INTERMEDIATE SANCTIONS

by

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and

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Chapter 1: Introduction

Until recently in many American jurisdictions, especially in urban areas, judges imposing sentences for any but the most trivial of crimes have had to choose between "doing something," imprisonment, and "doing nothing," probation.

Please don't misunderstand us. We don't mean to disparage probation officers, probation departments, or judges who sentence offenders to probation. The view of probation as "doing nothing" is overstated and oversimplified. There are thousands of conscientious probation officers, too often overworked and underpaid, and there are many well-run probation programs in which probation supervision <u>is</u> meaningful and probation conditions <u>are</u> enforced. However, there are also many probation offices in which caseloads are enormous and budgets are inadequate and in which supervision is <u>not</u> meaningful and conditions are <u>not</u> enforced.

Rightly or wrongly, the general public and many public officials often consider a sentence to probation to be a slap on the wrist. Kevin Burke, the District Attorney in Essex County, Massachusetts, for example, expresses this view when he observes that probation has become "just something you slap on people when you don't know what else to do with them. We waste a lot of resources on probation, which means absolutely nothing in most places" (Prosecuting Attorneys' Research Council 1988, p. 3).

Prison and jail crowding has focused policymakers' attention on the need to develop punishments that fall between probation and incarceration. These include intensive supervision probation, financial

penalties, house arrest, intermittent confinement, "shock" probation and incarceration, community service, electronic monitoring, and use of treatment conditions. These punishments, commonly known as "intermediate punishments" or "mid-level punishments" or "intermediate sanctions," are beginning to fill the gap that is widely perceived to exist between probation and prison.

Much of the current interest in intermediate sanctions arises from political and economic pressures to devise credible punishments that can be imposed on convicted offenders for whose imprisonment the state would rather not pay. Policymakers are caught between the perceptions that the public wants criminals to be punished for their crimes but, contrariwise, does not want to pay for construction and operation of greatly increased prison capacity.

This monograph provides an overview of newly developed or expanded "intermediate sanctions" programs, describes some of the best known and most emulated programs, and presents and critically comments on the findings of evaluations of new programs. We have tried to pull together the published evaluation literature, together with such unpublished reports and agency self-evaluations as we were able to identify and obtain, and to assess critically what can be gleaned from those sources of knowledge. No doubt there exist worthy well-managed new programs of which we are unaware, either because they have not been evaluated or because the evaluations have not been published or otherwise been widely distributed.

Besides this introduction, this monograph consists of seven chapters. Chapter 2 discusses practical and conceptual problems that confront efforts to evaluate the effects of new intermediate sanctions.

Chapters 3, 4, and 5, respectively, discuss intensive supervision probation, house arrest, and electronic monitoring. Chapters 6 and 7 deal with community service and financial sanctions. Chapter 8 considers next steps in research and policy development.

We have devoted chapters to new intermediate sanctions initiatives for which an evaluation literature is available. A number of other correctional programs sometimes thought of as intermediate sanctions are, accordingly, not the subjects of separate chapters. We don't mean to slight these other sanctions. Some, like halfway houses and split sentences, have long existed but are not being touted and adopted as new programs to reduce prison crowding pressures. Others, like shock probation and shock incarceration, are being proposed and adopted as intermediate sanctions but have not yet given rise to a sizable evaluation literature.

Halfway houses of a variety of kinds exist in most states, though in smaller numbers than in earlier years. Intermittent confinement programs, involving night-time or weekends, exist in jails and prisons in most states. Split sentences that couple a short period of incarceration with a term of probation exist in most states; in some states as many as a third of offenders sentenced to probation are also sentenced to short periods of confinement (Byrne and Kelly 1988, p. 8). At least sixteen states have "shock probation" in which judges sentence offenders to short state prison terms (in which they are confined with regular inmates) followed by probation. At least eight states operate "shock incarceration" programs in which young offenders serve short prison terms (isolated from regular inmates), in a regimen patterned

after a military boot camp, followed by release to parole or probation (see Parent 1988a for an overview of these programs).

And, of course, there is "regular" probation. For many offenses and offenders regular probation with appropriate conditions is an entirely fitting sentence. Depending on the judge's aims when probation is ordered, regular probation can take many forms. Conditions vary from the rote and routine ("don't commit new crimes; don't consort with known criminals") to specific conditions with rehabilitative ("participate in an out-patient drug or alcoholism program"), incapacitative ("you are confined to your home except while traveling to or from work or while working"), or punitive ("random, frequent urinalysis; 9:00 P.M. curfews") purposes.

For some offenders, the ignominy, hassle, and expense of prosecution and conviction, and the resulting stigmatization, may, from both punitive and crime-preventive perspectives, be entirely adequate punishment. For such offenders, imposition of a sentence of nominal probation permits a judge to appear to do something in these cases while doing nothing.

It is difficult and often artificial to draw fine lines between various intermediate punishments, and our effort to devote separate chapters to different programs suffers from that artificiality. House arrest, electronic monitoring, and intensive supervision probation take different forms, for example, and can be difficult to distinguish. Sometimes these are separate sanctions. Other times they are joined, as when house arrest subject to monitoring by electronic technology is a condition of intensive supervision probation. Similarly, the

differences among intermittent confinement, split sentences, and shock probation may be no more than verbal.

One final prefatory comment. There is a conceptual nonparallelism in the intermediate sanctions we discuss. Some, like intensive supervision probation and financial penalties, are generally understood to be intermediate punishments that can appropriately be imposed on offenders who would otherwise receive jail or prison terms. Others, like electronic monitoring, and the use of treatment conditions, aren't really sanctions at all but are techniques for carrying out other programs or sanctions. Community service and fines are typically not used as independent sanctions in nontrivial cases in the United States, even though, theoretically, they could be and, in other countries, they are.

Before we turn in Chapter 2 to some general issues raised by efforts to evaluate the effects of intermediate sanctions programs, two other subjects warrant mention in this introduction. First we discuss why the growth in interest in intermediate sanctions may be a constructive development both progammatically and conceptually. Second, we briefly summarize some of the forces that have led to that increased interest.

I. The Roles of Intermediate Sanctions

Recent increased interest in intermediate sanctions programs is seen by many as a positive development. Joan Petersilia of the Rand Corporation, the nation's leading academic expert on intermediate sanctions, has written, "these programs represent a part of, if not the

entire, positive future of American corrections" (1987, p. 93). Advocates maintain that intermediate sanctions can reduce pressure on scarce prison resources. By reducing prison crowding, they may improve the quality of life in prison and open up space and resources for rehabilitative programs. They may help offenders retain family and community ties without unduly jeopardizing community security or safety. Many programs are fully or partly supported by fees charged to offenders. They are said (though here the evidence is much less clear than the conventional wisdom suggests) to cost less to administer than imprisonment and thereby to save substantial public monies.

To many people, however, the growth of intermediate sanctions is a source of deep concern. For some, the concern is that the criminal justice system will become more punitive. Alvin Bronstein, head of the ACLU's National Prison Project, has said, "if these programs are used as alternatives to jail, then maybe there is no problem with them. If you're sending the same people to jail, and putting people who otherwise would be on probation in them, it's a misuse" (National Institute of Justice 1987).

To skeptics, intermediate sanctions threaten "net-widening." Experience and empirical research suggest that "alternatives to incarceration" often are imposed on people who would otherwise not have been incarcerated (Austin and Krisberg 1982).

Some people worry that intermediate sanctions will exacerbate the disproportion of minority and low income people among convicted offenders (one in eight Americans is black; nearly half of the inmates in state prisons are black; Blumstein 1988). Increased racial

imbalances in prison could result if proportionately more white than black offenders are diverted from prison into new programs.

Finally, some opponents of intermediate sanctions see them as a manifestation of punitive attitudes that they oppose and that they fear will stifle humane strategies of rehabilitation and reformation (Miller 1988).

The concerns sketched in the preceding paragraph are genuine and raise issues that warrant careful and sympathetic consideration. Nonetheless, we find the notion of "intermediate sanctions" liberating, for several reasons. First, although we believe the state's punitive powers should be used sparingly, credible sanctions other than incarceration must be available before a humane "least restrictive alternative" policy, like the American Bar Association's, becomes realistic. Other countries have managed to use fines or community service as sanctions for serious crimes and greatly to diminish reliance on short prison and jail sentences; perhaps the United States can also.

Second, intermediate sanctions may provide the successive steps of a meaningful ladder of scaled punishments outside prison. Proportionality in punishment is a primary value in most conceptions of just sentencing, both in the sense that punishments should in some meaningful way be commensurate with the severity of the offender's crime, and in the sense that relatively more severe offenses should receive relatively more severe punishments. Under current practice, proportionality in either sense has been a possibility only for that minority of offenders who receive incarcerative sanctions. In the states that have adopted meaningful sentencing guidelines or determinate sentencing laws, some proportionality, in both senses, has been achieved

in relation to incarcerated offenders (Tonry 1988). No state has as yet launched a serious statewide effort to achieve proportionality in sentences imposed other than imprisonment.

Third, the creation of meaningful intermediate sanctions removes the arbitrariness and unfairnesses that occur when prison and probation are the only choices available to the judge. In such jurisdictions, offenders whom the judge regards as at the margin present serious difficulties and probably suffer serious injustices. Judges may genuinely feel that sentencing such offenders to traditional probation unduly depreciates the seriousness of their behavior but that sentencing them to incarceration is unduly harsh. Inevitably some offenders at the margin go to prison when others like-situated receive probation. A continuum of graded punishments can free judges from that forced choice and thereby reduce the frequency of individual injustices.

Fourth, the notion of intermediate sanctions refocuses and enriches thinking about "net-widening." Programs designed as "alternatives to incarceration" are often criticized because they are applied to persons who otherwise would not have been incarcerated. For community service programs created as prison alternatives, for example, it has commonly been found in this country, and elsewhere, that as many as half of those sentenced to community service would otherwise have received probation (Pease 1985; McDonald 1986). If a new correctional program is justified and funded to serve as an "alternative to incarceration" and, instead, is used for people who would not otherwise have been incarcerated, patently it has been misapplied.

However, analysis of "net-widening" changes once punishment choices are conceived as being made from a diversity of programs along a

continuum of scaled control or punitiveness. The question becomes not, "is this program being applied only to people who would otherwise have been imprisoned," but "is this program being applied for persons of the sort for whom it was intended?" If, for example, a highly intrusive and structured intensive supervision probation program is designed solely for offenders who otherwise would be imprisoned, it is misused if it is applied to any other categories of offenders.

Not all intermediate sanctions, however, need be designed as "alternatives to incarceration." Some may be designed as punishments for people whose crimes and criminal records make it unduly lenient to sanction their criminality with a regular probation sentence and yet unduly harsh (or too disruptive of their lives, or the lives of their families or dependents) to incarcerate them. For such a sanctioning program, its application either to persons who would otherwise receive regular probation or to persons who would otherwise be imprisoned, would be a misuse. The former case might be thought of as "net-widening," the latter as "net-narrowing," though "net-narrowing" is not a banner behind which law reform groups are likely to march.

Thus, there seem to us to be legitimate public purposes to be served by development and implementation of new intermediate sanctions. Whether new programs do achieve their stated purposes is an empirical question and most of the pages of this monograph are devoted to reviewing the evidence on which answers to that question must be based. First, though, we devote a few pages to the political and social developments that have led to greatly increased interest in intermediate sanctions in the late-1980s.

II. Why Intermediate Sanctions?

Although the economic and political consequences of prison crowding are a primary impetus to development of intermediate sanctions, at least five recent developments have played a role.

A. Prison and Jail Crowding

Pressures created by prison and jail crowding are the most obvious precipitant of the rush to develop intermediate punishments. At the beginning of 1987, prisons in 37 states were subject to court orders related to crowding, as were many jails. Between December 31, 1977 and June 30, 1988, according to the Bureau of Justice Statistics, the federal and state prison populations grew from 300,024 to 604,824. During the years 1985, 1986, and 1987, the net increase per month in the national population of prisoners was nearly 3,300 people (Bureau of Justice Statistics 1988). The American jail population increased from 209,000 in 1982 to over 274,000 in 1986 (Bureau of Justice Statistics 1987). Many American jurisdictions are building new prisons and jails and altering existing facilities to increase capacity, but most continue to have serious crowding problems. Most forecasts project continued prison population increases into the mid-1990s.

During the late 1970s and early 1980s, many of the solutions to crowding were "back-door solutions" (Blumstein 1988). As judges directed increasing numbers of convicted offenders through the front doors of prisons, various manipulations of good-time policy, parole release standards, and emergency crowding laws helped offset crowding

pressures. These approaches have lost political favor in many states. As a result, many jurisdictions are now trying to establish punitive, nonprison sentences that judges and the general public will accept as appropriate state responses to serious crimes. The legislative and political histories of the enabling legislation for many new intermediate punishments, like Florida's extensive use of house arrest, Oklahoma's house arrest program for released prisoners, and Georgia's intensive supervision probation program, make it clear that a primary objective in each case was to provide intrusive community-based punishments for offenders who otherwise would be imprisoned.

B. Cost savings

Many people believe that imprisonment is so severe a punishment that it should be used sparingly, and therefore object to current levels of prison population for humanitarian reasons. Most of the pressure created by prison crowding, however, is financial, not humanitarian. Prisons and jails are expensive to build and expensive to operate. Construction costs per cell can run from $50,000 to $75,000 and operating costs per prisoner per year from $10,000 to $30,000 (Petersilia 1987, p. v). Crowded prison systems are under pressure to add expensive facilities simply to deal with surplus current population. Additional accommodation for larger prison populations will cost even more. Because most nonincarcerative sentences are less expensive to administer, per offender, than are prisons, many jurisdictions are trying to save money by sentencing offenders to punitive nonprison sentences like intensive supervision probation or house arrest.

Most of the evaluations of intensive supervision, house arrest, and electronic monitoring attempt to demonstrate that the per capita cost of administering those programs is much less than the per capita cost of incarcerating an offender and, as a result, that their jurisdictions are saving substantial amounts of money. For a variety of reasons that we discuss in Chapter 2, we suspect that often this is not true, but it is widely believed, and it is a frequent rationale for the establishment of new programs.

C. Professionalization of Correctional Personnel

Another development contributing to the move toward intermediate sanctions is the continuing professionalization of correctional management. In correctional agencies, as in all the bureaucracies that make up the criminal justice system, there has in recent decades been a steady movement toward increased professionalization (e.g., Jacobs 1980). This movement has been shaped by the training and program development efforts of the National Institute of Corrections and the American Correctional Association. A new cadre of managers has brought to corrections a variety of management and organizational strategies that were less common in earlier years. Managers have become more adept at dealing with political aspects of administration, with strategies for fund raising, and with the development and execution of long range plans. With this increased professionalization, in many jurisdictions, has come a management style in which correctional administrators act as initiators and proponents of new programs. Thus, in Massachusetts, intensive supervision probation was created by the commissioner of

probation as a mechanism for allocating supervision resources on the basis of risk assessments. In Georgia, to a significant extent, the development of intensive supervision probation has been a means to the end of enhancing the credibility of probation generally and thereby encouraging judges to increase the frequency at which they impose probationary sentences, whether intensive or otherwise. These new managers have been quick to see the organizational sense of developing intermediate sanctions and have possessed the political and managerial skills to promote them.

D. Structuring Sentencing

Only recently has the evolution of public policy concerning sentencing reached a stage where intermediate punishments can be built explicitly into comprehensive sentencing systems. Under the indeterminate sentencing systems that characterized all American states before 1975, the judge, influenced by counsel, had full legal authority, in the absence of mandatory sentencing laws, to decide whether an offender went to prison and, if so, at what point he would first be eligible for consideration for parole release. For those imprisoned, the parole board set release dates; under constitutional law doctrines, the courts accorded substantial deference to the parole board's decisions.

The development of presumptive sentencing guidelines in Minnesota, Washington, and elsewhere, starkly exposed the gap in American sentencing choices between probation and incarceration (Tonry 1987). The first American sentencing commission, in Minnesota, was authorized,

but not required, to establish guidelines for nonprison sentences. With plenty of other policy problems to address, the Minnesota Sentencing Guidelines Commission elected not to develop guidelines for nonprison sentences and, instead, promulgated a guidelines grid that specified whether offenders were presumptively to be imprisoned, and, for those imprisoned, for how long (Parent 1988b). For those presumptively not imprisoned, the Minnesota system provided no guidance to the sentencing judge in choosing among simple probation, a split sentence, jail incarceration up to a year, community service, or any other option an imaginative judge might devise. Major evaluations of the Minnesota experience showed that, among persons sentenced to state imprisonment, sentencing disparities were reduced and the guidelines' policies were largely followed, but that, among those not sentenced to state imprisonment, sentencing disparities increased (Knapp 1984; Tonry 1988).

The Washington State Sentencing Commission went a step further and developed guidelines for all felony offenders, including those receiving very short incarcerative sentences, and established rules governing the substitution of community service sentences for short incarcerative sentences (Boerner 1985).

Governor Pierre DuPont of Delaware oversaw development of a system of sentencing guidelines that establishes explicit choices of appropriate sentences of varying types for specific categories of offenders convicted of particular offenses. The Delaware system demonstrates how a comprehensive sentencing system might well provide guidance to choices among sentences other than nominal probation and incarceration (DuPont 1986).

A series of impact evaluations has shown that the Minnesota and Washington guidelines systems have been remarkably effective in establishing and implementing systems of structured sentencing discretion. The sentencing policies established by the commissions have to a considerable extent been accepted and followed by lawyers and judges. Governor DuPont's proposals illustrate what a comprehensive system of structured sentencing discretion might look like. The next step is to merge the approach of the Minnesota and Washington guidelines with the approach of the DuPont proposals to achieve a comprehensive system of structured sentencing discretion.

The movement toward development of sentencing guidelines continues in the United States. To date, more than 10 states have created sentencing commissions and their numbers increase each year. Some of these--Oregon and Washington particularly--are considering comprehensive guidelines systems that set standards for prison sentences, probation, and various intermediate sanctions. Of course, for such a system to succeed, there must be credible, workable intermediate sanctions in place.

E. Normative Developments

Related to these other precipitants of intermediate sanctions, but separate from them, have been three important normative developments. First, since the mid-1970s, there has been a continuing movement toward retributive "just deserts" approaches to punishment that inevitably influence how people think about the either-or, prison-or-probation choice. Second, for at least a decade, calls have been made for

adoption of incapacitative crime control strategies. Third, a backlash is setting in to the fashionable 1970s view that "rehabilitation doesn't work," and both policymakers and correctional administrators are showing renewed interest in rehabilitative programs.

1. Retribution. In the mid-1970s, a number of influential books, notably by Norval Morris (1974), Andrew von Hirsch (1976), and Alan Dershowitz (1976), heralded a shift in scholarly thinking about criminal punishment from emphasis on rehabilitative approaches to emphasis on retributive approaches. Some important work in this tradition continues (von Hirsch 1985; Wasik and von Hirsch 1988).

More recently, however, retributive approaches have received less attention from scholars, but appear to receive considerable support among practitioners and policymakers. For example, sentencing commissions in Washington, Minnesota, and Oregon have subscribed in various ways to retributive approaches to punishment policymaking. If, for normative reasons, it seems important to scale offenses in terms of their severity and to scale punishments in relation to the severity of the offenses that different individuals commit, inexorably there is a need for a range of punishments of varying severity. For those offenses that commonly result in the imposition of prison sentences, the scaling of the severity of punishment can be expressed in months and years. However, in some jurisdictions, less than a quarter of convicted felons receive prison sentences (Knapp 1984; Boland and Jones 1986, p. 8), and in most jurisdictions not more than half of convicted felons go to prison. In a jurisdiction whose punishment system consists solely of prison, jail, and traditional probation, it is impossible to scale sentences for the majority of offenders in any way that meaningfully

relates punishments to the seriousness of the crimes committed. Thus, for people who believe that retributive or just deserts considerations should play a determining, or even a substantial, role in choices among punishments, intermediate sanctions are necessary if those choices are to be made real.

2. Selective Incapacitation. New intermediate sanctions programs, like most innovations in sentencing and corrections, have been influenced by recently renewed interest in incapacitative crime control strategies. Substantial sums of money have been invested in research on prediction of dangerousness and "criminal careers." Numerous policy initiatives have been based on efforts to identify and incapacitate repeat offenders. These range from preventive detention and career criminal prosecution programs to development of risk classification systems for pretrial release, sentencing, parole, and institutional management.

Some leading scholars, such as James Q. Wilson (1983) and Michael Sherman and Gordon Hawkins (1981), have urged adoption of incapacitative approaches to crime control. Public and governmental tolerance for crime and its costs have declined in recent years and it is not implausible to suggest that criminal justice system resources should be used to protect the public by restraining offenders who are believed to be especially likely to reoffend.

Widespread loss of confidence in the capacity of correctional programs to rehabilitate offenders also contributed to interest in incapacitative programs. Robert Martinson's (1974) famous article "What Works?--Questions and Answers About Prison Reform," urged that claims of rehabilitative effectiveness be assessed with skepticism. A later

review of the same evidence by the National Academy of Sciences (Sechrest, White, and Brown 1979) concluded: "we do not know of any program or method of rehabilitation that could be guaranteed to reduce the criminal activity of released offenders" (p. 3).

Many people believe that criminal penalties act as deterrents in general, but few believe that our knowledge of deterrence can provide useful guidance for decision making in individual cases (Blumstein, Cohen, and Nagin 1978). Many people argue for retributive or "just deserts" approaches to punishment, but many others believe retributive approaches are too mechanical to serve as the primary rationale for punishment.

With rehabilitation in eclipse, and deterrence and retribution insufficient guides for policy, many people have concluded that incapacitation should play a major role in correctional and sentencing policy.

For a time, there was great interest in "selective incapacitation," a strategy aimed at identifying high-rate offenders and locking them up for extended periods (Greenwood and Abrahamse 1982). Selective incapacitation was a short-lived solution, partly because--at current levels of knowledge--our ability to identify high-rate offenders in advance is not very good (Cohen 1983; Blumstein et al. 1986). However, there is a long history of research on prediction of recidivism (Glaser 1987) which has given rise to systems of "risk classification" that are widely used (Brennan 1987).

Incapacitative considerations loom large in modern correctional policymaking. Most of the intermediate sanctions programs described in

this monograph expressly exclude offenders who are believed to present significant risks of reoffending.

3. Rehabilitation. By the mid-1970s, many scholars and policy analysts had concluded that rehabilitative considerations should no longer play a central role in punishment decisions. As noted above, a number of major reviews of the literature on correctional programs concluded that few existing programs could be shown substantially to increase the likelihood that a convicted offender would thereafter lead a law-abiding life (Sechrest, White, and Brown 1979). This nothing-works mentality removed much of the justification for the indeterminate system of individualized sentencing that was premised, in large part, on the desirability of tailoring decisions about individual offenders to their rehabilitative prospects.

As a normative matter, by the late-1970s many people concluded that the state should not take or extend its power over individuals' lives on the basis of rehabilitative considerations (e.g., Morris 1974). Partly this normative position was based on libertarian rationales: the state should not intrude into peoples' lives for paternalist reasons or for "their own good." But it was also based in part on arguments that the unguided discretions of indeterminate sentencing were inevitably vulnerable to arbitrary and idiosyncratic patterns of decision making, at best, and to invidious patterns of decision making, influenced by considerations of race, ethnicity, and class, at worst (American Friends Service Committee 1971).

These empirical and normative considerations combined into a powerful set of arguments against rehabilitative rationales for punishment and seem to have influenced politicians, scholars, and

practitioners alike. More recently, however, rehabilitation has been making a comeback. Isolated research findings have appeared to demonstrate that well-focused programs targeted on specific categories of offenders have had some success in reducing later recividism (e.g., Wilson and Herrnstein 1985). There is increased support for rehabilitative programs in correctional settings to facilitate self-change among those offenders who want it. And there is a growing body of evidence that some treatment programs, especially in respect of drug treatment, can have significant positive effects (Anglin and Hser 1989).

These indications of renewed support for rehabilitative programs have, we believe, been taken to heart by the new cadre of correctional managers, who see intermediate sanctions as devices both for establishing credible nonprison punishments and for fostering the rehabilitation of offenders.

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For all of these reasons, enormous energy and interest has been focused in recent years on design and implementation of new, or revivified, sanctions programs that begin to fill the gap between incarceration and traditional probation. Whether these new programs are achieving that objective is the primary question at which this monograph is directed. Unfortunately, that question is much more easily asked than answered. Chapter 2 explains why.

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Chapter 2: Evaluation of Intermediate Sanctions: Problems and Pitfalls

Social science research on the effects of legal or institutional changes is inherently difficult. Evaluations of intermediate sanctions programs present especially daunting problems. Evaluation research should identify the rationale and purposes of a new or altered program, describe and critically assess the extent to which the new program has been implemented in ways that are consistent with its rationale, and measure its effectiveness in terms of the purposes it sought to achieve.

Evaluation of most intermediate sanctions programs is especially difficult for at least five reasons. First, the purposes of particular programs are seldom specified in any authoritative way, and different people often have different purposes in mind. Legislators may want to reduce prison crowding and save state monies. Program administrators may want to allocate resources in the most cost-effective way, to provide social services humanely and efficiently, and to further the institutional interests of the agency. Different public officials and law reform activists may differently conceive whether the program is intended primarily to be punitive and intrusive, or incapacitative, or rehabilitative. The judges and prosecutors who determine who receives what sentence may have their own notions of the program's purposes in general and in particular cases.

