           our staff will take care of coordinating the  
4           arrangements.

5                         Thank you for giving me this  
6           opportunity, and I'm willing to take any  
7           questions you might have.

8                         CHAIRPERSON MAITLAND:  
9           Representative Feese.

10                        REPRESENTATIVE FEESE: Thank you,  
11           Mr. Chairman. Thank you, Mr. Bergstrom, for  
12           your testimony. Just focusing on the definition  
13           of offender, who is eligible and who is not, you  
14           said the commission recommends eliminating the  
15           list of specific offenses, which committed,  
16           would render somebody ineligible, not on --

17                        MR. BERGSTROM: I think they move in  
18           that direction because there's problems with  
19           having a specific list. You might miss some and  
20           you might over-include some.

21                        REPRESENTATIVE FEESE: My general  
22           question, would you agree there are certain  
23           types of offenses, murder or rape, deviate  
24           sexual intercourse, which are so serious that a  
25           person should not be eligible for intermediate

1 punishment, putting aside the irony that they  
2 might be eligible for probation? And that's for  
3 another day that maybe we should address.

4 Don't you believe there are certain  
5 types of offenses that just cry out for some  
6 punishment form other than intermediate  
7 punishment?

8 MR. BERGSTROM: I think so. As I  
9 said at the start, I don't think people that  
10 have committed crimes of violence should be on  
11 intermediate punishment. Intermediate  
12 punishment is not intended to put violent  
13 offenders on the street. On the other hand, the  
14 question is, how do you get to that?

15 I guess if you want to cover all of  
16 the behaviors that might fall under the umbrella  
17 of violent, it might be easier for the court to  
18 make a determination on that than trying to  
19 limit it to some type of list.

20 I think one of the things that maybe  
21 Judge Keller or others had talked about during  
22 other hearings was someone who has a history of  
23 violence but no criminal offenses, or someone  
24 who has violations of protection from abuse  
25 orders. The statute as written really doesn't

1           exclude them from intermediate punishment, but I  
2           would think there should be a determination made  
3           that they are probably inappropriate for  
4           intermediate punishment. Again, it just gets to  
5           the point of how you identify people that should  
6           not be there.

7                        I think it may be necessary to list  
8           some offenses. My concern is, we have a very  
9           long list. Some of the offenses are written  
10          fairly broadly. Anyone convicted of aggravated  
11          assault is ineligible for intermediate  
12          punishment. Most of those people should not be  
13          on intermediate punishment, but there are some  
14          that may be very appropriate for I.P.,  
15          especially those that might commit assaults  
16          because of drug dependency, other issues like  
17          that.

18                       The question is, how do you sort of  
19          tease that out? How do you give the judges the  
20          ability to sentence some of those people to  
21          treatment and other appropriate options versus  
22          saying none of those people are eligible. If  
23          you are going to have a list, I guess it should  
24          be fairly narrowly drawn, and then also give the  
25          court a role of excluding others in addition to

1 that.

2 REPRESENTATIVE FEESE: Thank you,  
3 Mr. Chairman.

4 CHAIRPERSON MAITLAND:  
5 Representative Dermody.

6 REPRESENTATIVE DERMODY: Thank you,  
7 Mr. Chairman. Good job, Mark.

8 MR. BERGSTROM: Thank you, sir.

9 REPRESENTATIVE DERMODY: Just a  
10 couple of questions. We're talking about, we're  
11 concerned about eligible offenders obviously. I  
12 understand the problem of trying to define that  
13 so we don't miss people who otherwise should  
14 have RIP. If you are convicted of aggravated  
15 assault, under your knowledge of the guidelines,  
16 if you're standing there convicted of aggravated  
17 assault, how many of the offenders would  
18 otherwise be eligible; that is, looking at  
19 guideline recommendations, those types of  
20 things? I understand most of them probably  
21 would be in position that the judge would not be  
22 able to impose that.

23 MR. BERGSTROM: That's right,  
24 especially someone who has a significant prior  
25 record score or has a higher level of aggravated

1 assault or felony 1 aggravated assault. They  
2 are probably in the section of the guidelines  
3 that there would be limited opportunity for  
4 intermediate punishment. As you move down the  
5 ranking there's probably some recommendations  
6 there that they might be eligible, the less  
7 serious.

8 REPRESENTATIVE DERMODY: I may have  
9 missed it in your testimony. We had a  
10 discussion earlier, and I think you may or may  
11 not have been here, about a certain instance  
12 where a judge had a defendant that had a past  
13 violent behavior. It was several years removed  
14 from the current offense, but according to the  
15 statute may be ineligible. Did you talk about  
16 lapsing provisions at all in your testimony?

17 MR. BERGSTROM: I listed that in my  
18 written testimony. I didn't mention that in the  
19 oral testimony. I think there may be some  
20 benefit in having lapsing. I think the only  
21 thing we can look at -- the statute is unclear  
22 about whether this applies to prior offenses or  
23 not.

24 The one Appellate Court decision, it  
25 might have only been a memorandum. It might not

1           have been a full decision. It's basically  
2           stating that prior convictions exclude someone  
3           for eligibility. In that case, it was I believe  
4           robberies in 1960 in Florida that excluded  
5           someone today from intermediate punishment.

6                       Whether that's appropriate or not, I  
7           don't know. But it certainly is an issue of  
8           whether there should be a lapse of ten years or  
9           20 years, some kind of lapsing provision so that  
10          stale records don't necessarily exclude someone  
11          from participation.

12                      REPRESENTATIVE DERMODY: They could  
13          be considered, obviously, but not necessarily.

14                      MR. BERGSTROM: Correct.

15                      REPRESENTATIVE DERMODY: Mr.  
16          Chairman, thank you very much.

17                      CHAIRPERSON MAITLAND: I'd like to  
18          welcome Representative James. I believe Mr.  
19          James has a question.

20                      REPRESENTATIVE JAMES: Thank you,  
21          Mr. Chairman. Thank you for your testimony.  
22          You had mentioned earlier about that you were  
23          going to have something sent to all the members  
24          of the task force. I would just ask if we can  
25          amend that to have it sent to all members of the



1           Judiciary Committee.

2                   MR. BERGSTROM: Absolutely.

3                   REPRESENTATIVE JAMES: The other  
4 thing I wanted to ask you about was, you were  
5 saying something about in Philadelphia on the  
6 27th and 28th there's going to be a meeting.

7                   MR. BERGSTROM: That's our next  
8 commission meeting, Commission on Sentencing.

9                   REPRESENTATIVE JAMES: I see you are  
10 inviting members. Is that possible that we can  
11 come? What would happen at that meeting?

12                   MR. BERGSTROM: First, commission  
13 meetings are opened to the public. What the  
14 commission is planning for those two days is,  
15 Tuesday morning the 27th, I guess we're having a  
16 public hearing on release of information.  
17 Tuesday afternoon we're planning to basically  
18 have a work session where we offer presentations  
19 on intermediate punishment and, perhaps, tour a  
20 drug treatment facility, and perhaps hear about  
21 drug courts. On Wednesday morning the  
22 commission has its quarterly commission meeting  
23 from 9 to 12. That's sort of the outline of  
24 those two days.

25                   The public meetings are always open

1 to the public. The work session, as I said, is  
2 more for the commission to see if I.P. is  
3 working under the guidelines and any kind of  
4 changes the commission might want to consider.  
5 It's that section that we extend the invitation  
6 to the task force and certainly to the Judiciary  
7 Committee to attend.

