

INTERMEDIATE REVOCATION SANCTIONS

AN OVERVIEW OF THE TEXAS SYSTEM

Conference on
Intermediate Punishments as Sentencing Options
U.S. Department of Justice
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PREFACE

Nearly every state in the country is experiencing some degree of overcrowding in its prisons and jails. This overcrowding has led to federal court intervention in over 40 of our states. Increasing numbers of convicted felons are being diverted from prison sentences to probation or are being released early from sentences of confinement in an effort to deal with the problem and relieve prison population growth.

When the external factor of overcrowding and its consequences becomes the primary reason for the imposition of a non-incarceration sanction, the result has been a higher failure rate due to the inappropriateness of the punishment to the offender and the crime. What was viewed as a means of slowing prison growth has simply accelerated the population pressure on our prisons by increasing the number of recidivists being committed to them. The demands of higher probation and parole caseloads, coupled with an influx of high risk offenders, has not provided adequate punishment, rehabilitation or societal control.

The increasing numbers of felons who violate the terms and conditions of probation or parole have caused the criminal justice system to review its level and variety of sanctions. Intermediate sanctions are now being scrutinized more closely as a form of punishment which is more restrictive and punitive than traditional probation, but less expensive and restrictive than imprisonment. The success of intermediate sanctions will depend both on how they are perceived by the criminal justice community and the public and also on the commitment to its implementation and the degree to which they are enforced.

The rationale for the creation and implementation of intermediate sanctions should not be overcrowding. Strict enforcement of violations is necessary for the integrity of the punishment as well as for the perception of the offender (and the public) and may require some degree of incarceration. An intermediate sanction should not be viewed as a popular "alternative to incarceration", but rather an appropriate level of punish-

ment for the defendant and what justice requires for the crime that was committed. Preliminary research has shown that the "alternatives" are sending escalating numbers of failures to prison, are achieving no better recidivism rates than regular probation and parole supervision, and are much more expensive, belying their claims of cost savings.

This report will inventory the intermediate sanctions available within the criminal justice system in the state of Texas and draw some specific conclusions concerning one state's implementation. The intermediate sanction is not a panacea and is not meant to replace or restrict prison expansion, but it can provide a broader spectrum of punishments which judges and juries can effectively tailor to the appropriate offender and the crime for which he was convicted. Only when they are viewed and implemented in that broader context will the intermediate sanctions find a place "between prison and probation."

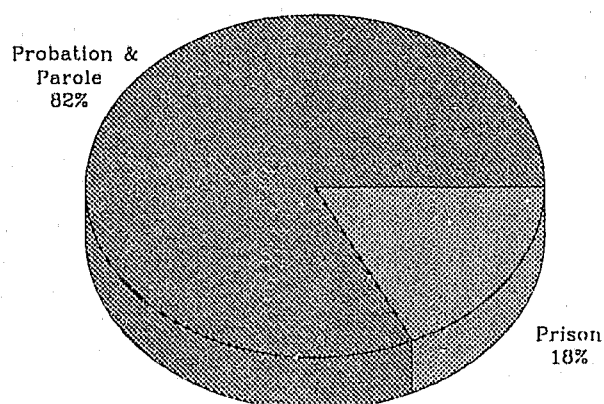
Austin, Texas
September 4, 1990

I OVERVIEW

Every state in the nation is experiencing overcrowding in prisons and jails as the population of convicted felons surpasses design and operational capacity. Increased criminal activity causes a proportional increase in the number of arrests, convictions and prison admissions. Larger numbers of convicted drug offenders will further accelerate this increase. Forecasts show projections of annual prison populations to be more than twice what had been originally projected in 1989. Much of this growth is attributable to increased efficiency in apprehending narcotics traffickers, particularly at the street level.¹

State prisons are presently operating at an average of 123% of design capacity.² As a result of this capacity shortfall, there has been an

Nationwide Prison Population
Versus Probation and Parole Population
1988

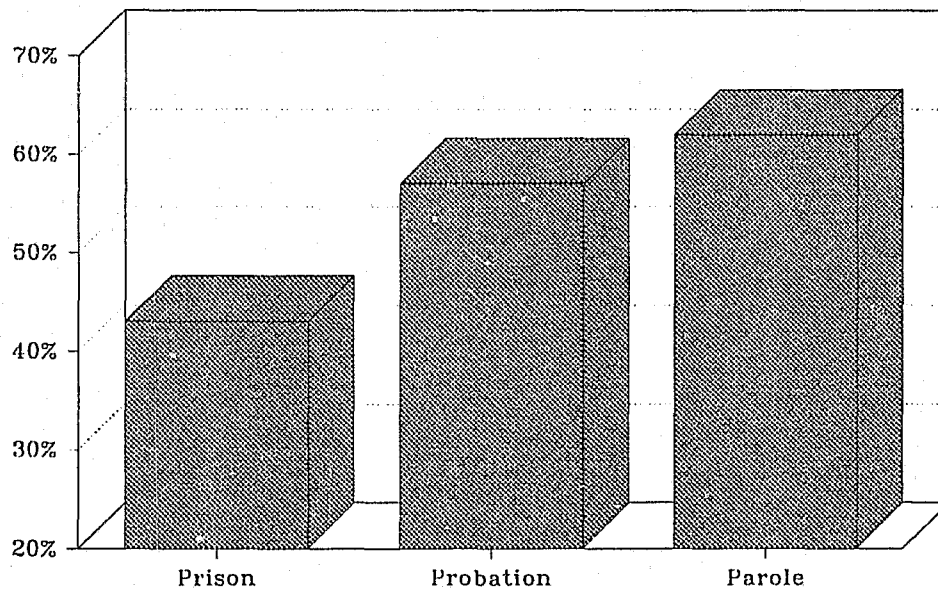


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increasing reliance on probation as a sanction for felons and on parole releases to relieve prison population growth. Nationwide, the increase in probation and parole populations has been greater than the increase in the

prison population. Between 1983 and 1988 the nationwide prison population increased by 43.4%³ compared to an increase of 56.86% for probation and 62.08% for parole populations.^{4 5}