Second, it is difficult to disentangle cause and effect in assessments of most legal changes. Samuel Johnson accused doctors of too often confusing consequence with subsequence. And so it is with intermediate sanctions. One event may precede another, but that does not mean that the first causes the second. The Georgia ISP program was

intended to divert convicted offenders from prison and thereby to reduce pressure on crowded prisons. After the program had been several years in operation, there was a decline in the proportion of convicted offenders who receive prison sentences. Did establishment of the ISP program cause the reduction in prison use? Would prison use have decreased if ISP had not been established? Were both the establishment of ISP and the reduction in prison use the results of widespread concern about crowded prisons and rapidly increasing correctional costs? Changes in public and officials' attitudes about these matters might have resulted in decreased prison use irrespective of ISP.

Third, efforts to isolate the effects of specific policy changes, for example, establishment of an ISP program, are complicated by the occurrence of other changes that affect the implementation and consequences of the policy change under examination. The Georgia ISP program, because it has received much attention and has been extensively evaluated, provides an illustration. At about the time Georgia ISP was established, or shortly thereafter, Georgia created a number of other intermediate sanctions programs including "boot camp" shock incarceration and "restitution" and "detention" centers (Parent 1988). The Georgia legislature enacted an emergency release law that would be triggered when prison population exceeded a specified limit. Anti-drunk driving organizations created popular and political pressure for increased severity in sentencing drunk drivers (Dale Parent, personal communication 1988). The presence or absence of any of these developments could have affected how judges decided sentencing cases in general or in individual cases. Taken together, they make it difficult

for the most careful evaluation to disentangle the effects of one legal or policy change from the effects of others.

Fourth, although very few intermediate sanctions programs have been evaluated carefully, many administrators believe their programs to be successful. This is entirely understandable. People like to think their work is worthwhile and effective. Human nature predisposes all of us to so believe. That is why rigorous evaluations by outsiders are needed, to subject such beliefs to empirical assessment and clear-eyed scrutiny. In a field, however, in which few rigorous evaluations have been conducted, the persuasive force of conventional but untested wisdom is great.

Fifth, although there are important exceptions, much of the existing evaluation research is badly flawed--often for reasons that do not necessarily reflect badly on the researcher involved--and cannot serve as a foundation for drawing meaningful conclusions. Careful research is expensive and operating agencies seldom feel justified in diverting substantial resources from provision of services to research. As a result, much of the work to date has been done on a shoestring or is based on case processing statistics that are collected for management purposes but are inadequate for evaluation purposes.

Taken together, these problems make evaluation research on intermediate sanctions challenging and make it difficult to offer strong assertions about the effects of individual programs.

I. Measuring the Effectiveness of Intermediate Sanctions

Four questions are commonly asked about intermediate sanctions: what purposes of punishments do they, or should they, serve; are they used as a diversion or an "alternative" from incarceration; do offenders sentenced to them have favorable recidivism rates; and do they result in overall cost savings to the state?

A. Purposes of Punishment

In principle, it should be possible to assess the effectiveness of intermediate sanctions programs in terms of how well they achieve the penal purposes--retribution or "just deserts," incapacitation, deterrence, rehabilitation--at which they are aimed. In practice, this is difficult because few programs expressly identify the specific penal purposes they aim to accomplish.

More commonly, the promoters of new sanctions programs offer to further all of the major penal purposes. ISP or house arrest or community service are portrayed as simultaneously retributive, deterrent, incapacitative, and rehabilitative in purpose and effect. It is nonetheless possible to draw plausible inferences about the penal purposes that various criminal punishments are likeliest to further and, correlatively, about the kinds of offenders for whom they are most appropriate. Prison or jail terms, for example, including intermittent confinement and split sentences, seem generally to serve retributive, deterrent, or incapacitative aims. Routine probation is not likely to be incapacitative but in some cases may serve retributive or deterrent

ends. If appropriate services are provided and used, routine probation may serve rehabilitative ends. Particularly in respect of drug treatment, there appears to be reason to believe that compelled participation can increase the likelihood of treatment successes (Anglin and Hser 1989).

Most intermediate sanctions appear to be primarily deterrent and retributive in aim, with a lesser emphasis on incapacitation. Most intermediate sanctions programs that claim to serve as alternatives to imprisonment expressly exclude from eligibility most offenders who present any significant risk of committing new crimes while in the program. Because no community sentence can be as restrictive as incarceration, intermediate sanctions are inherently limited in the incapacitative promises they can make. On the basis of our review of the evaluation literature, the following list identifies the penal purposes that we believe can most plausibly be inferred for the major intermediate sanctions.

Fines: The primary purposes of fines are retribution and deterrence. A weak argument can be made that fines serve rehabilitative goals by making the offender face up to and accept responsibility for his crimes.

ISP: The primary purpose of ISP appears generally to be retribution. The high frequency of contacts, spot searches, and drug tests, and the general intrusiveness of ISP, make it punitive. The secondary purpose appears to be

incapacitation--achieved through the high frequency and intimacy of contacts between probation officers and offenders. Intensive supervision probation may have some deterrent and rehabilitative effects but these seem typically to be subsidiary objectives.

House Arrest: As a stand-alone sanction (that is, not as one among many conditions of ISP), house arrest seems primarily retributive in purpose. Intensive monitoring through electronic means or frequent visits from probation officers is likely to keep the offender at home; to that extent, house arrest is also likely to be incapacitative. Deterrent and rehabilitative considerations seem subsidiary.

Electronic Monitoring: Electronic monitoring is a technology, not a sanction. To the extent the technology is used to restrict offenders' mobility, it is intrusive and therefore punitive and, by preventing movement, it is incapacitative.

Community Service: Community service, if enforced, imposes burdens on offenders' time and energy and is therefore retributive. Community service may be mildly incapacitative to the extent that offenders cannot easily commit new crimes while engaged in supervised

work. Deterrence and rehabilitation seem subsidiary.

In the following chapters, we occasionally refer to penal purposes that might underlie specific programs.

We also note how various sanctions serve particular purposes in particular cases. For example, for an offender for whom, under the state's sentencing policies, incapacitation is the primary applicable penal purpose at sentencing, house arrest enforced by electronic monitoring may do as well as a six-month jail term, at less cost to the state, and with less disruption to the lives of the offender and his family. Or, for another example, retribution and deterrence may be the applicable purposes at sentencing for an embezzler; a sizable, enforced fine may be as effective for these purposes as a prison term, and much less costly to the state. Different sanctions can further realization of different goals. This is one way development of intermediate sanctions may enrich sentencing practices in coming years.

B. Diversion and Net Widening

Many newly developed intermediate sanctions are intended to serve as alternatives to imprisonment or jailing. For such programs, accordingly, one measure of success is whether and to what extent offenders assigned to them have been diverted from incarceration.

This is a harder question to answer than may at first appear. For intermediate sanctions programs to which offenders are admitted directly from prison, like New Jersey's ISP (Pearson 1988) or Oklahoma's house

arrest (Petersilia 1987), the programs serve as substitutes for continued incarceration. Entry into most intermediate sanctions, however, is controlled by judges and prosecutors, and it becomes much harder to be certain that the affected offenders were otherwise bound for jail. In many cases, judges and prosecutors may believe that a new program, like ISP, is best used for people who would otherwise receive ordinary probation; in their own eyes, they are simply imposing an appropriate sentence and are not subverting the purposes of an "alternatives" program. The judge may say that a prison sentence would otherwise have been ordered. The judge may even impose a sentence and then stay its execution if the offender accepts placement in the intermediate sanctions program. In either case, it is difficult to know whether the offender would <u>really</u> have otherwise been incarcerated.

There is a substantial body of evidence (e.g., Austin and Krisberg 1982; Pease 1985; McDonald 1986) that shows that many programs designed as alternatives to incarceration are often used for offenders who otherwise would have received less, not more, punitive sentences. There is contrary evidence, mostly anecdotal, that many convicted offenders in some states have opted for a fixed term in prison rather than accept the intrusions and indignities of ISP and a substantial risk of incarceration as a penalty for failure to comply with program conditions.

It is important to know to what extent programs designed as prison alternatives serve as prison alternatives. There is a general public interest in knowing whether convicted offenders are receiving the kinds of punishments prescribed by state sentencing policies. There is also a more specific interest in knowing whether intermediate sanctions

programs are cost-effective. We can't know whether a newly created ISP program is saving the state money by diverting offenders from expensive prison beds unless we know how many offenders in the program have actually been diverted.

Researchers generally approach the net-widening issue by trying to develop statistical comparisons between groups of offenders in the program and other groups of offenders in prison, on regular probation, or both (e.g., Pearson 1988; Erwin 1987; McDonald 1986). Persuasive comparisons are difficult to make. Many intermediate sanctions programs that were designed to serve as prison alternatives often are not used in that way.

C. Recidivism

Most evaluations of new intermediate sanctions investigate the relation between participation in the program and "failure." Most programs drop offenders who commit new crimes or who fail to comply with program conditions. In this chapter, we distinguish between "failure rates," by which we refer to failure to comply with program conditions (including the condition that no new crimes be committed), and "re-offending rates," by which we refer only to commission of new crimes.

Two different sets of questions are asked about new offenses. First, what percentage or absolute number of offenders commit new crimes while in the program? Second, after release from the program, do participants as a class have recidivism rates that differ from those of comparably situated offenders who were not assigned to the program?

1. Public Safety. Program evaluators and administrators compile data about new crimes committed by offenders while in the program in order to demonstrate that it does not present unreasonable threats to public safety. Most intermediate sanctions programs that are used as sentencing options screen their cases very carefully. Not surprisingly, many of them experience low rates of commission of new crimes by their clients.

There may be a Catch-22 about in-program offending rates. Somewhat ironically, for programs that are intended to serve as alternatives to incarceration, relatively high rates of failure and offending may be signs of program success, not program failure. In many states, it is not easy to get into prison. Most prisoners have committed a very serious offense, or have a lengthy record of prior offenses, convictions, and sentences other than imprisonment. Recidivism rates for persons released from prison are in most states quite high. If people who would otherwise have been imprisoned are sentenced to an intermediate sanction, it would be reasonable to expect that their failure rates while in the program, and their re-offending rates afterwards, would also be quite high. Thus, high failure and re-offending rates might be signs that the intermediate sanction is being used, as intended, as an alternative to incarceration.

Low failure and re-offending rates for such a program can be explained in two ways. Either the program is actually receiving low-risk offenders who were not prison-bound, or it is successfully rehabilitating high risk offenders who have been diverted from prison. The latter explanation may sometimes be the true one, but often it will not.

If failure and re-offending rates are very low, it may often be the case that the program is not being used for serious offenders, but is instead being used for offenders who were not prison-bound and who could safely be dealt with by means of less intrusive and less expensive sanctions.

Any intermediate sanction that successfully diverts offenders from imprisonment inevitably endangers public safety. This is true even when rates of noncompliance with conditions and rates of re-offending are very low. Even one crime committed in the community by an offender on ISP is a crime that would not be committed were he in prison.

The important question concerning offenses by program participants is not the absolute number of offenses or the percentage of offenders who commit them, but what would have happened had those offenders received a different sentence. To answer this question, efforts are usually made to compare participants' offending rates to those of comparable sets of prisoners, probationers, or both.

The comparisons are difficult to make because, in the absence of random assignments to different sanctions, it is hard to be sure that the groups of offenders being compared are comparable. There is in addition, for comparisons with imprisoned offenders, the problem that the behavior of offenders <u>in</u>, say, an ISP program is compared with the behavior of other offenders <u>after</u> release from prison. If the ISP offenders are closely supervised, it would be astonishing if their offending rates were higher than those of less closely supervised ex-prisoners who are in all other respects comparable. A major evaluation of New Jersey's ISP program, for example, compares recidivism rates for offenders while in the program and afterwards, with rates for

a comparison group of offenders after release from prison (Pearson 1988, p. 444). The ISP group experienced lower recidivism rates than the comparison group, but it is hard to know what that signifies.

2. Treatment Effects. The second kind of recidivism analysis compares the experience of offenders after discharge from an intermediate sanction with the experience of offenders discharged from another sanction. If the groups are otherwise highly comparable, a lower recidivism rate for the intermediate sanctions group would suggest some sort of treatment effect which reduces later offending. Comparable recidivism rates would show that offenders in intermediate sanctions do no worse than those receiving another sentence. If the intermediate sanction costs less to administer, a cost benefit analysis might favor its continued or expanded use, even though it does not reduce re-offending rates.

* * *

The evaluation literature is weak in its handling of recidivism analyses. Too often, the comparison groups are patently not comparable, and the effects of noncomparability have not been accounted for in the analysis. Sometimes, the comparisons are between groups whose behavior was monitored for different periods. Some of these problems are discussed at greater length below.

D. Cost Savings

Most claims of substantial cost savings in operation of intermediate sanctions are suspect for three reasons. First, comparisons of per capita costs of prison and other sanctions are

misleading. The marginal cost of one additional prisoner for a prison system is slight--a bit of food, some disposable supplies, some paperwork. Only when nonprison programs divert enough prison-bound offenders to permit the closing of an institution, or a section of an institution, or to permit plans for new facilities to be scaled down, will nonprison programs achieve substantial cost savings. In New York City, for example, a highly regarded community service program, though successful from many perspectives, reduced demand for jail beds by 75 to 95 per year (McDonald 1986), a number so small relative to New York City's jail population and capacity as to be immaterial to total jail costs.

No doubt some nonprison programs have resulted in mothballing of plans for new construction; in Georgia, evaluators have claimed that the numbers of people diverted from prison to intensive supervision probation have eliminated a need to build two new prisons (Erwin 1986). In general, however, comparisons of the average cost per offender of administering an ISP or house arrest program with the average cost per offender of imprisonment are seriously misleading.

Second, to be valid, comparisons must be based on something other than the annual average costs of operating nonprison and prison programs. In calculating the costs and benefits of a 100-offender ISP program, it is necessary to know how many of those offenders would otherwise have gone to prison and how many would otherwise have received probation. If, say, 50 offenders would otherwise have been sentenced to probation, the average cost of correctional programs for them will have increased and this will offset to some degree the savings, if any, realized by diverting the other 50 offenders from prison. Similarly,

the prison costs for those later incarcerated following failure in the program--often a tenth to a third of those in the program--must be taken into account.

Third, cost-benefit calculations must take into account the time each offender is subject to control. If, and ignoring for the moment our first point about the misleading character of calculations of average per-person costs, the average cost per year per imprisoned offender is $12,000, and the average cost per year per ISP offender is $4,000, comparison of those average annual costs is inherently misleading. If the average ISP client serves 12 months on ISP ($4,000) but would otherwise have served 3 months in prison ($3,000), the ISP program is more, not less, expensive.

This isn't to say that nonprison programs cannot achieve cost savings, merely that claimed cost savings must be scrutinized with care. In a large jurisdiction, diversion of 1,000 prison-bound offenders for a year each may eliminate the need to build a new prison. In this case, there will be major cost savings (assuming that we know that those 1,000 offenders really would otherwise have been imprisoned).

Moreover, nonfinancial benefits may justify creation of new intermediate sanctions with the aim of diverting offenders from prison. Reducing prison crowding may lessen pressure on space and on available programming, may allow recreational and vocational space to be converted back from use as dormitories to its original use, and in general may improve the quality of life behind prison walls.

Our point, here, is simply that cost comparisons are complicated and that glib claims about cost savings associated with intermediate sanctions often do not stand up to careful scrutiny.

II. Evaluating Intermediate Sanctions

This monograph suffers from the limitations of the sources of knowledge on which it draws. We draw for the most part on the published scholarly literature, in-house descriptions and evaluations, national surveys of innovations in probation conducted by James Byrne of the University of Lowell (1986) and Joan Petersilia of the Rand Corporation (1987), and various networks of practitioners and researchers who operate these programs and from whom we have learned much.

Unfortunately, the published literature is small. Although there are important exceptions, there has not as yet emerged a rigorous scholarly tradition of research or evaluation concerning intermediate sanctions (Sechrest, White, and Brown 1979, p. 59). Much of what has been published has appeared in professional journals like Federal Probation or in more fugitive form as xeroxed copies of in-house evaluative reports or as papers presented at academic and professional meetings. Many reports are descriptive and uncritical and, while cautionary notes are often spelled out by researchers and evaluators, they tend to be swamped by the enthusiasms of program administrators who believe that their programs are achieving the public safety goals, cost savings, and reduced prison crowding that the programs were designed to achieve. (This state of affairs has changed little over the last ten years: see Sechrest, White, and Brown 1979, pp. 76-78.)

When a new program is established to achieve some designated purpose or purposes, not unnaturally people want to know whether it succeeded in its mission. The answer, unfortunately, is often not obvious. What we should want to know about the effectiveness of any

particular program for any particular group of people is what would have happened to those people had the program not been established and had they been dealt with in some other way.

Many descriptions of programs and many claims of program administrators attempt to address that question by reciting statistics on percentages of program clients who "succeed" or "fail." Failure is measured in a variety of ways--revocation for any reason, revocation for commission of a new crime, arrest for a new crime, conviction for a new crime. Thus, an intensive supervision probation program may claim success if only 10 percent of its clients have their probation revoked for alleged commission of a new crime, in contrast to, say, 40 percent of released prisoners who are reconvicted within two years of release. (There is an apples and oranges problem in comparisons between re-offending while <u>in</u> an intermediate sanctions program and re-offending <u>after</u> release from a different sanctions program; for discussion purposes, we ignore that problem here.)

That 10 percent failure rate in the abstract looks good, but it tells us nothing unless we know what would have happened to those specific people, or others just like them, had they not been sentenced to ISP. The simple comparison between ISP failure rates and general post-prison-release reconviction rates may well be seriously misleading. If the ISP clients are people who present little threat of recidivism in any event, they may have had a failure rate no higher than 10 percent had they simply been released into the community without supervision.

Researchers employ a number of strategies to try to isolate the effects of new programs on specific categories of people by identifying other groups of people who are comparable to them but were not assigned

to the new program. The best way to do this is to identify a large group of more or less comparable people and randomly divide them into two subgroups. If one group is assigned to ISP and another group to the conventional disposition, whatever it is, follow-up of the post-program experience of both groups will provide a basis for identifying differences in outcomes for the people assigned to the new program. This is called a randomized experiment and, from a scientific perspective, it is the best way to evaluate the effects of new programs.

No true scientific experiments have as yet been completed on the outcomes of intermediate sanctions. Joan Petersilia notes in her review of more than 100 evaluations of intermediate sanction programs that none of them used a random allocation experimental research design (1987, p. 8). Researchers have long urged increased use of randomized experiments in evaluation research and program administrators are increasingly willing to cooperate in establishing such experiments. The Bureau of Justice Assistance of the U.S. Department of Justice recently established a program to evaluate intermediate sanctions in nine jurisdictions by use of evaluations featuring random allocation of offenders to experimental and control groups (Petersilia 1987, p. 79). The National Institute of Justice has funded an evaluation of intensive supervision for parolees in Houston and Dallas, Texas that will use a random allocation approach (Petersilia, Turner, and Duncan 1988).

Oftentimes randomized experiments, for political, ethical, or other reasons, are simply not possible. Administrators or judges may refuse to assign offenders randomly between programs. Sometimes decisionmakers agree to assign offenders at random but, in practice, subvert the system. When randomized experiments are not feasible, researchers try

to create "comparison groups" of offenders who are comparable to the experimental group but who, owing to the vagaries of the criminal justice system, have received a different disposition. Although inferences based on a comparison group analysis are much less persuasive than inferences based on a randomized experimental analysis, if the comparison is done very carefully and very well, something can be learned. The comparison groups have got to be well-matched. In matching offenders, this probably means that the two groups should be comparable in their demographic makeup--their ages, sex, and race, their criminal records, their current conviction offenses, and various socioeconomic indicators like level of education, employment history, and residential stability. The goal of a matched comparison group project is to approximate as closely as possible the comparability between the two groups that would have existed had they been randomly assigned to different sanctions.

Unfortunately, the evaluation research on intermediate sanctions tends to use comparison groups, that are in important respects not comparable to the experimental group. As a result, it is difficult to have much confidence in contrasts between the experiences of offenders in the experimental and comparison groups. Thus, in ambitious evaluations of intensive supervision probation programs in Georgia (Erwin 1986) and New Jersey (Pearson 1988), for example, the comparison groups differ starkly from the experimental groups in such things as race, social class, and criminal record. It is accordingly difficult to know whether differences between the experiences of the experimental and comparison groups are attributable to the intensive supervision programs or to pre-existing differences between the groups.

In evaluating the effects of correctional programs, researchers try to learn what happens to program clients after they leave the program. For most correctional programs, this means that information is collected on recidivism within some fixed period after program participation. Arguments are made, depending on the context, in favor of one-year or 18-month or two-year or three-year follow-ups. Most follow-ups of the post-program experience of persons sentenced to intermediate sanctions have been very short, sometimes only a few months, and sometimes of variable length for various members of study groups (as, for example, when some in a study have been followed only for four months while others were followed for two years).

A peculiar problem in this field of research is the calculation of success and failure rates for program clients including those who remain active in the program. The Georgia ISP evaluators, for example, often report the percentage of "failures" among people who have ever been in the program (Erwin 1986). Because of variations in average time in the program, variations in numbers received in programs at different times, and myriad factual differences, it is always possible that subjects who remain active in the program at any given time differ in material respects from those who have already completed or failed the program. A follow-up that lumps together successes, failures, and "actives" is exceedingly difficult to disentangle.

We should stress that there have been a few careful, rigorous evaluations of the effects of intermediate sanctions. Notable examples include evaluations of a community service program in New York City (McDonald 1986) and ISP programs in New Jersey (Pearson 1988) and

Massachusetts (Byrne and Kelly 1988). They are, however, few in number and even the best of them suffer some of the limitations described here.

Most of the comparison group analyses are seriously flawed by noncomparability of the experimental and comparison groups, and much of what is left are simply case studies that describe the experience of persons processed throughout the new program. Unfortunately, unless we know something about what would have happened to those people, or others like them, had they not been assigned to the program, it is impossible to know whether seemingly positive effects result from the identities of the people assigned to the program, or to the effects of the program on them.

* * *

In the following chapters, we describe a number of well-known and widely imitated intermediate sanctions programs and summarize what is known about their operation. While inherent limitations of the evaluation literature make it difficult to offer strong conclusions, the literature does reveal both some programs whose promise is clear and others whose claimed successes seem overstated.

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Chapter 3: Intensive Supervision Probation

There is no generic intermediate sanction known as intensive supervision probation, or "ISP." Program administrators firmly and quickly disabuse neophytes of any such notion. So many different programs go by the name ISP that the name alone reveals next-to-nothing about any particular program's character. Some ISP programs, like that in New Jersey, involve upwards of 30 contacts a month between probation officers and probationers (Pearson 1988); some involve only two contacts. Some ISP programs are run by specially recruited and trained staffs; some are run out of the regular office by the regular staff doing the regular things. Some have been created by legislation, and some by probation management's decisions. Many feature caseloads of 25 probationers to two officers, or 40 probationers to three officers; others provide one officer for 40 probationers or more. Entry to some ISP programs is controlled by the sentencing judge; entry to others is controlled by a prison release board, a parole board, or a probation officer (Byrne 1986 and Petersilia 1987a document the wide diversity of ISP programs).

By 1987, statewide ISP programs were in operation in at least 40 states and existed at the state or local level in nearly every state and the District of Columbia (Byrne 1986; Petersilia 1987a). Most of these programs shared common elements: curfews or house arrest, unscheduled testing for drug or alcohol abuse, required community service, low caseloads for probation officers, frequent contacts, and strict revocation procedures.

Evaluations of some of the new programs have concluded that ISP has reduced prison crowding and eliminated the need to construct new prisons, has maintained public safety while controlling offenders in the community, has produced significant cost-savings, and has achieved better social adjustment and lower recidivism rates among participants compared with matched groups of offenders sentenced to other sanctions (e.g., Erwin 1987; Pearson 1988).

Each of these claims by itself would qualify a program as a success; some of the claims, though not all, can withstand close scrutiny. In this chapter, we discuss the range of variation in purpose and practice among ISP programs, giving particular attention to programs in Georgia, New Jersey, and Massachusetts that have been promoted and adopted as models in other states. Only a handful of ISP programs have been subjected to evaluations by outsiders or to ambitious in-house evaluations under the supervision of an outside advisory board. Besides the Georgia (Erwin 1987), Massachusetts (Byrne and Kelly 1988), and New Jersey (Pearson 1987, 1988) evaluations discussed in detail here, outside evaluations have also been conducted of ISP programs in Illinois (Thomson 1987; Lurigio 1987), Ohio (Latessa 1987), and New York (Association of the Bar of the City of New York 1986).

I. Purpose and Practice

Experimentation with reduced caseloads in probation is not new; dozens of programs were launched in the sixties and seventies (Banks et al. 1977). What is new is the rapid adoption of ISP across the nation,

the extensive claims made for its success, and a change in emphasis from rehabilitative to punitive and incapacitative goals.

ISP programs have been inserted into the criminal justice process in various ways. There are three major patterns.

The majority of ISP programs purport to be alternatives to incarceration. The Georgia and Illinois programs in which judges assign offenders--ostensibly otherwise bound for prison--to ISP offer examples (Erwin 1987; Thomson 1987). These programs raise a number of questions. To what extent are offenders being diverted from prison? Is the program reducing prison crowding? Are prison costs being reduced?

