

**IMPROVING THE USE OF INTERMEDIATE SANCTIONS:  
LESSONS FROM THE INTERMEDIATE SANCTIONS PROJECT**

A joint project of the National Institute of Corrections and the  
State Justice Institute

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This monograph summarizes the major learnings of a national Intermediate Sanctions Project, sponsored by the National Institute of Corrections and the State Justice Institute. The Project is a program of support and technical assistance developed in response to the enormous interest on the part of local jurisdictions in the development of intermediate sanctions. Originally intended by its sponsors to facilitate dialogue between the courts and corrections about sentencing, the Project has learned from the 25 jurisdictions that have been and are participants that achieving the effective and appropriate use of intermediate sanctions is a complex and multi-dimensional endeavor.

In large urban court systems like Phoenix, Arizona, and Houston, Texas, and in diverse suburban systems like Montgomery County, Maryland, and Dakota County, Minnesota, the Project has worked with policymakers from the courts, law enforcement, and state and local governments in their efforts to develop and implement a range of sanctioning options short of total incarceration. Those judges, county commissioners, prosecutors, sheriffs, probation officials, defense attorneys, state legislators, and their colleagues have shared their struggles, their fears, their concerns, and their frustrations with Project staff and consultants in the frankest terms. They have opened their meetings to us and allowed us to help them articulate their visions; they have asked us to critique

their agendas, program plans, research designs, and data collection instruments; and they have invited our advice and observation as they devised and carried out strategies with key constituencies. We hope that we can repay that trust and openness by capturing here the learnings of their efforts.

#### WHY INTERMEDIATE SANCTIONS?

The interest in intermediate sanctions in most jurisdictions is driven by profound dissatisfaction with the outcomes of most existing sanctions, particularly in light of their cost. The specific outcomes desired may be quite different, depending on the agency or policymaking body, but the frustration about current options is widely shared. Whether judges or legislators, criminal justice system policymakers want to have the ability to respond appropriately to the diversity of offenses and types of offenders coming through the system. They hope that by creating a new array of sanctioning programs they will make sentencing more just and effective for offenders, enhance public safety, increase local corrections capacity, restrain growth in prison and jail populations, and reduce costs.

These high expectations may ultimately spell failure for intermediate sanctions efforts. Some would argue that these expectations are unrealistic for any criminal sanctioning system. The more central issue here, however, is identifying the source of

the problems that these new programs are supposed to address: the ineffective, costly, and overcrowded state of our current sanctions. The fact is that, in jurisdiction after jurisdiction, we find that public and private agencies have created a wide variety of programs and options for use at sentencing. They have, in some places, multiplied the total capacity of all community-based sanctions many times over. With the advent of new technologies for assessment, classification, and supervision, new methods of intervention, and an increased understanding of targeting, the capability of those agencies to manage offenders safely in the community has expanded as well. Yet the search goes on for new approaches that, if tried., would make that long-awaited difference in sentencing.

No program or sentencing option can achieve its full potential for effectiveness if it serves the wrong population, nor will it be seen as successful if its purpose is misunderstood. Our experience **indicates that it is not the programs - in their number, their inventiveness, or their sophistication - that have produced such ineffective and frustrating results, but rather the failure of the system that surrounds them to behave as a system.** That failure takes a number of forms: a lack of communication among the actors and agencies about the capabilities and limitations of sentencing options; the absence of any agreement on specific populations and specific outcomes for which those options are best suited; a lack of information about the sentencing process and hard data about the

offenders who come through it, and, most importantly, the absence of a vision or articulated mission for the entire sanctioning enterprise.

The criminal justice system behaves as a system when it undertakes the process of developing policy, that is, articulating desired goals and outcomes for its efforts; gathering and using information to support choosing among options; examining and reexamining how well chosen options are meeting the intended goal; and holding itself accountable as a unified enterprise.

The pitfall for "intermediate sanctions" is that, unless this more fundamental failure is addressed, efforts now under way will simply add to the frustration while in no way addressing the underlying problem.

#### WHAT DO WE MEAN BY POLICY?

Policy is first and foremost a statement of intent. It expresses why we are engaging in a particular set of activities. It also contains the instructions for how we are to carry out those activities. Policy can be very general or very specific, or anywhere in between.