8 REPRESENTATIVE JAMES: Thank you.  
9 Thank you, Mr. Chairman.

10 CHAIRPERSON MAITLAND: I have a  
11 question for you, Mr. Bergstrom. Going back to  
12 the list or the modification of ineligible  
13 offenses, you stated in your testimony that  
14 those ineligible offenses will qualify for  
15 probation but do not qualify for intermediate  
16 punishment currently.

17 I would just ask, what's the  
18 philosophical difference here? Why are we  
19 making intermediate punishment an option for  
20 lesser offenses and not for these more serious  
21 offenses?

22 MR. BERGSTROM: I think it might be  
23 the opposite. The concern is that we do make  
24 probation available to these violent offenders  
25 or potential violent offenders and we don't make

1 I.P. eligible. I guess maybe some of the  
2 reasoning was, intermediate punishment does, in  
3 fact, target a more serious offender.

4 The starting point for targeting  
5 someone for intermediate punishment is  
6 identifying someone who the judge would  
7 otherwise incarcerate. With probation, it's  
8 generally a person who the judge is generally  
9 willing to put on the street anyhow. You're  
10 sort of targeting two different types of people.

11 When you are looking at this listing  
12 of offenses, while someone for -- any of these  
13 offenses, but pick burglary, let's say, someone  
14 for burglary while most of us would think  
15 incarceration is appropriate, clearly there are  
16 many times when people for burglary are placed  
17 on probation. Maybe judges don't see it the  
18 same way or maybe because there's no prohibition  
19 to it, that occurs a lot of times.

20 My concern is, when we get to  
21 intermediate punishment we are targeting a more  
22 serious offender, a jail-bound offender. And  
23 then we're saying to the court, look at those  
24 jail-bound offenders and think whether it might  
25 be more appropriate to place them in some type

1 of program. These can be very restrictive  
2 programs, like inpatient treatment, house  
3 arrest, other things like that, but is that an  
4 option you want to consider?

5 When you have a list of ineligible  
6 offenses, it excludes consideration data. The  
7 only option is incarceration or ironically  
8 probation. You remove sort of the middle range  
9 of that continuum that might offer the best  
10 packet of treatment and supervision for that  
11 offender. But by listing it as an ineligible  
12 offense, just take it off the table. That's my  
13 concern. I don't think we should put violent  
14 people on the street.

15 On the other hand, I don't think we  
16 should tie down the statutes so tightly that you  
17 exclude people that might really benefit from  
18 this kind of program, especially the drug  
19 treatment.

20 I think, as Mr. Tennis and others  
21 have said, it's a well received program, a  
22 program that works well, getting to some of the  
23 fundamental problems that offenders have, and to  
24 just take it off the table I'm not sure is  
25 always appropriate.

1                   CHAIRPERSON MAITLAND: Knowing that  
2                   the ranges of intermediate punishment from the  
3                   most restrictive I.P. down to the least,  
4                   wouldn't it make some sense to have nearly every  
5                   offender of any kind of seriousness, even these  
6                   ineligible offenses, once they've served their  
7                   time come out into I.P. from the most  
8                   restrictive point and work their way off of it,  
9                   in lieu of parole, in place of parole, eliminate  
10                  parole and put some kind of graduated  
11                  scaling-down supervision in?

12                 MR. BERGSTROM: I think that's a  
13                 wonderful idea. To their credit I think the  
14                 Board of Probation and Parole, and I think a lot  
15                 of judges try to include conditions of parole  
16                 that do that, the limitations of all these funds  
17                 and facilities and resources. But, I think to  
18                 the degree that they can, they do try to build  
19                 those types of things in based on the risks and  
20                 needs of the defendant. If we can improve that  
21                 or enhance that, I think that's a great idea.

22                 On sort of a technical side, I think  
23                 those programs are appropriate. I still would  
24                 sort of shy away from calling it intermediate  
25                 punishment. Statutory intermediate punishment

1 is a sentencing alternative, so it would be used  
2 on the front end and those would be conditions  
3 of parole, but I think they can be structured  
4 very much along the lines of what you are  
5 saying.

6 CHAIRPERSON MAITLAND: Finally, how  
7 does the commission measure success of these  
8 programs? It's always difficult. You get into  
9 definitions and there's some hard things to  
10 measure, but how do you do it?

11 MR. BERGSTROM: When we look at  
12 sentencing data, one of the measures of success  
13 is, are the programs being used or not? When we  
14 set our initial goal for intermediate punishment  
15 it was to, in fact, revert some offenders from  
16 state prisons down to county jails or from  
17 county jails out to the community. We're trying  
18 to move offenders to more community-based  
19 alternatives. We said that was one of our  
20 goals.

21 So, measurements of success for the  
22 Sentencing Commission, at least on one measure,  
23 would be, have we done that? Have we shifted  
24 some of the population out to drug treatment and  
25 other types of intermediate punishment from jail

1 cells? At least our analysis today said we  
2 have. That's one measure.

3 I guess the more important measure  
4 long term is, do they do better? Is there less  
5 recidivism and things like that? We are working  
6 jointly with PCCD and a number of other agencies  
7 to try to track that, especially for the drug  
8 and alcohol population.

9 One of the things that is really  
10 sort of almost a luxury of having \$10 million  
11 for those counties is, those 12 counties have  
12 basically a pot of money that they can provide  
13 all the appropriate treatment for those  
14 offenders. It's probably one of the first times  
15 in this state that we have seen a dedicated  
16 allocation of monies that allow for  
17 comprehensive and appropriate treatment for  
18 those kind of offenders instead of sort of the  
19 28-day, you're done kind of thing. I think we  
20 have a real opportunity to see if it works and  
21 how well it works. I believe our initial  
22 feedback that we have had is pretty positive.

23 CHAIRPERSON MAITLAND: Are there any  
24 other questions?

25 (No response)

1                   CHAIRPERSON MAITLAND:  If not, thank  
2                   you again very much for your testimony.

3                   MR. BERGSTROM:  Thank you.

4                   CHAIRPERSON MAITLAND:  I would  
5                   invite Terry Davis, President, and Stover Clark,  
6                   Executive Director, of the County Chief  
7                   Probation Officers Association to come up.

8                   MR. DAVIS:  I want to thank you.  I  
9                   got notice yesterday to come.  I kind of  
10                  prepared this quickly.  I'm going to read it to  
11                  make sure I get it all on the record.

12                  Good afternoon.  My name is Terry L.  
13                  Davis, and I am here today representing the  
14                  Chief Adult Probation and Parole Officers of  
15                  Pennsylvania.  I am presently the president of  
16                  our association, and on behalf of all of our  
17                  membership, we are pleased that we have been  
18                  asked to speak today on the pending bill, which  
19                  will impact on each and every one of the 67  
20                  counties within the Commonwealth.

21                  I first want to go on record to say  
22                  that our association supports the testimony of  
23                  the County Commissioners Association on the  
24                  issue of state funding for programs we are  
25                  expected to carry out.  I believe that their



1 testimony pretty well described the fiscal  
2 issues involving court-related programs and new  
3 legislation that will impact on the workload and  
4 performances of our county adult probation  
5 parole and intermediate punishment programs.

6 I will again go on record that we  
7 will perform to the level that the courts demand  
8 of us, and we will deliver a successful program,  
9 but we are at the point that we need the  
10 funding.

11 On the side bar when I came in the  
12 room the commissioner told me he did support all  
13 of our programs. For the record, he really does  
14 support us.

15 Senate Bill 636 addresses several  
16 issues that will impact on the intermediate  
17 punishment efforts of the Courts of Common  
18 Pleas. In the bill the expansion of the  
19 definition: Courts to include district justices  
20 in the intermediate punishment sentencing  
21 process may cause a tremendous amount of  
22 administrative work for the probation offices,  
23 and we do not necessarily support the expansion  
24 of these options until procedures could be  
25 worked out first.

