HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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House Bill 809

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House Judiciary Subcommittee
on Crime and Corrections

Capitol Annex
Room 205
Harrisburg, Pennsylvania

Wednesday, May 20, 1999 - 9:40 a.m.

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BEFORE:

Honorable Jerry Birmelin, Majority Chairperson
Honorable Brett Feese
Honorable Stephen Maitland
Honorable James Harold, Minority Chairperson

IN ATTENDANCE:

Honorable Don Walko
Honorable Timothy Hennessey

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1 ALSO PRESENT

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9 Minority Executive Director

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Cathy Hudson
11 Minority Committee Secretary

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13 Minority Chief Counsel

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Jane Mendlow
15 Minority Research Analyst

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14

(Written testimony submitted by Deborah Beck,
15 Drug & Alcohol Service Providers Organization)

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1 CHAIRPERSON BIRMELIN: Good morning.
2 We welcome you to the House Judiciary Committee
3 Subcommittee on Crime and Corrections' public
4 hearing this morning on House Bill 809. The
5 prime sponsor is Representative Gigliotti, who
6 is not going to be able to be with us today.
7 I'm Representative Birmelin,
8 Chairman of the subcommittee, and to my
9 immediate right is Representative Feese from
10 Lycoming County. We will, perhaps, have other
11 members of the committee coming and going as the
12 morning progresses.
13 We don't have a real big schedule
14 this morning for this bill. We have three time
15 slots set aside for five people to testify in.
16 We'll probably be able to accomplish that in
17 that time frame.
18 As other members come in, I'll be
19 sure to introduce them to you. Our first
20 testifier is Mr. Mark Bergstrom, Executive
21 Director of the Pennsylvania Commission on
22 Sentencing. Mr. Bergstrom, welcome to the
23 committee meeting this morning.
24 MR. BERGSTROM: Thank you, Mr.
25 Chairman. Good morning, Chairman Birmelin, and

1 Representative Feese and members of the
2 Subcommittee on Crime and Corrections. I'm Mark
3 Bergstrom, Executive Director of the
4 Pennsylvania Commission on Sentencing. Thank
5 you for providing this opportunity.
6 I'd like to update you briefly on
7 some of the -- the use of intermediate
8 punishments in the Commonwealth since the
9 enactment of the legislation and to offer some
10 brief comments today regarding House Bill 809.
11 This hearing today represents
12 another step in what has been a ten-year effort
13 to implement and refine the county intermediate
14 punishment legislation enacted by the General
15 Assembly in 1990. Since the passage of Acts 193
16 and 201 in 1990, the following legislation,
17 regulations and guidelines have been adopted:
18 Act 13 was passed in 1991 which
19 expanded IP eligibility.
20 Sentencing guideline revisions
21 incorporating IP first occurred in 1991. PCCD
22 passed interim and then final regulations
23 regarding intermediate punishments.
24 Act 1 dealing with immunity for
25 community service and restitution programs, and

1 Act 117 of 1992 dealing with expanded arrest
2 powers for probation officers were both enacted.
3 And then we had further sentencing
4 guideline revisions in 1994 and 1997, both of
5 which tried to expand the recommendations for
6 the use of intermediate punishments.
7 Finally, and certainly not least of
8 which, appropriations were given by the General
9 Assembly. They were general appropriations
10 since fiscal year 1994-95, $5.3 million per year
11 to support general operations of intermediate
12 punishments in the counties.
13 And more recently, appropriations
14 specifically for drug and alcohol comprehensive
15 treatment in lieu of incarceration beginning in
16 fiscal year '97-98 at the level of $10 million.
17 The appropriation for fiscal year '99-2000 is
18 increasing that to $11 million.
19 Additionally, numerous hearings have
20 been held by the Judiciary Committee of both
21 chambers regarding modifications to the
22 intermediate punishment legislation, including
23 those held last summer by the House Task Force
24 on Intermediate Punishment and the House Task
25 Force on DUI. The General Assembly has clearly

1 expressed interest in and support of the
2 continuing development of intermediate
3 punishments, and judges have responded
4 accordingly.
5 I have attached two charts to
6 illustrate the increasing use of intermediate
7 punishment since the enactment of the
8 legislation. The first chart, which is
9 Attachment 1, provides information on the number
10 of IP sentences imposed annually between 1992
11 and 1997. The red line, which is at the top,
12 reflects the approximate number of IP sentences
13 imposed each year, starting at zero or actually
14 29 in 1992 and rising to a little over 5,000 in
15 1997.
16 The green line, the next line,
17 reflects the number of non-DUI sentences
18 included in that, and you'll see in 1997 it
19 reaches about 3,200 sentences. And the black
20 line, the lowest line, reflects the number of
21 DUI sentences, about 1,800 in 1997.
22 While IP was primarily used for DUI
23 offenders in the early years, you'll note that
24 as time went on, more non-DUI offenders were
25 receiving intermediate punishment sentences.

1 The second chart, Attachment 2,
2 considers the utilization of intermediate
3 punishment expressed as a percentage of all
4 sentences. What portion of all sentences
5 imposed in Pennsylvania are intermediate
6 punishment sentences? Well, on average, the
7 Commission receives approximately 70,000
8 sentencing transactions each year reported to us
9 by courts, of which about 15,000 are for DUI.
10 On this chart, the red line in the
11 middle of the pack reflects the percentage of
12 all offenders receiving intermediate punishment
13 sentences. So roughly, in 1997, about 7.3
14 percent of all sentences are intermediate
15 punishment sentences.
16 The green line below reflects the
17 percentage of non-DUI offenders receiving IP,
18 about six percent; and the black line at the top
19 reflects the percentage of DUI offenders
20 receiving IP. You'll see it hit a peak of 12.9
21 percent in 1996 and sort of leveled off to about
22 12 percent in 1997. So, 12 percent of all DUI
23 offenders generally are receiving intermediate
24 punishment sentences.
25 The increased use of intermediate

1 punishment for non-DUI offenders since 1994 can
2 be attributed to two factors; one, the expanded
3 recommendations for the use of intermediate
4 punishment under the 1994 guidelines; and
5 second, the infusion of $5.3 million in state
6 funding for county programs. The 1994
7 guidelines provided the first substantial
8 incorporation of intermediate punishments into
9 the guidelines.
10 And if you look at Attachment 3,
11 which is the sentencing matrix under the 1994
12 guidelines, you'll note the gray shaded area, or
13 Level 3 of the matrix, targets offenders who
14 would otherwise be serving sentences in county
15 jail facilities, county incarceration sentences.
16 It targets those individuals particularly for
17 intermediate punishment because the statute
18 basically requires us to identify people who
19 would otherwise be housed in county facilities
20 for consideration for intermediate punishment.
21 So, the gray zone, Level 3, is the target for
22 intermediate punishment.
23 During 1996, approximately 90
24 percent of all sentences imposed in the
25 Commonwealth were based on these 1994

1 guidelines. And if you exclude the violent
2 offenders in Level 3, which are excluded from
3 eligibility for IP, the Commission received a
4 little over 10,000 non-DUI sentences at Level 3
5 in 1996. Of those, about 1,500 cases were
6 intermediate punishment sentences.
7 Turning to the next attachment,
8 Attachment 4, the 1997 sentencing matrix, you'll
9 see the Commission in 1997 further expanded
10 recommendations for the use of intermediate
11 punishment, targeting even more offenders who
12 would otherwise be given sentences in county
13 facilities.
14 The dark gray area, which we call
15 Level 4, basically targets state offenders who
16 would otherwise be serving sentences in county
17 facilities; anyone who would receive or could
18 receive a maximum sentence between two and five
19 years. So, the Commission expanded into yet
20 another category; individuals that might be in
21 county facilities, and identified these as
22 eligible individuals for intermediate
23 punishment.
24 I note very quickly that any of the
25 offenders with violent offenses in that area are

