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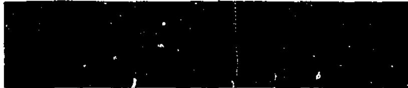

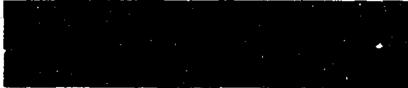

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PART I. Improving the Use of Intermediate Sanctions

by Peggy McGarry, Senior Associate, Center for Effective Public Policy and Director of the Intermediate Sanctions Project, NIC and the State Justice Institute

We are in the midst, it would seem, of the era of intermediate sanctions. From legislators clamoring for a less expensive response to crime than jail or prison, to judges intent on dispensing individualized justice, there is renewed interest in community-based sanctions.

There is no single definition of intermediate sanctions, nor agreement about what ought to be included within its boundaries. Some contend that almost anything between "regular" probation and a full prison term is an intermediate sanction; others deny inclusion to any sanction that involves incarceration. The growing popularity of residential facilities like restitution centers, work-release centers, and probation detention facilities, some with capacities in the hundreds, make this distinction more important.

What intermediate sanctions do have in common is the presence of features designed to enhance the desired sanctioning purpose: Whether one wants to achieve punishment, incapacitation, rehabilitation, or specific deterrence, intermediate sanctions give you *more* of it than simple probation (usually more of several of them!). This can mean increased surveillance, tighter controls on movement, more intense treatment for a wider assortment of maladies or deficiencies, increased offender accountability, and greater emphasis on payments to victims and/or corrections authorities.

Over the last twenty years, the variety of sanctioning options in use around the country has expanded significantly. The still-growing list can be seen as a kind of social history of our changing ideals, purposes, problems, and technologies: restitution, community service, shock probation, shock incarceration, split sentencing, day fines, day reporting centers, house arrest, electronic monitoring, intensive supervision probation, user fees, boot camps, and residential programs of all sorts. Jurisdictions have been as quick to adopt them as entrepreneurs, practitioners, and social scientists have been to invent (or reinvent) them.

Why Intermediate Sanctions?

The forces driving this expansion have changed over time. In 1990, there is no question that the number one issue is the turmoil in the legislature, the courts, and corrections over escalating jail and prison populations. Despite at least a decade of experience, state and local policymakers have not adopted the system-dynamic

approach that a resolution of the crowding problem requires. Policymakers are still searching for the single program that will end the crisis. Officials' election schedules seem to drive the search for such short-term solutions.

Overcrowding is not, of course, the only reason for the current interest in intermediate sanctions. It is fueled as well by:

- public concern over the adequate supervision of probationers and parolees;
- the demands of victims and their communities to be made whole again following a crime;
- changing and more available technologies that are challenging our notions of what is possible;
- the continuing desire of judges to tailor sentences to the offense and the offender;
- the rising failure rates of offenders on probation and parole; and
- the combined impact of the drug crisis and the war on drugs.

Communities suffering from the results of illegal drug use have little choice but to turn to the criminal justice system, particularly probation, to solve what is, in fact, an immense societal problem.

To community corrections agencies, particularly probation departments, whose own "overcrowding" has been far less visible than that of institutions, intermediate sanctions are a source of new credibility and funding. The creation and implementation of intermediate sanctions could generate new resources, new missions, more manageable workloads, and increased respect.

The ability of intermediate sanctions to meet these varied concerns and to respond effectively to these larger social problems is certainly open to question. There can be no question, however, that no single program can do it all and that all of our efforts are prone to the failure of too-high expectations.

Increasing the Success of Intermediate Sanctions

There are, however, actions that officials can take to increase the chances of success of intermediate sanctions in their jurisdictions. In most cases, these actions require an investment of time and energy rather than of new dollars to achieve their purpose.

The first of these is *to articulate precisely why a jurisdiction needs intermediate sanctions*. Upon questioning, all of the actors in the sentencing process will indicate dissatisfaction with the choice of options now available. The key is getting each of them to specify precisely which offenders are now sentenced inappropriately and what would represent a more appropriate sanction. Typically, responses will range from those of presiding judges who want more restrictive, treatment-oriented programs for offenders they are now putting on probation to those of probation chiefs who think that they can provide appropriate control in the community for many offenders the court is now putting in jail. Unless a jurisdiction has unlimited

resources, any effort to implement intermediate sanctions must begin with the actors finding the areas of common agreement, whether types of offenders or categories of offenses, and building from there.

A second step is *to establish clear sanctioning goals:* the why of sentencing. The individual actors and agencies within the criminal justice system commonly operate from different and unexamined philosophies of sentencing. Their individual goals in pursuing their part in the sentencing process may be different from case to case and be directly contradictory to those of their peers or of another agency. This divergence causes a number of problems.

A classic example, of course, is the judge who sentences the young, drug-dependent property offender to intensive probation so that the offender can get treatment for his addiction. The judge's goal in this case is rehabilitation. However, the probation agency does not include treatment in its intensive probation program because, with limited resources, the probation agency believes its primary responsibility is to provide supervision that limits his ability to steal again. Believing that this program's purpose is incapacitation, therefore, the probation department is frustrated that the judge has sentenced a low-stakes offender to a program designed for more serious cases. The agency lacks drug treatment resources because the legislature, sensitive to past charges of "mollycoddling," has eliminated funds for it. It has instead targeted funds for the close supervision of offenders to deter them from committing another offense.

