

129875

**U.S. Department of Justice
National Institute of Justice**

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this [REDACTED] material has been granted by
Public Domain/OJP/OJJDP

U.S. Department of Justice
to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the [REDACTED] owner.



NATIONAL INSTITUTE OF JUSTICE

Research in Action

Charles B. DeWitt, Director

September 1991

Alternative Sentencing: Selling It to the Public

by Michael N. Castle

Intermediate sanctions and the problem of obtaining community acceptance for them are subjects that have come to the fore in today's policy discussions concerning prison crowding, crime, and justice.

Any Governor, mayor, or county executive can tell you that these remain politically and publicly sensitive issues. People expect government to protect them. They do not want government proposing programs that put unrehabilitated criminals back into their communities. The pressure they can bring to bear against these programs is difficult to overcome.

People too often assume that public protection means prison, and that anything less than complete incarceration for all criminals will endanger public safety. Such an attitude is understandable, and that, perhaps, is why we have been so slow to challenge and to abandon the delusion that "out of sight, out of mind" will make our world safer.

Successful intermediate sanctions programs have been adopted in many communities, despite the burden of public

resistance. But accomplishing change means putting an end to the old-fashioned and inaccurate concept that criminal justice means prisons and *only* prisons.

Delaware has managed this. And because prison crowding is a problem that every State must muster its resources to overcome, I urge you to look from a new point of view as we consider what can be done to help any State solve it.

Public officials have been known to blame their predecessors for the difficult situations they inherit. I am fortunate that *my* predecessor left me the groundwork for managing our State's prison population. Governor du Pont led the effort to reform sentencing practices and attitudes in Delaware.¹ Serving as Lieutenant Governor and now as Governor, I learned critical lessons about the need for intermediate sanctions, and how to gain public support for them.

Before examining some of the benefits to be derived from implementing a program of intermediate sanctions, let's look at some facts.

- Nationwide, about 1 in 50 persons is under the control of correctional authorities.
- In the last decade, national per capita expenditures grew 21 percent, but corrections expenditures grew 65 percent.
- The Nation's prison population essentially doubled during the 1980's to more

than 600,000 people. If you include the jail population, that's a million people behind bars.

- The growth of America's prison population is over 10 times that of the general population.

The average person may be quite alarmed by these statistics and will wonder how government is handling these large increases in prison population. It may appear that our prisons are bursting at the seams, and that this could cause dangerous criminals to be allowed back on the streets.

What's more, prison construction costs nationwide in 1987 averaged \$42,000 per bed, according to a report by the National Conference of State Legislators; costs in some States were as high as \$110,000 per bed.

This is enough to give any Governor, judge, warden, or police officer pause. But consider this issue as a typical consumer, someone who is struggling to balance a checkbook and make ends meet. Think about how your dentist, your auto mechanic, or your child's teacher would react if you told them how much money is being taken out of their pockets to build prison beds and take care of criminals.

Michael N. Castle is Governor of Delaware. This article is adapted from his address to the 1990 Intermediate Punishments Conference, sponsored by the National Institute of Justice, in Arlington, Virginia. Michael Castle became Governor of Delaware in 1985 after 4 years as Lieutenant Governor.

¹ Pierre S. du Pont IV was completing his second term as Governor of Delaware when he wrote, for NIJ's *Research in Brief* series, "Expanding Sentencing Options: A Governor's Perspective" (1984).

The average person in Delaware annually pays \$1,000 in State personal income tax. It would take the total State tax collected from 15 Delaware residents to pay for just 1 prisoner for only 1 year. Tell people that and you not only get their attention and anger, but you get their interest in perhaps doing things differently.

Many taxpayers do not know that they pay a substantial price for the very prisons they demand, while policymakers do but have taken this knowledge for granted. We cannot afford this attitude any longer. We must look at things from the public's point of view so we can understand its concerns and address them effectively. It is our obligation to help stem the demand for prisons and long sentences for every convicted offender, by educating the public about the alternatives. Skeptics may doubt that we can change public opinion dramatically in this area. Fortunately, facts and experience prove the skeptic wrong.

I believe the public will not only permit but will support intermediate sanctions. A case in point: When the Edna McConnell Clark Foundation asked hundreds of Alabama residents how they would sentence 20 convicted offenders, virtually all thought prison appropriate. After some explanation of costs and alternatives, the same people "resentenced" most of these cases to intermediate sanctions. This demonstrates that an educated public will support alternative sanctions.