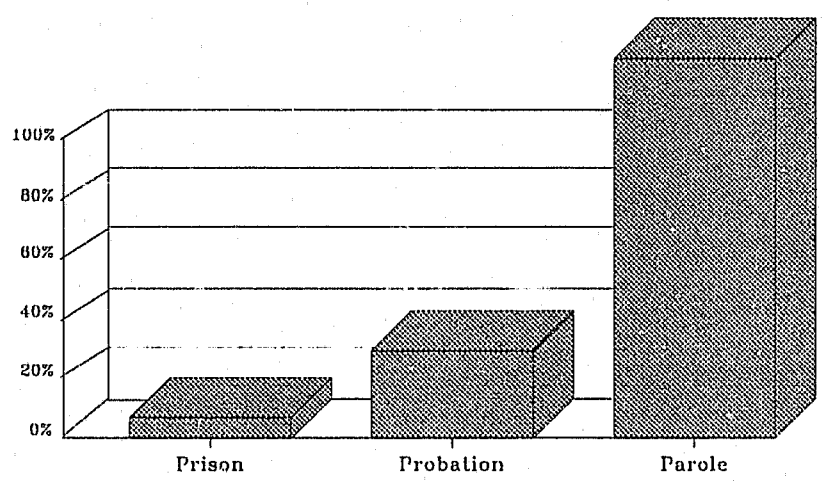
Nationwide Growth
Percentage Change From 1983 to 1988



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In Texas, as in most of the nation, demand for prison space has surpassed prison capacity. This demand has resulted in backlogs of state prisoners in county jails and an artificial increase in the use of probation and parole. Between 1983 and 1988 the prison population in Texas only increased by 7.8% due to capacity restrictions imposed by the federal courts.⁶ However, during the same period the state probation and parole population increased by 46.9%, with the probation population increasing by 32.9% and the parole population increasing by 142%.⁷ According to the U.S. Bureau of Justice Statistics, at the end of 1988 Texas reported the largest number of persons on probation in the nation (nearly 289,000), and the nation's largest parole population (almost 78,000). The Texas probation and parole population represented 13.2% of all probationers and

Texas Growth
Percentage Change From 1983 to 1988



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parolees in the nation. Table 1 below shows Texas' national ranking in 1989 in probation, parole and prison population per 100,000 adult population. The state ranked second for parole and third for probation with 657 parolees and 2,437 probationers per 100,000 adult population. The incarceration rate, however, was lower than 22 other states.

Ironically, as more offenders have been placed on probation and parole, the failure of these offenders has further accelerated the prison population growth. With increasing workloads, and more high risk offenders under supervision, traditional probation and parole supervision have not provided adequate punishment, rehabilitation or control. An estimated 41.4% of all felons released from the nation's prisons in 1983 were returned to prison or jail within 3 years; 62.7% were arrested for a felony or serious misdemeanor during the same period of time.⁸

Nationwide, probation recidivism data is not available. However, a study in California by the Rand Corporation found that during a 40-month follow-up period of felons granted probation, 51% were revoked or had motions to revoke filed. Thirty-four percent were re-incarcerated primarily for burglary, theft, robbery, and other violent crimes. The Rand

Parole Rate per 100,000		Probation Rate per 100,000		Incarceration Rate per 100,000	
State	Parole	State	Probation	State	Prison
1 District of Columbia	824	1 District of Columbia	2587	1 District of Columbia	1129
2 Texas	657	2 Georgia	2525	2 Nevada	473
3 Pennsylvania	508	3 Texas	2437	3 South Carolina	419
4 New Jersey	314	4 Maryland	2262	4 Louisiana	395
5 Washington	311	5 Massachusetts	2027	5 Mississippi	394
6 Maryland	265	6 Delaware	1939	6 Alaska	363
7 South Carolina	262	7 Connecticut	1855	7 Oklahoma	355
8 Louisiana	260	8 Washington	1742	8 Arizona	354
9 New York	251	9 Florida	1698	9 North Carolina	352
10 Georgia	248	10 Michigan	1698	10 Delaware	344
11 California	237	11 Minnesota	1575	11 Michigan	342
12 Delaware	221	12 Vermont	1434	12 Alabama	329
13 Arkansas	220	13 North Carolina	1384	13 Maryland	325
14 Nevada	218	14 Indiana	1366	14 Florida	311
				15 Georgia	302
				16 California	286
				17 New York	285
				18 Ohio	279
				19 Missouri	268
				20 Virginia	265
				21 Arkansas	261
				22 New Jersey	251
				23 Texas	230

study concluded that "felony probation presents a serious threat to public safety."⁹ The U.S. Bureau of Justice Statistics in their profile of state prison inmates in 1986 found that "over four-fifths of state prison inmates were recidivists - they had previously been sentenced to probation or incarceration as a juvenile or adult. More than 60% had been either incarcerated or been on probation at least twice; 45% three or more times; and nearly 20%, six or more times."¹⁰ Clearly then, increased use of probation and parole as the sole response to overcrowding is merely a stopgap measure which serves to worsen the problem presented by crowded prisons and provides only short-term answers to a problem which needs long term solutions.

To address the increased number of recidivists entering prison from probation and parole failures, and to better utilize incarceration resources without increasing risks to society, criminal justice policy makers have created "intermediate" sentencing options. These options are designed to be safe, punitive, tougher than traditional probation or parole but less stringent and expensive than imprisonment. Supervision in these pro-

grams is intensive due to increased contact with offenders. It can be "enhanced" by mechanisms like electronic monitoring or mandatory random drug testing. This labor intensive supervision is costly and contrasts sharply with the promotional claims of those advocating "alternatives" to prison expansion. A "graduated" system of sanctions also may be utilized to enforce the program or supervision conditions short of incarceration. Some common "intermediate sanction" programs are: Intensive Supervision Probation or Parole (ISP), house arrest, boot camps, restitution centers, parole violator incarcerative facilities and other restrictive supervision programs in the community.

In Texas, a comprehensive system of intermediate sanctions has been instituted through legislative change. This expansion is essential to address the increased prison admission pressure that has resulted in large part from probation and parole revocations. In 1989, over 68% of the admissions to prison were probation or parole revocations while only 31.6% of prison admissions were for direct court commitments.¹¹ Moreover, with dramatically increased drug activity in the state and the corresponding response by law enforcement, more drug offenders have been placed on probation and consequently more have been revoked and sentenced to prison. The proportion of drug offenders sent to prison increased from 18.5% of admissions in 1988 to 28% in 1989; 57.3% of these offenders had their supervision status revoked.¹²

This report discusses the intermediate punishment options under probation and parole in Texas which serve as a structured set of sanctions in lieu of revocation and return to prison. Part II of the report presents a brief overview of statutory provisions regulating sentencing and revocation policies in Texas. Part III and IV examine in detail the intermediate sanction programs of probation and parole. Particular attention is placed on identifying research and evaluations of these programs that can be used by policy makers to expand or re-examine the use of these alternatives. Part V concludes the report with a review of the "state of research" in this area, and the relation of research to the future success of intermediate sanctions.