Some ISP programs serve as a mechanism for early release from jail or prison. New Jersey's program is the best known of these (Pearson 1987, 1988), but other states including Kentucky (Commonwealth of Kentucky, Corrections Cabinet 1985) and Utah (Utah State Department of Corrections 1985) have adopted similar programs. Admission into the New Jersey program is based on applications from offenders who have on average served three to four months of a prison sentence before they are admitted. A number of questions are raised by these programs. Are judges sentencing offenders to prison who otherwise would not have been so sentenced to get them into ISP? Is net-widening less likely to be a serious concern than in ISP programs that serve as alternatives to incarceration? How often is ISP status revoked and the offender reincarcerated, and for how long? What are the financial costs and benefits? Is prison crowding reduced?

The third type of ISP program is as a form of case management for high-risk probationers. Massachusetts, which has the best-known program (Cochran, Corbett, and Byrne 1986), assigns probationers with the

highest-risk scores to ISP. Since these programs do not claim to be prison alternatives, their effect on prison crowding is not a major measure of effectiveness. Instead, the important questions are how the program's costs compare with regular probation, how high-risk offenders are identified, and how intensive supervision of high-risk offenders affects revocation and reoffending rates.

Supervision in ISP is typically more restrictive than in regular probation but the traditional rehabilitative aims of probation are generally not ignored. Not surprisingly, the emphasis placed on supervision and rehabilitation varies greatly. Several states, including Georgia, have tried to incorporate both elements by creating two-person supervision teams in which one member is designated as the service provider and the other as the control agent.

A. Control

Many jurisdictions have embraced ISP as a partial solution to the problems associated with prison crowding. A primary objective of ISP in those states is to maintain acceptable levels of public safety, both because higher-risk offenders diverted from prison warrant closer control and because a few well-publicized crimes by diverted offenders could undermine the program's public and political support.

There is no single, widely-accepted definition of the level of supervision for ISP probationers that distinguishes them from regular probationers. Officer/client contacts in regular probation can mean anything from weekly face-to-face contacts to monthly telephone calls or card mail-ins. An ISP probationer may have daily face-to-face contacts

with the probation officer and may experience frequent curfew checks; the range of contacts among states varies considerably from 2 to 32 per month. Table 2.1, based on a national survey conducted in 1986, demonstrates both the ambiguity and the diversity of ISP programs.

B. Rehabilitation

The rehabilitative component of probation lost some of its vitality during the last decade. Several reviews of correctional evaluations concluded that the effectiveness of correctional treatment programs could not be demonstrated (e.g., Lipton, Martinson, and Wilks 1975; Sechrest, White, and Brown 1979). None of the reviews actually concluded that "nothing works," but that is how they were interpreted. A separate body of evaluation research, on the effects of differential caseloads on recidivism rates, was no more reassuring. Recidivism rates remained about the same regardless of whether offenders were under the supervision of a probation officer with 50 or 200 cases (Banks et al. 1977). Partly because of these research findings, rehabilitative programs in prison and in the community lost support and momentum.

Intensive supervision probation may someday be credited with breathing new life into probation. In Georgia, probation administrators consciously used ISP to try to reestablish probation generally as a credible sanction. And Georgia evaluators claim that the strategy worked. As ISP came to be recognized as a punitive, intrusive sanction, the percentage of convicted felons receiving probationary sentences increased from 63 percent in 1982 to 73 percent in 1985 and Georgia's

per capita rate of incarceration fell, evaluators claim, from first in the world in 1981 to tenth in the United States in 1985 (Erwin 1987).

And, because ISP is promoted as a mechanism to alleviate prison crowding and is in some places self-supporting from probation fees, ISP offers the additional bonus of saving taxpayer's dollars.

Many ISP programs claim to have a strong rehabilitative component. Caseloads are reduced to provide more time for interaction between client and staff. A full range of social services is available to accommodate a client's needs. In New Jersey, 60 percent of ISP participants are involved in drug or alcohol treatment programs, and many others receive other services (Pearson 1988). Probationers in many ISP programs are expected to hold full-time employment, to be actively seeking employment, or to be enrolled in a full-time educational program. Among other rehabilitative benefits claimed for ISP: offenders maintain contact with family and friends; their spouses and children are less likely to be forced to go on welfare; they are spared exposure to criminal subcultures in prison.

The benefits claimed for ISP are so many and so desirable that Professor Todd Clear of Rutgers, one of the leading scholars of community corrections in the United States, has called ISP "the new panacea of corrections" (Clear, Flynn, and Shapiro 1987).

II. Programs

Although many probation programs called intensive supervision exist today or have existed nationwide during recent decades (Banks et al. 1977; Latessa 1979; Byrne 1986) a few have received a great deal of

attention. We examine ISP programs in Georgia, New Jersey, and Massachusetts. These are the most emulated ISP programs in the United States and represent the three different approaches: respectively, a judicially controlled diversion from incarceration, a prison early release program, and a differential case-management system for high-risk probationers.

A. Georgia

Georgia's ISP program has enjoyed tremendous support. More than twenty states have considered or used it as a model for their own ISP programs (Petersilia 1987a, 1987b). Georgia's involvement with ISP dates to 1974. The program now in operation was implemented in 1982 in 13 out of 45 judicial sentencing circuits. By the end of 1985 it had expanded to 33 circuits and 2,322 supervised probationers (Erwin 1987).

1. Program Characteristics. Team supervision is provided to clients by a probation officer and a surveillance officer. The probation officer provides counseling and has legal authority over the probationer, while the surveillance officer monitors the probationer's whereabouts and conduct. It is not uncommon for duties and responsibilities to overlap. Roles have blurred in many teams as surveillance officers find themselves wanting to be helpful and probation officers find themselves reacting to nonconforming behavior. Caseloads are generally limited to 25 probationers per team; in some circuits caseloads of 40 are managed by a probation officer and two surveillance officers (Erwin 1986).

There are three phases to the Georgia program. Satisfactory completion of one phase is required before the probationer graduates to the next. Poor performance in one phase may result in demotion to a previous phase or in return to court for resentencing.

Clients remain in the first phase for at least three months. They are required to have at least three face-to-face contacts with their ISP probation officer each week. Five face-to-face contacts per week may be required if an offender is classified as a "high risk" on a risk/needs assessment scale (based on the Wisconsin model and validated on a sample of Georgia offenders; Banks 1984). The probation officer also makes two collateral contacts per week (either face-to-face or by telephone) with people who have first-hand knowledge of the probationer's activities.

Each offender must be employed, enrolled in a full-time educational program, or actively seeking work. All participants must perform at least 132 hours of community service. A curfew, generally from 10:00 p.m. to 6:00 a.m., is also part of the program.

Phase II generally lasts from three to twelve months. Two face-to-face contacts per week are required, unsatisfied community service must be performed, and curfew is eased by one hour.

Probationers who meet all the requirements of phases I and II successfully go directly into regular probation; the rest enter phase III. One weekly face-to-face day-time contact and one face-to-face evening contact are required. Curfews are imposed only rarely. There is no minimum or maximum length of stay.

2. Evaluation. An evaluation of the program's operation through 1985 was released in 1987 (Erwin 1987). Group characteristics of all offenders sentenced to ISP in 1983 were initially used to select

comparison groups of offenders sentenced to regular probation and incarceration during the same year. The number of cases sentenced to ISP was 542; a breakdown by race, sex, age, crime type, risk score, and needs score is shown in table 2.2.

The comparison group of 753 probationers was selected from offenders sentenced to probation in 1983 matched by age, type of crime, and risk score (Erwin 1987, p. 12).

The incarceration comparison group of 173 prisoners was selected by prison counselors from five institutions who were asked to identify prisoners who would have been sentenced to ISP if the option had been available in their respective circuits at the time of sentencing.

There are a number of problems with use of the comparison groups. The most important are that crucial information on risk classifications on the ISP sample is missing and that the two comparison groups seem in many ways not comparable to the ISP group. Information on risk classification was missing for 99 offenders (18.3 percent) in the ISP group; this subset is excluded from the calculations. If the 99 omitted offenders from the analysis were all classified as something other than "maximum risk," the actual percentage of maximum-risk cases in the 1983 ISP group would have been 23.4 percent (127/542), not 28.7 percent (127/443). This would mean that the ISP group had as many as 5.5 percent fewer maximum-risk cases than did the control groups. Matching on needs scores shows a similar problem. Todd Clear (1987) points out similar problems with an earlier version of the Georgia evaluation.

Noncomparability between the prison and ISP comparison groups was stark. The prison group is much smaller (173 persons vs. 542). Prison comparison group members are twice as likely as ISP probationers to be

black, three times as likely to be female, and half again as likely to have been convicted of crimes against persons or to have a "high" or "maximum" risk classification. In other words, the ISP and prison comparison groups are not very comparable at all. (In private communications, Georgia researchers have expressed their disagreement with the preceding statement; their position is that "risk scores" are the best measure of comparability and that the ISP and prison-comparison groups are closely comparable by that measure.)

A subsample of all three groups was tracked for eighteen months. Summary data are reported in table 2.3. Two hundred cases were chosen from the 1983 ISP and probation samples for tracking by computer selection of the last two digits of their social security numbers. The tracked group in the incarceration sample was not derived from random assignment. It was based on date of release to insure 18 months of tracking. This sample included 97 individuals.

The Georgia evaluators found that "ISP probationers had a lower rate of reconviction for serious crimes against persons than either the regular probation or incarcerated comparison cohorts" (Erwin 1987). This should come as no surprise however. Because the prison comparison group members were much likelier to have been convicted of offenses against persons (15 percent vs. 9.6 percent) and to have higher "risk scores" (77 percent high or maximum vs. 63 percent), they would be expected to be more involved in violent crime. The probation comparison group members, by contrast, though more closely comparable to the ISP group, were supervised much less closely and were therefore less likely to be discovered in nonconforming or criminal behavior. Moreover because the ISP probationers were supervised so closely, 16 percent of

them were revoked either for technical or criminal violations and this sixth of the ISP caseload are probably among the most likely to commit new crimes had they remained at liberty.

From political and public relations perspectives the important finding may be that Georgia's ISP probationers did not commit much serious crime while on ISP. Offenders in the ISP group were reconvicted of fewer serious crimes against persons during an 18-month follow-up than were offenders in either the regular probation sample or the prison sample. Erwin and Bennett (1987, p. 4) report "[T]o date, no IPS probationer has committed a subsequent crime that resulted in serious bodily injury to victims. Of the 2,322 cases admitted to the program, the following serious crime convictions have resulted: 1 armed robbery, 6 simple assaults, 4 simple battery offenses, 1 terrorist threat, 18 burglaries, 19 thefts, and 3 motor vehicle thefts." It thus appears that ISP offenders posed no more threat to public safety in Georgia than do regular probationers.

This may result from Georgia's exceptionally punitive sentencing traditions which make imprisonment a serious risk for persons convicted of minor felonies who have slight or no records. In California, for example, by contrast, imprisonment appears to be reserved mostly for serious offenders; Rand Corporation researchers recently found that 65 percent of felony probationers were rearrested within 40 months, 51 percent were reconvicted (18 percent for serious violent crimes), and 34 percent were reincarcerated (Petersilia et al. 1985, p. 20).

The Georgia-California comparisons suggest that Georgia's low failure rates for its ISP program may not be likely to recur in states that already have much more seasoned offenders in their probation

caseloads. Any ISP program that successfully diverted offenders from incarceration would inevitably involve higher risks to public safety than Georgia experienced.

Eighteen months' tracking of the three groups indicates that the ISP sample had the lowest percentage of reconvictions after rearrest (see table 2.3). Even if the percentage of rearrested offenders is used as an indicator of recidivism, the ISP and regular probation groups fare about the same (37.5 versus 35.5 percent). In contrast, 57.8 percent of the prison releasees sample was rearrested, and 42.3 percent of the offenders in that sample were reconvicted.

There are two alternative interpretations that can be made of these findings. First, assuming the three groups were comparable, intensive supervision was impressively effective at controlling offenders in the diverted group. Second, the groups, and therefore their rearrest rates, are not comparable, and not much can be inferred from the differences in rates.

Our conclusion is that the evaluation data give no firm basis for conclusions about the incapacitative effects of Georgia ISP. As a threshold matter, it would be surprising if the program's frequent and intrusive contacts between probationers and offenders did not reduce their involvement in crime. Because the comparison groups seem noncomparable in important respects and because the absolute rates of involvement in serious crime by ISP-clients are remarkably low, however, it is difficult to conclude much.

Is the program diverting offenders from prison? The remarkably low rates of serious crime by ISP probationers raise the suspicion that many of them are low-risk offenders who would have received probation if ISP

had not been available. The 1983 population of ISP offenders consisted of cases received by "amended incarceration" sentences in which the judge first announces an incarcerative sentence and then purportedly changes his mind (47.1 percent), by direct sentences to ISP (48 percent), and by probation revocations (4.9 percent). It is impossible to assert confidently that direct sentence and probation revocation cases (52.9 percent of all sentences to ISP) are actually diversions. While judges were asked to certify that direct sentencing cases would otherwise have gone to prison without the ISP option, Erwin (1987, p. 8) agrees that such a process "could hardly be considered proof."

It seems reasonable to assume that at least 50 percent of the 2,322 cases placed under intensive supervision were not diversions. This is consistent with the ISP probationers' lower "risk scores" than the prison comparison group's and lesser rates of involvement in offenses against persons. (Georgia researchers in private communication have expressed the view that around 80 percent of ISP clients are "true diversions.")

One of the proofs offered for the claim that ISP is functioning as a diversion is that the percentage of convicted felons sentenced to probation increased by 10 percent between 1982 and 1985 (Erwin and Bennett 1987). This, however, is a non sequitur because ten percent of convicted felons in 1982-85 would total nearly 10,000 persons, a number many times larger than the 2,322 sentenced to ISP in that period. Clearly, Georgia judges were reducing their reliance on prison; whether ISP probationers would have been diverted from prison irrespective of ISP is something the data cannot tell us. During the early 1980s, Georgia established a number of new intermediate sanctions programs,

including shock incarceration, and residential "restitution" and "diversion centers" (Parent 1988). These programs also no doubt received some offenders who would otherwise have been imprisoned.

Clear, Flynn, and Shapiro (1987) add another dimension to the net-widening analysis. They speculate that diverted ISP probationers who are rearrested and reconvicted may incur a prison sentence longer than they would have received if sentenced to prison in the first instance. The underlying hypothesis is that the courts may look especially unkindly on prison-bound offenders who are given, but fail, a second chance. The policy problem is compounded in the case of nonprison-bound ISP offenders who suffer revocation and then go to prison.

Is the program saving money? The evaluators claim that $6,775 was saved per case diverted from prison, and assume that all cases were diverted. The savings estimate is based on the average ISP probationer receiving 196 days of intensive supervision at a cost of $4.37 per day and 169 days of regular supervision at a cost of $0.76 per day, while the incarcerated offender received an average sentence of 255 days at a cost of $30.43 per day.

If the estimates are reasonable, the cost savings would be substantial. The per diem cost for incarcerated offenders, however, is a mean cost derived from dividing the total prison operating costs by existing prison population. The cost of adding another offender to the prison population, however, is a marginal cost. That is, it would not actually cost $30.43 per day to house each additional offender. Actually, and ironically, as the number of incarcerated offenders decreases, the average daily cost of imprisonment per prisoner per day

would increase. (For example, if a prison for 1,000 prisoners cost $10,000,000 per year to operate, the mean annual cost would be $10,000; if the population declined to 900, operating costs would decline only slightly, say to $9,500,000, yielding a higher per capita annual cost of $10,555.)

If Georgia were building new prisons, capital costs would be a significant factor in the cost/benefit analysis. Erwin (1986) claims that the first 2,322 ISP probationers saved the cost of building "at least two new prisons." That claim seems doubtful, for several reasons. First, if only half of the ISP probationers were really diverted from prison, the number of diverted persons to year-end 1985 would be half of 2,322, or 1,161. According to the Georgia evaluators, the average term that would have been served by a diverted offender was 255 days, roughly 70 percent of a year: 70 percent of 1,161 equals 813 person-years. These, however, occurred over a four-year period from 1982 to 1985, which means that an average of 200 beds per year were saved. In addition, nearly 20 percent of the ISP participants were reconvicted and sentenced to jail or prison, and others had their ISP status revoked for breach of conditions. These events also reduce savings in prison beds.

A final question asked by the evaluation team is how well the program has been accepted. The evaluation claims that judges are now among the strongest supporters of the program due to its high degree of accountability. This is because judges know that they can obtain up-to-date information about a case from ISP officers who have frequent and direct contact with clients. Although ISP officers maintain heavy caseloads and irregular hours, morale is reportedly high. Most probation officers who have left the job have been promoted to other

positions rather than having quit the program, and there is a waiting list of officers interested in joining the program (Erwin 1987).

3. Summary. Georgia has one of the best documented and evaluated ISP programs in the nation. It merits close scrutiny which is made easy by the extensive reporting on its evaluation. Is the program successful? It depends. Evidence collected during the evaluation suggests that ISP probationers pose no more threat to the community than do regular probationers. If all of the ISP cases were true diversions, this would indicate that prison-bound offenders could be effectively supervised in the community and would also produce some cost-savings to taxpayers. However, many cases are probably not diversions, and actual savings are probably less sizable than has been suggested.

B. New Jersey

New Jersey's is the best known program for offenders released into ISP from imprisonment. The program, implemented in 1983, was designed to handle an active caseload of 375 to 500 offenders. By June 1987, there were 411 active cases (Pearson 1987, 1988).

1. Program Characteristics. Offenders apply for admission to ISP from prison and have generally served three to four months in prison before they are admitted to ISP. Between the start of the program and June 30, 1986, 4,373 applications had been evaluated in at least one stage of the screening process. Only 16 percent of the applicants had then been admitted to the program, 61 percent had been rejected, and 12 percent were pending. Nearly 10 percent of the first 4,373 applicants withdrew their applications because they felt the program was too

punitive or too long in comparison with the remainder of the prison sentence they were required to serve (Pearson 1988).

The selection process is intended to produce only "low risk" prisoners. There are seven separate eligibility reviews and offenders are dropped (or withdraw) at each stage (Pearson 1987). This is, in effect, a creaming process intended to identify the least threatening imprisoned offenders--almost, in effect, a program to remove from prison those who should not have been there at all.

Six superior court judges, sitting in three-person panels, decide which offenders are admitted into the program, after the applicants have been screened at six earlier stages. As of June 30, 1986, only 18 percent of applicants made it to this seventh stage and a tenth of these were declared ineligible by the judicial screening panels (Pearson 1987, p. 94).

Probation officers are specially trained for ISP casework and are assigned caseloads limited to 25. Each client is seen weekly or more often depending on his status in the program. The program operates 24 hours a day, seven days a week. Probation officers work evenings as well as weekends on a regular basis.

Acceptance into the program is for 18 months, divided into three stages, and unconditional release is granted on completion. The program contains features not unlike those in Georgia.

During the early months of participation, each offender is required to have at least 20 contacts per month with the probation officer. Twelve of the twenty contacts per month must be face-to-face during the first six months. Thereafter, supervision intensity is gradually lessened. During the period covered by Pearson's evaluation, the median

number of monthly contacts was 31 for the beginning stage, 25 for the intermediate state, and 22 for the advanced stage (1987, p. 101).

Like the Georgia program, curfew is also a mandatory component of this program. Participants are required to be home every night from 10:00 p.m. to 6:00 a.m., and late night curfew checks are made to insure compliance.

Employment or vocational training is mandatory for all participants. A return to prison occurs if the participant has not obtained a job or enrolled in a training program without good cause. In addition, at least sixteen hours of community service, usually involving physical labor, must be performed each month.

2. Evaluation. The final report of a major evaluation of the New Jersey ISP program was released in 1987 (Pearson 1987, 1988). The evaluation is divided into two sections: one that examines the performance of the program, and the other that contrasts the experiences of ISP offenders and a comparison group of 132 felons sentenced for ISP-eligible crimes who served ordinary terms of imprisonment and parole (OTI).

Pearson concluded that program implementation is "very good," and is satisfying the requirements of each of the program's major components. For example, during the beginning stage, the median monthly total number of contacts was 31, including 12 face-to-face with the ISP officer, 7 curfew checks, and 4 urinalyses. In addition, 96.5 percent of all participants were employed (at least part-time) during 1985 and 1986, and almost all offenders were satisfying the monthly requirement of 16 hours community service (Pearson 1987, chap. 5).

Because the New Jersey program accepts only offenders who apply for admission from prison, it is promoted as a device for reducing prison crowding by providing a punitive alternative sanction for low risk offenders. In theory, in comparison with the judicially-controlled ISP program in Georgia, there is less reason to suspect that New Jersey's ISP is applied to offenders who otherwise would not have been imprisoned. After all, they must be sentenced to prison in order to apply for the program, and many applications are rejected. However, according to Clear, Flynn, and Shapiro (1987), there is "a growing concern that some judges are 'backdooring' cases into ISP by sentencing borderline offenders to prison while announcing they will 'welcome an application for intensive supervision.' Yet whether the borderline case will be approved by the panel for resentencing remains an open question." Todd Clear (personal communication, 1988) has suggested that if only 1.2 percent of the 20,000 felons sentenced in New Jersey each year receive short prison terms because the judge predicts they will be admitted to ISP, the resulting increase in the prison population would exceed the ISP caseload and more than counterbalance any savings in cash or prison beds. Inasmuch as 40 percent of New Jersey ISP clients have their probation revoked (Pearson 1988), it would not take many "back doored" cases to wipe out any ISP cost savings. Clear does not claim that 1.2 percent of felons are imprisoned in the anticipation that they will later be released to ISP, merely that there are rational reasons why judges might do so, and that even a small incidence of such sentences would greatly alter any calculations of cost savings.

Does the New Jersey program save money? Pearson undertakes what is probably the most comprehensive comparative cost analysis in the

intermediate sanctions literature and concludes that intensive supervision probation is about 30 percent less expensive than if the same offenders were held in prison to the ends of their terms and that "ISP saves roughly $7,000 to $8,000 per offender compared with ordinary terms of incarceration and parole" (Pearson 1987, p. 187). The median number of days served in prison by an ISP offender was 107. Another 449 days were spent in intensive supervision. Prison time is valued at $50 per day and ISP is calculated at $13 per day. Consequently, the ISP program, excluding only capital costs but including the cost of imprisoning those whose ISP is revoked, costs about $17,300 per case.

In contrast, individuals in a matched group who were not released to ISP served a median prison term of 308 days. The median number of days served on parole was 896 at a cost of $2.50 per day. Therefore, the estimated cost per OTI case is about $24,600. The estimated cost savings of ISP in comparison with OTI is about $7,300 per case. If, however, Todd Clear's analysis is even partly right, and a nontrivial number of cases are being sentenced to prison in expectation of release to ISP, these savings may be substantially diminished.

Is public protection being compromised? Problems in the state-wide New Jersey computerized arrest, court processing, and custody data base meant that only rough rates of recidivism could be estimated. In addition, the conclusions based on the comparison of ISP and OTI recidivism rates are of doubtful reliability because of noncomparability between the two groups.

An initial random sampling of 500 prisoners convicted of "eligible" crimes produced a comparison group very different from Pearson's sample of ISP clients. An effort to isolate a more comparable subgroup of 132

produced only rough equivalence. Although the ISP and comparison groups were similar in terms of age, sex, race, drug and alcohol use, and conviction offense, in other important respects they were substantially different. The comparison group had a median of two prior convictions, the ISP group a median of one. Fifty-five percent of the comparison group had previously been incarcerated compared with 31 percent of the ISP group. The comparison group had a higher median risk score (Pearson 1987, p. 131).

The comparative analysis at the end of a two-year follow-up period showed that the ISP group had a reconviction rate of 12 percent (7.5 percent were for felonies) while the rate of the OTI group was 23 percent (14 percent were for felonies). Rearrest rates were also lower for the ISP group. In other words, the "failure rates" of ISP offenders, variously measured, were lower than those of the comparison group (Pearson 1987, pp. 156-57).

Pearson's recidivism analysis, for reasons he makes clear, suffers from serious limitations, including problems of access to data. In addition, we have noted problems of noncomparability between his ISP and comparison groups. At worst, however, Pearson concludes, "we can be confident that ISP at least did not increase recidivism rates" (Pearson 1988, p. 444).

The supervisory probation officers were apparently quite strict in enforcing the many conditions of the ISP sentences. Nearly 40 percent of persons released to ISP are returned to prison for new crimes or for failure to perform community service, honor curfews, or satisfy other conditions (Pearson 1988, pp. 439-40).

3. Summary. The New Jersey ISP program apparently met most of its performance objectives. According to Pearson (1988), the program appears to have been implemented as designed. "Contact" goals were met. Required community service was performed. Offenders participated in a wide variety of treatment programs. More than ninety-five percent obtained and retained jobs. Conditions were enforced. Pearson concludes that reoffending rates were lower than could otherwise have been expected and, at worst, were no worse: New Jersey ISP "provide[s] a level of punishment intermediate between ordinary probation on the one hand and ordinary terms of incarceration on the other hand" (Pearson 1987, p. 8).

C. Massachusetts

Intensive supervision probation is not designed as an alternative to incarceration in Massachusetts. Instead, its goals are to make better use of existing scarce probation resources by focusing them on offenders who most need them and to improve public protection by reducing recidivism (Byrne 1986).