1           There is not a clear paperwork trail  
2           from D.J.'s to probation, and because they are  
3           not a court of record, there is administrative  
4           and legal issues that clearly need defined. A  
5           good example of this is, if and when an offender  
6           violates a condition of sentence, and a hearing  
7           has to be scheduled for revocation. This  
8           process requires that a Common Pleas Court has  
9           to hold the hearing, and they, of course, were  
10          not involved in the initial agreement or  
11          sentencing.

12           This is just one of the issues that  
13          would become the responsibility of the Probation  
14          Department, and when a defendant falls through  
15          the cracks, it will be our fault, and we are not  
16          ready to accept that at this time.

17           Therefore, I would like to go on  
18          record that our association would prefer that  
19          courts remain the Common Pleas Courts.

20           The second section I want to address  
21          in the bill is the program section. Several  
22          weeks ago I testified that I fully support the  
23          expanding of intermediate punishment at the  
24          discretion of the court. It should be the  
25          judge's decision who should and who should not

1 be eligible for sentencing options.

2 I have also been particularly  
3 supportive of including driving under suspension  
4 for DUI into these programs. These offenders  
5 should be on work release or electronic  
6 monitoring, or in some cases probation-type  
7 supervision instead of requiring them to take up  
8 valuable prison bed spaces.

9 I am a strong believer that serious  
10 criminal offenders need to be incarcerated and  
11 locked up in cages, but offenders who are going  
12 to be returning to society after a very short  
13 period of punishment, would be better suited to  
14 living in a setting conducive to community  
15 living, instead of cages. Cages are for  
16 animals, and when offenders are so classified, I  
17 have no problem with caging him or her, but to  
18 house a nonviolent individual in a prison for a  
19 relatively short period of time, 90 days, five  
20 months, 11 months, which is common in county  
21 prisons, does not prepare them to return to  
22 society, and does not insure that they will be  
23 successfully punished, and not commit future  
24 criminal acts. Contrary reports would say that  
25 they are more likely to repeat than to be

1           successful.

2                       Therefore, our association fully  
3           supports expanding intermediate punishment to  
4           offenders that the courts choose to sentence to  
5           such programs.

6                       A third section of the bill  
7           discusses the county intermediate punishment  
8           board. I really do not see much need in  
9           changing the law to make it possible to expand  
10          the board. Counties who are utilizing I.P.  
11          boards are doing so because it just makes sense,  
12          while other counties are continuing to utilize  
13          the prison boards as their tool for dealing with  
14          the program.

15                      Personally, Dauphin County has  
16          continued to utilize the prison board as their  
17          official board, but when issues come up that  
18          impact on the other agencies, I personally try  
19          to work with the directors of those agencies,  
20          and get their input into sentencing either  
21          through pre-sentences or other avenues that are  
22          already in place. Unless the law is going to  
23          eliminate prison boards and require the  
24          replacement of such boards with an I.P. board, I  
25          really see very little impact on counties and

1 the makeup of those decision makers.

2 Prison board by law include the  
3 following: the commissioners, usually all three  
4 of them--In Erie County and other counties it's  
5 their board. They don't call them  
6 commissioners--a judge, the district attorney,  
7 the controller and the sheriff. An intermediate  
8 punishment board can and should include all the  
9 major contributors to offenders' services, as  
10 well as the positions mentioned above.

11 However, I do not see many counties  
12 giving up the prison boards, and the control, in  
13 favor of an expanded board with drug and  
14 alcohol, mental health, and treatment directors  
15 as prison decision makers, let alone chief  
16 probation officers casting critical votes for  
17 funding and budget issues.

18 For this to happen, the prison board  
19 law would first have to be changed, and I  
20 personally do not see a major problem with  
21 leaving it as it is. Dauphin County has a major  
22 intermediate punishment program, and it is  
23 totally supported and programmed by myself and  
24 my staff. Of course, the Court of Dauphin  
25 County supports every program that I have

1 initiated through the intermediate punishment  
2 process. And it seems to work okay for us, and  
3 I am sure for most counties.

4 The last major section of the bill  
5 has to do with the intermediate punishment plan.  
6 I believe that our association fully supports  
7 the concept of developing a plan for submission  
8 to the Commission on Crime and Delinquency. I  
9 believe that we support submitting changes when  
10 they occur to the commission, but I am not sure  
11 that we are looking for a complicated assessment  
12 tool being implemented to determine if  
13 everything we do is working.

14 We need something that is simple,  
15 but factual. A tool that is easily passed on to  
16 the overseers, the auditors, and to the public,  
17 the development of computer-based programs that  
18 feed directly into the Sentencing Commission,  
19 the Commission on Crime and Delinquency and to  
20 the court administration. But do not ask  
21 yourself, do intermediate punishment programs  
22 work all the time? Are we successful all the  
23 time? Ask ourselves, can they work if funded  
24 properly, if staffed properly, and if supported  
25 properly?

1 I tell you, that sentencing options  
2 work; alternatives to incarceration works; work  
3 release works; electronic monitoring works;  
4 intensive supervision works; community service  
5 works, but is it always successful? No. Will  
6 it stop offenders from committing future  
7 criminal behavior? The answer is no. Does it  
8 protect everyone in the community? No.

9 But, is it the most cost-effective  
10 means for us to house and supervise the 200,000  
11 offenders who are being supervised by county,  
12 state and federal probation officers? The  
13 answer is clearly yes.

14 You know that these efforts make a  
15 big difference in the criminal justice programs  
16 in Pennsylvania. I am here to tell you that  
17 they are the only thing that makes a big  
18 difference in the system, and we cannot afford  
19 to not create these programs.

20 Housing animals in state prisons may  
21 be the only alternative that we have for the  
22 violent, the predators, the individuals who are  
23 career criminals, but for the majority of  
24 offenders the prison cells in the state  
25 institutions are not necessary, and we need to

1 continue to build on developing community  
2 programs that work.

3 The County Adult Probation and  
4 Parole system is one of these programs. My  
5 counterparts working in every county in the  
6 Commonwealth are dedicated individuals who care  
7 about what we do. We care about creating  
8 programs that protect society, but also protect  
9 us from living in a society where every offender  
10 is locked up and the key is thrown away.

11 I think the reason that I love  
12 working in the County Adult Probation system  
13 here in Pennsylvania is because I can be as  
14 creative as necessary to develop programs that  
15 work for county judges and county taxpayers. I  
16 am not controlled by a system that will stifle  
17 my creativity. What works in Dauphin County may  
18 not work in Pike County, or in Philadelphia or  
19 in Pittsburgh, but it will work for Dauphin  
20 County taxpayers and that's important. Each of  
21 us analyze our community needs, and each of us  
22 make it work.

23 For the record, Pike was written in  
24 my speech.

25 I want to thank you again for



1           letting me voice my opinion of the County Chief  
2           Adult Probation and Parole Officers Association,  
3           as well as my own personal opinions on these  
4           important issues. Our association is very proud  
5           to be able to participate in program  
6           considerations, and we really appreciate you  
7           asking for our input in decisions that will  
8           impact on our daily activities and our business.

9                         Thank you for your time, and I would  
10           be more than willing to answer any questions.

11                        MR. CLARK: Good afternoon. I'm  
12           Stover Clark, the Executive Director of the  
13           County Chief Adult Probation Officers  
14           Association. I want to thank you for the  
15           opportunity to make some real brief comments.  
16           I'll concentrate my comments on the funding  
17           issue. Mark Bergstrom addressed it. Gary  
18           Tennis addressed it a little bit.