The intermediate punishment options of Texas' probation and parole were passed in the Texas Omnibus Criminal Justice Reform Bill of 1989 (H.B. 2335, 71st Legislature, Regular Session). This legislation created new authority for the development of community-based correctional sanctions and programs; clarified and expanded statutory provisions for the use of alternatives in probation and other areas of the system; and directed or emphasized several new or existing correctional and rehabilitative programs in the probation, prison and parole system. Other authorization and appropriations provided for a significant expansion of prison capacity as a critical element to restore balance to the criminal justice system in which the ultimate sanction of incarceration must be available for those who fail to abide by the rules of intermediate sentencing options.

Adequate incarceration capacity within the system to enforce those options is as critical to their functioning as their existence itself.

II SENTENCING AND REVOCATION POLICIES IN TEXAS

The following represents a brief overview of the felony sentencing options available in Texas. The intermediate sanction programs that are available to sentencing officials will be described in the subsequent sections. Texas has four classifications of felony offenses, first through third degree felonies and capital offenses. The punishment range of each felony classification is as follows:

Capital Offenses - The most severe sentence an offender can receive. Once convicted of a capital offense, there are only two sentencing options, life in prison or death.

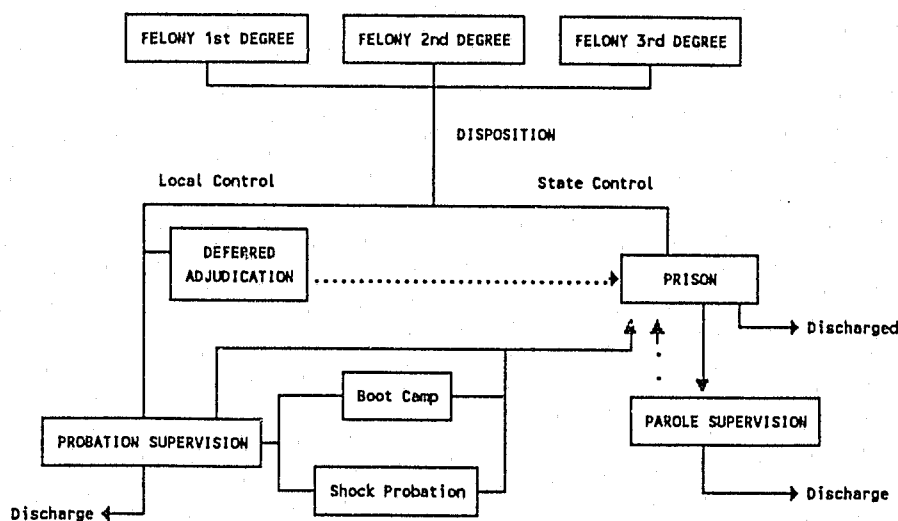
First Degree Felony - First degree felonies are punishable by five to 99 years or life in the Texas Department of Criminal Justice, Institutional Division and up to a \$10,000 fine.

Second Degree Felony - Second degree felonies are punishable by sentences from two to 20 years in the Texas Department of Criminal Justice, Institutional Division and up to a \$10,000 fine.

Third Degree Felony - Third degree felonies are punishable by a two to 10 year sentence in the Texas Department of Criminal Justice, Institutional Division or one year in a community corrections facility and up to a \$10,000 fine.

After an individual is convicted of a crime, sentencing authorities have several options. They may either sentence the defendant to prison or, if he has no previous felony convictions, the offender may be assessed a probated sentence (a judge may assess a probated sentence for certain

CHART 1
SENTENCING AND REVOCATION
POLICIES IN TEXAS: AN OVERVIEW



offenses regardless of the number of previous felony convictions). However, a judge may not grant a probated sentence upon a conviction for the following offenses: capital murder, aggravated kidnapping, aggravated sexual assault, aggravated robbery, or a felony offense where the offender used or exhibited a deadly weapon either during the commission of the offense or during immediate flight from the offense.

The court may also decide to place an individual on deferred adjudication. In that instance, the defendant pleads guilty, but the court does not actually adjudicate the defendant's guilt. The court finds that the evidence substantiates the defendant's guilt, defers further proceedings and places the defendant on probation. If the defendant completes the probationary term with no new offenses or violations of probation, the indictment may be dismissed. On the other hand, if the defendant violates the terms of his probation, the court may find the defendant guilty and consider the full range of punishment for the offense of which the defendant has been found guilty in assessing the sentence.

Once a defendant is placed on probation, the court has a number of intermediate sanctions to facilitate the enforcement of the terms and conditions of probation. In the event of a probation violation, the court has the authority to continue, modify, extend or revoke probation. The court may use intermediate sanctions such as intensive supervision programs, restitution centers, or boot camps and can use supervision enhancements such as electronic monitoring or drug testing, to more closely supervise and punish the offender. The court also has the authority to revoke probation and remand the defendant to confinement within the state penitentiary. The terms and conditions of probation may include requiring the defendant to:

- * make restoration or reparation to the victims in any sum the court shall determine.
- * participate in any community service work program designated by the court.
- * reimburse the county for the cost of appointed counsel.
- * remain under custodial supervision in a community-based facility while paying for room and board.
- * submit to testing for controlled substances.
- * attend counseling sessions for substance abusers or participate in substance abuse treatment services.
- * submit to a term of imprisonment in the county jail not to exceed 180 days in felony cases.

-
- * participate in a work program for any state agency or political subdivision, with proceeds going to off-set expenses incurred by the probation department in supervising participation in such a program.
 - * serve a term of not less than three months nor more than 12 months in a restitution center where outside employment is found for the probationer.
 - * serve a term of not less than one month nor not more than 24 months in a community corrections facility, other than a restitution center.
 - * report to a probation officer as frequently as the court desires.
 - * submit to electronic monitoring during specific hours and in restricted geographic areas.

Additional punishment options which may be imposed in driving while intoxicated cases:

- * mandate that the defendant install, at his own expense, ignition interlock equipment that will disable the motor vehicle if ethyl alcohol is detected on the breath.
- * impose 10 days shock incarceration in the county jail.
- * suspend the defendant's driver's license for up to one year.