1 not eligible for intermediate punishment. The
2 statute prohibits that.
3 Linked to the changes in the
4 guidelines in 1997 was additional funding, this
5 time for comprehensive drug and alcohol
6 treatment for offenders at Level 3 and Level 4.
7 Later this year as staff begins to analyze the
8 1998 sentencing data, the Commission should have
9 some indication of the impact of these changes.
10 Approximately 60 percent of the sentences
11 imposed during 1998 were based on the 1997
12 sentencing guidelines.
13 The focus of today's hearing is
14 House Bill 809, which would amend the judicial
15 code to permit the court to impose a split
16 sentence, comprised of a flat sentence of
17 partial or total confinement of up to 90 days
18 and a consecutive sentence of intermediate
19 punishment. Commission staff has worked over
20 the past several years with the District
21 Attorneys Association on draft language similar
22 to that found in the bill, and therefore,
23 supports this legislation.
24 I believe there will be some
25 presenters that follow me that suggests several

1 changes to the legislation you have to House
2 Bill 809, and we fully support those
3 recommendations.
4 Judges and county criminal justice
5 practitioners have often expressed concern that,
6 under existing statutes, it is difficult to
7 impose a split sentence in which the defendant
8 would serve the first portion of a sentence in
9 jail, sometimes called shock incarceration, and
10 then be transferred, not paroled, to a
11 intermediate punishment program. This is due to
12 the min/max requirement of partial and total
13 confinement rules in the Judicial Code.
14 Judges have indicated that it seems
15 ridiculous to impose a sentence in which an
16 offender is first incarcerated, then on parole,
17 and only then begins a period of intermediate
18 punishment. They have also indicated that it
19 seems inappropriate to refuse to parole someone
20 from a county sentence just so that person could
21 directly be transferred to a period of
22 intermediate punishment.
23 As a result, judges often feel that
24 they are in an either/or situation; either give
25 an incarceration sentence and eventually parole

1 the offender without benefit of enhanced
2 intermediate punishment programming, or give an
3 intermediate punishment sentence absent any
4 period of incarceration. This is particularly
5 true of DUI sentences, in which statute
6 restricts the type of intermediate punishment
7 programs that may be used to satisfy the
8 mandatory minimum.
9 House Bill 809 would give judges
10 greater flexibility to craft a sentence that
11 balances many of the purposes espoused in the
12 guidelines: proportionality, retribution,
13 rehabilitation and deterrence.
14 Some have raised concerns that under
15 the legislation, offenders presently receiving
16 IP sentences would instead receive longer split
17 sentences involving both jail and IP. While
18 this is possible, it is unlikely. Judges have
19 been cautious in terms of utilizing intermediate
20 punishment, and the long list of ineligible
21 offenses further limits its use.
22 This is best observed by the
23 utilization rate I just talked about, where
24 roughly seven percent of sentences in the
25 Commonwealth are IP sentences, a fairly low

1 number.

2 Anecdotically, it is rare to hear of

3 a case where the court imposed an IP sentence

4 when incarceration seemed more appropriate. It

5 is more often the case that the court did not

6 impose an IP sentence because IP alone seemed

7 inappropriate, or insufficient.

8 With enactment of this legislation,

9 offenders presently receiving incarceration

10 sentences might be considered appropriate for a

11 shorter period of incarceration, but only if

12 linked to a period of restrictive intermediate

13 punishment. Under the guidelines, incarceration

14 and restrictive intermediate punishment are

15 considered equivalent penalties for purposes of

16 guideline conformity. So when the Commission

17 makes a recommendation regarding incarceration,

18 that incarceration or confinement period could

19 be either restrictive intermediate punishment or

20 jail time, or a combination of the two.

21 One such example is an offender

22 convicted of a fourth DUI, which requires a

23 one-year mandatory minimum sentence. Many

24 judges are reluctant to place such an offender

25 exclusively on IP. The result is a one to

1 two-year sentence in which the judge loses
2 paroling authority to the Board of Probation and
3 Parole. It's a state sentence.
4 Under this legislation, a judge
5 could impose a 90-day incarceration sentence and
6 a consecutive IP sentence, perhaps residential
7 drug and alcohol treatment, and then maybe
8 followed by house arrest with electronic
9 monitoring and outpatient treatment; all, of
10 which, in a combination would satisfy the
11 mandatory minimum while providing enhanced
12 supervision and treatment services for the
13 offender.
14 For a number of years the Commission
15 has worked with other state and county agencies
16 and associations to improve the utility of the
17 County Intermediate Punishment Act. Suggestions
18 developed through these discussions, including a
19 recommendation to adopt legislation similar to
20 House Bill 809, received broad support from
21 practitioners when presented last year to the
22 House Task Force on Intermediate Punishment.
23 I encourage the committee to pass
24 this legislation and thank you for your interest
25 and support during the first decade of IP

1 sentencing.

2 Thank you for inviting me today, and
3 I certainly will try to address any questions
4 you have.

5 CHAIRPERSON BIRMELIN: Thank you,
6 Mr. Bergstrom. I'd like to now introduce two of
7 our members who have joined us since you began
8 your testimony. Second to my right is
9 Representative Stephen Maitland from Adams
10 County. Second to my left is Representative Tim
11 Hennessey from Chester County.

12 I'll give the members an opportunity
13 to ask questions. I'll start with
14 Representative Feese.

15 REPRESENTATIVE FEESE: Thank you,
16 Mr. Chairman. I just have one question. I
17 support the legislation also, Mr. Bergstrom, but
18 my question is: Have you given any thought or
19 has anyone to your knowledge given thought on
20 the impact of county budgets?

21 You spoke in your testimony about
22 5.3 million infusion to the counties, but I'm
23 not sure that that money is even adequate now.
24 So, I'd like your comments on that or thoughts
25 if you have any.

1 MR. BERGSTROM: I think for quite
2 awhile now the County Chief Adult Probation
3 Officers Association, the County Commissioners
4 Associations and others have been encouraging
5 the General Assembly to consider an increase in
6 that based on an appropriation of 5.3 million.
7 I think, historically, the Commission has been
8 supportive of those efforts.
9 I think we believe in many of these
10 cases it may be a more appropriate sentence to
11 use IP and, perhaps, some period of
12 incarceration instead of incarceration alone. I
13 think in some of the programs at the county
14 level it's actually more cost-effective to use
15 intermediate punishments instead of jail. That
16 really plays out if a county is paying money to
17 send bodies to another county to house them in
18 their jail. If a county already has a jail and
19 is paying for additional inmates there, maybe
20 the trade-off isn't quite as favorable as far as
21 expanding intermediate punishments.
22 So, I think counties do need some
23 assistance in expanding intermediate punishment
24 programs, but I think there is a good baseline
25 of programs in place, and by expanding this