19                        I want to go back historically to  
20           1990 when the bill was passed, Act 193 of 1990.  
21           It had no funding at all, no state funding. The  
22           Commission on Crime and Delinquency stepped up  
23           to the table and committed from 1990 to '93  
24           about \$12 million to fund county programs. In  
25           1994 the legislature enacted a funding

1 mechanism, \$5.3 million for intermediate  
2 punishment. In 1998-99 fiscal year budget, that  
3 figure is the same, \$5.3 million.

4 Since that time the average increase  
5 in sentencing to I.P. has increased by eight  
6 percent a year. There's not been the  
7 corresponding eight percent increase in the I.P.  
8 funding.

9 The mechanism itself that the  
10 funding was based on, in my opinion, and I'm  
11 sure the majority of the association would  
12 agree, is flawed. The whole idea was that the  
13 \$5.3 million was based on the cost savings  
14 realized by the Department of Corrections for  
15 shifting their population from the state to the  
16 county. It was a marginal cost of seven dollar  
17 and fifty cent per diem marginal costs. The  
18 marginal cost of keeping one person in a state  
19 correctional institution at that time, 1993, was  
20 \$7.51.

21 The administration and the  
22 legislature at that time said, we'll shift that  
23 money down to the county. That has no bearing  
24 on the actual cost of delivering intermediate  
25 punishment services to those offenders. There's

1 no direct relationship at all.

2 Not only have we increased eight  
3 percent a year the number of offenders, just the  
4 cost of living increases for the probation staff  
5 that supervises these people and the  
6 administration overhead has not kept up.

7 While we're standing here talking  
8 about how we can improve this act, the  
9 improvements are based on, in my opinion, an  
10 unstable foundation. Funding is the foundation.  
11 We need to rethink and institute a reasonable  
12 funding mechanism based on performance, based on  
13 actual sentencing practices, and based on the  
14 reflection of what it costs the counties of  
15 Pennsylvania to absorb these new people. I say  
16 absorb because Mark talked about sentencing  
17 guideline changes in '91, '94 and '97.

18 Consistent in all of those three  
19 changes has been a shift in the population from  
20 the state institutions to the county  
21 institutions, again, without the corresponding  
22 dollars necessary to absorb those people.

23 Terry said County Adult Probation  
24 staff throughout the Commonwealth are policing  
25 and supervise 175,000 offenders. The Department

1 of Corrections has 35,000 offenders in it.  
2 Their population is not increasing from new  
3 offenders. Their population is increasing  
4 because they are not releasing people on for  
5 state parole. Actually if you look at the real  
6 numbers of crime in the state, their numbers are  
7 going down. Our numbers on the county level are  
8 going up.

9 If you, again, want to enhance the  
10 intermediate punishment bill, I think one of the  
11 things we need to do is set up a reasonable and  
12 fair funding mechanism so we on the county  
13 levels can provide the services that are  
14 necessary.

15 To shift gears real quickly, we  
16 talked about the \$10 million that was set aside  
17 last year in the state budget, and again this  
18 year for the delivery of drug and alcohol  
19 treatment for serious offenders, Level 3 and  
20 Level 4 offenders.

21 A little story. This was taking  
22 place. Staff person from the Department of  
23 Health said to me, I don't understand you  
24 counties. Here we have \$10 million. Why aren't  
25 you coming for this money? My response was, why

1           should we? We're getting the bad end of the  
2           deal. You are shifting from the state serious  
3           offenders that normally would have been  
4           sentenced to the state institution. They would  
5           not have been the financial or political  
6           responsibility of the county. They would have  
7           become part of the State Corrections Department  
8           and then parole under the supervision of the  
9           Board of Probation and Parole.

10                         You're giving us not enough money,  
11           and I'll explain that later, to supervise these  
12           people, why should we take that risk? You're  
13           throwing crumbs at us, and you're treating us  
14           like we are being unfaithful little dogs. The  
15           issue of funding is the \$10 million, there is a  
16           restriction in the regulations that only 10  
17           percent of that \$10 million can be used for  
18           corrections supervision.

19                         Now, I ask any reasonable person if  
20           we're looking at serious offenders that would  
21           have normally been given state correctional  
22           sentences and now we want to place them in the  
23           community, we'll provide the funds for treatment  
24           but we will restrict the money available to  
25           provide quality, the intensive supervision by

1           probation and parole staff, why would the county  
2           opt to do that? Why would they take those risks  
3           and place their probation and parole staff at  
4           risk? Let the state take the financial and the  
5           political risk of that.

6                       We have to reexamine the regulations  
7           that restrict the use of that money. It's a  
8           nine million dollar windfall for the drug and  
9           alcohol inpatient treatment community, but it  
10          doesn't help the county criminal justice system.

11                      There was a reference to the 26  
12          million dollar recommendation that was developed  
13          by the Sentencing Commission, the Chief's  
14          Association, the D.A.'s Association. That  
15          figure included the drug and alcohol treatment  
16          necessary for everybody and the level of  
17          correction supervision, intensive probation and  
18          parole supervision necessary to accommodate the  
19          needs of that offender population. I think we  
20          have to go back and revisit that, and I think I  
21          would urge you to look at those regulations that  
22          restrict the 10 percent amount of money that can  
23          be provided for the criminal justice section.

24                      These are serious offenders. A  
25          number of counties have told me we are not going

1 to go there. Again, why should we take those  
2 risks? I don't want to beat a dead horse.

3 My comments are really based on my  
4 feeling that the act is on shaky ground in terms  
5 of financial stability. We don't rethink how we  
6 get the money out to the counties. Again, the  
7 dedicated staff is there. They're doing the job  
8 now. If we are going to shift the  
9 responsibility to the counties, give us the  
10 resources, and we'll do a good job and keep the  
11 citizens of the Commonwealth happy.

12 I could start talking about grant  
13 and aid now, but that probably wouldn't be  
14 appropriate. We can't look at intermediate  
15 punishment in a vacuum. We have to look at it  
16 in the context of the delivery of criminal  
17 justice services throughout the Commonwealth.  
18 That includes the lack of funding for adult  
19 probation and parole, the inadequate funding for  
20 intermediate punishment, and we put all those  
21 together, we're on shaky ground.

22 MR. DAVIS: I'd like to add one  
23 thing. Under intermediate punishment, the  
24 guidelines for supervision of these offenders  
25 says there's a maximum number of cases that can

1 be supervised by the probation officer they're  
2 dealing with. It's impossible for me to go to  
3 my county commissions and say, okay, I now have  
4 60 offenders assigned to this caseload. I want  
5 you to hire me another probation officer because  
6 I have another ten coming in.

7 They're just not going to respond to  
8 that based on the fact that there's no  
9 reimbursement coming from anywhere but county  
10 taxpayers. That's just not going to happen.  
11 Even though the caseloads are designated to be  
12 small, when they get full we just keep taking  
13 them in.

14 Now, in Dauphin County my judges  
15 sentence people to intermediate punishment.  
16 They like it. I said it the last time and I'll  
17 say it again today, I think the courts are the  
18 people that look at the defendant based on the  
19 information that's provided to them. If they  
20 feel that these sanctions will work for those  
21 kind, I'm in favor of my judges imposing the  
22 intermediate punishment sentence for the crime,  
23 and we'll supervise them.

