

Phone (814) 863-2797
Telefax (814) 863-2129



P.O. Box 1200
State College, PA 16804-1200

COMMONWEALTH OF PENNSYLVANIA
THE PENNSYLVANIA COMMISSION ON SENTENCING

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON CRIME & CORRECTIONS

Public Hearing on HB 809/PN 867

May 20, 1999

Mark H. Bergstrom
Executive Director

Good morning, Chairman Birmelin and members of the Subcommittee on Crime & Corrections. I am Mark Bergstrom, Executive Director of the Pennsylvania Commission on Sentencing. Thank you for providing this opportunity to offer some brief comments regarding House Bill 809.

This hearing today represents another step in what has been a ten-year effort to implement and refine the County Intermediate Punishment legislation enacted by the General Assembly in 1990. Since the passage of Act 1990-193 (61 P.S. §§1101-1114) and Act 1990-201(42 Pa. C. S. §§9729, 9763, 9773), the following legislation, regulations and guidelines have been adopted:

- Act 1991-13 (42 Pa. C. S. §§9721, 9729) expanding IP eligibility
- Sentencing Guideline Revisions (1991) (204 Pa. Code §§303.1-303.16)
- PCCD Intermediate Punishment Interim Regulations (1991) (37 Pa. Code Chapter 451)
- Act 1992-1 (42 Pa. C. S. §§8340, 8527) providing immunity for certain IP programs
- Act 1992-117 (61 P.S. §309.1) providing probation officers with IP arrest powers
- PCCD Intermediate Punishment Regulations (1992) (37 Pa. Code Chapter 451)
- Sentencing Guideline Revisions (1994) (204 Pa. Code §§303.1-303.16)
- Sentencing Guideline Revisions (1997) (204 Pa. Code §§303.1-303.18)

Appropriation for county IP

FY1994/95	\$5.3 million
FY1995/96	\$5.3 million
FY1997/98	\$5.3 million
FY1998/99	\$5.3 million
FY1999/00	\$5.3 million

Appropriation for county IP/D&A treatment

FY1997/98	\$10 million
FY1998/99	\$10 million
FY1999/00	\$11 million

Additionally, numerous hearings have been held by the Judiciary Committees of both Chambers regarding modifications to the IP legislation, including those held last summer by the House Task Force of Intermediate Punishment and the House Task Force on DUI. The General Assembly has clearly expressed its interest in and support of the continuing development of intermediate punishments, and judges have responded accordingly.

I have attached two charts to illustrate the increasing use of IP since the enactment of the legislation. The first chart [Attachment 1] provides information on the number of IP sentences imposed annually between 1992 and 1997. The red line reflects the total number of IP sentences imposed each year, reaching just over 5,000 sentences during 1997. The green line reflects the number for non-DUI sentences (3,267 during 1997) and the black line reflects the number for DUI sentences (1,807 during 1997). While IP was primarily used for DUI offenders in the early years, more IP sentences have been given to non-DUI offenders during the past two years.

The second chart [Attachment 2] considers the utilization of IP expressed as a percentage of all sentences reported. On average, approximately 70,000 sentencing transactions are reported to the Commission each year, of which about 15,000 are for DUI. The red line reflects the percentage of all offenders receiving IP sentences (7.3% in 1997). The green line reflects the percentage of non-DUI offenders receiving IP (6% in 1997) and the red line reflects the percentage of DUI offenders receiving IP (12% in 1997).

The increased use of IP for non-DUI offenders since 1994 can be attributed to two factors: expanded recommendations for the use of IP under the 1994 Sentencing Guidelines, and the infusion of \$5.3 million in state funding for county programs. The 1994 guidelines provided the first substantial incorporation of IP into the guidelines [Attachment 3]. The Commission targeted Level 3 offenders (i.e., gray shaded area of the matrix), those recommended for county incarceration, for restrictive intermediate punishment programs. Offenders convicted of violent crimes were excluded from consideration for this trade-off. During 1996, approximately 90% of all sentences imposed were based on the 1994 guideline recommendations. Excluding convictions for violent offenses, the Commission found 10,086 non-DUI sentences imposed in 1996 at Level 3. Of these, 1,563 or 15.5% were IP sentences.

