



National Institute of Justice

R e s e a r c h i n A c t i o n

Jeremy Travis, Director

January 1997

Highlights

State policymakers interested in developing effective and affordable sentencing policies have turned in recent years to intermediate sanctions as part of a menu of sentencing choices that better match the severity of punishment to the seriousness of the crime. Intermediate sanctions are also intended to permit more rational allocation of correctional and sanctioning resources to safely supervise minor offenders in community programs while confining serious offenders behind bars. The principal forms of intermediate sanctions are intensive supervision programs (ISPs), home confinement (with or without electronic monitoring), community service orders, prison boot camps, day fines, and day reporting centers.

To date, use of these sanctions has not achieved anticipated benefits. Assessing intermediate sanctions on a national level is difficult, however, because they have sprung up independently in many different jurisdictions. Only a few programs in a handful of jurisdictions have been evaluated, and it is not clear whether evaluated programs fairly represent broader practice. Available research findings indicate the following:

- Evidence suggests that ISPs and community service have not rehabilitated or deterred participants from committing future crimes any

continued . . .

Key Legislative Issues in Criminal Justice: Intermediate Sanctions

by Dale Parent, Terence Dunworth, Douglas McDonald, and William Rhodes

By the early 1990s most States had adopted intermediate sanctions. Nevertheless, the expansion or modification of intermediate sanctions remained a major issue in 1995 for State policymakers who wanted both to keep dangerous criminals off the streets and to curb rapidly growing prison and jail costs. Intermediate sanctions have appeared promising because they provide a means to punish nonviolent offenders without increasing the population of many overcrowded prisons. The principal forms of intermediate sanctions are intensive supervision programs (ISPs), home confinement (with or without electronic monitoring), community service orders, prison boot camps, day fines, and day reporting centers (DRCs).

This Research in Action discusses the origins and goals of intermediate sanctions, their effects on crime reduction and criminal justice sentencing practices, and their costs. It concludes with an analysis of future policy issues.

Origins and goals

Unlike other key issues facing policymakers today—such as sentencing commissions, mandatory sentencing, and

juvenile transfers—intermediate sanctions have been usually introduced by local, rather than Federal or State, innovators. Judges, probation or jail administrators, and private organizations¹ established the programs to expand the existing narrow range of sentencing options (usually, just fines, probation, or confinement).

The local origin of intermediate sanctions has three important implications:

- Because intermediate sanctions have sprung up independently in many different jurisdictions, describing the phenomenon on a national level is difficult. Only a few programs in a handful of jurisdictions have been evaluated, and it is not clear whether evaluated programs fairly represent broader practice.
- Goals for a particular type of intermediate sanction (e.g., DRCs) may vary greatly from one program to the next.
- Individual programs often pursue multiple, sometimes conflicting goals. This strategy can be intentional to broaden community and political support. However, if goals are conflicting, they usually lead to ambiguous and inconsistent operating policies. Such confusion about purpose may occur when jurisdictions stack intermedi-

Highlights

continued . . .

better than traditional sentencing options. Positive results on recidivism rates have been found from home detention and electronic monitoring. Boot camp research has been inconclusive. Boot camps accompanied by intensive treatment-oriented aftercare, however, have shown positive results; but it is not clear whether the boot camps or the aftercare made the difference.

- Problems with intermediate sanction programs may be attributed to design flaws, constraints in the local environment, and insufficient control over how and on what type of offender the sanctions are imposed.
- The cost of operating these programs has often exceeded expectations.

In spite of mixed results in realizing anticipated benefits of intermediate sanctions, their continuation is warranted because they enable more rational allocation of correctional and sanctioning resources—making the punishment fit the crime. The availability of more alternative sentencing choices should limit the inappropriate use of either probation or confinement.

To improve the likelihood of success, State legislatures should consider developing policies that govern how intermediate sanctions are used. These policies might include specific goals for particular sanctions, definitions of the types of offenders eligible for each sanction, or guidelines that govern the application of intermediate sanctions in specific cases.

ate sanctions on top of one another (such as sentencing an offender to *both* community service and home detention).