24 CHAIRPERSON MAITLAND: Mr. Mann.

25 MR. MANN: Thank you, Mr. Chairman.



1 Just a quick question. You made a lot of  
2 references to the formula used by I guess the  
3 administration to determine the amount of  
4 funding for intermediate punishment. I'm  
5 looking in Section 8 of the Intermediate  
6 Punishment Act relating to funding and audits.  
7 It doesn't really go into too much detail. It  
8 says 50 to 80 percent of the funding, and then  
9 they set up certain criteria for violent  
10 offenders in the program, population, existing  
11 conditions, county percentages between 18 and 29  
12 years of age, but it doesn't really say; where  
13 did we come up with \$5.3 million? Where does  
14 that figure come from?

15 MR. CLARK: Again, the 5.3 million  
16 is based on projected number of offenders. In  
17 1993 I believe it was 1,950 that would have been  
18 transferred from the Department of Corrections  
19 to the counties for the counties to absorb. The  
20 formula was based on a 50/50. Of that  
21 population some would be absorbed in the county  
22 jails; some would be absorbed in the  
23 intermediate punishment programs.

24 The 5.3 was based on this seven  
25 dollar fifty-one cent per diem, dollar figure,

1 that was being saved by the Department of  
2 Corrections; no relationship at all to the  
3 actual delivery of correction services on a  
4 county level. I think that was done by  
5 regulation. Initially, the first pool of money  
6 was administered by the Pennsylvania Board of  
7 Probation and Parole. I think those regulations  
8 were instituted during that time. Maybe Jim  
9 Strader could --

10 MR. MANN: Is it your testimony they  
11 are basing this on 1993 figures alone?

12 MR. CLARK: Absolutely. It's been  
13 consistent for the last, however many years it's  
14 been in the budget. It's \$5.3 million.

15 MR. DAVIS: And the same amount is  
16 given out every year.

17 MR. MANN: Right.

18 MR. CLARK: To each county  
19 regardless of the number of people that are, in  
20 fact, sentenced to I.P. That's a whole new  
21 assumption. We should really look at that  
22 funding mechanism, as well as the other issues  
23 that are in front of you today. I think Jim had  
24 his hand up.

25 CHAIRPERSON MAITLAND: Mr. Strader,

1 if you could come up to the mic.

2 MR. STRADER: My name is James  
3 Strader, and I'm Chief of Community Corrections  
4 Division at the Pennsylvania Commission on Crime  
5 and Delinquency. Thank you, Mr. Chairman.

6 I would just like to draw some focus  
7 on one of the questions and points that were  
8 made, and it has to do with the \$5.3 million  
9 that the Commission on Crime and Delinquency  
10 administers for general intermediate punishment.  
11 When the act was passed, the I.P. Act back in  
12 1990, again, there was no state funding included  
13 with the act.

14 However, as was mentioned previously  
15 the Commission on Crime and Delinquency did  
16 allocate a portion of its federal dollars to get  
17 I.P. basically jump-started in the Commonwealth.  
18 When the state funding did come along, it came  
19 along as part of a budget process, and the  
20 budget actually includes a language which deals  
21 with the distribution of the money. The \$5.3  
22 million is distributed based on a formula that's  
23 in the budget, and there's a legislative  
24 allocation which basically establishes an  
25 allocation for every county in the Commonwealth.

1           If the counties comply with our  
2 regulations, with respect to submission of a  
3 plan and sentencing authority requests, then  
4 that county is eligible for the amount of money  
5 as part of the 5.3 under the -- as per the  
6 legislative formula. We determine whether the  
7 county meets the law and our regulations. If  
8 they do, they are then entitled to that portion  
9 of the money.

10           The formula that Commissioner Clark  
11 alluded to is actually included in the budget  
12 which says that the 5.3 was going to be  
13 distributed across the state, based on 50  
14 percent anticipated divergent from state and  
15 county jails, and the remaining 50 percent would  
16 be based on anticipated movement from county  
17 jail out to intermediate punishment. That's  
18 really how the 5.3 is distributed.

19           MR. CLARK: I think the point is,  
20 you got a pretty good deal. You're moving those  
21 people from the state down to the county.

22           MR. MANN: One other quick question,  
23 and this is directed to Mr. Davis. I think your  
24 testimony stated that you would be opposed to  
25 expanding the prison board to include the

1 enumerated people, and I guess it's on page 5 of  
2 the draft bill. One of the things that we heard  
3 from a number of witnesses at our August 20th  
4 was that they should consult with and solicit  
5 information from everyone who is involved with  
6 the process.

7 MR. DAVIS: I agree. I personally  
8 think that the intermediate punishment boards  
9 allow all these people to be voting members.  
10 The prison boards do not allow them to be voting  
11 members.

12 MR. MANN: I would direct your  
13 attention to a little further down on the page,  
14 if you can find it, it says, when you solicit  
15 this information by any of the ways that are  
16 enumerated, and one of them is, of course,  
17 including them on the board; the other one is to  
18 appoint an advisory commission or committee.  
19 And then a third alternative is, come up with  
20 something that you can work with with the  
21 approval of the PCCD.

22 I guess that leaves a whole lot of  
23 discretion to how they are going to solicit that  
24 information. It's not necessarily mandated to  
25 expand the board to include these people.

1 MR. DAVIS: I'm not opposed to  
2 intermediate punishment boards. I'm just saying  
3 that I don't think that most counties who do the  
4 work and are controlling this process with the  
5 prison board, which is mandated legislatively  
6 who's on it, would open the door up for me to be  
7 a voting member, personally.

8 I mean, my county commissioners and  
9 I get along fine. My judges, we get along fine.  
10 I don't think I'm going to get a vote. For me  
11 to go to the commissioners and the prison boards  
12 and say, we want to do away with the prison  
13 board and went to the voting I.P. board, it's  
14 not going to happen in Dauphin County. I don't  
15 think it's going to happen in a lot of counties  
16 because the prison board controls budgets and a  
17 lot of other things.

18 Am I in favor of this? I would love  
19 to be on the board. I'd love to have a vote on  
20 the prison board or have the prison board go  
21 away and be the I.P. board. I just don't  
22 know -- The only way that's going to happen is  
23 if the legislation changes to say that the  
24 prison boards no longer are applicable and you  
25 now have to have an intermediate punishment

1 board, which includes drug and alcohol, mental  
2 health, and all that we may list because they  
3 are all valuable to people into the input of  
4 what happens in the criminal justice system.

5 So, if you don't do away with the  
6 prison board legislation, you are not going to  
7 get, I don't think, most counties to agree that  
8 Terry Davis or the chief probation officer or  
9 the D and A people are going to have a vote in  
10 how this is all done. We have a county  
11 intermediate punishment board. They meet and  
12 get input to the prison board. That's fine. I  
13 just personally think that it should be -- I  
14 would like to have a vote on it.

15 MR. CLARK: Structurally, the prison  
16 board's sole responsibility is running the  
17 prison. We are now asking them, the board  
18 that's made up of the sheriff and the controller  
19 that really are focused on running a county jail  
20 to broaden their expertise and look at community  
21 corrections.

22 I agree with Terry that that's the  
23 inappropriate body to do it. We should have a  
24 separate intermediate punishment board that  
25 encompasses adult probation, the drug and

1 alcohol treatment community to really make these  
2 community correction decisions.

3 MR. DAVIS: My intermediate  
4 punishment board, all those people are on my  
5 board. We don't meet regularly. We just confer  
6 on issues when issues come up.

7 CHAIRPERSON MAITLAND:  
8 Representative Walko.

9 REPRESENTATIVE WALKO: Thank you,  
10 Mr. Chairman. Mr. Davis, I know you're here in  
11 your capacity as County Chief Probation Officers  
12 Association President. But I also wanted to  
13 note that this task force and many members of  
14 the Judiciary Committee toured the Dauphin  
15 County Community Corrections Center, which you  
16 run.