The 1997 Sentencing Guidelines further expanded recommendations for the use of IP, targeting offenders whom otherwise would be given state sentences that could be served in county facilities [Attachment 4]. Linked to these changes was additional funding, this time for comprehensive drug & alcohol treatment for Level 3 & 4 offenders. Later this year, as staff begins to analyze the 1998 sentencing data, the Commission should have some indication of the impact of these changes. Approximately 60% of the sentences imposed during 1998 were based on the 1997 guidelines.

The focus of today's hearing is HB 809, which would amend the Judicial Code to permit the court to impose a 'split sentence' comprised of a flat sentence of partial or total confinement, of up to 90 days, and a consecutive sentence of intermediate punishment. Commission staff has worked over the past several years with the District Attorneys Association on draft language similar to that found in the bill, and therefore supports this legislation.

Judges and county criminal justice practitioners have often expressed concern that, under existing statutes, it is difficult to impose a 'split sentence,' in which a defendant would serve the first portion of a sentence in jail (i.e., shock incarceration) and then be transferred (not paroled) to an intermediate punishment program. This is due to the "min/max" requirement of 42 Pa. C. S. §9755 (partial confinement) and 42 Pa. C. S. §9756 (total confinement). Judges have indicated that it seems ridiculous to impose a sentence in which an offender is first incarcerated, then on parole, and only then begin a period of intermediate punishment. They have also indicated that it seems inappropriate to refuse to parole from a county sentence (i.e., 'max out') in order to transition directly from a period of confinement to a period of intermediate punishment.

As a result, judges often feel that they are in an either/or situation: either give an incarceration sentence and eventually parole the offender without the benefit of enhanced intermediate punishment programming, or give an intermediate punishment sentence absent any period of incarceration. This is particularly true of DUI sentences, in which statute restricts the types of intermediate punishment programs that may be used to satisfy the mandatory. HB 809 would give the judges greater flexibility to craft a sentence that balances many of the purposes espoused in the guidelines: proportionality, retribution, rehabilitation and deterrence.

Some have raised concerns that, under this legislation, offenders presently receiving IP sentences would instead receive longer split sentences involving both jail and IP. While this is possible, it is unlikely. Judges have been cautious in terms of the utilization of IP, and the long list of ineligible offenses further limits its use. Anecdotally, it is rare to hear of a case where the court imposed an IP sentence when incarceration seemed more appropriate. It is more often the case that the court did not impose an IP sentence because IP alone seemed inappropriate, or insufficient. With enactment of this legislation, offenders presently receiving incarceration sentences might be considered appropriate for a shorter period of incarceration if linked to a period of restrictive intermediate punishment. Under the guidelines, incarceration

