INTERMEDIATE SANCTIONS: THE USE OF COMMUNITY-BASED ALTERNATIVES TO INCARCERATION IN THE UNITED STATES

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INTERMEDIATE SANCTIONS: THE USE OF COMMUNITY-BASED ALTERNATIVES TO INCARCERATION IN THE UNITED STATES

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This paper discusses the evolution of public attitudes and professional practices in the United States regarding the use of alternatives to traditional incarcerative sentencing of the adjudicated serious offender over the past three decades. This time period, the most fertile and contentious in the American penological experience, begins with the roots of the “War on Crime” national policy in the Administration of President Lyndon Johnson through the current “War on Drugs” national policy of the Administration of President George Bush.

The differential Federal and state policies and practices relating to the use of “intermediate sanctions” -- the range of criminal sentences between traditional probation and straight jail or prison time -- are described in relation to the changing character and perception of criminal activity and offender characteristics in the U.S. over the past three decades are described, as are the economic and political imperatives that drive the American approach to the problem of crime in society.

Among the factors that have shaped the American experience with use of intermediate sanctions discussed in the paper are: the European penological experience; the individual experimentation of innovative jurists and criminal justice administrators; the inherent tensions between the executive, legislative and judicial branches of government in administration of the U.S. justice system; and the influence of government and foundation funding of new conceptual approaches to the multiple objectives of the criminal sanctioning process.

The paper presents a matrix of criminal sanctions ranging from the least to the most restrictive on the sentenced offender and the types of offenders with which each is most frequently used in the United States.
I. INTRODUCTION

The situation facing the American correctional system today can only be described as controlled chaos. Our 3,033 county jails and 705 state and federal prisons are holding over 1,100,000 adults, an increase of 114% in ten years. There are also three million adults on probation and parole, an increase of 110% over the past decade. In all, one of every 46 adults in the U.S.A is under some form of correctional supervision.

Despite our reliance on probation and parole for three out of four of our correctional population, the demands for jail and prison space continue unabated. In 1989 and 1990 we spent 6.7 billion U.S. dollars to add 128,000 new jail and prison beds, and yet 37 of our 50 states and 150 of our largest counties are under Federal court orders to reduce their jail and prison populations because of continued overcrowding. In fact, the demands on prison bed space are inexorable. Our felony trial courts alone, which handle the most serious of our offenses convict and sentence over 700,000 individuals a year, 77% of whom are sentenced to jail or prison, creating a need for an average of more than 1000 new prison and jail beds each week.

There are only two practical responses to this problem: building more jails or prisons or making greater use of community-based corrections. Having spent many billions of dollars on new construction only to see correctional facilities filled to capacity on the day their doors are open, and having had brought painfully home that the 50,000 dollar per bed cost of new correctional space was only 5% of the total cost of running that facility over its life time, the American tax payer has greatly diminished confidence in the ability of the community to build itself out of an overcrowding crisis.

Similarly disappointing was the effort to reduce prison and jail populations by releasing offenders back to the community prior to expiration of their sentences. The sad fact was that traditional probation and parole could not deal effectively with the released felony offender: 66% of the inmates returned by early release by community supervision, were back in jail within two years.

Faced with this dilemma, policy makers and citizens alike have been giving serious thought and widespread experimentation to the concept of punishment without incarceration. Over the past five or six years in the U.S. the concept of "intermediate sanctions"—intermediate between standard probation and parole and straight imprisonment—has captured the imagination of many penologists and corrections
researchers and has garnered increasing support from the community at large and from
the judges whose job it is to sentence offenders. It is these intermediate sanctions that I
would like to review with you today as a prelude to our workshops this afternoon.

II. THE DECISION POINTS FOR DISCRETIONARY
RELEASE FROM INCARCERATION

Most attempts to relieve jail and prison overcrowding focus on providing
alternatives to incarceration at various points in the criminal justice process. They
include those within law enforcement, the jails themselves, prosecution, and the courts.