17 I just wanted to state on the record  
18 and for any of the viewers that you really put  
19 your words into action there. Considering your  
20 strong words expressing your philosophy about  
21 cages and the fact that these individuals will  
22 be out in society really rang true and it really  
23 soaked in, particularly for those of us who had  
24 an opportunity to talk to many of the inmates  
25 there at the center. A couple of them said to



1 me and to others with me that their lives have  
2 been saved, and we know what that means; that  
3 they will be out in a community again and they  
4 will not be committing crimes again.

5 So, I just wanted to take this  
6 opportunity to commend you for the work you are  
7 doing at the center. Thank you for the  
8 wonderful tour that we had. I think a lot of  
9 your enthusiastic work wore off on many of us.  
10 Thank you.

11 MR. DAVIS: Thank You.

12 CHAIRPERSON MAITLAND: Mr. Davis, I  
13 just have one question for you. In your  
14 testimony you expressed a reservation about  
15 district justices being able to sentence to  
16 intermediate punishment. Earlier on we heard  
17 that some district justices apparently are doing  
18 this already. Do you or does anyone in the room  
19 know where this is being done and how?

20 MR. DAVIS: I don't know where it's  
21 being done.

22 CHAIRPERSON MAITLAND: Mr. Bergstrom  
23 has some thoughts on that.

24 MR. BERGSTROM: As far as district  
25 justices, I know at least two or three counties.

1 One in particular is Crawford County. The court  
2 approved it as a local option because the  
3 district justices were disposing a lot of  
4 misdemeanors cases because they only have two  
5 judges on the Common Pleas bench and they only  
6 had a handful of district justices. There was a  
7 little bit more, I believe, collaboration there.

8 I believe that might also be true in  
9 some other counties in the northwestern part of  
10 the state; for instance, Venango and others.

11 In reading the existing statute, it  
12 wasn't clear that they were excluded, and so I  
13 think the court just acted on it and built it  
14 into the local system.

15 CHAIRPERSON MAITLAND: I too would  
16 like to thank you for the tour that you provided  
17 a week or so ago. I thank both of you very much  
18 for your testimony. I really appreciate it.

19 MR. DAVIS: Thank you.

20 MR. CLARK: Thank you.

21 CHAIRPERSON MAITLAND: We call now  
22 William Folks, the Director of the Eagleville  
23 Hospital.

24 MR. FOLKS: Good afternoon, Mr.  
25 Chairman, and committee members. Thank you for

1 the opportunity to speak with you today about  
2 intermediate punishment. My name is William C.  
3 Folks. I am the Director of the Recovery  
4 Program at Eagleville Hospital. I have to just  
5 offer a correction there. I'm not responsible  
6 for the entire hospital, but for our nonhospital  
7 program.

8 The Recovery Program provides  
9 residential treatment services to adult men and  
10 women who have chronic chemical dependency  
11 problems. The majority of our clients are  
12 referred to treatment as a direct result of  
13 their involvement with the criminal justice  
14 system. This includes the residential treatment  
15 component for the SAVE program, intermediate  
16 punishment clients from several counties,  
17 clients from the Philadelphia FIR program and  
18 Philadelphia drug court. We are pleased to be  
19 able to provide this service to clients with  
20 such profound needs.

21 I've had the pleasure of serving as  
22 chairperson of the Pennsylvania Community  
23 Providers Association, Forensic Subcommittee for  
24 the past two years. The Pennsylvania Community  
25 Providers Association represents over 240

1 community agencies across the Commonwealth. Our  
2 membership includes providers who have  
3 demonstrated commitment to working with clients  
4 involved with the criminal justice system. We  
5 have been engaging in discussions with various  
6 different representatives from the criminal  
7 justice system and other entities to enhance our  
8 ability to partner with local and state agencies  
9 and provide these much needed services.

10 Our members asked that I thank you  
11 for the work that you are doing to allow an  
12 opportunity for addicted and mentally-ill  
13 offenders to receive community-based treatment.  
14 We realize that it is critical for our agencies  
15 to work in partnership with the law enforcement  
16 community to ensure that our society is safe.  
17 We believe that effective treatment is an  
18 essential component for ensuring community  
19 safety over time.

20 One strength of the Intermediate  
21 Punishment Act is the requirement that counties  
22 implement a process that brings together various  
23 different agencies and individuals to develop  
24 the county plan and advise the county board.  
25 Some of our members have experienced frustration

1 over the lack of dialogue in their home counties  
2 and will certainly welcome an opportunity to  
3 contribute to this work.

4 Our experience over the past two  
5 years has demonstrated that the process that  
6 occurs when treatment professionals and  
7 correction professionals come together can be  
8 quite meaningful. For too long these two  
9 systems have served the same clients but have  
10 not worked in partnership. An integrated system  
11 provides a powerful tool to reduce recidivism  
12 and protect the public.

13 A second strength of the proposed  
14 amendments is the opportunity to develop a  
15 continuum of supervision and treatment services  
16 at the county level. The Forensic Subcommittee  
17 strongly supports the development of a continuum  
18 of care and supervision. The challenge that we  
19 face is to devise assessment tools and processes  
20 that will allow us to match up each offender  
21 with an appropriate level of punishment,  
22 supervision, and treatment.

23 Both the treatment system and the  
24 corrections system have components of the  
25 required tools. We need to work together to

1 improve these tools and integrate our  
2 decision-making processes. Ideally, we will  
3 evolve a system that assesses each offender and  
4 matches them up with individualized treatment  
5 and supervision. This system needs to provide  
6 timely sanctions for those individuals who  
7 choose to ignore their personal responsibility  
8 to participate in treatment and change patterns  
9 of destructive behavior.

10 Many of these offenders require more  
11 than a single treatment episode in a single  
12 level of care. The issues that they bring  
13 include: multigenerational substance abuse,  
14 physical abuse, sexual abuse, psychological  
15 abuse, poor parenting skills, poor educational  
16 skills, for many no vocational skills, enabling  
17 families, inadequate housing and other needs.

18 We need an integrated system with  
19 multileveled supervision options, fluid movement  
20 through various levels of treatment,  
21 coordination with other types of education and  
22 rehabilitation services and safe recovery  
23 housing. Many of these resources already exist  
24 but lack coordination. This coordination can  
25 occur through the various county boards and

1 collaborative efforts on the part of the state  
2 agencies who are involved.

3 As I prepared my testimony I  
4 consulted with several individuals involved in  
5 the administration of existing intermediate  
6 punishment programs. They reported that the  
7 needs that exist on the local level are  
8 tremendous and that the current categorization  
9 of funding makes it difficult to match up a  
10 particular type of offender with the appropriate  
11 level of treatment.

12 I offer one example. I received a  
13 telephone call from a state parole agent who had  
14 a parolee in his office. The parolee had been  
15 making a reasonable adjustment to the community  
16 but had recently missed several appointments  
17 with the parole agent. The agent did an early  
18 morning visit to the home, discovered that the  
19 parolee had resumed heroin use and had been  
20 arrested in Philadelphia for simple possession  
21 of heroin. Given Philadelphia's crowding  
22 problem, the parolee had been released to the  
23 street but now had an open case. This, of  
24 course, represented a violation of parole.

25 The agent wanted to quickly get the

1 parolee into residential treatment, in the hope  
2 that the parolee could resume his successful  
3 adjustment to the community. The parolee did  
4 not qualify for the SAVE program because he had  
5 a new charge. I suggested that the agent try  
6 getting the client assessed for county funding  
7 for residential treatment. The agent phoned the  
8 Assessment Office and was told that the client  
9 would first have to apply for Medical Assistance  
10 in order to determine the type of categorical  
11 dollars to be applied by the county.