Studies typically have focused on particular programs rather than on the broader systems in which these programs have operated. Hence, little information exists about how intermediate sanctions have affected a jurisdiction's overall sentencing and imprisonment practices. For example, an intermediate sanction may reduce the demand for prison space by being applied to a substantial number of prison-bound offenders. However, vigorous enforcement of that intermediate sanction ultimately may *increase* the demand for prison space to handle violators of the sanction's conditions of supervision, which are usually more stringent than those of standard probation.

There have been few attempts to establish public policies to control development or application of intermediate sanctions, and two potentially conflicting forces appear to be driving their expansion. For example, some policymakers support intermediate sanctions as alternatives for selected prison-bound offenders, while others support them as intensified punishment for offenders who are insufficiently sanctioned or controlled by regular probation. Fiscal conservatives support intermediate sanctions as a way to slow the growth of correctional costs, while those focusing on the need to punish criminals want a broader array of punitive sanctions for offenders placed on probation.

Crime reduction

There is little evidence that ISPs² and community service³ either rehabilitated or deterred offenders from committing additional crimes better than the sentencing options they replaced. The find-

ings on boot camps are inconclusive.⁴ Overall, there have been no significant differences in outcomes, but boot camps with intensive treatment-oriented aftercare have shown positive results. It remains to be determined, however, whether the particular boot camp program, the aftercare program, or the combination of the two was the key factor in causing the better outcomes. Studies of home detention and electronic monitoring reported positive results with respect to recidivism,⁵ but did not account for diminished incapacitative effects,⁶ which were lost when offenders were diverted from prison to home detention, thereby skewing the findings in favor of home detention. No outcome evaluations have been completed for DRCs.

Effects on sentencing and correctional practices

Intermediate sanctions can fail to have the intended effects on sentencing practices in a jurisdiction because of design flaws, constraints of the political environment, or insufficient control over the imposition of the sanction.

Design flaws. Boot camps are often intended to reduce prison and jail populations and thereby alleviate crowding. To do that they must admit offenders who would have been incarcerated for a significant period of time if the boot camp did not exist.⁷ Boot camps, particularly those in local jails, frequently target offenders who otherwise would serve short periods of confinement. Hence, those who complete boot camps may serve longer total confinement terms than inmates who do not participate in them. Since boot camps generally accept offenders who volunteer for the programs, the longer total incarceration period reduces inmates' incentive to participate, which causes admissions to drop and

further reduces the potential of boot camps to affect confinement levels.

Constraints in the environment. With respect to reducing prison populations and spending, studies of intermediate sanctions generally have found strong resistance among criminal justice officials to change established sentencing patterns, especially if the change is intended to imprison fewer offenders. The easier route has been to use intermediate sanctions to intensify punishments for those not otherwise bound for prison or jail. Moreover, legislators have frequently restricted boot camps to nonviolent first offenders,⁸ following a practice instituted by some first-generation boot camps. The selection of such a “lightweight” population means boot camps cannot target the kinds of offenders needed to reduce prison or jail populations. In fact, populating boot camps with lightweight offenders has had the opposite effect—it has increased confinement populations by exposing offenders who would have received probation to an increased risk of committing technical violations and being subsequently imprisoned.⁹

Insufficient control over imposition of sanctions. Studies of intermediate sanctions and pretrial diversion programs have found that decisions about a new sanction’s position in the established hierarchy of sentencing options has depended in great part on which officials have had the most leverage over case dispositions. In a world where plea negotiation has been the rule rather than the exception, prosecutors’ decisions often have played a central role in determining sentences—a situation that has often not been fully appreciated by those who design and administer intermediate sanctions. Therefore, if intermediate

About the Key Legislative Issues Series

In 1995 the National Institute of Justice (NIJ) contracted with Abt Associates Inc. to interview legislators and policymakers throughout the country to identify important criminal justice topics being considered by State legislatures and to determine the information they need to help them make more informed decisions. Altogether, 89 legislators, legislative staff members, and other criminal justice policymakers (e.g., sentencing commission members) were interviewed in 23 States. The interviews were conducted during the opening weeks of the 1995 State legislative sessions.