Probation violations may occur upon the commission of a new offense or for administrative reasons (e.g., a failure to pay fees or to report to a probation officer). At any time within the probationary period, the court may continue or modify the terms of probation as it sees fit. If modi-

fication through intensive supervision or electronic monitoring or other enhancements is not sufficient, the court has the option of revoking the probation and committing the defendant to the custody of the state penitentiary. When a probated sentence is revoked, the court may sentence the defendant to any term of imprisonment not less than the minimum nor more than the maximum probationary term. In cases where deferred adjudication was originally assessed, a motion to proceed with adjudication of guilt is entered. In these cases, the court may sentence the defendant for any term of years not to exceed the maximum range of punishment for the offense.

Another alternative for sentencing authorities is "shock probation" wherein an offender is committed to prison (a minimum of 60 days but not more than 180 days in felony cases) and released after a short period of confinement and placed on probation. Only the court that entered the sentence may suspend its further imposition and place the defendant on probation. Theoretically, the defendant should not know of the duration of the "shock sentence" to the Texas Department of Criminal Justice, Institutional Division. Defendants not eligible for shock probation are those with prior prison commitments, or defendants convicted of murder, aggravated kidnapping, aggravated rape, aggravated sexual assault, deadly assault on a peace officer, injury to a child, aggravated robbery, bribery and escape.

Under Texas law, a felon may be sentenced to prison by one of three ways: directly from the court, as a result of a probation revocation (which may include a violation for commission of a new offense), or as a result of a parole revocation.

Offenders convicted for an aggravated offense or an offense wherein there has been an affirmative finding that a deadly weapon was used in the commission of or immediate flight from the offense are eligible for parole when they have served at least one-fourth of their sentence in calendar time, or 15 years, whichever is less. In no event are they be eligible for parole in less than two calendar years. All other prisoners are eligible for parole when calendar time served plus good conduct time earned equals one-fourth of the sentence imposed.

After release on parole, the defendant must report to a parole officer and live under restrictions similar to those of probation. However, the power to adjust parole terms or to return the parolee to prison is vested with the Board of Pardons and Paroles rather than the courts.

The Board has the authority to impose similar graduated intermediate sanctions in lieu of revocation. Some of those steps include drug testing, intensive supervision, or electronic monitoring. Parolees may be placed in the custody of a pre-release center, or released to community-based facilities, or half-way houses. The Board also has at its disposal secure intermediate sanction facilities for technical violators. If the Board feels that a parolee still remains a threat to society it has the authority to revoke parole and return the parolee to the state penitentiary.

III PROBATION INTERMEDIATE SANCTIONS

In Texas, a judge may choose from a continuum of community programs when he places an offender on felony probation supervision. Supervision levels are divided into four tiers based on the number of contacts made by the supervising officer and the services provided. For example, a minimum supervision caseload provides contacts with the probation officer once every three months, while the most restrictive caseload requires contacts five times per week. Each supervision level also may include enhancements like electronic monitoring or urinalysis testing. Residential facilities, which provide 24-hour supervision, also are available for probationers who represent a high risk to the community or whose needs require special attention. Residential facilities and intensive probation caseloads are considered to be diversionary programs. Placement into these programs is reserved for high needs or high risk offenders who would otherwise be sent to prison.

A judge may individually tailor a probation sentence to fit a specific offender. The conditions of probation, mentioned above in section II, provide flexibility by allowing the judge to determine the level of supervision and the work, education, treatment and personal restrictions that will be placed on the offender. The conditions of probation may be modified at any time during the term of probation.

Once placed on probation an offender may move either up or down the ladder of sanctions. Transfers between programs must be approved by the sentencing judge. An offender adjusting to community supervision will be moved gradually down the ladder into decreasing levels of supervision. Conversely, an offender who does not comply with the conditions of probation will be placed on more restrictive levels of supervision or placed in a residential facility. The conditions of probation also may change as the offender moves through the continuum, with an increase in supervision enhancements occurring for offenders violating the terms of their probation.

An increase in the sanctions placed on an offender does not require that the offender's probation be revoked. A modification may result from a dismissed motion to revoke, a hearing with the judge or an exit from a special program. Supervision enhancements may also be used in lieu of revocation. These tools, which include electronic monitoring, urinalysis and work probation, are used in conjunction with probation caseloads. As a final step before revocation, the judge may place an offender who has committed probation violations into specially designated prison beds for terms of 60 or 90 days. Probationers placed into these violator beds are not revoked and remain under the jurisdiction of the sentencing court.

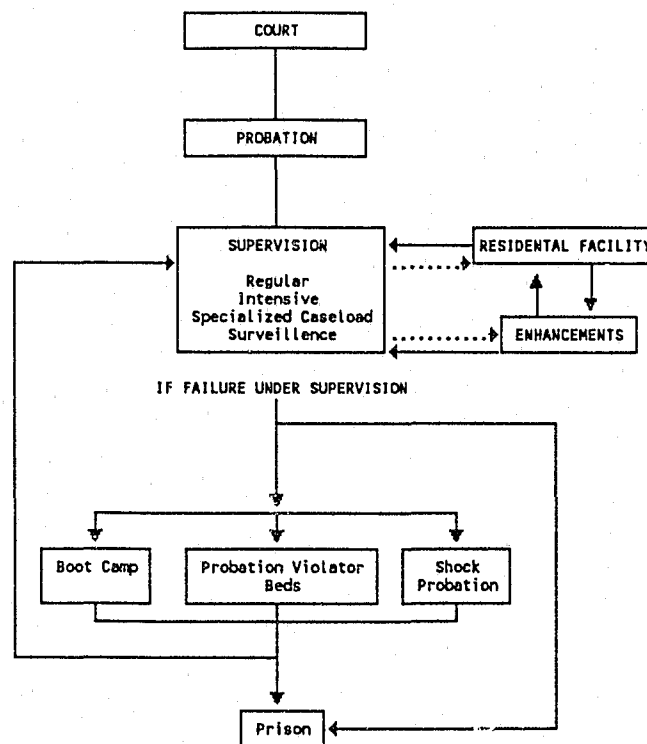
Revocation removes the offender from probationary status and commits the offender to prison to serve the remainder of the sentence. If the offender has no prior incarcerations, the court may choose to modify the probationer's sentence using short-term prison sanctions like shock probation or the state boot camp program. The court retains jurisdiction over the offenders for up to 180 days. Before this period expires, the court may suspend the remainder of the prison sentence and return the offender to active probation supervision.

The spectrum of sanctions offered through the various probation caseloads, residential facilities and supervision enhancements is presented in Chart 2 below. A description of each of the programs presented in the chart follows.