12 Since the Department of Welfare  
13 Office is next door to the State Parole Office,  
14 the agent sent the client next door to apply.  
15 The Welfare Office informed the parole agent  
16 that an application could not be taken in that  
17 office because the client lived in another town  
18 in the county. The parole agent did not have  
19 the time to travel across the county and could  
20 not allow the parole violator to travel across  
21 the county himself to apply for Medical  
22 Assistance.

23 The parole agent expressed great  
24 frustration at his inability to access resources  
25 for his client. The administrator of the D and



1 A Assessment Office expressed frustration about  
2 having criminal justice treatment dollars  
3 available but not being able to use them to  
4 purchase service for this parolee. I  
5 experienced frustration, having worked hard at  
6 trying to bring systems together. I could not  
7 provide assistance to this state employee who  
8 was trying his best to get the client into  
9 treatment.

10 Another area for consideration is  
11 including the option to allow a judge to  
12 sentence to jail for a period of time to be  
13 followed by treatment. We also need to enhance  
14 our ability to provide treatment in prisons and  
15 jails. We need to find a way to fund treatment  
16 for early parole for offenders who have done  
17 well in prison. All of these will assist us in  
18 providing space in prison for truly violent  
19 offenders.

20 Once again, PCPA would like to thank  
21 you for your work in this area. Our members are  
22 eager to contribute to this effort. I want to  
23 emphasize that we recognize that treatment is  
24 not a magical cure that will alone solve our  
25 social problems. We would appreciate continued

1 opportunities to work in partnership with the  
2 law enforcement community to develop an  
3 integrated system for impacting on these  
4 problems.

5 CHAIRPERSON MAITLAND: Thank you  
6 very much for your testimony, Mr. Folks. I have  
7 a question for you. Gary Tennis, the District  
8 Attorneys Association representative who was  
9 here first, said that it's very important that  
10 the level and duration of treatment be  
11 clinically determined, not just arbitrarily  
12 mandated by statutes and regulations.

13 How do you see that in practice  
14 today? What needs to change in the Intermediate  
15 Punishment Act to enable you to do a better job?

16 MR. FOLKS: Thank you for an  
17 opportunity to comment. I'm responsible for the  
18 residential component of treatment in the SAVE  
19 program. That's a fixed block of time that the  
20 client is spending in each phase of treatment.

21 Sometimes it might make sense to  
22 move a client along to the next level of care in  
23 a faster fashion. At other times it might make  
24 sense to bump a client back from intensive  
25 outpatient treatment, for example, back into

1 residential treatment for a brief period of  
2 time.

3 I think it's important for us to do  
4 as much as we can to match up each particular  
5 offender's needs with level of care and also  
6 with level of supervision. I think what makes  
7 that difficult is, it brings together those  
8 different systems that have not at this point in  
9 time been forced to work closely together.

10 Another issue that makes all of this  
11 quite difficult to manage is that we have payers  
12 involved who are making decisions about levels  
13 of care based on strictly financial reasons,  
14 some of them marketed by profit-making  
15 companies. Some of them are more sensitive to  
16 the needs of the client than others.

17 It can be quite complicated trying  
18 to bring together the concerns of the judge, the  
19 probation officer, the treatment program and the  
20 payer as well. The existing restrictive  
21 intermediate punishment dollars tend to be a bit  
22 more readily available than when we're trying to  
23 coordinate with Medicaid managed care companies.  
24 They are a player in this; the court's a player,  
25 and the treatment provider. It really is

1           difficult to bring all of that together.

2                       I don't know if I responded  
3           adequately to your question.

4                       CHAIRPERSON MAITLAND: We're trying  
5           to get a picture of it. How would you propose  
6           that we bring these groups together? You're  
7           talking categorization hindering your ability to  
8           properly treat the offender. I see that's what  
9           you need in all these different programs with  
10          the players, and they have their own little  
11          niches that might not neatly dovetail with the  
12          client that you are trying to serve.

13                      How can we help pull all this  
14          together into the seamless system that we want  
15          to see out there and maintain accountability to  
16          the taxpayer?

17                      MR. FOLKS: I understand. First of  
18          all, I think what you're doing today is a fine  
19          thing. I realize that much of the general  
20          public stills believes that all we need to do is  
21          lock people up. That makes it difficult for  
22          people such as yourself that propose and are  
23          trying to change.

24                      I have had the example -- I've been  
25          working with this committee for PCPA for a few

1 years. We've had a tremendous amount of  
2 dialogue with the Department of Corrections, the  
3 Board of Probation and Parole, Jim Strader's  
4 staff, the Drug and Alcohol Administrators  
5 Association. I've also been fortunate enough to  
6 work with a task force that AMI is heading up,  
7 trying to establish some program for individuals  
8 in the state system with serious and persistent  
9 mental illness.

10 There has been an awful lot of  
11 discussion and dialogue. I think most everyone  
12 who has been involved in those dialogues know  
13 that it's really important for us to address  
14 this problem. I would like to see, and perhaps  
15 I'm a bit naive, I'd like to see anybody who is  
16 a resident of the Commonwealth of Pennsylvania  
17 be able to access care through their county drug  
18 and alcohol office.

19 To me it's kind of absurd that we go  
20 through, well, are you on parole? If you're  
21 state parole, it's more difficult for you to get  
22 access to those county dollars. I realize that  
23 we have so many different counties that we can  
24 also have a fractured system in the way that  
25 each one responds to that.

1 I think it would be helpful if we  
2 could continue some type of process that brings  
3 together PCCD, the drug and alcohol  
4 administrators, the mental health  
5 administrators. I don't know if somehow we  
6 could be directed to get together in a room  
7 somewhere and put together a plan to submit to  
8 you. I really do believe that there are many  
9 individuals who are already working in that area  
10 who could, perhaps, craft and find a plan. Mr.  
11 Strader has a lot of work to do already. He's  
12 been quite supportive of the providers' efforts  
13 in trying to impact on them as well.

14 CHAIRMAN MAITLAND: Do you see  
15 through your facility people go through that  
16 have the exact recommended levels of care that  
17 you desire to see, as well as the ones that go  
18 through that you just can't get proper funding  
19 for what you would like so you do the next best  
20 thing?

21 MR. FOLKS: Both.

22 CHAIRMAN MAITLAND: And do you see a  
23 difference in the outcome?

24 MR. FOLKS: We haven't done any  
25 longitudinal outcome studies at Eagle in quite

1           some time. In fact, we just contracted with  
2           Governmetrics (phonetic) in Philadelphia to  
3           conduct an outcome study on our long-term  
4           treatment program. We want to specifically look  
5           at outcomes for, hopefully, the SAVE clients and  
6           Philadelphia (inaudible word) FIR clients.

7                   I can tell you anecdotically that I  
8           have -- I don't regularly get to work in direct  
9           care with clients. I had a chance here awhile  
10          back because I started a small program and I  
11          didn't have all the staff on board right away.

12                   I took a personal history from a  
13          gentleman who told me that he was in treatment  
14          because he been trying to get sober for five  
15          years. He was relapsing repeatedly. He became  
16          so despondent at his failures that he wanted to  
17          kill himself. He ended up in an emergency room  
18          in a hospital in Philadelphia. He was detoxed  
19          there; referred to me for intensive treatment.