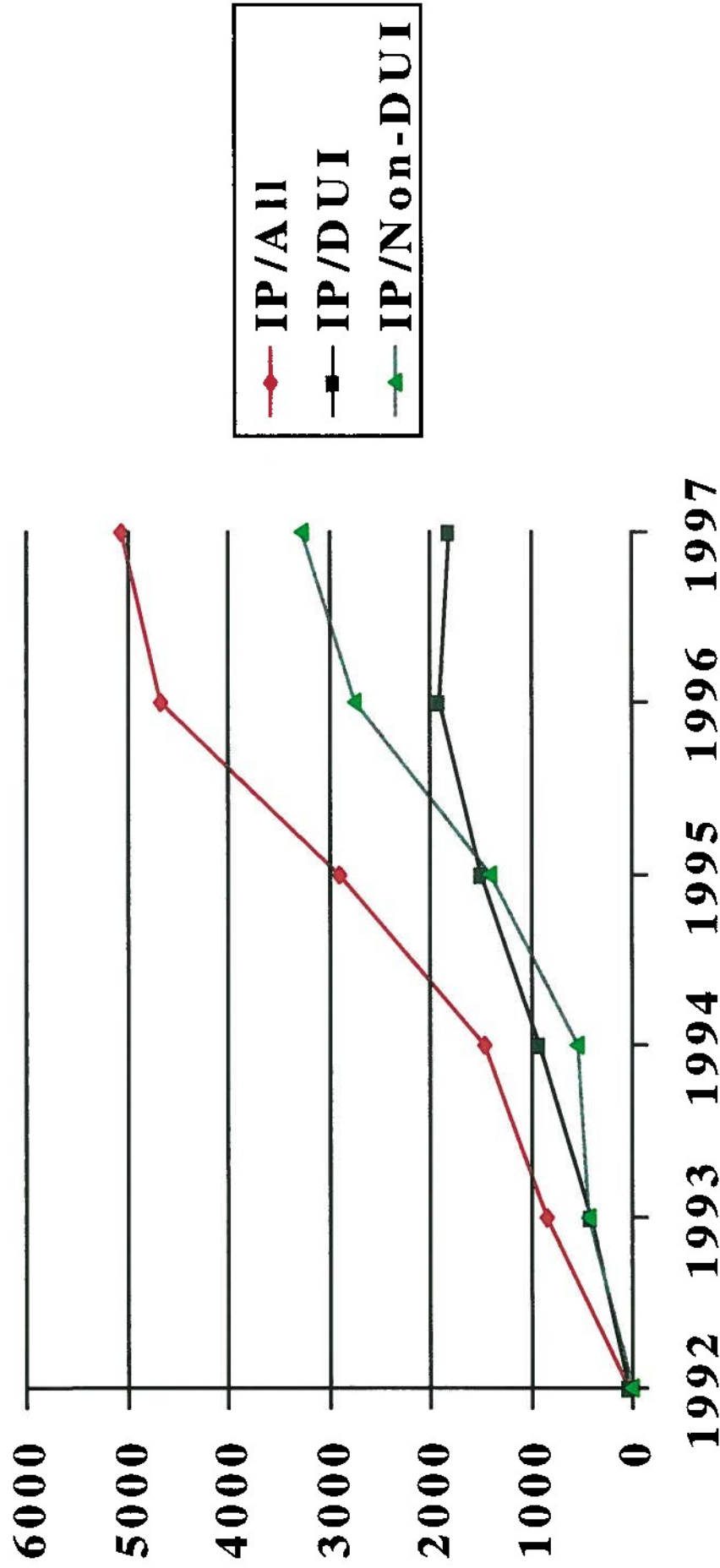
and restrictive intermediate punishments are considered equivalent penalties for purposes of guideline conformity.

One such example is an offender convicted of a fourth DUI, which requires a one-year mandatory minimum sentence. Many judges are reluctant to place such an offender exclusively on IP. The result is a 1-2 year state sentence, in which the judge loses paroling authority to the PA Board of Probation and Parole. Under this legislation, a judge could impose a 90-day incarceration sentence and a consecutive IP sentence, such as residential drug and alcohol treatment, which would satisfy the mandatory minimum while providing enhanced supervision and treatment services for the offender.

For a number of years, the Commission has worked with other state and county agencies and associations to improve the utility of the County Intermediate Punishment Act. Suggestions developed through these discussions, including a recommendation to adopt legislation similar to HB 809, received broad support from practitioners when presented last year to the House Task Force on Intermediate Punishment. I encourage the Committee to pass this legislation and thank you for your interest and support during this first decade of IP sentencing.