1 legislation, by allowing the shock
2 incarceration, we can sort of incrementally keep
3 improving the IP legislation. If it warrants
4 further state or county investments, then you
5 have at least a record of the need and the cost.
6 REPRESENTATIVE FEESE: Thank you.
7 CHAIRPERSON BIRMELIN:
8 Representative Hennessey.
9 REPRESENTATIVE HENNESSEY: Thank
10 you, Mr. Chairman. Good morning, Mark.
11 MR. BERGSTROM: Good morning.
12 REPRESENTATIVE HENNESSEY: I'm sorry
13 I missed the earlier part of your testimony.
14 On page 3, the bottom paragraph, you
15 indicate a long list of ineligible offenses
16 under the intermediate punishment statute. Is
17 it beyond the pale of your organization to make
18 actual suggestions as to which of those
19 limitations might -- we might want to consider
20 removing, or are you simply just here to comment
21 on the proposed legislation as it exists?
22 MR. BERGSTROM: I guess my purpose
23 today is to comment specifically on House Bill
24 809. But in the past, the Commission has
25 testified before this committee and also on the

1 Senate side to the Judiciary Committee there,
2 regarding some concerns about limitations
3 because of the ineligibility list.
4 Now, I have to admit that I'm not
5 sure that there's broad-base support to reduce
6 that list. But what we do hear from judges is,
7 there are some cases where you might have an
8 individual who is an accomplice charged with
9 basically the same offenses as co-conspirator.
10 In those cases, the person might not be viewed
11 as serious as the major actor; or, you know, the
12 court may feel this is an appropriate case for
13 intermediate punishment, but is basically not
14 allowed to consider intermediate punishment.
15 The irony that we pointed to in the
16 past is that, these individuals can get
17 probation, but they're not eligible for
18 intermediate punishment. So, we have always
19 been supportive, at least the General Assembly,
20 looking at that list, trying to see if there's
21 any way to give judges a bit more flexibility on
22 those ineligible offenses.
23 But I do know there are Commission
24 members and there are certainly people that have
25 testified before the House and Senate that are

1 not supportive of changing that list.

2 REPRESENTATIVE HENNESSEY: If you

3 can just get us a copy of that testimony --

4 MR. BERGSTROM: Sure, absolutely.

5 REPRESENTATIVE HENNESSEY: -- from

6 prior occasions, it might be helpful. Thank you

7 very much.

8 Thank you, Mr. Chairman. That's all

9 I have.

10 CHAIRPERSON BIRMELIN: I don't think

11 there are any further questions, Mr. Bergstrom.

12 I want to thank you for your input on this and

13 for all your charts and maps.

14 MR. BERGSTROM: Thanks, Mr.

15 Chairman.

16 CHAIRPERSON BIRMELIN: I appreciate

17 them.

18 MR. BERGSTROM: You're welcome.

19 CHAIRPERSON BIRMELIN: We next have

20 three gentlemen who are going to testify

21 together. First is the Honorable Ted McKnight,

22 District Attorney for Clinton County;

23 accompanied by Gary Tennis, who is the

24 Legislative Director of the Pennsylvania

25 District Attorneys Association; and Charles

1 Junod. He's the Director of Pretrial Services,
2 Philadelphia D.A.'s Office.
3 Gentlemen, we welcome you all here.
4 Mr. Junod, we don't have any written testimony
5 from you; is that right?
6 MR. TENNIS: Mr. Junod, basically I
7 asked him to come to answer questions because he
8 has the hands-on information. Any technical
9 questions that I can't answer, he'll be
10 available.
11 CHAIRPERSON BIRMELIN: Gary Tennis
12 and Mr. McKnight each have written testimony.
13 It doesn't matter to me which of you goes first.
14 MR. McKNIGHT: I'll be happy to.
15 CHAIRPERSON BIRMELIN: Mr. McKnight,
16 if you would give your testimony first. Then
17 we'll have Mr. Tennis, and we'll open it up for
18 questions, or if Mr. Junod has any comments he'd
19 like to make at that point.
20 MR. McKNIGHT: Thank you. Good
21 morning, Chairman Birmelin, Representative
22 Maitland, Representative Feese, Representative
23 Hennessey. On behalf of the Pennsylvania
24 District Attorneys Association, I thank you very
25 much for the opportunity to testify today on the

1 important issue of intermediate punishment.

2 I would like to address the

3 importance of drug and alcohol treatment as part

4 of the restrictive intermediate punishment.

5 The Pennsylvania District Attorneys

6 Association has been strongly supportive of

7 providing clinically appropriate drug and

8 alcohol treatment for RIP offenders, and, in

9 deed, for all individuals who are in need of

10 such treatment. This commitment manifested

11 itself five years ago when the Pennsylvania

12 District Attorneys Association agreed to

13 concessions in the sentencing guidelines

14 providing for RIP sentencing options where

15 county jail sentences previously had been the

16 only guidelines option.

17 Our agreement not to oppose these

18 changes was conditioned upon the requirement

19 that any offender being sentenced to RIP be

20 properly assessed and required to participate in

21 clinically appropriate drug and alcohol

22 treatment.

23 Why are Pennsylvania prosecutors,

24 and, indeed, prosecutors around the nation so

25 committed to expanding the use of clinically

1 appropriate drug and alcohol treatment?
2 Consider the following facts:
3 Sixty to 80 percent of all criminal
4 justice offenders have serious substance abuse
5 problems. Our failure to aggressively address
6 criminals' addiction means more crime, more
7 victims and more prison overcrowding.
8 One study after another confirms
9 that clinically appropriate drug and alcohol
10 treatment results in more than a two-thirds drop
11 in criminal recidivism.
12 Treatment saves taxpayers money.
13 Again, study after study shows that money spent
14 on good drug and alcohol treatment is an
15 outstanding investment. The most extensive
16 study done to date, the Caldata Study, shows
17 that every dollar spent on treatment yields a
18 seven dollar return within 12 months, primarily
19 in reduced criminal justice costs.
20 For this reason, the Pennsylvania
21 District Attorneys Association strongly supports
22 this year's 11 million dollar line item for RIP
23 treatment. Additionally, PCCD, and specifically
24 PCCD staffer, Jim Strader, deserves
25 congratulations for the highly competent manner

1 in which they have administered the RIP
2 treatment grants around the Commonwealth.
3 The Pennsylvania District Attorneys
4 Association would offer the following
5 recommendations with respect to this issue:
6 One, gradually increase funding of
7 this project until it is fully funded. As
8 stated above, funds invested in this criminal
9 justice treatment project will result in less
10 crime and significant savings to the state
11 criminal justice system.
12 Although it has been determined that
13 its statewide cost is approximately $26 million,
14 it is currently funded this year at the
15 11 million dollar range. This means that only
16 12 of the 26 counties applying for RIP treatment
17 grants were funded. PCCD was forced to turn
18 down $6 million in grant requests.
19 The Pennsylvania District Attorneys
20 Association recommends that funding for this
21 project be increased incrementally by
22 approximately $5 million per year, until it is
23 fully funded. I would also note, although it's
24 not in my written remarks, that there are other
25 counties interested in applying. But because of

1 the limited funds at this point, they have been
2 basically told not to do so because the funds
3 are already being addressed to those counties
4 that are on-line.
5 Number 2. The level and duration of
6 treatment should be clinically determined. The
7 success of treatment depends on the level and
8 duration of treatment being determined
9 clinically by qualified experts using
10 appropriate clinical criteria, the Pennsylvania
11 Placement Criteria. For addicts sufficiently
12 deteriorated to have ended up in the criminal
13 justice system, most will need long-term
14 residential treatment.
15 Some counties nonetheless have set
16 up RIP treatment programs that uniformly provide
17 the same level of outpatient treatment for all
18 offenders. Clinically, this dramatically
19 reduces the chances of success. More
20 importantly, inadequate treatment poses a public
21 safety risk that is unacceptable. PCCD should
22 be encouraged in its effort to require that all
23 RIP treatment grant recipients are providing
24 sufficient levels of treatment.
25 Number 3. Other treatment funding