SUPERVISION CASELOADS

Tier 3 & 4: Regular Direct Supervision - A supervision caseload of 75:1 (tier 3) and 100:1 (tier 4) represent regular felony probation caseloads. An offender receives one contact every three months in tier four and two contacts a month in tier three. Regular supervision provides basic services to felons including educational services, job skills training, personal awareness development and other types of services designed to divert individuals from criminal activity. At the end of August, 1989, 138,229 felony offenders were under regular probation supervision.

CHART 2
OVERVIEW OF PROBATION INTERMEDIATE
SANCTIONS IN TEXAS



Tier 2: Intensive Supervision (ISP) & Specialized Caseload Supervision - Tier two of the supervision system provides intense supervision to high risk and high need felony offenders. Caseloads are limited to a 40:1 ratio and are supervised by specially trained officers. A probationer on ISP receives an average of four contacts per month. An assessment of the probationer's progress under supervision is made by the probation officer every 90 days. Offenders are assigned to ISP for one year, although the term may be extended by the court. At the end of August, 1989, 5,390 offenders were on intensive probation in Texas.

Specialized Caseload Supervision is also part of Tier 2. The specialized caseload provides close supervision and counseling for offenders with special needs. Caseloads exist to deal with alcohol and drug abuse, mental illness, and mental retardation, as well as sex offenders and family violence offenders. Each caseload is supervised by a probation officer specially trained and experienced in dealing with the specific problem area of the probationers. Probationers assigned to a specialized caseload meet with their probation officer an average of three times per month. An offender may remain on a specialized caseload for up to one year. At the end of August, 1989, 998 probationers were serving in specialized caseloads.

Tier 1: Surveillance Probation - Caseloads in this tier are supervised by a team consisting of a probation officer assisted by a surveillance officer. This program requires five contacts per week. Surveillance methods such as curfew checks and electronic monitoring are also used. Caseloads of 25:1 are limited to high risk felony probationers with prior criminal records. At the end of August, 1989, 202 probationers were in surveillance probation caseloads. The revocation and commitment rate to prison for the calendar year was 20.8%. As with the other levels of probation supervision, no research has been conducted to determine the long-term recidivism rate of offenders in surveillance probation.

RESIDENTIAL FACILITIES

Probation residential facilities are grouped under the headings of community corrections facilities and county correctional centers. Community corrections facilities provide a closely monitored residential setting and frequently include treatment of specific problem areas for the offenders. Length of placement is for not less than one month nor more than 24 months. Community corrections facilities include those facilities listed below:

Restitution Centers - Restitution centers were created specifically as an alternative to imprisonment for the nonviolent felony offender. Centers provide close supervision in community based, highly supervised residential facilities. Felony probationers are placed in restitution centers for three to 12 months while they work and pay restitution to their victims. In 1990, 15 restitution centers were in operation throughout the state providing a total capacity of 801 beds.

Court Residential Treatment Centers (CRTC) - These centers provide 24-hour supervision and specialized services for felony probationers suffering from problems such as drug and alcohol abuse, mental health deficiencies or emotional problems. Services available in the centers include substance abuse treatment, counseling for emotional problems, job skills training and basic education. Placement in a court residential treatment center is for three to 12 months. Five Court Residential Treatment Centers (CRTC's) were in operation in 1990 with a total capacity of 154 beds.

Substance Abuse Treatment Facilities - These facilities are intended to provide 24-hour supervision and intensive treatment for high need substance abuse offenders. No substance abuse treatment facilities are currently in operation.

Custody Facilities and Community Boot Camps - These facilities provide the courts with a sentencing alternative for young offenders who have been convicted of a crime for the first time. Boot camps and custody facilities utilize a regimented supervision strategy along with other intervention programs. In 1990, one community boot camp was being operated by a county with a total capacity of 40.

Intermediate Sanction Facilities - These facilities are used as a community corrections sanction emphasizing short-term detention for probation violators and other offenders as deemed appropriate by local jurisdictions. No intermediate sanction facilities were in operation in 1990. Some facilities are being considered for implementation by local governments.

County correctional centers are residential facilities authorized by the county and operated by the county's sheriff. These facilities house and provide work programs and counseling for eligible defendants and probationers, including probation violators. County correctional centers provide the courts with a sentencing alternative to jail or prison. Legislation authorized the funding for these centers in September, 1989. No centers have yet been provided.

SUPERVISION ENHANCEMENTS

The supervision enhancements used by probation departments as sanctions in conjunction with the various caseloads and residential facilities are described below. No research has been conducted to determine the impact on recidivism of using supervision enhancements in addition to the regular requirements of probation supervision.

Electronic Monitoring - Electronic monitoring provides the courts with the most restrictive non-custodial sanction available for ensuring public safety and the social control of offenders. Monitoring services are used in conjunction with the various probation programs, often in lieu of a sentence of confinement. The use of electronic monitoring places the probationer under surveillance to ensure that the probationer remains at home during specified time periods. The departments using electronic monitoring vary in the level of service they provide. Some departments provide continuous monitoring of offenders while others have contracted for random checks in which the probationer must verify their presence through telephone contacts. Monitoring is used in addition to the regular contacts made by the probation officer. At the end of August, 1989, 133 probationers were being monitored electronically.

Urinalysis - Probationers placed on intensive probation caseloads or into residential facilities are tested for drug use. A probationer with a known drug problem or who exhibits symptoms of drug use is tested more frequently. Tests are random, but the total number of tests given by individual probation departments or dispositions of test results are not collected statewide.

Community Service Restitution (CSR) - Community service restitution is a condition of probation which mandates that a defendant work a specified number of hours at a community service project in order to make restitution to the community for the crime committed. The court may also require a defendant to serve CSR in lieu of confinement in a county jail under certain conditions. This sanction is available for both misdemeanants and felons. The number of work hours required varies with the classification of the offense.

Work Probation - This condition of probation requires a felony defendant to work a specified number of hours in a structured work program under supervision. The probation department may contract with state agencies, a political subdivision of the state, or a non-profit organization to use defendants as required to perform tasks in a work program. The court is required to make a good-faith effort to place the defendant in a field of work similar to the probationer's employment experience. All proceeds the defendant receives from the work go to the probation department.

Day Reporting Centers - These highly structured non-residential facilities provide programs consisting of supervision, reporting, employment, counseling, education and community resource referrals to probationers. One such center is currently operating in Dallas County.

SHORT-TERM PRISON SANCTIONS

The following sanctions place probationers in prison initially for a short term directly from the court or in lieu of revocation. After serving a specified period of time, the offender may be returned to the community to serve the remainder of his sentence on probation, or the court may decide the offender should serve the remainder of the sentence in prison.