1. Program Characteristics. During the first eighteen months after the program's inception in April 1985, nearly 500 offenders were assigned to ISP by means of use of a risk assessment device that identified them as members of a "very high risk" group. The device predicts rearraignment for a felony or a misdemeanor within a one-year follow-up period. For ordinary probation, the risk assessment is used to identify low-, medium-, and high-risk probationers who receive, respectively, minimum, moderate, and maximum levels of supervision. The

ISP clients fall within the high-risk group as a subgroup with even higher failure rates. Most ISP clients are young males with multiple prior convictions, no stable residence or family life, and alcohol or drug problems (Byrne and Kelly 1988, chap. 4).

Offenders assigned to ISP received more supervision than offenders assigned to lower probation supervision levels. Supervision consists of increased numbers of personal and collateral contacts (ten per month, four direct and six collateral), increased emphasis on mandatory referrals to meet needs related to criminal behavior, and stricter enforcement of probation conditions (Cochran, Corbett, and Byrne 1986). Probation conditions place strong emphasis on public safety and offender rehabilitation.

2. Evaluation. The National Institute of Justice has funded a major evaluation of the Massachusetts experience. The final report will not be available until 1989. Parts of it, however, concerning descriptions of the research design and the initial group of ISP probationers, and an assessment of the program's implementation, are available in draft form (Byrne and Kelly 1988).

a) Design of Evaluation. The Massachusetts design is intended to answer three broad sets of questions. Was the program fully implemented? What was its impact on the probationers who were assigned to it? Did it increase public safety by reducing recidivism rates of the offenders assigned to it?

To answer the implementation questions, the evaluators developed and applied a number of measures of the quantity and quality of supervision provided. To assess impacts on offenders, a number of measures of social functioning and social adjustment were developed. To

assess recidivism, a quasi-experimental research design was developed in which the recidivism patterns of four groups of offenders will be compared. Because the ISP program was established on a pilot basis in 13 courts, other courts are available to be used as controls. In the pilot courts, all 227 "very high risk" offenders were assigned to ISP (the post-test experimental group) and 242 "very high risk" offenders supervised in those courts in a period before ISP was established were assigned to a comparison group (the pre-test experimental group). Equivalent pre-test/post-test groups of "very high risk" offenders were identified in courts that did not establish ISP. Thus, the research design will allow a number of comparisons--between the very high risk probationers in the ISP courts with and without ISP and between very high risk probationers in non-ISP courts during the same period. In general, the four groups are highly comparable with respect to risk classification, as would be expected since they were all identified as "very high risk" offenders by the same risk classification device.

The Massachusetts evaluation should provide much the strongest evidence to date of the public safety effects of ISP for two reasons. First, the Massachusetts method of assigning offenders to ISP is much more consistent than in Georgia, where numerous judges make ad hoc assignment decisions, or in New Jersey. Second, Massachusetts's comparison groups are much more fully comparable than those in New Jersey and Massachusetts. Differences in the experience of the four groups are likelier to signify real differences and not merely defects in research design or matching of comparison groups.

The Massachusetts study, when it appears, should add important new insights to existing understanding of the effects of ISP programs.

b) Offender Descriptions. Earlier we mentioned that Georgia's ISP clients seem a markedly nonthreatening lot and that New Jersey's selection process seems designed to identify nonthreatening state prisoners who probably should not have been sent to prison in the first place. Massachusetts's ISP program deals with a much higher-risk set of offenders than either of the other programs. Eighty-six percent have three or more prior convictions.

The differences are most stark in reference to violent, alcohol, and drug offenses. More than a quarter (26.4 percent) of Massachusetts's ISP probationers were convicted of offenses against persons, compared with ten percent in Georgia and none at all in New Jersey. Only four percent of Massachusetts's ISP probationers were convicted of alcohol-related offenses, compared with 20 percent in Georgia. This suggests that Georgia's ISP is being used heavily for drunk-driving cases--a category of offenders who present low risks to public safety except when they are allowed to drink and drive. Fourteen percent of Massachusetts's ISP probationers were convicted of drug-related offenses, compared with 46 percent in New Jersey and 21 percent in Georgia. This suggests that the latter two programs are heavily using ISP for drug traffickers who do not have histories of violence (Byrne and Kelly 1988, table 1.6).

At the time of writing, findings have not been published on the evaluations of Massachusetts ISP on offenders' social functioning or recidivism. Given the serious nature of the ISP probationers' crimes and criminal records, this evaluation should provide important insights into the effectiveness of intensive supervision at changing offenders' behavior.

c) Implementation. The implementation analysis of the preliminary Massachusetts evaluation showed three important patterns (Byrne and Kelly 1988, chapter 4). First, ISP offenders in Massachusetts did not receive the full number of supervision contacts promised by the program plan. Only one percent received the full complement of monthly contacts and only a quarter experienced what the evaluators called "moderate implementation." Seventy-five percent experienced fewer than half the prescribed supervision contacts.

Second, the program was much more fully implemented in terms of style and quality of supervision and services provision. In this "helping" or service part of ISP, 40 percent of probationers received the full prescribed level of assistance, nearly 50 percent received a moderate level, and around ten percent received a low level.

Third, the program was most fully implemented in terms of enforcement of conditions and initiation where appropriate of revocation procedure. Eighty-three percent of offenders experienced high levels of enforcement.

3. Summary. The Massachusetts program deals with serious offenders, most of whom have lengthy prior records and many of whom have been convicted of violent crimes. The evaluation is thoughtful and well-designed and when it is completed should offer important additions to current understanding of the operation of ISP programs.

* * * * *

III. Conclusions

The descriptions of the three ISP programs indicate some of the variation that exists in program objectives, operations, and evaluations. The kinds of offenders admitted into the programs vary from state to state and the length and requirements of ISP differ. Most of the programs are structured around a set of phases or stages that each client must successfully complete before graduating to regular probation or unconditional release. All of them depend on reduced caseloads to increase surveillance and to increase attention paid to the special needs of each client.

The Georgia, New Jersey, and Massachusetts programs provide a cross-section of the existing ISP programs. A number of policy issues stand out.

First, is ISP overkill? The New Jersey selection system is so tight and careful that it might better be used to identify low-risk prisoners who should simply be released outright from prison or sentenced in the first instance to ordinary probation. Operating costs of $17,300 per case may simply be more than these cases warrant. That money might be better spent monitoring either higher-risk prison releasees or higher-risk regular probationers, of whom, in an urban industrial state like New Jersey, there must be many. In Georgia, the extraordinarily low rates of commission of serious crimes by ISP clients may suggest that they too represent a "low-risk" group that might more sensibly and more cost-effectively be sentenced to ordinary probation.

Second, is ISP too faddish? We noted earlier the conventional view that 20 states have patterned their ISP program after Georgia's. Yet

Georgia's ISP offenders are on average not threatening, as is evidenced by the one percent reconviction rate for violent crimes. Their low-risk nature raises doubts whether Georgia's reconviction and recidivism success warrants adoption of similar programs in jurisdictions like Chicago (Lurigio 1987) and the State of Illinois (Thomson 1987), where much more threatening offenders routinely receive probation sentences. These higher-risk offenders may be more appropriate targets for a case management system like Massachusetts's, in which probationers who present especially high risks received a heightened level of supervision.

Third, do ISP programs that serve as sentencing options available to judges inevitably produce inappropriate net-widening? The Georgia "alternative sentencing" approach is patently vulnerable to net-widening and informed observers hypothesize that even programs like New Jersey's "early release" approach are being manipulated.

Fourth, given the doubts expressed in the preceding three questions, how believable are the projections of estimated cost savings claimed by ISP proponents? None of the evaluations convincingly demonstrates that substantial cost-savings have in fact resulted directly from the ISP programs themselves.

At this point in the development of ISP, demonstrated success is less ample than its widespread adoption might suggest. However, its virtues and claimed successes have certainly not been disproved and future evaluations of these and other states' programs may much more convincingly demonstrate that the such programs can achieve what their proponents promise.

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Table 2:1

Interstate Variation in Officer/Client Contacts for ISP Programs

State	Type and Number of Contacts Direct	Personal Collateral	Curfew Checks	Monthly Total Contacts only
Texas	2/month	varies, non-specific	---	2
Nevada	2/month	1/month (Employer)	---	3
Ohio	2/month	2/month	---	4
Virginia	1-5/week	varies, non-specific	---	4-24
Oklahoma	1/week	---	---	4
Washington	1/week	2/month	---	6
New York	1/week	1/week	---	8
Oregon	2/week	varies, non-specific	unannounced name visit	8
South Carolina	1/week	1/week (Employer)	---	8
Maryland	(min.) 2/week	---	random telephone calls	10
Massachusetts	10/month	---	---	10
Vermont	1/week	6/month	---	10
Utah	3/week	---	---	12
Colorado	2/week	1/week (Employer)	1/month	13
Connecticut	3/week	1/week	---	16
Louisiana	4/week	---	2/week	16
Pennsylvania	2/week	2/week	---	16

Table 2.1 (continued)

State	Type and Number of Contacts Direct	Personal Collateral	Curfew Checks	Monthly Total Contacts Only
Kentucky	2-3/week	2/week	random	18
Arizona	4/week	1/week (Employer)	---	20
Iowa	5/week	---	1 face-to-face 3 phone checks	20
Kansas	3-5/week	---	---	20
New Jersey	5/week	---	5/month	20
Indiana	7/week	---	---	22
Illinois	5/week	1/week	1/week	24
North Carolina	5/week	1/week	3/week	24
Tennessee	5/week	1/week	2/week	24
Florida	6/week	1/week	2/month	28
Georgia	5/week	2/week	2/month	28
Missouri	5/week	2/week	---	28
California	7/week	---	---	30
Idaho	7/week	1/week	(varies by offender)	32

(Source: Byrne 1986, pp. 13-14)

Note: Direct contacts include face-to-face and telphone contacts. Intrastate variation is ignored in this preliminary summary.

Table 2.2 PROFILE OF IPS AND PROBATED/INCARCERATED GROUPS SENTENCED DURING 1983

		IPS		Probated Comparison		Incarcerated Comparison	
		No.	Percent	No.	Percent	No.	Percent
Race	White	389	71.8%	506	67.2%	84	48.6%
	Black	150	27.7%	245	32.5%	89	51.4%
	Hispanic/other	2	0.4%	2	0.3%	0	0%
Sex	Male	447	88.0%	625	83.0%	106	61.3%
	Female	65	12.0%	128	17.0%	67	38.7%
Age	16-20	63	11.6%	91	12.1%	40	23.1%
	21-25	193	35.6%	273	36.3%	49	28.3%
	31-30	130	2.4%	181	24.0%	40	23.1%
	31-35	69	12.7%	100	13.3%	18	10.4%
	36-40	39	7.2%	40	5.3%	14	8.1%
	41-45	20	3.7%	30	4.0%	3	1.7%
	46-50	10	1.8%	15	2.0%	3	1.7%
	51-Over	18	3.3%	23	3.1%	6	3.5%
Crime Type	Against Persons	52	9.6%	77	10.2%	26	15.0%
	Against Property	274	50.6%	362	48.1%	98	56.6%
	Drug-Related	131	24.2%	147	19.5%	32	18.5%
	Other	85	15.7%	167	22.2%	17	9.8%
Risk Score	0-7 (minimum)	35	7.9%	49	6.5%	9	5.2%
	8-14 (medium)	128	28.9%	219	29.1%	31	17.9%
	15-24 (high)	153	34.5%	267	35.5%	87	50.3%
	25-Over (maximum)	127	28.7%	218	28.9%	46	26.6%
	Missing Value	99	[illegible]	0		0	
Need Score	0-7 (minimum)	92	21.4%	159	21.1%	38	22.0%
	8-14 (medium)	153	36.6%	327	43.4%	59	34.1%
	15-24 (high)	137	31.9%	221	29.3%	64	37.0%
	25-Over (maximum)	48	11.2%	46	6.1%	11	6.4%
	Missing Value	112	[illegible]	0		1	0.5%
Total Number of Cases		542		753		173	

* Some values were missing. Percentages are based on cases with data available.

Source: Erwin (1987, p.15)

Table 2.3 Outcomes for Offender Groups after 18-Month Tracking by Risk Classification[a]

Offender classification	No. of Cases	Rearrested		Reconvicted		Sentenced to jail or prison		Incarcerated in State prison	
Low risk		No.	%	No.	%	No.	%	No.	%
IPS probationers	12	5	41.6%	3	25.0%	3	25.0%	2	16.7%
Regular probationers	11	3	27.0%	0	0.0%	1	9.1%	1	9.1%
Prison releasees	13	6	46.2%	5	38.5%	4	30.8%	3	23.1%
Medium risk									
IPS probationers	62	21	33.9%	10	16.1%	10	16.1%	9	14.5%
Regular probationers	58	20	34.5%	14	24.1%	9	15.5%	6	10.3%
Prison releasees	12	7	58.3%	6	50.0%	4	33.3%	2	16.7%
High risk									
IPS probationers	69	24	34.5%	19	27.5%	14	20.3%	11	15.9%
Regular probationers	73	22	30.1%	18	24.7%	13	17.3%	10	13.7%
Prison releasees	47	27	57.4%	21	44.7%	10	21.3%	6	12.8%
Maximum risk									
IPS probationers	57	25	43.6%	15	26.3%	12	21.1%	11	19.3%
Regular probationers	58	26	44.3%	16	27.6%	11	19.0%	8	13.3%
Prison releasees	25	16	64.0%	9	36.0%	7	28.0%	6	24.0%
Total for all risk groups									
IPS probationers	200	75 / 80	37.5% / 40.0%	37	18.5%	39	19.5%	33	16.5%
Regular probationers	200	71	35.5%	48	24.0%	34	17.0%	25	12.5%
Prison releasees	97	56	57.3%	41	42.3%	25	25.8%	17	17.5%

* Numbers and percentages do not add across the columns because the categories are separate but not mutually exclusive. A percentage of those offenders arrested are convicted. Some of those convicted are placed in jail while others are returned to prison.

Risk scores are based on a Wisconsin instrument: scores are 0-7 Low Risk, 8-14 Medium Risk, 15-24 High Risk, and 25 and over Maximum Risk.

Source: Erwin and Bennett (1987, p.4).

Chapter 4: House Arrest

House arrest, also called home incarceration or home detention, is a criminal justice sanction that limits the geographical freedom of an individual to his or her residence during specified periods of time. The daily duration of the restriction can be for a few hours or for the entire day. The sentence can be imposed for a few weeks or a few years.

House arrest as a distinct punishment should be distinguished from compliance with curfews, which are often imposed as conditions of regular or intensive probation. Curfews generally require that the offender be home during specified hours of the day, often from 10:00 P.M. to 6:00 A.M., as one among several conditions of probation. House arrest, by contrast, generally requires that the offender be at home 24 hours a day or except when at work or in transit to or from work. House arrest is intended to be punitive and, in effect, to convert the offender's home into a prison.

Some writers use the term "home incarceration" to refer to 24-hour-a-day house arrest and "home detention" to refer to programs that permit the offender to leave his house for work, or school, or treatment (Hofer and Meierhoefer 1987; Ball, Huff, and Lilly 1988). This distinction between "incarceration" and "detention" is no doubt useful for some purposes. For the purposes of this monograph, however, the more familiar generic term "house arrest" seems to us generally adequate. Sometimes we use "home detention" to refer to house arrest conditions that permit the offender to leave his residence for approved purposes.

House arrest should also be distinguished from intensive supervision probation. Joan Petersilia reports, "In general, house arrest programs are designed to be much more punitive than intensive probation programs" (1987, p. 33). Although home detention or curfew compliance may be a condition of an ISP sentence, they are analytically distinct from house arrest as an independent sanction. In house arrest per se, the confinement is the sanction and the supervising officer's primary function is to make sure the arrestee remains confined at home. In ISP, by contrast, curfews or home detention conditions are components of a package of supports and controls which may also include drug or alcohol treatment, counselling, community service, and receipt of various social services from the probation officers.

The diversity of interactions among ISP, home detention, and curfews is shown by James Byrne's 1986 survey of ISP programs in 32 states (Byrne and Kelly 1987). In 18 states, curfews or home detention were standard elements of ISP, in eight they were optional conditions within the probation officer's discretion, and in eight they were special conditions to be imposed by the judge. Byrne's tables suggest that these conditions are generally relatively flexible and that many take the form of 10:00 P.M. to 6:00 A.M. curfews.

House arrest can be served as a stand-alone sentence or as part of a punishment package. It can be administered at any stage in the criminal justice process--as a condition of pretrial release, as a diversion from jail or prison, as part of a split sentence, or as a condition of parole. The flexibility of house arrest allows it to be tailored to the needs of an individual offender. Its use has been advocated and tried for special categories of offenders who are

unusually ill-suited to conventional incarceration: victims of AIDS, pregnant women, and persons with minor mental handicaps.

Flexibility makes house arrest an attractive sanction in the current era of experimentation with intermediate punishments. Most states have experimented with, or are planning, some form of house arrest to alleviate prison crowding.

House arrest programs can be partitioned into two types: high volume programs for convicted felons diverted or released from prison; and low volume programs generally for drunk drivers and persons convicted of misdemeanors and minor felons and enforced by electronic monitoring. Among the high volume programs, Florida's community control/house arrest program handles more than 6,000 offenders at any one time; more than 20,000 offenders have been sentenced to the program since its initiation in 1983. Oklahoma's program, which is used as an early release system from prison, has involved more than 7,000 people with approximately 850 people in the program at any one time. Unfortunately, neither program has been the subject of a major independent evaluation and, with few exceptions, departmental management statistics are the only source of systematic empirical evidence on the programs' operation and effects.

By contrast, there have been a number of evaluations of low caseload house arrest programs for drunk drivers and misdemeanants (Clackamas County, Oregon: Jolin 1987; Kenton County, Kentucky: Lilly, Ball, and Wright 1987; San Diego, California: Curtis and Pennell 1987).

Because house arrest programs are relatively new, program development and implementation generally receive higher priority than research in competition for scarce financial resources. As a result,

there is no significant evaluation literature to document program successes and failures. The quality of evaluations suffers from a lack of experimental studies, or use of suitable controls and comparisons with matched groups of offenders. The resulting analyses tend to be post hoc generalizations that remain unsubstantiated by the scant data offered as corroboration.

While the concept of house arrest is far from new, some of the techniques for ensuring compliance are. No sanction can be credible--with criminal justice officials, or the general public--unless mechanisms exist for policing compliance. The whereabouts of clients on house arrest can be checked by unannounced visits to the offender's residence, by interviews with friends, neighbors, and employers, by random telephone calls, or by active or passive electronic monitoring that determines whether an offender is home when not otherwise engaged in some approved activity.

Because electronic monitoring has gained such widespread acceptance and usage, and because it is so intimately associated with house arrest, the two are frequently discussed interchangeably, with resulting confusion and imprecision. House arrest and electronic monitoring are not the same thing. House arrest is a type of criminal justice sanction; electronic monitoring is a set of technologies for tracking people or verifying that they are where they are supposed to be. In this chapter we discuss house arrest as a punishment. The uses of electronic monitoring in corrections are discussed in Chapter 5.

I. A Sampling of House Arrest Program Diversity

The literature on house arrest programs does not adequately showcase the diversity of programs being tried or considered across the nation. Newspaper reports and magazine articles hint at the range and creativity of use of such sentences. In dramatic cases, judges have sentenced slumlords to live in their own rat-infested apartments. House arrest has been used to provide privacy and security to AIDS-afflicted or pregnant prisoners. However, the focus here is on describing and discussing some of the better known programs for which some evaluation findings are available.

A. Florida's Community Control House Arrest Program

Florida's house arrest program is much the largest and best known in the country. Caseflow numbers--20,000 "community controllees" to date and 6,000 at any one time--dwarf all other existing house arrest programs. Specifically defined and designed as a diversionary alternative to imprisonment, Florida's community control house arrest program was formalized by legislation in 1983 (Flynn 1986). The rationale was to permit selected offenders to serve their sentences in their own homes and thereby provide a "safe diversionary alternative to incarceration." Placement in the program is controlled by the sentencing judge. Three broad categories of offenders are eligible: persons convicted of nonforcible felonies, probationers and parolees charged with technical or misdemeanor violations, and a highly elastic

category, "others deemed appropriate" by the sentencing judge (Wainwright 1984).

Offenders, or "community controllees," are required to perform 150 to 200 hours of community service, make restitution payments to their victims, pay monthly supervision fees of $30-$50, be employed so as to support themselves and their dependents, keep a daily log of their activities, and comply with restrictions on their mobility.

Surveillance to assess compliance is accomplished by specially trained community control officers whose caseloads are limited to twenty clients. Officers are supposed to make at least twenty-eight personal and collateral contacts per month. These contacts occur on weekends and holidays, as well as on weekdays.

Although electronic monitors were not originally used in this program, telephone robots that make calls with prerecorded messages to client's homes have been used in south Florida. Pilot projects are planned to investigate use of electronic monitors; the Florida legislature allocated $418,000 in February 1987 to purchase or lease electronic monitors to provide around the clock surveillance.

Very little has been published on the operation or outcomes of the Florida program. An initial description and commentary was published during the program's first year (Wainwright 1984). A three-page article by Leonard Flynn, director of the Probation and Parole Division of the Florida Department of Corrections, appeared in Corrections Today (Flynn 1986). The Department prepared a brief three-year report presenting aggregate case-flow statistics (Florida Department of Corrections 1987). An informal evaluation was completed in 1986 by researchers at the University of South Florida (Florida Mental Health Institute 1987).

These reports concur in their conclusions that the program has been reasonably well-implemented, that most community controlees were prison-bound, that 75 to 80 percent of offenders successfully complete the program, and that the program has saved the state of Florida tens of millions of dollars in prison operations and maintenance. The interesting question is, how many of these findings should be believed?

At the administrative level, the Florida program has apparently achieved many of its objectives: the target percentage of probation and parole staff to be reassigned to the community control program was attained, the first year's goals of 1,700 cases and caseload ratios under 20 to 1 were met, and during that first year there was an average monthly decline in prison commitments of 180 commitments. Sentencing guidelines were implemented in late 1983 and their imposition may have played a role in reducing commitments to prison. It is also possible that judges were independently responding to publicity and lawsuits about prison crowding in Florida.

Were house arrestees true diversions from prison? The Department's evaluators say yes, mostly. The data are less clear. To answer this question, the evaluators scored the characteristics of each client's offense by reference to the Florida sentencing guidelines and found that 72.6 percent of the offenders assigned to house arrest during the period October 1983 - September 1984 were actual diversions from prison. There are two problems with this analysis. First, 59.8 percent of the total community control caseload fell within a <u>discretionary</u> guideline cell in which the judge was free to impose sentences either to community control or to prison. That the judge <u>could</u> have ordered incarceration does not mean that he <u>would</u> have done so. To count as diversions cases for which

the guidelines expressly specified "community control" as one of the presumptive dispositions seems, at the least, optimistic. During that first year, only 12.6 percent of controllees were offenders for whom the guidelines unqualifiedly presumed prison to be the appropriate sentence. Second, the Florida guidelines have been unpopular with judges since they were first promulgated and it is unclear how closely guidelines' presumptive sentencing standards mirrored traditional sentencing norms in Florida or how likely Florida judges then were to defer to the guidelines (Holton 1987).

For the reasons outlined in the preceding paragraph, we consider the department's method for calculating diversions inherently suspect. Nonetheless, based on a sample of 5,512 cases for the program's first three years, using that method, the department estimates the percentage of "bona fide" prison diversions at 66.9 percent. This would mean that 12,010 of the 17,952 offenders assigned to the program as of March 31, 1987 were actual diversions from prison. According to the department, county jail diversions and regular probation cases that the sentencing judge thought needed closer supervision accounted for the remaining 33.1 percent of the client population (Florida Department of Corrections 1987, p. 10).

Are offenders successful in the program? It is hard to tell. The department uses a number of success measures. Under one measure, the number of offenders in the program compared with the number of revocations, the success rate through September 1986 was 82.3 percent. Under another measure, the number of "controllees" compared with the total number of revocations and absconders, the success rate is 80.9 percent. Under a third measure, comparing the number of "successful

terminations" plus current controllees, with the number of revocations the success rate is 75 percent. Other success rate measures produced figures ranging from 64.3 percent to 93 percent.

All of these success rates are misleading. There is a threshold conceptual problem: there is no way to know what any right or ideal success rate (however calculated) might be and there is therefore no norm to which any apparent success rate can be compared. There is also a fundamental analytical problem with all the measures used--they all use data on all controllees in the program through September 1986. When success is measured as the number of offenders ever placed in the program compared with the number of revocations, the effect is to understate the failure rate. Many currently in the program may be relatively new to it and may suffer revocation later. A converse measure comparing all successful terminations with all revocations overstates failure rates. By definition all successful terminations survived the entire confinement period; many revocations must occur early, which has the effect of charging groups of offenders in the program in the earlier years with the misdoings of members of later groups.

The most valid success measure would simply report the ratio of successful terminations to revocations among all persons, or samples of persons, who entered the program long enough ago that none of them remain under house arrest. No measure remotely like this was used and accordingly we can reach no conclusions about "success." Of nearly 2,500 revocations during the first three years, fewer than a thousand had been charged with committing a new misdemeanor or felony; this is about 6 percent of the 14,200 offenders in the program to that date;

this seems to us a low rate which suggests that the house arrest offenders come preponderantly from low-risk groups. Contrast this 6 percent new crime rate with Joan Petersilia's finding that 65 percent of her representative sample of California felons sentenced to probation in 1980 were rearrested within 40 months; 51 percent were reconvicted (18 percent for serious violent crimes), and 34 percent were reincarcerated (Petersilia et al. 1985, p. vii).