A review of possible options that can be found in various parts of the United
States include:

Law Enforcement Release Programs
- field citation (misdemeanors)
- diversion to services (family disputes, mentally ill, etc.)
- release without charge (public inebriates)

Jail Release Programs: Pretrial
- jail citation (pretrial misdemeanors)
- release without charge (pre-trial public inebriates)
- diversion to services (pretrial mentally ill)
- warrants - holds clearance programs
- bond schedule release
- case traffic management

Prosecutorial Programs
- diversion from prosecution (pretrial misdemeanants, felons)
- early case screening (pre-trial)
- expedited processing of detention cases (pre-trial)
- felony recognizance release (OR) (pre-trial)

Judicial Programs
- Pretrial
- release on recognizance
- early bail setting
- signature bond
- extra bond reviews
- supervised OR release
- third party OR release
- use of summons in lieu of arrest warrants
- court delay reduction programs
- speedy trials
- video arraignment
- on-call judges
- night courts
- court calendaring and trial staff management
- Post Trial
- non-incarceration sentencing programs (probation, community service, fines, restitution, treatment)
- home detention/electronic surveillance (pre-trial and post sentence)
- expediting writing of pre-sentence investigation reports
- delayed imposition of sentence
- deferred sentencing
- modification of sentence (shock probation, shock parole)
- use of Jail overcrowding cap

Jail/Prison Reduction: Post Trial
- programs to reduce the parolee population
- sheriff-initiated work in lieu of jail (sentenced DWIs, for example)
- county parole (sentenced misdemeanants)
- early release (sentenced misdemeanants: 80% rule)
- early release (work, good time)
- weekend furloughs/sentences

The following discussion highlights a few of the ways these alternatives are used at different parts of the criminal justice process.

Law Enforcement: Decisions surrounding local arrest practices -- whether to arrest, transport to jail or stationhouse, book or detain for bail setting -- are critical determinants of jail population size. Law enforcement practices, both before and after arrest, can be modified to reduce jail admissions. Jurisdictions such as San Diego County, California and Frederick County, Virginia use, perhaps, the most common form of pre-arrest diversion through short-term "sobering-up" facilities for public inebriates.

San Diego has also been successful in reducing crowding through the use of a privately operated detoxification reception program where inebriates must remain for a minimum 4-hour period. Though a largely rural area, the Frederick County, Virginia detoxification program, operated by the Division of Court Services, also has diverted a large number of persons from jail.

Similar pre-arrest diversion programs are in effect for persons involved in family disputes and for homeless persons in other jurisdictions throughout the United States.
In Galveston, Texas, law enforcement officials have instituted practices to divert the mentally ill - a population that frequently makes up 10-20 percent of a jail’s population. A team of deputies receives special training to assist in meeting the emergency needs of the mentally ill and works closely with other agencies in the community. Offenders so identified are taken directly to a mental health facility.

Jail Administrators: Elected sheriffs or appointed jail administrators are often viewed as the managers most affected but least powerful in dealing with jail overcrowding. While having little if any control over jail admissions and length of confinement, jail administrators nevertheless can help reduce crowding through several techniques.

First: assuring ready access of prisoners for pre-trial release and recognizance screenings and for bail review. In some jurisdictions, jail administrators are delegated authority to release defendants pretrial or to divert certain offenders (drunk drivers, for example) to treatment centers. Other administrators have developed non-jail pre-trial release and sentencing options or cooperate with other jurisdictions to alleviate crowding on a multi-county basis.

Second: case management and coordination with the court regarding the case processing status of detained defendants. The jail administrator also can develop a systematic approach to "case management" through the appointment of a Case Traffic Manager who provides the judge and other criminal justice officials with feedback regarding prisoners awaiting or following adjudication. Such a person tracks all offenders in terms of status and informs officials of the need to make decisions as appropriate. In DuPage County, Illinois, the jail administrator works on an "80 percent rule" whereby offenders who have completed 80 percent of their sentences can be released "early" if the jail has reached a "cap". Consideration is now being given in that facility to releasing sentenced offenders whose terms expire Saturday through Monday on the preceding Friday if the jail is overcrowded.