The sites and the respondents were chosen to reflect the diversity of the States. Some of the factors taken into consideration were geographic size and region, urban/rural mix, and existence (or nonexistence) of a sentencing commission in the State government. The respondents selected included the chairpersons of relevant legislative committees (such as the criminal justice, judiciary, and corrections committees), a representative from the governor’s staff, and an official with the executive branch (such as the commissioner of corrections or the sentencing commission chairperson). Other people whom they suggested were also interviewed, and, as might be expected, legislators frequently referred the interviewers to their staff.

These policymakers identified four topics as important items on their legislative agendas:

- Sentencing commissions.
- Intermediate sanctions.
- Mandatory sentencing, including three-strikes laws.

- Transferring serious juvenile offenders to adult courts.

State policymakers expressed a strong desire for more timely and useful information about research findings on important criminal justice policy issues they were addressing. However, they voiced reservations about gleaning useful information from technical research reports.

Reviews and summaries of the research literature on the four key topics identified present the information in a way that is more accessible to policymakers. Of the four reports, this one summarizes what is known about the use and effects of existing intermediate sanctions.

Titles in the series

The Impact of Sentencing Guidelines (NCJ 161837)

Intermediate Sanctions (NCJ 161838)

Mandatory Sentencing (NCJ 161839)

Transferring Serious Juvenile Offenders to Adult Courts (NCJ 161840)

These summary reports have been published in NIJ’s Research in Action series. Copies can be obtained from the National Criminal Justice Reference Service (NCJRS), Box 6000, Rockville, MD 20849-6000; telephone 800-851-3420; or e-mail askncjrs@ncjrs.org. The reports can also be viewed and downloaded from the NCJRS World Wide Web site, the Justice Information Center (<http://www.ncjrs.org>), or through the NCJRS Bulletin Board System (direct dial through computer modem: 301-738-8895; telnet to ncjrsbbs.ncjrs.org or gopher to ncjrs.org:71).

sanctions are to be applied to the intended group of offenders, prosecutors may need to participate in the design and development of specific programs. Likewise, judges may need to be involved. Judges often resist establishment of intermediate sanctions unless they have sufficient discretion in applying the sanction in individual cases.

Costs and benefits

Agencies operating intermediate sanction programs often make positive statements about their cost effectiveness. However, these statements may be based on cost-benefit analyses that have not adequately accounted for the real costs of sanctions or their alternatives. Most analyses have inappropriately used average daily costs rather than marginal costs¹⁰ to compute savings, and many have not taken capital spending into account satisfactorily.

The few studies that have attempted rigorous cost-benefit analyses of intermediate sanctions found that their financial payoff was smaller than expected. For example, one study found that ISPs were far more costly than previously assumed; in fact, ISP did not result in cost savings at any of the 14 sites studied during a 1-year followup period.¹¹ However, it should be noted that in general, variation in program costs have been related more to revocation rates for rule violations than to actual program operations. Costs to adjudicate high numbers of technical violations and to reincarcerate such offenders can quickly erode any potential cost savings.¹²

When boot camps have been properly designed to maximize savings in prison beds, their impact on prison

crowding and costs has been significant. For example, New York made several key decisions to maximize bed-space savings: the Department of Corrections (DOC) selected “tougher” cases than most other boot camps, thereby saving a substantial number of confinement months for each boot camp graduate, and it implemented boot camps on a large scale. New York officials have claimed that substantial cost savings have resulted and that, since boot camp graduates have not recidivated at a higher rate than regular inmates, public safety has not been compromised.¹³

However, a multijurisdictional study found that only two of the five boot camps examined saved jurisdictions a substantial number of prison beds by their use of boot camps.¹⁴ Although boot camps may reduce the need for bed space, it is difficult to prove that their use avoids future capital costs.¹⁵ Moreover, a sensible cost analysis would include the costs of aftercare programs, which may be substantial.