Did the program reduce prison populations? The department says yes, relying on statistics that showed a decline in prison commitments of 2,160--180 per month--during the program's first year. Correlation is not, however, causation, and other developments besides house arrest could affect prison commitments. These developments might include the effects of sentencing guidelines or efforts by sentencing judges to alleviate prison crowding by sending fewer people to prison. However, even if house arrest did reduce the level of prison commitments, the effect was short-lived. The proportions of Florida offenders imprisoned, placed on probation, and placed in house arrest over a four-year period are shown in table 3.1. In 1982-83, 26.4 percent were incarcerated; in 1985-86, 27.4 percent. The percentage sentenced to house arrest seems entirely to have come from persons who in former years would have been sentenced to probation. Given these proportions, assuming the mix of crimes and criminals in Florida looked much in 1986 as they did in 1982, it seems hard to conclude that house arrest significantly reduced prison commitments or crowding.

Was the program cost effective? The Department assesses the cost of house arrest at $2.86 per day per offender and the cost of imprisonment at $31.50 per day per offender, and concludes: "If only 50

percent of all cases placed in Community Control (7,100 cases) are counted as bona fide diversions, the annual savings in operation costs alone would total $74,220,560. This does not include construction costs for new institutions" (Florida Department of Corrections 1987, pp. 14-15).

A separate analysis by the Florida Mental Health Institute (1987) estimated that 4,600 cases were diverted at an annual cost savings of $27,154,000.

The department's estimate is entirely far-fetched. It gives no basis for its estimate of 50 percent "true diversions," ignores the costs of incarcerating 3,700 people whose house arrest was revoked, and applies to a one-year operating cost analysis all the purported true diversions over a three-year period. The analysis underlying the Florida Mental Health Institute analysis is not given and we cannot accordingly assess it. There appear to be so many empirical imponderables, however, that any cost-savings estimates must be largely guesswork.

It is a pity that the Florida house arrest program's operation and effectiveness are so poorly documented. Its size, longevity, and political credibility, together with its general acknowledgment as the leading program of its type in the country, suggest that something important and worthwhile is happening. The evaluation reports do not confirm the program's effectiveness.

Florida's program of community control has been widely heralded as a significant success in the search for workable intermediate sanctions that simultaneously reduce prison crowding and protect public safety. Florida's program is the largest in the nation, has received much

national attention, and is the model that most jurisdictions look to when considering adopting house arrest (Petersilia 1987). However, its administrator and principal proponent candidly comments that this type of program is not a panacea for prison and jail crowding (Flynn, 1986, p. 10).

B. Oklahoma's "Back Door" House Arrest

As development of intermediate sanctions continues, various jurisdictions become widely recognized as prototypical cases. For community service, New York's Vera Institute project is the prototype. For the three types of ISP, Georgia (alternative to prison), New Jersey ("back door" release from prison), and Massachusetts (probation risk management) are the prototypes. For house arrest as an alternative to prison, Florida plays that role. For "back-door" early release house arrest programs, Oklahoma is the unchallenged leader. Unfortunately, the literature on Oklahoma's program is even thinner than that on Florida and consists of a 1986 Corrections Today article by Larry Meachum, the corrections commissioner, and a brief paper presented at an academic conference (Sandhu and Dodder 1986).

In Oklahoma, a political and legislative decision was made to relieve prison crowding by transferring prisoners in the last stages of their prison terms into their homes and in effect, counting their homes as prison cells.

More than 4,000 Oklahoma prisoners have been released from prison ahead of schedule into house arrest. In April 1985, there were 963 offenders on house arrest and the enabling legislation allowed the

department of corrections to grant early release into house arrest of up to 15 percent of the total prison population.

Oklahoma's program is unusual in several ways. First, there is at present a negligible risk of net-widening because all house arrestees come from prison at the department's discretion. It seems most unlikely that Oklahoma judges are sending offenders to prison, whom they would not otherwise imprison, solely because the judge expects the offender to be released early to house arrest. Second, as prison releasees, they are a much higher risk group of offenders than characterize most intermediate sanctions. Third, the department has great latitude over release decisions.

Under the governing legislation, a prisoner must have served 15 percent of his maximum sentence before he becomes eligible for release and be within 27 months of discharge for a nonviolent offense and 11 months of discharge for a violent offense. Sex offenders are ineligible. Finally, persons denied parole within the preceding six months are ineligible (Sandhu and Dodder 1986).

Each house arrestee is jointly supervised by a correctional case manager and a community correctional officer. Once released to house arrest, offenders are subject to two or three random field contacts per week, regular meetings with the probation officer, and drug testing. They must pay $45 per month in supervisor fees and restitution (Petersilia 1987, pp. 39-41).

Between October 1984 and October 1985, 2,404 offenders were released from the program. Sixty-seven percent completed the period of house arrest successfully. Five percent of all house arrestees fail to complete the program because they have committed new crimes and another

5 percent because they abscond. Sandhu and Dodder (1986) compared a sample of 99 house arrestees with a sample of 55 community treatment center (CTC) residents. They report that the house arrestees were slightly more successful at completing their program than were CTC residents, but that the difference was not statistically significant (78.8 versus 72.7 percent).

Overall, the Oklahoma program seems to be a successful strategy for reducing prison crowding. It is capable of reducing the prison population by 15 percent without greatly endangering public safety. It may save money overall, but this cannot be known without access to reliable figures. Still, and recognizing that a single person diverted or removed from prison does not save the state the average cost of one prisoner's incarceration, the cumulative financial effect of 1,000 prisoners released early at any one time must be substantial. And because house arrestees pay a supervision fee, the net cost to the state of supervising their time in the community is less than it might have been.

C. Home Incarceration in Kenton County, Kentucky

As early as 1984, a bill was introduced into the Kentucky General Assembly to provide statutory authority for home incarceration with electronic monitoring. For political reasons, the bill was "killed." House arrest was implemented, however, in a manner that did not require legislative support. A new bill was passed and signed into law in April 1986 (Lilly, Ball, and Wright 1987).

Although the primary objective of the Kentucky program was to reduce jail crowding, whether an offender was sentenced to house arrest depended on the sentencing philosophies of the judges involved. Both misdemeanants and felons convicted of nonviolent offenses were eligible.

Offenders who were selected and who decided to participate in the program were required to wear an electronic transmitter strapped to an ankle. An interruption signal was sent from the transmitter to a host computer via telephone lines when the user strayed more than 150 feet from his telephone. In addition, clients were expected to maintain a telephone and to pay a supervision fee that was based on a sliding scale of up to 25 percent of their net weekly household income. No fees were collected from individuals whose net weekly household income was less than $100. Offenders were also expected to participate in treatment programs, to perform community service, to pay restitution, and to have a job or participate in a job training program (Lilly, Ball, and Wright 1987).

Was the program a success at diverting offenders from jail? Judges were asked if they would have sentenced offenders to jail if the program had not been a sentencing option. Their responses were quite mixed and they observed that available jail space and whether the offender was employed at the time of sentencing would have influenced their decisions.

Certainly, the small number of offenders who participated in the program between mid-1985 and mid-1986--there were only 40--did not have any noticeable effect on reducing jail crowding. The county jailer commented that the option was not used often enough as a front-end alternative and that it was not used enough as a condition of work

release out of jail (Lilly, Ball, and Wright 1987). The evaluators concluded that while district court judges did use home incarceration as a sentencing option they did not employ it as an alternative to jail.

How common was failure? Three people were removed from the Kenton County house arrest program. In one instance, an individual's inability to pay telephone bills resulted in removal from the program. The two additional removals were for direct program violations and resulted in the individuals being sent to jail. Both offenders were arrested for new offenses for which they had originally been convicted--DUI and operating a motor vehicle after license suspension. They were caught by the monitor; corroborative evidence was used to reconvict them.

Based on the two removals for new offenses, the evaluators estimate that the failure rate was 5.7 percent. A control group of offenders jailed in 1984 and matched by age and sex with the house arrest group on the basis of prior convictions, exhibited a recidivism rate of 20 percent. The evaluators conclude: "[T]his may mean that home incarceration is more effective than jail," (Lilly, Ball, and Wright 1987, p. 197). However, due to the small sample size and possible preferential treatment given to one of the individuals who reoffended, the evaluators conclude further that: "it is not possible at this time to determine if home incarceration is more, less or equal to jail in effectiveness" (Lilly, Ball, and Wright 1987, p. 202).

Did this program achieve financial success? Direct start-up costs totalled $27,043 for hardware, software, postage, phone, and computer training. Indirect costs included part-time salaries for an administrative assistant and a probation/parole officer, and mileage. Total program cost was estimated at $42,568. However, the program

evaluators revised this estimate downward to $27,068 based on the observation that salaries did not involve the expenditure of new funds.

Program savings equalled $44,252 based on the premise that 1,702 days of jail incarceration (valued at $26 per day) were saved through house incarceration. Given the evaluator's estimate that the program cost 27,068, then $17,184 was saved through house arrest. In addition, 83 percent of the program's clients paid supervision fees totaling $6,377. The evaluators conclude from these data that home incarceration has the potential for costing less than jail time (Lilly, Ball, and Wright 1987, p. 192). The data do lend themselves to cautious optimism; however, as with other cost/benefit analyses of intermediate punishments, this one is based exclusively on crude estimates of actual expenditures and revenues. Other costs, such as the costs of reprocessing the three removals from the program or the costs of job training and treatment in Alcoholics Anonymous are not considered.

There are several other points about the Kentucky program that merit mentioning. First, the enabling legislation passed in 1986 provides a broad definition of "home" to include hospitals, hospices, nursing centers, half-way houses, group homes and residential treatment centers (Lilly, Ball, and Wright 1987). This definition, at least in principle, increases the diversity of special needs individuals who might qualify for the house arrest program but, who, for a variety of reasons, were incapable of maintaining a private residence at the time of conviction.

Second, sentences to house arrest were approximately one third as long as the original sentences to the county jail. Average sentence

length varied depending on offense severity; the majority ranged between 28 and 49 days.

Third, although jail sentences were generally three times longer than house arrest sentences, jail crowding resulted in offenders serving only a portion of their time behind bars. For this reason, and because jailed offenders did not have to pay supervision fees or worry about supporting themselves while serving their sentences, two offenders who were offered the house arrest option refused it. The evaluators quoted one judge as stating, "[A]s long as the jail is crowded, home incarceration cannot be tested because jail is a good deal" (Lilly, Ball, and Wright 1987, p. 194).

D. In-House Arrest Work Release in Palm Beach County, Florida

Unlike the Florida and Kenton County programs, the Palm Beach house arrest program was intended to remove people from jail early rather than to keep them out altogether. Initiated as a pilot program in 1984, the Palm Beach County, Florida house arrest program was designed as a jail release option to alleviate crowding in the county stockade (Palm Beach County, Florida Sheriff's Department 1987). The county has operated a work release program for fifteen years (Davis 1987, personal communication). Inmates who volunteered for the pilot program had successfully to complete a portion of their work release sentence, have a residence within the county with a telephone, and not be convicted of any of the following charges: murder, rape, child molestation, armed robbery, drug crimes, sexually related crimes, and vehicular homicide (unless the victim's family gave written consent).

In addition to submitting to electronic monitoring, each inmate was required to pay a daily fee of $9.00 and to submit to a weekly inspection of the strap holding the anklet transmitter in place. A sponsor, such as a family member or friend, was considered beneficial but was not a requirement for eligibility to the program.

Was this program strictly used as an alternative to incarceration? Analysis of data collected between December 1984 and December 1985 shows that 87 individuals participated in the house arrest program. All but two of the participants had been sentenced to work release. The exceptions included two women with AIDS who were court-ordered to house arrest at their pretrial hearings (Palm Beach County, Florida Sheriff's Department 1987). For a program this small and this new, it is highly unlikely that judges were sentencing offenders to jail with the presumption that they would be offered work release coupled with house arrest.

What was the failure rate? Twelve offenders were removed from the program--three for serious violations and nine for lesser ones (Palm Beach County, Florida Sheriff's Department 1987). The serious problems included two arrests on new charges and one escape. The role of the electronic monitor in detecting violations of the conditions of house arrest was not described. The nine lesser violations were for problems such as loss of job, loss of transportation, and problems at home. Only the category of "problems at home" was unique to the house arrest program. The disposition of offenders with lesser violations was not mentioned.

Depending on what number is used as the base, the total number of participants (there were 87) or the total number no longer in the

programs as of February 1986 (there were 73), the failure rate was either 14.1 percent or 16.4 percent if the 12 program violators are included as the dividend in the calculation. Unfortunately, regardless of how the failure rate is defined, it is not compared with a matched group of work releasees to show whether house arrestees are more or less successful in their respective programs.

What did the program cost? The original monitoring equipment was purchased at the price of $49,275 (Palm Beach County, Florida Sheriff's Department 1987). The 87 participants, each of whom paid a user's fee of $9.00 per day, accumulated 4,765 days of electronically monitored supervision. Consequently, the fees generated $42,885 or 87 percent of the equipment purchase price during the first year of the program's operation. The accumulated user fees were expected to cover the price of equipment by February 1986 (Palm Beach County, Florida Sheriff's Department 1987).

As of February 1987, 250 offenders had entered the program and no additional serious violations had occurred between the first and second year of operation (Davis 1987, personal communication).

Average sentence length in this program was 55 days. Fifteen of the original 87 inmates, however, were monitored for more than 100 days and one of these offenders had been in the program for 311 days (Palm Beach County, Florida Sheriff's Department 1987). This program's average sentence length falls between those reported for the Kenton County, Kentucky, and Florida Department of Corrections programs.

II. To Confine or Not to Confine Outside of Institutions

The punishment philosophies underlying house arrest, like those behind imprisonment, are typically a mixture of retribution, incapacitation, and deterrence. Although some house arrest programs stress rehabilitation by purporting to instill in their clients a sense of accountability for their actions, the preponderance of program resources is seemingly channelled into some method of surveillance. This orientation should not be surprising to anyone, however, because the theoretical rationale for house arrest is to allow selected offenders, otherwise bound over to institutions, to be controlled in the community. Two interrelated questions arising from this orientation require further consideration: What offenders are appropriate for house arrest? What is the appropriate level of supervision?

If incarceration and house arrest are equivalent punishments, then the same offenders deemed appropriate for the former type of punishment should arguably be suitable for the latter. However, many people would not be willing to place an armed robber on house arrest simply because a level of supervision comparable to what exists in a prison can be achieved outside the prison walls. For the most part, participation in house arrest programs has been restricted to low risk offenders convicted of nonviolent offenses.

There is little reason to believe, however, that this restriction will soon change--not because a more sophisticated technology of surveillance and control cannot be devised but because of the social realities of the public's demand for punishment for people who commit

serious crime. Not everyone views house arrest and jail as equivalent sanctions. For example, spokesmen for Mothers Against Drunk Driving frequently argue that house arrest for DUI offenders, as opposed to imprisonment, trivializes their offenses (Petersilia 1987). Others argue that if the two kinds of punishment are equivalent then sentence lengths should be similar. If society is willing to accept the notion of "electronic jails", then "[F]or scientific and ethical purposes, we should keep the length of time equal for monitored release and for institutional confinement" (Berry 1985, p. 16).

The policy issues concerning whom to place on house arrest also raise legitimate concerns about widening the net of social control and discriminating against the disadvantaged and poor. Particularly relevant and troubling are AIDS victims who come in contact with the criminal justice system--is house arrest being used as a form of community isolation? This question and others like it must await further research and more thoughtful debate in the coming decade.

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Table 3.1 Disposition of Florida Offenders 1982-85

	Disposition (in percents)			
Year	Prison	House Arrest	Probation	House Arrest/ Probation Combined
1982-83	26.4	---	73.6	73.6
1983-84	23.7	4.5%	71.8	76.3
1984-85	25.2	10.1	64.7	74.8
1985-86	27.4	9.2	63.4	72.6

Source: Florida Department of Corrections (1987, p.26).

Chapter 5: Electronic Monitoring

Electronic monitoring is a set of surveillance technologies, not an intermediate sanction, or any other kind of sanction. Electronic monitoring is included, however, along with ISP, house arrest, and community service in most lists of intermediate sanctions.

For emphasis, we repeat: electronic monitoring by itself is not an intermediate sanction. It is a means of determining an offender's whereabouts for purposes of seeing that a curfew or house arrest order is being obeyed. We devote a separate chapter to electronic monitoring, however, because it is often discussed by professionals, and in the media, as if it were a sanction in itself. Our purposes in this chapter are to describe the development and applications of monitoring technology and, by referring to some monitoring applications that have been evaluated, to comment on its use.

Use of electronic monitoring equipment is increasing rapidly, as is shown in two surveys conducted by the National Institute of Justice. Known manufacturers are contacted to learn which jurisdictions are using their equipment. Those jurisdictions are then contacted to learn how many offenders are subject to monitoring on a single day. By the data of the first NIJ census, February 15, 1987, 826 offenders were reported as being monitored. A year later, on February 15, 1988, the NIJ census identified 2,277 monitored offenders (Schmidt 1988).

The notion of surveillance technology that permits distant watchers to observe human conduct is not new. Forty years ago, George Orwell chillingly demonstrated in 1984 the possibilities for social repression that exist in ubiquitous open channel two-way video transmission, a

technology that is not yet cost-effective but soon will be. In the 1960s, benign proposals were made for use of electronic monitoring as a part of support and rescue systems for cardiac patients or for persons who are mentally ill or retarded or suicidal (Schwitzgebel, Pahnke, and Hurd 1964). Later proposals called for experimentation with electronic monitoring of parolees as a possible means simultaneously to shorten prison sentences and assure public safety (Schwitzgebel 1969). From 1964 to 1970 experiments with monitoring were carried out in Cambridge and Boston, Massachusetts (Gable 1986). The most radical proposed applications, put forward recently by a group of academics, perhaps tongue-in-cheek, suggest use of electronic monitoring to keep track of people with AIDS, children, employees prone to sleep on the job, student athletes who might otherwise break curfews, and wandering spouses (Blomberg, Waldo, and Burcroff 1987).

Partly because the available technology was neither effective nor affordable, not much came of the early proposals. In more recent years, however, advances in computer and communications technology, and in electronic miniaturization, have removed the major barriers to electronic monitoring in the criminal justice system. Personal computers, cellular telephones, modems and fax machines, and interactive software for telephone calling techniques are commonplace. Reconfiguration of these and related technologies for surveillance is child's play for the electronically able.

Two striking numerical facts about electronic monitoring in the criminal justice system stand out. First, it has spread with remarkable speed since 1983 when Judge Jack Love in Albuquerque, New Mexico, inspired by a "Spiderman" comic strip, imposed one of the first

publicized sentences incorporating electronic monitoring. In 1984, the first organized monitoring programs began in Clackamas County, Oregon, Kenton County, Kentucky, and Palm Beach County, Florida. By February 1986, the U.S. Department of Justice reported that there then existed 45 established monitoring programs in 20 states. On February 14, 1988, 31 states and the District of Columbia reported monitors in use and three other states reported having monitoring programs but with no offenders then being monitored (Schmidt 1988). Anyone involved in corrections knows that electronic monitoring is now faddish and that new programs pop up every day.

The growth of the manufacturing industry also suggests a boom. An August 1, 1987 survey by Professor James Byrne of the University of Lowell, one of the nation's leading experts on intermediate punishments, estimated that 2,000 units were then in use across the country (Byrne and Kelly 1987). This is consistent with the NIJ census report that 2,277 offenders were being monitored early in 1988. A February 1986 survey identified eight manufacturers of electronic monitoring equipment (Schmidt 1986a). By mid-1986, the authors of an NIJ-sponsored survey were able to identify 10 manufacturers (Friel, Vaughn, and del Carmen 1987). An undated, but later, NIJ brochure identifies 14 manufacturers as of June 1987. A current count of advertisers in Corrections Today magazine would reveal even larger numbers of manufacturers.

The second striking numerical fact, notwithstanding recent rapid growth, is that the absolute number, and the percentage, of convicted offenders subject to electronic monitoring is tiny. In 1985, nearly 3,000,000 persons aged 18 or over were in jail or prison or were on probation or parole. Petersilia (1986) estimated that approximately

10,000 people in 42 states were then on house arrest and, as noted above, the best estimates for late 1987 and early 1988 are that approximately 2,000 offenders were then subject to electronic monitoring. Thus while electronic monitoring is growing rapidly, it affects as yet only a fraction of one percent of convicted offenders.

Although electronic monitoring in the criminal justice system is most commonly a facet of house arrest, and less commonly an adjunct of ISP, it has been used in many ways. Figure 4.1, reprinted from an article by Byrne and Kelly (1987), shows schematically ten different uses to which monitoring technology has been put. Our primary interest in this monograph is in electronic monitoring's role in intermediate punishments, so we ignore most of the possible applications Byrne and Kelly describe. Besides describing the available technologies and their costs, we give particular attention to the rationales and benefits of monitoring in administration of intermediate punishments.

Surveillance to enhance public safety and to assure offender compliance with sentence restrictions is an increasingly important component of criminal justice sanctions that permit offenders to serve their time in the community. This means that more and more human and financial resources must be diverted from uses to monitor an offender's whereabouts. Both intensive supervision probation and house arrest programs often include curfews that require someone to check that the offender is where he is supposed to be during specified hours, at night, and on weekends. Electronic monitoring is often seen as a cost effective way to keep track of sentenced offenders.

While the applications of monitoring technology have expanded rapidly there is very little research or evaluation literature on its

use. The National Institute of Justice has recently funded a number of experimental evaluations of use of monitoring equipment for pretrial detainees and offenders sentenced to house arrest and work release (e.g., Curtis and Pennell 1987; Mendelsohn and Baumer 1987). Most of the early monitoring programs were small, poorly funded, and focused on offenders who posed few risks to public safety. Such evaluations as exist tend to be descriptive and exceedingly weak methodologically.

Many questions remain concerning monitoring's reliability, its appropriate uses, its effect on reducing recidivism, its cost-effectiveness, and its constitutionality. In this chapter, we describe some of the kinds of electronic monitoring devices that are being manufactured and used, and comment on some of the problems that have been encountered in their operation. We discuss the types of convicted offenders who have been placed on monitors and with what consequences. We then discuss costs and very briefly canvass legal and constitutional issues associated with the use of monitoring equipment.

I. Technology

As the demand for community-based sentences has increased, so has the interest in monitoring technology. Advances in technology and more receptive market conditions for its use in criminal justice have stimulated development of electronic monitoring devices to police offenders' whereabouts.

Recent surveys (Schmidt 1986b; Vaughn 1987) identify at least a dozen vendors who are engaged in manufacturing and marketing electronic

monitoring devices. There are essentially two kinds of devices--those that use a telephone at the monitored location and those that do not.

Telecommunications devices can be divided into two sub-types. Those that include a transmitter, receiver-dialer unit, and a central-based computer that continuously monitors a signal from the transmitter are referred to as "active". On February 14, 1988, continuously signalling equipment was being used for 56 percent of offenders then being monitored (Schmidt 1988). With this type of equipment, the offender being monitored is required to wear a transmitter (about the size of a package of cigarettes) that is strapped around the wrist or ankle. The transmitter broadcasts an encoded signal to the receiver-dialer unit which is connected by the offender's telephone to a central computer. No interruption in the signal occurs so long as the offender wearing the transmitter remains within a specified radius (usually 150-200 feet) of the receiver-dialer.

The computer records all interruptions in the signal. Those that occur during authorized absences from home for the purpose of employment, vocational training, and other authorized activities are ignored. Other interruptions are noted as potential violations. The system monitors continuously around the clock. With existing miniaturization technology, the transmitters could be made much more compact than they now are; however, its present size and weight "reminds" the offender of its presence (del Carmen and Vaughn 1986, p. 61).

Tamper-proof straps secure the transmitter to the offender. Some types of straps are electronically fitted to send a message to the computer when the strap has been broken. For another type, visual

inspection is required to determine whether tampering has occurred. Neither type of strap is commercially available.

The second type of telephone-assisted system has been called "passive" or "programmed contact." Forty-two percent of monitored offenders identified by the 1988 NIJ census were being monitored by this type of equipment (Schmidt 1988). This system also uses a central office computer, but instead of a transmitter and receiver-dialer, it depends on an encoder device and verifier box. The encoder device is strapped to the offender and the verifier box is connected to the telephone. Random or scheduled calls to the offender's residence are made by the computer. The offender is required to answer the telephone and make voice identification. Then the offender must insert the encoder into the verifier box to confirm his identity. If the phone is not answered, is busy, or if the encoder is not properly inserted into the verifier box, the computer will generate an exception report. It is then up to the probation officer to determine whether an actual violation has occurred.

According to Vaughn (1987), another type of passive system is under development that will depend exclusively on computerized voice identification. The system is patterned after finger print identification. An offender on this system will not have to wear any type of device.

The second basic type of monitoring system does not rely on telephone lines for its operation. Its technology has been in use for many years by wildlife biologists to track the location of study animals. A transmitter worn by the offender emits a radio signal that is tracked with a portable receiver. The receiver is placed in the

monitoring officer's car and it receives a signal from the transmitter when it is within one block of the offender. It is useful not only for verifying that the offender is at home but also for making unintrusive random checks of offenders when they are supposed to be at work, at a treatment facility, or at other locations.

In theory, the ideas behind monitoring technology are relatively simple--the subject's whereabouts are monitored by an electronic signal sent from a transmitter worn by an offender to a receiver where it is translated into meaningful information to the probation officer. However, in practice, a number of "bugs" have been discovered (for examples, see Blomberg, Waldo, and Burcroff 1987).