Prosecution: Prosecutors act at more case-handling decision points than any other official in the judicial process in the United States. Early case screening, diversion
and deferred prosecution unquestionably reduces unnecessary length of confinement or confinement itself by eliminating or downgrading appropriate cases as early in the case process as possible.

Pretrial Release Services: Providing background information on defendants, release recommendations, and other pre-trial assistance (e.g., diversion of the mentally ill) can be an important component of solutions to crowding. Pre-trial services can often help merely by adjusting staff schedules to ensure timely screening and interviews for a maximum number of defendants. In some states, such as Maine, the legislature has authorized the Division of Parole and Probation to provide intensive supervision of selected pre-trial defendants who have been charged with serious offenses and who are released without bail. Limited release authority is delegated to staff of pretrial services agencies in an increasing number of jurisdictions. In other jurisdictions, many pretrial programs respond to jail population pressures by expanding the range of release options (conditional and supervised release, third-party custody, unsecured bail, deposit bail, for example) in coordination with the courts and the prosecution, and by conducting regular bail reviews for those defendants detained for trial.

Judiciary: Judges make more decisions affecting jail population than anyone else, which should make them the "leaders" in seeking jail population reduction solutions. Judges can issue summonses instead of arrest warrants; provide guidelines authorizing direct release by police, jail and pretrial staff; and provide bail setting outside normal court hours. Many courts provide 24-hour bail setting magistrates.

Defense: Early screening for indigency, defender appointment and defendant contact can decrease length of confinement and yield substantial savings of jail space. In many jurisdictions, efforts to reduce staggering defender caseloads by appointing private attorneys (if funds are available) in felony cases have also reduced case disposition time, stimulated bail review, and resulted in shorter pre-trial confinement.

Probation and Parole: Not only do probation and parole agencies provide non-jail alternatives for sentencing but they can also enhance case processing efficiency by streamlining presentence investigation procedures and expediting revocation decisions. In Brevard County, Florida, the jail population oversight committee has worked with probation and parole officers to reduce PSI preparation time from 90 days to 30 days for
jail cases and the time required for decisions on revocation has been reduced to 24 hours.

**Other Alternatives**

- **Restitution Programs:** In 1972, the Minnesota Restitution Program, the first of its kind in the nation, gave property crime offenders the opportunity to avoid or abbreviate their sentences by working to repay their victims. As my colleague, Caroline Cooper, will discuss, presently, some courts will allow criminal charges to be dropped once restitution is made, thereby foregoing the sentencing procedure altogether. In Mississippi and Georgia, among many other states, restitution programs (both residential and nonresidential) have become mainstays of the community corrections programs. In many jurisdictions, restitution is a standard condition of probation, which offers the courts an additional sentencing alternative in lieu of incarceration.

- **Community service:** Similar to restitution is the option of community service, especially for indigent offenders. In addition to helping they repay their debt to society, such service often helps offenders learn how to work.

- **Work release and work furloughs:** Work release and work furloughs have become popular programs and offer a significant alternative to incarceration. In many jurisdictions, these programs are managed by jail officials on residential and nonresidential bases.

- **Intensive supervision programs:** Intensive supervision programs (ISP), usually managed by probation and parole agencies, are becoming increasingly popular in many states. While initially designed to deal with state-based prison commitments, they have begun to find their way at operational levels in many local jurisdictions. Instead of incarceration, selected offenders are monitored closely in their own communities. The ISP officers, admittedly with reduced caseloads, are making as many as 10-15 face-to-face contacts in the field each week.