It appears that it will be very difficult for jail-based boot camps to reduce confined populations or costs. The low ceiling on jail confinement (no more than 1 year in most States, and often considerably less) means that meaningfully reducing the time served may not be possible for those completing jail-based boot camps.¹⁶

The costs of intermediate sanctions, in general, also have varied according to (1) their type of administration (either as stand-alone sanctions by a volunteer or private agency or as add-ons to a probation sentence), (2) the extent of enforcement required, and (3) the sites chosen. For example, the costs of administering and enforcing community service by a stand-alone private

agency in New York City were substantial and approximated those of imprisonment.¹⁷

Future issues for policymakers

Even if the use of these new sanctions has not achieved anticipated benefits, many reasons remain for encouraging their expansion. A longer menu of sentencing choices could lead to better matching of the severity of punishment to the seriousness of crimes. Intermediate sanctions can permit more rational allocation of correctional and sanctioning resources so that minor offenders can be safely supervised in community programs, while serious offenders are confined. More options should limit the inappropriate use of probation or prison for offenders who deserve mid-range sanctions.

State policymakers interviewed for this project were very interested in developing effective and affordable sentencing policies. Many wanted to respond to constituents’ fear of crime and demands for tougher sanctions, while recognizing the need to limit spiraling correctional costs. Intermediate sanctions are being considered in many States as a means to limit growth in confinement sentencing.

To address issues discussed earlier of conflicting objectives, States may need to develop policies (such as sentencing guidelines for nonconfinement and confinement sanctions) that govern the use of intermediate sanctions in individual cases. Such policies should be designed to ensure that overall use of intermediate sanctions is consistent with goals established by the legislature and with broad principles that govern sentencing (such as proportionality, uniformity, and neutrality). In particular, guidelines for intermediate

sanctions need to limit additive use of intermediate sanctions (heaping two or three intermediate sanctions on a particular offender) and control decisions to revoke probation in order to minimize use of confinement for minor rule violations.

Legislatures may also want to consider developing policies to ensure a more effective and systematic use of intermediate sanctions so that their potential to punish and reduce correctional costs can be achieved. Such policies should specify goals for each sanction, locate each category of intermediate sanctions in the continuum between standard probation and total confinement, and define target populations for each category (e.g., determine which sanctions should target confined offenders for early release, thereby enhancing standard probation, and which should be used for an offender population needing treatment and/or services). States may also want to develop a financial structure to steer development of intermediate sanctions in intended directions. This structure could be a variation of current community corrections acts, in which a central State agency sets standards for local programs and administers performance-based financial aid. That is, the State would provide greater support to jurisdictions whose intermediate sanctions meet or exceed performance objectives specified by the agency.

Policies on intermediate sanctions can be linked to those on mandatory sentences because they must confront the issues of balancing the costs of incarceration with the need to enhance safety in our communities. Many have argued that long mandatory sentences are neither cost effective nor effective at crime prevention because they con-

fine individuals beyond their criminally active years. Research has indicated that as offenders age, their risk of recidivism decreases. As part of their administrative policies on intermediate sanctions, States could consider some form of administrative review to determine if continued confinement is required for those serving long mandatory sentences.

Notes

1. Private organizations might identify a need for a new sentencing option, implement a program, and then contract with local officials to provide program "slots" for convicted offenders.
2. Petersilia, J., and S. Turner, "Intensive Probation and Parole," in *Crime and Justice: A Review of Research*, vol. 17, ed. Michael Tonry, Chicago: University of Chicago Press, 1993; Petersilia, J., *Intensive Probation Supervision for High-Risk Offenders: Findings From Three California Experiments*, Santa Monica: The RAND Corporation, 1990.
3. McDonald, D., *Punishment Without Walls: Community Service Sentences in New York City*, New Brunswick, New Jersey: Rutgers University Press, 1986.
4. MacKenzie, D.L., and C. Souryal, *Multisite Evaluation of Shock Incarceration*, Final Summary Report to the National Institute of Justice, Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1994; MacKenzie, D.L., J.W. Shaw, and V.B. Gowdy, "An Evaluation of Shock Incarceration in Louisiana: Executive Summary," Unpublished Report to the National Institute of Justice, Washington, D.C., 1990.
5. Baird, S.C., and D. Wagner, "Measuring Diversion: The Florida Community Control Program," *Crime and Delinquency*, 36(1990): 112–25; Austin, J., and P. Hardyman, "The Use of Early Parole with Electronic Monitoring to Control Prison Crowding: Evaluation of the Oklahoma Department of Corrections Pre-Parole Supervised Release with Electronic Monitoring," Unpublished Report to the National Institute of Justice, 1993, described in Voncile B. Gowdy, *The Intermediate Sanctions*, Research in Brief, Washington, D.C.: U.S. Department of Justice, National Institute of Justice.
6. Many intermediate sanctions draw offenders from two pools: (1) those who would have gotten regular probation and (2) those who would have