1 streams should be increased or at least
2 maintained. As a result of welfare reform, many
3 addicted individuals, who used to be eligible
4 for state Medicaid funding for nonhospital
5 residential and other levels of drug and alcohol
6 treatment, became ineligible. The state
7 purportedly compensated for these cuts by
8 creating a new funding stream: Behavior Health
9 Special Initiative funding. However, this
10 funding continues to fall far short of the need
11 created by welfare reform.
12 Moveover, this year's budget imposed
13 further cuts in Behavior Health Special
14 Initiative funding, meaning less treatment for,
15 and more crime committed by, untreated addicts
16 and alcoholics.
17 As crime experts around the country
18 have stated so many times, drug and alcohol
19 addiction is the engine that drives crime in our
20 nation. One of the very best anticrime
21 initiatives this General Assembly can launch is
22 expansion of resources for drug and alcohol
23 treatment across the board.
24 In rural counties, many judges
25 otherwise exposed to sentence addicted offenders

1 to RIP treatment are often unwilling to do so
2 because they believe at least some brief period
3 of incarceration is needed before entering RIP
4 treatment.
5 Although we are sometimes accused of
6 trying to reduce the flexibility of trial
7 judges, in this instance the PDAA is asking the
8 General Assembly to increase the judge's range
9 of options. If a judge feels that a defendant
10 is a good candidate for RIP treatment, but that
11 the defendant would benefit more from this
12 sentence if he or she first received a brief
13 dose of jail to get his or her attention, then
14 we should provide judges the flexibility to do
15 so. I believe that RIP treatment will be used
16 more often if judges can have that discretion.
17 Again, it's not in my written
18 comments, but I'd also note that the Sentencing
19 Commission, of which I happen to be a member,
20 increased the sentencing flexibility for judges
21 the last time we passed the change in guidelines
22 which went into effect on June 13, 1997.
23 I'm not aware of any group or
24 individual opposing this bill.
25 When I was asked to testify at this

1 hearing, I took the opportunity to review House
2 Bill 809. Quite frankly, I found it somewhat
3 confusing. I asked Gary Tennis to see if he
4 could make it clearer. I believe the
5 handwritten changes that I've attached to my
6 comments, with regards to House Bill 809, would
7 make the bill clearer while making no change to
8 the substance and intent of the bill.
9 I would respectfully request that
10 the House Judiciary Committee approve this
11 legislation with the proposed amendments, and
12 that the General Assembly expeditiously enact
13 this important bill. Thank you for your
14 attention.
15 CHAIRPERSON BIRMELIN: Mr. Tennis.
16 MR. TENNIS: Thank you, Chairman
17 Birmelin. Good morning, Representatives. Thank
18 you very much for the opportunity to testify
19 about this important bill. I'm happy to talk
20 about it.
21 This bill, House Bill 809, will
22 provide judges more flexibility to impose a
23 brief flat jail sentence, a sentence of less
24 than 90 days, before the offender begins the RIP
25 sentence. Under current law, judges do not have

1 this flexibility. As a result, sentences and
2 RIP treatment is being underutilized, or it's
3 not being utilized as much as it might be.
4 As Mr. McKnight, who is a former
5 president of the D.A.s Association, indicated,
6 we've been very supportive of RIP primarily
7 because it is a way -- an effective mechanism
8 for providing clinically appropriate drug and
9 alcohol treatment for addicted offenders.
10 Most offenders in this state have
11 serious substance abuse problems, and we need to
12 do what we can to get them into recovery if we
13 wish to stop their destructive cycle of criminal
14 behavior.
15 Particularly with the advent of
16 behavorial managed care, funding for drug and
17 alcohol treatment is being severely reduced, and
18 most specifically reduced in the area of
19 long-term residential care.
20 Now, addicts who need long-term
21 residential care, and alcoholics, are the ones
22 who are most addicted. As a result, they're the
23 ones who are most at risk of committing crime.
24 So, any reductions in funding, or
25 access to long-term residential care will be the

1 type of treatment that has the most impact on
2 crime, because those are the people that are at
3 the greatest risk.
4 If you'll look at what happens in
5 the managed care realm today--And the problem
6 has been around for about five or ten years
7 now--they just -- even though they're required
8 by law to do it and even though it's in the
9 provisions of the policy, as a practical matter
10 they just don't approve long-term residential
11 care. They won't approve it. They say, you
12 don't need it. Of course, they do.
13 An additional factor that makes this
14 legislation important is, if the addiction is
15 identified as a result of the offender's contact
16 with the criminal justice system; if it's
17 identified because the individual gets picked up
18 on drunk driving or auto theft, or whatever, and
19 they do a drug and alcohol assessment and find
20 the person is severely addicted, even though
21 that individual has insurance to cover it, the
22 HMOs won't pay for it because it was identified
23 through a contact with the criminal justice
24 system.
25 That's not anywhere in the mandates

1 that this General Assembly has created for
2 covering this -- providing coverage for this.
3 There's nothing in there that says you can have
4 that exception, but that's pretty much the
5 policy that exists for insurance policies.
6 As a result of this, and also as a
7 result of what Mr. McKnight talked about, the
8 reductions in BHSI funding, which has basically
9 in the last two years been reduced from
10 54 million to 41 million, it makes it
11 increasingly critical that we impose tough drug
12 and alcohol treatment on offenders as early as
13 possible in the course of their criminal
14 careers. The sooner we do it, the sooner we
15 interrupt and stop their cycle of crime, the
16 less crime, the greater the public safety. This
17 RIP program is very well designed to do
18 precisely that.
19 As I indicated before, many judges
20 throughout the state would like to sentence
21 eligible offenders to RIP sentences, but they're
22 relucted to do so because they believe the
23 offenders will do better -- that they should
24 serve some period of jail time, some brief
25 period, less than 90 days often, before they go

1 into RIP for a couple of reasons.

2 One is, they think some punishment

3 is appropriate, and that's our way of thinking,

4 that's probably correct. They also think that

5 the offender will benefit.

6 Interestingly, there's a letter that

7 is available to you now from the Drug and

8 Alcohol Service Providers of Pennsylvania

9 corroborating with what those judges feel and

10 corroborating with what we said, which is, that

11 very often in many cases the offenders will do

12 better in treatment if they get a little bit of

13 jail time first. They'll take it more seriously

14 if they get a good close look at what their

15 options are by not cooperating with treatment.

16 It actually is a clinically beneficial course of

17 action.

18 But under current law, the court

19 either has to forego incarceration altogether to

20 do RIP, or do incarceration and not do the RIP

21 treatment. Those are pretty much the options,

22 and really what we're asking for is more

23 flexibility for the judges.