- **Comprehensive community corrections:** Comprehensive community corrections, as directed by stated legislatures, is an innovative approach to encouraging local jurisdictions to keep selected offenders in the community instead of committing them to state facilities. One of the earliest and most ambitious efforts to achieve this end occurred in California though the state subsidy plan. Communities were paid as
much as $4,000 for each offender they kept out of the state prison system. Minnesota’s Community Corrections Act, passed in 1973, is an even more comprehensive statewide approach. The state distributed money to communities which have voluntarily developed local alternatives to imprisonment. Originally, the act required the counties to compensate the state for every offender sent to state prison for an offense carrying a minimum sentence of less than five years. That act initially established a policy that only offenders charged with very serious crimes were imprisoned but that provision was dropped when the state’s more explicit sentencing guidelines were enacted. This approach does not require localities to adopt specific designated alternatives to incarceration but allows each community to devise its own plan, based on its own needs and resources. Alternatives can include, but are not limited to, traditional or intensive probation, community service, restitution, weekend detention, and alcohol and drug abuse treatment.

- **House arrest and electronic surveillance:** Many states use house arrest and electronic surveillance as an alternative to incarceration, especially at the misdemeanor level. While the bulk of these programs are managed by probation and parole agencies, some are being developed by sheriff’s departments. In Sarpy County, Nebraska, for example, the sheriff, through the jail administrator, is running a program for Sarpy County and five other neighboring counties. Up to 50 offenders are placed on electronic surveillance at any given time. The offender pays the bulk of the costs for the program (a daily fee).

It should be noted that there is a growing trend toward using private vendors to develop and manage a host of alternative programs providing the services required to operate the range of intermediate sanctions described above, both residential and nonresidential. The key to their success, of course, is adequate and appropriate monitoring by key government officials and contracts that require a high degree of performance and accountability.
III. THE PRINCIPAL INTERMEDIATE SANCTIONS USED IN THE U.S.¹

This section presents an overview of a range of intermediate sanctions and related tools, and how they are being used by State and local governments in the United States. Several points should be noted here: First, while many of the State and local programs were initially established and promoted explicitly as less costly alternatives to incarceration, i.e., to address prison and jail crowding, most have also been used for, and increasingly are being designed for, a range of offenders who would otherwise have received "standard" probation. Again, intermediate sanctions serve more purposes than reducing costs and providing bedspace. Second, the sanctions described below are not mutually exclusive, but are frequently used in combination. Thus, a program of Intensive Supervision Probation may include requirements for community service, restitution, regular drug testing and a curfew. And third, these intermediate punishments can be effective--can function as credible sanctions with both offenders and the public--only to the extent that compliance with conditions is strictly monitored and enforced, and that the "back-up sentence"--the penalty for non-compliance--is defined and capable of implementation.

Shock Incarceration (SI) Programs: Shock Incarceration programs, popularly known as "boot camps," are one of the most publicized intermediate sanctions programs. As of February 1990, SI programs were operating in 14 States. Programs vary in size, duration, location, who controls entry (judiciary or department of corrections), the level of post-program supervision and differences in the level of training, education, or treatment programming provided. All are relatively brief--most, three to four months--and are designed for offenders who have not yet served time in a State prison. The programs draw on the model of a military boot camp. They stress strict discipline, obedience, regimentation, drill and ceremony, and physical conditioning, sometimes including manual labor. SI participants are expected to learn self-discipline, teamwork and develop improved self-respect. Program participants are housed separately from the

general prison population, although in some programs they are within sight and earshot of general population inmates.

**Intensive Supervision Probation (ISP):** Intensive supervision probation (ISP) is a technique for increasing control over offenders in the community (and thereby reducing risk), has gained wide popularity. A 1988 survey found that 45 States had or were developing ISP programs. The most basic elements of ISP are increased supervision, surveillance and control, usually achieved through reduced caseloads, increased numbers of contacts per month, and a range of mandated activities for participating offenders—for example, work or vocational training, community service, drug testing and treatment, and, in some cases, a curfew. Programs vary, however, in terms of the number and type of contacts per month, caseload size, type of surveillance conducted and services offered, whether staffed by specially trained officers or regular probation officers, and whether an officer "team" approach is used. Entry to a program may be the province of the sentencing judge, a prison release board, a parole board, or the probation agency.