Probation Violator Beds - This program allows the court to modify an offender's existing probation order. Offenders are not revoked, but rather are placed into designated trusty beds in lieu of revocation after committing violations of their original probation orders. In order to

modify an offender's probation in this way, the court must show that it has previously imposed three or more sanctions on the offender. Probation violators are sentenced to prison for terms of 60 or 90 days. In 1990, 15 probationers had their probation modified and were placed in these probation violator beds.

Shock Probation - This program allows the court to send probation-eligible offenders to prison for up to 180 days. Offenders are sentenced to prison and serve their sentence in the general population. However, the court retains jurisdiction over the offender for up to 180 days. During this time the court may suspend further execution of the offender's sentence and return him to probation supervision. In fiscal year 1989, 676 offenders were admitted to prison as shock probationers.

Special Alternative Incarceration Program (state boot camp) - This program allows judges to sentence young male offenders (age 17 to 25) to the state run boot camp for a period of 75 to 90 days. The court retains jurisdiction over the offender for 180 days. After the offender's 75th day, the court may suspend further execution of the sentence and return the offender to the community to serve the remainder of the sentence on probation. The boot camp program is highly regimented and emphasizes physical training, self-esteem, accountability, work, education, pro-social free time activities and responsibility for one's personal belongings and environment. In the first 18 months of operation, 1,296 offenders have been admitted to the state boot camp program. The state boot camp capacity is 400 beds.

RECIDIVISM OF PROBATIONERS: CURRENT RESEARCH

Research on the recidivism of probationers in Texas until recently has been non-existent even though Texas has more probationers than any other state. Revocation figures have been reported using aggregate data. The main reason for the lack of research is that probationers are supervised by local probation departments that do not usually have an incentive or funds for conducting recidivism studies. The local nature of the probation

system has also made it difficult for the state probation agency to collect data on probationers, particularly those under regular probation supervision. Sample data has been collected by the state to analyze the characteristics of probationers and this data has recently been used for preliminary recidivism studies. Reported below is a summary of revocation and recidivism rates that are presently available. Revocation rates and commitments to prison are calculated using the proportion of offenders revoked to prison from the average daily population served during the year.

- * At the end of August, 1989, 138,229 felony offenders were under regular probation supervision. The revocation rate and commitment to prison for the calendar year was 11.2% of regular probationers at all levels of supervision. No research has been conducted to determine the recidivism rate of offenders in regular probation. Therefore, data is not available to compare regular probation to other levels of supervision with respect to recidivism rates.
- * At the end of August, 1989, 5,390 offenders were on intensive supervision probation in Texas. The revocation rate and commitment to prison for the program for fiscal year 1989 was 12.6%. No extensive research has been conducted on the recidivism of ISP offenders. A preliminary follow-up, conducted for the first time in 1990, shows a return-to-prison rate of 42% after three years. No data has been systematically collected to compare this rate with similar information on offenders in other supervision levels of programs.
- * At the end of August, 1989, 998 probationers were serving in specialized caseloads. The revocation rate and commitment to prison for the year was 11.4%. No research has been conducted to determine the recidivism rate of offenders placed in specialized caseloads.

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- * At the end of August, 1989, 202 probationers were in surveillance probation caseloads. The revocation rate and commitment to prison for the year was 20.8%. Like the other levels of probation supervision, no research has been conducted to determine the recidivism rate of offenders in surveillance probation.
 - * In 1990, 15 restitution centers in operation throughout the state provided a total capacity of 801 beds. The revocation rate and commitment to prison for this program in fiscal year 1989 was 6.4%. Probationers placed in residential facilities are generally removed from the facility if a motion to revoke is filed. This accounts for the low revocation rate. No research has been conducted to determine the recidivism rate of offenders placed in restitution centers.
 - * Five Court Residential Treatment Centers (CRTC's) were in operation in 1990. No revocations of probationers placed in CRTC's were recorded in fiscal year 1989, because probationers placed in residential facilities are generally removed from the facility if a motion to revoke is filed. No research has been conducted to determine the recidivism rate of offenders that have been placed in CRTC's.
 - * At the end of August, 1989, 133 probationers were being monitored electronically. Probationers monitored electronically are supervised under one of the caseloads described above. Therefore, probationers revoked while on electronic monitoring are considered part of their probation caseload for revocation rate purposes. No recidivism research has been conducted to determine the effectiveness of this supervision enhancement.

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- * In 1990, 15 probationers had their probations modified and were placed in prison (probation violator beds). Research to compare these offenders with offenders in the general prison population and on probation is ongoing. However, the number of offenders utilizing these beds has not been large enough to make a valid comparison.
 - * In fiscal year 1989, 676 offenders were admitted to prison as shock probationers. Research to evaluate recidivism rates of regular prison population shock probationers and boot camp probationers is currently being conducted by the Criminal Justice Policy Council, but results are not yet available.
 - * In the first 18 months of operation, 1,296 offenders have been admitted to the state boot camp program. Research to evaluate recidivism rates of boot camp probationers is currently being conducted by the Criminal Justice Policy Council.