been imprisoned if the intermediate sanction did not exist. Even if some intermediate sanctions lower recidivism rates for the first group, they may raise recidivism rates for the second group, who could commit new crimes during the time in which they would have been incarcerated. A balanced measure of crime control must consider recidivism rates for both groups and use the total recidivism rates to assess the impact of the intermediate sanctions.

7. Parent, D.G., "Boot Camps Failing to Achieve Goals," *Overcrowded Times* 5(1994): 8–11.
8. Parent, D.G., "Shock Incarceration: An Overview of Existing Programs," Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1989; MacKenzie, L., L. Reichers Gould, and J. Shaw, "Shock Incarceration: Rehabilitation or Retribution?" *Journal of Offender Counseling, Services, and Rehabilitation*, 14(1980):25–40.
9. Parent, "Boot Camps Failing to Achieve Goals," 8–11.
10. Average daily costs are computed by totaling all costs associated with a service (e.g., imprisonment) and dividing by the number of person-days of service provided. This figure should include some costs that do not vary with the number of offenders served, some which vary only if there are substantial changes in the number of offenders served, and some—such as consumables—that vary with each offender served. The latter are termed *marginal costs*. Intermediate sanctions usually have a small net impact on the number of confined inmates. If this is the case, it is more appropriate to assess costs and benefits by analyzing marginal costs, not average daily costs.
11. Petersilia and Turner, "Intensive Probation and Parole."
12. Parent, "Boot Camps Failing to Achieve Goals," 8–11.
13. Clark, D., D. Aziz, and D. MacKenzie, "Focus on New York Shock Incarceration," Unpublished Report to the National Institute of Justice, Washington, D.C., 1993.
14. MacKenzie and Souryal, *Multisite Evaluation of Shock Incarceration*.
15. Parent, "Boot Camps Failing to Achieve Goals," 8–11.
16. *Ibid.*, 8–11.
17. McDonald, *Punishment Without Walls*.

Dale Parent, associate; Terence Dunworth, Ph.D., senior associate; Douglas McDonald, Ph.D., senior associate; and William Rhodes, Ph.D., senior scientist, are with Abt Associates Inc. This study, sponsored by the National Institute of Justice, was prepared under contract 94-IJ-CX-C007.

Points of view in this document are those of the authors and do not necessarily reflect the official position of the U.S. Department of Justice.

The National Institute of Justice is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, Bureau of Justice Statistics, Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

NCJ 161838

Quick Access to NIJ Publication News

For news about NIJ's most recent publications, including solicitations for grant applications, subscribe to JUSTINFO, the bimonthly newsletter sent to you via e-mail. Here's how:

- Send an e-mail to listproc@ncjrs.org
- Leave the subject line blank.
- Type subscribe justinfo your name (e.g., subscribe justinfo Jane Doe) in the body of the message.

Or check out the "What's New" section at the Justice Information Center homepage: <http://www.ncjrs.org>

U.S. Department of Justice
Office of Justice Programs
National Institute of Justice

Washington, D.C. 20531

Official Business
Penalty for Private Use \$300

BULK RATE
POSTAGE & FEES PAID
DOJ/NIJ
Permit No. G-91