24 This is particularly the case -- And

25 Representative Feese talked about the funding

1 issue. Now RIP is available for higher-level
2 offenders. It used to be it was only available
3 for people that were getting county sentences.
4 Now there's a Level 4 in the sentencing
5 guidelines that Mr. Bergstrom explained to you,
6 which are low-level state sentences.
7 In those cases in particular -- In
8 those cases the guidelines call for the judge to
9 put them in a state prison. Now, the judge can
10 give RIP. But in those cases in particular,
11 many judges are going to want to give at least
12 some period of jail time to be comfortable with
13 giving a RIP flat sentence.
14 I won't take too much more of our
15 your time. The clarifying language here, which
16 is attached to both my legislation and Mr.
17 McKnight's legislation, is handwritten in. Not
18 only Mr. McKnight -- I'll take responsibility
19 for the confusion in the initial draft. It was
20 my fault. There was a reason. We were amending
21 it to another bill. It made sense at the time,
22 but it doesn't anymore.
23 Everyone I showed this bill to said,
24 what does this do? I don't understand what this
25 accomplishes. So, what we attempted to do is

1 redraft it so that it spells out very clearly
2 and very directly what the bill -- what
3 everybody intended it to do; run it by everyone
4 who has been involved in the legislation so far
5 in terms of everyone who is interested in the
6 criminal justice system. Everyone likes the new
7 language, and we think we have it right this
8 time. And we would urge that the Judiciary
9 Committee to amend the new language into the
10 bill.
11 As indicated by Mr. McKnight, the
12 Pennsylvania District Attorneys Association has
13 unanimously endorsed the adoption of this bill.
14 We think it's good. It gives good flexibility.
15 We think it will lead to expanded use of drug
16 and alcohol treatment. We ask you to support
17 the bill, as well as in additional budget years
18 to do what you can to support increased funding
19 for the program.
20 We do think, in addition to saving
21 people from being victims of crime, it will save
22 the state money on state prison cost. It will
23 save the counties money at some level for county
24 jail, and it will save us all money because
25 people who otherwise continue to go through the

1 cycle of crime, going out and committing crime,
2 running through the criminal justice system, can
3 get into recovery; can get back out into public
4 life and become a productive citizen, and a
5 tax-paying citizen rather than a huge drain on
6 society.
7 So, I thank you very much, Mr.
8 Chairman, for holding the public hearing to give
9 us a chance to air our reasons for supporting
10 this legislation. Thank you.
11 CHAIRPERSON BIRMELIN: Thank you,
12 Mr. Tennis. Mr. Junod, do you have any
13 comments?
14 MR. JUNOD: No. I was asked by Mr.
15 Tennis to come in case there were questions
16 about Philadelphia's intermediate punishment
17 program specifically since I'm the one who
18 administers it. If there aren't, then I'll go
19 back to Philadelphia.
20 CHAIRPERSON BIRMELIN: Before I ask
21 the members of our panel to ask any questions of
22 you, we have a couple other members I need to
23 introduce. To my far left here, to your far
24 right here, Representative Don Walko from
25 Allegheny County. To my far right and your far

1 left is Representative Harold James, who is my
2 counterpart as Democratic Chairman of the
3 Subcommittee on Crime and Corrections.
4 Representative Hennessey, we'll
5 start with you.
6 REPRESENTATIVE HENNESSEY: Thank
7 you, Mr. Chairman.
8 Mr. Tennis, you had indicated that
9 HMOs generally don't like to pay for long-term
10 managed care. I'm wondering whether or not the
11 reform statute we passed last June has had any
12 effect in terms of turning them around, or did
13 we simply miss that particular problem in the
14 HMO system that we have to revisit it?
15 MR. TENNIS: I believe the latter is
16 the case. It has not had the impact -- I think
17 what needs to be understood is, the managed care
18 crisis in the area of drug and alcohol is very
19 different than it is in the case of health care
20 generally. And there's a reason why.
21 Denial is a part of the syndrome of
22 addiction. Most people who are alcoholics or
23 addicts don't think they really have a problem,
24 or if they think they have a problem, it's not a
25 very serious one. So the managed -- So they

1 have -- So they're already coming in --
2 This group of patients, unlike a
3 heart patient or somebody with a liver problem,
4 they're not eager to pursue treatment. If
5 there's some kind of obstacle thrown in the way,
6 they're not going to go after it like someone
7 who has a heart problem who might die.
8 In fact, from the managed care
9 company's perspective, the more they deny
10 treatment, the more money they make. So,
11 there's actually a direct conflict of interest.
12 So, unlike any other area of health care, you
13 actually have have a collusion of the patient
14 and the insurance company. They both have
15 separate reasons, but for both reasons, both of
16 them want to downplay the seriousness of the
17 addiction.
18 So the insurance -- The addict gets
19 to maintain his denial. The insurance company
20 or the HMO gets to keep their money. The only
21 people that pay are the family of the addict or
22 the alcoholic who pay big, or the public pays
23 through -- enduring crime committed by the
24 individual, through increased health care costs
25 when they show up in emergency rooms with a

1 failed liver or whatever it might be.

2 Through having to pay -- Sometimes

3 we end up paying double for one source of

4 treatment. Somebody may be covered under

5 Medicaid, for example, or under BHSI, but that's

6 handled like managed care. They deny long-term

7 residential treatment--They don't get it, but

8 they need it--they end up deteriorating even

9 more and end up having to be paid from block

10 grant dollars.

11 So basically, the taxpayers pay

12 twice for one round of treatment if we're lucky.

13 Sometimes the block grant dollars in some states

14 are being handled by managed care so the

15 taxpayers pay twice for no treatment, and then

16 we pay the third time when they get into the

17 criminal justice system.

18 Unfortunately, the current bill, a

19 good bill I understand for health care

20 generally. The issue of managed care with drug

21 and alcohol has to be handled separately,

22 because the dynamics are such that you have that

23 collusion that exists if the patient is not

24 eagerly seeking treatment. So, it does need to

25 be handled separately, and it has not had any

1 favorable impact to my knowledge.

2 REPRESENTATIVE HENNESSEY: Could I
3 ask you just to look at the HMO reforms we
4 passed last year; just to get back to us, the
5 subcommittee, and tell us whether or not we
6 totally missed it or whether or not there's
7 language in that legislation that would help if
8 somebody would just pick up the ball and run
9 with it?

10 MR. TENNIS: I will certainly. I
11 think what I will also do, if it's agreeable to
12 you, is ask Deb Beck to get in contact with you
13 too. She's also been working on the issue.
14 She's the representative, President of the Drug
15 and Alcohol Service Providers of Pennsylvania.

16 I have had the opportunity to talk
17 to different programs around the state, and
18 they've indicated it has not had an impact. The
19 people I've talked to have looked at the bill
20 and said that.

21 I will be happy to look at it and
22 get back to you about that, but I don't
23 believe -- I think it was good generally for
24 health care, but I think drug and alcohol has to
25 be handled separately.