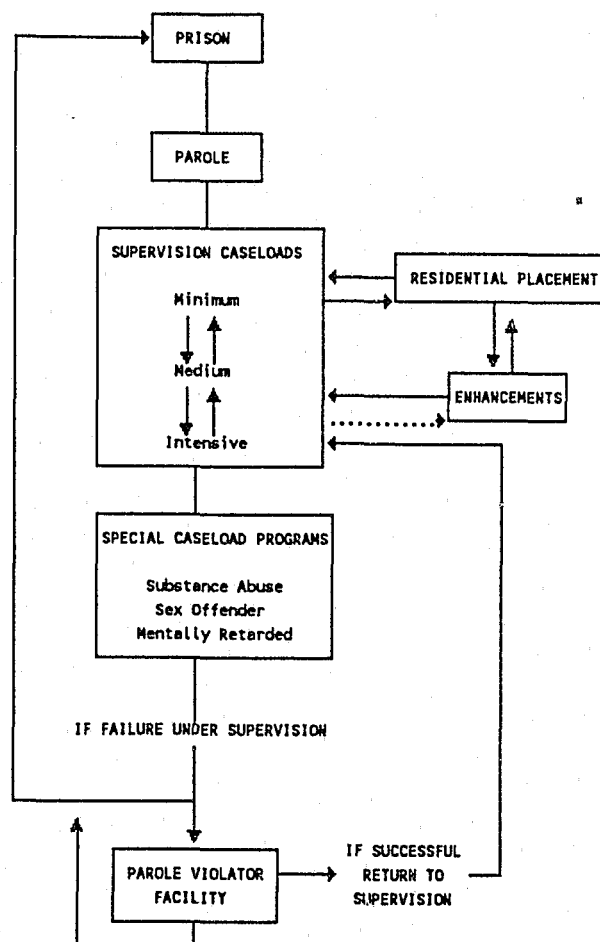
IV PAROLE INTERMEDIATE SANCTIONS

Inmates released from prison in Texas are placed under parole supervision for the remainder of their sentences. The Texas Department of Criminal Justice, Pardons and Paroles Division, a state agency, has jurisdiction over the parolees. In 1989, there were approximately 78,000 parolees under the supervision of this agency, more than in any other state. A parolee is subject to revocation for a new conviction or for violation of release rules. The conditions placed upon the parolee are outlined in a parole plan. The plan details the level of supervision and the special conditions (adult education, substance abuse treatment, counseling, personal restrictions, etc.) which the offender must follow to successfully complete parole. A parole plan can be modified at anytime to accommodate the offender's need or to increase supervision restrictions.

A spectrum of sanctions has been developed to provide parole officers with mechanisms to enforce parole conditions short of revocation and commitment to prison. A parolee can have his supervision status increased, decreased or enhanced based on his behavior. If the parolee is in danger of violating his parole plan, then tools such as electronic monitoring, intensive supervision, and urinalysis can be imposed. Also a parolee who has violated his parole conditions may be placed in a secure intermediate sanction facility for up to 90 days in lieu of revocation and return to prison. On the other hand, a parolee who meets his parole plan and complies with its conditions may have certain restrictions lifted. Good behavior leads to placement on annual status (reporting by mail once a year) and to eventual discharge from the system.

The continuum of supervision levels, supervision enhancements, and intermediate sanctions outlined below offers the parole officer the means by which to enforce parole rules and conditions using revocation only as the last alternative. This spectrum of alternatives is depicted in Chart 3.

CHART 3
OVERVIEW OF PAROLE INTERMEDIATE
SANCTIONS IN TEXAS



SUPERVISION LEVELS

Minimum and Medium Caseload - Regular parole supervision is provided by officers with minimum or medium caseloads of low risk offenders. Under minimum supervision the parolee must report to the office once a month, has home visits every third month, and a random number of phone contacts. Under medium supervision the parolee must report to the office once a month, has a home visit every other month, and a higher number of random phone contacts. The average caseload ratio under regular direct parole is 72:1. This caseload ratio varies from as low as 63:1 to as high as 87:1. In the parole process, a releasee enters into

parole at a certain tier of supervision. A parolee can either move up or down in this system as less supervision is needed.

Intensive Supervision Parole (ISP) - Intensive Supervision provides additional supervision for high risk offenders. ISP is a multi-faceted program that focuses on increased surveillance, control, and contacts integrated with a treatment-oriented approach to supervision. The supervision caseload ratio is 25:1 with at least four face to face contacts per month. Electronic monitoring and urinalysis testing are two enhancements routinely utilized under intensive supervision parole.

As part of supervision strategies parole officers can be assigned special caseloads of sex offenders, mentally retarded offenders, or offenders with substance abuse problems. The main purpose is to place the offender that has a specific problem into a program that will address his needs as a substance abuser, sex offender, or mentally retarded offender. Supervision under these programs is provided by officers trained in these areas. Special Caseload Programs are not generally used as an increased sanction. Offenders placed in these programs are classified as having special needs before their release from prison. Only if this classification has not occurred, and the offender is violating parole due to problems in this area, can the offender be placed on this specialized supervision in lieu of revocation to prison. Specific program characteristics are listed below.

Substance Abuse Caseload - Inmates supervised under this program have substance abuse problems. The caseload for the program is 25:1. The officer is a certified substance abuse counselor who assists the parolee in assessing the individual's program plan along with a three-phase program. The client must complete all three phases and meet all the objectives assigned before he returns to regular supervision. During the first phase of 30 days of the three-phase program the parolee receives individual or group counseling, random urinalysis, verification of employment and compliance with special conditions and at least six face to face contacts with his parole officer. In the second phase of 60 days, the parolee receives additional counseling, random drug-testing, four contacts per month with the parole officer, and continued monitoring of

compliance with program objectives. In the final phase of 90 days there is continued counseling and random drug-testing, family contact, and planning for the program termination and aftercare once the program is completed.

Sex Offender Program - Approximately five percent of inmates released on parole are sex offenders who are placed under this specialized supervision. The average caseload ratio is 45:1. Each officer receives 40 hours of training in identification, assessment, and treatment of sex offenders. The program begins in the prison with identification of sex offenders. The parolee is placed on an intensive plan through which he is referred to appropriate community-based treatment providers. He has at least three face to face contacts with his parole officer a month.

Mentally Retarded Offender Program - This program seeks to identify, coordinate, and develop support systems for the mentally retarded offender. Specially trained officers maintain a caseload of no more than 45:1 and visits each offender at least three times monthly. The program is geared towards providing services to offenders with an I.Q. level of 70 or below that have had "adaptive behavior deficits" before age 18.

RESIDENTIAL PLACEMENT

Residential Placement is geared to the placement of individuals who are in need of closer supervision upon release from the institution, who have no other residential resources in the community, or who have failed under prior supervision and need a more restrictive environment. In 1989, Texas contracted for 2,242 residential placement beds. Defendants remain in residential facilities for an average of 43 days each. Offenders in contract facilities have the opportunity to attend vocational training, to seek suitable employment or job training, and to participate in facility counseling or drug/alcohol treatment programs. These facilities are listed below.

Halfway Houses - Halfway Houses are facilities designed to meet the needs of the parolee in a non-secure, residential environment that are a transition to community life. These facilities provide employment counseling and placement, substance abuse counseling, adult education, life skills, and family support networks.

Secure Parole Violator Facility - This type of facility is designed to hold parolees that have violated a condition of their parole and is designed to be the last intensive measure that can be taken before recommitment to prison. Presently, there is one secure parole violator facility with a capacity of 461 operated by Wackenhut Corporation under contract with the state. Offenders in this facility are serving 60 to 90 days as an additional condition of parole.

SUPERVISION ENHANCEMENTS

Supervision enhancements are available to parole officers to provide closer monitoring of their assigned releasees. Two forms of supervision enhancements are electronic monitoring and urinalysis. Electronic monitoring provides around the clock surveillance of a parolee utilizing state of the art electronic devices. Urinalysis testing allows the parole officer to randomly test his clients to determine if they are violating parole conditions by using illegal substances.