Convincing people alternatives exist

Once you open people's minds to the "prison-only" problem, you must convince them that viable alternatives do exist that still protect their personal safety. Never lose sight of the fact that this is a very personal and human issue. Show people that there are programs nationwide where violent or habitual felons are assured prison beds only because many of the nuisance shoplifters, technical probation violators, or petty thieves are being punished in other meaningful ways.

Make the public understand that dangerous criminals will still be put in prison; that intermediate sanctions are necessary to reintegrate offenders so they have a better chance of becoming successful citizens and not continuing lives of crime. Communities should not be allowed to place the entire burden of reform on the correctional system. If we can provide useful and effective alternatives without costly incarceration, we all benefit.

Several States have helped pave the path for public acceptance of intermediate sanctions by successfully implementing and developing alternative programs that have convinced people to abandon the "prisons-only" concept. But in order to convince people, you must show them that there are programs that do, in fact, work. Here are a few programs that you are probably already aware of, which may even be replicated in your own State. Consider them as an average person would.

- In New York, there are several community residences that provide housing and life services for women released early from prison so they can reestablish their families and begin their reintegration into society.
- A county in Arizona uses the day-fine sanction for nonviolent felons, a program modeled after one in New York and linked to the offender's ability to pay.
- There are various Intensive Probation Supervision Sanctions around the Nation. Many are modeled on the first such program, which was established in Georgia. Figures from New Jersey's program show that while 30 percent of those undergoing intensive supervision have been returned to prison for violations, only 2 percent of those who successfully completed probation have been convicted of new indictable offenses.

To the average person who has taken the first step and realized there is a problem both with overcrowding and cost, these examples can be very comforting. But you cannot sell intermediate sanctions based on cost savings

alone, or on a few programs that work. It is your responsibility to go even further in gaining public acceptance.

Creating a consensus for change

Prisons will always play a role in the criminal justice system, but they cannot continue to play the central role that they have in the past.

In Delaware, we are working to expand one of our current men's facilities by 460 beds, and to build a replacement for our women's facility. We are, in fact, under Federal court order to ease crowding at our present women's prison. And while I am displeased at having to put additional beds into our system, the situation would be much worse if we did not have an alternative sentencing program in place.

Several years ago, Delaware embarked on a program designed to ensure punishment commensurate with the severity of the offense, and with due regard for resource availability and cost. The effort we made was twofold: To change our correctional system, and to change public opinion and attitudes. But before you can implement an awareness campaign, you must join with key groups to determine exactly what your philosophy will be. In Delaware we began with a broad survey of the situation in order to reach agreement that the status quo was not working, and we were able to use this information to build a consensus for change.

Our breakthrough came when we concluded that the solution was not putting more offenders in larger prisons, but that the structure of our system was inadequate. We wanted to sentence smarter, not just tougher. And it did not make sense to have such a gross dichotomy—offenders either in prison or out on the street under general probation. Instead, we envisioned a five-level continuum of punishment.

Having accepted that a restructuring was necessary, we turned to the issue of philosophy of sentencing. Although we

agreed that a new structure for sentencing was in order, one which included a continuum of punishments, we had not yet agreed on a philosophy to determine what kinds of offenders would qualify for what levels.

With general agreement regarding the severity of punishment, we advocated, in priority order:

- Removing the violent offender from the community.
- Restoring the victim to his preoffense status.
- Rehabilitating the offender.

By providing programs of supervision to nonviolent property offenders, we would reserve more of our limited and costly prison facilities for robbers, drug dealers, and others who assault or prey on our population.

To accomplish these goals, we began our work by establishing, by legislative act, a Sentencing Accountability Commission (SENTAC). It served as a forum for our target publics to study intermediate sanctions, debate them, and search for specific programs to create. But its express purpose was to devise a workable program to gain control of prison population problems, and not simply to *reduce* the prison population.

With representation from all facets of criminal justice, the Commission developed a defined continuum of sanctions, based on the degree of supervision and control that needed to be exercised over each offender. We then went directly to our public opinion leaders—legislators on criminal justice committees, prominent judges, and others—and educated them, answered their questions, and made them a part of the process.