**Day Reporting Centers:** An emerging development in the field of intensive supervision is the Day Reporting Center (DRC). Thirteen DRC's are operating in six states, the majority operated by private organizations. While programs vary in detail, in general, offenders must physically report to the Center on a daily basis, provide a schedule of their planned activities, and must participate in designated programs, services, and activities provided by the center or other community agencies. They must report by phone to the center throughout the day, and they can expect random phone checks by center staff both during the day and at home following curfew.

**House Arrest and Home Confinement Conditions:** Home confinement conditions restrict an individual to his or her residence for specific periods of time. Such conditions may be one component of a separate sentence (for example, the curfew conditions of intensive supervision programs), or may constitute an independent sanction, popularly known as "house arrest." Most house arrest programs, offenders are permitted to leave their home only for employment, medical needs, or such mandated assignments as community service.

In the spectrum of intermediate sanctions, house arrest is considered more punitive than intensive probation which, in addition to close surveillance, may offer the
offender counseling, treatment, and support services. In house arrest, the focus is on confinement, and the supervising officer's role is to ensure that the offender stays confined at home—a function supported in some programs with electronic monitoring. House arrest programs have been established in several States; those in Florida and Oklahoma are among the best known.

**Expanded Use of Fines:** Many proponents of intermediate sanctions are urging expanded use of fines as a sanction, based 1) on a growing body of U.S. research, and 2) on the British and European experience, including the use of "day-fines."

**U.S. Research and Practice:** While the fine as a criminal sanction is clearly punitive in nature, criticisms include: many fines are small and their punitive symbolism is limited; collection practices burden overworked courts, thus many fines are not collected, weakening the credibility of both the sanction and the court; and, because of disparity in offender incomes, set fines are inherently unfair. Recent research, however, demonstrates that there are many court across the country where fines are imposed frequently and collections rates are high; and that often such straightforward administrative measures as requiring immediate payment, keeping installment schedules short, monitoring payment and sanctioning non-compliance quickly, appear to be major factors in program effectiveness. A number of courts are turning to the private sector for assistance with collection and enforcement.

**The European Experience:** The use of fines as the sole sanction for non-trivial criminal cases has been demonstrated in the United Kingdom, West Germany and Sweden. During 1980 in England and Wales, 24 percent of those convicted for burglary, 50 percent of those convicted of violence against a person, and 52 of those convicted of theft or handling stolen property were fined. In West Germany, roughly 75 percent of adults convicted of other than traffic offenses are fined. The reported proportion in Sweden is close to 70 percent. A study in West Germany reported no difference in recidivism between professional thieves and traffic offenders given short-term imprisonment and those given a fine; it reported fines were considerably more effective than either imprisonment or probation for offenders convicted of embezzlement, theft, and fraud.
**Day Fines:** One technique for addressing the equity issue in using fines for offenders with vastly different incomes is the European Day Fine, widely used in West Germany and Scandinavia. With day fines, the judge first decides the number of "day fine units" warranted, based on the nature and severity of the crime (the more serious the crime, the higher the number of units), but with no consideration of the offender’s income or resources. The monetary value of each day-fine unit is then determined based on the offender’s income. The individual offender’s "day fine" times the number of units imposed, becomes the total fine. In Sweden, a day fine is 1/1000th of the individual’s annual income, with deductions made for taxes, dependents and major debts, but with increases based on net worth. Essentially, the Swedish system deprives offenders of disposable income over and above their basic living expenses. In Germany, a day-fine unit is described as the offender’s net income for one day, without deduction for family maintenance; the total fine then represents the net income the offender would have lost had he or she been incarcerated. Such fines can be adjusted to reflect individual circumstances.