In the case of sentencing, policy should express our priority purpose for sentencing: the reason we respond at all to criminal

behavior. This is the mission statement of our criminal justice system, our vision of justice in our jurisdiction. Because our goals for sentencing are likely to vary depending on the type of offense, and perhaps the type of offender, sentencing policy should also articulate when particular goals are preeminent and how their importance is to be weighed when they are in conflict.

In the case of intermediate sanctions, a primary motivation in most jurisdictions and among most policymakers is the desire to respond appropriately to a diversity of offenses and offenders. Therefore, policy regarding intermediate sanctions will typically be fairly specific: spelling out the categories of cases that are to be directed to intermediate sanctions, describing in detail the offense and offender characteristics of cases in each category and the outcomes or goals that are sought for each of those categories, and describing the kinds of responses that are appropriate for each group.

Because of the diverse sources of decisionmaking and influence on decisionmaking in the area of sentencing, policy regarding intermediate sanctions must also describe the means by which this matching of population group and sanction will be carried out. How will a jurisdiction ensure that sentencing practices actually reflect this agreement? How will the policy affect the day-to-day behavior of prosecutors, defense attorneys, judges, and probation officers writing pre-sentence recommendations? These are choices

that policymakers in a jurisdiction must make.

#### WHAT ARE INTERMEDIATE SANCTIONS?

The difficulty for many jurisdictions is that the term "intermediate sanctions" is used to refer both to specific sanctioning options or programs and to the overall concept of a graduated range of sentencing choices guided by an articulated policy framework. Creating intermediate sanctions in a jurisdiction requires the development of both a range **of** sanctioning options and a coherent policy to guide their use. To be successful, sanctions must be devised and operated with the participation and responsibility of those whose decisions will determine their use.

The policy that articulates an overall sentencing scheme and the place of sanctioning options within it is as important as the actual programs. The sanctioning options can be whatever the policymakers of a jurisdiction decide that they need and can afford in order to meet their goals for their offender population. Those options might include:

- Means-based or day fines;
- Community service and/or restitution (ordered ad hoc or organized as programs);
- Special-needs probation programs or caseloads (for some

categories of domestic violence, sex offenses, or drunk driving cases, for example, or for mentally ill or mentally retarded offenders);

- Out-patient and/or residential drug treatment centers;
- Day centers and/or residential centers for other treatment, training, or similar purpose;
- Intensive supervision probation;
- Day centers for monitoring and supervision;
- Curfews and house arrest (with or without electronic monitoring);
- Halfway houses or work release centers; and
- A number of other sanctions short of total incarceration.

Developing a range of sanctioning options typically means rationalizing the use of all correctional resources within a jurisdiction. If a jurisdiction seeks to create specific responses to specific offender behaviors and/or characteristics, then in so doing it must also define the best use of its existing options. As part of that effort, jurisdictions must also examine their responses to violation behavior by offenders in any of these sanctions. Such an examination would look at the options available as well as their usefulness in meeting the outcome originally desired at the time of sentencing.

WHAT DOES IT TAKE?



In order for a state or local jurisdiction to create a policy-driven range of intermediate sanctions, the key policy- and decisionmakers within the jurisdiction must agree to some fundamental changes in the way they do business. In effect, they must make the criminal justice system behave like a system. Several key elements are necessary to achieving this.

FIRST: The key players in the criminal justice system must agree to regular, frank communication about the sentencing practices, options, and desired sentencing outcomes in their jurisdiction.

-Experimentation and expansion in programming has been taking place in corrections throughout the country without adequate reference to the concerns and interests of all the players in that process. In most jurisdictions, there is no forum in which those players can share the outcomes that they want for sentencing. Unless key actors acknowledge their interests, explore the implications of those interests for the creation of options, and address their differences, the options created will not earn the support and trust of the very people whose decisions guide their use.

The first step is to create the forum through which criminal justice policymakers, elected officials, and other key groups can have regular dialogue about their interests and concerns in the carrying out of sentences. With a process of sharing and compromise about outcomes in place, it is much more likely that

sentencing options will be designed or reshaped successfully. This does not mean that every option will necessarily incorporate program elements designed to achieve every desired outcome. Rather, the development of a range of sanctions will be guided by the careful matching of specific goals to targeted populations, with the incorporation of needed program components that satisfy everyone's concerns.

Once established, the goals specified for various sanctions within a jurisdiction will become the measures against which the performance of those sanctions is monitored and evaluated. That information must, in turn, be provided to the policymakers for affirmation that their goals are being met or for recommendation of changes to meet the goals more effectively.