During this process we were able to hear concerns in a controlled environment and prepare the case for the general public. And by making the leaders part of the process, we gained some of our strongest and most effective advocates.



Michael N. Castle,
Governor of Delaware

The result was a continuum comprising five levels of increasingly restrictive sanctions as well as cost-control mechanisms. As a dynamic and fluid system, it allows offenders either to earn their way out of prison by good behavior and conformity with the rules, or to work their way further into the system by repeated nonconformity or additional offenses.

- *Level V* is full incarceration with complete institutional control.
- *Level IV* is quasi-incarceration where a person is supervised for 9 to 23 hours per day in programs such as halfway houses, electronically monitored house arrest, and residential drug treatment.
- *Level III* is intensive supervision involving 1 to 8 hours a day of direct supervision, in which criminals are subject to curfew checks, employment checks, and close monitoring for attendance in treatment programs.
- *Level II* is "normal" field supervision with 0 to 1 hour of contact per day.
- *Level I* is the lowest level of supervision.

This structure allows us to view existing or future programs, punishments, or combinations of the two, in a broad and logical framework. Now let's look at these levels on a human scale to see how they work.

Joe has been convicted of unlawful sexual intercourse, has a prior history of violence and burglary, and is obviously a threat to public safety. Under our system he was sentenced to 6 years of full incarceration followed by 1 year at Level III and 2 years at Level II. Not only is Joe kept out of the community for a long period of time, he is gradually integrated back into society under careful supervision.

On the other hand, Jill was convicted of shoplifting and has one prior offense for misdemeanor theft. Obviously she does not pose the same threat to society that Joe did, so she was sentenced to 1 year of intensive supervision under Level III, with the additional conditions of paying court costs and fines, getting a job, and not entering the store where the crime occurred.

These stories illustrate how the continuum works to put Joe behind bars for a long time, but then ease him back into society, and how it works to punish Jill commensurate with the degree and nature of her less serious crime, while not requiring that she needlessly sit in prison and waste taxpayer money.

I should note at this point that while some administrative leeway is allowed by the Department of Corrections in the three lower levels of supervision, the offender is primarily under the control of the sentencing judge. This allows the judge latitude in structuring punishment that truly fits both the crime and the criminal.

Compliance with the standards by judges is not subject to appeal. Our experience during the first 2 years has been that the sentences fall within the presumptive range over 90 percent of the time and that the majority of non-compliant sentences are lower than standard levels.

Implicit in the use of alternatives is the need to create programs and offender slots. Before our five-level system became law, we invested time, energy, and funds to develop an intensive supervision unit. We now have over 700 Level III slots and over 500 Level IV slots for offenders.

One other aspect that we found to be of utmost importance was an intense effort to meet with and train everyone in the State judicial and correctional system on the definitions and use of the five-level system. It was essential to have a single contact point to which questions and problems could be directed.

Herein lies another human aspect of this issue. The people creating and implementing these programs must be the best in their fields and must possess the determination to see hurdles as opportunities and not unsolvable problems. In Delaware, we had dedicated professionals who made intermediate sanctions their highest priority; we had community groups willing to work hard; and we had State employees, including judges, who made the commitment we needed to see our efforts through good times and bad.

A key element of this accountability system is the cooperation between the executive, the legislative, and the judicial branches of State government. The administration must budget for the creation and continuation of the alternative programs as well as for corrections itself. The cooperation of the legislature was necessary in Delaware to codify the five-level system and to make changes in the statutory punishment limits for individual offenses.

The judiciary joined, cautiously at first and then enthusiastically, in the effort by establishing sentencing standards under administrative court order, in large part because the SENTAC legislation reserved to the judiciary the responsibility for establishing the sentencing standards.

People made the difference as we worked toward reaching a consensus for change. Through creation of mutually

agreed-upon philosophies that were both politically and publicly acceptable, we were able to develop this five-level continuum as Delaware's solution to the "prison-only" problem.

With a program supported by the three branches of government and key community groups, we were able to implement a public awareness strategy designed to mobilize public support for our new initiatives. The strategy's key components included use of the following:

- Reasonable expectations.
- Pilot programs.
- Program evaluations.
- Ongoing communications.