1 REPRESENTATIVE HENNESSEY: I just
2 want to make sure that we haven't already fixed
3 the problem and nobody wants to use it or nobody
4 is thinking to use it. We need to go back and
5 revisit that, we can. Thank you.
6 CHAIRPERSON BIRMELIN:
7 Representative Maitland.
8 REPRESENTATIVE MAITLAND: Thank you,
9 gentlemen, for your testimony. I have two
10 questions for you.
11 One is, are there any studies maybe
12 from other states that show what the value is of
13 shock incarceration? What I mean is, somebody
14 has a drug or alcohol problem bad enough that
15 they're hauled before court, found guilty of
16 criminal offenses. What more does it take to
17 wake them up? Why shock incarceration?
18 MR. TENNIS: I'm not aware of any
19 studies to that effect. My information has been
20 drawn anecdotically both from people who were
21 involved and providing treatment. It's just
22 their experience. It's really anecdotal
23 experience.
24 I'm not sure that that issue has
25 been studied. What I'll do, I'll go back and

1 look and talk to people and see if I can find
2 it. But my guess is, that particular issue has
3 not been, but again I'll find out.
4 I have talked to quite a number of
5 people both who provide treatment and those who
6 have been ex-criminal justice offenders who got
7 into recovery. I consistently hear them say
8 that jail saved their lives. It woke them up.
9 It sort of made them sit in the cell and stew
10 for awhile and start thinking about, is this how
11 I want to spend the of my life.
12 And when they do end up getting into
13 treatment--It's a good program. It's pretty
14 tough, and they have a lot of hard work to
15 do--they end up being more willing to do that
16 because they've thought about what the
17 consequences are.
18 Without jail, sometimes they go into
19 treatment thinking they have beatened the
20 system.
21 So, some of it is sort of common
22 sense. There should be studies on this. I
23 think you're right to want them. I'm not sure
24 they have been done.
25 REPRESENTATIVE MAITLAND: I agree

1 anecdotically it makes a lot of sense. I'm
2 curious if there's any findings behind it.
3 My second question is -- The bill
4 amends Title 42. In your opinion, do any
5 changes need to be made to the Intermediate
6 Punishment Act to support shock incarceration?
7 MR. TENNIS: I think this covers it.
8 In conferring with Mark Bergstrom and also some
9 people that have worked on it from a technical
10 perspective from PCCD, there's been pretty much
11 a consensus that House Bill 809 with the
12 suggested amended language will take care of the
13 problem.
14 REPRESENTATIVE MAITLAND: Thank you
15 very much, Mr. Tennis.
16 MR. TENNIS: Thank you,
17 Representative Maitland.
18 MR. McKNIGHT: If I could just
19 respond to the first question briefly. Gary has
20 touched on some of those, but also, as I pointed
21 out in one of my comments, there are a number of
22 judges who want to have the combination of
23 incarceration along with the treatment. If they
24 don't have that, then they will not give the RIP
25 sentence. If they're not going to give the

1 sentence, we miss the treatment as well.
2 As a practical matter, I think it's
3 necessary. I know that judges that I have to
4 deal with in my county feel that way, and in
5 talking with other districts attorneys in rural
6 counties--It seems to be more of a rural county
7 situation--that their judges have expressed the
8 same opinion that they'd like to have the person
9 have some incarceration so they know what that
10 is as well as the treatment aspect.
11 REPRESENTATIVE MAITLAND: Thank you.
12 MR. TENNIS: Just to follow-up one
13 additional item and it relates somewhat to your
14 question. One of the popular conceptions out
15 there is that, coerced treatment doesn't work.
16 People have to be ready before they go into
17 treatment to be able to benefit from it.
18 The research shows that coerced
19 treatment is actually either as effective or
20 actually a little bit more effective than
21 someone just walking in on their own.
22 Something has to click upstairs for
23 them to benefit from treatment, but most often
24 that occurs after they have been in treatment
25 for a few weeks; not before they go in. I think

1 sometimes the jail adds a little bit more
2 element of coercion.
3 CHAIRPERSON BIRMELIN: We have a
4 letter from Deborah Beck, who is the president
5 of the Drug and Alcohol Service Providers
6 Organization that Gary Tennis referred to
7 before. I'll enter this letter as part of the
8 record for the public hearing today.
9 She does echo some of the comments
10 that you gentlemen have made, and just quoting a
11 portion of that, she says:
12 Studies done in this area of inquiry
13 demonstrate addiction rates among criminal
14 justice populations ranging from a low of 70
15 percent to highs over 90 percent. The rate of
16 addiction is quite high, but so, unfortunately,
17 is denial of the problem by the addicted
18 individual.
19 We're really dealing with a
20 reluctant participant in the process. Even
21 though they don't want to admit their problem,
22 we know we have to deal with it.
23 Then also, in her last statement she
24 says: Given the realities of addiction and
25 denial, serving some time in jail before

1 entering an addiction treatment program can be
2 clinically helpful.
3 This is sort of a follow-up to what
4 Representative Maitland brought out. It would
5 appear that they would agree with you that in no
6 other way, at least anecdotically from whatever
7 experience they have, they're seeing there is
8 some potential force, some positive good to be
9 done by some jail time.
10 I have one question for Mr.
11 McKnight. On page 2 of your testimony near the
12 bottom you made the statement that treatment
13 saves taxpayers money. Again, study after study
14 shows that money spent on good drug and alcohol
15 treatment is an outstanding investment.
16 I'd like to ask you, sir, if you
17 would tell me what your definition is of a good
18 drug and alcohol treatment program? I'm
19 assuming when you say that, there are ones,
20 perhaps, that aren't so good.
21 MR. McKNIGHT: I think it has to be
22 based on a clinical assessment first of what is
23 necessary, and then through the state, an
24 approved treatment program that matches the
25 assessed need for the treatment. We do have

1 some programs in the state that don't meet that
2 criteria. They're supposed to be treatment
3 programs, but they are, in fact, not treating
4 the addict.
5 We've had situations that result in
6 problems. Mr. Feese happens to be in an area
7 that about five or ten years ago got involved
8 with some of these supposed treatment programs
9 that were not, and it multiplied the problem.
10 I think that's why it's very
11 important that we follow and have legislatively
12 structured guidelines that make sure that the
13 programs that are in effect are legitimate
14 programs and not simply have the title of a
15 treatment program.
16 CHAIRPERSON BIRMELIN: In your
17 experience, have you dealt with faith-based
18 treatment centers, and if so, what has been your
19 experience?
20 MR. McKNIGHT: I've not. Maybe Gary
21 has.
22 MR. TENNIS: Some of them are really
23 good. Some of them have done very well and are
24 effective. The sticking point on a couple have
25 just been that some don't want to get licensed.

1 I think in a certain way any --
2 Treatment programs that are based on 12-step
3 programs are faith based, because 12-step
4 programs rely on some higher -- drawing on
5 higher power. It allows the individuals in the
6 programs to determine who that higher power is
7 according to their own religious beliefs.
8 I think to some extent all good
9 12-step programs--And good programs I believe
10 are based on the 12-step program--are to so some
11 level faith based.
12 They are some that are more
13 specifically tied into certain denominations,
14 and many of those are effective. The key issue,
15 though, from the state perspective is, if state
16 dollars are going into it, we need quality
17 control. We need to make sure they are doing --
18 have certain minimum requirements in terms of
19 number of counselors, the ratio of counselors to
20 patients, that kind of thing. Make sure it's a
21 safe environment in terms of fires, things like
22 that.
23 That's our way -- The licensing is
24 really the state's way of just ensuring that
25 certain minimum requirements have been met.