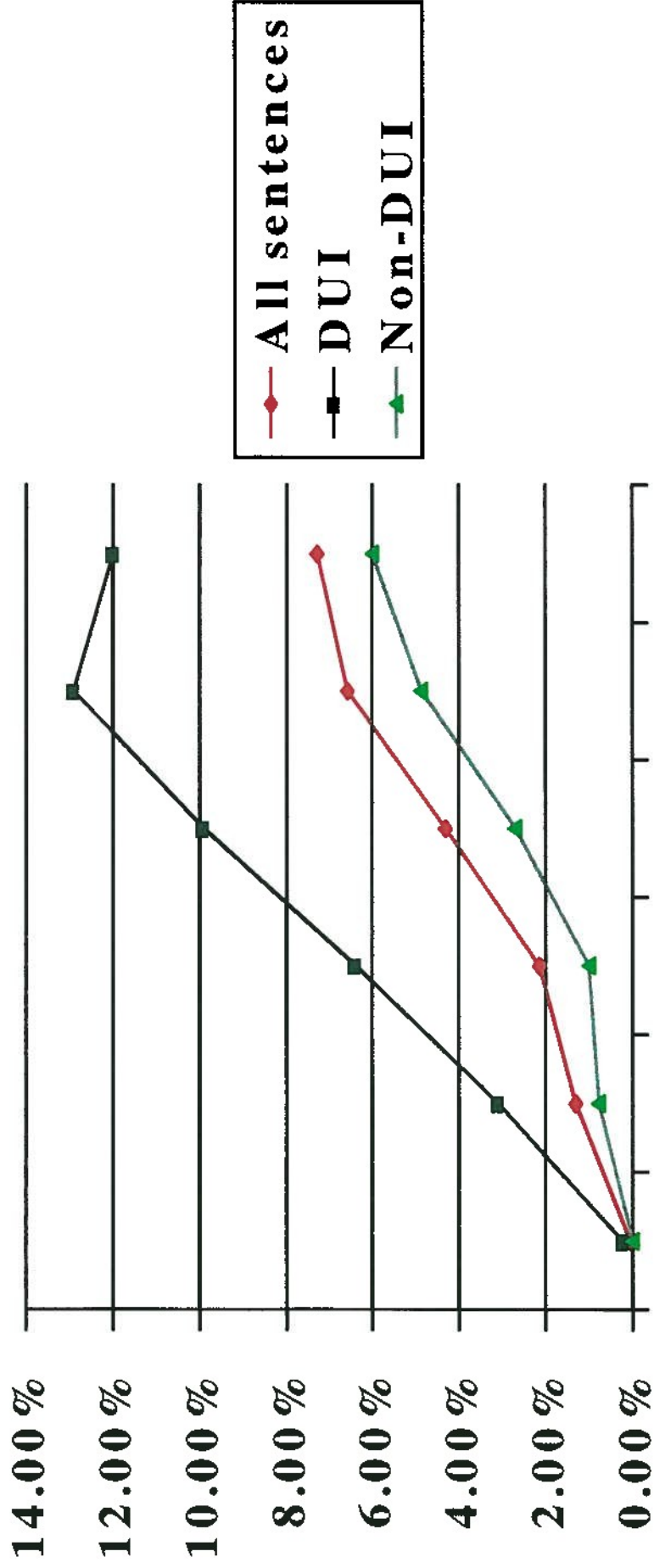
Thank you for inviting me to participate this morning.

Intermediate Punishment Number of Sentences Imposed



PA Commission on Sentencing (5/20/99)

Intermediate Punishment Percentage of Sentences



1992 1993 1994 1995 1996 1997

PA Commission on Sentencing (5/20/99)

§ 303.16, Standard range chart.

The standard sentence recommendations are as follows:

STANDARD RANGE

PRIOR RECORD SCORE

Level	Offense Gravity Score	Example Offenses	0	1	2	3	4	5	RFEL	REVOC	AGG/ MIT
Level 4 Incar	13	Murder 3	60-120	66-120	72-120	78-120	84-120	90-120	96-120	120	+12/ -12
	12	Drug delivery resulting in death; PWID cocaine, etc. (> 1000 gms)	54-72	57-75	60-78	66-84	72-90	78-96	84-102	120	+12/ -12
	11	Rape; (DS); robbery (SBI); agg. assault (SBI); PWID cocaine, etc. > 100-1000 gms)	42-60	45-63	48-66	54-72	60-78	66-84	72-96	120	+12/ -12
	10	Voluntary manslaughter; arson (person inside); PWID cocaine, etc. > 50-100 gms.)	30-48	33-51	36-54	42-60	48-66	54-72	60-84	120	+12/ -12
Level 3 Incar Cnty Jail/ RIP trade	9	Burglary (home; person pres.); agg. assault (cause BI/w weapon); robbery (threat. SBI); robbery (infl. BI); agg. assault (att. SBI); agg. ind. assit; PWID cocaine, etc. (> 10-50 gms)	8-20	12-27	15-30	21-36	27-42	33-48	39-60	-	+6/ -6
	8	Invol. mansl., homicide by veh. (when DUI); PWID cocaine, etc. (2.5-10 gms); PWID marijuana (> 10-50 lbs.); arson (pres. not inside); burglary (home; person not pres); theft (\$50,001-\$100,000)	6-18	9-21	12-24	18-30	24-36	30-42	36-48	-	+6/ -6
	7	Invol. mansl., homicide by vehicle (no DUI); statutory rape; theft (\$25,001-\$50,000)	4-12	7-15	10-18	16-24	22-30	28-36	34-42	-	+6/ -6
	6	Agg. assault (attempt BI w/weapon); burglary (not a home, person present); arson (property); escape (secure facility); PWID cocaine, etc. (< 2.5 gms)	3-9	6-11½	9-15	12-18	15-21	18-24	21-27	-	+3/ -3
Level 2 Incar RIP RS	5	Burglary (not a home, no one pres.); theft (> \$2000-\$25000); corruption of minors; firearms (loaded); robbery (removes property by force); PWID marijuana (1-10 lbs.)	RS-6	1-6	3-9	6-11½	9-15	12-18	15-21	-	+3/ -3
	4	Indecent assault; forgery (will, etc.); firearms (unloaded); criminal trespass (breaks into buildings)	RS-3	RS-6	RS-9	3-9	6-11½	9-15	12-18	-	+3/ -3
	3	Theft (\$200-\$2000); PWID marijuana (< 1 lb); drug possession; forgery (money, etc.); REAP; simple assault; retail theft (3 rd , subsequent)	RS-RIP	RS-3	RS-6	RS-9	3-9	6-11½	9-15	-	+3/ -3
Level 1 RS	2	Theft (\$50 - < \$200); bad checks; retail theft (1 st , 2 nd > \$150); retail theft (2 nd < \$150)	RS	RS	RS-RIP	RS-3	RS-6	1-6	3-9	-	+3/ -3
	1	Most misdemeanor 3's; drug paraphernalia; small amount of marijuana; theft (< \$50)	RS	RS	RS-RIP	RS-RIP	RS-3	RS-6	RS-6	-	+3/ -3

- When the offender meets the statutory criteria for boot camp participation, the court should consider authorizing the offender as eligible.
- Shaded areas of the matrix indicate restrictive intermediate punishments may be imposed as a substitute for incarceration.
- When restrictive intermediate punishments are appropriate, the duration of the restrictive intermediate punishment program shall not exceed the guideline ranges.
- When the range is RS through a number of months (e.g. RS-6), RIP may be appropriate.
- When RIP is the upper limit of the sentence recommendation (e.g. RS-RIP), the length of the restrictive intermediate punishment programs shall not exceed 30 days.

Key:

- AGG = aggravated sentence addition
- CNTY = county
- INCA = incarceration
- MIT = mitigated sentence subtraction
- PWID = possession with intent to deliver
- REVOC = repeat violent offender category
- RFEL = repeat felony I and felony II offender category
- RIP = restrictive intermediate punishments
- RS = restorative sanctions
- 11½ = denotes county sentence of less than 12 months
- < = less than
- > = greater than

§303.16. Basic Sentencing Matrix

Prior Record Score

5th Edition (6/13/97)