**Community Service:** Community service orders require offenders to work without pay for a designated number of hours, normally for public or non-profit organizations. Typical tasks include cleaning up highways and public parks, maintenance work in hospitals or nursing homes, or clerical tasks in public agencies. Community service has been discussed earlier as one element within a more stringent intermediate punishment (e.g., intensive probation, house arrest, or in conjunction with a heavy fine for white collar offenders who are seen as posing no risk to the public). Community service orders are also used as a stand-alone sanction or a condition of probation for low level indigent offenders unable to pay a fine; for lesser white collar offenders and for many juveniles. A recent review indicated there were well over 250 community service programs serving adult criminal courts and double that number for juveniles. Both the advice of experienced program administrators and research findings on community service indicate that to be effective—whether as an independent sanction or an element of a more punitive sentence—programs must focus on judicial acceptance, enforcement of community service orders, supervision of the work to be performed, and, often, training offenders to perform the work.
**Restitution:** Financial restitution to the victim (or, in the absence of an identified victim, mandated contributions to the State victim compensation fund) is increasingly seen as one element of a more stringent intermediate sanction, such as intensive supervision probation. Here, there is a supervision mechanism in place to enforce payment. When victim restitution is ordered as a condition of probation, it may be administered by the probation agency, a victim-assistance program, or an independent program. A 1986 analysis of restitution practices found both victim-focused and offender-focused restitution programs, but in few cases was victim restitution the sole sanction. For all types of programs, the techniques for determining restitution amount were a key issue. Concerns surrounding restitution collection, strategies, to encourage payment and sanctions for non-compliance parallel those involved in fines, although there appeared to be less innovation in addressing them.

**Mandatory Driver’s License Suspension:** Mandatory suspension of a driver’s license (or ineligibility to apply for one) is drawing increasing attention as a potential sanction for drug users as well as for alcohol offenses. It is theorized that the loss of a driver’s license for a significant period of time may not only enhance public safety, but also provide an inexpensive and administratively simple sanction that can have a significant deterrent effect, particularly for casual drug users and juveniles. There are already a few programs in operation--in Oregon, Missouri, and New Jersey--but little is known about their effectiveness. The Oregon Program is the oldest and targets 13 to 17 year olds. It was established in response to the Oregon Denial Law passed in 1983, which was the nation’s first State law to revoke minors’ driving privileges for alcohol or drug offenses, whether the vehicle was involved in the offense or not.

In addition, some jurisdictions are experimenting with confiscating the automobiles of drug users driving to a “drug market” to purchase drugs.

**Denial of Federal Benefits:** The opportunity to deny Federal benefits to convicted drug traffickers and possessors provides courts with an additional tool to punish drug offenders who might not otherwise receive a meaningful and tailored punishment. This provision sends out a message that there are consequences for drug use as well as trafficking.
Courts have the option of denying all Federal benefits or only selected benefits. The benefits subject to denial are: Federal Government grants, contracts, loans (including student loans), and commercial or professional licenses provided by an agency of the Federal Government, either directly or with Federally appropriated funds.

There are a number of benefits that have been specifically exempted from the denial process by statute. These include veterans benefits, benefits related to long-term drug treatment and benefits that are earned by financial contributions or services such as social security, and other retirement benefits.

The length of the denial depends upon the crime and the decision of the court. Drug traffickers can be denied benefits for up to 5 years for a first offense, up to 10 years for a second offense, and permanently for a third offense. Persons convicted of possession can be ineligible for benefits for up to one year for a first offense, and up to 5 years for subsequent offenses.

If an offender who is denied Federal benefits enters and successfully completes a long-term drug rehabilitation program and is rehabilitated under criteria established by the Federal Government’s Department of Health and Human Services, the court can suspend the denial of benefits.

**Technologies to Monitor Compliance with Conditions:** Two technologies that permit criminal justice agencies to monitor more accurately an offender’s compliance with the conditions of the sentence—drug testing and electronic monitoring—are increasingly being used in State and local intermediate sanctions programs.