First we established reasonable expectations. To attain any degree of success you must initially establish realistic goals and avoid speculation about results. Creating false hopes will all but ensure failure. By spelling out goals that you ultimately achieve, you develop credibility for your efforts.

Second, we developed pilot programs or contracted with already established programs. Using an incremental approach that built on one small success after another, we generated a growing wave of public momentum that, for the first time, had the average person considering alternatives to prison.

Third, we evaluated programs not only to determine their effectiveness but to demonstrate careful planning and forethought, with complete consideration for the public's safety.

Fourth, and perhaps most important, is communicating results on an ongoing basis. It has been almost 3 years since our five-level continuum was enacted, yet I continue to look for opportunities to discuss our successes with the general public. SENTAC has been tremendously successful. But it would not have been feasible, let alone successful, if not for a carefully planned and executed public acceptance campaign, such as the one I have described.

Have we succeeded in any of the goals we set for ourselves? Has it made a difference to Delaware? And has the public accepted it? You probably know that for years our State has been close to the top of the list of States in the number of persons incarcerated per 100,000. In 1989, our number was 349 per 100,000. None of our neighbors has reached that level yet, but they are all getting closer.

What is important for our discussion today is that our *growth* rate appears to be slowing, even though we are subject to the same crime rate trends as our neighbors. Considering only the last 2 years, the incarceration rate in Delaware increased by only 5.8 percent. By comparison, Maryland's rate increased by 15.8 percent, Virginia's increased 22.4 percent, New Jersey's 22.3, New York's 25.8, and Pennsylvania's 31.6 percent. Over the last 5 years, Delaware is the only State I have named that can exhibit a consistent slowing in the growth rate.

We attribute this trend to the manner in which our judges and other members of the criminal justice community have embraced the five-level system and the way they have chosen to replace a historic predilection for imprisonment with a graduated use of sanctions. I believe this behavior is a direct result of mobilizing public input and support.

Can we put a price on our progress? The costs of our system in 1989 were studied by Kay Pranis of the Minnesota Citizens Council on Crime and Justice under a grant from the Edna McConnell Clark Foundation. We currently have over 700 persons in our intensive supervision program at an annual cost of approximately \$2,300 per offender. If only half of them are true diversions from jail, we still have a program savings of \$5.4 million per year. In this program and our home confinement and halfway house programs alone we can demonstrate a total savings of almost \$8 million annually.

Evaluating public acceptance is obviously much more subjective than measuring cost savings. But I can tell you

that none of our statistical successes would have been possible without a degree of public support and acceptance that we must continually nurture and cultivate.

We have not solved all the problems of crime in Delaware. But we do believe that with continued use of SENTAC to combine a system of sentencing standards with a graduated continuum of sanctions and supervisory programs, Delaware is well on the way to achieving an affordable means of planning for and managing a correctional system that is effective, acceptable, and accountable to the citizens of our State.

Conclusion

We cannot *build* our way out of our current prison crisis, but we *can* manage and control our prison growth, and maintain the integrity of the criminal justice system. By carefully developing sensible sentencing policies and a wide range of sanctions, and implementing an aggressive public education initiative, we have held offenders accountable to the public and the legal system

and have held ourselves accountable to the public.

SENTAC was given a clear charge to develop a plan for reform that included sentencing guidelines and a time deadline. Through long discussions and compromise, a workable system was developed and is now in place, proving that intermediate sanctions can work when interested parties and the general public are both a part of the process.

There is nothing magical about our five-level continuum. What is essential is to make available an array of sanctions that is effective for *your* particular offender population, flexible enough to be responsive to the needs of specialized offender populations, and sensitive to the resource limitations and public concerns in your jurisdiction.

Always remember that while this is an issue of public concern, it is within your power to make it an issue of public interest and support as well.

Remember that this is a human issue and not an institutional one.

Remember that it is people's perception of their personal safety as well as allocation of their hard-earned money that you must address.

Remember that change is not easy but is certainly achievable through consensus building.

And finally, remember that it is people, your community members, whom you must make your partners in solving and preventing future correction problems.

Points of view or opinions expressed in this publication are those of the author and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

The Assistant Attorney General, Office of Justice Programs, establishes the policies and priorities, and manages and coordinates the activities of the Bureau of Justice Assistance, Bureau of Justice Statistics, National Institute of Justice, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

NCJ 129875