The most common type of problem is interruption of the signal even though the offender has not left his residence. Some of the causes include interference by metal objects that get between the transmitter and receiver. Metal lathes in the walls of stucco plastered houses and metal walls in mobile homes can cause this kind of problem. Appliances, such as refrigerators, can cause "dead spaces" in rooms that interfere with signal transmission. Areas that are bombarded with radio signals can create operating problems with the monitor. Sleeping in a fetal position so that the body mass is between the transmitter device and the receiver has been reported to generate a false reading on some kinds of equipment.

Variation in the quality of local telephone service can also cause difficulties--especially in areas where lines are in need of constant repair or where up-to-date telephone technology is not available. Lightening hits to telephone lines can cause electrical surges that damage monitoring equipment have also been reported. Power outages

interrupt signals; however, some monitoring systems have a battery powered option to store signals until local power is resumed (Byrne and Kelly 1987).

Finally, and not insignificantly, electrical burns to offenders wearing the devices have been reported (del Carmen and Vaughn 1986). Several offenders have required hospitalization due to the severity of their burns.

These problems, irritating though they have no doubt been, are mostly minor. Many have been solved and none is insoluble. As the monitoring industry develops, the small entrepreneurial companies that created the industry are likely to be displaced by well-capitalized industrial companies that can afford research and development expenses. Simple mechanical, electrical, and transmission problems are likely soon to be solved. To diversified electronics firms like Mitsubishi, which has recently entered the market, electronic monitoring equipment will fall at the relatively simple, low-tech end of their product lines.

The technology to monitor offenders is so new that very few data on equipment performance and reliability are available. Some manufacturers are voluntarily allowing the National Bureau of Standards to evaluate their equipment but as a general observation much more research on testing is necessary (Friel, Vaughn, and del Carmen 1987). Some unsystematic observations have been made. As the demand for monitors expands and the industry matures, there is little doubt that most of the bugs will be eliminated.

Aside from development and testing, another central issue concerns the interpretation of the received signal. Regardless of how advanced the technology becomes, it will still require a human mediator to

interpret the meaning of the results and to decide on appropriate action.

II. Who Gets Monitored?

There is an unfortunate tendency in the literature to use the terms "house arrest" and "electronic monitoring" interchangeably. The two concepts are quite distinct. Some house arrest programs use electronic monitoring devices; many do not. Of eight house arrest programs discussed in detail in Joan Petersilia's 1987 monograph on sentencing options, seven use electronic monitoring for some offenders. Increasing numbers of ISP programs use electronic monitoring for some cases. Of the 32 states identified in James Byrne's 1986 survey as having an ISP program, 7 were reported to use electronic monitoring (Byrne and Kelly 1987), and this was at a time when use of monitoring equipment was much less common.

Whether any intermediate sanction program employs electronic monitoring depends on whether it contains a provision for restricting mobility, and on particular administrative, political, financial, and historical factors that affect each jurisdiction. Given, however, that monitoring equipment is inexpensive to purchase, is faddish, and allows officials to claim to be acting to protect public safety, we expect the use of monitoring equipment to continue to expand.

This inability to predict which programs will use monitors, however, in no way prevents someone from answering the question of who will get monitored? In theory, the monitored offender population will include many individuals who are being sentenced to alternatives to jail

and prison: misdemeanants and nonviolent felons who are generally low to medium risks to commit serious or violent crimes. In practice, electronic monitoring is commonly being applied to surveillance of people who present little or no threat to public safety. Todd Clear (1988) notes that some of the earliest offenders subjected to electronic monitoring in the Northwest were convicted of welfare fraud, a crime that neither strikes fear in most people's hearts nor is especially affected by monitoring. In jurisdiction after jurisdiction, the preponderant conviction offense in house arrest programs with electronic monitoring is drunk driving and the next most common type of offense is "nonviolent misdemeanor." The February 14, 1988 NIJ census reports that 26 percent of the persons then being monitored had been convicted of 51 traffic offenses and another 15 percent of driver offenses (Schmidt 1988). Here are Joan Petersilia's (1987, pp. 41-57) capsule descriptions of the caseloads of five of the nation's most celebrated electronic monitoring/house arrest programs:

Program	Offenders
Palm Beach County, Florida	"Most participants are drunk-driving offenders"
Clackamas County, Oregon	"Slightly more than half [are] ... drunk-driving; about 10 percent [convicted] of driving while suspended"
Linn County, Oregon	"DUI offenders"
Kenton County, Kentucky	"Misdemeanants who posed a minimum risk"
San Diego, California	"Primarily drunk drivers who agree to participate"

The problem with these offender descriptions is that these offenders present so little threat to public safety that it may be a waste of money to subject them to electronic monitoring. The people who run these programs are, of course, not foolish. They know that they are dealing primarily with low risk offenders. Their rationales, however, often have less to do with public safety from monitoring than with reassuring the public that a house arrest program is safe. ("We accept only low risk offenders and we monitor their whereabouts and behavior with sophisticated electronic technology.") Another rationale, especially for drunk drivers, is to show activist groups like MADD that convicted offenders though not jailed are being seriously inconvenienced and thereby "punished." In other words, the rationale for use of electronic monitoring in house arrest programs may often be concerned more with public relations than with public safety. This is more than a little ironic inasmuch as research on "regular" probation (e.g., Petersilia et al. 1985) shows that many "regular" probationers present moderate or high risks of committing serious crimes and electronic monitoring seems much more sensibly targeted on such people.

This is not to say, however, that electronic monitoring is never applied to offenders who constitute serious social threats. In the New Jersey ISP program (Pearson 1987), for example, the highest risk offenders are being subjected to electronic surveillance (although, as we point out in the ISP chapter, the screening system in New Jersey is so stringent that few moderate or high-risk offenders are likely to slip through).

Evaluation research has little to say about the rehabilitative or incapacitative effects of electronic monitoring. There have been some

efforts to investigate failures to complete the period of monitoring and later recidivism (Lilly, Ball, and Wright 1987; Palm Beach County, Florida Sheriff's Department 1987). The numbers of offenders in most programs are typically small and they generally present a low likelihood of further offending. When therefore a study demonstrates that former program participants have committed few if any crimes, or have very low recidivism rates, it is difficult to do much more than yawn. There is some evidence that electronically-monitored offenders are less likely to have their sentences revoked than are comparable offenders who are not monitored, but there is no evidence that shows that they commit new crimes any less frequently than do offenders not placed on monitors. The greatest value of the monitors may be their deterrent effects. Offenders may believe that the monitors are infallible and may be less inclined to abscond.

III. Costs

There are two costs issues concerning electronic monitoring. What does it cost to establish and operate a system? How do these costs compare with the costs of the sanctions that monitored offenders would otherwise have suffered.

As to system costs: start-up costs are negligible but operating costs are higher than is usually admitted. Surveillance costs vary with the kind of electronic monitoring system being used and equipment costs represent only a portion of the total expenses involved in the initiation and maintenance of intermediate sanction programs with electronic monitoring. A central computer system and 20 home detention

units for the Linn County, Oregon, home detention program cost $35,000 (Petersilia 1987, p. 49). An equipment manufacturers survey conducted for the National Institute of Justice showed for six companies, as of March 1986, that the purchase prices for 20-unit systems ranged from $25,700 to $131,900 and for 50-unit systems from $47,000 to $263,200 (Friel, Vaughn, and del Carmen 1987, table 2.4). The In-house Arrest Work Release Program in Palm Beach County, Florida depends on an active or continuously monitoring system. The original monitoring equipment cost $49,275 (Palm Beach County, Florida Sheriff's Department 1987). Hardware included an IBM PC communications panel for linking with a WATS line, and 45 receiver/dialers and transmitters (obtained at a cost of $795.00 each). Software consisted of a package tailored specifically for the Palm Beach County program with a price tag of $3,500.00.

The in-house (passive) monitoring system that was used in the Kenton County, Kentucky house arrest program was intended to handle up to 20 offenders (Lilly, Ball, and Wright 1987). Direct costs for this system totaled $27,043.00; much of this amount was spent on computer hardware ($6,987.00) and software ($17,975.00). The software figure is about five times as expensive as that cited for the Florida program. The difference may be attributed to the inclusion of receiver/dialers and transmitters as a software item rather than as a hardware item.

The cost studies are not comprehensive. For example, they do not consider such items as charges for equipment failure, maintenance, or replacement. Another factor influencing costs, but in a positive manner, is that equipment costs should decrease as the technology development costs decrease and as economies of scale in production bring

down unit costs. At present some of the development expenses of this new technology are being borne by purchasers.

The system acquisition costs, though significant in absolute numbers, are small change compared with correctional system costs generally. Relative to prison and jail operating costs per bed per year of $10,000 to $30,000 and construction costs per bed of $20,000 to $50,000 and upwards, electronic monitoring equipment comes cheap.

Moreover, though operating costs are higher than is usually admitted, because monitoring the monitors is labor intensive, most programs charge offenders monitoring fees that typically range between $6.00 and $15.00 a day and thereby substantially defray program costs.

The bigger cost question, however, concerns not acquisition and operating costs, but whether use of electronic monitoring is less expensive than the sanctions that would otherwise have been imposed. The answer is probably that most electronic monitoring systems on balance increase overall correctional expenditure. There are three reasons for this. First, most affected offenders have been convicted of relatively minor crimes (this is true both for most house arrest and many ISP programs), and are unlikely to have been incarcerated in any event. Thus electronic monitoring is likely to be a substitute for less expensive probation, not more expensive incarceration. Second, as noted in chapter two, comparisons between per capita costs for imprisonment and for a new intermediate sanction are often misleading. The addition or subtraction of one prisoner from a prison system will not reduce fixed costs and accordingly the better cost comparison is usually between average costs for the intermediate sanction and marginal costs for prison. Third, although analyses of prison costs change when the

numbers of "diverted" offenders become large enough to close a facility or abandon a plan to build a new one, most electronic monitoring programs are very small and the numbers involved will seldom influence decisions on prison closings or building. Among ten ISP and house arrest programs using electronic monitoring that are discussed by Friel, Vaughn, and del Carmen (1987), the number of monitoring units available in mid-1986 ranged from 12 to 40, and these included statewide programs in Michigan, New Jersey, Oklahoma, and Utah.

Thus, on balance, electronic monitoring is not especially expensive but, in most cases, probably costs more than would the sanction that the monitored offenders would otherwise have received.

IV. Legal Issues

To many minds, the notion of monitoring people's behavior by electronic means conjures up abhorrent images out of George Orwell's 1984. It may be this fear of state intrusion coupled with potential violation of rights guaranteed by the United States Constitution that has stimulated a healthy abundance of legal debate and has generated a body of case law concerning electronic surveillance.

It is likely that the use of electronic monitors on convicted offenders will generally be held by the courts to be constitutional, especially for "volunteers." Possible constitutional objections include the Fourth Amendment prohibition against unreasonable searches and seizures, the Fifth Amendment right against self-incrimination, Eighth Amendment proscriptions of cruel and unusual punishment, the Equal Protection clause of the Fourteenth Amendment, and Due Process

protection against warrantless searches. An overview of the relevant case law is presented in del Carmen and Vaughn (1986); see also, Huff, Ball, and Lilly (1987). In the next few pages, we briefly sketch the constitutional issues that are arguably raised by use of electronic equipment to monitor sentenced offenders' whereabouts.

A. Searches and Seizures

Court decisions dating to 1928 have laid the framework for determining boundaries within which electronic surveillance and similar devices can be used. All of the debate has concentrated on the interception of wire and oral communications, and the use of devices, such as beepers, to obtain information that could not have been gathered by visual means. The electronic monitors being used in the criminal justice system cannot record conversations nor can they provide any type of information concerning an offender's activities inside his residence.

Monitors do provide probation officers with information not immediately available by visual inspection outside of the offender's residence. However, probation officers already have constitutional authority to make unannounced home visits and random or scheduled on-site visual inspections. In addition, the courts have concluded that protection of prisoners under the Fourth Amendment is less than that to which members of the general public are entitled and that any expectation of privacy is necessarily diminished in scope. Thus, the use of electronic monitors is not likely to be viewed as an illegal search under the Fourth Amendment; it is more likely to be seen as an assertion of authority already granted to probation officers.

B. Self-incriminating Testimony

The Fifth Amendment provides that no individual can be compelled to provide self-incriminating testimony in a criminal trial. Any incriminating evidence that an electronic monitor can produce, in legal jargon, is "physical" (presence in, or absence from, a designated location) rather than "testimonial." Generally, "physical" evidence, such as the results of blood tests, can be compelled without violating the Fifth Amendment; "testimonial" evidence generally cannot be compelled. In addition, the use of this type of physical evidence has been confined to probation revocation proceedings. It is possible, however, to imagine a situation in which the commission of an offense was linked to the electronically verified absence of an offender from his residence. Admission of this type of evidence in a criminal trial against the offender might be challengeable unless independent and corroborative evidence were available.

C. Cruel and Unusual Punishment

The use of electronic monitoring devices is unlikely to constitute a violation of the Eighth Amendment's injunction against "cruel and unusual punishment." The devices' application can probably not be considered either cruel or unusual considering that the alternative punishment for the offender is often incarceration (at least in theory). Given the two options, use of the devices is certainly less humiliating, less degrading, less oppressive, and less restrictive than confinement in a jail or prison.

D. Equal Protection

Electronic monitors that depend on telecommunications require that an offender have a fixed address and a telephone. In addition, most programs that depend on the devices charge a user's fee. Not all offenders have the financial resources to obtain housing, to maintain telephone service, or to pay a user's fee. Not all programs have provisions for extending electronic monitoring to indigent offenders and this omission raises Fourteenth Amendment concerns. Lack of financial resources may mean that some candidates for monitors are discriminated against; whether that discrimination, however, will be held to constitute a denial of constitutional equal protection remains to be seen.

V. Conclusion

Electronic monitoring in many respects remains, as Annesley Schmidt once wrote, "a technology in search of a program" (Schmidt 1986b). Although programs and offenders can readily be imagined for which and for whom electronic monitoring is a cost-effect means of surveillance for offenders who otherwise would suffer the much greater intrusions and unpleasantnesses of imprisonment. At present, electronic monitoring is too often used in house arrest and ISP programs to monitor persons convicted of minor crimes and who present few meaningful risks to public safety. For such offenders, electronic monitoring is an expensive redundancy whose justifications must be political and public relations and not prophylactic.

There is no reason why electronic monitoring cannot eventually evolve into a tool for use in community corrections programs for surveillance and supervision of mid- and high-risk offenders. When that begins to happen, and especially when it begins to happen with offenders who genuinely have been diverted from incarceration, electronic monitoring will have found its programs.

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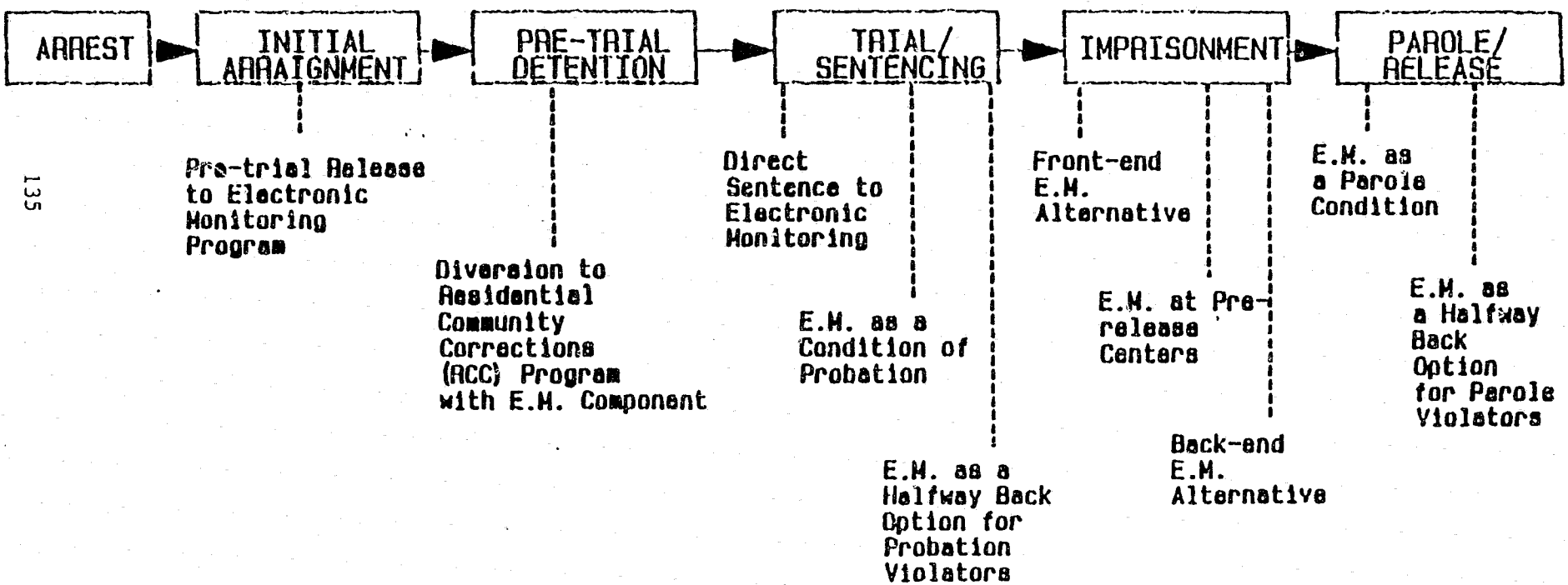
Figure 4.1

KEY DECISION POINTS WHERE ELECTRONIC MONITORING (E.M.) PROGRAMS ARE BEING USED



Source: Byrne and Kelly (1987, fig. 2).

Chapter 6: Community Service Orders

Performing labor to expunge sin has ancient roots; legislated examples can readily be uncovered in sixteenth century British law (Pease 1985, pp. 56-57). The contemporary version of this form of punishment, commonly referred to as the community service order (CSO), has been widely implemented through programs in which, according to the American Bar Association's definition, "convicted offenders are placed in unpaid positions with non-profit or tax-supported agencies to serve a specified number of hours performing work or service within a given time limit as a sentencing option or condition" (Harris 1980, p. 6). Or, phrased somewhat differently, certain offenders are sentenced to a fine on their time for which their labor is the currency of exchange (Pease 1985, p. 52). The notion of a "fine on time" encapsulates two ideas. The CSO for indigent offenders may, in effect, be the equivalent of paying a fine, but in services rather than in cash. Differently conceived, the CSO is a punitive taking of time, an intrusion on the offender's autonomy.

The development of community service orders in the United States is usually identified with the practice of judges of the municipal court in Alameda County, California, beginning in 1966, of punishing certain traffic offenders by sentencing them to periods of unpaid labor as community service. The idea took flight, especially after federal funding from the Law Enforcement Assistance Administration became available to underwrite the costs of new initiatives.

By the late 1970s, legislation to recognize community service as a criminal sanction had been adopted in more than a third of the states,

over a hundred projects had been launched to establish or evaluate community service programs, and countless judges ordered community service in individual cases on an ad hoc basis. Surveys conducted in 1977 and 1978 counted 58 organized community service programs for adults and another 70 for juveniles (McDonald 1986, p. 9). The federal Office of Juvenile Justice and Delinquency Prevention contributed $30,000,000 over three years, beginning in 1978, to establish community service programs for juveniles in 85 jurisdictions.

More recently, however, partly as a result of the demise of LEAA and consequent losses in federal funding, some organized community service programs have disappeared and others have cut back.

This does not mean, however, that community service programs are uncommon. Although the published literature on community service sentencing is tiny, there are a few statewide programs and many local ones. The National Community Service Sentencing Association holds annual conferences that are attended by several hundred practitioners from public and private nonprofit agencies involved in some facet of community service sentencing. The Association is now trying to develop standards for community service sentencing programs. Although many of these programs do not emphasize community service as a sole sanction or as an alternative to incarceration, the existence of so many programs is something that those concerned with the future of intermediate sanctions need to deal with.

Community service sentences remain common, but usually as a condition of probation and not as a stand-alone sanction. Widespread use of community service orders, however, often signifies the appearance but not the reality of criminal punishment. Without personnel in place

to locate appropriate work, monitor daily attendance, supervise the work being carried out, and follow up with the courts when offenders fail to appear or to work, community service cannot be a credible sanction. Practitioners in many states in which community service orders are routinely made admit that often the sentences are unlikely to be served.

Community service orders have, however, gained widespread appeal, not only in this country where they are most often used in conjunction with other sentencing options, but around the world. Outside the United States, CSOs have been used in Australia, Canada, Great Britain, Greece, the Netherlands, New Zealand, Sri Lanka, Tasmania, West Germany, and Yugoslavia.

Like much of the intermediate sanctions literature, the CSO literature is largely fugitive, provides only skeletal descriptions of program particulars, and includes only a few reports on careful evaluations. The notable exceptions are a series of reports by the British Home Office (see Pease 1985), and Douglas C. McDonald's Punishment Without Walls (1986), a report on the planning, implementation, and evaluation of a community service program in New York City.

I. Community Service in New York City: The Vera Institute Experiment

Initiated as an experiment in 1978 by the Vera institute of Justice, a program of community service was established in the Bronx in New York City. The program was designed to accommodate chronic thieves with long criminal records. The program's stated penal philosophy was one of punishment. One major objective was to get sentencing judges to

use the CSO half of the time as an alternative to jail and half of the time as a replacement for lesser sentences.

Several additional features of this program merit mention. First, the program was narrowly targeted on persistent thieves and property offenders for whom another short jail term was unlikely to deter them from future crimes but whose lengthy criminal records made it important that some significant punishment be imposed for the current crime. Second, Vera hired full-time court representatives whose task it was to identify prospective candidates for the program before the offenders were even convicted; the rationale was that the sentences were unlikely to be used for jail-bound offenders unless someone in the court room was prepared to play an advocacy role. Third, Vera hired full-time foremen to supervise work crews, monitor attendance, transport offenders from one work location to another, and report all violations; the rationale here was that the program's credibility in the eyes of judges and prosecutors would depend on enforcement of the CSOs conditions. Fourth, and last, the length of order was fixed at seventy hours regardless of offense severity, for several reasons. As an administrative matter, it was much easier to manage sentences of a common length. Moreover, it was not obvious how or why sentences of differing lengths should be set. Finally, one rationale was that the object was to carry out a meaningful punitive sentence in place of jail and it was unclear in any case precisely how jail time and CSO time could or should be calibrated.

During the program's early years, the goal that 50 percent of persons sentenced to community service in lieu of jailing was not achieved. Although two-thirds of the Manhattan participants would otherwise have been jailed, the corresponding proportions in Brooklyn

and the Bronx were 28 percent and 20 percent. The source of the failure was the refusal of prosecutors in Brooklyn and the Bronx to consent to community service for many jail-bound offenders. However, tighter screening criteria were established. The CSO court representatives became more aggressive in seeking community service orders from the judges over the prosecutors' objections. Finally, after negotiations, the prosecutors agreed to accept the tighter screening criteria and all three boroughs achieved the sought after 50/50 goal (McDonald 1986, p. 68).

Offenders sentenced to community service are required to work for seventy hours under very strict supervision. If clients fail to show up at work sites, project managers attempt to locate and return them. The majority of work performed by clients initially involved maintenance of nonprofit facilities such as community-owned nursing homes, churches, and other similar agencies. As the program matured and federal community development funds became available, the focus of work activities changed to include making abandoned buildings useable and preparing areas for community recreational activities. A prevailing view in the communities was that work crews were welcomed wherever they went.

The data indicate that slightly more than 85 percent of the offenders receiving CSOs in all three boroughs prior to June 30, 1983 completed their sentences. The major reason for terminating clients' orders and returning them to the courts was failure to show up for work. An average of 80 percent of those cases returned to the court for refusal to complete the CSO were resentenced to jail.

Forty to 50 percent of the offenders sentenced to CSOs were rearrested within six months of having been sentenced. Most of the charges for new crimes were the same kinds of charges for which they had previously been arrested. A control group of jailed offenders exhibited a similar recidivism rate; neither sentence made criminals more law-abiding. However, McDonald observes that jails do keep criminals off the streets and estimates that an additional fifteen arrests probably occurred for each one hundred CSO participants not otherwise spending their time in jail.

A final consideration of this interesting and continuing program is an assessment of its costs/benefits. Running the program was not inexpensive. In 1982, the average expenditure by the Vera Institute per offender was $1,077. This expenditure decreased to about $900 per offender during the next twelve months as the program became more established and intake increased. The value of the total number of community service hours performed increased from between $119,000 and $160,000 in 1982 to between $200,000 and $270,000 in 1984. At the time of writing, in mid-1988, the Vera program continues to exist and to handle about 1,200 offenders per year. The work of nearly 7,500 people sentenced to Vera's community service program in New York since its inception represents nearly $3,000,000 in value (Petersilia 1987, p. 76).

In addition to providing value in the form of the CSO clients' labor, the program also reduced the demand for jail space. For example, McDonald calculated that the program saved approximately eighty-nine prisoner years in 1983 and 102 prisoner years in 1984. These savings, of course, cannot be translated into dollars by multiplying 102 times

the average annual cost of incarcerating a criminal in 1984 in New York City (about $38,500). The jails were badly overcrowded in 1984 and the reduction in demand for 102 spaces reduced the degree of overcrowding.

One last measure of the Vera CSO program's operation is what offenders thought about it. Interviews with offenders sentenced to the program showed that most saw CSO as preferable to jail, for obvious reasons, and to probation, because probation would have kept their behavior under some form of scrutiny for a year or more. Many would have preferred to have received a fine, perhaps because they expected the amount would be small or that no amount would be collected.