RECIDIVISM OF PAROLEES: CURRENT RESEARCH

Research is currently in place to monitor the impact on recidivism on some of the programs listed above. The Parole Division tracks offenders released from prison for at least three years to collect data on recidivism. For the parole violators the measures of recidivism are re-arrests and re-incarcerations as reported in the Computerized Criminal History (CCH) System of the Texas Department of Public Safety. This research has been able to provide at least some baseline information to comparatively measure the impact of different supervision options on recidivism.

CONCLUSION

Texas has in place a comprehensive inventory of intermediate probation and parole options to provide a system of structured sanctions and sentencing alternatives. Integration of these options with incarceration capacity attempts to promote public safety by ensuring that high risk offenders on community release will be subjected to surveillance, incapacitation, and deterrent techniques that reduce the opportunities for recidivism.

Our review of these program in Texas demonstrates that there is no comprehensive research and evaluation plan to provide information to program managers and policy makers about "what works". Without this information we are left with only speculation concerning critical factors:

- * what reduces a specific type of offender's risk of recidivism;
- * what programs are true diversions from prison;
- * what impact do these options or programs have on overall community safety and on the rehabilitation of offenders, if any;
- * what strategies should not be dismissed because of poor implementation;
- * what is the true cost-effectiveness of the options or programs vis-a-vis the cost of crime to society;
- * what is an accurate failure rate to be anticipated for the program in question;
- * what expansion of incarceration capacity is necessary to enforce the sanctions through absorption of the failure rate and growth of direct commitments to the prison system; and

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- * what processes, policies or strategies should be used to replicate successful programs or options.

Norval Morris and Michael Tonry in their recent book, Between Prison and Probation, argue that intermediate punishments, when used within a principled, comprehensive, and effective sentencing policy, constitute true punitive responses to crime. A rational system of intermediate punishments would better serve the community than the existing stark choices of imprisonment and probation. They also argue that research and evaluation of this system is essential to the success of the policy because it would provide to practitioners and policy makers the ability to identify the types of offenders most suitable to these types of punishments.¹³

The research to properly evaluate the efficacy of intermediate punishments is presently lacking both in Texas and nationwide. With few exceptions, according to Byrne, Lurigio, and Baird, in a recent National Institute of Corrections publication, no rigorous research and evaluation of intermediate sanctions has emerged. This leaves the advocates of intermediate sanctions "unable to point to the results of rigorous evaluations of the options they propose."¹⁴ The authors review of ISP research in Georgia, New Jersey and Massachusetts, reveals that "research results do not provide adequate answers" to the "policy dilemmas facing legislators and correctional administrators" concerning the issue of how to develop cost-effective intermediate sanctions without jeopardizing public safety.¹⁵

One recent exception does exist and that is the Rand Corporation's evaluation of 11 separate intensive probation supervision demonstration programs, initiated with support from the U.S. Bureau of Justice Assistance. The evaluation is currently being completed, but a six-month recidivism follow-up has already been published.¹⁶ Using randomized field experiments, the preliminary six-month results seem to support the argument that "all intensive supervision does is monitor offenders' success or failure in meeting the conditions of the ISP; it has no apparent

effect on recidivism".¹⁷ However, the author cautions that results from a longer follow-up and an examination of program characteristics in each locality as they relate to recidivism are needed before conclusions are drawn. Even with the accompanying disclaimer, this is the type of research and evaluation necessary before well intentioned programs are promoted to achieve results that simply don't materialize.

There is a need to organize at the state and local level a rigorous evaluation of intermediate sanctions. This research needs to be conducted in close relationship with practitioners and policy-makers. The research should include a process and outcome evaluation of programs. The process evaluation provides critical information about the implementation of the program that is relevant for program administrators and critical for the replication of the program. The outcome evaluation, usually a follow-up of offenders in a control and experimental group to determine their recidivism, provides the "bottom line" for policy makers concerned with the impact of the program on public safety, rehabilitation or deterrence. Those sanctions which provide an acceptable degree of safety and societal control to an identified segment of the felony population, without increasing the risk of recidivism for the public, should be recognized and replicated.

In Texas, the Criminal Justice Policy Council has acquired funding for two "demonstration" research projects to provide practitioners and policy-makers practical evaluative information. The first is an evaluation of the therapeutic drug treatment component of the state "boot camp" program. For this evaluation, all inmates entering the enhanced substance abuse component of the boot camp compose the experimental sample. Comparison groups consist of: (a) offenders completing the boot camp prior to the start of the enhanced treatment; and (b) offenders receiving regular shock probation. Other groups consist of: (a) inmates who complete the enhanced treatment but are not released to probation; (b) inmates who return to target counties (offering the follow-up enhanced treatment while on probation); and (c) those inmates who return to a non-target county after completion of the treatment program. Extensive data is collected on each inmate, including self-reported drug use and more ob-

jective urinalysis data, to conduct a two and one-half year follow-up. Multiple measures of recidivism and a process evaluation are used to determine the success of the program. Preliminary results will be available by the middle of 1991.

Second, is an evaluation of the Reading to Reduce Recidivism (3R) program. This program provides computer-assisted education to inmates in prison and follow-up on parole if necessary. The goals of the program are for offenders to pass the General Educational Development (G.E.D.) exam and obtain a high school equivalency diploma; to develop and enhance the skills (cognitive and technological) that will enable functioning in a complex society; and aid in the adaptation of these skills to a community setting. It is expected that this may result in a lower incidence of recidivism. The evaluation of the program is directed at documenting the processes by which the many agencies involved cooperate and communicate to achieve these goals. For outcome, multiple measures of success are emphasized, including academic and cognitive skills, employment, and recidivism. Preliminary results will be available by the middle of 1991.

In Texas during 1990, out of every dollar spent on funding state criminal justice agencies, less than one cent was spent in research and evaluation activities. Criminal justice policy cannot be formulated in a vacuum of conjecture and uncertainty. Research is necessary to hold proposed programs "up to the light" and empirically document if they can achieve promised goals.

For intermediate sanctions, they must find their genesis in an integrated system that allows sufficient discretion to fit the defendant and the crime to an appropriate level of punishment. When the terms of an intermediate sanction imposed are violated, the system must have the resources to enforce the consequences of the breach. In many instances, this means having sufficient capacity to incarcerate for a specific period of time. Creation of a wide range of sanctions and financial allocations to them cannot be posited as competing interests or alternatives to each other or they will fail. Rather, they must be recognized to be interdependent and justified on their ability to protect the public from the recidivist.

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ENDNOTES

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