Level	OGS	Example Offenses	0	1	2	3	4	5	RFEL	REVOC	AGG/MIT
LEVEL 5 State Incar	14	<i>Murder 3</i> <i>Inchoate Murder/SBI</i>	72-240	84-240	96-240	120-240	168-240	192-240	204-240	240	+/- 12
	13	<i>Inchoate Murder/no SBI</i> Drug Del. Result in Death PWID Cocaine, etc. (> 1,000 gms)	60-78	66-84	72-90	78-96	84-102	96-114	108-126	240	+/- 12
	12	<i>Rape</i> <i>IDS/</i> <i>Robbery (SBI)</i> <i>Robbery/car (SBI)</i>	48-66	54-72	60-78	66-84	72-90	84-102	96-114	120	+/- 12
	11	<i>Agg Asslt (SBI)</i> <i>Voluntary Manslaughter</i> Sexual Assault PWID Cocaine, etc.(100-1,000 gms)	36-54 BC	42-60	48-66	54-72	60-78	72-90	84-102	120	+/- 12
	10	<i>Kidnapping</i> <i>Arson (person inside)</i> <i>Agg Asslt (att. SBI)</i> <i>Robbery (threat. SBI)</i> Agg. Indecent. Asslt Causing Catastrophe(F1) PWID Cocaine, etc.(50- < 100 gms)	22-36 BC	30-42 BC	36-48 BC	42-54	48-60	60-72	72-84	120	+/- 12
LEVEL 4 State Incar/ RIP trade	8 (F1)	<i>Agg Asslt (BI w/DW)</i> <i>Agg Asslt (att. BI w/DW)</i> Invol. Mansl. (when DUI) Horn. by Vehicle (when DUI) Theft (> \$100,000) PWID Cocaine, etc. (10- < 50 gms)	9-16 BC	12-18 BC	15-21 BC	18-24 BC	21-27 BC	27-33 BC	40-52	NA	+/- 9
	7 (F2)	Robbery (inflicts/threatens BI) Burglary (home/ no person) Statutory Sexual Assault Theft (> \$50,000-\$100,000) Sexual Abuse/Child (take photo) PWID Cocaine, etc.(2.5- < 10 gms)	6-14 BC	9-16 BC	12-18 BC	15-21 BC	18-24 BC	24-30 BC	35-45 BC	NA	+/- 6
	6	Invol. Mansl.(when no DUI) Horn. by Vehicle (when no DUI) Burglary (not home/person) Theft (> \$25,000-\$50,000) Arson (property) PWID Cocaine, etc.(< 2.5 gms)	3-12 BC	6-14 BC	9-16 BC	12-18 BC	15-21 BC	21-27 BC	27-40 BC	NA	+/- 6
LEVEL 3 State/ County Incar RIP trade	5 (F3)	Burglary (not home/no person) Corruption of Minors Robbery (prop by force) Firearms (loaded) Theft (> \$2000-\$25,000) PWID (1-<10 lb of marij)	RS-9	1-12 BC	3-14 BC	6-16 BC	9-16 BC	12-18 BC	24-36 BC	NA	+/- 3
	4	Indecent assault Forgery (money, stock, etc.) Firearms (unloaded) Crim Trespass (breaks in)	RS-3	RS-9	RS- < 12	3-14 BC	6-16 BC	9-16 BC	21-30 BC	NA	+/- 3
	3 (M1)	Simple Assault Terr. Threats Theft (\$200-\$2000) Retail Theft (3rd) DUI (M1) Drug Poss.	RS-1	RS-6	RS-9	RS- < 12	3-14 BC	6-16 BC	12-18 BC	NA	+/- 3
LEVEL 2 County Incar RIP RS	2 (M2)	Theft (\$50- < \$200) Retail Theft (1st, 2nd) DUI (M2) Bad Checks	RS	RS-2	RS-3	RS-4	RS-6	1-9	6- < 12	NA	+/- 3
	1 (M3)	Most Misd. 3's; Theft (< \$50) Drug Paraph. Poss. Small Amount Marij.	RS	RS-1	RS-2	RS-3	RS-4	RS-6	3-6	NA	+/- 3

1. Shaded areas of the matrix indicate restrictive intermediate punishments may be imposed as a substitute for incarceration.
2. When restrictive intermediate punishments are appropriate, the duration of the restrictive intermediate punishment program shall not exceed the guideline ranges.
3. When the range is RS through a number of months (e.g. RS-6), RIP may be appropriate.

Key:
 REVOC = Repeat Violent Offender category
 RFEL = Repeat Felony 1 and Felony 2 Offender category
 RIP = Restrictive Intermediate Punishments
 RS = Restorative Sanctions
 BC = Boot Camp
 Italic = Three Strikes Offense