The Vera program represents one among hundreds that have been established. Unfortunately, its clarity of purpose and its accomplishments have not been widely replicated. In the following section, we sample some of the program diversity that exists to offer comparison with the New York example.

II. Variation Among Community Service Programs

There is a diversity of CSO programs around the world: those outside of the United States are often served as stand alone sentences, while those within this country are most often a requirement of another alternative sanction such as intensive supervision probation or house arrest. For example, the Georgia ISP program requires every probationer to perform 132 hours of community service; the New Jersey ISP program requires at least 16 hours per month of community service; offenders in Florida's house arrest program are required to contribute 150-200 hours of free service to public service projects (Petersilia 1987).

Many CSO programs, at least in Australia and New Zealand (Bevan 1983), Canada (Doob and Macfarlane 1984), and Great Britain (Pease 1985) are promoted as alternatives to imprisonment. In this section, we examine variations in types of offenders sentenced to CSOs, kinds of unpaid labor that clients perform, lengths of CSO sentences, recidivism rates, and program costs and benefits.

A. Types of Offenders Served

Although many programs claim to be designed as alternatives to prison, there are few empirical evaluations to demonstrate that they are often used in this way. Harris (1980), for example, in a comprehensive overview of CSOs in the United States, does not provide data to determine to what extent CSO programs are used as diversions from incarceration. In this country, the CSO is often ordered for nonviolent offenders, usually traffic violators, misdemeanants, and property offenders (Petersilia 1987). Often, the convicted individuals are first-time offenders; however, the Vera experience has shown that even chronic thieves can be sentenced to, and successfully complete, a CSO. Commenting on the American practice, Harland (1982) concluded that the CSO falls in between probation and imprisonment.

The practice in England, rather than to list suitable types of CSO candidates, has been to devise unsuitability lists that include the seriously mentally ill, offenders with drug or alcohol addiction, offenders who lack a permanent address, and offenders with serious personal problems (McWilliams 1980). Offenses for which CSOs are ordered in Australia and New Zealand conform to this pattern (see Bevan

1983). Pease (1985, p. 69) reports that in both England and Australia the CSO appears to serve as a diversion from incarceration in about 45 to 55 percent of the cases.

Whether the CSO is used primarily as a diversion from imprisonment may be less important than that the sentenced offender knows what sentence he would otherwise have received (Pease 1985).

In some jurisdictions, the offender must consent to being sentenced to community service. Fairness may require that the offender be informed of the sentence he would receive if he rejected community service; failure to comply with the CSO's conditions would result in revocation, with jailing as the backup penalty. If the offender has consciously accepted the CSO to avoid incarceration, strict enforcement seems appropriate. When the offender consents to the CSO in the mistaken belief that incarceration otherwise will be ordered, it is less clear that strict enforcement is appropriate or fair.

Whether CSOs are genuinely used in lieu of imprisonment has important ramifications for deciding what to do when an offender fails to perform the required service. If the CSO is being used as an alternative to imprisonment, it is neither unreasonable nor unfair, as in New York City, if jail sentences are imposed as a sanction for failure to perform the required labor. When CSOs are ordered for offenders who would not otherwise have been imprisoned, it will often be unclear whether jailing is an appropriate penalty for failing to complete the required community service.

B. Kinds of Unpaid Labor Performed on CSOs

In theory, community service jobs are generally not intended to serve as replacements for paid labor. The New York City project ran into this problem when city employees protested to use of offenders to help with clean-up and light maintenance in public parks, work ordinarily handled by unionized Parks Department employees. Few such conflicts arose, however, and efforts were made to avoid situations in which paid employees would be displaced. The Vera project had little difficulty identifying work in neighborhoods or for nonprofit organizations that would otherwise not have been done at all (McDonald 1986, p. 36). Much of the work done to date has involved neighborhood cleanups and building rehabilitation.

From the very beginning of community service in England, the CSO has been used for work that otherwise might have been performed by paid labor (Pease 1985, p. 82). And, for most programs, compliance with the conditions at work has been left to the responsibility of the employer. This is the picture that is painted in Canada (see Roe 1980) and the one painted for many programs in the United States (see Harris 1980) as well. In the Vera project, by contrast, work supervisors closely supervised the work done.

C. CSO Sentence Length

Not unexpectedly, CSO sentence length among programs and within programs varies considerably. Some of the decisions involved in determining sentence length include crime seriousness and administrative

convenience; some of the decisions seem quite arbitrary. When the sentence is served, on consecutive weekdays, on weekends, or evenings, is also immensely variable.

Most people who have worked with community service believe the hours of work ordered should be relatively few in number. As a practical matter, a CSO calling for 1,000 hours of work is unlikely to be carried out and has the effect, just as does a 100-year prison sentence with parole eligibility in a few years, of reducing the criminal justice system's credibility. For a 1,000 hour sentence to be carried out would require that programs and personnel be in place to identify socially useful work, to supervise the offender's effort, to assure that the offender works when scheduled, and to initiate revocation or resentencing procedures when the offender fails to complete the assigned work. To do this entails organizational and logistical efficiency of the highest order--probably too high an order to be realistic. As a result, most serious programs provide for no more than a few hundred hours work.

In the English system, offenders are sentenced to a minimum of 40 and a maximum of 240 hours of community service work (Pease 1985). The Georgia community service programs, which were established by legislation in 1982, provide for up to 250 hours community service for misdemeanors and up to 500 hours of community service for felonies (Georgia Department of Corrections 1984). Harris (1980, p. 24) reports that CSOs for felony sentences served in the Solano County, California, Volunteer Work Program during a two year period from January 1976 through December 1977 ranged from 25 to 2,920 hours. The later is equivalent to working full-time for a year and a half. And, as we have

already reported for the Vera experiment in New York City, CSO sentence length was arbitrarily set at 70 hours regardless of type of offense committed.

When the sentence is to be served is generally matched for convenience with the offender's daily schedule. If the client is not otherwise employed, then CSO hours can be served consecutively. Otherwise, work schedules are often set for evenings and Saturdays. Community service orders in Australia, New Zealand, and Tasmania are commonly labelled "Saturday Work Orders" because sentences are so often completed on that day of the week (Varne 1976).

Part of the issue of matching offense type with number of hours of community service derives from the difficulty of calibrating jail or prison time with work time (assuming, of course that the CSO is considered to be a diversion from incarceration). Do eight hours of unpaid labor equal one day in prison? In most California CSO programs, the answer to this questions is "yes." Elsewhere, the answer is often "no." In England, for example, it has been argued that 190 hours of community service, for some purposes, is equivalent to one year in prison (Pease 1985, p. 71).

In situations where the CSO is substituted for the fine, an hourly dollar value is assessed for the unpaid labor. The length of the CSO is then determined by dividing the amount of the imposed fine by the hourly CSO assessed wage (see Harris 1980). In Queensland, for example, the CSO is used in place of a fine. A $50 fine is regarded as equivalent to a CSO sentence of twelve hours. A fine of $1,000 or more is substituted for a 240 hour CSO (Turnball 1983, p. 88).

Equating CSO sentence lengths with other punishments raises complex practical and analytical problems. "Other sentences are poor guides because either they differ from community service in aim or are at least ambiguous in aim. . . . One must, it would seem, start afresh [as was attempted in the Vera experiment] in the construction of a community service tariff" (Thorvaldson 1980, p. 27).

D. Failure Rates and Program Success

If failure rates are chosen as a measure of success, then CSO offenders do as well if not a little better than offenders in other types of programs. For example, looking at a large sample of CSOs made in England and Wales between 1979 and 1982, Pease found that failure to comply with program requirements varied between 12 and 14 percent, and that conviction for another offense was almost uniformly 10 percent over the four years (Pease 1985, p. 80). And, as we have already noted, about 15 percent of the offenders placed in the Vera program failed largely due to technical revocations (failure to attend work assignment).

There are probably two major reasons that help to explain CSO failure rates. First, in many CSO programs, the type of individual receiving a CSO is often a low risk, first-time offender. Given this profile, high rates of reconviction for new offenses would be surprising. Second, violations of the work order are often under-reported. The major reason for this seems to result from leniency or indifference on part of the person responsible for supervising the work (Young 1979; Vass 1980; Pease 1985). Pease (1985, p. 78),

commenting on the British experience, concludes that "nearly half of all revocations coincide with convictions for further offenses, indicating perhaps that evidence for revocation was only used when further conviction made clearing the books worthwhile."

If we turn to rates of recidivism as another measure of program success, CSOs fare about as well as other types of intermediate sanctions. Here again, without rigorous means to assure comparability of CSO offenders and offenders sentenced to other sanctions, it is hard to know whether recidivism rates indicate something about CSOs or something about the offenders sentenced to them. Between 40 and 50 percent of the offenders who participate in the Vera program are rearrested within six months of their release (McDonald 1986). Published studies from Great Britain (Pease, Billingham, and Earnshaw 1977; Home Office 1983) and Tasmania (Rook 1978) show similar recidivism rates with the rate increasing in relation to the length of the follow-up period. In contrast, however, in a study of twelve pilot CSO programs in Ontario undertaken between December 1977 and December 1979, Polonoski (1981) reports a recidivism rate for the period of time from the assignment of the CSO to one year after its completion to be 18 percent. The type of convicted offenders selected for this program were low-risk, single males, about 21 years of age, who showed evidence of a stable lifestyle.

Another measure of program success, one that is not commonly reported for other types of alternatives, is how the offenders perceived their sentences, and whether the experience positively affected their attitudes. Various studies have claimed that clients have thought that their community service experience was "useful" and that their attitudes

about justice being served and self-respect were changed (see various contributions in Hudson and Galaway 1980). Unfortunately, these more subjective measures of success have not translated into measurable reductions in rates of rearrest after sentence completion. In other words, the rehabilitative properties of the CSO are no more effective than jail, but they are no worse.

E. Program Costs and Benefits

The simplest and perhaps most common measure of program revenues is to tally the number of community service hours completed, and then multiply them by a predetermined hourly rate of pay. Another is to compare the costs of saved jail or prison time with program expenses (see Harris 1980).

Regardless of the method used, all of the calculations involve assumptions about CSO program characteristics which may or may not be justified (e.g., that the program is a true alternative to incarceration, that the unpaid labor did not compete with paying positions, and in the case of many multicomponent programs in the United States, that CSO costs and benefits can be disaggregated from other program components).

All that can be said in general is to reiterate what has been concluded in previous chapters about the cost/benefit analyses of other intermediate punishment programs. Much more carefully designed and thoughtfully implemented comparative cost studies need to be carried out.

F. Conclusions

After more than twenty years of use, the community service order has continued to evolve as a sentencing option. Programs vary tremendously in their philosophical underpinnings and in their requirements; it is more reasonable to describe the range of options being tried than it is to generalize about the "typical" program.

The well-documented Vera experiment provides some features worth replicating, especially in the use of courtroom representatives and paid foreman to supervise the work performed by criminals sentenced to CSOs. Pease (1985, p. 89) speculates that "[T]here is a better future for community service orders, but the last ten years give us no cause for optimism that we will live it." Experience with the Vera program, however, may provide a foundation for building more credible and more effective CSO programs that can appropriately be used as intermediate sanctions, often in lieu of incarceration.

III. Punishment Philosophy and the CSO

The CSO has been called a sanction for all seasons. As with many intermediate sanctions, it is often unclear precisely what penal purposes a community service program is designed to achieve. The British Advisory Council on the Penal System defines the problem:

> To some, it would be simply a more constructive and cheaper alternate to short sentences of imprisonment; by others it would be seen as introducing into the penal system a new dimension with an emphasis on reparation to the community; others again would regard

it as a means of giving effect to the old adage that the punishment should fit the crime; while still others would stress the value of bringing offenders in close touch with those members of the community who are most in need of help and support. [1970, p. 13]

At a later date, Baroness Wootton, who chaired the Advisory Council, admitted that "we did include a paragraph in the report of which I have always been slightly ashamed, as an undisguised attempt to curry favor with everybody" (Wootton 1978, p. 128). Nonetheless, the penal philosophy underlying the CSO is "punitive" and "deterrent" for some, "restorative" or "rehabilitative" for others.

The debate over which is the correct sentencing philosophy for the CSO continues. For example, Pease (1985) takes issue with Hudson and Galaway's (1980) assertion that the CSO should be seen as a kind of restitution. Others argue with equal conviction that the programs offer a strong rehabilitative component (e.g., Doob and Macfarlane 1984).

Part of the confusion over the CSO's purpose is semantic, and part reflects real disagreement over what the CSO aims to accomplish. The multiplicity of possible sentencing purposes should come as no surprise given the range of variation in program features we described earlier. Although quarrels over philosophical purposes and goals often continue unresolved for long periods, the development of CSOs would benefit if the ambiguities were lessened:

> What limits are to be set for such sanctions in legislation? How can one know if they are being applied consistently in the courts, or if they are being interpreted by administrators as they were intended? The offender must conclude that he is subject to the rule of men rather than the rule of the law. Finally, how can

> the investigator state hypotheses to be tested, marshal the relevant theory, and devise his measures? [Thorvaldson 1980, p. 16]

The questions Thorvaldson asked in 1980 await answers in 1989. And, the problems are compounded because CSOs are so often included as a component of a sentence to regular probation or ISP.

If CSOs in the United States are to become, as they are in other countries, intermediate sanctions that bridge the gap between prison and probation, the purposes of individual programs must be clearly specified and the programs be designed and implemented to achieve those purposes. Where the purpose is primarily punitive and the goal is to divert offenders from short jail terms, as in New York City's Vera project, the Vera project has shown how that can be done. If the purpose is to permit impecunious offenders to pay a "fine on time" by providing an equivalent value in unpaid service, procedures need to be established to make sure the service is provided and that the "fine" is paid.

Community service orders can become intermediate sanctions in the United States, rather than, as in most places they are, poorly enforced, half-hearted adjuncts to probation, ISP, or house arrest. However, to be imposed as true intermediate sanctions, they must be credible in the eyes of judges, prosecutors, and the general public and, to be credible, they must be carefully designed, effectively managed, and aggressively policed to sanction willful nonperformance by offenders sentenced to CSOs.

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Chapter 7: Financial Sanctions

Fines and restitution orders are the primary financial sanctions. Most of our discussion in this monograph centers on fines, for two reasons. First, another recent monograph in the NIJ "Issues and Practices Series, by Daniel McGillis (1986), has summarized research on restitution; little of consequence on restitution has been published in this country since that date. Second, although restitution is in one sense a criminal punishment, it is primarily a mechanism for assuring that offenders satisfy their civil obligation to make their victims whole. Even after restitution has been made, an entirely separate question of the appropriate criminal punishment remains.

That punishment and restitution are entirely separate subjects can be seen by imagining two persons who jointly commit the same crime and have identical criminal records, and who differ only in wealth. One is rich and can easily pay restitution. The other is penniless and can pay nothing in restitution. Even if the rich man can, and does, make full restitution, most people would argue that the two offenders still deserve comparable punishments: to conclude otherwise would be to reduce the rich man's punishment solely because of his wealth.

Besides fines and restitution, there are other charges and fees that offenders are expected to pay. These are broadly of two types.

"Supervision fees" are imposed by law on all offenders under supervision, with case-by-case judicial waivers based on the offender's inability to pay. According to an analysis by Dale Parent of Abt Associates, at least 28 states authorize imposition of probation

supervision fees. Supervision fees are in effect a source of revenue for probation departments.

"User fees" are, as the term suggests, fees charged to offenders who use or receive a special service. Examples include fees for urinalysis tests or use of electronic monitoring equipment.

Supervision and user fees have proliferated in recent years. A recent National Institute of Corrections study identified 28 different kinds of supervision or user fees that are now in use (Mullaney 1988). Strictly speaking, supervision and user fees are not intermediate sanctions. They are financial consequences of imposition of many intermediate sanctions. We devote a few pages of discussion to these fees at the end of this chapter.

I. Fines

It is curious, in this country that gives so large a role to financial incentives and disincentives in many spheres of life, that the fine plays so small a role in sentencing. In theory, in that vast majority of criminal cases in which incapacitative considerations do not require imposition of an incarcerative sentence, a powerful case can be made that the fine should be the sentence of choice.

Skeptics may retort that fines are unrealistic in many cases because most people convicted of crimes are poor. The skeptics are only partly right. It is true that few convicted offenders are affluent. However, fines are in some jurisdictions imposed on a large percentage of convicted offenders, and most of these fines are paid--often by family members (Hillsman and Greene 1988). Thus, it may in part be the

limited imaginations of policymakers rather than the limited resources of offenders that explains why the fine is so underdeveloped in this country as a criminal sanction.

Fines can serve both retributive and deterrent ends, can be adjusted in amount to reflect the severity of the offender's crime and the thickness of his wallet, are much less expensive to administer than a prison or jail sentence, and, if sensibly used and efficiently enforced, can provide a significant source of revenue to support the operations of the courts or to raise funds for other governmental purposes.

That fines can be much more extensively used as punishments for nontrivial cases has been repeatedly demonstrated by reference to experience in the United Kingdom, West Germany, and Sweden (Hillsman 1989). For example, in 1980, 45 percent of all persons sentenced for sexual offenses in England and Wales were fined, as were 24 percent of those convicted of burglary, 50 percent of those convicted of offenses of violence against a person, and 52 percent of those convicted of theft or handling stolen goods (Home Office 1981). In recent years, approximately 75 percent of adult offenders sentenced for criminal offenses, other than traffic offenses, in West Germany, have been sentenced to fines; in Sweden, the equivalent proportion appears to be about 69 percent (Hillsman, Sichel, and Mahoney 1984, p. 25). Corresponding figures in the United States generally, and in the criminal courts of New York City particularly, suggest that fines are much less extensively imposed as punishments in nontrivial cases (Hillsman and Greene 1988).

Fines have long been out of favor in this country, for a variety of reasons. First, most persons convicted of common law crimes such as theft, burglary, assault, and sexual offenses, are poor. This has meant either that it has been believed impossible to impose fines of any significant size on such defendants or that imposition of sizable fines would be unfair either because unduly burdensome or because they unjustly expose such persons to the threat of incarceration on failure to pay. Second, conversely, because of relatively low maximum fine amounts typically authorized by statutes, fines have often been believed to be inappropriate sanctions for the well-to-do, either because they would constitute no substantial burden on such offenders or because they provide an appearance of unseemliness in which the affluent offender simply "buys his way out" while the impoverished offender suffers much more burdensome sanctions. Third, even where these considerations do not prove insuperable, it is widely believed that fine enforcement and collection is woefully inefficient and as a result that many fines would simply never be collected; the fine is therefore often not seen as a credible sanction.

This aversion to reliance on fines is long standing and well-pedigreed. For example, the American Law Institute's Model Penal Code (1962) discourages the use of fines and authorizes them only when they seem likely to deter future crimes of gain. The report of the National Commission on Reform of Federal Criminal Laws (1970) takes a similar view. Similarly, the American Bar Association's standards relating to sentencing alternatives and procedures (1980) would require that judges believe a fine would achieve deterrent or rehabilitative ends before such a sentence could be imposed.

The American reluctance to rely on fines as punishments for serious crimes is shown in the approach recently taken by the U.S. Sentencing Commission in setting policy for use of fines as part of the recently implemented federal sentencing guidelines (U.S. Sentencing Commission 1987). Subject only to constitutional constraints based on offenders' inability to pay, the guidelines call for imposition of a fine in every case, but generally as a supplement to some other punishment and seldom as a free-standing sanction. For all but the most trivial of federal crimes, the guidelines presume that an incarcerative sentence of some type should be imposed in every case, which means that the stand-alone fine is reserved as punishment only for the most trifling of offenses.

No doubt in part because of the American disfavor for reliance on fines, there has been very little empirical research on fines in the United States until the last few years. Economists have long theorized that fines could be powerful deterrents to many kinds of criminal conduct (Becker 1968; Ehrlich 1973; Gillespie 1982). There has, however, been little research either to describe the nature, extent, and patterns of fining in this country or to test the effects of innovative efforts to change the ways that fines are imposed.

This lack of interest in fines, however, seems to be changing. Crowded conditions in America's prisons and jails and a not unrelated widespread movement to develop credible criminal sanctions that do not rely on incarceration have created greater interest in more extensive use of fines. Perhaps equally important, however, has been a long series of empirical analyses of the use of fines as criminal sanctions in the United States and the United Kingdom initiated by the National Institute of Justice in 1980, and leading now to the establishment and,

in due course, evaluation of the use of day-fine systems in the United States.

Because so little research on fining has been done in this country, except in relation to traffic offenses, this chapter relies primarily on reports generated by that series of NIJ-supported projects.

A. Research on Fines

The initial project, conducted by the Vera Institute of Justice in New York City, was an effort to establish a broad picture of the use of fines as criminal sanctions in the United States. It consisted of telephone surveys of court clerks and administrators across the country on patterns of imposition and collection of fines in their jurisdictions and on their attitudes toward the use of fines; site visits to thirty-eight county, municipal, city, and federal courts to interview judges, court staff, prosecutors, defense attorneys, and probation officers; and a statistical analysis of samples of arrests throughout New York City during one week in October 1979 (Hillsman, Sichel, and Mahoney 1984). This ground-breaking study found that patterns of imposition and collection of fines vary enormously across the United States; that fines are, however, used very widely as criminal sanctions, especially in lower courts and for less serious offenses; that very little systematic reliable information was then available from courts on fine imposition and collection; but, strikingly, that there were some courts in the United States, including some in New York City, in which fines were sometimes imposed as sanctions in nontrivial cases.

The initial project was followed by a study of the enforcement of fines as criminal sanctions in England and Wales with particular attention to the applicability of that experience for American practice (Casale and Hillsman 1986). The English study, primarily a quantitative case study of fining imposition, enforcement, and collection in four British magistrates' courts, identified substantial variations in fining practices among those four courts, but confirmed that fines are frequently imposed in the United Kingdom for punitive purposes, for nontrivial offenses, and that enforcement and collection of fines, though imperfect, achieve much higher levels of collection than is generally believed to occur in the United States. A recent Home Office study of compensation (restitution) orders in the United Kingdom confirmed the ability of the British courts to achieve high levels of collection of financial sanctions (Newburn and de Peyrecave 1988). Earlier we cited recent statistics showing that English courts use fines as punishments in large percentages of cases for serious crimes.

In related inquiries, the research team investigated the use of "day-fines" in West Germany and Sweden. They determined that the fine is the most frequently imposed punishment in both countries for serious offenses and that the day-fine, calculated in different ways in those two countries but intended to provide a means of basing fines in relation both to the severity of the offender's crime and the extent of the offender's income, appear to be effectively administered and enforced in both countries (Casale 1981).

The next major study in this series of NIJ-funded research projects on fines was a survey on the practices and attitudes of state trial court judges with respect to the use of fines as a criminal sanction

(Cole et al. 1987). A questionnaire was mailed to all full-time judges in the United States who handled felony or criminal misdemeanor cases in the two years preceding the survey, and was answered by approximately ten percent of them. It investigated judges' attitudes toward the use of fines, their views of the extent and effectiveness of imposition, collection, and enforcement of fines, and their receptivity to proposals for increased reliance on fines and experiments with day-fines in particular. Like the earlier survey of court clerks and administrators (Hillsman, Sichel, and Mahoney 1984), the results showed wide variation in the extent of reliance on fines. It also showed, as reported by judges, that fines are most commonly used in combination with other sanctions, that fines are not seen by most judges as a viable alternative to incarceration, and that fines are seldom used as the sole sanction, even in lower courts, for relatively serious offenses or for offenders with prior criminal records.

However, judges tended to be positively disposed toward increased use of fines. A significant percentage of those responding were receptive to the possibility of establishment of day-fine systems or experimentation with them.

In addition to this series of NIJ-supported projects, there has been one other major empirical study by the General Accounting Office (1985) of federal practices. That study revealed diverse patterns of fine use, a general disinclination by judges to impose fines as the sole punishment in nontrivial cases, and widespread failure to collect fines. For example, of five federal district courts studied in 1982, only 34 percent of the money owed by convicted felons and misdemeanants was paid.

The GAO study describes a system in which no single office or official had an interest in fine collection, with authority dispersed among a number of agencies. At the national level, the Department of Justice then had primary responsibility for monitoring and accounting for fines. At the local level, three agencies were involved. Responsibility for accounting payments was split between the U.S. attorneys and the court clerks. The probation office and the U.S. attorneys were responsible for monitoring fines. The U.S. attorneys were responsible for taking legal steps to enforce fines in default. In the result, minimum procedures were not in place to determine defendants' ability to pay or to assure that information required for enforcement went to the appropriate office.

Given this lack of system and integration, it should come as no surprise that many federal fines went unpaid. Although many enforcement techniques were available, including demand letters, court-ordered appearances, seizure of property, and imprisonment for contempt for willful nonpayment, most were rarely used. Justice Department rules required that demand letters for full payment be sent within two to ten days after every judgment that ordered payment of a fine. In the sample of cases GAO examined, such letters were sent in only 17 percent of cases and these letters were sent, on average, 143 days after judgment. In a similar vein, GAO found that garnishment procedures were never used in the cases examined, and other procedures were used infrequently.

The reasons why the Federal system was so haphazard and ill-organized are clear. No agency benefited from collection of fines--before the passage of new legislation in 1984, payments went to the Treasury; afterwards, to the Federal Victims Compensation Fund and

to the Treasury--and most of the agencies involved had little interest in the work.

What the accumulated research seems to show--especially when the European experience is consulted--is that fines can be used as sole punishments for serious crimes if credible mechanisms exist to assure that fines imposed will be collected.