In addition to combatting these kinds of contradictory efforts, choosing and defining goals is critical in the creation of either an individual sanctioning option or an entire sanctioning continuum. The sanctioning goal determines the features that will characterize the program; a day reporting center designed to offer rehabilitative services, for example, will look very different from one intended primarily to incapacitate or deter offenders. The sentencing purpose provides the organizing element in the continuum of sanctions and defines success for any individual program.

A third key action in implementing effective and appropriate intermediate sanctions is *to make available a continuum of sanctions scaled around one or more sanctioning goals*. For example, the goal of incapacitation may be implemented through varying levels of surveillance or control of movement. Such a continuum permits the court or corrections authority to tailor sanctions that are meaningful with respect both to their purposes and to the kinds of offenders that come before them.

A current practice is to unload the complete list of sanctions on all offenders, setting up both offenders and the program for failure. A typical offender who is supporting two children, for example, is not likely to be able to pay restitution, perform extensive community service, and participate in frequent drug counseling. Targeting specific sanctions to specific offender profiles, on the other hand, increases the chances of success for both the program and the offender. This kind of

policy-directed system can also be responsive to differing and changing behavior on the part of offenders.

Too frequently, policymakers and practitioners fail to understand the key role that a continuum plays in having an effective system of intermediate sanctions. This may occur for a number of reasons. For example, corrections officials may lack the resources to research, develop, and implement several programs either simultaneously or in rapid succession; legislators may become convinced that a particular approach will solve all criminal justice problems and limit funding to that program alone; or judges may be inclined to sentence offenders to programs with which they are already familiar.

The tendency is to put the efforts and resources into one or two programs and expect them to meet a variety of needs. When some offenders fail in those programs, there is no back-up short of jail or prison in response. Detractors are quick then to criticize the original program as simply postponing an inevitable commitment to incarceration for that offender, or worse, that the offender was "too risky" to have been in the community in the first place.

The availability of a range of sanctions has gained in importance particularly as our ability to monitor offender behavior in the community increases. The advent of more reliable technologies, whether in electronic monitoring or drug testing, has given us more, and more sophisticated, tools with which to identify offender misconduct and indicators of risk, yet without necessarily helping us to respond effectively. A continuum of sanctions might provide us with management and treatment techniques that are more appropriate than the incarceration or reincarceration that we now rely on.

The fourth essential action is *to collect and use good information about the jurisdiction's criminal justice system*, including offender flow data, offender profiles, information about sentencing practices, about programs, about what works and for whom. The availability of this kind of information makes possible much of the other action already described. It is impossible, for example, to create a program for a specific offender population if you do not know the characteristics of that population, the usual disposition for that group, or how many offenders fitting that profile pass through the court in any given period. In many jurisdictions, the problem does not lie in the information technology but rather with the awareness of how to use it.

In the area of sentencing policy and practices, policymakers often do not make the connection between good information and effective policy and program development. They do not know the questions to ask or even that questions are appropriate; they are content to deal with them on an emotional or "common sense" basis. The result is legislators who become enamored of a program like boot camps or electronic monitoring without asking what specifically they hope the program will achieve, for whom, and on what evidence. Judges, prosecutors, and probation officials can also fall victim to this approach.

Examples abound of programs that have been implemented without being subjected to hard scrutiny. It should not surprise us then when they are used inappropriately, wasting resources, putting offenders and the community at risk, and damaging the credibility of intermediate sanctions in general.

The Need for a Cooperative Approach

Each of these activities, necessary for achieving effective and appropriate use of intermediate sanctions, depends on the cooperative involvement of many parts of the system. The adversarial basis and political nature of our criminal justice system make it far more common for agencies to put energy into blaming one another than into supporting a cooperative approach. When resources for budgets are scarce and political fortunes can be won or lost over the outcomes of policies and even individual cases, it is not hard to understand why this is so.

Without structured means of communication among agencies and a commitment to cooperate on issues of mutual interest, however, the chances are slim that a jurisdiction will achieve lasting change in its use of intermediate sanctions. Even a cursory overview reveals how issues of power and trust can deter efforts at cooperation and interrupt the flow of critical information. For example, data on offenders, sentencing practices, and sanctions' effectiveness are essential for improving the application of intermediate sanctions. However, judges may be sensitive to potential political uses of sentencing data, and defense attorneys may be concerned about prosecutors' access to offender profile data.

To begin a thoughtful, comprehensive approach to using intermediate sanctions, corrections officials need to know not only the program features that are desirable or required, but also the particular concerns of both judges and prosecutors. Legislators need to understand the impact of their decisions on the courts and corrections. Conflicting interests will surely undermine the best efforts of any one agency to implement a strategy of improvement or expansion. Therefore, if any purposeful change is to occur and be sustained, the first step is for all of the key decisionmakers to come to the table to reach agreement on what they hope to achieve by implementing intermediate sanctions. ■