SECOND : The effort at regular communication and dialogue must be led by the bench and provided the resources needed to succeed.

Given the adversarial nature of criminal court proceedings and the constitutionally separate responsibilities of the three branches of government in the criminal justice system, only judges - or more precisely the presiding judges - have the requisite position and authority to call together all of the system representatives. This does not mean that the presiding judge must chair meetings or tend to matters like developing agenda, but rather that the overall effort to establish and maintain regular dialogue must be made

under his or her auspices and with his or her full support.

The process by which members of this group build common understandings of one another and their system, gather and use information, and reach agreements about the policies surrounding the development and use of intermediate sanctions is complex and time consuming. To succeed, this effort demands the dedication of support staff to prepare for meetings, maintain communication between meetings, gather requested data, and perform other related tasks.

**THIRD:** The key actors comprising the policy group must educate themselves about their own system.

The most common experience of Project participants has been the realization of how little they know about their own systems. In order to develop policy to guide the use of sanctioning options, it is necessary to understand:

- How the sentencing process actually works in a jurisdiction: How cases move through the system; what the key decision points and decision options are; who the decisionmakers are; the formal and informal rules that govern decisionmaking; and the characteristics and capacities of different programs.

- Who the offenders coming through the system are, and what their numbers are at different decision points. This involves attaching numbers and offender profiles to the system flowchart described above.

This is a critical set of activities. It establishes a base of common knowledge that reduces the likelihood of basing discussions and decisions on untested assumptions and individual anecdotes.

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FOURTH: The key actors in the criminal justice system must assume responsibility for the implementation and outcomes of sentencing decisions.

Corrections, whether institutional or community based, is typically ignored by the rest of the system once a case has been disposed. If everyone who has a role in the sentencing decision has an outcome or purpose in mind when making a recommendation or passing a sentence, they should also know how likely it is that the purpose will be served or the outcome achieved by the sentence.

Initially, the policy group will be reviewing the information described above and determining how best to meet desired outcomes through new or existing sanctioning options. Although this work will be ongoing, the group must also: 1) make a commitment to the

creation and maintenance of a system of data gathering for monitoring purposes, and 2) maintain the role of the policy group in reviewing the results of the monitoring and acting on any changes that might be indicated.

**FIFTH:** The work of the policy group must be supported by needed changes in the individual agencies and offices represented by the group. Members must be willing to implement those changes within their own agencies.

Creating effective intermediate sanctions, it turns out, has less to do with finding and implementing innovative programs and more to do with fundamentally changing the way criminal justice systems conduct their business. This requires a commitment on the part of policymakers to do more than simply agree in the policy group to certain principles, but to begin that change process within their own agencies. The agenda will be different for each agency or policymaking body, but might include, for example:

- A probation agency's reexamination of its policy guidelines to field officers on responses to violation behavior or on sentencing recommendations in pre-sentence investigations;
  
- A prosecutor's office review of its "standard" plea offers in some kinds of routine cases; or

- A bench's decision to no longer accept certain kinds of sentencing recommendations or plea agreements that have not examined possible intermediate sanctions.

## HOW CAN WE DO THIS IN OUR JURISDICTION?

The substantive work associated with achieving these kinds of changes is diverse and complex. It has several key components. These components and the tasks of which they are comprised are not separate and linear. They are parts of a larger process that encourages collaboration, clarifies goals, depends on information, and builds a common commitment.

The essential elements of the Intermediate Sanctions Process are:

- I. **The establishment of an identified and organized work group,**  
This group should be committed to frank and regular communication and organized to effect change in a coordinated fashion.

- II. **Obtaining good base-line information.**

Good base-line information establishes a common frame of reference about how the system in a jurisdiction currently works: its decision points, structure, and points of authority and influence.

- III. **A continuing process of goal and outcome clarification.**

The work group must continually clarify its definitions of the outcomes sought for both the change process and the sanctions.

- IV. **System scanning capability.**

This is the capability to find and use existing data and to establish ongoing data gathering and analysis to monitor and evaluate proposals and programs.

- V. **An ongoing review of the policies and practices of individual agencies.**

The work group, using its understanding of the sentencing process, must examine how the policies and practices of agencies combine to create that process and commit to changing them as necessary.

- VI. **Policy creation and implementation.**

Finally, information, data collection, dialogue, and goal

clarification must result in the creation of policy to guide the development and use of intermediate sanctions.