What is most striking about these seeming intractable problems of fine collection and enforcement is how eminently and swiftly soluble they are. The survey research on fines has shown, amidst the confusion and failures, jurisdictions that do collect fines efficiently, and much has been learned about how this is done (Hillsman, Sichel, and Mahoney 1984; Cole et al. 1987). The learning is not startling:

--insist whenever possible on immediate payment;

--if there are to be installment payments, keep the payment schedule short;

--don't impose fine amounts which, taken together with court costs, restitution, probation fees, and other charges, are impossible for the offender to meet;

--on the first signs of delay or default, send stern admonitory notices of the consequences of nonpayment;

--on further delay or default, step up the intensity of demand and proceed with garnishment or contempt proceedings.

None of this would surprise anyone involved in consumer credit or consumer debt collection. All that is needed are well-planned, well-managed procedures, under the management of people who have personal or institutional interest in successful collection.

The importance of institutional self-interest in fine collection is crucial and we reiterate it for emphasis. When the beneficiary of fines paid by offenders will be a state treasury or the federal treasury, it is not hard to understand why collection efforts are half-hearted. The primary objective of correctional managers is efficient, humane management of correctional programs. When resources are scarce, as they always are, it makes little institutional sense for managers to reallocate personnel and resources from service delivery and supervision to debt collection. Thus, the crucial first step in any serious effort to improve fine collection is to create an institutional self-interest in maximizing the amounts collected.

B. The Day Fine

The European day-fine appears to offer promise as a model for development of fines as intermediate sanctions in the United States. Finland introduced a "day-fine" system in 1921; Sweden in 1931; Denmark in 1939 (Grebing 1982). In 1975, based on ideas drawn from the Scandinavian legislation, West Germany introduced a far-reaching day-fine system. An experiment with the "day-fine" is now being launched in the courts in Richmond County, New York by collaboration between the District Attorney, the criminal court judges, and the Vera Institute of Justice (Hillsman and Greene 1988). Similar efforts at earlier stages are now being started or considered in Phoenix, Arizona, Minneapolis, Minnesota, and Portland, Oregon.

The Scandinavian and West German models differ in many details, but their broad thrust is the same. The number of "day-fine" units must be

decided first by the sentencing court without regard to the means of the offender. The nature and severity of the offender's crime is the primary determinant of the number of day fines ordered. The more serious the offense, the larger the number of day-fine units. The value of each "day-fine" unit is then calculated.

In practice, the Swedish and West German systems are quite different. In Sweden, the day-fine is 1/1000 of the offender's annual income less reduction for taxes, dependents, and significant debts, plus increases based on the offender's net worth. The Swedish system is in effect a system for depriving offenders of the pleasures of life, those expenditures that are made after basic living expenses are met (Grebing 1982, p. 94; Hillsman and Greene 1988 give a full description of the West German and Swedish systems).

The German day-fine is calculated as, in effect, the cost of a day of freedom. The day-fine is, in theory, the offender's net income for a day without deduction for family maintenance. The daily net income the offender would have forfeited had he been imprisoned is the amount he must pay (Grebing 1982). In practice, the fine is often adjusted to reflect the offender's individual circumstances.

The Swedish National Council for Crime Prevention (1986) reports that this system of fining in Sweden has been extended over the years since its introduction to more and more serious offenses, offenses which were previously punished by imprisonment. "Formerly fining was regarded as a sanction to be used when no other sanction was available and then only for comparatively small offenses. Nowadays the preventive function of fines is regarded as good." The Council concludes: "In Sweden short-term imprisonment is nowadays generally considered to be an

inappropriate sanction from the social, ethical and economic points of view. We wish to find other sanctions which have the same preventive effects as prison. Fining in the form of day-fines is regarded as a good alternative" (1986, p. 3).

The West German "day-fine" system uses "a guideline approach that establishes maximum and minimum day-fine units for particular offense groups . . . fine use has been high, fine amounts have been increasing (especially in cases involving affluent offenders), and there has been a significant decrease in the utilization of short-term incarceration as a criminal sanction" (Cole et al. 1987, p. 120).

There is little doubt that the German reliance on fines has worked a substantial reduction of short-term imprisonment. In 1968, the year before the passage of legislation to discourage use of short prison sentences, there were over 113,273 sentences to imprisonment of less than six months imposed by West German courts, which was 20 percent of all prison terms imposed. By 1976, this number had dropped to 10,704, which was 1.8 percent of all prison terms imposed. During the same period, the proportion of fine sentences rose from 63 percent to 83 percent of all sentences (Gillespie 1980, p. 21).

Drawing on this European experience, the National Institute of Justice is now supporting an experimental project to develop a day-fine system in Richmond County (Staten Island), New York for misdemeanants (including many, however, who were initially charged with felonies). A full description of this project, including detailed accounts of how fine amounts will be related to offenders' ability to pay and how they will be collected is set out in a recent report to the National Institute of Justice (Hillsman and Greene 1987; a shorter description

can be found in Hillsman and Greene 1988). Similar efforts at earlier stages are underway or under consideration in Phoenix, Arizona, Minneapolis, Minnesota, and Portland, Oregon.

II. Other Financial Orders: Fees and Restitution

From the perspective of development of intermediate sanctions, fines are the financial orders of principal theoretical interest. As a practical matter, however, fines compete for attention with other financial obligations of convicted offenders including restitution orders, fees for services, court costs, legal fees, and, sometimes, claims from the state for reimbursement of costs of prosecution or public defender services.

As a policy matter, it seems clear that the interrelations among these financial claims can be reconciled by setting guidelines for the distribution of funds received by the courts. Many people believe that restitution payments to victims should ordinarily have priority in distribution of any funds collected. After that, reasonable people can differ about the appropriate priority of claim among victim compensation funds, court costs, supervision and user fees, and reimbursements to the state.

Somewhat arbitrarily, we have limited our attention to ancillary financial obligations to restitution and fees for services. Partly this is because these two seem most closely linked to the normative issues that arise in sentencing and partly it is because there exists some scholarly writing on these subjects. We treat these literatures very briefly; perhaps not surprisingly, practical problems of enforcement and

collection for these financial claims closely resemble those that characterize fines.

A. Restitution

Research and practice concerning restitution has recently been summarized for the National Institute of Justice by Daniel McGillis (1986). In general, it appears that restitution programs tend to be inefficient and ineffective. A number of years ago, the National Institute of Justice funded a national study of adult restitution studies (Warren et al. 1983). That study of ten restitution projects in the United States concluded: "A majority [of programs] encountered extreme difficulty getting started, and more than two-thirds of them completely failed to gain a sufficient footing in the system to survive without continued federal funding." (Warren et al. 1983). McGillis's review of the literature suggests "that chronic problems experienced by many restitution mechanisms include staffing shortages, insufficient resources available to conduct detailed loss assessments or to involve victims, failure of judges to order restitution, and the inability or unwillingness of offenders to pay ordered restitution in full" (1986, p. 2). No doubt there exists some well-managed restitution programs. Presumably, the problems and shortcomings of effective debt collection apply equally to fines and restitution.

B. Fees for Services

Few subjects can be less glamorous than "fees for correctional services." Yet, for a variety of reasons, fees for services is an innovation that is expanding as rapidly as any program affecting or involving intermediate sanctions. Most of the ISP, house arrest, and electronic monitoring programs described in these pages are supported partly or wholly from revenues collected from offenders. Georgia's bellwether ISP program is entirely supported from fees charged to all probationers in Georgia (Erwin and Bennett 1987).

There are several reasons why imposition of supervision and user fees is becoming increasingly common. Supervision fees offer a significant source of revenue, which, if made available to a probation department or other correctional agency, can provide a source of discretionary income. Although some probationers, for example, are impoverished, many can afford to pay $30 or $50 a month in supervision fees. These funds, though collected from all solvent probationers, can be targeted on special needs--for example, as in Georgia, maintenance of the ISP program.

The case for user fees is the commonsensical notion that those who use special services should pay for them. This seems fair enough, so long as ability-to-pay does not become a criterion for eligibility for programs.

Since prisons were first established in the nineteenth century as places to which people were sent as punishment for crimes, efforts have been made to make them self-supporting. From prison farms to prison industry to use of prisoners for maintenance work, or even for guard

duty, programs have existed to gain some value from prisoners' labor to support prisons and take some of the fiscal burden off the taxpayers (Hawkins 1983).

The principle underlying use of prisoners' labor to support the prison system moved outside the prison in the 1930s and 1940s when Michigan and Colorado became the first states to charge "user fees" to probationers; the rationale was that probationers, like prisoners, should bear at least part of the cost of administering correctional programs.

Probation fees did not spread rapidly. By 1980, only ten states were collecting fees from probationers and even in those states only some probation offices did so. Resistance came from a number of sources. Many probation officers believed that fees were punitive and undermined the officers' rehabilitative efforts. Others simply resented being made into bill collectors.

After 1980 the collection of fees became much more common. By 1985, 24 states collected probation fees and, according to a 1986 report on a national survey of probation fees (Baird, Holien, and Bakke 1986), enabling legislation was then pending in five other states: "In many instances, fees collected amount to more than 50 percent of an agency's revenue" (Baird, Holien, and Bakke 1986, p. 6). In Texas, in 1984, probation fees totalled $25,800,000, representing 37 percent of probation agencies' revenues; no doubt the amounts collected today are much higher (Baird, Holien, and Bakke 1986, p. 7).

Nearly all of the ISP, house arrest, and electronic monitoring programs described in this monograph are financed at least in part by fees charged to offenders. Most programs require that offenders subject

to them work and, for those employed, the fees, usually $5.00-$10.00 per day, are probably affordable. For those not employed, some programs, but not all, waive fees or impose them on a sliding scale linked to ability-to-pay (Baird, Holien, and Bakke 1986, pp. 15-17).

Many persons sentenced to probation in the cities are poor and unemployed and unlikely to be able to pay supervision fees. User fees for many intermediate sanctions, however, do not present the equitable issues that generally arise when fees are imposed on the poor. As we noted in the ISP, house arrest, and electronic monitoring chapters, programs in many states target relatively low-risk offenders, including, especially for electronic monitoring, persons convicted of drunk driving and property misdemeanors. Many of these programs achieve employment rates for their clients in excess of 90 percent, which is no surprise given that many restrict eligibility to offenders who have a permanent residence and a telephone and, for many programs, a pre-arranged job. Thus, while there are no doubt financial hardships in many cases arising from the burden of fees on impoverished offenders, much of the inequity based on class and income in intermediate sanctions is likely to arise more from standards for eligibility for programs than from the fees that are charged to participants.

Not surprisingly, many of the problems associated with fine collection characterize supervision and user fees. Many probation officers find "bill-collecting" demeaning and inconsistent with their helping functions. Similarly, it is difficult to motivate agency personnel to expend efforts to collect fees when the monies collected do not benefit the agency; on the other hand, when the agency is able to apply the funds collected to agency purposes as was true in 1986 of

Texas and Georgia, that institutional incentive appears to be a powerful motivator (Baird, Holien, and Bakke 1986, pp. 26-31).

* * * * *

Collection of money is a mechanical task and both private collection agencies and some public bureaucracies are quite good at doing it. Perceived problems of collection and enforcement appear to be the primary impediments to greater reliance on financial sanctions, especially fines, as intermediate sanctions appropriate to serve as sole punishment for many offenders convicted of quite serious crimes for whom deterrence and retribution are the primary purposes of punishment applicable at sentencing. The day-fines projects beginning in a number of jurisdictions may be the first steps toward adding fines to the armamentarium of sanctions imposed on people convicted of serious crimes.

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Chapter 8: Intermediate Sanctions in Perspective

Prison crowding in the 1980s has done what tens of millions of federal dollars could not do in the 1970s--catalyze the development of intermediate sanctions targeted mostly, though not exclusively, on prison-bound offenders. Many of the ISP, community service, and restitution programs that were established with LEAA money withered away when the federal funding stopped. This time around, many new initiatives seem to be taking root.

More than 20,000 offenders have been sentenced to house arrest in Florida since that program began in 1983. Nearly 5,000 offenders in Georgia have been sentenced to intensive supervision probation since that program began in 1984. More than 6,000 offenders have been released early from Oklahoma prisons to serve out the balance of their sentences under house arrest. Smaller, newer programs of house arrest and ISP seem to be taking hold in many states. Community service and fines are common in many states, though generally as adjuncts to other punishments. Important experiments with community service and day-fines are demonstrating that these penalties may soon become viable punishments for nontrivial crimes.

The existing body of evaluation research does not give any clear basis for knowing what proportions of offenders apparently diverted from incarceration have in fact been diverted. Clearly, however, many have been. No doubt significant net-widening has also occurred.

Many legislators and other public officials believe these programs are being used for prison-bound offenders. Legislators, motivated in large part by financial considerations, have in many states passed

enabling legislation and appropriated funds for intermediate sanctions. Probation and community corrections administrators have established new programs, and lobbied effectively for political support, legislation, and money. Judges have, they say and apparently believe, sentenced offenders to intermediate sanctions when they would otherwise have sent offenders to jail or prison.

The spread of new programs has been rapid. By 1986, according to James Byrne, self-styled ISP programs existed in at least 32 states. Between late 1984 and February 1986, according to the Department of Justice, the number of electronic monitoring programs increased from 2 programs in 2 states to 45 programs in 20 states. By February 1988, 31 states and the District of Columbia reported monitors in use; three other states reported that programs had been established, but that no offenders were then being monitored. House arrest programs with and without electronic monitoring are likely soon to exist in every state.

The rapid spread and frequent adoption of intermediate sanctions programs in the 1980s stands in stark contrast to the experience in the 1970s when numerous intermediate sanctions programs, then generally called "alternatives to incarceration," were established with federal funding and often disappeared when outside funding stopped. In Georgia, for example, LEAA funds were used to establish and operate an ISP program for which 48 officers were hired to handle 25-offender caseloads. When the money ceased, the program closed, and the offenders in the smaller caseloads were absorbed into the regular probation programs. Not until 1982 did ISP revive and this time the incentives and motivation were based on local needs rather than on the availability of federal funds (Erwin 1987).

The contrast between the 1974-76 and the 1982-88 ISP stories in Georgia provides an important insight into program development and implementation: local need is a much more propitious basis for program development than federal money. This is not a new lesson. As Phyllis Ellickson and Joan Petersilia (1983) concluded years ago in a study of program implementation:

> when the 'adopting' agency identifies or accepts the need for a program, believes that the program is in its best interests, and, especially, is willing to support or find funds for the program, success is more likely. [Petersilia 1987, p. 91]

Their conclusion makes obvious intuitive sense and should not surprise any experienced or thoughtful program administrator. It is because so many of the current intermediate sanctions programs arise from local need with local funding (sometimes supplemented with modest federal or foundation support) that many seem likelier to survive than did their predecessors in the 1970s.

Some day soon, intermediate sanctions programs will achieve sufficient institutional maturity and political and programmatic credibility that they will become integrated components of comprehensive sentencing guidelines systems. Such systems will aim simultaneously at achieving consistency in sentencing, justice in individual cases, and cost-effective use of limited state correctional resources. Sentencing commissions in Minnesota, Oregon, and Washington are looking at ways, for the first time, to integrate intermediate sanctions into sentencing guidelines systems. The intersection of the intermediate sanctions and the sentencing guidelines movements will soon make development of

comprehensive systems of structured sentencing discretion both necessary and wise.

Our primary aims in this monograph have been to describe and assess the recent social science literature on the implementation and effects of intermediate sanctions. Readers familiar with earlier reviews of research on correctional programs generally (Lipton, Martinson, and Wilks 1975; Sechrest, White, and Brown 1979; Martin, Sechrest, and Redner 1981) or on ISP specifically (Banks et al. 1977) may feel a sense of deja vu at our frequent mention of basic methodological shortcomings of much of the existing research. Not much has changed since the first report of the National Academy of Science Panel on Research on Rehabilitative Techniques appeared:

> Research on rehabilitative techniques for criminal offenders has until now been characterized by weak methodologies, with many projects and reports on rehabilitative effects being virtually devoid of considerations of research design. Case studies abound, comparison groups do not, and true experiments are conspicuous by their scarcity. [Sechrest, White, and Brown 1979, p. 59]

If the references to rehabilitation were removed from the NAS Panel's conclusion, it would apply to the current body of research on intermediate sanctions. Although there have been improvements in the rigor and sophistication of evaluative research, in general the familiar problems remain. Experiments are rare and susceptible to failure because the mechanism for random selection breaks down. Many "evaluations" are merely case studies. Others that aspire to greater sophistication use samples of offenders that are too small to support

meaningful inferences. Comparison groups are often patently not comparable. And so on. The litany is familiar.

Given the limitations of the literature, what can be said with confidence, based on existing completed evaluations, about new intermediate sanctions programs?

1. A large number of new programs have been established, some involving many thousands of offenders; evaluation data provide descriptions of the offenses of which these offenders were convicted (and sometimes other information).

2. More evaluations of social programs fail because of failures of implementation than because of failures of evaluation; only a handful of studies provide careful analyses of the implementation of new sanctions and these studies confirm that successful implementation of ambitious new programs is enormously challenging.

3. Many program administrators (and evaluators) believe that their programs are being well-implemented, are being used for offenders who would otherwise have been sentenced to prison or jail, and are being managed in ways that do not present unacceptable risks to public safety.

Unfortunately, no generalizations can be confidently offered about four important empirical issues concerning most intermediate sanctions: net-widening--to what extent do they operate to divert prison-bound offenders to community-based sanctions; public safety--can they be managed in a way that does not present unacceptable threats to public safety; recidivism--do they produce higher, lower, or comparable recidivism rates when compared with other available sentencing options; cost savings--do they result overall in savings of public monies?

Concerning net-widening: although program managers and evaluators often claim that their programs are used as alternatives to incarceration, the supporting empirical evidence is weak. Florida's house arrest program claims, for example, that 67 percent of its clients are "bona fide" prison diversions, and that many of the rest are jail diversions (Florida Department of Corrections 1987, p. 10). For reasons we develop in Chapter 4, we believe these estimates are much too high. Georgia evaluators claim that most offenders in Georgia's ISP program are "true diversions" (Erwin 1987); in Chapter 3, we propose a number of reasons for skepticism. Only those programs that serve as mechanisms for early release from prison, like New Jersey's ISP or Oklahoma's house arrest, unambiguously serve as prison alternatives. In the case of New Jersey's ISP, however, there are grounds for suspecting that some judges may sentence some offenders to imprisonment because they expect them later to be released to ISP. Thus, even this program that accepts only applicants for prison may not entirely avoid net-widening concerns.

Concerning public safety: although many evaluations report on the offenses committed by offenders while in the program, it is hard to know what to make of these data. New Jersey's ISP, for example, reports that 2.3 percent of offenders were arrested for new crimes that resulted in convictions during the first six months on ISP (Pearson 1988, p. 444) and Georgia reports that less than 1 percent of offenders on ISP are convicted of new crimes while on ISP and that these are typically for minor offenses (Erwin 1987). There are two problems with these findings. First, assuming that the programs are "true diversions," even a single new crime in the community is more than would occur if the offenders were incarcerated (McDonald 1986). How much additional

victimization is politically acceptable as a trade-off for reduced prison crowding can't be answered by research. Second, these low rates of serious crime may mean that these programs handle only low-risk offenders who could safely, and much less expensively, be assigned to regular probation.

Concerning recidivism: although a number of evaluations claim to show that offenders assigned to specific intermediate sanctions have lower recidivism rates than do comparison groups of offenders assigned to other sanctions, these claims must be accepted with skepticism, for three reasons. First, no genuine experiments in which offenders are randomly assigned to different sanctions have yet been successfully completed, so we have no strong basis for any conclusions. Second, although some studies have compared the recidivism patterns of comparison groups with those of offenders in the new program, the comparison groups have generally been noncomparable in important respects and it is therefore impossible to know how much of any apparent difference results from their noncomparability and how much from their presence in or absence from the new program. Third, such comparisons often mix apples with oranges when they compare, say, two year's experience <u>after</u> release from prison to, say, two year's experience of which one year is in ISP and one year is after release from ISP. The time in ISP may suppress new offending (because of close surveillance) or make it appear greater (because new crimes are likelier to come to official attention); in either case, the time in ISP cannot appropriately be compared with time after release from prison.

Concerning cost-savings: cost-benefit analyses of the establishment of intermediate sanctions are enormously difficult, and

few strong conclusions can be offered anywhere. In Chapter 2, we explain why most cost analyses seem to us much too glib. Per capita costs of intermediate sanctions are often compared with per capita costs of imprisonment; this is patently wrong and misleading. Until the numbers of persons diverted from prisons are sufficiently great to permit the closing of facilities, the better comparison must be between the average cost per offender for the intermediate sanctions and the marginal cost per offender in prison. By that comparison, few intermediate sanctions can be shown to be cost-effective. There are many other problems for such analyses. If some offenders are redirected from regular probation to an intermediate sanction, the average cost of sanctions administration for them will increase. If the intermediate sanctions conditions are rigorously enforced and 25 to 40 percent of offenders in the program are sentenced to prison following revocation, they will use up prison space. If some of those imprisoned after revocation were "diverted" from probation, prison crowding will to that extent be worsened. Unfortunately, reliable information on all these matters is simply unavailable in most jurisdictions and any claims of substantial cost savings are therefore best considered with great skepticism.

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It is disheartening to have to conclude that so little is authoritatively known about the effects of intermediate sanctions. Better research could be done. The second report of the National Academy of Sciences Panel on Rehabilitative Techniques, urged "more

systematic, long-term, and focused research that will have a substantial probability of improving techniques and programs that can then be evaluated in ways that will produce more definitive conclusions" (Martin, Sechrest, and Redner 1981, p. 23). Of particular importance in terms of evaluating existing intermediate sanctions programs, designing future research, and undertaking new program developments are the Panel's admonitions that research must be guided by theory and that intervention programs should be developed jointly by researchers and program personnel as a coordinated activity designed to test detailed theoretical propositions explicitly (Martin, Sechrest, and Redner 1981, p. 23).

A few such efforts are underway. James Byrne of the University of Lowell has been involved in development and evaluation of Massachusetts's ISP program since its inception (e.g., Byrne and Kelly 1988). The Rand Corporation's Joan Petersilia and her colleagues have been involved in development and evaluation of intensive supervision parole program in Houston and Dallas since their beginnings (Petersilia, Turner, and Duncan 1988).

Knowledge about a number of important empirical issues thus remains hazy at best. From a reformer's perspective, however, it may be more important politically what people believe than what they know. Thus, if program administrators and other public officials believe that house arrest and ISP programs are diverting large numbers of offenders from prison at great savings to the state, it may be unimportant that the balance between "true" diversions and net-widening is often unclear and that claimed cost-savings seldom hold up under clear-eyed analyses. Similarly, if use of electronic monitoring in house arrest programs for

drunk drivers and persons convicted of trifling offenses makes the programs politically salable, it may be unimportant that the monitoring equipment is being used ineffectively and is targeted on the wrong kinds of offenders. With those reminders of political reality in mind, here are what seem to us the major recent programmatic and research developments concerning intermediate sanctions:

1. house arrest and ISP programs targeted on prison-bound offenders have been successfully implemented and institutionalized in a number of jurisdictions, and evaluators have concluded that they have diverted substantial numbers of offenders from prison at sizable net cost-savings to the state;

2. the European experience with use of fines as the primary sanction for crimes of low and moderate severity, in lieu of short prison sentences, demonstrates that fines can serve as credible intermediate sanctions in industrialized countries; the current experiments with "day-fines" in a number of jurisdictions may serve as stepping stones to increased reliance on financial sanctions in place of incarceration;

3. community service sentences in the United States are most commonly used as adjuncts to other sanctions and seem at present seldom to be imposed as substitutes for incarceration (except for very short sentences measured in days and weekends); the exception is the successful CSO program in New York City for chronic property offenders;

4. electronic monitoring programs in many jurisdictions are being used for offenders who present little-to-no risk of involvement in crimes that cause public fearfulness;

5. most claimed cost-savings associated with development of intermediate sanctions do not bear up under scrutiny, especially when they involve comparisons of per capita costs in community-based sanctions and in prison;

6. there is, throughout the correctional community, increasing political and organizational sophistication in developing, implementing, institutionalizing, and evaluating new programs.

Here, mercifully short, are our adjurations about research priorities for intermediate sanctions:

1. even recognizing that evaluation research is expensive, time-consuming, and frustrating and often fails to answer the questions it was designed to address, it warrants continued and increased support; for all their flaws and limitations, the evaluations of ISP in Georgia, Massachusetts, and New Jersey provide good descriptions of the programs, their implementation, and their caseflows and even when their results are not fully convincing, as concerning the extents of net-widening and cost-savings, they have illuminated the problems and helped sharpen the analysis; by contrast, the enormously influential house arrest programs in Florida and Oklahoma have not been subjected to

searching scrutiny from outsiders and much less is known about them;

2. the wisdom of establishing and carrying out long-term research strategies on specific topics is borne out by the history of NIJ-supported research on criminal fines in the United States and Europe, culminating in current efforts to develop, implement, and evaluate pilot day-fines projects;

3. the "net-widening" problem won't go away and greater emphasis should be given by funding agencies and researchers to design of evaluation strategies better able than current rough matching of comparison groups to yield credible findings;

4. finally, and with apologies to administrators who cringe when researchers start going on about research design and methodology, evaluation research needs to continue its recent progress toward greater rigor in methodology and design, including increased use of random allocation experiments.

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