1 I think the important issue for all
2 programs, whether they are faith based or not,
3 and an important issue I think for policymakers
4 is to make sure that some floor has been met and
5 the licensing requirements do that. There is a
6 good track record. The bottom line is, there is
7 a good track record for faith based.
8 CHAIRPERSON BIRMELIN: My experience
9 is that, oftentimes the states attempt to make
10 sure that quality of service is there.
11 Oftentimes, because of their heavy handedness,
12 it removes the ability of them to incorporate
13 into their program the faith aspect of it, which
14 is critically important.
15 I've read many of these faith-based
16 programs do a tremendous job. There may be a
17 few that aren't. Most of them are in there for
18 the long haul and are committed to what they're
19 doing. They're doing an excellent job. I would
20 say in most cases they are doing better than
21 so-called secular with no injection of faith or
22 religious principles involved.
23 I get concerned that we sometimes
24 kill the goose that laid the golden egg by
25 controlling it too much. I would hate to see

1 that happen in this area.
2 I know we have gone far afield from
3 your testimony and the questions you have raised
4 here today.
5 I do want to thank you for coming,
6 gentlemen. I appreciate the time you spent with
7 us. Mr. Junod, I'm sorry we didn't give you a
8 hard time. Maybe next time Mr. Tennis will
9 bring you in on the hot seat.
10 MR. JUNOD: I had a hard time about
11 a year ago on something else.
12 CHAIRPERSON BIRMELIN: Okay. We
13 didn't want to do that again.
14 Thank you, gentlemen, for your
15 testimony.
16 Our last testifier is Byron Cotter.
17 He's the Director of Alternative Sentencing from
18 the Philadelphia Public Defender's Office. Mr.
19 Cotter has a letter for us. I'm sure he's
20 willing to answer some questions after he's had
21 an opportunity to share that with us. Mr.
22 Cotter, welcome.
23 MR. COTTER: Good morning. Thank
24 you for having me here. Mr. Tennis and Mr.
25 Junod asked me to come to this hearing today. I

1 was glad to do it.

2 In Philadelphia, unlike the normal

3 trial situation, we work together on the IP

4 committee. We work closely with the Health

5 Department in Philadelphia, the Probation

6 Department, the Courts, the District Attorney's

7 Office and the Defender Association. We work

8 very closely on choosing the IP clients,

9 following them through treatment, after-care,

10 looking into placing them into jobs and becoming

11 productive members of society.

12 I submitted a short letter in

13 support of this bill. My main reason for

14 supporting this bill is, it gives the judges a

15 wider latitude in sentencing. Often judges are

16 reluctant to give clients that should be placed

17 in treatment under the IP program -- ah-h, give

18 them the IP program because they feel that they

19 do need some period of incarceration.

20 By supporting this bill I think it

21 will give the judges wider latitude, and it also

22 will help our clients to get the treatment they

23 desperately need.

24 The term shock incarceration has

25 been used at this hearing. Personally, I feel

1 that drug treatment is much harder than
2 incarceration. To go through the hoops and
3 hurdles that you have to go through in
4 Philadelphia to complete the IP program is much
5 harder than sitting in the jail doing basically
6 nothing all day.
7 In the IP program in Philadelphia
8 you must participate in community service. You
9 must go out and clean neighborhoods, clear the
10 paint, paint swimming pools that need to be
11 painted. You must complete an intensive drug
12 treatment program. You work with a case manager
13 in finding good housing and employment as your
14 treatment winds down.
15 It's a very difficult situation for
16 most of our clients. They are not used to this
17 rigorous structure. I feel it's much harder
18 than incarceration. However, the judiciary
19 often feels that some period of incarceration
20 needs to be given and, therefore, I support this
21 bill.
22 CHAIRPERSON BIRMELIN: Thank you.
23 Representative Walko.
24 REPRESENTATIVE WALKO: No thanks.
25 CHAIRPERSON BIRMELIN:

1 Representative Hennessey.

2 REPRESENTATIVE HENNESSEY: Thank

3 you, Mr. Chairman. Earlier Mr. Bergstrom

4 testified there were a number of crimes that

5 were statutorily ineligible for consideration

6 for this type of shock treatment, or I guess the

7 restrictive IP program.

8 MR. COTTER: Right.

9 REPRESENTATIVE HENNESSEY: Do you

10 have any suggestions, or do you care to suggest

11 certain crimes that are, perhaps, more amendable

12 to treatment in this kind of a bill than --

13 Obviously, we're not going to get

14 rid of the entire list of ineligible crimes, but

15 if there are certain crimes in your experience

16 that don't make sense being precluded from this

17 program, it might be helpful to the committee if

18 you give us a list of what those would be.

19 MR. COTTER: Let me first say, I

20 support everything that the District Attorneys

21 Association said here. I think they were right

22 on point. It's a changing world today in the

23 criminal justice system because the District

24 Attorney's Offices and the Defenders

25 Associations around the country--And I think

1 Philadelphia leads the country in this to some
2 extent--are working together to try to find
3 solutions to crime. Solutions to crime not only
4 helps the public, but it helps our clients.
5 I would certainly, and I don't
6 know -- I'm sure the District Attorneys
7 Organization probably would not agree totally
8 with me, but I would certainly like to see the
9 level of charges raised.
10 I also am in charge of an early
11 parole program, and we parole people early from
12 county prison that have been charged with some
13 violent crimes. The violence is often caused by
14 the drug addiction.
15 Assaultive crimes, certain types of
16 robberies we parole early into drug treatment.
17 Our statistics show that 88 percent of those
18 clients, after they complete six months of
19 treatment, are not convicted of a new crime for
20 the next two years.
21 Right now we have done a two-year
22 study. We're in the process of doing a
23 four-year study. So, the statistics show that
24 by getting the proper treatment you're going to
25 cut down on crime no matter what the charge is.

1 The idea of shock treatment or
2 forced treatment, as Mr. Tennis talked about, is
3 true. If a client is in jail for a very severe
4 charge and then is released early to treatment,
5 he knows if he fails in that treatment program
6 he's not going to go back to a county jail.
7 He's going to go back to a state prison. That
8 fear often drives him to complete the treatment
9 and conquer his addiction.
10 I would like to see -- For the short
11 answers, I would like to see the level of crimes
12 raised under IP. And you may want to raise the
13 length. You can place the client in jail before
14 he goes to IP. Maybe we should look at this for
15 the next year or so and then come back before
16 this committee and ask you to raise the stacks a
17 little.
18 REPRESENTATIVE HENNESSEY: Thank
19 you, Mr. Cotter.
20 CHAIRPERSON BIRMELIN: As a public
21 defender, I guess it's your duty to try to get
22 as minimal a sentence as possible for your
23 clients. Do you on occasion allow your clients
24 to have jail time before they go into
25 intermediate punishment because you know what's

1 best for them? Do you advise them in that
2 direction? They probably don't want to hear
3 that.
4 MR. COTTER: I would not advise them
5 to take jail time if I could avoid that. Again,
6 I think the treatment -- Often the toughest part
7 of my job is to convince the client to take
8 treatment over jail time. Treatment is much
9 tougher than jail time.
10 CHAIRPERSON BIRMELIN: Do they know
11 that?
12 MR. COTTER: Oh, yes. Yes. We
13 explain exactly what you have to go through to
14 complete this treatment. A lot of clients turn
15 that down. They're not interested in conquering
16 their addiction. They're the clients, you know,
17 frankly that we can't help. They're the clients
18 we don't put in IP.
19 The client that wants to conquer his
20 addiction, no matter what crime he committed, is
21 a client that we try to help. IP really helps
22 us treat those clients.
23 As I said, it has been seen on the
24 early parole side, the statistics show that it
25 does prevent further crime; that these clients

1 for the next two years, 88 percent are not
2 convicted of a new crime after they've completed
3 six months of treatment. And that's either
4 inpatient or outpatient, although in
5 Philadelphia approximately 65 percent of our
6 clients need inpatient treatment when they're
7 evaluated.
8 CHAIRPERSON BIRMELIN: In your
9 experience, after you have basically sat down
10 with your client and they say, I'm not taking
11 treatment, I want jail time, is that the last
12 time you see them and have the opportunity to
13 defend them and offer an alternative?
14 MR. COTTER: In my experience, that
15 client, if it's a young client, will come back
16 to me at some point in his criminal career and
17 ask me for help. And that's when I can help
18 him.
19 CHAIRPERSON BIRMELIN: Is that for
20 subsequent offenses?
21 MR. COTTER: Yes. That's the
22 client, as a defender, I really try to explain
23 treatment and how it's going to benefit him. As
24 you know, some people -- You can lead a horse to
25 water, but you can't make him drink. I'm being

1 honest with you.