- **Drug Testing:** Drug testing, to determine that an offender remains drug-free, is now being used as part of intensive supervision probation (ISP), house arrest, probation with day reporting, and shock incarceration programs at the State and local level. Testing may be either routine or unannounced, or both. Urinalysis, which identifies recent drug use, is the current technology. Hair analysis, which can identify drug use over time, is too expensive presently for widespread application. However, the technology is developing rapidly and may hold promise for a less intrusive testing method, which could be used at less frequent intervals to provide not simply a "snapshot" of recent drug use, but a history of use over time.
Electronic Monitoring: Electronic monitoring is used in a number of house arrest and ISP programs to monitor compliance with confinement conditions—in short, to make sure offenders are where they are supposed to be. Growth in use has been explosive in recent years. In February 1987, 826 offenders were being monitored in 21 States; by February 1989, an estimated 7,200 offenders in at least 37 States were being monitored.

Electronic monitoring is being used with major traffic offenders (particularly DUI or DWI), property offenders, drug offenders, and for some sex offenses and/or offenses against persons.

Commercially available monitoring equipment transmits information about the offender’s presence in or absence from the monitored location, usually telephone line, to a computer where it is available to the surveillance officer. Two approaches are prevalent: a “continuously signalling device” which constantly monitors the offender’s presence at a given location and the “programmed contact device” which phones offenders periodically to verify their presence. Recently, "hybrid" equipment has been introduced. It normally functions as a continuously signalling device, but when the computer is alerted to an unauthorized absence is capable of functioning as a programmed contact device, telephoning the offender and requesting verification that the individual responding is the offender being monitored. Numerous other advances and refinements are being incorporated in the systems, including visual verification through transmission of a snapshot activated by the person answering the telephone.

IV. PORTENTS FOR THE FUTURE

Despite this experimentation with a wide range of intermediate sanctions, the various legislatively established sentencing schemes in the states -- and the prevailing judicial philosophy in appplying them -- focus on the "in or out" decision with respect to prison or probation for the convicted offender. Within this framework, the "just deserts" objective of criminal sentencing, based on the seriousness of the crime and the defendant’s prior criminal history, is the predominant rationale for assessing punishment. There is almost no consideration given to what happens incidental to incarceration with
respect to the rehabilitative needs of the offender for whom the decision is "in"; and sentencing to community-based correctional supervision, the "out" decision, is driven more by what is or is not available in the community by way of resources to maintain effective control and supervision of the offender than by consideration of his or her rehabilitative posture and needs.

There is an uneasy feeling among some correctional researchers that these innovative intermediate sanctions that we have discussed are being used by judges to put some teeth into the traditional probation-type of sentence for individuals who normally would have been sentenced to probation, rather than as rational alternative sanctions for persons who would normally be sentenced to jail. As Andrew Von Hirsch concluded in his article on "punishment in the Community and the Principles of Desert,"(Rutgers Law Journal, Spring, 1989):

This strategy -- of simply creating more options -- has proven a disappointment, however. In the absence of principles governing their use, the novel sanctions have not necessarily served as replacements for imprisonment. Instead, judges often sentenced people to prison as before and used the new sanctions as substitutes for probation -- a measure which they had come to regard as perfunctory. The new measures proliferated at the expense of probation, and at the expense of each other....it is scarcely surprising that more careful recent assessments have questioned the newer "alternatives" success in reducing reliance on imprisonment.

Whether the results of the extensive evaluation research on intermediate sanctions now underway in the States bear out Professor Von Hirsch's apprehension remains to be seen. All of the successful offender-oriented programs spoken about by Osa and Leon evolved through a period of trial and error, so I am not surprised that the preliminary assessments of the impact of intermediate sanctions are inconclusive.

A major reason for my optimism is that there is widespread public support for the concept of community-based and -- even community-directed -- sanctioning and rehabilitation of the non-violent offender. There also is increasing acceptance by the judiciary of the concept that judges should be concerned with outcomes, as well as sanctions, in the exercise of their sentencing authority. This confluence of interests can only have a positive effect on the willingness of judges to avail themselves more aggressively of non-prison sentencing alternatives and on the political courage of State legislators to provide the statutory framework to enable them to do so.
SOURCES