20                   When the person that interacts with  
21          the insurance company presented that information  
22          to them, they told me I had five days to  
23          conclude his treatment episode. He was already  
24          thinking about killing himself. When I inquired  
25          about how I would connect him with

1 after-care resources, they gave me an 800 number  
2 and told me that when he found a place to live,  
3 he could call that 800 number and they would  
4 provide an outpatient appointment for him.

5            Luckily, he knew someone in AA who  
6 was willing to open their house up and let him  
7 sleep there for awhile. If that hadn't been  
8 true, I would have had to put him in a shelter.  
9 He would have been right back in the situation  
10 that prompted him to think about killing himself  
11 with a gun, into residential care.

12            This City of Philadelphia has been  
13 rather generous I think in their funding for the  
14 Behavioral Health Special Initiative. It's  
15 partly driven by their need to reduce crowding  
16 in Philadelphia prisons. But they've tended to  
17 be more reasonable with allowing longer length  
18 of stay, and in many ways so has C.B.H.

19            Some of the countries that I worked  
20 with have recognized the importance of paying  
21 for three, four months of residential treatment  
22 to prepare someone who's leaving jail to return  
23 to the community and, hopefully, function in  
24 intensive outpatient or outpatient programs.

25            Again, I believe that part of the



1 real challenge here both for the criminal  
2 justice side and for the treatment side is to  
3 find ways that we can work together to do  
4 comprehensive assessments, begin to  
5 individualize this whole process more. I'm not  
6 going to sit here and tell you I have all the  
7 details of how to pull that off, but I do think  
8 that needs to happen.

9 CHAIRPERSON MAITLAND:

10 Representative Walko.

11 REPRESENTATIVE WALKO: Thank you  
12 very much, Mr. Chairman. You just referred to  
13 an insurance company that limited treatment to  
14 five days for the patient who applied. I wanted  
15 to asked about that if you had some specifics on  
16 it. And then just ask you generally what has  
17 been your experience with managed care and their  
18 denials of treatment, or if you have some  
19 percentages of the people you deal with who go  
20 through that kind of denial process? I would  
21 appreciate it.

22 MR. FOLKS: Sure. The first is the  
23 example that I offered, I think it was three or  
24 four years ago. I honestly cannot recall which  
25 specific Medicare managed care firm it was.

1                   REPRESENTATIVE WALKO: But it was a  
2 managed care firm?

3                   MR. FOLKS: Yes, a Medicare managed  
4 care firm. Some of my colleagues in the  
5 treatment community would probably be upset with  
6 me. Historically, I think many treatment  
7 providers have skimmed the cream off the top of  
8 the population and all they wanted to work with  
9 were clients that were easy to work with. Many  
10 of us have gotten real comfortable with a  
11 particular treatment modality and kept clients  
12 in the level of care beyond what made sense for  
13 that client.

14                   Many of us have been reluctant to  
15 accurately treat clients and move them out of  
16 their facilities because then they have to find  
17 somebody for the empty bed. I think the  
18 pendulum has swung too far, particularly for  
19 socially-disadvantaged people in the  
20 Commonwealth.

21                   It's fascinating for me that we had  
22 through Bureau of Drug and Alcohol programs what  
23 I think is a pretty good instrument to determine  
24 the level of care. It's the Pennsylvania Client  
25 Placement Criteria for Adults. The problem, as

1 with any instrument, is, it's open to some  
2 subjective impression on the part of the person  
3 who's looking at it.

4 One of the best things that it does,  
5 I think, is differentiate between people who  
6 have an acute chemical dependency problem, but  
7 otherwise had achieved a fairly reasonable level  
8 of function in life. The concept of  
9 rehabilitating them or returning them to their  
10 previous level of function applies.

11 Unfortunately, at this point in  
12 time, we have, I can't tell you exactly how  
13 many, but we have many citizens of our  
14 Commonwealth who have never really functioned in  
15 society. They don't have an adequate education.  
16 They don't have good vocational skills. They  
17 come from families who have multigenerational  
18 substance abuse, multigenerational criminal  
19 behavior, and they really need more than a week  
20 or two just to get them cleared up and  
21 stabilized enough for them to begin to recognize  
22 what they need to do.

23 If what we are doing is staging a  
24 managed care concept that originally grew out a  
25 middle-class and affluent kind of population and

1 we're trying to apply that to a socially  
2 disadvantaged population, it's quite obvious to  
3 me that those two aren't going to match up.

4 The another thing is that, I don't  
5 know that anyone has had the authority to  
6 enforce compliance with that instrument across  
7 the insurance industry. Again, the City of  
8 Philadelphia is quite generous, maybe too  
9 generous, and look at that criteria and refer  
10 people to care. There are other situations  
11 where people with the exact same problem are  
12 getting maybe a week or two of residential care  
13 and have to function in the community whether  
14 they have a safe living environment or not.

15 REPRESENTATIVE WALKO: Do you think  
16 that the two pieces of legislation referred to  
17 by -- I don't if you were here when Mr. Tennis  
18 testified about legislation that would, one,  
19 establish a truly, effective and fair grievance  
20 procedure for the denial of treatment benefits;  
21 and another piece of legislation that would  
22 require managed care decision makers who decide  
23 who gets the treatment, to actually be qualified  
24 in the area of drug and alcohol, I suppose  
25 treatment or otherwise.

1                   Do you think those two pieces of  
2                   legislation would be helpful to meet the  
3                   challenges you described?

4                   MR. FOLKS: I wasn't here when Mr.  
5                   Tennis testified. I saw the draft of the  
6                   legislation about a grievance process. I don't  
7                   know if it's changed since the draft that I saw.

8                   If the draft that I saw is still  
9                   accurate, it allowed, I think a period of 30 to  
10                  60 days to go by before the appeal process had  
11                  to be completed. Usually, in my experience,  
12                  denials occur in an acute crisis, like the  
13                  example that I offered earlier. It's someone  
14                  who's seeking care in a detox unit, a hospital  
15                  unit, a residential program. Their problems are  
16                  immediate. We really can't wait 30 to 60 days  
17                  for a grievance process. The person may be  
18                  dead.

19                  Again, I want to be clear that I'm  
20                  in no way advocating for a return to everybody  
21                  gets a medical card and providers can do  
22                  whatever they want. That's not what I'm saying.  
23                  I do think the pendulum has swung too far in the  
24                  other direction. We have to find some way to  
25                  correct that.

1                   REPRESENTATIVE WALKO: Thank you  
2 very much. Thank you, Mr. Chairman.

3                   CHAIRPERSON MAITLAND: Thank you  
4 very much for your testimony, Mr. Folks. I  
5 would be interested in seeing your summary of  
6 your longitudinal outcome study when it's  
7 prepared.

8                   MR. FOLKS: Thank you.

9                   CHAIRPERSON MAITLAND: Thank you  
10 again. That concludes the task force hearing  
11 today. I thank the members of the staff for  
12 their help. Adjourned.

13                   (AT or about 3:25 p.m. the hearing  
14 concluded)

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## C E R T I F I C A T E

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2  
3 I, Karen J. Meister, Reporter,  
4 Notary Public, duly commissioned and qualified  
5 in and for the County of York, Commonwealth of  
6 Pennsylvania, hereby certify that the foregoing  
7 is a true and accurate transcript of my  
8 stenotype notes taken by me and subsequently  
9 reduced to computer printout under my  
10 supervision, and that this copy is a correct  
11 record of the same.

12 This certification does not apply to  
13 any reproduction of the same by any means unless  
14 under my direct control and/or supervision.

15 Dated this 6th day of October, 1998.

16  
17 *Karen J. Meister (S)*

18 Karen J. Meister - Reporter  
19 Notary Public

19 My commission  
20 expires 10/19/00  
21  
22  
23  
24  
25