2 CHAIRPERSON BIRMELIN: I think I've

3 heard that before. Let me ask you one other

4 question, similar to the one I asked Mr.

5 McKnight.

6 What is your definition of a good

7 quality drug and alcohol treatment program?

8 What do you look for? I'm assuming in your

9 cooperation with the D.A.'s Office you want

10 people placed in good programs.

11 MR. COTTER: Right.

12 CHAIRPERSON BIRMELIN: What is it

13 that you look for in a program that makes you

14 confident that your client is going to benefit

15 by being in that program as opposed to one you

16 are not so confident in?

17 MR. COTTER: Right now we're

18 expanding constantly. We have 45 programs that

19 we use. We use one in Harrisburg, in fact,

20 Gadenzia and Concept 90. A good program is one

21 that has licensed drug and alcohol therapists;

22 one that's licensed by the county. I visit all

23 of the programs. I try to visit one program a

24 month to check to see if they're providing the

25 needs of our client.

1 A good program teaches the client
2 the basic skills on how to obtain employment,
3 because I think employment is a key component to
4 a program. When you are about ready to leave
5 that program that you have a job, so when you go
6 out you're working, you feel that you're
7 successful in life, and that helps you fight off
8 your addiction.
9 That there is a basic education
10 component in the program; job skills in the
11 program; licensed drug and alcohol therapists,
12 and that the county or state visits that program
13 on a consistent basis to make sure it's keeping
14 to the requirements.
15 CHAIRPERSON BIRMELIN: Do all of
16 these drug and alcohol programs do urine tests
17 periodically when they're --
18 MR. COTTER: Yes. And we also work
19 with the probation department. That's a
20 component. They come to the program, meet with
21 the clients, so that when the client leaves the
22 program, the probation officer knows the client
23 and is working actively with the client. The
24 probation officers take the urine tests also.
25 CHAIRPERSON BIRMELIN: For how long

1 is that treatment program generally?
2 MR. COTTER: It depends on the level
3 of addiction, what the evaluation shows. An
4 intensive inpatient program is six to nine
5 months. And then some of the programs provide
6 after-care right at the program.
7 Some of the programs have apartments
8 where a client doesn't have to leave the
9 program. He steps down from that treatment;
10 will attend like AA meetings or outpatient
11 meetings; go to his employment and come back and
12 stay there at night. That can be for up to a
13 year after he completes that six to nine-month
14 program.
15 CHAIRPERSON BIRMELIN: Just one last
16 question. Some of you have been in the Public
17 Defender's Office for quite some time. Do you
18 see this problem as getting worse or better for
19 the City of Philadelphia? The drug and alcohol
20 connection and how we're dealing with this, are
21 we winning this battle or are we losing it?
22 MR. COTTER: We're losing it. The
23 drug problem is getting much worse. The
24 programs and the sentencing alternatives, such
25 as IP, are getting much, much better.

1 Hopefully, that will turn the tide and make us
2 win.
3 But right now, over the last ten
4 years, drug addiction has become a major
5 problem. As Mr. Tennis said, approximately 80
6 percent of the people that are going into state
7 prison are drug addicted.
8 CHAIRPERSON BIRMELIN:
9 Unfortunately, you're only seeing them after the
10 problem has developed and they committed a
11 crime.
12 MR. COTTER: Right. That is
13 unfortunate. What I can try to do is prevent
14 them from committing another crime.
15 CHAIRPERSON BIRMELIN: I understand
16 that. Editorially, I would say it is also
17 important that we try to prevent it from
18 happening in the first place.
19 MR. COTTER: That's true.
20 CHAIRPERSON BIRMELIN: As well as
21 cutting down recidivism. I'm going to give
22 Counsel Preski an opportunity to ask you a few
23 things. He's anxiously waiting.
24 MR. PRESKI: Mr. Cotter, just a very
25 simple question. We have you here and I have

1 you on the record. Mr. Tennis, with his
2 testimony, attached several some amendments to
3 House Bill 809.
4 Are you and the Defenders
5 Association in agreement with those amendments?
6 MR. COTTER: Yes, we are, because it
7 will give the judge more latitude and more
8 alternatives to give an IP sentence.
9 MR. PRESKI: I want to make sure
10 just in case we make any misrepresentations that
11 we have you on the record. Thank you.
12 MR. COTTER: Thank you.
13 CHAIRPERSON BIRMELIN:
14 Representative Hennessey.
15 REPRESENTATIVE HENNESSEY: Thank
16 you, Mr. Chairman. Just to amplify some of the
17 comments that Mr. Cotter made in response to
18 your question. I can speak for 20 years in the
19 Public Defender's Office and draw on that
20 experience.
21 I realize there is a misconception,
22 I think, that the Public Defender's Office is
23 always at war with the D.A.'s Office in trying
24 to minimize sentences; certainly try to get the
25 sentence that is fair for other -- in the

1 context of what other people are getting for
2 that period of time.
3 But, oftentimes, in my experience,
4 and apparently in Mr. Cotter's and many others,
5 you find yourself in a position of trying to
6 deal with the D.A.'s Office, first, to get an
7 offer; and then second, dealing with your client
8 and trying to convince your client that it's in
9 his interest to take whether it's a period of
10 incarceration or treatment, or whatever.
11 Really, I think the public should be
12 aware that the public defender's role becomes in
13 sense a dual role, dealing with the D.A.'s
14 Office, but then dealing with the client and
15 trying to convince the client exactly what's
16 deemed to be best for him; oftentimes,
17 persuading him to take what he doesn't want, or
18 he's rather reluctant to take in the first
19 place.
20 There's certain duality role, and
21 the Philadelphia Public Defender's Office does a
22 good job at that.
23 MR. COTTER: Thank you.
24 REPRESENTATIVE HENNESSEY: My
25 contacts are with the Montgomery County Public

1 Defender's Office, so I'm not degrading friends
2 of mine transplant when I say that.
3 CHAIRPERSON BIRMELIN: I want to
4 thank you, Mr. Cotter, for your opportunity to
5 testify and enlighten us on some of these
6 issues. We appreciate you coming here this
7 morning.
8 MR. COTTER: Thank you very much.
9 CHAIRPERSON BIRMELIN: He's our last
10 witness. At this time our meeting is adjourned.
11 (At or about 10:45 a.m. the hearing
12 concluded)
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1 C E R T I F I C A T E

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3 I, Karen J. Meister, Reporter, Notary

4 Public, duly commissioned and qualified in and

5 for the County of York, Commonwealth of

6 Pennsylvania, hereby certify that the foregoing

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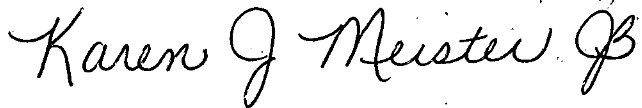
19 

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22 My commission
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